Sec. 2262.103. PERSONNEL. Each agency or officer with representation on the team shall provide, at the request of the team, staff to assist the team in carrying out its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1422, Sec. 5.01, eff. Sept. 1, 2001.

Sec. 2262.104. LOW-RISK CONTRACTS. The contract advisory team shall identify the types of procurements that pose a low risk of loss to the state and develop a model contract management process for use with those procurements.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1039 (H.B. 2873), Sec. 2, eff. September 1, 2013.

SUBCHAPTER D. CONTRACT FORMS AND PROVISIONS

Sec. 2262.151. CONTRACT TERMS RELATING TO NONCOMPLIANCE. (a) The comptroller shall develop recommendations for contract terms regarding remedies for noncompliance by contractors, including remedies for noncompliance with any required disclosure of conflicts of interest by contractors. The comptroller may develop recommended contract terms that are generally applicable to state contracts and terms that are applicable to important types of state contracts.

(b) A state agency may include applicable recommended terms in a contract entered into by the agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1227 (S.B. 1681), Sec. 7, eff. November 1, 2013.

Sec. 2262.152. UNIFORM FORMS. The comptroller shall develop and make available a uniform and automated set of forms that a state agency may use in the different stages of the contracting process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1227 (S.B. 1681), Sec. 7, eff. November 1, 2013.

Sec. 2262.153. FORMS FOR REPORTING CONTRACTOR PERFORMANCE. As part of the uniform forms published under Section 2262.152, the comptroller shall develop forms for use by state agencies in reporting a contractor's performance for use in the vendor performance tracking system under Section 2262.055.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1227 (S.B. 1681), Sec. 7, eff. November 1, 2013.

Sec. 2262.154. REQUIRED PROVISION RELATING TO AUDITING. (a) Each state agency shall include in each of its contracts a term that provides that:

(1) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract;

(2) acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds; and

(3) under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

(b) The state auditor shall provide assistance to a state agency in developing the contract provisions.

Added by Acts 2003, 78th Leg., ch. 785, Sec. 44, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1012 (H.B. 905), Sec. 2, eff. June 18, 2005.

Transferred, redesignated and amended from Government Code, Section 2262.003 by Acts 2013, 83rd Leg., R.S., Ch. 1227 (S.B. 1681), Sec. 8, eff. November 1, 2013.

CHAPTER 2263. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS

Sec. 2263.001. APPLICABILITY. (a) This chapter applies in

connection with the management or investment of any state funds managed or invested:

(1) under the Texas Constitution or other law, including Chapters 404 and 2256; and

(2) by or for:

(A) a public retirement system as defined by Section 802.001 that provides service retirement, disability retirement, or death benefits for officers or employees of the state;

(B) an institution of higher education as defined by Section 61.003, Education Code; or

(C) another entity that is part of state government and that manages or invests state funds or for which state funds are managed or invested.

(b) This chapter applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

(c) This chapter does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Added by Acts 2003, 78th Leg., ch. 932, Sec. 2, eff. Sept. 1, 2003.

Sec. 2263.002. DEFINITION. In this chapter, "financial advisor or service provider" includes a person or business entity who acts as a financial advisor, financial consultant, money or investment manager, or broker.

Added by Acts 2003, 78th Leg., ch. 932, Sec. 2, eff. Sept. 1, 2003.

Sec. 2263.003. CONSTRUCTION WITH OTHER LAW. To the extent of a conflict between this chapter and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Added by Acts 2003, 78th Leg., ch. 932, Sec. 2, eff. Sept. 1, 2003.

Sec. 2263.004. ETHICS REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS OR SERVICE PROVIDERS. (a) The governing body of a state

governmental entity by rule shall adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who:

(1) may reasonably be expected to receive, directly or indirectly, more than $10,000 in compensation from the entity during a fiscal year; or

(2) render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

(b) A contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person as described by Subsection (a) is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

Added by Acts 2003, 78th Leg., ch. 932, Sec. 2, eff. Sept. 1, 2003.

Sec. 2263.005. DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISOR OR SERVICE PROVIDER. (a) A financial advisor or service provider described by Section 2263.004 shall disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor:

(1) any relationship the financial advisor or service provider has with any party to a transaction with the state governmental entity, other than a relationship necessary to the investment or funds management services that the financial advisor or service provider performs for the state governmental entity, if a reasonable person could expect the relationship to diminish the financial advisor's or service provider's independence of judgment in the performance of the person's responsibilities to the state governmental entity; and

(2) all direct or indirect pecuniary interests the financial advisor or service provider has in any party to a transaction with the state governmental entity, if the transaction is connected with any financial advice or service the financial advisor

or service provider provides to the state governmental entity or to a member of the governing body in connection with the management or investment of state funds.

(b) The financial advisor or service provider shall disclose a relationship described by Subsection (a) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

(c) A financial advisor or service provider described by Section 2263.004 shall file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. The statement must disclose each relationship and pecuniary interest described by Subsection (a) or, if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact.

(d) The annual statement must be filed not later than April 15 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. The statement must cover the reporting period of the previous calendar year. The state auditor shall develop and recommend a uniform form that other governmental entities receiving the form may prescribe.

(e) The financial advisor or service provider shall promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 932, Sec. 2, eff. Sept. 1, 2003.

Sec. 2263.006. PUBLIC INFORMATION. Chapter 552 controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or excepted from required public disclosure.

Added by Acts 2003, 78th Leg., ch. 932, Sec. 2, eff. Sept. 1, 2003.

CHAPTER 2264. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2264.001. DEFINITIONS. In this chapter:

(1) "Economic development corporation" means a development

corporation organized under Subtitle C1, Title 12, Local Government Code.

(2) "Public agency" means the state or an agency, instrumentality, or political subdivision of this state, including a county, a municipality, a public school district, or a special-purpose district or authority.

(3) "Public subsidy" means a public program or public benefit or assistance of any type that is designed to stimulate the economic development of a corporation, industry, or sector of the state's economy or to create or retain jobs in this state. The term includes grants, loans, loan guarantees, benefits relating to an enterprise or empowerment zone, fee waivers, land price subsidies, infrastructure development and improvements designed to principally benefit a single business or defined group of businesses, matching funds, tax refunds, tax rebates, or tax abatements.

(4) "Undocumented worker" means an individual who, at the time of employment, is not:

(A) lawfully admitted for permanent residence to the United States; or

(B) authorized under law to be employed in that manner in the United States.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 11.023, eff. September 1, 2009.

SUBCHAPTER B. RESTRICTIONS ON USE OF CERTAIN PUBLIC SUBSIDIES TO EMPLOY UNDOCUMENTED WORKERS

Sec. 2264.051. STATEMENT REQUIRED IN APPLICATION FOR PUBLIC SUBSIDIES. A public agency, state or local taxing jurisdiction, or economic development corporation shall require a business that submits an application to receive a public subsidy to include in the application a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

Sec. 2264.052. CONDITION ON RECEIPT OF PUBLIC SUBSIDIES. The statement required by Section 2264.051 must state that if, after receiving a public subsidy, the business, or a branch, division, or department of the business, is convicted of a violation under 8 U.S.C. Section 1324a(f), the business shall repay the amount of the public subsidy with interest, at the rate and according to the other terms provided by an agreement under Section 2264.053, not later than the 120th day after the date the public agency, state or local taxing jurisdiction, or economic development corporation notifies the business of the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

Sec. 2264.053. AGREEMENT REGARDING REPAYMENT OF INTEREST. A public agency, state or local taxing jurisdiction, or economic development corporation, before awarding a public subsidy to a business, shall enter into a written agreement with the business specifying the rate and terms of the payment of interest if the business is required to repay the public subsidy.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

SUBCHAPTER C. ENFORCEMENT

Sec. 2264.101. RECOVERY. (a) A public agency, local taxing jurisdiction, or economic development corporation, or the attorney general on behalf of the state or a state agency, may bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under this chapter.

(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall recover court costs and reasonable attorney's fees incurred in an action brought under Subsection (a).

(c) A business is not liable for a violation of this chapter by a subsidiary, affiliate, or franchisee of the business, or by a

person with whom the business contracts.

Added by Acts 2007, 80th Leg., R.S., Ch. 853 (H.B. 1196), Sec. 1, eff. September 1, 2007.

CHAPTER 2265. REQUIRED PUBLICATION AND REPORTING BY GOVERNMENTAL ENTITIES

Sec. 2265.001. RECORDING AND REPORTING OF ELECTRICITY, WATER, AND NATURAL GAS CONSUMPTION. (a) In this section, "governmental entity" means:

(1) a board, commission, or department of the state or a political subdivision of the state, including a municipality, a county, or any kind of district other than a school district; or

(2) an institution of higher education as defined by Section 61.003, Education Code.

(b) Notwithstanding any other law, a governmental entity responsible for payments for electric, water, or natural gas utility services shall record in an electronic repository the governmental entity's metered amount of electricity, water, or natural gas consumed for which it is responsible to pay and the aggregate costs for those utility services. The governmental entity shall report the recorded information on a publicly accessible Internet website with an interface designed for ease of navigation if available, or at another publicly accessible location.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 8, eff. September 1, 2007.
Renumbered from Government Code, Section 2264.001 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(48), eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 597 (S.B. 668), Sec. 1.13, eff. June 10, 2019.

CHAPTER 2267. PUBLIC AND PRIVATE FACILITIES AND INFRASTRUCTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2267.001. DEFINITIONS. In this chapter:

(1) "Affected jurisdiction" means any county or municipality in which all or a portion of a qualifying project is

located.

(1-a) "Center" means the center for alternative finance and procurement established under Section 2152.110 by the Texas Facilities Commission.

(1-b) "Commission" means the Partnership Advisory Commission established under Chapter 2268.

(2) "Comprehensive agreement" means the comprehensive agreement authorized by Section 2267.058 between the contracting person and the responsible governmental entity.

(3) "Contracting person" means a person who enters into a comprehensive or interim agreement with a responsible governmental entity under this chapter.

(4) "Develop" means to plan, design, develop, finance, lease, acquire, install, construct, or expand a qualifying project.

(5) "Governmental entity" means:

(A) a board, commission, department, or other agency of this state, including an institution of higher education as defined by Section 61.003, Education Code, that elects to operate under this chapter through the adoption of a resolution by the institution's board of regents; and

(B) a political subdivision of this state that elects to operate under this chapter by the adoption of a resolution by the governing body of the political subdivision.

(5-a) "Improvement" means:

(A) a building, structure, fixture, or fence erected on or affixed to land;

(B) the installation of water, sewer, or drainage lines on, above, or under land;

(C) the paving of undeveloped land; and

(D) specialized software that in any manner is related to the control, management, maintenance, or operation of an improvement.

(6) "Interim agreement" means an agreement authorized by Section 2267.059 between a contracting person and a responsible governmental entity that proposes the development or operation of the qualifying project.

(7) "Lease payment" means any form of payment, including a land lease, by a governmental entity to the contracting person for the use of a qualifying project.

(8) "Material default" means any default by a contracting

person in the performance of duties imposed under Section 2267.057(f) that jeopardizes adequate service to the public from a qualifying project.

(9) "Operate" means to finance, maintain, improve, equip, modify, repair, or operate a qualifying project.

(9-a) "Private entity" means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

(9-b) "Property" means any matter or thing capable of public or private ownership.

(9-c) "Proposer" means a private entity that submits a proposal to a responsible governmental entity or affected jurisdiction.

(10) "Qualifying project" means:

(A) any ferry, mass transit facility, vehicle parking facility, port facility, power generation facility, fuel supply facility, oil or gas pipeline, water supply facility, public work, waste treatment facility, hospital, school, medical or nursing care facility, recreational facility, public building, technology facility, or other similar facility currently available or to be made available to a governmental entity for public use, including any structure, parking area, appurtenance, and other property required to operate the structure or facility and any technology infrastructure installed in the structure or facility that is essential to the project's purpose; or

(B) any improvements necessary or desirable to real property owned by a governmental entity.

(10-a) "Real property" means:

(A) improved or unimproved land;

(B) an improvement;

(C) a mine or quarry;

(D) a mineral in place;

(E) standing timber; or

(F) an estate or interest, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation, in a property described by Paragraphs (A) through (E).

(11) "Responsible governmental entity" means a governmental entity that has the power to develop or operate an applicable

qualifying project.

(12) "Revenue" means all revenue, income, earnings, user fees, lease payments, or other service payments that arise out of or in connection with the development or operation of a qualifying project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the project.

(13) "Service contract" means a contract between a governmental entity and a contracting person under Section 2267.054.

(14) "Service payment" means a payment to a contracting person of a qualifying project under a service contract.

(14-a) "State entity" means a governmental entity described by Subdivision (5)(A).

(15) "User fee" means a rate, fee, or other charge imposed by a contracting person for the use of all or part of a qualifying project under a comprehensive agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 271 (H.B. 768), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 23, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 2, eff. September 1, 2015.

Sec. 2267.002. DECLARATION OF PUBLIC PURPOSE; CONSTRUCTION OF CHAPTER. (a) The legislature finds that:

(1) there is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, and installation of education facilities, technology and other public infrastructure, and government facilities in this state that serve a public need and purpose;

(2) the public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped,

maintained, operated, implemented, or installed;

(3) there are inadequate resources to develop new education facilities, technology and other public infrastructure, and government facilities for the benefit of the citizens of this state, and there is demonstrated evidence that partnerships between public entities and private entities or other persons can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

(4) financial incentives exist under state and federal tax provisions that encourage public entities to enter into partnerships with private entities or other persons to develop qualifying projects; and

(5) authorizing private entities or other persons to develop or operate one or more qualifying projects may serve the public safety, benefit, and welfare by making the projects available to the public in a more timely or less costly fashion.

(b) An action authorized under Section 2267.053 serves the public purpose of this chapter if the action facilitates the timely development or operation of a qualifying project.

(c) The purposes of this chapter include:

(1) encouraging investment in this state by private entities and other persons;

(2) facilitating bond financing or other similar financing mechanisms, private capital, and other funding sources that support the development or operation of qualifying projects in order to expand and accelerate financing for qualifying projects that improve and add to the convenience of the public; and

(3) providing governmental entities with the greatest possible flexibility in contracting with private entities or other persons to provide public services through qualifying projects subject to this chapter.

(d) This chapter shall be liberally construed in conformity with the purposes of this section.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1075 , Sec. 12(1), eff. September 1, 2015.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 12(1),

eff. September 1, 2015.

Sec. 2267.003. APPLICABILITY. This chapter does not apply to:

(1) the financing, design, construction, maintenance, or operation of a highway in the state highway system;

(2) a transportation authority operating under Chapter 451, 452, 453, or 460, Transportation Code, other than a metropolitan rapid transit authority operating under Chapter 451, Transportation Code, in which the principal municipality has a population of 1.9 million or more;

(3) any telecommunications, cable television, video service, or broadband infrastructure other than technology installed as part of a qualifying project that is essential to the project; or

(4) except as provided by Section 2165.259, a qualifying project located in the Capitol Complex, as defined by Section 443.0071.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 24, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 526 (S.B. 255), Sec. 7, eff. September 1, 2017.

Sec. 2267.004. APPLICABILITY OF EMINENT DOMAIN LAW. This chapter does not alter the eminent domain laws of this state or grant the power of eminent domain to any person who is not expressly granted that power under other state law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.005. CONFLICT OF INTEREST. An employee of a responsible governmental entity or a person related to the employee within the second degree by consanguinity or affinity, as determined under Chapter 573, may not accept money, a financial benefit, or other consideration from a contracting person that has entered into a

comprehensive agreement with the responsible governmental entity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0051. PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED GOVERNMENTAL ENTITY EMPLOYEES. (a) A contracting person may not employ or enter into a professional services contract or a consulting services contract under Chapter 2254 with a former or retired employee of the responsible governmental entity with which the person has entered into a comprehensive agreement before the first anniversary of the date on which the former or retired employee terminates employment with the entity.

(b) This section does not prohibit the contracting person from entering into a professional services contract with a corporation, firm, or other business organization that employs a former or retired employee of the responsible governmental entity before the first anniversary of the date the former or retired employee terminates employment with the entity if the former or retired employee does not perform services for the corporation, firm, or other business organization under the comprehensive agreement with the responsible governmental entity that the former or retired employee worked on before terminating employment with the entity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0052. PROHIBITED EMPLOYMENT OF RESPONSIBLE GOVERNMENTAL ENTITY EMPLOYEES. (a) An employee of a responsible governmental entity may not be employed or hired by another person to perform duties that relate to the employee's specific duties in developing and implementing a qualifying project, including review, evaluation, development, and negotiation of a qualifying project proposal.

(b) The responsible governmental entity shall obtain from each employee sufficient information to determine whether:

(1) the employee is employed by another person; and

(2) a potential conflict of interest exists between the employee's duties for the entity and the employee's duties with the

other employer.

(c) Each employee of a responsible governmental entity whose duties relate to a qualifying project shall attest that the employee is aware of and agrees to the responsible governmental entity's ethics and conflict-of-interest policies.

(d) To the extent the other employment is authorized by the responsible governmental entity's policy, this section does not prohibit additional employment for an employee of a responsible governmental entity whose duties are not related to a qualifying project.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.006. DEVELOPMENT PLAN. (a) If the state intends to develop or operate a qualifying project under this chapter, the state entity proposing to develop or operate the project may adopt a development plan on the real property associated with the project.

(b) The purpose of a development plan is to conserve and enhance the value of real property belonging to the state, taking into consideration the preservation of the health, safety, and general welfare of the communities in which the real property is situated.

(c) The plan must address local land use planning ordinances, which may include the following:

(1) allocation and location of specific uses of the real property, including residential, commercial, industrial, recreational, or other appropriate uses;

(2) densities and intensities of designated land uses;

(3) the timing and rate of development;

(4) timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, and roads and transportation facilities; or

(5) needed zoning and other land use regulations.

(d) The plan must comply with existing rules, regulations, orders, or ordinances for real property development to the extent the rules, regulations, orders, or ordinances are not detrimental to the interests of the state as determined by the special board of review.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0061. PUBLIC HEARING BEFORE PREPARATION OF DEVELOPMENT PLAN. (a) If the state entity is requested to prepare a development plan under Section 2267.006, the state entity shall notify the local government to which the plan will be submitted under Section 2267.0062 of the state entity's intent to prepare a development plan. The state entity shall provide the local government with information relating to:

(1) the location of the real property to be offered for sale or lease;

(2) the highest and best use of the real property; and

(3) the process for preparing the development plan under Section 2267.006 and the process provided under Sections 2267.0065 and 2267.0066 for the special board of review.

(b) Not later than the 30th day after the date the local government receives the notice provided under Subsection (a), the local government may request the state entity to hold a public hearing to solicit public comment. If requested by the local government, the state entity shall hold a public hearing. The local government shall provide notice of the hearing to real property owners in at least the same manner that notice is provided for adopting zoning regulations or subdivision requirements in the local government's jurisdiction. The state entity shall set the agenda for the hearing, which must be completed not later than the 120th day after the date notice is provided under Subsection (a).

(c) If the local government does not request a public hearing under Subsection (b), the state entity may hold a hearing to solicit public comment. The state entity shall provide notice of the hearing in the same manner that a local government is required to provide notice under Subsection (b). The state entity shall set the agenda for the hearing and must complete the hearing not later than the 120th day after the date the notice is provided under Subsection (a).

(d) A public hearing under this section may include:

(1) a presentation by the state entity relating to the state entity's classification of the real property as unused or substantially underused and the state entity's recommendation of the highest and best use to which the real property may legally be

placed;

(2) a presentation by the local government relating to relevant local plans, development principles, and ordinances that may affect the development of the real property; and

(3) oral comments and presentations of information by and written comments received from other persons relating to the development of the real property.

(e) The state entity shall prepare a summary of the information and testimony presented at a hearing conducted under this section and may develop recommendations based on the information and testimony. The state entity shall prepare a report summarizing the information and testimony presented at the hearing and the views presented by the state, the affected local governments, and other persons who participated in the hearing process. The governing body of the state entity shall review the state entity's report and may instruct the state entity to incorporate information based on the report in preparing the development plan under Section 2267.006.

(f) The state entity may adopt rules to implement this section. The state entity shall administer the process provided by this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0062. SUBMISSION OF PLAN TO AFFECTED LOCAL GOVERNMENT. (a) The development plan adopted under Section 2267.006 shall be submitted to any local government having jurisdiction over the real property in question for consideration.

(b) The local government shall evaluate the plan and either accept or reject the plan not later than the 120th day after the date the state entity submits the plan.

(c) The plan may be rejected by the local government only on grounds that it does not comply with local ordinances and land use regulations, including zoning and subdivision ordinances.

(d) If the plan is rejected, the local government shall specifically identify any ordinance with which the plan conflicts and propose specific modifications to the plan that will bring it into compliance with the local ordinance.

(e) If the plan is rejected by the affected local government,

the state entity may modify the plan to conform to the ordinances specifically identified by the local government and resubmit the plan for approval, or the state entity may apply for necessary rezoning or variances from the local ordinances.

(f) Failure by the local government to act within the 120-day period prescribed by Subsection (b) is considered an acceptance by the local government of the plan.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0063. REZONING. (a) If the plan would require zoning inconsistent with any existing zoning or other land use regulation, the state entity or its designated representative may at any time submit a request for rezoning to the local government with jurisdiction over the real property in question.

(b) The rezoning or variance request shall be submitted in the same manner as any such request is submitted to the affected local government provided the local government takes final action on the request not later than the 120th day after the date the request for rezoning or variance is submitted.

(c) Failure by the local government to act within the 120-day period prescribed by Subsection (b) is considered an approval of the rezoning request by the local government.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0064. FEES AND ASSESSMENTS. (a) The local government may not impose application, filing, or other fees or assessments on the state for consideration of the plan or the application for rezoning or variance submitted by the state.

(b) The local government may not require the submission of architectural, engineering, or impact studies to be completed at state expense before considering the plan or application for rezoning or variance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0065. SPECIAL BOARD OF REVIEW. (a) If the local government denies the rezoning request submitted under this chapter, the matter may be appealed to a special board of review consisting of the following members:

(1) the land commissioner;

(2) the mayor of the municipality within whose corporate boundaries or extraterritorial jurisdiction the real property is located;

(3) the county judge of the county in which the qualifying project is located;

(4) the executive director of the state entity that proposes to develop or operate the qualifying project; and

(5) a member appointed by the governor.

(b) The land commissioner shall serve as the presiding officer of the special board of review.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0066. HEARING. (a) The special board of review shall conduct one or more public hearings to consider the proposed development plan.

(b) Hearings shall be conducted in accordance with rules adopted by the General Land Office for conducting a special review.

(c) If real property is located in more than one municipality, the hearings on any single tract of real property may be combined.

(d) Any political subdivision in which the tract in question is located and the appropriate central appraisal district shall receive written notice of board hearings at least 14 days before the date of the hearing.

(e) At least one hearing shall be conducted in the county where the real property is located.

(f) If after the hearings the special board of review determines that local zoning requirements are detrimental to the best interest of the state, the board shall issue an order establishing a development plan to govern the use of the real property as provided in this section.

(g) Development of the real property shall be in accordance with the plan and must comply with all local rules, regulations, orders, or ordinances except as specifically identified in an order of the special board of review issued pursuant to Subsection (f). In the event that substantial progress is not made toward development of the tract within five years of the date of adoption by the special board of review, local development policies and procedures shall become applicable to development of the tract, unless the special board of review promulgates a new plan.

(h) The hearing may not be considered a contested case proceeding under Chapter 2001 and is not subject to appeal under that chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25, eff. June 14, 2013.

Sec. 2267.0067. BINDING EFFECT OF DEVELOPMENT PLAN. (a) Except as provided by this subsection, a development plan promulgated by the special board of review under this chapter and any plan accepted by a local government shall be final and binding on the state, its lessees, successors in interest and assigns, and affected local governments or political subdivisions unless revised by the special board of review. If the state entity does not receive a bid or auction solicitation for the real property subject to the development plan, the state entity, at the direction of the executive director of the entity, may revise the development plan to conserve and enhance the value and marketability of the real property.

(b) A local government, political subdivision, owner, builder, developer, or any other person may not modify the development plan without specific approval by the special board of review.

(c) The special board of review must file a copy of the development plan in the deed records of the county in which the real property is located. Revisions to the development plan that are requested after the later of the 10th anniversary of the date on which the development plan was adopted by the special board of review or the date on which the state no longer holds a financial or property interest in the real property subject to the plan are governed by local development policies and procedures.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 25,

eff. June 14, 2013.

Sec. 2267.007. QUALIFYING PROJECTS IN CAPITOL COMPLEX. The Texas Facilities Commission may develop or operate a qualifying project located in the Capitol complex, as defined by Section 443.0071, as provided by this chapter only if specifically granted the authority by the legislature.

Added by Acts 2013, 83rd Leg., R.S., Ch. 713 (H.B. 3436), Sec. 2, eff. June 14, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1339 (S.B. 894), Sec. 2, eff. June 14, 2013.
Redesignated from Government Code, Section 2267.005 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(30), eff. September 1, 2015.

SUBCHAPTER B. QUALIFYING PROJECTS

Sec. 2267.051. APPROVAL REQUIRED. A person may not develop or operate a qualifying project unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 3, eff. September 1, 2015.

Sec. 2267.052. ADOPTION OF GUIDELINES BY RESPONSIBLE GOVERNMENTAL ENTITIES. (a) Before requesting or considering a proposal for a qualifying project, a responsible governmental entity must adopt and make publicly available guidelines that enable the governmental entity to comply with this chapter. The guidelines must be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible governmental entity.

(b) The guidelines for a responsible governmental entity described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

(A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and

(B) provide notice of the representative's availability;

(2) provide reasonable criteria for choosing among competing proposals;

(3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

(4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considered a priority by the entity;

(5) include financial review and analysis procedures that at a minimum consist of:

(A) a cost-benefit analysis;

(B) an assessment of opportunity cost;

(C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and

(D) consideration of the results of all studies and analyses related to the proposed qualifying project;

(6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;

(7) ensure that the governmental entity, for a proposed project to improve real property, evaluates design quality, life-cycle costs, and the proposed project's relationship to any relevant comprehensive planning or zoning requirements;

(8) include criteria for:

(A) the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;

(B) the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) the center's role in the review, analysis, or evaluation of the qualifying project;

(9) require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more

detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g); and

(10) establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement.

(c) The guidelines of a responsible governmental entity described by Section 2267.001(5)(B) must include:

(1) the provisions required under Subsection (b); and

(2) a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or registered municipal advisor, not otherwise employed by the governmental entity, or the center to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a qualifying project unless the governing body of the governmental entity determines that the analysis is to be performed by similarly qualified employees of the governmental entity.

(c-1) For a proposal with an estimated cost of $5 million or more for construction or renovation of a qualifying project, the analysis conducted under Subsection (c)(2) must include review by an architect, a professional engineer, and a registered municipal advisor not otherwise employed by the governmental entity.

(d) A responsible governmental entity described by Section 2267.001(5)(A) shall submit a copy of the guidelines adopted by the entity under this section to the commission for approval by the commission consistent with the requirements of Subsection (b). The commission shall prescribe the procedure for submitting the guidelines for review under this section. The commission must complete its review of the guidelines not later than the 60th day after the date the commission receives the guidelines and provide written comments and recommendations to the governmental entity to ensure timely compliance with Subsection (b). The governmental entity may not request or consider a proposal for a qualifying project until the guidelines are approved by the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 27, eff.

June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 4, eff. September 1, 2015.

Sec. 2267.053. APPROVAL OF QUALIFYING PROJECTS BY RESPONSIBLE GOVERNMENTAL ENTITY. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1075 , Sec. 12(2), eff. September 1, 2015.

(a-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1075 , Sec. 12(2), eff. September 1, 2015.

(b) A responsible governmental entity may request proposals or invite bids from persons for the development or operation of a qualifying project.

(b-1) A responsible governmental entity shall make a best value determination in evaluating the proposals received and consider the total project cost as one factor in evaluating the proposals. The responsible governmental entity is not required to select the proposal that offers the lowest total project cost and may consider the following factors:

(1) the proposed cost of the qualifying project;

(2) the general reputation, industry experience, and financial capacity of the person submitting a proposal;

(3) the proposed design and overall quality of the qualifying project;

(4) the eligibility of the project for accelerated selection, review, and documentation timelines under the responsible governmental entity's guidelines;

(5) comments from local citizens and affected jurisdictions;

(6) benefits to the public;

(7) the person's good faith effort to comply with the goals of a historically underutilized business plan;

(8) the person's plans to employ local contractors and residents;

(9) for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing;

(10) the relationship and conformity of the qualifying project to a state or local community plan impacted by the qualifying project or to the uses of property surrounding the qualifying

project;

(11) the historic significance of the property on which the qualifying project is proposed to be located;

(12) the environmental impact of the qualifying project; and

(13) other criteria that the responsible governmental entity considers appropriate.

(b-2) A responsible governmental entity may approve a qualifying project that the governmental entity determines serves a public purpose. The responsible governmental entity must include in the comprehensive agreement for the qualifying project a written declaration of the specific public purpose served by the project.

(c) The responsible governmental entity may approve as a qualifying project the development or operation of a facility needed by the governmental entity, or the design or equipping of a qualifying project, if the responsible governmental entity determines that the project serves the public purpose of this chapter. The responsible governmental entity may determine that the development or operation of the project as a qualifying project serves the public purpose if:

(1) there is a public need for or benefit derived from the project of the type the person proposes as a qualifying project;

(2) the estimated cost of the project is reasonable in relation to similar facilities; and

(3) the person's plans will result in the timely development or operation of the qualifying project.

(d) The responsible governmental entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the proposal, including reasonable legal fees, fees for financial and technical advisors or consultants, and fees for the center's review or consultation.

(e) The approval of a responsible governmental entity described by Section 2267.001(5)(A) is subject to the private entity or other person entering into an interim or comprehensive agreement with the responsible governmental entity.

(f) On approval of the qualifying project, the responsible governmental entity shall establish a date by which activities related to the qualifying project must begin. The responsible governmental entity may extend the date.

(g) The responsible governmental entity shall take action

appropriate under Section 552.153 to protect confidential and proprietary information provided by a private entity submitting the proposal and by the contracting person under an agreement.

(h) Before completing the negotiation and entering into an interim or comprehensive agreement, each responsible governmental entity described by Section 2267.001(5)(A) must submit copies of detailed proposals, including drafts of any interim agreement and the comprehensive agreement, to the Partnership Advisory Commission in accordance with Chapter 2268.

(i) This chapter and an interim or comprehensive agreement entered into under this chapter do not enlarge, diminish, or affect any authority a responsible governmental entity has to take action that would impact the debt capacity of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 28, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 12(2), eff. September 1, 2015.

Sec. 2267.054. SERVICE CONTRACTS. A responsible governmental entity may contract with a contracting person for the delivery of services to be provided as part of a qualifying project in exchange for service payments and other consideration as the governmental entity considers appropriate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.055. AFFECTED JURISDICTIONS. (a) A private entity whose proposal, other than a proposal for a service contract, is accepted for conceptual stage evaluation under Section 2267.053 shall notify each affected jurisdiction by providing a copy of its proposal to the affected jurisdiction.

(b) Not later than the 60th day after the date an affected

jurisdiction receives the notice required by Subsection (a), the affected jurisdiction that is not the responsible governmental entity for the respective qualifying project shall submit in writing to the responsible governmental entity any comments the affected jurisdiction has on the proposed qualifying project and indicate whether the facility or project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. The responsible governmental entity shall consider the submitted comments before entering into a comprehensive agreement with a contracting person.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 29, eff. June 14, 2013.

Sec. 2267.056. DEDICATION AND CONVEYANCE OF PUBLIC PROPERTY. (a) After obtaining any appraisal of the property interest that is required under other law in connection with the conveyance, a governmental entity may dedicate any property interest, including land, improvements, and tangible personal property, for public use in a qualifying project if the governmental entity finds that the dedication will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the governmental entity or reducing the delivery time of a qualifying project.

(b) In connection with a dedication under Subsection (a), a governmental entity may convey any property interest, including a license, franchise, easement, or another right or interest the governmental entity considers appropriate, subject to the conditions imposed by general law governing such conveyance and subject to the rights of an existing utility under a license, franchise, easement, or other right under law, to the contracting person for the consideration determined by the governmental entity. The consideration may include the agreement of the contracting person to develop or operate the qualifying project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.057. POWERS AND DUTIES OF CONTRACTING PERSON. (a) The contracting person has:

(1) the power granted by:

(A) general law to a person that has the same form of organization as the contracting person; and

(B) a statute governing the business or activity of the contracting person; and

(2) the power to:

(A) develop or operate the qualifying project; and

(B) collect lease payments, impose user fees subject to Subsection (b), or enter into service contracts in connection with the use of the project.

(b) The contracting person may not impose a user fee or increase the amount of a user fee until the fee or increase is approved by the responsible governmental entity.

(c) The contracting person may own, lease, or acquire any other right to use or operate the qualifying project.

(d) The contracting person may finance a qualifying project in the amounts and on the terms determined by the contracting person. The contracting person may issue debt, equity, or other securities or obligations, enter into sale and leaseback transactions, and secure any financing with a pledge of, security interest in, or lien on any or all of its property, including all of its property interests in the qualifying project.

(e) In operating the qualifying project, the contracting person may:

(1) establish classifications according to reasonable categories for assessment of user fees; and

(2) with the consent of the responsible governmental entity, adopt and enforce reasonable rules for the qualifying project to the same extent as the responsible governmental entity.

(f) The contracting person shall:

(1) develop or operate the qualifying project in a manner that is acceptable to the responsible governmental entity and in accordance with any applicable interim or comprehensive agreement;

(2) subject to Subsection (g), keep the qualifying project open for use by the public at all times, or as appropriate based on the use of the project, after its initial opening on payment of the

applicable user fees, lease payments, or service payments;

(3) maintain, or provide by contract for the maintenance or upgrade of, the qualifying project, if required by any applicable interim or comprehensive agreement;

(4) cooperate with the responsible governmental entity to establish any interconnection with the qualifying project requested by the responsible governmental entity; and

(5) comply with any applicable interim or comprehensive agreement and any lease or service contract.

(g) The qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible governmental entity, to protect public safety or for reasonable construction or maintenance activities.

(h) This chapter does not prohibit a contracting person of a qualifying project from providing additional services for the qualifying project to the public or persons other than the responsible governmental entity, provided that the provision of additional service does not impair the contracting person's ability to meet the person's commitments to the responsible governmental entity under any applicable interim or comprehensive agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.058. COMPREHENSIVE AGREEMENT. (a) Before developing or operating the qualifying project, the contracting person must enter into a comprehensive agreement with a responsible governmental entity. The comprehensive agreement shall provide for:

(1) delivery of letters of credit or other security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity, and delivery of performance and payment bonds in compliance with Chapter 2253 for all construction activities;

(2) review of plans and specifications for the qualifying project by the responsible governmental entity and approval by the responsible governmental entity indicating that the plans and specifications conform to standards acceptable to the responsible governmental entity, except that the contracting person may not be required to provide final design documents for a qualifying project

before the execution of a comprehensive agreement;

(3) inspection of the qualifying project by the responsible governmental entity to ensure that the contracting person's activities are acceptable to the responsible governmental entity in accordance with the comprehensive agreement;

(4) maintenance of a public liability insurance policy, copies of which must be filed with the responsible governmental entity accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible governmental entity and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued operation of the qualifying project;

(5) monitoring of the practices of the contracting person by the responsible governmental entity to ensure that the qualifying project is properly maintained;

(6) reimbursement to be paid to the responsible governmental entity for services provided by the responsible governmental entity;

(7) filing of appropriate financial statements on a periodic basis; and

(8) policies and procedures governing the rights and responsibilities of the responsible governmental entity and the contracting person if the comprehensive agreement is terminated or there is a material default by the contracting person, including conditions governing:

(A) assumption of the duties and responsibilities of the contracting person by the responsible governmental entity; and

(B) the transfer or purchase of property or other interests of the contracting person to the responsible governmental entity.

(b) The comprehensive agreement shall provide for any user fee, lease payment, or service payment established by agreement of the parties. In negotiating a user fee under this section, the parties shall establish a payment or fee that is the same for persons using a facility of the qualifying project under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or an amendment to the agreement is conclusive evidence that the user fee, lease payment, or service payment complies with this chapter. A user fee or lease payment established in the comprehensive agreement as a source of

revenue may be in addition to, or in lieu of, a service payment.

(c) A comprehensive agreement may include a provision that authorizes the responsible governmental entity to make grants or loans to the contracting person from money received from the federal, state, or local government or any agency or instrumentality of the government.

(d) The comprehensive agreement must incorporate the duties of the contracting person under this chapter and may contain terms the responsible governmental entity determines serve the public purpose of this chapter. The comprehensive agreement may contain:

(1) provisions that require the responsible governmental entity to provide notice of default and cure rights for the benefit of the contracting person and the persons specified in the agreement as providing financing for the qualifying project;

(2) other lawful terms to which the contracting person and the responsible governmental entity mutually agree, including provisions regarding unavoidable delays or providing for a loan of public money to the contracting person to develop or operate one or more qualifying projects; and

(3) provisions in which the authority and duties of the contracting person under this chapter cease and the qualifying project is dedicated for public use to the responsible governmental entity or, if the qualifying project was initially dedicated by an affected jurisdiction, to the affected jurisdiction.

(e) Any change in the terms of the comprehensive agreement that the parties agree to must be added to the comprehensive agreement by written amendment.

(f) The comprehensive agreement may provide for the development or operation of phases or segments of the qualifying project.

(g) The comprehensive agreement must provide that a security document or other instrument purporting to mortgage, pledge, encumber, or create a lien, charge, or security interest on or against the contracting party's interest may not extend to or affect the fee simple interest of the state in the qualifying project or the state's rights or interests under the comprehensive agreement. Any holder of debt shall acknowledge that the mortgage, pledge, or encumbrance or a lien, charge, or security interest on or against the contracting party's interest is subordinate to the fee simple interest of the state in the qualifying project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 30, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 6, eff. September 1, 2015.

Sec. 2267.059. INTERIM AGREEMENT. Before or in connection with the negotiation of the comprehensive agreement, the responsible governmental entity may enter into an interim agreement with the contracting person proposing the development or operation of the qualifying project. The interim agreement may:

(1) authorize the contracting person to begin project phases or activities for which the contracting person may be compensated relating to the proposed qualifying project, including project planning and development, design, engineering, environmental analysis and mitigation, surveying, and financial and revenue analysis, including ascertaining the availability of financing for the proposed facility or facilities of the qualifying project;

(2) establish the process and timing of the negotiation of the comprehensive agreement; and

(3) contain any other provision related to any aspect of the development or operation of a qualifying project that the parties consider appropriate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.060. FEDERAL, STATE, AND LOCAL ASSISTANCE. (a) The contracting person and the responsible governmental entity may use any funding resources that are available to the parties, including:

(1) accessing any designated trust funds; and

(2) borrowing or accepting grants from any state infrastructure bank.

(b) The responsible governmental entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any

contracts required to receive the assistance.

(c) If the responsible governmental entity is a state agency, any money received from the state or federal government or any agency or instrumentality of the state or federal government is subject to appropriation by the legislature.

(d) The responsible governmental entity may determine that it serves the public purpose of this chapter for all or part of the costs of a qualifying project to be directly or indirectly paid from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality of the government.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.0605. PERFORMANCE AND PAYMENT BONDS REQUIRED. (a) The construction, remodel, or repair of a qualifying project may be performed only after performance and payment bonds for the construction, remodel, or repair have been executed in compliance with Chapter 2253 regardless of whether the qualifying project is on public or private property or is publicly or privately owned.

(b) For purposes of this section, a qualifying project is considered a public work under Chapter 2253 and the responsible governmental entity shall assume the obligations and duties of a governmental entity under that chapter. The obligee under a performance bond under this section may be a public entity, a private person, or an entity consisting of both a public entity and a private person.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.061. MATERIAL DEFAULT; REMEDIES. (a) If the contracting person commits a material default, the responsible governmental entity may assume the responsibilities and duties of the contracting person of the qualifying project. If the responsible governmental entity assumes the responsibilities and duties of the contracting person, the responsible governmental entity has all the rights, title, and interest in the qualifying project, subject to any liens on revenue previously granted by the contracting person to any

person providing financing for the project.

(b) A responsible governmental entity that has the power of eminent domain under state law may exercise that power to acquire the qualifying project in the event of a material default by the contracting person. Any person who has provided financing for the qualifying project, and the contracting person to the extent of its capital investment, may participate in the eminent domain proceedings with the standing of a property owner.

(c) The responsible governmental entity may terminate, with cause, any applicable interim or comprehensive agreement and exercise any other rights and remedies available to the governmental entity at law or in equity.

(d) The responsible governmental entity may make any appropriate claim under the letters of credit or other security or the performance and payment bonds required by Section 2267.058(a)(1).

(e) If the responsible governmental entity elects to assume the responsibilities and duties for a qualifying project under Subsection (a), the responsible governmental entity may:

(1) develop or operate the qualifying project;

(2) impose user fees;

(3) impose and collect lease payments for the use of the project; and

(4) comply with any applicable contract to provide services.

(f) The responsible governmental entity shall collect and pay to secured parties any revenue subject to a lien to the extent necessary to satisfy the contracting person's obligations to secured parties, including the maintenance of reserves. The liens shall be correspondingly reduced and, when paid off, released.

(g) Before any payment is made to or for the benefit of a secured party, the responsible governmental entity may use revenue to pay the current operation and maintenance costs of the qualifying project, including compensation to the responsible governmental entity for its services in operating and maintaining the qualifying project. The right to receive any payment is considered just compensation for the qualifying project.

(h) The full faith and credit of the responsible governmental entity may not be pledged to secure any financing of the contracting person that was assumed by the governmental entity when the governmental entity assumed responsibility for the qualifying

project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.062. EMINENT DOMAIN. (a) At the request of the contracting person, the responsible governmental entity may exercise any power of eminent domain that it has under law to acquire any land or property interest to the extent that the responsible governmental entity dedicates the land or property interest to public use and finds that the action serves the public purpose of this chapter.

(b) Any amounts to be paid in any eminent domain proceeding shall be paid by the contracting person.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.063. AFFECTED FACILITY OWNER. (a) The contracting person and each facility owner, including a public utility, a public service company, or a cable television provider, whose facilities will be affected by a qualifying project shall cooperate fully in planning and arranging the manner in which the facilities will be affected.

(b) The contracting person and responsible governmental entity shall ensure that a facility owner whose facility will be affected by a qualifying project does not suffer a disruption of service as a result of the construction or improvement of the qualifying project.

(c) A governmental entity possessing the power of eminent domain may exercise that power in connection with the relocation of facilities affected by the qualifying project or facilities that must be relocated to the extent that the relocation is necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which includes construction of, renovation to, or improvements to temporary facilities to provide service during the period of construction or improvement. The governmental entity shall exercise its power of eminent domain to the extent required to ensure an affected facility owner does not suffer a disruption of service as a result of the construction or improvement of the qualifying project during the construction or improvement or after the qualifying

project is completed or improved.

(d) The contracting person shall pay any amount owed for the crossing, constructing, or relocating of facilities.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.064. POLICE POWERS; VIOLATIONS OF LAW. A peace officer of this state or of any affected jurisdiction has the same powers and jurisdiction within the area of the qualifying project as the officer has in the officer's area of jurisdiction. The officer may access the qualifying project at any time to exercise the officer's powers and jurisdiction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2267.065. PROCUREMENT GUIDELINES. (a) Chapters 2155, 2156, and 2166, any interpretations, rules, or guidelines of the comptroller and the Texas Facilities Commission, and interpretations, rules, or guidelines developed under Chapter 2262 do not apply to a qualifying project under this chapter.

(b) A responsible governmental entity may enter into a comprehensive agreement only in accordance with guidelines that require the contracting person to design and construct the qualifying project in accordance with procedures that do not materially conflict with those specified in:

(1) Subchapter G, Chapter 2269, for facilities projects described by Section 2269.302; or

(2) Subchapter H, Chapter 2269, for civil works projects as defined by Section 2269.351.

(c) This chapter does not authorize a responsible governmental entity or a contracting person to obtain professional services through any process except in accordance with Subchapter A, Chapter 2254.

(d) Identified team members, including the architect, engineer, or builder, may not be substituted or replaced once a project is approved and an interim or comprehensive agreement is executed without the written approval of the responsible governmental entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 7, eff. September 1, 2015.

Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS; FINAL VOTE. (a) Not later than the 10th day after the date a responsible governmental entity accepts a proposal submitted in accordance with Section 2267.053(b), the responsible governmental entity shall provide notice of the proposal as follows:

(1) for a responsible governmental entity described by Section 2267.001(5)(A), by posting the proposal on the entity's Internet website; and

(2) for a responsible governmental entity described by Section 2267.001(5)(B), by:

(A) posting a copy of the proposal on the entity's Internet website; or

(B) publishing in a newspaper of general circulation in the area in which the qualifying project is to be performed a summary of the proposal and the location where copies of the proposal are available for public inspection.

(b) The responsible governmental entity shall make available for public inspection at least one copy of the proposal. This section does not prohibit the responsible governmental entity from posting the proposal in another manner considered appropriate by the responsible governmental entity to provide maximum notice to the public of the opportunity to inspect the proposal.

(c) Trade secrets, proprietary information, financial records, and work product of a proposer are excluded from disclosure under Section 552.101 and may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the proposer. After submission by a responsible governmental entity of a detailed qualifying project proposal to the commission, the trade secrets, proprietary information, financial records, and work product of the proposer are not protected from disclosure unless expressly excepted from the requirements of Chapter 552 or considered confidential under other

law.

(d) The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement. The public hearing shall be held in the area in which the proposed qualifying project is to be performed.

(e) On completion of the negotiation phase for the development of an interim or comprehensive agreement and before an interim agreement or comprehensive agreement is entered into, a responsible governmental entity must make available the proposed agreement in a manner provided by Subsection (a) or (b).

(e-1) After making the proposed comprehensive agreement available as required by Subsection (e), the responsible governmental entity shall hold a public hearing on the final version of the proposed comprehensive agreement and vote on the proposed comprehensive agreement after the hearing. The hearing must be held not later than the 10th day before the date the entity enters into a comprehensive agreement with a contracting person.

(f) A responsible governmental entity that has entered into an interim agreement or comprehensive agreement shall make procurement records available for public inspection on request. For purposes of this subsection, procurement records do not include the trade secrets of the contracting person or financial records, including balance sheets or financial statements of the contracting person, that are not generally available to the public through regulatory disclosure or other means.

(g) Cost estimates relating to a proposed procurement transaction prepared by or for a responsible governmental entity are not open to public inspection.

(h) Any inspection of procurement transaction records under this section is subject to reasonable restrictions to ensure the security and integrity of the records.

(i) This section applies to any accepted proposal regardless of whether the process of bargaining results in an interim or comprehensive agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 31, eff.

June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 32, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 8, eff. September 1, 2015.

CHAPTER 2268. PARTNERSHIP ADVISORY COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2268.001. DEFINITIONS. In this chapter:

(1) "Center" means the center for alternative finance and procurement established under Section 2152.110 by the Texas Facilities Commission.

(1-a) "Commission" means the Partnership Advisory Commission.

(2) "Comprehensive agreement" has the meaning assigned by Section 2267.001.

(3) "Detailed proposal" means a proposal for a qualifying project accepted by a responsible governmental entity beyond a conceptual level of review that defines and establishes periods related to fixing costs, payment schedules, financing, deliverables, and project schedule.

(4) "Interim agreement" has the meaning assigned by Section 2267.001.

(5) "Qualifying project" has the meaning assigned by Section 2267.001.

(6) "Responsible governmental entity" has the meaning assigned by Section 2267.001.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 9, eff. September 1, 2015.

Sec. 2268.002. APPLICABILITY. This chapter applies only to responsible governmental entities described by Section 2267.001(5)(A).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1,

eff. September 1, 2011.

SUBCHAPTER B. COMMISSION

Sec. 2268.051. ESTABLISHMENT OF COMMISSION. The Partnership Advisory Commission is an advisory commission in the legislative branch that advises responsible governmental entities described by Section 2267.001(5)(A) on proposals received under Chapter 2267.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2268.052. COMPOSITION AND TERMS. (a) The commission consists of the following 11 members:

(1) the chair of the House Appropriations Committee or the chair's designee;

(2) three representatives appointed by the speaker of the house of representatives;

(3) the chair of the Senate Finance Committee or the chair's designee;

(4) three senators appointed by the lieutenant governor; and

(5) three representatives of the executive branch, appointed by the governor.

(b) The legislative members serve on the commission until the expiration of their terms of office or until their successors qualify.

(c) The members appointed by the governor serve at the will of the governor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2268.053. PRESIDING OFFICER. The members of the commission shall elect from among the legislative members a presiding officer and an assistant presiding officer to serve two-year terms.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2268.054. COMPENSATION; REIMBURSEMENT. A member of the commission is not entitled to compensation for service on the commission but is entitled to reimbursement for all reasonable and necessary expenses incurred in performing duties as a member.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2268.055. MEETINGS. (a) The commission shall hold meetings quarterly or on the call of the presiding officer.

(b) Commission meetings are subject to Chapter 551.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 34, eff. June 14, 2013.

Sec. 2268.056. ADMINISTRATIVE, LEGAL, RESEARCH, TECHNICAL, AND OTHER SUPPORT. (a) The legislative body that the presiding officer serves shall provide administrative staff support for the commission.

(b) The Texas Legislative Council shall provide legal, research, and policy analysis services to the commission.

(c) The staffs of the House Appropriations Committee, Senate Finance Committee, and comptroller shall provide technical assistance.

(d) The center, using the qualifying project fees authorized under Section 2165.353, shall provide, on a cost recovery basis, professional services of financial, technical, and other necessary advisors and consultants, authorized under Section 2267.053(d), as necessary to support the Partnership Advisory Commission in its review and evaluation of proposals, including financial and risk allocation analysis and ongoing contract performance monitoring of qualifying projects. The center shall assign staff and contracted advisors and consultants necessary to perform the duties required by this subsection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 35, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 10, eff. September 1, 2015.

Sec. 2268.057. COMMISSION PROCEEDINGS. A copy of the proceedings of the commission shall be filed with the legislative body that the presiding officer serves.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.

Sec. 2268.058. SUBMISSION OF DETAILED PROPOSALS FOR QUALIFYING PROJECTS; EXEMPTION; COMMISSION REVIEW. (a) Before beginning to negotiate an interim or comprehensive agreement, each responsible governmental entity receiving a detailed proposal for a qualifying project must provide copies of the proposal to:

(1) the presiding officer of the commission; and

(2) the chairs of the House Appropriations Committee and Senate Finance Committee or their designees.

(b) The following qualifying projects are not subject to review by the commission:

(1) any proposed qualifying project with a total cost of less than $5 million; and

(2) any proposed qualifying project with a total cost of more than $5 million but less than $50 million for which money has been specifically appropriated as a public-private partnership in the General Appropriations Act.

(c) The commission may undertake additional reviews of any qualifying project that will be completed in phases and for which an appropriation has not been made for any phase other than the current phase of the project.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1153, Sec. 38, eff. June 14, 2013.

(e) The commission in a public hearing by majority vote of the

members present shall approve or disapprove each detailed proposal submitted to the commission for review and may provide its findings and recommendations to the responsible governmental entity not later than the 45th day after the date the commission receives complete copies of the detailed proposal. If the commission does not provide its findings or recommendations to the responsible governmental entity by that date, the commission is considered to not have made any findings or recommendations on the proposal.

(f) The responsible governmental entity on request of the commission shall provide any additional information regarding a qualifying project reviewed by the commission if the information is available to or can be obtained by the responsible governmental entity.

(g) The commission shall include in any findings and recommendations provided to the responsible governmental entity:

(1) a determination on whether the terms of the proposal and proposed qualifying project create state tax-supported debt, taking into consideration the specific findings of the comptroller with respect to the recommendation;

(2) an analysis of the potential financial impact of the qualifying project;

(3) a review of the policy aspects of the detailed proposal and the qualifying project; and

(4) proposed general business terms.

(h) Review by the commission does not constitute approval of any appropriations necessary to implement a subsequent interim or comprehensive agreement.

(i) The responsible governmental entity may not negotiate an interim or comprehensive agreement for a detailed proposal that has been disapproved by the commission.

(j) Not later than the 30th day before the date a comprehensive or interim agreement is executed, the responsible governmental entity shall submit to the commission and the chairs of the House Appropriations Committee and Senate Finance Committee or their designees:

(1) a copy of the proposed interim or comprehensive agreement; and

(2) a report describing the extent to which the commission's recommendations were addressed in the proposed interim or comprehensive agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 36, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 38, eff. June 14, 2013.

Sec. 2268.059. CONFIDENTIALITY OF CERTAIN RECORDS SUBMITTED TO COMMISSION. Records and information afforded protection under Section 552.153 that are provided by a responsible governmental entity to the commission and the presiding officer of the House Appropriations Committee and of the Senate Finance Committee, or their designees, shall continue to be protected from disclosure when in the possession of the commission and the presiding officers or their designees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1334 (S.B. 1048), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1075 (H.B. 2475), Sec. 11, eff. September 1, 2015.

CHAPTER 2269. CONTRACTING AND DELIVERY PROCEDURES FOR CONSTRUCTION PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2269.001. DEFINITIONS. In this chapter:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code.

(2) "Engineer" means an individual licensed as an engineer under Chapter 1001, Occupations Code.

(3) "Facility" means, unless otherwise specifically provided, an improvement to real property.

(4) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

(5) "General contractor" means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a facility at the contracted price.

(6) "Public work contract" means a contract for constructing, altering, or repairing a public building or carrying out or completing any public work.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS. This chapter applies to a public work contract made by a governmental entity authorized by state law to make a public work contract, including:

(1) a state agency as defined by Section 2151.002, including the Texas Facilities Commission;

(2) a local government, including:

(A) a county;

(B) a municipality;

(C) a school district;

(D) any other special district or authority, including a hospital district, a defense base development authority established under Chapter 379B, Local Government Code, and a conservation and reclamation district, including a river authority or any other type of water district; and

(E) any other political subdivision of this state;

(3) a public junior college as defined by Section 61.003, Education Code; and

(4) a board of trustees governed by Chapter 54, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW PROCEDURES OF THIS CHAPTER. (a) Except as provided by this section, this chapter prevails over any other law relating to a public work contract.

(b) This chapter does not prevail over a conflicting provision in a law relating to contracting with a historically underutilized business.

(c) This chapter does not prevail over a conflicting provision in an ordinance or resolution passed by the governing body of a municipally owned electric utility in a procedure described by Section 252.022(c), Local Government Code, that:

(1) requires the use of competitive bidding or competitive sealed proposals; or

(2) prescribes a design-build procurement procedure that conflicts with this chapter.

(d) This chapter does not prevail over any law, rule, or regulation relating to competitive bidding or competitive sealed proposals for construction services, or to procurement of construction services pursuant to Section 49.273, Water Code, that applies to a river authority or to a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, unless the governing body of the river authority or conservation and reclamation district elects to permit this chapter to supersede the law, rule, or regulation.

(e) This chapter does not prevail over a conflicting provision in a regulation that prescribes procurement procedures for construction services that is adopted by the governing board of a river authority or of a conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, that owns electric generation capacity in excess of 2,500 megawatts, except with respect to Subchapter H.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.004. EXEMPTION: TEXAS DEPARTMENT OF TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

(1) a contract entered into by the Texas Department of Transportation; or

(2) a project that receives money from a state or federal highway fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.005. APPLICABILITY: INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education," "public junior college," and "university system" have the meanings assigned by Section 61.003, Education Code.

(b) This chapter applies to a public junior college but does not apply to:

(1) any other institution of higher education; or

(2) a university system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES. This chapter does not apply to a regional tollway authority under Chapter 366, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.007. EXEMPTION: CERTAIN LOCAL GOVERNMENT CORPORATION IMPROVEMENT PROJECTS. This chapter does not apply to an improvement project undertaken by or through a local government corporation exempt from competitive bidding requirements or restrictions under Section 431.110, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.008. EXEMPTION: REGIONAL MOBILITY AUTHORITIES. This chapter does not apply to a regional mobility authority under Chapter 370, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.009. EXEMPTION: COUNTY TOLL AUTHORITIES. This chapter does not apply to a project of a county under Chapter 284, Transportation Code, unless the county adopts an order electing to be governed by this chapter for a project to be developed by the county under Chapter 284.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.010. EXEMPTION: COORDINATED COUNTY TRANSPORTATION AUTHORITY. This chapter does not apply to a coordinated county transportation authority under Chapter 460, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2269.051. RULES. A governmental entity may adopt rules as necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.052. NOTICE REQUIREMENTS. (a) A governmental entity shall advertise or publish notice of requests for bids, proposals, or qualifications in a manner prescribed by law.

(b) For a contract entered into by a governmental entity under a method provided by this chapter, the governmental entity shall publish notice of the time and place the bid or proposal or request for qualifications will be received and opened in a manner prescribed by law.

(c) For a contract entered into by a municipality, river authority, conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority under any of the methods provided by this chapter, the municipality, river authority, conservation and reclamation district created pursuant to Section 59, Article XVI, Texas Constitution, and located in a county with a population of more than 250,000, or defense base development authority shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county in which the defense base development authority's or municipality's central administrative office is located or the county in which the

greatest amount of the river authority's or such conservation and reclamation district's territory is located once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in that county, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the defense base development authority's or municipality's central administrative office is located or the county in which the greatest amount of the river authority's or such conservation and reclamation district's territory is located. In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

(d) For a contract entered into by a county under any of the methods provided by this chapter, the county shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in the county, the notice shall be:

(1) posted at the courthouse door of the county; and

(2) published in a newspaper of general circulation in the nearest county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.053. DELEGATION OF AUTHORITY. (a) The governing body of a governmental entity may delegate its authority under this chapter regarding an action authorized or required by this chapter to a designated representative, committee, or other person.

(b) The governmental entity shall provide notice of the delegation, the limits of the delegation, and the name or title of each person designated under Subsection (a) by rule or in the request for bids, proposals, or qualifications or in an addendum to the

request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.054. RIGHT TO WORK. (a) This section applies to a governmental entity when the governmental entity is engaged in:

(1) procuring goods or services under this chapter;

(2) awarding a contract under this chapter; or

(3) overseeing procurement or construction for a public work or public improvement under this chapter.

(b) In engaging in an activity to which this section applies, a governmental entity:

(1) may not consider whether a person is a member of or has another relationship with any organization; and

(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.0541. AGREEMENT WITH COLLECTIVE BARGAINING ORGANIZATION. (a) A governmental entity awarding a public work contract funded with state money, including the issuance of debt guaranteed by this state, may not:

(1) prohibit, require, discourage, or encourage a person bidding on the public work contract, including a contractor or subcontractor, from entering into or adhering to an agreement with a collective bargaining organization relating to the project; or

(2) discriminate against a person described by Subdivision (1) based on the person's involvement in the agreement, including the

person's:

(A) status or lack of status as a party to the agreement; or

(B) willingness or refusal to enter into the agreement.

(b) This section may not be construed to:

(1) prohibit activity protected by the National Labor Relations Act (29 U.S.C. Section 151 et seq.), including entering into an agreement with a collective bargaining organization relating to the project; or

(2) permit conduct prohibited under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

Added by Acts 2019, 86th Leg., R.S., Ch. 366 (H.B. 985), Sec. 2, eff. September 1, 2019.

Sec. 2269.055. CRITERIA TO CONSIDER. (a) In determining the award of a contract under this chapter, the governmental entity may consider:

(1) the price;

(2) the offeror's experience and reputation;

(3) the quality of the offeror's goods or services;

(4) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;

(5) the offeror's safety record;

(6) the offeror's proposed personnel;

(7) whether the offeror's financial capability is appropriate to the size and scope of the project; and

(8) any other relevant factor specifically listed in the request for bids, proposals, or qualifications.

(b) In determining the award of a contract under this chapter, the governmental entity shall:

(1) consider and apply any existing laws, including any criteria, related to historically underutilized businesses; and

(2) consider and apply any existing laws, rules, or applicable municipal charters, including laws applicable to local governments, related to the use of women, minority, small, or disadvantaged businesses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.056. USING METHOD OTHER THAN COMPETITIVE BIDDING FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA. (a) The governing body of a governmental entity that considers a construction contract using a method authorized by this chapter other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity.

(b) The governmental entity shall base its selection among offerors on applicable criteria listed for the particular method used. The governmental entity shall publish in the request for proposals or qualifications:

(1) the criteria that will be used to evaluate the offerors;

(2) the applicable weighted value for each criterion; and

(3) a detailed methodology for scoring each criterion.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 13, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 1, eff. September 1, 2021.

Sec. 2269.057. ARCHITECT OR ENGINEER SERVICES. (a) An architect or engineer required to be selected or designated under this chapter has full responsibility for complying with Chapter 1051 or 1001, Occupations Code, as applicable.

(b) If the selected or designated architect or engineer is not

a full-time employee of the governmental entity, the governmental entity shall select the architect or engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.058. USE OF OTHER PROFESSIONAL SERVICES. (a) Independently of the contractor, construction manager-at-risk, or design-build firm, the governmental entity shall provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the governmental entity.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS REQUIRED. A person who submits a bid, proposal, or qualification to a governmental entity shall seal it before delivery.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.060. DOCUMENTS RELATED TO EVALUATION AND RANKING. (a) An offeror who submits a bid, proposal, or response to a request

for qualifications for a construction contract under this chapter may, after the contract is awarded, make a request in writing to the governmental entity to provide documents related to the evaluation of the offeror's submission.

(b) Not later than the 30th day after the date a request is made under Subsection (a), the governmental entity shall deliver to the offeror the documents relating to the evaluation of the submission including, if applicable, its ranking of the submission.

Added by Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. COMPETITIVE BIDDING METHOD

Sec. 2269.101. CONTRACTS FOR FACILITIES: COMPETITIVE BIDDING. (a) In this chapter, "competitive bidding" is a procurement method by which a governmental entity contracts with a contractor for the construction, alteration, rehabilitation, or repair of a facility by awarding the contract to the lowest responsible bidder.

(b) Except as otherwise provided by this chapter or other law, a governmental entity may contract for the construction, alteration, rehabilitation, or repair of a facility only after the entity advertises for bids for the contract in a manner prescribed by law, receives competitive bids, and awards the contract to the lowest responsible bidder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.102. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the construction documents required for a project to be awarded by competitive bidding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.103. PREPARATION OF REQUEST. The governmental entity shall prepare a request for competitive bids that includes construction documents, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to submit a bid.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.104. EVALUATION OF OFFERORS. The governmental entity shall receive, publicly open, and read aloud the names of the offerors and their bids.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.105. SELECTION OF OFFEROR. Not later than the seventh day after the date the contract is awarded, the governmental entity shall document the basis of its selection and shall make the evaluations public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise specifically provided by this section, Subchapter B, Chapter 271, Local Government Code, does not apply to a competitive bidding process conducted under this chapter. Sections 271.026, 271.027(a), and 271.0275, Local Government Code, apply to a competitive bidding process conducted under this chapter by a governmental entity as defined by Section 271.021, Local Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

Sec. 2269.151. CONTRACTS FOR FACILITIES: COMPETITIVE SEALED PROPOSALS. (a) In this chapter, "competitive sealed proposals" is a procurement method by which a governmental entity requests proposals, ranks the offerors, negotiates as prescribed, and then contracts with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

(b) In selecting a contractor through competitive sealed proposals, a governmental entity shall follow the procedures provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.152. USE OF ARCHITECT OR ENGINEER. The governmental entity shall select or designate an architect or engineer to prepare construction documents for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd

Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.153. PREPARATION OF REQUEST. (a) In this section, "civil works project" has the meaning assigned by Section 2269.351.

(b) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria and the weighted value for each criterion, estimated budget, project scope, estimated project completion date, and other information that a contractor may require to respond to the request.

(c) Except as provided by Subsection (d), for civil works projects, the weighted value assigned to price must be at least 50 percent of the total weighted value of all selection criteria.

(d) If the governing body of a governmental entity determines that assigning a lower weighted value to price is in the public interest, the governmental entity may assign to price a weighted value of not less than 36.9 percent of the total weighted value of all selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 3, eff. September 1, 2021.

Sec. 2269.154. EVALUATION OF OFFERORS. (a) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and any monetary proposals made by the offerors.

(b) Not later than the 45th day after the date on which the proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.

Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.155. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on:

(1) the selection criteria in the request for proposal and the weighted value for those criteria in the request for proposal; and

(2) its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its architect or engineer may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(d) Not later than the seventh business day after the date the contract is awarded, the governmental entity shall make the evaluations, including any scores, public and provide them to all offerors.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 4, eff. September 1, 2021.

SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

Sec. 2269.201. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) In this chapter, the "construction manager-agent method"

is a delivery method by which a governmental entity contracts with a construction manager-agent to provide consultation or administrative services during the design and construction phase and to manage multiple contracts with various construction prime contractors.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that serves as the agent for the governmental entity by providing construction administration and management services described by Subsection (a) for the construction, rehabilitation, alteration, or repair of a facility.

(c) A governmental entity may retain a construction manager-agent for assistance in the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.202. CONTRACT PROVISIONS OF CONSTRUCTION MANAGER-AGENT. The contract between the governmental entity and the construction manager-agent may require the construction manager-agent to provide:

(1) administrative personnel;

(2) equipment necessary to perform duties under this subchapter;

(3) on-site management; and

(4) other services specified in the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A construction manager-agent may not:

(1) self-perform any aspect of the construction,

rehabilitation, alteration, or repair of the facility;

(2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or

(3) provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.204. FIDUCIARY CAPACITY OF CONSTRUCTION MANAGER-AGENT. A construction manager-agent represents the governmental entity in a fiduciary capacity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.205. USE OF ARCHITECT OR ENGINEER. (a) On or before the selection of a construction manager-agent, the governmental entity shall select or designate an architect or engineer in accordance with Chapter 1051 or 1001, Occupations Code, as applicable, to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer may not serve, alone or in combination with another person, as the construction manager-agent unless the architect or engineer is hired to serve as the construction manager-agent under a separate or concurrent selection process conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) To the extent that the construction manager-agent's services are defined as part of the practice of architecture or engineering under Chapter 1051 or 1001, Occupations Code, those services must be conducted by a person licensed under the applicable chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.206. SELECTION OF CONTRACTORS. A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor or trade contractors who will serve as the prime contractor for their specific portion of the work and provide performance and payment bonds to the governmental entity in accordance with applicable laws.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner that an architect or engineer is selected under Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.208. INSURANCE. A construction manager-agent selected under this subchapter shall maintain professional liability or errors and omissions insurance in the amount of at least $1 million for each occurrence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

Sec. 2269.251. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) In this chapter, the "construction manager-at-risk method" is a delivery method by which a governmental entity contracts with an architect or engineer for design and construction phase services and contracts separately with a construction manager-at-risk to serve as the general contractor and to provide consultation during the design and construction, rehabilitation, alteration, or repair of a facility.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility. The contracted price may be a guaranteed maximum price.

(c) A governmental entity may use the construction manager-at-risk method in selecting a general contractor for the construction, rehabilitation, alteration, or repair of a facility only as provided by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.252. USE OF ARCHITECT OR ENGINEER. (a) On or before

the selection of a construction manager-at-risk, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) The governmental entity's architect or engineer for a project, or an entity related to the governmental entity's architect or engineer, may not serve, alone or in combination with another person, as the construction manager-at-risk. This subsection does not prohibit the governmental entity's architect or engineer from providing customary construction phase services under the architect's or engineer's original professional service agreement in accordance with applicable licensing laws.

(c) For purposes of Subsection (b), an entity is related to the governmental entity's architect or engineer if the entity is a sole proprietorship, corporation, partnership, limited liability company, or other entity that is a subsidiary, parent corporation, or partner or has any other relationship in which the governmental entity's architect or engineer has an ownership interest, or is subject to common ownership or control, or is party to an agreement by which it will receive any proceeds of the construction manager-at-risk's payments from the governmental entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 788 (H.B. 2634), Sec. 1, eff. September 1, 2015.

Sec. 2269.253. SELECTION PROCESS. (a) The governmental entity shall select the construction manager-at-risk in a one-step or two-step process.

(b) The governmental entity shall prepare a single request for proposals, in the case of a one-step process, and an initial request for qualifications, in the case of a two-step process, that includes:

(1) a statement as to whether the selection process is a one-step or two-step process;

(2) general information on the project site, project scope,

schedule, selection criteria and the weighted value for each criterion, and estimated budget and the time and place for receipt of the proposals or qualifications; and

(3) other information that may assist the governmental entity in its selection of a construction manager-at-risk.

(c) The governmental entity shall state the selection criteria in the request for proposals or qualifications.

(d) If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions.

(e) If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and prices for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened.

(g) Not later than the 45th day after the date on which the final proposals are opened, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.254. SELECTION OF OFFEROR. (a) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation.

(b) The governmental entity shall first attempt to negotiate a contract with the selected offeror.

(c) If the governmental entity is unable to negotiate a

satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2269.253(g) public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(11), eff. September 1, 2013.

Sec. 2269.255. PERFORMANCE OF WORK. (a) A construction manager-at-risk shall publicly advertise for bids or proposals and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions.

(b) A construction manager-at-risk may seek to perform portions of the work itself if:

(1) the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors; and

(2) the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.256. REVIEW OF BIDS OR PROPOSALS. (a) The

construction manager-at-risk shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, architect, engineer, or governmental entity. All bids or proposals shall be made available to the governmental entity on request and to the public after the later of the award of the contract or the seventh day after the date of final selection of bids or proposals.

(b) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk incurs because of the governmental entity's requirement that another bid or proposal be accepted.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.257. DEFAULT; PERFORMANCE OF WORK. If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this subchapter, the construction manager-at-risk may itself fulfill, without advertising, the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.258. PERFORMANCE OR PAYMENT BOND. (a) If a fixed

contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the request for proposals or qualifications.

(b) The construction manager-at-risk shall deliver the bonds not later than the 10th day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

Sec. 2269.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In this chapter, "design-build" is a project delivery method by which a governmental entity contracts with a single entity to provide both design and construction services for the construction, rehabilitation, alteration, or repair of a facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building or an associated structure, including an electric utility structure. This subchapter does not apply to:

(1) a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport

runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a building or associated structure only as provided by this subchapter. In using that method, the governmental entity shall enter into a single contract with a design-build firm for the design and construction of the building or associated structure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.304. DESIGN-BUILD FIRMS. A design-build firm under this subchapter must be a sole proprietorship, partnership, corporation, or other legal entity or team that includes an architect or engineer and a construction contractor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT REPRESENTATIVE. The governmental entity shall select or designate an

architect or engineer independent of the design-build firm to act as the governmental entity's representative for the duration of the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.306. PREPARATION OF REQUEST. (a) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria and the weighted value for each criterion, and other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, those services shall be provided in accordance with the applicable law.

(c) The design criteria package must include a set of documents that provides sufficient information, including criteria for selection, to permit a design-build firm to prepare a response to the governmental entity's request for qualifications and to provide any additional information requested. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, and any other requirement.

(d) The governmental entity may not require offerors to submit

architectural or engineering designs as part of a proposal or a response to a request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For each design-build firm that responded to the request for qualifications, the governmental entity shall evaluate the firm's experience, technical competence, and capability to perform, the past performance of the firm and members of the firm, and other appropriate factors submitted by the firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted.

(b) Each firm must certify to the governmental entity that each architect or engineer that is a member of the firm was selected based on demonstrated competence and qualifications, in the manner provided by Section 2254.004.

(c) The governmental entity shall qualify a maximum of five responders to submit proposals that contain additional information and, if the governmental entity chooses, to interview for final selection.

(d) The governmental entity shall evaluate the additional information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview.

(e) The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, or costing methodology. As used in this subsection, "costing methodology" means an offeror's policies on subcontractor markup, definition of general conditions, range of cost for general conditions, policies on retainage, policies on contingencies, discount for prompt payment, and expected staffing for administrative duties. The term does not include a guaranteed

maximum price or bid for overall design or construction.

(f) The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the request for qualifications.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.308. SELECTION OF DESIGN-BUILD FIRM. (a) The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations.

(b) The governmental entity shall first attempt to negotiate a contract with the selected firm.

(c) If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the governmental entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

(d) Not later than the seventh day after the date the contract is awarded, the governmental entity shall make the rankings determined under Section 2269.307(f) public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(12), eff. September 1, 2013.

Sec. 2269.309. SUBMISSION OF DESIGN AFTER SELECTION. After selection of the design-build firm, that firm's architects or

engineers shall submit all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's architect or engineer before or concurrently with construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.310. FINAL CONSTRUCTION DOCUMENTS. The design-build firm shall supply a set of construction documents for the completed project to the governmental entity at the conclusion of construction. The documents must note any changes made during construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.311. PERFORMANCE OR PAYMENT BOND. (a) A payment or performance bond is not required and may not provide coverage for the design portion of the design-build contract with the design-build firm under this subchapter.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time the design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, as specified in the design criteria package.

(c) The design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before construction begins.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08,

eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

Sec. 2269.351. DEFINITIONS. In this subchapter:

(1) "Civil works project" means:

(A) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B) and that are primarily civil engineering construction projects.

(2) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer and a construction contractor qualified to engage in civil works construction in Texas.

(3) "Design criteria package" means a set of documents that:

(A) provides sufficient information to convey the intent, goals, criteria, and objectives of the civil works project; and

(B) permits a design-build firm to:

(i) assess the scope of work and the risk involved; and

(ii) submit a proposal on the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.352. APPLICABILITY. This subchapter applies to a governmental entity that:

(1) has a population of more than 100,000 within the entity's geographic boundary or service area; or

(2) is a board of trustees governed by Chapter 54, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.353. CONTRACTS FOR CIVIL WORKS PROJECTS: DESIGN-BUILD. (a) A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a civil works project. In using this method and in entering into a contract for the services of a design-build firm, the contracting governmental entity and the design-build firm shall follow the procedures provided by this subchapter.

(b) A contract for a project under this subchapter may cover only a single integrated project. A governmental entity may not enter into a contract for aggregated projects at multiple locations. For purposes of this subsection:

(1) if a metropolitan transit authority created under Chapter 451, Transportation Code, enters into a contract for a project involving a linear transit project with multiple stops along the project route for boarding passengers, created under Chapter 451, Transportation Code, the linear transit project is a single integrated project; and

(2) a water treatment plant, including a desalination plant, that includes treatment facilities, well fields, and pipelines is a single integrated project.

(c) A governmental entity shall use the following criteria as a minimum basis for determining the circumstances under which the design-build method is appropriate for a project:

(1) the extent to which the entity can adequately define

the project requirements;

(2) the time constraints for the delivery of the project;

(3) the ability to ensure that a competitive procurement can be held; and

(4) the capability of the entity to manage and oversee the project, including the availability of experienced personnel or outside consultants who are familiar with the design-build method of project delivery.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 11, eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(13), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 11, eff. September 1, 2013.

Sec. 2269.354. LIMITATION ON NUMBER OF PROJECTS. (a) After August 31, 2013:

(1) a governmental entity with a population of 500,000 or more within the entity's geographic boundary or service area may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts; and

(3) a governmental entity that has a population of 100,000 or more but less than 500,000 or is a board of trustees governed by Chapter 54, Transportation Code, may enter into contracts under this subchapter for not more than four projects in any fiscal year.

(b) For purposes of determining the number of eligible projects under this section, a municipally owned water utility with a separate governing board appointed by the governing body of the municipality is considered part of the municipality.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1356 (S.B. 1430), Sec. 1, eff. June 14, 2013.

Sec. 2269.355. USE OF ENGINEER. (a) The governmental entity shall select or designate an engineer who is independent of the design-build firm to act as its representative for the procurement process and for the duration of the work on the civil works project. The selected or designated engineer has full responsibility for complying with Chapter 1001, Occupations Code.

(b) If the engineer is not a full-time employee of the governmental entity, the governmental entity shall select the engineer on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd

Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.356. USE OF OTHER PROFESSIONAL SERVICES. (a) The governmental entity shall provide or contract for, independently of the design-build firm, the following services as necessary for the acceptance of the civil works project by the entity:

(1) inspection services;

(2) construction materials engineering and testing; and

(3) verification testing services.

(b) The governmental entity shall select the services for which it contracts under this section in accordance with Section 2254.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.357. REQUEST FOR QUALIFICATIONS. (a) The governmental entity shall prepare a request for qualifications that includes:

(1) information on the civil works project site;

(2) project scope;

(3) project budget;

(4) project schedule;

(5) criteria for selection under Section 2269.359 and the weighting of the criteria; and

(6) other information that may assist potential design-build firms in submitting proposals for the project.

(b) The governmental entity shall also prepare a design criteria package as described by Section 2269.358.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(14), eff. September 1, 2013.

Sec. 2269.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A design criteria package may include, as appropriate:

(1) budget or cost estimates;

(2) information on the site;

(3) performance criteria;

(4) special material requirements;

(5) initial design calculations;

(6) known utilities;

(7) capacity requirements;

(8) quality assurance and quality control requirements;

(9) the type, size, and location of structures; and

(10) notice of any ordinances, rules, or goals adopted by the governmental entity relating to awarding contracts to historically underutilized businesses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The governmental entity shall receive proposals and shall evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted at this stage.

(b) Each offeror must:

(1) select or designate each engineer that is a member of its team based on demonstrated competence and qualifications, in the manner provided by Section 2254.004; and

(2) certify to the governmental entity that each selection or designation was based on demonstrated competence and

qualifications, in the manner provided by Section 2254.004.

(c) The governmental entity shall qualify offerors to submit additional information and, if the entity chooses, to interview for final selection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.360. SELECTION OF DESIGN-BUILD FIRM. The governmental entity shall select a design-build firm using a combination of technical and cost proposals as provided by Section 2269.361.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(15), eff. September 1, 2013.

Sec. 2269.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND COST PROPOSALS. (a) A governmental entity shall request proposals from design-build firms identified under Section 2269.359(c). A response to a request for detailed proposals must be submitted on or before the earlier of the time for submission requested by the governmental entity or the 180th day after the date the governmental entity makes a public request for the proposals from the selected firms. The request for proposals must include:

(1) a design criteria package;

(2) if the project site is identified, a geotechnical baseline report or other information that provides the design-build firm minimum geotechnical design parameters to submit a proposal;

(3) detailed instructions for preparing the technical proposal and the items to be included, including a description of the

form and level of completeness of drawings expected; and

(4) the relative weighting of the technical and price proposals and the formula by which the proposals will be evaluated and ranked.

(b) The technical proposal is a component of the proposal under this section.

(c) Each proposal must include a sealed technical proposal and a separate sealed cost proposal.

(d) The technical proposal must address:

(1) project approach;

(2) anticipated problems;

(3) proposed solutions to anticipated problems;

(4) ability to meet schedules;

(5) conceptual engineering design; and

(6) other information requested by the governmental entity.

(e) The governmental entity shall first open, evaluate, and score each responsive technical proposal submitted on the basis of the criteria described in the request for proposals and assign points on the basis of the weighting specified in the request for proposals. The governmental entity may reject as nonresponsive any firm that makes a significant change to the composition of its firm as initially submitted. The governmental entity shall subsequently open, evaluate, and score the cost proposals from firms that submitted a responsive technical proposal and assign points on the basis of the weighting specified in the request for proposals. The governmental entity shall select the design-build firm in accordance with the formula provided in the request for proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(16), eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 556 (S.B. 533), Sec. 14, eff. September 1, 2017.

Sec. 2269.3615. IDENTIFICATION OF PROJECT TEAM. (a) A governmental entity may require a design-build firm responding to a request for detailed proposals to identify companies that will:

(1) fill key project roles, including project management, lead design firm, quality control management, and quality assurance management; and

(2) serve as key task leaders for geotechnical, hydraulics and hydrology, structural, environmental, utility, and right-of-way issues.

(b) If a design-build firm required to identify companies under Subsection (a) is selected for a design-build agreement, the firm may not make changes to the identified companies unless an identified company:

(1) is no longer in business, is unable to fulfill its legal, financial, or business obligations, or can no longer meet the terms of the teaming agreement with the design-build firm;

(2) voluntarily removes itself from the team;

(3) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or

(4) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the project.

(c) If the design-build firm makes team changes in violation of Subsection (b), any cost savings resulting from the change accrue to the governmental entity and not to the design-build firm.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 5(b), eff. September 1, 2013.

Sec. 2269.362. NEGOTIATION. After selecting the highest-ranked design-build firm under Section 2269.361, the governmental entity shall first attempt to negotiate a contract with the selected firm. If the governmental entity is unable to negotiate a satisfactory contract with the selected firm, the entity shall, formally and in writing, end all negotiations with that firm and proceed to negotiate with the next firm in the order of the selection ranking until a contract is reached or negotiations with all ranked firms end.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08,

eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(17), eff. September 1, 2013.

Sec. 2269.363. ASSUMPTION OF RISKS. The governmental entity shall assume:

(1) all risks and costs associated with:

(A) scope changes and modifications, as requested by the governmental entity;

(B) unknown or differing site conditions unless otherwise provided by the governmental entity in the request for proposals and final contract;

(C) regulatory permitting, if the governmental entity is responsible for those risks and costs by law or contract; and

(D) natural disasters and other force majeure events unless otherwise provided by the governmental entity in the request for proposals and final contract; and

(2) all costs associated with property acquisition, excluding costs associated with acquiring a temporary easement or work area associated with staging or construction for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS. (a) Unless a stipend is paid under Subsection (c), the design-build firm retains all rights to the work product submitted in a proposal. The governmental entity may not release or disclose to any person, including the successful offeror, the work product contained in an unsuccessful proposal. The governmental entity shall return all copies of the proposal and other information submitted to an

unsuccessful offeror. The governmental entity or its agents may not make use of any unique or nonordinary design element, technique, method, or process contained in the unsuccessful proposal that was not also contained in the successful proposal at the time of the original submittal, unless the entity acquires a license from the unsuccessful offeror.

(b) A violation of this section voids the contract for the project entered into by the governmental entity. The governmental entity is liable to any unsuccessful offeror, or any member of the design-build team or its assignee, for one-half of the cost savings associated with the unauthorized use of the work product of the unsuccessful offeror. Any interested party may bring an action for an injunction, declaratory relief, or damages for a violation of this section. A party who prevails in an action under this subsection is entitled to reasonable attorney's fees as approved by the court.

(c) The governmental entity may offer an unsuccessful design-build firm that submits a response to the entity's request for additional information under Section 2269.361 a stipend for preliminary engineering costs associated with the development of the proposal. The stipend must be one-half of one percent of the contract amount and must be specified in the initial request for proposals. If the offer is accepted and paid, the governmental entity may make use of any work product contained in the proposal, including the techniques, methods, processes, and information contained in the proposal. The use by the governmental entity of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the entity and does not confer liability on the recipient of the stipend under this subsection.

(d) Notwithstanding other law, including Chapter 552, work product contained in an unsuccessful proposal submitted and rejected under this subchapter is confidential and may not be released unless a stipend offer has been accepted and paid as provided by Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(18), eff. September 1, 2013.

Sec. 2269.365. COMPLETION OF DESIGN. (a) Following selection of a design-build firm under this subchapter, the firm's engineers shall submit all design elements for review and determination of scope compliance to the governmental entity before or concurrently with construction.

(b) An appropriately licensed design professional shall sign and seal construction documents before the documents are released for construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.366. FINAL CONSTRUCTION DOCUMENTS. At the conclusion of construction, the design-build firm shall supply to the governmental entity a record set of construction documents for the project prepared as provided by Chapter 1001, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.367. PERFORMANCE OR PAYMENT BOND. (a) A performance or payment bond is not required for the portion of a design-build contract under this section that includes design services only.

(b) If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the construction budget, if commercially available and practical, as specified in the design criteria package.

(c) If the governmental entity awards a design-build contract under Section 2269.362, the design-build firm shall deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds before the commencement of construction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(19), eff. September 1, 2013.

SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

Sec. 2269.401. JOB ORDER CONTRACTING. In this chapter, "job order contracting" is a procurement method used for maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS; EXCEPTIONS. This subchapter applies only to a facility that is a building, the design and construction of which is governed by accepted building codes, or a structure or land, whether improved or unimproved, that is associated with a building. This subchapter does not apply to:

(1) a highway, road, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater

distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(2) a building or structure that is incidental to a project that is primarily a civil engineering construction project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR FACILITIES. (a) A governmental entity may award job order contracts for the maintenance, repair, alteration, renovation, remediation, or minor construction of a facility if:

(1) the work is of a recurring nature but the delivery times are indefinite; and

(2) indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The governmental entity shall establish the maximum aggregate contract price when it advertises the proposal.

(c) The governing body of a governmental entity shall approve each job, task, or purchase order that exceeds $500,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.404. CONTRACTUAL UNIT PRICES. The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to propose one or more coefficients or multipliers to be applied to the price book or prepriced work items as the price

proposal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A governmental entity may use the competitive sealed proposal method under Subchapter D for job order contracts.

(b) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(c) The governmental entity may require offerors to submit information in addition to rates, including experience, past performance, and proposed personnel and methodology.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.406. AWARDING OF JOB ORDER CONTRACTS. The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of proposals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.407. USE OF JOB ORDER CONTRACT. A job order contract may be used to accomplish work only for the governmental entity that awards the contract unless:

(1) the solicitation for the job order contract and the contract specifically provide for use by other persons; or

(2) the governmental entity enters into an interlocal agreement that provides otherwise.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.408. USE OF ARCHITECT OR ENGINEER. (a) If a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture within the meaning of Chapter 1051, Occupations Code, or the practice of engineering within the meaning of Chapter 1001, Occupations Code, the governmental entity shall select or designate an architect or engineer to prepare the construction documents for the project.

(b) Subsection (a) does not apply to a job order contract or an order issued under the contract for industrialized housing, industrialized buildings, or relocatable educational facilities subject to and approved under Chapter 1202, Occupations Code, if the contractor employs the services of an architect or engineer who approves the documents for the project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.409. JOB ORDER CONTRACT TERM. The base term for a job order contract may not exceed two years. The governmental entity may renew the contract annually for not more than three additional years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1,

2013.

Sec. 2269.410. JOB ORDERS. (a) An order for a job or project under a job order contract must be signed by the governmental entity's representative and the contractor.

(b) The order may be:

(1) a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities; or

(2) a unit price order based on the quantities and line items delivered.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.411. PAYMENT AND PERFORMANCE BONDS. The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

SUBCHAPTER J. ENFORCEMENT

Sec. 2269.451. VOID CONTRACT. A contract, including a job order, entered into in violation of this chapter is voidable as against public policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.

Sec. 2269.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 15th calendar day after the date on which the contract is awarded.

(b) This section does not apply to enforcement of a contract entered into by a state agency. In this subsection, "state agency" has the meaning assigned by Section 2151.002. The term includes the Texas Facilities Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.08, eff. September 1, 2011.
Redesignated from Government Code, Chapter 2267 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(23), eff. September 1, 2013.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 702 (H.B. 2581), Sec. 5, eff. September 1, 2021.

For expiration of this chapter, see Section 2270.0251.

CHAPTER 2270. PROHIBITION ON INVESTING PUBLIC MONEY IN CERTAIN INVESTMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2270.0001. DEFINITIONS. In this chapter:

(1) "Active business operations" means all business operations that are not inactive business operations.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association whose securities are publicly traded, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(3) "Designated foreign terrorist organization" means an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

(4) "Direct holdings" in a company means all securities of that company held directly by an investing entity in an account or fund in which an investing entity owns all shares or interests.

(5) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated to generate revenue but not presently deployed to generate revenue.

(6) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by an investing entity, in which the investing entity owns shares or interests together with other investors not subject to this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986.

(7) "Investing entity" means:

(A) an entity subject to Chapter 2256;

(B) the Employees Retirement System of Texas;

(C) the Teacher Retirement System of Texas; and

(D) the comptroller with respect to the comptroller's investment of state funds.

(8) "Listed company" means a company listed by the comptroller under Section 2270.0201.

(9) "Scrutinized company" means:

(A) a company that:

(i) engages in scrutinized business operations described by Section 2270.0052; or

(ii) has been complicit in the Darfur genocide during any preceding 20-month period;

(B) a company that engages in scrutinized business operations described by Section 2270.0102; and

(C) a company that engages in scrutinized business operations described by Section 2270.0152.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0002. EXCEPTION. Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions

regime relating to a designated foreign terrorist organization is not subject to divestment or investment prohibition under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0003. OTHER LEGAL OBLIGATIONS. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies as required by this chapter, an investing entity is exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of companies, or choosing asset managers, investment funds, or investments for the entity's securities portfolios.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0004. INAPPLICABILITY OF CERTAIN REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. An investing entity described by Section 2270.0001(7)(B) or (C) is not subject to a requirement of this chapter if the entity determines that the requirement would be inconsistent with the entity's fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May

23, 2017.

Sec. 2270.0005. CONFLICT WITH OTHER LAW. To the extent of a conflict between this chapter and a provision of Chapter 404 or 2256 regarding an investing entity's investments, this chapter prevails.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0006. INDEMNIFICATION OF INVESTING ENTITIES, EMPLOYEES, AND OTHERS. In a cause of action based on an action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

(1) an employee, a member of the governing body, or any other officer of an investing entity;

(2) a contractor of an investing entity;

(3) a former employee, a former member of the governing body, or any other former officer of an investing entity who was an employee or officer when the act or omission on which the damages are based occurred;

(4) a former contractor of an investing entity who was a contractor when the act or omission on which the damages are based occurred; and

(5) an investing entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0007. NO PRIVATE CAUSE OF ACTION. (a) A person, including a member, retiree, and beneficiary of a retirement system to which this chapter applies, an association, a research firm, a company, or any other person may not sue or pursue a private cause of action against the state, an investing entity, an employee, a member of the governing body, or any other officer of an investing entity, or a contractor of an investing entity, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter.

(b) A person who files suit against the state, an investing entity, an employee, a member of the governing body, or any other officer of an investing entity, or a contractor of an investing entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0008. RELIANCE ON COMPANY RESPONSE. The comptroller in administering this chapter and an investing entity may rely on a company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO INVESTMENTS IN SUDAN

Sec. 2270.0051. DEFINITIONS. In this subchapter:

(1) "Business operations" means engaging in commerce in any

form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2) "Complicit" means taking actions that have directly supported or promoted the genocidal campaign in Darfur, including:

(A) preventing members of Darfur's victimized population from communicating with each other;

(B) encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur; or

(C) actively working to deny, cover up, or alter the record on human rights abuses in Darfur.

(3) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan. The term does not include the regional government of southern Sudan.

(4) "Marginalized populations of Sudan" includes:

(A) the portion of the population in the Darfur region that has been genocidally victimized;

(B) the portion of the population of southern Sudan victimized by Sudan's North-South civil war;

(C) the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan;

(D) the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and

(E) the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(5) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems or military-grade transport vehicles or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(6) "Mineral extraction activities" includes exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore,

silver, tungsten, uranium, and zinc, as well as facilitating those activities, including by providing supplies or services in support of those activities.

(7) "Oil-related activities" includes:

(A) owning rights to oil blocks;

(B) exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil;

(C) constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; or

(D) facilitating oil-related activities, including by providing supplies or services in support of the activities, except that the mere retail sale of gasoline and related consumer products is not an oil-related activity.

(8) "Power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or another similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, and providing service contracts related to the installation or maintenance of the project, as well as facilitating those activities, including by providing supplies or services in support of those activities.

(9) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(10) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations, undertaking significant humanitarian efforts on behalf of one or more marginalized populations of Sudan, or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0052. SCRUTINIZED BUSINESS OPERATIONS IN SUDAN. A company engages in scrutinized business operations in Sudan if:

(1) the company has business operations that involve contracts with or providing supplies or services to the government of Sudan, a company in which the government of Sudan has any direct or indirect equity share, a government of Sudan-commissioned consortium or project, or a company involved in a government of Sudan-commissioned consortium or project and:

(A) more than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities, less than 75 percent of the company's revenue or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government, and the company has failed to take substantial action; or

(B) more than 10 percent of the company's revenue or assets linked to Sudan involve power production activities, less than 75 percent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action; or

(2) the company supplies military equipment in Sudan, unless:

(A) the company clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan; or

(B) the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, including:

(i) using post-sale tracking of the equipment by the company;

(ii) obtaining certification from a reputable and

objective third party that the equipment is not being used by a party participating in armed conflict in Sudan; or

(iii) selling the equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0053. SOCIAL DEVELOPMENT COMPANY. Notwithstanding any other law, a social development company that is not complicit in the Darfur genocide is not a scrutinized company under Section 2270.0001(9)(A).

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

SUBCHAPTER C. GENERAL PROVISIONS RELATING TO INVESTMENTS IN IRAN

Sec. 2270.0101. DEFINITIONS. In this subchapter:

(1) "Business operations" means engaging in commerce in any form in Iran, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems and military-grade transport vehicles.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May

23, 2017.

Sec. 2270.0102. SCRUTINIZED BUSINESS OPERATIONS IN IRAN. A company engages in scrutinized business operations in Iran if:

(1) the company has business operations that involve contracts with or providing supplies or services to the government of Iran, a company in which the government of Iran has any direct or indirect equity share, a consortium or project commissioned by the government of Iran, or a company involved in a consortium or project commissioned by the government of Iran; or

(2) the company supplies military equipment to Iran.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

SUBCHAPTER D. GENERAL PROVISIONS RELATING TO INVESTMENTS IN CERTAIN FOREIGN TERRORIST ORGANIZATIONS

Sec. 2270.0151. DEFINITIONS. In this subchapter:

(1) "Business operations" means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2) "Terroristic equipment" means weapons, arms, military supplies, and equipment that readily may be used for terroristic purposes or activities.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0152. SCRUTINIZED BUSINESS OPERATIONS WITH DESIGNATED FOREIGN TERRORIST ORGANIZATION. A company engages in scrutinized

business operations with a designated foreign terrorist organization if:

(1) the company has business operations that involve:

(A) a contract with or providing supplies or services to a designated foreign terrorist organization;

(B) a company in which a designated foreign terrorist organization has any direct or indirect equity share;

(C) a consortium or project commissioned by a designated foreign terrorist organization; or

(D) a company involved in a consortium or project commissioned by a designated foreign terrorist organization; or

(2) the company supplies terroristic equipment to a designated foreign terrorist organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0153. LIST OF DESIGNATED FOREIGN TERRORIST ORGANIZATIONS. (a) The comptroller shall prepare and maintain a list of designated foreign terrorist organizations.

(b) The comptroller shall maintain the list by updating the list as necessary to reflect changes in the list of foreign organizations designated as foreign terrorist organizations by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

(c) Not later than the 30th day after the date the comptroller first prepares or updates the list of designated foreign terrorist organizations as required by this section, the comptroller shall:

(1) file the list with the presiding officer of each house of the legislature and the attorney general; and

(2) post the list on the comptroller's Internet website.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

SUBCHAPTER E. DUTIES REGARDING INVESTMENTS

Sec. 2270.0201. LISTED COMPANIES. (a) The comptroller shall prepare and maintain a list of all scrutinized companies. The list must be categorized according to:

(1) companies that are scrutinized companies under Section 2270.0001(9)(A);

(2) companies that are scrutinized companies under Section 2270.0001(9)(B); and

(3) companies that are scrutinized companies under Section 2270.0001(9)(C).

(b) In maintaining the list of scrutinized companies under Subsection (a), the comptroller may review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies with business operations in Sudan, in Iran, or with designated foreign terrorist organizations, as applicable, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities.

(c) The comptroller shall update the list of scrutinized companies under Subsection (a) annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (b).

(d) The comptroller shall:

(1) provide each list prepared or updated under this section to each investing entity; and

(2) post each list on the comptroller's Internet website.

(e) Not later than the 30th day after the date a list of scrutinized companies is provided, the comptroller shall file the list of scrutinized companies with the presiding officer of each house of the legislature and the attorney general.

(f) For purposes of the prohibitions and duties under this chapter, the date the comptroller posts on the comptroller's Internet website a list of scrutinized companies under this section is considered the date the comptroller receives notice of the list.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.

Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0202. IDENTIFICATION OF INVESTMENT IN LISTED COMPANIES. Not later than the 30th day after the date an investing entity receives a list provided under Section 2270.0201, the entity shall notify the comptroller of the listed companies in which the entity owns direct or indirect holdings.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0203. NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE BUSINESS OPERATIONS. For each listed company identified under Section 2270.0202 that is engaged in only inactive scrutinized business operations, the investing entity shall send a written notice informing the company of this chapter and encouraging the company to continue to refrain from initiating active business operations in Sudan, in Iran, and with designated foreign terrorist organizations until it is able to avoid being considered a listed company. The investing entity shall continue the correspondence as the entity considers necessary, but is not required to initiate correspondence more often than semiannually.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0204. ACTIONS RELATING TO LISTED COMPANY ENGAGED IN ACTIVE BUSINESS OPERATIONS. (a) For each listed company identified under Section 2270.0202 that is engaged in scrutinized active business operations, the investing entity shall send a written notice

informing the company of its listed company status and warning the company that it may become subject to divestment by investing entities.

(b) The notice shall offer the company the opportunity to clarify its Sudan-related, Iran-related, or designated foreign terrorist organization-related activities, as applicable, and shall encourage the company, not later than the 90th day after the date the company receives notice under this section, to either cease all scrutinized business operations as described by Sections 2270.0052, 2270.0102, and 2270.0152, or convert such operations to inactive business operations in order to avoid qualifying for divestment by investing entities.

(c) If, during the time provided by Subsection (b), the company ceases scrutinized business operations described by that subsection, the comptroller shall remove the company from the list of scrutinized companies and this chapter will no longer apply to the company unless it resumes scrutinized business operations.

(d) If, during the time provided by Subsection (b), the company converts its scrutinized active business operations to inactive business operations, the company is subject to all provisions of this chapter relating to inactive business operations.

(e) If, after the time provided by Subsection (b) expires, the listed company continues to have scrutinized active business operations, the investing entity shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 2270.0207, according to the schedule provided by Section 2270.0206.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0205. ACTIONS RELATING TO LISTED COMPANY COMPLICIT IN GENOCIDE. (a) In this section, "complicit" has the meaning assigned by Section 2270.0051.

(b) For each company identified under Section 2270.0202 that has been complicit, the investing entity shall send a written notice

informing the company of its listed company status and warning the company that it may become subject to divestment by the investing entity.

(c) The notice must require the listed company to refrain from taking any further action that would make it complicit.

(d) If, after receiving the notice under Subsection (b), the listed company takes additional action that makes the company complicit, the investing entity shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 2270.0207, according to the schedule provided by Section 2270.0206.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0206. DIVESTMENT OF ASSETS. (a) An investing entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed company shall comply with the following schedule:

(1) at least 50 percent of those assets shall be removed from the investing entity's assets under management not later than the 270th day after the date the company receives notice under Section 2270.0204 or 2270.0205 or Subsection (b); and

(2) 100 percent of those assets shall be removed from the investing entity's assets under management not later than the 450th day after the date the company receives notice under Section 2270.0204 or 2270.0205 or Subsection (b).

(b) If a company that ceased scrutinized active business operations after receiving notice under Section 2270.0204 resumes scrutinized active business operations, the investing entity shall send a written notice to the company informing it that the entity will sell, redeem, divest, or withdraw all publicly traded securities of the scrutinized company according to the schedule in Subsection (a).

(c) An investing entity may delay the schedule for divestment under Subsection (a) only to the extent that the entity determines,

in the entity's good faith judgment, that divestment from listed companies will likely result in a loss in value described by Section 2270.0208(a). If the entity delays the schedule for divestment, the entity shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reasons and justification for the entity's delay in divestment from listed companies. The report must include documentation supporting its determination that the divestment would result in a loss in value described by Section 2270.0208(a), including objective numerical estimates. The investing entity shall update the report every six months.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0207. INVESTMENTS EXEMPTED FROM DIVESTMENT. An investing entity is not required to divest from any indirect holdings in actively managed investment funds or private equity funds. The investing entity shall submit letters to the managers of investment funds containing listed companies requesting that they consider removing those companies from the fund or create a similar actively managed fund with indirect holdings devoid of listed companies. If the manager creates a similar fund with substantially the same management fees and same level of investment risk, the investing entity shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent fiduciary standards.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0208. AUTHORIZED INVESTMENT IN LISTED COMPANIES. (a) An investing entity may cease divesting from or may reinvest in one

or more listed companies if clear and convincing evidence shows that the value for all assets under management by the entity becomes equal to or less than 99.7 percent of the hypothetical value of all assets under management by the entity had the entity not divested from listed companies under this chapter.

(b) An investing entity may invest in a listed company as provided by this section only to the extent necessary to ensure that the value of the assets managed by the entity does not fall below the value described by Subsection (a).

(c) Before an investing entity may invest in a listed company under this section, the entity must provide a written report to the presiding officer of each house of the legislature and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for its decisions to cease divestment, to reinvest, or to remain invested in a listed company.

(d) The investing entity shall update the report required by Subsection (c) semiannually, as applicable.

(e) This section does not apply to reinvestment in a company that has ceased to be a listed company.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0209. PROHIBITED INVESTMENTS. Except as provided by Sections 2270.0002 and 2270.0208, an investing entity may not acquire securities of a listed company.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

SUBCHAPTER F. EXPIRATION; REPORT; ENFORCEMENT

Sec. 2270.0251. EXPIRATION OF CHAPTER. This chapter expires September 1, 2037.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0252. REPORT. Not later than December 31 of each year, each investing entity shall:

(1) file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

(A) identifies all investments sold, redeemed, divested, or withdrawn in compliance with Section 2270.0206;

(B) identifies all prohibited investments under Section 2270.0209; and

(C) summarizes any changes made under Section 2270.0207; and

(2) file a report with the United States presidential special envoy to Sudan that identifies investments in Sudan identified in the report as required by Subdivisions (1)(A) and (B) and summarizes any changes made under Section 2270.0207 related to those investments.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

Sec. 2270.0253. ENFORCEMENT. The attorney general may bring any action necessary to enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1375 (S.B. 247), Sec. 2, eff. January 1, 2008.
Transferred, redesignated and amended from Government Code, Chapter 806 by Acts 2017, 85th Leg., R.S., Ch. 96 (S.B. 253), Sec. 4, eff. May 23, 2017.

CHAPTER 2271. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

Sec. 2271.001. DEFINITIONS. In this chapter:

(1) "Boycott Israel" has the meaning assigned by Section 808.001.

(2) "Company" has the meaning assigned by Section 808.001, except that the term does not include a sole proprietorship.

(3) "Governmental entity" has the meaning assigned by Section 2251.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 1 (H.B. 89), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 30 (H.B. 793), Sec. 1, eff. May 7, 2019.
Redesignated from Government Code, Chapter 2270 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(35), eff. September 1, 2019.

Sec. 2271.002. PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that:

(1) is between a governmental entity and a company with 10 or more full-time employees; and

(2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

(b) A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

(1) does not boycott Israel; and

(2) will not boycott Israel during the term of the contract.

Added by Acts 2017, 85th Leg., R.S., Ch. 1 (H.B. 89), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 30 (H.B. 793), Sec. 2, eff. May 7, 2019.
Redesignated from Government Code, Chapter 2270 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(35), eff. September 1, 2019.

CHAPTER 2272. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 2272.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration. The term does not include an administrative action.

(2) "Construction" includes:

(A) the initial construction of an improvement to real property;

(B) the construction of an addition to an improvement to real property; or

(C) the repair, alteration, or remodeling of an improvement to real property.

(3) "Construction defect" means a deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction, that is the result of:

(A) the use of defective materials, products, or components in the construction;

(B) a violation of a building code applicable by law to the construction;

(C) a failure of the design of an improvement to real property to meet the professional standards of care applicable at the time of governmental approval of the design or as otherwise applicable if no governmental approval of the design was required or obtained; or

(D) a failure to perform the construction in accordance with the accepted trade standards for good and workmanlike construction.

(4) "Contractor" means a person engaged in the business of developing, constructing, fabricating, repairing, altering, or remodeling improvements to real property.

(5) "Design professional" means an individual registered as an architect under Chapter 1051, Occupations Code, or a person licensed as an engineer under Chapter 1001, Occupations Code.

(6) "Governmental entity" means:

(A) the state;

(B) a municipality, county, public school district, or special-purpose district or authority;

(C) a district, county, or justice of the peace court;

(D) a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by Section 61.003, Education Code;

(E) the legislature or a legislative agency; or

(F) the Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction.

(7) "Subcontractor" means a contractor directly retained and compensated by another contractor to perform labor or perform labor and supply materials in the construction.

(8) "Supplier" means a person who provides only materials, equipment, or other supplies for the construction.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a claim:

(1) for:

(A) damages arising from damage to or loss of real or personal property caused by an alleged construction defect in an improvement to real property that is a public building or public work; or

(B) indemnity or contribution for damages described by Paragraph (A);

(2) asserted by a governmental entity with an interest in the public building or public work affected by the alleged construction defect; and

(3) asserted against a contractor, subcontractor, supplier, or design professional.

(b) This chapter does not apply to:

(1) a claim for personal injury, survival, or wrongful death;

(2) a claim involving the construction of residential property covered under Chapter 27, Property Code;

(3) a contract entered into by the Texas Department of Transportation;

(4) a project that receives money from a state or federal highway fund; or

(5) a civil works project as defined by Section 2269.351.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.0025. WAIVER PROHIBITED. This chapter may not be waived. A purported waiver of this chapter in violation of this section is void.

Added by Acts 2023, 88th Leg., R.S., Ch. 588 (H.B. 2965), Sec. 1, eff. September 1, 2023.

Sec. 2272.003. REPORT. (a) Before bringing an action asserting a claim to which this chapter applies, the governmental entity must provide each party with whom the governmental entity has a contract for the design or construction of an affected structure a written report by certified mail, return receipt requested, that clearly:

(1) identifies the specific construction defect on which the claim is based;

(2) describes the present physical condition of the affected structure; and

(3) describes any modification, maintenance, or repairs to the affected structure made by the governmental entity or others since the affected structure was initially occupied or used.

(b) Not later than the fifth day after the date a contractor receives a report under Subsection (a), the contractor must provide a copy of the report to each subcontractor retained on the construction of the affected structure whose work is subject to the claim.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. (a) Before bringing an action asserting a claim to which this chapter applies, the governmental entity must allow each party with whom the governmental entity has a contract for the design or construction of

an affected structure and who is subject to the claim and any known subcontractor or supplier who is subject to the claim:

(1) a reasonable opportunity to inspect any construction defect or related condition identified in the report for a period of 30 days after sending the report required by Section 2272.003; and

(2) at least 120 days after the inspection to:

(A) correct any construction defect or related condition identified in the report; or

(B) enter into a separate agreement with the governmental entity to correct any construction defect or related condition identified in the report.

(b) The governmental entity is not required to allow a party to make a correction or repair under Subsection (a) if:

(1) the party:

(A) is a contractor and cannot provide payment and performance bonds to cover the corrective work;

(B) cannot provide liability insurance or workers' compensation insurance;

(C) has been previously terminated for cause by the governmental entity; or

(D) has been convicted of a felony; or

(2) the governmental entity previously complied with the process required by Subsection (a) regarding a construction defect or related condition identified in the report and:

(A) the defect or condition was not corrected as required by Subsection (a)(2)(A) or an agreement under Subsection (a)(2)(B); or

(B) the attempt to correct the construction defect or related condition identified in the report resulted in a new construction defect or related condition.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.005. TOLLING OF LIMITATIONS AND REPOSE PERIODS. If the report and opportunity to correct required by Sections 2272.003 and 2272.004 are provided during the final year of a limitations or repose period applicable to the claim, the limitations or repose period is tolled until the first anniversary of the date on which the

report is provided.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.006. DISMISSAL. (a) If a governmental entity brings an action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, the court, arbitrator, or other adjudicating authority shall dismiss the action without prejudice.

(b) If an action is dismissed without prejudice under Subsection (a) and the governmental entity brings a second action asserting a claim to which this chapter applies without complying with Sections 2272.003 and 2272.004, the court, arbitrator, or other adjudicating authority shall dismiss the action with prejudice.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.007. RECOVERY OF REPORT COSTS. If a report provided by a governmental entity under Section 2272.003 identifies a construction defect that is corrected under Section 2272.004 or for which the governmental entity recovers damages, the party responsible for that construction defect shall pay the reasonable amounts incurred by the governmental entity to obtain the report with respect to identification of that construction defect.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.008. EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY. This chapter does not prohibit or limit a governmental entity from making emergency repairs to the property as necessary to protect the health, safety, and welfare of the public or a building occupant.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in connection with a potential claim against the party, receives a written notice of an alleged construction defect or a report under Section 2272.003 identifying a construction defect and provides the notice or report to the party's insurer, the insurer shall treat the provision of the notice or report to the party as the filing of a suit asserting that claim against the party for purposes of the relevant policy terms.

Added by Acts 2019, 86th Leg., R.S., Ch. 1287 (H.B. 1999), Sec. 1, eff. June 14, 2019.

CHAPTER 2273. PROHIBITED TRANSACTIONS

Sec. 2273.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002, Health and Safety Code.

(2) "Abortion provider" means:

(A) a facility licensed under Chapter 245, Health and Safety Code; or

(B) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code, that is used to perform more than 50 abortions in any 12-month period.

(3) "Affiliate" means a person or entity who enters into with another person or entity a legal relationship created or governed by at least one written instrument, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

(A) common ownership, management, or control between the parties to the relationship;

(B) a franchise granted by the person or entity to the affiliate; or

(C) the granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service mark, or other registered identification mark.

(4) "Governmental entity" means this state, a state agency in the executive, judicial, or legislative branch of state government, or a political subdivision of this state.

(5) "Taxpayer resource transaction" means a sale, purchase,

lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity receives something of value in return. The term does not include the provision of basic public services, including fire and police protection and utilities, by a governmental entity to an abortion provider or affiliate in the same manner as the entity provides the services to the general public. The term includes advocacy or lobbying by or on behalf of a governmental entity on behalf of the interests of an abortion provider or affiliate, but does not include:

(A) an officer or employee of a governmental entity providing information to a member of the legislature or appearing before a legislative committee at the request of the member or committee;

(B) an elected official advocating for or against or otherwise influencing or attempting to influence the outcome of legislation pending before the legislature while acting in the capacity of an elected official; or

(C) an individual speaking as a private citizen on a matter of public concern.

Added by Acts 2019, 86th Leg., R.S., Ch. 501 (S.B. 22), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(52), eff. September 1, 2021.

Sec. 2273.002. APPLICABILITY. (a) This chapter does not apply to:

(1) a hospital licensed under Chapter 241, Health and Safety Code;

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, that performs 50 or fewer abortions in any 12-month period;

(3) a state hospital as defined by Section 552.0011, Health and Safety Code;

(4) a teaching hospital of a public or private institution of higher education; or

(5) an accredited residency program providing training to resident physicians.

(b) For purposes of this chapter, a facility is not considered to be an abortion provider solely based on the performance of an abortion at the facility during a medical emergency as defined by Section 171.002, Health and Safety Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 501 (S.B. 22), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(52), eff. September 1, 2021.

Sec. 2273.003. ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), a governmental entity may not enter into a taxpayer resource transaction with an abortion provider or an affiliate of an abortion provider.

(b) This section does not apply to a taxpayer resource transaction that is subject to a federal law in conflict with Subsection (a) as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general.

Added by Acts 2019, 86th Leg., R.S., Ch. 501 (S.B. 22), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(52), eff. September 1, 2021.

Sec. 2273.004. INJUNCTION; WAIVER OF IMMUNITY. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 2273.003. The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under this subsection.

(b) Sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability is waived to the extent of liability created by Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 501 (S.B. 22), Sec. 1, eff. September 1, 2019.

Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(52), eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 10.008, eff. September 1, 2023.

Sec. 2273.005. CONSTRUCTION OF CHAPTER. This chapter may not be construed to restrict a municipality or county from prohibiting abortion.

Added by Acts 2019, 86th Leg., R.S., Ch. 501 (S.B. 22), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(52), eff. September 1, 2021.

CHAPTER 2274. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

Sec. 2274.001. DEFINITIONS. In this chapter:

(1) "Ammunition" means a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile.

(2) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or associations that exists to make a profit. The term does not include a sole proprietorship.

(3) "Discriminate against a firearm entity or firearm trade association":

(A) means, with respect to the entity or association, to:

(i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;

(ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or

(iii) terminate an existing business relationship with the entity or association based solely on its status as a

firearm entity or firearm trade association; and

(B) does not include:

(i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and

(ii) a company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:

(aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or

(bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

(4) "Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases.

(5) "Firearm accessory" means a device specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and an item used in conjunction with or mounted on a firearm that is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.

(6) "Firearm entity" means:

(A) a firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; and

(B) a sport shooting range as defined by Section 250.001, Local Government Code.

(7) "Firearm trade association" means any person, corporation, unincorporated association, federation, business league, or business organization that:

(A) is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;

(B) has two or more firearm entities as members; and

(C) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

(8) "Governmental entity" has the meaning assigned by Section 2251.001.

Added by Acts 2021, 87th Leg., R.S., Ch. 530 (S.B. 19), Sec. 1, eff. September 1, 2021.

Sec. 2274.002. PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that:

(1) is between a governmental entity and a company with at least 10 full-time employees; and

(2) has a value of at least $100,000 that is paid wholly or partly from public funds of the governmental entity.

(b) Except as provided by Subsection (c) and Section 2274.003, a governmental entity may not enter into a contract with a company for the purchase of goods or services unless the contract contains a written verification from the company that it:

(1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and

(2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

(c) Subsection (b) does not apply to a governmental entity that:

(1) contracts with a sole-source provider; or

(2) does not receive any bids from a company that is able to provide the written verification required by that subsection.

Added by Acts 2021, 87th Leg., R.S., Ch. 530 (S.B. 19), Sec. 1, eff. September 1, 2021.

Sec. 2274.003. CERTAIN CONTRACTS EXEMPTED. (a) A contract entered into in connection with or relating to the issuance, sale, or delivery of notes under Subchapter H, Chapter 404, or the administration of matters related to the notes, including the investment of note proceeds, is exempt from this chapter if, in the comptroller's sole discretion, the comptroller determines that compliance with Section 2274.002 is likely to prevent:

(1) an issuance, sale, or delivery that is sufficient to address the general revenue cash flow shortfall forecast; or

(2) the administration of matters related to the notes.

(b) Before making a determination under Subsection (a), the

comptroller must:

(1) survey potential respondents or bidders to a solicitation for a contract described by Subsection (a) to determine the number of qualified potential respondents or bidders that are able to provide the written verification required by Section 2274.002; and

(2) evaluate the historical bidding performance of qualified potential bidders.

Added by Acts 2021, 87th Leg., R.S., Ch. 530 (S.B. 19), Sec. 1, eff. September 1, 2021.

CHAPTER 2275. PROHIBITION ON CONTRACTS WITH CERTAIN FOREIGN-OWNED COMPANIES IN CONNECTION WITH CRITICAL INFRASTRUCTURE

Sec. 2275.0101. DEFINITIONS. In this chapter:

(1) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(2) "Critical infrastructure" means a communication infrastructure system, cybersecurity system, electric grid, hazardous waste treatment system, or water treatment facility.

(3) "Cybersecurity" means the measures taken to protect a computer, computer network, computer system, or other technology infrastructure against unauthorized use or access.

(4) "Designated country" means a country designated by the governor as a threat to critical infrastructure under Section 2275.0103.

(5) "Governmental entity" means a state agency, a political subdivision, or an independent organization certified under Section 39.151, Utilities Code, to perform a function described by Section 39.151(a), Utilities Code.

(6) "Affiliate," with respect to a company entering into an agreement in which the critical infrastructure is electric grid equipment, has the meaning assigned by the protocols of the independent organization certified under Section 39.151, Utilities Code, for the ERCOT power region.

Added by Acts 2021, 87th Leg., R.S., Ch. 975 (S.B. 2116), Sec. 3, eff. June 18, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 464 (S.B. 2013), Sec. 3, eff. June 9, 2023.
Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(21), eff. September 1, 2023.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(12), eff. September 1, 2023.

Sec. 2275.0102. PROHIBITED CONTRACTS. (a) A governmental entity may not enter into a contract or other agreement relating to critical infrastructure in this state with a company:

(1) if, under the contract or other agreement, the company would be granted direct or remote access to or control of critical infrastructure in this state, excluding access specifically allowed by the governmental entity for product warranty and support purposes; and

(2) if the governmental entity knows that the company is:

(A) owned by or the majority of stock or other ownership interest of the company is held or controlled by:

(i) individuals who are citizens of China, Iran, North Korea, Russia, or a designated country; or

(ii) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, or a designated country; or

(B) headquartered in China, Iran, North Korea, Russia, or a designated country.

(b) The prohibition described by Subsection (a) applies regardless of whether:

(1) the company's or its parent company's securities are publicly traded; or

(2) the company or its parent company is listed on a public stock exchange as:

(A) a Chinese, Iranian, North Korean, or Russian company; or

(B) a company of a designated country.

Added by Acts 2021, 87th Leg., R.S., Ch. 975 (S.B. 2116), Sec. 3, eff. June 18, 2021.
Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(21), eff. September 1, 2023.

Sec. 2275.0103. DESIGNATION OF COUNTRY AS THREAT TO CRITICAL INFRASTRUCTURE. (a) The governor, after consultation with the public safety director of the Department of Public Safety, may designate a country as a threat to critical infrastructure for purposes of this chapter.

(b) The governor shall consult the Homeland Security Council, established under Subchapter B, Chapter 421, to assess a threat to critical infrastructure for purposes of making a designation under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 975 (S.B. 2116), Sec. 3, eff. June 18, 2021.
Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(21), eff. September 1, 2023.

CHAPTER 2276. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING CERTAIN ENERGY COMPANIES

Sec. 2276.001. DEFINITIONS. In this chapter:

(1) "Boycott energy company" has the meaning assigned by Section 809.001.

(2) "Company" has the meaning assigned by Section 809.001, except that the term does not include a sole proprietorship.

(3) "Governmental entity" has the meaning assigned by Section 2251.001.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 2, eff. September 1, 2021.
Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(22), eff. September 1, 2023.

Sec. 2276.002. PROVISION REQUIRED IN CONTRACT. (a) This section applies only to a contract that:

(1) is between a governmental entity and a company with 10 or more full-time employees; and

(2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

(b) Except as provided by Subsection (c), a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

(1) does not boycott energy companies; and

(2) will not boycott energy companies during the term of the contract.

(c) Subsection (b) does not apply to a governmental entity that determines the requirements of Subsection (b) are inconsistent with the governmental entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

Added by Acts 2021, 87th Leg., R.S., Ch. 529 (S.B. 13), Sec. 2, eff. September 1, 2021.
Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(22), eff. September 1, 2023.

CHAPTER 2277. AGREEMENTS WITH PROFESSIONAL SPORTS TEAMS

Sec. 2277.001. DEFINITIONS. In this chapter:

(1) "Governmental entity" has the meaning assigned by Section 2251.001.

(2) "Professional sports team" has the meaning assigned by Section 2004.002, Occupations Code. The term includes a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of a professional sports team that exists to make a profit.

(3) "Sporting event" means any preseason, regular season, or postseason game of a professional sports team.

Added by Acts 2021, 87th Leg., R.S., Ch. 833 (S.B. 4), Sec. 1, eff. September 1, 2021.

Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(23), eff. September 1, 2023.

Sec. 2277.002. PROVISIONS REQUIRED IN CERTAIN AGREEMENTS. A governmental entity may not enter into an agreement with a professional sports team that requires a financial commitment by this state or any governmental entity unless the agreement includes:

(1) a written verification that the professional sports team will play the United States national anthem at the beginning of each team sporting event held at the team's home venue or other facility controlled by the team for the event; and

(2) a provision providing that failure to comply with the written verification required by Subdivision (1) for any team sporting event at the team's home venue or other facility:

(A) constitutes a default of the agreement;

(B) immediately subjects the team to any penalty the agreement authorizes for default, which may include requiring the team to repay any money paid to the team by this state or any governmental entity or classifying the team as ineligible to receive further money under the agreement; and

(C) may subject the team to debarment from contracting with this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 833 (S.B. 4), Sec. 1, eff. September 1, 2021.
Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(23), eff. September 1, 2023.

Sec. 2277.003. STRICT ADHERENCE TO DEFAULT PROVISION. (a) A governmental entity that enters into an agreement with a professional sports team shall strictly adhere to the default provision required by Section 2277.002(2).

(b) If a governmental entity fails to timely adhere to the default provision required under Section 2277.002(2), the attorney general may intervene to enforce the provision.

Added by Acts 2021, 87th Leg., R.S., Ch. 833 (S.B. 4), Sec. 1, eff.

September 1, 2021.
Redesignated from Government Code, Chapter 2274 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(23), eff. September 1, 2023.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(13), eff. September 1, 2023.

SUBTITLE G. ECONOMIC DEVELOPMENT PROGRAMS INVOLVING BOTH STATE AND LOCAL GOVERNMENTS

CHAPTER 2302. COGENERATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2302.001. DEFINITIONS. In this chapter:

(1) "Cogenerating state agency" means a state agency that has constructed or operates a state agency cogeneration facility.

(2) "Commission" means the Public Utility Commission of Texas.

(3) Repealed by Acts 2017, 85th Leg., R.S., Ch. 553 (S.B. 526), Sec. 4(c)(1), and Ch. 755 (S.B. 1731), Sec. 14(c)(1), eff. September 1, 2017.

(4) "Firm power" means power or power-producing capacity that, under an enforceable obligation, is available to the purchasing party according to a schedule over a specified term.

(5) "Nonfirm power" means power provided under an arrangement that does not guarantee that power will be available according to a schedule but provides instead for delivery of power as it is available.

(6) "Qualifying facility" means a qualifying small power production facility or a qualifying cogeneration facility as defined by Sections 3(17)(C) and 3(18)(B) of the Federal Power Act (16 U.S.C. Sections 796(17)(C) and 796(18)(B)).

(7) "State agency" means an office, department, commission, or board of any branch of state government or an institution of higher education as defined by Section 61.003, Education Code.

(8) "State agency cogeneration facility" means a qualifying facility constructed or operated by a state agency for the benefit of a state agency facility that is located adjacent to or on property contiguous with the site of the qualifying facility.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 553 (S.B. 526), Sec. 4(c)(1), eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 14(c)(1), eff. September 1, 2017.

SUBCHAPTER B. COGENERATION

Sec. 2302.021. STATE AGENCY COGENERATION PROJECTS. (a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 553 (S.B. 526), Sec. 4(c)(3), and Ch. 755 (S.B. 1731), Sec. 14(c)(3), eff. September 1, 2017.

(b) A state agency cogeneration facility's size and design is limited to the size and design that is necessary to supply economically the cogenerating state agency, considering the optimum balance of annual thermal and electrical energy requirements and any expansions anticipated in the near future.

(c) This section does not apply to a state agency cogeneration facility if, before September 1, 1987:

(1) the facility was in operation;

(2) the facility's final engineering design had been completed; or

(3) construction of the facility had begun.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 553 (S.B. 526), Sec. 4(c)(3), eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 14(c)(3), eff. September 1, 2017.

Sec. 2302.023. JOINT COGENERATION PROJECTS. Subject to this chapter, two or more state agencies may jointly construct or operate a state agency cogeneration facility.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2302.024. AUTHORITY TO SELL POWER. A cogenerating state

agency may contract in the same manner as a qualifying facility for the sale to an electric utility of firm or nonfirm power produced by the state agency cogeneration facility that exceeds the agency's power requirements.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 553 (S.B. 526), Sec. 4(b), eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 14(b), eff. September 1, 2017.

Sec. 2302.025. MONEY FROM POWER SALES. (a) A state agency shall first apply money it collects from the sale of firm or nonfirm power to retire any outstanding debt and pay operating expenses that result from constructing and maintaining the state agency cogeneration facility.

(b) A state agency shall deposit to the credit of the general revenue fund any money it collects under this chapter that exceeds the amount needed to service the debt and pay the operating expenses of the state agency cogeneration facility.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. ENFORCEMENT

Sec. 2302.041. COOPERATION WITH COGENERATING STATE AGENCIES. A political subdivision, municipality, or agency of the state that operates, maintains, or controls a facility that provides retail electric utility service:

(1) shall cooperate with a cogenerating state agency that attempts to sell firm or nonfirm power; and

(2) may not adopt rates, pricing policies, access restrictions, or other rules inconsistent with the intent of this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2302.042. PETITION FOR ENFORCEMENT. (a) A state agency

may file a petition with the commission to enforce Section 2302.041.

(b) Notwithstanding any other law, if a state agency files a petition under this section, the commission may determine issues relating to rates, pricing policies, access restrictions, and other matters regarding a state agency cogeneration facility as necessary to enforce Section 2302.041.

(c) The commission retains jurisdiction until the commission by final order resolves the issues raised in the petition.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2302.043. ORDER OR RULING. (a) A commission order or ruling entered under this chapter is considered to have been entered or adopted under the Public Utility Regulatory Act of 1995.

(b) A commission order or ruling entered under this chapter is enforced under Subtitle I, Title I, Public Utility Regulatory Act of 1995.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 765, Sec. 2.24, eff. Sept. 1, 1995.

Sec. 2302.044. JURISDICTION. This chapter does not enlarge or modify the commission's jurisdiction over a political subdivision, municipality, or agency of the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 2303. ENTERPRISE ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2303.001. SHORT TITLE. This chapter may be cited as the Texas Enterprise Zone Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2303.002. PURPOSES. The purposes of this chapter are to establish a process that clearly identifies severely distressed areas

of the state and provides incentives by state and local government to induce private investment in those areas by removing unnecessary governmental regulatory barriers to economic growth and to provide tax incentives and economic development program benefits.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2303.003. DEFINITIONS. In this chapter:

(1) "Bank" means the Texas Economic Development Bank established under Chapter 489.

(1-a) "Block group" has the meaning assigned by the Bureau of the Census of the United States Department of Commerce.

(1-b) "Day" means the period between 8 a.m. and 5 p.m. of a day other than a Saturday, Sunday, or state or federal holiday.

(1-c) "Distressed county" means a county:

(A) that has a poverty rate above 15.4 percent;

(B) in which at least 25.4 percent of the adult population does not hold a high school diploma or high school equivalency certificate; and

(C) that has an unemployment rate that has remained above 4.9 percent during the preceding five years.

(2) Repealed by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(6).

(3) "Enterprise zone" means an area designated as an enterprise zone under this chapter.

(3-a) "Governing body of an enterprise zone" means the governing body of a municipality or county in which an enterprise zone is located.

(4) Repealed by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(6).

(5) "Nominating body" means the governing body of a municipality or county that nominates a project or activity of a qualified business for designation as an enterprise project.

(5-a) "Office" means the Texas Economic Development and Tourism Office within the office of the governor.

(6) "Qualified business" means a person certified as a qualified business under Section 2303.402.

(6-a) "Qualified business site" means the specific business site of an enterprise project.

(7) "Qualified employee" means a person who:

(A) is a resident of this state;

(B) works for a qualified business;

(C) receives wages from the qualified business from which employment taxes are deducted; and

(D) meets one of the following qualifications:

(i) the person performs at least 50 percent of the person's service for the business at the qualified business site;

(ii) if the person engages in the transportation of goods or services, the person reports to the qualified business site and resides within 50 miles of the qualified business site; or

(iii) if the person engages in services off-site, the person is assigned to the qualified business site and resides within 25 miles of the qualified business site.

(8) "Qualified hotel project" means a hotel proposed to be constructed by a municipality or a nonprofit municipally sponsored local government corporation created under the Texas Transportation Corporation Act, Chapter 431, Transportation Code, that is within 1,000 feet of a convention center owned by a municipality having a population of 1,500,000 or more, including shops, parking facilities, and any other facilities ancillary to the hotel.

(9) "Veteran" means a person who:

(A) has served in:

(i) the army, navy, air force, coast guard, or marine corps of the United States;

(ii) the state military forces as defined by Section 431.001; or

(iii) an auxiliary service of one of those branches of the armed forces; and

(B) has been honorably discharged from the branch of the service in which the person served.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.50, 5.55, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1121, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 814, Sec. 3.01, 6.01(6), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1243 (H.B. 1659), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 1, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 490 (S.B. 1719), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 802 (S.B. 1548), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 227 (H.B. 1964), Sec. 4, eff. May 29, 2015.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 1, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 690 (H.B. 1515), Sec. 14, eff. September 1, 2023.

Sec. 2303.004. JURISDICTION OF MUNICIPALITY. (a) For the purposes of this chapter, territory in the municipal boundaries and in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality.

(b) Notwithstanding Subsection (a), the governing body of a county may nominate for designation as an enterprise project a project or activity of a qualified business that is located within the jurisdiction of a municipality located in the county.

(c) Before a county makes a nomination under Subsection (b), the nominating county must enter into an interlocal agreement with the municipality that has jurisdiction of the territory in which the nominated project or activity will be located. The interlocal agreement must specify that either the nominating county or the municipality that has jurisdiction of the territory in which the nominated project or activity will be located is the governmental body having administration authority under Section 2303.201 and that both the nominating county and municipality approve the nomination. For purposes of this subsection, a county during any biennium may use the maximum number of designations the county is permitted under Section 2303.406(d) within the territory described by this subsection.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 33, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 2, eff. September 1, 2015.

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES RELATING TO ZONES

Sec. 2303.051. GENERAL POWERS AND DUTIES. (a) The bank shall administer and monitor the implementation of this chapter.

(a-1) The bank shall compile data identifying the block groups in this state that automatically qualify for designation as enterprise zones under this chapter using the poverty data available from the most recent federal decennial census. The bank shall update the block group information as soon as practicable after the date on which the next federal decennial census is released. The bank shall make the information and updates available in an electronic format on the office's Internet website.

(a-2) The bank shall annually compile data identifying the distressed counties in this state that automatically qualify for designation as enterprise zones under this chapter.

(b) The bank shall establish criteria and procedures for designating a project or activity of a qualified business as an enterprise project.

(c) The office shall adopt rules necessary to carry out the purposes of this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.02, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1243 (H.B. 1659), Sec. 2, eff. September 1, 2005.

Sec. 2303.052. BANK REPORT REGARDING PROGRAM. The bank must include the following information regarding the enterprise zone program in the report required by Section 489.107:

(1) an evaluation of the effectiveness of the program;

(2) a description of the use of state and local incentives under this chapter and their effect on revenue; and

(3) suggestions for legislation with regard to the program.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1121, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 814, Sec. 3.02, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 3, eff. June 15, 2007.

Sec. 2303.053. ASSISTANCE. (a) The bank shall assist:

(1) a qualified business in obtaining the benefits of any incentive or inducement program provided by law;

(2) a unit of local government in obtaining status as a federal zone designation that furthers the purpose of this chapter;

(3) a nominating body in obtaining assistance from another state agency, including training and technical assistance to qualified businesses in an enterprise zone; and

(4) a nominating body in developing small business incubators.

(b) The bank shall provide to persons desiring to locate and engage in business in an enterprise zone information and appropriate assistance relating to the required legal authorization, including a state license, permit, certificate, approval, registration, or charter, to engage in business in this state.

(c) The bank shall publicize existing tax incentives and economic development programs in enterprise zones.

(d) On request the bank shall offer to a unit of local government having an enterprise zone within its jurisdiction technical assistance relating to tax abatement and the development of alternative revenue sources.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.02, eff. Sept. 1, 2003.

Sec. 2303.054. COORDINATION WITH OTHER GOVERNMENTAL ENTITIES. (a) In cooperation with the appropriate units of local government and other state agencies, the bank shall coordinate and streamline state business assistance programs and permit or license application

procedures for businesses in enterprise zones.

(b) The bank shall:

(1) work with the responsible state and federal agencies to coordinate enterprise zone programs with other programs carried out in an enterprise zone, including housing, community and economic development, small business, banking, financial assistance, transportation, and employment training programs;

(2) work to expedite, to the greatest extent possible, the consideration of applications for those programs by consolidating forms or by other means; and

(3) work, when possible, for the consolidation of periodic reports required under those programs into one summary report.

(c) The bank shall encourage other state agencies in awarding grants, loans, or services to give priority to businesses in enterprise zones.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.02, eff. Sept. 1, 2003.

SUBCHAPTER C. DESIGNATION OF ENTERPRISE ZONE

Sec. 2303.101. QUALIFICATION FOR ENTERPRISE ZONE DESIGNATION. An area automatically qualifies for designation as an enterprise zone if the area is:

(1) a block group, as defined by the most recent federal decennial census available at the time of designation, in which at least 20 percent of the residents of the block group have an income at or below 100 percent of the federal poverty level;

(2) an area designated by the federal government as a renewal community, a federal empowerment zone, or a federal enterprise community, including any developable area approved by the federal agency responsible for making that designation;

(3) an area located in a distressed county; or

(4) an area inside the boundaries of a defense base development authority established under Chapter 379B, Local Government Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.03, eff. Sept. 1, 2003.

Amended by:
Acts 2005, 79th Leg., Ch. 1243 (H.B. 1659), Sec. 3, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 1401 (H.B. 3066), Sec. 1, eff. June 14, 2013.

Sec. 2303.109. PERIOD OF DESIGNATION. (a) An enterprise zone designation remains in effect indefinitely so long as the area continues to qualify for designation as an enterprise zone under this chapter. If an area described by Section 2303.101(1) no longer qualifies for enterprise zone designation following the release of a subsequent federal decennial census, the area's designation remains in effect until the date on which the bank makes the updated information for that subsequent census available to the public as required by Section 2303.051.
(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 591 , Sec. 13, eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 985, Sec. 3, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 814, Sec. 3.04, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1243 (H.B. 1659), Sec. 4, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 13, eff. September 1, 2015.

SUBCHAPTER D. ADMINISTRATION

Sec. 2303.201. ADMINISTRATION BY GOVERNING BODY. (a) The governing body of an enterprise zone is the governing body of the municipality or county with jurisdiction over the area designated as an enterprise zone, except as provided by Subsection (b).
(b) The governing body with administration authority over an enterprise project nominated under Section 2303.004(c) is determined under the terms of an interlocal agreement required by that subsection.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.06, eff. Sept. 1,

2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 3, eff. September 1, 2015.

Sec. 2303.204. LIAISON. A nominating body shall designate a liaison to oversee enterprise projects it has nominated under this chapter and to communicate and negotiate with:

(1) the bank or the office;

(2) an enterprise project; and

(3) other entities in an enterprise zone or affected by an enterprise project, including a qualified business, within the jurisdiction of the nominating governmental entity.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.07, eff. Sept. 1, 2003.

Sec. 2303.205. ANNUAL REPORT. (a) Not later than October 1 of each year, the nominating body of a project or activity designated as an enterprise project shall submit to the bank a report in the form required by the bank.

(b) Repealed by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(6).

(c) The report must include for the year preceding the date of the report:

(1) a list of local incentives for community development available in the jurisdiction of the governmental entity nominating the enterprise project;

(2) the use of local incentives described by the nominating body in the ordinance or order nominating the enterprise project and the effect of those incentives on revenue;

(3) the number of businesses assisted, located, and retained in the jurisdiction of the governmental entity nominating the enterprise project due to the existence of the enterprise zone program; and

(4) a summary of all industrial revenue bonds issued to finance enterprise projects located in the jurisdiction of the governmental entity nominating the enterprise project.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 985, Sec. 4, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 814, Sec. 3.08, 6.01(6), eff. Sept. 1, 2003.

SUBCHAPTER F. QUALIFIED BUSINESSES AND ENTERPRISE PROJECTS

Sec. 2303.401. DEFINITIONS. In this subchapter:

(1) "New permanent job" means a new employment position that:

(A) is created by a qualified business as described by Section 2303.402 at the qualified business site not earlier than the 90th day before the date the business's project or activity is designated as an enterprise project under this chapter;

(B) will provide or has provided for the duration of the project's designation period at least 1,820 hours of employment a year to a qualified employee; and

(C) will exist or has existed at the qualified business site for the longer of:

(i) the duration of the project's designation period; or

(ii) three years after the date on which a state benefit is received as authorized by this chapter.

(2) "Retained job" means a job that:

(A) existed with a qualified business on the 91st day before the date the business's project or activity is designated as an enterprise project;

(B) has provided and will continue to provide employment to a qualified employee of at least 1,820 hours annually; and

(C) will be or has been an employment position for the longer of:

(i) the duration of the project's designation period; or

(ii) three years after the expiration date of the claim period for receipt of a state benefit authorized by this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a), eff. Sept. 1,

1995; Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1121, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 814, Sec. 3.09, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 4, eff. June 15, 2007.

Sec. 2303.402. QUALIFIED BUSINESS. (a) A person is a qualified business if the bank, for the purpose of state benefits under this chapter, or the nominating body of a project or activity of the person under this chapter, for the purpose of local incentives, certifies that:

(1) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in an enterprise zone, and at least 25 percent of the person's new permanent jobs in the enterprise zone are held by:

(A) residents of any enterprise zone in this state;

(B) economically disadvantaged individuals; or

(C) veterans; or

(2) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in an area of this state that does not qualify as an enterprise zone, and at least 35 percent of the person's new permanent jobs at the qualified business site are held by:

(A) residents of any enterprise zone in this state;

(B) individuals who are economically disadvantaged; or

(C) veterans.

(b) Repealed by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(6).

(c) For the purposes of this section, an economically disadvantaged individual is an individual who:

(1) was unemployed for at least three months before obtaining employment with the qualified business;

(2) receives public assistance benefits, including welfare payments or food stamps, based on need and intended to alleviate poverty;

(3) is a low-income individual, as defined by Section 101, Workforce Investment Act of 1998 (29 U.S.C. Section 2801(25));

(4) is an individual with a disability, as defined by 29 U.S.C. Section 705(20)(A);

(5) is an inmate, as defined by Section 498.001;

(6) is entering the workplace after being confined in a facility operated by or under contract with the Texas Department of Criminal Justice for the imprisonment of individuals convicted of felonies other than state jail felonies;

(7) has been released by the Texas Juvenile Justice Department and is on parole, if state law provides for such a person to be on parole;

(8) meets the current low income or moderate income limits developed under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f et seq.); or

(9) was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18th birthday.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2303.401 and amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a) and Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 814, Sec. 3.10, 6.01(6), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.089, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1116 (H.B. 1043), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 116, eff. September 1, 2015.

Sec. 2303.403. PROHIBITION ON QUALIFIED BUSINESS CERTIFICATION; LIMIT ON ENTERPRISE PROJECT DESIGNATIONS. If the bank determines that the governing body eligible to nominate an enterprise project is not complying with this chapter, the bank shall prohibit the certification of a qualified business until the bank determines that the governing body is complying with this chapter. The bank may not designate more than 105 enterprise projects during any biennium. Any

designations remaining at the end of a biennium may be carried forward to the next biennium.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2303.402 by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a), eff. Sept. 1, 1995, and Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 813, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 814, Sec. 3.11, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 6, eff. June 15, 2007.

Sec. 2303.404. REQUEST FOR APPLICATION FOR ENTERPRISE PROJECT DESIGNATION. (a) A qualified business may request that the governing body of a municipality or county in which the qualified business is located apply to the bank for designation of a project or activity of the business as an enterprise project.

(b) The enterprise project designation must be for:

(1) an expansion or relocation from out-of-state, an expansion, renovation, or new construction, or other property to be undertaken by a qualified business; and

(2) a predetermined designation period approved by the bank, with beginning and ending dates for each proposed project or activity.

(c) The designation period for an enterprise project may not be for less than one year or more than five years from the date on which the designation is made.

(d) If an enterprise project designation is for a franchise or subsidiary, separate books and records must be maintained for the business activity conducted at the qualified business site.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a), eff. Sept. 1, 1995, and Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.11, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 7, eff. June 15, 2007.

Sec. 2303.405. APPLICATION FOR ENTERPRISE PROJECT DESIGNATION. (a) If the governing body approves a request made under Section 2303.404, the governing body may apply to the bank for the designation of the project or activity of a qualified business as an enterprise project only after it submits to the bank the order or ordinance and other information that complies with the requirements of Sections 2303.4051 and 2303.4052.

(b) An application must contain an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity with regard to the enterprise project, including:

(1) the number of employment positions in existence at the qualified business site on the 91st day before the application deadline;

(1-a) the number of new permanent jobs the enterprise project commits to create during the designation period presented in the form of a tabular listing of:

(A) the classification titles of those jobs; and

(B) the number of jobs and salary range for each classification title;

(2) the number of permanent jobs the enterprise project commits to retain during the designation period presented in the form of a tabular listing of:

(A) the classification titles of the retained jobs; and

(B) the number of retained jobs and salary range for each classification title;

(3) the amount of investment to be made by the enterprise project;

(4) a complete description of the projected schedule for completion of the specific activity described by Section 2303.404(b) to be undertaken by the enterprise project;

(5) other information the bank requires;

(6) a description of the local effort made by the nominating body, the qualified business, and other affected entities to develop and revitalize the jurisdiction of the governmental entity nominating the project or activity; and

(7) if the nominating body is applying for a double or triple jumbo enterprise project, as defined by Section 2303.407, an indication of which level of designation is being sought.

(c) For the purposes of this section, local effort to develop and revitalize a municipality or county is:

(1) the willingness of public entities in the municipality or county to provide services, incentives, and regulatory relief authorized by this chapter and to negotiate with the qualified business for which application is made and with other local groups or businesses to achieve the public purposes of this chapter; and

(2) the effort of the qualified business and other affected entities to cooperate in achieving those public purposes.

(d) Factors to be considered in evaluating the local effort of a public entity include:

(1) tax abatement, deferral, refunds, or other tax incentives;

(2) regulatory relief, including:

(A) zoning changes or variances;

(B) exemptions from unnecessary building code requirements, impact fees, or inspection fees; and

(C) streamlined permitting;

(3) enhanced municipal services, including:

(A) improved police and fire protection;

(B) institution of community crime prevention programs; and

(C) special public transportation routes or reduced fares;

(4) improvements in community facilities, including:

(A) capital improvements in water and sewer facilities;

(B) road repair; and

(C) creation or improvement of parks;

(5) improvements to housing, including:

(A) low-interest loans for housing rehabilitation, improvement, or new construction; and

(B) transfer of abandoned housing to individuals or community groups;

(6) business and industrial development services, including:

(A) low-interest loans for business;

(B) use of surplus school buildings or other underutilized publicly owned facilities as small business incubators;

(C) provision of publicly owned land for development purposes, including residential, commercial, or industrial development;

(D) creation of special one-stop permitting and problem

resolution centers or ombudsmen; and

(E) promotion and marketing services; and

(7) job training and employment services, including:

(A) retraining programs;

(B) literacy and employment skills programs;

(C) vocational education; and

(D) customized job training.

(e) Factors to be considered in evaluating the local effort of a private entity include:

(1) the willingness to negotiate or cooperate in the achievement of the purposes of this chapter;

(2) commitments to hire underskilled, inexperienced, disadvantaged, or displaced workers who reside in the enterprise zone;

(3) commitments to hire minority workers and to contract with minority-owned businesses;

(4) provision of technical and vocational job training for enterprise zone residents or economically disadvantaged employees;

(5) provision of child care for employees;

(6) commitments to implement and contribute to a tutoring or mentoring program for area students;

(7) prevention or reduction of juvenile crime activity; and

(8) the willingness to make contributions to the well-being of the community, such as job training, or the donation of land for parks or other public purposes.

(f) A nominating body may submit an application for a project or activity that during the application process loses its eligibility for designation as an enterprise project solely because the project or activity is no longer located in an enterprise zone as described by Section 2303.101(1) if the bank receives the application not later than the 30th day after the date on which the bank makes the updated block group data used to make the eligibility determination available as required by Section 2303.051.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a), eff. Sept. 1, 1995, and Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.12, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1243 (H.B. 1659), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 8, eff. June 15, 2007.

Sec. 2303.4051. ORDINANCE OR ORDER FOR IDENTIFICATION OF LOCAL INCENTIVES. (a) In this section, "local incentive" means each tax incentive, grant, other financial incentive or benefit, or program to be provided by the governing body to qualified businesses participating in the enterprise zone program and any other local incentive listed in Section 2303.511.

(b) Before nominating the project or activity of a qualified business for designation as an enterprise project, the governing body of the municipality or county in which the business is located, by ordinance or order, as appropriate, must identify and summarize briefly any local incentives available.

(c) The ordinance or order must:

(1) state whether the project or activity to be nominated as an enterprise project is located in an area designated as an enterprise zone under this chapter;

(2) summarize briefly the local incentives, including tax incentives, that, at the election of the governing body, are or will be made available to the nominated project or activity of the qualified business; and

(3) nominate a project or activity as an enterprise project.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 21(1), eff. June 15, 2007.

(e) An ordinance or order adopted under this section is not valid unless the nominating body holds a public hearing before adopting the ordinance or order. Notice of the hearing must be published in a newspaper having general circulation in the municipality not later than the seventh calendar day before the date of the hearing. The notice must contain:

(1) the date, time, and location of the hearing;

(2) the provisions for any tax or other incentives applicable to the enterprise zone program;

(3) the name of the qualified business whose project or activity is being nominated for enterprise project designation; and

(4) the location of the qualified business site.

(f) If the nominating body has previously nominated a project or activity for designation as an enterprise project, the nominating body, instead of issuing a new ordinance or order under this section for a nominated project or activity, may by resolution make a reference to a previously issued ordinance or order that met the requirements of this section if:

(1) the resolution nominates the project or activity for designation as an enterprise project and states:

(A) whether the nominated project or activity is located in an area designated as an enterprise zone;

(B) the level of enterprise project designation being sought; and

(C) the ending date of the project's designation period;

(2) the local incentives described in the previously issued ordinance or order are the same on the date the resolution is issued; and

(3) the local incentives to be made available to the nominated project or activity are the same as those made available to the project or activity that are the subject of the previously issued ordinance or order.

(g) This section does not prohibit a municipality or county from extending additional incentives, including tax incentives, for qualified businesses in an enterprise zone by a separate order or ordinance.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 3.13, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 9, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 21(1), eff. June 15, 2007.

Sec. 2303.4052. REQUIRED INFORMATION FROM NOMINATING BODY. (a) Before nominating the project or activity of a qualified business for designation as an enterprise project, the nominating body must submit to the bank:

(1) a certified copy of the ordinance or order, as appropriate, or reference to an ordinance or order as required by Section 2303.4051;

(2) a certified copy of the minutes of all public hearings conducted with respect to local incentives available to qualified businesses within the jurisdiction of the governmental entity nominating the project or activity, regardless of whether those businesses are located in an enterprise zone;

(3) the name, title, address, telephone number, and electronic mail address of the nominating body's liaison designated under Section 2303.204;

(4) if the business is seeking job retention benefits, documentation showing the number of employment positions at the qualified business site;

(5) any interlocal agreement required under Section 2303.004(c) that states:

(A) which governing body has the administration authority under Section 2303.201; and

(B) that both the county in which the project or activity is located and the municipality in whose jurisdiction the project or activity is located approve the nomination of the project or activity; and

(6) any additional information the bank may require.

(b) The nominating body may electronically submit in a manner prescribed by the bank a digital scan of a certified copy of the documentation required by Subsections (a)(1) and (2).

Added by Acts 2003, 78th Leg., ch. 814, Sec. 3.13, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 10, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 5, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 690 (H.B. 1515), Sec. 15, eff. September 1, 2023.

Sec. 2303.406. ENTERPRISE PROJECT DESIGNATION. (a) The bank may designate a project or activity of a business as an enterprise

project only if the bank receives all of the information required by Section 2303.4052 and determines that:

(1) the business is a qualified business under Section 2303.402 that is located in or has made a substantial commitment to locate in an enterprise zone or at a qualified business site;

(2) the nominating body making the application has demonstrated that a high level of cooperation exists among public, private, and neighborhood entities within the jurisdiction of the governmental entity nominating the project or activity;

(3) the designation will contribute significantly to the achievement of the plans of the nominating body making the application for development and revitalization of the area in which the enterprise project will be located; and

(4) if the business is seeking job retention benefits, the business has clearly demonstrated that:

(A) the permanent employees of the business will be permanently laid off;

(B) the business will close down permanently;

(C) the business will relocate out-of-state;

(D) the business is able to employ individuals in accordance with Section 2303.402; or

(E) the business facility has been legitimately destroyed or substantially impaired because of fire, flood, tornado, hurricane, or any other natural disaster and that at least 60 percent of the capital investment is being spent to repair damages resulting from the disaster.

(b) The bank shall designate qualified businesses as enterprise projects on a competitive basis. The bank shall make its designation decisions using a weighted scale in which:

(1) 40 percent of the evaluation depends on the economic distress of the block group or distressed county in which a proposed enterprise project is located;

(2) 25 percent of the evaluation depends on the local effort to achieve development and revitalization of the block group or distressed county in which a proposed enterprise project is located; and

(3) 35 percent of the evaluation depends on the evaluation criteria as determined by the bank, which must include:

(A) with respect to a proposed enterprise project located in a block group, the level of cooperation and support the

project applicant commits to the revitalization goals of all of the enterprise zone block groups within the jurisdiction of the nominating governmental entity;

(B) with respect to a proposed enterprise project located in a distressed county, the level of cooperation and support the project applicant commits to the revitalization of the distressed county; and

(C) the type and wage level of the jobs to be created or retained by the business.

(c) The bank may remove an enterprise project designation if it determines that the business is not complying with a requirement for its designation.

(d) The maximum number of enterprise projects that the bank may designate for each nominating body during any biennium is:

(1) six, if the nominating body is the governing body of a municipality or county with a population of less than 250,000; or

(2) nine, if the nominating body is the governing body of a municipality or county with a population of 250,000 or more.

(d-1) An enterprise project designation may be split into two half designations. A half designation uses one-half of one of the enterprise project designations allowed to a nominating body under Subsection (d) and to the bank under Section 2303.403.

(e) The office may not designate multiple concurrent enterprise projects to a qualified business located at a qualified business site.

(f) An approved designation as a double jumbo enterprise project, as defined by Section 2303.407, counts as two project designations against both the nominating body for purposes of Subsection (d) and the number of enterprise project designations allowed statewide per biennium under Section 2303.403. An approved designation as a triple jumbo enterprise project, as defined by Section 2303.407, counts as three project designations against both the nominating body for purposes of Subsection (d) and the number of enterprise project designations allowed statewide per biennium under Section 2303.403.

(g) The bank may lower the designation level of a proposed project or activity nominated for enterprise project designation:

(1) if there are fewer designations available than applications received; or

(2) to further the economic interests of the state.

(h) A state benefit may not be obtained under this chapter or Chapter 151, Tax Code, for jobs moved from one jurisdiction in this state to another jurisdiction in this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a), eff. Sept. 1, 1995, and Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1121, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 813, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 92, eff. Oct. 1, 2003; Acts 2003, 78th Leg., ch. 814, Sec. 3.14, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1243 (H.B. 1659), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 11, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 12, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 21(2), eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 256 (H.B. 271), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 256 (H.B. 271), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 6, eff. September 1, 2015.

Sec. 2303.407. ALLOCATION OF JOBS ELIGIBLE FOR TAX REFUND. (a) The bank shall allocate to an enterprise project the maximum number of new permanent jobs or retained jobs eligible based on the amount of capital investment made in the project, the project's designation level, and the refund per job with a maximum refund to be included in a computation of a tax refund for the project.

(b) A capital investment in a project of:

(1) $40,000 to $399,999 will result in a refund of up to $2,500 per job with a maximum refund of $25,000 for the creation or retention of 10 jobs;

(2) $400,000 to $999,999 will result in a refund of up to $2,500 per job with a maximum refund of $62,500 for the creation or retention of 25 jobs;

(3) $1,000,000 to $4,999,999 will result in a refund of up to $2,500 per job with a maximum refund of $312,500 for the creation or retention of 125 jobs;

(4) $5,000,000 or more will result in a refund of up to $2,500 per job with a maximum refund of $1,250,000 for the creation or retention of 500 jobs, except as provided by Subdivision (5) or (6);

(5) $150,000,000 to $249,999,999 will result in a refund of up to $5,000 per new permanent job with a maximum refund of $2,500,000 for the creation of 500 new permanent jobs if the bank designates the project as a double jumbo enterprise project; or

(6) $250,000,000 or more will result in a refund of up to $7,500 per new permanent job with a maximum refund of $3,750,000 for the creation of at least 500 new permanent jobs if the bank designates the project as a triple jumbo enterprise project.

(c) An enterprise project for which a commitment for a capital investment in the range amount and the creation of the number of new permanent jobs specified by Subsection (b)(5) is made is considered a double jumbo enterprise project if the project is so designated by the bank.

(d) An enterprise project for which a commitment for a capital investment in the range amount and the creation of the number of new permanent jobs specified by Subsection (b)(6) is made is considered a triple jumbo enterprise project if the project is so designated by the bank.

(e) The maximum number of jobs that the bank may allocate to an enterprise project split into two half designations as provided by Section 2303.406(d-1) is 250.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a), eff. Sept. 1, 1995, and Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1134, Sec. 2.01, eff. Sept. 1, 2005; Acts 2003, 78th Leg., ch. 814, Sec. 3.16, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 13, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 7, eff. September 1, 2015.

Sec. 2303.4071. MAXIMUM TAX REFUND. (a) In this section:

(1) "Double jumbo enterprise project" and "triple jumbo enterprise project" have the meanings assigned by Section 2303.407.

(2) "Half enterprise project" means an enterprise project split into two half designations as provided by Section 2303.406(d-1).

(b) An enterprise project is eligible for a maximum refund of $250,000 in each state fiscal year.

(c) A double jumbo enterprise project is eligible for a maximum refund of $500,000 in each state fiscal year.

(d) A triple jumbo enterprise project is eligible for a maximum refund of $750,000 in each state fiscal year.

(e) A half enterprise project is eligible for a maximum refund not to exceed $125,000 in each state fiscal year and is subject to the capital investment and job allocation requirements under Section 2303.407(b)(1), (2), or (3).

Added by Acts 2003, 78th Leg., ch. 814, Sec. 3.17, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 8, eff. September 1, 2015.

Sec. 2303.4072. ENTERPRISE PROJECT CLAIM FOR STATE BENEFIT. A person must make a claim to the comptroller for a state benefit as prescribed under this chapter and Chapter 151, Tax Code, not later than 18 months after the date on which the term of the enterprise project designation expires as provided by Section 2303.404.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 3.17, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 14, eff. June 15, 2007.

Sec. 2303.408. DURATION OF CERTAIN DESIGNATIONS. The bank's designation of the project or activity of a qualified business as an enterprise project is effective until the period approved by the bank under Section 2303.404 regardless of whether the enterprise zone in

which the project is located, if any, fails to qualify as an enterprise zone before the expiration of the project.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.52(a), eff. Sept. 1, 1995, and Acts 1995, 74th Leg., ch. 985, Sec. 6, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.18, eff. Sept. 1, 2003.

SUBCHAPTER G. ENTERPRISE ZONE BENEFITS

Sec. 2303.501. EXEMPTIONS FROM STATE REGULATION; SUSPENSION OF LOCAL REGULATION. (a) A state agency may exempt from its regulation a qualified business, qualified employee, or qualified property in an enterprise zone if the exemption is consistent with:

(1) the purposes of this chapter; and

(2) the protection and promotion of the general health and welfare.

(b) A local government may suspend local regulation, including an ordinance, rule, or standard, relating to zoning, licensing, or building codes in an enterprise zone.

(c) An exemption from or suspension of regulation under this section must be adopted in the same manner that the regulation was adopted.

(d) The authorization provided by Subsection (a) or (b) does not apply to regulation:

(1) that relates to:

(A) civil rights;

(B) equal employment;

(C) equal opportunity;

(D) fair housing rights; or

(E) preservation of historical sites or historical artifacts;

(2) the relaxation of which is likely to harm the public safety or public health, including environmental health; or

(3) that is specifically imposed by law.

(e) For the purposes of this section, property is classified as qualified property if the property is:

(1) tangible personal property located in the enterprise zone that was:

(A) acquired by a taxpayer not earlier than the 90th

day before the date on which the area was designated as an enterprise zone; and

(B) used predominantly by the taxpayer in the active conduct of a trade or business;

(2) real property located in the enterprise zone that was:

(A) acquired by a taxpayer not earlier than the 90th day before the date on which the area was designated as an enterprise zone and was used predominantly by the taxpayer in the active conduct of a trade or business; or

(B) the principal residence of the taxpayer on the date of the sale or exchange; or

(3) an interest in an entity that was certified as a qualified business under Section 2303.402 for the entity's most recent tax year ending before the date of the sale or exchange.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.56, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 814, Sec. 3.19, eff. Sept. 1, 2003.

Sec. 2303.502. REVIEW OF STATE AGENCY RULES; REPORT. (a) A state agency rule adopted after September 1, 1987, may provide, when applicable, encouragements and incentives to increase:

(1) the renovation, improvement, or new construction of housing in enterprise zones; and

(2) the economic viability and profitability of business and commerce in enterprise zones.

(b) Annually each state agency shall:

(1) review the rules it administers that:

(A) may adversely affect:

(i) the renovation, improvement, or new construction of housing in enterprise zones; or

(ii) the economic viability and profitability of business and commerce in enterprise zones; or

(B) may otherwise affect the implementation of this chapter; and

(2) report the results of the review to the bank.

(c) The bank shall disseminate the reports to the governing bodies of the entities that nominated the enterprise projects and others as necessary to advance the purposes of this chapter.

(d) To contribute to the implementation of this chapter, an agency may waive, modify, provide exemptions to, or otherwise minimize the adverse effects of the rules it administers on the renovation, improvement, or new construction of housing in enterprise zones or on the economic viability and profitability of business and commerce in enterprise zones.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.20, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 15, eff. June 15, 2007.

Sec. 2303.503. STATE PREFERENCES. (a) A state agency shall give preference to the governing body of an enterprise zone or a qualified business or qualified employee located in an enterprise zone over other eligible applicants for grants or loans that are administered by the state agency if:

(1) at least 50 percent of the grant or loan will be spent for the direct benefit of the enterprise zone; and

(2) the purpose of the grant or loan is to:

(A) promote economic development in the community; or

(B) construct, improve, extend, repair, or maintain public facilities in the community.

(b) The comptroller may and is encouraged to deposit state money in financial institutions located or doing business in enterprise zones.

(c) A state agency may and is encouraged to contract with businesses located in enterprise zones.

(d) The office may give preference to enterprise zones in granting economic development money or other benefits.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.71, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 814, Sec. 3.21, eff. Sept. 1, 2003.

Sec. 2303.504. STATE TAX REFUNDS; REPORT. (a) Subject to Section 2303.516, an enterprise project is entitled to a refund of

state taxes under Section 151.429, Tax Code.

(b) At the time of receipt of any tax benefit available as a result of participating in the enterprise zone program, including a state sales and use tax refund, three percent of the amount of the tax benefit shall be transferred to the Texas economic development bank fund under Subchapter B, Chapter 489, to defray the cost of administering this chapter.

(c) Not later than the 60th day after the last day of each fiscal year, the comptroller shall report to the bank the statewide total of actual jobs created, actual jobs retained, and the tax refunds made under this section during that fiscal year.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.02, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1134, Sec. 2.02, eff. Sept. 1, 2005; Acts 2003, 78th Leg., ch. 814, Sec. 3.23, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 16(a), eff. January 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 9, eff. September 1, 2015.

Sec. 2303.505. LOCAL SALES AND USE TAX REFUNDS. (a) To encourage the development of areas designated as enterprise zones, the governing body of a municipality through a program may refund its local sales and use taxes paid by a qualified business on all taxable items purchased for use at the qualified business site related to the project or activity.

(b) To promote the public health, safety, or welfare, the governing body of a municipality or county through a program may refund its local sales and use taxes paid by a qualified business or qualified employee.

(c) The governing body of a municipality or county that is the governing body of an enterprise zone may provide for the partial or total refund of its local sales and use taxes paid by a person making a taxable purchase, lease, or rental for development or revitalization in the zone.

(d) A person entitled to a refund of local sales and use taxes under this section shall pay the entire amount of state and local

sales and use taxes at the time the taxes would be due if an agreement for the refund did not exist.

(e) An agreement to refund local sales and use taxes under this section must:

(1) be written;

(2) contain an expiration date; and

(3) require that the person entitled to the refund provide to the municipality or county making the refund the documentation necessary to support a refund claim.

(f) The municipality or county shall make the refund directly to the person entitled to the refund in the manner provided by the agreement.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 985, Sec. 7, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 17, eff. June 15, 2007.

Sec. 2303.5055. REFUND, REBATE, OR PAYMENT OF TAX PROCEEDS TO QUALIFIED HOTEL PROJECT. (a) For a period that may not exceed 10 years, a governmental body, including a municipality, county, or political subdivision, may agree to rebate, refund, or pay eligible taxable proceeds to the owner of a qualified hotel project at which the eligible taxable proceeds were generated.

(b) A municipality with a population of 1,500,000 or more may agree to guarantee from hotel occupancy taxes the bonds or other obligations of a municipally sponsored local government corporation created under the Texas Transportation Corporation Act, Chapter 431, Transportation Code, that were issued or incurred to pay the cost of construction, remodeling, or rehabilitation of a qualified hotel project.

(c) An agreement under this section must be in writing, contain an expiration date, and require the beneficiary to provide documentation necessary to support a claim.

(d) A governmental body that makes an agreement under this section shall make the rebate, refund, or payment directly to the beneficiary.

(e) In this section, "eligible taxable proceeds" means taxable

proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project, including hotel occupancy taxes, ad valorem taxes, sales and use taxes, and mixed beverage taxes.

(f) Notwithstanding any other law, the comptroller shall deposit eligible taxable proceeds that were collected by or forwarded to the comptroller, and to which the qualified hotel project is entitled according to an agreement under this section, in trust in a separate suspense account of the project. A suspense account is outside the state treasury, and the comptroller may make a rebate, refund, or payment authorized by this section without the necessity of an appropriation. The comptroller shall rebate, refund, or pay to each qualified hotel project eligible taxable proceeds to which the project is entitled under this section at least quarterly.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.53(a), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 179 (S.B. 977), Sec. 1, eff. May 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 490 (S.B. 1719), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 227 (H.B. 1964), Sec. 5, eff. May 29, 2015.

Sec. 2303.506. REDUCTION OR ELIMINATION OF LOCAL FEES OR TAXES. (a) To promote the public health, safety, or welfare, the governing body of a municipality or county through a program may reduce or eliminate fees or taxes that it imposes on a qualified business or qualified employee.

(b) This section does not apply to sales and use taxes or property taxes.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2303.507. TAX INCREMENT FINANCING AND ABATEMENT; LIMITATIONS ON APPRAISED AND TAXABLE VALUE. Designation of an area as an enterprise zone is also designation of the area as a reinvestment zone for:

(1) tax increment financing under Chapter 311, Tax Code;
(2) tax abatement under Chapter 312, Tax Code;
(3) limitations on appraised value under former Subchapter B or C, Chapter 313, Tax Code; and
(4) limitations on taxable value under Subchapter T, Chapter 403, of this code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1505, Sec. 11, eff. Jan. 1, 2002.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 377 (H.B. 5), Sec. 4, eff. January 1, 2024.

Sec. 2303.509. DEVELOPMENT BONDS. To finance a project in an enterprise zone, bonds may be issued under:
(1) Chapter 1433; or
(2) the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.246, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.12, eff. April 1, 2009.

Sec. 2303.510. INDUSTRIAL DEVELOPMENT CORPORATION. (a) The governing body of a municipality that is the governing body of an enterprise zone may create, in accordance with the Development Corporation Act (Subtitle C1, Title 12, Local Government Code), an industrial development corporation for use by the enterprise zone.
(b) A corporation created under this section has the powers and is subject to the limitations of a corporation created under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code). To the extent of a conflict between this section and that subtitle, that subtitle prevails.
(c) The articles of incorporation of a corporation created under this section must state that the corporation is governed by

this section.

(d) The governing body of the municipality that creates an industrial development corporation shall appoint the board of directors of the corporation.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.13, eff. April 1, 2009.

Sec. 2303.511. OTHER LOCAL INCENTIVES. (a) The governing body of a municipality or county that is the governing body of an enterprise zone may:

(1) defer compliance in the zone with the subdivision and development ordinances or rules, other than those relating to streets and roads or sewer or water services, of the municipality or county, as appropriate;

(2) give priority to the zone for the receipt of:

(A) community development block grant money;

(B) industrial revenue bonds; or

(C) funds received under the federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(3) adopt and implement a plan for police protection in the zone;

(4) amend the zoning ordinances of the municipality or county, as appropriate, to promote economic development in the zone;

(5) establish permitting preferences for businesses in the zone;

(6) establish simplified, accelerated, or other special permit procedures for businesses in the zone;

(7) waive development fees for projects in the zone;

(8) create a local enterprise zone fund for funding bonds or other programs or activities to develop or revitalize the zone;

(9) for qualified businesses in the zone, reduce rates charged by:

(A) a utility owned by the municipality or county, as appropriate; or

(B) a cooperative corporation or utility owned by private investors, subject to the requirements of Subsection (b);

(10) in issuing housing finance bonds, give priority to persons or projects in the zone;

(11) in providing services, give priority to local economic development, educational, job training, or transportation programs that benefit the zone; or

(12) sell real property owned by the municipality or county, as appropriate, and located in the enterprise zone in accordance with Section 2303.513.

(b) A reduction in utility rates under Subsection (a)(9)(B) is subject to the agreement of the affected utility and the approval of the appropriate regulatory authority. The rates may be reduced up to but not more than five percent below the lowest rate authorized for a person described by Subsection (a)(9)(B). A qualified enterprise project or the governing body of the enterprise zone may petition the appropriate utility and the appropriate regulatory authority to receive a reduced rate under this section, and the regulatory authority may order that rates be reduced. In making its determination under this section, the regulatory authority shall consider revitalization goals for the enterprise zone. In setting the rates of the utility the appropriate regulatory authority shall allow the utility to recover the amount of the reduction.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 985, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1121, Sec. 5, eff. Sept. 1, 1999.

Sec. 2303.513. DISPOSITION OF PUBLIC PROPERTY IN ENTERPRISE ZONE. (a) After an area is designated as an enterprise zone, the state, a municipality, or a county that owns a surplus building or vacant land in the zone may dispose of the building or land by:

(1) selling the building or land at a public auction; or

(2) establishing an urban homestead program described by Subsection (c).

(b) A municipality or county may sell a surplus building or vacant land in the enterprise zone at less than fair market value if the governing body of the municipality or county by ordinance or order, as appropriate, adopts criteria that specify the conditions and circumstances under which the sale may occur and the public purpose to be achieved by the sale. The building or land may be sold

to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order are satisfied. A copy of the ordinance or order must be filed with the bank not later than the day on which the sale occurs.

(c) An urban homestead program must provide that:

(1) the state, municipality, or county is to sell to an individual a residence or part of a residence that it owns for an amount not to exceed $100;

(2) as a condition of the sale, the individual must agree to live in the residence for at least seven years and to renovate or remodel the residence to meet the level of maintenance stated in an agreement between the individual and the governmental entity; and

(3) after the individual satisfies the seven-year residency and property improvement requirements of the agreement, the governmental entity shall assign the residence to the individual.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.24, eff. Sept. 1, 2003.

Sec. 2303.514. WAIVER OF PERFORMANCE BOND. A subcontractor is not required to execute a performance bond under Chapter 2253 if:

(1) the construction, alteration, repair, or other public work to be performed under the contract is entirely in an enterprise zone; and

(2) the amount of the contract does not exceed $200,000.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 985, Sec. 9, eff. Sept. 1, 1995.

Sec. 2303.515. LIABILITY OF CONTRACTOR OR ARCHITECT. A contractor or architect who constructs or rehabilitates a building in an enterprise zone is liable for any structural defect in the building only for the period ending on the 10th anniversary of the date on which beneficial occupancy of the building begins after the construction or rehabilitation, notwithstanding a statute of limitations to the contrary.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2303.516. MONITORING QUALIFIED BUSINESS OR ENTERPRISE PROJECT COMMITMENTS. (a) The comptroller may monitor a qualified business or enterprise project to determine whether and to what extent the business or project has followed through on any commitments made by it or on its behalf under this chapter.

(b) The comptroller may determine that the business or project is not entitled to a refund of state taxes under Section 2303.504 if the comptroller finds that:

(1) the business or project is not willing to cooperate with the comptroller in providing the comptroller with the information the comptroller needs to determine the state benefits; or

(2) the business or project has substantially failed to follow through on any commitments made by it or on its behalf under this chapter.

(c) A qualified business may obtain a state benefit, earned through a specific enterprise project designation, on completion of an audit performed by the comptroller that will certify hiring commitments and eligible purchases made by or on behalf of a qualified business under this chapter.

Added by Acts 2001, 77th Leg., ch. 1134, Sec. 1.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.25, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 18, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 591 (S.B. 100), Sec. 10, eff. September 1, 2015.

Sec. 2303.517. REPORT. (a) Before obtaining a state benefit, the qualified business must submit to the comptroller a certified report of the actual number of jobs created or retained and the capital investment made at or committed to the qualified business site.

(b) Not later than the 30th day after the date the comptroller completes an enterprise project's close-out, the comptroller shall submit to the bank a report stating the actual amount of capital

investment made and the actual number of jobs created or retained as a result of the enterprise project designation.

Added by Acts 2003, 78th Leg., ch. 814, Sec. 3.26, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1114 (H.B. 3694), Sec. 19, eff. June 15, 2007.

CHAPTER 2304. HOUSING REHABILITATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2304.001. SHORT TITLE. This chapter may be cited as the Texas Housing Rehabilitation Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.002. PURPOSES. (a) The purposes of this chapter are to provide a means by which the deterioration of housing and the decline of residential areas throughout the state can be arrested and prevented.

(b) The purposes of this chapter are public purposes for which money may be borrowed, loaned, and spent.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.003. DEFINITIONS. In this chapter:

(1) "Borrower" means a household whose application for a housing rehabilitation loan is approved under this chapter by a local government.

(2) "Department" means the Texas Department of Housing and Community Affairs.

(3) "Fund" means the Texas housing rehabilitation loan fund.

(4) "Household" means one or more persons owning housing.

(5) "Housing" means a structure that is on a permanent foundation and that consists of one to four family units used only for residential purposes.

(6) "Housing rehabilitation" means the repair, renovation,

or other improvement of housing to make the housing decent, safe, sanitary, and more habitable.

(7) "Housing rehabilitation loan" means a loan made under this chapter.

(8) "Local agency" means a:

(A) nonprofit organization whose principal purpose is to improve housing conditions; or

(B) local housing authority, urban renewal agency, or other public entity.

(9) "Local government" means a county or municipality.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.004. GENERAL POWERS OF DEPARTMENT. (a) The department has the powers necessary or appropriate to carry out the purposes of this chapter.

(b) The department may:

(1) make an agreement with any other person in carrying out its powers or duties under this chapter;

(2) spend funds appropriated to it by the legislature to pay for staff, travel expenses, supplies or equipment, or contracts for services necessary to carry out its powers or duties under this chapter; or

(3) seek and accept funds from any source.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.005. AUTHORITY OF DEPARTMENT TO ADOPT MINIMUM HOUSING CODE STANDARDS. The department shall adopt the minimum housing, building, fire, and related code standards that apply in designated areas for which a housing rehabilitation plan is approved by the department and for which local government standards are not in effect.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.006. LIMITATION ON CONSTRUCTION OF HOUSING OR ACQUISITION OF PROPERTY BY DEPARTMENT. (a) The department may not

construct housing.

(b) The department may not acquire housing except to enforce a lien under Subchapter D.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.007. PROHIBITION ON BORROWING, INCURRING OBLIGATIONS, OR PLEDGING CREDIT. The department may not borrow money, incur monetary obligations, or pledge in any manner the credit or taxing power of the state or a political subdivision of the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.008. ALLOCATION OF AVAILABLE LOAN FUNDS. If the amount of housing rehabilitation loans anticipated to be made in a fiscal year exceeds the estimated available funds for that year, the department shall allocate the estimated available funds for that year among the local governments that have filed housing rehabilitation area plans with the department. In allocating the available funds, the department shall take into account the probable amount of housing rehabilitation loans to be made by each local government.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.009. RELATIONSHIP OF DEPARTMENT AND LOCAL GOVERNMENTS. (a) The department shall adopt standards and procedures for the administration of this chapter by a local government or local agency.

(b) The department may provide technical assistance to a local government.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.010. DESIGNATION OF LOCAL AGENCY BY LOCAL GOVERNMENT. The governing body of a local government may designate one or more local agencies to exercise a power or duty of the local government under this chapter. The governing body may withdraw the delegated

power or duty at any time.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.011. EDUCATION PROGRAM CONDUCTED BY LOCAL GOVERNMENT. A local government engaged in housing rehabilitation under this chapter shall conduct a general education program to inform residents in designated areas of methods for maintaining their housing and of the availability of housing rehabilitation loans.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. HOUSING REHABILITATION LOAN FUND

Sec. 2304.021. FUND. (a) The Texas housing rehabilitation loan fund is in the state treasury.

(b) The department may designate separate accounts in the fund and the purposes of the accounts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.022. DEPOSITS TO FUND. The following money shall be credited to the fund:

(1) money appropriated by the legislature for housing rehabilitation loans;

(2) money received from other sources for the purpose of making housing rehabilitation loans;

(3) money received from borrowers as payments on their housing rehabilitation loans;

(4) income from the transfer of interests in property acquired in connection with housing rehabilitation loans; and

(5) interest earned on deposits and investments of the fund.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.023. PURPOSES OF FUND. The fund may be used only for:

(1) financing housing rehabilitation loans, including the administrative charge imposed under Section 2304.068 by a local government; and

(2) paying the expenses incurred by the department in connection with the acquisition or disposition of real property under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.024. INVESTMENT AND DISBURSEMENT OF FUND. The comptroller shall invest and disburse the money credited to the fund on the written authorization of the executive director of the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.72, eff. Sept. 1, 1997.

SUBCHAPTER C. HOUSING REHABILITATION AREA PLAN

Sec. 2304.041. DESIGNATION OF AREA AND PREPARATION OF PLAN. (a) A local government may allow households in a specific area within its boundaries to apply for housing rehabilitation loans by:

(1) designating the specific area; and

(2) preparing a housing rehabilitation plan for the designated area.

(b) A local government may designate more than one area within its boundaries.

(c) The designation of an area must be made in accordance with the standards established by the department. The area plan must be in the form prescribed by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.042. CONTENTS OF AREA PLAN. A housing rehabilitation area plan must contain relevant information about the area, including:

(1) a description of the physical, social, and economic characteristics of the area;

(2) a description of the housing conditions in the area;

(3) an assessment of the need for housing rehabilitation loans in the area, including:

(A) the number and characteristics of households in the area; and

(B) the average and total loan amounts needed;

(4) a description of the methods by which the local government preparing the plan will determine whether the rehabilitation of housing in the area is economically feasible;

(5) a description of the methods by which:

(A) rehabilitation work will be supervised; and

(B) compliance with departmental regulations governing materials, fixtures, and rehabilitation contracts will be ensured;

(6) a description of the methods and procedures that will be used to enforce:

(A) local housing, building, fire, and related codes; or

(B) the standards adopted by the department under Section 2304.005, if codes of those types have not been enacted;

(7) an assessment of the need for additional public improvements and public services in the area and a description of the specific means by which the improvements and services will be provided; and

(8) a description of the methods by which private investment to improve conditions in the area will be encouraged.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.043. APPROVAL OF AREA PLAN. (a) A local government's area plan must be approved by resolution or order of the governing body of the local government and must be submitted to the department for review.

(b) The department shall approve the plan if the area meets the standards established by the department and if the plan contains the required information.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.044. REJECTION OF AREA PLAN. (a) The department

shall return a housing rehabilitation area plan to the local government submitting it if the area for which the plan is prepared does not meet the department's standards or if the plan does not contain the required information. The department shall include with the returned plan a list of deficiencies.

(b) An area plan may be corrected and resubmitted for approval by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. HOUSING REHABILITATION LOANS

Sec. 2304.061. PRIMARY USE FOR LOAN. A housing rehabilitation loan must be used primarily to make housing comply with applicable state, county, or municipal housing codes or standards, including building, fire, health, housing maintenance, or similar codes.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.062. DEPARTMENT LOAN RULES. (a) The department shall adopt rules governing the making and servicing of a housing rehabilitation loan and the foreclosure of a loan in default. The rules must include:

(1) the requirement that a housing rehabilitation loan be evidenced by a promissory note payable to the state and be secured by a lien on real property in the state; and

(2) the standards under which a household in an area designated by a local government may qualify for a housing rehabilitation loan.

(b) In adopting the standards under Subsection (a)(2), the department shall take into account:

(1) household gross income;

(2) household income available for housing needs;

(3) household size;

(4) the value and condition of the housing to be rehabilitated; and

(5) the ability of households to compete successfully in the private housing market and to pay for sanitary, decent, and safe housing in that market.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.063. LOAN APPLICATION. A household may apply to the local government in which the household's housing is located for a housing rehabilitation loan if the housing is located in a designated area for which an area plan has been approved by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.064. LOCAL GOVERNMENT APPROVAL OF LOAN. (a) A local government may approve or disapprove a housing rehabilitation loan application authorized by Section 2304.063. The approval or disapproval must be given in accordance with the rules adopted by the department under Section 2304.062.

(b) The local government shall notify the department of the approval of a loan application and the amount of the approved loan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.065. DEPARTMENT APPROVAL. The department may not approve a housing rehabilitation loan unless it finds that:

(1) the benefit to an area designated under Section 2304.041 will exceed the financial commitment of the department; and

(2) the approval of the loan will be of benefit to the state and its taxpayers.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.066. DISBURSEMENT OF LOAN FUNDS. (a) The executive director of the department shall authorize the comptroller to disburse to a local government from the housing rehabilitation loan fund the amount of a housing rehabilitation loan approved by the local government under this chapter if the department receives from the local government a notice of the local government's approval of the loan.

(b) The executive director may not authorize the disbursement of funds for a housing rehabilitation loan if:

(1) the department finds that the local government that approved the loan is not making a good faith effort to substantially comply with the applicable housing rehabilitation area plan or the rules adopted by the department; or

(2) the remaining part of the fund allocated to the local government under Section 2304.008 is insufficient to allow the payment of the approved amount.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.73, eff. Sept. 1, 1997.

Sec. 2304.067. LIMIT ON AMOUNT OF LOAN. The amount of a housing rehabilitation loan may not exceed:

(1) the amount determined by subtracting the amount of all other outstanding indebtedness secured by the property covered by the loan from the market value of the rehabilitated property as determined by the local government approving the loan; or

(2) the amount determined by adding the amount of the housing rehabilitation contract made and approved under Subchapter E for the property to the amount of the administrative charge imposed under Section 2304.068 in connection with the loan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.068. ADMINISTRATIVE CHARGE IMPOSED BY LOCAL GOVERNMENT. (a) A local government may impose a charge to cover its administrative expenses incurred in connection with a housing rehabilitation loan made by the local government.

(b) The local government may deduct the charge from the amount loaned.

(c) The charge may not exceed three percent of the amount of the contract for housing rehabilitation the borrower makes with a contractor.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.069. INTEREST RATE. (a) The department shall set

the minimum and maximum interest rates for housing rehabilitation loans.

(b) A local government shall set the interest rate for a housing rehabilitation loan it approves under this chapter. The rate must be within the minimum and maximum rates set by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.070. TERM OF LOAN. A local government shall set the term of a housing rehabilitation loan it approves under this chapter. The term may not exceed 20 years.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.071. INSTALLMENT PAYMENTS. A housing rehabilitation loan must be repaid in installments.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.072. LOAN TO BE SECURED. A housing rehabilitation loan must be secured as required by this chapter and the rules adopted under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.073. OTHER LOAN CONDITIONS. For a housing rehabilitation loan a local government approves under this chapter, the local government shall establish other necessary conditions relating to the repayment of the loan according to this chapter and the regulations of the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.074. ADJUSTMENTS IF BORROWER UNABLE TO REPAY LOAN. A local government may allow for the deferment of payments or may adjust the interest rate or term of a housing rehabilitation loan

approved by the local government if the borrower is unable to make the required payments.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.075. DISPOSITION OR ENCUMBRANCE OF PROPERTY BY BORROWER. The department may adopt regulations governing the disposition or further encumbrance by the borrower of property subject to a lien that secures a housing rehabilitation loan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.076. CONDITIONS UNDER WHICH LOAN BECOMES IMMEDIATELY DUE. (a) A borrower must agree that if the borrower voluntarily destroys, moves from, or relinquishes ownership of the rehabilitated housing on or before the first anniversary of the date the rehabilitation is completed:

(1) the borrower's housing rehabilitation loan becomes immediately due and payable; and

(2) an interest surcharge is added sufficient to make the total interest paid equal an amount determined by the prevailing interest rates for rehabilitation loans from private sources at the time of the sale.

(b) The local government that approved the loan may waive the interest surcharge if:

(1) the local government finds that the borrower must sell the housing because of financial hardship or similar circumstances; and

(2) the department consents to the waiver.

(c) A local government that approved a housing rehabilitation loan may, with the consent of the department, take the following action if the borrower dies or the borrower sells or gives away property encumbered by the loan:

(1) declare all or part of any deferred payments due and payable;

(2) declare the balance of the loan due and payable; or

(3) allow a buyer, donee, or other successor in title who qualifies under Section 2304.062 to assume the loan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.077. ACQUISITION OF PROPERTY TO PROTECT LOAN. The department may acquire title to any project by foreclosure if necessary to protect a housing rehabilitation loan made for the project by the department and to pay the costs arising from the foreclosure.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.078. ACQUISITION OF PROPERTY TO ENFORCE LIEN. To enforce a lien under this chapter, the department may acquire housing by:

(1) foreclosure of a mortgage;

(2) a sale under a deed of trust; or

(3) a voluntary conveyance from a borrower in full or partial settlement of a housing rehabilitation loan.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.079. PUBLIC SALE OR AUCTION OF ACQUIRED PROPERTY. (a) If the department acquires housing in the enforcement of a lien under this chapter, it shall within six months after the acquisition offer the housing for public sale or auction.

(b) The department must provide notice of the public sale or auction by having a notice published in a newspaper of general circulation in the county in which the property is located. The notice must be published once a week for three consecutive weeks before the date of the sale or auction and must contain:

(1) a description of the property;

(2) a description of the procedures for submitting competitive bids for the property; and

(3) a statement of the time and location of the sale or auction.

(c) The department may reject any or all bids submitted for the property.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.080. PRIVATE SALE. (a) If a sale of property cannot be made by a public sale or auction as provided by Section 2304.079, the department may negotiate with a party for the expeditious sale of the property. In the negotiations, the department shall give priority to selling the property to a purchaser who will be required to pay ad valorem taxes on the property.

(b) If a sale to that kind of purchaser is not practicable, the department shall attempt to sell the property to a purchaser who is exempt from ad valorem taxes but who will make payments in lieu of taxes on the property.

(c) If neither type of purchaser is available, the department may sell the property to any purchaser.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.081. CONTRACT FOR SERVICING LOAN. A local government may contract with any entity for the servicing of a housing rehabilitation loan approved by the local government.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.082. AUDIT OF LOANS. The department shall audit the local administration of housing rehabilitation loans to determine if a good faith effort is being made to comply with the applicable housing rehabilitation plan and the rules adopted by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. HOUSING REHABILITATION CONTRACTS

Sec. 2304.101. STANDARDS FOR CONTRACTORS AND CONTRACTS. The department shall adopt standards for:

(1) the selection of contractors to perform housing rehabilitation under this chapter;

(2) housing rehabilitation contracts between borrowers and contractors; and

(3) materials and fixtures used in performing housing

rehabilitation under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.102. LOCAL GOVERNMENT APPROVAL AND SUPERVISION OF CONTRACTS. (a) A borrower and a contractor may not contract for housing rehabilitation that is to be financed by a housing rehabilitation loan unless the local government responsible for approving the loan approves the proposed contract in accordance with the standards adopted by the department.

(b) The local government shall supervise all work performed under the contract. The contractor is not entitled to payment until the work has been approved by the local government, and the borrower is not liable to the contractor for any work not approved by the local government.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.103. ADVERTISING REQUIREMENT FOR CERTAIN CONTRACTS. A contract for housing rehabilitation that involves the expenditure of more than $3,000 and that is to be financed by loan funds applied by the department may not be made unless advertised in the same way as a contract under Chapter 252, Local Government Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2304.104. PERFORMANCE AND PAYMENT BONDS. The provisions of Chapter 2253 relating to performance and payment bonds apply to a construction contract governed by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 2305. RESTITUTION FOR OIL OVERCHARGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2305.001. SHORT TITLE. This chapter may be cited as the Oil Overcharge Restitutionary Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2305.002. DEFINITIONS. In this chapter:

(1) "Account" means the oil overcharge account.

(2) "Applicable federal guidelines" means federal court judgments or orders, case settlements, laws, regulations, or other requirements or discretionary authority, imposed by the judicial, legislative, or executive branch, that govern or restrict the use of money received by the state because of petroleum overcharge litigation relating to the overpricing of crude oil or refined petroleum products during the 1973-1981 period of mandatory federal price controls.

(3) "Energy office" means the state energy conservation office of the comptroller's office as established by Chapter 447.

(4) "Supervising state agency" means the state agency, department, commission, or other entity designated by this chapter or by the governor to supervise, manage, or administer a program financed under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 526, Sec. 4, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 698, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 521, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 74, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1398, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER B. PROGRAM ADMINISTRATION

Sec. 2305.011. ADMINISTRATION BY COMPTROLLER'S OFFICE AND ENERGY OFFICE. (a) The energy office shall oversee and monitor the administration of programs prescribed by this chapter.

(b) The governor and the energy office may establish direct grant programs and competitive grant programs in addition to the programs provided by this chapter.

(c) The energy office shall establish programs and criteria and evaluate a proposal in accordance with applicable federal guidelines.

(d) The energy office shall send to the appropriate federal entity all information required under applicable federal guidelines.

(e) Criteria established under this section may apply generally

to all programs or specifically to one or more programs.

(f) The comptroller may establish procedures and adopt rules as necessary to administer the programs prescribed by this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 526, Sec. 5, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 698, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 521, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 75, 76, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1398, Sec. 3, 4, eff. Sept. 1, 2001.

Sec. 2305.012. ADMINISTRATION; ASSISTANCE. (a) The energy office shall implement and administer this chapter.

(b) The energy office or the governor through the energy office may enlist the assistance of a private entity or a state agency, department, commission, or other entity to:

(1) evaluate or review a proposal;

(2) audit a program participant or a supervising state agency;

(3) perform administrative duties under this chapter; or

(4) develop eligibility or evaluation criteria.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 63, eff. June 20, 2003.

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 2305.021. OIL OVERCHARGE ACCOUNT. (a) The oil overcharge account is an account in the general revenue fund.

(b) The comptroller shall deposit to the credit of the account any amount received as a result of petroleum overcharge litigation relating to the overpricing of crude oil or refined petroleum products during the 1973-1981 period of mandatory federal price controls.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2305.022. USE OF ACCOUNT. Money in the account may be

used only by the governor and the comptroller's office to implement and operate the programs authorized by this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 521, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 77, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1398, Sec. 5, eff. Sept. 1, 2001.

Sec. 2305.023. ACCOUNT RECORDS; ENERGY OFFICE REPORT. (a) The comptroller shall establish records of the money in the account that are sufficient to identify the source of each particular amount in the account to facilitate a determination of compliance with applicable federal guidelines relating to the use of money derived from each particular source.

(b) Not later than January 15 of each odd-numbered year, the energy office shall submit to the governor and the legislature a biennial report that shows the expenditures from the account during the previous biennium and the amount remaining in the account on the date of the report.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 521, Sec. 4, eff. Sept. 1, 1997.

Sec. 2305.024. INVESTMENT OF MONEY AND DEPOSIT OF INTEREST. (a) The comptroller may invest unobligated money in the account in accordance with Subchapter C, Chapter 404.

(b) The comptroller shall deposit to the credit of the account all interest or other income received from the investment of the money.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.74, eff. Sept. 1, 1997.

Sec. 2305.026. EFFECT OF RESTRICTION ON USE OR RECEIPT OF MONEY. A restriction or other criterion provided by or under this chapter that relates to the use or receipt of money awarded under this chapter to a supervising state agency, local recipient, or other

person applies only to the use or receipt of that money and does not affect the use or receipt of money provided under other law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. OIL OVERCHARGE PROGRAMS

Sec. 2305.031. OIL OVERCHARGE PROGRAMS. The energy office shall maintain a revolving loan program for the benefit of state agencies, universities, and political subdivisions. The energy office shall use oil overcharge funds for the programs and purposes in this subchapter.

Added by Acts 1997, 75th Leg., ch. 521, Sec. 5, eff. Sept. 1, 1997.

Sec. 2305.032. LOANSTAR REVOLVING LOAN PROGRAM. (a) The energy office under the loanstar revolving loan program may provide loans to finance energy and water efficiency measures for public facilities.

(b) The energy office shall determine the terms under which a loan may be made under this section and shall set the interest rate for a loan at a low rate that the energy office determines is sufficient to recover the cost of administering the loan program.

(c) Repealed by Acts 2003, 78th Leg., ch. 1310, Sec. 121(16).

(d) Any borrower that receives a loan under this section shall repay the principal of and interest on the loan from the value of energy savings that accrues as the result of the energy conservation measure implemented with the borrowed money.

(e) An institution that receives a loan under this section shall repay the loan from the amount budgeted for the agency's or institution's energy costs. Until the loan is repaid, the legislature may not reduce the amount budgeted for those energy costs to reflect the value of energy savings that accrues as a result of the energy conservation measure implemented with the borrowed money.

(f) The energy office shall allocate at least $95 million, including loan commitments and cash on hand, to the loanstar program and shall administer the funds under its control in a manner that assures that funds available to the loanstar program equal or exceed $95 million at all times.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2305.065 and amended by Acts 1997, 75th Leg., ch. 521, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 64, 121(16), eff. June 20, 2003.

Sec. 2305.033. STATE ENERGY PROGRAM. (a) The energy office is the supervising state agency for the state energy program.

(b) In accordance with Part D, Title III, Energy Policy and Conservation Act (42 U.S.C. Sec. 6321 et seq.), and its subsequent amendments, the energy office, under the program, shall distribute funds for projects that save measurable quantities of energy.

(c) Repealed by Acts 2003, 78th Leg., ch. 1310, Sec. 121(17).

(d) A proposal under Subsection (b) must:

(1) promote the conservation of energy; or

(2) improve the efficient use of energy through activities that result in quantifiable energy savings, including:

(A) energy audits of buildings;

(B) technical assistance in reducing energy bills;

(C) training to building operators and fiscal officers on various energy issues such as utility bill analysis and energy management techniques; or

(D) other technical assistance to programs for which funds are appropriated.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2305.041 and amended by Acts 1997, 75th Leg., ch. 521, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 65, 121(17), eff. June 20, 2003.

Sec. 2305.034. STATE AGENCIES PROGRAM. The energy office is the supervising agency for the state agencies program that may distribute funds through Chapter 447. Projects funded under this section may include:

(1) energy manager training;

(2) energy savings performance contracting services, including:

(A) education and training;

(B) contract review and approval;

(C) third-party contract review;
(D) development and dissemination of guidelines; and
(E) identification of contract financing sources;
(3) energy-efficient design assistance for new facilities, including major renovation;
(4) projects for state building design standards compliance;
(5) projects to create awareness of model energy codes at the local and state levels;
(6) projects to develop and maintain the state's utility database; and
(7) other appropriate energy and information applications.

Added by Acts 1997, 75th Leg., ch. 521, Sec. 8, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 66, eff. June 20, 2003.

Sec. 2305.035. ALTERNATIVE FUELS PROGRAM. (a) The energy office is the supervising state agency for the alternative fuels program.

(b) The energy office shall provide funds under the program to promote, facilitate, and support the use of alternative fuels in this state.

(c) Among the projects that may be funded under this section are:
(1) clean air projects;
(2) educational projects;
(3) demonstration and conversion projects; and
(4) technical research and training projects.

Added by Acts 1997, 75th Leg., ch. 521, Sec. 8, eff. Sept. 1, 1997.

Sec. 2305.036. HOUSING PARTNERSHIP PROGRAM. (a) The energy office is the supervising state agency for the housing partnership program.

(b) The energy office shall promote the efficient use of energy in Texas residential housing through grants, partnerships, and loans.

(c) Projects funded under this program may include:
(1) projects to demonstrate commercially available cost-

effective energy-saving techniques and technologies;

(2) training and technical assistance in energy-efficient construction, design, or remodeling;

(3) projects to provide energy education workshops or seminars for consumers;

(4) financing for energy designs and improvements, energy-efficient appliances, and energy management systems; and

(5) funding of a weatherization assistance program through the Texas Department Of Housing and Community Affairs to benefit individuals of low income.

(d) The ultimate beneficiaries of the program shall be residential energy consumers, primarily targeting low-to-moderate income households.

(e) Nonprofit organizations, community action agencies, local governments, regional government councils, universities, utility companies, public housing authorities, community-based organizations, social service agencies, and other service-related organizations may serve as leads in establishing partnerships with the agency.

(f) The energy office may require grant recipients to match a grant in a ratio determined by the energy office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2305.064 and amended by Acts 1997, 75th Leg., ch. 521, Sec. 9, eff. Sept. 1, 1997.

Sec. 2305.037. INNOVATIVE ENERGY DEMONSTRATION PROGRAM. (a) The energy office is the supervising state agency of the innovative energy demonstration program and shall distribute grant money under the program for demonstration projects that develop sustainable and innovative energy resources, including:

(1) a clean coal project, as defined by Section 5.001, Water Code;

(2) a gasification project for a coal and biomass mixture;

(3) photovoltaic, biomass, wind, and solar applications; and

(4) other appropriate low-emission, renewable, and sustainable energy applications.

(b) Contingent on the selection of a Texas site for the location of the coal-based integrated sequestration and hydrogen

project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project, and to the extent that funds are appropriated for this purpose, the energy office shall distribute to the managing entity of the FutureGen project an amount equal to 50 percent of the total amount invested in the project by private industry sources. The managing entity of the FutureGen project shall provide records as considered necessary by the energy office to justify grants under this subsection. Cumulative distributions under this subsection may not exceed $20 million.

(c) The energy office may require a grant recipient under the program to match a grant in a ratio determined by the energy office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2305.067 and amended by Acts 1997, 75th Leg., ch. 521, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 2, eff. June 18, 2005.

Sec. 2305.038. LOCAL GOVERNMENT ENERGY PROGRAM. (a) The energy office is the supervisory agency for the local government energy program to provide energy management assistance to public schools, health care institutions, and other local governments.

(b) Projects funded under this section may include:

(1) energy management training workshops that address current energy issues and state-of-the-art building energy technologies;

(2) energy-efficient partnerships with school districts or health care facilities to identify building energy performances, set up customized utility tracking systems, establish operation and maintenance procedures to curtail energy waste, identify capital energy projects that will yield a high return on investment, and locate appropriate sources of retrofit financing;

(3) assistance in analyzing alternative methods of financing energy-saving projects and negotiating contracts with power suppliers;

(4) technical support in designing new facilities, building additions, and renovations for energy-efficient operation; and

(5) colonias as defined by Section 2306.581.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2305.069 and amended by Acts 1997, 75th Leg., ch. 521, Sec. 11, eff. Sept. 1, 1997.

Sec. 2305.039. TRANSPORTATION ENERGY PROGRAM. (a) The energy office is the supervising state agency of the transportation energy program and shall distribute funds under the program for projects relating to mass transit and other transportation services.

(b) A project may:

(1) assist a service provider in providing services such as:

(A) computerized transit routing that is energy efficient;

(B) commuting solutions; and

(C) public education related to mass transit; and

(2) include studies to improve existing systems and plan for future transportation systems in this state.

(c) The energy office may require a grant recipient to match a grant in a ratio determined by the energy office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2305.070 and amended by Acts 1997, 75th Leg., ch. 521, Sec. 12, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 67, eff. June 20, 2003.

SUBCHAPTER E. COMPETITIVE GRANT PROGRAMS

Sec. 2305.075. SMALL HOSPITALS ENERGY MANAGEMENT PROGRAM. (a) The energy office is the supervising state agency for the small hospitals energy management program.

(b) The energy office shall use competitive grant money under the program to finance projects designed to assist small hospitals in controlling energy costs.

(c) Projects funded under this section may include:

(1) training for hospital personnel;

(2) technical assistance in establishing an energy management program;

(3) facility energy audits; and

(4) follow-up assistance in maintaining an energy management program.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 2306. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2306.001. PURPOSES. The purposes of the department are to:

(1) assist local governments in:

(A) providing essential public services for their residents; and

(B) overcoming financial, social, and environmental problems;

(2) provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income;

(3) contribute to the preservation, development, and redevelopment of neighborhoods and communities, including cooperation in the preservation of government-assisted housing occupied by individuals and families of very low and extremely low income;

(4) assist the governor and the legislature in coordinating federal and state programs affecting local government;

(5) inform state officials and the public of the needs of local government;

(6) serve as the lead agency for:

(A) addressing at the state level the problem of homelessness in this state;

(B) coordinating interagency efforts to address homelessness; and

(C) addressing at the state level and coordinating interagency efforts to address any problem associated with homelessness, including hunger; and

(7) serve as a source of information to the public regarding all affordable housing resources and community support services in the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 432, Sec. 1, eff. Sept. 1, 2001; Acts

2001, 77th Leg., ch. 1367, Sec. 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 1, eff. Sept. 1, 2003.

Sec. 2306.002. POLICY. (a) The legislature finds that:

(1) every resident of this state should have a decent, safe, and affordable living environment;

(2) government at all levels should be involved in assisting individuals and families of low income in obtaining a decent, safe, and affordable living environment; and

(3) the development and diversification of the economy, the elimination of unemployment or underemployment, and the development or expansion of commerce in this state should be encouraged.

(b) The highest priority of the department is to provide assistance to individuals and families of low and very low income who are not assisted by private enterprise or other governmental programs so that they may obtain affordable housing or other services and programs offered by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.60, eff. Sept. 1, 1995.

Sec. 2306.003. PUBLIC PURPOSE. The duties imposed and activities authorized by this chapter serve public purposes, and public money may be borrowed, spent, advanced, loaned, granted, or appropriated for those purposes.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.004. DEFINITIONS. In this chapter:

(1) "Board" means the governing board of the department.

(2) "Bond" means an evidence of indebtedness or other obligation, regardless of the source of payment, issued by the department under Subchapter P, including a bond, note, or bond or revenue anticipation note, regardless of whether the obligation is general or special, negotiable or nonnegotiable, in bearer or registered form, in certified or book-entry form, in temporary or permanent form, or with or without interest coupons.

(3) "Contract for Deed" means a seller-financed contract for the conveyance of real property under which:

(A) legal title does not pass to the purchaser until the consideration of the contract is fully paid to the seller; and

(B) the seller's remedy for nonpayment is recision or forfeiture or acceleration of any remaining payments rather than judicial or nonjudicial foreclosure.

(4) "Department" means the Texas Department of Housing and Community Affairs or any successor agency.

(4-a) "Development funding" means:

(A) a loan or grant; or

(B) an in-kind contribution, including a donation of real property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

(ii) results in a quantifiable cost reduction for the applicable development.

(5) "Director" means the executive director of the department.

(6) "Economically depressed or blighted area" means an area:

(A) that is a qualified census tract as defined by Section 143(j), Internal Revenue Code of 1986 (26 U.S.C. Section 143(j)) or has been determined by the housing finance division to be an area of chronic economic distress under Section 143, Internal Revenue Code of 1986 (26 U.S.C. Section 143);

(B) established in a municipality that has a substantial number of substandard, slum, deteriorated, or deteriorating structures and that suffers from a high relative rate of unemployment; or

(C) that has been designated as a reinvestment zone under Chapter 311, Tax Code.

(7) "Elderly individual" means an individual 62 years of age or older or of an age specified by the applicable federal program.

(8) "Family of moderate income" means a family:

(A) that is determined by the board to require assistance, taking into account:

(i) the amount of the total income available for housing needs of the individuals and families;

(ii) the size of the family;

(iii) the cost and condition of available housing facilities;

(iv) the ability of the individuals and families to compete successfully in the private housing market and to pay the amounts required by private enterprise for sanitary, decent, and safe housing; and

(v) standards established for various federal programs determining eligibility based on income; and

(B) that does not qualify as a family of low income.

(9) "Federal government" means the United States of America and includes any corporate or other instrumentality of the United States of America, including the Resolution Trust Corporation.

(10) "Federal mortgage" means a mortgage loan for residential housing:

(A) that is made by the federal government; or

(B) for which a commitment to make has been given by the federal government.

(11) "Federally assisted new communities" means federally assisted areas that receive or will receive assistance in the form of loan guarantees under Title X of the National Housing Act (12 U.S.C. Section 1701 et seq.), and a portion of that federally assisted area has received grants under Section 107(a)(1) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. Section 5301 et seq.).

(12) "Federally insured mortgage" means a mortgage loan for residential housing that:

(A) is insured or guaranteed by the federal government; or

(B) the federal government has committed to insure or guarantee.

(12-a) "Grant" means financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. For purposes of this chapter, a grant includes a forgivable loan.

(13) "Housing development" means property or work or a project, building, structure, facility, or undertaking, whether existing, new construction, remodeling, improvement, or rehabilitation, that meets or is designed to meet minimum property standards required by the department and that is financed under the

provisions of this chapter for the primary purpose of providing sanitary, decent, and safe dwelling accommodations for rent, lease, use, or purchase by individuals and families of low and very low income and families of moderate income in need of housing. The term includes:

(A) buildings, structures, land, equipment, facilities, or other real or personal properties that are necessary, convenient, or desirable appurtenances, including streets, water, sewers, utilities, parks, site preparation, landscaping, stores, offices, and other nonhousing facilities, such as administrative, community, and recreational facilities the department determines to be necessary, convenient, or desirable appurtenances; and

(B) single and multifamily dwellings in rural and urban areas.

(14) "Housing sponsor" means an individual, joint venture, partnership, limited partnership, trust, firm, corporation, limited liability company, other form of business organization, or cooperative that is approved by the department as qualified to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development, subject to the regulatory powers of the department and other terms and conditions in this chapter.

(15) "Individuals and families of low income" means individuals and families earning not more than 80 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231.

(16) "Individuals and families of very low income" means individuals and families earning not more than 60 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231.

(17) "Individuals and families of extremely low income" means individuals and families earning not more than 30 percent of the area median income or applicable federal poverty line, as determined under Section 2306.123 or Section 2306.1231.

(18) "Land development" means:

(A) acquiring land for residential housing construction; and

(B) making, installing, or constructing nonresidential improvements that the department determines are necessary or desirable for a housing development to be financed by the department, including:

(i) waterlines and water supply installations;

(ii) sewer lines and sewage disposal installations;

(iii) steam, gas, and electric lines and installations; and

(iv) roads, streets, curbs, gutters, and sidewalks, whether on or off the site.

(19) "Local government" means a county, municipality, special district, or any other political subdivision of the state, a public, nonprofit housing finance corporation created under Chapter 394, Local Government Code, or a combination of those entities.

(20) "Mortgage" means an obligation, including a mortgage, mortgage deed, bond, note, deed of trust, or other instrument, that is a lien:

(A) on real property; or

(B) on a leasehold under a lease having a remaining term that, at the time the lien is acquired, does not expire until after the maturity date of the obligation secured by the lien.

(21) "Mortgage lender" means a bank, trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, life insurance company, or other financial institution authorized to transact business in this state and approved as a mortgage lender by the department.

(22) "Mortgage loan" means an obligation secured by a mortgage.

(23) "Municipality" includes only a municipality in this state.

(23-a) "Neighborhood organization" means an organization that is composed of persons living near one another within the organization's defined boundaries for the neighborhood and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. A neighborhood organization includes a homeowners' association or a property owners' association.

(23-b) "New construction" means any construction to a development or a portion of a development that does not meet the definition of rehabilitation under this section.

(24) "Public agency" means the department or any agency, board, authority, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, or instrumentality of this state, including a county, municipality,

housing authority, state-supported institution of higher education, school district, junior college, other district or authority, or other type of governmental entity of this state.

(25) "Real estate owned contractor" means a person required to meet the obligations of a contract with the department for managing and marketing foreclosed property.

(26) "Real property" means land, including improvements and fixtures on the land, property of any nature appurtenant to the land or used in connection with the land, and a legal or equitable estate, interest, or right in land, including leasehold interests, terms for years, and a judgment, mortgage, or other lien.

(26-a) "Rehabilitation" means the improvement or modification of an existing residential development through an alteration, addition, or enhancement. The term includes the demolition of an existing residential development and the reconstruction of any development units, but does not include the improvement or modification of an existing residential development for the purpose of an adaptive reuse of the development.

(27) "Reserve fund" means any reserve fund established by the department.

(28) "Residential housing" means a specific work or improvement undertaken primarily to provide dwelling accommodations, including the acquisition, construction, reconstruction, remodeling, improvement, or rehabilitation of land and buildings and improvements to the buildings for residential housing and other incidental or appurtenant nonhousing facilities.

(28-a) "Rural area" means an area that is located:

(A) outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area; or

(B) within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area.

(28-b) "Rural development" means a development or proposed development that is located in a rural area, other than rural new construction developments with more than 80 units.

(29) "Servicer" means a person required to meet contractual obligations with the housing finance division or with a mortgage lender relating to a loan financed under Subchapter J, including:

(A) purchasing mortgage certificates backed by mortgage

loans;

(B) collecting principal and interest from the borrower;

(C) sending principal and interest payments to the division;

(D) preparing periodic reports;

(E) notifying the primary mortgage and pool insurers of delinquent and foreclosed loans; and

(F) filing insurance claims on foreclosed property.

(30) "State low income housing plan" means the comprehensive and integrated plan for the state assessment of housing needs and allocation of housing resources.

(31) "Economic submarket" means a group of borrowers who have common home mortgage loan market eligibility characteristics, including income level, credit history or credit score, and employment characteristics, that are similar to Standard and Poor's credit underwriting criteria.

(32) "Geographic submarket" means a geographic region in the state, including a county, census tract, or municipality, that shares similar levels of access to home mortgage credit from the private home mortgage lending industry, as determined by the department based on home mortgage lending data published by federal and state banking regulatory agencies.

(33) "Rural county" means a county that is outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area.

(34) "Subprime loan" means a loan that is originated by a lender designated as a subprime lender on the subprime lender list maintained by the United States Department of Housing and Urban Development or identified as a lender primarily engaged in subprime lending under Section 2306.143.

(35) "Uniform application and funding cycle" means an application and funding cycle established under Section 2306.1111.

(36) "Urban area" means the area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an area described by Subdivision (28-a)(B) or eligible for funding as described by Subdivision (28-a)(C).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.61, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 2.01, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 7, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 857 (H.B. 429), Sec. 1, eff. September 1, 2013.

Sec. 2306.005. REFERENCES TO FORMER LAW. A reference in law to the Texas Housing Agency or the Texas Department of Community Affairs means the Texas Department of Housing and Community Affairs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.006. RULES OF ABOLISHED AGENCIES. Rules of the abolished Texas Housing Agency and the Texas Department of Community Affairs continue in effect as rules of the Texas Department of Housing and Community Affairs until amended or repealed by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.007. ESTABLISHING ECONOMICALLY DEPRESSED OR BLIGHTED AREAS. (a) To establish an economically depressed or blighted area under Section 2306.004(6)(B) or (C), the governing body of a municipality must hold a public hearing and find that the area:

(1) substantially impairs or arrests the sound growth of the municipality; or

(2) is an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.

(b) The governing body of a municipality holding a hearing under this section must give notice as provided by Chapter 551, except that notice must be published not less than 10 days before the date of the hearing.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 980, Sec. 6, eff. Sept. 1, 1997.

Sec. 2306.008. PRESERVATION OF AFFORDABLE HOUSING. (a) The department shall support in the manner described by Subsection (b) the preservation of affordable housing for individuals with special needs, as defined by Section 2306.511, and individuals and families of low income at any location considered necessary by the department.

(b) The department shall support the preservation of affordable housing under this section by:

(1) making low interest financing and grants available to private for-profit and nonprofit buyers who seek to acquire, preserve, and rehabilitate affordable housing; and

(2) prioritizing available funding and financing resources for affordable housing preservation activities.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.01, eff. Sept. 1, 2001.

SUBCHAPTER B. GOVERNING BOARD AND DEPARTMENT

Sec. 2306.022. APPLICATION OF SUNSET ACT. The Texas Department of Housing and Community Affairs is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2029.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 1169, Sec. 1.03, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.01, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 1.01, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 1.10, eff. June 18, 2023.

Sec. 2306.024. BOARD MEMBERS: APPOINTMENT AND COMPOSITION.

The board consists of seven public members appointed by the governor.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2306.025. TERMS OF BOARD MEMBERS. Members of the board hold office for staggered terms of six years, with the terms of two or three members expiring on January 31 of each odd-numbered year.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2306.027. ELIGIBILITY. (a) The governor shall appoint to the board public members who have a demonstrated interest in issues related to housing and community support services. A person appointed to the board must be a registered voter in the state and may not hold another public office.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees and shall be made in a manner that produces representation on the board of the different geographical regions of this state. Appointments to the board must broadly reflect the geographic, economic, cultural, and social diversity of the state, including ethnic minorities, persons with disabilities, and women.

(c) A person may not be a member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

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

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

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2306.028. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the legislation that created the department and the board;

(2) the programs operated by the department;

(3) the role and functions of the department;

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

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest laws;

(8) the requirements of:

(A) state and federal fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.);

(B) the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);

(C) the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and

(D) the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.); and

(9) any applicable ethics policies adopted by the

department or the Texas Ethics Commission.

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

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2306.030. PRESIDING OFFICER; OTHER OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The presiding officer presides at meetings of the board and performs other duties required by this chapter.

(b) The board shall elect the following officers:

(1) from the members of the board, an assistant presiding officer to perform the duties of the presiding officer when the presiding officer is not present or is incapable of performing duties of the presiding officer;

(2) a secretary to be the official custodian of the minutes, books, records, and seal of the board and to perform other duties assigned by the board; and

(3) a treasurer to perform duties assigned by the board.

(c) The offices of secretary and treasurer may be held by one individual, and the holder of each of these offices need not be a board member. The board may appoint one or more individuals who are not members to be assistant secretaries to perform any duty of the secretary.

(d) Officers of the board shall be elected at the first meeting of the board on or after January 31 of each odd-numbered year and at any other time as necessary to fill a vacancy.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.04, eff. Sept. 1, 2001.

Sec. 2306.031. MEMBERS' COMPENSATION. Members of the board serve without compensation but are entitled to reimbursement for

actual expenses incurred in attending board meetings and in performing the duties of a board member.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.032. BOARD MEETINGS. (a) The board may hold meetings when called by the presiding officer, the director, or three of the members.

(b) The board shall keep minutes and complete transcripts of board meetings. The department shall post the transcripts on its website and shall otherwise maintain all accounts, minutes, and other records related to the meetings.

(c) All materials provided to the board that are relevant to a matter proposed for discussion at a board meeting must be posted on the department's website not later than the third day before the date of the meeting.

(d) Any materials made available to the board by the department at a board meeting must be made available in hard copy format to the members of the public in attendance at the meeting.

(e) The board shall conduct its meetings in accordance with Chapter 551, except as otherwise required by this chapter.

(f) For each item on the board's agenda at the meeting, the board shall provide for public comment after the presentation made by department staff and the motions made by the board on that topic.

(g) The board shall adopt rules that give the public a reasonable amount of time for testimony at meetings.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.62, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 1.05, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 8, eff. September 1, 2007.

Sec. 2306.0321. APPEAL OF BOARD AND DEPARTMENT DECISIONS. (a) The board shall adopt rules outlining a formal process for appealing board and department decisions.

(b) The rules must specify the requirements for appealing a

board or department decision, including:

(1) the persons eligible to appeal;

(2) the grounds for an appeal;

(3) the process for filing an appeal, including the information that must be submitted with an appeal;

(4) a reasonable period in which an appeal must be filed, heard, and decided;

(5) the process by which an appeal is heard and a decision is made;

(6) the possible outcomes of an appeal; and

(7) the process by which notification of a decision and the basis for a decision is given.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.06, eff. Sept. 1, 2001.

Sec. 2306.033. REMOVAL OF MEMBERS. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 2306.027;

(2) does not maintain during service on the board the qualifications required by Section 2306.027;

(3) is ineligible for membership under Section 2306.027(c), 2306.034, or 2306.035;

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

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

(6) engages in misconduct or unethical or criminal behavior.

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

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground

for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 9, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2306.034. DISQUALIFICATION OF MEMBERS AND CERTAIN EMPLOYEES. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of banking, real estate, housing development, or housing construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of banking, real estate, housing development, or housing construction.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2306.035. LOBBYIST RESTRICTION. A person may not be a member of the board or act as the director of the department or the general counsel to the board or the department if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.03, eff. Sept. 1, 2001.

Sec. 2306.036. EMPLOYMENT OF DIRECTOR. (a) With the approval of the governor, the board shall employ a director to serve at the pleasure of the board.

(b) After the election of a governor who did not approve the director's employment under Subsection (a), that governor may remove the director and require the board to employ a new director in accordance with Subsection (a). The governor must act under this subsection before the 90th day after the date the governor takes office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 519, Sec. 1, eff. June 18, 1999.

Sec. 2306.037. DIRECTOR'S COMPENSATION. The board shall set the salary of the director.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 519, Sec. 2, eff. June 18, 1999.

Sec. 2306.038. ACTING DIRECTOR. The board shall establish a procedure for designating an acting director and shall, with the approval of the governor, immediately designate an acting director or a new permanent director if the position becomes vacant because of absence or disability. A director designated under this section serves at the pleasure of the board but is subject to removal by a newly elected governor in accordance with Section 2306.036(b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 519, Sec. 3, eff. June 18, 1999.

Sec. 2306.039. OPEN MEETINGS AND OPEN RECORDS. (a) Except as provided by Subsections (b) and (c), the department and the Texas State Affordable Housing Corporation are subject to Chapters 551 and

552.

(b) Chapters 551 and 552 do not apply to the personal or business financial information, including social security numbers, taxpayer identification numbers, or bank account numbers, submitted by a housing sponsor or an individual or family to receive a loan, grant, or other housing assistance under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department, except that the department and the corporation are permitted to disclose information about any applicant in a form that does not reveal the identity of the sponsor, individual, or family for purposes of determining eligibility for programs and in preparing reports required under this chapter.

(c) The department's internal auditor, fraud prevention coordinator, or ethics advisor may meet in an executive session of the board to discuss issues related to fraud, waste, or abuse.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 9, eff. September 1, 2007.

Sec. 2306.040. DEPARTMENT PARTICIPATION IN LEGISLATIVE HEARING. On request, the department shall participate in any public hearing conducted by a legislator to discuss a rule to be adopted by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.041. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.042. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $1,000 for each violation.

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

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

(1) the seriousness of the violation, including:

(A) the nature, circumstance, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice may require.

(c) The board by rule or through procedures adopted by the board and published in the Texas Register shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.043. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the director determines that a violation occurred, the director shall issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the director's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the director shall give written notice of the report to the person.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing before the State Office of Administrative Hearings on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 1.02, eff.

September 1, 2013.

Sec. 2306.044. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended penalty of the director; or

(2) make a request for a hearing before the State Office of Administrative Hearings on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the director, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 1.03, eff. September 1, 2013.

Sec. 2306.045. HEARING. (a) If the person requests a hearing before the State Office of Administrative Hearings or fails to respond in a timely manner to the notice, the director shall set a hearing and give written notice of the hearing to the person.

(b) The State Office of Administrative Hearings shall:

(1) hold the hearing;

(2) make findings of fact and conclusions of law about the occurrence of the violation and the amount of a proposed penalty; and

(3) issue a proposal for decision regarding the penalty and provide notice of the proposal to the board.

(c) Any administrative proceedings relating to the imposition of a penalty under Section 2306.041 is a contested case under Chapter 2001.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 1.04, eff. September 1, 2013.

Sec. 2306.046. DECISION BY BOARD. (a) The board shall issue an order after receiving a proposal for decision from the State Office of Administrative Hearings under Section 2306.045.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 1.05, eff. September 1, 2013.

Sec. 2306.047. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.048. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 2306.047, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

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

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the

person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the director by certified mail.

(b) If the director receives a copy of an affidavit under Subsection (a)(2), the director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit.

(c) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.049. DECISION BY COURT. (a) Judicial review of a board order imposing an administrative penalty is under the substantial evidence rule.

(b) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(c) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed and may award the person reasonable attorney's fees.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 1.06, eff. September 1, 2013.

Sec. 2306.050. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.0501. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.0502. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.0503. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 10, eff. September 1, 2007.

Sec. 2306.0504. DEBARMENT FROM PROGRAM PARTICIPATION. (a) The department shall develop, and the board by rule shall adopt, a policy

providing for the debarment of a person from participation in programs administered by the department.

(b) The department may debar a person from participation in a department program on the basis of the person's past failure to comply with any condition imposed by the department in the administration of its programs.

(c) The department shall debar a person from participation in a department program if the person:

(1) materially or repeatedly violates any condition imposed by the department in connection with the administration of a department program, including a material or repeated violation of a land use restriction agreement regarding a development supported with a housing tax credit allocation; or

(2) is debarred from participation in federal housing programs by the United States Department of Housing and Urban Development.

(d) A person debarred by the department from participation in a department program may appeal the person's debarment to the board.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.
Transferred, redesignated and amended from Government Code, Section 2306.6721 by Acts 2013, 83rd Leg., R.S., Ch. 556 (S.B. 659), Sec. 1, eff. September 1, 2013.
Transferred, redesignated and amended from Government Code, Section 2306.6721 by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 1.07, eff. September 1, 2013.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 2306.051. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the director and staff of the department.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 2306.052. DIRECTOR'S POWERS AND DUTIES. (a) The director is the administrator and the head of the department and must be an

individual qualified by training and experience to perform the duties of the office.

(b) The director shall:

(1) administer and organize the work of the department consistent with this chapter and with sound organizational management that promotes efficient and effective operation;

(2) appoint and remove personnel employed by the department;

(3) submit, through and with the approval of the governor, requests for appropriations and other money to operate the department;

(4) administer all money entrusted to the department;

(5) administer all money and investments of the department subject to:

(A) department indentures and contracts;

(B) Sections 2306.118 through 2306.120; and

(C) an action of the board under Section 2306.351; and

(6) perform other functions that may be assigned by the board or the governor.

(c) The director shall develop and implement the policies established by the board that define the responsibilities of each division in the department.

(d) Repealed by Acts 2001, 77th Leg., ch. 1367, Sec. 1.45, eff. Sept. 1, 2001.

(e) The board shall adopt rules and the director shall develop and implement a program to train employees on the public information requirements of Chapter 552. The director shall monitor the compliance of employees with those requirements.

(f) The director shall use existing department resources to provide the board with any administrative support necessary for the board to exercise its duties regarding the implementation of this chapter, including:

(1) assigning personnel to assist the board;

(2) providing office space, equipment, and documents and other information to the board; and

(3) making in-house legal counsel available to the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.64(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 519, Sec. 4, eff. June 18, 1999;

Acts 2001, 77th Leg., ch. 1367, Sec. 1.08, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 1.45, eff. Sept. 1, 2001.

Sec. 2306.0521. ORGANIZATIONAL FLEXIBILITY OF DEPARTMENT. (a) Notwithstanding Section 2306.021(b) or any other provision of this chapter, the director, with the approval of the board, may:

(1) create divisions in addition to those listed in Section 2306.021(b) and assign to the newly created divisions any duties and powers imposed on or granted to an existing division or the department generally;

(2) eliminate any division listed in Section 2306.021(b) or created under this section and assign any duties or powers previously assigned to the eliminated division to another division listed in Section 2306.021(b) or created under this section; or

(3) eliminate all divisions listed in Section 2306.021(b) or created under this section and reorganize the distribution of powers and duties granted to or imposed on a division in any manner the director determines appropriate for the proper administration of the department.

(b) This section does not apply to the manufactured housing division.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 2306.053. DEPARTMENT POWERS AND DUTIES. (a) The department shall maintain suitable headquarters and other offices in this state that the director determines are necessary.

(b) The department may:

(1) sue and be sued, or plead and be impleaded;

(2) act for and on behalf of this state;

(3) adopt an official seal or alter it;

(4) adopt and enforce bylaws and rules;

(5) contract with the federal government, state, any public agency, mortgage lender, person, or other entity;

(6) designate mortgage lenders to act for the department for the origination, processing, and servicing of the department's mortgage loans under conditions agreed to by the parties;

(7) provide, contract, or arrange for consolidated processing of a housing development to avoid duplication;

(8) encourage homeless individuals and individuals of low or very low income to attend the department's educational programs and assist those individuals in attending the programs;

(9) appoint and determine the qualifications, duties, and tenure of its agents, counselors, and professional advisors, including accountants, appraisers, architects, engineers, financial consultants, housing construction and financing experts, and real estate consultants;

(10) administer federal housing, community affairs, or community development programs, including the low income housing tax credit program;

(11) establish eligibility criteria for individuals and families of low, very low, and families of moderate income to participate in and benefit from programs administered by the department;

(12) execute funding agreements;

(13) obtain, retain, and disseminate records and other documents in electronic form; and

(14) do all things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied by this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.62(c), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 11, eff. Sept. 1, 1997.

Sec. 2306.054. SPECIAL ADVISORY COUNCILS. (a) The governor or director may appoint special advisory councils to:

(1) assist the department in reviewing basic policy; or

(2) offer advice on technical aspects of certain programs.

(b) A special advisory council is dissolved on completion of its stated purpose unless continued by the governor or director.

(c) A special advisory council is subject to Chapter 2110, including Section 2110.008(a) but not including Section 2110.008(b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2306.094 and amended by Acts 1995, 74th Leg. ch. 76, Sec. 5.70(a), eff. Sept. 1, 1995.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 11, eff. September 1, 2007.

Sec. 2306.055. TRANSFERS FROM GOVERNOR. The governor may transfer to any division personnel, equipment, records, obligations, appropriations, functions, and duties of appropriate divisions of the governor's office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Renumbered from Government Code Sec. 2306.095 and amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.71(a), eff. Sept. 1, 1995.

Sec. 2306.056. COMMITTEES. (a) The presiding officer may appoint a committee composed of board members to carry out the board's duties.
(b) The board may consider a recommendation of a committee in making a decision under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.63(a), eff. Sept. 1, 1995.

Sec. 2306.057. COMPLIANCE ASSESSMENT REQUIRED FOR PROJECT APPROVAL BY BOARD. (a) Before the board approves any project application submitted under this chapter, the department, through the division with responsibility for compliance matters, shall:
(1) assess:
(A) the compliance history in this state of the applicant and any affiliate of the applicant with respect to all applicable requirements; and
(B) the compliance issues associated with the proposed project; and
(2) provide to the board a written report regarding the results of the assessments described by Subdivision (1).
(b) The written report described by Subsection (a)(2) must be included in the appropriate project file for board and department review.
(c) The board shall fully document and disclose any instances

in which the board approves a project application despite any noncompliance associated with the project, applicant, or affiliate that is reported by the department under Subsection (a)(2).

(d) In assessing the compliance of the project, applicant, or affiliate, the board shall consider any relevant compliance information in the department's database created under Section 2306.081, including compliance information provided to the department by the Texas State Affordable Housing Corporation.

(e) For a project application seeking financial assistance administered through the department's multifamily housing programs, the department may not include in the report provided under Subsection (a)(2) any instance of noncompliance associated with a project of the applicant or affiliate of the applicant if the applicant or affiliate has submitted documentation, in a format acceptable to the department, demonstrating that the responsibility for project compliance was delegated to another participant in the project, including, if applicable, a related party as defined by Section 2306.6702.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.07, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 332, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 12, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 527 (S.B. 2046), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. GENERAL ADMINISTRATIVE PROVISIONS

Sec. 2306.061. STANDARDS OF CONDUCT. The director or the director's designee shall become aware of and provide to members of the board and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.09, eff. Sept. 1, 2001.

Sec. 2306.063. PERFORMANCE EVALUATIONS. The director or the director's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.064. EQUAL EMPLOYMENT OPPORTUNITIES. (a) The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

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

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

(3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated at least annually, and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.065. DISCRIMINATION PROHIBITED. An individual may not, because of that individual's race, color, national origin, or sex, be excluded from participation, be denied benefits, or be

subjected to discrimination in any program or activity funded in whole or in part with funds made available under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.066. INFORMATION AND COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

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

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

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

(3) the subject matter of the complaint;

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

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

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

(c) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution. The department, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(d) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(e) The director shall prepare and maintain a written plan that describes how an individual who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to and participation in the department's programs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.10, eff. Sept. 1,

2001.

Sec. 2306.067. LOANED EMPLOYEES. (a) The director may enter into reciprocal agreements with a state agency or instrumentality or local government to loan or assign department employees to that entity.

(b) A state agency or instrumentality or local government may loan or assign employees to the department, with or without reimbursement, by agreement between the department and the other party. The department may contract to reimburse all costs incidental to loaning or assigning employees.

(c) An employee loaned or assigned to the department is an employee of the lending agency or unit for purposes of salary, leave, retirement, and other personnel benefits. The loaned or assigned employee is under the supervision of personnel of the department and is an employee of the department for all other purposes.

(d) The director may enter into an agreement with the manufactured housing division to loan or assign department employees, equipment, and facilities to that division.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.12, eff. Sept. 1, 2001.

Sec. 2306.068. INTERAGENCY COOPERATION. An agency or institution of the state shall cooperate with the department by providing personnel, information, and technical advice as the department assists the governor in:

(1) the coordination of federal and state activities affecting local government; and

(2) providing affordable housing for individuals and families of low and very low income and families of moderate income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.069. LEGAL COUNSEL. (a) With the approval of the attorney general, the department may hire appropriate outside legal counsel.

(b) The department may hire in-house legal counsel. The director shall prescribe the duties of the legal counsel.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.68(a), eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 13, eff. September 1, 2007.

Sec. 2306.0705. GENERAL APPROPRIATIONS ACT. Except as specifically provided by this chapter, the department is subject to the General Appropriations Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.65(a), eff. Sept. 1, 1995.

Sec. 2306.071. FUNDS. (a) The department may request, contract for, receive, and spend for its purposes an appropriation, grant, allocation, subsidy, rent supplement, guarantee, aid, contribution, gift, service, labor, or material from this state, the federal government, or another public or private source.

(b) The funds and revenues of the housing finance division shall be kept separate from the funds and revenues of the other divisions, and the other divisions may use funds and revenues of the housing finance division only to administer housing-related programs.

(c) Except for legislative appropriations, funds necessary for the operation of the housing finance division, and trustee-held funds of the department under a multifamily bond indenture, all funds and revenue received by the housing finance division are to be kept outside the state treasury.

(d) Legislative appropriations to the housing finance division and the operating funds of the division shall be kept in the state treasury. Trustee-held funds of the department under a multifamily bond indenture are held by the trustee as provided by the indenture.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.65(b), eff. Sept. 1, 1995.

Sec. 2306.072. ANNUAL LOW INCOME HOUSING REPORT. (a) Not later than March 18 of each year, the director shall prepare and submit to the board an annual report of the department's housing activities for the preceding year.

(b) Not later than the 30th day after the date the board receives and approves the report, the board shall submit the report to the governor, lieutenant governor, speaker of the house of representatives, and members of any legislative oversight committee.

(c) The report must include:

(1) a complete operating and financial statement of the department;

(2) a comprehensive statement of the activities of the department during the preceding year to address the needs identified in the state low income housing plan prepared as required by Section 2306.0721, including:

(A) a statistical and narrative analysis of the department's performance in addressing the housing needs of individuals and families of low and very low income;

(B) the ethnic and racial composition of individuals and families applying for and receiving assistance from each housing-related program operated by the department;

(C) the department's progress in meeting the goals established in the previous housing plan, including goals established with respect to the populations described by Section 2306.0721(c)(1); and

(D) recommendations on how to improve the coordination of department services to the populations described by Section 2306.0721(c)(1);

(3) an explanation of the efforts made by the department to ensure the participation of individuals of low income and their community-based institutions in department programs that affect them;

(4) a statement of the evidence that the department has made an affirmative effort to ensure the involvement of individuals of low income and their community-based institutions in the allocation of funds and the planning process;

(5) a statistical analysis, delineated according to each ethnic and racial group served by the department, that indicates the progress made by the department in implementing the state low income

housing plan in each of the uniform state service regions;

(6) an analysis, based on information provided by the fair housing sponsor reports required under Section 2306.0724 and other available data, of fair housing opportunities in each housing development that receives financial assistance from the department that includes the following information for each housing development that contains 20 or more living units:

(A) the street address and municipality or county in which the property is located;

(B) the telephone number of the property management or leasing agent;

(C) the total number of units, reported by bedroom size;

(D) the total number of units, reported by bedroom size, designed for individuals who are physically challenged or who have special needs and the number of these individuals served annually;

(E) the rent for each type of rental unit, reported by bedroom size;

(F) the race or ethnic makeup of each project;

(G) the number of units occupied by individuals receiving government-supported housing assistance and the type of assistance received;

(H) the number of units occupied by individuals and families of extremely low income, very low income, low income, moderate income, and other levels of income;

(I) a statement as to whether the department has been notified of a violation of the fair housing law that has been filed with the United States Department of Housing and Urban Development, the Commission on Human Rights, or the United States Department of Justice; and

(J) a statement as to whether the development has any instances of material noncompliance with bond indentures or deed restrictions discovered through the normal monitoring activities and procedures that include meeting occupancy requirements or rent restrictions imposed by deed restriction or financing agreements;

(7) a report on the geographic distribution of low income housing tax credits, the amount of unused low income housing tax credits, and the amount of low income housing tax credits received from the federal pool of unused funds from other states; and

(8) a statistical analysis, based on information provided by the fair housing sponsor reports required by Section 2306.0724 and other available data, of average rents reported by county.

(d) Repealed by Acts 2003, 78th Leg., ch. 330, Sec. 31(1).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 13, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 226, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 4.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 31(1), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 15, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 389 (S.B. 109), Sec. 1, eff. June 14, 2013.

Sec. 2306.0721. LOW INCOME HOUSING PLAN. (a) Not later than March 18 of each year, the director shall prepare and submit to the board an integrated state low income housing plan for the next year.

(b) Not later than the 30th day after the date the board receives and approves the plan, the board shall submit the plan to the governor, lieutenant governor, and the speaker of the house of representatives.

(c) The plan must include:

(1) an estimate and analysis of the size and the different housing needs of the following populations in each uniform state service region:

(A) individuals and families of moderate, low, very low, and extremely low income;

(B) individuals with special needs;

(C) homeless individuals;

(D) veterans;

(E) farmworkers;

(F) youth who are aging out of foster care;

(G) homeless youth, as defined by Section 2306.1101, and other individuals older than 18 years of age and younger than 25 years of age who are homeless; and

(H) elderly individuals;

(2) a proposal to use all available housing resources to address the housing needs of the populations described by Subdivision (1) by establishing funding levels for all housing-related programs;

(3) an estimate of the number of federally assisted housing units available for individuals and families of low and very low income and individuals with special needs in each uniform state service region;

(4) a description of state programs that govern the use of all available housing resources;

(5) a resource allocation plan that targets all available housing resources to individuals and families of low and very low income and individuals with special needs in each uniform state service region;

(6) a description of the department's efforts to monitor and analyze the unused or underused federal resources of other state agencies for housing-related services and services for homeless individuals and the department's recommendations to ensure the full use by the state of all available federal resources for those services in each uniform state service region;

(7) strategies to provide housing for individuals and families with special needs in each uniform state service region;

(8) a description of the department's efforts to encourage in each uniform state service region the construction of housing units that incorporate energy efficient construction and appliances;

(9) an estimate and analysis of the housing supply in each uniform state service region;

(10) an inventory of all publicly and, where possible, privately funded housing resources, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies;

(11) strategies for meeting rural housing needs;

(12) a biennial action plan for colonias that:

(A) addresses current policy goals for colonia programs, strategies to meet the policy goals, and the projected outcomes with respect to the policy goals; and

(B) includes information on the demand for contract-for-deed conversions, services from self-help centers, consumer education, and other colonia resident services in counties some part of which is within 150 miles of the international border of this state;

(13) a summary of public comments received at a hearing under this chapter or from another source that concern the demand for colonia resident services described by Subdivision (12); and

(13-a) information regarding foreclosures of residential property in this state, including the number and geographic location of those foreclosures.

(d) The priorities and policies in another plan adopted by the department must be consistent to the extent practical with the priorities and policies established in the state low income housing plan.

(e) To the extent consistent with federal law, the preparation and publication of the state low income housing plan shall be consistent with the filing and publication deadlines required of the department for the consolidated plan.

(f) The director may subdivide the uniform state service regions as necessary for purposes of the state low income housing plan.

(g) The department shall include the plan developed by the Texas State Affordable Housing Corporation under Section 2306.566 in the department's resource allocation plan under Subsection (c)(5).

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 226, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 1.13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 332, Sec. 5, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 42, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 389 (S.B. 109), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 61, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 825 (H.B. 2564), Sec. 1, eff. September 1, 2019.

Sec. 2306.0722. PREPARATION OF PLAN AND REPORT. (a) Before preparing the annual low income housing report under Section 2306.072 and the state low income housing plan under Section 2306.0721, the department shall meet with regional planning commissions created under Chapter 391, Local Government Code, representatives of groups with an interest in low income housing, nonprofit housing organizations, managers, owners, and developers of affordable housing, local government officials, residents of low income housing, and members of the Colonia Resident Advisory Committee. The department shall obtain the comments and suggestions of the representatives, officials, residents, and members about the prioritization and allocation of the department's resources in regard to housing.

(b) In preparing the annual report under Section 2306.072 and the state low income housing plan under Section 2306.0721, the director shall:

(1) coordinate local, state, and federal housing resources, including tax exempt housing bond financing and low income housing tax credits;

(2) set priorities for the available housing resources to help the neediest individuals;

(3) evaluate the success of publicly supported housing programs;

(4) survey and identify the unmet housing needs of individuals the department is required to assist;

(5) ensure that housing programs benefit an individual without regard to the individual's race, ethnicity, sex, or national origin;

(6) develop housing opportunities for individuals and families of low and very low income and individuals with special housing needs;

(7) develop housing programs through an open, fair, and public process;

(8) set priorities for assistance in a manner that is appropriate and consistent with the housing needs of the populations described by Section 2306.0721(c)(1);

(9) incorporate recommendations that are consistent with the consolidated plan submitted annually by the state to the United

States Department of Housing and Urban Development;

(10) identify the organizations and individuals consulted by the department in preparing the annual report and state low income housing plan and summarize and incorporate comments and suggestions provided under Subsection (a) as the board determines to be appropriate;

(11) develop a plan to respond to changes in federal funding and programs for the provision of affordable housing;

(12) use the following standardized categories to describe the income of program applicants and beneficiaries:

(A) 0 to 30 percent of area median income adjusted for family size;

(B) more than 30 to 60 percent of area median income adjusted for family size;

(C) more than 60 to 80 percent of area median income adjusted for family size;

(D) more than 80 to 115 percent of area median income adjusted for family size; or

(E) more than 115 percent of area median income adjusted for family size;

(13) use the most recent census data combined with existing data from local housing and community service providers in the state, including public housing authorities, housing finance corporations, community housing development organizations, and community action agencies; and

(14) provide the needs assessment information compiled for the report and plan to the Texas State Affordable Housing Corporation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 15, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 1.14, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 332, Sec. 6, eff. Sept. 1, 2003.

Sec. 2306.0723. REPORT CONSIDERED AS RULE. The department shall consider the annual low income housing report to be a rule and in developing the report shall follow rulemaking procedures required by Chapter 2001.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 16, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 1.15, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 17, eff. September 1, 2007.

Sec. 2306.0724. FAIR HOUSING SPONSOR REPORT. (a) The department shall require the owner of each housing development that receives financial assistance from the department and that contains 20 or more living units to submit an annual fair housing sponsor report. The report must include the relevant information necessary for the analysis required by Section 2306.072(c)(6). In compiling the information for the report, the owner of each housing development shall use data current as of January 1 of the reporting year.

(b) The department shall adopt rules regarding the procedure for filing the report.

(c) The department shall maintain the reports in electronic and hard-copy formats readily available to the public at no cost.

(d) A housing sponsor who fails to file a report in a timely manner is subject to the following sanctions, as determined by the department:

(1) denial of a request for additional funding; or

(2) an administrative penalty in an amount not to exceed $1,000, assessed in the manner provided for an administrative penalty under Section 2306.6023.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 4.02, eff. Sept. 1, 2001.

Sec. 2306.073. INTERNAL AUDIT. (a) The director, with the approval of the board, shall appoint an internal auditor who reports directly to the board and serves at the pleasure of the board.

(b) The internal auditor shall:

(1) prepare an annual audit plan using risk assessment techniques to rank high-risk functions in the department; and

(2) submit the annual audit plan to the director and board

for consideration and approval or change as necessary or advisable.

(c) The internal auditor may bring before the director or board an issue outside the annual audit plan that requires the immediate attention of the director or board.

(d) The internal auditor may not be assigned any operational or management responsibilities that impair the ability of the internal auditor to make an independent examination of the department's operations.

(e) The department shall give the internal auditor unrestricted access to activities and records of the department unless restricted by other law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.67(a), eff. Sept. 1, 1995.

Sec. 2306.074. AUDIT. (a) The department's books and accounts must be audited each fiscal year by a certified public accountant or, if requested by the department and if the legislative audit committee approves including the audit in the audit plan under Section 321.013(c), by the state auditor. A copy of the audit must be filed with the governor, the comptroller, and the legislature not later than the 30th day after the submission date for the annual financial report as required by the General Appropriations Act. If the state auditor is conducting the audit and it is not available by the 30th day after the submission date as required by the General Appropriations Act for annual financial reporting, it must be filed as soon as it is available.

(b) The department shall pay for the audit.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(b), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1035, Sec. 67, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 785, Sec. 48, eff. Sept. 1, 2003.

Sec. 2306.075. TAX EXEMPTION. The property of the department, its income, and its operations are exempt from all taxes and assessments imposed by this state and all public agencies on property acquired or used by the department under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.076. INSURANCE. (a) The board may purchase from department funds liability insurance for the director, board members, officers, and employees of the department.

(b) The board may purchase the insurance in an amount the board considers reasonably necessary to:

(1) insure against reasonably foreseeable liabilities; and

(2) provide for all costs of defending against those liabilities, including court costs and attorney's fees.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(c), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 17, eff. Sept. 1, 1997.

Sec. 2306.077. INTERNET AVAILABILITY. (a) In this section, "Internet" means the largest, nonproprietary, nonprofit, cooperative, public computer network, popularly known as the Internet.

(b) The department, to the extent it considers it to be feasible and appropriate, shall make information on the department's programs, public hearings, and scheduled public meetings available to the public on the Internet.

(c) The access to information allowed by this section is in addition to the public's free access to the information through other electronic or print distribution of the information and does not alter, diminish, or relinquish any copyright or other proprietary interest or entitlement of this state or a private entity under contract with this state.

(d) The department shall provide for annual housing sponsor reports required by Section 2306.0724 to be filed through the Internet.

(e) The department shall provide for reports regarding housing units designed for persons with disabilities made under Section 2306.078 to be filed through the Internet.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 18, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 4.03, eff. Sept. 1, 2001.

Sec. 2306.078. INFORMATION REGARDING HOUSING FOR PERSONS WITH DISABILITIES. (a) The department shall establish a system that requires owners of state or federally assisted housing developments with 20 or more housing units to report information regarding housing units designed for persons with disabilities.

(b) The system must provide for each owner of a development described by Subsection (a) with at least one housing unit designed for a person with a disability to enter the following information on the department's Internet site:

(1) the name, if any, of the development;

(2) the street address of the development;

(3) the number of housing units in the development that are designed for persons with disabilities and that are available for lease;

(4) the number of bedrooms in each housing unit designed for a person with a disability;

(5) the special features that characterize each housing unit's suitability for a person with a disability;

(6) the rent for each housing unit designed for a person with a disability; and

(7) the telephone number and name of the development manager or agent to whom inquiries by prospective tenants may be made.

(c) The department shall require each owner to maintain updated contact information under Subsection (b)(7) and shall solicit the owner's voluntary provision of updated information under Subsections (b)(3) and (6).

(d) The department shall make information provided under this section available to the public in electronic and hard-copy formats at no cost.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 4.04, eff. Sept. 1, 2001.

Sec. 2306.080. DATABASE INFORMATION SPECIALIST. The director shall appoint a database information specialist. The primary responsibility of the database information specialist is to provide for the effective and efficient dissemination to the public of information related to affordable housing and community development

in a form that is accessible, widely available, and easily used.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 5.01, eff. Sept. 1, 2001.

Sec. 2306.081. PROJECT COMPLIANCE; DATABASE. (a) The department, through the division with responsibility for compliance matters, shall monitor for compliance with all applicable requirements the entire construction phase associated with any project under this chapter. The monitoring level for each project must be based on the amount of risk associated with the project.

(b) After completion of a project's construction phase, the department shall periodically review the performance of the project to confirm the accuracy of the department's initial compliance evaluation during the construction phase.

(c) The department shall use the division responsible for credit underwriting matters and the division responsible for compliance matters to determine the amount of risk associated with each project.

(d) The department shall create an easily accessible database that contains all project compliance information developed under this chapter, including project compliance information provided to the department by the Texas State Affordable Housing Corporation.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.09, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 332, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 42, eff. September 1, 2007.

Sec. 2306.082. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The department shall develop and implement a policy to encourage the use of:

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

(2) appropriate alternative dispute resolution procedures

under Chapter 2009 to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must designate the State Office of Administrative Hearings as the primary mediator and, to the extent practicable, conform to any guidelines or rules issued by that office.

(c) The department shall designate a person employed by or appointed to the office of the director but who is not in the legal division to coordinate and process requests for the alternative dispute resolution procedures. The person must receive training from an independent source in alternative dispute resolution not later than the 180th day after the date the person was designated to coordinate and process requests for the alternative dispute resolution procedures.

(d) The department shall notify a person requesting the alternative dispute resolution procedures that:

(1) an alternative dispute resolution decision is not binding on the state; and

(2) the department will mediate in good faith.

(e) The alternative dispute resolution procedures may be requested before the board makes a final decision.

(f) Notwithstanding any other provision of this section, the alternative dispute resolution procedures may not be used to unnecessarily delay a proceeding under this chapter.

Added by Acts 2003, 78th Leg., ch. 330, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 18, eff. September 1, 2007.

Sec. 2306.083. APPLICATION REQUIREMENT FOR COLONIAS PROJECTS. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921, Water Code;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(2), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(2), eff. September 1, 2019.

(d) Regarding any projects funded by the department that provide assistance to colonias, the department shall require an applicant for the funds to submit to the department a colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the department may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the department, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2005, 79th Leg., Ch. 828 (S.B. 827), Sec. 4, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 8, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.07, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.08, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(2), eff. September 1, 2019.

SUBCHAPTER E. COMMUNITY AFFAIRS AND COMMUNITY DEVELOPMENT PROGRAMS

Sec. 2306.092. DUTIES REGARDING CERTAIN PROGRAMS CREATED UNDER FEDERAL LAW. The department shall administer, as appropriate under policies established by the board:

(1) state responsibilities for programs created under the federal Economic Opportunity Act of 1964 (42 U.S.C. Section 2701 et seq.);

(2) programs assigned to the department under the Omnibus Budget Reconciliation Act of 1981 (Pub.L. No. 97-35); and

(3) other federal acts creating economic opportunity programs assigned to the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.69(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 994, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1367, Sec. 1.16, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 19, eff. September 1, 2007.

Sec. 2306.093. HOUSING ASSISTANCE GOAL. By action of the board the community affairs division shall have a goal to apply a minimum of 25 percent of the division's total housing-related funds toward housing assistance for individuals and families of very low income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.094. SERVICES FOR THE HOMELESS. The department shall administer the state's allocation of federal funds provided under the Emergency Shelter Grants Program (42 U.S.C. Section 11371 et seq.), as amended, or its successor program, and any other federal funds provided for the benefit of homeless individuals and families.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 20, eff. Sept. 1, 1997.

Sec. 2306.097. ENERGY SERVICES PROGRAM FOR LOW-INCOME INDIVIDUALS. (a) The Energy Services Program for Low-Income Individuals shall operate in conjunction with the community services block grant program and has jurisdiction and responsibility for administration of the following elements of the State Low-Income Energy Assistance Program, from whatever sources funded:

(1) the Energy Crisis Intervention Program;

(2) the weatherization program; and

(3) the Low-Income Home Energy Assistance Program.

(b) Applications, forms, and educational materials for a program administered under Subsection (a)(1), (2), or (3) must be provided in English, Spanish, and any other appropriate language.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.72(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 21, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 600 (H.B. 434), Sec. 1, eff. June 19, 2009.

Sec. 2306.0985. RECOVERY OF FUNDS FROM CERTAIN SUBDIVISIONS. (a) It is the intent of the legislature that a private developer not unduly benefit from the expenditure by the state of public funds on infrastructure for public benefit.

(b) This section applies only to property located in:

(1) the unincorporated area of an affected county, as defined by Section 16.341, Water Code; and

(2) an economically distressed area, as defined by Section 16.341, Water Code.

(c) As a condition for the receipt of state funds, and to the extent permitted by law, federal funds, the department may require a political entity with authority to tax and place a lien on property to place a lien or assessment on property that benefits from the expenditure of state or federal funds for water, wastewater, or drainage improvements affecting the property. The lien or assessment may not exceed an amount equal to the cost of making the improvements as those costs relate to the property. The lien or assessment expires 10 years after the date the improvements are completed.

(d) If property subject to a lien or assessment under Subsection (c) is sold, the seller must pay to the political entity from the proceeds of the sale an amount equal to the value of the lien or assessment. This subsection does not apply if:

(1) the reason for the sale is:

(A) the disposition of the estate following the death of the owner of the property; or

(B) the owner because of physical condition must reside in a continuous care facility and no longer resides on the property; or

(2) the owner of the property is a person of low or moderate income.

(e) If property subject to a lien or assessment under Subsection (c) is repossessed by the holder of a note or a contract for deed, the holder must pay to the political entity an amount equal to the value of the lien or assessment before taking possession of the property.

(f) Subject to rules adopted by the department, a political entity shall collect payments made under this section and remit the funds for deposit in the treasury to the credit of a special account in the general revenue fund that may be appropriated only to the department for use in administering a program under Section 2306.098.

(g) After public notice and comment, the department shall adopt rules to administer this section. The department may provide by rule for the reduction or waiver of a fee authorized by this section.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 28, eff. June 16, 1995.

SUBCHAPTER F. HOUSING FINANCE DIVISION: GENERAL PROVISIONS

Sec. 2306.111. HOUSING FUNDS. (a) The department, through the housing finance division, shall administer all federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12704 et seq.) or any other affordable housing program.

(b) The housing finance division shall adopt a goal to apply an aggregate minimum of 25 percent of the division's total housing funds toward housing assistance for individuals and families of extremely low and very low income.

(c) In administering federal housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), the department shall expend:

(1) 95 percent of these funds for the benefit of non-participating small cities and rural areas that do not qualify to receive funds under the Cranston-Gonzalez National Affordable Housing Act directly from the United States Department of Housing and Urban Development; and

(2) five percent of these funds for the benefit of persons with disabilities who live in any area of this state.

(c-1) The following entities are eligible to apply for set-aside funds under Subsection (c):

(1) nonprofit providers of affordable housing, including community housing development organizations; and

(2) for-profit providers of affordable housing.

(c-2) In allocating set-aside funds under Subsection (c), the department may not give preference to nonprofit providers of affordable housing, except as required by federal law.

(c-3) In administering funds that are set aside for persons with disabilities under Subsection (c)(2) and allocated through the homebuyer assistance program, the department:

(1) may not require a person to enter into a contract to purchase a home before applying for or reserving funds allocated through the program; and

(2) by rule shall implement a preapproval process under which a person:

(A) before funds allocated through the program are made available, may establish eligibility to receive those funds; and

(B) has an adequate period of at least 90 days in which to locate a home for purchase using funds made available under the program.

(d) The department shall allocate housing funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), housing trust funds administered by the department under Sections 2306.201-2306.206, and commitments issued under the federal low income housing tax credit program administered by the department under Subchapter DD to all urban areas and rural areas of each uniform state service region based on a formula developed by the department under Section 2306.1115. If the department determines under the formula that an insufficient number of eligible applications for assistance out of funds or credits allocable under this subsection are submitted to the department from a particular uniform state service region, the department shall use the unused funds or credits allocated to that region for all urban areas and rural areas in other uniform state service regions based on identified need and financial feasibility.

(d-1) In allocating low income housing tax credit commitments under Subchapter DD, the department shall, before applying the regional allocation formula prescribed by Section 2306.1115, set aside for at-risk developments, as defined by Section 2306.6702, not less than the minimum amount of housing tax credits required under Section 2306.6714. Funds or credits are not required to be allocated according to the regional allocation formula under Subsection (d) if:

(1) the funds or credits are reserved for contract-for-deed conversions or for set-asides mandated by state or federal law and each contract-for-deed allocation or set-aside allocation equals not more than 10 percent of the total allocation of funds or credits for the applicable program;

(2) the funds or credits are allocated by the department primarily to serve persons with disabilities; or

(3) the funds are housing trust funds administered by the department under Sections 2306.201-2306.206 that are not otherwise required to be set aside under state or federal law and do not exceed $3 million for each programmed activity during each application cycle.

(d-2) In allocating low income housing tax credit commitments under Subchapter DD, the department shall allocate five percent of the housing tax credits in each application cycle to developments that receive federal financial assistance through the Texas Rural Development Office of the United States Department of Agriculture. Any funds allocated to developments under this subsection that involve rehabilitation must come from the funds set aside for at-risk developments under Section 2306.6714 and any additional funds set aside for those developments under Subsection (d-1). This subsection does not apply to a development financed wholly or partly under Section 538 of the Housing Act of 1949 (42 U.S.C. Section 1490p-2) unless the development involves the rehabilitation of an existing property that has received and will continue to receive as part of the financing of the development federal financial assistance provided under Section 515 of the Housing Act of 1949 (42 U.S.C. Section 1485).

(d-3) In allocating low income tax credit commitments under Subchapter DD, the department shall allocate to developments in rural areas 20 percent or more of the housing tax credits in the state in the application cycle, with $500,000 or more in housing tax credits being reserved for each uniform state service region under this subsection. Any amount of housing tax credits set aside for developments in a rural area in a specific uniform state service region under this subsection that remains after the initial allocation of housing tax credits is available for allocation to developments in any other rural area first, and then is available to developments in urban areas of any uniform state service region.

(d-4) A proposed or existing development that, before September 1, 2013, has been awarded or has received federal financial assistance provided under Section 514, 515, or 516 of the Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486) may apply for low income housing tax credits allocated under Subsection (d-2) or (d-3) for the uniform state service region in which the development is

located regardless of whether the development is located in a rural area.

(e) The department shall include in its annual low income housing plan under Section 2306.0721:

(1) the formula developed by the department under Section 2306.1115; and

(2) the allocation targets established under the formula for the urban areas and rural areas of each uniform state service region.

(f) The department shall include in its annual low income housing report under Section 2306.072 the amounts of funds and credits allocated to the urban areas and rural areas of each uniform state service region in the preceding year for each federal and state program affected by the requirements of Subsection (d).

(g) For all urban areas and rural areas of each uniform state service region, the department shall establish funding priorities to ensure that:

(1) funds are awarded to project applicants who are best able to meet recognized needs for affordable housing, as determined by department rule;

(2) when practicable and when authorized under Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), the least restrictive funding sources are used to serve the lowest income residents; and

(3) funds are awarded based on a project applicant's ability, when consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), practicable, and economically feasible, to:

(A) provide the greatest number of quality residential units;

(B) serve persons with the lowest percent area median family income;

(C) extend the duration of the project to serve a continuing public need;

(D) use other local funding sources to minimize the amount of state subsidy needed to complete the project; and

(E) provide integrated, affordable housing for individuals and families with different levels of income.

(h) The department by rule shall adopt a policy providing for the reallocation of financial assistance administered by the

department, including financial assistance related to bonds issued by the department, if the department's obligation with respect to that assistance is prematurely terminated.

(i) The director shall designate an employee of the department to act as the information officer and as a liaison with the public regarding each application seeking an allocation of housing funds described by this section.

(j) Notwithstanding any other law, money provided to this state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.) as a one-time lump sum for a specified use:

(1) is not subject to the allocation requirements under this section or the allocation formula developed by the department under Section 2306.1115; and

(2) may be allocated for the benefit of any area of this state in the manner specified under federal law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.75(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 23, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 421, Sec. 1, eff. Sept. 1, 2000; Acts 2001, 77th Leg., ch. 1367, Sec. 1.17, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 6.01, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1448, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 8, 9, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.02, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 857 (H.B. 429), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 395 (H.B. 1428), Sec. 1, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 880 (H.B. 4443), Sec. 1, eff. June 13, 2023.

Sec. 2306.1111. UNIFORM APPLICATION AND FUNDING CYCLES. (a) Notwithstanding any other state law and to the extent consistent with federal law, the department shall establish uniform application and funding cycles for all competitive single-family and multifamily housing programs administered by the department under this chapter, other than programs involving the issuance of private activity bonds.

(b) Wherever possible, the department shall use uniform threshold requirements for single-family and multifamily housing program applications, including uniform threshold requirements relating to market studies and environmental reports.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.18, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 20, eff. September 1, 2007.

Sec. 2306.1113. EX PARTE COMMUNICATIONS. (a) During the period beginning on the date project applications are filed in an application cycle and ending on the date the board makes a final decision with respect to the approval of any application in that cycle, a member of the board may not communicate with the following persons:

(1) an applicant or a related party, as defined by state law, including board rules, and federal law; and

(2) any person who is:

(A) active in the construction, rehabilitation, ownership, or control of a proposed project, including:

(i) a general partner or contractor; and

(ii) a principal or affiliate of a general partner or contractor; or

(B) employed as a consultant, lobbyist, or attorney by an applicant or a related party.

(a-1) Subject to Subsection (a-2), during the period beginning on the date project applications are filed in an application cycle and ending on the date the board makes a final decision with respect to the approval of any application in that cycle, an employee of the department may communicate about an application with the following persons:

(1) the applicant or a related party, as defined by state law, including board rules, and federal law; and

(2) any person who is:

(A) active in the construction, rehabilitation, ownership, or control of the proposed project, including:

(i) a general partner or contractor; and

(ii) a principal or affiliate of a general partner or contractor; or

(B) employed as a consultant, lobbyist, or attorney by the applicant or a related party.

(a-2) A communication under Subsection (a-1) may be oral or in any written form, including electronic communication through the Internet, and must satisfy the following conditions:

(1) the communication must be restricted to technical or administrative matters directly affecting the application;

(2) the communication must occur or be received on the premises of the department during established business hours; and

(3) a record of the communication must be maintained and included with the application for purposes of board review and must contain the following information:

(A) the date, time, and means of communication;

(B) the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the applicant;

(C) the subject matter of the communication; and

(D) a summary of any action taken as a result of the communication.

(b) Notwithstanding Subsection (a) or (a-1), a board member or department employee may communicate without restriction with a person listed in Subsection (a) or (a-1) during any board meeting or public hearing held with respect to the application, but not during a recess or other nonrecord portion of the meeting or hearing.

(c) Subsection (a) does not prohibit the board from participating in social events at which a person with whom communications are prohibited may or will be present, provided that all matters related to applications to be considered by the board will not be discussed.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.18, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 10, eff. Sept.

1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 22, eff. September 1, 2007.

Sec. 2306.1114. NOTICE OF RECEIPT OF APPLICATION OR PROPOSED APPLICATION. (a) Not later than the 14th day after the date an application or a proposed application for housing funds described by Section 2306.111 has been filed, the department shall provide written notice of the filing of the application or proposed application to the following persons:

(1) the United States representative who represents the community containing the development described in the application;

(2) members of the legislature who represent the community containing the development described in the application;

(3) the presiding officer of the governing body of the political subdivision containing the development described in the application;

(4) any member of the governing body of a political subdivision who represents the area containing the development described in the application;

(5) the superintendent and the presiding officer of the board of trustees of the school district containing the development described in the application; and

(6) any neighborhood organizations on record with the state or county in which the development described in the application is to be located and whose boundaries contain the proposed development site.

(b) The notice provided under Subsection (a) must include the following information:

(1) the relevant dates affecting the application, including:

(A) the date on which the application was filed;

(B) the date or dates on which any hearings on the application will be held; and

(C) the date by which a decision on the application will be made;

(2) a summary of relevant facts associated with the development;

(3) a summary of any public benefits provided as a result of the development, including rent subsidies and tenant services; and

(4) the name and contact information of the employee of the department designated by the director to act as the information officer and liaison with the public regarding the application.

Added by Acts 2003, 78th Leg., ch. 330, Sec. 11, eff. Sept. 1, 2003.

Sec. 2306.1115. REGIONAL ALLOCATION FORMULA. (a) To allocate housing funds under Section 2306.111(d), the department shall develop a formula that:

(1) includes as a factor the need for housing assistance and the availability of housing resources in an urban area or rural area;

(2) provides for allocations that are consistent with applicable federal and state requirements and limitations; and

(3) includes other factors determined by the department to be relevant to the equitable distribution of housing funds under Section 2306.111(d).

(b) The department shall use information contained in its annual state low income housing plan and other appropriate data to develop the formula under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 5, eff. September 1, 2007.

Sec. 2306.112. PREPARATION AND CONTENT OF ANNUAL BUDGET. (a) On or before August 1 of each year, the director shall file with the board a proposed annual budget for the housing finance division for the succeeding fiscal year.

(b) The budget shall state:

(1) the general categories of expected expenditures from revenues and income of the housing finance division;

(2) the amount of expected expenditures for each category;

(3) expected operating expenses of the housing finance division; and

(4) the proposed use of projected year-end unencumbered balances.

(c) The budget may include a provision or reserve for contingencies or overexpenditures.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.113. BOARD CONSIDERATION OF ANNUAL BUDGET. On or before September 1 of each year, the board shall consider the director's proposed annual budget for the housing finance division and shall approve or change the budget as the board determines necessary or advisable.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.114. FILING OF ANNUAL BUDGET. (a) Copies of the annual budget certified by the presiding officer of the board shall be filed promptly with the governor and the legislature.

(b) The annual budget is not effective until filed.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.115. FAILURE TO ADOPT ANNUAL BUDGET. If the board does not adopt the annual budget on or before September 1, the budget for the preceding year remains in effect until a new budget is adopted.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.116. AMENDED ANNUAL BUDGET. (a) The board may adopt an amended annual budget during the fiscal year.

(b) An amended annual budget does not supersede a prior budget until it is filed with the governor and the legislature.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.117. PAYMENT OF EXPENSES; INDEBTEDNESS. (a) The expenses incurred in carrying out the functions of the housing

finance division may be paid only from revenues or funds provided under this chapter.

(b) This chapter does not authorize the housing finance division to incur debt or liability on behalf of or payable by the state, except as provided by this chapter or other law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.118. DEPOSIT OF FUNDS WITH TEXAS TREASURY SAFEKEEPING TRUST COMPANY. Except as provided by Section 2306.120, revenue and funds of the department received by or payable through the programs and functions of the housing finance division, other than funds necessary for the operation of the housing finance division and appropriated funds, shall be deposited outside the treasury with the Texas Treasury Safekeeping Trust Company.

Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.119. SELECTION OF DEPOSITORY FOR OPERATING FUNDS. (a) The department shall choose a depository for the operating funds of the housing finance division after inviting bids for favorable interest rates.

(b) The housing finance division shall publish notice in at least one newspaper of general circulation in this state no later than the 14th day before the last day set for the receipt of the bids.

(c) Notice published under this section must state the:

(1) types of deposits planned;

(2) last day on which bids will be received; and

(3) time and place for opening bids.

(d) Sealed bids must be:

(1) identified on the envelope as bids; and

(2) submitted to the housing finance division before the deadline for receiving bids.

(e) The housing finance division shall provide a tabulation of all submitted bids for public inspection.

(f) The department shall choose the depository submitting the bid with the most favorable financial terms to the department, considering the security and efficiency with which the depository is

capable of managing the department's funds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.120. SELECTION OF DEPOSITORY UNDER COVENANTS OF BONDS OR TRUST INDENTURES. (a) If covenants related to the department's bonds or the trust indentures governing the bonds specify one or more depositories or set out a method of selecting depositories different from the method required by this subchapter, the covenants prevail regarding the funds to which they apply and the funds are not required to be deposited with the Texas Treasury Safekeeping Trust Company.

(b) Bonds of the housing finance division issued under trust indentures executed or resolutions adopted on or after September 1, 1991, may not include a covenant that interferes with the deposit of funds in the Texas Treasury Safekeeping Trust Company.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.121. RECORDS. The housing finance division shall keep complete records and accounts of its business transactions according to generally accepted accounting principles.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.123. AREA MEDIAN INCOME. The department may determine the median income of an individual or family for an area by using a source or methodology acceptable under federal law or rule.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.1231. FEDERAL POVERTY LINE. The department shall use the applicable federal poverty line in determining eligibility for each federal or state program administered by the department that requires poverty instead of area median income to be used as a criterion of program eligibility.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.76(a), eff. Sept. 1, 1995.

Sec. 2306.124. RULES REGARDING HOUSING DEVELOPMENTS. The department may adopt and publish rules regarding the:

(1) making of mortgage loans under this subchapter;

(2) regulation of borrowers;

(3) construction of ancillary commercial facilities; and

(4) resale and disposition of real property, or an interest in the property, that is financed by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.125. COURT ACTIONS. (a) The department may institute a judicial action or proceeding against a housing sponsor receiving a loan or owning a housing development under this chapter to:

(1) enforce this chapter;

(2) enforce the terms and provisions of an agreement or contract between the department and the recipient of a loan under this chapter, including provisions regarding rental or carrying charges and income limits as applied to tenants or occupants;

(3) foreclose its mortgage; or

(4) protect:

(A) the public interest;

(B) individuals and families of low and very low income or families of moderate income;

(C) stockholders; or

(D) creditors of the sponsor.

(b) In an action or proceeding under this section, the department may apply for the appointment of a trustee or receiver to assume the management and operation of the affairs of a housing sponsor.

(c) The department, through its designated agent, may accept appointment as trustee or receiver of a housing sponsor when appointed by a court of competent jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.126. EXEMPTION FROM PROPERTY TAX. (a) The department may, under its terms, conditions, and rules, pay public agencies in lieu of ad valorem taxes on property that the department acquires through foreclosure or sale under a deed of trust.

(b) The department shall make payments under this section instead of paying taxes whenever practicable with money lawfully available for this purpose, subject to the provisions of any bond resolution.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.127. PRIORITY FOR CERTAIN COMMUNITIES. In a manner consistent with the regional allocation formula described under Section 2306.111(d), the department shall give priority through its housing program scoring criteria to communities that are located wholly or partly in:

(1) a federally designated urban enterprise community;

(2) an urban enhanced enterprise community; or

(3) an economically distressed area or colonia.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.19, eff. Sept. 1, 2001.

SUBCHAPTER G. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF BOARD

Sec. 2306.141. RULES. The board shall have the specific duty and power to adopt rules governing the administration of the housing finance division and its programs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.142. AUTHORIZATION OF BONDS. (a) Subject to the requirements of this section, the board shall authorize all bonds issued by the department.

(b) If the issuance is authorized by the board, the department shall issue single-family mortgage revenue bonds to make home mortgage credit available for the purchase of newly constructed or previously owned single-family homes to economic and geographic

submarkets of borrowers who are not served or who are substantially underserved by the conventional, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration home mortgage lending industry or by housing finance corporations organized under Chapter 394, Local Government Code.

(c) The board by rule shall adopt a methodology for determining through a market study the home mortgage credit needs in underserved economic and geographic submarkets in the state. In conducting the market study required by this subsection, the department or its designee shall analyze for the underserved economic and geographic submarkets, at a minimum, the following factors:

(1) home ownership rates;

(2) loan volume;

(3) loan approval ratios;

(4) loan interest rates;

(5) loan terms;

(6) loan availability;

(7) type and number of dwelling units; and

(8) use of subprime mortgage loan products, comparing the volume amount of subprime loans and interest rates to "A" paper mortgage loans as defined by Standard and Poor's credit underwriting criteria.

(d) The department or its designee shall analyze the potential market demand, loan availability, and private sector home mortgage lending rates available to extremely low, very low, low, and moderate income borrowers in the rural counties of the state, in census tracts in which the median family income is less than 80 percent of the median family income for the county in which the census tract is located, and in the region of the state adjacent to the international border of the state. The department or its designee shall establish a process for serving those counties, census tracts, and regions through the single-family mortgage revenue bond program in a manner proportionate to the credit needs of those areas as determined through the department's market study.

(e) Using the market study and the analysis required by this section, the board shall evaluate the feasibility of a single-family mortgage revenue bond program with loan marketing, eligibility, underwriting, structuring, collection, and foreclosure criteria and with loan services practices that are designed to meet the credit

needs of the underserved economic and geographic submarkets of the state, including those submarkets served disproportionately by subprime lenders.

(f) In evaluating a proposed bond program under this section, the board shall consider, consistent with the reasonable financial operation of the department, specific set-asides or reservations of mortgage loans for underserved economic and geographic submarkets in the state, including the reservation of funds to serve borrowers who have "A-" to "B-" credit according to Standard and Poor's credit underwriting criteria.

(g) The department may use any source of funds or subsidy available to the department to provide credit enhancement, down payment assistance, pre-homebuyer and post-homebuyer counseling, interest rate reduction, and payment of incentive lender points to accomplish the purposes of this section in a manner considered by the board to be consistent with the reasonable financial operation of the department.

(h) In allocating funds under Subsection (g), the department's highest priority is to provide assistance to borrowers in underserved economic and geographic submarkets in the state. If the board determines that sufficient funds are available after fully meeting the credit needs of borrowers in those submarkets, the department may provide assistance to other borrowers.

(i) The board shall certify that each single-family mortgage revenue bond issued by the department under this section is structured in a manner that serves the credit needs of borrowers in underserved economic and geographic submarkets in the state.

(j) After any board approval and certification of a single-family mortgage revenue bond issuance, the department shall submit the proposed bond issuance to the Bond Review Board for review.

(k) In the state fiscal year beginning on September 1, 2001, the department shall:

(1) adopt by rule a market study methodology as required by Subsection (c);

(2) conduct the market study;

(3) propose for board review a single-family mortgage revenue bond program, including loan feature details, a program for borrower subsidies as provided by Subsections (g) and (h), and origination and servicing infrastructure;

(4) identify reasonable capital markets financing;

(5) conduct a public hearing on the market study results and the proposed bond program; and

(6) submit for review by the Bond Review Board the market study results and, if approved and certified by the board, the proposed bond program.

(l) In the state fiscal year beginning on September 1, 2002, and in each subsequent state fiscal year, the department shall allocate not less than 40 percent of the total single-family mortgage revenue bond loan volume to meet the credit needs of borrowers in underserved economic and geographic submarkets in the state, subject to the identification of a satisfactory market volume demand through the market study.

(m) On completion of the market study, if the board determines in any year that bonds intended to be issued to achieve the purposes of this section are unfeasible or would damage the financial condition of the department, the board may formally appeal to the Bond Review Board the requirements of Subsection (k) or (l), as applicable. The Bond Review Board has sole authority to modify or waive the required allocation levels.

(n) In addition to any other loan originators selected by the department, the department shall authorize colonia self-help centers and any other community-based, nonprofit institutions considered appropriate by the board to originate loans on behalf of the department. All non-financial institutions acting as loan originators under this subsection must undergo adequate training, as prescribed by the department, to participate in the bond program. The department may require lenders to participate in ongoing training and underwriting compliance audits to maintain good standing to participate in the bond program. The department may require that lenders meet appropriate eligibility standards as prescribed by the department.

(o) The department shall structure all single-family mortgage revenue bond issuances in a manner designed to recover the full costs associated with conducting the activities required by this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 24, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 2.02, eff. Sept. 1, 2001.

Sec. 2306.143. ALTERNATIVE TO SUBPRIME LENDER LIST. (a) If the United States Department of Housing and Urban Development ceases to prepare or make public a subprime lender list, the market study required by Section 2306.142 must annually survey the 100 largest refinancing lenders and the 100 largest home purchase loan lenders in the state to identify lenders primarily engaged in subprime lending.

(b) The lenders included in the survey must be identified on the basis of home mortgage loan data reported by lenders under the Home Mortgage Disclosure Act of 1975 (12 U.S.C. Section 2801 et seq.) and the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 2.03, eff. Sept. 1, 2001.

Sec. 2306.144. FEES FOR SERVICES AND FACILITIES; PAYMENT OF DEPARTMENT OBLIGATIONS AND EXPENSES. (a) It is the duty of the board to establish and collect sufficient fees for services and facilities.

(b) The board shall use available sources of revenue, income, and receipts to:

(1) pay all expenses of the department's operation and maintenance;

(2) pay the principal and interest on department bonds; and

(3) create and maintain the reserves or funds provided by each resolution authorizing the issuance of department bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.145. LOAN PROCEDURES. The board shall have the specific duty and power to adopt procedures for approving loans, purchases of loans and interests in loans, and commitments to purchase loans under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.146. INTEREST RATES AND AMORTIZATION SCHEDULES. The

board shall have the specific duty and power to establish interest rates and amortization schedules for loans made or financed under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.147. FEES AND PENALTIES. (a) The board shall have the specific duty and power to establish a schedule of fees and penalties relating to the operation of the housing finance division and authorized by this chapter, including application, processing, loan commitment, origination, servicing, and administrative fees.

(b) The department shall waive grant application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 980, Sec. 25, eff. Sept. 1, 1997.

Sec. 2306.148. UNDERWRITING STANDARDS. (a) The board shall have the specific duty and power to adopt underwriting standards for:

(1) loans made or financed by the housing finance division; and

(2) housing tax credits allocated by the department.

(b) Underwriting standards adopted under Subsection (a)(2) and used to determine the feasibility of a proposed development must be consistent with criteria established under Section 2306.185.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 643 (S.B. 1989), Sec. 1, eff. September 1, 2015.

Sec. 2306.149. APPROVED MORTGAGE LENDERS. The board shall have the specific duty and power to compile a list of approved mortgage lenders.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.150. PROPERTY STANDARDS. The board shall have the specific duty and power to adopt minimum property standards for housing developments financed or acquired under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.151. TARGET STRATEGY FOR BOND PROCEEDS. The board shall have the specific duty and power to adopt a target strategy for the percentage of mortgage revenue bond proceeds to be made available to individuals and families of low and very low income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.152. ELIGIBILITY CRITERIA. The board shall have the specific duty and power to establish eligibility criteria for participation in the housing finance division's programs for individuals and families of low and very low income and families of moderate income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. HOUSING FINANCE DIVISION: GENERAL POWERS AND DUTIES OF DEPARTMENT

Sec. 2306.171. GENERAL DUTIES OF DEPARTMENT RELATING TO PURPOSES OF HOUSING FINANCE DIVISION. The department shall:

(1) develop policies and programs designed to increase the number of individuals and families of extremely low, very low, and low income and families of moderate income that participate in the housing finance division's programs;

(2) work with municipalities, counties, public agencies, housing sponsors, and nonprofit and for profit corporations to provide:

(A) information on division programs; and

(B) technical assistance to municipalities, counties, and nonprofit corporations;

(3) encourage private for profit and nonprofit corporations and state organizations to match the division's funds to assist in providing affordable housing to individuals and families of low and very low income and families of moderate income;

(4) provide matching funds to municipalities, counties, public agencies, housing sponsors, and nonprofit developers who qualify under the division's programs; and

(5) administer the state's allocation of federal funds provided under the rental rehabilitation grant program authorized by Section 17, Title I, of the United States Housing Act of 1937 (42 U.S.C. Section 1437o).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 26, eff. Sept. 1, 1997.

Sec. 2306.1711. RULEMAKING PROCEDURES FOR CERTAIN PROGRAMS. (a) The department shall adopt rules outlining formal rulemaking procedures for the low income housing tax credit program and the multifamily housing mortgage revenue bond program in accordance with Chapter 2001.

(b) The rules adopted under Subsection (a) must include:

(1) procedures for allowing interested parties to petition the department to request the adoption of a new rule or the amendment of an existing rule;

(2) notice requirements and deadlines for taking certain actions; and

(3) a provision for a public hearing.

(c) The department shall provide for public input before adopting rules for programs with requests for proposals and notices of funding availability.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.20, eff. Sept. 1, 2001.

Sec. 2306.172. ACQUISITION AND USE OF MONEY; DEPOSITORIES. The department may:

(1) acquire, hold, invest, deposit, use, and spend its income and money from every source; and

(2) select its depository or depositories, subject only to the provisions of:

(A) this chapter; and

(B) a covenant relating to the department's bonds issued by the housing finance division.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.173. INVESTMENTS. Subject to a resolution authorizing issuance of its bonds, the department may:

(1) invest its money in bonds, obligations, or other securities; or

(2) place its money in demand or time deposits, whether or not evidenced by certificates of deposit.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.174. ACQUISITION AND DISPOSITION OF PROPERTY. The department may:

(1) acquire, own, rent, lease, accept, hold, or dispose of any real, personal, or mixed property, or any interest in property, including a right or easement, in performing its duties and exercising its powers under this chapter, by purchase, exchange, gift, assignment, transfer, foreclosure, sale, lease, or otherwise;

(2) hold, manage, operate, or improve real, personal, or mixed property, except that:

(A) the department is restricted in acquiring property under Section 2306.251 unless it is required to foreclose on a delinquent loan and elects to acquire the property at foreclosure;

(B) the department shall make a diligent effort to sell a housing development acquired through foreclosure to a purchaser who will be required to pay ad valorem taxes on the housing development or, if such a purchaser cannot be found, to another purchaser; and

(C) the department shall sell a housing development acquired through foreclosure not later than the third anniversary of the date of acquisition unless the board adopts a resolution stating that a purchaser cannot be found after diligent search by the housing finance division, in which case the department shall continue to try to find a purchaser and shall sell the housing development when a

purchaser is found; and

(3) lease or rent land or a dwelling, house, accommodation, building, structure, or facility from a private party to carry out the housing finance division's purposes.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.175. TRANSFER AND DISPOSITION OF PROPERTY; MANNER OF SALE. (a) The department may:

(1) sell, assign, lease, encumber, mortgage, or otherwise dispose of real, personal, or mixed property, or an interest in property, or a deed of trust or mortgage lien interest owned by it or in its control, custody, or possession; and

(2) release or relinquish a right, title, claim, lien, interest, easement, or demand acquired in any manner, including an equity or right of redemption in property foreclosed by it.

(b) Notwithstanding any other law, the department may, under this section, conduct a public or private sale, with or without public bidding.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.176. FEES. The department may set, charge, and collect fees relating to loans made or other services provided by the department under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.177. HEARINGS. The department may:

(1) conduct hearings; and

(2) take testimony and proof, under oath, at public hearings, on matters necessary to carry out the department's purposes.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 27, eff. Sept. 1, 1997.

Sec. 2306.178. INSURANCE. The department may acquire, and pay premiums on, insurance of any kind in amounts and from insurers that the board considers necessary or advisable.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.179. INVESTIGATION. The department may:

(1) investigate housing conditions and means for improving those conditions; and

(2) determine the location of slum or blighted areas.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.180. ENCOURAGING HOME OWNERSHIP. The department may encourage individual or cooperative home ownership among individuals and families of low and very low income and families of moderate income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.181. TARGETING BOND PROCEEDS. The department may target the proceeds from housing bonds issued by it to a geographic area or areas of the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.182. LOANS TO LENDERS. The department may make loans to mortgage lenders, public agencies, or other housing sponsors and use the proceeds to make loans for multifamily housing developments that will be substantially occupied by individuals and families of low and very low income or families of moderate income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.183. NEEDS OF QUALIFYING INDIVIDUALS AND FAMILIES IN RURAL AREAS AND SMALL MUNICIPALITIES. The department may adopt a

target strategy to ensure that the credit and housing needs of qualifying individuals and families who reside in rural areas and small municipalities are equitably served by the housing finance division.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.184. DISCLOSURE OF FEES. (a) This section does not apply to an application submitted by an individual or family for a loan, grant, or other assistance under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department.

(b) An application for a loan, grant, or other assistance for an eligible affordable housing project or activity under a program administered by the department or the Texas State Affordable Housing Corporation or from bonds issued by the department must include:

(1) the name of each person expected to charge the applicant a project development fee or project operation fee;

(2) the nature and amount of each project development fee and project operation fee the applicant is expected to pay; and

(3) any interlocking interests of persons listed under Subdivision (1).

(c) On completion of the project, the applicant shall cost certify the project and include the following:

(1) the name of each person to whom the recipient paid a project development fee or project operation fee during the term of the project;

(2) the nature and amount of each project development fee and project operation fee paid by the recipient during the term of the project; and

(3) any interlocking interests of persons listed under Subdivision (1).

(d) The department shall adopt rules governing penalties and sanctions under this section for a person who:

(1) does not provide the information required by this section; or

(2) knowingly discloses false information.

(e) In this section:

(1) "Project development fee" means a fee charged in

connection with the planning, design, or development of an affordable housing project, including an application fee, tax credit consulting fee, development consulting fee, mortgage brokerage fee, and financial advising fee.

(2) "Project operation fee" means a fee charged in connection with the operation, construction, management, or administration of an affordable housing project, including a management fee, asset management fee, incentive management fee, general partner fee, construction supervision fee, and construction management fee.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 28, eff. Sept. 1, 1997.

Sec. 2306.185. LONG-TERM AFFORDABILITY AND SAFETY OF MULTIFAMILY RENTAL HOUSING DEVELOPMENTS. (a) The department shall adopt policies and procedures to ensure that, for a multifamily rental housing development funded through loans, grants, or tax credits under this chapter, the owner of the development:

(1) keeps the rents affordable for low income tenants for the longest period that is economically feasible; and

(2) provides regular maintenance to keep the development sanitary, decent, and safe and otherwise complies with the requirements of Section 2306.186.

(b) In implementing Subsection (a)(1) and in developing underwriting standards and application scoring criteria for the award of loans, grants, or tax credits to multifamily developments, the department shall ensure that the economic benefits of longer affordability terms, for specific terms of years as established by the board, and below market rate rents are accurately assessed and considered.

(c) The department shall require that a recipient of funding maintains the affordability of the multifamily housing development for households of extremely low, very low, low, and moderate incomes for the greater of a 30-year period from the date the recipient takes legal possession of the housing or the remaining term of the existing federal government assistance. In addition, the agreement between the department and the recipient shall require the renewal of rental subsidies if available and if the subsidies are sufficient to maintain the economic viability of the multifamily development.

(d) The development restrictions provided by Subsection (a) and Section 2306.269 are enforceable by the department, by tenants of the development, or by private parties against the initial owner or any subsequent owner. The department shall require a land use restriction agreement providing for enforcement of the restrictions by the department, a tenant, or a private party that includes the right to recover reasonable attorney's fees if the party seeking enforcement of the restriction is successful.

(d-1) For developments receiving housing tax credits, the department shall determine the feasibility of the development at the time of cost certification using:

(1) actual net operating income, adjusted for stabilization of rents and extraordinary lease-up expenses; and

(2) a maximum debt coverage ratio of 1.50 or higher as adopted by department rule.

(d-2) A feasibility determination made under Subsection (d-1) may not include a maximum operating expense-to-income ratio.

(d-3) In determining net operating income and making the appropriate adjustments under Subsection (d-1)(1), the department shall consider the permanent lender and equity partner stabilization requirements documented in the loan and in the partnership or entity agreements.

(d-4) The department may adopt rules providing for exceptions to the maximum debt coverage ratio requirement of Subsection (d-1)(2) with respect to specific types of projects.

(d-5) The department shall adopt rules that provide for the amendment of a land use restriction agreement. Rules adopted under this subsection must require reasonable notice to tenants, a public hearing, and board approval for any material amendment to a land use restriction agreement.

(e) Subsections (c), (d), (d-1), (d-2), (d-3), (d-4), and (d-5) and Section 2306.269 apply only to multifamily rental housing developments to which the department is providing one or more of the following forms of assistance:

(1) a loan or grant in an amount greater than 33 percent of the market value of the development on the date the recipient completed the construction of the development;

(2) a loan guarantee for a loan in an amount greater than 33 percent of the market value of the development on the date the recipient took legal title to the development; or

(3) a low income housing tax credit.

(f) An owner of the housing development who intends to sell, lease, prepay the loan insured by the United States Department of Housing and Urban Development, opt out of a housing assistance payments contract under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), or otherwise dispose of the development shall agree to provide notice to the department at least 12 months before the date of any attempt to dispose of the development, prepay the loan, or opt out of the Section 8 contract to enable the department to attempt to locate a buyer who will conform to the development restrictions provided by this section.

(g) Repealed by Acts 2003, 78th Leg., ch. 330, Sec. 31(1).

(h) The department shall monitor a development owner's compliance with this section.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.02, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 12, 31(1), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 23, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 643 (S.B. 1989), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 817 (H.B. 3576), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(24), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(10), eff. September 1, 2017.

Sec. 2306.186. MANDATORY DEPOSITS TO FUND NECESSARY REPAIRS. (a) In this section:

(1) "Bank trustee" means a bank authorized to do business in this state, with the power to act as trustee.

(2) "Department assistance" means any state or federal assistance administered by or through the department, including low income housing tax credits.

(3) "First lien lender" means a lender whose lien has first priority.

(4) "Reserve account" means an individual account:

(A) created to fund any necessary repairs for a multifamily rental housing development; and

(B) maintained by a first lien lender or bank trustee.

(b) If the department is the first lien lender with respect to the development, each owner who receives department assistance for a multifamily rental housing development that contains 25 or more rental units shall deposit annually into a reserve account:

(1) for the year 2004:

(A) not less than $150 per unit per year for units one to five years old; and

(B) not less than $200 per unit per year for units six or more years old; and

(2) for each year following the year 2004, the amounts per unit per year as described by Subdivision (1).

(c) A land use restriction agreement or restrictive covenant between the owner and the department must require the owner to begin making annual deposits to the reserve account on the date that occupancy of the multifamily rental housing development stabilizes or the date that permanent financing for the development is completely in place, whichever occurs later, and shall continue making deposits until the earliest of the following dates:

(1) the date of any involuntary change in ownership of the development;

(2) the date on which the owner suffers a total casualty loss with respect to the development or the date on which the development becomes functionally obsolete, if the development cannot be or is not restored;

(3) the date on which the development is demolished;

(4) the date on which the development ceases to be used as multifamily rental property; or

(5) the end of the affordability period specified by the land use restriction agreement or restrictive covenant.

(d) With respect to multifamily rental developments, if the establishment of a reserve fund for repairs has not been required by the first lien lender, the development owner shall set aside the repair reserve amount as a reserve for capital improvements. The reserve must be established for each unit in the development, regardless of the amount of rent charged for the unit.

(e) Beginning with the 11th year after the awarding of any

financial assistance for the development by the department, the owner of a multifamily rental housing development shall contract for a third-party physical needs assessment at appropriate intervals that are consistent with lender requirements with respect to the development. If the first lien lender does not require a third-party physical needs assessment or if the department is the first lien lender, the owner shall contract with a third party to conduct a physical needs assessment at least once during each five-year period beginning with the 11th year after the awarding of any financial assistance for the development by the department. The owner of the development shall submit to the department copies of the most recent third-party physical needs assessment conducted on the development, any response by the owner to the assessment, any repairs made in response to the assessment, and information on any necessary changes to the required reserve based on the assessment.

(f) The department may complete necessary repairs if the owner fails to complete the repairs as required by Subsection (e). Payment for those repairs must be made directly by the owner of the development or through a reserve account established for the development under this section.

(g) If notified of the development owner's failure to comply with a local health, safety, or building code, the department may enter on the property and complete any repairs necessary to correct a violation of that code, as identified in the applicable violation report, and may pay for those repairs through a reserve account established for the development under this section.

(h) The duties of the owner of a multifamily rental housing development under this section cease on the date of a voluntary change in ownership of the development, but the subsequent owner of the development is subject to the deposit, inspection, and notification requirements of Subsections (b), (c), (d), and (e).

(i) The first lien lender shall maintain the reserve account. In the event there is no longer a first lien lender, then Subsections (b) and (d) no longer apply.

(j) The department shall adopt rules that:

(1) establish requirements and standards regarding:

(A) for first lien lenders and bank trustees:

(i) maintenance of reserve accounts and reasonable costs of that maintenance;

(ii) asset management;

(iii) transfer of money in reserve accounts to the department to fund necessary repairs; and

(iv) oversight of reserve accounts and the provision of financial data and other information to the department; and

(B) for owners, inspections of the multifamily rental housing developments and identification of necessary repairs, including requirements and standards regarding construction, rehabilitation, and occupancy that may enable quicker identification of those repairs;

(2) identify circumstances in which money in the reserve accounts may:

(A) be used for expenses other than necessary repairs, including property taxes or insurance; and

(B) fall below mandatory deposit levels without resulting in department action;

(3) define the scope of department oversight of reserve accounts and the repair process;

(4) provide the consequences of any failure to make a required deposit, including a definition of good cause, if any, for a failure to make a required deposit;

(5) specify or create processes and standards to be used by the department to obtain repairs for developments;

(6) define for purposes of Subsection (c) the date on which occupancy of a development is considered to have stabilized and the date on which permanent financing is considered to be completely in place; and

(7) provide for appointment of a bank trustee as necessary under this section.

(k) The department shall assess an administrative penalty on development owners who fail to contract for the third-party physical needs assessment and make the identified repairs as required by this section. The department may assess the administrative penalty in the same manner as an administrative penalty assessed under Section 2306.6023. The penalty is computed by multiplying $200 by the number of dwelling units in the development and must be paid to the department. The office of the attorney general shall assist the department in the collection of the penalty and the enforcement of this subsection.

(l) This section does not apply to a development for which an

owner is required to maintain a reserve account under any other provision of federal or state law.

Added by Acts 2003, 78th Leg., ch. 330, Sec. 13, eff. Sept. 1, 2003.

Sec. 2306.187. ENERGY EFFICIENCY STANDARDS FOR CERTAIN SINGLE AND MULTIFAMILY DWELLINGS. (a) A newly constructed single or multifamily dwelling that is constructed with assistance awarded by the department, including state or federal money, housing tax credits, or multifamily bond financing, must include energy conservation and efficiency measures specified by the department. The department by rule shall establish a minimum level of energy efficiency measures that must be included in a newly constructed single or multifamily dwelling as a condition of eligibility to receive assistance awarded by the department for housing construction. The measures adopted by the department may include:

(1) the installation of Energy Star-labeled ceiling fans in living areas and bedrooms;

(2) the installation of Energy Star-labeled appliances;

(3) the installation of Energy Star-labeled lighting in all interior units;

(4) the installation of Energy Star-labeled ventilation equipment, including power-vented fans, range hoods, and bathroom fans;

(5) the use of energy efficient alternative construction material, including structural insulated panel construction;

(6) the installation of central air conditioning or heat pump equipment with a better Seasonal Energy Efficiency Rating (SEER) than that required by the energy code adopted under Section 388.003, Health and Safety Code; and

(7) the installation of the air ducting system inside the conditioned space.

(b) A single or multifamily dwelling must include energy conservation and efficiency measures specified by the department if:

(1) the dwelling is rehabilitated with assistance awarded by the department, including state or federal money, housing tax credits, or multifamily bond financing; and

(2) any portion of the rehabilitation includes alterations that will replace items that are identified as required efficiency

measures by the department.

(c) The energy conservation and efficiency measures the department requires under Subsection (b) may not be more stringent than the measures the department requires under Subsection (a).

(d) The department shall review the measures required to meet the energy efficiency standards at least annually to determine if additional measures are desirable and to ensure that the most recent energy efficiency technology is considered.

(e) Subsections (a) and (b) do not apply to a single or multifamily dwelling that receives weatherization assistance money from the department or money provided under the first-time homebuyer program.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 9, eff. September 1, 2007.

Sec. 2306.188. ESTABLISHING HOME OWNERSHIP IN DISASTER AREA. (a) An applicant for federally provided financial assistance administered by the department to repair or rebuild a home damaged by a natural disaster may establish ownership of the home through nontraditional documentation of title. The department shall process an application for that assistance as if the applicant is the record title holder of the affected real property if the applicant provides to the department:

(1) on a form prescribed by the department, an affidavit summarizing the basis on which the applicant claims to be the holder of record title or, if applicable, a successor in interest to the holder of record title and stating that:

(A) there is no other person entitled to claim any ownership interest in the property; or

(B) each person who may be entitled to claim an ownership interest in the property has given consent to the application or cannot be located after a reasonable effort; and

(2) other documentation, including tax receipts, utility bills, or evidence of insurance for the home, that indicates that the applicant exercised ownership over the property at the time of the natural disaster.

(b) This section does not establish record ownership or otherwise alter legal ownership of real property.

(c) The department is not liable to any claimed owner of an interest in real property for administering financial assistance as permitted by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1135 (H.B. 2450), Sec. 1, eff. September 1, 2009.

SUBCHAPTER I. HOUSING FINANCE DIVISION: FUNDS

Sec. 2306.201. HOUSING TRUST FUND. (a) The housing trust fund is a fund:

(1) administered by the department through the housing finance division; and

(2) placed with the Texas Treasury Safekeeping Trust Company.

(b) The fund consists of:

(1) appropriations or transfers made to the fund;

(2) unencumbered fund balances;

(3) public or private gifts, grants, or donations;

(4) investment income, including all interest, dividends, capital gains, or other income from the investment of any portion of the fund;

(5) repayments received on loans made from the fund; and

(6) funds from any other source.

(c) The department may accept gifts, grants, or donations for the housing trust fund. All funds received for the housing trust fund under Subsection (b) shall be deposited or transferred into the Texas Treasury Safekeeping Trust Company.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 29, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 223, Sec. 1, eff. May 24, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 1, eff. June 19, 2009.

Sec. 2306.202. USE OF HOUSING TRUST FUND. (a) The department, through the housing finance division, shall use the housing trust fund to provide loans, grants, or other comparable forms of assistance to local units of government, public housing authorities,

nonprofit organizations, and income-eligible individuals, families, and households to finance, acquire, rehabilitate, and develop decent, safe, and sanitary housing. In each biennium the first $2.6 million available through the housing trust fund for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for local units of government, public housing authorities, and nonprofit organizations. Any additional funds may also be made available to for-profit organizations provided that at least 45 percent of available funds, as determined on September 1 of each state fiscal year, in excess of the first $2.6 million shall be made available to nonprofit organizations for the purpose of acquiring, rehabilitating, and developing decent, safe, and sanitary housing. The remaining portion shall be distributed to nonprofit organizations, for-profit organizations, and other eligible entities. Notwithstanding any other section of this chapter, but subject to the limitations in Section 2306.251(c), the department may also use the fund to acquire property to endow the fund.

(b) Use of the fund is limited to providing:

(1) assistance for individuals and families of low and very low income;

(2) technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income; and

(3) security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 980, Sec. 30, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 2, eff. June 19, 2009.

Sec. 2306.203. RULES REGARDING ADMINISTRATION OF HOUSING TRUST FUND. The board shall adopt rules to administer the housing trust fund, including rules providing:

(1) that the division give priority to programs that maximize federal resources;

(2) for a process to set priorities for use of the fund, including the distribution of fund resources in accordance with a plan that is developed and approved by the board and included in the department's annual report regarding the housing trust fund as described in the General Appropriations Act;

(3) that the criteria used to evaluate a proposed activity will include the:

(A) leveraging of resources;

(B) cost-effectiveness of the proposed activity; and

(C) extent to which individuals and families of very low income are served by the proposed activity;

(4) that funds may not be made available for a proposed activity that permanently and involuntarily displaces individuals and families of low income;

(5) that the board attempt to allocate funds to achieve a broad geographical distribution with:

(A) special emphasis on equitably serving rural and nonmetropolitan areas; and

(B) consideration of the number and percentage of income-qualified families in different geographical areas; and

(6) that multifamily housing developed or rehabilitated through the fund remain affordable to income-qualified households for at least 20 years.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 3, eff. June 19, 2009.

Sec. 2306.204. INDEPENDENT AUDIT OF HOUSING TRUST FUND. (a) An independent auditor shall annually conduct an audit of the housing trust fund to determine the amount of unencumbered fund balances that is greater than the amount required for the reserve fund.

(b) The independent auditor shall submit the audit report to the board not later than December 31 of each year.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.205. TRANSFER OF MONEY TO HOUSING TRUST FUND. (a)

Except as provided by Subsections (c), (d), and (e), not later than January 10 of each year the housing finance division shall transfer to the housing trust fund an amount, as determined by the audit report prepared under Section 2306.204, equal to one-half of the housing finance division's unencumbered fund balances in excess of two percent of the division's total bonded indebtedness that is not rated on its own merits in the highest long-term debt rating category by one or more nationally recognized rating agencies.

(b) The department shall determine the unencumbered fund balance under Subsection (a) according to the debt rating criteria established for housing finance agencies by one or more nationally recognized rating agencies.

(c) If, at the time an annual audit required by Section 2306.204 is concluded, the housing finance division's unencumbered fund balances exceed four percent of its total bonded indebtedness that is not rated on its own merits in the highest long-term debt rating category, the department shall transfer not later than January 10 of the next year all amounts in excess of that four percent.

(d) If, at the time an annual audit required by Section 2306.204 is concluded, a nationally recognized rating agency has recommended that the housing finance division maintain unencumbered fund balances in excess of the amount permitted by Subsection (a) to achieve or maintain a rating of at least Aa/A+ on all or a portion of the bonded indebtedness of the housing finance division that is issued under an open indenture or an open flow of funds, the department shall transfer not later than January 10 of the next year all amounts in excess of the amount required by the rating agency to be held as unencumbered fund balances.

(e) If, at the time an annual audit required by Section 2306.204 is concluded, a nationally recognized rating agency has recommended that the housing finance division increase the amount of its unencumbered fund balances to achieve or maintain a financially sound condition or to prevent a decrease in the long-term debt rating maintained on all or a portion of the housing finance division's bonded indebtedness, the housing finance division may not make further annual transfers to the housing trust fund until all requirements and conditions of the rating agency have been met.

(f) In addition to the money transferred into the housing trust fund under this section, and subject to Subsection (e), the department shall transfer into the fund the amount of any origination

fee, asset oversight fee, and servicing fee the department or the Texas State Affordable Housing Corporation receives in relation to the administration of its 501(c)(3) bond program established pursuant to Section 2306.358 that exceeds the amount needed by the department or the Texas State Affordable Housing Corporation to pay its operating and overhead costs and fund reserves, including an insurance reserve or credit enhancement reserve established by the board in administering the program.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 31, eff. Sept. 1, 1997.

Sec. 2306.206. HOUSING TRUST FUND NOT SUBJECT TO TEXAS TRUST CODE. The housing trust fund provided for by this subchapter is not subject to Subtitle B, Title 9, Property Code.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.207. RESERVE FUND. (a) The department may create a reserve fund with the comptroller out of:

(1) proceeds from the sale of the department's bonds; or

(2) other resources.

(b) The reserve fund is additional security for the division's bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 8.75, eff. Sept. 1, 1997.

SUBCHAPTER J. HOUSING FINANCE DIVISION: LOAN TERMS AND CONDITIONS

Sec. 2306.221. HOUSING DEVELOPMENT LOANS. To finance the purchase, construction, remodeling, improvement, or rehabilitation of housing developments for residential housing designed and planned for individuals and families of low and very low income and families of moderate income, the department, on the terms and conditions stated in this chapter, may:

(1) make, commit to make, and participate in the making of

mortgage loans, including federally insured loans to housing sponsors; and

(2) make temporary loans and advances in anticipation of permanent mortgage loans.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.222. CONTRACTS AND AGREEMENTS REGARDING HOUSING DEVELOPMENTS. The department may enter into agreements and contracts with housing sponsors and mortgage lenders under this chapter to make or participate in mortgage loans for residential housing for individuals and families of low and very low income and families of moderate income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.223. CRITERIA FOR FINANCING HOUSING DEVELOPMENT OF HOUSING SPONSOR. Notwithstanding any other provision of this chapter, the department may not finance a housing development undertaken by a housing sponsor under this chapter, unless the department first determines that:

(1) the housing development is necessary to provide needed decent, safe, and sanitary housing at rentals or prices that individuals or families of low and very low income or families of moderate income can afford;

(2) the housing sponsor undertaking the proposed housing development will supply well-planned and well-designed housing for individuals or families of low and very low income or families of moderate income;

(3) the housing sponsor is financially responsible;

(4) the housing sponsor is not, or will not enter into a contract for the proposed housing development with, a housing developer that:

(A) is on the department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) breached a contract with a public agency; or

(C) misrepresented to a subcontractor the extent to which the developer has benefited from contracts or financial

assistance that has been awarded by a public agency, including the scope of the developer's participation in contracts with the agency and the amount of financial assistance awarded to the developer by the agency;

(5) the financing of the housing development is a public purpose and will provide a public benefit; and

(6) the housing development will be undertaken within the authority granted by this chapter to the housing finance division and the housing sponsor.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 7.01, eff. Sept. 1, 2001.

Sec. 2306.224. LOAN TERMS AND CONDITIONS. A loan financed through a program of the housing finance division under this subchapter is subject to the terms and conditions provided by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.225. RATIO OF LOAN TO DEVELOPMENT COST; AMORTIZATION PERIOD. (a) Except as provided by Subsection (b), the ratio of loan to total housing development cost and the amortization period of a loan insured or guaranteed by the federal government is governed by the federal government mortgage insurance commitment or federal guarantee for each housing development.

(b) The amortization period for a loan may not exceed 40 years.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.226. INTEREST RATES. (a) The board shall set the interest rates at which the housing finance division makes loans and loan commitments.

(b) The interest rates shall be set to produce, when combined with other available funds, at least the amounts required to pay for the housing finance division's costs of operation and to meet its covenants with and responsibilities to the holders of its bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.227. PREPAYMENT OF MORTGAGE LOANS. A mortgage loan made under this chapter may be prepaid to maturity after the period of years and under the terms and conditions determined by the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.228. LOAN FEES. The department shall make and collect loan fees that the department determines are reasonable, including:

(1) fees to reimburse the housing finance division's financing costs;

(2) service charges;

(3) insurance premiums;

(4) mortgage insurance premiums; and

(5) fees for administrative costs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.229. DOCUMENTS SUPPORTING MORTGAGE LOANS. (a) A mortgage loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage that creates a lien on the housing development and on all real property that constitutes the site of or that relates to the housing development.

(b) A note or bond and a mortgage or deed of trust:

(1) must contain provisions satisfactory to the department;

(2) must be in a form satisfactory to the department; and

(3) may contain exculpatory provisions relieving the borrower or its principal from personal liability if the department agrees.

(c) For each loan made for the development of multifamily housing with funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.), the department shall obtain a mortgagee's title policy in the amount of the loan. The department may not designate a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance

company. The borrower shall select the title insurance company to close the loan and to provide the mortgagee title policy.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 24, eff. September 1, 2007.

Sec. 2306.230. AGREEMENTS REGARDING CERTAIN LIMITATIONS ON HOUSING SPONSORS. A mortgage loan is subject to an agreement between the department and the housing sponsor that subjects the sponsor and its principals or stockholders to limitations established by the department regarding:

(1) rentals and other charges;

(2) builders' and developers' profits and fees;

(3) the disposition of its property; and

(4) the real property that constitutes the site of or relates to the housing development.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.231. LOAN CONDITIONS RELATING TO DEPARTMENT POWERS. As a condition of each loan, the department, acting through the housing finance division, may at any time during the construction, rehabilitation, or operation of a housing development:

(1) enter and inspect the housing development to:

(A) investigate the development's:

(i) physical and financial condition;

(ii) construction;

(iii) rehabilitation;

(iv) operation;

(v) management; and

(vi) maintenance; and

(B) examine all books and records relating to:

(i) capitalization;

(ii) income; and

(iii) other matters regarding capitalization or income;

(2) impose charges that are required to cover the cost of

inspections and examinations under Subdivision (1);

(3) order alterations, changes, or repairs necessary to protect:

(A) the security of the department's investment in a housing development; or

(B) the health, safety, and welfare of the occupants of a housing development;

(4) order a managing agent, housing development manager, or housing development owner to do whatever is necessary to comply with or refrain from violating an applicable law, ordinance, department rule, or term of an agreement regarding the housing development; and

(5) file and prosecute a complaint against a managing agent, housing development manager, or housing development owner for a violation of any applicable law or ordinance.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.232. TEXAS HOUSING AGENCY LOAN OR GUARANTEE. A loan or guarantee made by the Texas Housing Agency becomes a loan or guarantee of the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 33, eff. Sept. 1, 1997.

SUBCHAPTER K. HOUSING PROGRAMS

Sec. 2306.251. PROPERTY OWNERSHIP PROGRAM. (a) While it is not the intent of the legislature that the department compete with the private sector by becoming a long-term owner of real property merely for the purpose of owning, managing, and operating tenant properties, the department may acquire, own, reconstruct, rehabilitate, manage, or operate real property:

(1) on an interim basis for sale or rental to:

(A) individuals and families of low and very low income and families of moderate income; and

(B) nonprofit housing organizations and other housing organizations to serve the needs of individuals and families of low and very low income and families of moderate income;

(2) for a period of time not to exceed 10 years for the

purposes of:

(A) preserving publicly financed or subsidized housing; or

(B) participating in a risk-sharing program entered into with the United States Department of Housing and Urban Development, any other insurer or guarantor of any United States Department of Housing and Urban Development-related indebtedness, a government sponsored enterprise, a housing finance agency or corporation, or a public housing authority.

(b) The department may use money from the housing trust fund, unencumbered fund balances, fees received by the housing finance division, proceeds from the sale or rental of real property, distribution of earnings under Section 2306.557, or appropriations, allocations, grants, or gifts from any public or private source to purchase property under this section.

(c) If the department uses the housing trust fund to finance real property acquisitions, it may not use more than 10 percent of the yearly balance of the fund to acquire the real property.

(d) If the department acquires property under this section, the department shall submit an annual report to the board that includes an analysis of the property ownership program's:

(1) financial stability;

(2) cost-effectiveness; and

(3) effectiveness in serving individuals and families of low and very low income and families of moderate income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.77(b), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 34, eff. Sept. 1, 1997.

Sec. 2306.252. HOUSING RESOURCE CENTER. (a) The board shall establish a housing resource center in the housing finance division.

(b) The department, through the center, shall:

(1) provide educational material prepared in plain language to housing advocates, housing sponsors, borrowers, and tenants;

(2) provide technical assistance to nonprofit housing sponsors;

(3) assist in the development of housing policy, including the annual state low income housing plan and report and the

consolidated plan; and

(4) provide, in cooperation with the state energy conservation office, the Texas Commission on Environmental Quality, and other governmental entities, information on the use of sustainable and energy efficient housing construction products and assist local governments and nonprofits in identifying information on sustainable and energy efficient housing construction and energy efficient resources and techniques.

(c) The housing resource center is intended to assist individuals, local organizations, and local governments in providing for the housing needs of individuals and families in their communities by providing information available to the center to housing contractors, nonprofit housing sponsors, community-based organizations, and local governments on:

(1) local housing needs;

(2) housing programs;

(3) available funding sources; and

(4) programs that affect the creation, improvement, or preservation of housing affordable to individuals and families of low and very low income.

(d) The center shall serve as a housing and community services clearinghouse to provide information to the public, local communities, housing providers, and other interested parties regarding:

(1) the performance of each department program;

(2) the number of people served;

(3) the income of people served;

(4) the funding amounts distributed;

(5) allocation decisions;

(6) regional impact of department programs; and

(7) any other relevant information.

(e) The center shall compile the department's reports into an integrated format and shall compile and maintain a list of all affordable housing resources in the state, organized by community.

(f) The information required under Subsections (d) and (e) must be readily available in:

(1) a hard-copy format; and

(2) a user-friendly format on the department's website.

Text of subsection effective until April 1, 2025

(g) The center shall provide information regarding the

department's housing and community affairs programs to the Texas Information and Referral Network for inclusion in the statewide information and referral network as required by Section 531.0312.

Text of subsection effective on April 1, 2025

(g) The center shall provide information regarding the department's housing and community affairs programs to the Texas Information and Referral Network for inclusion in the statewide information and referral network as required by Section 526.0004.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 35, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 1.21, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 14, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.22, eff. April 1, 2025.

Sec. 2306.253. HOMEBUYER EDUCATION PROGRAM. (a) The department shall develop and implement a statewide homebuyer education program designed to provide information and counseling to prospective homebuyers about the home buying process.

(b) The department shall develop the program in cooperation with the Texas Agricultural Extension Service, the Texas Department of Human Services, the Real Estate Research Center at Texas A&M University, the Texas Workforce Commission, experienced homebuyer education providers, community-based organizations, and advocates of affordable housing. The department shall implement the program through self-help centers when feasible.

(c) The department shall make full use of existing training and informational materials available from sources such as the United States Department of Housing and Urban Development, the cooperative extension system, the Neighborhood Reinvestment Corporation, and existing homebuyer education providers.

(d) In order to implement this section, the department may use money available to the department for housing purposes that the department is not prohibited from spending on the homebuyer education program, including:

(1) the amount of administrative or service fees the department receives from the issuance or refunding of bonds that

exceeds the amount the department needs to pay its overhead costs in administering its bond programs; and

(2) money the department receives from other entities by gift or grant under a contract.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 36, eff. Sept. 1, 1997.

Sec. 2306.255. CONTRACT FOR DEED CONVERSION PROGRAM. (a) In this section, "office" means the office established by the department to promote initiatives for colonias.

(b) The office shall establish a program to guarantee loans made by private lenders to convert a contract for deed into a warranty deed. To the extent possible, the office shall encourage conversion of a contract for deed under the program into a general warranty deed.

(c) The office shall make agreements with private lenders that will issue loans for contract conversions under the guarantee of the department. The office and the lender must agree on the criteria for issuing a deed conversion loan, including the percentage of the guarantee to be issued by the department.

(d) The office may not make an agreement with a lender unless the agreement allows the office to annually renegotiate the guarantee percentage for a loan issued by the lender. The office shall renegotiate the terms of a guarantee when possible to obtain a better guarantee percentage for the state from the lender.

(e) The office may establish eligibility criteria for a holder of a contract for deed who participates in this program. The criteria must include a priority for homeowners and owners of residential real property who are individuals or families of low, very low, or extremely low income.

(f) The office shall use funds allocated to the department under the federal HOME Investment Partnerships program established under Title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.) for a guarantee issued under this section.

(g) The office may use the services of the Texas State Affordable Housing Corporation when necessary to accomplish the purposes of this section.

(h) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1079, Sec.

5.01(1), eff. September 1, 2013.

(i) The department may adopt rules necessary to accomplish the purposes of this section.

Added by Acts 1999, 76th Leg., ch. 1238, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.22, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 5.01(1), eff. September 1, 2013.

Sec. 2306.256. AFFORDABLE HOUSING PRESERVATION PROGRAM. (a) The department shall develop and implement a program to preserve affordable housing in this state.

(b) Through the program, the department shall:

(1) maintain data on housing projected to lose its affordable status;

(2) develop policies necessary to ensure the preservation of affordable housing in this state;

(3) advise other program areas with respect to the policies; and

(4) assist those other program areas in implementing the policies.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.23, eff. Sept. 1, 2001.

Sec. 2306.2561. AFFORDABLE HOUSING PRESERVATION PROGRAM: LOANS AND GRANTS. (a) The department, through the housing finance division, shall provide loans and grants to political subdivisions, housing finance corporations, public housing authorities, for-profit organizations, nonprofit organizations, and income-eligible individuals, families, and households for purposes of rehabilitating housing to preserve affordability of the housing.

(b) The department may use any available revenue, including legislative appropriations, to provide loans and grants under this section.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.03, eff. Sept. 1,

2001.

Sec. 2306.257. APPLICANT COMPLIANCE WITH STATE AND FEDERAL LAWS PROHIBITING DISCRIMINATION: CERTIFICATION AND MONITORING. (a) The department may provide assistance through a housing program under this chapter only to an applicant who certifies the applicant's compliance with:

(1) state and federal fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. Section 3601 et seq.), and the Fair Housing Amendments Act of 1988 (42 U.S.C. Section 3601 et seq.);

(2) the Civil Rights Act of 1964 (42 U.S.C. Section 2000a et seq.);

(3) the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.); and

(4) the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.).

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1341, Sec. 42, eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.23, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 42, eff. September 1, 2007.

Sec. 2306.258. TRANSITIONAL HOUSING PILOT PROGRAM. (a) If funds are available, the department shall operate a transitional housing pilot program in four areas of the state.

(b) The program must address the needs of the homeless for:

(1) interim housing;

(2) physical and mental health services;

(3) literacy training;

(4) job training;

(5) family counseling;
(6) credit counseling;
(7) education services; and
(8) other services that will prevent homelessness.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.80(a), eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2307.006 and amended by Acts 2001, 77th Leg., ch. 432, Sec. 2, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.256 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(87), eff. Sept. 1, 2003.

Sec. 2306.2585. HOMELESS HOUSING AND SERVICES PROGRAM. (a) The department may administer a homeless housing and services program in each municipality in this state with a population of 285,500 or more to:

(1) provide for the construction, development, or procurement of housing for homeless persons; and

(2) provide local programs to prevent and eliminate homelessness.

(b) The department may adopt rules to govern the administration of the program, including rules that:

(1) provide for the allocation of any available funding; and

(2) provide detailed guidelines as to the scope of the local programs in the municipalities described by Subsection (a).

(c) The department may use any available revenue, including legislative appropriations, appropriation transfers from the trusteed programs within the office of the governor, including authorized appropriations from the Texas Enterprise Fund, available federal funds, and any other statutorily authorized and appropriate funding sources transferred from the trusteed programs within the office of the governor, for the purposes of this section. The department shall solicit and accept gifts and grants for the purposes of this section. The department shall use gifts and grants received for the purposes of this section before using any other revenue.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 43.03, eff. September 28, 2011.

Sec. 2306.259. AFFORDABLE HOUSING RESEARCH AND INFORMATION PROGRAM. With money available under Section 1372.006(a), the department shall establish an affordable housing research and information program in which the department shall contract for:

(1) periodic market studies to determine the need for housing for families of extremely low, very low, and low income in census tracts throughout the state;

(2) research from qualified professionals to determine the effect of affordable housing developments on property values, social conditions, and quality of life in surrounding neighborhoods;

(3) independent research in affordable housing design and development approaches that enhance community acceptance of affordable housing and improve the quality of life for the residents of the housing; and

(4) public education and outreach efforts to assist the public in understanding the nature and purpose of affordable housing and the process for public participation in the administration of affordable housing programs.

Added by Acts 2003, 78th Leg., ch. 1329, Sec. 17, eff. Sept. 1, 2003.

SUBCHAPTER L. HOUSING FINANCE DIVISION: REGULATION OF HOUSING SPONSORS

Sec. 2306.261. SUPERVISING HOUSING SPONSORS. The housing finance division may, as provided by this subchapter, supervise:

(1) housing sponsors, including limited profit housing sponsors, of housing developments that are financed under this chapter and rented or leased to tenants; and

(2) real and personal property of sponsors.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.262. UNIFORM SYSTEMS OF ACCOUNTS AND RECORDS. The department may require uniform systems of accounts and records for housing sponsors.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.263. REPORTING. The department may require housing sponsors to:

(1) make reports and certifications of their expenditures; and

(2) answer specific questions on forms whenever necessary for the purposes of this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.2631. REPORTS BY SPONSORS OF CERTAIN MULTIFAMILY HOUSING DEVELOPMENTS. (a) This section applies only to a housing sponsor of a multifamily housing development that:

(1) receives financial assistance from the state;

(2) receives financial assistance from the federal government, including an allocation of low income housing tax credits; or

(3) is subject to a land use restriction agreement.

(b) The department by rule shall require the housing sponsor of a multifamily housing development to submit a quarterly report to the department. The report must include information that identifies:

(1) the number of vacant units in the development at the time of the report; and

(2) the number of days that each unit has been vacant.

(c) The department shall provide to each member of the legislature, on request of that member, a report that disaggregates the information collected under Subsection (b) by zip code in the member's district.

Added by Acts 2009, 81st Leg., R.S., Ch. 1423 (S.B. 1717), Sec. 1, eff. September 1, 2009.

Sec. 2306.264. INSPECTIONS AND EXAMINATIONS. The department, through its agents or employees, may:

(1) enter and inspect, in whole or in part, the land, buildings, and equipment of a housing sponsor; and

(2) examine all records showing the capital structure, income, expenditures, and other payments of a housing sponsor.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.265. OPERATION, MAINTENANCE, AND REPAIR. The department may:

(1) supervise the operation and maintenance of a housing development; and

(2) order necessary repairs to protect the public interest or the health, welfare, or safety of the housing development occupants.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.266. FEES RELATING TO REGULATION. The department may require a housing sponsor to pay the housing finance division fees for the cost of regulating the housing sponsor, including the cost of:

(1) examination;

(2) inspection;

(3) supervision; and

(4) auditing.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.267. COMPLIANCE WITH APPLICABLE LAWS, RULES, AND CONTRACT TERMS. The department may order a housing sponsor to perform or refrain from performing certain acts in order to comply with the law, department rules, or terms of a contract or agreement to which the housing sponsor is a party.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 37, eff. Sept. 1, 1997.

Sec. 2306.268. RENTS AND CHARGES. The department shall approve and may change from time to time a schedule of rents and charges for a housing development operated by the department under Section 2306.251.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.269. TENANT AND MANAGER SELECTION. (a) The department shall set standards for tenant and management selection by a housing sponsor.

(b) The department shall prohibit a multifamily rental housing development funded or administered by the department, including a development supported with a housing tax credit allocation under Subchapter DD, from:

(1) excluding an individual or family from admission to the development because the individual or family participates in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f); and

(2) using a financial or minimum income standard for an individual or family participating in the voucher program described by Subdivision (1) that requires the individual or family to have a monthly income of more than 2-1/2 times the individual's or family's share of the total monthly rent payable to the owner of the development.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 3.04, eff. Sept. 1, 2001.

Sec. 2306.270. REGULATION OF RETIREMENT OF CAPITAL INVESTMENT OR REDEMPTION OF STOCK. The department shall regulate the retirement of a capital investment or the redemption of stock of a limited profit housing sponsor if the retirement or redemption, when added to a dividend or other distribution, exceeds in any one fiscal year the permitted percentage, as allowed by the department, of the original face amount of the limited profit housing sponsor's investment or equity in a housing development.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 38, eff. Sept. 1, 1997.

Sec. 2306.271. COST CONTROLS. (a) The housing finance

division by rule shall specify the categories of costs allowable in the construction, reconstruction, remodeling, improvement, or rehabilitation of a housing development.

(b) The housing finance division shall require a housing sponsor to certify the actual housing development costs on completion of the housing development, subject to audit and determination by the department.

(c) The department may accept, instead of certification of housing development costs under Subsection (b), other assurances of the costs, in any form, that will enable the housing finance division to determine with reasonable accuracy the amount of the costs.

(d) In this section, "housing development costs" means the total of all costs incurred in financing, creating, or purchasing a housing development, including a single-family dwelling, approved by the department as reasonable and necessary. The costs may include:

(1) the value of land and buildings on the land owned by the sponsor or the cost of acquiring land and buildings on the land, including payments for options, deposits, or contracts to purchase properties on the proposed housing site;

(2) costs of site preparation, demolition, and development;

(3) expenses relating to the issuance of bonds;

(4) fees paid or payable in connection with the planning, execution, and financing of the housing development, including fees to:

(A) architects;

(B) engineers;

(C) attorneys;

(D) accountants; or

(E) the housing finance division on the department's behalf;

(5) costs of necessary studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs during construction;

(6) costs of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, and apparatus related to the real property;

(7) costs of land improvements, including landscaping and off-site improvements, whether or not the costs have been paid in cash or in a form other than cash;

(8) necessary expenses for the initial occupancy of the

housing development;

(9) a reasonable profit and risk fee in addition to job overhead to the general contractor or limited profit housing sponsor;

(10) an allowance established by the department for working capital and contingency reserves and reserves for anticipated operating deficits during the first two years of occupancy; and

(11) the cost of other items, including tenant relocation if tenant relocation costs are not otherwise provided for, that the department determines are reasonable and necessary for the development of the housing development, less net rents and other net revenues received from the operation of the real and personal property on the development site during construction.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.272. HOUSING SPONSOR INVESTMENTS. (a) A principal or stockholder of a housing sponsor may not earn, accept, or receive a per annum return on an investment in a housing development financed by the department greater than that allowed by department rule.

(b) A housing sponsor's equity in a housing development is the difference between the mortgage loan and the total housing development cost.

(c) The department shall establish a housing sponsor's equity when the final mortgage advance is made.

(d) For the purposes of this section, the amount established under Subsection (c) remains constant during the life of the department's mortgage on the development, except for additional equity investment made by the sponsor with the department's approval or at its order.

(e) In this section, "housing development costs" has the meaning assigned by Section 2306.271(d).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.273. LIMITATION ON APPLICATION OF CERTAIN PROVISIONS OF SUBCHAPTER. Sections 2306.261 through 2306.271 do not apply to a housing development:

(1) for which individuals or families of low and very low income or families of moderate income receive a mortgage loan under

this chapter; and

(2) that initially is intended for occupancy by those individuals or families.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER M. HOUSING FINANCE DIVISION: PURCHASE AND SALE OF MORTGAGE LOANS

Sec. 2306.291. PURCHASE AND SALE OF MORTGAGE LOANS. (a) The department may purchase and take assignments from mortgage lenders or the federal government of notes and other obligations, including contracts for deed and mortgages, evidencing loans or interest in loans for the construction, remodeling, improvement, rehabilitation, purchase, leasing, or refinancing of housing developments for individuals and families of low and very low income and families of moderate income.

(b) The department may sell, at public or private sale, with or without public bidding, a mortgage or other obligation held by the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 39, eff. Sept. 1, 1997.

Sec. 2306.292. ELIGIBILITY OF MORTGAGE LOANS FOR PURCHASE. A mortgage loan or interest in a mortgage loan is not eligible for purchase by or on behalf of the department from a mortgage lender unless the mortgage lender certifies that the mortgage loan or interest in the mortgage loan is for a housing development for individuals or families of low and very low income or for families of moderate income.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.293. FEDERALLY ASSISTED MORTGAGE LOANS. A mortgage loan or interest in a mortgage loan purchased or sold under this subchapter may include a mortgage loan that is insured, guaranteed, or assisted by the federal government or a mortgage loan that the

federal government has committed to insure, guarantee, or assist.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.294. MORTGAGE LOAN PURCHASE PRICE. (a) On purchasing a mortgage loan or interest in a mortgage loan from a mortgage lender, the department shall pay a purchase price equal to the outstanding principal balance, except that a discount from the principal balance or the payment of a premium may be used to produce a fair rate of return consistent with the obligations of the department and the purposes of this chapter.

(b) In addition to payment of the outstanding principal balance, the department shall pay the accrued interest due to the date on which the mortgage loan is delivered against payment.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.295. RULES GOVERNING PURCHASE AND SALE OF MORTGAGE LOANS. The department shall adopt rules governing the purchase and sale of mortgage loans and the application of sale proceeds, including rules governing:

(1) procedures for submitting requests or inviting proposals for the purchase and sale of mortgage loans or interest in the mortgage loans;

(2) restrictions on the number of family units, location, or other qualifications of residences to be financed by residential mortgage loans;

(3) income limits of individuals and families of low and very low income or families of moderate income occupying a residence financed by a residential mortgage loan;

(4) restrictions relating to the interest rates on mortgage loans or the return realized by mortgage lenders;

(5) requirements for commitments by mortgage lenders relating to mortgage loans;

(6) schedules of fees and charges necessary for expenses and reserves of the housing finance division;

(7) resale of the housing development; and

(8) any other matter related to the power of the department to purchase and sell mortgage loans or interests in mortgage loans.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.296. REVIEW AND SUBSTITUTION OF PURCHASED MORTGAGE LOANS. (a) The department shall review each mortgage loan purchased or financed by the department to determine if the loan meets:

(1) the conditions of this chapter;

(2) the department's rules; and

(3) any commitment made with the mortgage lender to purchase mortgage loans.

(b) The department may require the substitution of another mortgage loan if it determines that a loan does not comply with the criteria of Subsection (a).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.297. APPLICATION OF PROVISIONS RELATING TO LOAN TERMS AND CONDITIONS. Sections 2306.225 through 2306.229 apply to the purchase of mortgage loans.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER P. HOUSING FINANCE DIVISION BONDS: ISSUANCE OF BONDS

Sec. 2306.351. ISSUANCE OF BONDS. (a) The department may issue bonds under this chapter, including qualified 501(c)(3) bonds under Section 145, Internal Revenue Code of 1986 (26 U.S.C. Section 145), and may:

(1) provide for and secure payment of the bonds;

(2) provide for the rights of the holders of the bonds, as permitted by this chapter and the Texas Constitution; and

(3) purchase, hold, cancel, resell, or otherwise dispose of its bonds, subject to restrictions in a resolution authorizing issuance of its bonds.

(b) In connection with or incidental to issuing and selling its bonds, the department may enter into contracts that the board considers necessary or appropriate for the department's obligation, as represented by the bonds and incidental contracts, to be placed, in whole or in part, on the basis desired by the board, including interest rate, currency, or cash flow.

(c) Contracts that may be entered into under Subsection (b) include contracts:

(1) commonly known as interest rate swap agreements, currency swap agreements, or forward payment conversion agreements;

(2) providing for payments based on levels of or changes in interest rates or currency exchange rates;

(3) to exchange cash flows or a series of payments; or

(4) that include options, puts or calls to hedge payment, currency, rate, spread, or similar exposure.

(d) A contract entered into under this section shall be on terms and conditions approved by the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 40, eff. Sept. 1, 1997.

Sec. 2306.352. TEXAS HOUSING BONDS. (a) The board by resolution may provide for the issuance of negotiable bonds as authorized by the Texas Constitution.

(b) The bonds shall be on a parity and shall be called Texas Housing Bonds.

(c) The board:

(1) may issue the bonds in one or several installments; and

(2) shall date the bonds of each issue.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.353. REVENUE BONDS. (a) In addition to issuing general obligation bonds under Section 2306.352, the department may issue revenue bonds to provide money to carry out a purpose, power, or duty of the housing finance division under this chapter.

(b) The bonds may be issued from time to time in one or more series or issues.

(c) The bonds shall be payable as to principal, interest, and redemption premium, if any, from, and secured by, a first or subordinate lien on, and pledge of, all or part of the revenues, income, or other resources of the housing finance division, including:

(1) the repayments of mortgage loans;

(2) the earnings from investment or deposit of the reserve fund and other funds of the housing finance division;

(3) the fees, charges, and other amounts or payments received under this chapter; and

(4) appropriations, grants, allocations, subsidies, rent supplements, guaranties, aid, contribution, or donations.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.354. DEFINITIVE REFUNDING BONDS. (a) The department may issue definitive refunding bonds if the bonds are issued and delivered to refund:

(1) other department bonds; or

(2) the obligations of:

(A) the department's predecessor; or

(B) a local housing finance corporation.

(b) The bonds must be payable as to principal, interest, and redemption premium, if any, from the refunding bonds and other revenues, income, or resources of the department.

(c) The department may contract to issue, sell, and deliver the definitive refunding bonds in a manner that will provide the money necessary to pay a required part of the principal, interest, and redemption premium, if any, on the refunded bonds or obligations when due.

(d) The refunded bonds or obligations may be refunded in another manner permitted by this chapter or other state law, including Chapter 1207.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.247, eff. Sept. 1, 2001.

Sec. 2306.355. ISSUANCE OF ADDITIONAL PARITY OR SUBORDINATE LIEN BONDS. The department may issue additional parity bonds or subordinate lien bonds under terms or conditions in the resolution authorizing issuance of the bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.356. ISSUANCE OF BONDS TO FUND DEPARTMENT RESERVES OR FUNDS. The department may issue bonds to provide all or part of the money required for funding or increasing the department's reserves or funds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.357. BONDS ISSUED BY TEXAS HOUSING AGENCY. A general obligation or revenue bond issued by the Texas Housing Agency becomes a general obligation or revenue bond of the department.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 41, eff. Sept. 1, 1997.

Sec. 2306.358. ISSUANCE OF QUALIFIED 501(C)(3) BONDS. (a) Of the total qualified 501(c)(3) bonds issued under Section 145 of the Internal Revenue Code of 1986 (26 U.S.C. Section 145) in each fiscal year, it is the express intent of the legislature that the department shall allocate qualified 501(c)(3) bonding authority as follows:

(1) not more than 25 percent of the total annual issuance amount authorized through the memorandum of understanding provided for in Subsection (b) may be used for projects in any one metropolitan area; and

(2) at least 15 percent of the annual issuance amount authorized through the memorandum of understanding provided for in Subsection (b) is reserved for projects in rural areas.

(a-1) For the purposes of Subsection (a), "rural area" and "metropolitan area" shall be defined through the memorandum of understanding provided for in Subsection (b).

(b) A qualified 501(c)(3) bond may not be issued unless approved by the Bond Review Board. In addition, the Bond Review Board shall enter into a memorandum of understanding with the department specifying the amount of bonds to be issued in each fiscal year. The department and the Bond Review Board shall review the memorandum of understanding annually to determine the specific amount of bonds to be issued in each fiscal year. The Bond Review Board may

not approve a proposal to issue qualified 501(c)(3) bonds unless they meet the requirements of this section, including the memorandum of understanding, and all other laws that may apply.

(c) In addition to the requirements of Section 145 of the Internal Revenue Code of 1986 (26 U.S.C. Section 145), a qualified 501(c)(3) organization must:

(1) demonstrate to the department that the project is carefully and conservatively underwritten to:

(A) ensure that the project is well run, well maintained, and financially viable; and

(B) minimize the risk of the organization's default;

(2) ensure that at least 60 percent of the housing to be provided under the project is affordable housing provided to individuals and families of low and very low income and:

(A) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(B) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size; and

(3) enter into an agreement with the department in which the 501(c)(3) organization:

(A) agrees during the term of the agreement to reserve at least 60 percent of the housing to be provided under the project for individuals and families of low and very low income;

(B) ensures that the reserved housing will remain affordable to individuals and families of low and very low income during the term of the agreement;

(C) agrees to not discriminate against a tenant applicant solely because the applicant receives public rental assistance payments, except if at least 15 percent of the housing units provided under the project are occupied by tenants who receive public rental assistance payments; and

(D) agrees to restrict the rents charged on those units reserved for individuals and families of low and very low income at 30 percent of the area median income adjusted for family size and utility allowance, unless this requirement is waived or modified on a case-by-case basis by the board, and approved by the Bond Review

Board, if both boards determine that the waiver or modification is necessary for an area of the state because the area's median income would prevent the construction of new affordable projects.

(d) Subsection (c)(3)(C) does not prohibit an organization from requiring a tenant applicant who receives public assistance to meet the organization's standard criteria for occupancy, including such criteria as satisfactory creditworthiness and lack of criminal history.

(e) The agreement provided for in Subsection (c)(3) may provide for the lease or sale of the project to a nonprofit corporation approved by the department subject to the conditions specified in Subsection (c).

(f) Neither the department nor the Texas State Affordable Housing Corporation may use state or federal money to provide for credit enhancement of a bond issued under this section unless the credit enhancement would facilitate the issuance of bonds for the purpose of financing the creation or preservation of affordable housing by 501(c)(3) nonprofit entities.

(g) In lieu of complying with the set-aside requirements specified in Subsection (c)(2), a qualified 501(c)(3) organization may comply with such other set-asides or restrictions as are approved by the Internal Revenue Service as a basis for the determination letter addressed to the qualified 501(c)(3) organization.

(h) For purposes of this section, "rural area" and "metropolitan area" shall be defined through the memorandum of understanding provided for in Subsection (b) of this section.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 42, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.24, eff. Sept. 1, 2001.

Sec. 2306.359. ISSUANCE OF PRIVATE ACTIVITY BONDS. (a) In evaluating an application for an issuance of private activity bonds, the department shall score and rank the application using a point system based on criteria that are adopted by the department, including criteria regarding:

(1) the income levels of tenants of the development, consistent with the funding priorities provided by Section 1372.0321;

(2) the rent levels of the units;

(3) the level of community support for the application;

(4) the period of guaranteed affordability for low income tenants;

(5) the cost per unit of the development;

(6) the size, quality, and amenities of the units;

(7) the services to be provided to tenants of the development; and

(8) other criteria as developed by the board.

(b) The department shall make available on its website details of the scoring system used by the department to score applications.

(c) The department shall underwrite the applications by determining:

(1) that the general contractor's profit, overhead, and general requirements are within the maximum limit published by the department;

(2) that the developer fee for the proposed project does not exceed the maximum amount allowed by the department; and

(3) if applicable, the amount of tax credits available to the proposed development.

(d) In adopting criteria for underwriting applications under this section, the department shall attach additional weight to criteria that will determine the maximum amount that can be awarded that will:

(1) result in an issuance of private activity bonds for developments serving the lowest income tenants; and

(2) produce the greatest number of high-quality units committed to remaining affordable to qualified tenants for extended periods.

Added by Acts 2003, 78th Leg., ch. 330, Sec. 15, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 25, eff. September 1, 2007.

SUBCHAPTER Q. HOUSING FINANCE DIVISION BONDS: BOARD ACTION ON BONDS

Sec. 2306.371. BOARD AUTHORIZATION OF BONDS. Bonds issued by the department must be authorized by board resolution.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.372. DEPARTMENT PROCEDURES. In a resolution authorizing the issuance of department bonds, the board may prescribe the systems and procedures under which the department shall function.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.373. USE OF BOND PROCEEDS. The board may provide in a resolution authorizing the issuance of department bonds that part of the proceeds from the sale of the bonds may be used to:

(1) pay the costs and expenses of issuing the bonds;

(2) pay interest on the bonds during a period required by the board;

(3) pay or repay the department's operation and maintenance expenses to the extent and for the period specified in the resolution; and

(4) fund, increase, or restore any depletions of the reserve fund or of other reserves or funds for any purpose.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.374. FACSIMILE SIGNATURES AND SEALS. (a) The board may state in a resolution authorizing the issuance of an installment or series of bonds the extent to which the presiding officer of the board or any other officer may use a facsimile signature or facsimile seal instead of a manual signature or manually impressed seal to execute or attest the bonds and appurtenant coupons.

(b) An interest coupon may be signed by the facsimile signature of the presiding officer of the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.375. PERSONAL LIABILITY OF BOARD MEMBER OR DIRECTOR. A member of the board or the director is not liable personally for bonds issued or contracts executed by the department or for any other action taken in accordance with the powers and duties authorized by this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 980, Sec. 43, eff. Sept. 1, 1997.

SUBCHAPTER R. HOUSING FINANCE DIVISION BONDS: FORM; TERMS

Sec. 2306.391. FORM. The department's bonds may be issued as:

(1) serial bonds;

(2) term bonds; or

(3) a combination of serial and term bonds as determined by the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.392. DENOMINATION. (a) The department's bonds may be issued:

(1) in coupon form payable to bearer;

(2) in fully registered form;

(3) as coupon bonds payable to bearer but registrable as to principal alone or as to both principal and interest; or

(4) in another form, including a registered uncertificated obligation not represented by written instruments, commonly known as a book-entry obligation.

(b) The department shall provide for the registration of ownership and transfer of a book-entry obligation under a system of books and records maintained by a bank serving as trustee, paying agent, or bond registrar.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.393. MANNER, PRICE, AND TERMS. The department's bonds may be sold in a manner, at a price, and under terms and conditions determined by the board under a contractual arrangement approved by the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.394. PLACE OF PAYMENT; MEDIUM OF EXCHANGE. (a) The department's bonds may be payable at a place inside or outside the

United States.

(b) The bonds may be made payable in any currency or medium of exchange, including United States dollars and currencies of other nations.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.395. INTEREST ON BONDS. The department's bonds may be issued to bear interest at a rate determined by the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.396. MATURITY OF BONDS. The department's bonds may mature within a period determined by the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.397. REDEMPTION BEFORE MATURITY; CONVERSION. (a) Department bonds may be made redeemable before maturity.

(b) The board may provide and covenant for the:

(1) conversion of one form of bond to another form; and

(2) reconversion of a bond to another form.

(c) Except as provided by Subsection (d), a replacement, converted, or reconverted bond must be approved and registered as provided by Sections 2306.431 and 2306.432, under procedures established by the resolution authorizing the bonds.

(d) If the duty of replacement, conversion, or reconversion of a bond is imposed on a place of payment (paying agent) or a corporate trustee under a trust agreement or trust indenture, the replacement, converted, or reconverted bond does not need to be reapproved by the attorney general or reregistered by the comptroller as provided by Sections 2306.431 and 2306.432.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER S. HOUSING FINANCE DIVISION BONDS: SECURITY FOR BONDS

Sec. 2306.411. SECURITY FOR PAYMENT OF PRINCIPAL, INTEREST, AND

REDEMPTION PREMIUM. (a) In addition to other security for the department's bonds authorized by this chapter, payment of the principal and interest and redemption premium, if any, on the department's bonds may be secured by a first or subordinate lien on and pledge of all or part of:

(1) the department's assets and real, personal, or mixed property, including:

(A) mortgages or other obligations securing the assets of property;

(B) investments; and

(C) trust agreements or trust indentures administered by one or more corporate trustees as allowed by the board; and

(2) the reserves or funds of the department.

(b) The form of a mortgage, trust agreement, or trust indenture securing department bonds must be authorized under the resolution authorizing the issuance of the bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 44, eff. Sept. 1, 1997.

Sec. 2306.412. VALIDITY OF LIENS AND PLEDGES. (a) A lien on or pledge of revenues, income, assets, reserves, funds, or other resources of the department, as authorized by this chapter, is valid and binding from the time of payment for and delivery of the bonds authorized by the board resolution creating or confirming the lien or pledge.

(b) A lien or pledge is fully effective as to revenues, income, assets, reserves, funds, or other resources on hand or later received, and those items are subject to the lien or pledge without physical delivery of the item or any further act.

(c) A lien or pledge is valid and binding against a party who has a claim in tort, contract, or otherwise against the department or another party, regardless of whether the party has notice of the lien or pledge.

(d) A resolution authorizing the issuance of department bonds or any other instrument creating or confirming a lien or pledge is not required to be filed or recorded, except that:

(1) the resolution or instrument must be filed in the

department's records; and

(2) each department bond resolution must be submitted to the attorney general under Section 2306.431.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 45, eff. Sept. 1, 1997.

SUBCHAPTER T. HOUSING FINANCE DIVISION BONDS: APPROVAL, REGISTRATION, AND EXECUTION

Sec. 2306.431. APPROVAL OF BONDS. (a) Bonds issued by the department and the appropriate proceedings authorizing the bonds' issuance shall be submitted to the attorney general for examination.

(b) The attorney general shall approve the bonds if the attorney general finds that the bonds have been authorized as provided by this chapter.

(c) Any bonds submitted by the department to the attorney general under this section must include a certification by the board that home mortgage loans made using the proceeds of the bonds do not include a mandatory arbitration requirement.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.25, eff. Sept. 1, 2001.

Sec. 2306.432. REGISTRATION. On approval of the attorney general under Section 2306.431, the comptroller shall register the department's bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.433. EXECUTION. Bonds authorized by Section 2306.352 shall be executed on the board's behalf as general obligations of the state as follows:

(1) the presiding officer of the board shall sign the bonds;

(2) the board shall impress its seal on the bonds;

(3) the governor shall sign the bonds; and

(4) the secretary of state shall attest the bonds and impress on them the state seal.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER U. HOUSING FINANCE DIVISION BONDS: RIGHTS AND REMEDIES OF BONDHOLDERS AND PARTIES IN INTEREST

Sec. 2306.451. STATE PLEDGE REGARDING BONDHOLDER RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the holders of bonds issued under this chapter that it will not limit or alter the rights vested in the department under this chapter to fulfill the terms of an agreement made with a bondholder or impair the rights and remedies of a bondholder until the following obligations are fully discharged:

(1) the bonds;

(2) interest on the bonds;

(3) interest on any unpaid installment of interest; and

(4) all costs and expenses related to an action or proceeding by or on behalf of the holders.

(b) The department may include the state's pledge and agreement under Subsection (a) in an agreement with the holders of the department's bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.452. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of mandamus and any other legal or equitable remedy are available to a party in interest to require the department, the comptroller, or another party to carry out an agreement or to perform a function or duty under:

(1) this chapter;

(2) the Texas Constitution; or

(3) the department's bond resolutions.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.76, eff. Sept. 1, 1997.

SUBCHAPTER V. HOUSING FINANCE DIVISION BONDS: OBLIGATIONS OF DEPARTMENT AND STATE

Sec. 2306.471. GENERAL OBLIGATION BONDS. General obligation bonds issued under Section 2306.352 and approved and registered under this chapter are general obligations of the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.472. DEPARTMENT'S BONDS OTHER THAN GENERAL OBLIGATION BONDS NOT OBLIGATIONS OF THE STATE. Except for bonds authorized by the Texas Constitution and issued under Section 2306.352, the department's bonds:

(1) are solely obligations of the department and are payable solely from funds of the housing finance division;

(2) are not an obligation, debt, or liability of the state; and

(3) do not create or constitute a pledge, giving, or lending of the faith, credit, or taxing power of the state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.473. STATE NOT OBLIGATED TO PAY; FAITH AND CREDIT NOT PLEDGED. A department bond not authorized by Section 2306.352 must contain a statement on the face of the bond that:

(1) the state is not obligated to pay the principal or interest on the bond; and

(2) the faith, credit, or taxing power of the state is not pledged, given, or loaned to payment of the bond's principal or interest.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER W. HOUSING FINANCE DIVISION BONDS: MISCELLANEOUS PROVISIONS

Sec. 2306.491. BONDS NEGOTIABLE INSTRUMENTS. Notwithstanding any other statute, a bond and interest coupon issued and delivered by the department is a negotiable instrument under the Uniform Commercial Code, except that the bond may be registered or subject to

registration under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 46, eff. Sept. 1, 1997.

Sec. 2306.492. BONDS INCONTESTABLE. Department bonds are incontestable for any reason in a court or other forum after approval by the attorney general and registration by the comptroller and are valid and binding obligations for all purposes under the terms of the bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.493. SIGNATURE OF FORMER OFFICER. If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on a coupon is not an officer at the time the bond is delivered, the signature is valid and sufficient for all purposes as if the officer had remained in office until delivery.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.494. BONDS NOT TAXABLE. The following are free from taxation or assessment by this state or a public agency:

(1) department bonds issued under this chapter;

(2) interest and income from department bonds, including a profit from the sale of the bonds; and

(3) all fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of the department's bonds.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.495. AUTHORIZED INVESTMENTS. Bonds issued by the department under this chapter are legal and authorized investments for:

(1) banks;

(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; or
(9) sinking or other public funds of:
(A) this state;
(B) a municipality;
(C) a county;
(D) a school district; or
(E) another political subdivision or public agency of this state.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.496. SECURITY FOR DEPOSIT OF FUNDS. Department bonds are eligible and lawful security for a deposit of public funds of the state or a public agency to the extent of the greater of the bonds' par or market value when accompanied by appurtenant unmatured interest coupons.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.497. MUTILATED, LOST, STOLEN, OR DESTROYED BONDS. The board may provide procedures for the replacement of a mutilated, lost, stolen, or destroyed bond or interest coupon.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.498. NO GAIN ALLOWED. (a) The director or a board member may not have or attempt to have a pecuniary interest in a transaction to which the department is a party for purposes of personal pecuniary gain.

(b) A board member or department employee may not purchase department bonds in the open secondary market for municipal securities.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER X. INDIVIDUALS WITH SPECIAL NEEDS

Sec. 2306.511. DEFINITION. In this subchapter, "individual with special needs" means an individual who:

(1) is considered to be an individual having a disability under a state or federal law;

(2) is elderly;

(3) is designated by the board as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise; or

(4) is legally responsible for caring for an individual described by Subdivision (1), (2), or (3) and meets the income guidelines established by the board.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.512. SPECIAL NEEDS. The department may adopt a strategy to serve the needs of individuals with special needs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2306.513. HOUSING FOR INDIVIDUALS WITH SPECIAL NEEDS. (a) The board shall adopt rules to achieve occupancy by individuals with special needs of at least five percent of the units in each multifamily housing development.

(b) Subsection (a) applies only to a multifamily housing development that contains at least 20 units and is financed by bonds issued under this chapter.

(c) If a survey that is conducted by the housing sponsor and verified by the housing finance division reveals that there is not sufficient need for housing for individuals with special needs in the area in which the development will be built or renovated to justify building or renovating and reserving at least five percent of the units for individuals with special needs, the department may, on a showing of good cause by the housing sponsor, lower the requirements to correspond to the amount of need found by the housing sponsor.

(d) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 5.78, eff.

Sept. 1, 1995.

(e) Repealed by Acts 1997, 75th Leg., ch. 980, Sec. 54, eff. Sept. 1, 1997.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.78, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 54, eff. Sept. 1, 1997.

Sec. 2306.514. CONSTRUCTION REQUIREMENTS FOR SINGLE FAMILY AFFORDABLE HOUSING. (a) If a person is awarded state or federal funds by the department to construct single family affordable housing for individuals and families of low and very low income, the affordable housing identified on the person's funding application must be constructed so that:

(1) at least one entrance door, whether located at the front, side, or back of the building:

(A) is on an accessible route served by a ramp or no-step entrance; and

(B) has at least a standard 36-inch door;

(2) on the first floor of the building:

(A) each interior door is at least a standard 32-inch door, unless the door provides access only to a closet of less than 15 square feet in area;

(B) each hallway has a width of at least 36 inches and is level, with ramped or beveled changes at each door threshold;

(C) each bathroom wall is reinforced for potential installation of grab bars;

(D) each electrical panel, light switch, or thermostat is not higher than 48 inches above the floor; and

(E) each electrical plug or other receptacle is at least 15 inches above the floor; and

(3) if the applicable building code or codes do not prescribe another location for the breaker boxes, each breaker box is located not higher than 48 inches above the floor inside the building on the first floor.

(b) A person who builds single family affordable housing to which this section applies may obtain a waiver from the department of the requirement described by Subsection (a)(1)(A) if the cost of grading the terrain to meet the requirement is prohibitively

expensive.

Added by Acts 1999, 76th Leg., ch. 1581, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 26, eff. September 1, 2007.

SUBCHAPTER X-2. NATURAL DISASTER HOUSING RECONSTRUCTION INITIATIVE

Sec. 2306.541. NATURAL DISASTER HOUSING RECONSTRUCTION ADVISORY COMMITTEE. (a) The director shall appoint a natural disaster housing reconstruction advisory committee composed of representatives from appropriate local, state, and federal entities and organizations and nonprofit organizations.

(b) The advisory committee shall develop a natural disaster housing reconstruction plan. In developing this plan, the advisory committee shall:

(1) evaluate existing systems of providing temporary housing to victims of natural disasters and develop alternative systems to increase efficiency and cost-effectiveness;

(2) evaluate existing models for providing permanent replacement housing to victims of natural disasters;

(3) design alternatives to existing models to improve the sustainability, affordability, desirability, and quality of housing rebuilt in the event of future natural disasters;

(4) evaluate economic circumstances of elderly, disabled, and low-income victims of natural disasters and develop models for providing affordable replacement housing;

(5) recommend programs for the rapid and efficient large-scale production of temporary and permanent replacement housing following a natural disaster; and

(6) encourage the participation, coordination, and involvement of appropriate federal organizations.

(c) Chapter 2110 does not apply to the advisory committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 1135 (H.B. 2450), Sec. 2, eff. September 1, 2009.

Sec. 2306.542. HOUSING RECONSTRUCTION DEMONSTRATION PILOT PROGRAM. (a) Using the natural disaster housing reconstruction plan

developed under this subchapter, the director and advisory committee shall develop, for implementation under Subsections (b) and (c), housing reconstruction demonstration pilot programs for three areas, each of which was affected by one of the three most recent federally declared natural disasters. The pilot programs must provide for the replacement of at least 20 houses in each area to test the feasibility of implementing the plan in the large-scale production of replacement housing for victims of federally declared natural disasters.

(b) The department shall provide to an interested council of government, county, or local government eligible for funding for disaster recovery under the community development block grant program:

(1) information regarding a pilot program developed under Subsection (a); and

(2) assistance in implementing a pilot program developed under Subsection (a).

(c) At the discretion of the board, the department may implement a pilot program in any of the three most recently federally declared disaster areas in which a pilot program has not been implemented by a council of government, county, or local government. The department may use any available funds to implement the pilot program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1135 (H.B. 2450), Sec. 2, eff. September 1, 2009.

SUBCHAPTER Y. TEXAS STATE AFFORDABLE HOUSING CORPORATION

Sec. 2306.551. DEFINITION. In this subchapter, "corporation" means the Texas State Affordable Housing Corporation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.

Sec. 2306.552. CREATION. (a) The existence of the Texas State Affordable Housing Corporation, or any similarly named corporation, begins on the date that the secretary of state issues the certificate of incorporation.

(b) The charter of the corporation must establish the corporation as nonprofit and specifically dedicate the corporation's activities to the public purpose authorized by this subchapter.

(c) The creation of the corporation does not limit or impair the rights, powers, and duties of the department under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.

Sec. 2306.5521. SUNSET PROVISION. The Texas State Affordable Housing Corporation is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this subchapter expires September 1, 2029.

Added by Acts 1997, 75th Leg., ch. 1169, Sec. 1.02, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1194, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 332, Sec. 8, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.04, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 1, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 3.02, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 1.11, eff. June 18, 2023.

Sec. 2306.553. PURPOSES. (a) The public purpose of the corporation is to perform activities and services that the corporation's board of directors determines will promote the public health, safety, and welfare through the provision of adequate, safe, and sanitary housing primarily for individuals and families of low, very low, and extremely low income and for persons who are eligible for loans under the home loan program provided by Section 2306.5621. The activities and services shall include engaging in mortgage banking activities and lending transactions and acquiring, holding, selling, or leasing real or personal property.

(b) The corporation's primary public purpose is to facilitate the provision of housing by issuing qualified 501(c)(3) bonds and qualified residential rental project bonds and by making affordable loans to individuals and families of low, very low, and extremely low income and to persons who are eligible for loans under the home loan program provided by Section 2306.5621. The corporation may make first lien, single family purchase money mortgage loans for single family homes only to individuals and families of low, very low, and extremely low income if the individual's or family's household income is not more than the greater of 60 percent of the median income for the state, as defined by the United States Department of Housing and Urban Development, or 60 percent of the area median family income, adjusted for family size, as defined by that department. The corporation may make loans for multifamily developments if:

(1) at least 40 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 60 percent of the median family income, adjusted for family size; or

(2) at least 20 percent of the units in a multifamily development are affordable to individuals and families with incomes at or below 50 percent of the median family income, adjusted for family size.

(c) To the extent reasonably practicable, the corporation shall use the services of banks, community banks, savings banks, thrifts, savings and loan associations, private mortgage companies, nonprofit organizations, and other lenders for the origination of all loans contemplated by this subchapter and assist the lenders in providing credit primarily to individuals and families of low, very low, and extremely low income.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1041, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1194, Sec. 3, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 332, Sec. 9, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1050, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 196 (H.B. 1007), Sec. 5, eff. May 27, 2005.

Acts 2005, 79th Leg., Ch. 674 (S.B. 132), Sec. 10(b), eff. June

17, 2005.

Acts 2005, 79th Leg., Ch. 674 (S.B. 132), Sec. 12, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 455 (H.B. 618), Sec. 1, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 544 (S.B. 1185), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1108 (H.B. 3552), Sec. 13, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 11.025, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 405 (S.B. 286), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1219 (S.B. 1553), Sec. 2, eff. June 14, 2013.

Sec. 2306.554. BOARD OF DIRECTORS AND OFFICERS. (a) The board of directors of the corporation consists of five members appointed by the governor. One member must represent the interests of individuals and families served by the corporation's single-family mortgage loan programs, one member must represent nonprofit housing organizations, and the remaining three members must represent one or more of the following areas:

(1) state or federal savings banks or savings and loan associations;

(2) community banks with assets of $200 million or less;

(3) large metropolitan banks with assets of more than $1 billion;

(4) asset management companies;

(5) mortgage servicing companies;

(6) builders;

(7) real estate developers;

(8) real estate brokers;

(9) community or economic development organizations;

(10) private mortgage companies;

(11) nonprofit housing development companies;

(12) attorneys;

(13) investment bankers;

(14) underwriters;

(15) private mortgage insurance companies;
(16) appraisers;
(17) property management companies;
(18) financial advisors;
(19) nonprofit foundations;
(20) financial advisors; or
(21) any other area of expertise that the governor finds necessary for the successful operation of the corporation.

(b) The governor shall designate a member of the corporation's board of directors as the presiding officer of the board of directors to serve in that capacity at the pleasure of the governor.

(c) A member of the corporation's board of directors is not entitled to compensation, but is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the board to the same extent provided by the General Appropriations Act for a member of a state board.

(d) The corporation shall employ, for compensation to be determined by the corporation's board of directors, a qualified individual to serve as president of the corporation.

(e) The corporation may purchase, with corporation funds, liability insurance for each of the members of the corporation's board of directors, officers, and other employees of the corporation in an amount that the corporation's board of directors considers reasonably necessary to:
(1) insure against foreseeable liabilities; and
(2) provide for all costs of defending against those liabilities, including, without limitation, court costs and attorney's fees.

(f) Appointments to the board of directors of the corporation shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1041, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 332, Sec. 10, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 2, eff. September 1, 2011.

Sec. 2306.5541. TERMS OF MEMBERS. The members of the board of directors of the corporation serve staggered six-year terms, with the terms of one or two members expiring on February 1 of each odd-numbered year.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 11, eff. Sept. 1, 2003.

Sec. 2306.5542. REMOVAL OF MEMBERS. (a) It is a ground for removal from the board of directors of the corporation that a member:

(1) does not have at the time of taking office the qualifications required by Section 2306.554;

(2) does not maintain during service on the board of directors of the corporation the qualifications required by Section 2306.554;

(3) is ineligible for membership under Sections 2306.554 and 2306.5545;

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 332, Sec. 11, eff. Sept. 1, 2003.

Sec. 2306.5543. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the corporation's board of

directors may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the legislation that created the corporation;

(2) the programs, functions, rules, and budget of the corporation;

(3) the results of the most recent formal audit of the corporation;

(4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(5) any applicable ethics policies adopted by the corporation or the Texas Ethics Commission.

(c) A person appointed to the corporation's board of directors is entitled to reimbursement, to the same extent provided by the General Appropriations Act for a member of a state board, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 3, eff. September 1, 2011.

Sec. 2306.5545. CONFLICT OF INTEREST POLICIES. (a) The board of directors of the corporation shall develop and implement policies relating to employee conflicts of interest that are substantially similar to comparable policies that govern state employees.

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

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of banking, mortgage

lending, real estate, housing development, or housing construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of banking, mortgage lending, real estate, housing development, or housing construction.

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

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

Added by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 332, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 4, eff. September 1, 2011.

Sec. 2306.5546. STANDARDS OF CONDUCT. The president of the corporation or the president's designee shall provide to members of the board of directors of the corporation and to corporation employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 13, eff. Sept. 1, 2003.

Sec. 2306.5547. DIVISION OF RESPONSIBILITY. The board of directors of the corporation shall develop and implement policies

that clearly separate the policymaking responsibilities of the board of directors and the management responsibilities of the president and the staff of the corporation.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 13, eff. Sept. 1, 2003.

Sec. 2306.5548. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The president of the corporation or the president's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

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

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

(c) The policy statement must be:

(1) updated annually; and

(2) filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 13, eff. Sept. 1, 2003.

Sec. 2306.5549. MEETINGS OF THE CORPORATION'S BOARD. (a) The corporation's board may hold meetings when called by the presiding officer, the president, or three of the members.

(b) The corporation's board shall keep minutes and complete transcripts of its meetings. The corporation shall post the transcripts on its Internet website and shall otherwise maintain all accounts, minutes, and other records related to the meetings.

(c) All materials provided to the corporation's board that are relevant to a matter proposed for discussion at a meeting of that board must be posted on the corporation's Internet website not later than the third day before the date of the meeting.

(d) Any materials made available to the corporation's board by the corporation at a meeting of that board must be made available in hard-copy format to the members of the public in attendance at the meeting.

(e) The corporation's board shall conduct its meetings in accordance with Chapter 551, except as otherwise required by this chapter.

(f) For each item on the agenda at a meeting of the corporation's board, the corporation's board shall provide for public comment after the presentation made by corporation staff and the motions made by the corporation's board on that topic.

(g) The corporation's board shall adopt rules that give the public a reasonable amount of time for testimony at meetings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 5, eff. September 1, 2011.

Sec. 2306.555. POWERS. (a) The corporation has the powers provided for the department under this chapter.

(b) In addition to the powers granted by Subsection (a), the corporation has all rights and powers necessary to accomplish its public purpose, including the powers to:

(1) purchase, service, sell, lend on the security of, or otherwise transact in:

(A) mortgages, including federal mortgages and federally insured mortgages;

(B) mortgage loans;

(C) deeds of trust; and

(D) loans or other advances of credit secured by liens against manufactured housing;

(2) guarantee or insure timely payment of mortgage loans and loans or other advances of credit secured by liens against manufactured housing, provided that the corporation's liability on that guaranty or insurance is limited to the assets of a guaranty fund or self-insurance fund established and maintained by the corporation;

(3) make mortgage loans and loans or other advances of credit secured by liens against manufactured housing to individuals and families of low income;

(4) make mortgage loans to provide temporary or permanent financing or refinancing for housing or land developments, including refunding outstanding obligations, mortgages, or advances issued for those purposes;

(5) borrow, give security, pay interest or other return, or issue bonds or other obligations, including notes, debentures, or mortgage-backed securities, provided that each bond or other obligation issued by the corporation must contain a statement that the state is not obligated to pay the principal of or any premium or interest on the bond or other obligation and that the full faith and credit and the taxing power of the state are not pledged, given, or loaned to the payment;

(6) acquire, hold, invest, use, pledge, reserve, and dispose of its assets, revenues, income, receipts, funds, and money from every source and to select one or more depositories, inside or outside the state, subject to the terms of any resolution, indenture, or other contract under which any bonds or other obligations are issued or any guaranty or insurance is provided;

(7) establish, charge, and collect fees, charges, and penalties in connection with the programs, services, and activities of the corporation;

(8) procure insurance and pay premiums on insurance of any type, in amounts, and from insurers as the corporation's board of directors considers necessary and advisable to further the corporation's public purpose, including, subject to Section 2306.554(e), liability insurance for the members of the corporation's board of directors and the officers and other employees of the corporation;

(9) make, enter into, and enforce contracts, agreements, leases, indentures, mortgages, deeds, deeds of trust, security agreements, pledge agreements, credit agreements, and other instruments with any person, including a mortgage lender, servicer, housing sponsor, the federal government, or any public agency, on terms the corporation determines may be acceptable;

(10) own, rent, lease, or otherwise acquire, accept, or hold real, personal, or mixed property, or any interest in property, by purchase, exchange, gift, assignment, transfer, foreclosure, mortgage, sale, lease, or otherwise and hold, manage, operate, or improve real, personal, or mixed property, regardless of location;

(11) sell, lease, encumber, mortgage, exchange, donate,

convey, or otherwise dispose of any or all of its properties or any interest in its properties, deeds of trust, or mortgage lien interest owned by it or under its control or custody, or in its possession, and release or relinquish any right, title, claim, lien, interest, easement, or demand, however acquired, including any equity or right of redemption in property foreclosed by it, by public or private sale, with or without public bidding;

(12) lease or rent any improvements, lands, or facilities from any person;

(13) request, accept, and use gifts, loans, donations, aid, guaranties, allocations, subsidies, grants, or contributions of any item of value to further its public purpose; and

(14) exercise the rights and powers of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(c) In exercising the foregoing powers granted to it under this chapter, the corporation shall not actively compete with private lenders and shall not originate or make a loan that would be made under the same circumstances by a private lender on substantially the same or better terms within the submarket in which the loan is proposed to be made.

(d) All of the mortgage banking operations shall be dedicated to the furtherance of facilitating affordable housing finance primarily for the benefit of individuals and families of low, very low, and extremely low income who, generally, are not afforded housing finance options through conventional lending channels.

(e) The corporation may contract with the department and with bond counsel, financial advisors, underwriters, or other providers of professional or consulting services.

(f) The corporation shall pay its expenses from any available fund without resort to the general revenues of the state, except as specifically appropriated by the legislature.

(g) The department may not transfer any funds to the corporation to support the administration of the corporation or to subsidize its operations in any way. The department shall be fully compensated by the corporation for any property or employees that are shared by the corporation and the department, and it is the intent of the legislature that no employees be shared beyond the time at which such sharing is absolutely necessary. This subsection does not prohibit the corporation from receiving grants, loans, or other

program funds of a kind that are available to other nonprofit corporations, or from using that portion of the program funds that are allowed for administration of the program for administrative purposes.

(h) Transfers of property from the department to the corporation shall be fully compensated.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1041, Sec. 3, eff. Sept. 1, 1999.

Sec. 2306.5551. BOARD DELEGATION OF AUTHORITY TO ISSUE BONDS OR OTHER OBLIGATIONS. (a) The board of directors of the corporation may delegate to a member of the board or to an employee of the corporation the authority to enter into a contract to issue bonds or other obligations for the corporation.

(b) The person to whom contract authority is delegated under this section shall report to the board as frequently as considered necessary by the board all of the person's activities relating to the issuance of bonds or other obligations.

Added by Acts 2001, 77th Leg., ch. 1194, Sec. 4, eff. June 15, 2001.

Sec. 2306.5552. TECHNICAL AND FINANCIAL ASSISTANCE PROVIDED TO NONPROFIT ORGANIZATIONS. The corporation shall supplement the technical and financial capacity of other appropriate nonprofit organizations to provide for the multifamily and single-family housing needs of individuals and families of low, very low, and extremely low income.

Added by Acts 2001, 77th Leg., ch. 1194, Sec. 4, eff. June 15, 2001.

Sec. 2306.5553. HISTORICALLY UNDERUTILIZED BUSINESSES. (a) The corporation shall make a good faith effort to provide contracting opportunities for, and to increase contract awards to, historically underutilized businesses for all services that may be required by the corporation, including professional and consulting services and commodities purchases.

(b) In accordance with Subchapter B, Chapter 20, Title 34, Texas Administrative Code, a good faith effort under Subsection (a) must include awarding historically underutilized businesses at least a portion of the total contract value of all contracts the corporation expects to award in a state fiscal year.

(c) The corporation may achieve annual procurement goals under this section by contracting directly with historically underutilized businesses or by contracting indirectly with those businesses through the provision of subcontracting opportunities.

Added by Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 6, eff. September 1, 2011.

Sec. 2306.5555. PUBLIC ACCESS. The board of directors of the corporation shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board of directors and to speak on any issue under the jurisdiction of the corporation.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.

Sec. 2306.556. EXEMPT FROM TAXATION AND REGISTRATION. (a) The corporation is exempt from all taxation by the state or a political subdivision of the state, including a municipality.

(b) A bond or other obligation issued by the corporation is an exempt security under The Securities Act (Title 12, Government Code), and unless specifically provided otherwise, under any subsequently enacted securities act. Any contract, guaranty, or other document executed in connection with the issuance of the bond or other obligation is not an exempt security under that Act, and unless specifically provided otherwise, under any subsequently enacted securities act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.27, eff. January 1, 2022.

Sec. 2306.557. DISTRIBUTION OF EARNINGS. Any part of earnings remaining after payment of expenses and any establishment of reserves by the corporation's board of directors may not inure to any person except that the corporation shall use these excess earnings to further the corporation's new or existing affordable housing initiatives if the corporation's board of directors determines that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation and for any establishment of reserves by the corporation's board of directors.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1041, Sec. 4, eff. Sept. 1, 1999.

Sec. 2306.558. ALTERATION AND TERMINATION. (a) Subject to this subchapter and the prohibition on the impairment of contracts in the law of this state, the corporation's board of directors by written resolution may alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation.

(b) The corporation's board of directors shall dissolve the corporation if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all bonds and other obligations issued by the corporation and all guaranties and insurance and other contractual obligations have been fully paid or provision for that payment has been made.

(c) On dissolution, the title to funds and properties previously owned by the corporation shall be transferred to the department.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.

Sec. 2306.559. REPORTING REQUIREMENTS. (a) The corporation

shall file an annual report of the financial activity of the corporation with the department. The corporation's board of directors shall submit the report to the governor, lieutenant governor, speaker of the house of representatives, and comptroller.

(b) The corporation shall file the report by the date established in the General Appropriations Act.

(c) The corporation shall prepare the report in accordance with generally accepted accounting principles.

(d) The report must include:

(1) a statement of support, revenue, and expenses and change in fund balances;

(2) a statement of functional expenses;

(3) balance sheets for all funds;

(4) the number, amount, and purpose of private gifts, grants, donations, or other funds applied for and received;

(5) the number, amount, and purpose of loans provided to affordable housing developers, regardless of whether the corporation provides those loans directly to the developers or administers the loans from another source;

(6) the amount and source of funds deposited into any fund created by the corporation for the purpose of providing grants and the number, amount, and purpose of any grants provided; and

(7) the total amount of annual revenue generated by the corporation in excess of its expenditures.

(e) The corporation shall file quarterly performance reports with the department.

(f) Promptly on receipt, the corporation shall file with the Bond Review Board a report for the preceding fiscal year. The report must contain the status of all outstanding debts and obligations of the corporation, the status of collateral pledged as security for those debts and obligations, and a maturity and payment schedule for those debts and obligations.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.66(d), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 62, eff.

September 1, 2013.

Sec. 2306.560. AUDIT. (a) The corporation shall hire an independent certified public accountant to audit the corporation's books and accounts for each fiscal year. The corporation shall file a copy of the audit with the department and shall submit the audit report to the governor, lieutenant governor, speaker of the house of representatives, comptroller, Bond Review Board, and State Auditor's Office not later than the 30th day after the submission date established in the General Appropriations Act for the annual financial report.

(b) The corporation is subject to audit by the state auditor.

(c) The corporation shall submit budget and financial information to the legislative budget office as required by the director of the legislative budget office.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(24), and Ch. 1079 (H.B. 3361), Sec. 5.01(2), eff. September 1, 2013.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 5.01(2), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 63, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(24), eff. September 1, 2013.

Sec. 2306.561. LIABILITY. (a) The directors, officers, and employees of the corporation are not personally liable for bonds or other obligations issued or contracts, guaranties, or insurance executed by the corporation, or for any other action taken in accordance with the powers and duties authorized by this subchapter or in the good faith belief that that action was taken in accordance with the powers and duties authorized by this subchapter.

(b) The directors and officers of the corporation are immune from civil liability to the same extent that a volunteer who serves as an officer, director, or trustee of a charitable organization is

immune from civil liability under Chapter 84, Civil Practice and Remedies Code.

(c) The civil liability of an employee of the corporation is limited to the same extent that the civil liability of an employee of a charitable organization is limited under Chapter 84, Civil Practice and Remedies Code.

(d) The limitations on liability contained in this section do not limit or impair the limitations on liability otherwise available to the corporation's directors, officers, and employees.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 47, eff. Sept. 1, 1997.

Sec. 2306.5621. HOMES FOR TEXAS HEROES HOME LOAN PROGRAM. (a) In this section:

(1) "Fire fighter" means a member of a fire department who performs a function listed in Section 419.021(3)(C), Government Code.

(2) "Home" means a dwelling in this state in which a fire fighter, corrections officer, county jailer, public security officer, peace officer, professional educator, veteran, or person defined as emergency medical services personnel under this section intends to reside as the borrower's principal residence.

(3) "Mortgage lender" has the meaning assigned by Section 2306.004.

(4) "Peace officer" has the meaning assigned by Section 1.07(a)(36), Penal Code.

(5) "Program" means the Homes for Texas Heroes home loan program.

(6) "Corrections officer" means a corrections officer employed by the Texas Department of Criminal Justice or a juvenile correctional officer employed by the Texas Juvenile Justice Department.

(7) "County jailer" has the meaning assigned by Section 1701.001, Occupations Code.

(8) "Public security officer" has the meaning assigned by Section 1701.001, Occupations Code.

(9) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.

(10) "Veteran" has the meaning assigned by Section 161.001, Natural Resources Code.

(11) "Allied health program faculty member" means a full-time member of the faculty of an undergraduate or graduate allied health program of a public or private institution of higher education in this state.

(12) "Graduate allied health program" means a postbaccalaureate certificate or master's or doctoral degree program in an allied health profession that is accredited by an accrediting entity recognized by the United States Department of Education.

(13) "Graduate professional nursing program" and "undergraduate professional nursing program" have the meanings assigned by Section 54.355, Education Code.

(14) "Professional educator" means a classroom teacher, full-time paid teacher's aide, full-time librarian, full-time counselor certified under Subchapter B, Chapter 21, Education Code, full-time school nurse, or allied health or professional nursing program faculty member.

(15) "Professional nursing program faculty member" means a full-time member of the faculty of either an undergraduate or graduate professional nursing program.

(16) "Undergraduate allied health program" means an undergraduate degree or certificate program that:

(A) prepares students for licensure, certification, or registration in an allied health profession; and

(B) is accredited by an accrediting entity recognized by the United States Department of Education.

(b) The corporation shall establish a program to provide eligible fire fighters, corrections officers, county jailers, public security officers, peace officers, emergency medical services personnel, professional educators, and veterans with low-interest home mortgage loans.

(c) To be eligible for a loan under this section, at the time a person files an application for the loan, the person must:

(1) be a:

(A) fire fighter, corrections officer, county jailer, public security officer, peace officer, veteran, or person defined as emergency medical services personnel under this section; or

(B) professional educator who is employed by a school district or is an allied health or professional nursing program faculty member in this state;

(2) reside in this state; and

(3) have an income of not more than 115 percent of area median family income, adjusted for family size, or the maximum amount permitted by Section 143(f), Internal Revenue Code of 1986, whichever is greater.

(d) The corporation may contract with other agencies of the state or with private entities to determine whether applicants qualify as fire fighters, corrections officers, county jailers, public security officers, peace officers, emergency medical services personnel, professional educators, or veterans under this section or otherwise to administer all or part of this section.

(d-1) The corporation may contract with the Texas Veterans Commission to provide other housing assistance to veterans receiving loans under this section.

(e) The board of directors of the corporation may set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

(f) The board of directors of the corporation shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the fire fighter, corrections officer, county jailer, public security officer, peace officer, professional educator, veteran, or person defined as emergency medical services personnel as the borrower's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

(g) The corporation shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the loan.

(h) In addition to funds set aside for the program under Section 1372.0223(1), the corporation may solicit and accept funding for the program from the following sources:

(1) gifts and grants for the purposes of this section;

(2) available money in the housing trust fund established under Section 2306.201, to the extent available to the corporation;

(3) federal block grants that may be used for the purposes of this section, to the extent available to the corporation;

(4) other state or federal programs that provide money that may be used for the purposes of this section; and

(5) amounts received by the corporation in repayment of loans made under this section.

(h-1) To fund home mortgage loans for eligible fire fighters, corrections officers, county jailers, public security officers, peace officers, emergency medical services personnel, professional educators, and veterans under this section, the corporation may use any proceeds received from the sale of bonds, notes, or other obligations issued under the home loan program provided by this section, regardless of any amendments to the eligibility standards for loans made under the program and regardless of when the corporation received the proceeds from those bonds, notes, or other obligations issued under the program.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 405 (S.B. 286), Sec. 6, and Ch. 1219 (S.B. 1553), Sec. 6, eff. June 14, 2013.

Added by Acts 2003, 78th Leg., ch. 1050, Sec. 3, eff. June 20, 2003.
For text of section as added by Acts 2003, 78th Leg., ch. 332, Sec. 16, see Sec. 2306.563, post.
Renumbered from Government Code, Section 2306.563 and amended by Acts 2005, 79th Leg., Ch. 196 (H.B. 1007), Sec. 1, eff. May 27, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 455 (H.B. 618), Sec. 2, eff. June 16, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 405 (S.B. 286), Sec. 3, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 405 (S.B. 286), Sec. 4, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 405 (S.B. 286), Sec. 5, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 405 (S.B. 286), Sec. 6, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1219 (S.B. 1553), Sec. 3, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1219 (S.B. 1553), Sec. 4, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1219 (S.B. 1553), Sec. 5, eff.

June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1219 (S.B. 1553), Sec. 6, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 117, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 9.011, eff. September 1, 2015.

Sec. 2306.563. PUBLIC BENEFIT REQUIREMENT. (a) The corporation shall implement a requirement that a community housing development organization that receives an issuance of qualified 501(c)(3) bonds from the corporation to develop property must invest at least one dollar in projects and services that benefit income-eligible persons for each dollar of taxes that is not imposed on the property as a result of a property tax exemption received under Section 11.182, Tax Code.

(b) The projects and services must benefit income-eligible persons in the county in which the property supported with the tax exemption is located.

(c) The projects and services must consist of:

(1) rent reduction;

(2) capital improvement projects; or

(3) social, educational, or economic development services.

(d) The corporation and the organization may determine on a case-by-case basis the specific projects and services in which the organization must invest under this section.

(e) The dollar-for-dollar public benefit requirement imposed by this section shall be reduced by an amount equal to each dollar that, in lieu of taxes, a community housing development organization pays to a taxing unit for which the property receives an exemption under Section 11.182, Tax Code.

(f) In implementing the public benefit requirement, the corporation shall adopt guidelines for reasonable rent reductions, capital improvement projects, and social, educational, and economic development services.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 16, eff. Sept. 1, 2003. For text of section as added by Acts 2003, 78th Leg., ch. 1050, Sec. 3, see Sec. 2306.563, ante.

Sec. 2306.564. REVIEW OF QUALIFIED 501(C)(3) BOND ISSUANCE POLICIES. (a) The corporation shall review annually its qualified 501(c)(3) bond issuance policies, including the public benefit requirement implemented under Section 2306.563.

(b) The corporation shall give to the secretary of state for publication in the Texas Register any proposed policy revisions and allow a reasonable period for public comment.

(c) The board of directors of the corporation must approve any change to the bond issuance policies.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 16, eff. Sept. 1, 2003.

Sec. 2306.565. ISSUANCE OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS; ALLOCATION OF BOND FUNDS. (a) The corporation shall direct the Bond Review Board on the issuance of the portion of state ceiling set aside for the corporation under Section 1372.0231(a).

(b) The board of directors of the corporation shall adopt guidelines governing the method by which the corporation identifies target areas for the allocation of qualified residential rental project bond funds. The guidelines must include a clear demonstration of local need and community support for a housing development.

(c) The corporation shall research the state's strategic housing needs by coordinating with the department and reviewing relevant needs assessment information, as required by Section 2306.566. The corporation shall also solicit information regarding housing needs from local and regional housing organizations.

(d) The board of directors of the corporation shall adopt criteria governing the method by which the corporation solicits proposals for housing developments in areas targeted by the corporation. The guidelines must state the criteria to be included in the corporation's requests for proposals. The requests for proposals must comply with any relevant federal requirements.

(e) The board of directors of the corporation shall adopt criteria governing the method by which the staff of the corporation scores and ranks applications for an allocation under this section that are received in response to a request for proposals. The

criteria must include:

(1) the cost per unit of the housing development;

(2) the proposed rent for a unit; and

(3) the income ranges of individuals and families to be served by the housing development.

(f) The board of directors of the corporation shall identify housing developments with respect to which the board anticipates directing the Bond Review Board to allocate bond funds under this section, based on the highest scores received in the scoring and ranking process described by Subsection (e).

(g) After the board of directors of the corporation has identified housing developments under Subsection (f), the corporation shall hold public hearings, as required by federal law, on the housing developments identified by the board.

(h) Following the public hearings, the staff shall prepare final evaluations and recommendations for the board, incorporating any public comments received at the hearings. The board shall consider the staff's recommendations in making its final decisions regarding the allocation of bond funds for housing developments under this section and shall inform the Bond Review Board of those decisions.

(i) The corporation shall pay the department a reasonable fee for underwriting an application for an allocation of low income housing tax credits if the housing development proposed in the application is or will be supported by an allocation of bond funds under this section.

(j) The decisions made by the corporation regarding the allocation of bond funds under this section are not subject to the restrictions in Section 1372.0321, as added by Chapter 1367 or 1420, Acts of the 77th Legislature, Regular Session, 2001.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 16, eff. Sept. 1, 2003.

Sec. 2306.566. COORDINATION REGARDING STATE LOW INCOME HOUSING PLAN. (a) The corporation shall review the needs assessment information provided to the corporation by the department under Section 2306.0722(b).

(b) The corporation shall develop a plan to meet the state's most pressing housing needs identified in the needs assessment

information and provide the plan to the department for incorporation into the state low income housing plan.

(c) The corporation's plan must include specific proposals to help serve rural and other underserved areas of the state.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 16, eff. Sept. 1, 2003.

Sec. 2306.567. COMPLIANCE INFORMATION. (a) The corporation shall provide to the department electronic copies of all compliance information compiled by the corporation.

(b) Before approving an application regarding a housing development, the corporation shall consider any relevant compliance information in the department's database created under Section 2306.081.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 16, eff. Sept. 1, 2003.

Sec. 2306.5671. COMPLIANCE WITH TERMS OF CERTAIN CONTRACTS OR AGREEMENTS. A compliance contract or agreement between the corporation and a housing sponsor that receives bond financing by or through the corporation for the purpose of providing affordable multifamily housing must contain a provision stating that if the housing sponsor fails to comply with the terms of the contract or agreement, the corporation may, at a minimum and as appropriate:

(1) assess penalties;

(2) remove the manager of the affected property and select a new manager;

(3) withdraw reserve funds to make needed repairs and replacements to the property; or

(4) appoint the corporation as a receiver to protect and operate the property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 8, eff. September 1, 2011.

Sec. 2306.568. RECORD OF COMPLAINTS. (a) The corporation shall maintain a system to promptly and efficiently act on complaints filed with the corporation. The corporation shall maintain

information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The corporation shall make information available describing its procedures for complaint investigation and resolution.

(c) The corporation shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2003, 78th Leg., ch. 332, Sec. 16, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 9, eff. September 1, 2011.

Sec. 2306.569. EFFECTIVE USE OF TECHNOLOGY. The corporation's board of directors shall develop and implement a policy requiring the president of the corporation and corporation employees to research and propose appropriate technological solutions to improve the corporation's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the corporation on the Internet;

(2) ensure that persons who want to use the corporation's services are able to:

(A) interact with the corporation through the Internet; and

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

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

Added by Acts 2003, 78th Leg., ch. 332, Sec. 16, eff. Sept. 1, 2003.

SUBCHAPTER Z. COLONIAS

Sec. 2306.581. DEFINITION. In this subchapter:

(1) "Colonia" means a geographic area that is located in a county some part of which is within 150 miles of the international border of this state, that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Section 17.921, Water Code; or

(B) has the physical and economic characteristics of a colonia, as determined by the department.

(2) "Community action agency" means a political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. Section 9902.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 9, eff. June 15, 2007.

Sec. 2306.582. COLONIA SELF-HELP CENTERS: ESTABLISHMENT. (a) The department shall establish colonia self-help centers in El Paso, Hidalgo, Nueces, Starr, and Webb Counties, and in Cameron County to serve Cameron and Willacy Counties. If the department determines it necessary and appropriate, the department may establish a self-help center in any other county if the county is designated as an economically distressed area under Chapter 17, Water Code, for purposes of eligibility to receive funds from the Texas Water Development Board.

(b) The department shall attempt to secure contributions, services, facilities, or operating support from the commissioners court of the county in which the self-help center is located to support the operation of the self-help center.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 352 (H.B. 2893), Sec. 1, eff. September 1, 2021.

Sec. 2306.583. SELF-HELP CENTERS: DESIGNATION. (a) The department shall designate a geographic area for the services provided by each self-help center.

(b) In consultation with the colonia resident advisory committee and the appropriate self-help center, the department shall designate five colonias in each service area to receive concentrated attention from that center.

(c) In consultation with the colonia resident advisory committee and the appropriate self-help center, the department may change the designation of colonias made under Subsection (b).

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 2.04, eff. Sept. 1, 2001.

Sec. 2306.584. COLONIA RESIDENT ADVISORY COMMITTEE. (a) The board shall appoint not fewer than six persons who are residents of colonias to serve on the Colonia Resident Advisory Committee. The members of the advisory committee shall be selected from lists of candidates submitted to the board by local nonprofit organizations and the commissioners court of a county in which a self-help center is located.

(b) The board shall appoint one committee member to represent each of the counties in which self-help centers are located. Each committee member:

(1) must be a resident of a colonia in the county the member represents; and

(2) may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract under this subchapter.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 36, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 1.27, eff. Sept. 1, 2001. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 352 (H.B. 2893), Sec. 2, eff. September 1, 2021.

Sec. 2306.585. DUTIES OF COLONIA RESIDENT ADVISORY COMMITTEE. (a) The Colonia Resident Advisory Committee shall advise the board regarding:

(1) the needs of colonia residents;

(2) appropriate and effective programs that are proposed or are operated through the self-help centers; and

(3) activities that may be undertaken through the self-help centers to better serve the needs of colonia residents.

(b) The advisory committee shall meet before the 30th day preceding the date on which a contract is scheduled to be awarded for the operation of a self-help center and may meet at other times.

(c) The advisory committee shall advise the colonia initiatives coordinator as provided by Section 775.005.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1234, Sec. 36, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 1.27, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 351 (S.B. 1202), Sec. 3, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(8), eff. September 1, 2007.

Sec. 2306.586. SELF-HELP CENTER: PURPOSE AND SERVICES. (a) The purpose of a self-help center is to assist individuals and families of low income and very low income to finance, refinance, construct, improve, or maintain a safe, suitable home and otherwise improve living conditions in the colonias' designated service area or in another area the department has determined is suitable.

(b) A self-help center shall set a goal to improve the living conditions of residents in the colonias designated under Section 2306.583(b) within a two-year period after a contract is awarded under this subchapter.

(c) A self-help center may serve individuals and families of low income and very low income by:

(1) providing assistance in obtaining loans or grants to build a home;

(2) teaching construction skills necessary to repair or build a home;

(3) providing model home plans;

(4) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing

necessary residential infrastructure;

(5) helping to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets, and utilities;

(6) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(7) providing credit and debt counseling related to home purchase and finance;

(8) applying for grants and loans to provide housing and other needed community improvements;

(9) providing other services that the self-help center, with the approval of the department, determines are necessary to assist colonia residents in improving their living conditions, including help in:

(A) obtaining suitable alternative housing outside of a colonia's area; and

(B) performing the following authorized public service activities under Title 1 of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.):

(i) securing employment;

(ii) establishing or expanding a small business;

(iii) developing professional skills; or

(iv) managing personal finances and achieving financial literacy;

(10) providing assistance in obtaining loans or grants to enable an individual or a family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and

(11) providing monthly programs to educate individuals and families on their rights and responsibilities as property owners.

(d) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home or otherwise improve living conditions in a colonia if water service and suitable wastewater disposal are not available.

(e) Through a self-help center, a colonia resident may apply for any direct loan or grant program operated by the department.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 402, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 2.05, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 653 (H.B. 1301), Sec. 1, eff. September 1, 2021.

Sec. 2306.587. OPERATION OF SELF-HELP CENTER; MONITORING. (a) To operate a self-help center, the department shall, subject to the availability of revenue for that purpose, enter into a four-year contract directly with a local nonprofit organization, including a local community action agency that qualifies as an eligible entity under 42 U.S.C. Section 9902, or a local housing authority that has demonstrated the ability to carry out the functions of a self-help center under this subchapter.

(b) The department is solely responsible for contract oversight and for the monitoring of self-help centers under this subchapter.

(c) The department and the self-help centers may apply for and receive public or private gifts or grants to enable the centers to achieve their purpose.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 2.06, eff. Sept. 1, 2001.

Sec. 2306.588. DEPARTMENT LIAISON TO SELF-HELP CENTERS. (a) The department shall designate appropriate staff in the department to act as liaison to the self-help centers to assist the centers in obtaining funding to enable the centers to carry out the centers' programs.

(b) The department shall make a reasonable effort to secure an adequate level of funding to provide the self-help centers with funds for low-interest mortgage financing, grants for self-help programs, a revolving loan fund for septic tanks, a tool-lending program, and other activities the department determines are necessary.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995.

Sec. 2306.589. COLONIA SET-ASIDE FUND. (a) The department shall establish a fund in the department designated as the colonia set-aside fund. The department may contribute money to the fund from any available source of revenue that the department considers appropriate to implement the purposes of this subchapter, except that the department may not use federal community development block grant money authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) unless the money is specifically appropriated by the legislature for that purpose.

(b) The department by rule shall provide that an application for assistance in paying for residential service lines, hookups, and plumbing improvements associated with being connected to a water supply or sewer service system may be submitted after construction of a water supply or sewer service system begins. The department shall approve or disapprove a timely application before construction of the water supply or sewer service is completed in order to eliminate delay in hookups once construction is completed. The department and the Texas Water Development Board shall coordinate the application process for hookup funds under this subsection and under Subchapter L, Chapter 15, Water Code, and shall share information elicited by each agency's application procedure in order to avoid duplication of effort and to eliminate the need for applicants to complete different forms with similar information.

(c) The department may use money in the colonia set-aside fund for specific activities that assist colonias, including:

(1) the operation and activities of the self-help centers established under this subchapter;

(2) reimbursement of colonia resident advisory committee members for their reasonable expenses in the manner provided by Chapter 2110 or the General Appropriations Act; and

(3) funding for the provision of water and sewer service connections in accordance with Subsection (b).

(d) The department may review and approve an application for funding from the colonia set-aside fund that advances the policy and goals of the state in addressing problems in the colonias.

Added by Acts 1995, 74th Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1405, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1367, Sec. 1.28, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1367, Sec. 2.07, eff. Sept. 1, 2001; Acts

2003, 78th Leg., ch. 330, Sec. 16, eff. Sept. 1, 2003.

Sec. 2306.590. COLONIA INITIATIVES ADVISORY COMMITTEE. (a) The Colonia Initiatives Advisory Committee is composed of seven members appointed by the governor as follows:

(1) one colonia resident;

(2) one representative of a nonprofit organization that serves colonia residents;

(3) one representative of a political subdivision that contains all or part of a colonia;

(4) one person to represent private interests in banking or land development;

(5) one representative of a nonprofit utility;

(6) one representative of an engineering consultant firm involved in economically distressed areas program projects under Subchapter K, Chapter 17, Water Code; and

(7) one public member.

(b) Each committee member, except the public member, must reside within 150 miles of the Texas-Mexico border.

(c) The secretary of state is an ex officio member of the committee.

(d) The committee shall:

(1) review the progress of colonia water and wastewater infrastructure projects managed by the Texas Water Development Board and the state agency responsible for administering the portion of the federal community development block grant nonentitlement program that addresses the infrastructure needs of colonias;

(2) present an update and make recommendations to the board and the Texas Water Development Board annually at a joint meeting regarding:

(A) efforts to ensure that colonia residents are connected to the infrastructure funded by state agencies;

(B) the financial, managerial, and technical capabilities of project owners and operators;

(C) the agencies' management of their colonia programs and the effectiveness of their policies regarding underperforming projects; and

(D) any other issues related to the effect of state-managed infrastructure programs on colonia residents;

(3) review public comments regarding the colonia needs assessment incorporated into the state low income housing plan under Section 2306.0721; and

(4) based on the public comments reviewed under Subdivision (3), recommend to the board new colonia programs or improvements to existing colonia programs.

Added by Acts 2001, 77th Leg., ch. 1234, Sec. 37, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 84 (S.B. 1574), Sec. 1, eff. September 1, 2019.

Sec. 2306.591. MANUFACTURED HOMES INSTALLED IN COLONIAS. (a) For a manufactured home to be approved for installation and use as a dwelling in a colonia:

(1) the home must be a HUD-code manufactured home, as defined by Section 1201.003, Occupations Code;

(2) the home must be habitable, as described by Section 1201.453, Occupations Code; and

(3) ownership of the home must be properly recorded with the manufactured housing division of the department.

(b) An owner of a manufactured home is not eligible to participate in a grant loan program offered by the department, including the single-family mortgage revenue bond program under Section 2306.142, unless the owner complies with Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 29, eff. June 18, 2005.

SUBCHAPTER AA. MANUFACTURED HOUSING DIVISION

Sec. 2306.6001. DEFINITIONS. In this subchapter:

(1) "Division" means the manufactured housing division.

(2) "Division director" means the executive director of the division.

(3) "Manufactured Housing Board" means the governing board of the division.

Renumbered from Sec. 2306.601 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6002. REGULATION AND ENFORCEMENT. The department shall administer and enforce Chapter 1201, Occupations Code, through the division. The Manufactured Housing Board and the division director shall exercise authority and responsibilities assigned to them under that chapter.

Renumbered from Sec. 236.601 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001; Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.784, eff. Sept. 1, 2003.

Sec. 2306.6003. MANUFACTURED HOUSING BOARD. (a) The Manufactured Housing Board is an independent entity within the department, is administratively attached to the department, and is not an advisory body to the department.

(b) The Manufactured Housing Board shall carry out the functions and duties conferred on the Manufactured Housing Board by this subchapter and by other law.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6004. MANUFACTURED HOUSING BOARD MEMBERSHIP. (a) The Manufactured Housing Board consists of five public members appointed by the governor.

(b) A person is eligible to be appointed as a public member of the Manufactured Housing Board if the person is a citizen of the United States and a resident of this state.

(c) A person may not be a member of the Manufactured Housing Board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of manufactured housing;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the division;

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

(4) uses or receives a substantial amount of tangible goods, services, or money from the division other than compensation or reimbursement authorized by law for Manufactured Housing Board membership, attendance, or expenses.

(d) Appointments to the Manufactured Housing Board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6005. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of manufactured housing; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of manufactured housing.

(c) A person may not be a member of the Manufactured Housing Board or act as the general counsel to the Manufactured Housing Board or the division if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the division.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6006. TERMS; VACANCY. (a) The members of the

Manufactured Housing Board serve staggered six-year terms, with the terms of one or two members expiring on January 31 of each odd-numbered year.

(b) A person may not serve two consecutive full six-year terms as a member of the Manufactured Housing Board.

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

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6007. PRESIDING OFFICER. The governor shall designate a member of the Manufactured Housing Board as the presiding officer of the Manufactured Housing Board to serve in that capacity at the will of the governor.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6008. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the Manufactured Housing Board that a member:

(1) does not have at the time of taking office the qualifications required by Section 2306.6004(b);

(2) does not maintain during service on the Manufactured Housing Board the qualifications required by Section 2306.6004(b);

(3) is ineligible for membership under Section 2306.6004(c) or 2306.6005;

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

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

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

(c) If the division director has knowledge that a potential ground for removal exists, the division director shall notify the presiding officer of the Manufactured Housing Board of the potential

ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the division director shall notify the next highest ranking officer of the Manufactured Housing Board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6009. REIMBURSEMENT. A Manufactured Housing Board member may not receive compensation, but may be reimbursed for actual travel expenses, including expenses for meals, lodging, and transportation. A Manufactured Housing Board member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6010. MEETINGS. (a) The Manufactured Housing Board shall have regular meetings as the majority of the members may specify and special meetings at the request of the presiding officer, any two members, or the division director.

(b) Reasonable notice of all meetings shall be given as prescribed by Manufactured Housing Board rules.

(c) The presiding officer shall preside at all meetings of the Manufactured Housing Board. In the absence of the presiding officer, the members present shall select one of the members to preside at the meeting.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6011. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the Manufactured Housing Board may not vote, deliberate, or be counted as a member in attendance at a meeting of the Manufactured Housing Board until the

person completes a training program that complies with this section.

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

(1) the legislation that created the division and the Manufactured Housing Board;

(2) the programs operated by the division;

(3) the role and functions of the division;

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

(5) the current budget for the division;

(6) the results of the most recent formal audit of the division;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the division or the Texas Ethics Commission.

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

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6012. APPROPRIATIONS; DONATIONS. (a) The legislature shall separately appropriate money to the Manufactured Housing Board within the appropriations to the department for all matters relating to the operation of the division.

(b) The Manufactured Housing Board may accept gifts and grants of money or property under this subchapter and shall spend the money and use the property for the purpose for which the donation was made, except that the expenditure of money or use of property must promote the acceptance of HUD-Code manufactured homes as a viable source of

housing for very low, low, and moderate income families.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6013. BUDGET; SHARING OF DEPARTMENT PERSONNEL, EQUIPMENT, AND FACILITIES. (a) The Manufactured Housing Board shall develop a budget for the operations of the department relating to the division.

(b) The Manufactured Housing Board shall reduce administrative costs by entering into an agreement with the department to enable the sharing of department personnel, equipment, and facilities.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6014. DIVISION DIRECTOR. (a) The Manufactured Housing Board shall employ the division director. The division director is the Manufactured Housing Board's chief executive and administrative officer.

(b) The division director is charged with administering, enforcing, and carrying out the functions and duties conferred on the division director by this subchapter and by other law.

(c) The division director serves at the pleasure of the Manufactured Housing Board.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6015. PERSONNEL. The division director may employ staff as necessary to perform the work of the division and may prescribe their duties and compensation. Subject to applicable personnel policies and regulations, the division director may remove any division employee.

Added by Acts 1995, 74th Leg., ch. 978, Sec. 24, eff. Sept. 1, 1995. Renumbered from Sec. 2306.602 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6016. SEPARATION OF RESPONSIBILITIES. The Manufactured Housing Board shall develop and implement policies that clearly separate the policy-making responsibilities of the Manufactured Housing Board and the management responsibilities of the division director and staff of the division.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6017. STANDARDS OF CONDUCT. The division director or the division director's designee shall provide to members of the Manufactured Housing Board and to division employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6018. EQUAL EMPLOYMENT OPPORTUNITY. (a) The division director or the division director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

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

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

(c) The policy statement must:

(1) be updated annually;

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

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

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6020. RULES. (a) The Manufactured Housing Board shall adopt rules as necessary to implement this subchapter and to administer and enforce the manufactured housing program through the division. Rules adopted by the Manufactured Housing Board are subject to Chapter 2001.

(b) The Manufactured Housing Board may not adopt rules restricting competitive bidding or advertising by a person regulated by the division except to prohibit false, misleading, or deceptive practices by that person.

(c) The Manufactured Housing Board may not include in the rules to prohibit false, misleading, or deceptive practices by a person regulated by the division a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement used by the person; or

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

Added by Acts 1995, 74th Leg., ch. 978, Sec. 24, eff. Sept. 1, 1995. Renumbered from Sec. 2306.603 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6021. PUBLIC PARTICIPATION. The Manufactured Housing Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Manufactured Housing Board and to speak on any issue under the jurisdiction of the division.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 2306.6022. COMPLAINTS. (a) The division shall maintain a file on each written complaint filed with the division. The file must include:

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

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

(3) the subject matter of the complaint;

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

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

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

(b) The division shall make available on its website the division's policies and procedures relating to complaint investigation and resolution and shall provide copies of such information on request.

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

(d) Unless otherwise confidential by law, the records of a license holder or other person that are required or obtained by the division or its agents or employees in connection with the investigation of a complaint are subject to the requirements of Chapter 552.

(e) The division director may allow an authorized employee of the division to dismiss a complaint if an investigation demonstrates that:

(1) a violation did not occur; or

(2) the subject of the complaint is outside the division's jurisdiction under this subchapter.

(f) An employee who dismisses a complaint under Subsection (e) shall report the dismissal to the division director and the board. The report must include a sufficient explanation of the reason the complaint was dismissed.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.29, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 64, eff. January 1, 2008.
Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.01, eff. September 1, 2013.

Sec. 2306.6023. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The division shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of division rules; and

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

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

(c) The division shall:

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

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.02, eff. September 1, 2013.

SUBCHAPTER DD. LOW INCOME HOUSING TAX CREDIT PROGRAM

Sec. 2306.6701. PURPOSE. The department shall administer the low income housing tax credit program to:

(1) encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace;

(2) maximize the number of suitable, affordable residential rental units added to the state's housing supply;

(3) prevent losses for any reason to the state's supply of suitable, affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventive financial support under this subchapter; and

(4) provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development, and operation of affordable housing developments in urban and rural communities.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6702. DEFINITIONS. (a) In this subchapter:

(1) "Applicant" means any person or affiliate of a person who files an application with the department requesting a housing tax credit allocation.

(2) "Application" means an application filed with the department by an applicant and includes any exhibits or other supporting materials.

(3) "Application log" means a form containing at least the information required by Section 2306.6709.

(4) "Application round" means the period beginning on the date the department begins accepting applications and continuing until all available housing tax credits are allocated, but not extending past the last day of the calendar year.

(5) "At-risk development" means:

(A) a development that:

(i) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under the following federal laws, as applicable:

(a) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. Section 1715l);

(b) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(c) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(d) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(e) the Section 8 Additional Assistance Program for housing developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart A;

(f) the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Part 886, Subpart C;

(g) Sections 514, 515, and 516, Housing Act of 1949 (42 U.S.C. Sections 1484, 1485, and 1486); or

(h) Section 42, Internal Revenue Code of 1986; and

(ii) is subject to the following conditions:

(a) the stipulation to maintain affordability in the contract granting the subsidy is nearing expiration; or

(b) the HUD-insured or HUD-held mortgage on the development is eligible for prepayment or is nearing the end of its term; or

(B) a development that proposes to rehabilitate or reconstruct housing units that:

(i) receive assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g) and are owned by:

(a) a public housing authority; or

(b) a public facility corporation created by a public housing authority under Chapter 303, Local Government Code;

(ii) received assistance under Section 9, United States Housing Act of 1937 (42 U.S.C. Section 1437g) and:

(a) are proposed to be disposed of or demolished by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

(b) have been disposed of or demolished by a public housing authority or a public facility corporation created by a public housing authority under Chapter 303, Local Government Code, in the two-year period preceding the application for housing tax

credits; or

(iii) receive assistance or will receive assistance through the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development as specified by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. No. 112-55) and its subsequent amendments, if the application for assistance through the Rental Assistance Demonstration program is included in the applicable public housing plan that was most recently approved by the United States Department of Housing and Urban Development as specified by 24 C.F.R. Section 903.23.

(6) "Development" means a proposed qualified low income housing project, as defined by Section 42(g), Internal Revenue Code of 1986 (26 U.S.C. Section 42(g)), that consists of one or more buildings containing multiple units, that is financed under a common plan, and that is owned by the same person for federal tax purposes, including a project consisting of multiple buildings that:

(A) are located on scattered sites; and

(B) contain only rent-restricted units.

(7) "Development owner" means any person or affiliate of a person who owns or proposes a development or expects to acquire control of a development under a purchase contract approved by the department.

(8) "Housing tax credit" means a tax credit allocated under the low income housing tax credit program.

(9) "Land use restriction agreement" means an agreement between the department, the development owner, and the development owner's successors in interest that encumbers the development with respect to the requirements of this subchapter and the requirements of Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42).

(10) "Qualified allocation plan" means a plan adopted by the board under this subchapter that:

(A) provides the threshold, scoring, and underwriting criteria based on housing priorities of the department that are appropriate to local conditions;

(B) consistent with Section 2306.6710(e), gives preference in housing tax credit allocations to developments that, as compared to the other developments:

(i) when practicable and feasible based on documented, committed, and available third-party funding sources,

serve the lowest income tenants per housing tax credit; and

(ii) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program; and

(C) provides a procedure for the department, the department's agent, or another private contractor of the department to use in monitoring compliance with the qualified allocation plan and this subchapter.

(11) "Related party" means the following individuals or entities:

(A) the brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573;

(B) a person and a corporation, if the person owns more than 50 percent of the outstanding stock of the corporation;

(C) two or more corporations that are connected through stock ownership with a common parent possessing more than 50 percent of:

(i) the total combined voting power of all classes of stock of each of the corporations that can vote;

(ii) the total value of shares of all classes of stock of each of the corporations; or

(iii) the total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(D) a grantor and fiduciary of any trust;

(E) a fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(F) a fiduciary of a trust and a beneficiary of the trust;

(G) a fiduciary of a trust and a corporation if more than 50 percent of the outstanding stock of the corporation is owned by or for:

(i) the trust; or

(ii) a person who is a grantor of the trust;

(H) a person or organization and an organization that is tax-exempt under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501), and that is controlled by that person or the

person's family members or by that organization;

(I) a corporation and a partnership or joint venture if the same persons own more than:

(i) 50 percent of the outstanding stock of the corporation; and

(ii) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;

(J) an S corporation and another S corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(K) an S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(L) a partnership and a person or organization owning more than 50 percent of the capital interest or the profits' interest in that partnership; or

(M) two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests.

(12) "Rural area" means an area that is:

(A) described by Section 2306.004(28-a); or

(B) designated by the department as a rural area under Section 2306.6740.

(13) "Rural development agency" means the state agency designated by the legislature as primarily responsible for rural area development in the state.

(14) "Set-aside" means a reservation of a portion of the available housing tax credits to provide financial support for specific types of housing or geographic locations or serve specific types of applicants as permitted by the qualified allocation plan on a priority basis.

(15) "Threshold criteria" means the criteria used to determine whether the development satisfies the minimum level of acceptability for consideration established in the department's qualified allocation plan.

(16) "Unit" means any residential rental unit in a development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

(17) "Urban area" means the area that is located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area other than an area:

(A) described by Section 2306.004(28-a)(B); or

(B) designated by the department as a rural area under Section 2306.6740.

(b) For purposes of Subsection (a)(11), the constructive ownership provisions of Section 267, Internal Revenue Code of 1986 (26 U.S.C. Section 267), apply. The board may lower in the qualified allocation plan the percentages described by Subsection (a)(11).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 857 (H.B. 429), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 963 (H.B. 1888), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 896 (S.B. 1315), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 916 (H.B. 74), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1259 (H.B. 2926), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 646 (S.B. 1238), Sec. 1, eff. June 12, 2017.

Sec. 2306.67021. APPLICABILITY OF SUBCHAPTER. Except as provided by Sections 2306.6703 and 2306.67071, this subchapter does not apply to the allocation of housing tax credits to developments financed through the private activity bond program.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 2.01, eff. September 1, 2013.

Sec. 2306.67022. QUALIFIED ALLOCATION PLAN; MANUAL. (a) At least biennially, the board shall adopt a qualified allocation plan and a corresponding manual to provide information regarding the administration of and eligibility for the low income housing tax credit program. The board may adopt the plan and manual annually, as considered appropriate by the board.

(b) The board shall adjust to reflect inflation any amount specified in the qualified allocation plan relating to the acceptable cost of a development by square foot. The board shall use 2021 as the base year for the adjustment.

(c) In making the computation under Subsection (b), the board shall consider the Consumer Price Index for All Urban Consumers, or its successor in function, published by the United States Bureau of Labor Statistics.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.03, eff. September 28, 2011.

Acts 2023, 88th Leg., R.S., Ch. 883 (H.B. 4550), Sec. 1, eff. September 1, 2023.

Sec. 2306.6703. INELIGIBILITY FOR CONSIDERATION. (a) An application is ineligible for consideration under the low income housing tax credit program if:

(1) at the time of application or at any time during the two-year period preceding the date the application round begins, the applicant or a related party is or has been:

(A) a member of the board; or

(B) the director, a deputy director, the director of housing programs, the director of compliance, the director of underwriting, or the low income housing tax credit program manager employed by the department;

(2) the applicant proposes to replace in less than 15 years any private activity bond financing of the development described by the application, unless:

(A) at least one-third of all the units in the development are public housing units or Section 8 project-based units

and the applicant proposes to maintain for a period of 30 years or more 100 percent of the units supported by housing tax credits as rent-restricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the area median income, adjusted for family size;

(B) the applicable private activity bonds will be redeemed only in an amount consistent with their proportionate amortization; or

(C) if the redemption of the applicable private activity bonds will occur in the first five years of the operation of the development and complies with Section 42(h)(4), Internal Revenue Code of 1986:

(i) on the date the certificate of reservation is issued, the Bond Review Board determines that there is not a waiting list for private activity bonds in the same priority level established under Section 1372.0321 or, if applicable, in the same uniform state service region, as referenced in Section 1372.0231, that is served by the proposed development; and

(ii) the applicable private activity bonds will be redeemed according to underwriting criteria, if any, established by the department;

(3) the applicant proposes to construct a new development that is located one linear mile or less from a development that:

(A) serves the same type of household as the new development, regardless of whether the developments serve families, elderly individuals, or another type of household;

(B) has received an allocation of housing tax credits for new construction at any time during the three-year period preceding the date the application round begins; and

(C) has not been withdrawn or terminated from the low income housing tax credit program; or

(4) the development is located in a municipality or, if located outside a municipality, a county that has more than twice the state average of units per capita supported by housing tax credits or private activity bonds, unless the applicant:

(A) has obtained prior approval of the development from the governing body of the appropriate municipality or county containing the development; and

(B) has included in the application a written statement of support from that governing body referencing this section and

authorizing an allocation of housing tax credits for the development.

(b) Subsection (a)(3) does not apply to a development:

(1) that is using:

(A) federal HOPE VI funds received through the United States Department of Housing and Urban Development;

(B) locally approved funds received from a public improvement district or a tax increment financing district;

(C) funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. Section 12701 et seq.); or

(D) funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.);

(2) that is located in a county with a population of less than one million;

(3) that is located outside of a metropolitan statistical area; or

(4) that a local government where the project is to be located has by vote specifically allowed the construction of a new development located within one linear mile or less from a development under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 18, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1106, Sec. 1, eff. Sept. 1, 2003. Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 8.021, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1416 (S.B. 2064), Sec. 18, eff. June 19, 2009.

Sec. 2306.6704. PREAPPLICATION PROCESS. (a) To prevent unnecessary filing costs, the department by rule shall establish a voluntary preapplication process to enable a preliminary assessment of an application proposed for filing under this subchapter.

(b) The department shall award in the application evaluation process described by Section 2306.6710 an appropriate number of points as an incentive for participation in the preapplication process established under this section.

(b-1) The preapplication process must require the applicant to provide the department with evidence that the applicant has notified the following entities with respect to the filing of the application:

(1) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

(2) the superintendent and the presiding officer of the board of trustees of the school district containing the development;

(3) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;

(4) the presiding officer of the governing body of the county containing the development and all elected members of that body; and

(5) the state senator and state representative of the district containing the development.

(c) The department shall reject and return to the applicant any application assessed by the department under this section that fails to satisfy the threshold criteria required by the board in the qualified allocation plan.

(d) If feasible under Section 2306.67041, an application under this section must be submitted electronically.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 19, eff. Sept. 1, 2003.

Sec. 2306.67041. ON-LINE APPLICATION SYSTEM. (a) The department and the Department of Information Resources shall cooperate to evaluate the feasibility of an on-line application system for the low income housing tax credit program to provide the following functions:

(1) filing of preapplications and applications on-line;

(2) posting of on-line preapplication or application status and the application log detailing the status of, and department's evaluations and scores pertaining to, those applications; and

(3) posting of comments from applicants and the public regarding a preapplication or application.

(b) The department shall determine the process for allowing

access to on-line preapplications and applications, information related to those applications, and department decisions relating to those applications.

(c) In the application cycle following the date any on-line application system becomes operational, the department shall require use of the system for submission of preapplications and applications under this subchapter.

(d) The department shall publish a status report on the implementation of the on-line application on the department's website not later than January 1, 2002.

(e) Before the implementation of the on-line application system, the department may implement the requirements of Section 2306.6717 in any manner the department considers appropriate.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6705. GENERAL APPLICATION REQUIREMENTS. An application must contain at a minimum the following written, detailed information in a form prescribed by the board:

(1) a description of:

(A) the financing plan for the development, including any nontraditional financing arrangements;

(B) the use of funds with respect to the development;

(C) the funding sources for the development, including:

(i) construction, permanent, and bridge loans; and

(ii) rents, operating subsidies, and replacement reserves; and

(D) the commitment status of the funding sources for the development;

(2) if syndication costs are included in the eligible basis, a justification of the syndication costs for each cost category by an attorney or accountant specializing in tax matters;

(3) from a syndicator or a financial consultant of the applicant, an estimate of the amount of equity dollars expected to be raised for the development in conjunction with the amount of housing tax credits requested for allocation to the applicant, including:

(A) pay-in schedules; and

(B) syndicator consulting fees and other syndication

costs;

(4) if rental assistance, an operating subsidy, or an annuity is proposed for the development, any related contract or other agreement securing those funds and an identification of:

(A) the source and annual amount of the funds;

(B) the number of units receiving the funds; and

(C) the term and expiration date of the contract or other agreement;

(5) if the development is located within the boundaries of a political subdivision with a zoning ordinance, evidence in the form of a letter from the chief executive officer of the political subdivision or from another local official with jurisdiction over zoning matters that states that:

(A) the development is permitted under the provisions of the ordinance that apply to the location of the development; or

(B) the applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied;

(6) if an occupied development is proposed for rehabilitation:

(A) an explanation of the process used to notify and consult with the tenants in preparing the application;

(B) a relocation plan outlining:

(i) relocation requirements; and

(ii) a budget with an identified funding source; and

(C) if applicable, evidence that the relocation plan has been submitted to the appropriate local agency;

(7) a certification of the applicant's compliance with appropriate state and federal laws, as required by other state law or by the board;

(8) any other information required by the board in the qualified allocation plan; and

(9) evidence that the applicant has notified the following entities with respect to the filing of the application:

(A) any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site;

(B) the superintendent and the presiding officer of the board of trustees of the school district containing the development;

(C) the presiding officer of the governing body of any municipality containing the development and all elected members of that body;

(D) the presiding officer of the governing body of the county containing the development and all elected members of that body; and

(E) the state senator and state representative of the district containing the development.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 20, eff. Sept. 1, 2003.

Sec. 2306.67055. MARKET ANALYSIS. (a) A market analysis submitted in conjunction with an application for housing tax credits must:

(1) be prepared by a market analyst approved by the department; and

(2) include an assessment of other developments that are supported by housing tax credits within the market area.

(b) The department, through the qualified allocation plan, shall develop:

(1) a process for approving market analysts; and

(2) a methodology for determining the market area to be examined in a market analysis.

Added by Acts 2003, 78th Leg., ch. 330, Sec. 21, eff. Sept. 1, 2003.

Sec. 2306.6706. ADDITIONAL APPLICATION REQUIREMENT: NONPROFIT SET-ASIDE ALLOCATION. (a) In addition to the information required by Section 2306.6705, an application for a housing tax credit allocation from the nonprofit set-aside, as defined by Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)), must contain the following written, detailed information with respect to each development owner and each general partner of a development owner:

(1) Internal Revenue Service documentation of designation

as a Section 501(c)(3) or 501(c)(4) organization;

(2) evidence that one of the exempt purposes of the nonprofit organization is to provide low income housing;

(3) a description of the nonprofit organization's participation in the construction or rehabilitation of the development and in the ongoing operations of the development;

(4) evidence that the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;

(5) a third-party legal opinion stating that the nonprofit organization is not affiliated with or controlled by a for-profit organization and the basis for that opinion;

(6) a copy of the nonprofit organization's most recent audited financial statement;

(7) a list of the names and home addresses of members of the board of directors of the nonprofit organization;

(8) a third-party legal opinion stating that the nonprofit organization is eligible under Subsection (b) for a housing tax credit allocation from the nonprofit set-aside and the basis for that opinion; and

(9) evidence that a majority of the members of the nonprofit organization's board of directors principally reside:

(A) in this state, if the development is located in a rural area; or

(B) not more than 90 miles from the development in the community in which the development is located, if the development is not located in a rural area.

(b) To be eligible for a housing tax credit allocation from the nonprofit set-aside, a nonprofit organization must:

(1) control a majority of the development;

(2) if the organization's application is filed on behalf of a limited partnership, be the managing general partner; and

(3) otherwise meet the requirements of Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6707. ADDITIONAL APPLICATION REQUIREMENT: DISCLOSURE OF INTERESTED PERSONS. (a) The applicant must disclose in the application the names of any persons, including affiliates of those persons and related parties, providing developmental or operational services to the development, including:

(1) a development owner;

(2) an architect;

(3) an attorney;

(4) a tax professional;

(5) a property management company;

(6) a consultant;

(7) a market analyst;

(8) a tenant services provider;

(9) a syndicator;

(10) a real estate broker or agent or a person receiving a fee in connection with services usually provided by a real estate broker or agent;

(11) at the time the application is submitted, the owners of the property on which the development is located;

(12) a developer; and

(13) a builder or general contractor.

(b) For each person described by Subsection (a), the application must disclose any company name, company contact person, address, and telephone number.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.67071. ADDITIONAL APPLICATION REQUIREMENT: NOTICE, HEARING, AND RESOLUTION BY CERTAIN GOVERNING BODIES. (a) Before submitting to the department an application for housing tax credits for developments financed through the private activity bond program, including private activity bonds issued by the department, the Texas State Affordable Housing Corporation, or a local issuer, an applicant must provide notice of the intent to file the application to:

(1) the governing body of a municipality in which the proposed development site is to be located;

(2) subject to Subdivision (3), the commissioners court of a county in which the proposed development site is to be located, if

the proposed site is to be located in an area of a county that is not part of a municipality; or

(3) the commissioners court of a county in which the proposed development site is to be located and the governing body of the applicable municipality, if the proposed site is to be located in the extraterritorial jurisdiction of a municipality.

(b) A county or municipality, as applicable, shall hold a hearing at which public comment may be made on the application.

(c) The board may not approve an application for housing tax credits for developments financed through the private activity bond program unless the applicant has submitted to the department a certified copy of a resolution from each applicable governing body described by Subsection (a). The resolution must certify that:

(1) notice has been provided to each governing body as required by Subsection (a);

(2) each governing body has had sufficient opportunity to obtain a response from the applicant regarding any questions or concerns about the proposed development;

(3) each governing body has held a hearing under Subsection (b); and

(4) after due consideration of the information provided by the applicant and public comment, the governing body does not object to the proposed application.

(d) The department by rule may provide for the time and manner of the submission to the department of a resolution required by Subsection (c).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 2.02, eff. September 1, 2013.

Sec. 2306.6708. APPLICATION CHANGES OR SUPPLEMENTS. (a) Except as provided by Subsection (b), an applicant may not change or supplement an application in any manner after the filing deadline.

(b) This section does not prohibit an applicant from:

(1) at the request of the department, clarifying information in the application or correcting administrative deficiencies in the application; or

(2) amending an application after allocation of housing tax credits in the manner provided by Section 2306.6712.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6709. APPLICATION LOG. (a) In a form prescribed by the department, the department shall maintain for each application an application log that tracks the application from the date of its submission.

(b) The application log must contain at least the following information:

(1) the names of the applicant and related parties;

(2) the physical location of the development, including the relevant region of the state;

(3) the amount of housing tax credits requested for allocation by the department to the applicant;

(4) any set-aside category under which the application is filed;

(5) the score of the application in each scoring category adopted by the department under the qualified allocation plan;

(6) any decision made by the department or board regarding the application, including the department's decision regarding whether to underwrite the application and the board's decision regarding whether to allocate housing tax credits to the development;

(7) the names of persons making the decisions described by Subdivision (6), including the names of department staff scoring and underwriting the application, to be recorded next to the description of the applicable decision;

(8) the amount of housing tax credits allocated to the development; and

(9) a dated record and summary of any contact between the department staff, the board, and the applicant or any related parties.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6710. EVALUATION AND UNDERWRITING OF APPLICATIONS. (a) In evaluating an application, the department shall determine whether the application satisfies the threshold criteria required by

the board in the qualified allocation plan. The department shall reject and return to the applicant any application that fails to satisfy the threshold criteria.

(b) If an application satisfies the threshold criteria, the department shall score and rank the application using a point system that:

(1) prioritizes in descending order criteria regarding:

(A) financial feasibility of the development based on the supporting financial data required in the application that will include a project underwriting pro forma from the permanent or construction lender;

(B) quantifiable community participation with respect to the development, evaluated on the basis of a resolution concerning the development that is voted on and adopted by the following, as applicable:

(i) the governing body of a municipality in which the proposed development site is to be located;

(ii) subject to Subparagraph (iii), the commissioners court of a county in which the proposed development site is to be located, if the proposed site is to be located in an area of a county that is not part of a municipality; or

(iii) the commissioners court of a county in which the proposed development site is to be located and the governing body of the applicable municipality, if the proposed site is to be located in the extraterritorial jurisdiction of a municipality;

(C) the income levels of tenants of the development;

(D) the size and quality of the units;

(E) the rent levels of the units;

(F) the cost of the development by square foot;

(G) the services to be provided to tenants of the development;

(H) whether, at the time the complete application is submitted or at any time within the two-year period preceding the date of submission, the proposed development site is located in an area declared to be a disaster under Section 418.014;

(I) quantifiable community participation with respect to the development, evaluated on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site; and

(J) the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site;

(2) uses criteria imposing penalties on applicants or affiliates who have requested extensions of department deadlines relating to developments supported by housing tax credit allocations made in the application round preceding the current round or a developer or principal of the applicant that has been removed by the lender, equity provider, or limited partners for its failure to perform its obligations under the loan documents or limited partnership agreement;

(3) encourages applicants to provide free notary public service to the residents of the developments for which the allocation of housing tax credits is requested; and

(4) for an application concerning a development that is or will be located in a county with a population of 1.2 million or more but less than 4 million and that is or will be located not more than two miles from a veterans hospital, veterans affairs medical center, or veterans affairs health care center, encourages applicants to provide a preference for leasing units in the development to low income veterans.

(c) The department shall publish in the qualified allocation plan details of the scoring system used by the department to score applications.

(d) The department shall underwrite the applications ranked under Subsection (b) beginning with the applications with the highest scores in each region described by Section 2306.111(d) and in each set-aside category described in the qualified allocation plan. Based on application rankings, the department shall continue to underwrite applications until the department has processed enough applications satisfying the department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and set-aside categories. To enable the board to establish an applications waiting list under Section 2306.6711, the department shall underwrite as many additional applications as the board considers necessary to ensure that all available housing tax credits are allocated within the period required by law. The department shall underwrite an application to determine the financial feasibility of the development and an appropriate level of housing

tax credits. In determining an appropriate level of housing tax credits, the department shall evaluate the cost of the development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for:

(1) the county in which the development is to be located;

(2) if certifications are unavailable under Subdivision (1), the metropolitan statistical area in which the development is to be located; or

(3) if certifications are unavailable under Subdivisions (1) and (2), the uniform state service region in which the development is to be located.

(e) In scoring applications for purposes of housing tax credit allocations, the department shall award, consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42), preference points to a development that will:

(1) when practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest income tenants per housing tax credit, if the development is to be located outside a qualified census tract; and

(2) produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low income housing tax credit program.

(f) In evaluating the level of community support for an application under Subsection (b)(1)(J), the department shall award:

(1) positive points for positive written statements received;

(2) negative points for negative written statements received; and

(3) zero points for neutral statements received.

(g) If no written statement is received for an application under Subsection (b)(1)(J), the department shall use the maximum number of points that could have been awarded under that paragraph to increase the maximum number of points that may be awarded for that application under Subsection (b)(1)(B). If awarding points under Subsection (b)(1)(B)(iii), the department shall reallocate the points from the scoring category provided by Subsection (b)(1)(J) equally between the political subdivisions described by Subsection (b)(1)(B)(iii). In awarding points transferred under this subsection

from the scoring category provided by Subsection (b)(1)(J) to the scoring category provided by Subsection (b)(1)(B), the department shall award:

(1) positive points for positive resolutions adopted;

(2) negative points for negative resolutions adopted; and

(3) zero points for neutral resolutions adopted.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 22, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 42, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 2.03, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 954 (S.B. 1316), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1111 (H.B. 3311), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1086 (H.B. 3574), Sec. 1(a), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1086 (H.B. 3574), Sec. 1(b), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1092 (H.B. 1973), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 662 (H.B. 1558), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 65, eff. September 1, 2023.

Sec. 2306.6711. ALLOCATION OF HOUSING TAX CREDITS. (a) The director shall provide the application scores to the board before the 30th day preceding the date the board begins to issue commitments for housing tax credits in the allocation round.

(b) Not later than the deadline specified in the qualified allocation plan, the board shall issue commitments for available housing tax credits based on the application evaluation process

provided by Section 2306.6710. The board may not allocate to an applicant housing tax credits in any unnecessary amount, as determined by the department's underwriting policy and by federal law, and in any event may not allocate to the applicant housing tax credits in an amount greater than $6 million in a single application round or to an individual development more than $2 million in a single application round.

(c) Concurrently with the initial issuance of commitments for housing tax credits under Subsection (b), the board shall establish a waiting list of additional applications ranked by score in descending order of priority based on set-aside categories and regional allocation goals.

(d) The board shall issue commitments for housing tax credits with respect to applications on the waiting list as additional credits become available.

(e) Not later than the 120th day after the date of the initial issuance of commitments for housing tax credits under Subsection (b), the department shall provide to an applicant who did not receive a commitment under that subsection an opportunity to meet and discuss with the department the application's deficiencies and scoring.

(f) Except as provided by Subsection (f-1), the board may allocate housing tax credits to more than one development in a single community, as defined by department rule, in the same calendar year only if the developments are or will be located more than two linear miles apart. This subsection applies only to communities contained within counties with populations exceeding one million.

(f-1) The board may allocate housing tax credits to more than one development in a single community only if:

(1) the community is located in:

(A) a municipality with a population of two million or more; and

(B) an area that is a federally declared disaster area; and

(2) the governing body of the municipality containing the development:

(A) has by vote specifically authorized the allocation of housing tax credits for the development; and

(B) is authorized to administer disaster recovery funds as a subgrant recipient.

(g) Except as necessary to comply with the nonprofit set-aside

required by Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)), in an urban subregion of a uniform state service region that contains a county with a population of more than 1.7 million, the board shall allocate housing tax credits to the highest scoring development, if any, that is part of a concerted plan of revitalization and is located in that urban subregion in a municipality with a population of 500,000 or more.

(h) Notwithstanding Section 2306.6710(d), and except as necessary to comply with the nonprofit set-aside required by Section 42(h)(5), Internal Revenue Code of 1986 (26 U.S.C. Section 42(h)(5)), the board may not allocate to developments reserved for elderly persons and located in an urban subregion of a uniform state service region a percentage of the available housing tax credits allocated to developments located in that subregion that is greater than the percentage that results from the following formula, unless there are no other qualified applicants in that region:

$$MP = [(LEH - ERU)/(TLH - TEU)] \times 100$$

where:

"MP" is the maximum percentage of the available housing tax credits allocated to developments in the subregion that may be allocated to developments reserved for elderly persons;

"LEH" is the number of low income elderly households in the subregion;

"ERU" is the number of existing units reserved for elderly persons in developments located in the subregion that already receive housing tax credits;

"TLH" is the total number of low income households in the subregion; and

"TEU" is the total number of existing units in developments located in the subregion that already receive housing tax credits.

(i) Subsection (h) applies only to a uniform state service region that contains a county with a population of more than one million.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 23, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1106, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.04, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 976 (H.B. 3535), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1111 (H.B. 3311), Sec. 2, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 584 (S.B. 493), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 883 (H.B. 4550), Sec. 2, eff. September 1, 2023.

Sec. 2306.6712. AMENDMENT OF APPLICATION SUBSEQUENT TO ALLOCATION BY BOARD. (a) If a proposed modification would materially alter a development approved for an allocation of a housing tax credit, the department shall require the applicant to file a formal, written amendment to the application on a form prescribed by the department.

(b) The director shall require the department staff assigned to underwrite applications to evaluate the amendment and provide an analysis and written recommendation to the board. The appropriate monitor under Section 2306.6719 shall also provide to the board an analysis and written recommendation regarding the amendment.

(c) The board must vote on whether to approve the amendment. The board by vote may reject an amendment and, if appropriate, rescind the allocation of housing tax credits and reallocate the credits to other applicants on the waiting list required by Section 2306.6711 if the board determines that the modification proposed in the amendment:

(1) would materially alter the development in a negative manner; or

(2) would have adversely affected the selection of the application in the application round.

(d) Material alteration of a development includes:

(1) a significant modification of the site plan;

(2) a modification of the number of units or bedroom mix of units;

(3) a substantive modification of the scope of tenant services;

(4) a reduction of three percent or more in the square footage of the units or common areas;

(5) a significant modification of the architectural design

of the development;

(6) a modification of the residential density of the development of at least five percent; and

(7) any other modification considered significant by the board.

(e) In evaluating the amendment under this subsection, the department staff shall consider whether the need for the modification proposed in the amendment was:

(1) reasonably foreseeable by the applicant at the time the application was submitted; or

(2) preventable by the applicant.

(f) This section shall be administered in a manner that is consistent with Section 42, Internal Revenue Code of 1986 (26 U.S.C. Section 42).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6713. HOUSING TAX CREDIT AND OWNERSHIP TRANSFERS. (a) An applicant may not transfer an allocation of housing tax credits or ownership of a development supported with an allocation of housing tax credits to any person other than an affiliate unless the applicant obtains the director's prior, written approval of the transfer.

(b) The director may not unreasonably withhold approval of the transfer.

(c) An applicant seeking director approval of a transfer and the proposed transferee must provide to the department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the department.

(d) On request, an applicant seeking director approval of a transfer must provide to the department:

(1) a list of the names of transferees and related parties; and

(2) detailed information describing the experience and financial capacity of transferees and related parties.

(e) The development owner shall certify to the director that the tenants in the development have been notified in writing of the transfer before the 30th day preceding the date of submission of the

transfer request to the department.

(f) Not later than the fifth working day after the date the department receives all necessary information under this section, the department shall conduct a qualifications review of a transferee to determine:

(1) the transferee's past compliance with all aspects of the low income housing tax credit program, including land use restriction agreements; and

(2) the sufficiency of the transferee's experience with developments supported with housing tax credit allocations.

(g) The transfer of ownership of a development supported with an allocation of housing tax credits under this section does not subject the development to a right of first refusal under Section 2306.6726 if the transfer is made to a newly formed entity:

(1) that is under common control with the development owner; and

(2) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the development using assistance administered through a state financing program.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 817 (H.B. 3576), Sec. 2, eff. September 1, 2015.

Sec. 2306.6714. AT-RISK DEVELOPMENT SET-ASIDE. (a) The department shall set aside for eligible at-risk developments not less than 15 percent of the housing tax credits available for allocation in the calendar year.

(a-1) An at-risk development described by Section 2306.6702(a)(5)(B) is eligible for housing tax credits set aside under Subsection (a) if:

(1) a portion of the public housing operating subsidy received from the department is retained for the development; and

(2) a portion of the units of the development are reserved for public housing as specified in the qualified housing plan.

(a-2) Notwithstanding any other provision of law, an at-risk development described by Section 2306.6702(a)(5)(B) that was

previously allocated housing tax credits set aside under Subsection (a) does not lose eligibility for those credits if the portion of units reserved for public housing as a condition of eligibility for the credits under Subsection (a-1)(2) are later converted under the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development as specified by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. No. 112-55) and its subsequent amendments.

(b) Any amount of housing tax credits set aside under this section that remains after the initial allocation of housing tax credits is available for allocation to any eligible applicant as provided by the qualified allocation plan.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 963 (H.B. 1888), Sec. 2, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 646 (S.B. 1238), Sec. 2, eff. June 12, 2017.

Sec. 2306.6715. APPEAL. (a) In a form prescribed by the department in the qualified allocation plan, an applicant may appeal the following decisions made by the department in the application evaluation process provided by Section 2306.6710:

(1) a determination regarding the application's satisfaction of threshold and underwriting criteria;

(2) the scoring of the application; and

(3) a recommendation as to the amount of housing tax credits to be allocated to the application.

(b) An applicant may not appeal a decision made under Section 2306.6710 regarding an application filed by another applicant.

(c) An applicant must file a written appeal authorized by this section with the department not later than the seventh day after the date the department publishes the results of the application evaluation process provided by Section 2306.6710. In the appeal, the applicant must specifically identify the applicant's grounds for appeal, based on the original application and additional documentation filed with the original application.

(d) The director shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the applicant is not satisfied with the director's response to the appeal, the applicant may appeal directly in writing to the board, provided that an appeal filed with the board under this subsection must be received by the board before:

(1) the seventh day preceding the date of the board meeting at which the relevant allocation decision is expected to be made; or

(2) the third day preceding the date of the board meeting described by Subdivision (1), if the director does not respond to the appeal before the date described by Subdivision (1).

(e) Board review of an appeal under Subsection (d) is based on the original application and additional documentation filed with the original application. The board may not review any information not contained in or filed with the original application. The decision of the board regarding the appeal is final.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6716. FEES. (a) A fee charged by the department for filing an application may not be excessive and must reflect the department's actual costs in processing the application, providing copies of documents to persons connected with the application process, and making appropriate information available to the public through the department's website.

(b) The department shall publish each year an updated schedule of application fees that specifies the amount to be charged at each stage of the application process.

(c) In accordance with the fee schedule, the department shall refund the balance of any fees collected for an application that is withdrawn by the applicant or that is not fully processed by the department. The department must provide the refund to the applicant not later than the 30th day after the date the last official action is taken with respect to the application.

(d) The department shall develop a sliding scale fee schedule for applications that encourages increased participation by community housing development organizations in the low income housing tax credit program.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 24, eff. Sept. 1, 2003.

Sec. 2306.6717. PUBLIC INFORMATION AND HEARINGS. (a) Subject to Section 2306.67041, the department shall make the following items available on the department's website:

(1) as soon as practicable, any proposed application submitted through the preapplication process established by this subchapter;

(2) before the 30th day preceding the date of the relevant board allocation decision, except as provided by Subdivision (3), the entire application, including all supporting documents and exhibits, the application log, a scoring sheet providing details of the application score, and any other document relating to the processing of the application;

(3) not later than the third working day after the date of the relevant determination, the results of each stage of the application process, including the results of the application scoring and underwriting phases and the allocation phase;

(4) before the 15th day preceding the date of board action on the amendment, notice of an amendment under Section 2306.6712 and the recommendation of the director and monitor regarding the amendment; and

(5) an appeal filed with the department or board under Section 2306.0504 or 2306.6715 and any other document relating to the processing of the appeal.

(b) The department shall make available on the department's website information regarding the low income housing tax credit program, including notice regarding public hearings, meetings, the opening and closing dates for applications, submitted applications, and applications approved for underwriting and recommended to the board, and shall provide that information to:

(1) locally affected community groups;

(2) local and state elected officials;

(3) local housing departments;

(4) any appropriate newspapers of general or limited circulation that serve the community in which the development is to be located;

(5) nonprofit and for-profit organizations;

(6) on-site property managers of occupied developments that are the subject of applications for posting in prominent locations in those developments; and

(7) any other interested persons and community groups that request the information.

(c) The department shall hold at least three public hearings in different regions of the state to receive public comments on applications and on other issues relating to the low income housing tax credit program.

(d) Notwithstanding any other provision of this section, the department may treat the financial statements of any applicant as confidential and may elect not to disclose those statements to the public.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 330, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 556 (S.B. 659), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 2.04, eff. September 1, 2013.

Sec. 2306.67171. ELECTRONIC MAIL NOTIFICATION SERVICE. (a) The department shall maintain an electronic mail notification service to which any person in this state may electronically subscribe to receive information concerning the status of pre-applications and applications under this subchapter.

(b) The electronic mail notification service maintained under Subsection (a) must:

(1) allow a subscriber to request for a zip code notification of:

(A) the filing of any pre-application or application concerning a development that is or will be located in the zip code;

(B) the posting of the board materials for board approval of a list of approved applications or the issuance of final allocation commitments for applications described by Paragraph (A); and

(C) any public hearing to be held concerning an application or pre-application described by Paragraph (A); and

(2) respond to a subscriber via electronic mail not later than the later of:

(A) the 14th day after the date the department receives notice of an event described by Subdivision (1); or

(B) if applicable, the date or dates specified by Section 2306.6717(a).

(c) The department may include in an electronic mail notification sent to a subscriber any applicable information described by Section 2306.6717.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 28, eff. September 1, 2007.

Sec. 2306.6718. ELECTED OFFICIALS. (a) The department shall provide written notice of the filing of an application to the following elected officials:

(1) members of the legislature who represent the community containing the development described in the application; and

(2) the chief executive officer of the political subdivision containing the development described in the application.

(b) The department shall provide the elected officials with an opportunity to comment on the application during the application evaluation process provided by Section 2306.6710 and shall consider those comments in evaluating applications under that section.

(c) A member of the legislature who represents the community containing the development may hold a community meeting at which the department shall provide appropriate representation.

(d) If the department receives written notice from the mayor or county judge of an affected municipality or county opposing an application, the department must contact the mayor or county judge and offer to conduct a physical inspection of the development site and consult with the mayor or county judge before the application is scored.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6719. MONITORING OF COMPLIANCE. (a) The department may contract with an independent third party to monitor a development during its construction or rehabilitation and during its operation for compliance with:

(1) any conditions imposed by the department in connection with the allocation of housing tax credits to the development; and

(2) appropriate state and federal laws, as required by other state law or by the board.

(b) The department may assign department staff other than housing tax credit division staff to perform the relevant monitoring functions required by this section in the construction or rehabilitation phase of a development.

(c) For a violation other than a violation that poses an imminent hazard or threat to health and safety, the department must provide the owner of a development with the following periods to correct a failure to comply with a condition or law described by Subsection (a)(1) or (2):

(1) 30 days for a failure to file the annual owner's compliance report; and

(2) 90 days for any other failure to comply under this section.

(d) For good cause shown, the executive director may extend the periods provided under Subsection (c).

(e) Solely for purposes of determining eligibility to apply for and receive financial assistance from the department, a development may not be considered to be in noncompliance with an applicable condition or law if the owner of the development takes appropriate corrective action during the period provided under Subsection (c).

(f) Notwithstanding Subsection (e), the department shall:

(1) submit to the applicable federal agency any report required by federal law regarding an owner's noncompliance with a condition or law described by Subsection (a)(1) or (2); and

(2) for purposes of developing and administering the policy relating to debarment under Section 2306.0504, consider recurring violations of a condition or law described by Subsection (a)(1) or (2), including violations that are corrected during the applicable period provided under Subsection (c).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 556 (S.B. 659), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 2.05, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 9.012, eff. September 1, 2015.

Sec. 2306.6720. ENFORCEABILITY OF APPLICANT REPRESENTATIONS. Each material representation made by an applicant to secure a housing tax credit allocation is enforceable by the department and the tenants of the development supported with the allocation. Subject to modification and enforcement as provided by this chapter, a land use restriction agreement that is recorded with respect to a development is considered to state the development owner's ongoing obligations with regard to the matters addressed in the agreement.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 817 (H.B. 3576), Sec. 3, eff. September 1, 2015.

Sec. 2306.6722. DEVELOPMENT ACCESSIBILITY. Any development supported with a housing tax credit allocation shall comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6723. COORDINATION WITH RURAL DEVELOPMENT AGENCY. (a) The department shall jointly administer with the rural development agency any set-aside for rural areas to:

(1) ensure the maximum use and optimum geographic distribution of housing tax credits in rural areas; and

(2) provide for information sharing, efficient procedures,

and fulfillment of development compliance requirements in rural areas.

(b) The rural development agency shall assist in developing all threshold, scoring, and underwriting criteria applied to applications eligible for the rural area set-aside. The criteria must be approved by that agency.

(c) To ensure that the rural area set-aside receives a sufficient volume of eligible applications, the department shall fund and, with the rural development agency, shall jointly implement outreach, training, and rural area capacity building efforts as directed by the rural development agency.

(d) The department and the rural development agency shall jointly adjust the regional allocation of housing tax credits described by Section 2306.111 to offset the under-utilization and over-utilization of multifamily private activity bonds and other housing resources in the different regions of the state.

(e) From application fees collected under this subchapter, the department shall reimburse the rural development agency for any costs incurred by the agency in carrying out the functions required by this section.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6724. DEADLINES FOR ALLOCATION OF LOW INCOME HOUSING TAX CREDITS. (a) Regardless of whether the board will adopt the plan annually or biennially, the department, not later than September 30 of the year preceding the year in which the new plan is proposed for use, shall prepare and submit to the board for adoption any proposed qualified allocation plan required by federal law for use by the department in setting criteria and priorities for the allocation of tax credits under the low income housing tax credit program.

(b) Regardless of whether the board has adopted the plan annually or biennially, the board shall submit to the governor any proposed qualified allocation plan not later than November 15 of the year preceding the year in which the new plan is proposed for use. The governor shall approve, reject, or modify and approve the proposed qualified allocation plan not later than December 1.

(d) An applicant for a low income housing tax credit to be

issued a commitment during the initial allocation cycle in a calendar year must submit an application to the department not later than March 1.

(e) The board shall review the recommendations of department staff regarding applications and shall issue a list of approved applications each year in accordance with the qualified allocation plan not later than June 30.

(f) The board shall issue final commitments for allocations of housing tax credits each year in accordance with the qualified allocation plan not later than July 31.

(g) Notwithstanding any other law, the department shall issue a final commitment for an allocation of housing tax credits not later than the 120th day following the date on which the department receives from an applicant a complete cost certification package, as prescribed by department rule, and the applicant has fulfilled any requests for information for the issuance of Internal Revenue Service Form 8609, or that form's successor.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 49, eff. Sept. 1, 1997. Renumbered from Sec. 2306.671 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.05, eff. September 28, 2011.

Acts 2023, 88th Leg., R.S., Ch. 883 (H.B. 4550), Sec. 3, eff. September 1, 2023.

Sec. 2306.6725. SCORING OF APPLICATIONS. (a) In allocating low income housing tax credits, the department shall score each application using a point system based on criteria adopted by the department that are consistent with the department's housing goals, including criteria addressing the ability of the proposed project to:

(1) provide quality social support services to residents;

(2) demonstrate community and neighborhood support as defined by the qualified allocation plan;

(3) consistent with sound underwriting practices and when economically feasible, serve individuals and families of extremely low income by leveraging private and state and federal resources, including federal HOPE VI grants received through the United States

Department of Housing and Urban Development;

(4) serve traditionally underserved areas;

(5) demonstrate support from local political subdivisions based on the subdivisions' commitment of development funding;

(6) rehabilitate or perform an adaptive reuse of a certified historic structure, as defined by Section 171.901(1), Tax Code, as part of the development;

(7) remain affordable to qualified tenants for an extended, economically feasible period; and

(8) comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), and specified under 24 C.F.R. Part 8, Subpart C.

(b) The department shall provide appropriate incentives as determined through the qualified allocation plan to reward applicants who agree to:

(1) equip the development that is the basis of the application with energy saving devices that meet the standards established by the state energy conservation office or provide to a qualified entity, in a land use restriction agreement in accordance with Section 2306.6726, a right of first refusal to purchase the development at the minimum price provided in, and in accordance with the requirements of, Section 42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)); and

(2) locate the development in a census tract in which there are no other existing developments supported by housing tax credits.

(c) On awarding tax credit allocations, the board shall document the reasons for each project's selection, including an explanation of:

(1) all discretionary factors used in making its determination; and

(2) the reasons for any decision that conflicts with the recommendations of department staff under Section 2306.6731.

(d) For each scoring criterion, the department shall use a range of points to evaluate the degree to which a proposed project satisfies the criterion. The department may not award:

(1) a number of points for a scoring criterion that is disproportionate to the degree to which a proposed project complies with that criterion; or

(2) to a proposed project for the general population a number of points for a scoring criterion that is different than the

number of points awarded for that criterion to a proposed project reserved for elderly persons if the proposed projects comply with the criterion to the same degree.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 49, eff. Sept. 1, 1997. Renumbered from Sec. 2306.672 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 330, Sec. 26, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1106, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 817 (H.B. 3576), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 954 (S.B. 1316), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1111 (H.B. 3311), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 8.016, eff. September 1, 2017.

Sec. 2306.6726. SALE OF CERTAIN LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS. (a) An owner of a development subject to a right of first refusal under Section 2306.6725 who intends to sell the development at any time after the expiration of the compliance period shall notify the department and the tenants of the development of the owner's intent to sell and, if applicable, shall specifically identify to the department any qualified entity that is the owner's intended recipient of the right of first refusal in the land use restriction agreement.

(a-1) As soon as practicable after receiving notice under Subsection (a), the department shall:

(1) provide to any qualified entity specifically identified under Subsection (a) notice regarding the owner's intent to sell the development; and

(2) post on the department's Internet website the notice described by Subdivision (1).

(b) The owner of a development subject to a right of first refusal under Section 2306.6725 may:

(1) during the first 60-day period after notice is provided under Subsection (a-1), negotiate or enter into a purchase agreement

only with a qualified entity that is:

(A) a community housing development organization as defined by the federal HOME investment partnership program;

(B) if the authority or the corporation owns the fee title to the development owner's leasehold estate:

(i) a public housing authority; or

(ii) a public facility corporation created by a public housing authority under Chapter 303, Local Government Code; or

(C) controlled by an entity described by Paragraph (A) or (B);

(2) during the second 60-day period after notice is provided under Subsection (a-1), negotiate or enter into a purchase agreement with a qualified entity that:

(A) is described by Section 2306.6706;

(B) is controlled by an entity described by Paragraph (A); or

(C) is a tenant organization; and

(3) during the last 60-day period after notice is provided under Subsection (a-1), negotiate or enter into a purchase agreement with any other qualified entity.

(c) Beginning on the 181st day after the date the department posts notice under Subsection (a-1), an owner of a development subject to a right of first refusal under Section 2306.6725 may sell to any purchaser a development to which the right of first refusal applies if a qualified entity does not offer to purchase the development for a price that the department determines to be reasonable.

(c-1) This section applies only to a right of first refusal memorialized in a land use restriction agreement. This section does not authorize a modification of any other agreement between an owner of a development and a qualified entity.

(c-2) The department shall adopt rules and procedures to give effect to the right of first refusal granted by any land use restriction agreement.

(d) In this section:

(1) "Compliance period" has the meaning assigned by Section 42(i)(1), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(1)).

(2) "Qualified entity" means an entity described by, or an entity controlled by an entity described by, Section 42(i)(7)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 42(i)(7)(A)).

Added by Acts 1997, 75th Leg., ch. 980, Sec. 49, eff. Sept. 1, 1997. Renumbered from Sec. 2306.673 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 817 (H.B. 3576), Sec. 5, eff. September 1, 2015.
Acts 2021, 87th Leg., R.S., Ch. 841 (S.B. 403), Sec. 1, eff. September 1, 2021.

Sec. 2306.6727. DEPARTMENT PURCHASE OF LOW INCOME HOUSING TAX CREDIT PROPERTY. The board by rule may develop and implement a program to purchase low income housing tax credit property that is not purchased by a qualified nonprofit organization or tenant organization. The department may not purchase low income housing tax credit property if the board finds that the purchase is not in the best interest of the state.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 49, eff. Sept. 1, 1997. Renumbered from Sec. 2306.674 by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6728. DEPARTMENT POLICY AND PROCEDURES REGARDING RECIPIENTS OF CERTAIN FEDERAL HOUSING ASSISTANCE. (a) The department by rule shall adopt a policy regarding the admittance to low income housing tax credit properties of income-eligible individuals and families receiving assistance under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(b) The policy must provide a reasonable minimum income standard that is not otherwise prohibited by this chapter and that is to be used by owners of low income housing tax credit properties and must place reasonable limits on the use of any other factors that impede the admittance of individuals and families described by Subsection (a) to those properties, including credit histories, security deposits, and employment histories.

(c) The department by rule shall establish procedures to monitor low income housing tax credit properties that refuse to admit individuals and families described by Subsection (a). The department by rule shall establish enforcement mechanisms with respect to those

properties, including a range of sanctions to be imposed against the owners of those properties.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.30, eff. Sept. 1, 2001.

Sec. 2306.6729. QUALIFIED NONPROFIT ORGANIZATION. (a) A qualified nonprofit organization may compete in any low income housing tax credit allocation pool, including:

(1) the nonprofit allocation pool;

(2) the rural projects/prison communities allocation pool; and

(3) the general projects allocation pool.

(b) A qualified nonprofit organization submitting an application under this subchapter must have a controlling interest in a project proposed to be financed with a low income housing tax credit from the nonprofit allocation pool.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 1.30, eff. Sept. 1, 2001.

Sec. 2306.6730. ACCESSIBILITY REQUIRED. A project to which a low income housing tax credit is allocated under this subchapter shall comply with the accessibility standards that are required under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), as amended, and specified under 24 C.F.R. Part 8, Subpart C.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6731. ALLOCATION DECISION; REEVALUATION. (a) Department staff shall provide written, documented recommendations to the board concerning the financial or programmatic viability of each application for a low income housing tax credit before the board makes a decision relating to the allocation of tax credits. The board may not make without good cause an allocation decision that conflicts with the recommendations of department staff.

(b) Regardless of project stage, the board must reevaluate a

project that undergoes a substantial change between the time of initial board approval of the project and the time of issuance of a tax credit commitment for the project. The board may revoke any tax credit commitment issued for a project that has been unfavorably reevaluated by the board under this subsection.

Added by Acts 1997, 75th Leg., ch. 980, Sec. 49, eff. Sept. 1, 1997. Renumbered from Sec. 2306.675 and amended by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6733. REPRESENTATION BY FORMER BOARD MEMBER OR OTHER PERSON. (a) A former board member or a former director, deputy director, director of housing programs, director of compliance, director of underwriting, or low income housing tax credit program manager employed by the department may not:

(1) for compensation, represent an applicant for an allocation of low income housing tax credits or a related party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the department ceases;

(2) represent any applicant or related party or receive compensation for services rendered on behalf of any applicant or related party regarding the consideration of a housing tax credit application in which the former board member, director, or manager participated during the period of service in office or employment with the department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or

(3) for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an applicant or related party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the department ceases.

(b) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6734. MINORITY-OWNED BUSINESSES. (a) The department shall require a person who receives an allocation of housing tax credits to attempt to ensure that at least 30 percent of the construction and management businesses with which the person contracts in connection with the development are minority-owned businesses.

(b) A person who receives an allocation of housing tax credits must report to the department not less than once in each 90-day period following the date of allocation regarding the percentage of businesses with which the person has contracted that qualify as minority-owned businesses.

(c) In this section:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

(2) "Minority group" includes:

(A) women;

(B) African Americans;

(C) American Indians;

(D) Asian Americans; and

(E) Mexican Americans and other Americans of Hispanic origin.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 8.01, eff. Sept. 1, 2001.

Sec. 2306.6735. REQUIRED LEASE AGREEMENT PROVISIONS. A lease agreement with a tenant in a development supported with a housing tax credit allocation must:

(1) include any applicable federal or state standards identified by department rule that relate to the termination or nonrenewal of the lease agreement; and

(2) be consistent with state and federal law.

Added by Acts 2007, 80th Leg., R.S., Ch. 818 (S.B. 1733), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 27,

eff. September 1, 2007.

For contingent expiration of this section, see Subsection (b)(2).

Sec. 2306.6736. LOW INCOME HOUSING TAX CREDITS FINANCED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. (a) To the extent the department receives federal funds under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) or any subsequent law (including any extension or renewal thereof) that requires the department to award the federal funds in the same manner and subject to the same limitations as awards of housing tax credits, the following provisions shall apply.

(b) Any reference in this chapter to the administration of the housing tax credit program shall apply equally to the administration of such federal funds, except:

(1) the department may establish a separate application procedure for such funds, outside of the uniform application cycle referred to in Section 2306.1111 and the deadlines established in Section 2306.6724, and any reference herein to the application period shall refer to the period beginning on the date the department begins accepting applications for such funds and continuing until all such available funds are awarded;

(2) unless reauthorized, this section is repealed on August 31, 2011.

Added by Acts 2009, 81st Leg., R.S., Ch. 1019 (H.B. 4275), Sec. 1, eff. June 19, 2009.

Sec. 2306.6737. ASSISTANCE FROM AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009. If allowed by federal law, the department shall, under any federally funded program resulting from the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5), secure the interests of the state through bonds, an ownership interest in property, restrictive covenants filed in the real property records, and/or liens filed on a property for which the applicant has accepted funds until such a time as the department and the State of Texas do not have liability to repay or recapture such funds.

Added by Acts 2009, 81st Leg., R.S., Ch. 1019 (H.B. 4275), Sec. 2,

eff. June 19, 2009.

Sec. 2306.6738. PROHIBITED PRACTICES. (a) Notwithstanding any other law, a development owner of a development supported with a housing tax credit allocation may not:

(1) lock out or threaten to lock out any person residing in the development except by judicial process unless the exclusion results from:

(A) a necessity to perform bona fide repairs or construction work; or

(B) an emergency; or

(2) seize or threaten to seize the personal property of any person residing in the development except by judicial process unless the resident has abandoned the premises.

(b) Each development owner shall:

(1) include a conspicuous provision in the lease agreement prohibiting the owner from engaging in a practice described by Subsection (a); and

(2) remove in the manner specified by department rule any provisions in the lease agreement that are contrary to Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1423 (S.B. 1717), Sec. 2, eff. September 1, 2009.
Redesignated from Government Code, Section 2306.6736 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(23), eff. September 1, 2011.

Sec. 2306.6739. HOUSING TAX CREDITS FINANCED USING FEDERAL EMERGENCY FUNDS. (a) To the extent the department receives federal emergency funds that must be awarded by the department in the same manner as and that are subject to the same limitations as awards of housing tax credits, any reference in this chapter to the administration of the housing tax credit program applies equally to the administration of the federal funds, subject to Subsection (b).

(b) Notwithstanding any other law, the department may establish a separate application procedure for the federal emergency funds that does not follow the uniform application cycle required by Section

2306.1111 or the deadlines established by Section 2306.6724, and any reference in this chapter to an application period occurring in relation to those federal emergency funds refers to the period beginning on the date the department begins accepting applications for the federal funds and continuing until all of the available federal funds are awarded.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 2.06, eff. September 1, 2013.

Sec. 2306.6740. DESIGNATION OF CERTAIN AREAS AS RURAL. (a) The department by rule shall provide for the designation by the department of an area located within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area as a rural area under Section 2306.6702(a)(12)(B) for purposes of receiving housing tax credits administered by the department under this subchapter.

(b) Rules adopted under this section must:

(1) provide procedures by which a political subdivision or a census-designated place may apply for a rural designation;

(2) provide guidelines for designating an area as rural, including specifying:

(A) conditions under which a rural designation is not appropriate, including the proximity of the area to or the presence of major amenities commonly associated with urban or suburban areas; and

(B) conditions under which a rural designation is appropriate, including areas with low population density, the proximity of the area to or the absence of major amenities commonly associated with urban or suburban areas, a high level of undeveloped land, a significant presence of unimproved roads, or significant agricultural activity; and

(3) ensure that any housing tax credits allocated to a designated rural area comply with applicable federal requirements regarding that assistance.

Added by Acts 2015, 84th Leg., R.S., Ch. 916 (H.B. 74), Sec. 2, eff. September 1, 2015.

SUBCHAPTER FF. OWNER-BUILDER LOAN PROGRAM

Sec. 2306.751. DEFINITION. In this subchapter, "owner-builder" means a person, other than a person who owns or operates a construction business:

(1) who:

(A) owns or purchases a piece of real property through a warranty deed or a warranty deed and deed of trust; or

(B) is purchasing a piece of real property under a contract for deed entered into before January 1, 1999; and

(2) who undertakes to make improvements to that property.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.

Sec. 2306.752. OWNER-BUILDER LOAN PROGRAM. (a) To provide for the development of affordable housing in this state, the department, through the colonia self-help centers established under Subchapter Z or a nonprofit organization certified by the department as a nonprofit owner-builder housing program, shall make loans for owner-builders to enable them to:

(1) purchase or refinance real property on which to build new residential housing;

(2) build new residential housing; or

(3) improve existing residential housing.

(b) The department may adopt rules necessary to accomplish the purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.

Sec. 2306.753. OWNER-BUILDER ELIGIBILITY. (a) Subject to this section, the department shall establish eligibility requirements for an owner-builder to receive a loan under this subchapter. The eligibility requirements must establish a priority for loans made under this subchapter to owner-builders with an annual income, as determined under Subsection (b)(1), of less than $17,500.

(b) To be eligible for a loan under this subchapter, an owner-builder:

(1) may not have an annual income that exceeds 80 percent, as determined by the department, of the greater of the state or local median family income, when combined with the income of any person who

resides with the owner-builder;

(2) must have resided in this state for the preceding six months;

(3) must have successfully completed an owner-builder education class under Section 2306.756; and

(4) must agree to:

(A) provide through personal labor at least 65 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified owner-builder housing program;

(B) provide an amount of personal labor equivalent to the amount required under Paragraph (A) in connection with building or rehabilitating housing for others through a state-certified owner-builder housing program;

(C) provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified owner-builder housing program; or

(D) if due to documented disability or other limiting circumstances as defined by department rule the owner-builder cannot provide the amount of personal labor otherwise required by this subdivision, provide through the noncontract labor of friends, family, or volunteers at least 65 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state-certified owner-builder housing program.

(c) The department may select nonprofit owner-builder housing programs to certify the eligibility of owner-builders to receive a loan under this subchapter. A nonprofit housing assistance organization selected by the department shall use the eligibility requirements established by the department to certify the eligibility of an owner-builder for the program.

(d) At least two-thirds of the dollar amount of loans made under this subchapter in each fiscal year must be made to borrowers whose property is in a census tract that has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 2.08, eff. Sept. 1,

2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 4, eff. June 19, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 428 (S.B. 992), Sec. 1, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 408 (H.B. 1472), Sec. 1, eff. September 1, 2023.

Sec. 2306.754. AMOUNT OF LOAN; LOAN TERMS. (a) The department may establish the minimum amount of a loan under this subchapter, but a loan made by the department may not exceed $45,000.

(b) If it is not possible for an owner-builder to purchase necessary real property and build or rehabilitate adequate housing for $45,000, the owner-builder must obtain the amount necessary that exceeds $45,000 from other sources of funds.

(c) A loan made by the department under this subchapter:

(1) may not exceed a term of 30 years;

(2) may bear interest at a fixed rate of not more than three percent or bear interest in the following manner:

(A) no interest for the first two years of the loan;

(B) beginning with the second anniversary of the date the loan was made, interest at the rate of one percent a year;

(C) beginning on the third anniversary of the date the loan was made and ending on the sixth anniversary of the date the loan was made, interest at a rate that is one percent greater than the rate borne in the preceding year; and

(D) beginning on the sixth anniversary of the date the loan was made and continuing through the remainder of the loan term, interest at the rate of five percent; and

(3) shall be secured by:

(A) a first lien by the department on the real property if the loan is the largest amortized, repayable loan secured by the real property; or

(B) a co-first lien or subordinate lien as determined by department rule, if the loan is not the largest loan as described by Paragraph (A).

(d) If an owner-builder is purchasing real property under a contract for deed, the department may not disburse any portion of a

loan made under this subchapter until the owner-builder:

(1) fully completes the owner-builder's obligation under the contract and receives a deed to the property; or

(2) refinances the owner-builder's obligation under the contract and converts the obligation to a note secured by a deed of trust.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 2.09, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 5, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1020 (H.B. 1512), Sec. 1, eff. June 15, 2017.

Sec. 2306.755. NONPROFIT OWNER-BUILDER HOUSING PROGRAMS. (a) The department may certify nonprofit owner-builder housing programs operated by a tax-exempt organization listed under Section 501(c)(3), Internal Revenue Code of 1986, to:

(1) qualify potential owner-builders for loans under this subchapter;

(2) provide owner-builder education classes under Section 2306.756;

(3) assist owner-builders in building or rehabilitating housing; and

(4) originate or service loans made under this subchapter.

(b) The department by rule shall adopt procedures for the certification of nonprofit owner-builder housing programs under this section.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 2.10, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 6, eff. June 19, 2009.

Sec. 2306.756. OWNER-BUILDER EDUCATION CLASSES. (a) A state-

certified nonprofit owner-builder housing program shall offer owner-builder education classes to potential owner-builders. A class under this section must provide information on:

(1) the financial responsibilities of an owner-builder under this subchapter, including the consequences of an owner-builder's failure to meet those responsibilities;

(2) the building or rehabilitation of housing by owner-builders;

(3) resources for low-cost building materials available to owner-builders; and

(4) resources for building or rehabilitation assistance available to owner-builders.

(b) A nonprofit owner-builder housing program may charge a potential owner-builder who enrolls in a class under this section a reasonable fee not to exceed $50 to offset the program's costs in providing the class.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 7, eff. June 19, 2009.

Sec. 2306.757. LOAN PRIORITY FOR WAIVER OF LOCAL GOVERNMENT FEES. In making loans under this subchapter, the department shall give priority to loans to owner-builders who will reside in counties or municipalities that agree in writing to waive capital recovery fees, building permit fees, inspection fees, or other fees related to the building or rehabilitation of the housing to be built or improved with the loan proceeds.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 8, eff. June 19, 2009.

Sec. 2306.758. FUNDING. (a) The department shall solicit gifts and grants to make loans under this subchapter.

(b) The department may also make loans under this subchapter from:

(1) available funds in the housing trust fund established under Section 2306.201; and

(2) federal block grants that may be used for the purposes of this subchapter.

(c) In a state fiscal year, the department may use not more than 10 percent of the revenue available for purposes of this subchapter to enhance the ability of tax-exempt organizations described by Section 2306.755(a) to implement the purposes of this chapter and to enhance the number of such organizations that are able to implement those purposes. The department shall use that available revenue to provide financial assistance, technical training, and management support for the purposes of this subsection.

(d) All money received by the department as part of the owner-builder loan program under this subchapter, including any amount received by the department for payment of the principal of or interest on a loan made under this subchapter, shall be deposited in the housing trust fund established under Section 2306.201 to be used to carry out the purposes of this subchapter. If the money to be received by the department for a state fiscal year for payment of the principal of or interest on a loan made under this subchapter is less than $3 million for a state fiscal year, the department shall use any available source of money in the housing trust fund to ensure that not less than $3 million is used for the owner-builder loan program each state fiscal year.

Added by Acts 1999, 76th Leg., ch. 1548, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 1367, Sec. 2.11, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1365 (S.B. 679), Sec. 9, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1020 (H.B. 1512), Sec. 2, eff. June 15, 2017.

SUBCHAPTER GG. COLONIA MODEL SUBDIVISION PROGRAM

Sec. 2306.781. DEFINITION. In this subchapter, "program" means the colonia model subdivision program established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 2.13, eff. Sept. 1,

2001.

Sec. 2306.782. ESTABLISHMENT OF PROGRAM. The department shall establish the colonia model subdivision program to promote the development of new, high-quality, residential subdivisions that provide:

(1) alternatives to substandard colonias; and

(2) housing options affordable to individuals and families of extremely low and very low income who would otherwise move into substandard colonias.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 2.13, eff. Sept. 1, 2001.

Sec. 2306.783. COLONIA MODEL SUBDIVISION REVOLVING LOAN FUND. (a) The department shall establish a colonia model subdivision revolving loan fund in the department. Money in the fund may be used only for purposes of the program.

(b) The department shall deposit money received in repayment of loans under this subchapter to the colonia model subdivision revolving loan fund.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 2.13, eff. Sept. 1, 2001.

Sec. 2306.784. SUBDIVISION COMPLIANCE. Any subdivision created with assistance from the colonia model subdivision revolving loan fund must fully comply with all state and local laws, including any process established under state or local law for subdividing real property.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 2.13, eff. Sept. 1, 2001.

Sec. 2306.785. PROGRAM LOANS. (a) The department may make loans under the program only to:

(1) colonia self-help centers established under Subchapter

Z; and

(2) community housing development organizations certified by the department.

(b) A loan made under the program may be used only for the payment of:

(1) costs associated with the purchase of real property;

(2) costs of surveying, platting, and subdividing or resubdividing real property;

(3) fees, insurance costs, or recording costs associated with the development of the subdivision;

(4) costs of providing proper infrastructure necessary to support residential uses;

(5) real estate commissions and marketing fees; and

(6) any other costs as the department by rule determines to be reasonable and prudent to advance the purposes of this subchapter.

(c) A loan made by the department under the program may not bear interest and may not exceed a term of 36 months.

(d) The department may offer a borrower under the program one loan renewal for each subdivision.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 2.13, eff. Sept. 1, 2001.

Sec. 2306.786. ADMINISTRATION OF PROGRAM; RULES. (a) In administering the program, the department by rule shall adopt:

(1) any subdivision standards in excess of local standards the department considers necessary;

(2) loan application procedures;

(3) program guidelines; and

(4) contract award procedures.

(b) The department shall adopt rules to:

(1) ensure that a borrower under the program sells real property under the program only to an individual borrower, nonprofit housing developer, or for-profit housing developer for the purposes of constructing residential dwelling units; and

(2) require a borrower under the program to convey real property under the program at a cost that is affordable to:

(A) individuals and families of extremely low income; or

(B) individuals and families of very low income.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 2.13, eff. Sept. 1, 2001.

SUBCHAPTER HH. AFFORDABLE HOUSING PRESERVATION

Sec. 2306.801. DEFINITION. In this subchapter, "federally subsidized" means receiving financial assistance through a federal program administered by the Secretary of Housing and Urban Development or the Secretary of Agriculture under which housing assistance is provided on the basis of income, including a program under:

(1) Section 221(d), National Housing Act (12 U.S.C. Section 1715l(d));

(2) Section 236, National Housing Act (12 U.S.C. Section 1715z-1);

(3) Section 202, Housing Act of 1959 (12 U.S.C. Section 1701q);

(4) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. Section 1701s);

(5) Section 514, 515, or 516, Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486); or

(6) Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.05, eff. Sept. 1, 2001.

Sec. 2306.802. MULTIFAMILY HOUSING PRESERVATION CLASSES. The department shall establish two classes of priorities of developments to preserve multifamily housing. The classes, in order of descending priority, are:

(1) Class A, which includes any federally subsidized multifamily housing development at risk because the contract granting a federal subsidy with a stipulation to maintain affordability is nearing expiration or because the government-insured mortgage on the property is eligible for prepayment or near the end of its mortgage term; and

(2) Class B, which includes any other multifamily housing

development with low income use or rental affordability restrictions.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.05, eff. Sept. 1, 2001.

Sec. 2306.803. AT-RISK MULTIFAMILY HOUSING: IDENTIFICATION, PRIORITIZATION, AND PRESERVATION. (a) The department shall determine the name and location of and the number of units in each multifamily housing development that is at risk of losing its low income use restrictions and subsidies and that meets the requirements of a Class A priority described by Section 2306.802.

(b) The department shall maintain an accurate list of those developments on the department's website.

(c) The department shall develop cost estimates for the preservation and rehabilitation of the developments in priority Class A.

(d) The department shall contact owners of developments assigned a Class A priority under this section and shall attempt to negotiate with those owners to ensure continued affordability for individuals and families of low income under the federal housing assistance program for those developments.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.05, eff. Sept. 1, 2001.

Sec. 2306.804. USE OF HOUSING PRESERVATION RESOURCES. (a) To the extent possible, the department shall use available resources for the preservation and rehabilitation of the multifamily housing developments identified and listed under Section 2306.803.

(b) To the extent possible, the department shall allocate low income housing tax credits to applications involving the preservation of developments assigned a Class A priority under Section 2306.803 and in both urban and rural communities in approximate proportion to the housing needs of each uniform state service region.

(c) The department shall give priority to providing financing or funding to a buyer who is supported or approved by an association of residents of the multifamily housing development.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.05, eff. Sept. 1,

2001.

Sec. 2306.805. HOUSING PRESERVATION INCENTIVES PROGRAM. (a) The department shall establish and administer a housing preservation incentives program to provide incentives through loan guarantees, loans, and grants to political subdivisions, housing finance corporations, public housing authorities, for-profit organizations, and nonprofit organizations for the acquisition and rehabilitation of multifamily housing developments assigned a Class A or Class B priority under Section 2306.803.

(b) A loan issued by a lender participating in the program must be fully underwritten by the department.

(c) Consistent with the requirements of federal law, the department may guarantee loans issued under the program by obtaining a Section 108 loan guarantee from the United States Department of Housing and Urban Development under the Housing and Community Development Act of 1974 (42 U.S.C. Section 5308).

(d) Grants under this program may include direct subsidies offered as an equity contribution to enable an owner to acquire and rehabilitate a Class A or Class B priority property described by Section 2306.802. Grants may also be offered to provide consultation and technical assistance services to a nonprofit organization seeking to acquire and rehabilitate a Class A or Class B priority property.

(e) A housing development that benefits from the incentive program under this section is subject to the requirements concerning:

(1) long-term affordability and safety prescribed by Section 2306.185; and

(2) tenant and manager selection prescribed by Section 2306.269.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.05, eff. Sept. 1, 2001.

SUBCHAPTER II. MULTIFAMILY HOUSING DEVELOPMENTS: PRESERVATION OF AFFORDABILITY

Sec. 2306.851. APPLICATION. (a) This subchapter applies only to a property owner of a multifamily housing development that is insured or assisted under a program under Section 8, United States

Housing Act of 1937 (42 U.S.C. Section 1437f), or that is:

(1) insured or assisted under a program under:

(A) Section 221(d)(3), National Housing Act (12 U.S.C. Section 1715l);

(B) Section 236, National Housing Act (12 U.S.C. Section 1715z-1); or

(C) Section 514, 515, or 516, Housing Act of 1949 (42 U.S.C. Section 1484, 1485, or 1486); and

(2) financed by a mortgage that is eligible for prepayment at the option of the property owner.

(b) This subchapter does not apply to the disposal of property because of:

(1) a governmental taking by eminent domain or negotiated purchase;

(2) a foreclosure action;

(3) a transfer by gift, devise, or operation of law; or

(4) a sale to a person who would be entitled to an interest in the property if the property owner died intestate.

(c) This subchapter does not apply to property included in a restructuring program with a participating administrative entity designated by the United States Department of Housing and Urban Development.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.07, eff. Sept. 1, 2001.

Sec. 2306.852. PROPERTY OWNER RESTRICTION. Except as provided by this subchapter, a property owner to whom this subchapter applies may not sell, lease, or otherwise dispose of a multifamily housing development described by Section 2306.851(a) or take any other action if that action will cause the disruption or discontinuance of:

(1) the development's federal insurance or assistance; or

(2) the provision of low income housing assistance to residents of the development.

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.07, eff. Sept. 1, 2001.

Sec. 2306.853. NOTICE OF INTENT. (a) A property owner of a

multifamily housing development may take an action, sell, lease, or otherwise dispose of the development subject to the restriction under Section 2306.852 if the property owner provides notice by mail of the owner's intent to the residents of the development and to the department.

(b) The notice required by Subsection (a) must indicate, as applicable, that the property owner intends to prepay a mortgage under a program described by Section 2306.851(a)(1) or that a contract formed under a program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), will expire.

(c) The property owner shall provide the notice required by Subsection (a) before the 90th day preceding the date of mortgage prepayment or contract expiration, as applicable, and as otherwise required by federal law.

(d) The notice required by this section is sufficient if the notice meets the requirements of Section 8(c)(8), United States Housing Act of 1937 (42 U.S.C. Section 1437f(c)(8)).

Added by Acts 2001, 77th Leg., ch. 1367, Sec. 3.07, eff. Sept. 1, 2001.

SUBCHAPTER KK. INTERAGENCY COUNCIL FOR THE HOMELESS

Sec. 2306.901. DEFINITION. In this subchapter, "council" means the Texas Interagency Council for the Homeless.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.80(a), eff. Sept. 1, 1995. Renumbered from Government Code Sec. 2307.001 and amended by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.781 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.

Sec. 2306.902. ADVISORY ROLE. (a) The Texas Interagency Council for the Homeless serves as an advisory committee to the department. The council may recommend policies to the board. The board must provide written justification for not accepting council recommendations and must consider council recommendations in preparing its low income housing plan under Section 2306.0721.

(b) The council is not subject to Chapter 2110.

Added by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.782 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.

Sec. 2306.903. MEMBERSHIP. (a) The Texas Interagency Council for the Homeless is composed of:

(1) one representative from each of the following agencies, appointed by the administrative head of that agency:

(A) the Department of State Health Services;

(B) the Texas Department of Criminal Justice;

(C) the Department of Aging and Disability Services;

(D) the Texas Education Agency;

(E) the Department of Family and Protective Services;

(F) the Health and Human Services Commission;

(G) the Texas Workforce Commission;

(H) the Texas Juvenile Justice Department;

(I) the Texas Veterans Commission; and

(J) the Department of Assistive and Rehabilitative Services;

(2) two representatives from the department who are appointed by the director, including at least one representative whose duties include management or administration of the community services block grant program or the emergency solutions grant program; and

(3) three members representing service providers to the homeless, one each appointed by the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) A member of the council serves at the pleasure of the appointing official or until termination of the member's employment with the entity the member represents.

(c) A member of the council must have:

(1) administrative responsibility for programs for the homeless or related services provided by the agency that the member represents; and

(2) authority to make decisions for and commit resources of the agency, subject to the approval of the administrative head of the agency.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.80(a), eff. Sept. 1,

1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.32, eff. Sept. 1, 1997. Renumbered from Government Code Sec. 2307.002 and amended by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.783 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 68, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 305 (S.B. 607), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 118, eff. September 1, 2015.

Sec. 2306.904. OPERATION OF COUNCIL. (a) The members of the council shall annually elect one member to serve as presiding officer.

(b) The council shall meet at least quarterly.

(c) An action taken by the council must be approved by a majority vote of the members present.

(d) The council may select and use advisors.

(e) The department shall provide clerical and advisory support staff and may provide fiscal support to the council.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.80(a), eff. Sept. 1, 1995. Renumbered from Government Code Sec. 2307.003 by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.784 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 305 (S.B. 607), Sec. 2, eff. September 1, 2015.

Sec. 2306.905. DUTIES OF COUNCIL. (a) The council shall:

(1) survey current resources for services for the homeless in this state;

(2) initiate an evaluation of the current and future needs for the services;

(3) assist in coordinating and providing statewide services for all homeless individuals in this state;

(4) increase the flow of information among separate providers and appropriate authorities;

(5) develop guidelines to monitor the provision of services for the homeless and the methods of delivering those services;

(6) provide technical assistance to the housing finance division of the department in assessing the need for housing for individuals with special needs in different localities;

(7) coordinate with the Texas Workforce Commission, local workforce development boards, homeless shelters, and public and private entities to provide homeless individuals information on services available to assist them in obtaining employment and job training;

(8) establish a central resource and information center for the homeless in this state; and

(9) ensure that local or statewide nonprofit organizations perform the duties under this section that the council is unable to perform.

(b) In accomplishing the council's duties under this section, the council and each of its represented agencies may seek program or policy assistance from the Texas Homeless Network or any other organization in this state that has a network of providers with expertise in assisting homeless youth.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.80(a), eff. Sept. 1, 1995. Renumbered from Government Code Sec. 2307.004 and amended by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.785 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 305 (S.B. 607), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 825 (H.B. 2564), Sec. 2, eff. September 1, 2019.

Sec. 2306.906. DUTIES OF STATE AGENCY COUNCIL MEMBERS. (a) Each agency represented on the council shall report to the department a standard set of performance data, as determined by the department, on the agency's outcomes related to homelessness.

(b) Each agency shall contribute resources to the council

unless the agency certifies in writing that the agency is unable to contribute resources during that fiscal period.

Added by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.786 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 305 (S.B. 607), Sec. 4, eff. September 1, 2015.

Sec. 2306.907. PUBLIC HEARINGS. (a) The council shall annually hold public hearings on homelessness issues in at least one county located in a rural area of this state and one county located in an urban area of this state.

(b) The department shall provide to the secretary of state for publication in the Texas Register a notice of the hearings and shall provide for the notice to be given in other appropriate sources, which may include:

(1) a newsletter published by a nonprofit organization addressing the problem of homelessness; or

(2) a local newspaper.

Added by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.787 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 922 (H.B. 1278), Sec. 1, eff. September 1, 2021.

Sec. 2306.908. REPORT. The council shall submit annually a progress report to the governing bodies of the agencies represented on the council.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.80(a), eff. Sept. 1, 1995. Renumbered from Government Code Sec. 2307.005 by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.788 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.

Sec. 2306.909. GIFTS AND GRANTS. The council may accept gifts and grants from a public or private source for use in carrying out the council's duties under this subchapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.80(a), eff. Sept. 1, 1995. Renumbered from Government Code Sec. 2307.008 and amended by Acts 2001, 77th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2001. Renumbered from Government Code Sec. 2306.789 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(88), eff. Sept. 1, 2003.

Sec. 2306.910. MEETING BY TELECONFERENCE. Notwithstanding Chapter 551, a member of the council who resides 20 or more miles away from the location of a council meeting may participate remotely in the meeting by telephone conference call or videoconference and is counted as present at the meeting for purposes of determining whether a quorum of the council is present.

Added by Acts 2015, 84th Leg., R.S., Ch. 305 (S.B. 607), Sec. 5, eff. September 1, 2015.

SUBCHAPTER LL. MIGRANT LABOR HOUSING FACILITIES

Sec. 2306.921. DEFINITIONS. In this subchapter:

(1) "Facility" means a structure, trailer, or vehicle, or two or more contiguous or grouped structures, trailers, or vehicles, together with the land appurtenant.

(2) "Migrant agricultural worker" means an individual who:

(A) is working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry; and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

(3) "Migrant labor housing facility" means a facility that is established, operated, or used for more than three days as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers, whether rent is paid or reserved in connection with the use of the facility.

(4) "Person" means an individual, association, partnership, corporation, or political subdivision.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.922. LICENSE REQUIRED. A person may not establish, maintain, or operate a migrant labor housing facility without obtaining a license from the department.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.923. LICENSE APPLICATION; APPLICATION INSPECTION. (a) To receive a migrant labor housing facility license, a person must apply to the department according to rules adopted by the board and on a form prescribed by the board.

(b) The application must be made not later than the 45th day before the intended date of operation of the facility.

(c) The application must state:

(1) the location and ownership of the migrant labor housing facility;

(2) the approximate number of persons to be accommodated;

(3) the probable periods of use of the facility; and

(4) any other information required by the board.

(d) The application must be accompanied by the license fee.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.924. INSPECTION. The department shall inspect the migrant labor housing facility not later than the 30th day after the date of receipt of a complete application and the fee.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.925. FAILURE TO MEET STANDARDS; REINSPECTION. (a) If a migrant labor housing facility for which a license application is made does not meet the reasonable minimum standards of construction, sanitation, equipment, and operation required by rules adopted under this subchapter, the department at the time of inspection shall give the license applicant the reasons that the facility does not meet those standards. The applicant may request the department to reinspect the facility not later than the 60th day after the date on which the reasons are given.

(b) If a facility does not meet the standards on reinspection, the applicant must submit a new license application as provided by Section 2306.923.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.926. LICENSE ISSUANCE; TERM; NOT TRANSFERABLE. (a) The department shall issue a license to establish, maintain, and operate a migrant labor housing facility if the facility meets the standards of construction, sanitation, equipment, and operation required by rules adopted under this subchapter.

(b) The license expires on the first anniversary of the date of issuance.

(c) The license issued under this subchapter is not transferable.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.927. LICENSE POSTING. A person who holds a license issued under this subchapter shall post the license in the migrant labor housing facility at all times during the maintenance or operation of the facility.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.928. INSPECTION OF FACILITIES. An authorized representative of the department, after giving or making a reasonable attempt to give notice to the operator of a migrant labor housing facility, may enter and inspect the facility during reasonable hours and investigate conditions, practices, or other matters as necessary or appropriate to determine whether a person has violated this subchapter or a rule adopted under this subchapter.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.929. FEE. The board shall set the license fee in an amount not to exceed $250.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.930. SUSPENSION OR REVOCATION OF LICENSE. (a) The department may suspend or revoke a license for a violation of this subchapter or a rule adopted under this subchapter.

(b) Chapter 2001 and department rules for holding a contested case hearing govern the procedures for the suspension or revocation of a license issued under this subchapter.

(c) A hearing conducted under this section must be held in the county in which the affected migrant labor housing facility is located.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.931. ENFORCEMENT; ADOPTION OF RULES. (a) The department shall enforce this subchapter.

(b) The board shall adopt rules to protect the health and

safety of persons living in migrant labor housing facilities.

(c) The board by rule shall adopt standards for living quarters at a migrant labor housing facility, including standards relating to:

(1) construction of the facility;

(2) sanitary conditions;

(3) water supply;

(4) toilets;

(5) sewage disposal;

(6) storage, collection, and disposal of refuse;

(7) light and air;

(8) safety requirements;

(9) fire protection;

(10) equipment;

(11) maintenance and operation of the facility; and

(12) any other matter appropriate or necessary for the protection of the health and safety of the occupants.

(d) An employee or occupant of a migrant labor housing facility who uses the sanitary or other facilities furnished for the convenience of employees or occupants shall comply with the rules adopted under Subsection (b) or (c).

(e) The board by rule shall adopt minimum standards for issuing, revoking, or suspending a license issued under this subchapter.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

Sec. 2306.932. INJUNCTIVE RELIEF. (a) A district court for good cause shown in a hearing and on application by the department, a migrant agricultural worker, or the worker's representative may grant a temporary or permanent injunction to prohibit a person, including a person who owns or controls a migrant labor housing facility, from violating this subchapter or a rule adopted under this subchapter.

(b) A person subject to a temporary or permanent injunction under Subsection (a) may appeal to the supreme court as in other cases.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1,

2005.

Sec. 2306.933. CIVIL PENALTY. (a) A person who violates this subchapter or a rule adopted under this subchapter is subject to a civil penalty of $200 for each day that the violation occurs.

(b) The county attorney for the county in which the violation occurred, or the attorney general, at the request of the department, shall bring an action in the name of the state to collect the penalty.

Transferred from Health and Safety Code, Chapter 147 and amended by Acts 2005, 79th Leg., Ch. 60 (H.B. 1099), Sec. 1, eff. September 1, 2005.

SUBCHAPTER MM. TEXAS FIRST-TIME HOMEBUYER PROGRAM

Sec. 2306.1071. DEFINITIONS. In this subchapter:

Text of subdivision as added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 2

(1) "First-time homebuyer" means a person who has not owned a home during the three years preceding the date on which an application under this subchapter is filed.

Text of subdivision as added by Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1

(1) "First-time homebuyer" means a person who:

(A) resides in this state on the date on which an application is filed; and

(B) has not owned a home during the three years preceding the date on which an application under this subchapter is filed.

(2) "Home" means a dwelling in this state in which a first-time homebuyer intends to reside as the homebuyer's principal residence.

(3) "Mortgage lender" has the meaning assigned by Section 2306.004.

(4) "Program" means the Texas First-Time Homebuyer Program.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff.

September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 2, eff. September 1, 2007.

Sec. 2306.1072. TEXAS FIRST-TIME HOMEBUYER PROGRAM. (a) The Texas First-Time Homebuyer Program shall facilitate the origination of single-family mortgage loans for eligible first-time homebuyers.

(b) The program may include down payment and closing cost assistance.

Added by Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 2, eff. September 1, 2007.

Sec. 2306.1073. ADMINISTRATION OF PROGRAM; RULES. (a) The department shall administer the program.

(b) The board shall adopt rules governing:

(1) the administration of the program;

(2) the making of loans under the program;

(3) the criteria for approving participating mortgage lenders;

(4) the use of insurance on the loans and the homes financed under the program, as considered appropriate by the board to provide additional security for the loans;

(5) the verification of occupancy of the home by the homebuyer as the homebuyer's principal residence; and

(6) the terms of any contract made with any mortgage lender for processing, originating, servicing, or administering the loans.

Added by Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 2, eff. September 1, 2007.

Sec. 2306.1074. ELIGIBILITY. (a) To be eligible for a

mortgage loan under this subchapter, a homebuyer must:

(1) qualify as a first-time homebuyer under this subchapter;

(2) have an income of not more than 115 percent of area median family income or 140 percent of area median family income in targeted areas; and

(3) meet any additional requirements or limitations prescribed by the department.

(b) To be eligible for a loan under this subchapter to assist a homebuyer with down payment and closing costs, a homebuyer must:

(1) qualify as a first-time homebuyer under this subchapter;

(2) have an income of not more than 80 percent of area median family income; and

(3) meet any additional requirements or limitations prescribed by the department.

(c) The department may contract with other agencies of the state or with private entities to determine whether applicants qualify as first-time homebuyers under this section or otherwise to administer all or part of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 2, eff. September 1, 2007.

Sec. 2306.1075. FEES. The board of directors of the department may set and collect from each applicant any fees the board considers reasonable and necessary to cover the expenses of administering the program.

Added by Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 2, eff. September 1, 2007.

Sec. 2306.1076. FUNDING. (a) The department shall ensure that a loan under this section is structured in a way that complies with any requirements associated with the source of the funds used for the

loan.

(b) In addition to funds set aside for the program under Section 1372.023, the department may solicit and accept funding for the program from gifts and grants for the purposes of this section.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1029 (H.B. 1637), Sec. 1, eff. September 1, 2007.

Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 11.024, eff. September 1, 2009.

SUBCHAPTER NN. HOUSING AND HEALTH SERVICES COORDINATION COUNCIL

Sec. 2306.1091. DEFINITIONS. (a) In this subchapter, "council" means the housing and health services coordination council.

(b) With the advice and assistance of the council, the department by rule shall define "service-enriched housing" for the purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff. September 1, 2009.

Sec. 2306.1092. COMPOSITION. (a) The department shall establish a housing and health services coordination council.

(b) The council is composed of 17 members consisting of:

(1) the director;

(2) one representative from each of the following agencies, appointed by the head of that agency:

(A) the Office of Rural Affairs within the Department of Agriculture;

(B) the Texas State Affordable Housing Corporation;

(C) the Health and Human Services Commission;

(D) the Department of Assistive and Rehabilitative Services;

(E) the Department of Aging and Disability Services;

(F) the Department of State Health Services; and

(G) the Texas Veterans Commission;

(3) one representative from the Department of Agriculture who is:

(A) knowledgeable about the Texans Feeding Texans and Retire in Texas programs or similar programs; and

(B) appointed by the head of that agency;

(4) one member who is:

(A) a member of the Health and Human Services Commission Promoting Independence Advisory Committee; and

(B) appointed by the governor; and

(5) one representative from each of the following interest groups, appointed by the governor:

(A) financial institutions;

(B) multifamily housing developers;

(C) health services entities;

(D) nonprofit organizations that advocate for affordable housing and consumer-directed long-term services and support;

(E) consumers of service-enriched housing;

(F) advocates for minority issues; and

(G) rural communities.

(c) A member of the council appointed under Subsection (b)(2) must have, subject to the approval of the head of the agency, authority to make decisions for and commit resources of the agency that the member represents and must have:

(1) administrative responsibility for agency programs for older adults or persons with disabilities;

(2) knowledge or experience regarding the implementation of projects that coordinate integrated housing and health services; or

(3) knowledge or experience regarding services used by older adults or persons with disabilities.

(d) The director serves as the presiding officer of the council.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 62.10, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 267 (H.B. 736), Sec. 1, eff. September 1, 2013.

Sec. 2306.1093. TERMS. (a) A member of the council who represents a state agency serves at the pleasure of the head of that agency.

(b) Members of the council who are appointed by the governor serve staggered six-year terms, with the terms of two or three members expiring on September 1 of each odd-numbered year.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff. September 1, 2009.

Sec. 2306.1094. OPERATION OF COUNCIL. (a) The council shall meet at least quarterly.

(b) The department shall provide clerical and advisory support staff to the council.

(c) Except as provided by Section 2306.1095, Chapter 2110 does not apply to the size, composition, or duration of the council.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff. September 1, 2009.

Sec. 2306.1095. COMPENSATION AND REIMBURSEMENT. (a) A member of the council who is appointed by the governor may not receive compensation for service on the council. The member may receive reimbursement from the department for actual and necessary expenses incurred in performing council functions as provided by Section 2110.004.

(b) A member of the council who is not appointed by the governor may not receive compensation for service on the council or reimbursement for expenses incurred in performing council functions.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff. September 1, 2009.

Sec. 2306.1096. DUTIES; BIENNIAL REPORT. (a) The council

shall:

(1) develop and implement policies to coordinate and increase state efforts to offer service-enriched housing;

(2) identify barriers preventing or slowing service-enriched housing efforts, including barriers attributable to the following factors:

(A) regulatory requirements and limitations;

(B) administrative limitations;

(C) limitations on funding; and

(D) ineffective or limited coordination;

(3) develop a system to cross-educate selected staff in state housing and health services agencies to increase the number of staff with expertise in both areas and to coordinate relevant staff activities of those agencies;

(4) identify opportunities for state housing and health services agencies to provide technical assistance and training to local housing and health services entities about:

(A) the cross-education of staff;

(B) coordination among those entities; and

(C) opportunities to increase local efforts to create service-enriched housing; and

(5) develop suggested performance measures to track progress in:

(A) the reduction or elimination of barriers in creating service-enriched housing;

(B) increasing the coordination between state housing and health services agencies;

(C) increasing the number of state housing and health services staff who are cross-educated or who have expertise in both housing and health services programs; and

(D) the provision of technical assistance to local communities by state housing and health services staff to increase the number of service-enriched housing projects.

(b) The council shall develop a biennial plan to implement the goals described by Subsection (a).

(c) Not later than August 1 of each even-numbered year, the council shall deliver a report of the council's findings and recommendations to the governor and the Legislative Budget Board.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff.

September 1, 2009.

Sec. 2306.1097. GIFTS AND GRANTS. The council may solicit and accept gifts, grants, and donations for the purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff. September 1, 2009.

Sec. 2306.1098. DUTIES OF EMPLOYEES PROVIDING ADVISORY SUPPORT TO COUNCIL. Department employees assigned to provide advisory support to the council shall:

(1) identify sources of funding from this state and the federal government that may be used to provide integrated housing and health services;

(2) determine the requirements and application guidelines to obtain those funds;

(3) provide training materials that assist the development and financing of a service-enriched housing project;

(4) provide information regarding:

(A) effective methods to collaborate with governmental entities, service providers, and financial institutions; and

(B) the use of layered financing to provide and finance service-enriched housing;

(5) create a financial feasibility model that assists in making a preliminary determination of the financial viability of proposed service-enriched housing projects, including models that allow a person to analyze multiuse projects that facilitate the development of projects that will:

(A) address the needs of communities with different populations; and

(B) achieve economies of scale required to make the projects financially viable;

(6) facilitate communication between state agencies, sources of funding, service providers, and other entities to reduce or eliminate barriers to service-enriched housing projects;

(7) provide training about local, state, and federal funding sources and the requirements for those sources;

(8) develop a database to identify, describe, monitor, and track the progress of all service-enriched housing projects developed in this state with state or federal financial assistance;

(9) conduct a biennial evaluation and include in the council's report to the governor and the Legislative Budget Board under Section 2306.1096 information regarding:

(A) the capacity of statewide long-term care providers; and

(B) interest by housing developers in investing in service-enriched housing;

(10) to increase the consistency in housing regulations, recommend changes to home and community-based Medicaid waivers that are up for renewal;

(11) research best practices with respect to service-enriched housing projects subsidized by other states; and

(12) create and maintain a clearinghouse of information that contains tools and resources for entities seeking to create or finance service-enriched housing projects.

Added by Acts 2009, 81st Leg., R.S., Ch. 838 (S.B. 1878), Sec. 1, eff. September 1, 2009.

SUBCHAPTER OO. HOMELESS YOUTH

Sec. 2306.1101. DEFINITION. In this subchapter, "homeless youth" means a person who is younger than 19 years of age, including a migratory child, as defined by Section 1309, Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6399), who:

(1) lacks a fixed, regular, and adequate nighttime residence, including a person who is:

(A) living in an emergency shelter;

(B) abandoned in a hospital; or

(C) awaiting foster care placement;

(2) has a primary nighttime residence that is a public or private place not designed or ordinarily used as a regular sleeping accommodation for humans; or

(3) is living in a car, park, other public space, abandoned building, substandard housing, bus or train station, or similar setting.

Added by Acts 2015, 84th Leg., R.S., Ch. 691 (H.B. 679), Sec. 1, eff.

September 1, 2015.

SUBCHAPTER PP. PROPERTY DESIGNATED BY POLITICAL SUBDIVISION FOR CAMPING BY HOMELESS INDIVIDUALS

Sec. 2306.1121. DEFINITION. In this subchapter, "camp" has the meaning assigned by Section 48.05, Penal Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 2, eff. September 1, 2021.

Sec. 2306.1122. APPROVAL REQUIRED. (a) A political subdivision may not designate a property to be used by homeless individuals to camp unless the department approves a plan described by Section 2306.1123(b).

(b) Not later than the 30th day after the date the department receives a plan submitted by a political subdivision under this subchapter, the department shall make a final determination regarding approval of the plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 2, eff. September 1, 2021.

Sec. 2306.1123. PLAN REQUIREMENTS. (a) In this section, "proposed new campers" means homeless individuals the applicant intends to allow to camp at the property.

(b) A plan submitted for approval under this subchapter must describe each of the following with respect to a proposed property:

(1) the availability of local health care for proposed new campers, including access to Medicaid services and mental health services;

(2) the availability of indigent services for proposed new campers;

(3) the availability of reasonably affordable public transportation for proposed new campers;

(4) local law enforcement resources in the area; and

(5) the steps the applicant has taken to coordinate with the local mental health authority to provide for any proposed new campers.

(c) An applicant shall respond to reasonable requests for additional information made by the department regarding the proposed property or plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 2, eff. September 1, 2021.

Sec. 2306.1124. APPROVAL OF CERTAIN PROPERTY PROHIBITED. The department may not approve a plan described by Section 2306.1123(b) if the department determines that a property proposed under the plan is a public park.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 2, eff. September 1, 2021.

CHAPTER 2308. WORKFORCE INVESTMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE. This chapter may be cited as the Workforce Investment Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 1.02, eff. Sept. 1, 2003.

Sec. 2308.002. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Workforce Investment Council.

(2) "Division" means the division of workforce development of the Texas Workforce Commission.

(3) "Local labor market" means an economically integrated geographical area within which individuals may reside and find employment within a reasonable distance.

(4) "Workforce development" includes workforce education and workforce training and services.

(5) "Workforce education" means articulated career-path programs and the constituent courses of those programs that lead to initial or continuing licensing or certification or associate degree-level accreditation and that:

(A) are subject to:

(i) initial and ongoing state approval or regional or specialized accreditation;

(ii) a formal state evaluation that provides the basis for program continuation or termination;

(iii) state accountability and performance standards; and

(iv) a regional or statewide documentation of the market demand for labor according to employers' needs; or

(B) are subject to approval by the Texas Higher Education Coordinating Board as adult vocational or continuing education courses.

(6) "Workforce training and services" means training and services programs that are not workforce education.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.01(a), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 818, Sec. 1.03, eff. Sept. 1, 2003.

Sec. 2308.003. CONTRACTING FOR PRIVATE SERVICES NOT RESTRICTED. This chapter does not restrict a person's authority to contract for the provision of workforce development without state or federal funds.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.004. PROGRAM YEAR. Under this chapter, a program year begins on July 1 and ends on June 30 unless otherwise specified under appropriate state or federal law.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1472, Sec. 1, eff. Sept. 1, 1999.

Sec. 2308.005. APPLICATION OF SUNSET ACT. The Texas Workforce Investment Council is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the

council is abolished September 1, 2027. The council shall be reviewed during the period in which the Texas Workforce Commission is reviewed.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.02(a), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1169, Sec. 2.06, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 818, Sec. 1.04, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 97 (H.B. 1606), Sec. 1, eff. September 1, 2015.

Sec. 2308.006. APPLICATION OF PRIOR LAW. (a) If a change in law made by House Bill 3431, Acts of the 76th Legislature, Regular Session, 1999, would have the effect of invalidating an exemption granted under the Workforce Investment Act of 1998 (Pub. L. No. 105-220), the Texas Workforce Investment Council may not operate under that change in law but, instead, shall operate under the law as it existed before September 1, 1999.

(b) A change in law described by Subsection (a) of this section does not affect other related provisions or applications of a statute that can be given effect without that change in law, and to this end those other provisions and applications of the statute shall be given effect.

Added by Acts 1999, 76th Leg., ch. 1472, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 1.05, eff. Sept. 1, 2003.

SUBCHAPTER B. COUNCIL MEMBERSHIP AND ADMINISTRATION

Sec. 2308.051. COUNCIL. (a) The council acts as a state human resource investment council under the Job Training Reform Amendments of 1992 (29 U.S.C. Section 1792 et seq.) and as a state workforce investment board under the Workforce Investment Act of 1998 (Pub. L. No. 105-220).

(b) The council is attached for administrative purposes to the office of the governor.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.03(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1472, Sec. 3, eff. Sept. 1, 1999.

Sec. 2308.052. MEMBERSHIP. (a) The governor shall appoint the members of the council as provided by this section.

(b) The council is composed of:

(1) three voting members who represent education, one of whom represents local public education, one of whom represents public postsecondary education, and one of whom represents vocational education;

(2) five voting members who represent organized labor appointed from recommendations made by recognized labor organizations;

(3) five voting members who represent business and industry, including business members serving on local workforce development boards or private industry councils;

(4) one voting member who represents community-based organizations; and

(5) the following ex officio voting members:

(A) the commissioner of education;

(B) the commissioner of higher education;

(C) the commissioner of human services;

(D) the executive director of the Texas Department of Economic Development; and

(E) the executive director of the Texas Workforce Commission.

(c) The membership of the council must represent the geographic diversity of this state.

(d) A member of the council who represents a community-based organization may not be a provider of services.

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

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.04(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1472, Sec. 4, eff. Sept. 1,

1999; Acts 2003, 78th Leg., ch. 818, Sec. 2.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 48.01, eff. Sept. 1, 2003.

Sec. 2308.053. PRESIDING OFFICER. (a) The governor shall designate one of the business or labor representatives on the council as the presiding officer of the council to serve in that capacity at the pleasure of the governor.

(b) The presiding officer of the council shall designate a member of the council as assistant presiding officer to preside in the absence of the presiding officer.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 2.02, eff. Sept. 1, 2003.

Sec. 2308.054. TERMS. (a) A member of the council who does not serve as an ex officio member serves a six-year term. Approximately one-third of these members' terms expire in each odd-numbered year.

(b) An ex officio member serves as a member of the council as long as the member continues to serve in the designated office.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 2.03, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 48.02, eff. Sept. 1, 2003.

Sec. 2308.055. DESIGNATED REPLACEMENTS. (a) A member of the council may designate another person to attend a meeting for the member.

(b) The designated person may participate in the activities and discussions of the council but may not vote.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.056. GROUNDS FOR REMOVAL. (a) It is a ground for

removal from the council that a member who is not an ex officio member:

(1) does not have at the time of appointment the qualifications required by Section 2308.052;

(2) does not maintain during service on the council the qualifications required by Section 2308.052;

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

(4) is absent from more than one-fourth of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council's members; or

(5) is absent from two consecutive council meetings for which the member received notice not less than 48 hours before the time of the meeting.

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

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

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 2.04, eff. Sept. 1, 2003.

Sec. 2308.057. MEETINGS. The council shall meet at least quarterly and at other times at the call of the presiding officer or as provided by rules adopted by the council.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.058. SUBCOMMITTEES; TECHNICAL ADVISORY COMMITTEES. (a) The presiding officer of the council may appoint subcommittees consisting of members of the council for any purpose consistent with the duties and responsibilities of the council under this chapter.

(b) The presiding officer of the council may appoint technical advisory committees composed of council members, persons who are not council members, or both members and nonmembers.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.059. FISCAL AGENT. The office of the governor shall serve as the council's fiscal agent.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.05, eff. Sept. 1, 1997.

Sec. 2308.060. EXECUTIVE DIRECTOR. (a) The presiding officer of the council shall appoint an executive director of the council.

(b) The executive director shall:

(1) report to the presiding officer of the council;

(2) perform duties assigned by the council and under state law;

(3) administer the daily operations of the council;

(4) appoint officers, accountants, attorneys, experts, and other employees for the council and assign duties for these employees to perform the council's powers and duties under this chapter; and

(5) delegate authority to persons appointed under this section as the executive director considers to be reasonable and proper for the effective administration of the council.

(c) The executive director shall adopt the administrative and personnel procedures of the council's fiscal agent.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.06(a), eff. Sept. 1, 1997.

Sec. 2308.061. STAFF. (a) The council shall have an independent staff with expertise sufficient to perform all duties and responsibilities of the council.

(b) The staff may be supplemented by staff from other state agencies who are temporarily assigned to assist with special projects.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.065. FUNDING. (a) Federal funding for the operation of the council shall be allocated according to federal requirements.

(b) A state agency represented on the council shall provide funds for the support of the council in proportion to the agency's financial participation in the workforce development system. The council, with the governor's approval, shall establish a funding formula to determine the level of support each agency must provide.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 704, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. COUNCIL DUTIES AND POWERS

Sec. 2308.101. GENERAL DUTIES. (a) The council shall:

(1) promote the development of a well-educated, highly skilled workforce in this state;

(2) advocate the development of an integrated workforce development system to provide quality services addressing the needs of business and workers in this state;

(3) recommend to the governor the designation or redesignation of workforce development areas for the local planning and delivery of workforce development;

(4) identify and recommend to the governor incentives to encourage the consolidation, on a regional labor market basis, of:

(A) local boards, councils, and committees; and

(B) service delivery areas authorized under federal workforce legislation;

(5) review plans for local workforce development and make recommendations to the governor for approval;

(6) evaluate the effectiveness of the workforce development system;

(7) use the administrative records of the state's unemployment compensation program and other sources as appropriate in evaluating the workforce development system;

(8) encourage, support, or develop research and demonstration projects designed to develop new programs and approaches to service delivery;

(9) recommend measures to ensure that occupational skills training is:

(A) provided in occupations that are locally in demand; and

(B) directed toward high-skill and high-wage jobs;

(10) monitor the operation of the state's workforce development system to assess the degree to which the system is effective in achieving state and local goals and objectives;

(11) develop and recommend to the governor criteria for the establishment of local workforce development boards;

(12) carry out the federal and state duties and responsibilities of advisory councils under applicable federal and state workforce development laws or regulations;

(13) report periodically to the governor and the legislature; and

(14) provide annual reports to the governor and the legislature, including an annual report analyzing work development programs that focus on welfare to work initiatives.

(b) The council shall provide the information required to be reported under Subsections (a)(13) and (14) and Section 2308.104(a) to the Texas Workforce Commission. The Texas Workforce Commission shall include information provided under this subsection that relates to the administration and operation of the state's workforce development system with other information the commission provides to the public on the Internet.

(c) The members of the council shall develop and implement policies that:

(1) clearly separate:

(A) the policy-making responsibilities of the members of the council; and

(B) the management responsibilities of the executive director and the staff of the council; and

(2) provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.07(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1472, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 704, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 818, Sec. 3.01, eff. Sept. 1, 2003.

Sec. 2308.1015. DUTY TO FACILITATE DELIVERY OF INTEGRATED WORKFORCE SERVICES. (a) To facilitate the seamless delivery of integrated workforce services in this state, the council shall:

(1) evaluate programs administered by agencies represented on the council to identify:

(A) any duplication of or gaps in the services provided by those programs; and

(B) any other problems that adversely affect the seamless delivery of those services; and

(2) develop and implement immediate and long-range strategies to address problems identified by the council under Subdivision (1).

(b) The council shall include in the council's annual report to the governor and to the legislature:

(1) a list of specific problems identified by the council under Subsection (a) to be addressed by the council in the following year; and

(2) the results of any measures taken by the council to address problems identified by the council under Subsection (a).

(c) The long-range strategies developed by the council under Subsection (a) must:

(1) identify each agency represented on the council that is responsible for implementing each strategy; and

(2) include a time frame for the implementation of each strategy.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 3.02, eff. Sept. 1, 2003.

Sec. 2308.1016. DUTY TO FACILITATE DELIVERY OF INTEGRATED ADULT EDUCATION AND LITERACY SERVICES. (a) In addition to any duty imposed under this subchapter, to facilitate the efficient delivery of integrated adult education and literacy services in this state, the council shall:

(1) evaluate adult education and literacy programs administered by the Texas Education Agency and the Texas Workforce Commission to identify:

(A) any duplication of planning by those agencies at the state and local level;

(B) any lack of adequate client information sharing between those agencies; and

(C) any other problems that adversely affect the delivery of those programs by the agencies;

(2) develop and implement immediate and long-range strategies to address problems identified by the council under Subdivision (1); and

(3) develop a system to monitor and evaluate the wage and employment outcomes of students who participate in the adult education and literacy programs administered by the Texas Education Agency, including students referred to the programs by the Texas Workforce Commission or local workforce development boards, to ensure the effectiveness of the programs in improving the employment-related outcomes of the students.

(b) The council shall include in the council's annual report to the governor and to the legislature:

(1) a list of specific problems identified by the council under Subsection (a) to be addressed by the council in the following year; and

(2) the results of any measures taken by the council to address problems identified by the council under Subsection (a).

(c) The long-range strategies developed by the council under Subsection (a) must:

(1) identify the agency responsible for implementing each strategy; and

(2) include a schedule for the implementation of each strategy.

Acts 2003, 78th Leg., ch. 817, Sec. 5.04, eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 110, Sec. 2

Sec. 2308.102. ASSUMPTION OF DUTIES AND RESPONSIBILITIES. (a) The council shall assume the duty to:

(1) develop, with the assistance of each appropriate state agency, recommend to the governor, and report to the legislature state plans required by applicable federal law in order for the state to receive federal funds;

(2) make policy recommendations to the governor and the legislature on goals and priorities for formula and discretionary funds for all applicable programs;

(3) participate directly in the development of the state plan for career and technology education, as required by law, and recommend the plan to the Texas Education Agency;

(4) ensure that general revenue funds previously available to the Texas Literacy Council are used to support the efforts of local literacy councils in a manner consistent with the state strategic plan;

(5) recommend to the State Board for Career and Technology Education the division of federal funds between secondary and postsecondary educational agencies under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. Section 2301 et seq.); and

(6) make recommendations to the Texas Workforce Commission on unemployment insurance issues pertinent to the responsibilities of the council.

(b) The council shall assume the responsibilities assigned to the state advisory council under the following federal laws:

(1) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(2) the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. Section 2301 et seq.);

(3) the Adult Education Act (20 U.S.C. Section 1201 et seq.);

(4) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.);

(5) Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 681 et seq.);

(6) the employment program established under Section 6(d)(4), Food Stamp Act of 1977 (7 U.S.C. Section 2015(d)(4)); and

(7) the National Literacy Act of 1991 (20 U.S.C. Section 1201 et seq.).

(c) The council shall assume the responsibilities formerly exercised by the following state advisory councils and committees:

(1) the State Job Training Coordinating Council;

(2) the Texas Council on Vocational Education;

(3) the Texas Literacy Council; and

(4) the Apprenticeship and Training Advisory Committee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.08(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1472, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 9.014(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 110, Sec. 2, eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., ch. 818, Sec. 3.03

Sec. 2308.102. ASSUMPTION OF DUTIES AND RESPONSIBILITIES. (a) The council shall assume the duty to:

(1) develop, with the assistance of each appropriate state agency, recommend to the governor, and report to the legislature state plans required by applicable federal law in order for the state to receive federal funds;

(2) make policy recommendations to the governor and the legislature on goals and priorities for formula and discretionary funds for all applicable programs; and

(3) make recommendations to the Texas Workforce Commission on unemployment insurance issues pertinent to the responsibilities of the council.

(b) The council shall assume the responsibilities formerly exercised by the Apprenticeship and Training Advisory Committee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.08(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1472, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 9.014(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 818, Sec. 3.03, eff. Sept. 1, 2003.

Sec. 2308.103. ADDITIONAL POWERS AND LIMITATIONS. (a) The council may:

(1) adopt rules essential to the internal functions and duties of the council;

(2) make expenditures, enter into contracts with public, private, and nonprofit organizations or agencies, require reports to be made, conduct investigations, and take other actions necessary or suitable to fulfill the council's duties under this chapter;

(3) delegate to the executive director any power or duty imposed on the council by law, including the authority to make a final order or decision;

(4) provide for the mediation or arbitration of disputes between agencies that perform functions for state and federal programs as provided by this chapter;

(5) accept gifts, grants, and donations of money, goods, or services to be used only to accomplish the council's duties under this chapter; and

(6) share employees with another state agency.

(b) The council may not:

(1) adopt rules related to the operation of workforce development; or

(2) delegate to the executive director the authority to adopt rules.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.104. STRATEGIC PLAN. (a) The council shall develop and recommend to the governor and report to the legislature a single strategic plan that establishes the framework for the budgeting and operation of the workforce development system, including school to careers and welfare to work components, administered by agencies represented on the council. The council shall annually report to the governor and the legislature on the implementation of the strategic plan.

(b) The council shall engage in strategic planning by selecting or developing two types of performance measures as described by Subsections (c) and (d). To the fullest extent possible, all measures must be selected from those already developed and approved before September 1, 2001, by one or more state agencies that administer workforce programs. The council may develop a new measure

only if the council:

(1) identifies a gap in accountability; or

(2) determines that at least one state agency administering a workforce program cannot report under the measures developed and approved before September 1, 2001.

(c) The first type of performance measure consists of formal measures identifying outcomes that are essentially consistent across all workforce programs. Job placement rates, job retention rates, and wage rates may be included among those measures. The council may develop or select not more than five formal measures. The council shall develop or select each formal measure in consultation with the state agencies required to report under this subsection. Once approved by the governor and the Legislative Budget Board, a formal measure becomes part of the state's performance budget and accounting system and applies to each state agency that administers a workforce program.

(d) The second type of performance measure consists of less formal measures to provide information determined by the council to be essential in development of the strategic plan under this section. Employer participation rates, customer satisfaction levels, and educational attainment may be included among those measures. The council shall develop or select each less formal measure with the approval of the governor and in consultation with the state agencies required to report under this subsection. The Legislative Budget Board shall provide technical assistance to the council to ensure that the measures and associated reporting criteria are consistent with the state's performance budget and accounting system. The council may exempt a state agency that administers a workforce program from any requirement to use a less formal measure.

(e) In addition to the other requirements of this chapter, the strategic plan recommended by the council must recognize and address literacy and basic education as activities that are critical to the well-being of individuals and the state without regard to whether the training and education is directed at preparing an individual for employment.

(f) The council shall include in the strategic plan goals, objectives, and performance measures for the workforce development system that involve programs of all state agencies that administer workforce programs.

(g) On approval of the plan by the governor, an agency

administering a workforce program shall use the strategic plan to develop the agency's operational plan.

(h) The council shall include in the strategic plan long-range strategies developed by the council under Section 2308.1015 to facilitate the seamless delivery of integrated workforce services in this state.

(i) The council shall include in the strategic plan the long-range strategies developed by the council under Section 2308.1016 to facilitate the efficient delivery of integrated adult education and literacy services in this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.07(b), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1472, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 704, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 817, Sec. 5.05, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 818, Sec. 3.04, eff. Sept. 1, 2003.

Sec. 2308.105. LOCAL SERVICE INTEGRATION. The governor, with the council and the local workforce development boards, shall:

(1) identify specific barriers to integrated service delivery at the local level;

(2) request waivers from federal and state regulations; and

(3) advocate changes in federal and state laws to promote local service integration.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.106. DIVISION ASSISTANCE. The division shall assist a local workforce development board in designing effective measures to accomplish the board's responsibilities under Section 2308.302.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.09(a), eff. Sept. 1, 1997.

Sec. 2308.107. COMPLAINTS AGAINST COUNCIL. (a) The council shall maintain a file on each written complaint filed with the council. The file must include:

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

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

(3) the subject matter of the complaint;

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

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

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

(b) The council shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

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

Added by Acts 2003, 78th Leg., ch. 818, Sec. 3.05, eff. Sept. 1, 2003.

Sec. 2308.108. POLICY ON TECHNOLOGICAL SOLUTIONS. The members of the council shall develop and implement a policy requiring the executive director and council employees to research and propose appropriate technological solutions to improve the council's ability to perform its functions. The technological solutions must:

(1) ensure that:

(A) the public is able to easily find information about the council on the Internet; and

(B) persons who want to use the council's services are able to:

(i) interact with the council through the Internet; and

(ii) access any service that can be provided

effectively through the Internet;

(2) be cost-effective; and

(3) be developed through the council's planning processes.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 3.05, eff. Sept. 1, 2003.

Sec. 2308.109. DUTY TO DEVELOP SKILL STANDARDS. (a) The council shall provide advice to the governor and the legislature on the development of a statewide system of industry-defined and industry-recognized skill standards and credentials for all major skilled occupations that:

(1) provide strong employment and earnings opportunities in this state; and

(2) require less than a baccalaureate degree.

(b) The council shall:

(1) validate and recognize nationally established skill standards to guide curriculum development, training, assessment, and certification of workforce skills;

(2) convene industry groups to develop skill standards and certification procedures for industries and occupations in which standards have not been established or adopted and recognize the skill standards and certification procedures;

(3) review the standards developed by other states and foreign countries and enter into agreements for mutual recognition of standards and credentials to enhance portability of skills; and

(4) promote the use of standards and credentials among employers.

(c) The council shall:

(1) report on the council's duties under this section to the governor; and

(2) provide annual reports on the council's duties under this section to the governor, the division, and the legislature.

Added by Acts 2015, 84th Leg., R.S., Ch. 97 (H.B. 1606), Sec. 2, eff. September 1, 2015.

SUBCHAPTER D. INFORMATION AND TRAINING

Sec. 2308.151. ESTABLISHMENT OF FUNDING FORMULA FOR EVALUATION

SYSTEM. The council shall establish, with the approval of the governor, a funding formula to determine the level of support each agency administering a workforce program must provide to operate the automated follow-up and evaluation system administered by the Texas Workforce Commission under Subchapter E, Chapter 302, Labor Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1472, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 704, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 818, Sec. 4.01, 4.02, 5.01, eff. Sept. 1, 2003.

Sec. 2308.158. COUNCIL TRAINING; STANDARDS OF CONDUCT INFORMATION. (a) A person who is appointed to and qualifies for office as a council member may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

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

(1) the legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the council;

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

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) Each council member shall comply with the member training requirements established by any other state agency that is given authority to establish the requirements for the council.

(d) The executive director shall provide to the council's members and employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers and employees.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 2.05, eff. Sept. 1, 2003.

SUBCHAPTER E. COUNCIL RECOMMENDATIONS AND IMPLEMENTATION BY STATE AGENCIES

Sec. 2308.201. DEVELOPMENT OF RECOMMENDATIONS. The council shall develop recommendations periodically in each of the council's areas of responsibility and shall submit the recommendations to the governor.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.202. CONSIDERATION OF RECOMMENDATIONS BY THE GOVERNOR. (a) The governor shall consider the recommendations submitted under this subchapter.

(b) The governor shall approve, disapprove, or modify the recommendations.

(c) The governor shall:

(1) return the recommendations to the council to be forwarded as appropriate; or

(2) forward an approved or modified recommendation without returning the recommendation to the council.

(d) A recommendation that is not approved, disapproved, or modified by the governor before the 60th day after the date the recommendation is submitted shall be considered approved by the governor.

(e) A recommendation that is approved or modified shall be forwarded to the appropriate agency for implementation.

(f) A recommendation that is approved or modified and that requires a change in state or federal law shall be forwarded to the

appropriate legislative body for its consideration.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.203. ACTION BY STATE AGENCIES. (a) A state agency that is responsible for the administration of human resources or workforce development in this state shall implement a recommendation under this subchapter if the recommendation does not violate a federal or state law.

(b) A state agency shall:

(1) provide requested information to the council in a timely manner;

(2) report on the implementation of the council's recommendations at the time and in the format requested by the council; and

(3) notify the governor, the executive director, and the presiding officer of the council within 30 days if the agency determines that a recommendation cannot be implemented.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.11(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1472, Sec. 12, eff. Sept. 1, 1999.

Sec. 2308.205. FUND AVAILABILITY AND SERVICES. A state agency represented on the council shall provide to the council and each local workforce development board an estimate of fund availability and services provided by the state agency in each local workforce development area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.206. PROVISION OF SERVICES BY STATE AGENCIES. A state agency represented on the council shall, consistent with state and federal law, provide workforce training and services in accordance with the local workforce development plan developed by the

local workforce development board and approved by the governor and shall implement rules and policies consistent with the plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

SUBCHAPTER F. CREATION AND ADMINISTRATION OF LOCAL WORKFORCE DEVELOPMENT AREAS AND LOCAL WORKFORCE DEVELOPMENT BOARDS

Sec. 2308.251. DEFINITIONS. In this subchapter:

(1) "Board" means a local workforce development board.

(2) "Veteran" means a person who:

(A) has served in:

(i) the army, navy, air force, coast guard, or marine corps of the United States or the United States Public Health Service under 42 U.S.C. Section 201 et seq., as amended;

(ii) the Texas military forces as defined by Section 437.001; or

(iii) an auxiliary service of one of those branches of the armed forces; and

(B) has been honorably discharged from the branch of the service in which the person served.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1426, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.10, eff. September 1, 2013.

Sec. 2308.2515. APPLICATION OF PRIOR LAW. (a) If a change in law made by House Bill 3480, Acts of the 76th Legislature, Regular Session, 1999, would have the effect of invalidating an exemption granted under the Workforce Investment Act of 1998 (Pub. L. No. 105-220), a local workforce development board may not operate under that change in law but, instead, shall operate under the law as it existed before the effective date of this Act.

(b) A change in law described by Subsection (a) of this section does not affect other related provisions or applications of a statute that can be given effect without that change in law, and to this end

those other provisions and applications of the statute shall be given effect.

Added by Acts 1999, 76th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1999.

Sec. 2308.252. DESIGNATION OF WORKFORCE DEVELOPMENT AREAS. (a) The governor shall, after receiving the recommendations of the council, publish a proposed designation of local workforce development areas for the planning and delivery of workforce development.

(b) A local workforce development area:

(1) is composed of more than one contiguous unit of general local government that includes at least one county;

(2) is consistent with either a local labor market area, a metropolitan statistical area, one of the 24 substate planning areas, or one of the 10 uniform state service regions; and

(3) is of a size sufficient to have the administrative resources necessary to provide for the effective planning, management, and delivery of workforce development.

(c) Units of general local government, business and labor organizations, and other affected persons and organizations must be given an opportunity to comment on and request revisions to the proposed designation of a workforce development area.

(d) After considering all comments and requests for changes, the governor shall make the final designation of workforce development areas.

(e) The governor may redesignate workforce development areas not more than once every two years. A redesignation must be made not later than four months before the beginning of a program year.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.253. CREATION OF LOCAL WORKFORCE DEVELOPMENT BOARDS. (a) The chief elected officials in a workforce development area may form, in accordance with rules established by the Texas Workforce Commission, a local workforce development board to:

(1) plan and oversee the delivery of workforce training and services; and

(2) evaluate workforce development in the workforce development area.

(b) The authority granted under Subsection (a) does not give a local workforce development board any direct authority or control over workforce funds and programs in its workforce development area, other than programs funded through that board.

(c) Before a local workforce development board may be created, at least three-fourths of the chief elected officials in the workforce development area who represent units of general local government must agree to the creation of the board, including all of the chief elected officials who represent units of general local government that have populations of at least 200,000. The elected officials who agree to the creation of the board must represent at least 75 percent of the population of the workforce development area.

(d) The chief elected officials shall consider the views of all affected local organizations, including private industry councils and quality workforce planning committees, before making a final decision on the formation of a board.

(e) An agreement on the formation of a board must be in writing and must include:

(1) the purpose for the agreement;

(2) the process to be used to select the chief elected official who will act on behalf of the other chief elected officials;

(3) the process to be used to keep the chief elected officials informed regarding local workforce development activities;

(4) the initial size of the board;

(5) how resources allocated to the local workforce development area are to be shared among the parties to the agreement;

(6) the process, consistent with applicable federal and state law, for the appointment of the board members; and

(7) the terms of office of the board members.

(f) In a state planning area in which there is more than one local workforce development area, the quality workforce planning committee of that state planning area shall continue in existence to provide labor market information for the entire state planning area until local workforce development boards are certified in each workforce development area in that state planning area.

(g) The chief elected officials designated under Subsection (c) shall enter into a partnership agreement with the board to:

(1) select the grant recipient and the administrative

entity for the local workforce development area; and

(2) determine procedures for the development of the local workforce development plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.09(b), 19.12(a), eff. Sept. 1, 1997.

Sec. 2308.254. LIMITATION ON EXERCISE OF BOARD POWERS. (a) A power or duty granted a board under this chapter may not be exercised in a workforce development area until:

(1) the chief elected officials in that area agree on the establishment of a board as provided by Section 2308.253(c); and

(2) the board is certified by the governor.

(b) A private industry council in an area in which a board is not created or in which the chief elective officers are unable to agree on the establishment of a board may not exercise any of the powers granted a board by this chapter, except for a power granted under the federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.12(b), eff. Sept. 1, 1997.

Sec. 2308.255. APPOINTMENT OF BOARD; LIABILITY OF BOARD MEMBERS. (a) The chief elected officials shall appoint the board.

(b) The appointments must:

(1) be consistent with the local government agreement and applicable federal and state law; and

(2) reflect the ethnic and geographic diversity of the workforce development area.

(c) To provide continuity, the chief elected officials shall consider appointing persons to the local workforce development board who are serving or who have served previously on a private industry council, a quality workforce planning committee, a job service employer committee, and any other entity affected by this chapter.

(d) Board members serve fixed and staggered terms as provided by the local government agreement or applicable federal or state law

and may continue to serve until successors are appointed.

(e) A member or former member of a board may not be held personally liable for a claim, damage, loss, or repayment obligation of federal or state funds that arises under this chapter unless the act or omission that causes the claim, damage, loss, or repayment obligation constitutes, on the part of the board member or former board member:

(1) official misconduct;

(2) wilful disregard of the requirements of this chapter; or

(3) gross negligence.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.12(c), (d) eff. Sept. 1, 1997.

Sec. 2308.256. BOARD MEMBERSHIP. (a) A board is composed as follows:

(1) representatives of the private sector, who:

(A) constitute a majority of the membership of the board; and

(B) are owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibilities;

(2) representatives of organized labor and community-based organizations, who constitute not less than 15 percent of the membership of the board; and

(3) representatives of each of the following:

(A) educational agencies, including community colleges and secondary and postsecondary practitioners representing vocational education, that are representative of all educational agencies in the service delivery area;

(B) vocational rehabilitation agencies;

(C) public assistance agencies;

(D) economic development agencies;

(E) the public employment service;

(F) local literacy councils;

(G) adult basic and continuing education organizations;

and

(H) the child-care workforce.

(b) Private sector representatives on the board are selected from individuals nominated by general-purpose business organizations that have consulted with and received recommendations from other business organizations in the workforce development area. The nominations and the individuals selected from the nominations must reasonably represent the industrial and demographic composition of the business community. Not less than one-half of the business and industry representatives must be, if possible, representatives of small businesses, including minority businesses.

(c) The education representatives on the board are selected from individuals nominated by regional or local educational agencies, vocational education institutions, institutions of higher education, including entities offering adult education, and general organizations of the institutions within the workforce development area.

(d) The labor representatives on the board are selected from individuals recommended by recognized state and local labor federations. If a state or local labor federation does not nominate a number of individuals sufficient to meet the labor representation requirements of Subsection (a)(2), individual workers may be included on the council to complete the labor representation.

(e) The remaining members of the board are selected from individuals recommended by interested organizations.

(f) In this section:

(1) "General-purpose business organization" means an organization that admits for membership any for-profit business operating within the workforce development area.

(2) "Small business" means a private, for-profit enterprise that employs not more than 500 employees.

(g) Repealed by Acts 2023, 88th Leg., R.S., Ch. 413 (H.B. 1615), Sec. 3, eff. September 1, 2023.

(h) At least one of the members of a board appointed under Subsection (a) must be a veteran who:

(1) meets the qualifications required for the member under that subsection; and

(2) serves as a representative on the board for the interests of veterans in the workforce development area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 340, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1103, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1426, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1142, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 511 (H.B. 720), Sec. 1, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 413 (H.B. 1615), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 413 (H.B. 1615), Sec. 3, eff. September 1, 2023.

Sec. 2308.257. RECUSAL. (a) A member of a board shall avoid the appearance of conflict of interest by not voting in, or participating in, any decision by the board regarding the provision of services by such member, or any organization which that member directly represents, or on any matter which would provide direct financial benefit to that member, the member's immediate family, or any organization which that member directly represents.

(b) Subsection (a) shall serve as a minimum standard and shall not be construed as to limit the board's authority for more restrictive governance to prevent real and/or apparent conflict of interest.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1004, Sec. 6, eff. Sept. 1, 2001.

Sec. 2308.258. PRESIDING OFFICER. The presiding officer of a board is selected from the members of the board who represent the private sector.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.259. BOARD COMMITTEES. A board may create committees as needed to carry out its duties and responsibilities.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.260. TECHNICAL ADVISORY GROUPS. A board may create technical advisory groups composed of both council and noncouncil members to provide assistance to the board.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.261. CERTIFICATION OF BOARD. (a) The governor shall certify a board on determining that the board's composition is consistent with applicable federal and state law and requirements and meets established state criteria.

(b) The governor shall certify or deny certification not later than the 30th day after the date a certification request is submitted to the governor.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.262. BUDGET. A board shall adopt a budget for the board that must be included in the local workforce development plan submitted to the division.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.13(a), eff. Sept. 1, 1997.

Sec. 2308.263. APPROVAL OF FISCAL AGENT. (a) The Texas Workforce Commission must approve the fiscal agent selected by a board before any federal or state workforce development funds may be disbursed to the board.

(b) The commission shall base its approval on an audit of the financial capability of the fiscal agent to ensure that fiscal controls and fund accounting procedures necessary to guarantee the proper disbursal of and accounting for federal and state funds are in

place.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.14, eff. Sept. 1, 1997.

Sec. 2308.264. CONTRACTING FOR SERVICE DELIVERY. (a) Except as otherwise provided by this section, a board may not directly provide workforce training or one-stop workforce services.

(b) A board may request from the Texas Workforce Commission a waiver of Subsection (a).

(c) The request for a waiver must include a detailed justification based on the lack of an existing qualified alternative for delivery of workforce training and services in the workforce development area.

(d) If a board receives a waiver to provide workforce training and one-stop workforce services, the evaluation of results and outcomes is provided by the Texas Workforce Commission.

(e) In consultation with local workforce development boards, the Texas Workforce Commission by rule shall establish contracting guidelines for boards under this section, including guidelines designed to:

(1) ensure that each independent contractor that contracts to provide one-stop workforce services under this section has sufficient insurance, bonding, and liability coverage for the overall financial security of one-stop workforce services funds and operations;

(2) prevent potential conflicts of interest between boards and entities that contract with boards under this section; and

(3) ensure that if a board acts as a fiscal agent for an entity that contracts with the board to provide one-stop workforce services, the board does not deliver the services or determine eligibility for the services.

(f) The Texas Workforce Commission shall ensure that each board complies with this section and may approve a local plan under Section 2308.304 only if the plan complies with this section.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 4.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1350 (S.B. 998), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 332 (H.B. 3074), Sec. 1, eff. June 15, 2007.

Sec. 2308.265. INCENTIVES AND WAIVERS. (a) A board certified by the governor is eligible for incentives and program waivers to promote and support integrated planning and evaluation of workforce development.

(b) To the extent feasible under federal and state workforce development law, incentives include priority for discretionary funding, including financial incentives for the consolidation of service delivery areas authorized under the federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.266. NONPROFIT STATUS; ABILITY TO SOLICIT FUNDS. (a) A board may apply for and receive a charter as a private, nonprofit corporation under the laws of this state and may choose to be recognized as a Section 501(c)(3) organization under the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)).

(b) In addition to receiving funds specified in this chapter, a board may solicit additional funds from other public and private sources.

(c) A board may not solicit or accept money from an entity with which the board contracts for the delivery of services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.267. STAFF. (a) A board may employ professional, technical, and support staff to carry out its planning, oversight, and evaluation functions.

(b) A board's staff shall be separate from and independent of any organization providing workforce education or workforce training

and services in the workforce development area. A board's staff may not direct or control the staffing of any entity providing one-stop workforce services.

(c) The requirement for separate staffing does not preclude a board from designating a qualified organization to provide staff services to the board if the board:

(1) arranges for independent evaluation of any other workforce services provided by the staffing organization; and

(2) requests and obtains from the Texas Workforce Commission a waiver of the separate staffing requirement and of the requirement under Section 2308.264(a).

(d) A request for a waiver under Subsection (c)(2) must contain a detailed justification for the waiver, including:

(1) cost-effectiveness;

(2) prior experience;

(3) geographic or budgetary considerations; and

(4) availability of qualified applicants.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.13(b), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 817, Sec. 4.02, eff. Sept. 1, 2003.

Sec. 2308.268. ASSISTANCE AND SANCTIONS FOR NONPERFORMANCE. (a) The council shall provide technical assistance to local workforce development areas that do not meet performance standards established under this chapter and other applicable federal and state law.

(b) If a local workforce development area does not meet performance standards for two consecutive program years, the council shall develop and impose a reorganization plan that may include:

(1) restructuring the board;

(2) prohibiting the use of designated service providers, including state agencies; and

(3) merging the local workforce development area with another area.

(c) If nonperformance is directly attributable to a specific state agency, the council may select an alternative provider.

(d) A local workforce development area that is the subject of a

reorganization plan may appeal to the governor to rescind or revise the plan not later than the 30th day after the date of receiving notice of the plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.269. SANCTIONS FOR LACK OF FISCAL ACCOUNTABILITY. If, as a result of financial and compliance audits or for another reason, the Texas Workforce Commission finds a substantial violation of a specific provision of this chapter or another federal or state law or regulation and corrective action has not been taken, the council shall:

(1) issue a notice of intent to revoke all or part of the affected local plan;

(2) issue a notice of intent to cease immediately reimbursement of local program costs; or

(3) impose a reorganization plan under Section 2308.268 for the local workforce development area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.15, eff. Sept. 1, 1997.

SUBCHAPTER G. RESPONSIBILITIES AND DUTIES OF LOCAL WORKFORCE DEVELOPMENT BOARDS

Sec. 2308.301. DEFINITIONS. In this subchapter:

(1) "Board" means a local workforce development board.

(2) "Commission" means the Texas Workforce Commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 9.016(a), eff. Sept. 1, 2001.

Sec. 2308.302. RESPONSIBILITY OF BOARD. (a) A board is directly responsible and accountable to the division for the planning and oversight of all workforce training and services and the evaluation of all workforce development programs in the workforce

development area. A board shall ensure effective outcomes consistent with statewide goals, objectives, and performance standards approved by the governor.

(b) A board is directly responsible to the division for the operational planning and administration of all workforce training and services funded through the Texas Workforce Commission to the local area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.09(c), eff. Sept. 1, 1997.

Sec. 2308.303. BOARD DUTIES. (a) A board shall:

(1) serve as a single point of contact for local businesses to communicate their skill needs and to influence the direction of all workforce development programs in the workforce development area;

(2) serve as a private industry council under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(3) develop a local plan to address the workforce development needs of the workforce development area that:

(A) is responsive to the goals, objectives, and performance standards established by the governor;

(B) targets services to meet local needs, including the identification of industries and employers likely to employ workers who complete job training programs; and

(C) ensures that the workforce development system, including the educational system, has the flexibility to meet the needs of local businesses;

(4) designate the board or another entity as the board's fiscal agent to be responsible and accountable for the management of all workforce development funds available to the board;

(5) create local career development centers under Section 2308.312;

(6) review plans for workforce education to ensure that the plans address the needs of local businesses and recommend appropriate changes in the delivery of education services;

(7) assume the functions and responsibilities of local workforce development advisory boards, councils, and committees authorized by federal or state law, including private industry

councils, quality workforce planning committees, job service employer committees, and local general vocational program advisory committees;

(8) monitor and evaluate the effectiveness of the career development centers, state agencies and other contractors providing workforce training and services, and vocational and technical education programs operated by local education agencies and institutions of higher education to ensure that performance is consistent with state and local goals and objectives; and

(9) promote cooperation and coordination among public organizations, community organizations, charitable organizations, religious organizations, and private businesses providing workforce development, in a manner consistent with the nondiscrimination principles and safeguards stated in 42 U.S.C. Section 604a.

(b) The board shall ensure that employment services are provided for persons seeking employment in the local workforce development area. The board shall contract with an appropriate entity for the provision of services, or, if all necessary waivers are granted, the board may provide the services directly.

(c) In performing its duties under this section, a board may provide to the division relevant labor market information and information regarding the availability of existing workforce development.

(d) A provider must respond to a change recommended by a board under Subsection (a)(6) not later than the 30th day after the date the provider receives the recommendation.

(e) A board shall educate the public about the plumbing profession and the resources available to employers for the recruitment and training of plumbers as provided by Section 1301.652, Occupations Code.

(f) These educational efforts may be conducted to the extent that the plumbing profession is designated as an occupation in demand by a board.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.09(d), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 401, Sec. 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1472, Sec. 13, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 819, Sec. 28, eff. Sept. 1, 2003.

Sec. 2308.3035. COMPONENTS OF LOCAL WORKFORCE DEVELOPMENT SYSTEM. The local workforce development system is composed of two major components as follows:

(1) an employer services component that provides labor market information and services and other services as appropriate to local employers; and

(2) an integrated service delivery system composed of a network of career development centers that serve the people of this state based on a "one-stop for service" approach and supported by electronic access to comprehensive labor market information.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 19.18(a), eff. Sept. 1, 1997.

Sec. 2308.304. LOCAL PLAN. (a) A board shall adopt a single plan that includes the components specified in this section.

(b) The plan must include a strategic component that:

(1) assesses the labor market needs of the local workforce development area;

(2) identifies existing workforce development programs;

(3) evaluates the effectiveness of existing programs and services; and

(4) sets broad goals and objectives for all workforce development programs in the local area consistent with statewide goals, objectives, and performance standards.

(c) The plan must include an operational component that specifies how all of the resources available to the local workforce development area from the Texas Workforce Commission will be used to achieve the goals and objectives of the plan for the area. At a minimum, this component must establish:

(1) the goals, objectives, and performance measures to be used in overseeing and evaluating the operation of all workforce training and services;

(2) the segments of the population targeted for various services;

(3) the mix of services to be provided and how those services are to be provided; and

(4) the structure of the local service delivery system.

(d) Program resources included in the operational component

are:

(1) job training programs funded under the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.);

(2) postsecondary vocational and technical job training programs that are not part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 130, and 135, or Subchapter E, Chapter 88, Education Code;

(3) adult education programs under Subchapter H, Chapter 29, Education Code;

(4) employment services programs;

(5) literacy funds available to the state under the National Literacy Act of 1991 (20 U.S.C. Section 1201 et seq.);

(6) the job opportunities and basic skills program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682); and

(7) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.16(a), eff. Sept. 1, 1997.

Sec. 2308.305. USE OF LABOR MARKET INFORMATION SYSTEM. A board shall review, verify, modify, and use local labor market information developed through the state's labor market information system to identify, by occupation, the labor demand by employers in each workforce development area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.17(a), eff. Sept. 1, 1997.

Sec. 2308.306. REPORT. A board shall periodically provide a report summarizing by occupation the labor demand to:

(1) each public postsecondary institution providing vocational and technical education; and

(2) each entity under contract to the board to provide workforce training and services in a workforce development area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.307. FILLING EDUCATIONAL NEEDS. (a) If a need in the availability of workforce education is indicated by the labor market information system provided by the board, by a direct request of employers located in the workforce area, or as the result of economic development incentives designed to attract or retain an employer, an institution may apply to the Texas Higher Education Coordinating Board for approval to offer the needed workforce education.

(b) An institution that desires to provide the needed workforce education must apply to the coordinating board not later than the 30th day after the date the need is identified.

(c) The coordinating board shall give immediate priority to the institution's application and shall notify the institution of the board's approval or disapproval not later than the 100th day after the date the application is received.

(d) If more than one institution in a workforce development area applies to provide the needed workforce education, the coordinating board shall select one or more institutions to offer the needed education as provided by Section 61.051, Education Code.

(e) If an institution approved by the coordinating board does not offer the approved workforce education in a timely manner, a board may solicit another qualified provider to apply to the coordinating board to provide needed education to be funded through state-appropriated formula funds.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.308. PUBLIC COMMUNITY COLLEGE. A public community college shall promptly provide workforce training and services that are requested:

(1) by a board if the need for the training and services is based on the labor market information system available for the area;

(2) by employers located in the college's taxing district when the request is presented directly to the college by the

employers or through the board; or

(3) as part of economic development incentives designed to attract or retain an employer, including incentives offered under the skills development fund program under Chapter 303, Labor Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.17(b), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 7, eff. June 18, 2005.

Sec. 2308.309. INSTITUTION OF HIGHER EDUCATION. (a) An institution of higher education that has local taxing authority and is governed by a locally elected board of trustees is the primary provider of local workforce training and services that are needed by an employer within the taxing district and funded fully or in part by local funds, except in Cameron, McLennan, and Potter counties, or by technical vocational funds administered by the Texas Higher Education Coordinating Board.

(b) A board shall select another qualified local or statewide provider if the local institution does not promptly provide locally needed workforce training and services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.310. CERTAIN EDUCATIONAL SERVICES NOT PROHIBITED. This subchapter does not prohibit an institution of higher education from offering workforce education or workforce training and services that:

(1) are needed by an employer located in the institution's taxing district and that meet all applicable standards; or

(2) have been approved under applicable law and that are reviewed by the Texas Higher Education Coordinating Board.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.311. LIST OF PUBLICLY FUNDED PROGRAMS AND CLASSES. (a) Each local education agency and public or private postsecondary educational institution shall provide the board in its area a list of all vocational-technical programs and classes the agency or institution offers that are funded by state or federal funds.

(b) A board, with the assistance of the labor demand occupation report, shall evaluate the supply of vocational-technical programs in relation to the demand for the programs and report any discrepancies between supply and demand to the appropriate educational institution, the Central Education Agency, the Texas Higher Education Coordinating Board, the council, and the Legislative Budget Board.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995.

Sec. 2308.312. CAREER DEVELOPMENT CENTERS. (a) A board shall establish career development centers accessible to students, workers, and persons formerly sentenced to the Texas Department of Criminal Justice throughout the workforce development area. The board shall establish the centers not later than the 180th day after the date the board is certified.

(b) Each center shall provide access to information and services available in the workforce development area, including employment services, and shall address the individual needs of students, workers, and persons formerly sentenced to the Texas Department of Criminal Justice.

(c) The services must include:

(1) labor market information, including:

(A) available job openings; and

(B) education and training opportunities in the local area, in the state, and, as feasible, in the nation;

(2) uniform eligibility requirements and application procedures for all workforce training and services;

(3) independent assessment of individual needs and the development of an individual service strategy;

(4) centralized and continuous case management and counseling;

(5) individual referral for services, including basic education, classroom skills training, on-the-job training, and

customized training;

(6) support services, including child care assistance, student loans, and other forms of financial assistance required to participate in and complete training; and

(7) job training and employment assistance for persons formerly sentenced to the Texas Department of Criminal Justice, provided in cooperation with Project RIO.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.18(b), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.23(a), eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.090, eff. September 1, 2009.

Sec. 2308.3121. SERVICE PROVIDER LIMITATION; WAIVER. (a) Except as provided by Subsection (b), a person who provides one-stop services may not also provide developmental services such as basic education and skills training.

(b) The division may develop a waiver process for a person subject to Subsection (a). A request for a waiver must include a detailed justification based on the lack of an existing qualified alternative for delivery of developmental services in the applicable workforce development area.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 19.18(c), eff. Sept. 1, 1997.

Sec. 2308.3122. UNEMPLOYMENT INSURANCE CLAIMS. In cooperation with the boards, the Texas Workforce Commission shall provide for the filing of unemployment insurance claims through career development centers in each local workforce development area.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 19.18(c), eff. Sept. 1, 1997.

Sec. 2308.313. RIGHT TO KNOW. A career development center

shall provide to each person, before the person participates in a vocational or technical training program, a document that informs the person of:

(1) current employment prospects;

(2) the current wage level for a person who completes the vocational or technical training program in which the person is considering participating; and

(3) the most recent information available on the performance of institutions that provide that training in the local workforce development area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.81(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 19.18(d), eff. Sept. 1, 1997.

Sec. 2308.314. TAX ASSISTANCE. (a) The Texas Workforce Commission may provide to individuals who participate in a workforce development program information on the federal earned income tax credit for working families. The commission may assist participants in preparing and filing federal income tax forms to ensure that a participant who is eligible to receive the tax credit obtains the tax credit. The commission may fulfill its duties under this subsection by:

(1) working in conjunction with the Internal Revenue Service to make each workforce development center a volunteer income tax assistance site during the two months preceding the date federal income taxes are due; or

(2) using specially trained staff or volunteers to assist in preparing and filing federal income tax forms.

(b) The Texas Workforce Commission may provide information on the federal earned income tax credit to an employer who hires a welfare recipient under a wage supplementation program.

(c) In addition to providing information under Subsection (a) to an individual who participates in a workforce development program, the Texas Workforce Commission may provide the information to any other person who uses services provided through a workforce development center.

(d) In this section:

(1) "Wage supplementation program" means a program under

which the state reserves all or part of the amounts that would be payable as benefits to welfare recipients and uses those amounts to provide and subsidize jobs for the recipients.

(2) "Welfare recipient" means a person who receives financial assistance under Chapter 31, Human Resources Code, or food stamps under the food stamp program administered under Chapter 33, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1321, Sec. 1, eff. Sept. 1, 1997.

Sec. 2308.315. REIMBURSEMENT RATES FOR CHILD-CARE PROVIDERS. Each board shall establish and implement graduated reimbursement rates for child-care providers participating in the commission's subsidized child-care program that align the commission's age groupings with the child-to-caregiver ratios and group sizes adopted by the Health and Human Services Commission. The graduated rates shall provide the highest reimbursement rate to child-care providers that provide care to children in the age group with the lowest child-to-caregiver ratio. The commission shall supply any demographic data needed by the board to establish the rates.

Added by Acts 1999, 76th Leg., ch. 1576, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 241 (H.B. 376), Sec. 3, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 59 (S.B. 1555), Sec. 1, eff. September 1, 2021.

Sec. 2308.3151. REIMBURSEMENT RATES FOR TEXAS RISING STAR PROGRAM PROVIDERS. (a) Each board shall establish graduated reimbursement rates for child care based on the commission's Texas Rising Star Program.

(b) The minimum reimbursement rate for a Texas Rising Star Program provider must be greater than the maximum rate established for a provider who is not a Texas Rising Star Program provider for the same category of care. The reimbursement rate must be:

(1) at least five percent higher for a provider with a two-star rating;

(2) at least seven percent higher for a provider with a

three-star rating; and

(3) at least nine percent higher for a provider with a four-star rating.

(c) The Texas Rising Star Program rate differential established in this section shall be funded with federal child-care development funds.

(d) The commission shall examine and implement strategies to address the increased costs a Texas Rising Star Program provider with a four-star or three-star rating would incur to provide care to infants and toddlers due to low child-to-caregiver ratios for children in those age groups.

Added by Acts 2021, 87th Leg., R.S., Ch. 59 (S.B. 1555), Sec. 1, eff. September 1, 2021.

Sec. 2308.3155. TEXAS RISING STAR PROGRAM. (a) The Texas Rising Star Program is a quality-based child care rating system of child care providers participating in the commission's subsidized child care program.

(b) The commission shall adopt rules to administer the Texas Rising Star Program, including:

(1) guidelines for rating a child-care provider who provides child care to a child younger than 13 years of age, including infants and toddlers, enrolled in the subsidized program; and

(2) a timeline and process for regularly reviewing and updating the quality standards used to determine the rating system that includes the commission's consideration of input from interested parties regarding those standards.

(b-1) The rating system adopted under Subsection (b) must include an entry level rating for child care providers and a maximum length of time a provider may participate at the entry level rating. To qualify for the entry level rating a child care provider must meet the minimum quality standards that qualify the provider to receive technical assistance and support under the Texas Rising Star Program. A provider participating at the entry level rating is not eligible for increased reimbursement rates.

(b-2) The commission shall develop a process to allow a child care provider to request a waiver to extend the length of time the

provider may participate at the entry level rating described by Subsection (b-1). The waiver authorized by this subsection may not exceed 36 months.

(c) The commission shall make money available to each board to hire necessary employees to provide technical assistance under Section 2308.320 from the child care and development block grant. In addition, a board may use money available from other public or private sources to hire necessary employees for the program.

(d) The commission shall, using a competitive procurement process that complies with all federal and state laws, select a single entity to oversee a statewide roster of qualified assessors to evaluate child-care providers participating in the Texas Rising Star Program during the initial certification process and at any other time during the provider's participation in the program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 241 (H.B. 376), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 5, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 263 (H.B. 1792), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1031 (H.B. 2607), Sec. 1, eff. September 1, 2021.

Sec. 2308.316. FUNDING OF COMPETITIVE PROCUREMENT PROCESS FOR INFANT AND EARLY CHILDHOOD CHILD CARE. Each board shall allocate a portion of the board's federal child care development funds dedicated to quality improvement activities to a competitive procurement process for a system for quality child care for children under four years of age that encourages child care providers to voluntarily meet the certification criteria of the commission's Texas Rising Star Program. In allocating funds under this section, special consideration shall be given to funding child care for children under four years of age in low-income communities. This section may not be interpreted to limit parental choice.

Added by Acts 1999, 76th Leg., ch. 1576, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 241 (H.B. 376), Sec. 5, eff.

September 1, 2013.

Sec. 2308.3165. SCOPE OF CHILD CARE SERVICES. In addition to other programs approved by a board or permitted by another law, a child who is otherwise eligible for child care services funded by a board is eligible to receive the services while the child is enrolled in a federal Head Start program or in after-school care provided at a school.

Added by Acts 2001, 77th Leg., ch. 1142, Sec. 1, eff. Sept. 1, 2001.

Sec. 2308.317. EXPENDITURES FOR CERTAIN CHILD CARE QUALITY IMPROVEMENT ACTIVITIES. (a) Notwithstanding any other law, the commission shall ensure that, to the extent federal child care development funds dedicated to quality improvement activities are used to improve quality and availability of child care, those funds are used for:

(1) quality child care programs, including programs:

(A) whose director receives mentoring; or

(B) that are in the process of obtaining a Texas Rising Star Program rating;

(2) technical assistance for providers as described by Section 2308.320;

(3) professional development for child care providers, directors, and employees;

(4) educational materials for children served by child care providers; and

(5) educational information for parents important for the development of a child under five years of age.

(b) For purposes of this section, a quality child care program is a program that:

(1) promotes:

(A) the physical, social, emotional, and intellectual development of young children;

(B) frequent, positive, warm interactions appropriate to a child's age and development; and

(C) regular communication with parents who are welcomed by the program at all times to participate in activities and to

observe, discuss, and recommend policies; and

(2) provides:

(A) a healthy, safe, and nurturing environment for young children;

(B) planned learning activities appropriate to a child's age and development;

(C) specially trained child care providers;

(D) a sufficient number of adults to respond to the needs of each child;

(E) a variety of age-appropriate materials;

(F) nutritious meals and snacks;

(G) an effective program administration; and

(H) an ongoing, systematic evaluation process for the program.

(c) Each board shall use at least two percent of the board's yearly allocation from the commission for quality child care initiatives. In addition, a board may use money available from other public or private sources for quality child care initiatives. A board shall give priority to quality child care initiatives that benefit child care facilities that are working toward Texas Rising Star certification or are Texas Rising Star certified providers working toward a higher certification level.

(d) Each board shall annually report to the commission regarding the board's use of the two percent allocation described by Subsection (c).

(e) Each board shall, to the extent practicable, ensure that any professional development for child care providers, directors, and employees funded under Subsection (a):

(1) can be used toward requirements for a credential, certification, or degree program; and

(2) meets the professional development requirements of the Texas Rising Star Program.

Added by Acts 2001, 77th Leg., ch. 1517, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 241 (H.B. 376), Sec. 6, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1038 (H.B. 680), Sec. 1, eff. September 1, 2019.

Sec. 2308.3171. INFORMATION ON QUALITY CHILD CARE. (a) In this section, "quality child-care indicator" means any appropriate indicator of quality services, including whether the provider of the services:

(1) meets Texas Rising Star Program certification criteria;

(2) is accredited by a nationally recognized accrediting organization approved by the commission;

(3) is certified under the school readiness certification system established under Section 29.161, Education Code;

(4) meets standards developed under Section 29.155(g), Education Code; or

(5) has achieved any other measurable target that is relevant to improving the quality of child care in this state and that has been approved by the commission.

(b) Each board shall provide information on quality child-care indicators to each licensed or registered child-care provider in the area. Each board shall determine the manner in which to provide this information.

(c) Each board shall post in a prominent place on the board's Internet website home page and at any physical location where the board provides services:

(1) a list of local designated vendors that are child-care providers and have a quality child-care indicator listed in Subsection (a)(1), (2), (3), or (4); and

(2) a list of local parenting classes.

(d) A child-care provider who receives funding or reimbursement for child-care services from a board shall post a certification or accreditation described by Subsection (a) at the entrance of the provider's facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 376 (S.B. 264), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 241 (H.B. 376), Sec. 7, eff. September 1, 2013.

Sec. 2308.318. MATCHING FUNDS FOR CHILD CARE SERVICES. For purposes of obtaining federal matching funds for child care services, including after-school care provided at a school or a federal Head

Start program, a board shall use money and in-kind services provided by a local school district or local education agency for those services to the extent permitted by federal law.

Added by Acts 2001, 77th Leg., ch. 667, Sec. 1, eff. June 13, 2001. Renumbered from Government Code Sec. 2308.317 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(89), eff. Sept. 1, 2003.

Sec. 2308.319. COLLABORATIVE READING INITIATIVES. The commission shall encourage each local workforce development board to raise an amount of local funds in excess of the amount required to meet performance measures to be used to support collaborative reading initiatives.

Acts 2003, 78th Leg., ch. 817, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 2308.320. TECHNICAL ASSISTANCE FOR PROVIDERS. Each board shall provide technical assistance to Texas Rising Star Program providers and to providers seeking certification under the Texas Rising Star Program, including providing:

(1) a mentor or coach to a Texas Rising Star Program provider to meet regularly with the provider and provide child care resources to the provider, including developmentally appropriate books, materials, and equipment;

(2) consumer information regarding the selection of quality child care for parents of children enrolled in the program; and

(3) parenting education information for parents of children enrolled in the program, including information about parenting classes that are available in the area or on the Internet.

Added by Acts 2013, 83rd Leg., R.S., Ch. 241 (H.B. 376), Sec. 8, eff. September 1, 2013.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 263 (H.B. 1792), Sec. 2, eff. September 1, 2021.

CHAPTER 2308A. TRI-AGENCY WORKFORCE INITIATIVE

Sec. 2308A.001. DEFINITIONS. In this chapter:

(1) "Agency," unless the context requires otherwise, means the Texas Education Agency.

(2) "Career education and training program" means:

(A) a career and technology education program offered by a public school;

(B) a career technical or workforce education program, as defined by the coordinating board, offered by an institution of higher education;

(C) a program administered by the commission relating to jobs training, skills development, or adult education and literacy; and

(D) a work-based learning program, such as an apprenticeship or internship program, that receives state funding or is administered by the commission.

(3) "Commission" means the Texas Workforce Commission.

(4) "Coordinating board" means the Texas Higher Education Coordinating Board.

(5) "Initiative" means the Tri-Agency Workforce Initiative.

(6) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(7) "State workforce development goals" means the state workforce development goals developed under Section 2308A.006.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.002. PURPOSE. The Tri-Agency Workforce Initiative is established to coordinate and improve information and other resources as necessary to:

(1) ensure that the use of state and federal education and workforce funds is efficiently aligned to achieve state workforce development goals;

(2) align career education and training programs to workforce demands; and

(3) enable local and state policy makers to identify the workforce outcomes of participants in career education and training programs and progress toward the state workforce development goals.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.003. INTERAGENCY AGREEMENTS AND STAFFING. (a) The agency, coordinating board, and commission shall enter into one or more interagency agreements establishing policies and processes for:

(1) sharing and matching relevant data and cooperatively managing education and workforce information collected by each respective agency; and

(2) coordinating the assignment of existing staff and other resources as necessary to effectuate the state workforce development goals and the strategies for achieving those goals developed under Section 2308A.006.

(b) The time spent by an employee of the agency, coordinating board, or commission in supporting the work of the initiative is not included in calculating the number of full-time equivalent employees allotted to the respective agency under other law.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.004. QUARTERLY DISCUSSIONS. The commissioner of education, commissioner of higher education, and chair of the commission shall discuss the work of the initiative at least once per quarter.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.005. STRATEGIC PLAN FOR UNIFIED WORKFORCE DATA REPOSITORY. (a) The coordinating board shall develop a strategic plan for the operation of a unified repository for education and workforce data. In developing the plan, the coordinating board shall solicit input from the agency, the commission, and relevant stakeholders.

(b) The plan developed under Subsection (a) must include recommendations for:

(1) automatically matching records of the agency, coordinating board, and commission at the student level on a timely basis;

(2) creating publicly available tools and resources regarding data on the outcomes of participants in career education and training programs, including graduation rates, student debt, employment status and industry of employment, and earnings over time, disaggregated to the extent practicable by income, race, ethnicity, and gender;

(3) making timely student data available to authorized entities to support higher education and workforce application, entry, and success; and

(4) creating and supporting a secure portal through which authorized personnel of approved entities can view and analyze comprehensive longitudinal and the most currently available matched data related to the progress toward meeting state workforce needs.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.006. STATE WORKFORCE DEVELOPMENT GOALS AND STRATEGIES. (a) The commissioner of education, commissioner of higher education, and chair of the commission jointly shall develop and post in a prominent location on the initiative's and each respective agency's Internet website state workforce development goals and coordinated interagency strategies for achieving those goals.

(b) The goals developed under Subsection (a) must:

(1) be developed in consultation with employers;

(2) include goals for the attainment of employment in jobs that pay a self-sufficient wage for all career education and training programs in the state;

(3) be disaggregated by race, ethnicity, and gender for each workforce development region; and

(4) provide for:

(A) locally determined priorities consistent with state goals; and

(B) collaborative planning and coordination with local employers, public schools, institutions of higher education, and local workforce development boards.

(c) The strategies developed under Subsection (a) must:

(1) include strategies for expanding work-based learning;

(2) articulate the ways in which the state can best leverage state and federal funding for career education and training programs; and

(3) be demonstrably guided by:

(A) education and workforce data;

(B) evidence of success and considerations of cost-effectiveness; and

(C) prioritized occupational classifications, including all target occupations and critical career pathways designated under Subsection (e).

(d) In consultation with employers, the commissioner of education, commissioner of higher education, and chair of the commission jointly shall update the state workforce development goals and strategies developed under Subsection (a) at least every four years, or more frequently if needed to reflect available data and circumstances.

(e) In consultation with employers, the commissioner of education, commissioner of higher education, and chair of the commission shall designate and update every two years a list of career pathways that includes the following two priority categories:

(1) target occupations, which include current needs that exist in one or more regions of the state as reflected in regional workforce assessments that:

(A) use the best available data and local employer requests; and

(B) satisfy minimum federal standards for designations, such as a foundation for qualified use of federal workforce funding; and

(2) critical career pathways that reflect the best statewide data and forecasts of skills and careers for which demand in the state is expected to grow that may:

(A) be associated with new emerging industries or new specialty occupations within an industry; or

(B) reflect pathways to better wages for workers with documented skills that provide promotional opportunities within or across occupations with targeted upskill training.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.007. CREDENTIAL LIBRARY. (a) The coordinating board and the commission jointly may establish a publicly accessible web-based library of credentials, such as diplomas, certificates, certifications, digital badges, apprenticeships, licenses, or degrees, that are:

(1) delivered, issued, funded, or governed by the state;

(2) aligned with recognized skills and industry standards;

(3) available to residents of the state; and

(4) used by employers in the state.

(a-1) A credential library established under this section must include the information included in the electronic tools or platforms developed by the coordinating board under Section 61.09022(a), Education Code.

(b) The coordinating board and the commission jointly may designate a host agency or operating entity for a credential library established under this section.

(c) In establishing a credential library under this section, the coordinating board and the commission shall solicit input from the agency and relevant stakeholders.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 378 (H.B. 8), Sec. 51, eff. June 9, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1011 (H.B. 2920), Sec. 8, eff. June 18, 2023.

Sec. 2308A.008. INTERNET-BASED RESOURCES. (a) Using federal funding or gifts, grants, or donations available for the purpose, the coordinating board may establish Internet-based resources for the initiative. The resources may include:

(1) a central Internet website for the initiative that contains information on the state workforce development goals and the strategies for achieving those goals developed under Section 2308A.006;

(2) a unified dashboard, updated on an annual or more frequent basis, that reports progress toward accomplishment of the state workforce development goals, both statewide and disaggregated

by public school and public school campus, institution of higher education campus, workforce region, and county;

(3) data on the outcomes of students who participate in career education and training programs, disaggregated to the extent practicable by income, race, ethnicity, and gender, including data regarding degree and credential completion, employment status and industry of employment, and earnings over time;

(4) guidance supporting the use of data on the dashboard described by Subdivision (2) for greater accessibility for a wide range of public, practitioner, and legislative users;

(5) tools enabling residents of the state to:

(A) explore careers that match the resident's education and skills and lead to a self-sufficient wage;

(B) identify and evaluate education and training opportunities related to the resident's career interests; and

(C) connect to available jobs through existing job matching websites; and

(6) tools to support joint program planning, budgeting, and performance evaluation among:

(A) the agency, coordinating board, and commission; and

(B) public schools, institutions of higher education, local workforce development boards, and partnering entities.

(b) In establishing Internet-based resources for the initiative under Subsection (a), the coordinating board shall solicit input from the agency and the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.009. STUDENT SUCCESS REPORTING. (a) Using federal workforce funds to the extent available for the purpose, the agency and the coordinating board shall make available to each public school and institution of higher education information possessed by the agency, coordinating board, or commission regarding the success of students previously enrolled in a career education and training program offered by the school or institution with respect to critical student outcomes, including degree and credential completion, employment status and industry of employment, and earnings over time.

(b) The commissioner of education and the commissioner of

higher education shall ensure that the information made available under Subsection (a) is made available in a manner that complies with applicable state or federal law regarding the privacy and confidentiality of student information.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.010. OPPORTUNITY FOR COMMENT. At least 30 days before finalizing state workforce development goals or strategies for achieving those goals developed under Section 2308A.006, the agency, coordinating board, and commission jointly shall post on the initiative's and each respective agency's Internet website the proposed goals or strategies and instructions for submitting comment on those items to the agencies.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.011. TARGETED FUNDING TO ADDRESS STATE GOALS. (a) A state agency that receives funding through the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. Section 2301 et seq.) or the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128) or any other federal funding for career education and training may, to the extent permissible under federal law, combine with, transfer to, or delegate to another state agency that receives such funding the agency's management of workforce-related funding as necessary to implement the state workforce development goals.

(b) A state agency that receives federal or state funding for career education and training programs shall include in the agency's legislative appropriations request a description of how the agency's career education and training programs and expenditures align with the state workforce development goals.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.012. SELF-SUFFICIENT WAGE. The agency, coordinating

board, and commission jointly shall determine for each county the wage that constitutes a self-sufficient wage for purposes of this chapter. The determination must be based on a common standard that reflects the regionally adjusted minimum employment earnings necessary to meet a family's basic needs while also maintaining self-sufficiency.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

Sec. 2308A.013. GIFTS, GRANTS, AND DONATIONS. (a) The agency, coordinating board, and commission may accept gifts, grants, and donations from any public or private source for purposes of the initiative.

(b) The agency, coordinating board, and commission shall investigate potential sources of funding from federal grants or programs that may be used for purposes of the initiative.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 2, eff. September 1, 2021.

CHAPTER 2309. NATIONAL DEFENSE IMPACTED REGION ASSISTANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2309.001. SHORT TITLE. This chapter may be cited as the National Defense Impacted Region Assistance Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

Sec. 2309.002. PURPOSE; FINDINGS. (a) The purpose of this chapter is to provide significant state financial assistance to an impacted region so that a governmental entity in the impacted region may better serve the people of the region, including the assigned military personnel, by ensuring the adequate provision of government services.

(b) The legislature finds that the construction and operation of a significant new naval military facility in the state provides substantial financial benefit to the state and that the state is

better protected in the event of enemy attack.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

Sec. 2309.003. DEFINITIONS. In this chapter:

(1) "Fund" means the Texas home port trust fund.

(2) "Impacted region" means a county:

(A) in which a significant new naval military facility is located; or

(B) that has a common boundary with a county in which the facility is located.

(3) "Significant new naval military facility" means a new United States Navy installation or an addition and expansion of an existing naval installation that involves:

(A) the acquisition of at least 60 acres of land;

(B) the construction of facilities and improvements that have a cost of at least $65 million; and

(C) the assignment of the facility as the home port of at least 2,000 additional active duty members of the armed forces.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

SUBCHAPTER B. FUND

Sec. 2309.021. FUND ADMINISTRATION. (a) The Texas home port trust fund is administered by the comptroller and may be paid only on written authorization of the governor.

(b) Before authorizing the use of money under this section, the governor shall notify the speaker of the house, the lieutenant governor, and the comptroller of the proposed authorizations and shall consider their recommendations and requests.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.77, eff. Sept. 1, 1997.

Sec. 2309.022. FUND PAYMENTS. Payments may be made from the

fund to a navigation district or to any other political subdivision, as determined by the governor to be appropriate, to be used only to:

(1) make a public works improvement, including docks, dredging, bulkheads, and utilities, related to the naval facility; or

(2) provide a permanent berthing location for a United States Navy aircraft carrier.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

Sec. 2309.023. IMPROVEMENT MADE WITH FUND PAYMENT. (a) An improvement made with funds authorized under Section 2309.022(1) must be of a nature that would benefit the state if the facility were not used as a military installation.

(b) The improvement may be leased to the United States government, but ownership of the improvement remains with the state, the navigation district, or the political subdivision.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

Sec. 2309.024. INTEREST ON FUND. Interest earned by the fund shall be deposited to the credit of the general revenue fund.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

Sec. 2309.025. LAPSE OF FUND. The fund lapses on the fourth anniversary of the date on which construction begins. At that time, any balance remaining in the fund shall be deposited to the credit of the general revenue fund.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

SUBCHAPTER C. GOVERNOR'S PROCLAMATION

Sec. 2309.041. GOVERNOR'S PROCLAMATION. When the Department of the Navy of the United States Department of Defense makes a final determination to locate a significant new naval military facility in this state, the governor shall issue an official proclamation declaring that determination.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.83(a), eff. Sept. 1, 1995.

CHAPTER 2310. DEFENSE ECONOMIC READJUSTMENT ZONE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2310.001. DEFINITIONS. In this chapter:

(1) "Bank" means the Texas Economic Development Bank established under Chapter 489.

(1-a) "Defense worker" means:

(A) an employee of the United States Department of Defense, including a member of the armed forces and a government civilian worker;

(B) an employee of a government agency or private business, or an entity providing a department of defense related function, who is employed on a defense facility;

(C) an employee of a business that provides direct services or products to the department of defense and whose job is directly dependent on defense expenditures; or

(D) an employee or private contractor employed by the United States Department of Energy working on a defense or department of energy facility in support of a department of defense related project.

(2) "Defense worker job" means a department of defense authorized permanent position or a position held or occupied by one or more defense workers for more than 12 months.

(3) Repealed by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(8).

(4) "Nominating body" means the governing body of a municipality or county, or a combination of the governing bodies of municipalities or counties, that nominates and applies for designation of an area as a readjustment zone.

(4-a) "Office" means the Texas Economic Development and Tourism Office.

(5) "Qualified business" means a person certified as a qualified business under Section 2310.302.

(6) "Qualified employee" means a person who:

(A) works for a qualified business; and

(B) performs at least 50 percent of the person's service for the business in the readjustment zone.

(7) "Readjustment zone" means an area designated as a defense economic readjustment zone under this chapter.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.27, 6.01(8), eff. Sept. 1, 2003.

Sec. 2310.002. JURISDICTION OF MUNICIPALITY. For the purposes of this chapter, territory in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES RELATING TO ZONES

Sec. 2310.051. GENERAL POWERS AND DUTIES. (a) The bank shall administer and monitor the implementation of this chapter.

(b) The bank shall establish criteria and procedures for designating a qualified area as a readjustment zone and for designating a defense readjustment project.

(c) The office shall adopt rules necessary to carry out the purposes of this chapter.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.28, eff. Sept. 1, 2003.

Sec. 2310.052. EVALUATION. (a) The bank shall conduct a continuing evaluation of the programs of readjustment zones.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(5), eff. September 1, 2021.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.29, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 13, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(5), eff. September 1, 2021.

Sec. 2310.053. ASSISTANCE. (a) The bank shall assist:

(1) a qualified business in obtaining the benefits of any state incentive or inducement program provided by law;

(2) the governing body of a readjustment zone in obtaining assistance from another state agency, including job training and technical assistance to qualified businesses in a zone; and

(3) the governing body of a readjustment zone in encouraging small business development.

(b) The bank shall provide to persons desiring to locate and engage in business in a readjustment zone information and appropriate assistance relating to the required legal authorization, including a state license, permit, certificate, approval, registration, or charter, to engage in business in this state.

(c) The bank shall publicize existing tax incentives and economic development programs in readjustment zones.

(d) On request the bank shall offer to a unit of local government having a readjustment zone within its jurisdiction technical assistance relating to tax abatement and the development of alternative revenue sources.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.30, eff. Sept. 1, 2003.

Sec. 2310.054. COORDINATION WITH OTHER GOVERNMENTAL ENTITIES. (a) In cooperation with the appropriate units of local government and other state agencies, the bank shall coordinate and streamline state business assistance programs and permit or license application procedures for businesses in readjustment zones.

(b) The bank shall work with the responsible state and federal agencies to coordinate readjustment zone programs with other programs carried out in a readjustment zone, including housing, community and economic development, small business, banking, financial assistance, transportation, and employment training programs.

(c) The bank shall encourage other state agencies in awarding grants, loans, or services to give priority to businesses in readjustment zones.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.31, eff. Sept. 1, 2003.

SUBCHAPTER C. DESIGNATION OF READJUSTMENT ZONE

Sec. 2310.101. CRITERIA FOR READJUSTMENT ZONE DESIGNATION. (a) To be designated as a readjustment zone an area must:

(1) have a continuous boundary;

(2) be at least one square mile but not larger than 20 square miles, excluding lakes, waterways, and transportation arteries, of the municipality, county, or combination of municipalities or counties nominating the area as a readjustment zone;

(3) be located in an adversely affected defense-dependent community;

(4) have at least 50 percent of its area located in an existing or former United States Department of Defense facility; and

(5) be nominated as a readjustment zone by an ordinance or order adopted by the nominating body.

(b) An area is not prohibited from being included in a readjustment zone because the area is also included in an enterprise zone designated under Chapter 2303.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.102. ADVERSELY AFFECTED DEFENSE-DEPENDENT COMMUNITY. A municipality or county is an adversely affected defense-dependent community if the bank determines that:

(1) the municipality or county requires assistance because of:

(A) the proposed or actual establishment, realignment, or closure of a defense facility;

(B) the cancellation or termination of a United States Department of Defense contract or the failure of the department of defense to proceed with an approved major weapon system program;

(C) a publicly announced planned major reduction in department of defense spending that would directly and adversely affect the municipality or county; or

(D) the closure or a significant reduction of the operations of a defense facility as the result of a merger, acquisition, or consolidation of a defense contractor operating the facility; and

(2) the municipality or county is expected to experience, during the period between the beginning of the federal fiscal year during which an event described by Subdivision (1) is finally approved and the date that the event is to be substantially completed, a direct loss of:

(A) 2,500 or more defense worker jobs in any area of the municipality or county that is located in an urbanized area of a metropolitan statistical area;

(B) 1,000 or more defense worker jobs in any area of the municipality or county that is not located in an urbanized area of a metropolitan statistical area; or

(C) one percent of the civilian jobs in the municipality or county.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.32, eff. Sept. 1, 2003.

Sec. 2310.103. NOMINATION OF READJUSTMENT ZONE. (a) The governing body of a municipality or county that is an adversely affected defense-dependent community, individually or in combination with other municipalities or counties that are adversely affected defense-dependent communities, by ordinance or order, as appropriate, may nominate as a readjustment zone an area within its jurisdiction that meets the criteria under Section 2310.101.

(b) Unless the nominating body holds a public hearing before adopting an ordinance or order under this section, the ordinance or

order is not valid.

(c) The governing body of a county may not nominate territory in a municipality, including extraterritorial jurisdiction of a municipality, to be included in a proposed readjustment zone unless the governing body of the municipality also nominates the territory and together with the county files a joint application under Section 2310.105.

(d) The governing bodies of a combination of municipalities or counties may not jointly nominate an area as a readjustment zone unless the governing bodies have entered into a binding agreement to administer the zone jointly.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.104. NOMINATING ORDINANCE OR ORDER. (a) An ordinance or order nominating an area as a readjustment zone must:

(1) describe precisely the area to be included in the zone by a legal description or reference to roadways, lakes, waterways, or municipal or county boundaries;

(2) state a finding that the area meets the requirements of this chapter;

(3) summarize briefly the incentives, including tax incentives, that, at the election of the nominating body, apply to business enterprises in the area; and

(4) nominate the area as a readjustment zone.

(b) At least one of the incentives summarized under Subsection (a)(3) must not be offered elsewhere within the jurisdiction except within an enterprise zone designated under Chapter 2303.

(c) This section does not prohibit a municipality or county from extending additional incentives, including tax incentives, for business enterprises in a readjustment zone by a separate ordinance or order.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.105. APPLICATION FOR DESIGNATION. (a) For an area to be designated as a readjustment zone, the nominating body, after nominating the area as a readjustment zone, must send to the bank a written application for designation of the area as a readjustment

zone.

(b) The application must include:

(1) a certified copy of the ordinance or order, as appropriate, nominating the area as a readjustment zone;

(2) a map of the area showing existing streets and highways;

(3) an analysis and appropriate supporting documents and statistics demonstrating that the area qualifies for designation as a readjustment zone;

(4) a statement that specifies each tax incentive, grant, other financial incentive or benefit, or program to be provided by the nominating body to business enterprises in the area that is not to be provided throughout the governmental entity or entities nominating the area as a readjustment zone;

(5) a statement of the economic development and planning objectives for the area;

(6) an estimate of the economic impact of the designation of the area as a readjustment zone on the revenues of the governmental entity or entities nominating the area as a readjustment zone, considering all the financial incentives and benefits and the programs contemplated;

(7) a transcript or tape recording of all public hearings on the proposed zone;

(8) if the application is a joint application, a description and copy of the agreement between the applicants;

(9) the procedures for negotiating with residents, community groups, and other entities affected by the designation of the area as a readjustment zone and with qualified businesses in the area;

(10) a description of the administrative authority, if one is to be appointed for the readjustment zone under Section 2310.202; and

(11) any additional information the bank requires.

(c) Information required by Subsection (b) is for evaluation purposes only.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.33, eff. Sept. 1, 2003.

Sec. 2310.106. REVIEW OF APPLICATION. (a) On receipt of an application for the designation of a readjustment zone, the bank shall review the application to determine if the nominated area qualifies for designation as a readjustment zone under this chapter.

(b) The bank shall allow an applicant to correct any omission or clerical error in the application and to return the application to the bank on or before the 15th day after the date on which the bank receives the application.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.34, eff. Sept. 1, 2003.

Sec. 2310.107. DESIGNATION AGREEMENT. (a) If the bank determines that a nominated area for which a designation application has been received satisfies the criteria under Section 2310.101, the bank shall negotiate with the nominating body for a designation agreement.

(b) A designation agreement must:

(1) designate the nominated area as a readjustment zone; and

(2) designate the administrative authority, if one is to be appointed for the zone under Section 2310.202, and describe its functions and duties, which should include decision-making authority and the authority to negotiate with affected entities.

(c) The bank shall complete the negotiations and sign the agreement not later than the 60th day after the date on which the application is received unless the bank extends that period to the 90th day after the date on which the application was received.

(d) If an agreement is not completed within the 60-day period provided by Subsection (c), the bank shall provide to the nominating body the specific areas of concern and a final proposal for the agreement.

(e) If the agreement is not executed before the 91st day after the date on which the application was received, the application is considered to be denied.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.35, eff. Sept. 1, 2003.

Sec. 2310.108. DENIAL OF APPLICATION; NOTICE. (a) The bank may deny an application for the designation of a readjustment zone only if the bank determines that the nominated area does not satisfy the criteria under Section 2310.101.

(b) The bank shall inform the nominating body of the specific reasons for denial of an application, including denial under Section 2310.107(e).

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.36, eff. Sept. 1, 2003.

Sec. 2310.109. PERIOD OF DESIGNATION. An area may be designated as a readjustment zone for a maximum of seven years. A designation remains in effect until September 1 of the final year of the designation.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.110. AMENDING BOUNDARIES. (a) The nominating body may amend the boundary of a readjustment zone by ordinance or order, as appropriate, adopted after a public hearing on the issue.

(b) The amended boundary:

(1) must be continuous;

(2) may not exceed the original size requirement of Section 2310.101; and

(3) may not exclude any qualified business designated as a defense readjustment project included within the boundary of the zone as designated.

(c) The readjustment zone with the amended boundary must continue to meet the location requirements of Section 2310.101(a)(4).

(d) A nominating body may not make more than one boundary amendment annually for a readjustment zone.

(e) For each amendment of a readjustment zone boundary, the nominating body shall pay the bank a reasonable fee, in an amount specified by the bank, not to exceed $500. The bank may use fees collected under this subsection to administer this chapter and for

other purposes to advance this chapter.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 356, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 814, Sec. 3.37, eff. Sept. 1, 2003.

Sec. 2310.111. REMOVAL OF DESIGNATION. (a) The bank may remove the designation of an area as a readjustment zone if:

(1) the area no longer meets the criteria for designation under this chapter or by rule of the office adopted under this chapter; or

(2) the bank determines that the governing body of the readjustment zone has not complied with commitments made in the ordinance or order nominating the area as a readjustment zone.

(b) The removal of a designation does not affect the validity of a tax incentive or regulatory relief granted or accrued before the removal.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.38, eff. Sept. 1, 2003.

SUBCHAPTER D. ADMINISTRATION OF READJUSTMENT ZONES

Sec. 2310.201. ADMINISTRATION BY GOVERNING BODY. The governing body of a readjustment zone is the governing body of the municipality or county, or the governing bodies of the combination of municipalities or counties, that applied to have the area designated as a readjustment zone.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.202. ADMINISTRATION BY ADMINISTRATIVE AUTHORITY. (a) The governing body of a readjustment zone may delegate its administrative duties to an administrative authority appointed by the governing body.

(b) An administrative authority must:

(1) be composed of 3, 5, 7, 9, 11, or 15 members; and

(2) be a viable and responsive body generally

representative of all public or private entities that have a stake in the development of the zone.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1049 (H.B. 3067), Sec. 1, eff. June 14, 2013.

Sec. 2310.203. LIAISON. The governing body of a readjustment zone shall designate a liaison to communicate and negotiate with:

(1) the bank;
(2) the administrative authority, if one exists;
(3) a defense readjustment project; and
(4) other entities in or affected by the readjustment zone.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.39, eff. Sept. 1, 2003.

Sec. 2310.204. ANNUAL REPORT. (a) Not later than October 1 of each year, the governing body of a readjustment zone shall submit to the bank a report in the form required by the bank.

(b) The report must be approved by the readjustment zone's administrative authority, if one exists.

(c) The report must include for the year preceding the date of the report:

(1) a list of local incentives for community development available in the zone;
(2) the use of local incentives for which the governing body provided in the ordinance or order nominating the readjustment zone and the effect of those incentives on revenue;
(3) the number of businesses assisted, located, and retained in the zone since its designation due to the existence of the readjustment zone;
(4) a summary of all industrial revenue bonds issued to finance projects located in the zone; and
(5) a description of all efforts made to attain revitalization goals for the zone.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.40, eff. Sept. 1, 2003.

SUBCHAPTER E. QUALIFIED BUSINESSES AND DEFENSE READJUSTMENT PROJECTS

Sec. 2310.301. DEFINITION. In this subchapter, "new permanent job" means a new employment position created by a qualified business as described by Section 2310.302 that:

(1) has provided at least 1,820 hours of employment a year to a qualified employee; and

(2) is intended to exist during the period that the qualified business is designated as a defense readjustment project under Section 2310.306.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.302. QUALIFIED BUSINESS. (a) A person is a qualified business if the bank, for the purpose of state benefits under this chapter, or the governing body of a readjustment zone, for the purpose of local benefits, certifies that:

(1) the person is engaged in or has provided substantial commitment to initiate the active conduct of a trade or business in the readjustment zone; and

(2) at least 25 percent of the person's new employees in the readjustment zone are:

(A) residents of the governing jurisdiction;

(B) economically disadvantaged individuals, as defined by Section 2303.402(c); or

(C) dislocated defense workers.

(b) The governing body of a readjustment zone may certify a franchise or subsidiary of a new or existing business as a qualified business if the franchise or subsidiary:

(1) is located entirely in the readjustment zone; and

(2) maintains separate books and records of the business activity conducted in the zone.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.41, eff. Sept. 1, 2003.

Sec. 2310.303. PROHIBITION ON QUALIFIED BUSINESS CERTIFICATION. If the bank determines that the governing body of a readjustment zone is not complying with this chapter, the bank shall prohibit the certification of a qualified business in the zone until the bank determines that the governing body is complying with this chapter. The bank may not designate more than two defense readjustment projects in a single readjustment zone.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.42, eff. Sept. 1, 2003.

Sec. 2310.304. REQUEST FOR APPLICATION FOR DEFENSE READJUSTMENT PROJECT DESIGNATION. A qualified business in a readjustment zone may request that the governing body of the readjustment zone apply to the bank for designation of the business as a defense readjustment project. The request must also be made to the readjustment zone's administrative authority, if one exists.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.42, eff. Sept. 1, 2003.

Sec. 2310.305. APPLICATION FOR DEFENSE READJUSTMENT PROJECT DESIGNATION. (a) If the governing body of a readjustment zone or the governing body and administrative authority of a readjustment zone, as appropriate, approve a request made under Section 2310.304, the governing body may apply to the bank for the designation of the qualified business as a defense readjustment project.

(b) An application must:

(1) describe the procedures and efforts of the governmental entity or entities that applied to have the area designated as a readjustment zone to facilitate and encourage participation by and negotiation among affected entities in the zone in which the qualified business is located;

(2) contain an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity

in the readjustment zone, including:

(A) the number of anticipated new permanent jobs the business will create;

(B) the anticipated number of permanent jobs the business will retain;

(C) the amount of investment to be made in the zone; and

(D) other information the bank requires; and

(3) describe the local effort made by the governmental entity or entities that applied to have the area designated as a readjustment zone, the administrative authority, if one exists, the qualified business, and other affected entities to develop and revitalize the zone.

(c) For the purposes of this section, local effort to develop and revitalize a readjustment zone is:

(1) the willingness of public entities in the zone to provide services, incentives, and regulatory relief authorized by this chapter and to negotiate with the qualified business for which application is made and with other local groups or businesses to achieve the public purposes of this chapter; and

(2) the effort of the qualified business and other affected entities to cooperate in achieving those public purposes.

(d) Factors to be considered in evaluating the local effort of a public entity include:

(1) tax abatement, deferral, refunds, or other tax incentives;

(2) regulatory relief, including:

(A) zoning changes or variances;

(B) exemptions from unnecessary building code requirements, impact fees, or inspection fees; and

(C) streamlined permitting;

(3) enhanced municipal services, including:

(A) improved police and fire protection;

(B) institution of community crime prevention programs; and

(C) special public transportation routes or reduced fares;

(4) improvements in community facilities, including:

(A) capital improvements in water and sewer facilities;

(B) road repair; and

(C) creation or improvement of parks;

(5) improvements to housing, including:

(A) low-interest loans for housing rehabilitation, improvement, or new construction; and

(B) transfer of abandoned housing to individuals or community groups;

(6) business and industrial development services, including:

(A) low-interest loans for business;

(B) use of surplus school buildings or other underutilized publicly owned facilities as small business incubators;

(C) provision of publicly owned land for development purposes, including residential, commercial, or industrial development;

(D) creation of special one-stop permitting and problem resolution centers or ombudsmen; and

(E) promotion and marketing services; and

(7) job training and employment services, including:

(A) retraining programs;

(B) literacy and employment skills programs;

(C) vocational education; and

(D) customized job training.

(e) Factors to be considered in evaluating the local effort of a private entity include:

(1) the willingness to negotiate or cooperate in the redevelopment of vacated defense facilities and the creation of high-skilled, high wage jobs;

(2) commitments to hire dislocated defense workers and economically disadvantaged workers;

(3) commitments to hire minority workers and to contract with minority-owned businesses;

(4) provision of technical and vocational job training for residents of the nominating body's jurisdiction or economically disadvantaged employees;

(5) provision of child care for employees;

(6) commitments to implement and contribute to a tutoring or mentoring program for area students;

(7) prevention or reduction of juvenile crime; and

(8) the willingness to make contributions to the well-being of the community, such as job training, or the donation of land for

parks or other public purposes.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.43, eff. Sept. 1, 2003.

Sec. 2310.306. DEFENSE READJUSTMENT PROJECT DESIGNATION. (a) The bank may designate a qualified business as a defense readjustment project only if the bank determines that:

(1) the business is a qualified business under Section 2310.302 that is located in or has made a substantial commitment to locate in a defense readjustment zone;

(2) the governing body of the readjustment zone making the application has demonstrated that a high level of cooperation exists among public, private, and neighborhood entities in the zone; and

(3) the designation will contribute significantly to the achievement of the plans of the governing body making the application for development and revitalization of the zone.

(b) The bank shall designate qualified businesses as defense readjustment projects on a competitive basis. The bank shall make its designation decisions using a weighted scale in which:

(1) 50 percent of the evaluation is based on the effect of the loss of defense expenditures and employment on the community;

(2) 25 percent of the evaluation depends on the local effort to achieve development and revitalization of the readjustment zone; and

(3) 25 percent of the evaluation depends on the evaluation criteria as determined by the bank, which must include:

(A) the level of cooperation and support the project applicant commits to the revitalization goals of the zone; and

(B) the type and wage level of the jobs to be created or retained by the business.

(c) The bank may remove a defense readjustment project designation if it determines that the business is not complying with a requirement for its designation.

(d) The bank may designate the same qualified business in a readjustment zone as more than one defense readjustment project.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2003, 78th Leg., ch. 356, Sec. 2, eff. June 18, 2003;

Acts 2003, 78th Leg., ch. 814, Sec. 3.44, eff. Sept. 1, 2003.

Sec. 2310.307. ALLOCATION OF JOBS ELIGIBLE FOR TAX REFUND. When the bank designates a business as a defense readjustment project, the bank shall allocate to the project the maximum number of new permanent jobs or retained jobs eligible to be included in a computation of a tax refund for the project. The number may not exceed 500 or a number equal to 110 percent of the number of anticipated new permanent jobs or retained jobs specified in the application for designation of the business as a defense readjustment project under Section 2310.305, whichever is less.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.44, eff. Sept. 1, 2003.

Sec. 2310.308. DURATION OF CERTAIN DESIGNATIONS. The bank's designation of a qualified business as a defense readjustment project is effective until the fifth anniversary of the date on which the designation is made regardless of whether the readjustment zone in which the project is located expires before the fifth anniversary of the project.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.44, eff. Sept. 1, 2003.

SUBCHAPTER F. READJUSTMENT ZONE BENEFITS

Sec. 2310.401. EXEMPTIONS FROM STATE REGULATION; SUSPENSION OF LOCAL REGULATION. (a) A state agency may exempt from its regulation a qualified business, qualified employee, or qualified property in a readjustment zone if the exemption is consistent with:

(1) the purposes of this chapter; and

(2) the protection and promotion of the general health and welfare.

(b) A local government may suspend local regulation, including an ordinance, rule, or standard, relating to zoning, licensing, or building codes in a readjustment zone.

(c) An exemption from or suspension of regulation under this section must be adopted in the same manner that the regulation was adopted.

(d) The authorization provided by Subsection (a) or (b) does not apply to regulation:

(1) that relates to:

(A) civil rights;

(B) equal employment;

(C) equal opportunity;

(D) fair housing rights; or

(E) preservation of historical sites or historical artifacts;

(2) the relaxation of which is likely to harm the public safety or public health, including environmental health; or

(3) that is specifically imposed by law.

(e) For the purposes of this section, property is classified as qualified property if the property is:

(1) tangible personal property located in the readjustment zone that was acquired from the federal government by lease or deed or:

(A) acquired by a taxpayer not earlier than the 90th day before the date on which the area was designated as a readjustment zone; and

(B) used predominantly by the taxpayer in the active conduct of a trade or business;

(2) real property located in the readjustment zone that was acquired from the federal government by lease or deed or:

(A) acquired by a taxpayer not earlier than the 90th day before the date on which the area was designated as a readjustment zone and was used predominantly by the taxpayer in the active conduct of a trade or business; or

(B) the principal residence of the taxpayer on the date of the sale or exchange; or

(3) an interest in an entity that was certified as a qualified business under Section 2310.302 for the entity's most recent tax year ending before the date of the sale or exchange.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.402. REVIEW OF STATE AGENCY RULES; REPORT. (a) A state agency by rule may provide, when applicable, encouragements and incentives to increase:

(1) the renovation, improvement, or new construction of housing in readjustment zones; and

(2) the economic viability and profitability of business and commerce in readjustment zones.

(b) The bank shall disseminate the reports to the governing bodies of readjustment zones and others as necessary to advance the purposes of this chapter.

(c) To contribute to the implementation of this chapter, an agency may waive, modify, provide exemptions to, or otherwise minimize the adverse effects of the rules it administers on the renovation, improvement, or new construction of housing in readjustment zones or on the economic viability and profitability of business and commerce in readjustment zones.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.45, eff. Sept. 1, 2003.

Sec. 2310.403. STATE PREFERENCES. (a) A state agency shall give preference to the governing body of a readjustment zone or a qualified business or qualified employee located in a readjustment zone over other eligible applicants for grants, loans, or credit enhancements that are administered by the state agency if:

(1) at least 50 percent of the grant, loan, or credit enhancement will be spent for the direct benefit of the readjustment zone; and

(2) the purpose of the grant, loan, or credit enhancement is to:

(A) promote economic development in the community; or

(B) construct, improve, extend, repair, or maintain public facilities in the community.

(b) The comptroller may and is encouraged to deposit state money in financial institutions located or doing business in readjustment zones.

(c) A state agency may and is encouraged to contract with businesses located in readjustment zones.

(d) The office or another state agency may give preference to readjustment zones in granting economic development money or other benefits.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.46, eff. Sept. 1, 2003.

Sec. 2310.404. STATE TAX REFUNDS AND CREDITS; REPORT. (a) Subject to Section 2310.413, a defense readjustment project is eligible for:

(1) a refund of state taxes under Section 151.4291, Tax Code;

(2) a franchise tax credit under Subchapter P or Q, Chapter 171, Tax Code; and

(3) the exclusion of receipts from service performed in a readjustment zone in the determination of gross receipts from business done in this state under Sections 171.103 and 171.1032, Tax Code.

(b) Not later than the 60th day after the last day of each fiscal year, the comptroller shall report to the department the statewide total of the tax refunds or credits made under this section during that fiscal year.

Amended by:

Acts 2005, 79th Leg., Ch. 1280 (H.B. 2340), Sec. 8, eff. September 1, 2005.

Sec. 2310.405. LOCAL SALES AND USE TAX REFUNDS. (a) To encourage the development of areas designated as readjustment zones, the governing body of a municipality through a program may refund its local sales and use taxes paid by a qualified business on:

(1) the purchase, lease, or rental of equipment or machinery for use in a readjustment zone;

(2) the purchase of material for use in remodeling, rehabilitating, or constructing a structure in a readjustment zone;

(3) labor for remodeling, rehabilitating, or constructing a structure in a readjustment zone; and

(4) electricity and natural gas purchased and consumed in

the normal course of business in the readjustment zone.

(b) To promote the public health, safety, or welfare, the governing body of a municipality or county through a program may refund its local sales and use taxes paid by a qualified business or qualified employee.

(c) The governing body of a municipality or county that is the governing body of a readjustment zone may provide for the partial or total refund of its local sales and use taxes paid by a person making a taxable purchase, lease, or rental for development or revitalization in the zone.

(d) A person eligible for a refund of local sales and use taxes under this section shall pay the entire amount of state and local sales and use taxes at the time the taxes would be due if an agreement for the refund did not exist.

(e) An agreement to refund local sales and use taxes under this section must:

(1) be written;

(2) contain an expiration date; and

(3) require that the person eligible for the refund provide to the municipality or county making the refund the documentation necessary to support a refund claim.

(f) The municipality or county shall make the refund directly to the person eligible for the refund in the manner provided by the agreement.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.406. REDUCTION OR ELIMINATION OF LOCAL FEES OR TAXES. (a) To promote the public health, safety, or welfare, the governing body of a municipality or county through a program may reduce or eliminate fees or taxes that it imposes on a qualified business or qualified employee.

(b) This section does not apply to sales and use taxes or property taxes.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.407. TAX INCREMENT FINANCING AND ABATEMENT. Designation of an area as a readjustment zone is also designation of

the area as a reinvestment zone for:

(1) tax increment financing under Chapter 311, Tax Code; and

(2) tax abatement under Chapter 312, Tax Code.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.408. DEVELOPMENT BONDS. To finance a project in a readjustment zone, bonds may be issued under:

(1) Chapter 1433; or

(2) the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.248, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.14, eff. April 1, 2009.

Sec. 2310.409. OTHER LOCAL INCENTIVES. (a) The governing body of a municipality or county that is the governing body of a readjustment zone may:

(1) defer compliance in the zone with the subdivision and development ordinances or rules, other than those relating to streets and roads or sewer or water services, of the municipality or county, as appropriate;

(2) give priority to the zone for the receipt of:

(A) community development block grant money;

(B) industrial revenue bonds; or

(C) funds received for job training;

(3) adopt and implement a plan for police protection in the zone;

(4) amend the zoning ordinances of the municipality or county, as appropriate, to promote economic development in the zone;

(5) establish permitting preferences for businesses in the zone;

(6) establish simplified, accelerated, or other special permit procedures for businesses in the zone;

(7) waive development fees for projects in the zone;

(8) create a local readjustment zone fund for funding bonds or other programs or activities to develop or revitalize the zone;

(9) for qualified businesses in the zone, reduce rates charged by:

(A) a utility owned by the municipality or county, as appropriate; or

(B) a cooperative corporation or utility owned by private investors, subject to the requirements of Subsection (b);

(10) in issuing housing finance bonds, give priority to persons or projects in the zone;

(11) in providing services, give priority to local economic development, educational, job training, or transportation programs that benefit the zone; or

(12) sell real property owned by the municipality or county, as appropriate, and located in the readjustment zone in accordance with Section 2310.410.

(b) A reduction in utility rates under Subsection (a)(9)(B) is subject to the agreement of the affected utility and the approval of the appropriate regulatory authority under Title 2, Utilities Code. The rates may be reduced up to but not more than five percent below the lowest rate allowable for that customer class. In making its determination under this section, the regulatory authority shall consider revitalization goals for the readjustment zone. In setting the rates of the utility the appropriate regulatory authority shall allow the utility to recover the amount of the reduction.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.29, eff. Sept. 1, 1999.

Sec. 2310.410. DISPOSITION OF PUBLIC PROPERTY IN READJUSTMENT ZONE. (a) After an area is designated as a readjustment zone, the state, a municipality, or a county that owns a surplus building (including any structure) or vacant land in the zone may dispose of the building or land by:

(1) selling the building or land at a public auction;

(2) selling the building or land without notice or bidding as provided by Subsection (d); or

(3) establishing an urban homestead program described by Subsection (e).

(b) A municipality or county may sell a surplus building or vacant land in the readjustment zone at less than fair market value if the governing body of the municipality or county by ordinance or order, as appropriate, adopts criteria that specify the conditions and circumstances under which the sale may occur and the public purpose to be achieved by the sale. A copy of the ordinance or order must be filed with the bank not later than the day on which the sale occurs.

(c) If the surplus building or vacant land is sold at a public auction, the building or land may be sold to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order adopted under Subsection (b) are satisfied.

(d) The surplus building or vacant land may be sold without complying with notice or bidding requirements (including election or voter approval requirements imposed by other law, if any) if the criteria and public purpose specified in the ordinance or order adopted under Subsection (b) are satisfied.

(e) An urban homestead program must provide that:

(1) the state, municipality, or county is to sell to an individual a residence or part of a residence that it owns for an amount not to exceed $100;

(2) as a condition of the sale, the individual must agree by covenant in the deed conveying the residence to live in the residence for at least seven years and to renovate or remodel the residence to meet the level of maintenance stated in an agreement between the individual and the governmental entity; and

(3) after the individual satisfies the seven-year residency and property improvement requirements of the agreement, the governmental entity shall assign the residence to the individual.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997. Amended by Acts 1999, 76th Leg., ch. 1055, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 894, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 814, Sec. 3.49, eff. Sept. 1, 2003.

Sec. 2310.411. WAIVER OF PERFORMANCE BOND. A subcontractor is not required to execute a performance bond under Chapter 2253 if:

(1) the construction, alteration, repair, or other public work to be performed under the contract is entirely in a readjustment zone; and

(2) the amount of the contract does not exceed $200,000.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.412. LIABILITY OF CONTRACTOR OR ARCHITECT. A contractor or architect who constructs or rehabilitates a building in a readjustment zone is liable for any structural defect in the building only for the period ending on the 10th anniversary of the date on which beneficial occupancy of the building begins after the construction or rehabilitation, notwithstanding a statute of limitations to the contrary.

Added by Acts 1997, 75th Leg., ch. 114, Sec. 1, eff. May 19, 1997.

Sec. 2310.413. MONITORING DEFENSE READJUSTMENT PROJECT COMMITMENTS. (a) The bank may monitor a defense readjustment project to determine whether and to what extent the project has followed through on any commitments made by it or on its behalf under this chapter.

(b) The bank may determine that the defense readjustment project is not eligible for state tax refunds and credits under Section 2310.404 if the bank finds that:

(1) the project is not willing to cooperate with the bank in providing the bank with the information the bank needs to make the determination under Subsection (a); or

(2) the project has substantially failed to follow through on its commitments made by it or on its behalf under this chapter.

Added by Acts 2001, 77th Leg., ch. 1134, Sec. 1.05, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 814, Sec. 3.50, eff. Sept. 1, 2003.

CHAPTER 2311. ENERGY SECURITY TECHNOLOGIES FOR CRITICAL GOVERNMENTAL FACILITIES

Sec. 2311.001. DEFINITIONS. In this chapter:

(1) "Combined heating and power system" means a system that:

(A) is located on the site of a facility;

(B) is the primary source of both electricity and thermal energy for the facility;

(C) can provide all of the electricity needed to power the facility's critical emergency operations for at least 14 days; and

(D) has an overall efficiency of energy use that exceeds 60 percent.

(2) "Critical governmental facility" means a building owned by the state, including by an institution of higher education, as defined by Section 61.003, Education Code, or a political subdivision of the state that is expected to:

(A) be continuously occupied;

(B) maintain operations for at least 6,000 hours each year;

(C) have a peak electricity demand exceeding 500 kilowatts; and

(D) serve a critical public health or public safety function during a natural disaster or other emergency situation that may result in a widespread power outage, including a:

(i) command and control center;

(ii) shelter;

(iii) prison or jail;

(iv) police or fire station;

(v) communications or data center;

(vi) water or wastewater facility;

(vii) hazardous waste storage facility;

(viii) biological research facility;

(ix) hospital; or

(x) food preparation or food storage facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 2.01, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1133 (H.B. 1864), Sec. 1, eff. September 1, 2013.

Sec. 2311.002. COMBINED HEATING AND POWER SYSTEMS. (a) When constructing or extensively renovating a critical governmental facility or replacing major heating, ventilation, and air-conditioning equipment for a critical governmental facility, the entity with charge and control of the facility shall evaluate whether equipping the facility with a combined heating and power system would result in expected energy savings that would exceed the expected costs of purchasing, operating, and maintaining the system over a 20-year period. Notwithstanding Chapter 2302, the entity may equip the facility with a combined heating and power system if the expected energy savings exceed the expected costs.

(b) The State Energy Conservation Office shall establish guidelines for the evaluation under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 2.01, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1133 (H.B. 1864), Sec. 1, eff. September 1, 2013.

SUBTITLE H. PROHIBITED ADVERSE ACTIONS BY GOVERNMENT
CHAPTER 2400. PROTECTION OF MEMBERSHIP IN AND SUPPORT TO RELIGIOUS ORGANIZATIONS

Sec. 2400.001. DEFINITIONS. In this chapter:

(1) "Adverse action" means any action taken by a governmental entity to:

(A) withhold, reduce, exclude, terminate, or otherwise deny any grant, contract, subcontract, cooperative agreement, loan, scholarship, license, registration, accreditation, employment, or other similar status from or to a person;

(B) withhold, reduce, exclude, terminate, or otherwise deny any benefit provided under a benefit program from or to a person;

(C) alter in any way the tax treatment of, cause any tax, penalty, or payment assessment against, or deny, delay, or revoke a tax exemption of a person;

(D) disallow a tax deduction for any charitable contribution made to or by a person;

(E) deny admission to, equal treatment in, or

eligibility for a degree from an educational program or institution to a person; or

(F) withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fund-raising campaign from or to a person.

(2) "Benefit program" means any program administered or funded by a governmental entity or federal agency that provides assistance in the form of payments, grants, loans, or loan guarantees.

(3) "Governmental entity" means:

(A) this state;

(B) a board, commission, council, department, or other agency in the executive branch of state government that is created by the state constitution or a statute, including an institution of higher education as defined by Section 61.003, Education Code;

(C) the legislature or a legislative agency;

(D) a state judicial agency or the State Bar of Texas;

(E) a political subdivision of this state, including a county, municipality, or special district or authority; or

(F) an officer, employee, or agent of an entity described by Paragraphs (A)-(E).

(4) "Person" has the meaning assigned by Section 311.005, except the term does not include:

(A) an employee of a governmental entity acting within the employee's scope of employment;

(B) a contractor of a governmental entity acting within the scope of the contract; or

(C) an individual or a medical or residential custodial health care facility while the individual or facility is providing medically necessary services to prevent another individual's death or imminent serious physical injury.

(5) "Religious organization" means an organization that is a religious organization under Section 110.011(b), Civil Practice and Remedies Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 666 (S.B. 1978), Sec. 1, eff. September 1, 2019.

Sec. 2400.0015. APPLICABILITY. This chapter does not apply to

an investment prohibited under Chapter 808 or a contract prohibited under Chapter 2271.

Added by Acts 2019, 86th Leg., R.S., Ch. 666 (S.B. 1978), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.015, eff. September 1, 2021.

Sec. 2400.002. ADVERSE ACTION PROHIBITED. Notwithstanding any other law, a governmental entity may not take any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support provided to a religious organization.

Added by Acts 2019, 86th Leg., R.S., Ch. 666 (S.B. 1978), Sec. 1, eff. September 1, 2019.

Sec. 2400.003. RELIEF AVAILABLE. (a) A person may assert an actual or threatened violation of Section 2400.002 as a claim or defense in a judicial or administrative proceeding and obtain:

(1) injunctive relief;
(2) declaratory relief; and
(3) court costs and reasonable attorney's fees.

(b) Notwithstanding any other law, a person may commence an action under this section and relief may be granted regardless of whether the person has sought or exhausted available administrative remedies.

Added by Acts 2019, 86th Leg., R.S., Ch. 666 (S.B. 1978), Sec. 1, eff. September 1, 2019.

Sec. 2400.004. IMMUNITY WAIVED. A person who alleges a violation of Section 2400.002 may sue the governmental entity for the relief provided under Section 2400.003. Sovereign or governmental immunity, as applicable, is waived and abolished to the extent of liability for that relief.

Added by Acts 2019, 86th Leg., R.S., Ch. 666 (S.B. 1978), Sec. 1, eff. September 1, 2019.

Sec. 2400.005. INTERPRETATION. (a) This chapter may not be construed to preempt a state or federal law that is equally or more protective of the free exercise of religious beliefs or to narrow the meaning or application of a state or federal law protecting the free exercise of religious beliefs.

(b) This chapter may not be construed to prevent a governmental entity from providing, either directly or through a person who is not seeking protection under this chapter, any benefit or service authorized under state or federal law.

Added by Acts 2019, 86th Leg., R.S., Ch. 666 (S.B. 1978), Sec. 1, eff. September 1, 2019.

CHAPTER 2401. PROTECTION OF RELIGIOUS ORGANIZATIONS

Sec. 2401.001. DEFINITIONS. In this chapter:

(1) "Disaster" has the meaning assigned by Section 418.004.

(2) "Governmental entity" means:

(A) this state;

(B) a board, commission, council, department, or other agency in the executive branch of state government that is created by the state constitution or a statute, including an institution of higher education as defined by Section 61.003, Education Code;

(C) the legislature or a legislative agency;

(D) a state judicial agency or the State Bar of Texas;

(E) a political subdivision of this state, including a county, municipality, or special district or authority; or

(F) an officer, employee, or agent of an entity described by Paragraphs (A) through (E).

(3) "Person" has the meaning assigned by Section 311.005, except the term does not include:

(A) an employee of a governmental entity acting within the employee's scope of employment; or

(B) a contractor of a governmental entity acting within the scope of the contract.

(4) "Religious organization" means an organization open to

the public that is a religious organization under Section 110.011(b), Civil Practice and Remedies Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 920 (H.B. 525), Sec. 1, eff. June 18, 2021.

Sec. 2401.002. ESSENTIAL BUSINESS; PROHIBITED RESTRICTIONS. (a) Notwithstanding any other law, a religious organization is an essential business at all times in this state, including during a declared state of disaster, and the organization's religious and other related activities are essential activities even if the activities are not listed as essential in an order issued during the disaster.

(b) A governmental entity may not:

(1) at any time, including during a declared state of disaster, prohibit a religious organization from engaging in religious and other related activities or continuing to operate in the discharge of the organization's foundational faith-based mission and purpose; or

(2) during a declared state of disaster order a religious organization to close or otherwise alter the organization's purposes or activities.

Added by Acts 2021, 87th Leg., R.S., Ch. 920 (H.B. 525), Sec. 1, eff. June 18, 2021.

Sec. 2401.003. RELIEF AVAILABLE. (a) A person may assert a violation of Section 2401.002 as a claim or defense in a judicial or administrative proceeding and obtain:

(1) injunctive relief;

(2) declaratory relief; and

(3) court costs and reasonable attorney's fees.

(b) Notwithstanding any other law, a person may commence an action under this section and relief may be granted regardless of whether the person has sought or exhausted available administrative remedies.

Added by Acts 2021, 87th Leg., R.S., Ch. 920 (H.B. 525), Sec. 1, eff. June 18, 2021.

Sec. 2401.004. ATTORNEY GENERAL ACTION; INTERVENTION IN PROCEEDING; PROHIBITED RECOVERY OF EXPENSES. (a) The attorney general may bring an action for injunctive or declaratory relief against a governmental entity or an officer or employee of a governmental entity to enforce compliance with this chapter.

(b) This section may not be construed to deny, impair, or otherwise affect any authority of the attorney general or a governmental entity acting under other law to institute or intervene in an action.

(c) The attorney general may not recover expenses incurred in bringing, instituting, or intervening in an action described by this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 920 (H.B. 525), Sec. 1, eff. June 18, 2021.

Sec. 2401.005. INTERPRETATION. (a) This chapter may not be construed to preempt a state or federal law that is equally or more protective of the free exercise of religious beliefs or to narrow the meaning or application of a state or federal law protecting the free exercise of religious beliefs.

(b) This chapter may not be construed to prevent a governmental entity from providing, either directly or through a person who is not seeking protection under this chapter, any benefit or service authorized under state or federal law.

Added by Acts 2021, 87th Leg., R.S., Ch. 920 (H.B. 525), Sec. 1, eff. June 18, 2021.

SUBTITLE Z. MISCELLANEOUS PROVISIONS PROHIBITING CERTAIN GOVERNMENTAL ACTIONS

CHAPTER 3000. GOVERNMENTAL ACTION AFFECTING RESIDENTIAL AND COMMERCIAL CONSTRUCTION

Sec. 3000.001. DEFINITIONS. In this chapter:

(1) "National model code" has the meaning assigned by Section 214.217, Local Government Code.

(2) "Governmental entity" has the meaning assigned by

Section 2007.002.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

Sec. 3000.002. CERTAIN REGULATIONS REGARDING BUILDING PRODUCTS, MATERIALS, OR METHODS PROHIBITED. (a) Notwithstanding any other law and except as provided by Subsection (d), a governmental entity may not adopt or enforce a rule, charter provision, ordinance, order, building code, or other regulation that:

(1) prohibits or limits, directly or indirectly, the use or installation of a building product or material in the construction, renovation, maintenance, or other alteration of a residential or commercial building if the building product or material is approved for use by a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building; or

(2) establishes a standard for a building product, material, or aesthetic method in construction, renovation, maintenance, or other alteration of a residential or commercial building if the standard is more stringent than a standard for the product, material, or aesthetic method under a national model code published within the last three code cycles that applies to the construction, renovation, maintenance, or other alteration of the building.

(b) A governmental entity that adopts a building code governing the construction, renovation, maintenance, or other alteration of a residential or commercial building may amend a provision of the building code to conform to local concerns if the amendment does not conflict with Subsection (a).

(c) This section does not apply to:

(1) a program established by a state agency that requires particular standards, incentives, or financing arrangements in order to comply with requirements of a state or federal funding source or housing program;

(2) a requirement for a building necessary to consider the building eligible for windstorm and hail insurance coverage under Chapter 2210, Insurance Code;

(3) an ordinance or other regulation that regulates outdoor

lighting that is adopted for the purpose of reducing light pollution and that:

(A) is adopted by a governmental entity that is certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program;

(B) is adopted by a governmental entity that has adopted a resolution stating the entity's intent to become certified as a Dark Sky Community by the International Dark-Sky Association as part of the International Dark Sky Places Program and does not regulate outdoor lighting in a manner that is more restrictive than the prohibitions or limitations required to become certified as a Dark Sky Community; or

(C) applies to outdoor lighting within five miles of the boundary of a military base in which an active training program is conducted;

(4) an ordinance or order that:

(A) regulates outdoor lighting; and

(B) is adopted under Subchapter B, Chapter 229, Local Government Code, or Subchapter B, Chapter 240, Local Government Code;

(5) a building located in a place or area designated for its historical, cultural, or architectural importance and significance that a municipality may regulate under Section 211.003(b), Local Government Code, if the municipality:

(A) is a certified local government under the National Historic Preservation Act (54 U.S.C. Section 300101 et seq.); or

(B) has an applicable landmark ordinance that meets the requirements under the certified local government program as determined by the Texas Historical Commission;

(6) a building located in a place or area designated for its historical, cultural, or architectural importance and significance by a governmental entity, if designated before April 1, 2019;

(7) a building located in an area designated as a historic district on the National Register of Historic Places;

(8) a building designated as a Recorded Texas Historic Landmark;

(9) a building designated as a State Archeological Landmark or State Antiquities Landmark;

(10) a building listed on the National Register of Historic Places or designated as a landmark by a governmental entity;

(11) a building located in a World Heritage Buffer Zone;

(12) a building located in an area designated for development, restoration, or preservation in a main street city under the main street program established under Section 442.014;

(13) a standard for a plumbing product required by an ordinance or other regulation implementing a water conservation plan or program described by Section 11.1271 or 13.146, Water Code; and

(14) a standard for a plumbing product imposed by the Texas Water Development Board as a condition of applying for or receiving financial assistance under a program administered by the board.

(d) A municipality that is not a municipality described by Subsection (c)(5)(A) or (B) may adopt or enforce a regulation described by Subsection (a) that applies to a building located in a place or area designated on or after April 1, 2019, by the municipality for its historical, cultural, or architectural importance and significance, if the municipality has the voluntary consent from the building owner.

(e) A rule, charter provision, ordinance, order, building code, or other regulation adopted by a governmental entity that conflicts with this section is void.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 475 (S.B. 1090), Sec. 1, eff. September 1, 2021.

Sec. 3000.003. INJUNCTION. (a) The attorney general or an aggrieved party may file an action in district court to enjoin a violation or threatened violation of Section 3000.002.

(b) The court may grant appropriate relief.

(c) The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under this section.

(d) Sovereign and governmental immunity to suit is waived and abolished only to the extent necessary to enforce this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

Sec. 3000.004. OTHER PROVISIONS NOT AFFECTED. This chapter does not affect provisions regarding:

(1) the installation of a fire sprinkler protection system under Section 1301.551(i), Occupations Code, or Section 775.045(a)(1), Health and Safety Code; or

(2) the enforcement of land use restrictions contained in plats and other instruments under Subchapter F, Chapter 212, Local Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 475 (S.B. 1090), Sec. 2, eff. September 1, 2021.

Sec. 3000.005. SEVERABILITY. If any provision of a rule, charter provision, ordinance, order, building code, or other regulation described by Section 3000.002(a) is held invalid under this chapter, the invalidity does not affect other provisions or applications of the rule, charter provision, ordinance, order, building code, or other regulation that can be given effect without the invalid provision or application, and to this end the provisions of the rule, charter provision, ordinance, order, building code, or other regulation are severable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1289 (H.B. 2439), Sec. 1, eff. September 1, 2019.

TITLE 11. STATE SYMBOLS AND HONORS; PRESERVATION
SUBTITLE A. STATE SYMBOLS AND HONORS
CHAPTER 3100. STATE FLAG
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3100.001. STATE FLAG. The state flag is the 1839 national flag of the Republic of Texas.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.002. DESCRIPTION: IN GENERAL. (a) The state flag is a rectangle that:

(1) has a width to length ratio of two to three; and

(2) contains:

(A) one blue vertical stripe that has a width equal to one-third the length of the flag;

(B) two equal horizontal stripes, the upper stripe white, the lower stripe red, each having a length equal to two-thirds the length of the flag; and

(C) one white, regular five-pointed star:

(i) located in the center of the blue stripe;

(ii) oriented so that one point faces upward; and

(iii) sized so that the diameter of a circle passing through the five points of the star is equal to three-fourths the width of the blue stripe.

(b) The red and blue of the state flag are:

(1) the same colors used in the United States flag; and

(2) defined as numbers 193 (red) and 281 (dark blue) of the Pantone Matching System.

(c) The red, white, and blue of the state flag represent, respectively, bravery, purity, and loyalty.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.003. DESCRIPTION UNDER GOVERNOR'S RULES. In addition to each requirement prescribed by Section 3100.002, the governor by executive order published in the Texas Register may prescribe changes or other rules relating to the description of the state flag.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.004. STATE FLAG MOUNTED ON FLAGSTAFF. (a) If the state flag is mounted on a flagstaff:

(1) the flag should be attached at the peak of the staff;

(2) the staff should be at least 2-1/2 times as long as the flag's hoist; and

(3) if the staff has a finial, the finial should be a star

or a spearhead.

(b) If the state flag is permanently mounted on a flagstaff:

(1) the flag may be decorated with gold fringe; and

(2) the staff may be decorated with gold cord or tassels.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

SUBCHAPTER B. DISPLAY OF STATE FLAG

Sec. 3100.051. DISPLAY: IN GENERAL. The state flag should be displayed:

(1) on each state or national holiday and on any special occasion of historical significance; and

(2) daily on or near the main administration building of each state institution.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.052. DISPLAY OUTDOORS. (a) The state flag should not normally be displayed outdoors before sunrise or after sunset.

(b) For patriotic effect, the state flag may be displayed outdoors:

(1) 24 hours a day, if properly illuminated during darkness; or

(2) in the same circumstances that the flag of the United States may be displayed.

(c) The state flag should not be displayed outdoors during inclement weather unless the flag is a weatherproof flag.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.053. ORIENTATION ON FLAGPOLE OR FLAGSTAFF. If the state flag is displayed on a flagpole or flagstaff, the white stripe should be at the top of the flag, except as a signal of dire distress in an instance of extreme danger to life or property.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.054. DISPLAY ON FLAGPOLE OR FLAGSTAFF WITH OTHER FLAG: IN GENERAL. A flag or pennant, other than the flag of the United States, displayed with the state flag:

(1) should not be above the state flag; or

(2) if the other flag or pennant is at the same height as the state flag, should not be, from the perspective of an observer, to the left of the state flag.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.055. DISPLAY ON FLAGPOLE OR FLAGSTAFF WITH FLAG OF UNITED STATES. (a) If it is necessary for the state flag and the flag of the United States to be displayed on the same flagpole or flagstaff, the United States flag should be above the state flag.

(b) If the state flag and the flag of the United States are displayed on flagpoles or flagstaffs at the same location:

(1) the flags should be displayed on flagpoles or flagstaffs of the same height;

(2) the flags should be of approximately equal size;

(3) the flag of the United States should be, from the perspective of an observer, to the left of the state flag;

(4) the flag of the United States should be hoisted before the state flag is hoisted; and

(5) the state flag should be lowered before the flag of the United States is lowered.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.056. DISPLAY ON FLAGPOLE OR FLAGSTAFF WITH FLAGS OF MUNICIPALITIES, LOCALITIES, OR ORGANIZATIONS. (a) If the state flag is displayed on a flagpole or flagstaff with a group of flags or pennants of municipalities, localities, or organizations that are displayed on flagpoles or flagstaffs, the state flag should be at the

center and at the highest point of the group.

(b) If the state flag is displayed on the same halyard as a flag or pennant of a municipality, locality, or organization, the state flag should be at the peak.

(c) If the state flag and the flag or pennant of a municipality, locality, or organization are displayed on adjacent flagpoles or flagstaffs:

(1) the state flag should be hoisted before the flag or pennant of the municipality, locality, or organization is hoisted; and

(2) the flag or pennant of the municipality, locality, or organization should be lowered before the state flag is lowered.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.057. DISPLAY ON FLAGPOLE OR FLAGSTAFF WITH FLAGS OF OTHER STATES, OTHER NATIONS, OR INTERNATIONAL ORGANIZATIONS. (a) If the state flag is displayed with the flag of another state of the United States, of a nation other than the United States, or of an international organization, the state flag:

(1) should be, from the perspective of an observer, to the left of the other flag on a separate flagpole or flagstaff; and

(2) should not be above the other flag on the same flagpole or flagstaff or on a taller flagpole or flagstaff than the flagpole or flagstaff on which the other flag is displayed.

(b) This section does not apply to the United States, including the armed services, if federal custom or practice requires another manner of display.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.058. DISPLAY WITH OTHER FLAG ON CROSSED FLAGSTAFFS. (a) If the state flag is displayed with another flag, other than the flag of the United States, against a wall on crossed flagstaffs, the state flag should:

(1) be, from the perspective of an observer, to the left of the other flag; and

(2) have its flagstaff in front of the flagstaff of the other flag.

(b) If the state flag and the flag of the United States are displayed against a wall on crossed flagstaffs, the state flag should:

(1) be, from the perspective of an observer, to the right of the flag of the United States; and

(2) have its flagstaff behind the flagstaff of the United States flag.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.059. HORIZONTAL AND VERTICAL DISPLAY. (a) If the state flag is displayed horizontally, the white stripe should be above the red stripe and, from the perspective of an observer, to the right of the blue stripe.

(b) If the state flag is displayed vertically:

(1) the blue stripe should be above the white and red stripes; and

(2) the white stripe should be, from the perspective of an observer, to the left of the red stripe.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.060. DISPLAY FROM OR IN BUILDING. (a) If the state flag is displayed from a flagstaff that projects horizontally or at an angle from a building, the top of the flag should be placed at the peak of the staff unless the flag is at half-staff.

(b) If the state flag is suspended over a sidewalk from a rope that extends from a building to a pole at the edge of a sidewalk, the flag should be hoisted from the building so that the white stripe is nearest the pole.

(c) If the state flag is suspended across a corridor or lobby in a building that has only one main entrance, the flag should be suspended vertically so that the white stripe is, from the perspective of an observer who is entering the building, to the left of the red stripe. If the building has more than one main entrance,

the state flag should be suspended vertically near the center of the corridor or lobby. If the entrances are on the east and west faces of the building, the white stripe should be to the north. If the entrances are on the north and south faces of the building, the white stripe should be to the east. If there are entrances on more than two faces of the building, the white stripe should be to the east.

(d) If the state flag is displayed in a window, the white stripe should be above the red stripe and, from the perspective of an observer who is outside the window, to the right of the blue stripe.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.061. DISPLAY OVER STREET. If the state flag is displayed over a street, the flag should be suspended vertically with the blue stripe above the white and red stripes. If the street is an east-west street, the white stripe should be to the north. If the street is a north-south street, the white stripe should be to the east.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.062. DISPLAY ON SPEAKER'S PLATFORM. (a) If the state flag is displayed flat on a speaker's platform, the flag should be displayed above and behind the speaker.

(b) If the state flag and the flag of the United States are displayed on a speaker's platform, the state flag should be, from the perspective of an observer, to the right of the United States flag.

(c) The use of the state flag to drape the front of a platform is governed by Section 3100.070(c).

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.063. DISPLAY ON CASKET. (a) If the state flag is used to cover a casket, the flag should be placed so that:

(1) the blue stripe is at the head of the casket; and

(2) the white stripe is over the left shoulder of the casket.

(b) The state flag should not be lowered in the grave or allowed to touch the ground.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.064. DISPLAY ON FLAGSTAFF ON MOTOR VEHICLE. If the state flag is displayed on a flagstaff on a motor vehicle, the staff should be attached firmly to the chassis or clamped to the right fender. If the flag of the United States and the state flag are displayed on flagstaffs on a motor vehicle:

(1) the staff of the flag of the United States should be clamped to the right fender of the vehicle; and

(2) the staff of the state flag should be clamped to the left fender of the vehicle.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.065. DISPLAY AT HALF-STAFF. (a) If the state flag is to be displayed at half-staff, the flag should be hoisted to the peak of the flagpole for an instant and then lowered to the half-staff position.

(b) Before the state flag is lowered for the day, it should first be raised to the peak of the flagpole.

(c) On Memorial Day, the state flag should be displayed at half-staff until noon and at that time raised to the peak of the flagpole.

(d) The state flag should be displayed at half-staff on Peace Officers Memorial Day, May 15, unless that date is also Armed Forces Day.

(e) By order of the governor, the state flag shall be displayed at half-staff on a person's death as a mark of respect to the memory of that person.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.066. CARRYING OF STATE FLAG: IN GENERAL. The state flag should, when practicable, be carried aloft and free, not flat or horizontally.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.067. CARRYING IN PROCESSION WITH OTHER FLAGS. (a) If the state flag is carried in a procession with another flag, other than the flag of the United States, the state flag should be on the marching right. If there is a line of other flags in the procession, the state flag should be in front of the center of that line.

(b) If the flag of the United States is carried in a procession with the state flag, the flag of the United States should be on the marching right.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.068. HOISTING AND LOWERING; PASSING IN PARADE OR REVIEW. (a) The state flag should be hoisted briskly and lowered ceremoniously.

(b) During the ceremony of hoisting or lowering the state flag or if the flag is passing in a parade or in review:

(1) each citizen of this state who is present and not in uniform should:

(A) face the state flag and stand at attention with the person's right hand over the heart; and

(B) if wearing a head covering that is easy to remove, remove the head covering with the right hand and hold it at the person's left shoulder, with the person's hand over the heart;

(2) each person who is present and in uniform should make the military salute;

(3) each person who is present, not in uniform, and a member of the armed forces or a veteran may make the military salute; and

(4) each person who is present but not a citizen of this

state should stand at attention.

(c) The salute to the state flag in a moving column shall be made at the moment the state flag passes that person.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 962 (S.B. 1968), Sec. 1, eff. June 15, 2017.

Sec. 3100.069. STATE FLAG AS FEATURE OF UNVEILING CEREMONY. (a) The state flag should form a distinctive feature of the ceremony of unveiling a statue or monument.

(b) The state flag should not be used as the covering for the statue or monument.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.070. LIMITATIONS ON DISPLAY. (a) The state flag should not:

(1) touch anything beneath it, including the ground or floor;

(2) be dipped to any person or thing, except as a mark of honor for the United States flag;

(3) trail in water;

(4) have placed on any part of it, or attached to it, any mark, word, figure, design, picture, or drawing;

(5) be used or stored in a manner in which it can easily be soiled or damaged;

(6) be used as a receptacle for receiving, holding, carrying, or delivering anything;

(7) be displayed on a float in a parade, except from a staff or in the manner provided by Section 3100.059;

(8) be draped over the hood, top, side, or back of any vehicle, train, boat, or aircraft;

(9) be used as bedding or drapery;

(10) be festooned or drawn back or up in folds, but instead allowed to fall free; or

(11) be used as a covering for a ceiling.

(b) Advertising should not be fastened to a flagpole, flagstaff, or halyard on which the state flag is displayed.

(c) Bunting of blue, white, and red, arranged with the blue above, the white in the middle, and the red below, should be used instead of the state flag to cover a speaker's desk or to drape the front of a platform and for decoration in general.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.071. AUTHORITY OF GOVERNOR. By executive order published in the Texas Register, the governor may:

(1) change or repeal any requirement relating to the display of the state flag provided by Sections 3100.051-3100.070; or

(2) prescribe additional requirements concerning the display of the state flag.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.072. LIMITATIONS ON GOVERNMENTAL SUBDIVISION OR AGENCY. (a) A governmental subdivision or agency may not enact or enforce a law that prohibits:

(1) the display of:

(A) a municipal flag;

(B) the state flag;

(C) the flag of another state of the United States;

(D) the United States flag; or

(E) the flag of a nation other than the United States; or

(2) any conduct covered by this subchapter.

(b) This section does not prohibit a governmental subdivision or agency from enacting or enforcing a law to protect the public health or safety.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.073. FOLDED STATE FLAG. (a) The state flag should be folded as follows:

(1) fold the flag in half lengthwise with the red stripe facing upward;

(2) fold the flag in half lengthwise once more, concealing the red stripe on the inside of the fold;

(3) position the flag with the white star facing downward and the blue stripe facing upward;

(4) fold the corner with the white stripe to the opposite side of the flag to form a triangle;

(5) continue folding the corners over in triangles until the resulting fold produces a blue triangle with a portion of the white star visible; and

(6) secure all edges into the folds.

(b) A folded state flag should be presented or displayed with all folded edges secured and with the blue stripe and a portion of the white star visible.

(c) A folded state flag should be stored or displayed in a manner that prevents tearing or soiling of the flag.

Added by Acts 2009, 81st Leg., R.S., Ch. 1218 (S.B. 1145), Sec. 2, eff. September 1, 2009.

SUBCHAPTER C. PLEDGE OF ALLEGIANCE TO STATE FLAG

Sec. 3100.101. PLEDGE. The pledge of allegiance to the state flag is: "Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 650 (H.B. 1034), Sec. 1, eff. June 15, 2007.

Sec. 3100.102. OCCASIONS AT WHICH PLEDGE MAY BE RECITED. The pledge of allegiance to the state flag may be recited at any:

(1) public or private meeting at which the pledge of allegiance to the United States flag is recited; and

(2) state historical event or celebration.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.103. ORDER OF RECITATION. The pledge of allegiance to the flag of the United States should be recited before the pledge of allegiance to the state flag if both are recited.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.104. RECITING PLEDGE. If the pledge to the state flag is recited, each person who is present and:

(1) not in uniform should:

(A) face the state flag and stand at attention with the person's right hand over the heart;

(B) if wearing a head covering that is easy to remove, remove that head covering with the right hand and hold it at the person's left shoulder, with the person's hand over the heart; and

(C) recite the pledge;

(2) not in uniform and a member of the armed forces or a veteran may make the military salute and recite the pledge; or

(3) in uniform should remain silent, face the flag, and make the military salute.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 962 (S.B. 1968), Sec. 2, eff. June 15, 2017.

SUBCHAPTER D. RETIREMENT OF STATE FLAG

Sec. 3100.151. MANNER OF RETIREMENT. (a) If a state flag is no longer used or useful as an emblem for display, it should be destroyed, preferably by burning, in a ceremony or another dignified way that emphasizes its honor as a fitting emblem for this state.

(b) It is encouraged that retirement of the state flag be a public ceremony under the direction of uniformed personnel representing a state or national military service or a patriotic

society, but the state flag may be retired in a private ceremony.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3100.152. CONDUCT OF RETIREMENT CEREMONY. (a) A retirement ceremony for a state flag should be conducted with the honor and respect inherent in the traditions of this state.

(b) During a retirement ceremony:

(1) each citizen of this state who is present and not in uniform should:

(A) stand at attention with the person's right hand over the heart; and

(B) if wearing a head covering that is easy to remove, remove the head covering with the person's right hand and hold it at the person's left shoulder, with the right hand over the heart;

(2) each person who is present and in uniform should make the military salute at the appropriate time as designated by the ceremony;

(3) each person who is present, not in uniform, and a member of the armed forces or a veteran may make the military salute at the appropriate time as designated by the ceremony; and

(4) each person who is present but not a citizen of this state should stand at attention.

(c) In a retirement ceremony in which the flag is to be burned or buried, the flag may be retired as a whole or the colors of the flag may be separated for individual dedication, with the separation taking place immediately before the retirement and dedication ceremony.

(d) The official retirement ceremony for the state flag encouraged for public use is:

I am your Texas flag!

I was born January 25, 1839.

I am one of only two flags of an American state that has also served as the symbol of an independent nation--The Republic of Texas.

While you may honor me in retirement, the spirit I represent will never retire!

I represent the spirit of Texas--Yesterday, Today, and

Tomorrow!

I represent the bravery of the Alamo and the Victory at San Jacinto.

My spirit rode with the Texas Rangers over the Forts Trail of the Big Country and herded cattle through the Fort Worth stockyards. I have sailed up Galveston Bay and kept a watchful eye over our El Paso del Norte.

My colors are in the waters of the Red River and in the Bluebonnets of the Texas Hill Country.

You'll find my spirit at the Light House of Palo Duro and in the sands of Padre Island;

I am at the Johnson Space Center in Houston and atop the oil wells of West Texas.

From the expanse of the Big Bend to the Riverwalk of San Antone--all of Texas is my home!

I wave over the cotton and grain fields of the High Plains, and I am deep in the rich soil of the Rio Grande Valley.

I am proudly displayed under the Capitol Dome, and I fly high above the concrete canyons of downtown Dallas.

You'll find my spirit in the East Texas piney woods and along the Grandeur of the Rio Grande.

I represent Texas--every Child, Woman, and Man!

The blue field in me stands for the valor of our ancestors in the battles for our country.

Let us retire the blue--Salute!

My white field stands for the purity in all our Texas hearts! It represents the honor that each of us should pay to our state each day.

Let us retire the white--Salute!

The red is for all of the men and women who have died in service of our state--whether as members of the armed services or as citizen Samaritans.

Let us retire the red--Salute!

My lone, independent star is recognized worldwide because it represents ALL of Texas and stands for our unity as one for God, State, and Country.

Let us retire the lone star--Salute!

Join in the pledge to the Texas flag:

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 375 (S.B. 258), Sec. 1, eff. June 17, 2011.
Acts 2017, 85th Leg., R.S., Ch. 962 (S.B. 1968), Sec. 3, eff. June 15, 2017.

CHAPTER 3101. STATE SYMBOLS

Sec. 3101.001. STATE SEAL. (a) The state seal is as provided by Section 19, Article IV, Texas Constitution.

(b) The reverse side of the state seal contains a shield displaying a depiction of:

(1) the Alamo;

(2) the cannon of the Battle of Gonzales; and

(3) Vince's Bridge.

(c) The shield on the reverse side of the state seal is encircled by:

(1) live oak and olive branches; and

(2) the unfurled flags of:

(A) the Kingdom of France;

(B) the Kingdom of Spain;

(C) the United Mexican States;

(D) the Republic of Texas;

(E) the Confederate States of America; and

(F) the United States of America.

(d) Above the shield is emblazoned the motto, "REMEMBER THE ALAMO," and beneath the shield are the words, "TEXAS ONE AND INDIVISIBLE."

(e) A white five-pointed star hangs over the shield, centered between the flags.

(f) The secretary of state by rule shall adopt the standard design for the state seal, including the reverse side of the seal.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.002. STATE ARMS. (a) The state arms are a five-

pointed white star, on an azure background, encircled by olive and live oak branches.

(b) The secretary of state by rule shall adopt the standard design for the state arms.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.003. USE OF STATE SEAL. A law that requires the use of the state seal does not require the use of the reverse of the state seal or the state arms.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.004. STATE MOTTO. The state motto is "Friendship."

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.005. STATE SONG. The state song, "Texas, Our Texas" by William J. Marsh and Gladys Yoakum Wright, is as follows:

Texas, our Texas! All hail the mighty State!
Texas, our Texas! So wonderful so great!
Boldest and grandest, Withstanding ev'ry test;
O Empire wide and glorious, You stand supremely blest.
Refrain:
God bless you Texas! And keep you brave and strong,
That you may grow in power and worth,
Thro'out the ages long.
Texas, O Texas! Your freeborn single star,
Sends out its radiance to nations near and far.
Emblem of freedom! It sets our hearts aglow,
With thoughts of San Jacinto and glorious Alamo.
Refrain
Texas, dear Texas! From tyrant grip now free,
Shines forth in splendor your star of destiny!
Mother of heroes! We come your children true,

Proclaiming our allegiance, our faith, our love for you.
Refrain

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.006. PERFORMANCE OF STATE SONG. (a) During the performance of the state song:

(1) when the state flag is displayed:

(A) each citizen of this state who is present and not in uniform should:

(i) face the flag and stand at attention with the person's right hand over the heart; and

(ii) if wearing a head covering that is easy to remove, remove the head covering with the right hand and hold it at the person's left shoulder, with the person's right hand over the heart;

(B) each person who is present and in uniform should make the military salute at the first note of the state song and retain that position until the last note;

(C) each person who is present, not in uniform, and a member of the armed forces or a veteran may make the military salute at the first note of the state song and retain that position until the last note; and

(D) each person who is present but not a citizen of this state should stand at attention; and

(2) when the state flag is not displayed, each person present should face toward the music and act in the same manner as the person would if the state flag were displayed there.

(b) The state song should be performed after the national anthem if both are performed.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 962 (S.B. 1968), Sec. 4, eff. June 15, 2017.

Sec. 3101.007. STATE BIRD. The state bird is the mockingbird.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.008. STATE FLOWER. The state flower is the bluebonnet.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.009. STATE TREE. The state tree is the pecan tree.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.010. THRASHING PECANS; PENALTY. (a) A person commits an offense if the person causes pecans to fall from a pecan tree by any means, including by thrashing, unless the tree is located on:

(1) land owned by the person causing the pecans to fall;

(2) privately owned land, and the person causing the pecans to fall has the written consent of the owner, lessee, or authorized agent of the owner or lessee;

(3) land owned by the state or a political subdivision of the state and in the boundaries of a municipality, and the person causing the pecans to fall has written consent from an officer or agent of the agency or political subdivision controlling the land or from the mayor of the municipality; or

(4) land owned by the state or a political subdivision of the state and outside the boundaries of a municipality, and the person causing the pecans to fall has written consent from an officer or agent of the agency or political subdivision controlling the property or from the county judge of the county.

(b) An offense under this section is a misdemeanor and on conviction is punishable by:

(1) a fine of not less than $5 or more than $300;

(2) confinement in the county jail for a term not to exceed three months; or

(3) both a fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.011. STATE PLAYS. The following plays are official state plays of Texas:

(1) The Lone Star presented in Galveston Island State Park;

(2) Texas presented in the Palo Duro Canyon State Park;

(3) Beyond the Sundown presented at the Alabama-Coushatta Indian Reservation; and

(4) Fandangle presented in Shackelford County.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3101.012. TEJANO MUSIC HALL OF FAME. The Tejano Music Hall of Fame Museum in Alice is the official Texas Tejano Music Hall of Fame.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.022(a), eff. Sept. 1, 2003.

Sec. 3101.013. STATE BOTANICAL GARDEN AND ARBORETUM. The state botanical garden and arboretum is the Lady Bird Johnson Wildflower Center at The University of Texas at Austin.

Added by Acts 2017, 85th Leg., R.S., Ch. 79 (H.B. 394), Sec. 1, eff. September 1, 2017.

CHAPTER 3104. POET LAUREATE, STATE MUSICIANS, STATE HISTORIAN, AND STATE ARTISTS

SUBCHAPTER A. POET LAUREATE, STATE MUSICIANS, AND STATE ARTISTS

Sec. 3104.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on the Arts.

(2) "Committee" means the Texas Poet Laureate, State Musician, and State Artist Committee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.024(a), eff. Sept. 1,

2003.

Sec. 3104.002. DESIGNATING POET LAUREATE, STATE MUSICIANS, AND STATE ARTISTS. (a) The committee shall designate:

(1) a Texas poet laureate;

(2) a Texas state musician for the classical genre;

(3) a Texas state musician for the nonclassical genre;

(4) a Texas state artist for two-dimensional media; and

(5) a Texas state artist for three-dimensional media.

(b) The committee shall choose the poet laureate, state musicians, and state artists from a list of persons submitted by the commission.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.024(a), eff. Sept. 1, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 68 (S.B. 281), Sec. 1, eff. September 1, 2023.

Sec. 3104.003. COMMITTEE. (a) The committee consists of seven members as follows:

(1) one member appointed by the governor;

(2) three members appointed by the lieutenant governor; and

(3) three members appointed by the speaker of the house of representatives.

(b) One member appointed by the speaker of the house of representatives must be the chair of the house committee that has primary jurisdiction over arts and cultural matters. That member serves on the committee as an additional duty of the chairmanship.

(c) A member of the committee who is not a member of the legislature serves a two-year term that expires on October 1 of each odd-numbered year.

(d) The committee shall select a presiding officer from among its members.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.024(a), eff. Sept. 1, 2003.

Sec. 3104.004. RECOMMENDATIONS FROM COMMISSION. (a) The commission shall solicit nominations from the arts and cultural community for the poet laureate, state musicians, and state artists. The commission shall use the commission's Texas Cultural & Arts Network, the media, public meetings, newsletters, the Writer's League of Texas, and other appropriate methods to distribute information about the nomination process.

(b) The commission may receive submissions from poets, musicians, and artists who have been nominated.

(c) The commission may assemble a group of artists, musicians, writers, scholars, and other appropriate experts in the fields of literature, music, and visual arts to:

(1) review the submissions from the nominated poets, musicians, and artists; and

(2) provide advice and recommendations to the commission on who should be considered for designation as poet laureate, state musicians, and state artists.

(d) For each category specified under Section 3104.002(a), the commission shall submit to the committee a list of not more than 10 persons who are worthy of being designated for that category.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.024(a), eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 68 (S.B. 281), Sec. 4, eff. September 1, 2023.

Sec. 3104.005. DESIGNATION CEREMONY. The governor and members of the committee shall honor the persons designated as poet laureate, state musicians, and state artists in a ceremony at the Capitol.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.024(a), eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 68 (S.B. 281), Sec. 5, eff. September 1, 2023.

Sec. 3104.006. DURATION OF DESIGNATION. A person designated as the poet laureate, a state musician, or a state artist retains the

designation for one year from the date of the designation ceremony.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.024(a), eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 68 (S.B. 281), Sec. 6, eff. September 1, 2023.

Sec. 3104.007. PAY AND EMOLUMENTS PROHIBITED. A person designated as the poet laureate, a state musician, or a state artist does not receive any pay or emolument based on that designation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.024(a), eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 68 (S.B. 281), Sec. 7, eff. September 1, 2023.

SUBCHAPTER B. TEXAS STATE HISTORIAN

Sec. 3104.051. STATE HISTORIAN. (a) The state historian shall be appointed by the governor on the recommendation of the Texas Historical Commission and the Texas State Historical Association. If the entities cannot agree on a nominee, each shall submit one candidate to the governor, who shall make the designation.

(b) In making an appointment under Subsection (a), the governor may reject one or more of the nominees submitted and request a new list of different nominees.

(c) The duties of the state historian shall include:

(1) enhancing the knowledge of Texans regarding Texas history and heritage;

(2) encouraging the teaching of Texas history in public schools;

(3) consulting with the governor, the lieutenant governor, the speaker of the house of representatives, and the legislature on matters related to the promotion of Texas history; and

(4) lecturing on matters of Texas history within the state historian's area of expertise.

(d) The state historian shall not receive compensation or reimbursement for expenses from the state for serving as state

historian.

(e) The governor, the lieutenant governor, and the speaker of the house of representatives, or their appointees, shall honor the person designated as state historian in a ceremony at the Capitol.

(f) An individual designated as the state historian retains the designation for two years from the date of the ceremony.

(g) The facilities and resources of the Texas Historical Commission in Austin shall be made available for the use of the state historian when needed.

Added by Acts 2005, 79th Leg., Ch. 427 (S.B. 1787), Sec. 3, eff. September 1, 2005.

CHAPTER 3105. TEXAS PEACE OFFICERS' MEMORIAL MONUMENT AND CEREMONY

Sec. 3105.001. PURPOSE OF MONUMENT. The Texas Peace Officers' Memorial Monument is erected on the grounds of the Capitol Complex to recognize and honor the ultimate sacrifice made by law enforcement and corrections officers in this state who were killed in the line of duty.

Added by Acts 2003, 78th Leg., ch. 378, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 379 (H.B. 3559), Sec. 2, eff. September 1, 2013.

Sec. 3105.002. DEFINITIONS. In this chapter:

(1) "Board" means the State Preservation Board.

(2) "Commission" means the Texas Commission on Law Enforcement.

(2-a) "Committee" means the Texas Peace Officers' Memorial Ceremony Committee.

(3) "Monument" means the Texas Peace Officers' Memorial Monument.

Added by Acts 2003, 78th Leg., ch. 378, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.37, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 379 (H.B. 3559), Sec. 3, eff.

September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1090 (H.B. 3647), Sec. 2, eff. June 15, 2017.

Sec. 3105.003. ELIGIBILITY FOR MONUMENT.

Text of subsection effective until January 1, 2025

(a) A person is eligible to have the person's name on the monument if the person was killed in the line of duty and was:

(1) a law enforcement officer or peace officer for this state or a political subdivision of this state under Article 2.12, Code of Criminal Procedure, or other law;

(2) a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure;

(3) a corrections or detention officer or county or municipal jailer employed or appointed by a municipal, county, or state penal institution in this state; or

(4) employed by this state or a political subdivision of this state and considered by the person's employer to be a trainee for a position described by Subdivision (1), (2), or (3).

Text of subsection effective on January 1, 2025

(a) A person is eligible to have the person's name on the monument if the person was killed in the line of duty and was:

(1) a law enforcement officer or peace officer for this state or a political subdivision of this state under Article 2A.001, Code of Criminal Procedure, or other law;

(2) a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2A.002, Code of Criminal Procedure;

(3) a corrections or detention officer or county or municipal jailer employed or appointed by a municipal, county, or state penal institution in this state; or

(4) employed by this state or a political subdivision of this state and considered by the person's employer to be a trainee for a position described by Subdivision (1), (2), or (3).

(b) A person described by Subsection (a) is presumed to have been killed in the line of duty if the Employees Retirement System of Texas makes payments and provides benefits to the eligible survivors

of the person as provided by Chapter 615.

Added by Acts 2003, 78th Leg., ch. 378, Sec. 1, eff. June 18, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 379 (H.B. 3559), Sec. 4, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 1090 (H.B. 3647), Sec. 3, eff. June 15, 2017.
Acts 2019, 86th Leg., R.S., Ch. 213 (H.B. 381), Sec. 1, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.119, eff. January 1, 2025.

Sec. 3105.0035. NOMINATIONS; ADDITION OF NAMES TO MONUMENT. (a) A peace officer, law enforcement agency, independent researcher, or organization that advocates on behalf of the survivors of persons described by Section 3105.003 may submit to the commission a nomination to have a person's name added to the monument.

(b) The executive director of the commission shall make a preliminary recommendation to the commission on whether a person nominated under Subsection (a) is eligible under Section 3105.003.

(c) The commission shall place each nomination, including the executive director's preliminary recommendation, on the agenda of a scheduled meeting of the commission for consideration by the commission. The commission shall allow public testimony and consider any evidence presented regarding the eligibility of the person nominated. After hearing testimony and considering evidence, the commission shall determine by a public vote whether the person meets the eligibility requirements under Section 3105.003.

(d) The commission shall add a person's name to the monument if the commission determines that the person meets the eligibility requirements.

Added by Acts 2017, 85th Leg., R.S., Ch. 1090 (H.B. 3647), Sec. 4, eff. June 15, 2017.

Sec. 3105.004. MAINTENANCE OF MONUMENT. (a) The board is responsible for the maintenance of the monument. The board may raise money from private or public entities for the continued maintenance

and update of the monument. The board shall:

(1) establish a schedule for the maintenance of the monument; and

(2) select persons to maintain the monument.

(b) The commission shall:

(1) establish and maintain historical and archival records of the inducted officers and jailers that must be accessible to family members and independent researchers; and

(2) adopt rules and establish procedures for adding names to the monument in accordance with Sections 3105.003 and 3105.0035.

(c) The commission may contract with public or private entities to:

(1) facilitate research;

(2) establish and maintain historical and archival records; and

(3) store records in a place accessible to the public.

(d) An entity that collects funds for the maintenance and improvement of the Texas Peace Officers' Memorial Monument shall send that money to the board to be deposited in the Capitol fund account.

Added by Acts 2003, 78th Leg., ch. 378, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 379 (H.B. 3559), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 379 (H.B. 3559), Sec. 6, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1090 (H.B. 3647), Sec. 5, eff. June 15, 2017.

Sec. 3105.005. ACCOUNT. (a) Money contributed to the state for a purpose related to the monument shall be deposited by the board in the Capitol fund to the credit of a separate interest-bearing account established for the monument.

(b) Notwithstanding other law, income from investments of money in the account shall be deposited to the credit of the account.

(c) Money in the account may be used only for the purposes prescribed by Section 3105.004.

Added by Acts 2003, 78th Leg., ch. 378, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 379 (H.B. 3559), Sec. 7, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1090 (H.B. 3647), Sec. 6, eff. June 15, 2017.

Sec. 3105.006. TEXAS PEACE OFFICERS' MEMORIAL CEREMONY COMMITTEE. (a) The committee is established to plan, oversee, and facilitate annual ceremonies recognizing and honoring peace officers of this state who were killed in the line of duty.

(b) The committee consists of the following members:

(1) a president, or the president's designee, of any law enforcement organization that:

(A) provides full service legal and political representation to law enforcement officers of this state;

(B) has at least 10,000 members paying dues, as provided by the organization's Internal Revenue Service Form 990 for the previous reporting period;

(C) has complied with all filing requirements of the Internal Revenue Service, the United States Department of Labor, and the secretary of state; and

(D) has an elected board of directors;

(2) a surviving spouse of a peace officer killed in the line of duty selected by the chapters of the Concerns of Police Survivors of this state; and

(3) the following nonvoting members or designees of the members:

(A) the governor;

(B) the lieutenant governor;

(C) the speaker of the house of representatives;

(D) the attorney general;

(E) the director of the Department of Public Safety;

(F) the executive director of the board; and

(G) the executive director of the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 1090 (H.B. 3647), Sec. 7, eff. June 15, 2017.

Sec. 3105.007. TEXAS PEACE OFFICERS' MEMORIAL CEREMONY. (a)

The committee shall meet as necessary to plan and coordinate an annual memorial ceremony on the Capitol grounds to honor Texas peace officers who were killed in the line of duty.

(b) The committee shall hold the ceremony on a date selected by the committee during the week in which May 8 occurs.

(c) The ceremony may be funded by public or private money.

(d) Each odd-numbered year, the ceremony must include:

(1) a parade of law enforcement color guards and personnel ending at the Capitol; and

(2) a ceremony held during a joint session of the legislature on the floor of the house of representatives, if possible.

(e) During the ceremony under this section, the name of each peace officer who is being added to the monument that year must be read and the surviving family members of the peace officer must be recognized.

Added by Acts 2017, 85th Leg., R.S., Ch. 1090 (H.B. 3647), Sec. 7, eff. June 15, 2017.

CHAPTER 3106. STAR OF TEXAS AWARDS

Sec. 3106.001. DEFINITIONS. In this chapter:

(1) "Emergency medical first responder" means an employee or volunteer of the state, a political subdivision, or an emergency medical services provider who provides urgent on-site medical care to the sick or injured.

(2) "Firefighter" includes a volunteer firefighter.

Text of subdivision effective until January 1, 2025

(3) "Peace officer" means a peace officer commissioned by the state or a political subdivision of the state under Article 2.12, Code of Criminal Procedure, or other law.

Text of subdivision effective on January 1, 2025

(3) "Peace officer" means a peace officer commissioned by the state or a political subdivision of the state under Article 2A.001, Code of Criminal Procedure, or other law.

(4) "Next of kin" means the relative in the nearest degree of relationship to a deceased person, including the person's spouse, child, parent, or sibling.

Added by Acts 2003, 78th Leg., ch. 614, Sec. 2, eff. June 20, 2003. Renumbered from Government Code, Section 3105.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(43), eff. September 1, 2005. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 585 (S.B. 877), Sec. 1, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.120, eff. January 1, 2025.

Sec. 3106.002. PEACE OFFICERS' STAR OF TEXAS AWARD. (a) The Peace Officers' Star of Texas Award shall be awarded to:

(1) each peace officer who is seriously injured in the line of duty;

(2) the surviving next of kin of each peace officer who is killed or sustains a fatal injury in the line of duty;

(3) each federal law enforcement officer or special agent who is seriously injured while performing duties in this state to assist a state or local law enforcement agency; and

(4) the surviving next of kin of each federal law enforcement officer or special agent who is killed or sustains a fatal injury while performing duties in this state to assist a state or local law enforcement agency.

(b) The Peace Officers' Star of Texas Award Advisory Committee shall advise the governor on the issuance, design, and presentation of the Peace Officers' Star of Texas Award.

(c) The committee consists of three current or retired peace officers appointed by the governor who have each served with distinction during a lengthy career as a peace officer.

Added by Acts 2003, 78th Leg., ch. 614, Sec. 2, eff. June 20, 2003. Renumbered from Government Code, Section 3105.002 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(43), eff. September 1, 2005. Amended by:

Acts 2005, 79th Leg., Ch. 990 (H.B. 1977), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 109 (H.B. 1164), Sec. 1, eff. May 17, 2007.

Sec. 3106.003. FIREFIGHTERS' STAR OF TEXAS AWARD. (a) The Firefighters' Star of Texas Award shall be awarded to each firefighter who is seriously injured in the line of duty and the surviving next of kin of each firefighter who is killed or sustains a fatal injury in the line of duty.

(b) The Firefighters' Star of Texas Award Advisory Committee shall advise the governor on the issuance, design, and presentation of the Firefighters' Star of Texas Award.

(c) The committee consists of three current or retired firefighters appointed by the governor who have each served with distinction during a lengthy career as a firefighter.

Added by Acts 2003, 78th Leg., ch. 614, Sec. 2, eff. June 20, 2003. Renumbered from Government Code, Section 3105.003 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(43), eff. September 1, 2005. Amended by:

Acts 2005, 79th Leg., Ch. 990 (H.B. 1977), Sec. 2, eff. June 18, 2005.

Sec. 3106.004. EMERGENCY MEDICAL FIRST RESPONDERS' STAR OF TEXAS AWARD. (a) The Emergency Medical First Responders' Star of Texas Award shall be awarded to each emergency medical first responder who is seriously injured in the line of duty and the surviving next of kin of each emergency medical first responder who is killed or sustains a fatal injury in the line of duty.

(b) The Emergency Medical First Responders' Star of Texas Award Advisory Committee shall advise the governor on the issuance, design, and presentation of the Emergency Medical First Responders' Star of Texas Award.

(c) The committee consists of three current or retired emergency medical first responders appointed by the governor who have each served with distinction during a lengthy career as an emergency medical first responder.

Added by Acts 2003, 78th Leg., ch. 614, Sec. 2, eff. June 20, 2003. Renumbered from Government Code, Section 3105.004 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(43), eff. September 1, 2005. Amended by:

Acts 2005, 79th Leg., Ch. 990 (H.B. 1977), Sec. 3, eff. June 18, 2005.

Sec. 3106.0041. CITIZENS' STAR OF TEXAS AWARD. (a) The Citizens' Star of Texas Award shall be awarded to:

(1) a private citizen who is seriously injured while aiding or attempting to aid a peace officer, firefighter, or emergency medical first responder in the performance of the duties of the officer, firefighter, or first responder; and

(2) the surviving next of kin of a private citizen who is killed or sustains a fatal injury while aiding or attempting to aid a peace officer, firefighter, or emergency medical first responder in the performance of the duties of the officer, firefighter, or first responder.

(b) The Peace Officers' Star of Texas Award Advisory Committee under Section 3106.002, the Firefighters' Star of Texas Award Advisory Committee under Section 3106.003, and the Emergency Medical First Responders' Star of Texas Award Advisory Committee under Section 3106.004, as applicable, shall advise the governor on the issuance, design, and presentation of the Citizens' Star of Texas Award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 585 (S.B. 877), Sec. 2, eff. September 1, 2013.

Sec. 3106.005. GENERAL MATTERS AFFECTING ADVISORY COMMITTEE. (a) Each member of an advisory committee created under this chapter serves at the will of the governor.

(b) The governor shall designate the presiding officer of each advisory committee.

(c) Each advisory committee shall meet once annually at the call of the governor or the presiding officer of the committee not later than three weeks before September 11, and at a location deemed appropriate by the governor or the governor's representative.

(d) A member of an advisory committee may not receive compensation for service on the committee or reimbursement for travel expenses incurred while conducting the business of the committee.

(e) An advisory committee is not subject to Chapter 2110.

Added by Acts 2003, 78th Leg., ch. 614, Sec. 2, eff. June 20, 2003. Renumbered from Government Code, Section 3105.005 by Acts 2005, 79th

Leg., Ch. 728 (H.B. 2018), Sec. 23.001(43), eff. September 1, 2005.

Sec. 3106.006. PRESENTATION; AWARD. (a) The governor or the governor's representative shall present in the name of the state a star of Texas award under this chapter to the appropriate recipient or surviving next of kin during a public ceremony held on, or as near as practicable to, September 11 of each year.

(b) At a minimum, the award shall consist of a medal, a certificate, and a ribbon suitable for wearing on a uniform.

Added by Acts 2003, 78th Leg., ch. 614, Sec. 2, eff. June 20, 2003. Renumbered from Government Code, Section 3105.006 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(43), eff. September 1, 2005.

Sec. 3106.007. RECOMMENDATION FOR AWARD. (a) Any person who has personal knowledge that a peace officer, firefighter, or emergency medical first responder has been killed or seriously injured in the line of duty, or that a federal law enforcement officer or special agent has been killed or seriously injured while performing duties in this state to assist a state or local law enforcement agency, may submit that information in writing to a committee under this chapter.

(b) The head of an agency that employs a peace officer, firefighter, or emergency medical first responder who has knowledge of a private citizen described by Section 3106.0041(a) and a state legislator representing the district in which the private citizen resides may submit information about the private citizen in writing to a committee under this chapter.

Added by Acts 2003, 78th Leg., ch. 614, Sec. 2, eff. June 20, 2003. Renumbered from Government Code, Section 3105.007 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(43), eff. September 1, 2005. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 109 (H.B. 1164), Sec. 2, eff. May 17, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 585 (S.B. 877), Sec. 3, eff. September 1, 2013.

CHAPTER 3107. TEXAS POLICE SERVICE ANIMALS MEMORIAL MONUMENT

Sec. 3107.001. DEFINITIONS. In this chapter:

(1) "Board" means the State Preservation Board.

(2) "Capitol Complex" has the meaning assigned by Section 443.0071.

(3) "Monument" means a Texas Police Service Animals Memorial Monument established under Section 3107.002.

(4) "Police service animal" has the meaning assigned by Section 38.151, Penal Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 323 (H.B. 1677), Sec. 1, eff. September 1, 2021.

Sec. 3107.002. TEXAS POLICE SERVICE ANIMALS MEMORIAL MONUMENT. Subject to Section 443.0152, the board may establish a Texas Police Service Animals Memorial Monument using board approval procedures on the grounds of the Capitol Complex adjacent to the Texas Peace Officers' Memorial Monument to recognize and honor police service animals that were killed in the line of duty.

Added by Acts 2021, 87th Leg., R.S., Ch. 323 (H.B. 1677), Sec. 1, eff. September 1, 2021.

Sec. 3107.003. MAINTENANCE OF MONUMENT. (a) If a monument is established under Section 3107.002, the board is responsible for the maintenance of the monument. The board may receive money from private entities for the continued maintenance and update of the monument. If a monument is established under Section 3107.002, the board shall:

(1) establish a schedule for the maintenance of the monument; and

(2) select persons to maintain the monument.

(b) An entity that collects funds for the maintenance and improvement of a monument shall send that money to the board to be deposited in the Capitol fund account.

Added by Acts 2021, 87th Leg., R.S., Ch. 323 (H.B. 1677), Sec. 1, eff. September 1, 2021.

Sec. 3107.004. ACCOUNT. (a) Money contributed to the state for a purpose related to a monument shall be deposited by the board in the Capitol fund to the credit of a separate interest-bearing account established for the monument.

(b) Notwithstanding any other law, income from investments of money in the account shall be deposited to the credit of the account.

(c) Money in the account may be used only for the purposes prescribed by Section 3107.003.

Added by Acts 2021, 87th Leg., R.S., Ch. 323 (H.B. 1677), Sec. 1, eff. September 1, 2021.

SUBTITLE B. PRESERVATION
CHAPTER 3151. PRESERVATION OF VIEW OF STATE CAPITOL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3151.001. DEFINITIONS. In this chapter:

(1) "Center of the Capitol dome" means the point at 653 feet above sea level at Texas Plane Coordinate X-2818555.07, Y-230595.65.

(2) "Texas Plane Coordinate" means the central zone of the Texas State Coordinate Systems as defined by the U.S. Coast and Geodetic Survey, dated 1945 and revised in March 1978.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3151.002. DEFINITION OF CAPITOL VIEW CORRIDOR. In this chapter, "Capitol view corridor" means:

(1) the South Mall of The University of Texas Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 594 feet above sea level at Texas Plane Coordinate X-2818794.86, Y-234376.98, and extends along a bearing of S 2 7 0.0 W for a distance of 3790.248 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818654.87, Y-230589.32; and

(B) the second of which begins at an elevation of 594 feet above sea level at Texas Plane Coordinate X-2818628.71, Y-234341.64, and extends along a bearing of S 2 39 17.7 W for a

distance of 3748.053 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818455.09, Y-230597.61.

(2) the Waterloo Park Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 496 feet above sea level at Texas Plane Coordinate X-2820189.70, Y-230799.91, and extends along a bearing of S 86 21 3.1 W for a distance of 1650.373 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818542.67, Y-230694.87; and

(B) the second of which begins at an elevation of 480 feet above sea level at Texas Plane Coordinate X-2820300.13, Y-229756.25, and extends along a bearing of N 67 16 4.1 W for a distance of 1939.019 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818511.73, Y-230505.53.

(3) the Wooldridge Park Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 515 feet above sea level at Texas Plane Coordinate X-2816727.54, Y-229659.96, and extends along a bearing of N 60 5 58.0 E for a distance of 2055.569 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818509.50, Y-230684.66; and

(B) the second of which begins at an elevation of 536 feet above sea level at Texas Plane Coordinate X-2816925.57, Y-229291.91, and extends along a bearing of N 54 4 50.4 E for a distance of 2089.263 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818617.55, Y-230517.56.

(4) the French Legation Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 539 feet above sea level at Texas Plane Coordinate X-2821177.01, Y-227894.81, and extends along a bearing of N 42 37 44.3 W for a distance of 3765.605 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818626.83, Y-230665.30; and

(B) the second of which begins at an elevation of 539

feet above sea level at Texas Plane Coordinate X-2821144.99, Y-227833.18, and extends along a bearing of N 44 39 68.5 W for a distance of 3787.992 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818482.12, Y-230527.25.

(5) the Lamar Bridge Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 460 feet above sea level at Texas Plane Coordinate X-2813589.52, Y-227457.92, and extends along a bearing of N 56 44 9.5 E for a distance of 5874.699 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818596.90, Y-230686.48; and

(B) the second of which begins at an elevation of 460 feet above sea level at Texas Plane Coordinate X-2813419.55, Y-226934.03, and extends along a bearing of N 55 25 10.4 E for a distance of 6308.017 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818613.13, Y-230514.22.

(6) the South Congress at East Live Oak Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 574 feet above sea level at Texas Plane Coordinate X-2814945.42, Y-218622.48, and extends along a bearing of N 16 19 7.6 E for a distance of 12505.861 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818459.33, Y-230624.51; and

(B) the second of which begins at an elevation of 574 feet above sea level at Texas Plane Coordinate X-2815051.19, Y-218649.13, and extends along a bearing of N 16 48 23.4 E for a distance of 12450.162 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818651.03, Y-230567.50.

(7) the Mopac Bridge Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 498 feet above sea level at Texas Plane Coordinate X-2808292.26, Y-229412.05, and extends along a bearing of N 83 58 33.0 E for a distance of 10331.327 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-

2818566.53, Y-230496.30; and

(B) the second of which begins at an elevation of 485 feet above sea level at Texas Plane Coordinate X-2808930.31, Y-230333.64, and extends along a bearing of N 87 50 44.3 E for a distance of 9628.852 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818552.35, Y-230695.61.

(8) the South Lamar at La Casa Drive Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 656 feet above sea level at Texas Plane Coordinate X-2806422.18, Y-219725.23, and extends along a bearing of N 47 47 22.8 E for a distance of 16290.678 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818488.35, Y-230670.13; and

(B) the second of which begins at an elevation of 656 feet above sea level at Texas Plane Coordinate X-2806443.28, Y-219708.55, and extends along a bearing of N 48 24 0.0 E for a distance of 16286.017 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818621.93, Y-230521.28.

(9) the Barton Creek Pedestrian Bridge Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 445 feet above sea level at Texas Plane Coordinate X-2811033.87, Y-227139.69, and extends along a bearing of N 64 37 45.5 E for a distance of 8277.813 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818513.32, Y-230686.51; and

(B) the second of which begins at an elevation of 460 feet above sea level at Texas Plane Coordinate X-2812177.38, Y-227545.58, and extends along a bearing of N 65 15 5.2 E for a distance of 7070.209 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818598.22, Y-230505.43.

(10) the Pleasant Valley Road at Lakeshore Drive Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 450 feet above sea level at Texas Plane Coordinate X-2826332.31, Y-219396.73, and extends along a bearing of N 34 21 30.0 W for a distance of

13634.929 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818637.21, Y-230652.69; and

(B) the second of which begins at an elevation of 450 feet above sea level at Texas Plane Coordinate X-2826129.04, Y-218986.86, and extends along a bearing of N 33 32 6.6 W for a distance of 13861.422 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818471.32, Y-230541.00.

(11) the East Eleventh Street Threshold Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 517 feet above sea level at Texas Plane Coordinate X-2821382.21, Y-228956.12, and extends along a bearing of N 61 38 31.4 W for a distance of 3269.672 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818504.91, Y-230509.14; and

(B) the second of which begins at an elevation of 517 feet above sea level at Texas Plane Coordinate X-2821418.78, Y-228980.65, and extends along a bearing of N 58 60 12.7 W for a distance of 3289.227 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818604.20, Y-230682.75.

(12) the North-Bound Lanes of Interstate Highway 35 Between the Municipal Police and Courts Building and West Tenth Street Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 501 feet above sea level at Texas Plane Coordinate X-2820624.99, Y-227858.68, and extends along a bearing of N 38 46 6.5 W for a distance of 3433.34 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818475.11, Y-230535.59; and

(B) the second of which begins at an elevation of 491 feet above sea level at Texas Plane Coordinate X-2820883.74, Y-228742.33, and extends along a bearing of N 49 33 37.2 W for a distance of 2977.840 feet to a point 100 feet from the center of the Capitol dome, this point begin located at Texas Plane Coordinate X-2818617.34, Y-230673.89.

(13) the South-Bound Lanes of the Upper Deck of Interstate Highway 35 Between Concordia College and the Martin Luther King

Boulevard Overpass Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 648 feet above sea level at Texas Plane Coordinate X-2822432.77, Y-233117.96, and extends along a bearing of S 55 43 8.2 W for a distance of 4627.079 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818609.48, Y-230511.74; and

(B) the second of which begins at an elevation of 618 feet above sea level at Texas Plane Coordinate X-2823639.09, Y-235471.26, and extends along a bearing of S 47 0 43.0 W for a distance of 7045.415 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818485.40, Y-230667.38.

(14) the North-Bound Lanes of Interstate Highway 35 Between Waller Creek Plaza and the Municipal Police and Court Building Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 498 feet above sea level at Texas Plane Coordinate X-2820389.72, Y-226977.21, and extends along a bearing of N 28 17 53.1 W for a distance of 4058.419 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818465.79, Y-230550.62; and

(B) the second of which begins at an elevation of 498 feet above sea level at Texas Plane Coordinate X-2820450.80, Y-227277.98, and extends along a bearing of N 28 14 42.1 W for a distance of 3823.132 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818641.53, Y-230645.90.

(15) the North-Bound Lanes of Interstate Highway 35 Between Third Street and the Waller Creek Plaza Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 482 feet above sea level at Texas Plane Coordinate X-2820010.77, Y-225710.94, and extends along a bearing of N 17 43 6.5 W for a distance of 5098.378 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818459.13, Y-230567.46; and

(B) the second of which begins at an elevation of 495 feet above sea level at Texas Plane Coordinate X-2820205.46, Y-

226432.65, and extends along a bearing of N 20 20 46.9 W for a distance of 4479.853 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818647.84, Y-230632.99.

(16) the East Seventh Street Bridge Over the Texas-New Orleans Railroad Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 476 feet above sea level at Texas Plane Coordinate X-2829646.58, Y-224957.77, and extends along a bearing of N 62 35 42.1 W for a distance of 12442.553 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818600.39, Y-230684.79; and

(B) the second of which begins at an elevation of 476 feet above sea level at Texas Plane Coordinate X-2829633.60, Y-224932.05, and extends along a bearing of N 63 23 0.0 W for a distance of 12442.674 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818509.56, Y-230506.61.

(17) the Longhorn Shores Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 435 feet above sea level at Texas Plane Coordinate X-2823252.67, Y-220131.43, and extends along a bearing of N 23 40 36.4 W for a distance of 11470.713 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818646.30, Y-230636.60; and

(B) the second of which begins at an elevation of 435 feet above sea level at Texas Plane Coordinate X-2822788.44, Y-220147.97, and extends along a bearing of N 22 33 57.2 W for a distance of 11273.211 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818462.39, Y-230558.09.

(18) the Zilker Clubhouse Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 561 feet above sea level at Texas Plane Coordinate X-2807259.05, Y-230056.68, and extends along a bearing of N 86 45 42.0 E for a distance of 11309.321 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-

2818550.31, Y-230695.53; and

(B) the second of which begins at an elevation of 561 feet above sea level at Texas Plane Coordinate X-2807248.18, Y-229969.74, and extends along a bearing of N 87 20 15.0 E for a distance of 11324.650 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818560.60, Y-230495.80.

(19) the Red Bud Trail Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 684 feet above sea level at Texas Plane Coordinate X-2801662.96, Y-236155.75, and extends along a bearing of S 72 6 10.9 E for a distance of 17783.936 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818586.34, Y-230690.63; and

(B) the second of which begins at an elevation of 684 feet above sea level at Texas Plane Coordinate X-2801887.25, Y-236038.78, and extends along a bearing of S 71 35 16.8 E for a distance of 17534.371 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818524.03, Y-230500.59.

(20) the Enfield Road Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 534 feet above sea level at Texas Plane Coordinate X-2814317.00, Y-232540.28, and extends along a bearing of S 64 7 24.8 E for a distance of 4664.000 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818513.37, Y-230504.76; and

(B) the second of which begins at an elevation of 534 feet above sea level at Texas Plane Coordinate X-2814166.24, Y-232616.36, and extends along a bearing of S 66 27 47.8 E for a distance of 4832.718 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818596.90, Y-230686.48.

(21) the Capital of Texas Highway Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 850 feet above sea level at Texas Plane Coordinate X-2793153.22, Y-246055.75, and extends along a bearing of S 58 62 1.6 E for a distance of

29736.832 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818607.06, Y-230681.07; and

(B) the second of which begins at an elevation of 850 feet above sea level at Texas Plane Coordinate X-2792663.44, Y-245928.13, and extends along a bearing of S 59 10 35.3 E for a distance of 30091.057 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818504.12, Y-230509.60.

(22) the 38th Street at Red River Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 609 feet above sea level at Texas Plane Coordinate X-2823695.84, Y-238333.37, and extends along a bearing of S 34 12 57.2 W for a distance of 9290.302 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818471.78, Y-230650.98; and

(B) the second of which begins at an elevation of 609 feet above sea level at Texas Plane Coordinate X-2823785.05, Y-238418.94, and extends along a bearing of S 33 9 15.9 W for a distance of 9410.983 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818638.21, Y-230540.07.

(23) the Robert Mueller Airport Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 603 feet above sea level at Texas Plane Coordinate X-2831475.74, Y-237087.29, and extends along a bearing of S 62 55 39.9 W for a distance of 14460.117 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818599.97, Y-230506.29; and

(B) the second of which begins at an elevation of 603 feet above sea level at Texas Plane Coordinate X-2831203.80, Y-237067.65, and extends along a bearing of S 63 18 20.5 W for a distance of 14208.702 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818509.52, Y-230684.67.

(24) the Martin Luther King Boulevard at IH-35 Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 570 feet

above sea level at Texas Plane Coordinate X-2821823.12, Y-232059.98, and extends along a bearing of S 64 15 51.7 W for a distance of 3582.510 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818595.97, Y-230504.39; and

(B) the second of which begins at an elevation of 570 feet above sea level at Texas Plane Coordinate X-2821665.89, Y-232039.68, and extends along a bearing of S 66 46 10.3 W for a distance of 3431.091 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818512.97, Y-230686.35.

(25) the Oakwood Cemetery Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 662 feet above sea level at Texas Plane Coordinate X-2823518.05, Y-231483.66, and extends along a bearing of S 78 43 9.6 W for a distance of 5042.788 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818572.69, Y-230497.21; and

(B) the second of which begins at an elevation of 662 feet above sea level at Texas Plane Coordinate X-2823496.42, Y-231576.82, and extends along a bearing of S 79 54 22.8 W for a distance of 5038.813 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818535.60, Y-230693.73.

(26) the East 12th Street at IH-35 Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 525 feet above sea level at Texas Plane Coordinate X-2821503.64, Y-229689.85, and extends along a bearing of N 74 46 47.6 W for a distance of 3086.184 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818525.71, Y-230500.05; and

(B) the second of which begins at an elevation of 523 feet above sea level at Texas Plane Coordinate X-2821304.47, Y-229769.21, and extends along a bearing of N 71 16 29.8 W for a distance of 2872.654 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818583.86, Y-230691.41.

(27) the Lyndon Baines Johnson Library Corridor, which

encompasses all of the area between two lines:

(A) one of which begins at an elevation of 596 feet above sea level at Texas Plane Coordinate X-2821830.47, Y-234589.86, and extends along a bearing of S 40 20 57.3 W for a distance of 5162.945 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818477.75, Y-230659.06; and

(B) the second of which begins at an elevation of 596 feet above sea level at Texas Plane Coordinate X-2821938.69, Y-233990.42, and extends along a bearing of S 43 38 37.1 W for a distance of 4790.234 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818625.90, Y-230525.05.

(28) the North Congress Avenue at Martin Luther King Boulevard Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 531 feet above sea level at Texas Plane Coordinate X-2819238.03, Y-232793.53, and extends along a bearing of N 14 46 25.5 E for a distance of 2303.720 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818650.57, Y-230565.97; and

(B) the second of which begins at an elevation of 531 feet above sea level at Texas Plane Coordinate X-2819171.57, Y-232814.96, and extends along a bearing of N 16 0 38.0 E for a distance of 2305.521 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818458.72, Y-230622.41.

(29) the field level of the Memorial Stadium Practice Center Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 550 feet above sea level at Texas Plane Coordinate X-2820995.40, Y-233291.51, and extends along a bearing of N 40 34 35.4 E for a distance of 3637.696 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818629.21, Y-230528.54; and

(B) the second of which begins at an elevation of 550 feet above sea level at Texas Plane Coordinate X-2820805.43, Y-233307.74, and extends along a bearing of N 41 18 34.5 E for a distance of 3525.556 feet to a point 100 feet from the center of the

Capitol dome, this point being located at Texas Plane Coordinate X-2818478.12, Y-230659.50.

(30) the entrance terrace to the University of Texas Swim Center Corridor, which encompasses all of the area between two lines:

(A) one of which begins at an elevation of 540 feet above sea level at Texas Plane Coordinate X-2821029.40, Y-232523.71, and extends along a bearing of N 50 14 50.5 E for a distance of 3138.424 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818616.54, Y-230516.77; and

(B) the second of which begins at an elevation of 540 feet above sea level at Texas Plane Coordinate X-2820873.01, Y-232433.33, and extends along a bearing of N 53 31 42.3 E for a distance of 2959.714 feet to a point 100 feet from the center of the Capitol dome, this point being located at Texas Plane Coordinate X-2818492.95, Y-230674.01.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3151.0021. DEFINITION OF CONGRESS AVENUE VIEW CORRIDOR. In this chapter, "Congress Avenue view corridor" means all of the area between two lines:

(1) one of which begins at Texas Plane Coordinate X-2817236.98, Y-226449.47 and terminates at Texas Plane Coordinate X-2818255.32, Y-229927.70; and

(2) the second of which begins at Texas Plane Coordinate X-2817394.92, Y-226404.24 and terminates at Texas Plane Coordinate X-2818441.82, Y-229874.83.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1288 (H.B. 2256), Sec. 1, eff. June 14, 2013.

Sec. 3151.003. APPLICABILITY. This chapter does not apply to:

(1) the construction, renovation, or equipment of the Darrell K Royal-Texas Memorial Stadium or to improvements related to the stadium, except that the height of the stadium or a related improvement may not exceed 666 feet above sea level;

(2) the construction, redevelopment, or improvement of 11th

Street pursuant to the East 11th and 12th Streets Redevelopment Program, except that the height of an improvement may not exceed 600 feet above sea level; or

(3) the construction, redevelopment, or improvement of Robert Mueller Municipal Airport under a redevelopment and reuse plan for the airport adopted by the City of Austin.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 556, Sec. 1, eff. June 20, 2003.

SUBCHAPTER B. PROHIBITED ACTIVITIES; CONFLICTING REQUIREMENTS

Sec. 3151.051. PROHIBITED CONSTRUCTION; CAPITOL VIEW CORRIDOR. A person may not begin, in a Capitol view corridor, construction of a structure that would exceed the maximum permissible height computed in accordance with the following formula:

h = (((653' - eVP) x (b'))/b) - (eS - eVP)

where:

h is the maximum permissible height of the structure;

b is the distance between the selected view point and the center of the Capitol dome;

b' is the distance between the view point and the structure;

eS is the elevation of the structure; and

eVP is the elevation of the view point.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1288 (H.B. 2256), Sec. 2, eff. June 14, 2013.

Sec. 3151.0511. PROHIBITED CONSTRUCTION; CONGRESS AVENUE VIEW CORRIDOR. A person may not begin, in the Congress Avenue view corridor, construction of a structure:

(1) on the west side of Congress Avenue that:

(A) is within 60 feet of Congress Avenue; and

(B) has a height that exceeds 90 feet; and

(2) on the east side of Congress Avenue that:

(A) is within 40 feet of Congress Avenue; and

(B) has a height that exceeds 90 feet.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1288 (H.B. 2256), Sec. 3, eff. June 14, 2013.

Sec. 3151.052. TRANSFERABLE CONSTRUCTION RIGHTS PROHIBITED. The governing body of a municipality affected by this chapter may not grant transferable construction rights to mitigate the impact of this chapter in a Capitol view corridor.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

Sec. 3151.053. CONFLICT WITH OTHER REQUIREMENTS. If a requirement of this chapter conflicts with a requirement enacted by a municipality or with any other requirement under state law, the stricter requirement prevails.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1288 (H.B. 2256), Sec. 4, eff. June 14, 2013.

SUBCHAPTER C. ENFORCEMENT

Sec. 3151.101. INJUNCTION. (a) A person may file an action to enjoin a violation or threatened violation of Section 3151.051.
(b) The court may grant appropriate relief.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 7.001, eff. Sept. 1, 2001.

TITLE 12. SECURITIES ACT
CHAPTER 4001. GENERAL PROVISIONS
SUBCHAPTER A. SHORT TITLE; PURPOSES; CONSTRUCTION

Sec. 4001.001. SHORT TITLE. This title may be cited as The Securities Act.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.002. PURPOSES; CONSTRUCTION. (a) The general purposes of this title are to:

(1) protect investors and, consistent with that purpose, encourage capital formation, job formation, and free and competitive securities markets;

(2) maximize coordination with federal and other states' laws and administration, particularly with respect to procedure, reports, forms, and exemptions; and

(3) minimize regulatory burdens on issuers and other persons subject to this title, especially small businesses.

(b) This title may be construed and implemented to effectuate the title's general purposes.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.003. SEVERABILITY. The provisions of this title are severable. If any provision of this title is declared void or unconstitutional, the remaining provisions of this title would have been enacted notwithstanding such judicial determination of the invalidity of the provision, and the remaining provisions shall remain in effect.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. DEFINITIONS

Sec. 4001.051. APPLICABILITY OF DEFINITIONS; CONSTRUCTION OF CERTAIN CONJUNCTIONS. (a) The definition for a term provided by this chapter applies in this title unless the context in which the term is used indicates a different meaning.

(b) The term "and" may be construed to mean "or," and the term "or" may be construed to mean "and."

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01,

eff. January 1, 2022.

Sec. 4001.052. AGENT. (a) Except as provided by Subsection (b), "agent" includes a person or company employed, appointed, or authorized by a dealer to sell, offer for sale or delivery, solicit subscriptions to or orders for, or deal in any other manner in, securities in this state directly or through a subagent.

(b) If a corporation or partnership is registered as a dealer under this title, an officer of the corporation or partner of the partnership is not deemed an agent solely because of the officer's or partner's status as an officer or partner of that entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.053. BOARD. "Board" means the State Securities Board.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.054. BROKER. "Broker" means "dealer" as defined in this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.055. COMMISSIONER. "Commissioner" means the securities commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.056. DEALER. (a) "Dealer" includes:

(1) a person or company, other than an agent, who for all or part of the person's or company's time engages in this state,

directly or through an agent, in selling, offering for sale or delivery, soliciting subscriptions to or orders for, undertaking to dispose of, or inviting offers for any security; and

(2) a person or company who deals in any other manner in any security in this state.

(b) Except as provided by Subsection (c), an issuer, other than a registered dealer, who directly or through any person or company, other than a registered dealer, offers for sale, sells, or makes sales of the issuer's own securities is deemed a dealer and shall comply with this title.

(c) An issuer is not deemed a dealer under Subsection (b) if:

(1) the issuer sells or offers for sale securities to a registered dealer or only by or through a registered dealer acting as fiscal agent for the issuer; or

(2) the transaction is exempt as provided by Subchapter A, Chapter 4005.

(d) Except as expressly provided otherwise in this title, a person or company engaged in the sale of, offer for sale of, solicitation of, subscription to, dealing in, or delivery of a security made in a transaction or under a condition specified in Subchapter A, Chapter 4005, is not deemed a dealer within the meaning of this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.057. FEDERAL COVERED INVESTMENT ADVISER. "Federal covered investment adviser" means an investment adviser who is registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.058. FRAUD; FRAUDULENT PRACTICE. (a) "Fraud" and "fraudulent practice" include:

(1) a misrepresentation of a relevant fact made in any manner;

(2) a promise, representation, or predication as to the

future not made honestly and in good faith;

(3) an intentional failure to disclose a material fact;

(4) a direct or indirect gain, through the sale of a security, of an underwriting or promotion fee or profit, or of a selling or managing commission or profit, that is so gross or exorbitant as to be unconscionable; and

(5) a scheme, device, or other artifice to obtain a profit, fee, or commission described by Subdivision (4).

(b) Nothing in this section limits the full meaning of "fraud," "fraudulent," or "fraudulent practice" as applied or accepted in courts.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.059. INVESTMENT ADVISER. "Investment adviser" includes a person who, for compensation, engages in the business of advising another, either directly or through publications or writings, with respect to the value of securities or to the advisability of investing in, purchasing, or selling securities or a person who, for compensation and as part of a regular business, issues or adopts analyses or a report concerning securities, as may be further defined by board rule. The term does not include:

(1) a bank or a bank holding company, as defined by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.), that is not an investment company;

(2) a lawyer, accountant, engineer, teacher, or geologist whose performance of the services is solely incidental to the practice of the person's profession;

(3) a dealer or agent who receives no special compensation for those services and whose performance of those services is solely incidental to transacting business as a dealer or agent;

(4) the publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; or

(5) a person whose advice, analyses, or report does not concern a security other than a security that is:

(A) a direct obligation of or an obligation the principal or interest of which is guaranteed by the United States

government; or

(B) issued or guaranteed by a corporation in which the United States has a direct or indirect interest and designated by the United States Secretary of the Treasury under Section 3(a)(12), Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(12)), as an exempt security for purposes of that Act.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.060. INVESTMENT ADVISER REPRESENTATIVE. (a) Except as provided by Subsection (b), "investment adviser representative" includes a person or company who, for compensation, is employed, appointed, or authorized by an investment adviser to solicit clients for the investment adviser or who provides investment advice, directly or through subagents, as defined by board rule, to an investment adviser's clients on behalf of the investment adviser.

(b) "Investment adviser representative" does not include a partner of a partnership or officer of a corporation or other entity that is registered as an investment adviser under this title solely because of the person's status as a partner or officer of that entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.061. ISSUER. "Issuer" means and includes a person or company who has issued, proposes to issue, or issues any security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.062. MORTGAGE. "Mortgage" includes a deed of trust to secure a debt.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.063. NO PAR VALUE; PAR VALUE. (a) "No par value" as applied to shares of stock or other securities means the securities are without a given or specified par value.

(b) For purposes of classifying or computing the par value of shares of stock or other securities of no par value, the amount for which the securities are sold or offered for sale to the public is used as a basis.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.064. PERSON; COMPANY. (a) The terms "person" and "company" include:

(1) any of the following formed under the laws of this or another state, country, sovereignty, or political subdivision of a state, country, or sovereignty, and regardless of whether incorporated or unincorporated:

(A) a corporation;

(B) a person;

(C) a company, including a joint stock company;

(D) a partnership, including a limited partnership;

(E) an association;

(F) a firm;

(G) a syndicate; or

(H) a trust; and

(2) a government or a political subdivision or agency of a government.

(b) As used in Subsection (a), "trust":

(1) is deemed to include a common law trust; and

(2) does not include a trust created or appointed under or by virtue of a last will and testament or by a court.

(c) The definition of "person" assigned by Section 311.005 does not apply to any provision in this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.065. REGISTERED DEALER. "Registered dealer" means a dealer the commissioner has registered under Sections 4004.054 and

4004.055, or Section 4004.056.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.066. REGISTERED INVESTMENT ADVISER. "Registered investment adviser" means an investment adviser to whom the commissioner has issued a registration certificate under Sections 4004.054 and 4004.055, or Section 4004.056.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.067. SALE; OFFER FOR SALE; SELL. (a) "Sale," "offer for sale," and "sell" include every disposition or attempted disposition of a security for value.

(b) "Sale" means and includes:

(1) a contract or agreement in which a security is sold, traded, or exchanged for money, property, or another thing of value; or

(2) a transfer of or agreement to transfer a security, in trust or otherwise.

(c) "Sale" or "offer for sale" includes a subscription, an option for sale, a solicitation of sale, a solicitation of an offer to buy, an attempt to sell, or an offer to sell, directly or by an agent, by a circular, letter, or advertisement or otherwise, including the deposit in any manner in the United States mail within this state of a circular, letter, or other advertising matter.

(d) "Sell" means any act by which a sale is made.

(e) A security given or delivered with or as a bonus on account of a purchase of securities or other thing of value is conclusively presumed to:

(1) constitute a part of the subject of the purchase; and

(2) have been sold for value.

(f) The sale of a security under conditions that entitle the purchaser or subsequent holder to exchange the security for another security or to purchase another security is not deemed a sale or offer for sale of the other security.

(g) This section does not limit the meaning of the terms

"sale," "offer for sale," or "sell" as used by or accepted in courts.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.068. SECURITY. (a) The term "security":

(1) includes:

(A) a limited partner interest in a limited partnership;

(B) a share;

(C) a stock;

(D) a treasury stock;

(E) a stock certificate under a voting trust agreement;

(F) a collateral trust certificate;

(G) an equipment trust certificate;

(H) a preorganization certificate or receipt;

(I) a subscription or reorganization certificate;

(J) a note, bond, debenture, mortgage certificate, or other evidence of indebtedness;

(K) any form of commercial paper;

(L) a certificate in or under a profit sharing or participation agreement;

(M) a certificate or instrument representing an interest in or under an oil, gas, or mining lease, fee, or title;

(N) a certificate or instrument representing or secured by an interest in any of the capital, property, assets, profits, or earnings of a company;

(O) an investment contract; and

(P) any other instrument commonly known as a security, regardless of whether the instrument is similar to another instrument listed in this subsection; and

(2) applies regardless of whether the security is evidenced by a written instrument.

(b) "Security" does not include an insurance policy, endowment policy, annuity contract, or optional annuity contract, or any contract or agreement in relation to and in consequence of any such policy or contract, issued by an insurance company subject to the supervision or control of the Texas Department of Insurance when the form of such policy or contract has been filed with the department as

required by law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. GENERAL ADMINISTRATIVE PROVISIONS

Sec. 4001.101. SUFFICIENCY OF NOTICE. In this title unless otherwise specified, a notice required by this title is sufficient if sent by registered or certified mail addressed to a person at:

(1) the address designated in any filing the person submitted to the commissioner; or

(2) the person's last known address.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.102. CONSENT FOR SERVICE OF PROCESS. (a) This section applies only to an issuer, dealer, or investment adviser that is:

(1) organized under the laws of any other state, territory, or government; or

(2) domiciled in any other state.

(b) Unless a board rule specifies otherwise, an issuer, dealer, or investment adviser subject to this section must include in an application filed with or notice filing submitted to the commissioner a provision that appoints the commissioner as the attorney of the issuer, dealer, or investment adviser who may be served with process in any action or proceeding against the issuer, dealer, or investment adviser that arises out of any transaction subject to this title.

(c) The provision required by Subsection (b) must be executed by an authorized agent of the issuer, dealer, or investment adviser filing the application or submitting the notice filing.

(d) Service of process on the commissioner in accordance with a provision executed under this section has the same effect as if the issuer, dealer, or investment adviser was created or formed under the laws of this state and served with process in this state.

(e) If the commissioner is served with process in accordance with a provision executed under this section, the commissioner shall forward the process by United States mail to the last known address

of the issuer, dealer, or investment adviser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER D. OTHER GENERAL PROVISIONS

Sec. 4001.151. PROSECUTION UNDER CERTAIN OTHER LAW. Nothing in Chapter 269 (S.B. 294), Acts of the 55th Legislature, Regular Session, 1957 (Article 581-1 et seq., Vernon's Texas Civil Statutes), limits the liability of a person or company, or of its officers or agents, imposed by law as of August 22, 1957, so as to prevent the prosecution of the person or company, or of its officers or agents, for violating another statute.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.152. GOOD FAITH. (a) A provision of this title that imposes liability or a penalty does not apply to an act or omission made in good faith in conformity with a board rule.

(b) This section applies regardless of whether the rule is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.153. BURDEN OF PROOF ON EXEMPTION. (a) A complaint, information or indictment, or a writ or proceeding brought under this title is not required to negate an exemption under this title.

(b) A party claiming an exemption under this title has the burden of proof on the exemption.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.154. CERTIFIED COPIES OF CERTAIN DOCUMENTS OR

INSTRUMENTS AS EVIDENCE. (a) Except as provided by Subsection (b), a copy of a paper, document, or instrument filed in the office of the commissioner and certified by the commissioner must be admitted in evidence in a court and elsewhere in this state in any case in which the original would be admitted in evidence.

(b) In any proceeding in a court, the court may, on cause shown, require the production of the original paper, document, or instrument.

(c) In a prosecution, suit, or other action or proceeding in a court of this state that arises under this title, a certificate showing compliance or noncompliance with a provision of this title by a dealer, agent, investment adviser, or investment adviser representative constitutes prima facie evidence of the person's compliance or noncompliance with that provision if the certificate:

(1) is under the state seal; and

(2) is signed by the commissioner.

(d) A certificate described by Subsection (c) is admissible in evidence in an action to enforce this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4001.155. PROOF OF CERTAIN RECORDS. All records of the former securities divisions of the offices of the secretary of state and the former Board of Insurance Commissioners for which custody was assumed by the commissioner under Chapter 269, Acts of the 55th Legislature, Regular Session, 1957, shall be proven under the commissioner's certificate.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

CHAPTER 4002. STATE SECURITIES BOARD AND SECURITIES COMMISSIONER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4002.001. APPLICABILITY OF OTHER LAW. The board and commissioner are subject to Chapters 551, 2001, and 2002.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.002. SUNSET PROVISION. The State Securities Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this title expires September 1, 2031.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.101, eff. January 1, 2022.

SUBCHAPTER B. STATE SECURITIES BOARD

Sec. 4002.051. APPOINTMENT OF BOARD. (a) The State Securities Board consists of five citizens of this state appointed by the governor with the advice and consent of the senate.

(b) Members of the board must be members of the general public.

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

(d) A member of the board is eligible for reappointment.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.052. MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment to the board if the person or the person's spouse:

(1) is registered as a dealer, agent, investment adviser, or investment adviser representative;

(2) has an active notice filing under this title to engage in business in this state as an investment adviser or investment adviser representative;

(3) is employed by or participates in the management of a business entity engaged in business as a securities dealer or investment adviser; or

(4) has, other than as a consumer, a financial interest in a business entity engaged in business as a securities dealer or

investment adviser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

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

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the board; or

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with as near as possible to one-third of the members' terms expiring January 20 of each odd-numbered year.

(b) The governor shall fill a vacancy on the board for the unexpired term.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.055. PRESIDING OFFICER. The governor shall designate a member of the board as the board's presiding officer to serve in that capacity at the will of the governor.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 4002.051;

(2) does not maintain during service on the board the qualifications required by Section 4002.051;

(3) is ineligible for membership under Section 4002.052 or 4002.053;

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

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

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

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

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.057. PER DIEM. A member of the board is entitled to a per diem as set by legislative appropriation for each day the

member engages in the business of the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.058. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

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

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

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

(d) The commissioner shall create a training manual that includes the information required by Subsection (b). The commissioner shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the commissioner a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.102, eff. January 1, 2022.

SUBCHAPTER C. SECURITIES COMMISSIONER AND EMPLOYEES OF BOARD

Sec. 4002.101. SECURITIES COMMISSIONER. The board shall appoint a securities commissioner who serves at the pleasure of the board and who, under the board's supervision, shall administer this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.102. DEPUTY SECURITIES COMMISSIONER; SECURITIES COMMISSIONER APPOINTEES. (a) The commissioner, with the consent of the board, may designate a deputy securities commissioner who shall perform all of the duties of the commissioner required by law to be performed by the commissioner when the commissioner is absent or unable to act for any reason.

(b) The commissioner shall appoint other persons as necessary to carry out the powers and duties of the commissioner under this title and under other laws granting jurisdiction to or applicable to the board or the commissioner.

(c) The commissioner may delegate to a person appointed under Subsection (b) powers and duties of the commissioner as the

commissioner considers necessary.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the commissioner and board employees.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.104. STANDARDS OF CONDUCT INFORMATION. The commissioner or the commissioner's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of each nonentry level position at least 10 days before the date of any public posting.

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

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

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

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

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.107. WRITTEN EMPLOYEE COMPLAINT PROCEDURE. (a) The commissioner or the commissioner's designee shall maintain a system to promptly and efficiently act on complaints filed with the commissioner or board concerning an employee or former employee. The commissioner or the commissioner's designee shall maintain the information listed in Section 4007.051 for files maintained under that section for complaints against persons registered under this title.

(b) The commissioner or the commissioner's designee shall make information available describing the board's procedures for complaint investigation and resolution.

(c) The commissioner or the commissioner's designee shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.103, eff. January 1, 2022.

SUBCHAPTER D. POWERS AND DUTIES OF BOARD AND COMMISSIONER

Sec. 4002.151. RULES. (a) Subject to Subsection (b), the board may adopt rules as necessary to implement this title, including rules:

(1) governing registration statements, applications, notices, and reports; and

(2) defining terms, regardless of whether used in this title, provided that the definitions are not inconsistent with the purposes fairly intended by the policy and provisions of this title.

(b) The board may not adopt a rule unless, after notice and opportunity for comment, the board finds that the action is:

(1) necessary or appropriate in the public interest or for the protection of investors; and

(2) consistent with the purposes fairly intended by the policy and provisions of this title.

(c) For the purpose of adopting rules, the board may classify securities, persons, and matters within the board's jurisdiction and prescribe different requirements for different classes.

(d) The board, in the board's discretion, may waive a requirement of a rule in a situation in which, in the board's opinion, the requirement is not necessary in the public interest or for the protection of investors.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.152. RULES REGARDING COMPETITIVE BIDDING OR ADVERTISING. (a) The board may not adopt rules restricting competitive bidding or advertising by a person registered under this title except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in the board's rules to prohibit

false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(c) This section does not affect limitations on advertising in Section 4005.012, 4005.013, or 4005.021 or in rules adopted by the board under Section 4005.024.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.153. BOARD DELEGATION OF RULEMAKING AUTHORITY. (a) The board by rule may delegate to the commissioner or the deputy securities commissioner the authority granted to the board under Section 4002.151 or 4002.152 to adopt rules or to waive the requirements of rules as the board considers appropriate.

(b) Any rule adopted by the commissioner or the deputy securities commissioner based on the authority delegated under this section must be adopted in accordance with Sections 4002.151 and 4002.152.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.1535. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The board shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of board rules; and

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

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

the use of alternative dispute resolution by state agencies.

(c) The board shall:

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

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.104, eff. January 1, 2022.

Sec. 4002.154. COMMISSIONER DISCRETION REGARDING RULES. In applying the standards of this title, the commissioner may waive or relax any restriction or requirement in a board rule that, in the commissioner's opinion, is unnecessary for the protection of investors in a particular case.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.155. DEPOSIT OF RECEIPTS TO GENERAL REVENUE FUND. The commissioner or board shall deposit money received from assessments or charges under this title to the credit of the general revenue fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.156. BOARD AUTHORITY TO EXERCISE COMMISSIONER'S POWERS. The board may exercise any power or perform any act the commissioner is authorized to exercise or perform under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.157. LIST OF SECURITIES OFFERED. At any time, the

commissioner may, in the exercise of reasonable discretion under this title, require a dealer to file with the commissioner a partial or complete list of securities that the dealer:

(1) is offering or advertising for sale in this state at the time of the request; or

(2) has offered or advertised for sale in this state during the six-month period preceding the date of the request.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.158. RECORD OF PROCEEDINGS. A complete record shall be kept of all proceedings held before the commissioner on any hearing or investigation.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.159. RECORD OF CERTAIN FILINGS AND ORDERS. (a) The commissioner shall maintain a record of:

(1) the names and addresses of all registered dealers, registered agents, registered investment advisers, registered investment adviser representatives, and persons who have submitted a notice filing under this title; and

(2) all orders of the commissioner denying, suspending, or revoking a registration.

(b) A record maintained under Subsection (a) must be open for public inspection.

(c) This section does not apply to information made confidential by Section 4002.161, 4007.052, or 4007.056 or other law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.160. COMMISSIONER'S ACCESS TO RECORDS AND REPORTS OF OTHER STATE AGENCIES. (a) During an investigation for the purpose of enforcing this title or in connection with the application of a person or company for registration or for a permit qualifying

securities for sale, the commissioner or deputy securities commissioner shall have free access to all records of, all reports of, and all reports made to an agency or department of this state.

(b) If the commissioner or deputy securities commissioner discloses any information made confidential by law, the affected person or company has a right of action on the official bond of the commissioner or deputy securities commissioner for the person's or company's injuries in a suit brought in the name of the state at the relation of the person or company.

(c) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.161. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) To the extent not otherwise provided by this title, any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations are confidential.

(b) Except as provided by Subsection (c) or Section 4007.056(b) or (c), the commissioner may not disclose a document or other information made confidential by Subsection (a) unless the disclosure is made to the public under court order for good cause shown.

(c) The commissioner, at the commissioner's discretion, may disclose confidential information in the commissioner's possession to:

(1) a governmental or regulatory authority or any association of governmental or regulatory authorities approved by board rule; or

(2) any receiver appointed under Section 4007.151.

(d) Disclosure of information under Subsection (c) does not violate any other provision of this title or Chapter 552.

(e) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.162. BOARD ACCESS TO OFFICES AND RECORDS. Each member of the board shall have access to all of the offices and records under the commissioner's supervision.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.163. ANNUAL REPORT. On or before January 1 of each year, the board, with the advice of the commissioner, shall report to the governor and the presiding officer of each house of the legislature about the administration of this title and plans and needs for future securities regulation. The report must include:

(1) a detailed accounting of all funds received and disbursed by the board during the preceding year, including the amount spent by the board assisting in the criminal prosecution of cases under Section 4007.001(e); and

(2) with respect to cases referred during the preceding year by the board under Section 4007.001(c), a breakdown by county and district attorney of the number of cases where:

(A) criminal charges were filed;

(B) prosecution is ongoing; or

(C) prosecution was completed.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.105, eff. January 1, 2022.

SUBCHAPTER E. CONSUMER INTEREST AND OTHER PUBLIC INTEREST INFORMATION

Sec. 4002.201. CONSUMER INTEREST INFORMATION. (a) The board shall prepare information of consumer interest describing:

(1) the regulatory functions of the board and commissioner; and

(2) the procedures by which consumer complaints are filed with and resolved by the board or commissioner.

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

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.202. PUBLIC PARTICIPATION. The board by rule shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4002.203. DOCUMENTS AND OTHER INFORMATION FILED WITH COMMISSIONER; PUBLIC RECORDS. (a) All information, papers, documents, instruments, and affidavits required by this title to be filed with the commissioner are public records.

(b) All information, papers, documents, instruments, and affidavits required by this title to be filed with the commissioner must be open to inspection and examination by a purchaser or prospective purchaser of securities, or by the agent or representative of a purchaser or prospective purchaser of securities. The commissioner shall:

(1) provide to a purchaser or prospective purchaser of securities, or an agent or representative of those persons, any information required to be filed with the commissioner under this title; and

(2) on request by a person described by Subdivision (1), provide a certified copy of any paper, document, instrument, or affidavit filed with the commissioner under this title.

(c) This section does not apply to information made confidential by Section 4002.161, 4007.052, or 4007.056 or other law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

CHAPTER 4003. SECURITIES

SUBCHAPTER A. PERMIT QUALIFYING SECURITIES FOR SALE

Sec. 4003.001. PERMIT REQUIRED; EXCEPTIONS. (a) A dealer or agent may not sell or offer for sale any securities issued after

September 6, 1955, unless the commissioner has issued a permit qualifying securities for sale for those securities to the issuer of the securities or a registered dealer.

(b) This section does not apply to:

(1) securities that have been registered by notification under Subchapter B or by coordination under Subchapter C; or

(2) transactions or securities that are exempt under Chapter 4005.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.002. PERMIT APPLICATION TO QUALIFY SECURITIES FOR SALE. (a) The commissioner may not issue a permit qualifying securities for sale required by Section 4003.001 until the issuer of the securities or a registered dealer files with the commissioner an application for the permit in the form of a statement containing the following information:

(1) the name, residence, and post office address of each of the company's officers and directors;

(2) the location of the company's principal office and each branch office in this state;

(3) a copy of the company's certificate of formation or articles of incorporation or partnership or association and any amendments to those documents;

(4) if the company is a corporation, a copy of:

(A) all minutes of any proceedings of the company's directors, stockholders, or members relating to or affecting the issuance of the securities; and

(B) the company's bylaws and any amendments to the bylaws;

(5) if the company is a trustee, a copy of all instruments by which the trust is created and in which the trust is accepted, acknowledged, or declared;

(6) a statement showing:

(A) the amount of capital stock and, if there is no capital stock, the amount of capital of the issuer that is contemplated to be employed;

(B) the number of shares into which the stock is

divided or, if not divided into shares, what division is to be made or is contemplated;

(C) the par value of each share or, if there are shares with no par value, the price at which the security is proposed to be sold; and

(D) the promotional fees or commissions to be paid for the sale of the securities, including:

(i) all compensation of every nature allowed to be paid to the promoters or allowed for the sale of the securities;

(ii) how the compensation is to be paid, whether in cash, securities, service or otherwise, or partly of either or both;

(iii) the amount of cash to be paid or securities to be issued, given, transferred, or sold to promoters for promotion or organization services and expenses; and

(iv) the amount of promotion or organization services and expenses that the issuer will assume or pay in any way;

(7) a copy of:

(A) certificates of the stock and all other securities to be sold or offered for sale, together with application blanks for the stock and securities;

(B) any contract the company proposes to make concerning the securities; and

(C) any prospectus or advertisement or other description of security prepared by or for the company for distribution or publication; and

(8) the statement of financial condition and income statement described by Section 4003.003.

(b) The statement in an application under this section must be:

(1) verified under oath by an executive officer or partner of the issuer or registered dealer filing the application; and

(2) attested by the secretary or partner of the issuer or registered dealer filing the application.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.003. STATEMENT OF FINANCIAL CONDITION AND INCOME STATEMENT. (a) In this section, "current liabilities" means all liabilities that will mature and become due not later than the first

anniversary of the date the application listing the liabilities is filed under this subchapter.

(b) A statement of financial condition required in the application under this subchapter must:

(1) be detailed;

(2) be prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles;

(3) reflect the financial condition of the issuer of the securities to be qualified for sale on a date not earlier than the 90th day before the date the issuer or registered dealer files the application;

(4) show all of the issuer's liabilities by listing all current liabilities and, separately from current liabilities, all other liabilities, including contingent liabilities, showing the amount of those liabilities that are secured by mortgage or otherwise, the issuer's assets that are subject to the mortgage, and the dates of maturity of the mortgage indebtedness;

(5) list all of the issuer's assets in detail and show how the value of the assets was determined;

(6) show whether the value of the assets represents:

(A) the assets' actual cost in money;

(B) the assets' present market value; or

(C) some other value of the assets;

(7) show the present actual value of the assets; and

(8) state whether the value listed in the statement is greater or less than the assets':

(A) actual cost value in money; and

(B) present market value.

(c) The statement under Subsection (b) must show the amount for which any real property listed as an asset is rendered for state and county taxation or assessed for taxation.

(d) The statement under Subsection (b) must describe any assets consisting of anything other than cash or real property in detail to give the commissioner the fullest possible information. The commissioner may require the filing of additional information as the commissioner considers necessary to determine whether the true value of those assets is reflected in the statement.

(e) A statement under Subsection (b) that lists assets subject to a repurchase agreement or similar agreement under the terms of

which the absolute ownership of or title to the assets is qualified or limited must fully state:

(1) the terms of the agreement; and

(2) the amount and character of the assets subject to the agreement.

(f) Subject to Subsection (g), the income statement required in an application under this subchapter must:

(1) be detailed;

(2) be prepared in accordance with generally accepted auditing standards and procedures and generally accepted accounting principles; and

(3) cover the lesser of:

(A) the preceding three years of the issuer's operations; or

(B) the period the issuer has been operating.

(g) If the issuer has not been operating but is taking over a concern of any kind that was previously operating, the income statement required in an application under this subchapter must:

(1) show the operations of the concern taken over for the three years preceding the taking over of the concern; and

(2) clearly reflect the amount of net income or net loss incurred during each year shown.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.004. EXCEPTIONS TO CERTIFICATION REQUIREMENT FOR FINANCIAL STATEMENTS. (a) Financial statements filed as required by this subchapter are not required to be certified by an independent certified public accountant or independent public accountant if:

(1) the fiscal year of the issuer of the securities to be qualified for sale ended on a date earlier than the 90th day before the date of the filing; and

(2) financial statements in addition to those required by this subchapter are filed that:

(A) contain the information required by Section 4003.003; and

(B) are certified by an independent certified public accountant or independent public accountant as of the end of the

issuer's preceding fiscal year.

(b) Instead of being audited and certified, the financial statements described by Section 4003.003 of a small business issuer, as defined by board rule, that meets all other requirements the board by rule or order prescribes, conditionally or unconditionally, may be reviewed by an independent certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.005. PERMIT FEE. The commissioner shall charge the fees provided by Chapter 4006 for the issuance of a permit qualifying securities for sale.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.006. EXAMINATION OF AND DETERMINATION ON PERMIT APPLICATION. (a) On the filing of an application for a permit qualifying securities for sale under this subchapter, the commissioner shall examine the application and the papers and documents filed with the application.

(b) After the examination, the commissioner shall:

(1) issue a permit to the applicant authorizing the applicant to issue and dispose of the securities if the commissioner determines that:

(A) the applicant's proposed plan of business appears to be fair, just, and equitable;

(B) any consideration paid or to be paid by promoters for the securities is fair, just, and equitable if that consideration is less than the proposed offering price to the public; and

(C) the securities the applicant proposes to issue and the methods to be used by the applicant in issuing and disposing of the securities will not work a fraud upon the purchaser of the securities; or

(2) deny the application for a permit and notify the

applicant in writing of the commissioner's decision if the commissioner determines that the applicant's proposed plan of business appears to be unfair, unjust, or inequitable.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.007. FORM AND CONTENTS OF PERMIT. A permit qualifying securities for sale must:

(1) be in the form the commissioner prescribes; and

(2) state in bold type that the issuance of the permit is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be issued.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.008. TERM OF PERMIT. A permit qualifying securities for sale that is issued under this subchapter is valid for one year.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.009. RENEWAL OF PERMIT. (a) An issuer or registered dealer may file a renewal application with the commissioner if the securities authorized to be sold under a permit qualifying securities for sale that is issued under this subchapter are not sold before the permit expires.

(b) The renewal application must:

(1) state:

(A) the total number of shares sold in this state;

(B) the total number of shares sold outside this state; and

(C) the total number of shares outstanding;

(2) contain a detailed balance sheet;

(3) contain an operating statement; and

(4) provide any other information the commissioner may require.

(c) The commissioner shall examine a renewal application and issue a renewal permit or deny the application using the standards stated in Section 4003.006 applicable to an original application.

(d) If issued, a renewal permit:

(1) is valid for one year; and

(2) must be in the form the commissioner prescribes.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.010. USE OF PERMIT FOR CERTAIN PURPOSES PROHIBITED. A dealer, issuer, or agent may not use a permit qualifying securities for sale in connection with a sale or effort to sell a security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. REGISTRATION BY NOTIFICATION

Sec. 4003.051. ELIGIBILITY FOR REGISTRATION BY NOTIFICATION. (a) Securities may be registered by notification under this subchapter if the securities are issued by an issuer that:

(1) has been in continuous operation for at least three years; and

(2) has shown, during at least the three years preceding the date of registration under this subchapter, average annual net earnings after deducting all prior charges, including income taxes but not including charges on securities to be retired out of the proceeds of sale, as follows:

(A) for interest-bearing securities, not less than one and one-half times the annual interest charges on those securities and on all other outstanding interest-bearing securities of equal rank;

(B) for securities with a specified dividend rate, not less than one and one-half times the annual dividend requirements on those securities and on all other outstanding securities of equal rank; and

(C) for securities with no specified dividend rate, not less than five percent on all outstanding securities of equal rank, together with the amount of those securities then offered for sale,

based on the maximum price at which the securities are to be offered for sale.

(b) For purposes of calculating average annual net earnings under Subsection (a)(2)(C), an issuer's ownership of more than 50 percent of the outstanding voting stock of a corporation:

(1) is construed as the issuer's proportionate ownership of that corporation; and

(2) permits the inclusion of that corporation's earnings applicable to the payment of dividends on the stock owned in the earnings of the issuer of the securities being registered by notification.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.052. REGISTRATION STATEMENT REQUIRED. (a) To register securities by notification that are entitled to that registration, an issuer of the securities or a registered dealer must file with the commissioner a registration statement that complies with this section.

(b) A registration statement filed under this section must:

(1) be in the form the commissioner prescribes;

(2) be signed by the applicant filing the statement; and

(3) contain the following information:

(A) the name and business address of the main office of the issuer of the securities to be registered and the address of the issuer's principal office, if any, in this state;

(B) the title of the securities to be registered and the total amount of securities to be offered;

(C) the price at which the securities are to be offered for sale to the public, the amount of securities to be offered in this state, and the amount of the registration fee, computed as provided by Chapter 4006;

(D) a brief statement of the facts showing that the securities are entitled to be registered by notification;

(E) the name and business address of the applicant filing the statement;

(F) subject to Subsection (c) and except as provided by Section 4003.053, financial statements that include, for at least the

three years preceding the date of registration:

(i) a certified income statement;

(ii) a certified balance sheet; and

(iii) a certified statement of stockholders' equity;

(G) a copy of any prospectus describing the securities; and

(H) a filing of a consent to service of process conforming to the requirements of Section 4001.102, if the issuer:

(i) is registering the securities; and

(ii) is not a resident of this state or incorporated or formed under the laws of this state.

(c) The financial statements described by Subsection (b)(3)(F) must reflect the financial condition of the issuer of the securities to be registered on a date not earlier than the 90th day before the date the issuer or registered dealer files the registration statement.

(d) Filing a registration statement that complies with this section constitutes the registration of the securities by notification, subject to Section 4003.055.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.053. EXCEPTION TO CERTIFICATION REQUIREMENT FOR FINANCIAL STATEMENTS. Financial statements filed as required by this subchapter are not required to be certified by an independent certified public accountant or independent public accountant if:

(1) the fiscal year of the issuer of the securities to be registered ended on a date earlier than the 90th day before the date of the filing; and

(2) financial statements in addition to those required by this subchapter are filed that:

(A) contain the information required by Section 4003.052; and

(B) are certified by an independent certified public accountant or independent public accountant as of the end of the issuer's preceding fiscal year.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01,

eff. January 1, 2022.

Sec. 4003.054. REGISTRATION PROCEDURES. (a) The commissioner shall complete the procedures specified by this section to register securities entitled to registration by notification.

(b) The commissioner shall:

(1) examine the registration statement filed under Section 4003.052 and the accompanying papers to determine their sufficiency under the requirements of this subchapter; and

(2) record the registration by notification of the securities described on receipt of:

(A) the registration statement;

(B) any prospectus;

(C) payment of the filing fee and registration fee; and

(D) a consent to service of process, if required.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.055. EFFECTIVE DATE OF REGISTRATION BY NOTIFICATION. (a) Except as provided by Subsection (b), the registration of securities by notification takes effect five days after the date the commissioner receives the registration statement filed under Section 4003.052 and all accompanying papers.

(b) The commissioner may waive or reduce the five-day waiting period if the commissioner determines that the public will not be injured by the waiver or reduction of the waiting period.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.056. EFFECT OF REGISTRATION BY NOTIFICATION. On registration of securities by notification, the securities may be sold in this state by a registered dealer or a registered agent.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.057. TERM OF REGISTRATION. A registration of securities by notification is effective for one year.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.058. RENEWAL OF REGISTRATION. A registration of securities by notification may be renewed for additional periods of one year if:

(1) the securities are entitled to registration under this subchapter at the time of renewal; and

(2) a new filing is made under this subchapter together with the payment of the renewal fee of $10.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.059. INSUFFICIENT OR FRAUDULENT REGISTRATION STATEMENT. (a) If at any time, in the commissioner's opinion, the information in a registration statement filed under this subchapter is insufficient to establish that the securities described in the statement are or were entitled to registration by notification under this subchapter, or that the registration information contains or contained false, misleading, or fraudulent facts, the commissioner may order the applicant who filed the statement to cease and desist from selling or offering for sale the securities registered or proposed to be registered by notification under this subchapter until additional information is filed with the commissioner that in the commissioner's judgment is necessary to establish that those securities are or were entitled to registration by notification under this subchapter.

(b) The provisions of Section 4007.107 relating to hearings apply to an order entered under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. REGISTRATION BY COORDINATION

Sec. 4003.101. ELIGIBILITY FOR REGISTRATION BY COORDINATION. A security may be registered by coordination if a registration statement has been filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) in connection with the same offering.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.102. REGISTRATION STATEMENT REQUIRED. To register securities by coordination, an issuer of the securities or a registered dealer must file with the commissioner a registration statement that contains:

(1) the following information:

(A) the amount of securities to be offered in this state;

(B) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and

(C) any adverse order, judgment, or decree previously entered in connection with the offering by a court or the Securities and Exchange Commission;

(2) one copy of the prospectus filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) together with all amendments to the prospectus;

(3) a copy of:

(A) the articles of incorporation and bylaws, or their substantial equivalents, currently in effect;

(B) any agreements with or among underwriters; and

(C) any indenture or other instrument governing the issuance of the securities to be registered;

(4) a specimen or copy of the security;

(5) any other information or copies of any other documents filed under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) the commissioner requests;

(6) an undertaking to promptly forward all amendments to the federal registration statement other than an amendment that delays the effective date only; and

(7) a consent to service of process conforming to the requirements of Section 4001.102 if:

(A) the registration statement is filed by the issuer or by a dealer that will offer the securities for sale as the issuer's agent; and

(B) the issuer is not a resident of this state or incorporated or formed under the laws of this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.103. EXAMINATION OF AND DETERMINATION ON REGISTRATION STATEMENT. (a) In this section, "price amendment" means the final federal amendment that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent on the offering price.

(b) The commissioner shall examine a registration statement filed under Section 4003.102 and the accompanying documents on receipt.

(c) The commissioner may enter an order denying registration of the securities to be registered under the registration statement if after the examination the commissioner determines that the registrant has not proven that:

(1) the proposed plan of business of the issuer of the securities is fair, just, and equitable;

(2) any consideration paid or to be paid by promoters for the securities is fair, just, and equitable if that consideration is less than the proposed offering price to the public; and

(3) the securities the registrant proposes to issue and the methods to be used by the registrant in issuing and disposing of the securities will not work a fraud upon the purchaser of the securities.

(d) If the commissioner enters an order denying the registration of securities under this subchapter, the commissioner shall notify the registrant immediately.

(e) A registration statement under this subchapter becomes effective automatically at the moment the federal registration statement becomes effective if all of the following conditions are satisfied:

(1) the commissioner has not entered an order denying

registration of the securities;

(2) the registration statement has been on file with the commissioner for at least 10 days; and

(3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or a shorter period as the commissioner expressly permits and the offering is made within those limitations.

(f) The commissioner may waive either or both of the conditions specified in Subsections (e)(2) and (3).

(g) The registrant shall promptly:

(1) notify the commissioner by telephone or telegram of the date and time when the federal registration statement became effective and the content of any price amendment; and

(2) file a post-effective amendment containing the information and documents in the price amendment.

(h) The commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to or suspending effectiveness of the registration statement until the registrant complies with this subchapter if the commissioner:

(1) does not receive the notification and post-effective amendment required under Subsection (g); and

(2) promptly notifies the registrant by telephone or telegram of the issuance of the stop order, and promptly confirms by letter or telegram if the commissioner notifies by telephone.

(i) A stop order entered under Subsection (h) is void from the time of the order's entry if the registrant proves compliance with the notice and post-effective amendment requirements of this section.

(j) If the federal registration statement becomes effective before all conditions under this section are satisfied and the conditions are not waived, the registration statement becomes effective automatically when all the conditions are satisfied.

(k) If the registrant advises the commissioner of the date the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether the commissioner then contemplates the issuance of an order denying registration. This advice by the commissioner does not preclude the issuance of the order at any time.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.104. TERM OF REGISTRATION. (a) Except as provided by this section, a registration by coordination of securities under this subchapter is effective until the first anniversary of the date the commissioner declares the registration to be effective.

(b) The initial registration by coordination of securities of an open-end investment company, as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), is effective until two months after the end of the issuer's fiscal year.

(c) The registration by coordination of securities of a unit investment trust, as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), is effective until the first anniversary of the date of effectiveness granted by the Securities and Exchange Commission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.105. RENEWAL OF REGISTRATION. (a) Except as provided by Subsection (b) and subject to Subsection (c), a registration of securities under Section 4003.104 may be renewed for additional periods of one year if the appropriate registration forms and renewal fees are received before the expiration date of the registration to be renewed.

(b) Subject to Subsection (c), for renewal of the initial registration of securities described by Section 4003.104(b), the issuer or the issuer's agent may renew the registration by submitting the appropriate registration forms and renewal fees not later than two months after the end of the issuer's fiscal year.

(c) The same standards of fairness, justice, and equity prescribed by this subchapter for original approval of a registration apply to the renewal of the registration.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER D. PROHIBITED SALES

Sec. 4003.151. CERTAIN SALES PROHIBITED. If the sale of a security entitles the purchaser or subsequent holder to exchange that security for another, or to purchase another security, the sale of, including an exchange for, the other security may not be made unless the sale is authorized under this title, if not exempt under this title, or by another provision of law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER E. REGULATION OF OFFERS

Sec. 4003.201. DEFINITION. In this subchapter, "broadcast offer" means an offer disseminated by radio, television, recorded telephone presentation, or other mass media.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.202. APPLICABILITY. This subchapter does not apply to transactions or securities exempt under Chapter 4005.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.203. AUTHORIZED WRITTEN, PRINTED, OR BROADCAST OFFERS. A person may make in this state a written or printed offer, including a pictorial demonstration with any accompanying script, or broadcast offer to sell a security if:

(1) a copy of the offer is filed with the commissioner not later than the 10th day after the date of the offer's first use in this state;

(2) the person making or distributing the offer is a registered dealer or registered agent of a registered dealer;

(3) either:

(A) the security is registered under Subchapter B or C or the commissioner has issued a permit qualifying securities for sale for the security under Subchapter A; or

(B) an application for registration under Subchapter B or C or for a permit under Subchapter A has been filed with the commissioner;

(4) for a registration for the security that has not become effective under Subchapter B or C or for a permit that has not been issued under Subchapter A, the offer prominently states on the first page of a written or printed offer or as a preface to any pictorial or broadcast offer either:

(A) "INFORMATIONAL ADVERTISING ONLY.
THE SECURITIES HEREIN DESCRIBED HAVE NOT BEEN QUALIFIED OR REGISTERED FOR SALE IN TEXAS. ANY REPRESENTATION TO THE CONTRARY OR CONSUMMATION OF SALE OF THESE SECURITIES IN TEXAS PRIOR TO QUALIFICATION OR REGISTRATION THEREOF IS A CRIMINAL OFFENSE."; or

(B) other language required by the Securities and Exchange Commission that in the commissioner's opinion will inform investors that the securities may not yet be sold;

(5) the person making or distributing the offer in this state:

(A) has not received written notice of an order prohibiting the offer under Section 4007.101 or 4007.102; or

(B) has received notice of an order described by Paragraph (A) but the order is no longer in effect; and

(6) payment is not accepted from the offeree and no contract of sale is made before registration of the security is effective under Subchapter B or C or a permit is issued under Subchapter A.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.204. AUTHORIZED ORAL OFFERS. (a) In this section, "oral offer" means an offer that is not a broadcast offer.

(b) A person may make in this state an oral offer to sell a security in person, by telephone, or by other direct individual communication if:

(1) the person making the offer is a registered dealer or registered agent of a registered dealer;

(2) either:

(A) the security is registered under Subchapter B or C

or the commissioner has issued a permit qualifying securities for sale for the security under Subchapter A; or

(B) an application for registration under Subchapter B or C or for a permit under Subchapter A has been filed with the commissioner;

(3) the person making or distributing the offer:

(A) has not received written notice of an order prohibiting the offer under Section 4007.101 or 4007.102; or

(B) has received notice of an order described by Paragraph (A) but the order is no longer in effect; and

(4) payment is not accepted from the offeree and no contract of sale is made before registration of the security is effective under Subchapter B or C or a permit is issued under Subchapter A.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.205. DEALER NAMED IN OFFER. A dealer whose name is included in a written, printed, or broadcast offer along with the name of a registered dealer is not deemed, on that fact alone, to have made an offer in this state to sell a security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.206. EFFECT OF COMPLIANCE OR NONCOMPLIANCE. (a) An offer to sell a security that complies with Section 4003.203 or 4003.204 does not violate Subchapter A, B, or C.

(b) An offer to sell a security that does not comply with Section 4003.203 or 4003.204 violates this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER F. CROWDFUNDING

Sec. 4003.251. DEFINITION. In this subchapter, "authorized small business development entity" means:

(1) a Type A corporation authorized under Chapter 504, Local Government Code;

(2) a Type B corporation authorized under Chapter 505, Local Government Code;

(3) a nonprofit organization authorized by an agency or authority of the federal government to distribute housing and community development block grants;

(4) a municipal corporation;

(5) the Texas Veterans Commission; or

(6) a nonprofit community development financial institution certified by the Community Development Financial Institutions Fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.252. CROWDFUNDING. (a) The board shall adopt rules to regulate and facilitate online intrastate crowdfunding applicable to authorized small business development entities. The board may create other requirements necessary to carry out this subchapter.

(b) The rules must:

(1) allow an authorized small business development entity to list on the entity's web portal offerings of securities by issuers in which the entity is financially interested;

(2) allow an authorized small business development entity and the entity's web portal to list offerings of securities without offering investment advice;

(3) allow an authorized small business development entity to subcontract the operations of a crowdfunding web portal to a third party as permitted by board rule; and

(4) limit the offerings of securities on an authorized small business development entity's web portal to securities of issuers located within the service area of the entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER G. PROTECTION FOR PURCHASERS OF SECURITIES

Sec. 4003.301. DEPOSIT IN TRUST ACCOUNT. (a) If the commissioner considers it necessary to protect the interests of

prospective purchasers of securities a company sells or offers for sale, the commissioner may require the company to deposit in a trust account at a bank or trust company approved by the commissioner and doing business in this state:

(1) all or part of the proposed securities; or

(2) subject to Subsection (b), all or part of the money and other funds received from the sale of those securities.

(b) A company is not required to deposit funds received from the sale of securities in a trust account to the extent the commissioner considers the funds necessary to be used, provided that the amount of the funds the company is not required to deposit does not exceed the amount allowed as expenses and commissions for the sale of the securities.

(c) The funds must remain on deposit until the proposed or existing company sells a specified monetary amount or number of shares of the securities that in the commissioner's opinion will reasonably assure the public's protection.

(d) When the commissioner makes a written determination that the terms of the escrow agreement have been fully met, the bank or trust company in which the funds of a proposed or existing corporation are deposited in a trust account as provided by this section shall transfer to the corporation and the corporation's executive officers the funds to allow the corporation to use the securities or money in the corporation's business.

(e) If a proposed or existing company that deposits funds in a trust account as provided by this section does not sell the minimum amount of capital necessary under the escrow agreement within two years, the commissioner may authorize the bank or trust company at which the funds are deposited to return to the subscribers the portion of the funds that were deposited or escrowed under the escrow agreement. The bank or trust company shall return the funds to the subscribers on receipt of authorization from the commissioner under this subsection. If the bank or trust company holds securities under the escrow agreement, the bank or trust company may return the securities to the corporation only after the bank or trust company receives from the issuer evidence of cancellation thereof.

(f) A dealer or issuer of securities shall provide to the commissioner and the bank or trust company at the time the dealer or issuer makes the deposit required by this section:

(1) the names of the purchasers of or subscribers for the

securities; and

(2) the amount of money paid by each.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.302. MARKETING EXPENSES. (a) Total expenses for marketing securities, including all commissions for the sale of the securities, and all other incidental selling expenses, may not in the aggregate exceed 20 percent of the price at which the stock or other securities of a proposed or existing company are to be sold or offered for sale to the public of this state.

(b) The commissioner may reduce the percentage listed in Subsection (a) to a percentage that in the commissioner's opinion is fair, just, and equitable under the facts of the particular case.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.303. PROSPECTUS REQUIRED FOR CERTAIN OFFERS. (a) Except as provided by Subsection (b), the commissioner shall require that, in connection with a permit qualifying securities for sale, all offers for the sale of the securities be made through a prospectus that:

(1) fairly discloses the material facts about the plan of finance and business; and

(2) must be filed with and approved by the commissioner.

(b) The prospectus requirements of this section are satisfied if the applicant files a prospectus or offering circular with the commissioner that is also filed with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or the regulations under that law.

(c) Failure to comply with the prospectus requirements of this section violates this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4003.304. INVESTOR EDUCATION. (a) The commissioner, with board approval, shall develop and implement investor education initiatives to inform the public about the basics of investing in securities. The initiatives must place a special emphasis on the prevention and detection of securities fraud. Materials developed for and distributed as part of the initiatives must be published in both English and Spanish.

(b) In developing and implementing the initiatives, the commissioner shall use the commissioner's best efforts to collaborate with public or nonprofit entities with an interest in investor education.

(c) For use in providing investor education initiatives and subject to Chapter 575, the commissioner may accept grants and donations from:

(1) a person who is not affiliated with the securities industry; or

(2) a nonprofit association, regardless of whether the entity is affiliated with the securities industry.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

CHAPTER 4004. REGULATION OF DEALERS, INVESTMENT ADVISERS, DEALERS' AGENTS, AND INVESTMENT ADVISER REPRESENTATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4004.001. RULES FOR EXEMPTION FROM REGISTRATION REQUIREMENTS. The board may adopt rules that exempt certain classes of persons from the dealer, agent, investment adviser, and investment adviser representative registration requirements, or provide conditional exemptions from registration, if the board determines that the rules are consistent with the purposes of this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.002. CERTAIN DISPLAYS OR ADVERTISEMENT OF REGISTRATION PROHIBITED. Except as expressly provided by this title, a dealer, agent, investment adviser, or investment adviser representative may not by public display or advertisement use the

fact that the person is registered under this title, the person's registration certificate or evidence of registration, or a certified copy of the certificate or evidence of registration in connection with any sale or effort to sell any security or any rendering of services as an investment adviser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.003. DISPLAY OF INFORMATION REGARDING COMPLAINTS. A dealer, agent, investment adviser, or investment adviser representative regulated under this title shall prominently display at all times in the person's place of business:

(1) a sign containing the name, mailing address, and telephone number of the board; and

(2) a statement informing consumers that complaints against a dealer, agent, investment adviser, or investment adviser representative may be directed to the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. REGISTRATION OF DEALERS AND INVESTMENT ADVISERS

Sec. 4004.051. REGISTRATION OF DEALERS REQUIRED. Except as provided by Section 4001.056(d) or Subchapter A, Chapter 4005, a dealer or other person or company, including a corporation or firm, may not, directly or through the dealer's or other person's or company's agents, offer for sale, sell, or make a sale of any securities in this state unless the dealer or other person or company is first registered as provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.052. REGISTRATION OF INVESTMENT ADVISERS REQUIRED. Except as provided by Subchapter A, Chapter 4005, a person may not, directly or through the person's investment adviser representative, render services as an investment adviser in this state unless the

person:

(1) is registered under this chapter;

(2) submits a notice filing as provided by Subchapter G; or

(3) is otherwise exempt under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.053. APPLICATION FOR REGISTRATION. (a) To be registered, a dealer or investment adviser must submit to the commissioner a sworn application that must be in the form the commissioner prescribes and must state:

(1) the applicant's principal place of business;

(2) the location of the applicant's principal place of business and all branch offices of the applicant in this state;

(3) the name or style of doing business and the address of the applicant;

(4) the name, residence, and business address of each person interested in the business as a principal, officer, director, or managing agent of the applicant's business, specified by capacity and title;

(5) the general plan and character of the applicant's business;

(6) the period the applicant has been engaged in the business; and

(7) the places at which the applicant has engaged in the business.

(b) An application filed under this section must contain additional information relating to the previous history, record, associations, and present financial condition of the applicant as the commissioner may require or as necessary to enable the commissioner to determine whether the sale of any securities the applicant proposes to issue or deal in would result in fraud.

(c) An application must be accompanied by a certificate or other evidence satisfactory to the commissioner that establishes the good reputation of:

(1) the applicant; and

(2) the directors, officers, copartners, or principals of the applicant.

(d) For an applicant that is a corporation organized under the laws of another state, territory, or government or that will have the applicant's principal place of business therein, the application must be accompanied by a copy of the corporation's:

(1) articles of incorporation or similar organizational instrument, and all amendments to the document or instrument, as applicable, certified by the appropriate officer of the corporation or of the state or other jurisdiction in which the corporation is organized;

(2) regulations; and

(3) bylaws.

(e) For an applicant that is a limited partnership, the application must be accompanied by either:

(1) a copy of the articles of copartnership or similar organizational instrument of the partnership; or

(2) a verified statement of the partnership's plan of doing business.

(f) For an applicant that is an unincorporated association or organization under the laws of another state, territory, or government or is an unincorporated association or organization that has its principal place of business therein, the application must be accompanied by a copy of the association's or organization's articles of association, trust agreement, or other form of organization.

(g) The commissioner shall:

(1) prescribe the application form to be used by an applicant under this section; and

(2) provide copies of the application form for registration to all persons who seek to submit an application to register as a dealer or investment adviser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.054. ISSUANCE OF REGISTRATION CERTIFICATE. The commissioner shall issue a certificate of registration to an applicant for registration as a dealer or investment adviser if:

(1) the commissioner is satisfied that the applicant has complied with the requirements of this chapter; and

(2) the applicant:

(A) if applicable, has filed a written consent to service that complies with Section 4001.102; and

(B) has paid the fees required by Chapter 4006.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.055. FORM AND CONTENTS OF REGISTRATION CERTIFICATE. The registration certificate must be in the form the commissioner prescribes and must state:

(1) the principal place of business and address of the dealer or investment adviser;

(2) the name and business address of each person interested in the business as a principal, officer, director, or managing agent of the dealer or investment adviser; and

(3) that the dealer or investment adviser has been registered for a current calendar year as a dealer in securities or as an investment adviser, as appropriate.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.056. TEMPORARY PERMISSION TO ENGAGE IN BUSINESS AS DEALER OR INVESTMENT ADVISER. (a) Pending final disposition of an application under this subchapter, the commissioner may, for special cause shown, grant an applicant temporary permission to engage in business as a dealer or investment adviser under this title, subject to any terms and conditions that the commissioner prescribes.

(b) Temporary permission granted by the commissioner under this section may be revoked at any time.

(c) A dealer or investment adviser acting under temporary permission granted under this section is considered to be a registered dealer or registered investment adviser for any purpose of this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.057. AMENDMENT OF REGISTRATION CERTIFICATE. (a) A dealer or investment adviser shall immediately certify under oath to the commissioner any change in the personnel of a partnership or in the principals, officers, directors, or managing agents of the dealer or investment adviser.

(b) A change in the registration certificate required as the result of a change described by Subsection (a) may be made at any time by submitting to the commissioner a written application that specifies the reason for the change.

(c) On the issuance of an amended registration certificate, the dealer or investment adviser shall promptly surrender the original certificate and any outstanding certified copies of the original certificate to the commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.058. POSTING REGISTRATION CERTIFICATES. On receipt of a registration certificate issued under this chapter, the dealer or investment adviser named in the certificate shall immediately post and conspicuously display the certificate at all times in the dealer's or investment adviser's principal place of business, if the dealer's or investment adviser's principal place of business is maintained in this state. The dealer or investment adviser shall similarly post and conspicuously display a duplicate copy of the dealer's or investment adviser's certificate in each branch office located in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. REGISTRATION OF AGENTS AND INVESTMENT ADVISER REPRESENTATIVES

Sec. 4004.101. REGISTRATION OF AGENTS. (a) An agent may not, on behalf of a registered dealer, sell, offer for sale, or make a sale of any securities in this state unless the agent is registered as an agent for that particular registered dealer under this chapter.

(b) On written application by a registered dealer, and on satisfactory compliance with the requirements of this title, the

commissioner shall register a person as an agent of the registered dealer.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.102. REGISTRATION OF INVESTMENT ADVISER REPRESENTATIVES. (a) A person may not act or render services as an investment adviser representative for an investment adviser in this state unless the person is registered or submits a notice filing as an investment adviser representative for that particular investment adviser as provided by this subchapter and Subchapter G.

(b) On written application by an investment adviser and on satisfactory compliance with the requirements of this title, the commissioner shall register a person as an investment adviser representative of that investment adviser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.103. APPLICATION FOR REGISTRATION. The application described by Sections 4004.101 and 4004.102 must:

(1) be in the form the commissioner prescribes;

(2) state:

(A) the residence and address of the person whose registration as an agent or investment adviser representative is requested through the application; and

(B) any other information relating to that person's previous history, record, and associations that the commissioner may require; and

(3) be signed and sworn to by the person whose registration as an agent or investment adviser representative is requested through the application.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.104. ISSUANCE OF EVIDENCE OF REGISTRATION. For each

person registered under this subchapter, the commissioner shall issue evidence of registration of the agent or investment adviser representative to the registered dealer or investment adviser who requested the person's registration, as appropriate. The registered dealer or investment adviser who requested the person's registration shall retain the evidence of registration for the dealer's agents or investment adviser's representatives, as appropriate.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.105. FORM AND CONTENTS OF EVIDENCE OF REGISTRATION. The evidence of registration described by Section 4004.104 must:

(1) be in the form the commissioner prescribes; and

(2) state:

(A) the name of the agent or investment adviser representative;

(B) the address of the registered dealer or investment adviser, as appropriate; and

(C) that the person is registered for the current calendar year as an agent of the dealer or as an investment adviser representative of the investment adviser, as appropriate.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.106. CANCELLATION OF REGISTRATION. On application by a registered dealer or investment adviser, the commissioner shall cancel the registration of the registered dealer's agent or the investment adviser's representative.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER D. EXAMINATION REQUIREMENTS

Sec. 4004.151. EXAMINATION REQUIREMENTS. (a) Except as provided by Subsection (c), the commissioner shall require that, to be registered under this chapter, each applicant must pass a written

examination to determine whether the applicant possesses the qualifications and competency to engage in the business of dealing in and selling securities as a dealer or agent, or rendering services as an investment adviser or investment adviser representative. If the applicant is a corporation or partnership, the officers, directors, or partners to be licensed by the corporation or partnership must pass the written examination described by this section.

(b) The commissioner may accept some or all of the examinations administered by securities self-regulatory organizations to fulfill the examination requirements of this section.

(c) The board may waive the examination requirement under Subsection (a) for any applicant or class of applicants.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.152. EXAMINATION RESULTS. (a) Except as provided by Subsection (b), the board shall notify each examinee of the results of a registration examination required by this subchapter not later than the 30th day after the date the examinee takes the examination.

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

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

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

(c) The board may require a testing service to notify an examinee of the results of the examination.

(d) If requested in writing by an examinee who fails an examination administered under this subchapter, the board shall provide the examinee with an analysis of the examinee's performance on the examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER E. DENIAL OR REVOCATION OF REGISTRATION

Sec. 4004.201. DENIAL OF REGISTRATION. The commissioner may deny an application for registration under this chapter in accordance with Section 4007.105.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.202. AUTOMATIC REVOCATION OF REGISTRATION OF AGENTS AND INVESTMENT ADVISER REPRESENTATIVES AFTER REVOCATION OF REGISTRATION OF DEALER OR INVESTMENT ADVISER. (a) The revocation of the registration of a dealer or an investment adviser under Section 4007.105 constitutes a revocation of the registration of any agent of the dealer or of any investment adviser representative of the investment adviser, as appropriate.

(b) The commissioner shall promptly send notice of the revocation of the registration of a dealer or of an investment adviser to each applicable agent or investment adviser representative.

(c) All evidences of registration that have been revoked shall be immediately surrendered to the commissioner on request.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER F. EXPIRATION AND RENEWAL OF REGISTRATION

Sec. 4004.251. EXPIRATION OF REGISTRATION. Except as provided by Sections 4004.252(a) and 4004.253, all registrations expire at the end of the calendar year.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.252. RENEWAL OF REGISTRATION. (a) A person may renew an unexpired registration by filing a renewal application in the form the commissioner prescribes and by paying the required renewal fee to the board before the registration's expiration date.

(b) New registrations for the year succeeding the expiration of registrations shall be issued on the filing of a written application

and payment of the fee as provided by this subchapter. If an applicant registers after December 1 of any year, the applicant may immediately apply for a renewal of the applicant's registration for the ensuing year.

(c) The filing of additional statements or the provision of additional information is not required for renewal unless specifically requested by the commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.253. STAGGERED RENEWAL; PRORATION OF REGISTRATION RENEWAL FEE. (a) The board by rule may adopt a system under which registrations expire on various dates during the year.

(b) For the year in which the registration expiration date is changed, registration fees payable after the 60th day and before the 30th day before January 1 of the next year shall be prorated on a monthly basis so that each person pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.254. NOTICE OF EXPIRATION REQUIRED. Not later than the 30th day before the date a person's registration is scheduled to expire, the commissioner shall send written notice of the impending expiration to the person at the person's last known address according to the board's records.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.255. RENEWAL OF EXPIRED REGISTRATION. (a) A person whose registration has been expired for 90 days or less may renew the registration by:

(1) filing a renewal application with the commissioner; and

(2) paying to the board:

(A) the required renewal fee; and

(B) a fee that is equal to one-half of the original registration application fee.

(b) A person whose registration has been expired for more than 90 days but less than two years may renew the registration by:

(1) filing a renewal application with the commissioner; and

(2) paying to the board:

(A) all unpaid renewal fees; and

(B) a fee that is equal to the original registration application fee.

(c) A person whose registration has been expired for two years or more may not renew the registration. The person may obtain a new registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original registration. The person must pay to the board a fee that is equal to the original registration application fee.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.256. EFFECT OF EXPIRED REGISTRATION. A person who sells securities or who renders investment advising services after the person's registration has expired but before the registration is renewed is subject to the sanctions provided by this title for selling securities or rendering investment advice without being registered.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.257. CONTINUING EDUCATION. (a) The board may recognize, prepare, or administer continuing education programs for a person who is registered under this chapter.

(b) A person who is registered under this chapter must participate in continuing education programs if the board requires participation as a condition of maintaining the person's certificate or evidence of registration.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER G. NOTICE FILINGS OF FEDERAL COVERED INVESTMENT ADVISERS AND CERTAIN REPRESENTATIVES OF FEDERAL COVERED INVESTMENT ADVISERS

Sec. 4004.301. APPLICABILITY. This subchapter does not apply to an investment adviser or investment adviser representative who is exempt from registration under this title or by board rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.302. NOTICE FILING. The board by rule shall authorize a federal covered investment adviser or a representative of a federal covered investment adviser to render services as an investment adviser in this state if the commissioner receives:

(1) a notice filing submitted by the adviser or representative that:

(A) is on the form and contains the information the commissioner prescribes; and

(B) if applicable, contains a consent to service appointing the commissioner as the adviser's attorney for service of process, as required by Section 4001.102; and

(2) a notice filing fee in the amount determined under Chapter 4006.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.303. EFFECTIVE DATE OF NOTICE FILING. On the commissioner's receipt of a notice filing and fee payment that meet the requirements of Section 4004.302, the notice filing takes effect and is valid for the remainder of the calendar year.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.304. RENEWAL. A federal covered investment adviser or a representative of a federal covered investment adviser may renew a notice filing on or before the filing's expiration date if the commissioner receives:

(1) a renewal notice filing submitted by the adviser or representative; and

(2) a renewal fee in the amount determined under Chapter 4006.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER H. REQUIREMENTS FOR PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Sec. 4004.351. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Exploitation," "financial exploitation," and "vulnerable adult" have the meanings assigned by Section 281.001, Finance Code.

(3) "Securities professional" means an agent, an investment adviser representative, or a person who serves in a supervisory or compliance capacity for a dealer or investment adviser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.106, eff. January 1, 2022.

Sec. 4004.352. REPORTING SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) If a securities professional or a person serving in a legal capacity for a dealer or investment adviser has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the securities professional or person serving in a legal capacity for the dealer or investment adviser shall notify the dealer or investment adviser of the suspected financial exploitation.

(b) If a dealer or investment adviser is notified of suspected financial exploitation under Subsection (a) or otherwise has cause to believe that financial exploitation of a vulnerable adult who is an account holder with the dealer or investment adviser has occurred, is occurring, or has been attempted, the dealer or investment adviser shall assess the suspected financial exploitation and submit a report to the commissioner, in accordance with rules adopted under Section 4004.353, and the department in the same manner as and containing the same information required to be included in a report under Section 48.051, Human Resources Code. The dealer or investment adviser shall submit the reports required by this subsection not later than the earlier of:

(1) the date the dealer or investment adviser completes the dealer's or investment adviser's assessment of the suspected financial exploitation; or

(2) the fifth business day after the date the dealer or investment adviser is notified of the suspected financial exploitation under Subsection (a) or otherwise has cause to believe that the suspected financial exploitation has occurred, is occurring, or has been attempted.

(c) A dealer or investment adviser who submits a report to the department of suspected financial exploitation of a vulnerable adult under Subsection (b) is not required to make an additional report of suspected abuse, neglect, or exploitation under Section 48.051, Human Resources Code, for the same conduct constituting the reported suspected financial exploitation.

(d) Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for:

(1) the securities professionals or persons serving in a legal capacity for the dealer or investment adviser to make the notification required under Subsection (a); and

(2) the dealer or investment adviser to conduct the assessment and submit the reports required under Subsection (b).

(e) The policies, programs, plans, or procedures adopted under Subsection (d) may authorize the dealer or investment adviser to report the suspected financial exploitation to other appropriate agencies and entities in addition to the commissioner and the department, including the attorney general, the Federal Trade Commission, and the appropriate law enforcement agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.353. FORM AND CONTENT OF REPORT. The board by rule shall prescribe the form and content of the report required to be submitted by a dealer or investment adviser to the commissioner under Section 4004.352(b).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.354. NOTIFYING THIRD PARTIES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. If a dealer or investment adviser submits reports of suspected financial exploitation of a vulnerable adult to the commissioner and the department under Section 4004.352(b), the dealer or investment adviser may at the time the dealer or investment adviser submits the reports also notify a third party reasonably associated with the vulnerable adult of the suspected financial exploitation, unless the dealer or investment adviser suspects the third party of financial exploitation of the vulnerable adult.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.355. TEMPORARY HOLD ON TRANSACTIONS IN CERTAIN CASES OF SUSPECTED FINANCIAL EXPLOITATION OF VULNERABLE ADULTS. (a) Notwithstanding any other law, a dealer or investment adviser:

(1) may place a hold on any transaction that involves an account of a vulnerable adult if the dealer or investment adviser:

(A) submits a report of suspected financial exploitation of the vulnerable adult to the commissioner and the department under Section 4004.352(b); and

(B) has cause to believe the transaction is related to the suspected financial exploitation alleged in the report; and

(2) must place a hold on any transaction involving an account of a vulnerable adult if the hold is requested by the commissioner, the department, or a law enforcement agency.

(b) Subject to Subsection (c), a hold placed on any transaction under Subsection (a) expires on the 10th business day after the date the hold is placed.

(c) A dealer or investment adviser may extend a hold placed on any transaction under Subsection (a) for a period not to exceed 30 business days after the expiration of the period prescribed by Subsection (b) if requested by a state or federal agency or a law enforcement agency investigating the suspected financial exploitation. The dealer or investment adviser may also petition a court to extend a hold placed on any transaction under Subsection (a) beyond the period prescribed by Subsection (b). A court may enter an order extending or shortening a hold or providing other relief.

(d) Each dealer and investment adviser shall adopt internal policies, programs, plans, or procedures for placing a hold on a transaction involving an account of a vulnerable adult under Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 502 (H.B. 4477), Sec. 3, eff. January 1, 2022.

Sec. 4004.356. IMMUNITY. (a) A securities professional or person serving in a legal capacity for a dealer or investment adviser who makes a notification under Section 4004.352(a), a dealer or investment adviser that submits a report under Section 4004.352(b) or makes a notification to a third party under Section 4004.354, or a securities professional or person serving in a legal capacity who or dealer or investment adviser that testifies or otherwise participates in a judicial proceeding arising from a notification or report is immune from any civil or criminal liability arising from the notification, report, testimony, or participation in the judicial proceeding, unless the securities professional, person serving in a legal capacity for the dealer or investment adviser, or dealer or investment adviser acted in bad faith or with a malicious purpose.

(b) A dealer or investment adviser that in good faith and with the exercise of reasonable care places or does not place a hold on any transaction under Section 4004.355(a)(1) is immune from civil or

criminal liability or disciplinary action resulting from the action or failure to act.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4004.357. RECORDS. To the extent permitted by state or federal law, a dealer or investment adviser, on request, shall provide access to or copies of records relevant to the suspected financial exploitation of a vulnerable adult to the commissioner, the department, a law enforcement agency, or a prosecuting attorney's office, either as part of a report to the commissioner, department, law enforcement agency, or prosecuting attorney's office or at the request of the commissioner, department, law enforcement agency, or prosecuting attorney's office in accordance with an investigation.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

CHAPTER 4005. EXEMPTIONS

SUBCHAPTER A. EXEMPT TRANSACTIONS

Sec. 4005.001. SCOPE OF EXEMPTION. Except as expressly provided otherwise in this title, this title does not apply to any sale of, offer for sale of, solicitation of, subscription to, dealing in, or delivery of a security made in a transaction or under a condition specified in this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.002. COURT SUPERVISED SALES. The exemption provided by Section 4005.001 applies to the sale of a security made:

(1) at a judicial, executor's, administrator's, guardian's, or conservator's sale; or

(2) by a receiver or trustee in insolvency or bankruptcy.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.003. PLEDGED SECURITIES. The exemption provided by Section 4005.001 applies to the sale of a security pledged in good faith as security for a bona fide debt that is made by or for the account of a pledge holder or mortgagee that is selling the security or offering the security for sale or delivery in the ordinary course of business to liquidate the debt.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.004. ISOLATED TRANSACTIONS. (a) The exemption provided by Section 4005.001 applies to the sale of a security that is made by a vendor or on a vendor's behalf by a dealer or other agent and is made in the ordinary course of a bona fide personal investment of the vendor's personal holdings or a change in the investment if:

(1) the vendor is not engaged in the business of selling securities; and

(2) the sale is an isolated transaction not made in the course of repeated and consecutive transactions of a like character.

(b) A sale or offer for sale under Subsection (a) is not exempt from this title if the sale or offer is made or intended to be made by the vendor or the vendor's agent for the direct or indirect benefit of a company other than the individual vendor. The usual commission of a vendor's agent is not a benefit for the purposes of this subsection.

(c) A person acting as an agent for a vendor in any sale or offer for sale under Subsection (a) must be registered under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.005. INSURANCE COMPANY SALES. (a) The exemption provided by Section 4005.001 applies to the sale of a security made by or on behalf of an insurance company that:

(1) is subject to the supervision or control of the Texas

Department of Insurance; and

(2) owns the security as a legal and bona fide investment.

(b) A sale or offer for sale under Subsection (a) is not exempt from this title if the sale or offer is made or intended to be made directly or indirectly for the benefit of another company.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.006. STOCK DIVIDENDS. The exemption provided by Section 4005.001 applies to a distribution of securities by a corporation directly to the corporation's stockholders as a stock dividend or other distribution paid out of earnings or surplus.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.007. EXISTING SECURITY HOLDERS. (a) In this section, "existing security holder" includes a person who is a holder of a convertible security or nontransferable warrant at the time of the transaction.

(b) The exemption provided by Section 4005.001 applies to an offer by the issuer of its securities to the issuer's existing security holders and to any transaction pursuant to the offer if no commission or other remuneration, other than a stand-by commission, is paid or given directly or indirectly for soliciting any security holder in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.008. FINANCIAL DISTRESS. (a) The exemption provided by Section 4005.001 applies to the issuance in good faith of securities by a company:

(1) to the company's security holders or creditors in the process of a bona fide reorganization of the company made in good faith; or

(2) to the security holders or creditors of a predecessor

company if the issuing company is organized solely for the purpose of taking over the assets and continuing the business of the predecessor company.

(b) The exemption provided by Section 4005.001 applies to an issuance of securities described by Subsection (a) only if:

(1) the securities are issued in exchange for securities of the security holders, claims of the creditors, or both; and

(2) the security holders or creditors do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued other than the securities of or claims against the company or the company's predecessor held or owned by the security holders or creditors at the time of the issuance.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.009. MERGER, CONSOLIDATION, AND ASSET SALES. (a) The exemption provided by Section 4005.001 applies to the issuance or sale of securities by one corporation to another corporation or to the security holders of the corporation pursuant to a vote by one or more classes of those security holders, as required by the certificate of formation, certificate of incorporation, or applicable corporation statute, in connection with:

(1) a merger;

(2) a consolidation; or

(3) a sale of corporate assets.

(b) The exemption provided by Section 4005.001 applies to an issuance or sale described by Subsection (a) only if the security holders do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued or sold other than the corporation's securities held by the security holders at the time of the issuance or sale.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.010. EXCHANGE OF SHARES. (a) The exemption provided by Section 4005.001 applies to the issuance or sale of securities by

one corporation to the corporation's stockholders in connection with:

(1) the change of par value stock to no par value stock or vice versa; or

(2) the exchange of outstanding shares for the same or a greater or smaller number of shares.

(b) The exemption provided by Section 4005.001 applies to an issuance or sale described by Subsection (a) only if the security holders do not pay, give, or promise any consideration, and are not obligated to pay or give any consideration, for the securities issued or sold other than the corporation's securities held by the security holders at the time of the issuance or sale.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.011. INSTITUTIONAL INVESTORS. The exemption provided by Section 4005.001 applies to the sale of a security to:

(1) a bank;

(2) a trust company;

(3) a building and loan association;

(4) a savings and loan association;

(5) an insurance company;

(6) a surety or guaranty company;

(7) a savings institution;

(8) an investment company as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.);

(9) a small business investment company as defined by the Small Business Investment Act of 1958 (15 U.S.C. Section 661 et seq.); or

(10) a registered dealer actually engaged in buying and selling securities.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.012. PRIVATE LIMITED OFFERINGS. (a) The exemption provided by Section 4005.001 applies to the following sales made without any public solicitation or advertisement:

(1) the sale of a security by the issuer of the security if

the total number of security holders of the issuer does not exceed 35 persons after the sale; or

(2) the sale by an issuer of the issuer's securities to not more than 15 persons during the 12-month period ending with the date of the sale if the persons purchased the securities for their own account and not for distribution.

(b) For the purpose of determining the number of persons under Subsection (a)(2), the following persons are not included:

(1) a purchaser of a security in a transaction exempt under another provision of this subchapter;

(2) a purchaser of a security exempt under Subchapter B; and

(3) a purchaser of a security that is part of an offering registered under Subchapter A, B, or C, Chapter 4003.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.013. COMPENSATION PLANS AND CONTRACTS. The exemption provided by Section 4005.001 applies to the sale or distribution of a security without any public solicitation or advertisement if the sale or distribution is made:

(1) by an issuer of the security or any participating subsidiary of the issuer; and

(2) under a bona fide thrift, savings, stock purchase, retirement, pension, profit-sharing, option, bonus, appreciation right, incentive, or similar written compensation plan or written compensation contract established by the issuer or the issuer's subsidiary for the benefit of:

(A) employees, directors, general partners, managers, or officers of the issuer or subsidiary;

(B) the issuer's or subsidiary's trustees, if the issuer or subsidiary is a business trust; or

(C) consultants or advisers who provide to the issuer or subsidiary bona fide services unrelated to the offer or sale of securities in a capital-raising transaction.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.014. MORTGAGES AND LIENS. The exemption provided by Section 4005.001 applies to a single transaction in which:

(1) the securities disposed of consist exclusively of notes or bonds secured by a mortgage or vendor's lien on real property or tangible personal property; and

(2) the entire mortgage or lien is sold or transferred with all of the notes or bonds secured by the mortgage or lien.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.015. NONPROFITS. The exemption provided by Section 4005.001 applies to the disposition of a security or membership:

(1) issued by a corporation or association:

(A) that is organized exclusively for a religious, educational, benevolent, fraternal, charitable, or reformatory purpose;

(B) that is not organized for pecuniary profit; and

(C) for which no part of the net earnings inures to the benefit of any stockholder, shareholder, or individual member of the corporation or association; and

(2) for which no commission or remuneration is paid or given or is to be paid or given.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.016. FINANCIAL INSTITUTIONS. The exemption provided by Section 4005.001 applies to:

(1) the sale, by the issuer itself or by a registered dealer, of any security issued or guaranteed by:

(A) a bank organized and subject to regulation under the laws of:

(i) the United States; or

(ii) a state, territory, or insular possession of the United States; or

(B) a savings and loan association organized and subject to regulation under the laws of this state; or

(2) the sale, by the issuer itself, of any security issued

by a federal savings and loan association.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.017. GOVERNMENT ISSUANCE OR GUARANTEE. The exemption provided by Section 4005.001 applies to the sale, by the issuer itself or by a registered dealer, of any security either issued or guaranteed by:

(1) the United States;

(2) the District of Columbia, a state, territory, or insular possession of the United States;

(3) a political subdivision of a state of the United States, including a county, city, municipal corporation, district, and authority; or

(4) a public or governmental agency or instrumentality of an entity described by Subdivisions (1)-(3).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.018. COOPERATIVES. (a) The exemption provided by Section 4005.001 applies to:

(1) the sale and issuance of:

(A) any securities issued by a farmers' cooperative marketing association organized under Chapter 52, Agriculture Code, or the predecessor of that law (Article 5737 et seq., Revised Statutes);

(B) any securities issued by a mutual loan corporation organized under Chapter 54, Agriculture Code, or the predecessor of that law (Article 2500 et seq., Revised Statutes); or

(C) any equity securities issued by a cooperative association organized under the Texas Cooperative Association Law as described by Section 1.008(i), Business Organizations Code, or the predecessor of that law (Article 1396-50.01, Vernon's Texas Civil Statutes); or

(2) the sale of any securities issued by a farmers' cooperative society organized under Chapter 51, Agriculture Code, or the predecessor of that law (Article 2514 et seq., Revised Statutes).

(b) The exemption provided by Section 4005.001 does not apply to an agent of a farmers' cooperative marketing association, mutual loan corporation, cooperative association, or farmers' cooperative society if the sale of the securities is made to:

(1) nonmembers; or

(2) members and a commission is paid or contracted to be paid to the agent.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.019. SECONDARY MARKET SALES. (a) In this section, "recognized securities manual" means a nationally distributed manual of securities that is approved by the board for use under this section.

(b) The exemption provided by Section 4005.001 applies to the sale of outstanding securities by a registered dealer if:

(1) the securities do not form part of an unsold allotment to or subscription by the dealer as a participant in the securities' distribution by the issuer of the securities;

(2) the securities are of the same class and the same issuer and are outstanding in the hands of the public;

(3) the securities are offered for sale, in good faith, at prices reasonably related to the current market price of the securities at the time of the sale;

(4) none of the sale proceeds are paid directly or indirectly to the issuer of the securities;

(5) the sale is not directly or indirectly for the purposes of providing or furthering a scheme to violate or evade this title;

(6) the right to sell or resell the securities has not been enjoined by a court in this state by a proceeding instituted by an officer or agency of this state charged with enforcement of this title;

(7) the commissioner has not revoked or suspended the right to sell the securities under this title or, if the commissioner has revoked or suspended the right to sell the securities, the revocation or suspension is not in effect;

(8) at the time of the sale, the issuer of the securities is:

(A) a going concern actually engaged in business; and

(B) not in an organization stage or in receivership or bankruptcy; and

(9) either:

(A) the securities or other securities of the issuer of the same class have been:

(i) qualified for sale by a permit issued under Subchapter A, Chapter 4003;

(ii) registered by notification under Subchapter B, Chapter 4003; or

(iii) registered by coordination under Subchapter C, Chapter 4003; or

(B) a recognized securities manual or a statement, in form and extent acceptable to the commissioner and filed with the commissioner by the issuer or a registered dealer, is provided at the time of the sale containing at least the following information about the issuer:

(i) a statement of the issuer's principal business;

(ii) a balance sheet as of a date not earlier than 18 months before the date of the sale; and

(iii) profit and loss statements and a record of any dividends paid for:

(a) a period of at least three years before the date of the balance sheet; or

(b) the period of the issuer's existence, if the issuer has been in existence less than three years.

(c) The commissioner may issue a stop order or by order may prohibit, revoke, or suspend the exemption under this section with respect to any security if the commissioner has reasonable cause to believe that the plan of business of the issuer of the security, the security, or the sale of the security would tend to work a fraud or deceit on any purchaser of the security. The order is subject to review in the manner provided by Section 4007.107.

(d) Notice of any court injunction enjoining the sale or resale of a security described by this section, or of an order revoking or suspending the exemption under Subsection (c) with respect to a security, shall be mailed by certified or registered mail with return receipt requested or otherwise delivered to any dealer believed to be selling or offering for sale the type of securities referred to in the notice. Subsections (b)(6) and (7) do not apply to a dealer until

the dealer has received from the commissioner actual notice of the revocation or suspension.

(e) The board, for cause shown, may revoke or suspend the recognition under this section of any manual previously approved under this section only after notice and an opportunity for a hearing is provided as required by law.

(f) A judgment sustaining the board in the board action complained about does not bar an application by the plaintiff for approval of the manual as provided by this section after the first anniversary of the date of the action.

(g) A judgment in favor of the plaintiff does not prevent the board from revoking the recognition of a manual previously approved under this section for any proper cause that may accrue or be discovered.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.020. UNSOLICITED ORDERS. The exemption provided by Section 4005.001 applies to a dealer's execution of an unsolicited order for the purchase of securities for which the initial offering of the securities has been completed if the dealer:

(1) acts solely as an agent for the purchaser;

(2) does not have a direct or indirect interest in the sale or distribution of securities ordered; and

(3) does not receive a commission, profit, or other compensation from any source other than the purchaser.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.021. OIL, GAS, OR MINING INTERESTS. (a) Subject to Subsection (b), the exemption provided by Section 4005.001 applies to the sales of interests in and under oil, gas, or mining leases, fees, or titles, or contracts relating to those interests in which:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated, or undivided in any single oil, gas, or mineral lease, fee, or title, or contract relating to those interests, is not more than 35 during a 12

consecutive month period; and

(2) no use is made of advertisement or public solicitation.

(b) If a sale of an interest described by Subsection (a) is made for an owner of the interest by an agent of the owner, the exemption under that subsection applies only if the agent is registered under this title.

(c) An oil, gas, or mineral unitization or pooling agreement may not be considered a sale under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.022. ISSUER SALES OF EXEMPT SECURITIES. (a) The exemption provided by Section 4005.001 applies to the sale by the issuer itself or by a subsidiary of the issuer of any securities that would be exempt under Subchapter B if sold by a registered dealer.

(b) This section does not apply to securities that would be exempt under Section 4005.053.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.023. OPTIONS. (a) In this section, "option" means and includes a put, call, straddle, or other option or privilege of buying from another person or selling to another person a specified number of securities at a specified price, without being obligated to do so, on or before a specified date. The term does not include an option or privilege that by its terms may terminate before the specified date on the occurrence of a specified event.

(b) The exemption provided by Section 4005.001 applies to a sale of an option by or through a registered dealer if, at the time of the sale:

(1) the performance of the terms of the option is guaranteed by a broker-dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.);

(2) the guaranty and broker-dealer described by Subdivision (1) are in compliance with any requirements or rules adopted or approved by the board;

(3) the option is not sold by or for the benefit of the

issuer of the security that may be purchased or sold on exercise of the option;

(4) the security that may be purchased or sold on exercise of the option is either:

(A) exempted under Section 4005.054; or

(B) quoted on the NASDAQ stock market and meets the requirements of Sections 4005.019(b)(1), (6), (7), and (8); and

(5) the sale is not directly or indirectly for the purposes of providing or furthering a scheme to violate or evade this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.024. EXEMPTIONS BY RULE OR ORDER. The exemption provided by Section 4005.001 applies to the sale of a security made in other transactions or under other conditions not specified in this subchapter as the board by rule or order may define or prescribe, conditionally or unconditionally.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.025. ISSUANCE OR TRANSFER TO NONPROFITS. The exemption provided by Section 4005.001 applies to the issuance or transfer of securities by the issuer of its securities to a corporation or association organized exclusively for a religious, educational, benevolent, fraternal, charitable, or reformatory purpose and not for pecuniary profit, only if:

(1) the corporation or association does not provide anything of value for the securities other than, for a security that is an option, payment of the exercise price of the option to acquire the securities at a price not to exceed the fair market value of the underlying securities on the date the option was granted;

(2) the issuance or transfer is not made for the purpose of raising capital for the issuer;

(3) a commission or other form of consideration is not paid or provided to a third party with respect to the issuance or transfer; and

(4) the issuance or transfer is not directly or indirectly

for the purposes of providing or furthering a scheme to violate or evade this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. EXEMPT SECURITIES

Sec. 4005.051. SCOPE OF EXEMPTION. Except as expressly provided otherwise in this title, this title does not apply to a security described by this subchapter when offered for sale, sold, or dealt in by a registered dealer or a registered dealer's agent.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.052. RAILROADS OR UTILITIES. The exemption provided by Section 4005.051 applies to:

(1) a security issued or guaranteed either as to principal, interest, or dividend by a corporation that owns or operates a railroad or any other public service utility if the corporation is subject to regulation or supervision either as to the corporation's rates and charges or as to the issuance of the corporation's own securities by:

(A) the Texas Department of Transportation; or

(B) a public commission, an agency, a board, or officers of:

(i) the government of the United States;

(ii) the District of Columbia, a state, territory, or insular possession of the United States, or a municipal corporation; or

(iii) Canada or a province of Canada; or

(2) equipment trust certificates or equipment notes or bonds:

(A) that are based on chattel mortgages, leases or agreements for conditional sale of cars, motive power or other rolling stock mortgages, leased or sold to or provided for the use of or on a railroad or other public service utility corporation if the corporation is subject to regulation or supervision as described by Subdivision (1); or

(B) for which the ownership or title of the equipment is pledged or retained to secure the payment of the equipment trust certificates, bonds, or notes, in accordance with the laws of:

(i) the United States;

(ii) the District of Columbia or a state, territory, or insular possession of the United States; or

(iii) Canada or a province of Canada.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.053. NONPROFIT CORPORATIONS. The exemption provided by Section 4005.051 applies to a security issued and sold by a domestic corporation that:

(1) is not organized and engaged in business for profit; and

(2) does not have capital stock.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.054. LISTED SECURITIES. (a) The exemption provided by Section 4005.051 applies to securities that at the time of sale:

(1) are fully listed on:

(A) the American Stock Exchange;

(B) the Boston Stock Exchange;

(C) the Chicago Stock Exchange;

(D) the New York Stock Exchange; or

(E) a recognized and responsible stock exchange approved by the commissioner, as provided by Subchapter C;

(2) are designated or approved for designation on notice of issuance on the national market system of the NASDAQ stock market; or

(3) are senior to, or if of the same issue, on a parity with, any securities listed or designated as described by Subdivision (1) or (2) or represented by subscription rights that are listed or designated as described by Subdivision (1) or (2), or evidence of indebtedness guaranteed by a company, any stock of which is listed or designated as described by Subdivision (1) or (2).

(b) Securities described by Subsection (a) are exempt only so

long as the exchange on which the securities are listed remains approved under this section or Subchapter C.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.055. COMMERCIAL PAPER. The exemption provided by Section 4005.051 applies to:

(1) commercial paper that:

(A) arises out of a current transaction or the proceeds of which have been or are to be used for current transactions; and

(B) evidences an obligation to pay cash not later than the ninth month after the issuance date of the commercial paper, not including days of grace;

(2) a renewal of commercial paper described by Subdivision (1) that is similarly limited; or

(3) a guarantee of commercial paper described by Subdivision (1) or of a renewal described by Subdivision (2).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.056. SECURED DEBT. The exemption provided by Section 4005.051 applies to notes, bonds, or other evidence of indebtedness or certificates of ownership that:

(1) are equally and proportionately secured without reference of priority of one over another; and

(2) by the terms of the instrument creating the lien, continue to be secured by the deposit with a trustee of recognized responsibility approved by the commissioner of any of the securities specified in:

(A) Section 4005.017, if the deposited securities have an aggregate par value of not less than 110 percent of the par value of the securities being secured; or

(B) Section 4005.052, if the deposited securities have an aggregate par value of not less than 125 percent of the par value of the securities being secured.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01,

eff. January 1, 2022.

Sec. 4005.057. NONPROFIT DEBT. The exemption provided by Section 4005.051 applies to notes, bonds, or other evidence of indebtedness of a religious, charitable, or benevolent corporation.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.058. SUSPENSION OF EXEMPT STATUS OF TRADING SYSTEM. (a) The commissioner, by the same procedures described by Section 4005.105, may at any time suspend the exempt status of any trading system exempted by the legislature on or after January 1, 1989, if at the time of the hearing the trading system does not meet the applicable standards for approval of exchanges provided by this title.

(b) The suspension of a trading system under Subsection (a) has the same effect as the withdrawal of approval of a stock exchange under Section 4005.105.

(c) The suspension under Subsection (a) remains in effect until the commissioner by order determines that the trading system:

(1) has corrected each deficiency on which the suspension was based; and

(2) maintains standards and procedures that provide reasonable protection to the public.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. PROCEDURES FOR APPROVAL OF STOCK EXCHANGE

Sec. 4005.101. APPLICATION FOR APPROVAL. An organized stock exchange may apply to the commissioner for approval in the manner and on the forms the commissioner prescribes.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.102. APPROVAL OF STOCK EXCHANGE. The commissioner may approve a stock exchange only if the commissioner finds that the facts and data provided with the application establish that:

(1) the requirements for the listing of securities on the exchange seeking approval provide reasonable protection to the public; and

(2) the governing constitution, bylaws, or regulations of the exchange require:

(A) an adequate examination into the affairs of the issuer of the securities to be listed on the exchange before permitting trading on the exchange;

(B) that the issuer of the securities, while the securities are listed on the exchange, shall periodically prepare, make public, and provide promptly to the exchange appropriate income, profit and loss, and other financial statements;

(C) that securities listed and traded on the exchange be restricted to securities of ascertained, sound asset or income value; and

(D) a reasonable surveillance of the exchange's members, including a requirement for periodical financial statements, a determination of the members' financial responsibility, and the right and obligation of the exchange's governing body to suspend or expel any member found:

(i) to be financially embarrassed or irresponsible; or

(ii) guilty of misconduct in the member's business dealings or of conduct prejudicial to the rights and interests of the member's customers.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.103. INVESTIGATION AND HEARING. The commissioner may approve a stock exchange only after a reasonable investigation and hearing.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.104. ORDER OF APPROVAL. The commissioner's approval of a stock exchange must be made by a written order based on a finding of fact substantially in accordance with the requirements of Sections 4005.101 and 4005.102.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4005.105. WITHDRAWAL OF APPROVAL. At any time, the commissioner, on 10 days' notice and hearing, may withdraw approval of a stock exchange that at the time of the hearing does not meet the standards for approval under this title. On the withdrawal of approval, securities listed on the exchange are not exempt from this title until the commissioner issues an order approving the exchange.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

CHAPTER 4006. FEES

SUBCHAPTER A. CERTAIN REGISTRATION AND NOTICE FILING FEES

Sec. 4006.001. CERTAIN REGISTRATION AND NOTICE FILING FEES. The board shall establish the following fees in amounts so that the aggregate amount that exceeds the amount of the fees on September 1, 2002, produces sufficient revenue to cover the costs of administering and enforcing this title:

(1) for filing an original, amended, or renewal application or registration statement to sell or dispose of securities, an amount not to exceed $100;

(2) for filing an original application of a dealer or investment adviser or submitting a notice filing for a federal covered investment adviser, an amount not to exceed $100;

(3) for filing a renewal application of a dealer or investment adviser or submitting a renewal notice filing for a federal covered investment adviser, an amount not to exceed $100;

(4) for filing an original application for each agent, officer, or investment adviser representative or submitting a notice filing for each representative of a federal covered investment adviser, an amount not to exceed $100; and

(5) for filing a renewal application for each agent,

officer, or investment adviser representative or submitting a renewal notice filing for each representative of a federal covered investment adviser, an amount not to exceed $100.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. EXEMPTION FEES AND OTHER FEES

Sec. 4006.051. NOTICE FOR SECONDARY TRADING EXEMPTION. The commissioner or board shall charge and collect:

(1) a fee of $500 for filing an initial notice required by the commissioner to claim a secondary trading exemption; and

(2) a fee of $500 for filing a secondary trading exemption renewal notice.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.052. NOTICE FOR LIMITED OFFERING EXEMPTION. (a) Subject to Subsection (b), for filing an initial notice required by the commissioner to claim a limited offering exemption, the commissioner or board shall charge and collect a fee of one-tenth of one percent of the aggregate amount of securities described as being offered for sale.

(b) A fee charged under this section may not exceed $500.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.053. APPLICATION FOR APPROVAL OF STOCK EXCHANGE. The commissioner or board shall charge and collect a fee of $10,000 for filing an application for approval of a stock exchange.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.054. AMENDMENT OR DUPLICATE OF REGISTRATION

CERTIFICATE OR EVIDENCE OF REGISTRATION. The commissioner or board shall charge and collect a fee of $25 for a filing to:

(1) amend the registration certificate of a dealer or investment adviser or the evidence of registration of an agent or investment adviser representative; or

(2) issue a duplicate certificate or evidence of registration.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.107, eff. January 1, 2022.

Sec. 4006.055. EXAMINATION OF CERTAIN APPLICATIONS OR REGISTRATION STATEMENTS. (a) For the examination of an original or amended application or registration statement filed under Subchapter A, B, or C, Chapter 4003, the commissioner or board shall charge and collect a fee of one-tenth of one percent of the aggregate amount of securities described and proposed to be sold to persons located in this state based on the price at which the securities will be offered to the public.

(b) A fee under this section applies regardless of whether the application or registration statement is denied, abandoned, withdrawn, or approved.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.056. CERTIFIED COPIES. (a) For a certified copy of any papers filed in the office of the commissioner, the commissioner shall charge and collect a fee that is reasonably related to the costs of producing the certified copy.

(b) A fee charged under this section may not be more than a fee that the secretary of state is authorized to charge for a similar service.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.057. REQUEST TO TAKE EXAMINATION. The commissioner or board shall charge and collect a fee of $35 for filing a request to take the Texas Securities Law Examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.058. INTERPRETATION BY GENERAL COUNSEL. (a) Except as provided by Subsection (b), the commissioner or board shall charge and collect a fee of $100 for an interpretation by the board's general counsel of this title or a rule adopted under this title.

(b) An officer or employee of a governmental entity and the entity that the officer or employee represents are exempt from the fee under this section if the officer or employee is conducting official business of the entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. PROVISIONS APPLICABLE TO CERTAIN FEES

Sec. 4006.101. REASONABLE AND NECESSARY REQUIREMENT. Subject to Subchapter A, the board shall set a fee under Subchapters A and B in an amount that is reasonable and necessary to defray costs.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.102. REDUCED FEES. (a) The board by rule may adopt reduced fees under Section 4006.001 for original and renewal applications of dealers, agents, officers, investment advisers, or investment adviser representatives who have assumed inactive status as defined by the board.

(b) The board by rule may adopt reduced fees under Section 4006.001 as appropriate to accommodate a small business required by this title to register in two or more of the following capacities:

(1) dealer;

(2) agent;
(3) investment adviser;
(4) investment adviser representative; or
(5) officer.

(c) A person is not required to pay more than one fee required under Section 4006.001 to engage in business in this state concurrently for the same person or company as:
(1) a dealer and an investment adviser; or
(2) an agent and investment adviser representative.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.103. PAYMENT OF CERTAIN COSTS. A cost incurred by the board in administering this title may be paid only from a fee collected under Section 4006.001.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.104. REFUND OF REGISTRATION FEE. If the commissioner or board determines that all or part of a registration fee should be refunded, the commissioner may make the refund by warrant on the state treasury from money appropriated from the general revenue fund for that purpose.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER D. FEES FOR CERTAIN SALES OR OFFERS OF SECURITIES

Sec. 4006.151. FEE FOR SALE OF EXCESS SECURITIES. (a) An offeror who sells securities in this state in excess of the aggregate amount of securities registered for the offering may apply to register the excess securities by paying:
(1) three times the difference between the initial fee paid and the fee required under Section 4006.055 for the securities sold to persons in this state;
(2) if the registration is no longer in effect, interest on

that amount computed at the rate provided by Section 302.002, Finance Code, from the date the registration was no longer in effect until the date the subsequent application is filed; and

(3) the amendment fee prescribed by Section 4006.001(1).

(b) If an application to register excess securities is granted under Subsection (a), the registration of the excess securities is effective retroactively to the effective date of the initial registration for the offering.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.152. FEE FOR EXCEEDING LIMITED OFFERING EXEMPTION. (a) This section applies only to an offeror who:

(1) has filed a notice to claim a limited offering exemption;

(2) paid less than the maximum fee prescribed by Section 4006.052; and

(3) offered a greater amount of securities in the offering than authorized pursuant to the formula prescribed by Section 4006.052.

(b) An offeror may:

(1) file an amended notice disclosing the amount of securities offered; and

(2) pay:

(A) three times the difference between the fee initially paid and the fee that should have been paid; and

(B) interest on that amount computed at the rate provided by Section 302.002, Finance Code, from the date the commissioner received the original notice until the date the commissioner received the amended notice.

(c) An amended notice filed under Subsection (b) is retroactive to the date of the initial filing of the notice to claim the exemption.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4006.153. FEE FOR SALES OF UNREGISTERED SECURITIES. (a)

If, after notice and hearing, the commissioner or a court finds that an offeror has sold securities in this state pursuant to an offering no part of which has been registered under Chapter 4003 and for which the transactions or securities are not exempt under Chapter 4005, the commissioner or court may impose a fee equal to:

(1) six times the amount that would have been paid if the issuer had filed an application or registration statement to register the securities and paid the fee required under Section 4006.055 based on the aggregate amount of sales made in this state in the preceding three years; and

(2) interest on that amount at the rate provided by Section 302.002, Finance Code, from the date of the first such sale made in this state until the date the fee is paid.

(b) Payment of the fee prescribed by this section does not effect registration of the securities or affect the application of any other provision of this title.

(c) Payment of the fee prescribed by this section is not an admission that the transactions or securities were not exempt and is not admissible as evidence in a suit or proceeding for failure to register the securities.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER E. MISCELLANEOUS FEES

Sec. 4006.201. RENEWAL OF REGISTRATION BY NOTIFICATION. A registration of securities by notification may be renewed as provided by Section 4003.058, which includes the payment of the renewal fee in the amount prescribed by that section.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER F. DEPOSIT OF FEES

Sec. 4006.251. DEPOSIT OF FEES TO GENERAL REVENUE FUND. The commissioner or board shall deposit money received from fees under this title to the credit of the general revenue fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01,

eff. January 1, 2022.

Sec. 4006.252. DAILY DEPOSIT OF CERTAIN FEES. The commissioner or board shall deposit daily all fees received under Subchapter B to the credit of the general revenue fund.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

CHAPTER 4007. ENFORCEMENT

SUBCHAPTER A. AUTHORITY TO ENFORCE TITLE

Sec. 4007.001. ENFORCEMENT BY COMMISSIONER, ATTORNEY GENERAL, AND DISTRICT OR COUNTY ATTORNEY. (a) The administration of the provisions of this title is vested in the commissioner.

(b) The commissioner and the attorney general shall:

(1) ensure that the provisions of this title are obeyed; and

(2) conduct investigations and take measures to prevent or detect a violation of this title.

(c) The commissioner shall at once submit any evidence of a criminal violation of this title to the district or county attorney of the appropriate county after the evidence comes to the commissioner's knowledge.

(d) If the district or county attorney neglects or refuses to prosecute the alleged criminal violation, the commissioner shall submit the evidence of the alleged violation to the attorney general. The attorney general may proceed with the criminal prosecution of the alleged violation and has all the rights, privileges, and powers conferred by law on a district or county attorney, including the authority to appear before a grand jury and to interrogate witnesses before a grand jury.

(e) Subject to Subsection (h), the board may provide assistance to a county or district attorney who requests assistance in a criminal prosecution involving an alleged violation of this title that is referred by the board to the attorney under Subsection (c).

(f) Before referring a case to a county or district attorney for prosecution as required by Subsection (c), the commissioner shall make a determination of:

(1) the potential resources of the board, including the number and types of board employees, that would be needed to assist in the prosecution of the case; and

(2) the availability of board employees and other resources necessary to carry out any request for assistance.

(g) The board by rule shall establish a process to enable the commissioner to determine whether to provide any requested assistance to the appropriate prosecuting attorney following referral of a case under Subsection (c) and, if so, the appropriate amount of such assistance. The rules must require the commissioner to consider:

(1) whether resources are available after taking into account any ongoing board investigations, investigations under Section 4007.053, and criminal prosecutions for which assistance is being provided;

(2) the seriousness of the alleged violation or violations in the case, including the severity of the harm and number of victims involved; and

(3) the state's interest in the prosecution of a particular case and the availability of other methods of redress for the alleged violations, including the pursuit of a civil action.

(h) In response to a request for assistance under Subsection (e), the board may provide only those board employees or resources, if any, determined to be available for that case in accordance with Subsection (f). If a change in circumstances occurs after the time of the determination under Subsection (f), the commissioner may reconsider the commissioner's determination under that subsection and may increase or reduce the number of board employees or other resources to be made available for a case using the process established under Subsection (g).

(i) The attorney general, at least biennially, shall review a sample of criminal cases for which the board provided requested assistance to county or district attorneys under this section. The review must include an evaluation of the pre-referral determination of available resources to support each case being reviewed as required by Subsection (f) and any subsequent determination of those resources made by the commissioner as authorized under Subsection (h). The attorney general may report any concerns the attorney general has in connection with the board's provision of assistance to the standing committee of each house of the legislature with primary jurisdiction over board matters.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.108, eff. January 1, 2022.

Sec. 4007.002. MEANS OF ENFORCEMENT NOT EXCLUSIVE. The commissioner may use any or all penalties, sanctions, remedies, or relief that the commissioner considers necessary.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. INSPECTIONS AND INVESTIGATIONS

Sec. 4007.051. COMPLAINTS FILED WITH COMMISSIONER OR BOARD. (a) The commissioner or the commissioner's designee shall maintain a system to promptly and efficiently act on complaints filed with the commissioner or board concerning a person registered under this title. The commissioner or the commissioner's designee shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The commissioner or the commissioner's designee shall make information available describing the board's procedures for complaint investigation and resolution.

(c) The commissioner or the commissioner's designee shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize a law enforcement investigation.

Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.103, eff. January 1, 2022.

Sec. 4007.052. INSPECTIONS. (a) The commissioner without notice may inspect a registered dealer or registered investment adviser as necessary to ensure compliance with this title and board rules.

(b) The commissioner, during regular business hours, may enter the business premises of a registered dealer or registered investment adviser and examine and copy books and records pertinent to the inspection.

(c) During the inspection, the registered dealer or registered investment adviser shall:

(1) provide to the commissioner or the commissioner's authorized representative immediate and complete access to the registered dealer's or registered investment adviser's office, place of business, files, safe, and any other location at which books and records pertinent to the inspection are located; and

(2) allow the commissioner or the commissioner's authorized representative to make photostatic or electronic copies of books or records subject to inspection.

(d) A registered dealer or registered investment adviser may not charge a fee for copying information under this section.

(e) Information obtained under this section and any intra-agency or interagency notes, memoranda, reports, or other communications consisting of advice, analyses, opinions, or recommendations that are made in connection with the inspection are confidential. The commissioner may not disclose to the public or release documents or other information made confidential by this subsection except to the same extent provided for the release or disclosure of confidential documents or other information made or obtained in connection with an investigation under Section 4007.053.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.053. INVESTIGATIVE AUTHORITY. (a) The commissioner shall conduct investigations as the commissioner considers necessary to prevent or detect a violation of this title or a board rule or order.

(b) For the purpose of conducting an investigation under this section, the commissioner may:

(1) administer oaths;

(2) sign subpoenas;

(3) issue subpoenas or summons to compel the attendance and testimony of witnesses and the production of all records, electronic

or otherwise, relating to any matter that the commissioner has the authority under this title to consider or investigate;

(4) examine witnesses; and

(5) receive evidence.

(c) During an investigation, the commissioner may cause the deposition of witnesses residing inside or outside this state to be taken in the manner prescribed by the laws of this state for taking a deposition in a civil action.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.054. SERVICE OF SUBPOENA, SUMMONS, OR OTHER PROCESS. (a) The commissioner may serve a subpoena, summons, or other process issued by the commissioner or have the subpoena, summons, or other process served by an authorized agent of the commissioner, a sheriff, or a constable.

(b) The sheriff's or constable's fee for serving the subpoena is the same as the fee paid the sheriff or constable for similar services.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.055. ENFORCEMENT OF SUBPOENA; CONTEMPT. (a) If a person disobeys a subpoena or if a witness appearing before the commissioner refuses to give evidence, the commissioner may petition the district court of a jurisdiction in which the person or witness may be found, and the court on this petition may issue an order requiring the person or witness to, as applicable, obey the subpoena, testify, or produce a book, an account, a record, a paper, and correspondence relating to the matter in question.

(b) The district court may punish as contempt the failure to obey an order under Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.056. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. (a) All information received in connection with an investigation under Section 4007.053 and all internal notes, memoranda, reports, or communications made in connection with an investigation under that section are confidential.

(b) The commissioner may not disclose a document or other information made confidential by Subsection (a) unless the disclosure is made:

(1) to the public under court order for good cause shown; or

(2) at the commissioner's discretion, as part of an administrative proceeding or a civil or criminal action to enforce this title.

(c) The commissioner, at the commissioner's discretion, may disclose confidential information in the commissioner's possession to:

(1) a governmental or regulatory authority or any association of governmental or regulatory authorities approved by board rule; or

(2) any receiver appointed under Section 4007.151.

(d) Disclosure of information under Subsection (c) does not violate any other provision of this title or Chapter 552.

(e) This section may not be interpreted to prohibit or limit the publication of rulings or decisions of the commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.057. COMPENSATION OF WITNESSES. (a) A witness required to attend a hearing before the commissioner shall receive for each day's attendance a fee in an amount set by board rule.

(b) A disbursement made in payment of a fee under this section shall be:

(1) made in accordance with board rule; and

(2) included in, and paid in the same manner that is provided for, the payment of other expenses incurred in the administration and enforcement of this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.058. IMPOSITION OF COSTS ON PARTIES. The commissioner may impose on a party of record fees, expenses, or costs incurred in connection with a hearing or may divide the fee, expense, or cost among any or all parties of record as determined by the commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.059. ASSISTANCE TO SECURITIES REGULATORS IN OTHER JURISDICTIONS. (a) On request from a securities regulator of another state or of a foreign jurisdiction, the commissioner may provide assistance to the regulator in conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to a securities matter that the regulator is authorized to administer or enforce.

(b) The commissioner may provide assistance under this section through the use of the authority to investigate and any other power conferred by this section or Section 4007.054, 4007.055, 4007.056, or 4007.057, as the commissioner determines to be necessary and appropriate.

(c) In determining whether to provide assistance under this section, the commissioner may consider whether:

(1) the securities regulator is permitted and has agreed to provide assistance within the regulator's jurisdiction to the commissioner reciprocally and at the commissioner's request concerning securities matters;

(2) compliance with the request for assistance would violate or otherwise prejudice the public policy of this state;

(3) the conduct described in the request would also constitute a violation of this title or another law of this state had the conduct occurred in this state; and

(4) board employees and board or commissioner resources necessary to carry out the request for assistance are available.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. ADMINISTRATIVE ACTIONS

Sec. 4007.101. CEASE AND DESIST ORDER: OFFER OR SALE OF SECURITIES. (a) The commissioner may hold a hearing as provided by this section if at any time it appears to the commissioner that the sale, proposed sale, or method of sale of securities, regardless of whether exempt:

(1) is a fraudulent practice;

(2) does not comply with this title;

(3) would tend to work a fraud on any purchaser of the securities; or

(4) would not be fair, just, or equitable to any purchaser of the securities.

(b) The commissioner may hold a hearing under this section on a date set by the commissioner that is not later than the 30th day after the date the issuer or registrant of the securities, the person on whose behalf the securities are being or will be offered, or any person that is acting as a dealer or agent in violation of this title, as applicable:

(1) receives actual notice; or

(2) is provided notice by registered or certified mail to the person's last known address.

(c) If the commissioner determines at the hearing that the sale, proposed sale, or method of sale of the securities is a fraudulent practice, does not comply with this title, would tend to work a fraud on any purchaser of the securities, or would not be fair, just, or equitable to any purchaser of the securities, the commissioner may issue a written cease and desist order:

(1) prohibiting or suspending the sale of the securities;

(2) denying or revoking the registration of the securities;

(3) prohibiting an unregistered person from acting as a dealer or agent; or

(4) prohibiting the fraudulent conduct.

(d) After the issuance of a cease and desist order under Subsection (c), a dealer or agent may not knowingly sell or offer for sale any security named in the order.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.102. CEASE AND DESIST ORDER: INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE. (a) Notwithstanding any provision of this title to the contrary, the commissioner may hold a hearing as provided by this section if at any time it appears to the commissioner that:

(1) an investment adviser or investment adviser representative is engaging or is likely to engage in fraud or a fraudulent practice with respect to rendering services as an investment adviser or investment adviser representative; or

(2) a person is acting as an investment adviser or investment adviser representative in violation of this title.

(b) A hearing under this section must be held not later than the 30th day after the date the person described by Subsection (a):

(1) receives actual notice; or

(2) is provided notice by registered or certified mail, return receipt requested, to the person's last known address.

(c) After the hearing, the commissioner shall issue or decline to issue a cease and desist order. An order issued under this subsection must:

(1) require the investment adviser or investment adviser representative to immediately cease and desist from the fraudulent conduct; or

(2) prohibit an unregistered or other unauthorized person who is not exempt from the registration or notice filing requirements of this title from acting as an investment adviser or investment adviser representative in violation of this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.103. CEASE PUBLICATION ORDER. (a) Notwithstanding any provision of this title to the contrary, the commissioner may issue a cease publication order if at any time it appears to the commissioner that an offer contains any statement that is materially false or misleading or is otherwise likely to deceive the public.

(b) A person may not make an offer that is prohibited by an order issued under Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.104. EMERGENCY CEASE AND DESIST ORDER. (a) On the commissioner's determination that the conduct, act, or practice threatens immediate and irreparable public harm, the commissioner may issue an emergency cease and desist order to a person who the commissioner reasonably believes:

(1) is engaging in or is about to engage in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment adviser or investment adviser representative;

(2) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or

(3) is engaging or is about to engage in an act or practice that violates this title or a board rule.

(b) The emergency order must:

(1) be sent on issuance to each person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the specific charges and require the person to immediately cease and desist from the unauthorized activity; and

(3) contain a notice that a request for a hearing may be filed under this section.

(c) Unless a person against whom the emergency order is directed requests a hearing in writing before the 31st day after the date the order is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the commissioner; and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the commissioner shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties agree to a later hearing date. At the hearing, the

commissioner has the burden of proof and must present evidence in support of the emergency order.

(e) After the hearing, the commissioner shall affirm, modify, or set aside, wholly or partly, the emergency order. An order affirming or modifying the emergency order is immediately final for purposes of enforcement and appeal.

(f) An emergency order continues in effect unless the order is stayed by the commissioner. The commissioner may impose any condition before granting a stay of the order.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.105. DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION. (a) The commissioner may deny an application for registration under this title, suspend or revoke a registration issued under this title, place on probation a dealer, agent, investment adviser, or investment adviser representative whose registration has been suspended under this title, or reprimand a person registered under this title if the person:

(1) has been convicted of a felony;

(2) has been convicted of a misdemeanor that directly relates to the person's securities-related duties and responsibilities;

(3) has engaged in:

(A) an inequitable practice in the sale of securities or in rendering services as an investment adviser; or

(B) a fraudulent business practice;

(4) is an insolvent dealer or investment adviser;

(5) is a dealer and is selling or sold securities in this state through an agent other than a registered agent;

(6) is an investment adviser and is engaging or engaged in rendering services as an investment adviser in this state through a representative who is not registered to perform services for that investment adviser;

(7) is an agent and is selling or sold securities in this state for a dealer, issuer, or controlling person with knowledge that the dealer, issuer, or controlling person has not complied with this title;

(8) is an investment adviser representative and is rendering or rendered services as an investment adviser for an investment adviser in this state whom the representative is not or was not registered to represent;

(9) has:

(A) made a material misrepresentation to the commissioner or board in connection with information considered necessary by the commissioner or board to determine:

(i) a dealer's or investment adviser's financial responsibility; or

(ii) a dealer's, agent's, investment adviser's, or investment adviser representative's business repute or qualifications; or

(B) refused to provide information described by Paragraph (A) that the commissioner or board has requested;

(10) is registered as a dealer, agent, investment adviser, or investment adviser representative and has not complied with an applicable requirement under Section 4004.151(a);

(11) is the subject of any of the following orders issued within the preceding five years that remain effective:

(A) an order by the securities agency or administrator of any state, the financial regulatory authority of a foreign country, or the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's license as a dealer, agent, investment adviser, or investment adviser representative or the substantial equivalent of those terms;

(B) an order suspending or expelling from membership in or association with a member of a self-regulatory organization;

(C) a United States Postal Service fraud order;

(D) an order by the securities agency or administrator of any state, the financial regulatory authority of a foreign country, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, finding, after notice and opportunity for hearing, that the person engaged in acts involving fraud, deceit, false statements or omissions, or wrongful taking of property; or

(E) an order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.);

(12) is subject to any order, judgment, or decree entered

by a court that permanently restrains or enjoins the person from engaging in or continuing any conduct, action, or practice in connection with any aspect of the purchase or sale of securities or the rendering of investment advice; or

(13) has violated:

(A) any provision of this title;

(B) a board rule;

(C) any order issued by the commissioner; or

(D) any undertaking or agreement with the commissioner.

(b) If the commissioner proposes the suspension or revocation of a person's registration, the person is entitled to a hearing before the commissioner or a hearings officer as required by law.

(c) All registration certificates that have been revoked shall be immediately surrendered to the commissioner on request.

(d) This section does not affect the confidentiality of investigative records maintained by the commissioner or board.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.106. ASSESSMENT OF ADMINISTRATIVE FINE. (a) In addition to any other remedies, the commissioner, after giving notice and opportunity for a hearing, may issue an order that assesses an administrative fine against a person or company found to have:

(1) engaged in fraud or a fraudulent practice in connection with:

(A) the offer for sale or sale of a security; or

(B) the rendering of services as an investment adviser or investment adviser representative;

(2) made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public;

(3) engaged in an act or practice that violates this title or a board rule or order; or

(4) with intent to deceive or defraud or with reckless disregard for the truth or the law, materially aided any person in engaging in an act or practice described by Subdivision (1), (2), or (3).

(b) An administrative fine assessed under this section when added to the amount of any civil penalty previously awarded under

Section 4007.154 must be in an amount that does not exceed:

(1) the greater of:

(A) $20,000 per violation; or

(B) the gross amount of any economic benefit gained by the person or company as a result of the act or practice for which the fine was assessed; and

(2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than $250,000.

(c) For purposes of determining the amount of an administrative fine assessed under this section, the commissioner shall consider factors set out in guidelines established by the board.

(d) For purposes of private civil litigation, the payment of a fine assessed in an agreed order under this title does not constitute an admission of any misconduct described in the order.

(e) A proceeding for the assessment of an administrative fine must be commenced within five years after the violation occurs.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.107. HEARINGS ON CERTAIN MATTERS. (a) A person or company may request a hearing to dispute the commissioner's:

(1) failure or refusal to:

(A) register and issue a certificate of registration for a dealer or investment adviser under Section 4004.054; or

(B) register and issue evidence of registration for an agent or investment adviser representative under Section 4004.104;

(2) issuance of an order under Section 4007.101, 4007.102, 4007.103, or 4007.104; or

(3) taking of an action in any other particular matter for which no other procedure is specified by this title.

(b) A hearing under Subsection (a) must be held before the commissioner or a hearings officer as required by law.

(c) On complaint by a person aggrieved by the denial of a permit qualifying securities for sale under Subchapter A, Chapter 4003, or by the failure or refusal to register securities under Subchapter B or C, Chapter 4003, the board or a hearings officer, as required by law, shall conduct a hearing.

(d) A hearing under this section is subject to Chapter 2001.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.108. REFUND. (a) Subject to Subsection (b), the commissioner may order a dealer, agent, investment adviser, or investment adviser representative regulated under this title to pay a refund to a client or a purchaser of securities or services from the person or company as provided in an agreed order or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

(b) The amount of a refund ordered as provided in an agreed order or an enforcement order may not exceed the amount the client or purchaser paid to the dealer, agent, investment adviser, or investment adviser representative for a service or transaction regulated by the board. The commissioner may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 9.109, eff. January 1, 2022.

SUBCHAPTER D. CIVIL PROCEEDINGS

Sec. 4007.151. RECEIVERSHIP. (a) This section applies only to a person or company acting as a dealer, agent, investment adviser, investment adviser representative, or issuer or as an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer, regardless of whether the person or company is required to be registered as provided in this title.

(b) The commissioner may request the attorney general to bring an action as provided by this section for the appointment of a receiver for a person or company to which this section applies or the assets of the person or company if it appears to the commissioner, on complaint or otherwise, that:

(1) the person or company has:

(A) engaged in an act, transaction, practice, or course of business declared as a fraudulent practice under Section 4007.152 or 4007.153; and

(B) acted as a dealer, agent, investment adviser,

investment adviser representative, or issuer or as an affiliate of a dealer, agent, investment adviser, investment adviser representative, or issuer in connection with the fraudulent practice; and

(2) the appointment of a receiver for the person or company or the assets of the person or company is necessary to conserve and protect the assets for the benefit of customers, security holders, and other claimants and potential claimants of the person or company.

(c) On the commissioner's request under Subsection (b), the attorney general may bring an action against a person or company in the name and on behalf of the state if it appears to the attorney general that the facts described by that subsection exist with respect to the person or company. The facts contained in the petition for the appointment of a receiver must be verified by the commissioner on information and belief.

(d) An action under this section may be brought in a district court of any county in which the fraudulent practice that is the subject of the petition was wholly or partly committed or in a county in which any defendant for whom the appointment of a receiver is sought has the defendant's principal place of business. A district court described by this subsection has jurisdiction and venue of the action. This subsection is superior to any other provision of law establishing jurisdiction or venue with regard to an action for receivership.

(e) The attorney general may apply for and, on proper showing, is entitled to have a subpoena issued by the court that requires:

(1) the appearance, without delay, of a defendant or any employee, investment adviser representative, or agent of the defendant to testify and give evidence concerning a matter relevant to the appointment of a receiver; and

(2) the production of documents, books, and records that may be necessary for a hearing on the action.

(f) The court may appoint a receiver for the person or company or the person's or company's assets on the attorney general's proper showing of the existence of the facts described by Subsection (b) with respect to the person or company.

(g) If the court appoints a receiver without providing the person or company with notice and an opportunity for hearing, the person or company may file with the court a written application for an order dissolving the receivership. If the application is filed not later than the 30th day after the date the person or company is

served with the order appointing the receiver, the person or company is entitled to a hearing on the application not later than the 10th day after the date written notice is provided to the attorney general.

(h) A person may not be appointed as a receiver under this section unless the court finds that the person is qualified to discharge the duties of receiver after:

(1) hearing the views of:

(A) the attorney general;

(B) the commissioner; and

(C) the defendant against whom the appointment of a receiver is sought, if the court considers it practicable; and

(2) considering the probable nature and magnitude of the receiver's duties in the particular case.

(i) The commissioner or attorney general may not be required to give a bond for receivership in an action brought under this section. The court shall require a person appointed as a receiver to give a bond that is:

(1) in an amount found by the court to be sufficient after considering the probable nature and magnitude of the receiver's duties in the particular case; and

(2) conditioned on the faithful discharge of the receiver's duties.

(j) The remedy provided by this section is in addition to any other remedy made available to the commissioner or the attorney general by statutory laws or case law of this state, including any provision authorizing receiverships.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.152. INJUNCTIVE RELIEF. (a) The commissioner may request the attorney general to bring an action as provided by this section against a person or company if it appears to the commissioner, on complaint or otherwise, that the person or company:

(1) has engaged, is engaging, or is about to engage in fraud or a fraudulent practice in connection with the sale of a security;

(2) has engaged, is engaging, or is about to engage in

fraud or a fraudulent practice in rendering services as an investment adviser or investment adviser representative;

(3) has made an offer containing a statement that is materially misleading or is otherwise likely to deceive the public; or

(4) has engaged, is engaging, or is about to engage in an act or practice that violates this title or a board rule or order.

(b) On the commissioner's request under Subsection (a), the attorney general, in addition to other remedies, may bring an action in the name and on behalf of the state:

(1) against:

(A) a person or company described by Subsection (a);

(B) any person who, with intent to deceive or defraud or with reckless disregard for the truth or the law, has materially aided, is materially aiding, or is about to materially aid the person or company; and

(C) any other person concerned with or in any manner participating in or about to participate in the acts or practices described by Subsection (a); and

(2) to enjoin the person or company and any other person described by Subdivision (1) from continuing the acts or practices that are the subject of the action for injunctive relief or from doing any act to further the acts or practices.

(c) The facts contained in an application for injunctive relief must be verified by the commissioner on information and belief.

(d) The attorney general may apply for and, on proper showing, is entitled to have a subpoena issued by the court that requires:

(1) the appearance, without delay, of a defendant and any employee or agent of the defendant to testify and give evidence concerning the acts, conduct, or other matters complained about in the application for injunctive relief; and

(2) the production of documents, books, and records that may be necessary for the hearing on the action.

(e) A district court in any county in which it is shown that the acts that are the subject of the application for injunctive relief have been or are about to be committed or a district court in Travis County has jurisdiction and venue of an action brought under this section. This subsection is superior to any provision establishing jurisdiction or venue with regard to an action for an injunction.

(f) The commissioner or attorney general shall not be required to give a bond for injunction in an action brought under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.153. EQUITABLE RELIEF AND RESTITUTION. (a) On the commissioner's request, the attorney general may, in addition to other remedies, seek:

(1) equitable relief, including restitution, for a victim of a fraudulent practice; and

(2) the disgorgement of any economic benefit gained by a defendant through an act or practice that violates this title or for which this title provides the commissioner and attorney general with a remedy.

(b) The attorney general may seek the remedies described by Subsection (a) either in:

(1) an action under Section 4007.152; or

(2) a separate action brought in district court.

(c) The court may:

(1) grant any equitable relief the court considers appropriate; and

(2) order the defendant to deliver to each victim of an act or practice that violates this title, or for which this title provides the commissioner or the attorney general with a remedy, the amount of money or the property the defendant obtained from the victim, including any bonus, fee, commission, option, proceeds, or profit from or loss avoided through the sale of the security or through the rendering of services as an investment adviser or investment adviser representative, or any other tangible benefit.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.154. CIVIL PENALTY. (a) On the commissioner's request, the attorney general may, in addition to other remedies, seek a civil penalty to be paid to the state in an amount that, when added to the amount of any administrative fine previously assessed

under Section 4007.106(b), does not exceed:

(1) the greater of:

(A) $20,000 per violation; or

(B) the gross amount of any economic benefit gained by the person or company as a result of the commission of the act or practice; and

(2) if the act or practice was committed against a person 65 years of age or older, an additional amount of not more than $250,000.

(b) The attorney general may seek a civil penalty under this section either in:

(1) an action under Section 4007.152; or

(2) a separate action in district court.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.155. RECOVERY OF COSTS. In an action brought under Section 4007.152, 4007.153, or 4007.154, the attorney general may recover reasonable costs and expenses incurred by the attorney general in bringing the action.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER E. CRIMINAL PROVISIONS

Sec. 4007.201. UNAUTHORIZED SALE OF SECURITIES; OFFENSE. (a) A person commits an offense if the person sells, offers for sale or delivery, solicits subscriptions to or orders for, disposes of, invites orders for, or deals in any other manner in a security issued after September 6, 1955, unless:

(1) the security has been registered under Subchapter B or C, Chapter 4003; or

(2) a permit qualifying securities for sale has been issued under Subchapter A, Chapter 4003, with respect to the security.

(b) A person commits an offense if the person sells, offers for sale or delivery, solicits subscriptions to or orders for, disposes of, invites offers for, or deals in any other manner in a security without being a registered dealer or registered agent as provided in

this title.

(c) An offense under this section is a felony of the third degree.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.202. UNAUTHORIZED RENDERING OF SERVICES AS INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE; OFFENSE. (a) A person commits an offense if the person:

(1) renders services as an investment adviser or investment adviser representative; and

(2) is not registered as an investment adviser or investment adviser representative as required by this title.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.203. FRAUDULENT CONDUCT; OFFENSE. (a) A person commits an offense if:

(1) the person directly or indirectly:

(A) engages in any fraud or fraudulent practice;

(B) employs any device, scheme, or artifice to defraud;

(C) knowingly makes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or

(D) engages in any act, practice, or course of business that operates or will operate as a fraud or deceit on any person; and

(2) the applicable conduct is committed in connection with:

(A) the sale of, the offering for sale or delivery of, the purchase of, the offer to purchase, invitation of offers to purchase, invitations of offers to sell, or dealing in any other manner in any security, regardless of whether the transaction or security is exempt under Chapter 4005; or

(B) the rendering of services as an investment adviser or an investment adviser representative.

(b) An offense under this section is:

(1) a felony of the third degree, if the amount involved in the offense is less than $10,000;

(2) a felony of the second degree, if the amount involved in the offense is $10,000 or more but less than $100,000; or

(3) a felony of the first degree, if the amount involved is $100,000 or more.

(c) An indictment for an offense under this section may be brought only before the fifth anniversary of the date the offense was committed.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.204. MATERIALLY FALSE STATEMENT IN DOCUMENT OR PROCEEDING; OFFENSE. (a) A person commits an offense if the person knowingly makes or causes to be made any statement in a document filed with the commissioner or in a proceeding under this title that is, at the time and in light of the circumstances under which the statement is made, false or misleading in any material respect.

(b) An offense is established under this section regardless of whether the document or proceeding relates to a transaction or security that is exempt under Chapter 4005.

(c) An offense under this section is a felony of the third degree.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.205. FALSE STATEMENT OR REPRESENTATION CONCERNING REGISTRATION; OFFENSE. (a) A person commits an offense if the person knowingly makes a false statement or representation concerning a registration made or an exemption claimed under this title.

(b) An offense under this section is a state jail felony.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.206. VIOLATION OF CEASE AND DESIST ORDER; OFFENSE. (a) A person commits an offense if the person knowingly violates a cease and desist order issued by the commissioner under Section 4007.101, 4007.102, or 4007.104.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.207. NONCOMPLIANT OFFER OR OFFER PROHIBITED BY CEASE PUBLICATION ORDER; OFFENSE. (a) A person commits an offense if the person:

(1) makes an offer of a security in this state that does not comply with the requirements governing offers specified in Subchapter E, Chapter 4003; or

(2) knowingly makes an offer of a security in this state that is prohibited by a cease publication order issued by the commissioner under Section 4007.103.

(b) An offense under this section is a state jail felony.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.208. AGGREGATION OF AMOUNTS. When amounts are obtained in violation of this title pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4007.209. LIABILITY OF CORPORATION. (a) In this section:

(1) "Association" and "corporation" have the meanings assigned by Section 1.07, Penal Code.

(2) "High managerial agent" has the meaning assigned by Section 7.21, Penal Code.

(b) If conduct constituting an offense under this subchapter is performed by an agent acting on behalf of a corporation or association and within the scope of the agent's office or employment, the corporation or association is criminally responsible for the offense only if the commission of the offense was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting on behalf of the corporation or association; or

(2) a high managerial agent acting on behalf of the corporation or association and within the scope of the high managerial agent's office or employment.

(c) It is an affirmative defense to prosecution of a corporation or association under Subsection (b) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent the commission of the offense.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

CHAPTER 4008. PRIVATE RIGHTS OF ACTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4008.001. UNENFORCEABILITY OF ILLEGAL CONTRACTS. A person may not base a suit on a contract if the person:

(1) made or engaged in the performance of the contract in violation of this title or a rule, order, or requirement under this title; or

(2) acquired any purported right under the contract with knowledge of the facts by reason of which the contract's making or performance was in violation of this title or a rule, order, or requirement under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.002. CERTAIN WAIVERS VOID. A condition, stipulation, or provision is void if it binds a buyer or seller of a security or a purchaser of services rendered by an investment adviser or investment adviser representative to waive compliance with this title or a rule,

order, or requirement under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.003. ACTION FOR COLLECTION OF COMMISSION OR COMPENSATION. (a) This section does not apply to a person or company that rendered services in connection with a transaction that is exempt under Subchapter A, Chapter 4005, or under a rule adopted by the board under Section 4005.024 if the person or company was not required to be registered by the terms of the exemption.

(b) A person or company may not bring or maintain any action in a court of this state for collection of a commission or compensation for services rendered in the sale or purchase of securities unless the person or company alleges and proves that:

(1) the person or company was:

(A) registered under this title; or

(B) exempt from registration under rules adopted under Section 4004.001; and

(2) the securities sold were registered under this title at the time the alleged cause of action arose.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.004. STAY OF RECOGNITION OR ENFORCEMENT OF FOREIGN-COUNTRY JUDGMENT. (a) Before a court's recognition or enforcement of a foreign-country judgment under Chapter 36A, Civil Practice and Remedies Code, or otherwise, a party against whom recognition or enforcement of the foreign-country judgment is sought is entitled to de novo review by a court in this state to determine whether a party, or the party's successors, assigns, agents, or representatives seeking recognition or enforcement of the foreign-country judgment have violated this title or Chapter 17, Business & Commerce Code.

(b) A party seeking de novo review under this section must file with the court a verified pleading asserting a violation of this title or Chapter 17, Business & Commerce Code, not later than the 30th day after the date of service of the notice of filing of the foreign-country judgment with the court for recognition or

enforcement.

(c) A pleading filed in accordance with Subsection (b) operates as a stay of the commencement or continuation of a proceeding to recognize or enforce the foreign-country judgment until the court completes its de novo review under this section and renders a final judgment.

(d) A finding by a court of a violation of this title or Chapter 17, Business & Commerce Code, is a sufficient ground for nonrecognition of a foreign-country judgment.

(e) This section applies to a foreign-country judgment involving a contract or agreement for a sale, offer for sale, or sell as defined by this title, or investment, that imposes an obligation of indemnification or liquidated damages on a resident of this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.005. SURVIVABILITY OF ACTION. A cause of action under this title survives the death of a person who might have been a plaintiff or defendant.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.006. SAVING OF EXISTING RIGHTS AND REMEDIES. The rights and remedies provided by this title are in addition to any other rights, including exemplary damages, or remedies that exist.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. CIVIL LIABILITY FOR ISSUANCE, SALE, OR PURCHASE OF SECURITIES

Sec. 4008.051. OFFEROR OR SELLER LIABILITY: REGISTRATION AND RELATED VIOLATIONS.

Text of subsection as amended by Acts 2021, 87th Leg., R.S., Ch. 41 (S.B. 1280), Sec. 1, eff. January 1, 2022.

(a) A person who offers or sells a security in violation of the following is liable to a person who buys the security from the offeror or seller:

(1) Section 4003.001(a), 4004.051, 4004.052, 4004.101(a), 4004.102(a), or 4007.103;

(2) Subchapter G, Chapter 4003, other than Section 4003.304, or a requirement of the commissioner under Subchapter G, Chapter 4003, other than Section 4003.304; or

(3) an order under Section 4007.101 or 4007.104.

(b) The buyer of the security may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 41 (S.B. 1280), Sec. 1, eff. January 1, 2022.

Sec. 4008.052. OFFEROR OR SELLER LIABILITY: UNTRUTH OR OMISSION. (a) Except as provided by Subsection (c), a person who offers or sells a security and from whom another person buys the security is liable to the buyer of the security, regardless of whether the security or transaction is exempt under Chapter 4005, if the person offers or sells the security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(b) The buyer may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

(c) Except as provided by Subsection (d), a person offering or selling a security is not liable under Subsection (a) if the person sustains the burden of proof that either:

(1) the buyer knew of the untruth or omission; or

(2) the offeror or seller did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(d) The issuer of the security, other than a government issuer identified in Section 4005.017, is not entitled to the defense in

Subsection (c)(2) regarding an untruth or omission:

(1) in a prospectus required in connection with an application or registration statement under Subchapter A, B, or C, Chapter 4003; or

(2) in a writing prepared and delivered by the issuer in the sale of the security.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.053. BUYER LIABILITY. (a) Except as provided by Subsection (c), a person who offers to buy or buys a security and to whom another person sells the security is liable to the seller, regardless of whether the security or transaction is exempt under Chapter 4005, if the person offers to buy or buys the security by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(b) The seller may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

(c) A person who offers to buy or buys a security is not liable under Subsection (a) if the offeror or buyer sustains the burden of proof that either:

(1) the seller knew of the untruth or omission; or

(2) the offeror or buyer did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.054. NONSELLING ISSUER LIABILITY. (a) This section applies only to an issuer that registers under Subchapter A, B, or C, Chapter 4003, or under Section 6, Securities Act of 1933 (15 U.S.C. Section 77f), the issuer's outstanding securities for offer and sale by or for the owner of the securities.

(b) Except as provided by Subsection (d), the issuer is liable to a person buying the registered security if the prospectus required

in connection with the registration contains, as of its effective date, an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) The buyer of the registered security may sue for:

(1) rescission; or

(2) damages if the buyer no longer owns the security.

(d) The issuer is not liable under Subsection (b) if the issuer sustains the burden of proof that the buyer knew of the untruth or omission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.055. CONTROLLING PERSON OR AIDER LIABILITY. (a) Except as provided by Subsection (b), a person who directly or indirectly controls a seller, buyer, or issuer of a security is liable under Section 4008.051, 4008.052, 4008.053, or 4008.054 jointly and severally with the seller, buyer, or issuer and to the same extent as the seller, buyer, or issuer.

(b) The controlling person is not liable under Subsection (a) if the controlling person sustains the burden of proof that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

(c) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids a seller, buyer, or issuer of a security is liable under Section 4008.051, 4008.052, 4008.053, or 4008.054 jointly and severally with the seller, buyer, or issuer and to the same extent as the seller, buyer, or issuer.

(d) There is contribution under this section as in cases of contract among the several persons who are liable.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.056. RESCISSION. (a) On rescission under this subchapter, a buyer of a security shall, on tender of the security or

a security of the same class and series, recover the consideration the buyer paid for the security plus interest on the consideration at the legal rate from the date the buyer made the payment, less the amount of any income the buyer received on the security.

(b) On rescission under this subchapter, a seller of a security shall recover the security or a security of the same class and series, on tender of the consideration the seller received for the security plus interest on the consideration at the legal rate from the date the seller received the payment, less the amount of any income the buyer received on the security.

(c) For a buyer suing under Section 4008.054, the consideration the buyer paid for the security is deemed to be the lesser of:

(1) the price the buyer paid; or

(2) the price at which the security was offered to the public.

(d) A tender specified in this section may be made at any time before a judgment is entered.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.057. DAMAGES. (a) In damages under this subchapter, a buyer of a security shall recover the consideration the buyer paid for the security plus interest on the consideration at the legal rate from the date the buyer made the payment, less the greater of:

(1) the value of the security at the time the buyer disposed of the security plus the amount of any income the buyer received on the security; or

(2) the actual consideration received for the security at the time the buyer disposed of the security plus the amount of any income the buyer received on the security.

(b) In damages under this subchapter, a seller of a security shall recover the value of the security at the time of sale plus the amount of any income the buyer received on the security, less the consideration paid to the seller for the security plus interest on the consideration at the legal rate from the date of payment to the seller.

(c) For a buyer suing under Section 4008.054, the consideration the buyer paid for the security is deemed to be the lesser of:

(1) the price the buyer paid; or

(2) the price at which the security was offered to the public.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.058. REQUIREMENTS OF RESCISSION OFFER TO BUYERS. (a) A rescission offer is sufficient for purposes of Section 4008.062(a) or (b) only if the offer meets the requirements of this section.

(b) The offer must include financial and other information material to the offeree's decision whether to accept the offer. The offer may not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) The offeror shall:

(1) deposit funds in escrow in a state or national bank doing business in this state, or in another bank approved by the commissioner; or

(2) receive an unqualified commitment from a bank described by Subdivision (1) to provide funds sufficient to pay the amount offered.

(d) The amount of the offer to a buyer who still owns the security must be the amount, excluding costs and attorney's fees, the buyer would recover on rescission under Section 4008.056(a).

(e) The amount of the offer to a buyer who no longer owns the security must be the amount, excluding costs and attorney's fees, the buyer would recover in damages under Section 4008.057(a).

(f) The offer must state:

(1) the amount of the offer, as determined under Subsection (d) or (e), which must be given:

(A) to the extent practicable, in terms of a specified number of dollars and a specified rate of interest for a period starting at a specified date; and

(B) to the extent necessary, in terms of specified elements, such as the value of the security when the offeree disposed of the security, that are known to the offeree but not to the offeror, subject to the provision of reasonable evidence by the

offeree;

(2) the name and address of the bank at which the amount of the offer will be paid;

(3) that the offeree will receive the amount of the offer within a specified number of days that is not more than 30 days after the date the bank receives, in form reasonably acceptable to the offeror and in compliance with the instructions in the offer:

(A) the security, if the offeree still owns the security, or evidence of the fact and date of disposition if the offeree no longer owns the security; and

(B) evidence, if necessary, of elements described by Subdivision (1)(B);

(4) in a conspicuous manner that the offeree may not sue on the offeree's purchase under this subchapter unless:

(A) the offeree accepts the offer but does not receive the amount of the offer, in which case the offeree may sue within the time allowed by Section 4008.062(a)(1), (b)(1), or (b)(2), as applicable; or

(B) the offeree rejects the offer in writing within 30 days of the date the offeree receives the offer and expressly reserves in the rejection the right to sue, in which case the offeree may sue not later than one year after the date of the rejection;

(5) in reasonable detail, the nature of the violation of this title that occurred or may have occurred; and

(6) any other information the offeror wants to include.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.059. REQUIREMENTS OF RESCISSION OFFER TO SELLERS. (a) A rescission offer is sufficient for purposes of Section 4008.062(c) only if the offer meets the requirements of this section.

(b) The offer must include financial and other information material to the offeree's decision whether to accept the offer. The offer may not contain an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

(c) The offeror shall deposit the securities in escrow in a

state or national bank doing business in this state, or in another bank approved by the commissioner.

(d) The terms of the offer must be the same, excluding costs and attorney's fees, as the seller would recover on rescission under Section 4008.056(b).

(e) The offer must state:

(1) the terms of the offer, as determined under Subsection (d), which must be given:

(A) to the extent practicable, in terms of a specified number and kind of securities and a specified rate of interest for a period starting at a specified date; and

(B) to the extent necessary, in terms of specified elements that are known to the offeree but not to the offeror, subject to the provision of reasonable evidence by the offeree;

(2) the name and address of the bank at which the terms of the offer will be carried out;

(3) that the offeree will receive the securities within a specified number of days that is not more than 30 days after the date the bank receives, in form reasonably acceptable to the offeror and in compliance with the instructions in the offer:

(A) the amount required by the terms of the offer; and

(B) evidence, if necessary, of elements described by Subdivision (1)(B);

(4) in a conspicuous manner that the offeree may not sue on the offeree's sale under this subchapter unless:

(A) the offeree accepts the offer but does not receive the securities, in which case the offeree may sue within the time allowed by Section 4008.062(c)(1) or (2), as applicable; or

(B) the offeree rejects the offer in writing within 30 days of the date the offeree receives the offer and expressly reserves in the rejection the right to sue, in which case the offeree may sue not later than one year after the date of the rejection;

(5) in reasonable detail, the nature of the violation of this title that occurred or may have occurred; and

(6) any other information the offeror wants to include.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.060. COSTS; ATTORNEY'S FEES. (a) On rescission or as a part of damages under this subchapter, a buyer or a seller of a security shall also recover costs.

(b) On rescission or as a part of damages under this subchapter, a buyer or a seller of a security may also recover reasonable attorney's fees if the court finds that the recovery is equitable under the circumstances.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.061. LIMITATION OF LIABILITY IN SMALL BUSINESS ISSUANCES. (a) In this section, "small business issuer" means an issuer that, at the time of an offer to which this section applies:

(1) has annual gross revenues in an amount that does not exceed $25 million; and

(2) does not have a class of equity securities registered, or required to be registered, with the Securities and Exchange Commission under Section 12, Securities Exchange Act of 1934 (15 U.S.C. Section 78l).

(b) This section applies only to:

(1) an offer of securities in an aggregate amount that does not exceed $5 million made by a small business issuer or by the seller of securities of a small business issuer; and

(2) a person who has been engaged to provide services relating to an offer of securities described by Subdivision (1), including an attorney, an accountant, a consultant, or the firm of the attorney, accountant, or consultant.

(c) In an action or series of actions under this subchapter relating to an offer of securities to which this section applies, the maximum amount that may be recovered against a person to whom this section applies is three times the fee paid by the small business issuer or other seller to the person for the services related to the offer of securities, unless the trier of fact finds the person engaged in intentional wrongdoing in providing the services.

(d) A small business issuer making an offer of securities shall:

(1) provide to the prospective buyer a written disclosure of the limitation of liability created by this section; and

(2) receive a signed acknowledgment that the disclosure was provided.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.062. STATUTE OF LIMITATIONS. (a) A person may not sue under Section 4008.051 or 4008.055 to the extent that section relates to Section 4008.051:

(1) more than three years after the date of the sale;

(2) if the person received a rescission offer meeting the requirements of Section 4008.058 before suit, unless the person:

(A) rejected the offer in writing within 30 days of the date the person received the offer; and

(B) expressly reserved in the rejection the right to sue; or

(3) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.058.

(b) A person may not sue under Section 4008.052, 4008.054, or 4008.055 to the extent that section relates to Section 4008.052 or 4008.054:

(1) more than three years after the date of discovery of the untruth or omission, or after the date discovery should have been made by the exercise of reasonable diligence;

(2) more than five years after the date of the sale;

(3) if the person received a rescission offer meeting the requirements of Section 4008.058 before suit, unless the person:

(A) rejected the offer in writing within 30 days of the date the person received the offer; and

(B) expressly reserved in the rejection the right to sue; or

(4) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.058.

(c) A person may not sue under Section 4008.053 or 4008.055 to the extent that section relates to Section 4008.053:

(1) more than three years after the date of discovery of the untruth or omission, or after the date discovery should have been

made by the exercise of reasonable diligence;

(2) more than five years after the date of the purchase;

(3) if the person received a rescission offer meeting the requirements of Section 4008.059 before suit, unless the person:

(A) rejected the offer in writing within 30 days of the date the person received the offer; and

(B) expressly reserved in the rejection the right to sue; or

(4) more than one year after the date the person so rejected a rescission offer meeting the requirements of Section 4008.059.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER C. CIVIL LIABILITY OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

Sec. 4008.101. INVESTMENT ADVISER OR INVESTMENT ADVISER REPRESENTATIVE LIABILITY. (a) An investment adviser or investment adviser representative who renders services as an investment adviser in violation of Section 4004.052 or 4004.102(a) or an order under Section 4007.102 or 4007.104 is liable to the purchaser, who may sue for damages in the amount of any consideration paid for the services.

(b) Except as provided by Subsection (c), an investment adviser or investment adviser representative who commits fraud or engages in a fraudulent practice in rendering services as an investment adviser is liable to the purchaser, who may sue for damages.

(c) An investment adviser or investment adviser representative who in rendering services as an investment adviser makes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement made, in light of the circumstances under which the statement is made, not misleading is not liable under Subsection (b) if the adviser or representative proves:

(1) the purchaser knew of the truth or omission; or

(2) the adviser or representative did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01,

eff. January 1, 2022.

Sec. 4008.102. CONTROLLING PERSON OR AIDER LIABILITY. (a) Except as provided by Subsection (b), a person who directly or indirectly controls an investment adviser is jointly and severally liable with the investment adviser under this subchapter and to the same extent as the investment adviser.

(b) The controlling person is not liable under Subsection (a) if the controlling person sustains the burden of proof that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which liability is alleged to exist.

(c) A person who directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aids an investment adviser in conduct for which a cause of action is authorized by this subchapter is jointly and severally liable with the investment adviser in an action to recover damages under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.103. DAMAGES. In damages under Section 4008.101(b), the purchaser is entitled to recover:

(1) the amount of any consideration paid for the services, less the amount of any income the purchaser received from acting on the services;

(2) any loss incurred by the purchaser in acting on the services provided by the investment adviser or investment adviser representative;

(3) interest at the legal rate for judgments accruing from the date the purchaser paid the consideration; and

(4) to the extent the court considers equitable, court costs and reasonable attorney's fees.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.104. STATUTE OF LIMITATIONS. (a) A person may not sue under Section 4008.101(a) more than three years after the date the violation occurs.

(b) A person may not sue under Section 4008.101(b) more than:

(1) five years after the date the violation occurs; or

(2) three years after the date the person knew or should have known, by the exercise of reasonable diligence, of the occurrence of the violation.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

Sec. 4008.105. REMEDY NOT EXCLUSIVE. A remedy provided by this subchapter is not exclusive of any other applicable remedy provided by law.

Added by Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 1.01, eff. January 1, 2022.

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

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

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

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

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

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

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

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

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

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

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

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

Sec. 1.005. DEFINITIONS. In this code:

(1) "Artificial swimming lagoon" means an artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant. The term does not include a body of water open to the public that continuously recirculates water from a spring or a pool.

(2) "Licensed practitioner" includes a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

(3) "Public swimming pool" means an artificial body of water, including a spa, maintained expressly for public recreational purposes, swimming and similar aquatic sports, or therapeutic purposes. The term does not include an artificial swimming lagoon or a body of water open to the public that continuously recirculates water from a spring.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 1, eff. June 15, 2017.

TITLE 2. HEALTH
SUBTITLE A. DEPARTMENT OF STATE HEALTH SERVICES
CHAPTER 11. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this title:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of state health

services.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 15, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0003, eff. April 2, 2015.

CHAPTER 12. POWERS AND DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Text of section effective on April 1, 2025

Sec. 12.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);

(4) Section 524.0202; and

(5) Section 525.0254.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.18, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.23, eff. April 1, 2025.

Text of section effective until April 1, 2025

Sec. 12.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the

commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.18, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.23, eff. April 1, 2025.

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

(b) The executive commissioner shall adopt rules for the performance of each duty imposed by law on the executive commissioner, the department, or the commissioner and file a copy of those rules with the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

Sec. 12.0011. INVESTIGATIONS IN GENERAL. Subject to the oversight of the executive commissioner, the department shall examine, investigate, enter, and inspect any public place or public building as the department determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

Sec. 12.002. CERTAIN PROCEDURES FOR INVESTIGATIONS. (a) The commissioner or the commissioner's designee may administer oaths,

summon witnesses, and compel the attendance of witnesses in any matter proper for investigation by the department, subject to the executive commissioner's oversight, including the determination of nuisances and the investigation of:

(1) public water supplies;

(2) sanitary conditions;

(3) the existence of infection; or

(4) any matter that requires the department to exercise its discretionary powers and that is within the general scope of its authority under this subchapter.

(b) Each district court shall aid the department in its investigations and in compelling compliance with this subchapter. If a witness summoned by the commissioner or the commissioner's designee is disobedient or disrespectful to the department's lawful authority, the district court of the county in which the witness is summoned to appear shall punish the witness in the manner provided for contempt of court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0010, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 12.011. APPROPRIATIONS, GRANTS, AND DONATIONS. (a) To carry out its duties and functions, the department may apply for, contract for, receive, and spend an appropriation or grant from the

state, the federal government, or any other public source, subject to any limitation or condition prescribed by legislative appropriation.

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

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

Sec. 12.0111. LICENSING FEES. (a) This section applies in relation to each licensing program administered by the department or administered by a regulatory board or other agency that is under the jurisdiction of the department or administratively attached to the department. In this section and Section 12.0112, "license" includes a permit, certificate, or registration.

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

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

(d) This section does not apply to:

(1) a person regulated under Chapter 773; or

(2) a license or registration under Chapter 401.

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

Amended by:

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0011, eff. April 2, 2015.

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

(b) This section does not apply to:

(1) a license issued for a youth camp under Chapter 141;

(2) a food manager certificate issued under Subchapter G, Chapter 438; or

(3) a license or registration under Chapter 401.

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

Amended by:

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

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

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

Sec. 12.0115. INTEGRATION OF HEALTH CARE DELIVERY PROGRAMS. (a) In this section, "health care delivery programs" includes the department's primary health care services program, its program to improve maternal and infant health, its services program for children with special health care needs, any aspects of health care delivery under the state Medicaid program assigned to the department by law or by the commission, and the part of any other department program concerned with the department's responsibility for the delivery of health care services.

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

Medicaid program.

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

(1) the development of health care policy;

(2) the delivery of health care services, to the extent appropriate for the recipients of the health care services; and

(3) to the extent possible, the administration of contracts with providers of health care services, particularly providers who concurrently provide health care services under more than one contract or program with the department.

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

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

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

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

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

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

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

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

(4) the integration of reimbursement methods:

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

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

(f) The department shall examine the extent to which the department could integrate all or part of its health care delivery programs into a single delivery system.

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

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

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0012, eff. April 2, 2015.

Sec. 12.012. AWARDING CONTRACTS OR GRANTS AND SELECTING SERVICE PROVIDERS. (a) In awarding contracts or grants for services, or in selecting service providers under any program administered by the department, the department shall give preference to providers who can

deliver appropriate services of similar quality in the most cost-effective manner.

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

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

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

(b) The executive commissioner by rule shall adopt a list of categories of licensed, certified, registered, or otherwise authorized providers to whom the department may award a grant for professional services under this section or with whom the department may contract or otherwise engage to perform professional services under this section.

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

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

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

(d) The department may award a grant, enter into a contract, or otherwise engage an individual or a group or association of individuals to perform professional services without complying with Subsection (c) if the executive commissioner by order determines that an emergency exists that necessitates the use of different

procedures. A grant, contract, or engagement under this subsection is effective only for the period specified by the executive commissioner's order.

Added by Acts 1991, 72nd Leg., ch. 284, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0013, eff. April 2, 2015.

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

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

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

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

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

(d) The executive commissioner by rule may establish fees that the department may collect for the sale of laboratory services.

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

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

Added by Acts 1997, 75th Leg., ch. 647, Sec. 1, eff. June 11, 1997.
Renumbered from Sec. 12.020 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(62), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0014, eff. April 2, 2015.

Sec. 12.0125. DRUG REBATES. (a) The department shall develop

a voluntary drug manufacturer rebate program for drugs purchased by or on behalf of a client of the Kidney Health Care Program or the Children with Special Health Care Needs Services Program for which rebates are not available under the Medicaid drug manufacturer rebate program.

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

(c) Amounts received by the department under the drug rebate program established under this section may be appropriated only for the Kidney Health Care Program or the Children with Special Health Care Needs Services Program.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0018, eff. April 2, 2015.

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

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

(c) To the extent allowed by federal law, the department shall provide an equal opportunity to request a waiver of the foreign country residence requirement for an individual described by Subsection (a) who agrees to practice medicine in:

(1) an area that the department determines is affected by an ongoing exposure to a disease that is designated as reportable under Section 81.048;

(2) a medically underserved area; or

(3) a health professional shortage area.

Added by Acts 2003, 78th Leg., ch. 143, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 3, eff. September 1, 2015.

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

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 17, eff. June 18, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0019, eff. April 2, 2015.

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

(1) the licensing of drivers;

(2) the enforcement of traffic safety laws, including differentiation between drivers who are ill or intoxicated; and

(3) accident investigation, including examination for alcohol or drugs in the bodies of persons killed in traffic accidents.

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

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

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

any state agency, board, or commission.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0020, eff. April 2, 2015.

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

(1) the imposition of a reprimand, a period of probation, a monetary penalty, or a condition on a person's continued practice or a facility's continued operation; and

(2) the refusal to renew or the suspension, probation, or revocation of a license or other form of permission to engage in an activity.

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

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

(d) The department shall publish and provide the information

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0021, eff. April 2, 2015.

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0022, eff. April 2, 2015.

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

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

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

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the department may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to

begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the department and must again comply with notice requirements and any other requirements of law or department rule as though the application were originally submitted to the department on that date.

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

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.01, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0023, eff. April 2, 2015.

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

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

Sec. 12.019. GENETIC COUNSELING FEES. (a) The executive commissioner by rule may set a fee to be collected by the department for providing genetic counseling services. The fee may not exceed the actual cost of providing the services.

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

Added by Acts 1995, 74th Leg., ch. 76, Sec. 8.116, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 12.017 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(51), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0024, eff. April 2, 2015.

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

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

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

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

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan, or any combination of those items, that has been adopted and used by the department to identify goods or services and distinguish those goods or services from other goods or services; or

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

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

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

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

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

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

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

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

(d) It is not a violation of Chapter 572, Government Code, or another law of this state for an employee of the department who

conceives, creates, discovers, invents, or develops intellectual property to own or to be awarded any amount of equity interest or participation in the research, development, licensing, or exploitation of that intellectual property with the approval of the commissioner.

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

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

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

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

(4) the identification of ownership and licensing responsibilities for each class of intellectual property; and

(5) royalty participation by inventors and the department.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0025, eff. April 2, 2015.

SUBCHAPTER D. FEES FOR PUBLIC HEALTH SERVICES

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

(1) personal health promotion, maintenance, and treatment services;

(2) infectious disease control and prevention services;

(3) environmental and consumer health protection services;

(4) laboratory services;

(5) health facility architectural plan review;

(6) public health planning, information, and statistical services;

(7) public health education and information services; and

(8) administration services.

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

Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES. (a) The executive commissioner by rule may adopt fees to be collected by the department from a person who receives public health services from the department.

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0026, eff. April 2, 2015.

Sec. 12.033. DISTRIBUTION AND ADMINISTRATION OF CERTAIN VACCINES AND SERA. (a) Except as otherwise provided by this section, the executive commissioner by rule shall adopt fees to be collected by the department for the distribution and administration of vaccines and sera provided under:

(1) Section 38.001, Education Code;

(2) Section 42.043, Human Resources Code;

(3) Chapter 826 (Rabies Control Act of 1981);

(4) Chapter 81 (Communicable Disease Prevention and Control Act); and

(5) Section 161.005.

(b) Except as otherwise provided by this section, the executive commissioner by rule may require a department contractor to collect

fees for public health services provided by a contractor participating in a department program under the laws specified by Subsection (a).

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

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

(1) a public health emergency exists; and

(2) the vaccine or serum is needed to meet the emergency.

(e) The department may not deny an immunization to an individual required to be immunized under a law specified by Subsection (a) because of the individual's inability to pay for the immunization. The department shall provide the immunization at a reduced charge or no charge according to the financial ability of the individual or a person with a legal obligation to support the individual to pay for the immunization. The department shall give priority to those persons least able to pay for immunization.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0027, eff. April 2, 2015.

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

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0028, eff. April 2, 2015.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 647, Sec. 2, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02(11), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0029, eff. April 2, 2015.

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

(1) personal insurance;

(2) another person, for a personal injury caused by the other person's negligence or wrongdoing; or

(3) any other source.

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

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

(1) enforcement of the right would tend to defeat the purpose of the department's program; or

(2) the administrative expense of the enforcement would be greater than the expected recovery.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0030, eff. April 2, 2015.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0031, eff. April 2, 2015.

Sec. 12.038. RULES. The executive commissioner may adopt rules necessary to implement this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0032, eff. April 2, 2015.

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

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

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

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

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

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

Sec. 12.052. REQUIREMENTS FOR EXPENDITURE OF CERTAIN FUNDS. (a) The expenditure of funds received by local units of government from the department is governed by Chapter 783, Government Code, and the rules adopted under that law, except as provided by Section 12.055.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.15, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1045, Sec. 3, eff. Sept. 1, 1997.

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

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

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

(1) exempt under Section 12.053 from the statewide personal property accounting system; or

(2) lawfully in the possession of an emergency medical services provider or governmental entity as those terms are defined by Section 773.003.

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

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

Added by Acts 1993, 73rd Leg., ch. 164, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(10), eff. Sept. 1, 1997.

Sec. 12.055. CERTAIN PROCUREMENTS MADE WITH DEPARTMENT FUNDS. (a) A state agency or local unit of government that expends funds received from the department for the acquisition of goods and services may satisfy the requirements of Section 12.052 or of another state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with those funds in accordance with Section 12.056 or in accordance with:

(1) Section 2155.144, Government Code, if the entity is a state agency subject to that law;

(2) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(3) this section, if the entity is not covered by Subdivision (1) or (2).

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

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

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the state agency's or local unit of government's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the state agency or local unit of government to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

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

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

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

(10) the acquisition price; and

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0033, eff. April 2, 2015.

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

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

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

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

SUBCHAPTER F. BORDER HEALTH

Sec. 12.071. OFFICE OF BORDER HEALTH. The department shall

establish and maintain an office in the department to coordinate and promote health and environmental issues between this state and Mexico.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 7, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0034, eff. April 2, 2015.

Sec. 12.072. VECTOR-BORNE AND ZOONOTIC DISEASE MITIGATION IN BORDER COUNTIES. (a) To address vector-borne and zoonotic diseases and standardize practices in counties located along the international border with Mexico, the department shall:

(1) consult with the Department of Agriculture and other appropriate state agencies to study:

(A) the ongoing and potential needs of border counties related to vector-borne and zoonotic diseases;

(B) the availability of and capacity for vector mitigation and control, including increased staffing, equipment, education, and training; and

(C) strategies to improve or develop continuing education and public outreach initiatives for vector-borne and zoonotic disease prevention, including sanitation, removal of standing water, use of repellant, and reporting to health authorities of rashes and other symptoms of vector-borne and zoonotic diseases;

(2) develop rapid local and regional response and support plans for:

(A) ongoing vector-borne and zoonotic disease control activities; and

(B) disasters, including flooding, hurricanes, and outbreaks of vector-borne diseases; and

(3) perform any administrative actions necessary to address the findings from the study described by Subdivision (1) and to implement any appropriate strategies developed under this section.

(b) The department may solicit and accept gifts, grants, and donations to implement and administer this section. The department shall coordinate with appropriate federal agencies, state agencies, nonprofit organizations, public and private hospitals, institutions of higher education, and private entities in implementing and

administering this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 398 (S.B. 1312), Sec. 3, eff. June 2, 2019.

SUBCHAPTER H. MEDICAL ADVISORY BOARD

Sec. 12.091. DEFINITION. In this subchapter, "panel" means a panel of the medical advisory board.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0035, eff. April 2, 2015.

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

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

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

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

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

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

Added by Acts 1995, 74th Leg., ch. 165, Sec. 9, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1261, Sec. 21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 9.23, eff. Sept. 1, 1999.
Amended by:

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0036, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 29, eff. January 1, 2016.

Sec. 12.093. ADMINISTRATION. (a) The medical advisory board is administratively attached to the department.

(b) The department:

(1) shall provide administrative support for the medical advisory board and panels of the medical advisory board; and

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0037, eff. April 2, 2015.

Sec. 12.094. RULES RELATING TO MEDICAL ADVISORY BOARD MEMBERS. (a) The executive commissioner:

(1) may adopt rules to govern the activities of the medical advisory board;

(2) by rule may establish a reasonable fee to pay a member of the medical advisory board for the member's professional consultation services; and

(3) if appropriate, may authorize reimbursement for travel expenses as provided by Section 2110.004, Government Code, for each meeting a member attends.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0038, eff. April 2, 2015.

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

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

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

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

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

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

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

Sec. 12.096. PHYSICIAN REPORT. (a) A physician licensed to practice medicine in this state may inform the Department of Public

Safety of the State of Texas or the medical advisory board, orally or in writing, of the name, date of birth, and address of a patient older than 15 years of age whom the physician has diagnosed as having a disorder or disability specified in a rule of the Department of Public Safety of the State of Texas.

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

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

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

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

(2) are privileged information; and

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

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

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

(2) the applicant or license holder; and

(3) the officer who presides at the hearing.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0039, eff. April 2, 2015.

Sec. 12.098. LIABILITY. A member of the medical advisory

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

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

SUBCHAPTER I. TEXAS VOLUNTEER HEALTH CORPS

Sec. 12.111. TEXAS VOLUNTEER HEALTH CORPS. (a) The department shall establish the Texas Volunteer Health Corps to enhance community-based public health services.

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

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

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

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

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

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

networks.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0040, eff. April 2, 2015.

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

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

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

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

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

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

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

SUBCHAPTER J. TOBACCO SETTLEMENT PROCEEDS

Sec. 12.131. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

(b) Subject to the approval of the advisory committee, the executive commissioner shall adopt rules governing the collection of information under Subsection (a). The rules may provide for regular

audits of randomly selected political subdivisions and may govern the manner in which a political subdivision is selected for an audit and the selection of an auditor.

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0041, eff. April 2, 2015.

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

(b) The rules may provide for:

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

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

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0042, eff. April 2, 2015.

Sec. 12.135. EFFECT OF DISPUTE. A dispute filed under

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

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

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

(b) If a monetary penalty is applied under Section 12.134, the department shall also reduce the political subdivision's percentage of the subsequent annual distribution of the earnings from the account appropriately.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0043, eff. April 2, 2015.

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

duties under this subchapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0044, eff. April 2, 2015.

Sec. 12.138. APPROVAL OF RULES. A rule to be adopted by the executive commissioner relating to certification of a percentage of an annual distribution under Section 12.132 or collection of information under Sections 12.132, 12.133, and 12.134 must be submitted to the advisory committee and may not become effective before the rule is approved by the advisory committee. If the advisory committee disapproves a proposed rule, the advisory committee shall provide the executive commissioner the specific reasons that the rule was disapproved.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0045, eff. April 2, 2015.

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

(1) review the results of any audit conducted under this

subchapter and the results of any dispute filed under Section 12.134; and

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

Added by Acts 1999, 76th Leg., ch. 753, Sec. 2.01, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0046, eff. April 2, 2015.

CHAPTER 13. DEPARTMENT HOSPITALS AND RESPIRATORY FACILITIES

SUBCHAPTER A. CARE AND TREATMENT IN DEPARTMENT HOSPITALS

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

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

(2) will benefit from hospitalization.

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

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

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

(c) The executive commissioner may adopt rules and the department may enter into contracts as necessary to implement this section.

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

(1) admit a patient to a particular hospital;

(2) guarantee the availability of space at any hospital; or

(3) provide treatment for a particular medical need at any hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0049, eff. April 2, 2015.

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

(b) The department may establish at the Rio Grande State Center:

(1) cancer screening;

(2) diagnostic services;

(3) educational services;

(4) obstetrical services;

(5) gynecological services;

(6) other inpatient health care services; and

(7) outpatient health care services, including diagnostic, treatment, disease management, and supportive care services.

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

Amended by:

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0050, eff. April 2, 2015.

Sec. 13.004. TREATMENT OF CERTAIN PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) The department or the Department of Aging and Disability Services, as appropriate, may transfer a person with mental illness or an intellectual disability who is infected with tuberculosis to a public health hospital as defined by Section 13.033.

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

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

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

by Acts 1995, 74th Leg., ch. 107, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0051, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0052, eff. April 2, 2015.

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

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

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

(b) The department may contract with:

(1) municipal, county, or state hospitals;

(2) private physicians;

(3) licensed nursing facilities and hospitals; and

(4) hospital districts.

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0053, eff. April 2, 2015.

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

(1) case-finding;

(2) inpatient and outpatient treatment; and
(3) the eventual eradication of tuberculosis.

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

Sec. 13.007. COLONEL H. WILLIAM "BILL" CARD, JR., OUTPATIENT CLINIC. The outpatient clinic operated by the South Texas Health Care System in Harlingen, Texas, is named the Colonel H. William "Bill" Card, Jr., Outpatient Clinic in honor of Colonel H. William "Bill" Card, Jr.

Added by Acts 2009, 81st Leg., R.S., Ch. 1056 (H.B. 4642), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1118 (S.B. 1926), Sec. 1, eff. June 17, 2011.

SUBCHAPTER B. TEXAS TUBERCULOSIS CODE

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

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

Sec. 13.032. PURPOSE. The purpose of this subchapter is to:
(1) enable persons with tuberculosis to obtain needed care;
(2) provide care and treatment for those persons; and
(3) facilitate their hospitalization.

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

Sec. 13.033. DEFINITIONS. In this subchapter:
(1) "Legally responsible person" means a parent, guardian, or spouse, or any person whom the laws of this state hold responsible for debts incurred as a result of the hospitalization or treatment of a patient.
(2) "Local health authority" means a practicing physician who acts as:

(A) a municipal or county health authority;

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

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

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

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

(5) "Public health hospital" means a hospital operated by the department to provide services under this subchapter, including the Texas Center for Infectious Disease.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0054, eff. April 2, 2015.

Sec. 13.034. DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The executive commissioner shall adopt rules relating to:

(1) the management of public health hospitals;

(2) the duties of officers and employees of those hospitals; and

(3) the enforcement of necessary discipline and restraint of patients.

(a-1) The executive commissioner may adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients.

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

(c) The department may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this

subchapter;

(2) require reports from the administrator of a public health hospital relating to the admission, examination, diagnosis, release, or discharge of a patient;

(3) visit each hospital regularly to review admitting procedures and the care and treatment of all new patients admitted since the last visit; and

(4) investigate by personal visit a complaint made by a patient or by another person on behalf of a patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0055, eff. April 2, 2015.

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0056, eff. April 2, 2015.

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

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

(c) An application for admission to a public health hospital shall be accompanied by a certificate issued by a physician stating that the physician has thoroughly examined the applicant and that the

applicant has tuberculosis. In the case of an applicant who is not a resident of this state, the certificate may be issued by a physician who holds a license to practice medicine in the state of residence of the applicant.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0057, eff. April 2, 2015.

Sec. 13.037. DETERMINATION OF RESIDENCY. (a) A person is a resident of this state if the person:

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

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

(3) is not in this state temporarily.

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

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

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

(3) employment in this state.

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

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

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

(1) does not possess property of any kind;

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

(3) is unable to reimburse the state.

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0058, eff. April 2, 2015.

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

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

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

hospital administrator, who shall receive the amount and give a receipt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0059, eff. April 2, 2015.

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

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

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

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

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0060, eff. April 2, 2015.

Sec. 13.042. DISCRIMINATION PROHIBITED. (a) A public health hospital may not discriminate against a patient.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0061, eff. April 2, 2015.

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

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

(c) The department shall strictly enforce this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0062, eff. April 2, 2015.

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

(1) members of the charitable organization;

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

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

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

(c) The state may not incur any expense in the erection, furnishing, and maintenance of the accommodations. The charitable organization that enters a patient under this section may be required to pay the pro rata part of the maintenance costs of that patient

that is found to be just and equitable, pending the next legislative appropriation for the maintenance of state chest hospitals. Any part of the accommodations not used by persons described by Subsection (a) may be used, at the discretion of the hospital administrator, by other patients in the hospital without charge to the state.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0063, eff. April 2, 2015.

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0064, eff. April 2, 2015.

Sec. 13.046. ADMISSION OF NONRESIDENT PATIENTS. (a) The department may enter into an agreement with an agency of another state responsible for the care of residents of that state who have tuberculosis under which:

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0065, eff. April 2, 2015.

SUBTITLE B. HEALTH PROGRAMS

CHAPTER 31. PRIMARY HEALTH CARE

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

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

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

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

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

(3) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for

payment of the costs of primary health care services, including benefits available from:

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

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

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

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

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

(4) "Primary health care services" includes:

(A) diagnosis and treatment;

(B) emergency services;

(C) family planning services;

(D) preventive health services, including immunizations;

(E) health education;

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

(G) nutrition services;

(H) health screening;

(I) home health care;

(J) dental care;

(K) transportation;

(L) prescription drugs and devices and durable supplies;

(M) environmental health services;

(N) podiatry services; and

(O) social services.

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0066, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0067, eff. April 2, 2015.

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

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

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

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

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

(d) The executive commissioner shall adopt rules under

Subsection (c) relating to the geographic areas covered and the classes of individuals eligible for services according to a statewide determination of the need for services.

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

(1) diagnosis and treatment;

(2) emergency services;

(3) family planning services;

(4) preventive health services, including immunizations;

(5) health education; and

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0068, eff. April 2, 2015.

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

(b) The executive commissioner by rule shall:

(1) establish the administrative structure of the program;

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

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0069, eff. April 2, 2015.

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

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

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

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

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

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

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

(5) eliminate, reduce, or otherwise modify the proposed

scope or type of services the department proposes to provide directly to the extent that those services may be provided by existing private or public providers or other resources in the service area that meet the executive commissioner's criteria for approval as providers.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0070, eff. April 2, 2015.

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

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

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

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

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

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

(e) The department may not exclude a provider solely because

the provider receives federal funds if the federal funds are inadequate to provide the services authorized by this chapter to all eligible individuals seeking services from that provider.

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

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

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

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

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

(2) expires according to its terms.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0071, eff. April 2, 2015.

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

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

(c) The application form must be accompanied by:

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0072, eff. April 2, 2015.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0073, eff. April 2, 2015.

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

(b) The department may modify, suspend, or terminate services

to an individual eligible for or receiving services after notice to the individual and an opportunity for a fair hearing.

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0074, eff. April 2, 2015.

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

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

(c) When an application is made under this chapter or when services are received, the individual applying for or receiving services shall inform the department of any other benefit to which the individual, or a person with a legal obligation to support the individual, may be entitled.

(d) An individual who has received services that are covered by

some other benefit, or a person with a legal obligation to support that individual, shall reimburse the department to the extent of the services provided when the other benefit is received.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0075, eff. April 2, 2015.

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

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

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

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

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0076, eff. April 2, 2015.

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0077, eff. April 2, 2015.

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

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

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

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

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

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

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

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

(3) the average cost per recipient of services;

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

(5) any other information required by the executive commissioner.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0078, eff. April 2, 2015.

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

(1) quantifiable indicators of effort and success;

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

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

(4) criteria for phasing out unnecessary services;

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

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

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

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

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

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

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

Sec. 31.017. FEDERALLY QUALIFIED HEALTH CENTERS. The department may make grants to establish new or expand existing facilities and to support new or expanded services at facilities that can qualify as federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B), in this state, including:

(1) planning grants;

(2) development grants;

(3) capital improvement grants; and

(4) grants for transitional operating support.

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

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

Sec. 31.018. REFERRAL FROM HEALTHY TEXAS WOMEN PROGRAM TO PRIMARY HEALTH CARE SERVICES PROGRAM. (a) In this section, "Healthy Texas Women program" means a program operated by the commission that is substantially similar to the demonstration project operated under former Section 32.0248, Human Resources Code, and that is intended to expand access to preventive health and family planning services for women in this state.

(b) The executive commissioner by rule shall ensure that women receiving services under the Healthy Texas Women program are referred to and provided with information on the primary health care services program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 2, eff.

June 10, 2019.

CHAPTER 32. MATERNAL AND INFANT HEALTH IMPROVEMENT

SUBCHAPTER A. PROGRAM FOR WOMEN AND CHILDREN

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

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

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

(1) "Adolescent" means an individual younger than 18 years of age.

(2) "Ancillary services" means services necessary to obtain timely, effective, and appropriate maternal and infant health improvement services, and includes prescription drugs, medical social services, transportation, health promotion services, and laboratory services.

(3) "Facility" includes a hospital, public health clinic, birthing center, outpatient clinic, or community health center.

(4) "Infant care" means maternal and infant health improvement services and ancillary services appropriate for an individual from birth to 12 months of age.

(5) "Intrapartum care" means maternal and infant health improvement services and ancillary services appropriate for a woman, fetus, or infant during childbirth.

(6) "Maternal and infant health improvement services" means services necessary to assure quality health care for women and children.

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

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

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

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

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

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

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

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

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

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

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

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

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

purposes of this chapter.

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

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0079, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0080, eff. April 2, 2015.

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

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

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

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

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

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

(e) In structuring the program and adopting rules, the

department and executive commissioner shall attempt to maximize the amount of federal matching funds available for maternal and infant health improvement services while continuing to serve targeted populations.

(f) If necessary, the executive commissioner by rule may coordinate services and other parts of the program with the medical assistance program. However, the executive commissioner may not adopt rules relating to the services under either program that would:

(1) cause the program established under this chapter not to conform with federal law to the extent that federal matching funds would not be available; or

(2) affect the status of the single state agency to administer the medical assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 3, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0081, eff. April 2, 2015.

Sec. 32.005. ABORTION SERVICES RESTRICTED. Notwithstanding any other provision of this chapter, funds administered under this chapter may not be used to provide abortion services unless the mother's life is in danger.

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

Sec. 32.006. ADMINISTRATION. (a) The executive commissioner shall adopt rules necessary to administer this chapter, and the department shall administer the program in accordance with those rules.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0082, eff. April 2, 2015.

Sec. 32.011. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may, for cause, deny, modify, suspend, or terminate services to an individual eligible for or receiving services after notice to the individual and an opportunity for a hearing.

(b) The executive commissioner by rule shall provide criteria for action by the department under this section.

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(65), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 124, Sec. 4, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0083, eff. April 2, 2015.

Sec. 32.012. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The department shall require an individual receiving services under this chapter, or the person with a legal obligation to support the individual, to pay for or reimburse the department for that part of the cost of the services that the individual or person is financially able to pay.

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

(c) When a determination of eligibility to receive maternal and infant health improvement services is made under this chapter or when

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

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

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 5, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0084, eff. April 2, 2015.

Sec. 32.013. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 32.012 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

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

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

Sec. 32.014. FEES. (a) Except as prohibited by federal law or regulation, the department may collect fees for the services provided directly by the department or through approved providers in

accordance with Subchapter D, Chapter 12.

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

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0085, eff. April 2, 2015.

Sec. 32.015. FUNDING. (a) Except as provided by this chapter or by other law, the department may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

(b) Notwithstanding other law, the department's authority to spend funds appropriated for the program established by this chapter is not affected by the amount of federal funds the department receives.

(c) The department is not required to provide maternal and infant health improvement services unless funds are appropriated to the department to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 124, Sec. 6, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0086, eff. April 2, 2015.

Sec. 32.016. CONTRACTS. The department shall enter into contracts and agreements or award grants necessary to facilitate the efficient and economical provision of services under this chapter, including contracts and grants for the purchase of services, equipment, and supplies from approved providers.

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

Sec. 32.017. RECORDS. (a) The department shall require each provider receiving reimbursement under this chapter to maintain

records and information for each applicant for or recipient of services.

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

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(79), eff. June 17, 2011.

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

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(1), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(79), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0087, eff. April 2, 2015.

Sec. 32.018. PROGRAM PLANS. (a) The department shall have a long-range plan covering at least six years that includes at least the following elements:

(1) quantifiable indicators of effort and success;

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

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

(4) criteria for phasing out unnecessary services;

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

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

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

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

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

(e) The department shall use the information collected under Section 32.017 to develop the long-range and short-range plans.

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

Sec. 32.021. REQUIREMENTS REGARDING THE WOMEN, INFANTS, AND CHILDREN PROGRAM. (a) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children shall each month provide the clinical and nutritional services supported by that program during extended hours, as defined by the department.

(b) Each agency, organization, or other entity that contracts with the program to provide clinical or nutritional services shall include in its annual plan submitted to the department a plan to expand client access to services through extended hours, the schedule for each site that provides services, and the reasons for each site's schedule. An agency, organization, or other entity that contracts with the program is not required to offer extended hours at each of its service sites.

(c) The department shall adopt guidelines for extended hours and waivers from the requirement of Subsection (a).

(d) To obtain a waiver, an agency, organization, or other entity shall submit a written justification to the department explaining the extraordinary circumstances involved and identifying the time frame needed for their resolution.

(e) The department may not grant a waiver to an agency, organization, or other entity for a period of more than two years.

(f) If an agency, organization, or other entity required by

this section to maintain extended hours provides other maternal and child health services, that entity shall also make those services available during the extended hours.

Added by Acts 1993, 73rd Leg., ch. 328, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0088, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0089, eff. April 2, 2015.

Sec. 32.0211. WOMEN, INFANTS, AND CHILDREN PROGRAM OUTREACH CAMPAIGN TO PROMOTE FATHERS' INVOLVEMENT. (a) The attorney general shall:

(1) subject to Subsections (b) and (c), develop and periodically update a publication that:

(A) describes the importance and long-term positive effects on children of a father's involvement during a mother's pregnancy; and

(B) provides guidance to prospective fathers on the positive actions that they can take to support the pregnant mother during pregnancy and the effect those actions have on pregnancy outcomes; and

(2) make the publication described by Subdivision (1) available to any agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children and on the attorney general's Internet website in a format that allows the public to download and print the publication.

(b) The publication developed by the attorney general under Subsection (a) must include:

(1) information regarding the steps that unmarried parents must take if the parents want to establish legal paternity and the benefits of paternity establishment for children;

(2) a worksheet to help fathers identify personal risk behaviors, including smoking, substance abuse, and unemployment;

(3) information regarding how a father's personal risk behaviors may affect the father's child and a guide to resources that

are available to the father to assist in making necessary lifestyle changes;

(4) information for fathers about the mother's prenatal health, including the emotional and physical changes a mother will experience throughout pregnancy, the mother's nutritional needs, and an explanation of how the father may help the mother meet those needs;

(5) an explanation of prenatal health care visits, including an explanation of what they are and what to expect, and the practical ways a father may support the mother throughout pregnancy;

(6) information regarding a child's prenatal health, including the child's developmental stages, the importance of attending prenatal health care visits, the practical ways a father may contribute to healthy baby outcomes, and actions the father may take to prepare for the birth of a child;

(7) an explanation regarding prenatal tests, including an explanation of what the tests are and what tests to expect;

(8) basic infant care information, including:

(A) information regarding the basics of dressing, diapering, bathing, consoling, and stimulating an infant;

(B) health and safety issues, including issues relating to nutritional information, sleep needs and expectations, baby-proofing a home, and what to expect at the first well-child visits; and

(C) information on bonding and attachment and how each relates to an infant's development;

(9) healthy relationship and coparenting information, including communication strategies, conflict resolution strategies, and problem-solving techniques for coparenting;

(10) worksheets, activities, and exercises to aid fathers and the couple in exploring the following topics:

(A) personal ideas about fatherhood and the role of the father in the family system;

(B) the immediate and long-term benefits of father involvement specific to their family; and

(C) perceived barriers to father involvement and strategies for overcoming those barriers; and

(11) activities and projects for fathers that increase the fathers' understanding of the stages of child developmental and health and safety issues.

(c) In developing the publication required by Subsection (a), the attorney general shall consult with:

(1) the department as the state agency responsible for administering the Special Supplemental Nutrition Program for Women, Infants, and Children and this state's program under the Maternal and Child Health Services Block Grant Act (42 U.S.C. Section 701 et seq.); and

(2) the Texas Council on Family Violence.

(d) An agency, organization, or other entity that contracts with the Special Supplemental Nutrition Program for Women, Infants, and Children shall make the publication described by Subsection (a) available to each client receiving clinical or nutritional services under the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 241 (H.B. 824), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0090, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0091, eff. April 2, 2015.

SUBCHAPTER B. PERINATAL HEALTH CARE SYSTEM

Sec. 32.041. LEGISLATIVE FINDINGS. (a) The legislature finds that the perinatal period beginning before conception and continuing through the first year of life poses unique challenges for the health care system. The development of a coordinated, cooperative system of perinatal health care within a geographic area will reduce unnecessary mortality and morbidity for women and infants.

(b) In order to improve the health of women and infants, it is necessary to promote health education, to provide assurance of reasonable access to safe and appropriate perinatal services, and to improve the quality of perinatal care by encouraging optimal use of health care personnel.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.042. DUTIES OF EXECUTIVE COMMISSIONER; RULES. (a) The executive commissioner by rule shall adopt:

(1) minimum standards and objectives to implement voluntary perinatal health care systems; and

(2) policies for health promotion and education, risk assessment, access to care, and perinatal system structure, including the transfer and transportation of pregnant women and infants.

(b) The rules must:

(1) reflect all geographic areas of the state, considering time and distance;

(2) provide specific requirements for appropriate care of perinatal patients; and

(3) facilitate coordination among all perinatal service providers and health care facilities in the delivery area.

(c) The rules must include:

(1) risk reduction guidelines for preconceptional, prenatal, intrapartum, postpartum, and infant care, including guidelines for the transfer and transportation of perinatal patients;

(2) criteria for determining geographic boundaries of perinatal health care systems;

(3) minimum requirements of health promotion and education, risk assessment, access to care, and coordination of services that must be present in a perinatal health care system;

(4) minimum requirements for resources and equipment needed by a health care facility to treat perinatal patients;

(5) standards for the availability and qualifications of the health care personnel treating perinatal patients in a facility;

(6) requirements for data collection, including operation of the perinatal health care system and patient outcomes;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that health care facilities will not refuse to accept the transfer of a perinatal patient solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0092, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0093, eff. April 2, 2015.

Sec. 32.043. DUTIES OF DEPARTMENT. The department shall:

(1) develop and monitor a statewide network of voluntary perinatal health care systems;

(2) develop and maintain a perinatal reporting and analysis system to monitor and evaluate perinatal patient care in the perinatal health care systems in this state; and

(3) provide for coordination and cooperation in this state and among this state and adjoining states.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.

Sec. 32.044. SYSTEM REQUIREMENTS. (a) Each voluntary perinatal health care system must have:

(1) a coordinating board responsible for ensuring, providing, or coordinating planning access to services, data collection, and provider education;

(2) access to appropriate emergency medical services;

(3) risk assessment, transport, and transfer protocols for perinatal patients;

(4) one or more health care facilities categorized according to perinatal care capabilities using standards adopted by department rule; and

(5) documentation of broad-based participation in planning by providers of perinatal services and community representatives throughout the defined geographic region.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0094, eff. April 2, 2015.

Sec. 32.045. GRANT PROGRAM. (a) The department may establish a program to award grants to initiate, expand, maintain, and improve voluntary perinatal health care systems.

(b) The executive commissioner by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the need for emergency transportation of perinatal patients and the extent to which the system meets the identified needs; and

(6) the stage of development of a perinatal health care system.

(c) The department may approve grants according to rules adopted by the executive commissioner. A grant awarded under this section is governed by Chapter 783, Government Code, and rules adopted under that chapter.

Added by Acts 1995, 74th Leg., ch. 124, Sec. 7, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0095, eff. April 2, 2015.

Sec. 32.046. POSTPARTUM DEPRESSION STRATEGIC PLAN. (a) The commission shall develop and implement a five-year strategic plan to improve access to postpartum depression screening, referral, treatment, and support services. Not later than September 1 of the last fiscal year in each five-year period, the commission shall develop a new strategic plan for the next five fiscal years beginning with the following fiscal year.

(b) The strategic plan must provide strategies to:

(1) increase awareness among state-administered program providers who may serve women who are at risk of or are experiencing postpartum depression about the prevalence and effects of postpartum depression on outcomes for women and children;

(2) establish a referral network of community-based mental health providers and support services addressing postpartum depression;

(3) increase women's access to formal and informal peer

support services, including access to certified peer specialists who have received additional training related to postpartum depression;

(4) raise public awareness of and reduce the stigma related to postpartum depression; and

(5) leverage sources of funding to support existing community-based postpartum depression screening, referral, treatment, and support services.

(c) The commission shall coordinate with the department, the statewide health coordinating council, the office of mental health coordination, and the statewide behavioral health coordinating council in developing the strategic plan.

(d) The commission, in consultation with the department, the statewide health coordinating council, the office of mental health coordination, and the statewide behavioral health coordinating council, shall annually review and update, as necessary, the strategic plan.

(e) For purposes of this section, "postpartum depression" means a disorder in which a woman experiences moderate to severe depression following a pregnancy, regardless of whether the pregnancy resulted in birth, or an act defined by Section 245.002(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 1028 (H.B. 253), Sec. 1, eff. September 1, 2019.

Sec. 32.047. HYPEREMESIS GRAVIDARUM STRATEGIC PLAN. (a) In this section, "hyperemesis gravidarum" means a disorder that causes a woman to experience extreme, persistent nausea and vomiting during pregnancy that may lead to dehydration, weight loss, or electrolyte imbalance.

(b) The commission shall develop and implement a five-year strategic plan to improve the diagnosis and treatment of and raise public awareness of hyperemesis gravidarum. Not later than September 1 of the last state fiscal year in each five-year period, the commission shall develop a new strategic plan for the next five state fiscal years that begins with the following state fiscal year.

(c) The strategic plan must provide strategies to:

(1) increase awareness among state-administered program providers who may serve women at risk of or experiencing hyperemesis gravidarum about the prevalence and effects of hyperemesis gravidarum

on outcomes for women and children;

(2) establish a referral network of community-based health care providers and support services addressing hyperemesis gravidarum;

(3) increase women's access to formal and informal peer support services, including access to certified peer specialists who have successfully completed additional training related to hyperemesis gravidarum;

(4) raise public awareness of hyperemesis gravidarum; and

(5) leverage sources of funding to support existing community-based hyperemesis gravidarum screening, referral, treatment, and support services.

(d) The commission shall coordinate with the department and the statewide health coordinating council in the development of the strategic plan.

(e) The commission, in consultation with the department and the statewide health coordinating council, shall annually review the strategic plan and update the plan as necessary.

Added by Acts 2021, 87th Leg., R.S., Ch. 441 (S.B. 1941), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. CENTERS OF EXCELLENCE FOR FETAL DIAGNOSIS AND THERAPY

Sec. 32.071. DESIGNATION OF CENTERS OF EXCELLENCE FOR FETAL DIAGNOSIS AND THERAPY. (a) The department, in consultation with the Perinatal Advisory Council established under Section 241.187, shall designate as centers of excellence for fetal diagnosis and therapy one or more health care entities or programs in this state, including institutions of higher education as defined by Section 61.003, Education Code, or the programs of those institutions.

(b) The executive commissioner of the Health and Human Services Commission, in consultation with the department and the Perinatal Advisory Council, shall adopt the rules necessary for a health care entity or program in this state to be designated as a center of excellence for fetal diagnosis and therapy.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

Sec. 32.072. SUBCOMMITTEE. (a) The department, in consultation with the Perinatal Advisory Council, shall appoint a subcommittee of that advisory council to advise the advisory council and the department on the development of rules related to the designations made by the department under this subchapter. As part of its duties under this subsection, the subcommittee specifically shall advise the advisory council and the department regarding the criteria necessary for a health care entity or program in this state to receive a designation under this subchapter.

(b) The subcommittee must consist of individuals with expertise in fetal diagnosis and therapy. A majority of the members of the subcommittee must practice in those areas in a health profession in this state. The subcommittee may include national and international experts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

Sec. 32.073. PRIORITY CONSIDERATIONS FOR CENTER DESIGNATIONS. The rules adopted under Section 32.071(b) must prioritize awarding a designation under this subchapter to a health care entity or program that:

(1) offers fetal diagnosis and therapy through an extensive multi-specialty clinical program that is affiliated and collaborates extensively with a medical school in this state and an associated hospital facility that provides advanced maternal and neonatal care in accordance with its level of care designation received under Section 241.182;

(2) demonstrates a significant commitment to research in and advancing the field of fetal diagnosis and therapy;

(3) offers advanced training programs in fetal diagnosis and therapy; and

(4) integrates an advanced fetal care program with a program that provides appropriate long-term monitoring and follow-up care for patients.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

Sec. 32.074. QUALIFICATIONS FOR DESIGNATION. The rules adopted under Section 32.071(b) must ensure that a health care entity or program that receives a center of excellence designation under this subchapter:

(1) provides or is affiliated with a hospital facility that provides advanced maternal and neonatal care in accordance with its level of care designation received under Section 241.182;

(2) implements and maintains a multidisciplinary health care team, including maternal fetal medicine specialists, pediatric and surgical specialists, neonatologists, nurses with specialized maternal and neonatal training, and other ancillary and support staff as appropriate to provide maternal, fetal, and neonatal services;

(3) establishes minimum criteria for medical staff, nursing staff, and ancillary and support personnel;

(4) measures short-term and long-term patient diagnostic and therapeutic outcomes; and

(5) provides to the department annual reports containing aggregate data on short-term and long-term diagnostic and therapeutic outcomes as requested or required by the department and makes those reports available to the public.

Added by Acts 2015, 84th Leg., R.S., Ch. 1060 (H.B. 2131), Sec. 1, eff. September 1, 2015.

SUBCHAPTER E. ENHANCED PRENATAL AND POSTPARTUM CARE SERVICES

Text of section effective until April 1, 2025

Sec. 32.101. ENHANCED PRENATAL SERVICES FOR CERTAIN WOMEN. The commission, in collaboration with managed care organizations that contract with the commission to provide health care services to medical assistance recipients under Chapter 533, Government Code, shall develop and implement cost-effective, evidence-based, and enhanced prenatal services for high-risk pregnant women covered under the medical assistance program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.24, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 32.101. ENHANCED PRENATAL SERVICES FOR CERTAIN WOMEN. The commission, in collaboration with managed care organizations that contract with the commission to provide health care services to medical assistance recipients under Chapter 540 or 540A, Government Code, as applicable, shall develop and implement cost-effective, evidence-based, and enhanced prenatal services for high-risk pregnant women covered under the medical assistance program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.24, eff. April 1, 2025.

Sec. 32.102. EVALUATION AND ENHANCEMENT OF POSTPARTUM CARE SERVICES FOR CERTAIN WOMEN. (a) In this section, "Healthy Texas Women program" means a program operated by the commission that is substantially similar to the demonstration project operated under former Section 32.0248, Human Resources Code, and that is intended to expand access to preventive health and family planning services for women in this state.

(b) The commission shall evaluate postpartum care services provided to women enrolled in the Healthy Texas Women program after the first 60 days of the postpartum period.

(c) Based on the commission's evaluation under Subsection (b), the commission shall develop an enhanced, cost-effective, and limited postpartum care services package for women enrolled in the Healthy Texas Women program to be provided:

(1) after the first 60 days of the postpartum period; and

(2) for a period of not more than 12 months after the date of enrollment in the Healthy Texas Women program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

SUBCHAPTER F. DELIVERY AND IMPROVEMENT OF MATERNAL HEALTH CARE SERVICES INVOLVING MANAGED CARE ORGANIZATIONS

Sec. 32.151. DEFINITIONS. In this subchapter:

(1) "High-risk population" means the population of women most disproportionately affected by maternal morbidity and maternal mortality, as determined in the joint biennial report required under Section 34.015 including minority women.

(2) "Healthy Texas Women program" means a program operated by the commission that is substantially similar to the demonstration project operated under former Section 32.0248, Human Resources Code, and that is intended to expand access to preventive health and family planning services for women in this state.

Text of subdivision effective until April 1, 2025

(3) "Medicaid managed care organization" means a managed care organization as defined by Section 533.001, Government Code, that contracts with the commission under Chapter 533, Government Code, to provide health care services to medical assistance program recipients.

Text of subdivision effective on April 1, 2025

(3) "Medicaid managed care organization" means a managed care organization as defined by Section 540.0001, Government Code, that contracts with the commission under Chapter 540 or 540A, Government Code, as applicable, to provide health care services to medical assistance program recipients.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.25, eff. April 1, 2025.

Sec. 32.152. PROVISION OF HEALTHY TEXAS WOMEN PROGRAM SERVICES THROUGH MANAGED CARE. (a) The commission shall contract with Medicaid managed care organizations to provide Healthy Texas Women program services.

(b) In implementing this section, the commission shall:

(1) consult with the state Medicaid managed care advisory committee before contracting with Medicaid managed care organizations to provide Healthy Texas Women program services under this section;

(2) identify barriers that prevent women from obtaining Healthy Texas Women program services and seek opportunities to mitigate those barriers; and

(3) designate Healthy Texas Women program service providers as significant traditional providers until at least the third anniversary of the date the commission initially contracts with Medicaid managed care organizations to provide program services.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 629 (H.B. 133), Sec. 2, eff. September 1, 2021.

Sec. 32.153. CONTINUITY OF CARE FOR CERTAIN WOMEN ENROLLING IN HEALTHY TEXAS WOMEN PROGRAM. The commission shall develop and implement strategies to ensure the continuity of care for women who transition from the medical assistance program and enroll in the Healthy Texas Women program. In developing and implementing strategies under this section, the commission may collaborate with health care providers participating in the Healthy Texas Women program and Medicaid managed care organizations that provide health care services to pregnant women.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

Sec. 32.154. POSTPARTUM DEPRESSION TREATMENT NETWORK. Using money from an available source designated by the commission, the commission, in collaboration with Medicaid managed care organizations and health care providers participating in the Healthy Texas Women program, shall develop and implement a postpartum depression treatment network for women enrolled in the medical assistance or Healthy Texas Women program.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

Sec. 32.155. STATEWIDE INITIATIVES TO IMPROVE QUALITY OF MATERNAL HEALTH CARE. (a) In this section, "social determinants of health" means the environmental conditions in which an individual lives that affect the individual's health and quality of life.

(b) The commission shall develop or enhance statewide initiatives to improve the quality of maternal health care services and outcomes for women in this state. The commission shall specify the initiatives that each managed care organization that contracts with the commission to provide health care services in this state must incorporate in the organization's managed care plans. The initiatives may address:

(1) prenatal and postpartum care rates;

(2) maternal health disparities that exist for minority women and other high-risk populations of women in this state;

(3) social determinants of health; or

(4) other priorities specified by the commission.

(c) A managed care organization required to incorporate the initiatives in the organization's managed care plans under Subsection (b) may incorporate any additional initiatives to improve the quality of maternal health care services for women receiving health care services through the organization.

(d) The commission shall prepare and submit to the legislature and make available to the public an annual report that summarizes:

(1) the commission's progress in developing or enhancing initiatives under this section; and

(2) each managed care organization's progress in incorporating the required initiatives in the organization's managed care plans.

Text of subsection effective until April 1, 2025

(e) The commission shall submit the report required under Subsection (d) with the report required under Section 536.008, Government Code.

Text of subsection effective on April 1, 2025

(e) The commission shall submit the report required under Subsection (d) with the report required under Section 543A.0008, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 3, eff. June 10, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 738 (H.B. 3265), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.26, eff. April 1, 2025.

Sec. 32.156. INFORMATION ABOUT AVAILABILITY OF SUBSIDIZED HEALTH INSURANCE COVERAGE. (a) The commission and each managed care organization participating in the Healthy Texas Women program shall provide a written notice containing information about eligibility requirements for and enrollment in a health benefit plan for which an enrollee receives a premium subsidy under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), based on family income, to a woman who:

(1) is enrolled in the Healthy Texas Women program; and

(2) has a household income that is more than 100 percent but not more than 200 percent of the federal poverty level.

(b) The commission, in consultation with the Texas Department of Insurance, shall develop the form and content of the notice required under this section. The notice must include:

(1) the latest information written in clear and easily understood language on available options for obtaining a subsidized health benefit plan described by Subsection (a); and

(2) resources for receiving assistance applying for and enrolling in that health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 629 (H.B. 133), Sec. 2, eff. September 1, 2021.

CHAPTER 33. PHENYLKETONURIA, OTHER HERITABLE DISEASES, HYPOTHYROIDISM, AND CERTAIN OTHER DISORDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. DEFINITIONS. In this chapter:

(1) "Birthing facility" means an inpatient or ambulatory health care facility that offers obstetrical or newborn care services. The term includes:

(A) a hospital licensed under Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility that provides obstetrical services and is maintained and operated by this state or an agency of this state.

(1-a) "Critical congenital heart disease" means an abnormality in the structure or function of the heart that exists at birth, causes severe, life-threatening symptoms, and requires medical intervention within the first few hours, days, or months of life.

(1-b) "Heritable disease" means an inherited disease that may result in a physical or intellectual disability or death.

(2) "Hypothyroidism" means a condition that may cause a severe intellectual disability if not treated.

(3) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for the payment of the costs of services. The term includes:

(A) benefits available under:

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

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

(iii) Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.);

(iv) the United States Department of Veterans Affairs;

(v) the TRICARE program of the United States Department of Defense; or

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

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

(C) benefits resulting from a cause of action for health care expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(4) "Phenylketonuria" means an inherited condition that may cause a severe intellectual disability if not treated.

(5) "Screening test" means a rapid analytical procedure to

determine the need for further diagnostic evaluation.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0098, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.01, eff. September 1, 2023.

Sec. 33.002. DETECTION AND TREATMENT PROGRAM ESTABLISHED. (a) The department shall carry out a program to combat morbidity, including intellectual disability, and mortality in persons who have phenylketonuria, other heritable diseases, or hypothyroidism.

(b) The executive commissioner shall adopt rules necessary to carry out the program, including a rule specifying other heritable diseases covered by this chapter.

(c) The department shall establish and maintain a laboratory to:

(1) conduct experiments, projects, and other activities necessary to develop screening or diagnostic tests for the early detection of phenylketonuria, other heritable diseases, and hypothyroidism;

(2) develop ways and means or discover methods to be used to prevent or treat phenylketonuria, other heritable diseases, and hypothyroidism; and

(3) serve other purposes considered necessary by the department to carry out the program.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0099, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.02, eff. September 1, 2023.

Sec. 33.0021. SICKLE-CELL TRAIT. Notwithstanding any provision of this chapter, the department shall include sickle-cell trait in

the detection and treatment program established under this chapter, in the screening for heritable diseases conducted under Subchapter B, and in the newborn screening services provided under Subchapter C.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 1, eff. May 27, 2009.

Sec. 33.003. COOPERATION OF HEALTH CARE PROVIDERS AND GOVERNMENTAL ENTITIES. (a) The department may invite all physicians, hospitals, and other health care providers in the state that provide maternity and newborn infant care to cooperate and participate in any program established by the department under this chapter.

(b) Other boards, agencies, departments, and political subdivisions of the state capable of assisting the department in carrying out the program may cooperate with the department and are encouraged to furnish their services and facilities to the program.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.004. NEWBORN SCREENING PROGRAM; FEES.

(b) In accordance with rules adopted by the executive commissioner, the department shall implement a newborn screening program.

(c) In implementing the newborn screening program, the department shall obtain the use of screening methodologies and hire the employees necessary to administer newborn screening under this chapter.

(e) The department shall periodically review the newborn screening program to determine the efficacy and cost-effectiveness of the program and determine whether adjustments to the program are necessary to protect the health and welfare of this state's newborns and to maximize the number of newborn screenings that may be conducted with the funding available for the screening.

(f) The executive commissioner by rule shall establish the amounts charged for newborn screening fees, including fees assessed for follow-up services, tracking confirmatory testing, and diagnosis. In adopting rules under this subsection, the executive commissioner

shall ensure that amounts charged for newborn screening fees are sufficient to cover the costs of performing the screening.

Added by Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0100, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 1, eff. September 1, 2019.

Sec. 33.005. CONSENT. (a) The department shall create a process to:

(1) permit the parent, managing conservator, or guardian of a newborn child to provide the consent required under this chapter through electronic means, including through audio or video recording;

(2) determine the manner of storing electronic consent records; and

(3) ensure the newborn child's attending physician has access to the electronic consent records for the child.

(b) A request for consent required by this chapter may be submitted to the parent, managing conservator, or guardian of a newborn child through written or electronic means, including through audio or visual recording.

(c) A birthing facility or person required to obtain consent under this chapter is not required to use the process created by the department under this section to obtain the consent.

Added by Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. NEWBORN SCREENING

Sec. 33.011. TEST REQUIREMENT. (a) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall cause the child to be subjected to screening tests approved by the department for phenylketonuria, other heritable diseases, hypothyroidism, and other

disorders for which screening is required by the department.

(a-1) Except as provided by this subsection and to the extent funding is available for the screening, the department shall require newborn screening tests to screen for disorders listed as core and secondary conditions in the Recommended Uniform Screening Panel of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children or another report determined by the department to provide more stringent newborn screening guidelines to protect the health and welfare of this state's newborns. The department, with the advice of the Newborn Screening Advisory Committee, may require additional newborn screening tests under this subsection to screen for other disorders or conditions. The department may exclude from the newborn screening tests required under this subsection screenings for galactose epimerase and galactokinase.

(b) The department may prescribe the screening test procedures to be used and the standards of accuracy and precision required for each test.

(c) Except as provided by Subsection (d), the screening tests required by this section must be performed by the laboratory established by the department or by a laboratory approved by the department under Section 33.016.

(d) The department, with the advice of the Newborn Screening Advisory Committee, shall authorize a screening test for critical congenital heart disease to be performed at a birthing facility that provides care to newborn patients and that complies with the test procedures and the standards of accuracy and precision required by the department for each screening test.

(e) If the department under Subsection (d) authorizes the performance at a birthing facility of a screening test for critical congenital heart disease, a birthing facility must perform the screening test on each newborn who is a patient of the facility before the newborn is discharged from the facility unless:

(1) the parent declines the screening;

(2) the newborn is transferred to another facility before the screening test is performed;

(3) the screening test has previously been completed; or

(4) the newborn is discharged from the birthing facility not more than 10 hours after birth and a referral for the newborn was made to another birthing facility, physician, or health care provider.

(f) Before requiring any additional screening test for critical congenital heart disease, the department must review the necessity of the additional screening test, including an assessment of the test implementation costs to the department, birthing facilities, and other health care providers.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0101, eff. April 2, 2015.

Sec. 33.0111. DISCLOSURE STATEMENT AND CONSENT. (a) The department shall develop a disclosure statement that clearly discloses to the parent, managing conservator, or guardian of a newborn child subjected to screening tests under Section 33.011:

(1) that the department or a laboratory established or approved by the department under Section 33.016 may retain for use by the department or laboratory genetic material used to conduct the newborn screening tests and discloses how the material is managed and used subject to this section and Sections 33.0112 and 33.018;

(2) that reports, records, and information obtained by the department under this chapter that do not identify a child or the family of a child will not be released for public health research purposes under Section 33.018(c-1) unless a parent, managing conservator, or guardian of the child consents to disclosure; and

(3) that newborn screening blood spots and associated data are confidential under law and may only be used as described by Section 33.018.

(b) The disclosure statement required by Subsection (a) must be included on the form developed by the department to inform parents about newborn screening. The disclosure statement must:

(1) be in a format that allows a parent, managing conservator, or guardian of a newborn child to consent to disclosure

under Section 33.018(c-1);

(2) include instructions on how to complete the portions of the form described by Subdivision (1);

(3) include the department's mailing address; and

(4) describe how a parent, managing conservator, or guardian of a newborn child may obtain information regarding consent through alternative sources.

(b-1) The department may provide the disclosure statement required by Subsection (a) in various formats and languages to ensure clear communication of information on the screening test required under this chapter.

(c) At the time a newborn child is subjected to screening tests under Section 33.011, the physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall provide the parent, managing conservator, or guardian of a newborn child a copy of the written or electronic disclosure statement developed by the department under this section.

(d) The department shall establish procedures for a physician attending a newborn child or the person attending the delivery of a newborn child to provide verification to the department that the physician or person has provided the parent, managing conservator, or guardian of the newborn child the disclosure statement required under this section.

(e) The physician attending a newborn child or the person attending the delivery of a newborn child that is not attended by a physician shall submit any document required by the department.

(f) This section does not supersede the requirements imposed by Section 33.018.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 268, Sec. 7, eff. September 1, 2013.

(h) Nothing in this section prohibits a physician attending a newborn child from delegating the physician's responsibilities under this section to any qualified and properly trained person acting under the physician's supervision.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 2, eff. May 27, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 1, eff. June 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 2, eff. June 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 7, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 2, eff. September 1, 2019.

Sec. 33.0112. DESTRUCTION OF GENETIC MATERIAL. (a) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material unless a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.018(c-1).

(b) The department shall destroy any genetic material obtained from a child under this chapter not later than the second anniversary of the date the department receives the genetic material if:

(1) a parent, managing conservator, or guardian of the child consents to disclosure under Section 33.018(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure revokes the consent under Section 33.018(i); and

(3) the department receives the written revocation of consent under Section 33.018(i) not later than the second anniversary of the date the department received the genetic material.

(c) The department shall destroy any genetic material obtained from a child under this chapter not later than the 60th day after the date the department receives a written revocation of consent under Section 33.018(i) if:

(1) a parent, managing conservator, or guardian of the child consented to disclosure under Section 33.018(c-1);

(2) the parent, managing conservator, or guardian who consented to the disclosure or the child revokes the consent under Section 33.018(i); and

(3) the department receives the written revocation of consent later than the second anniversary of the date the department received the genetic material.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 2, eff. May 27, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 3, eff. June 1, 2012.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0102, eff. April 2, 2015.

Sec. 33.012. EXEMPTION. (a) Screening tests may not be administered to a newborn child whose parents, managing conservator, or guardian objects on the ground that the tests conflict with the religious tenets or practices of an organized church of which they are adherents.

(b) If a parent, managing conservator, or guardian objects to the screening tests, the physician or the person attending the newborn child that is not attended by a physician shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the child. The parent, managing conservator, or guardian shall sign the entry.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.013. LIMITATION ON LIABILITY. A physician, technician, or other person administering the screening tests required by this chapter is not liable or responsible because of the failure or refusal of a parent, managing conservator, or guardian to consent to the tests for which this chapter provides.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.014. DIAGNOSIS; FOLLOW-UP. (a) If, because of an analysis of a specimen submitted under Section 33.011, the department reasonably suspects that a newborn child may have phenylketonuria, another heritable disease, hypothyroidism, or another disorder for which the screening tests are required, the department shall notify the person who submits the specimen that the results are abnormal and provide the test results to that person. The department may notify one or more of the following that the results of the analysis are

abnormal and recommend further testing when necessary:

(1) the physician attending the newborn child or the physician's designee;

(2) the person attending the delivery of the newborn child that was not attended by a physician;

(3) the parents of the newborn child;

(4) the health authority of the jurisdiction in which the newborn child was born or in which the child resides, if known; or

(5) physicians who are cooperating pediatric specialists for the program.

(b) If a screening test indicates that a newborn child is at high risk, the department shall recommend that the child be placed under the medical care of a licensed physician for diagnosis and provide the name of a consultant pediatric specialist in the child's geographic area.

(c) The department, the health authority, and the consulting pediatric specialist may follow up a positive test with the attending physician or with a parent of the newborn child if the child was not attended by a physician at birth.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 4, eff. September 1, 2005.

Sec. 33.015. REPORTS; RECORD KEEPING. (a) Each physician, health authority, birthing facility, or other individual who has the information of a confirmed case of a disorder for which a screening test is required that has been detected by a mechanism other than identification through a screening of a specimen by the department's diagnostic laboratory shall report the confirmed case to the department.

(b) The department may collect data to derive incidence and prevalence rates of disorders covered by this chapter from the information on the specimen form submitted to the department for screening determinations.

(c) The department shall maintain a roster of children born in this state who have been diagnosed as having one of the disorders for which the screening tests are required.

(d) The department may cooperate with other states in the development of a national roster of individuals who have been diagnosed as having one of the disorders for which the screening tests are required if:

(1) participation in the national roster encourages systematic follow-up in the participating states;

(2) incidence and prevalence information is made available to participating newborn screening programs in other states; and

(3) each participating newborn screening program subscribes to an agreement to protect the identity and diagnosis of the individuals whose names are included in the national roster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 5, eff. September 1, 2013.

Sec. 33.016. APPROVAL OF LABORATORIES. (a) The department may develop a program to approve any laboratory that wishes to perform the tests required to be administered under this chapter. To the extent that they are not otherwise provided in this chapter, the executive commissioner may adopt rules prescribing procedures and standards for the conduct of the program.

(b) The department may prescribe the form and reasonable requirements for the application and the procedures for processing the application.

(c) The department may prescribe the test procedure to be employed and the standards of accuracy and precision required for each test.

(d) The department may extend or renew any approval in accordance with reasonable procedures prescribed by the executive commissioner.

(e) The department may for good cause, after notice to the affected laboratory and a hearing if requested, restrict, suspend, or revoke any approval granted under this section.

(f) Hearings under this section shall be conducted in accordance with the department's hearing rules and the applicable provisions of Chapter 2001, Government Code.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991;

Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0103, eff. April 2, 2015.

Sec. 33.0165. MUTUAL AID AGREEMENT FOR NEWBORN SCREENING LABORATORY SERVICES. (a) In this section, "newborn screening laboratory services" means the performance of tests to analyze specimens collected as part of the newborn screenings performed under this subchapter.

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

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 109 (H.B. 1671), Sec. 1, eff. September 1, 2009.
Transferred, redesignated and amended from Health and Safety Code, Section 12.01221 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0015, eff. April 2, 2015.

Sec. 33.017. NEWBORN SCREENING ADVISORY COMMITTEE. (a) The department shall establish the Newborn Screening Advisory Committee.

(b) The advisory committee consists of members appointed by the commissioner. The advisory committee must include the following members:

(1) at least four physicians licensed to practice medicine in this state, including at least two physicians specializing in neonatal-perinatal medicine;

(2) at least two hospital representatives;

(3) at least two persons who have family members affected by a condition for which newborn screening is or may be required under this subchapter; and

(4) at least two health care providers who are involved in the delivery of newborn screening services, follow-up, or treatment in this state.

(c) The advisory committee shall:

(1) advise the department regarding strategic planning, policy, rules, and services related to newborn screening and additional newborn screening tests for each disorder included in the list described by Section 33.011(a-1); and

(2) review the necessity of requiring additional screening tests, including an assessment of the test implementation costs to the department, birthing facilities, and other health care providers.

(d) The advisory committee shall adopt bylaws governing the committee's operations.

(e) The advisory committee may appoint subcommittees.

(f) The advisory committee shall meet at least three times each year and at other times at the call of the commissioner.

(g) A member of the advisory committee is not entitled to compensation, but is entitled to reimbursement for travel or other expenses incurred by the member while conducting the business of the advisory committee, as provided by the General Appropriations Act.

(h) The advisory committee is not subject to Chapter 2110, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 268 (H.B. 740), Sec. 6, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0104, eff. April 2, 2015.

Sec. 33.018. CONFIDENTIALITY. (a) In this section:

(1) "Affiliated with a health agency" means a person who is an employee or former employee of a health agency.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

3.1639(16), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(16), eff. April 2, 2015.

Text of subdivision effective until April 1, 2025

(4) "Health agency" means the commission and the health and human services agencies listed in Section 531.001, Government Code.

Text of subdivision effective on April 1, 2025

(4) "Health agency" means the commission and the health and human services agencies listed in Section 521.0001, Government Code.

(5) "Public health purpose" means a purpose that relates to cancer, a birth defect, an infectious disease, a chronic disease, environmental exposure, or newborn screening.

(a-1) Reports, records, and information obtained or developed by the department under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not subject to subpoena, and may not otherwise be released or made public except as provided by this section.

(b) Notwithstanding other law, reports, records, and information obtained or developed by the department under this chapter may be disclosed:

(1) for purposes of diagnosis or follow-up authorized under Section 33.014;

(2) with the consent of each identified individual or an individual authorized to consent on behalf of an identified child;

(3) as authorized by court order;

(4) to a medical examiner authorized to conduct an autopsy on a child or an inquest on the death of a child;

(5) to public health programs of the department for public health research purposes, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee; and

(B) an institutional review board or privacy board of the department as authorized by the federal privacy requirements adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E;

(6) for purposes relating to review or quality assurance of the department's newborn screening under this chapter or the

department's newborn screening program services under Subchapter C, provided that no disclosure occurs outside of the department's newborn screening program;

(7) for purposes related to obtaining or maintaining federal certification, including related quality assurance, for the department's laboratory, provided that no disclosure occurs outside of the department's newborn screening program; or

(8) for purposes relating to improvement of the department's newborn screening under this chapter or the department's newborn screening program services under Subchapter C, provided that the disclosure is approved by the commissioner or the commissioner's designee.

(c) Notwithstanding other law, reports, records, and information that do not identify a child or the family of a child may be released without consent if the disclosure is for:

(1) statistical purposes;

(2) purposes related to obtaining or maintaining federal certification, including related review and quality assurance:

(A) for the department's laboratory that require disclosure outside of the department's newborn screening program; or

(B) for a public or private laboratory to perform newborn screening tests that are not part of inter-laboratory exchanges required for federal certification of the department's laboratory, provided that the disclosure is approved by the commissioner or the commissioner's designee; or

(3) other quality assurance purposes related to public health testing equipment and supplies, provided that the disclosure is approved by:

(A) the commissioner or the commissioner's designee; and

(B) an institutional review board or privacy board of the department.

(c-1) Notwithstanding other law, reports, records, and information that do not identify a child or the family of a child may be released for public health research purposes not described by Subsection (b)(5) if:

(1) a parent, managing conservator, or guardian of the child consents to the disclosure; and

(2) the disclosure is approved by:

(A) an institutional review board or privacy board of

the department; and

(B) the commissioner or the commissioner's designee.

(d) A state officer or employee, a department contractor, or a department contractor's employee, officer, director, or subcontractor may not be examined in a civil, criminal, special, or other judicial or administrative proceeding as to the existence or contents of records, reports, or information made confidential by this section unless disclosure is authorized by this section.

(e) If disclosure is approved by the commissioner or the commissioner's designee under Subsection (c)(3) or (c-1), the department shall post notice on the newborn screening web page on the department's Internet website that disclosure has been approved. The commissioner shall determine the form and content of the notice.

(f) In accordance with this section, the commissioner or the commissioner's designee:

(1) may approve disclosure of reports, records, or information obtained or developed under this chapter only for a public health purpose; and

(2) may not approve disclosure of reports, records, or information obtained or developed under this chapter for purposes related to forensic science or health insurance underwriting.

(g) An institutional review board or privacy board of the department that reviews a potential disclosure under this section must include at least three persons who are not affiliated with a health agency, one of whom must be a member of the public.

(h) Nothing in this section affects the requirement that screening tests be performed under Section 33.011.

(i) If a parent, managing conservator, or guardian of a child consents to disclosure under this section:

(1) the parent, managing conservator, or guardian who consented to the disclosure may revoke the consent, in writing, at any time by using a form designated by the department; and

(2) the child may revoke the consent, in writing, at any time on or after the date the child attains the age of majority by using a form designated by the department.

(j) If a person revokes consent under Subsection (i), the department shall destroy any genetic material obtained from the child as provided by Section 33.0112.

Added by Acts 2009, 81st Leg., R.S., Ch. 179 (H.B. 1672), Sec. 3, eff.

May 27, 2009.
Redesignated from Health and Safety Code, Section 33.017 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(24), eff. September 1, 2011.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 4, eff. June 1, 2012.
Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 4, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(16), eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.27, eff. April 1, 2025.

Sec. 33.019. NOTICE OF COST AND CLAIM PROCESS. (a) The department shall publish on its Internet website the cost of and instructions on the full claim and reimbursement process for a newborn screening test kit to be used to comply with the test requirements of Section 33.011.
(b) The department may change the cost published under Subsection (a) not later than the 90th day before the date the department publishes notice of the change on its Internet website. If the department changes the cost under this subsection, the department shall retain a record of the previous cost until the first anniversary of the date of the change.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 2, eff. September 1, 2019.

Sec. 33.020. ANNUAL REPORT. (a) For each newborn screening test that screens for a disorder included in the list of core conditions described by Section 33.011(a-1) that is not required by the department, the department shall, not later than September 1 of each year, prepare and submit a written report to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the legislature having primary jurisdiction over the department. The written report must:
(1) identify any additional program capacity or resources

the department would need to:

(A) implement the additional newborn screening test; and

(B) require each newborn in the state to receive the additional newborn screening test; and

(2) summarize the plan for implementing and requiring the additional newborn screening test, including by identifying:

(A) any potential barriers to implementation; and

(B) the anticipated implementation date.

(b) As part of the plan described by Subsection (a)(2), the report must include information on whether the department is capable of implementing the required additional newborn screening test within a 24-month period.

Added by Acts 2023, 88th Leg., R.S., Ch. 722 (H.B. 2478), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. NEWBORN SCREENING PROGRAM SERVICES

Sec. 33.031. COORDINATION WITH CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES. (a) All newborn children and other individuals under 21 years of age who have been screened, have been found to be presumptively positive through the newborn screening program for phenylketonuria, other heritable diseases, hypothyroidism, or another disorder for which the screening tests are required, and may be financially eligible may be referred to the department's services program for children with special health care needs.

(b) An individual who is determined to be eligible for services under the services program for children with special health care needs shall be given approved services through that program. An individual who does not meet that eligibility criteria shall be referred to the newborn screening program for a determination of eligibility for newborn screening program services.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1505, Sec. 3.11, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 5, eff. September 1, 2005.

Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of funds available for this purpose and in cooperation with the individual's physician, the department may provide services directly or through approved providers to individuals of any age who meet the eligibility criteria specified by department rules on the confirmation of a positive test for phenylketonuria, other heritable diseases, hypothyroidism, or another disorder for which the screening tests are required.

(b) The executive commissioner may adopt:

(1) rules specifying the type, amount, and duration of program services to be offered;

(2) rules establishing the criteria for eligibility for services, including the medical and financial criteria;

(3) rules establishing the procedures necessary to determine the medical, financial, and other eligibility of the individual;

(4) substantive and procedural rules for applying for program services and processing those applications;

(5) rules for providing services according to a sliding scale of financial eligibility;

(6) substantive and procedural rules for the denial, modification, suspension, and revocation of an individual's approval to receive services; and

(7) substantive and procedural rules for the approval of providers to furnish program services.

(c) The department may select providers according to the criteria in the department's rules.

(d) The executive commissioner by rule may establish fees to be collected by the department for the provision of services, except that services may not be denied to an individual because of the individual's inability to pay the fees.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 940 (H.B. 790), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0105, eff. April 2, 2015.

Sec. 33.033. CONSENT. The department may not provide services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.

Sec. 33.034. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF APPROVAL TO PROVIDE SERVICES. (a) After notice and an opportunity for a fair hearing, the department may deny the approval or modify, suspend, or revoke the approval of a person to provide services under this chapter.

(b) Notice shall be given and the hearing shall be conducted in accordance with the department's informal hearing procedures.

(c) Chapter 2001, Government Code, does not apply to the notice and hearing required by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.001, eff. September 1, 2005.

Sec. 33.035. INDIVIDUALS ELIGIBLE FOR SERVICES. (a) An individual is not eligible to receive the services authorized by this chapter at no cost or reduced cost to the extent that the individual or the parent, managing conservator, guardian, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) The department may waive ineligibility under Subsection (a) if the department finds that:

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of services to an otherwise eligible recipient.

(c) When an application for services is filed or at any time that an individual is eligible for or receiving services, the applicant or recipient shall inform the department of any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(d) The executive commissioner by rule shall provide criteria for actions taken under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0106, eff. April 2, 2015.

Sec. 33.036. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF ELIGIBILITY TO RECEIVE SERVICES. (a) After notice to the individual or, if the individual is a minor, the individual's parent, managing conservator, or guardian and an opportunity for a fair hearing, the department may deny, modify, suspend, or revoke the determination of a person's eligibility to receive services at no cost or at reduced cost under this chapter.

(b) Notice shall be given and the hearing shall be conducted in accordance with the department's informal hearing procedures.

(c) Chapter 2001, Government Code, does not apply to the notice and hearing required by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0107, eff. April 2, 2015.

Sec. 33.037. REIMBURSEMENT. (a) The department may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, or other person with a legal obligation to support the individual to pay or reimburse the department for all or part of the cost of the services provided.

(b) The recipient or the parent, managing conservator, guardian, or other person with a legal obligation to support an individual who has received services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0108, eff. April 2, 2015.

Sec. 33.038. RECOVERY OF COSTS. (a) The department is entitled to recover an expenditure for services provided under this chapter from:

(1) a person who does not reimburse the department as required by this chapter; or

(2) a third party with a legal obligation to pay other benefits and who has received prior written notice of the department's interests in the other benefits.

(b) This section creates a separate and distinct cause of action, and the department may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

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

(d) The executive commissioner by rule shall provide criteria for actions taken under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 8, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0109, eff. April 2, 2015.

SUBCHAPTER D. NEWBORN SCREENING PRESERVATION ACCOUNT

Sec. 33.051. DEFINITION. In this subchapter, "account" means the newborn screening preservation account established under Section 33.052.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 3, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 2, eff. September 1, 2019.

Sec. 33.052. CREATION OF ACCOUNT. (a) The newborn screening

preservation account is a dedicated account in the general revenue fund. Money in the account may be appropriated only to the department and only for the purpose of carrying out the newborn screening program established under this chapter.

(a-1) The department may use money appropriated under Subsection (a) to ensure that the laboratory established by the department or a laboratory approved by the department under Section 33.016 is available seven days a week to perform screening tests required by the department under Section 33.011.

(b) On November 1 of each year, the comptroller shall transfer to the account any unexpended and unencumbered money from Medicaid reimbursements collected by the department for newborn screening services during the preceding state fiscal year.

(c) The account is composed of:

(1) money transferred to the account under Subsection (b);

(2) gifts, grants, donations, and legislative appropriations; and

(3) interest earned on the investment of money in the account.

(d) Section 403.0956, Government Code, does not apply to the account.

(e) The department administers the account. The department may solicit and receive gifts, grants, and donations from any source for the benefit of the account.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 3, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 2, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 722 (H.B. 2478), Sec. 2, eff. September 1, 2023.

Sec. 33.053. DEDICATED USE. (a) The department may use any money remaining in the account after paying the costs of operating the newborn screening program established under this chapter only to:

(1) pay the costs of offering additional newborn screening tests not offered under this chapter before September 1, 2019, including the operational costs incurred during the first year of

implementing the additional tests; and

(2) pay for capital assets, equipment, and renovations for the laboratory established by the department to ensure the continuous operation of the newborn screening program.

(b) The department may not use money from the account for the department's general operating expenses.

Added by Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 3, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 2, eff. September 1, 2019.

CHAPTER 34. TEXAS MATERNAL MORTALITY AND MORBIDITY REVIEW COMMITTEE

Sec. 34.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(17), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(17), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(17), eff. April 2, 2015.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice, including a physician or a hospital or birthing center.

(5) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(6) "Intrapartum care" has the meaning assigned by Section 32.002.

(7) "Life-threatening condition" means a condition from which the likelihood of death is probable unless the course of the condition is interrupted.

(8) "Maternal morbidity" means a pregnancy-related health condition occurring during pregnancy, labor, or delivery or within one year of delivery or end of pregnancy.

(9) "Patient" means the woman who while pregnant or within one year of delivery or end of pregnancy suffers death or severe maternal morbidity.

(10) "Perinatal care" has the meaning assigned by Section

32.002.

(11) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(12) "Pregnancy-related death" means the death of a woman while pregnant or within one year of delivery or end of pregnancy, regardless of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

(12-a) "Review committee" means the Texas Maternal Mortality and Morbidity Review Committee.

(13) "Severe maternal morbidity" means maternal morbidity that constitutes a life-threatening condition.

(14) Repealed by Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 22, eff. June 10, 2019.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(17), eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 5, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 22, eff. June 10, 2019.

Sec. 34.002. TEXAS MATERNAL MORTALITY AND MORBIDITY REVIEW COMMITTEE. (a) The Texas Maternal Mortality and Morbidity Review Committee is administered by the department.

(b) The review committee is a multidisciplinary advisory committee within the department and is composed of the following 23 members:

(1) 21 members appointed by the commissioner as follows:

(A) four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist;

(B) one certified nurse-midwife;

(C) one registered nurse;

(D) one nurse specializing in labor and delivery;

(E) one physician specializing in family practice;

(F) one physician specializing in psychiatry;

(G) one physician specializing in pathology;

(H) one epidemiologist, biostatistician, or researcher of pregnancy-related deaths;

(I) one social worker or social service provider;

(J) two community members with experience in a relevant health care field, including a field involving the analysis of health care data, one of whom must represent an urban area of this state and one of whom must represent a rural area of this state;

(K) one medical examiner or coroner responsible for recording deaths;

(L) one physician specializing in critical care;

(M) one physician specializing in emergency care;

(N) one physician specializing in cardiology;

(O) one physician specializing in anesthesiology;

(P) one physician specializing in oncology; and

(Q) one representative of a managed care organization;

(2) a representative of the department's family and community health programs; and

(3) the state epidemiologist for the department or the epidemiologist's designee.

(c) In appointing members to the review committee, the commissioner shall:

(1) include members:

(A) working in and representing communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency; and

(B) from differing geographic regions in the state, including both rural and urban areas;

(2) endeavor to include members who are working in and representing communities that are affected by pregnancy-related deaths and severe maternal morbidity and by a lack of access to relevant perinatal and intrapartum care services; and

(3) ensure that the composition of the review committee reflects the racial, ethnic, and linguistic diversity of this state.

(d) The commissioner shall appoint from among the review committee members a presiding officer.

(e) A member of the review committee appointed under Subsection (b)(1) is not entitled to compensation for service on the review committee or reimbursement for travel or other expenses incurred by the member while conducting the business of the review committee.

(f) In carrying out its duties, the review committee may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 1, eff. August 16, 2017.
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.
Acts 2023, 88th Leg., R.S., Ch. 671 (H.B. 852), Sec. 1, eff. September 1, 2023.

Sec. 34.003. TERMS; VACANCY. (a) Review committee members appointed by the commissioner serve staggered six-year terms, with one-third or as near as possible to one-third of the members' terms expiring February 1 of each odd-numbered year.
(b) A review committee member may serve more than one term.
(c) A vacancy on the review committee shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.
Acts 2023, 88th Leg., R.S., Ch. 671 (H.B. 852), Sec. 2, eff. September 1, 2023.

Sec. 34.004. MEETINGS. (a) The review committee shall meet at least quarterly. The review committee may meet at other times at the call of the commissioner.
(b) Meetings of the review committee are subject to Chapter 551, Government Code, except that the review committee shall conduct a closed meeting to review cases under Section 34.007.
(c) The review committee shall:
(1) allow for public comment during at least one public meeting each year;

(2) present in open session recommendations made under Section 34.005 to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in this state; and

(3) post public notice for meetings conducted for the sole purpose of reviewing cases for selection under Section 34.007.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 2, eff. August 16, 2017.
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.

Sec. 34.005. DUTIES OF REVIEW COMMITTEE. The review committee shall:

(1) study and review:

(A) cases of pregnancy-related deaths;

(B) trends, rates, or disparities in pregnancy-related deaths and severe maternal morbidity;

(C) health conditions and factors that disproportionately affect the most at-risk population as determined in the joint biennial report required under Section 34.015; and

(D) best practices and programs operating in other states that have reduced rates of pregnancy-related deaths;

(2) compare rates of pregnancy-related deaths based on the socioeconomic status of the mother;

(3) determine the feasibility of the review committee studying cases of severe maternal morbidity; and

(4) in consultation with the Perinatal Advisory Council, make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 3, eff. August 16, 2017.
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 6, eff. June 10, 2019.

Sec. 34.0055. SCREENING AND EDUCATIONAL MATERIALS FOR SUBSTANCE USE AND DOMESTIC VIOLENCE. (a) Using existing resources, the commission, in consultation with the review committee, shall:

(1) make available to physicians and other persons licensed or certified to conduct a substance use screening and domestic violence screening of pregnant women information that includes:

(A) guidance regarding best practices for verbally screening a pregnant woman for substance use and verbally screening a pregnant woman for domestic violence using a validated screening tool; and

(B) a list of substance use treatment resources and domestic violence prevention and intervention resources in each geographic region of this state; and

(2) review and promote the use of educational materials on the consequences of opioid drug use and on domestic violence prevention and intervention during pregnancy.

(b) The commission shall make the information and educational materials described by Subsection (a) available on the commission's Internet website.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 4, eff. August 16, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 7, eff. June 10, 2019.

Sec. 34.006. CONSULTATIONS AND AGREEMENTS WITH OUTSIDE PARTIES. (a) The department and review committee may consult with any relevant experts and stakeholders, including:

(1) anesthesiologists;

(2) intensivists or critical care physicians;

(3) nutritionists;

(4) substance abuse treatment specialists;

(5) hospital staff or employees;

(6) representatives of the state Medicaid program;

(7) paramedics or other emergency medical response personnel;

(8) hospital-based risk management specialists;

(9) representatives of local health departments and public health districts in this state;

(10) public health experts;

(11) government representatives or officials; and

(12) law enforcement officials.

(b) In gathering information, the department and review committee may consult with representatives of any relevant state professional associations and organizations, including:

(1) District XI of the American Congress of Obstetricians and Gynecologists;

(2) the Texas Association of Obstetricians and Gynecologists;

(3) the Texas Nurses Association;

(4) the Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses;

(5) the Texas Academy of Family Physicians;

(6) the Texas Pediatric Society;

(7) the Consortium of Texas Certified Nurse-Midwives;

(8) the Association of Texas Midwives;

(9) the Texas Hospital Association;

(10) the Texas Medical Association; and

(11) the Texas Public Health Association.

(c) In consulting with individuals or organizations under Subsection (a) or (b), a member of the review committee or employee of the department may not disclose any identifying information of a patient or health care provider.

(d) The department on behalf of the review committee may enter into agreements with institutions of higher education or other organizations consistent with the duties of the department or review committee under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 8, eff. June 10, 2019.

Sec. 34.007. SELECTION AND REVIEW OF CASES. (a) The

department shall determine a statistically significant number of cases of pregnancy-related deaths for review. The department shall either randomly select cases or select all cases for the review committee to review under this subsection to reflect a cross-section of pregnancy-related deaths in this state.

(b) The department shall statistically analyze aggregate data of pregnancy-related deaths and severe maternal morbidity in this state to identify any trends, rates, or disparities.

(c) If feasible, the department may select cases of severe maternal morbidity for review. In selecting cases under this subsection, the department shall randomly select cases for the review committee to review to reflect trends identified under Subsection (b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 5, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 9, eff. June 10, 2019.

Sec. 34.008. OBTAINING DE-IDENTIFIED INFORMATION FOR REVIEW. (a) On selecting a case of pregnancy-related death or severe maternal morbidity for review, the department shall, in accordance with this section, obtain information relevant to the case to enable the review committee to review the case. The department shall provide the information to the review committee.

(b) The information provided to the review committee may not include identifying information of a patient or health care provider, including:

(1) the name, address, or date of birth of the patient or a member of the patient's family; or

(2) the name or specific location of a health care provider that treated the patient.

(c) On the request of the department, a hospital, birthing center, or other custodian of the requested information shall provide the information to the department. The information shall be provided without the authorization of the patient or, if the patient is

deceased, without the authorization of the patient's family.

(c-1) Not later than the 30th business day after receiving a request from the department for records regarding a pregnancy-related death for a specific patient, a hospital, birthing center, or other custodian of the records shall submit the records to the department. A request made under this subsection to a hospital or birthing center must be limited to a patient's medical records.

(d) A person who provides information to the department under this section is not subject to an administrative, civil, or criminal action for damages or other relief for providing the information.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 10, eff. June 10, 2019.

Sec. 34.009. CONFIDENTIALITY; PRIVILEGE. (a) Any information pertaining to a pregnancy-related death or severe maternal morbidity is confidential for purposes of this chapter.

(b) Except as provided by Subsection (b-1), confidential information that is acquired by the department and that includes identifying information of an individual or health care provider is privileged and may not be disclosed to any person. Information that may not be disclosed under this subsection includes:

(1) the name and address of a patient or a member of the patient's family;

(2) any service received by the patient or a member of the patient's family;

(3) the social and economic condition of the patient or a member of the patient's family;

(4) medical, dental, and mental health care information related to the patient or a member of the patient's family, including diagnoses, conditions, diseases, or disability; and

(5) the identity of a health care provider that provided any services to the patient or a member of the patient's family.

(b-1) Confidential information that is acquired by the department under this section that includes identifying information of an individual or health care provider may be securely disclosed to

an appropriate federal agency for the limited purpose of complying with applicable requirements under the federal Preventing Maternal Deaths Act of 2018 (Pub. L. No. 115-344).

(c) Review committee work product or information obtained by the department under this chapter, including information contained in an electronic database established and maintained under Section 34.012, or any other document or record, is confidential. This subsection does not prevent the review committee or department from releasing information described by Subsection (d) or (e) or from submitting the report required by Section 34.015.

(d) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider, such as:

(1) total expenditures made for specified purposes;

(2) the number of families served by particular health care providers or agencies;

(3) aggregated data on social and economic conditions;

(4) medical data and information related to health care services that do not include any identifying information relating to a patient or the patient's family;

(5) information, including the source, value, and purpose, related to gifts, grants, or donations to or for use by the review committee; and

(6) other statistical information.

(e) The review committee may publish statistical studies and research reports based on information that is confidential under this section, provided that the information:

(1) is published in the aggregate;

(2) does not identify a patient or the patient's family;

(3) does not include any information that could be used to identify a patient or the patient's family; and

(4) does not identify a health care provider.

(f) The department shall adopt and implement practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

(g) Information that is confidential under this section is excepted from disclosure under Chapter 552, Government Code, as provided by Section 552.101 of that chapter.

(h) The review committee and the department shall comply with all state and federal laws and rules relating to the transmission of

health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 6, eff. August 16, 2017.
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 11, eff. June 10, 2019.

Sec. 34.010. SUBPOENA AND DISCOVERY. Review committee work product or information that is confidential under Section 34.009 is privileged, is not subject to subpoena or discovery, and may not be introduced into evidence in any administrative, civil, or criminal proceeding against a patient, a member of the family of a patient, or a health care provider.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 12, eff. June 10, 2019.

Sec. 34.011. IMMUNITY. (a) A member of the review committee or a person employed by or acting in an advisory capacity to the review committee and who provides information, counsel, or services to the review committee is not liable for damages for an action taken within the scope of the functions of the review committee.

(b) Subsection (a) does not apply if the person acts with malice or without the reasonable belief that the action is warranted by the facts known to the person.

(c) This section does not provide immunity to a person described by Subsection (a) for a violation of a state or federal law or rule relating to the privacy of health information or the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 13, eff. June 10, 2019.

Sec. 34.012. DATABASE OF DE-IDENTIFIED INFORMATION. (a) The department may establish and maintain an electronic database to track cases of pregnancy-related deaths and severe maternal morbidity to assist the department and review committee in performing functions under this chapter.

(b) The information in the database may not include identifying information, including:

(1) the name of a patient; or

(2) the name or specific location of a health care provider that treated a patient.

(c) The database may be accessed only by the department and the review committee for the purposes described in this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 14, eff. June 10, 2019.

Sec. 34.013. INAPPLICABILITY OF CHAPTER. This chapter does not apply to disclosure of records pertaining to voluntary or therapeutic termination of pregnancy, and those records may not be collected, maintained, or disclosed under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.014. FUNDING. The department may accept gifts and grants from any source to fund the duties of the department and the review committee under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff.

September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 15, eff. June 10, 2019.

Sec. 34.015. REPORTS. (a) Not later than September 1 of each even-numbered year, the review committee and the department shall submit a joint report on the findings of the review committee under this chapter to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

(b) The report must include the review committee's recommendations under Section 34.005(4).

(c) The department shall disseminate the report to the state professional associations and organizations listed in Section 34.006(b) and make the report publicly available in paper or electronic form.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 7, eff. August 16, 2017.
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 16, eff. June 10, 2019.

Sec. 34.0155. REPORT ON PREGNANCY-RELATED DEATHS, SEVERE MATERNAL MORBIDITY, AND POSTPARTUM DEPRESSION. The commission shall:

(1) evaluate options for reducing pregnancy-related deaths, focusing on the most prevalent causes of pregnancy-related deaths as identified in the joint biennial report required under Section 34.015, and for treating postpartum depression in economically disadvantaged women;

(2) in coordination with the department and the review committee, identify strategies to:

(A) lower costs of providing medical assistance under Chapter 32, Human Resources Code, related to severe maternal morbidity and chronic illness; and

(B) improve quality outcomes related to the underlying causes of severe maternal morbidity and chronic illness; and

(3) not later than December 1 of each even-numbered year, submit to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the appropriate standing committees of the legislature a written report that includes:

(A) a summary of the commission's and department's efforts to accomplish the tasks described by Subdivisions (1) and (2); and

(B) a summary of the report required by Section 34.0156.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 8, eff. August 16, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 17, eff. June 10, 2019.

Sec. 34.0156. MATERNAL HEALTH AND SAFETY INITIATIVE. (a) Using existing resources, the department, in collaboration with the review committee, shall promote and facilitate the use among health care providers in this state of maternal health and safety informational materials, including tools and procedures related to best practices in maternal health and safety.

(b) Not later than December 1 of each even-numbered year, the department shall submit a report to the executive commissioner that includes:

(1) a summary of the initiative's implementation and outcomes; and

(2) recommendations for improving the effectiveness of the initiative.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 8, eff. August 16, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 18, eff. June 10, 2019.

Sec. 34.0158. REPORT ON ACTIONS TO ADDRESS MATERNAL MORTALITY RATES. Not later than December 1 of each even-numbered year, the commission shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the appropriate standing committees of the legislature a written report summarizing the actions taken to address maternal morbidity and reduce maternal mortality rates. The report must include information from programs and initiatives created to address maternal morbidity and reduce maternal mortality rates in this state, including:

(1) Medicaid;

(2) the children's health insurance program, including the perinatal program;

(3) the Healthy Texas Women program;

(4) the Family Planning Program;

(5) this state's program under the Maternal and Child Health Services Block Grant Act (42 U.S.C. Section 701 et seq.);

(6) the Perinatal Advisory Council;

(7) state health plans; and

(8) the Healthy Texas Babies program.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 3, eff. September 1, 2019.

Sec. 34.01581. OPIOID USE DISORDER MATERNAL AND NEWBORN HEALTH INITIATIVES. (a) The department, in collaboration with the review committee, shall develop and implement initiatives to:

(1) improve screening procedures to better identify and care for women with opioid use disorder;

(2) improve continuity of care for women with opioid use disorder by ensuring that health care providers refer the women to appropriate treatment and verify the women receive the treatment;

(3) optimize health care provided to pregnant women with opioid use disorder;

(4) optimize health care provided to newborns with neonatal abstinence syndrome by encouraging maternal engagement;

(5) increase access to medication-assisted treatment for women with opioid use disorder during pregnancy and the postpartum period; and

(6) prevent opioid use disorder by reducing the number of opioid drugs prescribed before, during, and following a delivery.

(c) Using existing resources, the department, in collaboration with the review committee, shall promote and facilitate the use among health care providers in this state of maternal health informational materials, including tools and procedures related to best practices in maternal health to improve obstetrical care for women with opioid use disorder.

Added by Acts 2019, 86th Leg., R.S., Ch. 514 (S.B. 436), Sec. 1, eff. June 7, 2019.
Redesignated and amended from Health and Safety Code, Section 34.0158 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.001, eff. September 1, 2021.

Text of section effective until April 1, 2025

Sec. 34.0159. PROGRAM EVALUATIONS. The commission, in collaboration with the task force and other interested parties, shall:

(1) explore options for expanding the pilot program for pregnancy medical homes established under Section 531.0996, Government Code;

(2) explore methods for increasing the benefits provided under Medicaid, including specialty care and prescriptions, for women at greater risk of a high-risk pregnancy or premature delivery;

(3) evaluate the impact of supplemental payments made to obstetrics providers for pregnancy risk assessments on increasing access to maternal health services;

(4) evaluate a waiver to fund managed care organization payments for case management and care coordination services for women at high risk of severe maternal morbidity on conclusion of their eligibility for Medicaid;

(5) evaluate the average time required for pregnant women to complete the Medicaid enrollment process;

(6) evaluate the use of Medicare codes for Medicaid care coordination;

(7) study the impact of programs funded from the Teen Pregnancy Prevention Program federal grant and evaluate whether the state should continue funding the programs; and

(8) evaluate the use of telemedicine medical services for women during pregnancy and the postpartum period.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 3, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.28, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 34.0159. PROGRAM EVALUATIONS. The commission, in collaboration with the task force and other interested parties, shall:

(1) explore options for expanding the pilot program for pregnancy medical homes established under former Section 531.0996, Government Code;

(2) explore methods for increasing the benefits provided under Medicaid, including specialty care and prescriptions, for women at greater risk of a high-risk pregnancy or premature delivery;

(3) evaluate the impact of supplemental payments made to obstetrics providers for pregnancy risk assessments on increasing access to maternal health services;

(4) evaluate a waiver to fund managed care organization payments for case management and care coordination services for women at high risk of severe maternal morbidity on conclusion of their eligibility for Medicaid;

(5) evaluate the average time required for pregnant women to complete the Medicaid enrollment process;

(6) evaluate the use of Medicare codes for Medicaid care coordination;

(7) study the impact of programs funded from the Teen Pregnancy Prevention Program federal grant and evaluate whether the state should continue funding the programs; and

(8) evaluate the use of telemedicine medical services for women during pregnancy and the postpartum period.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 3, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.28, eff. April 1, 2025.

Sec. 34.016. RULES. The executive commissioner may adopt rules to implement this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Sec. 34.017. DEPARTMENT ACCESS TO INFORMATION. (a) Notwithstanding Chapter 108 or any other law, the department may have access to the following information that may include the identity of a patient to fulfill its duties under this chapter:

(1) birth records;

(2) fetal death records;

(3) maternal death records; and

(4) hospital and birthing center discharge data.

(b) The department may not disclose the information described by Subsection (a) to the review committee or any other person.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 19, eff. June 10, 2019.

Sec. 34.018. SUNSET PROVISION. (a) The review committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the review committee is abolished and this chapter expires September 1, 2027.

(b) The Sunset Advisory Commission shall review the review committee during the two-year period preceding the date the department is scheduled for abolition under Section 1001.003, but the review committee is continued in existence until the date provided by Subsection (a). This subsection expires September 1, 2025.

Added by Acts 2013, 83rd Leg., R.S., Ch. 527 (S.B. 495), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 12 (S.B. 17), Sec. 9, eff. August 16, 2017.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.05, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 601 (S.B. 750), Sec. 20, eff. June 10, 2019.

Sec. 34.019. DATA COLLECTION. The task force, under the direction of the department, shall annually collect information relating to maternity care and postpartum depression in this state. The information must be based on statistics for the preceding year and include the:

(1) number of births by Medicaid recipients;

(2) number of births by women with health benefit plan coverage;

(3) number of Medicaid recipients screened for postpartum depression;

(4) number of women screened for postpartum depression under health benefit plan coverage;

(5) number of women treated for postpartum depression under health benefit plan coverage;

(6) number of women screened for postpartum depression under the Healthy Texas Women program;

(7) number of women treated for postpartum depression under the Healthy Texas Women program;

(8) number of claims for postpartum depression treatment paid by the Healthy Texas Women program;

(9) number of claims for postpartum depression treatment rejected by the Healthy Texas Women program;

(10) postpartum depression screening and treatment billing codes and the number of claims for each billing code under the Healthy Texas Women program;

(11) average number of days from the date of a postpartum depression screening to the date the patient begins treatment under Medicaid;

(12) average number of days from the date of a postpartum depression screening to the date the patient begins treatment under the Healthy Texas Women program;

(13) number of women who screened positive for postpartum depression under Medicaid and the average number of days following childbirth for the screening to occur;

(14) number of women who screened positive for postpartum depression under health benefit plan coverage and the average number of days following childbirth for the screening to occur; and

(15) number of women who screened positive for postpartum depression under the Healthy Texas Women program and the average number of days following childbirth for the screening to occur.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 4, eff. September 1, 2019.

Sec. 34.020. PROGRAM TO DELIVER PRENATAL AND POSTPARTUM CARE THROUGH TELEHEALTH OR TELEMEDICINE MEDICAL SERVICES IN CERTAIN COUNTIES. (a) In this section:

(1) "Postpartum care" and "prenatal care" have the meanings assigned by Section 32.002.

(2) "Telehealth service" and "telemedicine medical service" have the meanings assigned by Section 111.001, Occupations Code.

(b) The commission, in consultation with the task force, shall develop a program to deliver prenatal and postpartum care through telehealth services or telemedicine medical services to pregnant women with a low risk of experiencing pregnancy-related complications, as determined by a physician. The commission shall implement the program in:

(1) at least two counties with populations of more than 2.5 million;

(2) at least one county with a population of more than 100,000 and less than 500,000; and

(3) at least one rural county with high rates of maternal mortality and morbidity as determined by the commission in consultation with the task force.

Text of subsection effective until April 1, 2025

(c) The commission shall develop criteria for selecting participants for the program by analyzing information in the reports prepared by the task force under this chapter and the outcomes of the study conducted under Section 531.02163, Government Code.

Text of subsection effective on April 1, 2025

(c) The commission shall develop criteria for selecting participants for the program by analyzing information in the reports prepared by the task force under this chapter and the outcomes of the study conducted under former Section 531.02163, Government Code.

(d) In developing and administering the program, the commission shall endeavor to use innovative, durable medical equipment to monitor fetal and maternal health.

(e) If the commission determines it is feasible and cost-effective, the commission may:

(1) provide home telemonitoring services and necessary durable medical equipment to women participating in the program to the extent the commission anticipates the services and equipment will reduce unnecessary emergency room visits or hospitalizations; and

(2) reimburse providers under Medicaid for the provision of home telemonitoring services and durable medical equipment under the program.

(f) Not later than January 1, 2021, the commission shall submit to the legislature a report on the program that evaluates the program's success in delivering prenatal and postpartum care through telehealth services or telemedicine medical services under Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 4, eff. September 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.002, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 66, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.29, eff. April 1, 2025.

For expiration of this section, see Subsection (b).

Sec. 34.021. APPLICATION FOR FEDERAL GRANTS. (a) The executive commissioner shall apply to the United States Department of Health and Human Services for grants under the federal Preventing Maternal Deaths Act of 2018 (Pub. L. No. 115-344).

(b) This section expires September 1, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 4, eff. September 1, 2019.

CHAPTER 35. CHILDREN WITH SPECIAL HEALTH CARE NEEDS

Sec. 35.001. SHORT TITLE. This chapter may be cited as the Children with Special Health Care Needs Services Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.01, eff. Sept. 1, 1999.

Sec. 35.0021. DEFINITIONS. In this chapter:

(1) "Case management services" includes:

(A) coordinating medical services, marshaling available assistance, serving as a liaison between the child and the child's family and caregivers, insurance services, and other services needed to improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(2) "Child with special health care needs" has the meaning assigned by Section 35.0022.

(3) "Dentist" means a person licensed by the State Board of Dental Examiners to practice dentistry in this state.

(4) "Facility" includes a hospital, an ambulatory surgical center, and an outpatient clinic.

Text of subdivision effective until April 1, 2025

(5) "Family support services" means support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), as amended, and permanency planning, as that term is defined by Section 531.151, Government Code.

Text of subdivision effective on April 1, 2025

(5) "Family support services" means support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A

of the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.), as amended, and permanency planning, as that term is defined by Section 546.0201, Government Code.

(6) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services provided under the program, including benefits available from:

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

(B) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended;

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

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

(G) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

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

(8) "Program" means the services program for children with special health care needs.

(9) "Provider" means a person who delivers services purchased by the department for the purposes of this chapter.

(10) "Rehabilitation services" means the process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury and includes:

(A) facility care, medical and dental care, and

occupational, speech, and physical therapy;

(B) the provision of braces, artificial appliances, durable medical equipment, and other medical supplies; and

(C) other types of care specified by department rules.

(11) "Services" means the care, activities, and supplies provided under this chapter or department rules, including medical care, dental care, facility care, medical supplies, occupational, physical, and speech therapy, and other care specified by department rules.

(12) "Specialty center" means a facility and staff that meet minimum standards established under the program and are designated by the department for program use in the comprehensive diagnostic and treatment services for a specific medical condition.

(13) "Support" means to contribute money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0110, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.30, eff. April 1, 2025.

Sec. 35.0022. CHILD WITH SPECIAL HEALTH CARE NEEDS. (a) In this chapter, "child with special health care needs" means a person who:

(1) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(2) has cystic fibrosis, regardless of the person's age.

(b) The term "child with special health care needs" may include a person who has a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has a behavioral or emotional condition without having an accompanying physical or developmental condition.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.02, eff. Sept. 1, 1999.

Sec. 35.003. SERVICES PROGRAM FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) The program is in the department to provide services to eligible children with special health care needs. The program shall provide:

(1) early identification of children with special health care needs;

(2) diagnosis and evaluation of children with special health care needs;

(3) rehabilitation services to children with special health care needs;

(4) development and improvement of standards and services for children with special health care needs;

(5) case management services;

(6) other family support services; and

(7) access to health benefits plan coverage under Section 35.0031.

(b) The executive commissioner by rule shall:

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

(2) permit the payment of insurance premiums for eligible children.

(c) If budgetary limitations exist, the executive commissioner by rule shall establish a system of priorities relating to the types of services or the classes of persons eligible for the services. A waiting list of eligible persons may be established if necessary for the program to remain within the budgetary limitations. The department shall collect from each applicant for services who is placed on a waiting list appropriate information to facilitate contacting the applicant when services become available and to allow efficient enrollment of the applicant in those services. The information collected must include:

(1) the applicant's name, address, and phone number;

(2) the name, address, and phone number of a contact person other than the applicant;

(3) the date of the applicant's earliest application for services;

(4) the applicant's functional needs;

(5) the range of services needed by the applicant; and

(6) a date on which the applicant is scheduled for reassessment.

(d) The program may provide:

(1) transportation and subsistence for an eligible child with special health care needs and the child's parent, managing conservator, guardian, or other adult caretaker approved by the program to obtain services provided by the program; and

(2) the following services to an eligible child with special health care needs who dies in an approved facility outside the child's municipality of residence while receiving program services:

(A) the transportation of the child's remains, and the transportation of a parent or other person accompanying the remains, from the facility to the place of burial in this state that is designated by the parent or other person legally responsible for interment;

(B) the expense of embalming, if required for transportation;

(C) the cost of a coffin purchased at a minimum price, if a coffin is required for transportation; and

(D) any other necessary expenses directly related to the care and return of the child's remains to the place of burial in this state.

(e) The department may:

(1) develop methods to improve the efficiency and effectiveness of the program; and

(2) conduct pilot studies.

(f) The program is separate from the financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.03, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0111, eff. April 2, 2015.

Sec. 35.0031. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN ELIGIBLE CHILDREN. The department shall obtain coverage under a health benefits plan for a child who:

(1) is eligible for services under this chapter; and

(2) is not eligible for assistance under:

(A) a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended; or

(B) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0032. BENEFITS COVERAGE REQUIRED. To the extent possible, the health benefits plan required by Section 35.0031 must provide benefits comparable to the benefits provided under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0033. HEALTH BENEFITS PLAN PROVIDER. (a) A health benefits plan provider who provides coverage for benefits under Section 35.0031 must:

(1) hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health benefits plan provider to provide the type of coverage to be offered under Section 35.0031; and

(2) satisfy, except as provided by Subsection (b), any other applicable requirement of the Insurance Code or another insurance law of this state.

(b) Except as required by department rule, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0112, eff. April 2, 2015.

Sec. 35.0034. COST-SHARING PAYMENTS. (a) Except as provided by Subsection (b), the department may not require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The department may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under Section 35.0031 that is equal to any copayment required under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

(c) The department may require a child who is provided health benefits plan coverage under Section 35.0031 and who meets the income eligibility requirement of a program established under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the state child health plan established by this state to implement Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.0035. DISALLOWANCE OF MATCHING FUNDS FROM FEDERAL GOVERNMENT. Expenditures made to provide health benefits plan coverage under Section 35.0031 may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.04, eff. Sept. 1, 1999.

Sec. 35.004. SERVICE PROVIDERS. (a) The executive commissioner shall adopt substantive and procedural rules for the selection of providers to participate in the program, including rules for the selection of specialty centers and rules requiring that providers accept program payments as payment in full for services provided.

(b) The department shall approve physicians, dentists, licensed dietitians, facilities, specialty centers, and other providers to participate in the program according to the criteria and following the procedures prescribed by department rules.

(c) The department may pay only for services delivered by an approved provider, except in an emergency.

(d) Except as specified in the department rules, a recipient of services may select any provider approved by the department. If the recipient is a minor, the person legally authorized to consent to the treatment may select the provider.

(e) The executive commissioner shall adopt substantive and procedural rules for the modification, suspension, or termination of the approval of a provider.

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

(g) The department may not terminate the approval of a provider while a hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(h) Subsection (f) does not apply if a contract:

(1) is canceled by the department because services are restricted to conform to budgetary limitations and service priorities are adopted by the executive commissioner regarding types of services to be provided; or

(2) expires according to its terms.

(i) The Interagency Cooperation Act, Chapter 771, Government Code, does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible child. A publicly supported medical school facility receiving payment under this chapter shall deposit the payment in

local funds.

(j) This section does not apply to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.05, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0113, eff. April 2, 2015.

Sec. 35.0041. PARTICIPATION AND REIMBURSEMENT OF TELEMEDICINE MEDICAL SERVICE PROVIDERS. (a) The executive commissioner by rule shall develop and the department shall implement policies permitting reimbursement of a provider for services under the program performed using telemedicine medical services.

(b) The policies must provide for reimbursement of:

(1) providers using telemedicine medical services and telehealth services in a cost-effective manner that ensures the availability to a child with special health care needs of services appropriately performed using telemedicine medical services and telehealth services that are comparable to the same types of services available to that child without use of telemedicine medical services and telehealth services;

(2) a provider for a service performed using telemedicine medical services and telehealth services at an amount equal to the amount paid to a provider for performing the same service without using telemedicine medical services and telehealth services;

(3) multiple providers of different services who participate in a single telemedicine medical services or telehealth services session for a child with special health care needs, if the department determines that reimbursing each provider for the session is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services and telehealth services, including the costs of transportation and lodging and other direct costs; and

(4) providers using telemedicine medical services and

telehealth services included in the school health and related services program.

(c) In developing and implementing the policies required by this section, the executive commissioner and the department shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the commission, including the state Medicaid office;

(4) providers of telemedicine medical services and telehealth services hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

(d) This section applies to services for which coverage is provided under the health benefits plan established under Section 35.0031.

Added by Acts 2001, 77th Leg., ch. 959, Sec. 4, eff. June 14, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0114, eff. April 2, 2015.

Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The executive commissioner by rule shall:

(1) define medical, financial, and other criteria for eligibility to receive services; and

(2) establish a system for verifying eligibility information submitted by an applicant for or recipient of services.

(b) In defining medical and financial criteria for eligibility under Subsection (a), the executive commissioner may not:

(1) establish an exclusive list of coverable medical conditions; or

(2) consider as a source of support to provide services assets legally owned or available to a child's household.

(c) A child is not eligible to receive rehabilitation services unless:

(1) the child is a resident of this state;

(2) at least one physician or dentist certifies to the department that the physician or dentist has examined the child and finds the child to be a child with special health care needs whose disability meets the medical criteria established by the executive commissioner;

(3) the department determines that the persons who have any legal obligation to provide services for the child are unable to pay for the entire cost of the services;

(4) the child has a family income that is less than or equal to 200 percent of the federal poverty level; and

(5) the child meets all other eligibility criteria established by department rules.

(d) A child is not eligible to receive services, other than rehabilitation services, unless the child:

(1) is a resident of this state; and

(2) meets all other eligibility criteria established by department rules.

(e) Notwithstanding Subsection (c)(4), a child with special health care needs who has a family income that is greater than 200 percent of the federal poverty level and who meets all other eligibility criteria established by this section and by department rules is eligible for services if the department determines that the child's family is or will be responsible for medical expenses that are equal to or greater than the amount by which the family's income exceeds 200 percent of the federal poverty level.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.06, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0115, eff. April 2, 2015.

Sec. 35.006. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The executive commissioner shall adopt substantive and procedural rules for the denial of applications and the modification, suspension, or termination of services.

(b) The department may deny services to an applicant and modify, suspend, or terminate services to a recipient after:

(1) notice to the child or the person who is legally

obligated to support the child;

(2) a preliminary program review; and

(3) an opportunity for a fair hearing.

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

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

(e) This section does not apply if the department restricts services to conform to budgetary limitations that require the executive commissioner to adopt service priorities regarding types of services to be provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0116, eff. April 2, 2015.

Sec. 35.0061. REFERRAL FOR BEHAVIORAL OR EMOTIONAL CONDITIONS. If a child with special health care needs who is eligible for services under this chapter has a behavioral or emotional condition and the child is eligible for services from another provider of services that would address the behavioral or emotional condition, the department shall refer the child to that provider for those services.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 3.07, eff. Sept. 1, 1999.

Sec. 35.007. FINANCIAL ELIGIBILITY; OTHER BENEFITS. (a) The department shall require a child receiving services, or the person who has a legal obligation to support the child, to pay for or reimburse the department for that part of the cost of the services that the child or person is financially able to pay.

(b) A child is not eligible to receive services under this chapter to the extent that the child or a person with a legal obligation to support the child is eligible for some other benefit

that would pay for all or part of the services. The executive commissioner may waive this subsection if its enforcement will deny services to a class of children because of conflicting state and federal laws or rules and regulations.

(c) When the application is made under this chapter or at any time before, during, or after the receipt of services, an applicant for or recipient of services shall inform the department of any other benefit to which the child or any person who has a legal obligation to support the child may be entitled.

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

(e) The department may collect the cost of services provided under this chapter directly:

(1) in accordance with Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. Sec. 1395 et seq., 42 U.S.C. Sec. 1396 et seq., and 42 U.S.C. Sec. 1397aa et seq.), as amended; or

(2) from any personal insurance, a health maintenance organization, or any other third party who has a legal obligation to pay other benefits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 3.08, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0117, eff. April 2, 2015.

Sec. 35.008. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not pay or reimburse the department as required by Section 35.007 or from any third party who has a legal obligation to pay other benefits.

(b) This section creates a separate cause of action, and the department may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department.

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the

date on which the department provides the service to the date on which the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0118, eff. April 2, 2015.

Sec. 35.009. FEES. The executive commissioner by rule may adopt reasonable procedures and standards for the determination of fees and charges for program services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0119, eff. April 2, 2015.

Sec. 35.010. FUNDING. The department may receive and spend:
(1) gifts made for the purposes of this chapter; and
(2) funds appropriated or granted by the state or federal government to provide services for children.

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

Sec. 35.011. CONTRACTS. The department may enter into contracts and agreements necessary to carry out this chapter, including interagency agreements to provide for the efficient and uninterrupted provision of necessary services to children who are eligible to receive services from two or more public programs.

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

Sec. 35.012. RECORDS. (a) The department may take a census, make surveys, and establish permanent records of children with special health care needs.
(b) The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies

purchased by the department for children with special health care needs. Those items are not state-owned personal property and are exempt from the personal property inventory requirements of Subtitle D, Title 10, Government Code.

(c) The purchase of the items described by Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 11, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 3.09, eff. Sept. 1, 1999.

Sec. 35.013. LIMITATIONS ON AUTHORITY. (a) This chapter does not limit the authority of a parent, managing conservator, or guardian over a minor.

(b) This chapter does not entitle an employee, agent, or representative of the department or other official agent to enter a home over the objection of a child or, if the child is a minor, over the objection of the child's parent, managing conservator, or guardian.

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

CHAPTER 36. SPECIAL SENSES AND COMMUNICATION DISORDERS

Sec. 36.001. SHORT TITLE. This chapter may be cited as the Special Senses and Communication Disorders Act.

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

Sec. 36.002. PURPOSE. (a) The purpose of this chapter is to establish a program to identify, at as early an age as possible, those individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services. Early detection and remediation of those disorders provide the individuals with the opportunity to reach academic and social status through adequate educational planning and training.

(b) This chapter shall be implemented in accordance with the provisions of professional license laws that pertain to professional examinations and remedial services for individuals with special senses and communication disorders.

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

Sec. 36.003. DEFINITIONS. In this chapter:

(1) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.

(1-a) "Electronic eye chart" means any computerized or other electronic system, device, or method of displaying on an electronic screen medically accepted and properly sized optotypes, which may be letters, numbers, or symbols, a health care practitioner or other person uses to assess an individual's visual acuity. The term does not include an automated computer program that assesses an individual's visual acuity through the individual's interaction with the program by playing a game.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which an individual is entitled for payment of the costs of remedial services, and includes:

(A) benefits received under a personal insurance contract;

(B) payments received from another person for personal injury caused by the other person's negligence or wrongdoing; and

(C) payments received from any other source.

(3) "Preschool" means an educational or child-care institution that admits children who are three years of age or older but younger than five years of age.

(4) "Professional examination" means a diagnostic evaluation performed by an appropriately licensed professional or, if the professional is not required to be licensed under the laws of this state, by a certified or sanctioned individual whose area of expertise addresses the diagnostic needs of an individual identified as having a possible special senses or communication disorder.

(5) "Provider" means a person who provides remedial services to individuals who have special senses and communication disorders, and includes a physician, audiologist, speech pathologist, optometrist, psychologist, hospital, clinic, rehabilitation center,

university, or medical school.

(6) "Remedial services" means professional examinations and prescribed remediation, including prosthetic devices, for individuals with special senses or communication disorders.

(7) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

(8) "Screening" means a test or battery of tests administered to rapidly determine the need for a professional examination.

(9) "Special senses" means the faculties by which the conditions or properties of things are perceived, and includes vision and hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 313 (H.B. 1297), Sec. 1, eff. September 1, 2023.

Sec. 36.004. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION DISORDERS. (a) The executive commissioner by rule shall require screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders specified by the executive commissioner. In developing the rules, the executive commissioner may consider the number of individuals to be screened and the availability of:

(1) personnel qualified to administer the required screening;

(2) appropriate screening equipment; and

(3) state and local funds for screening activities.

(b) The rules must include procedures necessary to administer screening activities.

(b-1) The rules must allow an individual who attends a public or private school to be screened:

(1) using photoscreening to detect vision disorders; and

(2) using an electronic eye chart as a substitute for a printed eye chart to assess visual acuity.

(c) The executive commissioner shall adopt a schedule for

implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.

(d) The rules must provide for acceptance of results of screening conducted by a licensed professional, regardless of whether that professional is under contract with the department, if:

(1) the professional's legally defined scope of practice includes the area for which the screening is conducted; and

(2) the professional uses acceptable procedures for the screening.

(e) The department may coordinate the special senses and communication disorders screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department may provide screening personnel, equipment, and services only if the screening requirements cannot otherwise be met.

(g) The department shall monitor the quality of screening activities provided under this chapter.

(h) This section does not prohibit a volunteer from participating in the department's screening programs.

(i) A hearing screening performed under this section is in addition to any hearing screening test performed under Chapter 47.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1347, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0120, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 363 (H.B. 3157), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 313 (H.B. 1297), Sec. 2, eff. September 1, 2023.

Sec. 36.005. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the executive commissioner. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the executive commissioner. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, must submit to the admitting officer of the preschool or school on or before the day of admission an affidavit stating the objections to screening.

(c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the executive commissioner or submits an affidavit of exemption.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0121, eff. April 2, 2015.

Sec. 36.006. RECORDS; REPORTS. (a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department in accordance with department rules, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.

(b) The department may, directly or through local health departments, enter a preschool or school and inspect records maintained by the preschool or school relating to screening for special senses and communication disorders.

(c) An individual's screening records may be transferred among preschools and schools without the consent of the individual or, if

the individual is a minor, the minor's parent, managing conservator, or guardian.

(d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the executive commissioner. The report must be on a form prescribed by the department in accordance with department rules and must be submitted according to the rules.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0122, eff. April 2, 2015.

Sec. 36.007. PROVISION OF REMEDIAL SERVICES. (a) The department may provide remedial services directly or through approved providers to eligible individuals who have certain special senses and communication disorders and who are not eligible for special education services that remediate those disorders and that are administered by the Texas Education Agency through the public schools.

(b) The executive commissioner by rule shall:

(1) describe the type, amount, and duration of remedial services that the department provides;

(2) establish medical, financial, and other criteria to be applied by the department in determining an individual's eligibility for the services;

(3) establish criteria for the selection by the department of providers of remedial services; and

(4) establish procedures necessary to provide remedial services.

(c) The executive commissioner may establish a schedule to determine financial eligibility.

(d) The department may not require remedial services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.34, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0123, eff. April 2, 2015.

Sec. 36.008. INDIVIDUALS ELIGIBLE FOR REMEDIAL SERVICES. (a) An individual is not eligible to receive the remedial services authorized by this chapter to the extent that the individual or the parent, managing conservator, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

(b) The department may waive ineligibility under Subsection (a) if the department finds that:

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of remedial services to an otherwise eligible recipient.

(c) When an application for remedial services is filed or at any time that an individual is eligible for and receiving remedial services, the applicant or recipient shall inform the department of any other benefit to which the applicant, recipient, or person with a legal obligation to support the applicant or recipient may be entitled.

(d) The department may modify, suspend, or terminate the eligibility of an applicant for or recipient of remedial services after notice to the affected individual and an opportunity for a fair hearing that is conducted in accordance with the department's informal hearing rules.

(e) The executive commissioner by rule shall provide criteria for actions taken under this section.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0124, eff. April 2, 2015.

Sec. 36.009. REIMBURSEMENT. (a) The executive commissioner may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay or reimburse the department for a part of the cost of the remedial

services provided.

(b) The recipient or the parent, managing conservator, or other person with a legal obligation to support an individual who has received remedial services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0125, eff. April 2, 2015.

Sec. 36.010. RECOVERY OF COSTS. (a) The department is entitled to recover an expenditure for services provided under this chapter from:

(1) a person who does not reimburse the department as required by this chapter; or

(2) a third party with a legal obligation to pay other benefits and who has notice of the department's interests in the other benefits.

(b) The commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department. A suit brought under this section need not be ancillary or dependent on any other action.

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

(d) The executive commissioner by rule shall provide criteria for actions taken under this section.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0126, eff. April 2, 2015.

Sec. 36.011. QUALIFICATIONS OF PERSONS PROVIDING SCREENING AND REMEDIAL SERVICES. (a) The department in accordance with department rules may require that persons who administer special senses and

communication disorders screening complete an approved training program, and the department may train those persons and approve training programs.

(b) A person who provides speech and language screening services authorized by this chapter must be:

(1) appropriately licensed; or

(2) trained and monitored by a person who is appropriately licensed.

(c) A person who is not an appropriately licensed professional may not conduct hearing screening authorized by this chapter other than screening of hearing sensitivity. The person shall refer an individual who is unable to respond reliably to that screening to an appropriately licensed professional.

(d) A person who provides a professional examination or remedial services authorized by this chapter for speech, language, or hearing disorders must be appropriately licensed.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0127, eff. April 2, 2015.

Sec. 36.012. RESEARCH. (a) The department may conduct research and compile statistics on the provision of remedial services to individuals with special senses and communication disorders and on the availability of those services in the state.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(80), eff. June 17, 2011.

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

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(2), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(80), eff. June 17, 2011.

Sec. 36.013. FUNDING. The department may accept

appropriations, donations, and reimbursements, including donations of prosthetic devices, and may apply those items to the purposes of this chapter.

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

Sec. 36.014. CONTRACTS. The department may enter into contracts and agreements necessary to administer this chapter, including contracts for the purchase of remedial services.

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

CHAPTER 37. ABNORMAL SPINAL CURVATURE IN CHILDREN

Sec. 37.001. SCREENING PROGRAM FOR ABNORMAL SPINAL CURVATURE. (a) The department, in cooperation with the Texas Education Agency, shall establish a program to detect abnormal spinal curvature in children.

(b) The executive commissioner, in cooperation with the Texas Education Agency, shall adopt rules for the mandatory spinal screening of children attending public or private schools. In adopting rules under this subsection, the executive commissioner shall consider the most recent nationally accepted and peer-reviewed scientific research in determining the appropriate ages for conducting the spinal screening. The department shall coordinate the spinal screening program with any other screening program conducted by the department on those children.

(b-1) The executive commissioner, in cooperation with the Texas Education Agency, by rule shall develop a process to notify a parent, managing conservator, or guardian of:

(1) the screening requirement;

(2) the purposes of and reasons for the screening requirement, including prevention of painful scoliosis correction surgery and medical risks to the child if screening is declined;

(3) the noninvasive nature of the method used to conduct the screening; and

(4) the method for declining to comply with the screening requirement through the use of an exemption described by Section 37.002(b).

(c) The executive commissioner shall adopt substantive and

procedural rules necessary to administer screening activities.

(d) A rule adopted by the executive commissioner under this chapter may not require any expenditure by a school, other than an incidental expense required for certification training for nonhealth practitioners and for notification requirements under Section 37.003.

(e) The department may coordinate the spinal screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department shall monitor the quality of screening activities provided under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.36, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0128, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 336 (H.B. 1076), Sec. 1, eff. September 1, 2017.

Sec. 37.002. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) Each individual required by a department rule to be screened shall undergo approved screening for abnormal spinal curvature. The individual's parent, managing conservator, or guardian may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual's parent, managing conservator, or guardian must submit to the chief administrator on or before the day of the screening procedure an affidavit stating the objections to screening.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements set by the executive commissioner or submits an affidavit of exemption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0129, eff. April 2, 2015.

Sec. 37.003. REPORTS. (a) If the screening performed under this chapter indicates that an individual may have abnormal spinal curvature, the individual performing the screening shall fill out a report on a form prescribed by the department.

(b) The chief administrator of the school shall retain one copy of the report and shall mail one copy to the parent, managing conservator, or guardian of the individual screened.

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

Sec. 37.004. QUALIFICATIONS OF PERSONS PROVIDING SCREENING. (a) The department may train persons who administer the spinal screening procedure and may approve training programs.

(b) A person who provides screening services authorized by this chapter must be:

(1) appropriately licensed or certified as a health practitioner; or

(2) certified as having completed an approved training program in screening for abnormal spinal curvature.

(c) A person who provides a professional examination authorized by this chapter for abnormal spinal curvature must be appropriately licensed or certified as a health practitioner.

(d) It is the intent of the legislature that the department provide certification training for nonhealth practitioners through Texas Education Agency regional education service centers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.37, eff. Sept. 1, 1997.

Sec. 37.005. FUNDING. The department may accept appropriations, donations, and reimbursements and may apply those items to the purposes of this chapter.

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

Sec. 37.006. CONTRACTS. The department may enter into contracts and agreements necessary to administer this chapter.

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

CHAPTER 40. EPILEPSY

Sec. 40.001. DEFINITION. In this chapter, "epilepsy" means a variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a succession of clonic or tonic muscular spasms or other abnormal behavior.

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

Sec. 40.002. EPILEPSY PROGRAM. The department, with approval of the executive commissioner, may establish an epilepsy program to provide diagnostic services, treatment, and support services to eligible persons who have epilepsy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0133, eff. April 2, 2015.

Sec. 40.003. RULES. The executive commissioner may adopt rules the executive commissioner considers necessary to define the scope of the epilepsy program and the medical and financial standards for eligibility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0134, eff. April 2, 2015.

Sec. 40.004. ADMINISTRATION. (a) The commissioner, with the approval of the executive commissioner, may appoint an administrator to carry out the epilepsy program.

(b) The administrator shall report to and be under the direction of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0135, eff. April 2, 2015.

Sec. 40.005. FEES. Program patients may be charged a fee for services according to rules adopted by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0136, eff. April 2, 2015.

Sec. 40.006. FUNDING. The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purposes of the epilepsy program.

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

Sec. 40.007. CONTRACTS. The department may enter into contracts or other agreements it considers necessary to facilitate the provision of services under this chapter, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

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

CHAPTER 41. HEMOPHILIA

Sec. 41.001. DEFINITIONS. In this chapter:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically or hereditarily determined deficiency of a blood coagulation factor resulting in an abnormal or deficient plasma procoagulant.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which a person is entitled for payment of the costs of blood factor replacement products and other substances provided under this chapter, including benefits available from:

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

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

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

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

(G) a cause of action for medical or dental expenses to a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0137, eff. April 2, 2015.

Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The hemophilia assistance program is in the department to assist persons who have hemophilia and who require continuing treatment with blood factor replacement products, but who are unable to pay the entire cost of the treatment.

(b) The executive commissioner shall establish standards of

eligibility for assistance under this chapter in accordance with Section 41.004.

(c) The department shall provide, through approved providers, financial assistance for medically eligible persons in obtaining blood factor replacement products and other substances for use in medical or dental facilities or in the home.

(d) In addition to providing financial assistance under Subsection (c), the department may assist an eligible person in obtaining insurance by providing premium payment assistance.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0138, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 704 (H.B. 1038), Sec. 1, eff. June 17, 2015.

Sec. 41.003. ADMINISTRATION. (a) The commissioner may employ or appoint an administrator who shall carry out the hemophilia assistance program and report to the commissioner.

(b) The administrator may employ two persons to help carry out the program.

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

Sec. 41.004. FINANCIAL ELIGIBILITY. (a) A person is not eligible to receive services provided by this chapter:

(1) to the extent that another person with a legal obligation to provide for the person's care and treatment is financially able to pay for all or part of the services provided by this chapter; or

(2) to the extent that the person or a person with a legal obligation to support the person is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When the application is made under this chapter or when the services are received, the person applying for or receiving services shall inform the department of any other benefit to which the person or any other person with a legal obligation to support the person may

be entitled.

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

Sec. 41.005. REIMBURSEMENT. (a) The department shall require a person receiving services under this chapter who is financially able to bear part of the expense, or a person who has a legal obligation to provide for the person's care and treatment and who is financially able to bear part of the expense, to pay for or reimburse the department for that part of the cost of the services provided to the person by the department.

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

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

Sec. 41.006. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 41.005 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

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

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

Sec. 41.007. FUNDING. (a) The department may accept gifts and grants from individuals, private or public organizations, or federal or local funds to support the hemophilia assistance program.

(b) The department shall identify any potential sources of

funding from federal grants or programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0139, eff. April 2, 2015.

CHAPTER 42. KIDNEY HEALTH CARE

Sec. 42.001. SHORT TITLE; PURPOSE. (a) This chapter may be cited as the Texas Kidney Health Care Act.

(b) The state finds that one of the most serious and tragic problems facing the public health and welfare is the death each year from end stage renal disease of hundreds of persons in this state, when the present state of medical art and technology could return many of those individuals to a socially productive life. Patients may die for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. The state therefore recognizes a responsibility to allow its citizens to remain healthy without being pauperized and a responsibility to use the resources and organization of the state to gather and disseminate information on the prevention and treatment of end stage renal disease.

(c) A comprehensive program to combat end stage renal disease must be implemented through the combined and correlated efforts of individuals, state and local governments, persons in the field of medicine, universities, and nonprofit organizations. The program provided by this chapter is designed to direct the use of resources and to coordinate the efforts of the state in this vital matter of public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0140, eff. April 2, 2015.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(18), eff. April 2, 2015.

(2) "Other benefit" means a benefit, other than one

provided under this chapter, to which a person is entitled for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies, including benefits available from:

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

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

(C) the United States Department of Veterans Affairs;

(D) the TRICARE program of the United States Department of Defense;

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

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, or a hospital district; or

(G) a cause of action for medical expenses brought by an applicant for or recipient of services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(3) "Serum creatinine test" is a diagnostic test of a person's blood that measures the level of creatinine present in the blood.

(4) "Estimated glomerular filtration rate" is a calculation of a person's kidney function based on:

(A) the person's age, race, and gender; and

(B) the results of the person's serum creatinine test.

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

Acts 2009, 81st Leg., R.S., Ch. 1296 (H.B. 2330), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0141, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(18), eff. April 2, 2015.

Sec. 42.003. KIDNEY HEALTH CARE PROGRAM. (a) The kidney health care program is in the department to carry out this chapter.

(b) The department may develop and expand programs for the care and treatment of persons with end stage renal disease, including dialysis and other lifesaving medical procedures and techniques.

(c) The executive commissioner may adopt rules necessary to carry out this chapter and to provide adequate kidney care and treatment for citizens of this state.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0142, eff. April 2, 2015.

Sec. 42.004. SERVICES. (a) The department shall provide kidney care services directly or through public or private resources to persons the department determines to be eligible for services authorized under this chapter.

(b) The department may cooperate with other departments, agencies, political subdivisions, and public and private institutions to provide the services authorized by this chapter to eligible persons, to study the public health and welfare needs involved, and to plan, establish, develop, and provide programs or facilities and services that are necessary or desirable, including any that are jointly administered with state agencies.

(c) The department may conduct research and compile statistics relating to the provision of kidney care services and the need for the services by persons with disabilities.

(d) The department may contract with schools, hospitals, corporations, agencies, and individuals, including doctors, nurses, and technicians, for training, physical restoration, transportation, and other services necessary to treat and care for persons with end stage renal disease.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0143, eff. April 2, 2015.

Sec. 42.0045. DISTRIBUTION OF DRUGS AND DEVICES. (a) Sections 483.041(a) and 483.042 of this code, Subtitle J, Title 3, Occupations Code, and other applicable laws establishing prohibitions do not apply to a dialysate, device, or drug exclusively used or necessary to perform dialysis that a physician prescribes or orders for administration or delivery to a person with end stage renal disease if:

(1) the dialysate, device, or drug is lawfully held by a manufacturer or wholesaler licensed by the department;

(2) the manufacturer or wholesaler delivers the dialysate, device, or drug to:

(A) a person with end stage renal disease for self-administration at the person's home or a specified address, as ordered by a physician; or

(B) a physician for administration or delivery to a person with end stage renal disease; and

(3) the manufacturer or wholesaler has sufficient and qualified supervision to adequately protect the public health.

(b) The executive commissioner shall adopt rules necessary to ensure the safe distribution, without the interruption of supply, of a dialysate, device, or drug covered by Subsection (a). The rules must include provisions regarding manufacturer and wholesaler licensing, record keeping, evidence of a delivery to a patient or a patient's designee, patient training, specific product and quantity limitation, physician prescriptions or order forms, adequate facilities, and appropriate labeling to ensure that necessary information is affixed to or accompanies the dialysate, device, or drug.

(c) If the department determines that a dialysate, device, or drug distributed under this chapter is ineffective or unsafe for its intended use, the department may immediately recall the dialysate, device, or drug distributed to an individual patient.

(d) A dialysate, device, or drug covered by Subsection (a) may be delivered only by:

(1) the manufacturer or wholesaler to which the physician has issued an order; or

(2) a carrier authorized to possess the dialysate, device, or drug under Section 483.041(c).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 12, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.769, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0144, eff. April 2, 2015.

Sec. 42.0047. ESTIMATED GLOMERULAR FILTRATION RATE REPORTING. (a) A laboratory that performs a serum creatinine test on a sample from a person 18 years of age or older shall also calculate and include in the reported results the person's estimated glomerular filtration rate or the results of an alternative equivalent calculation measuring kidney function if the laboratory receives along with the sample all relevant clinical information about the person necessary to calculate the person's estimated glomerular filtration rate or perform an alternative equivalent calculation. A physician requesting a serum creatinine test shall provide to the laboratory all relevant clinical information about the person necessary to calculate the person's estimated glomerular filtration rate or perform an alternative equivalent calculation unless the physician determines that the calculation is unnecessary.

(b) The requirements under Subsection (a) do not apply to:

(1) a laboratory that uses equipment to perform serum creatinine tests that cannot be reprogrammed to calculate the estimated glomerular filtration rate or perform an alternative equivalent calculation measuring kidney function; or

(2) a laboratory performing a serum creatinine test on a sample taken from a patient who is being treated in a hospital.

Added by Acts 2009, 81st Leg., R.S., Ch. 1296 (H.B. 2330), Sec. 2, eff. September 1, 2009.

Sec. 42.005. FACILITIES. (a) The executive commissioner may establish standards for the accreditation of all facilities designed or intended to deliver care or treatment for persons with end stage renal disease, and the department shall maintain all established standards.

(b) The department may conduct surveys of existing facilities in this state that diagnose, evaluate, and treat patients with end

stage renal disease and may prepare and submit its findings and a specific program of action.

(c) The department may evaluate the need to create local or regional facilities and to establish a major kidney research center.

(d) The department may:

(1) establish or construct rehabilitation facilities and workshops;

(2) make grants to public agencies and make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and

(3) operate facilities to carry out this chapter.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(18), eff. April 2, 2015.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0145, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(18), eff. April 2, 2015.

Sec. 42.006. SELECTION OF SERVICE PROVIDERS. (a) The department shall select providers to furnish kidney health care services under the program according to the criteria and procedures adopted by the executive commissioner.

(b) The department shall provide a hearing procedure in accordance with department rules for the resolution of conflicts between the department and a provider. Chapter 2001, Government Code, does not apply to conflict resolution procedures adopted under this section.

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

(d) Subsections (b) and (c) do not apply if a contract:

(1) is canceled because program services are restricted to conform to budgetary limitations that require the executive

commissioner to adopt service priorities regarding types of services to be furnished or classes of eligible individuals; or

(2) expires according to its terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0146, eff. April 2, 2015.

Sec. 42.007. ELIGIBILITY FOR SERVICES. The executive commissioner may determine the terms, conditions, and standards, including medical and financial standards, for the eligibility of persons with end stage renal disease to receive the aid, care, or treatment provided under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0147, eff. April 2, 2015.

Sec. 42.008. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) After notice and an opportunity for a hearing, the department for cause may deny the application of or modify, suspend, or terminate services to an applicant for or recipient of services.

(b) The program rules adopted by the executive commissioner must contain the criteria for the department's action under this section.

(c) Chapter 2001, Government Code, does not apply to the granting, denial, modification, suspension, or termination of services provided under this chapter. Hearings under this section must be conducted in accordance with the department's hearing rules.

(d) This section does not apply if program services are restricted to conform to budgetary limitations that require the executive commissioner to adopt service priorities regarding types of services to be furnished or classes of eligible persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(66), eff. Sept. 1, 1995.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0148, eff. April 2, 2015.

Sec. 42.009. REIMBURSEMENT. (a) An applicant or recipient is not eligible to receive services provided by this chapter to the extent that the applicant or recipient, or another person with a legal obligation to support the applicant or recipient, is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When an application is made under this chapter or at any time while a person is eligible and receiving services under this chapter, the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, shall inform the department of any other benefit to which the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, may be entitled.

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

(d) The executive commissioner may waive the provisions of Subsection (a) in certain individually considered cases when the enforcement of that provision will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0149, eff. April 2, 2015.

Sec. 42.010. RECOVERY OF COSTS. (a) The department may recover the costs of services provided under this chapter from a person who does not reimburse the department as required by Section 42.009(c), or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

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

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

Sec. 42.011. FUNDING. (a) The department may receive and use gifts to carry out this chapter.

(b) The department may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportions possible to carry out this chapter.

(c) The comptroller may receive all money appropriated by congress and allotted to this state for carrying out this chapter or agreements or plans authorized by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 10.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0150, eff. April 2, 2015.

Sec. 42.012. CONTRACTS. (a) The department may enter into contracts and agreements with persons, colleges, universities, associations, corporations, municipalities, and other units of government as necessary to carry out this chapter.

(b) A contract may provide for payment by the state, within the limits of funds available, for material, equipment, or services.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0151, eff. April 2, 2015.

Sec. 42.013. COOPERATION. (a) The department may cooperate

with private or public agencies to facilitate the availability of adequate care for all citizens with end stage renal disease.

(b) The department shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statute or rule relating to the prevention, care, or treatment of end stage renal disease or the care, treatment, or rehabilitation of persons with end stage renal disease. The executive commissioner may adopt rules and methods of administration found by the federal government to be necessary for the proper and efficient operation of the agreements, arrangements, or plans.

(c) The department may enter into reciprocal agreements with other states.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0152, eff. April 2, 2015.

Sec. 42.014. SCIENTIFIC INVESTIGATIONS. (a) The department may develop and administer scientific investigations into the cause, prevention, methods of treatment, and cure of end stage renal disease, including research into kidney transplantation.

(b) The department may develop techniques for an effective method of mass testing to detect end stage renal disease and urinary tract infections.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0153, eff. April 2, 2015.

Sec. 42.015. EDUCATIONAL PROGRAMS. (a) The department may develop, implement, and supervise educational programs for the public and health providers, including physicians, hospitals, and public health departments, concerning end stage renal disease, including prevention and methods of care and treatment.

(b) The department may use existing public or private programs or groups for the educational programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0154, eff. April 2, 2015.

Sec. 42.016. REPORTS. The department shall report to the governor and the legislature not later than February 1 of each year concerning its findings, progress, and activities under this chapter and the state's total need in the field of kidney health care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0155, eff. April 2, 2015.

Sec. 42.017. INSURANCE PREMIUMS. The department may provide for payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) for certain classes of persons with end stage renal disease, in individually considered instances according to criteria established by department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0156, eff. April 2, 2015.

Sec. 42.018. FREEDOM OF SELECTION. The freedom of an eligible person to select a treating physician, a treatment facility, or a treatment modality is not limited by Section 42.009 if the physician, facility, or modality is approved by the department as required by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0157, eff. April 2, 2015.

CHAPTER 43. ORAL HEALTH IMPROVEMENT

Sec. 43.001. SHORT TITLE. This chapter may be cited as the Texas Oral Health Improvement Act.

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

Sec. 43.002. LIBERAL CONSTRUCTION. It is the intent of the legislature that this chapter be construed liberally so that eligible individuals may receive appropriate and adequate oral health services in a timely manner.

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

Sec. 43.003. DEFINITIONS. (a) In this chapter:

(1) "Dentist" means an individual licensed by the State Board of Dental Examiners to practice dentistry in this state.

(2) "Oral health services" means oral health education and promotion activities.

(3) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.

(4) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.

(5) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.

(b) The executive commissioner by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The executive commissioner may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0158, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0159, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(2), eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 2, eff.

September 1, 2021.

Sec. 43.004. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

(d) The department may establish an oral health services program that may consist of all or any combination of the following:

(1) a program of oral disease prevention, including:

(A) the fluoridation of community water supplies;

(B) fluoride mouth rinse programs in schools; and

(C) the promotion and implementation of sealants programs;

(2) oral health education and promotion, including:

(A) public health education to promote the prevention of oral disease through self-help methods, including the initiation and expansion of preschool, school age, and adult education programs;

(B) organized continuing health education training programs for health care providers; and

(C) preventive health education information for the public; and

(3) facilitation of access to oral health services, including:

(A) the improvement of the existing oral health services delivery system for the provision of services to low-income residents;

(B) outreach activities to inform the public of the type and availability of oral health services to increase the accessibility of oral health care for low-income residents; and

(C) assistance and cooperation in promoting better distribution of dentists and other oral health professionals throughout the state.

(e) The department may provide services only as prescribed by department rules.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0160, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 1(b)(3), eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 3, eff. September 1, 2021.

Sec. 43.005. ADMINISTRATION. (a) The department shall:
(1) administer the program of oral health services; and
(2) develop the design and content of all forms necessary for the program.
(b) The department may conduct field research, collect data, and prepare statistical and other reports relating to the need for and the availability of oral health services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0161, eff. April 2, 2015.

CHAPTER 45. DISTRIBUTION OF CHILD PASSENGER SAFETY SEAT SYSTEMS

Sec. 45.001. DEFINITION. In this chapter, "child passenger safety seat system" has the meaning assigned by Section 545.412, Transportation Code.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.203, eff. Sept. 1, 1997.

Sec. 45.002. CHILD PASSENGER SAFETY SEAT SYSTEM PROGRAM. (a) The department may establish a program to distribute child passenger safety seat systems to indigent persons in this state.
(b) A program established under this section may distribute new or used child passenger safety seat systems that have been donated to the department for distribution.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993.

Sec. 45.003. RULES. The executive commissioner may adopt rules governing eligibility for a child passenger safety seat system from the program established under Section 45.002.

Added by Acts 1993, 73rd Leg., ch. 311, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0169, eff. April 2, 2015.

CHAPTER 46. CONGENITAL CYTOMEGALOVIRUS

Sec. 46.001. DEFINITION. In this chapter, "congenital cytomegalovirus" means cytomegalovirus acquired by an infant before birth.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.002. EDUCATIONAL MATERIALS ON CONGENITAL CYTOMEGALOVIRUS. (a) The department, in consultation with the Texas Medical Board, shall develop and publish informational materials for women who may become pregnant, expectant parents, and parents of infants regarding:

(1) the incidence of cytomegalovirus;

(2) the transmission of cytomegalovirus to pregnant women and women who may become pregnant;

(3) birth defects caused by congenital cytomegalovirus;

(4) available preventive measures to avoid the infection of women who are pregnant or may become pregnant; and

(5) resources available for families of children born with congenital cytomegalovirus.

(b) The materials must be published in:

(1) English and Spanish;

(2) an easily comprehensible form; and

(3) a typeface large enough to be clearly legible.

(c) The department shall periodically review the materials to determine if changes to the contents of the materials are necessary.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.003. PUBLICATION OF MATERIALS. (a) The department shall publish the information required to be published under this chapter on the department's Internet website.

(b) The department may not charge a fee for physical copies of the materials. The department shall provide appropriate quantities of the materials to any person on request.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.004. EDUCATION AND OUTREACH. (a) The department shall establish an outreach program to:

(1) educate women who may become pregnant, expectant parents, and parents of infants about cytomegalovirus; and

(2) raise awareness of cytomegalovirus among health care providers who provide care to expectant mothers or infants.

(b) The department may solicit and accept the assistance of any relevant medical associations or community resources, including faith-based resources, to promote education about cytomegalovirus under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

Sec. 46.005. RULES. The executive commissioner may adopt rules for the implementation of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 2, eff. September 1, 2015.

CHAPTER 47. HEARING LOSS IN NEWBORNS

Sec. 47.001. DEFINITIONS. In this chapter:

(1) "Birth admission" means the time after birth that a newborn remains in the birthing facility before the newborn is

discharged.

(2) "Birthing facility" means:

(A) a hospital licensed under Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Chapter 244;

(C) a children's hospital; or

(D) a facility, maintained or operated by this state or an agency of this state, that provides obstetrical services.

(3) "Health care provider" means a registered nurse recognized as an advanced practice registered nurse by the Texas Board of Nursing or a physician assistant licensed by the Texas Physician Assistant Board.

(4) "Hearing loss" means a hearing loss of 30 dB HL or greater in the frequency region important for speech recognition and comprehension in one or both ears, approximately 500 through 4,000 Hz. As technological advances permit the detection of less severe hearing loss, the executive commissioner may modify this definition by rule.

(5) "Infant" means a child who is at least 30 days but who is younger than 24 months old.

(6) "Intervention or follow-up care" means the early intervention services described in Part C, Individuals with Disabilities Education Act (20 U.S.C. Sections 1431-1443).

(7) "Newborn" means a child younger than 30 days old.

(8) "Parent" means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(9) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

(10) "Program" means a newborn hearing screening, tracking, and intervention program certified by the department under this chapter.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 60, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 5, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0170, eff. April 2, 2015.

Sec. 47.003. NEWBORN HEARING SCREENING, TRACKING, AND INTERVENTION PROGRAM. (a) A birthing facility, through a program certified by the department under Section 47.004, shall perform, either directly or through a referral to another program certified under that section, a hearing screening for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged from the facility unless:

(1) the parent declines the screening;

(2) the newborn or infant is transferred to another facility before the screening is performed;

(3) the screening has previously been completed; or

(4) the newborn was discharged from the birthing facility not more than 10 hours after birth and a referral for the newborn was made to a program certified under Section 47.004 at another birthing facility or operated by a physician or other health care provider.

(a-1) The birthing facility shall inform the parents during admission that:

(1) the facility is required by law to screen a newborn or infant for hearing loss; and

(2) the parents may decline the screening.

(b) The department or the department's designee shall approve program protocols.

(c) Subject to Section 47.008, the department shall maintain data and information on each newborn or infant who receives a hearing screening under Subsection (a).

(d) The department shall ensure that intervention is available to families for a newborn or infant identified as having hearing loss and that the intervention is managed by state programs operating under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(e) The department shall ensure that the intervention described by Subsection (d) is available for a newborn or infant identified as having hearing loss not later than the sixth month after the newborn's or infant's birth and through the time the child is an infant unless the infant has been hospitalized since birth.

(f) If a newborn or an infant receives medical intervention

services, including a hearing aid or cochlear implant, the intervention specialist shall report the results of the intervention to the department.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 6, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 586 (S.B. 793), Sec. 1, eff. June 14, 2013.

Sec. 47.0031. FOLLOW-UP SCREENING. (a) The program that performed the hearing screening under Section 47.003 shall provide the newborn's or infant's parents with the screening results. A birthing facility, through the program, shall offer a follow-up hearing screening to the parents of a newborn or infant who does not pass the screening, or refer the parents to another program for the follow-up hearing screening. The follow-up hearing screening should be performed not later than the 30th day after the date the newborn or infant is discharged from the facility.

(b) If a newborn or an infant does not pass the screening in a follow-up hearing screening, the program that performed the follow-up hearing screening on the newborn or infant shall:

(1) provide the screening results to:

(A) the newborn's or infant's parents; and

(B) with the prior written consent of the newborn's or infant's parents, the primary statewide resource center established under Section 30.051, Education Code;

(2) assist in scheduling a diagnostic audiological evaluation for the newborn or infant, consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement, or refer the newborn or infant to a licensed audiologist who provides diagnostic audiological evaluations for newborns or infants that are consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement; and

(3) refer the newborn or infant to early childhood intervention services and the primary statewide resource center established under Section 30.051, Education Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 7,

eff. June 17, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 1, eff. September 1, 2019.

Sec. 47.0032. TESTING FOR CONGENITAL CYTOMEGALOVIRUS. (a) In this section, "congenital cytomegalovirus" has the meaning assigned by Section 46.001.

(b) If a newborn or infant does not pass the hearing screening performed under Section 47.003, the program that performed the screening shall perform or cause to be performed a test for congenital cytomegalovirus on the newborn or infant unless the newborn's or infant's parent declines the test.

(c) If the newborn or infant receives a positive test for congenital cytomegalovirus, the entity that performed the test shall provide the newborn's or infant's parents with:

(1) the results of the test;

(2) information on the potential effects of congenital cytomegalovirus and the available treatment options; and

(3) a referral to an appropriate physician or facility for the treatment of congenital cytomegalovirus.

Added by Acts 2023, 88th Leg., R.S., Ch. 722 (H.B. 2478), Sec. 3, eff. September 1, 2023.

Sec. 47.004. CERTIFICATION OF SCREENING PROGRAMS. (a) The executive commissioner shall establish certification criteria for implementing a program.

(b) In order to be certified, the program must:

(1) provide hearing screening using equipment recommended by the department;

(2) use appropriate staff to provide the screening;

(3) maintain and report data electronically as required by department rule;

(4) distribute family, health care provider, and physician educational materials standardized by the department;

(5) provide information, as recommended by the department, to the parents on follow-up services for newborns and infants who do

not pass the screening; and

(6) be supervised by:

(A) a physician;

(B) an audiologist;

(C) a registered nurse; or

(D) a physician assistant.

(c) The department may certify a program that meets and maintains the certification criteria.

(d) The department may renew the certification of a program on a periodic basis as established by department rule in order to ensure quality services to newborns, infants, and families.

(e) A fee may not be charged to certify or recertify a program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 8, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0171, eff. April 2, 2015.

Sec. 47.005. INFORMATION CONCERNING SCREENING RESULTS AND FOLLOW-UP CARE. (a) A birthing facility that operates a program shall simultaneously distribute to the parents of each newborn or infant who is screened:

(1) the screening results; and

(2) educational and informational materials that are standardized by the department regarding:

(A) follow-up care; and

(B) available public resources, including:

(i) early childhood intervention services developed under Chapter 73, Human Resources Code;

(ii) the primary statewide resource center established under Section 30.051, Education Code; and

(iii) contact information for Texas Early Hearing Detection and Intervention.

(a-1) The department shall make available to the public on request the educational and informational materials described by Subsection (a)(2).

(b) A birthing facility that operates a program shall report

screening results to:

(1) the parents;

(2) the newborn's or infant's attending physician, primary care physician, or other applicable health care provider;

(3) the department; and

(4) the primary statewide resource center established under Section 30.051, Education Code.

(c) Appropriate and necessary care for the infant who needs follow-up care should be directed and coordinated by the infant's physician or health care provider, with support from appropriate ancillary services.

(d) The department may coordinate the diagnostic audiological evaluation required under Section 47.0031(b)(2). A diagnostic audiological evaluation must be completed on the newborn or infant:

(1) not later than the third month after the newborn's or infant's birth unless the newborn or infant has been hospitalized since birth; or

(2) upon referral by the newborn's or infant's primary care physician or other applicable health care provider.

(e) An audiologist who performs a diagnostic audiological evaluation under this chapter shall report the results of the evaluation to:

(1) the parents;

(2) the newborn's or infant's primary care physician or other applicable health care provider; and

(3) the department under Section 47.007(b).

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 9, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 2, eff. September 1, 2019.

Sec. 47.006. TECHNICAL ASSISTANCE BY DEPARTMENT. The department may consult with a birthing facility and provide to the facility technical assistance associated with the implementation of a certified program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. (a) The department shall provide each birthing facility that provides newborn hearing screening under the state's medical assistance program provided under Chapter 32, Human Resources Code, with access to the appropriate information management, reporting, and tracking system for the program. The information management, reporting, and tracking system must be capable of providing the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components.

(b) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist shall access the information management, reporting, and tracking system to provide information to the department and may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss;

(5) infants who are referred for intervention services; and

(6) case level information necessary to report required statistics to:

(A) the federal Maternal and Child Health Bureau on an annual basis; and

(B) the federal Centers for Disease Control and Prevention.

(c) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

(d) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the newborn or infant or refer the newborn or infant to a person who provides the services needed by the newborn or infant; and

(2) provide, with the consent of the newborn's or infant's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of an infant identified with hearing loss; and

(C) reports on the initiation of intervention services.

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to an infant who is diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of follow-up care;

(2) results of audiologic testing; and

(3) reports on the initiation of intervention services.

(f) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system described by this section, access to which has been provided to the hospital by the department, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of all follow-up services for an infant who does not pass the screening described by Section 47.003(a) if the hospital provides the follow-up services; or

(2) the name of the provider or facility to which the hospital refers an infant who does not pass the screening described by Section 47.003(a) for follow-up services.

(g) The department shall ensure that the written or electronic consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

(h) Subject to Section 47.008, a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist may obtain information from the department relating to:

(1) the results of each hearing screening performed under Section 47.003(a) or 47.0031(a);

(2) the results of each diagnostic audiological evaluation required under Section 47.0031(b)(2);

(3) infants who receive follow-up care;

(4) infants identified with hearing loss; and

(5) infants who are referred for intervention services.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 10, eff. June 17, 2011.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0172, eff. April 2, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 3, eff. September 1, 2019.

Sec. 47.008. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The information management, reporting, and tracking system provided in accordance with this chapter must meet confidentiality requirements in accordance with required state and federal privacy guidelines.

(b) Data obtained through the information management, reporting, and tracking system under this chapter are for the confidential use of the department, the department's designee, and the persons or public or private entities that the department determines are necessary to carry out the functions of the tracking system.

(c) The executive commissioner by rule shall develop guidelines to protect the confidentiality of patients in accordance with Chapter 159, Occupations Code, and require the written or electronic consent of a parent or guardian of a patient before any individually identifying information is provided to the department or the primary statewide resource center established under Section 30.051, Education Code, as set out in this chapter. The department and center shall permit a parent or guardian at any time to withdraw information provided to the department or center under this chapter.

(d) Statistical or aggregated information that is about activities conducted under this chapter and that could not be used to individually identify a newborn, infant, or patient or a parent or guardian of a newborn, infant, or patient is not confidential.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.771, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 880, Sec. 1, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0173, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 4, eff. September 1, 2019.

Sec. 47.0085. CONSENT. (a) The department shall create a process to:

(1) permit the parent of a newborn or infant to provide the consent required under this chapter through electronic means, including through audio or video recording;

(2) determine the manner of storing electronic consent records; and

(3) ensure the newborn's or infant's attending physician has access to the electronic consent records for the newborn or infant.

(b) A request for consent required by this chapter may be submitted to the parent or guardian of a newborn or infant through written or electronic means, including through audio or visual recording.

(c) A birthing facility or person required to obtain consent under this chapter is not required to use the process created by the department under this section to obtain the consent.

Added by Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. 1404), Sec. 5, eff. September 1, 2019.

Sec. 47.009. IMMUNITY FROM LIABILITY. A birthing facility, a clinical laboratory, an audiologist, a health care provider, a physician, a registered nurse, or any other officer or employee of a birthing facility, a laboratory, a physician, or an audiologist is not criminally or civilly liable for furnishing information in good faith to the department or its designee as required by this chapter.

This section does not apply to information gathered and furnished after a parent of a newborn or infant declined screening offered through a program.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Sec. 47.010. RULEMAKING. (a) The executive commissioner may adopt rules for the department to implement this chapter.

(b) If the executive commissioner adopts rules, the executive commissioner shall consider the most current guidelines established by the Joint Committee on Infant Hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0174, eff. April 2, 2015.

Sec. 47.011. DUTIES OF MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section 203.002, Occupations Code, and includes a nurse midwife described by Section 301.152, Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of the newborn a hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program and make a record of the referral.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.

CHAPTER 48. PROMOTORAS AND COMMUNITY HEALTH WORKERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 48.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Promotora and Community Health Worker Training and Certification Advisory Committee.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(4) "Compensation" includes receiving payment or receiving reimbursement for expenses.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(20), eff. April 2, 2015.

(7) "Promotora" or "community health worker" means a person who, with or without compensation, provides a liaison between health care providers and patients through activities that may include activities such as assisting in case conferences, providing patient education, making referrals to health and social services, conducting needs assessments, distributing surveys to identify barriers to health care delivery, making home visits, and providing bilingual language services.

Added by Acts 1999, 76th Leg., ch. 857, Sec. 2.01, eff. Sept. 1, 1999. Renumbered from Sec. 46.001 and amended by Acts 2001, 77th Leg., ch. 946, Sec. 1, eff. Sept. 1, 2001 and Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(72), eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(20), eff. April 2, 2015.

SUBCHAPTER B. TRAINING AND REGULATION OF PROMOTORAS AND COMMUNITY HEALTH WORKERS

Sec. 48.051. PROMOTORA AND COMMUNITY HEALTH WORKER TRAINING PROGRAM. (a) The department shall establish and operate a program designed to train and educate persons who act as promotoras or community health workers. In establishing the training program, the department, to the extent possible, shall consider the applicable recommendations of the advisory committee.

(b) Participation in a training and education program established under this section is voluntary for a promotora or

community health worker who provides services without receiving any compensation and mandatory for a promotora or community health worker who provides services for compensation. The executive commissioner may adopt rules to exempt a promotora or community health worker from mandatory training who has served for three or more years or who has 1,000 or more hours of experience.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Sec. 48.052. CERTIFICATION PROGRAM FOR PROMOTORAS AND COMMUNITY HEALTH WORKERS. (a) The department shall establish and operate a certification program for persons who act as promotoras or community health workers. In establishing the program, the executive commissioner shall adopt rules that provide minimum standards and guidelines, including participation in the training and education program under Section 48.051, for issuance of a certificate to a person under this section. In adopting the minimum standards and guidelines, the executive commissioner shall consider the applicable recommendations of the advisory committee.

(b) Receipt of a certificate issued under this section may not be a requirement for a person to act as a promotora or community health worker without receiving any compensation and is a requirement for a person to act as a promotora or community health worker for compensation.

(c) The commission shall require health and human services agencies to use certified promotoras to the extent possible in health outreach and education programs for recipients of medical assistance under Chapter 32, Human Resources Code.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

Sec. 48.053. RULES. The executive commissioner shall adopt rules for the administration of this subchapter.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

SUBCHAPTER C. MAXIMIZING BENEFITS FROM EMPLOYMENT OF PROMOTORAS AND COMMUNITY HEALTH WORKERS

Sec. 48.101. PROMOTORA AND COMMUNITY HEALTH WORKER TRAINING AND CERTIFICATION ADVISORY COMMITTEE. (a) The department shall establish a statewide Promotora and Community Health Worker Training and Certification Advisory Committee composed of representatives from relevant entities appointed by the commissioner. The commissioner shall appoint a member of the advisory committee as presiding officer of the advisory committee.

(b) The advisory committee shall:

(1) advise the department and the commission on the implementation of standards, guidelines, and requirements under this chapter that relate to the training and regulation of promotoras and community health workers;

(2) advise the department on matters related to the employment and funding of promotoras and community health workers; and

(3) provide to the department recommendations for a sustainable program for promotoras and community health workers consistent with the purposes of this subchapter.

(c) Chapter 2110, Government Code, applies to the advisory committee.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 537 (H.B. 2610), Sec. 2, eff. September 1, 2011.

CHAPTER 50. SEX TRAFFICKING PREVENTION AND VICTIM TREATMENT PROGRAMS

SUBCHAPTER A. TREATMENT PROGRAM FOR VICTIMS OF CHILD SEX TRAFFICKING

Sec. 50.0001. DEFINITIONS. In this subchapter:

(1) "Child sex trafficking" has the meaning assigned by Section 772.0062, Government Code.

(2) "Program" means the treatment program for victims of child sex trafficking established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01,

eff. September 1, 2019.

Sec. 50.0002. ESTABLISHMENT; PURPOSE. The commission, in collaboration with the institution designated under Section 50.0003, shall establish a program to improve the quality and accessibility of care for victims of child sex trafficking in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0003. DESIGNATION OF INSTITUTION; OPERATION OF PROGRAM. (a) The commission shall designate a health-related institution of higher education to operate the program.

(b) The designated institution shall improve the quality and accessibility of care for victims of child sex trafficking by:

(1) dedicating a unit at the institution to provide or contract for inpatient care for victims of child sex trafficking;

(2) dedicating a unit at the institution to provide or contract for outpatient care for victims of child sex trafficking;

(3) creating opportunities for research and workforce expansion related to treatment of victims of child sex trafficking; and

(4) assisting other health-related institutions of higher education in this state to establish similar programs.

(c) The commission shall solicit and review applications from health-related institutions of higher education before designating an institution under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0004. FUNDING. In addition to money appropriated by the legislature, the designated institution may accept gifts, grants, and donations from any public or private person for the purpose of carrying out the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0005. RULES. The executive commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

SUBCHAPTER B. MATCHING GRANT PROGRAM FOR MUNICIPAL SEX TRAFFICKING PREVENTION PROGRAMS

Sec. 50.0051. ESTABLISHMENT OF MATCHING GRANT PROGRAM. (a) The commission shall establish a matching grant program to award to a municipality a grant in an amount equal to the amount committed by the municipality for the development of a sex trafficking prevention needs assessment. A municipality that is awarded a grant must develop the needs assessment in collaboration with a local institution of higher education and on completion submit a copy of the needs assessment to the commission.

(b) A sex trafficking prevention needs assessment developed under Subsection (a) must outline:

(1) the prevalence of sex trafficking crimes in the municipality;

(2) strategies for reducing the number of sex trafficking crimes in the municipality; and

(3) the municipality's need for additional funding for sex trafficking prevention programs and initiatives.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0052. APPLICATION. (a) A municipality may apply to the commission in the form and manner prescribed by the commission for a matching grant under this subchapter. To qualify for a grant, an applicant must:

(1) develop a media campaign and appoint a municipal employee to oversee the program; and

(2) provide proof that the applicant is able to obtain or secure municipal money in an amount at least equal to the amount of the awarded grant.

(b) The commission shall review applications for a matching grant submitted under this section and award matching grants to each municipality that demonstrates in the application the most effective strategies for reducing the number of sex trafficking crimes in the municipality and the greatest need for state funding.

(c) The commission may provide a grant under Subsection (b) only in accordance with a contract between the commission and the municipality. The contract must include provisions under which the commission is granted sufficient control to ensure the public purpose of sex trafficking prevention is accomplished and the state receives the return benefit.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0053. FUNDING. In addition to money appropriated by the legislature, the commission may solicit and accept gifts, grants, or donations from any source to administer and finance the matching grant program established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

SUBCHAPTER C. SEX TRAFFICKING PREVENTION GRANT PROGRAM FOR LOCAL LAW ENFORCEMENT

Sec. 50.0101. ESTABLISHMENT OF GRANT PROGRAM. (a) The office of the governor, in collaboration with the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, shall establish and administer a grant program to train local law enforcement officers to recognize signs of sex trafficking.

(b) The office of the governor may establish eligibility criteria for a grant applicant.

(c) A grant awarded under this section must include provisions under which the office of the governor is provided sufficient control to ensure the public purpose of sex trafficking prevention is accomplished and the state receives the return benefit.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

Sec. 50.0102. FUNDING. In addition to money appropriated by the legislature, the office of the governor may solicit and accept gifts, grants, or donations from any source to administer and finance the grant program established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 5.01, eff. September 1, 2019.

SUBCHAPTER D. TRAFFICKED PERSONS GRANT PROGRAM

Sec. 50.0151. DEFINITIONS. In this subchapter:

(1) "Account" means the trafficked persons program account established under Section 50.0153.

(2) "Department" means the Department of Family and Protective Services.

(3) "Grant program" means the trafficked persons grant program established under Section 50.0155.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0152. PURPOSE. The purpose of the trafficked persons program account is to provide money:

(1) to substantiate this state's interest in publicly operated and funded shelter and treatment for victims of an offense of trafficking of persons as defined by Article 56B.003, Code of Criminal Procedure;

(2) to prevent the recruitment of human trafficking victims within mixed-status child, youth, and young adult shelters;

(3) for consistent and recurring funding of long-term solutions for providing research-based treatment and safe and secure shelter to child, youth, and young adult victims of human trafficking;

(4) for financial stability of local governments, private partners, and medical facilities in planning, building, and maintaining dedicated housing and recovery programs for victims of human trafficking; and

(5) to raise awareness of the account among businesses and

philanthropists in this state and to strengthen public and private partnerships established to end the practice of human trafficking.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0153. ESTABLISHMENT OF ACCOUNT. (a) The trafficked persons program account is a dedicated account in the general revenue fund.

(b) The account consists of:

(1) contributions made under Section 2054.252, Government Code;

(2) contributions made under Sections 502.416, 521.013, and 522.0296, Transportation Code;

(3) fees for the specialty license plates issued under Section 504.675, Transportation Code;

(4) gifts, grants, and donations received for the account; and

(5) interest, dividends, and other income of the account.

(c) Section 403.0956, Government Code, does not apply to the account.

(d) Money in the account may be appropriated only to:

(1) the grant program;

(2) the sex trafficking prevention and victim treatment programs established under this chapter;

(3) the trafficked persons program established under Section 54.04012, Family Code; and

(4) the administration of a program described by Section 264.004(d), Family Code.

(e) The legislature may not use money in the account to offset any other appropriations designated to the department or commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0154. ACCOUNT ADMINISTRATION. (a) The commission shall administer the account and by rule establish guidelines for distributing money from the account in accordance with this subchapter.

(b) The commission shall distribute money from the account to the grant program until the commission determines that the grant program's purposes are satisfied statewide. Following that determination, the commission may distribute money from the account to a program described by Section 50.0153(d)(2), (3), or (4).

(c) The comptroller may audit money distributed under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0155. TRAFFICKED PERSONS GRANT PROGRAM. (a) The commission shall establish the trafficked persons grant program to provide grants to applicants for dedicated housing and treatment facilities provided to human trafficking victims.

(b) The commission by rule shall establish and publish on its Internet website eligibility criteria for grant recipients. The commission must develop the criteria using research-based best practices and require the recipient to provide:

(1) immediate trauma support to a human trafficking victim on the victim's initial rescue or recovery from trafficking;

(2) wraparound services to facilitate a continuity of care for human trafficking victims placed in the recipient's facility as assisted by:

(A) the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code; or

(B) the governor's program for victims of child sex trafficking established under Section 772.0063, Government Code; and

(3) safe and constitutionally secure shelter that considers the clear and present danger of organized crime to the children and youth housed in the facility.

(c) A grant applicant must provide to the commission plans that include:

(1) a process for obtaining the consent of a qualified guardian of a human trafficking victim for the applicant's services and treatment;

(2) a strategy for addressing the spectrum of needs for human trafficking victims, including victims whose history of trauma poses a risk to other residents of the shelter or facility;

(3) a statement on whether the shelter or facility will provide:

(A) acute or subacute services to address the immediate medical or treatment needs of the victims;

(B) short-term housing services following initial rescue or recovery of victims; and

(C) residential treatment services to meet long-term needs of victims; and

(4) a statement on whether the shelter or facility will provide separate housing space according to age, risk, and medical or mental health needs of victims.

(d) In determining whether to award a grant under this section, the commission shall prioritize applicants operating a shelter or facility that:

(1) satisfies the requirements under Chapter 42, Human Resources Code;

(2) provides dedicated housing or shelter space for the exclusive use of human trafficking victims; and

(3) has not adopted a policy that allows the facility to refuse for any reason to provide facility services to persons presented to the facility by any person involved in the recovery of human trafficking victims.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0156. REQUIRED GRANT CONTRACT. Before awarding a grant under this subchapter, the commission shall enter into a written agreement with the recipient specifying that:

(1) if the commission finds that the recipient has not complied with the standards required by this subchapter and rules adopted under this subchapter:

(A) the recipient shall repay the grant or a prorated portion of the grant to this state at an agreed rate and on agreed terms; and

(B) the commission will not distribute to the recipient any grant money that remains to be distributed to the recipient;

(2) if, as of a date provided in the agreement, the recipient has not used grant money awarded under this section for the

purposes for which the grant was intended, the recipient shall repay that amount to this state at an agreed rate and on agreed terms; and

(3) the recipient may not use grant money for administrative or overhead expenses.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

Sec. 50.0157. COMMISSION PROVISION OF SERVICES. The commission may distribute money from the account to the commission for the purposes of providing services described by Section 50.0155 if the commission determines it has the resources and personnel necessary to provide those services in accordance with this subchapter and rules adopted under this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 1, eff. September 1, 2021.

CHAPTER 51. CANCER CLINICAL TRIAL PARTICIPATION PROGRAM

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Cancer clinical trial" means a research study that subjects an individual to a new cancer treatment, including a medication, chemotherapy, adult stem cell therapy, or other treatment.

(2) "Inducement" means the payment of money, including a lump-sum or salary payment, to an individual for the individual's participation in a cancer clinical trial.

(3) "Program" means the cancer clinical trial participation program established under this chapter.

(4) "Subject" means an individual who participates in the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0002. ESTABLISHMENT. An independent, third-party

organization may develop and implement the cancer clinical trial participation program to provide reimbursement to subjects for ancillary costs associated with participation in a cancer clinical trial, including costs for:

(1) travel;

(2) lodging;

(3) parking and tolls; and

(4) other costs considered appropriate by the organization.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0003. REQUIREMENTS; NOTICE. (a) The program:

(1) must collaborate with physicians and health care providers to notify a prospective subject about the program when:

(A) the prospective subject provides informed consent for a cancer clinical trial; or

(B) funding is available to provide the program for the cancer clinical trial in which the prospective subject participates;

(2) must reimburse subjects based on financial need, which may include reimbursement to subjects whose income is at or below 700 percent of the federal poverty level;

(3) must provide reimbursement for ancillary costs, including costs described by Section 51.0002, to eliminate the financial barriers to enrollment in a clinical trial;

(4) may provide reimbursement for reasonable ancillary costs, including costs described by Section 51.0002, to one family member, friend, or other person who attends a cancer clinical trial to support a subject; and

(5) must comply with applicable federal and state laws.

(b) The independent, third-party organization administering the program shall provide written notice to prospective subjects of the requirements described by Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(9), eff. September 1, 2021.

Sec. 51.0004. REIMBURSEMENT REQUIREMENTS; NOTICE. (a) A reimbursement under the program must:

(1) be reviewed and approved by the institutional review board associated with the cancer clinical trial for which the reimbursement is provided; and

(2) comply with applicable federal and state laws.

(b) The independent, third-party organization operating the program is not required to obtain approval from an institutional review board on the financial eligibility of a subject who is medically eligible for the program.

(c) The independent, third-party organization operating the program shall provide written notice to a subject on:

(1) the nature and availability of the ancillary financial support under the program; and

(2) the program's general guidelines on financial eligibility.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0005. REIMBURSEMENT STATUS AS INDUCEMENT. Reimbursement to a subject of ancillary costs under the program:

(1) does not constitute an inducement to participate in a cancer clinical trial;

(2) is not considered coercion or the exertion of undue influence to participate in a cancer clinical trial; and

(3) is meant to accomplish parity in access to cancer clinical trials and remove barriers to participation in cancer clinical trials for financially burdened subjects.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec.

21.001(53), eff. September 1, 2021.

Sec. 51.0006. FUNDING. The independent, third-party organization that administers the program may accept gifts, grants, and donations from any public or private source to implement this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

Sec. 51.0007. COLLABORATION. The independent, third-party organization that administers the program may collaborate with the Cancer Prevention and Research Institute of Texas established under Chapter 102 to provide reimbursement under the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 2, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(53), eff. September 1, 2021.

For expiration of this chapter, see Section 52.0008.

CHAPTER 52. SICKLE CELL TASK FORCE

Sec. 52.0001. ESTABLISHMENT OF TASK FORCE. The executive commissioner, in collaboration with the members appointed to the Newborn Screening Advisory Committee to represent the sickle cell community, shall establish and maintain a task force to raise awareness of sickle cell disease and sickle cell trait.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0002. DUTIES. (a) The task force shall study and

advise the department on implementing the recommendations made in the 2018 Sickle Cell Advisory Committee Report published by the Sickle Cell Advisory Committee or any other report the executive commissioner determines is appropriate.

(b) The executive commissioner may assign tasks to the task force to accomplish the purposes of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0003. COMPOSITION OF TASK FORCE. The task force is composed of the following members appointed by the executive commissioner:

(1) two members from community-based organizations with experience addressing the needs of individuals with sickle cell disease;

(2) two physicians specializing in hematology;

(3) three members of the public, one of whom has sickle cell disease or sickle cell trait and two of whom either have sickle cell disease or are a parent of a person with sickle cell disease or sickle cell trait;

(4) one representative of a health-related institution;

(5) one representative of the Texas Education Agency;

(6) one representative of the commission;

(7) one physician with experience addressing the needs of individuals with sickle cell disease or sickle cell trait;

(8) one researcher from a public health-related or academic institution with experience addressing sickle cell disease and sickle cell trait; and

(9) one health care professional with experience addressing the needs of individuals with sickle cell disease or sickle cell trait.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September

1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 2, eff. September 1, 2023.

Sec. 52.0004. ADMINISTRATIVE SUPPORT. The executive commissioner shall provide administrative support services at the request of the task force.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0005. PRESIDING OFFICER; MEETINGS. (a) The task force shall elect a presiding officer from among its membership.
(b) The task force shall meet at the call of the presiding officer.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0006. COMPENSATION; REIMBURSEMENT; GIFTS, GRANTS, AND DONATIONS. A task force member is not entitled to compensation for service on the task force but is entitled to reimbursement for actual and necessary expenses incurred in performing task force duties. The task force may accept gifts, grants, and donations to pay for those expenses.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.

Sec. 52.0007. ANNUAL REPORT. (a) Not later than December 1 of each year, the task force shall prepare and submit to the governor and the legislature an annual written report that summarizes the task force's work and includes any recommended actions or policy changes endorsed by the task force.

(b) The task force shall, in collaboration with the commission, include in the task force's annual report recommendations for improving sickle cell disease education for health care providers.

Added by Acts 2019, 86th Leg., R.S., Ch. 889 (H.B. 3405), Sec. 1, eff. September 1, 2019.
Redesignated from Health and Safety Code, Chapter 50 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(54), eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 2, eff. September 1, 2023.

Sec. 52.0008. EXPIRATION. The task force is abolished and this chapter expires August 31, 2035.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 3, eff. September 1, 2023.

CHAPTER 52A. SICKLE CELL DISEASE CARE EDUCATION AND TREATMENT

Sec. 52A.001. DEFINITION. In this chapter, "sickle cell task force" means the sickle cell task force established under Chapter 52.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 4, eff. September 1, 2023.

Sec. 52A.002. EMERGENCY AND PRIMARY CARE MEDICINE GRADUATE MEDICAL EDUCATION PROGRAM CURRICULUM. (a) In this section, "graduate medical education program" and "medical school" have the meanings assigned by Section 58A.001, Education Code.

(b) A medical school or graduate medical education program in

this state that offers an emergency medicine, family medicine, internal medicine, obstetrics, or pediatrics residency program shall examine and, to the extent possible, incorporate in the curriculum requirements for the program education focused on sickle cell disease and sickle cell trait. The medical school or graduate medical education program may enter into agreements as necessary for the purposes of this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 4, eff. September 1, 2023.

Sec. 52A.003. INFORMATION FOR PUBLIC SCHOOL DISTRICT PERSONNEL. (a) To the extent possible, the Texas Education Agency in collaboration with sickle cell disease community-based organizations shall provide information on sickle cell disease and sickle cell trait to public school districts and district staff, including school nurses, teachers, and coaches.

(b) The commission in collaboration with the sickle cell task force shall explore methods for improving sickle cell disease education and awareness within the public school system and provide recommendations to the Texas Education Agency on the improvement methods.

Added by Acts 2023, 88th Leg., R.S., Ch. 409 (H.B. 1488), Sec. 4, eff. September 1, 2023.

CHAPTER 53. BONE MARROW DONOR RECRUITMENT PROGRAM

Sec. 53.001. ESTABLISHMENT OF PROGRAM. (a) The department shall establish a bone marrow donor recruitment program to educate residents of this state about:

(1) the need for bone marrow donors, including the particular need for donors from minority populations;

(2) the requirements for registering with the federally authorized bone marrow donor registry established and maintained as required by 42 U.S.C. Section 274k as a potential bone marrow donor, including procedures for determining an individual's tissue type;

(3) the medical procedures an individual must undergo to donate bone marrow or other sources of blood stem cells; and

(4) the availability of information about bone marrow

donation in health care facilities, blood banks, and driver's license offices.

(b) The department, in consultation with the federally authorized bone marrow donor registry established and maintained as required by 42 U.S.C. Section 274k and the registry's interested contracted network partners, shall develop written and electronic informational materials, including links to Internet websites and machine-readable codes, regarding:

(1) bone marrow donation; and

(2) the process of registering with the federally authorized bone marrow donor registry.

(c) The federally authorized bone marrow donor registry, in collaboration with the registry's interested contracted network partners, may develop and provide the informational materials described by Subsection (b) to the department.

(d) The department and the Department of Public Safety shall post the information described by Subsection (b) on each agency's respective Internet websites.

(e) Appropriate health care facilities, blood banks, and driver's license offices may access the informational materials described by Subsection (b) on the Internet websites of the department and the Department of Public Safety and print the materials to place in their facilities, banks, or offices to provide to residents of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 14 (H.B. 780), Sec. 1, eff. September 1, 2021.

Chapter 54, consisting of Secs. 54.001 to 54.002, was added by Acts 2023, 88th Leg., R.S., Ch. 88 (S.B. 1249), Sec. 1.

For another Chapter 54, consisting of Secs. 54.001 to 54.011, added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, see Sec. 54.001 et seq., post.

CHAPTER 54. LIVING ORGAN DONOR EDUCATION PROGRAM

Sec. 54.001. ESTABLISHMENT OF PROGRAM. The department shall establish a living organ donor education program to educate residents of this state about:

(1) the need for living organ donors, including the particular need for donors from minority populations;

(2) the partnership between the Glenda Dawson Donate Life Texas Registry for deceased organ donation, maintained by Donate Life Texas, and other organ donor registries for living organ donation;

(3) the requirements for registering as a potential living organ donor;

(4) the medical screening and procedures necessary for an individual to be a living organ donor; and

(5) the availability of information about living organ donation in health care facilities, transplant centers, organ procurement organizations, tissue banks, eye banks, and driver's license offices.

Added by Acts 2023, 88th Leg., R.S., Ch. 88 (S.B. 1249), Sec. 1, eff. September 1, 2023.

Sec. 54.002. INFORMATIONAL MATERIALS. (a) The department, in consultation with Donate Life Texas, shall develop written and electronic informational materials, including links to Internet websites and machine-readable codes, regarding:

(1) living organ donation; and

(2) the process of registering with a living donor registry.

(b) Donate Life Texas may develop and provide the informational materials described by Subsection (a) to the department.

(c) The department and the Department of Public Safety shall post the information described by Subsection (a) on each of the agency's Internet websites.

(d) Appropriate health care facilities, transplant centers, organ procurement organizations, tissue banks, eye banks, and driver's license offices may access the informational materials described by Subsection (a) on the Internet websites of the department and the Department of Public Safety and print the materials to place in their facilities or offices to provide to residents of this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 88 (S.B. 1249), Sec. 1, eff. September 1, 2023.

Chapter 54, consisting of Secs. 54.001 to 54.011, was added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14.

For another Chapter 54, consisting of Secs. 54.001 to 54.002, added by Acts 2023, 88th Leg., R.S., Ch. 88 (S.B. 1249), Sec. 1, see Sec. 54.001 et seq., post.

CHAPTER 54. THRIVING TEXAS FAMILIES PROGRAM

Sec. 54.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Network contractor" means a person who contracts with the commission to provide or coordinate the provision of services under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.002. ESTABLISHMENT. (a) The commission shall establish the Thriving Texas Families Program as a continuation of the alternatives to abortion program to facilitate the operation of a statewide support network that provides community outreach, consultation, and care coordination for women with an unexpected pregnancy.

(b) The Thriving Texas Families Program shall:

(1) promote healthy pregnancy and childbirth;

(2) promote childbirth as an alternative to abortion;

(3) increase access to resources that promote family and child development;

(4) encourage family formation;

(5) help parents establish and implement successful parenting techniques;

(6) increase the number of families who achieve economic self-sufficiency; and

(7) provide a local approach and personalized support to pregnant women to promote childbirth in all instances of pregnancy.

(c) The commission shall contract with network contractors to establish a statewide network of service providers, including pregnancy support centers, adoption assistance providers, and maternity homes, to provide the services described by Section 54.003. The commission may contract with the service providers to provide the services in accordance with this chapter.

(d) In developing the statewide network of service providers, the commission shall, to the extent practicable, contract with providers who have a history of working with the commission in programs similar to the program created by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.003. SERVICES. (a) Using the network contractors described under Section 54.002, the commission shall ensure that services described by this chapter are available throughout this state.

(b) Services provided through the program include:

(1) counseling and mentoring on pregnancy, education, parenting skills, adoption services, life skills, and employment readiness topics;

(2) care coordination for prenatal, perinatal, and postnatal services, including connecting participants to health services;

(3) educational materials and information about pregnancy, parenting, and adoption services;

(4) referrals to governmental and social service programs, including child care, transportation, housing, and state and federal benefit programs;

(5) classes on life skills, personal finance, parenthood, stress management, job training, job readiness, job placement, and educational attainment;

(6) provision of supplies for infant care and pregnancy, including car seats, cribs, maternity clothes, infant diapers, and formula; and

(7) housing services.

(c) A service provider participating in the program may not be required to provide all services listed under Subsection (b).

(d) A network contractor may provide housing services under Subsection (b)(7) through a maternity home.

(e) The commission or network contractors may not provide family planning services through the network.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.004. ELIGIBILITY. Program services are available to a resident of this state who is:

(1) a pregnant woman;

(2) the biological father of an unborn child;

(3) the biological parent of a child who is 36 months of age or younger;

(4) an adoptive parent of a child who is 36 months of age or younger;

(5) an approved adoptive parent of an unborn child;

(6) a former participant who has experienced the loss of a child;

(7) a parent or legal guardian of a pregnant minor who is a program client;

(8) the parent, legal guardian, or adult caregiver of a child who is 36 months of age or younger; and

(9) a parent who experienced a miscarriage or loss of a child not more than 90 days before the parent begins participation in the services offered through the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.005. PROVISION OF SERVICES. (a) The commission and its network contractors shall contract with service providers to assess the needs of the participants and implement a plan to provide services to address the participants' most critical needs.

(b) A service provider participating in the program may refer a program client to a service provider not participating in the program for medical services otherwise covered by the program. Services received through a referral under this subsection may not be paid for using program funds.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.006. PERFORMANCE OUTCOMES. (a) The commission and its network contractors may contract only with service providers whose

performance outcomes include:

(1) improving healthy pregnancy and childbirth outcomes;

(2) improving child health and development;

(3) assisting families in achieving economic self-sufficiency and stability;

(4) increasing workforce participation; or

(5) promoting marriage and family formation for participating parents.

(b) The commission shall identify indicators to measure the performance outcomes under Subsection (a) and require periodic reporting on the outcomes by network contractors and participating service providers.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.007. IMPACT EVALUATION. (a) The commission shall periodically conduct impact evaluations to measure the effects of services on participants receiving services through the program and to report on measured performance outcomes.

(b) The commission shall contract with an external third party to perform impact evaluations under this chapter.

(c) The commission shall select the impact evaluator through a competitive bidding process. The evaluator must have a demonstrated history in evaluating social services programs using an integrated holistic impact approach and data modeling.

(d) The commission may not enter into an interagency agreement to conduct an evaluation under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.008. REPORTS; AUDITS. (a) The commission shall compile reports provided by network contractors and service providers under Section 54.006 and audit a sampling of the reports to ensure validity.

(b) The commission shall annually issue a report that includes:

(1) the total number of network contractors and service providers, sorted by geographical region served;

(2) the total number of individuals served by each provider, sorted by age and sex;

(3) the total amount of expenditures, sorted by method of finance;

(4) the value of the contracts with each network contractor and service provider;

(5) any outcome measures reported to the commission by network contractors and service providers;

(6) any performance outcomes reported to the commission under Section 54.006; and

(7) the results of any impact evaluation conducted under Section 54.007.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.009. RULES. (a) The executive commissioner may adopt rules to implement this chapter.

(b) The executive commissioner may not adopt a rule that violates Chapter 110, Civil Practice and Remedies Code, or Chapter 45, Human Resources Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.010. PROHIBITED CONTRACT TERMS. A contract under this chapter may not include a provision that violates Chapter 110, Civil Practice and Remedies Code, or Chapter 45, Human Resources Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

Sec. 54.011. FUNDING. (a) The commission shall, to the greatest extent possible, seek private funding to supplement and match funding provided through the program.

(b) The commission or a service provider may not:

(1) use funding provided through the program to perform, induce, assist, or refer an abortion; or

(2) grant funds to an abortion provider or an affiliate of an abortion provider.

(c) The commission may not use more than three percent of funding allocated to the program to:

(1) administer the program; and

(2) procure evaluator services under Section 54.007.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 14, eff. September 1, 2023.

SUBTITLE C. PROGRAMS PROVIDING HEALTH CARE BENEFITS AND SERVICES

CHAPTER 61. INDIGENT HEALTH CARE AND TREATMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. SHORT TITLE. This chapter may be cited as the Indigent Health Care and Treatment Act.

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

Sec. 61.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(21), eff. April 2, 2015.

(2) "Eligible county resident" means an eligible resident of a county who does not reside in the service area of a public hospital or hospital district.

(3) "Eligible resident" means a person who meets the income and resources requirements established by this chapter or by the governmental entity, public hospital, or hospital district in whose jurisdiction the person resides.

(4) "Emergency services" has the meaning assigned by Chapter 773.

(5) "General revenue levy" means:

(A) the property taxes imposed by a county that are not dedicated to:

(i) the construction and maintenance of farm-to-market roads under Article VIII, Section 1-a, Texas Constitution;

(ii) flood control under Article VIII, Section 1-a, Texas Constitution;

(iii) the further maintenance of the public roads under Article VIII, Section 9, Texas Constitution; or

(iv) the payment of principal or interest on county debt; and

(B) the sales and use tax revenue to be received by the county during the calendar year in which the state fiscal year begins under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.

(6) "Governmental entity" includes a county, municipality, or other political subdivision of the state, but does not include a hospital district or hospital authority.

(7) "Hospital district" means a hospital district created under the authority of Article IX, Sections 4-11, of the Texas Constitution.

(8) "Mandated provider" means a person who provides health care services, is selected by a county, public hospital, or hospital district, and agrees to provide health care services to eligible residents, including the primary teaching hospital of a state medical school located in a county which does not have a public hospital or hospital district, and the faculty members practicing in both the inpatient and outpatient care facilities affiliated with the teaching hospital.

(9) "Medicaid" means the medical assistance program provided under Chapter 32, Human Resources Code.

(10) "Public hospital" means a hospital owned, operated, or leased by a governmental entity, except as provided by Section 61.051.

(11) "Service area" means the geographic region in which a governmental entity, public hospital, or hospital district has a legal obligation to provide health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 14, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.119, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.01, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1295 (H.B. 2315), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 16, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(21), eff. April 2, 2015.

Sec. 61.003. RESIDENCE. (a) For purposes of this chapter, a person is presumed to be a resident of the governmental entity in which the person's home or fixed place of habitation to which the person intends to return after a temporary absence is located. However, if a person's home or fixed place of habitation is located in a hospital district, the person is presumed to be a resident of that hospital district.

(b) If a person does not have a residence, the person is a resident of the governmental entity or hospital district in which the person intends to reside.

(c) Intent to reside may be evidenced by any relevant information, including:

(1) mail addressed to the person or to the person's spouse or children if the spouse or children live with the person;

(2) voting records;

(3) automobile registration;

(4) Texas driver's license or other official identification;

(5) enrollment of children in a public or private school; or

(6) payment of property tax.

(d) A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

(e) The burden of proving intent to reside is on the person requesting assistance.

(f) For purposes of this chapter, a person who is an inmate or resident of a state supported living center, as defined by Section 531.002, or institution operated by the Texas Department of Criminal Justice, Department of Aging and Disability Services, Department of State Health Services, Texas Juvenile Justice Department, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, or any other state agency or who is an inmate, patient, or resident of a school or institution operated by a federal agency is not considered a resident of a hospital district or of any governmental entity except the state or federal government.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.091, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0175, eff. April 2, 2015.

Sec. 61.004. RESIDENCE OR ELIGIBILITY DISPUTE. (a) If a provider of assistance and a governmental entity or hospital district cannot agree on a person's residence or whether a person is eligible for assistance under this chapter, the provider or the governmental entity or hospital district may submit the matter to the department.

(b) The provider of assistance and the governmental entity or hospital district shall submit all relevant information to the department in accordance with the application, documentation, and verification procedures established by department rule under Section 61.006.

(c) If the department determines that another governmental entity or hospital district may be involved in the dispute, the department shall notify the governmental entity or hospital district and allow the governmental entity or hospital district to respond.

(d) From the information submitted, the department shall determine the person's residence or whether the person is eligible for assistance under this chapter, as appropriate, and shall notify each governmental entity or hospital district and the provider of assistance of the decision and the reasons for the decision.

(e) If a governmental entity, hospital district, or provider of assistance does not agree with the department's decision, the governmental entity, hospital district, or provider of assistance may file an appeal with the department. The appeal must be filed not later than the 30th day after the date on which the governmental entity, hospital district, or provider of assistance receives notice of the decision.

(f) The department shall issue a final decision not later than the 45th day after the date on which the appeal is filed.

(g) A governmental entity, hospital district, or provider of assistance may appeal the final order of the department under Chapter 2001, Government Code, using the substantial evidence rule on appeal.

(h) Service may not be denied pending an administrative or judicial review of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.02, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0176, eff. April 2, 2015.

Sec. 61.0045. INFORMATION NECESSARY TO DETERMINE ELIGIBILITY. (a) Any provider, including a mandated provider, public hospital, or hospital district, that delivers health care services to a patient who the provider suspects is an eligible resident of the service area of a county, hospital district, or public hospital under this chapter may require the patient to:

(1) provide any information necessary to establish that the patient is an eligible resident of the service area of the county, hospital district, or public hospital; and

(2) authorize the release of any information relating to the patient, including medical information and information obtained under Subdivision (1), to permit the provider to submit a claim to the county, hospital district, or public hospital that is liable for payment for the services as described by Section 61.033 or 61.060.

(b) A county, hospital district, or public hospital that receives information obtained under Subsection (a) shall use the information to determine whether the patient to whom services were provided is an eligible resident of the service area of the county, hospital district, or public hospital and, if so, shall pay the claim made by the provider to the extent that the county, hospital district, or public hospital is liable under Section 61.033 or 61.060.

(c) The application, documentation, and verification procedures established by the department for counties under Section 61.006 may include a standard format for obtaining information under Subsection (a) to facilitate eligibility and residence determinations.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.03, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 1, eff. September 1, 2009.

Sec. 61.005. CONTRIBUTION TOWARD COST OF ASSISTANCE. (a) A county, public hospital, or hospital district may request an eligible resident receiving health care assistance under this chapter to contribute a nominal amount toward the cost of the assistance.

(b) The county, public hospital, or hospital district may not deny or reduce assistance to an eligible resident who cannot or refuses to contribute.

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

Sec. 61.006. STANDARDS AND PROCEDURES. (a) The department shall establish minimum eligibility standards and application, documentation, and verification procedures for counties to use in determining eligibility under this chapter.

(b) The minimum eligibility standards must incorporate a net income eligibility level equal to 21 percent of the federal poverty level based on the federal Office of Management and Budget poverty index.

(b-1) Expired.

(b-2) Repealed by Acts 2001, 77th Leg., ch. 1128, Sec. 7, eff. Sept. 1, 2001.

(c) The department shall also define the services and establish the payment standards for the categories of services listed in Sections 61.028(a) and 61.0285 in accordance with commission rules relating to the Temporary Assistance for Needy Families-Medicaid program.

(d) The department shall establish application, documentation, and verification procedures that are consistent with the analogous procedures used to determine eligibility in the Temporary Assistance for Needy Families-Medicaid program. Except as provided by Section 61.008(a)(6), the department may not adopt a standard or procedure that is more restrictive than the Temporary Assistance for Needy Families-Medicaid program or procedures.

(e) The department shall ensure that each person who meets the basic income and resources requirements for Temporary Assistance for Needy Families program payments but who is categorically ineligible for Temporary Assistance for Needy Families will be eligible for

assistance under Subchapter B. Except as provided by Section 61.023(b), the executive commissioner by rule shall also provide that a person who receives or is eligible to receive Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits is not eligible for assistance under Subchapter B even if the person has exhausted a part or all of that person's benefits.

(f) The department shall notify each county and public hospital of any change to department rules that affect the provision of services under this chapter.

(g) Notwithstanding Subsection (a), (b), or (c) or any other provision of law, the department shall permit payment to a licensed dentist for services provided under Sections 61.028(a)(4) and (6) if the dentist can provide those services within the scope of the dentist's license.

(h) Notwithstanding Subsection (a), (b), or (c), the department shall permit payment to a licensed podiatrist for services provided under Sections 61.028(a)(4) and (6), if the podiatrist can provide the services within the scope of the podiatrist's license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.09(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 15, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.120, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1377, Sec. 1.04, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 1, 7 eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 173 (S.B. 420), Sec. 1, eff. May 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0177, eff. April 2, 2015.

Sec. 61.007. INFORMATION PROVIDED BY APPLICANT. The executive commissioner by rule shall require each applicant to provide at least the following information:

(1) the applicant's full name and address;

(2) the applicant's social security number, if available;

(3) the number of persons in the applicant's household, excluding persons receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits;

(4) the applicant's county of residence;

(5) the existence of insurance coverage or other hospital or health care benefits for which the applicant is eligible;

(6) any transfer of title to real property that the applicant has made in the preceding 24 months;

(7) the applicant's annual household income, excluding the income of any household member receiving Temporary Assistance for Needy Families, Supplemental Security Income, or Medicaid benefits; and

(8) the amount of the applicant's liquid assets and the equity value of the applicant's car and real property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.04, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0178, eff. April 2, 2015.

Sec. 61.008. ELIGIBILITY RULES. (a) The executive commissioner by rule shall provide that in determining eligibility:

(1) a county may not consider the value of the applicant's homestead;

(2) a county must consider the equity value of a car that is in excess of the amount exempted under department guidelines as a resource;

(3) a county must subtract the work-related and child care expense allowance allowed under department guidelines;

(4) a county must consider as a resource real property other than a homestead and, except as provided by Subsection (b), must count that property in determining eligibility;

(5) if an applicant transferred title to real property for less than market value to become eligible for assistance under this chapter, the county may not credit toward eligibility for state assistance an expenditure for that applicant made during a two-year period beginning on the date on which the property is transferred; and

(6) if an applicant is a sponsored alien, a county may include in the income and resources of the applicant:

(A) the income and resources of a person who executed

an affidavit of support on behalf of the applicant; and

(B) the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if applicable.

(b) A county may disregard the applicant's real property if the applicant agrees to an enforceable obligation to reimburse the county for all or part of the benefits received under this chapter. The county and the applicant may negotiate the terms of the obligation.

(c) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

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

Acts 2011, 82nd Leg., R.S., Ch. 173 (S.B. 420), Sec. 2, eff. May 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0179, eff. April 2, 2015.

Sec. 61.009. REPORTING REQUIREMENTS. (a) The department shall establish uniform reporting requirements for governmental entities that own, operate, or lease public hospitals providing assistance under this chapter and for counties.

(b) The reports must include information relating to:

(1) expenditures for and nature of hospital and health care provided to eligible residents;

(2) eligibility standards and procedures established by counties and governmental entities that own, operate, or lease public hospitals; and

(3) relevant characteristics of eligible residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.121, eff. Sept. 1, 1995.

Sec. 61.010. DEDICATED TAX REVENUES. If the governing body of a governmental entity adopts a property tax rate that exceeds the rate calculated under Section 26.04, Tax Code, by more than eight

percent, and if a portion of the tax rate was designated to provide revenue for indigent health care services required by this chapter, the revenue produced by the portion of the tax rate designated for that purpose may be spent only to provide indigent health care services.

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

Sec. 61.011. SERVICES BY STATE HOSPITAL OR CLINIC. A state hospital or clinic shall be entitled to payment for services rendered to an eligible resident under the provisions of this chapter applicable to other providers. The executive commissioner may adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.05, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0180, eff. April 2, 2015.

Sec. 61.012. REIMBURSEMENT FOR SERVICES. (a) In this section, "sponsored alien" means a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) and who, as a condition of admission, was sponsored by a person who executed an affidavit of support on behalf of the person.

(b) A public hospital or hospital district that provides health care services to a sponsored alien under this chapter may recover from a person who executed an affidavit of support on behalf of the alien the costs of the health care services provided to the alien.

(c) A public hospital or hospital district described by Subsection (b) must notify a sponsored alien and a person who executed an affidavit of support on behalf of the alien, at the time the alien applies for health care services, that a person who executed an affidavit of support on behalf of a sponsored alien is liable for the cost of health care services provided to the alien.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.16(a), eff. September 28, 2011.

SUBCHAPTER B. COUNTY RESPONSIBILITY FOR PERSONS NOT RESIDING IN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

Sec. 61.021. APPLICATION OF SUBCHAPTER. This subchapter applies to health care services and assistance provided to a person who does not reside in the service area of a public hospital or hospital district.

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

Sec. 61.022. COUNTY OBLIGATION. (a) A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents.

(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available.

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

Sec. 61.0221. AUTHORITY RELATING TO OTHER ASSISTANCE PROGRAMS. This subchapter does not affect the authority of the commissioners court of a county to provide eligibility standards or other requirements relating to assistance programs or services that are not covered by this subchapter.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 13.11(g), eff. Sept. 1, 1999.

Sec. 61.023. GENERAL ELIGIBILITY PROVISIONS. (a) A person is eligible for assistance under this subchapter if:

(1) the person does not reside in the service area of a public hospital or hospital district;

(2) the person meets the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; and

(3) no other adequate source of payment exists.

(b) A county may use a less restrictive standard of eligibility

for residents than prescribed by Subsection (a). A county may credit toward eligibility for state assistance under this subchapter the services provided to each person who is an eligible resident under a standard that incorporates a net income eligibility level that is less than 50 percent of the federal poverty level based on the federal Office of Management and Budget poverty index.

(c) A county may contract with the department to perform eligibility determination services.

(d) Not later than the beginning of a state fiscal year, the county shall adopt the eligibility standards it will use during that fiscal year and shall make a reasonable effort to notify the public of the standards. The county may change the eligibility standards to make them more or less restrictive than the preceding standards, but the standards may not be more restrictive than the standards established by the department under Section 61.006.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(a), eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1377, Sec. 1.06, eff. Sept. 1, 1999.

Sec. 61.024. COUNTY APPLICATION PROCEDURE. (a) A county shall adopt an application procedure.

(b) The county may use the application, documentation, and verification procedures established by the department under Sections 61.006 and 61.007 or may use a less restrictive application, documentation, or verification procedure.

(c) Not later than the beginning of a state fiscal year, the county shall specify the procedure it will use during that fiscal year to verify eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the application procedure.

(d) The county shall furnish an applicant with written application forms.

(e) On request of an applicant, the county shall assist the applicant in filling out forms and completing the application process. The county shall inform an applicant of the availability of assistance.

(f) The county shall require an applicant to sign a written statement in which the applicant swears to the truth of the

information supplied.

(g) The county shall explain to the applicant that if the application is approved, the applicant must report to the county any change in income or resources that might affect the applicant's eligibility. The report must be made not later than the 14th day after the date on which the change occurs. The county shall explain the possible penalties for failure to report a change.

(h) The county shall review each application and shall accept or deny the application not later than the 14th day after the date on which the county receives the completed application.

(i) The county shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(j) The county shall provide an applicant written notification of the county's decision. If the county denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(k) The county shall maintain the records relating to an application at least until the end of the third complete state fiscal year following the date on which the application is submitted.

(l) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

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

Sec. 61.025. COUNTY AGREEMENT WITH MUNICIPALITY. (a) This section applies to a municipality that has a population of less than 15,000, that owns, operates, or leases a hospital, and that has made a transfer agreement before August 31, 1989, by the adoption of an ordinance, resolution, or order by the commissioners court and the governing body of the municipality.

(b) The transfer agreement may transfer partial responsibility to the county under which the municipal hospital continues to provide health care services to eligible residents of the municipality, but the county agrees to assume the hospital's responsibility to reimburse other providers who provide:

(1) mandatory inpatient or outpatient services to eligible residents that the municipal hospital cannot provide; or

(2) emergency services to eligible residents.

(c) The hospital is a public hospital for the purposes of this chapter, but it does not have a responsibility to provide reimbursement for services it cannot provide or for emergency services provided in another facility.

(d) Expenditures made by the county under Subsection (b) may be credited toward eligibility for state assistance under this subchapter if the person who received the health care services meets the eligibility standards established under Section 61.052 and would have been eligible for assistance under the county program if the person had not resided in a public hospital's service area.

(e) The agreement to transfer partial responsibility to a county under this section must take effect on a September 1 that occurs not later than two years after the date on which the county and municipality agree to the transfer. A county and municipality may not revoke or amend an agreement made under this section, except that the county may revoke or amend the agreement if a hospital district is created after the effective date of the agreement and the boundaries of the district cover all or part of the county.

(f) The county, the hospital, and any other entity in the county that provides services under this chapter shall adopt coordinated application and eligibility verification procedures. In establishing the coordinated procedures, the county and other entities shall focus on facilitating the efficient and timely referral of residents to the proper entity in the county. In addition, the procedures must comply with the requirements of Sections 61.024 and 61.053. Expenditures made by a county in establishing the coordinated procedures prescribed by this section may not be credited toward eligibility for state assistance under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1103, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1377, Sec. 1.07, eff. Sept. 1, 1999.

Sec. 61.026. REVIEW OF ELIGIBILITY. A county shall review at least once every six months the eligibility of a resident for whom an application for assistance has been granted and who has received assistance under this chapter.

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

Sec. 61.027. CHANGE IN ELIGIBILITY STATUS. (a) An eligible resident must report any change in income or resources that might affect the resident's eligibility. The report must be made not later than the 14th day after the date on which the change occurs.

(b) If an eligible resident fails to report a change in income or resources as prescribed by this section and the change has made the resident ineligible for assistance under the standards adopted by the county, the resident is liable for any benefits received while ineligible. This section does not affect a person's criminal liability under any relevant statute.

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

Sec. 61.028. BASIC HEALTH CARE SERVICES. (a) A county shall, in accordance with department rules adopted under Section 61.006, provide the following basic health care services:

(1) primary and preventative services designed to meet the needs of the community, including:

(A) immunizations;

(B) medical screening services; and

(C) annual physical examinations;

(2) inpatient and outpatient hospital services;

(3) rural health clinics;

(4) laboratory and X-ray services;

(5) family planning services;

(6) physician services;

(7) payment for not more than three prescription drugs a month; and

(8) skilled nursing facility services, regardless of the patient's age.

(b) The county may provide additional health care services, but may not credit the assistance toward eligibility for state assistance, except as provided by Section 61.0285.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.08, eff. Sept. 1, 1999.

Sec. 61.0285. OPTIONAL HEALTH CARE SERVICES. (a) In addition to basic health care services provided under Section 61.028, a county may, in accordance with department rules adopted under Section 61.006, provide other medically necessary services or supplies that the county determines to be cost-effective, including:

(1) ambulatory surgical center services;

(2) diabetic and colostomy medical supplies and equipment;

(3) durable medical equipment;

(4) home and community health care services;

(5) social work services;

(6) psychological counseling services;

(7) services provided by physician assistants, nurse practitioners, certified nurse midwives, clinical nurse specialists, and certified registered nurse anesthetists;

(8) dental care;

(9) vision care, including eyeglasses;

(10) services provided by federally qualified health centers, as defined by 42 U.S.C. Section 1396d(l)(2)(B);

(11) emergency medical services;

(12) physical and occupational therapy services; and

(13) any other appropriate health care service identified by department rule that may be determined to be cost-effective.

(b) A county must notify the department of the county's intent to provide services specified by Subsection (a). If the services are approved in accordance with Section 61.006, or if the department fails to notify the county of the department's disapproval before the 31st day after the date the county notifies the department of its intent to provide the services, the county may credit the services toward eligibility for state assistance under this subchapter.

(c) A county may provide health care services that are not specified in Subsection (a), or may provide the services specified in Subsection (a) without actual or constructive approval of the department, but may not credit the services toward eligibility for state assistance.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.09, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 24, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 947 (H.B. 871), Sec. 1, eff.

September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0181, eff. April 2, 2015.

Sec. 61.029. PROVISION OF HEALTH CARE SERVICES. (a) A county may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The county may affiliate with other governmental entities or with a public hospital or hospital district to provide regional administration and delivery of health care services.

(c) A county may provide or arrange to provide health care services for eligible county residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75.

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

Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 2, eff. September 1, 2009.

Sec. 61.030. MANDATED PROVIDER. A county may select one or more providers of health care services. The county may require eligible county residents to obtain care from a mandated provider except:

(1) in an emergency;

(2) when medically inappropriate; or

(3) when care is not available.

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

Sec. 61.031. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) A county may require any provider, including a mandated provider, to obtain approval from the county before providing nonemergency health care services to an eligible county resident.

(b) If the county does not require prior approval and a

provider delivers or will deliver nonemergency health care services to a patient who the provider suspects may be eligible for assistance under this subchapter, the provider shall notify the patient's county of residence that health care services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines the patient's county of residence; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines the patient's county of residence.

(c) If the provider knows that the patient's county of residence has selected a mandated provider or if, after contacting the patient's county of residence, that county requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the patient's county of residence receives sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.10, eff. Sept. 1, 1999.

Sec. 61.032. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES. (a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the patient's county of residence that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines the patient's county of residence; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines the patient's county of residence.

(b) The provider shall attempt to determine the patient's county of residence when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the county of which the patient is presumed to be a resident in determining if the patient is an eligible resident of that county.

(d) Not later than the 14th day after the date on which the patient's county of residence receives notification and sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If the county and the provider disagree on the patient's residence or eligibility, the county or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 2, eff. Sept. 1, 2001.

Sec. 61.033. PAYMENT FOR SERVICES. (a) To the extent prescribed by this chapter, a county is liable for health care services provided under this subchapter by any provider, including a public hospital or hospital district, to an eligible county resident. A county is not liable for payment for health care services provided:

(1) by any provider, including a public hospital or hospital district, to a resident of that county who resides in the service area of a public hospital or hospital district; or

(2) to an eligible resident of that county who does not reside within the service area of a public hospital or hospital district by a hospital having a Hill-Burton or state-mandated

obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(b) To the extent prescribed by this chapter, if another source of payment does not adequately cover a health care service a county provides to an eligible county resident, the county shall pay for or provide the health care service for which other payment is not available.

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

Sec. 61.034. PAYMENT STANDARDS FOR HEALTH CARE SERVICES. (a) A county is not liable for the cost of a health care service provided under Section 61.028 or 61.0285 that is in excess of the payment standards for that service established by the department under Section 61.006.

(b) A county may contract with a provider of assistance to provide a health care service at a rate below the payment standard set by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.12, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0182, eff. April 2, 2015.

Sec. 61.035. LIMITATION OF COUNTY LIABILITY. The maximum county liability for each state fiscal year for health care services provided by all assistance providers, including a hospital and a skilled nursing facility, to each eligible county resident is:

(1) $30,000; or

(2) the payment of 30 days of hospitalization or treatment in a skilled nursing facility, or both, or $30,000, whichever occurs first, if the county provides hospital or skilled nursing facility services to the resident.

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

Sec. 61.036. DETERMINATION OF ELIGIBILITY FOR PURPOSES OF STATE ASSISTANCE. (a) A county may not credit an expenditure made to assist an eligible county resident toward eligibility for state assistance under this subchapter unless the county complies with the department's application, documentation, and verification procedures.

(b) Except as provided by Section 61.023(b), a county may not credit an expenditure for an applicant toward eligibility for state assistance if the applicant does not meet the department's eligibility standards.

(c) Regardless of the application, documentation, and verification procedures or eligibility standards established under Subchapter A, a county may credit an expenditure for an eligible resident toward eligibility for state assistance if the eligible resident received the health care services at:

(1) a hospital maintained or operated by a state agency that has a contract with the county to provide health care services;

(2) a federally qualified health center delivering federally qualified health center services, as those terms are defined in 42 U.S.C. Sections 1396d(l)(2)(A) and (B), that has a contract with the county to provide health care services; or

(3) a hospital or other health care provider if the eligible resident is an inmate of a county jail or another county correctional facility.

(d) Regardless of the application, documentation, and verification procedures or eligibility standards established under Subchapter A, a county may credit an intergovernmental transfer to the state toward eligibility for state assistance if the transfer was made to provide health care services as part of the Texas Healthcare Transformation and Quality Improvement Program waiver issued under 42 U.S.C. Section 1315.

(e) A county may credit toward eligibility for state assistance intergovernmental transfers made under Subsection (d) that in the aggregate do not exceed four percent of the county's general revenue levy in any state fiscal year, provided:

(1) the commissioners court determines that the expenditure fulfills the county's obligations to provide indigent health care under this chapter;

(2) the commissioners court determines that the amount of care available through participation in the waiver is sufficient in type and amount to meet the requirements of this chapter; and

(3) the county receives periodic reports from health care providers that receive supplemental or incentive payments under the Texas Healthcare Transformation and Quality Improvement Program waiver that document the number and types of services provided to persons who are eligible to receive services under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(b), eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1377, Sec. 1.13, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1133 (H.B. 2618), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1007 (H.B. 2454), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1176 (S.B. 872), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0183, eff. April 2, 2015.

Sec. 61.037. COUNTY ELIGIBILITY FOR STATE ASSISTANCE. (a) The department may distribute funds as provided by this subchapter to eligible counties to assist the counties in providing health care services under Sections 61.028 and 61.0285 to their eligible county residents.

(b) Except as provided by Subsection (c), (d), (e), or (g), to be eligible for state assistance, a county must:

(1) spend in a state fiscal year at least eight percent of the county general revenue levy for that year to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023; and

(2) notify the department, not later than the seventh day after the date on which the county reaches the expenditure level, that the county has spent at least six percent of the applicable county general revenue levy for that year to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023.

(c) If a county and a health care provider signed a contract on or before January 1, 1985, under which the provider agrees to furnish a certain level of health care services to indigent persons, the

value of services furnished in a state fiscal year under the contract is included as part of the computation of a county expenditure under this section if the value of services does not exceed the payment rate established by the department under Section 61.006.

(d) If a hospital district is located in part but not all of a county, that county's appraisal district shall determine the taxable value of the property located inside the county but outside the hospital district. In determining eligibility for state assistance, that county shall consider only the county general revenue levy resulting from the property located outside the hospital district. A county is eligible for state assistance if:

(1) the county spends in a state fiscal year at least eight percent of the county general revenue levy for that year resulting from the property located outside the hospital district to provide health care services described by Subsection (a) to its eligible county residents who qualify for assistance under Section 61.023; and

(2) the county complies with the other requirements of this subchapter.

(e) A county that provides health care services described by Subsection (a) to its eligible residents through a hospital established by a board of managers jointly appointed by a county and a municipality under Section 265.011 is eligible for state assistance if:

(1) the county spends in a state fiscal year at least eight percent of the county general revenue levy for the year to provide the health care services to its eligible county residents who qualify for assistance under Section 61.052; and

(2) the county complies with the requirements of this subchapter.

(f) If a county anticipates that it will reach the eight percent expenditure level, the county must notify the department as soon as possible before the anticipated date on which the county will reach the level.

(g) The department may waive the requirement that the county meet the minimum expenditure level imposed by Subsection (b), (d), or (e) and provide state assistance under this chapter at a lower level determined by the department if the county demonstrates, through an appropriate actuarial analysis, that the county is unable to satisfy the eight percent expenditure level:

(1) because, although the county's general revenue tax levy has increased significantly, expenditures for health care services described by Subsection (a) have not increased by the same percentage;

(2) because the county is at the maximum allowable ad valorem tax rate, has a small population, or has insufficient taxable property; or

(3) because of a similar reason.

(h) The executive commissioner shall adopt rules governing the circumstances under which a waiver may be granted under Subsection (g) and the procedures to be used by a county to apply for the waiver. The procedures must provide that the department shall make a determination with respect to an application for a waiver not later than the 90th day after the date the application is submitted to the department in accordance with the procedures established by department rule. To be eligible for state assistance under Subsection (g), a county must submit monthly financial reports, in the form required by the department, covering the 12-month period preceding the date on which the assistance is sought.

(i) The county must give the department all necessary information so that the department can determine if the county meets the requirements of Subsection (b), (d), (e), or (g).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 651, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 272, Sec. 1, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0184, eff. April 2, 2015.

Sec. 61.038. DISTRIBUTION OF ASSISTANCE FUNDS. (a) If the department determines that a county is eligible for assistance, the department shall distribute funds appropriated to the department from the indigent health care assistance fund or any other available fund to the county to assist the county in providing health care services under Sections 61.028 and 61.0285 to its eligible county residents who qualify for assistance as described by Section 61.037.

(b) State funds provided under this section to a county must be

equal to at least 90 percent of the actual payment for the health care services for the county's eligible residents during the remainder of the state fiscal year after the eight percent expenditure level is reached.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 272, Sec. 2, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 61.039. FAILURE TO PROVIDE STATE ASSISTANCE. If the department fails to provide assistance to an eligible county as prescribed by Section 61.038, the county is not liable for payments for health care services provided to its eligible county residents after the county reaches the eight percent expenditure level.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.14, eff. Sept. 1, 1999.

Sec. 61.0395. LIMITED TO APPROPRIATED FUNDS. (a) The total amount of state assistance provided to counties under this chapter for a fiscal year may not exceed the amount appropriated for that purpose for that fiscal year.

(b) The executive commissioner may adopt rules governing the distribution of state assistance under this chapter that establish a maximum annual allocation for each county eligible for assistance under this chapter in compliance with Subsection (a).

(c) The rules adopted under this section:

(1) may consider the relative populations of the service areas of eligible counties and other appropriate factors; and

(2) notwithstanding Subsection (b), may provide for, at the end of each state fiscal year, the reallocation of all money that is allocated to a county under Subsection (b) but that the county is not eligible to receive and the distribution of that money to other eligible counties.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.15, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1128, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0185, eff. April 2, 2015.

Text of section effective until September 1, 2024

Sec. 61.040. TAX INFORMATION. The comptroller shall give the department information relating to:

(1) the taxable value of property taxable by each county and each county's applicable general revenue tax levy for the relevant period; and

(2) the amount of sales and use tax revenue received by each county for the relevant period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 64, eff. Sept. 1, 1991.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 629 (H.B. 4510), Sec. 3, eff. September 1, 2024.

Text of section effective on September 1, 2024

Sec. 61.040. TAX INFORMATION. (a) For the purpose of determining eligibility for state assistance under this chapter, the department may require a county to provide the following information for the relevant period:

(1) the taxable value of property taxable by the county;

(2) the county's applicable general revenue tax levy; and

(3) the amount of sales and use tax revenue received by the county.

(b) The department shall prescribe the manner in which a county must provide the information described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 6, Sec. 64, eff. Sept. 1, 1991.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 629 (H.B. 4510), Sec. 3, eff. September 1, 2024.

Sec. 61.041. COUNTY REPORTING. (a) The department shall establish monthly reporting requirements for a county seeking state assistance and establish procedures necessary to determine if the county is eligible for state assistance.

(b) The department shall establish requirements relating to:

(1) documentation required to verify the eligibility of residents to whom the county provides assistance; and

(2) county expenditures for health care services under Sections 61.028 and 61.0285.

(c) The department may audit county records to determine if the county is eligible for state assistance.

(d) The department shall establish annual reporting requirements for each county that is required to provide indigent health care under this chapter but that is not required to report under Subsection (a). A county satisfies the annual reporting requirement of this subsection if the county submits information to the department as required by law to obtain an annual distribution under the Agreement Regarding Disposition of Settlement Proceeds filed on July 24, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.16, eff. Sept. 1, 1999.

Sec. 61.042. EMPLOYMENT SERVICES PROGRAM. (a) A county may establish procedures consistent with those used by the commission under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas Workforce Commission.

(b) The county shall notify all persons with pending applications and eligible residents of the employment service program requirements not less than 30 days before the program is established.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.122, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0186, eff. April 2, 2015.

Sec. 61.043. PREVENTION AND DETECTION OF FRAUD. (a) The county shall adopt reasonable procedures for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud may exist, and for administrative hearings to be conducted on disqualifying persons in cases where fraud appears to exist.

(b) Procedures established by a county for administrative hearings conducted under this section shall provide for appropriate due process, including procedures for appeals.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.044. SUBROGATION. (a) The filing of an application for or receipt of services constitutes an assignment of the applicant's or recipient's right of recovery from:

(1) personal insurance;

(2) other sources; or

(3) another person for personal injury caused by the other person's negligence or wrong.

(b) A person who applies for or receives services shall inform the county, at the time of application or at any time during eligibility, of any unsettled tort claim that may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. An applicant or eligible resident shall inform the county of any injury that is caused by the act or failure to act of some other person. An applicant or eligible resident shall inform the county as required by this subsection within 10 days of the date the person learns of the person's insurance coverage, tort claim, or potential cause of action.

(c) A claim for damages for personal injury does not constitute grounds for denying or discontinuing services under this chapter.

(d) A separate and distinct cause of action in favor of the county is hereby created, and the county may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent on any other action.

(e) The county's right of recovery is limited to the amount of

the cost of services paid by the county. Other subrogation rights granted under this section are limited to the cost of the services provided.

(f) An applicant or eligible resident who knowingly and intentionally fails to disclose the information required by Subsection (b) commits a Class C misdemeanor.

(g) An applicant or eligible resident is subject to denial of services under this chapter following an administrative hearing.

Added by Acts 1993, 73rd Leg., ch. 880, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. PERSONS WHO RESIDE IN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

Sec. 61.051. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to health care services and assistance provided to a person who resides in the service area of a public hospital or hospital district.

(b) For the purposes of this subchapter, a hospital is not considered to be a public hospital and is not responsible for providing care under this subchapter if the hospital:

(1) is owned, operated, or leased by a municipality with a population of less than 5,500;

(2) was leased before January 1, 1981, by a municipality that at the time of the lease did not have a legal obligation to provide indigent health care; or

(3) was established under Section 265.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 16, eff. Sept. 1, 1991.

Sec. 61.052. GENERAL ELIGIBILITY PROVISIONS. (a) A public hospital or hospital district shall provide health care assistance to each eligible resident in its service area who meets:

(1) the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; or

(2) a less restrictive income and resources standard adopted by the hospital or hospital district serving the area in which the person resides.

(b) If a public hospital used an income and resources standard during the operating year that ended before January 1, 1985, that was less restrictive than the income and resources requirements established by the department under Section 61.006, the hospital shall adopt that standard to determine eligibility under this subchapter.

(c) If a public hospital did not use an income and resources standard during the operating year that ended before January 1, 1985, but had a Hill-Burton obligation during part of that year, the hospital shall adopt the standard the hospital used to meet the Hill-Burton obligation to determine eligibility under this subchapter.

(d) A public hospital established after September 1, 1985, shall provide health care services to each resident who meets the income and resources requirements established by the department under Sections 61.006 and 61.008, or the hospital may adopt a less restrictive income and resources standard. The hospital may adopt a less restrictive income and resources standard at any time.

(e) If because of a change in the income and resources requirements established by the department under Sections 61.006 and 61.008 the standard adopted by a public hospital or hospital district becomes stricter than the requirements established by the department, the hospital or hospital district shall change its standard to at least comply with the requirements established by the department.

(f) A public hospital or hospital district may contract with the department to perform eligibility determination services.

(g) A county that provides health care services to its eligible residents through a hospital established by a board of managers jointly appointed by a county and a municipality under Section 265.011 and that establishes an income and resources standard in accordance with Subsection (a)(2) may credit the services provided to all persons who are eligible under that standard toward eligibility for state assistance as described by Section 61.037(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.17, eff. Sept. 1, 1999.

Sec. 61.053. APPLICATION PROCEDURE. (a) A public hospital or hospital district shall adopt an application procedure.

(b) Not later than the beginning of a public hospital's or

hospital district's operating year, the hospital or district shall specify the procedure it will use during the operating year to determine eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the procedure.

(c) The public hospital or hospital district shall furnish an applicant with written application forms.

(d) On request of an applicant, the public hospital or hospital district shall assist an applicant in filling out forms and completing the application process. The hospital or district shall inform an applicant of the availability of assistance.

(e) The public hospital or hospital district shall require an applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(f) The public hospital or hospital district shall explain to the applicant that if the application is approved, the applicant must report to the hospital or district any change in income or resources that might affect the applicant's eligibility. The report must be made not later than the 14th day after the date on which the change occurs. The hospital or district shall explain the possible penalties for failure to report a change.

(g) The public hospital or hospital district shall review each application and shall accept or deny the application not later than the 14th day after the date on which the hospital or district receives the completed application.

(h) The public hospital or hospital district shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(i) The public hospital or hospital district shall provide an applicant written notification of the hospital's or district's decision. If the hospital or district denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(j) The public hospital or hospital district shall maintain the records relating to an application for at least three years after the date on which the application is submitted.

(k) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility.

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

Sec. 61.054. BASIC HEALTH CARE SERVICES PROVIDED BY A PUBLIC HOSPITAL. (a) Except as provided by Subsection (c), a public hospital shall endeavor to provide the basic health care services a county is required to provide under Section 61.028.

(b) If a public hospital provided additional health care services to eligible residents during the operating year that ended before January 1, 1985, the hospital shall continue to provide those services.

(c) A public hospital shall coordinate the delivery of basic health care services to eligible residents and may provide any basic health care services the hospital was not providing on January 1, 1999, but only to the extent the hospital is financially able to do so.

(d) A public hospital may provide health care services in addition to basic health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.18, eff. Sept. 1, 1999.

Sec. 61.055. BASIC HEALTH CARE SERVICES PROVIDED BY HOSPITAL DISTRICTS. (a) Except as provided by Subsection (b), a hospital district shall endeavor to provide the basic health care services a county is required to provide under Section 61.028, together with any other services required under the Texas Constitution and the statute creating the district.

(b) A hospital district shall coordinate the delivery of basic health care services to eligible residents and may provide any basic health care services the district was not providing on January 1, 1999, but only to the extent the district is financially able to do so.

(c) This section may not be construed to discharge a hospital district from its obligation to provide the health care services required under the Texas Constitution and the statute creating the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.19, eff. Sept. 1, 1999.

Sec. 61.056. PROVISION OF HEALTH CARE SERVICES. (a) A public hospital or hospital district may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The public hospital or hospital district may affiliate with other public hospitals or hospital districts or with a governmental entity to provide regional administration and delivery of health care services.

(c) A hospital district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003, may affiliate with any public or private entity to provide regional administration and delivery of health care services. The regional affiliation, in accordance with the affiliation agreement, shall use money contributed by an affiliated governmental entity to provide health care services to an eligible resident of that governmental entity.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 3

(d) A public hospital or hospital district may provide or arrange to provide health care services for eligible residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75. For purposes of this subsection, the board of directors or managers of the hospital or district have the powers and duties provided to the commissioners court of a county under Chapter 75.

Text of subsection as added by Acts 2009, 81st Leg., R.S., Ch. 217 (S.B. 1063), Sec. 3

(d) A hospital district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003, may provide or arrange to provide health care services for eligible residents through the purchase of health coverage or other health benefits, including benefits described by Chapter 75. For purposes of this subsection, the board of managers of the district has the powers and duties provided to the commissioners court of a county under Chapter 75.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 3, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 217 (S.B. 1063), Sec. 3, eff. May 27, 2009.
Acts 2009, 81st Leg., R.S., Ch. 916 (H.B. 2963), Sec. 3, eff. September 1, 2009.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 67, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 68, eff. September 1, 2023.

Sec. 61.057. MANDATED PROVIDER. A public hospital may select one or more providers of health care services. A public hospital may require eligible residents to obtain care from a mandated provider except:

(1) in an emergency;
(2) when medically inappropriate; or
(3) when care is not available.

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

Sec. 61.058. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) A public hospital may require any provider, including a mandated provider, to obtain approval from the hospital before providing nonemergency health care services to an eligible resident in the hospital's service area.

(b) If the public hospital does not require prior approval and a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that health care services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines that the patient resides in the hospital's service area; and
(2) by mail postmarked not later than the fifth working day

after the date on which the provider determines that the patient resides in the hospital's service area.

(c) If the provider knows that the public hospital serving the area in which the patient resides has selected a mandated provider or if, after contacting the hospital, the hospital requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.20, eff. Sept. 1, 1999.

Sec. 61.059. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES. (a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone not later than the 72nd hour after the provider determines that the patient resides in the hospital's service area; and

(2) by mail postmarked not later than the fifth working day after the date on which the provider determines that the patient resides in the hospital's service area.

(b) The provider shall attempt to determine if the patient resides in a public hospital's service area when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the public hospital in determining if the patient is an eligible resident of the hospital's service area.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If the public hospital and the provider disagree on the patient's residence or eligibility, the hospital or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

(g) If emergency services are customarily available at a facility operated by a public hospital, that hospital is not liable for emergency services furnished to an eligible resident by another provider in the area the hospital has a legal obligation to serve.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.21, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1128, Sec. 4, eff. Sept. 1, 2001.

Sec. 61.060. PAYMENT FOR SERVICES. (a) To the extent prescribed by this chapter, a public hospital is liable for health care services provided under this subchapter by any provider, including another public hospital, to an eligible resident in the hospital's service area. A public hospital is not liable for payment for health care services provided to:

(1) a person who does not reside in the hospital's service area; or

(2) an eligible resident of the hospital's service area by a hospital having a Hill-Burton or state-mandated obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(b) A hospital district is liable for health care services as provided by the Texas Constitution and the statute creating the district.

(c) A public hospital is the payor of last resort under this subchapter and is not liable for payment or assistance to an eligible resident in the hospital's service area if any other public or private source of payment is available.

(d) If another source of payment does not adequately cover a health care service a public hospital provides to an eligible resident of the hospital's service area, the hospital shall pay for or provide the health care service for which other payment is not available.

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

Sec. 61.061. PAYMENT RATES AND LIMITS. The payment rates and limits prescribed by Sections 61.034 and 61.035 that relate to county services apply to inpatient and outpatient hospital services a public hospital is required to provide if:

(1) the hospital cannot provide the services or emergency services that are required; and

(2) the services are provided by an entity other than the hospital.

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

Sec. 61.062. RESPONSIBILITY OF GOVERNMENTAL ENTITY. A governmental entity that owns, operates, or leases a public hospital shall provide sufficient funding to the hospital to provide basic health care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 61.063. PROCEDURE TO CHANGE ELIGIBILITY STANDARDS OR SERVICES PROVIDED. (a) A public hospital may not change its eligibility standards to make the standards more restrictive and may not reduce the health care services it offers unless it complies with

the requirements of this section.

(b) Not later than the 90th day before the date on which a change would take effect, the public hospital must publish notice of the proposed change in a newspaper of general circulation in the hospital's service area and set a date for a public hearing on the change. The published notice must include the date, time, and place of the public meeting. The notice is in addition to the notice required by Chapter 551, Government Code.

(c) Not later than the 30th day before the date on which the change would take effect, the public hospital must conduct a public meeting to discuss the change. The meeting must be held at a convenient time in a convenient location in the hospital's service area. Members of the public may testify at the meeting.

(d) If, based on the public testimony and on other relevant information, the governing body of the hospital finds that the change would not have a detrimental effect on access to health care for the residents the hospital serves, the hospital may adopt the change. That finding must be formally adopted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 61.064. TRANSFER OF A PUBLIC HOSPITAL. (a) A governmental entity that owns, operates, or leases a public hospital and that closes, sells, or leases the hospital:

(1) has the obligation to provide basic health care services under this chapter;

(2) shall adopt the eligibility standards that the hospital was or would have been required to adopt; and

(3) shall provide the same services the hospital was or would have been required to provide under this chapter on the date of the closing, sale, or lease.

(b) If the governmental entity owned, operated, or leased the public hospital before January 1, 1985, and sold or leased the hospital on or after that date but before September 1, 1986, the obligation retained is the obligation the hospital would have had on September 1, 1986.

(c) Notwithstanding Subsections (a) and (b), if a hospital district that owns, operates, or leases a public hospital dissolves,

the district has no responsibility under this chapter. If on or before dissolution the district sold or transferred its hospital to another governmental entity, that governmental entity assumes the district's responsibility to provide health care services in accordance with this subchapter. If the district did not sell or transfer the hospital to another governmental entity, the county shall provide health care services to the residents of the district's service area in accordance with Subchapter B.

(d) This section does not apply to a governmental entity that sold or leased a public hospital to a hospital district or a hospital authority on or after January 1, 1985, but before September 1, 1986. If a governmental entity sold or leased a hospital as provided by this subsection, the hospital ceased being a public hospital for the purposes of this chapter on the date it was sold or leased, and neither the governmental entity nor the hospital district or hospital authority has any responsibility under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1377, Sec. 1.23, eff. Sept. 1, 1999.

Sec. 61.065. COUNTY RESPONSIBILITY FOR HOSPITAL SOLD ON OR AFTER JANUARY 1, 1988. (a) This section applies to a county that, on or after January 1, 1988, sells to a purchaser that is not a governmental entity a county hospital that was leased at the time of the sale to a person who is not a governmental entity.

(b) On the date the hospital is sold, the hospital ceases being a public hospital for the purposes of this chapter, and the county shall provide health care services to county residents in accordance with Subchapter B.

(c) If the contract for the sale of the hospital provides for the provision by the hospital of health care services to county residents, the value of the health care services credited or paid in a state fiscal year under the contract is included as part of the computation of a county expenditure under Section 61.037 to the extent that the value of the services does not exceed the payment standard established by department rule for allowed inpatient and outpatient services.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.10(c), eff. Sept. 1, 1989.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0187, eff. April 2, 2015.

Sec. 61.066. PREVENTION AND DETECTION OF FRAUD. (a) A hospital district may adopt reasonable procedures for minimizing the opportunity for fraud, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud may exist, and for administrative hearings to be conducted on disqualifying persons in cases where fraud appears to exist.

(b) Procedures established by a hospital district for administrative hearings conducted under this section shall provide for appropriate due process, including procedures for appeals.

(c) A hospital district may recover, from the eligible resident perpetrating a fraud, an amount equal to the value of any fraudulently obtained health care services provided to the eligible resident disqualified under this section.

Added by Acts 2001, 77th Leg., ch. 563, Sec. 1, eff. Aug. 27, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 1, eff. September 1, 2011.

Sec. 61.067. LIEN BY NON-PROVIDER HOSPITAL DISTRICT. (a) This section applies to a hospital district that does not operate a hospital.

(b) After the hospital district pays the providing hospital for the actual cost of the service, the district may file a lien on a tort cause of action or claim of an eligible resident who receives health care services for injuries caused by an accident that is attributed to the negligence of another person.

(c) A person who applies for or receives health care services shall inform the hospital district, at the time of application or at any time during eligibility for services, of:

(1) any unsettled tort claim that may affect medical needs;

(2) any private accident or health insurance coverage that is or may become available; and

(3) any injury that is caused by the act or failure to act

of some other person.

(d) An applicant or eligible resident shall inform the hospital district of information required by Subsection (c) within 30 days of the date the person learns of the person's insurance coverage, tort claim, or potential cause of action.

(e) A claim for damages for personal injury does not constitute grounds for denying or discontinuing services under this chapter.

(f)(1) A lien under this chapter attaches to:

(A) a tort cause of action for damages arising from an injury for which the injured eligible resident receives health care services;

(B) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the eligible resident or by another person entitled to bring the suit in case of the death of the eligible resident to recover tort damages arising from an injury for which the eligible resident receives health care services; and

(C) the proceeds of a settlement of a tort cause of action or a tort claim by the eligible resident or another person entitled to make the claim, arising from an injury for which the eligible resident receives health care services.

(2) If the eligible resident has health insurance, the providing hospital is obligated to timely bill the applicable health insurer in accordance with Chapter 146, Civil Practice and Remedies Code.

(g) The lien does not attach to a claim under the workers' compensation law of this state, the Federal Employers' Liability Act, or the Federal Longshore and Harbor Workers' Compensation Act.

(h) A hospital district's lien established under Subsection (b) is for the amount actually paid by the hospital district for services provided to the eligible resident for health care services caused by an accident that is attributed to the negligence of another person.

(i) To secure the lien, a hospital district must file written notice of the lien with the county clerk of the county in which the services were provided. The notice must be filed and indexed before money is paid by the third-party liability insurer. The notice must contain:

(1) the injured individual's name and address;

(2) the date of the accident;

(3) the name and location of the hospital district claiming

the lien; and

(4) the name of the person alleged to be liable for damages arising from the injury, if known.

(j) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital district and shall index the record in the name of the injured individual.

(k) The procedures set forth in Sections 55.006 and 55.007, Property Code, for discharging and releasing the lien shall apply to liens filed under this section.

(l) Procedures established by a hospital district for administrative hearings under this section shall provide for appropriate due process, including procedures for appeals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0188, eff. April 2, 2015.

Sec. 61.068. EMPLOYMENT SERVICES PROGRAM. (a) A public hospital or hospital district may establish procedures consistent with those used by the commission under Chapter 31, Human Resources Code, for administering an employment services program and requiring an applicant or eligible resident to register for work with the Texas Workforce Commission.

(b) The public hospital or hospital district shall notify each person with a pending application and all eligible residents of the requirements of the employment services program not less than 30 days before the program is established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1206 (S.B. 304), Sec. 1, eff. June 17, 2011.
Redesignated from Health and Safety Code, Section 61.067 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(24), eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0189, eff. April 2, 2015.

CHAPTER 62. CHILD HEALTH PLAN FOR CERTAIN LOW-INCOME CHILDREN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. OBJECTIVE OF THE STATE CHILD HEALTH PLAN. The principal objective of the state child health plan is to provide primary and preventative health care to low-income, uninsured children of this state, including children with special health care needs, who are not served by or eligible for other state assisted health insurance programs.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(22), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(22), eff. April 2, 2015.

(3) "Health plan provider" means an insurance company, health maintenance organization, or other entity that provides health benefits coverage under the child health plan program. The term includes a primary care case management provider network.

(4) "Household income" means the sum of the individual incomes of each individual in an applicant's or enrollee's household, minus the standard income disregard prescribed by federal law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.45, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 1, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0190, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(22), eff. April 2, 2015.

Sec. 62.003. NOT AN ENTITLEMENT; TERMINATION OF PROGRAM. (a) This chapter does not establish an entitlement to assistance in obtaining health benefits for a child.

(b) The program established under this chapter terminates at

the time that federal funding terminates under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, unless a successor program providing federal funding for a state-designed child health plan program is created.

(c) Unless the legislature authorizes the expenditure of other revenue for the program established under this chapter, the program terminates on the date that money obtained by the state as a result of the Comprehensive Settlement Agreement and Release filed in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91, in the United States District Court, Eastern District of Texas, is no longer available to provide state funding for the program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.004. FEDERAL LAW AND REGULATIONS. The executive commissioner shall monitor federal legislation affecting Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) and changes to the federal regulations implementing that law. If the executive commissioner determines that a change to Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.) or the federal regulations implementing that law conflicts with this chapter, the executive commissioner shall report the changes to the governor, lieutenant governor, and speaker of the house of representatives, with recommendations for legislation necessary to implement the federal law or regulations, seek a waiver, or withdraw from participation.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0191, eff. April 2, 2015.

SUBCHAPTER B. ADMINISTRATION OF CHILD HEALTH PLAN PROGRAM

Sec. 62.051. DUTIES OF EXECUTIVE COMMISSIONER AND COMMISSION IN GENERAL. (a) The executive commissioner shall administer a state-designed child health plan program to obtain health benefits coverage for children in low-income families. The executive commissioner shall ensure that the child health plan program is designed and

administered in a manner that qualifies for federal funding under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations.

(b) The executive commissioner is responsible for making policy for the child health plan program, including policy related to covered benefits provided under the child health plan. The executive commissioner may not delegate this duty to another agency or entity.

(c) The executive commissioner shall oversee the implementation of the child health plan program and coordinate the activities of each agency necessary to the implementation of the program, including the Texas Department of Insurance.

(d) The executive commissioner shall adopt rules as necessary to implement this chapter.

(e) The commission shall conduct a review of each entity that enters into a contract under Section 62.055 or 62.155 to ensure that the entity is available, prepared, and able to fulfill the entity's obligations under the contract in compliance with the contract, this chapter, and rules adopted under this chapter.

(f) The commission shall ensure that the amounts spent for administration of the child health plan program do not exceed any limit on those expenditures imposed by federal law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0192, eff. April 2, 2015.

Sec. 62.052. AUTHORITY OF COMMISSION RELATING TO HEALTH PLAN PROVIDER CONTRACTS. The commission may:

(1) implement contracts with health plan providers under Section 62.155;

(2) monitor the health plan providers, through reporting requirements and other means, to ensure performance under the contracts and quality delivery of services;

(3) monitor the quality of services delivered to enrollees through outcome measurements including:

(A) rate of hospitalization for ambulatory sensitive conditions, including asthma, diabetes, epilepsy, dehydration, gastroenteritis, pneumonia, and UTI/kidney infection;

(B) rate of hospitalization for injuries;

(C) percent of enrolled adolescents reporting risky health behavior such as injuries, tobacco use, alcohol/drug use, dietary behavior, physical activity, or other health related behaviors; and

(D) percent of adolescents reporting attempted suicide; and

(4) provide payment under the contracts to the health plan providers.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0192, eff. April 2, 2015.

Sec. 62.053. AUTHORITY OF COMMISSION RELATING TO ELIGIBILITY AND MEDICAID COORDINATION. The commission may:

(1) accept applications for coverage under the child health plan and implement the child health plan program eligibility screening and enrollment procedures;

(2) resolve grievances relating to eligibility determinations; and

(3) coordinate the child health plan program with the Medicaid program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0193, eff. April 2, 2015.

Sec. 62.0531. AUTHORITY OF COMMISSION RELATING TO THIRD PARTY ADMINISTRATOR. If the commission contracts with a third party administrator under Section 62.055, the commission may:

(1) implement the contract;

(2) monitor the third party administrator, through reporting requirements and other means, to ensure performance under the contract and quality delivery of services; and

(3) provide payment under the contract to the third party administrator.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0193, eff. April 2, 2015.

Sec. 62.054. DUTIES OF TEXAS DEPARTMENT OF INSURANCE. (a) At the request of the commission, the Texas Department of Insurance shall provide any necessary assistance with the child health plan. The department shall monitor the quality of the services provided by health plan providers and resolve grievances relating to the health plan providers.

(b) The commission and the Texas Department of Insurance may adopt a memorandum of understanding that addresses the responsibilities of each agency with respect to the plan.

(c) The Texas Department of Insurance, in consultation with the commission, shall adopt rules as necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0194, eff. April 2, 2015.

Sec. 62.055. CONTRACTS FOR IMPLEMENTATION OF CHILD HEALTH PLAN. (a) It is the intent of the legislature that the commission maximize the use of private resources in administering the child health plan created under this chapter. In administering the child health plan, the commission may contract with a third party administrator to provide enrollment and related services under the state child health plan.

(b), (c) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(23), eff. April 2, 2015.

(e) The executive commissioner shall retain all policymaking authority over the state child health plan.

(f) The commission shall:

(1) procure all contracts with a third party administrator through a competitive procurement process in compliance with all applicable federal and state laws or regulations; and

(2) ensure that all contracts with child health plan

providers under Section 62.155 are procured through a competitive procurement process in compliance with all applicable federal and state laws or regulations.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.43, 2.156(a)(1), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0195, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(23), eff. April 2, 2015.

Sec. 62.056. COMMUNITY OUTREACH CAMPAIGN; TOLL-FREE HOTLINE. (a) The commission shall conduct a community outreach and education campaign to provide information relating to the availability of health benefits for children under this chapter. The commission shall conduct the campaign in a manner that promotes enrollment in, and minimizes duplication of effort among, all state-administered child health programs.

(b) The community outreach campaign must include:

(1) outreach efforts that involve school-based health clinics;

(2) a toll-free telephone number through which families may obtain information about health benefits coverage for children; and

(3) information regarding the importance of each conservator of a child promptly informing the other conservator of the child about the child's health benefits coverage.

(c) The commission shall contract with community-based organizations or coalitions of community-based organizations to implement the community outreach campaign and shall also promote and encourage voluntary efforts to implement the community outreach campaign. The commission shall procure the contracts through a process designed by the commission to encourage broad participation of organizations, including organizations that target population groups with high levels of uninsured children.

(d) The commission may direct that the Department of State Health Services perform all or part of the community outreach campaign.

(e) The commission shall ensure that information provided under this section is available in both English and Spanish.

Added by Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 2, eff. June 15, 2007.

Sec. 62.058. FRAUD PREVENTION. The commission shall develop and implement rules for the prevention and detection of fraud in the child health plan program.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.0582. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the commission for payment on behalf of a health plan provider under the program unless the vendor has entered into a contract with the commission authorizing that activity.

(b) To the extent practical, the contract shall contain provisions comparable to the provisions contained in contracts between the commission and health plan providers, with an emphasis on provisions designed to prevent fraud or abuse under the program. At a minimum, the contract must require the third-party billing vendor to:

(1) provide documentation of the vendor's authority to bill on behalf of each provider for whom the vendor submits claims;

(2) submit a claim in a manner that permits the commission to identify and verify the vendor, any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim; and

(3) subject to any confidentiality requirements imposed by federal law, provide the commission, the office of the attorney general, or authorized representatives with:

(A) access to any records maintained by the vendor, including original records and records maintained by the vendor on behalf of a provider, relevant to an audit or investigation of the vendor's services or another function of the commission or office of attorney general relating to the vendor; and

(B) if requested, copies of any records described by

Paragraph (A) at no charge to the commission, the office of the attorney general, or authorized representatives.

(c) On receipt of a claim submitted by a third-party billing vendor, the commission shall send a remittance notice directly to the provider referenced in the claim. The notice must include detailed information regarding the claim submitted on behalf of the provider.

(d) The commission shall take all action necessary, including any modifications of the commission's claims processing system, to enable the commission to identify and verify a third-party billing vendor submitting a claim for payment under the program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

(e) The commission shall audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse under the program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.44(a), eff. Jan. 1, 2006.

Sec. 62.060. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a) In this section, "health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, an electronic medical record, a computerized health care provider order entry, electronic prescribing, and clinical decision support technology.

(b) The commission shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the child health plan program conforms to standards required under federal law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1120 (H.B. 1218), Sec. 2, eff. September 1, 2009.

SUBCHAPTER C. ELIGIBILITY FOR COVERAGE UNDER CHILD HEALTH PLAN

Sec. 62.101. ELIGIBILITY. (a) A child is eligible for health benefits coverage under the child health plan if the child:

(1) is younger than 19 years of age;

(2) is not eligible for medical assistance under the Medicaid program;

(3) is not covered by a health benefits plan offering adequate benefits, as determined by the commission;

(4) has a household income that is less than or equal to the income eligibility level established under Subsection (b); and

(5) satisfies any other eligibility standard imposed under the child health plan program in accordance with 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations.

(a-1) A child who is the dependent of an employee of an agency of this state and who meets the requirements of Subsection (a) may be eligible for health benefits coverage in accordance with 42 U.S.C. Section 1397jj(b)(6) and any other applicable law or regulations.

(b) The executive commissioner shall establish income eligibility levels consistent with Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, and subject to the availability of appropriated money, so that a child who is younger than 19 years of age and whose household income is at or below 200 percent of the federal poverty level is eligible for health benefits coverage under the program.

(b-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(25), eff. April 2, 2015.

(c) The executive commissioner shall evaluate enrollment levels and program impact at least annually and shall submit a finding of fact to the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy as to the adequacy of funding and the ability of the program to sustain enrollment at the eligibility level established by Subsection (b). In the event that appropriated money is insufficient to sustain enrollment at the authorized eligibility level, the executive commissioner shall:

(1) suspend enrollment in the child health plan;

(2) establish a waiting list for applicants for coverage; and

(3) establish a process for periodic or continued enrollment of applicants in the child health plan program as the availability of money allows.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.46, eff. Sept. 1,

2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 3, eff. June 15, 2007.
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.03(a), eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0196, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(25), eff. April 2, 2015.

Sec. 62.1011. VERIFICATION OF INCOME. The commission shall continue employing methods of verifying the individual incomes of the individuals considered in the calculation of an applicant's household income. The commission shall verify income under this section unless the applicant reports a household income that exceeds the income eligibility level established under Section 62.101(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 4, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0197, eff. April 2, 2015.

Sec. 62.1015. ELIGIBILITY OF CERTAIN CHILDREN; DISALLOWANCE OF MATCHING FUNDS. (a) In this section:

(1) "Charter school" and "regional education service center" have the meanings assigned by Section 1579.002, Insurance Code.

(2) "Employee" has the meaning assigned by Section 1579.003, Insurance Code.

(b) A child of an employee of a charter school, school district, other educational district whose employees are members of the Teacher Retirement System of Texas, or regional education service center may be enrolled in health benefits coverage under the child health plan. A child enrolled in the child health plan under this section:

(1) participates in the same manner as any other child

enrolled in the child health plan; and

(2) is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as any other child enrolled in the child health plan.

(c) The cost of health benefits coverage for children enrolled in the child health plan under this section shall be paid as provided in the General Appropriations Act. Expenditures made to provide health benefits coverage under this section may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended, unless the commission, after consultation with the appropriate federal agencies, determines that the expenditures may be included without adversely affecting federal matching funding for the child health plan provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1187, Sec. 1.04, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.47, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0198, eff. April 2, 2015.

Sec. 62.102. CONTINUOUS COVERAGE. (a) Subject to a review under Subsection (b), the commission shall provide that an individual who is determined to be eligible for coverage under the child health plan remains eligible for those benefits until the earlier of:

(1) the end of a period not to exceed 12 months, beginning the first day of the month following the date of the eligibility determination; or

(2) the individual's 19th birthday.

(b) During the sixth month following the date of initial enrollment or reenrollment of an individual whose household income exceeds 185 percent of the federal poverty level, the commission shall:

(1) review the individual's household income and may use electronic technology if available and appropriate; and

(2) continue to provide coverage if the individual's

household income does not exceed the income eligibility limits prescribed by this chapter.

(c) If, during the review required under Subsection (b), the commission determines that the individual's household income exceeds the income eligibility limits prescribed by this chapter, the commission may not disenroll the individual until:

(1) the commission has provided the family an opportunity to demonstrate that the family's household income is within the income eligibility limits prescribed by this chapter; and

(2) the family fails to demonstrate such eligibility.

(d) The commission shall provide written notice of termination of eligibility to the individual not later than the 30th day before the date the individual's eligibility terminates.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.48, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 3.01, eff. August 29, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 5, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0199, eff. April 2, 2015.

Sec. 62.103. APPLICATION FORM AND PROCEDURES. (a) The executive commissioner shall adopt an application form and application procedures for requesting child health plan coverage under this chapter.

(b) The form and procedures must be coordinated with forms and procedures under the Medicaid program to ensure that there is a single consolidated application to seek assistance under this chapter or the Medicaid program.

(c) To the extent possible, the application form shall be made available in languages other than English.

(d) The executive commissioner may permit application to be made by mail, over the telephone, or through the Internet.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 584, Sec. 1.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0200, eff. April 2, 2015.

Sec. 62.104. ELIGIBILITY SCREENING AND ENROLLMENT. (a) The executive commissioner shall develop eligibility screening and enrollment procedures for children that comply with the requirements of 42 U.S.C. Section 1397bb, as amended, and any other applicable law or regulations. The procedures shall ensure that Medicaid-eligible children are identified and referred to the Medicaid program.

(b) The Texas Integrated Enrollment Services eligibility determination system or a compatible system may be used to screen and enroll children under the child health plan.

(c) The eligibility screening and enrollment procedures shall ensure that children who appear to be Medicaid-eligible are identified and that their families are assisted in applying for Medicaid coverage.

(d) A child who applies for enrollment in the child health plan, who is denied Medicaid coverage after completion of a Medicaid application under Subsection (c), but who is eligible for enrollment in the child health plan, shall be enrolled in the child health plan without further application or qualification.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(81), eff. June 17, 2011.

(f) A determination of whether a child is eligible for child health plan coverage under the program and the enrollment of an eligible child with a health plan provider must be completed, and information on the family's available choice of health plan providers must be provided, in a timely manner, as determined by the commission. The commission must require that the determination be made and the information be provided not later than the 30th day after the date a complete application is submitted on behalf of the child, unless the child is referred for Medicaid application under this section.

(g) The executive commissioner may establish enrollment periods for the child health plan.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(3), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(81), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0201, eff. April 2, 2015.

Sec. 62.105. COVERAGE FOR QUALIFIED ALIENS. The commission shall provide coverage under the state Medicaid program and under the program established under this chapter to a child who is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b), if the federal government authorizes the state to provide that coverage. The commission shall comply with any prerequisite imposed under the federal law to providing that coverage.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.106. SUSPENSION AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES. (a) In this section, "juvenile facility" means a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

(b) To the extent allowed under federal law, if a child is placed in a juvenile facility, the commission shall suspend the child's eligibility for health benefits coverage under the child health plan during the period the child is placed in the facility.

(c) Not later than 48 hours after the commission is notified of the release from a juvenile facility of a child whose eligibility for health benefits coverage under the child health plan has been suspended under this section, the commission shall reinstate the child's eligibility. Following the reinstatement, the child remains eligible until the expiration of the period for which the child was certified as eligible, excluding the period during which the child's eligibility was suspended.

Added by Acts 2015, 84th Leg., R.S., Ch. 862 (H.B. 839), Sec. 1, eff. June 18, 2015.

Sec. 62.107. NOTICE OF CERTAIN PLACEMENTS IN JUVENILE

FACILITIES. (a) In this section:

(1) "Custodian" and "guardian" have the meanings assigned by Section 51.02, Family Code.

(2) "Juvenile facility" has the meaning assigned by Section 62.106.

(b) A juvenile facility may notify the commission on the placement in the facility of a child who is enrolled in the child health plan.

(c) If a juvenile facility chooses to provide the notice described by Subsection (b), the facility shall provide the notice electronically or by other appropriate means as soon as possible, but not later than the 30th day, after the date of the child's placement.

(d) A juvenile facility may notify the commission of the release of a child who, immediately before the child's placement in the facility, was enrolled in the child health plan.

(e) If a juvenile facility chooses to provide the notice described by Subsection (d), the facility shall provide the notice electronically or by other appropriate means not later than 48 hours after the child's release from the facility.

(f) If a juvenile facility chooses to provide the notice described by Subsection (d), at the time of the child's release, the facility shall provide the child's guardian or custodian, as appropriate, with a written copy of the notice and a telephone number at which the commission may be contacted regarding confirmation of or assistance relating to reinstatement of the child's eligibility for health benefits coverage under the child health plan.

(g) The commission shall establish a means by which a juvenile facility, or an employee of the facility, may determine whether a child placed in the facility is or was, as appropriate, enrolled in the child health plan for purposes of this section.

(h) A juvenile facility, or an employee of the facility, is not liable in a civil action for damages resulting from a failure to comply with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 862 (H.B. 839), Sec. 1, eff. June 18, 2015.

SUBCHAPTER D. CHILD HEALTH PLAN

Sec. 62.151. CHILD HEALTH PLAN COVERAGE. (a) The child health

plan must comply with this chapter and the coverage requirements prescribed by 42 U.S.C. Section 1397cc, as amended, and any other applicable law or regulations.

(b) In modifying the covered benefits, the executive commissioner shall consider the health care needs of healthy children and children with special health care needs.

(c) In modifying the plan, the executive commissioner shall ensure that primary and preventive health benefits do not include reproductive services, other than prenatal care and care related to diseases, illnesses, or abnormalities related to the reproductive system.

(d) The child health plan must allow an enrolled child with a chronic, disabling, or life-threatening illness to select an appropriate specialist as a primary care physician.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(b)(2), and Ch. 946 (S.B. 277), Sec. 2.37(c)(2), eff. January 1, 2016.

(f) If the executive commissioner determines the policy to be cost-effective, the executive commissioner may ensure that an enrolled child does not, unless authorized by the commission in consultation with the child's attending physician or advanced practice nurse, receive under the child health plan:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34-day supply of a brand-name prescription drug at any one time.

(g) The child health plan may not provide coverage for services prohibited by Section 161.702 that are intended to transition a child's biological sex as determined by the child's sex organs, chromosomes, and endogenous profiles.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.49, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0202, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(b)(2), eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.37(c)(2),

eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 1, eff. September 1, 2023.

Sec. 62.1511. COVERAGE FOR MATERNAL DEPRESSION SCREENING. (a) In this section, "maternal depression" means depression of any severity with postpartum onset.

(b) The covered services under the child health plan must include a maternal depression screening for an enrollee's mother, regardless of whether the mother is also an enrollee, that is performed during a covered well-child or other office visit for the enrollee that occurs before the enrollee's first birthday.

(c) The executive commissioner shall adopt rules necessary to implement this section. The rules must be based on:

(1) clinical and empirical evidence concerning maternal depression; and

(2) information provided by relevant physicians and behavioral health organizations.

(d) The commission shall seek, accept, and spend any federal funds that are available for the purposes of this section, including priority funding authorized by Section 317L-1 of the Public Health Service Act (42 U.S.C. Section 201 et seq.), as added by the 21st Century Cures Act (Pub. L. No. 114-255).

Added by Acts 2017, 85th Leg., R.S., Ch. 852 (H.B. 2466), Sec. 1, eff. September 1, 2017.

Sec. 62.152. APPLICATION OF INSURANCE LAW. To provide the flexibility necessary to satisfy the requirements of Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan is not subject to a law that requires:

(1) coverage or the offer of coverage of a health care service or benefit;

(2) coverage or the offer of coverage for the provision of services by a particular health care services provider, except as provided by Section 62.155(b); or

(3) the use of a particular policy or contract form or of

particular language in a policy or contract form.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.153. COST SHARING. (a) To the extent permitted under 42 U.S.C. Section 1397cc, as amended, and any other applicable law or regulations, the executive commissioner shall require enrollees to share the cost of the child health plan, including provisions requiring enrollees under the child health plan to pay:

(1) a copayment for services provided under the plan;

(2) an enrollment fee; or

(3) a portion of the plan premium.

(b) Subject to Subsection (d), cost-sharing provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the plan.

(c) If cost-sharing provisions imposed under Subsection (a) include requirements that enrollees pay a portion of the plan premium, the executive commissioner shall specify the manner in which the premium is paid. The commission may require that the premium be paid to the health plan provider.

(d) Cost-sharing provisions adopted under this section may be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.50, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0203, eff. April 2, 2015.

Sec. 62.154. WAITING PERIOD; CROWD OUT. (a) To the extent permitted under Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, and any other applicable law or regulations, the child health plan must include a waiting period and may include copayments and other provisions intended to discourage:

(1) employers and other persons from electing to

discontinue offering coverage for children under employee or other group health benefit plans; and

(2) individuals with access to adequate health benefit plan coverage, other than coverage under the child health plan, from electing not to obtain or to discontinue that coverage for a child.

(b) A child is not subject to a waiting period adopted under Subsection (a) if:

(1) the family lost coverage for the child as a result of:

(A) termination of employment because of a layoff or business closing;

(B) termination of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272);

(C) change in marital status of a parent of the child;

(D) termination of the child's Medicaid eligibility because:

(i) the child's family's earnings or resources increased; or

(ii) the child reached an age at which Medicaid coverage is not available; or

(E) a similar circumstance resulting in the involuntary loss of coverage;

(2) the family terminated health benefits plan coverage for the child because the cost to the child's family for the coverage exceeded 9.5 percent of the family's household income;

(3) the child has access to group-based health benefits plan coverage and is required to participate in the health insurance premium payment reimbursement program administered by the commission;

(4) the commission has determined that other grounds exist for a good cause exception; or

(5) federal law provides that the child is not subject to a waiting period adopted under Subsection (a).

(c) A child described by Subsection (b) may enroll in the child health plan program at any time, without regard to any open enrollment period established under the enrollment procedures.

(d) The waiting period required by Subsection (a) must:

(1) extend for a period of 90 days after the last date on which the applicant was covered under a health benefits plan; and

(2) apply to a child who was covered by a health benefits plan at any time during the 90 days before the date of application

for coverage under the child health plan.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.51(a), (b), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1353 (H.B. 109), Sec. 6, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0204, eff. April 2, 2015.

Sec. 62.155. HEALTH PLAN PROVIDERS. (a) The commission shall select the health plan providers under the program through a competitive procurement process. A health plan provider, other than a state administered primary care case management network, must hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health plan provider to provide the type of child health plan offered and must satisfy, except as provided by this chapter, any applicable requirement of the Insurance Code or another insurance law of this state.

(b) A managed care organization or other entity shall seek to obtain, in the organization's or entity's provider network, the participation of significant traditional providers, as defined by commission rule, if that organization or entity:

(1) contracts with the commission or with another agency or entity to operate a part of the child health plan under this chapter; and

(2) uses a provider network to provide or arrange for health care services under the child health plan.

(c) In selecting a health plan provider, the commission:

(1) may give preference to a person who provides similar coverage under the Medicaid program; and

(2) shall provide for a choice of at least two health plan providers in each service area.

(d) The executive commissioner may authorize an exception to Subsection (c)(2) if there is only one acceptable applicant to become a health plan provider in the service area.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.52, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0205, eff. April 2, 2015.

Sec. 62.1551. INCLUSION OF CERTAIN HEALTH CARE PROVIDERS IN PROVIDER NETWORKS. (a) Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the executive commissioner shall adopt rules to require a managed care organization or other entity to ensure that advanced practice registered nurses and physician assistants are available as primary care providers in the organization's or entity's provider network. The rules must require advanced practice registered nurses and physician assistants to be treated in the same manner as primary care physicians with regard to:

(1) selection and assignment as primary care providers;

(2) inclusion as primary care providers in the provider network; and

(3) inclusion as primary care providers in any provider network directory maintained by the organization or entity.

(b) For purposes of Subsection (a), an advanced practice registered nurse may be included as a primary care provider in a managed care organization's or entity's provider network regardless of whether the physician supervising the advanced practice registered nurse is in the provider network.

(c) This section may not be construed as authorizing a managed care organization or other entity to supervise or control the practice of medicine as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 22, eff. November 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0206, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 302 (S.B. 654), Sec. 2, eff. September 1, 2017.

Sec. 62.156. HEALTH CARE PROVIDERS. Health care providers who provide health care services under the child health plan must satisfy certification and licensure requirements, as required by commission rules and consistent with other law.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0207, eff. April 2, 2015.

Sec. 62.1561. PROHIBITION OF CERTAIN HEALTH CARE PROVIDERS. The executive commissioner shall adopt rules for prohibiting a person from participating in the child health plan program as a health care provider for a reasonable period, as determined by the executive commissioner, if the person:

(1) fails to repay overpayments under the program; or

(2) owns, controls, manages, or is otherwise affiliated with and has financial, managerial, or administrative influence over a provider who has been suspended or prohibited from participating in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 8, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0208, eff. April 2, 2015.

Sec. 62.157. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. (a) In providing covered benefits to a child with special health care needs, a health plan provider must permit benefits to be provided through telemedicine medical services, teledentistry dental services, and telehealth services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services, teledentistry dental services, and telehealth services that are comparable to the same types of covered benefits provided without the use of telemedicine

medical services, teledentistry dental services, and telehealth services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, teledentistry dental services, telehealth services, or any combination of those services, if the executive commissioner determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry dental services, and telehealth services, including the costs of transportation and lodging and other direct costs.

(c) In developing the policies required by Subsection (a), the executive commissioner shall consult with:

(1) The University of Texas Medical Branch at Galveston;

(2) Texas Tech University Health Sciences Center;

(3) the Department of State Health Services;

(4) providers of telemedicine hub sites in this state;

(5) providers of services to children with special health care needs; and

(6) representatives of consumer or disability groups affected by changes to services for children with special health care needs.

Added by Acts 2001, 77th Leg., ch. 959, Sec. 5, eff. June 14, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0209, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 22, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 23, eff. September 1, 2021.

Sec. 62.1571. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) In providing covered benefits to a child, a health plan provider must permit benefits to be provided through telemedicine medical services, teledentistry dental services, and telehealth services in accordance with policies developed by the commission.

(b) The policies must provide for:

(1) the availability of covered benefits appropriately provided through telemedicine medical services, teledentistry dental services, and telehealth services that are comparable to the same types of covered benefits provided without the use of telemedicine medical services, teledentistry dental services, and telehealth services; and

(2) the availability of covered benefits for different services performed by multiple health care providers during a single session of telemedicine medical services, teledentistry dental services, or both services, or of telehealth services, if the executive commissioner determines that delivery of the covered benefits in that manner is cost-effective in comparison to the costs that would be involved in obtaining the services from providers without the use of telemedicine medical services, teledentistry dental services, or telehealth services, including the costs of transportation and lodging and other direct costs.

Text of subsection effective until April 1, 2025

(c) In this section, "teledentistry dental service," "telehealth service," and "telemedicine medical service" have the meanings assigned by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(c) In this section, "teledentistry dental service," "telehealth service," and "telemedicine medical service" have the meanings assigned by Section 521.0001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1255, Sec. 4, eff. June 15, 2001. Redesignated and amended from Health and Safety Code, Section 62.157 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0210, eff. April 2, 2015.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(b)(3), eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.37(c)(3), eff. January 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 624 (H.B. 4), Sec. 7, eff. June 15, 2021.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 24, eff. September 1, 2021.

Reenacted and amended by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B.

4595), Sec. 11.001, eff. September 1, 2023.
Reenacted and amended by Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.31, eff. April 1, 2025.

Sec. 62.158. STATE TAXES. The commission shall ensure that any experience rebate or profit-sharing for health plan providers under the child health plan is calculated by treating premium, maintenance, and other taxes under the Insurance Code and any other taxes payable to this state as allowable expenses for purposes of determining the amount of the experience rebate or profit-sharing.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.53, eff. Sept. 1, 2003.

Sec. 62.159. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist a child manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the executive commissioner identifies populations for which disease management would be cost-effective.

(b) The child health plan must provide disease management services or coverage for disease management services in the manner required by the executive commissioner, including:

(1) patient self-management education;
(2) provider education;
(3) evidence-based models and minimum standards of care;
(4) standardized protocols and participation criteria; and
(5) physician-directed or physician-supervised care.

Added by Acts 2003, 78th Leg., ch. 589, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0211, eff. April 2, 2015.

CHAPTER 63. HEALTH BENEFITS PLAN FOR CERTAIN CHILDREN

Sec. 63.002. NOT AN ENTITLEMENT. This chapter does not establish an entitlement to assistance in obtaining health benefits

for a child.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.003. HEALTH BENEFITS PLAN COVERAGE FOR CERTAIN CHILDREN. The executive commissioner shall develop and implement a program to provide health benefits plan coverage for a child who:

(1) is a qualified alien, as that term is defined by 8 U.S.C. Section 1641(b);

(2) is younger than 19 years of age;

(3) entered the United States after August 22, 1996;

(4) has resided in the United States for less than five years; and

(5) meets the income eligibility requirement of, but is not eligible for assistance under:

(A) the child health plan program under Chapter 62; or

(B) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0212, eff. April 2, 2015.

Sec. 63.004. BENEFITS COVERAGE REQUIRED. To the extent possible, the program required by Section 63.003 must provide benefits comparable to the benefits provided under the child health plan program under Chapter 62.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

Sec. 63.005. HEALTH BENEFITS PLAN PROVIDER. (a) A health benefits plan provider under this chapter must:

(1) hold a certificate of authority or other appropriate license issued by the Texas Department of Insurance that authorizes the health benefits plan provider to provide the type of coverage to be offered through the program required by Section 63.003; and

(2) satisfy, except as provided by Subsection (b), any

other applicable requirement of the Insurance Code or another insurance law of this state.

(b) Except as required by the executive commissioner, a health benefits plan provider under this chapter is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0213, eff. April 2, 2015.

Sec. 63.006. COST-SHARING PAYMENTS. (a) Except as provided by Subsection (b), the executive commissioner may not require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the medical assistance program under Chapter 32, Human Resources Code, to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter.

(b) The executive commissioner may require a child described by Subsection (a) to pay a copayment as a condition of health benefits plan coverage under this chapter that is equal to any copayment required under the child health plan program under Chapter 62.

(c) The executive commissioner may require a child who is provided health benefits plan coverage under Section 63.003 and who meets the income eligibility requirement of the child health plan program under Chapter 62 to pay a premium, deductible, coinsurance, or other cost-sharing payment as a condition of health benefits plan coverage under this chapter. The payment must be equal to any premium, deductible, coinsurance, or other cost-sharing payment required under the child health plan program under Chapter 62.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0214, eff. April 2, 2015.

Sec. 63.007. DISALLOWANCE OF MATCHING FUNDS FROM FEDERAL GOVERNMENT. Expenditures made to provide health benefits plan

coverage under this chapter may not be included for the purpose of determining the state children's health insurance expenditures, as that term is defined by 42 U.S.C. Section 1397ee(d)(2)(B), as amended.

Added by Acts 1999, 76th Leg., ch. 235, Sec. 1, eff. Aug. 30, 1999.

CHAPTER 64. MISCELLANEOUS PROVISIONS

Sec. 64.001. TEACHING HOSPITAL ACCOUNT. The Department of State Health Services state-owned multi-categorical teaching hospital account is an account in the general revenue fund. Money in the account may be appropriated only to the department to provide funding for indigent health care.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 3.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0215, eff. April 2, 2015.

CHAPTER 65. PRESCRIPTION DRUG SAVINGS PROGRAM FOR CERTAIN UNINSURED INDIVIDUALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 65.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual enrolled in the program.

(2) "Fund" means the trust fund established under Section 65.101.

(3) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151, Insurance Code.

(4) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

(5) "Program" means the prescription drug savings program established under this chapter.

(6) "Uninsured individual" means an individual without health benefit plan coverage for a prescription drug benefit.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.002. CONSTRUCTION OF CHAPTER; PURPOSE. (a) This chapter does not establish an entitlement to assistance in obtaining benefits for uninsured individuals.

(b) The purpose of this chapter is to establish a program to provide uninsured individuals access to prescription drug benefits using money from the fund to pay an amount equal to the value of a prescription drug rebate at the point of sale and returning that rebate amount to the fund to ensure the amounts credited to the fund equal the amounts paid from the fund.

(c) This chapter does not expand the Medicaid program.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.003. RULES. The executive commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER B. ESTABLISHMENT AND ADMINISTRATION OF PRESCRIPTION DRUG SAVINGS PROGRAM

Sec. 65.051. ESTABLISHMENT OF PROGRAM. (a) The commission shall develop and design a prescription drug savings program that partners with a pharmacy benefit manager to offer prescription drugs at a discounted rate to uninsured individuals.

(b) In developing and implementing the program, the commission shall ensure the program benefits do not include prescription drugs used for the elective termination of a pregnancy.

(c) The executive commissioner shall ensure the program is designed to provide the greatest possible value to uninsured individuals served by the program, while considering the adequacy of the prescription drug formulary, net costs of the drugs to enrollees, cost to the state, and other important factors determined by the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.052. GENERAL POWERS AND DUTIES OF COMMISSION RELATED TO PROGRAM. (a) The commission shall oversee the implementation of the program and coordinate the activities of each state agency involved in that implementation.

(b) The commission shall design the program to be cost neutral by collecting prescription drug rebates after using money in the fund in amounts equal to the rebate amounts to purchase prescription drugs.

(c) The commission shall develop procedures for accepting applications for program enrollment, including a process to:

(1) determine eligibility, screening, and enrollment procedures that allow applicants to self attest to the extent authorized by federal law; and

(2) resolve disputes related to eligibility determinations.

(d) The commission shall publish on an Internet website all average consumer costs for each prescription drug available through the program.

(e) The commission and the contracted pharmacy benefit manager shall integrate manufacturer and other third-party patient assistance programs into the program to the extent feasible. A manufacturer or other third party may decline to link the manufacturer's or third party's patient assistance program to the program. The commission shall give preference to integrating patient assistance programs by listing information on those patient assistance programs in a central location on the Internet website described by Subsection (d) that directs patients to those patient assistance programs as appropriate.

(f) The commission shall ensure the program has access to an adequate pharmacy network and give preference to conducting the program using a state pharmaceutical assistance program.

(g) The commission is not required to enter into stand-alone contracts under this chapter. The commission may add the program, wholly or partly, to existing contracts to increase efficiency.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.053. PHARMACY BENEFIT MANAGER CONTRACT, MONITORING, AND REPORTING REQUIREMENTS. (a) The commission shall contract with a pharmacy benefit manager to provide discounted prescription drugs to

enrollees under the program.

(b) The commission shall monitor through reporting or other methods the contracted pharmacy benefit manager to ensure performance under the contract and quality delivery of services.

(c) The contracted pharmacy benefit manager shall report to the commission on the commission's request information related to the program, including information on rebate amounts, prescription drug rates contracted with pharmacies, administrative costs, and out-of-pocket costs paid by enrollees at the point of sale of the prescription drugs.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.054. CONTRACT FUNCTIONS. (a) The commission may contract with a third-party administrator or other entity to perform any or all program functions for the commission under this chapter.

(b) A third-party administrator or other entity may perform tasks under a contract entered into under Subsection (a) that would otherwise be performed by the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.055. COMMUNITY OUTREACH CAMPAIGN. The commission shall conduct or contract to conduct a community outreach and education campaign in the form and manner determined by the commission to provide information on the program's availability to eligible individuals.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. TRUST FUND; PROGRAM SUSPENSION

Sec. 65.101. ESTABLISHMENT OF FUND. (a) A trust fund is established outside the state treasury for the purposes of this chapter.

(b) The fund consists of:

(1) gifts, grants, and donations received by this state for the purposes of the fund;

(2) legislative appropriations of money for the purposes of this chapter;

(3) federal money available to this state that by law may be used for the purposes of this chapter; and

(4) interest, dividends, and other income of the fund.

(c) The commission shall administer the fund as trustee for the benefit of the program established by this chapter.

(d) Money in the fund may be used only to administer the program and provide program services.

(e) The commission shall ensure money spent from the fund to assist enrollees in purchasing prescription drugs is cost neutral after collecting the prescription drug rebates under the program.

(f) The commission may solicit and accept gifts, grants, and donations for the fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.102. SUFFICIENT FUNDING REQUIRED. Notwithstanding any other provision of this chapter, the commission is not required to implement the program unless money is provided and by law made available for deposit to the credit of the fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.103. SUSPENSION OF PROGRAM. On the fourth anniversary of the date the program is established, the commission shall suspend the program and seek legislative approval to continue the program unless the ongoing costs of administering the program are fully funded through enrollee cost sharing.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER D. PROGRAM ELIGIBILITY AND ENROLLEE REQUIREMENTS

Sec. 65.151. ELIGIBILITY CRITERIA. (a) Except as provided by Subsection (b), an individual is eligible for benefits under the program if the individual is:

(1) a resident of this state;

(2) a citizen or lawful permanent resident of the United States; and

(3) uninsured, as determined by the commission.

(b) If the commission determines necessary, the commission may consider an applicant's financial vulnerability as an additional factor for determining program eligibility.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.152. COST SHARING. (a) To the extent necessary, the commission shall require enrollees to share the cost of the program, including requiring enrollees to pay a copayment at the point of sale of a prescription drug.

(b) The commission must:

(1) allow an enrollee to pay all or part of the enrollee's share from any source the enrollee selects; and

(2) accept another assistance program if that assistance program wholly or partly covers the enrollee share of the prescription drug cost.

(c) The commission shall require an enrollee to pay a copayment to compensate the pharmacy, pharmacy benefit manager, and commission for the costs of administering the program in accordance with Subsection (d) and under the methodology determined by the commission.

(d) Enrollees shall pay the costs of ongoing administration of the program through an additional charge at the point of sale of an eligible prescription drug only if the total number of enrollees in the program allows for the additional charge to be an amount not to exceed the lesser of:

(1) an amount similar to the amount charged for a prescription drug in other state pharmaceutical assistance programs administered by the commission; or

(2) 10 percent of the total amount charged at the point of sale for the prescription drug.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

SUBCHAPTER E. OPERATION OF PROGRAM

Sec. 65.201. PROGRAM BENEFITS. The commission must approve program benefits offered under this chapter. The commission shall ensure the benefits comply with all applicable federal and state laws, rules, and regulations.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.202. REPORTING. (a) A third-party administrator, pharmacy benefit manager, or any other entity the commission contracts with under Section 65.054 shall report to the commission in the form and manner prescribed by the commission on the benefits and services provided under the program.

(b) The commission shall establish a procedure to monitor the provision of benefits and services under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.203. FRAUD PREVENTION. The executive commissioner by rule shall develop and implement fraud prevention and detection for pharmacy benefit managers, contracted third parties, and other entities involved in the program.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

Sec. 65.204. ANNUAL PROGRAM REPORTS. Not later than December 1 of each year, the commission shall provide a written report to the governor, lieutenant governor, speaker of the house of representatives, and standing committees of the legislature with primary jurisdiction over the program. The report must include:

(1) a line-item list of all program administrative costs

incurred by the commission;

(2) the amount of the pharmacy benefit manager and third-party administrator fees;

(3) the aggregate amounts of rebates anticipated and received for the program; and

(4) other program expenditures as the commission determines appropriate.

Added by Acts 2021, 87th Leg., R.S., Ch. 626 (H.B. 18), Sec. 2, eff. September 1, 2021.

CHAPTER 75. REGIONAL OR LOCAL HEALTH CARE PROGRAMS FOR EMPLOYEES OF SMALL EMPLOYERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 75.001. PURPOSE. The purpose of this chapter is to:

(1) improve the health of employees of small employers and their families by improving the employees' access to health care and by reducing the number of those employees who are uninsured;

(2) reduce the likelihood that those employees and their families will require services from state-funded entitlement programs such as Medicaid;

(3) contribute to economic development by helping small businesses remain competitive with a healthy workforce and health care benefits that will attract employees; and

(4) encourage innovative solutions for providing and funding health care services and benefits.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.002. DEFINITIONS. In this chapter:

(1) "Employee" means an individual employed by an employer. The term includes a partner of a partnership and the proprietor of a sole proprietorship.

(2) "Governing body" means:

(A) the commissioners courts of the counties participating in a regional health care program;

(B) the commissioners court of a county participating in a local health care program; or

(C) the governing body of the joint council, nonprofit entity exempt from federal taxation, or other entity that operates a regional or local health care program.

(3) "Local health care program" means a local health care program operating in one county and established for the benefit of the employees of small employers under Subchapter B.

(4) "Regional health care program" means a regional health care program operating in two or more counties and established for the benefit of the employees of small employers under Subchapter B.

(5) "Small employer" means a person who employed an average of at least two employees but not more than 50 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

SUBCHAPTER B. REGIONAL OR LOCAL HEALTH CARE PROGRAM

Sec. 75.051. ESTABLISHMENT OF PROGRAM; MULTICOUNTY COOPERATION. (a) The commissioners court of a county may, by order, establish or participate in a local health care program under this subchapter.

(b) The commissioners courts of two or more counties may, by joint order, establish or participate in a regional health care program under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.052. GOVERNANCE OF PROGRAM. (a) A regional health care program may be operated subject to the direct governance of the commissioners courts of the participating counties. A local health care program may be operated subject to the direct governance of the commissioners court of the participating county. A regional or local health care program may be operated by a joint council, tax-exempt nonprofit entity, or other entity that:

(1) operates the program under a contract with the commissioners court or courts, as applicable; or

(2) is an entity in which the county or counties participate or that is established or designated by the commissioners

court or courts, as applicable, to operate the program.

(b) In selecting an entity described by Subsection (a)(1) or (2) to operate a regional or local health care program, the commissioners court or courts, as applicable, shall require, to the extent possible, that the entity be authorized under federal law to accept donations on a basis that is tax-deductible or otherwise tax-advantaged for the contributor.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.053. OPERATION OF PROGRAM. A regional or local health care program provides health care services or benefits to the employees of participating small employers who are located within the boundaries of the participating county or counties, as applicable. A program may also provide services or benefits to the dependents of those employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.054. PARTICIPATION BY SMALL EMPLOYERS; SHARE OF COST. Subject to Section 75.153, the governing body may establish criteria for participation in a regional or local health care program by small employers, the employees of the small employers, and their dependents. The criteria must require that participating employers and participating employees pay a share of the premium or other cost of the program.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.055. ADDITIONAL FUNDING. (a) A governing body may accept and use state money made available through an appropriation from the general revenue fund or a gift, grant, or donation from any source to operate the regional or local health care program and to provide services or benefits under the program.

(b) A governing body may apply for and receive funding from the

health opportunity pool trust fund under Subchapter D.

(c) A governing body shall actively solicit gifts, grants, and donations to:

(1) fund services and benefits provided under the regional or local health care program; and

(2) reduce the cost of participation in the program for small employers and their employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

SUBCHAPTER C. HEALTH CARE SERVICES AND BENEFITS

Sec. 75.101. ALTERNATIVE PROGRAMS AUTHORIZED; PROGRAM OBJECTIVES. In developing a regional or local health care program, a governing body may provide health care services or benefits as described by this subchapter or may develop another type of program to accomplish the purposes of this chapter. A regional or local health care program must be developed, to the extent practicable, to:

(1) reduce the number of individuals without health benefit plan coverage within the boundaries of the participating county or counties;

(2) address rising health care costs and reduce the cost of health care services or health benefit plan coverage for small employers and their employees within the boundaries of the participating county or counties;

(3) promote preventive care and reduce the incidence of preventable health conditions, such as heart disease, cancer, and diabetes and low birth weight in infants;

(4) promote efficient and collaborative delivery of health care services;

(5) serve as a model for the innovative use of health information technology to promote efficient delivery of health care services, reduce health care costs, and improve the health of the community; and

(6) provide fair payment rates for health care providers.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.102. HEALTH BENEFIT PLAN COVERAGE. (a) A regional or local health care program may provide health care benefits to the employees of small employers by purchasing or facilitating the purchase of health benefit plan coverage for those employees from a health benefit plan issuer, including coverage under:

(1) a small employer health benefit plan offered under Chapter 1501, Insurance Code;

(2) a standard health benefit plan offered under Chapter 1507, Insurance Code; or

(3) any other health benefit plan available in this state.

(b) The governing body may form one or more cooperatives under Subchapter B, Chapter 1501, Insurance Code.

(c) Notwithstanding Chapter 1251, Insurance Code, an insurer may issue a group accident and health insurance policy, including a group contract issued by a group hospital service corporation, to cover the employees of small employers participating in a regional or local health care program. The group policyholder of a policy issued in accordance with this subsection is the governing body or the designee of the governing body.

(d) A health maintenance organization may issue a health care plan to cover the employees of small employers participating in a regional or local health care program. The group contract holder of a contract issued in accordance with this subsection is the governing body or the designee of the governing body.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.103. OTHER HEALTH BENEFIT PLANS OR PROGRAMS. To the extent authorized by federal law, the governing body may establish or facilitate the establishment of self-funded health benefit plans or may facilitate the provision of health benefit coverage through health savings accounts and high-deductible health plans.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Sec. 75.104. HEALTH CARE SERVICES. (a) A regional or local health care program may contract with health care providers within

the boundaries of the participating county or counties to provide health care services directly to the employees of participating small employers and the dependents of those employees.

(b) A regional or local health care program shall allow any individual who receives state premium assistance to buy into the health benefit plan offered by the regional or local health care program.

(c) A governing body that operates a regional or local health care program under this section may require that participating employees and dependents obtain health care services only from health care providers that contract to provide those services under the program and may limit the health care services provided under the program to services provided within the boundaries of the participating county or counties.

(d) A governing body operating a regional or local health care program operated under this section is not an insurer or health maintenance organization and the program is not subject to regulation by the Texas Department of Insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

SUBCHAPTER D. TEXAS HEALTH OPPORTUNITY POOL FUNDS

Text of section effective until April 1, 2025

Sec. 75.151. DEFINITION. In this subchapter, "health opportunity pool trust fund" means the trust fund established under Subchapter N, Chapter 531, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.32, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 75.151. DEFINITION. In this subchapter, "health opportunity pool trust fund" means the trust fund established under Subchapter D, Chapter 526, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.32, eff. April 1, 2025.

Sec. 75.152. FUNDING AUTHORIZED. Notwithstanding any other law, a regional or local health care program may apply for funding from the health opportunity pool trust fund and the fund may provide funding in accordance with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.

Text of section effective until April 1, 2025

Sec. 75.153. ELIGIBILITY FOR FUNDS; STATEWIDE ELIGIBILITY CRITERIA. To be eligible for funding from money in the health opportunity pool trust fund, a regional or local health care program must:

(1) comply with any requirement imposed under the waiver obtained under Section 531.502, Government Code, including, to the extent applicable, any requirement that health care benefits or services provided under the program be provided in accordance with statewide eligibility criteria; and

(2) provide health care benefits or services under the program to a person receiving premium payment assistance for health benefits coverage through a program established under Section 531.507, Government Code, regardless of whether the person is an employee, or dependent of an employee, of a small employer.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.33, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 75.153. ELIGIBILITY FOR FUNDS; STATEWIDE ELIGIBILITY CRITERIA. To be eligible for funding from money in the health opportunity pool trust fund, a regional or local health care program must:

(1) comply with any requirement imposed under the waiver obtained under Section 526.0152, Government Code, including, to the extent applicable, any requirement that health care benefits or services provided under the program be provided in accordance with statewide eligibility criteria; and

(2) provide health care benefits or services under the program to a person receiving premium payment assistance for health benefits coverage through a program established under Section 526.0157, Government Code, regardless of whether the person is an employee, or dependent of an employee, of a small employer.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 13(a), eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.33, eff. April 1, 2025.

CHAPTER 76. FEDERALLY QUALIFIED HEALTH CENTER PRIMARY CARE ACCESS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. PURPOSES. The purposes of this chapter are to:

(1) increase access to primary care services at federally qualified health centers for low-income or at-risk individuals;

(2) improve the health of the employees of participating employers and their families by improving access to health care;

(3) contribute to economic development by assisting small businesses in remaining competitive through employment of a healthy workforce and provision of health care benefits that attract employees; and

(4) encourage innovative solutions for providing and funding health care services and benefits for participating employees.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.002. DEFINITIONS. In this chapter:

(1) "Department of insurance" means the Texas Department of Insurance.

(2) "Employee" means an individual who is employed by an employer for compensation. The term includes a partner of a partnership and a proprietor of a sole proprietorship.

(3) "Federally qualified health center" has the meaning assigned by 42 U.S.C. Section 1396d(l)(2)(B).

(4) "Program" means a primary care access program a federally qualified health center establishes and operates under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

SUBCHAPTER B. PRIMARY CARE ACCESS PROGRAM

Sec. 76.051. ESTABLISHMENT AND OPERATION OF PROGRAM. (a) A federally qualified health center may establish and operate a primary care access program for the provision of primary care services and benefits directly to the employees of participating employers and their dependents within the service area of the federally qualified health center.

(b) A program operated under this chapter shall, within the service area of the federally qualified health center and to the extent practicable:

(1) reduce the number of individuals who lack access to primary care services;

(2) reduce the cost of primary care services for small business employers and their employees;

(3) promote preventive care and reduce the incidence of preventable health conditions, such as heart disease, cancer, diabetes, and low birth weight in infants;

(4) promote efficient and collaborative delivery of primary care services;

(5) serve as a model for the innovative use of health information technology; and

(6) provide fair payment rates for participating health care providers.

(c) A federally qualified health center may require that

participating employees and dependents obtain primary health care services provided under a program only from health care providers at the federally qualified health center.

(d) A federally qualified health center that operates a program under this subchapter is not subject to regulation by the department of insurance as an insurer or health maintenance organization.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.052. PARTICIPATION BY EMPLOYERS; SHARE OF COST. (a) A federally qualified health center may establish program participation criteria for employers, employees of the employer, and the employees' dependents.

(b) A federally qualified health center may:

(1) require participating employers and their employees to pay a share of the premium or other cost of the primary care services;

(2) contract with a health foundation or other nonprofit organization to support payment of the employer's or employee's share under Subdivision (1); and

(3) screen employees and their dependents for eligibility to enroll in other state programs and for federal subsidies in the health insurance marketplace.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.053. FUNDING. (a) In addition to grants awarded under Subchapter C, a federally qualified health center may accept gifts, grants, or donations from any source to administer and finance the program.

(b) A federally qualified health center shall actively solicit gifts, grants, and donations to:

(1) fund primary care services and benefits provided under the program; and

(2) reduce the cost of participation in the program for employers and their employees.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

SUBCHAPTER C. PRIMARY CARE ACCESS GRANT PROGRAM

Sec. 76.101. GRANT PROGRAM. (a) The department of insurance, in collaboration with the commission, shall establish and administer a grant program to award grants to federally qualified health centers operating a program under this chapter.

(b) In awarding a grant under this section, the department of insurance shall consider whether the program will accomplish the purposes of this chapter and meet the objectives established under Section 76.051(b).

(c) The department of insurance shall establish performance objectives for a grant recipient and monitor whether the recipient meets those objectives.

(d) In addition to money appropriated by the legislature, the department of insurance may accept gifts, grants, or donations from any source to administer and finance the grant program.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

Sec. 76.102. REPORT. Not later than December 1 of each even-numbered year, the department of insurance and the commission shall jointly submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report:

(1) evaluating the success of the program in accomplishing the purposes of this chapter; and

(2) recommending any legislative or other action necessary to facilitate or improve the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 108 (S.B. 2193), Sec. 1, eff. May 19, 2023.

SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES; PUBLIC HEALTH DISASTERS AND EMERGENCIES

CHAPTER 81. COMMUNICABLE DISEASES; PUBLIC HEALTH DISASTERS; PUBLIC HEALTH EMERGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 81.001. SHORT TITLE. This chapter may be cited as the Communicable Disease Prevention and Control Act.

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

Sec. 81.002. RESPONSIBILITY OF STATE AND PUBLIC. The state has a duty to protect the public health. Each person shall act responsibly to prevent and control communicable disease.

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

Sec. 81.003. DEFINITIONS. In this chapter:

(1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(1-a) "Emergency response employee or volunteer" means an individual acting in the course and scope of employment or service as a volunteer as emergency medical service personnel, a peace officer, a detention officer, a county jailer, or a fire fighter.

(1-b) "Designated infection control officer" means the person serving as an entity's designated infection control officer under Section 81.012.

(2) "Health authority" means:

(A) a physician appointed as a health authority under Chapter 121 (Local Public Health Reorganization Act) or the health authority's designee; or

(B) a physician appointed as a regional director under Chapter 121 (Local Public Health Reorganization Act) who performs the duties of a health authority or the regional director's designee.

(3) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of the health of another individual or of an animal; and

(B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(4) "Local health department" means a department created under Chapter 121 (Local Public Health Reorganization Act).

(4-a) "Long-term care facility" means a facility licensed or regulated under Chapter 242, 247, or 252.

Text of subdivision effective until January 1, 2025

(4-b) "Peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure. The term includes a sheriff or constable.

Text of subdivision effective on January 1, 2025

(4-b) "Peace officer" has the meaning assigned by Article 2A.001, Code of Criminal Procedure. The term includes a sheriff or constable.

(5) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

(6) "Public health district" means a district created under Chapter 121 (Local Public Health Reorganization Act).

(7) "Public health disaster" means:

(A) a declaration by the governor of a state of disaster; and

(B) a determination by the commissioner that there exists an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that:

(i) poses a high risk of death or serious harm to the public; and

(ii) creates a substantial risk of harmful public exposure.

(7-a) "Public health emergency" means a determination by the commissioner, evidenced in an emergency order issued by the commissioner, that there exists an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that:

(A) potentially poses a risk of death or severe illness or harm to the public; and

(B) potentially creates a substantial risk of harmful exposure to the public.

(8) "Reportable disease" means a disease or condition included in the list of reportable diseases and includes a disease that is designated as reportable under Section 81.048.

(9) "Resident of this state" means a person who:

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

(B) is not in the state for temporary purposes; and

(C) intends to make a home in this state, which may be demonstrated by the presence of personal effects at a specific abode in the state; employment in the state; possession of a Texas driver's license, motor vehicle registration, voter registration, or other similar documentation; or other pertinent evidence.

(10) "School authority" means:

(A) the superintendent of a public school system or the superintendent's designee; or

(B) the principal or other chief administrative officer of a private school.

(11) "Sexually transmitted disease" means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

(A) produce a disease in, or otherwise impair the health of, either person; or

(B) cause an infection or disease in a fetus in utero or a newborn.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.167, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0216, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 4, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 786 (H.B. 1848), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 861 (S.B. 966), Sec. 3, eff. June 16, 2021.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 8, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.121, eff. January 1, 2025.

Sec. 81.004. ADMINISTRATION OF CHAPTER. (a) The commissioner is responsible for the general statewide administration of this chapter.

(b) The executive commissioner may adopt rules necessary for the effective administration and implementation of this chapter.

(c) A designee of the executive commissioner may exercise a power granted to or perform a duty imposed on the executive commissioner under this chapter except as otherwise required by law.

(d) A designee of the commissioner may exercise a power granted to or perform a duty imposed on the commissioner under this chapter except as otherwise required by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.168, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0217, eff. April 2, 2015.

Sec. 81.005. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

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

Sec. 81.006. FUNDS. The department may seek, receive, and spend appropriations, grants, fees, or donations for the purpose of identifying, reporting, preventing, or controlling communicable diseases or conditions determined to be injurious or to be a threat to the public health subject to any limitations or conditions prescribed by the legislature.

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

Sec. 81.007. LIMITATION ON LIABILITY. A private individual performing duties in compliance with orders or instructions of the

department or a health authority issued under this chapter is not liable for the death of or injury to a person or for damage to property, except in a case of wilful misconduct or gross negligence.

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

Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF INFORMATION. The Texas Animal Health Commission and the Texas A&M University Veterinary Medical Diagnostic Laboratory shall each adopt by rule a memorandum of understanding, adopted also by rule by the executive commissioner, governing the exchange of information on communicable diseases in animals between the department and those entities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0218, eff. April 2, 2015.

Sec. 81.009. EXEMPTION FROM MEDICAL TREATMENT. (a) This chapter does not authorize or require the medical treatment of an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However, the individual may be isolated or quarantined in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.

(b) An exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation under Chapter 418, Government Code (Texas Disaster Act of 1975).

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

Sec. 81.011. REQUEST FOR INFORMATION. In times of emergency or epidemic declared by the commissioner, the department is authorized to request information pertaining to names, dates of birth, and most recent addresses of individuals from the driver's license records of

the Department of Public Safety for the purpose of notification to individuals of the need to receive certain immunizations or diagnostic, evaluation, or treatment services for suspected communicable diseases.

Added by Acts 1991, 72th Leg., ch. 898, Sec. 3, eff. September 1, 1991.
Redesignated from Health and Safety Code Sec. 81.023, subsec. (d) and amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.

Sec. 81.012. DESIGNATED INFECTION CONTROL OFFICER. (a) An entity that employs or uses the services of an emergency response employee or volunteer shall nominate a designated infection control officer and an alternate designated infection control officer to:

(1) receive notification of a potential exposure to a reportable disease from a health care facility;

(2) notify the appropriate health care providers of a potential exposure to a reportable disease;

(3) act as a liaison between the entity's emergency response employees or volunteers who may have been exposed to a reportable disease during the course and scope of employment or service as a volunteer and the destination hospital of the patient who was the source of the potential exposure;

(4) investigate and evaluate an exposure incident, using current evidence-based information on the possible risks of communicable disease presented by the exposure incident; and

(5) monitor all follow-up treatment provided to the affected emergency response employee or volunteer, in accordance with applicable federal, state, and local law.

(b) The executive commissioner by rule shall prescribe the qualifications required for a person to be eligible to be designated as an infection control officer under this section. The qualifications must include a requirement that the person be trained as a health care provider or have training in the control of infectious and communicable diseases.

(c) The entity that employs or uses the services of an emergency response employee or volunteer is responsible for notifying the local health authorities or local health care facilities,

according to any local rules or procedures, that the entity has a designated infection control officer or alternate designated infection control officer.

Added by Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 5, eff. September 1, 2015.

Sec. 81.013. CONSIDERATION OF FEDERAL LAW AND REGULATIONS. The executive commissioner shall review the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Pub. L. No. 111-87) or any successor law and any regulations adopted under the law and determine whether adopting by rule any part of the federal law or regulations is in the best interest of the state to further achieve the purposes of this chapter. If the executive commissioner determines that adopting the federal law or regulations is in the best interest of the state to further achieve the purposes of this chapter, the executive commissioner may by rule adopt all or a part of the federal law or regulations.

Added by Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 5, eff. September 1, 2015.

Sec. 81.014. LONG-TERM CARE FACILITY INFECTION PREVENTION AND CONTROL PROGRAM. Each long-term care facility's infection prevention and control program must include:

(1) monitoring of key infectious agents, including multidrug-resistant organisms; and

(2) procedures for making rapid influenza diagnostic tests available to facility residents.

Added by Acts 2019, 86th Leg., R.S., Ch. 786 (H.B. 1848), Sec. 2, eff. September 1, 2019.

Sec. 81.015. ANTIMICROBIAL STEWARDSHIP REGIONAL ADVISORY COMMITTEES. (a) The department shall establish a regional advisory committee in each public health region designated under Section 121.007 to address antimicrobial stewardship in long-term care facilities and to improve antimicrobial stewardship through

collaborative action.

(b) A regional advisory committee established under this section must include:

(1) physicians;

(2) directors of nursing or equivalent consultants with long-term care facilities;

(3) public health officials knowledgeable about antimicrobial stewardship; and

(4) other interested parties.

Added by Acts 2019, 86th Leg., R.S., Ch. 786 (H.B. 1848), Sec. 2, eff. September 1, 2019.

Text of section as added by Acts 2021, 87th Leg., R.S., Ch. 842 (S.B. 437), Sec. 1

For text of section as added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 1, see other Sec. 81.016.

For expiration of this section, see Subsection (d).

Sec. 81.016. PERSONAL PROTECTIVE EQUIPMENT RESERVE ADVISORY COMMITTEE. (a) In this section, "division" means the Texas Division of Emergency Management.

(b) The division shall establish the Personal Protective Equipment Reserve Advisory Committee composed of the following members appointed by the division:

(1) one representative of an association representing different types of hospitals and health systems;

(2) one representative of an association representing nursing facilities;

(3) one representative of an association representing primary care clinics;

(4) one representative of an association representing nurses;

(5) one representative of an association representing home hospice care providers;

(6) one representative of a statewide association representing physicians;

(7) two representatives of labor organizations that represent essential personnel;

(8) one representative from the personal protective equipment manufacturing industry;

(9) one consumer representative;

(10) one representative from an association representing counties;

(11) one representative of a regional advisory council from one of this state's trauma service areas;

(12) one representative from the department;

(13) one representative from the division; and

(14) one representative from the commission.

(c) The advisory committee shall make recommendations to the division as necessary on:

(1) the procurements needed for a statewide personal protective equipment reserve;

(2) the storage of the equipment in the reserve; and

(3) the distribution of the equipment to health care workers and essential personnel.

(d) This section expires and the advisory committee is abolished September 1, 2023.

Added by Acts 2021, 87th Leg., R.S., Ch. 842 (S.B. 437), Sec. 1, eff. June 16, 2021.

Text of section as added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 1

For text of section as added by Acts 2021, 87th Leg., R.S., Ch. 842 (S.B. 437), Sec. 1, see other Sec. 81.016.

Sec. 81.016. AVAILABILITY OF DATA REGARDING PUBLIC HEALTH DISASTER. During a public health disaster, the department shall timely make available to the public on the department's Internet website, in an easy-to-read format, all available de-identified public health data regarding the public health disaster. The department must present data related to individuals as summary statistics consistent with the confidentiality provisions of Sections 81.046, 161.0073, and 161.008.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. PREVENTION AND PREPAREDNESS

Sec. 81.021. PROTECTION OF PUBLIC HEALTH. The executive commissioner and department shall exercise their powers in matters relating to protecting the public health to prevent the introduction of disease into the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0220, eff. April 2, 2015.

Sec. 81.022. HEALTH EDUCATION. (a) The department may conduct a program of health education for the prevention and control of communicable disease.

(b) The department may contract for presentations to increase the public awareness of individual actions needed to prevent and control communicable disease. The types of presentations include mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, pamphlets, posters, and audiovisual displays.

(c) The department shall recommend a public school health curriculum to the State Board of Education.

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

Sec. 81.023. IMMUNIZATION. (a) The department shall develop immunization requirements for children.

(b) The department shall cooperate with the Department of Family and Protective Services in formulating and implementing the immunization requirements for children admitted to child-care facilities.

(c) The department shall cooperate with the State Board of Education in formulating and implementing immunization requirements for students admitted to public or private primary or secondary schools.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 898, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.075, eff. Sept. 1, 1995; Acts 2003,

78th Leg., ch. 198, Sec. 2.169, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0221, eff. April 2, 2015.

Sec. 81.024. REPORTS BY DEPARTMENT. The department shall provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that the department determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0222, eff. April 2, 2015.

Sec. 81.027. TRAUMA SERVICE AREA REGIONAL ADVISORY COUNCIL DATA COLLECTION AND REPORTING. (a) Each trauma service area regional advisory council shall collect from each hospital located in the regional advisory council's trauma service area the de-identified health care data, including demographic data, necessary for this state and the area to effectively plan for and respond to public health disasters and communicable or infectious disease emergencies in this state. The executive commissioner by rule shall prescribe the data each council must collect under this subsection.

(b) A trauma service area regional advisory council shall:

(1) provide the data collected under Subsection (a) to the department; and

(2) make the data publicly available by:

(A) posting the data on the regional advisory council's Internet website; or

(B) if the regional advisory council does not maintain an Internet website, providing the data in writing on request.

(c) Information collected or maintained under this section that identifies a patient is confidential and exempt from disclosure under Chapter 552, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 866 (S.B. 984), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. REPORTS AND REPORTABLE DISEASES

Sec. 81.041. REPORTABLE DISEASES. (a) The executive commissioner shall identify each communicable disease or health condition that shall be reported under this chapter.

(b) The executive commissioner shall classify each reportable disease according to its nature and the severity of its effect on the public health.

(c) The executive commissioner shall maintain and revise as necessary the list of reportable diseases.

(d) The executive commissioner may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the executive commissioner shall require reports.

(f) In a public health disaster, the commissioner may require reports of communicable diseases or other health conditions from providers without the adoption of a rule or other action by the executive commissioner. The commissioner shall issue appropriate instructions relating to complying with the reporting requirements of this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.170, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0223, eff. April 2, 2015.

Sec. 81.042. PERSONS REQUIRED TO REPORT. (a) A report under Subsection (b), (c), or (d) shall be made to the local health authority.

(b) A dentist or veterinarian licensed to practice in this state or a physician shall report, after the first professional encounter, a patient or animal examined that has or is suspected of having a reportable disease.

(c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The executive commissioner by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.

(d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the executive commissioner, in the jurisdiction in which:

(1) the physician's office is located, if the laboratory examination was requested by a physician; or

(2) the laboratory is located, if the laboratory examination was not requested by a physician.

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

(1) a professional registered nurse;

(2) an administrator or director of a public or private temporary or permanent child-care facility;

(3) an administrator or director of a nursing home, personal care home, adult respite care center, or day activity and health services facility;

(4) an administrator of a home health agency;

(5) an administrator or health official of a public or private institution of higher education;

(6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;

(7) a superintendent, manager, or health official of a public or private camp, home, or institution;

(8) a parent, guardian, or householder;

(9) a health professional;

(10) an administrator or health official of a penal or correctional institution; or

(11) emergency medical service personnel, a peace officer,

or a firefighter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.171, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1312, Sec. 7, eff. June 21, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 14, eff. September 1, 2012.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0224, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 2, eff. June 19, 2015.

Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY. (a) Each health authority shall keep a record of each case of a reportable disease that is reported to the authority.
(b) A health authority shall report reportable diseases to the department's central office at least as frequently as the interval set by department rule.
(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(28), eff. April 2, 2015.
(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(28), eff. April 2, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.172, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 1, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0225, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(28), eff. April 2, 2015.

Sec. 81.044. REPORTING PROCEDURES. (a) The executive commissioner shall prescribe the form and method of reporting under this chapter by electronic data transmission, through a health information exchange as defined by Section 182.151 if requested and authorized by the person required to report, or by other means.

(b) The executive commissioner may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the patient's name, address, age, sex, race, and occupation;

(2) the date of onset of the disease or condition;

(3) the probable source of infection; and

(4) the name of the attending physician or dentist.

(b-1) In this subsection, "cycle threshold value" means for a communicable disease test the number of thermal cycles required for the fluorescent signal to exceed that of the background and cross the threshold for a positive test. The executive commissioner shall require the reports of polymerase chain reaction tests from clinical or hospital laboratories to contain the cycle threshold values and their reference ranges.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the reporting procedure would cause the information to be unduly delayed.

(d) For a case of acquired immune deficiency syndrome or human immunodeficiency virus infection, the executive commissioner shall require the reports to contain:

(1) the information described by Subsection (b); and

(2) the patient's ethnicity, national origin, and city and county of residence.

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

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0226, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 4, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 10, eff. June 16, 2021.

Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 2, eff. September 1, 2021.

Sec. 81.0443. STANDARDIZED INFORMATION SHARING METHOD. The department shall collaborate with local health authorities, hospitals, laboratories, and other persons who submit information to the department during a public health disaster or in response to other outbreaks of communicable disease to plan, design, and implement a standardized and streamlined method for sharing information needed during the disaster or response. The department may require a person submitting information to the department under this subchapter to use the method developed under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.0444. HOSPITAL TO REPORT. A hospital shall report to the department and to the applicable trauma service area regional advisory council all information required by the department related to a reportable disease for which a public health disaster is declared.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.0445. PROVISION OF INFORMATION TO PUBLIC DURING PUBLIC HEALTH DISASTER. (a) This section applies only to information related to a reportable disease for which a public health disaster is declared.

(b) The department and each trauma service area regional advisory council shall make publicly available in accordance with Subsection (c) the information a hospital is required to report to the department and regional advisory council under Section 81.0444. The department and each regional advisory council shall ensure that information released under this subsection does not contain any personally identifiable information.

(c) The department shall collaborate and coordinate with local health departments to ensure that all information covering a reporting period is released to the public in a timely manner.

(d) The department shall develop and publish on its Internet website monthly compliance reports for laboratories reporting during a public health disaster. Each compliance report, at a minimum, must

include:

(1) the number of laboratory reports the department receives by electronic data transmission;

(2) the number of incomplete information fields in the laboratory reports;

(3) the electronic format each laboratory used in submitting information;

(4) the number of coding errors in the laboratory reports; and

(5) the average length of time from the date the specimen is collected to the date the department receives the corresponding laboratory report.

(e) The department shall develop and publish on its Internet website monthly compliance reports for hospitals reporting during a public health disaster. Each compliance report, at a minimum, must include:

(1) the number of incomplete information fields in the hospital reports;

(2) the number of reports a hospital failed to submit in a timely manner; and

(3) the number of identified inaccuracies in the information submitted.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.045. REPORTS OF DEATH. (a) A physician who attends a person during the person's last illness shall immediately notify the health authority of the jurisdiction in which the person's death is pronounced or the department if the physician knows or suspects that the person died of a reportable disease or other communicable disease that the physician believes may be a threat to the public health.

(b) An attending physician or health authority, with consent of the survivors, may request an autopsy if the physician or health authority needs further information concerning the cause of death in order to protect the public health. The health authority shall order the autopsy to determine the cause of death if there are no survivors or the survivors withhold consent to the autopsy. The autopsy results shall be reported to the department.

(c) A justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a person's cause of death was a reportable disease or other communicable disease that the coroner or medical examiner believes may be a threat to the public health shall immediately notify the health authority of the jurisdiction in which the finding is made or the department.

(d) If the department provides to a health authority, who serves in that office part-time as described by Section 121.0245, information on a death from a reportable or other communicable disease reported to the department under this section, the department shall also provide the information to the director of the local health department for the county served by the health authority.

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

Acts 2021, 87th Leg., R.S., Ch. 566 (S.B. 464), Sec. 1, eff. June 14, 2021.

Sec. 81.046. CONFIDENTIALITY. (a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by:

(1) Subsections (c), (c-1), (d), and (f); and

(2) Section 181.060.

(c) Medical or epidemiological information, including information linking a person who is exposed to a person with a communicable disease, may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the

information;

(3) to medical personnel treating the individual, appropriate state agencies in this state or another state, a health authority or local health department in this state or another state, or federal, county, or district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions or under another state or federal law that expressly authorizes the disclosure of this information;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention, but, except as provided under Subsection (c-3), the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition;

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information;

(6) to a designated infection control officer;

(7) to governmental entities that provide first responders who may respond to a situation involving a potential communicable disease of concern and need the information to properly respond to the situation; or

(8) to a local health department or health authority for a designated monitoring period based on the potential risk for developing symptoms of a communicable disease of concern.

(c-1) A local health department or health authority shall provide to first responders the physical address of a person who is being monitored by the local department or authority for a communicable disease for the duration of the disease's incubation period. The local health department, health authority, or other governmental entity, as applicable, shall remove the person's physical address from any computer-aided dispatch system after the monitoring period expires.

(c-2) Only the minimum necessary information may be released under Subsections (c)(6) and (7) and (c-1), as determined by a health authority, local health department, governmental entity, or department.

(c-3) The following medical or epidemiological information

relating to a person who has or is suspected of having a present or potential health condition resulting from exposure to a high consequence communicable disease as defined by the department, including the Zika virus, may be released to an appropriate federal agency:

(1) the name, address, sex, race, and occupation of the person;

(2) the date of the onset of the health condition;

(3) the probable source of infection or exposure; and

(4) other requested information relating to the case or suspected case of the infection.

(d) In a case of sexually transmitted disease involving a minor under 14 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 261, Family Code. This subsection does not affect a person's duty to report child abuse or neglect under Subchapter B, Chapter 261, Family Code, except that information made confidential by this chapter may not be released. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(e) A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent.

(f) Reports, records, and information relating to cases or suspected cases of diseases or health conditions may be released to the extent necessary during a public health disaster, including an outbreak of a communicable disease, to law enforcement personnel and first responders solely for the purpose of protecting the health or life of a first responder or the person identified in the report, record, or information. Only the minimum necessary information may be released under this subsection, as determined by the health authority, the local health department, or the department.

(g) A judge of a county or district court may issue a protective order or take other action to limit disclosure of medical or epidemiological information obtained under this section before that information is entered into evidence or otherwise disclosed in a

court proceeding.

(h) For purposes of this section, "first responder" has the meaning assigned by Section 421.095, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.39, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.173, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 788 (S.B. 1171), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 789 (H.B. 2646), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 9.001, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(25), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 29, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1087 (H.B. 3576), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1087 (H.B. 3576), Sec. 2, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 95 (S.B. 930), Sec. 1, eff. September 1, 2021.

Sec. 81.047. EPIDEMIOLOGICAL REPORTS. Subject to the confidentiality requirements of this chapter, the department shall require epidemiological reports of disease outbreaks and of individual cases of disease suspected or known to be of importance to the public health. The department shall evaluate the reports to determine the trends involved and the nature and magnitude of the hazards.

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

Sec. 81.048. NOTIFICATION OF EMERGENCY RESPONSE EMPLOYEE OR

VOLUNTEER. (a) The executive commissioner shall:

(1) designate certain reportable diseases for notification under this section; and

(2) define the conditions that constitute possible exposure to those diseases.

(b) Notice of a positive or negative test result for a reportable disease designated under Subsection (a) shall be given to an emergency response employee or volunteer as provided by this section if:

(1) the emergency response employee or volunteer delivered a person to a hospital as defined by Section 74.001, Civil Practice and Remedies Code;

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the disease when the person was admitted to the hospital; and

(3) the emergency response employee or volunteer was exposed to the reportable disease during the course and scope of the person's employment or service as a volunteer.

(c) Notice of the possible exposure shall be given:

(1) by the hospital to the local health authority;

(2) by the hospital to the designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer; and

(3) by the local health authority or the designated infection control officer of the entity that employs or uses the services of the affected emergency response employee or volunteer to the employee or volunteer affected.

(d) A person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this chapter.

(e) A person is not liable for good faith compliance with this section.

(f) This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital.

(g) A hospital that gives notice of a possible exposure under Subsection (c) or a local health authority or designated infection control officer that receives notice of a possible exposure under Subsection (c) may give notice of the possible exposure to a person other than the affected emergency response employee or volunteer if

the person demonstrates that the person was exposed to the reportable disease while providing emergency care. The executive commissioner shall adopt rules to implement this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 135 (H.B. 738), Sec. 1, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 243 (H.B. 162), Sec. 2, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0227, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 7, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 8, eff. September 1, 2015.

Sec. 81.049. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly fails to report a reportable disease or health condition under this subchapter.
(b) An offense under this section is a Class B misdemeanor.

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

Sec. 81.0495. FAILURE TO REPORT; CIVIL PENALTY. (a) The department may impose a civil penalty of not more than $1,000 on a health care facility for each failure to submit a report required under this subchapter.
(b) The attorney general may bring an action to recover a civil penalty imposed under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

Sec. 81.050. MANDATORY TESTING OF PERSONS SUSPECTED OF EXPOSING CERTAIN OTHER PERSONS TO REPORTABLE DISEASES, INCLUDING HIV INFECTION. (a) The executive commissioner by rule shall prescribe the criteria that constitute exposure to reportable diseases. The

criteria must be based on activities that the United States Public Health Service determines pose a risk of infection.

(b) A person whose occupation or whose volunteer service is included in one or more of the following categories may request the department or a health authority to order testing of another person who may have exposed the person to a reportable disease:

(1) a law enforcement officer;

(2) a fire fighter;

(3) an emergency medical service employee or paramedic;

(4) a correctional officer;

(5) an employee, contractor, or volunteer, other than a correctional officer, who performs a service in a correctional facility as defined by Section 1.07, Penal Code, or a secure correctional facility or secure detention facility as defined by Section 51.02, Family Code;

(6) an employee of a juvenile probation department; or

(7) any other emergency response employee or volunteer.

(c) A request under this section may be made only if the person:

(1) has experienced the exposure in the course of the person's employment or volunteer service;

(2) believes that the exposure places the person at risk of a reportable disease; and

(3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

(d) The department or the department's designee who meets the minimum training requirements prescribed by department rule shall review the person's request and inform the person whether the request meets the criteria establishing risk of infection with a reportable disease.

(e) The department or the department's designee shall give the person who is subject to the order prompt and confidential written notice of the order. The order must:

(1) state the grounds and provisions of the order, including the factual basis for its issuance;

(2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases; and

(3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the

test.

(f) If the person who is subject to the order refuses to comply, the prosecuting attorney who represents the state in district court, on request of the department or the department's designee, shall petition the district court for a hearing on the order. The person who is subject to the order has the right to an attorney at the hearing, and the court shall appoint an attorney for a person who cannot afford legal representation. The person may not waive the right to an attorney unless the person has consulted with an attorney.

(g) In reviewing the order, the court shall determine whether exposure occurred and whether that exposure presents a possible risk of infection as defined by department rule. The attorney for the state and the attorney for the person subject to the order may introduce evidence at the hearing in support of or opposition to the testing of the person. On conclusion of the hearing, the court shall either issue an appropriate order requiring counseling and testing of the person for reportable diseases or refuse to issue the order if the court has determined that the counseling and testing of the person is unnecessary. The court may assess court costs against the person who requested the test if the court finds that there was not reasonable cause for the request.

(h) The department or the department's designee shall inform the person who requested the order and the designated infection control officer of the person who requested the order, if that person is an emergency response employee or volunteer, of the results of the test. If the person subject to the order is found to have a reportable disease, the department or the department's designee shall inform that person and the person who requested the order of the need for medical follow-up and counseling services. The department or the department's designee shall develop protocols for coding test specimens to ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete.

(i) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(28), eff. April 2, 2015.

(j) For the purpose of qualifying for workers' compensation or any other similar benefits for compensation, an employee who claims a possible work-related exposure to a reportable disease must provide the employer with a sworn affidavit of the date and circumstances of the exposure and document that, not later than the 10th day after the

date of the exposure, the employee had a test result that indicated an absence of the reportable disease.

(k) A person listed in Subsection (b) who may have been exposed to a reportable disease may not be required to be tested.

(l) In this section, "test result" has the meaning assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 17, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 320 (S.B. 665), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 925 (H.B. 3005), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0228, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(28), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 9, eff. September 1, 2015.

Sec. 81.051. PARTNER NOTIFICATION PROGRAMS; HIV INFECTION. (a) The department shall establish programs for partner notification and referral services.

(b) The partner notification services offered by health care providers participating in a program shall be made available and easily accessible to all persons with clinically validated HIV seropositive status.

(c) If a person with HIV infection voluntarily discloses the name of a partner, that information is confidential. Partner names may be used only for field investigation and notification.

(d) An employee of a partner notification program shall make the notification. The employee shall inform the person who is named as a partner of the:

(1) methods of transmission and prevention of HIV infection;

(2) telephone numbers and addresses of HIV antibody testing sites; and

(3) existence of local HIV support groups, mental health services, and medical facilities.

(e) The employee may not disclose:

(1) the name of or other identifying information concerning the identity of the person who gave the partner's name; or

(2) the date or period of the partner's exposure.

(f) If the person with HIV infection also makes the notification, the person should provide the information listed in Subsection (d).

(g) A partner notification program shall be carried out as follows:

(1) a partner notification program shall make the notification of a partner of a person with HIV infection in the manner authorized by this section regardless of whether the person with HIV infection who gave the partner's name consents to the notification; and

(2) a health care professional shall notify the partner notification program when the health care professional knows the HIV+ status of a patient and the health care professional has actual knowledge of possible transmission of HIV to a third party. Such notification shall be carried out in the manner authorized in this section and Section 81.103.

(h) A health care professional who fails to make the notification required by Subsection (g) is immune from civil or criminal liability for failure to make that notification.

(i) A partner notification program shall provide counseling, testing, or referral services to a person with HIV infection regardless of whether the person discloses the names of any partners.

(j) A partner notification program shall routinely evaluate the performance of counselors and other program personnel to ensure that high quality services are being delivered. A program shall adopt quality assurance and training guidelines according to recommendations of the Centers for Disease Control and Prevention of the United States Public Health Service for professionals participating in the program.

(k) In this section, "HIV" has the meaning assigned by Section 81.101.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 18, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 622, Sec. 1, eff. June 14, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0229, eff.

April 2, 2015.

Sec. 81.052. REPORTS AND ANALYSES CONCERNING AIDS AND HIV INFECTION. (a) The department shall ensure timely and accurate reporting under this chapter of information relating to acquired immune deficiency syndrome and human immunodeficiency virus infection.

(b) The department shall:

(1) quarterly compile the information submitted under Section 81.043(c) and make the compiled data available to the public within six months of the last day of each quarter;

(2) annually analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, city, county, age, gender, race, ethnicity, national origin, transmission category, and other factors as appropriate; and

(3) annually prepare a report on the analysis conducted under Subdivision (2) and make the report available to the public.

(b-1) The department may not include any information that would allow the identification of an individual in an analysis conducted under Subsection (b) or in a report prepared under that subsection.

(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.

(d) The department shall make available epidemiologic projections and other analyses, including comparisons of Texas and national trends, to state and local agencies for use in planning, developing, and evaluating AIDS and HIV-related programs and services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 19, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 447 (H.B. 246), Sec. 3, eff. September 1, 2007.

Sec. 81.053. DATA QUALITY ASSURANCE. The department shall implement quality assurance procedures to ensure that data collected and reported for a public health disaster is systematically reviewed for errors and completeness. The department shall implement procedures to timely resolve any deficiencies in data collection and

reporting.

Added by Acts 2021, 87th Leg., R.S., Ch. 864 (S.B. 969), Sec. 3, eff. September 1, 2021.

SUBCHAPTER D. INVESTIGATION AND INSPECTION

Sec. 81.061. INVESTIGATION. (a) The department shall investigate the causes and effects of communicable disease and methods of prevention.

(b) The department may require special investigations of specified cases of disease to evaluate the status in this state of epidemic, endemic, or sporadic diseases. Each health authority shall provide information on request according to the department's written instructions.

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and potential effects on the health of individuals and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department's written instructions.

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

Acts 2017, 85th Leg., R.S., Ch. 1087 (H.B. 3576), Sec. 3, eff. September 1, 2017.

Sec. 81.062. WITNESSES; DOCUMENTS. (a) For the purpose of an investigation under Section 81.061(c), the department may administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. The department may request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section conducted outside the witness's or deponent's county of residence is entitled to a travel and per diem allowance. The executive commissioner by rule shall set the

allowance in an amount not to exceed the travel and per diem allowance authorized for state employees traveling in this state on official business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0230, eff. April 2, 2015.

Sec. 81.063. SAMPLES. (a) A person authorized to conduct an investigation under this subchapter may take samples of materials present on the premises, including soil, water, air, unprocessed or processed foodstuffs, manufactured clothing, pharmaceuticals, and household goods.

(b) A person who takes a sample under this section shall offer a corresponding sample to the person in control of the premises for independent analysis.

(c) A person who takes a sample under this section may reimburse or offer to reimburse the owner for the materials taken. The reimbursement may not exceed the actual monetary loss to the owner.

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

Sec. 81.064. INSPECTION. (a) The department or a health authority may enter at reasonable times and inspect within reasonable limits a public place in the performance of that person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules adopted under this chapter.

(b) In this section, "a public place" means all or any portion of an area, building or other structure, or conveyance that is not used for private residential purposes, regardless of ownership.

(c) Evidence gathered during an inspection by the department or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

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

by Acts 2003, 78th Leg., ch. 198, Sec. 2.174, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0231, eff. April 2, 2015.

Sec. 81.065. RIGHT OF ENTRY. (a) For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine instituted by the commissioner, an employee of the department, or a health authority or instituted voluntarily on instructions of a private physician.

(b) Evidence gathered during an entry by the commissioner, department, or health authority under this section may not be used in a criminal proceeding other than a proceeding to assess a criminal penalty under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.175, eff. Sept. 1, 2003.

Sec. 81.066. CONCEALING COMMUNICABLE DISEASE OR EXPOSURE TO COMMUNICABLE DISEASE; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals or attempts to conceal from the department, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or

(2) a minor child or incompetent adult of whom the person is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.176, eff. Sept. 1, 2003.

Sec. 81.067. CONCEALING, REMOVING, OR DISPOSING OF AN INFECTED

OR CONTAMINATED ANIMAL, OBJECT, VEHICLE, WATERCRAFT, OR AIRCRAFT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation under this chapter by the department, a health authority, or a peace officer.

(b) An offense under this Section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.177, eff. Sept. 1, 2003.

Sec. 81.068. REFUSING ENTRY OR INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the department, a health authority, or a peace officer on presentation of a valid search warrant to investigate, inspect, or take samples on premises controlled by the person or by an agent of the person acting on the person's instruction.

(b) A person commits an offense if the person knowingly refuses or attempts to refuse inspection under Section 81.064 or entry or access under Section 81.065.

(c) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.178, eff. Sept. 1, 2003.

SUBCHAPTER E. CONTROL; PUBLIC HEALTH DISASTERS; PUBLIC HEALTH EMERGENCIES

Sec. 81.081. DEPARTMENT'S DUTY. The department is the preemptive authority for purposes of this chapter and shall coordinate statewide or regional efforts to protect public health. The department shall collaborate with local elected officials, including county and municipal officials, to prevent the spread of disease and protect the public health.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0232, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 11, eff. June 16, 2021.

Sec. 81.0813. AUTHORITY TO DECLARE PUBLIC HEALTH DISASTER OR ORDER PUBLIC HEALTH EMERGENCY. (a) The commissioner may declare a statewide or regional public health disaster or order a statewide or regional public health emergency if the commissioner determines an occurrence or threat to public health is imminent. The commissioner may declare a public health disaster only if the governor declares a state of disaster under Chapter 418, Government Code, for the occurrence or threat.

(b) Except as provided by Subsection (c), a public health disaster or public health emergency continues until the governor or commissioner terminates the disaster or emergency on a finding that:

(1) the threat or danger has passed; or

(2) the disaster or emergency has been managed to the extent emergency conditions no longer exist.

(c) A public health disaster or public health emergency expires on the 30th day after the date the disaster or emergency is declared or ordered by the commissioner. A public health disaster may only be renewed by the legislature or by the commissioner with the approval of a designated legislative oversight board that has been granted authority under a statute enacted by the legislature to approve the renewal of a public health disaster declaration. Each renewal period may not exceed 30 days.

(d) A declaration or order issued under this section must include:

(1) a description of the nature of the disaster or emergency;

(2) a designation of the area threatened by the disaster or emergency;

(3) a description of the condition that created the disaster or emergency; and

(4) if applicable:

(A) the reason for renewing the disaster or emergency; or

(B) the reason for terminating the disaster or emergency.

(e) A declaration or order issued under this section must be

disseminated promptly by means intended to bring its contents to the public's attention. A statewide or regional declaration or order shall be filed promptly with the office of the governor and the secretary of state. A regional declaration or order shall be filed with the county clerk or municipal secretary in each area to which it applies, unless the circumstances attendant on the disaster or emergency prevent or impede the filing.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 12, eff. June 16, 2021.

Sec. 81.0814. CONSULTATION WITH TASK FORCE ON INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE. After declaring a public health disaster or ordering a public health emergency, the commissioner shall consult with the Task Force on Infectious Disease Preparedness and Response, including any subcommittee the task force forms to aid in the rapid assessment of response efforts.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 12, eff. June 16, 2021.

Sec. 81.0815. FAILURE TO REPORT; CIVIL PENALTY. (a) A health care facility that fails to submit a report required by the department under a public health disaster is liable to this state for a civil penalty of not more than $1,000 for each failure.

(b) The attorney general at the request of the department may bring an action to collect a civil penalty imposed under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 12, eff. June 16, 2021.

Sec. 81.082. ADMINISTRATION OF CONTROL MEASURES. (a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the department. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure

standards in rules adopted by the executive commissioner.

(b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the department if the department finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

(c) The control measures may be imposed on an individual, animal, place, or object, as appropriate.

(c-1) A health authority may designate health care facilities within the health authority's jurisdiction that are capable of providing services for the examination, observation, quarantine, isolation, treatment, or imposition of control measures during a public health disaster or during an area quarantine under Section 81.085. A health authority may not designate a nursing facility or other institution licensed under Chapter 242.

(d) A declaration of a public health disaster or an order of public health emergency may continue for not more than 30 days after the date the disaster or emergency is declared or ordered by the commissioner. A public health disaster may be renewed by the legislature or by the commissioner with the approval of the legislative public health oversight board established under Section 81.0821 for an additional 30 days. A public health emergency order may be renewed by the commissioner for an additional 30 days. Each renewal period may not exceed 30 days.

(d-1) Notwithstanding Subsection (d), if the legislature or the legislative public health oversight board is unable to meet to consider the renewal of a declaration of a public health disaster, the declaration shall continue until the legislature or board meets unless the declaration is terminated by the commissioner or governor.

(d-2) Not later than the seventh day after the date the commissioner issues an initial declaration of a public health disaster or an order of a public health emergency, the commissioner shall consult with the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over public health regarding the disaster or emergency.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 17, eff. June 16, 2021.

(f) In this section, "control measures" includes:

(1) immunization;
(2) detention;
(3) restriction;
(4) disinfection;
(5) decontamination;
(6) isolation;
(7) quarantine;
(8) disinfestation;
(9) chemoprophylaxis;
(10) preventive therapy;
(11) prevention; and
(12) education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 20, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 198, Sec. 2.179, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.01, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0233, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 861 (S.B. 966), Sec. 5, eff. June 16, 2021.
Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 17, eff. June 16, 2021.

Sec. 81.0821. LEGISLATIVE PUBLIC HEALTH OVERSIGHT BOARD. (a) In this section, "board" means the legislative public health oversight board established under this section.
(b) The legislative public health oversight board is established to provide oversight for declarations of public health disasters and orders of public health emergencies issued by the commissioner under this chapter and perform other duties required by law.
(c) The board consists of the following members:
(1) the lieutenant governor;
(2) the speaker of the house of representatives;
(3) the chair of the Senate Committee on Finance or its successor;

(4) the chair of the Senate Committee on State Affairs or its successor;

(5) the chair of the Senate Committee on Health and Human Services or its successor;

(6) the chair of the Senate Committee on Education or its successor;

(7) the chair of the House Committee on Appropriations or its successor;

(8) the chair of the House Committee on State Affairs or its successor;

(9) the chair of the House Committee on Public Health or its successor;

(10) the chair of the House Committee on Public Education or its successor;

(11) two additional members of the senate appointed by the lieutenant governor; and

(12) two additional members of the house appointed by the speaker.

(d) The lieutenant governor and the speaker of the house of representatives are joint chairs of the board.

(e) A majority of the members of the board from each house of the legislature constitutes a quorum to transact business. If a quorum is present, the board by majority vote may act on any matter within the board's jurisdiction.

(f) The board shall meet as often as necessary to perform the board's duties. Meetings may be held at any time at the request of either chair or on written petition of a majority of the board members from each house of the legislature.

(g) The board shall meet in Austin, except that if a majority of the board members from each house of the legislature agree, the committee may meet in any location determined by the board.

(h) As an exception to Chapter 551, Government Code, and other law, for a meeting in Austin at which both joint chairs of the board are physically present, any number of the other board members may attend the meeting by use of telephone conference call, video conference call, or other similar telecommunication device. This subsection applies for purposes of establishing a quorum or voting or any other purpose allowing the members to fully participate in any board meeting. This subsection applies without regard to the subject or topics considered by the members at the meeting.

(i) A board meeting held by use of telephone conference call, video conference call, or other similar telecommunication device:

(1) is subject to the notice requirements applicable to other meetings;

(2) must specify in the notice of the meeting the location in Austin at which the joint chairs will be physically present;

(3) must be open to the public and audible to the public at the location specified in the notice under Subdivision (2); and

(4) must provide two-way audio communication between all board members attending the meeting during the entire meeting, and if the two-way audio communication link with any member attending the meeting is disrupted at any time, the meeting may not continue until the two-way audio communication link is reestablished.

Added by Acts 2021, 87th Leg., R.S., Ch. 861 (S.B. 966), Sec. 6, eff. June 16, 2021.

Sec. 81.083. APPLICATION OF CONTROL MEASURES TO INDIVIDUAL. (a) Any person, including a physician, who examines or treats an individual who has a communicable disease shall instruct the individual about:

(1) measures for preventing reinfection and spread of the disease; and

(2) the necessity for treatment until the individual is cured or free from the infection.

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in

the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; or

(2) a public health disaster exists, regardless of whether the department or health authority has issued a written order and the individual has indicated that the individual will not voluntarily comply with control measures.

(f) An individual who is the subject of court orders under Subchapter G shall pay the expense of the required medical care and treatment except as provided by Subsections (g)-(i).

(g) A county or hospital district shall pay the medical expenses of a resident of the county or hospital district who is:

(1) indigent and without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility.

(h) The state may pay the medical expenses of a nonresident individual who is:

(1) indigent and without the financial means to pay for part or all of the required medical care and treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program.

(i) The provider of the medical care and treatment under Subsection (h) shall certify the reasonable amount of the required medical care to the comptroller. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount.

(j) The department may:

(1) return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in

which the individual resides; and

(2) enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.

(k) If the department or a health authority has reasonable cause to believe that a group of five or more individuals has been exposed to or infected with a communicable disease, the department or health authority may order the members of the group to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state. If the department or health authority adopts control measures under this subsection, each member of the group is subject to the requirements of this section.

(l) An order under Subsection (k) must be in writing and be delivered personally or by registered or certified mail to each member of the group, or the member's parent, legal guardian, or managing conservator if the member is a minor. If the name, address, and county of residence of any member of the group is unknown at the time the order is issued, the department or health authority must publish notice in a newspaper of general circulation in the county that includes the area of the suspected exposure and any other county in which the department or health authority suspects a member of the group resides. The notice must contain the following information:

(1) that the department or health authority has reasonable cause to believe that a group of individuals is ill with, has been exposed to, or is the carrier of a communicable disease;

(2) the suspected time and place of exposure to the disease;

(3) a copy of any orders under Subsection (k);

(4) instructions to an individual to provide the individual's name, address, and county of residence to the department or health authority if the individual knows or reasonably suspects that the individual was at the place of the suspected exposure at the time of the suspected exposure;

(5) that the department or health authority may request that an application for court orders under Subchapter G be filed for the group, if applicable; and

(6) that a criminal penalty applies to an individual who:

(A) is a member of the group; and

(B) knowingly refuses to perform or allow the

performance of the control measures in the order.

(m) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure the members of a group subject to an order issued under Subsection (k); and

(2) except as directed by the department or health authority, prevent the members from leaving the group or other individuals from joining the group.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.180, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.02, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 2, eff. June 14, 2013.

Sec. 81.084. APPLICATION OF CONTROL MEASURES TO PROPERTY. (a) If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for the period necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The department or health authority may tag an object for identification with a notice of possible infection or contamination.

(b) The department or health authority shall send notice of its action by registered or certified mail or by personal delivery to the person who owns or controls the property. If the property is land or a structure or an animal or other property on the land, the department or health authority shall also post the notice on the land and at a place convenient to the public in the county courthouse. If the property is infected or contaminated as a result of a public health disaster, the department or health authority is not required to provide notice under this subsection.

(c) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the property is found not to be infected or

contaminated. The department or health authority by written order may require the person who owns or controls the property to impose control measures that are technically feasible to disinfect or decontaminate the property if the property is found to be infected or contaminated.

(d) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the control measures are effective. If the control measures are ineffective or if there is not a technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the quarantine is removed by the department or health authority.

(d-1) In a public health disaster, the department or health authority by written order may require a person who owns or controls property to impose control measures that are technically feasible to disinfect or decontaminate the property or, if technically feasible control measures are not available, may order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the department or health authority authorizes entry into the structure or property.

(e) The department or health authority may petition the county or district court of the county in which the property is located for

orders necessary for public health if:

(1) a person fails or refuses to comply with the orders of the department or health authority as required by this section; and

(2) the department or health authority has reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health.

(f) After the filing of a petition, the court may grant injunctive relief for the health and safety of the public.

(g) The person who owns or controls the property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may require the person who owns or controls the property to execute a bond in an amount set by the court to ensure the performance of any control measures, restoration, or destruction ordered by the court. If the property is an object, the bond may not exceed the value of the object in a noninfected or noncontaminated state. The bond shall be returned to the person when the department or health authority informs the court that the property is no longer infected or contaminated or that the property has been destroyed.

(h) If the court finds that the property is not infected or contaminated, it shall order the department or health authority to:

(1) remove the quarantine;

(2) if the property is an object, remove the quarantine tags; and

(3) release the property to the person who owns or controls it.

(i) The department or health authority, as appropriate, shall charge the person who owns or controls the property for the cost of any control measures performed by the department's or health authority's employees. The department shall deposit the payments received to the credit of the general revenue fund to be used for the administration of this chapter. A health authority shall distribute payments received to each county, municipality, or other jurisdiction in an amount proportional to the jurisdiction's contribution to the quarantine and control expense.

(j) In this section, "property" means:

(1) an object;

(2) a parcel of land; or

(3) a structure, animal, or other property on a parcel of

land.

(k) In a public health disaster, the department or a health authority may impose additional control measures the department or health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(l) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure a property subject to a court order issued under this section; and

(2) except as directed by the department or health authority, prevent an individual from entering or leaving the property subject to the order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.181, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0234, eff. April 2, 2015.

Sec. 81.085. AREA QUARANTINE; CRIMINAL PENALTY. (a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. The commissioner may impose an area quarantine, if the commissioner has reasonable cause to believe that individuals or property in the area may be infected or contaminated with a communicable disease, for the period necessary to determine whether an outbreak of communicable disease has occurred. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with the department. A health authority that imposes an area quarantine shall give written notice to and shall consult with the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area as soon as practicable.

(c) The department may impose additional disease control measures in a quarantine area that the department considers necessary

and most appropriate to arrest, control, and eradicate the threat to the public health. Absent preemptive action by the department under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(d) If an affected area includes territory in an adjacent state, the department may enter into cooperative agreements with the appropriate officials or agencies of that state to:

(1) exchange morbidity, mortality, and other technical information;

(2) receive extrajurisdictional inspection reports;

(3) coordinate disease control measures;

(4) disseminate instructions to the population of the area, operators of interstate private or common carriers, and private vehicles in transit across state borders; and

(5) participate in other public health activities appropriate to arrest, control, and eradicate the threat to the public health.

(e) The department or health authority may use all reasonable means of communication to inform persons in the quarantine area of the department's or health authority's orders and instructions during the period of area quarantine. The department or health authority shall publish at least once each week during the area quarantine period, in a newspaper of general circulation in the area, a notice of the orders or instructions in force with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under the orders or instructions.

(f) The department or, with the department's consent, a health authority may terminate an area quarantine.

(g) To provide isolation and quarantine facilities during an area quarantine, the commissioner's court of a county, the governing body of a municipality, or the governing body of a hospital district may suspend the admission of patients desiring admission for elective care and treatment, except for needy or indigent residents for whom the county, municipality, or district is constitutionally or statutorily required to care.

(h) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the department or an order or instruction of a health authority issued under a department rule and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

(i) On request of the department during a public health disaster, an individual shall disclose the individual's immunization information. If the individual does not have updated or appropriate immunizations, the department may take appropriate action during a quarantine to protect that individual and the public from the communicable disease.

(j) A peace officer, including a sheriff or constable, may use reasonable force to:

(1) secure a quarantine area; and

(2) except as directed by the department or health authority, prevent an individual from entering or leaving the quarantine area.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.182, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 4, eff. June 14, 2013.

Sec. 81.086. APPLICATION OF CONTROL MEASURES TO PRIVATE AND COMMON CARRIERS AND PRIVATE CONVEYANCES. (a) This section applies to any private or common carrier or private conveyance, including a vehicle, aircraft, or watercraft, while the vehicle or craft is in this state.

(b) If the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1) stop the carrier or conveyance at a port of entry or place of first landing or first arrival in this state; and

(2) provide information on passengers and cargo manifests that includes the details of:

(A) any illness suspected of being communicable that occurred during the journey;

(B) any condition on board the carrier or conveyance during the journey that may lead to the spread of disease; and

(C) any control measures imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

(c) The department or health authority may impose necessary technically feasible control measures under Section 81.083 or 81.084 to prevent the introduction and spread of communicable disease in this state if the department or health authority, after inspection, has reasonable cause to believe that a carrier or conveyance that has departed from or traveled through an infected or contaminated area:

(1) is or may be infected or contaminated with a communicable disease;

(2) has cargo or an object on board that is or may be infected or contaminated with a communicable disease; or

(3) has an individual on board who has been exposed to, or is the carrier of, a communicable disease.

(d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The department shall deposit the reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

(e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the department or health authority is subject to reimbursement as provided by Subsection (d).

(f) A crew member, passenger, or individual on board the carrier or conveyance shall pay the expense of control measures employed under Section 81.083. The state may pay the expenses of an

individual who is:

(1) without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program, as provided by Section 81.083.

(g) A carrier, a conveyance, cargo, an object, an animal, or an individual placed in quarantine under this section may not be removed from or leave the area of quarantine without the department's or health authority's permission.

(h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

(1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order and instruction of the department or health authority, if the cargo or object is being transported through this state;

(2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

(3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

(i) The department or health authority may require an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in this state. The department or health authority may investigate and, if necessary, isolate or involuntarily hospitalize the individual until the department or health authority approves the discharge as authorized by Section 81.083.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.183, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0235, eff. April 2, 2015.

Sec. 81.087. VIOLATION OF CONTROL MEASURE ORDERS; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083-81.086.

(b) An offense under this section is a Class B misdemeanor.

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

Sec. 81.088. REMOVAL, ALTERATION, OR DESTRUCTION OF QUARANTINE DEVICES; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device, notice, or security item in a manner that diminishes the effectiveness of the device, notice, or item; or

(2) destroys an object the person knows is a quarantine device, notice, or security item.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.184, eff. Sept. 1, 2003.

Sec. 81.089. TRANSPORTATION; CRIMINAL PENALTY. (a) A person commits an offense if, before notifying the department or health authority at a port of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that is a threat to the public health;

(2) transports or causes to be transported into this state

an individual who the person knows has or is the carrier of a communicable disease that is a threat to the public health; or

(3) transports or causes to be transported into this state a person, animal, or object in a private or common carrier or a private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class A misdemeanor, except that if the person acts with the intent to harm or defraud another, the offense is a felony of the third degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.185, eff. Sept. 1, 2003.

Sec. 81.090. DIAGNOSTIC TESTING DURING PREGNANCY AND AFTER BIRTH. (a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at the first examination and visit;

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for:

(A) syphilis;

(B) HIV infection; and

(C) hepatitis B infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(a-1) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood or other appropriate specimen at an examination in the third trimester of the pregnancy, but not earlier than the 28th week of the pregnancy;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for syphilis and HIV infection; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(b) A successor is presumed to have complied with this section

if the successor in good faith obtains a record that indicates compliance with Subsections (a) and (a-1), if applicable.

(c) A physician or other person in attendance at a delivery shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother on admission for delivery; and

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for hepatitis B infection and syphilis.

(c-1) If the physician or other person in attendance at the delivery does not find in the woman's medical records results from the diagnostic test for syphilis and HIV infection performed under Subsection (a-1), the physician or person shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the mother;

(2) submit the sample to an appropriately certified laboratory for diagnostic testing approved by the United States Food and Drug Administration for syphilis and HIV infection; and

(3) instruct the laboratory to expedite the processing of the HIV test so that the results are received less than six hours after the time the sample is submitted.

(c-2) If the physician or other person responsible for the newborn child does not find in the woman's medical records results from a diagnostic test for syphilis and HIV infection performed under Subsection (a-1), and the diagnostic test for syphilis and HIV infection was not performed before delivery under Subsection (c-1), the physician or other person responsible for the newborn child shall:

(1) take or cause to be taken a sample of blood or other appropriate specimen from the newborn child less than two hours after the time of birth;

(2) submit the sample to an appropriately certified laboratory for a diagnostic test approved by the United States Food and Drug Administration for syphilis and HIV infection; and

(3) instruct the laboratory to expedite the processing of the HIV test so that the results are received less than six hours after the time the sample is submitted.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7,

eff. September 1, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(g) Repealed by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993.

(h) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1124, Sec. 7, eff. September 1, 2009.

(i) Before conducting or causing to be conducted a diagnostic test for HIV infection under this section, the physician or other person shall advise the woman that the result of a test taken under this section is confidential as provided by Subchapter F, but that the test is not anonymous. The physician or other person shall explain the difference between a confidential and an anonymous test to the woman and that an anonymous test may be available from another entity. The physician or other person shall make the information available in another language, if needed, and if resources permit. The information shall be provided by the physician or another person, as needed, in a manner and in terms understandable to a person who may be illiterate if resources permit.

(j) The result of a test for HIV infection under Subsection (a)(2)(B), (a-1), (c-1), or (c-2) is a test result for purposes of Subchapter F.

(k) Before the sample is taken, the health care provider shall distribute to the patient printed materials about AIDS, HIV, hepatitis B, and syphilis. A health care provider shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the department and shall be prepared and designed to inform the patients about:

(1) the incidence and mode of transmission of AIDS, HIV, hepatitis B, and syphilis;

(2) how being infected with HIV, AIDS, hepatitis B, or syphilis could affect the health of their child;

(3) the available cure for syphilis;

(4) the available treatment to prevent maternal-infant HIV transmission; and

(5) methods to prevent the transmission of the HIV virus, hepatitis B, and syphilis.

(l) A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (a)(2)(B), (a-1), or (c-1) if the woman objects. A physician or other person may not conduct a diagnostic test for HIV infection under Subsection (c-2) if a parent, managing conservator, or guardian objects.

(m) If a screening test and a confirmatory test conducted under this section show that the woman is or may be infected with HIV, hepatitis B, or syphilis, the physician or other person who submitted the sample for the test shall provide or make available to the woman disease-specific information on the disease diagnosed, including:

(1) information relating to treatment of HIV infection, acquired immune deficiency syndrome, hepatitis B, or syphilis, which must be in another language, if needed, and must be presented, as necessary, in a manner and in terms understandable to a person who may be illiterate if resources permit; and

(2) counseling under Section 81.109, if HIV infection or AIDS is diagnosed.

(n) A physician or other person may comply with the requirements of Subsection (m)(1) by referring the woman to an entity that provides treatment for individuals infected with the disease diagnosed.

(o) In this section, "HIV" has the meaning assigned by Section 81.101.

(p) Not later than January 1 of each odd-numbered year, the department shall report to the legislature the number of cases of early congenital syphilis and of late congenital syphilis that were diagnosed in this state in the preceding biennium.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 420, Sec. 1, eff. June 6, 1993; Acts 1995, 74th Leg., ch. 805, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 573, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1124 (H.B. 1795), Sec. 7, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 206 (S.B. 1128), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 973 (S.B. 748), Sec. 5, eff. September 1, 2019.

Sec. 81.091. OPHTHALMIA NEONATORUM PREVENTION; CRIMINAL PENALTY. (a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the executive commissioner to prevent ophthalmia neonatorum.

(b) A midwife is responsible for the administration of the prophylaxis to each infant the midwife delivers by:

(1) administering the prophylaxis under standing delegation orders issued by a licensed physician; or

(2) requiring the prophylaxis to be administered by an appropriately licensed and trained individual under standing delegation orders issued by a licensed physician.

(c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the executive commissioner free of charge to:

(1) health care providers if the newborn's financially responsible adult is unable to pay; and

(2) a midwife identified under Chapter 203, Occupations Code, who requests prophylaxis for administration under standing delegation orders issued by a licensed physician under Subsection (b) and subject to the provisions of Subchapter A, Chapter 157, Occupations Code.

(d) If a physician is not available to issue a standing delegation order or if no physician will agree to issue a standing delegation order, a midwife shall administer or cause to be administered by an appropriately trained and licensed individual prophylaxis approved by the executive commissioner to prevent ophthalmia neonatorum to each infant that the midwife delivers.

(e) Administration and possession by a midwife of prophylaxis under this section is not a violation of Chapter 483.

(f) A health care provider may not charge for prophylaxis received free from the department.

(g) Except as provided by Subsection (g-1), a person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(g-1) A physician, nurse, midwife, or other person in attendance at childbirth who is unable to apply the prophylaxis as required by this section due to the objection of a parent, managing conservator, or guardian of the newborn infant does not commit an offense under this section and is not subject to criminal, civil, or administrative liability or any professional disciplinary action for failure to administer the prophylaxis. The physician, nurse, midwife, or person shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the infant.

(h) In this section, "financially responsible adult" means a parent, guardian, spouse, or any other person whom the laws of this state hold responsible for the debts incurred as a result of hospitalization or treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 158, Sec. 24, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 14.772, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0236, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 504 (H.B. 2886), Sec. 1, eff. September 1, 2017.

Sec. 81.092. CONTRACTS FOR SERVICES. The department may contract with a physician to provide services to persons infected or reasonably suspected of being infected with a sexually transmitted disease or tuberculosis if:

(1) local or regional health department services are not available;

(2) the person in need of examination or treatment is unable to pay for the services; and

(3) there is an immediate need for examination or treatment of the person.

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

Sec. 81.093. PERSONS PROSECUTED FOR CERTAIN CRIMES. (a) A court may direct a person convicted of an offense under Section 43.02 or 43.021, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031 through 485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

(b) The court shall order that a presentence report be prepared under Subchapter F, Chapter 42A, Code of Criminal Procedure, to determine if a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) or under Sections 485.031 through 485.035 should be subject to Section 81.083 and Subchapter G.

(c) On the request of a prosecutor who is prosecuting a person under Section 22.012, Penal Code, the court shall release to the prosecutor the presentencing report and a statement as to whether the court directed the person to be subject to control measures and court-ordered management for human immunodeficiency virus infection or acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 21, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.64, eff. January 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 44, eff. September 1, 2021.

Sec. 81.094. TESTING BY HOSPITALS OF PERSONS INDICTED FOR CERTAIN CRIMES. A hospital shall perform a medical procedure or test on a person if a court orders the hospital to perform the procedure or test on a person whom the court orders to undergo the procedure or test under Article 21.31, Code of Criminal Procedure. The procedure or test is a cost of court.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 22, eff. Sept. 1, 1991.

Sec. 81.095. TESTING FOR ACCIDENTAL EXPOSURE. (a) In a case of accidental exposure of a health care worker to blood or other body

fluids of a patient in a licensed hospital, the hospital, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B, hepatitis C, HIV, or any reportable disease.

(b) This subsection applies only in a case of accidental exposure of certified emergency medical services personnel, an emergency response employee or volunteer, or a first responder who renders assistance at the scene of an emergency or during transport to the hospital to blood or other body fluids of a patient who is transported to a licensed hospital. The hospital receiving the patient, following a report of the exposure incident, shall take reasonable steps to test the patient for hepatitis B, hepatitis C, HIV, or any reportable disease if the report shows there is significant risk to the person exposed. The organization that employs the person or for which the person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test. The hospital shall provide the test results to the department or to the local health authority and to the designated infection control officer of the entity employing or using the services of an affected emergency response employee or volunteer, which are reponsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed and, if applicable, the patient regarding the test results. The hospital shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital to provide any further testing, treatment, or services or to perform further procedures.

(c) A test conducted under this section may be performed without the patient's specific consent.

(d) The facility shall have a policy concerning the disclosure of the result of the testing as authorized or required by law.

(e) The facility shall abide by all patient confidentiality standards as set out in Section 81.046.

Added by Acts 1999, 76th Leg., ch. 1169, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 610, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 835, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 10, eff. September 1, 2015.

Sec. 81.0955. TESTING FOR ACCIDENTAL EXPOSURE INVOLVING A DECEASED PERSON. (a) This section applies only to the accidental exposure to the blood or other body fluids of a person who dies at the scene of an emergency or during transport to the hospital involving an emergency response employee or volunteer or another first responder who renders assistance at the scene of an emergency or during transport of a person to the hospital.

(b) A hospital, certified emergency medical services personnel, a justice of the peace, a medical examiner, or a physician on behalf of the person exposed, following a report of the exposure incident, shall take reasonable steps to have the deceased person tested for reportable diseases. The hospital, certified emergency medical services personnel, justice of the peace, medical examiner, or physician shall provide the test results to the department or to the local health authority and to the designated infection control officer of an affected emergency response employee or volunteer responsible for following the procedures prescribed by Section 81.050(h) to inform the person exposed, and, if applicable, the department or the local health authority shall inform the next of kin of the deceased person regarding the test results. The hospital, certified emergency medical services personnel, medical examiner, or physician shall follow applicable reporting requirements prescribed by Subchapter C. This subsection does not impose a duty on a hospital, certified emergency medical services personnel, a medical examiner, or a physician to provide any further testing, treatment, or services or to perform further procedures. This subsection does not impose a duty on a justice of the peace to order that further testing, treatment, or services be provided or further procedures be performed. The executive commissioner shall adopt rules to implement this subsection.

(c) The organization that employs the exposed person or for which the exposed person works as a volunteer in connection with rendering the assistance is responsible for paying the costs of the test.

(d) If the deceased person is delivered to a funeral establishment as defined in Section 651.001, Occupations Code, before a hospital, certified emergency medical services personnel, or a physician has tested the deceased person, the funeral establishment

shall allow, if requested by the hospital, certified emergency medical services personnel, or a physician, access to the deceased person for testing under this section.

(e) A test conducted under this section may be performed without the consent of the next of kin of the deceased person being tested.

(f) A hospital, certified emergency medical services personnel, or a physician that conducts a test under this section must comply with the confidentiality requirements of Section 81.046 except as specifically provided by this section.

Added by Acts 2005, 79th Leg., Ch. 243 (H.B. 162), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0237, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 11, eff. September 1, 2015.

SUBCHAPTER F. TESTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME AND RELATED DISORDERS

Sec. 81.101. DEFINITIONS. In this subchapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

(2) "HIV" means human immunodeficiency virus.

(3) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.

(4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Center for Biologics Evaluation and Research of the United States Food and Drug Administration, accredited for membership in the AABB (formerly known as the American Association of Blood Banks), or qualified for membership in the American Association

of Tissue Banks.

(5) "Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0238, eff. April 2, 2015.

Sec. 81.102. TESTS; CRIMINAL PENALTY. (a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

(1) the medical procedure or test is required under Subsection (d), under Section 81.050, or under Article 21.31, Code of Criminal Procedure;

(2) the medical procedure or test is required under Section 81.090, and no objection has been made under Section 81.090(l);

(3) the medical procedure or test is authorized under Chapter 545, Insurance Code;

(4) a medical procedure is to be performed on the person that could expose health care personnel to AIDS or HIV infection, according to department rules defining the conditions that constitute possible exposure to AIDS or HIV infection, and there is sufficient time to receive the test result before the procedure is conducted; or

(5) the medical procedure or test is necessary:

(A) as a bona fide occupational qualification and there is not a less discriminatory means of satisfying the occupational qualification;

(B) to screen blood, blood products, body fluids, organs, or tissues to determine suitability for donation;

(C) in relation to a particular person under this chapter;

(D) to manage accidental exposure to blood or other

body fluids, but only if the test is conducted under written infectious disease control protocols adopted by the health care agency or facility;

(E) to test residents and clients of residential facilities of the department or the Department of Aging and Disability Services, but only if:

(i) the test result would change the medical or social management of the person tested or others who associated with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the residential facility or rules of the appropriate department; or

(F) to test residents and clients of residential facilities of the Texas Juvenile Justice Department, but only if:

(i) the test result would change the medical or social management of the person tested or others who associate with that person; and

(ii) the test is conducted in accordance with guidelines adopted by the Texas Juvenile Justice Department.

(b) An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation.

(c) Protocols adopted under Subsection (a)(5)(D) must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this chapter.

(d) The executive commissioner may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the executive commissioner that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure

confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and their test results.

(e) This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders.

(f) A person who requires a medical procedure or test in violation of this section commits an offense. An offense under this subsection is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 23, 24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 805, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.126, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0239, eff. April 2, 2015.

Sec. 81.103. CONFIDENTIALITY; CRIMINAL PENALTY. (a) A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.

(b) A test result may be released to:

(1) the department under this chapter;

(2) a local health authority if reporting is required under this chapter;

(3) the Centers for Disease Control and prevention of the United States Public Health Service if reporting is required by federal law or regulation;

(4) the physician or other person authorized by law who ordered the test;

(5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;

(6) the person tested or a person legally authorized to consent to the test on the person's behalf;

(7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS;

(8) a person authorized to receive test results under Article 21.31, Code of Criminal Procedure, concerning a person who is tested as required or authorized under that article;

(9) a person exposed to HIV infection as provided by Section 81.050;

(10) a county or district court to comply with this chapter or rules relating to the control and treatment of communicable diseases and health conditions; and

(11) a designated infection control officer of an affected emergency response employee or volunteer.

(c) The court shall notify persons receiving test results under Subsection (b)(8) of the requirements of this section.

(d) A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this subsection must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.

(e) A person may release or disclose a test result for statistical summary purposes only without the written consent of the person tested if information that could identify the person is removed from the report.

(f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A report under this subsection is not a breach of any confidential relationship.

(g) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A report under this subsection may not disclose the name of the donor or

person tested or any information that could result in the disclosure of the donor's or person's name, including an address, social security number, a designated recipient, or replacement information.

(h) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

(i) An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential under this chapter.

(j) A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this subsection is a Class A misdemeanor.

(k) A judge of a county or district court may issue a protective order or take other action to limit disclosure of a test result obtained under this section before that information is entered into evidence or otherwise released in a court proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 25, eff. Sept. 1, 1991. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 788 (S.B. 1171), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 12, eff. September 1, 2015.

Sec. 81.104. INJUNCTION; CIVIL LIABILITY. (a) A person may bring an action to restrain a violation or threatened violation of Section 81.102 or 81.103.

(b) A person who violates Section 81.102 or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not more than $5,000; and

(3) court costs and reasonable attorney's fees incurred by

the person bringing the action.

(c) A person who is found in a civil action to have wilfully released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not less than $5,000 nor more than $10,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(d) Each release or disclosure made, or allowance of a test result to become known, in violation of this subchapter constitutes a separate offense.

(e) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1213, Sec. 1, eff. Sept. 1, 1999.

Sec. 81.105. INFORMED CONSENT. (a) Except as otherwise provided by law, a person may not perform a test designed to identify HIV or its antigen or antibody without first obtaining the informed consent of the person to be tested.

(b) Consent need not be written if there is documentation in the medical record that the test has been explained and the consent has been obtained.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 26, eff. Sept. 1, 1991.

Sec. 81.106. GENERAL CONSENT. (a) A person who has signed a general consent form for the performance of medical tests or procedures is not required to also sign or be presented with a specific consent form relating to medical tests or procedures to determine HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS that will be performed on the person during the time in which the general consent form is in effect.

(b) Except as otherwise provided by this chapter, the result of a test or procedure to determine HIV infection, antibodies to HIV, or infection with any probable causative agent of AIDS performed under

the authorization of a general consent form in accordance with this section may be used only for diagnostic or other purposes directly related to medical treatment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 27, eff. Sept. 1, 1991.

Sec. 81.107. CONSENT TO TEST FOR CERTAIN ACCIDENTAL EXPOSURES. (a) In a case of accidental exposure to blood or other body fluids under Section 81.102(a)(5)(D), the health care agency or facility may test a person who may have exposed the health care worker or other emergency response employee or volunteer to HIV without the person's specific consent to the test.

(b) A test under this section may be done only if:

(1) the test is done according to protocols established as provided by Section 81.102(c); and

(2) those protocols ensure that any identifying information concerning the person tested will be destroyed as soon as the testing is complete and the person who may have been exposed is notified of the result.

(c) A test result under this section is subject to the confidentiality provisions of this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 28, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0240, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1278 (S.B. 1574), Sec. 13, eff. September 1, 2015.

Sec. 81.108. TESTING BY INSURERS. The Insurance Code and any rules adopted by the commissioner of insurance for the Texas Department of Insurance exclusively govern all practices of insurers in testing applicants to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 29, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0241, eff.

April 2, 2015.

Sec. 81.109. COUNSELING REQUIRED FOR POSITIVE TEST RESULTS. (a) A positive test result may not be revealed to the person tested without giving that person the immediate opportunity for individual, face-to-face post-test counseling about:

(1) the meaning of the test result;

(2) the possible need for additional testing;

(3) measures to prevent the transmission of HIV;

(4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;

(5) the benefits of partner notification; and

(6) the availability of partner notification programs.

(b) Post-test counseling should:

(1) increase a person's understanding of HIV infection;

(2) explain the potential need for confirmatory testing;

(3) explain ways to change behavior conducive to HIV transmission;

(4) encourage the person to seek appropriate medical care; and

(5) encourage the person to notify persons with whom there has been contact capable of transmitting HIV.

(c) Subsection (a) does not apply if:

(1) a report of a test result is used for statistical or research purposes only and any information that could identify the person is removed from the report; or

(2) the test is conducted for the sole purpose of screening blood, blood products, bodily fluids, organs, or tissues to determine suitability for donation.

(d) A person who is injured by an intentional violation of this section may bring a civil action for damages and may recover for each violation from a person who violates this section:

(1) $1,000 or actual damages, whichever is greater; and

(2) reasonable attorney fees.

(e) This section does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this section.

(f) A person performing a test to show HIV infection,

antibodies to HIV, or infection with any other probable causative agent of AIDS is not liable under Subsection (d) for failing to provide post-test counseling if the person tested does not appear for the counseling.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 30, eff. Sept. 1, 1991.

SUBCHAPTER G. COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES

Sec. 81.151. APPLICATION FOR COURT ORDER. (a) At the request of the health authority, a municipal, county, or district attorney shall file a sworn written application for a court order for the management of a person with a communicable disease. At the request of the department, the attorney general shall file a sworn written application for a court order for the management of a person with a communicable disease.

(b) The application must be filed with the district court in the county in which the person:

(1) resides;

(2) is found; or

(3) is receiving court-ordered health services.

(c) If the application is not filed in the county in which the person resides, the court may, on request of the person or the person's attorney and if good cause is shown, transfer the application to that county.

(d) A copy of written orders made under Section 81.083, if applicable, and a medical evaluation must be filed with the application, except that a copy of the written orders need not be filed with an application for outpatient treatment.

(e) A single application may be filed for a group if:

(1) the department or health authority reasonably suspects that a group of five or more persons has been exposed to or infected with a communicable disease; and

(2) each person in the group meets the criteria of this chapter for court orders for the management of a person with a communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 1, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.186, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.03, eff. September 1, 2007.

Sec. 81.1511. APPLICABILITY OF SUBCHAPTER TO GROUP. To the extent possible, and except as otherwise provided, if a group application is filed under Section 81.151(e), the provisions of this subchapter apply to the group in the same manner as they apply to an individual, except that:

(1) except as provided by Subdivision (2), any statement or determination regarding the conduct or status of a person must be made in regard to the majority of the members of the group;

(2) any finding or statement related to compliance with orders under Section 81.083 must be made for the entire group;

(3) any notice required to be provided to a person must:

(A) in addition to being sent to each individual in the group for whom the department or health authority has an address, be published in a newspaper of general circulation in the county that includes the area of the suspected contamination and any other county in which the department or health authority suspects a member of the group resides;

(B) state that the group is appointed an attorney but that a member of the group is entitled to the member's own attorney on request; and

(C) include instructions for any person who reasonably suspects that the person was at the place of the suspected exposure at the time of the suspected exposure to provide the person's name, address, and county of residence to the department or health authority; and

(4) an affidavit of medical evaluation for the group may be based on evaluation of one or more members of the group if the physician reasonably believes that the condition of the individual or individuals represents the condition of the majority of the members of the group.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.04, eff. September 1, 2007.

Sec. 81.152. FORM OF APPLICATION. (a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.

(b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the person's name and address;

(2) the person's county of residence in this state;

(3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and

(4) a statement, to be included only in an application for inpatient treatment, that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083, if applicable.

(d) A group application must contain the following information according to the applicant's information and belief:

(1) a description of the group and the location where the members of the group may be found;

(2) a narrative of how the group has been exposed or infected;

(3) an estimate of how many persons are included in the group;

(4) to the extent known, a list containing the name, address, and county of residence in this state of each member of the group;

(5) if the applicant is unable to obtain the name and address of each member of the group:

(A) a statement that the applicant has sought each of the unknown names and addresses; and

(B) the reason that the names and addresses are unavailable; and

(6) a statement, to be included only in an application for inpatient treatment, that the members of the group fail or refuse to comply with written orders of the department or health authority

under Section 81.083, if applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 2, eff. May 23, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.187, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.05, eff. September 1, 2007.

Sec. 81.153. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.

(b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records.

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

Sec. 81.1531. APPOINTMENT OF ATTORNEY FOR GROUP. (a) A judge shall appoint an attorney to represent a group identified in a group application under Section 81.151(e) and shall appoint an attorney for each person who is listed in the application if requested by a person in the group who does not have an attorney.

(b) To the extent possible, the provisions of this chapter that apply to an individual's attorney apply to a group's attorney.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.06, eff. September 1, 2007.

Sec. 81.154. SETTING ON APPLICATION. (a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is served on the person.

(b) The hearing may not be held within the first three days

after the application is filed if the person or the person's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is served on the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 3, eff. May 23, 1997.

Sec. 81.155. NOTICE. (a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to:

(1) the person's parent, if the person is a minor;

(2) the person's appointed guardian, if the person is the subject of a guardianship; or

(3) each managing and possessory conservator, that has been appointed for the person.

(c) The court shall appoint a guardian ad litem for a minor if the parent cannot be located and a guardian or conservator has not been appointed.

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

Sec. 81.156. DISCLOSURE OF INFORMATION. (a) The person's attorney may request information from the attorney general or the municipal, county, or district attorney, as appropriate, in accordance with this section if the attorney cannot otherwise obtain the information. The attorney must request the information at least 48 hours before the time set for the hearing.

(b) If the person's attorney requests the information in accordance with Subsection (a), the attorney general or the municipal, county, or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this chapter that will be relied on at the hearing to establish that the person requires a court order for the temporary or extended management of a person with a communicable disease;

(2) the name, address, and telephone number of each witness who may testify at the hearing;

(3) a brief description of the reasons why temporary or extended management is required; and

(4) a list of any acts committed by the person that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under this chapter if the admission would not deprive the person of a fair opportunity to contest the evidence or testimony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 4, eff. May 23, 1997.

Sec. 81.157. DISTRICT COURT JURISDICTION. (a) A proceeding under this chapter must be held in a district court of the county in which the person is found, resides, or is receiving court-ordered health services.

(b) If a person subject to an order for temporary management is receiving services in a county other than the county in which the court that entered the temporary order is located and requires extended management, the county in which the temporary order was issued shall pay the expenses of transporting the person back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the person is receiving services to hold the hearing on the application for extended order before the temporary order expires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 5, eff. May 23, 1997.

Sec. 81.158. AFFIDAVIT OF MEDICAL EVALUATION. (a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's

designee. The certificate must include:

(1) the name and address of the examining physician, if applicable;

(2) the name and address of the person examined or to be examined;

(3) the date and place of the examination, if applicable;

(4) a brief diagnosis of the examined person's physical and mental condition, if applicable;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:

(A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and

(B) as a result of that communicable disease the examined person:

(i) is likely to cause serious harm to himself; or

(ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section.

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

Sec. 81.159. DESIGNATION OF FACILITY. (a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate:

(1) a nursing facility or custodial care home required to be licensed under Chapter 242; or

(2) an ICF-IID required to be licensed under Chapter 252.

(b) The health authority shall select a designated facility in the county in which the application is filed. If no facility is designated in the county, the commissioner shall select the facility.

(c) This section does not relieve a county of its responsibility under other provisions of this chapter or applicable law for providing health care services.

(d) A designated facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) This section does not apply to a person for whom treatment in a private health facility is proposed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 6, eff. May 23, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.07, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0242, eff. April 2, 2015.

Sec. 81.160. LIBERTY PENDING HEARING. The person who is the subject of an application for management is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this chapter.

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

Sec. 81.161. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A

motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.

(b) The motion may be filed by the municipal, county, or district attorney on behalf of the health authority. The motion shall be filed by the attorney general at the request of the department.

(c) The motion must state that:

(1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the conduct of the person who is the subject of the motion; or

(C) the circumstances under which the person is found.

(d) The motion must be accompanied by an affidavit of medical evaluation.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 7, eff. May 23, 1997.

Sec. 81.162. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and

(2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083, if applicable.

(b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

(c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention.

(f) Notwithstanding Section 81.161 or Subsection (c), a judge or magistrate may issue a temporary protective custody order before the filing of an application for a court order for the management of a person with a communicable disease under Section 81.151 if:

(1) the judge or magistrate takes testimony that an application under Section 81.151, together with a motion for protective custody under Section 81.161, will be filed with the court on the next business day; and

(2) the judge or magistrate determines based on evidence taken under Subsection (d) that there is probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the filing of the application and motion.

(g) A temporary protective custody order issued under Subsection (f) may continue only until 4 p.m. on the first business day after the date the order is issued unless the application for a court order for the management of a person with a communicable disease and a motion for protective custody, as described by Subsection (f)(1), are filed at or before that time. If the application and motion are filed at or before 4 p.m. on the first business day after the date the order is issued, the temporary protective custody order may continue for the period reasonably necessary for the court to rule on the motion for protective custody.

(h) The judge or magistrate may direct a peace officer, including a sheriff or constable, to prevent a person who is the subject of a protective custody order from leaving the facility designated to detain the person if the court finds that a threat to

the public health exists because the person may attempt to leave the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.188, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.08, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 5, eff. June 14, 2013.

Sec. 81.163. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a peace officer, including a sheriff or constable, to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a hearing is held under Section 81.165.

(d) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health facility without the consent of the head of the facility.

(f) A protective custody order issued under Section 81.162 may direct an emergency medical services provider to provide an ambulance and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 6, eff. June 14, 2013.

Sec. 81.164. APPOINTMENT OF ATTORNEY. (a) The judge or designated magistrate shall appoint an attorney to represent a person who is the subject of a protective custody order who does not have an attorney when the order is signed.

(b) Within a reasonable time before a hearing is held under Section 81.165, the court that ordered the protective custody shall provide the person and the person's attorney with a written notice that states:

(1) that the person has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause.

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

Sec. 81.165. PROBABLE CAUSE HEARING. (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and

(2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health.

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing. If the area in which the person is found, or the area where the hearing will be held, is under a public health disaster, the judge or magistrate may postpone the hearing

until the period of disaster is ended.

(c) A magistrate or a master appointed by the presiding judge shall conduct the hearing. The master is entitled to reasonable compensation.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others. If the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a magistrate or a master may order that a person entitled to a hearing for a protective custody order may not appear in person and may appear only by teleconference or another means the magistrate or master finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the initial motion.

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

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.09, eff. September 1, 2007.

Sec. 81.166. ORDER FOR CONTINUED DETENTION. (a) The magistrate or master shall order that a person remain in protective custody if the magistrate or master determines after the hearing that an adequate factual basis exists for probable cause to believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot remain at liberty pending the hearing on the application.

(b) The magistrate or master shall arrange for the person to be returned to the health facility or other suitable place, along with copies of the affidavits and other material submitted as evidence in the hearing and the notification prepared as prescribed by Subsection

(d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the district court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20__, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____ (date of notice).

I have examined the affidavit of medical evaluation and _____ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes ____ or no ____) or others (yes ____ or no ____) such that the proposed patient cannot be at liberty pending final hearing because the proposed patient is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and the proposed patient has failed or refused to comply with the orders of the health authority or the Department of State Health Services delivered on _____ (date of service) _____.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0243, eff. April 2, 2015.

Sec. 81.167. DETENTION IN PROTECTIVE CUSTODY. (a) The head of a facility or the facility head's designee shall detain a person under a protective custody order in the facility pending a court

order for the management of a person with a communicable disease or until the person is released or discharged under Section 81.168.

(b) A person under a protective custody order shall be detained in an appropriate inpatient health facility that has been designated by the commissioner or by a health authority and selected by the health authority under Section 81.159.

(c) A person under a protective custody order may be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime only with the consent of the medical director of the facility and only if the facility has respiratory isolation capability for airborne communicable diseases. The person may not be detained in a nonmedical facility under this subsection for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The health authority shall ensure that proper isolation methods are used and medical care is made available to a person who is detained in a nonmedical facility under Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 8, eff. May 23, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.10, eff. September 1, 2007.

Sec. 81.168. RELEASE FROM DETENTION. (a) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing under Section 81.165 that no probable cause exists to believe that the person presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

(1) the location at which the person was apprehended;

(2) the person's place of residence in this state; or

(3) another suitable location.

(c) The head of a facility shall discharge a person held under

a protective custody order if:

(1) the head of the facility does not receive notice within 72 hours after detention begins, excluding Saturdays, Sundays, legal holidays, the period prescribed by Section 81.165(b) for an extreme weather emergency, and the duration of a public health disaster, that a probable cause hearing was held and the person's continued detention was authorized;

(2) a final court order for the management of a person with a communicable disease has not been entered within the time prescribed by Section 81.154; or

(3) the health authority or commissioner determines that the person no longer meets the criteria for protective custody prescribed by Section 81.162.

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

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.11, eff. September 1, 2007.

Sec. 81.169. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

(b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.

(c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.

(d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.

(e) The hearing must be open to the public unless the person or the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(f) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this chapter.

(g) The court may consider the testimony of a nonphysician health professional in addition to medical testimony.

(h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence.

(i) Notwithstanding Subsection (d), if the health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge, jurors, or the public would jeopardize the health and safety of those persons and the public health, a judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.0001, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.12, eff. September 1, 2007.

Sec. 81.170. RIGHT TO JURY. (a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.

(b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed by the person and the person's attorney.

(d) The court may permit a waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made at least seven days before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 9, eff. May 23, 1997.

Sec. 81.171. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for a court order for temporary or extended management if after a hearing the judge or jury fails to find, from clear and convincing evidence, that the person:

(1) is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health;

(2) has refused or failed to follow the orders of the health authority if the application is for inpatient treatment; and

(3) meets the applicable criteria for orders for the management of a person with a communicable disease.

(b) If the court denies the application, the court shall order the immediate release of a person who is not at liberty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 10, eff. May 23, 1997.

Sec. 81.172. ORDER FOR TEMPORARY MANAGEMENT. (a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

(1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The person or the person's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and the court may admit, as evidence, the affidavit of medical evaluation. The affidavit admitted under this subsection constitutes competent medical testimony, and the court may make its findings solely from the affidavit.

(d) An order for temporary management shall state that

examinations, treatment, and surveillance are authorized for a period not longer than 90 days.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 11, eff. May 23, 1997.

Sec. 81.173. ORDER FOR EXTENDED MANAGEMENT. (a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and, if the application is for inpatient treatment, has failed to follow the orders of the health authority or department;

(2) as a result of that communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

(3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The court may not make findings solely from the affidavit of medical evaluation, but shall hear testimony. The court may not enter an order for extended management unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical testimony.

(d) An order for extended management shall state that examination, treatment, and surveillance are authorized for not longer than 12 months.

(e) The department, with the cooperation of the head of the facility, shall submit to the court a general program of treatment to be provided. The program must be submitted not later than the 14th

day after the date the order is issued and must be incorporated into the court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 12, eff. May 23, 1997.

Sec. 81.174. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found:

(1) to be infected with or reasonably suspected of being infected with a communicable disease;

(2) to have failed or refused to follow the orders of a health authority or the department if the application is for inpatient treatment; and

(3) to meet the criteria for orders for the management of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

(1) committing the person to a health care facility for inpatient care; or

(2) requiring the person to participate in other communicable disease management programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 13, eff. May 23, 1997.

Sec. 81.175. COURT-ORDERED OUTPATIENT SERVICES. (a) The court, in an order that directs a person to participate in an outpatient communicable disease program, shall designate a health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority in implementing the court orders.

(b) The health authority or the department, with the

cooperation of the head of the facility, shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The health authority or department shall inform the court:

(1) if the person fails to comply with the court order; and

(2) of any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health care facility without the consent of the facility head.

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

Sec. 81.176. DESIGNATION OF FACILITY. In a court order for the temporary or extended management of a person with a communicable disease specifying inpatient care, the court shall commit the person to a health care facility designated by the commissioner or a health authority in accordance with Section 81.159.

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

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.13, eff. September 1, 2007.

Sec. 81.177. COMMITMENT TO PRIVATE FACILITY. (a) The court may order a person committed to a private health care facility at no expense to the state if the court receives:

(1) an application signed by the person or the person's guardian or next friend requesting that the person be placed in a designated private health care facility at the person's or applicant's expense; and

(2) a written agreement from the head of the private health care facility to admit the person and to accept responsibility for the person in accordance with this chapter.

(b) Consistent with Subsection (a), the court may order a

person committed to a private health care facility at no expense to the state, a county, a municipality, or a hospital district if:

(1) a state of disaster or a public health disaster has been declared or an area quarantine is imposed under Section 81.085;

(2) the health care facility is located within the disaster area or area quarantine, as applicable; and

(3) the judge determines that there is no public health care facility within the disaster area or area quarantine, as applicable, that has appropriate facilities and the capacity available to receive and treat the person.

(c) Nothing in this section prevents a health care facility that accepts a person under this section from pursuing reimbursement from any appropriate source, such as a third-party public or private payor or disaster relief fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 14.14, eff. September 1, 2007.

Sec. 81.178. COMMITMENT TO FEDERAL FACILITY. (a) A court may order a person committed to a federal agency that operates a health care facility if the court receives written notice from the agency that facilities are available and that the person is eligible for care or treatment in the facility. The court may place the person in the agency's custody for transportation to the health care facility.

(b) A person admitted under court order to a health care facility operated by a federal agency, regardless of location, is subject to the agency's rules and regulations.

(c) The head of the health care facility has the same authority and responsibility with respect to the person as the head of a facility.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the person's condition and the necessity of the person's continued commitment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0244, eff. April 2, 2015.

Sec. 81.179. TRANSPORTATION OF PERSON. (a) The court shall order the sheriff or constable to transport the person to the designated health care facility.

(b) A female shall be accompanied by a female attendant during conveyance to the health care facility.

(c) The health authority or department shall instruct the sheriff or constable on procedures that may be necessary in transporting the person to prevent the spread of the disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 14, eff. May 23, 1997.

Sec. 81.180. WRIT OF COMMITMENT. The court shall direct the court clerk to issue to the individual authorized to transport the person two writs of commitment requiring the individual to take custody of and transport the person to the designated health care facility.

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

Sec. 81.181. ACKNOWLEDGEMENT OF DELIVERY. The head of the facility, after receiving a copy of the writ of commitment and after admitting the person, shall:

(1) give the individual transporting the person a written statement acknowledging acceptance of the person and of any personal property belonging to the person; and

(2) file a copy of the statement with the clerk of the committing court.

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

Sec. 81.182. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall request the court that entered the commitment order to modify the order to provide for outpatient care. At the request of the department, the attorney

general shall request the court that entered the commitment order to modify the order to provide for outpatient care.

(b) The request must explain in detail the reason for the request. The request must be accompanied by an affidavit of a physician who examined the person during the preceding seven days.

(c) The person shall be given notice of the request.

(d) On the request of the person or any other interested individual, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 81.169. The person shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting affidavit.

(f) If the court modifies the order, the court shall designate the health authority to monitor the person's compliance.

(g) The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority and shall comply with Section 81.175(b).

(h) A modified order may not extend beyond the term of the original order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 15, eff. May 23, 1997.

Sec. 81.183. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a person to participate in outpatient health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, on the motion of a municipal, county, or district attorney at the request of the health authority, on the motion of the attorney general at the request of the department, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the person if a hearing is scheduled. The person shall be given notice of the matters to be considered at the hearing. The notice must comply with

the requirements of Section 81.155 for notice before a hearing on an application for court orders for the management of a person with a communicable disease.

(c) The hearing shall be held before the court, without a jury, and as prescribed by this chapter. The person shall be represented by an attorney and receive proper notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 16, eff. May 23, 1997.

Sec. 81.184. ORDER FOR TEMPORARY DETENTION. (a) At the request of the health authority, a municipal, county, or district attorney, as appropriate, shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183. At the request of the department, the attorney general shall file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

(1) the person meets the criteria described by this chapter; and

(2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person and the person's attorney a written notice that contains:

(1) a statement that the person has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 17, eff. May 23, 1997.

Sec. 81.185. APPREHENSION AND RELEASE UNDER ORDER FOR TEMPORARY DETENTION. (a) The order for temporary detention shall direct a peace officer, including a sheriff or constable, to take the person into custody and immediately transport the person to an appropriate inpatient health care facility. The person shall be transported to a facility considered suitable by the health authority if an appropriate inpatient health care facility is not available.

(b) A person may be detained under a temporary detention order for not longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency.

(c) A facility head shall immediately release a person held under an order for temporary detention if the facility head does not receive notice that a modification hearing was held within the time prescribed by Subsection (b) at which the patient's continued detention was authorized.

(d) A person released from custody under Subsection (c) continues to be subject to the terms of the outpatient orders for the management of the person issued before the order for temporary detention, if the orders have not expired.

(e) The order for temporary detention may direct an emergency medical services provider to provide an ambulance and staff to immediately transport the person who is the subject of the order to an appropriate inpatient health care facility designated by the order or other suitable facility. The provider may seek reimbursement for the costs of the transport from any appropriate source.

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

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 7, eff. June 14, 2013.

Sec. 81.186. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the person

continues to meet the applicable criteria for court orders for the management of a person with a communicable disease and that:

(1) the person has not complied with the court's order; or

(2) the person's condition has deteriorated to the extent that outpatient services are no longer appropriate.

(b) The court's decision to modify an order must be supported by an affidavit of medical evaluation prepared by the health authority or department.

(c) A court may refuse to modify the order and may direct the person to continue to participate in outpatient health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for examination, observation, isolation, or treatment at an appropriate inpatient health care facility.

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

Sec. 81.187. RENEWAL OF ORDER FOR EXTENDED MANAGEMENT. (a) A municipal, county, or district attorney, as appropriate, at the request of the health authority, shall file an application to renew an order for extended management. At the request of the department, the attorney general shall file an application to renew an order for extended management.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the person to extended inpatient services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by an affidavit of medical evaluation dated and signed by the health authority or department according to an examination conducted within the preceding 30 days.

(d) The court shall appoint an attorney to represent the person when an application is filed.

(e) The person or the person's attorney may request a hearing

on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for a court order for the extended management of a person with a communicable disease.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended management required by this chapter. The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) The court may admit into evidence the affidavit of medical evaluation if a hearing is not requested or set. The affidavit constitutes competent medical testimony and the court may make its findings solely from the affidavit and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient health services, may modify the order to provide for outpatient health services in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 242, Sec. 18, eff. May 23, 1997.

Sec. 81.188. MOTION FOR REHEARING. (a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.

(b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.

(c) The court may require an appearance bond in an amount set by the court.

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

Sec. 81.189. REQUEST FOR REEXAMINATION. (a) A person subject to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.

(b) The request must be filed in the county in which the person

is receiving the services.

(c) The court may, on good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the health authority, department, and the head of the facility providing health services to the person.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.

(e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.

(f) The head of the facility shall immediately discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.

(g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the request for reexamination and hearing is filed.

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

Sec. 81.190. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

(1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or

(2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services

to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria.

(g) If the department or health authority advises the court that the person must remain in isolation or quarantine and that exposure to the judge or the public would jeopardize the health and safety of those persons and the public health, the judge may order that a person entitled to a hearing may not appear in person and may appear only by teleconference or another means that the judge finds appropriate to allow the person to speak, to interact with witnesses, and to confer with the person's attorney.

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

Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 8, eff. June 14, 2013.

Sec. 81.191. APPEAL. (a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not

meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

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

Sec. 81.192. CONTINUING CARE PLAN BEFORE DISCHARGE. The health authority or department, in consultation with the person, shall prepare a continuing care plan for a person who is scheduled to be discharged if the person requires continuing care.

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

Sec. 81.193. PASS FROM INPATIENT CARE. (a) The head of a facility may permit a person admitted to the facility under order for extended inpatient management of a person with a communicable disease to leave the facility under a pass.

(b) A pass authorizes the person to leave the facility for not more than 72 hours.

(c) The pass may be subject to specified conditions.

(d) A pass may not be authorized without the concurrence of the health authority or department.

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

Sec. 81.194. RETURN TO FACILITY. (a) If a person is permitted to leave a facility under Section 81.193, the head of the facility may have the person taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the person's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the person's return.

(b) The health authority or department may also have a person

returned by signing the certificate authorized by Subsection (a)(1).

(c) A magistrate may issue an order directing a peace officer to take a person into custody and return the person to the facility if the head of the facility, health authority, or department files the certificate as prescribed by this section.

(d) The head of the facility, health authority, or department may sign or file the certificate on a reasonable belief that:

(1) the person is absent without authority from the facility;

(2) the person has violated the conditions of a pass; or

(3) the person's condition has deteriorated to the extent that the person's continued absence from the facility under a pass is inappropriate.

(e) A peace officer shall take the person into custody and return the person to the facility as soon as possible if the person's return is authorized by the certificate or the court order.

(f) The peace officer may take the person into custody without having the certificate or court order in the officer's possession.

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

Sec. 81.195. DISCHARGE ON EXPIRATION OF COURT ORDER. The head of a facility to which a person was committed or from which a person was required to receive temporary or extended inpatient or outpatient health services shall discharge the person when the court order expires.

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

Sec. 81.196. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The health authority or department may direct the head of a facility to which a person was committed for inpatient health services or that provides outpatient health services to discharge the person at any time before the court order expires if the health authority or department determines that the person no longer meets the criteria for court-ordered health services.

(b) The health authority or department shall consider before discharging the person whether the person should receive outpatient health services in accordance with:

(1) a court order; or

(2) a modified order under Section 81.182 that directs the person to participate in outpatient health services.

(c) A discharge under Subsection (a) terminates the court order.

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

Sec. 81.197. CERTIFICATE OF DISCHARGE. Before a person is discharged under Section 81.195 or 81.196, the health authority or department shall prepare a discharge certificate, file it with the court that entered the order, and notify the head of the facility.

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

Sec. 81.198. AUTHORIZATION FOR ADMISSION. The head of a health care facility may admit and detain a person under the procedures prescribed by this subchapter.

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

Sec. 81.199. TRANSFER TO FEDERAL FACILITY. The health authority or department may authorize the head of a health care facility to transfer a person to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in the facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer.

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

Sec. 81.200. TRANSFER OF RECORDS. The head of the transferring inpatient health care facility shall send the person's appropriate medical records, or a copy of the records, to the head of the health

care facility to which the person is transferred.

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

Sec. 81.201. WRIT OF HABEAS CORPUS. This subchapter does not limit a person's right to obtain a writ of habeas corpus.

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

Sec. 81.202. EFFECT ON GUARDIANSHIP. This subchapter, or an action taken or a determination made under this subchapter, does not affect a guardianship established under law.

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

Sec. 81.203. CONFIDENTIALITY OF RECORDS. Records of a health care facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by this chapter or other state law.

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

Sec. 81.204. RIGHTS SUBJECT TO LIMITATION BY HEAD OF FACILITY. (a) A person in an inpatient health care facility has the right to:

(1) receive visitors;

(2) communicate with a person outside the facility; and

(3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

(c) A restriction imposed by the head of the facility for the public health or the person's welfare and the reasons for the restriction shall be made a part of the person's clinical record.

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

Sec. 81.205. NOTIFICATION OF RIGHTS. A person receiving inpatient health services shall be informed of the rights provided by Section 81.206:

(1) orally, in simple, nontechnical terms;

(2) in writing that, if possible, is in the person's primary language; and

(3) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

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

Sec. 81.206. GENERAL RIGHTS RELATING TO TREATMENT. A person receiving health services under this subchapter has the right to:

(1) appropriate treatment for the person's illness in an appropriate setting consistent with the protection of the person and the community;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program; and

(4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

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

Sec. 81.207. ADEQUACY OF TREATMENT. (a) The head of an inpatient health care facility shall provide adequate medical care and treatment to every patient in accordance with accepted standards of medical practice.

(b) The head of the facility is responsible for the detention of the patient and for providing suitable security to prevent the patient from transmitting the communicable disease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 31, eff. Sept. 1, 1991.

Sec. 81.208. PERIODIC EXAMINATION. The head of a health care facility is responsible for the examination by a physician of each person admitted to the facility under this subchapter at least once every seven days and more frequently as necessary.

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

Sec. 81.209. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a person unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

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

Sec. 81.210. COSTS. (a) A county shall pay the costs for a hearing or proceeding under this subchapter if a health authority:

(1) initiates an application for a court order under Section 81.151; or

(2) has an application for court-ordered management transferred to it under Section 81.157.

(b) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-ordered personal services;

(4) security; and

(5) expenses of transportation to a designated facility.

(c) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the person who is the subject of the application; or

(2) a person or estate liable for the person's support.

(d) The department shall pay the costs of returning a person absent without authorization unless the person is able to pay the costs.

Added by Acts 1997, 75th Leg., ch. 242, Sec. 19 eff. May 23, 1997.

Sec. 81.211. FILING AND STATUS OF FOREIGN COURT ORDERS. (a) In the case of a person who is not a resident of this state and who may be admitted to a public health hospital in accordance with Section 13.046, the attorney general, at the request of the department, shall file a copy of an order issued by a court of another state that authorizes the commitment of the person to a health care facility for inpatient care in the manner provided by Chapter 35, Civil Practice and Remedies Code, for enforcement of foreign judgments.

(b) The application must be filed with the district court in the county in which the public health hospital to which the person will be admitted is located.

(c) A filed foreign court order that authorizes the commitment of a person to a health care facility for inpatient care may be enforced in the same manner as a court order of the court in which it is filed.

(d) A foreign court order that authorizes the commitment of a person to a health care facility for inpatient care is subject to the contractual agreement with the foreign state entered into under Section 13.046.

Added by Acts 2003, 78th Leg., ch. 107, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0245, eff. April 2, 2015.

Sec. 81.212. EVADING OR RESISTING APPREHENSION OR TRANSPORT; CRIMINAL PENALTY. (a) A person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter commits an offense if the person resists or evades apprehension by a sheriff, constable, or other peace officer enforcing the order or resists or evades transport to an appropriate inpatient health care facility or other suitable facility under the order.

(b) A person commits an offense if the person assists a person who is subject to a protective custody order or temporary detention order issued by a court under this subchapter in resisting or evading apprehension by a sheriff, constable, or other peace officer enforcing the order or in resisting or evading transport to an

appropriate inpatient health care facility or other suitable facility under the order.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 314 (H.B. 1690), Sec. 9, eff. June 14, 2013.

SUBCHAPTER H. BLOODBORNE PATHOGEN EXPOSURE CONTROL PLAN

Sec. 81.301. DEFINITIONS. In this subchapter:

(1) "Bloodborne pathogens" means pathogenic microorganisms that are present in human blood and that can cause diseases in humans. The term includes hepatitis B virus, hepatitis C virus, and human immunodeficiency virus.

(2) "Engineered sharps injury protection" means:

(A) a physical attribute that is built into a needle device used for withdrawing body fluids, accessing a vein or artery, or administering medications or other fluids and that effectively reduces the risk of an exposure incident by a mechanism such as barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or another effective mechanism; or

(B) a physical attribute built into any other type of needle device, into a nonneedle sharp, or into a nonneedle infusion safety securement device that effectively reduces the risk of an exposure incident.

(3) "Governmental unit" means:

(A) this state and any agency of the state, including a department, bureau, board, commission, or office;

(B) a political subdivision of this state, including any municipality, county, or special district; and

(C) any other institution of government, including an institution of higher education.

(4) "Needleless system" means a device that does not use a needle and that is used:

(A) to withdraw body fluids after initial venous or arterial access is established;

(B) to administer medication or fluids; or

(C) for any other procedure involving the potential for an exposure incident.

(5) "Sharp" means an object used or encountered in a health

care setting that can be reasonably anticipated to penetrate the skin or any other part of the body and to result in an exposure incident, including a needle device, a scalpel, a lancet, a piece of broken glass, a broken capillary tube, an exposed end of a dental wire, or a dental knife, drill, or bur.

(6) "Sharps injury" means any injury caused by a sharp, including a cut, abrasion, or needlestick.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.302. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a governmental unit that employs employees who:

(1) provide services in a public or private facility providing health care-related services, including a home health care organization; or

(2) otherwise have a risk of exposure to blood or other material potentially containing bloodborne pathogens in connection with exposure to sharps.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.303. EXPOSURE CONTROL PLAN. The department shall establish an exposure control plan designed to minimize exposure of employees described by Section 81.302 to bloodborne pathogens. In developing the plan, the department must consider:

(1) policies relating to occupational exposure to bloodborne pathogens;

(2) training and educational requirements for employees;

(3) measures to increase vaccinations of employees; and

(4) increased use of personal protective equipment by employees.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Sec. 81.304. MINIMUM STANDARDS. The executive commissioner by

rule shall adopt minimum standards to implement the exposure control plan and the other provisions of this subchapter. The rules shall be analogous to standards adopted by the federal Occupational Safety and Health Administration. Each governmental unit shall comply with the minimum standards adopted under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0246, eff. April 2, 2015.

Sec. 81.305. NEEDLELESS SYSTEMS. (a) The executive commissioner by rule shall recommend that governmental units implement needleless systems and sharps with engineered sharps injury protection for employees.

(b) The recommendation adopted under Subsection (a) does not apply to the use of a needleless system or sharps with engineered sharps injury protection in circumstances and in a year in which an evaluation committee has established that the use of needleless systems and sharps with engineered sharps injury protection will jeopardize patient or employee safety with regard to a specific medical procedure or will be unduly burdensome. A report of the committee's decision shall be submitted to the department annually.

(c) At least half of the members of an evaluation committee established by a governmental unit to implement Subsection (b) must be employees who are health care workers who have direct contact with patients or provide services on a regular basis.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0247, eff. April 2, 2015.

Sec. 81.306. SHARPS INJURY LOG. (a) The executive commissioner by rule shall require that information concerning exposure incidents be recorded in a written or electronic sharps injury log to be maintained by a governmental unit. This information

must be reported to the department and must include:

(1) the date and time of the exposure incident;

(2) the type and brand of sharp involved in the exposure incident; and

(3) a description of the exposure incident, including:

(A) the job classification or title of the exposed employee;

(B) the department or work area where the exposure incident occurred;

(C) the procedure that the exposed employee was performing at the time of the incident;

(D) how the incident occurred;

(E) the employee's body part that was involved in the exposure incident; and

(F) whether the sharp had engineered sharps injury protection and, if so, whether the protective mechanism was activated and whether the injury occurred before, during, or after the activation of the protective mechanism.

(b) Information regarding which recommendations under Section 81.305(a) were adopted by the governmental entity shall be included in the log.

(c) All information and materials obtained or compiled by the department in connection with a report under this section are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release by the department. The department shall make available, in aggregate form, the information described in Section 81.305(b) and this section, provided that the name and other information identifying the facility is deleted and the information is provided according to public health regions established by the executive commissioner.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 26.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0248, eff. April 2, 2015.

SUBCHAPTER I. ANIMAL-BORNE DISEASES

Sec. 81.351. DEFINITION. In this subchapter, "pet store" means a retail store that sells animals as pets.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.

Sec. 81.352. WARNING SIGN REQUIRED; RULES. (a) The owner or operator of a pet store that sells reptiles shall:

(1) post a sign warning of reptile-associated salmonellosis in accordance with department rules; and

(2) ensure that a written warning related to reptile-associated salmonellosis is provided to each purchaser of a reptile.

(b) The executive commissioner shall adopt rules to govern:

(1) the form and content of the sign required by Subsection (a) and the manner and place of posting of the sign; and

(2) the form and content of the written warning required by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0250, eff. April 2, 2015.

Sec. 81.353. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty if a person violates this subchapter or a rule adopted under this subchapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $500 for each month a violation continues.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by

filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1228, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0251, eff. April 2, 2015.

SUBCHAPTER J. TASK FORCE ON INFECTIOUS DISEASE PREPAREDNESS AND RESPONSE

Sec. 81.401. DEFINITION. In this subchapter, "task force" means the Task Force on Infectious Disease Preparedness and Response.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.402. PURPOSE AND FINDINGS. The legislature finds that:

(1) infectious diseases are responsible for more deaths worldwide than any other single cause;

(2) the State of Texas has a responsibility to safeguard and protect the health and well-being of its citizens from the spread of infectious diseases;

(3) on September 30, 2014, the first case of Ebola diagnosed in the United States occurred in Dallas, Texas;

(4) addressing infectious diseases requires the coordination and cooperation of multiple governmental entities at the local, state, and federal levels;

(5) public health and medical preparedness and response guidelines are crucial to protect the safety and welfare of our citizens; and

(6) Texas has nationally recognized infectious disease experts and other highly trained professionals across the state with the experience needed to minimize any potential risk to the people of Texas.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.403. TASK FORCE; DUTIES. (a) The Task Force on Infectious Disease Preparedness and Response is created as an advisory panel to the governor.

(b) The task force shall:

(1) provide expert, evidence-based assessments, protocols, and recommendations related to state responses to infectious diseases, including Ebola; and

(2) serve as a reliable and transparent source of information and education for Texas leadership and citizens.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.404. APPOINTMENT OF MEMBERS; TERMS. (a) The governor may appoint members of the task force as necessary, including members from relevant state agencies, members with expertise in infectious diseases and other issues involved in the prevention of the spread of infectious diseases, and members from institutions of higher education in this state. The governor shall appoint to the task force:

(1) at least one member who is a county judge of a county with a population of less than 100,000;

(2) at least one member who is a county judge of a county with a population of 100,000 or more;

(3) at least one member who is a representative of a local health authority serving a rural area;

(4) at least one member who is a representative of a local health authority serving an urban area;

(5) at least one member who is a licensed nurse;

(6) at least one member who is emergency medical services personnel, as defined by Section 773.003; and

(7) at least one member who is an epidemiologist.

(b) The governor shall appoint a director of the task force from among the members of the task force.

(c) The governor may fill any vacancy that occurs on the task

force and may appoint additional members as needed.

(d) Members of the task force serve at the pleasure of the governor.

(e) A state or local employee appointed to the task force shall perform any duties required by the task force in addition to the regular duties of the employee.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 866 (S.B. 984), Sec. 2, eff. September 1, 2021.

Sec. 81.405. REPORTS. The task force may make written reports on its findings and recommendations, including legislative recommendations, to the governor and legislature.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.406. MEETINGS. (a) The task force shall meet:

(1) at least once each year at a location determined by the task force director; and

(2) at other times and locations as determined by the task force director.

(b) The task force may meet telephonically in accordance with Section 551.125(b)(3), Government Code.

(c) The task force may hold public hearings to gather information. The task force shall endeavor to meet in various parts of the state to encourage local input.

(d) Notwithstanding Section 551.144, Government Code, or any other law, the task force may hold a closed meeting to discuss matters that are confidential by state or federal law or to ensure public security or law enforcement needs. A closed meeting held as provided by this subsection must be held as otherwise provided by Chapter 551, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Amended by:
Acts 2021, 87th Leg., R.S., Ch. 866 (S.B. 984), Sec. 3, eff. September 1, 2021.

Sec. 81.407. ADMINISTRATIVE SUPPORT. State agencies with members on the task force shall provide administrative support for the task force.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Sec. 81.408. REIMBURSEMENT. Task force members serve without compensation and are not entitled to reimbursement for travel expenses.

Added by Acts 2015, 84th Leg., R.S., Ch. 1099 (H.B. 2950), Sec. 1, eff. June 19, 2015.

Chapter 81B, consisting of Secs. 81B.001 to 81B.004, was added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1.

For another Chapter 81B, consisting of Secs. 81B.001 to 81B.004, added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, see Sec. 81B.001 et seq., post.

CHAPTER 81B. PROHIBITED CORONAVIRUS PREVENTATIVE MEASURES

Sec. 81B.001. DEFINITIONS. In this chapter:

(1) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(2) "Governmental entity" means this state, a local government entity as defined by Section 418.004, Government Code, an open-enrollment charter school, or an agency of this state or a local government entity.

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.

Sec. 81B.002. PROHIBITED FACE-COVERING MANDATE. (a) Except as

provided by Subsection (b), a governmental entity may not implement, order, or otherwise impose a mandate requiring a person to wear a face mask or other face covering to prevent the spread of COVID-19.

(b) The limitation prescribed by Subsection (a) does not apply to an order or mandate that relates to:

(1) a state supported living center, as defined by Section 531.002, subject to any applicable rule or guidance prescribed by the commission that conflicts with that limitation;

(2) a facility operated by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department or a municipal or county jail, subject to any applicable rule or guidance prescribed by the Commission on Jail Standards that conflicts with that limitation; or

(3) a hospital or other health care facility owned by a governmental entity, including a hospital or other health care clinic operated by or associated with an institution of higher education, as that term is defined by Section 61.003, Education Code, subject to any applicable order, ordinance, or guidance prescribed by that governmental entity that conflicts with that limitation.

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.

Sec. 81B.003. PROHIBITED VACCINE MANDATE. (a) Except as provided by Subsection (b), a governmental entity may not implement, order, or otherwise impose a mandate requiring a person to be vaccinated against COVID-19.

(b) The prohibition under Subsection (a) applies only to the extent the prohibition does not conflict with the final rule adopted by the Centers for Medicare and Medicaid Services and published at 86 Fed. Reg. 61555 (November 5, 2021).

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.

Sec. 81B.004. PROHIBITED CLOSURE MANDATE FOR PRIVATE BUSINESSES AND SCHOOLS. A governmental entity may not implement, order, or otherwise impose a mandate requiring the closure of a private business, public school, open-enrollment charter school, or private

school to prevent the spread of COVID-19.

Added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, eff. September 1, 2023.

Chapter 81B, consisting of Secs. 81B.001 to 81B.004, was added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1.

For another Chapter 81B, consisting of Secs. 81B.001 to 81B.004, added by Acts 2023, 88th Leg., R.S., Ch. 336 (S.B. 29), Sec. 1, see Sec. 81B.001 et seq., post.

CHAPTER 81B. PRICE GOUGING OF MEDICAL STAFFING SERVICES DURING DESIGNATED PUBLIC HEALTH DISASTER PERIOD

Sec. 81B.001. DEFINITION. In this chapter, "designated public health disaster period" means a period:

(1) based on a threat to the public health, including a threat from:

(A) a chemical, biological, explosive, nuclear, or radiological attack or incident; or

(B) a communicable disease, epidemic, or pandemic;

(2) beginning on the earlier of the date:

(A) the governor issues a proclamation or executive order declaring a state of disaster under Chapter 418, Government Code, for any area of this state;

(B) the president of the United States declares a state of disaster that includes an area of this state as part of the federally declared disaster area; or

(C) a disaster described by Paragraph (A) or (B) occurs; and

(3) ending on the 30th day after the date the disaster declaration expires or is terminated.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

Sec. 81B.002. APPLICABILITY. This chapter applies only to a medical staffing services agency that provides the following health care professionals to fill vacancies or address temporary staffing needs during a designated public health disaster period:

(1) physician assistants licensed under Chapter 204, Occupations Code;

(2) surgical assistants licensed under Chapter 206, Occupations Code;

(3) nurses licensed under Chapter 301, Occupations Code; or

(4) nurse aides listed in the nurse aide registry under Chapter 250.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

Sec. 81B.003. PROHIBITED PRICE GOUGING DURING DESIGNATED PUBLIC HEALTH DISASTER PERIOD. During a designated public health disaster period, a medical staffing services agency to which this chapter applies may not, in an area subject to the declared state of disaster:

(1) provide medical staffing services to a health care organization or other entity in this state at an exorbitant or excessive price; or

(2) demand or charge an exorbitant or excessive price to provide medical staffing services to a health care organization or other entity in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

Sec. 81B.004. CIVIL PENALTY; INJUNCTION. (a) A medical staffing services agency that violates this chapter is subject to a civil penalty in an amount not to exceed $10,000 for each violation.

(b) The consumer protection division of the office of the attorney general may bring an action in the name of the state to:

(1) recover a civil penalty under this section; or

(2) temporarily or permanently restrain or enjoin the person from violating this chapter.

(c) The consumer protection division of the office of the attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, expert witness fees, deposition expenses, and investigatory costs.

(d) An action under this section may be brought:

(1) in a district court of the county in which:

(A) the defendant resides;

(B) the defendant's principal place of business is located;

(C) the defendant conducts business; or

(D) the transaction giving rise to the claim occurred; or

(2) on the consent of the parties, in a district court of Travis County.

Added by Acts 2023, 88th Leg., R.S., Ch. 1029 (S.B. 401), Sec. 1, eff. September 1, 2023.

CHAPTER 81D. PROHIBITED CORONAVIRUS VACCINE MANDATES BY PRIVATE EMPLOYER

Sec. 81D.001. DEFINITIONS. In this chapter:

(1) "Adverse action" means an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position.

(2) "Commission" means the Texas Workforce Commission.

(3) "Contractor" means a person who undertakes specific work for an employer in exchange for a benefit without submitting to the control of the employer over the manner, methods, or details of the work.

(4) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(5) "Employer" means a person, other than a governmental entity, who employs one or more employees.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.002. EMPLOYER CORONAVIRUS VACCINE MANDATES PROHIBITED. An employer may not adopt or enforce a mandate requiring an employee, contractor, applicant for employment, or applicant for a contract position to be vaccinated against COVID-19 as a condition of

employment or a contract position.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.003. PROHIBITED ADVERSE ACTION BY EMPLOYER. An employer may not take an adverse action against an employee, contractor, applicant for employment, or applicant for a contract position for a refusal to be vaccinated against COVID-19.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.0035. ADVERSE ACTION EXCEPTION FOR CERTAIN HEALTH CARE FACILITIES, HEALTH CARE PROVIDERS, AND PHYSICIANS. (a) In this section:

(1) "Health care facility" means a facility that is a provider of services, as defined by Section 1861, Social Security Act (42 U.S.C. Section 1395x).

(2) "Health care provider" and "physician" have the meanings assigned by Section 74.001, Civil Practice and Remedies Code.

(b) A health care facility, health care provider, or physician may establish and enforce a reasonable policy that includes requiring the use of protective medical equipment by an individual who is an employee or contractor of the facility, provider, or physician and who is not vaccinated against COVID-19 based on the level of risk the individual presents to patients from the individual's routine and direct exposure to patients.

(c) Establishing or enforcing a policy described by Subsection (b) is not considered an adverse action under this chapter.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.004. COMPLAINT; INVESTIGATION. (a) An employee, contractor, applicant for employment, or applicant for a contract position against whom an employer took an adverse action in violation

of this chapter may file a complaint with the commission in the form and manner prescribed by commission rules.

(b) A complaint filed with the commission must include the following information:

(1) the name of the complainant;

(2) the name of the employer; and

(3) the nature and description of any alleged adverse action the employer took against the complainant.

(c) On receipt of a complaint under Subsection (a), the commission shall conduct an investigation to determine whether the employer took an adverse action against the complainant because of the complainant's refusal to be vaccinated against COVID-19. For a complaint against a health care facility, health care provider, or physician, the commission shall consult with the department in determining if a policy adopted under Section 81D.0035 was reasonable.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.005. INJUNCTIVE RELIEF. (a) On receipt of a complaint filed under Section 81D.004, the commission may request that the attorney general bring an action for injunctive relief against the employer to prevent further violations of this chapter by the employer. The action must be filed in a district court in:

(1) Travis County; or

(2) the county in which the alleged adverse action occurred.

(b) In an injunction issued under Subsection (a), a court may include reasonable requirements to prevent further violations of this chapter.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.006. ADMINISTRATIVE PENALTY. (a) The commission shall impose on an employer who violates this chapter an administrative penalty in an amount equal to $50,000 for each violation, unless the employer, as applicable:

(1) hires the applicant for employment or offers a contract to the applicant for a contract position; or

(2) reinstates the employee or contractor and provides the employee or contractor with back pay from the date the employer took the adverse action and makes every reasonable effort to reverse the effects of the adverse action, including reestablishing employee benefits for which the employee or contractor otherwise would have been eligible if the adverse action had not been taken.

(b) If, following an investigation under Section 81D.004, the commission determines that the employer violated this chapter, the commission may recover from the employer reasonable investigative costs incurred by the commission in conducting the investigation, regardless of whether the employer has taken an action described by Subsection (a)(1) or (2).

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

Sec. 81D.007. RULES. The commission shall adopt rules as necessary to implement and enforce this chapter.

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 7), Sec. 1, eff. February 6, 2024.

CHAPTER 82. CANCER REGISTRY

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Texas Cancer Incidence Reporting Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 33, eff. Sept. 1, 1991.

Sec. 82.002. DEFINITIONS. In this chapter:

(1) "Cancer" includes:

(A) a large group of diseases characterized by uncontrolled growth and spread of abnormal cells;

(B) any condition of tumors having the properties of anaplasia, invasion, and metastasis;

(C) a cellular tumor the natural course of which is

fatal, including malignant and benign tumors of the central nervous system; and

(D) malignant neoplasm, other than nonmelanoma skin cancers such as basal and squamous cell carcinomas.

(2) "Clinical laboratory" means an accredited facility in which:

(A) tests are performed identifying findings of anatomical changes; and

(B) specimens are interpreted and pathological diagnoses are made.

(3) "Health care facility " means:

(A) a general or special hospital as defined by Chapter 241 (Texas Hospital Licensing Law);

(B) an ambulatory surgical center licensed under Chapter 243;

(C) an institution licensed under Chapter 242; or

(D) any other facility, including an outpatient clinic, that provides diagnosis or treatment services to patients with cancer.

(4) "Health care practitioner" means:

(A) a physician as defined by Section 151.002, Occupations Code; or

(B) a person who practices dentistry as described by Section 251.003, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 1, eff. Sept. 1, 2001.

Sec. 82.003. APPLICABILITY OF CHAPTER. This chapter applies to records of cases of cancer, diagnosed on or after January 1, 1979, and to records of all ongoing cancer cases diagnosed before January 1, 1979.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 2, eff. Sept. 1, 2001.

Sec. 82.004. REGISTRY REQUIRED. The department shall maintain a cancer registry for the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0252, eff. April 2, 2015.

Sec. 82.005. CONTENT OF REGISTRY. (a) The cancer registry must be a central data bank of accurate, precise, and current information that medical authorities agree serves as an invaluable tool in the early recognition, prevention, cure, and control of cancer.

(b) The cancer registry must include:

(1) a record of the cases of cancer that occur in the state; and

(2) information concerning cancer cases as the executive commissioner considers necessary and appropriate for the recognition, prevention, cure, or control of cancer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0253, eff. April 2, 2015.

Sec. 82.006. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS. (a) To implement this chapter, the executive commissioner may adopt rules that the executive commissioner considers necessary.

(b) To implement this chapter, the department may:

(1) execute contracts considered necessary;

(2) receive the data from medical records of cases of cancer that are in the custody or under the control of clinical laboratories, health care facilities, and health care practitioners to record and analyze the data directly related to those diseases;

(3) compile and publish statistical and other studies derived from the patient data obtained under this chapter to provide, in an accessible form, information that is useful to physicians, other medical personnel, and the general public;

(4) comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions

possible;

(5) receive and use gifts made for the purpose of this chapter; and

(6) limit cancer reporting activities under this chapter to specified geographic areas of the state to ensure optimal use of funds available for obtaining the data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0254, eff. April 2, 2015.

Sec. 82.007. REPORTS. (a) The department shall publish an annual report to the legislature of the information obtained under this chapter.

(b) The department, in cooperation with other cancer reporting organizations and research institutions, may publish reports the department determines are necessary or desirable to carry out the purpose of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 34, eff. Sept. 1, 1991.

Sec. 82.008. DATA FROM MEDICAL RECORDS. (a) To ensure an accurate and continuing source of data concerning cancer, each health care facility, clinical laboratory, and health care practitioner shall furnish to the department, on request, data the executive commissioner considers necessary and appropriate that is derived from each medical record pertaining to a case of cancer that is in the custody or under the control of the health care facility, clinical laboratory, or health care practitioner. The department may not request data that is more than three years old unless the department is investigating a possible cancer cluster. At the request and with the authorization of the applicable health care facility, clinical laboratory, or health care practitioner, data may be furnished to the department through a health information exchange as defined by Section 182.151.

(b) A health care facility, clinical laboratory, or health care

practitioner shall furnish the data requested under Subsection (a) in a reasonable format prescribed by department rule and within six months of the patient's admission, diagnosis, or treatment for cancer unless a different period is prescribed by the United States Department of Health and Human Services.

(c) The data required to be furnished under this section must include patient identification and diagnosis.

(d) The department may access medical records that would identify cases of cancer, establish characteristics or treatment of cancer, or determine the medical status of any identified patient from the following sources:

(1) a health care facility or clinical laboratory providing screening, diagnostic, or therapeutic services to a patient with respect to cancer; or

(2) a health care practitioner diagnosing or providing treatment to a patient with cancer, except as described by Subsection (g).

(e) The executive commissioner shall adopt procedures that ensure adequate notice is given to the health care facility, clinical laboratory, or health care practitioner before the department accesses data under Subsection (d).

(f) A health care facility, clinical laboratory, or health care practitioner that knowingly or in bad faith fails to furnish data as required by this chapter shall reimburse the department or its authorized representative for the costs of accessing and reporting the data. The costs reimbursed under this subsection must be reasonable, based on the actual costs incurred by the department or by its authorized representative in the collection of data under Subsection (d), and may include salary and travel expenses. The department may assess a late fee on an account that is 60 days or more overdue. The late fee may not exceed one and one-half percent of the total amount due on the late account for each month or portion of a month the account is not paid in full. A health care facility, clinical laboratory, or health care practitioner may request that the department conduct a hearing to determine whether reimbursement to the department under this subsection is appropriate.

(g) The department may not require a health care practitioner to furnish data or provide access to records if:

(1) the data or records pertain to cases reported by a health care facility providing screening, diagnostic, or therapeutic

services to cancer patients that involve patients referred directly to or previously admitted to the facility; and

(2) the facility reported the same data the practitioner would be required to report.

(h) The data required to be furnished under this section may be shared with cancer registries of health care facilities subject to the confidentiality provisions in Section 82.009.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 35, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 343, Sec. 1, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 589, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0255, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 5, eff. September 1, 2015.

Sec. 82.009. CONFIDENTIALITY. (a) Reports, records, and information obtained under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not subject to subpoena, and may not otherwise be released or made public except as provided by this section or Section 82.008(h). The reports, records, and information obtained under this chapter are for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this chapter.

(b) Medical or epidemiological information may be released:

(1) for statistical purposes in a manner that prevents identification of individuals, health care facilities, clinical laboratories, or health care practitioners;

(2) with the consent of each person identified in the information; or

(3) to promote cancer research, including release of information to other cancer registries and appropriate state and federal agencies, under rules adopted by the executive commissioner to ensure confidentiality as required by state and federal laws.

(c) A state employee may not testify in a civil, criminal,

special, or other proceeding as to the existence or contents of records, reports, or information concerning an individual whose medical records have been used in submitting data required under this chapter unless the individual consents in advance.

(d) Data furnished to a cancer registry or a cancer researcher under Subsection (b) or Section 82.008(h) is for the confidential use of the cancer registry or the cancer researcher, as applicable, and is subject to Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 343, Sec. 2, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 589, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0256, eff. April 2, 2015.

Sec. 82.010. IMMUNITY FROM LIABILITY. The following persons subject to this chapter that act in compliance with this chapter are not civilly or criminally liable for furnishing the information required under this chapter:

(1) a health care facility or clinical laboratory;

(2) an administrator, officer, or employee of a health care facility or clinical laboratory;

(3) a health care practitioner or employee of a health care practitioner; and

(4) an employee of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 589, Sec. 7, eff. Sept. 1, 2001.

Sec. 82.011. EXAMINATION AND SUPERVISION NOT REQUIRED. This chapter does not require an individual to submit to any medical examination or supervision or to examination or supervision by the department.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0257, eff. April 2, 2015.

CHAPTER 83. CHRONIC KIDNEY DISEASE TASK FORCE

Sec. 83.001. DEFINITION. In this chapter, "task force" means the Chronic Kidney Disease Task Force.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.002. CHRONIC KIDNEY DISEASE TASK FORCE. (a) The Chronic Kidney Disease Task Force is composed of:

(1) 20 members appointed by the governor as follows:

(A) one family practice physician;

(B) one pathologist;

(C) one nephrologist from a nephrology department of a state medical school;

(D) one nephrologist in private practice;

(E) one representative from the National Kidney Foundation;

(F) one representative from the Texas Kidney Foundation;

(G) one representative from the South Plains Kidney Foundation of West Texas;

(H) one representative from the Texas Renal Coalition;

(I) one representative from the commission's Kidney Health Care Program;

(J) one representative of an insurer that issues a preferred provider benefit plan or of a health maintenance organization;

(K) one representative of clinical laboratories;

(L) one representative of private renal care providers;

(M) one pediatrician in private practice;

(N) one kidney transplant surgeon;

(O) one primary care physician;

(P) one licensed and certified renal dietitian;

(Q) one certified nephrology nurse;

(R) one representative from a health care system;

(S) one representative of the commission whose duties involve the state Medicaid program; and

(T) one end stage renal disease expert;

(2) two members of the senate appointed by the lieutenant governor; and

(3) two members of the house of representatives appointed by the speaker of the house of representatives.

(b) The governor shall designate a member of the task force to serve as the presiding officer of the task force. The presiding officer serves at the will of the governor.

(c) Appointments to the task force shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.003. DUTIES. The task force shall:

(1) coordinate implementation of the state's cost-effective plan for prevention, early screening, diagnosis, and management of chronic kidney disease for the state's population through national, state, and local partners; and

(2) educate health care professionals on the use of clinical practice guidelines for screening, detecting, diagnosing, treating, and managing chronic kidney disease, its comorbidities, and its complications based on the Kidney Disease Outcomes Quality Initiative Clinical Practice Guidelines for Chronic Kidney Disease.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.004. REIMBURSEMENT. A member of the task force may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.005. ASSISTANCE. The commission shall provide administrative support to the task force, including necessary staff and meeting facilities.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.006. REPORT. Not later than January 1 of each odd-numbered year, the task force shall submit its findings and recommendations to:

(1) the governor, lieutenant governor, and speaker of the house of representatives; and

(2) the presiding officers of the appropriate standing committees of the legislature with jurisdiction over health issues.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.007. FUNDING. (a) The task force, through the commission, may accept gifts and grants from individuals, private or public organizations, or federal or local funds to support the task force.

(b) The commission shall investigate any potential sources of funding from federal grants or programs.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.008. APPLICABILITY OF OTHER LAW. Except as specifically provided by this chapter, Chapter 2110, Government Code, does not apply to the task force.

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

Sec. 83.009. TASK FORCE REVIEW AND ABOLISHMENT. (a) The commission shall review the continued need for the task force at

least once every five years.

(b) If the commission determines the task force is no longer needed and should be abolished, the commission shall publish notice of its decision in the Texas Register and on the commission's Internet website.

(c) The task force is abolished on the date stated in the notice required by Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1063 (H.B. 1225), Sec. 3, eff. September 1, 2019.

CHAPTER 84. REPORTING OF OCCUPATIONAL CONDITIONS

Sec. 84.001. SHORT TITLE. This chapter may be cited as the Occupational Condition Reporting Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.

Sec. 84.002. DEFINITIONS. In this chapter:

(1) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, a certificate or license, or membership in a regional or national association.

(2) "Occupational condition " means a disease, abnormal health condition, or laboratory finding that is caused by or is related to exposures in the workplace.

(3) "Reportable condition " means a disease, condition, or laboratory finding required to be reported under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.

Sec. 84.003. REPORTABLE CONDITIONS; RULES. (a) Asbestosis and silicosis are occupational conditions that are reportable to the department.

(b) Blood lead levels in adults are laboratory findings that

are reportable to the department as provided by department rule.

(c) The executive commissioner may adopt rules that require other occupational conditions to be reported under this chapter. Before the executive commissioner requires another occupational condition to be reported, the executive commissioner must find that the condition:

(1) has a well-understood etiology;

(2) results predominantly from occupational exposures; and

(3) is preventable.

(d) The executive commissioner shall maintain a list of reportable conditions.

(e) The executive commissioner shall adopt rules necessary to administer and implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 2, eff. May 23, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0258, eff. April 2, 2015.

Sec. 84.004. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of reportable conditions to the department:

(1) a physician who diagnoses or treats the individual with the condition;

(2) a person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of the condition; and

(3) a health professional.

(b) The department may contact a physician attending a person with a case or a suspected case of an occupational condition.

(c) The executive commissioner shall prescribe the form and method of reporting. The executive commissioner may require the reports to contain any information necessary to achieve the purposes of this chapter, including the person's name, address, age, sex, race, occupation, employer, and attending physician.

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

by Acts 1997, 75th Leg., ch. 245, Sec. 3, eff. May 23, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0259, eff. April 2, 2015.

Sec. 84.005. POWERS AND DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purpose of identifying, reporting, or preventing those occupational conditions that have been determined by the executive commissioner to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

(c) Subject to the confidentiality requirements of this chapter, the department shall evaluate the reports of occupational conditions to establish the nature and magnitude of the hazards associated with those conditions, to prevent the occurrence of those hazards, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this chapter and other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 4, eff. May 23, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0260, eff. April 2, 2015.

Sec. 84.006. CONFIDENTIALITY. (a) All information and records relating to reportable conditions are confidential. That information may not be released or made public on subpoena or otherwise, except that release of information may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

(b) The executive commissioner shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this chapter are kept confidential and protected from release to unauthorized persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 5, eff. May 23, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0261, eff. April 2, 2015.

Sec. 84.007. INVESTIGATIONS. (a) The department shall investigate the causes of occupational conditions and methods of prevention.

(b) In performing the department's duty to prevent an occupational condition, the department's designee may enter at reasonable times and inspect within reasonable limits all or any part of an area, structure, or conveyance, regardless of ownership, that is not used for private residential purposes.

(c) Persons authorized to conduct investigations under this section may take samples of materials present on the premises, including samples of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, and household goods. If samples are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis.

(d) Persons securing the required samples may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 245, Sec. 6, eff. May 23, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0262, eff. April 2, 2015.

CHAPTER 85. ACQUIRED IMMUNE DEFICIENCY SYNDROME AND HUMAN

IMMUNODEFICIENCY VIRUS INFECTION

SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATIONAL MATERIALS

Sec. 85.001. SHORT TITLE. This chapter may be cited as the Human Immunodeficiency Virus Services Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.002. DEFINITIONS. In this chapter:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

(2) "Communicable disease" has the meaning assigned by Section 81.003.

(3) "Contact tracing" means identifying all persons who may have been exposed to an infected person and notifying them that they have been exposed, should be tested, and should seek treatment.

(4) "HIV" means human immunodeficiency virus.

(5) "State agency" means:

(A) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the Texas Constitution or a state statute and includes an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; and

(C) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

(6) "Testing program" means a program using a diagnostic test approved by the United States Food and Drug Administration to indicate the presence of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0263, eff. April 2, 2015.

Sec. 85.003. DEPARTMENT AS LEAD AGENCY AND PRIMARY RESOURCE. The department, in the discharge of its duty to protect the public health, shall act as the lead agency for AIDS and HIV policy for

Texas and is the primary resource for HIV education, prevention, risk reduction materials, policies, and information in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 708, Sec. 2, eff. Sept. 1, 1993.

Sec. 85.004. EDUCATIONAL MATERIALS. (a) The department shall develop model educational materials to be available on the department's Internet website to educate the public about AIDS and HIV infection.

(b) The educational materials must:

(1) include information about methods of transmission and prevention of HIV infection, state laws relating to the transmission, and conduct that may result in the transmission of HIV; and

(2) be scientifically accurate and factually correct and designed to:

(A) communicate to the public knowledge about methods of transmission and prevention of HIV infection; and

(B) educate the public about transmission risks in social, employment, and educational situations.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0265, eff. April 2, 2015.

Sec. 85.005. EDUCATIONAL MATERIALS DESIGNED FOR CERTAIN PERSONS; SPECIFIC INFORMATION. (a) The department shall include in the educational materials specific information designed to reach:

(1) persons with behavior conducive to HIV transmission;

(2) persons younger than 18 years of age; and

(3) minority groups.

(b) In developing educational materials for ethnic minorities and in assisting local community organizations in developing educational materials for minority groups, the department shall ensure that the educational materials reflect the nature and spread of HIV infection in minorities in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0265, eff. April 2, 2015.

Sec. 85.006. EDUCATIONAL MATERIALS FOR PERSONS WITH DISABILITIES. (a) The department shall develop and promote the availability of educational materials concerning HIV and prevention of HIV infection specifically designed to address the concerns of persons with physical or mental disabilities.

(b) In developing those educational materials, the department shall consult persons with disabilities or consult experts in the appropriate professional disciplines.

(c) To the maximum extent possible, state-funded HIV education and prevention programs shall be accessible to persons with physical disabilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0266, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0267, eff. April 2, 2015.

Sec. 85.007. EDUCATIONAL MATERIALS FOR MINORS. (a) The department shall give priority to developing model educational materials for education programs for persons younger than 18 years of age.

(b) The materials in the education programs intended for persons younger than 18 years of age must:

(1) emphasize sexual abstinence before marriage and fidelity in marriage as the expected standard in terms of public health and the most effective ways to prevent HIV infection, sexually transmitted diseases, and unwanted pregnancies; and

(2) state that homosexual conduct is not an acceptable lifestyle and is a criminal offense under Section 21.06, Penal Code.

(c) In addition, the educational materials intended for persons younger than 18 years of age must:

(1) teach that sexual activity before marriage is likely to

have harmful psychological and physical consequences;

(2) teach adolescents ways to recognize and respond to unwanted physical and verbal sexual advances;

(3) teach that the use of alcohol or drugs increases a person's vulnerability to unwanted sexual advances; and

(4) emphasize the importance of attaining self-sufficiency before engaging in sexual activity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 24.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0268, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0269, eff. April 2, 2015.

Sec. 85.008. PROMOTION OF AVAILABILITY OF EDUCATIONAL MATERIALS. The department shall determine where HIV education efforts are needed in this state and shall promote the availability of educational materials on the department's Internet website in those areas.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff. April 2, 2015.

Sec. 85.009. AVAILABILITY OF EDUCATIONAL MATERIALS. The department shall make the educational materials available on the department's Internet website for local governments and private businesses.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff. April 2, 2015.

Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF HEALTH CARE FACILITIES. A health care facility licensed by the department or the Department of Aging and Disability Services shall require its employees to complete an educational course about HIV infection based on the model educational materials developed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff. April 2, 2015.

Sec. 85.011. CONTRACTS FOR EDUCATIONAL MATERIALS. (a) The department may contract with any person, other than a person who advocates or promotes conduct that violates state law, for the design and development of educational materials.

(b) This section does not restrict the inclusion in educational materials of accurate information about different ways to reduce the risk of exposure to or the transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0270, eff. April 2, 2015.

Sec. 85.012. MODEL WORKPLACE GUIDELINES. (a) To ensure consistent public policy, the department, in consultation with appropriate state and local agencies and private entities, shall develop model workplace guidelines concerning persons with HIV infection and related conditions.

(b) The model workplace guidelines must include provisions stating that:

(1) all employees will receive some education about methods of transmission and prevention of HIV infection and related conditions;

(2) accommodations will be made to keep persons with HIV infection employed and productive for as long as possible;

(3) the confidentiality of employee medical records will be protected;

(4) HIV-related policies will be consistent with current information from public health authorities, such as the Centers for Disease Control and Prevention of the United States Public Health Service, and with state and federal law and regulations;

(5) persons with HIV infection are entitled to the same rights and opportunities as persons with other communicable diseases; and

(6) employers and employees should not engage in discrimination against persons with HIV infection unless based on accurate scientific information.

(c) The department shall develop more specific model workplace guidelines for employers in businesses with educational, correctional, health, or social service responsibilities.

(d) The department shall make the model workplace guidelines available on request.

(e) Employers should be encouraged to adopt HIV-related workplace guidelines that incorporate, at a minimum, the guidelines established by the department under this section.

(f) This chapter does not create a new cause of action for a violation of workplace guidelines.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0271, eff. April 2, 2015.

Sec. 85.014. TECHNICAL ASSISTANCE TO COMMUNITY ORGANIZATIONS. (a) The department shall provide technical assistance to nonprofit community organizations to maximize the use of limited resources and volunteer efforts and to expand the availability of health care, education, prevention, and social support services needed to address the HIV epidemic.

(b) The department shall provide technical assistance in:

(1) recruiting, training, and effectively using volunteers in the delivery of HIV-related services;

(2) identifying funding opportunities and sources, including information on developing sound grant proposals; and

(3) developing and implementing effective service delivery approaches for community-based health care, education, prevention,

and social support services pertaining to HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.015. CONTRACT FOR SERVICES; DURATION. (a) The department may contract with an entity to provide the services required by Subchapters A through F if:

(1) the contract would minimize duplication of effort and would deliver services cost-effectively; and

(2) the contracting entity does not advocate or promote conduct that violates state law.

(b) Subsection (a)(2) does not restrict the inclusion in educational materials of accurate information about ways to reduce the risk of exposure to or transmission of HIV.

(c) The department may audit an entity contracting with the department under Subsection (a).

(d) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out Subsections (a) through (c).

(e) A contract entered into by the department under this subchapter may not be for a term of more than one year, except that a contract may be renewed without a public hearing.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0272, eff. April 2, 2015.

Sec. 85.016. RULES. The executive commissioner may adopt rules necessary to implement Subchapters A through F.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0273, eff. April 2, 2015.

SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS

Sec. 85.031. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS.

The department shall establish and administer a state grant program to nonprofit community organizations for:

(1) HIV education, prevention, and risk reduction programs; and

(2) treatment, health, and social service programs for persons with HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The executive commissioner may adopt rules relating to:

(1) the services that may be furnished under the program;

(2) a system of priorities regarding the types of services provided, geographic areas covered, or classes of individuals or communities targeted for services under the program; and

(3) a process for resolving conflicts between the department and a program receiving money under this subchapter.

(b) Executive commissioner or department actions relating to service, geographic, and other priorities shall be based on the set of priorities and guidelines established under this section.

(c) In structuring the program and adopting rules, the department and the executive commissioner, as appropriate, shall attempt to:

(1) coordinate the use of federal, local, and private funds;

(2) encourage the provision of community-based services;

(3) address needs that are not met by other sources of funding;

(4) provide funding as extensively as possible across the regions of the state in amounts that reflect regional needs; and

(5) encourage cooperation among local service providers.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0274, eff. April 2, 2015.

Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent unnecessary duplication of services, the executive commissioner and

the department shall seek to coordinate the services provided by eligible programs under Subchapters A through G with existing federal, state, and local programs.

(b) The department shall consult with the Department of Aging and Disability Services and the commission to ensure that programs funded under this subchapter complement and do not unnecessarily duplicate services provided through the Department of Aging and Disability Services and the commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0274, eff. April 2, 2015.

Sec. 85.034. APPLICATION PROCEDURES AND ELIGIBILITY GUIDELINES. (a) The department shall establish application procedures and eligibility guidelines for the state grants under this subchapter.

(b) Application procedures must include regional public hearings after reasonable notice in the region in which the community organization is based before awarding an initial grant or grants totalling more than $25,000 annually.

(c) Before the 10th day before the date of the public hearing, notice shall be given to each state representative and state senator who represents any part of the region in which any part of the grant will be expended.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.035. APPLICANT INFORMATION. An applicant for a state grant under this subchapter shall submit to the department for approval:

(1) a description of the objectives established by the applicant for the conduct of the program;

(2) documentation that the applicant has consulted with appropriate local officials, community groups, and individuals with expertise in HIV education and treatment and knowledge of the needs of the population to be served;

(3) a description of the methods the applicant will use to evaluate the activities conducted under the program to determine if

the objectives are met; and

(4) any other information requested by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.036. AWARDING OF GRANTS. (a) In awarding grants for education programs under this subchapter, the department shall give special consideration to nonprofit community organizations whose primary purpose is serving persons younger than 18 years of age.

(b) In awarding grants for treatment, health, and social services, the department shall endeavor to distribute grants in a manner that prevents unnecessary duplication of services within a community.

(c) In awarding grants for education programs, the department shall endeavor to complement existing education programs in a community, to prevent unnecessary duplication of services within a community, to provide HIV education programs for populations engaging in behaviors conducive to HIV transmission, to initiate needed HIV education programs where none exist, and to promote early intervention and treatment of persons with HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.037. RESTRICTIONS ON GRANTS. (a) The department may not award a grant to an entity or community organization that advocates or promotes conduct that violates state law.

(b) This section does not prohibit the award of a grant to an entity or community organization that provides accurate information about ways to reduce the risk of exposure to or transmission of HIV.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.038. RESTRICTIONS ON FUNDS. (a) The department may not use more than five percent of the funds appropriated for the grant program to employ sufficient staff to review and process grant applications, monitor and evaluate the effectiveness of funded programs, and provide technical assistance to grantees.

(b) Not more than one-third of the funds available under this

subchapter may be used for HIV education, prevention, and risk reduction.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.039. INFORMATION PROVIDED BY FUNDED PROGRAM. (a) A program funded with a grant under this subchapter shall provide information and educational materials that are accurate, comprehensive, and consistent with current findings of the United States Public Health Service.

(b) Information and educational materials developed with a grant awarded under this subchapter must contain materials and be presented in a manner that is specifically directed to the group for which the materials are intended.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.040. EVALUATION OF FUNDED PROGRAMS. (a) The department shall develop evaluation criteria to document effectiveness, unit-of-service costs, and number of volunteers used in programs funded with grants under this subchapter.

(b) An organization that receives funding under the program shall:

(1) collect and maintain relevant data as required by the department; and

(2) submit to the department copies of all material the organization has printed or distributed relating to HIV infection.

(c) The department shall provide prompt assistance to grantees in obtaining materials and skills necessary to collect and report the data required under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.041. RECORDS AND REPORTS. (a) The department shall require each program receiving a grant under this subchapter to maintain records and information specified by the department.

(b) The executive commissioner may adopt rules relating to the information a program is required to report to the department and

shall adopt procedures and forms for reporting the information to prevent unnecessary and duplicative reporting of data.

(c) The department shall review records, information, and reports prepared by programs funded under this subchapter. Before December 1 of each year, the department shall prepare a report that is available to the public and that summarizes data regarding the type, level, quality, and cost-effectiveness of services provided under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0275, eff. April 2, 2015.

Sec. 85.042. FINANCIAL RECORDS. (a) The department shall review periodically the financial records of a program funded with a grant under this subchapter.

(b) As a condition of accepting a grant under this subchapter, a community organization must allow the department to periodically review the financial records of that organization.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.043. DUE PROCESS. The department may provide a due process hearing procedure for the resolution of conflicts between the department and a program funded with a state grant under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.044. ADVISORY COMMITTEE. The executive commissioner may appoint an advisory committee to assist in the development of procedures and guidelines required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0276, eff. April 2, 2015.

SUBCHAPTER C. HIV MEDICATION PROGRAM

Sec. 85.061. HIV MEDICATION PROGRAM. (a) The Texas HIV medication program is established in the department.

(b) The program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the commissioner that have been shown to be effective in reducing hospitalizations due to HIV-related conditions.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0277, eff. April 2, 2015.

Sec. 85.062. ELIGIBILITY. (a) To be eligible for the program, an individual:

(1) must not be eligible for Medicaid benefits;

(2) must meet financial eligibility criteria set by department rule;

(3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and

(4) must be diagnosed by a licensed physician as having AIDS or an HIV-related condition or illness of at least the minimal severity set by the executive commissioner.

(b) The department shall give priority to participation in the program to eligible individuals younger than 18 years of age.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0278, eff. April 2, 2015.

Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The executive commissioner by rule shall establish:

(1) application and distribution procedures;

(2) eligibility guidelines to ensure the most appropriate distribution of funds available each year; and

(3) appellate procedures to resolve any eligibility or funding conflicts.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0279, eff. April 2, 2015.

Sec. 85.064. FUNDING. (a) The department may accept and use local, state, and federal funds and private donations to fund the program.

(b) State, local, and private funds may be used to qualify for federal matching funds if federal funding becomes available.

(c) A hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization may participate in the program by sending funds to the department for the purpose of providing assistance to clients for the purchase of HIV medication. A hospital district may send funds obtained from any source, including taxes levied by the district.

(d) The department shall deposit money received under this section in the state treasury to the credit of the general revenue fund.

(e) Funds received from a hospital district, local health department, public or nonprofit hospital or clinic, or nonprofit community organization under this section may be used only to provide assistance to clients of that entity. The funds may be supplemented with other funds available for the purpose of the program.

(f) Funds appropriated by the General Appropriations Act may not be transferred from other line items for the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0280, eff. April 2, 2015.

Sec. 85.065. SLIDING FEE SCALE TO PURCHASE MEDICATION. The department may institute a sliding fee scale to help eligible HIV-

infected individuals purchase medications under the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING

Sec. 85.081. MODEL PROTOCOLS FOR COUNSELING AND TESTING. (a) The department shall develop, and the executive commissioner shall adopt, model protocols for counseling and testing related to HIV infection. The protocols shall be made available to health care providers on request.

(b) A testing program shall adopt and comply with the model protocols developed by the department under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0281, eff. April 2, 2015.

Sec. 85.082. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a) The department shall establish voluntary HIV testing programs in each public health region to make confidential counseling and testing available. The department shall complete contact tracing after a confirmed positive test.

(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.

(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who is injured by an intentional violation of Subsection (c) may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):

(1) $1,000 or actual damages, whichever is greater; and

(2) reasonable attorney fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.085. PHYSICIAN SUPERVISION OF MEDICAL CARE. A licensed physician shall supervise any medical care or procedure provided under a testing program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.086. REPORTS. A testing program shall report test results for HIV infection in the manner provided by Chapter 81 (Communicable Disease Prevention and Control Act).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.087. TRAINING OF COUNSELORS. (a) The department shall develop and offer a training course for persons providing HIV counseling. The training course shall include information relating to the special needs of persons with positive HIV test results, including the importance of early intervention and treatment and recognition of psychosocial needs.

(b) The department shall maintain a registry of persons who successfully complete the training course.

(c) The department may charge a fee for the course to persons other than employees of entities receiving state or federal funds for HIV counseling and testing programs through a contract with the department.

(d) The executive commissioner by rule shall set the fee in an amount that is reasonable and necessary to cover the costs of providing the course.

(e) The department may contract for the training of counselors.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0282, eff. April 2, 2015.

Sec. 85.088. STATE-FUNDED HEALTH CLINICS. (a) State-funded

primary health, women's reproductive health, and sexually transmitted disease clinics shall:

(1) make available to patients and clients information and educational materials concerning the prevention of HIV infection; and

(2) provide or refer patients and clients to voluntary and affordable counseling and HIV testing services, including the patient's or client's choice of anonymous or confidential HIV testing or counseling.

(b) Information provided under Subsection (a)(1) shall be routinely incorporated into patient education and counseling in clinics specializing in sexually transmitted diseases and women's reproductive health.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0283, eff. April 2, 2015.

Sec. 85.089. DISCIPLINARY ACTION. This subchapter does not prohibit disciplinary proceedings from being conducted by the appropriate licensing authorities for a health care provider's violation of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS

Sec. 85.111. EDUCATION OF STATE EMPLOYEES. (a) Each state agency annually shall provide to each state employee educational information about:

(1) methods of transmission and prevention of HIV infection;

(2) state laws relating to the transmission of HIV infection; and

(3) conduct that may result in the transmission of HIV infection.

(b) The educational information shall be provided to a newly hired state employee on the first day of employment.

(c) The educational information shall be based on the model developed by the department and shall include the workplace

guidelines adopted by the state agency.

(d) The department shall prepare and distribute to each state agency a model informational pamphlet that can be reproduced by each state agency to meet the requirements of this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0284, eff. April 2, 2015.

Sec. 85.112. WORKPLACE GUIDELINES. (a) Each state agency shall adopt and implement workplace guidelines concerning persons with AIDS and HIV infection.

(b) The workplace guidelines shall incorporate at a minimum the model workplace guidelines developed by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS. An entity that contracts with or is funded by any of the following state agencies to operate a program involving direct client contact shall adopt and implement workplace guidelines similar to the guidelines adopted by the agency that funds or contracts with the entity:

(1) the Department of Assistive and Rehabilitative Services;

(2) the Texas Juvenile Justice Department;

(3) the Texas Department of Criminal Justice;

(4) the department;

(5) the Department of Aging and Disability Services; and

(6) the commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 835, Sec. 25, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0285, eff. April 2, 2015.

Sec. 85.114. EDUCATION OF CERTAIN CLIENTS, INMATES, PATIENTS, AND RESIDENTS. (a) Each state agency listed in Section 85.113 shall routinely make available HIV education for clients, inmates, patients, and residents of treatment, educational, correctional, or residential facilities under the agency's jurisdiction.

(b) Education available under this section shall be based on the model educational materials developed by the department and tailored to the cultural, educational, language, and developmental needs of the clients, inmates, patients, or residents, including the use of Braille or telecommunication devices for the deaf.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0286, eff. April 2, 2015.

Sec. 85.115. CONFIDENTIALITY GUIDELINES. (a) Each state agency shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the agency and for clients, inmates, patients, and residents served by the agency.

(b) Each entity that receives funds from a state agency for residential or direct client services or programs shall develop and implement guidelines regarding confidentiality of AIDS and HIV-related medical information for employees of the entity and for clients, inmates, patients, and residents served by the entity.

(c) The confidentiality guidelines shall be consistent with guidelines published by the department and with state and federal law and regulations.

(d) An entity that does not adopt confidentiality guidelines as required by Subsection (b) is not eligible to receive state funds until the guidelines are developed and implemented.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.116. TESTING AND COUNSELING FOR STATE EMPLOYEES EXPOSED TO HIV INFECTION ON THE JOB. (a) On an employee's request, a state agency shall pay the costs of testing and counseling an employee of that agency concerning HIV infection if:

(1) the employee documents to the agency's satisfaction that the employee may have been exposed to HIV while performing duties of employment with that agency; and

(2) the employee was exposed to HIV in a manner that the United States Public Health Service has determined is capable of transmitting HIV.

(b) The executive commissioner by rule shall prescribe the criteria that constitute possible exposure to HIV under this section. The criteria must be based on activities the United States Public Health Service determines pose a risk of HIV infection.

(c) For the purpose of qualifying for workers' compensation or any other similar benefits or compensation, an employee who claims a possible work-related exposure to HIV infection must provide the employer with a written statement of the date and circumstances of the exposure and document that, within 10 days after the date of the exposure, the employee had a test result that indicated an absence of HIV infection.

(d) The cost of a state employee's testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The State Office of Risk Management shall adopt rules necessary to administer this subsection.

(e) Counseling or a test conducted under this section must conform to the model protocol on HIV counseling and testing prescribed by the department.

(f) A state employee who may have been exposed to HIV while performing duties of state employment may not be required to be tested.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0287, eff. April 2, 2015.

SUBCHAPTER G. POLICIES OF CORRECTIONAL AND LAW ENFORCEMENT AGENCIES, FIRE DEPARTMENTS, AND EMERGENCY MEDICAL SERVICES PROVIDERS

Sec. 85.141. MODEL POLICIES CONCERNING PERSONS IN CUSTODY. The department, in consultation with appropriate correctional and law enforcement agencies, fire departments, and emergency medical services providers, shall develop model policies regarding the

handling, care, and treatment of persons with AIDS or HIV infection who are in the custody of the Texas Department of Criminal Justice, local law enforcement agencies, municipal and county correctional facilities, and district probation departments.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.142. ADOPTION OF POLICY. (a) Each state and local law enforcement agency, fire department, emergency medical services provider, municipal and county correctional facility, and district probation department shall adopt a policy for handling persons with AIDS or HIV infection who are in their custody or under their supervision.

(b) The policy must be substantially similar to a model policy developed by the department under Section 85.141.

(c) A policy adopted under this section applies to persons who contract or subcontract with an entity required to adopt the policy under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

Sec. 85.143. CONTENT OF POLICY. A policy adopted under this subchapter must:

(1) provide for periodic education of employees, inmates, and probationers concerning HIV;

(2) ensure that education programs for employees include information and training relating to infection control procedures and that employees have infection control supplies and equipment readily available; and

(3) ensure access to appropriate services and protect the confidentiality of medical records relating to HIV infection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 36, eff. Sept. 1, 1991.

SUBCHAPTER I. PREVENTION OF TRANSMISSION OF HIV AND HEPATITIS B VIRUS BY INFECTED HEALTH CARE WORKERS

Sec. 85.201. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) the Centers for Disease Control and Prevention of the United States Public Health Service have made recommendations for preventing transmission of human immunodeficiency virus (HIV) and hepatitis B virus (HBV) to patients in the health care setting;

(2) the Centers for Disease Control and Prevention of the United States Public Health Service have found that when health care workers adhere to recommended infection-control procedures, the risk of transmitting HBV from an infected health care worker to a patient is small, and the risk of transmitting HIV is likely to be even smaller;

(3) the risk of transmission of HIV and HBV in health care settings will be minimized if health care workers adhere to the Centers for Disease Control and Prevention of the United States Public Health Service recommendations; and

(4) health care workers who perform exposure-prone procedures should know their HIV antibody status; health care workers who perform exposure-prone procedures and who do not have serologic evidence of immunity to HBV from vaccination or from previous infection should know their HBsAg status and, if that is positive, should also know their HBeAg status.

(b) Any testing for HIV antibody status shall comply with Subchapters C, D, and F, Chapter 81.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0288, eff. April 2, 2015.

Sec. 85.202. DEFINITIONS. In this subchapter:

(1) "Exposure-prone procedure" means a specific invasive procedure that poses a direct and significant risk of transmission of HIV or hepatitis B virus, as designated by a health professional association or health facility, as provided by Section 85.204(b)(4).

(2) "Health care worker" means a person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by this state or a person providing direct patient care in the course of a training or educational program.

(3) "Invasive procedure" means:

(A) a surgical entry into tissues, cavities, or organs; or

(B) repair of major traumatic injuries associated with any of the following:

(i) an operating or delivery room, emergency department, or outpatient setting, including a physician's or dentist's office;

(ii) cardiac catheterization or angiographic procedures;

(iii) a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or

(iv) the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

(4) "Universal precautions" means procedures for disinfection and sterilization of reusable medical devices and the appropriate use of infection control, including hand washing, the use of protective barriers, and the use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0289, eff. April 2, 2015.

Sec. 85.203. INFECTION CONTROL STANDARDS. (a) All health care workers shall adhere to universal precautions as defined by this subchapter.

(b) Health care workers with exudative lesions or weeping dermatitis shall refrain from all direct patient care and from handling patient care equipment and devices used in performing invasive procedures until the condition resolves.

(c) All institutions of higher education and professional and vocational schools training health care workers shall provide instruction on universal precautions.

(d) Health care institutions shall establish procedures for monitoring compliance with universal precautions.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.204. MODIFICATION OF PRACTICE. (a) Except as provided by Subsections (b) and (c), a health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may not perform an exposure-prone procedure.

(b)(1) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive may perform an exposure-prone procedure only if the health care worker has sought counsel from an expert review panel and been advised under what circumstances, if any, the health care worker may continue to perform the exposure-prone procedure.

(2) An expert review panel should include the health care worker's personal physician and experts with knowledge of infectious diseases, infection control, the epidemiology of HIV and hepatitis B virus, and procedures performed by the health care worker.

(3) All proceedings and communications of the expert review panel are confidential and release of information relating to a health care worker's HIV status shall comply with Chapter 81.

(4) Health professional associations and health facilities should develop guidelines for expert review panels and identify exposure-prone procedures, as defined by this subchapter.

(c) A health care worker who performs an exposure-prone procedure as provided under Subsection (b) shall notify a prospective patient of the health care worker's seropositive status and obtain the patient's consent before the patient undergoes an exposure-prone procedure, unless the patient is unable to consent.

(d) To promote the continued use of the talents, knowledge, and skills of a health care worker whose practice is modified because of the worker's HIV or hepatitis B virus infection status, the worker should:

(1) be provided opportunities to continue patient care activities, if practicable; and

(2) receive career counseling and job retraining.

(e) A health care worker whose practice is modified because of

hepatitis B virus infection may request periodic redeterminations by the expert review panel under Subsection (b) of any change in the worker's HBeAg status due to resolution of infection or as a result of treatment.

(f) A health care worker who is infected with HIV or who is infected with hepatitis B virus and is HBeAg positive who performs invasive procedures not identified as exposure-prone should not have his or her practice restricted, provided the infected health care worker adheres to the standards for infection control provided in Section 85.203.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.205. DISCIPLINARY PROCEDURES. A health care worker who fails to comply with this subchapter is subject to disciplinary procedures by the appropriate licensing entity.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

Sec. 85.206. RETENTION OF LICENSE; PERMITTED ACTS. This subchapter does not:

(1) require the revocation of the license, registration, or certification of a health care worker who is infected with HIV or hepatitis B virus;

(2) prohibit a health care worker who is infected with HIV or hepatitis B virus and who adheres to universal precautions, as defined by this subchapter, from:

(A) performing procedures not identified as exposure-prone; or

(B) providing health care services in emergency situations;

(3) prohibit a health care worker who is infected with HIV and who adheres to universal precautions from providing health care services, including exposure-prone procedures, to persons who are infected with HIV; or

(4) require the testing of health care workers.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.05, eff. Sept. 1, 1991.

SUBCHAPTER J. HOME COLLECTION KITS FOR HIV INFECTION TESTING

Sec. 85.251. DEFINITIONS. In this subchapter:

(1) "Home collection kit" means a product sold to the general public and used by an individual to collect a specimen from the human body and to submit the specimen to a laboratory for testing and a report.

(2) "Service provider" means the manufacturer of a home collection kit or a person designated by the manufacturer to provide the services required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.252. PROHIBITIONS RELATING TO HOME COLLECTION KIT. A person may not market, distribute, or sell a home collection kit for HIV infection testing in this state unless the kit complies with Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.253. PROHIBITIONS RELATING TO HOME TESTING. (a) A person may not market, distribute, or sell a product to be used by a member of the public to test a specimen collected from the human body for HIV infection unless the kit complies with Chapter 431.

(b) This section does not apply to a product marketed, distributed, or sold only to physicians or other persons authorized by law to test for HIV infection a specimen collected from the human body.

(c) A person may not require an individual to be tested for HIV infection as provided in Section 81.102.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.254. PACKAGE OF SERVICES. A home collection kit for HIV infection testing shall be sold as part of a package of services

that includes:

(1) laboratory testing by a qualified facility;

(2) reporting of test results;

(3) verification of positive test results;

(4) counseling as required by this subchapter; and

(5) information, upon request, describing how test results and related information are stored by the service provider, how long the information is retained, and under what circumstances the information may be communicated to other persons.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.255. QUALIFIED FACILITY. A laboratory facility that conducts testing of a specimen collected with a home collection kit for HIV infection testing must comply with the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Section 263a).

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.256. ORAL REPORTING. A service provider shall report test results from a home collection kit for HIV infection testing orally to the individual tested. Notwithstanding Section 81.109, the test results may be provided by telephone.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.257. COUNSELING; COUNSELING PROTOCOLS. (a) A service provider shall provide pretesting counseling to an individual who is considering using a home collection kit for HIV infection testing. This counseling may be provided orally by telephone or through written information included with the home collection kit.

(b) At the time the test results are reported to the individual tested, the service provider shall provide counseling and appropriate referrals for care and treatment.

(c) Counseling provided by a service provider, including written information provided under Subsection (a) and referrals, must conform with counseling protocols adopted by the executive commissioner. Except as provided by Section 85.256, the counseling

protocols must be consistent with the requirements of Section 81.109 and the protocols adopted under Section 85.081.

(d) Counseling provided by a service provider under this section must be provided in English and in Spanish. The department may require a service provider to provide counseling in another language if the department finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

(e) A service provider, in providing counseling, may not:

(1) solicit the purchase of additional services or products; or

(2) refer the individual being counseled to an entity:

(A) that is owned or controlled by the service provider;

(B) that owns or controls the service provider;

(C) that is owned or controlled by an entity that owns or controls the service provider; or

(D) that has another ongoing financial relationship with the service provider.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0290, eff. April 2, 2015.

Sec. 85.258. LABELING. (a) A home collection kit for HIV infection testing shall meet the requirements of Chapter 431.

(b) In addition to the requirements in Subsection (a), the labeling shall explain which persons and entities will have access to the test results for the individual.

(c) In addition to the labeling requirements in Subsections (a) and (b), a home collection kit labeled in Spanish must also be available. The department may require a service provider to label a home collection kit in another language if the department finds that the service provider is marketing home collection kits in a community in which a significant portion of the population speaks a language other than English or Spanish.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0291, eff. April 2, 2015.

Sec. 85.259. ENFORCEMENT. A home collection kit for HIV infection testing is a "device" as that term is defined in Section 431.002 and is subject to the provisions for enforcement contained in Chapter 431. Any violation of the requirement in Section 85.258 shall be subject to the enforcement provisions of Chapter 431.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.260. CONFIDENTIALITY. (a) Any statement that an identifiable individual has or has not been tested with a home collection kit for HIV infection testing, including a statement or assertion that the individual is positive, is negative, is at risk, or has or does not have a certain level of antigen or antibody, is confidential as provided by Section 81.103.

(b) A person commits an offense if the person violates this section. The punishment for an offense under this section is the same as the punishment for an offense under Section 81.103.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.261. CERTAIN TECHNOLOGY PROHIBITED. A service provider may not use technology that permits the service provider to identify an individual to whom test results or counseling is provided or to identify the telephone number from which that individual is calling.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

Sec. 85.262. REPORTS. A service provider shall report test results from a home collection kit for HIV infection testing in the manner provided by Subchapter C, Chapter 81.

Added by Acts 1995, 74th Leg., ch. 33, Sec. 1, eff. April 28, 1995.

SUBCHAPTER K. TEXAS HIV MEDICATION ADVISORY COMMITTEE

Sec. 85.271. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(32), eff. April 2, 2015.

(2) "Committee" means the Texas HIV Medication Advisory Committee.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(32), eff. April 2, 2015.

(4) "Program" means the Texas HIV medication program established under Subchapter C.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(32), eff. April 2, 2015.

Sec. 85.272. TEXAS HIV MEDICATION ADVISORY COMMITTEE. (a) The executive commissioner shall establish the committee.

(b) The committee consists of 11 members appointed by the executive commissioner. The committee must include:

(1) three physicians who are actively engaged in the treatment of adults who are infected with HIV;

(2) one physician who is actively engaged in the treatment of infants and children who are infected with HIV;

(3) four consumers who are diagnosed with HIV;

(4) one person who is an administrator for a public, nonprofit hospital that provides services to individuals who are infected with HIV;

(5) one social worker who works with individuals who are infected with HIV; and

(6) one pharmacist who participates in the program.

(c) The department shall provide staff support for the committee.

(d) Except as provided by this subchapter, the committee is subject to Chapter 2110, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.273. DUTIES. (a) The committee shall advise the executive commissioner and the department in the development of procedures and guidelines for the program.

(b) The committee shall:

(1) review the program's goals and aims;

(2) evaluate the program's ongoing efforts;

(3) recommend both short-range and long-range goals and objectives for medication needs; and

(4) perform any other tasks assigned by the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.274. TERMS. A committee member serves at the will of the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.275. OFFICERS. (a) The committee shall select a presiding officer and an assistant presiding officer from the committee members.

(b) An officer shall begin serving on March 1 of each odd-numbered year and serve until February 27 of the following odd-numbered year.

(c) An officer may continue to serve until a replacement is elected for the officer's position.

(d) The presiding officer shall:

(1) preside at all committee meetings attended by the presiding officer;

(2) call meetings in accordance with this subchapter;

(3) appoint subcommittees as necessary; and

(4) ensure annual reports are made to the commissioner.

(e) The presiding officer may serve as an ex officio member of any subcommittee.

(f) The assistant presiding officer shall:

(1) perform the duties of the presiding officer if the presiding officer is absent or is not able to perform those duties

because of disability; and

(2) complete the unexpired portion of the presiding officer's term if the office of the presiding officer becomes vacant.

(g) The committee may elect a committee member to replace the assistant presiding officer if the office of the assistant presiding officer becomes vacant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0292, eff. April 2, 2015.

Sec. 85.276. MEETINGS. (a) The committee shall meet only as necessary to conduct committee business.

(b) A meeting may be called by agreement between the department staff and:

(1) the presiding officer; or

(2) three or more members of the committee.

(c) The department staff shall:

(1) make meeting arrangements; and

(2) contact each committee member to determine the member's availability for a meeting date and place.

(d) The committee is not a "governmental body" as defined by Chapter 551, Government Code. However, each committee meeting must be announced and conducted in accordance with Chapter 551, Government Code, except that the provisions allowing executive sessions do not apply to the committee.

(e) Each member of the committee must be informed of a committee meeting at least five working days before the meeting is to take place.

(f) An agenda for each committee meeting must include an item entitled "public comment" under which any person may address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit for each comment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.277. ATTENDANCE. (a) A member shall attend:

(1) a scheduled committee meeting; and

(2) a meeting of a subcommittee to which the member is assigned.

(b) A member shall notify the presiding officer or the appropriate department staff if the member is unable to attend a scheduled meeting.

(c) The committee shall include the attendance records of each member in the committee's annual report to the commissioner. The report must include a member's attendance at both committee and subcommittee meetings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.278. PROCEDURES. (a) The committee shall use Robert's Rules of Order as the basis of parliamentary decisions except as provided by other law or rule.

(b) An action taken by the committee must be approved by a majority vote of the members present after a quorum is established.

(c) Each member shall have one vote.

(d) A member may not authorize another individual to represent the member by proxy.

(e) The committee shall make decisions in the discharge of the committee's duties without discrimination based on a person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(f) The department staff shall take minutes of each committee meeting. After the minutes are approved by the committee, the presiding officer shall sign the minutes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.279. SUBCOMMITTEES. (a) The committee may establish subcommittees as necessary to assist the committee in performing the committee's duties.

(b) The presiding officer shall appoint committee members to serve on subcommittees and to act as subcommittee chairs. The

presiding officer may appoint a person who is not a committee member to serve on a subcommittee.

(c) A subcommittee shall meet when called by the subcommittee's chair or when directed by the committee.

(d) A subcommittee chair shall make a regular report to the committee at each committee meeting or in an interim written report as needed. The report must include an executive summary or minutes of each subcommittee meeting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.280. STATEMENT BY MEMBER; MEMBER DUTIES. (a) The executive commissioner, the department, and the committee may not be bound by any statement made or action taken by a committee member unless the member makes the statement or takes the action based on specific instructions from the executive commissioner, the department, or the committee.

(b) The committee and committee members may not participate in any legislative activity in the name of the executive commissioner, the department, or the committee unless the committee or committee member obtains approval through the department's legislative process. Committee members may represent themselves or another entity in the legislative process.

(c) A committee member may not accept or solicit a benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(d) A committee member may not disclose confidential information acquired through the member's service on the committee.

(e) A committee member may not knowingly solicit, accept, or agree to accept a benefit for exercising the member's official powers or duties in favor of another person.

(f) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact and may not vote or otherwise participate in the matter.

(g) In this section, "personal or private interest" means a direct pecuniary interest in a matter but does not include a person's engagement in a profession, trade, or occupation if the person's interest is the same as any other person who is similarly engaged in

the profession, trade, or occupation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.281. COMPENSATION; EXPENSES. (a) A committee member may receive reimbursement for expenses incurred for each day the member engages in official committee business if the reimbursement is authorized by the General Appropriations Act or through the budget execution process.

(b) A committee member is not entitled to a salary or stipend unless required by law.

(c) A committee member who is an employee of a state agency, other than the department, is not entitled to reimbursement for expenses from the department.

(d) A person who serves on a subcommittee and who is not a committee member is not entitled to reimbursement for expenses from the department.

(e) Only a consumer who is diagnosed with HIV and serves as a committee member is eligible for reimbursement of actual travel expenses incurred.

(f) A committee member who is eligible for reimbursement of expenses shall submit to the department staff the member's receipts for the expenses and any required forms not later than 14 days after a committee meeting.

(g) A member shall make a request for reimbursement of expenses on an official state travel voucher prepared by the department staff.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

Sec. 85.282. REPORTS. (a) The committee shall file an annual written report with the commissioner not later than March 31 of each year. The report must cover the meetings and activities of the committee for the year preceding the date of the report.

(b) The report must include:

(1) the meeting dates of the committee and any subcommittee;

(2) attendance records for each committee member;

(3) a brief description of any action taken by the committee;

(4) a description of how the committee has accomplished any specific tasks officially given to the committee;

(5) the status of any rules recommended by the committee; and

(6) the anticipated activities of the committee for the following year.

(c) The committee shall identify the costs for the committee's existence in the report, including the cost of department staff used to support the committee's activities and the source of funds used to support the committee's activities.

(d) The presiding officer and appropriate department staff shall sign the report.

Added by Acts 2011, 82nd Leg., R.S., Ch. 520 (H.B. 2229), Sec. 1, eff. September 1, 2011.

CHAPTER 86. BREAST CANCER AND LUNG CANCER

SUBCHAPTER B. BREAST CANCER SCREENING

Sec. 86.013. INFORMATION ON SUPPLEMENTAL BREAST CANCER SCREENING. (a) On completion of a mammogram, a mammography facility certified by the United States Food and Drug Administration or by a certification agency approved by the United States Food and Drug Administration shall provide to the patient the following notice:

"If your mammogram demonstrates that you have dense breast tissue, which could hide abnormalities, and you have other risk factors for breast cancer that have been identified, you might benefit from supplemental screening tests that may be suggested by your ordering physician.

"Dense breast tissue, in and of itself, is a relatively common condition. Therefore, this information is not provided to cause undue concern, but rather to raise your awareness and to promote discussion with your physician regarding the presence of other risk factors, in addition to dense breast tissue.

"A report of your mammography results will be sent to you and your physician. You should contact your physician if you have any questions or concerns regarding this report."

(b) Notwithstanding any other law, this section does not create

a cause of action or create a standard of care, obligation, or duty that provides a basis for a cause of action.

(c) The information required by this section or evidence that a person violated this section is not admissible in a civil, judicial, or administrative proceeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1154 (H.B. 2102), Sec. 2, eff. September 1, 2011.

CHAPTER 87. BIRTH DEFECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 87.001. DEFINITIONS. In this chapter:

(1) "Birth defect" means a physical or mental functional deficit or impairment in a human embryo, fetus, or newborn resulting from one or more genetic or environmental causes.

(2) "Communicable disease" has the meaning assigned by Section 81.003.

(3) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 8.134, eff. Sept. 1, 1995.

(4) "Environmental causes" means the sum total of all the conditions and elements that make up the surroundings and influence the development of an individual.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(33), eff. April 2, 2015.

(6) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, certificate, or license or membership in a regional or national association.

(7) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital operated by the department or a state supported living center operated by the Department of Aging and Disability Services;

(E) a genetic evaluation and counseling center;

(F) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121;

(G) a physician peer review organization; and

(H) another facility specified by department rule.

(8) "Midwife" has the meaning assigned by Section 203.002, Occupations Code.

(9) "Local health unit" has the meaning assigned by Section 121.004.

(10) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(33), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.134, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.774, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0293, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(33), eff. April 2, 2015.

Sec. 87.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department may release medical, epidemiological, or toxicological information:

(1) for statistical purposes, if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information or, if the person is a minor, the minor's parents, managing conservator, guardian, or other person who is legally

authorized to consent;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and department rules relating to the identification, monitoring, and referral of children with birth defects;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service; or

(5) to medical personnel to the extent necessary to protect the health or life of the child identified in the information.

(d) The executive commissioner, the commissioner, another employee of the department, or an authorized agent may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified or monitored for a birth defect by the department without the consent of the child's parents, managing conservator, guardian, or other person authorized by law of this state or another state or by a court order to give consent.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 8.130, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0294, eff. April 2, 2015.

Sec. 87.003. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for supplies, equipment, data, and data collection and other services.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.004. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this

chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.005. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the program.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. BIRTH DEFECTS MONITORING PROGRAM

Sec. 87.021. SURVEILLANCE PROGRAM; REGISTRY ESTABLISHED. (a) The executive commissioner shall establish in the department a program to:

(1) identify and investigate certain birth defects in children; and

(2) maintain a central registry of cases of birth defects.

(b) The executive commissioner may authorize the department to implement a statewide program or to limit the program to a part or all of one or more public health regions, depending on the funding available to the department. In establishing the program, the executive commissioner shall consider:

(1) the number and geographic distribution of births in the state;

(2) the trained personnel and other departmental resources that may be assigned to the program activities; and

(3) the occurrence or probable occurrence of an urgent situation that requires or will require an unusual commitment of the department's personnel and other resources.

(c) The department shall design the program so that the program will:

(1) provide information to identify risk factors and causes of birth defects;

(2) provide information on other possible causes of birth defects;

(3) provide for the development of strategies to prevent birth defects;

(4) provide for interview studies about the causes of birth defects;

(5) together with other departmental programs, contribute birth defects data to a central registry;

(6) provide for the appointment of authorized agents to collect birth defects information; and

(7) provide for the active collection of birth defects information.

(d) The executive commissioner shall adopt rules to govern the operation of the program and carry out the intent of this chapter. At a minimum, the rules shall:

(1) use a medically recognized system to specify the birth defects to be identified and investigated;

(2) select a system for classifying the birth defects according to the public health significance of each defect to prioritize the use of resources;

(3) develop a system to select and specify the cases to be investigated;

(4) specify a system for selecting the demographic areas in which the department may undertake investigations; and

(5) prescribe the training and experience a person must have for appointment as an authorized agent of the department.

(e) In adopting the rules required by Subsection (d), the executive commissioner shall consider at least:

(1) the known incidence and prevalence rates of a birth defect in the state or portions of the state;

(2) the known incidence and prevalence rates of a particular birth defect in specific population groups who live in the state or portions of the state;

(3) the morbidity and mortality resulting from the birth defect; and

(4) the existence, cost, and availability of a strategy to prevent and treat the birth defect.

(f) In addition to providing for the active collection of birth defects information under Subsection (c)(7), the department may design the program to also provide for the passive collection of that information.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 1042, Sec. 1, eff. June 20,

2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0295, eff. April 2, 2015.

Sec. 87.022. DATA COLLECTION. (a) To ensure an accurate source of data necessary to investigate the incidence, prevalence, and trends of birth defects, the executive commissioner may require a health facility, health professional, or midwife to make available for review by the department or by an authorized agent medical records or other information that is in the facility's, professional's, or midwife's custody or control and that relates to the occurrence of a birth defect specified by the executive commissioner.

(b) The executive commissioner by rule shall prescribe the manner in which records and other information are made available to the department.

(c) The executive commissioner shall adopt procedural rules to facilitate cooperation between the health care facility, health professional, or midwife and a department employee or authorized agent, including rules for notice, requests for medical records, times for record reviews, and record management during review.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0296, eff. April 2, 2015.

Sec. 87.023. REFERRAL FOR SERVICES. A child who meets the medical criteria prescribed by department rule, and the child's family, shall be referred to the department's case management program for guidance in applying for financial or medical assistance available through existing state and federal programs.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0297, eff. April 2, 2015.

SUBCHAPTER C. INVESTIGATIONS AND INSPECTIONS

Sec. 87.041. INVESTIGATIONS. (a) The department may conduct investigations, including epidemiological or toxicological investigations, of cases of specified birth defects.

(b) The department may conduct these investigations to determine the nature and extent of the disease or the known or suspected cause of the birth defect and to formulate and evaluate control measures to protect the public health. The department's investigation is not limited to geographic, temporal, or occupational associations and may include investigation of past exposures.

(c) A person shall provide medical, demographic, epidemiological, toxicological, and environmental information to the department under this chapter.

(d) A person is not liable in damages or other relief for providing medical or other confidential information to the department during an epidemiological or toxicological investigation.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.042. DEPARTMENTAL INVESTIGATORY POWERS. To conduct an investigation under this chapter, the commissioner or the commissioner's designee has the same authority to enter, inspect, investigate, and take samples and to do so in the same manner as is provided for communicable diseases under Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.132, eff. Sept. 1, 1995.

SUBCHAPTER D. CENTRAL REGISTRY

Sec. 87.061. REGISTRY; CONFIDENTIALITY. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central registry to facilitate research and to maintain security. The department may also store information available from other departmental programs and information from other reporting systems and health care providers.

(b) The department shall use the registry to:

(1) investigate the causes of birth defects and other

health conditions as authorized by Texas statutes;

(2) design and evaluate measures to prevent the occurrence of birth defects and other health conditions; and

(3) conduct other investigations and activities necessary for the executive commissioner and department to fulfill their obligation to protect the health of the public.

(c) The department may store in the central registry information that is obtained from the section of the birth certificate entitled "For Medical and Health Use Only." This information may be used only as provided by Section 192.002(b), relating to the form and contents of the birth certificate.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0298, eff. April 2, 2015.

Sec. 87.062. ACCESS TO INFORMATION. (a) Access to the central registry information is limited to authorized department employees and other persons with a valid scientific interest who are engaged in demographic, epidemiological, or other studies related to health and who agree in writing to maintain confidentiality.

(b) The department shall maintain a listing of each person who is given access to the information in the central registry. The listing shall include:

(1) the name of the person authorizing access;

(2) the name, title, and organizational affiliation of each person given access;

(3) the dates of access; and

(4) the specific purpose for which the information was used.

(c) The listing is public information, is open to the public under Chapter 552, Government Code, and may be inspected during the department's normal hours of operation.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 87.063. RESEARCH; REVIEW AND APPROVAL. (a) The commissioner and the department's committee for the protection of human subjects shall review each research proposal that requests the use of information in the central registry. The executive commissioner shall adopt rules establishing criteria to be used in deciding if the research design should be approved. A proposal that meets the approval criteria is considered to establish a valid interest as required by Section 87.062(a), and the commissioner and the committee shall authorize the researcher to review the records relevant to the research proposal and to contact cases and controls.

(b) If an investigator using central registry data under a research design approved under this section believes it is necessary to contact case subjects and controls, the investigator must submit a protocol describing the purpose and method to the commissioner and the department's committee for the protection of human subjects. If the contact protocol is approved, the investigator is considered to have established a bona fide research, development, or planning purpose and is entitled to carry out the contacts without securing additional approvals or waivers from any entity.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.133, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0299, eff. April 2, 2015.

Sec. 87.064. REPORT OF CENTRAL REGISTRY ACTIVITIES AND FINDINGS. (a) The department shall publish an annual report of activities using data contained in the central registry. The report shall include:

(1) a description of research projects in progress since the last report and the sponsors and principal investigators directing each project;

(2) results of the completed research projects either as an abstract or a complete scientific paper that has been reviewed and approved by an appropriate jury;

(3) a summary of the statistical information compiled in the registry, including a specific discussion of any clusters, high

or low incidences, or prevalences or trends encountered;

(4) any policy, research, educational, or other recommendations the department considers appropriate; and

(5) such other information the editors of the report find is appropriate.

(b) The department may publish periodic reports in addition to the annual report.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

Sec. 87.065. COORDINATION WITH MEXICO. In developing the central registry and conducting research in areas of this state that border Mexico, the department shall make every effort to coordinate its efforts with similar efforts and research programs in Mexico.

Added by Acts 1993, 73rd Leg., ch. 602, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 88. REPORTS OF CHILDHOOD LEAD POISONING

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Child care" includes a school, preschool, kindergarten, nursery school, or other similar activity that provides care or instruction for young children.

(2) "Child care facility" means a public place or a residence in which a person furnishes child care.

(3) "Health authority" means a physician appointed as such under Chapter 121.

(4) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of health in another individual; and

(B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(5) "Lead" includes metallic lead and materials containing metallic lead with a potential for release in sufficient concentrations to pose a threat to public health.

(6) "Reference level" means the presence of blood lead concentrations suspected to be associated with mental and physical disorders due to absorption, ingestion, or inhalation of lead as specified in the most recent reference value issued by the Centers

for Disease Control and Prevention of the United States Public Health Service.

(7) "Lead poisoning" means the presence of a confirmed venous blood level established by department rule in the range specified for medical evaluation and possible pharmacologic treatment in the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

(8) "Local health department" means a department created under Chapter 121.

(9) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

(10) "Public health district" means a district created under Chapter 121.

(11) "Regional director" means a physician appointed under Section 121.007 as the chief administrative officer of a public health region as designated under Chapter 121.

(12) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(34), eff. April 2, 2015.

(13) "Child-occupied facility" means a building or part of a building, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(14) "Lead hazard" means an item, surface coating, or environmental media that contains or is contaminated with lead and, when ingested or inhaled, may cause exposures that contribute to blood lead levels in children, including:

(A) an accessible painted surface or coating;

(B) an article for residential or consumer use;

(C) accessible soil and dust, including attic dust; and

(D) food, water, or remedies.

(15) "Certified lead risk assessor" means a person who has been certified by the department to conduct lead risk assessments, inspections, and lead-hazard screens, as defined by department rule.

(16) "Environmental lead investigation" means an investigation performed by a certified lead risk assessor of the home environment of, or other premises frequented by, a child who has a confirmed blood lead level warranting such an investigation, under

the most recent criteria issued by the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by Acts 2003, 78th Leg., ch. 740, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0300, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(34), eff. April 2, 2015.

Sec. 88.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a health authority, a regional director, or the department that relate to cases or suspected cases of children with reportable blood lead levels are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of childhood lead poisoning and children with reportable blood lead levels are not public information under the open records law, Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) Medical, epidemiologic, or toxicologic information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and related rules;

(4) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service, except that the information must be limited to the information requested by the agency; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the child identified in the information.

(d) The commissioner, a regional director or other department employee, a health authority or employee of a public health district, a health authority or employee of a county or municipal health department, or a public official of a county or municipality may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified, examined, or treated for lead poisoning or about a child possessing reportable blood lead levels by the department, a public health district, a local health department, or a health authority without the consent of the child's parents, managing conservator, guardian, or other person authorized by law to give consent.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0301, eff. April 2, 2015.

Sec. 88.0025. CHILDHOOD LEAD POISONING PREVENTION. The executive commissioner may adopt policies and procedures to promote the elimination of childhood lead poisoning within the state, and the department shall implement all adopted policies and procedures. The executive commissioner may adopt measures to:

(1) significantly reduce the incidence of childhood lead poisoning throughout the state;

(2) improve public awareness of lead safety issues and educate both property owners and tenants about practices that can reduce the incidence of lead poisoning; and

(3) encourage the testing of children likely to suffer the consequences of lead poisoning so that prompt diagnosis and treatment and the prevention of harm are possible.

Added by Acts 2003, 78th Leg., ch. 740, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0302, eff. April 2, 2015.

Sec. 88.003. REPORTABLE HEALTH CONDITION. (a) Childhood blood lead levels that exceed the reference level are reportable.

(b) The executive commissioner by rule may designate:

(1) blood lead concentrations in children that must be reported; and

(2) the ages of children for whom the reporting requirements apply.

(c) The executive commissioner may adopt rules that establish a registry of children with blood lead levels that exceed the reference level and lead poisoning.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0303, eff. April 2, 2015.

Sec. 88.004. PERSONS REQUIRED TO REPORT. (a) A person required to report childhood blood lead levels shall report to the department in the manner specified by department rule. Except as provided by this section, a person required by this section to report must make the report immediately after the person gains knowledge of a child with a reportable blood lead level.

(b) A physician shall report a case or suspected case of childhood lead poisoning or of a child with a reportable blood lead level after the physician's first examination of a child for whom reporting is required by this chapter or department rule.

(c) A person in charge of an independent clinical laboratory, a hospital or clinic laboratory, or other facility in which a laboratory examination of a specimen derived from the human body yields evidence of a child with a reportable blood lead level shall report the findings to the department as required by department rule.

(d) If a report is not made as required by Subsection (b) or (c), the following persons shall report a child's reportable blood lead level and all information known concerning the child:

(1) the administrator of a hospital licensed under Chapter 241;

(2) a registered nurse;

(3) an administrator or director of a public or private child care facility;

(4) an administrator of a home and community support services agency;

(5) an administrator or health official of a public or private institution of higher education;

(6) a superintendent, manager, or health official of a public or private camp, home, or institution;

(7) a parent, managing conservator, or guardian; and

(8) a health professional.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0304, eff. April 2, 2015.

Sec. 88.005. REPORTING PROCEDURES. (a) The executive commissioner shall prescribe the form and method of reporting under this chapter, including a report in writing, by telephone, or by electronic data transmission.

(b) The executive commissioner by rule may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

(1) the child's name, address, age, sex, and race;

(2) the child's blood lead concentration;

(3) the procedure used to determine the child's blood lead concentration; and

(4) the name of the attending physician.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the customary reporting procedure would cause the information to be unduly delayed.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0305, eff. April 2, 2015.

Sec. 88.006. REPORTS OF HOSPITALIZATION; DEATH. (a) A physician who attends a child during the child's hospitalization shall immediately notify the department if the physician knows or

suspects that the child has lead poisoning or a blood lead level that exceeds the reference level and the physician believes the lead poisoning or blood lead level resulted from the child's exposure to a dangerous level of lead that may be a threat to the public health.

(b) A physician who attends a child during the child's last illness shall immediately notify the department if the physician:

(1) knows or suspects that the child died of lead poisoning; and

(2) believes the lead poisoning resulted from the child's exposure to a dangerous level of lead that may be a threat to the public health.

(c) An attending physician, health authority, or regional director, with the consent of the child's survivors, may request an autopsy if the physician, health authority, or regional director needs further information concerning the cause of death in order to protect the public health. The health authority or regional director may order the autopsy to determine the cause of death if the child's survivors do not consent to the autopsy. The autopsy results shall be reported to the department.

(d) A justice of the peace acting as coroner or a medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a child's cause of death was lead poisoning that resulted from exposure to a dangerous level of lead that the justice of the peace or medical examiner believes may be a threat to the public health shall immediately notify the health authority or the regional director in the jurisdiction in which the finding is made.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 52, eff. Jan. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0306, eff. April 2, 2015.

Sec. 88.007. DEPARTMENT RULES FOR FOLLOW-UP CARE; COORDINATION OF CARE. (a) The executive commissioner may adopt rules establishing standards for follow-up care provided to children with a confirmed blood lead level that exceeds the reference level.

(b) Rules adopted under this section must meet any federal requirements for coordinated follow-up care for children with

confirmed blood lead levels that exceed the reference level and may include, in a manner consistent with current federal guidelines:

(1) an environmental lead investigation of all or parts of a child's home environment, child-care facility, or child-occupied facility that may be a source of a lead hazard causing or contributing to the child's lead exposure; and

(2) guidance to parents, guardians, and consulting physicians on how to eliminate or control lead exposures that may be contributing to the child's blood lead level.

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0307, eff. April 2, 2015.

Sec. 88.008. ENVIRONMENTAL LEAD INVESTIGATIONS. (a) On receiving a report of a child with a confirmed blood lead level warranting an environmental lead investigation, the department or its authorized agent may conduct an environmental lead investigation of:

(1) the home environment in which the child resides, if the department or the department's authorized agent obtains the written consent of an adult occupant;

(2) any child-care facility with which the child has regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of the owner, operator, or principal of the facility; and

(3) any child-occupied facility with which the child has regular contact and that may be contributing to the child's blood lead level, if the department or the department's authorized agent obtains the written consent of:

(A) the owner, operator, or principal of the facility; or

(B) an adult occupant of the facility if the facility is subject to a lease agreement.

(b) Notwithstanding the consent requirements under Subsection (a), consent for an investigation is not required to be in writing for an investigation related to a report of a child with a blood lead

level of 45 micrograms per deciliter or more if a good faith attempt to contact the persons authorized to provide written consent under Subsection (a) has been unsuccessful.

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.

Sec. 88.009. ENVIRONMENTAL LEAD INVESTIGATION PROCEDURES. The executive commissioner may adopt rules establishing procedures for environmental lead investigations of dwellings and other premises subject to this chapter. The rules must meet, but may not exceed, any requirements established under regulations adopted by the federal Environmental Protection Agency under Subchapter IV, Toxic Substances Control Act (15 U.S.C. Section 2681 et seq.).

Added by Acts 2007, 80th Leg., R.S., Ch. 398 (S.B. 814), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0308, eff. April 2, 2015.

CHAPTER 89. SCREENING AND TREATMENT FOR TUBERCULOSIS IN JAILS AND OTHER CORRECTIONAL FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. DEFINITIONS. In this chapter:

(1) "Community corrections facility" means a facility established under Chapter 509, Government Code.

(2) "County jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an offense and includes:

(A) a facility operated by or for a county for the confinement of persons accused or convicted of an offense;

(B) a county jail or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code; and

(C) a county correctional center authorized by Subchapter H, Chapter 351, Local Government Code.

(3) "Governing body" means:

(A) the commissioners court of a county, for a county jail;

(B) the district judges governing a community corrections facility, for a community corrections facility;

(C) the governing body of a municipality, for a jail operated by or under contract to a municipality; or

(D) the community supervision and corrections department, for a jail operated under contract to a community supervision and corrections department.

(4) "Health authority" has the meaning assigned by Section 121.021.

(5) "Jail" means:

(A) a county jail; or

(B) a facility for the confinement of persons accused of an offense that is:

(i) operated by a municipality or a vendor under contract with a municipality under Subchapter F, Chapter 351, Local Government Code; or

(ii) operated by a vendor under contract with a community supervision and corrections department under Chapter 76, Government Code.

(6) "Local health department" means a health department created under Subchapter D, Chapter 121.

(7) "Physician" means a person licensed to practice medicine in a state of the United States.

(8) "Public health district" means a health district established under Subchapter E, Chapter 121.

(9) "Screening test" means a rapid analytical laboratory or other procedure to determine the need for further diagnostic evaluation.

(10) "Tuberculosis" means a disease caused by Mycobacterium tuberculosis or other members of the Mycobacterium tuberculosis complex.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 7.07, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 348, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0309, eff. April 2, 2015.

Sec. 89.002. SCOPE OF CHAPTER. Except as provided by Subchapter E, this chapter applies only to a jail that:

(1) has a capacity of at least 100 beds; or

(2) houses inmates:

(A) transferred from a county that has a jail that has a capacity of at least 100 beds; or

(B) from another state.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER B. SCREENING OF JAIL EMPLOYEES AND VOLUNTEERS

Sec. 89.011. SCREENING OF JAIL EMPLOYEES AND VOLUNTEERS. (a) The governing body of a jail or community corrections facility, through the community supervision and corrections department, shall require that each employee or volunteer working or providing services in a jail or a community corrections facility, who meets the screening guidelines prescribed by department rule, present to the governing body a certificate signed by a physician that states that:

(1) the employee or volunteer has been tested for tuberculosis infection in accordance with department rules; and

(2) the results of the test indicate that the person does not have tuberculosis.

(b) In lieu of a screening test, an employee or volunteer with a history of a positive screening test may provide:

(1) documentation of that positive test result and of any diagnostic and therapeutic follow-up; and

(2) a certificate signed by a physician that states that the person does not have tuberculosis.

(c) The health authority may require an employee or volunteer to have an additional screening test or medical examination if the department determines that an additional test or examination is necessary and appropriate to protect the public health.

(d) An employee or volunteer is exempt from the screening test required by this section if:

(1) the screening test conflicts with the tenets of an organized religion to which the individual belongs; or

(2) the screening test is medically contraindicated based on an examination by a physician.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 348, Sec. 3, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0310, eff. April 2, 2015.

Sec. 89.012. FOLLOW-UP EVALUATIONS AND TREATMENT. (a) An employee or a volunteer with a positive screening test result must obtain a diagnostic evaluation from the person's own physician to determine if the person has tuberculosis.

(b) If the employee or volunteer has tuberculosis, the governing body may not permit the person to begin or continue the person's employment duties or volunteer services unless the person is under treatment for the disease by a physician and the person provides to the governing body a certificate signed by the attending physician stating that the patient is noninfectious.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 4, eff. Sept. 1, 1997.

Sec. 89.013. CERTIFICATE REQUIRED. (a) The governing body or a designee of the governing body shall confirm that each employee or volunteer required to be screened under this subchapter has the required certificate.

(b) The governing body may not permit an employee or volunteer to carry out the person's duties if the person does not have the required certificate.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 5, eff. Sept. 1, 1997.

Sec. 89.014. COST OF TESTS, FOLLOW-UP, AND TREATMENT. The employee or volunteer shall pay the expense of a screening test, diagnostic evaluation, or other professional medical service required under this subchapter unless the commissioners court, the governing body of a municipality, or a local health department or public health district elects to provide the service.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 348, Sec. 5, eff. Sept. 1, 1997.

SUBCHAPTER C. INMATE SCREENING AND TREATMENT

Sec. 89.051. INMATE SCREENING REQUIRED. (a) Each inmate in a jail or community corrections facility shall undergo a screening test for tuberculosis infection approved by the executive commissioner if:

(1) the inmate will probably be confined in jail or a community corrections facility for more than seven days; and

(2) the inmate meets the screening guidelines prescribed by department rules.

(b) The inmate must be tested on or before the seventh day after the day the inmate is first confined.

(c) An inmate listed by Subsection (a) is not required to be retested at each rebooking if the inmate is booked into a jail or a community corrections facility more than once during a 12-month period unless the inmate shows symptoms of tuberculosis or is known to have been exposed to tuberculosis.

(d) An inmate is exempt from the screening test required by this section if:

(1) the screening test conflicts with the tenets of an organized religion to which the individual belongs; or

(2) the screening test is medically contraindicated based on an examination by a physician.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 6, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0311, eff. April 2, 2015.

Sec. 89.052. RESCREENING; DIAGNOSTIC EVALUATIONS. The department or a health authority may require a governing body to provide an additional screening test or a diagnostic evaluation if the department or health authority determines that an additional screening test or a diagnostic evaluation is necessary and appropriate to protect the health of the jail inmates, employees, volunteers, or the public.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 348, Sec. 7, eff. Sept. 1, 1997.

Sec. 89.053. FOLLOW-UP EVALUATIONS. (a) If an inmate has a confirmed positive screening test result, the governing body shall provide a diagnostic evaluation to determine whether the inmate has tuberculosis.

(b) The sheriff, jail administrator, or director of the community corrections facility shall provide appropriate accommodations to an inmate who has tuberculosis or is suspected of having tuberculosis, including respiratory isolation, if necessary, and adequate medical care and treatment that meet the accepted standards of medical practice.

(c) The jail or community corrections facility shall provide preventive therapy to an infected inmate if the preventive therapy is prescribed by the attending physician and the inmate consents to the treatment.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 8, eff. Sept. 1, 1997.

Sec. 89.054. INMATE TRANSFER AND RELEASE. A copy of an inmate's medical records or documentation of screenings or treatment received during confinement must accompany an inmate transferred from one jail or community corrections facility to another or the Texas Department of Criminal Justice and be available for medical review on arrival of the inmate.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. REPORTING; RULEMAKING; MINIMUM STANDARDS

Sec. 89.071. REPORTING. (a) A case of tuberculosis shall be reported to the appropriate health authority or to the department not later than the third day after the day on which the diagnosis is suspected.

(b) The results of a screening test shall be reported to the department monthly in a manner approved by the department.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.

Sec. 89.072. RULEMAKING. The department shall recommend to the Commission on Jail Standards and the Texas Department of Criminal Justice rules to carry out this chapter, including rules describing:

(1) the types of screening tests and diagnostic evaluations and the scope of the professional examinations that may be used to meet the requirements of this chapter;

(2) the categories of employees, volunteers, or inmates who must have a screening test under this chapter;

(3) the form and content of the certificate required under Subchapter B for employees and volunteers;

(4) the deadlines for filing a certificate;

(5) the transfer of employee or volunteer certificates and inmate records between facilities;

(6) the frequency of screening tests for employees, volunteers, and inmates;

(7) the criteria for requiring an additional screening test or a diagnostic evaluation or examination; and

(8) the reporting of a screening test or an evaluation or examination result to the appropriate health authority or to the department.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 9, eff. Sept. 1, 1997.

Sec. 89.073. ADOPTION OF LOCAL STANDARDS. (a) The standards prescribed by this chapter and the rules adopted by the executive commissioner relating to screening tests or examinations for tuberculosis required for certain employees and volunteers are minimum standards.

(b) With the prior approval of the department:

(1) a governing body may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this chapter and department rules; and

(2) a private facility may adopt and enforce standards for carrying out this chapter if the standards are compatible with and equal to or more stringent than the standards prescribed by this

chapter and department rules.

(c) The executive commissioner shall adopt substantive and procedural rules to govern the submission of standards adopted under Subsection (b). At a minimum these rules must contain:

(1) a procedure for the submission of standards for departmental review; and

(2) an internal departmental appeal process by which a governing body or private entity may seek a review of the department's decision to reject proposed standards.

Added by Acts 1993, 73rd Leg., ch. 786, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 348, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0312, eff. April 2, 2015.

SUBCHAPTER E. CONTINUITY OF CARE

Sec. 89.101. DEFINITIONS. In this subchapter:

(1) "Corrections facility" means:

(A) a jail or community corrections facility, without regard to whether the jail or facility satisfies the requirements of Section 89.002;

(B) any correctional facility operated by or under contract with a division of the Texas Department of Criminal Justice; or

(C) a detention facility operated by the Texas Juvenile Justice Department.

(2) "Offender" means a juvenile or adult who is arrested or charged with a criminal offense.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0313, eff. April 2, 2015.

Sec. 89.102. REPORT OF RELEASE. A corrections facility shall report to the department the release of an offender who is receiving treatment for tuberculosis. The department shall arrange for

continuity of care for the offender.

Added by Acts 1997, 75th Leg., ch. 348, Sec. 11, eff. Sept. 1, 1997.

CHAPTER 92. INJURY PREVENTION AND CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS. In this chapter:

(1) "Injury" means damage to the body that results from intentional or unintentional acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of essentials such as heat or oxygen.

(2) "Reportable injury" means an injury or condition required to be reported under this subchapter.

(3) "Traumatic brain injury" means an acquired injury to the brain, including brain injuries caused by anoxia due to near drowning. The term does not include brain dysfunction caused by congenital or degenerative disorders or birth trauma.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.001 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 2003.

Sec. 92.002. REPORTABLE INJURY; RULES. (a) Spinal cord injuries, traumatic brain injuries, and submersion injuries are reportable to the department. The executive commissioner by rule shall define those terms for reporting purposes.

(b) The executive commissioner may adopt rules that require other injuries to be reported under this subchapter.

(c) The executive commissioner shall maintain and revise, as necessary, the list of reportable injuries.

(d) The executive commissioner shall adopt rules necessary to administer this subchapter.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.002 by Acts 1995, 74th

Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.002 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0314, eff. April 2, 2015.

Sec. 92.003. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of reportable injuries to the department:

(1) a physician who diagnoses or treats a reportable injury; and

(2) a medical examiner or justice of the peace.

(b) The department may contact a physician attending a person with a case or suspected case of a reportable injury.

(c) The department shall prescribe the form and method of reporting. The department may require the reports to contain any information, including the person's name, address, age, sex, race, occupation, employer, and attending physician, necessary to achieve the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.003 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1088, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0315, eff. April 2, 2015.

Sec. 92.004. POWERS AND DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements as necessary to carry out this subchapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purpose of identifying, reporting, or preventing those injuries determined by the executive commissioner to be harmful or to be a threat to the public health.

(c) Subject to the confidentiality provisions of this subchapter, the department shall evaluate the reports of injuries to establish the nature and magnitude of the hazards associated with those injuries, to reduce the occurrence of those risks, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this subchapter and other law.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.004 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0316, eff. April 2, 2015.

Sec. 92.005. ACCESS TO INFORMATION. Subject to the confidentiality provisions of this subchapter, the department may collect, or cause to be collected, medical, demographic, or epidemiologic information from any medical or laboratory record or file to help the department in the epidemiologic investigation of injuries and their causes.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.005 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 7, eff. Sept. 1, 2003.

Sec. 92.006. CONFIDENTIALITY. (a) All information and records relating to injuries are confidential, including information from

injury investigations. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

(b) The executive commissioner shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this subchapter are kept confidential and protected from release to unauthorized persons.

(c) The commissioner, the commissioner's designee, the executive commissioner, or an employee of the department or commission may not be examined in a judicial or other proceeding about the existence or contents of pertinent records of, investigation reports of, or reports or information about a person examined or treated for an injury without that person's consent.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.006 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.006 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1088, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0317, eff. April 2, 2015.

Sec. 92.007. INVESTIGATIONS. (a) The department shall investigate the causes of injuries and methods of prevention.

(b) The department may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in the department's duty to prevent an injury.

(c) The department may not enter a private residence to conduct an investigation about the causes of injuries without first receiving permission from a lawful adult occupant of the residence.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.007 by Acts 1995, 74th

Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.007 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0318, eff. April 2, 2015.

Sec. 92.009. COORDINATION WITH TEXAS DEPARTMENT OF INSURANCE. The department and the Texas Department of Insurance shall enter into a memorandum of understanding which shall include the following:

(1) the department and the Texas Department of Insurance shall exchange relevant injury data on an ongoing basis notwithstanding Section 92.006;

(2) confidentiality of injury data provided to the department by the Texas Department of Insurance is governed by Subtitle A, Title 5, Labor Code;

(3) confidentiality of injury data provided to the Texas Department of Insurance by the department is governed by Section 92.006; and

(4) cooperation in conducting investigations of work-related injuries.

Added by Acts 1993, 73rd Leg., ch. 41, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 87.009 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(18), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 88.009 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(53), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 893, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.101, eff. September 1, 2005.

CHAPTER 93. PREVENTION OF CARDIOVASCULAR DISEASE AND STROKE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Cardiovascular disease" means the group of diseases that target the heart and blood vessels and that are the result of complex interactions between multiple inherited traits and

environmental factors.

(2) "Council" means the Council on Cardiovascular Disease and Stroke.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.002. APPOINTMENT OF COUNCIL; TERMS OF MEMBERS. (a) The Council on Cardiovascular Disease and Stroke is composed of:

(1) 11 public members appointed by the governor, with the advice and consent of the senate, as follows:

(A) a licensed physician with a specialization in cardiology;

(B) a licensed physician with a specialization in neurology to treat stroke;

(C) a licensed physician employed in a primary care setting;

(D) a registered nurse with a specialization in quality improvement practices for cardiovascular disease and stroke;

(E) a registered and licensed dietitian;

(F) two persons with experience and training in public health policy, research, or practice;

(G) two consumer members, with special consideration given to persons actively participating in the Texas affiliates of the American Heart Association or American Stroke Association, managed care, or hospital or rehabilitation settings; and

(H) two members from the general public that have or care for persons with cardiovascular disease or stroke; and

(2) one nonvoting member representing each of the state agencies that oversee:

(A) health services;

(B) assistive and rehabilitative services; and

(C) aging and disability services.

(b) In appointing public members under Subsection (a)(1), the governor shall attempt to appoint female members and members of different minority groups, including African Americans, Hispanic Americans, Native Americans, and Asian Americans.

(c) The head of each agency overseeing services listed in Subsection (a)(2) shall appoint the agency's representative nonvoting

member.

(d) Public members of the council serve staggered six-year terms, with the terms of three or four of the public members expiring February 1 of each odd-numbered year. A nonvoting member representing a state agency serves at the will of the appointing agency.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 6.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 5, eff. June 17, 2011.

Sec. 93.003. REIMBURSEMENT. (a) Except as provided by Subsection (b), a member of the council may be reimbursed for travel expenses incurred while conducting the business of the council at the same rate provided for state employees in the General Appropriations Act, provided funds are appropriated to the department for this purpose.

(b) If funds are not appropriated to support reimbursement of travel expenses, the commissioner may authorize reimbursement of the travel expenses incurred by a member while conducting the business of the council, as provided in the General Appropriations Act, if the commissioner finds on application of the member that travel for council business imposes a financial hardship on the member.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 2, eff. September 1, 2005.

Sec. 93.004. DUTIES OF DEPARTMENT; FUNDS. The department shall accept funds appropriated for the purposes of this chapter and shall allocate those funds. The council shall make recommendations to the department concerning the allocation of funds.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.005. CONSULTANTS; ADVISORY COMMITTEE. To advise and assist the council with respect to the council's duties under this chapter, the council may appoint one or more:

(1) consultants to the council; or

(2) advisory committees under Chapter 2110, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.007. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT. (a) A person is not eligible to serve as a public member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds at the council's direction;

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization receiving funds at the council's direction; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department at the council's direction, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council or act as the general counsel of the council.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the council. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of health care may not be a member of the council and may not be an employee, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) For purposes of Subsection (c), a trade association is a nonprofit, cooperative, and voluntary association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.008. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council if a member:

(1) is not eligible for appointment to the council at the time of appointment as provided by Section 93.007(a);

(2) is not eligible to serve on the council as provided by Section 93.007(a);

(3) violates a prohibition established by Section 93.007(b) or (c);

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

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

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

(c) If the presiding officer of the council knows that a potential ground for removal exists, the presiding officer shall notify the governor of its existence.

(d) The council shall inform its members as often as necessary of:

(1) the qualifications for office prescribed by this chapter; and

(2) the responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.009. PRESIDING OFFICER. The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.010. STAFF SUPPORT. Each agency represented on the council:

(1) shall provide the council with staff support of specialists as needed; and

(2) may provide staff support to an advisory committee.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.012. MEETINGS. (a) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(b) An action taken by the council must be approved by a majority of the voting members present.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.

Sec. 93.013. GIFTS AND GRANTS. (a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council.

(b) The department may retain five percent of any monetary gifts accepted on behalf of the council to cover its costs in administering this section.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0326, eff. April 2, 2015.

Sec. 93.014. FUNDS FOR CLINICAL RESEARCH. The council shall develop a policy governing the award of funds for clinical research that follows scientific peer review guidelines for primary and secondary prevention of heart disease or stroke or that follows other review procedures that are designed to distribute those funds on the basis of scientific merit.

Added by Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 5, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0327, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COUNCIL

Sec. 93.051. CARDIOVASCULAR DISEASE AND STROKE PREVENTION PLAN; DUTIES OF COUNCIL. (a) The council shall develop an effective and resource-efficient plan to reduce the morbidity, mortality, and economic burden of cardiovascular disease and stroke in this state. The council shall:

(1) conduct health education, public awareness, and community outreach activities that relate to primary and secondary prevention of cardiovascular disease and stroke;

(2) promote, enhance, and coordinate health education, public awareness, and community outreach activities that relate to primary and secondary prevention of cardiovascular disease and stroke and that are provided by private and other public organizations;

(3) coordinate activities with other entities that are concerned with medical conditions that are similar to cardiovascular disease and stroke or that have similar risk factors;

(4) identify to health care providers, employers, schools, community health centers, and other groups the benefits of encouraging treatment, primary and secondary prevention, and public awareness of cardiovascular disease and stroke and recognize innovative and effective programs that achieve the objectives of improved treatment, prevention, and public awareness;

(5) provide guidance regarding the roles and responsibilities of government agencies, health care providers, employers, third-party payers, patients, and families of patients in the treatment, primary and secondary prevention, and public awareness

of cardiovascular disease and stroke;

(6) improve access to treatment for and primary and secondary prevention of cardiovascular disease and stroke through public awareness programs, including access for uninsured individuals and individuals living in rural or underserved areas;

(7) assist communities to develop comprehensive local cardiovascular disease and stroke prevention programs;

(8) assist the Texas Education Agency and local school districts to promote a public school curriculum that includes physical, nutritional, and health education relating to cardiovascular disease and stroke prevention;

(9) establish appropriate forums, programs, or initiatives designed to educate the public regarding the impact of heart disease and stroke on women's health, with an emphasis on preventive health and healthy lifestyles; and

(10) evaluate and enhance the implementation and effectiveness of the program developed under this chapter.

(b) The council shall make written recommendations for performing its duties under this chapter to the department and the legislature.

(c) The council shall advise the legislature on legislation that is needed to develop further and maintain a statewide system of quality education services for all persons with cardiovascular disease or stroke. The council may develop and submit legislation to the legislature or comment on pending legislation that affects persons with cardiovascular disease and stroke.

(d) The council shall collaborate with the Governor's EMS and Trauma Advisory Council, the American Stroke Association, and other stroke experts to make recommendations to the department for rules on the recognition and rapid transportation of stroke patients to health care facilities capable of treating strokes 24 hours a day and recording stroke patient outcomes.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 732 (H.B. 2344), Sec. 6, eff. September 1, 2005.

Sec. 93.052. DATABASE OF CLINICAL RESOURCES. The council shall review available clinical resources and shall develop a database of recommendations for appropriate care and treatment of patients with cardiovascular disease or who have suffered from or are at risk for stroke. The council shall make the database accessible to the public.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.053. CARDIOVASCULAR DISEASE AND STROKE DATABASE. (a) The council shall collect and analyze information related to cardiovascular disease and stroke at the state and regional level and, to the extent feasible, at the local level. The council shall obtain the information from federal and state agencies and from private and public organizations. The council shall maintain a database of this information.

(b) The database may include:

(1) information related to behavioral risk factors identified for cardiovascular disease and stroke;

(2) morbidity and mortality rates for cardiovascular disease and stroke; and

(3) community indicators relevant to cardiovascular disease and stroke.

(c) In compiling the database, the council may use information available from other sources, such as the Behavioral Risk Factor Surveillance System established by the Centers for Disease Control and Prevention, reports of hospital discharge data, and information included in death certificates.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

Sec. 93.054. INFORMATION RECEIVED FROM ANOTHER STATE AGENCY; CONFIDENTIALITY. (a) To perform its duties under this chapter, the council may request and receive information in the possession of any state agency. In addition to the restriction imposed by Subsection (b), information provided to the council under this subsection is subject to any restriction on disclosure or use of the information

that is imposed by law on the agency from which the council obtained the information.

(b) Information in the possession of the council that identifies a patient or that is otherwise confidential under law is confidential, is excepted from required public disclosure under Chapter 552, Government Code, and may not be disclosed for any purpose.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 25.01, eff. Sept. 1, 1999.

CHAPTER 94. STATE PLAN FOR HEPATITIS C; EDUCATION AND PREVENTION PROGRAM

Sec. 94.001. STATE PLAN FOR HEPATITIS C. (a) The department shall develop a state plan for prevention and treatment of hepatitis C. The plan must include strategies for prevention and treatment of hepatitis C in specific demographic groups that are disproportionately affected by hepatitis C, including persons infected with HIV, veterans, racial or ethnic minorities that suffer a higher incidence of hepatitis C, and persons who engage in high risk behavior, such as intravenous drug use.

Text of subsection effective until April 1, 2025

(b) In developing the plan, the department shall seek the input of:

(1) the public, including members of the public that have hepatitis C;

(2) each state agency that provides services to persons with hepatitis C or the functions of which otherwise involve hepatitis C, including any appropriate health and human services agency described by Section 531.001, Government Code;

(3) any advisory body that addresses issues related to hepatitis C;

(4) public advocates concerned with issues related to hepatitis C; and

(5) providers of services to persons with hepatitis C.

Text of subsection effective on April 1, 2025

(b) In developing the plan, the department shall seek the input of:

(1) the public, including members of the public that have

hepatitis C;

(2) each state agency that provides services to persons with hepatitis C or the functions of which otherwise involve hepatitis C, including any appropriate health and human services agency described by Section 521.0001, Government Code;

(3) any advisory body that addresses issues related to hepatitis C;

(4) public advocates concerned with issues related to hepatitis C; and

(5) providers of services to persons with hepatitis C.

(c) The department shall update the state plan developed under this section biennially.

Added by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 13, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.34, eff. April 1, 2025.

Sec. 94.002. HEPATITIS C EDUCATION AND PREVENTION PROGRAM. (a) The department shall develop a program to heighten awareness and enhance knowledge and understanding of hepatitis C. The department shall:

(1) conduct a seroprevalence study to estimate the current and future impact of hepatitis C on the state;

(2) conduct health education, public awareness, and community outreach activities to promote public awareness and knowledge about the risk factors, the value of early detection, available screening services, and the options available for the treatment of hepatitis C;

(3) provide training to public health clinic staff regarding the treatment, detection, and methods of transmission of hepatitis C;

(4) identify to health care providers and employers the benefits of disease awareness and prevention; and

(5) develop a prevention program to reduce the risk of

transmission of hepatitis C.

(b) In developing the prevention program required by Subsection (a)(5), the department may forecast the economic and clinical impacts of hepatitis C and the impact of hepatitis C on quality of life. The department may develop the forecasts in conjunction with an academic medical center or a nonprofit institution with experience using disease management prospective modeling and simulation techniques.

Added by Acts 1999, 76th Leg., ch. 823, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 93.001 and amended by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.

Sec. 94.003. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a) The department shall establish voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under Section 85.082 in each public health region to make confidential counseling and testing available.

(b) The department may contract with public and private entities to perform the testing as necessary according to local circumstances.

(c) The results of a test conducted by a testing program or department program under this section may not be used for insurance purposes, to screen or determine suitability for employment, or to discharge a person from employment.

(d) A person who intentionally violates Subsection (c) is liable to a person injured by the violation. The injured person may bring a civil action for damages and may recover for each violation from a person who violates Subsection (c):

(1) the greater of $1,000 or actual damages; and

(2) reasonable attorney's fees.

(e) In addition to the remedies provided by Subsection (d), the person may bring an action to restrain a violation or threatened violation of Subsection (c).

Added by Acts 1999, 76th Leg., ch. 823, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 93.002 by Acts 2001, 77th Leg., ch. 918, Sec. 1, eff. June 14, 2001.

CHAPTER 94A. STATE PLAN FOR STREPTOCOCCUS PNEUMONIAE; EDUCATION AND PREVENTION PROGRAM

Sec. 94A.001. STATE PLAN FOR STREPTOCOCCUS PNEUMONIAE. (a) The department, using existing resources and programs to the extent possible, shall develop a state plan for prevention and treatment of diseases caused by Streptococcus pneumoniae. The plan must include strategies for prevention and treatment of diseases caused by Streptococcus pneumoniae in specific demographic groups that are disproportionately affected by the diseases, including persons who are elderly, children under two years of age, persons living in long-term care facilities, persons with a chronic heart or lung disease, smokers, and persons with asplenia.

Text of subsection effective until April 1, 2025

(b) In developing the plan, the department shall seek the advice of:

(1) the public, including members of the public who have been infected with Streptococcus pneumoniae;

(2) each state agency that provides services to persons infected with Streptococcus pneumoniae or that is assigned duties related to diseases caused by Streptococcus pneumoniae, including any appropriate health and human services agency described by Section 531.001, Government Code, the Employees Retirement System of Texas, and the Teacher Retirement System of Texas;

(3) any advisory body that addresses issues related to diseases caused by Streptococcus pneumoniae;

(4) public advocates concerned with issues related to diseases caused by Streptococcus pneumoniae;

(5) providers of services to persons with diseases caused by Streptococcus pneumoniae;

(6) a statewide professional association of physicians; and

(7) a statewide professional association of nurses.

Text of subsection effective on April 1, 2025

(b) In developing the plan, the department shall seek the advice of:

(1) the public, including members of the public who have been infected with Streptococcus pneumoniae;

(2) each state agency that provides services to persons infected with Streptococcus pneumoniae or that is assigned duties related to diseases caused by Streptococcus pneumoniae, including any appropriate health and human services agency described by Section 521.0001, Government Code, the Employees Retirement System of Texas,

and the Teacher Retirement System of Texas;

(3) any advisory body that addresses issues related to diseases caused by Streptococcus pneumoniae;

(4) public advocates concerned with issues related to diseases caused by Streptococcus pneumoniae;

(5) providers of services to persons with diseases caused by Streptococcus pneumoniae;

(6) a statewide professional association of physicians; and

(7) a statewide professional association of nurses.

(c) The department shall review and modify as necessary the state plan developed under this section at least once every five years and may update the state plan biennially.

Added by Acts 2017, 85th Leg., R.S., Ch. 994 (H.B. 970), Sec. 1, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.35, eff. April 1, 2025.

Sec. 94A.002. STREPTOCOCCUS PNEUMONIAE EDUCATION AND PREVENTION PROGRAM. (a) The department shall develop a program to heighten awareness and enhance knowledge and understanding of Streptococcus pneumoniae.

(b) The program developed under Subsection (a) must require the department to:

(1) conduct health education, public awareness, and community outreach activities to promote public awareness and knowledge about the risk factors for, the value of early detection of, available screening services for, and the options available for the treatment of diseases caused by Streptococcus pneumoniae; and

(2) post on the department's Internet website the options available for the prevention, treatment, and detection of diseases caused by Streptococcus pneumoniae and information on the risk factors for, method of transmission of, and value of early detection of the diseases.

(c) The department, using existing resources, may include in the program developed under Subsection (a) a study to estimate the current and future impact on this state of diseases caused by Streptococcus pneumoniae.

Added by Acts 2017, 85th Leg., R.S., Ch. 994 (H.B. 970), Sec. 1, eff. September 1, 2017.

CHAPTER 95. DIABETES

SUBCHAPTER A. RISK ASSESSMENT FOR TYPE 2 DIABETES

Sec. 95.001. DEFINITIONS. In this subchapter:

(1) "Acanthosis nigricans" means a light brown or black velvety, rough, or thickened area on the surface of the skin that may signal high insulin levels indicative of insulin resistance.

(2) "Advisory committee" means the Type 2 Diabetes Risk Assessment Program Advisory Committee established under Section 95.006.

(3) "Council" means the Texas Diabetes Council.

(4) "Office" means The University of Texas Rio Grande Valley Border Health Office.

(5) "Professional examination" means an evaluation performed by an appropriately licensed professional.

(6) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 392 (S.B. 510), Sec. 3, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 188 (S.B. 1467), Sec. 13, eff. May 30, 2021.

Sec. 95.002. TYPE 2 DIABETES EDUCATION AND RISK ASSESSMENT PROGRAM. (a) The office shall administer a risk assessment program for Type 2 diabetes in accordance with this chapter.

(b) The office, after reviewing recommendations made by the advisory committee, by rule shall coordinate the risk assessment for Type 2 diabetes of individuals who attend public or private schools

located in Texas Education Agency Regional Education Service Centers 1, 2, 3, 4, 10, 11, 13, 15, 18, 19, and 20 and, by using existing funding as efficiently as possible or by using other available funding, in additional regional education service centers.

(c) The rules must include procedures necessary to administer the risk assessment program, including procedures that require each school to record and report risk assessment activities using:

(1) an existing database used to administer and track risk assessment data; or

(2) widely accepted surveillance software selected by the office.

(d) The office shall require a risk assessment for Type 2 diabetes to be performed at the same time hearing and vision screening is performed under Chapter 36 or spinal screening is performed under Chapter 37. The risk assessment for Type 2 diabetes should:

(1) identify students with acanthosis nigricans; and

(2) further assess students identified under Subdivision (1) to determine the students':

(A) body mass index; and

(B) blood pressure.

(e) The office may:

(1) coordinate the risk assessment for Type 2 diabetes activities of school districts, private schools, state agencies, volunteer organizations, universities, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative; and

(2) provide technical assistance to those entities in developing risk assessment programs.

(f) The office shall:

(1) provide educational and other material to assist local risk assessment activities;

(2) monitor the quality of risk assessment activities provided under this chapter; and

(3) consult with the Texas Board of Nursing to determine the training requirements necessary for a nurse or other person to conduct risk assessment activities under this chapter.

(g) The office shall provide on the office's Internet website information on obesity, Type 2 diabetes, and related conditions to health care providers and update the information at least annually.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0329, eff. April 2, 2015.

Sec. 95.003. COMPLIANCE WITH RISK ASSESSMENT REQUIREMENTS. (a) Each individual required by rules adopted under this chapter to be assessed shall undergo approved risk assessment for Type 2 diabetes. The individual shall comply with the requirements as soon as possible after the individual's admission to a school and as required by rule. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian may substitute a professional examination for the risk assessment.

(b) An individual is exempt from risk assessment if risk assessment conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the individual's parent, managing conservator, or guardian must submit to the chief administrator of the school on or before the day of the risk assessment process an affidavit stating the objections to the risk assessment.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the risk assessment requirements set by the office or submits an affidavit of exemption.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.

Sec. 95.004. RECORDS; REPORTS. (a) The chief administrator of each school shall maintain, on a form prescribed by the office, risk assessment records for each individual in attendance and enter the

risk assessment information for each individual on the surveillance software selected by the office. The risk assessment records are open for inspection by the office or the local health department.

(b) The office may, directly or through local health departments, enter a school and inspect records maintained by the school relating to risk assessment for Type 2 diabetes.

(c) An individual's risk assessment records may be transferred among schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.

(d) The person performing the risk assessment shall send a report indicating that an individual may be at risk for developing Type 2 diabetes to the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian. The report must include:

(1) an explanation of:

(A) the process for assessing risk for developing Type 2 diabetes;

(B) the reasons the individual was identified in the risk assessment process as being at risk for developing Type 2 diabetes;

(C) the risk factors associated with developing Type 2 diabetes; and

(D) the individual's body mass index;

(2) a statement concerning an individual's or family's need for further evaluation for Type 2 diabetes and related conditions;

(3) instructions to help the individual or family receive evaluation by a physician or other health care provider; and

(4) information on procedures for applying for the state child health plan program and the state Medicaid program.

(e) Each school shall submit to the office an annual report on the risk assessment status of the individuals in attendance during the reporting year and shall include in the report any other information required by the office.

(f) The report required under Subsection (e) must:

(1) be compiled from the information entered into the surveillance software;

(2) be on a form prescribed by the office; and

(3) be submitted according to the timetable established by the office's rules.

(g) After the end of the reporting period under Subsection (e), the office shall:

(1) analyze and compile a summary of the reports submitted by schools during that reporting period;

(2) file a copy of the summary with the advisory committee; and

(3) post on an Internet website accessible to each school required to submit a report under Subsection (e):

(A) the number of students and the percentage of the student population identified by each of those schools during the reporting period as at risk for Type 2 diabetes; and

(B) comparison data and analyses regarding the information required to be reported under that subsection.

(h) The office shall deliver to the chief administrator of each school and the school nurse or other person responsible for conducting risk assessment activities for the school under this chapter an annual summary compilation of the reports submitted by schools under Subsection (e).

(i) Not later than January 15 of each odd-numbered year, the office shall submit to the governor and the legislature a report relating to the implementation and effectiveness of the Type 2 diabetes risk assessment program established by this chapter that includes a detailed description of the expenses related to the program.

Added by Acts 2001, 77th Leg., ch. 1465, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 3, eff. September 1, 2007.

Sec. 95.005. GIFTS AND GRANTS. The office may accept gifts, grants, and donations to support the Type 2 diabetes risk assessment program conducted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 4, eff. September 1, 2007.

Sec. 95.006. ADVISORY COMMITTEE. (a) The Type 2 Diabetes Risk Assessment Program Advisory Committee is established to advise the

office on the Type 2 diabetes risk assessment program conducted under this chapter.

(b) The advisory committee is composed of:

(1) the following representatives appointed by the executive director of the office:

(A) one representative of the office;

(B) one representative of the Texas Education Agency;

(C) one representative of the Texas Pediatric Society;

(D) one representative of the American Diabetes Association;

(E) one school nurse representative from an urban school located within the boundaries of a regional education service center;

(F) one parent or guardian of a child who resides within the boundaries of a regional education service center; and

(G) one person with knowledge and experience in health care in school settings; and

(2) the following representatives appointed by the chairman of the council:

(A) one representative of the council;

(B) one representative of the Texas Medical Association;

(C) one school district administrator representative from a school district located within the boundaries of a regional education service center;

(D) one school principal representative from a school district located within the boundaries of a regional education service center; and

(E) one school nurse representative from a rural school located within the boundaries of a regional education service center.

(c) A person may not be a member of the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a health care profession or related business or another profession related to the operation of the council.

(d) The representative of the office appointed under Subsection (b)(1)(A) shall serve as the presiding officer of the advisory committee.

(e) The advisory committee shall meet at least twice a year and at other times at the call of the presiding officer. The advisory

committee may meet by teleconference if an in-person meeting of all the members is not practicable.

(f) Members of the advisory committee may not receive compensation for service on the committee. An advisory committee member is entitled to reimbursement of travel expenses incurred by the member while conducting the business of the advisory committee to the extent that funds are available to the office for that purpose.

(g) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

(h) The advisory committee shall:

(1) recommend the person who should be responsible for conducting risk assessment activities under this chapter for schools that do not employ a school nurse;

(2) advise the office on the age groups that would benefit most from the risk assessment activities under this chapter;

(3) recommend a method to record and report the number of children who are identified in the risk assessment process as being at risk for having or developing Type 2 diabetes and who qualify for the national free or reduced-price lunch program established under 42 U.S.C. Section 1751 et seq.;

(4) recommend a deadline, which may not be later than the first anniversary of the date the advisory committee submits a recommendation to the office under this section, by which the office shall implement the advisory committee's recommended risk assessment activities, surveillance methods, reports, and quality improvements;

(5) contribute to the state plan for diabetes treatment developed by the council under Section 103.013 by providing statistics and information on the risk assessment activities conducted under this chapter and recommendations for assisting children in this state at risk for developing Type 2 diabetes; and

(6) recommend any additional information to be included in the report required by Section 95.004.

(i) The advisory committee shall submit to the office a report of the recommendations developed under Subsection (h) not later than September 1 of each even-numbered year. The office, subject to the availability of funds, shall implement each advisory committee recommendation concerning the Type 2 diabetes risk assessment program.

(j) In this section, "regional education service center" means a Texas Education Agency Regional Education Service Center listed in

Section 95.002(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 504 (S.B. 415), Sec. 4, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 5.02, eff. June 17, 2011.

CHAPTER 95A. REPORTS ON PREVENTION AND TREATMENT OF DIABETES

Sec. 95A.001. DEFINITION. In this chapter, "council" means the Texas Diabetes Council.

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0331, eff. April 2, 2015.

Sec. 95A.002. BIENNIAL REPORT ON COMMISSION'S PRIORITIES FOR ADDRESSING DIABETES. (a) The commission, in coordination with the council, shall prepare a biennial report that identifies the commission's priorities for addressing diabetes within the Medicaid population.

(b) Not later than December 1 of each even-numbered year, the commission shall submit the report to the legislature and the governor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 1, eff. September 1, 2011.

CHAPTER 96. RESPIRATORY SYNCYTIAL VIRUS

Sec. 96.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(37), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(37), eff. April 2, 2015.

(3) "Health facility" includes:

(A) a general or special hospital licensed by the

department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital operated by the department or a state supported living center operated by the Department of Aging and Disability Services;

(E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121; and

(F) another facility specified by a rule adopted by the executive commissioner.

(4) "Local health unit" has the meaning assigned by Section 121.004.

(5) "RSV" means respiratory syncytial virus.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0332, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(37), eff. April 2, 2015.

Sec. 96.002. CONFIDENTIALITY. (a) Except as specifically authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department may release medical, epidemiological, or toxicological information:

(1) for statistical purposes, if released in a manner that prevents the identification of any person;

(2) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of

counties and municipalities as necessary to comply with this chapter and rules relating to the identification, monitoring, and referral of children with RSV; or

(3) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.003. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.004. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the sentinel surveillance program.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.005. SENTINEL SURVEILLANCE PROGRAM. (a) The executive commissioner shall establish in the department a program to:

(1) identify by sentinel surveillance RSV infection in children; and

(2) maintain a central database of laboratory-confirmed cases of RSV that can be used to investigate the incidence, prevalence, and trends of RSV.

(b) In establishing the sentinel surveillance program for RSV, the executive commissioner shall consider:

(1) the number and geographic distribution of children in

the state;

(2) the location of health facilities that collect RSV information locally; and

(3) the use of existing data collected by health facilities.

(c) The executive commissioner shall adopt rules to govern the operation of the program and carry out the intent of this chapter, including rules that specify a system for selecting the demographic areas in which the department collects information.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.006. DATA COLLECTION. (a) To ensure an accurate source of data, the executive commissioner may require a health facility or health professional to make available for review by the department or by an authorized agent medical records or other information that is in the facility's or professional's custody or control and that relates to an occurrence of RSV.

(b) The executive commissioner by rule shall prescribe the manner in which data are reported to the department.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

Sec. 96.007. DATABASE. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central database to facilitate information sharing and provider education.

(b) The department may use the database to:

(1) design and evaluate measures to prevent the occurrence of RSV and other health conditions; and

(2) provide information and education to providers on the incidence of RSV infection.

Added by Acts 2005, 79th Leg., Ch. 152 (H.B. 1677), Sec. 1, eff. September 1, 2005.

CHAPTER 98. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 98.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 946 , Sec. 1.09(h)(1), eff. September 1, 2015.

(2) "Ambulatory surgical center" means a facility licensed under Chapter 243.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(38), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(38), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(38), eff. April 2, 2015.

(6) "General hospital" means a general hospital licensed under Chapter 241 or a hospital that provides surgical or obstetrical services and that is maintained or operated by this state. The term does not include a comprehensive medical rehabilitation hospital.

(7) "Health care-associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of the delivery of health care to the patient.

(8) "Health care facility" means a general hospital or an ambulatory surgical center.

(8-a) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(9) "Infection rate" means the number of health care-associated infections of a particular type at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection, unless the term is modified by rule of the executive commissioner to accomplish the purposes of this chapter.

(10) Repealed by Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(1), eff. September 1, 2019.

(10-a) "Potentially preventable complication" and "potentially preventable readmission" have the meanings assigned by Section 1002.001, Health and Safety Code.

(11) "Reporting system" means the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System.

(12) "Special care setting" means a unit or service of a general hospital that provides treatment to inpatients who require extraordinary care on a concentrated and continuous basis. The term includes an adult intensive care unit, a burn intensive care unit, and a critical care unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(b), eff. September 1, 2009.
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.01, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(38), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(h)(1), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(1), eff. September 1, 2019.

SUBCHAPTER C. DUTIES OF DEPARTMENT; REPORTING SYSTEM

Sec. 98.101. RULEMAKING. (a) The executive commissioner may adopt rules for the department to implement this chapter.

(b) The executive commissioner may not adopt rules that conflict with or duplicate any federally mandated infection reporting program or requirement.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.102. DEPARTMENTAL RESPONSIBILITIES; REPORTING SYSTEM. (a) The department shall establish the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System within the department. The purpose of the reporting system is to provide for:

(1) the reporting of health care-associated infections by health care facilities to the department;

(2) the reporting of health care-associated preventable

adverse events by health care facilities to the department;

(3) the public reporting of information regarding the health care-associated infections by the department;

(4) the public reporting of information regarding health care-associated preventable adverse events by the department; and

(5) the education and training of health care facility staff by the department regarding this chapter.

(b) The reporting system shall provide a mechanism for this state to collect data, at state expense, through a secure electronic interface with health care facilities.

(c) The data reported by health care facilities to the department must contain sufficient patient identifying information to:

(1) avoid duplicate submission of records;

(2) allow the department to verify the accuracy and completeness of the data reported; and

(3) for data reported under Section 98.103, allow the department to risk adjust the facilities' infection rates.

(d) The department shall review the infection control and reporting activities of health care facilities to ensure the data provided by the facilities is valid and does not have unusual data patterns or trends that suggest implausible infection rates.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(e), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.02, eff. September 28, 2011.

Sec. 98.103. REPORTABLE INFECTIONS. (a) A health care facility shall report to the department each health care-associated infection, including the causative pathogen if the infection is laboratory-confirmed, that occurs in the facility and that the federal Centers for Medicare and Medicaid Services requires a facility participating in the Medicare program to report through the federal Centers for Disease Control and Prevention's National Healthcare Safety Network, or its successor.

(a-1) A health care facility shall report each health care-associated infection to the department under this section regardless of the facility's participation in Medicare.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(2), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(2), eff. September 1, 2019.

(d) The department shall ensure that the health care-associated infections a health care facility is required to report under this section have the meanings assigned by the federal Centers for Disease Control and Prevention.

(d-1) The executive commissioner by rule may designate the federal Centers for Disease Control and Prevention's National Healthcare Safety Network, or its successor, to receive reports of health care-associated infections from health care facilities on behalf of the department. A health care facility must file a report required in accordance with a designation made under this subsection in accordance with the National Healthcare Safety Network's definitions, methods, requirements, and procedures. A health care facility shall authorize the department to have access to facility-specific data contained in a report filed with the National Healthcare Safety Network in accordance with a designation made under this subsection.

(e) A report made under this section must specify whether the infection resulted in the death of the patient while hospitalized.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 369 (H.B. 1362), Sec. 2, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.03, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1072 (H.B. 3285), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 512 (S.B. 384), Sec. 2(2), eff.

September 1, 2019.

Sec. 98.1045. REPORTING OF PREVENTABLE ADVERSE EVENTS. (a) Each health care facility shall report to the department the occurrence of any of the following preventable adverse events involving the facility's patient:

(1) a health care-associated adverse condition or event for which the Medicare program will not provide additional payment to the facility under a policy adopted by the federal Centers for Medicare and Medicaid Services; and

(2) subject to Subsection (b), an event included in the list of adverse events identified by the National Quality Forum that is not included under Subdivision (1).

(b) The executive commissioner may exclude an adverse event described by Subsection (a)(2) from the reporting requirement of Subsection (a) if the executive commissioner determines that the adverse event is not an appropriate indicator of a preventable adverse event.

(c) The executive commissioner by rule may designate an agency of the United States Department of Health and Human Services to receive reports of preventable adverse events by health care facilities on behalf of the department. A health care facility shall authorize the department to have access to facility-specific data contained in a report made in accordance with a designation made under this subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(f), eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.04, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(d), eff. September 1, 2015.

Sec. 98.1046. PUBLIC REPORTING OF CERTAIN POTENTIALLY PREVENTABLE EVENTS FOR HOSPITALS. (a) The department, using data submitted under Chapter 108, shall publicly report for hospitals in this state risk-adjusted outcome rates for those potentially

preventable complications and potentially preventable readmissions that the department has determined to be the most effective measures of quality and efficiency.

(b) The department shall make the reports compiled under Subsection (a) available to the public on the department's Internet website.

(c) The department may not disclose the identity of a patient or health care professional in the reports authorized in this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.05, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.32, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.14(b), eff. September 1, 2015.

Sec. 98.1047. STUDIES ON LONG-TERM CARE FACILITY REPORTING OF ADVERSE HEALTH CONDITIONS. (a) The department shall study which adverse health conditions commonly occur in long-term care facilities and, of those health conditions, which are potentially preventable.

(b) The department shall develop recommendations for reporting adverse health conditions identified under Subsection (a).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.05, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.33, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.14(c), eff. September 1, 2015.

Sec. 98.106. DEPARTMENTAL SUMMARY. (a) The department shall compile and make available to the public a summary, by health care facility, of:

(1) the infections reported by facilities under Section 98.103, including whether the infections resulted in the death of the patient while hospitalized; and

(2) the preventable adverse events reported by facilities under Section 98.1045.

(b) Information included in the departmental summary with respect to infections reported by facilities under Section 98.103 must be risk adjusted and include a comparison of the risk-adjusted infection rates for each health care facility in this state that is required to submit a report under Section 98.103.

(c) The department shall publish the departmental summary in a format that is easy to read.

(d) The department shall publish the departmental summary at least annually and may publish the summary more frequently as the department considers appropriate. Data made available to the public must include aggregate data covering a period of at least a full calendar quarter.

(e) The executive commissioner by rule shall allow a health care facility to submit concise written comments regarding information contained in the departmental summary that relates to the facility. The department shall attach the facility's comments to the public report and the comments must be in the same format as the summary.

(f) The disclosure of written comments to the department by a health care facility as provided by Subsection (e) does not constitute a waiver of a privilege or protection under Section 98.109.

(g) The department shall make the departmental summary available on an Internet website administered by the department and may make the summary available through other formats accessible to the public. The website must contain a statement informing the public of the option to report suspected health care-associated infections and preventable adverse events to the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(g), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.07, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1072 (H.B. 3285), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(f), eff. September 1, 2015.

Sec. 98.1065. STUDY OF INCENTIVES AND RECOGNITION FOR HEALTH CARE QUALITY. The department shall conduct a study on developing a recognition program to recognize exemplary health care facilities for superior quality of health care and make recommendations based on that study.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.08, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.34, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.14(d), eff. September 1, 2015.

Sec. 98.107. EDUCATION AND TRAINING REGARDING REPORTING SYSTEM. The department shall provide education and training for health care facility staff regarding this chapter. The training must be reasonable in scope and focus primarily on:

(1) the implementation and management of a facility reporting mechanism;

(2) characteristics of the reporting system, including public reporting by the department and facility reporting to the department;

(3) confidentiality; and

(4) legal protections.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

Sec. 98.108. FREQUENCY OF REPORTING. (a) The executive commissioner by rule shall establish the frequency of reporting by health care facilities required under Sections 98.103 and 98.1045.

(b) Except as provided by Subsection (c), facilities may not be required to report more frequently than quarterly.

(c) The executive commissioner may adopt rules requiring

reporting more frequently than quarterly if more frequent reporting is necessary to meet the requirements for participation in the federal Centers for Disease Control and Prevention's National Healthcare Safety Network.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(h), eff. September 1, 2009.
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.09, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.09(g), eff. September 1, 2015.

Sec. 98.109. CONFIDENTIALITY; PRIVILEGE. (a) Except as provided by Sections 98.1046, 98.106, and 98.110, all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled or reported by a health care facility or an entity that has an ownership or management interest in a facility.

(b-1) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials obtained, compiled, or reported by the department under this chapter.

(c) The transfer of information or materials under this chapter is not a waiver of a privilege or protection granted under law.

(d) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a health care facility in compliance with or as authorized under this

chapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(e) A department summary or disclosure may not contain information identifying a patient, employee, contractor, volunteer, consultant, health care professional, student, or trainee in connection with a specific incident.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(i), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.10, eff. September 28, 2011.

Sec. 98.110. DISCLOSURE AMONG CERTAIN AGENCIES.

Text of subsection effective until April 1, 2025

(a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103 or 98.1045 to other programs within the department, to the commission, to other health and human services agencies, as defined by Section 531.001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

Text of subsection effective on April 1, 2025

(a) Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103 or 98.1045 to other programs within the department, to the commission, to other health and human services agencies, as defined by Section 521.0001, Government Code, and to the federal Centers for Disease Control and Prevention, or any other agency of the United States Department of Health and Human Services, for public health

research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

(b) If the executive commissioner designates an agency of the United States Department of Health and Human Services to receive reports of health care-associated infections or preventable adverse events, that agency may use the information submitted for purposes allowed by federal law.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(j), eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 6.11, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0333, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.36, eff. April 1, 2025.

Sec. 98.111. CIVIL ACTION. Published infection rates or preventable adverse events may not be used in a civil action to establish a standard of care applicable to a health care facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 2(j), eff. September 1, 2009.

SUBCHAPTER D. ENFORCEMENT

Sec. 98.151. VIOLATIONS. (a) Except as provided by Subsection (b), a general hospital that violates this chapter or a rule adopted under this chapter is subject to the enforcement provisions of Subchapter C, Chapter 241, and rules adopted and enforced under that subchapter as if the hospital violated Chapter 241 or a rule adopted under that chapter.

(b) Subsection (a) does not apply to a comprehensive medical rehabilitation hospital as defined in Section 241.003.

(c) An ambulatory surgical center that violates this chapter or a rule adopted under this chapter is subject to the enforcement provisions of Chapter 243 and rules adopted and enforced under that chapter as if the center violated Chapter 243 or a rule adopted under that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 359 (S.B. 288), Sec. 1, eff. June 15, 2007.

CHAPTER 99. OPEN BURN PIT REGISTRY

Sec. 99.001. DEFINITIONS. In this chapter:

(1) "Airborne hazard" means an airborne environmental contaminant, including open burn pit smoke, oil well fire smoke, sand, dust, or other particles, that may cause short-term or long-term health effects to a person exposed to the contaminant.

(2) "Open burn pit," also known as an "open air burn pit," means a site used for solid waste disposal by burning the waste in the outdoor air without the use of a commercially manufactured incinerator or other equipment specifically designed and manufactured for burning solid waste.

(3) "Service member" means an individual who is currently serving in:

(A) the armed forces of the United States;

(B) an auxiliary service of one of the armed forces of the United States, including the National Guard; or

(C) the state military forces as defined by Section 431.001, Government Code.

(4) "Veteran" means an individual who served in:

(A) the armed forces of the United States;

(B) an auxiliary service of one of the armed forces of the United States, including the National Guard; or

(C) the state military forces as defined by Section 431.001, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.002. RULES; MEMORANDUM OF UNDERSTANDING. (a) The executive commissioner shall adopt the rules necessary to administer this chapter and may enter into a memorandum of understanding with the United States Department of Veterans Affairs as necessary to administer this chapter.

(b) A memorandum of understanding entered into under Subsection (a) must ensure that the United States Department of Veterans Affairs will maintain the confidentiality of a service member or veteran's personally identifying information that is submitted by the department to the Department of Veterans Affairs under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.003. OPEN BURN PIT REGISTRY. (a) For outreach and education related to exposure to open burn pit smoke or other airborne hazards by service members and veterans in this state, the department shall create and maintain an open burn pit registry of service members and veterans who were exposed to open burn pit smoke or other airborne hazards during their military service in:

(1) the Southwest Asia theater of operations on or after August 2, 1990;

(2) Operation Desert Shield or Desert Storm;

(3) Djibouti, Africa, on or after September 11, 2001;

(4) Operation Enduring Freedom, Iraqi Freedom, or New Dawn; or

(5) any other conflict or theater identified by the United States Department of Veterans Affairs.

(b) The department shall include for each entry in the open burn pit registry:

(1) the service member's or veteran's name, address, telephone number, and e-mail address;

(2) the location of the service member's or veteran's service and the period of service;

(3) any medical condition or death of the service member or veteran that may be related to exposure to open burn pit smoke or other airborne hazards; and

(4) any other information that the department or the United States Department of Veterans Affairs considers necessary.

(c) The department shall:

(1) share the information included in the department's open burn pit registry with the United States Department of Veterans Affairs Airborne Hazards and Open Burn Pit Registry; and

(2) electronically link the open burn pit registry created under this chapter with the federal registry.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.004. VOLUNTARY REGISTRATION. A service member or veteran described by Section 99.003, or a family member of that service member or veteran, may voluntarily register a case of exposure to open burn pit smoke or other airborne hazards with the department for inclusion in the registry.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.005. CONFIDENTIALITY. Entries and information obtained under this chapter are confidential and are not subject to disclosure under Chapter 552, Government Code, are not subject to subpoena, and may not otherwise be released or made public except to the United States Department of Veterans Affairs as provided by Section 99.003.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.006. OPEN BURN PIT INFORMATION. The department, with the assistance of the Texas Veterans Commission, shall develop and include on its Internet website information to inform service members, veterans, and their families about the:

(1) registration and use of the department's open burn pit registry and the United States Department of Veterans Affairs Airborne Hazards and Open Burn Pit Registry;

(2) most recent scientific developments on the health effects of exposure to open burn pit smoke and other airborne hazards and the status of any illness or condition that is presumed to be

caused by exposure to open burn pit smoke or other airborne hazards as designated by the United States Department of Veterans Affairs;

(3) availability of any treatment offered by the United States Department of Veterans Affairs for an illness or condition that may be caused by exposure to open burn pit smoke or other airborne hazards;

(4) process for applying to the United States Department of Veterans Affairs for service-related disability compensation for an illness or condition that may be related to exposure to open burn pit smoke or other airborne hazards, including the methods for documenting the illness or condition; and

(5) manner of appealing to the United States Department of Veterans Affairs an existing service-related disability rating decision or requesting an increased service-related disability rating based on an illness or condition that may be related to exposure to open burn pit smoke or other airborne hazards.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.007. REPORT. Not later than December 1 of each even-numbered year following the creation of the registry, the department shall submit a report to the appropriate standing committees of the house of representatives and senate that includes:

(1) an assessment of the effectiveness of collection and maintenance of information on the health effects of exposure to open burn pit smoke and other airborne hazards; and

(2) any recommendation to improve the collection and maintenance of information about the health effects of exposure to open burn pit smoke and other airborne hazards.

Added by Acts 2019, 86th Leg., R.S., Ch. 153 (H.B. 306), Sec. 2, eff. September 1, 2019.

Sec. 99.008. OPEN BURN PIT REGISTRY FUND. (a) The open burn pit registry fund is a special fund in the state treasury outside the general revenue fund. The fund is composed of:

(1) money transferred to the fund at the direction of the legislature;

(2) gifts and grants contributed to the fund;

(3) the earnings of the fund; and

(4) money deposited to the credit of the fund under Section 504.679, Transportation Code.

(b) Money in the fund may be appropriated only to the department. The department may use the money only for the creation and maintenance of the open burn pit registry established under Section 99.003, except that the department may use the money for any other purpose of the department consistent with legislative appropriation of the money if the department finds that the registry is adequately funded and contributions to the fund exceed the amount necessary for the registry to be adequately funded.

Added by Acts 2023, 88th Leg., R.S., Ch. 128 (H.B. 1315), Sec. 2, eff. September 1, 2023.

CHAPTER 99A. STATE PLAN FOR ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 99A.001. DEVELOPMENT AND IMPLEMENTATION OF STATE PLAN. (a) The department, using existing resources and programs to the extent possible, shall develop and implement a state plan for education on and treatment of Alzheimer's disease and related disorders.

(b) The state plan must include strategies for:

(1) improving early detection of, reducing disease onset risks for, and improving treatment of Alzheimer's disease and related disorders for specific demographic groups;

(2) educating health care professionals, caregivers, and the public to increase awareness of Alzheimer's disease and related disorders;

(3) providing caregiver support;

(4) advancing basic science and applied research related to Alzheimer's disease and related disorders; and

(5) collecting and evaluating information on efforts to prevent and treat Alzheimer's disease and related disorders.

(c) The department shall develop the strategies described by Subsection (b)(1) in consultation with physicians and other health care providers licensed in this state who have clinical training and experience in caring for persons with Alzheimer's disease or related

disorders.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.002. COMMENTS FROM INTERESTED PARTIES. (a) In developing the state plan under Section 99A.001, the department shall seek comments from interested parties, including:

(1) members of the public with, or who care for persons with, Alzheimer's disease or related disorders;

(2) each state agency that provides services to persons with Alzheimer's disease or related disorders;

(3) any advisory body that addresses issues related to Alzheimer's disease or related disorders;

(4) public advocates concerned with issues related to Alzheimer's disease or related disorders;

(5) physicians and health care providers licensed in this state who have clinical training and experience in caring for persons with Alzheimer's disease or related disorders; and

(6) researchers of issues affecting persons with Alzheimer's disease or related disorders.

(b) On request of the department, the commission shall provide information and comments related to services provided to persons with Alzheimer's disease or related disorders.

(c) The department shall meet with interested parties at least two times each year to:

(1) facilitate comments on and discuss the progress of developing and implementing the state plan developed under this chapter; and

(2) gather information for the report required under Section 99A.004.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.
Redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(10), eff. September 1, 2021.

Sec. 99A.003. REVIEW AND MODIFICATION OF STATE PLAN. The department shall conduct a review and modify as necessary the state plan developed under this chapter at least once every five years.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.004. REPORT. Not later than September 1 of each even-numbered year, the department shall submit to the legislature a report on the development and implementation or the review or modification of the state plan developed under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.005. GIFTS AND GRANTS. The department may accept gifts and grants from any source to fund the duties of the department under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.

Sec. 99A.006. NO CAUSE OF ACTION, DUTY, STANDARD OF CARE, OR LIABILITY CREATED. Notwithstanding any other law, Section 99A.001, including the use of or failure to use any information or materials developed or disseminated under that section, does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 6 (S.B. 999), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(55), eff. September 1, 2021.
Redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(11), eff. September 1, 2021.

CHAPTER 100. EMERGING AND NEGLECTED TROPICAL DISEASES

Sec. 100.001. DEFINITIONS. In this chapter:

(1) "Emerging disease" means a disease that is appearing in a specific population for the first time or that is increasing in incidence or geographic range.

(2) "Health facility" includes:

(A) a general or special hospital licensed by the department under Chapter 241;

(B) a physician-owned or physician-operated clinic;

(C) a publicly or privately funded medical school;

(D) a state hospital or state school maintained and managed by the department or the Department of Aging and Disability Services;

(E) a public health clinic conducted by a local health unit, health department, or public health district organized and recognized under Chapter 121; and

(F) another facility specified by a rule adopted by the executive commissioner.

(3) "Local health unit" has the meaning assigned by Section 121.004.

(4) "Neglected tropical disease" means a parasitic or bacterial disease that:

(A) occurs solely or principally in the tropics;

(B) is largely endemic in the developing world; and

(C) has a potential to spread through international travel or trade.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.002. CONFIDENTIALITY. (a) Except as specifically

authorized by this chapter, reports, records, and information furnished to a department employee or to an authorized agent of the department that relate to cases or suspected cases of a health condition are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of health conditions in the possession of the department under this chapter are not public information under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise except as provided by this chapter.

(c) The department shall release medical, epidemiological, or toxicological information:

(1) to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of counties and municipalities as necessary to comply with this chapter and rules relating to the identification, monitoring, and referral of individuals infected with an emerging or neglected tropical disease; or

(2) to appropriate federal agencies, such as the Centers for Disease Control and Prevention of the United States Public Health Service.

(d) The department may release medical, epidemiological, or toxicological information for statistical purposes, if released in a manner that prevents the identification of any person.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.003. LIMITATION OF LIABILITY. A health professional, a health facility, or an administrator, officer, or employee of a health facility subject to this chapter is not civilly or criminally liable for divulging information required to be released under this chapter, except in a case of gross negligence or wilful misconduct.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.004. COOPERATION OF GOVERNMENTAL ENTITIES. Another state board, commission, agency, or governmental entity capable of

assisting the department in carrying out the intent of this chapter shall cooperate with the department and furnish expertise, services, and facilities to the program.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.005. SENTINEL SURVEILLANCE PROGRAM. (a) The executive commissioner shall establish in the department a program to:

(1) identify by sentinel surveillance individuals infected with emerging or neglected tropical diseases;

(2) maintain a central database of laboratory-confirmed cases of emerging and neglected tropical diseases; and

(3) use the information in the database to investigate the incidence, prevalence, and trends of emerging and neglected tropical diseases.

(b) In establishing the sentinel surveillance program for emerging and neglected tropical diseases, the executive commissioner shall consider:

(1) the location of health facilities that collect locally emerging and neglected tropical disease information; and

(2) the use, privacy, and security of existing data collected by health facilities.

(c) The executive commissioner shall adopt rules to govern the operation of the program and carry out the intent of this chapter, including rules that:

(1) specify a system for selecting the demographic areas in which the department collects information; and

(2) identify the specific emerging and neglected tropical diseases that are included in the sentinel surveillance program and the manner in which diseases will be added to the program as necessary to reflect changing conditions.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.006. DATA COLLECTION. (a) To ensure an accurate source of data, the executive commissioner may require a health

facility or health professional to make available for review by the department or by an authorized agent medical records or other information in the facility's or professional's custody or control that relates to an occurrence of an emerging or neglected tropical disease.

(b) The department shall reimburse a health facility or health professional for the actual costs incurred by the facility or professional in making copies of medical records or other information available to the department.

(c) The executive commissioner by rule shall prescribe the manner in which information is reported to the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.007. DATABASE. (a) Information collected and analyzed by the department or an authorized agent under this chapter may be placed in a central database to facilitate information sharing and provider education.

(b) The department may use the database to:

(1) design and evaluate measures to prevent the occurrence of emerging and neglected tropical diseases and other health conditions; and

(2) provide information and education to providers on the incidence of emerging and neglected tropical diseases.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

Sec. 100.008. EDUCATIONAL AND INFORMATIONAL MATERIALS. The department shall make available to health facilities and health professionals:

(1) educational and informational materials concerning emerging and neglected tropical diseases; and

(2) information on the importance of monitoring and surveilling emerging and neglected tropical diseases.

Added by Acts 2015, 84th Leg., R.S., Ch. 758 (H.B. 2055), Sec. 1, eff. September 1, 2015.

CHAPTER 100A. UTERINE FIBROID EDUCATION AND RESEARCH

Sec. 100A.001. UTERINE FIBROID DATABASE. (a) Using available data collected by the department under Chapter 108, the department's Center for Health Statistics shall establish and maintain an electronic database of information related to uterine fibroids to increase awareness about uterine fibroids and ensure women receive the information and health care necessary to prevent and treat the condition. The database must include the:

(1) demographic attributes of women diagnosed with uterine fibroids; and

(2) treatments for uterine fibroids used by health care providers.

(b) Information regarding a woman who is diagnosed with or treated for uterine fibroids that is collected by the department and maintained in the database under Subsection (a):

(1) may not include any personally identifying information of the woman; and

(2) is confidential and may be used only by the department or other person on behalf of the department for uterine fibroid research.

Added by Acts 2021, 87th Leg., R.S., Ch. 480 (H.B. 1967), Sec. 1, eff. September 1, 2021.

Sec. 100A.002. UTERINE FIBROID EDUCATION. The department, in consultation with the Texas Medical Association, shall identify and post on the department's Internet website existing resources and educational materials on uterine fibroids to increase public awareness of uterine fibroids, including information on and awareness of the:

(1) women of a race or ethnicity that has a statistically elevated risk of developing uterine fibroids; and

(2) range of available treatment options for uterine fibroids that include non-hysterectomy treatments and procedures.

Added by Acts 2021, 87th Leg., R.S., Ch. 480 (H.B. 1967), Sec. 1, eff. September 1, 2021.

SUBTITLE E. HEALTH CARE COUNCILS AND RESOURCE CENTERS
CHAPTER 101. TEXAS COUNCIL ON ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Alzheimer's disease and related disorders support group" means a local, state, or national organization that:

(A) is established to provide support services to aid persons with Alzheimer's disease and related disorders and their caregivers;

(B) encourages research into the cause, prevention, treatment, and care of persons with Alzheimer's disease and related disorders; and

(C) is dedicated to the development of essential services for persons with Alzheimer's disease and related disorders and their caregivers.

(2) "Council" means the Texas Council on Alzheimer's Disease and Related Disorders.

(3) "Primary family caregiver" means an individual who is a relative of a person with Alzheimer's disease or related disorders, who has or has had a major responsibility for care and supervision of the person, and who is not a professional health care provider paid to care for the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0334, eff. April 2, 2015.

Sec. 101.002. COMPOSITION OF COUNCIL. (a) The Texas Council on Alzheimer's Disease and Related Disorders is composed of:

(1) five public members, one of whom is an individual related to a person with Alzheimer's disease or related disorders but who is not a primary family caregiver, one of whom is a primary family caregiver, two of whom are members of an Alzheimer's disease and related disorders support group, and one of whom is an interested citizen;

(2) seven professional members with special training and interest in Alzheimer's disease and related disorders, with one representative each from nursing facilities, physicians, nurses,

public hospitals, private hospitals, home health agencies, and faculty of institutions of higher education; and

(3) the representative from the commission, department, and Department of Aging and Disability Services designated by the executive commissioner or commissioner of each agency, as applicable.

(b) The governor shall appoint two public members and two professional members, the lieutenant governor shall appoint two public members and two professional members, and the speaker of the house of representatives shall appoint one public member and three professional members.

(c) The governor shall designate a member of the council who is not an agency representative as the chairman of the council to serve in that capacity at the will of the governor.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 10.01, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0335, eff. April 2, 2015.

Sec. 101.0021. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of medicine.

(c) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1,

1999.

Sec. 101.0022. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by Section 101.002(a);

(2) does not maintain during service on the council the qualifications required by Section 101.002(a);

(3) is ineligible for membership under Section 101.0021;

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.0023. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

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

(1) the legislation that created the council;

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

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.02, eff. Sept. 1, 1999.

Sec. 101.004. TERMS; VACANCY. (a) Appointed council members serve for staggered six-year terms, with the terms of four members expiring August 31 of each odd-numbered year.

(b) If a vacancy occurs, the appropriate appointing authority shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(c) A person who has served one full term is not eligible for reappointment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 494, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.005. COMPENSATION. (a) A member of the council is

not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing council duties.

(b) A representative of a state agency shall be reimbursed from the funds of the agency the person represents. Other members shall be reimbursed from funds made available to the council.

(c) If funds are not made available to the council, members who are not representatives of state agencies serve at their own expense.

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

Sec. 101.006. MEETINGS. (a) The council shall meet at least twice each calendar year and at the call of the chairman.

(b) The council shall adopt rules for the conduct of its meetings.

(c) Any action taken by the council must be approved by a majority of the members present.

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

Sec. 101.0065. PUBLIC TESTIMONY. The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.03, eff. Sept. 1, 1999.

Sec. 101.007. POWERS AND DUTIES OF COUNCIL. (a) The council shall:

(1) advise the department and recommend needed action for the benefit of persons with Alzheimer's disease and related disorders and for their caregivers;

(2) coordinate public and private family support networking systems for primary family caregivers;

(3) disseminate information on services and related activities for persons with Alzheimer's disease and related disorders to the medical and health care community, the academic community, primary family caregivers, advocacy associations, and the public;

(4) coordinate a volunteer assistance program primarily for in-home and respite care services;

(5) encourage research to benefit persons with Alzheimer's disease and related disorders;

(6) recommend to the department disbursement of grants and funds available for the council; and

(7) facilitate coordination of state agency services and activities relating to persons with Alzheimer's disease and related disorders.

(b) The council is subject to Chapter 551, Government Code, and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0336, eff. April 2, 2015.

Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

(1) provide administrative assistance, services, and materials to the council;

(2) accept, deposit, and disburse funds made available to the council at the direction of the executive commissioner;

(3) accept gifts and grants on behalf of the council from any public or private entity; and

(4) apply for and receive on behalf of the council any appropriations, gifts, or other funds from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0337, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 4, eff. September 1, 2021.

Sec. 101.0081. INFORMATION ABOUT STANDARDS OF CONDUCT. The

commissioner or the commissioner's designee shall provide to members of the council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 10.05, eff. Sept. 1, 1999.

Sec. 101.009. GIFTS AND GRANTS. (a) The council is encouraged to seek and the department may accept on behalf of the council a gift or grant from any public or private entity.

(b) The department shall deposit any money received under Subsection (a) in the state treasury to be used for the purposes of this chapter.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0338, eff. April 2, 2015.

Sec. 101.010. REPORT. Before September 1 of each even-numbered year, the council shall submit a biennial report of the council's activities and recommendations to the governor, lieutenant governor, speaker of the house of representatives, and members of the legislature.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0339, eff. April 2, 2015.

CHAPTER 102. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Institute" means the Cancer Prevention and Research Institute of Texas.

(2) "Oversight committee" means the Cancer Prevention and

Research Institute of Texas Oversight Committee.

(2-a) "Program integration committee" means the Cancer Prevention and Research Institute of Texas Program Integration Committee.

(3) "Research and prevention programs committee" means a Cancer Prevention and Research Institute of Texas Scientific Research and Prevention Programs committee appointed by the chief executive officer.

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

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 1, eff. June 14, 2013.

Sec. 102.002. PURPOSES. The Cancer Prevention and Research Institute of Texas is established to:

(1) create and expedite innovation in the area of cancer research and in enhancing the potential for a medical or scientific breakthrough in the prevention of cancer and cures for cancer;

(2) attract, create, or expand research capabilities of public or private institutions of higher education and other public or private entities that will promote a substantial increase in cancer research and in the creation of high-quality new jobs in this state; and

(3) develop and implement the Texas Cancer Plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.06, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 36, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.003. SUNSET PROVISION. The Cancer Prevention and Research Institute of Texas is subject to Chapter 325, Government

Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the institute is abolished and this chapter expires September 1, 2029.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.24, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 36, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 2.02, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.02, eff. June 15, 2007.
Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.002, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 2, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 4.01, eff. June 16, 2021.

Sec. 102.004. STATE AUDITOR. Nothing in this chapter limits the authority of the state auditor under Chapter 321, Government Code, or other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. POWERS AND DUTIES OF INSTITUTE

Sec. 102.051. POWERS AND DUTIES. (a) The institute:

(1) may make grants to provide funds to public or private persons to implement the Texas Cancer Plan, and may make grants to institutions of learning and to advanced medical research facilities and collaborations in this state for:

(A) research into the causes of and cures for all types of cancer in humans;

(B) facilities for use in research into the causes of and cures for cancer;

(C) research, including translational research, to develop therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of all types of cancer in humans; and

(D) cancer prevention and control programs in this state to mitigate the incidence of all types of cancer in humans;

(2) may support institutions of learning and advanced medical research facilities and collaborations in this state in all stages in the process of finding the causes of all types of cancer in humans and developing cures, from laboratory research to clinical trials and including programs to address the problem of access to advanced cancer treatment;

(3) may establish the appropriate standards and oversight bodies to ensure the proper use of funds authorized under this chapter for cancer research and facilities development;

(4) may employ necessary staff to provide administrative support;

(5) shall continuously monitor contracts and agreements authorized by this chapter and ensure that each grant recipient complies with the terms and conditions of the grant contract;

(6) shall ensure that all grant proposals comply with this chapter and rules adopted under this chapter before the proposals are submitted to the oversight committee for approval; and

(7) shall establish procedures to document that the institute, its employees, and its committee members appointed under this chapter comply with all laws and rules governing the peer review process and conflicts of interest.

(b) The institute shall work to implement the Texas Cancer Plan and continually monitor and revise the Texas Cancer Plan as necessary.

(c) The institute shall employ a chief compliance officer to monitor and report to the oversight committee regarding compliance with this chapter and rules adopted under this chapter.

(d) The chief compliance officer shall:

(1) ensure that all grant proposals comply with this chapter and rules adopted under this chapter before the proposals are submitted to the oversight committee for approval; and

(2) attend and observe the meetings of the program integration committee to ensure compliance with this chapter and rules adopted under this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 3, eff. June 14, 2013.

Sec. 102.0511. CHIEF EXECUTIVE OFFICER; OTHER OFFICERS. (a) The oversight committee shall hire a chief executive officer. The chief executive officer shall perform the duties required by this chapter or designated by the oversight committee.

(b) The chief executive officer must have a demonstrated ability to lead and develop academic, commercial, and governmental partnerships and coalitions.

(c) The chief executive officer shall hire:

(1) one chief scientific officer;

(2) one chief operating officer;

(3) one chief product development officer; and

(4) one chief prevention officer.

(d) The officers described by Subsections (c)(1)-(4) shall report directly to the chief executive officer and assist the chief executive officer in collaborative outreach to further cancer research and prevention.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 4, eff. June 14, 2013.

Sec. 102.052. ANNUAL PUBLIC REPORT; INTERNET POSTING. (a) Not later than January 31 of each year, the institute shall submit to the lieutenant governor, the speaker of the house of representatives, the governor, and the standing committee of each house of the legislature with primary jurisdiction over institute matters and post on the institute's Internet website a report outlining the institute's activities, grants awarded, grants in progress, research accomplishments, and future program directions. The report must include:

(1) the number and dollar amounts of research and facilities grants;

(2) identification of the grant recipients for the reported

year;

(3) the institute's administrative expenses;

(4) an assessment of the availability of funding for cancer research from sources other than the institute;

(5) a summary of findings of research funded by the institute, including promising new research areas;

(6) an assessment of the relationship between the institute's grants and the overall strategy of its research program;

(7) a statement of the institute's strategic research and financial plans;

(8) an estimate of how much cancer has cost the state during the year, including the amounts spent by the state relating to cancer by the child health program, the Medicaid program, the Teacher Retirement System of Texas, and the Employees Retirement System of Texas;

(9) a statement of the institute's compliance program activities, including any proposed legislation or other recommendations identified through the activities; and

(10) for the previous 12 months, a list of any conflicts of interest under this chapter or rules adopted under this chapter, any conflicts of interest that require recusal under Section 102.1061, any unreported conflicts of interest confirmed by an investigation conducted under Section 102.1063, including any actions taken by the institute regarding an unreported conflict of interest and subsequent investigation, and any waivers granted through the process established under Section 102.1062.

(b) The institute shall submit the annual public report to the governor and the legislature.

(c) The institute shall post on the institute's Internet website the list described by Subsection (a)(10).

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 5, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 6, eff. June 14, 2013.

Sec. 102.053. INDEPENDENT FINANCIAL AUDIT FOR REVIEW BY COMPTROLLER. (a) The institute shall annually commission an independent financial audit of its activities from a certified public accounting firm. The institute shall provide the audit to the comptroller. The comptroller shall review and evaluate the audit and annually issue a public report of that review. The comptroller shall make recommendations concerning the institute's financial practices and performance.

(b) The oversight committee shall review the annual financial audit, the comptroller's report and evaluation of that audit, and the financial practices of the institute.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.0535. GRANT RECORDS. (a) The institute shall maintain complete records of:

(1) the review of each grant application submitted to the institute, including the score assigned to each grant application reviewed by a research and prevention programs committee in accordance with rules adopted under Section 102.251(a)(1), even if the grant application is not funded by the institute or is withdrawn after submission to the institute;

(2) each grant recipient's financial reports, including the amount of matching funds dedicated to the research specified for the grant award;

(3) each grant recipient's progress reports;

(4) for the purpose of determining any conflict of interest, the identity of each principal investor and owner of each grant recipient as provided by institute rules; and

(5) the institute's review of the grant recipient's financial reports and progress reports.

(b) The institute shall have periodic audits made of any electronic grant management system used to maintain records of grant applications and grant awards under this section. The institute shall address in a timely manner each weakness identified in an audit of the system.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 7,

eff. June 14, 2013.

Sec. 102.054. GIFTS AND GRANTS. The institute may solicit and accept gifts and grants from any source for the purposes of this chapter.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.055. QUARTERLY MEETINGS. The oversight committee shall hold a public meeting at least once in each quarter of the calendar year, with appropriate notice and with a formal public comment period.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.056. SALARY. (a) The institute may not supplement the salary of any institute employee with a gift or grant received by the institute.

(b) The institute may supplement the salary of the chief scientific officer. Funding for a salary supplement for the chief scientific officer may only come from legislative appropriations or bond proceeds.

(c) The institute may not supplement the salary of the chief executive officer. The salary of the chief executive officer may only be paid from legislative appropriations.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 2, eff. June 19, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 8, eff. June 14, 2013.

Sec. 102.057. PROHIBITED OFFICE LOCATION. An institute

employee may not have an office in a facility owned by an entity receiving or applying to receive money from the institute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 9, eff. June 14, 2013.

SUBCHAPTER C. OVERSIGHT COMMITTEE

Sec. 102.101. COMPOSITION OF OVERSIGHT COMMITTEE. (a) The Cancer Prevention and Research Institute of Texas Oversight Committee is the governing body of the institute.

(b) The oversight committee is composed of the following nine members:

(1) three members appointed by the governor;

(2) three members appointed by the lieutenant governor; and

(3) three members appointed by the speaker of the house of representatives.

(c) The members of the oversight committee must represent the geographic and cultural diversity of the state.

(d) In making appointments to the oversight committee, the governor, lieutenant governor, and speaker of the house of representatives:

(1) must each appoint at least one person who is a physician or a scientist with extensive experience in the field of oncology or public health; and

(2) should attempt to include cancer survivors and family members of cancer patients if possible.

(e) A person may not be a member of the oversight committee if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money from the institute;

(2) owns or controls, directly or indirectly, an interest in a business entity or other organization receiving money from the institute; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the institute, other than reimbursement authorized by this chapter for oversight committee membership, attendance, or expenses.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 10, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 7, eff. September 1, 2017.

Sec. 102.102. REMOVAL. (a) It is a ground for removal from the oversight committee that a member:

(1) is ineligible for membership under Section 102.101(e);

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

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

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

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 11, eff. June 14, 2013.

Sec. 102.103. TERMS; VACANCY. (a) Oversight committee members appointed by the governor, lieutenant governor, and speaker of the

house serve at the pleasure of the appointing office for staggered six-year terms, with the terms of three members expiring on January 31 of each odd-numbered year.

(b) Not later than the 30th day after the date an oversight committee member's term expires, the appropriate appointing authority shall appoint a replacement.

(c) If a vacancy occurs on the oversight committee, the appropriate appointing authority shall appoint a successor, in the same manner as the original appointment, to serve for the remainder of the unexpired term. The appropriate appointing authority shall appoint the successor not later than the 30th day after the date the vacancy occurs.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 3, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 12, eff. June 14, 2013.

Sec. 102.104. OFFICERS. (a) The oversight committee shall elect a presiding officer and assistant presiding officer from among its members every two years. The oversight committee may elect additional officers from among its members.

(b) The presiding officer and assistant presiding officer may not serve in the position to which the officer was elected for two consecutive terms.

(c) The oversight committee shall:

(1) establish and approve duties and responsibilities for officers of the committee; and

(2) develop and implement policies that distinguish the responsibilities of the oversight committee and the committee's officers from the responsibilities of the chief executive officer and the employees of the institute.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 13, eff.

June 14, 2013.

Sec. 102.105. EXPENSES. A member of the oversight committee is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in attending meetings of the committee or performing other official duties authorized by the presiding officer.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.106. CONFLICT OF INTEREST. (a) The oversight committee shall adopt conflict-of-interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern members of the oversight committee, the program integration committee, the research and prevention programs committees, and institute employees.

(b) An institute employee, oversight committee member, program integration committee member, or research and prevention programs committee member shall recuse himself or herself, as provided by Section 102.1061(a), (b), or (c) as applicable, if the employee or member, or a person who is related to the employee or member within the second degree of affinity or consanguinity, has a professional or financial interest in an entity receiving or applying to receive money from the institute.

(c) A person has a professional interest in an entity receiving or applying to receive money from the institute if the person:

(1) is a member of the board of directors, another governing board, or any committee of the entity, or of a foundation or similar organization affiliated with the entity, during the same grant cycle;

(2) serves as an elected or appointed officer of the entity or of a foundation or similar organization affiliated with the entity;

(3) is an employee of or is negotiating future employment with the entity or with a foundation or similar organization affiliated with the entity;

(4) represents the entity or a foundation or similar organization affiliated with the entity;

(5) is a professional associate of a primary member of the entity's research or prevention program team;

(6) is, or within the preceding six years has been, a student, postdoctoral associate, or part of a laboratory research group for a primary member of the entity's research or prevention program team;

(7) is engaged or is actively planning to be engaged in collaboration with a primary member of the entity's research or prevention program team; or

(8) has long-standing scientific differences or disagreements with a primary member of the entity's research or prevention program team, and those differences:

(A) are known to the professional community; and

(B) could be perceived as affecting objectivity.

(d) A person has a financial interest in an entity receiving or applying to receive money from the institute if the person:

(1) owns or controls, directly or indirectly, an ownership interest, including sharing in profits, proceeds, or capital gains, in an entity receiving or applying to receive money from the institute or in a foundation or similar organization affiliated with the entity; or

(2) could reasonably foresee that an action taken by the institute, a research and prevention programs committee, the program integration committee, or the oversight committee could result in a financial benefit to the person.

(e) Nothing in this chapter limits the authority of the oversight committee to adopt additional conflict-of-interest standards.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 14, eff. June 14, 2013.

Sec. 102.1061. DISCLOSURE OF CONFLICT OF INTEREST; RECUSAL. (a) If an oversight committee member or program integration

committee member has a conflict of interest as described by Section 102.106 regarding an application that comes before the member for review or other action, the member shall:

(1) provide written notice to the chief executive officer and the presiding officer of the oversight committee or the next ranking member of the committee if the presiding officer has the conflict of interest;

(2) disclose the conflict of interest in an open meeting of the oversight committee; and

(3) recuse himself or herself from participating in the review, discussion, deliberation, and vote on the application and from accessing information regarding the matter to be decided.

(b) If an institute employee has a conflict of interest described by Section 102.106 regarding an application that comes before the employee for review or other action, the employee shall:

(1) provide written notice to the chief executive officer of the conflict of interest; and

(2) recuse himself or herself from participating in the review of the application and be prevented from accessing information regarding the matter to be decided.

(c) If a research and prevention programs committee member has a conflict of interest described by Section 102.106 regarding an application that comes before the member's committee for review or other action, the member shall:

(1) provide written notice to the chief executive officer of the conflict of interest; and

(2) recuse himself or herself from participating in the review, discussion, deliberation, and vote on the application and from accessing information regarding the matter to be decided.

(d) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee with a conflict of interest may seek a waiver as provided by Section 102.1062.

(e) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee who reports a potential conflict of interest or another impropriety or self-dealing of the member or employee and who fully complies with the recommendations of the general counsel and recusal requirements is considered in compliance with the conflict-of-interest provisions of this chapter. The member or employee is

subject to other applicable laws, rules, requirements, and prohibitions.

(f) An oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee who intentionally violates this section is subject to removal from further participation in the institute's grant review process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1062. EXCEPTIONAL CIRCUMSTANCES REQUIRING PARTICIPATION. The oversight committee shall adopt rules governing the waiver of the conflict-of-interest requirements of this chapter under exceptional circumstances for an oversight committee member, program integration committee member, research and prevention programs committee member, or institute employee. The rules must:

(1) authorize the chief executive officer or an oversight committee member to propose the granting of a waiver by submitting to the presiding officer of the oversight committee a written statement about the conflict of interest, the exceptional circumstance requiring the waiver, and any proposed limitations to the waiver;

(2) require a proposed waiver to be publicly reported at a meeting of the oversight committee;

(3) require a majority vote of the oversight committee members present and voting to grant a waiver;

(4) require any waiver granted to be reported annually to the lieutenant governor, the speaker of the house of representatives, the governor, and the standing committee of each house of the legislature with primary jurisdiction over institute matters; and

(5) require the institute to retain documentation of each waiver granted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1063. INVESTIGATION OF UNREPORTED CONFLICTS OF INTEREST. (a) An oversight committee member, a program integration committee member, a research and prevention programs committee

member, or an institute employee who becomes aware of a potential conflict of interest described by Section 102.106 that has not been reported shall immediately notify the chief executive officer of the potential conflict of interest. On notification, the chief executive officer shall notify the presiding officer of the oversight committee and the general counsel, who shall determine the nature and extent of any unreported conflict.

(b) A grant applicant seeking an investigation regarding whether a prohibited conflict of interest was not reported shall file a written request with the institute's chief executive officer. The applicant must:

(1) include in the request all facts regarding the alleged conflict of interest; and

(2) submit the request not later than the 30th day after the date the chief executive officer presents final funding recommendations for the affected grant cycle to the oversight committee.

(c) On notification of an alleged conflict of interest under Subsection (a) or (b), the institute's general counsel shall:

(1) investigate the matter; and

(2) provide to the chief executive officer and presiding officer of the oversight committee an opinion that includes:

(A) a statement of facts;

(B) a determination of whether a conflict of interest or another impropriety or self-dealing exists; and

(C) if the opinion provides that a conflict of interest or another impropriety or self-dealing exists, recommendations for an appropriate course of action.

(d) If the conflict of interest, impropriety, or self-dealing involves the presiding officer of the oversight committee, the institute's general counsel shall provide the opinion to the next ranking oversight committee member who is not involved with the conflict of interest, impropriety, or self-dealing.

(e) After receiving the opinion and consulting with the presiding officer of the oversight committee, the chief executive officer shall take action regarding the recusal of the individual from any discussion of or access to information related to the conflict of interest or other recommended action related to the impropriety or self-dealing. If the alleged conflict of interest, impropriety, or self-dealing is held by, or is an act of, the chief

executive officer, the presiding officer of the oversight committee shall take actions regarding the recusal or other action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.1064. FINAL DETERMINATION OF UNREPORTED CONFLICT OF INTEREST. (a) The chief executive officer or, if applicable, the presiding officer of the oversight committee shall make a determination regarding the existence of an unreported conflict of interest described by Section 102.1063 or other impropriety or self-dealing. The determination must specify any actions to be taken to address the conflict of interest, impropriety, or self-dealing, including:

(1) reconsideration of the application; or

(2) referral of the application to another research and prevention programs committee for review.

(b) The determination made under Subsection (a) is considered final unless three or more oversight committee members request that the issue be added to the agenda of the oversight committee.

(c) The chief executive officer or, if applicable, the presiding officer of the oversight committee, shall provide written notice of the final determination, including any further actions to be taken, to the grant applicant requesting the investigation.

(d) Unless specifically determined by the chief executive officer or, if applicable, the presiding officer of the oversight committee, or the oversight committee, the validity of an action taken on a grant application is not affected by the fact that an individual who failed to report a conflict of interest participated in the action.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 15, eff. June 14, 2013.

Sec. 102.107. POWERS AND DUTIES. (a) The oversight committee shall:

(1) hire a chief executive officer;

(2) annually set priorities as prescribed by the legislature for each grant program that receives money under this

chapter; and

(3) consider the priorities set under Subdivision (2) in awarding grants under this chapter.

(b) The oversight committee may conduct a closed meeting in accordance with Subchapter E, Chapter 551, Government Code, to discuss issues related to managing, acquiring, or selling securities or other revenue-sharing obligations realized under the standards established as required by Section 102.256.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 16, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 3, eff. September 1, 2017.

Sec. 102.108. RULEMAKING AUTHORITY. The oversight committee may adopt rules to administer this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 4, eff. June 19, 2009.

Sec. 102.109. CODE OF CONDUCT. (a) The oversight committee shall adopt a code of conduct applicable to each oversight committee member, program integration committee member, and institute employee.

(b) The code of conduct at a minimum must include provisions prohibiting the member, the employee, or the member's or employee's spouse from:

(1) accepting or soliciting any gift, favor, or service that could reasonably influence the member or employee in the discharge of official duties or that the member, employee, or spouse of the member or employee knows or should know is being offered with the intent to influence the member's or employee's official conduct;

(2) accepting employment or engaging in any business or professional activity that would reasonably require or induce the member or employee to disclose confidential information acquired in the member's or employee's official position;

(3) accepting other employment or compensation that could

reasonably impair the member's or employee's independent judgment in the performance of official duties;

(4) making personal investments or having a financial interest that could reasonably create a substantial conflict between the member's or employee's private interest and the member's or employee's official duties;

(5) intentionally or knowingly soliciting, accepting, or agreeing to accept any benefit for exercising the member's official powers or performing the member's or employee's official duties in favor of another;

(6) leasing, directly or indirectly, any property, capital equipment, employee, or service to any entity that receives a grant from the institute;

(7) submitting a grant application for funding by the institute;

(8) serving on the board of directors of an organization established with a grant from the institute; or

(9) serving on the board of directors of a grant recipient.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 17, eff. June 14, 2013.

Sec. 102.110. FINANCIAL STATEMENT REQUIRED. Each member of the oversight committee shall file with the chief compliance officer a verified financial statement complying with Sections 572.022 through 572.0252, Government Code, as required of a state officer by Section 572.021, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 17, eff. June 14, 2013.

SUBCHAPTER D. COMMITTEES

Sec. 102.151. SCIENTIFIC RESEARCH AND PREVENTION PROGRAMS COMMITTEE.

(a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 368, Sec. 16, eff. June 19, 2009.

(a-1) The oversight committee shall establish research and prevention programs committees. The chief executive officer, with

approval by simple majority of the members of the oversight committee, shall appoint as members of research and prevention programs committees experts in the field of cancer research and prevention, including qualified trained cancer patient advocates who meet the qualifications developed by rule as provided by Subsection (c).

(b) The institute shall adopt a written policy on in-state or out-of-state residency requirements for members of the research and prevention programs committees.

(c) The oversight committee shall adopt rules regarding the qualifications required for an individual who will serve as a trained cancer patient advocate committee member for a research and prevention programs committee. The rules must require a trained cancer patient advocate to receive science-based training.

(d) A member of a scientific research and prevention programs committee may receive an honorarium. Subchapter B, Chapter 2254, Government Code, does not apply to an honorarium made to a committee member under this chapter.

(e) The chief executive officer, in consultation with the oversight committee, shall adopt a policy and document any change in the amount of honorarium paid to a member of a research and prevention programs committee, including information explaining the basis for changing the amount.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 5, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 16, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 18, eff. June 14, 2013.

Sec. 102.152. TERMS OF RESEARCH AND PREVENTION PROGRAMS COMMITTEE MEMBERS. Members of a research and prevention programs committee serve for terms as determined by the chief executive officer.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 6, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 19, eff. June 14, 2013.

Sec. 102.153. EXPENSES. Members of the university advisory committee or any ad hoc advisory committee appointed under this subchapter serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the committee or performing other official duties authorized by the presiding officer.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 8, eff. June 19, 2009.

Sec. 102.154. UNIVERSITY ADVISORY COMMITTEE. (a) The Cancer Prevention and Research Institute of Texas University Advisory Committee is composed of the following members:

(1) two members appointed by the chancellor of The University of Texas System to represent:

(A) The University of Texas Southwestern Medical Center;

(B) The University of Texas Medical Branch at Galveston;

(C) The University of Texas Health Science Center at Houston;

(D) The University of Texas Health Science Center at San Antonio;

(E) The University of Texas Health Center at Tyler; or

(F) The University of Texas M. D. Anderson Cancer Center;

(2) one member appointed by the chancellor of The Texas A&M University System to represent:

(A) The Texas A&M University System Health Science Center; or

(B) the teaching hospital for The Texas A&M Health Science Center College of Medicine;

(3) one member appointed by the chancellor of the Texas Tech University System to represent the Texas Tech University Health Sciences Center;

(4) one member appointed by the chancellor of the University of Houston System to represent the system;

(5) one member appointed by the chancellor of the Texas State University System to represent the system;

(6) one member appointed by the chancellor of the University of North Texas System to represent the system;

(7) one member appointed by the president of Baylor College of Medicine;

(8) one member appointed by the president of Rice University; and

(9) members appointed at the executive director's discretion by the chancellors of other institutions.

(b) The university advisory committee shall advise the oversight committee and a research and prevention programs committee regarding the role of institutions of higher education in cancer research.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 14, eff. September 1, 2013.

Sec. 102.155. AD HOC ADVISORY COMMITTEE. (a) The oversight committee shall create an ad hoc committee of experts to address childhood cancers. The oversight committee, as necessary, may create additional ad hoc committees of experts to advise the oversight committee on issues relating to cancer.

(b) Ad hoc committee members shall serve for a period determined by the oversight committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.

Sec. 102.156. CONFLICT OF INTEREST. (a) A member of a research and prevention programs committee appointed under this subchapter shall disclose in writing to the chief executive officer if the member has a professional or financial interest, as defined by Section 102.106, in an entity that has a direct interest in a matter that comes before the member's committee.

(b) The member shall recuse himself or herself in the manner described by Section 102.1061 from the committee's deliberations and actions on the matter in Subsection (a) and may not participate in the committee's decision on the matter.

(c) A member of a research and prevention programs committee appointed under this chapter may not serve on the board of directors or other governing board of an entity receiving a grant from the institute or of a foundation or similar organization affiliated with the entity.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 9, eff. June 19, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 20, eff. June 14, 2013.

SUBCHAPTER E. CANCER PREVENTION AND RESEARCH FUND

Sec. 102.201. CANCER PREVENTION AND RESEARCH FUND. (a) The cancer prevention and research fund is a dedicated account in the general revenue fund.

(b) The cancer prevention and research fund consists of:

(1) appropriations of money to the fund by the legislature, except that the appropriated money may not include the proceeds from the issuance of bonds authorized by Section 67, Article III, Texas Constitution;

(2) gifts, grants, including grants from the federal government, and other donations received for the fund; and

(3) interest earned on the investment of money in the fund.

(c) The fund may be used only to pay for:

(1) grants for cancer research and for cancer research facilities in this state to realize therapies, protocols, and medical

procedures for the cure or substantial mitigation of all types of cancer in humans;

(2) the purchase, subject to approval by the institute, of laboratory facilities by or on behalf of a state agency or grant recipient;

(3) grants to public or private persons to implement the Texas Cancer Plan;

(4) the operation of the institute;

(5) grants for cancer prevention and control programs in this state to mitigate the incidence of all types of cancer in humans; and

(6) debt service on bonds issued as authorized by Section 67, Article III, Texas Constitution.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 21, eff. June 14, 2013.

Sec. 102.202. ISSUANCE OF GENERAL OBLIGATION BONDS. (a) The institute may request the Texas Public Finance Authority to issue and sell general obligation bonds of the state as authorized by Section 67, Article III, Texas Constitution.

(b) The Texas Public Finance Authority may not issue and sell general obligation bonds authorized by this section before January 1, 2008, and may not issue and sell more than $300 million in general obligation bonds authorized by this section in a state fiscal year.

(c) The institute shall determine, and include in its request for issuing bonds, the amount, exclusive of costs of issuance, of the bonds to be issued and the preferred time for issuing the bonds.

(d) The Texas Public Finance Authority shall issue the bonds in accordance with and subject to Chapter 1232, Government Code, and Texas Public Finance Authority rules. The bonds may be issued in installments.

(e) Proceeds of the bonds issued under this section shall be deposited in separate funds or accounts, in the state treasury, as shall be set out in the proceedings authorizing the bonds.

(f) The proceeds of the bonds may be used only to:

(1) make grants authorized by Section 67, Article III, Texas Constitution;

(2) purchase laboratory facilities approved by the institute;

(3) pay costs of operating the institute; or

(4) pay the costs of issuing the bonds and related bond administration costs of the Texas Public Finance Authority.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.203. AUTHORIZED USE OF FUNDS. (a) A person awarded money from the cancer prevention and research fund or from bond proceeds under this subchapter may use the money for research consistent with the purpose of this chapter and in accordance with a contract between the person and the institute.

(b) Except as otherwise provided by this section, money awarded under this subchapter may be used for authorized expenses, including honoraria, salaries and benefits, travel, conference fees and expenses, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, and reimbursement for costs of participation incurred by cancer clinical trial participants, including transportation, lodging, and any costs reimbursed under the cancer clinical trial participation program established under Chapter 51.

(c) A person receiving money under this subchapter for cancer research may not spend more than five percent of the money for indirect costs. For purposes of this subsection, "indirect costs" means the expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.

(d) Not more than five percent of the money awarded under this subchapter may be used for facility purchase, construction, remodel, or renovation purposes during any year. Expenditures of money awarded under this subchapter for facility purchase, construction, remodel, or renovation projects must benefit cancer prevention and

research.

(e) Not more than 10 percent of the money appropriated by the legislature for grants in a state fiscal year may be used for cancer prevention and control programs during that year.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 10, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1157 (H.B. 3147), Sec. 3, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(12), eff. September 1, 2021.

Sec. 102.204. PREFERENCE FOR TEXAS BUSINESSES. If the Texas Public Finance Authority contracts with a private entity to issue the bonds under this subchapter, the Texas Public Finance Authority shall consider contracting with an entity that has its principal place of business in this state and shall include using a historically underutilized business as defined by Section 2161.001, Government Code.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

SUBCHAPTER F. PROCEDURE FOR MAKING AWARDS

Sec. 102.251. RULES FOR GRANT AWARD PROCEDURE. (a) The oversight committee shall issue rules regarding the procedure for awarding grants to an applicant under this chapter. The rules must include the following procedures:

(1) a research and prevention programs committee shall score grant applications and make recommendations to the program integration committee, established under Section 102.264, and the oversight committee regarding the award of cancer research and prevention grants, including a prioritized list that:

(A) ranks the grant applications in the order the committee determines applications should be funded; and

(B) includes information explaining how each grant application on the list meets the research and prevention programs committee's standards for recommendation;

(2) the program integration committee shall submit to the oversight committee a list of grant applications the program integration committee by majority vote approved for recommendation that:

(A) includes documentation on the factors the program integration committee considered in making the grant recommendations;

(B) is substantially based on the list submitted by the research and prevention programs committee under Subdivision (1); and

(C) to the extent possible, gives priority to proposals that:

(i) could lead to immediate or long-term medical and scientific breakthroughs in the area of cancer prevention or cures for cancer;

(ii) strengthen and enhance fundamental science in cancer research;

(iii) ensure a comprehensive coordinated approach to cancer research;

(iv) are interdisciplinary or interinstitutional;

(v) address federal or other major research sponsors' priorities in emerging scientific or technology fields in the area of cancer prevention or cures for cancer;

(vi) are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(vii) are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(viii) have a demonstrable economic development benefit to this state;

(ix) enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside

this state additional researchers and resources;

(x) expedite innovation and product development, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or technology research capabilities; and

(xi) address the goals of the Texas Cancer Plan; and

(3) the institute's chief compliance officer shall compare each grant application submitted to the institute to a list of donors from any nonprofit organization established to provide support to the institute compiled from information made available under Section 102.262(c) before the application is submitted to a research and prevention programs committee for review and again before any grant is awarded to the applicant.

(b) A member of a research and prevention programs committee may not attempt to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(c) The chief executive officer shall submit a written affidavit for each grant application recommendation included on the list submitted to the oversight committee under Subsection (a)(2). The affidavit must contain all relevant information on:

(1) the peer review process for the grant application;

(2) the application's peer review score assigned by the research and prevention programs committee; and

(3) if applicable, the intellectual property and other due diligence reviews of the application.

(d) A member of the program integration committee may not discuss a grant applicant recommendation with a member of the oversight committee unless the chief executive officer and the program integration committee have fulfilled the requirements of Subsections (a)(2) and (c), as applicable.

(e) The institute may not award a grant to an applicant who has made a gift or grant to the institute or a nonprofit organization established to provide support to the institute.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 11, eff.

June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 22, eff. June 14, 2013.

Sec. 102.252. FUNDING RECOMMENDATIONS. Two-thirds of the members of the oversight committee present and voting must vote to approve each funding recommendation of the program integration committee. If the oversight committee does not approve a funding recommendation of the program integration committee, a statement explaining the reasons a funding recommendation was not followed must be included in the minutes of the meeting.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.
Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 12, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 23, eff. June 14, 2013.

Sec. 102.253. MAXIMUM AMOUNT OF ANNUAL AWARDS. The oversight committee may not award more than $300 million in grants under Subchapter E in a fiscal year.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.255. CONTRACT TERMS. (a) The oversight committee shall negotiate on behalf of the state regarding awarding, by grant, money under this chapter.
(b) Before awarding a grant under Subchapter E, the committee shall enter into a written contract with the grant recipient. The contract may specify that:
(1) if all or any portion of the amount of the grant is used to build a capital improvement:
(A) the state retains a lien or other interest in the capital improvement in proportion to the percentage of the grant

amount used to pay for the capital improvement; and

(B) the grant recipient shall, if the capital improvement is sold:

(i) repay to the state the grant money used to pay for the capital improvement, with interest at the rate and according to the other terms provided by the contract; and

(ii) share with the state a proportionate amount of any profit realized from the sale;

(2) if the grant recipient has not used grant money awarded under Subchapter E for the purposes for which the grant was intended, the recipient shall repay that amount and any related interest applicable under the contract to the state at the agreed rate and on the agreed terms; and

(3) if the grant recipient fails to meet the terms and conditions of the contract, the institute may terminate the contract using the written process prescribed in the contract and require the recipient to repay the grant money awarded under Subchapter E and any related interest applicable under the contract to this state at the agreed rate and on the agreed terms.

(c) The contract must:

(1) include terms relating to intellectual property rights consistent with the standards developed by the oversight committee under Section 102.256;

(2) require, in accordance with Subsection (d), the grant recipient to dedicate an amount of matching funds equal to one-half of the amount of the research grant awarded; and

(3) specify:

(A) the amount of matching funds to be dedicated under Subdivision (2);

(B) the period in which the grant award must be spent;

(C) the name of the research project to which matching funds are to be dedicated; and

(D) the specific deliverables of the project that is the subject of the grant proposal.

(d) Before the oversight committee may make for cancer research any grant of any proceeds of the bonds issued under Subchapter E, the recipient of the grant must certify that the recipient has an amount of funds equal to one-half of the grant and dedicate those funds to the research that is the subject of the grant request. The institute shall adopt rules specifying how a grant recipient fulfills

obligations under this subchapter. At a minimum, the rules must:

(1) allow a grant recipient that is a public or private institution of higher education, as defined by Section 61.003, Education Code, to credit toward the recipient's matching funds the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the recipient and the indirect cost rate authorized by Section 102.203(c);

(2) require that a grant recipient certify before the distribution of any money awarded under a grant for cancer research:

(A) that encumbered funds equal to one-half of the amount of the total grant award are available and not yet expended for research that is the subject of the grant; or

(B) if the grant recipient is a public or private institution of higher education, the indirect cost rate authorized by the federal research grants awarded to the recipient;

(3) specify that:

(A) a grant recipient receiving more than one grant award may provide matching funds certification at an institutional level;

(B) the recipient of a multiyear grant award may certify matching funds on a yearly basis; and

(C) grant funds may not be distributed to the grant recipient until the annual certification of the matching funds has been approved;

(4) specify that money used for purposes of certification may include:

(A) federal funds, including funds provided under the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) and the fair market value of drug development support provided to the recipient by the National Cancer Institute or other similar programs;

(B) funds of this state;

(C) funds of other states; and

(D) nongovernmental funds, including private funds, foundation grants, gifts, and donations;

(5) specify that the following items do not qualify for purposes of the certification required by this subsection:

(A) in-kind costs;

(B) volunteer services furnished to a grant recipient;

(C) noncash contributions;

(D) income earned by the grant recipient that is not available at the time of the award;

(E) preexisting real estate of the grant recipient, including buildings, facilities, and land;

(F) deferred giving, including a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(G) other items as may be determined by the oversight committee;

(6) require a grant recipient and the institute to include the certification in the grant award contract;

(7) specify that a grant recipient's failure to provide certification shall serve as grounds for terminating the grant award contract;

(8) require a grant recipient to maintain adequate documentation supporting the source and use of the funds required by this subsection and to provide documentation to the institute upon request; and

(9) require that the institute establish a procedure to conduct an annual review of the documentation supporting the source and use of funds reported in the required certification.

(e) The institute shall adopt a policy on advance payments to grant recipients.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 13, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 24, eff. June 14, 2013.

Sec. 102.256. PATENT ROYALTIES AND LICENSE REVENUES PAID TO STATE. (a) The oversight committee shall establish standards that require all grant awards to be subject to an intellectual property agreement that allows the state to collect royalties, income, and other benefits, including interest or proceeds resulting from securities and equity ownership, realized as a result of projects undertaken with money awarded under Subchapter E.

(b) In determining the state's interest in any intellectual property rights, the oversight committee shall balance the opportunity of the state to benefit from the patents, royalties, licenses, and other benefits that result from basic research, therapy development, and clinical trials with the need to ensure that essential medical research is not unreasonably hindered by the intellectual property agreement and that the agreement does not unreasonably remove the incentive on the part of the individual researcher, research team, or institution.

(c) The oversight committee may transfer its management and disposition authority over the state's interest in securities, equities, royalties, income, and other benefits realized as a result of projects undertaken with money awarded under Subchapter E to the Texas Treasury Safekeeping Trust Company. If the oversight committee transfers management and disposition authority under this subsection, the trust company has any power necessary to accomplish the purposes of this section.

(d) In managing the assets described by Subsection (c) through procedures and subject to restrictions that the Texas Treasury Safekeeping Trust Company considers appropriate, the trust company may acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain in light of the purposes, terms, distribution requirements, and other circumstances then prevailing pertinent to each investment, including the requirements prescribed by Subsection (b) and the purposes described by Section 102.002. The trust company may charge a fee to recover the reasonable and necessary costs incurred in managing assets under this section.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 448 (S.B. 1421), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 521 (S.B. 81), Sec. 6, eff. September 1, 2017.

Sec. 102.257. MULTIYEAR PROJECTS. The oversight committee may

grant funds for a multiyear project. The oversight committee must specify the total amount of money approved to fund the multiyear project. The total amount specified is considered for purposes of this subchapter to have been awarded in the state fiscal year that the project is approved by the research and prevention programs committee. The institute shall distribute only the money that will be expended during that fiscal year. The remaining money shall be distributed by the institute as the money is needed in each subsequent fiscal year.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 521 (H.B. 2251), Sec. 6, eff. June 17, 2011.

Sec. 102.258. PREFERENCE FOR TEXAS SUPPLIERS. The oversight committee shall establish standards to ensure that grant recipients purchase goods and services from suppliers in this state to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from suppliers in this state.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.259. HISTORICALLY UNDERUTILIZED BUSINESSES. The oversight committee shall establish standards to ensure that grant recipients purchase goods and services from historically underutilized businesses as defined by Chapter 2161, Government Code, and any other applicable state law.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.260. GRANT EVALUATION. (a) The oversight committee

shall require as a condition of a grant that the grant recipient submit to regular inspection reviews of the grant project by institute staff, including progress oversight reviews, to ensure compliance with the terms of the award and to ensure the scientific merit of the research.

(b) The chief executive officer shall determine the grant review process under this section. The chief executive officer may terminate grants that do not meet contractual obligations.

(c) The chief executive officer shall report at least annually to the oversight committee on the progress and continued merit of each research program funded by the institute.

(d) The institute shall establish and implement reporting requirements to ensure that each grant recipient complies with the terms and conditions in the grant contract, including verification of the amounts of matching funds dedicated to the research that is the subject of the grant award to the grant recipient.

(e) The institute shall implement a system to:

(1) track the dates on which grant recipient reports are due and are received by the institute; and

(2) monitor the status of any required report that is not timely submitted to the institute by a grant recipient.

(f) The chief compliance officer shall monitor compliance with this section and at least annually shall inquire into and monitor the status of any required report that is not timely submitted to the institute by a grant recipient. The chief compliance officer shall notify the general counsel and the oversight committee of a grant recipient that has not maintained compliance with the reporting requirements or matching funds provisions of the grant contract to allow the institute to begin suspension or termination of the grant contract under Subsection (b). This subsection does not limit other remedies available under the grant contract.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 14, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 25, eff. June 14, 2013.

Sec. 102.261. MEDICAL ETHICS. Any research project that receives money under Subchapter E must:

(1) be conducted with full consideration for the ethical and medical implications of the research; and

(2) comply with all federal and state laws regarding the conduct of research.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 4., eff. November 6, 2007.

Sec. 102.262. PUBLIC INFORMATION. (a) The following information is public information and may be disclosed under Chapter 552, Government Code:

(1) the applicant's name and address;

(2) the amount of funding applied for;

(3) the type of cancer to be addressed under the proposal; and

(4) any other information designated by the institute with the consent of the grant applicant.

(b) In order to protect the actual or potential value of information submitted to the institute by an applicant for or recipient of an institute grant, the following information submitted by such applicant or recipient is confidential and is not subject to disclosure under Chapter 552, Government Code, or any other law:

(1) all information, except as provided in Subsection (a), that is contained in a grant award contract between the institute and a grant recipient, relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information, including computer programs, developed in whole or in part by an applicant for or recipient of an institute grant, regardless of whether patentable or capable of being registered under copyright or trademark laws, that has a potential for being sold, traded, or licensed for a fee; and

(2) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility.

(c) The records of a nonprofit organization established to provide support to the institute are public information subject to

Chapter 552, Government Code.

(d) The institute shall post on the institute's Internet website records that pertain specifically to any gift, grant, or other consideration provided to the institute, an institute employee, or a member of an institute committee. The posted information must include each donor's name and the amount and date of the donor's donation.

Added by Acts 2009, 81st Leg., R.S., Ch. 368 (H.B. 1358), Sec. 15, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 448 (S.B. 1421), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 761 (S.B. 895), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 26, eff. June 14, 2013.

Sec. 102.263. COMPLIANCE PROGRAM. (a) In this section, "compliance program" means a process to assess and ensure compliance by the institute's committee members and employees with applicable laws, rules, and policies, including matters of:

(1) ethics and standards of conduct;

(2) financial reporting;

(3) internal accounting controls; and

(4) auditing.

(b) The institute shall establish a compliance program that operates under the direction of the institute's chief compliance officer. The institute may establish procedures, such as a telephone hotline, to allow private access to the compliance program office and to preserve the confidentiality of communications and the anonymity of a person making a compliance report or participating in a compliance investigation.

(c) The following are confidential and are not subject to disclosure under Chapter 552, Government Code:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the institute's compliance program office, sought guidance from the office, or participated in an investigation conducted under the compliance

program;

(2) information that directly or indirectly reveals the identity of an individual who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the office if, after completing an investigation, the office determines the report to be unsubstantiated or without merit; and

(3) other information that is collected or produced in a compliance program investigation if releasing the information would interfere with an ongoing compliance investigation.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

(e) Information made confidential or excepted from public disclosure by this section may be made available to the following on request in compliance with applicable laws and procedures:

(1) a law enforcement agency or prosecutor;

(2) a governmental agency responsible for investigating the matter that is the subject of a compliance report, including the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission; or

(3) a committee member or institute employee who is responsible under institutional policy for a compliance program investigation or for a review of a compliance program investigation.

(f) A disclosure under Subsection (e) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

Sec. 102.2631. COMPLIANCE MATTERS; CLOSED MEETING. The oversight committee may conduct a closed meeting under Chapter 551, Government Code, to discuss an ongoing compliance investigation into issues related to fraud, waste, or abuse of state resources.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

Sec. 102.264. PROGRAM INTEGRATION COMMITTEE. (a) The institute shall establish a program integration committee. The

committee is composed of the following five members:

(1) the chief executive officer;

(2) the chief scientific officer;

(3) the chief product development officer;

(4) the commissioner of state health services; and

(5) the chief prevention officer.

(b) The committee has the duties assigned under this chapter.

(c) The chief executive officer shall serve as the presiding officer of the program integration committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 27, eff. June 14, 2013.

SUBCHAPTER G. CANCER PREVENTION AND RESEARCH INTEREST AND SINKING FUND

Sec. 102.270. ESTABLISHMENT OF FUND. (a) The cancer prevention and research interest and sinking fund is a dedicated account in the general revenue fund.

(b) The fund consists of:

(1) patent, royalty, and license fees and other income received under a contract entered into as provided by Section 102.255; and

(2) interest earned on the investment of money in the fund.

(c) The fund may be used only to pay for debt service on bonds issued as authorized by Section 67, Article III, Texas Constitution, at a time and in a manner to be determined by the legislature in the General Appropriations Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1150 (S.B. 149), Sec. 28, eff. June 14, 2013.

CHAPTER 103. TEXAS DIABETES COUNCIL

Sec. 103.001. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Diabetes Council.

(2) "Person with diabetes" means a person diagnosed by a physician in accordance with nationally recognized standards as having diabetes.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 1, eff. September 1, 2019.

Sec. 103.002. COMPOSITION OF COUNCIL. (a) The Texas Diabetes Council is composed of 11 citizen members appointed from the public and one representative each from the department, the commission, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, and the Texas Workforce Commission vocational rehabilitation services division.

(b) The governor, with the advice and consent of the senate, shall appoint the following citizen members:

(1) a licensed physician with a specialization in treating diabetes;

(2) a registered nurse with a specialization in diabetes education and training;

(3) a registered and licensed dietitian with a specialization in the diabetes education field;

(4) a person with experience and training in public health policy;

(5) three consumer members, with special consideration given to persons active in the Texas affiliates of the Juvenile Diabetes Research Foundation (JDRF), the American Association of Diabetes Educators, or the American Diabetes Association; and

(6) four members from the general public with expertise or demonstrated commitment to diabetes issues.

(b-1) In making appointments under this section, the governor shall attempt to appoint members of different minority groups including females, African-Americans, Hispanic-Americans, Native Americans, and Asian-Americans.

(c) The commissioner, executive commissioner, executive director of the Employees Retirement System of Texas, executive director of the Teacher Retirement System of Texas, and the director of the Texas Workforce Commission vocational rehabilitation services division shall appoint that agency's representative to the council. Agency representatives shall be nonvoting members of the council.

(d) Appointments to the council shall be made without regard to the race, color, disability, creed, sex, religion, age, or national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 6.39, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 12.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1170, Sec. 10.01, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 6, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0340, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 2, eff. September 1, 2019.

Sec. 103.0024. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

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

(1) the legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the council;

(4) the rules of the council;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

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

(B) the public information law, Chapter 552, Government Code;

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

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to

reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 12.03, eff. Sept. 1, 1999.

Sec. 103.0025. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 12.03, eff. Sept. 1, 1999.

Sec. 103.004. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT. (a) A person is not eligible for appointment or service as a citizen member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds at the council's direction;

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization receiving funds at the council's direction; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department at the council's direction, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council or act as the general counsel.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the council. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of health care may not be a member of the council and may not be an

employee, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For purposes of Subsection (c), a trade association is a nonprofit, cooperative, and voluntary association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

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

Sec. 103.005. TERMS. (a) Council members appointed by the governor serve for staggered six-year terms, with the terms of three or four members expiring February 1 of each odd-numbered year.

(b) A council member appointed as a representative of an agency serves at the will of the appointing agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1285, Sec. 3.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1170, Sec. 10.02, eff. Sept. 1, 2003.

Sec. 103.006. CHAIRMAN. The governor shall designate a member of the council as the chairman of the council to serve in that capacity at the will of the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 12.02, eff. Sept. 1, 1999.

Sec. 103.007. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council if a member:

(1) is not eligible for appointment to the council at the time of appointment as provided by Section 103.004(a);

(2) is not eligible to serve on the council as provided by Section 103.004(a);

(3) violates a prohibition established by Section 103.004(b) or (c);

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

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

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

(c) If the chairman of the council has knowledge that a potential ground for removal exists, the chairman shall notify the governor of its existence.

(d) The council shall inform its members as often as necessary of:

(1) the qualifications for office prescribed by this chapter; and

(2) their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

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

Sec. 103.008. VACANCY. (a) The office of a member appointed by an agency becomes vacant when the person terminates employment with the agency or when the agency elects to replace the person as provided by Section 103.005.

(b) If the office of a member who is an agency representative becomes vacant, the commissioner or executive commissioner, as appropriate, of that agency shall appoint an agency representative to serve for the remainder of that member's term.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1285, Sec. 3.02, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0341, eff. April 2, 2015.

Sec. 103.009. REIMBURSEMENT. The department shall reimburse council and advisory committee members for travel and other necessary

expenses incurred in performing official duties as provided by Section 2110.004, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0342, eff. April 2, 2015.

Sec. 103.010. STAFF AND ADMINISTRATIVE SUPPORT. (a) Each agency represented on the council shall provide the council with periodic staff support of specialists as needed and may provide staff support to an advisory committee.

(b) The department shall provide administrative support to the council by providing research services and preparing any reports required under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 3, eff. September 1, 2019.

Sec. 103.011. ADVISORY COMMITTEES; WORK GROUPS. (a) The council may establish advisory committees or work groups that the council considers necessary and may determine the appropriate membership for each committee or group.

(b) The council shall specify the purpose and duties of each advisory committee or work group and shall specify any product the committee is required to develop.

(c) Members of an advisory committee or work group serve at the will of the council. The council may dissolve an advisory committee or work group when necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 4, eff. September 1, 2019.

Sec. 103.012. MEETINGS. (a) The council shall meet at least

quarterly and shall adopt rules for the conduct of its meetings.

(b) Any action taken by the council must be approved by a majority of the voting members present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 269, Sec. 3, eff. Sept. 1, 1991.

Sec. 103.013. STATE PLAN. (a) The council shall develop and implement a state plan for diabetes treatment, education, and training to ensure that:

(1) this chapter is properly implemented by the agencies affected;

(2) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(3) a procedure for review of individual complaints about services provided under this chapter is implemented.

(b) The state plan may include provisions to ensure that:

(1) individual and family needs are assessed statewide and all available resources are coordinated to meet those needs; and

(2) health care provider needs are assessed statewide and strategies are developed to meet those needs.

(b-1) The state plan may include provisions to address obesity treatment, education, and training related to:

(1) obesity-dependent diabetes; and

(2) the health impacts of obesity on a person with diabetes.

(c) The council shall make written recommendations for performing its duties under this chapter to the executive commissioner and the legislature. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

(d) The council shall submit the state plan to the state agency designated as the state health planning and development agency not later than November 1 of each odd-numbered year.

(e) Each state agency affected by the state plan shall:

(1) determine what resources would be required to implement

the portions of the state plan affecting that agency; and

(2) determine whether that agency will seek funds to implement that portion of the state plan.

(f) Not later than November 1 of each even-numbered year, each state agency affected by the state plan, other than a state agency represented on the council, shall report to the council, the Legislative Budget Board, and the Governor's Office of Budget and Planning:

(1) information determined under Subsection (e); and

(2) each deviation from the council's proposed plan, including an explanation for the deviation.

(g) The report required under Subsection (f) may be published electronically on a state agency's Internet website. A state agency that electronically publishes a report under this subsection shall notify each agency entitled to receive a copy of the report that the report is available on the agency's Internet website on or before the date the report is due.

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

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 64, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0343, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 5, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 14, eff. September 1, 2021.

Sec. 103.0131. ASSESSMENT OF PROGRAMS TO PREVENT AND TREAT DIABETES.

Text of subsection effective until April 1, 2025

(a) In conjunction with developing each state plan described in Section 103.013, the council shall conduct a statewide assessment of existing programs for the prevention of diabetes and treatment of individuals with diabetes that are administered by the commission or a health and human services agency, as defined by Section 531.001, Government Code. As part of the assessment, the council shall

collect data regarding:

(1) the number of individuals served by the programs;

(2) the areas where services to prevent diabetes and treat individuals with diabetes are unavailable; and

(3) the number of health care providers treating individuals with diabetes under the programs.

Text of subsection effective on April 1, 2025

(a) In conjunction with developing each state plan described in Section 103.013, the council shall conduct a statewide assessment of existing programs for the prevention of diabetes and treatment of individuals with diabetes that are administered by the commission or a health and human services agency, as defined by Section 521.0001, Government Code. As part of the assessment, the council shall collect data regarding:

(1) the number of individuals served by the programs;

(2) the areas where services to prevent diabetes and treat individuals with diabetes are unavailable; and

(3) the number of health care providers treating individuals with diabetes under the programs.

(b) Not later than November 1 of each odd-numbered year, the council shall submit to the governor, the lieutenant governor, and the legislature a written report containing the findings of the assessment conducted under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 409 (S.B. 796), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0344, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.37, eff. April 1, 2025.

Sec. 103.014. POWERS AND DUTIES. (a) The council shall address contemporary issues affecting health promotion services in the state, including:

(1) professional and patient education;

(2) evidence-based diabetes self-management education strategies;

(3) evidence-based strategies to achieve the council's

mission;

(4) state expenditures for the prevention, detection, management, and treatment of diabetes and obesity; and

(5) public awareness of the specific risks and benefits of prevention, detection, management, and treatment of diabetes, including obesity-dependent diabetes.

(b) The council shall advise the legislature on legislation that is needed to develop further and maintain a statewide system of quality education services for all persons with diabetes. The council may develop and submit legislation to the legislature or comment on pending legislation that affects persons with diabetes.

(c) The council may establish priorities and make recommendations for program expenditures that align with the council's mission.

(d) The council may engage in studies that it determines are necessary or suitable under the state plan as provided by this chapter.

(e) The department shall accept funds appropriated for the purposes of this chapter and shall allocate those funds. The council shall make recommendations to the department concerning the allocation of funds.

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

Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 6, eff. September 1, 2019.

Sec. 103.015. GIFTS AND GRANTS. (a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council and shall deposit any funds accepted under this section to the credit of the general revenue fund.

(b) The department may retain five percent of any monetary gifts accepted on behalf of the council to cover its costs in administering this section.

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0345, eff. April 2, 2015.

Sec. 103.016. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS. (a) The council shall prepare information of public interest describing the functions of the council and describing council procedures by which complaints are filed with and resolved by the council. The council shall make the information available to the general public and appropriate state agencies.

(b) The council by rule shall establish methods by which consumers or service recipients are notified of the name, mailing address, and telephone number of the council for the purpose of directing complaints to the council.

(c) The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

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

Sec. 103.017. PUBLIC AWARENESS AND TRAINING. (a) The department, commission, and Texas Workforce Commission vocational rehabilitation services division shall work with the council to jointly develop, produce, and implement a general public awareness strategy focusing on diabetes, its complications, and techniques for achieving good management. Each agency shall pay for the costs of producing and disseminating information on diabetes to clients served by that agency.

(b) The strategy developed under Subsection (a) must include a plan under which the council provides public awareness information through businesses, civic organizations, and similar entities.

(c) The department, commission, and Texas Workforce Commission vocational rehabilitation services division may jointly develop and implement a statewide plan for conducting regional training sessions for public and private service providers, including institutional health care providers, who have routine contact with persons with diabetes.

(d) The council must approve the strategies and plans developed under this section.

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

by Acts 1997, 75th Leg., ch. 165, Sec. 6.40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1285, Sec. 4.01, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 7, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0346, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 7, eff. September 1, 2019.

Sec. 103.0175. MATERIALS FOR SCHOOL-BASED AND SCHOOL-LINKED CLINICS. The council, in consultation with the department and the Texas Education Agency, shall develop and make available materials that provide information about diabetes to be distributed to students and the parents of students by health clinics at public primary or secondary schools.

Added by Acts 1997, 75th Leg., ch. 1285, Sec. 4.01, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 452 (S.B. 2151), Sec. 8, eff. September 1, 2019.

Sec. 103.019. AUDIT. The financial transactions pertaining to the council are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 39, eff. Sept. 1, 1991.

CHAPTER 104. STATEWIDE HEALTH COORDINATING COUNCIL AND STATE HEALTH PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 104.001. POLICY; PURPOSE. (a) The policy of this state and the purpose of this chapter are to ensure that health care services and facilities are available to all citizens in an orderly and economical manner.

(b) To achieve this purpose it is essential that:

(1) appropriate health planning activities are undertaken and implemented; and

(2) health care services and facilities are provided in a cost-effective manner, compatible with the health care needs of the different areas and populations of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 18, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 1, eff. June 19, 2009.

Sec. 104.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(42), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(42), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(42), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(42), eff. April 2, 2015.

(5) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical center, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, end stage renal disease facility, and inpatient rehabilitation facility. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups.

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

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(42), eff. April 2, 2015.

Sec. 104.004. INTERAGENCY COOPERATION. Each state agency, department, instrumentality, grantee, political subdivision, and

institution of higher education shall cooperate with the department in performing assigned duties and functions.

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

Sec. 104.005. LIMITATIONS ON POWERS OF DEPARTMENT. This chapter does not authorize the department or an official or employee of the department to:

(1) supervise or control the practice of medicine, the manner in which physician's services in private practice are provided, or the selection, tenure, compensation, or fees of a physician in the delivery of physician's services; or

(2) perform a duty or function under Title XI of the Social Security Act (42 U.S.C. Sec. 1301 et seq.) or a rule or regulation adopted under that Act.

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

SUBCHAPTER B. STATEWIDE HEALTH COORDINATING COUNCIL

Sec. 104.011. COMPOSITION OF COUNCIL. (a) The statewide health coordinating council is composed of 17 members determined as follows:

(1) the executive commissioner or a representative designated by the executive commissioner;

(2) the chair of the Texas Higher Education Coordinating Board or a representative designated by the presiding officer;

(3) the commissioner or a representative designated by the commissioner;

(4) the commissioner of aging and disability services or a representative designated by the commissioner of aging and disability services; and

(5) the following members appointed by the governor:

(A) three health care professionals from the allied health, dental, medical, mental health, and pharmacy professions, no two of whom may be from the same profession;

(B) one registered nurse;

(C) two representatives of a university or health-related institution of higher education;

(D) one representative of a junior or community college

with a nursing program;

(E) one hospital administrator;

(F) one managed care administrator; and

(G) four public members.

(b) The appointments of the governor shall be with the advice and consent of the senate.

(c) The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the will of the governor.

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

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 19, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1386, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 11.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.192(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 3, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0348, eff. April 2, 2015.

Sec. 104.0111. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the statewide health coordinating council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of medicine.

(c) A person may not be a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf

of a profession related to the operation of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.02, eff. Sept. 1, 1999.

Sec. 104.0112. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the statewide health coordinating council that a member:

(1) does not have at the time of taking office the qualifications required by Section 104.011(a);

(2) does not maintain during service on the council the qualifications required by Section 104.011(a);

(3) is ineligible for membership under Section 104.0111;

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.02, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0349, eff. April 2, 2015.

Sec. 104.0113. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the statewide health coordinating

council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

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

(1) the legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the council;

(4) the rules of the council;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

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

(B) the public information law, Chapter 552, Government Code;

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

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.02, eff. Sept. 1, 1999.

Sec. 104.0115. TERMS. (a) Members of the council serve for staggered six-year terms, with the terms of four or five members expiring August 31 of each odd-numbered year.

(b) An appointment to fill a vacancy is for the unexpired term.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 20, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 728, Sec. 6, eff. June 20, 2003.

Sec. 104.012. RULES. The statewide health coordinating council shall adopt rules governing the development and implementation of the state health plan.

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

Sec. 104.013. FEES. The statewide health coordinating council may establish and charge fees for public health planning, data, and statistical services.

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

Sec. 104.014. ASSISTANCE. The department, in accordance with rules adopted by the statewide health coordinating council, shall assist the council in performing the council's duties and functions.

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

Sec. 104.0141. DIVISION OF POLICY AND MANAGEMENT RESPONSIBILITIES. The statewide health coordinating council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the commissioner and the staff of the department.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.03, eff. Sept. 1, 1999.

Sec. 104.0142. INFORMATION ABOUT STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to members of the statewide health coordinating council, as often as necessary, information regarding the requirements for office under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.03, eff. Sept. 1, 1999.

Sec. 104.015. ADVISORY BOARDS AND AD HOC COMMITTEES. The statewide health coordinating council may form advisory boards or ad hoc committees composed of individuals from the public and private sectors to review policy matters related to the council's purpose.

Added by Acts 1997, 75th Leg., ch. 1386, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 4, eff. June 19, 2009.

Sec. 104.0155. NURSING ADVISORY COMMITTEE. (a) The statewide health coordinating council shall form a nursing advisory committee the majority of the members of which must be nurses. The committee:

(1) must include:

(A) members of associations that represent nurses, educators of nurses, and employers of nurses;

(B) members who represent the Texas Board of Nursing; and

(C) a nurse researcher; and

(2) may include other members who are health care experts from the public or private sector, nurses, nurse educators, employers of nurses, or consumers of nursing services.

(b) The committee shall:

(1) review policy matters on the collection of data and reports performed under Chapter 105 that relate to the nursing profession;

(2) subject to approval of the council, develop priorities and an operations plan for the nursing resource section under Section 105.002(b); and

(3) review reports and information before dissemination.

(c) A nurse member of the committee and a nurse member of the statewide health coordinating council shall cochair the committee.

(d) Chapter 2110, Government Code, does not apply to the committee formed under this section.

(e) Meetings of the committee under this section are subject to Chapter 551, Government Code.

Added by Acts 2003, 78th Leg., ch. 728, Sec. 7, eff. June 20, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 5, eff.

June 19, 2009.

Sec. 104.016. PUBLIC TESTIMONY. The statewide health coordinating council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 11.04, eff. Sept. 1, 1999.

SUBCHAPTER C. STATE HEALTH PLAN

Sec. 104.021. PROPOSED STATE HEALTH PLAN. (a) The department, in accordance with rules adopted by the statewide health coordinating council, shall prepare and review a proposed state health plan every six years and shall revise and update the plan biennially.

(b) The department shall submit the proposed plan to the statewide health coordinating council.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 747, Sec. 21, eff. Sept. 1, 1993.

Sec. 104.022. STATE HEALTH PLAN. (a) Information needed for the development of the state health plan shall be gathered through systematic methods designed to include local, regional, and statewide perspectives.

(b) The statewide health coordinating council, in consultation with the commission, shall issue overall directives for the development of the state health plan.

(c) The department shall consult with the Department of Aging and Disability Services, the commission, and other appropriate health-related state agencies designated by the governor before performing the duties and functions prescribed by state and federal law regarding the development of the state health plan.

(d) The statewide health coordinating council shall provide guidance to the department in developing the state health plan.

(e) The state health plan shall be developed and used in accordance with applicable state and federal law. The plan must

identify:

(1) major statewide health concerns;

(2) the availability and use of current health resources of the state, including resources associated with information technology and state-supported institutions of higher education; and

(3) future health service, information technology, and facility needs of the state.

(f) The state health plan must:

(1) propose strategies for the correction of major deficiencies in the service delivery system;

(2) propose strategies for incorporating information technology in the service delivery system;

(3) propose strategies for involving state-supported institutions of higher education in providing health services and for coordinating those efforts with health and human services agencies in order to close gaps in services; and

(4) provide direction for the state's legislative and executive decision-making processes to implement the strategies proposed by the plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 627, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 22, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.126, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 785 (S.B. 45), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 6, eff. June 19, 2009.

Sec. 104.023. REVIEW OF STATE HEALTH PLAN. The statewide health coordinating council shall submit the state health plan to the commission for review and comment before the plan is sent to the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 627, Sec. 14, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.127, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0350, eff.

April 2, 2015.

Sec. 104.024. SUBMISSION OF PLAN TO GOVERNOR. The statewide health coordinating council shall approve the state health plan for submission to the governor in accordance with applicable federal law and, not later than November 1 of each even-numbered year, submit the plan to the governor for adoption.

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

Sec. 104.025. IMPLEMENTATION OF STATE HEALTH PLAN. The statewide health coordinating council shall promote the implementation of the recommendations made in the state health plan.

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

Sec. 104.026. COST DATA. (a) A state agency directly affected by a recommendation in the state health plan shall submit cost data for the implementation of the recommendation to the department and to the statewide health coordinating council, and shall indicate whether the agency is requesting funds in a manner consistent with the plan's recommendation.

(b) If the agency does not request funds consistent with the state health plan's recommendation, the agency shall submit an explanation and justification of any deviation.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(6), eff. September 1, 2021.

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

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(6), eff. September 1, 2021.

SUBCHAPTER D. THE DEPARTMENT AND THE STATE HEALTH PLAN

Sec. 104.042. DATA COLLECTION. (a) The executive commissioner by rule shall establish reasonable procedures for the collection of data by the department from health care facilities and for the

distribution of data necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The executive commissioner by rule shall specify the type of data required, the entities required to submit the data, and the period during which the data must be submitted.

(c) The department, in accordance with rules adopted by the statewide health coordinating council, shall collect and distribute data necessary to support specific state health plan goals.

(d) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(e) Data received by the department under this section containing information identifying specific patients is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless the information identifying the patient is removed. This subsection does not authorize the release of information that is confidential under Chapter 108.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 728, Sec. 8, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 7, eff. June 19, 2009.

Sec. 104.0421. STATEWIDE DATA COLLECTION AND COORDINATION. (a) The statewide health coordinating council shall work with appropriate health professional licensing agencies to develop uniform standards for health professional data collected by those agencies to enable the council to maintain a comprehensive health professional database.

(b) The council shall retrieve data on health professionals from the appropriate licensing agencies. The council may seek the assistance of the appropriate licensing agency or department in the retrieval of data on health professionals.

(c) The council shall monitor and evaluate long-term regional, statewide, and local health needs. The council shall use this evaluation for developing recommendations relating to health education, training, and regulation.

(d) The council shall use data collected under this section to

develop workforce goals for health professionals and to recommend the appropriate level and distribution of state funding for education and training to achieve these goals. The council shall evaluate the short-term and long-term effects of the recommendations made under this subsection.

(e) The council shall, with the assistance of higher education agencies and institutions, area health education centers, teaching hospitals, and health education institutions, improve coordination of statewide health planning. The council may seek the assistance of the National Association of Health Data Organizations, the Association of American Medical Colleges, the National Council of State Legislatures, the American Association of Colleges of Osteopathic Medicine, the Association of American Health Centers, and any other appropriate entities.

(f) The department shall continue to assist the council and the health professions resource center with the development of the state health plan. The council shall coordinate related health planning functions within the department. The staff of the health professions resource center shall continue to be department employees but are governed by the council.

Added by Acts 1997, 75th Leg., ch. 1386, Sec. 8, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 8, eff. June 19, 2009.

Sec. 104.043. FAILURE TO SUBMIT DATA; CIVIL PENALTY. (a) If the department does not receive necessary data from an entity as required by department rules, the department shall send to the entity a notice requiring the entity to submit the data not later than the 30th day after the date on which the entity receives the notice.

(b) An entity that does not submit the data during the period determined under Subsection (a) is subject to a civil penalty of not more than $500 for each day after the period that the entity fails to submit the data.

(c) At the request of the executive commissioner, the attorney general shall sue in the name of the state to recover the civil penalty.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 9, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0351, eff. April 2, 2015.

Sec. 104.044. SORTING COLLECTED DATA. (a) The department shall compile the health data collected under this subchapter and organize the results, to the extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;

(2) each public health region;

(3) rural areas;

(4) urban areas;

(5) each county; and

(6) the state.

(b) Health data released under this subchapter must be released in accordance with the way it is compiled under this section.

Added by Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 2, eff. September 1, 2005.

CHAPTER 105. HEALTH PROFESSIONS RESOURCE CENTER

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Health profession" means any health or allied health profession that is licensed, certified, or registered by a state board, agency, or association.

(2) "Council" means the statewide health coordinating council.

(3) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254.

(4) "Home health agency" means a home and community support services agency licensed under Chapter 142.

(5) "Hospital" means a general or special hospital licensed under Chapter 241, a private mental hospital licensed under Chapter 577, or a hospital that is maintained or operated by this state or an agency of this state.

(6) "Nursing facility" means an institution licensed under

Chapter 242.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 3, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1088 (H.B. 2696), Sec. 1, eff. June 19, 2015.

Sec. 105.002. ESTABLISHMENT OF CENTER. (a) In conjunction with the Texas Higher Education Coordinating Board and in such a way as to avoid duplication of effort, the council shall establish a comprehensive health professions resource center for the collection and analysis of educational and employment trends for health professions in this state.

(b) In conjunction with the committee formed under Section 104.0155, to avoid duplication of effort, and to the extent funding is available through fees collected under Section 301.155(c), Occupations Code, the council shall establish a nursing resource section within the center for the collection and analysis of educational and employment trends for nurses in this state.

(c) If the nursing resource section established under Subsection (b) is funded from surcharges collected under Section 301.155(c), Occupations Code, the council shall provide the Texas Board of Nursing with an annual accounting of the money received from the board. The council may expend a reasonable amount of the money to pay administrative costs of maintaining the nursing resource section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 728, Sec. 9, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 1, eff. May 20, 2005.
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 62, eff. September 1, 2007.

Sec. 105.003. COLLECTION OF DATA. (a) The council shall place

a high priority on collecting and disseminating data on health professions demonstrating an acute shortage in this state, including:

(1) data concerning nursing personnel; and

(2) data concerning the health professions in which shortages occur in rural areas.

(b) To the extent possible, the council may collect the data from existing sources that the council determines are credible. The council may enter agreements with those sources that establish guidelines concerning the identification, acquisition, transfer, and confidentiality of the data.

(c) The Department of Information Resources, through the state electronic Internet portal and in consultation with the council and the Health Professions Council, shall add and label as "mandatory" the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

(1) full name and last four digits of social security number;

(2) full mailing address; and

(3) educational background and training, including basic health professions degree, school name and location of basic health professions degree, and graduation year for basic health professions degree, and, as applicable, highest professional degree obtained, related professional school name and location, and related graduation year.

(c-1) The Department of Information Resources, through the state electronic Internet portal and in consultation with the council and the Health Professions Council, shall add the following fields on an application or renewal form for a license, certificate, or registration for a person subject to Subsection (c-2):

(1) date and place of birth;

(2) sex;

(3) race and ethnicity;

(4) location of high school;

(5) mailing address of primary practice;

(6) number of hours per week spent at primary practice location;

(7) description of primary practice setting;

(8) primary practice information, including primary specialty practice, practice location zip code, and county; and

(9) information regarding any additional practice, including description of practice setting, practice location zip code, and county.

(c-2) The following health professionals are subject to this section:

(1) audiologists;
(2) chiropractors;
(3) licensed professional counselors;
(4) licensed chemical dependency counselors;
(5) dentists;
(6) dental hygienists;
(7) emergency medical services personnel;
(8) marriage and family therapists;
(9) medical radiologic technologists;
(10) licensed vocational nurses;
(11) registered nurses;
(12) certified nurse aides;
(13) occupational therapists;
(14) optometrists;
(15) pharmacists;
(16) physical therapists;
(17) physicians;
(18) physician assistants;
(19) psychologists;
(20) social workers; and
(21) speech-language pathologists.

(c-3) The relevant members of the Health Professions Council shall encourage each person described by Subsection (c-2) licensed, certified, or registered under that council's authority to submit application and renewal information under Subsections (c) and (c-1) through the system developed by the Department of Information Resources and the state electronic Internet portal.

(d) To the extent feasible, the council shall use a researcher with a doctorate in nursing to collect, analyze, and disseminate nursing data that may be used to predict supply and demand for nursing personnel in this state using appropriate federal or state supply-and-demand models. The nursing data must at least:

(1) include demographics, areas of practice, supply, demand, and migration; and

(2) be analyzed to identify trends relating to numbers and

geographical distribution, practice setting, and area of practice and, to the extent possible, compare those trends with corresponding national trends.

(e) Data received under this section by the nursing resource section established under Section 105.002 that contains information identifying specific patients or health care facilities is confidential, is not subject to disclosure under Chapter 552, Government Code, and may not be released unless all identifying information is removed.

(f) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the information collected under Subsections (c) and (c-1) is transmitted to the statewide health coordinating council. The council shall store the information as needed and conduct related workforce studies, including a determination of the geographical distribution of the reporting professionals.

(g) The relevant members of the Health Professions Council, in conjunction with the Department of Information Resources, shall ensure that the following information is submitted to the statewide health coordinating council for a person subject to Subsection (c-2):

(1) certification, registration, or license number;

(2) issuance date;

(3) method of certification, registration, or licensure; and

(4) certification, registration, or licensure status.

(h) The Department of Information Resources shall work with the health occupation regulatory agencies that are members of the Health Professions Council to minimize the costs to Health Professions Council members of obtaining the information under Subsections (c) and (c-1). The Department of Information Resources shall provide the Health Professions Council with the appropriate federal information processing standards code based on the information in Subsections (c-1)(8) and (9).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 5, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 728, Sec. 10, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 2, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 486 (S.B. 29), Sec. 1, eff. March 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 27, eff. June 17, 2011.

Sec. 105.004. REPORTS. (a) The council may use the data collected and analyzed under this chapter to publish reports regarding:

(1) the educational and employment trends for health professions;

(2) the supply and demand of health professions; and

(3) other issues, as necessary, concerning health professions in this state.

(b) The council shall publish reports regarding the data collected and analyzed under this chapter related to:

(1) the educational and employment trends of nursing professionals;

(2) the supply and demand of nursing professionals; and

(3) other issues, as determined necessary by the council, concerning nursing professionals in this state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1386, Sec. 6, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 728, Sec. 11, eff. June 20, 2003.

Sec. 105.005. RULES. The executive commissioner may adopt rules to govern the reporting and collection of data.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 10, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0352, eff. April 2, 2015.

Sec. 105.006. ASSISTANCE OF OTHER STATE AGENCIES. The Texas Higher Education Coordinating Board or the department may require the assistance of other state agencies or institutions of higher

education for the development of, or the collection of data for, any report.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 40, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10.001(a), eff. Sept. 1, 2003.

Sec. 105.009. RESEARCH REGARDING GRADUATE MEDICAL EDUCATION SYSTEM. (a) The comprehensive health professions resource center shall conduct research:

(1) to identify all medical specialties and subspecialties that are at critical shortage levels in this state, together with the geographic location of the physicians in those specialties and subspecialties; and

(2) regarding the overall supply of physicians in this state and any other issues that are relevant to the status of the state's graduate medical education system and the ability of that system to meet the current and future health care needs of this state.

(b) Not later than May 1 of each even-numbered year, the council shall report the results of the center's research to the Legislative Budget Board, the Texas Higher Education Coordinating Board, the office of the governor, and the standing committees of each house of the legislature with primary jurisdiction over state finance or appropriations.

Added by Acts 2015, 84th Leg., R.S., Ch. 321 (S.B. 18), Sec. 7, eff. September 1, 2015.

Sec. 105.011. WORKPLACE VIOLENCE PREVENTION GRANT PROGRAM. (a) To the extent funding is available, the nursing resource section established under Section 105.002 shall administer a grant program to fund innovative approaches for reducing verbal and physical violence against nurses in hospitals, freestanding emergency medical care facilities, nursing facilities, and home health agencies.

(b) The nursing resource section shall require a grant recipient to submit periodic reports describing the outcome of the activities funded through the grant, including any change in the severity and frequency of verbal and physical violence against

nurses.

(c) The nursing advisory committee established by Section 104.0155 shall serve in an advisory capacity for the grant program.

(d) The department shall provide administrative assistance to the nursing resource section in administering the grant program under this section.

(e) The executive commissioner shall adopt rules to implement the grant program, including rules governing the submission and approval of grant requests and establishing a reporting procedure for grant recipients.

(f) The nursing resource section may use money transferred to the department from the Texas Board of Nursing under Section 301.155, Occupations Code, to fund the grants authorized by this section.

(g) At least annually, the nursing resource section shall publish a report describing the grants awarded under this section, including the amount of the grant, the purpose of the grant, and the reported outcome of the approach adopted by the grant recipient.

Added by Acts 2017, 85th Leg., R.S., Ch. 406 (H.B. 280), Sec. 1, eff. September 1, 2017.

CHAPTER 107A. CENTER FOR ELIMINATION OF DISPROPORTIONALITY AND DISPARITIES

Sec. 107A.001. CENTER FOR ELIMINATION OF DISPROPORTIONALITY AND DISPARITIES. The executive commissioner shall maintain a center for elimination of disproportionality and disparities in the commission to:

(1) assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of minority health to develop health initiatives to decrease or eliminate health and health access disparities among racial, multicultural, disadvantaged, ethnic, and regional populations, including appropriate language services; and

(2) maximize use of existing resources without duplicating existing efforts.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0353, eff. April 2, 2015.

Sec. 107A.002. POWERS OF CENTER. The center may:

(1) provide a central information and referral source, including a clearinghouse for health disparities information, and serve as the primary state resource in coordinating, planning, and advocating access to health care services to eliminate health disparities in this state;

(2) coordinate conferences and other training opportunities to increase skills among state agencies and government staff in management and in the appreciation of cultural diversity;

(3) pursue and administer grant funds for innovative projects for communities, groups, and individuals;

(4) provide recommendations and training in improving minority recruitment in state agencies;

(5) publicize information regarding health disparities and minority health issues through the use of the media;

(6) network with existing minority organizations, community-based health groups, and statewide health coalitions;

(7) solicit, receive, and spend grants, gifts, and donations from public and private sources; and

(8) contract with public and private entities in the performance of its responsibilities.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12 and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.

Sec. 107A.003. FUNDING. The commission may distribute to the center unobligated and unexpended appropriations to be used to carry out its powers.

Redesignated from Health and Safety Code, Subchapter G, Chapter 12

and amended by Acts 2007, 80th Leg., R.S., Ch. 222 (H.B. 1396), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 121 (S.B. 501), Sec. 2, eff. May 21, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0354, eff. April 2, 2015.

CHAPTER 108. HEALTH CARE DATA COLLECTION

Sec. 108.001. DEPARTMENT DUTIES. The department shall administer this chapter and report to the governor, the legislature, and the public.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.002. DEFINITIONS. In this chapter:

(1) "Accurate and consistent data" means data that has been edited by the department and subject to provider validation and certification.

(3) "Certification" means the process by which a provider confirms the accuracy and completeness of the data set required to produce the public use data file in accordance with department rule.

(4) "Charge" or "rate" means the amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances. The term does not include copayment charges to enrollees in health benefit plans charged by providers paid by capitation or salary.

(4-a) "Commission" means the Health and Human Services Commission.

(6) "Data" means information collected under Section 108.0065 or 108.009 in the form initially received.

(8) "Edit" means to use an electronic standardized process developed and implemented by department rule to identify potential errors and mistakes in data elements by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of

data.

(9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization; or

(B) an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844, Insurance Code.

(10) "Health care facility" means:

(A) a hospital;

(B) an ambulatory surgical center licensed under Chapter 243;

(C) a chemical dependency treatment facility licensed under Chapter 464;

(D) a renal dialysis facility;

(E) a birthing center;

(F) a rural health clinic;

(G) a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B);

(H) a freestanding imaging center; or

(I) a freestanding emergency medical care facility, as defined by Section 254.001, including a freestanding emergency medical care facility that is exempt from the licensing requirements of Chapter 254 under Section 254.052(8).

(11) "Health maintenance organization" means an organization as defined in Section 843.002, Insurance Code.

(12) "Hospital" means a public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital, or other type of hospital.

(13) "Outcome data" means measures related to the provision of care, including:

(A) patient demographic information;

(B) patient length of stay;

(C) mortality;

(D) co-morbidity;

(E) complications; and

(F) charges.

(14) "Physician" means an individual licensed under the laws of this state to practice medicine under Subtitle B, Title 3, Occupations Code.

(15) "Provider" means a physician or health care facility.

(16) "Provider quality" means the extent to which a provider renders care that, within the capabilities of modern medicine, obtains for patients medically acceptable health outcomes and prognoses, after severity adjustment.

(17) "Public use data" means patient level data relating to individual hospitalizations that has not been summarized or analyzed, that has had patient identifying information removed, that identifies physicians only by use of uniform physician identifiers, and that is severity and risk adjusted, edited, and verified for accuracy and consistency. Public use data may exclude some data elements submitted to the department.

(19) "Severity adjustment" means a method to stratify patient groups by degrees of illness and mortality.

(20) "Uniform patient identifier" means a number assigned by the department to an individual patient and composed of numeric, alpha, or alphanumeric characters.

(21) "Uniform physician identifier" means a number assigned by the department to an individual physician and composed of numeric, alpha, or alphanumeric characters.

(22) "Validation" means the process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification in accordance with department rule.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1460, Sec. 8.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.775, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.523, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.01, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.07(b), eff. September 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 1, eff. September 1, 2019.

Sec. 108.006. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The department shall develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care. The executive commissioner or department, as applicable, shall perform the following duties:

(1) the department shall direct the collection, dissemination, and analysis of data under this chapter;

(2) the department shall collect the data under this chapter;

(3) the executive commissioner shall adopt policies and rules necessary to carry out this chapter, including rules concerning data collection requirements;

(4) the department shall build on and not duplicate other data collection required by state or federal law, by an accreditation organization, or by department rule;

(5) working with appropriate agencies, the department, with the approval of the executive commissioner, shall review public health data collection programs in this state and recommend, where appropriate, consolidation of the programs and any legislation necessary to effect the consolidation;

(6) the department shall assure that public use data is made available and accessible to interested persons;

(7) the executive commissioner shall prescribe by rule the process for providers to submit data consistent with Section 108.009;

(8) the executive commissioner shall adopt by rule and the department shall implement a methodology to collect and disseminate data reflecting provider quality in accordance with Section 108.010;

(9) the department shall make reports to the legislature, the governor, and the public on:

(A) the charges and rate of change in the charges for

health care services in this state;

(B) the effectiveness of the department in carrying out the legislative intent of this chapter;

(C) if applicable, any recommendations on the need for further legislation; and

(D) the quality and effectiveness of health care and access to health care for all citizens of this state;

(10) the department shall develop an annual work plan and establish priorities to accomplish its duties;

(11) the department shall provide consumer education on the interpretation and understanding of the public use or provider quality data before the data is disseminated to the public;

(12) the department shall work with the commission and each health and human services agency that administers a part of the state Medicaid program to avoid duplication of expenditures of state funds for computer systems, staff, or services in the collection and analysis of data relating to the state Medicaid program;

(13) the department shall work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards; and

(14) the department shall develop and implement a health care information plan to:

(A) support public health and preventative health initiatives;

(B) assist in the delivery of primary and preventive health care services;

(C) facilitate the establishment of appropriate benchmark data to measure performance improvements;

(D) establish and maintain a systematic approach to the collection, storage, and analysis of health care data for longitudinal, epidemiological, and policy impact studies; and

(E) develop and use system-based protocols to identify individuals and populations at risk.

(b) The department may:

(1) employ a director and other staff, including administrative personnel, necessary to comply with this chapter and rules adopted under this chapter;

(2) engage professional consultants as it considers necessary to the performance of its duties; and

(3) apply for and receive any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to Section 108.015 and limitations and conditions provided by legislative appropriation.

(b-1) The executive commissioner may adopt rules clarifying which health care facilities must provide data under this chapter.

(c) The department may not establish or recommend rates of payment for health care services.

(d) The department may not take an action that affects or relates to the validity, status, or terms of an interagency agreement without the executive commissioner's approval.

(e) In the collection of data, the department shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and The Joint Commission to reduce potential duplication or inconsistencies. The executive commissioner may not adopt rules that conflict with or duplicate any federally mandated data collection programs or requirements of comparable scope.

(f) The executive commissioner shall prescribe by rule a public use data file minimum data set that maintains patient confidentiality and establishes data accuracy and consistency.

(g) The public use data file minimum data set as defined by department rule is subject to annual review by the department. The purpose of the review is to evaluate requests to modify the existing minimum data set and editing process. A decision to modify the minimum data set by the addition or deletion of data elements shall include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. The department may also consider the costs to the department and providers associated with modifying the minimum data set.

(h) In accordance with Section 108.0135, the department may release data collected under Section 108.009 that is not included in the public use data file minimum data set established under Subsection (f).

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0065. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT RELATING TO MEDICAID MANAGED CARE.

Text of subsection effective until April 1, 2025

(a) In this section, "Medicaid managed care organization" means a managed care organization, as defined by Section 533.001, Government Code, that is contracting with the commission to implement the Medicaid managed care program under Chapter 533, Government Code.

Text of subsection effective on April 1, 2025

(a) In this section, "Medicaid managed care organization" means a managed care organization, as defined by Section 540.0001, Government Code, that is contracting with the commission to implement the Medicaid managed care program under Chapter 540 or 540A, Government Code, as applicable.

(b) The commission may direct the department to collect data under this chapter with respect to Medicaid managed care organizations. The department shall coordinate the collection of the data with the collection of data for health benefit plan providers, but with the approval of the commission may collect data in addition to the data otherwise required of health benefit plan providers.

(c) Each Medicaid managed care organization shall provide to the department the data required by the executive commissioner in the form required by the executive commissioner or, if the data is also being submitted to the commission, in the form required by the commission.

(d) Dissemination of data collected under this section is subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014, and 108.0141.

(e) The commission shall analyze the data collected in accordance with this section and shall use the data to:

(1) evaluate the effectiveness and efficiency of the Medicaid managed care system;

(2) determine the extent to which Medicaid managed care does or does not serve the needs of Medicaid recipients in this state; and

(3) assess the cost-effectiveness of the Medicaid managed care system in comparison to the fee-for-service system, considering any improvement in the quality of care provided.

(h) The commission, using existing funds, may contract with an entity to comply with the requirements under Subsection (e).

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 8.03, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 14, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(85), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.38, eff. April 1, 2025.

Sec. 108.007. REVIEW POWERS. (a) The department, subject to reasonable rules and guidelines, may:

(1) inspect documents and records used by data sources that are required to compile data and reports; and

(2) compel providers to produce accurate documents and records.

(b) The department may enter into a memorandum of understanding with a state agency, including the division of the commission responsible for the state Medicaid program, or with a school of public health or another institution of higher education, to share data and expertise, to obtain data for the department, or to make data available to the department. An agreement entered into under this subsection must protect patient confidentiality.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney general shall furnish the department with advice and legal assistance that may be required to implement this chapter.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 8, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The department may collect, and, except as provided by Subsection (d), providers shall submit to the department or another entity as determined by the department, all data required by this section. The data shall be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available.

(b) The executive commissioner shall adopt rules to implement the data submission requirements imposed by Subsection (a) in appropriate stages to allow for the development of efficient systems for the collection and submission of the data. A rule adopted by the executive commissioner that requires submission of a data element that, before adoption of the rule, was not required to be submitted may not take effect before the 90th day after the date the rule is adopted and must take effect not later than the first anniversary after the date the rule is adopted.

(c) The department or another entity as determined by the department to collect data from a provider under Subsection (a) shall maintain a database that does not include identifying information for use as authorized by law, including this chapter.

(d) The department may not collect data from individual physicians or from an entity that is composed entirely of physicians and that is a professional association organized under the former Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or formed under the Texas Professional Association Law, as described by Section 1.008(l), Business Organizations Code, a limited liability partnership organized under former Section 3.08,

Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes), or formed as described by Subchapter J, Chapter 152, Business Organizations Code, or a limited liability company organized under the former Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) or formed under the Texas Limited Liability Company Law, as described by Section 1.008(e), Business Organizations Code, except to the extent the entity owns and operates a health care facility in this state. This subsection does not prohibit the release of data about physicians using uniform physician identifiers that has been collected from a health care facility under this chapter.

(e) The department shall establish the single collection point for receipt of data from providers. With the approval of the executive commissioner, the department may transfer collection of any data required to be collected by the department under any other law to the statewide health care data collection system.

(f) The executive commissioner may not require providers to submit data more frequently than quarterly, but providers may submit data on a more frequent basis.

(g) The department shall coordinate data collection with the data collection formats used by federally qualified health centers. To satisfy the requirements of this chapter:

(1) a federally qualified health center shall submit annually to the department a copy of the Medicaid cost report of federally qualified health centers; and

(2) a provider receiving federal funds under 42 U.S.C. Section 254b or 254c shall submit annually to the department a copy of the Uniform Data System data report developed by the United States Department of Health and Human Services.

(h) The department shall coordinate data collection with the data submission formats used by hospitals and other providers. The department shall accept data in the format developed by the American National Standards Institute or its successor or other nationally accepted standardized forms that hospitals and other providers use for other complementary purposes.

(i) The executive commissioner shall develop by rule reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity.

(k) The department shall collect health care data elements relating to payer type, the racial and ethnic background of patients,

and the use of health care services by consumers. The department shall prioritize data collection efforts on inpatient and outpatient surgical and radiological procedures from hospitals, ambulatory surgical centers, and free-standing imaging centers.

(m) To the extent feasible, the department shall obtain from public records the information that is available from those records.

(o) A provider of a health benefit plan shall annually submit to the department aggregate data by service area required by the Healthcare Effectiveness Data and Information Set (HEDIS) as operated by the National Committee for Quality Assurance. The department may approve the submission of data in accordance with other methods generally used by the health benefit plan industry. If the Healthcare Effectiveness Data and Information Set does not generally apply to a health benefit plan, the department shall require submission of data in accordance with other methods. This subsection does not relieve a health care facility that provides services under a health benefit plan from the requirements of this chapter. Information submitted under this section is subject to Section 108.011 but is not subject to Section 108.010.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 9, 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.03, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.07(b), eff. September 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 1, eff. September 1, 2015.

Sec. 108.0095. NOTIFICATION OF DATA COLLECTION. (a) A provider shall provide to a patient whose data is being collected

under this chapter written notice on a form prescribed by the department of the collection of the patient's data for health care purposes.

(b) The notice provided under this section must include the name of the agency or entity receiving the data and of an individual within the agency or entity whom the patient may contact regarding the collection of data.

(c) The department shall include the notice required under this section on an existing department form and make the form available on the department's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 2, eff. September 1, 2015.

Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER QUALITY DATA. (a) Subject to Section 108.009, the department shall collect data reflecting provider quality based on a methodology and review process established through the executive commissioner's rulemaking process. The methodology shall identify and measure quality standards and adhere to any federal mandates.

(b) The department shall study and analyze initial methodologies for obtaining provider quality data, including outcome data.

(c) The department shall test the methodology by collecting provider quality data for one year, subject to Section 108.009. The department may test using pilot methodologies. After collecting provider quality data for one year, the department shall report findings applicable to a provider to that provider and allow the provider to review and comment on the initial provider quality data applicable to that provider. The department shall verify the accuracy of the data during this review and revision process. After the review and revision process, provider quality data for subsequent reports shall be published and made available to the public, on a time schedule the department considers appropriate.

(d) If the department determines that provider quality data to be published under Subsection (c) does not provide the intended result or is inaccurate or inappropriate for dissemination, the department is not required to publish the data or reports based in whole or in part on the data. This subsection does not affect the

release of public use data in accordance with Section 108.011 or the release of information submitted under Section 108.009(o).

(e) The executive commissioner shall adopt rules allowing a provider to submit concise written comments regarding any specific provider quality data to be released concerning the provider. The department shall make the comments available to the public at the office of the department and in an electronic form accessible through the Internet. The comments shall be attached to any public release of provider quality data. Providers shall submit the comments to the department to be attached to the public release of provider quality data in the same format as the provider quality data that is to be released.

(f) The methodology adopted for measuring quality shall include case-mix qualifiers, severity adjustment factors, adjustments for medical education and research, and any other factors necessary to accurately reflect provider quality.

(g) In addition to the requirements of this section, any release of provider quality data shall comply with Sections 108.011(e) and (f).

(h) A provider quality data report may not identify an individual physician by name, but must identify the physician by the uniform physician identifier designated by the department under Section 108.011(c).

(i) The department shall release provider quality data in an aggregate form without uniform physician identifiers when the cell size of the data is below the minimum size established by department rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 5, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND DEPARTMENT PUBLICATIONS. (a) The department shall promptly provide public use data and data collected in accordance with Section 108.009(o) to

those requesting it. The public use data does not include provider quality data prescribed by Section 108.010 or confidential data prescribed by Section 108.013.

(b) Subject to the restrictions on access to department data prescribed by Sections 108.010 and 108.013, and using the public use data and other data, records, and matters of record available to it, the department shall prepare and issue reports to the governor, the legislature, and the public as provided by this section and Section 108.006(a). The department must issue the reports at least annually.

(c) Subject to the restrictions on access to department data prescribed by Sections 108.010 and 108.013, the department shall use public use data to prepare and issue reports that provide information relating to providers, such as the incidence rate of selected medical or surgical procedures. The reports must provide the data in a manner that identifies individual providers, including individual physicians, and that identifies and compares data elements for all providers. Individual physicians may not be identified by name, but shall be identified by uniform physician identifiers. The executive commissioner by rule shall designate the characters to be used as uniform physician identifiers.

(c-1) The department shall use public use data to prepare and issue reports that provide information for review and analysis by the commission relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c-2) Subsection (c-1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The executive commissioner shall adopt procedures to establish the accuracy and consistency of the public use data before releasing the public use data to the public. The department may adopt additional procedures as the department determines necessary. The procedures adopted under this subsection must meet available best practices and national standards for public research on and consumer use of health care data collected by governmental agencies.

(e) If public use data is requested from the department about a specific provider, the department shall notify the provider about the

release of the data. This subsection does not authorize the provider to interfere with the release of that data.

(f) A report issued by the department shall include a reasonable review and comment period for the affected providers before public release of the report.

(g) The executive commissioner shall adopt rules allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. The department shall make the comments available to the public at the office of the department and in an electronic form accessible through the Internet. The comments shall be attached to any public release of the public use data. Providers shall submit the comments to the department to be attached to the public release of public use data in the same format as the public use data that is to be released.

(h) Tapes containing public use data and provider quality reports that are released to the public must include general consumer education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports.

(i) The department shall release public use data in an aggregate form without uniform physician identifiers when the cell size of the data is below the minimum size established by department rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 3, eff. September 1, 2015.

Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The department shall provide a means for computer-to-computer access to the public use data. All reports shall maintain patient confidentiality as

provided by Section 108.013.

(b) The department may charge a person requesting public use or provider quality data a fee for the data. The fees may reflect the quantity of information provided and the expense incurred by the department in collecting and providing the data. The executive commissioner by rule shall set the fees at a level that will raise revenue sufficient for the operation of the department. The department may not charge a fee for providing public use data to another state agency.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The data received by the department under this chapter shall be used by the department and commission only for the benefit of the public. Subject to specific limitations established by this chapter and department rule, the department shall make determinations on requests for information in favor of access.

(b) The executive commissioner by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department may not release and a person or entity may not gain access to any data obtained under this chapter:

(1) that could reasonably be expected to reveal the identity of a patient;

(2) that could reasonably be expected to reveal the identity of a physician;

(3) disclosing provider discounts or differentials between payments and billed charges;

(4) relating to actual payments to an identified provider made by a payer; or

(5) submitted to the department in a uniform submission

format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Except as provided by this section, all data collected and used by the department under this chapter is subject to the confidentiality provisions and criminal penalties of:

(1) Section 311.037;

(2) Section 81.103; and

(3) Section 159.002, Occupations Code.

(e) Data on patients and compilations produced from the data collected that identify patients are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(f) Data on physicians and compilations produced from the data collected that identify physicians are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(g) Unless specifically authorized by this chapter, the department may not release data elements in a manner that will reveal the identity of a patient. The department may not release data elements in a manner that will reveal the identity of a physician.

(h) Subsections (c) and (g) do not prohibit the release of a uniform physician identifier in conjunction with associated public use data in accordance with Section 108.011 or a provider quality report in accordance with Section 108.010.

(i) Notwithstanding any other law and except as provided by this section, the department may not provide information made confidential by this section to any other agency of this state.

(j) The executive commissioner shall by rule develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any department or commission program if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Confidential data collected under this chapter that is disclosed to a department or commission program remains subject to the confidentiality provisions of this chapter and other applicable law. The department shall identify the confidential data that is disclosed to a program under Subsection (k). The program shall maintain the confidentiality of the disclosed confidential data.

(m) The following provisions do not apply to the disclosure of data to a department or commission program:

(1) Section 81.103;

(2) Sections 108.010(g) and (h);

(3) Sections 108.011(e) and (f);

(4) Section 311.037; and

(5) Section 159.002, Occupations Code.

(n) Nothing in this section authorizes the disclosure of physician identifying data.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.776, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.04, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 4, eff. September 1, 2015.

Sec. 108.0131. LIST OF PURCHASERS OR RECIPIENTS OF DATA. The department shall post on the department's Internet website a list of each entity that purchases or receives data collected under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.06, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0132. PROHIBITED CHARGE TO CERTAIN STATE AGENCIES FOR DATA. The department may not charge a fee to the commission or any other health and human services agency for the use of any data collected under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 5, eff. September 1, 2015.

Sec. 108.0135. INSTITUTIONAL REVIEW BOARD. (a) The department shall establish an institutional review board to review and approve requests for access to data not contained in public use data. The members of the institutional review board must have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the institutional review board in determining whether to approve a request for information, the executive commissioner shall adopt rules similar to the federal Centers for Medicare and Medicaid Services' guidelines on releasing data.

(c) A request for information other than public use data must be made on the form prescribed by the department.

(d) Any approval to release information under this section must require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 802, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 873 (S.B. 156), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 7.05, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0136. REPORT; NOTIFICATION OF CYBER ATTACK. (a) The department shall prepare for the commissioner an annual report describing the security measures taken to protect data collected under this chapter and any breaches, attempted cyber attacks, and

security issues related to the data that are encountered during the calendar year.

(b) The report described by this section is not subject to Chapter 552, Government Code, but may be released on request to a member of the legislature.

(c) If a cyber attack occurs targeting data collected under this chapter, the department shall notify the Department of Public Safety of the State of Texas and the Federal Bureau of Investigation of the attack.

Added by Acts 2015, 84th Leg., R.S., Ch. 344 (H.B. 764), Sec. 6, eff. September 1, 2015.

Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or negligently releases data in violation of this chapter is liable for a civil penalty of not more than $10,000.

(b) A person who fails to supply available data under Sections 108.009 and 108.010 is liable for a civil penalty of not less than $1,000 or more than $10,000 for each act of violation.

(c) The attorney general, at the request of the department, shall enforce this chapter. The venue of an action brought under this section is in Travis County.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the general revenue fund to the credit of the health care information account.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 802, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.0141. CRIMINAL PENALTY. (a) A person who knowingly accesses data in violation of this chapter or who with criminal negligence releases data in violation of this chapter commits an offense.

(b) An offense under this section is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 13, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 802, Sec. 10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.015. CONFLICT OF INTEREST. The department may not accept a donation from a person required to provide data under this chapter or from a person or business entity who provides goods or services to the department for compensation.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.

Sec. 108.016. SUNSET REVIEW. Unless the department is continued in existence in accordance with Chapter 325, Government Code (Texas Sunset Act), after the review required by Section 1001.003, this chapter expires on the date the department is abolished under that section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 919 (H.B. 1394), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0355, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.02, eff. September 1, 2015.

CHAPTER 109. STATEWIDE BEHAVIORAL HEALTH COORDINATING COUNCIL

Sec. 109.001. DEFINITION. In this chapter, "council" means the Statewide Behavioral Health Coordinating Council.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 5, eff. September 1, 2019.

Sec. 109.002. STATEWIDE BEHAVIORAL HEALTH STRATEGIC PLAN. In preparing the statewide behavioral health strategic plan, the council shall incorporate, as a separate part of that plan, strategies regarding substance abuse issues that are developed by the council in cooperation with the Texas Medical Board and the Texas State Board of Pharmacy, including strategies for:

(1) addressing the challenges of existing prevention, intervention, and treatment programs;

(2) evaluating substance use disorder prevalence involving the abuse of opioids;

(3) identifying substance abuse treatment services availability and gaps; and

(4) collaborating with state agencies to expand substance abuse treatment services capacity in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 5, eff. September 1, 2019.

CHAPTER 113. TEXAS CHILD MENTAL HEALTH CARE CONSORTIUM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.0001. DEFINITIONS. In this chapter:

(1) "Community mental health provider" means an entity that provides mental health care services at a local level, including a local mental health authority.

(2) "Consortium" means the Texas Child Mental Health Care Consortium.

(3) "Executive committee" means the executive committee of the consortium.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER B. CONSORTIUM

Sec. 113.0051. ESTABLISHMENT; PURPOSE. The Texas Child Mental Health Care Consortium is established to:

(1) leverage the expertise and capacity of the health-related institutions of higher education listed in Section 113.0052(1) to address urgent mental health challenges and improve the mental health care system in this state in relation to children

and adolescents; and

(2) enhance the state's ability to address mental health care needs of children and adolescents through collaboration of the health-related institutions of higher education listed in Section 113.0052(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0052. COMPOSITION. The consortium is composed of:

(1) the following health-related institutions of higher education:

(A) Baylor College of Medicine;

(B) Texas A&M University System Health Science Center;

(C) Texas Tech University Health Sciences Center;

(D) Texas Tech University Health Sciences Center at El Paso;

(E) University of North Texas Health Science Center at Fort Worth;

(F) The Dell Medical School at The University of Texas at Austin;

(G) The University of Texas Medical Branch at Galveston;

(H) The University of Texas Health Science Center at Houston;

(I) The University of Texas Health Science Center at San Antonio;

(J) The University of Texas Rio Grande Valley School of Medicine;

(K) The University of Texas Health Science Center at Tyler; and

(L) The University of Texas Southwestern Medical Center;

(2) the commission;

(3) the Texas Higher Education Coordinating Board;

(4) three nonprofit organizations that focus on mental health care, designated by a majority of the members described by Subdivision (1);

(5) each regional education service center established

under Chapter 8, Education Code, that the executive commissioner identifies as a center predominately serving school districts classified as rural by the National Center for Education Statistics of the United States Department of Education; and

(6) any other entity that the executive committee considers necessary.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 150 (S.B. 850), Sec. 1, eff. September 1, 2023.

Sec. 113.0053. ADMINISTRATIVE ATTACHMENT. The consortium is administratively attached to the Texas Higher Education Coordinating Board for the purpose of receiving and administering appropriations and other funds under this chapter. The board is not responsible for providing to the consortium staff, human resources, contract monitoring, purchasing, or any other administrative support services.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER C. EXECUTIVE COMMITTEE

Sec. 113.0101. EXECUTIVE COMMITTEE COMPOSITION. (a) The consortium is governed by an executive committee composed of the following members:

(1) the chair of the academic department of psychiatry of each of the health-related institutions of higher education listed in Section 113.0052(1) or a licensed psychiatrist, including a child-adolescent psychiatrist, designated by the chair to serve in the chair's place;

(2) a representative of the commission with expertise in the delivery of mental health care services, appointed by the executive commissioner;

(3) a representative of the commission with expertise in mental health facilities, appointed by the executive commissioner;

(4) a representative of the Texas Higher Education Coordinating Board, appointed by the commissioner of the coordinating

board;

(5) a representative of each nonprofit organization described by Section 113.0052(4) that is part of the consortium, designated by a majority of the members described by Subdivision (1);

(6) a representative of a hospital system in this state, designated by a majority of the members described by Subdivision (1);

(7) a representative selected from among the regional education service centers described by Section 113.0052(5), appointed by the executive commissioner; and

(8) any other representative designated:

(A) under Subsection (b); or

(B) by a majority of the members described by Subdivision (1) at the request of the executive committee.

(b) The president of each of the health-related institutions of higher education listed in Section 113.0052(1) may designate a representative to serve on the executive committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 150 (S.B. 850), Sec. 2, eff. September 1, 2023.

Sec. 113.0102. TERMS; VACANCY. (a) Except as provided by Subsection (b), the executive committee shall establish:

(1) the terms of executive committee members; and

(2) procedures for the reappointment of members.

(b) An executive committee member described by Section 113.0101(a)(7) serves a two-year term and is eligible for reappointment.

(c) A vacancy on the executive committee shall be filled in the same manner as the original appointment.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 150 (S.B. 850), Sec. 3, eff. September 1, 2023.

Sec. 113.0103. PRESIDING OFFICER. The executive committee shall elect a presiding officer from among the membership of the executive committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0104. STATEWIDE BEHAVIORAL HEALTH COORDINATING COUNCIL. The consortium shall designate a member of the executive committee to represent the consortium on the statewide behavioral health coordinating council.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0105. GENERAL DUTIES. The executive committee shall:

(1) coordinate the provision of funding to the health-related institutions of higher education listed in Section 113.0052(1) to carry out the purposes of this chapter;

(2) establish procedures and policies for the administration of funds under this chapter;

(3) monitor funding and agreements entered into under this chapter to ensure recipients of funding comply with the terms and conditions of the funding and agreements; and

(4) establish procedures to document compliance by executive committee members and staff with applicable laws governing conflicts of interest.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER D. ACCESS TO CARE

Sec. 113.0151. CHILD PSYCHIATRY ACCESS NETWORK AND TELEMEDICINE AND TELEHEALTH PROGRAMS. (a) The consortium shall establish a network of comprehensive child psychiatry access centers. A center established under this section shall:

(1) be located at a health-related institution of higher education listed in Section 113.0052(1); and

(2) provide consultation services and training opportunities for pediatricians and primary care providers operating in the center's geographic region to better care for children and youth with behavioral health needs.

(b) The consortium shall establish or expand telemedicine or telehealth programs for identifying and assessing behavioral health needs and providing access to mental health care services. The consortium shall implement this subsection with a focus on the behavioral health needs of at-risk children and adolescents.

(c) A health-related institution of higher education listed in Section 113.0052(1) may enter into a memorandum of understanding with a community mental health provider to:

(1) establish a center under Subsection (a); or

(2) establish or expand a program under Subsection (b).

(d) The consortium shall leverage the resources of a hospital system under Subsection (a) or (b) if the hospital system:

(1) provides consultation services and training opportunities for pediatricians and primary care providers that are consistent with those described by Subsection (a); and

(2) has an existing telemedicine or telehealth program for identifying and assessing the behavioral health needs of and providing access to mental health care services for children and adolescents.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0152. CONSENT REQUIRED FOR SERVICES TO MINOR. (a) A person may provide mental health care services to a child younger than 18 years of age through a program established under this subchapter only if the person obtains the written consent of the parent or legal guardian of the child.

(b) The consortium shall develop and post on its Internet website a model form for a parent or legal guardian to provide consent under this section.

(c) This section does not apply to services provided by a school counselor in accordance with Section 33.005, 33.006, or 33.007, Education Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff.

June 6, 2019.

Sec. 113.0153. REIMBURSEMENT FOR SERVICES. A child psychiatry access center established under Section 113.0151(a) may not submit an insurance claim or charge a pediatrician or primary care provider a fee for providing consultation services or training opportunities under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER E. CHILD MENTAL HEALTH WORKFORCE

Sec. 113.0201. CHILD PSYCHIATRY WORKFORCE EXPANSION. (a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding:

(1) two full-time psychiatrists who treat children and adolescents to serve as academic medical director at a facility operated by a community mental health provider; and

(2) two new resident rotation positions.

(b) An academic medical director described by Subsection (a) shall collaborate and coordinate with a community mental health provider to expand the amount and availability of mental health care resources by developing training opportunities for residents and supervising residents at a facility operated by the community mental health provider.

(c) An institution of higher education that receives funding under Subsection (a) shall require that psychiatric residents participate in rotations through the facility operated by the community mental health provider in accordance with Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0202. CHILD AND ADOLESCENT PSYCHIATRY FELLOWSHIP. (a) The executive committee may provide funding to a health-related institution of higher education listed in Section 113.0052(1) for the purpose of funding a physician fellowship position that will lead to

a medical specialty in the diagnosis and treatment of psychiatric and associated behavioral health issues affecting children and adolescents.

(b) The funding provided to a health-related institution of higher education under this section must be used to increase the number of fellowship positions at the institution and may not be used to replace existing funding for the institution.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

Sec. 113.0251. BIENNIAL REPORT. Not later than December 1 of each even-numbered year, the consortium shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over behavioral health issues and post on its Internet website a written report that outlines:

(1) the activities and objectives of the consortium;

(2) the health-related institutions of higher education listed in Section 113.0052(1) that receive funding by the executive committee; and

(3) any legislative recommendations based on the activities and objectives described by Subdivision (1).

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

Sec. 113.0252. APPROPRIATION CONTINGENCY. The consortium is required to implement a provision of this chapter only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the consortium may, but is not required to, implement a provision of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 22, eff. June 6, 2019.

CHAPTER 117. PUBLIC HEALTH FUNDING AND POLICY COMMITTEE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(46), eff. April 2, 2015.

(2) "Committee" means the Public Health Funding and Policy Committee established under Section 117.051.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(46), eff. April 2, 2015.

(4) "Local health department" means a local health department established under Subchapter D, Chapter 121.

(5) "Local health entity" means a local health unit, a local health department, or a public health district.

(6) "Local health unit" has the meaning assigned by Section 121.004.

(7) "Public health district" means a health district established under Subchapter E, Chapter 121.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(46), eff. April 2, 2015.

Sec. 117.002. APPLICATION OF SUNSET ACT. The Public Health Funding and Policy Committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2027.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.06, eff. June 10, 2019.

Sec. 117.003. ADMINISTRATIVE COSTS. To the extent that a term or condition of a federal grant or federal law does not limit the use of federal grant money, the department or a local health entity may

use federal grant money to pay the administrative costs incurred by the department or the local health entity in implementing and administering this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. ESTABLISHMENT OF COMMITTEE

Sec. 117.051. ESTABLISHMENT OF COMMITTEE. The commissioner shall establish the Public Health Funding and Policy Committee within the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.052. APPOINTMENT OF MEMBERS. (a) The commissioner shall appoint nine members to the committee as follows:

(1) two regional health directors, each of whom is serving as a health authority in a municipality or county;

(2) one local health entity representative of a municipality or county with a population of 50,000 or less;

(3) one local health entity representative from a municipality or county with a population greater than 50,000 but less than 250,000;

(4) one local health entity representative from a municipality or county with a population of at least 250,000;

(5) two local health entity representatives, each of whom serves in a municipality or county as the health authority; and

(6) two representatives of schools of public health at institutions of higher education in this state.

(b) In making appointments under Subsections (a)(2), (3), (4), and (5), the commissioner shall select the members from nominations by associations representing local health departments, county governments, and municipal governments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.053. TERMS; VACANCY. (a) Committee members serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs on the committee, a person shall be appointed to fill the vacancy for the unexpired term in the same manner as the original appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.054. COMPENSATION AND REIMBURSEMENT. A committee member is not entitled to compensation for service on the committee and is not entitled to reimbursement for any travel expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.055. PRESIDING OFFICER. The presiding officer is elected by a majority vote of all the committee members.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.056. MEETINGS. (a) The committee shall meet at least quarterly or more frequently at the call of the presiding officer.

(b) To ensure appropriate representation from all areas of this state, the committee may meet by videoconference or telephone conference call. A meeting held by videoconference or telephone conference call under this subsection must comply with the requirements applicable to a telephone conference call under Sections 551.125(c), (d), (e), and (f), Government Code. Sections 551.125(b) and 551.127, Government Code, do not apply to the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. DUTIES OF COMMITTEE

Sec. 117.101. GENERAL DUTIES OF COMMITTEE. (a) The committee shall:

(1) define the core public health services a local health entity should provide in a county or municipality;

(2) evaluate public health in this state and identify initiatives for areas that need improvement;

(3) identify all funding sources available for use by local health entities to perform core public health functions;

(4) establish public health policy priorities for this state; and

(5) at least annually, make formal recommendations to the department regarding:

(A) the use and allocation of funds available exclusively to local health entities to perform core public health functions;

(B) ways to improve the overall public health of citizens in this state;

(C) methods for transitioning from a contractual relationship between the department and the local health entities to a cooperative-agreement relationship between the department and the local health entities; and

(D) methods for fostering a continuous collaborative relationship between the department and the local health entities.

(b) Recommendations made under Subsection (a)(5)(A) must be in accordance with:

(1) prevailing epidemiological evidence, variations in geographic and population needs, best practices, and evidence-based interventions related to the populations to be served;

(2) state and federal law; and

(3) federal funding requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.102. PUBLIC TESTIMONY. (a) At least semiannually, the committee shall:

(1) invite public health stakeholders, including federal public health officials, county and municipal governments, schools of public health at institutions of higher education, and federally

qualified health centers, to give oral or written testimony to the committee; and

(2) provide opportunities for the general public to give oral or written testimony to the committee.

(b) The committee shall consult with public health stakeholders to carry out the general duties of the committee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.103. ANNUAL REPORT. Beginning in 2012, not later than November 30 of each year the committee shall file a report on the implementation of this chapter with the governor, the lieutenant governor, and the speaker of the house of representatives.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.104. SUPPORT STAFF. Using existing personnel and videoconferencing equipment, local health entities or their designees may assist the committee in the performance of its duties under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.105. OPEN MEETINGS ACT. Except as provided by Section 117.056, the committee is subject to Chapter 551, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 117.151. ANNUAL REPORT. (a) Beginning in 2012, not later than November 30 of each year the department shall file an annual report with the governor, the lieutenant governor, and the speaker of the house of representatives detailing:

(1) the implementation of the committee's recommendations described in Section 117.101(a)(5); and

(2) an explanation of the department's reasons for not implementing a recommendation.

(b) A decision by the department not to implement a recommendation of the committee must be based on:

(1) a lack of available funding;

(2) evidence that the recommendation is not in accordance with prevailing epidemiological evidence, variations in geographic and population needs, best practices, or evidence-based interventions related to the populations to be served;

(3) evidence that implementing the recommendation would violate state or federal law; or

(4) evidence that the recommendation would violate federal funding requirements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

Sec. 117.152. COLLABORATIVE RELATIONSHIP WITH LOCAL HEALTH ENTITIES. The department shall establish a continuous collaborative relationship with local health departments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 1, eff. September 1, 2011.

CHAPTER 118. PALLIATIVE CARE INTERDISCIPLINARY ADVISORY COUNCIL

Sec. 118.001. DEFINITION. In this chapter, "advisory council" means the Palliative Care Interdisciplinary Advisory Council established under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.002. ESTABLISHMENT; PURPOSE. The commission shall establish the Palliative Care Interdisciplinary Advisory Council to assess the availability of patient-centered and family-focused palliative care in this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.004. MEMBERS. (a) The advisory council is composed of the members appointed by the executive commissioner as provided by this section.

(b) The advisory council must include:

(1) at least five physician members, including two who are board certified in hospice and palliative care and one who is board certified in pain management;

(2) three palliative care practitioner members, including two advanced practice registered nurses who are board certified in hospice and palliative care and one physician assistant who has experience providing palliative care;

(3) four health care professional members, including a nurse, a social worker, a pharmacist, and a spiritual care professional, with:

(A) experience providing palliative care to pediatric, youth, or adult populations;

(B) expertise in palliative care delivery in an inpatient, outpatient, or community setting; or

(C) expertise in interdisciplinary palliative care;

(4) at least three members with experience as an advocate for patients and the patients' family caregivers and who are independent of a hospital or other health care facility, including at least one member who is a representative of an established patient advocacy organization; and

(5) ex officio representatives of the commission or another state agency as the executive commissioner determines appropriate.

(c) Advisory council members serve at the pleasure of the executive commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.005. TERMS; VACANCY. (a) An advisory council member serves a four-year term.

(b) If a vacancy occurs on the advisory council, a person shall

be appointed to fill the vacancy for the unexpired term.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.006. OFFICERS. Advisory council members shall:

(1) elect a chair and a vice chair; and

(2) establish the duties of the chair and the vice chair.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.007. MEETINGS. The executive commissioner shall set a time and place for regular meetings, which must occur at least twice each year.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.008. COMPENSATION AND REIMBURSEMENT. A member of the advisory council may not receive compensation for service on the advisory council but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the advisory council, as provided by the General Appropriations Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.009. DUTIES. The advisory council shall consult with and advise the commission on matters related to the establishment, maintenance, operation, and outcome evaluation of the palliative care consumer and professional information and education program established under Section 118.011.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.010. REPORT. Not later than October 1 of each even-numbered year, the advisory council shall submit a biennial report to the standing committees of the senate and the house of representatives with primary jurisdiction over health matters on:

(1) the advisory council's assessment of the availability of palliative care in this state for patients in the early stages of serious disease;

(2) the advisory council's analysis of barriers to greater access to palliative care; and

(3) the advisory council's analysis of the policies, practices, and protocols in this state concerning patients' rights related to palliative care, including:

(A) whether a palliative care team member may introduce palliative care options to a patient without the consent of the patient's attending physician;

(B) the practices and protocols for discussions between a palliative care team member and a patient on life-sustaining treatment or advance directives decisions; and

(C) the practices and protocols on informed consent and disclosure requirements for palliative care services.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.011. INFORMATION AND EDUCATION PROGRAM. (a) The commission, in consultation with the advisory council, shall establish a statewide palliative care consumer and professional information and education program to ensure that comprehensive and accurate information and education about palliative care are available to the public, health care providers, and health care facilities.

(b) The commission shall make available on its Internet website information and resources regarding palliative care, including:

(1) links to external resources regarding palliative care;

(2) continuing education opportunities for health care providers;

(3) information about palliative care delivery in the home, primary, secondary, and tertiary environments; and

(4) consumer educational materials regarding palliative

care, including hospice care.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

Sec. 118.012. PROTECTIONS. Notwithstanding any other law, the advisory council and the information and education program established under this chapter do not create a cause of action or create a standard of care, obligation, or duty that provides a basis for a cause of action.

Added by Acts 2015, 84th Leg., R.S., Ch. 356 (H.B. 1874), Sec. 2, eff. June 9, 2015.

CHAPTER 119. TEXAS HEALTH IMPROVEMENT NETWORK

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 119.001. DEFINITION. In this chapter, "network" means the Texas Health Improvement Network established under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.001 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

SUBCHAPTER B. NETWORK

Sec. 119.051. ESTABLISHMENT; PURPOSE.(a) The Texas Health Improvement Network is established to address urgent health care challenges and improve the health care system in this state and the nation and to develop, based on population health research, health care initiatives, policies, and best practices.

(b) The purpose of the network is to:

(1) reduce the per capita costs of health care;

(2) improve the individual experience of health care, including the quality of care and patient satisfaction; and

(3) improve the health of residents of this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1,

eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.051 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.052. COMPOSITION OF NETWORK. The network consists of experts in:

(1) general public health and other medical fields;
(2) mental health;
(3) nursing;
(4) pharmacy;
(5) social work;
(6) health economics;
(7) health policy and law;
(8) epidemiology;
(9) biostatistics;
(10) health informatics;
(11) health services research;
(12) engineering; and
(13) computer science.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.052 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.053. DUTIES. (a) The network shall establish as its primary goals:

(1) evaluating and eliminating health disparities in this state, including racial, ethnic, geographic, and income-related or education-related disparities; and
(2) health care cost containment and the economic analysis of health policy.

(b) The network shall:

(1) function as an incubator and evaluator of health improvement practices; and
(2) support local communities in this state by offering

leadership training, data analytics, community health assessments, and grant writing support to local communities.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.053 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.054. ADMINISTRATIVE ATTACHMENT TO THE UNIVERSITY OF TEXAS SYSTEM. (a) The network is administratively attached to The University of Texas System.

(b) The University of Texas System shall administer and coordinate the network and provide administrative support to the network as necessary to carry out the purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.054 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.055. GIFTS AND GRANTS. The network may accept and administer gifts and grants to fund the network from an individual, corporation, trust, or foundation or the federal government, subject to any limitations or conditions imposed by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.055 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.056. REPORT. The network shall report the results of the network's efforts, findings, and activities to the legislature, state and federal partners, and other interested entities.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1,

eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.056 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

SUBCHAPTER C. ADVISORY COUNCIL

Sec. 119.101. ADVISORY COUNCIL. The network shall establish an advisory council to advise the network on the health care needs of this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.101 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.102. COMPOSITION OF ADVISORY COUNCIL. The advisory council is composed of:

(1) members who are appointed by an executive officer of The University of Texas System and nominated by participants in the network and who are:

(A) state and national leaders in population health;

(B) experts in traditional public health and medical fields; and

(C) leaders in the fields of behavioral health, business, insurance, philanthropy, education, and health law and policy; and

(2) representatives from the department and the commission, selected by the executive head of the agency.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.102 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.103. TERMS. Members of the advisory council serve staggered three-year terms, with the terms of one-third of the

members expiring on January 1 of each year.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.103 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.104. PRESIDING OFFICER. The executive officer of The University of Texas System who appoints members to the advisory council shall appoint a presiding officer from among the members to serve a one-year term.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.104 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.105. MEETINGS. The advisory council shall meet at the call of the presiding officer or at other times that the council determines are necessary or appropriate.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.105 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.106. COMPENSATION AND REIMBURSEMENT. A member of the advisory council may not receive compensation for service on the advisory council but may be reimbursed for travel expenses incurred by the member while conducting the business of the advisory council, if funds are available for that purpose, as provided by the General Appropriations Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.

Redesignated from Health and Safety Code, Section 118.106 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

Sec. 119.107. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory council.

Added by Acts 2015, 84th Leg., R.S., Ch. 1123 (H.B. 3781), Sec. 1, eff. June 19, 2015.
Redesignated from Health and Safety Code, Section 118.107 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(27), eff. September 1, 2017.

CHAPTER 119A. PEDIATRIC ACUTE-ONSET NEUROPSYCHIATRIC SYNDROME ADVISORY COUNCIL

Sec. 119A.001. DEFINITION. In this chapter, "advisory council" means the Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council established under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.002. ESTABLISHMENT OF ADVISORY COUNCIL. The Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council is established to advise the commission and the legislature on research, diagnosis, treatment, and education related to pediatric acute-onset neuropsychiatric syndrome.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.003. APPOINTMENT OF ADVISORY COUNCIL MEMBERS. (a) The advisory council is composed of the following 19 members:

(1) one member designated by the executive commissioner;

(2) two members of the senate appointed by the lieutenant governor;

(3) two members of the house of representatives appointed

by the speaker of the house of representatives; and

(4) 14 members appointed by the governor with the following qualifications:

(A) three members who are health care providers, as defined by Section 161.201;

(B) one member who is a licensed health care provider with expertise in treating persons with pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, and autism;

(C) one member who is a pediatrician with experience treating persons with pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(D) one member who is a child psychiatrist with experience treating persons with pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(E) one member with experience in conducting research on pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, obsessive-compulsive disorder, tic disorders, and other neurological disorders;

(F) one member who is a social worker;

(G) one member who is a representative of the Texas Education Agency with expertise in special education services;

(H) one member who is a psychologist licensed under Chapter 501, Occupations Code;

(I) one member who is a representative of a professional organization in this state for school nurses;

(J) one member who is a representative of an advocacy and support group in this state for individuals affected by pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(K) one member who is a representative of an advocacy and support group in this state for individuals affected by autism; and

(L) one member who is a parent of a child who has been diagnosed with pediatric acute-onset neuropsychiatric syndrome or autism.

(b) The member designated by the executive commissioner serves as an ex officio nonvoting member. In the event of a tie vote among the members of the advisory council, the member designated by the executive commissioner may cast the deciding vote.

(c) Each member of the advisory council must be a citizen of this state.

(d) An advisory council member appointed under Subsection (a)(2) or (3) may designate another individual to serve in the member's place on the advisory council at the pleasure of the member. An advisory council member who designates another individual to serve in the member's place under this subsection shall provide written notification to the chair of the advisory council.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 746 (H.B. 3808), Sec. 1, eff. September 1, 2023.

Sec. 119A.004. TERMS; VACANCY. (a) Advisory council members appointed by the lieutenant governor and the speaker of the house of representatives serve terms that coincide with the advisory council members' terms of office. The remaining members serve two-year terms.

(b) A vacancy on the advisory council shall be filled in the same manner as the original appointment.

(c) A member appointed to fill a vacancy holds the office for the unexpired portion of the term.

(d) Each member may be reappointed to serve on the advisory council.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.005. CHAIR AND VICE CHAIR. Members of the advisory council shall elect from among its members by a majority vote a chair and vice chair.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff.

September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 746 (H.B. 3808), Sec. 2, eff. September 1, 2023.

Sec. 119A.006. MEETINGS; QUORUM. (a) The advisory council shall meet at times and locations as determined by the chair or a majority of the members of the advisory council.

(b) A majority of the members of the advisory council constitute a quorum.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.007. ANNUAL REPORT. (a) Not later than September 1 of each year, the advisory council shall prepare and submit to the governor, legislature, and commission a written report that includes recommendations on:

(1) practice guidelines for the diagnosis and treatment of pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections;

(2) mechanisms to increase clinical awareness and education regarding pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, among physicians, including pediatricians, school-based health centers, and mental health care providers;

(3) strategies for outreach to educators and parents to increase awareness of pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections; and

(4) developing a network of volunteer experts on the diagnosis and treatment of pediatric acute-onset neuropsychiatric syndrome, including pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections, to assist in the delivery of education and outreach.

(b) Notwithstanding any other law, this section, including any action taken under this section to develop or disseminate information

or materials, does not create a civil or administrative cause of action or a civil or criminal liability and does not create a standard of care, obligation, or duty that provides the basis for a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.008. COMPENSATION AND REIMBURSEMENT. A member of the advisory council is not entitled to compensation or reimbursement for expenses incurred in performing advisory council duties.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

Sec. 119A.009. SUNSET PROVISION. The Pediatric Acute-Onset Neuropsychiatric Syndrome Advisory Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished and this chapter expires September 1, 2033.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.01, eff. June 18, 2023.

Sec. 119A.010. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory council.

Added by Acts 2019, 86th Leg., R.S., Ch. 847 (H.B. 2783), Sec. 1, eff. September 1, 2019.

SUBTITLE F. LOCAL REGULATION OF PUBLIC HEALTH
CHAPTER 120. TASK FORCE OF BORDER HEALTH OFFICIALS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Border region" means the area consisting of the counties immediately adjacent to the international boundary between the United States and Mexico.

(2) "Task force" means the Task Force of Border Health Officials.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.002. SUNSET PROVISION. The task force is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the task force is abolished and this chapter expires September 1, 2029.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 120.051. TASK FORCE; DUTIES. (a) The department shall establish the Task Force of Border Health Officials to advise the commissioner:

(1) on policy priorities addressing major issues affecting the border region residents' health and health conditions;

(2) on raising public awareness of the issues described by Subdivision (1); and

(3) on other health issues impacting the border region as determined by the commissioner, including:

(A) barriers to accessing health care;

(B) health problems affecting the region, including:

(i) diabetes;

(ii) infant mortality;

(iii) heart disease and stroke;

(iv) obesity;

(v) cervical cancer; and

(vi) communicable diseases, including tuberculosis;

(C) factors that impede access to health care, including:

(i) socioeconomic conditions;

(ii) linguistic and cultural barriers;

(iii) low population density; and

(iv) lack of health insurance;

(D) surveillance and tracking of communicable diseases, environmental factors, and other factors negatively influencing health;

(E) standardization of data to ensure compatibility with data collected by border states on both sides of the international border with Mexico;

(F) public health infrastructure that includes education and research institutions to train culturally competent health care providers;

(G) establishment of local and regional public health programs that build on local resources and maximize the use of public dollars to address the needs of the indigent population; and

(H) collaboration and cooperation with Mexican counterparts of the task force at the state and federal level, and collaboration with federal counterparts in the United States.

(b) The task force shall study and make recommendations relating to the health problems, conditions, challenges, and needs of the population in the border region.

(c) The task force shall submit a report of recommendations to the commissioner for short-term and long-term border plans, as described by Subchapter C, not later than November 1 of each even-numbered year.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.052. COLLABORATION WITH OFFICE OF BORDER HEALTH. The Office of Border Health established under Section 12.071 shall provide staff support to the task force and any other assistance as needed or required by the task force, if practicable.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.053. COMPOSITION; TERMS. (a) The task force is composed of:

(1) the health department directors appointed under Section

121.033 from:

(A) each county in the border region; and

(B) each municipality in the border region that has a sister city in Mexico;

(2) two ex officio nonvoting members who are members of the legislature:

(A) one of whom is appointed by the lieutenant governor; and

(B) one of whom is appointed by the speaker of the house of representatives; and

(3) additional members appointed by the commissioner.

(b) The commissioner shall designate a chair and vice chair of the task force from among the task force members.

(c) The members appointed by the lieutenant governor and the speaker of the house of representatives serve three-year terms.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.054. MEETINGS. (a) The task force shall meet at least quarterly each fiscal year. Members may hold meetings by conference calls and through videoconference in accordance with Section 551.127, Government Code.

(b) Section 551.125, Government Code, applies to a meeting held by conference call under this section, except that Section 551.125(b), Government Code, does not apply.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.055. COMPENSATION AND REIMBURSEMENT. A task force member is not entitled to compensation or reimbursement for expenses incurred in performing the member's duties.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

SUBCHAPTER C. BORDER HEALTH IMPROVEMENT PLAN

Sec. 120.101. SHORT-TERM AND LONG-TERM PLANS. (a) The task force shall make recommendations to the commissioner for short-term and long-term border health improvement plans. The short-term plan shall identify health objectives proposed to be accomplished before the fourth anniversary of the date the plan is adopted. The long-term plan shall identify health objectives proposed to be accomplished before the ninth anniversary of the date the plan is adopted.

(b) The commissioner shall review the task force's recommendations and, based on those recommendations, recommend short-term and long-term border health improvement plans to the executive commissioner, identifying specific health objectives that may be implemented under existing law.

(c) The executive commissioner shall adopt short-term and long-term border health improvement plans and direct the department to implement the portions of the plans that may be implemented within existing appropriations under existing law.

(d) Not later than September 1 of each even-numbered year, the executive commissioner shall submit a report detailing the actions taken by the task force. The report must include:

(1) the status of all projects and activities involving the health issues described under Section 120.051(a)(3);

(2) the funding for the expenditures; and

(3) recommendations for legislation necessary to implement the short-term and long-term border health improvement plans.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.102. APPLICATION OF OTHER LAW. Chapter 2110, Government Code, does not apply to the task force.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

Sec. 120.103. ASSISTANCE FROM STATE AGENCIES AND POLITICAL SUBDIVISIONS. At the request of the task force, a state agency or political subdivision of this state may cooperate with the task force to the greatest extent practicable to fully implement the task

force's statutory duties.

Added by Acts 2017, 85th Leg., R.S., Ch. 754 (S.B. 1680), Sec. 1, eff. September 1, 2017.

CHAPTER 121. LOCAL PUBLIC HEALTH REORGANIZATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 121.001. SHORT TITLE. This chapter may be cited as the Local Public Health Reorganization Act.

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

Sec. 121.002. DEFINITIONS. In this chapter:

(1) "Essential public health services" means services to:

(A) monitor the health status of individuals in the community to identify community health problems;

(B) diagnose and investigate community health problems and community health hazards;

(C) inform, educate, and empower the community with respect to health issues;

(D) mobilize community partnerships in identifying and solving community health problems;

(E) develop policies and plans that support individual and community efforts to improve health;

(F) enforce laws and rules that protect the public health and ensure safety in accordance with those laws and rules;

(G) link individuals who have a need for community and personal health services to appropriate community and private providers;

(H) ensure a competent workforce for the provision of essential public health services;

(I) research new insights and innovative solutions to community health problems; and

(J) evaluate the effectiveness, accessibility, and quality of personal and population-based health services in a community.

(2) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 1, eff. June 19, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0361, eff. April 2, 2015.

Sec. 121.003. POWERS OF MUNICIPALITIES AND COUNTIES. (a) The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health.

(b) The governing bodies of municipalities and the commissioners courts of counties may cooperate with one another in making necessary improvements and providing services to promote the public health in accordance with Chapter 791, Government Code.

(c) The commissioners court of a county may grant authority under this subsection to a county employee who is trained by a health authority appointed by the county under Section 121.021, by a local health department established under Section 121.031, or by a public health district established under Section 121.041 and who is not a peace officer. The court may grant to the employee the power to issue a citation in an unincorporated area of the county to enforce any law or order of the commissioners court that is reasonably necessary to protect the public health. A citation issued under this subsection must state the name of the person cited, the violation charged, and the time and place the person is required to appear in court. If a person who receives a citation under this subsection fails to appear on the return date of the citation, the court may issue a warrant for the person's arrest for the violation described in the citation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 562, Sec. 1, eff. Aug. 26, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0362, eff. April 2, 2015.

Sec. 121.0035. REGULATION OF MOBILE FOOD UNITS AND ROADSIDE FOOD VENDORS IN CERTAIN POPULOUS AREAS. (a) In this section,

"mobile food unit" and "roadside food vendor" have the meanings assigned under Section 437.001.

(b) A municipality with a population of 1.5 million or more and a county with a population of 3.4 million or more shall enforce state law and rules adopted under state law concerning mobile food units and roadside food vendors in the same manner that the county or municipality enforces other health and safety regulations relating to food service.

Added by Acts 2005, 79th Leg., Ch. 1288 (H.B. 2507), Sec. 1, eff. September 1, 2005.

Sec. 121.004. LOCAL HEALTH UNITS. A local health unit is a division of municipal or county government that provides public health services but does not provide each service listed under Section 121.006(d) or required of a public health district under Section 121.043(a).

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

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0363, eff. April 2, 2015.

Sec. 121.005. STATE AND LOCAL AFFILIATION; CONTRACTS. (a) A local health unit, local health department, or public health district may become affiliated with the department to facilitate the exchange of information and the coordination of public health services.

(b) To be affiliated with the department, a local health unit, local health department, or public health district must annually provide to the department information relating to:

(1) services provided;

(2) staffing patterns; and

(3) funding sources and budget.

(c) The department may contract with a local health unit, local health department, or public health district for the provision of public health services.

(d) The executive commissioner may adopt rules necessary to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0364, eff. April 2, 2015.

Sec. 121.006. PUBLIC HEALTH SERVICES FEES; STATE SUPPORT. (a) The governing body of a municipality, the commissioners court of a county, or the administrative board of a public health district may adopt ordinances or rules to charge fees for public health services.

(b) A municipality, county, or public health district may not deny public health services to an individual because of inability to pay for the services. A municipality, county, or public health district shall provide for the reduction or waiver of a fee for an individual who cannot pay for services in whole or in part.

(c) Chapter 783, Government Code, and standards adopted under that chapter control, if applicable, if the local health unit, local health department, or public health district receives state support for the provision of public health services.

(c-1) A fee for a public health service charged in the jurisdiction of a public health district may be uniform throughout the district regardless of which governmental entity member of the district charges the fee. The fee may be set at an amount up to the highest amount charged by any governmental entity member of the district.

(d) In this section, "public health services" means:

(1) personal health promotion and maintenance services;
(2) infectious disease control and prevention services;
(3) environmental and consumer health programs;
(4) public health education and information services;
(5) laboratory services; and
(6) administrative services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 810 (S.B. 1380), Sec. 1, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0365, eff. April 2, 2015.

Sec. 121.0065. GRANTS FOR ESSENTIAL PUBLIC HEALTH SERVICES. (a) Subject to the availability of funds, the department shall administer a program under which appropriated money may be granted to counties, municipalities, public health districts, and other political subdivisions for use by the counties, municipalities, public health districts, and other political subdivisions to provide or pay for essential public health services.

(b) The grants authorized by Subsection (a) shall be distributed equally between urban and rural areas of the state.

(c) The executive commissioner shall adopt rules governing:

(1) the allocation formula for grants awarded under this section;

(2) the manner in which a municipality, county, public health district, or other political subdivision applies for a grant;

(3) the procedures for awarding grants; and

(4) the minimum essential public health services to be provided under the grant and other standards applicable to the services to be provided under the grant.

(d) A municipality, county, public health district, or other political subdivision that receives a grant under this section, in consultation with the department, shall develop a plan to evaluate the effectiveness, accessibility, and quality of the essential public health services that are provided under the grant. The plan must:

(1) identify the outcomes that are intended to result from the use of the grant money and establish a mechanism to measure those outcomes; and

(2) establish performance standards for the delivery of essential public health services and a mechanism to measure compliance with those standards.

(e) The governing body of the municipality, the commissioners court of the county, or the members of a public health district may appoint a local health board to monitor the use of the money received under this section.

(f) A public health board established under Section 121.034 or 121.046 may serve as the local health board authorized under Subsection (e).

(g) The governing body of the municipality or the commissioners court of a county may serve as the local health board authorized under Subsection (e). If the governing body of the municipality or the commissioners court of the county elects to serve as the local

health board, the governing body or commissioners court may appoint an advisory committee to advise the governing body or commissioners court with respect to the use of the money granted under this section.

(h) Chapter 783, Government Code, and standards adopted under that chapter control if applicable to a grant made under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 2, eff. June 19, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0366, eff. April 2, 2015.

Sec. 121.0066. ESSENTIAL PUBLIC HEALTH SERVICES PROVIDED BY DEPARTMENT. (a) Subject to the availability of funds, the department may provide essential public health services for a population for which a municipality, county, public health district, or other political subdivision is not receiving a grant to provide those services under Section 121.0065.

(b) Subject to the availability of funds, the department shall develop a plan that complies with Section 121.0065(d) to evaluate the effectiveness, accessibility, and quality of essential public health services provided under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 2, eff. June 19, 1999.

Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The department may designate geographic areas of the state as public health regions to provide public health services.

(b) The department shall appoint a physician to serve as regional director for each public health region. The regional director is the chief administrative officer of the region. The department shall establish the qualifications and terms of employment of a regional director.

(c) The department may require a regional director to perform the duties of a health authority. The regional director may perform those duties, as authorized by the department, in a jurisdiction in the region in which the health authority fails to perform duties prescribed under Section 121.024. The regional director shall

perform the duties of a health authority in a jurisdiction in the region in which there is not a health authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 118, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1378, Sec. 3, 8, eff. June 19, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0367, eff. April 2, 2015.

Sec. 121.008. ANNUAL CONFERENCE. (a) The department shall hold an annual conference for health authorities and for directors of local health departments and public health districts. The commissioner or the commissioner's designee shall preside over the conference.

(b) A county or municipality may pay necessary expenses incurred by its health authority or director in attending the conference.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0368, eff. April 2, 2015.

SUBCHAPTER B. HEALTH AUTHORITIES

Sec. 121.021. HEALTH AUTHORITY. A health authority is a physician appointed under the provisions of this chapter to administer state and local laws relating to public health within the appointing body's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 118, Sec. 2, eff. Sept. 1, 1991.

Sec. 121.022. QUALIFICATIONS. (a) A health authority must be:

(1) a competent physician with a reputable professional standing who is legally qualified to practice medicine in this state; and

(2) a resident of this state.

(b) To be qualified to serve as a health authority, the appointee must:

(1) take and subscribe to the official oath; and

(2) file a copy of the oath and appointment with the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0369, eff. April 2, 2015.

Sec. 121.023. TERM OF OFFICE. A health authority serves for a term of two years and may be appointed to successive terms.

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

Sec. 121.024. DUTIES. (a) A health authority is a state officer when performing duties prescribed by state law.

(b) A health authority shall perform each duty that is:

(1) necessary to implement and enforce a law to protect the public health; or

(2) prescribed by the department.

(c) The duties of a health authority include:

(1) establishing, maintaining, and enforcing quarantine in the health authority's jurisdiction;

(2) aiding the department in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation in the health authority's jurisdiction;

(3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the department in the manner and at the times prescribed by the department;

(4) reporting to the department on any subject on which it is proper for the department to direct that a report be made; and

(5) aiding the department in the enforcement of the following in the health authority's jurisdiction:

(A) proper rules, requirements, and ordinances;

(B) sanitation laws;

(C) quarantine rules; and
(D) vital statistics collections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0370, eff. April 2, 2015.

Sec. 121.0245. DUTIES OF PART-TIME HEALTH AUTHORITY. (a) If a physician appointed to serve as health authority for a county serves in that office part-time, the physician may:

(1) coordinate with the director of the local health department for the county in the performance of the duties imposed by Section 121.024(c)(3); and

(2) notify the department that the physician serves part-time in the office of health authority for the county.

(b) If the department provides information to a physician who serves part-time as health authority for a county, the department shall also provide the information to the director of the local health department for the county.

Added by Acts 2021, 87th Leg., R.S., Ch. 566 (S.B. 464), Sec. 2, eff. June 14, 2021.

Sec. 121.025. REMOVAL FROM OFFICE. A health authority may be removed from office for cause under the personnel procedures applicable to the heads of departments of the local government that the health authority serves.

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

Sec. 121.026. EXPIRATION AND EXTENSION OF CERTAIN PUBLIC HEALTH ORDERS ISSUED BY HEALTH AUTHORITY. (a) This section applies only to a public health order imposed on more than one individual, animal, place, or object.

(b) A public health order issued by a health authority under this chapter or other law expires on the 15th day following the date the order is issued unless, before the 15th day by majority vote:

(1) the governing body of a municipality or the commissioners court of a county that appointed the health authority extends the order for a longer period; or

(2) if the health authority is jointly appointed by a municipality and county, the commissioner's court of the county extends the order for a longer period.

Added by Acts 2021, 87th Leg., R.S., Ch. 862 (S.B. 967), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. MUNICIPALITIES AND COUNTIES WITHOUT ORGANIZED LOCAL PUBLIC HEALTH DEPARTMENTS OR DISTRICTS

Sec. 121.028. APPOINTMENT OF HEALTH AUTHORITY. (a) The governing body of a municipality or the commissioners court of a county that has not established a local health department or a public health district may appoint a physician as health authority to administer state and local laws relating to public health in the municipality's or county's jurisdiction.

(b) The governing body of a municipality or the commissioners court of a county described by Subsection (a) that is receiving a grant under Section 121.0065 shall appoint a physician as health authority.

(c) An individual appointed to serve as health authority for a county or municipality may serve as the health authority for one or more other jurisdictions under an interlocal contract made in accordance with Chapter 791, Government Code.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 3, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 4, eff. June 19, 1999.

Sec. 121.029. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department, or by this or any other law, to a properly qualified physician to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the

appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the department as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the department.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the time to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity that appoints the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 3, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0371, eff. April 2, 2015.

SUBCHAPTER D. LOCAL HEALTH DEPARTMENTS

Sec. 121.031. ESTABLISHMENT. The governing body of a municipality or the commissioners court of a county may establish a local health department by majority vote.

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

Sec. 121.032. POWERS AND DUTIES. A local health department may perform all public health functions that the municipality or county that establishes the local health department may perform.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1378, Sec. 5, eff. June 19, 1999.

Sec. 121.033. DEPARTMENT DIRECTOR. (a) The governing body of a municipality or the commissioners court of a county shall appoint the director of the municipality's or county's local health department.

(b) The director is the chief administrative officer of the local health department, and if the director is a physician, the director is the health authority in the local health department's jurisdiction.

(c) The governing body of a municipality or the commissioners court of a county may designate a person to perform its appointment duties under this section.

(d) A director of a local health department who is not a physician shall appoint a physician as the health authority in the local health department's jurisdiction, subject to the approval of the governing body or the commissioners court, as appropriate, and the department.

(e) The governing body or the commissioners court, as appropriate, shall set the compensation of the director and the health authority in its jurisdiction, except that the compensation, including a salary, may be allowed only for services actually rendered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.07(a), eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0372, eff. April 2, 2015.

Sec. 121.0331. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department, or by this or any other law, to a properly qualified physician who is employed by the municipality's or county's local health department to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and

appointment with the department as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the department.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the delegation to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity or entities that appoint the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 7, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0373, eff. April 2, 2015.

Sec. 121.034. PUBLIC HEALTH BOARD. (a) The governing body of a municipality that establishes a local health department may provide for the creation of an administrative or advisory public health board and the appointment of representatives to that board.

(b) The commissioners court of a county that establishes a local health department may provide for the creation of an advisory public health board and the appointment of representatives to that board.

(c) The director of the local health department is an ex officio, nonvoting member of any public health board established for the local health department.

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

SUBCHAPTER E. PUBLIC HEALTH DISTRICTS

Sec. 121.041. ESTABLISHMENT. By a majority vote of each

governing body, a public health district may be established by:

(1) two or more counties;

(2) two or more municipalities;

(3) a county and one or more municipalities in the county; or

(4) two or more counties and one or more municipalities in those counties.

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

Sec. 121.042. ADMISSION TO DISTRICT. (a) Any governmental entity, including a school district, may apply to become a member of a public health district.

(b) The governing body of each member shall review the application.

(c) The governmental entity may be admitted to membership on terms acceptable to the applicant and the members if a majority of the governing body of each member approves the application.

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

Sec. 121.043. POWERS AND DUTIES. (a) A public health district may perform any public health function that any of its members may perform unless otherwise restricted by law.

(b) For purposes of Section 121.005, a public health district shall be identified by its program of public health services and shall, at a minimum, provide the services listed under Section 121.006(d).

(c) A public health district may sue and be sued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 476, Sec. 3, eff. Aug. 26, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0374, eff. April 2, 2015.

Sec. 121.044. COOPERATIVE AGREEMENT. (a) The members of a public health district shall prepare a written cooperative agreement

that sets out fully the terms of operation of the district.

(b) The terms in a cooperative agreement must include:

(1) organizational structure;

(2) financial administration; and

(3) procedures for:

(A) modification of the cooperative agreement;

(B) admission, withdrawal, and expulsion of members;

(C) dissolution of the district; and

(D) selection and removal of a director.

(c) A cooperative agreement must be:

(1) approved by the governing body of each member; and

(2) signed by the appropriate officers of each governing body.

(d) A modification of a cooperative agreement must be in writing. A modification is effective on approval by the governing body of each member.

(e) A copy of a cooperative agreement and of each modification shall be:

(1) included in the minutes of the governing body of each member; and

(2) filed with the clerk of each county and municipality in the district and with the department.

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

Sec. 121.045. DISTRICT DIRECTOR. (a) The members of a public health district shall appoint the director of the district.

(b) The director is the chief administrative officer of the public health district, and if the director is a physician, the director is the health authority in the district's jurisdiction.

(c) A member may designate a person to perform its appointment duties under this section.

(d) A director of a public health district who is not a physician shall appoint a physician as the health authority for the district, subject to the approval of the members and the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.07(a), eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0375, eff.

April 2, 2015.

Sec. 121.0451. DELEGATION OF AUTHORITY. (a) A health authority, unless otherwise restricted by law, may delegate a power or duty imposed on the health authority by the department, or by this or any other law, to a properly qualified physician who is employed by the public health district to act while the health authority is absent or incapacitated.

(b) The physician designated by the health authority must:

(1) meet the qualifications set out in Section 121.022(a);

(2) be appointed as a designee in the same manner as the appointment of the health authority;

(3) take, subscribe, and file the official oath and appointment with the department as required by Section 121.022(b); and

(4) file a certified copy of the written delegation with the department.

(c) The delegation is effective during the term of the health authority who made the delegation; however, the health authority may limit the delegation to a shorter duration in the written delegation of authority.

(d) The health authority is responsible for the acts of the physician to whom the health authority has delegated the power or duty.

(e) The entity or entities that appoint the health authority and the designee health authority must adopt procedures for the service of the designee as health authority under this section. The procedures shall prevent duplication of authority between the health authority and the designee and provide notice to the department when authority is transferred.

Added by Acts 1991, 72nd Leg., ch. 118, Sec. 7, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0376, eff. April 2, 2015.

Sec. 121.046. PUBLIC HEALTH BOARD. (a) The cooperative agreement of a public health district may provide for the creation of

an advisory or administrative public health board.

(b) An advisory public health board shall advise the members and director on matters of public health.

(c) An administrative public health board may adopt substantive and procedural rules that are necessary and appropriate to promote and preserve the health and safety of the public. However, an administrative board may not adopt a rule that is not specifically authorized by state law, conflicts with a law of this state, or conflicts with an ordinance of a municipality or county in the district.

(d) A public health board may perform any function relating to the operation of the public health district that is required under the cooperative agreement.

(e) The terms of a cooperative agreement that provides for a public health board must include:

(1) the composition and number of the representatives that compose the public health board;

(2) a method for appointing representatives to the public health board;

(3) the length of the representatives' terms, which must be staggered;

(4) a requirement that a representative must have resided in the district for at least three years before the date of the representative's appointment;

(5) a requirement that each representative serve without compensation;

(6) the manner in which a vacancy is filled for an unexpired term;

(7) the procedure and substantive criteria for the removal of a representative; and

(8) a description of the relationship between the director and the public health board.

(f) The director is an ex officio, nonvoting member of a public health board established by the cooperative agreement.

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

Sec. 121.047. FINANCES. The members of a public health district shall pay the costs necessary to operate the district,

including costs for:

(1) staff salaries;

(2) supplies;

(3) suitable offices;

(4) health and clinic centers;

(5) health services and facilities; and

(6) maintenance.

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

SUBCHAPTER F. PUBLIC HEALTH CONSORTIUM

Sec. 121.101. DEFINITION. In this chapter, "consortium" means the public health consortium established under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.

Sec. 121.102. CONSORTIUM ESTABLISHED. Subject to availability of funds, the department shall establish a public health consortium composed of:

(1) The University of Texas Health Science Center at San Antonio;

(2) The University of Texas M. D. Anderson Cancer Center;

(3) The University of Texas Southwestern Medical Center;

(4) The University of Texas Medical Branch at Galveston;

(5) The University of Texas Health Science Center at Houston;

(6) The University of Texas Health Science Center at Tyler;

(7) the Texas Tech University Health Sciences Center;

(8) The Texas A&M University Health Science Center;

(9) the University of North Texas Health Science Center at Fort Worth; and

(10) any other public institution of higher education that elects to participate in the consortium.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 15, eff. September 1, 2013.

Sec. 121.103. GENERAL DUTIES. (a) Subject to the availability of funds, the department, in consultation with the consortium and local health units, local health departments, and public health districts, shall:

(1) develop curricula to provide training to public health workers;

(2) conduct research on improving health status outcomes and methods of monitoring those outcomes;

(3) develop performance standards for local health units, local health departments, and public health districts;

(4) develop competency certification standards for public health workers; and

(5) study the technology infrastructure available to local health units, local health departments, and public health districts and improve the use of this infrastructure to permit:

(A) statewide communication relating to disease surveillance and reporting of public health information; and

(B) immediate access to public health information and collaboration among public health professionals.

(b) The training curricula described by Subsection (a)(1) may include training for local health authorities.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 6, eff. June 19, 1999.

CHAPTER 122. POWERS AND DUTIES OF COUNTIES AND MUNICIPALITIES RELATING TO PUBLIC HEALTH

Sec. 122.001. COUNTY FUNDING FOR PUBLIC HEALTH AND SANITATION. The commissioners court of a county may appropriate and spend money from the county general revenues for public health and sanitation in the county.

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

Sec. 122.002. HEALTH UNIT IN COUNTY WITH POPULATION OF LESS THAN 22,000. (a) The commissioners court of a county with a population of less than 22,000 may impose an ad valorem tax at a rate not to exceed five cents on each $100 of the taxable value of property taxable by the county for:

(1) the creation of a county health unit;

(2) vaccines and medical services required to immunize schoolchildren and indigent persons from communicable diseases; and

(3) medical treatment for indigent persons who are not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(b) This section is effective for a county only if it is approved by a majority of the voters of the county at an election called for that purpose by the commissioners court on receipt of a petition signed by at least five percent of the property taxpaying voters in the county.

(c) The commissioners court may pay not more than half of the costs of medical treatment and immunization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(d) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The proceeds of the tax shall be deposited to the credit of that fund. Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a).

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

Sec. 122.003. HEALTH UNIT IN COUNTY WITH POPULATION OF 22,200 TO 22,500. (a) The commissioners court of a county with a population of 22,200 to 22,500 may impose an ad valorem tax at a rate not to exceed 10 cents on each $100 of the taxable value of property taxable by the county for:

(1) the creation of a county health unit;

(2) vaccines and medical services required to immunize schoolchildren and indigent persons from communicable diseases; and

(3) medical treatment or hospitalization of indigent persons who are not entitled to treatment or hospitalization under Chapter 61 (Indigent Health Care and Treatment Act).

(b) The commissioners court may pay not more than half of the costs of medical treatment or hospitalization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(c) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The

proceeds of the tax shall be deposited to the credit of that fund. Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a).

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

Sec. 122.004. APPROPRIATION TO HOSPITAL ESTABLISHED BY DONATION. If a fund of at least $50,000 is left by will or otherwise to establish and maintain a hospital in a municipality with a population of at least 10,000, the governing body of that municipality or the commissioners court of the county in which the municipality is located may make an appropriation to the hospital, in an amount that the governing body or commissioners court considers proper, to provide hospitalization and medical and surgical services for indigent residents of the municipality or county who are sick or wounded.

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

Sec. 122.005. POWERS OF TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may take any action necessary or expedient to promote health or suppress disease, including actions to:

(1) prevent the introduction of a communicable disease into the municipality, including stopping, detaining, and examining a person coming from a place that is infected or believed to be infected with a communicable disease;

(2) establish, maintain, and regulate hospitals in the municipality or in any area within five miles of the municipal limits; or

(3) abate any nuisance that is or may become injurious to the public health.

(b) The governing body of a Type A general-law municipality may adopt rules:

(1) necessary or expedient to promote health or suppress disease; or

(2) to prevent the introduction of a communicable disease into the municipality, including quarantine rules, and may enforce those rules in the municipality and in any area within 10 miles of

the municipality.

(c) The governing body of a Type A general-law municipality may fine a person who fails or refuses to observe the orders and rules of the health authority.

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

Sec. 122.006. POWERS OF HOME-RULE MUNICIPALITIES. A home-rule municipality may:

(1) adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease; and

(2) provide for the establishment of quarantine stations, emergency hospitals, and other hospitals.

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

Sec. 122.007. ESTABLISHMENT OF MEDICAL CLINICS IN CERTAIN COUNTIES. (a) The commissioners court of a county with a population of less than 20,000 may establish a medical clinic for the provision of health care services.

(b) The commissioners court may determine the types of health care services to be provided at the clinic, including medical care and treatment provided by a licensed physician, nursing care provided by a registered nurse, and dental care provided by a licensed dentist.

(c) The commissioners court may:

(1) purchase land on which to construct the clinic;

(2) construct the clinic, lease space for the clinic, or purchase and develop an existing building for the clinic; and

(3) operate or contract for the operation of the clinic.

(d) A county with a population of less than 20,000 that constructs a medical clinic under this section may continue to operate the clinic and exercise the powers provided by this section after the county exceeds that population.

Added by Acts 1991, 72nd Leg., ch. 758, Sec. 1, eff. Aug. 26, 1991.

Sec. 122.008. EMPLOYMENT FOR PUBLIC SCHOOLS AND COMPENSATION. (a) The commissioners court of a county may employ one or more registered nurses to visit the public schools in the county.

(b) A nurse employed under Subsection (a) shall:

(1) investigate the health conditions and sanitary surroundings of the schools and the personal, physical, and health condition of students in the schools;

(2) cooperate with the department and local health authorities; and

(3) perform other duties required by the commissioners court.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0377, eff. April 2, 2015.

SUBTITLE G. LICENSES AND OTHER REGULATION

CHAPTER 141. YOUTH CAMPS

Sec. 141.001. SHORT TITLE. This chapter may be cited as the Texas Youth Camp Safety and Health Act.

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

Sec. 141.002. DEFINITIONS. In this chapter:

(1) "Camper" means a minor who is attending a youth camp on a day care or boarding basis.

(2) "Day camp" includes any camp that primarily operates during any portion of the day between 7 a.m. and 10 p.m. for a period of four or more consecutive days but may incidentally offer not more than two overnight stays each camp session. The term does not include a facility required to be licensed with the Department of Family and Protective Services.

(3) "Person" means an individual, partnership, corporation, association, or organization.

(4) "Resident youth camp" includes any camp that for a period of four or more days continuously provides residential services, including overnight accommodations for the duration of the camp session.

(5) "Youth camp" means a facility or property, other than a facility required to be licensed by the Department of Family and Protective Services, that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used primarily or partially for recreational, athletic, religious, or educational activities; and

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four days.

(6) "Youth camp operator" means a person who owns, operates, controls, or supervises a youth camp, regardless of profit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.076, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1373, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0378, eff. April 2, 2015.

Sec. 141.0021. EXEMPTION. This chapter does not apply to a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

Added by Acts 2003, 78th Leg., ch. 1302, Sec. 1, eff. June 20, 2003.

Sec. 141.0025. WAIVER; APPEAL. (a) The department may grant a waiver from the requirements of this chapter to a program that:

(1) is sponsored by a religious organization as defined by Section 464.051;

(2) has been in operation for at least 30 consecutive years;

(3) operates one camp for not more than seven days in any year;

(4) has not more than 80 campers;

(5) is conducted by adult participants who are all

volunteers;

(6) operates in a county with a population of at least 4,000 but not more than 4,350; and

(7) ensures that background checks are conducted on and the training required under Section 141.0095 is completed by each adult participating in the program.

(b) A waiver granted by the department under Subsection (a) is valid until the waiver is revoked for cause by the department.

(c) A person who operates a program for which an application for a waiver under this section has been denied or for which a waiver under this section has been revoked may appeal the action in the manner provided for appeal of contested cases under Chapter 2001, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1146 (H.B. 492), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 69, eff. September 1, 2023.

Sec. 141.003. LICENSE REQUIRED. A person may not own, operate, control, or supervise a youth camp unless the person:

(1) holds a license issued under this chapter for that camp; and

(2) complies with this chapter and department rules and orders.

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

Sec. 141.0035. LICENSE FEES. (a) The executive commissioner by rule shall establish the amount of the fee for obtaining or renewing a license under this chapter. The executive commissioner shall set the fee in a reasonable amount designed to recover the direct and indirect costs to the department of administering and enforcing this chapter. The executive commissioner may set fees in a different amount for resident youth camps and day youth camps to reflect differences in the costs of administering and enforcing this chapter for resident and day camps.

(b) Before the executive commissioner adopts or amends a rule

under Subsection (a), the department shall solicit comments and information from the operators of affected youth camps and allow affected youth camp operators the opportunity to meet with appropriate department staff who are involved with the rulemaking process.

Added by Acts 2003, 78th Leg., ch. 1110, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0379, eff. April 2, 2015.

Sec. 141.004. LICENSE APPLICATION AND ISSUANCE. (a) To obtain a license, a person must submit a license application accompanied by a license fee in an amount set by the executive commissioner by rule.

(b) On receiving a license application, the department shall inspect the applicant's facilities, operations, and premises and shall issue a license to each applicant who will operate a youth camp in accordance with this chapter and rules adopted under this chapter.

(c) The department shall issue serially numbered licenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 2, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1110, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0380, eff. April 2, 2015.

Sec. 141.005. LICENSE RENEWAL. (a) A person holding a license issued under this chapter must renew the license annually by submitting a renewal application on a date determined by department rule on a form provided by the department.

(b) The application must be accompanied by a renewal fee in an amount set by the executive commissioner by rule.

(c) The department may not renew the license of a youth camp which has not corrected deficiencies before the application for renewal is submitted. The executive commissioner shall adopt substantive and procedural rules for the submission by a youth camp operator of evidence that a deficiency or deficiencies have been corrected.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 251, Sec. 3, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1373, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1110, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0381, eff. April 2, 2015.

Sec. 141.0051. LICENSE; CONSIDERATION OF CERTAIN CONVICTIONS. In making a determination on issuance, renewal, or revocation of a youth camp operator's license, the department shall consider whether the youth camp employs an individual who was convicted of an act of sexual abuse, as defined by Section 21.02, Penal Code, that occurred at the camp.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 1, eff. September 1, 2019.

Sec. 141.006. PRINCIPAL AUTHORITY FOR YOUTH CAMPS. The department is the principal authority on matters relating to health and safety conditions at youth camps. In addition to the powers and duties established by this chapter, the department has any other powers necessary and convenient to carry out its responsibilities under this chapter.

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

Sec. 141.007. INSPECTIONS. (a) An employee or agent of the department may enter any property for which a license is issued under this chapter, property for which a license application to operate a youth camp is pending, or property on which a youth camp is in operation to investigate and inspect conditions relating to the health and safety of the campers.
(b) An employee or agent who enters a youth camp to investigate and inspect conditions shall notify the person in charge of the camp of the inspector's presence and shall present proper credentials. The department may exercise the remedies authorized by Section 141.015(b) if the employee or agent is not allowed to enter.

(c) The executive commissioner may prescribe reasonable record-keeping requirements for licensed youth camps, including a requirement that the youth camp keep records relating to matters involving the health and safety of campers. An employee or agent of the department may examine, during regular business hours, any records relating to the health and safety of campers.

(d) An employee or agent of the department who enters a youth camp to investigate and inspect conditions shall:

(1) notify the person in charge of the camp or the person's designee of any violations as they are discovered; and

(2) allow the camp to correct the violations while the investigation and inspection is occurring.

(e) The department may not extend or delay an investigation or inspection to allow the youth camp to correct a violation under Subsection (d)(2).

(f) An employee or agent of the department performing an investigation and inspection under this section may not report a violation that is significant under the department's rules if the violation is corrected during the investigation and inspection.

(g) A penalty may not be imposed on a youth camp for a violation that is significant under the department's rules if the violation is corrected during an investigation and inspection under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 636, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0382, eff. April 2, 2015.

Sec. 141.008. ADOPTION OF RULES; EXEMPTION FROM APPLICATION OF CERTAIN RULES. (a) The executive commissioner may adopt rules to implement this chapter. In adopting the rules the executive commissioner shall comply with Subchapter B, Chapter 2001, Government Code, including Sections 2001.032(b) and 2001.033, Government Code. In developing the rules to be adopted by the executive commissioner, the department shall consult parents, youth camp operators, and appropriate public and private officials and organizations.

(b) A youth camp operator may grant an exemption from

compliance with a rule that requires physical examinations or inoculations for children or staff if the exemption is requested on the grounds of religious convictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 636, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0383, eff. April 2, 2015.

Sec. 141.0085. REPORTS OF ABUSE; DUTIES OF YOUTH CAMP OPERATOR. (a) The executive commissioner by rule shall establish a procedure for the department to forward a report of alleged abuse of a camper that is received by the department to the Department of Family and Protective Services or another appropriate agency.

(b) If a law enforcement agency notifies a youth camp operator of the investigation or conviction of an individual who is employed by the camp for an act of sexual abuse, as defined by Section 21.02, Penal Code, that occurred at the camp, the operator shall:

(1) immediately notify the department of the investigation or conviction; and

(2) retain all records related to the investigation or conviction until the department notifies the camp that the record retention is no longer required.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 1, eff. September 1, 2019.

Sec. 141.009. STANDARDS. The executive commissioner by rule shall establish health and safety standards for youth camps. The standards may relate to:

(1) adequate and proper supervision at all times of camp activities;

(2) qualifications for directors, supervisors, and staff and sufficient numbers of those persons;

(3) proper safeguards for sanitation and public health;

(4) adequate medical services for personal health and first aid;

(5) proper procedures for food preparation, handling, and

mass feeding;

(6) healthful and sufficient water supply;

(7) proper waste disposal;

(8) proper water safety procedures for swimming pools, lakes, and waterways;

(9) safe boating equipment;

(10) proper maintenance and safe use of motor vehicles;

(11) safe buildings and physical facilities;

(12) proper fire precautions;

(13) safe and proper recreational and other equipment;

(14) proper regard for density and use of the premises; and

(15) records of criminal convictions of camp personnel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1373, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0384, eff. April 2, 2015.

Sec. 141.0095. TRAINING AND EXAMINATION PROGRAM. (a) A person holding a license issued under this chapter may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp unless:

(1) the individual submits to the person or the youth camp has on file documentation that verifies the individual within the preceding two years successfully completed the training and examination program required by this section; or

(2) the individual successfully completes the youth camp's training and examination program, which must be approved by the department as required by this section, during the individual's first workweek and the youth camp issues and files documentation verifying that fact.

(b) A person holding a license issued under this chapter must retain in the person's records a copy of the documentation required or issued under Subsection (a) for each employee or volunteer until the second anniversary of the examination date.

(c) A person applying for or holding an employee or volunteer position involving contact with campers at a youth camp must successfully complete the training and examination program on sexual

abuse and child molestation required by this section during the applicable period described by Subsection (a).

(d) In accordance with this section, the executive commissioner by rule shall establish criteria and guidelines for training and examination programs on sexual abuse and child molestation. The department may approve training and examination programs offered by trainers under contract with youth camps or by online training organizations or may approve programs offered in another format authorized by the department.

(e) A training and examination program on sexual abuse and child molestation approved by the department must include training and an examination on:

(1) the definitions and effects of sexual abuse and child molestation;

(2) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(3) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse; and

(4) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation.

(f) The department may assess a fee in the amount set by the executive commissioner by rule as necessary to cover the costs of administering this section to each person that applies for the department's approval of a training and examination program on sexual abuse and child molestation under this section.

(g) The department at least every five years shall review each training and examination program on sexual abuse and child molestation approved by the department to ensure the program continues to meet the criteria and guidelines established by rule under this section.

Added by Acts 2005, 79th Leg., Ch. 860 (S.B. 990), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0385, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.10(b),

eff. September 1, 2015.

Sec. 141.010. ADVISORY COMMITTEE. (a) The executive commissioner shall appoint a committee to advise the executive commissioner in the development of standards and procedures, make recommendations to the executive commissioner regarding the content of the rules adopted to implement this chapter, and perform any other functions requested by the executive commissioner in the implementation and administration of the chapter.

(b) The advisory committee may not exceed nine members, at least two of whom shall be members of the general public. The other members should be experienced camping professionals who represent the camping communities of the state. In making the appointments, the executive commissioner shall attempt to reflect the geographic diversity of the state in proportion to the number of camps licensed by the department in each geographic area of the state.

(c) Advisory committee members serve for staggered six-year terms, with the terms of three members expiring on August 31 of each odd-numbered year.

(d) A vacancy on the advisory committee is filled by the executive commissioner in the same manner as other appointments to the advisory committee.

(e) The advisory committee will meet annually and at the call of the commissioner.

(f) The advisory committee may elect a chairperson, vice-chairperson, and secretary from among its members and may adopt rules for the conduct of its own activities.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 636, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0387, eff. April 2, 2015.

Sec. 141.011. OPERATOR'S DUTY. A youth camp operator shall provide each camper with safe and healthful conditions, facilities, and equipment that are free from recognized hazards that cause or may tend to cause death, serious illness, or bodily harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 141.010 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.0111. REQUIRED INFORMATION ABOUT ABUSE REPORTING. A youth camp operator shall develop and maintain a written policy regarding the method for reporting to the department suspected abuse occurring at the camp. The operator on request of any person shall provide a copy of the policy to the person.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 2, eff. September 1, 2019.

Sec. 141.0112. REQUIRED NOTICE ABOUT YOUTH CAMP COMPLAINTS AND DISCIPLINARY ACTIONS. (a) The department shall post on the department's Internet website each youth camp compliance order issued by the department until at least the third anniversary of the date the compliance order was finally adjudicated.

(b) A youth camp operator shall include on the camp's publicly accessible Internet website a clearly marked link to the youth camp program web page on the department's Internet website.

Added by Acts 2019, 86th Leg., R.S., Ch. 1325 (H.B. 4372), Sec. 2, eff. September 1, 2019.

Sec. 141.012. LICENSE REVOCATION. (a) If the department finds that a violation of this chapter or a rule adopted under this chapter has occurred or is occurring at a youth camp for which a license has been issued, the department shall give written notice to the licensee setting forth the nature of the violation and demanding that the violation cease.

(b) The department may initiate proceedings to revoke the license if the licensee refuses or fails to comply with the notice in the time and manner directed in the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 141.011 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.013. HEARINGS. (a) The department may:

(1) call and conduct hearings;

(2) administer oaths;

(3) receive evidence;

(4) issue subpoenas for witnesses, papers, and documents related to the hearing; and

(5) make findings of fact and decisions concerning the administration of this chapter and rules adopted under this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(47), eff. April 2, 2015.

(c) Reasonable notice of the hearing shall be given to all involved parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 141.012 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0388, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0389, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(47), eff. April 2, 2015.

Sec. 141.014. JUDICIAL REVIEW. A person affected by a ruling, order, or other act of the department may appeal the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 141.013 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.015. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule or order adopted under this chapter is subject to a civil penalty of not less than $50 or more than $1,000 for each act of violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted

under this chapter, the department may bring a civil action in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(c) The district court, on a finding that the person is violating this chapter or a rule or order adopted under this chapter, shall grant the injunctive relief, assess a civil penalty, or both, as warranted by the facts.

(d) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that a person:

(1) is violating or threatening to violate this chapter or a rule or order adopted under this chapter; or

(2) is taking any other action that creates an emergency condition that constitutes an imminent danger to the health, safety, or welfare of campers at a youth camp.

(e) An action for injunctive relief, recovery of a civil penalty, or both, may be brought in the county in which the defendant resides or in which the violation or threat of violation occurs.

(f) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(g) An appellate court shall give precedence to an action brought under this section over other cases of a different nature on the docket of the court.

(h) A civil penalty recovered in an action brought by the department under this chapter shall be deposited to the credit of the youth camp health and safety fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 141.014 by Acts 1991, 72nd Leg., ch. 251, Sec. 4, eff. Sept. 1, 1991.

Sec. 141.016. ADMINISTRATIVE PENALTY. (a) The department may

assess an administrative penalty if a person violates this chapter or a rule or order adopted or license issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $1,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1373, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 636, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0390, eff. April 2, 2015.

Sec. 141.017. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the administrative law judge shall make findings of fact and shall issue a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(47), eff. April 2, 2015.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0391, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(47), eff. April 2, 2015.

Sec. 141.018. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved

by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0392, eff. April 2, 2015.

Sec. 141.019. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0393, eff. April 2, 2015.

Sec. 141.020. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty under this chapter.

Added by Acts 1991, 72nd Leg., ch. 251, Sec. 5, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0394, eff. April 2, 2015.

CHAPTER 142. HOME AND COMMUNITY SUPPORT SERVICES
SUBCHAPTER A. HOME AND COMMUNITY SUPPORT SERVICES LICENSE

Sec. 142.001. DEFINITIONS. In this chapter:

(1) "Administrative support site" means a facility or site where a home and community support services agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services.

(2) "Alternate delivery site" means a facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by a hospice;

(B) that is not the hospice's principal place of business;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(3) "Bereavement" means the process by which a survivor of a deceased person mourns and experiences grief.

(4) "Bereavement services" means support services offered to a family during bereavement.

(5) "Branch office" means a facility or site in the geographical area served by a home and community support agency where home health or personal assistance services are delivered or active client records are maintained.

(6) "Certified agency" means a home and community support services agency, or a portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the United States Department of Health and Human Services as in compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(7) "Certified home health services" means home health services that are provided by a certified agency.

(8) "Chief financial officer" means an individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(9) "Controlling person" means a person who controls a home and community support services agency or other person as described by Section 142.0012.

(10) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(48), eff. April 2, 2015.

(11) "Counselor" means an individual qualified under Medicare standards to provide counseling services, including

bereavement, dietary, spiritual, and other counseling services, to both the client and the family.

(11-a) "Department" means the Department of Aging and Disability Services.

(11-b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(48), eff. April 2, 2015.

Text of subdivision effective until April 1, 2025

(11-c) "Habilitation" means habilitation services, as defined by Section 534.001, Government Code, delivered by a licensed home and community support services agency.

Text of subdivision effective on April 1, 2025

(11-c) "Habilitation" means habilitation services, as defined by Section 542.0001, Government Code, delivered by a licensed home and community support services agency.

(12) "Home and community support services agency" means a person who provides home health, hospice, habilitation, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(12-a) "Home and community support services agency administrator" or "administrator" means the person who is responsible for implementing and supervising the administrative policies and operations of the home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(13) "Home health service" means the provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(14) "Hospice" means a person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(15) "Hospice services" means services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include support services for terminally ill patients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing home, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client.

(16) "Inpatient unit" means a facility that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.); and

(B) standards adopted under this chapter.

(17) "Independent living environment" means:

(A) a client's individual residence, which may include a group home or foster home; or

(B) other settings where a client participates in activities, including school, work, or church.

(18) "Interdisciplinary team" means a group of individuals who work together in a coordinated manner to provide hospice services and must include a physician, registered nurse, social worker, and counselor.

(19) "Investigation" means an inspection or survey conducted by a representative of the department to determine if a licensee is in compliance with this chapter.

(20) Repealed by Acts 2019, 86th Leg., R.S., Ch. 609 (S.B.

916), Sec. 3, eff. June 10, 2019.

(21) "Person" means an individual, corporation, or association.

(22) "Personal assistance service" means routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing under the terms of a memorandum of understanding executed by the board and the department; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(22-a) "Personal care" means the provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(23) "Place of business" means an office of a home and community support services agency that maintains client records or directs home health, hospice, habilitation, or personal assistance services. The term does not include an administrative support site.

(24) "Residence" means a place where a person resides and includes a home, a nursing home, a convalescent home, or a residential unit.

(25) "Residential unit" means a facility that provides living quarters and hospice services to clients admitted into the

unit and that is in compliance with standards adopted under this chapter.

(26) "Respite services" means support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(27) "Social worker" means an individual licensed as a social worker under Chapter 505, Occupations Code.

(28) "Support services" means social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(29) "Terminal illness" means an illness for which there is a limited prognosis if the illness runs its usual course.

(30) "Volunteer" means an individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 42, 43, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 702, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.193, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 63, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0395, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(48), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 2, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 3, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.39, eff. April 1, 2025.

Sec. 142.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that home and community support services agencies in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum standards for acceptable quality of care, and a violation of a minimum standard established or adopted under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

(1) client independence and self-determination;

(2) humane treatment;

(3) continuity of care;

(4) coordination of services;

(5) professionalism of service providers;

(6) quality of life;

(7) client satisfaction with services; and

(8) person-centered service delivery.

(b) The executive commissioner shall protect clients of home and community support services agencies by adopting rules relating to quality of care and quality of life.

(c) The department shall protect clients of home and community support services agencies by:

(1) regulating those agencies;

(2) strictly monitoring factors relating to the health, safety, welfare, and dignity of each client;

(3) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;

(4) enabling agencies to provide person-centered services that allow clients to maintain the highest possible degree of independence and self-determination; and

(5) providing the public with helpful and understandable information relating to agencies in this state.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0396, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 2, eff. September 1, 2015.

Sec. 142.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a home and community support services agency or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company or other business entity that operates or contracts with others for the operation of a home and community support services agency;

(2) a person who is a controlling person of a management company or other business entity that operates a home and community support services agency or that contracts with another person for the operation of a home and community support services agency; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a home and community support services agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a home and community support services agency.

(d) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0397, eff. April 2, 2015.

Sec. 142.002. LICENSE REQUIRED. (a) Except as provided by Section 142.003, a person, including a health care facility licensed under this code, may not engage in the business of providing home health, hospice, habilitation, or personal assistance services, or represent to the public that the person is a provider of home health, hospice, habilitation, or personal assistance services for pay without a home and community support services agency license authorizing the person to perform those services issued by the department for each place of business from which home health, hospice, habilitation, or personal assistance services are directed. A certified agency must have a license to provide certified home health services.

(b) A person who is not licensed to provide home health services under this chapter may not indicate or imply that the person is licensed to provide home health services by the use of the words "home health services" or in any other manner.

(c) A person who is not licensed to provide hospice services under this chapter may not use the word "hospice" in a title or description of a facility, organization, program, service provider, or services or use any other words, letters, abbreviations, or insignia indicating or implying that the person holds a license to provide hospice services under this chapter.

(d) A license to provide hospice services issued under this chapter authorizes a hospice to own or operate a residential unit or inpatient unit at the licensed site in compliance with the standards and rules adopted under this chapter.

(e) A license issued under this chapter may not be transferred to another person, but may be transferred from one location to another location. A change of ownership or location shall be reported to the department.

(f) A person who is not licensed to provide personal assistance services under this chapter may not indicate or imply that the person is licensed to provide personal assistance services by the use of the words "personal assistance services" or in any other manner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.194, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 3, eff.

September 1, 2015.

Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the United States Department of Health and Human Services to qualify as a certified agency, the department may issue a temporary home and community support services agency license to the person authorizing the person to provide certified home health services. A temporary license is effective as provided by rules adopted by the executive commissioner.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 44, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 5, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.02, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 10, eff. September 1, 2011.

Sec. 142.003. EXEMPTIONS FROM LICENSING REQUIREMENT.

Text of subsection effective until April 1, 2025

(a) The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, occupational therapist, or physical therapist licensed under the laws of this state who provides home health services to a client only as a part of and incidental to that person's private office practice;

(2) a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech therapist, medical social worker, or any other health care professional as determined by the department who provides home health services as a sole practitioner;

(3) a registry that operates solely as a clearinghouse to put consumers in contact with persons who provide home health, hospice, habilitation, or personal assistance services and that does not maintain official client records, direct client services, or compensate the person who is providing the service;

(4) an individual whose permanent residence is in the client's residence;

(5) an employee of a person licensed under this chapter who provides home health, hospice, habilitation, or personal assistance services only as an employee of the license holder and who receives no benefit for providing the services, other than wages from the license holder;

(6) a home, nursing home, convalescent home, assisted living facility, special care facility, or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under this chapter;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that does not furnish services, other than supplies, to a person at the person's house;

(10) a hospital or other licensed health care facility that provides home health or personal assistance services only to inpatient residents of the hospital or facility;

(11) a person providing home health or personal assistance services to an injured employee under Title 5, Labor Code;

(12) a visiting nurse service that:

(A) is conducted by and for the adherents of a well-recognized church or religious denomination; and

(B) provides nursing services by a person exempt from licensing by Section 301.004, Occupations Code, because the person furnishes nursing care in which treatment is only by prayer or spiritual means;

(13) an individual hired and paid directly by the client or the client's family or legal guardian to provide home health or personal assistance services;

(14) a business, school, camp, or other organization that provides home health or personal assistance services, incidental to the organization's primary purpose, to individuals employed by or participating in programs offered by the business, school, or camp that enable the individual to participate fully in the business's, school's, or camp's programs;

(15) a person or organization providing sitter-companion services or chore or household services that do not involve personal care, health, or health-related services;

(16) a licensed health care facility that provides hospice services under a contract with a hospice;

(17) a person delivering residential acquired immune deficiency syndrome hospice care who is licensed and designated as a residential AIDS hospice under Chapter 248;

(18) the Texas Department of Criminal Justice;

(19) a person that provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program;

(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or

(D) Section 534.152, Government Code;

(20) a person who provides intellectual and developmental disabilities habilitative specialized services under Medicaid and is:

(A) a certified HCS or TxHmL provider; or

(B) a local intellectual and developmental disability authority contracted under Section 534.105; or

(21) an individual who provides home health or personal assistance services as the employee of a consumer or an entity or employee of an entity acting as a consumer's fiscal agent under Section 531.051, Government Code.

Text of subsection effective on April 1, 2025

(a) The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, occupational therapist, or physical therapist licensed under the laws of this state who provides home health services to a client only as a part of and incidental to that person's private office practice;

(2) a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech therapist, medical social worker, or any other health care professional as determined by the department who provides home health services as a sole practitioner;

(3) a registry that operates solely as a clearinghouse to put consumers in contact with persons who provide home health, hospice, habilitation, or personal assistance services and that does not maintain official client records, direct client services, or compensate the person who is providing the service;

(4) an individual whose permanent residence is in the client's residence;

(5) an employee of a person licensed under this chapter who provides home health, hospice, habilitation, or personal assistance services only as an employee of the license holder and who receives no benefit for providing the services, other than wages from the license holder;

(6) a home, nursing home, convalescent home, assisted living facility, special care facility, or other institution for individuals who are elderly or who have disabilities that provides home health or personal assistance services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under this chapter;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that does not furnish services, other than supplies, to a person at the person's house;

(10) a hospital or other licensed health care facility that provides home health or personal assistance services only to inpatient residents of the hospital or facility;

(11) a person providing home health or personal assistance services to an injured employee under Title 5, Labor Code;

(12) a visiting nurse service that:

(A) is conducted by and for the adherents of a well-recognized church or religious denomination; and

(B) provides nursing services by a person exempt from licensing by Section 301.004, Occupations Code, because the person furnishes nursing care in which treatment is only by prayer or spiritual means;

(13) an individual hired and paid directly by the client or the client's family or legal guardian to provide home health or personal assistance services;

(14) a business, school, camp, or other organization that provides home health or personal assistance services, incidental to the organization's primary purpose, to individuals employed by or participating in programs offered by the business, school, or camp that enable the individual to participate fully in the business's, school's, or camp's programs;

(15) a person or organization providing sitter-companion

services or chore or household services that do not involve personal care, health, or health-related services;

(16) a licensed health care facility that provides hospice services under a contract with a hospice;

(17) a person delivering residential acquired immune deficiency syndrome hospice care who is licensed and designated as a residential AIDS hospice under Chapter 248;

(18) the Texas Department of Criminal Justice;

(19) a person that provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program;

(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or

(D) Section 542.0152, Government Code;

(20) a person who provides intellectual and developmental disabilities habilitative specialized services under Medicaid and is:

(A) a certified HCS or TxHmL provider; or

(B) a local intellectual and developmental disability authority contracted under Section 534.105; or

(21) an individual who provides home health or personal assistance services as the employee of a consumer or an entity or employee of an entity acting as a consumer's fiscal agent under Subchapter C, Chapter 546, Government Code.

(b) A home and community support services agency that owns or operates an administrative support site is not required to obtain a separate license under this chapter for the administrative support site.

(c) A hospice that operates or provides hospice services to an inpatient unit under a contract with a licensed health care facility is not required to obtain an alternate delivery site license for that inpatient unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 769, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.777, eff. Sept. 1, 2001; Acts 2003, 78th

Leg., ch. 198, Sec. 2.55, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 1.02, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 4, eff. September 1, 2015.
Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 1, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.40, eff. April 1, 2025.

Sec. 142.004. LICENSE APPLICATION. (a) An applicant for a license to provide home health, hospice, habilitation, or personal assistance services must:

(1) file a written application on a form prescribed by the department indicating the type of service the applicant wishes to provide;

(2) cooperate with any surveys required by the department for a license; and

(3) pay the license fee prescribed by this chapter.

(b) In addition to the requirements of Subsection (a), if the applicant is a certified agency when the application for a license to provide certified home health services is filed, the applicant must maintain its Medicare certification. If the applicant is not a certified agency when the application for a license to provide certified home health services is filed, the applicant must establish that it is in the process of receiving its certification from the United States Department of Health and Human Services.

(c) The executive commissioner by rule shall require that, at a minimum, before the department may approve a license application, the applicant must provide to the department:

(1) documentation establishing that, at a minimum, the applicant has sufficient financial resources to provide the services required by this chapter and by the department during the term of the license;

(2) a list of the management personnel for the proposed home and community support services agency, a description of personnel qualifications, and a plan for providing continuing training and education for the personnel during the term of the

license;

(3) documentation establishing that the applicant is capable of meeting the minimum standards established by the executive commissioner relating to the quality of care;

(4) a plan that provides for the orderly transfer of care of the applicant's clients if the applicant cannot maintain or deliver home health, hospice, habilitation, or personal assistance services under the license;

(5) identifying information on the home and community support services agency owner, administrator, and chief financial officer to enable the department to conduct criminal background checks on those persons;

(6) identification of any controlling person with respect to the applicant; and

(7) documentation relating to any controlling person identified under Subdivision (6), if requested by the department and relevant to the controlling person's compliance with any applicable licensing standard required or adopted under this chapter.

(d) Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

(e) A home and community support services agency owned or operated by a state agency directly providing services is not required to provide the information described in Subsections (c)(1) and (5).

(f) The department shall evaluate and consider all information collected during the application process.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 45, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0398, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 5, eff. September 1, 2015.

Sec. 142.005. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in any other state in which the applicant, license holder, or controlling person operates or operated a home and community support services agency.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 5, eff. Sept. 1, 1999.

Sec. 142.006. LICENSE ISSUANCE; TERM. (a) The department shall issue a home and community support services agency license to provide home health, hospice, habilitation, or personal assistance services for each place of business to an applicant if:

(1) the applicant:

(A) qualifies for the license to provide the type of service that is to be offered by the applicant;

(B) submits an application and license fee as required by this chapter; and

(C) complies with all applicable licensing standards required or adopted under this chapter; and

(2) any controlling person with respect to the applicant complies with all applicable licensing standards required or adopted under this chapter.

(b) A license issued under this chapter expires three years after the date of issuance. The executive commissioner by rule may adopt a system under which licenses expire on various dates during the three-year period. For the year in which a license expiration date is changed, the commission shall prorate the license fee on a monthly basis. Each license holder shall pay only that portion of the license fee allocable to the number of months for which the license is valid. A license holder shall pay the total license renewal fee at the time of renewal. The commission may issue an initial license for a shorter term to conform expiration dates for a locality or an applicant. The commission may issue a temporary license to an applicant for an initial license.

(c) The department may find that a home and community support services agency has satisfied the requirements for licensing if the agency is accredited by an accreditation organization, such as The

Joint Commission or the Community Health Accreditation Program, and the department finds that the accreditation organization has standards that meet or exceed the requirements for licensing under this chapter. A license fee is required of the home and community support services agency at the time of a license application.

(d) to (f) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1).

(g) The license must designate the types of services that the home and community support services agency is authorized to provide at or from the designated place of business. The types of services that may be designated include dialysis and habilitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0399, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 6, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1160 (H.B. 3193), Sec. 1, eff. September 1, 2019.

Sec. 142.0061. POSSESSION OF STERILE WATER OR SALINE. A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients under physician's orders:

(1) sterile water for injection and irrigation; and

(2) sterile saline for injection and irrigation.

Added by Acts 1993, 73rd Leg., ch. 16, Sec. 1, eff. April 2, 1993. Amended by Acts 1993, 73rd Leg., ch. 789, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 307, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0062. POSSESSION OF CERTAIN VACCINES OR TUBERCULIN. (a) A home and community support services agency or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to the agency's employees, home health or hospice patients, or patient family members under physician's standing orders the following dangerous drugs:

(1) hepatitis B vaccine;

(2) influenza vaccine;

(3) tuberculin purified protein derivative for tuberculosis testing;

(4) pneumococcal polysaccharide vaccine; and

(5) any other vaccine approved, authorized for emergency use, or otherwise permitted for use by the United States Food and Drug Administration to treat or mitigate the spread of a communicable disease, as defined by Section 81.003.

(b) A home and community support services agency that purchases, stores, or transports a vaccine or tuberculin under this section shall ensure that any standing order for the vaccine or tuberculin:

(1) is signed and dated by the physician;

(2) identifies the vaccine or tuberculin covered by the order;

(3) indicates that the recipient of the vaccine or tuberculin has been assessed as an appropriate candidate to receive the vaccine or tuberculin and has been assessed for the absence of any contraindication;

(4) indicates that appropriate procedures are established for responding to any negative reaction to the vaccine or tuberculin; and

(5) orders that a specific medication or category of medication be administered if the recipient has a negative reaction to the vaccine or tuberculin.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.195, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 49 (H.B. 797), Sec. 1, eff. May 18, 2021.

Sec. 142.0063. POSSESSION OF CERTAIN DANGEROUS DRUGS. (a) A home and community support services agency in compliance with this section or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health or hospice patients in accordance with Subsection (c) the following dangerous drugs:

(1) any of the following items in a sealed portable container of a size determined by the dispensing pharmacist:

(A) 1,000 milliliters of 0.9 percent sodium chloride intravenous infusion;

(B) 1,000 milliliters of five percent dextrose in water injection; or

(C) sterile saline; or

(2) not more than five dosage units of any of the following items in an individually sealed, unused portable container:

(A) heparin sodium lock flush in a concentration of 10 units per milliliter or 100 units per milliliter;

(B) epinephrine HCl solution in a concentration of 1 to 1,000;

(C) diphenhydramine HCl solution in a concentration of 50 milligrams per milliliter;

(D) methylprednisolone in a concentration of 125 milligrams per two milliliters;

(E) naloxone in a concentration of one milligram per milliliter in a two-milliliter vial;

(F) promethazine in a concentration of 25 milligrams per milliliter;

(G) glucagon in a concentration of one milligram per milliliter;

(H) furosemide in a concentration of 10 milligrams per milliliter;

(I) lidocaine 2.5 percent and prilocaine 2.5 percent cream in a five-gram tube; or

(J) lidocaine HCl solution in a concentration of one percent in a two-milliliter vial.

(b) A home and community support services agency or the agency's authorized employees may purchase, store, or transport dangerous drugs in a sealed portable container under this section only if the agency has established policies and procedures to ensure that:

(1) the container is handled properly with respect to storage, transportation, and temperature stability;

(2) a drug is removed from the container only on a physician's written or oral order;

(3) the administration of any drug in the container is performed in accordance with a specific treatment protocol; and

(4) the agency maintains a written record of the dates and times the container is in the possession of a registered nurse or licensed vocational nurse.

(c) A home and community support services agency or the agency's authorized employee who administers a drug listed in Subsection (a) may administer the drug only in the patient's residence under physician's orders in connection with the provision of emergency treatment or the adjustment of:

(1) parenteral drug therapy; or

(2) vaccine or tuberculin administration.

(d) If a home and community support services agency or the agency's authorized employee administers a drug listed in Subsection (a) pursuant to a physician's oral order, the physician shall promptly send a signed copy of the order to the agency, and the agency shall:

(1) not later than 24 hours after receipt of the order, reduce the order to written form and send a copy of the form to the dispensing pharmacy by mail or facsimile transmission; and

(2) not later than 20 days after receipt of the order, send a copy of the order as signed by and received from the physician to the dispensing pharmacy.

(e) A pharmacist that dispenses a sealed portable container under this section shall ensure that the container:

(1) is designed to allow access to the contents of the container only if a tamper-proof seal is broken;

(2) bears a label that lists the drugs in the container and provides notice of the container's expiration date, which is the earlier of:

(A) the date that is six months after the date on which the container is dispensed; or

(B) the earliest expiration date of any drug in the container; and

(3) remains in the pharmacy or under the control of a pharmacist, registered nurse, or licensed vocational nurse.

(f) If a home and community support services agency or the agency's authorized employee purchases, stores, or transports a sealed portable container under this section, the agency shall deliver the container to the dispensing pharmacy for verification of drug quality, quantity, integrity, and expiration dates not later than the earlier of:

(1) the seventh day after the date on which the seal on the container is broken; or

(2) the date for which notice is provided on the container label.

(g) A pharmacy that dispenses a sealed portable container under this section shall take reasonable precautionary measures to ensure that the home and community support services agency receiving the container complies with Subsection (f). On receipt of a container under Subsection (f), the pharmacy shall perform an inventory of the drugs used from the container and shall restock and reseal the container before delivering the container to the agency for reuse.

Added by Acts 1997, 75th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1997.

Sec. 142.0065. DISPLAY OF LICENSE. A license issued under this chapter shall be displayed in a conspicuous place in the designated place of business and must show:

(1) the name and address of the licensee;

(2) the name of the owner or owners, if different from the information provided under Subdivision (1);

(3) the license expiration date; and

(4) the types of services authorized to be provided under the license.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 9, eff. Sept. 1, 1993.

Sec. 142.007. NOTICE OF DRUG TESTING POLICY. An agency licensed under this chapter shall provide to the following persons a written statement describing the agency's policy for the drug testing of employees who have direct contact with clients:

(1) each person applying for services from the agency; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.008. BRANCH OFFICE. (a) The department may issue a branch office license to a person who holds a license to provide home health or personal assistance services.

(b) The executive commissioner by rule shall establish eligibility requirements for a branch office license.

(c) A branch office license expires on the same date as the license to provide home health or personal assistance services held by the applicant for the branch office license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 10, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0400, eff. April 2, 2015.

Sec. 142.0085. ALTERNATE DELIVERY SITE LICENSE. (a) The department shall issue an alternate delivery site license to a qualified hospice.

(b) The executive commissioner by rule shall establish standards required for the issuance of an alternate delivery site license.

(c) An alternate delivery site license expires on the same date as the license to provide hospice services held by the hospice.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 11, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0401, eff. April 2, 2015.

Sec. 142.009. SURVEYS; CONSUMER COMPLAINTS. (a) The department or its representative may enter the premises of a license applicant or license holder at reasonable times to conduct a survey incidental to the issuance of a license and at other times as the department considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

(a-1) A license applicant or license holder must provide the

department representative conducting the survey with a reasonable and safe workspace at the premises. The executive commissioner may adopt rules to implement this subsection.

(b) A home and community support services agency shall provide each person who receives home health, hospice, habilitation, or personal assistance services with a written statement that contains the name, address, and telephone number of the department and a statement that informs the recipient that a complaint against a home and community support services agency may be directed to the department.

(c) The department or its authorized representative shall investigate each complaint received regarding the provision of home health, hospice, habilitation, or personal assistance services and may, as a part of the investigation:

(1) conduct an unannounced survey of a place of business, including an inspection of medical and personnel records, if the department has reasonable cause to believe that the place of business is in violation of this chapter or a rule adopted under this chapter;

(2) conduct an interview with a recipient of home health, hospice, habilitation, or personal assistance services, which may be conducted in the recipient's home if the recipient consents;

(3) conduct an interview with a family member of a recipient of home health, hospice, habilitation, or personal assistance services who is deceased or other person who may have knowledge of the care received by the deceased recipient of the home health, hospice, habilitation, or personal assistance services; or

(4) interview a physician or other health care practitioner, including a member of the personnel of a home and community support services agency, who cares for a recipient of home health, hospice, habilitation, or personal assistance services.

(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

(1) to a state or federal agency;

(2) to federal, state, or local law enforcement personnel;

(3) with the consent of each person identified in the information released;

(4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;

(5) on a form developed by the department that identifies

any deficiencies found without identifying a person, other than the home and community support services agency;

(6) on a form required by a federal agency if:

(A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;

(B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and

(C) the release of the information complies with any other federal requirement; or

(7) as provided by Section 142.0092.

(e) The department's representative shall hold a conference with the person in charge of the home and community support services agency before beginning the on-site survey to explain the nature and scope of the survey. When the survey is completed, the department's representative shall hold a conference with the person who is in charge of the agency and shall identify any records that were duplicated. Agency records may be removed from an agency only with the agency's consent.

(f) At the conclusion of a survey or complaint investigation, the department shall fully inform the person who is in charge of the home and community support services agency of the preliminary findings of the survey at an exit conference and shall give the person a reasonable opportunity to submit additional facts or other information to the department's authorized representative in response to those findings. The response shall be made a part of the record of the survey for all purposes. The department's representative shall leave a written list of the preliminary findings with the agency at the exit conference.

(g) After a survey of a home and community support services agency by the department, the department shall provide to the home and community support services agency administrator:

(1) specific and timely written notice of the official findings of the survey, including:

(A) the specific nature of the survey;

(B) any alleged violations of a specific statute or rule;

(C) the specific nature of any finding regarding an

alleged violation or deficiency; and

(D) if a deficiency is alleged, the severity of the deficiency;

(2) information on the identity, including the name, of each department representative conducting or reviewing the results of the survey and the date on which the department representative acted on the matter; and

(3) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

(g-1) If the department or the department's authorized representative discovers any additional violations during the review of field notes or preparation of the official statement of deficiencies for a home and community support services agency, the department or the department's representative shall conduct an additional exit conference regarding the additional violations. The additional exit conference must be held in person and may not be held over the telephone, by e-mail, or by facsimile transmission.

(h) Except for the investigation of complaints, a home and community support services agency licensed by the department under this chapter is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains accreditation for the applicable service from The Joint Commission, the Community Health Accreditation Program, or other accreditation organizations that meet or exceed the regulations adopted under this chapter. Each provider must submit to the department documentation from the accrediting body indicating that the provider is accredited when the provider is applying for the initial license and annually when the license is renewed.

(i) Except as provided by Subsection (h), the department may not renew an initial home and community support services agency license unless the department has conducted an initial on-site survey of the agency.

(j) Except as provided by Subsections (h) and (l), a survey may be conducted within 18 months after a survey for an initial license. After that time, an on-site survey must be conducted at least every 36 months.

(k) If a person is renewing or applying for a license to provide more than one type of service under this chapter, the surveys

required for each of the services the license holder or applicant seeks to provide shall be completed during the same surveyor visit.

(l) The department and other state agencies that are under the commission and that contract with home and community support services agencies to deliver services for which a license is required under this chapter shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of standards or conflicts between standards and of functions in license, certification, or compliance surveys and complaint investigations. The memorandum of understanding must be approved by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 46, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 276, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.56, 2.156(a)(1), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0402, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 13, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 7, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 4, eff. September 1, 2023.

Sec. 142.0091. TRAINING. (a) The department shall provide specialized training to representatives of the department who survey

home and community support services agencies. The training must include information relating to:

(1) the conduct of appropriate surveys that do not focus exclusively on medical standards under an acute care model;

(2) acceptable delegation of nursing tasks; and

(3) the provision of person-centered services.

(b) In developing and updating the training required by Subsection (a), the department shall consult with and include providers of home health, hospice, habilitation, and personal assistance services, recipients of those services and their family members, and representatives of appropriate advocacy organizations.

(c) The department at least semiannually shall provide joint training for home and community support services agencies and surveyors on subjects that address the 10 most common violations of federal or state law by home and community support services agencies. The department may charge a home and community support services agency a fee, not to exceed $50 per person, for the training.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.04, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 8, eff. September 1, 2015.

Sec. 142.0092. CONSUMER COMPLAINT DATA. (a) The department shall maintain records or documents relating to complaints directed to the department by consumers of home health, hospice, habilitation, or personal assistance services. The department shall organize the records or documents according to standard, statewide categories as determined by the department. In determining appropriate categories, the department shall make distinctions based on factors useful to the public in assessing the quality of services provided by a home and

community support services agency, including whether the complaint:

(1) was determined to be valid or invalid;

(2) involved significant physical harm or death to a patient;

(3) involved financial exploitation of a patient; or

(4) resulted in any sanction imposed against the agency.

(b) The department shall make the information maintained under this section available to the public in a useful format that does not identify individuals implicated in the complaints.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 9, eff. September 1, 2015.

Sec. 142.0093. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against another person for filing a complaint, presenting a grievance, or providing in good faith information relating to home health, hospice, habilitation, or personal assistance services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 10, eff. September 1, 2015.

Sec. 142.0094. USE OF REGULATORY SURVEY REPORTS AND OTHER DOCUMENTS. (a) Except as otherwise provided by this section, a survey report or other document prepared by the department that relates to regulation of a home and community support services agency is not admissible as evidence in a civil action to prove that the agency violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department survey reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 142.013;

(B) an action seeking imposition of a civil penalty under Section 142.014;

(C) a contested case hearing involving imposition of an administrative penalty under Section 142.017; and

(D) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter;

(2) bar the admission into evidence of department survey reports or other documents that are offered:

(A) to establish warning or notice to a home and community support services agency of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that a home and community support services agency violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department survey reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the survey reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 8, eff. Sept. 1, 1999.

Sec. 142.0095. INVESTIGATIONS OF HOME AND COMMUNITY SUPPORT SERVICES AGENCIES PROVIDING HOSPICE SERVICES. The commission or its authorized representative shall investigate an allegation of abuse, neglect, or exploitation of a client of any age of a home and community support services agency if:

(1) the abuse, neglect, or exploitation occurs when the client is receiving inpatient hospice services; and

(2) the alleged perpetrator of the abuse, neglect, or exploitation is an employee, volunteer, contractor, or subcontractor

of the home and community support services agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 878 (H.B. 3079), Sec. 1, eff. June 10, 2019.

Sec. 142.010. FEES. (a) The executive commissioner by rule shall set license fees for home and community support services agencies in amounts that are reasonable to meet the costs of administering this chapter, except that the fees may not be less than $600 or more than $2,625 for a license to provide home health, hospice, habilitation, or personal assistance services.

(b) The executive commissioner shall consider the size of the home and community support services agency, the number of clients served, the number of services provided, and the necessity for review of other accreditation documentation in determining the amount collected by the department for initial and renewal license fees.

(c) A fee charged under this section is nonrefundable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 13, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0403, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 11, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1160 (H.B. 3193), Sec. 2, eff. September 1, 2019.

Sec. 142.0104. CHANGE IN APPLICATION INFORMATION. (a) If certain application information as specified by department rule changes after the applicant submits an application to the department for a license under this chapter or after the department issues the license, the license holder shall report the change to the department and pay a fee not to exceed $50 not later than the time specified by department rule.

(b) The executive commissioner by rule shall:

(1) specify the information provided in an application that a license holder shall report to the department if the information changes;

(2) prescribe the time for reporting a change in the application information required by Subdivision (1);

(3) establish which changes required to be reported under Subdivision (1) will require department evaluation and approval; and

(4) set the amount of a late fee to be assessed against a license holder who fails to report a change in the application information within the time prescribed under Subdivision (2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.06, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 14, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0404, eff. April 2, 2015.

Sec. 142.0105. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by submitting a completed application for renewal and paying the required renewal fee to the department not later than the 45th day before the expiration date of the license. A person whose license has expired may not engage in activities that require a license.

(b) An applicant for a license renewal who submits an application later than the 45th day before the expiration date of the license is subject to a late fee in accordance with department rules.

(c) Not later than the 120th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department. The written notice must include an application for license renewal and instructions for completing the application.

Added by Acts 1999, 76th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 8, eff. September 1, 2007.

Sec. 142.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny a license application or suspend or revoke the license of a person who:

(1) fails to comply with the rules or standards for licensing required by this chapter; or

(2) engages in conduct that violates Section 102.001, Occupations Code.

(b) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the home and community support services agency adequate notice of the action taken, the legal grounds for the action, and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the seventh day after the effective date of the suspension or revocation.

(c) The department may suspend or revoke a home and community support services agency's license to provide certified home health services if the agency fails to maintain its certification qualifying the agency as a certified agency. A home and community support services agency that is licensed to provide certified home health services and that submits a request for a hearing as provided by Subsection (d) is subject to the requirements of this chapter relating to a home and community support services agency that is licensed to provide home health services, but not certified home health services, until the suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court.

(d) A person whose application is denied or whose license is suspended or revoked is entitled to a hearing if the person submits a written request to the commission. Chapter 2001, Government Code, and the department's rules for contested case hearings apply to hearings conducted under this section and to appeals from department decisions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 47, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 800, Sec. 14, eff. Sept. 1, 1993; Acts 1995,

74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 276, Sec. 9, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.07, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 15, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0405, eff. April 2, 2015.

Sec. 142.012. POWERS AND DUTIES. (a) The executive commissioner shall adopt rules necessary to implement this chapter. The executive commissioner may adopt rules governing the duties and responsibilities of home and community support services agency administrators, including rules regarding:

(1) an administrator's management of daily operations of the home and community support services agency;

(2) an administrator's responsibility for supervising the provision of quality care to agency clients;

(3) an administrator's implementation of agency policy and procedures; and

(4) an administrator's responsibility to be available to the agency at all times in person or by telephone.

(b) The executive commissioner by rule shall set minimum standards for home and community support services agencies licensed under this chapter that relate to:

(1) qualifications for professional and nonprofessional personnel, including volunteers;

(2) supervision of professional and nonprofessional personnel, including volunteers;

(3) the provision and coordination of treatment and services, including support and bereavement services, as appropriate;

(4) the management, ownership, and organizational structure, including lines of authority and delegation of responsibility and, as appropriate, the composition of an interdisciplinary team;

(5) clinical and business records;

(6) financial ability to carry out the functions as proposed;

(7) safety, fire prevention, and sanitary standards for residential units and inpatient units; and

(8) any other aspects of home health, hospice, habilitation, or personal assistance services as necessary to protect the public.

(c) The initial minimum standards adopted under Subsection (b) for hospice services must be at least as stringent as the conditions of participation for a Medicare certified provider of hospice services in effect on April 30, 1993, under Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

(d) The department shall prescribe forms necessary to perform its duties.

(e) The department shall require each person or home and community support services agency providing home health, hospice, habilitation, or personal assistance services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 15, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 1.08, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 12, eff. September 1, 2015.

Sec. 142.013. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a person is violating this chapter, may by injunction:

(1) prohibit the person from continuing the violation; or

(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

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

Sec. 142.014. CIVIL PENALTY. (a) A person who engages in the business of providing home health, hospice, habilitation, or personal assistance service, or represents to the public that the person is a provider of home health, hospice, habilitation, and personal assistance services for pay, without a license issued under this chapter authorizing the services that are being provided is liable for a civil penalty of not less than $1,000 or more than $2,500 for each day of violation. Penalties may be appropriated only to the department and to administer this chapter.

(b) An action to recover a civil penalty is in addition to an action brought for injunctive relief under Section 142.013 or any other remedy provided by law. The attorney general shall bring suit on behalf of the state to collect the civil penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 16, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 13, eff. September 1, 2015.

Sec. 142.0145. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a home and community support services agency that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.02, eff. Sept. 1, 1999.

Sec. 142.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates:

(1) this chapter or a rule adopted under this chapter; or

(2) Section 102.001, Occupations Code, if the violation

relates to the provision of home health, hospice, habilitation, or personal assistance services.

(b) The penalty shall be not less than $100 or more than $1,000 for each violation. Each day of a violation that occurs before the day on which the person receives written notice of the violation from the department does not constitute a separate violation and shall be considered to be one violation. Each day of a continuing violation that occurs after the day on which the person receives written notice of the violation from the department constitutes a separate violation.

(c) The executive commissioner by rule shall specify each violation for which the department may assess an administrative penalty. In determining which violations warrant penalties, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The executive commissioner by rule shall establish a schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or safety of clients;

(2) the history of previous violations by the person or a controlling person with respect to that person;

(3) whether the affected home and community support services agency had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation; and

(6) any other matters that justice may require.

(e) Except as provided by Subsection (j), the executive commissioner by rule shall provide the home and community support services agency with a reasonable period of time following the first day of a violation to correct the violation before the department

assesses an administrative penalty if a plan of correction has been implemented.

(f) An administrative penalty may not be assessed for minor violations unless those violations are of a continuing nature or are not corrected.

(g) The executive commissioner shall establish a system to ensure standard and consistent application of penalties regardless of the home and community support services agency location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The department may not assess an administrative penalty against a state agency.

(j) The department may assess an administrative penalty without providing a reasonable period of time to the agency to correct the violation if the violation:

(1) results in serious harm or death;

(2) constitutes a serious threat to health or safety;

(3) substantially limits the agency's capacity to provide care;

(4) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false, of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by the department;

(B) refuses to allow a representative of the department to inspect a book, record, or file required to be maintained by an agency;

(C) wilfully interferes with the work of a representative of the department or the enforcement of this chapter;

(D) wilfully interferes with a representative of the department preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(E) fails to pay a penalty assessed by the department under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from the department that the previously submitted plan of correction is not acceptable;

(5) is a violation of Section 142.0145; or

(6) involves the rights of the elderly under Chapter 102, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 276, Sec. 10, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.778, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 9, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0406, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 14, eff. September 1, 2015.

Sec. 142.0171. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty based on the factors listed in Section 142.017(d); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that

determination.

(c) If the person notified of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the department shall order the person to pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0407, eff. April 2, 2015.

Sec. 142.0172. HEARING; ORDER. (a) If the person notified requests a hearing, the department shall refer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.

(a-1) The department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0408, eff. April 2, 2015.

Sec. 142.0173. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 142.0172(c) to the person alleged to have committed the violation. The notice must include:

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

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10 days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to

the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A), or gave a supersedeas bond, and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.0174. USE OF ADMINISTRATIVE PENALTY. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 1, eff. September

1, 2005.

Sec. 142.0175. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 142.013 or 142.014 or to enforce an administrative penalty assessed under Section 142.0173 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 1191, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.018. REPORTS OF ABUSE, EXPLOITATION, OR NEGLECT. (a) In this section, "abuse," "exploitation," and "neglect" have the meanings applicable through a rule adopted by the executive commissioner under Section 48.002(c), Human Resources Code, except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a), Human Resources Code, shall be used.

(b) A home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency shall report the information to the commission.

(c) This section does not affect the duty or authority of any state agency to conduct an investigation of alleged abuse, exploitation, or neglect as provided by other law. An investigation of alleged abuse, exploitation, or neglect may be conducted without an on-site survey, as appropriate.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.197, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0409, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 5, eff. September 1, 2023.

Sec. 142.019. CERTAIN PHYSICIAN REFERRALS PROHIBITED. A physician may not refer a patient to a home and community support services agency if the referral violates 42 U.S.C. Section 1395nn and its subsequent amendments.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 11, eff. Sept. 1, 1999.

Sec. 142.020. DISPOSAL OF SPECIAL OR MEDICAL WASTE. (a) A home and community support services agency that generates special or medical waste while providing home health services must dispose of the waste in the same manner that the home and community support services agency disposes of special or medical waste generated in the agency's office location.

(b) A home and community support services agency shall provide both verbal and written instructions to the agency's client regarding the proper procedure for disposing of sharps. Sharps include hypodermic needles; hypodermic syringes with attached needles; scalpel blades; razor blades, disposable razors, and disposable scissors used in medical procedures; and intravenous stylets and rigid introducers.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 12, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 1999.

Sec. 142.0201. REGISTRATION FOR EVACUATION; DISASTER PREPAREDNESS. A home and community support services agency shall:

(1) assist clients as necessary with registering for disaster evacuation assistance through 2-1-1 services provided by the Texas Information and Referral Network; and

(2) counsel clients as necessary regarding disaster preparedness.

Added by Acts 2009, 81st Leg., R.S., Ch. 459 (H.B. 2558), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. PERMITS TO ADMINISTER MEDICATION

Sec. 142.021. ADMINISTRATION OF MEDICATION. A person may not administer medication to a client of a home and community support services agency unless the person:

(1) holds a license under state law that authorizes the person to administer medication;

(2) holds a permit issued under Section 142.025 and acts under the delegated authority of a person who holds a license under state law that authorizes the person to administer medication;

(3) administers a medication to a client of a home and community support service agency in accordance with rules of the Texas Board of Nursing that permit delegation of the administration of medication to a person not holding a permit under Section 142.025; or

(4) administers noninjectable medication under circumstances authorized by the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 19, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1191, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 65, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0410, eff. April 2, 2015.

Sec. 142.022. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 142.021 and 142.029 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical

experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under Section 142.024 who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 4, eff. June 19, 1990. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.009, eff. Feb. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 66, eff. September 1, 2007.

Sec. 142.023. RULES FOR ADMINISTRATION OF MEDICATION. The executive commissioner by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to a home health medication aide;

(2) curricula to train a home health medication aide;

(3) minimum standards for the approval of home health medication aide training programs and for rescinding approval;

(4) the acts and practices that are allowed or prohibited to a permit holder; and

(5) minimum standards for on-site supervision of a permit holder by a registered nurse.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 20, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0411, eff.

April 2, 2015.

Sec. 142.024. HOME HEALTH MEDICATION AIDE TRAINING PROGRAMS. (a) An application for the approval of a home health medication aide training program must be made to the department on a form prescribed by the department and under department rules.

(b) The department shall approve a home health medication aide training program that meets the minimum standards adopted under Section 142.023. The department may review the approval annually.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 21, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0412, eff. April 2, 2015.

Sec. 142.025. ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) To be issued or to have renewed a home health medication aide permit, a person shall apply to the department on a form prescribed by the department and under department rules.

(b) The department shall prepare and conduct an examination for the issuance of a permit.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) The department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 142.023;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee specified in department rules.

(e) A permit is valid for one year and is not transferable.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 22, 23, eff. Sept. 1, 1993.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0413, eff. April 2, 2015.

Sec. 142.026. FEES FOR ISSUANCE AND RENEWAL OF HOME HEALTH MEDICATION AIDE PERMIT. (a) The executive commissioner by rule shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions under this subchapter. The fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

(b) Fees received under this section may only be appropriated to the department to administer this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 24, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0414, eff. April 2, 2015.

Sec. 142.027. VIOLATION OF HOME HEALTH MEDICATION AIDE PERMITS. (a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:

(1) deny, suspend, revoke, or refuse to renew a permit;

(2) suspend a permit in an emergency; or

(3) rescind training program approval.

(b) Except as provided by Section 142.028, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.028. EMERGENCY SUSPENSION OF HOME HEALTH MEDICATION AIDE PERMITS. (a) The department shall issue an order to suspend a permit issued under Section 142.025 if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 26, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 142.029. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a client of a home and community support services agency and the person is not authorized to administer the medication under Section 142.021 or 142.022.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 27, eff. Sept. 1, 1993.

Sec. 142.030. DISPENSING DANGEROUS DRUGS OR CONTROLLED SUBSTANCES; CRIMINAL PENALTY. (a) A person authorized by this subchapter to administer medication to a client of a home and community support services agency may not dispense dangerous drugs or controlled substances without complying with Subtitle J, Title 3, Occupations Code.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 3, eff. June 19, 1990. Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 28, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 14.779, eff. Sept. 1, 2001.

SUBCHAPTER C. DISPOSAL OF CONTROLLED SUBSTANCE PRESCRIPTION DRUGS BY HOSPICE SERVICE PROVIDER

Sec. 142.041. DEFINITION. In this subchapter, "license holder" means a home and community support services agency licensed under this chapter to provide hospice services.

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff. September 1, 2019.

Sec. 142.042. POLICY. (a) A license holder may adopt written policies and procedures related to the disposal of a patient's unused controlled substance prescription drugs on the patient's death or in other circumstances in which disposal is appropriate.

(b) A license holder that adopts policies and procedures under this section shall:

(1) provide a copy of the policies and procedures to the patient and the patient's family;

(2) discuss the policies and procedures with the patient and the patient's family in a language and manner the patient and patient's family understand; and

(3) document in the patient's clinical record that the policies and procedures were provided and discussed under Subdivisions (1) and (2).

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff. September 1, 2019.

Sec. 142.043. EMPLOYEE TRAINING. (a) This section applies to an employee of a license holder who is a health care professional licensed under Title 3, Occupations Code.

(b) A license holder may provide training to the employees

described by Subsection (a) regarding the secure and responsible disposal of controlled substance prescription drugs in a manner that discourages abuse, misuse, or diversion.

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff. September 1, 2019.

Sec. 142.044. AUTHORIZED DISPOSAL. (a) If the license holder has complied with Section 142.042(b) with respect to a patient, a health care professional employee who has completed the training under Section 142.043(b) may confiscate and dispose of a patient's controlled substance prescription drug if:

(1) the patient has died;

(2) the drug has expired; or

(3) the patient's physician has given written instructions that the patient should no longer use the drug.

(b) The employee confiscating the controlled substance prescription drug shall dispose of the drug in a manner consistent with recommendations of the United States Food and Drug Administration and the laws of this state.

(c) The disposal of a controlled substance prescription drug under this section must occur at the location at which the drug was confiscated and be witnessed by another person 18 years of age or older.

(d) After disposing of the controlled substance prescription drug, the employee shall document in the patient's record:

(1) the name of the drug;

(2) the dosage of the drug the patient was receiving;

(3) the route of controlled substance prescription drug administration;

(4) the quantity of the controlled substance prescription drug originally dispensed and the quantity of the drug remaining; and

(5) the time, date, and manner of disposal.

(e) An employee shall document in a patient's file if a family member of the patient prevented the confiscation and disposal of a controlled substance prescription drug as authorized under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 829 (H.B. 2594), Sec. 1, eff. September 1, 2019.

CHAPTER 142A. SUPPORTIVE PALLIATIVE CARE SERVICES

Sec. 142A.0001. DEFINITION. In this chapter, "supportive palliative care" means physician-directed interdisciplinary patient- and family-centered care provided to a patient with a serious illness without regard to the patient's age or terminal prognosis that:

(1) may be provided concurrently with methods of treatment or therapies that seek to cure or minimize the effects of the patient's illness; and

(2) seeks to optimize the quality of life for a patient with a life-threatening or life-limiting illness and the patient's family through various methods, including methods that seek to:

(A) anticipate, prevent, and treat the patient's total suffering related to the patient's physical, emotional, social, and spiritual condition;

(B) address the physical, intellectual, emotional, cultural, social, and spiritual needs of the patient; and

(C) facilitate for the patient regarding treatment options, education, informed consent, and expression of desires.

Added by Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 1, eff. June 10, 2019.

Sec. 142A.0002. REFERENCE IN OTHER LAW. Notwithstanding any other law, a reference in this code or other law to palliative care means supportive palliative care.

Added by Acts 2019, 86th Leg., R.S., Ch. 609 (S.B. 916), Sec. 1, eff. June 10, 2019.

CHAPTER 143. INDUSTRIAL HOMEWORK

Sec. 143.001. DEFINITIONS. In this chapter:

(1) "Employer" means a person who, directly, indirectly, or through an employee, agent, independent contractor, or any other person, delivers to another person materials for articles that are:

(A) to be manufactured in a home and returned to the employer; and

(B) not for the personal use of the employer or a

member of the employer's family.

(2) "Home" means a room, house, apartment, or other premises, whichever is most extensive, that is used in whole or in part as a dwelling.

(3) "Industrial homework" means the manufacture, in a home, of articles for an employer.

(4) "Manufacture" includes preparation, alteration, repair, or finishing, in whole or in part, for profit or compensation.

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

Sec. 143.002. EMPLOYER'S PERMIT REQUIRED. (a) An employer may not deliver materials for industrial homework to any person in this state without an employer's permit issued by the board.

(b) If the employer is not a resident of this state, the employer's agent must hold the employer's permit.

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

Sec. 143.003. EMPLOYER'S PERMIT APPLICATION AND ISSUANCE; TERM. (a) An applicant must apply for an employer's permit in the form prescribed by board rule.

(b) The application must be accompanied by a $50 permit fee.

(c) An employer's permit is valid for one year from the date of issuance.

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

Sec. 143.004. SUSPENSION OR REVOCATION OF EMPLOYER'S PERMIT. The board may suspend or revoke an employer's permit if the board finds that the employer has violated this chapter or has failed to comply with a provision of the permit.

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

Sec. 143.005. HOMEWORKER'S CERTIFICATE REQUIRED. (a) A person may not engage in industrial homework without a homeworker's

certificate issued by the board.

(b) A homeworker's certificate is valid only for work performed by the certificate holder in the certificate holder's home.

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

Sec. 143.006. HOMEWORKER'S CERTIFICATE APPLICATION AND ISSUANCE; TERM. (a) An applicant must apply for a homeworker's certificate in the form prescribed by board rule. Each applicant must present a health certificate or other evidence of good health as required by the board.

(b) The application must be accompanied by a fee in an amount set by the board, but not to exceed 50 cents.

(c) A homeworker's certificate is valid for one year from the date of issuance.

(d) The board may not issue a homeworker's certificate to a person who:

(1) is younger than 15 years of age;

(2) suffers from a communicable disease; or

(3) lives in a home that is not clean, sanitary, and free from communicable diseases.

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

Sec. 143.007. SUSPENSION OR REVOCATION OF HOMEWORKER'S CERTIFICATE. The board may suspend or revoke a homeworker's certificate if the board finds that the industrial homeworker:

(1) is performing industrial homework in violation of the conditions under which the certificate was issued or in violation of this chapter; or

(2) has allowed a person who does not hold a homeworker's certificate to assist the homeworker in performing the industrial homework.

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

Sec. 143.008. PROHIBITION ON ISSUANCE OF PERMIT OR CERTIFICATE. The board may not issue an employer's permit or a homeworker's

certificate to authorize industrial homework or the delivery of materials for industrial homework if the board determines that the industrial homework:

(1) is injurious to the health or welfare of industrial homeworkers in that industry or to the public; or

(2) makes it unduly difficult to maintain or enforce health standards established by law or rule for factory workers in that industry.

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

Sec. 143.009. ORDER PROHIBITING CERTAIN INDUSTRIAL HOMEWORK; HEARING. (a) The board by order shall prohibit industrial homework in a certain industry and shall require employers in that industry to stop delivering in this state any materials for that industrial homework if the board determines, after investigation, that the industrial homework may not be continued in that industry without injuring the health and welfare of industrial homeworkers in that industry or of the public.

(b) Before adopting an order under Subsection (a), the board must hold a public hearing at which an opportunity to be heard must be afforded to any person having an interest in the subject matter of the hearing, including:

(1) an employer or a representative of employers; or

(2) an industrial homeworker or a representative of industrial homeworkers.

(c) The board must give public notice of the hearing:

(1) not later than the 30th day before the date on which the hearing is held; and

(2) in a manner determined by the board.

(d) The board shall hold the hearing in the place the board determines to be most convenient to the employers and industrial homeworkers affected by the order.

(e) The board shall determine the effective date of the order, which may not be less than 90 days after the date of its adoption.

(f) After an order becomes effective, a person holding an employer's permit may not deliver materials for the industrial homework prohibited by the order.

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

Sec. 143.010. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules necessary to implement this chapter and shall enforce this chapter.

(b) The board or the board's representative shall conduct all inspections and investigations necessary to enforce this chapter.

(c) The board or the board's representative may:

(1) administer oaths;

(2) take affidavits;

(3) issue subpoenas;

(4) compel the attendance of witnesses and the production of books, contracts, documents, or any other evidence;

(5) hear testimony under oath; and

(6) take depositions of witnesses who reside in this state or outside this state in the manner provided by law for similar depositions in civil actions in a justice court.

(d) A subpoena or commission to take testimony shall be issued under the seal of the board.

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

Sec. 143.011. PROHIBITION ON CERTAIN DELIVERIES BY EMPLOYER. An employer may not deliver or cause to be delivered any materials for industrial homework to a person who does not possess an employer's permit or a homeworker's certificate issued in accordance with this chapter.

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

Sec. 143.012. RECORD REQUIREMENTS; INVESTIGATION. (a) A person who holds an employer's permit may not deliver or cause to be delivered or received materials for industrial homework or receive an article as a result of industrial homework unless the employer keeps a record of:

(1) the persons engaged in industrial homework on materials delivered by that employer;

(2) the places where those persons work;

(3) the articles that those persons have manufactured;

(4) the agents or contractors to whom the employer has delivered materials for industrial homework; and

(5) the persons from whom the employer has received materials for industrial homework.

(b) The employer shall maintain and report the information in the manner prescribed by board rule and on forms that the board may provide.

(c) The information and records required by this section may be used by the board only to enforce this chapter and may not be published or disclosed except to representatives of the board enforcing this chapter.

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

Sec. 143.013. LABEL REQUIREMENT. (a) An employer may not deliver or cause to be delivered materials for industrial homework unless there has been conspicuously affixed to those materials a label or other identifying trademark that bears the employer's name and address printed or written legibly in English.

(b) The label must be affixed to the package or container in which the materials are delivered or are to be kept if it is impossible to affix the label to the materials.

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

Sec. 143.014. DISPOSITION OF UNLAWFULLY MANUFACTURED ARTICLES. (a) The board may remove from a home articles that are being manufactured in the home in violation of this chapter and materials used to manufacture those articles.

(b) The board shall give notice of the removal by registered mail to the person whose name and address are affixed to the materials as provided by Section 143.013.

(c) The board may retain the materials or articles until they are claimed by the employer, and if they are not claimed before the 31st day after the date on which the notice is sent, the board may destroy or otherwise dispose of the materials or articles.

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

Sec. 143.015. CRIMINAL PENALTY. (a) An employer commits an offense if the employer:

(1) violates Section 143.002;

(2) refuses to allow the board or its representative to enter the employer's place of business to conduct an investigation authorized by this chapter;

(3) refuses to permit the board or its representative to inspect or copy the employer's records or other documents related to the enforcement of this chapter;

(4) makes an oral statement that the employer is required by the commissioner to make and the statement made is false; or

(5) otherwise violates this chapter or any provision of the employer's permit.

(b) A person commits an offense if the person violates a rule adopted by the board.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $25 or more than $200, imprisonment for not less than 30 days or more than 60 days, or both.

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

CHAPTER 144. RENDERERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 144.002. DEFINITIONS. In this chapter:

(1) "Dead animal" means the whole or substantially whole carcass of a dead or fallen domestic animal, or domesticated wild animal, that was not slaughtered for human consumption.

(2) "Dead animal hauler" means a person who collects and disposes of dead animals for commercial purposes.

(3) "Disposal" means the burying, burning, cooking, processing, or rendering of dead animals or of renderable raw materials.

(4) "Employee" means a person who:

(A) is a legal employee of a rendering establishment; and

(B) handles or operates rendering equipment, utensils, containers, vehicles, or packaging materials owned or leased by the rendering establishment.

(5) "Nuisance" means any situation or condition that

constitutes a nuisance under Section 341.011.

(6) "Person" means an individual, firm, partnership, association, corporation, trust, company, or organization, and includes an agent, officer, or employee of that individual or entity.

(7) "Processing" means an operation or combination of operations through which materials derived from a dead animal or renderable raw material sources are:

(A) prepared for disposal at a rendering establishment;

(B) stored; or

(C) treated for commercial use or disposition, other than as food for human consumption.

(8) "Related station" means an operation or facility that is necessary or incidental to the operation of a rendering establishment and that is operated or maintained separately from the rendering establishment.

(9) "Rendering business" means the collection, transportation, disposal, or storage of dead animals or renderable raw materials for commercial purposes at locations where dead animals or renderable raw materials are rendered, boiled, processed, stored, transferred, or otherwise prepared, either as a separate business or in connection with any other established business.

(10) "Rendering establishment" means an establishment or part of an establishment, a plant, or any other premises at which dead animals or renderable raw materials are rendered, boiled, processed, or otherwise prepared to obtain a product for commercial use or disposition, other than as food for human consumption. The term includes all other operations and facilities that are necessary or incidental to the establishment.

(11) "Renderable raw material" means any unprocessed or partially processed material of animal or plant origin, other than a dead animal, that is processed by rendering establishments. The term includes:

(A) animals, poultry, or fish slaughtered or processed for human consumption but that are unsuitable for that use;

(B) the inedible products and by-products of animals, poultry, or fish slaughtered or processed for human consumption;

(C) parts from dead animals;

(D) whole or partial carcasses of dead poultry or fish;

(E) waste cooking greases; and

(F) recyclable cooking oil.

(12) "Recyclable cooking oil" means any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and intended for recycling by being used or reused as:

(A) an ingredient in a process to make a product; or

(B) an effective substitute for a commercial product.

(13) "Renderable raw material hauler" means a person who collects or transports renderable raw materials for commercial purposes.

(14) "Transfer station" means a facility at which renderable raw materials are transferred from one conveyance to another.

(15) "Waste cooking grease" means any unprocessed or partially processed grease, fat, or oil previously used in the cooking or preparation of food for human consumption and no longer suitable for such use.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 1, eff. Sept. 1, 1999.

Sec. 144.003. CONSTRUCTION OF OTHER LAWS. (a) This chapter does not affect:

(1) Chapter 141, Agriculture Code; or

(2) any state law or a rule of any public regulatory body that relates to the control of water or air pollution.

(b) This chapter does not affect a municipality's power to regulate by ordinance rendering businesses within the boundaries of the municipality. However, each rendering establishment, related station, transfer station, dead animal hauler, or renderable raw material hauler subject to a municipal ordinance shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER C. OPERATING PROCEDURES

Sec. 144.021. GENERAL REQUIREMENTS FOR RENDERING OPERATIONS. Each rendering establishment, related station, transfer station, dead animal hauler, or renderable raw material hauler shall adopt

operating procedures that:

(1) provide for the sanitary performance of rendering operations and processes;

(2) prevent the spread of infectious or noxious materials; and

(3) ensure that finished products are free from disease-producing organisms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0416, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.005, eff. September 1, 2015.

Sec. 144.022. RECORDS. (a) Each rendering establishment, related station, or dead animal hauler shall have a dead animal log that meets the requirements prescribed by department rule. The name of the rendering establishment, related station, or dead animal hauler must be on the front of the log.

(b) A rendering establishment, related station, or dead animal hauler that receives a dead animal shall enter the following information in the log:

(1) the date and time of the pickup of the dead animal;

(2) the name of the driver of the collection vehicle;

(3) a description of the dead animal;

(4) the location of the dead animal, including the county; and

(5) the owner of the dead animal, if known.

(c) The rendering establishment, related station, or dead animal hauler shall also keep a record in the log, or in an appendix to the log, of the general route followed in making the collection.

(d) The log is subject to inspection at all reasonable times by the department or a person with written authorization from the department.

(e) This section does not apply to a renderable raw material hauler.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0417, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.006, eff. September 1, 2015.

Sec. 144.023. VEHICLES. (a) A vehicle used to transport dead animals or renderable raw materials to or from a rendering establishment must:

(1) be leak-proof and maintained in a manner that precludes the creation of a nuisance; and

(2) comply with each applicable requirement for operation on the public roads or highways, including applicable insurance requirements and gross vehicle weight limitations.

(b) A collection vehicle shall be held to a minimum number of stops, and the stops shall be brief, while traveling to the establishment with dead animals or renderable raw materials. Each collection vehicle shall be washed and sanitized at the end of each day's operations.

(c) A truck bed used to transport dead animals or renderable raw materials shall be thoroughly washed and sanitized before use for the transport of finished rendered products. A truck bed used to transport dead animals or renderable raw materials to a rendering establishment, or to transfer finished rendered products from an establishment, shall, before being used to transport any product intended for human consumption, be thoroughly sanitized with a bactericidal agent that is safe for use in a rendering establishment. A truck bed may not be used to transport dead animals or renderable raw materials at the same time the truck bed or any part of the truck bed is used to transport any product intended for human consumption, notwithstanding the manner in which part of the truck bed is sealed or separated from the remainder of the bed.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(3), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(3), eff. September 1, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.007, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.008, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(3), eff. September 1, 2015.

Sec. 144.024. TREATMENT OF DEAD ANIMALS OR RENDERABLE RAW MATERIALS. (a) Dead animals or renderable raw materials received by a rendering establishment shall either be immediately placed in the rendering process or stored for not more than 48 hours in a manner that precludes the creation of a nuisance or a malodorous condition.

(b) Cooking or other dehydration operations shall be conducted in a manner that prevents the survival of disease-producing organisms in the processed material. Adequate and suitable means for the treatment of cooking vapors shall be provided and operated in a manner that controls odors.

(c) All cooked or finished materials shall be kept apart from areas where dead animals or renderable raw materials are kept in a manner that prevents contamination.

(d) If a person intends to use oil or grease as an ingredient in livestock feed or in topical cosmetic products, the person may not contaminate or commingle waste cooking greases or recyclable cooking oils with grease trap waste, grit trap waste, or any other substance that would render the greases or oils harmful or otherwise unsuitable for use as an ingredient in livestock feed or in topical cosmetic products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 8, eff. Sept. 1, 1999.

Sec. 144.025. FLOORS. (a) During operations, the floors in processing areas shall be kept reasonably free from processing wastes, including:

(1) blood;

(2) manure;

(3) scraps;

(4) grease;
(5) water;
(6) dirt; and
(7) litter.

(b) The floors shall be thoroughly cleaned at the end of each day's operations.

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

Sec. 144.026. WASTE TREATMENT. (a) Waste shall be handled and disposed of in a manner that prevents contamination of:

(1) the water supply;
(2) processing equipment;
(3) packaging materials; and
(4) finished products.

(b) Liquid waste shall be treated in the manner required by the department and disposed of in a manner approved by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0418, eff. April 2, 2015.

Sec. 144.027. EMPLOYEE FACILITIES. (a) Adequate and convenient toilet facilities for employees shall be located in an establishment.

(b) An adequate number of lavatory facilities for employees to wash their hands shall be provided at convenient locations in the establishment and must be supplied with warm water under pressure and with soap or another detergent.

(c) A drinking water supply shall be provided at convenient locations in the establishment for the use of employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.009, eff. September 1, 2015.

Sec. 144.028. HYGIENE REQUIREMENTS. A person engaging in rendering processes or operations shall wear washable garments and accessories and conform to hygienic practices.

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

Sec. 144.029. SANITARY CONDITIONS REQUIRED. (a) The premises of a rendering establishment shall be kept clean and neat, in good repair, and reasonably free from:

(1) undue collection of refuse;
(2) waste materials;
(3) rodent infestation;
(4) insect breeding places;
(5) standing water; and
(6) other objectionable conditions.

(b) Equipment and utensils shall be provided as necessary for the rendering establishment to conduct operations in a sanitary manner.

(c) Rodents, roaches, and other vermin shall be controlled.

(d) Hide storage facilities shall be in closed areas separate from all other areas.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 144.030. COLLECTION CONTAINER REQUIREMENTS. (a) A container in which dead animals or renderable raw materials are accumulated by a producer at collecting points for pickup by a dead animal hauler or renderable raw material hauler must remain on the premises at each collecting point.

(b) The owner of the containers shall maintain the containers in a leak-proof and sanitary condition and shall replace them as necessary.

(c) The transportation, delivery, transfer, loading, and off-loading of dead animals and renderable raw materials shall be performed in a manner that prevents the release of animal parts and spills or leaks of renderable raw materials from containers. A release of dead animal parts or spill or leak of renderable raw materials shall immediately be cleaned up and reported in the log required by Section 144.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 9, eff. Sept. 1, 1999.

SUBCHAPTER G. ADMINISTRATIVE AND ENFORCEMENT PROVISIONS; PENALTIES

Sec. 144.078. INJUNCTION. (a) The attorney general may bring an action in any district court of this state that has jurisdiction and venue for an injunction to compel compliance with this chapter or to restrain any actual or threatened violation of this chapter.

(b) The court may enter an order or judgment to award a preliminary or final injunction as it considers appropriate.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(15), eff. September 1, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 21, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.010, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(15), eff. September 1, 2015.

Sec. 144.079. PROHIBITED ACTS. (a) A person may not receive, hold, slaughter, butcher, or otherwise process any animal as food for human consumption in a building or compartmented area of a building used as a rendering establishment or related station.

(b) A person may not steal, misappropriate, contaminate, or damage recyclable cooking oil or containers of recyclable cooking oil.

(c) A renderer, hauler, or any other person may not knowingly take possession of stolen recyclable cooking oil.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 485, Sec. 22, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.011, eff. September 1, 2015.

CHAPTER 145. TANNING FACILITIES

Sec. 145.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(23), eff. September 1, 2015.

(2) "Fitzpatrick scale" means the following scale for classifying a skin type, based on the skin's reaction to the first 10 to 45 minutes of sun exposure after the winter season:

Skin Type	Sunburning and Tanning History
1	Always burns easily; never tans
2	Always burns easily; tans minimally
3	Burns moderately; tans gradually
4	Burns minimally; always tans well
5	Rarely burns; tans profusely
6	Never burns; deeply pigmented

(3) "Health authority" has the meaning assigned by Section 121.021.

(4) "Operator" means an owner of a tanning facility or an agent of an owner of a tanning facility.

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Phototherapy device" means a piece of equipment that emits ultraviolet radiation and is used by a health care professional in the treatment of disease.

(7) "Tanning device" means a device under Section 431.002 and includes any equipment, including a sunlamp, tanning booth, and tanning bed, that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers and is used for the tanning of human skin. The term also includes any accompanying equipment, including protective eyewear, timers, and handrails.

(8) "Tanning facility" means a business that provides persons access to or use of tanning devices.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 1, eff. June 15, 1995; Acts 2001, 77th Leg., ch. 473, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(23), eff. September 1, 2015.

Sec. 145.003. EXEMPTION. This chapter does not apply to a phototherapy device used by or under the supervision of a licensed physician trained in the use of phototherapy devices.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.

Sec. 145.004. COMPLIANCE WITH LAW. (a) A tanning device used by a tanning facility must comply with all applicable federal and state laws and regulations.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(24), eff. September 1, 2015.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 2, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0431, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(24), eff. September 1, 2015.

Sec. 145.005. CUSTOMER NOTICE; LIABILITY. (a) A tanning facility shall give each customer a written statement warning that:

(1) failure to use the eye protection provided to the customer by the tanning facility may result in damage to the eyes;

(2) overexposure to ultraviolet light causes burns;

(3) repeated exposure may result in premature aging of the skin and skin cancer;

(4) abnormal skin sensitivity or burning may be caused by reactions of ultraviolet light to certain:

(A) foods;

(B) cosmetics; or

(C) medications, including:

(i) tranquilizers;

(ii) diuretics;

(iii) antibiotics;

(iv) high blood pressure medicines; or

(v) birth control pills;

(5) any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device;

(6) a person with skin that always burns easily and never tans should avoid a tanning device; and

(7) a person with a family or past medical history of skin cancer should avoid a tanning device.

(b) Compliance with the notice requirement does not affect the liability of a tanning facility operator or a manufacturer of a tanning device.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 473, Sec. 2, eff. Sept. 1, 2001.

Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall post a warning sign in a conspicuous location where it is readily visible by persons entering the establishment. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

Repeated exposure to ultraviolet radiation may cause chronic sun damage characterized by wrinkling, dryness, fragility, bruising of the skin, and skin cancer.

DANGER: ULTRAVIOLET RADIATION

Failure to use protective eyewear may result in severe burns or permanent injury to the eyes.

Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medications, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women taking oral contraceptives who use this product may develop discolored skin.

A tanning facility operator who violates a law relating to the operation of a tanning facility is subject to a civil or criminal penalty. If you suspect a violation, please contact your local law enforcement authority or local health authority.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF AN ULTRAVIOLET LAMP OR SUNLAMP.

(b) A tanning facility operator shall also post a warning sign at each tanning device in a conspicuous location that is readily visible to a person about to use the device. The sign must have dimensions of at least 11 inches by 17 inches and must contain the following wording:

DANGER: ULTRAVIOLET RADIATION

1. Follow the manufacturer's instructions for use of this device.

2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.

3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

4. Do not sunbathe before or after exposure to ultraviolet radiation from sunlamps.

5. Medications or cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a sunlamp if you are using medication, have a history of skin problems, or believe you are especially sensitive to sunlight. Pregnant women or women using oral contraceptives who use this product may develop discolored skin.

A tanning facility operator who violates a law relating to the operation of a tanning facility is subject to a civil or criminal penalty. If you suspect a violation, please contact your local law enforcement authority or local health authority.

IF YOU DO NOT TAN IN THE SUN, YOU ARE UNLIKELY TO TAN FROM USE OF THIS DEVICE.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(25), eff. September 1, 2015.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 3, eff. June 15, 1995; Acts 2001, 77th Leg., ch. 473, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0432, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.012, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(25), eff. September 1, 2015.

Sec. 145.007. PROHIBITED CLAIMS ABOUT SAFETY. A tanning facility operator may not claim or distribute promotional materials that claim that using a tanning device is safe or free from risk or

that using a tanning device will result in medical or health benefits.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 4, eff. June 15, 1995.

Sec. 145.008. OPERATIONAL REQUIREMENTS. (a) A tanning facility shall have an operator present during operating hours. The operator must:

(1) be sufficiently knowledgeable in the correct operation of the tanning devices used at the facility;

(2) instruct, inform, and assist each customer in the proper use of the tanning devices;

(3) complete and maintain records required by this chapter; and

(4) explain or otherwise inform each customer initially using the tanning facility of:

(A) the potential hazards of and protective measures necessary for ultraviolet radiation;

(B) the requirement that protective eyewear be worn while using a tanning device;

(C) the possibility of photosensitivity or of a photoallergic reaction to certain drugs, medicine, or other agents when a person is subjected to the sun or ultraviolet radiation;

(D) the correlation between skin type and exposure time;

(E) the maximum exposure time to the facility's devices;

(F) the biological process of tanning; and

(G) the dangers of and the necessity to avoid overexposure to ultraviolet radiation.

(b) Before each use of a tanning device, the operator shall provide with each device clean and properly sanitized protective eyewear that protects the eyes from ultraviolet radiation and allows adequate vision to maintain balance. The protective eyewear shall be located in the immediate area of each tanning device and shall be provided without charge to each user of a tanning device. The operator may not allow a person to use a tanning device if that person does not use protective eyewear that meets the requirements of

the United States Food and Drug Administration. The operator also shall show each customer how to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device.

(c) The tanning facility operator shall clean and properly sanitize the body contact surfaces of a tanning device after each use of the tanning device.

(d) The tanning facility shall use a timer with an accuracy of at least plus or minus 10 percent of the maximum timer interval of the tanning device. The operator shall limit the exposure time of a customer on a tanning device to the maximum exposure time recommended by the manufacturer. A timer shall be located so that a customer cannot set or reset the customer's exposure time. The operator shall control the temperature of the customer contact surfaces of a tanning device and the surrounding area so that it may not exceed 100 degrees Fahrenheit.

(e) Before a customer uses a tanning facility's tanning device for the first time and each time a person executes or renews a contract to use a tanning facility, the person must provide photo identification and sign a written statement acknowledging that the person has read and understood the required warnings before using the device and agrees to use protective eyewear.

(f) To ensure the proper operation of the tanning equipment, a tanning facility may not allow a person younger than 18 years of age to use a tanning device.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1381, Sec. 2, eff. September 1, 2013.

(h) When a tanning device is in use by a person, another person may not be allowed in the area of the tanning device.

(i) A record of each customer using a tanning device shall be maintained at the tanning facility at least until the third anniversary of the date of the customer's last use of a tanning device. The record shall include:

(1) the date and time of the customer's use of a tanning device;

(2) the length of time the tanning device was used;

(3) any injury or illness resulting from the use of a tanning device;

(4) any written informed consent statement required to be signed under Subsection (e);

(5) the customer's skin type, as determined by the customer by using the Fitzpatrick scale for classifying a skin type;

(6) whether the customer has a family history of skin cancer; and

(7) whether the customer has a past medical history of skin cancer.

(j) An operator shall keep an incident log at each tanning facility. The log shall be maintained at the tanning facility at least until the third anniversary of the date of an incident. The log shall include each:

(1) alleged injury;

(2) use of a tanning device by a customer not wearing protective eyewear;

(3) mechanical problem with a tanning device; and

(4) customer complaint.

(k) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(26), eff. September 1, 2015.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 5, eff. June 15, 1995; Acts 2001, 77th Leg., ch. 473, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 626 (H.B. 1310), Sec. 1, eff. January 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 1381 (S.B. 329), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1381 (S.B. 329), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0433, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.013, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(26), eff. September 1, 2015.

Sec. 145.0096. CERTAIN ADVERTISING PROHIBITED. (a) This section applies only to a business that:

(1) is operated under a license or permit as a sexually oriented business issued in accordance with Section 243.007, Local

Government Code; or

(2) offers, as its primary business, a service or the sale, rental, or exhibition of a device or other item that is intended to provide sexual stimulation or sexual gratification to a customer.

(a-1) A business to which this section applies may not use the word "tan" or "tanning" in a sign or any other form of advertising.

(b) A person commits an offense if the person violates Subsection (a-1). Except as provided by Subsection (c), an offense under this subsection is a Class C misdemeanor.

(c) If it is shown on the trial of an offense under Subsection (b) that the person has previously been convicted of an offense under that subsection, the offense is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 7, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.014, eff. September 1, 2015.

Sec. 145.011. ACCESS TO RECORDS. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(30), eff. September 1, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.030(30), eff. September 1, 2015.

(c) A person who is required to maintain records under this chapter or a person in charge of the custody of those records shall, at the request of a health authority, permit the health authority access to copy or verify the records at reasonable times.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 9, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0436, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.015, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.016, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.030(30), eff. September 1, 2015.

Sec. 145.0121. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated or is violating this chapter, the attorney general, or the district, county, or municipal attorney in the jurisdiction where the violation is alleged to have occurred or may occur, may institute a civil suit for:

(1) an order enjoining the violation;

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy;

(3) the assessment and recovery of a civil penalty; or

(4) both injunctive relief and a civil penalty.

(b) A civil penalty may not exceed $25,000 a day for each violation. Each day the violation occurs constitutes a separate violation for the purposes of the assessment of a civil penalty.

(c) In determining the amount of the civil penalty, the court hearing the matter shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) the hazard to the health and safety of the public;

(4) the demonstrated good faith of the person charged; and

(5) any other matter as justice may require.

(d) Venue for a suit brought under this section is the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The attorney general may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the attorney general shall be used by the attorney general.

Added by Acts 1995, 74th Leg., ch. 684, Sec. 11, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0438, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.017, eff. September 1, 2015.

Sec. 145.013. CRIMINAL PENALTY. (a) A person, other than a customer, commits an offense if the person violates this chapter.

(b) An offense under this chapter is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 49, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 684, Sec. 12, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.018, eff. September 1, 2015.

Sec. 145.016. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), an operator or other person may not disclose a customer record required by Section 145.008(i).

(b) An operator or other person may disclose a customer record:

(1) if the customer, or a person authorized to act on behalf of the customer, requests the record;

(2) if a health authority requests the record under Section 145.011;

(3) if the customer consents in writing to the disclosure to another person;

(4) in a criminal proceeding in which the customer is a victim, witness, or defendant;

(5) if the record is requested in a criminal or civil proceeding by court order or subpoena; or

(6) as otherwise required by law.

Added by Acts 2001, 77th Leg., ch. 473, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.019, eff. September 1, 2015.

CHAPTER 146. TATTOO AND CERTAIN BODY PIERCING STUDIOS

Sec. 146.001. DEFINITIONS. In this chapter:

(1) "Body piercing" means the creation of an opening in an individual's body, other than in an individual's earlobe, to insert jewelry or another decoration.

(1-a) "Body piercer" means a person who performs body piercing.

(2) "Body piercing studio" means a facility in which body piercing is performed.

(3) "Tattoo" means the practice of producing an indelible mark or figure on the human body by scarring or inserting a pigment under the skin using needles, scalpels, or other related equipment. The term includes the application of permanent cosmetics.

(4) "Tattooist" means a person who performs tattooing.

(5) "Tattoo studio" means an establishment or facility in which tattooing is performed.

(6) "Temporary location" means a fixed location at which an individual operator performs tattooing or body piercing for a specified period of not more than seven days in conjunction with a single event or celebration, where the primary function of the event or celebration is tattooing or body piercing.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1226, Sec. 1, eff. Sept. 1, 2003.

Sec. 146.002. LICENSE REQUIRED. (a) A person may not conduct, operate, or maintain a tattoo studio unless the person holds a license issued by the department to operate the tattoo studio. Except as provided by Section 146.0025, a person may not conduct, operate, or maintain a body piercing studio unless the person holds a license issued by the department to operate the body piercing studio.

(b) Except as provided by Section 146.0025, a person may not practice tattooing or body piercing at a temporary location unless the person holds a temporary location license for tattooing or body piercing, as appropriate, issued by the department.

(c) The license must be displayed in a prominent place in the tattoo or body piercing studio or temporary location.

(d) Tattooing and body piercing are permitted only at a location that is in compliance with this chapter and rules adopted under this chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 3, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 3, eff. Sept. 1, 1999.

Sec. 146.0025. EXEMPTIONS FROM LICENSING REQUIREMENTS; EAR PIERCING ESTABLISHMENTS EXEMPT. (a) This chapter does not apply to:

(1) a medical facility licensed under other law;

(2) an office or clinic of a person licensed by the Texas Medical Board;

(3) a person who performs only ear piercing; or

(4) a facility in which only ear piercing is performed.

(b) A person who conducts, operates, or maintains a facility, office, or clinic described by Subsection (a)(1), (2), or (4) is not required to obtain a license under this chapter to operate that facility.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0440, eff. April 2, 2015.

Sec. 146.003. LICENSE APPLICATION. (a) To receive a tattoo studio license, body piercing studio license, or temporary location license, a person must submit a signed, verified license application to the department on a form prescribed by the department and must submit an application fee. In addition, the person must submit evidence from the appropriate zoning officials in the municipality or county in which the studio is proposed to be located that confirms that the studio is in compliance with existing zoning codes applicable to the studio.

(b) The department may issue a license or temporary location license for a tattoo or body piercing studio after determining that the studio is in compliance with applicable statutes, rules, and zoning codes.

(c) Repealed by Acts 1999, 76th Leg., ch. 1528, Sec. 9(1), eff. September 1, 1999.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 4, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1528, Sec. 1, 9(1), eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0441, eff. April 2, 2015.

Sec. 146.004. LICENSE TERM; RENEWAL. (a) A tattoo studio or body piercing studio license is valid for two years from the date of issuance. A temporary tattooing or body piercing location license is valid for a specified period not to exceed seven days.

(b) A tattoo studio or body piercing studio license may be renewed on payment of the required renewal fee.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 5, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0442, eff. April 2, 2015.

Sec. 146.0041. GENERAL GROUNDS FOR REFUSAL. (a) The department may refuse to issue an original or renewal tattoo studio or body piercing studio license if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(1) the applicant has been convicted of a violation of this chapter during the two years immediately preceding the filing of the application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for a conviction associated with tattooing or body piercing;

(3) the applicant violated or caused to be violated a provision of this chapter or a rule adopted under this chapter involving moral turpitude during the six months immediately preceding the filing of the application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for a fee or penalty imposed by this chapter or by rule adopted under this chapter;

(6) the applicant is a minor; or

(7) the applicant does not provide an adequate building available at the address for which the license is sought before

conducting any activity authorized by the license.

(b) The department may refuse to issue or renew, for a period of one year from the date of application for the initial or renewal license, a tattoo studio or body piercing studio license for a premises where a shooting, stabbing, or other violent act or an offense involving drugs occurred that involved a license applicant, license holder, or registrant under this chapter or a patron or employee of the studio.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0443, eff. April 2, 2015.

Sec. 146.0042. REVOCATION OR SUSPENSION OF LICENSE. (a) In Subsection (b), "license holder" includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock.

(b) The department may suspend for not more than 60 days or revoke an original or renewal tattoo studio or body piercing studio license if it is found, after notice and hearing, that any of the following is true:

(1) the license holder has been finally convicted of a violation of this chapter;

(2) the license holder violated a provision of this chapter or a rule adopted under this chapter;

(3) the license holder made a false or misleading statement in connection with the original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the department;

(4) the license holder is indebted to the state for fees or payment of penalties imposed by this chapter or by a rule adopted under this chapter;

(5) the license holder knowingly misrepresented to a customer or the public any tattoo or body piercing jewelry sold by the license holder; or

(6) the license holder was intoxicated on the licensed premises.

(c) The department may refuse to renew or, after notice and

hearing, suspend for not more than 60 days or revoke a tattoo studio or body piercing studio license if the department finds that the license holder is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 151, Tax Code, or is shown on the records of the comptroller as being subject to a final determination of taxes due and payable under Chapter 321, Tax Code.

(d) If a license holder cannot be located for any notice required under this section, the department shall provide notice by posting a copy of the order on the front door of the licensed premises.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0444, eff. April 2, 2015.

Sec. 146.005. FEES. The executive commissioner by rule shall set license and license renewal fees in amounts necessary to administer this chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 1226, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0445, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 5, eff. September 1, 2021.

Sec. 146.006. CHANGE OF LOCATION. (a) A person holding a tattoo studio or body piercing studio license under this chapter who intends to change the location of the tattoo or body piercing studio shall notify the department in writing of that intent not less than 30 days before the change is to occur. The notice shall include the street address of the new location and the name and residence address of the individual in charge of the business at the new location.

(b) Not later than the 10th day after the change of location is complete, a person holding a license under this chapter shall notify

the department in writing and shall verify the information submitted under Subsection (a).

(c) Notice under this section must be sent to the department's central office by certified mail, return receipt requested.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 6, eff. Sept. 1, 1999.

Sec. 146.007. COMPLIANCE WITH CHAPTER AND RULES. (a) A person who owns, operates, or maintains a tattoo or body piercing studio or practices tattooing or body piercing at a temporary location shall comply with this chapter, Chapter 431, and rules adopted under this chapter and Chapter 431.

(b) The department may enforce Chapter 431 in relation to a drug, cosmetic, or device that is used in tattooing and that is not otherwise subject to that chapter as if the drug, cosmetic, or device satisfied the definitions assigned those terms under Section 431.002.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 7, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 7, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1528, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0446, eff. April 2, 2015.

Sec. 146.008. ASEPTIC TECHNIQUES. A person who owns, operates, or maintains a tattoo or body piercing studio and each tattooist or person who performs body piercing who works in the studio or at a temporary location shall take precautions to prevent the spread of infection, including:

(1) using germicidal soap to clean the hands of the tattooist or person who performs body piercing and the skin area of the client to be tattooed or pierced;

(2) wearing clean apparel and rubber gloves;

(3) using sterile tools and equipment as provided by Section 146.011; and

(4) keeping the tattoo or body piercing studio or temporary

location in a sanitary condition.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 8, eff. Sept. 1, 1999.

Sec. 146.010. SANITATION REQUIREMENTS. (a) The executive commissioner by rule shall establish sanitation requirements for tattoo and body piercing studios and any other necessary requirements relating to the building or part of the building in which a tattoo or body piercing studio is located.

(b) A person who owns, operates, or maintains a tattoo or body piercing studio shall comply with the rules adopted under this section.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 10, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0447, eff. April 2, 2015.

Sec. 146.011. TOOLS AND EQUIPMENT. (a) A tattooist or person who performs body piercing shall use tools and equipment for tattooing or body piercing that have been properly sterilized and kept in a sterile condition.

(b) A tattooist or person who performs body piercing shall sterilize tools and equipment used on one client before using them on another client.

(c) Tools and equipment shall be sterilized by:

(1) the use of a dry heat sterilizer; or

(2) steam pressure treatment in an autoclave.

(d) All needles and instruments shall be kept in a clean, dust-tight container when not in use.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 516, Sec. 11, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1528, Sec. 3, eff. Sept. 1, 1999.

Sec. 146.012. TATTOOS PROHIBITED FOR CERTAIN PERSONS. (a) A tattooist may not tattoo:

(1) except as provided by Subsection (a-1), a person younger than 18 years of age; or

(2) a person who the tattooist suspects is under the influence of alcohol or drugs.

(a-1) A tattooist may tattoo a person younger than 18 years of age if:

(1) the tattoo will cover a tattoo that contains:

(A) obscene or offensive language or symbols;

(B) gang-related names, symbols, or markings;

(C) drug-related names, symbols, or pictures; or

(D) other words, symbols, or markings that the person's parent or guardian considers would be in the best interest of the person to cover; and

(2) the person has obtained consent from the person's parent or guardian to cover the tattoo.

(b) The consent required by Subsection (a-1) may be satisfied by the individual's parent or guardian:

(1) being physically present at the tattoo studio at the time the tattooing is performed;

(2) executing an affidavit stating that the person is the parent or guardian of the individual on whom the tattooing is to be performed;

(3) presenting evidence of the person's identity to the person who will perform the tattooing; and

(4) presenting evidence of the person's status as parent or guardian of the individual who will receive the tattoo.

(c) A person younger than 18 years of age commits an offense if the person falsely states that the person is 18 years of age or older or presents any document that indicates that the person is 18 years of age or older to a person engaged in the operation of a tattoo studio. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 11, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1226, Sec. 5, eff. Sept. 1, 2003.

Sec. 146.0124. BODY PIERCING PROHIBITED FOR CERTAIN PERSONS. A person may not perform body piercing if the person suspects that the individual on whom the body piercing is to be performed is under the influence of alcohol or drugs.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 12, eff. Sept. 1, 1999.

Sec. 146.0125. BODY PIERCING PROHIBITED WITHOUT PARENTAL CONSENT; EXCEPTION. (a) A person may not perform body piercing on an individual younger than 18 years of age without the consent of a parent, managing conservator, or guardian of the individual.

(b) The consent must indicate the part of the person's body that may be pierced.

(c) The consent required by Subsections (a) and (b) may be satisfied by the individual's parent or guardian:

(1) being physically present at the body piercing studio at the time the body piercing is performed;

(2) executing an affidavit stating that the person is the parent or guardian of the individual on whom the body piercing is to be performed;

(3) presenting evidence of the person's identity to the person who will perform the body piercing; and

(4) presenting evidence of the person's status as parent or guardian of the individual who will receive the body piercing.

(d) A person younger than 18 years of age commits an offense if the person falsely states that the person is 18 years of age or older or presents any document that indicates that the person is 18 years of age or older to a person engaged in the operation of a body piercing studio. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1999, 76th Leg., ch. 516, Sec. 12, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1226, Sec. 6, eff. Sept. 1, 2003.

Sec. 146.0126. TONGUE SPLITTING PROHIBITED. (a) For purposes of this section, "tongue splitting" means cutting a human tongue into two or more parts.

(b) A person may not perform tongue splitting.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 7, eff. Sept. 1, 2003.

Sec. 146.013. MAINTENANCE OF RECORDS. (a) A tattooist shall maintain a permanent record of each person tattooed by the tattooist for a period established by department rule. A person who performs body piercing shall maintain a permanent record of each individual whose body is pierced by the person for a period established by department rule.

(b) The record shall be available for inspection on the request of the department.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 516, Sec. 13, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0448, eff. April 2, 2015.

Sec. 146.014. REPORT OF INFECTION. A person who owns, operates, or maintains a tattoo or body piercing studio shall report to the department any infection resulting from tattooing or body piercing as soon as it becomes known.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 936, Sec. 12, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 14, eff. Sept. 1, 1999.

Sec. 146.015. RULES; ENFORCEMENT. (a) The executive commissioner shall adopt rules to implement this chapter.

(b) The department shall enforce this chapter and the rules adopted under this chapter and may issue orders to compel compliance.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0449, eff. April 2, 2015.

Sec. 146.016. INSPECTIONS. (a) The department shall inspect a tattoo or body piercing studio to determine if the studio complies with this chapter and the rules adopted under this chapter.

(b) A person who owns, operates, or maintains a tattoo or body piercing studio shall allow inspection of the studio by the department at any time the studio is in operation.

(c) The department shall inform the person who owns, operates, or maintains a tattoo or body piercing studio of any violation discovered by the department under this section and shall give the person a reasonable period in which to take necessary corrective action.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 936, Sec. 13, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 516, Sec. 15, eff. Sept. 1, 1999.

Sec. 146.017. LICENSE DENIAL, SUSPENSION, OR REVOCATION. (a) The department may refuse to issue a license or suspend or revoke a license issued under this chapter if an applicant or license holder does not comply with this chapter or a rule adopted or order issued under this chapter.

(b) The refusal to issue a license, the suspension or revocation of a license, and any appeals are governed by the department's formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code. A person may appeal a final decision of the department as provided by that chapter.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 5, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0450, eff. April 2, 2015.

Sec. 146.018. OFFENSE; CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1528, Sec. 6, eff. Sept. 1, 1999.

Sec. 146.019. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person who violates a rule adopted under Section 146.007 or an order adopted or license issued under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amounts necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The department shall issue an order that states the facts on which a determination that a violation occurred is based, including an assessment of the penalty.

(e) The department shall give written notice of the order to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of

the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall refer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall give written notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

(s) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(52), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 580, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), (55), (59), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1528, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0451, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(52), eff. April 2, 2015.

Sec. 146.020. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or an order issued or a rule adopted under this chapter, the commissioner may request the attorney general or the district attorney, county attorney, or municipal attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation;

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the department shows that the person has engaged in or is engaging in a violation;

(3) the assessment and recovery of a civil penalty; or

(4) both injunctive relief and a civil penalty.

(b) A civil penalty may not exceed $5,000 a day for each violation. Each day the violation occurs constitutes a separate violation for the purposes of the assessment of a civil penalty.

(c) In determining the amount of the civil penalty, the court hearing the matter shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) the hazard to the health and safety of the public;

(4) the demonstrated good faith of the person charged; and

(5) any other matter as justice may require.

(d) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the commissioner under this section may be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

Added by Acts 1999, 76th Leg., ch. 1528, Sec. 8, eff. Sept. 1, 1999.

Sec. 146.021. EMERGENCY ORDERS. (a) The commissioner may, with or without notice or hearing, issue an emergency order relating to regulation under this chapter of a tattooist or body piercer, or to the operation of a tattoo studio or body piercing studio, if the commissioner finds:

(1) that:

(A) the operation of the tattoo studio or body piercing studio or the performance of tattooing or body piercing by the tattooist or body piercer presents an immediate and serious threat to human health; or

(B) a shooting, stabbing, or other violent act or an offense involving drugs:

(i) occurred at the tattoo studio or body piercing studio; or

(ii) involved the tattooist or body piercer; and

(2) that other procedures available to the department to remedy or prevent the threat will result in an unreasonable delay.

(b) If the commissioner issues an emergency order under this section without a hearing, the department shall set a hearing under Chapter 2001, Government Code, to affirm, modify, or set aside the emergency order.

(c) If the license holder cannot be located for a notice required under this section, the department shall provide notice by

posting a copy of the order on the front door of the premises of the license holder.

Added by Acts 2003, 78th Leg., ch. 1226, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 6, eff. September 1, 2021.

CHAPTER 147. E-CIGARETTE RETAILER PERMITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 147.0001. DEFINITIONS. In this chapter:

(1) "Commercial business location" means the entire premises occupied by a permit applicant or a person required to hold a permit under this chapter.

(2) "E-cigarette" has the meaning assigned by Section 161.081.

(3) "E-cigarette retailer" means a person who engages in the business of selling e-cigarettes to consumers, including a person who sells e-cigarettes to consumers through a marketplace.

(4) "Marketplace" has the meaning assigned by Section 151.0242, Tax Code.

(5) "Permit holder" means a person who obtains a permit under Section 147.0052.

(6) "Place of business" means:

(A) a commercial business location where e-cigarettes are sold;

(B) a commercial business location where e-cigarettes are kept for sale or consumption or otherwise stored; or

(C) a vehicle from which e-cigarettes are sold.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0002. INAPPLICABILITY TO CERTAIN PRODUCTS. This chapter does not apply to a product described by Section 161.0815.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0003. HEARINGS. Unless otherwise provided by this chapter, the comptroller shall conduct all hearings required by this chapter in accordance with Chapter 2001, Government Code. The comptroller may designate one or more representatives to conduct the hearings and may prescribe the rules of procedure governing the hearings.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0004. RULES. The comptroller may adopt rules to implement this chapter, including rules exempting a person who sells e-cigarettes to consumers through a marketplace from the requirements of this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. PERMITS

Sec. 147.0051. E-CIGARETTE RETAILER PERMIT REQUIRED. (a) A person may not engage in business as an e-cigarette retailer in this state unless the person has been issued a permit from the comptroller.

(b) An e-cigarette retailer shall obtain a permit for each place of business owned or operated by the e-cigarette retailer. The comptroller may not issue a permit for a place of business that is a residence or a unit in a public storage facility.

(c) The comptroller shall prescribe the form and content of an application for a permit and provide the form on request.

(d) The applicant shall accurately complete all information required by the application and provide the comptroller with additional information the comptroller considers necessary.

(e) Each applicant that applies for a permit to sell e-cigarettes from a vehicle must provide the make, model, vehicle identification number, registration number, and any other information concerning the vehicle the comptroller requires.

(f) All financial information provided under this section is confidential and not subject to Chapter 552, Government Code.

(g) Permits for engaging in business as an e-cigarette retailer

are governed exclusively by the provisions of this code.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0052. ISSUANCE OF PERMIT. (a) The comptroller shall issue a permit to an applicant if the comptroller:

(1) has received an application and fee;

(2) does not reject the application and deny the permit under Section 147.0053; and

(3) determines that issuing the permit will not jeopardize the administration and enforcement of this chapter.

(b) The permit shall be issued for a designated place of business, except as provided by Section 147.0056.

(c) The permits are nonassignable.

(d) The permit must indicate the type of permit and authorize the sale of e-cigarettes in this state. The permit must show that it is revocable and shall be forfeited or suspended if the conditions of issuance, provisions of this chapter, or rules of the comptroller are violated.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0053. DENIAL OF PERMIT. The comptroller may reject an application and deny a permit if the comptroller finds, after notice and opportunity for hearing, any of the following:

(1) the premises where business will be conducted are not adequate to protect the e-cigarettes; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10 percent or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:

(A) has failed to disclose any information required by Sections 147.0051(d) and (e); or

(B) has previously violated provisions of this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff.

September 1, 2021.

Sec. 147.0054. PERMIT PERIOD; FEES. (a) A permit required by this chapter expires on the last day of May of each even-numbered year.

(b) An application for a permit required by this chapter must be accompanied by a fee of:

(1) one-half of the amount of the fee for a retailer's permit required by Section 154.111(b), Tax Code, if at the time of application the applicant holds a valid retailer's permit under Section 154.101, 154.102, or 155.041, Tax Code, for the same place of business; or

(2) the amount of the fee for a retailer's permit required by Section 154.111(b), Tax Code.

(c) For a new permit required by Section 147.0051, the comptroller shall prorate the fee according to the number of months remaining during the period that the permit is to be in effect.

(d) A person who does not obtain a renewal permit in a timely manner must pay a late fee of $50 in addition to the application fee for the permit.

(e) If on the date of issuance a permit will expire within three months, the comptroller may collect the prorated permit fee or the fee for the current period and, with the consent of the permit holder, may collect the fee for the next permit period and issue a permit or permits for both periods, as applicable.

(f) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0055. PAYMENT FOR PERMITS. (a) An applicant for a permit required by Section 147.0051 shall send the required fee with the application.

(b) The payment must be made in cash or by money order, check, or credit card.

(c) The comptroller may not issue a permit in exchange for a

check until after the comptroller receives full payment on the check.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0056. DISPLAY OF PERMIT. (a) A permit holder shall keep the permit on public display at the place of business for which the permit was issued.

(b) A permit holder who has a permit assigned to a vehicle shall post the permit in a conspicuous place on the vehicle.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0057. REVENUE. Revenue from the sale of e-cigarette retailer's permits shall be deposited as provided by Section 161.0903 and may be appropriated only as provided by that section.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. PERMIT SUSPENSION AND REVOCATION

Sec. 147.0101. FINAL SUSPENSION OR REVOCATION OF PERMIT. (a) The comptroller may revoke or suspend a permit holder's permit if the comptroller finds, after notice and hearing as provided by this section, that the permit holder violated this chapter or a rule adopted under this chapter.

(b) If the comptroller intends to suspend or revoke a permit, the comptroller shall provide the permit holder with written notice that includes a statement:

(1) of the reason for the intended revocation or suspension;

(2) that the permit holder is entitled to a hearing by the comptroller on the proposed suspension or revocation; and

(3) of the date, time, and place of the hearing.

(c) The comptroller shall deliver the written notice by personal service or by mail to the permit holder's mailing address as it appears in the comptroller's records. Service by mail is complete

when the notice is deposited with the United States Postal Service.

(d) The comptroller shall give the permit holder notice before the 10th day before the final hearing.

(e) A permit holder may appeal the comptroller's decision to a district court in Travis County not later than the 30th day after the date the comptroller's decision becomes final.

(f) A person whose permit is suspended or revoked may not sell, offer for sale, or distribute e-cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0102. SUMMARY SUSPENSION OF PERMIT. (a) The comptroller may suspend a permit holder's permit without notice or a hearing for the permit holder's failure to comply with this chapter or a rule adopted under this chapter if the permit holder's continued operation constitutes an immediate and substantial threat.

(b) If the comptroller summarily suspends a permit holder's permit, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(c) At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(d) Chapter 2001, Government Code, does not apply to a summary suspension under this section.

(e) To initiate a proceeding to suspend summarily a permit holder's permit, the comptroller shall serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. The notice must be personally served on the permit holder or an officer, employee, or agent of the permit holder or sent by certified or registered mail, return receipt requested, to the permit holder's mailing address as it appears in the comptroller's records. The

notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If notice is served in person, the permit holder shall immediately surrender the permit to the comptroller. If notice is served by mail, the permit holder shall immediately return the permit to the comptroller.

(f) Section 147.0101, governing hearings for final suspension or revocation of a permit under this chapter, governs a final administrative hearing.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. PENALTIES

Sec. 147.0151. PENALTIES. (a) A person violates this chapter if the person:

(1) engages in the business of an e-cigarette retailer without a permit; or

(2) is a person who is subject to a provision of this chapter or a rule adopted by the comptroller under this chapter and who violates the provision or rule.

(b) A person who violates this section shall pay to the state a penalty of not more than $2,000 for each violation.

(c) Each day on which a violation occurs is a separate violation.

(d) The attorney general shall bring suit to recover penalties under this section.

(e) A suit under this section may be brought in Travis County or another county having jurisdiction.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

Sec. 147.0152. FAILURE TO HAVE PERMIT; OFFENSE. (a) A person commits an offense if the person acts as an e-cigarette retailer and:

(1) receives or possesses e-cigarettes without having a permit;

(2) receives or possesses e-cigarettes without having a permit posted where it can be easily seen by the public; or

(3) sells e-cigarettes without having a permit.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 1, eff. September 1, 2021.

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 161. PUBLIC HEALTH PROVISIONS

SUBCHAPTER A. IMMUNIZATIONS

Sec. 161.0001. DEFINITIONS. In this subchapter:

(1) "Data elements" means the information:

(A) a health care provider who administers a vaccine is required to record in a medical record under 42 U.S.C. Section 300aa-25, as amended, including:

(i) the date the vaccine is administered;

(ii) the vaccine manufacturer and lot number of the vaccine;

(iii) any adverse or unexpected events for a vaccine; and

(iv) the name, the address, and if appropriate, the title of the health care provider administering the vaccine; and

(B) specified in rules adopted to implement Section 161.00705.

(1-a) "First responder" means:

(A) any federal, state, local, or private personnel who may respond to a disaster, including:

(i) public health and public safety personnel;

(ii) commissioned law enforcement personnel;

(iii) fire protection personnel, including volunteer firefighters;

(iv) emergency medical services personnel, including hospital emergency facility staff;

(v) a member of the National Guard;

(vi) a member of the Texas State Guard; or

(vii) any other worker who responds to a disaster in the worker's scope of employment; or

(B) any related personnel that provide support services during the prevention, response, and recovery phases of a disaster.

(1-b) "Immediate family member" means the parent, spouse,

child, or sibling of a person who resides in the same household as the person.

(1-c) "Individual's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of an individual, if the individual is a minor;

(B) a guardian of the individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or

(C) an agent of the individual authorized under a durable power of attorney for health care.

(2) "Payor" means an insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including providing immunizations.

(3) "Electronically," as related to a communication authorized under this chapter, means by e-mail, text message, online communication, or another electronic method of communication approved by the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.01, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 803 (S.B. 1409), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 4.03, eff. September 1, 2009.

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION. (a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by department rule or is otherwise required by law or other rules.

(b) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable or responsible for the

failure to immunize a child because of the failure or refusal of a parent, managing conservator, or guardian to consent to the vaccination or immunization required under this chapter. Consent to the vaccination or immunization must be given in the manner authorized by Chapter 32, Family Code.

(c) A person who fails to comply with Section 161.004 is not liable or responsible for that failure, and that failure does not create a cause of action.

(d) This section does not apply to a negligent act in administering the vaccine or immunizing agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.40, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0454, eff. April 2, 2015.

Sec. 161.002. INADMISSIBILITY OF IMMUNIZATION SURVEY INFORMATION. Information obtained from a physician's medical records by a person conducting an immunization survey for the department is not admissible as evidence in a suit against the physician that involves an injury relating to the immunization of an individual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.003. IMMUNIZATION REMINDER NOTICES. (a) In a program administered by the department in which an immunization reminder notice is sent regarding the immunization of a child, the notice must be sent without discrimination based on the legitimacy of the child.

(b) The reminder notice must be addressed to an adult or parent and may not use:

(1) an indication of the marital status of the addressee; or

(2) the terms "Mr.," "Mrs.," "Miss," or "Ms."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.004. STATEWIDE IMMUNIZATION OF CHILDREN. (a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted in department rules.

(b) Hospitals shall be responsible for:

(1) referring newborns for immunization at the time the newborn screening test is performed;

(2) reviewing the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic; and

(3) administering needed vaccinations or referring the child for immunization.

(c) Physicians shall be responsible for reviewing the immunization history of every child examined and administering any needed vaccinations or referring the child for immunization.

(d) A child is exempt from an immunization required by this section if:

(1) a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief; or

(2) the immunization is medically contraindicated based on the opinion of a physician licensed by any state in the United States who has examined the child.

(e) For purposes of this section, "child" means a person under 18 years of age.

(f) The executive commissioner shall adopt rules that are necessary to administer this section.

(g) A parent, managing conservator, or guardian may choose the health care provider who administers the vaccine or immunizing agent under this chapter.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.162, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0455, eff. April 2, 2015.

Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM. (a) A

person claiming an exemption from a required immunization based on reasons of conscience, including a religious belief, under Section 161.004 of this code, Section 38.001, 51.9192, or 51.933, Education Code, or Section 42.043, Human Resources Code, must complete an affidavit on a form provided by the department stating the reason for the exemption. This subsection does not apply to a person claiming the exemption using the Internet-based process under Section 51.9192(d-3), Education Code.

(b) The affidavit must be signed by the person claiming the exemption or, if the person is a minor, the person's parent, managing conservator, or guardian, and the affidavit must be notarized.

(c) A person claiming an exemption from a required immunization under this section may only obtain the affidavit form by submitting a written request for the affidavit form to the department.

(d) The department shall develop a blank affidavit form that contains a seal or other security device to prevent reproduction of the form. The affidavit form shall contain a statement indicating that the person or, if a minor, the person's parent, managing conservator, or guardian understands the benefits and risks of immunizations and the benefits and risks of not being immunized.

(e) The department shall maintain a record of the total number of affidavit forms sent out each year and shall report that information to the legislature each year. The department may not maintain a record of the names of individuals who request an affidavit under this section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.163, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 729 (S.B. 62), Sec. 2, eff. October 1, 2013.

Sec. 161.005. IMMUNIZATIONS REQUIRED. (a) On admission of a child to a mental health facility of the department, a state supported living center of the Department of Aging and Disability Services, or a facility of the Texas Department of Criminal Justice or the Texas Juvenile Justice Department, the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the executive commissioner have the same powers and duties under this section as the department and the executive commissioner have under Sections 38.001 and 51.933, Education Code. In addition, the provisions of those sections relating to provisional admissions and exceptions apply to this section.

(c) A facility covered by this section shall keep an individual immunization record during the individual's period of admission, detention, or commitment in the facility, and the records shall be open for inspection at all reasonable times by a representative of the local health department or the department.

(d) This section does not affect the requirements of Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.41, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0456, eff. April 2, 2015.

Sec. 161.0051. REQUIRED IMMUNIZATIONS FOR NURSING HOMES. (a) This section applies only to a nursing home that:

(1) is an institution licensed under Chapter 242; and

(2) serves residents who are elderly persons as defined by Section 242.002.

(b) The executive commissioner by rule may require nursing facilities to offer, in accordance with an immunization schedule adopted in department rules, immunizations to elderly residents or to staff who are in contact with elderly residents against diseases that the executive commissioner determines to be:

(1) caused by infectious agents;

(2) potentially deadly; and

(3) preventable by vaccine.

(c) The executive commissioner by rule shall require nursing homes to offer, in accordance with an immunization schedule adopted in department rules:

(1) pneumococcal vaccine to elderly residents; and

(2) influenza vaccine to elderly residents and to staff who are in contact with elderly residents.

Added by Acts 1999, 76th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0457, eff. April 2, 2015.

Sec. 161.0052. IMMUNIZATION OF ELDERLY PERSONS BY HOSPITALS, END STAGE RENAL DISEASE FACILITIES, AND PHYSICIANS' OFFICES. (a) In this section:

(1) "Elderly person" means a person who is 65 years of age or older.

(2) "End stage renal disease facility" has the meaning assigned by Section 251.001.

(3) "Hospital" has the meaning assigned by Section 241.003.

(b) The executive commissioner by rule shall require a hospital to inform each elderly person admitted to the hospital for a period of 24 hours or more that the pneumococcal and influenza vaccines are available. If the elderly person requests a vaccine, and if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest, the hospital must make the vaccination available to the person before the person is discharged from the hospital.

(c) The executive commissioner by rule shall require an end stage renal disease facility to offer, to the extent possible as determined by the facility, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the facility if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest. If the facility decides it is not feasible to offer the vaccine, the facility must provide the person with information on other options for obtaining the vaccine.

(d) The Texas Medical Board by rule shall require a physician responsible for the management of a physician's office that provides ongoing medical care to elderly persons to offer, to the extent possible as determined by the physician, the opportunity to receive

the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(e) Rules adopted under this section must require that:

(1) a hospital, end stage renal disease facility, or physician's office:

(A) offer the influenza vaccine in October and November, and if the vaccine is available, December; and

(B) offer the pneumococcal vaccine year-round; and

(2) a person administering a vaccine:

(A) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(B) administer the vaccine under institution-approved or physician-approved protocols after making an assessment for contraindications; and

(C) permanently document the vaccination in the elderly person's medical records.

(f) In adopting rules under this section, the executive commissioner and the Texas Medical Board shall consider the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(g) Rules adopted under this section may consider the potential for a shortage of a vaccine.

(h) The department shall make available to hospitals and end stage renal disease facilities, and the Texas Medical Board shall make available to physicians' offices, educational and informational materials concerning vaccination against influenza virus and pneumococcal disease.

Added by Acts 2005, 79th Leg., Ch. 368 (S.B. 1330), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0458, eff. April 2, 2015.

Sec. 161.006. DEPARTMENT IMMUNIZATION SERVICE. The department, to the extent permitted by law, is authorized to pay employees who

are exempt or not exempt for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business operations. Authorization for payment under this section is limited to work directly related to immunizations.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.

Sec. 161.007. IMMUNIZATION REGISTRY; REPORTS TO DEPARTMENT. (a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective communicable disease prevention and control efforts, shall establish and maintain an immunization registry. The executive commissioner by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code;

(2) inform the individual or the individual's legally authorized representative about the registry and that registry information may be released under Section 161.00735;

(3) require the written or electronic consent of the individual or the individual's legally authorized representative before any information relating to the individual is included in the registry;

(4) permit the individual or the individual's legally authorized representative to withdraw consent for the individual to be included in the registry; and

(5) determine the process by which consent is verified, including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained.

(a-1) The written or electronic consent required by Subsection (a)(3) for an individual younger than 18 years of age is required to be obtained only one time. The written or electronic consent of the individual's parent, managing conservator, or guardian must be submitted to the department before the individual's 18th birthday. After consent is submitted, the individual's immunization information

may be included in the registry until the individual becomes 26 years of age unless the consent is withdrawn in writing or electronically, or renewed after the individual's 18th birthday as provided by Subsection (a-2). A parent, managing conservator, or guardian of a minor may provide the consent by using an electronic signature on the minor's birth certificate.

(a-2) The written or electronic consent required by Subsection (a)(3) for an individual who is 18 years of age or older is required to be obtained only one time and must be received from the individual before the information may be released. An individual's legally authorized representative or the individual, after the individual has attained 18 years of age, may consent in writing or electronically for the individual's information to remain in the registry. The consent of the representative or individual is valid until the individual or the individual's legally authorized representative withdraws consent in writing or electronically. The department may not include in the registry the immunization information of an individual who is 26 years of age or older until written or electronic consent has been obtained as provided by this subsection. The department shall coordinate with the Texas Education Agency to distribute materials described in Section 161.0095(a)(2) to students and parents through local school districts.

(a-3) The executive commissioner by rule shall develop guidelines and procedures for obtaining consent from an individual after the individual's 18th birthday, including procedures for retaining immunization information in a separate database that is inaccessible by any person other than the department during the eight-year period during which an individual who is 18 years of age or older may consent to inclusion in the registry under Subsection (a-2).

(a-4) After an individual's 18th birthday, the department shall make a reasonable effort to provide notice to an individual whose immunization information is included in the registry with consent that was provided by a parent, managing conservator, or guardian under Subsection (a-1). The reasonable effort shall include at least two attempts by the department to provide the notice required by this subsection by telephone or e-mail, by regular mail to the individual's last known address, or by general outreach efforts through the individual's health care provider, school district, or institution of higher education. The notice must inform the

individual that the individual's immunization records will be included in the registry until the date of the individual's 26th birthday unless the individual or the individual's legally authorized representative:

(1) withdraws consent in writing or electronically before that date; or

(2) provides consent for the records to continue to be included in the registry as provided by Subsection (a-2).

(a-5) After an individual's 25th birthday, the department shall make a reasonable effort to provide notice to an individual whose immunization information is included in the registry with consent that was provided under Subsection (a-1) and has not been renewed under Subsection (a-2). The reasonable effort shall include at least two attempts by the department to provide the notice required by this subsection by telephone or e-mail, by regular mail to the individual's last known address, or by general outreach efforts through the individual's health care provider or institution of higher education. The notice must inform the individual that the individual's immunization records will be included in the immunization registry until the individual's 26th birthday unless the individual or the individual's legally authorized representative renews consent as provided by Subsection (a-2).

(a-6) The department shall make a reasonable effort to obtain current contact information for written or electronic notices sent by the department under Subsection (a-5) that are returned due to incorrect address information.

(b) Except as provided by Section 161.0071, the immunization registry must contain information on the immunization history that is obtained by the department under:

(1) this section of each individual for whom consent has been obtained in accordance with guidelines adopted under Subsection (a);

(2) Section 161.00705 of persons immunized to prepare for or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency;

(3) Section 161.00706 of first responders or their immediate family members; and

(4) Section 161.00735 of persons evacuated or relocated to this state because of a disaster.

(b-1) The department shall remove from the registry information for any individual for whom consent has been withdrawn. The department may not retain individually identifiable information about any individual:

(1) for whom consent has been withdrawn;

(2) for whom a consent for continued inclusion in the registry following the end of the declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency has not been received under Section 161.00705(f);

(3) for whom a request to be removed from the registry has been received under Section 161.00706(e);

(4) for whom consent for continued inclusion in the registry following the end of a disaster has not been received under Section 161.00735(f); or

(5) for whom a request to remove information from the registry has been received under Section 161.00735(g).

(c) A payor that receives data elements from a health care provider who administers an immunization to an individual younger than 18 years of age shall provide the data elements to the department. A payor is required to provide the department with only the data elements the payor receives from a health care provider. A payor that receives data elements from a health care provider who administers an immunization to an individual 18 years of age or older may provide the data elements to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) A health care provider who administers an immunization to an individual younger than 18 years of age shall provide data elements regarding an immunization to the department. A health care provider who administers an immunization to an individual 18 years of age or older may submit data elements regarding an immunization to the department. At the request and with the authorization of the health care provider, the data elements may be submitted through a health information exchange as defined by Section 182.151. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the information

in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(e) The department shall provide notice to a health care provider that submits an immunization history for an individual for whom consent cannot be verified. The notice shall contain instructions for obtaining consent in accordance with guidelines adopted under Subsection (a) and resubmitting the immunization history to the department.

(f) The department and health care providers may use the registry to provide notices by mail, telephone, personal contact, or other means to an individual or the individual's legally authorized representative regarding an individual who is due or overdue for a particular type of immunization according to the department's immunization schedule for children or another analogous schedule recognized by the department for individuals 18 years of age or older. The department shall consult with health care providers to determine the most efficient and cost-effective manner of using the registry to provide those notices.

(g) The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process. The department shall:

(1) initially target providers in the geographic regions of the state with immunization rates below the state average for preschool children; and

(2) expedite the processing of provider applications.

(h) Nothing in this section diminishes a parent's, managing conservator's, or guardian's responsibility for having a child immunized properly, subject to Section 161.004(d).

(i) A person, including a health care provider, payor, or an employee of the department who submits or obtains in good faith immunization data elements to or from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(j) Except as provided by Sections 161.00705, 161.00706, 161.00735(b), and 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written or electronic consent of the individual or the individual's legally authorized representative.

(k) The executive commissioner shall adopt rules to implement

this section.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.780, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1081, Sec. 2.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0459, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 764 (H.B. 2171), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 6, eff. September 1, 2015.

Sec. 161.00705. RECORDING ADMINISTRATION OF IMMUNIZATION AND MEDICATION FOR DISASTERS AND EMERGENCIES. (a) The department shall maintain a registry of persons who receive an immunization or antiviral administered to prepare for a potential disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. A health care provider who administers an immunization or antiviral shall provide the data elements to the department. At the request and with the authorization of the health care provider, the data elements may be provided through a health information exchange as defined by Section 182.151.

(b) The department shall maintain the registry as part of the immunization registry required by Section 161.007.

(c) The department shall track adverse reactions to an immunization or antiviral administered to prepare for a potential disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health disaster, terrorist

attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. A health care provider who administers an immunization or antiviral may provide data related to adverse reactions to the department.

(d) Sections 161.007, 161.0071, 161.0072, and 161.0074 apply to the data elements submitted to the department under this section, unless a provision in those sections conflicts with a requirement in this section.

(e) The executive commissioner by rule shall determine the period during which the information collected under this section must remain in the immunization registry following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) Unless an individual or the individual's legally authorized representative consents in writing or electronically to continued inclusion of the individual's information in the registry, the department shall remove the immunization records collected under this section from the registry on expiration of the period prescribed under Subsection (e).

(g) The immunization information of a child or other individual received by the department under this section, including individually identifiable information, may be released only:

(1) on consent of the individual or, if a child, the child's parent, managing conservator, or guardian; or

(2) to a state agency or health care provider consistent with the purposes of this subchapter or the purposes of aiding or coordinating communicable disease prevention and control efforts during a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(h) The report required under Section 161.0074 must also include the number of complaints received by the department related to the department's failure to remove information from the registry as required by Subsection (f).

(i) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0460, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 7, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 13, eff. June 16, 2021.

Sec. 161.00706. FIRST RESPONDER IMMUNIZATION INFORMATION. (a) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may:

(1) request that a health care provider who administers an immunization to the person provide data elements regarding the immunization to the department for inclusion in the immunization registry; or

(2) provide the person's immunization history directly to the department for inclusion in the immunization registry.

(b) A health care provider, on receipt of a request under Subsection (a)(1), shall submit the data elements to the department in a format prescribed by the department. At the request and with the authorization of the health care provider, the data elements may be submitted through a health information exchange as defined by Section 182.151. The department shall verify the person's request before including the information in the immunization registry.

(c) The executive commissioner shall:

(1) develop rules to ensure that immunization history submitted under Subsection (a)(2) is medically verified immunization information;

(2) develop guidelines for use by the department in informing first responders about the registry and that registry information may be released under Section 161.00735; and

(3) adopt rules necessary for the implementation of this section.

(d) Except as provided by Section 161.00735, a person's immunization history or data received by the department under this section may be released only on consent of the person or to any health care provider licensed or otherwise authorized to administer vaccines.

(e) A person whose immunization records are included in the immunization registry as authorized by this section may request in writing or electronically that the department remove that information from the registry. Not later than the 10th day after receiving a request under this subsection, the department shall remove the person's immunization records from the registry.

(f) The report required under Section 161.0074 must also include the number of complaints received by the department related to the department's failure to comply with requests for removal of information from the registry under Subsection (e).

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0461, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 8, eff. September 1, 2015.

Sec. 161.00707. INFORMATION AND EDUCATION FOR FIRST RESPONDERS. The department shall develop a program for informing first responders about the immunization registry and educating first responders about the benefits of being included in the immunization registry, including:

(1) ensuring that first responders receive necessary immunizations to prevent the spread of communicable diseases to which a first responder may be exposed during a public health emergency, declared disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency; and

(2) preventing duplication of vaccinations.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.02, eff. September 1, 2007.

Sec. 161.00708. ACCESS TO FIRST RESPONDER IMMUNIZATION HISTORY.

(a) The department shall establish a process to provide an employer of a first responder with direct access to the first responder's immunization information in the immunization registry for verification of the first responder's immunization history. The process must require a first responder to provide electronic or written consent before the employer is granted direct access to the first responder's immunization information in the immunization registry. A first responder may withdraw consent at any time.

(b) The department may establish a process to provide a first responder with access to the first responder's immunization information in the immunization registry.

Added by Acts 2019, 86th Leg., R.S., Ch. 259 (H.B. 1256), Sec. 1, eff. September 1, 2019.

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) The first time the department receives registry data for an individual for whom the department has received consent to be included in the registry, the department shall send notice to the individual or the individual's legally authorized representative disclosing:

(1) that providers and payors may be sending the individual's immunization information to the department;

(2) the information that is included in the registry;

(3) the persons to whom the information may be released under Sections 161.00735(b) and 161.008(d);

(4) the purpose and use of the registry;

(5) the procedure to exclude an individual from the registry; and

(6) the procedure to report a violation if an individual's information is included in the registry after exclusion has been requested or consent has been withdrawn.

(b) On discovering that consent to be included in the registry has not been granted or has been withdrawn, the department shall exclude the individual's immunization records from the registry and any other registry-related department record that individually identifies the individual.

(c) On receipt of a written or electronic request to exclude an individual's immunization records from the registry, the department

shall send to the individual or the individual's legally authorized representative who makes the request a written confirmation of receipt of the request for exclusion and shall exclude the individual's records from the registry.

(d) The department commits a violation if the department fails to exclude an individual's immunization information from the registry as required by Subsection (b) or (c).

(e) The department shall accept a written or electronic statement from an individual or the individual's legally authorized representative communicating to the department that an individual's information should be excluded from the registry, including a statement on a minor's birth certificate, as a request for exclusion under Subsection (c).

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 3, eff. September 1, 2009.

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. (a) If the individual or the individual's legally authorized representative has reasonable concern that the individual's health care provider is not submitting the immunization history to the department, the individual or the individual's legally authorized representative may provide the individual's immunization history directly to the department to be included in the immunization registry.

(b) The individual or the individual's legally authorized representative may send evidence of the individual's immunization history to the department electronically, by facsimile transmission, or by mail. The evidence may include a copy of:

(1) the individual's medical record indicating the immunization history;

(2) an invoice from a health care provider for the immunization; or

(3) documentation showing that a claim for the immunization was paid by a payor.

(c) The executive commissioner shall develop rules to ensure that the immunization history submitted by an individual or the individual's legally authorized representative is medically verified immunization information.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 6, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0462, eff. April 2, 2015.

Sec. 161.0073. REGISTRY CONFIDENTIALITY. (a) Except as provided by Sections 161.00705 and 161.00735, information that individually identifies an individual that is received by the department for the immunization registry is confidential and may be used by the department for registry purposes only.

(b) Unless specifically authorized under this subchapter, the department may not release registry information to any individual or entity without the consent of the individual or the individual's legally authorized representative.

(c) A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information of an individual to any other person without the written or electronic consent of the individual or the individual's legally authorized representative, except as provided by Sections 161.007, 161.00705, 161.00706, and 161.008 of this code, Chapter 159, Occupations Code, or Section 602.053, Insurance Code.

(d) Registry information is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this subchapter; or

(2) admissible in any civil, administrative, or criminal proceeding.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.127, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.04, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 4, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 9, eff. September 1, 2015.

Sec. 161.00735. RELEASE AND RECEIPT OF REGISTRY DATA IN DISASTER. (a) In this section, "disaster" means a disaster declared by the president of the United States, the governor of this state, or the governor of another state.

(b) If the department determines that residents of this state have evacuated or relocated to another state in response to a disaster, the department may release registry data, except registry data obtained under Section 161.00705, to the appropriate health authority of that state or to local health authorities in that state.

(c) The department may receive immunization information from a health authority of another state or from a local health authority in another state if the department determines that residents of that state have evacuated or relocated to this state in response to a disaster. The department shall include information received under this subsection in the registry. Notwithstanding Section 161.007, the department is not required to obtain written consent for the inclusion in the registry of information received under this subsection.

(d) Immunization information received under Subsection (c) is subject to Section 161.0073, and may not be released except as authorized by this chapter.

(e) The executive commissioner by rule shall determine the period during which the information collected under Subsection (c) must remain in the immunization registry following the end of the disaster.

(f) Unless an individual or, if a child, the child's parent, managing conservator, or guardian consents in writing to continued inclusion of the individual's or child's information in the registry, the department shall remove the immunization records collected under Subsection (c) from the registry on the expiration of the period

prescribed by Subsection (e).

(g) If an individual or, if a child, the child's parent, managing conservator, or guardian requests in writing that the individual's or child's information obtained under Subsection (c) be removed from the registry, the department shall remove that information from the registry.

(h) The executive commissioner shall make every effort to enter into a memorandum of agreement with each state to which residents of this state are likely to evacuate in a disaster on:

(1) the release and use of registry information under this section to the appropriate health authority or local health authority of that state, including the length of time the information may be retained by that state; and

(2) the receipt and use of information submitted by the health authority or local health authority of that state for inclusion in the registry under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 5, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0463, eff. April 2, 2015.

Sec. 161.0074. REPORT TO LEGISLATURE. (a) The department shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the house of representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year.

(b) The department shall use the report required under Subsection (a) to develop ways to increase immunization rates using state and federal resources.

(c) The report must:

(1) include the current immunization rates by geographic region of the state, where available;

(2) focus on the geographic regions of the state with immunization rates below the state average for preschool children;

(3) describe the approaches identified to increase immunization rates in underserved areas and the estimated cost for each;

(4) identify changes to department procedures needed to increase immunization rates;

(5) identify the services provided under and provisions of contracts entered into by the department to increase immunization rates in underserved areas;

(6) identify performance measures used in contracts described by Subdivision (5);

(7) include the number and type of exemptions used in the past year;

(8) include the number of complaints received by the department related to the department's failure to comply with requests for exclusion of individuals from the registry;

(9) identify all reported incidents of discrimination for requesting exclusion from the registry or for using an exemption for a required immunization; and

(10) include ways to increase provider participation in the registry.

(d) If a public health disaster was declared under Chapter 81 during the preceding two years, in addition to the information required under Subsection (c), for immunizations that immunize an individual against the communicable disease subject to the declaration the report must:

(1) include information by county on the accessibility to the immunizations of county residents by age, race, and geographic location, provided the information does not personally identify any individual;

(2) identify and assess disparities in access to the immunizations by age, race, and geographic location, including an assessment of immunization accessibility in each county;

(3) include the estimated economic benefit to this state of reducing disparities in immunization accessibility;

(4) include recommendations for reducing disparities in immunization accessibility; and

(5) include recommendations for legislative action to increase immunization rates.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 611 (S.B. 1353), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 7, eff. September 1, 2021.

Sec. 161.0075. IMMUNITY FROM LIABILITY. Except as provided by Section 161.009, the following persons subject to this subchapter that act in compliance with Sections 161.007, 161.00705, 161.00706, 161.0071, 161.0073, 161.0074, and 161.008 are not civilly or criminally liable for furnishing the information required under this subchapter:

(1) a payor;

(2) a health care provider who administers immunizations; and

(3) an employee of the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.05, eff. September 1, 2007.

Sec. 161.0076. COMPLIANCE WITH FEDERAL LAW. If the provisions of this chapter relating to the use or disclosure of information in the registry are more stringent than the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, then the use or disclosure of information in the registry is governed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.008. IMMUNIZATION RECORD. (a) An immunization record is part of the immunization registry.

(b) An immunization record contains the:

(1) name and date of birth of the person immunized;

(2) dates of immunization;

(3) types of immunization administered; and

(4) name and address of the health care provider administering the immunization.

(b-1) An immunization record provided by a health care provider as required by Section 161.00705 for inclusion in the immunization

registry during a public health disaster declared under Chapter 81 must contain the race, age, ethnicity, and county of residence of the individual immunized. This subsection applies only to immunizations that immunize an individual against the communicable disease subject to the declaration.

(c) The department may obtain the data constituting an immunization record for an individual from a public health district, a local health department, the individual or the individual's legally authorized representative, a physician to the individual, a payor, or any health care provider licensed or otherwise authorized to administer vaccines. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) The department may release the data constituting an immunization record for the individual to:

(1) any entity that is described by Subsection (c);

(2) a school or child care facility in which the individual is enrolled;

(3) a state agency having legal custody of the individual; or

(4) an employer of a first responder or a first responder in accordance with Section 161.00708.

(e) An individual or the individual's legally authorized representative may obtain and on request to the department shall be provided with all individually identifiable immunization registry information concerning the individual.

(f) A person, including a health care provider, a payor, or an employee of the department, that submits in good faith an immunization history or data to or obtains in good faith an immunization history or data from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(g) The department may release nonidentifying summary statistics related to the registry that do not individually identify an individual.

(h) The executive commissioner shall adopt rules to implement this section.

(i) At the request and with the authorization of the applicable health care provider, immunization history or data may be submitted

to or obtained by the department through a health information exchange as defined by Section 182.151.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 8, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0464, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 10, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 259 (H.B. 1256), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 611 (S.B. 1353), Sec. 2, eff. June 14, 2021.

Sec. 161.0085. COVID-19 VACCINE PASSPORTS PROHIBITED. (a) In this section, "COVID-19" means the 2019 novel coronavirus disease.

(b) A governmental entity in this state may not issue a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual's COVID-19 immunization record or similar health information for a purpose other than health care.

(c) A business in this state may not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business. A business that fails to comply with this subsection is not eligible to receive a grant or enter into a contract payable with state funds.

(d) Notwithstanding any other law, each appropriate state agency shall ensure that businesses in this state comply with Subsection (c) and may require compliance with that subsection as a condition for a license, permit, or other state authorization necessary for conducting business in this state.

(e) This section may not be construed to:

(1) restrict a business from implementing COVID-19

screening and infection control protocols in accordance with state and federal law to protect public health; or

(2) interfere with an individual's right to access the individual's personal health information under federal law.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 14, eff. June 16, 2021.

Sec. 161.009. PENALTIES FOR DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person:

(1) negligently releases or discloses immunization registry information in violation of Section 161.007, 161.0071, 161.0073, or 161.008;

(2) fails to exclude an individual's immunization information in violation of Section 161.0071;

(3) fails to remove a person's immunization information in violation of Section 161.00705, 161.00706, or 161.00735; or

(4) negligently uses information in the immunization registry to solicit new patients or clients or for other purposes that are not associated with immunization or quality-of-care purposes, unless authorized under this section.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 5.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 9, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 6, eff. September 1, 2009.

Sec. 161.0095. EDUCATION PROGRAMS AND INFORMATION. (a) The department shall develop:

(1) continuing education programs for health care providers relating to immunizations and the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s; and

(2) educational information, for health care providers, health care clinics, hospitals, and any other health care facility that provides health care to children 14 to 18 years of age, relating to the immunization registry and the option for an individual who is 18 years of age or older to consent to submission and retention of the individual's information in the immunization registry.

Text of subsection effective until April 1, 2025

(b) The department shall establish a work group to assist the department in developing the continuing education programs and educational information. The work group shall include physicians, nurses, department representatives, representatives of managed care organizations that provide health care services under Chapter 533, Government Code, representatives of health plan providers that provide health care services under Chapter 62, and members of the public.

Text of subsection effective on April 1, 2025

(b) The department shall establish a work group to assist the department in developing the continuing education programs and educational information. The work group shall include physicians, nurses, department representatives, representatives of managed care organizations that provide health care services under Chapter 540 or 540A, Government Code, as applicable, representatives of health plan providers that provide health care services under Chapter 62, and members of the public.

Added by Acts 2003, 78th Leg., ch. 613, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 10, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.41, eff. April 1, 2025.

Sec. 161.010. IMMUNIZATION EDUCATION; STATEWIDE COALITION. (a) The department shall establish a continuous statewide education program to educate the public about the importance of immunizing children and the risks and contraindications of an immunization.

(b) The department shall increase coordination among public and private local, regional, and statewide entities that have an interest in immunizations.

Added by Acts 2003, 78th Leg., ch. 125, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.0101. INCREASE IMMUNIZATION AWARENESS. (a) The department shall develop new public-private partnerships and work with existing public-private partnership programs, including the Seniors and Volunteers Program For Childhood Immunization, to increase public and private awareness of and support for early childhood immunizations.

(b) The department shall work with the Texas Education Agency to increase immunization awareness and participation among parents of preschool and school-age children by:

(1) jointly applying for federal funds for immunization awareness and vaccination programs; and

(2) creating partnerships with public and private health, service, and education organizations, including parent-teacher associations, the United Way, schools, local businesses, community-based organizations, chambers of commerce, and athletic booster clubs, to increase awareness and participation in the state's early childhood vaccination program.

(c) The department shall work to increase immunization awareness and participation among parents of children in child-care facilities, as defined by Section 42.002, Human Resources Code, in the state's early childhood vaccination program by publishing on the department's website information about the benefits of annual immunization against influenza for children aged six months to five years. The department shall work with the Department of Family and Protective Services and with child-care facilities to ensure that the information is annually distributed to parents in August or September.

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003.
Renumbered from Health and Safety Code, Section 161.010 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(44), eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 922 (H.B. 3184), Sec. 1, eff. June 15, 2007.

Sec. 161.0102. VACCINES FOR CHILDREN PROGRAM; INFLUENZA VACCINES. (a) In this section, "vaccines for children program" means the program operated by the department under authority of 42 U.S.C. Section 1396s, as amended.

(b) The department shall allow each health care provider participating in the vaccines for children program to:

(1) select influenza vaccines from the list of all influenza vaccines that:

(A) are approved by the United States Food and Drug Administration and recommended by the federal Advisory Committee on Immunization Practices; and

(B) are either:

(i) within the limits of the vaccines annually allocated by the Centers for Disease Control and Prevention of the United States Public Health Service to the department for the vaccines for children program; or

(ii) not offered in the annual allocation under Subparagraph (i), but are available from the Centers for Disease Control and Prevention of the United States Public Health Service and for which the Centers for Disease Control and Prevention awards to the department additional funds; and

(2) use both inactivated influenza vaccines and live, attenuated influenza vaccines.

Added by Acts 2007, 80th Leg., R.S., Ch. 397 (S.B. 811), Sec. 1, eff. June 15, 2007.

Sec. 161.01035. PROVIDER CHOICE SYSTEM. (a) The department shall implement a provider choice system for the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s and the adult safety net vaccination program.

(b) The department shall ensure that eligible health care providers participating in the vaccines for children program or the adult safety net vaccination program may select any licensed vaccine, including combination vaccines and any dosage forms that:

(1) are recommended by the federal Advisory Committee on Immunization Practices;

(2) are made available to the department by the Centers for Disease Control and Prevention of the United States Public Health

Service; and

(3) for adult vaccines, are on the department-approved list of vaccines offered by the adult safety net vaccination program.

(c) For the purposes of this section, "equivalent vaccines" means two or more vaccines, excluding the influenza vaccine, that meet all of the following:

(1) protect a recipient of a vaccine against the same infection or infections;

(2) require the same number of doses;

(3) have similar safety and efficacy profiles; and

(4) are recommended for comparable populations by the Centers for Disease Control and Prevention of the United States Public Health Service.

(d) The department shall provide a vaccine selected by a health care provider under Subsection (b) only if the cost to the department of providing the vaccine is not more than 115 percent of the lowest-priced equivalent vaccine.

(e) This section does not apply in the event of a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) The department shall convene the immunization work group established under Section 161.0095 and solicit its recommendations regarding development of a plan for the implementation of the provider choice system under this section. The plan shall include the education of participating health care providers about:

(1) procedures and distribution systems of the Centers for Disease Control and Prevention of the United States Public Health Service; and

(2) vaccine options, the enrollment process, ordering, accountability, and reporting procedures.

Added by Acts 2009, 81st Leg., R.S., Ch. 258 (H.B. 448), Sec. 1, eff. September 1, 2009.

Sec. 161.0104. DISASTER PREPARATION. The department shall consult with public health departments and appropriate health care providers to identify adult immunizations that may be necessary to respond to or prepare for a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or

extraordinary law enforcement emergency.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.07, eff. September 1, 2007.
Renumbered from Health and Safety Code, Section 161.0102 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(52), eff. September 1, 2009.

Sec. 161.0105. LIMITATION ON LIABILITY. (a) A health care provider who acts in compliance with Sections 161.007, 161.00705, 161.00706, and 161.008 and any rules adopted under those sections is not civilly or criminally liable for furnishing the information required under those sections. This subsection does not apply to criminal liability established under Section 161.009.

(b) A person who administers a vaccination under a department program may be held liable only to the extent the person would be liable if the person administered the vaccination outside the program. The person is not liable for damages arising from the acts or omissions of another person acting under the program or the department.

(c) The immunity created by this section is in addition to any immunity created by Sections 161.001 and 161.007(i).

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.08, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0465, eff. April 2, 2015.

Sec. 161.0106. RESPIRATORY SYNCYTIAL VIRUS; IMMUNIZATION. As part of the education programs under Sections 161.0095 and 161.010, the department shall include information about:

(1) respiratory syncytial virus and the importance of preventative activities for children at risk of contracting the virus;

(2) respiratory syncytial virus prophylaxis for children who are at high risk of complications from the disease; and

(3) immunization for respiratory syncytial virus when a

vaccine is recommended and available.

Added by Acts 2005, 79th Leg., Ch. 115 (S.B. 1211), Sec. 1, eff. September 1, 2005.

Sec. 161.0107. ELECTRONIC MEDICAL RECORDS SYSTEMS. (a) In this section:

(1) "Electronic medical records software package or system" means an electronic system for maintaining medical records in the clinical setting.

(2) "Medical records" has the meaning assigned by Section 151.002, Occupations Code.

(b) A person who sells, leases, or otherwise provides an electronic medical records software package or system to a person who administers immunizations in this state or to an entity that manages records for the person shall provide, as part of the electronic medical records software package or system, the ability to:

(1) electronically interface with the immunization registry created under this subchapter; and

(2) generate electronic reports that contain the fields necessary to populate the immunization registry.

(c) The executive commissioner by rule shall specify:

(1) the fields necessary to populate the immunization registry, including a field that indicates the patient's consent to be listed in the immunization registry has been obtained; and

(2) the data standards that must be used for electronic submission of immunization information.

(d) The data standards specified under Subsection (b) must be compatible with the standards for immunization information transmission adopted by the Healthcare Information Technology Standards Panel sponsored by the American National Standards Institute and included in certification criteria by the Certification Commission for Healthcare Information Technology.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0466, eff. April 2, 2015.

Sec. 161.0108. INJUNCTION. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 161.0107.

(b) If the state prevails in a suit under this section, the attorney general may recover on behalf of the state reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.

Sec. 161.0109. HUMAN PAPILLOMAVIRUS; VACCINES EDUCATION MATERIALS. (a) The department, using existing resources, shall produce and distribute informational materials regarding vaccines against human papillomavirus that are approved by the United States Food and Drug Administration for human use. The materials must include information relating to the effectiveness, availability, and contraindications of the vaccines. The materials must be available in English and in Spanish.

(b) The department shall collaborate with the Cancer Prevention and Research Institute of Texas or its successor entity to develop educational programs for parents regarding human papillomavirus and promoting awareness of a minor's need for preventive services for cervical cancer and its precursors.

(c) The department shall develop and maintain an Internet website that targets the public and health care professionals and provides accurate, comprehensive information on all aspects of cervical cancer prevention, including vaccination against human papillomavirus.

Added by Acts 2007, 80th Leg., R.S., Ch. 59 (H.B. 1379), Sec. 1, eff. September 1, 2007.
Renumbered from Health and Safety Code, Section 161.0107 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(53), eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0467, eff. April 2, 2015.

SUBCHAPTER B. HEALTH INSPECTION OF PRIVATE RESIDENCE

Sec. 161.011. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

(1) permission obtained from a lawful adult occupant of the residence; or

(2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81, or a health ordinance of a political subdivision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.189, eff. Sept. 1, 2003.

Sec. 161.012. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 161.011. An offense under this subsection is punishable by confinement in the Texas Department of Criminal Justice for not more than two years, a fine of not more than $1,000, or both.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 161.011 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by confinement in the county jail for not more than one year, a fine of not more than $500, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.092, eff. September 1, 2009.

SUBCHAPTER C. PROVISION OF INFORMATION RELATING TO CERTAIN HEALTH CONDITIONS

Sec. 161.021. AUTHORIZATION TO PROVIDE INFORMATION; USE OF INFORMATION; LIABILITY. (a) Unless prohibited by other law, a person, including a hospital, sanatorium, nursing facility, rest home, medical society, cancer registry, or other organization, may

provide interviews, reports, statements, memoranda, or other information relating to the condition and treatment of any person, to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization, to:

(1) the department;

(2) a person that makes inquiries under immunization surveys conducted for the department;

(3) a medical organization;

(4) a hospital;

(5) a hospital committee; or

(6) a cancer registry, including a cancer registry of a cancer treatment center.

(b) A person is not liable for damages or other relief for:

(1) providing the information;

(2) releasing or publishing the findings or conclusions to advance medical research or medical education; or

(3) releasing or publishing a general summary of those studies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 3, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.03, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0468, eff. April 2, 2015.

Sec. 161.0211. EPIDEMIOLOGIC OR TOXICOLOGIC INVESTIGATIONS. (a) Under its duty to protect the public health, the department shall conduct epidemiologic or toxicologic investigations of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health.

(b) The department may conduct those investigations to determine the nature and extent of the disease or environmental exposure believed to be harmful to the public health. Any findings or determinations from such investigations that relate to environmental exposures believed to be harmful to the public shall be reported in writing to the Texas Commission on Environmental Quality, and the two agencies shall coordinate corrective measures as appropriate. The department shall use generally accepted methods of

epidemiology or toxicology in the conduct of an investigation.

(c) A person shall provide medical, demographic, epidemiologic, toxicologic, or environmental information to the department as described by Section 81.061(c).

(d) A person is not liable for damages or other relief for providing medical or other confidential information to the department during an epidemiologic or toxicologic investigation.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 65, eff. September 1, 2013.

Sec. 161.0212. RIGHT OF ENTRY. To conduct an epidemiologic or toxicologic investigation, the commissioner or the commissioner's designee has the same authority to investigate, sample, inspect, and enter as that described by Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Sec. 161.0213. CONFIDENTIALITY. Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas Commission on Environmental Quality that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0469, eff. April 2, 2015.

Sec. 161.022. USE AND PUBLICATION RESTRICTIONS;

CONFIDENTIALITY. (a) The department, a medical organization, a hospital, a hospital committee, or a cancer registry may use or publish information under Section 161.021 only to advance medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of the studies may be released by those persons for general publication.

(b) The identity of a person whose condition or treatment has been studied is confidential and may not be revealed except in immunization surveys conducted for the department to identify persons who need immunization.

(c) Interviews, reports, statements, memoranda, and other information, other than immunization information, furnished under this chapter and any findings or conclusions resulting from the study of that information, are privileged.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 4, eff. May 27, 1997.

Sec. 161.023. NO LIABILITY FOR REPORTS TO MEDICAL COMMITTEE. (a) This section applies to:

(1) a physician, hospital, medical organization, university health science center, university medical school, or an officer or employee of that person or entity; and

(2) a health maintenance organization or an officer, employee, or agent of the health maintenance organization, including an independent practice association or other physician association contracting with the health maintenance organization.

(b) A person or entity covered by this section is not liable for damages to any person for furnishing information, reports, or records to a medical committee relating to a patient:

(1) examined or treated by the physician; or

(2) treated or confined in:

(A) the hospital;

(B) a clinic or facility staffed or operated by a university health science center or university medical school; or

(C) a hospital, clinic, or facility staffed, operated, or used by a health maintenance organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.024. APPLICATION TO HEALTH MAINTENANCE ORGANIZATION. This subchapter does not apply to a function of a health maintenance organization other than medical peer review and quality assurance conducted under Chapter 843, Insurance Code, the rules adopted under that chapter, or other applicable state and federal statutes and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.524, eff. Sept. 1, 2003.

SUBCHAPTER D. MEDICAL COMMITTEES, MEDICAL PEER REVIEW COMMITTEES, AND COMPLIANCE OFFICERS

Sec. 161.031. MEDICAL COMMITTEE DEFINED. (a) In this subchapter, "medical committee" includes any committee, including a joint committee, of:

(1) a hospital;

(2) a medical organization;

(3) a university medical school or health science center;

(4) a health maintenance organization licensed under Chapter 843, Insurance Code, including an independent practice association or other physician association whose committee or joint committee is a condition of contract with the health maintenance organization;

(5) an extended care facility;

(6) a hospital district; or

(7) a hospital authority.

(b) The term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.

(c) The term includes a committee, including a joint committee, of one or more health care systems if each health care system includes one or more of the entities listed in Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 655, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 908, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.525, eff. Sept. 1, 2003.

Sec. 161.0315. AUTHORITY OF GOVERNING BODY TO FORM COMMITTEE TO

EVALUATE MEDICAL AND HEALTH CARE SERVICES. (a) The governing body of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, hospital district, or hospital authority may form a medical peer review committee, as defined by Section 151.002, Occupations Code, or a medical committee, as defined by Section 161.031, to evaluate medical and health care services, except as provided by this section.

(b) Except as provided by Subsection (d), a medical peer review committee or medical committee formed by the governing body of a hospital district may not evaluate medical and health care services provided by a health care facility that:

(1) contracts with the district to provide those services; and

(2) has formed a medical peer review committee or medical committee to evaluate the services provided by the facility.

(c) A hospital district may require in a contract with a health care facility described by Subsection (b) a provision that allows the governing body of the district to appoint a specified number of members to the facility's medical peer review committee or medical committee to evaluate medical and health care services for which the district contracts with the facility to provide. The governing body of a hospital district may receive a report from the facility's medical peer review committee or medical committee under this section in a closed meeting. A report, information, or a record that the district receives from the facility related to a review action conducted under the terms of the contract is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

(d) If a hospital district and a health care facility described by Subsection (b) do not agree on a contract provision described by Subsection (c), the hospital district has, with respect to a review action for the evaluation of medical and health care services provided by the facility under a contract with the district, a right to:

(1) initiate the review action;

(2) appoint from the medical staff of the facility a number of members to the facility's medical peer review committee or medical committee equal to the number of members appointed to the committee by the facility to conduct the review action, without regard to whether the district initiates the action; and

(3) receive records, information, or reports from the medical peer review committee or medical committee related to the review action.

(e) The governing body of a hospital district may receive a report under Subsection (d)(3) in a closed meeting. A report, information, or a record that the hospital district receives under Subsection (d)(3) is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

(f) A medical peer review committee or medical committee formed by the governing body of a hospital district may compile a report, information, or record of the medical and health care services provided by a health care facility described by Subsection (b) and submit the compilation to the facility's medical peer review committee or medical committee. A report, information, or record compiled under this subsection is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

Added by Acts 1999, 76th Leg., ch. 908, Sec. 6, eff. June 18, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.781, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 721, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0470, eff.

April 2, 2015.

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) Notwithstanding Section 551.002, Government Code, the following proceedings may be held in a closed meeting following the procedures prescribed by Subchapter E, Chapter 551, Government Code:

(1) a proceeding of a medical peer review committee, as defined by Section 151.002, Occupations Code, or medical committee; or

(2) a meeting of the governing body of a public hospital, hospital district, hospital authority, or health maintenance organization of a public hospital, hospital authority, hospital district, or state-owned teaching hospital at which the governing body receives records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer.

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

(d) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

(g) Notwithstanding any other provision of this section, the

records of a medical committee of a university medical school or a health science center, including a joint committee, may be disclosed to the extent required under federal law as a condition on the receipt of federal money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 625, Sec. 6, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 908, Sec. 4, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1511, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 66, eff. September 1, 2013.

Sec. 161.033. IMMUNITY FOR COMMITTEE MEMBERS. A member of a medical committee is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. REPORTS OF GUNSHOT WOUNDS AND CONTROLLED SUBSTANCE OVERDOSES

Sec. 161.041. MANDATORY REPORTING OF GUNSHOT WOUNDS. A physician who attends or treats, or who is requested to attend or treat, a bullet or gunshot wound, or the administrator, superintendent, or other person in charge of a hospital, sanitorium, or other institution in which a bullet or gunshot wound is attended or treated or in which the attention or treatment is requested, shall report the case at once to the law enforcement authority of the municipality or county in which the physician practices or in which the institution is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.042. MANDATORY REPORTING OF CONTROLLED SUBSTANCE

OVERDOSES. (a) A physician who attends or treats, or who is requested to attend or treat, an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022, or the administrator, superintendent, or other person in charge of a hospital, sanitorium, or other institution in which an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022 is attended or treated or in which the attention or treatment is requested, shall report the case at once to the department.

(b) A physician or other person who reports an overdose of a controlled substance under this section shall include in the report information regarding the date of the overdose, the type of controlled substance used, the sex and approximate age of the person attended or treated for the overdose or for whom treatment was sought, the symptoms associated with the overdose, the extent of treatment made necessary by the overdose, and the patient outcome. The physician or other person making the report may provide other demographic information concerning the person attended or treated or for whom treatment was sought but may not disclose the person's name or address or any other information concerning the person's identity.

(c) A hospital, sanitorium, or other institution that makes a report under this section is not subject to civil or criminal liability for damages arising out of the report. An individual who makes a good-faith report under this section is not subject to civil or criminal liability for damages arising out of the report.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 17, eff. September 1, 2021.

Sec. 161.043. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to report under this subchapter and intentionally fails to report.

(b) An offense under this section is a misdemeanor punishable by confinement in jail for not more than six months or by a fine of not more than $100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health and Safety Code Sec. 161.042 and amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.044. CONTROLLED SUBSTANCE OVERDOSE INFORMATION REPOSITORY. (a) The department shall maintain a central repository for the collection and analysis of information relating to incidents of a controlled substance overdose for which a physician or other person is required to report to the department under Section 161.042. The department may not include in the repository any information the physician or other person is precluded from reporting under that section.

(b) The department shall release statistical information contained in the central repository on the request of a medical professional or representative of a law enforcement agency.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.045. MANDATORY REPORTING OF CONTROLLED SUBSTANCE OVERDOSES FOR PUBLIC SAFETY MAPPING. (a) In this section:

(1) "Controlled substance" has the meaning assigned by Section 481.002.

(2) "Emergency medical services personnel" has the meaning assigned by Section 773.003.

(3) "Opioid antagonist" has the meaning assigned by Section 483.101.

(4) "Overdose" means an acute condition caused by abuse or misuse of a controlled substance evidenced by symptoms such as extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death.

(b) This section applies only to emergency medical services personnel operating within the geographical jurisdiction of a local health authority or law enforcement agency, as applicable, that has entered into a participation agreement for overdose mapping under Section 370.007, Local Government Code.

(c) A person to whom this section applies who responds to an overdose incident shall report information about the incident as soon as possible to the local health authority or law enforcement agency,

as applicable, that has entered into the participation agreement under Section 370.007, Local Government Code. A person satisfies the requirements of this section by reporting information to either the appropriate local health authority or law enforcement agency.

(d) A report under this section must include, if possible:

(1) the date and time of the overdose incident;

(2) the approximate location of the overdose incident, using:

(A) an address;

(B) the latitude and longitude of the location; or

(C) the location data from a cellular device;

(3) whether an opioid antagonist was administered, and if so, the number of doses and the type of delivery; and

(4) whether the overdose was fatal or nonfatal.

(e) A person who reports information about an overdose incident under this section in good faith is not subject to civil or criminal liability for making the report.

(f) A law enforcement agency may use information received from a report under this section only for mapping overdose locations for public safety purposes.

(g) Information in a report described by this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 204 (S.B. 1319), Sec. 1, eff. September 1, 2023.

SUBCHAPTER F. DISCLOSURE OF CERTAIN AGREEMENTS FOR PAYMENT OF LABORATORY TESTS

Sec. 161.061. LABORATORY INFORMATION REQUIRED. (a) A person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic may not agree with a clinical, bioanalytical, or hospital laboratory to make payments to the laboratory for individual tests, combinations of tests, or test series for a patient unless:

(1) the person discloses on the bill or statement to the patient or to a third party payor the name and address of the laboratory and the net amount paid to or to be paid to the laboratory; or

(2) discloses in writing on request to the patient or third party payor the net amount.

(b) The disclosure permitted by Subsection (a)(2) must show the charge for the laboratory test or test series and may include an explanation, in net dollar amounts or percentages, of the charge from the laboratory, the charge for handling, and an interpretation charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.062. GROUNDS FOR LICENSE DENIAL. The agency responsible for licensing and regulating a person subject to this subchapter may, in addition to any other authority granted, deny a license application or other permission to practice if the person violates this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. HUMAN MILK BANKS

Sec. 161.071. MINIMUM GUIDELINES FOR HUMAN DONOR MILK BANKS. The department shall establish minimum guidelines for the procurement, processing, distribution, or use of human milk by donor milk banks.

Added by Acts 2001, 77th Leg., ch. 379, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS

Sec. 161.081. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(1-a) (A) "E-cigarette" means:

(i) an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or

(ii) a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or

other device described by this subdivision.

(B) The term "e-cigarette" does not include a prescription medical device unrelated to the cessation of smoking.

(C) The term "e-cigarette" includes:

(i) a device described by this subdivision regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(ii) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(1-b) "Minor" means a person under 21 years of age.

(2) "Permit holder" has the meaning assigned by Section 147.0001 of this code or Section 154.001 or 155.001, Tax Code, as applicable.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes, e-cigarettes, or tobacco products.

(4) "Retailer" means a person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers and includes the owner of a coin-operated cigarette, e-cigarette, or tobacco product vending machine. The term includes a retailer as defined by Section 154.001 or 155.001, Tax Code, and an e-cigarette retailer as defined by Section 147.0001 of this code, as applicable.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 2, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 2, eff. September 1, 2021.

Sec. 161.0815. NONAPPLICABILITY. This subchapter does not apply to a product that is:

(1) approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction; and

(2) labeled with a "Drug Facts" panel in accordance with regulations of the United States Food and Drug Administration.

Added by Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 2, eff. September 1, 2019.

Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 21 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 21 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to someone who is younger than 21 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(f) It is an exception to the application of Subsection (a)(1)

that the person to whom the cigarette, e-cigarette, or tobacco product was sold:

(1) is at least 18 years of age; and

(2) presented at the time of purchase a valid military identification card of the United States military forces or the state military forces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.081 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 4, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 4, eff. September 1, 2019.

Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate.

(b) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with Section 161.082.

(c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and

relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

Added by Acts 2005, 79th Leg., Ch. 391 (S.B. 1465), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 5, eff. October 1, 2015.

Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 30 YEARS OF AGE. (a) A person may not sell, give, or cause to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 30 years of age unless the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presents an apparently valid proof of identification.

(a-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 19, eff. September 1, 2019.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 161.0901.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 5, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 6, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 19, eff.

September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 3, eff. September 1, 2021.

Sec. 161.084. WARNING NOTICE. (a) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO $500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY FORCES.

(c) The comptroller by rule shall determine the design and size of the sign.

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes, e-cigarettes, or tobacco products or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

(f) The comptroller may accept gifts or grants from any public or private source to perform the comptroller's duties under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.082 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 62 (S.B. 91), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 8, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 7, eff. September 1, 2019.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes, e-cigarettes, or tobacco products to any person who is younger than 21 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that a violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by this section must be provided within 72 hours of the date an individual begins to engage in retail sales of cigarettes, e-cigarettes, or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social

security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 9, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 8, eff. September 1, 2019.

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes, e-cigarettes, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, e-cigarettes, or tobacco products; or

(2) install or maintain a vending machine containing cigarettes, e-cigarettes, or tobacco products.

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open to persons younger than 21 years of age at any time;

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment and that is not open to persons younger than 21 years of age at any time; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code and that is not open to persons younger than 21 years of age at any time.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.
Amended by Acts 1999, 76th Leg., ch. 567, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 10, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 9, eff. September 1, 2019.

Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS. (a) A person may not distribute:

(1) a free sample of a cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product.

(a-1) A person may not distribute to persons younger than 21 years of age a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product.

(b) Except as provided by Subsection (c), a person, including a permit holder, may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem:

(1) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product if

the recipient is younger than 21 years of age.

(b-1) A coupon or other item that a recipient described by Subsection (b) may use to receive a discounted cigarette, e-cigarette, or tobacco product may not be redeemable through mail or courier delivery.

(c) Subsections (a)(2), (a-1), (b), and (b-1) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 11, eff. October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 12, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 10, eff. September 1, 2019.

Sec. 161.0875. SALE OF E-CIGARETTE NICOTINE CONTAINERS. (a) A person may not sell or cause to be sold a container that contains liquid with nicotine and that is an accessory for an e-cigarette unless:

(1) the container satisfies the child-resistant effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when tested in accordance with the method described by 16 C.F.R. Section 1700.20; or

(2) the container is a cartridge that is prefilled and sealed by the manufacturer and is not intended to be opened by a consumer.

(b) If the federal government adopts standards for the packaging of a container described by Subsection (a), a person who complies with those standards is considered to be in compliance with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 13, eff. October 1, 2015.

Sec. 161.0876. PROHIBITED E-CIGARETTE PRODUCTS. (a) For purposes of this section, "e-cigarette product" includes any substance containing nicotine from any source that is intended for use in an e-cigarette.

(b) A person commits an offense if the person markets, advertises, sells, or causes to be sold an e-cigarette product, if the product's container:

(1) depicts a cartoon-like fictional character that mimics a character primarily aimed at entertaining minors;

(2) imitates or mimics trademarks or trade dress of products that are or have been primarily marketed to minors;

(3) includes a symbol that is primarily used to market products to minors;

(4) includes an image of a celebrity; or

(5) includes an image that resembles a food product, including candy or juice.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 919 (H.B. 4758), Sec. 2, eff. January 1, 2024.

Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a) The comptroller shall enforce this subchapter in partnership with local law enforcement agencies and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter R in a manner that can reasonably be expected to reduce the extent to which cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to persons who are younger than 21 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to

ensure compliance with this subchapter and Subchapter R. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter and Subchapter R.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 21 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R;

(2) at the time of the inspection, order, or delivery, the minor decoy is younger than 21 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of or any person who delivers cigarettes, e-cigarettes, or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age at the time of the inspection, order, or delivery.

(e) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1156, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 14, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 11, eff.

September 1, 2019.

Sec. 161.089. PREEMPTION OF LOCAL LAW. (a) Except as provided by Subsection (b), this subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

(b) A political subdivision may not adopt or enforce an ordinance or requirement relating to the lawful age to sell, distribute, or use cigarettes, e-cigarettes, or tobacco products that is more stringent than a requirement prescribed by this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 12, eff. September 1, 2019.

Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCT RETAILERS. (a) A retailer is subject to disciplinary action as provided by this section if an agent or employee of the retailer commits an offense under this subchapter.

(b) If the comptroller finds, after notice and an opportunity for a hearing as provided by Chapter 2001, Government Code, that a permit holder has violated this subchapter at a place of business for which a permit is issued, the comptroller may suspend the permit for that place of business and administratively assess a fine as follows:

(1) for the first violation of this subchapter during the 24-month period preceding the violation at that place of business, the comptroller may require the permit holder to pay a fine in an amount not to exceed $1,000;

(2) for the second violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller may require the permit holder to pay a fine in an amount not to exceed $2,000; and

(3) for the third violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller may:

(A) require the permit holder to pay a fine in an amount not to exceed $3,000; and

(B) suspend the permit for that place of business for not more than five days.

(c) Except as provided by Subsection (e), for the fourth or a subsequent violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller shall revoke the permit issued under Chapter 147 of this code or Chapter 154 or 155, Tax Code, as applicable. If the permit holder does not hold a permit under Chapter 147 of this code or Chapter 154 or 155, Tax Code, the comptroller shall revoke the permit issued under Section 151.201, Tax Code.

(d) A permit holder whose permit has been revoked under this section may not apply for a permit for the same place of business before the expiration of six months after the effective date of the revocation.

(e) For purposes of this section, the comptroller may suspend a permit for a place of business but may not revoke the permit under Subsection (c) if the comptroller finds that:

(1) the permit holder has not violated this subchapter more than seven times at the place of business in the 48-month period preceding the violation in question;

(2) the permit holder requires its employees to attend a comptroller-approved seller training program;

(3) the employees have actually attended a comptroller-approved seller training program; and

(4) the permit holder has not directly or indirectly encouraged the employees to violate the law.

(f) The comptroller may adopt rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 4, eff. September 1, 2021.

Sec. 161.0902. E-CIGARETTE REPORT. (a) Not later than January 5th of each odd-numbered year, the department shall report to the governor, lieutenant governor, and speaker of the house of representatives on the status of the use of e-cigarettes in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter and Subchapter R;

(2) a baseline of statistics and analysis regarding illegal e-cigarette sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) e-cigarette controls and initiatives by the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the department to decrease the use of e-cigarettes;

(5) the educational programs of the department and the effectiveness of those programs; and

(6) the incidence of use of e-cigarettes by regions in this state, including use of e-cigarettes by ethnicity.

(c) The department may include the report required by this section with a similar report for cigarettes or tobacco products required by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 15, eff. October 1, 2015.

Sec. 161.0903. USE OF CERTAIN REVENUE. Revenue from fees

collected under Section 161.123 and from the sale of permits under Chapter 147 of this code, retailer permits under Chapter 154, Tax Code, and retailer permits under Chapter 155, Tax Code, shall be deposited in the general revenue fund and may be appropriated only as provided by this section. The revenue shall be appropriated, in order of priority, to:

(1) the comptroller for the purpose of administering retailer permitting under Chapter 147 of this code and Chapters 154 and 155, Tax Code; and

(2) the comptroller for the purpose of administering and enforcing this subchapter and Subchapters K and N.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 4, eff. September 1, 2021.

SUBCHAPTER J. EXPOSURE TO LEAD

Sec. 161.101. TESTS FOR EXPOSURE TO LEAD. (a) At the request of an attending physician, the department shall conduct tests for lead poisoning if the physician suspects that a person has been exposed to lead and that the person may have been harmed by that exposure.

(b) The department shall charge only for the cost to the department of conducting the test.

(c) The executive commissioner shall adopt rules to implement this section.

Acts 1991, 72nd Leg., ch. 695, Sec. 1, eff. Aug. 26, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0472, eff. April 2, 2015.

SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE OR TOBACCO PRODUCT ADVERTISING; FEE

Sec. 161.121. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(3) "School" means a private or public elementary or

secondary school.

(4) "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.122. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. (a) Except as provided by this section, a sign containing an advertisement for cigarettes or tobacco products may not be located closer than 1,000 feet to a church or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period.

(d) In Subsection (c), a "facility" includes a stadium, arena, or events center and any land or property owned or leased by the professional sports franchise that is connected to or immediately contiguous to the stadium, arena, or events center.

(e) Subsection (a) does not apply to a sign containing an advertisement for cigarettes or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.

(f) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An

offense under this subsection is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 209, Sec. 1, eff. Oct. 1, 2003.

Sec. 161.123. ADVERTISING FEE. (a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(b) The comptroller shall collect the fee as provided in this section.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall establish by rule the periods for collection of the fees and the methods of payment and shall adopt other rules necessary to administer and enforce this section.

(e) In this section, "gross sales price" means the sum of:

(1) production costs;

(2) media cost; and

(3) cost of sales or commissions paid to an agency or broker.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 5, eff. September 1, 2021.

Sec. 161.125. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising required to comply with Section 161.123 who violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the amount of fees due and owing;

(2) attempted concealment of misconduct by the person who committed the violation;

(3) premeditated misconduct by the person who committed the violation;

(4) intentional misconduct by the person who committed the violation;

(5) the motive of the person who committed the violation;

(6) prior misconduct of a similar or related nature by the person who committed the violation;

(7) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(8) violation by the person who committed the violation of an order of the comptroller;

(9) lack of rehabilitative potential or likelihood for future misconduct of a similar nature;

(10) relevant circumstances increasing the seriousness of the misconduct; and

(11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the person of the comptroller's order. The notice must include a statement of the rights of the person to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be deposited in the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

SUBCHAPTER L. ABUSE, NEGLECT, AND UNPROFESSIONAL OR UNETHICAL CONDUCT IN HEALTH CARE FACILITIES

Sec. 161.131. DEFINITIONS. In this subchapter:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(2) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(3) "Hospital" has the meaning assigned by Section 241.003.

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section 571.003.

(6) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(7) "Mental health facility" has the meaning assigned by Section 571.003.

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0473, eff.

April 2, 2015.

Sec. 161.132. REPORTS OF ABUSE AND NEGLECT OR OF ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT. (a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(d) The executive commissioner by rule for the department and the Department of Aging and Disability Services, and each state health care regulatory agency by rule, shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report

referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) The executive commissioner by rule and each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

(h) A person commits an offense if the person:

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

(j) In this section, "abuse" includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.41, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0474, eff. April 2, 2015.

Sec. 161.133. INSERVICE TRAINING. (a) The executive commissioner by rule shall require each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of

continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The rules must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) The department shall review and the executive commissioner shall modify the rules as necessary not later than the last month of each state fiscal year.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0475, eff. April 2, 2015.

Sec. 161.134. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

(1) reinstatement in the plaintiff's former position;

(2) compensation for lost wages; and

(3) reinstatement of lost fringe benefits or seniority rights.

(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0476, eff. April 2, 2015.

Sec. 161.135. RETALIATION AGAINST NONEMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility

that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the department;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a

violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section 161.134(j).

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0477, eff. April 2, 2015.

Sec. 161.136. BROCHURE RELATING TO SEXUAL EXPLOITATION. (a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(b) The brochure shall include:

(1) procedures for filing a complaint relating to sexual exploitation, including any toll-free telephone number available; and

(2) the rights of a victim of sexual exploitation.

(c) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.137. PENALTIES. In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

SUBCHAPTER M. MEDICAL OR MENTAL HEALTH RECORDS

Sec. 161.201. DEFINITION. In this subchapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.202. FEES. (a) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

(1) Chapter 31, Human Resources Code;

(2) the state Medicaid program;

(3) Title II, the federal Social Security Act, as amended (42 U.S.C. Section 401 et seq.);

(4) Title XVI, the federal Social Security Act, as amended (42 U.S.C. Section 1382 et seq.);

(5) Title XVIII, the federal Social Security Act, as amended (42 U.S.C. Section 1395 et seq.);

(6) 38 U.S.C. Section 1101 et seq., as amended; or

(7) 38 U.S.C. Section 1501 et seq., as amended.

(b) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or assistance under Subsection (a) or an appeal relating to denial of those benefits or assistance.

(c) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.

(d) A health care provider or health facility is not required to provide more than one complete record for a patient or former patient requested under Subsection (a)(6) or (7) without charge. If

additional material is added to the patient or former patient's record, on request the health care provider or health facility shall supplement the record provided under Subsection (a)(6) or (7) without charge. This subsection does not affect the ability of a person to receive a medical or mental health record under Subsections (a)(1)-(5).

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 1999, 76th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.203. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section 161.202 not later than the 30th day after the date on which the provider or facility receives the request.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.204. APPLICATION OF OTHER LAW. This subchapter controls over Section 611.0045 of this code and Section 159.006, Occupations Code, and any other provision that authorizes the charging of a fee for providing medical or mental health records.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.783, eff. Sept. 1, 2001.

SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(1-a) "E-cigarette" has the meaning assigned by Section 161.081.

(1-b) "Minor" means a person under 21 years of age.

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 17, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 13, eff. September 1, 2019.

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 21 years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product; or

(2) falsely represents himself or herself to be 21 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette, e-cigarette, or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 21 years of age possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 21 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(c-1) It is an exception to the application of this section that the individual younger than 21 years of age:

(1) is at least 18 years of age; and

(2) presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(d) An offense under this section is punishable by a fine not to exceed $100.

(e) On conviction of an individual under this section, the court shall give notice to the individual that the individual may apply to the court to have the individual's conviction expunged as provided by Section 161.255 on or after the individual's 21st birthday.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 19, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 14, eff. September 1, 2019.

Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE. (a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend an e-cigarette and tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the e-cigarette and tobacco awareness program with the defendant.

(b) On request, an e-cigarette and tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to an e-cigarette and tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of e-cigarette- and tobacco-related community service instead of attending the e-cigarette and tobacco awareness program.

(d) The e-cigarette and tobacco awareness program and the e-cigarette- and tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the e-cigarette and tobacco awareness program or the e-cigarette- and tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 20, eff. October 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 21, eff. October 1, 2015.

Sec. 161.255. EXPUNGEMENT OF CONVICTION. (a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged on or after the individual's 21st birthday. The court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a reimbursement fee in the amount of $30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.
Amended by:
Acts 2005, 79th Leg., Ch. 886 (S.B. 1426), Sec. 5, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 22, eff. October 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 15, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.50, eff. January 1, 2020.

Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a

court under this subchapter may impose a requirement that a defendant attend an e-cigarette and tobacco awareness program or perform e-cigarette- and tobacco-related community service.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 23, eff. October 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 16, eff. September 1, 2019.

Sec. 161.257. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

SUBCHAPTER O. PREVENTION OF TOBACCO AND E-CIGARETTE USE BY MINORS

Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS CAMPAIGN. (a) The department shall develop and implement a public awareness campaign designed to reduce the use by minors in this state of tobacco and e-cigarettes as defined by Section 161.081. The campaign may use advertisements or similar media to provide educational information about tobacco and e-cigarette use.

(b) The department may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.

(c) A contract awarded under Subsection (b) may be awarded only to a business that has a proven background in advertising and public relations campaigns.

(d) The department may not award a contract under Subsection (b) to:

(1) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code, except as provided by Subsection (f);

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1) and not described by Subsection (f); or

(3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the

outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

(e) The persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

(f) A registrant under Chapter 305, Government Code, is not ineligible under Subsections (d) and (e) if the person is required to register under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action concerning a matter relating to the purchase of products or services by a state agency.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1174 (H.B. 3445), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0478, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 25, eff. October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 26, eff. October 1, 2015.

Sec. 161.302. GRANT PROGRAM FOR YOUTH GROUPS. (a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of use by the group's members of tobacco and e-cigarettes as defined by Section 161.081.

(b) "Youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in addition to the components described by Subsection (a), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 27, eff. October 1, 2015.

SUBCHAPTER P. DISCLOSURE OF INGREDIENTS IN CIGARETTES AND TOBACCO PRODUCTS

Sec. 161.351. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Manufacturer" has the meanings assigned by Sections 154.001 and 155.001, Tax Code.

(3) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 161.251 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.352. REPORT TO DEPARTMENT. (a) Each manufacturer shall file with the department an annual report for each cigarette or tobacco product distributed in this state, stating the identity of each ingredient in the cigarette or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:

(1) tobacco;

(2) water; or

(3) a reconstituted tobacco sheet made wholly from tobacco.

(b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity.

(c) The executive commissioner by rule shall establish the time

for filing an annual report under this section and shall prescribe the form for the report.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.252 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(12), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0479, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 8, eff. September 1, 2021.

Sec. 161.354. PUBLIC INFORMATION. (a) Except as provided by Subsections (b), (c), and (d), information included in a report filed under this subchapter is public information and is not confidential unless it is determined to be confidential under this section.

(b) The department may not disclose information under Subsection (a) until the department has obtained the advice of the attorney general under this section with respect to the particular information to be disclosed. If the attorney general determines that the disclosure of particular information would constitute an unconstitutional taking of property, the information is confidential and the department shall exclude that information from disclosure.

(c) Information included in a report filed under this subchapter is confidential if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health.

(d) Information included in a report filed under this subchapter is confidential under Chapter 552, Government Code, if the information would be excepted from public disclosure as a trade secret under state or federal law.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.254 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.355. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a manufacturer

has failed to file the report required by Section 161.352, may by injunction:

(1) prohibit the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer; or

(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.255 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(13), eff. Sept. 1, 1999.

Sec. 161.356. COMPLIANCE WITH FEDERAL LAW. A person is considered to have complied with this subchapter if the person complies with Subchapter IX of 21 U.S.C. Chapter 9 and rules adopted under that subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 28, eff. October 1, 2015.

SUBCHAPTER Q. INSTALLATION OF ASBESTOS

Sec. 161.401. DEFINITIONS. In this subchapter:

(1) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Contractor" means a person who constructs, repairs, or maintains a public building as an independent contractor. The term includes a subcontractor.

(3) "Public building" means a building used or to be used for purposes that provide for public access or occupancy. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. The executive commissioner shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. A person may not install materials or replacement parts in a public building if:

(1) the person does not obtain a required material safety data sheet; or

(2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0481, eff. April 2, 2015.

Sec. 161.403. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a contractor who is violating or threatening to violate this subchapter. The action may be brought in a district court of Travis County or of a county in which any part of the violation or threatened violation occurs.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.404. CIVIL PENALTY. (a) A contractor who violates this subchapter is subject to a civil penalty not to exceed $10,000 a day for each violation. Each day of violation constitutes a separate violation for purposes of penalty assessment.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) the contractor's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the contractor; and

(5) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) The party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.403; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(e) A penalty collected under this section by the attorney general shall be deposited in the state treasury to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.405. RECOVERY OF COSTS. The party bringing a suit under Section 161.403 or 161.404 may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.406. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a contractor who violates this subchapter.

(b) The amount of the penalty may not exceed $10,000 a day for a violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) The penalty amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the contractor pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A contractor who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.407. REMEDIES CUMULATIVE. The civil penalty, administrative penalty, and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

Sec. 161.451. DEFINITIONS. In this subchapter:

(1) "Delivery sale" means a sale of cigarettes or e-cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes or e-cigarettes are delivered by use of the mails or another delivery service. A sale of cigarettes or e-cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes or e-cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

(2-a) "E-cigarette" has the meaning assigned by Section 161.081.

(3) "Shipping container" means a container in which cigarettes or e-cigarettes are shipped in connection with a delivery sale.

(4) "Shipping documents" means a bill of lading, airbill, United States Postal Service form, or any other document used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 30, eff. October 1, 2015.

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes or e-cigarettes to an individual who is under the age prescribed by Section 161.082.

(b) A person taking a delivery sale order of cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the registration and reporting requirements prescribed

by Section 161.456;

(4) the tax collection requirements prescribed by Section 161.457; and

(5) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping requirement.

(c) A person taking a delivery sale order of e-cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the registration and reporting requirements prescribed by Section 161.456; and

(4) each law of this state that generally applies to sales of e-cigarettes that occur entirely within this state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 31, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 17, eff. September 1, 2019.

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective customer a certification that includes:

(A) reliable confirmation that the purchaser is at least 21 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective purchaser

understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company;

(2) makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161.454; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

(c) A person may not mail or ship e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 21 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. After the order is accepted, the person must use a method of mailing or shipping that requires an adult signature.

(d) A retailer in this state that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with Subsection (c) by:

(1) verifying the age of the prospective purchaser with a commercially available database or a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(2) obtaining a written statement signed by the prospective purchaser, under penalty of law, certifying the prospective purchaser's address and date of birth; and

(3) receiving payment for the delivery sale from the prospective purchaser by a credit card or debit card that has been issued in the prospective purchaser's name or by a check that is associated with a bank account in the prospective purchaser's name.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 32, eff. October 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 18, eff. September 1, 2019.

Sec. 161.454. DISCLOSURE REQUIREMENTS. (a) The notice required by Section 161.453(a)(3) for a delivery sale of cigarettes must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

(b) A delivery sale of an e-cigarette must include a prominent and clearly legible statement that:

(1) e-cigarette sales to individuals younger than the age prescribed by Section 161.082 are illegal under state law; and

(2) e-cigarette sales are restricted to individuals who provide verifiable proof of age in accordance with Section 161.453.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 33, eff. October 1, 2015.

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes or e-cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name; and

(2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Except as provided by Subsection (d), not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes or e-cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(2) the brand or brands of the cigarettes or e-cigarettes that were sold; and

(3) the quantity of cigarettes or e-cigarettes that were sold.

(c) With respect to cigarettes, a person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

(d) A person is exempt from the requirement of filing with the comptroller a memorandum or a copy of an invoice under Subsection (b) if, in the two years preceding the date the report is due, the person has not violated this subchapter and has not been reported under Section 161.090 to the comptroller as having violated Subchapter H.

(e) A person required to submit a memorandum or a copy of an invoice under Subsection (b) shall submit a memorandum or a copy of an invoice to the comptroller for each delivery sale of a cigarette or e-cigarette in the previous two years unless the person has previously submitted the memorandum or copy to the comptroller.

(f) A person shall maintain records of compliance with this section until at least the fourth anniversary of the date the record was prepared.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 35, eff. October 1, 2015.

Sec. 161.457. COLLECTION OF TAXES. A person who makes a

delivery sale shall collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. A person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.458. GENERAL OFFENSES. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on the trial of a person that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.459. KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due. The penalty provided by this section is in addition to any other penalty provided by law.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.461. FORFEITURE. (a) Cigarettes or e-cigarettes sold or that a person attempted to sell in a delivery sale that does not

comply with this subchapter are forfeited to the state and shall be destroyed.

(b) A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to the state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 36, eff. October 1, 2015.

Sec. 161.462. ENFORCEMENT. The attorney general or the attorney general's designee may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER S. ALLOCATION OF KIDNEYS AND OTHER ORGANS AVAILABLE FOR TRANSPLANT

Sec. 161.471. DEFINITIONS. In this subchapter:

(1) "Auxiliary aids and services" means:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) provision of information in a format readily accessible and understandable to individuals with cognitive, neurological, developmental, or intellectual disabilities;

(D) acquisition or modification of equipment or devices; and

(E) other services and actions similar to those described by Paragraphs (A), (B), (C), and (D).

(2) "Disability" has the meaning assigned by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(3) "Health care facility" means a facility licensed,

certified, or otherwise authorized to provide health care in the ordinary course of business, including a hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business or professional practice, including a physician, hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(5) "Organ procurement organization" means an organization that is a qualified organ procurement organization under 42 U.S.C. Section 273 that is currently certified or recertified in accordance with that federal law.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003. Renumbered from Health and Safety Code, Section 161.451 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 45 (H.B. 119), Sec. 2, eff. September 1, 2021.

Sec. 161.472. FORMATION OF KIDNEY SHARING POOL AND DISTRIBUTION TO LONGEST WAITING PATIENTS. (a) Under the system for allocating kidneys available for transplant in this state, to the extent allowed by federal law, a statewide pool of 20 percent of the kidneys from deceased donors of each blood type recovered by each organ procurement organization that has a defined service area that includes all or part of this state is provided to a special pool for redistribution to patients who have been waiting the longest for transplantation in this state.

(b) Medically eligible patients with low panel reactive antibodies of less than 10 percent who, in terms of accumulated waiting time, comprise the top 20 percent of all patients waiting will be put in a pool. As one of those patients receives a transplant, the patient will be replaced in the pool, in turn, by the

next longest waiting patient. Only accumulated waiting time will be used to establish priority access to the pool.

(c) With the exception of assigning points for a six antigen match with zero antigen mismatch, assigning points for human leukocyte antigen (HLA) match will be eliminated by organ procurement organizations that are participating in the pool established under Subsection (a).

(d) After a patient has qualified for entry into the pool established under Subsection (b), the order of distribution is based solely on the length of time each patient has waited.

(e) Use of the pools will be managed by the federal Organ Procurement and Transplantation Network.

(f) A panel of appropriate physician specialists of Texas' Organ Procurement and Transplantation Network members will monitor the listing of patients and the appropriate use of the pools.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003. Renumbered from Health and Safety Code, Section 161.452 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.

Sec. 161.473. DISCRIMINATION ON BASIS OF DISABILITY PROHIBITED. (a) A health care provider may not, solely on the basis of an individual's disability:

(1) determine an individual is ineligible to receive an organ transplant;

(2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an organ transplant; or

(4) refuse to place the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability.

(b) Notwithstanding Subsection (a), a health care provider may consider an individual's disability when making a treatment recommendation or decision solely to the extent that a physician,

following an individualized evaluation of the potential transplant recipient, determines the disability is medically significant to the organ transplant. This section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

(c) A health care provider may not consider an individual's inability to independently comply with post-transplant medical requirements as medically significant for the purposes of Subsection (b) if the individual has:

(1) a known disability; and

(2) the necessary support system to assist the individual in reasonably complying with the requirements.

(d) A health care facility shall make reasonable modifications in policies, practices, or procedures as necessary to allow individuals with a disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care facility can demonstrate that making the modifications would fundamentally alter the nature of the services or would impose an undue hardship on the facility. Reasonable modifications in policies, practices, and procedures may include:

(1) communicating with persons supporting or assisting with the individual's postsurgical and post-transplant care, including medication; and

(2) considering the support available to the individual in determining whether the individual is able to reasonably comply with post-transplant medical requirements, including support provided by:

(A) family;

(B) friends; or

(C) home and community-based services, including home and community-based services funded by:

(i) Medicaid;

(ii) Medicare;

(iii) a health plan in which the individual is enrolled; or

(iv) any other program or source of funding available to the individual.

(e) A health care provider shall make reasonable efforts to comply with the policies, practices, and procedures, as applicable, developed by a health care facility under Subsection (d), as

necessary to allow an individual with a known disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care provider can demonstrate that compliance would fundamentally alter the nature of the services or would impose an undue hardship on the health care provider.

(f) A health care provider shall make reasonable efforts to provide auxiliary aids and services to an individual with a known disability seeking organ transplant-related services, including organ transplant-related counseling, information, or treatment, as necessary to allow the individual access to those services, unless the health care provider can demonstrate that providing the transplant-related services with auxiliary aids and services present would fundamentally alter the transplant-related services provided or would impose an undue hardship on the health care provider.

(g) A health care provider shall comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent that Act applies to a health care provider. This subsection may not be construed to require a health care provider to comply with that Act if the Act does not otherwise require compliance by the health care provider.

(h) This section applies to each stage of the organ transplant process.

(i) A violation of this section is grounds for disciplinary action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who committed the violation. Before a regulatory agency may take disciplinary action against a health care provider for a violation, the applicable regulatory agency shall:

(1) notify the health care provider of the agency's finding that the health care provider has violated or is violating this section or a rule adopted under this section; and

(2) provide the health care provider with an opportunity to correct the violation without penalty or reprimand.

(j) A physician who in good faith makes a determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

(k) A health care provider who in good faith makes a treatment recommendation or decision on the basis of a physician's

determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 45 (H.B. 119), Sec. 3, eff. September 1, 2021.

SUBCHAPTER T. INFORMATION FOR PARENTS OF NEWBORN CHILDREN

Sec. 161.501. RESOURCE PAMPHLET AND RESOURCE GUIDE PROVIDED TO PARENTS OF NEWBORN CHILDREN. (a) A hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant shall:

(1) provide the woman and the father of the infant, if possible, or another adult caregiver for the infant, with a resource pamphlet that includes:

(A) a list of the names, addresses, and phone numbers of professional organizations that provide postpartum counseling and assistance to parents relating to postpartum depression and other emotional trauma associated with pregnancy and parenting;

(B) information regarding the prevention of shaken baby syndrome including:

(i) techniques for coping with anger caused by a crying baby;

(ii) different methods for preventing a person from shaking a newborn, infant, or other young child;

(iii) the dangerous effects of shaking a newborn, infant, or other young child; and

(iv) the symptoms of shaken baby syndrome and who to contact, as recommended by the American Academy of Pediatrics, if a parent suspects or knows that a baby has been shaken in order to receive prompt medical treatment;

(C) a list of diseases for which a child is required by state law to be immunized and the appropriate schedule for the administration of those immunizations;

(D) the appropriate schedule for follow-up procedures for newborn screening;

(E) information regarding sudden infant death syndrome, including current recommendations for infant sleeping conditions to lower the risk of sudden infant death syndrome;

(F) educational information in both English and Spanish on:

(i) pertussis disease and the availability of a vaccine to protect against pertussis, including information on the Centers for Disease Control and Prevention recommendation that parents receive Tdap during the postpartum period to protect newborns from the transmission of pertussis; and

(ii) the incidence of cytomegalovirus, birth defects caused by congenital cytomegalovirus, and available resources for the family of an infant born with congenital cytomegalovirus; and

(G) the danger of heatstroke for a child left unattended in a motor vehicle;

(2) if the woman is a recipient of medical assistance under Chapter 32, Human Resources Code, provide the woman and the father of the infant, if possible, or another adult caregiver with a resource guide that includes information in both English and Spanish relating to the development, health, and safety of a child from birth until age five, including information relating to:

(A) selecting and interacting with a primary health care practitioner and establishing a "medical home" for the child;

(B) dental care;

(C) effective parenting;

(D) child safety;

(E) the importance of reading to a child;

(F) expected developmental milestones;

(G) health care resources available in the state;

(H) selecting appropriate child care; and

(I) other resources available in the state;

(3) document in the woman's record that the woman received the resource pamphlet described in Subdivision (1) and the resource guide described in Subdivision (2), if applicable; and

(4) retain the documentation for at least five years in the hospital's, birthing center's, physician's, nurse midwife's, or midwife's records.

(b) A hospital, birthing center, physician, nurse midwife, or midwife:

(1) may use the pamphlet provided on the department's website or an alternative pamphlet that provides the information required by Subsection (a)(1); and

(2) may use the resource guide provided on the department's

website or an alternative guide that provides the information required by Subsection (a)(2).

(c) The department may make available online and distribute an existing publication created by another health and human services agency as the resource guide required by Subsection (a)(2).

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 106 (H.B. 1510), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 575 (H.B. 3336), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0482, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1081 (H.B. 2574), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 3, eff. September 1, 2015.

Sec. 161.502. DUTIES OF DEPARTMENT, EXECUTIVE COMMISSIONER, AND COMMISSION. (a) The department shall:

(1) establish guidelines for the provision of the information required by Section 161.501;

(2) make available on the department's website:

(A) a printable version of the pamphlet required by Section 161.501(a)(1); and

(B) a printable version of the resource guide required by Section 161.501(a)(2);

(3) update the list of resources and required immunizations in the pamphlet required under Subdivision (2)(A) quarterly;

(4) make the pamphlet and resource guide required by Section 161.501 available for distribution to hospitals, physicians, birthing centers, nurse midwives, and midwives; and

(5) coordinate funding for the development, publication, and distribution of the informational pamphlet and resource guide

with other health and human services agencies, and solicit funding for the department's duties under this subchapter through means other than appropriations, such as gifts, grants, and sales of sponsorship or advertising.

(b) The department may include additional information in the pamphlet or resource guide as appropriate for parents of newborns.

(c) The executive commissioner shall develop specific performance measures by which the commission may evaluate the effectiveness of the resource guide under Section 161.501(a)(2) in:

(1) reducing costs to the state; and

(2) improving outcomes for children.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(7), eff. September 1, 2021.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0483, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0484, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(7), eff. September 1, 2021.

Sec. 161.503. LIABILITY NOT CREATED. This subchapter does not create civil or criminal liability.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

SUBCHAPTER U. INFORMATION REGARDING PROGRAMS FOR MILITARY PERSONNEL AND THEIR FAMILIES

Sec. 161.551. DEFINITIONS. (a) In this subchapter, "servicemember" means a member or former member of the state military forces or a component of the United States armed forces, including a

reserve component.

(b) In this section, "state military forces" has the meaning assigned by Section 437.001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.11, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0485, eff. April 2, 2015.

Sec. 161.552. DIRECTORY OF SERVICES. (a) The department and commission shall compile, maintain, and disseminate through the Texas Information and Referral Network and through other appropriate media, a directory of services and other resources, tools, and counseling programs available to servicemembers and their immediate family.

(b) The directory must include:

(1) information regarding counseling services that:

(A) facilitate the reintegration of the servicemember into civilian and family life;

(B) identify and treat stress disorders, trauma, and traumatic brain injury;

(C) address parenting and family well-being, employment, and substance abuse issues; and

(D) provide crisis intervention services;

(2) to the greatest degree possible in the judgment of the department, all private and public community, state, and national resources that protect and promote the health and well-being of servicemembers and their immediate family and that are accessible in the state directly or through electronic media, print media, or the Internet; and

(3) other resources that support the health of servicemembers and their families.

(c) The department and commission shall organize the directory in a manner that allows a person to locate services in a specific community in the state.

(d) The department and commission shall develop and maintain the directory in collaboration with local, state, and national

private and government organizations, including:

(1) the United States Veterans Health Administration;

(2) the United States Department of Defense;

(3) the Texas military forces;

(4) the Texas Veterans Commission; and

(5) other public and private national and community-based organizations that provide support to servicemembers and their families.

(e) The department shall provide the directory to the Texas Information and Referral Network of the commission in the time periods and in the manner and format specified by the Texas Information and Referral Network.

(f) The department shall provide the directory on the department's website or through links appearing on the department's website.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.10, eff. September 1, 2013.

SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) recover health care costs to the state imposed by non-settling manufacturers;

(2) prevent non-settling manufacturers from undermining this state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;

(4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by imposing a partial payment obligation on non-settling manufacturers that already make payments on Texas sales under the master settlement agreement until a credit amendment to that agreement that will provide those manufacturers with a credit for payments to Texas is effective; and

(5) provide funding for any purpose the legislature determines.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means a roll for smoking that is:

(A) made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) not a cigar.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this subchapter with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049 percent; by the original participating manufacturers, as defined in the master settlement agreement; and by subsequent

participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(6) "Fee" or "monthly fee" means the fee imposed under Section 161.603.

(7) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or cigarette tobacco products for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(8) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013.

(9) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement described by Subdivision (15).

(10) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(11) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(12) "Released claim" means:

(A) "released claims" as that term is defined in the agreement described by Subdivision (15)(A); and

(B) all claims encompassed in Paragraph 7 of the agreement described by Subdivision (15)(B).

(13) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco

settlement agreement described by Subdivision (15).

(14) "Subsequent participating manufacturer" has the same meaning provided for that term in the master settlement agreement, except that the term excludes any settling manufacturer under the tobacco settlement agreement described by Subdivision (15)(B). A manufacturer may not be treated as a subsequent participating manufacturer for purposes of Section 161.604(c) unless it has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that it is a subsequent participating manufacturer.

(15) "Tobacco settlement agreement" means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997, regarding the matter described in Paragraph (A), but only as to companies that signed that agreement on that date.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to

cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by that settling manufacturer, under the tobacco settlement agreement described by Section 161.602(15)(A).

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376.

(d) The fee imposed by this section is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(e) Except as otherwise provided by this subchapter, the fee imposed by this section is imposed, collected, paid, administered, and enforced in the same manner as the taxes imposed by Chapter 154 or 155, Tax Code, as appropriate.

(f) The fee imposed by this section shall be collected only once on each cigarette or cigarette tobacco product on which it is due.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette tobacco products sold, used, consumed, or distributed in this state, as provided by Section 161.603, during the 2013 calendar year, the fee is imposed at the rate of 2.75 cents for:

(1) each non-settling manufacturer cigarette; and

(2) each 0.09 ounces of non-settling manufacturer cigarette tobacco product described by Section 161.602(3).

(b) Beginning in January 2014, and in January of each subsequent year, the comptroller shall adjust the rate of the fee by increasing the rate in effect on the date the adjustment is made by the greater of:

(1) three percent; or

(2) the actual total percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, during the preceding calendar year, calculated by comparing the CPI-U for December of the preceding calendar year with the CPI-U for

December a year earlier.

(b-1) The adjusted rate of the fee determined under Subsection (b) takes effect on February 1 of the year in which the adjusted rate is determined and remains in effect until January 31 of the following year.

(c) Notwithstanding Subsection (a), the rate of the fee on the cigarettes and cigarette tobacco products of a subsequent participating manufacturer shall, for calendar months beginning before the effective date of a credit amendment, be calculated by substituting 0.75 cents for 2.75 cents in Subsection (a). For calendar months beginning on or after the effective date of a credit amendment, the rate of the fee on the cigarettes and cigarette tobacco products of subsequent participating manufacturers shall be the same as the rate that applies for those months to the cigarettes of non-settling manufacturers who are not subsequent participating manufacturers.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 33 (S.B. 1390), Sec. 1, eff. September 1, 2017.

Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY FEE. (a) A distributor required to file a report under Section 154.210 or 155.111, Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211, Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States;

(4) a calculation of the monthly fee required to be paid by the distributor; and

(5) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) A distributor shall include with the report required under this section the fee imposed under Section 161.603 based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report under this section and calculated using the rate under Section 161.604.

(c) The information required by Subsections (a)(1), (2), and (3) must be itemized for each place of business and by manufacturer and brand family.

(d) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Notwithstanding any other law, a distributor that remits a monthly fee under this section is entitled to a stamping allowance of three percent of the face value of all stamps purchased under Section 154.041, Tax Code, for providing the service of affixing stamps to cigarette packages.

(f) Information obtained from a report provided under Subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to the manufacturer or to the authorized representative of the manufacturer.

(g) The comptroller shall, for the purpose of assisting distributors in calculating the monthly fee, publish and maintain on the comptroller's Internet website:

(1) a list of the names and brand families of settling manufacturers;

(2) a list of each non-settling manufacturer showing whether that manufacturer:

(A) is a subsequent participating manufacturer; or

(B) is not a subsequent participating manufacturer; and

(3) the effective date of any credit amendment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 33 (S.B. 1390), Sec. 2, eff. September 1, 2017.

Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a non-settling manufacturer were not offered for sale or distribution in this state on September 1, 2013, the non-settling manufacturer shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the non-settling manufacturer's complete name, address, and telephone number;

(2) the date that the non-settling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the non-settling manufacturer will offer for sale or distribution in this state;

(4) a statement that the non-settling manufacturer intends to comply with this subchapter; and

(5) the name, address, telephone number, and signature of an officer of the non-settling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and cigarette tobacco products of a non-settling manufacturer that are sold, used, consumed, or distributed in this state in violation of this subchapter, including cigarettes and cigarette tobacco products for which full payment of the fee imposed under Section 161.603 is not made, shall be treated as cigarettes or cigarette tobacco

products for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the distributor or non-settling manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. A non-settling manufacturer shall appoint and engage a resident agent for service of process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.609. AUDIT OR INSPECTION. The comptroller or attorney general is entitled to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and its distributors to ensure compliance with this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request, the comptroller shall report annually to the independent auditor or other entities responsible for making calculations or other determinations under a tobacco settlement agreement or the master settlement agreement, as the master settlement agreement may be amended or supplemented by some or all of the parties thereto, the volume of cigarettes on which the fee required under Section 161.603 is paid, itemized by cigarette manufacturer and brand family.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND. The revenue from the fees imposed by this subchapter shall be deposited

in the state treasury to the credit of the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.612. RELEASED CLAIMS. All fees paid by a manufacturer under this subchapter shall apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This subchapter applies without regard to Section 154.022, Tax Code, or any other law that might be read to create an exemption for interstate sales.

(b) This subchapter does not apply to a tobacco product described by Section 155.001(15)(C), Tax Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.614. RULES. The comptroller may issue rules and regulations as necessary to carry out or enforce this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

SUBCHAPTER W. INFORMATION REGARDING DOWN SYNDROME

Sec. 161.651. DEFINITIONS. In this subchapter:

(1) "Down syndrome" means a chromosomal condition caused by the presence of an extra whole or partial copy of chromosome 21.

(2) "Health care provider" has the meaning assigned by Section 34.001 and includes a genetic counselor.

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

Sec. 161.652. INFORMATION REGARDING DOWN SYNDROME. (a) The department shall make available information regarding Down syndrome that includes:

(1) information addressing physical, developmental, educational, and psychosocial outcomes, life expectancy, clinical course, and intellectual and functional development for individuals with Down syndrome;

(2) information regarding available treatment options for individuals with Down syndrome;

(3) contact information for national and local Down syndrome education and support programs, services, and organizations, including organizations in Houston, Dallas, San Antonio, and Austin, and information hotlines, resource centers, and clearinghouses; and

(4) any other information required by the department.

(b) The information described by Subsection (a) must be:

(1) current, evidence-based information that:

(A) has been reviewed by medical experts and local Down syndrome organizations; and

(B) does not explicitly or implicitly present pregnancy termination as an option when a prenatal test indicates that the unborn child has Down syndrome; and

(2) published in English and Spanish.

(c) The department shall make the information described by Subsection (a) available on the department's Internet website in a format that may be easily printed. The department may provide the information described by Subsection (a) in writing to health care providers if the department determines that providing written information is cost-effective.

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

Sec. 161.653. DUTY OF HEALTH CARE PROVIDER. (a) A health care provider who administers or causes to be administered a test for Down syndrome or who initially diagnoses a child with Down syndrome shall provide the information described by Section 161.652 to:

(1) expectant parents who receive a prenatal test result

indicating a probability or diagnosis that the unborn child has Down syndrome; or

(2) a parent of a child who receives:

(A) a test result indicating a probability or diagnosis that the child has Down syndrome; or

(B) a diagnosis of Down syndrome.

(b) In addition to providing the information described by Subsection (a), a health care provider may provide additional information about Down syndrome that is current and evidence-based and has been reviewed by medical experts and national Down syndrome organizations.

(c) Notwithstanding any other law, this section does not impose a standard of care or create an obligation or duty that provides a basis for a cause of action against a health care provider. A health care provider may not be held civilly or criminally liable for failing to provide information as required by Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

Subchapter X, consisting of Sec. 161.681, was added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 1.

For another Subchapter X, consisting of Secs. 161.701 to 161.706, added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, see Sec. 161.701 et seq., post.

SUBCHAPTER X. INFORMATION REGARDING RISK OF IMPAIRED FERTILITY FROM CANCER TREATMENTS

Sec. 161.681. NOTICE FOR CHILDREN RECEIVING CHEMOTHERAPY OR RADIATION. (a) A health care facility at which a child will begin receiving chemotherapy or radiation that may directly or indirectly cause impaired fertility must, before the treatment begins, notify the child's parents or legal guardians of the risk of impaired fertility from treatment.

(b) The department shall develop and make available a written notice for a health care facility to use for purposes of this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 1, eff. September 1, 2023.

Subchapter X, consisting of Secs. 161.701 to 161.706, was added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2.

For another Subchapter X, consisting of Sec. 161.681, added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 1, see Sec. 161.681 et seq., post.

SUBCHAPTER X. GENDER TRANSITIONING AND GENDER REASSIGNMENT PROCEDURES AND TREATMENTS FOR CERTAIN CHILDREN

Sec. 161.701. DEFINITIONS. In this subchapter:

(1) "Child" means an individual who is younger than 18 years of age.

(2) "Health care provider" means a person other than a physician who is licensed, certified, or otherwise authorized by this state's laws to provide or render health care or to dispense or prescribe a prescription drug in the ordinary course of business or practice of a profession.

(3) "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

(4) "Physician" means a person licensed to practice medicine in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.

Sec. 161.702. PROHIBITED PROVISION OF GENDER TRANSITIONING OR GENDER REASSIGNMENT PROCEDURES AND TREATMENTS TO CERTAIN CHILDREN. For the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex, a physician or health care provider may not knowingly:

(1) perform a surgery that sterilizes the child, including:

(A) castration;

(B) vasectomy;

(C) hysterectomy;

(D) oophorectomy;

(E) metoidioplasty;

(F) orchiectomy;

(G) penectomy;
(H) phalloplasty; and
(I) vaginoplasty;
(2) perform a mastectomy;
(3) provide, prescribe, administer, or dispense any of the following prescription drugs that induce transient or permanent infertility:
(A) puberty suppression or blocking prescription drugs to stop or delay normal puberty;
(B) supraphysiologic doses of testosterone to females; or
(C) supraphysiologic doses of estrogen to males; or
(4) remove any otherwise healthy or non-diseased body part or tissue.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.

Sec. 161.703. EXCEPTIONS. (a) Section 161.702 does not apply to the provision by a physician or health care provider, with the consent of the child's parent or legal guardian, of:
(1) puberty suppression or blocking prescription drugs for the purpose of normalizing puberty for a minor experiencing precocious puberty; or
(2) appropriate and medically necessary procedures or treatments to a child who:
(A) is born with a medically verifiable genetic disorder of sex development, including:
(i) 46,XX chromosomes with virilization;
(ii) 46,XY chromosomes with undervirilization; or
(iii) both ovarian and testicular tissue; or
(B) does not have the normal sex chromosome structure for male or female as determined by a physician through genetic testing.
(b) Section 161.702 does not apply to the provision of a prescription drug to a child that is otherwise prohibited by that section if:
(1) the prescription drug is part of a continuing course of treatment that the child began before June 1, 2023; and

(2) the child attended 12 or more sessions of mental health counseling or psychotherapy during a period of at least six months before the date the course of treatment described by Subdivision (1) began.

(c) A child to whom the exception under Subsection (b) applies:

(1) shall wean off the prescription drug over a period of time and in a manner that is safe and medically appropriate and that minimizes the risk of complications; and

(2) may not switch to or begin a course of treatment on another prescription drug that a physician or health care provider is prohibited from providing to the child under Section 161.702 or otherwise receive a procedure or treatment prohibited by that section.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.

Sec. 161.704. PROHIBITED USE OF PUBLIC MONEY. Public money may not directly or indirectly be used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under Section 161.702.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.

Sec. 161.705. PROHIBITED STATE HEALTH PLAN REIMBURSEMENT. The commission may not provide Medicaid reimbursement and the child health plan program established by Chapter 62 may not provide reimbursement to a physician or health care provider for provision of a procedure or treatment to a child that is prohibited under Section 161.702.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.

Sec. 161.706. ATTORNEY GENERAL ENFORCEMENT. (a) If the

attorney general has reason to believe that a person is committing, has committed, or is about to commit a violation of Section 161.702, the attorney general may bring an action to enforce this subchapter to restrain or enjoin the person from committing, continuing to commit, or repeating the violation.

(b) Venue for an action brought under this section is in a district court of Travis County or the county where the violation occurred or is about to occur.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 2, eff. September 1, 2023.

CHAPTER 162. BLOOD BANKS AND DONATION OF BLOOD

Sec. 162.001. DEFINITIONS. In this chapter:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, the AABB (formerly known as the American Association of Blood Banks), and the American Red Cross Blood Services and that is registered or licensed by the Center for Biologics Evaluation and Research of the United States Food and Drug Administration and accredited by the AABB or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

(2) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

(3) "HIV" means human immunodeficiency virus.

(4) "Adult stem cell" means an undifferentiated cell that is:

(A) found in differentiated tissue; and

(B) able to renew itself and differentiate to yield all or nearly all of the specialized cell types of the tissue from which the cell originated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(a), eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0486, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 2, eff. September 1, 2015.

Sec. 162.002. REQUIRED TESTING OF BLOOD. (a) For each donation of blood, a blood bank shall require the donor to submit to tests for communicable diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

(b) A blood bank is not required to obtain the donor's informed consent before administering tests for infectious diseases and is not required to provide counseling concerning the test results.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0487, eff. April 2, 2015.

Sec. 162.003. CONFIDENTIALITY OF BLOOD BANK RECORDS. The medical and donor records of a blood bank are confidential and may not be disclosed except as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank shall disclose all information required by law, including HIV test results, to:

(1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);

(2) the Centers for Disease Control and Prevention of the United States Public Health Service, as required by federal law or regulation; or

(3) any other local, state, or federal entity, as required by law, rule, or regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0488, eff. April 2, 2015.

Sec. 162.005. DISCLOSURE TO CERTAIN PHYSICIANS OR PERSON TESTED. A blood bank shall disclose blood test results and the name of the person tested to:

(1) the physician or other person authorized by law who ordered the test;

(2) the physician attending the person tested; or

(3) the person tested or a person legally authorized to consent to the test on behalf of the person tested.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.006. DISCLOSURE TO OTHER BLOOD BANKS. (a) A blood bank may report to other blood banks the name of a donor with a possible communicable disease according to positive blood test results.

(b) A blood bank that reports a donor's name to other blood banks under this section may not disclose the communicable disease that the donor has or is suspected of having.

(c) A blood bank that reports as provided by this section does not breach a confidence arising out of any confidential relationship.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0489, eff. April 2, 2015.

Sec. 162.007. REPORT TO RECIPIENT OR TRANSFUSER. (a) A blood bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other communicable disease to:

(1) the hospital or other facility in which the blood was transfused or provided;

(2) the physician who transfused the infected blood; or

(3) the recipient of the blood.

(b) A blood bank may report blood test results for statistical purposes.

(c) A blood bank that reports test results under this section may not disclose the name of the donor or person tested or any other information that could result in the disclosure of the donor's or

person's identity, including an address, social security number, designated recipient, or replacement donation information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0490, eff. April 2, 2015.

Sec. 162.008. PROCEDURES FOR NOTIFYING BLOOD RECIPIENTS. Each hospital, physician, health agency, and other transfuser of blood shall strictly follow the official "Operation Look-Back" procedure of the American Association of Blood Banks or the American Red Cross Blood Services in notifying past and future recipients of blood. The only exception to notifying a recipient of blood is if the recipient is dead or cannot be located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(b), eff. Sept. 1, 1989.

Sec. 162.009. PROVISION OF BLOOD SAMPLES FOR TESTING. On request, a blood bank shall provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.010. GENERAL POWERS AND DUTIES OF COURT. (a) After notice and hearing, a court of competent jurisdiction may require a blood bank to provide a recipient of blood from the blood bank with the results of tests of the blood of each donor of blood transfused into the recipient. The court may also require the test results to be given to an heir, parent, or guardian of the recipient, or a personal representative of the recipient's estate. The test results must be given in accordance with Section 162.007.

(b) If a blood bank fails to or cannot provide the test results as required under Subsection (a), the court may require the blood bank to use every reasonable effort, including any effort directed by the court, to locate any donor of the blood in question. The court

may require the blood bank to obtain from that donor a blood sample for testing and may direct the blood bank to provide blood test results, samples of the blood, or both, to an independent laboratory designated by the court for testing. The results of the independent laboratory test must be made available to the recipient, an heir, parent, or guardian of the recipient, or the personal representative of the recipient's estate.

(c) Section 162.002 applies if a blood bank requires a donor to provide a blood sample for testing under Subsection (b).

(d) If a blood test result is positive or if the blood bank fails to or cannot provide a blood test result or blood sample as required under Subsection (b), the court may require the blood bank to provide any information that the court determines is necessary to satisfy the court that the blood bank has complied in all respects with this section and the court's order or has demonstrated every reasonable effort to comply. The blood bank must provide the information to the judge of the court in camera and under seal.

(e) The court may not disclose to any other person the name of a donor or any other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information. However, on the motion of any party, the court shall order the taking of the donor's deposition at a specified time and in a manner that maintains the donor's anonymity.

(f) The court may not deny a party's attorney the right to orally cross-examine the donor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.011. DISCOVERY POWERS OF COURT. (a) A court of competent jurisdiction shall exercise the discovery powers granted in this section on the motion of any party. The court shall exercise the powers to the extent reasonably necessary to obtain information from or relating to a donor if that information:

(1) is reasonably calculated to lead to the discovery of admissible evidence regarding any matter relevant to the subject matter of a pending proceeding; and

(2) cannot otherwise be obtained without threatening the disclosure of the name of a donor or other information that could

result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information.

(b) This section does not apply to information obtainable under Section 162.010.

(c) The court may:

(1) order the deposition of any witness, including a donor, orally, on written questions and cross-questions propounded by the parties, or both; and

(2) compel the production of documents and things.

(d) A subpoena issued to a donor under this section may be served only in person at the donor's residence address. On a showing that service in person cannot be made at the donor's residence despite diligent efforts to do so, the court may order service on the donor at other places as directed by the court.

(e) The court shall deliver to the parties all discoverable information obtained through the exercise of powers provided by this section, including testimony, documents, or things. The court shall first delete from that information the name of any donor or any other information that could result in the disclosure of a donor's identity, including information described by Subsection (a)(2). The court may substitute fictitious names, such as "John Doe," or make other changes as necessary to protect the confidentiality of the donor's identity in the information made available to the parties.

(f) The court may not disclose confidential donor information to any person other than a person acting under Section 162.010(e) or (f). That person may not disclose the information to others.

(g) The exercise of the court's powers under this section is governed by the Texas Rules of Civil Procedure, except to the extent of any conflict with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.012. LIMITATION ON LIABILITY. (a) A donor who provides information or blood samples under Section 162.010 is immune from all liability arising out of the donation of the blood transfused into a recipient.

(b) A blood bank is not liable for the disclosure of information to a court in accordance with an order issued under

Sections 162.010(b)-(f).

(c) A presumption of negligence or causation does not attach to a donor's positive test result if the test result is obtained after the donation of blood or blood components that is the subject of discovery as provided under Section 162.011.

(d) Except as provided by Section 162.013 or 162.014, a person who negligently or intentionally discloses blood bank records in violation of this chapter is liable only for actual damages resulting from the negligent or intentional disclosure.

(e) This chapter does not give rise to any liability under Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.013. CIVIL PENALTY. (a) A person who is injured by a violation of Section 162.006, 162.007, 162.010, or 162.011 may bring a civil action for damages. In addition, any person may bring an action to restrain such a violation or threatened violation.

(b) If it is found in a civil action that a person has violated a section listed in Subsection (a), that person is liable for:

(1) actual damages;

(2) a civil penalty of not more than $1,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.014. CRIMINAL PENALTY. (a) A person commits an offense if the person discloses information in violation of Section 162.006, 162.007, 162.010, or 162.011.

(b) An offense under this section is a Class C misdemeanor.

(c) Each disclosure made in violation of Section 162.006 or 162.007 constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.015. DONATION OF BLOOD BY PERSONS YOUNGER THAN 18

YEARS OF AGE. A person who is 17 years of age may consent to the donation of the person's blood or blood components. A person younger than 18 years of age may not receive any compensation from a blood bank for a donation of the person's blood or blood components.

Added by Acts 1993, 73rd Leg., ch. 160, Sec. 1, eff. Sept. 1, 1993.

Sec. 162.016. BE A BLOOD DONOR ACCOUNT; DEDICATION. (a) The be a blood donor account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 504.641, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The department administers the account.

(b-1) The department may spend money credited to the account or money deposited to the associated trust fund account created under Section 504.6012, Transportation Code, only to:

(1) make grants to nonprofit blood centers in this state for programs to recruit and retain volunteer blood donors; and

(2) defray the cost of administering the account.

(c) The department may accept gifts, grants, and donations from any source for the benefit of the account. The executive commissioner of the Health and Human Services Commission by rule shall establish guidelines for spending money described by Subsection (b-1).

Added by Acts 2003, 78th Leg., ch. 1320, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0491, eff. April 2, 2015.

Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS. (a) The executive commissioner shall prepare and update as necessary a brochure based on nationally accepted, peer reviewed, scientific research information regarding stem cells contained in the umbilical cord blood after delivery of an infant. The information in the brochure must include:

(1) the current and potential uses, risks, and benefits of

stem cells contained in umbilical cord blood to a potential recipient of donated stem cells, including a biological family member, extended family member, or nonrelated individual;

(2) the options available for future use or storage of umbilical cord blood after delivery of an infant, including:

(A) discarding the stem cells;

(B) donating the stem cells to a public umbilical cord blood bank;

(C) storing the stem cells in a private family umbilical cord blood bank for use by immediate and extended family members; and

(D) storing the stem cells for immediate and extended family use through a family or sibling donor banking program that provides free collection, processing, and storage when a medical need exists;

(3) the medical process used to collect umbilical cord blood after delivery of an infant;

(4) any risk associated with umbilical cord blood collection to the mother and the infant;

(5) any costs that may be incurred by a pregnant woman who chooses to donate or store umbilical cord blood after delivery of the woman's infant; and

(6) the average cost of public and private umbilical cord blood banking.

(b) The department shall make the brochure available on the department's website and shall distribute the brochure on request to physicians or other persons permitted by law to attend a pregnant woman during gestation or at delivery of an infant.

Added by Acts 2007, 80th Leg., R.S., Ch. 104 (H.B. 709), Sec. 1, eff. May 17, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0492, eff. April 2, 2015.

Sec. 162.019. DUTY OF CERTAIN PROFESSIONALS. (a) Except as otherwise provided by this section, a physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall provide the woman with the brochure

described in Section 162.018 before the third trimester of the woman's pregnancy or as soon as reasonably feasible.

(b) A person described in Subsection (a) who attends a pregnant woman during delivery of her infant shall permit the mother to arrange for umbilical cord blood storage or donation if the mother requests unless, in the opinion of the person, the donation threatens the health of the mother or her infant.

(c) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) or to permit for the arrangement of umbilical cord blood storage or donation under Subsection (b) if the action conflicts with the person's religious beliefs and the person makes this fact known to the mother as soon as reasonably feasible.

(d) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) while treating the pregnant woman for an emergency condition or when the mother presents in labor and delivers the infant during that presentation.

(e) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) if the woman provides the person with a written statement that she chooses to view the materials on the website described by Section 162.018(b).

(f) A person described by Subsection (a) who fails to distribute the brochure is not subject to discipline by the appropriate licensing agency and a cause of action is not created by any failure to distribute the brochure as required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 104 (H.B. 709), Sec. 1, eff. May 17, 2007.

Sec. 162.020. ADULT STEM CELL COLLECTION. Blood obtained by a blood bank may be used for the collection of adult stem cells if the donor consents in writing to that use.

Added by Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 3, eff. September 1, 2015.

CHAPTER 163. EDUCATION PROGRAM ABOUT SEXUAL CONDUCT AND SUBSTANCE ABUSE

Sec. 163.001. PROGRAM. (a) The department shall develop a

model public health education program suitable for school-age children and shall make the program available to any person on request. The program should emphasize:

(1) that abstinence from sexual intercourse is the most effective protection against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually;

(2) that abstinence from sexual intercourse outside of lawful marriage is the expected societal standard for school-age unmarried persons; and

(3) the physical, emotional, and psychological dangers of substance abuse, including the risk of acquired immune deficiency syndrome (AIDS) through the sharing of needles during intravenous drug usage.

(b) Course materials and instruction relating to sexual education or sexually transmitted diseases should be age appropriate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 51, eff. Sept. 1, 1991.

Sec. 163.002. INSTRUCTIONAL ELEMENTS. Course materials and instruction relating to sexual education or sexually transmitted diseases should include:

(1) an emphasis on sexual abstinence as the only completely reliable method of avoiding unwanted teenage pregnancy and sexually transmitted diseases;

(2) an emphasis on the importance of self-control, responsibility, and ethical conduct in making decisions relating to sexual behavior;

(3) statistics, based on the latest medical information, that indicate the efficacy of the various forms of contraception;

(4) information concerning the laws relating to the financial responsibilities associated with pregnancy, childbirth, and child rearing;

(5) information concerning the laws prohibiting sexual abuse and the legal and counseling options available to victims of sexual abuse;

(6) information on how to cope with and rebuff unwanted physical and verbal sexual advances, as well as the importance of avoiding the sexual exploitation of other persons;

(7) psychologically sound methods of resisting unwanted peer pressure; and

(8) emphasis, provided in a factual manner and from a public health perspective, that homosexuality is not a lifestyle acceptable to the general public and that homosexual conduct is a criminal offense under Section 21.06, Penal Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 51, eff. Sept. 1, 1991.

Sec. 163.003. ADDITIONAL INSTRUCTIONAL ELEMENTS REGARDING HUMAN PAPILLOMAVIRUS. Course materials and instruction relating to sexually transmitted diseases must be available in English and in Spanish and should include:

(1) the following specific information on human papillomavirus:

(A) that sexual intercourse is not required to become infected with human papillomavirus and that the avoidance of skin-to-skin contact involving the genital areas offers the best protection;

(B) that both males and females may be infected with human papillomavirus and symptoms may not be present;

(C) that younger women are at greater risk of human papillomavirus infection than older women; and

(D) that human papillomavirus may be transmitted to an infant during childbirth;

(2) information regarding the role of human papillomavirus in the development of genital warts, cervical cancer, and other diseases; and

(3) information regarding the continuing need for women to undergo Pap smear testing, even if they have received a vaccination against human papillomavirus.

Added by Acts 2007, 80th Leg., R.S., Ch. 59 (H.B. 1379), Sec. 2, eff. September 1, 2007.

CHAPTER 164. TREATMENT FACILITIES MARKETING AND ADMISSION PRACTICES

Sec. 164.001. SHORT TITLE. This chapter may be cited as the Treatment Facilities Marketing Practices Act.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1,

1993.

Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this chapter is to safeguard the public against fraud, deceit, and misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities and chemical dependency treatment facilities by prohibiting or restricting practices by which the public has been injured in connection with the marketing and advertising of mental health services and the admission of patients. Nothing in this chapter should be construed to prohibit a mental health facility from advertising its services in a general way or promoting its specialized services. However, the public should be able to distinguish between the marketing activities of the facility and its clinical functions.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.003. DEFINITIONS. In this chapter:

(1) "Advertising" or "advertise" means a solicitation or inducement, through print or electronic media, including radio, television, or direct mail, to purchase the services provided by a treatment facility.

(2) "Chemical dependency" has the meaning assigned by Section 462.001.

(3) "Chemical dependency facility" means a treatment facility as that term is defined by Section 462.001.

(4) "Intervention and assessment service" means a service that offers assessment, counseling, evaluation, intervention, or referral services or makes treatment recommendations to an individual with respect to mental illness or chemical dependency.

(5) "Mental health facility" means:

(A) a "mental health facility" as defined by Section 571.003;

(B) a residential treatment facility, other than a mental health facility, in which persons are treated for emotional problems or disorders in a 24-hour supervised living environment; and

(C) a day activity and health services facility as

defined by Section 103.003, Human Resources Code.

(6) "Mental health professional" means a:

(A) "physician" as defined by Section 571.003;

(B) "licensed professional counselor" as defined by Section 503.002, Occupations Code;

(C) "chemical dependency counselor" as defined by Section 504.001, Occupations Code;

(D) "psychologist" offering "psychological services" as defined by Section 501.003, Occupations Code;

(E) "registered nurse" licensed under Chapter 301, Occupations Code;

(F) "vocational nurse" licensed under Chapter 301, Occupations Code;

(G) "licensed marriage and family therapist" as defined by Section 502.002, Occupations Code; and

(H) "social worker" as defined by Section 505.002, Occupations Code.

(7) "Mental health services" has the meaning assigned by Section 531.002.

(8) "Mental illness" has the meaning assigned by Section 571.003.

(9) "Referral source" means a person who is in a position to refer or who refers a person to a treatment facility. "Referral source" does not include a physician, an insurer, a health maintenance organization (HMO), a preferred provider arrangement (PPA), or other third party payor or discount provider organization (DPO) where the insurer, HMO, PPA, third party payor, or DPO pays in whole or in part for the treatment of mental illness or chemical dependency.

(10) "Treatment facility" means a chemical dependency facility and a mental health facility.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.784, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.010, eff. Feb. 1, 2004.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0493, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 3, eff.

June 19, 2015.

Sec. 164.004. EXEMPTIONS. This chapter does not apply to:

(1) a treatment facility:

(A) operated by the department, a federal agency, or a political subdivision; or

(B) funded by the department;

(2) a community center established under Subchapter A, Chapter 534, or a facility operated by a community center; or

(3) a facility owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 96, Sec. 1, eff. May 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0494, eff. April 2, 2015.

Sec. 164.005. CONDITIONING EMPLOYEE OR AGENT RELATIONSHIPS ON PATIENT REVENUE. A treatment facility may not permit or provide compensation or anything of value to its employees or agents, condition employment or continued employment of its employees or agents, set its employee or agent performance standards, or condition its employee or agent evaluations, based on:

(1) the number of patient admissions resulting from an employee's or agent's efforts;

(2) the number or frequency of telephone calls or other contacts with referral sources or patients if the purpose of the telephone calls or contacts is to solicit patients for the treatment facility; or

(3) the existence of or volume of determinations made respecting the length of patient stay.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary alternative education program, or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; or

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and intellectual disability center funded by the department and the Department of Aging and Disability Services;

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1112, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1055, Sec. 28, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0495, eff. April 2, 2015.

Sec. 164.007. QUALIFIED MENTAL HEALTH REFERRAL SERVICE: DEFINITION AND STANDARDS. (a) A qualified mental health referral service means a service that conforms to all of the following standards:

(1) the referral service does not exclude as a participant in the referral service an individual who meets the qualifications for participation and qualifications for participation cannot be based in whole or in part on an individual's or entity's affiliation or nonaffiliation with other participants in the referral service;

(2) a payment the participant makes to the referral service is assessed equally against and collected equally from all participants, and is only based on the cost of operating the referral service and not on the volume or value of any referrals to or business otherwise generated by the participants of the referral service;

(3) the referral service imposes no requirements on the manner in which the participant provides services to a referred person, except that the referral service may require that the participant charge the person referred at the same rate as it charges other persons not referred by the referral service, or that these services be furnished free of charge or at a reduced charge;

(4) a referral made to a mental health professional or chemical dependency treatment facility is made only in accordance with Subdivision (1) and the referral service does not make referrals to mental health facilities other than facilities maintained or operated by the department, community mental health centers, or other political subdivisions, provided that a physician may make a referral directly to any mental health facility;

(5) the referral service is staffed by appropriately licensed and trained mental health professionals and a person who makes assessments for the need for treatment of mental illness or chemical dependency is a mental health professional as defined by this chapter;

(6) in response to each inquiry or after personal assessment, the referral service makes referrals, on a clinically appropriate, rotational basis, to at least three mental health professionals or chemical dependency treatment facilities whose practice addresses or facilities are located in the county of residence of the person seeking the referral or assessment, but if there are not three providers in the inquirer's county of residence, the referral service may include additional providers from other counties nearest the inquirer's county of residence;

(7) no information that identifies the person seeking a referral, such as name, address, or telephone number, is used, maintained, distributed, or provided for a purpose other than making the requested referral or for administrative functions necessary to operating the referral service;

(8) the referral service makes the following disclosures to each person seeking a referral:

(A) the manner in which the referral service selects the group of providers participating in the referral service;

(B) whether the provider participant has paid a fee to the referral service;

(C) the manner in which the referral service selects a particular provider from its list of provider participants to which to make a referral;

(D) the nature of the relationship or any affiliation between the referral service and the group of provider participants to whom it could make a referral; and

(E) the nature of any restriction that would exclude a provider from continuing as a provider participant;

(9) the referral service maintains each disclosure in a written record certifying that the disclosure has been made and the record certifying that the disclosure has been made is signed by either the person seeking a referral or by the person making the disclosure on behalf of the referral service; and

(10) if the referral service refers callers to a 1-900 telephone number or another telephone number that requires the payment of a toll or fee payable to or collected by the referral service, the referral service discloses the per minute charge.

(b) A qualified mental health referral service may not limit participation by a person for a reason other than:

(1) failure to have a current, valid license without limitation to practice in this state;

(2) failure to maintain professional liability insurance while participating in the service;

(3) a decision by a peer review committee that the person has failed to meet prescribed standards or has not acted in a professional or ethical manner;

(4) termination of the contract between the participant and the qualified mental health referral service by either party under the terms of the contract; or

(5) significant dissatisfaction of consumers that is documented and verifiable.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0496, eff.

April 2, 2015.

Sec. 164.008. OPERATING AN INTERVENTION AND ASSESSMENT SERVICE. A treatment facility may not own, operate, manage, or control an intervention and assessment service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the intervention and assessment service:

(1) is a qualified mental health referral service under Section 164.007;

(2) discloses in all advertising the relationship between the treatment facility and the intervention and assessment service; and

(3) discloses to each person contacting the service, at the time of initial contact, the relationship between the treatment facility and the intervention and assessment service.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.009. DISCLOSURES AND REPRESENTATIONS. (a) A treatment facility may not admit a patient to its facilities without fully disclosing to the patient or, if the patient is a minor, the patient's parent, managing conservator, or guardian, in, if possible, the primary language of the patient, managing conservator, or guardian, as the case may be, the following information in writing before admission:

(1) the treatment facility's estimated average daily charge for inpatient treatment with an explanation that the patient may be billed separately for services provided by mental health professionals;

(2) the name of the attending physician, if the treatment facility is a mental health facility, or the name of the attending mental health professional, if the facility is a chemical dependency facility; and

(3) the current "patient's bill of rights" as adopted by the executive commissioner that sets out restrictions to the patient's freedom that may be imposed on the patient during the patient's stay in a treatment facility.

(b) A treatment facility may not misrepresent to a patient or the parent, guardian, managing conservator, or spouse of a patient, the availability or amount of insurance coverage available to the prospective patient or the amount and percentage of a charge for which the patient will be responsible.

(c) A treatment facility may not represent to a patient who requests to leave a treatment facility against medical advice that:

(1) the patient will be subject to an involuntary commitment proceeding or subsequent emergency detention unless that representation is made by a physician or on the written instruction of a physician who has evaluated the patient within 48 hours of the representation; or

(2) the patient's insurance company will refuse to pay all or any portion of the medical expenses previously incurred.

(d) A mental health facility may not represent or recommend that a prospective patient should be admitted for inpatient treatment unless the representation is made by a licensed physician or, subsequent to evaluation by a licensed physician, by a mental health professional.

(e) A chemical dependency facility may not represent or recommend that a prospective patient should be admitted to a facility for treatment unless and until:

(1) the prospective patient has been evaluated, in person, by a mental health professional; and

(2) a mental health professional determines that the patient meets the facility's admission standards.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0497, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 1, eff. June 19, 2015.

Sec. 164.010. PROHIBITED ACTS. It is a violation of this chapter, in connection with the marketing of mental health services, for a person to:

(1) advertise, expressly or impliedly, the services of a

treatment facility through the use of:

(A) promises of cure or guarantees of treatment results that cannot be substantiated; or

(B) any unsubstantiated claims;

(2) advertise, expressly or impliedly, the availability of intervention and assessment services unless and until the services are available and are provided by mental health professionals licensed or certified to provide the particular service;

(3) fail to disclose before soliciting a referral source or prospective patient to induce a person to use the services of the treatment facility an affiliation between a treatment facility and its soliciting agents, employees, or contractors;

(4) obtain information considered confidential by state or federal law regarding a person for the purpose of soliciting that person to use the services of a treatment facility unless and until consent is obtained from the person or, in the case of a minor, the person's parent, managing conservator, or legal guardian or another person with authority to give that authorization; or

(5) represent that a referral service is a qualified mental health referral service unless and until the referral service complies with Section 164.007.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.011. INJUNCTION. (a) If it appears that a person is in violation of this chapter, the attorney general, a district attorney, or a county attorney may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties of not less than $1,000 and not more than $25,000 per violation.

(b) A civil action filed under this section shall be filed in a district court in Travis County or in the county in which the defendant resides.

(c) The attorney general, a district attorney, or a county attorney may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to that local government.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.012. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or treatment facility that is licensed by a state health care regulatory agency is subject to the same consequences as a violation of the licensing law applicable to the individual or treatment facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.013. DECEPTIVE TRADE PRACTICES. A person may bring suit under Subchapter E, Chapter 17, Business & Commerce Code, for a violation of this chapter, and a public or private right or remedy prescribed by that subchapter may be used to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.

Sec. 164.014. RULE-MAKING AUTHORITY. The executive commissioner may adopt rules interpreting the provisions of this chapter relating to the activities of a chemical dependency facility or mental health facility under the department's jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0498, eff. April 2, 2015.

CHAPTER 165. BREAST-FEEDING

SUBCHAPTER A. BREAST-FEEDING RIGHTS AND POLICIES

Sec. 165.001. LEGISLATIVE FINDING. The legislature finds that breast-feeding a baby is an important and basic act of nurture that must be encouraged in the interests of maternal and child health and family values. In compliance with the breast-feeding promotion program established under the federal Child Nutrition Act of 1966 (42 U.S.C. Section 1771 et seq.), the legislature recognizes breast-feeding as the best method of infant nutrition.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.002. RIGHT TO BREAST-FEED OR EXPRESS BREAST MILK. A mother is entitled to breast-feed her baby or express breast milk in any location in which the mother's presence is otherwise authorized.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 731 (H.B. 541), Sec. 1, eff. September 1, 2019.

Sec. 165.003. BUSINESS DESIGNATION AS "MOTHER-FRIENDLY". (a) A business may use the designation "mother-friendly" in its promotional materials if the business develops a policy supporting the practice of worksite breast-feeding that addresses the following:

(1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;

(2) the provision of accessible locations allowing privacy;

(3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and

(4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

(b) The business shall submit its breast-feeding policy to the department. The department shall maintain a list of "mother-friendly" businesses covered under this section and shall make the list available for public inspection.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.004. SERVICES PROVIDED BY STATE AGENCIES. Any state agency that administers a program providing maternal or child health services shall provide information that encourages breast-feeding to program participants who are pregnant women or mothers with infants.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

SUBCHAPTER B. DEMONSTRATION PROJECT

Sec. 165.031. LEGISLATIVE RECOGNITION. The legislature recognizes a mother's responsibility to both her job and her child when she returns to work and acknowledges that a woman's choice to breast-feed benefits the family, the employer, and society.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.032. DEMONSTRATION PROJECT. (a) The department shall establish a demonstration project in Travis County to provide access to worksite breast-feeding for department employees who are mothers with infants.

(b) The department shall administer the demonstration project and shall determine the benefits of, potential barriers to, and potential costs of implementing worksite breast-feeding support policies for state employees.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

Sec. 165.033. BREAST-FEEDING POLICY. The department shall develop recommendations supporting the practice of worksite breast-feeding that address the following:

(1) work schedule flexibility, including scheduling breaks and work patterns to provide time for expression of milk;

(2) the provision of accessible locations allowing privacy;

(3) access nearby to a clean, safe water source and a sink for washing hands and rinsing out any needed breast-pumping equipment; and

(4) access to hygienic storage alternatives in the workplace for the mother's breast milk.

Added by Acts 1995, 74th Leg., ch. 600, Sec. 1, eff. Aug. 28, 1995.

CHAPTER 166. ADVANCE DIRECTIVES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 166.001. SHORT TITLE. This chapter may be cited as the Advance Directives Act.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.002. DEFINITIONS. In this chapter:

(1) "Advance directive" means:

(A) a directive, as that term is defined by Section 166.031;

(B) an out-of-hospital DNR order, as that term is defined by Section 166.081; or

(C) a medical power of attorney under Subchapter D.

(2) "Artificially administered nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the gastrointestinal tract.

(3) "Attending physician" means a physician selected by or assigned to a patient who has primary responsibility for a patient's treatment and care.

(4) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(5) "Declarant" means a person who has executed or issued a directive under this chapter.

(5-a) "Digital signature" means an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature.

(5-b) "Electronic signature" means a facsimile, scan, uploaded image, computer-generated image, or other electronic representation of a manual signature that is intended by the person using it to have the same force and effect of law as a manual

signature.

(6) "Ethics or medical committee" means a committee established under Sections 161.031-161.033.

(7) "Health care or treatment decision" means consent, refusal to consent, or withdrawal of consent to health care, treatment, service, or a procedure to maintain, diagnose, or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

(8) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(9) "Irreversible condition" means a condition, injury, or illness:

(A) that may be treated but is never cured or eliminated;

(B) that leaves a person unable to care for or make decisions for the person's own self; and

(C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

(10) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(11) "Medical power of attorney" means a document delegating to an agent authority to make health care decisions executed or issued under Subchapter D.

(12) "Physician" means:

(A) a physician licensed by the Texas Medical Board; or

(B) a properly credentialed physician who holds a commission in the uniformed services of the United States and who is serving on active duty in this state.

(13) "Terminal condition" means an incurable condition

caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care. A patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 is presumed to have a terminal condition for purposes of this chapter.

(14) "Witness" means a person who may serve as a witness under Section 166.003.

(15) "Cardiopulmonary resuscitation" means any medical intervention used to restore circulatory or respiratory function that has ceased.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0499, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 1, eff. September 1, 2015.

Sec. 166.003. WITNESSES. In any circumstance in which this chapter requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed:

(1) each witness must be a competent adult; and

(2) at least one of the witnesses must be a person who is not:

(A) a person designated by the declarant to make a health care or treatment decision;

(B) a person related to the declarant by blood or marriage;

(C) a person entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;

(D) the attending physician;

(E) an employee of the attending physician;

(F) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(G) a person who, at the time the written advance directive is executed or, if the directive is a nonwritten directive issued under this chapter, at the time the nonwritten directive is issued, has a claim against any part of the declarant's estate after the declarant's death.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 2, eff. September 1, 2015.

Sec. 166.004. STATEMENT RELATING TO ADVANCE DIRECTIVE. (a) In this section, "health care provider" means:

(1) a hospital;

(2) an institution licensed under Chapter 242, including a skilled nursing facility;

(3) a home and community support services agency;

(4) an assisted living facility; and

(5) a special care facility.

(b) A health care provider shall maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the health care provider is unwilling or unable to provide or withhold in accordance with an advance directive.

(c) Except as provided by Subsection (g), the health care provider shall provide written notice to an individual of the written policies described by Subsection (b). The notice must be provided at the earlier of:

(1) the time the individual is admitted to receive services from the health care provider; or

(2) the time the health care provider begins providing care to the individual.

(d) If, at the time notice is to be provided under Subsection (c), the individual is incompetent or otherwise incapacitated and unable to receive the notice required by this section, the provider shall provide the required written notice, in the following order of preference, to:

(1) the individual's legal guardian;

(2) a person responsible for the health care decisions of the individual;

(3) the individual's spouse;

(4) the individual's adult child;

(5) the individual's parent; or

(6) the person admitting the individual.

(e) If Subsection (d) applies and except as provided by Subsection (f), if a health care provider is unable, after diligent search, to locate an individual listed by Subsection (d), the health care provider is not required to provide the notice.

(f) If an individual who was incompetent or otherwise incapacitated and unable to receive the notice required by this section at the time notice was to be provided under Subsection (c) later becomes able to receive the notice, the health care provider shall provide the written notice at the time the individual becomes able to receive the notice.

(g) This section does not apply to outpatient hospital services, including emergency services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0500, eff. April 2, 2015.

Sec. 166.005. ENFORCEABILITY OF ADVANCE DIRECTIVES EXECUTED IN ANOTHER JURISDICTION. An advance directive or similar instrument validly executed in another state or jurisdiction shall be given the same effect as an advance directive validly executed under the law of this state. This section does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by the laws of this state.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1,

1999.

Sec. 166.006. EFFECT OF ADVANCE DIRECTIVE ON INSURANCE POLICY AND PREMIUMS. (a) The fact that a person has executed or issued an advance directive does not:

(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining treatment is withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy and may not be a factor for the purpose of determining, under the life insurance policy, whether benefits are payable or the cause of death.

(c) The fact that a person has executed or issued or failed to execute or issue an advance directive may not be considered in any way in establishing insurance premiums.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.007. EXECUTION OF ADVANCE DIRECTIVE MAY NOT BE REQUIRED. A physician, health facility, health care provider, insurer, or health care service plan may not require a person to execute or issue an advance directive as a condition for obtaining insurance for health care services or receiving health care services.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.008. CONFLICT BETWEEN ADVANCE DIRECTIVES. To the extent that a treatment decision or an advance directive validly executed or issued under this chapter conflicts with another treatment decision or an advance directive executed or issued under this chapter, the treatment decision made or instrument executed later in time controls.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.009. CERTAIN LIFE-SUSTAINING TREATMENT NOT REQUIRED. This chapter may not be construed to require the provision of life-sustaining treatment that cannot be provided to a patient without denying the same treatment to another patient.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.02, eff. Sept. 1, 1999.

Sec. 166.010. APPLICABILITY OF FEDERAL LAW RELATING TO CHILD ABUSE AND NEGLECT. This chapter is subject to applicable federal law and regulations relating to child abuse and neglect to the extent applicable to the state based on its receipt of federal funds.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 2, eff. June 20, 2003.

Sec. 166.011. DIGITAL OR ELECTRONIC SIGNATURE. (a) For an advance directive in which a signature by a declarant, witness, or notary public is required or used, the declarant, witness, or notary public may sign the directive or a written revocation of the directive using:

(1) a digital signature that:

(A) uses an algorithm approved by the department;

(B) is unique to the person using it;

(C) is capable of verification;

(D) is under the sole control of the person using it;

(E) is linked to data in a manner that invalidates the digital signature if the data is changed;

(F) persists with the document and not by association in separate files; and

(G) is bound to a digital certificate; or

(2) an electronic signature that:

(A) is capable of verification;

(B) is under the sole control of the person using it;

(C) is linked to data in a manner that invalidates the electronic signature if the data is changed; and

(D) persists with the document and not by association in separate files.

(b) In approving an algorithm for purposes of Subsection (a)(1)(A), the department may consider an algorithm approved by the National Institute of Standards and Technology.

(c) The executive commissioner by rule shall modify the advance directive forms required under this chapter as necessary to provide for the use of a digital or electronic signature that complies with the requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0501, eff. April 2, 2015.

SUBCHAPTER B. DIRECTIVE TO PHYSICIANS

Sec. 166.031. DEFINITIONS. In this subchapter:

(1) "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.

(2) "Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 208, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 5.04, eff. Aug. 30, 1993. Renumbered from Sec. 672.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.032. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) Except as provided by Subsection (b-1), the declarant must sign the directive in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the directive.

(b-1) The declarant, in lieu of signing in the presence of witnesses, may sign the directive and have the signature acknowledged before a notary public.

(c) A declarant may include in a directive directions other than those provided by Section 166.033 and may designate in a directive a person to make a health care or treatment decision for the declarant in the event the declarant becomes incompetent or otherwise mentally or physically incapable of communication.

(d) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is incompetent or otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 1, eff. Jan. 1, 1998. Renumbered from Sec. 672.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 3, eff. September 1, 2015.

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your

family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care or treatment decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

_____	I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR
_____	I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make

decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificially administered nutrition and hydration, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make health care or treatment decisions with my physician compatible with my personal values:

1. _____
2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except

those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed_____ Date_____ City, County, State of Residence _____

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a health care or treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Witness 1 _____ Witness 2 _____

Definitions:

"Artificially administered nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the gastrointestinal tract.

"Irreversible condition" means a condition, injury, or illness:

(1) that may be treated, but is never cured or eliminated;

(2) that leaves a person unable to care for or make decisions for the person's own self; and

(3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment

you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 209, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 291, Sec. 2, eff. Jan. 1, 1998. Renumbered from Sec. 672.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 4, eff. September 1, 2015.

Sec. 166.034. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT. (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record, and the names of the witnesses shall be entered in the medical record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.035. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE. The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

(1) the patient's spouse, if the spouse is an adult;

(2) the patient's parents; or

(3) the patient's legal guardian.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.006 by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.036. NOTARIZED DOCUMENT NOT REQUIRED; REQUIREMENT OF SPECIFIC FORM PROHIBITED. (a) Except as provided by Section 166.032(b-1), a written directive executed under Section 166.033 or 166.035 is effective without regard to whether the document has been notarized.

(b) A physician, health care facility, or health care professional may not require that:

(1) a directive be notarized; or

(2) a person use a form provided by the physician, health care facility, or health care professional.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 4, eff.

September 1, 2009.

Sec. 166.037. PATIENT DESIRE SUPERSEDES DIRECTIVE. The desire of a qualified patient, including a qualified patient younger than 18 years of age, supersedes the effect of a directive.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.038. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when an adult qualified patient has executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person may make a treatment decision in accordance with the declarant's directions.

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician believes that the directive does not reflect the patient's present desire.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from 672.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.039. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult qualified patient has not executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian or an agent under a medical power of attorney may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment from the patient.

(b) If the patient does not have a legal guardian or an agent under a medical power of attorney, the attending physician and one

person, if available, from one of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment:

(1) the patient's spouse;

(2) the patient's reasonably available adult children;

(3) the patient's parents; or

(4) the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if known.

(d) A treatment decision made under Subsection (b) must be documented in the patient's medical record and signed by the attending physician.

(e) If the patient does not have a legal guardian and a person listed in Subsection (b) is not available, a treatment decision made under Subsection (b) must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(f) The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining treatment.

(g) A person listed in Subsection (b) who wishes to challenge a treatment decision made under this section must apply for temporary guardianship under Chapter 1251, Estates Code. The court may waive applicable fees in that proceeding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 291, Sec. 3, eff. Jan. 1, 1998. Renumbered from Sec. 672.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0502, eff. April 2, 2015.

Sec. 166.040. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE. (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a

terminal or irreversible condition.

(b) Before withholding or withdrawing life-sustaining treatment from a qualified patient under this subchapter, the attending physician must determine that the steps proposed to be taken are in accord with this subchapter and the patient's existing desires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 6.01, eff. Nov. 12, 1991. Renumbered from Sec. 672.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.041. DURATION OF DIRECTIVE. A directive is effective until it is revoked as prescribed by Section 166.042.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.011 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.042. REVOCATION OF DIRECTIVE. (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;

(2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or

(3) the declarant orally stating the declarant's intent to revoke the directive.

(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on

behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.043. REEXECUTION OF DIRECTIVE. A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 166.032, including reexecution after the declarant is diagnosed as having a terminal or irreversible condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.013 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.044. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES. (a) A physician or health care facility that causes life-sustaining treatment to be withheld or withdrawn from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the physician or health care facility fails to exercise reasonable care when applying the patient's advance directive.

(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not civilly liable for that action unless the health professional fails to exercise reasonable care when applying the

patient's advance directive.

(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action unless the physician or health professional fails to exercise reasonable care when applying the patient's advance directive.

(d) The standard of care that a physician, health care facility, or health care professional shall exercise under this section is that degree of care that a physician, health care facility, or health care professional, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.015 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.0445. LIMITATION ON LIABILITY FOR PERFORMING CERTAIN MEDICAL PROCEDURES. (a) A physician or a health care professional acting under the direction of a physician is not subject to civil liability for participating in a medical procedure performed under Section 166.046(d-2).

(b) A physician or a health care professional acting under the direction of a physician is not subject to criminal liability for participating in a medical procedure performed under Section 166.046(d-2) unless:

(1) the physician or health care professional in participating in the medical procedure acted with a specific malicious intent to cause the death of the patient and that conduct significantly hastened the patient's death; and

(2) the hastening of the patient's death is not attributable to the risks associated with the medical procedure.

(c) A physician or a health care professional acting under the direction of a physician has not engaged in unprofessional conduct by participating in a medical procedure performed under Section 166.046(d-2) unless the physician or health care professional in participating in the medical procedure acted with a specific

malicious intent to harm the patient.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 1, eff. September 1, 2023.

Sec. 166.045. LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE. (a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate a qualified patient's directive in violation of this subchapter or other laws of this state. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to comply with a directive or treatment decision and does not wish to follow the procedure established under Section 166.046, life-sustaining treatment shall be provided to the patient, but only until a reasonable opportunity has been afforded for the transfer of the patient to another physician or health care facility willing to comply with the directive or treatment decision.

(d) A physician, health professional acting under the direction of a physician, or health care facility is not civilly or criminally liable or subject to review or disciplinary action by the person's appropriate licensing board if the person has complied with the procedures outlined in Section 166.046.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.046. PROCEDURE IF NOT EFFECTUATING DIRECTIVE OR TREATMENT DECISION FOR CERTAIN PATIENTS. (a) This section applies only to health care and treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication.

(a-1) If an attending physician refuses to honor an advance directive of or health care or treatment decision made by or on

behalf of a patient to whom this section applies, the physician's refusal shall be reviewed by an ethics or medical committee. The attending physician may not be a member of that committee during the review. The patient shall be given life-sustaining treatment during the review.

(a-2) An ethics or medical committee that reviews a physician's refusal to honor an advance directive or health care or treatment decision under Subsection (a-1) shall consider the patient's well-being in conducting the review but may not make any judgment on the patient's quality of life. For purposes of this section, a decision by the committee based on any of the considerations described by Subdivisions (1) through (5) is not a judgment on the patient's quality of life. If the review requires the committee to determine whether life-sustaining treatment requested in the patient's advance directive or by the person responsible for the patient's health care decisions is medically inappropriate, the committee shall consider whether provision of the life-sustaining treatment:

(1) will prolong the natural process of dying or hasten the patient's death;

(2) will result in substantial, irremediable, and objectively measurable physical pain that is not outweighed by the benefit of providing the treatment;

(3) is medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(4) is consistent with the prevailing standard of care; or

(5) is contrary to the patient's clearly documented desires.

(b) The person responsible for the patient's health care decisions:

(1) shall be informed in writing not less than seven calendar days before the meeting called to discuss the patient's directive, unless the period is waived by written mutual agreement, of:

(A) the ethics or medical committee review process and any other related policies and procedures adopted by the health care facility, including any policy described by Subsection (b-1);

(B) the rights described in Subdivisions (3)(A)-(D);

(C) the date, time, and location of the meeting;

(D) the work contact information of the facility's

personnel who, in the event of a disagreement, will be responsible for overseeing the reasonable effort to transfer the patient to another physician or facility willing to comply with the directive;

(E) the factors the committee is required to consider under Subsection (a-2); and

(F) the language in Section 166.0465;

(2) at the time of being informed under Subdivision (1), shall be provided:

(A) a copy of the appropriate statement set forth in Section 166.052; and

(B) a copy of the registry list of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the department under Section 166.053; and

(3) is entitled to:

(A) attend and participate in the meeting as scheduled by the committee;

(B) receive during the meeting a written statement of the first name, first initial of the last name, and title of each committee member who will participate in the meeting;

(C) subject to Subsection (b-1):

(i) be accompanied at the meeting by the patient's spouse, parents, adult children, and not more than four additional individuals, including legal counsel, a physician, a health care professional, or a patient advocate, selected by the person responsible for the patient's health care decisions; and

(ii) have an opportunity during the open portion of the meeting to either directly or through another individual attending the meeting:

(a) explain the justification for the health care or treatment request made by or on behalf of the patient;

(b) respond to information relating to the patient that is submitted or presented during the open portion of the meeting; and

(c) state any concerns of the person responsible for the patient's health care decisions regarding compliance with this section or Section 166.0465, including stating an opinion that one or more of the patient's disabilities are not relevant to the committee's determination of whether the medical or

surgical intervention is medically appropriate;

(D) receive a written notice of:

(i) the decision reached during the review process accompanied by an explanation of the decision, including, if applicable, the committee's reasoning for affirming that requested life-sustaining treatment is medically inappropriate;

(ii) the patient's major medical conditions as identified by the committee, including any disability of the patient considered by the committee in reaching the decision, except the notice is not required to specify whether any medical condition qualifies as a disability;

(iii) a statement that the committee has complied with Subsection (a-2) and Section 166.0465; and

(iv) the health care facilities contacted before the meeting as part of the transfer efforts under Subsection (d) and, for each listed facility that denied the request to transfer the patient and provided a reason for the denial, the provided reason;

(E) receive a copy of or electronic access to the portion of the patient's medical record related to the treatment received by the patient in the facility for the period of the patient's current admission to the facility; and

(F) receive a copy of or electronic access to all of the patient's reasonably available diagnostic results and reports related to the medical record provided under Paragraph (E).

(b-1) A health care facility may adopt and implement a written policy for meetings held under this section that is reasonable and necessary to:

(1) facilitate information sharing and discussion of the patient's medical status and treatment requirements, including provisions related to attendance, confidentiality, and timing regarding any agenda item; and

(2) preserve the effectiveness of the meeting, including provisions disclosing that the meeting is not a legal proceeding and the committee will enter into an executive session for deliberations.

(b-2) Notwithstanding Subsection (b)(3), the following individuals may not attend or participate in the executive session of an ethics or medical committee under this section:

(1) the physicians or health care professionals providing health care and treatment to the patient; or

(2) the person responsible for the patient's health care

decisions or any person attending the meeting under Subsection (b)(3)(C)(i).

(b-3) If the health care facility or person responsible for the patient's health care decisions intends to have legal counsel attend the meeting of the ethics or medical committee, the facility or person, as applicable, shall make a good faith effort to provide written notice of that intention not less than 48 hours before the meeting begins.

(c) The written notice required by Subsection (b)(3)(D)(i) must be included in the patient's medical record.

(d) After written notice is provided under Subsection (b)(1), the patient's attending physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. The health care facility's personnel shall assist the physician in arranging the patient's transfer to:

(1) another physician;

(2) an alternative care setting within that facility; or

(3) another facility.

(d-1) If another health care facility denies the patient's transfer request, the personnel of the health care facility assisting with the patient's transfer efforts under Subsection (d) shall make a good faith effort to inquire whether the facility that denied the patient's transfer request would be more likely to approve the transfer request if a medical procedure, as that term is defined in this section, is performed on the patient.

(d-2) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate:

(1) the attending physician or another physician responsible for the care of the patient shall perform on the patient each medical procedure that satisfies all of the following conditions:

(A) in the attending physician's judgment, the medical procedure is reasonable and necessary to help effect the patient's transfer under Subsection (d);

(B) an authorized representative for another health care facility with the ability to comply with the patient's advance directive or the health care or treatment decision made by or on

behalf of the patient has expressed to the personnel described by Subsection (b)(1)(D) or the attending physician that the facility is more likely to accept the patient's transfer to the other facility if the medical procedure is performed on the patient;

(C) in the medical judgment of the physician who would perform the medical procedure, performing the medical procedure is:

(i) within the prevailing standard of medical care; and

(ii) not medically contraindicated or medically inappropriate under the circumstances;

(D) in the medical judgment of the physician who would perform the medical procedure, the physician has the training and experience to perform the medical procedure;

(E) the physician who would perform the medical procedure has medical privileges at the facility where the patient is receiving care authorizing the physician to perform the medical procedure at the facility;

(F) the facility where the patient is receiving care has determined the facility has the resources for the performance of the medical procedure at the facility; and

(G) the person responsible for the patient's health care decisions provides consent on behalf of the patient for the medical procedure; and

(2) the person responsible for the patient's health care decisions is entitled to receive:

(A) a delay notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions provides to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent;

(B) a start notice:

(i) if, at the time the written decision is provided as required by Subsection (b)(3)(D)(i), no medical procedure satisfies all of the conditions described by Subdivisions (1)(A) through (F); or

(ii) if:

(a) at the time the written decision is provided as required by Subsection (b)(3)(D)(i), a medical procedure satisfies all of the conditions described by Subdivision (1) except Subdivision (1)(G); and

(b) the person responsible for the patient's health care decisions does not provide to the attending physician or another physician or health care professional providing direct care to the patient consent on behalf of the patient for the medical procedure within 24 hours of the request for consent; and

(C) a start notice accompanied by a statement that one or more of the conditions described by Subdivisions (1)(A) through (G) are no longer satisfied if, after a delay notice is provided in accordance with Subdivision (2)(A) and before the medical procedure on which the delay notice is based is performed on the patient, one or more of those conditions are no longer satisfied.

(d-3) After the 25-day period described by Subsection (e) begins, the period may not be suspended or stopped for any reason. This subsection does not limit or affect a court's ability to order an extension of the period in accordance with Subsection (g). Subsection (d-2) does not require a medical procedure to be performed on the patient after the expiration of the 25-day period.

(e) If the patient's advance directive or the person responsible for the patient's health care decisions is requesting life-sustaining treatment that the attending physician has decided and the ethics or medical committee has affirmed is medically inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer under Subsection (d). This subsection does not authorize withholding or withdrawing pain management medication, medical interventions necessary to provide comfort, or any other health care provided to alleviate a patient's pain. The patient is responsible for any costs incurred in transferring the patient to another health care facility. The attending physician, any other physician responsible for the care of the patient, and the health care facility are not obligated to provide life-sustaining treatment after the 25th calendar day after a

start notice is provided in accordance with Subsection (d-2)(2)(B) or (C) to the person responsible for the patient's health care decisions or a medical procedure for which a delay notice was provided in accordance with Subsection (d-2)(2)(A) is performed, whichever occurs first, unless ordered to extend the 25-day period under Subsection (g), except that artificially administered nutrition and hydration must be provided unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would:

(1) hasten the patient's death;

(2) be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of providing the treatment;

(3) result in substantial, irremediable, and objectively measurable physical pain not outweighed by the benefit of providing the treatment;

(4) be medically ineffective in prolonging life; or

(5) be contrary to the patient's or surrogate's clearly documented desire not to receive artificially administered nutrition or hydration.

(e-1) If during a previous admission to a facility a patient's attending physician and the review process under Subsection (b) have determined that life-sustaining treatment is inappropriate, and the patient is readmitted to the same facility within six months from the date of the decision reached during the review process conducted upon the previous admission, Subsections (b) through (e) need not be followed if the patient's attending physician and a consulting physician who is a member of the ethics or medical committee of the facility document on the patient's readmission that the patient's condition either has not improved or has deteriorated since the review process was conducted.

(f) Life-sustaining treatment under this section may not be entered in the patient's medical record as medically unnecessary treatment until the time period provided under Subsection (e) has expired.

(g) At the request of the person responsible for the patient's health care decisions, the appropriate district or county court shall extend the period provided under Subsection (e) only if the court finds, by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is

granted.

(h) This section may not be construed to impose an obligation on a facility or a home and community support services agency licensed under Chapter 142 or similar organization that is beyond the scope of the services or resources of the facility or agency. This section does not apply to hospice services provided by a home and community support services agency licensed under Chapter 142.

(i) In this section:

(1) "Delay notice" means a written notice that the first day of the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will be delayed until the calendar day after a medical procedure required by Subsection (d-2)(1) is performed unless, before the medical procedure is performed, the person receives written notice of an earlier first day because one or more conditions described by that subdivision are no longer satisfied.

(2) "Medical procedure" means only a tracheostomy or a percutaneous endoscopic gastrostomy.

(3) "Start notice" means a written notice that the 25-day period provided under Subsection (e), after which life-sustaining treatment may be withheld or withdrawn unless a court has granted an extension under Subsection (g), will begin on the first calendar day after the date the notice is provided.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 3, 4, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0503, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 5, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 3, eff. September 1, 2023.

Sec. 166.0465. ETHICS OR MEDICAL COMMITTEE DECISION RELATED TO

PATIENT DISABILITY. (a) In this section, "disability" has the meaning assigned by the Americans with Disabilities Act of 1990 in 42 U.S.C. Section 12102.

(b) During the review process under Section 166.046(b), the ethics or medical committee may not consider a patient's disability that existed before the patient's current admission unless the disability is relevant in determining whether the medical or surgical intervention is medically appropriate.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 4, eff. September 1, 2023.

Sec. 166.047. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining treatment from a qualified patient in accordance with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.048. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining treatment to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining treatment to be withheld or withdrawn from the other person with the result that the other person's death is hastened.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.049. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.050. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.051. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining treatment in a lawful manner, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Sec. 672.021 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999.

Sec. 166.052. STATEMENTS EXPLAINING PATIENT'S RIGHT TO TRANSFER. (a) In cases in which the attending physician refuses to honor an advance directive or health care or treatment decision

requesting the provision of life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Against Certain Life-Sustaining Treatment That You Wish To Continue

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that life-sustaining treatment* be provided to the patient, which the attending physician believes is not medically appropriate. This information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication because of the physician's judgment that the treatment would be medically inappropriate, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If after this review process both the attending physician and the ethics or medical committee conclude that life-sustaining treatment is medically inappropriate and yet you continue to request such treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to provide the requested treatment.

2. You are being given a list of health care providers,

licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

3. The patient will continue to be given life-sustaining treatment until the patient can be transferred to a willing provider for up to 25 calendar days from the time you were given a written notice of the first day of the 25-day period or a medical procedure is performed that delayed the 25-day period and for which you received notice, whichever occurs first. The patient will continue to be given after the 25-day period treatment to enhance pain management and reduce suffering, including artificially administered nutrition and hydration, unless, based on reasonable medical judgment, providing artificially administered nutrition and hydration would hasten the patient's death, be medically contraindicated such that the provision of the treatment seriously exacerbates life-threatening medical problems not outweighed by the benefit of the provision of the treatment, result in substantial irremediable physical pain not outweighed by the benefit of the provision of the treatment, be medically ineffective in prolonging life, or be contrary to the patient's or surrogate's clearly documented desires.

4. If a transfer can be arranged, the patient will be responsible for the costs of the transfer.

5. If a provider cannot be found willing to give the requested treatment within 25 calendar days, life-sustaining treatment may be withdrawn unless a court of law has granted an extension.

6. You may ask the appropriate district or county court to extend the 25-day period if the court finds that there is a reasonable expectation that you may find a physician or health care facility willing to provide life-sustaining treatment if the extension is granted. Patient medical records will be provided to the patient or surrogate in accordance with Section 241.154, Texas Health and Safety Code.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and

artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(b) In cases in which the attending physician refuses to comply with an advance directive or a health care or treatment decision requesting the withholding or withdrawal of life-sustaining treatment for a patient who is determined to be incompetent or is otherwise mentally or physically incapable of communication, the statement required by Section 166.046(b)(2)(A) shall be in substantially the following form:

When There Is A Disagreement About Medical Treatment: The Physician Recommends Life-Sustaining Treatment That You Wish To Stop

You have been given this information because the patient has requested through an advance directive or you have requested on behalf of the patient that life-sustaining treatment* be withdrawn or withheld from the patient, and the attending physician disagrees with and refuses to comply with that request. The information is being provided to help you understand state law, your rights, and the resources available to you in such circumstances. It outlines the process for resolving disagreements about treatment among patients, families, and physicians. It is based upon Section 166.046 of the Texas Advance Directives Act, codified in Chapter 166, Texas Health and Safety Code.

When an attending physician refuses to comply with an advance directive or other request for withdrawal or withholding of life-sustaining treatment for any reason, the case will be reviewed by an ethics or medical committee. Life-sustaining treatment will be provided through the review.

You will receive notification of this review at least seven calendar days before a meeting of the committee related to your case. You are entitled to attend the meeting. With your agreement, the meeting may be held sooner than seven calendar days, if possible.

You are entitled to receive a written explanation of the decision reached during the review process.

If you or the attending physician do not agree with the decision reached during the review process, and the attending physician still refuses to comply with your request to withhold or withdraw life-sustaining treatment, then the following procedure will occur:

1. The physician, with the help of the health care facility, will assist you in trying to find a physician and facility willing to withdraw or withhold the life-sustaining treatment.

2. You are being given a list of health care providers, licensed physicians, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer, or to assist in locating a provider willing to accept transfer, maintained by the Department of State Health Services. You may wish to contact providers, facilities, or referral groups on the list or others of your choice to get help in arranging a transfer.

*"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificially administered nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

(c) An attending physician or health care facility may, if it chooses, include any additional information concerning the physician's or facility's policy, perspective, experience, or review procedure.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0504, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 435 (H.B. 3074), Sec. 6, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 5, eff. September 1, 2023.

Sec. 166.053. REGISTRY TO ASSIST TRANSFERS. (a) The department shall maintain a registry listing the identity of and contact information for health care providers and referral groups, situated inside and outside this state, that have voluntarily notified the department they may consider accepting or may assist in

locating a provider willing to accept transfer of a patient under Section 166.045 or 166.046.

(b) The listing of a provider or referral group in the registry described in this section does not obligate the provider or group to accept transfer of or provide services to any particular patient.

(c) The department shall post the current registry list on its website in a form appropriate for easy comprehension by patients and persons responsible for the health care decisions of patients. The list shall separately indicate those providers and groups that have indicated their interest in assisting the transfer of:

(1) those patients on whose behalf life-sustaining treatment is being sought;

(2) those patients on whose behalf the withholding or withdrawal of life-sustaining treatment is being sought; and

(3) patients described in both Subdivisions (1) and (2).

(d) The registry list described in this section shall include the following disclaimer:

"This registry lists providers and groups that have indicated to the Department of State Health Services their interest in assisting the transfer of patients in the circumstances described, and is provided for information purposes only. Neither the Department of State Health Services nor the State of Texas endorses or assumes any responsibility for any representation, claim, or act of the listed providers or groups."

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 5, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0505, eff. April 2, 2015.

Sec. 166.054. REPORTING REQUIREMENTS REGARDING ETHICS OR MEDICAL COMMITTEE PROCESSES. (a) Not later than the 180th day after the date written notice is provided under Section 166.046(b)(1), a health care facility shall prepare and submit to the commission a report that contains the following information:

(1) the number of days that elapsed from the patient's admission to the facility to the date notice was provided under Section 166.046(b)(1);

(2) whether the ethics or medical committee met to review

the case under Section 166.046 and, if the committee did meet, the number of days that elapsed from the date notice was provided under Section 166.046(b)(1) to the date the meeting was held;

(3) whether the patient was:

(A) transferred to a physician within the same facility who was willing to comply with the patient's advance directive or a health care or treatment decision made by or on behalf of the patient;

(B) transferred to a different health care facility; or

(C) discharged from the facility to a private residence or other setting that is not a health care facility;

(4) whether the patient died while receiving life-sustaining treatment at the facility;

(5) whether life-sustaining treatment was withheld or withdrawn from the patient at the facility after expiration of the time period described by Section 166.046(e) and, if so, the disposition of the patient after the withholding or withdrawal of life-sustaining treatment at the facility, as selected from the following categories:

(A) the patient died at the facility;

(B) the patient is currently a patient at the facility;

(C) the patient was transferred to a different health care facility; or

(D) the patient was discharged from the facility to a private residence or other setting that is not a health care facility;

(6) the age group of the patient selected from the following categories:

(A) 17 years of age or younger;

(B) 18 years of age or older and younger than 66 years of age; or

(C) 66 years of age or older;

(7) the health insurance coverage status of the patient selected from the following categories:

(A) private health insurance coverage;

(B) public health plan coverage; or

(C) uninsured;

(8) the patient's sex;

(9) the patient's race;

(10) whether the facility was notified of and able to

reasonably verify any public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(11) whether the facility was notified of and able to reasonably verify any public disclosure by facility personnel of the contact information for the patient's immediate family members or the person responsible for the patient's health care decisions in connection with the patient's stay at the facility.

(b) The commission shall ensure information provided in each report submitted by a health care facility under Subsection (a) is kept confidential and not disclosed in any manner, except as provided by this section.

(c) Not later than April 1 of each year, the commission shall prepare and publish on the commission's Internet website a report that contains:

(1) aggregate information compiled from the reports submitted to the commission under Subsection (a) during the preceding year on:

(A) the total number of written notices provided under Section 166.046(b)(1);

(B) the average number of days described by Subsection (a)(1);

(C) the total number of meetings held by ethics or medical committees to review cases under Section 166.046;

(D) the average number of days described by Subsection (a)(2);

(E) the total number of patients described by Subsections (a)(3)(A), (B), and (C);

(F) the total number of patients described by Subsection (a)(4);

(G) the total number of patients for whom life-sustaining treatment was withheld or withdrawn after expiration of the time period described by Section 166.046(e);

(H) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure of the contact information for the facility's personnel, physicians or health care professionals who provide care at the facility, or members of the ethics or medical committee in connection with the patient's stay at the facility; and

(I) the total number of cases for which the facility was notified of and able to reasonably verify the public disclosure by facility personnel of contact information for the patient's immediate family members or person responsible for the patient's health care decisions in connection with the patient's stay at the facility; and

(2) if the total number of reports submitted under Subsection (a) for the preceding year is 10 or more, aggregate information compiled from those reports on the total number of patients categorized by:

(A) sex;

(B) race;

(C) age group, based on the categories described by Subsection (a)(6);

(D) health insurance coverage status, based on the categories described by Subsection (a)(7); and

(E) for patients for whom life-sustaining treatment was withheld or withdrawn at the facility after expiration of the period described by Section 166.046(e), the total number of patients described by each of the following:

(i) Subsection (a)(5)(A);

(ii) Subsection (a)(5)(B);

(iii) Subsection (a)(5)(C); and

(iv) Subsection (a)(5)(D).

(d) If the commission receives fewer than 10 reports under Subsection (a) for inclusion in an annual report required under Subsection (c), the commission shall include in the next annual report prepared after the commission receives 10 or more reports the aggregate information for all years for which the information was not included in a preceding annual report. The commission shall include in the next annual report a statement that identifies each year during which an underlying report was submitted to the commission under Subsection (a).

(e) The annual report required by Subsection (c) or (d) may not include any information that could be used alone or in combination with other reasonably available information to identify any individual, entity, or facility.

(f) The executive commissioner shall adopt rules to:

(1) establish a standard form for the reporting requirements of this section; and

(2) protect and aggregate any information the commission receives under this section.

(g) Information collected as required by this section or submitted to the commission under this section:

(1) is not admissible in a civil or criminal proceeding in which a physician, health care professional acting under the direction of a physician, or health care facility is a defendant;

(2) may not be used in relation to any disciplinary action by a licensing or regulatory agency with oversight over a physician, health care professional acting under the direction of a physician, or health care facility; and

(3) is not public information or subject to disclosure under Chapter 552, Government Code, except as permitted by Section 552.008, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 6, eff. September 1, 2023.

SUBCHAPTER C. OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

Sec. 166.081. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2003, 78th Leg., ch. 1228, Sec. 8.

(2) "DNR identification device" means an identification device specified by department rule under Section 166.101 that is worn for the purpose of identifying a person who has executed or issued an out-of-hospital DNR order or on whose behalf an out-of-hospital DNR order has been executed or issued under this subchapter.

(3) "Emergency medical services" has the meaning assigned by Section 773.003.

(4) "Emergency medical services personnel" has the meaning assigned by Section 773.003.

(5) "Health care professionals" means physicians, physician assistants, nurses, and emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.

(6) "Out-of-hospital DNR order":

(A) means a legally binding out-of-hospital do-not-resuscitate order, in the form specified by department rule under Section 166.083, prepared and signed by the attending physician of a person, that documents the instructions of a person or the person's

legally authorized representative and directs health care professionals acting in an out-of-hospital setting not to initiate or continue the following life-sustaining treatment:

(i) cardiopulmonary resuscitation;

(ii) advanced airway management;

(iii) artificial ventilation;

(iv) defibrillation;

(v) transcutaneous cardiac pacing; and

(vi) other life-sustaining treatment specified by department rule under Section 166.101(a); and

(B) does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care or to alleviate pain or to provide water or nutrition.

(7) "Out-of-hospital setting" means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.

(8) "Proxy" means a person designated and authorized by a directive executed or issued in accordance with Subchapter B to make a treatment decision for another person in the event the other person becomes incompetent or otherwise mentally or physically incapable of communication.

(9) "Qualified relatives" means those persons authorized to execute or issue an out-of-hospital DNR order on behalf of a person who is incompetent or otherwise mentally or physically incapable of communication under Section 166.088.

(10) "Statewide out-of-hospital DNR protocol" means a set of statewide standardized procedures adopted by the executive commissioner under Section 166.101(a) for withholding cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1228, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0506, eff. April 2, 2015.

Sec. 166.082. OUT-OF-HOSPITAL DNR ORDER; DIRECTIVE TO PHYSICIANS. (a) A competent person may at any time execute a written out-of-hospital DNR order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule.

(b) Except as provided by this subsection, the declarant must sign the out-of-hospital DNR order in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the order. The attending physician of the declarant must sign the order and shall make the fact of the existence of the order and the reasons for execution of the order a part of the declarant's medical record. The declarant, in lieu of signing in the presence of witnesses, may sign the out-of-hospital DNR order and have the signature acknowledged before a notary public.

(c) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B, the physician may rely on the directive as the person's instructions to issue an out-of-hospital DNR order and shall place a copy of the directive in the person's medical record. The physician shall sign the order in lieu of the person signing under Subsection (b) and may use a digital or electronic signature authorized under Section 166.011.

(d) If the person is incompetent but previously executed or issued a directive to physicians in accordance with Subchapter B designating a proxy, the proxy may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(e) If the person is now incompetent but previously executed or issued a medical power of attorney designating an agent, the agent may make any decisions required of the designating person as to an out-of-hospital DNR order and shall sign the order in lieu of the person signing under Subsection (b).

(f) The executive commissioner, on the recommendation of the department, shall by rule adopt procedures for the disposition and maintenance of records of an original out-of-hospital DNR order and any copies of the order.

(g) An out-of-hospital DNR order is effective on its execution.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 5, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0507, eff. April 2, 2015.

Sec. 166.083. FORM OF OUT-OF-HOSPITAL DNR ORDER. (a) A written out-of-hospital DNR order shall be in the standard form specified by department rule as recommended by the department.

(b) The standard form of an out-of-hospital DNR order specified by department rule must, at a minimum, contain the following:

(1) a distinctive single-page format that readily identifies the document as an out-of-hospital DNR order;

(2) a title that readily identifies the document as an out-of-hospital DNR order;

(3) the printed or typed name of the person;

(4) a statement that the physician signing the document is the attending physician of the person and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life-sustaining treatment on behalf of the person, and a listing of those procedures not to be initiated or continued;

(5) a statement that the person understands that the person may revoke the out-of-hospital DNR order at any time by destroying the order and removing the DNR identification device, if any, or by communicating to health care professionals at the scene the person's desire to revoke the out-of-hospital DNR order;

(6) places for the printed names and signatures of the witnesses or the notary public's acknowledgment and for the printed name and signature of the attending physician of the person and the medical license number of the attending physician;

(7) a separate section for execution of the document by the legal guardian of the person, the person's proxy, an agent of the

person having a medical power of attorney, or the attending physician attesting to the issuance of an out-of-hospital DNR order by nonwritten means of communication or acting in accordance with a previously executed or previously issued directive to physicians under Section 166.082(c) that includes the following:

(A) a statement that the legal guardian, the proxy, the agent, the person by nonwritten means of communication, or the physician directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and, as applicable, the legal guardian, proxy, agent, or physician;

(8) a separate section for execution of the document by at least one qualified relative of the person when the person does not have a legal guardian, proxy, or agent having a medical power of attorney and is incompetent or otherwise mentally or physically incapable of communication, including:

(A) a statement that the relative of the person is qualified to make a treatment decision to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment under Section 166.088 and, based on the known desires of the person or a determination of the best interest of the person, directs that each listed life-sustaining treatment should not be initiated or continued in behalf of the person; and

(B) places for the printed names and signatures of the witnesses and qualified relative of the person;

(9) a place for entry of the date of execution of the document;

(10) a statement that the document is in effect on the date of its execution and remains in effect until the death of the person or until the document is revoked;

(11) a statement that the document must accompany the person during transport;

(12) a statement regarding the proper disposition of the document or copies of the document, as the executive commissioner determines appropriate; and

(13) a statement at the bottom of the document, with places for the signature of each person executing the document, that the document has been properly completed.

(c) The executive commissioner may, by rule and as recommended

by the department, modify the standard form of the out-of-hospital DNR order described by Subsection (b) in order to accomplish the purposes of this subchapter.

(d) A photocopy or other complete facsimile of the original written out-of-hospital DNR order executed under this subchapter may be used for any purpose for which the original written order may be used under this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.003 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0508, eff. April 2, 2015.

Sec. 166.084. ISSUANCE OF OUT-OF-HOSPITAL DNR ORDER BY NONWRITTEN COMMUNICATION. (a) A competent person who is an adult may issue an out-of-hospital DNR order by nonwritten communication.

(b) A declarant must issue the nonwritten out-of-hospital DNR order in the presence of the attending physician and two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(c) The attending physician and witnesses shall sign the out-of-hospital DNR order in the place of the document provided by Section 166.083(b)(7) and the attending physician shall sign the document in the place required by Section 166.083(b)(13). The physician shall make the fact of the existence of the out-of-hospital DNR order a part of the declarant's medical record and the names of the witnesses shall be entered in the medical record.

(d) An out-of-hospital DNR order issued in the manner provided by this section is valid and shall be honored by responding health care professionals as if executed in the manner provided by Section 166.082.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.085. EXECUTION OF OUT-OF-HOSPITAL DNR ORDER ON BEHALF OF A MINOR. (a) The following persons may execute an out-of-hospital DNR order on behalf of a minor:

(1) the minor's parents;

(2) the minor's legal guardian; or

(3) the minor's managing conservator.

(b) A person listed under Subsection (a) may not execute an out-of-hospital DNR order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.005 by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1228, Sec. 6, eff. June 20, 2003.

Sec. 166.086. DESIRE OF PERSON SUPERSEDES OUT-OF-HOSPITAL DNR ORDER. The desire of a competent person, including a competent minor, supersedes the effect of an out-of-hospital DNR order executed or issued by or on behalf of the person when the desire is communicated to responding health care professionals as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.006 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.087. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) This section applies when a person 18 years of age or older has executed or issued an out-of-hospital DNR order and subsequently becomes incompetent or otherwise mentally or physically incapable of communication.

(b) If the adult person has designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician and the designated person shall comply with the out-of-hospital DNR order.

(c) If the adult person has not designated a person to make a treatment decision as authorized by Section 166.032(c), the attending physician shall comply with the out-of-hospital DNR order unless the physician believes that the order does not reflect the person's

present desire.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.088. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED OUT-OF-HOSPITAL DNR ORDER AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION. (a) If an adult person has not executed or issued an out-of-hospital DNR order and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, proxy, or agent having a medical power of attorney may execute an out-of-hospital DNR order on behalf of the person.

(b) If the person does not have a legal guardian, proxy, or agent under a medical power of attorney, the attending physician and at least one qualified relative from a category listed by Section 166.039(b), subject to the priority established under that subsection, may execute an out-of-hospital DNR order in the same manner as a treatment decision made under Section 166.039(b).

(c) A decision to execute an out-of-hospital DNR order made under Subsection (a) or (b) must be based on knowledge of what the person would desire, if known.

(d) An out-of-hospital DNR order executed under Subsection (b) must be made in the presence of at least two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2).

(e) The fact that an adult person has not executed or issued an out-of-hospital DNR order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment designated by department rule.

(f) If there is not a qualified relative available to act for the person under Subsection (b), an out-of-hospital DNR order must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of the ethics or medical committee of the health care facility in which the person is a patient.

(g) A person listed in Section 166.039(b) who wishes to

challenge a decision made under this section must apply for temporary guardianship under Chapter 1251, Estates Code. The court may waive applicable fees in that proceeding.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0509, eff. April 2, 2015.

Sec. 166.089. COMPLIANCE WITH OUT-OF-HOSPITAL DNR ORDER. (a) When responding to a call for assistance, health care professionals shall honor an out-of-hospital DNR order in accordance with the statewide out-of-hospital DNR protocol and, where applicable, locally adopted out-of-hospital DNR protocols not in conflict with the statewide protocol if:

(1) the responding health care professionals discover an executed or issued out-of-hospital DNR order form on their arrival at the scene; and

(2) the responding health care professionals comply with this section.

(b) If the person is wearing a DNR identification device, the responding health care professionals must comply with Section 166.090.

(c) The responding health care professionals must establish the identity of the person as the person who executed or issued the out-of-hospital DNR order or for whom the out-of-hospital DNR order was executed or issued.

(d) The responding health care professionals must determine that the out-of-hospital DNR order form appears to be valid in that it includes:

(1) written responses in the places designated on the form for the names, signatures, and other information required of persons executing or issuing, or witnessing or acknowledging as applicable, the execution or issuance of, the order;

(2) a date in the place designated on the form for the date the order was executed or issued; and

(3) the signature or digital or electronic signature of the

declarant or persons executing or issuing the order and the attending physician in the appropriate places designated on the form for indicating that the order form has been properly completed.

(e) If the conditions prescribed by Subsections (a) through (d) are not determined to apply by the responding health care professionals at the scene, the out-of-hospital DNR order may not be honored and life-sustaining procedures otherwise required by law or local emergency medical services protocols shall be initiated or continued. Health care professionals acting in out-of-hospital settings are not required to accept or interpret an out-of-hospital DNR order that does not meet the requirements of this subchapter.

(f) The out-of-hospital DNR order form or a copy of the form, when available, must accompany the person during transport.

(g) A record shall be made and maintained of the circumstances of each emergency medical services response in which an out-of-hospital DNR order or DNR identification device is encountered, in accordance with the statewide out-of-hospital DNR protocol and any applicable local out-of-hospital DNR protocol not in conflict with the statewide protocol.

(h) An out-of-hospital DNR order executed or issued and documented or evidenced in the manner prescribed by this subchapter is valid and shall be honored by responding health care professionals unless the person or persons found at the scene:

(1) identify themselves as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a medical power of attorney who executed or issued the out-of-hospital DNR order on behalf of the person; and

(2) request that cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule be initiated or continued.

(i) If the policies of a health care facility preclude compliance with the out-of-hospital DNR order of a person or an out-of-hospital DNR order issued by an attending physician on behalf of a person who is admitted to or a resident of the facility, or if the facility is unwilling to accept DNR identification devices as evidence of the existence of an out-of-hospital DNR order, that facility shall take all reasonable steps to notify the person or, if the person is incompetent, the person's guardian or the person or persons having authority to make health care treatment decisions on behalf of the person, of the facility's policy and shall take all

reasonable steps to effect the transfer of the person to the person's home or to a facility where the provisions of this subchapter can be carried out.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 7, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0510, eff. April 2, 2015.

Sec. 166.090. DNR IDENTIFICATION DEVICE. (a) A person who has a valid out-of-hospital DNR order under this subchapter may wear a DNR identification device around the neck or on the wrist as prescribed by department rule adopted under Section 166.101.

(b) The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid out-of-hospital DNR order or has a valid out-of-hospital DNR order executed or issued on the person's behalf. Responding health care professionals shall honor the DNR identification device as if a valid out-of-hospital DNR order form executed or issued by the person were found in the possession of the person.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0511, eff. April 2, 2015.

Sec. 166.091. DURATION OF OUT-OF-HOSPITAL DNR ORDER. An out-of-hospital DNR order is effective until it is revoked as prescribed by Section 166.092.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.011 and amended by Acts 1999, 76th Leg., ch.

450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.092. REVOCATION OF OUT-OF-HOSPITAL DNR ORDER. (a) A declarant may revoke an out-of-hospital DNR order at any time without regard to the declarant's mental state or competency. An order may be revoked by:

(1) the declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any;

(2) a person who identifies himself or herself as the legal guardian, as a qualified relative, or as the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order or another person in the person's presence and at the person's direction destroying the order form and removing the DNR identification device, if any;

(3) the declarant communicating the declarant's intent to revoke the order; or

(4) a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order orally stating the person's intent to revoke the order.

(b) An oral revocation under Subsection (a)(3) or (a)(4) takes effect only when the declarant or a person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a medical power of attorney who executed the out-of-hospital DNR order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation in accordance with the statewide out-of-hospital DNR protocol and rules adopted by the executive commissioner and any applicable local out-of-hospital DNR protocol. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the person's medical record.

(c) Except as otherwise provided by this subchapter, a person

is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16 1995. Renumbered from Sec. 674.012 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0512, eff. April 2, 2015.

Sec. 166.093. REEXECUTION OF OUT-OF-HOSPITAL DNR ORDER. A declarant may at any time reexecute or reissue an out-of-hospital DNR order in accordance with the procedures prescribed by Section 166.082, including reexecution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.013 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.094. LIMITATION ON LIABILITY FOR WITHHOLDING CARDIOPULMONARY RESUSCITATION AND CERTAIN OTHER LIFE-SUSTAINING PROCEDURES. (a) A health care professional or health care facility or entity that in good faith causes cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule to be withheld from a person in accordance with this subchapter is not civilly liable for that action.

(b) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter is not civilly liable for that action.

(c) A health care professional or health care facility or entity that in good faith participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter is not criminally liable or guilty of unprofessional conduct as a result of that action.

(d) A health care professional or health care facility or entity that in good faith causes or participates in withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter and rules adopted under this subchapter is not in violation of any other licensing or regulatory laws or rules of this state and is not subject to any disciplinary action or sanction by any licensing or regulatory agency of this state as a result of that action.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0513, eff. April 2, 2015.

Sec. 166.095. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE OUT-OF-HOSPITAL DNR ORDER. (a) A health care professional or health care facility or entity that has no actual knowledge of an out-of-hospital DNR order is not civilly or criminally liable for failing to act in accordance with the order.

(b) A health care professional or health care facility or entity is subject to review and disciplinary action by the appropriate licensing board for failing to effectuate an out-of-hospital DNR order. This subsection does not limit remedies available under other laws of this state.

(c) If an attending physician refuses to execute or comply with an out-of-hospital DNR order, the physician shall inform the person, the legal guardian or qualified relatives of the person, or the agent of the person having a medical power of attorney and, if the person or another authorized to act on behalf of the person so directs, shall make a reasonable effort to transfer the person to another physician who is willing to execute or comply with an out-of-hospital DNR order.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.096. HONORING OUT-OF-HOSPITAL DNR ORDER DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE. A person does not commit an offense under Section 22.08, Penal Code, by withholding cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule from a person in accordance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0514, eff. April 2, 2015.

Sec. 166.097. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's out-of-hospital DNR order or DNR identification device without that person's consent or the consent of the person or persons authorized to execute or issue an out-of-hospital DNR order on behalf of the person under this subchapter. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule to be withheld from another person contrary to the other person's desires, falsifies or forges an out-of-hospital DNR order or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes cardiopulmonary resuscitation and certain other life-sustaining treatment designated by department rule to be withheld from the other person with the result that the other person's death is hastened.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0515, eff. April 2, 2015.

Sec. 166.098. PREGNANT PERSONS. A person may not withhold cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule under this subchapter from a person known by the responding health care professionals to be pregnant.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.020 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0516, eff. April 2, 2015.

Sec. 166.099. MERCY KILLING NOT CONDONED. This subchapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.021 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Sec. 166.100. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This subchapter does not impair or supersede any legal right or responsibility a person may have under a constitution, other statute, regulation, or court decision to effect the withholding of cardiopulmonary resuscitation or certain other life-sustaining treatment designated by department rule.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.022 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0517, eff. April 2, 2015.

Sec. 166.101. DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER. (a) The executive commissioner shall, on the recommendation of the

department, adopt all reasonable and necessary rules to carry out the purposes of this subchapter, including rules:

(1) adopting a statewide out-of-hospital DNR order protocol that sets out standard procedures for the withholding of cardiopulmonary resuscitation and certain other life-sustaining treatment by health care professionals acting in out-of-hospital settings;

(2) designating life-sustaining treatment that may be included in an out-of-hospital DNR order, including all procedures listed in Sections 166.081(6)(A)(i) through (v); and

(3) governing recordkeeping in circumstances in which an out-of-hospital DNR order or DNR identification device is encountered by responding health care professionals.

(b) The rules adopted under Subsection (a) are not effective until approved by the Texas Medical Board.

(c) Local emergency medical services authorities may adopt local out-of-hospital DNR order protocols if the local protocols do not conflict with the statewide out-of-hospital DNR order protocol adopted by the executive commissioner.

(d) The executive commissioner by rule shall specify a distinctive standard design for a necklace and a bracelet DNR identification device that signifies, when worn by a person, that the possessor has executed or issued a valid out-of-hospital DNR order under this subchapter or is a person for whom a valid out-of-hospital DNR order has been executed or issued.

(e) The department shall report to the executive commissioner from time to time regarding issues identified in emergency medical services responses in which an out-of-hospital DNR order or DNR identification device is encountered. The report may contain recommendations to the executive commissioner for necessary modifications to the form of the standard out-of-hospital DNR order or the designated life-sustaining procedures listed in the standard out-of-hospital DNR order, the statewide out-of-hospital DNR order protocol, or the DNR identification devices.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 10, eff. June 16, 1995. Renumbered from Sec. 674.023 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.04, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0517, eff.

April 2, 2015.

Sec. 166.102. PHYSICIAN'S DNR ORDER MAY BE HONORED BY HEALTH CARE PERSONNEL OTHER THAN EMERGENCY MEDICAL SERVICES PERSONNEL. (a) Except as provided by Subsection (b), a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate order.

(b) When responding to a call for assistance, emergency medical services personnel:

(1) shall honor only a properly executed or issued out-of-hospital DNR order or prescribed DNR identification device in accordance with this subchapter; and

(2) have no duty to review, examine, interpret, or honor a person's other written directive, including a written directive in the form prescribed by Section 166.033.

Added by Acts 2003, 78th Leg., ch. 1228, Sec. 7, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 710 (H.B. 577), Sec. 1, eff. June 17, 2011.

SUBCHAPTER D. MEDICAL POWER OF ATTORNEY

Sec. 166.151. DEFINITIONS. In this subchapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Agent" means an adult to whom authority to make health care decisions is delegated under a medical power of attorney.

(3) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician.

(4) "Principal" means an adult who has executed a medical power of attorney.

(5) "Residential care provider" means an individual or facility licensed, certified, or otherwise authorized to operate, for profit or otherwise, a residential care home.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26,

1991. Renumbered from Civil Practice & Remedies Code Sec. 135.001 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.152. SCOPE AND DURATION OF AUTHORITY. (a) Subject to this subchapter or any express limitation on the authority of the agent contained in the medical power of attorney, the agent may make any health care decision on the principal's behalf that the principal could make if the principal were competent.

(b) An agent may exercise authority only if the principal's attending physician certifies in writing and files the certification in the principal's medical record that, based on the attending physician's reasonable medical judgment, the principal is incompetent.

(c) Notwithstanding any other provisions of this subchapter, treatment may not be given to or withheld from the principal if the principal objects regardless of whether, at the time of the objection:

(1) a medical power of attorney is in effect; or

(2) the principal is competent.

(d) The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment or of any proposal to withdraw or withhold treatment before implementing an agent's advance directive.

(e) After consultation with the attending physician and other health care providers, the agent shall make a health care decision:

(1) according to the agent's knowledge of the principal's wishes, including the principal's religious and moral beliefs; or

(2) if the agent does not know the principal's wishes, according to the agent's assessment of the principal's best interests.

(f) Notwithstanding any other provision of this subchapter, an agent may not consent to:

(1) voluntary inpatient mental health services;

(2) convulsive treatment;

(3) psychosurgery;

(4) abortion; or

(5) neglect of the principal through the omission of care primarily intended to provide for the comfort of the principal.

(g) The power of attorney is effective indefinitely on execution as provided by this subchapter and delivery of the document to the agent, unless it is revoked as provided by this subchapter or the principal becomes competent. If the medical power of attorney includes an expiration date and on that date the principal is incompetent, the power of attorney continues to be effective until the principal becomes competent unless it is revoked as provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.002 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.153. PERSONS WHO MAY NOT EXERCISE AUTHORITY OF AGENT. A person may not exercise the authority of an agent while the person serves as:

(1) the principal's health care provider;

(2) an employee of the principal's health care provider unless the person is a relative of the principal;

(3) the principal's residential care provider; or

(4) an employee of the principal's residential care provider unless the person is a relative of the principal.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.003 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.154. EXECUTION. (a) Except as provided by Subsection (b), the medical power of attorney must be signed by the principal in the presence of two witnesses who qualify under Section 166.003, at least one of whom must be a witness who qualifies under Section 166.003(2). The witnesses must sign the document.

(b) The principal, in lieu of signing in the presence of the witnesses, may sign the medical power of attorney and have the signature acknowledged before a notary public.

(c) If the principal is physically unable to sign, another person may sign the medical power of attorney with the principal's name in the principal's presence and at the principal's express

direction. The person may use a digital or electronic signature authorized under Section 166.011.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.004 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 461 (H.B. 2585), Sec. 8, eff. September 1, 2009.

Sec. 166.155. REVOCATION; EFFECT OF TERMINATION OF MARRIAGE. (a) A medical power of attorney is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state; or

(2) execution by the principal of a subsequent medical power of attorney.

(a-1) An agent's authority under a medical power of attorney is revoked if the agent's marriage to the principal is dissolved, annulled, or declared void unless the medical power of attorney provides otherwise.

(b) A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.005 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 1, eff. January 1, 2018.
Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 2, eff. January 1, 2018.

Sec. 166.156. APPOINTMENT OF GUARDIAN. (a) On motion filed in connection with a petition for appointment of a guardian or, if a guardian has been appointed, on petition of the guardian, a probate court shall determine whether to suspend or revoke the authority of the agent.

(b) The court shall consider the preferences of the principal as expressed in the medical power of attorney.

(c) During the pendency of the court's determination under Subsection (a), the guardian has the sole authority to make any health care decisions unless the court orders otherwise. If a guardian has not been appointed, the agent has the authority to make any health care decisions unless the court orders otherwise.

(d) A person, including any attending physician or health or residential care provider, who does not have actual knowledge of the appointment of a guardian or an order of the court granting authority to someone other than the agent to make health care decisions is not subject to criminal or civil liability and has not engaged in unprofessional conduct for implementing an agent's health care decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.006 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.157. DISCLOSURE OF MEDICAL INFORMATION. Subject to any limitations in the medical power of attorney, an agent may, for the purpose of making a health care decision:

(1) request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;

(2) execute a release or other document required to obtain the information; and

(3) consent to the disclosure of the information.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.007 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept.

1, 1999.

Sec. 166.158. DUTY OF HEALTH OR RESIDENTIAL CARE PROVIDER. (a) A principal's health or residential care provider and an employee of the provider who knows of the existence of the principal's medical power of attorney shall follow a directive of the principal's agent to the extent it is consistent with the desires of the principal, this subchapter, and the medical power of attorney.

(b) The attending physician does not have a duty to verify that the agent's directive is consistent with the principal's wishes or religious or moral beliefs.

(c) A principal's health or residential care provider who finds it impossible to follow a directive by the agent because of a conflict with this subchapter or the medical power of attorney shall inform the agent as soon as is reasonably possible. The agent may select another attending physician. The procedures established under Sections 166.045 and 166.046 apply if the agent's directive concerns providing, withholding, or withdrawing life-sustaining treatment.

(d) This subchapter may not be construed to require a health or residential care provider who is not a physician to act in a manner contrary to a physician's order.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.008 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.159. DISCRIMINATION RELATING TO EXECUTION OF MEDICAL POWER OF ATTORNEY. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a medical power of attorney;

(2) require a person to execute a medical power of attorney before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care; or

(3) refuse health or residential care to a person solely because the person has executed a medical power of attorney.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.009 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.160. LIMITATION ON LIABILITY. (a) An agent is not subject to criminal or civil liability for a health care decision if the decision is made in good faith under the terms of the medical power of attorney and the provisions of this subchapter.

(b) An attending physician, health or residential care provider, or a person acting as an agent for or under the physician's or provider's control is not subject to criminal or civil liability and has not engaged in unprofessional conduct for an act or omission if the act or omission:

(1) is done in good faith under the terms of the medical power of attorney, the directives of the agent, and the provisions of this subchapter; and

(2) does not constitute a failure to exercise reasonable care in the provision of health care services.

(c) The standard of care that the attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control shall exercise under Subsection (b) is that degree of care that an attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or similar community.

(d) An attending physician, health or residential care provider, or person acting as an agent for or under the physician's or provider's control has not engaged in unprofessional conduct for:

(1) failure to act as required by the directive of an agent or a medical power of attorney if the physician, provider, or person was not provided with a copy of the medical power of attorney or had no knowledge of a directive; or

(2) acting as required by an agent's directive if the medical power of attorney has expired or been revoked but the physician, provider, or person does not have knowledge of the expiration or revocation.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.010 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.161. LIABILITY FOR HEALTH CARE COSTS. Liability for the cost of health care provided as a result of the agent's decision is the same as if the health care were provided as a result of the principal's decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.011 by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney must be in substantially the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name:_____

Address:_____

Phone_____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:_____

_____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your

spouse, the designation is automatically revoked by law if your marriage is dissolved, annulled, or declared void unless this document provides otherwise.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent

Name:_____

Address:_____

Phone _____

B. Second Alternate Agent

Name:_____

Address:_____

Phone _____

The original of this document is kept at:

_____

_____

_____

The following individuals or institutions have signed copies:

Name:_____

Address:_____

_____

Name:_____

Address:_____

_____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

(IF APPLICABLE) This power of attorney ends on the following date: _____

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

DISCLOSURE STATEMENT.

THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are unable to make the decisions for yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority is effective when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have if you were able to make health care decisions for yourself.

It is important that you discuss this document with your physician or other health care provider before you sign the document to ensure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing facility, or residential care facility, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not allow a person to serve as both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Once you have signed this document, you have the right to make health care decisions for yourself as long as you are able to make those decisions, and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise in this document, your appointment of a spouse is revoked if your marriage is dissolved, annulled, or declared void.

This document may not be changed or modified. If you want to make changes in this document, you must execute a new medical power of attorney.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. If you designate an alternate agent, the alternate agent has the same authority as the agent to make health care decisions for you.

THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

(1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC; OR

(2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

(1) the person you have designated as your agent;

(2) a person related to you by blood or marriage;

(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;

(4) your attending physician;

(5) an employee of your attending physician;

(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this medical power of attorney is executed, has a claim against any part of your estate after your death.

By signing below, I acknowledge that I have read and understand the information contained in the above disclosure statement.

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____

(City and State)

_____

(Signature)

_____

(Print Name)

State of Texas
County of _____
This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

_____
NOTARY PUBLIC, State of Texas
Notary's printed name:

_____
My commission expires:

_____

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____

(City and State)

_____

(Signature)

_____

(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be

entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Signature:_____

Print Name:_____ Date:_____

Address:_____

SIGNATURE OF SECOND WITNESS.

Signature:_____

Print Name:_____ Date:_____

Address:_____

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.016 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 1, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 995 (H.B. 995), Sec. 3, eff. January 1, 2018.

Sec. 166.165. CIVIL ACTION. (a) A person who is a near relative of the principal or a responsible adult who is directly interested in the principal, including a guardian, social worker, physician, or clergyman, may bring an action to request that the medical power of attorney be revoked because the principal, at the time the medical power of attorney was signed:

(1) was not competent; or

(2) was under duress, fraud, or undue influence.

(a-1) In a county in which there is no statutory probate court, an action under this section shall be brought in the district court. In a county in which there is a statutory probate court, the statutory probate court and the district court have concurrent

jurisdiction over an action brought under this section.

(b) The action may be brought in the county of the principal's residence or the residence of the person bringing the action.

(c) During the pendency of the action, the authority of the agent to make health care decisions continues in effect unless the court orders otherwise.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.017 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 134 (S.B. 651), Sec. 2, eff. September 1, 2013.

Sec. 166.166. OTHER RIGHTS OR RESPONSIBILITIES NOT AFFECTED. This subchapter does not limit or impair any legal right or responsibility that any person, including a physician or health or residential care provider, may have to make or implement health care decisions on behalf of a person, provided that if an attending physician or health care facility is unwilling to honor a patient's advance directive or a treatment decision to provide life-sustaining treatment, life-sustaining treatment is required to be provided the patient, but only until a reasonable opportunity has been afforded for transfer of the patient to another physician or health care facility willing to comply with the advance directive or treatment decision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 3.02(a), eff. Aug. 26, 1991. Renumbered from Civil Practice & Remedies Code Sec. 135.018 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.05, eff. Sept. 1, 1999.

SUBCHAPTER E. HEALTH CARE FACILITY DO-NOT-RESUSCITATE ORDERS

Sec. 166.201. DEFINITION. In this subchapter, "DNR order" means an order instructing a health care professional not to attempt cardiopulmonary resuscitation on a patient whose circulatory or respiratory function ceases.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.202. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to a DNR order issued in a health care facility or hospital.

(b) This subchapter does not apply to an out-of-hospital DNR order as defined by Section 166.081.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.203. GENERAL PROCEDURES AND REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) A DNR order issued for a patient is valid only if the order is dated and:

(1) is issued by a physician providing direct care to the patient in compliance with:

(A) the written and dated directions of a patient who was competent at the time the patient wrote the directions;

(B) the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom must be a person not listed under Section 166.003(2)(E) or (F);

(C) the directions in an advance directive enforceable under Section 166.005 or executed in accordance with Section 166.032, 166.034, 166.035, 166.082, 166.084, or 166.085;

(D) the directions of a patient's:

(i) legal guardian;

(ii) agent under a medical power of attorney acting in accordance with Subchapter D; or

(iii) proxy as designated and authorized by a directive executed in accordance with Subchapter B to make a treatment decision for the patient if the patient becomes incompetent or otherwise mentally or physically incapable of communication; or

(E) a treatment decision made in accordance with Section 166.039;

(2) is issued by the patient's attending physician and:

(A) the order is not contrary to the directions of a

patient who was competent at the time the patient conveyed the directions; and

(B) in the reasonable medical judgment of the patient's attending physician:

(i) the patient's death is imminent, within minutes to hours, regardless of the provision of cardiopulmonary resuscitation; and

(ii) the DNR order is medically appropriate; or

(3) is issued by the patient's attending physician:

(A) for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) in compliance with a decision:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient.

(b) The DNR order takes effect at the time the order is issued, provided the order is placed in the patient's medical record as soon as practicable and may be issued and entered in a format acceptable under the policies of the health care facility or hospital.

(c) Unless notice is provided in accordance with Section 166.204(a), before placing in a patient's medical record a DNR order issued under Subsection (a)(2), a physician, physician assistant, nurse, or other person acting on behalf of a health care facility or hospital shall:

(1) inform the patient of the order's issuance; or

(2) if the patient is incompetent, make a reasonably diligent effort to contact or cause to be contacted and inform of the order's issuance:

(A) the patient's known agent under a medical power of attorney or legal guardian; or

(B) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(d) To the extent a DNR order described by Subsection (a)(1) conflicts with a treatment decision or advance directive validly executed or issued under this chapter, the treatment decision made in compliance with this subchapter, advance directive validly executed

or issued as described by this subchapter, or DNR order dated and validly executed or issued in compliance with this subchapter later in time controls.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 7, eff. September 1, 2023.

Sec. 166.204. NOTICE REQUIREMENTS FOR DO-NOT-RESUSCITATE ORDERS. (a) If an individual arrives at a health care facility or hospital that is treating a patient for whom a DNR order is issued under Section 166.203(a)(2) and the individual notifies a physician, physician assistant, or nurse providing direct care to the patient of the individual's arrival, the physician, physician assistant, or nurse who has actual knowledge of the order shall, unless notice has been provided in accordance with Section 166.203(c), disclose the order to the individual, provided the individual is:

(1) the patient's known agent under a medical power of attorney or legal guardian; or

(2) for a patient who does not have a known agent under a medical power of attorney or legal guardian, a person described by Section 166.039(b)(1), (2), or (3).

(a-1) For a patient who was incompetent at the time notice otherwise would have been provided to the patient under Section 166.203(c)(1) and if a physician providing direct care to the patient later determines that, based on the physician's reasonable medical judgment, the patient has become competent, a physician, physician assistant, or nurse providing direct care to the patient shall disclose the order to the patient, provided that the physician, physician assistant, or nurse has actual knowledge:

(1) of the order; and

(2) that a physician providing direct care to the patient has determined that the patient has become competent.

(b) Failure to comply with Subsection (a) or (a-1) or Section 166.203(c) does not affect the validity of a DNR order issued under this subchapter.

(c) Any person, including a health care facility or hospital,

is not civilly or criminally liable or subject to disciplinary action from the appropriate licensing authority for any act or omission related to providing notice under Subsection (a) or (a-1) of this section or Section 166.203(c) if the person:

(1) makes a good faith effort to comply with Subsection (a) or (a-1) or Section 166.203(c) and contemporaneously records in the patient's medical record the person's effort to comply with those provisions; or

(2) makes a good faith determination that the circumstances that would require the person to perform an act under Subsection (a) or (a-1) or Section 166.203(c) are not met.

(d) A physician, physician assistant, or nurse may satisfy the notice requirement under Subsection (a) by notifying the patient's known agent under a medical power of attorney or legal guardian or, for a patient who does not have a known agent or guardian, one person in accordance with the priority established under Section 166.039(b). The physician, physician assistant, or nurse is not required to notify additional persons beyond the first person notified.

(e) On admission to a health care facility or hospital, the facility or hospital shall provide to the patient or person authorized to make treatment decisions on behalf of the patient notice of the policies of the facility or hospital regarding the rights of the patient and person authorized to make treatment decisions on behalf of the patient under this subchapter.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 8, eff. September 1, 2023.

Sec. 166.205. REVOCATION OF DO-NOT-RESUSCITATE ORDER; LIMITATION OF LIABILITY. (a) A physician providing direct care to a patient for whom a DNR order is issued shall revoke the patient's DNR order if:

(1) an advance directive that serves as the basis of the DNR order is properly revoked in accordance with this chapter;

(2) the patient expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke a

DNR order issued under Section 166.203(a); or

(3) the DNR order was issued under Section 166.203(a)(1)(D) or (E) or Section 166.203(a)(3), and the person responsible for the patient's health care decisions expresses to any person providing direct care to the patient a revocation of consent to or intent to revoke the DNR order.

(b) A person providing direct care to a patient under the supervision of a physician shall notify the physician of the request to revoke a DNR order or of the revocation of an advance directive under Subsection (a).

(c) A patient's attending physician may at any time revoke a DNR order issued under:

(1) Section 166.203(a)(1)(A), (B), or (C), provided that:

(A) the order is for a patient who is incompetent or otherwise mentally or physically incapable of communication; and

(B) the decision to revoke the order is:

(i) agreed on by the attending physician and the person responsible for the patient's health care decisions; and

(ii) concurred in by another physician who is not involved in the direct treatment of the patient or who is a representative of an ethics or medical committee of the health care facility in which the person is a patient;

(2) Section 166.203(a)(1)(E), provided that the order's issuance was based on a treatment decision made in accordance with Section 166.039(e);

(3) Section 166.203(a)(2); or

(4) Section 166.203(a)(3).

(c-1) A patient's attending physician shall revoke a DNR order issued for the patient under Section 166.203(a)(2) if, in the attending physician's reasonable medical judgment, the condition described by Section 166.203(a)(2)(B)(i) is no longer satisfied.

(d) Except as otherwise provided by this subchapter, a person is not civilly or criminally liable for failure to act on a revocation described by or made under this section unless the person has actual knowledge of the revocation.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 9, eff.

September 1, 2023.

Sec. 166.206. PROCEDURE FOR FAILURE TO EXECUTE DO-NOT-RESUSCITATE ORDER OR PATIENT INSTRUCTIONS. (a) If a physician, health care facility, or hospital does not wish to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation, the physician, facility, or hospital shall inform the patient, the legal guardian or qualified relatives of the patient, or the agent of the patient under a medical power of attorney of the benefits and burdens of cardiopulmonary resuscitation.

(b) If, after receiving notice under Subsection (a), the patient or another person authorized to act on behalf of the patient and the physician, health care facility, or hospital remain in disagreement, the physician, facility, or hospital shall make a reasonable effort to transfer the patient to another physician, facility, or hospital willing to execute or comply with a DNR order or the patient's instructions concerning the provision of cardiopulmonary resuscitation.

(c) The procedures required by this section may not be construed to control or supersede Section 166.203(a).

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 10, eff. September 1, 2023.

Sec. 166.207. LIMITATION ON LIABILITY FOR ISSUING DNR ORDER OR WITHHOLDING CARDIOPULMONARY RESUSCITATION. A physician, health care professional, health care facility, hospital, or entity that in good faith issues a DNR order under this subchapter or that, in accordance with this subchapter, causes cardiopulmonary resuscitation to be withheld or withdrawn from a patient in accordance with a DNR order issued under this subchapter is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for that action.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1,

eff. April 1, 2018.

Sec. 166.208. LIMITATION ON LIABILITY FOR FAILURE TO EFFECTUATE DNR ORDER. A physician, health care professional, health care facility, hospital, or entity that has no actual knowledge of a DNR order is not civilly or criminally liable or subject to review or disciplinary action by the appropriate licensing authority for failing to act in accordance with the order.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.

Sec. 166.209. ENFORCEMENT. (a) Subject to Sections 166.205(d), 166.207, and 166.208 and Subsection (c), a physician, physician assistant, nurse, or other person commits an offense if, with the specific intent to violate this subchapter, the person intentionally:

(1) conceals, cancels, effectuates, or falsifies another person's DNR order in violation of this subchapter; or

(2) conceals or withholds personal knowledge of another person's revocation of a DNR order in violation of this subchapter.

(a-1) An offense under Subsection (a) is a Class A misdemeanor. This section does not preclude prosecution for any other applicable offense.

(b) Subject to Sections 166.205(d), 166.207, and 166.208, a physician, health care professional, health care facility, hospital, or entity is subject to review and disciplinary action by the appropriate licensing authority for intentionally:

(1) failing to effectuate a DNR order in violation of this subchapter; or

(2) issuing a DNR order in violation of this subchapter.

(c) Subsection (a) does not apply to a person whose act or omission was based on a reasonable belief that the act or omission was in compliance with the wishes of the patient or the person responsible for the patient's health care decisions.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 11 (S.B. 11), Sec. 1, eff. April 1, 2018.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 11, eff. September 1, 2023.

CHAPTER 167. FEMALE GENITAL MUTILATION

Sec. 167.001. FEMALE GENITAL MUTILATION PROHIBITED. (a) A person commits an offense if the person:

(1) knowingly circumcises, excises, or infibulates any part of the labia majora or labia minora or clitoris of another person who is younger than 18 years of age;

(2) is a parent or legal guardian of another person who is younger than 18 years of age and knowingly consents to or permits an act described by Subdivision (1) to be performed on that person; or

(3) knowingly transports or facilitates the transportation of another person who is younger than 18 years of age within this state or from this state for the purpose of having an act described by Subdivision (1) performed on that person.

(b) An offense under this section is a state jail felony.

(c) It is a defense to prosecution under Subsection (a) that:

(1) the person performing the act is a physician or other licensed health care professional and the act is within the scope of the person's license; and

(2) the act is performed for medical purposes.

(d) It is not a defense to prosecution under this section that:

(1) the person on whom the circumcision, excision, or infibulation was performed or was to be performed, or another person authorized to consent to medical treatment of that person, including that person's parent or legal guardian, consented to the circumcision, excision, or infibulation;

(2) the circumcision, excision, or infibulation is required by a custom or practice of a particular group; or

(3) the circumcision, excision, or infibulation was performed or was to be performed as part of or in connection with a religious or other ritual.

Added by Acts 1999, 76th Leg., ch. 642, Sec. 1, eff. Aug. 30, 1999. Renumbered from Sec. 166.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(75), eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 537 (S.B. 323), Sec. 1, eff.

September 1, 2017.

CHAPTER 167A. PELVIC EXAMINATIONS

Sec. 167A.001. DEFINITIONS. In this chapter:

(1) "Health care practitioner" means a physician, physician assistant, or advanced practice registered nurse licensed to practice in this state.

(2) "Patient's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of a patient, if the patient is a minor;

(B) a guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs; or

(C) an agent of the patient authorized under a durable power of attorney for health care.

(3) "Pelvic examination" means a physical examination by a health care practitioner of a patient's external and internal reproductive organs, genitalia, or rectum.

Added by Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 1, eff. September 1, 2021.

Sec. 167A.002. LIMITATIONS ON CERTAIN PELVIC EXAMINATIONS. (a) A health care practitioner may not perform or delegate to another individual, including a student training to become a health care practitioner, the performance of a pelvic examination on an anesthetized or unconscious patient unless:

(1) the pelvic examination is within the standard scope of a procedure or diagnostic examination scheduled to be performed on the patient;

(2) the patient or the patient's legally authorized representative gives informed consent for the pelvic examination as provided by Subsection (b);

(3) the pelvic examination is necessary for diagnosis or treatment of the patient's medical condition; or

(4) the pelvic examination is for the purpose of collecting evidence.

(b) To obtain informed consent to perform a pelvic examination on an unconscious or anesthetized patient, a health care practitioner

must:

(1) provide the patient or the patient's legally authorized representative with a written or electronic informed consent form that:

(A) may be included as a distinct or separate section of a general informed consent form;

(B) contains the following heading at the top of the form in at least 18-point boldface type: "CONSENT FOR EXAMINATION OF PELVIC REGION";

(C) specifies the nature and purpose of the pelvic examination;

(D) informs the patient or the patient's legally authorized representative that a medical student or resident may be present if the patient or the patient's legally authorized representative authorizes the student or resident to:

(i) perform the pelvic examination; or

(ii) observe or otherwise be present at the pelvic examination, either in person or through electronic means;

(E) allows the patient or the patient's legally authorized representative the opportunity to consent to or refuse to consent to the pelvic examination; and

(F) allows a patient or a patient's legally authorized representative that consents to a pelvic examination under Paragraph (E) the opportunity to authorize or refuse to authorize:

(i) a medical student or resident to perform the pelvic examination; or

(ii) a medical student or resident to observe or otherwise be present at the pelvic examination, either in person or through electronic means;

(2) obtain the signature of the patient or the patient's legally authorized representative on the informed consent form; and

(3) sign the informed consent form.

Added by Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 1, eff. September 1, 2021.

Sec. 167A.003. DISCIPLINARY ACTION. The appropriate licensing authority may take disciplinary action against a health care practitioner who violates Section 167A.002, including imposing an

administrative penalty, as if the practitioner violated an applicable licensing law.

Added by Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 1, eff. September 1, 2021.

CHAPTER 168. CARE OF STUDENTS WITH DIABETES

Sec. 168.001. DEFINITIONS. In this chapter:

(1) "Diabetes management and treatment plan" means the document required by Section 168.002.

(2) "Individualized health plan" means the document required by Section 168.003.

(3) "Principal" includes the principal's designee.

(4) "School" means a public elementary or secondary school. The term does not include an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(5) "School employee" means a person employed by:

(A) a school;

(B) a local health department that assists a school under this chapter; or

(C) another entity with which a school has contracted to perform its duties under this chapter.

(6) "Unlicensed diabetes care assistant" means a school employee who has successfully completed the training required by Section 168.005.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.002. DIABETES MANAGEMENT AND TREATMENT PLAN. (a) A diabetes management and treatment plan must be developed and implemented for each student with diabetes who will seek care for the student's diabetes while at school or while participating in a school activity. The plan shall be developed by:

(1) the student's parent or guardian; and

(2) the physician responsible for the student's diabetes treatment.

(b) A diabetes management and treatment plan must:

(1) identify the health care services the student may

receive at school;

(2) evaluate the student's ability to manage and level of understanding of the student's diabetes; and

(3) be signed by the student's parent or guardian and the physician responsible for the student's diabetes treatment.

(c) The parent or guardian of a student with diabetes who seeks care for the student's diabetes while the student is at school shall submit to the school a copy of the student's diabetes management and treatment plan. The plan must be submitted to and reviewed by the school:

(1) before or at the beginning of the school year;

(2) on enrollment of the student, if the student enrolls in the school after the beginning of the school year; or

(3) as soon as practicable following a diagnosis of diabetes for the student.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.003. INDIVIDUALIZED HEALTH PLAN. (a) An individualized health plan is a coordinated plan of care designed to meet the unique health care needs of a student with diabetes in the school setting.

(b) An individualized health plan must be developed for each student with diabetes who will seek care for diabetes while at school or while participating in a school activity. The school principal and the school nurse, if a school nurse is assigned to the school, shall develop a student's individualized health plan in collaboration with the student's parent or guardian and, to the extent practicable, the physician responsible for the student's diabetes treatment and one or more of the student's teachers.

(c) A student's individualized health plan must incorporate components of the student's diabetes management and treatment plan, including the information required under Section 168.002(b). A school shall develop a student's individualized health plan on receiving the student's diabetes management and treatment plan.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.004. UNLICENSED DIABETES CARE ASSISTANT. (a) At each school in which a student with diabetes is enrolled, the school principal shall:

(1) seek school employees who are not health care professionals to serve as unlicensed diabetes care assistants and care for students with diabetes; and

(2) make efforts to ensure that the school has:

(A) at least one unlicensed diabetes care assistant if a full-time nurse is assigned to the school; and

(B) at least three unlicensed diabetes care assistants if a full-time nurse is not assigned to the school.

(b) An unlicensed diabetes care assistant shall serve under the supervision of the principal.

(c) A school employee may not be subject to any penalty or disciplinary action for refusing to serve as an unlicensed diabetes care assistant.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.005. TRAINING FOR UNLICENSED DIABETES CARE ASSISTANT. (a) The Texas Diabetes Council shall develop guidelines, with the assistance of the following entities, for the training of unlicensed diabetes care assistants:

(1) the department's School Health Program;

(2) the American Diabetes Association;

(3) the Juvenile Diabetes Research Foundation International;

(4) the American Association of Diabetes Educators;

(5) the Texas Nurses Association;

(6) the Texas School Nurse Organization; and

(7) the Texas Education Agency.

(b) If a school nurse is assigned to a campus, the school nurse shall coordinate the training of school employees acting as unlicensed diabetes care assistants.

(c) Training under this section must be provided by a health care professional with expertise in the care of persons with diabetes or by the school nurse. The training must be provided before the beginning of the school year or as soon as practicable following:

(1) the enrollment of a student with diabetes at a campus that previously had no students with diabetes; or

(2) a diagnosis of diabetes for a student at a campus that previously had no students with diabetes.

(d) The training must include instruction in:

(1) recognizing the symptoms of hypoglycemia and hyperglycemia;

(2) understanding the proper action to take if the blood glucose levels of a student with diabetes are outside the target ranges indicated by the student's diabetes management and treatment plan;

(3) understanding the details of a student's individualized health plan;

(4) performing finger-sticks to check blood glucose levels, checking urine ketone levels, and recording the results of those checks;

(5) properly administering glucagon and insulin and recording the results of the administration;

(6) recognizing complications that require seeking emergency assistance; and

(7) understanding the recommended schedules and food intake for meals and snacks for a student with diabetes, the effect of physical activity on blood glucose levels, and the proper actions to be taken if a student's schedule is disrupted.

(e) The school nurse or principal shall maintain a copy of the training guidelines and any records associated with the training.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.006. REQUIRED INFORMATION FOR CERTAIN EMPLOYEES. A school district shall provide to each district employee who is responsible for providing transportation for a student with diabetes or supervising a student with diabetes during an off-campus activity a one-page information sheet that:

(1) identifies the student who has diabetes;

(2) identifies potential emergencies that may occur as a result of the student's diabetes and the appropriate responses to such emergencies; and

(3) provides the telephone number of a contact person in case of an emergency involving the student with diabetes.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.007. REQUIRED CARE OF STUDENTS WITH DIABETES. (a) If a school nurse is assigned to a campus and the nurse is available, the nurse shall perform the tasks necessary to assist a student with diabetes in accordance with the student's individualized health plan. If a school nurse is not assigned to the campus or a school nurse is not available, an unlicensed diabetes care assistant shall perform the tasks necessary to assist the student with diabetes in accordance with the student's individualized health plan and in compliance with any guidelines provided during training under Section 168.005. An unlicensed diabetes care assistant may perform the tasks provided by this subsection only if the parent or guardian of the student signs an agreement that:

(1) authorizes an unlicensed diabetes care assistant to assist the student; and

(2) states that the parent or guardian understands that an unlicensed diabetes care assistant is not liable for civil damages as provided by Section 168.009.

(b) If a school nurse is not assigned to a campus:

(1) an unlicensed diabetes care assistant must have access to an individual with expertise in the care of persons with diabetes, such as a physician, a registered nurse, a certified diabetes educator, or a licensed dietitian; or

(2) the principal must have access to the physician responsible for the student's diabetes treatment.

(c) Each school shall adopt a procedure to ensure that a school nurse or at least one unlicensed diabetes care assistant is present and available to provide the required care to a student with diabetes during the regular school day.

(d) A school district may not restrict the assignment of a student with diabetes to a particular campus on the basis that the campus does not have the required unlicensed diabetes care assistants.

(e) An unlicensed diabetes care assistant who assists a student

as provided by Subsection (a) in compliance with a student's individualized health plan:

(1) is not considered to be engaging in the practice of professional or vocational nursing under Chapter 301, Occupations Code, or other state law; and

(2) is exempt from any applicable state law or rule that restricts the activities that may be performed by a person who is not a health care professional.

(f) An unlicensed diabetes care assistant may exercise reasonable judgment in deciding whether to contact a health care provider in the event of a medical emergency involving a student with diabetes.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.008. INDEPENDENT MONITORING AND TREATMENT. In accordance with the student's individualized health plan, a school shall permit the student to attend to the management and care of the student's diabetes, which may include:

(1) performing blood glucose level checks;

(2) administering insulin through the insulin delivery system the student uses;

(3) treating hypoglycemia and hyperglycemia;

(4) possessing on the student's person at any time any supplies or equipment necessary to monitor and care for the student's diabetes; and

(5) otherwise attending to the management and care of the student's diabetes in the classroom, in any area of the school or school grounds, or at any school-related activity.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.009. IMMUNITY FROM DISCIPLINARY ACTION OR LIABILITY. (a) A school employee may not be subject to any disciplinary proceeding, as defined by Section 22.0512(b), Education Code, resulting from an action taken in compliance with this subchapter. The requirements of this subchapter are considered to involve the

employee's judgment and discretion and are not considered ministerial acts for purposes of immunity from liability under Section 22.0511, Education Code. Nothing in the subchapter shall be considered to limit the immunity from liability afforded under Section 22.0511, Education Code.

(b) A school nurse is not responsible for and may not be subject to disciplinary action under Chapter 301, Occupations Code, for actions performed by an unlicensed diabetes care assistant.

Added by Acts 2005, 79th Leg., Ch. 1022 (H.B. 984), Sec. 1, eff. June 18, 2005.

Sec. 168.011. GRANT-WRITING COORDINATION PROGRAM. (a) The department shall employ one person as a grant writer to assist and coordinate with school districts located in the Texas-Mexico border region in obtaining grants and other funds for school-based health centers.

(b) A grant writer employed under this section may secure a grant or other funds on behalf of the state for a school-based health center.

(c) Funds obtained by the use of a grant writer employed under this section may be used only to:

(1) acquire, construct, or improve facilities for a school-based health center;

(2) purchase or lease equipment or materials for a school-based health center; or

(3) pay the salary or employment benefits of a person who is employed to work exclusively in a school-based health center.

Added by Acts 2007, 80th Leg., R.S., Ch. 1111 (H.B. 3618), Sec. 1, eff. June 15, 2007.

CHAPTER 169. FIRST OFFENDER SOLICITATION OF PROSTITUTION PREVENTION PROGRAM

Sec. 169.001. FIRST OFFENDER SOLICITATION OF PROSTITUTION PREVENTION PROGRAM; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "first offender solicitation of prostitution prevention program" means a program that has the following essential characteristics:

(1) the integration of services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety, to reduce the demand for the commercial sex trade and trafficking of persons by educating offenders, and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse;

(5) a coordinated strategy to govern program responses to participant compliance;

(6) monitoring and evaluation of program goals and effectiveness;

(7) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(8) development of partnerships with public agencies and community organizations.

(b) If a defendant successfully completes a first offender solicitation of prostitution prevention program, regardless of whether the defendant was convicted of the offense for which the defendant entered the program or whether the court deferred further proceedings without entering an adjudication of guilt, after notice to the state and a hearing on whether the defendant is otherwise entitled to the petition, including whether the required time period has elapsed, and whether issuance of the order is in the best interest of justice, the court shall enter an order of nondisclosure of criminal history record information under Subchapter E-1, Chapter 411, Government Code, as if the defendant had received a discharge and dismissal under Article 42A.111, Code of Criminal Procedure, with respect to all records and files related to the defendant's arrest for the offense for which the defendant entered the program if the defendant:

(1) has not been previously convicted of a felony offense; and

(2) is not convicted of any other felony offense before the second anniversary of the defendant's successful completion of the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.65, eff. January 1, 2017.
Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. 1902), Sec. 29, eff. September 1, 2015.
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 46, eff. September 1, 2021.

Sec. 169.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY. (a) The commissioners court of a county or governing body of a municipality may establish a first offender solicitation of prostitution prevention program for defendants charged with an offense under Section 43.021, Penal Code.

(b) A defendant is eligible to participate in a first offender solicitation of prostitution prevention program established under this chapter only if:

(1) the attorney representing the state consents to the defendant's participation in the program; and

(2) the court in which the criminal case is pending finds that the defendant has not been previously convicted of:

(A) an offense under Section 20A.02, 43.02(b), as that law existed before September 1, 2021, 43.021, 43.03, 43.031, 43.04, 43.041, or 43.05, Penal Code;

(B) an offense listed in Article 42A.054(a), Code of Criminal Procedure; or

(C) an offense punishable as a felony under Chapter 481.

(c) For purposes of Subsection (b), a defendant has been previously convicted of an offense listed in that subsection if:

(1) the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; or

(2) the defendant was convicted under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in Subsection (b).

(d) A defendant is not eligible to participate in the first offender solicitation of prostitution prevention program if the defendant offered or agreed to hire a person to engage in sexual conduct and the person was younger than 18 years of age at the time of the offense.

(e) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to participate in the first offender solicitation of prostitution prevention program or otherwise proceed through the criminal justice system.

(f) If a defendant who chooses to participate in the first offender solicitation of prostitution prevention program fails to attend any portion of the program, the court in which the defendant's criminal case is pending shall issue a warrant for the defendant's arrest and proceed on the criminal case as if the defendant had chosen not to participate in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.66, eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1273 (S.B. 825), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 3.10, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 47, eff. September 1, 2021.

Sec. 169.003. PROGRAM POWERS AND DUTIES. (a) A first offender solicitation of prostitution prevention program established under this chapter must:

(1) ensure that a person eligible for the program is provided legal counsel before volunteering to proceed through the program and while participating in the program;

(2) allow any participant to withdraw from the program at any time before a trial on the merits has been initiated;

(3) provide each participant with information, counseling, and services relating to sex addiction, sexually transmitted diseases, mental health, and substance abuse; and

(4) provide each participant with classroom instruction related to the prevention of the solicitation of prostitution.

(b) To provide each program participant with information, counseling, and services described by Subsection (a)(3), a program established under this chapter may employ a person or solicit a volunteer who is:

(1) a health care professional;

(2) a psychologist;

(3) a licensed social worker or counselor;

(4) a former prostitute;

(5) a family member of a person arrested for soliciting prostitution;

(6) a member of a neighborhood association or community that is adversely affected by the commercial sex trade or trafficking of persons; or

(7) an employee of a nongovernmental organization specializing in advocacy or laws related to sex trafficking or human trafficking or in providing services to victims of those offenses.

(c) A program established under this chapter shall establish and publish local procedures to promote maximum participation of eligible defendants in programs established in the county or municipality in which the defendants reside.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 48, eff. September 1, 2021.

Sec. 169.004. OVERSIGHT. (a) The lieutenant governor and the speaker of the house of representatives may assign to appropriate legislative committees duties relating to the oversight of first offender solicitation of prostitution prevention programs established under this chapter.

(b) A legislative committee or the governor may request the state auditor to perform a management, operations, or financial or accounting audit of a first offender solicitation of prostitution prevention program established under this chapter.

(c) A first offender solicitation of prostitution prevention

program established under this chapter shall:

(1) notify the criminal justice division of the governor's office before or on implementation of the program; and

(2) provide information regarding the performance of the program to the division on request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 49, eff. September 1, 2021.

Sec. 169.005. REIMBURSEMENT FEES. (a) A first offender solicitation of prostitution prevention program established under this chapter may collect from a participant in the program a nonrefundable reimbursement fee for the program in a reasonable amount not to exceed $1,000, from which the following must be paid:

(1) a counseling and services reimbursement fee in an amount necessary to cover the costs of the counseling and services provided by the program; and

(2) a law enforcement training reimbursement fee, in an amount equal to five percent of the total amount paid under Subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons.

(b) Reimbursement fees collected under this section may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director administering the first offender solicitation of prostitution prevention program. The fees must be based on the participant's ability to pay.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.51, eff. January 1, 2020.
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 49, eff.

September 1, 2021.

Sec. 169.006. SUSPENSION OR DISMISSAL OF COMMUNITY SERVICE REQUIREMENT. (a) To encourage participation in a first offender solicitation of prostitution prevention program established under this chapter, the judge or magistrate administering the program may suspend any requirement that, as a condition of community supervision, a participant in the program work a specified number of hours at a community service project.

(b) On a participant's successful completion of a first offender solicitation of prostitution prevention program, a judge or magistrate may excuse the participant from any condition of community supervision previously suspended under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1289 (H.B. 1994), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 49, eff. September 1, 2021.

CHAPTER 170. PROHIBITED ACTS REGARDING ABORTION

Sec. 170.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Physician" means an individual licensed to practice medicine in this state.

(3) "Viable" means the stage of fetal development when, in the medical judgment of the attending physician based on the particular facts of the case, an unborn child possesses the capacity to live outside its mother's womb after its premature birth from any cause. The term does not include a fetus whose biparietal diameter is less than 60 millimeters.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 5, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.001, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 3, eff. September 1, 2017.

Sec. 170.002. PROHIBITED ACTS; EXEMPTION. (a) Except as provided by Subsection (b), a person may not intentionally or knowingly perform an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy.

(b) Subsection (a) does not prohibit a person from performing an abortion if at the time of the abortion the person is a physician and concludes in good faith according to the physician's best medical judgment that:

(1) the fetus is not a viable fetus and the pregnancy is not in the third trimester;

(2) the abortion is necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman; or

(3) the fetus has a severe and irreversible abnormality, identified by reliable diagnostic procedures.

(c) A physician who performs an abortion that, according to the physician's best medical judgment at the time of the abortion, is to abort a viable unborn child during the third trimester of the pregnancy shall certify in writing to the commission, on a form prescribed by the commission, the medical indications supporting the physician's judgment that the abortion was authorized by Subsection (b)(2) or (3). If the physician certifies the abortion was authorized by Subsection (b)(3), the physician shall certify in writing on the form the fetal abnormality identified by the physician. The certification must be made not later than the 30th day after the date the abortion was performed.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 1, eff. November 14, 2017.

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

(3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body

during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved.

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A person may not knowingly perform, induce, or attempt an abortion.

(b) The prohibition under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and

(3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create:

(A) a greater risk of the pregnant female's death; or

(B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

(c) A physician may not take an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(d) Medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional

injury or death of the unborn child does not constitute a violation of this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.004. CRIMINAL OFFENSE. (a) A person who violates Section 170A.002 commits an offense.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.005. CIVIL PENALTY. A person who violates Section 170A.002 is subject to a civil penalty of not less than $100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. The fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

Sec. 170A.007. DISCIPLINARY ACTION. In addition to any other penalty that may be imposed under this chapter, the appropriate licensing authority shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

Added by Acts 2021, 87th Leg., R.S., Ch. 800 (H.B. 1280), Sec. 2, eff. August 25, 2022.

CHAPTER 171. ABORTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. SHORT TITLE. This chapter may be called the Woman's Right to Know Act.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.002. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Abortion provider" means a facility where an abortion is performed, including the office of a physician and a facility licensed under Chapter 245.

(3) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(4) "Sonogram" means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 4, eff. September 1, 2017.

Sec. 171.003. PHYSICIAN TO PERFORM. An abortion may be performed only by a physician licensed to practice medicine in this state.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.0031. REQUIREMENTS OF PHYSICIAN; OFFENSE. (a) A physician performing or inducing an abortion:

(1) must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that:

(A) is located not further than 30 miles from the location at which the abortion is performed or induced; and

(B) provides obstetrical or gynecological health care services; and

(2) shall provide the pregnant woman with:

(A) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed or induced with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance or induction of the abortion or ask health-related questions regarding the abortion; and

(B) the name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

(b) A physician who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor punishable by a fine only, not to exceed $4,000.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 2, eff. October 29, 2013.

Sec. 171.004. ABORTION OF FETUS AGE 16 WEEKS OR MORE. An abortion of a fetus age 16 weeks or more may be performed only at an ambulatory surgical center or hospital licensed to perform the

abortion.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.005. COMMISSION TO ENFORCE; EXCEPTION. The commission shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 6, eff. September 1, 2021.

Text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 4 (H.B. 13), Sec. 1

For text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 2, see other Sec. 171.006.

Sec. 171.006. ABORTION COMPLICATION REPORTING REQUIREMENTS; CIVIL PENALTY. (a) In this section, "abortion complication" or "adverse event" means any harmful event or adverse outcome with respect to a patient related to an abortion that is performed or induced on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility and includes:

(1) shock;
(2) uterine perforation;
(3) cervical laceration;
(4) hemorrhage;
(5) aspiration or allergic response;
(6) infection;
(7) sepsis;
(8) death of the patient;
(9) incomplete abortion;
(10) damage to the uterus;
(11) an infant born alive after the abortion;
(12) blood clots resulting in pulmonary embolism or deep vein thrombosis;

(13) failure to actually terminate the pregnancy;
(14) pelvic inflammatory disease;
(15) endometritis;
(16) missed ectopic pregnancy;
(17) cardiac arrest;
(18) respiratory arrest;
(19) renal failure;
(20) metabolic disorder;
(21) embolism;
(22) coma;
(23) placenta previa in subsequent pregnancies;
(24) preterm delivery in subsequent pregnancies;
(25) fluid accumulation in the abdomen;
(26) hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;
(27) adverse reactions to anesthesia or other drugs; or
(28) any other adverse event as defined by the United States Food and Drug Administration's criteria provided by the MedWatch Reporting System.

(b) The reporting requirements of this section apply only to:
(1) a physician who:
(A) performs or induces at an abortion facility an abortion that results in an abortion complication diagnosed or treated by that physician; or
(B) diagnoses or treats an abortion complication that is the result of an abortion performed or induced by another physician; or
(2) a health care facility that is a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care, as defined by Section 773.003.

(c) A physician described by Subsection (b)(1) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each abortion complication diagnosed or treated by that physician not later than the end of the third business day after the date on which the complication is diagnosed or treated. Each health care facility described by Subsection (b)(2) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each abortion complication diagnosed or treated at the facility not later

than the 30th day after the date on which the complication is diagnosed or treatment is provided for the complication.

(d) The commission shall develop a form for reporting an abortion complication under Subsection (c) and publish the form on the commission's Internet website. The executive commissioner by rule may adopt procedures to reduce duplication in reporting under this section.

(e) A report under this section may not identify by any means the physician performing an abortion, other than a physician described by Subsection (b)(1), or the patient on whom the abortion was performed.

(f) A report under this section must identify the name of the physician submitting the report or the name and type of health care facility submitting the report and must include, if known, for each abortion complication:

(1) the date of the abortion that caused or may have caused the complication;

(2) the type of abortion that caused or may have caused the complication;

(3) the gestational age of the fetus at the time the abortion was performed;

(4) the name and type of the facility in which the abortion was performed;

(5) the date the complication was diagnosed or treated;

(6) the name and type of any facility other than the reporting facility in which the complication was diagnosed or treated;

(7) a description of the complication;

(8) the patient's year of birth, race, marital status, and state and county of residence;

(9) the date of the first day of the patient's last menstrual period that occurred before the date of the abortion that caused or may have caused the complication;

(10) the number of previous live births of the patient; and

(11) the number of previous induced abortions of the patient.

(g) Except as provided by Section 245.023, all information and records held by the commission under this section are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on

subpoena or otherwise, except release may be made:

(1) for statistical purposes, but only if a person, patient, or health care facility is not identified;

(2) with the consent of each person, patient, and facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(h) A report submitted under this section must include the most specific, accurate, and complete reporting for the highest level of specificity.

(i) The commission shall develop and publish on the commission's Internet website an annual report that aggregates on a statewide basis each abortion complication required to be reported under Subsection (f) for the previous calendar year. The annual report may not include any duplicative data.

(j) A physician described by Subsection (b)(1) or health care facility that violates this section is subject to a civil penalty of $500 for each violation. The attorney general, at the request of the commission or appropriate licensing agency, may file an action to recover a civil penalty assessed under this subsection and may recover attorney's fees and costs incurred in bringing the action. Each day of a continuing violation constitutes a separate ground for recovery.

(k) The third separate violation of this section constitutes cause for the revocation or suspension of a physician's or health care facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the physician or facility by the appropriate licensing agency.

(l) The commission shall notify the Texas Medical Board of any violations of this section by a physician.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 4 (H.B. 13), Sec. 1, eff. November 14, 2017.

Amended by:

Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 2, eff. December 2, 2021.

Text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 2

For text of section as added by Acts 2017, 85th Leg., 1st C.S., Ch. 4 (H.B. 13), Sec. 1, see other Sec. 171.006.

Sec. 171.006. REPORTING REQUIREMENTS FOR ABORTIONS PERFORMED ON WOMEN YOUNGER THAN 18 YEARS OF AGE. (a) For each abortion performed on a woman who is younger than 18 years of age, the physician who performed the abortion shall document in the woman's medical record and report to the commission in the report required under Section 245.011:

(1) one of the following methods for obtaining authorization for the abortion:

(A) the woman's parent, managing conservator, or legal guardian provided the written consent required by Section 164.052(a)(19), Occupations Code;

(B) the woman obtained judicial authorization under Section 33.003 or 33.004, Family Code;

(C) the woman consented to the abortion if the woman has had the disabilities of minority removed and is authorized under law to have the abortion without the written consent required by Section 164.052(a)(19), Occupations Code, or without judicial authorization under Section 33.003 or 33.004, Family Code; or

(D) the physician concluded and documented in writing in the woman's medical record that on the basis of the physician's good faith clinical judgment:

(i) a condition existed that complicated the medical condition of the woman and necessitated the immediate abortion of the woman's pregnancy to avert the woman's death or to avoid a serious risk of substantial impairment of a major bodily function; and

(ii) there was insufficient time to obtain the consent of the woman's parent, managing conservator, or legal guardian;

(2) if the woman's parent, managing conservator, or legal guardian provided the written consent described by Subdivision (1)(A), whether the consent was given:

(A) in person at the location where the abortion was performed; or

(B) at a place other than the location where the abortion was performed; and

(3) if the woman obtained the judicial authorization described by Subdivision (1)(B):

(A) if applicable, the process the physician or physician's agent used to inform the woman of the availability of petitioning for judicial authorization as an alternative to the written consent required by Section 164.052(a)(19), Occupations Code;

(B) whether the court forms were provided to the woman by the physician or the physician's agent;

(C) whether the physician or the physician's agent made arrangements for the woman's court appearance; and

(D) if known, whether the woman became pregnant while in foster care or in the managing conservatorship of the Department of Family and Protective Services.

(b) Except as provided by Section 245.023, all information and records held by the commission under this section are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except release may be made:

(1) for statistical purposes, but only if a person, patient, or health care facility is not identified;

(2) with the consent of each person, patient, and facility identified in the information released;

(3) to appropriate state agencies or county and district courts to enforce this chapter;

(4) to appropriate state licensing boards to enforce state licensing laws; or

(5) to licensed medical or health care personnel currently treating the patient.

(c) Any information released by the commission may not identify by any means the county in which a minor obtained judicial authorization for an abortion under Chapter 33, Family Code.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 9 (H.B. 215), Sec. 2, eff. November 14, 2017.

Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary

due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b) A physician shall:

(1) place the document described by Subsection (a) in the pregnant woman's medical record; and

(2) maintain a copy of the document described by Subsection (a) in the physician's practice records.

(c) A physician who performs or induces an abortion on a pregnant woman shall:

(1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A) specifies the medical condition the abortion is asserted to address; and

(B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 7, eff. September 1, 2021.

SUBCHAPTER B. INFORMED CONSENT

Sec. 171.011. INFORMED CONSENT REQUIRED. A person may not perform an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed.

Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A) the physician's name;

(B) the particular medical risks associated with the

particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform or induce the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by Section 171.014; and

(B) informs the pregnant woman that those materials:

(i) have been provided by the commission;

(ii) are accessible on an Internet website sponsored by the commission;

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under

Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE

HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

___ MY UNBORN CHILD HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

_____ _____

SIGNATURE DATE";

(6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

(a-1) During a visit made to a facility to fulfill the requirements of Subsection (a), the facility and any person at the facility may not accept any form of payment, deposit, or exchange or make any financial agreement for an abortion or abortion-related services other than for payment of a service required by Subsection (a). The amount charged for a service required by Subsection (a) may

not exceed the reimbursement rate established for the service by the executive commissioner for statewide medical reimbursement programs.

(b) The information required to be provided under Subsections (a)(1) and (2) may not be provided by audio or video recording and must be provided at least 24 hours before the abortion is to be performed:

(1) orally and in person in a private and confidential setting if the pregnant woman currently lives less than 100 miles from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period; or

(2) orally by telephone on a private call or in person in a private and confidential setting if the pregnant woman certifies that the woman currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period.

(c) When providing the information under Subsection (a)(3), the physician or the physician's agent must provide the pregnant woman with the address of the Internet website on which the printed materials described by Section 171.014 may be viewed as required by Section 171.014(e).

(d) The information provided to the woman under Subsection (a)(2)(B) must include, based on information available from the Office of the Attorney General and the United States Department of Health and Human Services Office of Child Support Enforcement for the three-year period preceding the publication of the information, information regarding the statistical likelihood of collecting child support.

(e) The department is not required to republish informational materials described by Subsection (a)(2)(B) because of a change in information described by Subsection (d) unless the statistical information in the materials changes by five percent or more.

(f) The physician who is to perform the abortion, or the physician's designee, shall in person hand to the pregnant woman a copy of the informational materials described by Section 171.014:

(1) on the day of the consultation required under Subsection (a)(4) for a pregnant woman who lives less than 100 miles from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period; or

(2) before any sedative or anesthesia is administered to the pregnant woman on the day of the abortion and at least two hours before the abortion if the woman lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 2, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0518, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 502 (S.B. 24), Sec. 1, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 8, eff. September 1, 2021.

Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion begins, a copy of the signed, written certification received by the physician under Section 171.012(a)(6) must be placed in the pregnant woman's medical records.

(b) A copy of the signed, written certification required under Sections 171.012(a)(5) and (6) shall be retained by the facility where the abortion is performed until:

(1) the seventh anniversary of the date it is signed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date it is signed; or

(B) the woman's 21st birthday.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0122. VIEWING PRINTED MATERIALS AND SONOGRAM IMAGE; HEARING HEART AUSCULTATION OR VERBAL EXPLANATION. (a) A pregnant woman may choose not to view the printed materials provided under Section 171.012(a)(3) after she has been provided the materials.

(b) A pregnant woman may choose not to view the sonogram images

required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(c) A pregnant woman may choose not to hear the heart auscultation required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(d) A pregnant woman may choose not to receive the verbal explanation of the results of the sonogram images under Section 171.012(a)(4)(C) if:

(1) the woman's pregnancy is a result of a sexual assault, incest, or other violation of the Penal Code that has been reported to law enforcement authorities or that has not been reported because she has a reason that she declines to reveal because she reasonably believes that to do so would put her at risk of retaliation resulting in serious bodily injury;

(2) the woman is a minor and obtaining an abortion in accordance with judicial bypass procedures under Chapter 33, Family Code; or

(3) the fetus has an irreversible medical condition or abnormality, as previously identified by reliable diagnostic procedures and documented in the woman's medical file.

(e) The physician and the pregnant woman are not subject to a penalty under this chapter solely because the pregnant woman chooses not to view the printed materials or the sonogram images, hear the heart auscultation, or receive the verbal explanation, if waived as provided by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0123. PATERNITY AND CHILD SUPPORT INFORMATION. If, after being provided with a sonogram and the information required under this subchapter, the pregnant woman chooses not to have an abortion, the physician or an agent of the physician shall provide the pregnant woman with a publication developed by the Title IV-D agency that provides information about paternity establishment and child support, including:

(1) the steps necessary for unmarried parents to establish legal paternity;

(2) the benefits of paternity establishment for children;

(3) the steps necessary to obtain a child support order;

(4) the benefits of establishing a legal parenting order; and

(5) financial and legal responsibilities of parenting.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.

Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A physician may perform an abortion without obtaining informed consent under this subchapter in a medical emergency. A physician who performs an abortion in a medical emergency shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the department the specific medical condition that constituted the emergency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0519, eff. April 2, 2015.

Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) The physician or the physician's agent shall furnish copies of the materials described by Section 171.014 to the pregnant woman at least 24 hours before the abortion is to be performed and shall direct the pregnant woman to the Internet website required to be published under Section 171.014(e). The physician or the physician's agent may furnish the materials to the pregnant woman by mail if the materials are mailed, restricted delivery to addressee, at least 72 hours before the abortion is to be performed.

(b) A physician or the physician's agent is not required to furnish copies of the materials if the woman provides the physician with a written statement that she chooses to view the materials on the Internet website sponsored by the department.

(c) The physician and the physician's agent may disassociate

themselves from the materials and may choose to comment on the materials or to refrain from commenting.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 4, eff. September 1, 2011.

Sec. 171.014. INFORMATIONAL MATERIALS. (a) The department shall publish informational materials that include:

(1) the information required to be provided under Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and

(2) the materials required by Sections 171.015 and 171.016.

(b) The materials shall be published in:

(1) English and Spanish;

(2) an easily comprehensible form; and

(3) a typeface large enough to be clearly legible.

(c) The materials shall be available at no cost from the department on request. The department shall provide appropriate quantities of the materials to any person.

(d) The department shall annually review the materials to determine if changes to the contents of the materials are necessary. The executive commissioner shall adopt rules necessary for considering and making changes to the materials.

(e) The department shall develop and maintain an Internet website to display the information required to be published under this section. In developing and maintaining the website the department shall, to the extent reasonably practicable, safeguard the website against alterations by anyone other than the department and shall monitor the website each day to prevent and correct tampering. The department shall ensure that the website does not collect or maintain information regarding access to the website.

(f) In addition to any other organization or entity, the department shall use the American College of Obstetricians and Gynecologists as the resource in developing information required to be provided under Sections 171.012(a)(1)(B) and (D), Sections 171.012(a)(2)(A), (B), and (C), and Section 171.016, and in maintaining the department's Internet website.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0520, eff. April 2, 2015.

Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE AGENCIES. The informational materials must include:

(1) geographically indexed materials designed to inform the pregnant woman of public and private agencies and services that:

(A) are available to assist a woman through pregnancy, childbirth, and the child's dependency, including:

(i) a comprehensive list of adoption agencies;

(ii) a description of the services the adoption agencies offer;

(iii) a description of the manner, including telephone numbers, in which an adoption agency may be contacted; and

(iv) a comprehensive list of agencies and organizations that offer sonogram services at no cost to the pregnant woman;

(B) do not provide abortions or abortion-related services or make referrals to abortion providers; and

(C) are not affiliated with organizations that provide abortions or abortion-related services or make referrals to abortion providers; and

(2) a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies described by Subdivision (1) that are located near the caller and of the services the agencies offer.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 5, eff. September 1, 2011.

Sec. 171.016. INFORMATION RELATING TO CHARACTERISTICS OF UNBORN CHILD. (a) The informational materials must include materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be

pregnant to full term, including any relevant information on the possibility of the unborn child's survival.

(b) The materials must include color pictures representing the development of the child at two-week gestational increments. The pictures must contain the dimensions of the unborn child and must be realistic.

(c) The materials provided under this section must be objective and nonjudgmental and be designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.017. PERIODS RUN CONCURRENTLY. If the woman is an unemancipated minor subject to Chapter 33, Family Code, the 24-hour periods established under Sections 171.012(b) and 171.013(a) may run concurrently with the period during which actual or constructive notice is provided under Section 33.002, Family Code.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

Sec. 171.018. OFFENSE. A physician who intentionally performs an abortion on a woman in violation of this subchapter commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $10,000. In this section, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

Added by Acts 2003, 78th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS POST-FERTILIZATION

Sec. 171.041. SHORT TITLE. This subchapter may be cited as the Preborn Pain Act.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.042. DEFINITIONS. In this subchapter:

(1) "Post-fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.

(2) "Severe fetal abnormality" has the meaning assigned by Section 285.202.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE REQUIRED. Except as otherwise provided by Section 171.046, a physician may not perform or induce or attempt to perform or induce an abortion without, prior to the procedure:

(1) making a determination of the probable post-fertilization age of the unborn child; or

(2) possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.044. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Except as otherwise provided by Section 171.046, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.045. METHOD OF ABORTION. (a) This section applies only to an abortion authorized under Section 171.046(a)(1) or (2) in which:

(1) the probable post-fertilization age of the unborn child

is 20 or more weeks; or

(2) the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks.

(b) Except as otherwise provided by Section 171.046(a)(3), a physician performing an abortion under Subsection (a) shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.046. EXCEPTIONS. (a) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable:

(1) the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child;

(2) the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks; or

(3) the use of a method of abortion other than a method described by Section 171.045(b).

(b) A physician may not take an action authorized under Subsection (a) if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.

(c) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed on an unborn child who has a severe fetal abnormality.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.047. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. (a) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under this subchapter, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(b) Unless the court makes a ruling under Subsection (c) to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.

(c) A court may order the disclosure of information that is confidential under this section if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on each interested party; and

(3) the court determines after the hearing and an in camera review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.048. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal

court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Supreme Court of Texas shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) This subchapter may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

SUBCHAPTER D. ABORTION-INDUCING DRUGS

Sec. 171.061. DEFINITIONS. In this subchapter:

(1) "Abortion" has the meaning assigned by Section 245.002. This definition, as applied in this subchapter, may not be construed to apply to an act done with the intent to treat a maternal disease or illness for which a prescribed drug, medicine, or other substance is indicated.

(2) "Abortion-inducing drug" means a drug, a medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the

Mifeprex regimen, misoprostol (Cytotec), and methotrexate. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

(2-a) "Adverse event" or "abortion complication" means any harmful event or adverse outcome with respect to a patient related to an abortion, including the abortion complications listed in Section 171.006, as added by Chapter 4 (H.B. 13), Acts of the 85th Legislature, 1st Called Session, 2017.

(3) Repealed by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(1), eff. December 2, 2021.

(4) "Gestational age" means the amount of time that has elapsed since the first day of a woman's last menstrual period.

(5) "Medical abortion" means the administration or use of an abortion-inducing drug to induce an abortion, and may also be referred to as a "medication abortion," a "chemical abortion," a "drug-induced abortion," "RU-486," or the "Mifeprex regimen".

(6) Repealed by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(1), eff. December 2, 2021.

(7) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(8) "Pregnant" means the female reproductive condition of having an unborn child in a woman's uterus.

(8-a) "Provide" means, as used with regard to abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession, or otherwise providing or prescribing an abortion-inducing drug.

(9) "Unborn child" means an offspring of human beings from conception until birth.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 5, eff. September 1, 2017.

Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 3, eff. December 2, 2021.

Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(1), eff. December 2, 2021.

Sec. 171.062. ENFORCEMENT BY TEXAS MEDICAL BOARD. Notwithstanding Section 171.005, the Texas Medical Board shall enforce this subchapter.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.063. PROVISION OF ABORTION-INDUCING DRUG. (a) A person may not knowingly provide an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless:

(1) the person who provides the abortion-inducing drug is a physician; and

(2) the provision of the abortion-inducing drug satisfies the protocol authorized by this subchapter.

(b) Repealed by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(2), eff. December 2, 2021.

(b-1) A manufacturer, supplier, physician, or any other person may not provide to a patient any abortion-inducing drug by courier, delivery, or mail service.

(c) Before the physician provides an abortion-inducing drug, the physician must:

(1) examine the pregnant woman in person;

(2) independently verify that a pregnancy exists;

(3) document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy to determine whether an ectopic pregnancy exists;

(4) determine the pregnant woman's blood type, and for a woman who is Rh negative, offer to administer Rh immunoglobulin (RhoGAM) at the time the abortion-inducing drug is administered or used or the abortion is performed or induced to prevent Rh incompatibility, complications, or miscarriage in future pregnancies;

(5) document whether the pregnant woman received treatment for Rh negativity, as diagnosed by the most accurate standard of medical care; and

(6) ensure the physician does not provide an abortion-

inducing drug for a pregnant woman whose pregnancy is more than 49 days of gestational age.

(d) The physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug shall provide the pregnant woman with:

(1) a copy of the final printed label of that abortion-inducing drug; and

(2) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the administration or use of the drug or ask health-related questions regarding the administration or use of the drug.

(e) A physician who provides the abortion-inducing drug, or the physician's agent, must schedule a follow-up visit for the woman to occur not later than the 14th day after the earliest date on which the abortion-inducing drug is administered or used or the abortion is performed or induced. At the follow-up visit, the physician must:

(1) confirm that the woman's pregnancy is completely terminated; and

(2) assess any continued blood loss.

(f) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, shall make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit under Subsection (e). The physician or the physician's agent shall document a brief description of any effort made to comply with this subsection, including the date, time, and name of the person making the effort, in the woman's medical record.

(g) If a physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized by this section and the physician knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug, the physician shall report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.
Amended by:
Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 4, eff. December 2, 2021.
Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 5, eff. December 2, 2021.
Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 7(2), eff. December 2, 2021.

Sec. 171.0631. VOLUNTARY AND INFORMED CONSENT REQUIRED. A person may not provide an abortion-inducing drug to a pregnant woman without satisfying the applicable informed consent requirements of Subchapter B.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December 2, 2021.

Sec. 171.0632. REPORTING REQUIREMENTS. A physician who provides an abortion-inducing drug must comply with the applicable physician reporting requirements under Section 245.011.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December 2, 2021.

Sec. 171.064. ADMINISTRATIVE PENALTY. (a) The Texas Medical Board may take disciplinary action under Chapter 164, Occupations Code, or assess an administrative penalty under Subchapter A, Chapter 165, Occupations Code, against a person who violates Section 171.063.
(b) A penalty may not be assessed under this section against a pregnant woman who receives a medical abortion.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

Sec. 171.065. CRIMINAL OFFENSE. (a) A person who intentionally, knowingly, or recklessly violates this subchapter

commits an offense. An offense under this subsection is a state jail felony.

(b) A pregnant woman on whom a drug-induced abortion is attempted, induced, or performed in violation of this subchapter is not criminally liable for the violation.

(c) Conduct constituting an offense under this section may also be the basis for an administrative violation under Section 171.064.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December, 2 2021.

Sec. 171.066. ENFORCEMENT OF SUBCHAPTER. A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs on the requirements of the state or federal constitution, unless the official is enjoined by a state or federal court from enforcing this subchapter.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 10 (S.B. 4), Sec. 6, eff. December 2, 2021.

SUBCHAPTER E. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF PERSONS FOR CERTAIN FACILITY PERSONNEL

Sec. 171.081. APPLICABILITY. This subchapter applies to each person who:

(1) is employed by, volunteers at, or performs services under contract with:

(A) an abortion facility licensed under Chapter 245; or

(B) an ambulatory surgical center licensed under Chapter 243 that performs more than 50 abortions in any 12-month period; and

(2) has direct contact with patients of the facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 999 (H.B. 416), Sec. 1, eff. June 19, 2015.

Sec. 171.082. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF

PERSONS. (a) The executive commissioner of the Health and Human Services Commission by rule shall require a person described by Section 171.081 to complete within a reasonable time after beginning work at the facility a training program to identify and assist victims of human trafficking.

(b) A training program under this section must use the standardized curriculum created by the human trafficking prevention task force under Section 402.035(d)(6), Government Code.

(c) The department shall make available to each facility described by Sections 171.081(1)(A) and (B) the training program required under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 999 (H.B. 416), Sec. 1, eff. June 19, 2015.

SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

Sec. 171.101. DEFINITIONS. In this subchapter:

(1) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(A) for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, deliberately and intentionally vaginally delivers a living fetus until:

(i) for a head-first presentation, the entire fetal head is outside the body of the mother; or

(ii) for a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother; and

(B) performs the overt act described in Paragraph (A), other than completion of delivery, that kills the partially delivered living fetus.

(2) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A physician or other person may not knowingly perform a partial-birth

abortion.

(b) Subsection (a) does not apply to a physician who performs a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.103. CRIMINAL PENALTY. A person who violates Section 171.102 commits an offense. An offense under this section is a state jail felony.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.104. CIVIL LIABILITY. (a) Except as provided by Subsection (b), the father of the fetus or a parent of the mother of the fetus, if the mother is younger than 18 years of age at the time of the partial-birth abortion, may bring a civil action to obtain appropriate relief, including:

(1) money damages for physical injury, mental anguish, and emotional distress; and

(2) exemplary damages equal to three times the cost of the partial-birth abortion.

(b) A person may not bring or maintain an action under this section if:

(1) the person consented to the partial-birth abortion; or

(2) the person's criminally injurious conduct resulted in the pregnancy.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.105. HEARING. (a) A physician who is the subject of a criminal or civil action for a violation of Section 171.102 may request a hearing before the Texas Medical Board on whether the

physician's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

(b) The board's findings under Subsection (a) are admissible in any court proceeding against the physician arising from that conduct. On the physician's motion, the court shall delay the beginning of a criminal or civil trial for not more than 60 days for the hearing to be held under Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.106. APPLICABILITY. A woman on whom a partial-birth abortion is performed or attempted in violation of this subchapter may not be prosecuted under this subchapter or for conspiracy to commit a violation of this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

SUBCHAPTER G. DISMEMBERMENT ABORTIONS

Sec. 171.151. DEFINITION. In this subchapter, "dismemberment abortion" means an abortion in which a person, with the purpose of causing the death of an unborn child, dismembers the living unborn child and extracts the unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, a piece of the unborn child's body to cut or rip the piece from the body. The term does not include an abortion that uses suction to dismember the body of an unborn child by sucking pieces of the unborn child into a collection container. The term includes a dismemberment abortion that is used to cause the death of an unborn child and in which suction is subsequently used to extract pieces of the unborn child after the unborn child's death.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.152. DISMEMBERMENT ABORTIONS PROHIBITED. (a) A person may not intentionally perform a dismemberment abortion unless the dismemberment abortion is necessary in a medical emergency.

(b) A woman on whom a dismemberment abortion is performed, an employee or agent acting under the direction of a physician who performs a dismemberment abortion, or a person who fills a prescription or provides equipment used in a dismemberment abortion does not violate Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.153. CRIMINAL PENALTY. (a) A person who violates Section 171.152 commits an offense.

(b) An offense under this section is a state jail felony.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

Sec. 171.154. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed, as a matter of state law, to be enforceable to the maximum possible extent consistent with but not further than federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Supreme Court of Texas shall provide an authoritative construction of the objectionable

statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs concerning the requirements of the state or federal constitution, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) This subchapter may not be construed to:

(1) authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced in violation of this subchapter; or

(2) create or recognize a right to abortion or a right to a particular method of abortion.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 6, eff. September 1, 2017.

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. In this subchapter:

(1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

(3) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

(4) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(5) "Pregnancy" means the human female reproductive condition that:

(A) begins with fertilization;

(B) occurs when the woman is carrying the developing human offspring; and

(C) is calculated from the first day of the woman's

last menstrual period.

(6) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

(7) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds, according to contemporary medical research, that:

(1) fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;

(2) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

(3) Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and

(4) to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

(c) In making a determination under Subsection (b), the

physician must use a test that is:

(1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and

(2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

(d) A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:

(1) the estimated gestational age of the unborn child;

(2) the method used to estimate the gestational age; and

(3) the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 or failed to perform a test to detect a fetal heartbeat.

(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 171.203 and did not detect a fetal heartbeat.

(c) This section does not affect:

(1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2) any other provision of state law that regulates or prohibits abortion.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a) Sections 171.203 and 171.204 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

(b) A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:

(1) the physician's belief that a medical emergency necessitated the abortion; and

(2) the medical condition of the pregnant woman that prevented compliance with this subchapter.

(c) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b).

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not create or recognize a right to abortion before a fetal heartbeat is detected.

(b) This subchapter may not be construed to:

(1) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter;

(2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this state, a political subdivision, a district or county

attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 171.208.

(b) Subsection (a) may not be construed to:

(1) legalize the conduct prohibited by this subchapter or by Chapter 6-1/2, Title 71, Revised Statutes;

(2) limit in any way or affect the availability of a remedy established by Section 171.208; or

(3) limit the enforceability of any other laws that regulate or prohibit abortion.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1) performs or induces an abortion in violation of this subchapter;

(2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(b) If a claimant prevails in an action brought under this section, the court shall award:

(1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;

(2) statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the fourth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion;

(6) the consent of the unborn child's mother to the abortion; or

(7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 171.209.

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the

physician performing or inducing the abortion will comply with this subchapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

(h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2) the defendant has standing to assert the rights of

women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section if:

(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

(c) A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d) A defendant may not establish an undue burden under this section by:

(1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 171.208 occurred before the Supreme Court overruled either of those decisions.

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.210. CIVIL LIABILITY: VENUE. (a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.208 shall be brought in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4) the county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any conflicting law, including:

(1) the Uniform Declaratory Judgments Act; and

(2) Chapter 37, Civil Practice and Remedies Code.

(b) This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(c) A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

Sec. 171.212. SEVERABILITY. (a) Mindful of Leavitt v. Jane

L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(b-1) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(c) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.

(d) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2) is not a formal amendment of the language in a statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

Added by Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 3, eff. September 1, 2021.

CHAPTER 172. REMOVAL OF PLACENTA FROM HOSPITAL OR BIRTHING CENTER

Sec. 172.001. DEFINITIONS. In this chapter:

(1) "Birthing center" means a facility licensed under Chapter 244.

(2) "Hospital" means a facility licensed under Chapter 241 or a hospital maintained or operated by this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 740 (H.B. 1670), Sec. 1, eff. June 17, 2015.

Sec. 172.002. REMOVAL OF PLACENTA FROM HOSPITAL OR BIRTHING CENTER. (a) Except for the portion of a delivered placenta that is necessary for an examination described by Subsection (d), a hospital or birthing center without a court order shall allow a woman who has

given birth in the facility, or a spouse of the woman if the woman is incapacitated or deceased, to take possession of and remove from the facility the placenta if:

(1) the woman tests negative for infectious diseases as evidenced by the results of the diagnostic testing required by Section 81.090; and

(2) the person taking possession of the placenta signs a form prescribed by the department acknowledging that:

(A) the person has received from the hospital or birthing center educational information prescribed by the department concerning the spread of blood-borne diseases from placentas, the danger of ingesting formalin, and the proper handling of placentas; and

(B) the placenta is for personal use.

(b) A person removing a placenta from a hospital or birthing center under this section may only retain the placenta for personal use and may not sell the placenta.

(c) A hospital or birthing center shall retain a signed form received under Subsection (a) with the woman's medical records.

(d) This section does not prohibit a pathological examination of the delivered placenta that is ordered by a physician or required by a policy of the hospital or birthing center.

(e) This section does not authorize a woman or the woman's spouse to interfere with a pathological examination of the delivered placenta that is ordered by a physician or required by a policy of the hospital or birthing center.

(f) A hospital or birthing center that allows a person to take possession of and remove from the facility a delivered placenta in compliance with this section is not required to dispose of the placenta as medical waste.

(g) A hospital or birthing center that acts in accordance with this section is not liable for the act in a civil action, a criminal prosecution, or an administrative proceeding.

Added by Acts 2015, 84th Leg., R.S., Ch. 740 (H.B. 1670), Sec. 1, eff. June 17, 2015.

Sec. 172.003. DEPARTMENT DUTIES. The department shall develop the form and the educational information required under Section

172.002 and post a copy of the form and information on the department's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 740 (H.B. 1670), Sec. 1, eff. June 17, 2015.

CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

Sec. 173.001. DEFINITIONS. In this chapter:

(1) "Authorized facility" means:

(A) a hospital licensed under Chapter 241;

(B) a hospital maintained or operated by this state or an agency of this state;

(C) an ambulatory surgical center licensed under Chapter 243; or

(D) a birthing center licensed under Chapter 244.

(2) "Human fetal tissue" means any gestational human organ, cell, or tissue from an unborn child. The term does not include:

(A) supporting cells or tissue derived from a pregnancy or associated maternal tissue that is not part of the unborn child; or

(B) the umbilical cord or placenta, provided that the umbilical cord or placenta is not derived from an elective abortion.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.002. APPLICABILITY. This chapter does not apply to:

(1) human fetal tissue obtained for diagnostic or pathological testing;

(2) human fetal tissue obtained for a criminal investigation;

(3) human fetal tissue or human tissue obtained during pregnancy or at delivery of a child, provided the tissue is obtained by an accredited public or private institution of higher education for use in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research; or

(4) cell lines derived from human fetal tissue or human tissue existing on September 1, 2017, that are used by an accredited

public or private institution of higher education in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.003. ENFORCEMENT. (a) The department shall enforce this chapter.

(b) The attorney general, on request of the department or a local law enforcement agency, may assist in the investigation of a violation of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.004. PROHIBITED DONATION. A person may not donate human fetal tissue except as authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only an authorized facility may donate human fetal tissue. An authorized facility may donate human fetal tissue only to an accredited public or private institution of higher education for use in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research.

(b) An authorized facility may not donate human fetal tissue obtained from an elective abortion.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized

facility may not donate human fetal tissue under this chapter unless the facility has obtained the written, voluntary, and informed consent of the woman from whose pregnancy the fetal tissue is obtained. The consent must be provided on a standard form prescribed by the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) offers a woman monetary or other consideration to:

(A) have an abortion for the purpose of donating human fetal tissue; or

(B) consent to the donation of human fetal tissue; or

(2) knowingly or intentionally solicits or accepts tissue from a fetus gestated solely for research purposes.

(b) An offense under this section is a Class A misdemeanor punishable by a fine of not more than $10,000.

(c) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.008. RECORD RETENTION. Unless another law requires a longer period of record retention, an authorized facility may not dispose of any medical record relating to a woman who consents to the donation of human fetal tissue before:

(1) the seventh anniversary of the date consent was obtained under Section 173.006; or

(2) if the woman was younger than 18 years of age on the date consent was obtained under Section 173.006, the later of:

(A) the woman's 23rd birthday; or

(B) the seventh anniversary of the date consent was obtained.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

Sec. 173.009. ANNUAL REPORT. An authorized facility that donates human fetal tissue under this chapter shall submit an annual report to the department that includes for each donation:

(1) the specific type of fetal tissue donated; and

(2) the accredited public or private institution of higher education that received the donation.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 7, eff. September 1, 2017.

SUBTITLE I. MEDICAL RECORDS
CHAPTER 181. MEDICAL RECORDS PRIVACY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 181.001. DEFINITIONS. (a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(55), eff. April 2, 2015.

(2) "Covered entity" means any person who:

(A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site;

(B) comes into possession of protected health information;

(C) obtains or stores protected health information under this chapter; or

(D) is an employee, agent, or contractor of a person

described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information.

(2-a) "Disclose" means to release, transfer, provide access to, or otherwise divulge information outside the entity holding the information.

(2-b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(55), eff. April 2, 2015.

(3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements in existence on September 1, 2011, of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(4) "Marketing" means:

(A) making a communication about a product or service that encourages a recipient of the communication to purchase or use the product or service, unless the communication is made:

(i) to describe a health-related product or service or the payment for a health-related product or service that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about:

(a) the entities participating in a health care provider network or health plan network;

(b) replacement of, or enhancement to, a health plan; or

(c) health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits;

(ii) for treatment of the individual;

(iii) for case management or care coordination for the individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the individual; or

(iv) by a covered entity to an individual that encourages a change to a prescription drug included in the covered entity's drug formulary or preferred drug list;

(B) an arrangement between a covered entity and any other entity under which the covered entity discloses protected health information to the other entity, in exchange for direct or

indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service; and

(C) notwithstanding Paragraphs (A)(ii) and (iii), a product-specific written communication to a consumer that encourages a change in products.

(5) "Product" means a prescription drug or prescription medical device.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 2.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 1, eff. September 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(55), eff. April 2, 2015.

Sec. 181.002. APPLICABILITY. (a) Except as provided by Section 181.205, this chapter does not affect the validity of another statute of this state that provides greater confidentiality for information made confidential by this chapter.

(b) To the extent that this chapter conflicts with another law, other than Section 58.0052, Family Code, with respect to protected health information collected by a governmental body or unit, this chapter controls.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 653 (S.B. 1106), Sec. 5, eff. June 17, 2011.

Sec. 181.003. SOVEREIGN IMMUNITY. This chapter does not waive sovereign immunity to suit or liability.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.004. APPLICABILITY OF STATE AND FEDERAL LAW. (a) A covered entity, as that term is defined by 45 C.F.R. Section 160.103, shall comply with the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) Subject to Section 181.051, a covered entity, as that term is defined by Section 181.001, shall comply with this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 2, eff. September 1, 2012.

Sec. 181.005. DUTIES OF THE EXECUTIVE COMMISSIONER. (a) The executive commissioner shall administer this chapter and may adopt rules consistent with the Health Insurance Portability and Accountability Act and Privacy Standards to administer this chapter.

(b) The executive commissioner shall review amendments to the definitions in 45 C.F.R. Parts 160 and 164 that occur after September 1, 2011, and determine whether it is in the best interest of the state to adopt the amended federal regulations. If the executive commissioner determines that it is in the best interest of the state to adopt the amended federal regulations, the amended regulations shall apply as required by this chapter.

(c) In making a determination under this section, the executive commissioner must consider, in addition to other factors affecting the public interest, the beneficial and adverse effects the amendments would have on:

(1) the lives of individuals in this state and their expectations of privacy; and

(2) governmental entities, institutions of higher education, state-owned teaching hospitals, private businesses, and commerce in this state.

(d) The executive commissioner shall prepare a report of the executive commissioner's determination made under this section and shall file the report with the presiding officer of each house of the legislature before the 30th day after the date the determination is made. The report must include an explanation of the reasons for the determination.

Added by Acts 2003, 78th Leg., ch. 924, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 3, eff.

September 1, 2012.

Sec. 181.006. PROTECTED HEALTH INFORMATION NOT PUBLIC. Notwithstanding Sections 181.004 and 181.051, for a covered entity that is a governmental unit, an individual's protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity; and

(2) is not public information and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 5, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 4, eff. September 1, 2012.

SUBCHAPTER B. EXEMPTIONS

Sec. 181.051. PARTIAL EXEMPTION. Except for Subchapter D, this chapter does not apply to:

(1) a covered entity as defined by Section 602.001, Insurance Code;

(2) an entity established under Article 5.76-3, Insurance Code; or

(3) an employer.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1274, Sec. 20, eff. April 1, 2005.

Sec. 181.052. PROCESSING PAYMENT TRANSACTIONS BY FINANCIAL INSTITUTIONS. (a) In this section, "financial institution" has the meaning assigned by Section 1101, Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401), and its subsequent amendments.

(b) To the extent that a covered entity engages in activities of a financial institution, or authorizes, processes, clears, settles, bills, transfers, reconciles, or collects payments for a financial institution, this chapter and any rule adopted under this

chapter does not apply to the covered entity with respect to those activities, including the following:

(1) using or disclosing information to authorize, process, clear, settle, bill, transfer, reconcile, or collect a payment for, or related to, health plan premiums or health care, if the payment is made by any means, including a credit, debit, or other payment card, an account, a check, or an electronic funds transfer; and

(2) requesting, using, or disclosing information with respect to a payment described by Subdivision (1):

(A) for transferring receivables;

(B) for auditing;

(C) in connection with a customer dispute or an inquiry from or to a customer;

(D) in a communication to a customer of the entity regarding the customer's transactions, payment card, account, check, or electronic funds transfer;

(E) for reporting to consumer reporting agencies; or

(F) for complying with a civil or criminal subpoena or a federal or state law regulating the covered entity.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.053. NONPROFIT AGENCIES. The executive commissioner shall by rule exempt from this chapter a nonprofit agency that pays for health care services or prescription drugs for an indigent person only if the agency's primary business is not the provision of health care or reimbursement for health care services.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0521, eff. April 2, 2015.

Sec. 181.054. WORKERS' COMPENSATION. This chapter does not apply to:

(1) workers' compensation insurance or a function authorized by Title 5, Labor Code; or

(2) any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits under

a self-insured program for workers' compensation.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.055. EMPLOYEE BENEFIT PLAN. This chapter does not apply to:

(1) an employee benefit plan; or

(2) any covered entity or other person, insofar as the entity or person is acting in connection with an employee benefit plan.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.056. AMERICAN RED CROSS. This chapter does not prohibit the American Red Cross from accessing any information necessary to perform its duties to provide biomedical services, disaster relief, disaster communication, or emergency leave verification services for military personnel.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 5, eff. Sept. 1, 2003.

Sec. 181.057. INFORMATION RELATING TO OFFENDERS WITH MENTAL IMPAIRMENTS. This chapter does not apply to an agency described by Section 614.017 with respect to the disclosure, receipt, transfer, or exchange of medical and health information and records relating to individuals in the custody of an agency or in community supervision.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.058. EDUCATIONAL RECORDS. In this chapter, protected health information does not include:

(1) education records covered by the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) and its subsequent amendments; or

(2) records described by 20 U.S.C. Section 1232g(a)(4)(B)(iv) and its subsequent amendments.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.059. CRIME VICTIM COMPENSATION. This chapter does not apply to any person or entity in connection with providing, administering, supporting, or coordinating any of the benefits regarding compensation to victims of crime as provided by Chapter 56B, Code of Criminal Procedure.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 5, eff. September 1, 2012.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.53, eff. January 1, 2021.

Sec. 181.060. INFORMATION REGARDING COMMUNICABLE DISEASES IN CERTAIN FACILITIES. (a) In this section:

(1) "Communicable disease" has the meaning assigned by Section 81.003.

(2) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) a continuing care facility licensed under Chapter 246; and

(C) an assisted living facility licensed under Chapter 247.

(3) "Resident" means an individual, including a patient, who resides in a facility.

(b) In this chapter, protected health information does not include information that identifies:

(1) the name or location of a facility in which residents have been diagnosed with a communicable disease; or

(2) the number of residents who have been diagnosed with a communicable disease in a facility.

(c) Unless made confidential under other law, the information described by Subsection (b) is not confidential and is subject to disclosure under Chapter 552, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 95 (S.B. 930), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION

Sec. 181.101. TRAINING REQUIRED. (a) Each covered entity shall provide training to employees of the covered entity regarding the state and federal law concerning protected health information as necessary and appropriate for the employees to carry out the employees' duties for the covered entity.

(b) An employee of a covered entity must complete training described by Subsection (a) not later than the 90th day after the date the employee is hired by the covered entity.

(c) If the duties of an employee of a covered entity are affected by a material change in state or federal law concerning protected health information, the employee shall receive training described by Subsection (a) within a reasonable period, but not later than the first anniversary of the date the material change in law takes effect.

(d) A covered entity shall require an employee of the entity who receives training described by Subsection (a) to sign, electronically or in writing, a statement verifying the employee's completion of training. The covered entity shall maintain the signed statement until the sixth anniversary of the date the statement is signed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1367 (S.B. 1609), Sec. 1, eff. June 14, 2013.

Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS. (a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access,

or to which access may be denied, under 45 C.F.R. Section 164.524.

(c) For purposes of Subsection (a), the executive commissioner, in consultation with the department, the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0522, eff. April 2, 2015.

Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney general shall maintain an Internet website that provides:

(1) information concerning a consumer's privacy rights regarding protected health information under federal and state law;

(2) a list of the state agencies, including the department, the Texas Medical Board, and the Texas Department of Insurance, that regulate covered entities in this state and the types of entities each agency regulates;

(3) detailed information regarding each agency's complaint enforcement process; and

(4) contact information, including the address of the agency's Internet website, for each agency listed under Subdivision (2) for reporting a violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0523, eff. April 2, 2015.

Sec. 181.104. CONSUMER COMPLAINT REPORT BY ATTORNEY GENERAL. (a) The attorney general annually shall submit to the legislature a report describing:

(1) the number and types of complaints received by the

attorney general and by the state agencies receiving consumer complaints under Section 181.103; and

(2) the enforcement action taken in response to each complaint reported under Subdivision (1).

(b) Each state agency that receives consumer complaints under Section 181.103 shall submit to the attorney general, in the form required by the attorney general, the information the attorney general requires to compile the report required by Subsection (a).

(c) The attorney general shall de-identify protected health information from the individual to whom the information pertains before including the information in the report required by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 6, eff. September 1, 2012.

SUBCHAPTER D. PROHIBITED ACTS

Sec. 181.151. REIDENTIFIED INFORMATION. A person may not reidentify or attempt to reidentify an individual who is the subject of any protected health information without obtaining the individual's consent or authorization if required under this chapter or other state or federal law.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.152. MARKETING USES OF INFORMATION. (a) A covered entity must obtain clear and unambiguous permission in written or electronic form to use or disclose protected health information for any marketing communication, except if the communication is:

(1) in the form of a face-to-face communication made by a covered entity to an individual;

(2) in the form of a promotional gift of nominal value provided by the covered entity;

(3) necessary for administration of a patient assistance program or other prescription drug savings or discount program; or

(4) made at the oral request of the individual.

(b) If a covered entity uses or discloses protected health information to send a written marketing communication through the mail, the communication must be sent in an envelope showing only the

names and addresses of sender and recipient and must:

(1) state the name and toll-free number of the entity sending the marketing communication; and

(2) explain the recipient's right to have the recipient's name removed from the sender's mailing list.

(c) A person who receives a request under Subsection (b)(2) to remove a person's name from a mailing list shall remove the person's name not later than the 45th day after the date the person receives the request.

(d) A marketing communication made at the oral request of the individual under Subsection (a)(4) may be made only if clear and unambiguous oral permission for the use or disclosure of the protected health information is obtained. The marketing communication must be limited to the scope of the oral permission and any further marketing communication must comply with the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 924, Sec. 6, eff. Jan. 1, 2004.

Sec. 181.153. SALE OF PROTECTED HEALTH INFORMATION PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an individual's protected health information to any other person in exchange for direct or indirect remuneration, except that a covered entity may disclose an individual's protected health information:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(b) The direct or indirect remuneration a covered entity receives for making a disclosure of protected health information authorized by Subsection (a)(1)(D) may not exceed the covered

entity's reasonable costs of preparing or transmitting the protected health information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 7, eff. September 1, 2012.

Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS. (a) A covered entity shall provide notice to an individual for whom the covered entity creates or receives protected health information if the individual's protected health information is subject to electronic disclosure. A covered entity may provide general notice by:

(1) posting a written notice in the covered entity's place of business;

(2) posting a notice on the covered entity's Internet website; or

(3) posting a notice in any other place where individuals whose protected health information is subject to electronic disclosure are likely to see the notice.

(b) Except as provided by Subsection (c), a covered entity may not electronically disclose an individual's protected health information to any person without a separate authorization from the individual or the individual's legally authorized representative for each disclosure. An authorization for disclosure under this subsection may be made in written or electronic form or in oral form if it is documented in writing by the covered entity.

(c) The authorization for electronic disclosure of protected health information described by Subsection (b) is not required if the disclosure is made:

(1) to another covered entity, as that term is defined by Section 181.001, or to a covered entity, as that term is defined by Section 602.001, Insurance Code, for the purpose of:

(A) treatment;

(B) payment;

(C) health care operations; or

(D) performing an insurance or health maintenance organization function described by Section 602.053, Insurance Code; or

(2) as otherwise authorized or required by state or federal law.

(d) The attorney general shall adopt a standard authorization form for use in complying with this section. The form must comply with the Health Insurance Portability and Accountability Act and Privacy Standards and this chapter.

(e) This section does not apply to a covered entity, as defined by Section 602.001, Insurance Code, if that entity is not a covered entity as defined by 45 C.F.R. Section 160.103.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 7, eff. September 1, 2012.

SUBCHAPTER E. ENFORCEMENT

Sec. 181.201. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may institute an action for injunctive relief to restrain a violation of this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the attorney general may institute an action for civil penalties against a covered entity for a violation of this chapter. A civil penalty assessed under this section may not exceed:

(1) $5,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed negligently;

(2) $25,000 for each violation that occurs in one year, regardless of how long the violation continues during that year, committed knowingly or intentionally; or

(3) $250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

(b-1) The total amount of a penalty assessed against a covered entity under Subsection (b) in relation to a violation or violations of Section 181.154 may not exceed $250,000 annually if the court finds that the disclosure was made only to another covered entity and only for a purpose described by Section 181.154(c) and the court finds that:

(1) the protected health information disclosed was encrypted or transmitted using encryption technology designed to protect against improper disclosure;

(2) the recipient of the protected health information did not use or release the protected health information; or

(3) at the time of the disclosure of the protected health information, the covered entity had developed, implemented, and maintained security policies, including the education and training of employees responsible for the security of protected health information.

(c) If the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed $1.5 million annually.

(d) In determining the amount of a penalty imposed under Subsection (b), the court shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(e) The attorney general may institute an action against a covered entity that is licensed by a licensing agency of this state for a civil penalty under this section only if the licensing agency refers the violation to the attorney general under Section 181.202(2).

(f) The office of the attorney general may retain a reasonable portion of a civil penalty recovered under this section, not to exceed amounts specified in the General Appropriations Act, for the enforcement of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 8, eff. September 1, 2012.

Sec. 181.202. DISCIPLINARY ACTION. In addition to the

penalties prescribed by this chapter, a violation of this chapter by a covered entity that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency. If there is evidence that the violations of this chapter are egregious and constitute a pattern or practice, the agency may:

(1) revoke the covered entity's license; or

(2) refer the covered entity's case to the attorney general for the institution of an action for civil penalties under Section 181.201(b).

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 9, eff. September 1, 2012.

Sec. 181.203. EXCLUSION FROM STATE PROGRAMS. In addition to the penalties prescribed by this chapter, a covered entity shall be excluded from participating in any state-funded health care program if a court finds the covered entity engaged in a pattern or practice of violating this chapter.

Added by Acts 2001, 77th Leg., ch. 1511, Sec. 1, eff. Sept. 1, 2001.

Sec. 181.205. MITIGATION. (a) In an action or proceeding to impose an administrative penalty or assess a civil penalty for actions related to the disclosure of individually identifiable health information, a covered entity may introduce, as mitigating evidence, evidence of the entity's good faith efforts to comply with:

(1) state law related to the privacy of individually identifiable health information; or

(2) the Health Insurance Portability and Accountability Act and Privacy Standards.

(b) In determining the amount of a penalty imposed under other law in accordance with Section 181.202, a court or state agency shall consider the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the disclosure;

(2) the covered entity's compliance history;

(3) whether the violation poses a significant risk of financial, reputational, or other harm to an individual whose protected health information is involved in the violation;

(4) whether the covered entity was certified at the time of the violation as described by Section 182.108;

(5) the amount necessary to deter a future violation; and

(6) the covered entity's efforts to correct the violation.

(c) On receipt of evidence under Subsections (a) and (b), a court or state agency shall consider the evidence and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

Added by Acts 2003, 78th Leg., ch. 924, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 10, eff. September 1, 2012.

Sec. 181.206. AUDITS OF COVERED ENTITIES. (a) The commission, in coordination with the attorney general and the Texas Department of Insurance:

(1) may request that the United States secretary of health and human services conduct an audit of a covered entity, as that term is defined by 45 C.F.R. Section 160.103, in this state to determine compliance with the Health Insurance Portability and Accountability Act and Privacy Standards; and

(2) shall periodically monitor and review the results of audits of covered entities in this state conducted by the United States secretary of health and human services.

(b) If the commission has evidence that a covered entity has committed violations of this chapter that are egregious and constitute a pattern or practice, the commission may:

(1) require the covered entity to submit to the commission the results of a risk analysis conducted by the covered entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

(2) if the covered entity is licensed by a licensing agency of this state, request that the licensing agency conduct an audit of the covered entity's system to determine compliance with the provisions of this chapter.

(c) The commission annually shall submit to the appropriate

standing committees of the senate and the house of representatives a report regarding the number of federal audits of covered entities in this state and the number of audits required under Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 11, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 2, eff. September 1, 2015.

Sec. 181.207. FUNDING. (a) The commission and the Texas Department of Insurance shall apply for and actively pursue available federal funding for enforcement of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 11, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 3, eff. September 1, 2015.

CHAPTER 182. ELECTRONIC EXCHANGE OF HEALTH INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 182.001. PURPOSE. This chapter establishes the Texas Health Services Authority as a public-private collaborative to implement the state-level health information technology functions identified by the Texas Health Information Technology Advisory Committee by serving as a catalyst for the development of a seamless electronic health information infrastructure to support the health care system in the state and to improve patient safety and quality of care.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the corporation.

(2) "Corporation" means the Texas Health Services

Authority.

(2-a) "Covered entity" has the meaning assigned by Section 181.001.

(3) "De-identified protected health information" means protected health information that is not individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(3-a) "Disclose" has the meaning assigned by Section 181.001.

(3-b) "Health Insurance Portability and Accountability Act and Privacy Standards" has the meaning assigned by Section 181.001.

(4) "Individually identifiable health information" means individually identifiable health information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

(5) "Physician" means:

(A) an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code;

(B) a professional entity organized in conformity with Title 7, Business Organizations Code, and permitted to practice medicine under Subtitle B, Title 3, Occupations Code;

(C) a partnership organized in conformity with Title 4, Business Organizations Code, composed entirely of individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code;

(D) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(F) an entity wholly owned by individuals licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(6) "Protected health information" means protected health

information as that term is defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 12, eff. September 1, 2012.

Sec. 182.004. APPLICATION OF SUNSET ACT. The Texas Health Services Authority is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the corporation is abolished and this section, Section 182.001, and Subchapters B and C expire September 1, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. ADMINISTRATION

Sec. 182.051. TEXAS HEALTH SERVICES AUTHORITY; PURPOSE. (a) The corporation is established to:

(1) promote, implement, and facilitate the voluntary and secure electronic exchange of health information; and

(2) create incentives to promote, implement, and facilitate the voluntary and secure electronic exchange of health information.

(b) The corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under the Business Organizations Code.

(c) The corporation is subject to state law governing nonprofit corporations, except that:

(1) the corporation may not be placed in receivership; and

(2) the corporation is not required to make reports to the secretary of state under Section 22.357, Business Organizations Code.

(d) Except as otherwise provided by law, all expenses of the corporation shall be paid from income of the corporation.

(e) The corporation is subject to Chapter 551, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.053. COMPOSITION OF BOARD OF DIRECTORS. (a) The corporation is governed by a board of 12 directors appointed by the governor, with the advice and consent of the senate.

(b) The governor shall also appoint at least two ex officio, nonvoting members representing the health and human services agencies as state agency data resources.

(b-1) The governor shall appoint as a voting board member one individual who represents Texas local health information exchanges.

(c) The governor shall appoint as voting board members individuals who represent consumers, clinical laboratories, health benefit plans, hospitals, regional health information exchange initiatives, pharmacies, physicians, or rural health providers, or who possess expertise in any other area the governor finds necessary for the successful operation of the corporation.

(d) An individual may not serve on the board of the corporation if the individual serves on the board of any other governmental body in this state.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) An individual may not serve on the board of the corporation, in any capacity, if the individual has made a gift or grant, in cash or in kind, to the corporation.

(g) An individual may not serve on the board of the corporation, in any capacity, if the individual is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession or entity that is engaged in the providing of health care, the review or analysis of health care, the payment for health care services or procedures, or the providing of information technology.

(h) In this section, "health and human services agencies" includes the:

(1) department;

(2) Department of Aging and Disability Services;

(3) Department of Assistive and Rehabilitative Services;
(4) Department of Family and Protective Services; and
(5) commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0524, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 7, eff. September 1, 2015.

Sec. 182.054. TERMS OF OFFICE. Appointed members of the board serve two-year terms and may continue to serve until a successor has been appointed by the governor.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.055. EXPENSES. Members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the board or performing other official duties authorized by the presiding officer.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.056. OFFICERS; CONFLICT OF INTEREST. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Any board member or a member of a committee formed by the board with direct interest in a matter, personally or through an employer, before the board shall abstain from deliberations and actions on the matter in which the conflict of interest arises and shall further abstain on any vote on the matter, and may not otherwise participate in a decision on the matter.

(c) Each board member shall file a conflict of interest statement and a statement of ownership interests with the board to

ensure disclosure of all existing and potential personal interests related to board business.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.057. PROHIBITION ON CERTAIN CONTRACTS AND EMPLOYMENT. The board may not compensate, employ, or contract with any individual who serves as a member of the board or advisory council to any other governmental body, including any agency, council, or committee, in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.058. MEETINGS. (a) The board may meet as often as necessary, but shall meet at least twice a year.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.059. CHIEF EXECUTIVE OFFICER; PERSONNEL. The board may hire a chief executive officer. Under the direction of the board, the chief executive officer shall perform the duties required by this chapter or designated by the board. The chief executive officer may hire additional staff to carry out the responsibilities of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.060. TECHNOLOGY POLICY. The board shall implement a policy requiring the corporation to use appropriate technological solutions to improve the corporation's ability to perform its

functions. The policy must ensure that the public is able to interact with the corporation on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.061. LIABILITIES OF AUTHORITY. Liabilities created by the corporation are not debts or obligations of the state, and the corporation may not secure any liability with funds or assets of the state except as otherwise provided by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Sec. 182.062. BOARD MEMBER IMMUNITY. (a) A board member may not be held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 182.101. GENERAL POWERS AND DUTIES. (a) The corporation may:

(1) establish statewide health information exchange capabilities, including capabilities for electronic laboratory results, diagnostic studies, and medication history delivery, and, where applicable, promote definitions and standards for electronic interactions statewide;

(2) seek funding to:

(A) implement, promote, and facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures; and

(B) create incentives to implement, promote, and

facilitate the voluntary exchange of secure electronic health information between and among individuals and entities that are providing or paying for health care services or procedures;

(3) establish statewide health information exchange capabilities for streamlining health care administrative functions including:

(A) communicating point of care services, including laboratory results, diagnostic imaging, and prescription histories;

(B) communicating patient identification and emergency room required information in conformity with state and federal privacy laws;

(C) real-time communication of enrollee status in relation to health plan coverage, including enrollee cost-sharing responsibilities; and

(D) current census and status of health plan contracted providers;

(4) support regional health information exchange initiatives by:

(A) identifying data and messaging standards for health information exchange;

(B) administering programs providing financial incentives, including grants and loans for the creation and support of regional health information networks, subject to available funds;

(C) providing technical expertise where appropriate;

(D) sharing intellectual property developed under Section 182.105;

(E) waiving the corporation's fees associated with intellectual property, data, expertise, and other services or materials provided to regional health information exchanges operated on a nonprofit basis; and

(F) applying operational and technical standards developed by the corporation to existing health information exchanges only on a voluntary basis, except for standards related to ensuring effective privacy and security of individually identifiable health information;

(5) identify standards for streamlining health care administrative functions across payors and providers, including electronic patient registration, communication of enrollment in health plans, and information at the point of care regarding services covered by health plans; and

(6) support the secure, electronic exchange of health information through other strategies identified by the board.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.003, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 8, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(3), eff. September 1, 2019.

Sec. 182.102. PROHIBITED ACTS. (a) The corporation has no authority and shall not engage in any of the following:

(1) the collection and analysis of clinical data;

(2) the comparison of physicians to other physicians, including comparisons to peer group physicians, physician groups, and physician teams, and to national specialty society adopted quality measurements;

(3) the creation of a tool to measure physician performance compared to:

(A) peer group physicians on state and specialty levels; or

(B) objective standards;

(4) the providing of access to aggregated, de-identified protected health information to local health information exchanges and other users of quality care studies, disease management and population health assessments;

(5) providing to public health programs trended, aggregated, de-identified protected health information to help assess the health status of populations and the providing of regular reports of trends and important incidence of events to public health avenues for intervention, education, and prevention programs; or

(6) the creation of evidence-based standards for the practice of medicine.

(b) The corporation has no authority and shall not disseminate

information, in any manner, to the public that compares, rates, tiers, classifies, measures, or ranks a physician's performance, efficiency, or quality of practice.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 9, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(4), eff. September 1, 2019.

Sec. 182.103. PRIVACY OF INFORMATION. (a) Protected health information and individually identifiable health information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) The corporation shall comply with all state and federal laws and rules relating to the transmission of health information, including Chapter 181, and rules adopted under that chapter, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

(c) The corporation shall develop privacy, security, operational, and technical standards to assist health information networks in the state to ensure effective statewide privacy, data security, efficiency, and interoperability across networks. The network's standards shall be guided by reference to the standards of the Certification Commission for Healthcare Information Technology or the Health Information Technology Standards Panel, or other federally approved certification standards, that exist on May 1, 2007, as to the process of implementation, acquisition, upgrade, or installation of electronic health information technology.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0525, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 10, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(5), eff. September 1, 2019.

Sec. 182.104. SECURITY COMPLIANCE. (a) The corporation shall:

(1) establish appropriate security standards to protect both the transmission and the receipt of individually identifiable health information or health care data;

(2) establish appropriate security standards to protect access to any individually identifiable health information or health care data collected, assembled, or maintained by the corporation;

(3) establish the highest levels of security and protection for access to and control of individually identifiable health information, including mental health care data and data relating to specific disease status, that is governed by more stringent state or federal privacy laws; and

(4) establish policies and procedures for the corporation for taking disciplinary actions against a board member, employee, or other person with access to individually identifiable health care information that violates state or federal privacy laws related to health care information or data maintained by the corporation.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 11, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(6), eff. September 1, 2019.

Sec. 182.105. INTELLECTUAL PROPERTY. (a) The corporation shall take commercially reasonable measures to protect its intellectual property, including obtaining patents, trademarks, and

copyrights where appropriate.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 12, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(7), eff. September 1, 2019.

Sec. 182.106. ANNUAL REPORT. (a) The corporation shall submit an annual report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate oversight committee in the senate and the house of representatives. The annual report must include financial information and a progress update on the corporation's efforts to carry out its mission.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 13, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(8), eff. September 1, 2019.

Sec. 182.107. FUNDING. (a) The corporation may be funded through the General Appropriations Act and may request, accept, and use gifts and grants as necessary to implement its functions.

(b) The corporation may assess transaction, convenience, or subscription fees to cover costs associated with implementing its functions. All fees must be voluntary but receipt of services provided by the corporation may be conditioned on payment of fees.

(c) The corporation may participate in other revenue-generating activities that are consistent with the corporation's purposes.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304

), Sec. 2, eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 845 (H.B. 1066), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 14, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(9), eff. September 1, 2019.

Sec. 182.108. STANDARDS FOR ELECTRONIC SHARING OF PROTECTED HEALTH INFORMATION; COVERED ENTITY CERTIFICATION. (a) The corporation shall develop and submit to the commission for ratification privacy and security standards for the electronic sharing of protected health information.

(b) The commission shall review and the executive commissioner by rule shall adopt acceptable standards submitted for ratification under Subsection (a).

(c) Standards adopted under Subsection (b) must be designed to:

(1) comply with the Health Insurance Portability and Accountability Act and Privacy Standards and Chapter 181;

(2) comply with any other state and federal law relating to the security and confidentiality of information electronically maintained or disclosed by a covered entity;

(3) ensure the secure maintenance and disclosure of personally identifiable health information;

(4) include strategies and procedures for disclosing personally identifiable health information; and

(5) support a level of system interoperability with existing health record databases in this state that is consistent with emerging standards.

(d) The corporation shall establish a process by which a covered entity may apply for certification by the corporation of a covered entity's past compliance with standards adopted under Subsection (b).

(e) The corporation shall publish the standards adopted under Subsection (b) on the corporation's Internet website.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2, eff. September 1, 2019.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 13, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0526, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 12 (S.B. 203), Sec. 15(a), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 2(10), eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1169 (H.B. 3304), Sec. 3, eff. September 1, 2019.

SUBCHAPTER D. HEALTH INFORMATION EXCHANGES

Sec. 182.151. DEFINITION. In this subchapter, "health information exchange" means an organization that:

(1) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement with the organizations;

(2) as a primary business function, compiles or organizes health-related information designed to be securely transmitted by the organization among physicians, other health care providers, or entities within a region, state, community, or hospital system; or

(3) assists in the transmission or receipt of electronic health-related information among physicians, other health care providers, or entities within:

(A) a hospital system;

(B) a physician organization;

(C) a health care collaborative, as defined by Section 848.001, Insurance Code;

(D) an accountable care organization participating in the Pioneer Model under the initiative by the Innovation Center of the Centers for Medicare and Medicaid Services; or

(E) an accountable care organization participating in the Medicare Shared Savings Program under 42 U.S.C. Section 1395jjj.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.152. AUTHORITY OF HEALTH INFORMATION EXCHANGE. (a) Notwithstanding Sections 81.046, 82.009, 161.0073, and 161.008, a health information exchange may access and transmit health-related information under Sections 81.044(a), 82.008(a), 161.007(d), 161.00705(a), 161.00706(b), and 161.008(i) if the access or transmittal is:

(1) made for the purpose of assisting in the reporting of health-related information to the appropriate agency;

(2) requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person who is required to report health-related information;

(3) made in accordance with the applicable consent requirements for the immunization registry under Subchapter A, Chapter 161, if the information being accessed or transmitted relates to the immunization registry; and

(4) made in accordance with the requirements of this subchapter and all other state and federal law.

(b) A health information exchange may only use and disclose the information that it accesses or transmits under Subsection (a) in compliance with this subchapter and all applicable state and federal law, and may not exchange, sell, trade, or otherwise make any prohibited use or disclosure of the information.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.153. COMPLIANCE WITH LAW; SECURITY. A health information exchange that collects, transmits, disseminates, accesses, or reports health-related information under this subchapter shall comply with all applicable state and federal law, including secure electronic data submission requirements.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.154. CRIMINAL PENALTY. (a) A person who collects, transmits, disseminates, accesses, or reports information under this subchapter on behalf of or as a health information exchange commits an offense if the person, with the intent to violate this subchapter,

allows health-related information in the possession of a health information exchange to be used or disclosed in a manner that violates this subchapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

Sec. 182.155. IMMUNITIES AND DEFENSES CONTINUED. Collecting, transmitting, disseminating, accessing, or reporting information through a health information exchange does not alone deprive a physician or health care provider of an otherwise applicable immunity or defense.

Added by Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 11, eff. September 1, 2015.

SUBTITLE J. PAYMENT FOR HEALTH CARE SERVICES AND SUPPLIES

CHAPTER 185. HEALTH CARE BILLING

Sec. 185.001. DEFINITIONS. In this chapter:

(1) "Debt collection" has the meaning assigned by Section 392.001, Finance Code.

(2) "Health care provider" means a facility licensed, certified, or otherwise authorized to provide health care services or supplies in this state in the ordinary course of business, including a hospital, except the term does not include a federally-qualified health center, as defined by 42 U.S.C. Section 1396d(l)(2)(B).

(3) "Health care service" means a service a health care provider provides to an individual to diagnose, prevent, treat, alleviate, cure, or heal a human health condition, illness, injury, or disease.

Added by Acts 2023, 88th Leg., R.S., Ch. 271 (S.B. 490), Sec. 1, eff. September 1, 2023.

Sec. 185.002. ITEMIZED BILL REQUIRED. (a) A health care provider that requests payment from a patient after providing a health care service or related supply to the patient shall submit

with the request a written, itemized bill of the alleged cost of each service and supply provided to the patient during the patient's visit to the provider. The provider must submit the itemized bill not later than the 30th day after the provider receives a final payment on the provided service or supply from a third party.

(b) The itemized bill must include:

(1) a plain language description of each distinct health care service or supply the health care provider provided to the patient;

(2) if the provider sought or is seeking reimbursement from a third party, any billing code submitted to the third party and the amounts billed to and paid by that third party; and

(3) the amount the provider alleges is due from the patient for each service and supply provided to the patient.

(c) A health care provider may issue the itemized bill electronically, including through a patient portal on the provider's Internet website.

(d) A patient is entitled to obtain from the health care provider an itemized bill on request at any time after the itemized bill is initially issued under Subsection (a).

(e) A health care provider may not pursue debt collection against a patient for a provided health care service or supply unless the provider has complied with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 271 (S.B. 490), Sec. 1, eff. September 1, 2023.

Sec. 185.003. DISCIPLINARY ACTION BY LICENSING AUTHORITY. The appropriate licensing authority shall take disciplinary action against the provider for the violation as if the provider violated an applicable licensing law.

Added by Acts 2023, 88th Leg., R.S., Ch. 271 (S.B. 490), Sec. 1, eff. September 1, 2023.

TITLE 3. VITAL STATISTICS
CHAPTER 191. ADMINISTRATION OF VITAL STATISTICS RECORDS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS. In this title:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Vital statistics unit" means the vital statistics unit established in the Department of State Health Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0527, eff. April 2, 2015.

Sec. 191.0011. REFERENCE IN OTHER LAW. A reference in other law to the bureau of vital statistics of the department or of the former Texas Department of Health means the vital statistics unit established in the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0528, eff. April 2, 2015.

Sec. 191.002. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall administer the registration of vital statistics.

(b) The department shall:

(1) establish a vital statistics unit in the department with suitable offices that are properly equipped for the preservation of its official records;

(2) establish a statewide system of vital statistics;

(3) provide instructions and prescribe forms for collecting, recording, transcribing, compiling, and preserving vital statistics;

(4) require the enforcement of this title and rules adopted under this title;

(5) prepare, print, and supply to local registrars forms for registering, recording, and preserving returns or otherwise carrying out the purposes of this title; and

(6) propose legislation necessary for the purposes of this title.

(c) The department may use birth records and provide those records on request to other state agencies for programs notifying

mothers of young children about children's health needs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0529, eff. April 2, 2015.

Sec. 191.003. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The executive commissioner shall adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics.

(a-1) The department shall:

(1) supervise the vital statistics unit; and

(2) appoint the director of the vital statistics unit.

(b) In an emergency, the executive commissioner may suspend any part of this title that hinders the uniform and efficient registration of vital events and may substitute emergency rules designed to expedite that registration under disaster conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0530, eff. April 2, 2015.

Sec. 191.0031. CERTIFIED COPIES BY MAIL. The state registrar or a local registrar may not issue a certified copy of a record under this chapter to a person who has applied for the record by mail unless the person has provided notarized proof of identity in accordance with rules adopted by the executive commissioner of the Health and Human Services Commission. The rules may require the issuer of the certified copy to verify the notarization using the records of the secretary of state under Section 406.012, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 5.01, eff. September 1, 2015.

Sec. 191.004. STATE REGISTRAR. (a) The director of the vital

statistics unit is the state registrar of vital statistics. The director must be a competent vital statistician.

(b) The state registrar shall prepare and issue detailed instructions necessary for the uniform observance of this title and the maintenance of a perfect system of registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0531, eff. April 2, 2015.

Sec. 191.0045. FEES. (a) The department may collect fees for providing services to the public and performing other activities in connection with maintenance of the vital statistics system, including:

(1) performing searches of birth, death, fetal death, marriage, divorce, annulment, and other records;

(2) preparing and issuing copies and certified copies of birth, death, fetal death, marriage, divorce, annulment, and other records; and

(3) filing a record, amendment, or affidavit under this title.

(b) The executive commissioner by rule may prescribe a schedule of fees for vital statistics services. The aggregate of the amounts of the fees may not exceed the cost of administering the vital statistics system.

(c) The department shall refund to an applicant any fee received for services that the department cannot perform. If the money has been deposited to the credit of the vital statistics account in the general revenue fund, the comptroller shall issue a warrant against the fund for refund of the payment on presentation of a claim signed by the state registrar.

(d) A local registrar or county clerk who issues a certified copy of a birth or death certificate shall collect the same fees as collected by the department, including the additional fee required under Subsection (e), except as provided by Subsections (g) and (h).

(e) In addition to fees charged by the department under Subsection (b), the department shall collect an additional $2 fee for each of the following:

(1) issuing a certified copy of a certificate of birth;
(2) issuing a wallet-sized certification of birth; and
(3) conducting a search for a certificate of birth.

(f) Repealed by Acts 2005, 79th Leg., Ch. 263, Sec. 5(1), eff. May 30, 2005.

(g) A local registrar or county clerk that on March 31, 1995, was collecting a fee for the issuance of a certified copy of a birth certificate that exceeded the fee collected by the department for the same type of certificate may continue to do so but shall not raise this fee until the fee collected by the department exceeds the fee collected by the local registrar or county clerk. A local registrar or county clerk to which this subsection applies shall collect the additional fee as required under Subsection (e).

(h) In addition to other fees collected under this section, a local registrar or county clerk may collect a fee not to exceed $1 for:

(1) preserving vital statistics records maintained by the registrar or county clerk, including birth, death, fetal death, marriage, divorce, and annulment records;
(2) training registrar or county clerk employees regarding vital statistics records; and
(3) ensuring the safety and security of vital statistics records.

(i) A fee under this section shall be collected by the registrar or county clerk on the issuance of a vital statistics record, including a record issued through a Remote Birth Access site.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 52, eff. Sept. 1, 1991.
Amended by Acts 1991, 72nd Leg., ch. 651, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 9.62, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 305, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 975, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 5(1), eff. May 30, 2005.

Acts 2005, 79th Leg., Ch. 400 (S.B. 1524), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1022 (H.B. 2717), Sec. 3, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0532, eff.

April 2, 2015.

Sec. 191.0046. FEE EXEMPTIONS. (a) On the request of a child's parent or guardian, the state registrar shall issue without fee a certificate necessary for admission to school or to secure employment. The certificate shall be limited to a statement of the child's date of birth.

(b) The state registrar shall issue without fee a certified copy of a record not otherwise prohibited by law to a veteran or to the veteran's widow, orphan, or other dependent if the copy is for use in settling a claim against the government.

(c) On court order, the state registrar may issue without fee a certified copy of a birth record in cases related to child labor or the public schools.

(d) The state registrar on request shall issue without a fee a copy of a birth or death record that is not certified to a child fatality review team or the child fatality review team committee established under Subchapter F, Chapter 264, Family Code.

(e) It is the intent of the legislature to not impose a cost for obtaining certified records for the purpose of obtaining an election identification certificate issued pursuant to Chapter 521A, Transportation Code. Notwithstanding any other law, the state registrar, a local registrar, or a county clerk shall not charge a fee to an applicant that is associated with searching for or providing a record, including a certified copy of a birth record, if the applicant states that the applicant is requesting the record for the purpose of obtaining an election identification certificate under Section 521A.001, Transportation Code.

(f) Notwithstanding Subsection (e), a local registrar or a county clerk who issues a birth record that is required for the purpose of obtaining an election identification certificate issued pursuant to Chapter 521A, Transportation Code, and is otherwise entitled by law to retain all or a portion of a fee for that birth record, is entitled to payment of the amount from the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept.1, 1989. Renumbered from Sec. 191.054 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 52, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 11 (S.B. 239), Sec. 1, eff. May 3, 2005.

Acts 2015, 84th Leg., R.S., Ch. 130 (S.B. 983), Sec. 1, eff. May 27, 2015.

Sec. 191.0047. BIRTH INFORMATION FOR DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. (a) The department shall implement an efficient and effective method to verify birth information or provide a certified copy of a birth record necessary to provide services for the benefit of a minor being served by the Department of Family and Protective Services.

(b) The department shall enter into a memorandum of understanding with the Department of Family and Protective Services to implement this section. Subject to Subsection (c), the terms of the memorandum of understanding must include methods for reimbursing the department in an amount that is not more than the actual costs the department incurs in verifying the birth information or providing the birth record to the Department of Family and Protective Services.

(c) The department may not collect a fee or other amount for verification of birth information or provision of a certified copy of the birth record under Subsection (a) for a child in the managing conservatorship of the Department of Family and Protective Services if parental rights to the child have been terminated and the child is eligible for adoption.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 23, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 758 (S.B. 703), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0533, eff. April 2, 2015.

Sec. 191.0048. VOLUNTARY CONTRIBUTION TO TEXAS HOME VISITING PROGRAM. (a) A person requesting a copy or certified copy of a birth, marriage, or divorce record may make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood

Coordination of the Health and Human Services Commission.

(b) On each paper or electronic application form for a copy or certified copy of a birth, marriage, or divorce record, the department shall include a printed box for the applicant to check indicating that the applicant wishes to make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(c) Notwithstanding Section 191.0045, a local registrar or county clerk may collect the additional voluntary contribution under this section.

Text of subsection effective until April 1, 2025

(d) Notwithstanding Section 191.005, the local registrar or county clerk who collects the voluntary contribution under this section shall send the voluntary contribution to the comptroller, who shall deposit the voluntary contribution in the Texas Home Visiting Program trust fund under Section 531.287, Government Code.

Text of subsection effective on April 1, 2025

(d) Notwithstanding Section 191.005, the local registrar or county clerk who collects the voluntary contribution under this section shall send the voluntary contribution to the comptroller, who shall deposit the voluntary contribution in the Texas Home Visiting Program trust fund under Section 523.0306, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 820 (S.B. 1836), Sec. 3, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0534, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.42, eff. April 1, 2025.

Sec. 191.0049. BIRTH RECORD ISSUED TO FOSTER CHILD OR YOUTH OR HOMELESS CHILD OR YOUTH. On request of a child or youth described by this section, the state registrar, a local registrar, or a county clerk shall issue, without fee or parental consent, a certified copy of the child's or youth's birth record to:

(1) a homeless child or youth as defined by 42 U.S.C. Section 11434a;

(2) a child in the managing conservatorship of the Department of Family and Protective Services; and

(3) a young adult who:

(A) is at least 18 years of age, but younger than 21 years of age; and

(B) resides in a foster care placement, the cost of which is paid by the Department of Family and Protective Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 1024 (H.B. 123), Sec. 2, eff. September 1, 2019.

Sec. 191.00491. BIRTH RECORD ISSUED TO VICTIMS AND CHILDREN OF VICTIMS OF DATING OR FAMILY VIOLENCE. On request of an individual described by this section, the state registrar, a local registrar, or a county clerk shall issue, without payment of a fee, a certified copy of the individual's birth record to:

(1) a victim of dating violence as defined by Section 71.0021, Family Code;

(2) a victim of family violence as defined by Section 51.002, Human Resources Code; or

(3) a child of a victim described by Subdivision (1) or (2).

Added by Acts 2021, 87th Leg., R.S., Ch. 374 (S.B. 798), Sec. 1, eff. September 1, 2021.

Sec. 191.005. VITAL STATISTICS ACCOUNT. (a) The vital statistics account is an account in the general revenue fund in the state treasury.

(b) The legislature shall make appropriations to the department from the vital statistics account to be used to defray expenses incurred in the administration and enforcement of the system of vital statistics.

(c) All fees collected by the department under this chapter shall be deposited to the credit of the vital statistics account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 53, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0535, eff. April 2, 2015.

Sec. 191.006. RECORDS OF PERSONS IN HOSPITALS AND INSTITUTIONS. (a) This section applies to each public or private hospital, almshouse, or other institution to which persons are committed by process of law or voluntarily enter for treatment of disease or for confinement.

(b) When a person is admitted to the institution, the superintendent, manager, or other person in charge of the institution shall record, in the manner directed by the state registrar, the admitted person's personal and statistical data required by certificate forms under this title. If the person is admitted for the treatment of disease, the physician in charge shall specify for the record the nature of the disease and where, in the physician's opinion, the disease was contracted.

(c) The personal information required under Subsection (b) shall be obtained:

(1) from the person admitted to the institution, if practicable; or

(2) from the person's relatives or friends or from other persons acquainted with the facts, in as complete a manner as possible, if the information cannot be obtained from the person admitted to the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.007. REGULATION BY CERTAIN MUNICIPALITIES. The governing body of a Type A general-law municipality may:

(1) regulate the registration of marriages; and

(2) direct the return and maintenance of bills of mortality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.008. SORTING COLLECTED DATA. (a) The department shall compile the information relating to births, deaths, and fetal deaths collected under this chapter and organize the results, to the

extent possible, according to the following geographic areas:

(1) the Texas-Mexico border region;

(2) each public health region;

(3) rural areas;

(4) urban areas;

(5) each county; and

(6) the state.

(b) The department may release the information relating to births, deaths, and fetal deaths in accordance with the way it is compiled under this section.

Added by Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 3, eff. September 1, 2005.

Sec. 191.009. USE OF DIACRITICAL MARKS. (a) In this section, "diacritical mark" means a mark used in Latin script to change the sound of the letter to which it is added or used to distinguish the meaning of the word in which the letter appears. The term includes accents, tildes, graves, umlauts, and cedillas.

(b) The state registrar shall ensure that a vital statistics record issued under this title properly records any diacritical mark used in a person's name.

Added by Acts 2017, 85th Leg., R.S., Ch. 1041 (H.B. 1823), Sec. 1, eff. September 1, 2017.

Sec. 191.010. DEATH INFORMATION FOR DEPARTMENT OF PUBLIC SAFETY. (a) The department shall implement an efficient and effective method to verify death information to assist the Department of Public Safety with maintaining records of holders of driver's licenses and personal identification certificates in this state.

(b) The department shall enter into a memorandum of understanding with the Department of Public Safety to implement this section. The memorandum of understanding must include a mechanism for the department to provide to the Department of Public Safety death information that includes unique identifiers, including social security numbers, necessary to accurately match death records with driver's license and personal identification certificate records.

Added by Acts 2017, 85th Leg., R.S., Ch. 737 (S.B. 1205), Sec. 1, eff. June 12, 2017.
Redesignated from Health and Safety Code, Section 191.009 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(36), eff. September 1, 2019.

Sec. 191.011. DEATH INFORMATION PROVIDED TO SECRETARY OF STATE. (a) The department shall implement an efficient and effective method to provide death information to the secretary of state to assist in maintaining the statewide computerized voter registration list under Section 18.061, Election Code.

(b) The method implemented under Subsection (a) must provide at least the following information on each deceased person for whom a death certificate is filed with a local registrar in this state:

(1) the county of residence of the deceased;

(2) the date of birth of the deceased; and

(3) the full name of the deceased.

(c) The department shall enter into a memorandum of understanding with the secretary of state to implement this section. The memorandum of understanding must include a mechanism for the department to provide the secretary of state with death information that includes unique identifiers necessary to accurately match death records with names included on the voter registration list.

Added by Acts 2023, 88th Leg., R.S., Ch. 1074 (S.B. 545), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. RECORDS OF BIRTHS, DEATHS, AND FETAL DEATHS

Sec. 191.021. REGISTRATION DISTRICTS. (a) The state is divided into registration districts for the purposes of registering births, deaths, and fetal deaths. The registration districts are:

(1) each justice of the peace precinct; and

(2) each municipality with a population of 2,500 or more.

(b) To facilitate registration, the department may combine or divide registration districts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0536, eff.

April 2, 2015.

Sec. 191.022. LOCAL REGISTRARS. (a) The justice of the peace is the local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(b) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(c) Each local registrar shall appoint a deputy registrar so that a registrar will be available at all times for the registration of births and deaths.

(d) The local registrar shall sign each report made to the department.

(e) If a local registrar fails or refuses to register each birth and death in the district or neglects duties under this title, the county judge or the mayor, as appropriate, shall appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar.

(f) A local registrar who collects a fee for a certified copy of a birth certificate shall deduct 20 cents of that fee to apply to the registrar's administrative costs and remit $1.80 of that fee to the comptroller.

(g) Each local registrar shall annually submit a self-assessment report to the state registrar. The department shall prescribe the information that must be included in the report to allow a thorough desk audit of a local registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 305, Sec. 2, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 1, eff. May 30, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0537, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 5.02, eff. September 1, 2015.

Sec. 191.023. CONSOLIDATION OF COUNTY AND MUNICIPAL MAINTENANCE OF BIRTH AND DEATH RECORDS. (a) The duties imposed by law relating to the maintenance of birth and death records of a municipality with a population of 2,500 or more may be transferred to the county in which the municipality is located, as provided by this section.

(b) If the commissioners court adopts a resolution to transfer the duties and the governing body of the municipality subsequently adopts a concurring resolution, the county and municipality shall agree on a timetable for the transfer and shall execute the transfer in an orderly fashion.

(c) Before a commissioners court may adopt a resolution under Subsection (b), the official to whom the duties would be transferred must attest in writing that the official has sufficient resources and finances to assume those duties.

(d) If the governing body of a municipality does not adopt a concurring resolution before the 91st day after the date on which a county adopts a resolution under Subsection (b), a petition by the qualified voters of the municipality may serve as the equivalent of a concurring resolution under Subsection (b). The petition must succinctly describe the intention to consolidate county and municipal maintenance of birth and death records and must be signed by a number of qualified voters equal to at least 20 percent of the number of qualified voters voting in the most recent mayoral election.

(e) A consolidation under this section affects only the county and the municipality to which the resolutions apply. This section does not affect the apportionment of registration districts under Section 191.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.024. REPORTS OF INFORMATION. (a) On the state registrar's demand, a person, including a local registrar, physician, midwife, or funeral director, who has information relating to a birth, death, or fetal death shall supply the information to the state registrar in person, by mail, or through the local registrar. The person shall supply the information on a form provided by the department or on the original certificate.

(b) An organization or individual who has a record of births or deaths that may be useful to establish the genealogy of a resident of this state may file the record or a duly authenticated transcript of the record with the state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 302 (H.B. 2061), Sec. 1, eff. June 17, 2011.

Sec. 191.025. RECORD BOOKS AND CERTIFICATES. (a) Forms for the registration of births, deaths, and fetal deaths must be approved by the department.

(b) A municipality shall supply its local registrar, and each county shall supply the county clerk, with permanent record books for recording the births, deaths, and fetal deaths occurring in their respective jurisdictions. The record books must be in forms approved by the state registrar.

(c) A local registrar shall supply forms of certificates to persons who need them. The executive commissioner shall establish and promulgate rules for strict accountability of birth certificates to prevent birth certificate fraud.

(d) Information required on a certificate must be written legibly in durable blue or black ink or may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

(e) A certificate must contain each item of information required on the certificate or a satisfactory reason for omitting the item.

(f) The department shall require that the form for the registration of deaths must include the question, "Was the decedent a peace officer or an honorably retired peace officer in this state?".

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.14, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 17, Sec. 1, eff. April 25, 1997; Acts 2001, 77th Leg., ch. 476, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 744 (H.B. 2769), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0538, eff. April 2, 2015.

Sec. 191.026. LOCAL RECORDS. (a) The local registrar shall secure a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction.

(b) The local registrar shall consecutively number birth and death certificates in separate series, beginning with the number "1" for the first birth and the first death in each calendar year. The local registrar shall sign each certificate to attest to the date the certificate is filed in the local registrar's office.

(c) The local registrar shall copy in the record book required under Section 191.025 each certificate that the local registrar registers, unless the local registrar keeps duplicates under Subsection (d) or makes photographic duplications as authorized by Chapter 201, Local Government Code, or the provisions of Chapter 204, Local Government Code, derived from former Chapter 181, Local Government Code. Except as provided by Subsection (e), the copies shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar.

(d) The local registrar may permanently bind duplicate reports of births and deaths, if the duplicates are required by local ordinance, and index them in the manner that the state registrar indexes records under Section 191.032.

(e) The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record of the birth, death, or fetal death maintained by the local registrar if:

(1) the local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the vital statistics unit; and

(2) before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the unit's database and that each record is included in the database or otherwise accounted for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 74th Leg., ch. 17, Sec. 2, eff. April 25, 1997.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0539, eff. April 2, 2015.

Sec. 191.027. REVIEW OF CERTIFICATE BY LOCAL REGISTRAR. (a) The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required by this title and by the state registrar's instructions.

(b) If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return.

(c) If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.028. AMENDMENT OF CERTIFICATE. (a) A record of a birth, death, or fetal death accepted by a local registrar for registration may not be changed except as provided by Subsection (b).

(b) An amending certificate may be filed to complete or correct a record that is incomplete or proved by satisfactory evidence to be inaccurate. The amendment must be in a form prescribed by the department. The amendment shall be attached to and become a part of the legal record of the birth, death, or fetal death if the amendment is accepted for filing, except as provided by Section 192.011(b).

(c) Not later than the 30th business day after the date the department receives an amending certificate, the department shall notify the individual of whether the amendment has been accepted for filing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 54, eff. Sept. 1, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 758 (S.B. 703), Sec. 2, eff. September 1, 2009.

Sec. 191.029. CERTIFICATES OR REPORT SENT TO STATE REGISTRAR.

On the 10th day of each month, the local registrar shall send to the state registrar:

(1) the original certificates that the local registrar registered during the preceding month; or

(2) a report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.031. REVIEW OF CERTIFICATES BY STATE REGISTRAR. (a) The state registrar shall carefully examine the certificates received monthly from the local registrars.

(b) The state registrar shall require additional information to make the record complete and satisfactory if necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.032. STATE RECORDS. (a) The state registrar shall arrange, bind, and permanently preserve birth, death, and fetal death certificates in a systematic manner.

(b) The executive commissioner shall adopt rules necessary to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0540, eff. April 2, 2015.

Sec. 191.033. ADDENDA. (a) The state registrar may attach to the original record an addendum that sets out any information received by the state registrar that may contradict the information in a birth, death, or fetal death record required to be maintained in the vital statistics unit.

(b) If the state registrar attaches an addendum to an original record, the state registrar shall instruct the local registration official in whose jurisdiction the birth, death, or fetal death

occurred to attach an identical addendum to any duplicate of the record in the official's custody.

(c) In this section, "local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0541, eff. April 2, 2015.

Sec. 191.034. NOTATION OF DEATH ON BIRTH CERTIFICATE. (a) On receipt of the death certificate of a person whose birth is registered in this state, the state registrar shall conspicuously note the person's date of death on the person's birth certificate.

(b) The state registrar shall notify the county clerk of the county in which the person was born and the local registrar of the registration district in which the person was born of the person's death. On receipt of the notification of death, the county clerk or local registrar shall conspicuously note the person's date of death on the person's birth certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 2, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1067 (H.B. 3253), Sec. 1, eff. June 14, 2013.

Sec. 191.036. SPANISH SURNAME INFORMATION. (a) The purpose of this section is to:

(1) enable this state to participate in a study being conducted by a group of southwestern states to obtain information about the birth rates and mortality patterns of persons with Spanish surnames; and

(2) implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

(b) In the next official revision of the prescribed forms for

birth and fetal death certificates, the department shall include the following questions and instructions:

(1) Is the father of Spanish origin?

(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(3) Is the mother of Spanish origin?

(4) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(c) In the next official revision of the prescribed forms for death certificates, the department shall include the following questions and instructions:

(1) Was the decedent of Spanish origin?

(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. COPIES OF RECORDS

Sec. 191.051. CERTIFIED COPIES. (a) Subject to department rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.

(b) A certified copy issued under this subsection may be issued only in the form approved by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0542, eff. April 2, 2015.

Sec. 191.052. CERTIFIED COPY AS EVIDENCE. A copy of a birth, death, or fetal death record registered under this title that is certified by the state registrar is prima facie evidence of the facts stated in the record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 191.056. COPIES COLLECTED BY NATIONAL AGENCY. (a) The national agency in charge of the collection of vital statistics may obtain, without expense to the state, transcripts of vital records

without payment of the fees prescribed by this chapter.

(b) The department may contract with the national agency to have copies of vital records that are filed with the vital statistics unit transcribed for that agency.

(c) The state registrar may act as special agent for the national agency to accept the use of the franking privilege and forms furnished by the national agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0543, eff. April 2, 2015.

Sec. 191.057. RECORDS WITH ADDENDA. (a) In this section:

(1) "Copy" means a reproduction of a record made by any means.

(2) "Local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

(b) If the vital statistics unit or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under Section 191.033, the application shall be sent immediately to the state registrar. After examining the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

(c) If the state registrar refuses to issue the certified copy:

(1) the state registrar shall notify the applicant of the refusal and the reason for the refusal not later than the 10th day after the date on which the state registrar receives the application; and

(2) the department shall give the applicant an opportunity for a hearing.

(d) After the hearing, the state registrar shall notify the local officials who have duplicates of the questioned record of the department's final decision. The department may order the officials to issue or refuse to issue certified copies of the record.

(e) A duty imposed on or a power granted to the state registrar

under this section may be performed or exercised by a designee of the state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0544, eff. April 2, 2015.

SUBCHAPTER D. ACCESS TO RECORDS

Sec. 191.071. CRIMINAL BACKGROUND CHECK REQUIRED. (a) A person may not access vital records maintained by the department under this chapter and may not access the department's vital records electronic registration system unless the department, or another person acting on behalf of the department, has conducted a fingerprint-based criminal background check, using state and federal databases, on the person in accordance with department policy and the person's record is satisfactory as determined under department policy.

(b) The department may adopt a policy waiving the requirement of a fingerprint-based background check for a person who previously submitted to a fingerprint-based background check as a condition of licensure by a state agency.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 5.03, eff. September 1, 2015.

CHAPTER 192. BIRTH RECORDS

SUBCHAPTER A. GENERAL REGISTRATION PROVISIONS

Sec. 192.001. REGISTRATION REQUIRED. The birth of each child born in this state shall be registered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.002. FORM OF BIRTH CERTIFICATE. (a) The department shall prescribe the form and contents of the birth certificate.

(b) The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information held by the department under that section of the

certificate is confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in Subtitle B, Title 3, Occupations Code, or to a faculty member at a medical school, as that term is defined in Section 61.501, Education Code, for statistical or medical research, or to appropriate state or federal agencies for statistical research. The executive commissioner may adopt rules to implement this subsection.

(c) The form must include a space for recording the social security numbers of the mother and father and the signatures of the biological mother and biological father. These social security numbers and signatures are not a part of the legal birth certificate, shall be made available to the agency administering the state's plan under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.), and may not be used or disseminated for any purpose other than the establishment and the enforcement of child support orders.

(d) The social security numbers of the mother and father recorded on the form shall be made available to the United States Social Security Administration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 7; Acts 1991, 72nd Leg., ch. 14, Sec. 56, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 556, Sec. 69, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.785, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1067 (H.B. 3253), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0545, eff. April 2, 2015.

Sec. 192.0021. HEIRLOOM BIRTH CERTIFICATE. (a) The department shall promote and sell copies of an heirloom birth certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the certificate. An heirloom birth certificate must contain the same

information as, and have the same effect of, a certified copy of another birth record. The executive commissioner by rule shall prescribe a fee for the issuance of an heirloom birth certificate in an amount that does not exceed $50. The heirloom birth certificate must be printed on high-quality paper with the appearance of parchment not smaller than 11 inches by 14 inches.

(b) The department shall deposit 50 percent of the proceeds from the sale of heirloom birth certificates to the credit of the childhood immunization account and the other 50 percent to the credit of the undedicated portion of the general revenue fund. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the department for:

(1) making grants to fund childhood immunizations and related education programs; and

(2) administering this section.

(c) The department may sell an heirloom birth certificate only for an individual born in this state.

Added by Acts 1993, 73rd Leg., ch. 941, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1265 (H.B. 2101), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0546, eff. April 2, 2015.

Sec. 192.0022. CERTIFICATE OF BIRTH RESULTING IN STILLBIRTH. (a) In this section:

(1) "Stillbirth" means an unintended, intrauterine fetal death occurring in this state after a gestational age of not less than 20 completed weeks.

(2) "Certificate of birth resulting in stillbirth" means a birth certificate issued to record the birth of a stillborn child.

(b) The person who is required to file a fetal death certificate under Section 193.002 shall advise the parent or parents of a stillborn child:

(1) that a parent may, but is not required to, request the preparation of a certificate of birth resulting in stillbirth;

(2) that a parent may obtain a certificate of birth resulting in stillbirth by contacting the vital statistics unit to

request the certificate and paying the required fee; and

(3) regarding the way or ways in which a parent may contact the vital statistics unit to request the certificate.

(c) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the vital statistics unit shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent. The name of the stillborn child provided on or later added by amendment to the certificate of birth resulting in stillbirth shall be the same name as placed on the original or amended fetal death certificate.

(d) A certificate of birth resulting in stillbirth must include the state file number of the corresponding fetal death certificate.

(e) The department shall prescribe the form and content of a certificate of birth resulting in stillbirth and shall specify the information necessary to prepare the certificate.

(f) The department may not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(g) On issuance of a certificate of birth resulting in stillbirth to a parent who has requested the certificate as provided by this section, the vital statistics unit shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the fetal death certificate.

(h) A parent may request the vital statistics unit to issue a certificate of birth resulting in stillbirth without regard to the date on which the fetal death certificate was issued.

(i) The executive commissioner may adopt rules necessary to administer this section.

Added by Acts 2005, 79th Leg., Ch. 276 (S.B. 271), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0547, eff. April 2, 2015.

Sec. 192.003. BIRTH CERTIFICATE FILED OR BIRTH REPORTED. (a) The physician, midwife, or person acting as a midwife in attendance

at a birth shall file the birth certificate with the local registrar of the registration district in which the birth occurs.

(b) If a birth occurs in a hospital or birthing center, the hospital administrator, the birthing center administrator, or a designee of the appropriate administrator may file the birth certificate in lieu of a person listed by Subsection (a).

(c) If there is no physician, midwife, or person acting as a midwife in attendance at a birth and if the birth does not occur in a hospital or birthing center, the following in the order listed shall report the birth to the local registrar:

(1) the father or mother of the child; or

(2) the owner or householder of the premises where the birth occurs.

(d) Except as provided by Subsection (e), a person required to file a birth certificate or report a birth shall file the certificate or make the report not later than the fifth day after the date of the birth.

(e) Based on a parent's religious beliefs, a parent may request that a person required to file a birth certificate or report a birth delay filing the certificate or making the report until the parent contacts the person with the child's name. If a parent does not name the child before the fifth day after the date of the birth due to the parent's religious beliefs, the parent must contact the person required to file the birth certificate or report the birth with the name of the child as soon as the child is named. A person required to file the birth certificate or report the birth who delays filing the certificate or making the report in accordance with the parent's request shall file the certificate or make the report not later than the 15th day after the date of the child's birth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 519, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(21), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, Sec. 124, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 556, Sec. 81, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 68 (H.B. 1604), Sec. 1, eff. May 17, 2005.

Sec. 192.0031. INFORMATION OF BIRTH TO SCHOOL-AGE MOTHER. (a) Notwithstanding Subchapter C, Chapter 552, Government Code, the department shall notify the commissioner of education of each birth to a school-age mother. The commissioner may notify the school district in which a school-age mother resides of each birth to a school-age mother.

(b) The department may not notify the commissioner of a birth to a school-age mother if:

(1) the child died at birth; or

(2) the child was placed for adoption.

(c) A notification under this section must include the name and address of the mother, the father, if the father is of school age and is named on the birth certificate, and the person born. Reports under this section shall be sent at least quarterly.

Added by Acts 1993, 73rd Leg., ch. 907, Sec. 6, eff. June 19, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(101), eff. Sept. 1, 1995.

Sec. 192.004. INFORMATION OBTAINED BY LOCAL REGISTRAR. (a) The local registrar shall obtain the information necessary to prepare the birth certificate from the person reporting a birth or from another person with the required knowledge if:

(1) the birth is reported under Section 192.003(c); or

(2) a person who files a certificate under Section 192.003(a) or 192.003(b) cannot by diligent inquiry obtain an item of information required for the certificate.

(b) A person from whom a local registrar requests necessary information shall answer correctly to the best of the person's knowledge. On request of the local registrar, a person who makes a statement under this section shall verify the statement by signing it.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 30, Sec. 2, eff. Sept. 1, 1993.

Sec. 192.005. RECORD OF PATERNITY. (a) The items on a birth certificate relating to the child's father shall be completed only if:

(1) the child's mother was married to the father:
(A) at the time of the child's conception;
(B) at the time of the child's birth; or
(C) after the child's birth;
(2) paternity is established by order of a court of competent jurisdiction; or
(3) a valid acknowledgment of paternity executed by the father has been filed with the vital statistics unit as provided by Subchapter D, Chapter 160, Family Code.

(b) Repealed by Acts 2003, 78th Leg., ch. 610, Sec. 23, eff. Sept. 1, 2003.

(c) A person may apply to the state registrar for the removal of any indication of the absence of paternity of a child who has no presumed father from the person's birth record.

(d) If the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the state registrar shall notify the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 8; Acts 1993, 73rd Leg., ch. 519, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.42, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 21, 23, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0548, eff. April 2, 2015.

Sec. 192.0051. REPORT OF DETERMINATION OF PATERNITY. (a) A report of each determination of paternity in this state shall be filed with the state registrar.

(b) On a determination of paternity, the petitioner shall provide the clerk of the court in which the decree was granted with the information necessary to prepare the report. The clerk shall:
(1) report the determination on a form or in a manner provided by the department; and
(2) complete the report immediately after the decree becomes final.

(c) On completion of the report, the clerk of the court shall forward to the state registrar the report for each decree that became

final in that court.

Added by Acts 1993, 73rd Leg., ch. 519, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 70, eff. Sept. 1, 1999.

Sec. 192.006. SUPPLEMENTARY BIRTH CERTIFICATES. (a) A supplementary birth certificate may be filed if the person who is the subject of the certificate:

(1) becomes the child of the person's father by the subsequent marriage of the person's parents;

(2) has the person's parentage determined by a court of competent jurisdiction; or

(3) is adopted under the laws of any state.

(b) An application for a supplementary birth certificate may be filed by:

(1) an adult whose status is changed; or

(2) a legal representative of the person whose status is changed.

(c) The state registrar shall require proof of the change in status that the executive commissioner by rule may prescribe.

(d) Supplementary birth certificates and applications for supplementary birth certificates shall be prepared and filed in accordance with department rules.

(e) In accordance with department rules, a supplementary birth certificate may be filed for a person whose parentage has been determined by an acknowledgment of paternity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 57, 58, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 556, Sec. 71, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0549, eff. April 2, 2015.

Sec. 192.007. SUPPLEMENTARY CERTIFICATES FOR CHILD WHO DIES BEFORE ADOPTION. (a) If a child in the process of being adopted in this state dies before the adoption is completed, the persons who attempted to adopt the child may request the state registrar to file

supplementary birth and death certificates for the child.

(b) Persons making a request under this section must include with the request:

(1) sufficient information to prove that they attempted to adopt the child and that the child died before the adoption was completed;

(2) a copy of an irrevocable affidavit of relinquishment of parental rights relating to the child;

(3) a copy of the affidavit of the status of the child, if applicable; and

(4) any other information required by the department.

(c) On receipt of the information required by Subsection (b), the state registrar shall complete birth and death certificates as if the child had been adopted by court decree and then died.

(d) In the absence of evidence to the contrary, compliance with this section and the completion of the birth certificate constitute adoption by estoppel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.008. BIRTH RECORDS OF ADOPTED PERSON. (a) The supplementary birth certificate of an adopted child must be in the names of the adoptive parents, one of whom must be a female, named as the mother, and the other of whom must be a male, named as the father. This subsection does not prohibit a single individual, male or female, from adopting a child. Copies of the child's birth certificates or birth records may not disclose that the child is adopted.

(b) After a supplementary birth certificate of an adopted child is filed, information disclosed from the record must be from the supplementary certificate.

(c) The executive commissioner shall adopt rules and procedures to ensure that birth records and indexes under the control of the department or local registrars and accessible to the public do not contain information or cross-references through which the confidentiality of adoption placements may be directly or indirectly violated. The rules and procedures may not interfere with the registries established under Subchapter E, Chapter 162, Family Code, or with a court order under this section.

(d) Except as provided by Subsections (e) and (f), only the court that granted the adoption may order access to an original birth certificate and the filed documents on which a supplementary certificate is based.

(e) A person applying for access to an original birth certificate and the filed documents on which the supplementary certificate is based is entitled to know the identity and location of the court that granted the adoption. If that information is not on file, the state registrar shall give the person an affidavit stating that the information is not on file with the state registrar. Any court of competent jurisdiction to which the person presents the affidavit may order the access.

(f) An adult adoptee who is applying for access to the person's original birth certificate and who knows the identity of each parent named on the original birth certificate is entitled to a noncertified copy of the original birth certificate without obtaining a court order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 561, Sec. 29, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 480 (H.B. 240), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0550, eff. April 2, 2015.

Sec. 192.009. CERTIFICATE OF ADOPTION, ANNULMENT OF ADOPTION, OR REVOCATION OF ADOPTION. (a) A certificate of each adoption, annulment of adoption, and revocation of adoption decreed in this state shall be filed with the state registrar.

(b) When a petition for adoption, annulment of adoption, or revocation of adoption is granted, the petitioner shall supply the clerk of the court the information necessary to prepare the certificate. The clerk shall:

(1) prepare the certificate on a form furnished by the department that provides the information prescribed by the department; and

(2) complete the certificate immediately after the decree

becomes final.

(c) Not later than the 10th day of each month, the clerk shall forward to the state registrar the certificates that the clerk completed for decrees that became final in the preceding calendar month.

(d) If the department determines that a certificate filed with the state registrar under this section requires correction, the department shall mail the certificate directly to an attorney of record with respect to the petition of adoption, annulment of adoption, or revocation of adoption. The attorney shall return the corrected certificate to the department. If there is no attorney of record, the department shall mail the certificate to the clerk of the court for correction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1128, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0551, eff. April 2, 2015.

Sec. 192.010. CHANGE OF NAME. (a) Subject to department rules, an adult whose name is changed by court order, or the legal representative of any person whose name is changed by court order, may request that the state registrar attach an amendment showing the change to the person's original birth record.

(b) The state registrar shall require proof of the change of name that the executive commissioner by rule may prescribe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 59, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0552, eff. April 2, 2015.

Sec. 192.011. AMENDING BIRTH CERTIFICATE. (a) This section applies to an amending birth certificate that is filed under Section 191.028 and that completes or corrects information relating to the person's sex, color, or race.

(b) On the request of the person or the person's legal

representative, the state registrar, local registrar, or other person who issues birth certificates shall issue a birth certificate that incorporates the completed or corrected information instead of issuing a copy of the original or supplementary certificate with an amending certificate attached.

(c) The department shall prescribe the form for certificates issued under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.012. RECORD OF ACKNOWLEDGMENT OF PATERNITY. (a) If the mother of a child is not married to the father of the child, a person listed in Section 192.003 who is responsible for filing the birth certificate shall:

(1) provide an opportunity for the child's mother and putative father to sign an acknowledgment of paternity as provided by Subchapter D, Chapter 160, Family Code; and

(2) provide oral and written information to the child's mother and putative father about:

(A) establishing paternity, including an explanation of the rights and responsibilities that result from acknowledging paternity; and

(B) the availability of child support services.

(b) The local registrar shall transmit the acknowledgment of paternity to the state registrar.

(c) The state registrar shall record the information contained in the acknowledgment of paternity and transmit the information to the Title IV-D agency.

(d) The Title IV-D agency may use the information contained in the acknowledgment of paternity for any purpose directly connected with providing child support services under Chapter 231, Family Code.

Added by Acts 1999, 76th Leg., ch. 556, Sec. 72, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0553, eff. April 2, 2015.

SUBCHAPTER B. DELAYED REGISTRATION

Sec. 192.021. DELAY LESS THAN ONE YEAR. (a) A birth that

occurred more than five days but less than one year before the date of an application for registration may be recorded on a birth certificate and submitted for filing to the local registrar of the registration district in which the birth occurred.

(b) The local registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The local registrar may accept the certificate for filing if the evidence required by the local registrar is submitted.

(c) Registration under this section is subject to department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0554, eff. April 2, 2015.

Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED WITH STATE REGISTRAR. Subject to department rules, an application to file a delayed birth certificate for a birth in this state not registered before the one-year anniversary of the date of birth shall be made to the state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0555, eff. April 2, 2015.

Sec. 192.023. DELAY OF MORE THAN ONE BUT LESS THAN FOUR YEARS. (a) A birth that occurred at least one year but less than four years before the date of the application for registration shall be recorded on a birth certificate in the form prescribed by the state registrar and submitted to the state registrar for filing.

(b) The state registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The state registrar may accept the certificate for filing if the evidence required by the state registrar is submitted.

(c) A birth certificate filed under this section shall be

marked "Delayed" and must show on its face the date of registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.024. DELAY OF FOUR YEARS OR MORE. (a) A birth that occurred four or more years before the date of the application for registration shall be recorded on a form entitled "Delayed Certificate of Birth." The department shall prescribe and furnish the form.

(b) The form shall provide for:

(1) the name and sex of the person whose birth is to be registered;

(2) the place and date of the person's birth;

(3) the names of the person's parents;

(4) the place of birth of each parent;

(5) the date of registration; and

(6) any other information required by the state registrar.

(c) The information on the form must be subscribed and sworn to, before an official authorized to administer oaths, by:

(1) the person whose birth is to be registered; or

(2) the person's parent, legal guardian, or legal representative if the person is incompetent to swear to the information.

(d) The state registrar shall add to a certificate submitted under this section:

(1) a description of each document submitted in support of the delayed registration, including the title of the document or the type of document;

(2) the name and address of the affiant if the document is an affidavit of personal knowledge; and

(3) if the document is a record, or certified copy of a record, of a business entry:

(A) the name and address of the custodian of the record;

(B) the date of the original entry; and

(C) the date of the certified copy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.025. SUPPORTING DOCUMENTS. (a) The state registrar shall accept an application under Section 192.024 if the applicant's statement of date and place of birth and parentage is established to the state registrar's satisfaction by the evidence required by this section.

(b) The certification of the state registrar shall be added to a certificate accepted for filing under this section.

(c) If the birth occurred at least four years but less than 15 years before the date of the application:

(1) the statement of date and place of birth must be supported by at least two documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(d) If the birth occurred 15 or more years before the date of the application:

(1) the statement of date and place of birth must be supported by at least three documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(e) A document accepted as evidence under this section, other than an affidavit of personal knowledge, must be at least five years old. A copy or abstract of the document may be accepted if certified as true and correct by the custodian of the document.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 192.026. REJECTION OR RETURN OF APPLICATION. (a) The state registrar may not register a delayed birth certificate if:

(1) the applicant does not submit the documentary evidence required by Section 192.025; or

(2) the state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence.

(b) On the state registrar's refusal to register a certificate under Subsection (a), the state registrar shall:

(1) furnish the applicant a statement of the reasons for

the refusal; and

(2) advise the applicant of the right to appeal to the statutory probate court or district court in the county in which the birth occurred, or in the statutory probate court or district court in the county in which the person resides, as provided by Section 192.027.

(c) If an application to file a delayed birth certificate is not actively pursued, the state registrar shall:

(1) return the application, supporting evidence, and any related instruments to the applicant; or

(2) make another disposition of those documents that the state registrar considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 1, eff. September 1, 2015.

Sec. 192.027. REGISTRATION BY JUDICIAL ORDER. (a) If a delayed birth certificate is not accepted for registration by the state registrar, the person may file a petition in the statutory probate court or district court in the county in which the birth occurred, or in the statutory probate court or district court in the county in which the person resides, for an order establishing a record of the person's date of birth, place of birth, and parentage.

(b) The petition must include:

(1) the petitioner's:

(A) full name;

(B) place of residence;

(C) date of birth;

(D) city or town, if applicable, and county of birth;

(E) race or ethnicity; and

(F) gender;

(2) the full name and county of birth of the petitioner's father;

(3) the full name, including any maiden name, and county of birth of the petitioner's mother;

(4) whether the petitioner has been the subject of a final felony conviction;

(5) whether the petitioner is subject to the registration requirements of Chapter 62, Code of Criminal Procedure; and

(6) a legible and complete set of the petitioner's fingerprints on a fingerprint card format acceptable to the Department of Public Safety and the Federal Bureau of Investigation.

(c) The petition must be accompanied by:

(1) a statement of the state registrar issued under Section 192.026(b)(1); and

(2) the documentary evidence submitted to the state registrar in support of the application.

(d) If, after a hearing, the court finds from the evidence submitted to the registrar and any other relevant evidence presented by the person that the person was born in this state, the court shall:

(1) make findings as to the person's date and place of birth and parentage;

(2) make other findings required by the case; and

(3) enter an order on a form prescribed and furnished by the department to establish a record of birth.

(e) An order under this section must include:

(1) the birth data to be registered;

(2) a description of the evidence presented; and

(3) the date of the court's action.

(f) Not later than the seventh day after the date on which the order is entered, the clerk of the court shall forward the order to the state registrar. The state registrar shall register the order, which is the record of birth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 2, eff. September 1, 2015.

Sec. 192.028. APPOINTMENT OF ATTORNEY AD LITEM. A judge of a statutory probate court or district court may appoint an attorney ad litem in a proceeding under Section 192.027 to represent the interests of the person seeking the delayed birth certificate.

Added by Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 3, eff. September 1, 2015.

Sec. 192.029. REFUSAL TO SIGN AFFIDAVIT OF PERSONAL KNOWLEDGE. (a) A parent of a person who is seeking a delayed birth certificate under this subchapter shall sign an affidavit of personal knowledge acknowledging that the individual is the parent of the person seeking the delayed birth certificate if:

(1) the person seeking a delayed birth certificate, a managing conservator or guardian of the person, or, if the person is a minor, another person with custody of the minor has requested the person's parent to sign the affidavit of personal knowledge; and

(2) the parent's affidavit of personal knowledge is necessary for the issuance of the birth certificate because the person seeking the delayed birth certificate is unable to provide sufficient alternative documentary evidence as required by Section 192.025.

(b) A parent shall sign an affidavit as described by Subsection (a) not later than the 30th day after the date a request is made as described by Subsection (a)(1).

(c) A person who is a parent of a person seeking a delayed birth certificate and who fails to sign an affidavit of personal knowledge as required by this section:

(1) commits an offense punishable as a Class B misdemeanor if the request under Subsection (a)(1) is made on or after the fourth anniversary of the date of birth but before the 15th anniversary of the date of birth; or

(2) commits an offense punishable as a Class A misdemeanor if the request under Subsection (a)(1) is made on or after the 15th anniversary of the date of birth.

Added by Acts 2015, 84th Leg., R.S., Ch. 1093 (H.B. 2794), Sec. 3, eff. September 1, 2015.

CHAPTER 193. DEATH RECORDS

Sec. 193.001. FORM OF CERTIFICATE. (a) The department shall prescribe the form and contents of death certificates and fetal death certificates.

(a-1) In prescribing each form under Subsection (a), the department shall ensure that the form instructs the person required

to file the death certificate or fetal death certificate to:

(1) enter the date in the standard order of "month, day, year"; and

(2) spell out the name of the month when entering the date.

(b) The social security number shall be recorded on the death certificate and on any other records related to the death.

(c) The department shall require death certificates and fetal death certificates to include the name of the place and the specific number of the plot, crypt, lawn crypt, or niche in which a decedent's remains will be interred or, if the remains will not be interred, the place and manner of other disposition.

(c-1) The department shall require death certificates to include the county where the decedent died and the decedent's county of last legal residence.

(d) The department and each local registrar shall make the information provided under Subsection (c) available to the public and may collect a fee in an amount prescribed under Section 191.0045 for providing that service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 502, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 556, Sec. 73, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 557 (H.B. 2940), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0556, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1074 (S.B. 545), Sec. 2, eff. September 1, 2023.

Sec. 193.002. PERSON REQUIRED TO FILE. The person in charge of interment or in charge of removal of a body from a registration district for disposition shall:

(1) obtain and file the death certificate or fetal death certificate;

(2) enter on the certificate the information relating to disposition of the body;

(3) sign the certificate; and

(4) file the certificate electronically as specified by the

state registrar.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 302 (H.B. 1739), Sec. 1, eff. September 1, 2007.

Sec. 193.0025. EXPEDITED DEATH CERTIFICATES FOR RELIGIOUS PURPOSES IN CERTAIN COUNTIES. (a) This section applies only to a county:

(1) with an office of medical examiner established in accordance with Section 1, Article 49.25, Code of Criminal Procedure; and

(2) for which the commissioners court of the county by resolution elects for this section to apply.

(b) This section does not apply to a county that entered into an agreement with another county to create a medical examiners district under Section 1-a, Article 49.25, Code of Criminal Procedure, unless:

(1) the office of medical examiner is located in the county and the county has adopted a resolution described by Subsection (a)(2); or

(2) notwithstanding Subsection (a), the county elects for this section to apply in the agreement creating the district.

(c) An individual may submit to the person required to file a death certificate under Section 193.002 a written request for the person to expedite the completion of a decedent's death certificate if the requestor demonstrates that:

(1) the expedited completion is necessary for religious purposes;

(2) the decedent's remains will be interred, entombed, buried, cremated, or otherwise laid to rest in a foreign country; and

(3) the requestor is authorized to obtain a copy of the death certificate.

(d) A person who receives a request under Subsection (c) shall issue a copy of the decedent's death certificate to the requestor not later than 48 hours after the time the person receives the request unless an inquest will be conducted for the decedent.

(e) For purposes of completing an expedited death certificate

under this section, a medical examiner may:

(1) perform a medical examination; and

(2) complete the medical certification, provided:

(A) the medical examiner has access to the decedent's medical history relevant to the death;

(B) the decedent's death is due to natural causes; and

(C) the medical examiner serves as medical examiner of the county in which the death occurred.

(f) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 233 (H.B. 1011), Sec. 1, eff. September 1, 2021.

Sec. 193.003. TIME AND PLACE FOR FILING DEATH CERTIFICATE. (a) Not later than the 10th day after the date of a death that occurs in this state, a death certificate shall be filed with the local registrar of the registration district in which:

(1) the death occurs; or

(2) the body is found, if the place of death is not known.

(b) Subject to department rules, a certificate of a fetal death that occurs in this state shall be filed with the local registrar of the registration district in which:

(1) the fetal death occurs; or

(2) the body is found, if the place of fetal death is not known.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0557, eff. April 2, 2015.

Sec. 193.004. PERSONAL AND MEDICAL INFORMATION. (a) The person required to file a death certificate shall obtain the required personal information from a competent person with knowledge of the facts.

(b) The person required to file a fetal death certificate shall obtain the required personal information from the person best qualified to furnish the information.

(c) A person required to obtain information under this section shall obtain the information over the signature of the person who furnishes the information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1425, Sec. 1, eff. Sept. 1, 1997.

Sec. 193.0041. DISCIPLINARY ACTION PROHIBITED. A state agency that licenses a person required to file a death certificate under this chapter may not take disciplinary action against the person for failure to timely file the certificate if the person supplies written documentation that the person has made a good faith effort to file the certificate within the time required by Section 193.003(a) and the failure to timely file the certificate results from circumstances beyond the person's control.

Added by Acts 2007, 80th Leg., R.S., Ch. 636 (H.B. 755), Sec. 1, eff. September 1, 2007.

Sec. 193.005. PERSONAL INFORMATION. (a) A person required to file a death certificate or fetal death certificate shall obtain the required medical certification from the decedent's attending physician, or a physician assistant or advanced practice registered nurse of the decedent, if the death occurred under the care of the person in connection with the treatment of the condition or disease process that contributed to the death.

(a-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 733 (H.B. 4048), Sec. 2, eff. June 15, 2021.

(b) The attending physician, physician assistant, or advanced practice registered nurse shall complete the medical certification not later than five days after receiving the death certificate.

(c) An associate physician, the chief medical officer of the institution where the death occurred, or the physician who performed an autopsy on the decedent may complete the medical certification if:

(1) the attending physician, the physician assistant, and the advanced practice registered nurse described by Subsection (a) are unavailable;

(2) the attending physician, the physician assistant, or the advanced practice registered nurse described by Subsection (a)

approves; and

(3) the person completing the medical certification has access to the medical history of the case and the death is due to natural causes.

(d) If a death or fetal death occurs without medical attendance or is otherwise subject to Chapter 49, Code of Criminal Procedure, the person required to file the death or fetal death certificate shall notify the appropriate authority of the death.

(e) A person conducting an inquest required by Chapter 49, Code of Criminal Procedure, shall:

(1) complete the medical certification not later than five days after receiving the death or fetal death certificate; and

(2) state on the medical certification the disease that caused the death or, if the death was from external causes, the means of death and whether the death was probably accidental, suicidal, or homicidal, and any other information required by the state registrar to properly classify the death.

(e-1) The medical certification on a death certificate must include either the term "Fentanyl Poisoning" or the term "Fentanyl Toxicity" if:

(1) a toxicology examination reveals a controlled substance listed in Penalty Group 1-B present in the body of the decedent in an amount or concentration that is considered to be lethal by generally accepted scientific standards; and

(2) the results of an autopsy performed on the decedent are consistent with an opioid overdose as the cause of death.

(f) If the identity of the decedent is unknown, the person conducting the inquest shall obtain and forward to the Department of Public Safety:

(1) the decedent's fingerprints;

(2) information concerning the decedent's hair color, eye color, height, weight, deformities, and tattoo marks; and

(3) other facts required for assistance in identifying the decedent.

(g) If the medical certification cannot be completed in a timely manner, the person required to complete the medical certification shall give the funeral director or the person acting as funeral director notice of the reason for the delay. Final disposition of the body may not be made unless specifically authorized by the person responsible for completing the medical

certification.

(h) The person completing the medical certification shall submit the information and attest to its validity using an electronic process approved by the state registrar.

(i) On receipt of autopsy results or other information that would change the information in the medical certification on the death certificate, the appropriate certifier shall immediately report the change in a manner prescribed by the department to amend the death certificate.

(j) The death certificate of a decedent who was an inmate of the Texas Department of Criminal Justice at the time of death and who was lawfully executed shall classify the manner of death as death caused by judicially ordered execution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1425, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 285 (H.B. 93), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 302 (H.B. 1739), Sec. 2, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 412 (S.B. 919), Sec. 1, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 1, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 733 (H.B. 4048), Sec. 1, eff. June 15, 2021.

Acts 2021, 87th Leg., R.S., Ch. 733 (H.B. 4048), Sec. 2, eff. June 15, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 1, eff. September 1, 2023.

Sec. 193.006. INFORMATION RELATING TO VETERANS. (a) This section applies to the death certificate of a person who:

(1) served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas;

(2) was the wife or widow of a person who served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas; or

(3) at the time of death was in the service of the United States.

(b) The funeral director or the person in charge of the disposition of the body shall supply on the reverse side of the death certificate:

(1) the organization in which service was rendered;

(2) the serial number on the discharge papers or the adjusted service certificate; and

(3) the name and mailing address of the decedent's next of kin or next friend.

(c) When the death certificate is filed locally, the local registrar shall immediately notify the nearest congressionally chartered veteran organizations.

(d) When the death certificate is filed with the vital statistics unit, the state registrar shall notify the Texas Veterans Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 260, Sec. 3, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0558, eff. April 2, 2015.

Sec. 193.007. DELAYED REGISTRATION OF DEATH. (a) A death that occurred more than 10 days but less than one year before the date of an application for registration of death may be recorded on a death certificate and submitted for filing with the local registrar of the registration district in which the death occurred.

(b) To file a record of a death that occurred in this state but was not registered within one year of the date of death, a person shall submit a record of the death to the county probate court in the county in which the death occurred.

(c) The department shall furnish a form for filing records under this section. Records submitted under this section must be on the form furnished by the department. The state registrar may accept a certificate that is verified as provided by this section.

(d) The certificate must be supported by the affidavit of:

(1) the physician last in attendance on the decedent or the funeral director who buried the body; or

(2) if the affidavit of the physician or funeral director cannot be obtained:

(A) any person who was acquainted with the facts surrounding the death when the death occurred; and

(B) another person who was acquainted with the facts surrounding the death but who is not related to the decedent by consanguinity or affinity, as determined under Chapter 573, Government Code.

(e) For each application under this section, the court shall collect a $1 fee. The court retains 50 cents of the fee and the remaining 50 cents is allocated to the clerk of the court for recording the certificate.

(f) Not later than the seventh day after the date on which a certificate is accepted and ordered filed by a court under this section, the clerk of the court shall forward to the vital statistics unit:

(1) the certificate; and

(2) an order from the court that the state registrar accept the certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 29, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1425, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0559, eff. April 2, 2015.

Sec. 193.008. BURIAL-TRANSIT PERMIT. (a) A burial-transit permit issued under the law and rules of a place outside of this state in which a death or fetal death occurred authorizes the transportation of the body in this state. A cemetery or crematory shall accept the permit as authorization for burial, cremation, or other disposal of the body in this state.

(b) The department shall prescribe the form and contents of the burial-transit permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 193.009. BURIAL RECORDS. (a) The person in charge of premises on which interments are made shall keep a record of the bodies interred or otherwise disposed of on the premises.

(b) The records must include for each decedent:

(1) the decedent's name;

(2) the place of death;

(3) the date of interment or disposal;

(4) the name and address of the funeral director; and

(5) any other information required by the state registrar.

(c) The records are open to official inspection at all times.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 193.010. CERTIFICATE OF DEATH BY CATASTROPHE. (a) In this section, "catastrophe" means the occurrence of a substantial force that causes widespread or severe damage, injury, or loss of life or property and from which it is not reasonable to assume that a person could survive, including:

(1) flood, earthquake, tornado, or other natural disaster;

(2) explosion, fire, or destruction of a building;

(3) the crash of a motor vehicle, train, or airplane involving more than one person; or

(4) the overtaking of more than one person by fire, water, earth, or other substance.

(b) A local registrar shall issue and file a certificate of death by catastrophe for a person if:

(1) an affidavit is submitted to the registrar stating that:

(A) the person was last reasonably believed to be at the scene of a catastrophe;

(B) at least 10 days have passed since the day of the catastrophe;

(C) a diligent search has been made by a governmental authority and the authority has concluded the search for the person;

(D) the catastrophe was not intentionally caused by the person; and

(E) the affiant:

(i) does not know whether the person is alive or dead;

(ii) has not received any information about the person's status since the catastrophe and, barring the person's death, would have received information about the person's status;

(iii) is not aware of any custody or guardianship issues involving the person, if the person is a minor or a person for whom a guardian has been appointed; and

(iv) is not aware of any reasonable motive for the person to disappear or for another person to abduct the person; and

(2) a written statement signed by an agent of the governmental authority that conducts a search under Subdivision (1)(C) is submitted to the registrar stating that the governmental authority conducted and concluded a search for the person.

(c) The department may issue a certificate of death by catastrophe for a minor or a person for whom a guardian has been appointed who is the subject of a custody or guardianship dispute only if all parties to the dispute submit an affidavit under Subsection (b).

(d) An insurer shall accept as proof of death of an insured a certificate of death by catastrophe issued under this section.

Added by Acts 2003, 78th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 2003.

Sec. 193.011. MEMORANDUM OF UNDERSTANDING ON SUICIDE DATA. (a) In this section, "authorized entity" means a medical examiner, a local registrar, a local health authority, a local mental health authority, a community mental health center, a mental health center that acts as a collection agent for the suicide data reported by community mental health centers, or any other political subdivision of this state.

(b) An authorized entity may enter into a memorandum of understanding with another authorized entity to share suicide data that does not name a deceased individual. The shared data may include:

(1) the deceased individual's date of birth, race or national origin, gender, and zip code of residence;

(2) any school or college the deceased individual was attending at the time of death;

(3) the suicide method used by the deceased individual;

(4) the deceased individual's status as a veteran or member

of the armed services; and

(5) the date of the deceased individual's death.

(c) The suicide data an authorized entity receives or provides under Subsection (b) is not confidential.

(d) An authorized entity that receives suicide data under a memorandum of understanding authorized by this section may periodically release suicide data that does not name a deceased individual to an agency or organization with recognized expertise in suicide prevention. The agency or organization may use suicide data received by the agency or organization under this subsection only for suicide prevention purposes.

(e) An authorized entity or an employee or agent of an authorized entity is not civilly or criminally liable for receiving or providing suicide data that does not name a deceased individual and that may be shared under a memorandum of understanding authorized by this section.

(f) This section does not prohibit the sharing of data as authorized by other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 100 (H.B. 1067), Sec. 2, eff. May 23, 2009.

Sec. 193.012. NOTICE OF CERTAIN DEATH CERTIFICATE AMENDMENTS. For a death certificate that is not a pending death certificate, a person who submits to the department a request for an amendment to modify the medical certification information on the certificate shall provide in the manner prescribed by the department written notice of the modification to a decedent's next of kin.

Added by Acts 2021, 87th Leg., R.S., Ch. 12 (H.B. 723), Sec. 2, eff. September 1, 2021.

CHAPTER 194. MARRIAGE AND DIVORCE RECORDS

Sec. 194.001. REPORT OF MARRIAGE. (a) The county clerk shall file with the vital statistics unit a copy of each completed marriage license application and a copy of any affidavit of an absent applicant submitted with an application. The clerk shall file the copies not later than the 90th day after the date of the application. The clerk may not collect a fee for filing the copies.

(b) The county clerk shall file with the vital statistics unit a copy of each declaration of informal marriage executed under Section 2.402, Family Code. The clerk shall file the copy not later than the 90th day after the date on which the declaration is executed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 650 (H.B. 869), Sec. 5, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0560, eff. April 2, 2015.

Sec. 194.0011. MARRIAGE LICENSE APPLICATIONS. (a) The executive commissioner by rule shall prescribe the format and content of the department form used for the marriage license application. The form must:

(1) require identification of the county in which the application is submitted; and

(2) allow, but may not require, the name of the county clerk to appear on the application.

(b) The vital statistics unit shall print and distribute the department forms to each county clerk throughout the state.

(c) The department form shall replace locally adopted forms.

(d) A county clerk may reproduce the department form locally.

Added by Acts 1991, 72nd Leg., ch. 96, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0561, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 695 (H.B. 555), Sec. 2, eff. June 12, 2017.

Sec. 194.002. REPORT OF DIVORCE OR ANNULMENT. (a) The department shall prescribe a form for reporting divorces and annulments of marriage. The form must require the following information:

(1) each party's:

(A) full name;

(B) usual residence;
(C) age;
(D) place of birth;
(E) color or race; and
(F) number of children;
(2) the date and place of the parties' marriage;
(3) the date the divorce or annulment of marriage was granted; and
(4) the court and the style and docket number of the case in which the divorce or annulment of marriage was granted.

(b) The vital statistics unit shall furnish sufficient copies of the form to each district clerk.

(c) When an attorney presents a final judgment for a divorce or annulment of marriage to a court for a final decree, the attorney shall:
(1) enter on the form the information required under Subsection (a); and
(2) submit the report to the district clerk with the final judgment.

(d) Not later than the ninth day of each month, each district clerk shall file with the vital statistics unit a completed report for each divorce or annulment of marriage granted in the district court during the preceding calendar month. If a report does not include the information required by Subsection (a)(3) or (4), the clerk must complete that information on the report before the clerk files the report with the unit.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(e), eff. January 1, 2022.

(f) If the department determines that a report filed with the department under this section requires correction, the department shall mail the report form directly to an attorney of record with respect to the divorce or annulment of marriage. The attorney shall return the corrected report form to the department. If there is no attorney of record, the department shall mail the report form to the district clerk for correction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1128, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 186 (H.B. 723), Sec. 1, eff. May 27,

2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0562, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(e), eff. January 1, 2022.

Sec. 194.003. STATE INDEX. (a) The vital statistics unit shall maintain a statewide alphabetical index, under the names of both parties, of each marriage license application or declaration of informal marriage. The statewide index does not replace the indexes required in each county.

(b) The vital statistics unit shall maintain a statewide alphabetical index, under the names of both parties, of each report of divorce or annulment of marriage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0563, eff. April 2, 2015.

Sec. 194.004. RELEASE OF INFORMATION. (a) The vital statistics unit shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.

(b) The vital statistics unit may not issue:

(1) a certificate or a certified copy of information relating to a marriage; or

(2) a certified copy of a report of divorce or annulment of marriage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 61, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0564, eff. April 2, 2015.

Sec. 194.005. HEIRLOOM WEDDING ANNIVERSARY CERTIFICATE. (a) The department shall promote the sale of an heirloom wedding anniversary certificate. The department shall solicit donated

designs for the certificate from Texas artists and select the best donated designs for the form of the certificate.

(b) The department shall collect a $50 fee for the issuance of an heirloom wedding anniversary certificate.

(c) The executive commissioner shall adopt rules designating certain milestone wedding anniversary dates and shall design and promote heirloom wedding anniversary certificates celebrating those anniversary dates.

(d) The department shall create an heirloom wedding anniversary certificate ordering system that includes printed order forms available through the department and an online ordering system.

(e) An heirloom wedding anniversary certificate produced by the department under this section must be printed on parchment paper and be not smaller than 11 inches by 14 inches in size.

(f) An heirloom wedding anniversary certificate produced by the department under this section is not a marriage license under this chapter or Chapter 2, Family Code, and does not establish and may not be used to establish a marriage relationship.

(g) The department shall deposit proceeds it receives from the issuance of heirloom wedding anniversary certificates to the credit of the childhood immunization account. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the department for:

(1) making grants to fund childhood immunizations and related education programs; and

(2) administering this section.

Added by Acts 2005, 79th Leg., Ch. 1264 (H.B. 2100), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0565, eff. April 2, 2015.

CHAPTER 195. ENFORCEMENT OF VITAL STATISTICS REPORTING

Sec. 195.001. ENFORCEMENT OF TITLE; REPORTS BY LOCAL REGISTRAR. (a) The local registrar in each local registration district shall enforce this title under the supervision and direction of the state registrar.

(b) A local registrar shall report immediately to the state

registrar a violation of this title of which the local registrar has knowledge by observation, by complaint of another person, or by other means.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 195.002. SUPERVISION AND INVESTIGATION BY STATE REGISTRAR. (a) The state registrar shall execute this title throughout the state. To ensure uniform compliance with this title, the state registrar has supervisory power over local registrars, deputy registrars, and subregistrars.

(b) The state registrar or the state registrar's representative may investigate cases of irregularity or violations of law. On request, any other registrar shall aid in the investigation.

(c) If the state registrar considers it necessary, the state registrar shall report a violation of this title to the appropriate district or county attorney for prosecution. The report must include a statement of the facts and circumstances. The district or county attorney shall immediately initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation.

(d) On the request of the state registrar, the attorney general shall assist in enforcing this title.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 195.003. FALSE RECORDS. (a) A person commits an offense if the person intentionally or knowingly makes a false statement or directs another person to make a false statement in:

(1) a certificate, record, or report required under this title;

(2) an application for an amendment of a certificate, record, or report required under this title;

(3) an application for a delayed birth certificate or delayed death certificate; or

(4) an application for a certified copy of a vital record.

(b) A person commits an offense if the person intentionally or knowingly supplies false information, or intentionally or knowingly creates a false record, or directs another person to supply false

information or create a false record, for use in the preparation of a certificate, record, report, or amendment under this title.

(c) A person commits an offense if the person, without lawful authority and with intent to deceive, makes, counterfeits, alters, amends, or mutilates or directs another person to make, counterfeit, alter, amend, or mutilate:

(1) a certificate, record, or report required under this title; or

(2) a certified copy of a certificate, record, or report required under this title.

(d) A person commits an offense if the person, for purposes of deception, intentionally or knowingly obtains, possesses, uses, sells, or furnishes, or attempts or directs another person to attempt to obtain, possess, use, sell, or furnish a certificate, record, or report required under this title, or a certified copy of a certificate, record, or report required under this title, if the document:

(1) is made, counterfeited, altered, amended, or mutilated without lawful authority and with intent to deceive;

(2) is false in whole or in part; or

(3) relates to the birth of another individual.

(e) A person commits an offense if the person intentionally or knowingly fraudulently identifies himself or herself to obtain or return registration forms, certificates, or any other forms required under this title.

(f) An offense under this section is a felony of the third degree.

(g) In this section, "person" means an individual, corporation, or association.

(h) If a person is convicted of an offense under this section, the court shall order as a condition of probation that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery, and the Texas Department of Criminal Justice shall require as a condition of parole that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.15, eff. Sept. 1, 1991.

Sec. 195.004. FAILURE TO PERFORM DUTY. (a) A person commits an offense if the person refuses or fails to furnish correctly any information in the person's possession affecting a certificate or record required under this title.

(b) A person commits an offense if the person fails, neglects, or refuses to fill out a birth or death certificate and to file the certificate with the local registrar or deliver it on request to the person with the duty to file it, as required by this title.

(c) A local registrar, deputy registrar, or subregistrar commits an offense if that person fails, neglects, or refuses to perform a duty under this title or under instructions and directions of the state registrar given under this title.

(d) Except as provided by Subsection (d-1), an offense under this section is a Class C misdemeanor.

(d-1) An offense under this section for failure to perform a duty required by Section 192.003 is a Class A misdemeanor.

(e) In this section, "person" means an individual, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 222 (H.B. 253), Sec. 3, eff. September 1, 2011.

Sec. 195.005. DISCLOSURE OF CONFIDENTIAL INFORMATION. (a) A person commits an offense if the person knowingly violates Section 192.002(b), knowingly induces or causes another to violate that section, or knowingly fails to comply with a rule adopted under that section.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 62, eff. Sept. 1, 1991.

TITLE 4. HEALTH FACILITIES
SUBTITLE A. FINANCING, CONSTRUCTING, REGULATING, AND INSPECTING HEALTH FACILITIES
CHAPTER 221. HEALTH FACILITIES DEVELOPMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. SHORT TITLE. This chapter may be cited as the Health Facilities Development Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.002. PURPOSE; CONSTRUCTION. (a) The purpose of this chapter is to enable a municipality, county, or hospital district to create a corporation with the power to provide, expand, and improve health facilities that the corporation determines are needed to improve the adequacy, cost, and accessibility of health care, research, and education in the state.

(b) The legislature intends that a corporation created under this chapter be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of its sponsoring entity for the purposes of Section 103, Internal Revenue Code of 1986 (26 U.S.C. Section 103). This chapter and the rules and rulings issued under this chapter shall be construed according to this intent.

(c) This chapter shall be liberally construed to conform to the intent of the legislature expressed by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.003. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of a development corporation.

(2) "Bonds" includes notes, interim certificates, or other evidences of indebtedness of a development corporation issued under this chapter.

(3) "Cash management" means borrowing by a development corporation on behalf of a user to allow the user to manage the user's need for cash.

(4) "Cost," as applied to a health facility, includes:

(A) the cost of acquisition of land, a right-of-way, an option to purchase land, an easement, a leasehold estate in land, or another interest in land;

(B) the cost of acquisition, construction, repair, renovation, remodeling, or improvement of a structure used as, or in

connection with, the health facility;

(C) the cost of site preparation, including demolition or removal of a structure as necessary or incident to providing the health facility;

(D) the cost of architectural, engineering, legal, or other related services;

(E) preparation cost of plans, specifications, studies, surveys, cost and revenue estimates, and other expenses necessary or incident to planning, providing, or determining the feasibility of the health facility;

(F) the cost of machinery, equipment, furnishings, and facilities necessary or incident to placing the health facility in operation;

(G) finance charges, interest, and marketing and start-up costs, before and during construction and for not more than two years after the date that construction is completed;

(H) costs incurred in connection with financing the health facility, including:

(i) amounts paid under Sections 221.061(c) and (d);

(ii) financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements;

(iii) the cost of a title insurance policy;

(iv) the cost of printing, engraving, and reproduction services; and

(v) the cost of a trustee's or paying agent's initial or acceptance fee;

(I) a cost of the development corporation incurred in connection with providing the health facility, including reasonable amounts to reimburse the development corporation for time spent by its agents or employees relating to providing the health facility and its financing; and

(J) the cost of financing, establishing, and funding a reserve fund for a self-insurance or risk management program, including the cost of preparation of a study, survey, or estimate of cost, revenue, risk, or liability or other cost or expense necessary or incident to planning, providing, or determining the feasibility and continuing program and operating costs of a self-insurance or risk management program.

(5) "Development corporation" means a health facilities development corporation created under this chapter.

(6) "Director" means a member of the board of directors.

(7) "District" means a hospital district created under state law.

(8) "Health facility" means property or an interest in property for which the board of directors finds that financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping is required, necessary, or convenient for health care, research, or education, including:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as a:

(i) hospital, clinic, or health facility;

(ii) nursing home;

(iii) extended-care, outpatient, or rehabilitation facility;

(iv) pharmacy;

(v) medical or dental laboratory;

(vi) physicians' office building;

(vii) laundry, administrative, computer, communication, fire-fighting or fire-prevention, food service and preparation, storage, utility, or x-ray facility;

(viii) parking facility or area;

(ix) building related to a health care or health-care-related facility or system;

(x) multiunit housing facility for medical staff, nurses, interns, and other employees of a health care or health-care-related facility or system, for patients of a health care facility, or for relatives of those persons; or

(xi) medical or dental research or training facility or other facility used in the education or training of health care personnel;

(C) property or material used in landscaping, equipping, or furnishing a health care or health-care-related facility or similar items necessary or convenient for the operation of such a facility;

(D) an adult foster care facility, life care facility, retirement home, retirement village, home for the aging, or other facility that undertakes to furnish shelter, food, medical attention, nursing services, medical services, social activities, or other

personal services or attention to an individual for more than one year; and

(E) any other structure, facility, or equipment related to or essential to the operation of a health care or health-care-related facility.

(9) "Resolution" means an action, including an order or ordinance, of a sponsoring entity's governing body.

(10) "Sponsoring entity" means a municipality, county, or district.

(11) "User" means a person who, as owner, lessee, or manager or through other authority, will occupy, operate, manage, or employ a health facility after the facility is financed, acquired, or constructed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.004. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this chapter violates the federal or state constitution, a development corporation by resolution may provide an alternate procedure that conforms to the constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.005. EFFECT OF CHAPTER ON OTHER LAW. (a) This chapter does not limit the police powers provided by law to the state, a municipality, or other political subdivision of the state or an official or agency of the state, a municipality, or other political subdivision of the state over property of a corporation.

(b) This chapter does not exempt a corporation or user from compliance with Chapter 104 or 225.

(c) A sponsoring entity or development corporation may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. CREATION AND OPERATION OF DEVELOPMENT CORPORATION

Sec. 221.011. AUTHORITY TO CREATE. (a) A sponsoring entity may create one or more nonmember, nonstock development corporations for the sole public purpose of acquiring, constructing, providing, improving, financing, and refinancing a health facility to assist the maintenance of public health.

(b) The sponsoring entity may use the development corporation to:

(1) provide a health facility to promote and develop health care, research, and education for the public purpose of promoting the health and welfare of state citizens; and

(2) issue bonds on the sponsoring entity's behalf to finance the cost of the health facility.

(c) The sponsoring entity may not lend its credit or grant public money or other thing of value in aid of a development corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.012. PROCEDURE. (a) If the governing body of a sponsoring entity determines that it is in the public interest and to the benefit of the sponsoring entity's residents and the citizens of this state that a development corporation be created to promote and develop new, expanded, or improved health facilities to assist the maintenance of the public health and welfare, the governing body, by resolution stating that determination, may authorize and approve creation of a development corporation, and shall approve proposed articles of incorporation for the development corporation.

(b) No fewer than three residents of the sponsoring entity who are each at least 18 years of age may act as incorporators of the development corporation by signing and verifying the articles of incorporation and delivering the original and two copies of the articles of incorporation to the secretary of state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.013. ARTICLES OF INCORPORATION. (a) The articles of incorporation of a development corporation must include:

(1) the corporation's name;

(2) a statement that the corporation is a nonprofit public

corporation;

(3) the duration of the corporation, which may be perpetual;

(4) a statement that the purpose of the corporation is to acquire, construct, provide, improve, finance, and refinance a health facility to assist the maintenance of the public health;

(5) a statement that the corporation has no members and is a nonstock corporation;

(6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;

(7) the number of directors on the initial board of directors and those directors' names and addresses;

(8) each incorporator's name and street address;

(9) the sponsoring entity's name and address; and

(10) a statement that the sponsoring entity by resolution has specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation, and has approved the articles of incorporation.

(b) The corporate powers enumerated in this chapter are not required to be included in the articles of incorporation.

(c) The articles of incorporation may include provisions for the regulation of the internal affairs of the development corporation, including a provision required or permitted by this chapter to be in the bylaws.

(d) Except as provided by Subsection (e), if a bylaw conflicts with the articles of incorporation, the articles of incorporation control.

(e) Unless the articles of incorporation provide that a change in the number of directors may be made only by amendment to those articles, the change may be made by amendment to the bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.014. CERTIFICATE OF INCORPORATION. (a) The incorporators shall deliver to the secretary of state the original and two copies of the articles of incorporation and a certified copy of the resolution by the sponsoring entity's governing body approving the articles of incorporation.

(b) If the secretary of state finds that the articles of incorporation comply with this chapter and have been approved by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of incorporation with a copy of the articles of incorporation attached to each.

(c) The secretary of state shall deliver a certificate of incorporation, with a copy of the articles of incorporation attached, to the incorporators or their representative and to the sponsoring entity's governing body.

(d) The development corporation's existence begins on issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsoring entity have been performed and that the corporation has been incorporated under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.015. ORGANIZATIONAL MEETING. (a) After issuance of the certificate of incorporation and at the call of a majority of the incorporators, the board of directors named in the articles of incorporation shall hold an organizational meeting in this state to adopt bylaws and elect officers and for any other purposes.

(b) Not later than the sixth day before the date of the meeting, the incorporators shall mail notice, postage prepaid, to each director of the time and place of the meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.016. AMENDMENT OF ARTICLES OF INCORPORATION. (a) Articles of incorporation may be amended to contain any provision that is lawful under this chapter if the sponsoring entity's governing body by appropriate resolution determines that the amendment is advisable and authorizes or directs that an amendment be

made.

(b) The development corporation's president or vice-president and secretary or assistant secretary, or the presiding officer and the secretary or clerk of the sponsoring entity's governing body, shall execute articles of amendment on behalf of the development corporation. An officer signing the articles of amendment shall verify those articles.

(c) The articles of amendment must include:

(1) the name of the development corporation;

(2) if the amendment alters a provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as amended;

(3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each added provision;

(4) the name and current address of the sponsoring entity;

(5) a statement that the amendment was authorized by the governing body of the sponsoring entity; and

(6) the date of the meeting at which the governing body adopted or approved the amendment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.017. CERTIFICATE OF AMENDMENT. (a) The original and two copies of the articles of amendment and a certified copy of the resolution of the sponsoring entity's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of amendment comply with this chapter and are authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of amendment and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of amendment with a copy of the articles of amendment attached to each.

(c) The secretary of state shall deliver to the development

corporation or its representative and to the sponsoring entity's governing body a certificate of amendment with a copy of the articles of amendment attached.

(d) The amendment to the articles of incorporation takes effect on issuance of the certificate of amendment.

(e) An amendment does not affect an existing cause of action in favor of or against the development corporation, a pending suit to which the corporation is a party, or an existing right of any person. Change of the corporate name by amendment does not abate a suit brought by or against the corporation under its former name.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.018. RESTATED ARTICLES OF INCORPORATION. (a) A development corporation may authorize, execute, and file restated articles of incorporation by following the procedure to amend articles of incorporation, including obtaining authorization from the sponsoring entity's governing body.

(b) The restated articles of incorporation must restate the entire text of the articles of incorporation as amended or supplemented by all previous certificates of amendment. The restated articles of incorporation may also contain further amendments to the articles of incorporation.

(c) Unless the restated articles of incorporation include amendments that were not previously in the articles of incorporation and previous certificates of amendment, the introductory paragraph of the restated articles of amendment must contain a statement that the instrument accurately copies the articles of incorporation and all amendments that are in effect on the date of the filing without further changes, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors, and the incorporators' names and addresses may be omitted.

(d) If the restated articles of incorporation contain further amendments not included in the articles of incorporation and previous certificates of amendment, the instrument containing the restated articles of incorporation must:

(1) include for each further amendment a statement that the

amendment has been made in conformity with this chapter;

(2) include the statements required by this chapter to be contained in articles of amendment, except that the full text of the amendment need not be included except in the restated articles of incorporation as amended;

(3) contain a statement that the instrument accurately copies the articles of incorporation and all previous amendments in effect on the date of the filing, as further amended by the restated articles of incorporation, and that the instrument does not contain any other change, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors, and the incorporators' names and addresses may be omitted; and

(4) restate the entire text of the articles of incorporation as amended and supplemented by all previous certificates of amendment and as further amended by the restated articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.019. RESTATED CERTIFICATE OF INCORPORATION. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the sponsoring entity's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the restated articles of incorporation comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the restated articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two restated certificates of incorporation with a copy of the restated articles of incorporation attached to each.

(c) The secretary of state shall deliver a restated certificate of incorporation, with a copy of the restated articles of

incorporation attached, to the development corporation or its representative and to the sponsoring entity's governing body.

(d) On issuance by the secretary of state of the restated certificate of incorporation, the original articles of incorporation and all amendments are superseded and the restated articles of incorporation become the development corporation's articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.020. REGISTERED OFFICE AND AGENT. (a) A development corporation shall continuously maintain a registered office and registered agent in this state.

(b) The registered office may be, but need not be, the same as the development corporation's principal office. The registered agent may be:

(1) an individual resident of this state whose business office is the same as the registered office; or

(2) a domestic or foreign profit or nonprofit corporation that is authorized to transact business or conduct affairs in this state and that has a principal or business office that is the same as the registered office.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.021. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A development corporation may change its registered office, registered agent, or both, by filing the original and a copy of a statement in the office of the secretary of state. The president or vice-president of the corporation shall execute and verify the statement.

(b) The statement must include:

(1) the development corporation's name;

(2) the post office address of the corporation's current registered office;

(3) if the registered office is to be changed, the post office address of the corporation's new registered office;

(4) the name of the corporation's registered agent;

(5) if the registered agent is to be changed, the name of the successor registered agent;

(6) a statement that, after the change, the post office address of the registered office will be the same as the post office address of the business office of the registered agent; and

(7) a statement that the change was authorized by the board of directors or by a corporate officer authorized by the board of directors to make the change.

(c) If the secretary of state finds that the statement complies with this chapter, the secretary of state, when all fees have been paid as required by this chapter, shall:

(1) write "filed" on the original and each copy of the statement and the month, day, and year of the filing;

(2) file the original statement in the office of the secretary of state; and

(3) return the copy of the statement to the corporation or its representative.

(d) The change made by the statement takes effect on the filing of the statement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.022. RESIGNATION OF REGISTERED AGENT. (a) A registered agent of a development corporation may resign by:

(1) mailing or delivering written notice to the corporation; and

(2) filing the original and two copies of the notice in the office of the secretary of state not later than the 10th day after the date the notice is mailed or delivered to the corporation.

(b) The notice must include the development corporation's last known address, a statement that written notice was given to the corporation, and the date the written notice was given to the corporation.

(c) If the secretary of state finds that the notice complies with this chapter, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original notice and both copies and the month, day, and year of the filing;

(2) file the original notice in the office of the secretary of state;

(3) return one copy of the notice to the resigning

registered agent; and

(4) deliver one copy of the notice to the development corporation at the address shown in the notice.

(d) The resignation takes effect on the 31st day after the date the notice is received by the secretary of state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.023. AGENTS FOR SERVICE. (a) The president, each vice-president, and the registered agent of a development corporation are the corporation's agents on whom may be served a process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a development corporation fails to appoint or maintain a registered agent in this state, or if the registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent of the corporation on whom a process, notice, or demand may be served.

(c) The secretary of state may be served by delivering two copies of the process, notice, or demand to the secretary of state, the deputy secretary of state, or a clerk in charge of the corporation department of the secretary of state's office. The secretary of state shall immediately forward one copy of the process, notice, or demand by registered mail to the development corporation at its registered office.

(d) Service on the secretary of state is returnable not earlier than the 30th day after the date of the service.

(e) The secretary of state shall keep a record of each process, notice, and demand served, including the time of the service and the action of the secretary of state in reference to the process, notice, or demand.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 41 (H.B. 297), Sec. 2, eff. September 1, 2005.

Sec. 221.024. BOARD. (a) A development corporation's affairs are governed by a board of directors composed of at least three

individuals appointed by the sponsoring entity's governing body. Directors may be divided into classes.

(b) A director serves for a term of not more than six years. The terms of directors of different classes may be of different lengths.

(c) A director holds office for the term to which the director is appointed and until a successor is appointed and has qualified.

(d) The sponsoring entity's governing body may remove a director for cause or at any time without cause.

(e) A director serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.025. OFFICERS. (a) The officers of a development corporation are:

(1) the president, vice-president, and secretary; and

(2) other officers, including a treasurer, and assistant officers considered necessary.

(b) An officer is elected or appointed at the time, in the manner, and for the term provided by the articles of incorporation or bylaws, except that an officer's term may not exceed three years. If the articles of incorporation or bylaws do not contain those requirements, the board of directors shall elect or appoint each officer annually.

(c) A person may simultaneously hold more than one office, except that the same person may not simultaneously hold the offices of president and secretary.

(d) An officer may be removed by the persons authorized to elect or appoint that officer if those persons believe the best interests of the corporation will be served by the removal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.026. INDEMNIFICATION. (a) Except as provided by Subsection (c), a development corporation may indemnify a director or officer or a former director or officer for expenses and costs, including attorney's fees, actually or necessarily incurred by the

person in connection with a claim asserted against the person, by action in court or other forum, because of the person's being or having been a director or officer.

(b) If a development corporation has not fully indemnified a director or officer under Subsection (a), the court in a proceeding in which a claim is asserted against the director or officer, or a court having jurisdiction over an action brought by the director or officer on a claim for indemnity, may assess indemnity against the corporation or its receiver or trustee. The assessment must equal:

(1) the amount that the director or officer paid to satisfy the judgment or compromise the claim, not including any amount paid the corporation; and

(2) to the extent the court considers reasonable and equitable, the expenses and costs, including attorney's fees, actually and necessarily incurred by the director or officer in connection with the claim.

(c) A development corporation may not provide indemnity in a matter if the director or officer is guilty of negligence or misconduct in relation to the matter. A court may not assess indemnity unless it finds that the director or officer was not guilty of negligence or misconduct in relation to the matter in which indemnity is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.027. BYLAWS. (a) The board of directors shall adopt a development corporation's initial bylaws and may amend or repeal the bylaws or adopt new bylaws. The bylaws and each amendment and repeal of the bylaws must be approved by the sponsoring entity's governing body by resolution.

(b) The bylaws may contain any provision for the regulation and management of the development corporation's affairs consistent with law and the articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.028. COMMITTEES. (a) If permitted by the articles of incorporation or bylaws, the board of directors, by resolution adopted by a majority of directors in office, may designate one or

more committees consisting of two or more directors to exercise the board's authority in the management of the development corporation to the extent provided by the resolution, articles of incorporation, or bylaws. The designation of a committee or delegation of authority to a committee does not relieve the board of directors or an individual director of a responsibility imposed by law.

(b) Other committees not exercising the authority of the board of directors in the management of the development corporation may be designated. Those committees may be, but need not be, limited to directors, and shall be designated and appointed by:

(1) the board of directors by resolution of a majority of directors adopted at a meeting at which a quorum is present; or

(2) the president, if authorized by the articles of incorporation, bylaws, or a resolution of a majority of the board of directors adopted at a meeting at which a quorum is present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.029. MEETINGS; ACTION WITHOUT MEETING. (a) A regular board of directors meeting may be called and held, with or without notice, as provided by the bylaws. A special board of directors meeting may be held on notice as provided by the bylaws. A regular or special meeting may be held at any location in the state.

(b) Notice or waiver of notice of a regular or special board of directors meeting need not specify the business to be transacted or the meeting's purpose, unless required by the bylaws.

(c) A director's attendance at a meeting waives notice to the director of the meeting, unless the attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(d) A quorum is the lesser of:

(1) a majority of the number of directors established by the bylaws, or if the bylaws do not establish a number of directors, a majority of the number of directors stated in the articles of incorporation; or

(2) the number of directors, which number may not be smaller than three, established as a quorum by the articles of incorporation or bylaws.

(e) The act of a majority of the directors present at a meeting

at which a quorum is present is an act of the board of directors, unless the act of a larger number is required by the articles of incorporation or bylaws. The articles of incorporation control if, with respect to an action to be taken by the board of directors, the articles of incorporation require the vote or concurrence of a greater proportion of directors than required by this chapter with respect to the action.

(f) An action required or permitted to be taken at a board of directors meeting may be taken without a meeting if a consent is signed by all directors. An action permitted to be taken at a committee meeting may be taken without a meeting if a consent is signed by all members of the committee. A consent under this subsection must be in writing and must set forth the action to be taken. The consent has the effect of a unanimous vote and may be stated as a unanimous vote in articles or other documents filed with the secretary of state under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.030. CORPORATION'S GENERAL POWERS. (a) Subject to Section 221.035, a development corporation has the rights and powers necessary or convenient to accomplish the corporation's purposes, including the power to:

(1) acquire, by purchase, devise, gift, lease, or a combination of those methods, construct, or improve, or cause a user to acquire, construct, or improve, one or more health facilities located in the state and located:

(A) wholly or partly within the limits of the sponsoring entity; or

(B) outside the limits of the sponsoring entity, with the consent of each other sponsoring entity in which the health facility is or is to be located;

(2) lease as lessor all or part of a health facility for the rental amount and on the terms and conditions that the corporation considers advisable;

(3) sell for installment payments or other method of payment, option or contract for sale, and convey all or part of a health facility for the price and on the terms and conditions that the corporation considers advisable;

(4) make a contract, incur a liability, borrow money at a rate of interest the corporation determines, and secure bonds or obligations by mortgage or pledge of all or part of the corporation's property, franchises, and income;

(5) make a secured or unsecured loan to provide temporary or permanent financing or refinancing of all or part of the cost of a health facility, including refunding of an outstanding obligation, mortgage, or advance issued, made, or given by a person for the cost of a health facility;

(6) charge and collect interest on a loan for the loan payments and on the terms that the board of directors considers advisable;

(7) lend money for its corporate purposes, invest and reinvest corporate funds, and take and hold property as security for the payment of the money loaned or invested;

(8) purchase, receive, lease, or acquire in another manner, own, hold, improve, or use property or an interest in property, or deal in any other manner in or with that property, regardless of location, as the purposes of the corporation require or, if the property is donated, subject to the terms of the donation;

(9) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or part of the corporation's property and assets;

(10) appoint agents of the corporation for the period the corporation determines, and determine their duties;

(11) sue, be sued, complain, and defend in its corporate name; and

(12) have a corporate seal, which the corporation may alter as it considers necessary, and use the seal by having it or a facsimile of it impressed on, affixed to, or reproduced on an instrument required or authorized to be executed by the corporation's proper officers.

(b) A development corporation may not incur a financial obligation under this chapter unless it is payable solely from:

(1) bond proceeds;

(2) revenue derived from the lease or sale of a health facility or from a loan made by a corporation to finance or refinance a health facility in whole or part;

(3) revenue derived from operating a health facility; or

(4) other revenue provided by a user of a health facility.

(c) A sponsoring entity may not delegate to a development corporation the power of taxation or eminent domain, police power, or an equivalent sovereign power of the state or the sponsoring entity.

(d) This section does not authorize a corporate director or officer to exercise a power enumerated by this section in a manner inconsistent with the development corporation's articles of incorporation or bylaws or beyond the scope of the corporation's purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.031. CONVEYANCE OF LAND. (a) A development corporation may convey land by deed if the conveyance is authorized by an appropriate resolution of the board of directors. The deed may be with or without the corporation's seal and must be signed by the corporation's president, vice-president, or attorney.

(b) If the deed is acknowledged by the signing officer or attorney to be the act of the development corporation, or if the deed is proved in the manner prescribed for other conveyances of land, it may be recorded in the same manner and with the same effect as other deeds.

(c) A deed that is signed by the development corporation's president or vice-president and recorded is prima facie evidence that the board of directors adopted the appropriate resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.032. PERFECTION OF SECURITY INTEREST. A security interest granted by a corporation may be perfected in the manner and with the effect provided by Chapter 9, Business & Commerce Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.32, eff. July 1, 2001.

Sec. 221.033. TAXATION. (a) A health facility, including a leasehold estate in a health facility, that is owned by a development corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation under Title 1,

Tax Code, shall be assessed to the user of the health facility to the same extent and subject to the same exemptions from taxation as if the user owned the health facility. If there is more than one user of the health facility, the health facility shall be assessed to the users in proportion to the value of the rights of each user to occupy, operate, manage, or employ the health facility.

(b) The user of a health facility is considered the owner of the health facility for purposes of the application of:

(1) sales and use taxes in construction, sale, lease, or rental of the health facility; and

(2) other taxes levied or imposed by the state or a political subdivision of the state.

(c) A development corporation is engaged exclusively in performance of charitable functions and is exempt from taxation by the state, a municipality, or other political subdivision of the state. Bonds issued by a corporation under this chapter, a transfer of the bonds, interest on the bonds, and a profit from the sale or exchange of the bonds are exempt from taxation by the state, a municipality, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.034. NET EARNINGS. A development corporation is a nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and expenses of accomplishing its public purpose may benefit a person other than the sponsoring entity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.035. ALTERATION OF DEVELOPMENT CORPORATION OR ACTIVITIES. The sponsoring entity, in its sole discretion, may alter the development corporation's structure, organization, programs, or activities, subject only to limitations provided by law relating to the impairment of contracts entered into by the corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.036. EXAMINATION OF BOOKS AND RECORDS. A

representative of the sponsoring entity may examine all books and records of the development corporation at any time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.037. WAIVER OF NOTICE. If a notice is required to be given to a director by this chapter, the articles of incorporation, or bylaws, a waiver of the notice signed by the person entitled to the notice, before or after the time that would have been stated in the notice, is equivalent to giving the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BONDS

Sec. 221.061. AUTHORITY TO ISSUE; USE OF PROCEEDS. (a) A development corporation may issue bonds to pay all or part of the cost of a health facility or for cash management.

(b) Before preparation and issuance of definitive bonds, the development corporation may issue interim receipts or temporary bonds, with or without coupons, that may be exchanged for definitive bonds after the definitive bonds are executed and available for delivery. The term of the interim receipts or temporary bonds may not exceed three years.

(c) Bond proceeds may be used only for payment of all or part of the cost of a health facility for which the bonds have been issued, for making a loan in the amount of all or part of the cost of that health facility, or for deposit to a reserve fund for the bonds. The proceeds shall be disbursed in the manner and under the restrictions determined by the development corporation.

(d) From the bond proceeds, the development corporation shall be paid an amount equal to:

(1) the corporation's expenses and costs in issuing, selling, and delivering the bonds, including financing, legal, financial advisory, and printing expenses; and

(2) the compensation paid to employees of the corporation for the time the employees spend on activities relating to issuing, selling, and delivering the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.062. INFORMATION FILED WITH SPONSORING ENTITY. (a) Not later than the 15th day before the date on which bonds are issued, the proceeds of which are to be used to pay all or part of the cost of a health facility, the development corporation shall file with the sponsoring entity's governing body a full and complete description of the health facility, including:

(1) an explanation of the projected costs and of the necessity for the proposed health facility; and

(2) the name of the proposed user of the health facility.

(b) If the bond proceeds are to be used for cash management, the user shall file with the sponsoring entity's governing body a forecast of the user's need for cash based on the user's most recent revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month for a period of not more than one year.

(c) After issuing the bonds and before using all of the bond proceeds, the development corporation may amend the filing required by this section and use the proceeds as provided by the amended filing if the sponsoring entity's governing body determines that the use according to the amended filing furthers the purposes of this chapter.

(d) Information filed under this section is public information open to public inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.063. TERMS. (a) Bonds issued under this chapter must be dated and bear interest at a fixed or variable rate determined by the development corporation. The bonds must mature at the time determined by the corporation, but may not mature later than 40 years after their date of issuance. Bonds issued for cash management may not mature later than 24 months after their date of issuance.

(b) The bonds may be made redeemable before maturity at the price and on the terms determined by the development corporation.

(c) The bonds, including any interest coupons initially attached, must be in the form and denomination, payable at the place, and executed or authenticated in the manner that the development

corporation determines.

(d) The bonds may be issued in coupon or registered form or be payable to a specific person, as the development corporation determines. The corporation may provide for the registration of coupon bonds as to principal only, for the conversion of coupon bonds into fully registered bonds without coupons, and for reconversion into coupon bonds of fully registered bonds without coupons. The duty of conversion or reconversion may be imposed on a trustee in a trust agreement.

(e) The signature or facsimile of the signature of an officer that appears on the bonds or coupons remains valid and sufficient for all purposes regardless of whether the person ceases to be an officer before delivery of and payment for the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.064. SALE. (a) A development corporation shall sell at a public or private sale the bonds at the price it determines.

(b) The net effective interest rate on the bonds, computed according to Chapter 1204, Government Code, may not exceed the maximum annual interest rate established for business loans of $250,000 or more in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.249, eff. Sept. 1, 2001.

Sec. 221.065. REFUNDING BONDS. (a) A development corporation may issue bonds to refund any of its valid outstanding bonds, including any bonds issued for unspecified projects and including any redemption premium on the bonds and interest accrued to the date of redemption, on a finding by the board of directors of the development corporation that there is a public benefit and a public purpose for the refunding.

(b) The provisions of this chapter generally applicable to bonds apply to the issuance, maturity, terms, and holder's rights in the refunding bonds, and to the development corporation's rights, duties, and obligations in relation to the refunding bonds.

(c) The development corporation may issue the refunding bonds in exchange or substitution for outstanding bonds or may sell the

refunding bonds and use the proceeds to pay or redeem outstanding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 829, Sec. 2, eff. June 19, 1993.

Sec. 221.066. SOURCE OF PAYMENT; BONDS NOT GENERAL OBLIGATION. (a) The principal of, interest on, and any redemption penalty on bonds issued under this chapter are payable solely from, and may be secured by a pledge of all or part of, one or more of the following:

(1) the bond proceeds;

(2) revenue derived from the lease or sale of a health facility or from a loan made by a development corporation to finance or refinance all or part of a health facility;

(3) revenue derived from the operation of a health facility; or

(4) other revenue provided by a user of a health facility.

(b) The bonds are not an obligation or a pledge of the faith and credit of the state, a sponsoring entity, or other political subdivision or agency of the state.

(c) Each bond must contain on its face a statement that:

(1) neither the state nor a political subdivision or agency of the state, including the sponsoring entity, is obligated to pay the bonds or interest on the bonds; and

(2) neither the faith and credit nor the taxing power of the state, the sponsoring entity, or other political subdivision or agency of the state is pledged to the payment of the principal of or interest or any redemption premium on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.067. EXEMPT SECURITIES. (a) Bonds issued under this chapter and any interest coupons are exempt securities under The Securities Act (Title 12, Government Code).

(b) If the bonds are secured by an agreement by a user to pay to the development corporation amounts sufficient to pay the principal of and interest and any redemption premium on the bonds, the agreement, for the purposes of The Securities Act (Title 12, Government Code), is a separate security issued to purchasers of the

bonds by the user, and not by the corporation. The agreement is exempt from that Act only if:

(1) that Act exempts the agreement; or

(2) the bonds or the payments to be made under the agreement are guaranteed by any person and the guarantee is an exempt security under that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.28, eff. January 1, 2022.

Sec. 221.068. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Unless made ineligible under other law, rules, or rulings, bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary, trustee, or guardian; and

(7) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposit of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons, if any.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. DISSOLUTION OF CORPORATION

Sec. 221.081. DISSOLUTION AUTHORIZED. After a development corporation's bonds and other obligations are paid and discharged, or adequate provision is made for their payment and discharge, the sponsoring entity's governing body by written resolution shall authorize and direct the dissolution of the corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.082. ARTICLES OF DISSOLUTION. (a) Articles of dissolution on behalf of the corporation shall be executed by:

(1) the president or vice-president and the secretary or assistant secretary; or

(2) the presiding officer of the sponsoring entity's governing body and the secretary or clerk of that body.

(b) An officer signing the articles of dissolution shall verify them.

(c) The articles of dissolution must include:

(1) the name of the development corporation;

(2) the name and address of the sponsoring entity;

(3) a statement that the dissolution was authorized by the governing body of the sponsoring entity;

(4) the date of the meeting at which the dissolution was authorized;

(5) a statement that all of the corporation's bonds and obligations have been paid and discharged or that adequate provision has been made for their payment and discharge; and

(6) a statement that no suit is pending in a court against the corporation or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the corporation in each pending suit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.083. CERTIFICATE OF DISSOLUTION. (a) The original and two copies of the articles of dissolution shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of dissolution comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of dissolution and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of dissolution with a copy of

the articles of dissolution attached to each.

(c) The secretary of state shall deliver a certificate of dissolution with a copy of the articles of dissolution attached to the representative of the dissolved development corporation and to the sponsoring entity's governing body.

(d) The existence of the development corporation ceases on issuance of the certificates of dissolution, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of the corporation as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.084. EXTENSION OF DURATION. If a corporation is dissolved by expiration of its duration, the corporation may amend its articles of incorporation to extend its duration within three years after the date of dissolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.085. VESTING PROPERTY IN SPONSORING ENTITY. The title to all funds and other property owned by a development corporation when it dissolves automatically vests in the sponsoring entity without further conveyance, transfer, or other act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.086. RIGHTS, CLAIMS, AND LIABILITIES BEFORE DISSOLUTION. The dissolution of a development corporation by issuance of a certificate of dissolution or expiration of its duration does not impair a remedy available to or against the corporation or a director or officer of the corporation for a right or claim existing or a liability incurred before the dissolution, if action or other proceeding on the remedy is begun within three years after the date of the dissolution. The action may be prosecuted or defended by the corporation in its corporate name. The directors and officers may take corporate or other action as appropriate to protect the remedy, right, or claim.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. ADMINISTRATION BY SECRETARY OF STATE

Sec. 221.101. ADMINISTRATION OF CHAPTER. The secretary of state may act as reasonably necessary to efficiently administer this chapter and to perform the duties imposed by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.102. FEES. (a) The secretary of state shall charge and collect fees for:

(1) filing articles of incorporation and issuing two certificates of incorporation;

(2) filing articles of amendment and issuing two certificates of amendment;

(3) filing a statement of change of address of registered office or change of registered agent, or both;

(4) filing restated articles of incorporation and issuing two restated articles of incorporation; and

(5) filing articles of dissolution.

(b) The fees are in the amounts charged by the secretary of state for the respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.103. NOTICE AND APPEAL OF DISAPPROVAL. (a) If the secretary of state fails to approve a document required by this chapter to be approved by the secretary of state, the secretary of state, not later than the 10th day after the date the document is delivered to the secretary of state, shall give written notice of the disapproval to the person who delivered the document. The notice must state the reasons for the disapproval.

(b) The person may appeal the disapproval to a district court of Travis County by filing with the clerk of the court a petition including a copy of the disapproved document and a copy of the disapproval notice.

(c) The court shall try the matter de novo, and either sustain the secretary of state's action or direct the secretary of state to take action the court considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 221.104. DOCUMENTS AS PRIMA FACIE EVIDENCE. The following documents shall be received by a court, public office, or official body as prima facie evidence of the facts, or the existence or nonexistence of the facts, stated in the document:

(1) a certificate issued by the secretary of state under this chapter;

(2) a copy, certified by the secretary of state, of a document filed in the office of the secretary of state under this chapter; and

(3) a certificate of the secretary of state under the state seal as to the existence or nonexistence of a fact relating to a development corporation that would not appear from a document or certificate under Subdivision (1) or (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 33, eff. Aug. 30, 1993.

CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION, INSPECTION, AND REGULATION

SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS

Sec. 222.001. SHORT TITLE. This subchapter may be cited as the Texas Hospital Survey and Construction Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.002. DEFINITIONS. In this subchapter:

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health

Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Hospital" includes a public health center, a general hospital, or a tuberculosis, mental, chronic disease, or other type of hospital, and related facilities such as a laboratory, outpatient department, nurses' home and training facility, or central service facility operated in connection with a hospital.

(5) "Public health center" means a publicly owned facility for providing public health services and includes related facilities such as a laboratory, clinic, or administrative office operated in connection with a facility for providing public health services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.003. EXCEPTION. This subchapter does not apply to a hospital furnishing primarily domiciliary care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF HOSPITALS. (a) The department is the only agency of the state authorized to make an inventory of existing hospitals, survey the need for construction of hospitals, and develop a program of hospital construction as provided by the federal Hospital Survey and Construction Act (42 U.S.C. Section 291 et seq.).

(b) The executive commissioner may adopt rules to meet the requirements of the federal Hospital Survey and Construction Act relating to survey, planning, and construction of hospitals and public health centers. The executive commissioner shall adopt other rules the executive commissioner considers necessary.

(c) The commissioner may establish methods of administration and shall:

(1) require reports and make inspections and investigations as the commissioner considers necessary; and

(2) take other action that the commissioner considers necessary to carry out the federal Hospital Survey and Construction Act and the regulations adopted under that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.006. FUNDING. (a) The department shall accept, on behalf of the state, a payment of federal funds or a gift or grant made to assist in meeting the cost of carrying out the purpose of this subchapter, and may spend the payment, gift, or grant for that purpose.

(b) The department shall deposit the payment, gift, or grant in the state treasury to the credit of the hospital construction fund.

(c) The department shall deposit to the credit of the hospital construction fund money received from the federal government for a construction project approved by the surgeon general of the United States Public Health Service. The department shall use the money only for payments to applicants for work performed and purchases made in carrying out approved projects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES OF OTHER ENTITIES. To the extent the department considers desirable to carry out the purposes of this subchapter, the department may enter into an agreement for the use of a facility or service of another public or private department, agency, or institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff.

April 2, 2015.

Sec. 222.008. EXPERTS AND CONSULTANTS. The department may contract for services of experts or consultants, or organizations of experts or consultants, on a part-time or fee-for-service basis. The contracts may not involve the performance of administrative duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.009. REPORT. (a) The department annually shall report to the executive commissioner on activities and expenditures under this subchapter.

(b) The department shall include in the report recommendations for additional legislation that the department considers appropriate to furnish adequate hospital, clinic, and similar facilities to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF HEALTH CARE FACILITIES

Sec. 222.022. DEFINITIONS. In this subchapter:

(1) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Health care facility" has the meaning assigned by Section 104.002, except that the term does not include a chemical dependency treatment facility licensed by the Department of State Health Services under Chapter 464.

(3) "Inspection" includes a survey, inspection, investigation, or other procedure necessary for a state agency to carry out an obligation imposed by federal and state laws, rules, and regulations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state agency may make or require only those inspections necessary to carry out obligations imposed on the agency by federal and state laws, rules, and regulations.

(b) Instead of making an on-site inspection, a state agency shall accept an on-site inspection by another state agency charged with making an inspection if the inspection substantially complies with the accepting agency's inspection requirements.

(c) A state agency shall coordinate its inspections within the agency and with inspections required of other agencies to ensure compliance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF INSPECTION. (a) Except as provided by Subsection (c), a hospital licensed by the Department of State Health Services is not subject to additional annual licensing inspections before the department issues the hospital a license while the hospital maintains:

(1) certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); or

(2) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(b) If the Department of State Health Services licenses a hospital exempt from an annual licensing inspection under Subsection (a), the department shall issue a renewal license to the hospital if the hospital annually:

(1) submits a complete application required by the department;

(2) remits any applicable fees;

(3) submits a copy of documentation from the certification or accreditation body showing that the hospital is certified or accredited; and

(4) submits a copy of the most recent fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

(c) The Department of State Health Services may conduct an inspection of a hospital exempt from an annual licensing inspection under Subsection (a) before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and the department determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 16, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 223, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.026. COMPLAINT INVESTIGATIONS AND ENFORCEMENT AUTHORITY. (a) Section 222.024 does not affect the authority of the Department of State Health Services to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) to:

(1) reinspect a hospital if a hospital applies for the reissuance of its license after a final ruling upholding the suspension or revocation of a hospital's license, the assessment of administrative or civil penalties, or the issuance of an injunction against the hospital for violations of provisions of the licensing law, rules adopted under the licensing law, special license conditions, or orders of the commissioner of state health services; or

(2) investigate a complaint against a hospital and, if appropriate, enforce the provisions of the licensing law on a finding by the Department of State Health Services that reasonable cause exists to believe that the hospital has violated provisions of the licensing law, rules adopted under the licensing law, special license

conditions, or orders of the commissioner of state health services; provided, however, that the Department of State Health Services shall coordinate with the federal Centers for Medicare and Medicaid Services and its agents responsible for the inspection of hospitals to determine compliance with the conditions of participation under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), so as to avoid duplicate investigations.

(b) The executive commissioner shall by rule establish a procedure for the acceptance and timely review of complaints received from hospitals concerning the objectivity, training, and qualifications of the persons conducting the inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 64, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 17, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The Department of State Health Services shall ensure that a licensed physician involved in direct patient care as defined by the Texas Medical Board is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in hospitals.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 63, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY

Sec. 222.041. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(4) "ICF-IID" means the medical assistance program serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.080, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.042. LICENSING OF BEDS AND FACILITIES. The department may not license or approve as meeting licensing standards new ICF-IID beds or the expansion of an existing ICF-IID facility unless the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Section 533.062.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 747, Sec. 26, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.044. FOLLOW-UP SURVEYS. (a) The department shall conduct follow-up surveys of ICF-IID facilities to:

(1) evaluate and monitor the findings of the certification or licensing survey teams; and

(2) ensure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(b) A provider shall correct any additional deficiency cited by the department. The department may not impose an additional punitive action for the deficiency unless the provider fails to correct the deficiency within the period during which the provider is required to correct the deficiency.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.082, eff. Sept. 1,

1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

Sec. 222.046. SURVEYS OF ICF-IID FACILITIES. (a) The department shall ensure that each survey team sent to survey an ICF-IID facility includes a qualified intellectual disabilities professional, as that term is defined by federal law.

(b) The department shall require that each survey team sent to survey an ICF-IID facility conduct a final interview with the provider to ensure that the survey team informs the provider of the survey findings and that the survey team has requested the necessary information from the provider. The survey team shall allow the provider to record the interview. The provider shall immediately give the survey team a copy of any recording.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 65, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0566, eff. April 2, 2015.

CHAPTER 223. HOSPITAL PROJECT FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 223.001. SHORT TITLE. This chapter may be cited as the Hospital Project Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.002. DEFINITIONS. In this chapter:

(1) "Authority" means a public health authority, including a hospital authority created under Chapter 262 or 264.

(2) "Bond" includes a note.

(3) "Issuer" means an authority, municipality, county, or hospital district.

(4) "Hospital project" means existing or future real, personal, or mixed property, or an interest in that property, other than a nursing home licensed or required to be licensed under the

authority of this state, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be necessary for medical care, research, training, or teaching in this state. A hospital project may include one or more of the following properties if found by the governing body of an issuer to be necessary or convenient for the project:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as:

(i) a hospital, clinic, health facility, extended care facility, outpatient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(ii) a multiunit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(iii) a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment; or

(iv) a medical or dental research facility, medical or dental training facility, or another facility used in the education or training of health care personnel;

(C) property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(D) any other structure, facility, or equipment related or essential to the operation of a health facility or system.

(5) "Nonprofit organization" means:

(A) a nonprofit corporation established under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) an association, foundation, trust, cooperative, or similar person no part of the net earnings of which is distributable to any private shareholder or individual and that incurs a contractual obligation with an issuer with respect to a hospital

project under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.003. HOSPITAL PROJECT COSTS. (a) Hospital project costs include costs related to:

(1) the acquisition of land, a right-of-way, an option to purchase land, an easement, or another interest in land related to a hospital project;

(2) the acquisition, construction, repair, renovation, remodeling, or improvement of a structure to be used as or with a hospital project;

(3) site preparation, including demolishing or removing a structure the removal of which is necessary or incident to providing a hospital project;

(4) expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project, including architectural, engineering, legal, and related services, plans and specifications, studios, surveys, and cost and revenue estimates;

(5) machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project for operation;

(6) financing charges and interest accruing before and during construction, and after completion of construction for not more than two years;

(7) the start-up of a hospital project during construction and after completion of construction for not more than two years;

(8) hospital project financing, including:

(A) legal, accounting, and appraisal fees, expenses, and disbursements;

(B) printing, engraving, and reproduction services; and

(C) an initial or acceptance fee of a trustee or paying agent;

(9) the provision of the hospital project by the issuer, including:

(A) costs incurred directly or indirectly by the issuer;

(B) reimbursement of reasonable sums to the issuer for time spent by its employees in providing the hospital project and its financing; and

(C) the appraisal obtained under Section 223.011(d)(2); and

(10) the authorization, preparation, sale, issuance, and delivery of bonds under this chapter, including:

(A) related fees, charges, and expenses;

(B) expenses and costs described by Section 223.029(b); and

(C) expenses incurred in carrying out a trust agreement relating to hospital project bonds.

(b) The listing of items of cost in Subsection (a) is not inclusive of all hospital costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. FINANCING HOSPITAL PROJECTS

Sec. 223.011. PROVIDING HOSPITAL PROJECTS. (a) An issuer acting for itself or through a nonprofit organization may provide one or more hospital projects by acquisition, construction, or improvement. An acquisition may occur by purchase, devise, gift, lease, or a combination of those methods.

(b) A hospital project must be located in this state and within or partially within the issuer's boundaries, except that a hospital project of a municipality may be located:

(1) outside the municipality's limits if it is within the municipality's extraterritorial jurisdiction; or

(2) in another municipality if the governing body of the other municipality consents to the former municipality's provision of the project.

(c) An issuer may only acquire a hospital project from a nonprofit organization that has been in existence and has operated the hospital project for at least three years before the date of acquisition by the issuer.

(d) An issuer must affirmatively find that the cost of an acquired hospital project is not more than:

(1) the actual audited cost of the hospital project to the date of acquisition; or

(2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.012. TITLE TO PROJECTS. (a) An issuer may vest title to a hospital project provided under this chapter in a nonprofit organization.

(b) If the issuer vests the title in a nonprofit organization, it may retain a mortgage interest in the hospital project. The mortgage interest expires when all bonds of the issuer sold to provide the hospital project are paid or provision has been made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.013. CONTRACTS RELATING TO HOSPITAL PROJECT. (a) An issuer may execute a contract, including a lease, with a nonprofit organization with respect to a hospital project. A contract may authorize the nonprofit organization to use, operate, or acquire the hospital project on the terms, including payment provisions, the issuer's governing body determines to be advisable.

(b) A contract may include the sale of a hospital project to a nonprofit organization, including a nonprofit organization using the hospital project. The terms of the sale may include installment payments. The sale must be fully consummated when all bonds of the issuer issued to provide the hospital project are paid or provision is made for their final payment if, during the time the bonds or interest on the bonds remains unpaid, there is no failure to make any payments owing under any lease or contract at the time and in the manner as the payments come due.

(c) A contract under this chapter may be for the term agreed to by the parties and may provide that the contract continues until the bonds specified in the contract, or refunding or substitution bonds issued in place of those bonds, are fully paid or provision is made for their final payment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.014. AUTHORITY OF ISSUER. An issuer has full and complete authority relating to its bonds, a lease agreement in which the issuer is a lessor, or a sale or other contract, subject only to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.015. OBLIGATIONS LIMITED. (a) The issuer may not incur a financial obligation under this chapter that cannot be paid from the proceeds of hospital project bonds, revenues derived from operating a hospital project, or other revenues that may be provided by a nonprofit organization in accordance with this chapter.

(b) The legislature or an issuer may not make an appropriation to pay any part of a cost of a hospital project or any operating cost of a hospital project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.016. EMINENT DOMAIN. (a) Under this chapter, an issuer may not acquire by eminent domain a hospital project, or any part of a hospital project, to be sold or leased under this chapter.

(b) Land previously acquired by eminent domain by an issuer may be sold or leased under this chapter if the governing body of the issuer determines that:

(1) the use of the land will not interfere with the purpose for which the land was originally acquired or that the land is no longer needed for that purpose;

(2) at least seven years have elapsed since the date the land was acquired by eminent domain; and

(3) the land was not acquired for park purposes or, if the land was acquired for park purposes, the sale or lease of parkland has been approved at an election held under Section 1502.055, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.250, eff. Sept. 1, 2001.

SUBCHAPTER C. HOSPITAL PROJECT BONDS

Sec. 223.021. ISSUANCE OF HOSPITAL PROJECT BONDS. (a) An issuer may provide for the issuance of negotiable revenue bonds or other evidences of indebtedness for paying hospital project costs. The bonds may be issued subject only to the requirements of this chapter.

(b) As the governing body of the issuer determines to be in the best interest of the issuer, one or more series of bonds may be issued for each hospital project, or more than one hospital project may be combined in one or more series of bonds, but each hospital project may be considered separately with respect to Subsections (c), (d), and (e), and Sections 223.022-223.024.

(c) Before issuing bonds, the governing body of an issuer must adopt a resolution:

(1) declaring its intention to issue bonds; and

(2) stating the maximum amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of the bonds.

(d) Unless the governing body of the issuer orders an election on the issuance of the bonds, a substantial copy of the resolution shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first publication must be made not earlier than the 45th day before the tentative date stated in the resolution. The third publication must be made not later than the 11th day before the tentative date.

(e) Before authorizing the issuance of any bonds or ordering an election on any matters authorized by this chapter, the issuer must deposit with the chief administrative officer of the issuer a complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the name of each owner of the nonprofit organization for whom the hospital project is to be constructed. The required description is public information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.022. ELECTION ON BONDS. (a) The governing body of an issuer shall order and hold an election on the question of the

issuance of hospital project bonds if at least five percent or 20,000 of the voters qualified to vote in an election held by the issuer, whichever is less, file a written protest against the issuance of the bonds before the close of business on the business day before the tentative date in the resolution for the authorization of the bonds.

(b) The issuer's governing body may order an election on its own motion without the filing of a protest.

(c) In addition to the contents required by the Election Code, the election order must specify the location of and the presiding judge and alternate judge for each polling place.

(d) Notice of a bond election shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first notice must be published not earlier than the 45th day before the date set for the election, and the third notice must be published not later than the 11th day before the date set for the election.

(e) The election shall be conducted in accordance with the general laws pertaining to bond elections in municipalities, except as modified by this chapter.

(f) The ballot shall provide for voting for or against the proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects."

(g) The governing body shall declare whether a majority of the voters voting in the election approve the proposition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.023. ELECTION RESULTS. (a) If the proposition is approved by a majority of the voters voting in the election, the issuer may authorize the bonds.

(b) If the proposition is not approved, an election on the issuing of revenue bonds for the hospital project that was the subject of the election may not be ordered within six months after that election, and bonds may not be issued for the hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.024. PROTEST NOT FILED. If a protest requiring an election is not filed under Section 223.022(a) and an election is not called under Section 223.022(b), the issuer may issue the bonds under the resolution without an election for two years after the tentative date specified in the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.025. LIMITATIONS ON BONDS. (a) Bonds issued in accordance with this chapter are not general obligations or a pledge of the faith and credit of this state, the issuer, or another political subdivision of this state. The bonds are payable solely from revenues of the hospital project for which they are issued or from other revenues provided by a nonprofit organization. Money of this state or a political subdivision of this state from any source, including tax revenue, but excluding revenue of the hospital project being financed with the bonds, may not be used to pay the principal of, any redemption premium for, or interest on revenue bonds or refunding bonds issued under this chapter.

(b) Each revenue bond must state on its face that:

(1) this state, the issuer, or any political subdivision of this state is not obligated to pay the principal of, any redemption premium for, or interest on the bonds except from the revenues pledged for that purpose; and

(2) the faith, credit, or the taxing power of this state, the issuer, or any political subdivision of this state is not pledged to the payment of the principal of, any redemption premium for, or interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.026. FORM AND TERM OF BONDS. (a) The issuer shall determine the form of the bonds, the date of the bond issue, the price and interest rate of the bonds, and the maturity for the bonds, which may not be more than 40 years after its date.

(b) The issuer may:

(1) make the bonds redeemable before maturity and determine the prices and conditions for early redemption;

(2) determine:

(A) the interest coupons to be attached to the bonds;

(B) the denominations of the bonds; and

(C) the places of payment of the bonds' principal, any redemption premium, and interest;

(3) issue the bonds in coupon or in registered form, or both;

(4) make the bonds payable to a specific person;

(5) provide for the registration of coupon bonds as to principal or as to principal and interest; and

(6) provide for the conversion of coupon bonds into registered bonds without coupons and for the reconversion into coupon bonds of any registered bonds without coupons.

(c) If the duty of conversion or reconversion of a bond is imposed on a trustee in a trust agreement, the substituted bonds need not be reapproved by the attorney general, and the bonds remain incontestable.

(d) The issuer may provide for execution of the bonds and any coupons using a facsimile signature under Chapter 618, Government Code. If the signature or a facsimile signature of a person who has been an officer appears on a bond or coupon, the signature or facsimile signature is valid and sufficient for all purposes, regardless of whether the person is an officer when the bonds are delivered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.251, eff. Sept. 1, 2001.

Sec. 223.027. DEDICATED REPAYMENT REVENUE. The principal of, any redemption premium for, and interest on hospital project bonds are payable from and secured, as specified by the resolution of the governing body or in any trust agreement or other instrument securing the bonds, by a pledge of all or part of the revenues of the issuer to be derived from:

(1) the ownership, operation, lease, use, mortgage, or sale of the hospital project for which the bonds have been issued; or

(2) other revenues provided by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.028. SECURITY FOR BONDS. (a) Bonds issued under this chapter may be secured by a trust agreement between the issuer and a trust company or bank having the powers of a trust company in this state.

(b) A trust agreement may pledge or assign lease income, contract payments, fees, or other charges to be received from a nonprofit organization. The governing body of the issuer may secure the bonds additionally by a mortgage, a deed of trust lien, or other security interest on a designated hospital project vesting in the trustee the power to sell the hospital project for the payment of the indebtedness, the power to operate the hospital project, and any other power for the further security of the bonds.

(c) The trust agreement may:

(1) evidence a pledge of all or any part of the revenue of the issuer from the ownership, operation, lease, use, mortgage, or sale of a hospital project for the payment of principal of, any redemption premium for, and interest on the bonds when due and payable;

(2) provide for the creation and maintenance of reserves;

(3) set forth the rights and remedies of the bondholders and of the trustee;

(4) restrict the individual right of action by bondholders as is customary in trust agreements securing bonds and debentures of corporations;

(5) contain provisions the issuer considers reasonable and proper for the security of the bondholders; and

(6) provide for the issuance of bonds to replace lost, stolen, or mutilated bonds.

(d) A trust agreement or resolution providing for the issuance of bonds may provide for protecting and enforcing the rights and remedies of the bondholders as reasonable and proper, including covenants setting forth the duties of the issuer and the nonprofit organization in relation to:

(1) the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which the bonds are issued; and

(2) the custody, safeguarding, and application of all money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.029. USE OF PROCEEDS. (a) The proceeds of the bonds may be:

(1) used only for the payment of hospital project costs for which the bonds are issued; and

(2) disbursed in the manner and subject to the restrictions provided in the resolution authorizing the issuance or in the trust agreement securing the bonds.

(b) The issuer shall be paid, from the proceeds of its bonds, money in the amount equal to:

(1) the issuer's actual expenditures for financing, legal, printing, and other expenses incurred in issuing, selling, and delivering the bonds; and

(2) the compensation paid to the issuer's employees for the time the employees spent on activities related to the issuance, sale, and delivery of the bonds.

(c) If the amount of proceeds exceeds the cost of the hospital project for which the bonds are issued, the excess shall be deposited to the credit of the sinking fund for the bonds.

(d) The governing body of the issuer may provide for a bond reserve fund in the resolution authorizing the bonds or an instrument securing the bonds and may set aside amounts from the proceeds for payments into the reserve fund.

(e) Proceeds from the sale of bonds may be invested in:

(1) direct, indirect, or guaranteed obligations of the United States that mature in a manner specified by the resolution authorizing the bonds or another instrument securing the bonds; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(f) The issuer's governing body may designate a trust company or a bank with trust powers to act as depository for proceeds of bonds or revenues from a lease or other contract. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.030. TEMPORARY OBLIGATIONS. (a) Before the issuance

of definitive bonds, the issuer may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery.

(b) The term of an interim receipt or temporary bond may not be more than two years.

(c) The issuer shall submit the interim receipts or temporary bonds to the attorney general in accordance with Section 223.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.031. EXAMINATION OF BONDS. (a) After issuance of the bonds is authorized and before delivery of the bonds to their purchasers, the bonds and the proceedings authorizing their issuance and securing the bonds shall be presented to the attorney general for examination.

(b) If the bonds state that they are secured by a pledge of all or part of the revenues of the issuer to be derived from a lease or other contract, the contract shall also be submitted to the attorney general.

(c) If the attorney general finds that the bonds have been authorized in accordance with state law and any contract securing the bonds has been made in accordance with state law, the attorney general shall approve the bonds and contract.

(d) The comptroller shall register the bonds when they are approved. After approval and registration, the bonds and contract submitted with the bonds are valid and binding obligations according to their terms and are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.032. REFUNDING BONDS. (a) An issuer by resolution may authorize the issuance of revenue bonds to refund:

(1) outstanding bonds or other evidences of indebtedness that have been issued to provide a hospital project; or

(2) outstanding obligations, mortgages, or advances issued, made, or given by a nonprofit organization for the cost of a hospital project.

(b) The amounts refunded may include the principal of and any redemption premium for the bonds or other evidences of indebtedness,

and any interest accruing to the date of redemption.

(c) The bonds or other evidences of indebtedness to be refunded need not have been issued under this chapter and need not have been originally issued by the issuer of the refunding bonds.

(d) This subchapter governs the issuance of refunding bonds, the maturities and other details of the bonds, the rights of the bondholders, and rights, duties, and obligations of the refunding bond issuer.

(e) The issuer may issue the refunding bonds in exchange or substitution for outstanding bonds or other evidences of indebtedness or may sell the refunding bonds and use the proceeds for paying or redeeming outstanding bonds or other evidences of indebtedness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.033. ENFORCEMENT OF AGREEMENTS. (a) An agreement made under this chapter may provide, in the event of default in the payment of the principal of, interest on, or any redemption premium for bonds subject to the agreement or in the performance of an agreement contained in the proceedings, mortgage, or instruments relating to the bonds, for enforcement of the payment or performance by:

(1) mandamus; or

(2) the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with the resolution, mortgage, or instruments.

(b) A mortgage to secure hospital project bonds may provide for foreclosure and the sale of the property secured by the mortgage on default in the mortgage payment or the violation of an agreement contained in the mortgage. The foreclosure and sale may occur under proceedings in equity or in any other manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder of any of the bonds secured by the mortgage may be the purchaser at a foreclosure sale if the trustee or bondholder is the highest bidder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.034. MEMBERSHIP OF GOVERNING BODY NOT SUBJECT TO

CHANGE. The resolution authorizing the issuance of hospital project bonds, the trust agreement securing the bonds, or any other agreement relating to the bonds may not prescribe the method of selecting or the term of office of any member of the issuer's governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.035. BONDS TAX EXEMPT. The bonds issued under this chapter, their transfer, and interest from the bonds, including profit made from their sale, are exempt from taxation by this state and a municipality or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.036. BONDS AS SECURITIES. (a) Bonds issued under this chapter and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and are exempt securities under The Securities Act (Title 12, Government Code).

(b) A lease agreement, sales agreement, or other contract under this chapter is not a security under The Securities Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.29, eff. January 1, 2022.

Sec. 223.037. BONDS AS INVESTMENTS. (a) Unless the bonds issued under this chapter are ineligible for investments in accordance with the criteria established in other statutes, rulings, or regulations of this state or the United States, the bonds are legal and authorized investments for:

(1) a bank;
(2) a savings bank;
(3) a trust company;
(4) a savings and loan association;
(5) an insurance company;
(6) a fiduciary;
(7) a trustee or guardian; and

(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of this state.

(b) The bonds may secure the deposits of public funds of this state or a municipality, county, school district, or other political corporation or subdivision of this state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 223.038. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer or nonprofit organization, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 224. POLICY ON VACCINE PREVENTABLE DISEASES

Sec. 224.001. DEFINITIONS. In this chapter:

(1) "Covered individual" means:

(A) an employee of the health care facility;

(B) an individual providing direct patient care under a contract with a health care facility; or

(C) an individual to whom a health care facility has granted privileges to provide direct patient care.

(2) "Health care facility" means:

(A) a facility licensed under Subtitle B, including a hospital as defined by Section 241.003; or

(B) a hospital maintained or operated by this state.

(3) "Regulatory authority" means a state agency that regulates a health care facility under this code.

(4) "Vaccine preventable diseases" means the diseases

included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.002. VACCINE PREVENTABLE DISEASES POLICY REQUIRED. (a) Each health care facility shall develop and implement a policy to protect its patients from vaccine preventable diseases.

(b) The policy must:

(1) require covered individuals to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(2) specify the vaccines a covered individual is required to receive based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(3) include procedures for verifying whether a covered individual has complied with the policy;

(4) include procedures for a covered individual to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a covered individual who is exempt from the required vaccines, include procedures the individual must follow to protect facility patients from exposure to disease, such as the use of protective medical equipment, such as gloves and masks, based on the level of risk the individual presents to patients by the individual's routine and direct exposure to patients;

(6) prohibit discrimination or retaliatory action against a covered individual who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the health care facility to maintain a written or electronic record of each covered individual's compliance with or

exemption from the policy; and

(8) include disciplinary actions the health care facility is authorized to take against a covered individual who fails to comply with the policy.

(c) The policy may include procedures for a covered individual to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.003. DISASTER EXEMPTION. (a) In this section, "public health disaster" has the meaning assigned by Section 81.003.

(b) During a public health disaster, a health care facility may prohibit a covered individual who is exempt from the vaccines required in the policy developed by the facility under Section 224.002 from having contact with facility patients.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.004. DISCIPLINARY ACTION. A health care facility that violates this chapter is subject to an administrative or civil penalty in the same manner, and subject to the same procedures, as if the facility had violated a provision of this code that specifically governs the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

Sec. 224.005. RULES. The appropriate rulemaking authority for each regulatory authority shall adopt rules necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 8.02, eff. September 28, 2011.

CHAPTER 225. HEALTH PLANNING AND CAPITAL EXPENDITURE REVIEW

Sec. 225.001. DEFINITIONS. In this chapter:

(1) "Capital expenditure" means an expenditure that is not an operation or a maintenance expense under generally accepted accounting principles.

(2) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and any other facility designated a health care facility by federal law. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.002. FEDERAL LAW. A reference in this chapter to federal law is a reference to any pertinent federal authority, including:

(1) the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. No. 96-79);

(2) Pub. L. Nos. 79-725, 88-164, 89-749, and 92-603; and

(3) the federal rules and regulations adopted under a law specified by Subdivision (1) or (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.003. GOVERNOR'S DUTIES RELATING TO HEALTH PLANNING. (a) The governor, as chief executive and planning officer of this state, may perform the duties and functions assigned to the governor by federal law.

(b) The governor may transfer personnel, equipment, records, obligations, appropriations, functions, and duties of the governor's office to another agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.004. CAPITAL EXPENDITURE REVIEW PROGRAM. (a) The governor by executive order may establish a program to comply with federal law to review capital expenditures made by or on behalf of a health care facility if the governor finds that the program is necessary to prevent the loss of federal funds.

(b) The governor may authorize the program to negotiate an agreement on behalf of the state with the Secretary of Health and Human Services to administer a state capital expenditure review program under Section 1122 of the Social Security Act (42 U.S.C. Section 1320a-1), the federal rules and regulations adopted under that Act, or other pertinent federal authority.

(c) If necessary, the governor may use any available funds to implement the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 225.005. EXECUTIVE ORDER. (a) An order issued under Section 225.004(a) must contain the governor's findings, including a brief description of the reason for the findings.

(b) An unrescinded order issued under Section 225.004(a) that has not expired on its own terms expires on September 1 after the next regular legislative session that begins after the date on which the order is issued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 241. HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 241.001. SHORT TITLE. This chapter may be cited as the Texas Hospital Licensing Law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.002. PURPOSE. The purpose of this chapter is to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of certain standards in the construction, maintenance, and operation of hospitals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.003. DEFINITIONS. In this chapter:

(1) "Advanced practice nurse" means a registered nurse recognized as an advanced practice nurse by the Texas Board of Nursing.

(2) "Commission" means the Health and Human Services Commission.

(2-a) "Commissioner" means the commissioner of state health services.

(3) "Comprehensive medical rehabilitation hospital" means a general hospital that specializes in providing comprehensive medical rehabilitation services, including surgery and related ancillary services.

(4) "Department" means the Department of State Health Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "General hospital" means an establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(6) "Governmental unit" means a political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(7) "Hospital" includes a general hospital and a special hospital.

(8) "Medical staff" means a physician or group of physicians and a podiatrist or a group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or

a physical deformity or injury.

(9) "Pediatric and adolescent hospital" means a general hospital that specializes in providing services to children and adolescents, including surgery and related ancillary services.

(10) "Person" means an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(11) "Physician" means a physician licensed by the Texas Medical Board.

(12) "Physician assistant" means a physician assistant licensed by the Texas Physician Assistant Board.

(13) "Podiatrist" means a podiatrist licensed by the Texas Department of Licensing and Regulation.

(14) Repealed by Acts 2005, 79th Leg., Ch. 1286, Sec. 2, eff. September 1, 2005.

(15) "Special hospital" means an establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 79, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 43, Sec. 1, eff. May 7, 1997; Acts 1997, 75th Leg., ch. 623, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 428, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1286 (H.B. 2471), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 67, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0567, eff.

April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.007, eff. September 1, 2019.

Sec. 241.004. EXEMPTIONS. This chapter does not apply to a facility:

(1) licensed under Chapter 242 or 577;

(2) maintained or operated by the federal government or an agency of the federal government; or

(3) maintained or operated by this state or an agency of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 76, Sec. 16, eff. Sept. 1, 1991.

Sec. 241.005. EMPLOYMENT OF PERSONNEL. The department may employ stenographers, inspectors, and other necessary assistants in carrying out the provisions of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.006. COORDINATION OF SIGNAGE REQUIREMENTS IMPOSED BY STATE AGENCIES. (a) The department is authorized to review current and proposed state rules, including department rules and rules of other state agencies, that mandate that a hospital place or post a notice, poster, or sign in a conspicuous place or in an area of high public traffic, concerning the rights of patients or others or the responsibilities of the hospital, which is directed at patients, patients' families, or others. The purpose of this review shall be to coordinate the placement, format, and language contained in the required notices in order to:

(1) eliminate the duplication of information;

(2) reduce the potential for confusion to patients, patients' families, and others; and

(3) reduce the administrative burden of compliance on hospitals.

(b) Notwithstanding any other law, this section applies to all notices, posters, or signs described in Subsection (a).

Added by Acts 1995, 74th Leg., ch. 965, Sec. 3, eff. June 16, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0568, eff. April 2, 2015.

Sec. 241.007. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A hospital shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 6, eff. September 1, 2011.

Sec. 241.008. INDUCED DELIVERIES OR CESAREAN SECTIONS BEFORE 39TH WEEK. A hospital that provides obstetrical services shall collaborate with physicians providing services at the hospital to develop quality initiatives to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at the hospital on a woman before the 39th week of gestation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 299 (H.B. 1983), Sec. 2, eff. September 1, 2011.
Redesignated from Health and Safety Code, Section 241.007 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(25), eff. September 1, 2013.

Sec. 241.009. PHOTO IDENTIFICATION BADGE REQUIRED. (a) In this section, "health care provider" means a person who provides health care services at a hospital as a physician, as an employee of the hospital, under a contract with the hospital, or in the course of a training or educational program at the hospital.

(b) A hospital licensed under this chapter shall adopt a policy requiring a health care provider providing direct patient care at the hospital to wear a photo identification badge during all patient encounters, unless precluded by adopted isolation or sterilization protocols. The badge must be of sufficient size and worn in a manner to be visible and must clearly state:

(1) at minimum the provider's first or last name;

(2) the department of the hospital with which the provider is associated;

(3) the type of license held by the provider, if the provider holds a license under Title 3, Occupations Code; and

(4) if applicable, the provider's status as a student, intern, trainee, or resident.

(c) For purposes of Subsection (b)(3), the identification badge of a health care provider licensed under Title 3, Occupations Code, must clearly state:

(1) "physician," if the provider holds a license under Subtitle B of that title;

(2) "chiropractor," "podiatrist," "midwife," "physician assistant," "acupuncturist," or "surgical assistant," as applicable, if the provider holds a license under Subtitle C of that title;

(3) "dentist" or "dental hygienist," as applicable, if the provider holds a license under Subtitle D of that title;

(4) "licensed vocational nurse," "registered nurse," "nurse practitioner," "nurse midwife," "nurse anesthetist," or "clinical nurse specialist," as applicable, if the provider holds a license under Subtitle E of that title;

(5) "optometrist," or "therapeutic optometrist," as applicable, if the provider holds a license under Subtitle F of that title;

(6) "speech-language pathologist" or "audiologist," as applicable, if the provider holds a license under Subtitle G of that title;

(7) "physical therapist," "occupational therapist," or "massage therapist," as applicable, if the provider holds a license under Subtitle H of that title;

(8) "medical radiologic technologist," "medical physicist," "perfusionist," "respiratory care practitioner," "orthotist," or "prosthetist," as applicable, if the provider holds a license or certificate, as appropriate, under Subtitle K of that title; and

(9) "dietitian," if the provider holds a license under Subtitle M of that title.

Added by Acts 2013, 83rd Leg., R.S., Ch. 108 (S.B. 945), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0569, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 60 (S.B. 1753), Sec. 1, eff. September 1, 2015.

Sec. 241.010. DISPOSITION OF FETAL REMAINS. (a) A hospital shall release the remains of an unintended, intrauterine fetal death on the request of a parent of the unborn child, in a manner appropriate under law and the hospital's policy for disposition of a human body.

(b) Notwithstanding Subsection (a), if the remains of an unintended, intrauterine fetal death weigh less than 350 grams, a hospital shall release the remains on the request of a parent of the unborn child, in a manner that is appropriate under law and consistent with hospital policy.

Added by Acts 2015, 84th Leg., R.S., Ch. 342 (H.B. 635), Sec. 1, eff. September 1, 2015.

Sec. 241.011. HUMAN TRAFFICKING SIGNS REQUIRED. An emergency department of a hospital shall display separate signs, in English and Spanish, that comply with Section 245.025 as if the hospital is an abortion facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 11, eff. September 1, 2017.

Sec. 241.012. IN-PERSON HOSPITAL VISITATION DURING PERIOD OF DISASTER. (a) In this section:

(1) "Hospital" means a hospital licensed under this chapter.

(2) "Qualifying official disaster order" means an order, proclamation, or other instrument issued by the governor, another official of this state, or the governing body or an official of a political subdivision of this state declaring a disaster that has infectious disease as the basis for the declared disaster.

(3) "Qualifying period of disaster" means the period of time the area in which a hospital is located is declared to be a disaster area by a qualifying official disaster order.

(4) "Religious counselor" means an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

(b) A hospital may not during a qualifying period of disaster prohibit in-person visitation with a patient receiving care or treatment at the hospital unless federal law or a federal agency requires the hospital to prohibit in-person visitation during that period.

(c) Notwithstanding Subsection (b), a hospital may during a qualifying period of disaster:

(1) restrict the number of visitors a patient receiving care or treatment at the hospital may receive to not fewer than one;

(2) require a visitor to the hospital to:

(A) complete a health screening before entering the hospital; and

(B) wear personal protective equipment at all times while visiting a patient at the hospital; and

(3) deny entry to or remove from the hospital's premises a visitor who fails or refuses to:

(A) submit to or meet the requirements of a health screening administered by the hospital; or

(B) wear personal protective equipment that meets the hospital's infection control and safety requirements in the manner prescribed by the hospital.

(d) A health screening administered by a hospital under this section must be conducted in a manner that, at a minimum, complies with:

(1) hospital policy; and

(2) if applicable, guidance or directives issued by the commission, the Centers for Medicare and Medicaid Services, or another agency with regulatory authority over the hospital.

(e) Notwithstanding any other law, neither a hospital nor a physician providing health care services on the hospital's premises is subject to civil or criminal liability or an administrative penalty if a visitor contracts an infectious disease while on the hospital's premises during a qualifying period of disaster or, in connection with a visit to the hospital, spreads an infectious disease to any other individual, except where intentional misconduct or gross negligence by the hospital or the physician is shown. A physician who in good faith takes, or fails to take, an action under

this section is not subject to civil or criminal liability or disciplinary action for the physician's action or failure to act under this section.

(f) This section may not be construed as requiring a hospital to:

(1) provide a specific type of personal protective equipment to a visitor to the hospital; or

(2) allow in-person visitation with a patient receiving care or treatment at the hospital if an attending physician determines that in-person visitation with that patient may lead to the transmission of an infectious agent that poses a serious community health risk.

(g) A determination made by an attending physician under Subsection (f)(2) is valid for not more than five days after the date the determination is made unless renewed by an attending physician.

(h) If a visitor to a hospital is denied in-person visitation with a patient receiving care or treatment at a hospital because of a determination made by an attending physician under Subsection (f)(2), the hospital shall:

(1) provide each day a written or oral update of the patient's condition to the visitor if the visitor:

(A) is authorized by the patient to receive relevant health information regarding the patient;

(B) has authority to receive the patient's health information under an advance directive or medical power of attorney; or

(C) is otherwise the patient's surrogate decision-maker regarding the patient's health care needs under hospital policy and other applicable law; and

(2) notify the person who receives the daily update required under Subdivision (1) of the estimated date and time at which the patient will be discharged from the hospital.

(i) Notwithstanding any other provision of this section, a hospital may not prohibit in-person visitation by a religious counselor with a patient who is receiving care or treatment at the hospital and who is seriously ill or dying for a reason other than the religious counselor's failure to comply with a requirement described by Subsection (c)(2).

(j) In the event of a conflict between this section and any provision of a qualifying official disaster order, this section

prevails.

(k) This section does not create a cause of action against a hospital or physician.

Added by Acts 2021, 87th Leg., R.S., Ch. 688 (H.B. 2211), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. HOSPITAL LICENSES

Sec. 241.021. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a hospital in this state without a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.022. LICENSE APPLICATION. (a) An application for a license must be made to the department on a form provided by the department.

(b) The application must contain:

(1) the name and social security number of the sole proprietor, if the applicant is a sole proprietor;

(2) the name and social security number of each general partner who is an individual, if the applicant is a partnership;

(3) the name and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the applicant is a corporation; and

(4) any other information that the department may reasonably require.

(c) The department shall require that each hospital show evidence that:

(1) at least one physician is on the medical staff of the hospital, including evidence that the physician is currently licensed;

(2) the governing body of the hospital has adopted and implemented a patient transfer policy in accordance with Section 241.027; and

(3) if the governing body has chosen to implement patient transfer agreements, it has implemented the agreements in accordance with Section 241.028.

(d) The application must be accompanied by:

(1) a copy of the hospital's current patient transfer policy;

(2) a nonrefundable license fee;

(3) copies of the hospital's patient transfer agreements, unless the filing of copies has been waived by the department in accordance with the rules adopted under this chapter; and

(4) a copy of the most recent annual fire safety inspection report from the fire marshal in whose jurisdiction the hospital is located.

(e) The department may require that the application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation. A hospital located outside the limits of a municipality shall comply with corresponding state laws.

(f) The department shall post on the department's Internet website a list of all of the individuals named in applications as required by Subsections (b)(1)-(3). The department may not post on its Internet website a social security number of an individual required to be named in an application under Subsections (b)(1)-(3).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 82, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 1161 (H.B. 3357), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0570, eff. April 2, 2015.

Sec. 241.023. ISSUANCE OF LICENSE. (a) On receiving a license application and the license fee, the department shall issue a license if it finds that the applicant and the hospital comply with this chapter and the rules or standards adopted under this chapter.

(b) A license may be renewed every two years after payment of the required fee and submission of an application for license renewal that contains the information required by Section 241.022(b).

(c) Except as provided by Subsection (c-1), the department may issue a license only for the premises of a hospital and person or

governmental unit named in the application.

(c-1) The department may issue one license for multiple hospitals if:

(1) all buildings in which inpatients receive hospital services and inpatient services of each of the hospitals to be included in the license are subject to the control and direction of the same governing body;

(2) all buildings in which inpatients receive hospital services are within a 30-mile radius of the main address of the applicant;

(3) there is integration of the organized medical staff of each of the hospitals to be included in the license;

(4) there is a single chief executive officer for all of the hospitals who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(5) there is a single chief medical officer for all of the hospitals who reports directly to the governing body and who is responsible for all medical staff activities of the hospital;

(6) each building of a hospital to be included in the license that is geographically separate from other buildings of the same hospital contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination of diagnostic or laboratory services, in the building for hospital inpatients; and

(7) each hospital that is to be included in the license complies with the emergency services standards:

(A) for a general hospital, if the hospital provides surgery or obstetrical care or both; or

(B) for a special hospital, if the hospital does not provide surgery or obstetrical care.

(c-2) The department may recommend a waiver of the requirement of Subsection (c-1)(7) for a hospital if another hospital that is to be included in the license:

(1) complies with the emergency services standards for a general hospital; and

(2) is in close geographic proximity to the hospital.

(c-3) The executive commissioner shall adopt rules to implement the waiver provision of Subsection (c-2). The rules must provide for a determination by the department that the waiver will facilitate the

creation or operation of the hospital seeking the waiver and that the waiver is in the best interest of the individuals served or to be served by the hospital.

(d) Subject to Subsection (e), a license issued under this section for a hospital includes each outpatient facility that is not separately licensed, that is located apart from the hospital, and for which the hospital has submitted to the department:

(1) a copy of a fire safety survey that is dated not earlier than one year before the submission date indicating approval by:

(A) the local fire authority in whose jurisdiction the outpatient facility is located; or

(B) the nearest fire authority, if the outpatient facility is located outside of the jurisdiction of a local fire authority; and

(2) if the hospital is accredited by The Joint Commission or the American Osteopathic Association, a copy of documentation from the accrediting body showing that the outpatient facility is included within the hospital's accreditation.

(e) Subsection (d) applies only if the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services, or Office of Inspector General adopts final or interim final rules requiring state licensure of outpatient facilities as a condition of the determination of provider-based status for Medicare reimbursement purposes.

(f) A license may not be transferred or assigned without the written approval of the department.

(g) A license shall be posted in a conspicuous place on the licensed premises.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 2.01, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 1161 (H.B. 3357), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1286 (H.B. 2471), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0571, eff. April 2, 2015.

Sec. 241.025. LICENSE FEES. (a) The department shall charge each hospital a license fee for an initial license or a license renewal.

(b) The executive commissioner by rule shall adopt the fees authorized by Subsection (a) in amounts as prescribed by Section 12.0111 and according to a schedule under which the number of beds in the hospital determines the amount of the fee. A minimum license fee may be established.

(c) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(d) All license fees collected shall be deposited in the state treasury to the credit of the department to administer and enforce this chapter.

(e) Notwithstanding Subsection (d), to the extent that money received from the fees collected under this chapter exceeds the costs to the department to conduct the activity for which the fee is imposed, the department may use the money to administer Chapter 324 and similar laws that require the department to provide information related to hospital care to the public. The executive commissioner may not consider the costs of administering Chapter 324 or similar laws in adopting a fee imposed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 2.02, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0572, eff. April 2, 2015.

Sec. 241.026. RULES AND MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules and the department shall enforce the rules to further the purposes of this chapter. The rules at a minimum shall address:

(1) minimum requirements for staffing by physicians and nurses;

(2) hospital services relating to patient care;

(3) fire prevention, safety, and sanitation requirements in hospitals;

(4) patient care and a patient bill of rights;

(5) compliance with other state and federal laws affecting the health, safety, and rights of hospital patients; and

(6) compliance with nursing peer review under Subchapter I, Chapter 301, and Chapter 303, Occupations Code, and the rules of the Texas Board of Nursing relating to peer review.

(b) In adopting rules, the executive commissioner shall consider the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) and the standards of The Joint Commission and will attempt to achieve consistency with those conditions and standards.

(c) The department by order may waive or modify the requirement of a particular provision of this chapter or minimum standard adopted by department rule under this section to a particular general or special hospital if the department determines that the waiver or modification will facilitate the creation or operation of the hospital and that the waiver or modification is in the best interests of the individuals served or to be served by the hospital.

(d) The executive commissioner shall adopt rules establishing procedures and criteria for the issuance of the waiver or modification order. The criteria must include at a minimum a statement of the appropriateness of the waiver or modification against the best interests of the individuals served by the hospital.

(e) If the department orders a waiver or modification of a provision or standard, the licensing record of the hospital granted the waiver or modification shall contain documentation to support the action. Department rules shall specify the type and specificity of the supporting documentation that must be included.

(f) A comprehensive medical rehabilitation hospital or a pediatric and adolescent hospital shall have an emergency treatment room but is not required to have an emergency department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 350, Sec. 1, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 4, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 43, Sec. 2, eff. May 7, 1997; Acts 1997, 75th Leg., ch. 617, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 623, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec.

14.786, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 68, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0573, eff. April 2, 2015.

Sec. 241.0262. CIRCULATING DUTIES FOR SURGICAL SERVICES. Circulating duties in the operating room must be performed by qualified registered nurses. In accordance with approved medical staff policies and procedures, licensed vocational nurses and surgical technologists may assist in circulatory duties under the direct supervision of a qualified registered nurse circulator.

Added by Acts 2005, 79th Leg., Ch. 966 (H.B. 1718), Sec. 2, eff. September 1, 2005.

Sec. 241.0263. RECOMMENDATIONS RELATING TO MISSING INFANTS. (a) The department shall recommend hospital security procedures to:
(1) reduce the likelihood of infant patient abduction; and
(2) aid in the identification of missing infants.
(b) In making recommendations, the department shall consider hospital size and location and the number of births at a hospital.
(c) The procedures recommended by the department under Subsection (a)(1) may include:
(1) controlling access to newborn nurseries;
(2) expanding observation of newborn nurseries through the use of video cameras; and
(3) requiring identification for hospital staff and visitors as a condition of entrance to newborn nurseries.
(d) The procedures recommended by the department under Subsection (a)(2) may include:
(1) footprinting, photographing, or writing descriptions of infant patients at birth; and
(2) obtaining umbilical cord blood samples for infant patients born at the hospital and storing the samples for genetic testing purposes.
(e) Each hospital licensed under this chapter shall consider

implementing the procedures recommended under this section.

Added by Acts 1997, 75th Leg., ch. 314, Sec. 1, eff. Sept. 1, 1997.

Sec. 241.0265. STANDARDS FOR CARE FOR MENTAL HEALTH AND CHEMICAL DEPENDENCY. (a) The care and treatment of a patient receiving mental health services in a facility licensed by the department under this chapter or Chapter 577 are governed by the applicable department standards adopted under this chapter or Chapter 577.

(b) The care and treatment of a patient receiving chemical dependency treatment in a facility licensed by the department under this chapter are governed by the same standards that govern the care and treatment of a patient receiving treatment in a treatment facility licensed under Chapter 464, to the same extent as if the standards were rules adopted under this chapter.

(c) The department shall enforce the standards provided by Subsections (a) and (b). A violation of a standard is subject to the same consequence as a violation of a rule adopted under this chapter or Chapter 577. The department is not required to enforce a standard if the enforcement violates a federal law, rule, or regulation.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 3.02, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0574, eff. April 2, 2015.

Sec. 241.027. PATIENT TRANSFERS. (a) The executive commissioner shall adopt rules to govern the transfer of patients between hospitals that do not have a transfer agreement and governing services not included in transfer agreements.

(b) The rules must provide that patient transfers between hospitals be accomplished through hospital policies that result in medically appropriate transfers from physician to physician and from hospital to hospital by providing:

(1) for notification to the receiving hospital before the patient is transferred and confirmation by the receiving hospital that the patient meets the receiving hospital's admissions criteria

relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) for the use of medically appropriate life support measures that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use to stabilize the patient before the transfer and to sustain the patient during the transfer;

(3) for the provision of appropriate personnel and equipment that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use for the transfer;

(4) for the transfer of all necessary records for continuing the care for the patient; and

(5) that the transfer of a patient not be predicated on arbitrary, capricious, or unreasonable discrimination because of race, religion, national origin, age, sex, physical condition, or economic status.

(c) The rules must require that if a patient at a hospital has an emergency medical condition which has not been stabilized, the hospital may not transfer the patient unless:

(1) the patient or a legally responsible person acting on the patient's behalf, after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility;

(2) a licensed physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(3) if a licensed physician is not physically present in the emergency department at the time a patient is transferred, a qualified medical person has signed a certification described in Subdivision (2) after a licensed physician, in consultation with the person, has made the determination described in such clause and subsequently countersigns the certificate.

(d) The rules also shall provide that a public hospital or hospital district shall accept the transfer of its eligible residents if the public hospital or hospital district has appropriate facilities, services, and staff available for providing care to the

patient.

(e) The rules must require that a hospital take all reasonable steps to secure the informed refusal of a patient or of a person acting on the patient's behalf to a transfer or to related examination and treatment.

(f) The rules must recognize any contractual, statutory, or regulatory obligations that may exist between a patient and a designated or mandated provider as those obligations apply to the transfer of emergency or nonemergency patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 83, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 5, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0575, eff. April 2, 2015.

Sec. 241.028. TRANSFER AGREEMENTS. (a) If hospitals execute a transfer agreement that is consistent with the requirements of this section, all patient transfers between the hospitals are governed by the agreement.

(b) The hospitals shall submit the agreement to the department for review for compliance with the requirements of this section. The department shall complete the review of the agreement within 30 days after the date the agreement is submitted by the hospitals.

(c) At a minimum, a transfer agreement must provide that:

(1) transfers be accomplished in a medically appropriate manner and comply with Sections 241.027(b)(2) through (5) and Section 241.027(c);

(2) the transfer or receipt of patients in need of emergency care not be based on the individual's inability to pay for the services rendered by the transferring or receiving hospital;

(3) multiple transfer agreements be entered into by a hospital based on the type or level of medical services available at other hospitals;

(4) the hospitals recognize the right of an individual to request transfer to the care of a physician and hospital of the individual's choice;

(5) the hospitals recognize and comply with the

requirements of Chapter 61 (Indigent Health Care and Treatment Act) relating to the transfer of patients to mandated providers; and

(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient.

(d) If a hospital transfers a patient in violation of Subsection (c)(1), (2), (4), (5), or (6), relating to required provisions for a transfer agreement, the violation is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 84, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 6, eff. Sept. 1, 1993.

Sec. 241.029. POLICIES AND PROCEDURES RELATING TO WORKPLACE SAFETY. (a) The governing body of a hospital shall adopt policies and procedures related to the work environment for nurses to:

(1) improve workplace safety and reduce the risk of injury, occupational illness, and violence; and

(2) increase the use of ergonomic principles and ergonomically designed devices to reduce injury and fatigue.

(b) The policies and procedures adopted under Subsection (a), at a minimum, must include:

(1) evaluating new products and technology that incorporate ergonomic principles;

(2) educating nurses in the application of ergonomic practices;

(3) conducting workplace audits to identify areas of risk of injury, occupational illness, or violence and recommending ways to reduce those risks;

(4) controlling access to those areas identified as having a high risk of violence; and

(5) promptly reporting crimes committed against nurses to appropriate law enforcement agencies.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 13, eff. June 20, 2003.

SUBCHAPTER C. ENFORCEMENT

Sec. 241.051. INSPECTIONS. (a) The department may make any inspection, survey, or investigation that it considers necessary. A

representative of the department may enter the premises of a hospital at any reasonable time to make an inspection, a survey, or an investigation to assure compliance with or prevent a violation of this chapter, the rules adopted under this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures. The department shall maintain the confidentiality of hospital records as applicable under state or federal law.

(b) The department or a representative of the department is entitled to access to all books, records, or other documents maintained by or on behalf of the hospital to the extent necessary to enforce this chapter, the rules adopted under this chapter, an order or special order of the commissioner, a special license provision, a court order granting injunctive relief, or other enforcement procedures.

(c) By applying for or holding a hospital license, the hospital consents to entry and inspection of the hospital by the department or a representative of the department in accordance with this chapter and the rules adopted under this chapter.

(d) Except as provided by Subsection (e), all information and materials in the possession of or obtained or compiled by the commission in connection with a complaint and investigation concerning a hospital are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the commission or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the commission in the enforcement action against the hospital;

(2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(e) The following information is subject to disclosure in accordance with Chapter 552, Government Code, only to the extent that

all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the hospital's alleged violation, which must include the provisions of law the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations the commission has conducted of the hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the hospital for the alleged violation;

(4) the outcome of each investigation the commission conducted of the hospital, including:

(A) the issuance of a reprimand;

(B) the denial or revocation of a license;

(C) the adoption of a corrective action plan; or

(D) the imposition of an administrative penalty and the penalty amount; and

(5) a final decision, investigative report, or order issued by the commission to address the alleged violation.

(f) Not later than the 90th day after the date the commission issues a final decision, investigative report, or order to address a hospital's alleged violation, the commission shall post on the commission's Internet website:

(1) the notice of alleged violation described by Subsection (e)(1);

(2) the name of the hospital;

(3) the geographic location of the hospital;

(4) the date the commission issued the final decision, investigative report, or order; and

(5) the outcome of the commission's investigation of the hospital that includes the information described by Subsection (e)(4).

(g) The commission may not remove information posted on the commission's Internet website under Subsection (f) before the second anniversary of the date the information is posted on the Internet website.

(h) Nothing in this section precludes a hospital from releasing medical records in the hospital's possession:

(1) on the request of the patient who is the subject of the record; or

(2) to the patient, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 8, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1444, Sec. 15, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0576, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 42 (H.B. 49), Sec. 1, eff. September 1, 2023.

Sec. 241.052. COMPLIANCE WITH RULES AND STANDARDS. (a) A hospital that is in operation when an applicable rule or minimum standard is adopted under this chapter must be given a reasonable period within which to comply with the rule or standard.
(b) The period for compliance may not exceed six months, except that the department may extend the period beyond six months if the hospital sufficiently shows the department that it requires additional time to complete compliance with the rule or standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.053. DENIAL OF APPLICATION, SUSPENSION, REVOCATION, PROBATION, OR REISSUANCE OF LICENSE. (a) The department, after providing notice and an opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a hospital's license if the department finds that the hospital:
(1) failed to comply with:
(A) a provision of this chapter;
(B) a rule adopted under this chapter;
(C) a special license condition;
(D) an order or emergency order by the commissioner; or
(E) another enforcement procedure permitted under this chapter;
(2) has a history of noncompliance with the rules adopted under this chapter relating to patient health, safety, and rights which reflects more than nominal noncompliance; or

(3) has aided, abetted, or permitted the commission of an illegal act.

(b) A hospital whose license is suspended or revoked may apply to the department for the reissuance of a license. The department may reissue the license if the department determines that the hospital has corrected the conditions that led to the suspension or revocation of the hospital's license, the initiation of enforcement action against the hospital, the assessment of administrative penalties, or the issuance of a court order enjoining the hospital from violations or assessing civil penalties against the hospital. A hospital whose license is suspended or revoked may not admit new patients until the license is reissued.

(c) A hospital must apply for reissuance in the form and manner required in the rules adopted under this chapter.

(d) Administrative hearings required under this section shall be conducted under the department's formal hearing rules and the contested case provisions of Chapter 2001, Government Code.

(e) Judicial review of a final decision by the department is by trial de novo in the same manner as a case appealed from the justice court to the county court. The substantial evidence rule does not apply.

(f) If the department finds that a hospital is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital for probation rather than suspending or revoking the hospital's license. The department shall provide notice to the hospital of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital will remain under probation. During the probation period, the hospital must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a hospital that does not correct items that were in noncompliance or that does not comply with the applicable requirements within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 9, eff. Sept. 1, 1993; Acts

1993, 73rd Leg., ch. 705, Sec. 3.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 1, 2, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0577, eff. April 2, 2015.

Sec. 241.0531. COMMISSIONER'S EMERGENCY ORDERS. (a) Following notice to the hospital and opportunity for hearing, the commissioner or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a hospital licensed under this chapter if the commissioner or the commissioner's designee determines that the hospital is violating or threatening to violate this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief issued pursuant to Section 241.054, an order of the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(b) The department shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.

(c) The hearing shall not be governed by the contested case provisions of Chapter 2001, Government Code, but shall instead be held in accordance with the department's informal hearing rules.

(d) The order shall be effective on delivery to the hospital or at a later date specified in the order.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 10, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0578, eff. April 2, 2015.

Sec. 241.054. VIOLATIONS; INJUNCTIONS. (a) The department

shall:

(1) notify a hospital of a finding by the department that the hospital is violating or has violated this chapter or a rule or standard adopted under this chapter; and

(2) provide the hospital an opportunity to correct the violation.

(b) After the notice and opportunity to comply, the commissioner may request the attorney general or the appropriate district or county attorney to institute and conduct a suit for a violation of this chapter or a rule adopted under this chapter.

(c) The department may petition a district court for a temporary restraining order to restrain a continuing violation if the department finds that the violation creates an immediate threat to the health and safety of the patients of a hospital.

(d) On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action in the name of the state for a violation of this chapter or a rule adopted under this chapter.

(e) The district court shall assess the civil penalty authorized by Section 241.055, grant injunctive relief, or both, as warranted by the facts. The injunctive relief may include any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(f) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(g) Venue may be maintained in Travis County or in the county in which the violation occurred.

(h) Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of a referral from the department before filing suit.

(i) The injunctive relief and civil penalty authorized by this

section and Section 241.055 are in addition to any other civil, administrative, or criminal penalty provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.02, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0579, eff. April 2, 2015.

Sec. 241.055. CIVIL PENALTY. (a) A hospital shall timely adopt, implement, and enforce a patient transfer policy in accordance with Section 241.027. A hospital may implement patient transfer agreements in accordance with Section 241.028.

(b) A hospital that violates Subsection (a), another provision of this chapter, or a rule adopted or enforced under this chapter is liable for a civil penalty of not more than $1,000 for each day of violation and for each act of violation. A hospital that violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services is liable for a civil penalty of not more than $25,000 for each day of violation and for each act of violation.

(c) In determining the amount of the penalty, the district court shall consider:

(1) the hospital's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the hospital; and

(5) the amount necessary to deter future violations.

(d) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 86, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 11, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.03, eff. Sept. 1, 1993.

Sec. 241.0555. ADDITIONAL REQUIREMENTS: POTENTIALLY PREVENTABLE ADVERSE EVENTS. (a) If the department finds that a hospital has committed a violation that resulted in a potentially preventable adverse event reportable under Chapter 98, the department shall require the hospital to develop and implement a plan for approval by the department to address the deficiencies that may have contributed to the preventable adverse event.

(b) The department may require the plan under this section to include:

(1) staff training and education;

(2) supervision requirements for certain staff;

(3) increased staffing requirements;

(4) increased reporting to the department; and

(5) a review and amendment of hospital policies relating to patient safety.

(c) The department shall carefully and frequently monitor the hospital's adherence to the plan under this section and enforce compliance.

Added by Acts 2015, 84th Leg., R.S., Ch. 183 (S.B. 373), Sec. 2, eff. September 1, 2015.

Sec. 241.056. SUIT BY PERSON HARMED. (a) A person who is harmed by a violation under Section 241.028 or 241.055 may petition a district court for appropriate injunctive relief.

(b) Venue for a suit brought under this section is in the county in which the person resides or, if the person is not a resident of this state, in Travis County.

(c) The person may also pursue remedies for civil damages under common law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 87, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 584, Sec. 12, eff. Sept. 1, 1993.

Sec. 241.057. CRIMINAL PENALTY. (a) A person commits an offense if the person establishes, conducts, manages, or operates a

hospital without a license.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $100 for the first offense and not more than $200 for each subsequent offense.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.058. MINOR VIOLATIONS. (a) This chapter does not require the commissioner or a designee of the commissioner to report a minor violation for prosecution or the institution of any other enforcement proceeding authorized under this chapter, if the commissioner or designee determines that prosecution or enforcement is not in the best interests of the persons served or to be served by the hospital.

(b) For the purpose of this section, a "minor violation" means a violation of this chapter, the rules adopted under this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter by a hospital that does not constitute a threat to the health, safety, and rights of the hospital's patients or other persons.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 13, eff. Sept. 1,1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0580, eff. April 2, 2015.

Sec. 241.0585. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 241.058 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.041, eff. Sept. 1, 1993.

Sec. 241.059. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a hospital that violates this chapter, a rule adopted pursuant to this chapter, a special license provision, an order or emergency order issued by the commissioner or the commissioner's designee, or another enforcement procedure permitted under this chapter. The department shall assess an administrative penalty against a hospital that violates Section 166.004.

(b) In determining the amount of the penalty, the department shall consider:

(1) the hospital's previous violations;

(2) the seriousness of the violation;

(3) any threat to the health, safety, or rights of the hospital's patients;

(4) the demonstrated good faith of the hospital; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $1,000 for each violation, except that the penalty for a violation of Section 166.004 shall be $500. Each day of a continuing violation, other than a violation of Section 166.004, may be considered a separate violation.

(d) When it is determined that a violation has occurred, the department shall give written notice of the violation to the person, delivered by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely

to the notice, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall give notice of the hearing to the person. The administrative law judge conducting the hearing shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of the penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the

supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) When the department receives a copy of an affidavit under Subsection (k)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person within 30 days after the judgment of the court becomes final. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to

the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 584, Sec. 14, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(51), (53), (55), (60), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 450, Sec. 2.03, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0581, eff. April 2, 2015.

Sec. 241.060. ADMINISTRATIVE PENALTY FOR MENTAL HEALTH, CHEMICAL DEPENDENCY, OR REHABILITATION SERVICES. (a) The department may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department shall give written notice of the violation to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the department's order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period

beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.04, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 241.058 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(22), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0582, eff. April 2, 2015.

SUBCHAPTER E. STAFF, RECORDS, AND PLAN REVIEWS

Sec. 241.101. HOSPITAL AUTHORITY CONCERNING MEDICAL STAFF. (a) Except as otherwise provided by this section and Section 241.102, this chapter does not change the authority of the governing body of a hospital, as it considers necessary or advisable, to:

(1) make rules, standards, or qualifications for medical staff membership; or

(2) grant or refuse to grant membership on the medical staff.

(b) This chapter does not prevent the governing body of a hospital from adopting reasonable rules and requirements in compliance with this chapter relating to:

(1) qualifications for any category of medical staff appointments;

(2) termination of appointments; or

(3) the delineation or curtailment of clinical privileges of those who are appointed to the medical staff.

(c) The process for considering applications for medical staff membership and privileges or the renewal, modification, or revocation

of medical staff membership and privileges must afford each physician, podiatrist, and dentist procedural due process that meets the requirements of 42 U.S.C. Section 11101 et seq., as amended.

(d) If a hospital's credentials committee has failed to take action on a completed application as required by Subsection (k), or a physician, podiatrist, or dentist is subject to a professional review action that may adversely affect his medical staff membership or privileges, and the physician, podiatrist, or dentist believes that mediation of the dispute is desirable, the physician, podiatrist, or dentist may require the hospital to participate in mediation as provided in Chapter 154, Civil Practice and Remedies Code. The mediation shall be conducted by a person meeting the qualifications required by Section 154.052, Civil Practice and Remedies Code, and within a reasonable period of time.

(e) Subsection (d) does not authorize a cause of action by a physician, podiatrist, or dentist against the hospital other than an action to require a hospital to participate in mediation.

(f) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law.

(g) A hospital's bylaw requirements for staff privileges may require a physician, podiatrist, or dentist to document the person's current clinical competency and professional training and experience in the medical procedures for which privileges are requested.

(h) In granting or refusing medical staff membership or privileges, a hospital may not differentiate on the basis of the academic medical degree held by a physician.

(i) Graduate medical education may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to training programs accredited by the Accreditation Council for Graduate Medical Education and by the American Osteopathic Association.

(j) Board certification may be used as a standard or qualification for medical staff membership or privileges for a physician, provided that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists.

(k) A hospital's credentials committee shall act expeditiously and without unnecessary delay when a licensed physician, podiatrist, or dentist submits a completed application for medical staff

membership or privileges. The hospital's credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received. The governing body of the hospital shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received. The hospital must notify the applicant in writing of the hospital's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 77, Sec. 1, eff. May 11, 1995; Acts 1999, 76th Leg., ch. 159, Sec. 1, eff. May 21, 1999; Acts 2001, 77th Leg., ch. 1175, Sec. 1, eff. June 15, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0583, eff. April 2, 2015.

Sec. 241.1015. PHYSICIAN COMMUNICATION AND CONTRACTS. (a) A hospital, whether by contract, by granting or withholding staff privileges, or otherwise, may not restrict a physician's ability to communicate with a patient with respect to:

(1) the patient's coverage under a health care plan;

(2) any subject related to the medical care or health care services to be provided to the patient, including treatment options that are not provided under a health care plan;

(3) the availability or desirability of a health care plan or insurance or similar coverage, other than the patient's health care plan; or

(4) the fact that the physician's staff privileges or contract with a hospital or health care plan have terminated or that the physician will otherwise no longer be providing medical care or health care services at the hospital or under the health care plan.

(b) A hospital, by contract or otherwise, may not refuse or fail to grant or renew staff privileges, or condition staff privileges, based in whole or in part on the fact that the physician or a partner, associate, or employee of the physician is providing medical or health care services at a different hospital or hospital

system.

(c) A hospital may not contract to limit a physician's participation or staff privileges or the participation or staff privileges of a partner, associate, or employee of the physician at a different hospital or hospital system.

(d) This section does not prevent a hospital from entering into contracts with physicians to ensure physician availability and coverage at the hospital or to comply with regulatory requirements or quality of care standards established by the governing body of the hospital.

(e) This section does not prevent the governing body of a hospital from:

(1) limiting the number of physicians granted medical staff membership or privileges at the hospital based on a medical staff development plan that is unrelated to a physician's professional or business relationships or associations including those with another physician or group of physicians or to a physician or a partner, associate, or employee of a physician having medical staff membership or privileges at another hospital or hospital system; or

(2) limiting the ability of hospital medical directors to contract with or hold medical staff memberships or clinical privileges at different hospitals or hospital systems provided that such limitations do not extend to the medical directors' professional or business relationships or associations including those with another physician, group of physicians, or other health care providers, other than hospitals or hospital systems.

(f) A contract provision that violates this section is void.

(g) In this section, "health care plan" has the meaning assigned by Section 843.002, Insurance Code, and "hospital medical directors" means physicians who have been employed by or are under contract with a hospital to manage a clinical department or departments of the hospital.

Added by Acts 1997, 75th Leg., ch. 735, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.526, eff. Sept. 1, 2003.

Sec. 241.102. AUTHORIZATIONS AND RESTRICTIONS IN RELATION TO PHYSICIANS AND PODIATRISTS. (a) This chapter does not authorize a

physician or podiatrist to perform medical or podiatric acts that are beyond the scope of the respective license held.

(b) This chapter does not prevent the governing body of a hospital from providing that:

(1) a podiatric patient be coadmitted to the hospital by a podiatrist and a physician;

(2) a physician be responsible for the care of any medical problem or condition of a podiatric patient that may exist at the time of admission or that may arise during hospitalization and that is beyond the scope of the podiatrist's license; or

(3) a physician determine the risk and effect of a proposed podiatric surgical procedure on the total health status of the patient.

(c) An applicant for medical staff membership may not be denied membership solely on the ground that the applicant is a podiatrist rather than a physician.

(d) This chapter does not automatically entitle a physician or a podiatrist to membership or privileges on a medical staff.

(e) The governing body of a hospital may not require a member of the medical staff to involuntarily:

(1) coadmit patients with a podiatrist;

(2) be responsible for the care of any medical problem or condition of a podiatric patient; or

(3) determine the risk and effect of any proposed podiatric procedure on the total health status of the patient.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 241.103. PRESERVATION OF RECORDS. (a) A hospital may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when the patient was last treated, the hospital may authorize the disposal of medical records relating to the patient on or after the date of the patient's 20th birthday or on or after the 10th anniversary of the date on which the patient was last treated, whichever date is later.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the

litigation has not been finally resolved.

(d) A hospital shall provide written notice to a patient, or a patient's legally authorized representative as that term is defined by Section 241.151, that the hospital, unless the exception in Subsection (c) applies, may authorize the disposal of medical records relating to the patient on or after the periods specified in this section. The notice shall be provided to the patient or the patient's legally authorized representative not later than the date on which the patient who is or will be the subject of a medical record is treated, except in an emergency treatment situation. In an emergency treatment situation, the notice shall be provided to the patient or the patient's legally authorized representative as soon as is reasonably practicable following the emergency treatment situation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 466 (H.B. 118), Sec. 1, eff. September 1, 2011.

Sec. 241.1031. PRESERVATION OF RECORD FROM FORENSIC MEDICAL EXAMINATION. (a) A hospital may not destroy a medical record from the forensic medical examination of a sexual assault victim conducted under Subchapter G, Chapter 56A, Code of Criminal Procedure, until the 20th anniversary of the date the record was created.

(b) A hospital may maintain a medical record described by Subsection (a) in the same form in which the hospital maintains other medical records.

Added by Acts 2019, 86th Leg., R.S., Ch. 357 (H.B. 531), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.003, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 18, eff. September 1, 2023.

Sec. 241.104. HOSPITAL PLAN REVIEWS. (a) The executive commissioner by rule shall adopt fees for hospital plan reviews

according to a schedule based on the estimated construction costs.

(b) The fee schedule may not exceed the following:

Cost of Construction	Fee
(1) $ 100,000 or less	$ 500
(2) $ 100,001 - $ 600,000	$1,500
(3) $ 600,001 - $ 2,000,000	$3,000
(4) $ 2,000,001 - $ 5,000,000	$4,500
(5) $ 5,000,001 - $10,000,000	$6,000
(6) $ 10,000,001 and over	$7,500

(c) The department shall charge a fee for field surveys of construction plans reviewed under this section. The executive commissioner by rule shall adopt a fee schedule for the surveys that provides a minimum fee of $500 and a maximum fee of $1,000 for each survey conducted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 584, Sec. 15, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 2.03, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0584, eff. April 2, 2015.

Sec. 241.105. HOSPITAL PRIVILEGES FOR ADVANCED PRACTICE NURSES AND PHYSICIAN ASSISTANTS. (a) The governing body of a hospital is authorized to establish policies concerning the granting of clinical privileges to advanced practice nurses and physician assistants, including policies relating to the application process, reasonable qualifications for privileges, and the process for renewal, modification, or revocation of privileges.

(b) If the governing body of a hospital has adopted a policy of granting clinical privileges to advanced practice nurses or physician assistants, an individual advanced practice nurse or physician assistant who qualifies for privileges under that policy shall be entitled to certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, when an application for privileges is submitted to the hospital. At a minimum, any policy adopted shall specify a reasonable period for the processing and consideration of the application and shall provide for written notification to the applicant of any final action on the

application by the hospital, including any reason for denial or restriction of the privileges requested.

(c) If an advanced practice nurse or physician assistant has been granted clinical privileges by a hospital, the hospital may not modify or revoke those privileges without providing certain procedural rights to provide fairness of process, as determined by the governing body of the hospital, to the advanced practice nurse or physician assistant. At a minimum, the hospital shall provide the advanced practice nurse or physician assistant written reasons for the modification or revocation of privileges and a mechanism for appeal to the appropriate committee or body within the hospital, as determined by the governing body of the hospital.

(d) If a hospital extends clinical privileges to an advanced practice nurse or physician assistant conditioned on the advanced practice nurse or physician assistant having a sponsoring or collaborating relationship with a physician and that relationship ceases to exist, the advanced practice nurse or physician assistant and the physician shall provide written notification to the hospital that the relationship no longer exists. Once the hospital receives such notice from an advanced practice nurse or physician assistant and the physician, the hospital shall be deemed to have met its obligations under this section by notifying the advanced practice nurse or physician assistant in writing that the advanced practice nurse's or physician assistant's clinical privileges no longer exist at that hospital.

(e) Nothing in this section shall be construed as modifying Subtitle B, Title 3, Occupations Code, Chapter 204 or 301, Occupations Code, or any other law relating to the scope of practice of physicians, advanced practice nurses, or physician assistants.

(f) This section does not apply to an employer-employee relationship between an advanced practice nurse or physician assistant and a hospital.

Added by Acts 1999, 76th Leg., ch. 428, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.787, eff. Sept. 1, 2001.

SUBCHAPTER F. MEDICAL REHABILITATION SERVICES

Sec. 241.121. DEFINITION. In this subchapter, "comprehensive

medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.

Sec. 241.122. LICENSE REQUIRED. Unless a person has a license issued under this chapter, a person other than an individual may not provide inpatient comprehensive medical rehabilitation to a patient who requires medical services that are provided under the supervision of a physician and that are more intensive than nursing facility care and minor treatment.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.

Sec. 241.123. REHABILITATION SERVICES STANDARDS. (a) The executive commissioner by rule shall adopt standards for the provision of rehabilitation services by a hospital to ensure the health and safety of a patient receiving the services.

(b) The standards at a minimum shall require a hospital that provides comprehensive medical rehabilitation:

(1) to have a director of comprehensive medical rehabilitation who is:

(A) a licensed physician;

(B) either board certified or eligible for board certification in a medical specialty related to rehabilitation; and

(C) qualified by training and experience to serve as medical director;

(2) to have medical supervision by a licensed physician for 24 hours each day; and

(3) to provide appropriate therapy to each patient by an interdisciplinary team consisting of licensed physicians, rehabilitation nurses, and therapists as are appropriate for the patient's needs.

(c) An interdisciplinary team for comprehensive medical

rehabilitation shall be directed by a licensed physician. An interdisciplinary team for comprehensive medical rehabilitation shall have available to it, at the hospital at which the services are provided or by contract, members of the following professions as necessary to meet the treatment needs of the patient:

(1) physical therapy;
(2) occupational therapy;
(3) speech-language pathology;
(4) therapeutic recreation;
(5) social services and case management;
(6) dietetics;
(7) psychology;
(8) respiratory therapy;
(9) rehabilitative nursing;
(10) certified orthotics; and
(11) certified prosthetics.

(d) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written treatment plan designed for that patient's needs for treatment and care. The executive commissioner by rule shall specify a time after admission of a patient for inpatient rehabilitation services by which a hospital must evaluate the patient for the patient's initial treatment plan and by which a hospital must provide copies of the plan after evaluation.

(e) A hospital shall prepare for each patient receiving inpatient rehabilitation services a written continuing care plan that addresses the patient's needs for care after discharge, including recommendations for treatment and care and information about the availability of resources for treatment or care. The executive commissioner by rule shall specify the time before discharge by which the hospital must provide a copy of the continuing care plan. Department rules may allow a facility to provide the continuing care plan by a specified time after discharge if providing the plan before discharge is impracticable.

(f) A hospital shall provide a copy of a treatment or continuing care plan prepared under this section to the following persons in the person's primary language, if practicable:

(1) the patient;
(2) a person designated by the patient; and
(3) as specified by department rule, family members or

other persons with responsibility for or demonstrated participation in the patient's care or treatment.

(g) Rules adopted by the executive commissioner under this subchapter may not conflict with a federal rule, regulation, or standard.

Added by Acts 1993, 73rd Leg., ch. 707, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0585, eff. April 2, 2015.

SUBCHAPTER G. DISCLOSURE OF HEALTH CARE INFORMATION

Sec. 241.151. DEFINITIONS. In this subchapter:

(1) "Directory information" means information disclosing the presence of a person who is receiving inpatient, outpatient, or emergency services from a licensed hospital, the nature of the person's injury, the person's municipality of residence, sex, and age, and the general health status of the person as described in terms of "critical," "poor," "fair," "good," "excellent," or similar terms.

(2) "Health care information" means information, including payment information, recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient.

(3) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(4) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review or approve the initiation of or conduct periodic review of research programs to ensure the protection of the rights and welfare of human research subjects.

(5) "Legally authorized representative" means:

(A) a parent or legal guardian if the patient is a minor;

(B) a legal guardian if the patient has been adjudicated incapacitated to manage the patient's personal affairs;

(C) an agent of the patient authorized under a medical

power of attorney;

(D) an attorney ad litem appointed for the patient;

(E) a person authorized to consent to medical treatment on behalf of the patient under Chapter 313;

(F) a guardian ad litem appointed for the patient;

(G) a personal representative or heir of the patient, as defined by Chapter 22, Estates Code, if the patient is deceased;

(H) an attorney retained by the patient or by the patient's legally authorized representative; or

(I) a person exercising a power granted to the person in the person's capacity as an attorney-in-fact or agent of the patient by a statutory durable power of attorney that is signed by the patient as principal.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 498, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1138 (H.B. 2765), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1003 (H.B. 4029), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0586, eff. April 2, 2015.

Sec. 241.152. WRITTEN AUTHORIZATION FOR DISCLOSURE OF HEALTH CARE INFORMATION. (a) Except as authorized by Section 241.153, a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient or the patient's legally authorized representative without the written authorization of the patient or the patient's legally authorized representative.

(b) A disclosure authorization to a hospital is valid only if it:

(1) is in writing;

(2) is dated and signed by the patient or the patient's legally authorized representative;

(3) identifies the information to be disclosed;

(4) identifies the person or entity to whom the information is to be disclosed; and

(5) is not contained in the same document that contains the consent to medical treatment obtained from the patient.

(c) A disclosure authorization is valid until the 180th day after the date it is signed unless it provides otherwise or unless it is revoked.

(d) Except as provided by Subsection (e), a patient or the patient's legally authorized representative may revoke a disclosure authorization to a hospital at any time. A revocation is valid only if it is in writing, dated with a date that is later than the date on the original authorization, and signed by the patient or the patient's legally authorized representative.

(e) A patient or the patient's legally authorized representative may not revoke a disclosure that is required for purposes of making payment to the hospital for health care provided to the patient.

(f) A patient may not maintain an action against a hospital for a disclosure made by the hospital in good-faith reliance on an authorization if the hospital's medical record department did not have notice that the authorization was revoked.

(g) Repealed by Acts 1997, 75th Leg., ch. 498, Sec. 5, eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 498, Sec. 2, 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 271, Sec. 1, eff. Sept. 1, 1999.

Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION. A patient's health care information may be disclosed without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the hospital not to make the disclosure or the directory information is otherwise protected by state or federal law;

(2) to a health care provider who is rendering health care to the patient when the request for the disclosure is made;

(3) to a transporting emergency medical services provider for the purpose of:

(A) treatment or payment, as those terms are defined by the regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(B) the following health care operations described by the regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191):

(i) quality assessment and improvement activities;

(ii) specified insurance functions;

(iii) conducting or arranging for medical reviews; or

(iv) competency assurance activities;

(4) to a member of the clergy specifically designated by the patient;

(5) to a procurement organization as defined in Section 692A.002 for the purpose of making inquiries relating to donations according to the protocol referred to in Section 692A.015;

(6) to a prospective health care provider for the purpose of securing the services of that health care provider as part of the patient's continuum of care, as determined by the patient's attending physician;

(7) to a person authorized to consent to medical treatment under Chapter 313 or to a person in a circumstance exempted from Chapter 313 to facilitate the adequate provision of treatment;

(8) to an employee or agent of the hospital who requires health care information for health care education, quality assurance, or peer review or for assisting the hospital in the delivery of health care or in complying with statutory, licensing, accreditation, or certification requirements and if the hospital takes appropriate action to ensure that the employee or agent:

(A) will not use or disclose the health care information for any other purpose; and

(B) will take appropriate steps to protect the health care information;

(9) to a federal, state, or local government agency or authority to the extent authorized or required by law;

(10) to a hospital that is the successor in interest to the hospital maintaining the health care information;

(11) to the American Red Cross for the specific purpose of fulfilling the duties specified under its charter granted as an instrumentality of the United States government;

(12) to a regional poison control center, as the term is used in Chapter 777, to the extent necessary to enable the center to provide information and education to health professionals involved in

the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(13) to a health care utilization review agent who requires the health care information for utilization review of health care under Chapter 4201, Insurance Code;

(14) for use in a research project authorized by an institutional review board under federal law;

(15) to health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient;

(16) to facilitate reimbursement to a hospital, other health care provider, or the patient for medical services or supplies;

(17) to a health maintenance organization for purposes of maintaining a statistical reporting system as required by a rule adopted by a state agency or regulations adopted under the federal Health Maintenance Organization Act of 1973, as amended (42 U.S.C. Section 300e et seq.);

(18) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code;

(19) to comply with a court order except as provided by Subdivision (20); or

(20) related to a judicial proceeding in which the patient is a party and the disclosure is requested under a subpoena issued under:

(A) the Texas Rules of Civil Procedure or Code of Criminal Procedure; or

(B) Chapter 121, Civil Practice and Remedies Code.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 498, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 847, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 136 (H.B. 739), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 337 (S.B. 1113), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 2, eff. September 1, 2009.

Sec. 241.1531. EXCHANGE OF INMATE'S HEALTH CARE INFORMATION. Notwithstanding any other law of this state, the health care information of a patient who is a defendant or inmate confined in a facility operated by or under contract with the Texas Department of Criminal Justice may be exchanged between health care personnel of the department and health care personnel of The University of Texas Medical Branch at Galveston or the Texas Tech University Health Sciences Center. The authorization of the defendant or inmate is not required for the exchange of information.

Added by Acts 2005, 79th Leg., Ch. 1270 (H.B. 2195), Sec. 1, eff. June 18, 2005.

Sec. 241.154. REQUEST. (a) On receipt of a written authorization from a patient or legally authorized representative to examine or copy all or part of the patient's recorded health care information, except payment information, or for disclosures under Section 241.153 not requiring written authorization, a hospital or its agent, as promptly as required under the circumstances but not later than the 15th day after the date the request and payment authorized under Subsection (b) are received, shall:

(1) make the information available for examination during regular business hours and provide a copy to the requestor, if requested; or

(2) inform the authorized requestor if the information does not exist or cannot be found.

(b) Except as provided by Subsection (d), the hospital or its agent may charge a reasonable fee for providing the health care information except payment information and is not required to permit the examination, copying, or release of the information requested until the fee is paid unless there is a medical emergency. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $30; and

(A) a charge for each page of:

(i) $1 for the 11th through the 60th page of the provided copies;

(ii) 50 cents for the 61st through the 400th page of the provided copies; and

(iii) 25 cents for any remaining pages of the provided copies; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies;

(2) if the requested records are stored on microform, a retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $45; and

(A) $1 per page thereafter; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies; or

(3) if the requested records are provided on a digital or other electronic medium and the requesting party requests delivery in a digital or electronic medium, including electronic mail:

(A) a retrieval or processing fee, which may not exceed $75; and

(B) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(c) In addition, the hospital or its agent may charge a reasonable fee for:

(1) execution of an affidavit or certification of a document, not to exceed the charge authorized by Section 22.004, Civil Practice and Remedies Code; and

(2) written responses to a written set of questions, not to exceed $10 for a set.

(d) A hospital may not charge a fee for:

(1) providing health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161;

(2) a patient to examine the patient's own health care information;

(3) providing an itemized statement of billed services to a patient or third-party payor, except as provided under Section 311.002(f); or

(4) health care information relating to treatment or hospitalization for which workers' compensation benefits are being sought, except to the extent permitted under Chapter 408, Labor Code.

(e) Effective September 1, 1996, and annually thereafter, the fee for providing health care information as specified in this section shall be adjusted accordingly based on the most recent changes to the consumer price index as published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers' families and single workers living alone.

(f) A request from a patient or legally authorized representative for payment information is subject to Section 311.002.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 498, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1003 (H.B. 4029), Sec. 2, eff. September 1, 2009.

Sec. 241.155. SAFEGUARDS FOR SECURITY OF HEALTH CARE INFORMATION. A hospital shall adopt and implement reasonable safeguards for the security of all health care information it maintains.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

Sec. 241.156. PATIENT REMEDIES. (a) A patient aggrieved by a violation of this subchapter relating to the unauthorized release of confidential health care information may bring an action for:

(1) appropriate injunctive relief; and

(2) damages resulting from the release.

(b) An action under Subsection (a) shall be brought in:

(1) the district court of the county in which the patient resides or in the case of a deceased patient the district court of the county in which the patient's legally authorized representative resides; or

(2) if the patient or the patient's legally authorized representative in the case of a deceased patient is not a resident of this state, the district court of Travis County.

(c) A petition for injunctive relief under Subsection (a)(1)

takes precedence over all civil matters on the court docket except those matters to which equal precedence on the docket is granted by law.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER H. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE

Sec. 241.182. LEVEL OF CARE DESIGNATIONS. (a) The executive commissioner, in accordance with the rules adopted under Section 241.183, shall assign level of care designations to each hospital based on the neonatal and maternal services provided at the hospital.

(b) A hospital may receive different level designations for neonatal and maternal care, respectively.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.183. RULES. (a) The executive commissioner, in consultation with the department, shall adopt rules:

(1) establishing the levels of care for neonatal and maternal care to be assigned to hospitals;

(2) prescribing criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(3) establishing a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(4) establishing a process for amending the level of care designation requirements, including a process for assisting facilities in implementing any changes made necessary by the amendments;

(5) dividing the state into neonatal and maternal care regions;

(6) facilitating transfer agreements through regional coordination;

(7) requiring payment, other than quality or outcome-based funding, to be based on services provided by the facility, regardless of the hospital's level of care designation;

(8) prohibiting the denial of a neonatal or maternal level

of care designation to a hospital that meets the minimum requirements for that level of care designation;

(9) establishing a process through which a hospital may obtain a limited follow-up survey by an independent third party to appeal the level of care designation assigned to the hospital;

(10) permitting a hospital to satisfy any requirement for a Level I or II level of care designation that relates to an obstetrics or gynecological physician by:

(A) granting maternal care privileges to a family physician with obstetrics training or experience; and

(B) developing and implementing a plan for responding to obstetrical emergencies that require services or procedures outside the scope of privileges granted to the family physician described by Paragraph (A);

(11) clarifying that, regardless of a hospital's level of care designation, a health care provider at a designated facility or hospital may provide the full range of health care services:

(A) that the provider is authorized to provide under state law; and

(B) for which the hospital has granted privileges to the provider; and

(12) requiring the department to provide to each hospital that receives a level of care designation a written explanation of the basis for the designation, including, as applicable, specific reasons that prevented the hospital from receiving a higher level of care designation.

(b) The criteria for levels one through three of neonatal and maternal care adopted under Subsection (a)(2) may not include requirements related to the number of patients treated at a hospital.

(c) The commission shall study patient transfers that are not medically necessary but would be cost-effective. Based on the study under this subsection, if the executive commissioner determines that the transfers are feasible and desirable, the executive commissioner may adopt rules addressing those transfers.

(d) Each level of care designation must require a hospital to regularly submit outcome and other data to the department as required or requested.

(e) The criteria a hospital must achieve to receive each level of care designation must be posted on the department's Internet website.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0587, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 1, eff. June 10, 2019.

Sec. 241.1835. USE OF TELEMEDICINE MEDICAL SERVICES. (a) In this section, "telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

(b) The rules adopted under Section 241.183 must allow the use of telemedicine medical services by a physician providing on-call services to satisfy certain requirements identified by the executive commissioner in the rules for a Level I, II, or III level of care designation.

(c) In identifying a requirement for a level of care designation that may be satisfied through the use of telemedicine medical services under Subsection (b), the executive commissioner, in consultation with the department, physicians of appropriate specialties, statewide medical, nursing, and hospital associations, and other appropriate interested persons, must ensure that the provision of a service or procedure through the use of telemedicine medical services is in accordance with the standard of care applicable to the provision of the same service or procedure in an in-person setting.

(d) Telemedicine medical services must be administered under this section by a physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

(e) This section does not waive other requirements for a level of care designation.

Added by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 2, eff. June 10, 2019.

Sec. 241.1836. APPEAL PROCESS. (a) The rules adopted under Section 241.183 establishing level of care designations for hospitals must allow a hospital to appeal a level of care designation to a

three-person panel that includes:

(1) a representative of the department;

(2) a representative of the commission; and

(3) an independent person who:

(A) has expertise in the specialty area for which the hospital is seeking a level of care designation;

(B) is not an employee of or affiliated with either the department or the commission; and

(C) does not have a conflict of interest with the hospital, department, or commission.

(b) The independent person on the panel described by Subsection (a) must rotate after each appeal from a list of five to seven similarly qualified persons. The department shall solicit persons to be included on the list. A person must apply to the department on a form prescribed by the department and be approved by the commissioner to be included on the list.

Added by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 2, eff. June 10, 2019.

Sec. 241.1837. PATIENT SAFETY PRACTICES REGARDING PLACENTA ACCRETA SPECTRUM DISORDER. (a) In this section:

(1) "Placenta accreta spectrum disorder" includes placenta accreta, placenta increta, and placenta percreta.

(2) "Telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

(b) The executive commissioner, in consultation with the department, the Perinatal Advisory Council established under Section 241.187, and other interested persons described by Subsection (c), shall by rule develop patient safety practices for the evaluation, diagnosis, treatment, and management of placenta accreta spectrum disorder.

(c) In adopting the patient safety practices under Subsection (b), the executive commissioner must consult with:

(1) physicians and other health professionals who practice in the evaluation, diagnosis, treatment, and management of placenta accreta spectrum disorder;

(2) health researchers with expertise in placenta accreta spectrum disorder;

(3) representatives of patient advocacy organizations; and

(4) other interested persons.

(d) The patient safety practices developed under Subsection (b) must, at a minimum, require a hospital assigned a maternal level of care designation under Section 241.182 to:

(1) screen patients for placenta accreta spectrum disorder, if appropriate;

(2) manage patients with placenta accreta spectrum disorder, including referring and transporting patients to a higher level of care when clinically indicated;

(3) foster telemedicine medical services, referral, and transport relationships with other hospitals assigned a maternal level of care designation under Section 241.182 for the treatment and management of placenta accreta spectrum disorder;

(4) address inpatient postpartum care for patients diagnosed with placenta accreta spectrum disorder; and

(5) develop a written hospital preparedness and management plan for patients with placenta accreta spectrum disorder who are undiagnosed until delivery, including educating hospital and medical staff who may be involved in the treatment and management of placenta accreta spectrum disorder.

(e) In addition to implementing the patient safety practices required by Subsection (d), a hospital assigned a level IV maternal designation shall have available a multidisciplinary team of health professionals who participate in continuing staff and team-based education and training to care for patients with placenta accreta spectrum disorder.

(f) The team of health professionals described by Subsection (e) may include anesthesiologists, obstetricians/gynecologists, urologists, surgical specialists, interventional radiologists, and other health professionals who are timely available on urgent request to assist in attending to a patient with placenta accreta spectrum disorder.

(g) The Perinatal Advisory Council, using data collected by the department from available sources related to placenta accreta spectrum disorder, shall recommend rules on patient safety practices for the evaluation, diagnosis, treatment, management, and reporting of placenta accreta spectrum disorder. The rules adopted under this subsection from the council's recommendations must be included in the patient safety practices a hospital assigned a maternal level of care

designation under Section 241.182 is required to adopt under Subsection (d).

(h) Notwithstanding any other law, this section, including the use of or failure to use any patient safety practices, information, or materials developed or disseminated under this section, does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action, and may not be referred to or used as evidence in a health care liability claim under Chapter 74, Civil Practice and Remedies Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 648 (H.B. 1164), Sec. 1, eff. September 1, 2021.

Sec. 241.184. CONFIDENTIALITY; PRIVILEGE. (a) All information and materials submitted by a hospital to the department under Section 241.183(d) are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are submitted by a hospital or an entity that has an ownership or management interest in a hospital.

(c) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials submitted to the department under Section 241.183(d).

(d) The submission of information or materials under Section 241.183(d) is not a waiver of a privilege or protection granted under law.

(e) The provisions of this section regarding the confidentiality of information or materials submitted by a hospital in compliance with Section 241.183(d) do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(f) A department summary or disclosure, including an assignment of a level of care designation, may not contain information identifying a patient, employee, contractor, volunteer, consultant, health care practitioner, student, or trainee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.185. ASSIGNMENT OF LEVEL OF CARE DESIGNATION. (a) The executive commissioner, in consultation with the department, shall assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care. The executive commissioner shall evaluate separately the neonatal and maternal services provided at the hospital and assign the respective level of care designations accordingly.

(b) Every three years, the executive commissioner and the department shall review the level of care designations assigned to each hospital and, as necessary, assign a hospital a different level of care designation or remove the hospital's level of care designation.

(c) A hospital may request a change of designation at any time. On request under this subsection, the executive commissioner and the department shall review the hospital's request and, as necessary, change the hospital's level of care designation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.

Sec. 241.186. HOSPITAL NOT DESIGNATED. A hospital that does not meet the minimum requirements for any level of care designation for neonatal or maternal services:

(1) may not receive a level of care designation for those services; and

(2) is not eligible to receive reimbursement through the Medicaid program for neonatal or maternal services, as applicable, except emergency services required to be provided or reimbursed under state or federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff.

September 1, 2013.

Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION REQUIREMENTS; CONDITIONAL DESIGNATION. (a) The department shall develop and implement a process through which a hospital may request and enter into an agreement with the department to:

(1) receive or maintain a level of care designation for which the hospital does not meet all requirements conditioned on the hospital, in accordance with a plan approved by the department and outlined under the agreement, satisfying all requirements for the level of care designation within a time specified under the agreement, which may not exceed the first anniversary of the effective date of the agreement; or

(2) waive one specific requirement for a level of care designation in accordance with Subsection (c).

(b) The process developed and implemented under this section must:

(1) subject to Subdivision (2), allow a hospital to submit a written request under Subsection (a) at any time;

(2) require a hospital to:

(A) before submitting the request, provide notice of the hospital's intention to seek a waiver under this section to the hospital's medical staff who practice in a specialty service area affected by the waiver;

(B) provide the notice required by Paragraph (A) in accordance with the hospital's process for communicating information to medical staff; and

(C) document the provision of the notice required by Paragraph (A); and

(3) allow the department to make a determination on the request at any time.

(c) The department may enter into an agreement with a hospital to waive a requirement under Subsection (a)(2) only if the department determines the waiver is justified after considering:

(1) the expected impact on:

(A) the accessibility of care in the geographical area served by the hospital if the waiver is not granted; and

(B) quality of care and patient safety; or

(2) whether health care services related to the requirement

can be provided through telemedicine medical services under Section 241.1835.

(d) A waiver agreement entered into under Subsection (a):

(1) must expire not later than at the end of each designation cycle but may be renewed on expiration by the department under the same or different terms; and

(2) may specify any conditions for ongoing reporting and monitoring during the agreement.

(e) A hospital that enters into a waiver agreement under Subsection (a) is required to satisfy all other requirements for a level of care designation that are not waived in the agreement.

(f) The department shall post on the department's Internet website and periodically update:

(1) a list of hospitals that enter into an agreement with the department under this section; and

(2) an aggregated list of the requirements conditionally met or waived in agreements entered into under this section.

(g) A hospital that enters into an agreement with the department under this section shall post on the hospital's Internet website the nature and general terms of the agreement.

Added by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 2, eff. June 10, 2019.

Sec. 241.187. PERINATAL ADVISORY COUNCIL. (a) In this section, "advisory council" means the Perinatal Advisory Council established under this section.

(b) The advisory council consists of 19 members appointed by the executive commissioner as follows:

(1) four physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in neonatology:

(A) at least two of whom practice in a Level III or IV neonatal intensive care unit; and

(B) at least one of whom practices in a neonatal intensive care unit of a hospital located in a rural area;

(2) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in general pediatrics;

(3) two physicians licensed to practice medicine under

Subtitle B, Title 3, Occupations Code, specializing in obstetrics-gynecology;

(4) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in maternal fetal medicine;

(5) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in family practice who provide obstetrical care in a rural community, at least one of whom must provide such care at a hospital that has 50 or fewer patient beds and that is:

(A) located in a county with a population of 60,000 or less; or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital;

(6) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in maternal health care delivery;

(7) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in perinatal health care delivery;

(8) one representative from a children's hospital;

(9) one representative from a hospital with a Level II neonatal intensive care unit;

(10) two representatives from a rural hospital, at least one of whom must be an administrative representative from a hospital that has 50 or fewer patient beds and that is:

(A) located in a county with a population of 60,000 or less; or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital;

(11) one representative from a general hospital; and

(12) one ex officio representative from the office of the medical director of the Health and Human Services Commission.

(c) To the extent possible, the executive commissioner shall appoint members to the advisory council who previously served on the Neonatal Intensive Care Unit Council established under Chapter 818 (H.B. 2636), Acts of the 82nd Legislature, Regular Session, 2011.

(d) Members of the advisory council described by Subsections (b)(1)-(11) serve staggered three-year terms, with the terms of six

of those members expiring September 1 of each year. A member may be reappointed to the advisory council.

(e) A member of the advisory council serves without compensation but is entitled to reimbursement for actual and necessary travel expenses related to the performance of advisory council duties.

(f) The department, with recommendations from the advisory council, shall develop a process for the designation and updates of levels of neonatal and maternal care at hospitals in accordance with this subchapter.

(g) The advisory council shall:

(1) develop and recommend criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(2) develop and recommend a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(3) make recommendations for the division of the state into neonatal and maternal care regions;

(4) examine utilization trends relating to neonatal and maternal care; and

(5) make recommendations related to improving neonatal and maternal outcomes.

(h) In developing the criteria for the levels of neonatal and maternal care, the advisory council shall consider:

(1) any recommendations or publications of the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists, including "Guidelines for Perinatal Care";

(2) any guidelines developed by the Society of Maternal-Fetal Medicine;

(3) the geographic and varied needs of citizens of this state; and

(4) the patient safety practices adopted under Section 241.1837.

(i) In developing the criteria for designating levels one through three of neonatal and maternal care, the advisory council may not consider the number of patients treated at a hospital.

(j) The advisory council shall submit a report detailing the advisory council's determinations and recommendations to the department and the executive commissioner not later than September 1,

2016.

(k) The advisory council shall continue to update its recommendations based on any relevant scientific or medical developments.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.07

(l) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished and this section expires September 1, 2027.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 3

(l) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). The advisory council shall be reviewed during the period in which the Department of State Health Services is reviewed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 217 (H.B. 15), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 583 (H.B. 3433), Sec. 1, eff. June 16, 2015.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.07, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 600 (S.B. 749), Sec. 3, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 648 (H.B. 1164), Sec. 2, eff. September 1, 2021.

SUBCHAPTER I. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES ASSOCIATED WITH LICENSED HOSPITALS

Sec. 241.201. APPLICABILITY. This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is exempt from the licensing requirements of Chapter 254 under Section 254.052(7) or (8).

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.
Redesignated from Health and Safety Code, Section 241.181 by Acts

2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(32), eff. September 1, 2015.

Sec. 241.202. ADVERTISING. A facility described by Section 241.201:

(1) may not advertise or hold itself out as a medical office, facility, or provider other than an emergency room if the facility charges for its services the usual and customary rate charged for the same service by a hospital emergency room in the same region of the state or located in a region of the state with comparable rates for emergency health care services; and

(2) must comply with the regulations in Section 254.157.

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.
Redesignated by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(32), eff. September 1, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.002(12), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 2, eff. September 1, 2019.

Sec. 241.204. ADMINISTRATIVE PENALTY. The department may assess an administrative penalty under Section 241.059 against a hospital that violates this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 917 (H.B. 1376), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0589, eff. April 2, 2015.
Redesignated from Health and Safety Code, Section 241.184 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(32), eff. September 1, 2015.

Sec. 241.205. DISCLOSURE STATEMENT REQUIRED. A facility described by Section 241.201 shall comply with Section 254.156.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 3, eff. September 1, 2019.

SUBCHAPTER I-1. PRICES AND FEES CHARGED BY FREESTANDING EMERGENCY MEDICAL CARE FACILITIES ASSOCIATED WITH CERTAIN HOSPITALS

Sec. 241.221. APPLICABILITY. (a) This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is:

(1) exempt from the licensing requirements of Chapter 254 under Section 254.052(5), (7), or (8); and

(2) associated with a hospital licensed under this chapter that does not meet the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(b) This subchapter does not apply to a freestanding emergency medical care facility associated with a hospital licensed under this chapter that:

(1) has been operating as a hospital for less than one year;

(2) has submitted an application to a federally recognized accreditation program for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); and

(3) has not failed an accreditation for certification.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.222. CERTAIN FEES PROHIBITED. (a) A facility described by Section 241.221 that provides a health care service, including testing or vaccination, to an individual accessing the service from the individual's vehicle may not charge the individual or a third-party payor a facility or observation fee.

(b) This section may not be construed as expanding the type of health care services a facility described by Section 241.221 is authorized to provide.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.223. DISCLOSURE OF CERTAIN PRICES AND FEES DURING DECLARED DISASTER; CONSTRUCTION. (a) A facility described by Section 241.221 that provides testing or vaccination for an infectious disease for which a state of disaster has been declared under Chapter 418, Government Code, shall disclose to each patient the prices the facility charges for the test or vaccine and any facility fees, supply costs, and other costs associated with the test or vaccine in accordance with the disclosure requirements described by Section 254.156, as added by Chapter 1093 (H.B. 2041), Acts of the 86th Legislature, Regular Session, 2019.

(b) This section may not be construed as expanding the type of health care services a facility described by Section 241.221 is authorized to provide.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.224. PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER. (a) In this section, "unconscionable price" means a price that is more than 200 percent of the average price for the same or a substantially similar product or service provided to other individuals by health care facilities located in the same county or nearest county to the county in which the facility described by Section 241.221 is located, as applicable, according to data collected by the department under Chapter 108.

(b) During a state of disaster declared by the governor under Chapter 418, Government Code, a facility described by Section 241.221 may not:

(1) charge an individual an unconscionable price for a product or service provided at the facility; or

(2) knowingly or intentionally charge a third-party payor, including a health benefit plan insurer, a price higher than the price charged to an individual for the same product or service based on the payor's liability for payment or partial payment of the product or service.

(c) Subsection (b)(2) does not prohibit a facility described by Section 241.221 from:

(1) offering an uninsured individual a cash discount for a particular product or service; or

(2) accepting directly from an individual full payment for a health care product or service in lieu of submitting a claim to the individual's health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

Sec. 241.225. ENFORCEMENT. Notwithstanding any conflicting provision in this subchapter and except for good cause shown, the commission shall impose the following penalty on a person licensed under this chapter who violates Section 241.224 or a rule adopted under that section:

(1) for the first violation, an administrative penalty in an amount equal to $10,000;

(2) for the second violation:

(A) an administrative penalty in an amount equal to $50,000; and

(B) a suspension of the person's license for 30 days; and

(3) for the third violation, a permanent revocation of the person's license.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 1, eff. September 1, 2021.

SUBCHAPTER J. NOTICE OF FACILITY FEES IN CERTAIN FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

Sec. 241.251. APPLICABILITY. This subchapter applies only to a freestanding emergency medical care facility, as that term is defined by Section 254.001, that is exempt from the licensing requirements of Chapter 254 under Section 254.052(8).

Added by Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 1, eff. September 1, 2015.

Sec. 241.252. NOTICE OF FEES. (a) In this section, "provider network" has the meaning assigned by Section 1456.001, Insurance Code.

(b) A facility described by Section 241.251 shall post notice that:

(1) states:

(A) the facility is a freestanding emergency medical care facility;

(B) the facility charges rates comparable to a hospital emergency room and may charge a facility fee;

(C) a facility or a physician providing medical care at the facility may not be a participating provider in the patient's health benefit plan provider network; and

(D) a physician providing medical care at the facility may bill separately from the facility for the medical care provided to a patient; and

(2) either:

(A) lists the health benefit plans in which the facility is a participating provider in the health benefit plan's provider network; or

(B) states the facility is not a participating provider in any health benefit plan provider network.

(c) The notice required by this section must be posted prominently and conspicuously:

(1) at the primary entrance to the facility;

(2) in each patient treatment room;

(3) at each location within the facility at which a person pays for health care services; and

(4) on the facility's Internet website.

(d) The notice required by Subsections (c)(1), (2), and (3) must be in legible print on a sign with dimensions of at least 8.5 inches by 11 inches.

(e) Notwithstanding Subsection (c), a facility that is a participating provider in one or more health benefit plan provider networks complies with Subsection (b)(2) if the facility:

(1) provides notice on the facility's Internet website listing the health benefit plans in which the facility is a participating provider in the health benefit plan's provider network; and

(2) provides to a patient written confirmation of whether the facility is a participating provider in the patient's health benefit plan's provider network.

Added by Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 175 (H.B. 3276), Sec. 1, eff. September 1, 2017.

SUBCHAPTER K. LIMITED SERVICES RURAL HOSPITAL

Sec. 241.301. DEFINITION. In this subchapter, "limited services rural hospital" means a general or special hospital that is or was licensed under this chapter and that:

(1) is:

(A) located in a rural area, as defined by:

(i) commission rule; or

(ii) 42 U.S.C. Section 1395ww(d)(2)(D); or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital; and

(2) otherwise meets the requirements to be designated as a limited services rural hospital or a similarly designated hospital under federal law for purposes of a payment program described by Section 241.302(a)(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 560 (S.B. 1621), Sec. 1, eff. September 1, 2019.

Sec. 241.302. LICENSE REQUIRED. (a) A person may not establish, conduct, or maintain a limited services rural hospital unless:

(1) the United States Congress passes a bill creating a payment program specifically for limited services rural hospitals or similarly designated hospitals that becomes law; and

(2) the commission issues a license to the person to establish, conduct, or maintain a limited services rural hospital under this subchapter.

(b) If the United States Congress enacts a bill described by Subsection (a)(1) that becomes law, the executive commissioner shall adopt rules:

(1) establishing minimum standards for the facilities; and

(2) implementing this section.

(c) The standards adopted under Subsection (b) must be at least as stringent as the standards established in the law described by Subsection (a) for eligibility to qualify for a payment program established by the law.

(d) An applicant for a license under this section must:

(1) submit an application for the license to the commission in a form and manner prescribed by the commission; and

(2) pay any required fee.

(e) The commission shall issue a license to act as a limited services rural hospital under this subchapter if the applicant complies with the rules and standards adopted under this section.

(f) The commission by order may waive or modify the requirement of a particular provision of this chapter or a standard adopted under this section if the commission determines that the waiver or modification will facilitate the creation or operation of the facility and that the waiver or modification is in the best interests of the individuals served or to be served by the facility. Sections 241.026(d) and (e) apply to a waiver or modification under this section for a limited services rural hospital in the same manner as the subsections apply to a waiver or modification for a hospital.

(g) A provision of this chapter related to the enforcement authority of the commission applies to a limited services rural hospital.

Added by Acts 2019, 86th Leg., R.S., Ch. 560 (S.B. 1621), Sec. 1, eff. September 1, 2019.

Sec. 241.303. LICENSING FEE. (a) The executive commissioner by rule shall establish and the commission shall collect a fee for issuing and renewing a license under this subchapter that is in an amount reasonable and necessary to cover the costs of administering and enforcing this subchapter.

(b) All fees collected under this section shall be deposited in the state treasury to the credit of the commission to administer and enforce this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 560 (S.B. 1621), Sec. 1, eff. September 1, 2019.

SUBCHAPTER L. LIMITATION ON CIVIL LIABILITY OF CHILDREN'S ISOLATION UNITS

Sec. 241.351. DEFINITION. In this subchapter, "children's isolation unit" means an isolation unit in a hospital licensed under this chapter that is designed to provide health care services to children with highly contagious infectious diseases.

Added by Acts 2021, 87th Leg., R.S., Ch. 676 (H.B. 1914), Sec. 1, eff. September 1, 2021.

Sec. 241.352. LIMITATION ON CIVIL LIABILITY OF CHILDREN'S ISOLATION UNIT. A children's isolation unit that has instituted isolation protocols is not liable for any claim, damage, or loss arising from the provision of health care services to children with highly contagious diseases, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence or wilful misconduct.

Added by Acts 2021, 87th Leg., R.S., Ch. 676 (H.B. 1914), Sec. 1, eff. September 1, 2021.

SUBCHAPTER M. HOSPITAL AT HOME PROGRAM

Sec. 241.401. DEFINITIONS. In this subchapter:

(1) "Acute hospital care at home waiver program" means:

(A) the program established by the Centers for Medicare and Medicaid Services under 42 U.S.C. Section 1320b-5 that waives the requirements of 42 C.F.R. Sections 482.23(b) and (b)(1); and

(B) a successor program to the program described by Paragraph (A) that is established by the United States Congress or the Centers for Medicare and Medicaid Services.

(2) "Hospital at home program" means a program operated by a hospital to provide in a home setting health care services that are considered to be acute hospital care for purposes of the acute hospital care at home waiver program.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.402. APPROVAL REQUIRED. A hospital may not operate a hospital at home program unless the hospital is approved to operate the program by:

(1) the Centers for Medicare and Medicaid Services; and

(2) the commission under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.403. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules establishing minimum standards for the operation of a hospital at home program by a hospital.

(b) The standards established under Subsection (a) must be at least as stringent as the standards established by the Centers for Medicare and Medicaid Services under the acute hospital care at home waiver program.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.404. APPLICATION; APPROVAL. (a) An applicant for approval to operate a hospital at home program under this subchapter must:

(1) submit an application to the commission in the form and manner prescribed by the commission; and

(2) pay a fee in the amount set by the commission under Section 241.405.

(b) The commission shall approve an application submitted by an applicant under Subsection (a) of this section if the applicant meets the standards established under Section 241.403 and satisfies the requirements of this section.

(c) The commission may request that an applicant provide additional information necessary to determine whether the applicant meets the standards established under Section 241.403 after the applicant has submitted an application.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.405. FEE. (a) The commission may establish a fee to be assessed for the consideration of an application submitted under this subchapter.

(b) The commission must set the fee in an amount that is reasonable and necessary to cover the costs of administering this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

Sec. 241.406. WAIVER OF REQUIREMENTS. (a) The commission by order may waive or modify a requirement of a particular provision of this subchapter or a standard established under this subchapter if the commission determines that the waiver or modification:

(1) will facilitate a hospital's creation or operation of a hospital at home program; and

(2) is in the best interests of the individuals who are or will be served by the hospital's hospital at home program.

(b) Sections 241.026(d) and (e) apply to a waiver or modification under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 232 (H.B. 1890), Sec. 1, eff. May 27, 2023.

CHAPTER 242. CONVALESCENT AND NURSING FACILITIES AND RELATED INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 242.001. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) It is the goal of this chapter to ensure that institutions in this state deliver the highest possible quality of care. This chapter, and the rules and standards adopted under this chapter, establish minimum acceptable levels of care. A violation of a minimum acceptable level of care established under this chapter or a rule or standard adopted under this chapter is forbidden by law. Each institution licensed under this chapter shall, at a minimum, provide quality care in accordance with this chapter and the rules and standards. Components of quality of care addressed by these rules and standards include:

(1) quality of life;

(2) access to care;

(3) continuity of care;
(4) comprehensiveness of care;
(5) coordination of services;
(6) humaneness of treatment;
(7) conservatism in intervention;
(8) safety of the environment;
(9) professionalism of caregivers; and
(10) participation in useful studies.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program. The rules and standards may not be less stringent than the Medicaid certification standards imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(c) The rules and standards adopted under this chapter apply to each licensed institution. The rules and standards are intended for use in state surveys of the facilities and any investigation and enforcement action and are designed to be useful to consumers and providers in assessing the quality of care provided in an institution.

(d) The legislature finds that the construction, maintenance, and operation of institutions shall be regulated in a manner that protects the residents of the institutions by:

(1) providing the highest possible quality of care;
(2) strictly monitoring all factors relating to the health, safety, welfare, and dignity of each resident;
(3) imposing prompt and effective remedies for noncompliance with licensing standards; and
(4) providing the public with information concerning the operation of institutions in this state.

(e) It is the legislature's intent that this chapter accomplish the goals listed in Subsection (d).

(f) This chapter shall be construed broadly to accomplish the purposes set forth in this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of aging and disability services.

(3) "Controlling person" means a person who controls an institution or other person as described by Section 242.0021.

(4) "Department" means the Department of Aging and Disability Services.

(5) "Elderly person" means an individual who is 65 years of age or older.

(5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility" means an institution.

(7) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(8) "Home" means an institution.

(9) "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).

(10) "Institution" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(B) provides minor treatment under the direction and supervision of a physician licensed by the Texas Medical Board, or other services that meet some need beyond the basic provision of food, shelter, and laundry.

(11) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity and includes a legal successor of those entities.

(12) "Resident" means an individual, including a patient, who resides in an institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 30, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 747, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), 8.084, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 693, Sec. 2, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1159, Sec. 1.02, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 404 (S.B. 870), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0591, eff. April 2, 2015.

Sec. 242.0021. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an institution or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an institution;

(2) any person who is a controlling person of a management company or other business entity that operates an institution or that contracts with another person for the operation of an institution; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an institution, is in a position of actual control or authority with respect to the institution, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an institution or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of an institution.

(d) The executive commissioner may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.03, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 1, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0592, eff. April 2, 2015.

Sec. 242.003. EXEMPTIONS. Except as otherwise provided, this chapter does not apply to:

(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;

(2) a hospital;

(3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;

(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;

(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;

(6) a facility that:

(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

(B) is operated under the jurisdiction of a state or federal agency, including the commission, department, Department of Assistive and Rehabilitative Services, Department of State Health Services, Texas Department of Criminal Justice, and United States Department of Veterans Affairs; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency;

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the

executive commissioner; and

(8) a facility licensed under Chapter 252 or exempt from licensure under Section 252.003.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 88, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 693, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.093, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0593, eff. April 2, 2015.

Sec. 242.005. PERFORMANCE REPORTS. (a) The department shall prepare annually a full report of the operation and administration of the department's responsibilities under this chapter, including recommendations and suggestions considered advisable.

(b) The Legislative Budget Board and the state auditor shall jointly prescribe the form and content of reports required under this section, provided, however, that the state auditor's participation under this section is subject to approval by the legislative audit committee for inclusion in the audit plan under Section 321.013(c), Government Code.

(c) The department shall submit the required report to the governor and the legislature not later than March 1 of each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.04, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 785, Sec. 68, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 7, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.26, eff. September 1, 2019.

Sec. 242.006. DIRECTORY OF LICENSED INSTITUTIONS. (a) The department shall prepare and publish annually a directory of all

licensed institutions.

(b) The directory must contain:

(1) the name and address of the institution;

(2) the name of the proprietor or sponsoring organization; and

(3) other pertinent data that the department considers useful and beneficial to those persons interested in institutions operated in accordance with this chapter.

(c) The department shall make copies of the directory available to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.007. CONSULTATION AND COOPERATION. (a) Whenever possible, the department shall use the services of and consult with state and local agencies in carrying out its responsibility under this chapter.

(b) The department may cooperate with local public health officials of a county or municipality in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department in accordance with this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.085, eff. Sept. 1, 1995.

Sec. 242.008. EMPLOYMENT OF PERSONNEL. The department may employ the personnel necessary to administer this chapter properly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.009. FEDERAL FUNDS. The department may accept and use any funds allocated by the federal government to the department for administrative expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.010. CHANGE OF ADMINISTRATORS. An institution that hires a new administrator or person designated as chief manager shall:

(1) notify the department in writing not later than the 30th day after the date on which the change becomes effective; and

(2) pay a $20 administrative fee to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.011. LANGUAGE REQUIREMENTS PROHIBITED. An institution may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing medical treatment, nursing care, or institutional services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.013. PAPERWORK REDUCTION RULES. (a) The executive commissioner shall adopt rules to reduce the amount of paperwork an institution must complete and retain.

(a-1) The department shall attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.086, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0594, eff. April 2, 2015.

Sec. 242.014. PROHIBITION OF REMUNERATION. (a) An institution may not receive monetary or other remuneration from a person or

agency that furnishes services or materials to the institution or its occupants for a fee.

(b) The department may revoke the license of an institution that violates Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.015. LICENSED ADMINISTRATOR. (a) Each institution must have a licensed nursing facility administrator.

(b) The administrator shall:

(1) manage the institution;

(2) be responsible for:

(A) delivery of quality care to all residents; and

(B) implementation of the policies and procedures of the institution; and

(3) work at least 40 hours per week on administrative duties.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.016. FEES AND PENALTIES. Except as expressly provided by this chapter, a fee or penalty collected by or on behalf of the department under this chapter must be deposited to the credit of the general revenue fund and may be appropriated only to the department to administer and enforce this chapter. Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless the department or other state agency assesses and collects a penalty described under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.05, eff. Sept. 1, 1997.

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution has violated this chapter or a rule adopted under this chapter; or

(2) the fact of the assessment of a penalty against an institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the department that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action; and

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the department after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 16.02, eff. Sept. 1, 2003.

Sec. 242.018. COMPLIANCE WITH CHAPTER 260A. (a) An institution shall comply with Chapter 260A and the rules adopted under that chapter.

(b) A person, including an owner or employee of an institution, shall comply with Chapter 260A and the rules adopted under that chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(e), eff. September 28, 2011.

Sec. 242.019. GUARDIANSHIP ORDERS. An institution shall make a

reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An institution that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

Added by Acts 2015, 84th Leg., R.S., Ch. 724 (H.B. 1337), Sec. 1, eff. September 1, 2015.

Sec. 242.020. CIVIL LIABILITY RELATED TO MISAPPROPRIATION OF RESIDENT'S FUNDS. (a) In this section:

(1) "Misappropriate" means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any real or personal property or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority.

(2) "Responsible payor" means a person who:

(A) has legal access to the resident's income or resources available to pay for nursing facility care; and

(B) has signed an admission agreement or other contract with the facility in which the person agrees to provide payment for the resident's facility care from the resident's income or resources.

(b) A nursing facility may file an action against a resident's responsible payor for an amount owed by the resident to the facility if:

(1) before admission of the resident, the facility obtains financial information from the resident or responsible payor demonstrating the amount of financial resources that the resident has available to pay for nursing facility care; and

(2) after the resident begins to reside at the facility, the responsible payor misappropriates the resident's resources to a degree that the resident is unable to afford to pay for the resident's care.

(c) A nursing facility may file an action for injunctive relief against a resident's responsible payor who engages in conduct described by Subsection (b). The court may grant any appropriate injunctive relief to prevent or abate the conduct, including a

temporary restraining order, temporary injunction, or permanent injunction.

(d) Subject to Subsection (e), the prevailing party in an action filed under this section may recover attorney's fees.

(e) In an action filed under this section, a nursing facility may not recover a total amount, including damages and attorney's fees, that exceeds the amount the responsible payor has misappropriated from the resident.

Added by Acts 2021, 87th Leg., R.S., Ch. 2 (S.B. 270), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 242.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain an institution in this state without a license issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.032. LICENSE OR RENEWAL APPLICATION. (a) An application for a license or renewal of a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires.

(c) The applicant or license holder must furnish evidence to affirmatively establish the applicant's or license holder's ability to comply with:

(1) minimum standards of medical care, nursing care, and financial condition; and

(2) any other applicable state or federal standard.

(d) The department shall consider the background and qualifications of:

(1) the applicant or license holder;

(2) a partner, officer, director, or managing employee of the applicant or license holder;

(3) a person who owns or who controls the owner of the physical plant of a facility in which the institution operates or is

to operate; and

(4) a controlling person with respect to the institution for which a license or license renewal is requested.

(e) In making the evaluation required by Subsection (d), the department shall require the applicant or license holder to file a sworn affidavit of a satisfactory compliance history and any other information required by the department to substantiate a satisfactory compliance history relating to each state or other jurisdiction in which the applicant or license holder and any other person described by Subsection (d) operated an institution at any time before the date on which the application is made. The executive commissioner by rule shall determine what constitutes a satisfactory compliance history. The department may consider and evaluate the compliance history of the applicant and any other person described by Subsection (d) for any period during which the applicant or other person operated an institution in this state or in another state or jurisdiction. The department may also require the applicant or license holder to file information relating to the history of the financial condition of the applicant or license holder and any other person described by Subsection (d) with respect to an institution operated in another state or jurisdiction at any time before the date on which the application is made.

(f) Information obtained under this section regarding an applicant's or license holder's financial condition is confidential and may not be disclosed to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.06, eff. Sept. 1, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 10, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 17, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0595, eff. April 2, 2015.

Sec. 242.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After

receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant or license holder, and any other person described by Section 242.032(d), meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter.

(b) The department may issue a license only for:

(1) the premises and persons or governmental unit named in the application; and

(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) Except as provided by Subsection (f), a license is renewable every three years after:

(1) an inspection, unless an inspection is not required as provided by Section 242.047;

(2) payment of the license fee; and

(3) department approval of the report filed every three years by the licensee.

(e) The report required for license renewal under Subsection (d)(3) must comply with department rules that specify the date of submission of the report, the information it must contain, and its form.

(f) The initial license issued to a license holder who has not previously held a license under this subchapter is a probationary license. A probationary license is valid for only one year. At the end of the one-year period, a license under Subsection (a) shall be issued but only after:

(1) the department finds that the license holder and any other person described by Section 242.032(d) continue to meet the requirements established under each provision of this chapter and any rule or standard adopted under this chapter;

(2) an inspection, unless an inspection is not required as provided by Section 242.047;

(3) payment of the license fee; and

(4) department approval of the report required for license renewal that complies with rules adopted under Subsection (e).

(g) The executive commissioner by rule shall adopt a system under which an appropriate number of licenses issued by the department under this chapter expire on staggered dates occurring in

each three-year period. If the expiration date of a license changes as a result of this subsection, the department shall prorate the licensing fee relating to that license as appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(a), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.07, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 512, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(a), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0596, eff. April 2, 2015.

Sec. 242.0335. EXPEDITED ISSUANCE OF CHANGE OF OWNERSHIP LICENSE TO CERTAIN CURRENT LICENSE HOLDERS. (a) The department shall maintain, and keep current, a list of license holders that operate an institution in this state and that have excellent operating records according to the information available to the department. The executive commissioner by rule shall establish specific criteria for the department to designate a license holder as eligible for the list.

(b) The department shall establish a procedure under which a listed license holder may be granted expedited approval in obtaining a change of ownership license to operate another existing institution in this state. The procedure may involve allowing a listed license holder to submit an affidavit demonstrating that the license holder continues to meet the criteria for being listed and continues to meet the requirements described by Subsection (c).

(c) An applicant for a change of ownership license must meet all applicable requirements that an applicant for renewal of a license must meet under this subchapter, including under Section 242.032(d), and under rules adopted under this subchapter. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(d) Subsection (c) applies only to a license holder designated as eligible for and placed on the list maintained under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 7.05, eff. June 15, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0597, eff. April 2, 2015.

Sec. 242.0336. TEMPORARY CHANGE OF OWNERSHIP LICENSE. (a) For purposes of this section, a temporary change of ownership license is a temporary 90-day license issued to an applicant who proposes to become the new operator of an institution existing on the date the application is filed.

(b) After receiving an application for a temporary change of ownership license, the department shall issue a temporary license to the applicant if, after investigation, the department finds that the applicant and any other person described by Section 242.032(d) meet:

(1) the requirements established under Section 242.032(c); and

(2) the department's standards for background and qualifications under Sections 242.032(d) and (e).

(b-1) Except as provided by Subsection (b-2), the department may not issue a temporary change of ownership license before the 31st day after the date the department has received both:

(1) the application for the license; and

(2) notification, in writing, of the intent of the institution's existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

(b-2) Notwithstanding Section 242.0335, the executive commissioner shall establish criteria under which the department may waive the 30-day requirement or the notification requirement of Subsection (b-1). The criteria may include the occurrence of forcible entry and detainer, death, or divorce or other events that affect the ownership of the institution by the existing license holder.

(b-3) After receipt of an application or written notification described by Subsection (b-1), the department may place a hold on payments to the existing license holder in an amount not to exceed the average of the monthly vendor payments paid to the facility, as

determined by the department. The department shall release funds to the previous license holder not later than the 120th day after the date on which the final reporting requirements are met and any resulting informal reviews or formal appeals are resolved. The department may reduce the amount of funds released to the previous license holder by the amount owed to the department or the commission under the previous license holder's Medicaid contract or license.

(b-4) The executive commissioner shall adopt rules for the department that define a change of ownership. In adopting the rules, the executive commissioner shall consider:

(1) the proportion of ownership interest that is being transferred to another person;

(2) the addition or removal of a stockholder, partner, owner, or other controlling person;

(3) the reorganization of the license holder into a different type of business entity; and

(4) the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.

(c) The department shall issue or deny a temporary change of ownership license not later than the 31st day after the date of receipt of the completed application. The effective date of a temporary change of ownership license issued under this section is the date requested in the application unless:

(1) the department does not receive the application and written notification described by Subsection (b-1) at least 30 days before that date; and

(2) no waiver under Subsection (b-2) applies.

(c-1) If the department does not receive the application and written notification required by Subsection (b-1) at least 30 days before the effective date requested in the application and Subsection (b-2) does not apply, the effective date of the temporary change of ownership license is the 31st day after the date the department receives both the application and the notification.

(d) Except as provided in Subsection (d-1), after the

department issues a temporary change of ownership license to the applicant, the department shall conduct an inspection or survey of the nursing facility under Section 242.043 as soon as reasonably possible. During the period between the issuance of the temporary license and the inspection or survey of the nursing facility or desk review under Subsection (d-1), the department may not place a hold on vendor payments to the temporary license holder.

(d-1) The executive commissioner shall establish criteria under which the department may substitute a desk review of the facility's compliance with applicable requirements for the on-site inspection or survey under Subsection (d).

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection, or survey and the applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

(1) place a hold on vendor payments to the temporary change of ownership license holder; and

(2) take any other action authorized under this chapter.

(f) If the applicant meets the requirements of Section 242.033 and the nursing facility passes a desk review, initial inspection, or subsequent inspection before the temporary change of ownership license expires, the license issued under Section 242.033 is considered effective on the date the department determines under Subsection (c) or (c-1).

(g) A temporary change of ownership license issued under Subsection (b) expires on the 90th day after the effective date established under Subsection (c) or (c-1).

Added by Acts 2001, 77th Leg., ch. 14, Sec. 1, eff. Sept. 1, 2001.
Renumbered from Health & Safety Code Sec. 242.0335 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(91), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0598, eff. April 2, 2015.

Sec. 242.034. LICENSE FEES. (a) The executive commissioner may establish by rule license fees for institutions licensed by the department under this chapter. The license fee may not exceed $375 plus:

(1) $15 for each unit of capacity or bed space for which a license is sought; and

(2) a background examination fee imposed under Subsection (d).

(b) The license fee for a probationary license issued under Section 242.033(f) may not exceed $125 plus:

(1) $5 for each unit of capacity or bed space for which the license is sought; and

(2) a background examination fee imposed under Subsection (d).

(c) An additional license fee may be charged as provided by Section 242.097.

(d) The executive commissioner by rule may establish a background examination fee in an amount necessary to defray the department's expenses in administering its duties under Sections 242.032(d) and (e).

(e) The applicable license fee must be paid with each application for a probationary license, an initial license, a renewal license, or a change of ownership license.

(f) The state is not required to pay the license fee.

(g) An approved increase in bed space is subject to an additional fee.

(h) The license fees established under this chapter are an allowable cost for reimbursement under the medical assistance program administered by the commission under Chapter 32, Human Resources Code. Any fee increases shall be reflected in reimbursement rates prospectively.

(i) An applicant for license renewal who submits an application later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(b), eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1159, Sec. 1.08, eff. Sept. 1, 1997; Acts

1999, 76th Leg., ch. 512, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 11, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1063 (H.B. 3196), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0599, eff. April 2, 2015.

Sec. 242.035. LICENSING CATEGORIES. (a) The department shall determine the rank of licensing categories.
(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The executive commissioner shall establish procedures and standards to accommodate an institution's operation under the lower category.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0600, eff. April 2, 2015.

Sec. 242.036. GRADING. (a) The executive commissioner may adopt and publish and the department may enforce minimum standards relating to the grading of an institution in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the executive commissioner.
(b) An institution that has a superior grade shall prominently display the grade for public view.
(c) As an incentive to attain the superior grade, an institution may advertise its grade, except that it may not advertise a superior grade that has been canceled.
(d) The department may not award a superior grade to an institution that, during the year preceding the grading inspection, violated state or federal law, rules, or regulations relating to:
(1) the health, safety, or welfare of its residents;
(2) resident funds;

(3) the confidentiality of a resident's records;

(4) the financial practices of the institution; or

(5) the control of medication in the institution.

(e) The department shall cancel an institution's superior grade if the institution:

(1) does not meet the criteria established for a superior grade; or

(2) violates a state or federal law, rule, or regulation described by Subsection (d).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0601, eff. April 2, 2015.

Sec. 242.037. RULES; MINIMUM STANDARDS. (a) The executive commissioner shall make and the department shall enforce rules and minimum standards to implement this chapter, including rules and minimum standards relating to quality of life, quality of care, and residents' rights.

(b) The rules and standards adopted under this chapter may be more stringent than the standards imposed by federal law for certification for participation in the state Medicaid program.

(c) The rules and standards adopted by the executive commissioner may not be less stringent than the Medicaid certification standards and regulations imposed under the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub.L. No. 100-203.

(d) To implement Sections 242.032(d) and (e), the executive commissioner by rule shall adopt minimum standards for the background and qualifications of any person described by Section 242.032(d). The department may not issue or renew a license if a person described by Section 242.032 does not meet the minimum standards adopted under this section.

(e) In addition to standards or rules required by other provisions of this chapter, the executive commissioner shall adopt and publish and the department shall enforce minimum standards relating to:

(1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to

ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;

(3) requirements for in-service education of all employees who have any contact with the residents;

(4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the nutritional needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare;

(8) the use and administration of medication in conformity with applicable law and rules;

(9) care and treatment of residents and any other matter related to resident health, safety, and welfare;

(10) licensure of institutions; and

(11) implementation of this chapter.

(f) The executive commissioner shall adopt and publish and the department shall enforce minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents in an institution and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by department rule, on a schedule determined by department rule.

(g) To administer the surveys for provider certification provided for by federal law and regulation, the department must identify each area of care that is subject to both state licensing requirements and federal certification requirements. For each area of care that is subject to the same standard under both federal certification and state licensing requirements, an institution that

is in compliance with the federal certification standard is considered to be in compliance with the same state licensing requirement.

(h) Section 161.0051 applies to institutions serving residents who are elderly persons, and any rules and standards adopted under that section are considered to be rules and standards adopted under this chapter.

(i) The minimum standards adopted under this section must require that each institution, as part of an existing training program, provide each registered nurse, licensed vocational nurse, nurse aide, and nursing assistant who provides nursing services in the institution at least one hour of training each year in caring for people with dementia.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 583, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(54), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.09, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 259, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1031, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0602, eff. April 2, 2015.

Sec. 242.0371. NOTICE OF CERTAIN EMPLOYMENT POLICIES. (a) An institution licensed under this chapter shall prepare a written statement describing the institution's policy for:

(1) the drug testing of employees who have direct contact with residents; and

(2) the conducting of criminal history record checks of employees and applicants for employment in accordance with Chapter 250.

(b) The institution shall provide the statement to:

(1) each person applying for services from the institution or the person's next of kin or guardian; and

(2) any person requesting the information.

Added by Acts 1999, 76th Leg., ch. 1020, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 1, eff. Sept. 1, 2001.

Sec. 242.0373. RESTRAINT AND SECLUSION. A person providing services to a resident of an institution shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 2, eff. September 1, 2005.

Sec. 242.038. REASONABLE TIME TO COMPLY. The executive commissioner by rule shall give an institution that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0603, eff. April 2, 2015.

Sec. 242.0385. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify an institution may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0604, eff. April 2, 2015.

Sec. 242.039. FIRE SAFETY REQUIREMENTS. (a) The executive commissioner shall adopt rules necessary to specify the edition of the Life Safety Code of the National Fire Protection Association that will be used to establish the life safety requirements for an institution licensed under this chapter.

(b) The executive commissioner shall adopt the edition of the Life Safety Code of the National Fire Protection Association for fire safety as designated by federal law and regulations for an institution or portion of an institution that is constructed after September 1, 1993, and for an institution or portion of an institution that was operating or approved for construction on or before September 1, 1993.

(c) The executive commissioner may not require more stringent fire safety standards than those required by federal law and regulation. The rules adopted under this section may not prevent an institution licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the executive commissioner.

(d) Licensed health care facilities in existence at the time of the effective date of this subsection may have their existing use or occupancy continued if such facilities comply with fire safety standards and ordinances in existence at the time of the effective date of this subsection.

(e) Notwithstanding any other provision of this section, a municipality shall have the authority to enact additional and higher fire safety standards applicable to new construction beginning on or

after the effective date of this subsection.

(g) The executive commissioner shall adopt rules to implement an expedited inspection process that allows an applicant for a license or for a renewal of a license to obtain a life safety code and physical plant inspection not later than the 15th day after the date the request is made. The department may charge a fee to recover the cost of the expedited inspection. The rules must permit the department to charge different fee amounts based on the size and type of institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 583, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0605, eff. April 2, 2015.

Sec. 242.0395. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK.

Text of subsection effective until April 1, 2025

(a) An institution licensed under this chapter shall register with the Texas Information and Referral Network under Section 531.0312, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

Text of subsection effective on April 1, 2025

(a) An institution licensed under this chapter shall register with the Texas Information and Referral Network under Section 526.0004, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The institution is not required to identify individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The institution shall notify each resident and the resident's next of kin or guardian regarding how to register for

evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 1.17, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.43, eff. April 1, 2025.

Sec. 242.040. CERTIFICATION OF INSTITUTIONS THAT CARE FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS. (a) The department shall establish a system for certifying institutions that meet standards adopted by the executive commissioner concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(c) The executive commissioner by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for a three-year certification period.

(d) The executive commissioner by rule may establish and the department may collect fees for the certification in an amount necessary to administer this section.

(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer's disease or related disorders unless the institution is certified under this section.

(f) The executive commissioner by rule shall adopt a system under which an appropriate number of certifications issued by the department expire on staggered dates occurring in each three-year period. If the expiration date of a certification changes as a result of this subsection, the department shall prorate the certification fee relating to that certification as appropriate.

(g) The executive commissioner by rule shall adopt a definition of "Alzheimer's disease and related disorders," and may adopt by reference a definition published in a generally accepted clinical

resource for medical professionals. The executive commissioner shall modify the definition as necessary to conform to changes in medical practice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1063 (H.B. 3196), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0606, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 1, eff. June 20, 2015.

Sec. 242.0405. NOTICE OF ALZHEIMER'S DISEASE AND RELATED DISORDERS CERTIFICATION. (a) A nursing facility advertising, marketing, or otherwise promoting that the facility provides memory care services shall prepare a written notice disclosing whether the facility is certified or is not certified under Section 242.040 to provide specialized care and treatment for facility residents with Alzheimer's disease and related disorders.

(b) The nursing facility shall provide the notice described by Subsection (a) to:

(1) each facility resident; and

(2) each person applying for services from the facility or the person's next of kin or guardian.

(c) A nursing facility that provides the notice required under Subsection (a) is not required to include the information described by Section 242.202(d)(2) in a disclosure statement provided under that section.

Added by Acts 2021, 87th Leg., R.S., Ch. 514 (S.B. 383), Sec. 1, eff. September 1, 2021.

Sec. 242.041. FALSE COMMUNICATION CONCERNING CERTIFICATION; CRIMINAL PENALTY. (a) An institution commits an offense if the institution violates Section 242.040(e).

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.042. POSTING. (a) Each institution shall prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that licensing inspection reports and other related reports which show deficiencies cited by the department are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution;

(4) a concise summary of the most recent inspection report relating to the institution;

(5) notice that the department can provide summary reports relating to the quality of care, recent investigations, litigation, and other aspects of the operation of the institution;

(6) notice that the Texas Board of Nursing Facility Administrators, if applicable, can provide information about the nursing facility administrator;

(7) any notice or written statement required to be posted under Section 242.072(c);

(8) notice that informational materials relating to the compliance history of the institution are available for inspection at a location in the institution specified by the sign;

(9) notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 260A.014 and 260A.015; and

(10) a sign required to be posted under Section 260A.006(a).

(b) The notice required by Subsection (a)(8) must also be posted at each door providing ingress to and egress from the institution.

(c) The informational materials required to be maintained for

public inspection by an institution under Subsection (a)(8) must be maintained in a well-lighted accessible location and must include:

(1) any information required to be included under Section 242.504; and

(2) a statement of the institution's record of compliance with this chapter and the rules and standards adopted under this chapter that is updated not less frequently than bi-monthly and that reflects the record of compliance during the period beginning one year before the date the statement is last updated, in the form required by the department.

(d) The notice required by Subsection (a)(9) must be posted in English and a second language as required by department rule.

(e) The department shall post detailed compliance information regarding each institution licensed by the department, including the information an institution is required to make accessible by Subsection (c), on the department's website. The department shall update the website once a month to provide the most current compliance information regarding each institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 324, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 192, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 102 (H.B. 1081), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(f), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0607, eff. April 2, 2015.

Sec. 242.043. INSPECTIONS. (a) The commission or the commission's representative may make any inspection, including an unannounced inspection or follow-up inspection, survey, or investigation that it considers necessary and may enter the premises of an institution at reasonable times to make an inspection, survey, or investigation in accordance with department rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the

extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the institution by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, a physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) An institution, an officer or employee of an institution, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The executive commissioner shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the executive commissioner considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0608, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 1, eff. September 1, 2021.

Sec. 242.044. UNANNOUNCED INSPECTIONS. (a) The commission

shall annually conduct at least one unannounced inspection of each institution.

(b) For at least one unannounced annual inspection of an institution, the commission shall invite at least one person as a citizen advocate from:

(1) the AARP;

(2) the Texas Senior Citizen Association;

(3) the department's Certified Long-term Care Ombudsman; or

(4) another statewide organization for the elderly.

(c) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of institutions for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(d) The department may require additional inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 815, Sec. 1(c), eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 1, eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0609, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 2, eff. September 1, 2021.

Sec. 242.0441. FOLLOW-UP INSPECTIONS. (a) The commission or the commission's representative may conduct a follow-up inspection of an institution after conducting an inspection, survey, or investigation of the institution under Section 242.043 or 242.044 to:

(1) evaluate and monitor the findings of the initial inspection, survey, or investigation; and

(2) ensure the commission is citing and punishing institutional deficiencies consistently across the state.

(b) If an institution corrects a deficiency cited during a follow-up inspection within the time specified by executive commissioner rule, the commission may not impose additional punitive actions for the deficiency.

Added by Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 3, eff.

September 1, 2021.

Sec. 242.0442. COMMISSION EVALUATION OF REGULATORY CAPACITY. (a) Not later than January 31 of each year, the commission shall evaluate the commission's capacity to regulate institutions under this chapter and formulate a strategy to effectively perform licensing duties, enforcement activities, and complaint investigations for that year.

(b) The commission shall continue to regularly evaluate the commission's capacity to regulate institutions under this chapter and implement corrective measures as necessary.

(c) The commission shall monitor the commission's staffing of employees who perform inspections, surveys, or investigations of institutions under this chapter and fill any vacant positions as soon as possible.

(d) Not later than January 1 of each year, the commission shall evaluate the commission's compliance during the previous year with Sections 242.043, 242.044, and 242.0441.

Added by Acts 2021, 87th Leg., R.S., Ch. 803 (H.B. 1423), Sec. 3, eff. September 1, 2021.

Sec. 242.0445. REPORTING OF VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and

(2) identify the specific law or rule the facility violated.

(a-1) If the commission or the commission's representative conducting an inspection, survey, or investigation under Section 242.043 or 242.044 identifies a violation that constitutes immediate jeopardy to the health or safety of a resident:

(1) the commission shall immediately notify the facility's management of the violation; and

(2) a commission representative shall remain in or be accessible to the facility until the commission has received the facility's plan of removal related to the violation.

(b) At the conclusion of an inspection, survey, or investigation under Section 242.043 or 242.044, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(b-1) Not later than the fifth working day after the date the facility receives the final statement of violations under this section, the facility shall provide a copy of the statement to a representative of the facility's family council.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 3, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 637 (S.B. 1519), Sec. 3, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 805 (H.B. 2205), Sec. 2, eff. June 10, 2019.

Sec. 242.045. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of an institution before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general;

(3) a statewide organization for the elderly, including the AARP and the Texas Senior Citizen Association;

(4) an ombudsman or representative of the department;

(5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or

(6) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a third degree felony.

(d) A person convicted under this section is not eligible for state employment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.11, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0610, eff. April 2, 2015.

Sec. 242.046. OPEN HEARING. (a) The department shall hold an open hearing in a licensed institution if the department has taken a punitive action against the institution in the preceding 12 months or if the department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid. The department is not required to hold more than one open meeting in a particular institution in each year.

(b) The department shall give notice of the time, place, and date of the hearing to:

(1) the institution;

(2) the designated closest living relative or legal guardian of each resident; and

(3) appropriate state or federal agencies that work with the institution.

(c) The department may exclude an institution's administrators and personnel from the hearing.

(d) The department shall notify the institution of any complaints received at the hearing and, without identifying the source of the complaints, provide a summary of them to the institution.

(e) The department shall determine and implement a mechanism to notify confidentially a complainant of the results of the investigation of the complaint.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 89, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0611, eff. April 2, 2015.

Sec. 242.047. ACCREDITATION REVIEW TO SATISFY INSPECTION OR CERTIFICATION REQUIREMENTS. (a) The department shall accept an annual accreditation review from The Joint Commission for a nursing facility instead of an inspection for renewal of a license under Section 242.033 and in satisfaction of the requirements for certification for participation in the medical assistance program under Chapter 32, Human Resources Code, and the federal Medicare program, but only if:

(1) the nursing facility is accredited by The Joint Commission under The Joint Commission's long-term care standards;

(2) The Joint Commission maintains an annual inspection or review program for each nursing facility that the department determines meets the applicable minimum standards;

(3) The Joint Commission conducts an annual on-site inspection or review of the facility;

(4) the nursing facility submits to the department a copy of its annual accreditation review from The Joint Commission in addition to the application, fee, and any report required for renewal of a license or for certification, as applicable; and

(5) the department has:

(A) determined whether a waiver or authorization from a federal agency is necessary under federal law, including for federal funding purposes, before the department accepts an annual accreditation review from The Joint Commission:

(i) instead of an inspection for license renewal

purposes;

(ii) as satisfying the requirements for certification for participation in the medical assistance program; or

(iii) as satisfying the requirements for certification for participation in the federal Medicare program; and

(B) obtained any necessary federal waivers or authorizations.

(b) The department shall coordinate its licensing and certification activities with The Joint Commission.

(c) The department and The Joint Commission shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the executive commissioner.

(d) Except as specifically provided by this section, this section does not limit the department in performing any duties and inspections authorized by this chapter or under any contract relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) This section does not require a nursing facility to obtain accreditation from The Joint Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.57(a), eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0612, eff. April 2, 2015.

Sec. 242.048. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of validation surveys is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 90, eff. Sept. 1, 1991.

Sec. 242.049. QUALITY IMPROVEMENT. (a) The department may evaluate data for quality of care in nursing facilities.

(b) The department may gather data on a form or forms to be provided by the department to improve the quality of care in nursing facilities and may provide information to nursing facilities which will allow them to improve and maintain the quality of care which they provide. Data referred to in this section can include information compiled from documents otherwise available under Chapter 552, Government Code, including but not limited to individual survey reports and investigation reports.

(c) All licensed nursing facilities in the state may be required to submit information designated by the department as necessary to improve the quality of care in nursing facilities.

(d) The collection, compilation, and analysis of the information and any reports produced from these sources shall be done in a manner that protects the privacy of any individual about whom information is given and is explicitly confidential. The department shall protect and maintain the confidentiality of the information. The information received by the department, any information compiled as a result of review of internal agency documents, and any reports, compilations, and analyses produced from these sources shall not be available for public inspection or disclosure, nor are these sources public records within the meaning of Chapter 552, Government Code. The information and any compilations, reports, or analyses produced from the information shall not be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided in this section and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(e) The information and reports, compilations, and analyses developed by the department for quality improvement shall be used only for the evaluation and improvement of quality care in nursing facilities. No department proceeding or record shall be subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity, and shall not be admissible in any civil, administrative, or criminal proceeding. This privilege shall be recognized by Rules 501 and 502 of the Texas Rules of Evidence.

(f) Notwithstanding Subsection (d), the department shall transmit reports, compilations, and analyses of the information provided by a nursing facility to that nursing facility, and such disclosure shall not be violative of this section nor shall it constitute a waiver of confidentiality.

(g) A member, agent, or employee of the department may not disclose or be required to disclose a communication made to the department or a record or proceeding of the department required to be submitted under this section except to the nursing facility in question or its agents or employees.

(h) Nothing in this section is intended to abridge the department's enforcement responsibilities under this chapter or under any other law.

(i) Any information, reports, and other documents produced which are subject to any means of legal compulsion or which are considered to be public information under Chapter 260A and the rules adopted under that chapter shall continue to be subject to legal compulsion and be treated as public information under Chapter 260A, even though such information, reports, and other documents may be used in the collection, compilation, and analysis described in Subsections (b) and (d).

Added by Acts 1993, 73rd Leg., ch. 815, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 10.0011, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0613, eff. April 2, 2015.

Sec. 242.051. NOTIFICATION OF AWARD OF EXEMPLARY DAMAGES. (a) If exemplary damages are awarded under Chapter 41, Civil Practice and Remedies Code, against an institution or an officer, employee, or agent of an institution, the court shall notify the department.

(b) If the department receives notice under Subsection (a), the department shall maintain the information contained in the notice in the records of the department relating to the history of the institution.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 2.01, eff. June 15,

2001.

Sec. 242.052. DRUG TESTING OF EMPLOYEES. (a) An institution may establish a drug testing policy for employees of the institution. An institution that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the executive commissioner or may use another drug testing policy.

(b) The executive commissioner by rule shall adopt a model drug testing policy for use by institutions. The model drug testing policy must be designed to ensure the safety of residents through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of an institution that has direct contact with a resident in the institution; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1025, Sec. 2, eff. Sept. 1, 2001.
Renumbered from Health & Safety Code Sec. 242.050 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(92), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0614, eff. April 2, 2015.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 242.061. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) In this section:

(1) "Abuse" has the meaning assigned by Section 260A.001.

(2) "Immediate threat to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(3) "Neglect" has the meaning assigned by Section 260A.001.

(a-1) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, the

license holder, or any other person described by Section 242.032(d) has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner;

(2) committed any act described by Sections 242.066(a)(2)-(6); or

(3) failed to comply with Section 242.074.

(a-2) Except as provided by Subsection (a-3) or (e-1), the executive commissioner shall revoke a license under Subsection (a-1) if the department finds that:

(1) the license holder has committed three violations described by Subsection (a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident; and

(2) each of the violations described by Subdivision (1) is reported in connection with a separate survey, inspection, or investigation visit that occurred on separate entrance and exit dates.

Text of subsection effective until April 1, 2025

(a-3) The executive commissioner may not revoke a license under Subsection (a-2) due to a violation described by Subsection (a-2)(1), if:

(1) the violation and the determination of immediate threat to health and safety are not included on the written list of violations left with the facility at the time of the initial exit conference under Section 242.0445(b) for a survey, inspection, or investigation;

(2) the violation is not included on the final statement of violations described by Section 242.0445; or

(3) the violation has been reviewed under the informal dispute resolution process established by Section 531.058, Government Code, and a determination was made that:

(A) the violation should be removed from the license holder's record; or

(B) the violation is reduced in severity so that the violation is no longer cited as an immediate threat to health and safety related to the abuse or neglect of a resident.

Text of subsection effective on April 1, 2025

(a-3) The executive commissioner may not revoke a license under Subsection (a-2) due to a violation described by Subsection (a-2)(1), if:

(1) the violation and the determination of immediate threat to health and safety are not included on the written list of violations left with the facility at the time of the initial exit conference under Section 242.0445(b) for a survey, inspection, or investigation;

(2) the violation is not included on the final statement of violations described by Section 242.0445; or

(3) the violation has been reviewed under the informal dispute resolution process established by Section 526.0202, Government Code, and a determination was made that:

(A) the violation should be removed from the license holder's record; or

(B) the violation is reduced in severity so that the violation is no longer cited as an immediate threat to health and safety related to the abuse or neglect of a resident.

(b) The status of a person as an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(c) The department may deny, suspend, or revoke the license of an institution if any person described by Section 242.032(d) has been excluded from holding a license under Section 242.0615.

(c-1) In the case of revocation of a license under Subsection (a-2), to ensure the health and safety of residents of the institution, the department may:

(1) request the appointment of a trustee to operate the institution under Subchapter D;

(2) assist with obtaining a new operator for the institution; or

(3) assist with the relocation of residents to another institution.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation

of the license is sought.

(e) The executive commissioner may stay a license revocation required by Subsection (a-2) if the executive commissioner determines that the stay would not jeopardize the health and safety of the residents of the facility or place the residents at risk of abuse or neglect. The executive commissioner by rule shall establish criteria under which a license revocation may be stayed under this subsection. The executive commissioner shall follow negotiated rulemaking procedures prescribed by Chapter 2008, Government Code, for the adoption of rules establishing the criteria. The criteria established must permit the executive commissioner to stay a license revocation of a nursing facility for which the department has deployed a rapid response team under Section 255.004, if the facility has cooperated with the rapid response team and demonstrated improvement in quality of care, as determined by the rapid response team.

(e-1) The executive commissioner may stay a license revocation required by Subsection (a-2) for a veterans home, as defined by Section 164.002, Natural Resources Code, if the Veterans' Land Board contracts with a different entity to operate the veterans home than the entity that operated the home during the period in which the violations described by Subsection (a-2) occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 452, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1094, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 1(b), eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 1(b), eff. September 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.44, eff. April 1, 2025.

Sec. 242.0615. EXCLUSION. (a) The department, after providing notice and opportunity for a hearing, may exclude a person from eligibility for a license under this chapter if the person or any person described by Section 242.032(d) has substantially failed to

comply with this chapter and the rules adopted under this chapter. The authority granted by this subsection is in addition to the authority to deny issuance of a license under Section 242.061(a-1).

(b) Exclusion of a person under this section must extend for a period of at least two years and may extend throughout the person's lifetime or existence.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.13, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 2.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 18, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 2, eff. June 19, 2015.

Sec. 242.062. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend an institution's license or order an immediate closing of part of the institution if:

(1) the department finds the institution is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The executive commissioner by rule shall provide for the placement of residents during the institution's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of an institution under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of an institution is valid for 10 days after the effective date of the order.

(e) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an emergency suspension or closing order under this section or the conduct with respect to which the emergency suspension or closing

order is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0615, eff. April 2, 2015.

Sec. 242.063. INJUNCTION. (a) The department may petition a district court for:

(1) a temporary restraining order to restrain a person from a violation or threatened violation of the standards imposed under this chapter or any other law affecting residents if the department reasonably believes that the violation or threatened violation creates an immediate threat to the health and safety of a resident; and

(2) an injunction to restrain a person from a violation or threatened violation of the standards imposed under this chapter or by any other law affecting residents if the department reasonably believes that the violation or threatened violation creates a threat to the health and safety of a resident.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from violating the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating or threatening to violate the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall institute and conduct in the name of the state a suit authorized by this section or Subchapter D.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in the county in which the alleged violation occurs.

(e) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.58(b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.14, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.58(a), (b), eff. Sept. 1, 2003.

Sec. 242.064. LICENSE REQUIREMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 242.031.

(b) An offense under this section is punishable by a fine of not more than $1,000 for the first offense and not more than $500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.065. CIVIL PENALTY. (a) A person who violates or causes a violation of this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $1,000 or more than $20,000 for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) In determining the amount of a penalty to be awarded under this section, the trier of fact shall consider:

(1) the seriousness of the violation;

(2) the history of violations committed by the person or the person's affiliate, employee, or controlling person;

(3) the amount necessary to deter future violations;

(4) the efforts made to correct the violation;

(5) any misrepresentation made to the department or to another person regarding:

(A) the quality of services rendered or to be rendered to residents;

(B) the compliance history of the institution or any institutions owned or controlled by an owner or controlling person of the institution; or

(C) the identity of an owner or controlling person of the institution;

(6) the culpability of the individual who committed the violation; and

(7) any other matter that should, as a matter of justice or

equity, be considered.

(c) Each day of a continuing violation constitutes a separate ground for recovery.

(d) Any party to a suit under this section may request a jury.

(e) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The executive commissioner by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(f) On request by the department, the attorney general may institute an action in a district court to collect a civil penalty under this section.

(g) A payment made to satisfy an obligation under this section is not an allowable cost for reimbursement under the state Medicaid program.

(h) A civil penalty awarded under this section constitutes a fine, penalty, or forfeiture payable to and for the benefit of a government unit and is not compensation for actual pecuniary loss.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;
(ii) a director;
(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and
(iv) a controlling individual;
(4) with respect to a limited partnership:
(A) a general partner; and
(B) a limited partner who is a controlling individual;
(5) with respect to a limited liability company:
(A) an owner who is a manager as described by the Texas Limited Liability Company Law, as described by Section 1.008(e), Business Organizations Code; and
(B) each owner who is a controlling individual; and
(6) with respect to any other business entity, a controlling individual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 13, Sec. 1, eff. May 3, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.59, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0616, eff. April 2, 2015.

Sec. 242.066. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:
(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;
(2) makes a false statement, that the person knows or should know is false, of a material fact:
(A) on an application for issuance or renewal of a license or in an attachment to the application; or
(B) with respect to a matter under investigation by the commission;
(3) refuses to allow a representative of the commission to inspect:
(A) a book, record, or file required to be maintained

by an institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(6) fails to pay a penalty assessed by the commission under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the commission of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Subsection (f) and Section 242.0665(c), the penalty may not exceed $10,000 a day for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The executive commissioner shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the commission shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations; and

(5) efforts to correct the violation.

(f) The penalty for a violation of Section 242.072(c) or a right of a resident adopted under Subchapter L may not exceed $1,000 a day for each violation. This subsection does not apply to conduct that violates both Subchapter K or a standard adopted under Subchapter K and a right of a resident adopted under Subchapter L.

(g) The persons against whom an administrative penalty may be assessed under Subsection (a) include:

(1) an applicant for a license under this chapter;

(2) a license holder;

(3) a partner, officer, director, or managing employee of a license holder or applicant; and

(4) a person who controls an institution.

(h) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(i) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate institution to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 93, Sec. 2, eff. May 17, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 12, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0617, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 3, eff. September 1, 2017.

Sec. 242.0661. ADMINISTRATIVE PENALTY FOR CONFISCATION OR MISAPPROPRIATION OF FEDERAL PAYMENTS. (a) In this section:

(1) "Eligible federal payment" means a payment made to an individual by the federal government that is not designated by law as income or a resource for purposes of an individual's Medicaid eligibility.

(2) "Medicaid" means the medical assistance program established under Chapter 32, Human Resources Code.

(3) "Misappropriate" means the taking, secretion,

misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any real or personal property or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority.

(b) A facility may not confiscate or misappropriate an eligible federal payment made to a resident who is a recipient of Medicaid. Notwithstanding Section 242.066(b), a facility that violates this section is subject to an administrative penalty in the amount equal to $25,000 for each violation. Each day the facility fails to return confiscated or misappropriated money to the resident constitutes a separate violation.

Added by Acts 2023, 88th Leg., R.S., Ch. 400 (H.B. 1290), Sec. 1, eff. September 1, 2023.

Sec. 242.0663. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty under this subchapter against an institution that violates Section 166.004.

(b) Notwithstanding Sections 242.066(b) and (c), a penalty assessed in accordance with this section shall be $500 and a separate penalty may not be assessed for a separate day of a continuing violation.

(c) Section 242.0665 does not apply to a penalty assessed in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.04, eff. Sept. 1, 1999.

Sec. 242.0665. RIGHT TO CORRECT. (a) The commission may not collect an administrative penalty against an institution under this subchapter if, not later than the 45th day after the date the institution receives notice under Section 242.067(c), the institution corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the commission determines:

(A) represents a pattern of violation that results in actual harm;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to:

(i) residents' rights;

(ii) treatment of residents;

(iii) resident behavior and institution practices;

(iv) quality of care;

(v) medication errors;

(vi) standard menus and nutritional adequacy;

(vii) physician visits;

(viii) infection control;

(ix) life safety from fire; or

(x) emergency preparedness and response;

(D) constitutes an immediate threat to the health or safety of a resident; or

(E) substantially limits the institution's capacity to provide care;

(2) to a violation described by Sections 242.066(a)(2)-(7);

(3) to a violation of Section 260A.014 or 260A.015;

(4) to a violation of a right of a resident adopted under Subchapter L; or

(5) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) An institution that corrects a violation under Subsection (a) must maintain the correction. If the institution fails to maintain the correction until at least the first anniversary of the date the correction was made, the commission may assess an administrative penalty under this subchapter for the subsequent violation. A penalty assessed under this subsection shall be equal to three times the amount of the penalty assessed but not collected under Subsection (a). The commission is not required to provide the institution an opportunity to correct the subsequent violation under this section.

(d) In this section:

(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(3) "Pattern of violation" means repeated, but not

pervasive, failures of an institution to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the institution or that affect or involve the same residents or institution employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the institution; or

(B) represents a systemic failure by the institution that affects or has the potential to affect a large portion of or all of the residents of the institution.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.17, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 93, Sec. 3, eff. May 17, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 13, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(g), eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 4, eff. September 1, 2017.

Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter has occurred if it has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 242.0665 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the institution must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty;

(2) make a written request for a hearing; or

(3) if the violation is subject to correction under Section 242.0665, submit a plan of correction to the department for approval.

(e) If the violation is subject to correction under Section 242.0665, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm that the violation has been corrected and shall notify the person that:

(1) the correction is satisfactory and that a penalty is not assessed; or

(2) the correction is not satisfactory and that a penalty is recommended.

(f) Not later than the 20th day after the date on which a notice under Subsection (e)(2) is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(g) If the person charged with the violation consents to the administrative penalty recommended by the department, does not timely respond to a notice sent under Subsection (c) or (e), or fails to correct the violation to the department's satisfaction, the department shall assess the recommended administrative penalty.

(h) If the department assesses the recommended penalty, the

department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.087, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0618, eff. April 2, 2015.

Sec. 242.068. HEARINGS ON ADMINISTRATIVE PENALTIES. (a) An administrative law judge of the State Office of Administrative Hearings shall order a hearing and the department shall give notice of the hearing if a person charged under Section 242.067(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, the administrative law judge by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 8.088, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0619, eff. April 2, 2015.

Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department shall give notice of the decision taken under Section 242.068(d) to the person charged. If

the department finds that a violation has occurred and has assessed an administrative penalty, the department shall give written notice to the person charged of:

(1) the findings;

(2) the amount of the penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether payment of the penalty or other action under Section 242.071 is required; and

(5) the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the department's order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the failure to correct the violation to the department's satisfaction, or all of the above.

(c) Notwithstanding Subsection (b), the department may permit the person to pay the penalty in installments or may require the person to use the amount of the penalty under the department's supervision in accordance with Section 242.071.

(d) If the person does not pay the penalty within the 30-day period:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) If a penalty is reduced or not assessed, the department shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the department under Subsection (e)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid under Subsection (b) and ending on the date the penalty is remitted.

(g) Interest under Subsection (d) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the notice of the department's order is received by the person and ending on the date the penalty is paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.089, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0620, eff. April 2, 2015.

Sec. 242.0695. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 2, eff. September 1, 2005.

Sec. 242.070. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter and Chapter 32, Human Resources Code, for a violation arising out of the same act or failure to act, except as provided by Section 242.0665(c). The department may assess the greater of a monetary penalty under this chapter or a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 1995, 74th Leg., ch. 1049, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.18, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.60(a), eff. Sept. 1, 2003.

Sec. 242.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section

242.066, the department may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) The department may not offer amelioration to a person if:

(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or

(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the institution that will improve services to or quality of care of residents of the institution;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the institution;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, a pending request for a hearing submitted by the person under Section 242.067(d) shall be denied.

(j) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 619, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1284, Sec. 8.01, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.002, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0621, eff. April 2, 2015.

Sec. 242.072. OTHER REMEDIES. (a) If the department finds that an institution has committed an act for which a civil penalty may be imposed under Section 242.065, the department may, as appropriate under the circumstances, order the institution to immediately suspend admissions.

(b) A suspension of admissions ordered under Subsection (a) is effective on the date a representative of the institution receives notice of the order and of the manner in which the order may be

appealed. The department must provide an opportunity for a hearing with respect to an appeal of the order not later than the 14th day after the date the suspension becomes effective.

(c) During the period that an institution is ordered to suspend admissions, the institution shall post a notice of the suspension on all doors providing ingress to and egress from the institution. The notice shall be posted in the form required by the department.

(d) A person commits an offense if the person knowingly:

(1) violates Subsection (c); or

(2) removes a notice posted under Subsection (c) before the facility is allowed to admit residents.

(e) An offense under Subsection (d) is a Class C misdemeanor.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving an order suspending admissions under this section or the conduct with respect to which the order suspending admissions is sought.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1094, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0622, eff. April 2, 2015.

Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL. (a) The department and the attorney general shall work in close cooperation throughout any legal proceedings requested by the department.

(b) The commissioner must approve any settlement agreement to a suit brought under this chapter or any other law relating to the health and safety of residents in institutions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.19, eff. Sept. 1, 1997.

Sec. 242.074. NOTIFICATION OF CHANGE IN FINANCIAL CONDITION. (a) An institution shall notify the department of a significant change in the institution's financial position, cash flow, or results of operation that could adversely affect the institution's delivery

of essential services, including nursing services, dietary services, and utilities, to residents of the institution.

(b) The department may verify the financial condition of an institution in order to identify any risk to the institution's ability to deliver essential services.

(c) A person that knowingly files false information under this section may be prosecuted under the Penal Code.

(d) The executive commissioner shall adopt rules to implement this section. The rules shall include the conditions that constitute a significant change in an institution's financial condition that are required to be reported under Subsection (a).

(e) The information obtained by the department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The department may release the information to:

(1) the institution; or

(2) a person other than the institution if the institution consents in writing to the disclosure.

(f) A person who knowingly discloses information in violation of Subsection (e) commits an offense. An offense under this subsection is a Class A misdemeanor.

(g) The provisions in Subsection (e) relating to the confidentiality of records do not apply to:

(1) an institution whose license has been revoked or suspended; or

(2) the use of information in an administrative proceeding initiated by the department or in a judicial proceeding.

Added by Acts 1999, 76th Leg., ch. 452, Sec. 2.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0623, eff. April 2, 2015.

SUBCHAPTER D. TRUSTEES FOR NURSING OR CONVALESCENT HOMES

Sec. 242.091. FINDINGS AND PURPOSE. (a) The legislature finds that the closing of a nursing or convalescent home for violations of laws and rules may:

(1) in certain circumstances, have an adverse effect on both the home's residents and their families; and

(2) in some cases, result in a lack of readily available funds to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the home in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.092. DEFINITION. In this subchapter, "home" means a nursing or convalescent home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.093. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in a home may, at any time, request the department to assume the operation of the home through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the home under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all rights of the residents as granted by law.

(d) The agreement terminates at the time specified by the parties or when either party notifies the other in writing that the party wishes to terminate the appointment agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.094. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a

home if:

(1) the home is operating without a license;

(2) the department has suspended or revoked the home's license;

(3) license suspension or revocation procedures against the home are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the home's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a home if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes institutional medical administration.

Text of subsection (e) as added by Acts 1993, 73rd Leg., ch. 815, Sec. 3

(e) Venue for actions brought under this section shall be in Travis County.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 , Sec. 3.1639(59), eff. April 2, 2015.

(f) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve the legal issues of a dispute involving the:

(1) appointment of a trustee under this section; or

(2) conduct with respect to which the appointment of trustee is sought.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 583, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 815, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1094, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(59), eff. April 2, 2015.

Sec. 242.0945. QUALIFICATIONS OF TRUSTEES. (a) A court may appoint a person to serve as a trustee under this subchapter only if the proposed trustee can demonstrate to the court that the proposed trustee will be:

(1) present at the home as required to perform the duties of a trustee; and

(2) available on call to appropriate staff at the home, the department, and the court as necessary during the time the trustee is not present at the home.

(b) A trustee shall report to the court in the event that the trustee is unable to satisfy the requirements of Subsection (a)(1) or (2).

(c) On the motion of any party or on the court's own motion, the court may replace a trustee who is unable to satisfy the requirements of Subsection (a)(1) or (2).

(d) A trustee's charges must separately identify personal hours worked for which compensation is claimed. A trustee's claim for personal compensation may include only compensation for activities related to the trusteeship and performed in or on behalf of the home.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.0946. NEPOTISM PROHIBITION. A person serving as a trustee under this subchapter may not employ or otherwise appoint an individual to work with the trustee in the home who is related to the trustee within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 1, eff. Sept. 1, 1999.

Sec. 242.095. FEE; RELEASE OF FUNDS. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court. In determining the trustee's personal compensation for nursing facility administrator activities, the court shall consider

reasonable a rate that is equal to 150 percent of the maximum allowable rate for an owner-administrator under the state's Medicaid reimbursement rules. The court shall determine the reasonableness of the trustee's personal compensation for other duties. On the motion of any party, the court shall review the reasonableness of the trustee's fees. The court shall reduce the amount if the court determines that the fees are not reasonable.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by the commission at the recommendation of the department.

(c) Withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

(1) for Medicaid, Medicare, or insurance;

(2) by another third party; or

(3) for medical expenses borne by the resident.

(d) If the department appoints a trustee under this subchapter for a veterans home as defined by Section 164.002, Natural Resources Code, the Veterans' Land Board is responsible for the trustee's fee under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 439, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 166, Sec. 1, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0624, eff. April 2, 2015.

Sec. 242.096. NURSING AND CONVALESCENT HOME TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The nursing and convalescent home trust fund is with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to a home.

(b) A trustee of a home may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;
(3) sanitation services;
(4) minor repairs;
(5) supplies necessary for personal hygiene; or
(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to a home if the court finds that:
(1) the home has inadequate funds accessible to the trustee for the operation of the home;
(2) there exists an emergency that presents an immediate threat to the health and safety of the residents; and
(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with department rules.

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of $10,000,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated only to the department for its use in administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.04, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0625, eff. April 2, 2015.

Sec. 242.0965. ASSISTED LIVING FACILITY TRUST FUND AND EMERGENCY ASSISTANCE FUNDS. (a) The assisted living facility trust fund is a trust fund with the comptroller and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to an assisted living facility.

(b) A trustee of an assisted living facility may use the emergency assistance funds only to alleviate an immediate threat to

the health or safety of the residents. The use may include payments for:

(1) food;

(2) medication;

(3) sanitation services;

(4) minor repairs;

(5) supplies necessary for personal hygiene; or

(6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to an assisted living facility if the court finds that:

(1) the assisted living facility has inadequate funds accessible to the trustee for the operation of the assisted living facility;

(2) an emergency exists that presents an immediate threat to the health and safety of the residents; and

(3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the assisted living facility trust fund as ordered by the court in accordance with department rules.

(e) Any unencumbered amount in the assisted living facility trust fund in excess of $500,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0626, eff. April 2, 2015.

Sec. 242.097. ADDITIONAL LICENSE FEE--NURSING AND CONVALESCENT HOMES. (a) In addition to the license fee provided by Section 242.034, the executive commissioner by rule shall adopt an annual fee to be collected by the department if the amount of the nursing and convalescent home trust fund is less than $10,000,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the nursing and convalescent home trust fund is sufficient to make the disbursements required under Section 242.096. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and the members of the Legislative Budget Board.

(c) The executive commissioner shall set the fee for each nursing and convalescent home at $1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide not more than $10,000,000 in the fund. The total fees assessed in a year may not exceed $20 for each licensed unit of capacity or bed space in a home.

(d) This section does not apply to a veterans home as defined by Section 164.002, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1019, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 723, Sec. 2, eff. June 13, 2001; Acts 2001, 77th Leg., ch; 1248, Sec. 16, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 166, Sec. 2, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0627, eff. April 2, 2015.

Sec. 242.0975. ADDITIONAL LICENSE FEE--ASSISTED LIVING FACILITIES. (a) In addition to the license fee provided by Section 247.024, the executive commissioner by rule shall adopt an annual fee to be collected by the department if the amount of the assisted living facility trust fund is less than $500,000. The fee shall be deposited to the credit of the assisted living facility trust fund created by this subchapter.

(b) The department may charge and collect a fee under this section more than once each year only if necessary to ensure that the amount in the assisted living facility trust fund is sufficient to make the disbursements required under Section 242.0965. If the department makes a second or subsequent assessment under this subsection in any year, the department shall notify the governor and

the Legislative Budget Board.

(c) The executive commissioner shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than $500,000 in the assisted living facility trust fund.

Added by Acts 2001, 77th Leg., ch. 723, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1248, Sec. 15, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10.003, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0628, eff. April 2, 2015.

Sec. 242.098. REIMBURSEMENT. (a) A home that receives emergency assistance funds under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the funds were disbursed to the home. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money was disbursed to the home.

(c) The owner of the home when the trustee was appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the department may determine that the home is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect the funds due under this section at the request of the department. Venue for an action brought under this section is in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 35, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.64, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0629, eff. April 2, 2015.

Sec. 242.099. APPLICABILITY OF OTHER LAW. Subtitle D, Title 10, Government Code does not apply to any payments made by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(13), eff. Sept. 1, 1997.

Sec. 242.100. NOTIFICATION OF CLOSING. (a) A home that is closing temporarily or permanently, or voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the closing.

(b) If the closing of a home is ordered by the department or is in any other way involuntary, the home shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the closing of a home is voluntary, the home shall make the notification not later than one week after the date on which the decision to close is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.101. CRIMINAL PENALTY. (a) A home commits an offense if the home fails or refuses to comply with Section 242.100.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.102. INELIGIBILITY FOR LICENSE. (a) A license holder or controlling person who operates a home for which a trustee is appointed under this subchapter and with respect to which emergency assistance funds, other than funds used to pay the expenses of the trustee, are used under this subchapter is subject to exclusion from eligibility for:

(1) issuance of an original license for a home for which the person has not previously held a license; or

(2) renewal of the license for the home for which the trustee is appointed.

(b) Exclusion under this section is governed by Section 242.0615.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER F. MEDICAL, NURSING, AND DENTAL SERVICES OTHER THAN ADMINISTRATION OF MEDICATION

Sec. 242.151. PHYSICIAN SERVICES. (a) An institution shall have at least one medical director who is licensed as a physician in this state.

(b) The attending physician is responsible for a resident's assessment and comprehensive plan of care and shall review, revise, and sign orders relating to any medication or treatment in the plan of care. The responsibilities imposed on the attending physician by this subsection may be performed by an advanced practice nurse or a physician assistant pursuant to protocols jointly developed with the attending physician.

(c) Each resident has the right to choose a personal attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.152. PHYSICIAN SERVICES FOR RESIDENTS YOUNGER THAN 18 YEARS OF AGE. (a) An institution shall use appropriate pediatric consultative services for a resident younger than 18 years of age, in accordance with the resident's assessment and comprehensive plan of care.

(b) A pediatrician or other physician with training or expertise in the clinical care of children with complex medical needs shall participate in all aspects of the resident's medical care.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.153. DIRECTOR OF NURSING SERVICES. An institution

shall have a director of nursing services who shall be a registered nurse. The director of nursing services is responsible for:

(1) coordinating each resident's comprehensive plan of care; and

(2) ensuring that only personnel with an appropriate license or permit administer medication.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.154. NURSING SERVICES. (a) An institution shall provide the nursing care required to allow each resident to achieve and maintain the highest possible degree of function and independence medically possible.

(b) The institution shall maintain sufficient staff to provide nursing and related services:

(1) in accordance with each resident's plan of care; and

(2) to obtain and maintain the physical, mental, and psychosocial functions of each resident at the highest practicable level, as determined by the resident's assessment and plan of care.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.155. PEDIATRIC NURSING SERVICES. An institution shall ensure that:

(1) nursing services for a resident younger than 18 years of age are provided by a staff member who has been instructed and has demonstrated competence in the care of children; and

(2) consultative pediatric nursing services are available to the staff if the institution has a resident younger than 18 years of age.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.156. REQUIRED MEDICAL EXAMINATION. (a) Except as required by federal law, the department shall require that each

resident be given at least one medical examination each year.

(b) The executive commissioner shall specify the details of the examination.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0630, eff. April 2, 2015.

Sec. 242.157. DENTAL EXAMINATION. (a) The department shall require that each resident of an institution or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each institution shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The institution is not liable for any costs relating to a dental examination under this section.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.158. IDENTIFICATION OF CERTAIN NURSING FACILITY RESIDENTS REQUIRING MENTAL HEALTH OR INTELLECTUAL DISABILITY SERVICES. (a) Each resident of a nursing facility who is considering making a transition to a community-based care setting shall be identified to determine the presence of a mental illness or intellectual disability, regardless of whether the resident is receiving treatment or services for a mental illness or intellectual disability.

(b) In identifying residents having a mental illness or intellectual disability, the department shall use an identification process that is at least as effective as the mental health and intellectual disability identification process established by federal law. The results of the identification process may not be used to prevent a resident from remaining in the nursing facility unless the nursing facility is unable to provide adequate care for the resident.

(c) The department shall compile information regarding each resident identified as having a mental illness or intellectual disability before the resident makes a transition from the nursing facility to a community-based care setting. The department shall provide to the Department of State Health Services information regarding each resident identified as having a mental illness.

(d) The department and the Department of State Health Services shall use the information compiled and provided under Subsection (c) solely for the purposes of:

(1) determining the need for and funding levels of mental health and intellectual disability services for residents making a transition from a nursing facility to a community-based care setting;

(2) providing mental health or intellectual disability services to an identified resident after the resident makes that transition; and

(3) referring an identified resident to a local mental health or local intellectual and developmental disability authority or private provider for additional mental health or intellectual disability services.

(e) This section does not authorize the department to decide for a resident of a nursing facility that the resident will make a transition from the nursing facility to a community-based care setting.

Added by Acts 2001, 77th Leg., ch. 423, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0631, eff. April 2, 2015.

Sec. 242.159. AUTOMATED EXTERNAL DEFIBRILLATORS. (a) An institution shall have available for use at the institution an automated external defibrillator, as defined by Section 779.001, and shall comply with the training, use, and notification requirements of Chapter 779.

(b) An institution that does not have funds available for purposes of Subsection (a) may solicit gifts, grants, or donations to purchase or maintain an automated external defibrillator for use at the institution.

(c) The use of an automated external defibrillator must be

consistent with a resident's advance directive executed or issued under Subchapter C, Chapter 166.

(d) Notwithstanding Section 74.151(b), Civil Practice and Remedies Code, Section 74.151(a), Civil Practice and Remedies Code, applies to administration of emergency care using an automated external defibrillator by an employee or volunteer at an institution.

(e) An institution shall employ at least one person who is trained in the proper use of an automated external defibrillator.

Added by Acts 2009, 81st Leg., R.S., Ch. 257 (H.B. 392), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(b), eff. September 28, 2011.

SUBCHAPTER G. RESPITE CARE

Sec. 242.181. DEFINITIONS. In this subchapter:

(1) "Person with a disability" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(2) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(3) "Respite care" means the provision by an institution to a person, for not more than two weeks for each stay in the institution, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0632, eff. April 2, 2015.

Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly person or a

person with a disability according to a plan of care.

(b) The executive commissioner may adopt rules for the regulation of respite care provided by an institution licensed under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0633, eff. April 2, 2015.

Sec. 242.183. PLAN OF CARE. (a) The institution and the person arranging the care must agree on the plan of care and the plan must be filed at the institution before the institution admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The institution may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. During that period, the institution may admit the person as frequently as is needed and as accommodations are available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.184. NOTIFICATION. An institution that offers respite care shall notify the department in writing that it offers respite care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any

rules the executive commissioner may adopt to regulate respite care services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0634, eff. April 2, 2015.

Sec. 242.186. SUSPENSION. (a) The department may require an institution to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the institution cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of an institution that continues to provide respite care after receiving a written order from the department to cease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER H. CARE FOR RESIDENTS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 242.201. SCOPE OF SUBCHAPTER. This subchapter applies only to an institution that advertises, markets, or otherwise promotes that the institution provides services to residents with Alzheimer's disease and related disorders.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.202. DISCLOSURE REQUIRED. (a) An institution covered by this subchapter shall provide a disclosure statement disclosing the nature of its care or treatment of residents with Alzheimer's disease and related disorders to:

(1) an individual seeking placement as a resident with Alzheimer's disease or a related disorder;

(2) an individual attempting to place another individual as a resident with Alzheimer's disease or a related disorder; or

(3) a person seeking information about the institution's care or treatment of residents with Alzheimer's disease and related

disorders.

(b) The disclosure statement must be displayed with the institution's license as it is posted under Section 242.042.

(c) The institution must file the disclosure statement with the department as part of the report filed under Section 242.033(d). The department shall verify contents of the disclosure statement as part of the license renewal process.

(d) The disclosure statement must contain the following categories of information:

(1) the institution's philosophy of care;

(2) whether the institution is certified under Section 242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders;

(3) the preadmission, admission, and discharge process;

(4) resident assessment, care planning, and implementation of the care plan;

(5) staffing patterns, such as resident-to-staff ratios, and staff training;

(6) the physical environment of the institution;

(7) resident activities;

(8) program costs;

(9) systems for evaluation of the institution's programs for residents;

(10) family involvement in resident care; and

(11) the toll-free telephone number maintained by the department for acceptance of complaints against the institution.

(e) The institution must update the disclosure statement as needed to reflect changes in the operation of the institution.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 2, eff. June 20, 2015.

Sec. 242.203. VIOLATION. (a) An institution that violates this subchapter is subject to an administrative penalty under Subchapter C.

(b) The department may not revoke or suspend the license of an institution for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.

Sec. 242.204. RULES. The executive commissioner shall adopt rules governing:

(1) the content of the disclosure statement required by this subchapter, consistent with the information categories required by Section 242.202(d); and

(2) the amount of an administrative penalty to be assessed for a violation of this subchapter.

Added by Acts 1995, 74th Leg., ch. 38, Sec. 1, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0635, eff. April 2, 2015.

SUBCHAPTER H-1. AUTOMATED MEDICAID PATIENT CARE AND REIMBURSEMENT SYSTEM

Sec. 242.221. AUTOMATED SYSTEM FOR MEDICAID PATIENT CARE AND REIMBURSEMENT. (a) The department shall acquire and develop an automated system for providing reimbursements to nursing facilities under the state Medicaid program, subject to the availability of funds appropriated for that purpose.

(b) The department shall select an automated system that will allow the addition of other components of the state Medicaid program, including components administered by other state agencies.

(c) The department and the commission shall work together to apply for all available federal funds to help pay for the automated system.

(d) To the extent possible, the department shall assist nursing facilities to make systems compatible with the automated system selected by the department.

(e) The department shall charge a fee to nursing facilities that do not receive their Medicaid reimbursements electronically. The executive commissioner by rule shall set the fee in an amount necessary to cover the costs of manually processing and sending the reimbursements.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995.
Renumbered from Health and Safety Code Sec. 242.201 by Acts 1997,

75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0636, eff. April 2, 2015.

Sec. 242.222. DATA USED BY SYSTEM. The automated patient care and reimbursement system must use a form designed by the United States Health Care Financing Administration for nursing facility use.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.202 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.223. FREQUENCY OF DATA SUBMISSION. Nursing facilities must complete and electronically submit the designated form to the department at least quarterly for reimbursement.

Added by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.224. ELECTRONIC CLAIMS FOR REIMBURSEMENT. The automated reimbursement system must be able to link the department electronically with nursing facilities making claims for reimbursement. When the system is operational, each nursing facility shall make claims electronically.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.203 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.225. DATE OF REIMBURSEMENT. The department shall pay Medicaid nursing facility reimbursement claims that are made electronically not later than the 30th day after the date the claim is made.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.204 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.

Sec. 242.226. RULES. The executive commissioner shall adopt rules and make policy changes as necessary to improve the efficiency of the reimbursement process and to maximize the automated reimbursement system's capabilities.

Added by Acts 1995, 74th Leg., ch. 189, Sec. 1, eff. Aug. 28, 1995. Renumbered from Health and Safety Code Sec. 242.205 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(55), eff. Sept. 1, 1997; amended by Acts 1997, 75th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0637, eff. April 2, 2015.

SUBCHAPTER H-2. ARBITRATION OF CERTAIN DISPUTES

Sec. 242.251. SCOPE OF SUBCHAPTER. This subchapter applies to any dispute between an institution licensed under this chapter and the department relating to:

(1) renewal of a license under Section 242.033;

(2) suspension or revocation of a license under Section 242.061;

(3) assessment of a civil penalty under Section 242.065;

(4) assessment of a monetary penalty under Section 242.066; or

(5) assessment of a penalty as described by Section 32.021(n), Human Resources Code.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0638, eff. April 2, 2015.

Sec. 242.252. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected institution may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected institution may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is sooner. If a civil penalty is requested after the initial filing of a Section 242.094 lawsuit through the filing of an amended or supplemental pleading, an affected institution must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected institution or its counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the institution of the election not later than the date that the institution may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected institution that has had an award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court will dismiss the arbitration election and retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and has no jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the institution and the department.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.253. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed $500.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.254. ARBITRATOR; QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 242.253(b).

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.255. ARBITRATOR; SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 242.253(b).

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.256. DUTIES OF ARBITRATOR. The arbitrator shall:

(1) protect the interests of the department and the institution;

(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and institution; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.257. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the institution of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or institution. The arbitrator may not unreasonably deny a request for a continuance.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.258. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the institution shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.259. ATTENDANCE REQUIRED. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.260. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the institution.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the institution may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.261. EVIDENCE. (a) The department or the institution may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.262. CLOSING STATEMENTS; BRIEFS. The department and the institution may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.263. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the institution may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings, for transmittal to the arbitrator.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.264. ORDER. (a) The arbitrator may enter any order that may be entered by the department, executive commissioner, commissioner, or court under this chapter in relation to a dispute described by Section 242.251.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and institution's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the institution in writing of the decision.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0639, eff. April 2, 2015.

Sec. 242.265. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 242.267, there is no right to appeal.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.266. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.267. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of an institution, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of an institution.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or

misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 242.264(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the institution or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.268. NO ARBITRATION IN CASE OF EMERGENCY ORDER OR CLOSING ORDER. This subchapter does not apply to an order issued under Section 242.062 or 242.072, and neither the department nor the institution may elect to arbitrate a dispute if the subject matter of the dispute is part of the basis for:

(1) revocation, denial, or suspension of an institution's license;

(2) issuance of a closing order under Section 242.062; or

(3) suspension of admissions under Section 242.072.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Sec. 242.269. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS. (a) This section applies only to a suit for the assessment of a civil penalty under Section 242.065 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 242.267(d)(1), a motion is made to the court to vacate the arbitrator's order in accordance with Section 242.267.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 242.267 and within the time limit prescribed by Section 242.267(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Redesignated from Health and Safety Code, Subchapter J, Chapter 242 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(26), eff. September 1, 2011.

Subchapter I, consisting of Secs. 242.301 to 242.322, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.327, added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01, see Sec. 242.301 et seq. post.

Text of subchapter effective until federal determination of failure to comply with federal regulations

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(2) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(3) "Practice of nursing facility administration" means the

performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.302. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER. (a) The executive commissioner may adopt rules consistent with this subchapter. The executive commissioner shall adopt and publish a code of ethics for nursing facility administrators.

(b) The department shall:

(1) spend funds necessary for the proper administration of the department's assigned duties under this subchapter; and

(2) periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The department is the licensing agency for the healing arts, as provided by 42 U.S.C. Section 1396g.

(d) The executive commissioner shall establish:

(1) the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(2) reasonable and necessary fees for the administration and implementation of this subchapter; and

(3) a minimum number of hours of continuing education required to renew a license issued under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0640, eff. April 2, 2015.

Sec. 242.303. NURSING FACILITY ADMINISTRATORS ADVISORY COMMITTEE. (a) The Nursing Facility Administrators Advisory Committee is appointed by the governor.

(b) Members of the committee serve for staggered terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(c) The committee shall consist of:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(d) The committee shall advise the department on the licensing of nursing facility administrators, including the content of applications for licensure and of the examination administered to license applicants under Section 242.306. The committee shall review and recommend rules and minimum standards of conduct for the practice of nursing facility administration. The committee shall review all complaints against administrators and make recommendations to the department regarding disciplinary actions. Failure of the committee to review complaints and make recommendations in a timely manner shall not prevent the department from taking disciplinary action.

(e) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

(f) A member of the committee receives no compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the member's duties under this section.

(g) The department shall pay the expenses of the committee and shall supply necessary personnel and supplies.

(h) A vacancy in a position on the committee shall be filled in the same manner in which the position was originally filled and shall be filled by a person who meets the qualifications of the vacated position.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0641, eff. April 2, 2015.

Sec. 242.304. FEES; FUNDS. (a) The executive commissioner, in consultation with the department, by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The executive commissioner by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0642, eff. April 2, 2015.

Sec. 242.305. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.306. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The department shall prescribe the form of the application and the executive commissioner may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the executive commissioner that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed

and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;

(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the department of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0643, eff. April 2, 2015.

Sec. 242.3061. APPLICABILITY OF OTHER LAW. Chapter 53, Occupations Code, does not apply to the issuance or renewal of a license under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 1, eff. September 1, 2023.

Sec. 242.307. EXAMINATION. (a) The licensing examination shall be prepared or approved by the department and shall be administered by the department to qualified applicants at least twice each calendar year. The department shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the department shall notify examinees of the results of the examination not later than two weeks after the date the department receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the department shall notify

the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the department shall furnish the person with an analysis of the person's performance on the examination.

(d) The executive commissioner may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0644, eff. April 2, 2015.

Sec. 242.308. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. (a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the department of the license holder's correct mailing address.

(c) A license is valid for two years. The executive commissioner by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The executive commissioner by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The executive commissioner by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0645, eff.

April 2, 2015.

Sec. 242.309. PROVISIONAL LICENSE. (a) The department shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the department relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the department under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The department may waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license. The department shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.306; or

(2) the provisional license holder passes the part of the examination under Section 242.307 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the department verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies all other license requirements under this subchapter.

(d) The department must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(e) The executive commissioner by rule may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.20, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0646, eff. April 2, 2015.

Sec. 242.310. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.21, eff.

Sept. 1, 1999.

Sec. 242.311. MANDATORY CONTINUING EDUCATION. (a) The executive commissioner by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The department may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by department rule.

(b) The executive commissioner shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The department shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0647, eff. April 2, 2015.

Sec. 242.312. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The department shall keep an information file concerning each complaint filed with the department regarding a person licensed under this subchapter. The department's information file shall be kept current and shall contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the department that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The executive commissioner by rule shall adopt a form to

standardize information concerning complaints made to the department. The executive commissioner by rule shall prescribe information to be provided to a person when the person files a complaint with the department.

(d) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department.

(e) The executive commissioner shall adopt rules concerning the investigation of complaints filed with the department. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the executive commissioner be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures to be followed by the department in obtaining the services of a private investigator.

(f) The department shall dispose of all complaints in a timely manner. The executive commissioner by rule shall establish a schedule for initiating a complaint investigation that is under the control of the department not later than the 30th day after the date the complaint is received by the department. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The commissioner shall notify the executive commissioner at least quarterly of complaints that have extended beyond the time prescribed by the executive commissioner for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0648, eff. April 2, 2015.

Sec. 242.313. SANCTIONS. (a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the department may require the license holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules adopted by the executive commissioner before a sanction is imposed under this section.

(d) The executive commissioner by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The department shall use the schedule for any sanction imposed in accordance with the rules.

(e) The executive commissioner shall by rule establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care related to an act or failure to act by the administrator, and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 2, eff. June 19, 2009.

Sec. 242.314. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the department may issue a written reprimand to a license holder who violates this subchapter or may require that a license holder who violates this subchapter participate in continuing education programs. The department shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.315. ADMINISTRATIVE PENALTY AS SANCTION. (a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this

subchapter or a rule adopted under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violations; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0649, eff. April 2, 2015.

Sec. 242.316. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely

respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within

five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 3, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0650, eff. April 2, 2015.

Sec. 242.317. INFORMAL PROCEEDINGS. (a) The executive commissioner by rule shall adopt procedures governing:
(1) informal disposition of a contested case under Section 2001.056, Government Code; and
(2) informal proceedings held in compliance with Section 2001.054, Government Code.
(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0651, eff. April 2, 2015.

Sec. 242.318. MONITORING OF LICENSE HOLDER. The executive commissioner by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the department to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0652, eff. April 2, 2015.

Sec. 242.319. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for

each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.321. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.305.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 242.322. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, eff. Sept. 1, 1997.

Subchapter I, consisting of Secs. 242.301 to 242.327, was added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

For another Subchapter I, consisting of Secs. 242.301 to 242.322, added by Acts 1997, 75th Leg., ch. 1280, Sec. 1.01, see Sec. 242.301 et seq. post.

Text of subchapter effective upon federal determination of failure to comply with federal regulations

SUBCHAPTER I. NURSING FACILITY ADMINISTRATION

Sec. 242.301. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Nursing Facility Administrators.

(2) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, or skilled nursing facility by the department under this chapter.

(3) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility

administration, without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(4) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.302. TEXAS BOARD OF NURSING FACILITY ADMINISTRATORS. (a) The Texas Board of Nursing Facility Administrators is within the department.

(b) The board is composed of nine members appointed by the governor as follows:

(1) three licensed nursing facility administrators, at least one of whom shall represent a not-for-profit nursing facility;

(2) one physician with experience in geriatrics who is not employed by a nursing facility;

(3) one registered nurse with experience in geriatrics who is not employed by a nursing facility;

(4) one social worker with experience in geriatrics who is not employed by a nursing facility; and

(5) three public members with experience working with the chronically ill and infirm as provided by 42 U.S.C. Section 1396g.

(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the person is appointed.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.303. MEMBERSHIP REQUIREMENTS. (a) A member of the board who is an administrator must:

(1) be a resident of this state and a citizen of the United States;

(2) be licensed under this subchapter and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and

(3) hold a degree from an accredited four-year college or university.

(b) An administrator who does not have a degree as required by Subsection (a)(3) may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the administrator has completed at a four-year college or university.

(c) A member or employee of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or

(2) be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.

(d) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.

(e) A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board may not serve on the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.304. GROUNDS FOR REMOVAL. It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 242.303 for appointment to the board;

(2) does not maintain during service on the board the

qualifications required by Section 242.303 for appointment to the board;

(3) violates a prohibition established by Section 242.303;

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.305. BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES. (a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.306. APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACT. The board is subject to Chapters 551 and 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.307. POWERS AND DUTIES OF THE BOARD. (a) The board may adopt rules consistent with this subchapter.

(b) The board shall:

(1) adopt and publish a code of ethics for nursing facility administrators;

(2) establish the qualifications of applicants for licenses and the renewal of licenses issued under this subchapter;

(3) spend funds necessary for the proper administration of the department's assigned duties under this subchapter;

(4) establish reasonable and necessary fees for the administration and implementation of this subchapter; and

(5) establish a minimum number of hours of continuing education required to renew a license issued under this subchapter and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

(c) The board is the licensing authority for the healing arts, as provided by 42 U.S.C. Section 1396g, and shall meet the requirements of a state licensing agency for nursing facility practitioners, as provided by 42 C.F.R. Part 431, Subpart N.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.308. ADMINISTRATIVE FUNCTIONS. The department shall serve as the administrator of the licensing activities under this subchapter and shall provide staff as necessary for the licensing and regulation of nursing facility administrators under this subchapter. If necessary to the administration of this subchapter, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.309. FEES; FUNDS. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this subchapter. The board by rule may set different licensing fees for different categories of licenses.

(b) The department shall receive and account for funds received under this subchapter. The funds shall be deposited in the state treasury to the credit of the general revenue fund.

(c) The department may receive and disburse funds received from any federal source for the furtherance of the department's functions under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.310. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.311. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this subchapter. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;

(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) must present evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) to enable the applicant to engage in the practice of nursing facility administration.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.3115. APPLICABILITY OF OTHER LAW. Chapter 53, Occupations Code, does not apply to the issuance or renewal of a license under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 2, eff. September 1, 2023.

Sec. 242.312. EXAMINATION. (a) The licensing examination shall be prepared or approved by the board and shall be administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this subchapter, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the board shall notify examinees of the results of the examination not later than two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.313. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS. (a) A person who meets the requirements for licensing under this subchapter is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this subchapter must notify the board of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder

shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.314. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a nursing facility administrator for at least two years in another jurisdiction, including a foreign country, that has licensing requirements that are substantially equivalent to the requirements of this subchapter;

(2) has passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) is sponsored by a person licensed by the board under this subchapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subchapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 242.311; or

(2) the provisional license holder passes the part of the examination under Section 242.312 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of nursing facility administration in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subchapter; and

(B) the provisional license holder satisfies any other license requirements under this subchapter.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.22, eff. Sept. 1, 1999.

Sec. 242.315. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 31st day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01. Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.23, eff. Sept. 1, 1999.

Sec. 242.316. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this subchapter. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.317. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The board shall keep an information file about each complaint filed with the board regarding a person licensed under this subchapter. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by

rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall adopt rules concerning the investigation of complaints filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised at least quarterly of complaints that have been dismissed and require that a letter be sent to each person who has filed a complaint that is dismissed explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that may require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(f) The board shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for initiating a complaint investigation that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The department shall notify the board at least quarterly of complaints that have extended beyond the time prescribed by the board for resolving complaints so that the department may take any necessary corrective actions on the processing of complaints.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.318. SANCTIONS. (a) The board may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess

an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the license holder's use of alcohol or drugs creates a hazard to the residents of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude;

(7) the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006; or

(8) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license sanction is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing in accordance with rules promulgated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this subchapter. The board shall use the schedule for any sanction imposed in accordance with the rules.

(e) The department shall by rule establish criteria to

determine whether deficiencies from a facility's survey warrant action against an administrator. The criteria shall include a determination of whether the survey indicates substandard quality of care and whether a deficiency is related to an act or failure to act by the administrator. If a deficiency on which a disciplinary action against an administrator is initiated or completed is not substantiated, the disciplinary action shall be reversed.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 4, eff. June 19, 2009.

Sec. 242.319. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this subchapter, the board may issue a written reprimand to a license holder who violates this subchapter or require that a license holder who violates this subchapter participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.320. ADMINISTRATIVE PENALTY AS SANCTION. (a) The department may impose an administrative penalty against a person licensed or regulated under this subchapter who violates this subchapter or a rule adopted by the board under this subchapter.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;
(4) the amount necessary to deter future violations;
(5) efforts to correct the violations; and
(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.321. NOTICE AND HEARING. (a) If the department determines that a violation has occurred, the department shall give written notice of the determination to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and the penalty recommended by the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) If the person accepts the determination and the penalty recommended by the department, or if the person fails to timely respond to the notice, the department shall impose the recommended penalty.

(d) If the person requests a hearing, the department shall set a hearing and give notice of the hearing to the person. The hearing shall be held in accordance with the rules on contested case hearings adopted by the executive commissioner.

(e) The notice of the hearing decision given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the decision.

(f) Within 30 days after the date the department's decision is final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the

amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within the 30-day period, a person who acts under Subsection (f)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(h) If the department receives a copy of an affidavit under Subsection (g)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(i) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(j) Judicial review of the decision of the department:

(1) is instituted by filing a petition as provided by Section 2001.176, Government Code; and

(2) is under the substantial evidence rule.

(k) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(l) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(m) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(n) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 5, eff. June 19, 2009.

Sec. 242.322. INFORMAL PROCEEDINGS. (a) The department by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.323. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this subchapter. Rules adopted under this section shall include procedures for monitoring a license holder who is required by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.324. CIVIL PENALTY. A person who violates this subchapter is liable to the state for a civil penalty of $1,000 for each day of violation. At the request of the department, the attorney general shall bring an action to recover a civil penalty established by this section.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this subchapter. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.326. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 242.310.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

Sec. 242.327. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a licensed nursing facility administrator who refuses to engage in an act or omission relating to the administrator's job duties or responsibilities that would

constitute a violation of this subchapter or of a rule adopted under this subchapter, if the administrator notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes a violation of this subchapter or of a rule adopted under this subchapter.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if:

(1) the act or omission the administrator refused to commit was not conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter; or

(2) the act or omission the administrator refused to commit was conduct that constitutes a violation of this subchapter or of a rule adopted under this subchapter, and the person rescinds any disciplinary or discriminatory action taken against the administrator, compensates the administrator for lost wages, and restores any lost benefits to the administrator.

(c) A violation of this section is an unlawful employment practice, and a civil action may be brought by a licensed nursing facility administrator against a person for the violation. The relief available in a civil action shall be the same as the relief available to complainants in a civil action for violations of Chapter 21, Labor Code. In no event may any action be brought pursuant to this section more than two years after the date of the administrator's refusal to engage in an act or omission that would constitute a violation of this subchapter or of a rule adopted under this subchapter.

(d) In this section, "person" includes an individual, organization, corporation, agency, facility, or other entity.

Added by Acts 1997, 75th Leg., ch. 1280, Sec. 2.01.

SUBCHAPTER K. QUALITY OF CARE

Sec. 242.401. QUALITY OF LIFE. (a) An institution shall care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life and dignity. An institution that admits a resident who is younger than 18 years of age must provide care to meet the resident's unique medical and developmental needs.

(b) A resident of an institution has the right to reside and

receive services in the institution with reasonable accommodation of individual needs, except to the extent the health or safety of the resident or other residents would be endangered.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.402. QUALITY OF CARE. An institution shall provide to each resident the necessary care or service needed to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being, in accordance with:

(1) each resident's individual assessment and comprehensive plan of care; and

(2) the rules and standards relating to quality of care adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.403. STANDARDS FOR QUALITY OF LIFE AND QUALITY OF CARE. (a) The executive commissioner shall adopt standards to implement Sections 242.401 and 242.402. Those standards must, at a minimum, address:

(1) admission of residents;

(2) care of residents younger than 18 years of age;

(3) an initial assessment and comprehensive plan of care for residents;

(4) transfer or discharge of residents;

(5) clinical records;

(6) infection control at the institution;

(7) rehabilitative services;

(8) food services;

(9) nutrition services provided by a director of food services who is licensed by the Texas Department of Licensing and Regulation under Chapter 701, Occupations Code, or, if not so licensed, who is in scheduled consultation with a person who is so licensed as frequently and for such time as the executive commissioner shall determine necessary to assure each resident a diet that meets the daily nutritional and special dietary needs of each

resident;

(10) social services and activities;

(11) prevention of pressure sores;

(12) bladder and bowel retraining programs for residents;

(13) prevention of complications from nasogastric or gastrotomy tube feedings;

(14) relocation of residents within an institution;

(15) postmortem procedures; and

(16) appropriate use of chemical and physical restraints.

(b) The executive commissioner may require an institution to submit information to the department, including Minimum Data Set Resident Assessments, necessary to ensure the quality of care in institutions. Information submitted to the department that identifies a resident of an institution is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The executive commissioner may adopt standards in addition to those required by Subsection (a) to implement Sections 242.401 and 242.402.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 667 (S.B. 48), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0653, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 9.002, eff. September 1, 2017.

Sec. 242.404. POLICIES, PROCEDURES, AND PRACTICES FOR QUALITY OF CARE AND QUALITY OF LIFE. (a) Each institution shall comply with the standards adopted under this subchapter and shall develop written operating policies to implement those standards.

(b) The policies and procedures must be available to each physician, staff member, resident, and resident's next of kin or guardian and to the public.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER L. RIGHTS OF RESIDENTS

Sec. 242.501. RESIDENT'S RIGHTS. (a) The executive commissioner by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

(1) to be free from abuse and exploitation;

(2) to safe, decent, and clean conditions;

(3) to be treated with courtesy, consideration, and respect;

(4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;

(5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;

(6) to privacy, including privacy during visits and telephone calls;

(7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;

(8) to have information about the resident in the possession of the institution maintained as confidential;

(9) to retain the services of a physician the resident chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;

(10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;

(11) to a written statement or admission agreement describing the services provided by the institution and the related charges;

(12) to manage the resident's own finances or to delegate that responsibility to another person;

(13) to access money and property that the resident has

deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;

(14) to keep and use personal property, secure from theft or loss;

(15) to not be relocated within the institution, except in accordance with standards adopted under Section 242.403;

(16) to receive visitors;

(17) to receive unopened mail and to receive assistance in reading or writing correspondence;

(18) to participate in activities inside and outside the institution;

(19) to wear the resident's own clothes;

(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;

(21) to not be discharged from the institution except as provided in the standards adopted under Section 242.403;

(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and

(23) to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

(b) A right of a resident may be restricted only to the extent necessary to protect:

(1) a right of another resident, particularly a right of the other resident relating to privacy and confidentiality; or

(2) the resident or another person from danger or harm.

(c) The executive commissioner may adopt rights of residents in addition to those required by Subsection (a) and may consider additional rights applicable to residents in other jurisdictions.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 919, Sec. 1, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1224, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.004, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0654, eff. April 2, 2015.

Sec. 242.502. RIGHTS CUMULATIVE. The rights established under this subchapter are cumulative of the rights established under any other law.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.503. DUTIES OF INSTITUTION. (a) An institution shall develop and implement policies to protect resident rights.

(b) An institution and the staff of an institution may not violate a right adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.504. INFORMATION ABOUT RESIDENT'S RIGHTS AND VIOLATIONS. (a) An institution shall inform each resident and the resident's next of kin or guardian of the rights adopted under this subchapter and shall explain the rights to the resident and the resident's next of kin or guardian. The institution shall provide a written statement of:

(1) all of the resident's rights; and

(2) any additional rules adopted by the institution involving resident rights and responsibilities.

(b) The institution shall provide a copy of the written statement to:

(1) each resident;

(2) the next of kin or guardian of each resident; and

(3) each member of the staff of the institution.

(c) The institution shall maintain a copy of the statement, signed by the resident or the resident's next of kin or guardian, in the institution's records.

(d) The institution shall post the written statement in the manner required by Section 242.042.

(e) An institution that has been cited by the department for a violation of any right adopted under this subchapter shall include a notice of the citation in the informational materials required by Section 242.042(a)(8). The notice of citation must continue to be included in the informational materials until any regulatory action or proceeding with respect to the violation is complete and the department has determined that the institution is in full compliance with the applicable requirement.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.505. PRESCRIPTION OF PSYCHOACTIVE MEDICATION. (a) In this section:

(1) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a resident to prevent:

(A) imminent probable death or substantial bodily harm to the resident; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the resident overtly or continually makes or commits.

(2) "Psychoactive medication" means a medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. The term includes the following categories when used as described by this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

(b) A person may not administer a psychoactive medication to a resident who does not consent to the prescription unless:

(1) the resident is having a medication-related emergency;

or

(2) the person authorized by law to consent on behalf of the resident has consented to the prescription.

(c) Subject to Subsection (c-1), consent to the prescription of psychoactive medication given by a resident or by a person authorized by law to consent on behalf of the resident is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the person prescribing the medication, that person's designee, or the facility's medical director provided the following information, in a standard format approved by the department, to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable clinically significant side effects and risks associated with the medication; and

(D) the proposed course of the medication;

(3) the resident and, if appropriate, the person authorized by law to consent on behalf of the resident are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the resident's clinical record by:

(A) a signed form prescribed by the facility or by a statement of the person prescribing the medication or that person's designee that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained; and

(B) the original or a copy of the written consent required by Subsection (c-1), if applicable.

(c-1) In addition to the requirements of Subsection (c), consent to the prescription of an antipsychotic or neuroleptic medication is valid only if the consent to the prescription of that medication is given in writing, on a form prescribed by the commission, by a resident or by a person authorized by law to consent on behalf of the resident.

(c-2) Written consent provided by a resident or the resident's legally authorized representative on the form described by Subsection (c-1) satisfies the consent requirements of Subsection (c).

(c-3) There is a rebuttable presumption that the written consent provided by a resident or the resident's legally authorized representative on the form described by Subsection (c-1) satisfies the disclosure requirements established by the Texas Medical Disclosure Panel in Sections 74.104 and 74.105, Civil Practice and Remedies Code.

(d) A resident's refusal to consent to receive psychoactive medication shall be documented in the resident's clinical record.

(e) If a person prescribes psychoactive medication to a resident without the resident's consent because the resident is having a medication-related emergency:

(1) the person shall document in the resident's clinical record in specific medical or behavioral terms the necessity of the order; and

(2) treatment of the resident with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the resident's personal liberty.

(f) A physician or a person designated by the physician is not liable for civil damages or an administrative penalty and is not subject to disciplinary action for a breach of confidentiality of medical information for a disclosure of the information provided under Subsection (c)(2) made by the resident or the person authorized by law to consent on behalf of the resident that occurs while the information is in the possession or control of the resident or the person authorized by law to consent on behalf of the resident.

Added by Acts 2001, 77th Leg., ch. 919, Sec. 2, eff. June 14, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1095 (H.B. 2050), Sec. 1, eff. September 1, 2019.

SUBCHAPTER M. COMPLAINT INSPECTIONS

Sec. 242.551. COMPLAINT REQUESTING INSPECTION. (a) A person may request an inspection of an institution in accordance with this chapter by making a complaint notifying the department of an alleged violation of law and requesting an inspection.

(b) The department shall encourage a person who makes an oral complaint under Subsection (a) to submit a written, signed complaint.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.552. DISCLOSURE OF SUBSTANCE OF COMPLAINT. The department may not provide information to the institution relating to the substance of a complaint made under this subchapter before an on-site inspection is begun in accordance with this subchapter.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.553. CONFIDENTIALITY. The name of the person making the complaint is confidential and may not be released to the institution or any other person, unless the person making the complaint specifically requests that the person's name be released.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.554. PRELIMINARY REVIEW OF COMPLAINT; INSPECTION. (a) On receipt of a complaint under this subchapter, the department shall make a preliminary review of the complaint.

(b) Within a reasonable time after receipt of the complaint, the department shall make an on-site inspection or otherwise respond to the complaint unless the department determines that:

(1) the person making the complaint made the complaint to harass the institution;

(2) the complaint is without any reasonable basis; or

(3) sufficient information in the possession of the department indicates that corrective action has been taken.

(c) The department shall promptly notify the person making the complaint of the department's proposed course of action under Subsection (b) and the reasons for that action.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER N. ADMINISTRATION OF MEDICATION

Sec. 242.601. MEDICATION ADMINISTRATION. (a) An institution must establish medication administration procedures.

(b) The medication administration procedures must comply with this subchapter and the rules adopted under Section 242.608.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.61, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0655, eff. April 2, 2015.

Sec. 242.602. PHARMACIST SERVICES. (a) An institution shall:

(1) employ a licensed pharmacist responsible for operating the institution's pharmacy; or

(2) contract, in writing, with a licensed pharmacist to advise the institution on ordering, storage, administration, and disposal of medications and biologicals and related recordkeeping.

(b) The institution shall allow residents to choose their pharmacy provider from any pharmacy that is qualified to perform the services.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.603. STORAGE AND DISPOSAL OF MEDICATIONS. (a) An institution shall store medications under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

(b) The institution shall properly dispose of:

(1) any medication that is discontinued or outdated, except as provided by Subsection (c); and

(2) any medication in a container with a worn or illegible label or missing a label.

(c) A discontinued medication that has not been destroyed must be reinstated if reordered.

(d) An institution shall release the medications of a resident who is transferred directly to another institution or who is

discharged to home to the new institution or to the resident or resident's next of kin or guardian, as appropriate. The institution may release a medication to a resident only on the written or verbal authorization of the attending physician.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.62, eff. Sept. 1, 2003.

Sec. 242.604. REPORTS OF MEDICATION ERRORS AND ADVERSE REACTIONS. An institution's nursing staff must report medication errors and adverse reactions to the resident's physician in a timely manner, as warranted by an assessment of the resident's condition, and record the errors and reactions in the resident's clinical record.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.605. MEDICATION REFERENCE SOURCES. An institution shall maintain updated medication reference texts or sources. If the institution has a resident younger than 18 years of age, these texts or sources must include information on pediatric medications, dosages, sites, routes, techniques of administration of medications, desired effects, and possible side effects.

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.606. PERMITS TO ADMINISTER MEDICATION. A person may not administer medication to a resident unless the person:

(1) holds a license under state law that authorizes the person to administer medication; or

(2) holds a permit issued under Section 242.610 and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Redesignated from V.T.C.A, Health and Safety Code Sec. 242.151 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

Sec. 242.607. EXEMPTIONS FOR NURSING STUDENTS AND MEDICATION AIDE TRAINEES. (a) Sections 242.606 and 242.614 do not apply to:

(1) a graduate nurse holding a temporary permit issued by the Texas Board of Nursing;

(2) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(3) a graduate vocational nurse holding a temporary permit issued by the Texas Board of Nursing;

(4) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(5) a trainee in a medication aide training program approved by the department under this subchapter who is administering medications as part of the trainee's clinical experience.

(b) The administration of medications by persons exempted under Subdivisions (1) through (4) of Subsection (a) is governed by the terms of the memorandum of understanding executed by the department and the Texas Board of Nursing.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 31, Sec. 1, eff. June 19, 1990. Redesignated from Health and Safety Code Sec. 242.1511 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 553, Sec. 2.011, eff. Feb. 1, 2004. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 69, eff. September 1, 2007.

Sec. 242.608. RULES FOR ADMINISTRATION OF MEDICATION. The executive commissioner by rule shall establish:

(1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to

administer medication to a resident;

(2) curricula to train persons to administer medication to a resident;

(3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and

(4) the acts and practices that are allowed or prohibited to a permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Redesignated from V.T.C.A, Health and Safety Code Sec. 242.152 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0656, eff. April 2, 2015.

Sec. 242.609. TRAINING PROGRAMS TO ADMINISTER MEDICATION. (a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the executive commissioner.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.608. The department may review the approval annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Redesignated from V.T.C.A, Health and Safety Code Sec. 242.153 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0657, eff. April 2, 2015.

Sec. 242.610. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the executive commissioner.

(b) The department shall prepare and conduct, at the site of

the training program, an examination for the issuance of a permit. The results of the examination shall be reported in accordance with Section 242.6101.

(c) The executive commissioner shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) Subject to Subsections (h)-(m), the department shall issue a permit or renew a permit to an applicant who:

(1) meets the minimum requirements adopted under Section 242.608;

(2) successfully completes the examination or the continuing education requirements; and

(3) pays a nonrefundable application fee determined by the executive commissioner by rule.

(e) Except as provided by Subsection (g), a permit is valid for one year and is not transferable.

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

(g) The executive commissioner by rule may adopt a system under which permits expire on various dates during the year. For the year in which the permit expiration date is changed, the department shall prorate permit fees on a monthly basis so that each permit holder pays only that portion of the permit fee that is allocable to the number of months during which the permit is valid. On renewal of the permit on the new expiration date, the total permit renewal fee is payable.

(h) A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to the department before the expiration date of the permit. A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(i) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(j) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by

complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.

(l) A person who was issued a permit in this state, moved to another state, currently holds a valid permit or license issued by the other state, and has been in practice in that state for the two years preceding the date of application may obtain a new permit without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the permit.

(m) Not later than the 30th day before the date a person's permit is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 93, eff. Sept. 1, 1991. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.154 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 453, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1169, Sec. 15, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0658, eff. April 2, 2015.

Sec. 242.6101. RESULTS OF EXAMINATION FOR ISSUANCE OF PERMIT. (a) Not later than the 30th day after the date a person takes an examination for the issuance of a permit under this subchapter, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for the issuance of a permit administered under this subchapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1169, Sec. 16, eff. Sept. 1, 2003.

Sec. 242.611. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. The executive commissioner by rule shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. Except as otherwise provided by Section 242.610, the fees may not exceed:

(1) $25 for a combined permit application and examination fee; and

(2) $15 for a renewal permit application fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.155 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 17, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0659, eff. April 2, 2015.

Sec. 242.6111. APPLICABILITY OF OTHER LAW. Chapter 53, Occupations Code, does not apply to the issuance or renewal of a permit to administer medication under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 3, eff. September 1, 2023.

Sec. 242.612. VIOLATION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall revoke, suspend, or refuse to renew a permit or shall reprimand a permit holder for a violation of this subchapter or a rule adopted under this subchapter. In addition, the department may suspend a permit in an emergency or rescind training program approval.

(b) Except as provided by Section 242.613, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by Chapter 2001, Government Code.

(c) The department may place on probation a person whose permit is suspended. If a permit suspension is probated, the department may require the person:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the department; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.156 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1169, Sec. 18, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0660, eff. April 2, 2015.

Sec. 242.613. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a permit issued under this subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, an administrative law judge of the State Office of Administrative Hearings shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Redesignated from V.T.C.A, Health and Safety Code Sec. 242.157 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0661, eff. April 2, 2015.

Sec. 242.614. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from V.T.C.A, Health and Safety Code Sec. 242.158 and amended by Acts 1997, 75th Leg., ch. 1159, Sec. 1.30, eff. Sept. 1, 1997.

SUBCHAPTER R. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 242.841. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in the room of a resident of an institution and making tapes or recordings with the device after making a request to the institution to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in the room of a resident; and

(ii) audio devices installed in the room of a resident designed to acquire communications or other sounds occurring

in the room; and

(B) does not include an interception device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.12, eff. January 1, 2019.

Sec. 242.842. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in the room of a resident of an institution.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in the room of a resident of an institution or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Article 18A.001, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.13, eff.

January 1, 2019.

Sec. 242.843. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR INSTITUTION. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in the room of a resident is considered to be covert if:

(1) the placement and use of the device is not open and obvious; and

(2) the institution and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the institution may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in the room of a resident.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.844. REQUIRED FORM ON ADMISSION. The executive commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to an institution by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in the room of a resident or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under Subchapter R, Chapter 242, Health and Safety Code, and that if the institution refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring that the person should contact the Department of Aging and Disability Services;

(4) the basic procedures that must be followed to request

authorized electronic monitoring;

(5) the manner in which this chapter affects the legal requirement to report abuse or neglect when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0662, eff. April 2, 2015.

Sec. 242.845. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter, notwithstanding the terms of any durable power of attorney or similar instrument.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The executive commissioner by rule shall prescribe:

(1) guidelines that will assist institutions, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the executive commissioner.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0663, eff. April 2, 2015.

Sec. 242.846. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the institution on a form prescribed by the department.

(b) The form prescribed by the department must require the resident or the resident's guardian or legal representative to:

(1) release the institution from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the department, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 242.845(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the department under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the institution from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a

video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in the room of a resident and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The department may include other information that the department considers to be appropriate on either of the forms that the department is required to prescribe under this section.

(h) The executive commissioner may adopt rules prescribing the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the institution; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0664, eff. April 2, 2015.

Sec. 242.847. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) An institution shall permit a resident or the resident's guardian or legal representative to monitor the room of the resident through the use of electronic monitoring devices.

(b) The institution shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request

of the resident or the resident's guardian or legal representative.

(d) An institution may not refuse to admit an individual to residency in the institution and may not remove a resident from the institution because of a request to conduct authorized electronic monitoring. An institution may not remove a resident from the institution because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) An institution shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) An institution may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The executive commissioner may adopt rules regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the institution may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) An institution may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0665, eff. April 2, 2015.

Sec. 242.848. REPORTING ABUSE AND NEGLECT. (a) For purposes of the duty to report abuse or neglect under Section 260A.002 and the criminal penalty for the failure to report abuse or neglect under Section 260A.012, a person who is conducting electronic monitoring on behalf of a resident under this subchapter is considered to have viewed or listened to a tape or recording made by the electronic monitoring device on or before the 14th day after the date the tape or recording is made.

(b) If a resident who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring under this subchapter gives a tape or recording made by the electronic monitoring device to a person and directs the person to view or listen to the tape or recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the tape or recording is considered to have viewed or listened to the tape or recording on or before the seventh day after the date the person receives the tape or recording for purposes of the duty to report abuse or neglect under Section 260A.002 and of the criminal penalty for the failure to report abuse or neglect under Section 260A.012.

(c) A person is required to report abuse based on the person's viewing of or listening to a tape or recording only if the incident of abuse is acquired on the tape or recording. A person is required to report neglect based on the person's viewing of or listening to a tape or recording only if it is clear from viewing or listening to the tape or recording that neglect has occurred.

(d) If abuse or neglect of the resident is reported to the institution and the institution requests a copy of any relevant tape or recording made by an electronic monitoring device, the person who possesses the tape or recording shall provide the institution with a copy at the institution's expense.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(h), eff. September 28, 2011.

Sec. 242.849. USE OF TAPE OR RECORDING BY AGENCY OR COURT. (a) Subject to applicable rules of evidence and procedure and the

requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or evidence of neglect may be found. The executive commissioner may adopt rules encouraging persons who send a tape or recording to the department to identify the place on the tape or recording that an incident of abuse or evidence of neglect may be found.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0666, eff. April 2, 2015.

Sec. 242.850. NOTICE AT ENTRANCE TO INSTITUTION. Each institution shall post a notice at the entrance to the institution stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The executive commissioner by rule shall prescribe the format and the precise content of the notice.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0667, eff. April 2, 2015.

Sec. 242.851. ENFORCEMENT. (a) The department may impose appropriate sanctions under this chapter on an administrator of an institution who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

(b) The department may assess an administrative penalty under Section 242.066 against an institution that:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the institution because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the institution because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

Sec. 242.852. CRIMINAL OFFENSE. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this section is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the

resident's guardian or legal representative.

Added by Acts 2001, 77th Leg., ch. 1224, Sec. 1, eff. June 15, 2001.

SUBCHAPTER S. FAMILY COUNCIL

Sec. 242.901. DEFINITION. In this subchapter, "family council" means a group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0668, eff. April 2, 2015.

Sec. 242.902. FAMILY COUNCIL. A family council may:

(1) make recommendations to the institution proposing policy and operational decisions affecting resident care and quality of life; and

(2) promote educational programs and projects that will promote the health and happiness of residents.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.903. DUTIES OF INSTITUTION. (a) An institution shall consider the views and recommendations of the family council and make a reasonable effort to resolve the council's grievances.

(b) An institution may not:

(1) prohibit the formation of a family council;

(2) terminate an existing family council;

(3) deny a family council the opportunity to accept help from an outside person;

(4) limit the rights of a resident, family member, or family council member to meet with an outside person, including:

(A) an employee of the institution during nonworking hours if the employee agrees; and

(B) a member of a nonprofit or government organization;

(5) prevent or interfere with the family council receiving outside correspondence addressed to the council;

(6) open family council mail; or

(7) wilfully interfere with the formation, maintenance, or operation of a family council, including interfering by:

(A) discriminating or retaliating against a family council participant; and

(B) wilfully scheduling events in conflict with previously scheduled family council meetings if the institution has other scheduling options.

(c) On admission of a resident, an institution shall inform the resident's family members in writing of:

(1) the family members' right to form a family council; or

(2) if a family council already exists, the council's:

(A) meeting time, date, and location; and

(B) contact person.

(d) An institution shall:

(1) include notice of a family council in a mailing that occurs at least semiannually;

(2) permit a representative of a family council to discuss concerns with an individual conducting an inspection or survey of the facility;

(3) provide a family council with adequate space on a prominent bulletin board to post notices and other information;

(4) provide a designated staff person to act as liaison for a family council; and

(5) respond in writing to a written request by a family council within five working days.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.904. MEETINGS. (a) On written request, an institution shall allow a family council to meet in a common meeting room of the institution at least once a month during hours mutually agreed upon by the family council and the institution.

(b) Institution employees or visitors may attend a family council meeting only at the council's invitation.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff.

September 1, 2008.

Sec. 242.905. VISITING. A family council member may authorize in writing another member to visit and observe a resident represented by the authorizing member unless the resident objects.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

Sec. 242.906. ADMINISTRATION; RULES. (a) The department shall administer this subchapter.

(b) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 798 (S.B. 131), Sec. 3, eff. September 1, 2008.

SUBCHAPTER T. SERVICES PROVIDED BY CERTAIN VOCATIONAL NURSING STUDENTS

Sec. 242.951. DEFINITION. In this subchapter, "disaster" has the meaning assigned by Section 418.004, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 619 (S.B. 1856), Sec. 1, eff. September 1, 2021.

Sec. 242.952. APPLICABILITY. This subchapter applies only to a student who is:

(1) enrolled in an accredited school or program that is preparing the student for licensure as a licensed vocational nurse; and

(2) participating in a clinical program at a facility licensed under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 619 (S.B. 1856), Sec. 1, eff. September 1, 2021.

Sec. 242.953. SERVICES PROVIDED BY CERTAIN VOCATIONAL NURSING STUDENTS. (a) Notwithstanding any other law, services that are provided by a student to whom this subchapter applies in a facility licensed under this chapter and authorized by a contract or other arrangement with the facility are allowed at all times in this state, including during a declared state of disaster.

(b) A facility licensed under this chapter may:

(1) require a student to comply with the facility's policies regarding health screenings or the use of personal protective equipment; and

(2) condition the student's provision of services on compliance with the facility's policies described by Subdivision (1).

Added by Acts 2021, 87th Leg., R.S., Ch. 619 (S.B. 1856), Sec. 1, eff. September 1, 2021.

CHAPTER 243. AMBULATORY SURGICAL CENTERS

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

Sec. 243.001. SHORT TITLE. This chapter may be cited as the Texas Ambulatory Surgical Center Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.002. DEFINITIONS. In this chapter:

(1) "Ambulatory surgical center" means a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0669, eff.

April 2, 2015.

Sec. 243.003. LICENSE REQUIRED. (a) Except as provided by Section 243.004, a person may not establish or operate an ambulatory surgical center in this state without a license issued under this chapter.

(b) Each ambulatory surgical center must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) an office or clinic of a licensed physician, dentist, or podiatrist;

(2) a licensed nursing home; or

(3) a licensed hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an ambulatory surgical center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that there is at least one physician, dentist, or podiatrist on the staff of the center who is licensed by the appropriate state licensing board.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee must be paid every two years on renewal of the license.

(f) The department shall issue a renewal license to a center certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when the center:

(1) remits any license fee; and

(2) submits the inspection results or the inspection results report from the certification body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0670, eff. April 2, 2015.

Sec. 243.006. INSPECTIONS. (a) The department may inspect an ambulatory surgical center at reasonable times as necessary to assure compliance with this chapter.

(b) An ambulatory surgical center licensed by the department and certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) is subject to an on-site licensing inspection under this chapter once every three years while the center maintains the certification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1546, Sec. 1, eff. Sept. 1, 1999.

Sec. 243.007. FEE AMOUNTS. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and as prescribed by Section 12.0111.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0671, eff. April 2, 2015.

Sec. 243.008. DEPOSIT OF FEES. All fees collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0672, eff.

April 2, 2015.

Sec. 243.009. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ambulatory surgical center.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0673, eff. April 2, 2015.

Sec. 243.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards applicable to an ambulatory surgical center and for:

(1) the construction and design, including plumbing, heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients;

(2) the qualifications of the professional staff and other personnel;

(3) the equipment essential to the health and welfare of the patients;

(4) the sanitary and hygienic conditions within the center and its surroundings; and

(5) a quality assurance program for patient care.

(b) Standards set under this section may not exceed the minimum standards for certification of ambulatory surgical centers under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(c) This section does not authorize the executive commissioner to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0674, eff.

April 2, 2015.

Sec. 243.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that an ambulatory surgical center is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license. The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of an ambulatory surgical center that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 3, 4, eff. June 20, 2003.

Sec. 243.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An

administrative law judge of the office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1546, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0675, eff. April 2, 2015.

Sec. 243.012. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an ambulatory surgical center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of an ambulatory surgical center without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the ambulatory surgical center is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 243.003(a).

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.014. CIVIL PENALTY. (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 243.015. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 243.016 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date, and the department shall give written notice of the time and place of the hearing to the person. An administrative law judge of that office shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the department's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 3.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0676, eff.

April 2, 2015.

Sec. 243.016. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the department under Section 243.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 3.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0677, eff. April 2, 2015.

Sec. 243.017. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An ambulatory surgical center shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 7, eff. September 1, 2011.

CHAPTER 244. BIRTHING CENTERS

Sec. 244.001. SHORT TITLE. This chapter may be cited as the Texas Birthing Center Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.002. DEFINITIONS. In this chapter:

(1) "Birthing center" means a place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(60), eff. April 2, 2015.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0678, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(60), eff. April 2, 2015.

Sec. 244.003. LICENSE REQUIRED. (a) Except as provided by Section 244.004, a person may not establish or operate a birthing center in this state without an appropriate license issued under this chapter.

(b) Each birthing center must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) a licensed hospital;

(2) a licensed nursing home; or

(3) a licensed ambulatory surgical center.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for a birthing center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that the composition of the center's staff meets the standards adopted under this chapter for the level of license for which the application is submitted.

(d) The department shall issue the appropriate license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee shall be paid every two years on renewal of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0679, eff. April 2, 2015.

Sec. 244.006. INSPECTIONS. (a) The department may inspect a birthing center at reasonable times as necessary to assure compliance with this chapter.

(b) If a birthing center's failure to comply with this chapter creates a serious threat to the health and safety of the public, the department may appoint a monitor for the center to ensure compliance with this chapter. The birthing center shall be liable for the cost of the monitor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1999.

Sec. 244.007. FEES. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and as prescribed by Section 12.0111.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0680, eff. April 2, 2015.

Sec. 244.009. ADOPTION OF RULES. (a) The executive commissioner shall adopt rules necessary to implement this chapter.

(b) The executive commissioner shall adopt rules that establish different levels of licenses to operate a birthing center and that provide requirements for the issuance, renewal, denial, suspension, and revocation of each level of license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0681, eff. April 2, 2015.

Sec. 244.010. MINIMUM STANDARDS. (a) For each level of license of a birthing center, the rules must contain minimum standards for:

(1) the qualifications for professional and nonprofessional personnel;

(2) the supervision of professional and nonprofessional personnel;

(3) the provision and coordination of treatment and services;

(4) the organizational structure, including the lines of authority and the delegation of responsibility;

(5) the keeping of clinical records; and

(6) any other aspect of the operation of a birthing center that the executive commissioner considers necessary to protect the public.

(b) This section does not authorize the executive commissioner to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under another state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0682, eff. April 2, 2015.

Sec. 244.0105. COMPLAINTS. A person may file a complaint with the department against a birthing center licensed under this chapter. A person who files a false complaint may be prosecuted under the Penal Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.011. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for:

(1) a violation of this chapter or a rule adopted under this chapter; or

(2) a history of continuing noncompliance with this chapter or the rules adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that a birthing center is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license. The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a birthing center that does not correct items that were in noncompliance or that does not comply with the applicable

requirements within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1265, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 802, Sec. 5, 6, eff. June 20, 2003.

Sec. 244.0115. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. On written request of the license holder, the department shall conduct a hearing not earlier than the seventh day or later than the 10th day after the date the notice of the emergency suspension is sent to the license holder to determine if the emergency suspension is to take effect, to be modified, or to be rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1265, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.012. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a birthing center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of a birthing center without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit

authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the birthing center is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 244.003(a).

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.014. CIVIL PENALTY. (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 244.015. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 244.016 shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of that office shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the department's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0683, eff. April 2, 2015.

Sec. 244.016. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the department under Section 244.015(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the

affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0684, eff. April 2, 2015.

CHAPTER 245. ABORTION FACILITIES

Sec. 245.001. SHORT TITLE. This chapter may be cited as the

Texas Abortion Facility Reporting and Licensing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.002. DEFINITIONS. In this chapter:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

(2) "Abortion facility" means a place where abortions are performed.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(62), eff. April 2, 2015.

(4) "Department" means the Department of State Health Services.

(4-a) "Ectopic pregnancy" means the implantation of a fertilized egg or embryo outside of the uterus.

(4-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Patient" means a female on whom an abortion is performed, but does not include a fetus.

(6) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0685, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(62), eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 8, eff. September 1, 2017.

Sec. 245.003. LICENSE REQUIRED. (a) Except as provided by Section 245.004, a person may not establish or operate an abortion facility in this state without an appropriate license issued under this chapter.

(b) Each abortion facility must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section as amended by Acts 2003, 78th Leg., Ch. 198, Sec. 2.63 (a).

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law); or

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used for the purpose of performing more than 50 abortions in any 12-month period.

(b) In computing the number of abortions performed in the office of a physician under Subsection (a)(2), an abortion performed in accordance with Section 245.016 is not included.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.63(a), eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., Ch. 999, Sec. 2

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law);

(2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used substantially for the purpose of performing abortions; or

(3) an ambulatory surgical center licensed under Chapter 243.

(b) For purposes of this section, a facility is used

substantially for the purpose of performing abortions if the facility:

(1) is a provider for performing:

(A) at least 10 abortion procedures during any month; or

(B) at least 100 abortion procedures in a year;

(2) operates less than 20 days in a month and the facility, in any month, is a provider for performing a number of abortion procedures that would be equivalent to at least 10 procedures in a month if the facility were operating at least 20 days in a month;

(3) holds itself out to the public as an abortion provider by advertising by any public means, including advertising placed in a newspaper, telephone directory, magazine, or electronic medium, that the facility performs abortions; or

(4) applies for an abortion facility license.

(c) For purposes of this section, an abortion facility is operating if the facility is open for any period of time during a day and has on site at the facility or on call a physician available to perform abortions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 999, Sec. 2, eff. Sept. 1, 2003.

Sec. 245.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an abortion facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that there are one or more physicians on the staff of the facility who are licensed by the Texas Medical Board.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the abortion facility meet the requirements of this chapter and the standards adopted under this chapter.

(e) As a condition for renewal of a license, the licensee must submit to the department the annual license renewal fee and an annual

report.

(f) Information regarding the licensing status of an abortion facility is an open record for the purposes of Chapter 552, Government Code, and shall be made available by the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 856, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0686, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 9, eff. September 1, 2017.

Sec. 245.006. INSPECTIONS. (a) The department shall inspect an abortion facility at random, unannounced, and reasonable times as necessary to ensure compliance with this chapter, Subchapter B, Chapter 171, and Chapter 33, Family Code.

(b) The department shall inspect an abortion facility before renewing the facility's license under Section 245.005(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1120, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 8, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 12, eff. January 1, 2016.

Sec. 245.007. FEES. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and Chapter 171.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 999, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0687, eff. April 2, 2015.

Sec. 245.009. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an abortion facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0688, eff. April 2, 2015.

Sec. 245.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility and must contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171. On and after September 1, 2014, the minimum standards for an abortion facility must be equivalent to the minimum standards adopted under Section 243.010 for ambulatory surgical centers.

(b) Only a physician as defined by Subtitle B, Title 3, Occupations Code, may perform an abortion.

(c) Repealed by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 8, eff. September 1, 2014.

(d) This section does not authorize the executive commissioner to:

(1) establish the qualifications of a licensed practitioner; or

(2) permit a person to provide health care services who is not authorized to provide those services under other laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.789, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 999, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 4, eff. October 29, 2013.
Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 8, eff. September 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0689, eff. April 2, 2015.

Sec. 245.0105. UNIQUE IDENTIFYING NUMBER; DISCLOSURE IN ADVERTISEMENT. (a) The department shall assign to each abortion facility a unique license number that may not change during the period the facility is operating in this state.

(b) An abortion facility shall include the unique license number assigned to the facility by the department in any abortion advertisement directly relating to the provision of abortion services at the facility.

(c) In this section, "abortion advertisement" means:

(1) any communication that advertises the availability of abortion services at an abortion facility and that is disseminated through a public medium, including an advertisement in a newspaper or other publication or an advertisement on television, radio, or any other electronic medium; or

(2) any commercial use of the name of the facility as a provider of abortion services, including the use of the name in a directory, listing, or pamphlet.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 2, eff. Sept. 1, 1997.

Sec. 245.011. PHYSICIAN REPORTING REQUIREMENTS; CRIMINAL PENALTY. (a) A physician who performs an abortion at an abortion facility must complete and submit a monthly report to the department on each abortion performed by the physician at the abortion facility. The report must be submitted on a form provided by the department.

(b) The report may not identify by any means the patient.

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the

time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient;

(10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and

(11) the information required under Sections 171.008(a) and (c).

(d) Except as provided by Section 245.023, all information and records held by the department under this chapter are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person, patient, physician performing an abortion, or abortion facility is not identified;

(2) with the consent of each person, patient, physician, and abortion facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(e) A person commits an offense if the person violates Subsection (b), (c), or (d). An offense under this subsection is a Class A misdemeanor.

(f) Not later than the 15th day of each month, a physician shall submit to the department the report required by this section for each abortion performed by the physician at an abortion facility in the preceding calendar month.

(g) The department shall establish and maintain a secure electronic reporting system for the submission of the reports required by this section. The department shall adopt procedures to enforce this section and to ensure that only physicians who perform one or more abortions during the preceding calendar month are required to file the reports under this section for that month.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1120, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 5, eff. October 29, 2013.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 10, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 11, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 62 (S.B. 8), Sec. 9, eff. September 1, 2021.

Sec. 245.0115. NOTIFICATION. Not later than the seventh day after the date the report required by Section 245.011 is due, the commissioner of state health services shall notify the Texas Medical Board of a violation of that section.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 12, eff. September 1, 2017.

Sec. 245.0116. DEPARTMENT REPORT. (a) The department shall publish on its Internet website a monthly report containing aggregate data of the information in the reports submitted under Section 245.011.

(b) The department's monthly report may not identify by any means an abortion facility, a physician performing the abortion, or a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 12, eff. September 1, 2017.

Sec. 245.012. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the

procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the abortion facility adequate notice of the action and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the 14th day after the effective date of the suspension or revocation.

(d) If the department finds that an abortion facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not in any way involve the health and safety of the public or an individual, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(e) The department may suspend or revoke the license of an abortion facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 802, Sec. 7, 8, eff. June 20, 2003.

Sec. 245.013. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the

patients of an abortion facility.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of an abortion facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the abortion facility is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 245.003(a).

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.02, eff. Sept. 1, 1999.

Sec. 245.015. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.016. ABORTION IN UNLICENSED ABORTION FACILITY TO PREVENT DEATH OR SERIOUS IMPAIRMENT. This chapter does not remove the responsibility or limit the ability of a physician to perform an abortion in an unlicensed abortion facility if, at the commencement of the abortion, the physician reasonably believes that the abortion is necessary to prevent the death of the patient or to prevent serious impairment of the patient's physical health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.03, eff. Sept. 1, 1999.

Sec. 245.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.018. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty, based on the factors listed in Section 245.017(c); and

(3) a statement of the person's right to a hearing on the

occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the department shall order the person to pay the recommended penalty.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0690, eff. April 2, 2015.

Sec. 245.019. HEARING; ORDER. (a) If the person requests a hearing, the department shall transfer the case to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing.

(a-1) The department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0691, eff. April 2, 2015.

Sec. 245.020. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of

the department's order under Section 245.019(c) to the person alleged to have committed the violation. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the department's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement

of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0692, eff. April 2, 2015.

Sec. 245.021. PENALTY DEPOSITED TO STATE TREASURY. A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue

fund.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.022. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date a department order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 245.013 or 245.015 or an action to enforce an administrative penalty assessed under Section 245.017 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0693, eff. April 2, 2015.

Sec. 245.023. PUBLIC INFORMATION; TOLL-FREE TELEPHONE NUMBER. (a) The department on request shall make the following information available to the public:

(1) the status of the license of any abortion facility;

(2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any

corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and

(3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

(b) Subsection (a) does not require the department to provide information that is not in the possession of the department. The Texas Medical Board shall provide to the department information in the possession of the board that the department is required to provide under Subsection (a).

(c) The department shall maintain a toll-free telephone number that a person may call to obtain the information described by Subsection (a).

(d) An abortion facility shall provide to a woman, at the time the woman initially consults the facility, a written statement indicating the number of the toll-free telephone line maintained under Subsection (c). The written statement must be available in English and Spanish and be in substantially the following form:

"(toll-free telephone number)

You have a right to access certain information concerning this abortion facility by using the toll-free telephone number listed above. If you make a call to the number, your identity will remain anonymous. The toll-free telephone line can provide you with the following information:

(1) Whether this abortion facility is licensed by the Texas Department of State Health Services.

(2) The date of the last inspection of this facility by the Texas Department of State Health Services and any violations of law or rules discovered during that inspection that may pose a health risk to you.

(3) Any relevant fine, penalty, or judgment rendered against this facility or a doctor who provides services at this facility."

(e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 4, eff. Sept. 1, 1997. Renumbered from Sec. 245.017 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(65), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0694, eff. April 2, 2015.

Sec. 245.024. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An abortion facility shall comply with Subchapter B, Chapter 171.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 9, eff. September 1, 2011.

Sec. 245.025. HUMAN TRAFFICKING SIGNS REQUIRED. (a) An abortion facility shall display separate signs, in English, Spanish, and any additional language as required by Subsection (b), side by side in accordance with this section in each restroom and patient consulting room. The signs must include the following information:

(1) no person, including an individual's parents, may force any individual to have an abortion;

(2) it is illegal for a person to force an individual to engage in sexual acts;

(3) a woman who needs help may call or text a state or national organization that assists victims of human trafficking and forced abortions; and

(4) the toll-free number of an organization described by Subdivision (3).

(a-1) In addition to the information required under Subsection (a), the sign must include the contact information for reporting suspicious activity to the Department of Public Safety.

(b) Signs required under this section must be in English and Spanish. If an abortion facility is located in a political subdivision required to provide election materials in a language other than English or Spanish under Section 272.011, Election Code, the facility shall display a separate sign in that language.

(c) Signs required under this section must be at least 8-1/2 by 11 inches in size and displayed in a conspicuous manner clearly

visible to the public and employees of an abortion facility. The notice must cover at least four-fifths of the sign.

(d) The executive commissioner shall adopt rules as necessary to implement and enforce this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 12, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 280 (H.B. 3721), Sec. 5, eff. September 1, 2021.

CHAPTER 246. CONTINUING CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 246.001. SHORT TITLE. This chapter may be cited as the Texas Continuing Care Facility Disclosure and Rehabilitation Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.002. DEFINITIONS. In this chapter:

(1) "Board" means the State Board of Insurance.

(2) "Commissioner" means the commissioner of the State Board of Insurance.

(3) Redesignated by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 1, eff. June 19, 2015.

(4) "Continuing care contract" means an agreement that requires the payment of an entrance fee by or on behalf of a resident in exchange for the furnishing of continuing care by a provider and that is effective for:

(A) the life of the resident; or

(B) more than one year.

(5) "Entrance fee" means an initial or deferred transfer of money or other property valued at an amount exceeding three months' payments for rent or services, made, or promised to be made, as full or partial consideration for acceptance by a provider of a specified individual entitled to receive continuing care under a continuing care contract. The term does not include a deposit made under a reservation agreement.

(6) "Facility" means an establishment that provides continuing care to an individual. The term does not include an

individual's residence if the residence is not a living unit provided by a provider.

(7) "Living unit" means a room, apartment, cottage, or other area that is in a facility and that is set aside for the exclusive use or control of one or more specified individuals.

(8) "Long-term nursing care" means nursing care provided for a period longer than 365 consecutive days.

(9) "Person" means an individual, corporation, association, or partnership, and includes a fraternal or benevolent order or society.

(10) "Provider" means a person who undertakes to provide continuing care under a continuing care contract to a resident.

(11) "Reservation agreement" means an agreement that requires the payment of a deposit to reserve a living unit for a prospective resident.

(12) "Resident" means an individual entitled to receive continuing care under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 95, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, Sec. 31, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.
Redesignated and amended from Health and Safety Code, Section 246.002(3) by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 1, eff. June 19, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 2, eff. June 19, 2015.

Sec. 246.0025. DEFINITION OF CONTINUING CARE. (a) In this chapter, "continuing care" means the furnishing of a living unit, together with personal care services, nursing services, medical services, or other health-related services, regardless of whether the services and the living unit are provided at the same location:

(1) to an individual who is not related by consanguinity or affinity, as determined under Chapter 573, Government Code, to the person furnishing the care; and

(2) under a continuing care contract.

(b) The term "continuing care" includes the furnishing of services described by Subsection (a) to an individual in the individual's residence or otherwise enabling the individual to remain in the individual's residence.

Redesignated and amended from Health and Safety Code, Section 246.002(3) by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 1, eff. June 19, 2015.

Sec. 246.003. BOARD POWERS AND DUTIES. (a) The board shall regulate providers as provided by this chapter.

(b) The board may adopt rules and take other action as necessary to administer and enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.004. RIGHTS OF RESIDENTS. A resident receiving care in a portion of a facility licensed to provide nursing home care, personal care, or custodial care is entitled to all statutory rights provided to a nursing home, personal care, or custodial care resident.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.005. LICENSING FOR CERTAIN TAX PURPOSES. A facility regulated under this chapter is licensed for purposes of Section 151.314, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.006. QUALITY OF CARE. The commissioner may not regulate or in any manner inquire into the quality of care provided in a facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.007. REDUCTION OF FEES. The commissioner shall reduce the annual filing fees under this chapter if the cumulative amount of the fees exceeds the actual cost of regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Sec. 246.021. CERTIFICATE OF AUTHORITY REQUIRED. Unless a provider holds a certificate of authority issued under this subchapter, the provider may not:

(1) acquire a facility;

(2) enter into a continuing care contract; or

(3) enter into a reservation agreement unless the agreement provides for the full refund, for any reason, of a deposit paid in connection with the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 2, eff. Sept. 1, 1993.

Sec. 246.022. APPLICATION FOR AND ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall adopt rules stating the information an applicant for a certificate of authority must submit.

(b) On receiving an application for a certificate of authority, the commissioner shall conduct a hearing on the application.

(c) The commissioner shall grant an application for a certificate of authority if the commissioner finds that:

(1) the applicant or the facility is financially sound;

(2) the competence, experience, and integrity of the applicant, its board of directors, its officers, or its management make it in the public interest to issue the certificate; and

(3) the applicant is capable of complying with this chapter.

(d) The commissioner shall issue an order approving or disapproving an application not later than the 180th day after the date on which the application is filed.

(e) The commissioner may limit issuance of certificates of authority to incorporated entities only.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.023. MANDATORY ISSUANCE OF CERTIFICATE OF AUTHORITY TO CERTAIN FACILITIES. (a) The commissioner shall issue a certificate of authority for a facility that:

(1) was occupied by at least one resident on September 1, 1987;

(2) was under construction on September 1, 1987; or

(3) incurred substantial financial obligations before September 1, 1987, related to the development of the facility.

(b) A certificate of authority issued under this section may be suspended or revoked as any other certificate.

(c) This section prevails over Section 246.022.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.024. TRANSFER OF CERTIFICATE OF AUTHORITY. A certificate of authority may not be transferred without the prior approval of the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 96, eff. Sept. 1, 1991.

Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner may suspend or revoke a provider's certificate of authority if the provider:

(1) draws on its entrance fee escrow in an amount greater than provided for by Section 246.073;

(2) draws on its loan reserve fund escrow in an amount greater than provided for by Section 246.078; or

(3) intentionally violates this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 97, eff. Sept. 1, 1991.

Sec. 246.026. MANAGEMENT BY OTHERS. A holder of a certificate of authority may not contract for management of the facility unless the commissioner is notified of the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.027. CERTIFICATE OF AUTHORITY FEES. (a) Except as provided by Subsection (b), a facility that files an application for a certificate of authority must pay to the commissioner a fee of $10,000.

(b) A facility that files an application for a certificate of authority issued under Section 246.023 must pay to the commissioner:

(1) a fee of $500; and

(2) a fee of $2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. CONTINUING CARE CONTRACTS AND DISCLOSURE STATEMENTS

Sec. 246.041. PRECONTRACTUAL RECORDING REQUIREMENTS. (a) A provider shall file with the board a current disclosure statement that meets the requirements of this subchapter and shall file copies of the agreements establishing the escrows under Subchapter D or a verified statement explaining that an escrow is not required before the provider:

(1) contracts to provide continuing care to a resident in this state;

(2) extends the term of an existing continuing care contract with a resident in this state that requires or allows an entrance fee from any person, regardless of whether the extended contract requires an entrance fee; or

(3) including a person acting on the provider's behalf, solicits for an individual who is a resident of this state a continuing care contract in this state.

(b) A contract is solicited in this state if, during the 12-month period preceding the date on which a continuing care contract for a facility is signed or accepted by either party, information concerning the facility or the availability of a continuing care contract for the facility is given:

(1) by personal, telephone, mail, or other communication directed to and received by a person at a location in this state; or

(2) in a paid advertisement published or broadcast from within this state, other than in a publication in which more than two-thirds of the circulation is outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 3, eff. June 19, 2015.

Sec. 246.042. DELIVERY OF DISCLOSURE STATEMENT. (a) A provider who has not been issued a certificate of authority under Subchapter B must deliver a disclosure statement to any person from whom the provider accepts a deposit in connection with a reservation agreement before the provider accepts the deposit.

(b) A provider who has been issued a certificate of authority under Subchapter B must deliver a disclosure statement to a person with whom a continuing care contract is to be made before the earlier of:

(1) the execution of the continuing care contract; or

(2) the transfer of any entrance fee or nonrefundable deposit to the provider by or on behalf of the person.

(c) The most recently filed disclosure statement is the only statement that:

(1) is current for purposes of this chapter; and

(2) may be delivered under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 3, eff. Sept. 1, 1993.

Sec. 246.043. COVER PAGE OF DISCLOSURE STATEMENT. The cover page of a disclosure statement must state:

(1) the date of the statement in a prominent location and in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous;

(2) that if the provider has not been issued a certificate of authority under Subchapter B, this chapter requires the delivery of a disclosure statement to a prospective resident before the payment of any deposit to reserve a living unit;

(3) that this chapter requires the delivery of a disclosure

statement to a contracting party before the execution of a continuing care contract or the payment of an entrance fee or nonrefundable deposit; and

(4) that the disclosure statement has not been approved by a governmental agency or representative to ensure the accuracy of its information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 98, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 4, eff. Sept. 1, 1993.

Sec. 246.044. CONTENTS OF DISCLOSURE STATEMENT: PROVIDER. (a) The disclosure statement must include the name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity. If the provider is not an individual, the statement must include:

(1) the name and business address of each officer, director, trustee, and managing or general partner; and

(2) the name and business address of each person who has at least a 10 percent interest in the provider and a description of the person's interest in or occupation with the provider.

(b) The provider may include in the disclosure statement any other material information concerning the facility or the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.045. CONTENTS OF DISCLOSURE STATEMENT: THIRD PARTY MANAGEMENT. If a person, other than an individual directly employed by the provider, is to be the day-to-day manager of a facility, the disclosure statement must include:

(1) a description of the person's business experience, if any, in the operation or management of a similar facility;

(2) the name and address of any professional service, firm, association, trust, partnership, or corporation that:

(A) has in the person, or in which the person has, at least a 10 percent interest; and

(B) proposes to provide goods, leases, or services to the facility or to the residents of the facility, of an aggregate value of at least $500 in a year;

(3) a description of any goods, leases, or services under Subdivision (2), and a statement of their probable or anticipated cost to the facility, provider, or residents, or a statement that their cost cannot be estimated; and

(4) a description of any matter in which the person:

(A) has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been held liable or enjoined in a civil action by final judgment, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) is subject to an injunction or restrictive order of a court of record; or

(C) has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency if the order or action arose out of or was related to a business activity in a health care field, including an action affecting a license to operate a foster care facility, a nursing home, a retirement home, a home for the aged, or a facility subject to this chapter or a similar statute in another state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.046. CONTENTS OF DISCLOSURE STATEMENT: AFFILIATION WITH NONPROFIT ORGANIZATION. The disclosure statement must state whether the provider is affiliated with a religious, charitable, or other nonprofit organization, and if so, the statement must:

(1) describe the extent of the affiliation;

(2) explain the extent to which the organization is responsible for the financial and contractual obligations of the provider; and

(3) cite any provision of the Internal Revenue Code of 1986 under which the provider or affiliate claims to be exempt from the payment of income tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.047. CONTENTS OF DISCLOSURE STATEMENT: PHYSICAL PROPERTY. (a) The disclosure statement must provide the location and a description of the proposed or existing physical property of

the facility.

(b) If the physical property of the facility is proposed, the disclosure statement must state:

(1) the estimated completion date;

(2) whether construction has begun; and

(3) any contingencies under which construction may be deferred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.048. CONTENTS OF DISCLOSURE STATEMENT: CONTRACTS AND FEES. The disclosure statement must describe:

(1) the services provided under a continuing care contract, including:

(A) the extent to which medical care is furnished; and

(B) those services that are included for specified basic fees for continuing care and those services that are made available at extra charge;

(2) all fees required of residents, including the entrance fee and any periodic charges;

(3) the conditions under which a continuing care contract may be canceled by the provider or the resident;

(4) any conditions under which all or part of the entrance fee is refundable on cancellation of the contract by the provider or the resident, or by the death of the resident before or during the occupancy of a living unit or otherwise before or during the term of the contract; and

(5) the manner by which the provider may adjust periodic charges or other recurring fees and any limitations on those adjustments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 4, eff. June 19, 2015.

Sec. 246.049. CONTENTS OF DISCLOSURE STATEMENT: CHANGE OF CIRCUMSTANCES. The disclosure statement for a continuing care contract to provide continuing care in a living unit of a facility

must state:

(1) the policy of the facility regarding changes in the number of people residing in a living unit because of marriage or other relationships;

(2) the policy of the facility relating to the admission of a spouse to the facility and the consequences if the spouse does not meet the requirements for admission;

(3) the conditions under which a living unit occupied by a resident may be made available by the facility to a different resident other than on the death of the previous resident; and

(4) the health and financial conditions required for acceptance as a resident and for continuation as a resident, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 5, eff. June 19, 2015.

Sec. 246.050. CONTENTS OF DISCLOSURE STATEMENT: FINANCIAL INFORMATION. (a) The disclosure statement must:

(1) describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully perform its obligations under a continuing care contract, including:

(A) the establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested; and

(B) the name and experience of any individual in the direct employment of the provider who will make the investment decisions; and

(2) provide financial statements of the provider, including:

(A) a balance sheet as of the end of the most recent fiscal year; and

(B) income statements and a statement of cash flow for each of the three most recent fiscal years that the provider has been

in existence.

(b) Financial statements required by Subsection (a)(2) must be prepared in accordance with generally accepted accounting principles and must be audited by an independent certified public accountant, who shall state in the audit report whether the financial statements were prepared in accordance with those principles.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 99, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 6, eff. June 19, 2015.

Sec. 246.051. CONTENTS OF DISCLOSURE STATEMENT: ANNUAL INCOME STATEMENTS. The disclosure statement must contain estimated annual income statements for the facility for at least five fiscal years, including:

(1) anticipated earning on any cash reserves;

(2) estimates of net receipts from entrance fees, other than entrance fees included in the statement of anticipated source and application of funds required under Section 246.052, minus estimated entrance fee refunds, including a description of the actuarial basis and method of computation for the projection of entrance fee receipts;

(3) an estimate of gifts or bequests to be relied on to meet operating expenses;

(4) a projection of estimated income from fees and charges, excluding entrance fees, that:

(A) states individual rates anticipated to be charged; and

(B) includes a description of the assumptions used for computing the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided under the continuing care contract;

(5) a projection of the facility's operating expenses, including:

(A) a description of the assumptions used in computing the expenses; and

(B) a separate allowance for the replacement of

equipment and furnishings and anticipated major structural repairs or additions; and

(6) an estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing arrangement relating to the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 100, eff. Sept. 1, 1991.

Sec. 246.052. CONTENTS OF DISCLOSURE STATEMENT: ANTICIPATED SOURCE AND APPLICATION OF FUNDS. If a facility has not begun operation, the disclosure statement must include a statement of the anticipated source and application of the funds to be used in the purchase or construction of the facility, including:

(1) an estimate of the cost of purchasing or constructing and of equipping the facility, including financing expenses, legal expenses, land costs, occupancy development costs, and similar costs that the provider expects to incur or to become obligated to pay before operations begin;

(2) a description of any mortgage loan or other long-term financing arrangement for the facility, including the anticipated terms and costs of the financing;

(3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the operation of the facility begins; and

(4) an estimate of any funds anticipated to be necessary to cover initial losses and to provide reserve funds to assure full performance of the obligations of the provider under a continuing care contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.053. STANDARD CONTRACT FORM. (a) A copy of the standard contract form used by a provider must be attached as an exhibit to each disclosure statement.

(b) The standard contract form must specify the refund provisions of Sections 246.056 and 246.057.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 101, eff. Sept. 1, 1991.

Sec. 246.054. ANNUAL DISCLOSURE STATEMENT REVISION. (a) A provider shall file a revised disclosure statement with the board not later than the 120th day after the date on which the provider's fiscal year ends.

(b) The revised disclosure statement must revise, as of the end of the provider's fiscal year, the information required by this subchapter.

(c) The revised disclosure statement must describe any material differences between:

(1) the estimated income statements filed under Section 246.052 as a part of the disclosure statement filed after the start of the provider's most recently completed fiscal year; and

(2) the actual result of operations during that fiscal year with the revised estimated income statements filed as a part of the revised disclosure statement.

(d) A provider may revise its disclosure statement and may file the revised disclosure statement at any other time if, in the provider's opinion, revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required to be included in the disclosure statement.

(e) The commissioner shall review the disclosure statement for completeness but is not required to review the disclosure statement for accuracy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.055. ADVERTISEMENT IN CONFLICT WITH DISCLOSURES. A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.056. RESCISSION OF CONTRACT; REQUIRED LANGUAGE. (a) A person who executes a continuing care contract with a provider may

rescind the contract at any time before the later of midnight of the seventh day, or a later day if specified in the contract:

(1) after the date on which the continuing care contract is executed; or

(2) after the date on which the person receives a disclosure statement that meets the requirements of this subchapter.

(b) A resident who executes a continuing care contract to provide continuing care in a living unit of a facility may not be required to move into the facility before the expiration of the period during which the contract may be rescinded.

(c) If a continuing care contract is rescinded under this section, any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be refunded not later than the 30th day after the date of rescission.

(d) Each continuing care contract must include the following statement or a substantially equivalent statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"You may cancel this contract at any time prior to midnight of the seventh day, or a later day if specified in the contract, after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your occupancy of a living unit."

(e) Each continuing contract also must include the following statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

"This document, if executed, constitutes a legal and binding contract between you and _____. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 102, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 5, eff. Sept. 1, 1993.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 7, eff. June 19, 2015.

Sec. 246.057. CANCELLATION OF CONTRACT: DEATH OR INCAPACITY BEFORE OCCUPANCY. (a) A continuing care contract to provide continuing care in a living unit in a facility is canceled if the resident:

(1) dies before occupying a living unit in the facility; or

(2) is precluded under the terms of the contract from occupying a living unit in the facility because of illness, injury, or incapacity.

(b) If a continuing care contract is canceled under this section, the resident or the resident's legal representative is entitled to a refund of all money or property transferred to the provider, minus:

(1) any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident; and

(2) a reasonable service charge, if set out in the contract, that may not exceed the greater of $1,000 or two percent of the entrance fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 6, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 8, eff. June 19, 2015.

Sec. 246.058. DISCLOSURE STATEMENT FEES. A facility that files a disclosure statement under Section 246.041 or 246.054 shall pay to the commissioner:

(1) a filing fee of $500; and

(2) a fee of not more than $2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 103, eff. Sept. 1, 1991.

SUBCHAPTER D. ENTRANCE FEE AND RESERVE FUND ESCROW ACCOUNTS

Sec. 246.071. ENTRANCE FEE ESCROW ACCOUNT; ESCROW AGENT. (a) Before a provider may accept the payment of a deposit made under a reservation agreement or any portion of an entrance fee, the provider must establish an entrance fee escrow account with a bank or trust company, as escrow agent, that is located in this state.

(b) The provider shall deposit with the escrow agent any deposit or any portion of an entrance fee received by the provider not later than 72 hours after the provider receives the deposit or fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 7, eff. Sept. 1, 1993.

Sec. 246.072. RETURN OF DEPOSITS; RELEASE OR RETURN OF ENTRANCE FEE. (a) On a written request from or on behalf of the provider or a prospective resident, the escrow agent shall return the amount on deposit to the person who paid the deposit or shall maintain the deposit as an entrance fee in the entrance fee escrow account.

(b) Unless the escrow agent receives a written request from or on behalf of a provider or a resident for the return of an entrance fee under Section 246.056, the agent shall release the fee to the provider or place the fee in a loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 104, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 8, eff. Sept. 1, 1993.

Sec. 246.073. RELEASE TO THE PROVIDER. (a) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:

(A) uncanceled executed continuing care contracts with

those residents; and

(B) the receipt by the agent of entrance fee deposits of at least 10 percent of the entrance fee designated in each continuing care contract;

(2) the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under Subdivision (3), and funds from other sources in the actual possession of the provider are equal to or more than the total amount of:

(A) 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility;

(B) 90 percent of the funds estimated, in the statement of anticipated source and application of funds included in the disclosure statement, to be necessary to cover initial losses of the facility; and

(C) 90 percent of the amount of any loan reserve fund escrow required to be maintained by the provider under Section 246.077; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the facility; and:

(A) if construction of the facility has not been substantially completed:

(i) all necessary government permits or approvals have been obtained;

(ii) the provider and the general contractor responsible for construction of the facility have entered into a maximum price contract;

(iii) a recognized surety authorized to do business in this state has executed in favor of the provider a bond covering faithful performance of the construction contract by the general contractor and the payment of all obligations under the contract;

(iv) the provider has entered a loan agreement for an interim construction loan in an amount that, when combined with the amount of entrance fees in escrow plus the amount of funds from

other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;

(v) the lender has disbursed not less than 10 percent of the amount of the construction loan for physical construction or completed site preparation work; and

(vi) the provider has placed orders at firm prices for not less than 50 percent of the value of items necessary for equipping and furnishing the facility in accordance with the description in the disclosure statement, including any installation charges; or

(B) if construction or purchase of the facility has been substantially completed:

(i) an occupancy permit covering the living unit has been issued by the local government that has authority to issue the permit; and

(ii) if the entrance fee applies to a living unit that has been previously occupied, the living unit is available for occupancy by the new resident.

(b) Before the date on which the loan reserve fund escrow required under Section 246.077 is first established, the aggregate amount of entrance fees that may be released to the provider under this section may not exceed an amount equal to the aggregate amount of entrance fees received or receivable by the provider under binding continuing care contracts minus the amount of entrance fees received or receivable that are required to be maintained initially in the loan reserve fund escrow.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 105, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 9, eff. Sept. 1, 1993.

Sec. 246.0735. PHASE-IN FACILITIES. The commissioner may create requirements for escrow release different from those under Section 246.073 for facilities that obtain a certificate of authority issued under this subchapter before the commencement of facility construction. A facility that meets the commissioner's requirements under this section is not required to satisfy Section 246.073.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228 (H.B. 2392), Sec. 1,

eff. June 15, 2007.

Sec. 246.0736. CONTINUING RELEASE OF ESCROW. (a) After the initial release of an entrance fee by an escrow agent for a specific facility, the commissioner shall authorize an escrow agent to continue to release escrowed entrance fees for that facility to the provider without further proof of satisfying the requirements of Section 246.073 if:

(1) the provider provides a monthly report to the department on marketing activities for living units of the facility; and

(2) the provider immediately informs the department of any problems, issues, or irregularities encountered in its marketing activities for the facility.

(b) If the provider fails to meet the requirements of Subsection (a), the commissioner may require the provider to satisfy the requirements of Section 246.073 before the commissioner authorizes the escrow agent to continue releasing escrowed entrance fees to the provider.

(c) The commissioner shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1228 (H.B. 2392), Sec. 1, eff. June 15, 2007.

Sec. 246.0737. CARE IN RESIDENCE. The commissioner by rule shall establish requirements for escrow release different from those under Section 246.073 for money received as an entrance fee in connection with a continuing care contract in circumstances in which a living unit is not furnished to the resident.

Added by Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 9, eff. June 19, 2015.

Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent shall return an entrance fee to the person who paid it if the fee is not released to the provider or placed in the loan reserve fund escrow required under Section 246.077 within:

(1) 36 months after the date on which any portion of the entrance fee is received by the provider; or

(2) a longer time specified by the provider in the disclosure statement delivered with the continuing care contract under which the fee was paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 106, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 10, eff. Sept. 1, 1993.

Sec. 246.075. ESCROW OF APPLICATION FEE NOT REQUIRED. This subchapter does not require the escrow of any nonrefundable portion of a deposit or entrance fee that:

(1) does not exceed an amount equal to two percent of the entrance fee; and

(2) is clearly designated as nonrefundable in the continuing care contract or reservation agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 11, eff. Sept. 1, 1993.

Sec. 246.076. INTEREST ACCRUED ON ENTRANCE FEE FUNDS. Unless otherwise provided in a continuing care contract, interest that accrues on funds held in an entrance fee escrow account is the property of the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 12, eff. Sept. 1, 1993.

Sec. 246.077. RESERVE FUND ESCROW. (a) When a facility is first occupied by a resident, the provider shall establish and maintain in an escrow account with a bank or trust company, as escrow agent, that is located in this state a reserve fund equal to the total of all principal and interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility. The requirements of this section may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations if the total amount equals or

exceeds the amount required by this subsection.

(b) At the option of the facility, the loan reserve fund escrow amount may exclude the portion of principal and interest payments applicable to that portion of the facility that is a licensed nursing home.

(c) The provider shall maintain the loan reserve fund escrow in an account that is fully covered by federal deposit insurance and is separate from the provider's business account or in other accounts or investments approved by the commissioner. The funds in the reserve fund escrow account may be invested, with earnings payable to the provider.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 107, eff. Sept. 1, 1991.

Sec. 246.078. RELEASE OF RESERVE FUND ESCROW. (a) The escrow agent may release an amount equal to not more than one-twelfth of the loan reserve fund required by Section 246.077 if the provider requests the release in writing.

(b) The escrow agent must give written notice to the board not later than the 11th day before the date of the release.

(c) The escrow agent may not release funds from the loan reserve fund escrow under this section more than once during a calendar year. A provider at any time may apply to the commissioner for the withdrawal of all or part of the loan reserve escrow funds. The provider may withdraw the funds on the approval of the withdrawal by the commissioner. The application must be made and the approval given as provided by rule.

(d) The provider must repay to the loan reserve fund escrow account the amount released to the provider under Subsection (a) or (c) not later than 18 months after the date the amount is released. The commissioner may place the provider or facility under supervision under Section 246.091 or take any other appropriate action as provided by law if the provider does not repay the loan reserve fund escrow account within the required period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 108, eff. Sept. 1, 1991.

Sec. 246.079. TRANSITION. (a) A provider who operates a facility that existed on September 1, 1987, must comply with the filing requirements imposed under Section 246.041 and the escrow requirements imposed under Sections 246.077 and 246.078 not later than September 1, 1990.

(b) The commissioner may extend the time for compliance under this section for a reasonable period if the commissioner determines that the provider is unable to comply with this section after making a good faith effort to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 109, eff. Sept. 1, 1991.

Sec. 246.080. APPLICABILITY. Sections 246.071 through 246.076 do not apply to a facility that on September 1, 1987, was completed and occupied by at least one person.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 110, eff. Sept. 1, 1991.

SUBCHAPTER E. SUPERVISION, REHABILITATION, AND LIQUIDATION

Sec. 246.091. SUPERVISION BY COMMISSIONER. (a) The commissioner may place a provider or facility under supervision if:

(1) the provider draws on the provider's entrance fee escrow in an amount greater than permitted by Section 246.073;

(2) the provider draws on the provider's loan reserve fund escrow in an amount greater than permitted or more frequently than permitted by Section 246.078;

(3) the commissioner determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) The commissioner appoints the supervisor.

(c) The commissioner may provide that the provider may not, during the supervision period and without the prior approval of the commissioner or the supervisor:

(1) dispose of, convey, or encumber its assets;
(2) withdraw its bank accounts;
(3) lend its funds;
(4) invest its funds;
(5) transfer its property;
(6) incur a debt, obligation, or liability; or
(7) merge or consolidate with another facility.

(d) The commissioner shall terminate the supervision and restore to a provider the authority to manage the affairs of the facility if the commissioner determines that the facility is capable of meeting its financial obligations.

(e) The facility or provider shall pay the costs of a supervisor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 111, eff. Sept. 1, 1991.

Sec. 246.092. APPLICATION FOR COURT ORDER FOR REHABILITATION OR LIQUIDATION. (a) The commissioner shall request the attorney general to apply to a district court of this state, or to the federal bankruptcy court that has exercised jurisdiction over a provider or facility, for an order directing the appointment of a trustee to rehabilitate or liquidate the facility if the commissioner elects not to place the facility under supervision and:

(1) the provider draws from the provider's loan reserve fund escrow an amount greater than permitted by Section 246.078;
(2) the provider does not repay the loan reserve fund escrow as required by Section 246.078;
(3) the board determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or
(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) In connection with an application for an order to rehabilitate or liquidate a facility, the court shall consider the manner in which the welfare of persons who have previously contracted

with the provider for continuing care at the facility may be best served, and may order that the proceeds of a lien imposed under Section 246.111 may be used in full or partial payment of entrance fees to other facilities on behalf of the residents of the facility being liquidated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 112, eff. Sept. 1, 1991.

Sec. 246.093. ORDER TO REHABILITATE. An order to rehabilitate a facility must direct the trustee to:

(1) take possession of the provider's property in order to conduct the business, including employing any managers or agents the trustee considers necessary; and

(2) take action as directed by the court to eliminate the causes and conditions that made rehabilitation necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.094. ORDER TO LIQUIDATE. (a) If the trustee determines that further efforts to rehabilitate the provider would be impractical or useless, the trustee may apply to the court that ordered the rehabilitation for an order of liquidation.

(b) A court that has jurisdiction may issue an order to liquidate a facility on application of the board, regardless of whether an order to rehabilitate the facility exists. If the court issues an order to liquidate, the court shall appoint a trustee to collect and liquidate all of the provider's assets located in this state.

(c) A person may not contract for continuing care at a facility after an order to liquidate that facility has been entered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.095. BOND. A court may refuse to make or may vacate an order to rehabilitate under this subchapter if the provider posts a bond that is:

(1) in an amount determined by the court to be equal to the

reserve funding needed to fulfill the provider's obligations under its continuing care contracts at the facility;

(2) issued by a recognized surety authorized to do business in this state; and

(3) executed in favor of the state on behalf of all persons entitled to refunds of entrance fees from the provider or other damages if the provider is unable to fulfill its continuing care contracts at the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.096. TERMINATION OF REHABILITATION. (a) A court may terminate a rehabilitation and order return of a facility and its assets and affairs to the management of the provider if the court, on petition of the trustee or the provider or on its own motion, finds that:

(1) the objectives of the order to rehabilitate the facility have been accomplished; and

(2) the facility can be returned to the provider's management without further jeopardy to the residents, creditors, or owners of the facility or the public.

(b) A court may enter an order under this section after:

(1) a full report and accounting of the conduct of the facility's affairs during the rehabilitation; and

(2) a report on the facility's financial condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.097. PAYMENT OF TRUSTEE. The reasonable costs, expenses, and fees of the trustee are payable from the assets of the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. ENFORCEMENT

Sec. 246.111. LIEN. (a) To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility or receives services under

a continuing care contract. The lien covers the real and personal property of the provider located at the facility. The provider shall prepare a written notice sworn to by an officer of the provider for each county where the provider has a facility. The notice must contain the name of the provider, the legal description of each facility of the provider, and a statement that the facility is subject to this chapter and the lien provided by this section. The provider shall file for record the notice in the real property records of each county where the provider has a facility on or before the later of January 1, 1994, or the date of the execution of the first continuing care contract relating to the facility.

(b) The commissioner may remove a lien under this section if requested by a provider to obtain secondary financing or refinancing of a facility if:

(1) the facility is financially sound; and

(2) removal of the lien does not adversely affect the residents.

(c) A lien under this section is subordinate to any liens on the property of the facility if the proceeds of the loan secured by the liens were used in whole or in part to:

(1) construct, acquire, replace, or improve the facility; or

(2) refinance an earlier loan used to construct, acquire, replace, or improve the facility.

(d) A lien under this section is effective for 10 years.

(e) A lien under this section may be foreclosed on application of the board if the facility is liquidated or the provider is insolvent or bankrupt. The proceeds from a foreclosed lien shall be used for full or partial satisfaction of the provider's obligations under continuing care contracts in effect on the date of the foreclosure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 953, Sec. 13, 15, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1089 (H.B. 2697), Sec. 10, eff. June 19, 2015.

Sec. 246.112. INVESTIGATIONS. The commissioner may conduct an

examination or investigation as necessary to:

(1) determine whether a person has violated or is about to violate this chapter;

(2) aid in the enforcement of this chapter;

(3) determine the financial solvency of a facility; or

(4) verify a statement contained in a disclosure statement filed or delivered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.113. PRODUCTION OF EVIDENCE. (a) In an investigation or proceeding under this chapter, the board may:

(1) require or allow a person to file a written statement regarding any of the facts and circumstances concerning the matter to be investigated;

(2) administer oaths and affirmations;

(3) subpoena witnesses;

(4) compel attendance;

(5) take evidence; and

(6) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records considered relevant to the inquiry.

(b) The board may bring suit in district court to enforce a subpoena if the person to whom a subpoena is directed fails to comply.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.114. ACTUARIAL REVIEW. (a) This section applies only to a facility whose contracts offer future guarantees of long-term nursing care that develop current actuarial liabilities.

(b) A facility subject to this section that initially filed with the commissioner an actuarial review performed on or after September 1, 1982, and before September 1, 1987, shall file with the commissioner subsequent actuarial reviews at five-year intervals from the date of completion of the initial actuarial review.

(c) A facility subject to this section that initially filed with the commissioner an actuarial review performed on or after September 1, 1987, shall file with the commissioner subsequent

actuarial reviews at five-year intervals from the date of the filing of the initial actuarial review.

(d) The commissioner may require an actuarial review of a facility before the end of the five-year interval in which the facility would otherwise be required to file an actuarial review if, in the opinion of the commissioner, the facility exhibits conditions of financial instability warranting an earlier review.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 113, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 953, Sec. 14, eff. Sept. 1, 1993.

Sec. 246.115. CEASE AND DESIST ORDERS; INJUNCTIONS. (a) The board may request that the attorney general bring an action to prohibit a person from engaging in an act or practice and to order compliance with this chapter if the board determines, after a complaint or by other means, that the act or practice violates this chapter or an order made under this chapter.

(b) The action may be brought in the district court of a county in which:

(1) the defendant resides;

(2) the defendant has done business;

(3) the principal place of business of the defendant is located; or

(4) the transaction occurred.

(c) The court may grant an injunction or restraining order on a proper showing. If the court grants an injunction or restraining order, the court shall issue it without bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.116. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 246.117. CIVIL LIABILITY. (a) A provider who makes a

continuing care contract without complying with the disclosure statement requirement under Subchapter C, or who makes a continuing care contract with a person who has relied on a disclosure statement that omits a material fact required to be stated in the statement or necessary to make the statement accurate, is liable to the person with whom the continuing care contract is made for:

(1) actual damages;

(2) repayment of all fees paid to the provider minus the reasonable value of care and lodging provided to the person by or on whose behalf the continuing care contract was made before the violation, misstatement, or omission was discovered or reasonably should have been discovered;

(3) interest at the legal rate for judgments;

(4) court costs; and

(5) reasonable attorney's fees.

(b) A provider is liable under this section regardless of whether the provider had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid to the provider, facility, or person violating this chapter and reasonable interest from the date of payment, minus the reasonable value of care and lodging provided before the receipt of the offer and:

(1) the offer states the provisions of this section; and

(2) the recipient of the offer fails to accept the offer within 30 days after the date the offer is received.

(d) A person must bring suit under this section not later than three years after:

(1) the date on which the continuing care contract was entered into; or

(2) the violation, misstatement, or omission is discovered or reasonably should have been discovered.

(e) Except as expressly provided by this chapter, civil liability does not arise in favor of a private party by implication from or as a result of the violation of this chapter or a rule or order adopted under this chapter.

(f) This chapter does not limit a liability that would exist under any other statute or common law if this chapter were not in effect.

(g) The provisions of this chapter are not exclusive and the remedies provided by this chapter are in addition to any other remedies provided by any other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 247. ASSISTED LIVING FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 247.001. SHORT TITLE. This chapter may be cited as the Assisted Living Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.0011. SCOPE, PURPOSE, AND IMPLEMENTATION. (a) The purpose of this chapter is to ensure that assisted living facilities in this state deliver the highest possible quality of care. This chapter and the rules adopted under this chapter establish minimum acceptable levels of care, and a violation of a minimum acceptable level of care established under this chapter is a violation of law. For purposes of this chapter, components of quality of care include:

(1) resident independence and self-determination;

(2) humane treatment;

(3) conservative intervention;

(4) access to care;

(5) continuity of care;

(6) coordination of services;

(7) safe surroundings;

(8) professionalism of service providers;

(9) participation in useful studies; and

(10) quality of life.

(b) The executive commissioner shall protect residents of assisted living facilities by:

(1) adopting rules relating to quality of care and quality of life; and

(2) adopting rules relating to the assessment of the condition and service needs of each resident.

(b-1) The department shall protect residents of assisted living

facilities by:

(1) promoting policies that maximize the dignity, autonomy, privacy, and independence of each resident;

(2) regulating the construction, maintenance, and operation of assisted living facilities;

(3) strictly monitoring factors relating to the health, safety, welfare, and dignity of each resident;

(4) imposing prompt and effective remedies for violations of this chapter and rules and standards adopted under this chapter;

(5) promoting a residential environment that allows residents to maintain the highest possible degree of independence and self-determination; and

(6) providing the public with helpful and understandable information relating to the operation of assisted living facilities in this state.

(c) Assisted living services are driven by a service philosophy that emphasizes personal dignity, autonomy, independence, and privacy. Assisted living services should enhance a person's ability to age in place in a residential setting while receiving increasing or decreasing levels of service as the person's needs change.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0695, eff. April 2, 2015.

Sec. 247.002. DEFINITIONS. In this chapter:

(1) "Assisted living facility" means an establishment that:

(A) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;

(B) provides:

(i) personal care services; or

(ii) administration of medication by a person licensed or otherwise authorized in this state to administer the medication;

(C) may provide assistance with or supervision of the administration of medication;

(D) may provide skilled nursing services for the

following limited purposes:

(i) coordination of resident care with outside home and community support services agencies and other health care professionals;

(ii) provision or delegation of personal care services and medication administration as described by this subdivision;

(iii) assessment of residents to determine the care required; and

(iv) for periods of time as established by department rule, delivery of temporary skilled nursing treatment for a minor illness, injury, or emergency; and

(E) may provide health maintenance activities as defined by rule by the Texas Board of Nursing.

(2) "Commission" means the Health and Human Services Commission.

(2-a) "Commissioner" means the commissioner of aging and disability services.

(3) "Controlling person" means a person who controls an assisted living facility or other person as described by Section 247.005.

(4) "Department" means the Department of Aging and Disability Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Personal care services" means:

(A) assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or

(B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

(6) "Qualified religious society" means a church, synagogue, or other organization or association that is organized primarily for religious purposes and that:

(A) has been in existence in this state for at least 35 years; and

(B) does not distribute any of its income to its members, officers, or governing body other than as reasonable

compensation for services or reimbursement of expenses.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 608, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.092, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. 216), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(a), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0696, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0697, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 298 (H.B. 3329), Sec. 1, eff. September 1, 2019.

Sec. 247.003. APPLICATION OF OTHER LAW. (a) Except as provided by Subsections (b) and (c), Chapter 242 does not apply to an assisted living facility licensed under this chapter.

(b) Subchapter D, Chapter 242, applies to an assisted living facility, and the department shall administer and enforce that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home.

(c) Except as provided by this subsection, Subchapter R, Chapter 242, applies to an assisted living facility, and the department shall administer that subchapter for an assisted living facility in the same manner it is administered and enforced for a nursing home, but shall enforce that subchapter in accordance with the sanctions authorized by this chapter. Sections 242.851 and 242.852 do not apply to an assisted living facility or to conduct within an assisted living facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 160, Sec. 1, eff. May 27, 2003.

Sec. 247.004. EXEMPTIONS. This chapter does not apply to:

(1) a boarding home facility as defined by Section 260.001;

(2) an establishment conducted by or for the adherents of the Church of Christ, Scientist, for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing without the use of any drug or material remedy if the establishment complies with local safety, sanitary, and quarantine ordinances and regulations;

(3) a facility conducted by or for the adherents of a qualified religious society classified as a tax-exempt organization under an Internal Revenue Service group exemption ruling for the purpose of providing personal care services without charge solely for the society's professed members or ministers in retirement, if the facility complies with local safety, sanitation, and quarantine ordinances and regulations; or

(4) a facility that provides personal care services only to persons enrolled in a program that:

(A) is funded in whole or in part by the department and that is monitored by the department or its designated local intellectual and developmental disability authority in accordance with department rules; or

(B) is funded in whole or in part by the Department of State Health Services and that is monitored by that department, or by its designated local mental health authority in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 608, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1106 (H.B. 216), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(b), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0698, eff. April 2, 2015.

Sec. 247.005. CONTROLLING PERSON. (a) A person is a controlling person if the person, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(2) a person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b-1) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of an assisted living facility or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(c) A controlling person described by Subsection (b)(3) does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(d) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0699, eff. April 2, 2015.

Sec. 247.007. COMPLIANCE WITH CHAPTER 260A. (a) An assisted living facility shall comply with Chapter 260A and the rules adopted under that chapter.

(b) A person, including an owner or employee of an assisted living facility, shall comply with Chapter 260A and the rules adopted under that chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(i), eff. September 28, 2011.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 247.021. LICENSE REQUIRED. (a) A person may not establish or operate an assisted living facility without a license issued under this chapter.

(b) A person establishing or operating a facility that is not required to be licensed under this chapter may not use the term "assisted living" in referring to the facility or the services provided at the facility.

(c) A person establishing or operating a facility that is not required to be licensed but who elects to obtain a license under this chapter may use the term "assisted living" in referring to the facility or the services provided at the facility.

(d) The executive commissioner by rule shall establish procedures to issue a six-month provisional license to existing facilities with residents. The department may issue a provisional license if:

(1) the facility is in compliance with resident care standards;

(2) the facility voluntarily discloses that the facility needs additional time to comply with life safety code and physical plant standards;

(3) the disclosure is made in writing by certified mail to the department;

(4) an investigation of the violation was not initiated and the violation was not independently detected by the department; and

(5) the disclosure is made promptly after knowledge of the information disclosed is obtained by the facility.

(d-1) A provisional license expires the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by the department, in the department's sole discretion; or

(2) the date a license is issued to the provisional license holder under Subsection (d-3).

(d-2) The department shall conduct a life safety code inspection of the facility as soon as reasonably possible after the department issues a provisional license.

(d-3) After conducting a life safety code inspection, the department shall issue a license under Section 247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license. A license issued under this subsection has the same effective date as the provisional license.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9, eff. September 1, 2009.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 917, Sec. 9, eff. September 1, 2009.

(g) The department shall, upon submission of a written request by the applicant, automatically issue a six-month provisional license without conducting a life safety code inspection before issuance of the provisional license to a newly constructed facility if:

(1) the license applicant has submitted building plans to the department for an early compliance review in accordance with Section 247.0261;

(2) all local approvals, including a certificate of occupancy where required, have been obtained;

(3) a complete license application form is submitted within 30 days of receipt of all local approvals;

(4) the license fee has been paid;

(5) the department determines that the license applicant or a person who owns the license applicant and controls the operations of the license applicant constructed another facility in this state that complies with the department's life safety code standards; and

(6) the facility is in compliance with resident care standards based on an on-site health inspection.

(h) The department may automatically issue a provisional license in the case of a corporate change of ownership of a facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 1088, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 9, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 382 (H.B. 3729), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0700, eff. April 2, 2015.

Sec. 247.0211. EXPEDITED INSPECTION. (a) The executive commissioner shall adopt rules to implement an expedited inspection process that allows an applicant for an assisted living facility license or for a renewal of a license to obtain:

(1) a life safety code and physical plant inspection not later than the 15th day after the date the request is made; or

(2) an on-site health inspection not later than the 21st day after the date the request is made.

(b) The department may charge a fee to recover the cost of the expedited inspection.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 5, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0701, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 362 (H.B. 823), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 362 (H.B. 823), Sec. 2, eff. September 1, 2019.

Sec. 247.022. LICENSE APPLICATION. (a) An applicant for an assisted living facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(b-1) If the department conducts more than two life safety code inspections at the applicant's facility, the department may collect a fee in addition to the fee under Subsection (b) for the application for the license.

(c) The department may provide technical assistance to an applicant by making brief inspections of the assisted living facility proposed to be licensed and making recommendations concerning actions necessary to meet standards for assisted living facilities.

(d) An assisted living facility license applicant in good standing may request an initial license that does not require an on-site health inspection. The department may not require the applicant to admit a resident to the facility before the department issues the license. The department shall require the license applicant to submit for approval policies and procedures, verification of employee background checks, and employee credentials.

(e) The department shall conduct a survey of a facility issued an initial license under Subsection (d) not later than the 90th day after the date on which the department issues the license to the facility. Until the department conducts the survey, the facility shall disclose to all residents and prospective residents that the department has not yet conducted the survey required by this subsection.

(f) For purposes of this section, a license applicant is in "good standing" if:

(1) the license applicant, or the controlling person of the license applicant if the license applicant is a newly formed business entity, has operated or been the controlling person of an assisted living facility in this state for six consecutive years; and

(2) each assisted living facility operated by the license applicant, or operated or controlled by a controlling person of the license applicant if the license applicant is a newly formed business entity:

(A) has not had a violation that resulted in actual harm to a resident or that posed an immediate threat of harm causing, or likely to cause, serious injury, impairment, or death of a

resident; and

(B) in the six years preceding the date on which the license applicant submits the application, has not had a sanction imposed by the department against the facility, including:

(i) the imposition of a civil or administrative penalty or an injunction;

(ii) the denial, suspension, or revocation of a license; or

(iii) an emergency closure.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0702, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 100 (H.B. 1769), Sec. 1, eff. September 1, 2015.

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The commission shall issue a license if, after inspection and investigation, it finds that the applicant, the assisted living facility, and all controlling persons with respect to the applicant or facility meet the requirements of this chapter and the standards adopted under this chapter. The license expires on the third anniversary of the date of its issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during each three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) To renew a license, the license holder must submit to the commission the license renewal fee.

(c) The commission may require participation in a continuing education program as a condition of renewal of a license. The executive commissioner shall adopt rules to implement this subsection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0703, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 5, eff. September 1, 2017.

Sec. 247.0231. COMPLIANCE RECORD IN OTHER STATES. The department may require an applicant or license holder to provide the department with information relating to compliance by the applicant, the license holder, or a controlling person with respect to the applicant or license holder with regulatory requirements in another state in which the applicant, license holder, or controlling person operates or operated an assisted living facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.024. FEES; DISPOSITION OF REVENUE. (a) The executive commissioner by rule shall set license fees imposed by this chapter:

(1) on the basis of the number of beds in assisted living facilities required to pay the fee; and

(2) in amounts reasonable and necessary to defray the cost of administering this chapter, but not to exceed $2,250.

(b) The executive commissioner shall establish by rule a base fee schedule and a per bed fee schedule.

(c) All fees or penalties collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(d) Investigation fees or attorney's fees may not be assessed against or collected from an assisted living facility by or on behalf of the commission or another state agency unless the commission or other state agency assesses and collects a penalty authorized by this chapter from the facility.

(e) An applicant who submits a license renewal later than the

45th day before the expiration date of a current license is subject to a late fee in accordance with commission rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 416, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 15, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0704, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 6, eff. September 1, 2017.

Sec. 247.025. ADOPTION OF RULES. (a) The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an assisted living facility.
(b) The executive commissioner shall adopt rules distinguishing and providing guidelines on the scope of services that an assisted living facility may provide under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0705, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 298 (H.B. 3329), Sec. 2, eff. September 1, 2019.

Sec. 247.0251. CONSTRUCTION IN 100-YEAR FLOODPLAIN IN CERTAIN COUNTIES PROHIBITED. (a) In this section, "100-year floodplain" means an area that is subject to inundation by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year, as determined from maps or other data from the Federal Emergency Management Agency, or, if not mapped by the Federal Emergency Management Agency, from the United States

Department of Agriculture soil maps.

(b) In a county with a population of 3.3 million or more, the executive commissioner by rule shall prohibit the construction of a new assisted living facility licensed under this chapter within a 100-year floodplain.

(c) The prohibition on new construction under this section does not apply to expansions or renovations of existing assisted living facilities.

Added by Acts 2021, 87th Leg., R.S., Ch. 668 (H.B. 1681), Sec. 1, eff. September 1, 2021.

Sec. 247.0255. RESTRAINT AND SECLUSION. A person providing services to a resident of an assisted living facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 3, eff. September 1, 2005.

Sec. 247.026. STANDARDS. (a) The executive commissioner by rule shall prescribe minimum standards to protect the health and safety of an assisted living facility resident.

(b) The standards must:

(1) clearly differentiate an assisted living facility from an institution required to be licensed under Chapter 242;

(2) ensure quality care and protection of the residents' health and safety without excessive cost;

(3) ensure that the daily nutritional and special dietary needs of each resident are met; and

(4) require an assisted living facility to:

(A) use its license number or a state-issued facility identification number in all advertisements, solicitations, and promotional materials; and

(B) provide each prospective resident or prospective resident's representative, as appropriate, with a consumer disclosure statement in a standard form adopted by the department.

(c) The executive commissioner shall require an assisted living facility that provides brain injury rehabilitation services to include in the facility's consumer disclosure statement a specific

statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitation services.

(c-1) The executive commissioner shall require each assisted living facility to include in the facility's consumer disclosure statement whether the facility holds a license classified under Section 247.029 for the provision of personal care services to residents with Alzheimer's disease or related disorders.

(d) The executive commissioner may prescribe different levels of minimum standards for assisted living facilities according to the number of residents, the type of residents, the level of personal care provided, the nutritional needs of residents, and other distinctions the executive commissioner considers relevant. If the executive commissioner does not prescribe minimum standards for facilities serving non-geriatric residents, the executive commissioner must develop procedures for consideration and approval of alternate methods of compliance by such facilities with the department's standards.

(e) Local health and safety standards adopted by the municipality in which an assisted living facility is located do not apply to the facility unless the standards specifically state that they apply to assisted living facilities.

(f) The executive commissioner by rule shall prescribe minimum standards requiring appropriate training in geriatric care for each individual who provides services to geriatric residents as an employee of an assisted living facility and who holds a license or certificate issued by an agency of this state that authorizes the person to provide the services. The minimum standards may require that each licensed or certified individual complete an appropriate program of continuing education or in-service training, as determined by department rule, on a schedule determined by department rule.

(g) Any individual otherwise qualified, who has been employed by a licensed assisted living facility for at least 90 days, shall be eligible to be certified as a medication aide following completion of the required course of study and successful completion of any required examination.

(h) An individual may not serve as the manager of an assisted living facility that has 17 beds or more unless the individual:

(1) has an associate's degree in nursing, health care management, or a related field from a public or private institution

of higher education;

(2) has a bachelor's degree from a public or private institution of higher education; or

(3) has at least one year of experience working in management or in the health care industry.

(i) The executive commissioner by rule shall require each manager of an assisted living facility that has 17 beds or more to complete at least one educational course on the management of assisted living facilities not later than the first anniversary of the date the manager begins employment in that capacity.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 542, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 583, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 31.01(57), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 416, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 734, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0706, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 3, eff. June 20, 2015.

Sec. 247.0261. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund to the credit of the assisted living account.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0707, eff. April 2, 2015.

Sec. 247.0262. REPORT ON LIFE SAFETY CODE SURVEYS. (a) The department shall annually report the number of life safety code surveys for an initial assisted living facility license with respect to which the department first visits the facility to conduct the survey more than 60 days after the date the applicant notifies the department that the applicant is ready for the initial survey.

(b) The department may report other data related to the timeliness of life safety code surveys or the processing time of license applications.

(c) The department may include the information described by Subsections (a) and (b) in any required annual regulatory report.

Added by Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 7, eff. September 1, 2009.

Sec. 247.0263. LIFE SAFETY CODE TECHNICAL MEMORANDUM. (a) At least twice each year, the commission shall issue a technical memorandum providing guidance on the interpretation of minimum life safety code standards prescribed under this chapter and by commission rule. Any new requirement that relates to an existing standard must first appear in a technical memorandum.

(b) The commission shall solicit comments from interested parties and experts to assist in determining which standards need to be addressed in a technical memorandum issued under this section.

(c) The commission shall post the technical memorandum on the commission's Internet website.

(d) A technical memorandum issued under this section is binding and must be followed by a person conducting a life safety code survey under this chapter.

(e) This section does not affect the commission's rulemaking process.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. 1049), Sec. 1, eff. September 1, 2017.

Sec. 247.0264. ACCESSIBILITY STANDARDS. (a) The Texas Department of Licensing and Regulation governs the interpretation and enforcement of accessibility standards in assisted living facilities as provided by Chapter 469, Government Code.

(b) An assisted living facility that during initial licensing passed an on-site inspection by the Texas Department of Licensing and Regulation relating to the facility's compliance with the accessibility standards may not be cited by the commission for a violation relating to the accessibility standards. If the commission issues a citation relating to compliance with accessibility standards to a facility that has not been inspected by the Texas Department of Licensing and Regulation for compliance with the accessibility standards, the commission shall rescind the citation on the facility's passage of the on-site inspection by the Texas Department of Licensing and Regulation.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. 1049), Sec. 1, eff. September 1, 2017.

Sec. 247.027. INSPECTIONS. (a) In addition to the inspection required under Section 247.023(a), the commission:

(1) shall inspect each assisted living facility at least every two years following the initial inspection required under Section 247.023(a); and

(2) may inspect a facility at other reasonable times as

necessary to assure compliance with this chapter.

(b) The commission shall establish an inspection checklist based on the minimum standards that describes the matters subject to inspection. The commission shall use the inspection checklist in conducting inspections under this section and Section 247.023(a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.
Amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 7, eff. September 1, 2017.

Sec. 247.0271. INSPECTION EXIT CONFERENCE. (a) At the conclusion of an inspection under Section 247.023(a) or Section 247.027, the inspector shall perform an exit conference to advise the assisted living facility of the findings resulting from the inspection.

(b) At the exit conference, the inspector shall provide a copy of the inspection checklist to the assisted living facility and list each violation discovered during the inspection, with specific reference to the standard violated.

(c) If, after the initial exit conference, additional violations are cited, the inspector shall conduct an additional exit conference regarding the newly identified violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(d) The assisted living facility shall submit a plan of correction to the regional director with supervisory authority over the inspector not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 17, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 4, eff. September 1, 2007.

Sec. 247.0272. INSPECTOR TRAINING; REQUIRED EXAMINATION. (a) The department shall develop and implement a training program to provide specialized training to department employees who inspect assisted living facilities under this chapter. The training must emphasize the distinction between an assisted living facility and an institution licensed under Chapter 242.

(b) In developing and updating the training program required by this section, the department shall consult with operators of assisted living facilities and consumers of personal care services provided by assisted living facilities or legal representatives of those consumers.

(c) The department shall examine department employees who inspect or otherwise survey assisted living facilities under this chapter. In developing the examination, the department shall consult with operators of assisted living facilities or their representatives and with consumers of personal care services provided by assisted living facilities or representatives of consumers.

(d) A department employee may not independently inspect, survey, or take administrative action against an assisted living facility unless the employee has passed the examination administered under Subsection (c).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 3, 4, eff. Sept. 1, 2001.

Sec. 247.0275. REGISTRATION WITH TEXAS INFORMATION AND REFERRAL NETWORK.

Text of subsection effective until April 1, 2025

(a) An assisted living facility licensed under this chapter shall register with the Texas Information and Referral Network under Section 531.0312, Government Code, to assist the state in identifying persons needing assistance if an area is evacuated because of a disaster or other emergency.

Text of subsection effective on April 1, 2025

(a) An assisted living facility licensed under this chapter shall register with the Texas Information and Referral Network under Section 526.0004, Government Code, to assist the state in identifying

persons needing assistance if an area is evacuated because of a disaster or other emergency.

(b) The assisted living facility is not required to identify individual residents who may require assistance in an evacuation or to register individual residents with the Texas Information and Referral Network for evacuation assistance.

(c) The assisted living facility shall notify each resident and the resident's next of kin or guardian regarding how to register for evacuation assistance with the Texas Information and Referral Network.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 1.18, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.45, eff. April 1, 2025.

Sec. 247.028. ASSISTANCE BY DEPARTMENT. The department may provide assistance to an assisted living facility, including the provision of training materials, the coordination of training conferences and workshops with other state agencies, and the development of a provider's handbook explaining assisted living facility rules.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.029. FACILITIES FOR PERSONS WITH ALZHEIMER'S DISEASE. (a) The executive commissioner by rule shall establish a classification and license for a facility that advertises, markets, or otherwise promotes that the facility provides personal care services to residents who have Alzheimer's disease or related disorders. A facility is not required to be classified under this section to provide care or treatment to residents who have Alzheimer's disease or related disorders.

(b) The executive commissioner shall adopt minimum standards for an assisted living facility classified under this section.

(c) An individual may not serve as the manager of an assisted

living facility classified under this section or as the supervisor of an assisted living facility unit classified under this section unless the individual is at least 21 years of age and has:

(1) an associate's degree from a public or private institution of higher education in nursing, health care management, or a related field;

(2) a bachelor's degree from a public or private institution of higher education in psychology, gerontology, nursing, or a related field; or

(3) at least one year of experience working with persons with dementia.

(d) The executive commissioner by rule shall adopt a definition of "Alzheimer's disease and related disorders," and may adopt by reference a definition published in a generally accepted clinical resource for medical professionals. The executive commissioner shall modify the definition as necessary to conform to changes in medical practice.

Added by Acts 1997, 75th Leg., ch. 444, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0708, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1256 (H.B. 2588), Sec. 4, eff. June 20, 2015.

Sec. 247.0291. TRAINING REQUIREMENTS FOR STAFF MEMBERS OF ASSISTED LIVING FACILITIES PROVIDING CARE TO RESIDENTS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS. (a) In this section:

(1) "Assisted living manager" means an individual who is in a senior personnel position at an assisted living facility, including a facility administrator or manager who directly supervises direct service staff members.

(2) "Direct service staff member" means a staff member whose work involves extensive contact with residents, including a certified nursing assistant, nurse aide, personal care assistant, home health or personal care aide, licensed practical nurse, licensed vocational nurse, registered nurse, social worker, activity director, licensed dietitian, physician assistant, nurse practitioner, physical

therapist, speech language pathologist, and occupational therapist.

(3) "Staff member" means a full- or part-time employee of an assisted living facility.

(b) This section applies only to an assisted living facility that:

(1) provides personal care services to residents with Alzheimer's disease or related disorders; and

(2) does not hold a license classified under Section 247.029 to provide those services.

(c) An assisted living facility shall require each facility staff member to complete training on Alzheimer's disease and related disorders in accordance with this section. Training hours completed by a staff member under this section may be credited toward any applicable training requirements the executive commissioner prescribes for assisted living facility managers or employees.

(d) An assisted living facility shall require each direct service staff member to successfully complete four hours of training and pass a competency-based evaluation on:

(1) Alzheimer's disease and related disorders;

(2) the provision of person-centered care;

(3) assessment and care planning;

(4) daily life activities of residents with Alzheimer's disease or related disorders; and

(5) common behaviors and communications associated with residents with Alzheimer's disease and related disorders.

(e) A direct service staff member may not provide any direct care to a resident with Alzheimer's disease or related disorders until the staff member successfully completes the training and passes the evaluation required under Subsection (d).

(f) An assisted living facility shall require each assisted living manager employed by the facility to successfully complete four hours of training and pass a competency-based evaluation on:

(1) the topics listed under Subsection (d);

(2) administrative support services related to information for comorbidities management, care planning, and the provision of medically appropriate education and support services and resources in the community, including person-centered care, to residents with Alzheimer's disease or related disorders and their families;

(3) staffing requirements to facilitate collaboration and cooperation among facility staff members and to ensure each staff

member obtains appropriate informational materials and training to properly care for and interact with residents with Alzheimer's disease or related disorders based on the staff member's position;

(4) the establishment of a supportive and therapeutic environment for residents with Alzheimer's disease or related disorders to enhance the sense of community among the residents and within the facility; and

(5) the transition of care and coordination of services for residents with Alzheimer's disease or related disorders.

(g) An assisted living facility shall require each staff member who is not required to complete the training or pass the evaluation under Subsection (d) or (f), including housekeeping staff, front desk staff, maintenance staff, and other staff members with incidental but recurring contact with residents with Alzheimer's disease or related disorders, to successfully complete training and pass a competency-based evaluation on the topics listed under Subsections (d)(1), (2), and (5).

(h) An assisted living facility shall provide a certificate of completion to and maintain records of each certificate, in accordance with applicable records retention policies the commission prescribes, for each staff member who successfully completes the training and passes the evaluation required under Subsection (d), (f), or (g).

(i) Each direct service staff member and assisted living manager who successfully completes the training and passes the evaluation required under Subsection (d) or (f) must annually complete two hours of continuing education on best practices related to the treatment of and provision of care to residents with Alzheimer's disease or related disorders.

(j) Except as provided by Subsection (k), an assisted living facility staff member who successfully completes the training and passes the evaluation required under Subsection (d), (f), or (g) and who transfers to another facility is not required to complete those requirements for the other facility.

(k) An assisted living facility may require a staff member who has had a lapse of employment with facilities to which this section applies for a period of two years or more to successfully complete the training and pass the evaluation required under Subsection (d), (f), or (g) even if the staff member previously completed those requirements.

(l) Each assisted living facility staff member who successfully

completes the training, including continuing education requirements, and passes an evaluation required under this section must maintain documentation regarding the training and evaluation.

(m) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 820 (H.B. 1673), Sec. 1, eff. September 1, 2023.

Sec. 247.0295. NOTICE OF ALZHEIMER'S DISEASE OR RELATED DISORDERS LICENSE CLASSIFICATION. (a) An assisted living facility advertising, marketing, or otherwise promoting that the facility provides memory care services shall provide to each facility resident written notice disclosing whether the facility holds a license or does not hold a license classified under Section 247.029 to provide personal care services to residents with Alzheimer's disease or related disorders.

(b) An assisted living facility that provides the notice required under Subsection (a) is not required under Section 247.026(c-1) to include in the facility's consumer disclosure statement information on whether the facility holds a license classified under Section 247.029 to provide personal care services to residents with Alzheimer's disease or related disorders.

Added by Acts 2021, 87th Leg., R.S., Ch. 514 (S.B. 383), Sec. 2, eff. September 1, 2021.

Sec. 247.031. MUNICIPAL ENFORCEMENT. The governing body of a municipality by ordinance may:

(1) prohibit a person who does not hold a license issued under this chapter from establishing or operating an assisted living facility within the municipality; and

(2) establish a procedure for emergency closure of a facility in circumstances in which:

(A) the facility is established or operating in violation of Section 247.021; and

(B) the continued operation of the facility creates an immediate threat to the health and safety of a resident of the facility.

Added by Acts 1997, 75th Leg., ch. 1088, Sec. 2, eff. Sept. 1, 1997. Renumbered from Sec. 247.029 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.032. ACCREDITATION SURVEY TO SATISFY INSPECTION REQUIREMENTS. (a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities (CARF), The Joint Commission, or another organization approved by the executive commissioner.

(b) The department shall accept an accreditation survey from an accreditation commission for an assisted living facility instead of an inspection under Section 247.023 or an annual inspection or survey conducted under the authority of Section 247.027, but only if:

(1) the accreditation commission's standards meet or exceed the requirements for licensing of the executive commissioner for an assisted living facility;

(2) the accreditation commission maintains an inspection or survey program that, for each assisted living facility, meets the department's applicable minimum standards as confirmed by the executive commissioner;

(3) the accreditation commission conducts an on-site inspection or survey of the facility at least as often as required by Section 247.023 or 247.027 and in accordance with the department's minimum standards;

(4) the assisted living facility submits to the department a copy of its required accreditation reports to the accreditation commission in addition to the application, the fee, and any report required for renewal of a license;

(5) the inspection or survey results are available for public inspection to the same extent that the results of an investigation or survey conducted under Section 247.023 or 247.027 are available for public inspection; and

(6) the department ensures that the accreditation commission has taken reasonable precautions to protect the confidentiality of personally identifiable information concerning the residents of the assisted living facility.

(c) The department shall coordinate its licensing activities with each of the accreditation commissions.

(d) Except as specifically provided by this section, this

section does not limit the department in performing any power or duty under this chapter or inspection authorized by Section 247.027, including taking appropriate action relating to an assisted living facility, such as suspending or revoking a license, investigating an allegation of abuse, exploitation, or neglect or another complaint, assessing an administrative penalty, or closing the facility.

(e) This section does not require an assisted living facility to obtain accreditation from an accreditation commission.

Added by Acts 2005, 79th Leg., Ch. 579 (H.B. 1558), Sec. 1, eff. January 1, 2006.
Added by Acts 2005, 79th Leg., Ch. 870 (S.B. 1055), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 917 (H.B. 2972), Sec. 8, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0709, eff. April 2, 2015.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant, license holder, or a controlling person has:

(1) violated this chapter or a rule, standard, or order adopted or license issued under this chapter in either a repeated or substantial manner; or

(2) committed any act described by Sections 247.0451(a)(2)-(6).

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The status of a person as an applicant for a license or as a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

(d) A court having jurisdiction of a judicial review of the matter may not order arbitration, whether on motion of any party or on the court's own motion, to resolve a dispute involving the denial, suspension, or revocation of a license under this section or the conduct with respect to which the denial, suspension, or revocation of the license is sought.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 5, eff. Sept. 1, 2001.

Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) If the department finds an assisted living facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department may suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is effective immediately on written notice to the license holder or on the date specified in the order.

(c) The order suspending the license and ordering closure of all or part of an assisted living facility is valid for 10 days after its effective date.

(d) The department shall provide for the relocation of residents of an assisted living facility that is closed. The relocation may not be to a facility with a more restrictive environment unless all other reasonable alternatives are exhausted. Relocation procedures shall be adopted as part of the memorandum of understanding adopted under Section 247.061.

(e) The department and the State Office of Administrative Hearings shall expedite any hearing or decision involving an emergency suspension or closing order issued under this section.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1248, Sec. 6, eff. Sept. 1, 2001.

Sec. 247.043. INVESTIGATION OF ABUSE, EXPLOITATION, OR NEGLECT. (a) The department shall conduct an investigation in accordance with Section 260A.007 after receiving a report of abuse, exploitation, or neglect of a resident of an assisted living facility.

Text of subsection effective until April 1, 2025

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

(1) implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;

(2) notify the Department of Family and Protective Services of the results of the investigation;

(3) notify a health and human services agency, as defined by Section 531.001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and

(4) provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

Text of subsection effective on April 1, 2025

(b) If the thorough investigation reveals that abuse, exploitation, or neglect has occurred, the department shall:

(1) implement enforcement measures, including closing the facility, revoking the facility's license, relocating residents, and making referrals to law enforcement agencies;

(2) notify the Department of Family and Protective Services of the results of the investigation;

(3) notify a health and human services agency, as defined by Section 521.0001, Government Code, that contracts with the facility for the delivery of personal care services of the results of the investigation; and

(4) provide to a contracting health and human services agency access to the department's documents or records relating to the investigation.

(c) Providing access to a confidential document or record under Subsection (b)(4) does not constitute a waiver of confidentiality.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(j), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0711, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.46, eff. April 1, 2025.

Sec. 247.044. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that:

(1) the violation creates an immediate threat to the health and safety of the assisted living facility residents; or

(2) the facility is operating without a license.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain the establishment or operation of an assisted living facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The department may petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. If it is shown that admission to the facility cannot be obtained, the court shall order the facility to allow the department admission to the facility.

(d) The attorney general or local prosecuting attorney may institute and conduct a suit authorized by this section at the request of the department.

(e) Venue for a suit brought under this section is in the county in which the assisted living facility is located or in Travis County.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991.

Renumbered from 247.043 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.045. CIVIL PENALTIES. (a) Except as provided by Subsections (b) and (c), a person who violates this chapter or who fails to comply with a rule adopted under this chapter and whose violation is determined by the department to threaten the health and safety of a resident of an assisted living facility is subject to a civil penalty of not less than $100 nor more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(b) A person is subject to a civil penalty if the person:

(1) is in violation of Section 247.021; or

(2) has been determined to be in violation of Section 247.021 and violates any other provision of this chapter or fails to comply with a rule adopted under this chapter.

(c) The amount of a civil penalty under Subsection (b) may not be less than $1,000 or more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

(d) The attorney general may institute and conduct a suit to collect a penalty and fees under this section at the request of the department. If the attorney general fails to notify the department within 30 days of referral from the department that the attorney general will accept the case, the department shall refer the case to the local district attorney, county attorney, or city attorney. The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

(e) Investigation and attorney's fees may not be assessed or collected by or on behalf of the department or other state agency unless a penalty described under this chapter is assessed.

(f) The department and attorney general, or other legal representative as described in Subsection (d), shall work in close cooperation throughout any legal proceedings requested by the department.

(g) The commissioner must approve any settlement agreement to a

suit brought under this chapter.

(h) If a person who is liable under this section fails to pay any amount the person is obligated to pay under this section, the state may seek satisfaction from any owner, other controlling person, or affiliate of the person found liable. The owner, other controlling person, or affiliate may be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. The executive commissioner by rule may establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

(i) In this section, "affiliate" means:

(1) with respect to a partnership other than a limited partnership, each partner of the partnership;

(2) with respect to a corporation:

(A) an officer;

(B) a director;

(C) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(D) a controlling individual;

(3) with respect to an individual:

(A) each partnership and each partner in the partnership in which the individual or any other affiliate of the individual is a partner; and

(B) each corporation or other business entity in which the individual or another affiliate of the individual is:

(i) an officer;

(ii) a director;

(iii) a stockholder who owns, holds, or has the power to vote at least 10 percent of any class of securities issued by the corporation, regardless of whether the power is of record or beneficial; and

(iv) a controlling individual;

(4) with respect to a limited partnership:

(A) a general partner; and

(B) a limited partner who is a controlling individual;

(5) with respect to a limited liability company:

(A) an owner who is a manager under the Texas Limited

Liability Company Law as described by Section 1.008(e), Business Organizations Code; and

(B) each owner who is a controlling individual; and

(6) with respect to any other business entity, a controlling individual.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 114, eff. Sept. 1, 1991. Renumbered from Sec. 247.044 and amended by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 416, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1088, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.03, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1194 (H.B. 1168), Sec. 9, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0712, eff. April 2, 2015.

Sec. 247.0451. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the commission;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by an assisted living facility; or

(B) any portion of the premises of an assisted living facility;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the

commission preserving evidence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the commission of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section 247.0452(c), the penalty may not exceed:

(1) $5,000 for each violation that:

(A) represents a pattern of violation that results in actual harm or is widespread in scope and results in actual harm; or

(B) constitutes an immediate threat to the health or safety of a resident; or

(2) $1,000 for each other violation.

(c) The executive commissioner shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) In determining the amount of a penalty, the commission shall consider any matter that justice may require, but must consider each of the following and make a record of the extent to which each of the following was considered:

(1) the gradations of penalties established under Subsection (c);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) efforts to correct the violation; and

(6) the size of the facility and of the business entity that owns the facility.

(e) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(f) The commission may not assess a penalty under this section against a resident of an assisted living facility unless the resident is also an employee of the facility or a controlling person.

(g) The commission shall develop and use a system to record and

track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate assisted living facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(h) In this section, "actual harm," "immediate threat to the health or safety of a resident," "pattern of violation," and "widespread in scope" have the meanings assigned by Section 247.0452.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 16, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0713, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 8, eff. September 1, 2017.

Sec. 247.0452. RIGHT TO CORRECT. (a) The commission may not collect an administrative penalty from an assisted living facility under Section 247.0451 if, not later than the 45th day after the date the facility receives notice under Section 247.0453(c), the facility corrects the violation.

(b) Subsection (a) does not apply:

(1) to a violation that the commission determines represents a pattern of violation that results in actual harm;

(2) to a violation that the commission determines is widespread in scope and results in actual harm;

(3) to a violation that the commission determines is widespread in scope, constitutes a potential for actual harm, and relates to:

(A) resident assessment;

(B) staffing, including staff training;

(C) administration of medication;
(D) infection control;
(E) restraints; or
(F) emergency preparedness and response;
(4) to a violation that the commission determines constitutes an immediate threat to the health or safety of a resident;
(5) to a violation described by Sections 247.0451(a)(2)-(7) or a violation of Section 260A.014 or 260A.015;
(6) to a second or subsequent violation of:
(A) a right of the same resident under Section 247.064; or
(B) the same right of all residents under Section 247.064;
(7) to a violation described by Section 247.066, which contains its own right to correct provisions; or
(8) to a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) An assisted living facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary of the date the correction was made, the commission may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The commission is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

(d) In this section:
(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.
(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.
(3) "Pattern of violation" means repeated, but not pervasive, failures of an assisted living facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:
(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the assisted living facility; or

(B) represents a systemic failure by the assisted living facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 17, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(k), eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 9, eff. September 1, 2017.

Sec. 247.0453. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 247.0451 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 247.0452 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the assisted living facility must file with the department a plan of correction to be approved by the department; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 247.0452, the assisted living facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 247.0452, and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department shall assess the recommended penalty.

(i) If the department assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0714, eff. April 2, 2015.

Sec. 247.0454. HEARING ON ADMINISTRATIVE PENALTY. (a) An administrative law judge shall order a hearing and the department shall give notice of the hearing if a person charged with a violation under Section 247.0451 timely requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for decision regarding the occurrence of a violation of this chapter or a rule, standard, or order adopted under this chapter or a term of a license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the department by order may:

(1) find that a violation has occurred and assess an administrative penalty; or

(2) find that a violation has not occurred.

(e) If the department finds that a violation has not occurred, the department shall order that all records reflecting that the department found a violation had occurred and attempted to impose an administrative penalty shall be expunged except:

(1) records obtained by the department during its investigation; and

(2) the administrative law judge's findings of fact.

(f) Proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0715, eff. April 2, 2015.

Sec. 247.0455. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department shall give notice of the findings made under Section 247.0454(d) to the person charged. If the department finds that a violation has occurred, the department shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue;

(4) whether action under Section 247.0457 is required in lieu of payment of all or part of the penalty; and

(5) the person's right to judicial review of the department order.

(b) Not later than the 30th day after the date on which the department order is final, the person charged with the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, the department's dissatisfaction with efforts to correct the violation, or any combination of these issues.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments or may require the person to use all or part of the amount of the penalty in accordance with Section 247.0457.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the department shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on amounts remitted by the department under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0716, eff. April 2, 2015.

Sec. 247.0456. APPLICATION OF OTHER LAW. The department may not assess a monetary penalty under this chapter and a monetary penalty under Chapter 32, Human Resources Code, for the same act or failure to act.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.

Sec. 247.0457. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 247.0451, the department in accordance with this section may allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the assisted living facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a resident of the assisted living facility.

(c) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of the recommended assessment of an administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 247.0454.

(d) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 247.0454 if the department approves the plan.

(e) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the assisted living facility that will improve services to or quality of care of residents of the assisted living facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the assisted living facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a time line for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(f) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the commission or the State Office of Administrative Hearings, as appropriate, shall deny a pending request for a hearing submitted by the person under Section 247.0453.

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0717, eff. April 2, 2015.

Sec. 247.0458. USE OF ADMINISTRATIVE PENALTY. Money from an administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 3, eff. September 1, 2005.

Sec. 247.0459. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against an assisted living facility that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.05, eff. Sept. 1, 1999. Renumbered from Sec. 247.0455 and amended by by Acts 2001, 77th Leg., ch. 1248, Sec. 7, eff. Sept. 1, 2001.

Sec. 247.046. COOPERATION AMONG AGENCIES. The executive commissioner by rule for the department and the Department of Family and Protective Services and the attorney general by rule shall adopt a memorandum of understanding that:

(1) defines those agencies' responsibilities concerning assisted living facilities and coordinates those agencies' activities;

(2) details coordinated procedures to be used by those agencies in responding to complaints relating to neglect or abuse of residents of facilities, to substandard facilities, and to unlicensed facilities;

(3) identifies enforcement needs those agencies may have in order to perform their duties under the memorandum of understanding, including any need for access to information or to facilities under investigation or operating under a plan of correction; and

(4) provides a plan for correcting violations in substandard or unlicensed assisted living facilities that specifies the conditions under which it is appropriate to impose such a plan and that outlines a schedule of implementation for the plan.

Added by Acts 1991, 72nd Leg., ch. 349, Sec. 1, eff. June 5, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.093, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 416, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0718, eff. April 2, 2015.

Sec. 247.048. REGIONAL TRAINING FOR AGENCIES AND LOCAL GOVERNMENTS. The department periodically shall conduct regional training programs for representatives of local governments and appropriate state agencies relating to assisted living facility concerns. The training programs must provide to participants information relating to the assisted living facility industry, including information on:

(1) the general characteristics of assisted living facilities and residents of those facilities;

(2) the different types of assisted living facilities;

(3) the laws applicable to assisted living facilities; and

(4) the authority of the department and other entities to enforce applicable laws.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.049. USE OF REGULATORY REPORTS AND DOCUMENTS. (a) Except as otherwise provided by this section, a report or other document prepared by the department that relates to regulation of an assisted living facility is not admissible as evidence in a civil action to prove that the facility violated a standard prescribed under this chapter.

(b) Subsection (a) does not:

(1) bar the admission into evidence of department reports or other documents in an enforcement action in which the state or an agency or political subdivision of the state is a party, including:

(A) an action seeking injunctive relief under Section 247.044;

(B) an action seeking imposition of a civil penalty under Section 247.045;

(C) a contested case hearing involving denial, suspension, or revocation of a license issued under this chapter; and

(D) an action seeking imposition of an administrative penalty under this subchapter;

(2) bar the admission into evidence of department reports or other documents that are offered:

(A) to establish warning or notice to an assisted living facility of a relevant department determination; or

(B) under any rule or evidentiary predicate of the Texas Rules of Evidence;

(3) prohibit or limit the testimony of a department employee, in accordance with the Texas Rules of Evidence, as to observations, factual findings, conclusions, or determinations that an assisted living facility violated a standard prescribed under this chapter if the observations, factual findings, conclusions, or determinations were made in the discharge of the employee's official duties for the department; or

(4) prohibit or limit the use of department reports or other documents in depositions or other forms of discovery conducted in connection with a civil action if use of the reports or other documents appears reasonably calculated to lead to the discovery of admissible evidence.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 9, eff. Sept. 1, 2001.

Sec. 247.050. MONITORING OF UNLICENSED FACILITIES; REPORTING. (a) The executive commissioner shall adopt procedures to monitor the status of unlicensed assisted living facilities. As part of these procedures, the department shall:

(1) maintain a registry of all reported unlicensed assisted living facilities for the purpose of periodic follow-up by the field staff in each region; and

(2) prepare a quarterly report that shows the number of:

(A) complaints relating to unlicensed assisted living facilities that are received;

(B) complaints that are investigated;

(C) unsubstantiated complaints;

(D) substantiated complaints; and

(E) cases referred to the attorney general.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 990, Sec. 10(5), eff. June 17, 2011.

(c) The department shall file a copy of the quarterly reports required by this section with the substantive committees of each house of the legislature with jurisdiction over regulation of assisted living facilities.

(d) The department shall permanently retain at least one copy or one electronic source of information pertaining to complaints and investigations of unlicensed assisted living facilities used to maintain a registry as required under Subsection (a)(1) and used to prepare a report under Subsection (a)(2).

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.09, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 8, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 990 (H.B. 1781), Sec. 10(5), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0719, eff. April 2, 2015.

Sec. 247.051. INFORMAL DISPUTE RESOLUTION. (a) The executive commissioner by rule shall establish an informal dispute resolution process to address disputes between an assisted living facility and the commission concerning a statement of violations prepared by the commission in accordance with this section. The process must provide

for adjudication by an appropriate disinterested person of disputes relating to a statement of violations. The informal dispute resolution process must require:

(1) the assisted living facility to request informal dispute resolution not later than the 10th day after the date of notification by the commission of the violation of a standard or standards;

(2) that the process be completed not later than the 90th day after the date of receipt of a request from the assisted living facility for informal dispute resolution;

(3) that, not later than the 20th business day after the date an assisted living facility requests an informal dispute resolution, the commission forward to the assisted living facility a copy of all information referenced in the disputed statement of violations or on which a citation is based in connection with the survey, inspection, investigation, or other visit, including any notes taken by or e-mails or messages sent by a commission employee involved with the survey, inspection, investigation, or other visit and excluding the following information:

(A) the name of any complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(B) any information that would reasonably lead to the identification of a complainant, witness, or informant, which must be redacted from information provided to the assisted living facility;

(C) information obtained from or contained in the records of the facility;

(D) information that is publicly available; or

(E) information that is confidential by law;

(4) that full consideration is given to all factual arguments raised during the informal dispute resolution process;

(5) that full consideration is given during the informal dispute resolution process to the information provided by the assisted living facility and the commission;

(6) that ex parte communications concerning the substance of any argument relating to a survey, inspection, investigation, visit, or statement of violations under consideration not occur between the informal dispute resolution staff and the assisted living facility or the commission;

(7) that the assisted living facility and the commission be

given a reasonable opportunity to submit arguments and information supporting the position of the assisted living facility or the commission and to respond to arguments and information presented against them, provided the assisted living facility submits its arguments and supporting information not later than the 10th business day after the date of receipt of the materials provided under Subdivision (3); and

(8) that the commission bears the burden of proving the violation of a standard or standards.

(b) The commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

(c) An assisted living facility requesting an informal dispute resolution under this section must reimburse the commission for any costs associated with the commission's preparation, copying, and delivery of information requested by the facility.

(d) A statement of violations prepared by the commission following a survey, inspection, investigation, or visit is confidential pending the outcome of the informal dispute resolution process. Information concerning the outcome of a survey, inspection, investigation, or visit may be posted on any website maintained by the commission while the dispute is pending if the posting clearly notes each finding that is in dispute.

(e) The commission may charge and the assisted living facility shall pay the reasonable costs associated with making the redactions required by Subsections (a)(3)(A) and (B).

Added by Acts 2001, 77th Leg., ch. 1248, Sec. 13, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0720, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 590 (S.B. 924), Sec. 1, eff. September 1, 2017.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 247.061. COORDINATION BETWEEN AGENCIES. (a) The executive commissioner and the attorney general shall adopt by rule a

memorandum of understanding that:

(1) defines the department's and the attorney general's responsibilities concerning assisted living facilities;

(2) outlines and coordinates procedures to be used by those agencies in responding to complaints concerning assisted living facilities; and

(3) provides a plan for correcting violations or deficiencies in assisted living facilities.

(b) The department shall prepare the initial draft of the memorandum of understanding and shall facilitate and ensure its adoption.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.095, eff. Sept. 1, 1995. Renumbered from Sec. 247.062 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0721, eff. April 2, 2015.

Sec. 247.062. DIRECTORY OF ASSISTED LIVING FACILITIES; CONSUMERS' GUIDE. (a) The department shall prepare a directory of assisted living facilities that includes the name of the owner, the address and telephone number of the facility, the number of beds in the facility, and the facility's accessibility to persons with disabilities.

(b) The department shall revise the directory annually and shall make it available to the public.

(c) The department shall prepare a consumers' guide to assisted living facilities and make it available to the public. The consumers' guide shall provide information on licensing requirements for assisted living facilities, a brief description of minimum standards for facilities, a copy of the residents' bill of rights, a copy of the providers' bill of rights, and any other information that the department determines may be useful to the public.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from 247.063 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0722, eff. April 2, 2015.

Sec. 247.063. REFERRALS. (a) If the Department of State Health Services, the department, a local mental health authority, or a local intellectual and developmental disability authority refers a patient or client to an assisted living facility, the referral may not be made to a facility that is not licensed under this chapter.

(b) If the Department of State Health Services or a local mental health or intellectual and developmental disability authority gains knowledge of an assisted living facility that is not operated or licensed by the department or the authority and that has four or more residents who are unrelated to the proprietor of the facility, the Department of State Health Services or the authority shall report the name, address, and telephone number of the facility to the department.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.096, eff. Sept. 1, 1995. Renumbered from Sec. 247.064 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0723, eff. April 2, 2015.

Sec. 247.0631. ACCESS. An employee of the Department of State Health Services or an employee of a local mental health or intellectual and developmental disability authority may enter an assisted living facility as necessary to provide services to a resident of the facility.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0724, eff. April 2, 2015.

Sec. 247.064. RESIDENTS' BILL OF RIGHTS. (a) Each assisted living facility shall post a residents' bill of rights in a prominent

place in the facility.

(b) The residents' bill of rights must provide that each resident in the assisted living facility has the right to:

(1) manage the resident's financial affairs;

(2) determine the resident's dress, hair style, or other personal effects according to individual preference, except that the resident has the responsibility to maintain personal hygiene;

(3) retain and use personal property in the resident's immediate living quarters and to have an individual locked cabinet in which to keep personal property;

(4) receive and send unopened mail;

(5) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis;

(6) privacy;

(7) unrestricted communication, including personal visitation with any person of the resident's choice, at any reasonable hour, including family members and representatives of advocacy groups and community service organizations;

(8) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable;

(9) present grievances on behalf of the resident or others to the operator, state agencies, or other persons without threat of reprisal in any manner;

(10) a safe and decent living environment and considerate and respectful care that recognizes the dignity and individuality of the resident;

(11) refuse to perform services for the facility, except as contracted for by the resident and operator;

(12) practice the religion of the resident's choice;

(13) leave the facility temporarily or permanently, subject to contractual or financial obligations; and

(14) not be deprived of any constitutional, civil, or legal right solely by reason of residence in an assisted living facility.

(c) The residents' bill of rights must be written in the primary language of each resident of the facility and must also provide the toll-free telephone number of the department for reporting abuse or neglect.

(d) The rights provided under this section do not take precedence over health and safety rights of other residents of the

facility.

(e) The department shall develop a residents' bill of rights in accordance with this section and provide a copy to each facility. The copy shall be written in the primary language of each resident of the facility.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.065 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.065. PROVIDERS' BILL OF RIGHTS. (a) Each assisted living facility shall post a providers' bill of rights in a prominent place in the facility.

(b) The providers' bill of rights must provide that a provider of personal care services has the right to:

(1) be shown consideration and respect that recognizes the dignity and individuality of the provider and assisted living facility;

(2) terminate a resident's contract for just cause after a written 30-day notice;

(3) terminate a contract immediately, after notice to the department, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the assisted living facility;

(4) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(5) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(6) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(7) access to patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(8) refuse a person referred to the facility if the referral is inappropriate;

(9) maintain an environment free of weapons and drugs; and

(10) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

Added by Acts 1991, 72nd Leg., ch. 637, art. 2, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 247.066 and amended by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.

Sec. 247.066. APPROPRIATE PLACEMENT DETERMINATION. (a) The department may not require the removal and relocation of a resident of an assisted living facility if the resident's presence in the facility does not endanger other residents and the resident can receive adequate care at the facility through services:

(1) provided by the facility in accordance with its license; or

(2) obtained by the resident from other providers.

(b) In assessing whether a resident can receive adequate care at a facility, the department shall consider all relevant factors, including the placement preference expressed by the resident with the agreement of the facility operator, the resident's physician, and the resident's family members or other representatives.

(b-1) If a facility identifies a resident who the facility believes is inappropriately placed at the facility, the facility is not required to move the resident if the facility obtains the written statements and waiver prescribed by Subsection (c).

(c) If a resident is inappropriately placed at a facility, the facility is not required to move the resident if, not later than the 10th business day after the date that the facility determines or is informed of the department's determination that a resident is inappropriately placed at the facility, the facility:

(1) obtains a written assessment from a physician that the resident is appropriately placed;

(2) obtains a written statement:

(A) from the resident that the resident wishes to remain in the facility; or

(B) from a family member of the resident that the family member wishes for the resident to remain in the facility, if the resident lacks capacity to give a statement under this subsection;

(3) states in writing that the facility wishes for the

resident to remain in the facility; and

(4) applies for and obtains a waiver from the department of all applicable requirements for evacuation that the facility does not meet with respect to the resident, if the facility does not meet all requirements for the evacuation of residents with respect to the resident.

(d) If the department determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or does not obtain the written statements and waiver prescribed by Subsection (c) that would allow the resident to remain in the facility, the facility shall discharge the resident. The resident is allowed 30 days after the date of discharge to move from the facility. A discharge required under this subsection must be made notwithstanding:

(1) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(2) the terms of any contract.

(d-1) If a facility is required to discharge the resident because the facility has not obtained the written statements prescribed by Subsection (c) or the department does not approve a waiver based on the written statements submitted, the department may:

(1) assess an administrative penalty against the facility if the facility intentionally or repeatedly disregards department criteria for obtaining a waiver for inappropriate placement of a resident;

(2) seek an emergency suspension or closing order against the facility under Section 247.042 if the department determines there is a significant risk to the residents of the facility and an immediate threat to the health and safety of the residents; or

(3) seek other sanctions against the facility under Subchapter C in lieu of an emergency suspension or closing order if the department determines there is a significant risk to a resident of the facility and an immediate threat to the health and safety of a resident.

(d-2) The executive commissioner by rule shall develop criteria under which the department may determine when a facility has intentionally or repeatedly disregarded the waiver process.

(e) To facilitate obtaining the written statements required under Subsections (b-1) and (c)(1)-(3), the department shall develop standard forms that must be used under Subsections (b-1) or (c)(1)-

(3), as appropriate. The executive commissioner by rule shall develop criteria under which the department will determine, based on a resident's specific situation, whether it will grant or deny a request for a waiver under Subsection (b-1) or (c)(4).

(f) The department shall ensure that each facility and resident is aware of the waiver process described by Subsection (c) for aging in place. A facility must include with the facility disclosure statement required under Section 247.026(b)(4)(B) information regarding the policies and procedures for aging in place described by this section.

(g) The department, in cooperation with assisted living service providers, shall develop cost-effective training regarding aging in place, retaliation, and other issues determined by the department.

(h) The department shall require surveyors, facility supervisors, and other staff, as appropriate, to complete the training described by Subsection (g) annually.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1248, Sec. 14, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. 2109), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0725, eff. April 2, 2015.

Sec. 247.067. HEALTH CARE PROFESSIONALS. (a) In this section, "health care professional" means an individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(b) Unless otherwise prohibited by law, a health care professional may be employed by an assisted living facility to provide at the facility to the facility's residents services that are authorized by this chapter and that are within the professional's scope of practice. This subsection does not authorize a facility to provide ongoing services comparable to the services available in an

institution licensed under Chapter 242. A health care professional providing services under this subsection shall maintain medical records of those services in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(c) A resident of an assisted living facility has the right to contract with a home and community support services agency licensed under Chapter 142 or with an independent health professional for health care services.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.08(c), eff. September 28, 2011.

Sec. 247.068. RETALIATION PROHIBITED. (a) A person licensed under this chapter may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the license holder.

(b) This section does not prohibit a license holder from terminating an employee for a reason other than retaliation.

(c) A department employee may not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of a department employee;

(2) disagreeing with a department employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 305 (H.B. 2109), Sec. 2, eff. June 17, 2011.

Sec. 247.069. CONSUMER CHOICE FOR ASSISTED LIVING IN COMMUNITY CARE PROGRAMS. The community based alternatives program and the residential care programs, which provide an assisted living option to

consumers, shall provide a consumer the opportunity to choose an assisted living facility that meets the department's licensing standards relating to facility construction without regard to the number of units in the facility, if consumers are advised of all other community care options.

Added by Acts 2005, 79th Leg., Ch. 870 (S.B. 1055), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 18, eff. September 1, 2007.

Sec. 247.070. GUARDIANSHIP ORDERS. An assisted living facility shall make a reasonable effort to request a copy of any court order appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support. An assisted living facility that receives a copy of a court order appointing a guardian of a resident or a resident's estate shall maintain a copy of the court order in the resident's medical records.

Added by Acts 2015, 84th Leg., R.S., Ch. 724 (H.B. 1337), Sec. 2, eff. September 1, 2015.

Sec. 247.071. LOCAL APPROVAL OF ASSISTED LIVING FACILITY. (a) In this section, "governmental unit" means a municipality, county, or other political subdivision of the state that has the authority to adopt a building code or fire code.

(b) A governmental unit that adopts a building code or fire code governs the interpretation and enforcement of that building code or fire code.

(c) The commission may not issue a citation for a violation of a building code or fire code adopted by a governmental unit to an assisted living facility that presents evidence of the governmental unit's determination that the assisted living facility is compliant with the code. If the commission cites an assisted living facility for a building code or fire code violation and the assisted living facility subsequently provides the evidence described by this subsection, the commission shall rescind the citation.

(d) Subsection (c) does not restrict the authority of the commission to issue a citation to an assisted living facility for a violation of any National Fire Protection Association codes or standards adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 66 (S.B. 1049), Sec. 3, eff. September 1, 2017.

Sec. 247.072. APPLICANTS FOR EMPLOYMENT; CRIMINAL HISTORY CHECK. (a) In addition to the prohibitions provided by Section 250.003, an assisted living facility licensed under this chapter may not employ at the facility an applicant who fails to indicate in a written statement developed by the commission and included with the submitted application that the applicant has not been convicted of an offense described by Section 250.006. For purposes of this subsection, a person who commits an offense in another state that is substantially similar to an offense described by Section 250.006 is considered to have committed the offense described by that section.

(b) If an applicant for employment at an assisted living facility states in the application that the applicant resided in another state during the five years preceding the date of the application, the facility, before employing the applicant in a permanent position, shall conduct a name-based criminal history check in each state in which the applicant previously resided.

(c) The commission shall develop the statement described by Subsection (a) and make the statement available to assisted living facilities on the commission's Internet website.

(d) If an assisted living facility employs a person pending an out-of-state criminal history check under Subsection (b), the facility shall ensure the person has no direct contact with a resident until the facility obtains the person's criminal history record information and verifies the person is not barred from employment under Section 250.006.

Added by Acts 2021, 87th Leg., R.S., Ch. 363 (S.B. 271), Sec. 1, eff. September 1, 2021.

SUBCHAPTER E. ARBITRATION

Sec. 247.081. SCOPE OF SUBCHAPTER. This subchapter applies to

any dispute between a facility licensed under this chapter and the department relating to:

(1) renewal of a license under Section 247.023;

(2) suspension, revocation, or denial of a license under Section 247.041;

(3) assessment of a civil penalty under Section 247.045; or

(4) assessment of an administrative penalty under Section 247.0451.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.082. ELECTION OF ARBITRATION. (a) Except as provided by Subsection (d), an affected facility may elect binding arbitration of any dispute to which this subchapter applies. Arbitration under this subchapter is an alternative to a contested case hearing or to a judicial proceeding relating to the assessment of a civil penalty.

(b) An affected facility may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and the office of the attorney general. The election must be filed not later than the 10th day after the date on which the answer is due or the date on which the answer is filed, whichever is earlier. If a civil penalty is requested after the initial filing of a Section 242.094 action through the filing of an amended or supplemental pleading, an affected facility must elect arbitration not later than the 10th day after the date on which the amended or supplemental pleading is served on the affected facility or the facility's counsel.

(c) The department may elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and by notifying the facility of the election not later than the date on which the facility may elect arbitration under Subsection (b).

(d) Arbitration may not be used to resolve a dispute related to an affected facility that has had an arbitration award levied against it in the previous five years.

(e) If arbitration is not permitted under this subchapter or the election of arbitration is not timely filed:

(1) the court shall dismiss the arbitration election and

retain jurisdiction of the lawsuit; and

(2) the State Office of Administrative Hearings shall dismiss the arbitration and does not have jurisdiction over the lawsuit.

(f) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.083. ARBITRATION PROCEDURES. (a) The arbitration shall be conducted by an arbitrator.

(b) The arbitration and the appointment of the arbitrator shall be conducted in accordance with rules adopted by the chief administrative law judge of the State Office of Administrative Hearings. Before adopting rules under this subsection, the chief administrative law judge shall consult with the department and shall consider appropriate rules developed by any nationally recognized association that performs arbitration services.

(c) The party that elects arbitration shall pay the cost of the arbitration. The total fees and expenses paid for an arbitrator for a day may not exceed $1,000.

(d) The State Office of Administrative Hearings may designate a nationally recognized association that performs arbitration services to conduct arbitrations under this subchapter and may, after consultation with the department, contract with that association for the arbitrations.

(e) On request by the department, the attorney general may represent the department in the arbitration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.084. ARBITRATOR QUALIFICATIONS. Each arbitrator must be on an approved list of a nationally recognized association that performs arbitration services or be otherwise qualified as provided in the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff.

September 1, 2013.

Sec. 247.085. ARBITRATOR SELECTION. The arbitrator shall be appointed in accordance with the rules adopted under Section 247.083(b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.086. ARBITRATOR DUTIES. The arbitrator shall:

(1) protect the interests of the department and the facility;

(2) ensure that all relevant evidence has been disclosed to the arbitrator, department, and facility; and

(3) render an order consistent with this chapter and the rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.087. SCHEDULING OF ARBITRATION. (a) The arbitrator conducting the arbitration shall schedule arbitration to be held not later than the 90th day after the date the arbitrator is selected and shall notify the department and the facility of the scheduled date.

(b) The arbitrator may grant a continuance of the arbitration at the request of the department or facility. The arbitrator may not unreasonably deny a request for a continuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.088. EXCHANGE AND FILING OF INFORMATION. Not later than the seventh day before the first day of arbitration, the department and the facility shall exchange and file with the arbitrator:

(1) all documentary evidence not previously exchanged and filed that is relevant to the dispute; and

(2) information relating to a proposed resolution of the dispute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.089. ATTENDANCE. (a) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a postponement.

(b) An arbitrator may not make an order solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.090. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by the department or the facility.

(b) The department shall make an electronic recording of the proceeding.

(c) An official stenographic record of the proceeding is not required, but the department or the facility may make a stenographic record. The party that makes the stenographic record shall pay the expense of having the record made.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.091. EVIDENCE. (a) The department or the facility may offer evidence and shall produce additional evidence as the arbitrator considers necessary to understand and resolve the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to rules applicable to judicial proceedings is not required.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff.

September 1, 2013.

Sec. 247.092. CLOSING STATEMENTS; BRIEFS. The department and the facility may present closing statements, but the record does not remain open for written briefs unless required by the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.093. EX PARTE CONTACTS PROHIBITED. (a) Except as provided by Subsection (b), the department and the facility may not communicate with an arbitrator other than at an oral hearing unless the parties and the arbitrator agree otherwise.

(b) Any oral or written communication, other than a communication authorized under Subsection (a), from the parties to an arbitrator shall be directed to the association that is conducting the arbitration or, if there is no association conducting the arbitration, to the State Office of Administrative Hearings for transmittal to the arbitrator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.094. ORDER. (a) The arbitrator may enter any order that may be entered by the department, executive commissioner, commissioner, or court under this chapter in relation to a dispute described by Section 247.081.

(b) The arbitrator shall enter the order not later than the 60th day after the last day of the arbitration.

(c) The arbitrator shall base the order on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the department's and facility's stipulations on uncontested issues.

(e) The arbitrator shall file a copy of the order with the department and shall notify the department and the facility in writing of the decision.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0726, eff. April 2, 2015.

Sec. 247.095. EFFECT OF ORDER. An order of an arbitrator under this subchapter is final and binding on all parties. Except as provided by Section 247.097, there is no right to appeal.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.096. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award until the 20th day after the date of the award.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.097. COURT VACATING ORDER. (a) On a finding described by Subsection (b), a court shall:

(1) on application of a facility, vacate an arbitrator's order with respect to an arbitration conducted at the election of the department; or

(2) on application of the department, vacate an arbitrator's order with respect to an arbitration conducted at the election of a facility.

(b) A court shall vacate an arbitrator's order under Subsection (a) only on a finding that:

(1) the order was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence; or

(3) the order exceeded the jurisdiction of the arbitrator under Section 247.094(a).

(c) If the order is vacated, the dispute shall be remanded to the department for another arbitration proceeding.

(d) A suit to vacate an arbitrator's order must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the facility or department knew or should have known of a basis for suit under this section, but in no event later than the first anniversary of the date of the order.

(e) Venue for a suit to vacate an arbitrator's order is in the county in which the arbitration was conducted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

Sec. 247.098. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS FOR CIVIL PENALTIES. (a) This section applies only to a suit for the assessment of a civil penalty under Section 247.045 in which binding arbitration has been elected under this subchapter as an alternative to the judicial proceeding.

(b) On application of a party to the suit, the district court in which the underlying suit has been filed shall enter a judgment in accordance with the arbitrator's order unless, within the time limit prescribed by Section 247.097(d)(2), a motion is made to the court to vacate the arbitrator's order in accordance with Section 247.097.

(c) A judgment filed under Subsection (b) is enforceable in the same manner as any other judgment of the court. The court may award costs for an application made under Subsection (b) and for any proceedings held after the application is made.

(d) Subsection (b) does not affect the right of a party, in accordance with Section 247.097 and within the time limit prescribed by Section 247.097(d)(2), if applicable, to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 218 (H.B. 33), Sec. 2, eff. September 1, 2013.

CHAPTER 248. SPECIAL CARE FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248.001. SHORT TITLE. This chapter may be cited as the Texas Special Care Facility Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Medical care" means care that is:

(A) required for improving life span and quality of life, for comfort, for prevention and treatment of illness, and for maintenance of bodily and mental function;

(B) under the continued supervision of a physician; and

(C) provided by a registered nurse or licensed vocational nurse available to carry out a physician's plan of care for a resident.

(4) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:

(A) promote and maintain health;

(B) prevent illness and disability;

(C) manage health care during acute and chronic phases of illness;

(D) provide guidance and counseling of individuals and families; and

(E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(5) "Person" means an individual, organization, establishment, or association of any kind.

(6) "Resident" means an individual accepted for care in a special care facility.

(7) "Services" means the provision of medical or nursing care, assistance, or treatment by special care facility personnel,

volunteers, or other qualified individuals, agencies, or staff of an organization or other entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(8) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

(9) "Bereavement services" has the meaning assigned by Section 142.001.

(10) "Palliative care" has the meaning assigned by Section 142.001.

(11) "Support services" has the meaning assigned by Section 142.001.

(12) "Residential AIDS hospice" means a facility licensed and designated as a residential AIDS hospice under this chapter.

(13) "Residential AIDS hospice care" means hospice services provided in a residential AIDS hospice.

(14) "AIDS" means acquired immune deficiency syndrome.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 800, Sec. 30, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0727, eff. April 2, 2015.

Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

(1) a home and community support services agency required to be licensed under Chapter 142;

(2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);

(3) an institution required to be licensed under Chapter 242;

(4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);

(5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);

(6) a facility required to be licensed under Chapter 245

(Texas Abortion Facility Reporting and Licensing Act);

(7) a general residential operation, foster group home, foster home, and child-placing agency, for children in foster care or other residential care who are under the conservatorship of the Department of Family and Protective Services; or

(8) a person providing medical or nursing care or services under a license or permit issued under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 504, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 800, Sec. 29, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0728, eff. April 2, 2015.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 248.021. LICENSE REQUIRED. A person may not establish or operate a special care facility unless the person holds a license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.022. APPLICATION. (a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with department rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0729, eff. April 2, 2015.

Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The

department shall issue a license to an applicant if on inspection and investigation it finds that the applicant meets the requirements of this chapter and department rules.

(b) A license shall be renewed at the times and in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0730, eff. April 2, 2015.

Sec. 248.024. FEES. (a) The executive commissioner by rule shall establish a license application fee and a license renewal fee in amounts as prescribed by Section 12.0111.

(b) The executive commissioner by rule may establish other reasonable and necessary fees in amounts that are adequate, with the license application and license renewal fees, to collect sufficient revenue to meet the expenses necessary to administer this chapter. The fees may include construction plan review and inspection fees.

(c) All fees collected under this chapter are nonrefundable.

(d) All fees received by the department shall be deposited to the credit of the General Revenue Fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0731, eff. April 2, 2015.

Sec. 248.025. NONTRANSFERABILITY; POSTING. (a) A license issued under this chapter is not transferable or assignable.

(b) A special care facility shall post in plain sight the license issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.026. DUTIES OF EXECUTIVE COMMISSIONER. (a) The executive commissioner shall adopt rules necessary to implement this chapter. The rules must establish minimum standards for special care

facilities relating to:

(1) the issuance, renewal, denial, suspension, and revocation of the license required by this chapter;

(2) the qualifications, duties, and supervision of professional and nonprofessional personnel and volunteers;

(3) residents' rights;

(4) medical and nursing care and services provided by a license holder;

(5) the organizational structure, lines of authority, delegation of responsibility, and operation of a special care facility;

(6) records of care and services kept by the license holder, including the disposal or destruction of those records;

(7) safety, fire prevention, and sanitary provisions;

(8) transfer of residents in a medically appropriate manner from or to a special care facility;

(9) construction plan approval and inspection; and

(10) any aspects of a special care facility as necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the executive commissioner to establish the qualifications of licensed health care providers or permit the executive commissioner to authorize persons to provide health care services who are not authorized to provide those services under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0732, eff. April 2, 2015.

Sec. 248.027. CONSTRUCTION STANDARDS. (a) If there are no local regulations in effect or enforced in the area in which a special care facility is located, the facility's construction must conform to the minimum standards established by the executive commissioner.

(b) Construction of a facility is subject to construction plan approval by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0733, eff. April 2, 2015.

Sec. 248.028. INSPECTIONS; INVESTIGATIONS. (a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this chapter.

(b) The department shall investigate each complaint received regarding a special care facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Sec. 248.029. RESIDENTIAL AIDS HOSPICE DESIGNATION. (a) The executive commissioner by rule shall adopt standards for the designation of a special care facility licensed under this chapter as a residential AIDS hospice. Those standards shall be consistent with other standards adopted under this chapter and consistent with the purposes for which special care facilities are created.

(b) In adopting the standards, the executive commissioner shall consider rules adopted for the designation of a hospice under Chapter 142 and shall establish specific standards requiring:

(1) the provision of exclusively palliative care by a facility;

(2) the provision of bereavement services;

(3) the provision of support services to the family of a client;

(4) the participation of a registered nurse in the development of an initial plan of care for a client and periodic review of the plan of care by an interdisciplinary team of the facility; and

(5) clinical and medical review of patient care services by a physician who acts as a medical consultant.

(c) A special care facility licensed under this chapter that satisfies the standards adopted under this section shall be designated as a residential AIDS hospice.

(d) Notwithstanding Chapter 142, a special care facility licensed and issued a designation as a residential AIDS hospice under this chapter may use the term "residential AIDS hospice" or a similar term or language in its title or in a description or representation

of the facility if the similar term or language clearly identifies the facility as a facility regulated under this chapter and clearly distinguishes the facility from a hospice regulated under Chapter 142.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(65), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 800, Sec. 31, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0734, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(65), eff. April 2, 2015.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 248.051. LICENSE DENIAL, SUSPENSION, PROBATION, OR REVOCATION. (a) The department may deny, revoke, or suspend a license issued under this chapter for a violation of this chapter or the rules adopted under this chapter.

(b) Except as provided by Section 248.052, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

(c) If the department finds that a special care facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a special care facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules

adopted under this chapter within the applicable probation period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 802, Sec. 9, 10, eff. June 20, 2003.

Sec. 248.052. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0735, eff. April 2, 2015.

Sec. 248.053. INJUNCTION. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the executive commissioner under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other person has violated this chapter or department rules, the district court shall grant the injunctive relief that the facts warrant.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0736, eff. April 2, 2015.

Sec. 248.054. CIVIL PENALTY. A license holder or person who violates this chapter or a rule adopted by the executive commissioner under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than $1,000 for each day of violation. All penalties collected under this section shall be deposited to the credit of the General Revenue Fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0737, eff. April 2, 2015.

Sec. 248.0545. VIOLATION OF LAW RELATING TO ADVANCE DIRECTIVES. (a) The department shall assess an administrative penalty against a special care facility that violates Section 166.004.

(b) A penalty assessed under this section shall be $500.

(c) The penalty shall be assessed in accordance with department rules. The rules must provide for notice and an opportunity for a hearing.

Added by Acts 1999, 76th Leg., ch. 450, Sec. 2.06, eff. Sept. 1, 1999.

Sec. 248.055. CRIMINAL PENALTY. (a) A person who knowingly establishes or operates a special care facility without a license issued under this chapter commits an offense.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 115, eff. Sept. 1, 1991.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 248.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0738, eff. April 2, 2015.

Sec. 248.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 248.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0739, eff. April 2, 2015.

Sec. 248.105. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0740, eff.

April 2, 2015.

Sec. 248.106. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0741, eff. April 2, 2015.

Sec. 248.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the department under Section 248.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0742, eff. April 2, 2015.

Sec. 248.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 248.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an

escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0743, eff. April 2, 2015.

Sec. 248.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce

the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

Sec. 248.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 5.01, eff. Sept. 1, 1999.

CHAPTER 248A. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248A.001. DEFINITIONS. In this chapter:

(1) "Basic services" includes:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's parent or legal guardian; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor served; and

(B) the caregiver training needs of the minor's parent or legal guardian.

(2) "Center" means a prescribed pediatric extended care center.

(3) "Commission" means the Health and Human Services Commission.

(4) "Commissioner" means the commissioner of aging and disability services.

(5) "Controlling person" has the meaning assigned by Section 248A.0012.

(6) "Department" means the Department of Aging and Disability Services.

(7) "Executive commissioner" means the executive commissioner of the commission.

(8) "Medically dependent or technologically dependent minor" means a minor who because of an acute, chronic, or intermittent medically complex or fragile condition or disability requires ongoing, technology-based skilled nursing care prescribed by the minor's physician to avert death or further disability or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include minor or occasional medical conditions that do not require continuous nursing care, including asthma or diabetes, or a condition that requires an

epinephrine injection.

(9) "Minor" means an individual younger than 21 years of age.

(10) "Prescribed pediatric extended care center" means a facility operated for profit or on a nonprofit basis that provides nonresidential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a center or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

(2) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(3) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(c) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of a center or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(d) A controlling person described by Subsection (b)(3) does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of a center.

(e) The executive commissioner may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.002. EXEMPTIONS. This chapter does not apply to:

(1) a facility operated by the United States government or a federal agency; or

(2) a health facility otherwise licensed under this subtitle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.003. CONFLICT WITH LOCAL LAWS. To the extent of any conflict between the standards adopted under this chapter and a standard required in a local, county, or municipal ordinance, this chapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. LICENSING OF CENTERS

Sec. 248A.051. LICENSE REQUIRED; PREMISES RESTRICTION. (a) A person may not own or operate a prescribed pediatric extended care center in this state unless the person holds an initial, renewal, or temporary license issued under this chapter. An applicant for a prescribed pediatric extended care center license may not provide services under that license until the department issues the license.

(b) A separate initial, renewal, or temporary license is required for each center located on separate premises, regardless of whether the centers are under the ownership or operation of the same

person.

(c) A person may not operate a center on the same premises as:

(1) a child-care facility licensed under Chapter 42, Human Resources Code; or

(2) any other facility licensed by the department or the Department of State Health Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 1, eff. September 1, 2015.

Sec. 248A.052. INITIAL LICENSE APPLICATION; ISSUANCE. (a) An applicant for an initial prescribed pediatric extended care center license shall submit to the department in accordance with department rules:

(1) a sworn application on the form prescribed by the department;

(2) a letter of credit as prescribed by the department to demonstrate the applicant's financial viability; and

(3) the required fees.

(b) The application must contain:

(1) the location of the premises of the center for which the license is sought;

(2) documentation, signed by the appropriate local government official, stating the location and use of the premises meet local zoning requirements;

(3) the name, address, and social security number of, and background and criminal history check information for:

(A) the applicant;

(B) the administrator responsible for daily operations of the center;

(C) the financial officer responsible for financial operations of the center; and

(D) each controlling person;

(4) the name, address, and federal employer identification number or taxpayer identification number of the applicant and of each controlling person, if the applicant or controlling person is not an

individual;

(5) the business name of the center;

(6) the maximum patient capacity requested for the center; and

(7) a sworn affidavit that the applicant has complied with this chapter and rules adopted under this chapter.

(c) The department shall issue an initial license to a center under this chapter if the department determines that the applicant and the center meet the requirements of this chapter and the rules and standards adopted under this chapter. The license must include:

(1) the license holder's name;

(2) the location of the premises of the center; and

(3) a statement indicating the center provides services to minors for 12 hours or less in a 24-hour period and does not provide 24-hour care.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0744, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 3, eff. September 1, 2015.

Sec. 248A.0525. TEMPORARY LICENSE PROCEDURES. (a) An applicant for an initial license under Section 248A.052 may request, in the manner prescribed by the department and in accordance with this section, that the department issue a temporary license pending the department's review of the applicant's application for an initial license. An applicant is not required to request a temporary license to receive an initial or renewal license.

(b) A temporary license issued under this section authorizes an applicant to provide nonresidential basic services to not more than six minors until the temporary license expires or terminates in accordance with this section.

(c) On receipt of a temporary license request, the department shall conduct a review of the applicant's policies, procedures, and

staffing plans to serve minors in the center.

(d) The department shall grant an applicant's request for a temporary license if the department determines the applicant is eligible for the license as provided by this subsection. The department may not grant a request for a temporary license if the department determines the applicant is ineligible for the license under this subsection. An applicant is eligible for a temporary license only if the applicant meets:

(1) the license application requirements of Sections 248A.052(a) and (b) and the license application rules adopted under this chapter;

(2) the building requirements and standards for a center provided in department rules adopted under this chapter; and

(3) the requirements of the department's review conducted under Subsection (c).

(e) A temporary license issued under this section expires on the earlier of:

(1) the 90th day after the date the temporary license is issued or the last day of any extension period granted by the department; or

(2) the date an initial license is issued under Section 248A.052.

(f) The department may not grant more than one extension of a temporary license issued under this section and may not grant an extension for a period that exceeds 90 days. The department shall grant an extension if a temporary license holder submits to the department an extension request in the manner prescribed by the department not later than the 30th day before the date the temporary license expires.

(g) A temporary license holder must comply with this chapter and the rules adopted under this chapter for the period for which the temporary license is issued, including an extension, if applicable. The department may take an enforcement action against a temporary license holder for failure to comply with this chapter and the rules adopted under this chapter.

(h) The department may conduct a complaint investigation and inspection of a temporary license holder.

Added by Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 4, eff. September 1, 2015.

Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL; NOTIFICATION. (a) An initial or renewal license issued under this chapter expires on the third anniversary of the date of issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during each three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) A person applying to renew a center license shall:

(1) submit a renewal application to the commission on a prescribed form at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by agency rule; and

(3) comply with any other requirements specified by agency rule.

(c) The commission shall assess a $50 per day late fee to a license holder who submits a renewal application after the date required by Subsection (b)(1), except that the total amount of a late fee may not exceed the lesser of 50 percent of the license renewal fee or $500.

(d) At least 120 days before expiration of a center license, the commission shall notify the owner or operator of the center of the license expiration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0745, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 10, eff. September 1, 2017.

Sec. 248A.054. LICENSE NOT TRANSFERABLE OR ASSIGNABLE. A license under this chapter is issued to the license holder named on the license at the location of the premises listed on the license and

is not transferable or assignable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER C. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER, COMMISSION, AND DEPARTMENT

Sec. 248A.101. ADOPTION OF RULES AND STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter.

(b) To protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, the rules must establish minimum center standards, including:

(1) standards relating to the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a center;

(2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;

(3) based on the size of the building and the number of minors served, building construction and renovation standards, including standards for plumbing, electrical, glass, manufactured buildings, accessibility for persons with physical disabilities, and fire protection;

(4) based on the size of the building and the number of minors served, building maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents or legal guardians;

(8) standards relating to physician-prescribed supportive

services;

(9) standards relating to transportation services and as required by Section 248A.1015; and

(10) standards relating to maintenance of patient medical records and program records in accordance with other law and with accepted professional standards and practices.

(c) The executive commissioner by rule shall authorize the commissioner to grant a waiver from compliance with standards adopted under Subsection (b)(3), (4), or (6) to a center located in a municipality that adopts a code to regulate any of those standards if the commissioner determines the applicable municipal code standards exceed the corresponding standards adopted under Subsection (b)(3), (4), or (6).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0746, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 1, eff. September 1, 2023.

Sec. 248A.1015. TRANSPORTATION STANDARDS. The executive commissioner by rule shall establish minimum standards for transportation services as required under Section 248A.101(b)(9). In adopting rules under this section, the executive commissioner:

(1) shall authorize a center to determine:

(A) in coordination with a minor client's parent, guardian, or other legally authorized representative, the schedule of transportation services; and

(B) in coordination with the client's prescribing physician, the necessary type of provider who must be present during transportation;

(2) shall permit a minor client's parent, guardian, or other legally authorized representative to decline a center's transportation services entirely or only on a specific date; and

(3) may not:

(A) require a plan of care or physician's order to document a client's need for transportation services to access a

center's services; or

(B) consider transportation services as nursing services included in a client's plan of care.

Added by Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 2, eff. September 1, 2023.

Sec. 248A.102. INSPECTIONS; CORRECTIVE ACTION PLAN. (a) The department may inspect a center, including its records, at reasonable times as necessary to ensure compliance with this chapter and the rules adopted under this chapter. The center shall provide the department with access to all center records.

(b) The department shall inspect a center before issuing or renewing a license under this chapter.

(c) The department may require a center that undergoes an inspection to:

(1) take appropriate corrective action necessary to comply with the requirements of this chapter and rules adopted under this chapter; and

(2) submit a corrective action plan to the department for approval.

(d) A center shall make available to any person on request a copy of each inspection report pertaining to the center that has been issued by the department. Before making an inspection report available under this subsection, the center shall redact from the report any information that is confidential under other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.103. FEES. (a) The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) A fee collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(c) A fee collected under this chapter is nonrefundable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0747, eff. April 2, 2015.

Sec. 248A.104. COMMISSION DUTIES. The commission shall designate a center licensed under this chapter as a health care services provider under the medical assistance program established under Chapter 32, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.105. INTERFERENCE WITH RIGHTS TO DETERMINE TREATMENT. (a) Except as provided by Subsection (b), any rules the executive commissioner adopts under this subchapter may not interfere with the authority of a parent, guardian, or legally authorized representative of a minor client to make decisions regarding the treatment provided to the child.

(b) The executive commissioner, by rule, may limit the maximum amount of authorized services provided to a client.

Added by Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 2, eff. September 1, 2023.

SUBCHAPTER D. CENTER REGULATION

Sec. 248A.151. ADMISSION CRITERIA FOR MINOR CLIENT; ADULT ACCOMPANIMENT. (a) A center may not admit a minor client to the center unless:

(1) the client is a medically dependent or technologically dependent minor;

(2) the minor's prescribing physician issues a prescription ordering care at a center;

(3) the minor's parent or legal guardian consents to the minor's admission to the center; and

(4) the admission is voluntary based on the parent's or legal guardian's preference in both managed care and non-managed care service delivery systems.

(b) An admission authorized under this section is not intended

to supplant the right to a Medicaid private duty nursing benefit, when medically necessary.

(c) A minor client's parent, legal guardian, or managing conservator is not required to accompany the client when:

(1) the client receives services in the center, including therapy services delivered in the center but billed separately; or

(2) the center transports or provides for the transport of the client to and from the center.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 8, eff. September 1, 2015.

Sec. 248A.152. RESTRICTIONS ON HOURS, SERVICES, AND PATIENT CAPACITY. (a) A center may not provide services to a minor for more than 12 hours in any 24-hour period.

(b) A center may not provide services other than services regulated under this chapter and department rule.

(c) The maximum patient capacity at a center may not exceed 60.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0748, eff. April 2, 2015.

Sec. 248A.153. LICENSE DISPLAY. Each center licensed under this chapter shall display the center's license in a conspicuous location readily visible to a person entering the center.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.154. MAINTENANCE OF RECORDS. Each center shall

maintain at the center the medical and other records required by this chapter and by rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.155. COMPLAINTS. A person may file a complaint with the department against a center licensed or required to be licensed under this chapter. The department shall investigate the complaint in accordance with the complaint procedures established under Chapter 161, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.156. COMPLIANCE WITH OTHER LAW. (a) A center shall comply with Chapter 260A and rules adopted under that chapter.

(b) An owner, center employee, or other person subject to Chapter 260A shall comply with that chapter and rules adopted under that chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.157. CLOSING OF CENTER. At least 30 days before the date a center voluntarily discontinues operation, the owner or operator of the center shall inform the parent or legal guardian of each minor client to whom the center is providing services of:

(1) the discontinuance; and

(2) the proposed time of the discontinuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.158. RELATION TO NURSING SERVICES. (a) Subject to Subsection (b), nursing services provided to a client by a center must be a replacement of private duty nursing or other skilled

nursing services provided in a setting other than a center unless additional nursing services are medically necessary.

(b) A center may provide nursing services in a group setting, consistent with appropriate staffing ratios as the executive commissioner determines.

Added by Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 9, eff. September 1, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 3, eff. September 1, 2023.

Sec. 248A.159. ADMISSION FORMS. (a) Before admission to a center, the center may obtain all required parent or legal guardian signatures for a patient on one consent document.

(b) The consent document must illustrate the involvement of the parent or legal guardian in developing and establishing the care and treatment to be provided to the patient in the center.

Added by Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 4, eff. September 1, 2023.

SUBCHAPTER E. GENERAL ENFORCEMENT

Sec. 248A.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license issued under this chapter for:

(1) a violation of this chapter or a rule or standard adopted under this chapter;

(2) an intentional or negligent act by the center or an employee of the center that the department determines significantly affects the health or safety of a minor served by the center;

(3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;

(4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state of any person required to undergo a background and criminal history check under this chapter;

(5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or

deception; or

(6) a license revocation, suspension, or other disciplinary action taken against the license holder or any person listed in the application in another state.

(b) Except as provided by Section 248A.203, the procedures by which the department denies, suspends, or revokes a license and by which those actions are appealed are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.202. PROBATION. (a) If the department finds that a center is in repeated noncompliance with this chapter, rules adopted under this chapter, or a corrective action plan, but that the noncompliance does not endanger a minor served by the center or the public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license.

(b) The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(c) The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a center that does not correct items that were in noncompliance or does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.203. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to a minor served by the center or the public health and safety. An emergency

suspension is effective immediately without a hearing on notice to the license holder.

(b) On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(c) The hearing and any appeal are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.204. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule or standard adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the minors served by a center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating this chapter or the rules adopted under this chapter, may by injunction:

(1) prohibit the person from continuing the violation;

(2) restrain or prevent the establishment or operation of a center without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) Venue for a suit brought under this section is in the county in which the center is located or in Travis County.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.205. CIVIL PENALTY. (a) A person who violates this chapter or a rule or standard adopted under this chapter or who fails to comply with a corrective action plan submitted under this chapter is liable for a civil penalty of not more than $500 for each violation if the department determines the violation threatens the health and safety of a minor served by the center.

(b) Each day a violation continues constitutes a separate violation for the purposes of this section.

(c) The attorney general may sue to collect the penalty. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) All penalties collected under this section shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.206. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly establishes or operates a center without the appropriate license issued under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day a violation continues constitutes a separate offense.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 248A.251. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or standard adopted or order issued under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0749, eff.

April 2, 2015.

Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule or standard adopted or order issued under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate center to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 11, eff. September 1, 2017.

Sec. 248A.252. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) any previous violations;

(4) the amount necessary to deter a future violation;

(5) the efforts made by the violator to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.253. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the

department shall give written notice of the report to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.254. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice sent under Section 248A.253, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall approve the determination and impose the recommended penalty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0750, eff. April 2, 2015.

Sec. 248A.255. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0751, eff. April 2, 2015.

Sec. 248A.256. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0752, eff. April 2, 2015.

Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the order of the department imposing an administrative penalty under Section 248A.256 becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0753, eff. April 2, 2015.

Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within the

period prescribed by Section 248A.257, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account in the court registry; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0754, eff. April 2, 2015.

Sec. 248A.259. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

(c) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.260. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.261. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.262. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.263. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

CHAPTER 250. NURSE AIDE REGISTRY AND CRIMINAL HISTORY CHECKS OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT IN CERTAIN FACILITIES SERVING THE ELDERLY, PERSONS WITH DISABILITIES, OR PERSONS WITH TERMINAL ILLNESSES

Sec. 250.001. DEFINITIONS. In this chapter:

(1) "Nurse aide registry" means a list maintained by the Department of Aging and Disability Services of nurse aides under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203).

(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.

Text of subdivision effective until April 1, 2025

(1-b) "Consumer-directed service option" has the meaning assigned by Section 531.051, Government Code.

Text of subdivision effective on April 1, 2025

(1-b) "Consumer-directed service option" has the meaning assigned by Section 546.0101, Government Code.

(2) "Direct contact with a consumer" means any contact with a consumer.

(3) "Facility" means:

(A) a nursing facility, custodial care home, or other institution licensed by the Department of Aging and Disability Services under Chapter 242;

(B) an assisted living facility licensed by the Department of Aging and Disability Services under Chapter 247;

(C) a home and community support services agency licensed under Chapter 142;

(D) a day activity and health services facility licensed by the Department of Aging and Disability Services under

Chapter 103, Human Resources Code;

(E) an ICF-IID licensed under Chapter 252;

(F) an adult foster care provider that contracts with the Department of Aging and Disability Services;

(G) a facility that provides mental health services and that is operated by or contracts with the Department of State Health Services;

(H) a local mental health authority designated under Section 533.035 or a local intellectual and developmental disability authority designated under Section 533.035;

(I) a person exempt from licensing under Section 142.003(a)(19) or (20);

(J) a special care facility licensed by the Department of State Health Services under Chapter 248;

(K) a mental health service unit of a hospital licensed under Chapter 241; or

(L) a prescribed pediatric extended care center licensed by the Department of Aging and Disability Services under Chapter 248A.

Text of subdivision effective until April 1, 2025

(3-a) "Financial management services agency" means an entity that contracts with the Department of Aging and Disability Services to serve as a fiscal and employer agent for an individual employer in the consumer-directed service option described by Section 531.051, Government Code.

Text of subdivision effective on April 1, 2025

(3-a) "Financial management services agency" means an entity that contracts with the commission to serve as a fiscal and employer agent for an individual employer in the consumer-directed service option described by Section 546.0101, Government Code.

(3-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring service providers to deliver program services.

(4) "Private agency" means a person engaged in the business of obtaining criminal history checks on behalf of a facility.

(5) "Regulatory agency" means a state agency referred to in Subdivision (3).

(6) "Commission" means the Health and Human Services

Commission.

(7) "Executive commissioner" means the executive commissioner of the commission.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 233, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1209, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.198, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1189 (H.B. 3737), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 19, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 1, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 605 (S.B. 944), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0755, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 4, eff. June 19, 2015.

Acts 2021, 87th Leg., R.S., Ch. 434 (S.B. 1103), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.47, eff. April 1, 2025.

Sec. 250.002. INFORMATION OBTAINED BY FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a) A regulatory agency or a financial management services agency on behalf of an individual employer is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment at a facility other than a facility licensed under Chapter 142;

(2) an employee of a facility other than a facility licensed under Chapter 142;

(3) an applicant for employment at or an employee of a facility licensed under Chapter 142 whose employment duties would or do involve direct contact with a consumer in the facility; or

(4) an applicant for employment by or an employee of an individual employer.

(a-1) A facility or a private agency on behalf of a facility is entitled to obtain from the Department of Public Safety of the State of Texas criminal history record information maintained by the Department of Public Safety that relates to a person who is:

(1) an applicant for employment with, an employee of, or a volunteer with the facility;

(2) an applicant for employment with or an employee of a person or business that contracts with the facility;

(3) an applicant for employment by or an employee of an individual employer; or

(4) a student enrolled in an educational program or course of study who is at the facility for educational purposes.

(b) A facility may:

(1) pay a private agency to obtain criminal history record information for a person described by Subsection (a-1) directly from the Department of Public Safety of the State of Texas; or

(2) obtain the information directly from the Department of Public Safety.

(c) The private agency shall forward criminal history record information received under this section to the facility requesting the information.

(c-1) A financial management services agency shall forward criminal history record information received under this section to the individual employer requesting the information.

(d) The executive commissioner of the Health and Human Services Commission may adopt rules relating to the processing of information requested or obtained under this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 2001, 77th Leg., ch. 1025, Sec. 3, eff. Sept. 1, 2001; Acts

2001, 77th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 20, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 266 (H.B. 729), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0756, eff. April 2, 2015.

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH; DISCHARGE. (a) A facility or individual employer may not employ an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the facility or to direct contact with the individual using the consumer-directed service option;

(2) if the applicant is a nurse aide, until the facility or individual employer further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility or individual employer verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer.

(a-1) Except for an applicant for employment at or an employee of a facility licensed under Chapter 242 or 247, a person licensed under another law of this state is exempt from the requirements of this chapter.

(a-2) If a facility employs a person pending a criminal history check, the facility shall ensure that the person has no direct contact with a consumer until the facility obtains the person's criminal history record information and verifies the person's

employability under Section 250.006.

(b) The facility may not employ an applicant covered by Subsection (a), except that in an emergency requiring immediate employment, a facility may hire on a temporary or interim basis a person not listed in the registry pending the results of a criminal conviction check, which must be requested:

(1) within 72 hours of employment; or

(2) if the facility is licensed under Chapter 242 or 247, within 24 hours of employment.

(c) A facility or individual employer shall immediately discharge any employee:

(1) who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer; or

(2) whose criminal history check reveals conviction of a crime that bars employment or that the individual employer or the facility determines is a contraindication to employment as provided by this chapter.

(c-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 363, Sec. 11, eff. January 1, 2014.

(d) In addition to the initial verification of employability, a facility or an individual employer or financial management services agency on behalf of an individual employer shall:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether any employee of the facility or of an individual employer is designated in either registry as having abused, neglected, or exploited a consumer or an individual using the consumer-directed service option; and

(2) maintain in the facility's or individual employer's books and records a copy of the results of the search conducted under Subdivision (1).

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.002 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 4, eff. Sept. 1, 2001; Acts

2001, 77th Leg., ch. 1267, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 436 (H.B. 2191), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 6, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 7, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(27), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 2, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 11, eff. January 1, 2014.

Sec. 250.0035. CERTIFICATE OF REGISTRATION; REQUIREMENTS FOR INCLUSION IN NURSE AIDE REGISTRY. (a) To be listed on the nurse aide registry, an applicant must:

(1) complete a training program approved by the commission that includes:

(A) not less than 100 hours of course work as specified by rule; and

(B) a competency evaluation on completion of the training program; and

(2) hold a certificate of registration issued by the commission on completion of the training program required under Subdivision (1).

(b) A certificate of registration and listing on the nurse aide registry expire on the second anniversary of the date the certificate is issued and the nurse aide is listed in the registry.

(c) To renew a nurse aide's certificate of registration and listing on the registry, the nurse aide must complete at least 24 hours of in-service education every two years, including training in geriatrics and, if applicable, in the care of patients with

Alzheimer's disease.

(c-1) Chapter 53, Occupations Code, does not apply to the issuance or renewal of a nurse aide's certificate of registration or an applicant's inclusion in the nurse aide registry under this section.

(d) The executive commissioner shall adopt the rules necessary to implement this section, including rules for the issuance and renewal of a certificate of registration under this section and the regulation of nurse aides as necessary to protect the public health and safety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 408 (S.B. 795), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 434 (S.B. 1103), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1136 (S.B. 681), Sec. 4, eff. September 1, 2023.

Sec. 250.004. CRIMINAL HISTORY RECORD OF EMPLOYEES. (a) Identifying information of an employee in a covered facility or of an employee of an individual employer shall be submitted electronically, on disk, or on a typewritten form to the Department of Public Safety to obtain the person's criminal conviction record when the person applies for employment and at other times as the facility or individual employer may determine appropriate. In this subsection, "identifying information" includes:

(1) the complete name, race, and sex of the employee;

(2) any known identifying number of the employee, including social security number, driver's license number, or state identification number; and

(3) the employee's date of birth.

(b) If the Department of Public Safety reports that a person has a criminal conviction of any kind, the conviction shall be reviewed by the facility, the financial management services agency, or the individual employer to determine if the conviction may bar the person from employment in a facility or by the individual employer under Section 250.006 or if the conviction may be a contraindication to employment.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 250.003 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1025, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.04, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 22, eff. September 1, 2011.

Sec. 250.005. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING ACCURACY OF INFORMATION. (a) If a facility, financial management services agency, or individual employer believes that a conviction may bar a person from employment in a facility or by the individual employer under Section 250.006 or may be a contraindication to employment, the facility or individual employer shall notify the applicant or employee.

(b) The Department of Public Safety of the State of Texas shall give a person notified under Subsection (a) the opportunity to be heard concerning the accuracy of the criminal history record information and shall notify the facility or individual employer if inaccurate information is discovered.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.004 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 23, eff. September 1, 2011.

Sec. 250.006. CONVICTIONS BARRING EMPLOYMENT. (a) A person for whom the facility or the individual employer is entitled to obtain criminal history record information may not be employed in a

facility or by an individual employer if the person has been convicted of an offense listed in this subsection:

(1) an offense under Chapter 19, Penal Code (criminal homicide);

(2) an offense under Chapter 20, Penal Code (kidnapping, unlawful restraint, and smuggling of persons);

(3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or disabled individual), or Section 21.11, Penal Code (indecency with a child);

(4) an offense under Section 22.011, Penal Code (sexual assault);

(5) an offense under Section 22.02, Penal Code (aggravated assault);

(6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);

(7) an offense under Section 22.041, Penal Code (abandoning or endangering a child, elderly individual, or disabled individual);

(8) an offense under Section 22.08, Penal Code (aiding suicide);

(9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);

(10) an offense under Section 25.08, Penal Code (sale or purchase of child);

(11) an offense under Section 28.02, Penal Code (arson);

(12) an offense under Section 29.02, Penal Code (robbery);

(13) an offense under Section 29.03, Penal Code (aggravated robbery);

(14) an offense under Section 21.08, Penal Code (indecent exposure);

(15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);

(16) an offense under Section 21.15, Penal Code (invasive visual recording);

(17) an offense under Section 22.05, Penal Code (deadly conduct);

(18) an offense under Section 22.021, Penal Code (aggravated sexual assault);

(19) an offense under Section 22.07, Penal Code (terroristic threat);

(20) an offense under Section 32.53, Penal Code

(exploitation of child, elderly individual, or disabled individual);

(21) an offense under Section 33.021, Penal Code (online solicitation of a minor);

(22) an offense under Section 34.02, Penal Code (money laundering);

(23) an offense under Section 35A.02, Penal Code (health care fraud);

(24) an offense under Section 36.06, Penal Code (obstruction or retaliation);

(25) an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or

(26) a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility or may not be employed by an individual employer before the fifth anniversary of the date the person is convicted of:

(1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;

(2) an offense under Section 30.02, Penal Code (burglary);

(3) an offense under Chapter 31, Penal Code (theft), that is punishable as a felony;

(4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of financial institution), that is punishable as a Class A misdemeanor or a felony;

(5) an offense under Section 32.46, Penal Code (fraudulent securing of document execution), that is punishable as a Class A misdemeanor or a felony;

(6) an offense under Section 37.12, Penal Code (false identification as peace officer; misrepresentation of property); or

(7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

(c) In addition to the prohibitions on employment prescribed by Subsections (a) and (b), a person for whom a facility licensed under Chapter 242 or 247 is entitled to obtain criminal history record information may not be employed in a facility licensed under Chapter

242 or 247 if the person has been convicted:

(1) of an offense under Section 30.02, Penal Code (burglary); or

(2) under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense under Section 30.02, Penal Code.

(d) For purposes of this section, a person who is placed on deferred adjudication community supervision for an offense listed in this section, successfully completes the period of deferred adjudication community supervision, and receives a dismissal and discharge in accordance with Article 42A.111, Code of Criminal Procedure, is not considered convicted of the offense for which the person received deferred adjudication community supervision.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.39, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 250.005 and amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 482, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1159, Sec. 1.33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1025, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1267, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 911, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1084, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1209, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.44, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 971 (S.B. 199), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 817 (H.B. 2609), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.06, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 24, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 3, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0757, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.68, eff. January 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 381 (H.B. 2894), Sec. 5, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.22, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 837 (S.B. 109), Sec. 7, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 830 (H.B. 2187), Sec. 7, eff. September 1, 2023.

Sec. 250.007. RECORDS PRIVILEGED. (a) The criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, the financial management services agency on behalf of the individual employer, the individual employer, and the applicant or employee who is the subject of the records.

(b) All criminal records and reports and the information they contain that are received by the regulatory agency or private agency for the purpose of being forwarded to the requesting facility or received by the financial management services agency under this chapter are privileged information.

(c) The criminal records and reports and the information they contain may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.07, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 25, eff. September 1, 2011.

Sec. 250.008. CRIMINAL PENALTY. (a) A person commits an offense if the person releases or otherwise discloses any information

received under this chapter except as prescribed by Section 250.007(b) or (c).

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.

Sec. 250.009. CIVIL LIABILITY. (a) A facility, an officer or employee of a facility, a financial management services agency, or an individual employer is not civilly liable for failure to comply with this chapter if the facility, financial management services agency, or individual employer makes a good faith effort to comply.

(b) A regulatory agency is not civilly liable to a person for criminal history record information forwarded to a requesting facility in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 747, Sec. 25, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 831, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.08, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 26, eff. September 1, 2011.

CHAPTER 251. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 251.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(66), eff. April 2, 2015.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

(4) "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

(5) "Dialysis technician" means an individual who is not a registered nurse or physician and who provides dialysis care under the supervision of a registered nurse or physician.

(6) "End stage renal disease" means that stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.

(7) "End stage renal disease facility" means a facility that provides dialysis treatment or dialysis training to individuals with end stage renal disease.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) "Medical review board" means a medical review board that:

(A) is appointed by a renal disease network organization which includes this state; and

(B) has a contract with the Centers for Medicare and Medicaid Services under Section 1881, Title XVIII, Social Security Act (42 U.S.C. Section 1395rr).

(9) "Physician" means an individual who is licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.790, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0758, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(66), eff. April 2, 2015.

Sec. 251.002. FEES. (a) The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and as prescribed by Section 12.0111.

(b) In setting fees under this section, the executive commissioner shall consider setting a range of license and renewal fees based on the number of dialysis stations at each end stage renal disease facility and the patient census.

(c) An end stage renal disease facility owned or operated by a state agency is not required to pay fees imposed under this chapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0759, eff. April 2, 2015.

Sec. 251.003. ADOPTION OF RULES. The executive commissioner shall adopt rules to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an end stage renal disease facility.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0760, eff. April 2, 2015.

SUBCHAPTER B. LICENSING OF END STAGE RENAL DISEASE FACILITIES

Sec. 251.011. LICENSE REQUIRED. Except as provided by Section 251.012, a person may not operate an end stage renal disease facility without a license issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.012. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities are not required to be licensed under this chapter:

(1) a home and community support services agency licensed under Chapter 142 with a home dialysis designation;

(2) a hospital licensed under Chapter 241 that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services due to a disaster declared by the governor or a federal disaster declared by the president of the United States occurring in this state or another state during the term of the disaster declaration;

(3) a hospital operated by or on behalf of the state as part of the managed health care provider network established under Chapter 501, Government Code, that provides dialysis only to individuals receiving:

(A) inpatient services from the hospital; or

(B) outpatient services while serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice;

(4) an end stage renal disease facility operated by or on behalf of the state as part of the managed health care provider network established under Chapter 501, Government Code, that provides dialysis only to individuals receiving those services while serving a term of confinement in a facility operated by or under contract with the Texas Department of Criminal Justice; or

(5) the office of a physician unless the office is used primarily as an end stage renal disease facility.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.02, eff. September 1, 2009.
Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.002, eff. September 1, 2011.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 65.05, eff. September 28, 2011.

Sec. 251.013. ISSUANCE AND RENEWAL OF LICENSE. (a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee.

(c) Each application must contain evidence that there is at least one qualified physician on the staff of the facility and that each dialysis technician on staff has completed the training program required by this chapter.

(d) The department may grant a temporary initial license to an applicant. The temporary initial license expires on the earlier of:

(1) the date the department issues or denies the license; or

(2) the date six months after the date the temporary initial license was issued.

(e) The department shall issue a license if, after inspection and investigation, it finds the applicant meets the requirements of

this chapter and the standards adopted under this chapter.

(f) The license is renewable every two years after submission of:

(1) the renewal application and fee; and

(2) a report on a form prescribed by the department.

(g) The report required under Subsection (f) must include information related to the quality of care at the end stage renal disease facility. The report must be in the form and documented by evidence as required by department rule.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0761, eff. April 2, 2015.

Sec. 251.014. MINIMUM STANDARDS. (a) The rules adopted under Section 251.003 must contain minimum standards to protect the health and safety of a patient of an end stage renal disease facility, including standards for:

(1) the qualifications and supervision of the professional staff, including physicians, and other personnel;

(2) the equipment used by the facility is compatible with the health and safety of the patients;

(3) the sanitary and hygienic conditions in the facility;

(4) quality assurance for patient care;

(5) the provision and coordination of treatment and services by the facility;

(6) clinical records maintained by the facility;

(7) design and space requirements for the facility for safe access by patients and personnel and for ensuring patient privacy;

(8) indicators of the quality of care provided by the facility; and

(9) water treatment and reuse by the facility.

(b) The standards described in Subsection (a)(7) of this section shall apply only:

(1) to a facility which initiates the provision of end stage renal disease services on or after September 1, 1996; or

(2) to the area of a facility affected by design and space modifications or renovations completed after September 1, 1996.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.015. MEDICAL REVIEW BOARD. (a) A medical review board shall advise the executive commissioner and the department on minimum standards and rules to be adopted by the executive commissioner under this chapter.

(b) The medical review board shall review the information on quality of care provided in the annual report filed under Section 251.013(f) and other appropriate information provided to or compiled by the department with respect to an end stage renal disease facility. Based on the review, the medical review board may advise the department about the quality of care provided by a facility and recommend an appropriate corrective action plan under Section 251.061 or other enforcement proceedings against the facility.

(c) Information concerning quality of care provided to or compiled by the department or medical review board and a recommendation of the medical review board are confidential. The information or recommendation may not be made available for public inspection, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery, subpoena, or other compulsory legal process.

(d) The department, in its discretion, may release to a facility information relating to that facility that is made confidential under Subsection (c). Release of information to a facility under this subsection does not waive the confidentiality of that information or the privilege from compulsory legal process.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0762, eff. April 2, 2015.

Sec. 251.016. EMERGENCY PREPAREDNESS AND CONTINGENCY OPERATIONS PLANNING. (a) In this section and Section 251.017, "emergency" means an incident likely to threaten the health, welfare, or safety of end stage renal disease facility patients or staff or the public, including a fire, equipment failure, power outage, flood, interruption in utility service, medical emergency, or natural or

other disaster.

(b) Each end stage renal disease facility shall adopt a written emergency preparedness and contingency operations plan to address the provision of care during an emergency. The plan must:

(1) be updated annually and approved by the facility's leadership each time the plan is updated;

(2) include procedures for notifying each of the following entities as soon as practicable regarding the closure or reduction in hours of operation of the facility due to an emergency:

(A) the department;

(B) each hospital with which the facility has a transfer agreement;

(C) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(D) each applicable local emergency management agency;

(3) except as provided by Subsection (d), require the facility to execute a contract with another end stage renal disease facility located within a 100-mile radius of the facility stipulating that the other end stage renal disease facility will provide dialysis treatment to facility patients who are unable to receive scheduled dialysis treatment due to the facility's closure or reduction in hours; and

(4) include a documented patient communications plan that includes procedures for notifying a patient when that patient's scheduled dialysis treatment is interrupted.

(c) As part of the emergency preparedness and contingency operations plan adopted under Subsection (b), each end stage renal disease facility shall develop and the facility's leadership must approve a continuity of care plan for the provision of dialysis treatment to facility patients during an emergency. The facility must provide a copy of the plan to each patient before providing or scheduling dialysis treatment. The plan must include:

(1) procedures for distributing written materials to facility patients that specifically describe the facility's emergency preparedness and contingency operations plan adopted under Subsection (b); and

(2) detailed procedures, based on the facility's patient population, on the facility's contingency plans, including transportation options, for patients to access dialysis treatment at each end stage renal disease facility with which the facility has an

agreement or made advance preparations to ensure that the facility's patients have the option to receive dialysis treatment.

(d) An end stage renal disease facility is not required to contract with another end stage renal disease facility under Subsection (b)(3) if:

(1) no other end stage renal disease facility is located within a 100-mile radius of the facility; and

(2) the facility obtains written approval from the department exempting the facility from that requirement.

(e) On request, an end stage renal disease facility shall provide the facility's emergency preparedness and contingency operations plan adopted under Subsection (b) to:

(1) the department;

(2) each hospital with which the facility has a transfer agreement;

(3) the trauma service area regional advisory council that serves the geographic area in which the facility is located; and

(4) each applicable local emergency management agency.

(f) Each end stage renal disease facility shall provide annual training to facility staff on the facility's emergency preparedness and contingency operations plan under this section.

(g) Each end stage renal disease facility shall annually contact a local and state disaster management representative, an emergency operations center, and a trauma service area regional advisory council to:

(1) request comments on whether the emergency preparedness and contingency operations plan adopted by the facility under Subsection (b) should be modified; and

(2) ensure that local agencies, regional agencies, state agencies, and hospitals are aware of the facility, the facility's policy on provision of life-saving treatment, the facility's patient population and potential transportation needs, and the anticipated number of patients affected.

Added by Acts 2021, 87th Leg., R.S., Ch. 961 (S.B. 1876), Sec. 1, eff. September 1, 2021.

Sec. 251.017. EMERGENCY CONTINGENCY PLAN FOR POWER AND POTABLE WATER. (a) Each end stage renal disease facility shall adopt an

emergency contingency plan for the continuity of essential building systems during an emergency. A plan adopted by a facility under this subsection must meet the requirements described by Subsection (b), (d), or (e).

(b) Unless the facility adopts a plan described by Subsection (d) or (e), an end stage renal disease facility must adopt an emergency contingency plan as required by Subsection (a) under which the facility is required:

(1) to have an on-site emergency generator that:

(A) has a type 2 essential electrical distribution system in accordance with the National Fire Protection Association 99, Section 4.5, and the National Fire Protection Association 110;

(B) is installed, tested, and maintained in accordance with the National Fire Protection Association 99, Section 4.5.4, and the National Fire Protection Association 110; and

(C) is kept at all times not less than 10 feet from the electrical transformer;

(2) except as provided by Subsection (c), to maintain an on-site fuel source that contains enough fuel capacity to power the on-site generator for not less than 24 hours, as determined by the electrical load demand on the emergency generator for that period;

(3) to maintain a sufficient quantity of potable water on-site to operate the facility's water treatment system for not less than 24 hours; and

(4) to maintain a water valve connection that allows an outside vendor to provide potable water to operate the facility's water treatment system.

(c) An end stage renal disease facility that adopts an emergency contingency plan under Subsection (b) is not required to maintain an on-site fuel source described by Subsection (b)(2) if the facility's on-site emergency generator uses a vapor liquefied petroleum gas system with a dedicated fuel supply.

(d) Unless the facility adopts a plan described by Subsection (b) or (e), an end stage renal disease facility must adopt an emergency contingency plan as required by Subsection (a) under which the facility is required:

(1) to maintain sufficient resources to provide on demand or to execute a contract with an outside supplier or vendor to provide on demand:

(A) a portable emergency generator that:

(i) has an electrical transfer switch with a plug-in device to provide emergency power for patient care areas and complies with National Fire Protection Association 99, Section 4.5.2.2.2; and

(ii) has a water valve connection that allows for the use of potable water to operate the facility's water treatment system;

(B) an alternate power source for light, including battery-powered light, that:

(i) is separate and independent from the normal electrical power source;

(ii) is capable of providing light for not less than one and a half hours;

(iii) is capable of providing a sufficient amount of light to allow for the safe evacuation of the building; and

(iv) is maintained and tested not less than four times each year; and

(C) potable water;

(2) to implement the plan when the facility loses electrical power due to a natural or man-made event during which the electrical power may not be restored within 24 hours; and

(3) to contact the outside supplier or vendor with which the facility contracts under Subdivision (1), if applicable, not later than 36 hours after the facility loses electrical power.

(e) Unless the facility adopts a plan described by Subsection (b) or (d), an end stage renal disease facility must adopt an emergency contingency plan as required by Subsection (a) under which the facility is required to execute a contract with another end stage renal disease facility that is located within a 100-mile radius of the facility stipulating that the other end stage renal disease facility will provide emergency contingency care to the facility's patients. The other end stage renal disease facility with which the facility contracts must have an alternate power source for light, including battery-powered light, that:

(1) is separate and independent from the normal electrical power source;

(2) is capable of providing light for not less than one and a half hours;

(3) is capable of providing a sufficient amount of light to allow for the safe evacuation of the building; and

(4) is maintained and tested not less than four times each year.

Added by Acts 2021, 87th Leg., R.S., Ch. 961 (S.B. 1876), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. DIALYSIS TECHNICIANS

Sec. 251.031. TRAINING REQUIRED. An individual may not act as a dialysis technician employed by or working in an end stage renal disease facility unless that individual is trained and competent under this subchapter.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.032. MINIMUM REQUIREMENTS; TRAINING. The department rules adopted under Section 251.003 shall establish:

(1) minimum standards for the curricula and instructors used to train individuals to act as dialysis technicians;

(2) minimum standards for the determination of the competency of individuals who have been trained as dialysis technicians;

(3) minimum requirements for documentation that an individual has been trained and determined to be competent as a dialysis technician and the acceptance of that documentation by another end stage renal disease facility that may later employ the individual; and

(4) the acts and practices that are allowed or prohibited for dialysis technicians.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0763, eff. April 2, 2015.

Sec. 251.033. PROVISION OF HOME DIALYSIS CARE IN NURSING FACILITIES. (a) A dialysis technician may provide home dialysis care in a nursing facility, including hemodialysis, only if:

(1) the care is provided under the personal supervision of

a registered nurse who is:

(A) in compliance with all commission rules under 26 T.A.C. Section 558.405 regarding training and competency for registered nurses to provide care at end stage renal disease facilities; and

(B) employed by the same entity that employs the dialysis technician; and

(2) the dialysis technician has complied with all commission rules regarding training and competency for dialysis technicians.

(b) For purposes of this section, "personal supervision" means supervision of a dialysis technician by a registered nurse who is physically present in the room during the administration of dialysis services by the dialysis technician.

Added by Acts 2021, 87th Leg., R.S., Ch. 955 (S.B. 1692), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. INSPECTIONS

Sec. 251.051. INSPECTIONS. (a) The department may conduct an inspection of an end stage renal disease facility to verify compliance with this chapter, rules adopted under this chapter, or a corrective action plan under Section 251.061.

(b) An inspection conducted under this section may be unannounced.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.052. DISCLOSURE OF UNANNOUNCED INSPECTION; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date or time of or any other fact about an unannounced inspection of an end stage renal disease facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the Health and Human Services Commission, including the office of the inspector general;

(3) the office of the attorney general; or

(4) any other person authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0764, eff. April 2, 2015.

SUBCHAPTER E. ENFORCEMENT

Sec. 251.061. CORRECTIVE ACTION PLAN. (a) The department may use a corrective action plan as an alternative to enforcement action under this subchapter.

(b) Before taking enforcement action under this subchapter, the department shall consider whether the use of a corrective action plan under this section is appropriate. In determining whether to use a corrective action plan, the department shall consider whether:

(1) the end stage renal disease facility has violated this chapter or a rule adopted under this chapter and the violation has resulted in an adverse patient result;

(2) the facility has a previous history of lack of compliance with this chapter, rules adopted under this chapter, or a corrective action plan; or

(3) the facility fails to agree to a corrective action plan.

(c) The department may use a level one, level two, or level three corrective action plan, as determined by the department in accordance with this section, after inspection of the end stage renal disease facility.

(d) A level one corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter, but the circumstances are not serious or life-threatening. Under a level one corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor may supervise the implementation of the plan.

(e) A level two corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are potentially serious or life-threatening or if the department finds that the facility failed to implement or comply with a level one corrective action plan. Under a level two corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. The department or a monitor shall supervise the implementation of the plan. Supervision of the implementation of the plan may include on-site supervision, observation, and direction.

(f) A level three corrective action plan is appropriate if the department finds that the end stage renal disease facility is not in compliance with this chapter or rules adopted under this chapter and the circumstances are serious or life-threatening or if the department finds that the facility failed to comply with a level two corrective action plan or to cooperate with the department in connection with that plan. Under a level three corrective action plan, the department shall require the facility to develop and implement a corrective action plan approved by the department. In connection with requiring a level three corrective action plan, the department may seek the appointment of a temporary manager under Subchapter F.

(g) A corrective action plan is not confidential. Information contained in the plan may be excepted from required disclosure under Chapter 552, Government Code, in accordance with that chapter or other applicable law.

(h) The department shall select the monitor for a corrective action plan. The monitor shall be an individual or team of individuals and may include a professional with end stage renal disease experience or a member of the medical review board. The monitor may not be or include individuals who are current or former employees of the facility that is the subject of the corrective action plan or of an affiliated facility. The purpose of the monitor is to observe, supervise, consult, and educate the facility and the employees of the facility under a corrective action plan. The facility shall pay the cost of the monitor.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.062. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license issued under this chapter for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that an end stage renal disease facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of an end stage renal disease facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996. Amended by Acts 2003, 78th Leg., ch. 802, Sec. 11, 12, eff. June 20, 2003.

Sec. 251.0621. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall refer the matter to the State Office of Administrative Hearings, and an administrative law judge of that office shall conduct a hearing not earlier than the 10th day or

later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 802, Sec. 13, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0765, eff. April 2, 2015.

Sec. 251.063. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of patients of an end stage renal disease facility.

(b) A district court, on petition of the department and on a finding that a person is violating this chapter or a rule adopted under this chapter, may by injunction:

(1) prohibit a person from continuing the violation;

(2) restrain or prevent the operation of an end stage renal disease facility without a license issued under this chapter; or

(3) grant other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the end stage renal disease facility is located or in Travis County.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.064. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 251.011 or 251.031.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.065. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not more than $1,000 for each violation if the department finds that the violation threatens the health and safety of a patient of an end stage renal disease facility.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.066. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY. (a) If after investigation of a possible violation and the facts surrounding that possible violation the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty,

based on the factors listed in Section 251.066(c); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the department shall order the person to pay the recommended penalty.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0766, eff. April 2, 2015.

Sec. 251.068. HEARING; ORDER. (a) If the person notified fails to respond in a timely manner to the notice under Section 251.067(b) or if the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall conduct the hearing.

(a-1) The department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a written proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0767, eff. April 2, 2015.

Sec. 251.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the department's order under Section 251.068(c) to the person notified. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the department's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the

affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the department's order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0768, eff. April 2, 2015.

Sec. 251.070. PENALTY DEPOSITED TO STATE TREASURY. A civil or

administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.

Sec. 251.071. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date a department order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 251.063 or 251.065 or to enforce an administrative penalty assessed under Section 251.066, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1996.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0769, eff. April 2, 2015.

SUBCHAPTER F. TEMPORARY MANAGER

Sec. 251.091. APPOINTMENT BY AGREEMENT. (a) A person holding a controlling interest in an end stage renal disease facility may, at any time, request the department to assume the management of the facility through the appointment of a temporary manager under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the temporary manager's appointment and authority; and

(2) preserve all rights of the individuals served by the facility granted by law.

(d) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.092. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a temporary manager to manage an end stage renal disease facility if:

(1) the facility is operating without a license;

(2) the department has denied, suspended, or revoked the facility's license but the facility continues to operate;

(3) license denial, suspension, or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility;

(5) the facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure; or

(6) the department determines a level three corrective action plan under Section 251.061 that includes appointment of a temporary manager is necessary to address serious or life-threatening conditions at the facility.

(b) After a hearing, a court shall appoint a temporary manager

to manage a facility if the court finds that the appointment of the manager is necessary.

(c) The court order shall address the duties and authority of the temporary manager, which may include management of the facility and the provision of dialysis services to facility patients until specified circumstances occur, such as new ownership of the facility, compliance with this chapter and rules adopted under this chapter, or closure of the facility.

(d) If possible, the court shall appoint as temporary manager an individual whose background includes administration of end stage renal disease facilities or similar facilities.

(e) Venue for an action under this section is in Travis County.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

Sec. 251.093. FEE; RELEASE OF FUNDS. (a) A temporary manager appointed under Section 251.092 is entitled to a reasonable fee as determined by the court. The fee shall be paid by the facility.

(b) The temporary manager may petition the court to order the release to the manager of any payment owed the manager for care and services provided to patients of the facility if the payment has been withheld.

(c) Withheld payments that may be released under Subsection (b) may include payments withheld by a governmental agency or other entity before or during the appointment of the temporary manager, including:

(1) Medicaid, Medicare, or insurance payments; or

(2) payments from another third party.

Added by Acts 1995, 74th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 252. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 252.001. PURPOSE. The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards for the provision of services to individuals residing in intermediate care facilities for individuals with an intellectual disability and the

establishment, construction, maintenance, and operation of facilities providing this service that, in light of advancing knowledge, will promote quality in the delivery of services and treatment of residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0771, eff. April 2, 2015.

Sec. 252.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Designee" means a state agency or entity with which the department contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means a home or an establishment that:

(A) furnishes food, shelter, and treatment or services to four or more individuals unrelated to the owner;

(B) is primarily for the diagnosis, treatment, or rehabilitation of individuals with an intellectual disability or related conditions; and

(C) provides in a protected setting continuous evaluation, planning, 24-hour supervision, coordination, and integration of health or rehabilitative services to help each resident function at the resident's greatest ability.

(5) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.

(6) "Person" means an individual, firm, partnership, corporation, association, or joint stock company and includes a legal successor of those entities.

(7) "Resident" means an individual, including a client,

with an intellectual disability or a related condition who is residing in a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0772, eff. April 2, 2015.

Sec. 252.003. EXEMPTIONS. Except as otherwise provided by this chapter, this chapter does not apply to:

(1) an establishment that:

(A) provides training, habilitation, rehabilitation, or education to individuals with an intellectual disability or related conditions;

(B) is operated under the jurisdiction of a state or federal agency, including the department, commission, Department of Assistive and Rehabilitative Services, Department of State Health Services, Texas Department of Criminal Justice, and United States Department of Veterans Affairs; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; or

(2) an establishment that is conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of individuals who are ill and who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.094, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0773, eff. April 2, 2015.

Sec. 252.004. ALLOCATED FEDERAL MONEY. The department may accept and use any money allocated by the federal government to the department for administrative expenses.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.005. LANGUAGE REQUIREMENTS PROHIBITED. A facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.006. RIGHTS OF RESIDENTS. Each facility shall implement and enforce Chapter 102, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.007. PAPERWORK REDUCTION RULES. (a) The executive commissioner shall adopt rules to reduce the amount of paperwork a facility must complete and retain.

(a-1) The department shall attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department and each facility shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0774, eff. April 2, 2015.

Sec. 252.008. RULES GENERALLY. The executive commissioner shall adopt rules related to the administration and implementation of this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 160, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0775, eff.

April 2, 2015.

Sec. 252.0085. RESTRAINT AND SECLUSION. A person providing services to a resident of a facility licensed by the department under this chapter or operated by the department and exempt under Section 252.003 from the licensing requirements of this chapter shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 4, eff. September 1, 2005.

Sec. 252.009. CONSULTATION AND COORDINATION. (a) Whenever possible, the department shall:

(1) use the services of and consult with state and local agencies in carrying out the department's functions under this chapter; and

(2) use the facilities of the department, particularly in establishing and maintaining standards relating to the humane treatment of residents.

(b) The department may cooperate with local public health officials of a municipality or county in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department under this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0776, eff. April 2, 2015.

Sec. 252.010. CHANGE OF ADMINISTRATORS; FEE. A facility that hires a new administrator or other person designated as the chief management officer for the facility shall:

(1) notify the department in writing of the change not

later than the 30th day after the date on which the change becomes effective; and

(2) pay a $20 administrative fee to the department.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.011. PROHIBITION OF REMUNERATION. (a) A facility may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the facility or residents for a fee.

(b) The department may revoke the license of a facility that violates Subsection (a).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 252.031. LICENSE REQUIRED. A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a facility in this state without a license issued under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.0311. PERSON INELIGIBLE FOR LICENSE. (a) In this section, "controlling person" means a person who, acting alone or with others, has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or a person who operates a facility. The term includes:

(1) a management company or other business entity that operates or contracts with others for the operation of a facility;

(2) a person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of a facility; and

(3) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is

formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(b) A controlling person described by Subsection (a)(3) does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(c) The executive commissioner may adopt rules that specify the ownership interests and other relationships that qualify a person as a controlling person.

(d) A person is not eligible for a license or to renew a license if the applicant, a controlling person with respect to the applicant, or an administrator or chief financial officer of the applicant has been convicted of an offense that would bar a person's employment at a facility in accordance with Chapter 250.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 10, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0777, eff. April 2, 2015.

Sec. 252.032. LICENSE APPLICATION. (a) An application for a license is made to the department on a form provided by the department and must be accompanied by the license fee adopted under Section 252.034.

(b) The application must contain information that the department requires. The department may require affirmative evidence of ability to comply with the standards and rules adopted under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.033. ISSUANCE AND RENEWAL OF LICENSE. (a) After receiving the application, the commission shall issue a license if, after inspection and investigation, it finds that the applicant and facility meet the requirements established under this chapter.

(b) The commission may issue a license only for:

(1) the premises and persons or governmental unit named in the application; and

(2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) A license is renewable on the third anniversary of issuance or renewal of the license after:

(1) an inspection;

(2) filing and approval of a renewal report; and

(3) payment of the renewal fee.

(e) The renewal report required under Subsection (d)(2) must be filed in accordance with rules adopted by the executive commissioner that specify the form of the report, the date it must be submitted, and the information it must contain.

(f) The commission may not issue a license for new beds or an expansion of an existing facility under this chapter unless the addition of new beds or the expansion is included in the plan approved by the commission in accordance with Section 533A.062.

(g) A license or renewal fee imposed under this chapter is an allowable cost for reimbursement under the state Medicaid program. An increase in the amount of a fee shall be reflected in reimbursement rates prospectively.

(h) The executive commissioner by rule shall:

(1) define specific, appropriate, and objective criteria on which the commission may deny an initial license application or license renewal or revoke a license; and

(2) adopt a system under which:

(A) licenses expire on staggered dates during each three-year period; and

(B) the commission prorates the license fee as appropriate if the expiration date of a license changes as a result of the system adopted under Paragraph (A).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 534, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0778, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 12, eff. September 1, 2017.

Sec. 252.034. LICENSE FEES. (a) The executive commissioner by rule may adopt a fee for a license issued under this chapter. The fee may not exceed $225 plus $7.50 for each unit of capacity or bed space for which the license is sought.

(b) The license fee must be paid with each application for an initial license or for a renewal or change of ownership of a license.

(c) A facility operated by the state is not required to pay a license fee.

(d) The executive commissioner by rule may adopt an additional fee for the approval of an increase in bed space.

(e) All license fees collected under this section shall be deposited in the state treasury to the credit of the commission and may be appropriated to the commission to administer and enforce this chapter.

(f) An applicant who submits an application for license renewal later than the 45th day before the expiration date of a current license is subject to a late fee in accordance with commission rules.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 19, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0779, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 13, eff. September 1, 2017.

Sec. 252.035. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter.

(b) The status of an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.036. MINIMUM STANDARDS. (a) The executive commissioner may adopt minimum standards relating to:

(1) the construction or remodeling of a facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) sanitary and related conditions in a facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(3) equipment essential to the residents' health and welfare;

(4) the reporting and investigation of injuries, incidents, and unusual accidents and the establishment of other policies and procedures necessary to ensure resident safety;

(5) behavior management, including use of seclusion and physical restraints;

(6) policies and procedures for the control of communicable diseases in employees and residents;

(7) the use and administration of medication in conformity with applicable law and rules for pharmacy services;

(8) specialized nutrition support such as delivery of enteral feedings and parenteral nutrients;

(9) requirements for in-service education of each employee who has any contact with residents;

(10) the regulation of the number and qualification of all personnel, including management and professional support personnel, responsible for any part of the care given to residents; and

(11) the quality of life and the provision of active treatment to residents.

(b) The department shall enforce the adopted minimum standards.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0780, eff. April 2, 2015.

Sec. 252.037. REASONABLE TIME TO COMPLY. The executive commissioner by rule shall give a facility that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0781, eff. April 2, 2015.

Sec. 252.0375. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify a facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a review under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0782, eff. April 2, 2015.

Sec. 252.038. FIRE SAFETY REQUIREMENTS. (a) A facility shall comply with fire safety requirements established under this section.

(b) The executive commissioner by rule shall adopt the fire safety standards applicable to the facility. The fire safety standards must be the same as the fire safety standards established by an edition of the Life Safety Code of the National Fire Protection Association. If required by federal law or regulation, the edition selected may be different for facilities or portions of facilities operated or approved for construction at different times.

(c) A facility that is licensed under applicable law on September 1, 1997, must comply with the fire safety standards, including fire safety standards imposed by municipal ordinance, applicable to the facility on that date.

(d) The rules adopted under this section do not prevent a facility licensed under this chapter from voluntarily conforming to fire safety standards that are compatible with, equal to, or more stringent than those adopted by the executive commissioner.

(e) Notwithstanding any other provision of this section, a municipality may enact additional and more stringent fire safety standards applicable to new construction begun on or after September 1, 1997.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0783, eff. April 2, 2015.

Sec. 252.039. POSTING. Each facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the commission that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the commission;

(3) a notice in a form prescribed by the commission stating that inspection and related reports are available at the facility for

public inspection and providing the commission's toll-free telephone number that may be used to obtain information concerning the facility;

(4) a concise summary of the most recent inspection report relating to the facility;

(5) a notice providing instructions for reporting an allegation of abuse, neglect, or exploitation to the commission; and

(6) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 252.132 and 252.133.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 192, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 11, eff. June 11, 2009.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 6, eff. September 1, 2023.

Sec. 252.040. INSPECTIONS. (a) The department or the department's designee may make any inspection, survey, or investigation that it considers necessary and may enter the premises of a facility at reasonable times to make an inspection, survey, or investigation in accordance with department rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of a facility to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the facility by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions the department finds during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident. The procedures may include photography or photocopying of relevant documents, such as license holder's notes, physician's orders, and

pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) A facility, an officer or employee of a facility, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The executive commissioner shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper.

(i) The department shall have specialized staff conduct inspections, surveys, or investigations of facilities under this section.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 160, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0784, eff. April 2, 2015.

Sec. 252.041. UNANNOUNCED INSPECTIONS. (a) Each licensing period, the commission shall conduct at least three unannounced inspections of each facility.

(b) In order to ensure continuous compliance, the commission shall randomly select a sufficient percentage of facilities for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(c) The commission may require additional inspections.

(d) As considered appropriate and necessary by the commission, the commission may invite at least one person as a citizen advocate to participate in inspections. The invited advocate must be an

individual who has an interest in or who is employed by or affiliated with an organization or entity that represents, advocates for, or serves individuals with an intellectual disability or a related condition.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0785, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 14, eff. September 1, 2017.

Sec. 252.042. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

(1) the department;

(2) the office of the attorney general;

(3) a representative of an agency or organization when a Medicaid survey is made concurrently with a licensing inspection; or

(4) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.043. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of a validation survey is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.044. REPORTING VIOLATIONS. (a) The department or the department's representative conducting an inspection, survey, or investigation under this chapter shall:

(1) list each violation of a law or rule on a form designed by the department for inspections; and

(2) identify the specific law or rule the facility violates.

(b) At the conclusion of an inspection, survey, or investigation under this chapter, the department or the department's representative conducting the inspection, survey, or investigation shall discuss the violations with the facility's management in an exit conference. The department or the department's representative shall leave a written list of the violations with the facility and the person designated by the facility to receive notice under Section 252.066 at the time of the exit conference. If the department or the department's representative discovers any additional violations during the review of field notes or preparation of the official final list, the department or the department's representative shall give the facility an additional exit conference regarding the additional violations. An additional exit conference must be held in person and may not be held by telephone, e-mail, or facsimile transmission.

(c) The facility shall submit a plan to correct the violations to the regional director not later than the 10th working day after the date the facility receives the final official statement of violations.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 974 (S.B. 344), Sec. 6, eff. September 1, 2007.

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 252.061. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend a facility's license or order an immediate closing of part of the facility if:

(1) the department finds the facility is operating in

violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The executive commissioner by rule shall provide for the placement of residents during the facility's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of a facility under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of a facility is valid for 10 days after the effective date of the order.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0786, eff. April 2, 2015.

Sec. 252.062. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a person from continuing a violation of the standards prescribed by this chapter if the department finds that the violation creates an immediate threat to the health and safety of the facility's residents.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of a facility without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall bring and conduct on behalf of the state a suit authorized by this section.

(d) A suit for a temporary restraining order or other

injunctive relief must be brought in Travis County or the county in which the alleged violation occurs.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 192, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.063. LICENSE REQUIREMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 252.031.

(b) An offense under this section is punishable by a fine of not more than $1,000 for the first offense and not more than $500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.064. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $10,000 for each violation if the department determines the violation threatens the health and safety of a resident.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

(c) On request of the department, the attorney general may institute an action in a district court to collect a civil penalty under this section. Any amount collected shall be remitted to the comptroller for deposit to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 23, Sec. 1, eff. May 3, 1999.

Sec. 252.065. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:

(1) violates this chapter or a rule, standard, or order adopted or license issued under this chapter;

(2) makes a false statement, that the person knows or should know is false, of a material fact:

(A) on an application for issuance or renewal of a

license or in an attachment to the application; or

(B) with respect to a matter under investigation by the commission;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by the institution; or

(B) any portion of the premises of an institution;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(6) fails to pay a penalty assessed by the commission under this chapter not later than the 10th day after the date the assessment of the penalty becomes final;

(7) fails to submit a plan of correction within 10 days after receiving a statement of licensing violations; or

(8) fails to notify the commission of a change in ownership before the effective date of that change of ownership.

(b) The penalty for a facility with fewer than 60 beds shall be not less than $100 or more than $1,000 for each violation. The penalty for a facility with 60 beds or more shall be not less than $100 or more than $5,000 for each violation. Each day a violation occurs or continues is a separate violation for purposes of imposing a penalty. The total amount of penalties assessed under this subsection for an on-site regulatory visit or complaint investigation, regardless of the duration of any ongoing violations, may not exceed:

(1) $5,000 for a facility with fewer than 60 beds; and

(2) $25,000 for a facility with 60 beds or more.

(c) The executive commissioner by rule shall specify each violation for which an administrative penalty may be assessed. In determining which violations warrant penalties, the executive commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(2) whether the affected facility had identified the

violation as a part of its internal quality assurance process and had made appropriate progress on correction.

(d) The executive commissioner by rule shall establish a specific and detailed schedule of appropriate and graduated penalties for each violation based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(2) the history of previous violations;

(3) whether the affected facility had identified the violation as a part of its internal quality assurance process and had made appropriate progress on correction;

(4) the amount necessary to deter future violations;

(5) efforts made to correct the violation;

(6) the size of the facility; and

(7) any other matters that justice may require.

(e) The executive commissioner by rule shall provide the facility with a reasonable period of time, not less than 45 days, following the first day of a violation to correct the violation before the commission may assess an administrative penalty if a plan of correction has been implemented. This subsection does not apply to a violation described by Subsections (a)(2)-(8) or to a violation that the commission determines:

(1) represents a pattern of violation that results in actual harm;

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope, constitutes a potential for actual harm, and relates to:

(A) staff treatment of a resident;

(B) active treatment;

(C) client behavior and facility practices;

(D) health care services;

(E) drug administration;

(F) infection control;

(G) food and nutrition services; or

(H) emergency preparedness and response;

(4) constitutes an immediate threat to the health or safety of a resident; or

(5) substantially limits the facility's capacity to provide care.

(f) The commission may not assess an administrative penalty for a minor violation if the person corrects the violation not later than the 46th day after the date the person receives notice of the violation.

(g) The executive commissioner shall establish a system to ensure standard and consistent application of penalties regardless of the facility location.

(h) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

(i) The commission may not assess an administrative penalty against a state agency.

(j) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected. The administrative penalty ceases to be incurred only if the facility:

(1) notifies the commission in writing of the correction of the violation and of the date the violation was corrected; and

(2) shows later that the violation was corrected.

(k) Rules adopted under this section shall include specific, appropriate, and objective criteria that describe the scope and severity of a violation that results in a recommendation for each specific penalty.

(l) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

(m) In this section:

(1) "Actual harm" means a negative outcome that compromises a resident's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a resident" means a situation that causes, or is likely to cause,

serious injury, harm, or impairment to or the death of a resident.

(3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the facility; or

(B) that affects or has the potential to affect a large portion of or all of the residents of the facility.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 534, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 20, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0787, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 15, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1304 (H.B. 3803), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 906 (H.B. 3720), Sec. 3, eff. September 1, 2021.

Sec. 252.0651. APPLICATION OF OTHER LAW. The department may not assess more than one monetary penalty under this chapter for a violation arising out of the same act or failure to act.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 4, eff. Sept. 1, 1999.

Sec. 252.066. NOTICE; REQUEST FOR HEARING. (a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation

to the person designated by the facility to receive notice. The notice shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty based on the factors listed in Section 252.065(d); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date on which the notice is received, the person notified may accept the determination of the department made under this section, including the proposed penalty, or may make a written request for a hearing on that determination.

(c) If the person notified under this section of the violation accepts the determination of the department or if the person fails to respond in a timely manner to the notice, the department shall issue an order approving the determination and ordering that the person pay the proposed penalty.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 534, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0788, eff. April 2, 2015.

Sec. 252.067. HEARING; ORDER. (a) If the person notified under Section 252.066 requests a hearing, an administrative law judge shall set a hearing and the department shall give written notice of the hearing to the person.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0789, eff. April 2, 2015.

Sec. 252.068. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The department shall give notice of the order under Section 252.067(c) to the person alleged to have committed the violation and the person designated by the facility to receive notice under Section 252.066. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the order.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(2) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order becomes final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within 10

days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

(e) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the penalty.

(f) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (c)(1)(A) and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.069. USE OF ADMINISTRATIVE PENALTY. An administrative penalty collected under this subchapter may be appropriated for the purpose of funding the grant program established under Section 161.074, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 4, eff. September 1, 2005.

Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR ADMINISTRATIVE PENALTY. (a) If the attorney general brings an action against a person under Section 252.062 or 252.064 or to enforce an administrative penalty assessed under Section 252.065 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(b) For purposes of this section, reasonable expenses and costs include expenses incurred by the department and the attorney general in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.

Sec. 252.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty authorized by this subchapter, the department may allow a person subject to the penalty to use, under the supervision of the department, all or part of the amount of the penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of a facility resident.

(c) The department may not offer amelioration to a person if the department determines that the charged violation constitutes immediate jeopardy to the health and safety of a facility resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of assessment of

administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 252.067.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 252.067 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the facility that will improve services to or quality of care of residents of the facility;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the facility;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(h) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the commission or the State Office of Administrative Hearings, as appropriate, shall deny a pending request for a hearing submitted by the person under Section 252.066(b).

(i) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(j) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 619, Sec. 2, eff. Sept. 1, 2001.
Added by Acts 1999, 76th Leg., ch. 534, Sec. 6, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1284, Sec. 8.02, eff. June 15, 2001.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0790, eff. April 2, 2015.

SUBCHAPTER D. TRUSTEES FOR FACILITIES

Sec. 252.091. FINDINGS AND PURPOSE. (a) The legislature finds that, under some circumstances, closing a facility for a violation of a law or rule may:

(1) have an adverse effect on the facility's residents and their families; and

(2) result in a lack of readily available financial resources to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the facility in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.092. APPOINTMENT BY AGREEMENT. (a) A person who holds a controlling interest in a facility may request the department to assume the operation of the facility through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the facility under conditions both parties consider appropriate if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify the terms and conditions of the trustee's appointment and authority; and

(2) preserve the rights of the residents as granted by law.

(d) The agreement terminates at the time:

(1) specified by the parties; or

(2) either party notifies the other in writing that the party is terminating the appointment agreement.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.093. INVOLUNTARY APPOINTMENT. (a) The department may request the attorney general to bring an action on behalf of the state for the appointment of a trustee to operate a facility if:

(1) the facility is operating without a license;

(2) the department has suspended or revoked the facility's license;

(3) license suspension or revocation procedures against the facility are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the facility is closing and arrangements for relocation of the residents to other licensed facilities have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the facility's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a facility if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes intellectual disability service administration.

(e) An action under this section must be brought in Travis County or the county in which the violation is alleged to have occurred.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 192, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0791, eff. April 2, 2015.

Sec. 252.094. FEE; RELEASE OF MONEY. (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

(1) for Medicaid or insurance;

(2) by a third party; or

(3) for medical expenses borne by the residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.095. EMERGENCY ASSISTANCE FEE. (a) In addition to the licensing and renewal fee collected under Section 252.034, the department may collect an annual fee to be used to make emergency assistance money available to a facility licensed under this chapter.

(b) The fee collected under this section shall be in the amount prescribed by Section 242.097(c) and shall be deposited to the credit of the nursing and convalescent home trust fund established under Section 242.096.

(c) The department may disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents. Payments under this section may include payments described by Section 242.096(b).

(d) A court may order the department to disburse emergency assistance money to a trustee for a facility licensed under this chapter if the court makes the findings provided by Section 242.096(c).

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0792, eff. April 2, 2015.

Sec. 252.096. REIMBURSEMENT. (a) A facility that receives

emergency assistance money under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the money is disbursed to the facility. The rate of interest is the rate determined under Section 304.003, Finance Code, to be applicable to judgments rendered during the month in which the money is disbursed to the facility.

(c) The owner of the facility when the trustee is appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the first anniversary of the date on which the money is received is delinquent and the commission may determine that the facility is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect money due under this section at the request of the department. An action under this section must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0793, eff. April 2, 2015.

Sec. 252.097. NOTIFICATION OF CLOSURE. (a) A facility that is closing temporarily or permanently, voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the facility closes.

(b) If the department orders a facility to close or the facility's closure is in any other way involuntary, the facility shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the facility's closure is voluntary, the facility shall make the notification not later than one week after the date on which the decision to close is made.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.098. CRIMINAL PENALTY FOR FAILURE TO NOTIFY. (a) A facility commits an offense if the facility knowingly fails to comply with Section 252.097.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. INVESTIGATIONS OF ABUSE, NEGLECT, AND EXPLOITATION AND REPORTS OF RETALIATION

Sec. 252.121. AUTHORITY TO RECEIVE REPORTS AND INVESTIGATE. (a) A person, including an owner or employee of a facility, who has cause to believe that a resident is being or has been subjected to abuse, neglect, or exploitation shall report the suspected abuse, neglect, or exploitation to the commission. The commission shall investigate the allegation of abuse, neglect, or exploitation in the manner prescribed by the commission.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(1), eff. September 1, 2023.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 7, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(1), eff. September 1, 2023.

Sec. 252.122. NOTIFICATION OF DUTY TO REPORT ABUSE, NEGLECT, AND EXPLOITATION. Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse, neglect, or exploitation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.

Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT. Before the completion of the investigation by the commission, the commission shall file a petition for temporary care and protection of a resident if the commission determines that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 8, eff. September 1, 2023.

Sec. 252.126. CONFIDENTIALITY; DISCLOSURE OF INVESTIGATION REPORT. (a) A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only as provided by Chapter 48, Human Resources Code, Chapter 261, Family Code, or this section.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(2), eff. September 1, 2023.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 13, eff. June 11, 2009.
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(2), eff. September 1, 2023.

Sec. 252.132. SUIT FOR RETALIATION. (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, the owner of the facility, or another employee of the facility that suspends or terminates the employment of the employee or otherwise

disciplines, discriminates against, or retaliates against the employee for:

(1) reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(2) initiating or cooperating in any investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(c) A plaintiff who prevails in a suit under this section may recover:

(1) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and

(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district

court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 252.122. If a facility does not require an employee to read and sign the statement, the periods prescribed by Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 192, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 14, eff. June 11, 2009.

Sec. 252.133. SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT. (a) A facility may not retaliate or discriminate against a volunteer, a resident, or a family member or guardian of a resident because the volunteer, the resident, the resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;

(2) reports a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to the care, services, or conditions at the facility.

(b) A volunteer, a resident, or a family member or guardian of a resident against whom a facility retaliates or discriminates in violation of Subsection (a) is entitled to sue for:

(1) injunctive relief;

(2) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental

anguish is not shown;

(3) exemplary damages;

(4) court costs; and

(5) reasonable attorney's fees.

(c) A volunteer, a resident, or a family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, the resident, or the family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 192, Sec. 5, eff. Sept. 1, 2001.

SUBCHAPTER F. MEDICAL CARE

Sec. 252.151. ADMINISTRATION OF MEDICATION. The executive commissioner shall adopt rules relating to the administration of medication in facilities.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0794, eff. April 2, 2015.

Sec. 252.152. REQUIRED MEDICAL EXAMINATION. (a) The department shall require each resident to be given at least one medical examination each year.

(b) The executive commissioner shall specify the details of the examination.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0795, eff. April 2, 2015.

SUBCHAPTER G. RESPITE CARE

Sec. 252.181. DEFINITIONS. In this subchapter:

(1) "Plan of care" means a written description of the care, training, and treatment needed by a person during respite care.

(2) "Respite care" means the provision by a facility to a person, for not more than two weeks for each stay in the facility, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.182. RESPITE CARE. (a) A facility licensed under this chapter may provide respite care for an individual who has a diagnosis of an intellectual disability or a related condition without regard to whether the individual is eligible to receive intermediate care services under federal law.

(b) The executive commissioner may adopt rules for the regulation of respite care provided by a facility licensed under this chapter.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0796, eff. April 2, 2015.

Sec. 252.183. PLAN OF CARE. (a) The facility and the person arranging the care must agree on the plan of care and the plan must be filed at the facility before the facility admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The facility may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. After each admission, the facility shall review and update the plan

of care. During that period, the facility may admit the person as frequently as is needed and as accommodations are available.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.184. NOTIFICATION. A facility that offers respite care shall notify the department in writing that it offers respite care.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

Sec. 252.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect a facility's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the executive commissioner may adopt to regulate respite care services.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0797, eff. April 2, 2015.

Sec. 252.186. SUSPENSION. (a) The department may require a facility to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the facility cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of a facility that continues to provide respite care after receiving a written order from the department to cease.

Added by Acts 1997, 75th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. QUALITY ASSURANCE FEE

Sec. 252.201. DEFINITION. In this subchapter, "gross receipts"

means money paid as compensation for services provided to residents, including client participation. The term does not include charitable contributions to a facility.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.

Sec. 252.202. COMPUTING QUALITY ASSURANCE FEE. (a) A quality assurance fee is imposed on each facility for which a license fee must be paid under Section 252.034, on each facility owned by a community mental health and intellectual disability center, as described by Subchapter A, Chapter 534, and on each facility owned by the department. The fee:

(1) is an amount established under Subsection (b) multiplied by the number of patient days as determined in accordance with Section 252.203;

(2) is payable monthly; and

(3) is in addition to other fees imposed under this chapter.

(b) The commission or the department at the direction of the commission shall set the quality assurance fee for each day in the amount necessary to produce annual revenues equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state. The fee is subject to a prospective adjustment as necessary.

(c) The amount of the quality assurance fee must be determined using patient days and gross receipts reported to the department and covering a period of at least six months.

(d) The quality assurance fee is an allowable cost for reimbursement under the Medicaid program.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.64, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 1(a), eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0798, eff. April 2, 2015.

Sec. 252.203. PATIENT DAYS. For each calendar day, a facility shall determine the number of patient days by adding the following:

(1) the number of patients occupying a facility bed immediately before midnight of that day; and

(2) the number of beds that are on hold on that day and that have been placed on hold for a period not to exceed three consecutive calendar days during which a patient is on therapeutic leave.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.65, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 2, eff. June 20, 2003.

Sec. 252.204. REPORTING AND COLLECTION. (a) The commission or the department at the direction of the commission shall collect the quality assurance fee.

(b) Each facility shall:

(1) not later than the 20th day after the last day of a month file a report with the commission or the department, as appropriate, stating the total patient days for the month; and

(2) not later than the 30th day after the last day of the month pay the quality assurance fee.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.66, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0799, eff. April 2, 2015.

Sec. 252.205. RULES; ADMINISTRATIVE PENALTY. (a) The executive commissioner shall adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) The executive commissioner may not adopt rules granting any exceptions from the quality assurance fee.

(c) An administrative penalty assessed under this subchapter in

accordance with Section 252.065 may not exceed one-half of the amount of the outstanding quality assurance fee or $20,000, whichever is greater.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0800, eff. April 2, 2015.

Sec. 252.206. QUALITY ASSURANCE FUND. (a) The quality assurance fund is an account in the general revenue fund. Notwithstanding any other law, the comptroller shall deposit fees collected under this subchapter to the credit of the fund.

(b) The quality assurance fund is composed of fees deposited to the credit of the fund under this subchapter.

(c) Money deposited to the quality assurance fund may be appropriated only for the purposes of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0801, eff. April 2, 2015.

Sec. 252.207. REIMBURSEMENT OF FACILITIES. (a) Subject to legislative appropriation and state and federal law, the commission may use money in the quality assurance fund, together with any federal money available to match that money:

(1) to offset expenses incurred to administer the quality assurance fee under this chapter;

(2) to increase reimbursement rates paid under the Medicaid program to facilities or waiver programs for individuals with an intellectual disability operated in accordance with 42 U.S.C. Section 1396n(c) and its subsequent amendments; or

(3) for any other health and human services purpose approved by the governor and Legislative Budget Board.

(b) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(1)

and Acts 2003, 78th Leg., ch. 1251, Sec. 4(b).

(c) If money in the quality assurance fund is used to increase a reimbursement rate in the Medicaid program, the commission shall ensure that the reimbursement methodology used to set that rate describes how the money in the fund will be used to increase the rate and provides incentives to increase direct care staffing and direct care wages and benefits.

(d) The increased Medicaid reimbursement paid to a facility under this section may not be based solely on the amount of the quality assurance fee paid by that facility unless authorized by 42 C.F.R. Section 433.68 or other federal law.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.67, 2.156(a)(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 4(a), (b), eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.003, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0802, eff. April 2, 2015.

Sec. 252.208. INVALIDITY; FEDERAL FUNDS. If any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, the commission shall stop collection of the quality assurance fee and shall return, not later than the 30th day after the date collection is stopped, any money collected, but not spent, under this subchapter to the facilities that paid the fees in proportion to the total amount paid by those facilities.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 9.01, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0803, eff. April 2, 2015.

CHAPTER 253. EMPLOYEE MISCONDUCT; REGISTRY

Sec. 253.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.

Text of subdivision effective until April 1, 2025

(1-b) "Consumer-directed service option" has the meaning assigned by Section 531.051, Government Code.

Text of subdivision effective on April 1, 2025

(1-b) "Consumer-directed service option" has the meaning assigned by Section 546.0101, Government Code.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Employee" means a person who:

(A) works at a facility or for an individual employer;

(B) is an individual who provides personal care services, active treatment, or any other personal services to a consumer or to an individual using the consumer-directed service option; and

(C) is not licensed by an agency of the state to perform the services the employee performs for the individual using the consumer-directed service option or at the facility or is a nurse aide employed by a facility.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Text of subdivision as amended by Acts 2023, 88th Leg., R.S., Ch. 674 (H.B. 1009), Sec. 4

(4) "Facility" means:

(A) a facility:

(i) licensed by the department;

(ii) licensed under Chapter 252; or

(iii) licensed under Chapter 555;

(B) an adult foster care provider that contracts with the department;

(C) a home and community support services agency licensed by the department under Chapter 142; or

(D) a prescribed pediatric extended care center licensed under Chapter 248A.

Text of subdivision as amended by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 9

(4) "Facility" means:

(A) a nursing facility licensed by the commission under Chapter 242;

(B) an intermediate care facility for individuals with an intellectual disability licensed by the commission under Chapter 252;

(C) an adult foster care provider that contracts with the commission;

(D) a home and community support services agency licensed by the commission under Chapter 142;

(E) a prescribed pediatric extended care center licensed by the commission under Chapter 248A;

(F) an assisted living facility licensed by the commission under Chapter 247;

(G) a day activity and health services facility licensed by the commission under Chapter 103, Human Resources Code;

(H) a residential child-care facility as defined by Section 42.002, Human Resources Code, at which an elderly person or an adult with a disability resides or is in the facility's care;

(I) a provider who provides home and community-based services under the home and community-based services (HCS) waiver program or the Texas home living (TxHmL) waiver program; or

(J) a facility that is exempt from licensure under Section 252.003.

(4-a) "Financial management services agency" means an entity that contracts with the department to serve as a fiscal and employer agent for an individual employer using the consumer-directed service option.

(4-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring providers to deliver program services.

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to an individual using the consumer-directed service option or a consumer;

(B) sexual abuse of an individual using the consumer-directed service option or a consumer;

(C) financial exploitation of an individual using the consumer-directed service option or a consumer in an amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual using the consumer-directed service option or a consumer.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 15, eff. June 11, 2009.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 8, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 4, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 4, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 674 (H.B. 1009), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.48, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 9, eff. September 1, 2023.

Sec. 253.002. INVESTIGATION BY DEPARTMENT. (a) If the department receives a report that an employee of a facility, other than a facility licensed under Chapter 252, committed reportable conduct, the department shall investigate the report to determine whether the employee has committed the reportable conduct.

(b) If the department receives a report that an employee of a facility licensed under Chapter 252 or of an individual employer committed reportable conduct, the department shall forward that report to the Department of Family and Protective Services for investigation.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 7, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 16, eff. June 11, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 5, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0804, eff. April 2, 2015.

Sec. 253.0025. EMPLOYMENT SUSPENSION FOR FACILITY EMPLOYEES ACCUSED OF COMMITTING REPORTABLE CONDUCT. A facility shall suspend the employment of a facility employee who the Health and Human Services Commission finds has engaged in reportable conduct while the employee exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review conducted in accordance with Section 253.004 or 253.005, pending a final decision by an administrative law judge. The facility may not reinstate the employee's position during the course of any applicable appeals process.

Added by Acts 2023, 88th Leg., R.S., Ch. 674 (H.B. 1009), Sec. 5, eff. September 1, 2023.

Sec. 253.003. DETERMINATION; NOTICE. (a) If, after an investigation, the department determines that the reportable conduct occurred, the department shall give written notice of the department's findings. The notice must include:
(1) a brief summary of the department's findings; and
(2) a statement of the person's right to a hearing on the occurrence of the reportable conduct.
(b) Not later than the 30th day after the date on which the notice is received, the employee notified may accept the determination of the department made under this section or may make a written request for a hearing on that determination.
(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the department shall order that the reportable conduct be

recorded in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0805, eff. April 2, 2015.

Sec. 253.004. HEARING; ORDER. (a) If the employee requests a hearing, an administrative law judge of the State Office of Administrative Hearings shall conduct a hearing and the department shall give written notice of the hearing to the employee.

(a-1) The administrative law judge must complete the hearing and the hearing record not later than the 120th day after the date the department receives a request for a hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the department a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the department by order may find that the reportable conduct has occurred. If the department finds that the reportable conduct has occurred, the department shall issue an order on that determination.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 9, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 6, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0806, eff. April 2, 2015.

Sec. 253.005. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 253.004 to the employee alleged to have committed the reportable conduct. The notice must include:

(1) separate statements of the findings of fact and

conclusions of law;

(2) a statement of the right of the employee to judicial review of the order; and

(3) a statement that the reportable conduct will be recorded in the registry under Section 253.007 if:

(A) the employee does not request judicial review of the determination; or

(B) the determination is sustained by the court.

(b) Not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the determination, the department shall record the reportable conduct in the registry under Section 253.007.

(c) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall record the reportable conduct in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 10, eff. Sept. 1, 2001.

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding of reportable conduct is the basis for an entry in the nurse aide registry maintained under Chapter 250 and the entry is subsequently removed from the nurse aide registry, the department shall immediately remove the record of reportable conduct from the employee misconduct registry maintained under Section 253.007.

Added by Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 9, eff. June 19, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0807, eff. April 2, 2015.

Sec. 253.006. INFORMAL PROCEEDINGS. The executive commissioner by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 10, eff. June 19, 2009.

Sec. 253.007. EMPLOYEE MISCONDUCT REGISTRY. (a) The department shall establish an employee misconduct registry. If the department in accordance with this chapter finds that an employee of a facility or of an individual employer has committed reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility or individual employer, the address of the facility or individual employer, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may make a record in the employee misconduct registry of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act, and a description of the act.

(c) The department shall make the registry available to the public.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 11, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 11, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 7, eff. January 1, 2014.

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. On receipt of a

finding of an employee's reportable conduct by the Department of Family and Protective Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry in accordance with Section 253.007.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 12, eff. June 19, 2009.

Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH. (a) Before a facility or individual employer as defined in this chapter or an agency as defined in Section 48.401, Human Resources Code, may hire an employee, the individual employer or a financial management services agency on behalf of the individual employer, the facility, or agency shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 as required by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer.

(b) A facility, individual employer or financial management services agency on behalf of an individual employer, or agency may not employ a person who is listed in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer.

(c) In addition to the initial verification of employability, a facility, agency, individual employer, or financial management services agency on behalf of an individual employer shall:

(1) annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the individual employer, facility, or applicable agency is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer; and

(2) maintain in the facility's or individual employer's books and records a copy of the results of the search conducted under Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.68, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 22, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 13, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 8, eff. January 1, 2014.

Sec. 253.009. NOTIFICATION. (a) Each facility or individual employer as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, shall notify its employees in a manner prescribed by the department:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(b) The executive commissioner shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.69, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 23, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 14, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 9, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0808, eff. April 2, 2015.

Sec. 253.010. REMOVAL FROM REGISTRY. (a) The Health and Human Services Commission may remove a person from the employee misconduct registry if, after receiving a written request from the person, the commission determines that the person does not meet the requirements

for inclusion in the employee misconduct registry.

(b) The executive commissioner by rule may establish:

(1) criteria for a person to submit a request for removal under Subsection (a); and

(2) a process for the Health and Human Services Commission to determine whether the person meets the requirements for inclusion in the employee misconduct registry.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 2, eff. September 1, 2023.

CHAPTER 254. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Emergency care" has the meaning assigned by Sections 843.002 and 1301.155, Insurance Code.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means a freestanding emergency medical care facility.

(5) "Freestanding emergency medical care facility" means a facility, structurally separate and distinct from a hospital, that receives an individual and provides emergency care, as defined by Subdivision (2).

(6) "Provider network" has the meaning assigned by Section 1456.001, Insurance Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0809, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 2, eff. September 1, 2015.

SUBCHAPTER B. LICENSING

Sec. 254.051. LICENSE REQUIRED. (a) Except as provided by Section 254.052, a person may not establish or operate a freestanding emergency medical care facility in this state without a license issued under this chapter.

(b) Except as provided by Section 254.052, a facility or person may not hold itself out to the public as a freestanding emergency medical care facility or use any similar term, as defined by department rule, that would give the impression that the facility or person is providing emergency care unless the facility or person holds a license issued under this chapter.

(c) Each separate facility location must have a separate license.

(d) A license issued under this chapter is not transferable or assignable.

(e) A license may be issued only for the establishment or operation of a facility that is in continuous operation 24 hours per day and 7 days per week.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(68), eff. April 2, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0810, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(68), eff. April 2, 2015.

Sec. 254.052. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities are not required to be licensed under this chapter:

(1) an office or clinic owned and operated by a manufacturing facility solely for the purposes of treating its employees and contractors;

(2) temporary emergency clinics in disaster areas;

(3) an office or clinic of a licensed physician, dentist,

optometrist, or podiatrist;

(4) a licensed nursing home;

(5) a licensed hospital;

(6) a hospital that is owned and operated by this state;

(7) a facility located within or connected to a hospital described by Subsection (5) or (6);

(8) a facility that is owned or operated by a hospital described by Subsection (5) or (6) and is:

(A) surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services; or

(B) granted provider-based status by the Centers for Medicare and Medicaid Services; or

(9) a licensed ambulatory surgical center.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.053. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for a license under this chapter must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the executive commissioner by rule.

(c) The application must contain evidence that there is at least one physician and one nurse on the staff of the facility who are licensed by the appropriate state licensing board.

(d) The application must contain evidence that the facility meets the minimum standards and requirements specified in Section 254.151.

(e) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the facility meet the requirements of this chapter and the standards adopted under this chapter.

(f) The license fee must be paid on renewal of the license. The term of a license issued under this chapter is two years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1040 (H.B. 3085), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0811, eff. April 2, 2015.

SUBCHAPTER C. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS AND DUTIES

Sec. 254.101. ADOPTION OF RULES. The executive commissioner shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate a facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.102. FEES. The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0812, eff. April 2, 2015.

Sec. 254.103. INSPECTIONS. The department may inspect a facility at reasonable times as necessary to ensure compliance with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.104. FREESTANDING EMERGENCY MEDICAL CARE FACILITY LICENSING FUND. All fees and administrative penalties collected under this chapter shall be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund and may be appropriated to the department only to administer and

enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 4, eff. September 1, 2019.

SUBCHAPTER D. REGULATION OF FACILITIES

Sec. 254.151. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter, including minimum standards for:

(1) the construction and design of the facility, including plumbing, heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients;

(2) the number, qualifications, and organization of the professional staff and other personnel;

(3) the administration of the facility;

(4) the equipment essential to the health and welfare of the patients;

(5) the sanitary and hygienic conditions within the facility and its surroundings;

(6) the requirements for the contents, maintenance, and release of medical records;

(7) the minimal level of care and standards for denial of care;

(8) the provision of laboratory and radiological services;

(9) the distribution and administration of drugs and controlled substances;

(10) a quality assurance program for patient care;

(11) disclosure, if applicable, of the following:

(A) the name and social security number of the sole proprietor, if the facility is a sole proprietor;

(B) the name and social security number of each general partner who is an individual, if the facility is a partnership;

(C) the name and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the facility is a corporation; and

(D) the name and license numbers of any physicians

licensed by the Texas Medical Board who have a financial interest in the facility or any entity which has an ownership interest in the facility;

(12) transfer protocols for patients requiring advanced medical care at a hospital; and

(13) any other aspect of the operation of a facility that the executive commissioner considers necessary to protect the facility's patients and the public.

(b) In adopting the rules required under Subsection (a) concerning transfer protocols, the executive commissioner must consult with physicians who provide emergency care, medical consultant organizations, and organizations representing hospitals licensed in this state.

(c) The minimum standards under this section shall apply to all facilities licensed under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0813, eff. April 2, 2015.

Sec. 254.153. FACILITY CARE REQUIREMENTS. (a) A facility shall provide to each facility patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists and any necessary stabilizing treatment.

(b) Before a facility accepts any patient for treatment or diagnosis, the facility shall enter into a referral, transmission, or admission agreement with a hospital licensed in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.154. COMPLAINTS. A person may file a complaint with the department against a facility licensed under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2009.

Sec. 254.155. NOTICE OF FEES. (a) A facility shall post notice that:

(1) states:

(A) the facility is a freestanding emergency medical care facility;

(B) the facility charges rates comparable to a hospital emergency room and may charge a facility fee;

(C) a facility or a physician providing medical care at the facility may be an out-of-network provider for the patient's health benefit plan provider network; and

(D) a physician providing medical care at the facility may bill separately from the facility for the medical care provided to a patient; and

(2) either:

(A) lists the health benefit plans in which the facility is an in-network provider in the health benefit plan's provider network; or

(B) states the facility is an out-of-network provider for all health benefit plans.

(b) The notice required by this section must be posted prominently and conspicuously:

(1) at the primary entrance to the facility;

(2) in each patient treatment room;

(3) at each location within the facility at which a person pays for health care services; and

(4) on the home page of the facility's Internet website or on a different page available through a hyperlink that is:

(A) entitled "Insurance Information"; and

(B) located prominently on the home page.

(c) The notice required by Subsections (b)(1), (2), and (3) must be in legible print on a sign with dimensions of at least 8.5 inches by 11 inches.

(d) Notwithstanding Subsection (b), a facility that is an in-network provider in one or more health benefit plan provider networks complies with Subsection (a)(2) if the facility:

(1) provides notice on the facility's Internet website

listing the health benefit plans in which the facility is an in-network provider in the health benefit plan's provider network; and

(2) provides to a patient written confirmation of whether the facility is an in-network provider in the patient's health benefit plan's provider network.

(e) A facility may not add to or alter the language of a notice required by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 3, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 175 (H.B. 3276), Sec. 2, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 5, eff. September 1, 2019.

Sec. 254.1555. CERTAIN FEES PROHIBITED. (a) A facility that provides a health care service, including testing or vaccination, to an individual accessing the service from the individual's vehicle may not charge the individual or a third-party payor a facility or observation fee.

(b) This section may not be construed as expanding the type of health care services a facility is authorized to provide under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 2, eff. September 1, 2021.

Sec. 254.1556. DISCLOSURE OF CERTAIN PRICES AND FEES DURING DECLARED DISASTER; CONSTRUCTION. (a) A facility that provides testing or vaccination for an infectious disease for which a state of disaster has been declared under Chapter 418, Government Code, shall disclose the price the facility charges for the test or vaccine and any facility fees, supply costs, and other costs associated with the test or vaccine in accordance with the disclosure requirements described by Section 254.156, as added by Chapter 1093 (H.B. 2041), Acts of the 86th Legislature, Regular Session, 2019.

(b) This section may not be construed as expanding the type of health care services a facility is authorized to provide under this

chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 2, eff. September 1, 2021.

Sec. 254.156. DISCLOSURE STATEMENT REQUIRED. (a) In addition to the notice required under Section 254.155, a facility shall provide to a patient or a patient's legally authorized representative a written disclosure statement in accordance with this section that:

(1) lists the facility's observation and facility fees that may result from the patient's visit; and

(2) lists the health benefit plans in which the facility is a network provider in the health benefit plan's provider network or states that the facility is an out-of-network provider for all health benefit plans.

(b) A facility shall provide the disclosure statement in accordance with the standards prescribed by Section 254.153(a).

(c) The disclosure statement must be:

(1) printed in at least 16-point boldface type;

(2) in a contrasting color using a font that is easily readable; and

(3) in English and Spanish.

(d) The disclosure statement:

(1) must include:

(A) the name and contact information of the facility; and

(B) a place for the patient or the patient's legally authorized representative and an employee of the facility to sign and date the disclosure statement;

(2) may include information on the facility's procedures for seeking reimbursement from the patient's health benefit plan; and

(3) must, as applicable:

(A) state "This facility charges a facility fee for medical treatment" and include:

(i) the facility's median facility fee;

(ii) a range of possible facility fees; and

(iii) the facility fees for each level of care provided at the facility; and

(B) state "This facility charges an observation fee for

medical treatment" and include:

(i) the facility's median observation fee;

(ii) a range of possible observation fees; and

(iii) the observation fees for each level of care provided at the facility.

(e) A facility may include only the information described by Subsection (d) in the required disclosure statement and may not include any additional information in the statement. The facility annually shall update the statement.

(f) A facility shall provide each patient with a physical copy of the disclosure statement even if the patient refuses or is unable to sign the statement. If a patient refuses or is unable to sign the statement, as required by this section, the facility shall indicate in the patient's file that the patient failed to sign.

(g) A facility shall retain a copy of a signed disclosure statement provided under this section until the first anniversary of the date on which the disclosure was signed.

(h) A facility is not required to provide notice to a patient or a patient's legally authorized representative under this section if the facility determines before providing emergency health care services to the patient that the patient will not be billed for the services.

(i) A facility complies with the requirements of Subsections (a)(1) and (d)(3) if the facility posts on the facility's Internet website in a manner that is easily accessible and readable:

(1) the facility's standard charges, including the fees described by those subsections; and

(2) updates to the standard charges at least annually or more frequently as appropriate to reflect the facility's current charges.

(j) A facility's failure to obtain the signed disclosure statement required by this section from the patient or the patient's legally authorized representative may not be a determining factor in the adjudication of liability for health care services provided to the patient at the facility.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.157. CERTAIN ADVERTISING PROHIBITED. (a) A facility may not advertise or hold itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network, unless the facility is a network provider of a health benefit plan issuer.

(b) A facility may not post the name or logo of a health benefit plan issuer in any signage or marketing materials if the facility is an out-of-network provider for all of the issuer's health benefit plans.

(c) A violation of this section is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.158. REMOVAL OF SIGNS. A facility that closes or for which a license issued under this chapter expires or is suspended or revoked shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation.

Added by Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 6, eff. September 1, 2019.

Sec. 254.160. PROHIBITED PRICING PRACTICES DURING DECLARED STATE OF DISASTER. (a) In this section, "unconscionable price" means a price that is more than 200 percent of the average price for the same or a substantially similar product or service provided to other individuals by health care facilities located in the same county or nearest county to the county in which the freestanding emergency medical care facility is located, as applicable, according to data collected by the department under Chapter 108.

(b) During a state of disaster declared by the governor under Chapter 418, Government Code, a facility may not:

(1) charge an individual an unconscionable price for a product or service provided at the facility; or

(2) knowingly or intentionally charge a third-party payor,

including a health benefit plan insurer, a price higher than the price charged to an individual for the same product or service based on the payor's liability for payment or partial payment of the product or service.

(c) Subsection (b)(2) does not prohibit a facility from:

(1) offering an uninsured individual a cash discount for a particular product or service; or

(2) accepting directly from an individual full payment for a health care product or service in lieu of submitting a claim to the individual's health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 3, eff. September 1, 2021.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 254.201. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If the department finds that a facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not endanger public health and safety, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility remains under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1,

eff. March 1, 2010.

Sec. 254.202. EMERGENCY SUSPENSION. (a) The department may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety.

(b) An emergency suspension under this section is effective immediately without a hearing on notice to the license holder.

(c) On written request of the license holder to the department for a hearing, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received by the department to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) A hearing and any appeal under this section are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0814, eff. April 2, 2015.

Sec. 254.203. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter or of Section 254.158 if the department finds that the violation creates an immediate threat to the health and safety of the patients of a facility or of the public.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter or is violating Section 254.158, may by injunction:

(1) prohibit a person from continuing the violation;

(2) restrain or prevent the establishment or operation of a

facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1062 (H.B. 1112), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.004(b), eff. September 1, 2021.

Sec. 254.204. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 254.051.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. September 1, 2010.

Sec. 254.205. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. A penalty collected under this section or Section 254.206 shall be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund described by Section 254.104.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The penalty may not exceed $1,000 for each violation. Each day of a continuing violation may be considered a separate violation for purposes of imposing a penalty.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

(i) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of that office shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(l) The notice of the order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0815, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1093 (H.B. 2041), Sec. 8, eff. September 1, 2019.

Sec. 254.206. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the department under Section 254.205(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under

Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 1, eff. March 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0816, eff. April 2, 2015.

Sec. 254.207. ENFORCEMENT. Notwithstanding any conflicting provision in this subchapter and except for good cause shown, the Health and Human Services Commission shall impose the following on a person licensed under this chapter who violates Section 254.160 or a rule adopted under that section:

(1) for the first violation, an administrative penalty in an amount equal to $10,000;

(2) for the second violation:

(A) an administrative penalty in an amount equal to $50,000; and

(B) a suspension of the person's license for 30 days; and

(3) for the third violation, a permanent revocation of the person's license.

Added by Acts 2021, 87th Leg., R.S., Ch. 1050 (S.B. 2038), Sec. 4, eff. September 1, 2021.

CHAPTER 255. QUALITY ASSURANCE EARLY WARNING SYSTEM FOR LONG-TERM CARE FACILITIES; RAPID RESPONSE TEAMS

Sec. 255.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Long-term care facility" means a nursing institution, an assisted living facility, or an ICF-IID licensed under Chapter 242, 247, or 252, or certified under Chapter 32, Human Resources Code.

(3) "Quality-of-care monitor" means a registered nurse, pharmacist, or nutritionist who:

(A) is employed by the department;

(B) is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of patient care; and

(C) functions independently of other divisions of the department.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 837 (S.B. 874), Sec. 1, eff. September

1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0817, eff. April 2, 2015.

Sec. 255.002. EARLY WARNING SYSTEM. The department shall establish an early warning system to detect conditions that could be detrimental to the health, safety, and welfare of residents. The early warning system shall include analysis of financial and quality-of-care indicators that would predict the need for the department to take action.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Sec. 255.003. QUALITY-OF-CARE MONITORS. (a) The department shall establish regional offices with one or more quality-of-care monitors, based on the number of long-term care facilities in the region, to monitor the facilities in the region on a regular, aperiodic basis, including nights, evenings, weekends, and holidays. A monitoring visit conducted under this chapter may be announced or unannounced.

(b) Monitoring visits shall be given to long-term care facilities:

(1) with a history of patient care deficiencies; or

(2) that are identified as medium risk through the department's early warning system.

(b-1) A long-term care facility may request a monitoring visit under this section.

(c) Quality-of-care monitors may not be deployed by the department as a part of the regional survey team in the conduct of routine, scheduled surveys.

(d) A quality-of-care monitor may not interfere with, impede, or otherwise adversely affect the performance of the duties of a surveyor, inspector, or investigator of the department.

(e) Quality-of-care monitors shall assess:

(1) the overall quality of life in the long-term care facility; and

(2) specific conditions in the facility directly related to

patient care, including conditions identified through the long-term care facility's quality measure reports based on Minimum Data Set Resident Assessments.

(f) The quality-of-care monitor shall include in a monitoring visit:

(1) observation of the care and services rendered to residents; and

(2) formal and informal interviews with residents, family members, facility staff, resident guests, volunteers, other regulatory staff, and representatives of a human rights advocacy committee.

(g) The identity of a resident or a family member of a resident interviewed by a quality-of-care monitor as provided by Subsection (f)(2) shall remain confidential and may not be disclosed to any person under any other provision of this section.

(h) The findings of a monitoring visit, both positive and negative, shall be provided orally and in writing to the long-term care facility administrator or, in the absence of the facility administrator, to the administrator on duty or the director of nursing.

(i) The quality-of-care monitor may recommend to the long-term care facility administrator procedural and policy changes and staff training to improve the care or quality of life of facility residents.

(i-1) The department shall schedule a follow-up visit not later than the 45th day after the date of an initial monitoring visit conducted under this section.

(j) Conditions observed by the quality-of-care monitor that create an immediate threat to the health or safety of a resident shall be reported immediately to the long-term care facility administrator, to the regional office supervisor for appropriate action, and, as appropriate or as required by law, to law enforcement, adult protective services, other divisions of the department, or other responsible agencies.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 837 (S.B. 874), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 3, eff. June 19, 2015.

Sec. 255.004. RAPID RESPONSE TEAMS. (a) In this section:

(1) "Abuse" has the meaning assigned by Section 260A.001.

(2) "Immediate threat to health and safety" means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(3) "Neglect" has the meaning assigned by Section 260A.001.

(a-1) The department shall create rapid response teams composed of health care experts that can visit a long-term care facility that:

(1) is identified as high risk through the department's early warning system; or

(2) if the long-term care facility is a nursing institution, has committed three violations described by Section 242.061(a-1), within a 24-month period, that constitute an immediate threat to health and safety related to the abuse or neglect of a resident.

(a-2) A long-term care facility shall cooperate with a rapid response team deployed under this section to improve the quality of care provided at the facility.

(b) Rapid response teams may visit long-term care facilities that request the department's assistance. A visit under this subsection may not occur before the 60th day after the date of an exit interview following an annual or follow-up survey or inspection.

(c) The rapid response teams may not be deployed for the purpose of helping a long-term care facility prepare for a regular inspection or survey conducted under Chapter 242, 247, or 252 or in accordance with Chapter 32, Human Resources Code.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1142 (S.B. 304), Sec. 4, eff. June 19, 2015.

Sec. 255.005. REPORT. (a) The Health and Human Services Commission shall assess and evaluate the effectiveness of the quality assurance early warning system and shall report its findings annually to the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) The Health and Human Services Commission shall submit the report required under this section with the report required under Section 536.008, Government Code.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.03, eff. June 15, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 738 (H.B. 3265), Sec. 3, eff. September 1, 2023.

CHAPTER 256. SAFE PATIENT HANDLING, MOVEMENT, AND DISCHARGE PRACTICES

Sec. 256.001. DEFINITIONS. In this chapter:

(1) "Hospital" means a general or special hospital, as defined by Section 241.003, a private mental hospital licensed under Chapter 577, or another hospital that is maintained or operated by the state.

(2) "Nursing home" means an institution licensed under Chapter 242.

Added by Acts 2005, 79th Leg., Ch. 401 (S.B. 1525), Sec. 1, eff. January 1, 2006.

Sec. 256.002. REQUIRED SAFE PATIENT HANDLING AND MOVEMENT POLICY. (a) The governing body of a hospital or the quality assurance committee of a nursing home shall adopt and ensure implementation of a policy to identify, assess, and develop strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient.

(b) The policy shall establish a process that, at a minimum, includes:

(1) analysis of the risk of injury to both patients and nurses posed by the patient handling needs of the patient populations

served by the hospital or nursing home and the physical environment in which patient handling and movement occurs;

(2) education of nurses in the identification, assessment, and control of risks of injury to patients and nurses during patient handling;

(3) evaluation of alternative ways to reduce risks associated with patient handling, including evaluation of equipment and the environment;

(4) restriction, to the extent feasible with existing equipment and aids, of manual patient handling or movement of all or most of a patient's weight to emergency, life-threatening, or otherwise exceptional circumstances;

(5) collaboration with and annual report to the nurse staffing committee;

(6) procedures for nurses to refuse to perform or be involved in patient handling or movement that the nurse believes in good faith will expose a patient or a nurse to an unacceptable risk of injury;

(7) submission of an annual report to the governing body or the quality assurance committee on activities related to the identification, assessment, and development of strategies to control risk of injury to patients and nurses associated with the lifting, transferring, repositioning, or movement of a patient; and

(8) in developing architectural plans for constructing or remodeling a hospital or nursing home or a unit of a hospital or nursing home in which patient handling and movement occurs, consideration of the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

Added by Acts 2005, 79th Leg., Ch. 401 (S.B. 1525), Sec. 1, eff. January 1, 2006.

Sec. 256.003. PROHIBITED DISCHARGE OF PATIENTS TO CERTAIN GROUP-CENTERED FACILITIES. (a) Subject to Subsection (b), a hospital or other health facility may discharge or otherwise release a patient to the care of a group home, boarding home facility, or similar group-centered facility only if the person who operates the group-centered facility holds a license or permit issued in

accordance with applicable state law.

(b) A hospital or other health facility may discharge or otherwise release a patient to the care of a group home, boarding home facility, or similar group-centered facility operated by a person who does not hold a license or permit issued in accordance with applicable state law only if:

(1) no group-centered facility is operated in the county in which the patient is discharged by a person who holds the applicable license or permit; or

(2) the patient voluntarily elects to reside in the group-centered facility of the unlicensed or unpermitted person.

(c) A hospital or other health facility is not liable for damages to a patient resulting from the patient's discharge or release to a group home, boarding home facility, or similar group-centered facility under Subsection (b).

(d) A local health authority may not issue an order authorizing a hospital or health facility to discharge or release a patient to a group-centered facility in a manner that conflicts with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1045 (S.B. 186), Sec. 2, eff. September 1, 2023.

CHAPTER 257. NURSE STAFFING

Sec. 257.001. DEFINITIONS. In this chapter:

(1) "Committee" means a nurse staffing committee required by this chapter.

(2) "Department" means the Department of State Health Services.

(3) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or

(B) a mental hospital licensed under Chapter 577.

(4) "Patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.002. LEGISLATIVE FINDINGS. (a) The legislature finds that:

(1) research supports a conclusion that adequate nurse staffing is directly related to positive patient outcomes and nurse satisfaction with the practice environment;

(2) nurse satisfaction with the practice environment is in large measure determined by providing an adequate level of nurse staffing based on research findings and patient intensity;

(3) nurse satisfaction and patient safety can be adversely affected when nurses work excessive hours; and

(4) hospitals and nurses share a mutual interest in patient safety initiatives that create a healthy environment for nurses and appropriate care for patients.

(b) In order to protect patients, support greater retention of registered nurses, and promote adequate nurse staffing, the legislature intends to establish a mechanism whereby nurses and hospital management shall participate in a joint process regarding decisions about nurse staffing.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.003. NURSE STAFFING POLICY AND PLAN. (a) The governing body of a hospital shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The policy must include a process for:

(1) requiring the hospital to give significant consideration to the nurse staffing plan recommended by the hospital's nurse staffing committee and to that committee's evaluation of any existing plan;

(2) adopting, implementing, and enforcing an official nurse services staffing plan that is based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(3) using the official nurse services staffing plan as a component in setting the nurse staffing budget;

(4) encouraging nurses to provide input to the committee relating to nurse staffing concerns;

(5) protecting from retaliation nurses who provide input to

the committee; and

(6) ensuring compliance with rules adopted by the executive commissioner of the Health and Human Services Commission relating to nurse staffing.

(b) The official nurse services staffing plan adopted under Subsection (a) must:

(1) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;

(2) set minimum staffing levels for patient care units that are:

(A) based on multiple nurse and patient considerations; and

(B) determined by the nursing assessment and in accordance with evidence-based safe nursing standards;

(3) include a method for adjusting the staffing plan for each patient care unit to provide staffing flexibility to meet patient needs; and

(4) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources.

(c) The hospital shall:

(1) use the official nurse services staffing plan:

(A) as a component in setting the nurse staffing budget; and

(B) to guide the hospital in assigning nurses hospital-wide; and

(2) make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.004. NURSE STAFFING COMMITTEE. (a) A hospital shall establish a nurse staffing committee as a standing committee of the hospital.

(b) The committee shall be composed of members who are

representative of the types of nursing services provided in the hospital.

(c) The chief nursing officer of the hospital is a voting member of the committee.

(d) At least 60 percent of the members of the committee must be registered nurses who:

(1) provide direct patient care during at least 50 percent of their work time; and

(2) are selected by their peers who provide direct patient care during at least 50 percent of their work time.

(e) The committee shall meet at least quarterly.

(f) Participation on the committee by a hospital employee as a committee member is part of the employee's work time, and the hospital shall compensate that member for that time accordingly. The hospital shall relieve a committee member of other work duties during committee meetings.

(g) The committee shall:

(1) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of Section 257.003;

(2) review, assess, and respond to staffing concerns expressed to the committee;

(3) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(4) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(5) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(h) In evaluating the effectiveness of the official nurse services staffing plan, the committee shall consider patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 257.005. REPORTING OF STAFFING INFORMATION TO DEPARTMENT. (a) A hospital shall annually report to the department on:

(1) whether the hospital's governing body has adopted a nurse staffing policy as required by Section 257.003;

(2) whether the hospital has established a nurse staffing committee as required by Section 257.004 that meets the membership requirements of that section;

(3) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan as required by Section 257.004 and has reported the results of the evaluation to the hospital's governing body as provided by that section; and

(4) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(b) Information reported under Subsection (a) is public information.

(c) To the extent possible, the department shall collect the data required under Subsection (a) as part of a survey required by the department under other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

CHAPTER 258. MANDATORY OVERTIME FOR NURSES PROHIBITED

Sec. 258.001. DEFINITIONS. In this chapter:

(1) "Hospital" means:

(A) a general hospital or special hospital, as those terms are defined by Section 241.003, including a hospital maintained or operated by this state; or

(B) a mental hospital licensed under Chapter 577.

(2) "Nurse" means a registered nurse or vocational nurse licensed under Chapter 301, Occupations Code.

(3) "On-call time" means time spent by a nurse who is not working but who is compensated for availability.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.002. MANDATORY OVERTIME. For purposes of this chapter, "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. In determining whether work is mandatory overtime, prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety is not included.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.003. PROHIBITION OF MANDATORY OVERTIME. (a) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(b) This section does not prohibit a nurse from volunteering to work overtime.

(c) A hospital may not use on-call time as a substitute for mandatory overtime.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.004. EXCEPTIONS. (a) Section 258.003 does not apply if:

(1) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(2) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(3) there is an emergency or unforeseen event of a kind that:

(A) does not regularly occur;

(B) increases the need for health care personnel at the hospital to provide safe patient care; and

(C) could not prudently be anticipated by the hospital; or

(4) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.

(b) If a hospital determines that an exception exists under Subsection (a)(3), the hospital shall, to the extent possible, make a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

Sec. 258.005. RETALIATION PROHIBITED. A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 1, eff. September 1, 2009.

CHAPTER 259. SURGICAL TECHNOLOGISTS AT HEALTH CARE FACILITIES

Sec. 259.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Surgical technologist" means a person who practices surgical technology.

(3) "Surgical technology" means intraoperative surgical patient care as follows:

(A) preparing the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely;

(B) preparing the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(C) anticipating the needs of the surgical team based on knowledge of human anatomy and pathophysiology and how they relate to the surgical patient and the patient's surgical procedure;

(D) as directed in an operating room setting, performing the following tasks at the sterile field:

(i) passing supplies, equipment, or instruments;

(ii) sponging or suctioning an operative site;

(iii) preparing and cutting suture material;

(iv) transferring and pouring irrigation fluids;

(v) transferring but not administering drugs within the sterile field;

(vi) handling specimens;

(vii) holding retractors and other instruments;

(viii) applying electrocautery to clamps on bleeders;

(ix) connecting drains to suction apparatus;

(x) applying dressings to closed wounds; and

(xi) assisting in counting sponges, needles, supplies, and instruments with the registered nurse circulator;

(E) cleaning and preparing instruments for sterilization on completion of the surgery; and

(F) assisting the surgical team with cleaning of the operating room on completion of the surgery.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.002. REQUIREMENTS FOR PRACTICING SURGICAL TECHNOLOGY; CONTINUING EDUCATION. (a) A health care facility licensed by the department under this subtitle or owned or operated by the state may not employ a person to practice surgical technology in that health care facility unless that person provides evidence that the person:

(1) has successfully completed an accredited educational program for surgical technologists and holds and maintains certification as a surgical technologist by:

(A) the National Board of Surgical Technology and Surgical Assisting or its successor;

(B) the National Center for Competency Testing or its successor; or

(C) another surgical technologist certification program approved by the department;

(2) has completed an appropriate training program for

surgical technology in the army, navy, air force, marine corps, or coast guard of the United States or in the United States Public Health Service;

(3) was employed to practice surgical technology in a health care facility before September 1, 2009; or

(4) is in the service of the federal government, to the extent the person is performing duties related to that service.

(b) Notwithstanding Subsection (a), a health care facility may employ a person to practice surgical technology at that health care facility from the date the person graduates from an accredited educational program for surgical technologists until the 180th day after the date of graduation. The person may not continue to practice surgical technology after the 180th day after the date of graduation without showing documentation to the health care facility that the person holds and maintains the surgical technologist certification required by Subsection (a)(1).

(c) Notwithstanding Subsection (a), a health care facility may employ a surgical technologist who does not meet the requirements of this section if:

(1) after a diligent and thorough effort has been made, the health care facility is unable to employ a sufficient number of qualified surgical technologists who meet the requirements of this section; and

(2) the health care facility makes a written record of its efforts under Subdivision (1) and retains the record at the health care facility.

(d) A person employed by a health care facility to practice surgical technology under Subsection (a)(1) shall complete the number of hours of continuing education required to maintain certification by the organization that issued the surgical technologist certification to the person. On the facility's request, the person shall submit to the facility evidence of completion of the continuing education.

(e) A person employed by a health care facility to practice surgical technology under Subsection (a)(2) or (3) or Subsection (c) shall complete every two years 30 hours of continuing education related to surgical technology. On the facility's request, the person shall submit to the facility evidence of completion of the continuing education.

(f) A health care facility may restrict the ability of a person

employed by the facility to practice surgical technology in the facility if the person fails to complete the continuing education required by Subsection (d) or (e).

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 435 (S.B. 1239), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 435 (S.B. 1239), Sec. 2, eff. September 1, 2019.

Sec. 259.003. SUPERVISION OF SURGICAL TECHNOLOGISTS. This chapter does not repeal or modify any law relating to the supervision of surgical technologists.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.004. OTHER LICENSED PRACTITIONERS. This chapter does not prohibit a licensed practitioner from performing a task or function within the scope of the practitioner's license.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.005. APPLICABILITY. This chapter does not apply to:
(1) a licensed registered nurse or a licensed vocational nurse; or
(2) the employment by a health care facility of an individual whose primary functions include the cleaning or sterilization of supplies, instruments, equipment, or operating rooms.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.

Sec. 259.006. ENFORCEMENT. (a) The executive commissioner of the Health and Human Services Commission may adopt rules to administer and enforce this chapter.

(b) A health care facility that violates Section 259.002 is subject to an administrative penalty, a civil penalty, or other disciplinary action, as applicable, in the same manner as if the facility violated the chapter under which the facility is licensed.

Added by Acts 2009, 81st Leg., R.S., Ch. 321 (H.B. 643), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0818, eff. April 2, 2015.

CHAPTER 260. BOARDING HOME FACILITIES

Sec. 260.001. DEFINITIONS. In this chapter:

(1) "Assistance with self-administering medication" means assisting a resident by reminding the resident to take medication, opening and removing medications from a container, or reminding the resident when a prescription medication needs to be refilled.

(2) "Boarding home facility" means an establishment that:

(A) furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and

(B) provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services as defined by Section 247.002 to those persons.

(3) "Commission" means the Health and Human Services Commission.

(4) "Elderly person" has the meaning assigned by Section 48.002, Human Resources Code.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Person with a disability" means a disabled person as defined by Section 48.002, Human Resources Code.

(7) "Resident" means a person who is residing in a boarding home facility.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.002. EXEMPTIONS. This chapter does not apply to:

(1) a person that is required to be licensed under Chapter 142, 242, 246, 247, or 252;

(2) a person that is exempt from licensing under Section 142.003(a)(19) or (20), 242.003(3), or 247.004(4);

(3) a hotel as defined by Section 156.001, Tax Code;

(4) a retirement community;

(5) a monastery or convent;

(6) a child-care facility as defined by Section 42.002, Human Resources Code;

(7) a family violence shelter center as defined by Section 51.002, Human Resources Code; or

(8) a sorority or fraternity house or other dormitory associated with an institution of higher education.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 3, eff. September 1, 2021.

Sec. 260.003. MODEL STANDARDS. The executive commissioner shall develop and publish in the Texas Register model standards for the operation of a boarding home facility relating to:

(1) the construction or remodeling of a boarding home facility, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;

(2) sanitary and related conditions in a boarding home facility and its surroundings, including insect and rodent control, water supply, sewage disposal, food handling, and general hygiene to ensure the residents' health, safety, and comfort;

(3) the reporting and investigation of injuries, incidents,

and unusual accidents and the establishment of other policies and procedures necessary to ensure resident health and safety;

(4) assistance with self-administering medication;

(5) requirements for in-service education of the facility's staff;

(6) criminal history record checks; and

(7) assessment and periodic monitoring to ensure that a resident:

(A) does not require the boarding home facility to provide personal care, nursing, or other services not listed in Section 260.001(2); and

(B) is capable of self-administering medication or is aware of what the resident's medications look like and knows when the medications should be taken but requires assistance with self-administering medication.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Redesignated and amended from Health and Safety Code, Section 254.003 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(6), eff. September 1, 2011.

Sec. 260.004. LOCAL REGULATION. A county or municipality may require a person to obtain a permit from the county or municipality to operate a boarding home facility within the county's or municipality's jurisdiction. A county or municipality may adopt the standards developed by the executive commissioner under Section 260.003 and require a boarding home facility that holds a permit issued by the county or municipality to comply with the adopted standards.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Redesignated and amended from Health and Safety Code, Section 254.004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(7), eff. September 1, 2011.

Sec. 260.005. PERMIT PROCEDURES; FEES; FINES. (a) A county or municipality that requires a person to obtain a boarding home facility permit as authorized by Section 260.004 may establish procedures for the submission of a boarding home facility permit application and for the issuance, denial, renewal, suspension, and revocation of the permit.

(b) A county or municipality that requires a person to obtain a boarding home facility permit as authorized under Section 260.004 may set reasonable fees for issuance of the permit, renewal of the permit, and inspections and may impose fines for noncompliance with the county or municipal boarding home facility regulations. The fees collected and fines imposed by the county or municipality must be used to administer the county or municipal permitting program or for other purposes directly related to providing boarding home facility or other assisted living services to elderly persons and persons with disabilities.

(c) A person required to obtain a boarding home facility permit from a county or municipality as authorized under Section 260.004 shall pay any fees required or fines imposed by the county or municipality.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.
Redesignated and amended from Health and Safety Code, Section 254.005 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(8), eff. September 1, 2011.

Sec. 260.0051. CRIMINAL PENALTY. (a) This section applies only to a county or municipality that requires a person to obtain a permit to operate a boarding home facility as authorized by Section 260.004.

(b) A person commits an offense if the person operates a boarding home facility without a permit in a county or municipality to which this section applies.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2021, 87th Leg., R.S., Ch. 517 (S.B. 500), Sec. 1, eff. September 1, 2021.

Sec. 260.006. POSTING. A boarding home facility that holds a permit issued by a county or municipality shall prominently and conspicuously post for display in a public area of the boarding home facility that is readily available to residents, the operator, employees, and visitors:

(1) the permit issued by a county or municipality;

(2) a sign prescribed by the county or municipality that issued the permit that specifies how complaints may be registered with the county or municipality;

(3) a notice in a form prescribed by the county or municipality that issued the permit stating that inspection and related reports are available at the boarding home facility for public inspection and providing a telephone number that may be used to obtain information concerning the boarding home facility;

(4) a concise summary of the most recent inspection report relating to the boarding home facility; and

(5) a notice in a form prescribed by the county or municipality that issued the permit that lists the name, location, and contact information for:

(A) the closest local public health services agency in the proximity of the boarding home facility; and

(B) a local organization or entity that represents, advocates, or serves elderly persons or persons with disabilities, including any related toll-free contact information for reporting emergencies to the organization or entity.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.007. INSPECTIONS. (a) A county or municipality may conduct any inspection, survey, or investigation that it considers necessary and may enter the premises of a boarding home facility at reasonable times to make an inspection, survey, or investigation.

(b) A county or municipality is entitled to access to books, records, and other documents maintained by or on behalf of a boarding home facility to the extent necessary to enforce the standards adopted by the county or municipality.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011,

82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.008. INTERLOCAL COOPERATION. Two or more counties or municipalities may cooperate and contract with each other for the purpose of inspecting and permitting boarding home facilities.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.009. REPORTING AND INVESTIGATION OF ABUSE, NEGLECT, OR EXPLOITATION. (a) A person, including an owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality, who has cause to believe that a resident who is an elderly person or a person with a disability is being or has been abused, neglected, or exploited shall report the abuse, neglect, or exploitation to the Department of Family and Protective Services for investigation by that agency. The Department of Family and Protective Services shall investigate the allegation of abuse, neglect, or exploitation as authorized and in the manner provided by Chapter 48, Human Resources Code.

(b) Each boarding home facility that holds a permit issued by a county or municipality shall require each employee of the boarding home facility, as a condition of employment with the boarding home facility, to sign a statement that the employee acknowledges that the employee may be criminally liable under Section 48.052, Human Resources Code, for failure to report abuse, neglect, or exploitation.

(c) An owner, operator, or employee of a boarding home facility that holds a permit issued by a county or municipality may not retaliate against an employee of the facility who in good faith makes a complaint to the office of the inspector general of the Health and Human Services Commission, cooperates with the office of the inspector general in an investigation, or reports abuse, neglect, or exploitation of a resident to the Department of Family and Protective Services.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011,

82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Sec. 260.0091. REQUIRED REPORT BY LESSOR OF ABUSE, NEGLECT, OR EXPLOITATION; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) owns a building that the person leases to another person who operates a boarding home facility in the building;

(2) has actual knowledge that a resident of the boarding home facility is being or has been abused, neglected, or exploited; and

(3) fails to report the abuse, neglect, or exploitation to the Department of Family and Protective Services for investigation by that agency.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 1046 (S.B. 189), Sec. 1, eff. September 1, 2023.

Sec. 260.010. ANNUAL REPORT TO COMMISSION; LEGISLATIVE REPORT. (a) Not later than September 30 of each year following the establishment of a county or municipal permitting requirement under this chapter, each county or municipality that requires a person to obtain a boarding home facility permit under Section 260.004 shall submit to the commission a report. The report must include:

(1) the total number of:

(A) boarding home facilities permitted during the preceding state fiscal year;

(B) boarding home facility applications denied permitting, including a summary of cause for denial; and

(C) boarding home facility permits active on August 31 of the preceding state fiscal year;

(2) the total number of residents reported housed in each boarding home facility reported;

(3) the total number of inspections conducted at each boarding home facility by the county or municipality that requires the permit;

(4) the total number of permits revoked or suspended as a

result of an inspection described by Subdivision (3) and a summary of the outcome for the residents displaced by revocation or suspension of a permit; and

(5) the total number of incidents occurring at each boarding home facility that required the intervention of a peace officer as defined by Article 2.12, Code of Criminal Procedure.

(b) The commission shall establish and maintain a standardized compilation of information reported under this section and provide to the legislature a report of this information not later than January 1 of each odd-numbered year.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(9), eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 1046 (S.B. 189), Sec. 2, eff. September 1, 2023.

Sec. 260.011. EXCLUSION PROHIBITED. If an entity meets the requirements established by a county or municipality under this chapter, the entity may not be excluded from a residential area by zoning ordinances or similar regulations.

Redesignated from Health and Safety Code, Chapter 254 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(28), eff. September 1, 2011.

CHAPTER 260A. REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF RESIDENTS OF CERTAIN FACILITIES

Sec. 260A.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(B) sexual abuse of a resident, including any

involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(1-a) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Exploitation" means the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(5) "Facility" means:

(A) an institution as that term is defined by Section 242.002;

(B) an assisted living facility as that term is defined by Section 247.002; and

(C) a prescribed pediatric extended care center as that term is defined by Section 248A.001.

(6) "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(7) "Resident" means an individual, including a patient, who resides in or receives services from a facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 5, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 10, eff. September 1, 2023.

Sec. 260A.002. REPORTING OF ABUSE, NEGLECT, AND EXPLOITATION.

(a) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation caused by another person shall report the abuse, neglect, or exploitation in accordance with this chapter.

(a-1) Notwithstanding any other provision of this chapter, a report made under this section that a provider is or may be alleged to have committed abuse, neglect, or exploitation of a resident of a facility other than a prescribed pediatric extended care center shall be investigated by the commission in accordance with Subchapter F, Chapter 48, Human Resources Code, and this chapter does not apply to that investigation. In this subsection, "facility" and "provider" have the meanings assigned by Section 48.251, Human Resources Code.

(b) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report those abuses.

(c) A person shall make an oral or electronic report immediately on learning of the abuse, neglect, or exploitation.

(d) A facility or provider shall submit a provider investigation report to the commission not later than the fifth day after the date the facility or provider makes the oral or electronic report under Subsection (c).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 8, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 11, eff. September 1, 2023.

Sec. 260A.003. CONTENTS OF REPORT. (a) A report of abuse, neglect, or exploitation is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused, neglected, or exploited or has died of abuse or neglect.

(b) The report must contain:

(1) the name and address of the resident;

(2) the name and address of the person responsible for the care of the resident, if available; and

(3) other relevant information.

(c) Except for an anonymous report under Section 260A.004, a report of abuse, neglect, or exploitation under Section 260A.002 should also include the address or phone number of the person making the report so that an investigator can contact the person for any necessary additional information. The phone number, address, and name of the person making the report must be deleted from any copy of any type of report that is released to the public, to the facility, or to an owner or agent of the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.004. ANONYMOUS REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION. (a) An anonymous report of abuse, neglect, or exploitation, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.

(b) An anonymous report about a specific individual that accuses the individual of abuse, neglect, or exploitation need not be investigated.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.005. TELEPHONE HOTLINE; PROCESSING OF REPORTS. (a) The department shall operate the department's telephone hotline to:

(1) receive reports of abuse, neglect, or exploitation; and

(2) dispatch investigators.

(b) A report of abuse, neglect, or exploitation shall be made to the department's telephone hotline or to a local or state law enforcement agency. A report made relating to abuse, neglect, or exploitation or another complaint described by Section 260A.007(c)(1) shall be made to the department's telephone hotline and to the law enforcement agency described by Section 260A.017(a).

(c) Except as provided by Section 260A.017, a local or state law enforcement agency that receives a report of abuse, neglect, or

exploitation shall refer the report to the department.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.006. NOTICE. (a) Each facility shall prominently and conspicuously post a sign for display in a public area of the facility that is readily available to residents, employees, and visitors.

(b) The sign must include the statement: CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING (insert telephone hotline number).

(c) A facility shall provide the telephone hotline number to an immediate family member of a resident of the facility upon the resident's admission into the facility.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.007. INVESTIGATION AND REPORT OF DEPARTMENT. (a) The department shall make a thorough investigation after receiving an oral or written report of abuse, neglect, or exploitation under Section 260A.002 or another complaint alleging abuse, neglect, or exploitation.

(b) The primary purpose of the investigation is the protection of the resident.

(c) The department shall begin the investigation:

(1) within 24 hours after receipt of the report or other allegation, if the report of abuse, neglect, exploitation, or other complaint alleges that:

(A) a resident's health or safety is in imminent danger;

(B) a resident has recently died because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint;

(C) a resident has been hospitalized or been treated in an emergency room because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint;

(D) a resident has been a victim of any act or attempted act described by Section 21.02, 21.11, 22.011, or 22.021, Penal Code; or

(E) a resident has suffered bodily injury, as that term is defined by Section 1.07, Penal Code, because of conduct alleged in the report of abuse, neglect, exploitation, or other complaint; or

(2) before the end of the next working day after the date of receipt of the report of abuse, neglect, exploitation, or other complaint, if the report or complaint alleges the existence of circumstances that could result in abuse, neglect, or exploitation and that could place a resident's health or safety in imminent danger.

(d) The executive commissioner shall adopt rules governing the conduct of investigations, including procedures to ensure that the complainant and the resident, the resident's next of kin, and any person designated to receive information concerning the resident receive periodic information regarding the investigation.

(e) In investigating the report of abuse, neglect, exploitation, or other complaint, the investigator for the commission shall:

(1) conduct an unannounced investigation to determine the nature and cause of the alleged abuse, neglect, or exploitation of the resident;

(2) interview each available witness, including the resident who suffered the alleged abuse, neglect, or exploitation if the resident is able to communicate or another resident or other witness identified by any source as having personal knowledge relevant to the report of abuse, neglect, exploitation, or other complaint;

(3) inspect any physical circumstance that is relevant and material to the report of abuse, neglect, exploitation, or other complaint and that may be objectively observed;

(4) if an on-site investigation is conducted, make a photographic record of any injury to a resident, subject to Subsection (n);

(5) write an investigation report that includes:

(A) the investigator's personal observations;

(B) a review of relevant documents and records;

(C) a summary of each witness statement, including the statement of the resident that suffered the alleged abuse, neglect,

or exploitation and any other resident interviewed in the investigation; and

(D) a statement of the factual basis for the findings for each incident or problem alleged in the report or other allegation; and

(6) for a resident of an institution or assisted living facility, inspect any court order appointing a guardian of the resident who was the subject of the alleged abuse, neglect, or exploitation that is maintained in the resident's medical records under Section 242.019 or 247.070.

(e-1) In addition to the requirements under Subsection (e), the commission shall make an unannounced visit to a facility to conduct an investigation of abuse or neglect.

(f) An investigator for an investigating agency shall conduct an interview under Subsection (e)(2) in private unless the witness expressly requests that the interview not be private.

(g) Not later than the 30th day after the date the investigation is complete, the investigator shall prepare the written report required by Subsection (e). The department shall make the investigation report available to the public on request after the date the department's letter of determination is complete. The department shall delete from any copy made available to the public:

(1) the name of:

(A) any resident, unless the department receives written authorization from a resident or the resident's legal representative requesting the resident's name be left in the report;

(B) the person making the report of abuse, neglect, exploitation, or other complaint; and

(C) an individual interviewed in the investigation; and

(2) photographs of any injury to the resident.

(h) In the investigation, the department shall determine:

(1) the nature, extent, and cause of the abuse, neglect, or exploitation;

(2) the identity of the person responsible for the abuse, neglect, or exploitation;

(3) the names and conditions of the other residents;

(4) an evaluation of the persons responsible for the care of the residents;

(5) the adequacy of the facility environment; and

(6) any other information required by the department.

(i) If the department attempts to carry out an on-site investigation and it is shown that admission to the facility or any place where the resident is located cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow entrance for the interview and investigation.

(j) Before the completion of the investigation, the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

(k) If the department determines the report of abuse, neglect, or exploitation is substantiated at the conclusion of the investigation, the department shall make a complete final written report of the investigation and submit the report and its recommendations to the appropriate law enforcement agency.

(l) Within 24 hours after receipt of a report of abuse, neglect, exploitation, or other complaint described by Subsection (c)(1), the department shall report the report or complaint to the law enforcement agency described by Section 260A.017(a). The department shall cooperate with that law enforcement agency in the investigation of the report or complaint as described by Section 260A.017.

(m) The inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Section 260A.017 does not constitute grounds to prevent or prohibit the department from performing its duties under this chapter. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Section 260A.017.

(n) If the department determines that, before a photographic record of an injury to a resident may be made under Subsection (e), consent is required under state or federal law, the investigator:

(1) shall seek to obtain any required consent; and

(2) may not make the photographic record unless the consent is obtained.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0819, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 724 (H.B. 1337), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1031 (H.B. 1642), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 12, eff. September 1, 2023.

Sec. 260A.008. CONFIDENTIALITY. A report, record, or working paper used or developed in an investigation made under this chapter and the name, address, and phone number of any person making a report under this chapter are confidential and may be disclosed only for purposes consistent with rules adopted by the executive commissioner. The report, record, or working paper and the name, address, and phone number of the person making the report shall be disclosed to a law enforcement agency as necessary to permit the law enforcement agency to investigate a report of abuse, neglect, exploitation, or other complaint in accordance with Section 260A.017.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.009. IMMUNITY. (a) A person who reports as provided by this chapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.

(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

(c) This section does not apply to a person who reports in bad faith or with malice.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.010. PRIVILEGED COMMUNICATIONS. In a proceeding regarding the abuse, neglect, or exploitation of a resident or the cause of any abuse, neglect, or exploitation, evidence may not be

excluded on the ground of privileged communication except in the case of a communication between an attorney and client.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.011. CENTRAL REGISTRY. (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse, neglect, or exploitation.

(b) The executive commissioner may adopt rules necessary to carry out this section.

(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse, neglect, or exploitation.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.012. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, or exploitation and knowingly fails to report in accordance with Section 260A.002.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.013. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY. (a) A person commits an offense if the person reports under this chapter in bad faith, maliciously, or recklessly.

(b) An offense under this section is a Class A misdemeanor.

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.014. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) In this section, "employee" means a person who is an employee of a facility or any other person who provides services for a facility for compensation, including a contract laborer for the facility.

(b) An employee has a cause of action against a facility, or the owner or another employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines or discriminates or retaliates against the employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247, or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the facility.

(c) The petitioner may recover:

(1) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown, and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amounts that may be recovered under Subsection (c), a person whose employment is suspended or terminated is entitled to appropriate injunctive relief, including, if applicable:

(1) reinstatement in the person's former position; and

(2) reinstatement of lost fringe benefits or seniority rights.

(e) The petitioner, not later than the 90th day after the date on which the person's employment is suspended or terminated, must bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue under this section. A petitioner who notifies the Texas Workforce Commission under this subsection must bring suit not later than the 90th day after the date of the delivery of the notice to the commission. On receipt of the notice, the commission shall notify the facility of the petitioner's intent to bring suit under this section.

(f) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was

suspended or terminated for reporting abuse, neglect, or exploitation if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

(h) Each facility shall require each employee of the facility, as a condition of employment with the facility, to sign a statement that the employee understands the employee's rights under this section. The statement must be part of the statement required under Section 260A.002. If a facility does not require an employee to read and sign the statement, the periods under Subsection (e) do not apply, and the petitioner must bring suit not later than the second anniversary of the date on which the person's employment is suspended or terminated.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.015. RETALIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) A facility may not retaliate or discriminate against a volunteer, resident, or family member or guardian of a resident because the volunteer, resident, resident's family member or guardian, or any other person:

(1) makes a complaint or files a grievance concerning the facility;

(2) reports a violation of law, including a violation of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247; or

(3) initiates or cooperates in an investigation or proceeding of a governmental entity relating to care, services, or conditions at the facility.

(b) A volunteer, resident, or family member or guardian of a resident who is retaliated or discriminated against in violation of Subsection (a) is entitled to sue for:

(1) injunctive relief;

(2) the greater of $1,000 or actual damages, including damages for mental anguish even if an injury other than mental

anguish is not shown;

(3) exemplary damages;

(4) court costs; and

(5) reasonable attorney's fees.

(c) A volunteer, resident, or family member or guardian of a resident who seeks relief under this section must report the alleged violation not later than the 180th day after the date on which the alleged violation of this section occurred or was discovered by the volunteer, resident, or family member or guardian of the resident through reasonable diligence.

(d) A suit under this section may be brought in the district court of the county in which the facility is located or in a district court of Travis County.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.016. REPORTS RELATING TO DEATHS OF RESIDENTS OF AN INSTITUTION. (a) In this section, "institution" has the meaning assigned by Section 242.002.

(b) An institution shall submit a report to the department concerning deaths of residents of the institution. The report must be submitted not later than the 10th day after the last day of each month in which a resident of the institution dies. The report must also include the death of a resident occurring within 24 hours after the resident is transferred from the institution to a hospital.

(c) The institution must make the report on a form prescribed by the department. The report must contain the name and social security number of the deceased.

(d) The department shall correlate reports under this section with death certificate information to develop data relating to the:

(1) name and age of the deceased;

(2) official cause of death listed on the death certificate;

(3) date, time, and place of death; and

(4) name and address of the institution in which the deceased resided.

(e) Except as provided by Subsection (f), a record under this section is confidential and not subject to the provisions of Chapter

552, Government Code.

(f) The department shall develop statistical information on official causes of death to determine patterns and trends of incidents of death among residents and in specific institutions. Information developed under this subsection is public.

(g) A licensed institution shall make available historical statistics on all required information on request of an applicant or applicant's representative.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

Sec. 260A.017. DUTIES OF LAW ENFORCEMENT; JOINT INVESTIGATION. (a) The department shall investigate a report of abuse, neglect, exploitation, or other complaint described by Section 260A.007(c)(1) jointly with:

(1) the municipal law enforcement agency, if the facility is located within the territorial boundaries of a municipality; or

(2) the sheriff's department of the county in which the facility is located, if the facility is not located within the territorial boundaries of a municipality.

(b) The law enforcement agency described by Subsection (a) shall acknowledge the report of abuse, neglect, exploitation, or other complaint and begin the joint investigation required by this section within 24 hours after receipt of the report or complaint. The law enforcement agency shall cooperate with the department and report to the department the results of the investigation.

(c) The requirement that the law enforcement agency and the department conduct a joint investigation under this section does not require that a representative of each agency be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the course of the investigation.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(c), eff. September 28, 2011.

CHAPTER 260B. RIGHT TO ESSENTIAL CAREGIVER VISITS FOR CERTAIN RESIDENTS

Sec. 260B.0001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Essential caregiver" means a family member, friend, guardian, or other individual selected by a resident, resident's guardian, or resident's legally authorized representative for in-person visits.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) an assisted living facility licensed under Chapter 247; or

(C) an intermediate care facility for individuals with an intellectual disability licensed under Chapter 252.

(5) "Program provider" means a person that provides services through the home and community-based services (HCS) waiver program in a residence.

(6) "Residence" means a three-person or four-person residence, as defined by the home and community-based services (HCS) waiver program billing guidelines, that is leased or owned by a program provider. The term does not include a host home or companion care.

(7) "Resident" means:

(A) an individual, including a patient, who resides in a facility; or

(B) an individual enrolled in the home and community-based services (HCS) waiver program who resides in a residence.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 2, eff. September 1, 2021.

Sec. 260B.0002. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A resident, resident's guardian, or resident's legally authorized representative has the right to designate an essential caregiver with whom the facility or program provider may not prohibit in-person visitation.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist facilities and program

providers in establishing essential caregiver visitation policies and procedures. The guidelines must require the facilities and program providers to:

(1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver in the same manner that a resident would designate a power of attorney;

(2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;

(3) establish procedures to enable physical contact between the resident and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying that the caregiver will follow the facility's or program provider's safety protocols and any other rules adopted under this section.

(c) A facility or program provider may revoke an individual's designation as an essential caregiver if the caregiver violates the facility's or provider's safety protocols or rules adopted under this section. If a facility or program provider revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Safety protocols adopted by a facility or program provider for an essential caregiver under this section may not be more stringent than safety protocols for the staff of the facility or residence.

(e) A facility or program provider may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the facility's or program provider's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk. A facility or program provider may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension under this subsection for a

period that exceeds seven days, and a facility or program provider must separately request each extension. A facility or program provider may not suspend in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) This section may not be construed as requiring an essential caregiver to provide necessary care to a resident, and a facility or program provider may not require an essential caregiver to provide necessary care.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 2, eff. September 1, 2021.

Chapter 260C, consisting of Secs. 260C.001 to 260C.002, was added by Acts 2021, 87th Leg., R.S., Ch. 519 (S.B. 572), Sec. 2.

For another Chapter 260C, consisting of Secs. 260C.001 to 260C.002, added by Acts 2021, 87th Leg., R.S., Ch. 732 (H.B. 3961), Sec. 1, see Sec. 260C.001 et seq., post.

CHAPTER 260C. IN-PERSON VISITATION WITH RELIGIOUS COUNSELOR

Sec. 260C.001. DEFINITIONS. In this chapter:

(1) "Health care facility" means:

(A) a home and community support services agency licensed under Chapter 142;

(B) a hospital licensed under Chapter 241;

(C) a nursing facility licensed under Chapter 242;

(D) a continuing care facility regulated under Chapter 246;

(E) an assisted living facility licensed under Chapter 247; or

(F) a special care facility licensed under Chapter 248.

(2) "Public health emergency" means:

(A) a state of disaster or local disaster declared under Chapter 418, Government Code; or

(B) a public health disaster as defined by Section 81.003.

(3) "Religious counselor" means an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

Added by Acts 2021, 87th Leg., R.S., Ch. 519 (S.B. 572), Sec. 2, eff. June 14, 2021.

Sec. 260C.002. IN-PERSON VISITATION WITH RELIGIOUS COUNSELOR. (a) A health care facility may not prohibit a resident or patient of the facility from receiving in-person visitation with a religious counselor during a public health emergency on the request of:

(1) the patient or resident; or

(2) if the patient or resident is incapacitated, the patient's or resident's legally authorized representative, including a family member of the patient or resident.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures. The guidelines must:

(1) establish minimum health and safety requirements for in-person visitation with religious counselors;

(2) allow health care facilities to adopt reasonable time, place, and manner restrictions on in-person visitation with religious counselors to:

(A) mitigate the spread of a communicable disease; and

(B) address the patient's or resident's medical condition;

(3) provide special consideration to patients and residents who are receiving end-of-life care; and

(4) allow health care facilities to condition in-person visitation with religious counselors on the counselor's compliance with guidelines, policies, and procedures established under this subsection.

(c) A health care facility may prohibit in-person visitation with a religious counselor during a public health emergency if federal law or a federal agency requires the health care facility to prohibit in-person visitation during that period.

Added by Acts 2021, 87th Leg., R.S., Ch. 519 (S.B. 572), Sec. 2, eff. June 14, 2021.

CHAPTER 260D. POSTING OF OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

INFORMATION BY CERTAIN FACILITIES

Sec. 260D.001. DEFINITION. In this chapter, "long-term care facility" means:

(1) a nursing facility licensed under Chapter 242;

(2) an assisted living facility licensed under Chapter 247; or

(3) any other facility providing care to residents who are assisted by the state long-term care ombudsman established under Subchapter F, Chapter 101A, Human Resources Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 732 (H.B. 3961), Sec. 1, eff. January 1, 2022.
Redesignated from Health and Safety Code, Chapter 260C by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(24), eff. September 1, 2023.

Sec. 260D.002. POSTING OF OFFICE OF STATE LONG-TERM CARE OMBUDSMAN INFORMATION ON INTERNET WEBSITE. (a) Except as provided by Subsection (b), a long-term care facility shall post on the facility's Internet website information about the office of the state long-term care ombudsman established under Subchapter F, Chapter 101A, Human Resources Code, including:

(1) information regarding the office's role as an advocate for residents of long-term care facilities; and

(2) the office's statewide toll-free telephone number.

(b) A long-term care facility:

(1) may comply with this section by posting the required information on the Internet website of the facility's parent company if the facility does not maintain a unique Internet website; and

(2) is not required to comply with this section if the facility and any parent company do not maintain an Internet website.

Added by Acts 2021, 87th Leg., R.S., Ch. 732 (H.B. 3961), Sec. 1, eff. January 1, 2022.
Redesignated from Health and Safety Code, Chapter 260C by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(24), eff. September 1, 2023.

SUBTITLE C. LOCAL HOSPITALS

CHAPTER 261. MUNICIPAL HOSPITALS

SUBCHAPTER A. TYPE A GENERAL-LAW MUNICIPALITIES

Sec. 261.001. REGULATION OF HOSPITALS BY TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may:

(1) construct or establish one or more hospitals and control and regulate those hospitals; and

(2) prohibit or permit and regulate the establishment of private hospitals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. SALE, LEASE, OR CLOSURE OF MUNICIPAL HOSPITAL

Sec. 261.011. AUTHORITY OF GOVERNING BODY. (a) The governing body of a municipality by ordinance may order the sale, lease, or closure of all or part of a hospital owned and operated by the municipality, including real property. The ordinance must include a finding by the governing body that the sale, lease, or closure is in the best interest of the residents of the municipality.

(b) A sale or closure may not take effect before the expiration of the period in which a petition may be filed under Section 261.012.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 261.012. SALE OR CLOSURE PETITION; ELECTION. (a) The governing body shall order and conduct an election on the sale or closure of a hospital if, before the 31st day after the date the governing body orders the sale or closure, the governing body receives a petition signed by at least 10 percent of the qualified voters of the municipality requesting the election.

(b) If a petition is filed under Subsection (a), the sale or closure is contingent on voter approval. If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed. The number of qualified voters of the municipality is determined according to the most recent official list of qualified voters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 261.013. FORM AND TERMS OF LEASE IN MUNICIPALITY OF 25,000 OR LESS. (a) The governing body of a municipality with a population of 25,000 or less may lease all or part of a hospital owned by the municipality for operation by the lessee as a public hospital under terms that are satisfactory to the governing body and the lessee. The term of the lease may not exceed 50 years.

(b) The lease must:

(1) be authorized by ordinance or resolution adopted by the governing body;

(2) be executed on behalf of the municipality by the mayor and the municipal secretary or clerk; and

(3) have the seal of the municipality impressed on the lease.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 261.051. DEFINITION. In this subchapter, "municipal hospital management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under a contract with a municipality or municipal hospital authority.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 11.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 2, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 26.01, eff. Jan. 11, 2004.

Sec. 261.052. LIABILITY OF A MUNICIPAL HOSPITAL MANAGEMENT CONTRACTOR. A municipal hospital management contractor in its management or operation of a hospital under a contract with a municipality or a municipal hospital authority is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the municipality for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 11.02, eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 289, Sec. 2, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 26.01, eff. Jan. 11, 2004.

CHAPTER 262. MUNICIPAL HOSPITAL AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 262.001. SHORT TITLE. This chapter may be cited as the Hospital Authority Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.002. DEFINITIONS. In this chapter:

(1) "Authority" means a hospital authority created under this chapter.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a note.

(4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(5) "Governing body" means the governing body of a municipality.

(6) "Hospital" means a hospital project as defined by Section 223.002.

(7) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of, or creating a mortgage lien on, properties to secure revenue bonds issued by an authority.

(8) "Trustee" means the trustee under a trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.003. CREATION. (a) A governing body may adopt an ordinance creating a hospital authority and designating the name of the authority if the governing body finds that creation of the authority is in the best interest of the municipality and its residents.

(b) The governing bodies of two or more municipalities may each adopt an ordinance creating a hospital authority that includes those municipalities and designating the name of the authority if the governing bodies find that creation of the authority is in the best

interest of the municipalities.

(c) The authority is composed only of the territory in each municipality in the authority.

(d) The authority is a body politic and corporate.

(e) The authority does not have taxing power.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.004. TAX EXEMPTION. The authority's property is exempt from taxation because it is held for public purposes only and devoted exclusively to the use and benefit of the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.005. DISSOLUTION. (a) A governing body by ordinance may dissolve an authority created by the governing body if the governing body and the authority provide for the sale or transfer of the authority's assets and liabilities to the municipality or to another person.

(b) The dissolution of an authority and the sale or transfer of the authority's assets and liabilities may not:

(1) violate a trust indenture or bond resolution relating to the outstanding bonds of the authority; or

(2) diminish or impair the rights of the holders of outstanding bonds, warrants, or other obligations of the authority.

(c) Except as otherwise provided by this section, an ordinance dissolving an authority takes effect on the 31st day after the date the governing body adopts the ordinance.

(d) If before the ordinance takes effect the municipality receives a petition requesting a referendum on the dissolution that is signed by a number of registered voters of the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal election, the ordinance does not take effect and the governing body shall order the election.

(e) Section 41.001(a), Election Code, requiring an election to be held on a uniform election date, does not apply to an election under this section. The ballot shall be printed to provide for voting for or against the proposition: "Dissolution of the (name of the authority)."

(f) If a majority of the votes in the election are cast in favor of the proposition, the ordinance takes effect on a date stated in the order declaring the results of the election. If a majority of the votes in the election are cast against the proposition, the ordinance does not take effect and the governing body may not adopt an ordinance dissolving the authority before the first anniversary of the date of the election. That ordinance is also subject to the petition and election requirements of this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 262.011. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the ordinance or ordinances creating the authority unless prohibited by the resolution authorizing the issuance of bonds or by the trust indenture securing the bonds. However, a reduction in the number of directors may not shorten the term of an incumbent director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.012. APPOINTMENT OF BOARD; TERMS OF OFFICE. (a) The governing body or governing bodies shall appoint the directors of the authority for terms not to exceed two years except as otherwise provided by this section. If the authority includes more than one municipality, each governing body shall appoint an equal number of directors unless the governing bodies agree otherwise.

(b) The resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds may prescribe the method of selecting a majority of the directors and the term of office of those directors, and the terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The governing body or governing bodies shall appoint the remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint

all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a hospital under construction from a nonprofit corporation, the directors shall be determined as provided in the contract of purchase.

(e) If the authority is financed under Chapter 223, the governing body or governing bodies by ordinance may require the board to submit nominees for appointment to the board. If a nominee is rejected by the governing body or governing bodies, the board shall submit another nominee. The governing body or governing bodies shall select the directors from the nominees submitted by the board and any other nominee submitted by a member of a governing body. The governing body or governing bodies may also limit the number of successive terms that a director may serve.

(f) An officer or employee of a municipality in the authority is not eligible for appointment as a director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.013. OFFICERS. (a) The board shall elect:

(1) a president and a vice-president, who must be directors;

(2) a secretary and a treasurer, who are not required to be directors; and

(3) any other officers authorized by the authority's bylaws.

(b) The offices of secretary and treasurer may be combined.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 262.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

(1) have a seal;

(2) sue and be sued; and

(3) make, amend, and repeal its bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS. (a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals. A hospital may be located outside the municipality or municipalities.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital, or part of a hospital, owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.0225. AUTHORITY TO BORROW MONEY. (a) This section applies only to an authority created by a municipality with a population of less than 25,000.

(b) The board may, on behalf of the authority, borrow money from a federally insured lending institution for any of the authority's purposes.

(c) The board may borrow money in the amount it considers advisable subject to a rate of interest and other terms and conditions it considers advisable.

(d) A loan for which bonds are pledged shall mature not later than the first anniversary of the date on which the loan is made.

Added by Acts 1995, 74th Leg., ch. 740, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2003, 78th Leg., ch. 702, Sec. 1, eff. June 20, 2003.

Sec. 262.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the authority to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.024. MANAGEMENT AGREEMENT. (a) The board may enter into an agreement with any person for the management or operation of a hospital, or part of a hospital, owned by the authority under terms that are satisfactory to the board and the contracting party.

(b) The agreement must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the authority to manage the hospital and to employ and discharge employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.025. COMMITTEES. (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the authority to:

(1) issue bonds;

(2) make or amend a lease of a hospital or a management agreement relating to a hospital; or

(3) employ or discharge a manager or executive director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.026. RATES FOR HOSPITAL SERVICES. (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources the board shall produce revenue sufficient to:

(1) pay the expenses of owning, operating, and maintaining the hospital;

(2) pay the interest on the bonds as it becomes due;

(3) create a sinking fund to pay the bonds as they become due; and

(4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient with the nonprofit corporation's or lessee's other sources of revenue to:

(1) pay the expenses of operating and maintaining the hospital; and

(2) make payments or pay rentals to the authority that are

sufficient with the authority's other pledged sources of estimated revenue to:

(A) pay the interest on the bonds as it becomes due;

(B) create a sinking fund to pay the bonds as they become due; and

(C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.027. DEPOSITORY. The authority may:

(1) select a depository in the same manner that a municipality may select a depository under Chapter 105, Local Government Code; or

(2) award its depository contract to the depository or depositories selected as the depository or depositories of the municipality or municipalities in the authority and on the same terms as the terms of the municipal depository agreement or agreements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.030. MEDICAL RECORDS. (a) The preservation, microfilming, destruction, or other disposition of the records of the authority is subject to Subtitle C, Title 6, Local Government Code.

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the Texas Department of Health and with other applicable federal and state laws and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 116, eff. Sept. 1, 1991.

Sec. 262.031. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

(1) a trust indenture or bond resolution relating to outstanding bonds of the authority;

(2) prior restrictions placed on the use of the property; or

(3) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board shall provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board shall publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in each municipality in the authority. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.032. SALE OF PROPERTY TO POLITICAL SUBDIVISION. (a)

The authority may sell property to a political subdivision for the fair market value of the property.

(b) The board must publish a notice of its intention to sell, a description of the property, and the scheduled date of sale in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 15th day before the scheduled sale date.

(c) A petition requesting an election on the question of the sale, signed by at least 10 percent of the qualified voters residing in the authority, may be presented to the secretary or president of the board before the scheduled sale date.

(d) The board shall order the election on receiving the petition. If no petition is filed, the board may sell the property without an election or may order an election on its own motion. The order must contain the same information contained in the notice of the election under Subsection (f).

(e) Section 41.001(a), Election Code, requiring elections to be held on uniform election dates, does not apply to the election.

(f) In addition to the contents of the notice required by the Election Code, the notice must state the names of the presiding judge, alternate judge, and clerks for each polling place. The board shall publish notice of the election in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 31st day before election day.

(g) The ballot shall be printed to provide for voting for or against the proposition: "The sale of _____ by the _____ Hospital Authority."

(h) If a majority of qualified voters who vote in the election favor the sale, the board may sell the property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.033. SALE OR CLOSING OF HOSPITAL. (a) The board may sell a hospital, or part of a hospital, owned by the authority or close a hospital, or part of a hospital, owned or operated by the authority. The sale or closure must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president

and secretary of the board; and

(3) be made by a document having the seal of the authority impressed on it.

(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the authority. The number of qualified voters is determined according to the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.0331. EXPENDITURE OF FUNDS FOR PUBLIC HEALTH INITIATIVES AFTER SALE OR CLOSING OF HOSPITAL. (a) If, after the sale or closing of a hospital under Section 262.033, the authority does not own or operate a hospital, the board may use the authority's available assets to promote public health and general welfare initiatives that the board determines will benefit the residents served by the authority, including:

(1) owning, operating, or funding an indigent health care clinic, medical research facility, medical training facility, or other health care facility;

(2) providing direct or indirect financial assistance to a nonprofit organization that:

(A) owns or operates a hospital, indigent health care clinic, medical research facility, medical training facility, or other health care facility; or

(B) supports an initiative promoting health education, wellness, or disease prevention; and

(3) undertaking any other activity that the board determines is necessary or appropriate to improve public health, promote wellness, prevent disease, or enhance the general welfare of the residents served by the authority.

(b) The board may not make an expenditure under Subsection (a) unless:

(1) the board makes appropriate provisions for the satisfaction of any outstanding bonds, debt obligations, or other liabilities of the authority;

(2) the predominant purpose of the expenditure is to promote the public health and general welfare of the residents served by the authority; and

(3) the board establishes sufficient controls to ensure that the expenditure promotes the public health and general welfare of the residents served by the authority.

Added by Acts 2013, 83rd Leg., R.S., Ch. 154 (S.B. 233), Sec. 1, eff. September 1, 2013.

Sec. 262.0335. LIABILITY OF CERTAIN MUNICIPAL HOSPITAL AUTHORITIES UNDER CONTRACT FOR SALE OF HOSPITAL. (a) This section applies only to a municipal hospital authority wholly located in a county with a population of less than 70,000.

(b) A municipal hospital authority that enters into a contract to sell a hospital owned by the authority waives governmental immunity to suit for the purpose of adjudicating a claim for breach of the contract.

(c) For a breach of contract claim described by Subsection (b), a claimant may not be awarded:

(1) a total amount that exceeds the amount due and owed by the municipal hospital authority under the contract; or

(2) consequential or exemplary damages.

(d) A municipal hospital authority that enters into a contract to sell a hospital owned by the authority may indemnify the purchaser of the hospital according to the terms of the contract.

Added by Acts 2023, 88th Leg., R.S., Ch. 111 (S.B. 1097), Sec. 1, eff. May 23, 2023.

Sec. 262.034. FACILITIES AND SERVICES FOR ELDERLY AND DISABLED. (a) The authority may construct, acquire, own, operate, enlarge, improve, furnish, or equip one or more of the following types of facilities or services for the care of the elderly or disabled:

(1) a nursing home or similar long-term care facility;
(2) elderly housing;
(3) assisted living;
(4) home health;
(5) personal care;
(6) special care;
(7) continuing care; and
(8) durable medical equipment.

(b) The authority may lease or enter into an operations or management agreement relating to all or part of a facility or service for the care of the elderly or disabled that is owned by the authority. The authority may sell, transfer, otherwise convey, or close all or part of the facility and may discontinue a service.

(c) The authority may issue revenue bonds and other notes in accordance with this chapter to acquire, construct, or improve a facility for the care of the elderly or disabled or to implement the delivery of a service for the care of the elderly or disabled.

(d) For the purposes of this section, a facility or service described by Subsection (a) is considered to be a hospital project under Chapter 223 (Hospital Project Financing Act).

(e) This section applies only to an authority that owns or operates a hospital licensed under Chapter 241 and that is located in:

(1) a county with a population of 225,000 or less;
(2) those portions of extended municipalities that the federal census bureau has determined to be rural;
(3) an area that is not delineated as an urbanized area by the federal census bureau; or
(4) a municipality with a population of less than 12,000 and a county with a population of 3.3 million or more at the time the authority begins operating a facility or providing a service described by Subsection (a).

(f) This section does not authorize the authority to issue revenue bonds or other notes in accordance with this chapter to construct, acquire, own, enlarge, improve, furnish, or equip a facility or service listed in Subsection (a) if a private provider of the facility or service is available and accessible in the service area of the authority.

(g) An authority described by Subsection (e)(4) may not own or operate more than 50 licensed nursing home beds under this section

and is not subject to Subsection (f).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 117, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 4, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 793, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1030, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 70, eff. September 1, 2023.

Sec. 262.035. POWERS AND DUTIES OF CERTAIN HOSPITAL AUTHORITIES; LEASE. (a) This section applies only to an authority created in a county with a population of at least 350,000 in which a hospital district is not located.

(b) A municipality may lease to an authority subject to this section all or part of a hospital and any other health facilities owned by the municipality. The lease may provide that the municipality may retain during the term of the lease specified rights relating to the operation of the authority and the facilities leased from the municipality. The lease may provide that:

(1) the municipality may retain the power to appoint all directors of the authority, notwithstanding Section 262.012;

(2) the authority is required to perform specified health care services on behalf of the municipality;

(3) the municipality may agree to fund specified health care services;

(4) the authority is prohibited from eliminating or curtailing specified health care services offered at the facilities leased from the municipality without prior consultation with or the approval of the municipality;

(5) the authority is prohibited from subletting the facilities leased from the municipality or assigning its rights under the lease for a total term of more than five years, or entering into a management contract for the operation of the facilities leased from the municipality as a whole, or pledging the authority's revenues derived from the operation of the facilities leased from the municipality, without prior consultation with or the approval of the municipality;

(6) the board may be subject to any ethics or conflict of

interest ordinance applicable to other sovereign city boards and commissions adopted by the municipality and any goals for hiring and contracting with minorities or women adopted by and for the municipality;

(7) the authority will comply with Chapter 252, Local Government Code, relating to purchasing and contracts;

(8) the municipality may issue general obligation bonds for the use and benefit of the authority;

(9) an authority and its employees may participate in the municipality's employee retirement plan, employee health plans, and other employee benefit plans; and

(10) the lease may contain other terms and conditions that the municipality and authority agree on and which are not prohibited by law or by the constitution.

(c) If the municipality retains in the lease the right to appoint all members of the board, the municipality may remove the entire board or any member of the board at any time with cause. The municipality may remove the board or a member of the board under this subsection only after reasonable written notice to the board or board members and on the affirmative vote of a majority of the members of the governing body of the municipality.

(d) For purposes of Chapters 101 and 102, Civil Practice and Remedies Code, a municipal hospital authority subject to this section is a unit of local government and not a municipality.

(e) An authority subject to this section is subject to Chapter 551, Government Code, and Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 558, Sec. 1, eff. June 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), (88), eff. Sept. 1, 1995.

Sec. 262.036. RETIREMENT BENEFITS. If any authority is created by the governing body of a municipality which has established a municipal retirement system pursuant to Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas Civil Statutes), then the board of such authority shall have the authority to provide and shall provide retirement benefits for employees of the authority by participating in and making all contributions required or authorized by the municipal retirement

system established by the municipality pursuant to Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas Civil Statutes).

Added by Acts 1993, 73rd Leg., ch. 614, Sec. 1, eff. July 1, 1993. Renumbered from Health & Safety Code Sec. 262.035 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(23), eff. Sept. 1, 1995.

Sec. 262.037. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) The authority may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of an authority under this chapter.

(b) The board shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The authority may contribute money to or solicit money for the nonprofit corporation. If the authority contributes money to or solicits money for the corporation, the authority shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

(e) A nonprofit corporation formed under this section shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the authority is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 1, eff. June 16, 2007.

Sec. 262.038. HOSPITAL AUTHORITY CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. The authority may, directly or through any nonprofit corporation formed by the authority, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 1, eff. June 16, 2007.

Sec. 262.039. INVESTMENT OF AUTHORITY FUNDS. (a) This section applies only to an authority that:

(1) is located in:

(A) a county of 2.4 million or more; or

(B) a municipality of less than 15,000;

(2) has assets that exceed the amount of any outstanding bonds issued under Subchapter D; and

(3) does not operate a hospital.

(b) Notwithstanding any other law, an authority may invest authority funds:

(1) as provided by Chapter 2256, Government Code; and

(2) in any investment a trustee is authorized to make under Subtitle B, Title 9, Property Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 154 (S.B. 233), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 581 (H.B. 3333), Sec. 1, eff. September 1, 2015.

SUBCHAPTER D. BONDS

Sec. 262.041. REVENUE BONDS. (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes.

(b) Revenue bonds must be payable from, and secured by a pledge of, revenues from the operation of one or more hospitals and any other revenues from owning hospital property. Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property owned by the authority or by a chattel mortgage on the authority's personal property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.042. FORM AND PROCEDURE. (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

(1) be signed by the president or vice-president of the board;

(2) be countersigned by the secretary of the board; and

(3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.043. TERMS. (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

(1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate computed according to Chapter 1204, Government Code, may not exceed 10 percent a year;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and

(3) be made registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.252, eff. Sept. 1, 2001.

Sec. 262.044. NOTICE. (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board shall publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be not later than the 15th day before the date set for adoption of the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.045. REFERENDUM. (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the president or secretary of the board before the

date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the authority who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1251, Government Code. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the municipality's governing body, mayor, and municipal secretary.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.253, eff. Sept. 1, 2001.

Sec. 262.046. JUNIOR LIEN BONDS; PARITY BONDS. (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.047. BOND PROCEEDS; INVESTMENT OF FUNDS. (a) The board may set aside from the proceeds from the sale of bonds:

(1) an amount for payment of not more than two years' interest on the bonds;

(2) the amount required for operating expenses during the first year of operation as estimated by the board; and

(3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of municipal funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may

invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this chapter may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Subchapters B and C, Chapter 1207, Government Code, or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.254, eff. Sept. 1, 2001.

Sec. 262.049. APPROVAL AND REGISTRATION OF BONDS. (a) The authority shall submit to the attorney general bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 262.050. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;
(4) a savings and loan association;
(5) an insurance company; or
(6) the interest and sinking fund or other public fund of an authority.

(b) The bonds are eligible and lawful security, to the extent of the value of the bonds, for the deposits of public funds of the state or an authority if accompanied by all appurtenant unmatured interest coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 263. COUNTY HOSPITALS AND OTHER HEALTH FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 263.0001. DEFINITION. In this chapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0820, eff. April 2, 2015.

Sec. 263.001. TWO OR MORE COUNTIES MAY JOIN. (a) Two or more adjacent counties may act together to carry out the purposes of this chapter and construct one or more hospitals for their joint use as provided by this chapter for a single county if:
(1) each of the counties has fewer than 15,000 inhabitants; and
(2) the executive commissioner approves.

(b) The counties acting together have the same powers and liabilities under this chapter as a single county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0821, eff. April 2, 2015.

Sec. 263.002. ADDITIONAL HOSPITAL. A county may maintain more than one county hospital if considered advisable by the commissioners

court of the county and approved by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0822, eff. April 2, 2015.

SUBCHAPTER B. ESTABLISHING, ENLARGING, SELLING, AND CLOSING COUNTY HOSPITALS

Sec. 263.021. ESTABLISHING OR ENLARGING HOSPITAL ON PETITION; SUBMISSION OF BOND PROPOSITION. (a) The commissioners court of a county may establish a county hospital or any medical or other health facility or enlarge an existing hospital or facility for the care and treatment of persons who are sick or injured in accordance with this subchapter.

(b) Ten percent or more of the qualified property taxpaying voters of a county may petition the commissioners court of the county to establish or enlarge a county hospital or any medical or other health facility.

(c) A petition may not be presented to the commissioners court during the 12-month period succeeding the date on which a petition under this section was last presented to the court unless the county does not own a hospital.

(d) On proper petition, the commissioners court shall, within the period designated in the petition, submit to the qualified voters of the county at a special or regular election the proposition of issuing bonds in the amount designated in the petition to establish or enlarge the hospital or facility.

(e) The commissioners court may not submit to the voters a bond proposition to establish or enlarge a county hospital or facility more than twice during any 12-month period.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.022. POWERS AND DUTIES OF COMMISSIONERS COURT AFTER PASSAGE OF BOND PROPOSITION. (a) If a bond proposition under Section 263.021 is approved by a majority of the qualified voters voting at the election, the commissioners court of the county shall establish or enlarge a hospital or medical or other health facility

as provided in the proposition and maintain the hospital or facility.

(b) In establishing, enlarging, or maintaining a hospital or facility, the commissioners court may:

(1) purchase or lease real or personal property or acquire real property and easements to real property by condemnation;

(2) purchase or construct any necessary buildings;

(3) make necessary improvements, repairs, and alterations to an existing building;

(4) impose property taxes in the county for all necessary expenditures related to the hospital or facility, including maintenance expenses;

(5) issue county bonds to provide funds to establish, enlarge, and equip the hospital or facility or make any necessary permanent improvements in connection with the hospital or facility; and

(6) accept and hold a grant or devise of land or a gift or bequest of money or personal property in trust for the county and apply the principal or income, or both, for the benefit of the hospital or facility and in accordance with the terms of the gift.

(c) Subject to this chapter, the commissioners court may purchase or lease real or personal property, or both, in an adjacent county if the court considers the purchase or lease necessary for hospital purposes. The commissioners court may not acquire real property in an adjacent county by condemnation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.023. CONSTRUCTION OF HOSPITAL TO AVOID INADEQUATE CARE IN CERTAIN COUNTIES. (a) The commissioners court of a county shall provide for the construction of a county hospital if:

(1) the county has a municipality with more than 10,000 inhabitants as ascertained by the court in the manner determined by a resolution of the court; and

(2) the county does not have a county hospital or the county hospital is inadequate.

(b) The commissioners court shall provide for the construction of the hospital within six months after the date the number of inhabitants of the municipality exceeds 10,000 except that the executive commissioner may, for good cause, extend this period.

(c) The hospital must have a room or ward for the care of confinement cases and a room or ward for the temporary care of persons suffering from mental or nervous disease.

(d) The hospital must have separate buildings for persons suffering from tuberculosis and other communicable diseases.

(e) Sufficient accommodations shall be added to the hospital as needed to take care of persons in the county who are sick or injured.

(f) If adequate funds for the issuance of county warrants and scrip for the construction of the hospital are not available from the county, the commissioners court shall submit, either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the construction of the hospital. If the proposition is not approved by a majority vote at the election, the court shall, on petition of 10 percent or more of the qualified voters of the county, resubmit the proposition.

(g) A petition may not be presented to the commissioners court if a petition has been presented to the court in the preceding 12 months.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0823, eff. April 2, 2015.

Sec. 263.024. HOSPITAL REVENUE BONDS. (a) A county may issue revenue bonds for:

(1) acquiring, constructing, repairing, equipping, or renovating buildings and improvements for county hospital purposes; or

(2) acquiring land for county hospital purposes.

(b) The county may issue bonds to refund previously issued revenue bonds.

(c) The revenue bonds shall be payable from and secured by a pledge of all or a part of the revenues of the county derived from the operation of the hospital. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of the county's hospital property.

(d) The revenue bonds must be issued in accordance with Sections 264.042-264.047(a), 264.048, and 264.049, and with the

effect specified by Section 264.050.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.025. HOSPITAL OPERATING FUNDS USED FOR IMPROVEMENTS IN CERTAIN COUNTIES. The commissioners court of a county with a population of 24,000 or more but less than 24,500 or a population of 24,700 or more but less than 27,000 may use excess money in the county hospital operating fund for making permanent improvements to the county hospital and for the payment of county bonds issued for the construction and improvement of a county hospital facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 71, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 35, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 71, eff. September 1, 2023.

Sec. 263.026. HEALTH UNIT OR CENTER IN COUNTY WITH POPULATION GREATER THAN 100,000. (a) The commissioners court of a county with a population of more than 100,000 that has a county hospital may acquire sites and construct or otherwise acquire buildings to use for county public health units or public health centers as part of the county hospital system. The commissioners court may locate a health unit or center anywhere in the county.

(b) Payments for the sites or buildings shall be made from the county permanent improvement fund. To pay for a site or building for a health unit or center, the commissioners court may:

(1) issue negotiable bonds and impose taxes to pay the principal of and interest on the bonds in accordance with Subtitles A and C, Title 9, Government Code;

(2) issue time warrants and impose taxes to pay the principal of and interest on the time warrants in accordance with Subchapter C, Chapter 262, Local Government Code; or

(3) by order issue certificates of indebtedness and impose taxes to pay the principal of and interest on the certificates in accordance with this section.

(c) The certificates of indebtedness must:

(1) mature not later than 35 years after the date of the certificates; and

(2) be signed by the county judge and attested by the county clerk, either by their actual or facsimile signatures as provided by the order of issuance.

(d) The interest on certificates of indebtedness may be evidenced by interest coupons at the discretion of the commissioners court. The interest coupons must be executed by the facsimile signatures of the county judge and county clerk.

(e) The certificates of indebtedness and the record relating to their issuance shall be submitted to the attorney general for examination. If the certificates are issued in accordance with the Texas Constitution and this section, the attorney general shall approve the certificates and the comptroller shall register the certificates. If the certificates are registered, they are incontestable after they are delivered to the purchasers.

(f) The commissioners court shall sell the certificates of indebtedness for not less than their par value plus accrued interest. The commissioners court shall impose a continuing annual ad valorem tax sufficient to pay the principal of and interest on the certificates as each becomes due and payable.

(g) Certificates of indebtedness issued under this section are negotiable instruments.

(h) The commissioners court may issue refunding bonds to refund bonds and certificates issued under this section, subject to state law applicable to refunding bonds issued by counties. The commissioners court may issue the refunding bonds without notice or a referendum.

(i) The commissioners court may issue refunding bonds to refund time warrants issued under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 32, eff. Sept. 1, 1999.

Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR. If requested by the commissioners court of a county, the executive commissioner must approve plans for the construction, alteration, or repair of a hospital or facility under this chapter before the construction, alteration, or repair may begin.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0824, eff. April 2, 2015.

Sec. 263.028. CONTRACT FOR CARE. (a) The commissioners court of a county that does not have a municipality with a population of more than 10,000 may contract with a hospital in the county, an incorporated society or municipality in the county that maintains a hospital, or an adjacent county for the care of residents of the county who are sick or injured.

(b) The term of the contract may not exceed one year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.029. SALE OR LEASE OF HOSPITAL. (a) A county may sell or lease all or part of a county hospital or medical or other health facility operated by the county, including real property, if the commissioners court of the county, by order entered in the minutes of the court, finds that the sale or lease is in the best interest of the county.

(b) The commissioners court shall set a time and place for a hearing on the proposed sale or lease. The date of the hearing may not be earlier than the 16th day or later than the 30th day from the date of the order.

(c) The county clerk, immediately after the time and place of the hearing are set, shall give notice informing all qualified voters of the county and other persons interested in the issue of selling or leasing the hospital of the time and place of the hearing and their right to appear at the hearing and to speak for or against the proposed action. The county clerk shall publish notice once a week for two consecutive weeks in a newspaper published in the county. The first notice must be published not later than the 15th day before the date set for the hearing. If no newspaper is published in the county, the county clerk shall post the notice at the courthouse door for 14 days before the date set for the hearing.

(d) Ten percent or more of the qualified voters in the county may petition the commissioners court in writing before the time set

for the hearing for a referendum on whether the hospital shall be sold or leased or shall continue under county operation. The commissioners court may not sell or lease the hospital unless the proposition to sell or lease the hospital is approved by a majority of the votes cast at the election. The election shall be held under and governed by the election provisions of Section 263.021.

(e) If no petition is filed with the county clerk, the commissioners court may conduct the hearing. Any person interested may appear in person or by attorney. The commissioners court may adjourn the hearing from day to day and from time to time as it considers necessary. On completion of the hearing, the commissioners court may enter an order determining whether or not to sell or lease the hospital. If the court finds that due notice was given, no petition was filed, and the proposed sale or lease is in the best interest of the county, the commissioners court may enter in its minutes an order that the hospital be sold or leased.

(f) The commissioners court may submit the issue of the sale or lease to the voters and withhold its final determination pending the election even if no petition is filed.

(g) The court may sell the hospital or may lease the hospital to be operated as a hospital by the lessee under terms satisfactory to the commissioners court and the lessee. The commissioners court shall enter in its minutes an order of the sale or lease that contains a complete copy of the sales or lease contract.

(h) If 50 qualified property taxpaying voters in a county with a population of 5,000 to 10,390 file a written petition with the commissioners court requesting a referendum on the issue of leasing all or part of the county hospital and if the proposition to lease all or part of the hospital is not approved by a majority of the votes cast at the election, the commissioners court may not lease all or part of the hospital for a period greater than five years.

(i) The commissioners court may deposit all or part of the proceeds from the sale of a county hospital to the credit of a fund to be known as the county health care fund and shall deposit any of the remainder to the credit of the county general fund. The county health care fund may be used only to finance items related to providing health care to county residents, including indigent residents. The commissioners court may deposit to the credit of the county health care fund all or part of the interest from that fund and shall deposit any remainder to the credit of the county general

fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.030. CLOSING OF HOSPITAL. (a) The commissioners court of a county by order on terms it considers reasonable may close a hospital or medical facility constructed, purchased, or acquired under this chapter.

(b) The order is final 30 days after the date of adoption unless at least 10 percent of the qualified voters in the county petition the commissioners court requesting an election to determine whether the hospital or facility should be closed.

(c) On proper petition, the commissioners court shall set a time for an election and shall submit to the qualified voters of the county ballots providing for voting for or against the proposition: "The closing of (name of hospital or facility to be closed)."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.031. CLOSING PART OF HOSPITAL. A county may close a part of a county hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BOARD OF MANAGERS

Sec. 263.041. APPOINTMENT OF BOARD OF MANAGERS. (a) The commissioners court of a county shall appoint at least six but not more than 12 residents of the county as the board of managers of a county hospital or medical or other health facility after the court acquires the site for the hospital and awards the contracts for the buildings and improvements necessary for the hospital.

(b) A manager is appointed for a term of two years except that the commissioners court may set the terms of the initial managers at less than two years so that as close as possible to one-half of the managers' terms expire each year.

(c) An appointment to fill a vacancy is for the unexpired term.

(d) A vacancy is created if a manager misses three consecutive board meetings unless the board takes formal action to excuse the

absences.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.042. OPERATION OF BOARD OF MANAGERS. (a) The board of managers shall elect from among its members a president, at least one vice-president, a secretary, and a treasurer.

(b) The county judge of the county in which the hospital is located may vote to break a tie vote by the board of managers.

(c) The board of managers shall meet at the hospital at least once a month and may meet at other times as provided by its bylaws.

(d) The board of managers shall hold an annual meeting before the beginning of the third week preceding the date of the meeting of the commissioners court at which the court considers appropriations for the following year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.043. COMPENSATION AND EXPENSES OF BOARD OF MANAGERS. (a) The commissioners court may provide hospitalization insurance as compensation for the services of the board of managers.

(b) The commissioners court shall pay and audit, in the same manner as other expenses of the hospital, the managers' actual and necessary traveling and other expenses within this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.044. TORT CLAIMS PAYMENTS. A member of the board of managers is a county officer for purposes of Chapter 102, Civil Practice and Remedies Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.045. REMOVAL OF MANAGER. After citation, the commissioners court may, at any time, remove a member of the board of managers from office for cause.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.046. GENERAL POWERS AND DUTIES OF BOARD OF MANAGERS. (a) The board of managers shall generally manage and control the hospital, including:

(1) its buildings and grounds;

(2) its officers and employees;

(3) its patients; and

(4) all matters relating to its government, discipline, contracts, and fiscal concerns.

(b) The board of managers may adopt rules it considers necessary to carry out the purposes of the hospital.

(c) The board of managers shall maintain an effective inspection of the hospital and keep itself informed of the hospital's affairs and management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.047. SALARIES. (a) The board of managers shall determine the salaries of the officers and employees of the hospital, including the superintendent.

(b) The salaries may not exceed the appropriation made for the salaries by the commissioners court.

(c) The salaries are full compensation for all services rendered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.048. VISITING PHYSICIANS. (a) The board of managers shall appoint a staff of visiting physicians who visit and treat hospital patients at the request of the board or the superintendent.

(b) The physicians serve without pay from the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.049. DISCHARGE OF PATIENTS. (a) The board of managers shall make the final disposition of a case concerning the

discharge of a patient from the hospital.

(b) The decision of the board of managers regarding discharge of a patient may not be appealed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.050. DISPENSARIES AND CLINICS. (a) The board of managers may establish and operate:

(1) an outpatient department or a free dispensary and clinic at the hospital or in the municipality located nearest the hospital; and

(2) a branch dispensary or clinic in a municipality that is located in the county and that has 5,000 or more inhabitants.

(b) The board of managers shall appoint a physician to serve at the dispensary or clinic, determine the time that the physician is required to spend at the dispensary or clinic, and fix the salary, if any, of the physician.

(c) The board of managers shall appoint a trained visiting nurse to serve in connection with the dispensary or clinic and the hospital. The board shall fix the salary of the nurse within the limits of the appropriation made for the salary by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.051. SCHOOL FOR CHILDREN HAVING TUBERCULOSIS. (a) The board of managers may establish a special and separate school for the education, care, and treatment of children having tuberculosis.

(b) The school may be located at the hospital, in the municipality nearest the hospital, or in the largest municipality in the county.

(c) The school shall be conducted as a branch of the hospital and the children at the school are patients of the hospital and subject to this chapter.

(d) The board of managers shall employ a specially qualified teacher to instruct and care for the children of the school.

(e) The board of managers shall assign the superintendent of the hospital, a member of the staff of visiting physicians, or a physician serving a county dispensary or shall employ a physician to

attend the children of the school and to supervise their care and treatment.

(f) The board of managers shall assign a nurse from the hospital or a visiting nurse or shall employ a nurse to assist in the care and treatment of the children of the school.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.052. CONTRACT FOR CARE BY BOARD. The board of managers may contract for the care of a person who is sick or injured and who applies to the hospital for admission. The board may contract for this care with:

(1) a hospital in the county; or

(2) an incorporated society or municipality in the county that maintains a hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.053. RECORDS. (a) The board of managers shall keep a proper record of its proceedings in a book provided for that purpose. The record must be open for inspection at all times to the board, the commissioners court, and any resident of the county.

(b) The board of managers shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, which shall provide for their payment in the same manner that other charges against the county are paid.

(c) The board of managers shall report to the commissioners court annually, and at other times as directed by the court, on the details of the operation during the year of the hospital dispensaries and school for children suffering from tuberculosis. The report must contain:

(1) the number of patients admitted and the methods and result of their treatment, together with suitable recommendations and other material required by the court; and

(2) full and detailed estimates of the appropriations required during the following year for all purposes, including maintenance, building construction, repairs, renewals, extensions, and improvements.

(d) The board of managers shall incorporate into its report to

the commissioners court the accounts and records prepared by the superintendent of the hospital under Section 263.077.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. SUPERINTENDENT

Sec. 263.071. APPOINTMENT OF SUPERINTENDENT. (a) The board of managers shall appoint a superintendent of the hospital who holds office at the pleasure of the board.

(b) The superintendent may not be a member of the board of managers and must be a qualified practitioner of medicine or be specially trained for the work of a superintendent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.072. ROLE OF SUPERINTENDENT. (a) The superintendent is the chief executive officer of the hospital.

(b) The superintendent is subject to the bylaws and rules of the hospital and to the board of managers.

(c) The board of managers shall determine the amount of time that a superintendent must spend at the hospital in the performance of the superintendent's duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.073. BOND. The superintendent, before beginning to discharge the duties of office, shall give a bond in a sum determined by the board of managers to secure the faithful performance of the superintendent's duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.074. GENERAL POWERS AND DUTIES OF SUPERINTENDENT. (a) The superintendent has general supervision and control of:

(1) the records and accounts of the hospital;

(2) the hospital buildings; and

(3) the internal affairs of the hospital, including

discipline.

(b) The superintendent shall enforce the bylaws and rules adopted by the board of managers for the government, discipline, and management of the hospital and its employees and patients.

(c) The superintendent may adopt additional rules and orders the superintendent considers necessary that are not inconsistent with law or the rules and directions of the board of managers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.075. EQUIPPING THE HOSPITAL. (a) The superintendent shall, with the consent of the board of managers, equip the hospital with furniture, appliances, fixtures, and other facilities necessary for the care and treatment of patients and the use of officers and employees.

(b) The superintendent shall purchase all supplies necessary for the hospital.

(c) Expenditures under this section may not exceed the amount provided for them by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.076. OFFICERS AND EMPLOYEES. (a) With the consent of the board of managers, the superintendent shall appoint resident officers and employees considered proper and necessary by the superintendent for the efficient performance of the hospital's business.

(b) The superintendent shall determine the duties of the officers and employees of the hospital.

(c) The superintendent may discharge an officer or employee at the discretion of the superintendent for cause stated in writing after an opportunity for a hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.077. ACCOUNTS AND RECORDS. (a) The superintendent shall require daily accounts and records of the hospital's business and operations.

(b) The superintendent shall require that:

(1) a record is kept of the condition of a patient on and after admission; and

(2) proper records and accounts are kept of the admission of a patient, including the patient's name, age, sex, color, marital condition, residence, occupation, and place of past employment.

(c) The superintendent shall present the accounts and records to the board of managers in an annual report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.078. FORMS FOR ADMISSION. (a) The county hospital shall provide forms for application for admission to the hospital and the superintendent shall forward the forms free to a licensed physician in the county in which the hospital is located at the request of the physician.

(b) An application for admission to a county hospital must be made, if practicable, on a form provided under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.079. ADMISSION OF PERSONS FROM COUNTY. (a) A resident of a county in which a county hospital is located who desires treatment in the hospital may apply in person to the superintendent or to a licensed physician for examination. If the physician finds that the resident is sick or injured, the physician may apply to the superintendent for admission of the resident.

(b) After the superintendent receives an application for admission to the hospital, the superintendent shall notify the applicant to appear in person at the hospital if:

(1) it appears from the application that the applicant is sick or injured; and

(2) there is a vacancy in the hospital.

(c) The superintendent, acting under the general direction of the board of managers, shall admit an applicant for admission to the hospital in order of application or according to the urgency of need of treatment if:

(1) after a personal examination of the applicant, the superintendent is satisfied that the applicant is sick or injured;

and

(2) the applicant resides in the county at the time of the application for admission to the hospital.

(d) An application for admission must state whether, in the judgment of the physician, the applicant is able to pay, in whole or in part, for the applicant's care and treatment while in the hospital.

(e) An application must be filed and recorded in a book kept for that purpose in the order it is received.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.080. ADMISSION OF PERSONS FROM ADJACENT COUNTY. The superintendent shall admit to the hospital a person sent by the commissioners court of an adjacent county if:

(1) the adjacent county has contracted with the board of managers for the care and treatment of persons who are sick or injured;

(2) the person resides in the adjacent county at the time of the application for admission to the hospital; and

(3) there is sufficient provision for the care of persons who are sick or injured and who reside in the county in which the hospital is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.081. CONDITION AND TREATMENT OF PATIENT. The superintendent shall require that a patient's physical condition is carefully examined and the treatment the patient needs is provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.082. PAYMENT BY PATIENT. (a) A patient may not be permitted to pay an amount for the patient's maintenance in the hospital greater than the average per capita cost of maintenance in the hospital, including a reasonable allowance for the interest on the cost of the hospital.

(b) An officer or employee of a county hospital may not accept

from a patient a fee, payment, or gratuity for any service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.083. SUPPORT. (a) The superintendent shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to the hospital from the county in which the hospital is located. If the superintendent finds that the patient or the patient's relatives are liable to pay for the patient's care and treatment in whole or in part, the superintendent shall issue an order directing the patient or the patient's relatives to pay to the treasurer of the hospital a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) A superintendent may collect an amount owed under this section from the estate of a patient, or the relatives legally responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a decedent.

(d) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over that ability or if there is doubt in the mind of the superintendent of the hospital over that ability. The court shall hear witnesses and issue any order that may be proper. The order may not be appealed.

(e) Discrimination in the accommodations, care, or treatment of a patient may not be made because the patient or the patient's relatives contribute to the cost, in whole or in part, of the patient's maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.084. DISCHARGE OF PATIENTS. (a) The superintendent shall temporarily or permanently discharge a patient from the hospital if the patient:

(1) is not sick or injured or recovers from the sickness or

injury;

(2) wilfully or habitually violates hospital rules; or

(3) is not suitable for treatment for any other reason.

(b) The superintendent shall make a full report of a discharge of a patient from the hospital at the next meeting of the board of managers after the discharge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 263.085. COLLECTION OF MONEY. (a) The superintendent shall collect money due the hospital.

(b) The superintendent shall keep an accurate account of money collected at the hospital, report at the monthly meeting of the board of managers the amount of money collected, and transmit the money to the county treasurer of the county in which the hospital is located within 10 days after the date of the meeting of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. ENFORCEMENT AND DISSEMINATION OF INFORMATION

Sec. 263.101. INSPECTIONS. (a) A resident officer of a county hospital shall admit a member of the board of managers into every part of the hospital and its premises.

(b) On the demand of a member of the board of managers, a resident officer of the hospital shall:

(1) give the board access to all books, papers, accounts, and other records pertaining to the hospital; and

(2) furnish the board with copies, abstracts, and reports.

(c) A hospital established or maintained under this chapter is subject to inspection by an authorized representative of:

(1) the Department of State Health Services;

(2) the commissioners court; or

(3) a state board of charities, if such a board is created.

(d) A resident officer of a county hospital shall admit a representative listed in Subsection (c) into every part of the hospital and its buildings.

(e) On the demand of a representative listed in Subsection (c), a resident officer of the hospital shall give the representative access to all books, papers, accounts, reports, and other records

pertaining to the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0825, eff. April 2, 2015.

Sec. 263.102. RULES AND PUBLICATIONS. (a) The board of managers shall print, or purchase from the Department of State Health Services at the actual cost of printing:

(1) rules adopted by the executive commissioner for the care of persons having a communicable disease and for the prevention and spread of communicable disease; and

(2) bulletins and other publications prepared by the department providing information about the cause, nature, treatment, and prevention of disease.

(b) The board of managers shall send or deliver copies of those rules, bulletins, and publications to:

(1) all practicing physicians in the county in which the hospital is located;

(2) all public schools;

(3) private schools that request copies; and

(4) organizations, churches, societies, unions, and individuals who present a written request for copies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0826, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0827, eff. April 2, 2015.

CHAPTER 264. COUNTY HOSPITAL AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 264.001. SHORT TITLE. This chapter may be cited as the County Hospital Authority Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.002. DEFINITIONS. In this chapter:

(1) "Authority" means a county hospital authority created under this chapter.

(2) "Board" means the board of directors of an authority.

(3) "Bond" includes a note.

(4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.

(5) "Hospital" means a hospital project as defined under Section 223.002.

(6) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of or creating a mortgage lien on properties to secure revenue bonds issued by an authority.

(7) "Trustee" means the trustee under a trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.003. CREATION. (a) The commissioners court of a county by order may create a county hospital authority and designate the name of the authority if the commissioners court finds that creation of the authority is in the best interest of the county and its residents.

(b) The authority is composed only of the territory in the county.

(c) The authority is a body politic and corporate and a political subdivision of the state.

(d) The authority does not have taxing power.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.004. DISSOLUTION. (a) The commissioners court of a county by order may dissolve an authority created by the commissioners court if the commissioners court and the authority provide for the sale or transfer of the authority's assets and liabilities to the county.

(b) The dissolution of an authority and the sale or transfer of the authority's assets and liabilities may not:

(1) violate a trust indenture or bond resolution relating to the outstanding bonds of the authority; or

(2) diminish or impair the rights of the holders of

outstanding bonds, warrants, or other obligations of the authority.

(c) An order dissolving an authority takes effect on the 31st day after the date the commissioners court adopts the order.

(d) All records of the authority remaining when the authority is dissolved shall be transferred to the county clerk of the county in which the authority is located.

Added by Acts 2017, 85th Leg., R.S., Ch. 120 (H.B. 594), Sec. 1, eff. May 26, 2017.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 264.011. BOARD OF DIRECTORS. (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the order creating the authority unless prohibited by the resolution authorizing the issuance of bonds or by the trust indenture securing the bonds. However, a reduction in the number of directors may not shorten the term of an incumbent director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.012. APPOINTMENT OF BOARD; TERMS OF OFFICE. (a) The commissioners court shall appoint the directors of the authority for terms not to exceed three years except as otherwise provided by this section.

(b) The resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds may prescribe the method of selecting a majority of the directors and the term of office of those directors, and the terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The commissioners court shall appoint the remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a hospital under construction from a nonprofit corporation, the

directors shall be determined as provided in the contract of purchase.

(e) An officer or employee of the county is not eligible for appointment as a director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.013. OFFICERS. (a) The board shall elect:

(1) a president and a vice-president, who must be directors;

(2) a secretary and a treasurer, who are not required to be directors; and

(3) any other officers authorized by the authority's bylaws.

(b) The offices of secretary and treasurer may be combined.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 264.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

(1) have a seal;

(2) sue and be sued; and

(3) make, amend, and repeal its bylaws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS. (a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals located in the county.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital or part of a hospital owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the power to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.024. MANAGEMENT AGREEMENT. (a) The board may enter

into an agreement with any person for the management or operation of a hospital or part of a hospital owned by the authority under terms that are satisfactory to the board and the contracting party.

(b) The agreement must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the power to manage the hospital and to employ and discharge employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.025. COMMITTEES. (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the power to:

(1) issue bonds;

(2) make or amend a lease of a hospital or a management agreement relating to a hospital; or

(3) employ or discharge a manager or executive director.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.026. RATES FOR HOSPITAL SERVICES. (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources, the board shall produce revenue sufficient to:

(1) pay the expenses of owning, operating, and maintaining the hospital;

(2) pay the interest on the bonds as it becomes due;

(3) create a sinking fund to pay the bonds as they become

due; and

(4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient, with the nonprofit corporation's or lessee's other sources of revenue, to:

(1) pay the expenses of operating and maintaining the hospital; and

(2) make payments or pay rentals to the authority that are sufficient, with the authority's other pledged sources of estimated revenue, to:

(A) pay the interest on the bonds as it becomes due;

(B) create a sinking fund to pay the bonds as they become due; and

(C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.027. DEPOSITORY. The authority may:

(1) select a depository in the same manner that a county may select a depository under Chapter 116, Local Government Code; or

(2) award its depository contract to the depository or depositories of the county on the same terms as the terms of the county depository agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.030. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

(1) a trust indenture or bond resolution relating to outstanding bonds of the authority; or

(2) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board must provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board must publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in the county. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223.

(e) This section does not apply to the sale or closing of a hospital as provided in Section 264.031.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1011, Sec. 2, eff. Sept. 1, 1997.

Sec. 264.031. SALE OR CLOSING OF HOSPITAL. (a) The board may sell all or part of a hospital owned by the authority or close all or part of a hospital owned or operated by the authority. The sale or closing must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) be made by a document having the seal of the authority impressed on it.

(b) The sale or closing of a hospital may not take effect before the expiration of the time in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the county. The number of qualified voters is determined by the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.032. EMERGENCY BORROWING. (a) If the board declares that funds are not available to meet lawfully authorized obligations of the authority and that an emergency exists, the board may borrow money at a rate of interest not to exceed the maximum annual percentage rate allowed by law for authority obligations at the time the loan is made.

(b) To secure a loan, the board may pledge:

(1) revenues of the authority that are not pledged to pay bonded indebtedness of the authority;

(2) authority bonds that have been authorized but not sold; or

(3) revenues of the authority if the pledge is subordinate to any pledge securing outstanding bonds of the authority.

(c) A loan for which bonds are pledged must mature not later than the first anniversary of the date on which the loan is made. A loan for which authority revenues are pledged must mature not later than the fifth anniversary of the date on which the loan is made.

(d) The board may not spend money obtained from a loan under this section for any purpose other than the purpose for which the board declared an emergency and, if bonds are pledged to pay the

loan, for any purpose other than the purposes for which the pledged bonds were authorized.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997.

Sec. 264.033. TIME WARRANTS. The authority may issue time warrants in the manner in which a commissioners court may issue time warrants under Subchapter C, Chapter 262, Local Government Code.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 33, eff. Sept. 1, 1999.

Sec. 264.034. FACILITIES AND SERVICES FOR THE DISABLED OR THE ELDERLY. (a) The authority may construct, acquire, own, operate, enlarge, improve, furnish, equip, or provide the following facilities and services to care for the disabled or the elderly:

(1) a nursing home or similar long-term care facility;
(2) elderly housing;
(3) assisted living services;
(4) home health care;
(5) personal care;
(6) special care;
(7) continuing care; or
(8) durable medical equipment.

(b) The authority may lease or enter into an operations or management agreement to care for the disabled or the elderly under Subsection (a).

(c) The authority may sell, transfer, otherwise convey, or close all or part of a facility described by Subsection (a) and discontinue a service described by Subsection (a).

(d) The authority may issue revenue bonds, notes, and time warrants as provided by this chapter to acquire, construct, or improve a facility described by Subsection (a).

(e) For purposes of Chapter 223, a facility or service described by Subsection (a) is a hospital project.

Added by Acts 1997, 75th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 1997.

Sec. 264.035. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) The authority may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of an authority under this chapter.

(b) The board shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The authority may contribute money to or solicit money for the nonprofit corporation. If the authority contributes money to or solicits money for the corporation, the authority shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

(e) A nonprofit corporation formed under this section shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the authority is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 2, eff. June 16, 2007.

Sec. 264.036. HOSPITAL AUTHORITY CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. The authority may, directly or through any nonprofit corporation formed by the authority, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 2, eff. June 16, 2007.

SUBCHAPTER D. BONDS

Sec. 264.041. REVENUE BONDS. (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes.

(b) Revenue bonds must be payable from, and secured by a pledge of, revenues from the operation of one or more hospitals and any other revenues from owning hospital property. Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property

owned by the authority or by a chattel mortgage on the authority's personal property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.042. FORM AND PROCEDURE. (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

(1) be signed by the president or vice-president of the board;

(2) be countersigned by the secretary of the board; and

(3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.043. TERMS. (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

(1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate computed according to Chapter 1204, Government Code, may not exceed 10 percent a year;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and

(3) be made registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.255, eff. Sept. 1, 2001.

Sec. 264.044. NOTICE. (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board must publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be published not later than the 15th day before the date set for adoption of the resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.045. REFERENDUM. (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the secretary or president of the board before the date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1251, Government Code. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the commissioners court, county judge, and county clerk.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.256, eff. Sept. 1, 2001.

Sec. 264.046. JUNIOR LIEN BONDS; PARITY BONDS. (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.047. BOND PROCEEDS; INVESTMENT OF FUNDS. (a) The board may set aside from the proceeds from the sale of bonds:

(1) an amount for payment of not more than two years'

interest on the bonds;

(2) the amount required for operating expenses during the first year of operation as estimated by the board; and

(3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of county funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this section may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Subchapters B and C, Chapter 1207, Government Code, or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.257, eff. Sept. 1, 2001.

Sec. 264.049. APPROVAL AND REGISTRATION OF BONDS. (a) The authority shall submit to the attorney general the bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following

provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 264.050. LEGAL INVESTMENTS. Bonds of the authority are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company; or

(6) the sinking fund of a political corporation or subdivision of the state, including a municipality, county, or school district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 265. JOINT MUNICIPAL AND COUNTY HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 265.001. MUNICIPALITY WITH POPULATION OF AT LEAST 10,000 AND ANY COUNTY. (a) The commissioners court of a county may cooperate with the proper authorities of a municipality with at least 10,000 inhabitants to establish, build, equip, and maintain a hospital in the municipality.

(b) The commissioners court may appropriate funds for the hospital that the commissioners court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.002. COUNTY AND ANY TWO OR MORE MUNICIPALITIES. (a) The commissioners court of a county may cooperate with the proper authorities of two or more municipalities to establish, build, equip, and maintain a hospital in the county.

(b) The commissioners court may appropriate funds for the

hospital that the court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.003. COUNTY WITH POPULATION OF AT LEAST 92,600 AND MUNICIPALITY WITH POPULATION OF AT LEAST 57,250. (a) The commissioners court of a county with a population of at least 92,600 and the governing body of a municipality in that county with a population of at least 57,250 may establish, build, equip, maintain, and operate a hospital for the care and treatment of sick, infirm, or injured inhabitants of the county or municipality.

(b) The commissioners court and the governing body by agreement may divide the hospital costs between the county and the municipality.

(c) If the amounts in the county or municipal general funds are insufficient to pay the hospital costs, the commissioners court or the governing body at a special or general election may submit to the qualified voters of the county or municipality, respectively, a proposition for the county and municipality to establish, build, equip, maintain, and operate a hospital and for:

(1) the levy of a tax for that purpose not to exceed 10 cents on each $100 of the taxable value of real and personal property that is taxable by the county or municipality; or

(2) the issuance of bonds by the county or municipality in an amount not to exceed the amount specified in the proposition for all or part of the cost of establishing, building, or equipping the hospital and for the levy of a tax to create a sinking fund for the payment of interest on the bonds not to exceed 10 cents on each $100 of the taxable value of real and personal property that is taxable by the county or municipality.

(d) The commissioners court or governing body may assess and levy a tax, or may issue bonds in the manner provided for issuance of other bonds by the county or municipality and assess and levy a tax, as stated in the proposition if the proposition is approved by a majority of votes cast in the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. JOINT HOSPITAL WITH BOARD OF MANAGERS

Sec. 265.011. ESTABLISHMENT OF HOSPITAL BY COMMISSIONERS COURT AND MUNICIPAL GOVERNING BODY. The commissioners court of a county and the governing body of a municipality in that county may jointly appoint a board of managers to establish, build, equip, maintain, and operate one or more hospitals for the care and treatment of the sick, infirm, or injured.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.012. FINANCING. (a) If the municipality or county has issued and sold bonds to establish, build, equip, maintain, and operate a joint municipal and county hospital, the municipality or county may finance the hospital out of general revenue and may levy and collect a tax to finance the hospital not to exceed 10 cents on each $100 of the taxable value of property taxable by the municipality or county.

(b) The commissioners court and the municipal governing body may contribute to the funds necessary for the hospital in a proportion to which they agree.

(c) The board of managers may spend, in a manner determined by the board, funds provided by the county or municipality through the issuance of bonds or other obligations or by appropriation from other funds, for purposes related to the hospital as if the action were taken by the commissioners court or the governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.013. BOARD OF MANAGERS. (a) The board of managers is composed of seven members.

(b) The commissioners court and the municipal governing body shall each appoint three members to the board, and the commissioners court and the governing body shall jointly appoint one member to the board. Members are appointed for six-year terms. However, in making the initial appointments to the board, each appointing entity shall designate one of its appointees for a term expiring two years after the date of appointment, one for a term expiring four years after the

date of appointment, and one for a term expiring six years after the date of appointment. The term of the initial joint appointee expires six years after the date of appointment.

(c) The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.014. CHAIRMAN. The board of managers shall select a chairman from among its members who shall:

(1) preside over the board's meetings; and

(2) sign any contract, agreement, or other instrument made by the board on behalf of the county and municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.015. CONTRACTS. The board of managers may execute any contract relating to establishing, building, equipping, maintaining, or operating the hospital as if the action were taken by the commissioners court or the municipal governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.016. FINANCIAL STATEMENT; BUDGET. (a) The board of managers shall annually prepare and present to the commissioners court and the municipal governing body a statement of the hospital's financial status with a proposed budget for the following year.

(b) On the basis of the financial statement and budget, the commissioners court and the governing body shall appropriate an amount those entities consider proper and necessary for the use of the board of managers in the operation of the hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.017. ISSUANCE OF REVENUE BONDS. (a) The board of

managers may issue and sell revenue bonds in the name of the hospital to finance:

(1) the acquisition of real property, the acquisition, construction, improvement, repair, or rehabilitation of hospital facilities, or the acquisition of equipment or supplies necessary for the hospital to provide hospital services; or

(2) the installation of equipment necessary for the hospital to provide hospital services.

(b) The board of managers has the powers of an issuer under Chapter 1371, Government Code, and may enter into a credit agreement under that chapter. A bond issued under this subchapter is an obligation under Chapter 1371, Government Code, but is not required to be rated as required by that chapter. In this subsection, "credit agreement" and "obligation" have the meanings assigned by Section 1371.001, Government Code.

(c) Bonds issued under this subchapter must be approved by:

(1) a resolution adopted by the board of managers; and

(2) a resolution or order adopted by the commissioners court of the county and the governing body of the municipality that appointed the board.

(d) At the time of issuance of the bonds, the board of managers may:

(1) determine the title of the bonds, provided the title includes the following: "Board of Managers Joint (insert county name)-(insert municipality name) Hospital Revenue Bonds";

(2) prescribe procedures for the operation and maintenance of the hospital in the proceedings authorizing issuance of the revenue bonds; and

(3) provide for the issuance of additional parity bonds or subordinate lien bonds under terms prescribed by the board of managers in the proceedings authorizing issuance of the revenue bonds.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0171. REPAYMENT OF BONDS. The board of managers may provide for the payment of principal of, premium on, if any, and interest on the bonds by pledging all or any part of the hospital's revenue derived from the operation of the hospital or from other

sources.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0172. ADDITIONAL SECURITY FOR BONDS. The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the hospital and rights appurtenant to those properties.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0173. MATURITY. A bond issued under this subchapter must mature not later than 40 years after its date.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0174. BONDS NOT PAYABLE FROM TAXES. A bond issued under this subchapter must contain the following provision: "The holder of this obligation is not entitled to demand payment of this obligation out of any money raised by taxation by (name of county) or by (name of municipality) or from any other income of the county or municipality. The board of managers of the hospital has no taxing power."

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0175. SALE OF BONDS. The board of managers may sell bonds issued under this subchapter at public or private sale in the manner and on the terms approved by the board.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0176. REFUNDING BONDS. (a) The board of managers may refund bonds issued under this subchapter by issuing refunding bonds under terms approved by the board.

(b) All appropriate provisions of this subchapter apply to the

refunding bonds. The refunding bonds shall be issued in the manner provided by this subchapter for issuing other bonds.

(c) The refunding bonds may be sold and delivered in amounts sufficient to pay the principal of and interest and any redemption premium on the bonds to be refunded, at maturity or on any redemption date.

(d) The refunding bonds may be issued to be exchanged for the bonds being refunded by them. In that case, the comptroller shall register the refunding bonds and deliver them to the holder of the bonds being refunded as approved by the board. The exchange may be made in one delivery or in installment deliveries.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0177. AUTHORITY TO BORROW MONEY. (a) After approval by resolution of the commissioners court of the county and the governing body of the municipality that appointed the board, the board of managers may, on behalf of the hospital, borrow money from a federally insured lending institution for a purpose described by Section 265.0179. The board may execute a loan agreement or promissory note as evidence of the obligation to repay the loan.

(b) The board of managers may borrow money in an amount it considers advisable, subject to a rate of interest, security, and other terms it considers advisable. The loan shall mature not later than the 30th anniversary of the date on which the loan is made.

(c) Before entering into a loan under this section, the board of managers must determine that there will be sufficient money available from revenues generated by the hospital to pay the loan when the loan becomes due.

(d) The commissioners court of the county and the governing body of the municipality that appointed the board of managers must approve the terms of a loan agreement by written resolution.

(e) Chapter 1202, Government Code, does not apply to a promissory note or any other instrument evidencing a loan under this section.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.0178. PLEDGE OF SECURITY. (a) A loan under Section

265.0177 may be:

(1) payable from and secured by a pledge of all or part of the revenues, income, or resources of the hospital that are not pledged to pay a bonded indebtedness of the hospital; or

(2) secured by a deed of trust or other security interest in any property of the hospital that is not pledged to pay a bonded indebtedness of the hospital.

(b) The holder of a loan obligation under Section 265.0177 is not entitled to demand payment of the principal and interest on the loan from any money or property of the hospital other than the money or property specifically pledged to secure payment of the loan.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.0179. PERMISSIBLE USES OF LOAN PROCEEDS. The proceeds from a loan under Section 265.0177 may be used to pay costs related to the acquisition, construction, rehabilitation, and equipping of a hospital facility, including costs related to the acquisition of real property and any other improvement considered necessary and appropriate by the board of managers.

Added by Acts 2003, 78th Leg., ch. 719, Sec. 1, eff. June 20, 2003.

Sec. 265.018. HOSPITAL PROPERTY. The board of managers may acquire, hold, or dispose of property or an interest in property. As agreed by the county and municipality, the county or municipality may hold title to hospital property, or title may be held in the name of the hospital.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.0181. TRANSFER OF PROPERTY. On dissolution of the board of managers, title to property held by the board or in the name of the hospital shall be transferred to the county and municipality as agreed to by the county and municipality.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.019. USE OF EARNINGS OR ASSETS FOR PRIVATE PURPOSES PROHIBITED. Except as reasonable compensation for services rendered or reasonable allowance for authorized expenditures incurred on behalf of the board of managers or the hospital, the net earnings of the board or the hospital may not be used for the benefit of a private officer, board member, individual, or substantial contributor to the board of managers or the hospital. The assets of the board or the hospital may not be distributed to, be divided among, be used for, accrue to, or benefit a private officer, board member, individual, or substantial contributor to the board or the hospital.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

Sec. 265.020. APPLICABILITY. Sections 265.017-265.019 apply only to a hospital located in a county with a population of 75,000 or more.

Added by Acts 2001, 77th Leg., ch. 151, Sec. 1, eff. May 16, 2001.

SUBCHAPTER C. JOINT HOSPITAL CONTROLLED BY MUNICIPALITY OR COUNTY

Sec. 265.021. OWNERSHIP AND CONTROL DESIGNATED. (a) A county with a population of at least 200,000 and one or more municipalities in the county that jointly own and operate a hospital in the county may by agreement designate one of those governmental entities to assume the entire ownership and control of the hospital on terms to which those governmental entities agree.

(b) On the agreement of the commissioners court and the governing body of each municipality that jointly owns and operates the hospital, a countywide election on the issue of the future ownership and operation of the hospital may be ordered. The majority vote on the propositions submitted shall govern the future ownership and operation of the hospital. The commissioners court shall pay the costs of the election from county funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.022. BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY COUNTY. (a) If the county is designated to own and control the

hospital, the commissioners court shall appoint a board of managers with at least three and not more than nine members.

(b) The board of managers has control of the management of the hospital.

(c) The board of managers shall give a report of their management, including all acts and rules of the board, to the commissioners court once each quarter or more often at the request of the commissioners court.

(d) The board of managers shall give a quarterly financial statement to the commissioners court that shows all money spent and received by the board and the purposes of the expenditures.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.023. BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY MUNICIPALITY. If the municipality is designated to own and control the hospital, the governing body of the municipality may appoint the board of managers under its charter or as it considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.024. TERMS. Members of the board of managers shall be appointed for staggered six-year terms, with one-third of the terms expiring every two years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.025. TAX. (a) The commissioners court may authorize and levy a tax not to exceed 50 cents on each $100 of the taxable value of property taxable by the county for construction of buildings or building additions, for other improvements or equipment, or for operation and maintenance of the hospital if the tax is approved by a majority vote at a county election. Additional taxes may be authorized at subsequent elections if the total tax does not exceed the limit imposed by this subsection.

(b) The voters may approve a part of the tax to be used for the interest and sinking fund for outstanding bonds of the municipality or county issued for construction or maintenance of the hospital,

whether issued before or after the ownership and control of the hospital are designated under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.026. TUBERCULOSIS CONTROL. (a) The commissioners court and each municipal governing body that designates the ownership and control of a joint hospital under this subchapter may conduct a joint program of tuberculosis control in their jurisdictions to protect the public health through alleviation, suppression, and prevention of the spread of tuberculosis.

(b) The program may include cooperation with public or private agencies that have the same objective, whether federal, state, or local.

(c) The commissioners court may levy a tax not to exceed 10 cents on each $100 of the taxable value of property taxable by the county, in addition to the tax under Section 265.025, if approved by a majority vote at a county election. The revenue from that tax shall be kept separate from other funds and shall be used only for the purposes of this section.

(d) The governing body of a municipality participating in the program may levy a tax not to exceed five cents on each $100 of the taxable value of property taxable by the municipality if approved by a majority vote at a municipal election in accordance with the municipal charter in a home-rule municipality or with other law in a general-law municipality. The revenue from the tax shall be kept separate from other funds and shall be used only for the purposes of this section. The municipal charter of a home-rule municipality may be amended to create the fund for the tax proceeds or other income.

(e) The county and each municipality participating in the program and levying the taxes may create a joint tuberculosis control board to administer this section. The board must have at least five members. The district judges of the county by majority action, the county health board, the municipal health board of the participating municipality with the largest population, the county judge, and the mayor of each participating municipality shall each appoint a member to the board. Board members serve without compensation.

(f) The members are appointed for three-year terms. However, the term of the first appointment by the county health board or by a

mayor expires one year after the date of appointment, the term of the first appointment by the municipal health board or the county judge expires two years after the date of appointment, and the term of the first appointment by the district judges expires three years after the date of appointment. The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

(g) The board may administer this section to alleviate, suppress, and prevent the spread of tuberculosis in the county as a public health function.

(h) The county and each municipality participating under this section may combine the proceeds from taxes levied under this section to be spent under the board's direction only to:

(1) provide necessary economic aid to indigent persons with tuberculosis and dependent members of their immediate family, on certification by the county or municipal health authority that those persons are indigent and have resided in the county for at least six months before receiving aid or assistance from a public or private charity or service for the person's support or the support of the person's family, in order to treat and prevent the disease and protect the public health; or

(2) pay administrative expenses, including the expenses of case investigation and necessary equipment and services.

(i) The board quarterly shall report the condition of the fund, the expenditures from the fund, and the services performed to the commissioners court and the governing body of each municipality participating under this section. The commissioners court or the governing body of a municipality participating under this section may examine and audit the books and other records of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. JOINT COUNTY-MUNICIPAL HOSPITAL BOARDS

Sec. 265.031. CREATION OF BOARD. (a) The commissioners court of a county and the governing body of a municipality located in whole or in part in that county may adopt resolutions creating a joint county-municipal hospital board, without taxing power, designated the "_____ County-Municipality of _____, Texas, Hospital

Board."

(b) A board created under this section is a public agency and body politic.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.032. APPOINTMENT OF BOARD. (a) The board consists of seven directors. A director may serve successive terms.

(b) The commissioners court shall appoint four directors in its resolution creating the board, and the municipal governing body shall appoint three directors in its resolution creating the board.

(c) Directors are appointed for staggered terms of two years. However, in making the initial appointments to the board the commissioners court shall designate two of its appointees to serve two-year terms and two to serve one-year terms, and the governing body shall designate two of its appointees to serve two-year terms and one to serve a one-year term.

(d) The entity that makes an original appointment shall appoint a successor director on the expiration of a director's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.033. OFFICERS. (a) The board shall elect a director as chairman. The chairman shall preside at board meetings and perform other duties and functions prescribed by the board. The chairman may vote in the same manner as any other director.

(b) The board shall elect a secretary, who is not required to be a director. The secretary is the official custodian of the minutes, books, records, and seal of the board and shall perform other duties and functions prescribed by the board.

(c) The board may elect any other officer that the board considers necessary or advisable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.034. AUTHORITY OF BOARD. (a) The board shall act

through resolutions adopted by the board. The affirmative vote of four directors is required to adopt a resolution.

(b) The board is a joint agent of the county and the municipality for hospital purposes and shall act solely for the joint benefit of the county and the municipality. However, the board shall act independently in the exercise of powers, duties, and functions under this subchapter.

(c) The board may appoint or employ any agent, employee, or official that the board considers necessary or advisable to carry out any power, duty, or function of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.035. SUITS. The board may sue and be sued in its own name, capacity, and behalf.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.036. COMPENSATION. A director may not receive compensation but is entitled to reimbursement for actual expenses incurred in the performance of the duties of director to the extent authorized by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.037. HOSPITAL FACILITIES; OTHER PROPERTY. (a) The board may purchase, construct, receive, lease, or otherwise acquire hospital facilities and may improve, enlarge, furnish, equip, operate, and maintain those facilities.

(b) The county or the municipality may lease or convey title to, or any other interest in, all or part of the county's or municipality's hospital facilities, including real and personal property, to the board on terms agreed to by the county or municipality and the board.

(c) The board may own, receive, encumber, sell, lease, or convey any interest in real or personal property, including gifts and grants. However, the board may not encumber, sell, lease, or convey real or personal property unless the commissioners court and the

governing body of the municipality by resolution approve the transaction.

(d) A board existing in a county with a population of more than 100,000 and a municipality with a population of more than 75,000, as an exercise of its powers as a public agency and body politic, may purchase, construct, receive, lease, or otherwise acquire hospital facilities, including the sublease of one or more hospital facilities, regardless of whether the action might be considered anticompetitive under the antitrust laws of the United States or this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 909, Sec. 1, eff. Sept. 1, 1997.

Sec. 265.038. CONTRACTS FOR HOSPITAL SERVICES. The county or the municipality may contract with the board for the care and treatment of indigent or needy patients or for any other hospital services. The county or the municipality may make payments to the board under the contract and may levy ad valorem taxes or pledge funds or resources for the payments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.039. FUNDS. (a) The board may apply for, receive, and spend federal or state funds available for hospital purposes.

(b) The county or the municipality by resolution may authorize the board to apply for, receive, and spend federal or state funds available for county or municipal hospital purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.040. AUTHORITY TO ISSUE REVENUE BONDS. (a) The board may issue revenue bonds to perform any power, duty, or function under this subchapter. The issuance must be approved by resolution by the commissioners court and the municipal governing body.

(b) The board may prescribe procedures for the operation and maintenance of the hospital in the proceedings authorizing the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.041. TERMS OF BONDS. (a) The revenue bonds may mature serially or otherwise not more than 40 years after they are issued. The bonds may bear interest at a rate not to exceed the maximum rate provided by Chapter 1204, Government Code, and may be made redeemable prior to maturity.

(b) The bonds and any appurtenant interest coupons are negotiable instruments.

(c) The bonds may be made registrable as to principal or as to principal and interest.

(d) The directors may determine, in the proceedings authorizing the issuance of the bonds:

(1) the form, denominations, and manner in which the bonds are issued;

(2) the terms and details under which the bonds are issued; and

(3) the manner in which the bonds are executed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.258, eff. Sept. 1, 2001.

Sec. 265.042. PLEDGE OF SECURITY. (a) The revenue bonds may be payable from, and secured by a pledge of, all or part of the revenues, income, or resources of the board or the board's hospital facilities. Additionally, the bonds may be secured by a mortgage or deed of trust on real or personal property, and the board may authorize the execution and delivery of trust indentures or other encumbrances to evidence the security.

(b) The bonds must contain substantially the following statement: "The owner hereof shall never have the right to demand payment of this obligation from taxes levied by the hospital board."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.043. SALE AND USE OF PROCEEDS. (a) The revenue bonds may be sold at public or private sale at a price and under terms determined by the directors. The bonds may bear interest at a rate

not to exceed the maximum rate provided by Chapter 1204, Government Code.

(b) Proceeds from the sale of the bonds may be used, if the use is authorized in the proceedings authorizing issuance of the bonds, to:

(1) pay interest on the bonds during the construction of hospital facilities acquired through issuance of the bonds;

(2) pay operation and maintenance expense of the hospital facilities to the extent and for the time specified in the proceedings;

(3) create reserves for the payment of principal of and interest on the bonds; or

(4) invest, until needed, to the extent and in the manner provided in the bond resolution or a trust indenture executed in connection with the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.259, eff. Sept. 1, 2001.

Sec. 265.044. PARITY AND SUBORDINATE LIEN BONDS. The directors may provide in the authorization of the revenue bonds for the subsequent issuance of additional parity bonds or subordinate lien bonds under terms set by the board in the proceedings authorizing the issuance of the revenue bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.045. NOTICE; PETITION FOR ELECTION. (a) Before the directors authorize the issuance of bonds other than refunding bonds, the directors shall prepare and publish a notice of:

(1) its intention to adopt a resolution authorizing the issuance of bonds;

(2) the date it intends to adopt the resolution; and

(3) the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in a newspaper of general circulation in the county and the municipality. The first notice must be published not later than the 15th day before the date set for adopting the bond resolution.

(c) A petition requesting an election on the proposition for the issuance of the bonds may be presented to the hospital board secretary before the date set for adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county and in any part of the municipality that is not in the county.

(d) The directors shall order an election requested under Subsection (c) in the county and any part of the municipality that is not in the county. The election shall be held substantially as provided by Chapter 1251, Government Code. The board may issue the bonds if the issuance is approved at the election.

(e) The bond resolution may be adopted on the date set for the adoption, or not later than the 30th day after that date, if no petition is filed, and the bonds may be issued and delivered without an election or the creation of an encumbrance.

(f) The directors may order an election on the issuance of the bonds on their own motion if they consider it advisable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.260, eff. Sept. 1, 2001.

Sec. 265.046. REFUNDING BONDS. Any bonds issued under this subchapter may be refunded by the issuance of refunding bonds in the manner provided by this subchapter for the issuance of other bonds, except the refunding bonds may be issued to be exchanged for the bonds being refunded. If the refunding bonds are issued to be exchanged, the comptroller shall register the refunding bonds and deliver them to each holder of the bonds being refunded as provided by the proceedings authorizing the refunding bonds. The exchange may be made in one delivery or several installment deliveries.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.047. EXAMINATION, APPROVAL, AND REGISTRATION OF BONDS. (a) The board shall submit to the attorney general for examination the bonds issued under this subchapter and the proceedings authorizing their issuance.

(b) The attorney general shall approve the bonds if the attorney general finds that the bonds have been authorized in

accordance with this subchapter, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are valid and binding obligations in accordance with their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.048. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this subchapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) an interest and sinking fund or other public fund of the state or of an agency, subdivision, or instrumentality of the state, including a municipality, county, school district, special district, public agency, and body politic.

(b) The bonds are eligible and lawful security for the deposits of public funds of the state or of an agency, subdivision, or instrumentality of the state, including a municipality, county, school district, special district, public agency, and body politic. The bonds may secure those deposits in an amount up to the value of the bonds, if accompanied by all appurtenant unmatured interest coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.049. CHARGES FOR SERVICES AND FACILITIES. The board shall operate its hospital facilities for the use and benefit of the public, but shall establish and collect charges for services and facilities that are sufficient combined with other revenue and income to:

(1) pay all expenses related to ownership, operation, and

maintenance of its hospital facilities;

(2) pay principal of and interest on its bonds; and

(3) create and maintain reserves and any other funds provided for in the proceedings authorizing the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.050. DEPOSITORY. The board may:

(1) select a depository in the same manner that a municipality or county may select a depository under Chapter 105 or Chapter 116, Local Government Code; or

(2) execute a depository contract with a depository selected by the municipality or the county on the same terms as the municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.051. INVESTMENT OF FUNDS. (a) The law relating to security for and investment of municipal or county funds applies to hospital board funds. A bond resolution or trust indenture executed for hospital board bonds may further restrict the security for and investment of hospital board funds.

(b) The hospital board may invest, until needed, all or part of its bond proceeds in direct obligations of the United States to the extent authorized in the bond resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.052. EMINENT DOMAIN. (a) The hospital board may acquire the fee simple title to or any other interest in land and other property by condemnation under Chapter 21, Property Code, to carry out any power, duty, or function under this subchapter.

(b) The board has the same rights as a county or municipality under Section 21.021, Property Code.

(c) The board shall determine the amount and character of the interest in land or other property to be acquired under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. SALE, LEASE, OR CLOSING

Sec. 265.071. OFFICIAL ACTION. (a) The commissioners court by order and the governing body of a municipality by ordinance may order the sale, lease, or closing of all or part of a joint municipal and county hospital, including real property, owned and operated by the county and municipality.

(b) The order and ordinance must include a finding that the sale, lease, or closing is in the best interest of the residents of the county or municipality, respectively.

(c) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 265.072.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 265.072. PETITION AND ELECTION. (a) A petition requesting an election on the sale or closing of the hospital may be presented to the commissioners court and the municipal governing body before the 31st day after the date the commissioners court and the governing body order the sale or closing.

(b) The petition must be signed by at least 10 percent of the qualified voters of the county and any part of the municipality that is not in the county.

(c) On receipt of the petition, the commissioners court and the governing body shall order and conduct the election. The commissioners court and the governing body may sell or close the hospital only if a majority of the qualified voters voting at the election approve the sale or closing.

(d) The number of qualified voters of the county and any part of the municipality that is not in the county is determined according to the most recent official list of registered voters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBTITLE D. HOSPITAL DISTRICTS

CHAPTER 281. HOSPITAL DISTRICTS IN COUNTIES OF AT LEAST 190,000

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 281.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district created under this chapter.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0828, eff. April 2, 2015.

Sec. 281.002. DISTRICT AUTHORIZATION. (a) A county with at least 190,000 inhabitants that does not own or operate a hospital system for indigent or needy persons may create a countywide hospital district and provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) A county with at least 190,000 inhabitants that owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, may create a countywide hospital district and take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(c) A county with at least 190,000 inhabitants that has within its boundaries a municipality that owns a hospital or hospital system for indigent or needy persons that is operated by or on behalf of the municipality may create a countywide hospital district to assume ownership of the hospital or hospital system and to furnish medical aid and hospital care to indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.208, eff. Sept. 1, 2003.

Sec. 281.003. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district is to be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion and shall order the election on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.004. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (a-1) or (b), the ballot for an election under this chapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 75 cents on each $100 of the taxable value of property taxable by the district."

(a-1) The ballot for an election under this chapter held in a county with a population of more than 1.2 million that is not included in the boundaries of a hospital district before September 1, 2003, shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 25 cents on each $100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this chapter shall contain the proposition prescribed by Subsection (a) or (a-1), as appropriate, followed by ", and the assumption by the district of all outstanding bonds previously issued for hospital purposes by _____ County and by any municipality in the county."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.209, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 72, eff. September 1, 2023.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 281.021. APPOINTMENT OF BOARD. (a) The commissioners

court of a county in which a district is created under this chapter shall appoint a board of hospital managers composed of not less than five or more than seven members.

(b) The commissioners court of a county with a population of more than 2.1 million but less than 2.5 million in which a district is created under this chapter shall appoint a board composed of not less than five or more than 15 members.

(c) The Harris County Commissioners Court shall appoint a board composed of not less than seven or more than nine members.

(d) If a district is created under this chapter in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003, the district shall be governed by a nine-member board of hospital managers, appointed as follows:

(1) the commissioners court of the county shall appoint four members;

(2) the governing body of the municipality with the largest population in the county shall appoint four members; and

(3) the commissioners court and the governing body of the municipality described by Subdivision (2) shall jointly appoint one member.

(e) The El Paso County Commissioners Court shall appoint a board composed of seven members, and shall by order provide for the qualifications of appointees to the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 72, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 36, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.210, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 35, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 73, eff. September 1, 2023.

Sec. 281.0211. APPOINTMENT OF DALLAS COUNTY HOSPITAL DISTRICT BOARD; MEMBERS' TERMS. (a) The Dallas County Hospital District is governed by a board composed of 11 members, appointed as follows:

(1) the Dallas County Commissioners Court shall appoint one member;

(2) each commissioner on the Dallas County Commissioners Court shall appoint two members; and

(3) the county judge of Dallas County shall appoint two members.

(b) Board members appointed under this section serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

(c) On or after September 1, 2030, the Dallas County Commissioners Court shall appoint members to the board in accordance with Sections 281.021(a) and 281.022(a).

(d) Subsection (c) does not affect the entitlement of a member of the board of the Dallas County Hospital District appointed to the board under this section before September 1, 2030, to continue to carry out the member's functions for the remainder of the member's term.

(e) On the expiration of the terms of the board members described by Subsection (d), the Dallas County Commissioners Court shall take appropriate action to ensure that, as soon as possible, the board of the Dallas County Hospital District complies with the requirements of Sections 281.021(a) and 281.022(a).

Added by Acts 2015, 84th Leg., R.S., Ch. 899 (S.B. 1461), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 385 (S.B. 1165), Sec. 1, eff. June 7, 2021.

Sec. 281.022. TERM. (a) A board member serves a two-year term, except that the commissioners court may make some initial appointments for one year in order to stagger terms.

(b) The members of the board of hospital managers of the Nueces County Hospital District serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

(c) The members of a board of hospital managers appointed under Section 281.021(d) serve staggered four-year terms, with as near as possible to one-fourth of the members' terms expiring each year. The terms of the members appointed under that section are as follows:

(1) the members appointed solely by the governing body of the municipality with the largest population in the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term;

(2) the members appointed solely by the commissioners court of the county shall draw lots to determine which member serves a one-year term, which member serves a two-year term, which member serves a three-year term, and which member serves a four-year term; and

(3) the member appointed jointly by the governing body of the municipality described by Subdivision (1) and the commissioners court serves a four-year term.

(d) The members of the board of hospital managers of the El Paso County Hospital District serve staggered three-year terms, with as near as possible to one-third of the members' terms expiring each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 212, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.211, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 2, eff. September 1, 2009.

Sec. 281.0222. QUALIFICATIONS FOR OFFICE. (a) This section applies only to the El Paso County Hospital District.

(b) The El Paso County Commissioners Court may not appoint a person to the board of hospital managers of the district if the person is:

(1) an employee of El Paso County;

(2) a district employee; or

(3) related within the third degree of consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, to a member of the commissioners court or to a person described by Subdivision (1) or (2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 2, eff. June 17, 2011.

Sec. 281.023. OFFICERS. (a) The board shall elect from among its members:

(1) a chairman; and

(2) a vice-chairman to preside in the chairman's absence.

(b) The board shall appoint a board member or the administrator to serve as secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.024. COMPENSATION. A board member serves without compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.025. RECORD OF BOARD MEETING. (a) The board shall require the secretary to keep a suitable record of each board meeting.

(b) The presiding member shall read and sign the record after the meeting, and the secretary shall attest to the record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.026. ADMINISTRATOR; DUTIES. (a) The board shall appoint a person qualified by training and experience as the administrator for the district.

(b) The administrator serves at the will of the board and for terms of not more than four years.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than $10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the

administrator shall:

(1) perform duties required by the board;

(2) supervise the work and activities of the district; and

(3) generally direct the affairs of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 424 (S.B. 1769), Sec. 1, eff. June 17, 2005.

Sec. 281.027. ASSISTANT ADMINISTRATOR. (a) If the administrator is incapacitated, absent, or unable to perform the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's powers or duties, subject to limitations prescribed by board order.

(b) The assistant administrator or other persons shall execute a bond as required by board order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.028. STAFF. (a) The board may appoint doctors to the district's staff and hire technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) An employment contract of a person appointed or hired under this section may not exceed four years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 110, Sec. 1, eff. Aug. 26, 1991.

Sec. 281.0281. EMPLOYMENT OF HEALTH CARE PROVIDERS. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board, as it considers necessary for the efficient operation of the district, may employ:

(1) physicians as provided in this section and Sections 162.001(c-4) and (c-5), Occupations Code; and

(2) dentists or other health care providers.

(c) The board may employ a licensed physician as a medical director if the physician:

(1) provides only policy, administrative, and managerial services; and

(2) does not provide direct patient care or otherwise practice medicine, as defined by Section 151.002, Occupations Code, at or for the district.

(d) This section does not authorize the board to supervise or control the practice of medicine or permit the unauthorized practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 4, eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 74, eff. September 1, 2023.

Sec. 281.02815. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITAL DISTRICTS. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) In addition to the authority to employ physicians under Section 281.0281 in the manner and for the purposes provided by that section, the board of the district may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.

(c) The term of an employment contract entered into under this section may not exceed four years.

(d) This section may not be construed as authorizing the board to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(e) The authority granted to the board under Subsection (b) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(f) The medical executive board of the district shall adopt, maintain, and enforce policies to ensure that a physician employed by

the district under this section exercises the physician's independent medical judgment in providing care to patients.

(g) The policies adopted by the medical executive board under this section must include:

(1) policies relating to:

(A) governance of the medical executive board;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive board.

(h) The medical executive board and the board of the district shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive board under this section and a policy of the district.

(i) A member of the medical executive board who is a physician shall provide biennially to the chair of the medical executive board a signed, verified statement indicating that the board member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive board matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the board member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive board; and

(4) will report immediately to the Texas Medical Board any action or event that the board member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(j) For all matters relating to the practice of medicine, each physician employed by the district under this section shall ultimately report to the chair of the medical executive board for the

district.

Added by Acts 2019, 86th Leg., R.S., Ch. 27 (S.B. 1142), Sec. 1, eff. May 7, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 75, eff. September 1, 2023.

Sec. 281.0282. DALLAS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF HEALTH CARE PROVIDERS AND PHYSICIANS. (a) The board of the Dallas County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Dallas County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Dallas County Hospital District under Subsection (a) to employ physicians shall apply only as necessary for the district to fulfill the district's statutory mandate to provide medical and dental care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The Dallas County Hospital District shall establish a committee consisting of at least five actively practicing physicians who provide care in the district. The committee shall approve existing policies or adopt new policies, if no policies exist, to ensure that a physician who is employed by the district is exercising the physician's independent medical judgment in providing care to patients.

(f) The chair of the committee must be a member of the executive committee of the Dallas County Hospital District's medical staff.

(g) The policies adopted or approved by the committee shall include policies relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, governance of the committee, and due process.

(h) Each member of a committee shall provide biennially to the

chief medical officer of the Dallas County Hospital District a signed, verified statement indicating that the committee member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all committee matters, including matters relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, and due process;

(3) will exercise the committee member's best efforts to ensure compliance with the Dallas County Hospital District's policies that are adopted or established by the committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) The committee shall adopt rules requiring the disclosure of financial conflicts of interest by a committee member.

(j) For all matters relating to the practice of medicine, each physician employed by the board shall ultimately report to the chief medical officer of the Dallas County Hospital District.

Added by Acts 2009, 81st Leg., R.S., Ch. 823 (S.B. 1705), Sec. 1, eff. June 19, 2009.

Sec. 281.0283. HARRIS COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Harris County Hospital District may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the Harris County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

(d) The authority granted to the board of the Harris County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive board of the Harris County Hospital

District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive board under this section must include:

(1) policies relating to:

(A) governance of the medical executive board;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive board.

(g) The medical executive board and the board of the Harris County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive board under this section and a policy of the Harris County Hospital District.

(h) A member of the medical executive board who is a physician shall provide biennially to the chair of the medical executive board a signed, verified statement indicating that the board member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive board matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the board member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive board; and

(4) will report immediately to the Texas Medical Board any action or event that the board member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each

physician employed by the Harris County Hospital District shall ultimately report to the chair of the medical executive board for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 975 (H.B. 1568), Sec. 1, eff. June 17, 2011.

Sec. 281.0284. BEXAR COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Bexar County Hospital District may employ physicians as the board considers necessary for the efficient operation of the district.

(b) A physician employed by the Bexar County Hospital District under this section must practice with a nonprofit health organization certified by the Texas Medical Board and created by the Bexar County Hospital District.

(c) The term of an employment contract entered into under this section may not exceed four years.

(d) This section may not be construed as authorizing the board of the Bexar County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 524 (H.B. 2351), Sec. 1, eff. June 17, 2011.
Redesignated from Health and Safety Code, Section 281.0283 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(26), eff. September 1, 2013.

Sec. 281.0285. EL PASO COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS, DENTISTS, AND OTHER HEALTH CARE PROVIDERS. (a) The board of the El Paso County Hospital District may appoint, contract for, or employ physicians, dentists, and other health care providers as the board considers necessary for the efficient operation of the district.

(b) The term of an employment contract entered into under this section may not exceed four years.

(c) This section may not be construed as authorizing the board of the El Paso County Hospital District to supervise or control the practice of medicine as prohibited by Subtitle B, Title 3,

Occupations Code, or to supervise or control the practice of dentistry as prohibited by Subtitle D, Title 3, Occupations Code.

(d) The authority granted to the board of the El Paso County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.

(e) The medical executive committee of the El Paso County Hospital District, in accordance with the bylaws adopted by the board of the El Paso County Hospital District, shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.

(f) The policies adopted by the medical executive committee under this section must include:

(1) policies relating to:

(A) governance of the medical executive committee;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the El Paso County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between the policies adopted under this section and a policy of the El Paso County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the committee member:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive committee matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;
(E) medical decision-making; and
(F) due process;
(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and
(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.
(i) For all matters relating to the practice of medicine, each physician employed by the El Paso County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 417 (S.B. 860), Sec. 1, eff. June 17, 2011.

Sec. 281.0286. TARRANT COUNTY HOSPITAL DISTRICT; EMPLOYMENT OF PHYSICIANS. (a) The board of the Tarrant County Hospital District may appoint, contract for, or employ physicians as the board considers necessary for the efficient operation of the district.
(b) The term of an employment contract entered into under this section may not exceed four years.
(c) This section may not be construed as authorizing the board of the Tarrant County Hospital District to supervise or control the practice of medicine, as prohibited by Subtitle B, Title 3, Occupations Code.
(d) The authority granted to the board of the Tarrant County Hospital District under Subsection (a) to employ physicians shall apply as necessary for the district to fulfill the district's statutory mandate to provide medical care for the indigent and needy residents of the district as provided by Section 281.046.
(e) The medical executive committee of the Tarrant County Hospital District shall adopt, maintain, and enforce policies to ensure that a physician employed by the district exercises the physician's independent medical judgment in providing care to patients.
(f) The policies adopted by the medical executive committee

under this section must include:

(1) policies relating to:

(A) governance of the medical executive committee;

(B) credentialing;

(C) quality assurance;

(D) utilization review;

(E) peer review;

(F) medical decision-making; and

(G) due process; and

(2) rules requiring the disclosure of financial conflicts of interest by a member of the medical executive committee.

(g) The medical executive committee and the board of the Tarrant County Hospital District shall jointly develop and implement a conflict management process to resolve any conflict between a policy adopted by the medical executive committee under this section and a policy of the Tarrant County Hospital District.

(h) A member of the medical executive committee who is a physician shall provide biennially to the chair of the medical executive committee a signed, verified statement indicating that the member of the medical executive committee:

(1) is licensed by the Texas Medical Board;

(2) will exercise independent medical judgment in all medical executive committee matters, including matters relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review;

(E) medical decision-making; and

(F) due process;

(3) will exercise the committee member's best efforts to ensure compliance with the policies that are adopted or established by the medical executive committee; and

(4) will report immediately to the Texas Medical Board any action or event that the committee member reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(i) For all matters relating to the practice of medicine, each physician employed by the Tarrant County Hospital District shall ultimately report to the chair of the medical executive committee for the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1320 (S.B. 303), Sec. 3, eff. September 1, 2011.

Sec. 281.029. RETIREMENT PROGRAMS. (a) With the approval of the commissioners court, the board may contract with the state or the federal government as necessary to establish or continue a retirement program for the benefit of district employees.

(b) In addition to the retirement programs authorized by Subsection (a), the board may establish a retirement program the board considers necessary and advisable for the benefit of district employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.030. SEAL. The board shall have a seal engraved with the district's name. The seal shall be kept by the secretary and used to authenticate the board's acts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.031. REMOVAL OF BOARD MEMBER. (a) A member of the board of hospital managers of the El Paso County Hospital District is considered to have resigned the member's position if the member:

(1) is absent from all the regularly scheduled board and committee meetings that the member is eligible to attend during a 90-day period;

(2) is absent from more than half of the regularly scheduled board and committee meetings that the member is eligible to attend during a 12-month period;

(3) fails to pay a local tax, including an ad valorem tax, when due; or

(4) would be ineligible to serve on the board as provided by Section 281.0222.

(b) A resignation under Subsection (a) is effective immediately on the date the absence, disqualifying conduct, or ineligibility specified by Subsection (a) occurs or exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 206 (S.B. 534), Sec. 3, eff.

September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 841 (H.B. 3462), Sec. 3, eff. June 17, 2011.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 281.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) Except as provided by Subsection (e), on the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, the county and municipality jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county and municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, the county and municipality jointly operating a hospital or hospital system, or the municipality owning a hospital or hospital system shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

(1) all joint or separate county and municipal funds that are the proceeds of any bonds assumed by the district under Section 281.044; and

(2) all unexpended joint or separate county and municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created, to be used by the district to operate and maintain those facilities for the remainder of the year.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) On the creation of the district, the board of managers of

the county or municipal hospital system shall continue to manage and control the property and affairs of that system until the board of the district is appointed and organized. At that time, the county or municipal board of managers shall transfer to the district board all county and municipal hospital system records, property, and affairs and shall cease to exist.

(e) A county or municipality transferring property or funds under this section is not required to transfer to the district:

(1) a medical facility used primarily for the treatment of inmates of a jail or any other correctional facilities, including juvenile justice facilities;

(2) property owned by the municipality that is used in connection with the provision of utility services, including electricity, water, wastewater, and sewer services;

(3) any real property or other assets related to a medical clinic facility on which construction has begun, but has not been completed, by the date on which the board members have been appointed and qualified to serve;

(4) a building and related land owned by the county or municipality that are used for purposes related or unrelated to the hospital or hospital system, except that:

(A) if the county or municipality retains ownership of the building and related land, the county or municipality shall lease the space used for hospital or hospital system purposes to the district for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity; or

(B) if the county or municipality transfers the building and related land to the district, the district shall lease to the transferring entity the space not used for hospital or hospital system purposes for an initial term of three years unless a shorter term is otherwise agreed to by the district and the transferring entity;

(5) any or all of the public health services and related facilities of the county or municipality, other than a hospital or hospital district, unless the transfer of the public health services or a related facility to the district is mutually agreed to by the district and the transferring entity; or

(6) an ambulance service, emergency medical service, search and rescue service, or medical transport service that is owned or operated by the county or municipality, unless the transfer of all or

part of the service and related buildings and equipment to the district is mutually agreed to by the district and the transferring entity.

(f) A transfer of an asset under this section, including a federally qualified health center, that would violate federal or state law unless a waiver or other authorization or approval is granted by a federal or state agency may not occur until the required waiver, authorization, or approval is obtained. A facility designated as a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B), as amended, may not be transferred to the district until the district board has confirmed that the transfer will not jeopardize the federal designation of that facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.212, eff. Sept. 1, 2003.

Sec. 281.042. RETURN OF TRANSFERRED PROPERTY TO COUNTY OR MUNICIPALITY. (a) The board by deed may transfer to the county or a municipality any property that:

(1) was transferred to the district by that county or municipality under Section 281.041; and

(2) the board considers is not and will not be useful for the purposes for which the property was originally transferred to the district.

(b) The transfer may be made on terms determined suitable by the board and the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes, without prejudice to the rights of third parties, any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, maintenance, or operation of hospital facilities and the provision of health care services or hospital care, including mental health care, to indigent residents of the county or municipality before the creation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 2003, 78th Leg., ch. 198, Sec. 2.213, eff. Sept. 1, 2003.

Sec. 281.044. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS. (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) On the creation of the district, the county or a municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of the bonds or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds by the county or municipality, or both, to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the county or municipality, or both, may not sell the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.045. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES. (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems under Chapter 265 shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for

which the taxes were originally levied.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.046. DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE. Beginning on the date on which taxes are collected for the district, the district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.0465. NURSING SERVICES FOR SCHOOL DISTRICTS. A hospital district may contract with a school district included in the hospital district to provide nursing services and assistance to employees or students of the school district.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 38, eff. May 30, 1995.

Sec. 281.047. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital or hospital system of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.0475. RENAMING DISTRICT. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) With the approval of the commissioners court, the board may rename the district.

Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 10, eff. September 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 76, eff. September 1, 2023.

Sec. 281.048. DISTRICT RULES. The board may adopt rules governing the operation of the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.049. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES. (a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

(b) The commissioners court by resolution or order may delegate its powers under Subsection (a) to the board.

(c) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(d) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.050. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) With the approval of the commissioners court, the board may construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a hospital, building, or other facility or to provide a service required by the district. Approval of the commissioners court shall be required for the sale or lease of a hospital facility regardless of the provisions of Section 285.051.

(b) Notwithstanding any other law, the board may, with the approval of the commissioners court, enter into a lease, including a lease with an option to purchase, an installment purchase agreement, an installment sale agreement, or any other type of agreement that relates to real property considered appropriate by the board to provide for the development, improvement, acquisition, or management of developed or undeveloped real property designed to generate

revenue for the financial benefit of the district. The board, directly or through a nonprofit corporation, may contract or enter into a joint venture with a public or private entity as necessary to enter into an agreement under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 137, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 535 (S.B. 1478), Sec. 1, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 104 (H.B. 2559), Sec. 1, eff. May 23, 2015.

Sec. 281.051. CONTRACTING AUTHORITY. (a) With the approval of the commissioners court, the board may, in performing its powers under Section 281.050, contract or cooperate with:

(1) the federal government;

(2) this state;

(3) another governmental entity; or

(4) a privately owned or operated hospital.

(b) With the approval of the commissioners court, the board may contract with:

(1) a county for care and treatment of the county's sick, diseased, or injured persons; and

(2) this state or the federal government for care and treatment of sick, diseased, or injured persons for whom the state or federal government is responsible.

(c) The board shall encourage and promote participation by all sectors of the business community, including small businesses and businesses owned by members of a minority group or by women, in the process by which the district enters into contracts. The board shall develop a plan for the district to identify and remove barriers that do not have a definite or objective relationship to quality or competence and that unfairly discriminate against small businesses and businesses owned by members of a minority or by women. These barriers may include contracting procedures and contract specifications or conditions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 996, Sec. 1, eff. Aug. 30, 1993; Acts

1997, 75th Leg., ch. 137, Sec. 2, eff. Sept. 1, 1997.

Sec. 281.0511. CONTRACTING AUTHORITY OF CERTAIN DISTRICTS; LEASE OF PROPERTY OR HOSPITAL FACILITIES. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) Notwithstanding Sections 281.050 and 281.051, the board may contract with any person, including a private or public entity or a political subdivision of this state, to provide or assist in the provision of services.

(c) Notwithstanding Section 281.050, the board may lease any property or hospital facility without the approval of the commissioners court. The board may enter into a lease under this subsection only after an open meeting in accordance with Chapter 551, Government Code, including Section 551.072, Government Code.

(d) Notwithstanding any other law, the board may, with the approval of the commissioners court at a meeting subject to Chapter 551, Government Code, lease undeveloped or vacant real property for not more than 99 years to provide for the development and construction of facilities designed to generate revenue for the financial benefit of the district. The board, directly or through a nonprofit corporation, may contract or enter into a joint venture with a public or private entity as necessary to enter into a lease under this subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 5, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 917 (S.B. 1352), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 917 (S.B. 1352), Sec. 2, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 104 (H.B. 2559), Sec. 2, eff. May 23, 2015.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 77, eff. September 1, 2023.

Sec. 281.0512. CONTRACT TO PROVIDE ADMINISTRATIVE FUNCTIONS AND SERVICES. (a) This section applies only to a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B) or a federally qualified health center look-alike organized and operated under the authority of and in compliance with 42 U.S.C. Section 254b that is substantially devoted to providing services to socially and economically disadvantaged individuals in the geographical area of the district.

(b) The board may contract with a federally qualified health center or a federally qualified health center look-alike to perform for the center administrative functions and services that the district and the center may perform independently.

Added by Acts 2011, 82nd Leg., R.S., Ch. 633 (S.B. 847), Sec. 1, eff. June 17, 2011.

Sec. 281.0514. HARRIS COUNTY HOSPITAL DISTRICT; CONTRACT WITH CERTAIN HOSPITALS. (a) The Harris County Hospital District may contract for indigent health care services with at least one hospital that is:

(1) located in the district;

(2) exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under any subdivision of Section 501(c) of that code; and

(3) substantially devoted to providing hospital services to socially and economically disadvantaged individuals in the geographical area of the district.

(b) A contract under this section is subject to Section 281.051(a).

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 1.24, eff. Sept. 1, 1999.

Sec. 281.0515. PROCEDURES FOR HEALTH MAINTENANCE ORGANIZATION. A district may establish a health maintenance organization in accordance with Chapter 843, Insurance Code, to provide or arrange for health care services for the residents of the district.

Added by Acts 1993, 73rd Leg., ch. 908, Sec. 2, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0829, eff. April 2, 2015.

Sec. 281.0517. INTEGRATED HEALTH CARE SYSTEM. (a) In this section:

(1) "Integrated health care system" means a nonprofit corporation established and operated by a district and a medical school to provide or arrange for comprehensive health care services for residents of the district.

(2) "Provider" means a physician or a provider as defined under Section 843.002, Insurance Code.

(3) "Medical school" means a medical school governed by Chapter 110, Education Code.

(b) The El Paso County Hospital District and a medical school may establish and operate an integrated health care system.

(c) To provide or arrange for comprehensive health care services, an integrated health care system created under this section may:

(1) own, acquire, lease, or contract for all necessary assets;

(2) enter into contracts with providers for the provision of health care services directly or indirectly through subcontract;

(3) provide or enter into a contract with an individual or business entity under which the individual or entity provides necessary management or administrative services for the system and the system's providers;

(4) enter into a contract or other agreement with a business or governmental entity under which the system is paid to provide health care services; and

(5) enter into a fee-for-service, capitated, or risk-sharing health care service arrangement.

(d) An integrated health care system that recites in its articles of incorporation that it is created under this section is:

(1) subject to:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code;

(C) Chapter 843, Insurance Code;

(D) Chapter 844, Insurance Code; and

(E) Chapter 262, Local Government Code; and

(2) a unit of local government for the purposes of Chapter 101, Civil Practice and Remedies Code.

(e) Notwithstanding Subsection (d)(1)(A), an integrated health care system created under this section may hold a closed meeting to deliberate:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if an open meeting would have a detrimental effect on the position of the system in the bid or negotiation process; or

(2) a proposed new service or product line, if the meeting is held before public announcement of the service or product line.

(f) Notwithstanding Subsection (d)(1)(B), information relating to the following is confidential and not subject to disclosure:

(1) pricing or financial planning relating to a bid or negotiation for a contract to provide a service or product line, if disclosure would have a detrimental effect on the position of the integrated health care system in the bid or negotiation process; or

(2) a proposed new service or product line, if disclosure is requested before public announcement of the service or product line.

(g) Subject to the requirements and limitations of the local health care market, an integrated health care system created under this section shall make reasonable efforts to include in its provider group community providers other than the medical school and a hospital of the El Paso County Hospital District.

Added by Acts 1997, 75th Leg., ch. 947, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.528, 10A.529, eff. Sept. 1, 2003.

Sec. 281.0518. DALLAS COUNTY HOSPITAL DISTRICT; AUTHORITY TO SELL OR LICENSE INTELLECTUAL PROPERTY. (a) The Dallas County Hospital District or a nonprofit corporation formed by the district may:

(1) sell or license technology or intellectual property that is owned by or licensed to the district or a nonprofit corporation formed by the district;

(2) enter into a contract to provide services related to technology or intellectual property sold or licensed under Subdivision (1);

(3) contract, collaborate, or enter into a joint venture or other agreement with a public or private entity to engage in an activity authorized under Subdivision (1) or (2); or

(4) take any other action necessary to protect or benefit from the exclusivity of technology and intellectual property owned by or licensed to the district or a nonprofit corporation formed by the district, including applying for, acquiring, registering, securing, holding, protecting, and renewing under applicable provisions of state, federal, or international law:

(A) a patent;

(B) a copyright;

(C) a trademark, service mark, collective mark, or certification mark; or

(D) any other form of protection of intellectual property provided by law.

(a-1) For purposes of Subsection (a)(3):

(1) a public or private entity may be a for-profit or a nonprofit entity; and

(2) a nonprofit corporation formed by the district may hold an ownership interest in a public or private entity described by Subsection (a)(3).

(b) Information prepared or compiled by or for the Dallas County Hospital District or a nonprofit corporation formed by the district relating to the development of technology or intellectual property to which this section applies is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1375 (S.B. 1916), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 363 (H.B. 2557), Sec. 1, eff. June 9, 2015.

Sec. 281.0519. TARRANT COUNTY HOSPITAL DISTRICT; AUTHORITY TO SELL OR LICENSE INTELLECTUAL PROPERTY. (a) The Tarrant County Hospital District or a nonprofit corporation formed by the district

may:

(1) sell or license technology or intellectual property that is owned by or licensed to the district or a nonprofit corporation formed by the district;

(2) enter into a contract to provide services related to technology or intellectual property sold or licensed under Subdivision (1);

(3) contract, collaborate, or enter into a joint venture or other agreement with a public or private entity to engage in an activity authorized under Subdivision (1) or (2); or

(4) take any other action necessary to protect or benefit from the exclusivity of technology and intellectual property owned by or licensed to the district or a nonprofit corporation formed by the district, including applying for, acquiring, registering, securing, holding, protecting, and renewing under applicable provisions of state, federal, or international law:

(A) a patent;

(B) a copyright;

(C) a trademark, service mark, collective mark, or certification mark; or

(D) any other form of protection of intellectual property provided by law.

(b) For purposes of Subsection (a)(3):

(1) a public or private entity may be a for-profit or a nonprofit entity; and

(2) a nonprofit corporation formed by the district may hold an ownership interest in a public or private entity described by Subsection (a)(3).

(c) Information prepared or compiled by or for the Tarrant County Hospital District or a nonprofit corporation formed by the district relating to the development of technology or intellectual property to which this section applies is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 351 (H.B. 2847), Sec. 1, eff. June 7, 2021.

Sec. 281.052. COUNTY AUTHORITY TO SELL, LEASE, AND PURCHASE FACILITIES FOR DISTRICT PURPOSES. (a) The commissioners court of a

county in which a district is created under this chapter may sell real or personal property in order to enter into a contract to:

(1) lease or rent buildings, land, facilities, equipment, or services from others for district purposes;

(2) construct, repair, renovate, improve, or enlarge buildings, land, facilities, or equipment for district purposes; and

(3) pay regular monthly utility bills, including electricity, gas, and water bills, for the leased or rented buildings, land, facilities, equipment, or services.

(b) The commissioners court may pay for the facilities, equipment, and services and for the regular monthly utility bills for those facilities, equipment, and services from the county's general fund if a majority of the commissioners court considers the facilities, equipment, and services essential to the proper administration of the county.

(c) A construction project under this section shall be let by contract. The contract must contain the prevailing wage for mechanics, laborers, and other persons employed in the project. The Tarrant County Commissioners Court shall set the prevailing wage in the amount set by the commissioners court for all construction projects involving the expenditure of county funds.

(d) On or before the expiration of the lease or rental contract, the county may purchase the facilities with county general funds if a majority of the commissioners court considers the purchase price reasonable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.053. DISTRICT INSPECTIONS. (a) The district may be inspected by a representative of the commissioners court or the Department of State Health Services.

(b) A district officer shall:

(1) admit an inspector into the district facilities; and

(2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0830, eff. April 2, 2015.

Sec. 281.054. EMINENT DOMAIN. (a) The district has the power of eminent domain to acquire any interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit with the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to:

(1) pay in advance or give bond or other security for costs in the trial court;

(2) give bond for the issuance of a temporary restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or writ of error.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.055. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.056. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION. (a) The board may sue and be sued. A health care liability claim, as defined by Section 74.001, Civil Practice and Remedies Code, may be brought against the district only in the county in which the district is established.

(b) Except as provided by Subsection (b-1), a district may employ or contract with private legal counsel to represent the district on any legal matter. If the district does not employ or contract with private legal counsel on a legal matter, the county

attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district.

(b-1) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall, in all legal matters, represent a district located in:

(1) a county that borders the United Mexican States and in which a municipality with a population of 500,000 or more is located;

(2) a county with a population of 3.4 million or more; or

(3) a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(c) A board that receives legal services from a county attorney, district attorney, or criminal district attorney may employ additional private legal counsel when the board determines that additional counsel is advisable. A board that contracts or employs private legal counsel under Subsection (b) may request and receive additional legal services from the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters when the board determines that additional counsel is necessary.

(d) If the district receives legal services from a county attorney, district attorney, or criminal district attorney, the district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 3.08, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 11, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 36, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 78, eff. September 1, 2023.

Sec. 281.0565. CHARITABLE ORGANIZATIONS. (a) In this section, "charitable organization" means an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code.

(b) A district may create a charitable organization to facilitate the management of a district health care program by providing or arranging health care services, developing resources for health care services, or providing ancillary support services for the district.

(c) A charitable organization created by a district under this section is a unit of local government only for purposes of Chapter 101, Civil Practice and Remedies Code.

(d) A district may make a capital or other financial contribution to a charitable organization created by the district to provide regional administration and delivery of health care services to or for the district.

(e) A charitable organization created by a district under this section may contract, collaborate, or enter into a joint venture or other agreement with a public or private entity, without regard to that entity's for-profit or nonprofit status, and may hold an ownership interest in such an entity.

(f) A charitable organization created by a district under this section remains subject to the laws of this state and the United States that govern charitable organizations. Nothing in this section may be construed as abrogating or modifying any other provision of law governing charitable organizations.

Added by Acts 1997, 75th Leg., ch. 104, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 6, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 363 (H.B. 2557), Sec. 2, eff. June 9, 2015.

Sec. 281.057. EMPLOYMENT OF DISTRICT PEACE OFFICERS. (a) The board of the Dallas County Hospital District, the Tarrant County Hospital District, the Bexar County Hospital District, or the El Paso County Hospital District may employ and commission peace officers for

the district.

(b) The jurisdiction of a peace officer commissioned under this section includes the property owned or controlled by the district that employs the peace officer and any street abutting, right-of-way over or through, or easement in the property.

(c) In a district peace officer's jurisdiction, the peace officer has the authority granted by Chapter 14, Code of Criminal Procedure. The peace officer may also make an arrest without a warrant in the officer's jurisdiction if the offense involves injury or harm to any property owned or controlled by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 853, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 888, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 402 (S.B. 601), Sec. 1, eff. June 17, 2011.

Sec. 281.058. AUTHORITY TO FORM CAPTIVE INSURANCE OR CAPTIVE MANAGEMENT COMPANY. (a) In this section, "captive insurance company" and "captive management company" have the meanings assigned to those terms by Section 964.001, Insurance Code.

(b) A district, a combination of districts, or a nonprofit corporation formed by a district or a combination of districts to further the purposes of the district or districts, as appropriate, may form a captive insurance company or a captive management company in accordance with the provisions of Chapter 964, Insurance Code, for the purpose of engaging in the business of insurance under that chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 363 (H.B. 2557), Sec. 3, eff. June 9, 2015.

Sec. 281.059. DALLAS COUNTY HOSPITAL DISTRICT; BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY. (a) In this section:

(1) "Broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(2) "District" means the Dallas County Hospital District.

(b) Except as provided by Subsection (c), the Dallas County

Hospital District may contract with a broker to lease or sell a tract of real property that is owned by the district.

(c) The district may not contract with a broker who is related within the third degree of consanguinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the Dallas County Commissioners Court.

(d) The district may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(e) If a contract made under Subsection (b) requires a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other brokers in the county in which the real property is located, the district, on or after the 30th day after the date the property is listed, may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker, including a broker described by Subsection (c), using the multiple-listing service and who submits the most advantageous offer.

(f) The district must post a notice of intent to sell the real property in a newspaper of general circulation, not less than once, at least 14 days before the date the district accepts an offer produced by a broker.

(g) The district may sell a tract of real property under this section without complying with the requirements of Section 272.001, Local Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1066 (H.B. 3178), Sec. 1, eff. June 15, 2017.

Sec. 281.060. EL PASO COUNTY HOSPITAL DISTRICT; BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY. (a) In this section:

(1) "Broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(2) "District" means the El Paso County Hospital District.

(b) Except as provided by Subsection (c), the El Paso County Hospital District may contract with a broker to sell a tract of real property that is owned by the district.

(c) The district may not contract with a broker who is related

within the third degree of consanguinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the El Paso County Commissioners Court.

(d) The district may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(e) If a contract made under Subsection (b) requires a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other brokers in the county in which the real property is located, the district, on or after the 30th day after the date the property is listed, may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker, including a broker described by Subsection (c), using the multiple-listing service and who submits the most advantageous offer.

(f) The district must post a notice of intent to sell the real property in a newspaper of general circulation, not less than once, at least 14 days before the date the district accepts an offer produced by a broker.

(g) The district may sell a tract of real property under this section without complying with the requirements of Section 272.001, Local Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 697 (H.B. 2382), Sec. 1, eff. June 15, 2021.

Sec. 281.061. NUECES COUNTY HOSPITAL DISTRICT; BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY. (a) In this section:

(1) "Broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(2) "District" means the Nueces County Hospital District.

(3) "Fair market value" means the price that a property would bring in an arms-length transaction when offered for sale by a person who wishes, but is not obliged, to sell the property and when bought by a person who is under no necessity of buying the property. The value shall be determined as if the property were available for immediate possession and for use for any reasonable purpose.

(b) Except as provided by Subsection (c), the Nueces County

Hospital District may contract with a broker to sell a tract of real property that is owned by the district.

(c) The district may not contract with a broker who is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the Nueces County Commissioners Court.

(d) The district may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(e) If a contract made under Subsection (b) requires a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other brokers in the county in which the real property is located, the district, on or after the 30th day after the date the property is listed, may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker with whom the district may contract under Subsection (c) using the multiple-listing service and who submits the most advantageous offer.

(f) The district must post a notice of intent to sell the real property in a newspaper of general circulation, not less than once, at least 30 days before the date the district accepts an offer produced by a broker.

(g) The district may sell a tract of real property under this section without complying with the requirements of Section 272.001, Local Government Code.

(h) The district may not sell a tract of real property under this section for less than the fair market value of the tract of real property, as determined by an independent appraisal prepared by an appraiser certified under Chapter 1103, Occupations Code, and obtained by the district in accordance with Subsection (j).

(i) The district may not sell a tract of real property under this section to a buyer who:

(1) is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to:

(A) a member of the board of hospital managers of the district;

(B) a public official who serves on the Nueces County Commissioners Court; or

(C) the broker for the sale; or

(2) has a business or financial relationship with a member of the board of hospital managers of the district or a public official who serves on the Nueces County Commissioners Court that could reasonably be expected to materially and adversely affect the judgment of the member or public official.

(j) The district may not obtain an appraisal under Subsection (h) from an appraiser who is related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code, to:

(1) a member of the board of hospital managers of the district; or

(2) a public official who serves on the Nueces County Commissioners Court.

Added by Acts 2023, 88th Leg., R.S., Ch. 992 (H.B. 4844), Sec. 1, eff. June 18, 2023.

SUBCHAPTER D. MEDICAL TREATMENT AND CARE

Sec. 281.071. PAYMENT AND SUPPORT. (a) The administrator shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to district facilities from the county in which the hospital is located. If the administrator finds that the patient or the patient's relatives are liable for the patient's care and treatment in whole or in part, the administrator shall issue an order directing the patient or the patient's relatives to pay to the district treasurer a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) An administrator may collect an amount owed under this section from the estate of a patient, or the relatives legally responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a deceased person.

(d) If the administrator finds that the patient and the patient's relatives are not able to pay in whole or in part, the district shall without charge supply the care and treatment to the

patient.

(e) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over this ability or if there is doubt in the mind of the administrator over this ability. The court shall hear witnesses and issue any order that may be proper.

(f) An appeal from an order of the county court must be made to a district court in the county in which the district is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.072. REIMBURSEMENT FOR SERVICES. The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61 (Indigent Health Care and Treatment Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.073. DISPOSITION OF DISTRICT RECORDS. (a) The preservation, microfilming, destruction, or other disposition of the records of a district is subject to Subtitle C, Title 6, Local Government Code.

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the executive commissioner and with other applicable federal and state laws and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 118, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0831, eff. April 2, 2015.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 281.091. BUDGET. (a) The administrator shall prepare an

annual budget under the board's direction.

(b) The budget and budget revisions must be approved by the board and then shall be presented to the commissioners court for final approval.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.092. ADMINISTRATOR'S REPORT. (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the board, commissioners court, executive commissioner, and comptroller.

(b) The report must:

(1) consist of a sworn statement of all money and choses in action received by the administrator and their disposition; and

(2) show in detail the operations of the district for the fiscal year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0832, eff. April 2, 2015.

Sec. 281.093. DEPOSITORY. (a) Not later than the 30th day after the appointment of the board, the board shall:

(1) select a depository for district funds in the manner provided by law for the selection of a county depository; or

(2) elect to use the depository previously selected by the county.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for four years and until its successor is selected and qualified.

(c) The board may extend any contract with a depository to the next October and then select a depository for the following four years.

(d) All income of the district shall be deposited in the district depository.

(e) Warrants against district funds do not require the county clerk's signature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 246, Sec. 1, eff. Aug. 30, 1993.

Sec. 281.094. USE OF CERTAIN FUNDS BY THE NUECES COUNTY HOSPITAL DISTRICT. (a) With the approval of the Nueces County Commissioners Court, the board of the Nueces County Hospital District may use funds made available to the district from sources other than a tax levy to fund health care services, including public health services, mental health services, intellectual disability services, emergency medical services, health services provided to persons confined in jail facilities, and for other health related purposes.

(b) The board of the Nueces County Hospital District may use funds made available to the district from any source to fund:

(1) indigent health care; and

(2) intergovernmental transfers from the district to the state for use as the nonfederal share of Medicaid supplemental payment program or waiver program payments for eligible health care providers located inside or outside the district's boundaries, including, but not limited to, any payments available through a waiver granted under Section 1115, Social Security Act (42 U.S.C. Section 1315), or other similar payment programs, subject to the limitation prescribed by Subsection (c).

(c) Neither the funds comprising an intergovernmental transfer described by Subsection (b)(2) nor any federal funds obtained from any such transfer may be used by the board of the Nueces County Hospital District or any entity to expand eligibility for medical assistance (Medicaid) under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 1999, 76th Leg., ch. 1133, Sec. 1, eff. June 18, 1999. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1373 (S.B. 1863), Sec. 1, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.03, eff. September 1, 2023.

Sec. 281.095. PROHIBITION AGAINST PARTICIPATION IN TAX

INCREMENT FINANCING BY CERTAIN HOSPITAL DISTRICTS. (a) In this section, "district" means Bexar County Hospital District, Nueces County Hospital District, El Paso County Hospital District, or Harris County Hospital District.

(b) The district may not enter into a contract or agreement to pay into a tax increment fund any of the district's tax increment produced from property located in a reinvestment zone under Chapter 311, Tax Code. This subsection does not affect the validity of an agreement entered into by the district before September 1, 2001, to pay a portion of the district's tax increment into a tax increment fund under Chapter 311, Tax Code.

(c) The proceeds of a tax imposed under Section 281.121 may not be used to make a payment into a tax increment fund under Chapter 311, Tax Code, if that payment is prohibited by this section.

(d) A project plan or reinvestment zone financing plan approved under Section 311.011, Tax Code, on or after September 1, 2001, may not include any of the district's tax increment or any other funds derived from the district as a source of revenue to finance or pay project costs.

(e) A project plan or reinvestment zone financing plan approved under Section 311.011, Tax Code, before September 1, 2001, may not be amended on or after September 1, 2001, to:

(1) increase the percentage of the district's tax increment to be contributed to a tax increment fund;

(2) increase the time during which the district is to contribute any of the district's tax increment to a tax increment fund;

(3) allow or require the district, if it was not included in the originally approved project plan or reinvestment zone financing plan, to contribute any of the district's tax increment or other money to a tax increment fund; or

(4) allow the district to pay into a tax increment fund any of the district's tax increment derived from property added to the reinvestment zone on or after September 1, 2001.

(f) An agreement entered into by the district under Section 311.013(f), Tax Code, before September 1, 2001, may not be amended on or after September 1, 2001, to include any of the conditions prohibited by Subsection (e).

Added by Acts 2001, 77th Leg., ch. 588, Sec. 1, eff. Sept. 1, 2001.

Sec. 281.096. AUTHORITY TO TAKE ACTIONS RELATING TO AD VALOREM TAXES. (a) With respect to the imposition or collection of an ad valorem tax imposed for the benefit of a hospital district, the commissioners court of the county in which the district is located has the authority assigned by law to the governing body of the hospital district, including the authority to:

(1) adopt an exemption, partial exemption, or other form of relief from an ad valorem tax;

(2) elect to tax property that would otherwise be exempt from an ad valorem tax; and

(3) exercise a power granted to a taxing unit under Section 6.30, Tax Code.

(b) The board of a hospital district may not exercise a power granted by Subsection (a) to the commissioners court with respect to the imposition or collection of an ad valorem tax imposed for the benefit of the hospital district.

Added by Acts 2003, 78th Leg., ch. 102, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. DISTRICT BONDS AND CERTIFICATES OF OBLIGATION

Sec. 281.101. GENERAL OBLIGATION BONDS. The commissioners court, in the district's name and on the district's faith and credit, may issue and sell bonds to acquire, construct, equip, or enlarge the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.102. BOND ELECTION. (a) The district may not issue bonds, excluding refunding bonds, unless the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose.

(b) The commissioners court may order a bond election on its own motion or on the board's request.

(c) The election must be:

(1) called and held in accordance with Chapter 1251, Government Code; and

(2) conducted in the same manner as other countywide

elections.

(d) The district shall pay for the cost of the election and shall provide for payment before the commissioners court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.261, eff. Sept. 1, 2001.

Sec. 281.103. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund and pay any outstanding bonded indebtedness of the district, including assumed bonded indebtedness.

(b) The refunding bonds must be issued in the manner provided for other bonds of the district except that an election is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of those proceeds. In those computations, any premium required to be paid on the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.104. EXECUTION OF BONDS. The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.105. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the same effect as that approval for other bonds issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 281.106. AUTHORITY TO ISSUE CERTIFICATES OF OBLIGATION. With the approval of the commissioners court, the board may issue certificates of obligation in accordance with Subchapter C, Chapter 271, Local Government Code, for district purposes as authorized by this chapter.

Added by Acts 2003, 78th Leg., ch. 47, Sec. 2, eff. Sept. 1, 2003.

Sec. 281.107. ALTERNATIVE FINANCING AND ELECTION PROCEDURES. (a) This section is applicable to any hospital district that was created pursuant to the authority granted by Section 4, Article IX, Texas Constitution, is operating under this chapter, and has previously held an election at which the voters approved the levy and assessment of an ad valorem tax at a rate not greater than 75 cents per $100 of assessed valuation of taxable property within the district.

(b) The commissioners court may, in the district's name, call, order, and hold an election and submit thereat the proposition and ballot prescribed in Subsections (c) and (d) if the district's board of managers:

(1) finds that capital funds are needed to acquire, construct, equip, and improve the district's hospital system;

(2) finds that financing such improvements through the issuance of combination tax and revenue bonds or other obligations is the best available method to provide the capital funds that are needed to furnish the highest quality of medical treatment and

hospital care to persons residing in the district; and

(3) requests that the commissioners court call and hold an election under the alternative procedures authorized by this section.

(c) The official proposition submitted to the voters at an election held under this section shall include, at a minimum, the information included in the election order as prescribed by Subsection (e).

(d) The ballot shall be arranged in a manner that will permit the voters to vote for or against the following summary of the proposition:

"Authorizing (insert name of district) to (insert description of proposed district improvement) and to pledge (insert amount of combination tax and revenue bonds or other obligations) for the purpose of financing the proposed hospital district improvement project."

(e) The election order shall include:

(1) a statement of the maximum aggregate principal amount of bonds and obligations having maturities longer than five years that will be secured by the hospital system and tax revenues authorized by this section if approved by the voters at the election unless another election is held and the voters approve an increased amount; and

(2) a general description of the district's proposed financing and improvement plans, including:

(A) the expected uses of the proposed improvements to the hospital system according to the proposed plans;

(B) estimates of the costs of the proposed improvements, estimates of the amount of the expected revenues that will be received from the operation of the proposed improvements, and estimates of the amount of revenues, including tax revenues, that will be required to pay the long-term combination tax and revenue bonds and other obligations when due, based on the interest rate and other assumptions stated in the order; and

(C) any other matter deemed by the board of managers to be appropriate to inform the voters of the details of the proposed improvements to the district's hospital system and the financing plans.

(f) An election conducted pursuant to this section shall be conducted in accordance with the procedures provided in Section 281.102.

(g) If a majority of the votes received at the election favor the proposition submitted at the election, the commissioners court is authorized to issue and execute, on behalf and in the name of the district, combination tax and revenue bonds and other short-term and long-term obligations in the amounts and upon the terms recommended and at the times requested by the board of managers. If requested by the board of managers, the commissioners court may also, by order, extend or confirm the pledge to previously issued bonds and other obligations of the district.

(h) Bonds and other short-term or long-term obligations that are secured in the manner authorized by this section shall be payable from and secured by the revenues of the district's hospital system and from the ad valorem tax revenues of the district to the extent prescribed and agreed in the orders, resolutions, indentures, contracts, or other documents authorizing their issuance or execution. The district, through the commissioners court, shall annually levy, assess, and collect ad valorem taxes on taxable property in the district, within the limited tax rate previously authorized by the voters, when and as required by the proceedings authorizing the bonds and other obligations.

(i) Each district that utilizes the alternative procedures permitted by this section is authorized to enter into, execute, and deliver any of the credit agreements permitted by Chapter 1371, Government Code, and to secure them by pledging revenues and taxes to the same extent they are pledged to bonds or other short-term or long-term obligations in accordance with this section.

(j) The portion of the rate of ad valorem tax that is to be levied and assessed each year by or for the district that is allocated by the district to the payment of the principal of and the interest on bonds and other obligations or the maintenance of reserves therefor in accordance with this section shall be applied as a payment on current debt in calculating the current debt rate under the applicable voter-approval tax rate provisions of Chapter 26, Tax Code.

(k) The procedures authorized by this section are alternative to the provisions of Chapter 284 and the other sections of this chapter and are cumulative of and in addition to any powers granted to any district under those or any other laws.

Added by Acts 2003, 78th Leg., ch. 55, Sec. 1, eff. May 15, 2003.

Renumbered from Health and Safety Code, Section 281.106 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(48), eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 371 (H.B. 1366), Sec. 1, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 76, eff. January 1, 2020.

SUBCHAPTER G. TAXES

Sec. 281.121. TAXES TO PAY BONDS AND CERTIFICATES OF OBLIGATION; TAX ASSESSMENT AND COLLECTION. (a) When the district issues bonds or certificates of obligation payable from and secured by taxes under this chapter, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation. The commissioners court may impose the tax for the entire year in which the district is created in order to finance initial district operation and to pay bonds assumed by the district.

(b) The tax amount:

(1) must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature; and

(2) may not exceed 75 cents on each $100 of the taxable value of property taxable by the district, or the rate authorized in the election to create the district.

(c) The proceeds of the tax may be used:

(1) to pay the interest on and create a sinking fund for bonds that may be assumed or issued by the district for hospital purposes in accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system;

(3) if requested by the board and approved by the commissioners court, to make further improvements and additions to the hospital system, including acquiring necessary sites by purchase, lease, or condemnation; and

(4) to pay for certificates of obligation issued under Section 281.106 that are payable from and secured by taxes.

(d) The county tax assessor-collector shall collect the tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 47, Sec. 3, 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 198, Sec. 2.2216, eff. Sept. 1, 2003.

Sec. 281.122. REDUCTION IN AD VALOREM TAX RATE BY GOVERNMENTAL ENTITY. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The commissioners court of the county and the governing body of the municipality with the largest population in the county, in determining the ad valorem tax rate of the county or municipality, as appropriate, for the first year in which the district imposes ad valorem taxes on property in the district, shall:

(1) take into account the decrease in the amount the county or municipality will spend for health care purposes in that year because the district is providing health care services previously provided or paid for by the county or municipality; and

(2) reduce the ad valorem tax rate adopted for the county or municipality, as appropriate, in accordance with the amount of the decrease.

(c) The commissioners court of the county and the governing body of the municipality with the largest population in the county shall retain an independent auditor to verify that the ad valorem tax rate of the county or municipality, as appropriate, has been reduced as required by Subsection (b).

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.217, eff. Sept. 1, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 79, eff. September 1, 2023.

Sec. 281.124. ELECTION TO APPROVE TAX RATE IN EXCESS OF VOTER-APPROVAL TAX RATE. (a) This section applies only to a district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

(b) The board may hold an election at which the registered voters of the district may approve a tax rate for the current tax year that exceeds the district's voter-approval tax rate for the year computed under Chapter 26, Tax Code, by a specific rate stated in dollars and cents per $100 of taxable value.

(c) An election under this section must be held at least 180 days before the date on which the district's tax rate is adopted by the board. At the election, the ballot shall be prepared to permit voting for or against the proposition: "Approving the ad valorem tax rate of $ (insert total proposed tax rate) per $100 valuation in (insert district name) for the (insert current tax year) tax year, a rate that exceeds the district's voter-approval tax rate. The proposed ad valorem tax rate exceeds the ad valorem tax rate most recently adopted by the district by $ (insert difference between proposed and preceding year's tax rates) per $100 valuation."

(d) If a majority of the votes cast in the election favor the proposition, the tax rate for the specified tax year is the rate approved by the voters, and that rate is not subject to Section 26.07, Tax Code. The board shall adopt the tax rate as provided by Chapter 26, Tax Code.

(e) If the proposition is not approved as provided by Subsection (d), the board may not adopt a tax rate for the district for the specified tax year that exceeds the rate that was not approved, and Section 26.07, Tax Code, applies to the adopted rate if that rate exceeds the district's voter-approval tax rate.

(f) Notwithstanding any other law, if a majority of the votes cast in the election favor the proposition, a governing body with approval authority over the district's budget or tax rate may not disapprove the tax rate approved by the voters or disapprove the budget based solely on the tax rate approved by the voters.

Added by Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 7, eff. September 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 77, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 78, eff. January 1, 2020.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 80, eff. September 1, 2023.

CHAPTER 282. HOSPITAL DISTRICTS IN COUNTIES OF 75,000 OR LESS

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 282.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of a district.

(2) "District" means a hospital district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.002. DISTRICT AUTHORIZATION. (a) The commissioners court of a county with a population of 75,000 or less and an assessed property valuation of at least $200,000,000 may create one or more hospital districts.

(b) The district may include a municipality or town, or a part of a municipality or town, but the district may not include part of another district.

(c) To be formed the proposed district must be composed of territory having property of an assessed value of more than $25,000,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.003. CREATION ELECTION REQUIRED. The creation of the district must be approved by a majority of the qualified voters of the area of the proposed district who vote at an election ordered and held for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.004. PETITION FOR ELECTION. (a) To propose the establishment of a district:

(1) a petition for a creation election signed by at least five percent of the qualified property taxpaying voters of the area of the proposed district must be presented to the commissioners court; and

(2) $200 in cash must be deposited with the county clerk at

the time of the presentation of the petition.

(b) The petition must state:

(1) the boundaries of the proposed district;

(2) the public necessity for the proposed district; and

(3) the name of the proposed district which includes the county name.

(c) The petition may include a request for the commissioners court to provide on the ballot at the creation election for voting for or against:

(1) imposing a tax to provide funds to construct, equip, maintain, or purchase hospital buildings or land for the district; or

(2) the issuance of bonds to acquire sites for and to construct hospital buildings and imposing a tax at the rate necessary to create an interest and sinking fund sufficient to pay the principal of and interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.005. HEARING; ELECTION ORDER. (a) When the petition is presented to the commissioners court, the commissioners court shall:

(1) set a date for a hearing on the petition at a regular session or special session called for that purpose, not less than 30 days nor more than 60 days after the date on which the petition is presented; and

(2) order the county clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order for at least 20 days before the date of the election at the courthouse door and at four other places in the proposed district.

(b) If the court finds at the hearing that the petition meets the requirements of this chapter, the court shall order an election to be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(c) The order must contain a description of the metes and bounds of the proposed district and must set the date of the election.

(d) The ballot for election shall be printed to provide for

voting for or against:

(1) the creation of the district; and

(2) if the petition includes a request under Section 282.004(c), the imposition of a tax or the issuance of bonds according to the terms of the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.006. ELECTION COSTS; DISPOSITION OF DEPOSIT. (a) The county clerk shall retain the amount deposited under Section 282.004(a) until the commissioners court declares the election results.

(b) If at the election the majority of the voters approved the creation of the district, the county clerk shall return that amount to the petitioners or the petitioners' agent or attorney.

(c) If at the election the majority of the voters disapproved the creation of the district, the county clerk shall:

(1) pay from the amount deposited on warrants approved and signed by the county judge, all costs and expenses pertaining to the proposed district, including the costs related to the elections;

(2) return the remaining amount, if any, to the petitioners or the petitioners' agent or attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 282.021. ELECTION OF BOARD. (a) Board members shall be elected from the district at large.

(b) Initial board members shall be elected at the district creation election.

(c) A person who wishes to have his name printed on the ballot as a candidate to serve as an initial district board member must present to the commissioners court a petition requesting that the person's name be placed on the ballot at the district creation election. The petition must be accompanied by a second petition signed by at least 100 qualified voters of the proposed district requesting that the person's name be placed on the ballot as a candidate for board membership. The petitions must be filed with the commissioners court before the third day before the date on which the

election order is issued.

(d) The commissioners court shall declare that the five candidates receiving the highest number of votes at the initial election of board members are district board members. When they are qualified under this chapter, the candidates shall serve as district board members.

(e) The initial board members shall serve as district board members until the next regular election of state and county officers. An election for board members shall be held at that time and at the general election in each second year after that time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.0211. OPTIONAL FOUR-YEAR TERMS. (a) The board may, on its own motion, order that board members are to be elected in even-numbered years to serve staggered four-year terms.

(b) The first election of board members in an even-numbered year that occurs at least 120 days after the date on which an order is entered under Subsection (a) shall be held as previously scheduled. The three candidates receiving the highest number of votes at that election serve for a term of four years. The remaining two directors elected at that election serve for a term of two years. Subsequent members shall be elected in even-numbered years and shall serve four-year terms.

Added by Acts 1991, 72nd Leg., ch. 645, Sec. 1, eff. June 16, 1991.

Sec. 282.022. OATH AND BOND. (a) Before assuming the duties of office on the board, each district board member elect must:

(1) take and subscribe an oath before the county judge to faithfully and impartially discharge the duties of a board member and to give an account of the member's activities to the commissioners court when requested to do so; and

(2) execute a good and sufficient bond for $5,000 payable to the county judge for the use and benefit of the district, conditioned on the faithful performance of the person's duties as a board member.

(b) The county clerk shall file and maintain the oath as part of the district records.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.023. COMPENSATION. A board member serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.024. OFFICERS. The board shall elect from among its members a chairman, a secretary, and other officers the board considers appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.025. QUORUM; MEETING PROCEDURE AND RECORD. (a) Three board members constitute a quorum.

(b) All board proceedings shall be by motion or resolution and shall be recorded in a book kept for that purpose. The book is a public record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.026. SEAL. The board shall adopt an official seal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.027. SUPERINTENDENT; DUTIES. (a) The board shall appoint a superintendent to serve as the district's chief administrator.

(b) The superintendent serves at the will of the board and is responsible to the board for the efficient administration of hospital affairs.

(c) The superintendent is entitled to compensation as determined by the board.

(d) The superintendent may attend board meetings and meetings of a board committee and may participate in the discussion of matters

within the superintendent's functions, but the superintendent may not vote on matters considered by the board.

(e) The superintendent shall:

(1) control administrative functions of the hospital;

(2) carry out the board orders;

(3) ensure that the district complies with state law relating to matters within the superintendent's functions; and

(4) fully advise the board of the district's financial condition and needs.

(f) At least once a year, the superintendent shall:

(1) prepare an estimate of administrative expenses for the succeeding fiscal year;

(2) recommend to the board and estimate the cost of improvements to be made in the succeeding fiscal year;

(3) certify to the board district bills, allowances, and payrolls, including public works contractors' claims; and

(4) recommend to the board salary amounts of district employees under the administrator and a salary scale to be paid for different services required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.028. OTHER OFFICERS AND DISTRICT EMPLOYEES. (a) The board shall appoint other district officers that the board considers necessary.

(b) A person appointed under Subsection (a) serves at the will of the board and is entitled to receive compensation as determined by the board.

(c) The board may contract with or employ legal, technical, and professional assistance and other employees.

(d) If the superintendent is temporarily incapacitated or absent, the board may designate a competent person to perform the superintendent's powers or duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 282.041. MANAGEMENT, CONTROL, AND ADMINISTRATION. (a) The board shall manage, control, and administer the district.

(b) The board is a corporate body in the name of the "_____ County Public Hospital District No. _____."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.042. DISTRICT RULES. The board may adopt rules and bylaws the board considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.043. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) On the district's behalf, the board may hold, construct, condemn, purchase, acquire, lease, add to, maintain, operate, develop, regulate, sell, and convey land, property, a property right, equipment, a hospital facility, or a hospital system to maintain a district hospital, building, structure, or other facility.

(b) The board may lease an existing hospital, equipment, or property used in connection with a district hospital and equipment at a rate the board considers proper.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.044. CONTRACTING AUTHORITY. (a) In performing its powers under this subchapter the board may contract with:

(1) the federal government;

(2) this state;

(3) a municipality; and

(4) another hospital district.

(b) The district may incur indebtedness or borrow money for district purposes on the credit of the district or secured by the revenues of a district hospital.

(c) The district may contract with another community, corporation, or individual for services provided by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.045. PURCHASING PROCEDURES. The district is subject to the County Purchasing Act (Subchapter C, Chapter 262, Local Government Code), and the board shall comply with the competitive bidding or proposal procedures prescribed by that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.046. EMINENT DOMAIN. (a) On a resolution by the board, the district may exercise the power of eminent domain for the acquisition of property necessary to carry out the powers and duties of the district, including preventing damage to district property, property rights, equipment, hospital facilities and systems, and property adjacent to district property.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, for the exercise of that power by a municipality.

(c) The district may not exercise the power of eminent domain against:

(1) a hospital, clinic, or sanatorium operated as a charitable, nonprofit establishment or operated by a religious organization; or

(2) a privately owned or operated hospital or clinic, whether or not incorporated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.047. GIFTS AND ENDOWMENTS. The board may accept bequests and contributions on behalf of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.048. AUTHORITY TO SUE AND BE SUED; DISTRICT LIABILITY. (a) The board may sue and be sued on behalf of the district.

(b) A suit against the district must be brought in the county in which the district is located.

(c) The district is not liable for negligence for an act of a district officer, agent, or employee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.049. OTHER BOARD POWERS. The board may:

(1) promote health in the district;

(2) print and publish information; and

(3) do any other thing necessary to the performance of the board's duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.050. PROVISION OF HOSPITAL SERVICES. (a) The district shall provide adequate hospital services for the district. A person who resides in the district is entitled to receive those services at available district hospital facilities at a rate determined by the board and in any manner the board considers expedient or necessary under existing conditions. The district may provide the services in hospitals located outside the district.

(b) The district may furnish hospital services to a person who does not reside in the district at a reasonable and fair rate the board considers proper, but the district shall give priority to a district resident in the provision of hospital services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. DISTRICT FINANCES

Sec. 282.061. ANNUAL REPORT. (a) Not later than June 1 of each year, the board shall prepare and file with the commissioners court a full, detailed report of the condition of the district. The report must include:

(1) an estimate of the cost of maintenance, operation, and needed repairs for the succeeding year;

(2) an inventory of all funds and other property of the district; and

(3) a list of all legal demands, debts, and obligations against the district.

(b) The board shall verify the report.

(c) The commissioners court shall carefully investigate and consider the report before setting a tax rate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.062. TREASURER. (a) The county treasurer of the county in which the district is located serves as treasurer of the construction and maintenance fund and the interest and sinking fund of the district.

(b) All money to be credited to the construction and maintenance fund or the interest and sinking fund shall be paid to the treasurer.

(c) The treasurer may not pay money from the construction and maintenance fund or the interest and sinking fund unless the treasurer receives a warrant ordering the payment signed by the district board chairman or another district officer designated by the board.

(d) The treasurer shall open a construction and maintenance fund account and an interest and sinking fund account with the district and shall keep a record of all of the district's money received for the accounts and paid from the accounts. The treasurer may not pay money from the accounts except on a voucher signed by the chairman or two board members.

(e) The treasurer shall maintain a file of the payment orders from the accounts.

(f) As required by the board or the commissioners court, the treasurer shall give a correct accounting to the board or the commissioners court of all matters relating to the accounts.

(g) For services on behalf of the district, the treasurer is entitled to receive an amount equal to:

(1) one-fourth of one percent of all money received by the treasurer for the construction and maintenance fund or the interest and sinking fund; and

(2) one-eighth of one percent of all money received by the treasurer and paid out of the construction and maintenance fund or the interest and sinking fund of the district.

(h) The treasurer is not entitled to receive a commission under Subsection (g) on district money the treasurer receives from the preceding treasurer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 119, eff. Sept. 1, 1991.

Sec. 282.063. DISTRICT FUNDS; INVESTMENT OF FUNDS. (a) The treasurer shall maintain a construction and maintenance fund and an interest and sinking fund for the district and shall place money in those funds as required by this chapter or as the board by resolution directs. All other money received by the district shall be placed in a fund or funds as provided by the board.

(b) The amount of taxes collected that is necessary to pay the principal of and interest on the bonds as they mature shall be credited to the interest and sinking fund. All money received by the district from the sale of bonds shall be credited to the construction and maintenance fund.

(c) The treasurer shall pay from the construction and maintenance fund or from a fund or funds designated by the board the expenses, debts, and obligations of the district created after the filing of the original petition and incurred in the creation, operation, and maintenance of the district, other than the principal of and interest on bonds.

(d) The interest and sinking fund may be invested for the benefit of the district in bonds and securities approved by the attorney general.

(e) The construction and maintenance fund and interest and sinking fund shall be held for the purposes for which they were created. If money is improperly paid from either fund, the commissioners court may require the county treasurer to transfer to the fund from the district account the amount necessary to restore that amount.

(f) District funds shall be deposited in the county depositories in the manner required by law for county depositories. Interest collected on those funds belongs to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 119, eff. Sept. 1, 1991.

Sec. 282.064. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding.

(c) The fiscal year may not be changed more than once in any 24-month period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 120, eff. Sept. 1, 1991.

Sec. 282.065. ANNUAL AUDIT; OPEN RECORDS. (a) The board annually shall have an audit made of the financial condition of the district.

(b) The audit and other district records are open to inspection during regular business hours at the district's principal office.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 120, eff. Sept. 1, 1991.

SUBCHAPTER E. DISTRICT BONDS

Sec. 282.071. GENERAL OBLIGATION BONDS. The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire or construct hospital buildings or land if the bonds are approved by a majority of the qualified voters at the election to create the district in accordance with Subchapter A.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.072. INTEREST, MATURITY, AND DENOMINATION. (a) District bonds mature not more than 30 years after their date and bear interest at a rate ordered by the commissioners court but not more than six percent annually.

(b) The bonds must provide the interest rate and the time, place, manner, and conditions of payment as ordered by the commissioners court.

(c) The bonds may be payable annually or semiannually.

(d) The bonds must be issued in denominations of not less than $100 nor more than $1,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.073. EXECUTION OF BONDS. The county judge shall sign

the bonds, and the county clerk shall attest the signature and place the seal of the court on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.074. APPROVAL AND REGISTRATION OF BONDS. (a) Before the bonds are offered for sale, the district shall forward to the attorney general:

(1) a copy of the bonds to be issued;

(2) a certified copy of the court order imposing the tax to pay the interest on the bonds and provide a sinking fund;

(3) a statement of the total bonded indebtedness of the district, including the series of bonds proposed;

(4) the assessed value of property for the purpose of taxation as shown by the most recent official county assessment; and

(5) any other information that the attorney general requires.

(b) The attorney general shall:

(1) examine the bonds; and

(2) certify the bonds if the attorney general determines that the bonds are issued in conformity with the constitution and law and that they are valid and binding obligations of the district.

(c) When the bonds are approved by the attorney general, the comptroller shall register the bonds in a book kept for that purpose and maintain the certificate of approval for the bonds.

(d) On approval and registration under this section, the bonds are incontestable for any cause. The certificate of approval or a certified copy of the certificate is admissible evidence in a suit to enforce the collection of the bonds as prima facie proof of the validity of the bonds with attached coupons. In that suit, only forgery or fraud may be offered as a defense against the validity of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.075. BOND RECORD BOOK. (a) Before issuing the bonds, the commissioners court shall provide to the county clerk a well-bound book in which the clerk shall record all bonds issued, including the following information:

(1) the bond numbers, amount, rate of interest, and date of issue;

(2) the date when the bonds are due;

(3) the place where the bonds are payable;

(4) the amount received for each bond;

(5) the annual assessment made to pay bond interest and to provide a sinking fund to pay the bonds; and

(6) the payment made of each bond.

(b) The record book must be open for inspection at all times by a taxpayer of the district or a bondholder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.076. COMPENSATION OF COUNTY CLERK. For recording services provided to the district, the county clerk is entitled to receive fees as provided by Chapter 118, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.077. BOND OF COUNTY JUDGE. (a) When the bonds are registered, the county judge shall execute a good and sufficient bond, approved by the board and payable to the board, for an amount not less than the amount of the bonds issued. The bond must be conditioned on the faithful performance of the judge's duties.

(b) If the bond is executed by a satisfactory surety, the district may pay from the district construction and maintenance fund a reasonable premium on the bond on receipt of an invoice for the premium. If the amount of the premium is disputed as unreasonable, a court of competent jurisdiction may determine whether or not the premium is reasonable.

(c) The board may charge the cost of the bond premium against the commission allowed the county judge on the sale of district bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.078. SALE OF THE BONDS. (a) When the bonds are registered, the county judge, under the direction of the

commissioners court, shall advertise and sell the bonds on the best terms and for the best price possible, but for a price not less than the sum of the amounts of the par value and the accrued interest.

(b) The county judge shall give the money received from the sale of a bond to the county treasurer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.079. DISPOSITION OF UNNEEDED BONDS. With the consent of the commissioners court made of record, bonds that are not required for the purpose for which they were voted may be sold and the proceeds may be used to maintain, preserve, and operate the district hospital and to pay district debts and other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.080. ADDITIONAL BOND ISSUE AND ELECTION. (a) The board shall certify to the commissioners court the necessity for an additional bond issue if:

(1) the proceeds of the original bond issue are insufficient to complete the construction, equipment, maintenance, or purchase of hospital buildings or land for the district; or

(2) the board decides to provide for additional construction, equipment, maintenance, or purchase of hospital buildings or land.

(b) The certification must state:

(1) the amount required;

(2) the purpose for the funds;

(3) the rate of interest of the proposed bonds; and

(4) the maturity date of the proposed bonds.

(c) When the commissioners court receives the certification, the commissioners court shall order an election on the issuance of the bonds to be held in the district on the first uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(d) The sum of the amount of any outstanding bonds and the amount of additional bonds issued under this section may not exceed one-fourth of the assessed value of the real property in the district, as shown by the most recent annual assessment made for

county taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.081. CHANGE IN USE OF BOND PROCEEDS AFTER BOND ISSUANCE. (a) After the issuance of bonds, the board may change the use of the bond proceeds to include a change or improvement to the district hospital if the change or improvement will not increase the cost of the proposed project beyond the amount of the authorized bonds.

(b) The board may make the change in the use of the bond proceeds by:

(1) entering in the minutes of the board a notation of the change; and

(2) by giving notice of the change by publication of the notation and the page number of the board minutes on which the notation was entered.

(c) The publication must be in English and must run for two successive weeks in a newspaper of general circulation in the county in which the district is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. TAXES TO PAY BONDS

Sec. 282.101. TAXES TO PAY BONDS. (a) When the bonds have been approved by the voters at the election authorizing the levy of taxes, the commissioners court shall impose a property tax for the benefit of the district. The tax rate must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they become due.

(b) After investigation and consideration of the annual report in accordance with Section 282.061, the commissioners court shall impose and collect taxes annually on all taxable property in the district. The amount of tax revenue:

(1) must be sufficient to maintain, preserve, and operate the district hospital and to pay all legal district debts and other obligations; and

(2) may not exceed two-tenths of one percent of the annual total assessed valuation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 282.102. TAX ASSESSOR-COLLECTOR. (a) The county tax assessor-collector shall levy and collect taxes for the district.

(b) After receiving a petition of at least five percent of the qualified taxpaying voters of a created district, the commissioners court may order an election to determine whether the district should have a tax assessor and collector other than the county tax assessor-collector. The commissioners court may order the election after:

(1) the district is created; and

(2) giving notice in the manner as provided for the creation election.

(c) If the voters determine by a two-thirds vote that the district should have a district tax assessor-collector, the board shall appoint a suitable person to serve in that position.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. CONVERSION OF DISTRICTS

Sec. 282.121. AUTHORITY TO CONVERT. A district created in accordance with this chapter may be converted into a district operating under Article IX, Section 9, of the Texas Constitution.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.122. CONVERSION HEARING AND ELECTION. (a) A district may be converted under this subchapter only if the conversion is approved by a majority of the qualified voters of the district who vote at an election called and held for that purpose.

(b) The board by order may set a time and place to hold a hearing on the question of converting the district under this subchapter. The board shall set a date for the hearing that is after the 30th day after the date on which the board issues the order.

(c) If after the hearing the board finds that conversion of the district would be in the best interest of the district, the board may order an election on the question of converting the district.

(d) The election shall be held not later than the 60th day after the date on which the election is ordered. Section 41.001(a),

Election Code, does not apply to an election ordered under this section.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.123. BALLOT PROPOSITION. The ballot for the election shall be printed to permit voting for or against the proposition: "The conversion of the _____ County Public Hospital District No. _____ (name of district) from a district operating under Chapter 282, Health and Safety Code, to a district operating under Article IX, Section 9, of the Texas Constitution, and the levy of annual taxes for hospital purposes at a rate not to exceed _____ (insert amount not to exceed 75 cents) on each $100 valuation of all taxable property in the district."

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.124. EFFECTIVE DATE OF CONVERSION. If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date that the election results are declared.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.125. RESPONSIBILITY OF COUNTY. On conversion of a district under this subchapter, the county in which the district is located shall convey or transfer to the district:

(1) money held by the county treasurer for the district under Subchapter D, including any money in the district's construction and maintenance fund or interest and sinking fund; and

(2) taxes levied by the county for the benefit of the district under Subchapter F.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.126. DISTRICT RESPONSIBILITIES. On conversion of the district under this subchapter, the district assumes any outstanding

indebtedness incurred by the county under Subchapter E.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

Sec. 282.127. EFFECT OF CONVERSION. (a) A district converted under this subchapter is governed by Article IX, Section 9, of the Texas Constitution and by Chapter 206, Acts of the 71st Legislature, Regular Session, 1989 (Article 4494q-1, Vernon's Texas Civil Statutes), as if it had been originally created under that section and that Act, except that the board shall continue to be elected as provided by this chapter.

(b) The district's identity is not affected by the conversion, and the district is liable for all outstanding debts and obligations assumed or incurred by the district.

(c) Notwithstanding any other provision of law, the board may impose taxes for the entire year in which the district is converted unless the county has imposed taxes for the benefit of the district for that year.

Added by Acts 1991, 72nd Leg., ch. 94, Sec. 1, eff. May 15, 1991.

CHAPTER 283. OPTIONAL HOSPITAL DISTRICT LAW OF 1957

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 283.001. SHORT TITLE. This Act may be cited as the Optional Hospital District Law of 1957.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.003. DISTRICT AUTHORIZATION. (a) A county authorized

to establish a hospital district under Article IX, Section 4, of the Texas Constitution may create a hospital district and provide for the establishment of a countywide hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) If the county authorized to establish a hospital district under Article IX, Section 4, of the Texas Constitution owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, the countywide hospital district may take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.004. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district will be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion or on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) When the commissioners court orders the election, the court shall determine, subject to Section 283.121(c)(2), a rate of property tax that produces the amount of tax revenue necessary:

(1) to operate and maintain the proposed district's hospital system; and

(2) to pay when due the principal of and interest on bonds assumed by the district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.005. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (b), the ballot for an election under this subchapter shall be printed to provide for voting for or against the

proposition: "The creation of a hospital district under the Optional Hospital District Law of 1957 and the levy of a tax not to exceed _____ cents (the amount determined by the commissioners court in the election order) on each $100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district, the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each $100 of the taxable value of property taxable by the district, and the assumption by the district of all outstanding bonds previously issued for hospital purposes by _____ County and by any municipality in the county."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 283.021. DISTRICT BOARD; OFFICERS. (a) The commissioners court of a county in which a district is created under this chapter serves as the district board of hospital managers.

(b) The county judge of the county in which the district is located serves as the district board chairman.

(c) The county clerk serves as the district board secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.022. COMPENSATION. A board member serves without compensation other than the compensation provided by law for a county judge or a commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.023. RECORD OF BOARD MEETING. The secretary shall keep a suitable record of each board meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.024. ADMINISTRATOR; DUTIES. (a) The board shall appoint an administrator for the district. The person must be qualified by training and experience.

(b) The administrator holds an office for a term of not more than two years but is subject to removal by the board at any time.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than $10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the administrator shall:

(1) perform duties required by the board;

(2) supervise the work and activities of the district; and

(3) generally direct the affairs of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.025. ASSISTANT ADMINISTRATOR. (a) If the administrator is absent or unable to perform any of the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's functions or duties, subject to limitations prescribed by board order.

(b) The assistant administrator and other employees shall execute a bond as required by board order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.026. STAFF. (a) The board may hire doctors, technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) An employment contract may not exceed two years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.027. RETIREMENT PROGRAMS. The commissioners court may include district employees in:

(1) an existing county employees' pension or retirement program; or

(2) an employees' pension or retirement program established for the benefit of district employees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.028. SEAL. The commissioners court's seal is the district seal. The seal shall be used to authenticate the board's acts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 283.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning a hospital or hospital system located in the district, or the county and municipality jointly operating a hospital or hospital system located in the district, shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county or municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, or the county and municipality jointly operating a hospital or hospital system, shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

(1) the unspent proceeds of any bonds assumed by the district under Section 283.043; and

(2) all unspent joint or separate county or municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the

year in which the district is created.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) As soon as practical after the declaration of the election results, the county or municipal board of managers shall transfer to the district board all county and municipal hospital system records, property, and affairs and shall cease to exist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.042. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes without prejudice to the rights of third parties any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, or maintenance of hospital facilities before the creation of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.043. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS. (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) A county or municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of bonds assumed by the district or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the bonds may not be sold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.044. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES. (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems or for the payment of bonds issued for the systems shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for which the taxes were originally levied.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.045. DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE. The district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.046. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital or hospital system of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.047. DISTRICT RULES. The board may adopt rules governing the operation of the hospital or hospital system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.048. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES. (a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

(b) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(c) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.049. DISTRICT INSPECTIONS. (a) The district facilities may be inspected by a representative of the Department of State Health Services or any other state agency or board authorized to supervise a hospital.

(b) A resident district officer shall:

(1) admit an inspector into the district facilities; and

(2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0833, eff. April 2, 2015.

Sec. 283.050. EMINENT DOMAIN. (a) The district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as

provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to:

(1) pay in advance or give bond or other security for costs in the trial court;

(2) give bond for the issuance of a temporary restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or writ of error.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.051. GIFTS AND ENDOWMENTS. (a) On behalf of the district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district.

(b) The board may contract with the state to receive a payment or grant provided by the state for the care or treatment of hospital patients or patients in district facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.052. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION. (a) The board may sue and be sued.

(b) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district in all legal matters.

(c) The board may employ additional legal counsel when the board determines that additional counsel is advisable.

(d) The district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. MEDICAL TREATMENT AND CARE

Sec. 283.071. ADMISSION CRITERIA AND PAYMENT; CRIMINAL PENALTY. (a) The board shall enter an order in district records defining "indigent or needy person" for the purpose of determining qualifications for admission to district hospital facilities.

(b) An order under Subsection (a) must detail the criteria for an emergency admission to district facilities without regard to indigency and for the length and basis of the stay at the facility.

(c) The board may require evidence of indigency that it considers appropriate, including an affidavit of inability to pay.

(d) The board may hire personnel necessary to determine the eligibility of an applicant for admission to district facilities and to process admissions.

(e) A person commits an offense if the person is able to pay for the person's hospital care at a district facility and makes a false statement for the purpose of obtaining admission to a district hospital facility. An offense under this subsection is a misdemeanor and punishable by a fine not to exceed $200.

(f) A person who violates Subsection (e) is also liable for the cost of the person's hospital care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 283.081. BUDGET. (a) The administrator shall prepare an annual budget.

(b) The budget and all budget revisions shall be approved by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.082. ADMINISTRATOR'S REPORT. (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the commissioners court, executive commissioner of the Health and Human Services Commission, and comptroller.

(b) The report must:

(1) contain a sworn statement of all money and choses in action received by the administrator and the disposition of the money

and actions; and

(2) detail the operations of the district for the fiscal year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0834, eff. April 2, 2015.

Sec. 283.083. DEPOSITORY. (a) Not later than the 30th day after the appointment of the board, the board shall:

(1) select a depository for district funds in the manner provided by law for the selection of a county depository; or

(2) elect to use the county depository.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for two years and until its successor is selected and qualified.

(c) All income of the district shall be deposited in the district depository.

(d) The county clerk's signature is not required on warrants against district funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. DISTRICT BONDS

Sec. 283.101. GENERAL OBLIGATION BONDS. The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire, purchase, construct, equip, or enlarge the hospital or hospital system if:

(1) a tax may be imposed at a rate that:

(A) is sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds; and

(B) when added to the rates of other taxes imposed by the district, does not exceed the maximum tax rate of the district; and

(2) the bonds are authorized by majority vote of the qualified voters of the district voting at an election held for the purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.102. BOND ELECTION. (a) A bond election may be held at any time the commissioners court considers advisable, except that it may not be held within two years after the date of a previous election.

(b) The election must be:

(1) ordered and held in accordance with Chapter 1251, Government Code; and

(2) conducted in the same manner as other countywide elections.

(c) The district shall pay for the cost of the election and shall provide for payment before the commissioners court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.262, eff. Sept. 1, 2001.

Sec. 283.103. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund outstanding bonded indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided for other bonds of the district except that an election to authorize their issuance is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged from the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged from those proceeds. In those computations, any premium required to be paid on

the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.104. EXECUTION OF BONDS. The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.105. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds must be approved by the attorney general and registered by the comptroller subject to the same requirements for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the same effect as that approval for other bonds issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. TAXES

Sec. 283.121. TAX ASSESSMENT AND COLLECTION. (a) If the district has issued or assumed bonds payable from taxes, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation.

(b) The commissioners court may impose a tax for:

(1) the entire year in which the district is created;

(2) maintenance and operation of the district; and

(3) improvements and additions to the hospital system.

(c) The total tax rate of the district may not exceed:

(1) the rate authorized by the voters of the district; or

(2) the constitutional tax rate limit.

(d) The tax revenue may be used:

(1) to create an interest and sinking fund for bonds that may be assumed or issued by the district for hospital purposes in

accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system; and

(3) to make improvements and additions to the hospital system, including the acquisition of necessary sites.

(e) The county tax assessor-collector shall collect the tax.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.122. ELECTION TO INCREASE TAX AMOUNT. (a) The tax rate approved in the creation of the district may be increased only if the increase is approved by a majority of the qualified voters of the district who vote in an election called and held for that purpose.

(b) The commissioners court may order an election to increase the allowable tax rate to be held on its own motion or on the presentation of a petition for an election signed by at least 100 qualified property taxpaying voters of the district.

(c) When the commissioners court orders the election, the court shall determine the amount of tax necessary for the proper maintenance of the hospital district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the other requirements of law and that occurs at least 30 days after the date on which the court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.123. BALLOT PROPOSITION FOR TAX INCREASE. The ballot for a tax increase under this subchapter shall be printed to provide for voting for or against the proposition: "The increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the commissioners court in its order calling the election) on each $100 of the taxable value of property taxable by the district."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER H. DISTRICT CONVERSION

Sec. 283.131. DISTRICT CONVERSION AUTHORITY. A hospital district created in accordance with Chapter 281 may be converted into a district subject to this chapter, or a district created in accordance with this chapter may be converted into a district subject to Chapter 281.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.132. CONVERSION ELECTION REQUIRED. (a) A district may be converted under this subchapter only if the conversion is approved by a majority of the qualified voters of the county in which the district is located who vote at an election called and held for that purpose.

(b) The commissioners court shall order a conversion election not later than the 20th day after the date of presentation of a petition for conversion signed by at least five percent of the qualified property taxpaying voters of the county.

(c) If the election is on the question of conversion of a district created in accordance with Chapter 281, when the commissioners court orders the election, the court shall determine the amount of tax necessary:

(1) to operate and maintain the district's hospital system;

(2) to make improvements and additions to the hospital system, including the acquisition of necessary sites; and

(3) to pay when due the principal of and interest on district bonds assumed by the original district but excluding bonds issued by the original district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs at least 30 days after the date on which the court orders the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.133. BALLOT PROPOSITIONS. (a) The ballot for the election held to determine the question of conversion of a district created under this chapter shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district

from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 281, Health and Safety Code, and the levy of a tax not to exceed 75 cents on each $100 of the taxable value of property taxable by the district."

(b) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if no bonds issued by the district are outstanding, shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each $100 of the taxable value of property taxable by the district."

(c) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if bonds issued by the district are outstanding, shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed 75 cents on each $100 of the taxable value of property taxable by the district until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each $100 of the taxable value of property taxable by the district."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.134. EFFECTIVE DATE OF CONVERSION. If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date that the election results are declared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.135. EFFECT OF CONVERSION. (a) The district's identity is not affected by the conversion, and the district is

liable for all outstanding debts and obligations assumed or incurred by the district.

(b) Any bonds voted by a district originally created under Chapter 281 which have not been issued on the date of the conversion election may not be issued.

(c) On conversion of a district from one operated under Chapter 281 to one operated under this chapter, the district may not impose a tax in excess of the amount determined by the commissioners court in the election order for any purposes other than to pay the principal of and interest on the unpaid bonds issued by the district before the date of conversion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 283.136. LIMITATION ON FURTHER ELECTIONS. (a) If the proposition fails to carry at the conversion election, the district may not hold another election on the proposition for two years after the date of the election.

(b) A district that has converted under this subchapter may hold an election for reconversion after five years after the date of the conversion. The election for reconversion must be held in the same manner as provided in this subchapter for the conversion.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 284. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICT BONDS

SUBCHAPTER A. ISSUANCE OF REVENUE BONDS IN COUNTIES WITH POPULATION OF AT LEAST 200,000

Sec. 284.001. AUTHORITY TO ISSUE; FORM OF BONDS. (a) The commissioners court of a county with a population of at least 200,000 in which a hospital district has been created in accordance with Article IX of the Texas Constitution may issue revenue bonds to provide funds to:

(1) acquire, construct, repair, renovate, improve, enlarge, and equip a hospital facility; and

(2) acquire any real or personal property on behalf of the district for those purposes.

(b) The commissioners court may not issue revenue bonds under this subchapter on behalf of a hospital district to purchase a

nursing home for long-term care.

(c) The bonds and bond interest coupons are negotiable instruments.

(d) The bonds may be issued in the form, denomination, and manner and under the terms and conditions determined and provided by the commissioners court in the order authorizing the issuance of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.002. TERMS. (a) The bonds must mature serially or otherwise not more than 40 years after the date they are issued.

(b) The bonds may be:

(1) made redeemable before maturity; and

(2) issued registrable as to principal or as to principal and interest.

(c) The bonds shall be executed in the manner and bear interest at the rate provided by the commissioners court in the order authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.003. APPROVAL AND REGISTRATION OF BONDS. (a) The commissioners court shall submit the bonds and the proceedings authorizing their issuance to the attorney general for examination. If the attorney general finds that the bonds are authorized in accordance with law, the attorney general shall approve the bonds and the comptroller shall register the bonds.

(b) After approval and registration, the bonds are incontestable and are binding obligations according to their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.004. SECURITY. (a) The commissioners court may make bonds issued under this subchapter payable from and secured by a lien on or pledge of all or part of the hospital district revenue from operation or ownership of hospital facilities, except ad valorem taxes.

(b) The commissioners court may also secure the bonds by:

(1) a pledge of all or part of a grant, a donation, or other income received from a public or private source, whether in accordance with an agreement or otherwise; and

(2) a mortgage or deed of trust on real property on which a district hospital facility is or will be located and any real or personal property incident or appurtenant to that facility.

(c) The commissioners court may authorize the execution and delivery of a trust indenture, mortgage, deed of trust, or other form of encumbrance to evidence a security agreement under Subsection (b)(2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.005. SALE OF BONDS; USE OF PROCEEDS. (a) The bonds may be sold in the manner, at the price, and under the terms determined and provided by the commissioners court in the order authorizing the issuance of the bonds.

(b) If permitted by the bond order, a required part of the proceeds from the bond sale may be used for:

(1) the payment of interest on the bonds during the construction of hospital facilities financed with bond proceeds;

(2) the payment of operation and maintenance expenses of those facilities to the extent and for the period specified by the bond order; and

(3) the creation of reserves for the payment of bond principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.006. INVESTMENT OF BOND PROCEEDS. Proceeds from the sale of bonds may be invested until needed to the extent and in the manner provided by the bond order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.007. LEGAL INVESTMENTS. The bonds are legal and authorized investments for:

(1) a bank;
(2) a trust company;
(3) a savings and loan association;
(4) an insurance company;
(5) a small business investment corporation;
(6) a fiduciary;
(7) a trustee;
(8) a guardian; or
(9) an interest or sinking fund or other public funds of the state or a municipality, county, school district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.008. SECURITY FOR DEPOSITS. The bonds are eligible to secure deposits of public funds of the state or of a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their market value if accompanied by all appurtenant unmatured coupons, if any.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.009. AUTHORITY TO ISSUE SUBSEQUENT BONDS. In the authorization of bonds under Section 284.001, the commissioners court may provide for the subsequent issuance of additional parity, subordinate lien, or other bonds, under the terms or conditions stated in the order authorizing the issuance of the original bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.010. REFUNDING BONDS AND REFINANCING. (a) Revenue bonds issued by the commissioners court under this subchapter or under any other statute of this state and payable from hospital facility revenue may be refunded or otherwise refinanced by the commissioners court.

(b) The provisions of this subchapter pertinent and appropriate to the issuance of revenue bonds generally apply to the refunding

bonds.

(c) In issuing refunding bonds or in refinancing revenue bonds, the commissioners court in the same authorizing proceedings may:

(1) refund or refinance bonds issued under this subchapter and bonds issued under another statute of this state and combine the refunding bonds with other new bonds to be issued under those laws into one or more issues or series of bonds; and

(2) provide for the subsequent issuance of additional parity, subordinate lien, or other bonds.

(d) Refunding bonds shall be issued and delivered under the terms and conditions stated in the authorizing proceedings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.011. TAXES TO PAY OPERATING AND MAINTENANCE EXPENSES. (a) Ad valorem taxes of the hospital district shall be used to pay hospital facility operation and maintenance expenses to the extent that hospital facility revenue and income are not available at any time to pay all those expenses.

(b) The proceeds of an annual ad valorem tax may be pledged to pay hospital facility operation and maintenance expenses in the order authorizing the issuance of bonds under this subchapter.

(c) During each year that any of the bonds are outstanding, the commissioners court shall compute and determine the rate and amount of ad valorem tax that is sufficient to raise and produce the funds required to pay required hospital facility operation and maintenance expenses if the annual ad valorem tax is pledged as security for the payment of those expenses. In determining the tax rate, the commissioners court may allow for tax delinquencies and the cost of tax collection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.012. AUTHORITY OF DISTRICT GOVERNING BODY IN ABSENCE OF AD VALOREM TAX. If a hospital district created under Article IX of the Texas Constitution does not have ad valorem taxes levied on behalf of the district by the commissioners court of the county in which the hospital district is located, the district board of directors or other governing body has all of the powers and duties

otherwise provided to a commissioners court under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.013. ANNUAL BUDGET. (a) The commissioners court, board of hospital managers, or hospital district board of directors shall provide in each annual hospital district budget for the payment of all operation and maintenance expenses of the hospital district.

(b) In preparing the budget, the commissioners court or board may consider the estimated revenue and income from hospital facilities that will be available for paying operation and maintenance expenses after providing for all principal, interest, and reserve requirements in connection with the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.014. AUTHORITY TO CHARGE FOR HOSPITAL SERVICES. (a) The commissioners court, board of hospital managers, or hospital district board of directors may fix and collect charges for the occupancy or use of hospital facilities and hospital services in the amount and manner determined by the commissioners court or board.

(b) The charges shall be fixed and collected in an amount:

(1) sufficient, with other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds; and

(2) required by the bond order to provide for payment of all or part of the operation, maintenance, and other expenses of the hospital facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 284.015. USE OF OTHER LAW. A commissioners court may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any power expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. ISSUING AND REFUNDING REVENUE BONDS BY HOSPITAL DISTRICTS CREATED UNDER ARTICLE IX, SECTION 9, OF THE TEXAS CONSTITUTION

Sec. 284.031. AUTHORITY TO ISSUE. (a) A hospital district created in accordance with Article IX, Section 9, of the Texas Constitution may issue revenue bonds to:

(1) acquire, construct, repair, renovate, or equip buildings and improvements for hospital purposes; and

(2) acquire sites for hospital purposes.

(b) The hospital district may refund revenue bonds previously issued for the purposes specified by Subsection (a).

(c) The bonds must be payable from and secured by a pledge of all or part of district revenues from operation of a hospital. The bonds may also be secured by a mortgage or deed of trust lien on all or part of the district's property.

(d) The bonds must be issued in accordance with Sections 264.042-264.047(a), 264.048, and 264.049, and with the effect specified by Section 264.050.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BOND ELECTIONS IN HOSPITAL DISTRICTS

Sec. 284.041. BOND ELECTIONS FOR REVENUE BONDS. (a) The commissioners court of a county authorized by law to issue revenue bonds on behalf of a hospital district in the county may, on its own motion, order an advisory election to determine whether a majority of the qualified voters of the hospital district voting at the election favor the issuance of revenue bonds. The order must contain the same information contained in the notice of the election.

(b) In addition to the contents of the notice required by the Election Code, the notice must state any other matters that the commissioners court considers necessary or advisable.

(c) Subject to any additional notice requirements under Section 4.003, Election Code, the commissioners court shall publish notice of the election one time, at least 10 days before the date set for the election, in a newspaper of general circulation in the hospital district.

(d) The election is advisory only and does not affect the authority of the commissioners court to issue revenue bonds on behalf

of the hospital district under an applicable law that does not require an election.

(e) The expenses of holding the election shall be paid from hospital district funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 285. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICTS

SUBCHAPTER A. PAYMENT OF HOSPITAL DISTRICT OPERATING EXPENSES IN CERTAIN POPULOUS COUNTIES

Sec. 285.001. DEFINITION. In this subchapter, "bond" includes a note.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county having:

(1) a population of:

(A) at least 1.2 million; or

(B) at least 830,000 and not more than 870,000; and

(2) a countywide hospital district that:

(A) has taxes imposed and collected by the commissioners court of the county; and

(B) has teaching hospital facilities affiliated with a state-owned or private medical school.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 73, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 37, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 37, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 81, eff. September 1, 2023.

Sec. 285.003. AUTHORITY TO MAKE REVENUE ANTICIPATION AGREEMENT. (a) The commissioners court of the county may make a revenue anticipation agreement with a person, including a bank or other

financial institution, on the determination by the commissioners court that the county hospital district's projected revenue, including tax collections, will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses.

(b) Under the revenue anticipation agreement, the contracting person agrees to advance to the hospital district, and the county and district agree to repay from the sources specified by Section 285.006, funds necessary for the district hospital facilities' operation and maintenance during the term of the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.004. TERMS. (a) Subject to this section, the parties to a revenue anticipation agreement determine its terms.

(b) The term of the revenue anticipation agreement may not exceed two years.

(c) An advance may not be made to a district under a revenue anticipation agreement more than once each month. The amount of an advance may not exceed the difference between (1) the district's accumulated, unpaid operating and maintenance expenses, and (2) the district's revenue and income, including tax revenue, actually received by the district to the date of the advance and lawfully available for paying those expenses, together with the operating reserves reasonably required for one month.

(d) The party making the advances may rely on a certification made by the district's authorized officers concerning facts specified by Subsection (c).

(e) Amounts advanced under a revenue anticipation agreement may bear interest at a rate or rates not more than the legal rate for district revenue bonds, and the agreement may provide that the rate of interest on those amounts may be determined at the time the advance is made by reference to any determinative factors and formulae on which the parties agree.

(f) The agreement must provide:

(1) for the advanced amounts to mature and become due and payable on a date on or before the day the agreement ends; and

(2) that the advanced amounts may be paid without penalty at any time before maturity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.005. REFUNDING PROHIBITED; REPAYMENT REQUIRED. (a) An advance may not be refunded, refinanced, or extended.

(b) When district revenues are received, the commissioners court shall apply them to the payment or prepayment of outstanding, unpaid advances under the revenue anticipation agreement if:

(1) those revenues are not required or committed to pay other district obligations and expenses; and

(2) the revenues are received during the term of the revenue anticipation agreement.

(c) Until all advances under a revenue anticipation agreement are repaid, retired, and canceled, an advance may not be made under a subsequent revenue anticipation agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.006. SECURITY; DEFAULT OF REPAYMENT. (a) An advance under a revenue anticipation agreement is secured by and payable from:

(1) a pledge of and lien on district revenue from the operation and maintenance of its hospital facilities; or

(2) tax revenues, when collected, imposed for the purpose of operating and maintaining the district's facilities for the year during which the advances are made.

(b) If the district fails to repay any advanced amount when due under an agreement or under this subchapter, an application for a writ of mandamus or other action may be filed in a district court to enforce the agreement and repayment as required by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.007. LIMITATION ON USE OF PROCEEDS; AUDIT. (a) An advance under a revenue anticipation agreement may be used only for the purposes authorized by this subchapter.

(b) It is not a defense to repayment of advanced amounts that the funds are used for a purpose not authorized by this subchapter.

(c) The auditor of the hospital district shall:

(1) audit the use of advanced funds at the time of the district's regular audit; and

(2) certify to the commissioners court whether those funds are used for proper operating and maintenance purposes authorized by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.008. BONDS. (a) In a revenue anticipation agreement, the commissioners court may promise to execute and deliver, concurrently with the making of advances under the agreement, interest-bearing bonds evidencing the county's and hospital district's obligation to repay the advances as provided by the agreement and this subchapter.

(b) The bonds may be delivered on terms consistent with the terms specified for a revenue anticipation agreement by this subchapter.

(c) The provisions of this subchapter that relate to advances apply to bonds issued under this section.

(d) Bonds issued under this subchapter are:

(1) incontestable in a court or other forum;

(2) valid and binding obligations;

(3) investment securities under the Uniform Commercial Code (Title 1, Business & Commerce Code);

(4) legal and authorized security for public funds of the state and its political subdivisions; and

(5) legal and authorized investments by a bank, savings bank, savings and loan association, or insurance company.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.009. TAXES TO SECURE BONDS. (a) The commissioners court may pay and secure the principal of and interest on bonds issued under this subchapter with annual ad valorem taxes imposed by the hospital district as required by the bonds and any relevant revenue anticipation agreement if:

(1) the hospital district is created under Article IX, Section 4, of the Texas Constitution and the creation of the district is approved at an election held in the district as required by that

constitutional provision; or

(2) the hospital district is created under another constitutional provision that permits the imposition and pledge of taxes.

(b) The commissioners court shall set the tax rate of the hospital district at a rate sufficient to pay the bond principal and interest when due if taxes are pledged in accordance with this section. In setting the tax rate, the commissioners court shall give consideration to the amount of money estimated to be received from revenues pledged under a revenue anticipation agreement that may be available for the payment of bond principal and interest as provided by the revenue anticipation agreement, making allowance for tax delinquencies and the cost of tax collection.

(c) The sum of all annual ad valorem taxes imposed by the hospital district may not exceed 75 cents on $100 valuation of all taxable property in the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PARKING STATIONS NEAR HOSPITALS IN COUNTIES OF AT LEAST 1.5 MILLION

Sec. 285.021. DEFINITIONS. In this subchapter:

(1) "Bond order" means the order authorizing the issuance of revenue bonds.

(2) "Parking station" means a lot, an area, or a surface or a subsurface structure for automotive vehicle parking. The term includes the equipment used in connection with the maintenance and operation of the station and the site of the station.

(3) "Trust indenture" means the indenture pledging revenues to secure revenue bonds issued by a hospital district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.022. AUTHORITY TO CONSTRUCT, IMPROVE, OPERATE, AND LEASE PARKING STATION. (a) A hospital district located in a county with a population of more than 1.5 million may construct, enlarge, furnish, equip, operate, or lease a parking station near a hospital in the district on the determination by the commissioners court of the county that the action is in the best interest of the hospital

district and the residents of the district.

(b) A lease under this section may be made to a person on terms considered appropriate by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 38, eff. September 1, 2011.

Sec. 285.023. AUTHORITY TO ISSUE REVENUE BONDS; SECURITY. (a) The commissioners court may issue revenue bonds on behalf of the hospital district to pay the costs to construct, enlarge, furnish, or equip the parking station.

(b) The bonds must be payable from and secured by a pledge of:

(1) the net revenues derived from the operation of the parking station; and

(2) other revenues resulting from the ownership of the parking station properties, including receipts from leasing all or part of the parking station.

(c) The bonds must be authorized by an order adopted by a majority vote of a quorum of the commissioners court on behalf of the hospital district. An election is not required.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.024. FORM AND EXECUTION OF BONDS. The bonds must:

(1) be negotiable;

(2) be signed by the county judge;

(3) be countersigned by the county clerk;

(4) be registered by the county treasurer;

(5) have the seal of the commissioners court impressed or printed on the bonds; and

(6) contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.025. TERMS. (a) Bonds issued under this subchapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

(1) be sold at a price and under terms that the commissioners court considers the most advantageous reasonably obtainable; and

(2) be made callable before maturity at times and prices prescribed in the order authorizing the bonds.

(b) The bonds may not bear interest at a rate greater than that allowed by Chapter 1204, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.263, eff. Sept. 1, 2001.

Sec. 285.026. APPROVAL AND REGISTRATION OF BONDS. (a) The county must submit to the attorney general bonds issued under this subchapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this subchapter, are valid and binding obligations of the county, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration of the bonds.

(c) The bonds are incontestable after the comptroller certifies the registration of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.027. OTHER BONDS. (a) Bonds constituting a junior lien on the net revenues may be issued unless prohibited by the bond order or the trust indenture.

(b) Parity bonds may be issued under conditions specified in the bond order or trust indenture.

(c) The county may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this subchapter.

(d) Refunding bonds issued under this section may be exchanged for previous bonds by the comptroller or may be sold. If the bonds are sold, the proceeds shall be applied to the payment of outstanding bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.028. USE OF PROCEEDS; INITIAL COSTS. An amount necessary for the payment of not more than two years' interest on the bonds and an amount estimated by the commissioners court to be required for operating expenses until the parking station becomes sufficiently operative may be set aside out of the proceeds from the sale of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.029. CHANGE FOR DISTRICT SERVICES. The hospital district shall charge sufficient rentals or rates for services rendered by the parking station to produce revenues sufficient to:

(1) pay all expenses of owning, operating, and maintaining the parking station;

(2) pay the principal of and interest on the bonds when due; and

(3) create and maintain a bond reserve fund and other funds as provided by the bond order or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.030. PROCEDURES FOR STATION OPERATION. The bond order or trust indenture may prescribe procedures for the operation of the parking station.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR IN HOSPITAL DISTRICTS CREATED UNDER CONSTITUTION

Sec. 285.041. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR. A hospital district created under Article IX, Section 9, of the Texas Constitution may appoint a tax assessor and collector for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. SALE, LEASE, OR CLOSING OF HOSPITAL

Sec. 285.051. AUTHORITY OF GOVERNING BODY. (a) The governing body of a hospital district by resolution may order the sale, lease, or closing of all or part of a hospital owned and operated by the hospital district, including real property. The resolution must include a finding by the governing body that the sale, lease, or closing is in the best interest of the residents of the hospital district.

(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 285.052.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.052. PETITION; ELECTION. (a) The governing body of the hospital district shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body orders the sale or closing, the governing body receives a petition requesting the election signed by at least 10 percent of the qualified voters of the hospital district. The number of qualified voters of the hospital district is determined according to the most recent official lists of registered voters.

(b) If a petition is filed under Subsection (a), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. SALES AND USE TAX TO LOWER AD VALOREM TAXES

Sec. 285.061. TAX AUTHORIZED; TAX RATES. (a) A hospital district that is authorized to impose ad valorem taxes may adopt a sales and use tax to lower the district's ad valorem taxes at an election held as provided by this subchapter. A district may change the rate of the sales and use tax or abolish the sales and use tax at an election held as provided by this subchapter. Subject to the limitations provided by Subsections (c) and (d), the district may impose the tax in increments of one-eighth of one percent, with a minimum tax of one-eighth of one percent and a maximum tax of two

percent.

(b) Chapter 323, Tax Code, applies to the application, collection, and administration of the tax imposed under this subchapter. The comptroller may make rules for the collection and administration of this tax in the same manner as for a tax imposed under Chapter 323, Tax Code. Where a county and a hospital district both impose a sales and use tax, the comptroller may by rule provide for proportionate allocation of sales and use tax collections between a county and a hospital district on the basis of the period of time each tax is imposed and the relative tax rates.

(c) A district may not adopt a tax under this subchapter or increase the rate of the tax if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

(d) If the voters of a district approve the adoption of the tax or an increase in the tax rate at an election held on the same election date on which another political subdivision of this state adopts a sales and use tax or approves the increase in the rate of its sales and use tax and as a result the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district, the election to adopt a sales and use tax or to increase the rate of the sales and use tax in the district under this subchapter has no effect.

(e) to (h) Expired.

Added by Acts 1989, 71st Leg., 1st C.S., c. 40, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 658, Sec. 1, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 158, Sec. 1, eff. May 20, 1997; Acts 2001, 77th Leg., ch. 1290, Sec. 2, eff. Sept. 1, 2001.

Sec. 285.062. TAX ELECTION PROCEDURES. (a) Except as otherwise provided by this subchapter, an election to adopt or abolish the tax or to change the rate of the tax is governed by the provisions of Subchapter E, Chapter 323, Tax Code, applicable to an election to adopt or abolish a county sales and use tax.

(b) An election is called by the adoption of a resolution by

the governing body of the district. The governing body shall call an election if a number of qualified voters of the district equal to at least five percent of the number of registered voters in the district petitions the governing body to call the election.

(c) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at the rate of (proposed tax rate) percent to be used to reduce the district property taxes."

(d) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in (name of district)."

(e) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 3, eff. Sept. 1, 2001.

Sec. 285.063. EFFECTIVE DATE OF TAX OR TAX CHANGE; BOUNDARY CHANGE. (a) The adoption or abolition of the tax or change in the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the tax rate change, the effective date may be extended by the comptroller until the first day of the next succeeding calendar quarter.

(c) The provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter in the event of a change in the district's boundaries.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989.

Sec. 285.064. USE OF TAX REVENUE. Revenue from the tax may be used for any purpose for which ad valorem tax revenue of the district may be used.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. LIABILITY OF NONPROFIT MANAGEMENT CONTRACTOR

Sec. 285.071. DEFINITION. In this chapter, "hospital district management contractor" means a nonprofit corporation, partnership, or sole proprietorship that manages or operates a hospital or provides services under contract with a hospital district that was created by general or special law.

Added by Acts 1991, 72nd Leg., ch. 523, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 11.03, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 3, eff. Sept. 1, 2003.

Sec. 285.072. LIABILITY OF A HOSPITAL DISTRICT MANAGEMENT CONTRACTOR. A hospital district management contractor in its management or operation of a hospital under a contract with a hospital district is considered a governmental unit for purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code, and any employee of the contractor is, while performing services under the contract for the benefit of the hospital, an employee of the hospital district for the purposes of Chapters 101, 102, and 108, Civil Practice and Remedies Code.

Added by Acts 1991, 72nd Leg., ch. 523, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 11.04, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 289, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER G. TERMS OF MEMBERS OF GOVERNING BOARD

Sec. 285.081. OPTIONAL FOUR-YEAR TERMS. (a) The governing

board of a hospital district created under general or special law may, on its own motion, order that the members of the governing board are to be elected in even-numbered years to serve staggered four-year terms.

(b) The first election of board members in an even-numbered year that occurs at least 120 days after the date on which an order is entered under Subsection (a) shall be held as previously scheduled and the members elected shall serve two-year terms. The subsequent election of board members previously scheduled to be held in an odd-numbered year shall be held as scheduled and the members elected shall serve three-year terms. Subsequent members shall be elected in even-numbered years and shall serve four-year terms.

(c) This section does not apply to a hospital district created under Chapter 281, Chapter 282, and Chapter 283.

Added by Acts 1991, 72nd Leg., ch. 645, Sec. 2, eff. June 16, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 1, eff. September 1, 2023.

Sec. 285.082. OPTIONAL THREE-YEAR TERMS. (a) The governing board of a hospital district created under general or special law may, on its own motion, order that the members of the governing board are to be elected to serve staggered three-year terms if:

(1) the members of the governing board serve staggered four-year terms on the date the governing board enters the order; and

(2) Subsection (b), (c), or (d) applies to the governing board.

(b) This subsection applies to a governing board of a hospital district with five members. The election of board members in the even-numbered year following the date an order is entered under Subsection (a) in which three board members are to be elected shall be held as previously scheduled. Two of the members elected at that election shall serve three-year terms, and one of the members elected at that election shall serve a four-year term, to be determined by random draw. Board members elected in subsequent elections shall serve three-year terms.

(c) This subsection applies to a governing board of a hospital district with seven members. The election of board members in the

even-numbered year following the date an order is entered under Subsection (a) in which four members are to be elected shall be held as previously scheduled. Two of the members elected at that election shall serve three-year terms and two of the members elected at that election shall serve four-year terms, to be determined by random draw. Board members elected in subsequent elections shall serve three-year terms.

(d) This subsection applies to a governing board of a hospital district with nine members. The election of board members in the even-numbered year following the date an order is entered under Subsection (a) in which five members are to be elected shall be held as previously scheduled. Two of the members elected at that election shall serve three-year terms and three of the members elected at that election shall serve four-year terms, to be determined by random draw. The election of board members in the next even-numbered year following the date an order is entered under Subsection (a) in which four members are to be elected shall be held as previously scheduled. Three of the members elected at that election shall serve three-year terms and one of the members elected at that election shall serve a four-year term, to be determined by random draw. Board members elected in subsequent elections shall serve three-year terms.

Added by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 2, eff. September 1, 2023.

Sec. 285.083. RESIGNATION OF TERM. (a) A member of the governing board of a hospital district is considered to have resigned the member's position if the member is absent from five or more regularly scheduled board meetings that the member is eligible to attend in any 12-month period without an excuse approved by a majority vote of the board.

(b) A resignation under Subsection (a) is effective on the date of the fifth regularly scheduled board meeting at which the member is absent without an excuse approved by the board.

(c) The validity of an action of the board is not affected by the fact that the action is taken during a period in which a board member is considered to have resigned under Subsection (a).

(d) This section does not apply to a hospital district created under Chapter 281.

Added by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 2, eff. September 1, 2023.

SUBCHAPTER H. CONTRACTS, COLLABORATIONS, AND JOINT VENTURES

Sec. 285.091. HOSPITAL DISTRICT CONTRACTS, COLLABORATIONS, AND JOINT VENTURES. (a) A hospital district created under general or special law may, directly or through a nonprofit corporation created or formed by the district, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the district.

(b) A hospital district created under general or special law may contract with the Texas Department of Health for the provision of health care services and assistance, including preventive health care services, to eligible residents of the district.

(c) A hospital district created under general or special law may contract or collaborate with a local governmental entity, as defined by Section 534.002, Government Code, or any other public or private entity as necessary to provide or deliver health care services under a demonstration project established under Section 534.201 or 534.202, Government Code, in which the hospital district participates.

Added by Acts 1995, 74th Leg., ch. 46, Sec. 1, eff. Aug. 28, 1995, and Acts 1995, 74th Leg., ch. 444, Sec. 3, eff. June 13, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 20.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1139, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 3, eff. June 16, 2007.

SUBCHAPTER I. LONG-TERM CARE AND RELATED FACILITIES

Sec. 285.101. FACILITIES OR SERVICES FOR ELDERLY OR DISABLED. (a) This subchapter applies only to a hospital, hospital district, or authority created and operated under Article IX, Texas Constitution, under a special law, or under this title that is located in:

(1) a county with a population of 35,000 or less;

(2) those portions of extended municipalities that the

federal census bureau has determined to be rural; or

(3) an area that is not delineated as an urbanized area by the federal census bureau.

(b) A hospital, hospital district, or authority covered by this subchapter may:

(1) construct, acquire, own, operate, enlarge, improve, furnish, or equip one or more of the following types of facilities or services for the care of the elderly or disabled:

(A) a nursing home or similar long-term care facility;

(B) elderly housing;

(C) assisted living;

(D) home health;

(E) personal care;

(F) special care;

(G) continuing care; or

(H) durable medical equipment;

(2) lease or enter into an operations or management agreement relating to all or part of a facility or service described in Subdivision (1) that is owned by the hospital district or authority;

(3) close, transfer, sell, or otherwise convey all or part of a facility and discontinue services; and

(4) issue revenue bonds and other notes to acquire, construct, or improve a facility for the care of the elderly or disabled or to implement the delivery of a service for the care of the elderly or disabled.

(c) For the purpose of this section, a facility or service created under Subsection (b) is considered to be a hospital project under Chapter 223.

(d) This section does not authorize a hospital, hospital district, or authority to issue revenue bonds or other notes in accordance with this chapter to construct, acquire, own, enlarge, improve, furnish, or equip a facility or service listed in Subsection (b)(1) if a private provider of the facility or service is available and accessible in the service area of the hospital, hospital district, or authority.

Added by Acts 1995, 74th Leg., ch. 965, Sec. 5, eff. June 16, 1995.

SUBCHAPTER J. WRITE-IN VOTING IN ELECTION FOR BOARD MEMBERS

Sec. 285.131. WRITE-IN VOTING IN ELECTION FOR BOARD MEMBERS. (a) In a general or special election for board members of a hospital district created under general or special law, a write-in vote may not be counted unless the name written in appears on the list of write-in candidates.

(b) To be entitled to a place on the list of write-in candidates, a candidate must make a declaration of write-in candidacy.

(c) A declaration of write-in candidacy must be filed with the authority with whom an application for a place on the ballot is required to be filed in the election.

(d) A declaration of write-in candidacy must be filed not later than the deadline prescribed by Section 146.054, Election Code, for a write-in candidate in a city election.

(e) Subchapter B, Chapter 146, Election Code, applies to write-in voting in an election for board members except to the extent of a conflict with this section.

(f) The secretary of state shall adopt rules necessary to implement this section.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1318, Sec. 51(3), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 1343, Sec. 2, eff. June 20, 1997.
Amended by Acts 2003, 78th Leg., ch. 925, Sec. 11, eff. Nov. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1109 (H.B. 2339), Sec. 34, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 46, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1318 (S.B. 100), Sec. 51(3), eff. September 1, 2011.

SUBCHAPTER K. DISSOLUTION OF HOSPITAL DISTRICT

Sec. 285.151. ASSETS TRANSFERRED ON DISSOLUTION. Notwithstanding any general or special law, if a hospital district is dissolved and the money or other assets of the district are transferred to a county or other governmental entity under a process established in accordance with Section 9, Article IX, Texas

Constitution, the governmental entity shall use all transferred assets to:

(1) pay the outstanding debts and obligations of the district relating to the assets at the time of the transfer, if any; and

(2) furnish medical and hospital care for indigent persons who reside in the territory within the jurisdiction of the governmental entity.

Added by Acts 1999, 76th Leg., ch. 1377, Sec. 4.01, eff. Sept. 1, 1999.

SUBCHAPTER L. SALES AND USE TAX TO RAISE REVENUE FOR DISTRICTS IN SMALL COUNTIES

Sec. 285.161. TAX AUTHORIZED. (a) A majority of voters in a hospital district created under general or special law of which all or a majority of the territory is located in a county or counties each with a population of 75,000 or less may impose a sales and use tax to raise revenue if the imposition is authorized at an election under this subchapter.

(b) A district may not adopt a tax under this subchapter or increase the rate of the tax if as a result of the adoption or increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.162. TAX RATE; CHANGE IN RATE. (a) A district may impose the tax in increments of one-eighth of one percent, with a minimum rate of one-eighth of one percent and a maximum rate of two percent.

(b) A district may increase the rate of the tax to a maximum of two percent or decrease the rate of the tax to a minimum of one-eighth of one percent if the change is approved by a majority of the voters of the district at an election called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.163. TAX ELECTION PROCEDURES. (a) An election is called by the adoption of a resolution by the governing body of the district. The governing body shall call an election if at least five percent of the number of registered voters in the district petition the governing body to call the election.

(b) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax to raise revenue in (name of district) at the rate of (proposed tax rate) percent."

(c) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax to raise revenue in (name of district)."

(d) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax to raise revenue imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.164. ELECTION IN OTHER TAXING AUTHORITY. (a) In this section, "taxing authority" means any entity authorized to impose a local sales and use tax.

(b) If a district or proposed district is included within the boundaries of another taxing authority and the adoption or increase of the tax under this subchapter would result in a combined tax rate by the district and other political subdivisions of this state of more than two percent at any location in the district, an election to approve or increase the tax under this subchapter has no effect unless:

(1) one or more of the other taxing authorities holds an election in accordance with the law governing that authority on the same date as the election under this chapter to reduce the tax rate of that authority to a rate that will result in a combined tax rate by the district and other political subdivisions of not more than two percent at any location in the district; and

(2) the combined tax rate is reduced to not more than two percent as a result of that election.

(c) This section does not permit a taxing authority to impose taxes at differential tax rates within the territory of the authority.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.165. USE OF TAX. The taxes imposed may be used to pay:

(1) the indebtedness issued or assumed by the district; and

(2) the maintenance and operating expenses of the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 286.165 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(93), eff. Sept. 1, 2003.

Sec. 285.166. EFFECTIVE DATE. (a) The adoption or abolition of the tax or a change in the rate of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the change in the rate of the tax, the effective date may be extended by the comptroller until the first day of the next calendar quarter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

Sec. 285.167. COUNTY SALES AND USE TAX ACT APPLICABLE. Except to the extent that a provision of this chapter applies, Chapter 323, Tax Code, applies to the tax authorized by this chapter in the same manner as that chapter applies to the tax authorized by that chapter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 4, eff. Sept. 1, 2001.

SUBCHAPTER M. REGULATION OF SERVICES

Sec. 285.201. PROVISION OF MEDICAL AND HOSPITAL CARE. As authorized by 8 U.S.C. Section 1621(d), this chapter affirmatively establishes eligibility for a person who would otherwise be ineligible under 8 U.S.C. Section 1621(a), provided that only local funds are utilized for the provision of nonemergency public health benefits. A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.70(a), eff. Sept. 1, 2003.

Sec. 285.202. USE OF TAX REVENUE FOR ABORTIONS; EXCEPTION FOR MEDICAL EMERGENCY. (a) In this section, "medical emergency" means:

(1) a condition exists that, in a physician's good faith clinical judgment, complicates the medical condition of the pregnant woman and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function; or

(2) the fetus has a severe fetal abnormality.

(a-1) In Subsection (a), a "severe fetal abnormality" means a life threatening physical condition that, in reasonable medical judgment, regardless of the provision of life saving medical treatment, is incompatible with life outside the womb.

(a-2) In Subsection (a-1), "reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(b) Except in the case of a medical emergency, a hospital district created under general or special law that uses tax revenue of the district to finance the performance of an abortion may not receive state funding.

(c) A physician who performs an abortion in a medical emergency at a hospital or other health care facility owned or operated by a hospital district that receives state funds shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the Department of State Health Services the specific medical condition that constituted the emergency.

(d) The statement required under Subsection (c)(1) shall be placed in the patient's medical records and shall be kept by the hospital or other health care facility where the abortion is performed until:

(1) the seventh anniversary of the date the abortion is performed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date the abortion is performed; or

(B) the woman's 21st birthday.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 15.02, eff. September 28, 2011.

SUBCHAPTER N. CHANGE IN RATE OF AD VALOREM TAXES

Sec. 285.231. ELECTION TO INCREASE MAXIMUM TAX RATE. (a) Registered voters of a hospital district that is authorized to impose ad valorem taxes and that has a maximum tax rate of less than 75 cents on the $100 valuation of all taxable property in the district may file a petition with the secretary of the governing body of the hospital district requesting an election to authorize the increase of that maximum tax rate. The petition must be signed by at least the lesser of:

(1) 100 of the registered voters of the district; or

(2) the number equal to 15 percent of the registered voters of the district.

(b) The petition must state the maximum tax rate to be voted on at the election, which may not exceed 75 cents on the $100 valuation of all taxable property in the district.

(c) The governing body of the hospital district by order shall set a time and place to hold a hearing on the petition to increase the maximum tax rate of the district. The governing body shall set a date for the hearing that is not earlier than the 10th day after the

date the governing body issues the order.

(d) If after the hearing the governing body of the hospital district finds that the petition is in proper form and that an increase of the maximum tax rate would benefit the district, the governing body shall order an election to authorize the increase of the maximum tax rate to the tax rate stated in the petition. The order calling the election must state the:

(1) nature of the election, including the proposition that is to appear on the ballot;

(2) date of the election;

(3) maximum tax rate to be voted on at the election;

(4) hours during which the polls will be open; and

(5) location of the polling places.

(e) The governing body of the hospital district shall give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the district once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

(f) The ballot for the election shall be printed to permit voting for or against the proposition: "The increase by the _____ (name of district) Hospital District of the maximum rate of annual taxes imposed for hospital purposes to a rate not to exceed _____ (insert the amount prescribed by the petition, not to exceed 75 cents) on each $100 valuation of all taxable property in the district."

(g) After ordering an election under this subchapter, the governing body of the hospital district shall hold the election on the first authorized uniform election date prescribed by Section 41.001, Election Code, that allows sufficient time to comply with other requirements of law.

(h) If the majority of the votes cast in the district favor the proposition, the maximum tax rate of the district is increased to the tax rate stated in the petition.

Added by Acts 2003, 78th Leg., ch. 272, Sec. 1, eff. June 18, 2003. Renumbered from Health and Safety Code, Section 285.201 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(49), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1001 (S.B. 1972), Sec. 1, eff. September 1, 2007.

SUBCHAPTER O. NONPROFIT CORPORATION CREATED OR FORMED BY DISTRICT

Sec. 285.301. ESTABLISHMENT OF NONPROFIT CORPORATION. (a) A hospital district created under general or special law may form and sponsor a nonprofit corporation under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of the district.

(b) The governing body of the hospital district shall appoint the board of directors of a nonprofit corporation formed under this section.

(c) The hospital district may contribute money to or solicit money for the nonprofit corporation. If the district contributes money to or solicits money for the corporation, the district shall establish procedures and controls sufficient to ensure that the money is used by the corporation for public purposes.

(d) A nonprofit corporation formed under this section has the same powers as a development corporation under Section 221.030.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 4, eff. June 16, 2007.

Sec. 285.302. COMPLIANCE BY NONPROFIT CORPORATION WITH CERTAIN LAWS. A nonprofit corporation created or formed under this subchapter or other law by a hospital district that is created under general or special law shall comply with Chapter 2258, Government Code, in the same manner and to the same extent that the hospital district that created or formed the corporation is required to comply with that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 470 (H.B. 2168), Sec. 4, eff. June 16, 2007.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 285.901. DISPOSITION OF SALVAGE AND SURPLUS PROPERTY. (a)

In this section:

(1) "Salvage property" has the meaning assigned by Section 263.151, Local Government Code.

(2) "Surplus property" has the meaning assigned by Section 263.151, Local Government Code.

(b) The governing board of a hospital district may dispose of the hospital district's surplus or salvage property in the same way that a commissioners court of a county may dispose of the county's surplus or salvage property under Section 263.152, Local Government Code.

Added by Acts 2003, 78th Leg., ch. 345, Sec. 2, eff. June 18, 2003.

CHAPTER 286. HOSPITAL DISTRICTS CREATED BY VOTER APPROVAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 286.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means a hospital district created under this chapter.

(3) "Director" means a member of the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.002. DISTRICT AUTHORIZATION. A hospital district may be created and established and, if created, must be maintained, operated, and financed in the manner provided by Article IX, Section 9, of the Texas Constitution and by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 286.021. PETITION FOR CREATION OF DISTRICT. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by the greater of:

(1) at least three percent of the registered voters of the territory of the proposed district; or

(2) 100 registered voters of the territory of the proposed

district.

(b) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by the greater of:

(1) at least three percent of the registered voters of the territory of the county in which the judge presides and of the proposed district; or

(2) 100 registered voters of the territory of the county in which the judge presides and of the proposed district.

(c) If there are fewer than 100 registered voters in any area for which a separate petition must be filed, the petition must be signed by a majority of the registered voters in the area.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 257 (H.B. 1618), Sec. 1, eff. September 1, 2021.

Sec. 286.022. CONTENTS OF PETITION. (a) The petition prescribed by Section 286.021 must show:

(1) that the district is to be created and is to operate under Article IX, Section 9, of the Texas Constitution;

(2) the name of the proposed district;

(3) the district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) that none of the territory in the district is included in another hospital district;

(5) the names of the temporary directors the commissioners court must appoint under Section 286.030 or a request that the commissioners court appoint temporary directors;

(6) whether the district is to impose a property tax and the maximum tax rate to be voted on at the creation election, which may not exceed 75 cents on the $100 valuation of all taxable property in the district;

(7) whether the district is to impose a sales and use tax under Subchapter I and the maximum tax rate to be voted on at the creation election, which may not exceed the rate allowed under that subchapter;

(8) the method by which the permanent directors will be elected, as provided by Subsection (c); and

(9) the mailing address of each petitioner.

(b) The petition must provide for the appointment of the same number of temporary directors as there will be permanent directors.

(c) The petition may provide:

(1) the number of directors for the district, which number must be an odd number;

(2) the method by which directors are to be elected, whether at large, by place, or by a combination of both, so that a specific number of directors are elected from each commissioner precinct and a specific number are elected at large; and

(3) whether directors will be elected to serve two-year or four-year terms.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 3, eff. September 1, 2023.

Sec. 286.023. FILING OF PETITION; HEARING; ORDERING ELECTION. (a) If the petition is in proper form, the county judge shall receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall issue a notice of the hearing in accordance with Chapter 551, Government Code.

(d) At the time and place set for the hearing, the commissioners court shall consider the petition. The commissioners court shall grant the petition if the court finds that the petition is in proper form and contains the information required by Section 286.022. The commissioners court may grant a petition proposing creation of a hospital district that imposes a sales and use tax under Subchapter I only if all or a majority of the territory of the

district is located in a county or counties each with a population of 75,000 or less.

(e) If a petition is granted, the commissioners court shall order an election to confirm the district's creation and to authorize the levy of a tax not to exceed the maximum tax rate prescribed by the petition.

(f) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(g) Repealed by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(1), eff. September 1, 2023.

(h) Section 41.001(a), Election Code, does not apply to an election ordered under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1290, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(1), eff. September 1, 2023.

Sec. 286.0235. BOND PROPOSITION AT ELECTION. (a) The petition prescribed by Section 286.021 may include a request that a proposition be submitted at the election to determine whether the board may issue general obligation bonds if the district is created. The petition must specify the maximum amount of bonds to be issued and their maximum maturity date.

(b) Even though the petition does not request submission of a proposition on whether the board may issue general obligation bonds, the commissioners court may, on the request of a petitioner, submit a proposition at the creation election on the issuance of bonds.

(c) The board may issue general obligation bonds as provided by Subchapter G if a majority of the votes cast in the election favor creation of the district and issuance of the bonds.

Added by Acts 1991, 72nd Leg., ch. 648, Sec. 1, eff. Aug. 26, 1991.

Sec. 286.024. ELECTION ORDER. The order calling the election must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open; and

(4) the location of the polling places.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.025. NOTICE. (a) The commissioners court shall give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed district in accordance with Section 4.003, Election Code.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(2), eff. September 1, 2023.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(2), eff. September 1, 2023.

Sec. 286.026. BALLOT PROPOSITION. (a) The ballot for an election proposing to create a hospital district that imposes a property tax shall be printed to permit voting for or against the proposition: "The creation of the _____ (name of district) Hospital District and the levy of annual property taxes for hospital purposes at a rate not to exceed _____ (insert the amount prescribed by the petition, not to exceed 75 cents) cents on each $100 valuation of all taxable property in the district."

(b) The ballot for an election proposing to create a hospital district that imposes a sales and use tax under Subchapter I shall be printed to permit voting for or against the proposition: "The creation of the _____ (name of district) Hospital District and the levy of sales and use taxes for hospital purposes at a rate not to exceed _____ (insert the amount prescribed by the petition, not to exceed the amount allowed under Subchapter I) percent."

(c) If a bond proposition is submitted to the voters, the ballot for the election shall contain the proposition prescribed by Subsection (a) or (b) followed by: " and the issuance of bonds in an amount not to exceed _____ (insert the amount prescribed by the petition or the commissioners court's order) and to mature not later than _____ (insert the date prescribed by the petition or the commissioners court's order)."

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 648, Sec. 2, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1290, Sec. 7, eff. Sept. 1, 2001.

Sec. 286.027. ELECTION RESULT. (a) Except as provided in Subsections (b) and (c), a district is created and organized under this chapter if a majority of the votes cast in the election favor creation of the district.

(b) If the proposed district contains territory in more than one county, a majority of the votes cast in each county must also favor creation of the district.

(c) If a majority of the votes cast in a county within the proposed district are against the creation of the district and a majority of the votes cast in the remaining county or counties favor creation of the district, the district may be created only in the counties voting in favor of the proposed district.

(d) If a majority of those voting at the election vote against creation of the district, another election on the question of creating the district may not be held before the first anniversary of the most recent election concerning the creation of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.028. COMMISSIONERS COURT ORDER. When a district is created, the commissioners court of each county in which the district is located shall enter an order in its minutes that reads substantially as follows:

"Whereas, at an election held on the _____ day of _____, 19___, in that part of _____ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether

that territory should be formed into a hospital district under state law; and

"Whereas, at the election _____ votes were cast in favor of formation of the district and _____ votes were cast against formation; and

"Whereas, the formation of the hospital district received the affirmative vote of the majority of the votes cast at the election as provided by law;

"Now, therefore, the Commissioners Court of _____ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into a hospital district (or a portion thereof) under the name of _____, under Article IX, Section 9, of the Texas Constitution, and has the powers vested by law in the district."

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.029. OVERLAPPING DISTRICTS. (a) If the territory in one or more districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(b) For purposes of this section, a district is created on the date the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing required by Section 286.023 was most recently held.

(c) The fact that a district is created with boundaries that overlap the boundaries of another district does not affect the validity of either district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.030. TEMPORARY DIRECTORS. (a) On the date a commissioners court enters the order required by Section 286.028, the commissioners court shall also appoint the temporary directors of the district.

(b) If the petition prescribed by Section 286.021 specifically names temporary directors, the commissioners court shall name those persons to serve as temporary directors of the district. If the

petition requests that the commissioners court appoint the temporary directors, the court shall appoint the appropriate number of persons to serve as temporary directors of the district. If the petition fails to name or state the number of directors, there are five directors.

(c) If the district is located in more than one county, the commissioners courts shall each appoint a percentage of temporary directors equal to the ratio that the number of district residents in the county bears to the total number of district residents.

(d) From the time the district is created under Section 286.027 until the elected directors take office, the temporary directors serve as directors of the district.

(e) The commissioners court shall fill a vacancy in the office of temporary director by appointment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 286.041. BOARD OF DIRECTORS. The directors shall be elected at large, by place, or by a combination of both, in accordance with the petition prescribed by Section 286.021.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 5, eff. September 1, 2023.

Sec. 286.042. DIRECTOR'S ELECTION. (a) The initial directors shall be elected at an election to be held on the uniform election date in May following the creation of the district.

(b) If the directors are elected at large for two-year terms:

(1) the appropriate number of candidates receiving the highest number of votes at the initial election of directors are directors for the district;

(2) the number of directors equal to a majority of the directors who receive the highest number of votes at the initial election serve for a term of two years; and

(3) the remaining directors serve for a term of one year.

(c) If the directors are elected by place for two-year terms:

(1) the candidate for a place receiving the highest number of votes for election to that place is a director for the district;

(2) a director elected to fill an even-numbered place at the initial election serves for a term of one year; and

(3) a director elected to fill an odd-numbered place at the initial election serves for a term of two years.

(d) If the directors are elected from commissioners precincts and at large for two-year terms:

(1) the number of candidates equal to the number of directors to be elected from each precinct who receive the highest number of votes from a commissioner precinct are directors for that precinct;

(2) the number of candidates equal to the number of directors to be elected at large who receive the highest number of votes from the district at large are directors for the district at large;

(3) a candidate elected from an odd-numbered precinct at the initial election serves for a term of two years;

(4) a candidate elected from an even-numbered precinct at the initial election serves for a term of one year;

(5) a candidate elected as the director from the district at large at the initial election serves for a term of two years; and

(6) if more than one director is elected at large, half of the directors elected serve two-year terms, and the other half serve one-year terms.

(d-1) If the directors are elected at large for four-year terms:

(1) the appropriate number of candidates receiving the highest number of votes at the initial election of directors are directors for the district;

(2) the number of directors equal to a majority of the directors who receive the highest number of votes at the initial election serve for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year; and

(3) the remaining directors serve for a term of one year if elected in an odd-numbered year or two years if elected in an even-numbered year.

(d-2) If the directors are elected by place for four-year terms:

(1) the candidate for a place receiving the highest number

of votes for election to that place is a director for the district;

(2) a director elected to fill an even-numbered place at the initial election serves for a term of one year if elected in an odd-numbered year or two years if elected in an even-numbered year; and

(3) a director elected to fill an odd-numbered place at the initial election serves for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year.

(d-3) If the directors are elected from commissioners precincts and at large for four-year terms:

(1) the number of candidates equal to the number of directors to be elected from each precinct who receive the highest number of votes from a commissioner precinct are directors for that precinct;

(2) the number of candidates equal to the number of directors to be elected at large who receive the highest number of votes from the district at large are directors for the district at large;

(3) a candidate elected from an odd-numbered precinct at the initial election serves for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year;

(4) a candidate elected from an even-numbered precinct at the initial election serves for a term of one year if elected in an odd-numbered year or two years if elected in an even-numbered year;

(5) a candidate elected as the director from the district at large at the initial election serves for a term of three years if elected in an odd-numbered year or four years if elected in an even-numbered year; and

(6) if more than one director is elected at large, half of the directors elected at large serve for a term described by Subdivision (4) for a candidate elected from an even-numbered precinct, and the other half serve for a term described by Subdivision (3) for a candidate elected from an odd-numbered precinct.

(e) After the initial election of directors, an election shall be held on the uniform election date in May of each year or every other year, as applicable, to elect the appropriate number of successor directors for two-year terms or four-year terms as specified in the petition to create the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 6, eff. September 1, 2023.

Sec. 286.043. NOTICE OF ELECTION. Notice of an election shall be published in a newspaper with general circulation in the district in accordance with Section 4.003, Election Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 7, eff. September 1, 2023.

Sec. 286.044. APPLICATION FOR PLACE ON BALLOT. (a) A person who wishes to have the person's name printed on the ballot as a candidate for director must file an application with the secretary of the board in accordance with Chapter 144, Election Code.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(3), eff. September 1, 2023.

(c) If directors are elected by place, the application must specify the place for which the applicant is to be a candidate.

(d) If the directors are elected from commissioners precincts and at large, the application must specify:

(1) the commissioner precinct the candidate wishes to represent; or

(2) that the candidate wishes to represent the district at large.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 8, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 9, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 17(3), eff. September 1, 2023.

Sec. 286.045. QUALIFICATIONS FOR OFFICE. (a) To be eligible to be a candidate for or to serve as a director, a person must be:

(1) a resident of the district; and

(2) a qualified voter.

(b) In addition to the qualifications required by Subsection (a), if directors are elected from commissioners precincts, a person who is elected from a commissioner precinct or who is appointed to fill a vacancy for a commissioner precinct must be a resident of that commissioner precinct.

(c) An employee of the district may not serve as a director.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.046. BOND. (a) Before assuming the duties of the office, each director must execute a bond for $5,000 payable to the district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for directors' bonds with district funds.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.047. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term by appointment by the remaining directors.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.048. OFFICERS. (a) The board shall elect from among its members a president and a vice-president.

(b) The board shall appoint a secretary who need not be a director.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.049. OFFICERS' TERMS; VACANCY. (a) Each officer of

the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.050. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.051. VOTING REQUIREMENT. A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.052. ADMINISTRATOR, ASSISTANT ADMINISTRATOR, AND ATTORNEY. (a) The board may appoint qualified persons as administrator of the district, assistant administrator, and attorney for the district.

(b) The administrator, assistant administrator, and attorney serve at the will of the board.

(c) The administrator, assistant administrator, and attorney are entitled to compensation as determined by the board.

(d) Before assuming the administrator's duties, the administrator shall execute a bond payable to the hospital district in an amount not less than $5,000 as determined by the board, conditioned on the faithful performance of the administrator's duties under this chapter. The board may pay for the bond with district funds.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.053. APPOINTMENTS TO STAFF. The board may:

(1) appoint to the staff any health care practitioners the board considers necessary for the efficient operation of the district; and

(2) grant clinical privileges on a temporary or emergency basis as the board considers necessary.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 10, eff. September 1, 2023.

Sec. 286.054. TECHNICIANS, NURSES, AND OTHER DISTRICT EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.055. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall:

(1) supervise the work and activities of the district; and

(2) direct the general affairs of the district, subject to the limitations prescribed by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.056. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by:

(1) establishing or administering a retirement program; or

(2) electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 286.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On creation of a district, a county, municipality, or other governmental entity in which the district is located shall convey or transfer to the district:

(1) title to land, buildings, improvements, and equipment related to the hospital system located wholly in the district that are owned by the county, municipality, or other governmental entity in which the district is located;

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the county, municipality, or other governmental entity in which the district is located to provide medical care for residents of the district for the remainder of the fiscal year in which the district is established;

(3) taxes levied by the county, municipality, or other governmental entity in which the district is located for hospital purposes for residents of the district for the year in which the district is created; and

(4) funds established for payment of indebtedness assumed by the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.072. LIMITATION ON GOVERNMENTAL ENTITY. On or after creation of the district, a county, municipality, or other governmental entity in which the district is located may not levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care for the residents of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.073. DISTRICT RESPONSIBILITIES. (a) On creation of a district, the district:

(1) assumes full responsibility for operating hospital facilities and for furnishing medical and hospital care for the district's needy inhabitants;

(2) assumes any outstanding indebtedness incurred by a county, municipality, or other governmental entity in which all or part of the district is located in providing hospital care for residents of the territory of the district before the district's creation; and

(3) may operate or provide for the operation of a mobile emergency medical service.

(b) If part of a county, municipality, or other governmental entity is included in a district and part is not included in the district, the amount of indebtedness the district assumes under Subsection (a)(2) is that portion of the total outstanding indebtedness of the county, municipality, or other entity for hospital care for all residents of the county, municipality, or other entity that the value of taxable property in the district bears to the total value of taxable property in the county, municipality, or other entity according to the last preceding approved assessment rolls of the county, municipality, or other entity before the district is confirmed.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.074. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital system and the funds and resources of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.075. DISTRICT RULES. The board may adopt rules governing the operation of the hospital and hospital system and the duties, functions, and responsibilities of district staff and employees.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.076. METHODS AND PROCEDURES. The board may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.077. HOSPITAL PROPERTY, FACILITIES, AND EQUIPMENT. (a) The board shall determine:

(1) the type, number, and location of buildings required to establish and maintain an adequate hospital system; and

(2) the type of equipment necessary for hospital care.

(b) The board may:

(1) acquire property, facilities, and equipment for the district for use in the hospital system;

(2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;

(3) transfer by lease to physicians, individuals, companies, corporations, or other legal entities or acquire by lease district hospital facilities; and

(4) sell or otherwise dispose of district property, facilities, or equipment.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.078. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into a public work contract as authorized under Chapter 2269, Government Code.

(c) Chapter 2253, Government Code, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 11, eff. September 1, 2023.

Sec. 286.079. DISTRICT OPERATING AND MANAGEMENT CONTRACTS. The board may enter into operating or management contracts relating to hospital facilities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.080. EMINENT DOMAIN. (a) A district may exercise the power of eminent domain to acquire a fee simple or other interest in property located in the territory of the district if the property interest is necessary to the exercise of the rights or authority conferred by this chapter.

(b) A district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by a district, the district is not required to:

(1) pay in advance or give bond or other security for costs in the trial court;

(2) give bond for the issuance of a temporary restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or writ of error.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.081. EXPENSES FOR MOVING FACILITIES OF RAILROADS OR UTILITIES. If, in exercising the power of eminent domain, the board requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission and electric distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of a facility, after deducting the net salvage value derived from the old facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.082. INDIGENT CARE. (a) The district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is

legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance, as provided by Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and

(2) a relative of the patient who is legally responsible for the patient's support.

(d) On finding that a patient or a relative of the patient legally responsible for the patient's support can pay for all or any part of the care and treatment provided by the district, the administrator shall report that finding to the board, and the board shall issue an order directing the patient or the relative to pay the district each week a specified amount that the individual is able to pay.

(e) The administrator may collect money owed to the district from the estate of a patient or from that of a relative who was legally responsible for the patient's support in the manner provided by law for collection of expenses in the last illness of a deceased person.

(f) If there is a dispute relating to an individual's ability to pay or if the administrator has any doubt concerning an individual's ability to pay, the board shall call witnesses, hear and resolve the question, and issue a final order. An appeal from a final order of the board must be made to a district court in the county in which the district is located, and the substantial evidence rule applies.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.083. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61 (Indigent Health Care and Treatment Act).

(b) The board shall require reimbursement from the sheriff or

police chief of a county or municipality for the district's care and treatment of a person confined in a jail facility of the county or municipality who is not a resident of the district.

(c) The board may contract with the state or federal government for the state or federal government to reimburse the district for treatment of a sick, diseased, or injured person.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.084. SERVICE CONTRACTS. The board may contract with a municipality, county, special district, or other political subdivision of the state or with a state or federal agency for the district to:

(1) furnish a mobile emergency medical service; or

(2) provide for the investigatory or welfare needs of inhabitants of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.085. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.086. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER E. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT

Sec. 286.101. EXPANSION OF DISTRICT TERRITORY. (a) Registered voters of a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be

signed by at least 50 registered voters of the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The board shall set a date for the hearing that is after the 30th day after the date the board issues the order.

(c) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a modification or change is necessary or desirable.

(d) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(e) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the _____ Hospital District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the _____ Hospital District, if it is added to the district."

(f) The election shall be ordered and notice of the election shall be given in the same manner as provided by Sections 286.024 and 286.025 for ordering and giving notice of an election authorizing creation of the district. Section 41.001(a), Election Code, does not apply to an election held under this section.

(g) If a district imposes a sales and use tax under Subchapter I, the territory added to the district must be located in a county or counties each with a population of 75,000 or less, and the addition of the territory may not result in a combined tax rate by the hospital district and other political subdivisions of this state of more than two percent at any location in the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 8, eff. Sept. 1,

2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 12, eff. September 1, 2023.

Sec. 286.102. DISSOLUTION. (a) A district may be dissolved as provided by this section.

(b) The board may order an election on the question of dissolving the district and disposing of the district's assets and obligations. The board shall order an election if the board receives a petition requesting an election that is signed by a number of residents of the district equal to at least 15 percent of the registered voters in the district.

(c) Section 41.001(a), Election Code, does not apply to an election ordered under this section.

(d) The ballot for the election shall be printed to permit voting for or against the proposition: "The dissolution of the _____ Hospital District." The election shall be held in accordance with the applicable provisions of the Election Code.

(e) If a majority of the votes in the election favor dissolution, the board shall find that the district is dissolved. If a majority of the votes in the election do not favor dissolution, the board shall continue to administer the district, and another election on the question of dissolution may not be held before the first anniversary of the most recent election to dissolve the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 13, eff. September 1, 2023.

Sec. 286.103. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If a majority of the votes in the election favor dissolution, the board shall:

(1) transfer the land, buildings, improvements, equipment, and other assets that belong to the district to a county or another governmental entity in the district; or

(2) administer the property, assets, and debts in

accordance with Section 286.104.

(b) If the district transfers the land, buildings, improvements, equipment, and other assets to a county or other governmental entity, the county or entity assumes all debts and obligations of the district at the time of the transfer, and the district is dissolved.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.104. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) If the district does not transfer the land, buildings, improvements, equipment, and other assets to a county or another governmental entity in the district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) After the board finds that the district is dissolved, the board shall determine the debt owed by the district and:

(1) if the district imposes a property tax, impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value; or

(2) if the district imposes a sales and use tax under Subchapter I, continue the tax until the debt is repaid.

(c) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of property taxes due the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 9, eff. Sept. 1, 2001.

Sec. 286.105. RETURN OF SURPLUS PROPERTY TAX MONEY. (a) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused property tax money to each district taxpayer.

(b) A taxpayer may request that the taxpayer's share of surplus property tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 10, eff. Sept. 1, 2001.

Sec. 286.106. REPORT; DISSOLUTION ORDER. (a) After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Sections 286.104 and 286.105, the board shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district.

(b) Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER F. DISTRICT FINANCES

Sec. 286.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.122. ANNUAL AUDIT. The board annually shall have an audit made of the financial condition of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposed budget; and

(7) the estimated property tax rate that will be required, if the district imposes a property tax.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 11, eff. Sept. 1, 2001.

Sec. 286.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(e) The budget is effective only after adoption by the board.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.127. LIMITATION OF EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.128. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.129. SPENDING AND INVESTMENT LIMITATIONS. (a) Except as provided by Sections 286.078(a), 286.141, 286.144, and 286.145, and Chapter 315, the district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in investments authorized under Chapter 2256, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.101, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 848 (H.B. 3191), Sec. 14, eff. September 1, 2023.

Sec. 286.130. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 286.129(b) and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be

deposited as received with the depository bank and must remain on deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER G. BONDS

Sec. 286.141. GENERAL OBLIGATION BONDS. The board may issue and sell bonds authorized by an election in the name and on the faith and credit of the hospital district to:

(1) purchase, construct, acquire, repair, or renovate buildings or improvements;

(2) equip buildings or improvements for hospital purposes; or

(3) acquire and operate a mobile emergency medical service.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.142. TAXES TO PAY BONDS. (a) At the time the bonds are issued by the district, the board shall levy a tax.

(b) The tax must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature.

(c) In any year, the tax together with any other tax the district levies may not exceed the limit approved by the voters at the election authorizing the levy of taxes.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.143. BOND ELECTION. (a) The district may issue general obligation bonds only if the bonds are authorized by a

majority of the qualified voters of the district voting at an election called and held for that purpose under this section or under Subchapter B.

(b) The board may order a bond election. The order calling the election must state:

(1) the nature and date of the election;

(2) the hours during which the polls will be open;

(3) the location of the polling places;

(4) the amount of bonds to be authorized; and

(5) the maximum maturity of the bonds.

(c) Notice of a bond election shall be given as provided by Section 1251.003, Government Code.

(d) The board shall canvass the returns and declare the results of the election.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 648, Sec. 3, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 8.264, eff. Sept. 1, 2001.

Sec. 286.144. REVENUE BONDS. (a) The board may issue revenue bonds to:

(1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for hospital purposes;

(2) acquire sites to be used for hospital purposes; or

(3) acquire and operate a mobile emergency medical service to assist the district in carrying out its hospital purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the district's hospital system. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049 for issuance of revenue bonds by county hospital authorities.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.145. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Subchapter D, Chapter 1207, Government Code.

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the refunding bonds must be issued and payments made in the manner provided by Subchapters A-C, Chapter 1207, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.265, eff. Sept. 1, 2001.

Sec. 286.146. INTEREST AND MATURITY. District bonds must mature not later than the 50th anniversary of the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 1204, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.266, eff. Sept. 1, 2001.

Sec. 286.147. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by Chapter 618, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.266, eff. Sept. 1, 2001.

Sec. 286.148. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the

comptroller, the bonds are incontestable for any cause.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.149. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.150. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.151. TAX STATUS OF BONDS. Because the district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER H. PROPERTY TAXES

Sec. 286.161. TAX AUTHORIZED. (a) A majority of voters in a district or proposed district may, at the creation election under Subchapter B or in conjunction with any other district election, authorize the district to impose a property tax.

(b) The board annually may impose property taxes in an amount not to exceed the limit approved by the voters at the election authorizing the levy of taxes.

(c) The tax rate for all purposes may not exceed 75 cents on each $100 valuation of all taxable property in the district.

(d) The taxes may be used to pay:

(1) the indebtedness issued or assumed by the district; and

(2) the maintenance and operating expenses of the district.

(e) The district may not impose taxes to pay the principal of or interest on revenue bonds issued under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1290, Sec. 13, eff. Sept. 1, 2001.

Sec. 286.162. BOARD AUTHORITY. The board may impose taxes for the entire year in which the district is created.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.163. ADOPTING TAX RATE. In adopting the tax rate, the board shall consider the income of the district from sources other than taxation.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

Sec. 286.164. TAX ASSESSMENT AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax

assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991.

SUBCHAPTER I. SALES AND USE TAXES FOR DISTRICTS IN SMALL COUNTIES

Sec. 286.171. TAX AUTHORIZED. (a) A majority of voters in a proposed district of which all or a majority of the territory is located in a county or counties each with a population of 75,000 or less may impose a sales and use tax if the imposition is authorized at the creation election under Subchapter B.

(b) An election to authorize the imposition of a sales and use tax under this subchapter may be held only in conjunction with a creation election under Subchapter B.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.172. LIMITATION ON COMBINED TAX RATE; EFFECT ON ELECTIONS. An election to create a hospital district and to authorize the imposition of a sales and use tax under this subchapter, or an election to change the tax rate under Section 286.174, has no effect if as a result of the adoption of the sales and use tax or the change in the rate the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.173. ELECTION IN OTHER TAXING AUTHORITY. (a) In this section, "taxing authority" means any entity authorized to impose a local sales and use tax.

(b) If a district or proposed district is included within the boundaries of another taxing authority and the adoption or increase of the tax under this subchapter would result in a combined tax rate by the district and other political subdivisions of this state of more than two percent at any location in the district, an election to approve or increase the tax under this subchapter has no effect

unless:

(1) one or more of the other taxing authorities holds an election in accordance with the law governing that authority on the same date as the election under this chapter to reduce the tax rate of that authority to a rate that will result in a combined tax rate by the district and other political subdivisions of not more than two percent at any location in the district; and

(2) the combined tax rate is reduced to not more than two percent as a result of that election.

(c) This section does not permit a taxing authority to impose taxes at differential tax rates within the territory of the authority.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.174. TAX RATE; CHANGE IN RATE. (a) A district may impose the tax in increments of one-eighth of one percent, with a minimum rate of one-eighth of one percent and a maximum rate of two percent.

(b) Subject to Section 286.172, a district may increase the rate of the tax to a maximum of two percent or decrease the rate of the tax to a minimum of one-eighth of one percent if the change is approved by a majority of the voters of the district at an election called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.175. USE OF TAX. The taxes imposed may be used to pay:

(1) the indebtedness issued or assumed by the district; and

(2) the maintenance and operating expenses of the district.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.176. EFFECTIVE DATE. (a) The adoption or abolition of the tax or a change in the rate of the tax takes effect on the first day of the first calendar quarter occurring after the

expiration of the first complete calendar quarter occurring after the date the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the change in the rate of the tax, the effective date may be extended by the comptroller until the first day of the next calendar quarter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

Sec. 286.177. COUNTY SALES AND USE TAX ACT APPLICABLE. Except to the extent that a provision of this chapter applies, Chapter 323, Tax Code, applies to the tax authorized by this chapter in the same manner as that chapter applies to the tax authorized by that chapter.

Added by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

SUBCHAPTER X. MISCELLANEOUS

Sec. 286.951. LIMITATION ON STATE ASSISTANCE. The state may not become obligated for the support or maintenance of a hospital district created under this chapter, and the legislature may not make a direct appropriation for the construction, maintenance, or improvement of a facility of the district.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 121, eff. Sept. 1, 1991. Renumbered from Sec. 286.181 by Acts 2001, 77th Leg., ch. 1290, Sec. 14, eff. Sept. 1, 2001.

CHAPTER 287. HEALTH SERVICES DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 287.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "District" means a health services district created under this chapter.

(3) "Director" means a member of the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.002. DISTRICT AUTHORIZATION. A health services district may be created and established and, if created, must be maintained, operated, and financed in the manner provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 287.021. CREATION BY CONCURRENT ORDERS. (a) Except as provided by Subsection (b), a county or hospital district and one or more other counties or hospital districts may create a health services district by adopting concurrent orders.

(b) A county or portion of a county that is in the boundaries of a hospital district may not be a party to the creation of a health services district or to a contract with a health services district. The hospital district that serves the county or portion of the county may create and contract with the health services district for the boundaries of the hospital district.

(c) A concurrent order to create a health services district must:

(1) be approved by the governing body of each creating county and hospital district;

(2) contain identical provisions; and

(3) define the boundaries of the district to be coextensive with the combined boundaries of each creating county and hospital district.

(d) A concurrent order to create a health services district adopted by a hospital district for which the tax rate is set by the commissioners court of the county in which the hospital district operates must be approved by the commissioners court of that county.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.022. CONTRACT TERMS. (a) A county or hospital district that creates a district under this chapter shall contract with the district to provide, at a minimum, the health care services

the county or hospital district is required to provide by law or under the constitution. A contract with a county or hospital district that created the health services district under this chapter must:

(1) state the term of the contract, not to exceed six years;

(2) specify the purpose, terms, rights, and duties of the district, as authorized by this chapter;

(3) specify the financial contributions to be made by each party to the contract to fund the district, as described by Section 287.024; and

(4) specify the land, buildings, improvements, equipment, and other assets owned by a party to the contract that the district will be required to manage and operate.

(b) Chapter 791, Government Code, does not apply to a contract made under this chapter.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.023. PURPOSE AND DUTIES. (a) A health services district shall:

(1) provide health care services to indigent residents of the district;

(2) manage the funds contributed to the district by each county or hospital district that contracts with the district; and

(3) plan and coordinate with public and private health care providers and entities for the long-term provision of health care services to residents of the district.

(b) A health services district may:

(1) provide health care services on a sliding-fee scale to residents of the district who do not meet the basic income and resources requirements established under Sections 61.006 and 61.008 to be eligible for assistance under Chapter 61 but who are unable to pay for the full cost of health care services; and

(2) assume responsibility for management and operation of the land, buildings, improvements, equipment, and other assets that are acquired by the district or for which the district agrees to assume responsibility under the terms of the contract.

(c) A health services district may not:

(1) establish, conduct, or maintain an institution as defined by Section 242.002; or

(2) establish or operate a personal care facility as defined by Section 247.002.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.024. FUNDING. (a) Each county or hospital district that contracts with the district shall contribute to the district for its operation:

(1) a specified dollar amount from or a percentage of the contracting entity's operating budget and reserves if the contracting entity is a hospital district;

(2) a specified percentage, not less than the percentage required under Section 61.037 for state assistance, of the contracting entity's general revenue levy for each state fiscal year for the term of the contract, if the contracting entity is a county;

(3) state assistance received under Chapter 61;

(4) federal matching funds received by a hospital district under the Medicaid disproportionate share program; and

(5) any funds that are:

(A) received under the Agreement Regarding Disposition of Settlement Proceeds dated July 18, 1998, or July 24, 1998, and filed in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Company, et al., No. 5-96CV-91; and

(B) received on or after the date on which the district is created and before the district is dissolved.

(b) The district shall maintain an accounting of the funds received from each county or hospital district that contracts with the district.

(c) The district may administer the financial contributions of all parties to the contract for district purposes.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 287.041. BOARD OF DIRECTORS. (a) A county or hospital district that creates the district and has a population of 125,000 or

more shall appoint one director to the board for every 125,000 persons in the population of the county or hospital district, rounded to the nearest 125,000.

(b) A county or hospital district that creates the district and has a population of less than 125,000 may appoint one director to the board.

(c) The county judges of a county that creates the district shall appoint the directors to the board on behalf of the county. The board of directors of a hospital district that creates the district shall appoint the directors to the board on behalf of the hospital district.

(d) Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(e) The number of directors appointed to the board by each county or hospital district that creates the district is determined at the time of the initial appointment of directors under this section and does not vary with subsequent variations in the population of the county or hospital district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.042. QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident of the county or hospital district that appoints the person under Section 287.041.

(b) An employee of the district may not serve as a director.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.043. BOND. (a) Before assuming the duties of the office, each director must execute a bond for $5,000 payable to the district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for directors' bonds with district funds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.044. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.045. OFFICERS. (a) The board shall elect from among its members a president and a vice president.

(b) The board shall appoint a secretary, who need not be a director.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.046. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.047. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.048. VOTING REQUIREMENT. A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.049. ADMINISTRATOR AND ADDITIONAL STAFF. (a) The board may appoint qualified persons as administrator of the district and as additional administrative staff members as the board considers necessary for the efficient operation of the district.

(b) The administrator and other administrative staff members serve at the will of the board.

(c) The administrator and other administrative staff members are entitled to compensation as determined by the board.

(d) Before assuming the administrator's duties, the administrator shall execute a bond payable to the health services district in an amount not less than $5,000 as determined by the board, conditioned on the faithful performance of the administrator's duties under this chapter. The board may pay for the bond with district funds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.050. APPOINTMENTS TO STAFF. The board may:

(1) appoint to the staff any doctors the board considers necessary for the efficient operation of the district; and

(2) make temporary appointments the board considers necessary.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.051. TECHNICIANS, NURSES, AND OTHER DISTRICT EMPLOYEES. (a) The district may employ technicians, nurses, fiscal agents, accountants, architects, additional attorneys, and other necessary employees.

(b) The board may delegate to the administrator the authority to employ persons for the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.052. GENERAL DUTIES OF ADMINISTRATOR. The administrator shall:

(1) supervise the work and activities of the district; and

(2) direct the general affairs of the district, subject to

the limitations prescribed by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.053. RETIREMENT BENEFITS. The board may provide retirement benefits for employees of the district by:

(1) establishing or administering a retirement program; or

(2) electing to participate in the Texas County and District Retirement System or in any other statewide retirement system in which the district is eligible to participate.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 287.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On creation of a district, a county or hospital district that creates the district may transfer to the district:

(1) management and operation of any land, buildings, improvements, and equipment related to the health care system located wholly in the district that are owned by the county or hospital district in which the district is located, as specified in the contract with the counties and hospital districts that created the district; and

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the county or hospital district in which the district is located to provide medical care for residents of the district, as specified in the contract with the counties and hospital districts that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.072. DISTRICT RESPONSIBILITIES. On creation of a district, the district assumes the duties required under Section 287.023 and any additional duties specified in the contract with the counties and hospital districts that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.073. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the health care system and the funds and resources of the district that are transferred under Section 287.071.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.074. DISTRICT RULES. The board may adopt rules governing the operation of the district and the duties, functions, and responsibilities of district staff and employees.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.075. METHODS AND PROCEDURES. The board may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.076. HEALTH CARE PROPERTY, FACILITIES, AND EQUIPMENT. (a) The board shall determine:

(1) the type, number, and location of buildings required to establish and maintain an adequate health care system; and

(2) the type of equipment necessary for health care.

(b) The board may:

(1) acquire property, facilities, and equipment for the district for use in the health care system;

(2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;

(3) transfer by lease to physicians, individuals, companies, corporations, or other legal entities or acquire by lease district health care facilities;

(4) sell or otherwise dispose of property, facilities, or equipment acquired by the district; and

(5) contract with a state agency or other qualified provider to provide services.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.077. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into construction contracts that involve spending more than $10,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

(c) Chapter 2253, Government Code, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.078. DISTRICT CONTRACTS AND COLLABORATIONS. (a) The board may enter into operating or management contracts relating to health care facilities owned by the district or for which the district assumes responsibility for managing and operating under the terms of the contract with the counties and hospital districts that created the district.

(b) The board may contract or collaborate with a local governmental entity, as defined by Section 534.002, Government Code, or any other public or private entity as necessary to provide or deliver health care services under a demonstration project established under Section 534.201 or 534.202, Government Code, in which the district participates.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1139, Sec. 3, eff. Sept. 1, 2003.

Sec. 287.079. PAYMENT FOR HEALTH CARE SERVICES. (a) The district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance that complies with Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and

(2) a relative of the patient who is legally responsible for the patient's support.

(d) The board may adopt a sliding-fee scale for health care services provided to a patient who can pay for some, but not all, of the care and treatment provided by the district.

(e) A county that created and contracted with the district may credit a district expenditure for the care and treatment of an eligible county resident to the same extent and in the same manner the county would be able to claim the expenditure under Chapter 61 if the county made the expenditure.

(f) The board shall adopt rules regarding the collection of money that is owed to the district for health care services provided to a patient who is determined to be able to pay for all or any part of the services from a patient, a patient's estate, or a relative who is legally responsible for the patient's support.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.080. REIMBURSEMENT FOR SERVICES. (a) The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61.

(b) The board shall require reimbursement from the sheriff or police chief of a county or municipality for the district's care and treatment of a person confined in a jail facility of the county or municipality who is not a resident of the district, as determined in the same manner as the person's residence is determined under Chapter 61.

(c) The board may contract with a state or federal agency or political subdivision of the state to provide health care services.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.081. SERVICE CONTRACTS. The board may contract with a

municipality, county, special district, or other political subdivision of the state or with a state or federal agency for the district to:

(1) furnish a mobile emergency medical service; or

(2) provide for the investigatory or welfare needs of inhabitants of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.082. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the donor that is consistent with the proper management of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.083. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued on behalf of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. DISSOLUTION OF DISTRICT

Sec. 287.101. DISSOLUTION. (a) A district shall be dissolved if:

(1) the contract with the counties and hospital districts that created the district expires and is not renewed; or

(2) the counties and hospital districts that created the district adopt concurrent orders to terminate the contract and dissolve the district and the concurrent orders:

(A) are approved by the governing bodies of each county and hospital district; and

(B) contain identical provisions.

(b) The governing body of a county or hospital district may adopt orders to terminate the contract with the district and end the county's or hospital district's participation in the district. The county or hospital district must give written notice to the district at least one fiscal year, as established by the board under Section

287.121, before terminating the contract and ending participation in the district. On termination of the contract with the district, the district shall transfer to the county or hospital district all unspent funds contributed by the county or hospital district to the district and the land, buildings, improvements, equipment, and other assets acquired by the district that are located in the county or hospital district. The termination of the contract by a county or hospital district does not affect the operation of the district with respect to each other county or hospital district that created the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.102. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If the district is dissolved, the board shall:

(1) transfer the land, buildings, improvements, equipment, and other assets acquired by the district to the county or hospital district in which the property is located; or

(2) administer the property, assets, and debts in accordance with Section 287.103.

(b) If the district transfers its land, buildings, improvements, equipment, and other assets to a county or hospital district, the county or hospital district assumes all debts and obligations of the district related to the land, buildings, improvements, equipment, or assets at the time of the transfer, and the district is dissolved.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.103. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) If the district does not transfer its land, buildings, improvements, equipment, and other assets to a county or hospital district in the district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) If, after administering the property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the

remaining debts to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

(c) If, after administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the counties and hospital districts that created the district in proportion to the funds contributed to the district by each county or hospital district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.104. ACCOUNTING. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Sections 287.102 and 287.103, the board shall provide an accounting to each county and hospital district that created and contracted with the district. The accounting must show the manner in which the assets and debts of the district were distributed.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. DISTRICT FINANCES

Sec. 287.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.122. ANNUAL AUDIT. (a) The board annually shall have an independent audit made of the financial condition of the district.

(b) A copy of the audit must be provided to:

(1) each county and hospital district that created and contracted with the district;

(2) each state and federal agency with which the district contracts; and

(3) each other entity that contributes substantial funds to the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared; and

(6) the estimated amount of revenues and balances available to cover the proposed budget.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the residents of the district demand.

(e) The budget is effective only after adoption by the board.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board's approval.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.127. LIMITATION OF EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.128. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.129. SPENDING AND INVESTMENT LIMITATIONS. (a) Except for construction contracts under Section 287.077(a) or as provided by Sections 287.142 and 287.143, the district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current and immediately following fiscal year of the district.

(b) The board may invest operating, depreciation, or building reserves only in:

(1) bonds of the United States;

(2) certificates of indebtedness issued by the United States secretary of the treasury;

(3) bonds of this state or a county, municipality, or school district of this state; or

(4) shares or share accounts of savings and loan associations organized under the laws of this state or federal savings and loan associations domiciled in this state, if the shares or share accounts are insured by the Federal Deposit Insurance

Corporation.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.102, eff. Sept. 1, 2001.

Sec. 287.130. DEPOSITORY. (a) The board shall name at least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by Section 287.129(b) and those transmitted to a bank of payment for bonds or obligations issued or assumed by the district, shall be deposited as received with the depository bank and must remain on deposit. This subsection does not limit the power of the board to place a portion of district funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.131. AD VALOREM TAXATION. A district may not impose an ad valorem tax.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. BONDS

Sec. 287.141. GENERAL OBLIGATION BONDS. A district may not issue general obligation bonds.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.142. REVENUE BONDS. (a) The board may issue revenue bonds to:

(1) purchase, construct, acquire, repair, equip, or renovate buildings or improvements for district purposes;

(2) acquire sites to be used for district purposes; or

(3) acquire and operate a mobile emergency medical service to assist the district in carrying out its purposes.

(b) The bonds must be payable from and secured by a pledge of all or part of the revenues derived from the operation of the district. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of district property.

(c) The bonds must be issued in the manner provided by Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049 for issuance of revenue bonds by county hospital authorities.

(d) Revenue derived from the operation of the district and pledged to the repayment of revenue bonds issued by the district must be used to repay the principal and interest owed on the bonds before being used to repay any other obligation of the district, including money owed to physicians who are employed by or who contract with the district.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.143. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund an outstanding indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided by Subchapter D, Chapter 1207, Government Code.

(c) The refunding bonds may be sold and the proceeds applied to the payment of outstanding indebtedness or may be exchanged in whole or in part for not less than a similar principal amount of outstanding indebtedness. If the refunding bonds are to be sold and the proceeds applied to the payment of outstanding indebtedness, the refunding bonds must be issued and payments made in the manner provided by Subchapters A-C, Chapter 1207, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.267, eff. Sept. 1, 2001.

Sec. 287.144. INTEREST AND MATURITY. District bonds must

mature not later than the 50th anniversary of the date of their issuance and must bear interest at a rate not to exceed that provided by Chapter 1204, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.268, eff. Sept. 1, 2001.

Sec. 287.145. EXECUTION OF BONDS. The president of the board shall execute the bonds in the name of the district, and the secretary of the board shall countersign the bonds in the manner provided by Chapter 618, Government Code.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.268, eff. Sept. 1, 2001.

Sec. 287.146. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by counties.

(b) On approval by the attorney general and registration by the comptroller, the bonds are incontestable for any cause.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.147. BONDS AS INVESTMENTS. District bonds and indebtedness assumed by the district are legal and authorized investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and

(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.148. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value if accompanied by all unmatured coupons.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

Sec. 287.149. TAX STATUS OF BONDS. Because the district created under this chapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1999, 76th Leg., ch. 1293, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 288. HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES LOCATED ON TEXAS-MEXICO BORDER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 288.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created under this chapter.

(3) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 2, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 231 (H.B. 2476), Sec. 1, eff. May 29, 2015.

Sec. 288.002. CREATION OF DISTRICT. A district may be created by order of the commissioners court of each county located on the Texas-Mexico border that has a population of:

(1) 500,000 or more and is adjacent to two or more counties each of which has a population of 50,000 or more;

(2) 350,000 or more and is adjacent to a county described by Subdivision (1); or

(3) less than 300,000 and contains one or more municipalities with a population of 200,000 or more.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 3, eff. June 14, 2013.

Sec. 288.0031. DISSOLUTION. A district created under this chapter may be dissolved in the manner provided for the dissolution of a hospital district under Subchapter E, Chapter 286.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 4, eff. June 14, 2013.

Sec. 288.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 288.051. COMMISSION; DISTRICT GOVERNANCE. (a) Each district created under Section 288.002 is governed by a commission consisting of the commissioners court of the county in which the district is created.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1369, Sec. 19, eff. June 14, 2013.

(c) Service on the commission by a county commissioner or county judge is an additional duty of that person's office.

(d) A district is a component of county government and is not a separate political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 5, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 6, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 19, eff. June 14, 2013.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 288.101. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. Each district may require a mandatory payment only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 7, eff. June 14, 2013.

Sec. 288.102. MAJORITY VOTE REQUIRED. (a) A district may not require any mandatory payment authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before requiring a mandatory payment under this chapter in

any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 8, eff. June 14, 2013.

Sec. 288.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a mandatory payment authorized by this chapter.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1369, Sec. 19, eff. June 14, 2013.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 9, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 19, eff. June 14, 2013.

Sec. 288.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 288.151. HEARING. (a) Each year, the commission of a district shall hold a public hearing on the amounts of any mandatory payments that the commission intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments required by the district under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 10, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 1, eff. June 12, 2017.

Sec. 288.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 288.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the district depository as provided by Section 288.203 and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 11, eff. June 14, 2013.

Sec. 288.155. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue from the mandatory payment required by this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the district;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of the money received by the district from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid

supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the district determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subdivision may not be used by the district, the county in which the district is located, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 12, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 2, eff. June 12, 2017.

Sec. 288.156. ALLOCATION OF CERTAIN FUNDS. Not later than the 15th day after the date the district receives a payment described by Section 288.155(c)(5), the district shall transfer to each paying hospital an amount equal to the proportionate share of those funds to which the hospital is entitled.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 12, eff. June 14, 2013.

SUBCHAPTER E. MANDATORY PAYMENTS

Sec. 288.201. MANDATORY PAYMENT BASED ON HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commission of a district may require an annual mandatory payment to be assessed quarterly on the net patient revenue of an institutional health care provider located in the district. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health

Services under Sections 311.032 and 311.033 in the fiscal year ending in 2010. The district shall update the amount of the mandatory payment on a biennial basis.

(b) The amount of a mandatory payment required under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district. A mandatory payment required under this section may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commission of a district shall set the amount of the mandatory payment required under this section. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the district, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the district.

(d) Subject to the maximum amount prescribed by Subsection (c), the commission shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) An institutional health care provider may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 14, eff. June 14, 2013.

Sec. 288.202. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The district may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments required under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 15, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 3, eff. June 12, 2017.

Sec. 288.203. DEPOSIT OF REVENUE FROM MANDATORY PAYMENTS. Revenue from the mandatory payment required by this chapter shall be deposited in the district's local provider participation fund.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 16, eff. June 14, 2013.

Sec. 288.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 17, eff. June 14, 2013.

Sec. 288.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a mandatory payment required by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1369 (S.B. 1623), Sec. 18, eff. June 14, 2013.

CHAPTER 289. COUNTY HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES LOCATED ON TEXAS-MEXICO BORDER THAT HAVE POPULATION OF LESS THAN 300,000

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 289.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created by this chapter.

(3) "District taxpayer" means a person or entity who has paid a tax imposed under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.002. CREATION OF DISTRICT. A district is created in each county located on the Texas-Mexico border that has a population of less than 300,000 and contains one or more municipalities with a population of 200,000 or more.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 40, eff. September 1, 2011.

Sec. 289.003. DURATION OF DISTRICT. (a) Unless continued in existence by the legislature, a district created by this chapter is abolished September 1, 2007.

(b) Any money held by a district at the time the district is

abolished shall be used to pay any outstanding administrative expenses of the district, and the commission shall direct the secretary of the commission to return the pro rata share of any remaining district money to each district taxpayer.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.004. POLITICAL SUBDIVISION. A district created by this chapter is a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 289.051. COMMISSION; APPOINTMENT. (a) Each district is governed by a commission of five members appointed as provided by this section.

(b) Each county commissioner on the commissioners court of the county in which the district is located shall appoint one member who meets the qualifications prescribed by Section 289.052 to serve on the commission. The county judge of the county shall appoint any remaining members who meet the qualifications prescribed by Section 289.052 to serve on the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.052. QUALIFICATION OF MEMBERS OF COMMISSION. To be eligible to serve as a member of the commission, a person must:

(1) be a United States citizen;

(2) be 18 years of age or older on the first day of the term that the person is appointed to fill;

(3) have not been determined mentally incompetent by a final judgment of a court;

(4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in this state for 12 months and in the county in which the district is located for six months immediately preceding the date of the appointment; and

(6) be a person knowledgeable in the field of health care.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.053. TERM OF MEMBERS OF COMMISSION. The members of the commission serve staggered two-year terms.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.054. VACANCY. (a) If a vacancy occurs on the commission, the commissioners court of the county in which the district is located shall appoint a qualified person to fill the vacancy not later than the 30th day after the date the vacancy occurs.

(b) If the commissioners court of the county in which the district is located does not appoint a member to the commission to fill a vacancy by the 30th day after the date the vacancy occurs, the remaining members of the commission may, by vote of the commission, appoint a replacement.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.055. OFFICERS. (a) Each commission shall elect a chairperson and a secretary from among its members.

(b) The chairperson and secretary shall each serve in that office until the expiration of their term as a member of the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.056. COMPENSATION; EXPENSES. A member of the commission serves without compensation but may, on the approval of the entire commission, be reimbursed for actual expenses incurred in the performance of the member's official duties.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.057. EMPLOYEES AND INDEPENDENT CONTRACTORS. The commission may employ an attorney, financial advisor, and bookkeeper for the district or contract for those services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.058. MAINTENANCE OF RECORDS; PUBLIC INSPECTION. Except as otherwise provided by law, all district records, including books, accounts, notices, minutes, and all other matters of the district and the operation of its facilities, shall be:

(1) maintained at the district office; and

(2) open to public inspection at the district office during reasonable hours.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 289.101. LIMITATION ON TAXING AUTHORITY. Each district may impose taxes only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.102. MAJORITY VOTE REQUIRED. (a) A district may not impose any tax authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before imposing a tax under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.103. ELECTION REQUIRED FOR CERTAIN EXPENDITURES. (a) In addition to the majority vote required under Section 289.102, a district may not spend any money of the district unless the district receives the approval of at least 95 percent of the district taxpayers.

(b) This section does not apply to expenditures related to the administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a tax authorized by this chapter.

(b) In order to implement the requirements of Sections 289.102 and 289.103, the commission shall adopt any necessary procedures.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.105. PURCHASING AND ACCOUNTING PROCEDURES. (a) The commission may prescribe the method and manner for making purchases

and expenditures by the district.

(b) The commission shall prescribe:

(1) all accounting and control procedures; and

(2) the method of purchasing necessary supplies, materials, and equipment.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.107. AUTHORITY TO SUE AND BE SUED. Each district may sue and be sued in its own name in any court of this state as a governmental agency.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 289.151. BUDGET. (a) Each year, the commission shall prepare a budget for the following fiscal year that includes:

(1) proposed expenditures and disbursements;

(2) estimated receipts and collections; and

(3) the rates and amounts of any taxes that the commission intends to impose during the year.

(b) The commission shall hold a public hearing on the proposed

budget. Not later than the 10th day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) Any district taxpayer is entitled to appear at the time and place designated in the public notice and to be heard regarding any item shown in the proposed budget.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.153. ANNUAL AUDIT. (a) For each fiscal year, each commission shall have an independent audit made of the district's books and records.

(b) Not later than December 31 of each year, the audit made for a district shall be filed with the comptroller and at the office of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including tax revenue after deducting discounts and fees for assessing and collecting the taxes, shall be deposited with the district depository and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER E. TAXES

Sec. 289.201. TAX ON OUTPATIENT SERVICES. (a) The commission of a district may impose an annual tax to be assessed quarterly on all outpatient hospital visits to an institutional health care provider located in the district. In the first year in which the tax is imposed, the tax is assessed on the total number of outpatient hospital visits of an institutional health care provider reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2003. The district shall update this tax basis with the number of outpatient hospital visits reported on a biennial basis.

(b) A tax imposed under this section must be imposed uniformly on each institutional health care provider of outpatient hospital services located in the district. A tax imposed under this section also may not hold harmless any institutional health care provider of outpatient hospital services, as required under 42 U.S.C. Section 1396b(w).

(c) The commission shall set the rate of the tax imposed under this section. The rate may not exceed $100 for each outpatient hospital visit.

(d) Subject to the maximum tax rate prescribed by Subsection (c), the commission shall set the rate of the tax at a rate that will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of tax revenue used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the tax or $20,000.

(e) An institutional health care provider may not add a tax imposed under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.202. ASSESSMENT AND COLLECTION OF TAXES. (a) Except

as provided by Subsection (b), the county tax assessor-collector shall collect a tax imposed under this subchapter unless the commission employs a tax assessor and collector for the district. The county tax assessor-collector shall charge and deduct from taxes collected for the district a fee for collecting the tax in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges for the collection of similar taxes.

(b) If determined by the commission to be appropriate, the commission may contract for the assessment and collection of taxes in the manner provided by Title 1, Tax Code, for the assessment and collection of ad valorem taxes.

(c) Revenue from a fee charged by a county tax assessor-collector for collecting the tax shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county tax assessor-collector.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.203. USE OF TAX REVENUE. Revenue generated by a district from a tax imposed under this subchapter may be used only to:

(1) provide the nonfederal share of a Medicaid supplemental payment program;

(2) subsidize indigent programs; and

(3) pay administrative expenses of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on taxes imposed under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 289.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

CHAPTER 290. COUNTY HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES WITH POPULATION OF 2.1 MILLION OR LESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 290.001. DEFINITIONS. In this chapter:

(1) "Commission" means the commission of a district created under this chapter.

(2) "District" means a county health care funding district created by this chapter.

(3) "District taxpayer" means a person or entity who has paid a tax imposed under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.002. CREATION OF DISTRICT. A district is created in each county that has a population of 2.1 million or less and in which a municipality with a population of 1.1 million or more is predominantly located.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 42, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 83, eff. September 1, 2023.

Sec. 290.003. DURATION OF DISTRICT. (a) Unless continued in existence by the legislature, a district created by this chapter is abolished September 1, 2007.
(b) Any money held by a district at the time the district is abolished shall be used to pay any outstanding administrative expenses of the district, and the commission shall direct the secretary of the commission to return the pro rata share of any remaining district money to each district taxpayer.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.004. POLITICAL SUBDIVISION. A district created by this chapter is a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.005. DISTRICT TERRITORY. The boundaries of each district are coextensive with the boundaries of the county in which the district is created.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June

18, 2005.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 290.051. COMMISSION; APPOINTMENT. (a) Each district is governed by a commission of five members appointed as provided by this section.

(b) Each county commissioner on the commissioners court of the county in which the district is located shall appoint one member who meets the qualifications prescribed by Section 290.052 to serve on the commission. The county judge of the county shall appoint any remaining members who meet the qualifications prescribed by Section 290.052 to serve on the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.052. QUALIFICATION OF MEMBERS OF COMMISSION. To be eligible to serve as a member of the commission, a person must:

(1) be a United States citizen;

(2) be 18 years of age or older on the first day of the term that the person is appointed to fill;

(3) have not been determined mentally incompetent by a final judgment of a court;

(4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;

(5) have resided continuously in this state for 12 months and in the county in which the district is located for six months immediately preceding the date of the appointment; and

(6) be a person knowledgeable in the field of health care.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.053. TERM OF MEMBERS OF COMMISSION. The members of the commission serve staggered two-year terms.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June

18, 2005.

Sec. 290.054. VACANCY. (a) If a vacancy occurs on the commission, the commissioners court of the county in which the district is located shall appoint a qualified person to fill the vacancy not later than the 30th day after the date the vacancy occurs.

(b) If the commissioners court of the county in which the district is located does not appoint a member to the commission to fill a vacancy by the 30th day after the date the vacancy occurs, the remaining members of the commission may, by vote of the commission, appoint a replacement.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.055. OFFICERS. (a) Each commission shall elect a chairperson and a secretary from among its members.

(b) The chairperson and secretary shall each serve in that office until the expiration of their term as a member of the commission.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.056. COMPENSATION; EXPENSES. A member of the commission serves without compensation but may, on the approval of the entire commission, be reimbursed for actual expenses incurred in the performance of the member's official duties.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.057. EMPLOYEES AND INDEPENDENT CONTRACTORS. The commission may employ an attorney, financial advisor, and bookkeeper for the district or contract for those services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.058. MAINTENANCE OF RECORDS; PUBLIC INSPECTION. Except as otherwise provided by law, all district records, including books, accounts, notices, minutes, and all other matters of the district and the operation of its facilities, shall be:

(1) maintained at the district office; and

(2) open to public inspection at the district office during reasonable hours.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 290.101. LIMITATION ON TAXING AUTHORITY. Each district may impose taxes only in the manner provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.102. MAJORITY VOTE REQUIRED. (a) A district may not impose any tax authorized by this chapter, spend any money, including for the administrative expenses of the district, or conduct any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Before imposing a tax under this chapter in any one year, the commission must obtain the affirmative vote required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.103. ELECTION REQUIRED FOR CERTAIN EXPENDITURES. (a) In addition to the majority vote required under Section 290.102, a district may not spend any money of the district unless the district receives the approval of at least 95 percent of the district

taxpayers.

(b) This section does not apply to expenditures related to the administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.104. RULES AND PROCEDURES. (a) The commission may adopt rules governing the operation of the district, including rules relating to the administration of a tax authorized by this chapter.

(b) In order to implement the requirements of Sections 290.102 and 290.103, the commission shall adopt any necessary procedures.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.105. PURCHASING AND ACCOUNTING PROCEDURES. (a) The commission may prescribe the method and manner for making purchases and expenditures by the district.

(b) The commission shall prescribe:

(1) all accounting and control procedures; and

(2) the method of purchasing necessary supplies, materials, and equipment.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.106. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) A district shall require an institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the department to implement those sections.

(b) A district may inspect the records of an institutional health care provider to the extent necessary to ensure that the provider has submitted all required data under this section.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.107. AUTHORITY TO SUE AND BE SUED. Each district may sue and be sued in its own name in any court of this state as a governmental agency.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 290.151. BUDGET. (a) Each year, the commission shall prepare a budget for the following fiscal year that includes:

(1) proposed expenditures and disbursements;

(2) estimated receipts and collections; and

(3) the rates and amounts of any taxes that the commission intends to impose during the year.

(b) The commission shall hold a public hearing on the proposed budget. Not later than the 10th day before the date of the hearing, the commission shall publish at least once notice of the hearing in a newspaper of general circulation in the county in which the district is located.

(c) Any district taxpayer is entitled to appear at the time and place designated in the public notice and to be heard regarding any item shown in the proposed budget.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.152. FISCAL YEAR. Each district's fiscal year begins on September 1 and ends on August 31 of each year.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.153. ANNUAL AUDIT. (a) For each fiscal year, each commission shall have an independent audit made of the district's

books and records.

(b) Not later than December 31 of each year, the audit made for a district shall be filed with the comptroller and at the office of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.154. DEPOSITORY. (a) Each commission by resolution shall designate one or more banks located in the district as the depository for the district. A bank designated as depository serves for two years or until a successor is designated.

(b) All income received by a district, including tax revenue after deducting discounts and fees for assessing and collecting the taxes, shall be deposited with the district depository and may be withdrawn only as provided by this chapter.

(c) All district funds shall be secured in the manner provided for securing county funds.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

SUBCHAPTER E. TAXES

Sec. 290.201. TAX ON EMERGENCY ROOM SERVICES. (a) The commission of a district may impose an annual tax to be assessed quarterly on all emergency room visits to an institutional health care provider located in the district. In the first year in which the tax is imposed, the tax is assessed on the total number of emergency room visits of an institutional health care provider reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2003. The district shall update this tax basis with the number of emergency room visits reported on a biennial basis.

(b) A tax imposed under this section must be imposed uniformly on each institutional health care provider of emergency room services located in the district. A tax imposed under this section also may not hold harmless any institutional health care provider of emergency room services, as required under 42 U.S.C. Section 1396b(w).

(c) The commission shall set the rate of the tax imposed under

this section. The rate may not exceed $100 for each emergency room visit.

(d) Subject to the maximum tax rate prescribed by Subsection (c), the commission shall set the rate of the tax at a rate that will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of tax revenue used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the tax or $20,000.

(e) An institutional health care provider may not add a tax imposed under this section as a surcharge to a patient.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.202. ASSESSMENT AND COLLECTION OF TAXES. (a) Except as provided by Subsection (b), the county tax assessor-collector shall collect any tax imposed under this subchapter unless the commission employs a tax assessor and collector for the district. The county tax assessor-collector shall charge and deduct from taxes collected for the district a fee for collecting the tax in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges for the collection of similar taxes.

(b) If determined by the commission to be appropriate, the commission may contract for the assessment and collection of taxes in the manner provided by Title 1, Tax Code, for the assessment and collection of ad valorem taxes.

(c) Revenue from a fee charged by a county tax assessor-collector for collecting the tax shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county tax assessor-collector.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.203. USE OF TAX REVENUE. Revenue generated by a district from a tax imposed under this subchapter may be used only

to:

(1) provide the nonfederal share of a Medicaid supplemental payment program;

(2) subsidize indigent programs; and

(3) pay administrative expenses of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.204. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on taxes imposed under this subchapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue from a tax imposed by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a tax under this chapter to be ineligible for federal matching funds, the district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June 18, 2005.

Sec. 290.206. ELECTION REQUIRED FOR CERTAIN PROVISIONS OR PROCEDURES. (a) In order to amend any provision or procedure set out in this chapter, the district must obtain the approval of at least 95 percent of the institutional health care providers potentially subject to the tax.

(b) This section does not apply to rules or procedures related to the daily administrative matters of the district.

Added by Acts 2005, 79th Leg., Ch. 1367 (H.B. 2463), Sec. 1, eff. June

18, 2005.

CHAPTER 291. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES IN THE TEXAS-LOUISIANA BORDER REGION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 291.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) is located in the Texas-Louisiana border region, as that region is defined by Section 2056.002, Government Code; and

(3) has a population of more than 51,000 but less than 65,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 84, eff. September 1, 2023.

Sec. 291.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and

indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 291.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the

county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 291.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 4, eff. June 12, 2017.

Sec. 291.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the

county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing

similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 5, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 291.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In

the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 291.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff.

June 18, 2015.

Sec. 291.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 6, eff. June 12, 2017.

Sec. 291.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

Sec. 291.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 867 (H.B. 2280), Sec. 1, eff. June 18, 2015.

CHAPTER 291A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 291A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.002. APPLICABILITY. This chapter applies only to:

(1) a county that:

(A) is not served by a hospital district or a public hospital;

(B) has a population of more than 75,000; and

(C) borders or includes a portion of the Sam Rayburn Reservoir; and

(2) a county that has a population of more than 200,000 and less than 233,500.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 85, eff. September 1, 2023.

Sec. 291A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 291A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 291A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner

provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of

money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 291A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C.

Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 291A.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

Sec. 291A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 801 (H.B. 2995), Sec. 1, eff. June 15, 2017.

CHAPTER 292. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.002. APPLICABILITY. This chapter applies only to a county that is not served by a hospital district and:

(1) is located in the Texas-Louisiana border region, as that region is defined by Section 2056.002, Government Code, and has a population of more than 90,000 but less than 200,000; or

(2) has a population of less than 51,000 and is adjacent to a county with a population of more than 200,000 but less than 233,500.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff.

May 28, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 86, eff. September 1, 2023.

Sec. 292.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized

under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 7, eff. June 12, 2017.

Sec. 292.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the

intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 8, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in

amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 9, eff. June 12, 2017.

Sec. 292.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

Sec. 292.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 208 (S.B. 1587), Sec. 1, eff. May 28, 2015.

CHAPTER 292A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING RED RIVER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 100,000;

(3) contains at least two municipalities, each of which has a population of more than 15,000; and

(4) borders the Red River.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care

provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in

the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing

similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care

provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 292A.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

Sec. 292A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 784 (H.B. 2062), Sec. 1, eff. June 15, 2017.

CHAPTER 292B. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING COUNTY CONTAINING STATE CAPITAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292B.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.002. APPLICABILITY. This chapter applies only to a

county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 400,000; and

(3) is adjacent to the county containing the state capital.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292B.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292B.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general

circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching

payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292B.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment

authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 292B.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

Sec. 292B.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 111 (H.B. 3954), Sec. 1, eff. May 26, 2017.

CHAPTER 292C. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES WITH HOSPITAL DISTRICT BORDERING OKLAHOMA

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292C.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services and that is not located within the boundaries of a hospital district.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.002. APPLICABILITY. This chapter applies only to a county that:

(1) contains a hospital district that is not countywide;

(2) has a population of more than 125,000 but less than 135,000; and

(3) borders Oklahoma.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 87, eff. September 1, 2023.

Sec. 292C.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers as provided by this chapter.

(b) The commissioners court of a county may adopt an order authorizing the county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.004. EXPIRATION. The authority of a county to administer and operate a program under this chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 454 (H.B. 4928), Sec. 1, eff. June 9, 2023.
Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 1, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 292C.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff.

June 10, 2019.

Sec. 292C.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider located in the county to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 292C.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) pay the administrative expenses of the county solely for activities under this chapter;

(3) refund a portion of a mandatory payment collected in error from a paying hospital; and

(4) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money deposited to the local provider participation fund may not be used to pay for the services of a consultant or a person required to register under Chapter 305, Government Code.

(e) Money in the local provider participation fund may not be commingled with other county funds.

(f) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation

Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 292C.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment

authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter and to fund an intergovernmental transfer described by Section 292C.103(c)(1), except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed $20,000, plus the cost of collateralization of deposits. If the county demonstrates to the paying hospitals that the costs of administering the program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $20,000 in any year, on consent of a majority of the paying hospitals, the county may use additional revenue from mandatory payments received under this chapter to compensate the county for its administrative expenses. A paying hospital may not unreasonably withhold consent to compensate the county for administrative expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff.

June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Sec. 292C.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 1, eff. June 2, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 690 (S.B. 2286), Sec. 1, eff. June 10, 2019.

Text of chapter effective on September 1, 2025

CHAPTER 292D. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING NECHES RIVER

Text of subchapter effective on September 1, 2025

SUBCHAPTER A. GENERAL PROVISIONS

Text of section effective on September 1, 2025

Sec. 292D.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district;

(2) has a population of more than 250,000; and

(3) borders the Neches River.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county as provided by Section 292D.103(c).

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of subchapter effective on September 1, 2025

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Text of section effective on September 1, 2025

Sec. 292D.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENTS. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.053. RULES AND PROCEDURES. The commissioners court may adopt rules relating to the administration of the program, including the collection of a mandatory payment, expenditures, an audit, and any other administrative aspect of the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) If the commissioners court of a county authorizes the county to participate in a program under this chapter, the commissioners court shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of subchapter effective on September 1, 2025
SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Text of section effective on September 1, 2025

Sec. 292D.101. HEARING. (a) In each year that the commissioners court of a county authorizes a program under this chapter, the commissioners court shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county and provide written notice of the hearing to each institutional health care provider located in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs;

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the county is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B);

(D) payments to Medicaid managed care organizations that are dedicated for payment to hospitals; or

(E) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 292D.151(d), pay the administrative expenses of the county in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital;

(4) refund to paying hospitals a proportionate share of the money attributable to mandatory payments collected under this chapter that the county:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the county is legally required to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the county made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the county if the county is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the county, any funds received by the state or county as a result of the transfer may not be used by the state, county, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of subchapter effective on September 1, 2025

SUBCHAPTER D. MANDATORY PAYMENTS

Text of section effective on September 1, 2025

Sec. 292D.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the commissioners court of a county authorizes a program under this chapter, the commissioners court may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court shall provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The commissioners court shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The aggregate amount of the mandatory payment required of all paying hospitals may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the county.

(d) Subject to Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this

chapter and to fund an intergovernmental transfer described by Section 292D.103(c)(1). The annual amount of revenue from mandatory payments that may be used to pay the administrative expenses of the county for activities under this chapter may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

(b) The person charged by the county with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the county a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the county, any revenue from a collection fee charged under Subsection (b) shall be deposited in the county general fund and, if appropriate, shall be reported as fees of the county.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff.

September 1, 2025.

Text of section effective on September 1, 2025

Sec. 292D.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of certain Medicaid programs as described by Section 292D.103(c)(1).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the commissioners court of the county administering the program may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the county or an institutional health care provider located in the county beyond the provisions of this chapter. This section does not require the commissioners court of a county to adopt a rule.

(c) The county may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 292D.103(c)(1) is available to the county.

Added by Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 1, eff. September 1, 2025.

CHAPTER 293. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 293.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 10, eff. June 12, 2017.

Sec. 293.002. APPLICABILITY. This chapter applies only to a county that:
(1) is not served by a hospital district or a public hospital;
(2) borders the county in which the State Capitol is located; and
(3) has a population of more than 100,000 but less than 300,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.
(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 293.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 293.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 11, eff. June 12, 2017.

Sec. 293.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 12, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 293.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed quarterly on the net patient revenue of each institutional health care provider located in the county. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2014. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when

added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 13, eff. June 12, 2017.

Sec. 293.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

Sec. 293.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 873 (H.B. 3175), Sec. 1, eff. June 18, 2015.

CHAPTER 293A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES INCLUDING PORTION OF CONCHO RIVER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 293A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means a county health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 100,000; and

(3) includes a portion of the Concho River.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff.

June 12, 2017.

Sec. 293A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court of a county may adopt an order authorizing the county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 293A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating

to the administration of the mandatory payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider located in the county to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 293A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 293A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an

institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the paying hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 293A.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection

of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

Sec. 293A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide an intergovernmental transfer described by Section 293A.103(c)(1).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 611 (H.B. 3398), Sec. 1, eff. June 12, 2017.

CHAPTER 293C. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES NOT BORDERING CERTAIN POPULOUS COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 293C.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means a county health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) has a population of more than 140,000 and less than 155,000; and

(3) is not adjacent to a county with a population of 1.2 million or more.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 88, eff. September 1, 2023.

Sec. 293C.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court of a county may adopt an order authorizing the county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 293C.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.053. RULES AND PROCEDURES. After the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider located in the county to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 293C.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists

of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 293C.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed six percent of the hospital's net patient revenue.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by

Section 293C.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

Sec. 293C.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide an intergovernmental transfer described by Section 293C.103(c)(1).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 1, eff. May 31, 2019.

CHAPTER 294. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES CONTAINING A PRIVATE UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 294.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 14, eff. June 12, 2017.

Sec. 294.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital;

(2) contains a private institution of higher education with a student enrollment of more than 12,000; and

(3) has a population of less than 265,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 89, eff. September 1, 2023.

Sec. 294.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider

located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 294.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING;

INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 294.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 15, eff. June 12, 2017.

Sec. 294.102. DEPOSITORY. (a) The commissioners court of each

county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas

Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 16, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 294.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment

to be assessed quarterly on the net patient revenue of each institutional health care provider located in the county. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2014. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 17, eff. June 12, 2017.

Sec. 294.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

Sec. 294.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 175 (H.B. 2809), Sec. 1, eff. May 28, 2015.

CHAPTER 295A. CITY OF AMARILLO HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 295A.001. PURPOSE. The purpose of this chapter is to

authorize the district to administer a health care provider participation program to provide additional compensation to hospitals in the district by collecting mandatory payments from each hospital in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the City of Amarillo Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(4) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.003. APPLICABILITY. This chapter applies only to the City of Amarillo Hospital District.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.004. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff.

June 12, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 295A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider participation program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a health care provider participation program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 295A.101. HEARING. (a) In each year that the board authorizes a health care provider participation program under this chapter, the board shall hold a public hearing on the amounts of any

mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) If the board collects a mandatory payment authorized under this chapter, the board shall create a local provider participation fund in one or more banks designated by the district as a depository for public funds.

(b) The board may withdraw or use money in the fund only for a purpose authorized under this chapter.

(c) All funds collected under this chapter shall be secured in the manner provided by Chapter 1001, Special District Local Laws Code, for securing other public funds of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established under Section 295A.102 consists of:

(1) all mandatory payments authorized under this chapter and received by the district;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state as the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) pay costs associated with indigent care provided by institutional health care providers in the district;

(3) pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(c) Money in the local provider participation fund may not be commingled with other district funds.

(d) An intergovernmental transfer of funds described by Subsection (b)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subsection may not be used by the district or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 295A.151. MANDATORY PAYMENTS. (a) Except as provided by Subsection (e), if the board authorizes a health care provider

participation program under this chapter, the board shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board shall provide that the mandatory payment is to be collected at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be a uniform percentage of the amount of net patient revenue generated by each paying hospital in the district. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The aggregate amount of the mandatory payments required of all paying hospitals in the district may not exceed six percent of the aggregate net patient revenue of all paying hospitals in the district.

(d) Subject to the maximum amount prescribed by Subsection (c), the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter, fund an intergovernmental transfer described by Section 295A.103(b)(1), or make other payments authorized under this chapter. The amount of revenue from mandatory payments that may be used for administrative expenses by the district in a year may not exceed $25,000, plus the cost of collateralization of deposits. If the board demonstrates to the paying hospitals that the costs of administering the health care provider participation program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $25,000 in any year, on consent

of all of the paying hospitals, the district may use additional revenue from mandatory payments received under this chapter to compensate the district for its administrative expenses. A paying hospital may not unreasonably withhold consent to compensate the district for administrative expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient or insurer.

(f) A mandatory payment under this chapter is not a tax for purposes of Section 5(a), Article IX, Texas Constitution, or Chapter 1001, Special District Local Laws Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The district may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

Sec. 295A.153. CORRECTION OF INVALID PROVISION OR PROCEDURE. To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 651 (S.B. 2117), Sec. 1, eff. June 12, 2017.

CHAPTER 296. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 296.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital; and

(2) has a population of less than 235,000 and contains two municipalities both with populations of 83,000 or more.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 91, eff. September 1, 2023.

Sec. 296.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 296.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the

records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 296.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 21, eff. June 12, 2017.

Sec. 296.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only

as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in

error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 22, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 296.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care

provider's Medicare cost report submitted for the 2013 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund an intergovernmental transfer described by Section 296.103(c)(1), and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 23, eff. June 12, 2017.

Sec. 296.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

Sec. 296.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 235 (H.B. 3185), Sec. 1, eff. May 29, 2015.

CHAPTER 296A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING TWO POPULOUS COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 296A.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider

participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.002. APPLICABILITY. This chapter applies only to a county that:

(1) is not served by a hospital district or a public hospital; and

(2) has a population of less than 600,000 and borders two counties both with populations of 1.1 million or more.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 92, eff. September 1, 2023.

Sec. 296A.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 296A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 296A.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the 10th day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment

authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by Subsection (c)(1) may not

be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 296A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the county. The commissioners court may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2017 or, if the institutional health care provider did not report any data under those sections in that fiscal year, as determined by the institutional health care provider's Medicare cost report submitted for the 2017 fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The county shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that

exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

Sec. 296A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid

supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 389 (H.B. 4548), Sec. 2, eff. June 2, 2019.

CHAPTER 297. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES CONTAINING A MILITARY BASE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 297.001. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(3) "Program" means the county health care provider participation program authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 24, eff. June 12, 2017.

Sec. 297.002. APPLICABILITY. This chapter applies only to a county:

(1) that is not served by a hospital district or a public hospital;

(2) on which a military base with more than 30,000 military personnel is partially located; and

(3) that has a population of more than 300,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.003. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) A county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. Money in the fund may be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) The commissioners court may adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 297.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The commissioners court of a county may require a mandatory payment authorized under this chapter by an institutional health care provider in the county only in the manner provided by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.052. MAJORITY VOTE REQUIRED. The commissioners court of a county may not authorize the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.053. RULES AND PROCEDURES. After the commissioners court has voted to require a mandatory payment authorized under this chapter, the commissioners court may adopt rules relating to the administration of the mandatory payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff.

May 28, 2015.

Sec. 297.054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS. (a) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall require each institutional health care provider to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

(b) The commissioners court of a county that collects a mandatory payment authorized under this chapter may inspect the records of an institutional health care provider to the extent necessary to ensure compliance with the requirements of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 297.101. HEARING. (a) Each year, the commissioners court of a county that collects a mandatory payment authorized under this chapter shall hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the commissioners court of the county shall publish notice of the hearing in a newspaper of general circulation in the county.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 25, eff.

June 12, 2017.

Sec. 297.102. DEPOSITORY. (a) The commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution shall designate one or more banks located in the county as the depository for mandatory payments received by the county. A bank designated as a depository serves for two years or until a successor is designated.

(b) All income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, shall be deposited with the county depository in the county's local provider participation fund and may be withdrawn only as provided by this chapter.

(c) All funds under this chapter shall be secured in the manner provided for securing county funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Each county that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) The local provider participation fund of a county consists of:

(1) all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the county to the state to provide:

(A) the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs; or

(B) payments to Medicaid managed care organizations that are dedicated for payment to hospitals;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the county solely for activities under this chapter;

(4) refund a portion of a mandatory payment collected in error from a paying hospital;

(5) refund to paying hospitals the proportionate share of money received by the county from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(6) refund to paying hospitals the proportionate share of money that the county determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments.

(d) Money in the local provider participation fund may not be commingled with other county funds.

(e) An intergovernmental transfer of funds described by Subsection (c)(1) and any funds received by the county as a result of an intergovernmental transfer described by that subsection may not be used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 26, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 297.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), the commissioners court of a county that collects a mandatory payment authorized under this chapter may require an annual mandatory payment to be assessed quarterly on the net patient revenue of each institutional health care provider located in the county. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the fiscal year ending in 2013. The county may update the amount of the mandatory payment on an annual basis based on data reported to the Department of State Health Services in a more recent fiscal year.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the amount of the mandatory payment. The amount of the mandatory payment required of each paying hospital may not exceed an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Subject to the maximum amount prescribed by Subsection (c), the commissioners court of a county that collects a mandatory payment authorized under this chapter shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or $20,000.

(e) A paying hospital may not add a mandatory payment required

under this section as a surcharge to a patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The county may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 27, eff. June 12, 2017.

Sec. 297.153. INTEREST, PENALTIES, AND DISCOUNTS. Interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

Sec. 297.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) The purpose of this chapter is to generate revenue by collecting from institutional health care providers a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the county may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 177 (H.B. 2913), Sec. 1, eff. May 28, 2015.

For expiration of this chapter, see Section 298A.004.

CHAPTER 298A. DALLAS COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298A.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Dallas County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.002. APPLICABILITY. This chapter applies only to the Dallas County Hospital District.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.004. EXPIRATION. (a) Subject to Section 298A.153(d), the authority of the district to administer and operate

a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 194 (H.B. 2326), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 2, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298A.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff.

May 18, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298A.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider in the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals affiliated with the district, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Subdivision (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 298A.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local

provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298A.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the board may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost

report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298A.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and

collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

Sec. 298A.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298A.103(c)(1) is available to the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 17 (H.B. 4300), Sec. 1, eff. May 18, 2017.

CHAPTER 298B. TARRANT COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298B.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Tarrant County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.002. APPLICABILITY. This chapter applies only to the Tarrant County Hospital District.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.004. EXPIRATION OF AUTHORITY. (a) Subject to Sections 298B.153(d) and 298B.154, the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) Subsection (a) does not affect the authority of the district to require and collect a mandatory payment under Section 298B.154 after December 31, 2027, if necessary.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 100 (H.B. 2324), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 3, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298B.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING.

If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298B.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider in the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment

authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals affiliated with the district, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 298B.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services

Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298B.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the board may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care

provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298B.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28,

eff. June 12, 2017.

Sec. 298B.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be

ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298B.103(c)(1) is available to the district.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

Sec. 298B.154. FEDERAL DISALLOWANCE. Notwithstanding any other provision of this chapter, if the Centers for Medicare and Medicaid Services issues a disallowance of federal matching funds for a purpose for which intergovernmental transfers described by Section 298B.103(c)(1) were made and the Health and Human Services Commission demands repayment from the district of federal funds paid to the district for that purpose, the district may require and collect mandatory payments from each paying provider that received those federal funds in an amount sufficient to satisfy the repayment demand made by the commission. The percentage limitation prescribed by Section 298B.151(c) does not apply to a mandatory payment required under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 457 (S.B. 1462), Sec. 28, eff. June 12, 2017.

CHAPTER 298C. NUECES COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298C.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Nueces County Hospital District.

(3) "Institutional health care provider" means a hospital that is not owned and operated by a federal or state government and provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.002. APPLICABILITY. This chapter applies only to the Nueces County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298C.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider located in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection

of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298C.101. HEARING. (a) In each fiscal year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider located in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in

the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to hospitals in the Medicaid managed care service area in which the district is located, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) delivery system reform incentive payments, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(C) uniform rate enhancements for hospitals in the Medicaid managed care service area in which the district is located;

(D) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to hospitals described by Paragraph (A), (B), or (C); or

(E) any reimbursement to hospitals for which federal matching funds are available;

(2) subject to Section 298C.151(d), pay the administrative

expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments or uniform rate enhancements described by Subdivision (1)(C); or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments or uniform rate enhancements described by Subdivision (1)(C);

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(C) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298C.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the fiscal year at the discretion of the board, on the net patient revenue of each institutional health care provider located in the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to pay the assessment. In the first fiscal year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment assessed under this chapter by the board must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate

sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298C.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

Sec. 298C.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for

hospitals to support the provision of health care by institutional health care providers located in the district.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298C.103(c)(1) is available to at least one institutional health care provider located in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 694 (S.B. 2315), Sec. 1, eff. June 10, 2019.

CHAPTER 298D. LUBBOCK COUNTY HOSPITAL DISTRICT OF LUBBOCK COUNTY, TEXAS: HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298D.001. PURPOSE. The purpose of this chapter is to authorize the district to administer a health care provider participation program to provide additional compensation to nonpublic hospitals by collecting mandatory payments from each nonpublic hospital in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff.

June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Lubbock County Hospital District of Lubbock County, Texas.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.003. APPLICABILITY. This chapter applies only to the Lubbock County Hospital District of Lubbock County, Texas.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.004. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.

Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298D.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter from an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.052. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.053. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider participation program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298D.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

(c) The board's determination of the amount of mandatory payments to be collected during the year must be shown to be based on reasonable estimates of the amount of revenue necessary to fund intergovernmental transfers from the district to the state providing the nonfederal share of payments described by Section 298D.103(b)(1) that is otherwise unfunded.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(13), eff. September 1, 2021.

Sec. 298D.102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) If the board collects a mandatory payment authorized under this chapter, the board shall create a local provider participation fund in one or more banks located in the district that are designated by the district as a depository for public funds.

(b) All money received by the district under this chapter, including the amount of revenue from mandatory payments remaining after deducting any discounts and fees for assessing and collecting the payments, shall be deposited with a depository designated under Subsection (a).

(c) The board may withdraw or use money in the fund only for a

purpose authorized under this chapter.

(d) All funds collected under this chapter shall be secured in the manner provided by Chapter 1053, Special District Local Laws Code, for securing public funds of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established under Section 298D.102 consists of:

(1) all mandatory payments authorized under this chapter and received by the district;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state as the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care and delivery system reform incentive payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available to nonpublic hospitals under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which

federal matching funds are available;

(2) subject to Section 298D.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a portion of a mandatory payment collected in error from a paying hospital; and

(4) refund to paying hospitals a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments described by Subdivision (1); or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments described by Subdivision (1).

(c) Money in the local provider participation fund may not be commingled with other district funds.

(d) An intergovernmental transfer of funds described by Subsection (b)(1) and any funds received by the district as a result of an intergovernmental transfer described by that subsection may not be used by the district or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(14), eff. September 1, 2021.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298D.151. MANDATORY PAYMENTS. (a) If the board authorizes a program under this chapter, the board shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide that the mandatory payment is to be collected at

least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The district shall update the amount of the mandatory payment on an annual basis and may update the amount on a more frequent basis.

(b) The amount of a mandatory payment authorized under this chapter must be a uniform percentage of the amount of net patient revenue generated by each paying hospital in the district. A mandatory payment authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The aggregate amount of the mandatory payments required of all paying hospitals in the district may not exceed six percent of the aggregate net patient revenue of all paying hospitals in the district.

(d) Subject to the maximum amount prescribed by Subsection (c) and this subsection, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter, fund an intergovernmental transfer described by Section 298D.103(b)(1), or make other payments authorized under this chapter. The amount of the mandatory payments must be based on reasonable estimates of the amount of revenue necessary to cover the administrative expenses, intergovernmental transfers, and other payments described by this subsection as authorized under this chapter. The amount of revenue from mandatory payments that may be used for administrative expenses by the district in a year may not exceed $25,000, plus the cost of collateralization of deposits. If the board demonstrates to the paying hospitals that the costs of administering the program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $25,000 in

any year, on consent of all of the paying hospitals, the district may use additional revenue from mandatory payments received under this chapter to compensate the district for its administrative expenses. A paying hospital may not unreasonably withhold consent to compensate the district for administrative expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient or insurer.

(f) A mandatory payment under this chapter is not a tax for purposes of Section 9, Article IX, Texas Constitution, or Chapter 1053, Special District Local Laws Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.002(15), eff. September 1, 2021.

Sec. 298D.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. The district may collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

Sec. 298D.153. CORRECTION OF INVALID PROVISION OR PROCEDURE. To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 454 (S.B. 2448), Sec. 1, eff. June 4, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(56), eff. September 1, 2021.

For expiration of this chapter, see Section 298E.004.

CHAPTER 298E. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN HOSPITAL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298E.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of a district.

(2) "District" means a hospital district to which this chapter applies.

(3) "Institutional health care provider" means a hospital that is not owned and operated by a federal, state, or local government and provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means a health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.002. APPLICABILITY. This chapter applies only to a hospital district created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 93, eff.

September 1, 2023.

Sec. 298E.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board of a district may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.004. EXPIRATION. (a) Subject to Section 298E.153(d), the authority of a district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 77 (S.B. 699), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 4, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298E.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board of a district may require a mandatory payment authorized under this chapter by an institutional health care provider located in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff.

May 31, 2019.

Sec. 298E.052. RULES AND PROCEDURES. The board of a district may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board of a district authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298E.101. HEARING. (a) In each year that the board of a district authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider located in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.102. DEPOSITORY. (a) If the board of a district requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected by a district under this chapter shall be secured in the manner provided for securing other funds of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If a district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) A district's local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of a district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to hospitals in the Medicaid managed care service area in which the district is located, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under

Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to hospitals for which federal matching funds are available;

(2) subject to Section 298E.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(d) Money in the local provider participation fund of a district may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by a district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient

Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298E.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board of a district authorizes a health care provider participation program under this chapter, the board may require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide for the mandatory payment to be assessed quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider as reported in the provider's Medicare cost report submitted for the most recent fiscal year for which the provider submitted a Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment assessed under this chapter by the board of a district must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider located in the district, as required under 42 U.S.C. Section 1396b(w).

(c) If the board of a district requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate

net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board of a district requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298E.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

Sec. 298E.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) A district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff.

May 31, 2019.

Sec. 298E.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize a district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for hospitals to support the provision of health care by institutional health care providers located in the district to district residents in need of health care.

(b) This chapter does not authorize a district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for hospitals and to cover the administrative expenses of the district associated with activities under this chapter.

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board of a district may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) A district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298E.103(c)(1) is available to the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 304 (H.B. 1142), Sec. 2, eff. May 31, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 345 (S.B. 1350), Sec. 1, eff. May 31, 2019.

For expiration of this chapter, see Section 298F.004.

CHAPTER 298F. BEXAR COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298F.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Bexar County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.002. APPLICABILITY. This chapter applies only to the Bexar County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.004. EXPIRATION. (a) Subject to Section 298F.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 202 (S.B. 1155), Sec. 1, eff. May 24, 2023.
Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 5, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298F.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298F.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each paying provider in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another federal waiver program authorizing Medicaid payments to nonpublic hospitals;

(D) any payments to Medicaid managed care organizations for the benefit of nonpublic hospitals and for which federal matching funds are available; or

(E) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 298F.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by

Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298F.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) If the board authorizes a health care provider participation program under this chapter, for each year the program is authorized, the board may require a mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board may provide for the mandatory payment to be assessed periodically throughout the year. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to pay the assessment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, which is the amount of that revenue as reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C.

Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298F.103(c)(1). The amount of revenue from mandatory payments that may be used for administrative expenses by the district in a year for activities under this chapter may not exceed $184,000, plus the cost of collateralization of deposits. If the board demonstrates to the paying providers that the costs of administering the health care provider participation program under this chapter, excluding those costs associated with the collateralization of deposits, exceed $184,000 in any year, on consent of all of the paying providers, the district may use additional revenue from mandatory payments received under this chapter to compensate the district for its administrative expenses. A paying provider may not unreasonably withhold consent to compensate the district for administrative expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the district associated with activities under this chapter and other amounts for which the fund may be used as described by Section 298F.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care

provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, reimbursement, or other payment described by Section 298F.103(c)(1) is available to nonpublic hospitals in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 639 (S.B. 1545), Sec. 1, eff. June 10, 2019.

Sec. 298F.154. INTEREST AND PENALTIES. The district may impose and collect interest and penalties on delinquent mandatory payments assessed under this chapter in any amount that does not exceed the maximum amount authorized for other delinquent payments owed to the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 202 (S.B. 1155), Sec. 2, eff. May 24, 2023.

For expiration of this chapter, see Section 298G.004.

CHAPTER 298G. EL PASO COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298G.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the El Paso County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.002. APPLICABILITY. This chapter applies only to the El Paso County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.004. EXPIRATION. (a) Subject to Section 298G.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 347 (S.B. 849), Sec. 1, eff. June 2, 2023.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 6, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298G.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298G.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall

designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of:

(A) any payment to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315); or

(B) Medicaid payments for:

(i) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(ii) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments described by Paragraph (A) or Subparagraph (i) to nonpublic hospitals or any payments to Medicaid managed care organizations for the benefit of nonpublic hospitals; or

(iii) any reimbursement to nonpublic hospitals located in the district for which federal matching funds are

available;

(2) subject to Section 298G.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of the transfer may not be used by the state, district, or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298G.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) If the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the year at the discretion of the board, on the net patient revenue of each institutional health care provider located in

the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to make the assessed mandatory payment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, as determined by the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any paying provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298G.103(c)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district is $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045 of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff.

May 31, 2019.

Sec. 298G.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 298G.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 298G.103(c)(1) is available to nonpublic hospitals in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 347 (S.B. 1751), Sec. 1, eff. May 31, 2019.

Sec. 298G.154. INTEREST AND PENALTIES. The district may impose and collect interest and penalties on delinquent mandatory payments assessed under this chapter in any amount that does not exceed the maximum amount authorized for other delinquent payments owed to the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 347 (S.B. 849), Sec. 2, eff. June 2, 2023.

For expiration of this chapter, see Section 298H.004.

CHAPTER 298H. NACOGDOCHES COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 298H.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means the Nacogdoches County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.002. APPLICABILITY. This chapter applies only to the Nacogdoches County Hospital District.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. (a) The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

(b) The board may not authorize the district to participate in a health care provider participation program under Chapter 300 or 300A.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.004. EXPIRATION. (a) Subject to Section 298H.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2027.

(b) This chapter expires December 31, 2027.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 298H.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under

this chapter by an institutional health care provider located in the district only in the manner provided by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and other administrative aspects of the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board may require each institutional health care provider to submit to the district a copy of any financial and utilization data reported in the provider's Medicare cost report submitted for the most recent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 298H.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to the mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid supplemental payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program

authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 298H.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payments or rate enhancements described by Subdivision (1); or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payments or rate enhancements described by Subdivision (1); and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to Medicaid supplemental payments for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of that transfer may not be used by the state, district, or other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 298H.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET

PATIENT REVENUE. (a) If the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the year at the discretion of the board, on the net patient revenue of each institutional health care provider located in the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to make the assessed mandatory payment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, as determined by the provider's Medicare cost report submitted for the most recent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall periodically update the amount of the mandatory payment.

(b) The amount of a mandatory payment authorized under this chapter must be determined in a manner that ensures the revenue generated qualifies for federal matching funds under federal law, consistent with 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 298H.103(c)(1). The annual amount of revenue from the mandatory payments used by the district may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 9, Article IX, Texas Constitution, or Section 1069.301, Special District Local Laws

Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of the mandatory payments may not charge the district a fee for assessing and collecting the payments unless the district authorizes the fee in writing.

(c) If the person charged with the assessment and collection of the mandatory payments is an official of the district, any revenue from a fee authorized under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

Sec. 298H.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect the mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect the mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the

fund described by Section 298H.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, rate enhancement, or reimbursement described by Section 298H.103(c)(1) is available for nonpublic hospitals located in the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 918 (H.B. 4700), Sec. 1, eff. June 17, 2023.

For expiration of this chapter, see Section 299.004.

CHAPTER 299. HARRIS COUNTY HOSPITAL DISTRICT HEALTH CARE PROVIDER PARTICIPATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 299.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of hospital managers of the district.

(2) "District" means the Harris County Hospital District.

(3) "Institutional health care provider" means a nonpublic hospital located in the district that provides inpatient hospital services.

(4) "Paying provider" means an institutional health care provider required to make a mandatory payment under this chapter.

(5) "Program" means the health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.002. APPLICABILITY. This chapter applies only to the Harris County Hospital District.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.003. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM. The board may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.004. EXPIRATION. (a) Subject to Section 299.153(d), the authority of the district to administer and operate a program under this chapter expires December 31, 2025.

(b) This chapter expires December 31, 2025.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 316 (H.B. 1338), Sec. 1, eff. June 7, 2021.

Acts 2023, 88th Leg., R.S., Ch. 433 (H.B. 1925), Sec. 1, eff. June 9, 2023.

Acts 2023, 88th Leg., R.S., Ch. 857 (H.B. 3456), Sec. 7, eff. June 13, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 299.051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.052. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the program, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a program under this chapter, the board shall require each institutional health care provider to submit to the district a copy of any financial and utilization data as reported in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 299.101. HEARING. (a) In each year that the board authorizes a program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in the district and provide written notice of the hearing to each institutional health care provider in the district.

(c) A representative of a paying provider is entitled to appear at the public hearing and be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.102. DEPOSITORY. (a) If the board requires a mandatory payment authorized under this chapter, the board shall designate one or more banks as a depository for the district's local provider participation fund.

(b) All funds collected under this chapter shall be secured in the manner provided for securing other district funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) If the district requires a mandatory payment authorized under this chapter, the district shall create a local provider participation fund.

(b) The local provider participation fund consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer under the program, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(c) Money deposited to the local provider participation fund of the district may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 299.151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund a mandatory payment collected in error from a paying provider;

(4) refund to paying providers a proportionate share of the money attributable to mandatory payments collected under this chapter that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments; and

(5) transfer funds to the Health and Human Services Commission if the district is legally required to transfer the funds to address a disallowance of federal matching funds with respect to programs for which the district made intergovernmental transfers described by Subdivision (1).

(d) Money in the local provider participation fund may not be commingled with other district funds.

(e) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (c)(1) made by the district, any funds received by the state, district, or other entity as a result of the transfer may not be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 299.151. MANDATORY PAYMENTS BASED ON PAYING PROVIDER NET PATIENT REVENUE. (a) If the board authorizes a health care provider participation program under this chapter, the board may require a mandatory payment to be assessed, either annually or periodically throughout the year at the discretion of the board, on the net patient revenue of each institutional health care provider located in the district. The board shall provide an institutional health care provider written notice of each assessment under this subsection, and the provider has 30 calendar days following the date of receipt of the notice to pay the assessment. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider, as determined by the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. If the mandatory payment is required, the district shall update the amount of the mandatory payment on an annual basis and may update the amount on a more frequent basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying provider in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) If the board requires a mandatory payment authorized under this chapter, the board shall set the amount of the mandatory payment, subject to the limitations of this chapter. The aggregate amount of the mandatory payments required of all paying providers in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying providers in the district.

(d) Subject to Subsection (c), if the board requires a mandatory payment authorized under this chapter, the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 299.103(c)(1). The annual amount of revenue from mandatory payments used for

administrative expenses by the district for activities under this chapter is $600,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying provider may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of Section 4, Article IX, Texas Constitution, or Section 281.045.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 316 (H.B. 1338), Sec. 2, eff. June 7, 2021.

Sec. 299.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

Sec. 299.153. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) The purpose of this chapter is to authorize the district to establish a program to enable the district to collect mandatory payments from institutional health care providers to fund the nonfederal share of a Medicaid supplemental payment program or the Medicaid managed care rate enhancements for

nonpublic hospitals to support the provision of health care by institutional health care providers to district residents in need of health care.

(b) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 299.103(c).

(c) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(d) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 299.103(c)(1) is available to the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 208 (H.B. 3459), Sec. 1, eff. May 24, 2019.

CHAPTER 300. HEALTH CARE PROVIDER PARTICIPATION PROGRAMS IN CERTAIN POLITICAL SUBDIVISIONS IN THIS STATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300.0001. PURPOSE. The purpose of this chapter is to authorize a hospital district, county, or municipality in this state to administer a health care provider participation program to provide additional compensation to certain hospitals located in the hospital district, county, or municipality by collecting mandatory payments from each of those hospitals to be used to provide the nonfederal

share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0002. DEFINITIONS. In this chapter:

(1) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(2) "Local government" means a hospital district, county, or municipality to which this chapter applies.

(3) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(4) "Program" means a health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0003. APPLICABILITY. (a) Except as provided by Subsection (b), this chapter applies only to:

(1) a hospital district that is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(2) a county or municipality that:

(A) is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(B) is not served by a hospital district or a public hospital.

(b) This chapter does not apply to a municipality that is located in a county described by Section 292D.002.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 632 (H.B. 4835), Sec. 2, eff. September 1, 2023.

Sec. 300.0004. LOCAL JURISDICTION HEALTH CARE PROVIDER PARTICIPATION PROGRAM; ORDER REQUIRED FOR PARTICIPATION. The governing body of a local government may only adopt an order or ordinance authorizing that local government to participate in a health care provider participation program after an affirmative vote of the majority of the governing body.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF GOVERNING BODY

Sec. 300.0051. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The governing body of a local government may require a mandatory payment authorized under this chapter by an institutional health care provider located in that hospital district, county, or municipality, as applicable, only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0052. RULES AND PROCEDURES. The governing body of a local government may adopt rules relating to the administration of the health care provider participation program in the local government, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0053. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the governing body of a local government authorizes the local government to participate in a health care provider participation program under this chapter, the governing body shall require each institutional health care provider to submit to the local government a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and

311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 300.0101. HEARING. (a) In each year that the governing body of a local government authorizes a health care provider participation program under this chapter, the governing body shall hold a public hearing on the amounts of any mandatory payments that the governing body intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the governing body shall publish notice of the hearing in a newspaper of general circulation in the hospital district, county, or municipality, as applicable, and provide written notice of the hearing to the chief operating officer of each institutional health care provider located in the hospital district, county, or municipality, as applicable.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) Each governing body of a local government that collects a mandatory payment authorized under this chapter shall create a local provider participation fund.

(b) If a governing body of a local government creates a local provider participation fund, the governing body shall designate one or more banks as a depository for the mandatory payments received by the local government.

(c) The governing body of a local government may withdraw or use money in the local provider participation fund of the local government only for a purpose authorized under this chapter.

(d) All funds collected under this chapter shall be secured in the manner provided for securing other funds of the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established by a local government under Section 300.0102 consists of:

(1) all revenue received by the local government attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the local government to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund of a local government may be used only to:

(1) fund intergovernmental transfers from the local government to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the local government is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 300.0151(d), pay the administrative expenses of the local government in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital;

(4) refund to paying hospitals a proportionate share of the money that the local government:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the local government is required by law to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the local government made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the local government if the local government is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(c) Money in the local provider participation fund of a local government may not be commingled with other funds of the local government.

(d) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (b)(1) made by the local government, any funds received by the state, local government, or other entity as a result of that transfer may not be used by the state, local government, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff.

June 10, 2019.

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 300.0151. MANDATORY PAYMENTS. (a) Except as provided by Subsection (e), if the governing body of a local government authorizes a health care provider participation program under this chapter, the governing body shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the hospital district, county, or municipality, as applicable. The governing body of the local government shall provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider located in the hospital district, county, or municipality, as applicable, as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The local government shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter for a local government must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the hospital district, county, or municipality, as applicable, as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The governing body of a local government that authorizes a program under this chapter shall set the amount of the mandatory payment. The aggregate amount of the mandatory payments required of all paying hospitals in the hospital district, county, or municipality, as applicable, may not exceed six percent of the aggregate net patient revenue from hospital services provided by all

paying hospitals in the hospital district, county, or municipality, as applicable.

(d) Subject to Subsection (c), the governing body of a local government shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the local government for activities under this chapter and to fund an intergovernmental transfer described by Section 300.0103(b)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses for activities under this chapter by the local government may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

(f) A mandatory payment required by the governing body of a hospital district under this chapter is not a tax for purposes of the applicable provision of Article IX, Texas Constitution.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) A hospital district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) A county or municipality may collect or, using a competitive bidding process, contract for the assessment and collection of mandatory payments authorized under this chapter.

(c) The person charged by the local government with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the local government a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(d) If the person charged with the assessment and collection of mandatory payments is an official of the local government, any revenue from a collection fee charged under Subsection (c) shall be deposited in the local government general fund and, if appropriate, shall be reported as fees of the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff.

June 10, 2019.

Sec. 300.0153. CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) This chapter does not authorize a local government to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals and to cover the administrative expenses of the local government associated with activities under this chapter and other uses of the fund described by Section 300.0103(b).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the local government may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the local government or an institutional health care provider in the local hospital district, county, or municipality, as applicable, beyond the provisions of this chapter. This section does not require the governing body of a local government to adopt a rule.

(c) The local government may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 300.0103(b)(1) is available to the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0154. REPORTING REQUIREMENTS. (a) The governing body of each local government that authorizes a program under this chapter shall report information to the Health and Human Services Commission regarding the program on a schedule determined by the commission.

(b) The information must include:

(1) the amount of the mandatory payments required and collected in each year the program is authorized;

(2) any expenditure of money attributable to mandatory payments collected under this chapter, including:

(A) any contract with an entity for the administration or operation of a program authorized by this chapter; or

(B) a contract with a person for the assessment and collection of a mandatory payment as authorized under Section 300.0152; and

(3) the amount of money attributable to mandatory payments collected under this chapter that is used for any other purpose.

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules to administer this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0155. EXPIRATION OF AUTHORITY. The authority of a local government to administer and operate a program under this chapter expires on September 1 following the second anniversary of the date the governing body of the local government adopted the order or ordinance authorizing the local government to participate in the program as provided by Section 300.0004.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

Sec. 300.0156. AUTHORITY TO REFUSE FOR VIOLATION. The Health and Human Services Commission may refuse to accept money from a local provider participation fund established under this chapter if the commission determines that doing so may violate federal law.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 1, eff. June 10, 2019.

CHAPTER 300A. HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN DISTRICTS COMPOSED OF CERTAIN LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 300A.0001. PURPOSE. The purpose of this chapter is to authorize certain local governments to create a district to

administer a health care provider participation program to provide additional compensation to certain hospitals in the district by collecting mandatory payments from each of those hospitals in the district to be used to provide the nonfederal share of a Medicaid supplemental payment program and for other purposes as authorized under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Director" means a member of the board.

(3) "District" means a health care provider participation district created under this chapter.

(4) "Institutional health care provider" means a nonpublic hospital that provides inpatient hospital services.

(5) "Local government" means a hospital district, county, or municipality to which this chapter applies.

(6) "Paying hospital" means an institutional health care provider required to make a mandatory payment under this chapter.

(7) "Program" means a health care provider participation program authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0003. APPLICABILITY. This chapter applies only to:

(1) a hospital district that:

(A) is not participating in a health care provider participation program authorized by another chapter of this subtitle; and

(B) has only one institutional health care provider located in the district; and

(2) a county or municipality that:

(A) is not participating in a health care provider participation program authorized by another chapter of this subtitle;

(B) is not served by a hospital district or a public hospital; and

(C) has only one institutional health care provider located in the county or municipality.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER B. CREATION, OPERATION, AND DISSOLUTION OF DISTRICT

Sec. 300A.0021. CREATION BY CONCURRENT ORDERS. (a) A local government and one or more other local governments may create a district by adopting concurrent orders.

(b) A concurrent order to create a district must:

(1) be approved by the governing body of each creating local government;

(2) contain identical provisions; and

(3) define the boundaries of the district to be coextensive with the combined boundaries of each creating local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0022. POWERS. A district may authorize and administer a health care provider participation program in accordance with this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0023. BOARD OF DIRECTORS. (a) If three or more local governments create a district, the presiding officer of the governing body of each local government that creates the district shall appoint one director.

(b) If two local governments create a district:

(1) the presiding officer of the governing body of the most populous local government shall appoint two directors; and

(2) the presiding officer of the governing body of the other local government shall appoint one director.

(c) Directors serve staggered two-year terms, with as near as possible to one-half of the directors' terms expiring each year.

(d) A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

(e) The board shall elect from among its members a president. The president may vote and may cast an additional vote to break a tie.

(f) The board shall also elect from among its members a vice president.

(g) The board shall appoint a secretary, who need not be a director.

(h) Each officer of the board serves for a term of one year.

(i) The board shall fill a vacancy in a board office for the unexpired term.

(j) A majority of the members of the board voting must concur in a matter relating to the business of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0024. QUALIFICATIONS FOR OFFICE. (a) To be eligible to serve as a director, a person must be a resident of the local government that appoints the person under Section 300A.0023.

(b) An employee of the district may not serve as a director.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0025. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0026. AUTHORITY TO SUE AND BE SUED. The board may

sue and be sued on behalf of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0027. DISTRICT FINANCES. Subchapter F, Chapter 287, other than Sections 287.129 and 287.130, applies to the district in the same manner that those provisions apply to a health services district created under Chapter 287. This section does not authorize the district to issue bonds.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0028. DISSOLUTION. A district shall be dissolved if the local governments that created the district adopt concurrent orders to dissolve the district and the concurrent orders contain identical provisions.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0029. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After dissolution of a district under Section 300A.0028, the board shall continue to control and administer any property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) As soon as practicable after the dissolution of the district, the board shall transfer to each institutional health care provider in the district the provider's proportionate share of any remaining funds in any local provider participation fund created by the district under Section 300A.0102.

(c) If, after administering any property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the local governments that created the district in proportion to the funds contributed to the district by each local government, including a paying hospital in the local government.

(d) If, after complying with Subsections (b) and (c) and administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the local governments that created the district in proportion to the funds contributed to the district by each local government, including a paying hospital in the local government.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0030. ACCOUNTING AFTER DISSOLUTION. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Section 300A.0029, the board shall provide an accounting to each local government that created the district. The accounting must show the manner in which the assets and debts of the district were distributed.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER C. HEALTH CARE PROVIDER PARTICIPATION PROGRAM; POWERS AND DUTIES OF DISTRICT BOARD

Sec. 300A.0051. HEALTH CARE PROVIDER PARTICIPATION PROGRAM. The board of a district may authorize the district to participate in a health care provider participation program on the affirmative vote of a majority of the board, subject to the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0052. LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. The board may require a mandatory payment authorized under this chapter by an institutional health care provider in the district only in the manner provided by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0053. RULES AND PROCEDURES. The board may adopt rules relating to the administration of the health care provider participation program in the district, including collection of the mandatory payments, expenditures, audits, and any other administrative aspects of the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0054. INSTITUTIONAL HEALTH CARE PROVIDER REPORTING. If the board authorizes the district to participate in a health care provider participation program under this chapter, the board shall require each institutional health care provider located in the district to submit to the district a copy of any financial and utilization data required by and reported to the Department of State Health Services under Sections 311.032 and 311.033 and any rules adopted by the executive commissioner of the Health and Human Services Commission to implement those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 300A.0101. HEARING. (a) In each year that the board authorizes a health care provider participation program under this chapter, the board shall hold a public hearing on the amounts of any mandatory payments that the board intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Not later than the fifth day before the date of the hearing required under Subsection (a), the board shall publish notice of the hearing in a newspaper of general circulation in each local government that creates the district and provide written notice of the hearing to the chief operating officer of each institutional health care provider in the district.

(c) A representative of a paying hospital is entitled to appear at the time and place designated in the public notice and be heard regarding any matter related to the mandatory payments authorized

under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0102. LOCAL PROVIDER PARTICIPATION FUND; DEPOSITORY. (a) If the board collects a mandatory payment authorized under this chapter, the board shall create a local provider participation fund in one or more banks designated by the district as a depository for the mandatory payments received by the district.

(b) The board may withdraw or use money in the local provider participation fund of the district only for a purpose authorized under this chapter.

(c) All funds collected under this chapter shall be secured in the manner provided for securing public funds.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0103. DEPOSITS TO FUND; AUTHORIZED USES OF MONEY. (a) The local provider participation fund established under Section 300A.0102 consists of:

(1) all revenue received by the district attributable to mandatory payments authorized under this chapter;

(2) money received from the Health and Human Services Commission as a refund of an intergovernmental transfer from the district to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment; and

(3) the earnings of the fund.

(b) Money deposited to the local provider participation fund may be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of Medicaid payments for:

(A) uncompensated care payments to nonpublic hospitals, if those payments are authorized under the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section

1315);

(B) uniform rate enhancements for nonpublic hospitals in the Medicaid managed care service area in which the district is located;

(C) payments available under another waiver program authorizing payments that are substantially similar to Medicaid payments to nonpublic hospitals described by Paragraph (A) or (B); or

(D) any reimbursement to nonpublic hospitals for which federal matching funds are available;

(2) subject to Section 300A.0151(d), pay the administrative expenses of the district in administering the program, including collateralization of deposits;

(3) refund all or a portion of a mandatory payment collected in error from a paying hospital;

(4) refund to paying hospitals a proportionate share of the money that the district:

(A) receives from the Health and Human Services Commission that is not used to fund the nonfederal share of Medicaid supplemental payment program payments; or

(B) determines cannot be used to fund the nonfederal share of Medicaid supplemental payment program payments;

(5) transfer funds to the Health and Human Services Commission if the district is required by law to transfer the funds to address a disallowance of federal matching funds with respect to payments, rate enhancements, and reimbursements for which the district made intergovernmental transfers described by Subdivision (1); and

(6) reimburse the district if the district is required by the rules governing the uniform rate enhancement program described by Subdivision (1)(B) to incur an expense or forego Medicaid reimbursements from the state because the balance of the local provider participation fund is not sufficient to fund that rate enhancement program.

(c) Money in the local provider participation fund may not be commingled with other district funds or other funds of a local government that creates the district.

(d) Notwithstanding any other provision of this chapter, with respect to an intergovernmental transfer of funds described by Subsection (b)(1) made by the district, any funds received by the state, district, or other entity as a result of the transfer may not

be used by the state, district, or any other entity to:

(1) expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152); or

(2) fund the nonfederal share of payments to nonpublic hospitals available through the Medicaid disproportionate share hospital program or the delivery system reform incentive payment program.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0104. ACCOUNTING OF FUNDS. The district shall maintain an accounting of the funds received from each local government that creates the district, including a paying hospital located in a hospital district, county, or municipality that created the district, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBCHAPTER E. MANDATORY PAYMENTS

Sec. 300A.0151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Except as provided by Subsection (e), if the board authorizes a health care provider participation program under this chapter, the district shall require an annual mandatory payment to be assessed on the net patient revenue of each institutional health care provider located in the district. The board shall provide that the mandatory payment is to be assessed at least annually, but not more often than quarterly. In the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an institutional health care provider located in the district as determined by the data reported to the Department of State Health Services under Sections 311.032 and 311.033 in the most recent fiscal year for which that data was reported. If the institutional health care provider did not report any data under those sections, the provider's net patient revenue is the amount of that revenue as contained in the provider's Medicare

cost report submitted for the previous fiscal year or for the closest subsequent fiscal year for which the provider submitted the Medicare cost report. The district shall update the amount of the mandatory payment on an annual basis.

(b) The amount of a mandatory payment authorized under this chapter must be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district as permitted under federal law. A health care provider participation program authorized under this chapter may not hold harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w).

(c) The board shall set the amount of a mandatory payment authorized under this chapter. The aggregate amount of the mandatory payments required of all paying hospitals in the district may not exceed six percent of the aggregate net patient revenue from hospital services provided by all paying hospitals in the district.

(d) Subject to Subsection (c), the board shall set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the district for activities under this chapter and to fund an intergovernmental transfer described by Section 300A.0103(b)(1). The annual amount of revenue from mandatory payments that shall be paid for administrative expenses by the district for activities under this chapter may not exceed $150,000, plus the cost of collateralization of deposits, regardless of actual expenses.

(e) A paying hospital may not add a mandatory payment required under this section as a surcharge to a patient.

(f) For purposes of any hospital district that creates a district under this chapter, a mandatory payment assessed under this chapter is not a tax for hospital purposes for purposes of the applicable provision of Article IX, Texas Constitution.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) The district may designate an official of the district or contract with another person to assess and collect the mandatory payments authorized under this chapter.

(b) The person charged by the district with the assessment and collection of mandatory payments shall charge and deduct from the mandatory payments collected for the district a collection fee in an amount not to exceed the person's usual and customary charges for like services.

(c) If the person charged with the assessment and collection of mandatory payments is an official of the district, any revenue from a collection fee charged under Subsection (b) shall be deposited in the district general fund and, if appropriate, shall be reported as fees of the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0153. CORRECTION OF INVALID PROVISION OR PROCEDURE; LIMITATION OF AUTHORITY. (a) This chapter does not authorize the district to collect mandatory payments for the purpose of raising general revenue or any amount in excess of the amount reasonably necessary to:

(1) fund the nonfederal share of a Medicaid supplemental payment program or Medicaid managed care rate enhancements for nonpublic hospitals; and

(2) cover the administrative expenses of the district associated with activities under this chapter and other uses of the fund described by Section 300A.0103(b).

(b) To the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, the board may provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services. A rule adopted under this section may not create, impose, or materially expand the legal or financial liability or responsibility of the district or an institutional health care provider in the district beyond the provisions of this chapter. This section does not require the board to adopt a rule.

(c) The district may only assess and collect a mandatory payment authorized under this chapter if a waiver program, uniform rate enhancement, or reimbursement described by Section 300A.0103(b)(1) is available to the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0154. REPORTING REQUIREMENTS. (a) The board of a district that authorizes a program under this chapter shall report information to the Health and Human Services Commission regarding the program on a schedule determined by the commission.

(b) The information must include:

(1) the amount of the mandatory payments required and collected in each year the program is authorized;

(2) any expenditure of money attributable to mandatory payments collected under this chapter, including:

(A) any contract with an entity for the administration or operation of a program authorized by this chapter; or

(B) a contract with a person for the assessment and collection of a mandatory payment as authorized under Section 300A.0152; and

(3) the amount of money attributable to mandatory payments collected under this chapter that is used for any other purpose.

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules to administer this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0155. EXPIRATION OF AUTHORITY. The authority of a district to administer and operate a program under this chapter expires on September 1 following the second anniversary of the date the board of the district authorized the district to participate in the program as provided by Section 300A.0051.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

Sec. 300A.0156. AUTHORITY TO REFUSE FOR VIOLATION. The Health and Human Services Commission may refuse to accept money from a local provider participation fund established under this chapter if the commission determines that doing so may violate federal law.

Added by Acts 2019, 86th Leg., R.S., Ch. 923 (H.B. 4289), Sec. 2, eff. June 10, 2019.

SUBTITLE E. COOPERATIVE ASSOCIATIONS
CHAPTER 301. COOPERATIVE ASSOCIATIONS
SUBCHAPTER A. HOSPITAL LAUNDRY COOPERATIVE ASSOCIATIONS

Sec. 301.001. DEFINITIONS. In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

(A) a municipality;

(B) a political subdivision of the state;

(C) a state-supported health-related institution, including:

(i) The Texas A&M University System;

(ii) The University of Texas System; and

(iii) the Texas Woman's University System;

(D) a nonprofit health-related institution; or

(E) a cooperative association created under Subchapter B, a unit of which is located in a county with a population of more than 3.3 million.

(2) "Laundry system" includes:

(A) buildings in which soiled or infected clothing, uniforms, or linens are laundered;

(B) land and interests in land as sites for buildings or access to buildings;

(C) equipment and appliances for a laundry operation;

(D) supplies for a laundry operation;

(E) clothing, uniforms, and linens;

(F) automotive and other personal property appropriate for delivery and pickup services; and

(G) other property and equipment incidental or appropriate to the operation of laundry facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 74, eff. Sept. 1, 1991. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 43, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 145 (S.B. 1126), Sec. 32, eff. May 26, 2021.

Sec. 301.002. CREATION OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION. (a) Eligible institutions may create a hospital laundry cooperative association to establish, operate, and maintain a laundry system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Hospital Laundry Cooperative Association."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.003. ARTICLES OF INCORPORATION. (a) Eligible institutions creating a hospital laundry cooperative association may file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.004. USE OF PUBLIC FUNDS PROHIBITED. Public funds appropriated to a state department or to a state institution may not be used to create a hospital laundry cooperative association under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.005. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS. (a) An eligible institution may be elected to membership in a hospital laundry cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.006. MEMBERSHIP NOT REQUIRED. A component institution of a state-supported institution is not required to be a member of a hospital laundry cooperative association created under this subchapter but may be a member of one or more associations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.007. POWERS OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION. A hospital laundry cooperative association may:

(1) acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible

institutions that are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a laundry system and may own, hold, improve, develop, and manage land and interests in land acquired;

(3) construct, improve, enlarge, and equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing and fabrics, and the transportation and distribution of those articles;

(6) encumber and dispose of any personal property owned or held by the association;

(7) acquire by purchase or other method uniforms, clothing, or linen for its members;

(8) borrow or raise money without limit as to amount;

(9) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(10) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on, creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.008. COST OF SERVICES. A hospital laundry cooperative association may determine the amount to be charged for providing laundry services through its laundry system to eligible institutions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.009. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) A hospital laundry cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a laundry system.

(b) The association shall pay bonds, notes, or other obligations of the association solely from revenue received from the operation of a laundry system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal of or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.010. BONDS AS INVESTMENTS. Bonds issued by a hospital laundry cooperative association under this subchapter are legal and authorized investments for:

(1) a bank;

(2) a savings and loan association;

(3) an insurance company;

(4) a fiduciary;

(5) a trustee; and

(6) a sinking fund of a municipality, county, school district, or other political subdivision or corporation of the state or other public fund of the state or a state agency, including the permanent school fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.011. BONDS AS SECURITY FOR DEPOSITS. A hospital laundry cooperative association's bonds may secure the deposits of public funds of the state or a municipality, county, school district,

or other political subdivision or corporation of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.012. LIABILITY TO CREDITORS. Except as provided by this subchapter, a member of a hospital laundry cooperative association is not liable to the association or its creditors in excess of the amount contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.013. TAX EXEMPTION. (a) A hospital laundry cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.014. ANNUAL REPORT. A hospital laundry cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.015. SURPLUS REVENUE. The directors of a hospital laundry cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any

surplus revenue derived from the laundry system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.016. LOANS TO MEMBERS PROHIBITED. A hospital laundry cooperative association may not loan money to a member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. MISCELLANEOUS COOPERATIVE ASSOCIATIONS

Sec. 301.031. DEFINITIONS. In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

(A) a municipality;

(B) a political subdivision of the state;

(C) a health-related institution supported by the state or federal government or by a federal department, division, or agency, including:

(i) The Texas A&M University System;

(ii) The University of Texas System;

(iii) the Texas Woman's University System; and

(iv) the Children's Nutrition Research Center;

(D) a nonprofit health-related institution; and

(E) a cooperative association created to provide a system, a unit of which is located in a county that has a population of more than 1.3 million and in which a municipality with a population of more than one million is primarily located, or in a county contiguous to a county having those characteristics.

(2) "System" includes all property and facilities, including buildings and land and interests in land, necessary, incidental, or appropriate to provide the following services for the benefit of members of a cooperative association:

(A) laundering services;

(B) central heating and cooling services, including steam and chilled water supply;

(C) communication services, including broadcast and other electronic communications, cable television, and transmission of X-rays, records, and documents;

(D) facilities and services for parking and traffic control, including the installation of appropriate traffic control devices on private streets;

(E) preparation, processing, delivery, and service of food, including food necessary for special diets;

(F) central administrative, financial, billing, conference, and educational services;

(G) child care services for the children of employees, consultants, students, and volunteers of cooperative association members, and temporary child care services for the children of patients and customers of those members;

(H) waste removal and disposal services of all types, including incineration and the removal, disposal, and abatement of hazardous wastes, including asbestos, lead, and other toxic substances;

(I) generation, cogeneration, purchase, sale, and pooling of energy in any form to the extent reasonably necessary to support the activities of a cooperative association;

(J) production and publication of educational or research materials;

(K) storage and warehousing services;

(L) transportation services;

(M) police and security services; and

(N) housing for employees, consultants, students, volunteers, and patients of members of the cooperative association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.05(a), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 75, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 38, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 145 (S.B. 1126), Sec. 33, eff. May 26, 2021.

Sec. 301.032. CREATION OF COOPERATIVE ASSOCIATION. (a) Eligible institutions may create a cooperative association to

establish, operate, and maintain a system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Cooperative Association."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.033. ARTICLES OF INCORPORATION. (a) Eligible institutions creating a cooperative association may prepare and file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.034. USE OF PUBLIC FUNDS PROHIBITED. Public funds appropriated to a state department or to a state institution may not be used to create a cooperative association under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.035. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS. (a) An eligible institution may be elected to membership in a cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an

association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership, if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.036. MEMBERSHIP NOT REQUIRED. A component institution of an institution that is supported by the federal or state government or a department, division, or agency of the federal government is not required to be a member of a cooperative association created under this subchapter but may be a member of one or more associations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.037. POWERS OF COOPERATIVE ASSOCIATION. To carry out the purposes of this subchapter, a cooperative association may:

(1) acquire, own, and operate a system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible institutions that are necessarily related to the acquisition, ownership, operation, and maintenance of a system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a system and may own, hold, improve, develop, and manage any land and interests in land acquired;

(3) construct, improve, enlarge, or equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a system;

(6) borrow or raise money;

(7) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(8) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on, creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.038. PROVISION OF SERVICES; COSTS. (a) A cooperative association may provide services from a system to eligible institutions and may determine the amount to be charged for providing the services.

(b) Notwithstanding Sections 301.032 and 301.037, a cooperative association may provide from a system central heating and cooling services, including steam and heated and chilled water supply, to persons other than eligible institutions and may determine the amount to be charged for providing services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 10, eff. September 1, 2007.

Sec. 301.039. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) A cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a system.

(b) The association shall pay the bonds, notes, or other obligations of the association solely from revenue received from the operation of a system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal of or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.040. BONDS AS INVESTMENTS. Bonds issued by a cooperative association under this subchapter are legal and authorized investments for:

(1) a bank;
(2) a savings and loan association;
(3) an insurance company;
(4) a fiduciary; and
(5) a trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.041. LIABILITY TO CREDITORS. (a) Except as provided by this subchapter, a member of a cooperative association is not liable to the association or its creditors in excess of the amount contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases.

(b) This subchapter does not authorize a state-supported health-related institution to make a financial commitment beyond the current budget period for the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.042. TAX EXEMPTION. (a) A cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.043. ANNUAL REPORT. A cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.044. SURPLUS REVENUE. The directors of a cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any surplus revenue derived from a system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.045. LOANS TO MEMBERS PROHIBITED. A cooperative association may not loan money to a member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.046. LIBERAL CONSTRUCTION. This subchapter shall be liberally construed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 301.047. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not prevent a cooperative association from:

(1) creating recourse or nonrecourse debt in the form of bonds, debentures, notes, or any other form of obligation;

(2) encumbering, mortgaging, pledging, or granting a security interest in any property of the cooperative association;

(3) refunding existing debt or obligations by any means available under this subchapter; or

(4) otherwise exercising all express or implied powers granted by Section 301.033(b), 301.037, 301.038, 301.039, or 301.044, or granted by state corporation laws.

(b) This section only clarifies the powers of cooperative associations and does not expand their powers.

Added by Acts 1993, 73rd Leg., ch. 902, Sec. 1, eff. June 19, 1993.

SUBTITLE F. POWERS AND DUTIES OF HOSPITALS

CHAPTER 311. POWERS AND DUTIES OF HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SPECIAL HOSPITAL REQUIREMENTS FOR GRADUATE OF FOREIGN MEDICAL SCHOOL PROHIBITED. (a) A hospital may not, as a condition to beginning a hospital internship or residency, require a United States citizen who resides in this state and who holds a diploma from a medical school outside the United States that is listed in the AVICENNA Directory for Medicine published by the University of Copenhagen, in collaboration with the World Health Organization and the World Federation for Medical Education, to:

(1) take an examination other than an examination required by the Texas Medical Board to be taken by a graduate of a medical school in the United States before allowing that graduate to begin an internship or residency;

(2) complete a period of internship or graduate clinical training; or

(3) be certified by the Educational Commission for Foreign Medical Graduates.

(b) This section applies only to a hospital that:

(1) is licensed by this state;

(2) is operated by this state or a political subdivision of this state; or

(3) receives direct or indirect state financial assistance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0835, eff. April 2, 2015.

Sec. 311.002. ITEMIZED STATEMENT OF BILLED SERVICES. (a) Each hospital shall develop, implement, and enforce a written policy for the billing of hospital services and supplies. The policy must include:

(1) a periodic review of the itemized statements required by Subsection (b); and

(2) a procedure for handling complaints relating to billed services.

(b) Not later than the 30th business day after the date of the hospital discharge of a person who receives hospital services, the hospital shall provide on request an itemized statement of the billed services provided to the person. The itemized statement must:

(1) be printed in a conspicuous manner;

(2) list the date services and supplies were provided;

(3) state whether:

(A) a claim has been submitted to a third party payor; and

(B) a third party payor has paid the claim;

(4) if payment is not required, state that payment is not required:

(A) in a typeface that is bold-faced, capitalized, underlined, or otherwise set out from surrounding written material; or

(B) by other reasonable means so as to be conspicuous that payment is not required; and

(5) contain the telephone number of the facility to call for an explanation of acronyms, abbreviations, and numbers used to describe the services provided or supplies used or any other questions regarding the bill.

(c) Before a person is discharged from a hospital, the hospital shall inform the person of the availability of the statement.

(d) To be entitled to receive a statement, a person must

request the statement not later than one year after the date on which the person is discharged from the hospital. The hospital shall provide the statement to the person not later than the 30th day after the date on which the person requests the statement.

(e) A hospital shall provide an itemized statement of billed services to a third party payor who is actually or potentially responsible for paying all or part of the billed services provided to a patient and who has received a claim for payment of those services. To be entitled to receive a statement, the third party payor must request the statement from the hospital and must have received a claim for payment. The request must be made not later than one year after the date on which the payor received the claim for payment. The hospital shall provide the statement to the payor not later than the 30th day after the date on which the payor requests the statement. If a third party payor receives a claim for payment of part but not all of the billed services, the third party payor may request an itemized statement of only the billed services for which payment is claimed or to which any deduction or copayment applies.

(f) If a person, including a third party payor, requests more than two copies of the statement, the hospital may charge a reasonable fee for the third and subsequent copies provided to that person. The fee may not exceed the hospital's cost to copy, process, and deliver the copy to the person.

(g) The Department of State Health Services or other appropriate licensing agency may enforce this section by assessing an administrative penalty, obtaining an injunction, or providing any other appropriate remedy, including suspending, revoking, or refusing to renew a hospital's license.

(h) In this section, "hospital" includes:

(1) a treatment facility licensed under Chapter 464; and

(2) a mental health facility licensed under Chapter 577.

(i) This section does not apply to a hospital maintained or operated by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 2.01, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 610, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0836, eff. April 2, 2015.

Sec. 311.0025. AUDITS OF BILLING. (a) A hospital, treatment facility, mental health facility, or health care professional may not submit to a patient or a third party payor a bill for a treatment that the hospital, facility, or professional knows was not provided or knows was improper, unreasonable, or medically or clinically unnecessary.

(b) If the appropriate licensing agency receives a complaint alleging a violation of Subsection (a), the agency may audit the billings and patient records of the hospital, treatment facility, mental health facility, or health care professional.

(c) A hospital, treatment facility, mental health facility, or health care professional that violates Subsection (a) is subject to disciplinary action, including denial, revocation, suspension, or nonrenewal of the license of the hospital, facility, or professional. Disciplinary action taken under this section is in addition to any other civil, administrative, or criminal penalty provided by law.

(d) In this section:

(1) "Health care professional" means an individual licensed, certified, or regulated by a health care regulatory agency who is eligible for reimbursement for treatment ordered or rendered by that professional.

(2) "Hospital" means a hospital licensed under Chapter 241.

(3) "Mental health facility" means a mental health facility licensed under Chapter 577.

(4) "Treatment facility" means a treatment facility licensed under Chapter 464.

(e) A licensing agency may not take disciplinary action against a hospital, treatment facility, mental health facility, or health care professional for unknowing and isolated billing errors.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 2.02, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.003. REIMBURSEMENT FOR INFANT TRANSPORT TO HOSPITAL

NEONATAL INTENSIVE CARE UNIT. (a) A hospital that agrees to admit an infant into its level III neonatal intensive care unit shall pay for the part of the cost of transporting the infant to the hospital from any location in this state that the hospital administrator determines cannot be paid:

(1) by a member of the infant's immediate family or other person legally responsible for the infant's support through personal means; or

(2) by insurance or another benefit system that pays for transportation for that purpose.

(b) A hospital is entitled to receive state reimbursement for funds spent by the hospital under Subsection (a).

(c) The Department of State Health Services shall administer the state funds for reimbursement under this section, and may spend not more than $100,000 each fiscal year from earned federal funds or private donations to implement this section.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules that establish qualifications for reimbursement and provide procedures for applying for reimbursement.

(e) In this section, "level III neonatal intensive care unit" means a neonatal care unit that complies with standards adopted by the American Academy of Pediatrics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0837, eff. April 2, 2015.

Sec. 311.004. STANDARDIZED PATIENT RISK IDENTIFICATION SYSTEM. (a) In this section:

(1) "Department" means the Department of State Health Services.

(1-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Hospital" means a general or special hospital as defined by Section 241.003. The term includes a hospital maintained or operated by this state.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(69), eff. April 2, 2015.

(c) Unless the department authorizes an exemption for the reason stated in Subsection (d), the department shall require each hospital to implement and enforce the statewide standardized patient risk identification system under which a patient with a specific medical risk may be readily identified through the use of the system to communicate to hospital personnel the existence of that risk.

(d) The department may exempt from the statewide standardized patient risk identification system a hospital that seeks to adopt another patient risk identification methodology supported by evidence-based protocols for the practice of medicine.

(e) The department shall modify the statewide standardized patient risk identification system in accordance with evidence-based medicine as necessary.

(f) The executive commissioner may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 5.01, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0838, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0839, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(69), eff. April 2, 2015.

Sec. 311.005. WATER WELLS FOR USE BY HOSPITALS IN CERTAIN COUNTIES IN EVENT OF EMERGENCY OR NATURAL DISASTER. (a) This section applies only to a hospital located in a county that:

(1) has a population of more than 250,000; and

(2) borders the Neches River.

(b) A hospital to which this section applies may drill a water well on property owned by the hospital for the purpose of producing water to supplement the hospital's water supply in the event that an emergency or natural disaster prevents the hospital from receiving water from the hospital's usual source.

(c) This section does not affect the authority of a groundwater conservation district to regulate groundwater production under Chapter 36, Water Code, or other law governing a groundwater

conservation district.

Added by Acts 2023, 88th Leg., R.S., Ch. 978 (S.B. 2406), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. EMERGENCY SERVICES

Sec. 311.021. DEFINITION. In this subchapter, "emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately to:

(1) sustain a person's life;

(2) prevent serious permanent disfigurement or loss or impairment of the function of a body part or organ; or

(3) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.022. DISCRIMINATION PROHIBITED IN DENIAL OF SERVICES; CRIMINAL PENALTIES. (a) An officer, employee, or medical staff member of a general hospital may not deny emergency services because a person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry if:

(1) the services are available at the hospital; and

(2) the person is diagnosed by a licensed physician as requiring those services.

(b) An officer or employee of a general hospital may not deny a person in need of emergency services access to diagnosis by a licensed physician on the hospital staff because the person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry.

(c) In addition, the person needing emergency services may not be subjected to arbitrary, capricious, or unreasonable discrimination based on age, sex, physical condition, or economic status.

(d) An officer, employee, or medical staff member of a general hospital commits an offense if that person recklessly violates this section. An offense under this subsection is a Class B misdemeanor,

except that if the offense results in permanent injury, permanent disability, or death, the offense is a Class A misdemeanor.

(e) An officer, employee, or medical staff member of a general hospital commits an offense if that person intentionally or knowingly violates this section. An offense under this subsection is a Class A misdemeanor, except that if, as a direct result of the offense, a person denied emergency services dies, the offense is a felony of the third degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.023. NO LIABILITY FOR FAILURE TO PROVIDE EMERGENCY SERVICES AFTER GOOD FAITH EFFORT. An employee of a general hospital that does not have physician services available at the time of an emergency is not in violation of Section 311.022 if, after a reasonable good faith effort, a physician fails to provide or delegate the provision of medical services as required by state statutes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.024. PAYMENT FOR SERVICES REQUIRED. This subchapter does not relieve a person of that person's obligation to pay for services provided by a hospital if the person can pay for those services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. HOSPITAL DATA REPORTING AND COLLECTION SYSTEM

Sec. 311.031. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(69), eff. April 2, 2015.

(2) "Charity care" means the unreimbursed cost to a hospital of:

(A) providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as "financially indigent" or "medically indigent"; and/or

(B) providing, funding, or otherwise financially supporting health care services provided to financially indigent persons through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(3) "Contractual allowances" means the difference between revenue at established rates and amounts realizable from third-party payors under contractual agreements.

(4) "Department" means the Department of State Health Services.

(5) "Donations" means the unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(6) "Education-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs including:

(A) education of physicians, nurses, technicians, and other medical professionals and health care providers;

(B) provision of scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs; and

(D) community health education through informational programs, publications, and outreach activities in response to community needs.

(6-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Financially indigent" means an uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(8) "Government-sponsored indigent health care" means the unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(9) "Health care organization" means a nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

(10) "Hospital" means:

(A) a general or special hospital licensed under Chapter 241;

(B) a private mental hospital licensed under Chapter 577; and

(C) a treatment facility licensed under Chapter 464.

(11) "Hospital eligibility system" means the financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system which sets the income level eligible for charity care lower than that required by counties under Section 61.023 or higher, in the case of the financially indigent, than 200 percent of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(12) "Hospital system" means a system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

(13) "Medically indigent" means a person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(14) "Research-related costs" means the unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting facilities, equipment, and personnel for medical and clinical research conducted in response to community needs.

(15) "Subsidized health services" means those services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity revenue sources. Subsidized health services may include but are not limited to:

(A) emergency and trauma care;

(B) neonatal intensive care;

(C) free-standing community clinics; and

(D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization

programs.

(16) "Unreimbursed costs" means the costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. Prior to January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining unreimbursed costs. After January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 360, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 6.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 781, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0840, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(69), eff. April 2, 2015.

Sec. 311.032. DEPARTMENT ADMINISTRATION OF HOSPITAL REPORTING AND COLLECTION SYSTEM. (a) The department shall establish a uniform reporting and collection system for hospital financial and

utilization data.

(b) The executive commissioner shall adopt necessary rules consistent with this subchapter to govern the reporting and collection of data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 726, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0841, eff. April 2, 2015.

Sec. 311.033. FINANCIAL AND UTILIZATION DATA REQUIRED. (a) A hospital shall submit to the department financial and utilization data for that hospital, including data relating to the hospital's:

(1) total gross revenue, including:
- (A) Medicare gross revenue;
- (B) Medicaid gross revenue;
- (C) other revenue from state programs;
- (D) revenue from local government programs;
- (E) local tax support;
- (F) charitable contributions;
- (G) other third party payments;
- (H) gross inpatient revenue; and
- (I) gross outpatient revenue;

(2) total deductions from gross revenue, including:
- (A) contractual allowance; and
- (B) any other deductions;

(3) charity care;

(4) bad debt expense;

(5) total admissions, including:
- (A) Medicare admissions;
- (B) Medicaid admissions;
- (C) admissions under a local government program;
- (D) charity care admissions; and
- (E) any other type of admission;

(6) total discharges;

(7) total patient days;

(8) average length of stay;

(9) total outpatient visits;

(10) total assets;

(11) total liabilities;

(12) estimates of unreimbursed costs of subsidized health services reported separately in the following categories:

(A) emergency care and trauma care;

(B) neonatal intensive care;

(C) free-standing community clinics;

(D) collaborative efforts with local government or private agencies in preventive medicine, such as immunization programs; and

(E) other services that satisfy the definition of "subsidized health services" contained in Section 311.031(15);

(13) donations;

(14) total cost of reimbursed and unreimbursed research;

(15) total cost of reimbursed and unreimbursed education separated into the following categories:

(A) education of physicians, nurses, technicians, and other medical professionals and health care providers;

(B) scholarships and funding to medical schools, colleges, and universities for health professions education;

(C) education of patients concerning diseases and home care in response to community needs;

(D) community health education through informational programs, publications, and outreach activities in response to community needs; and

(E) other educational services that satisfy the definition of "education-related costs" under Section 311.031(6).

(b) The data must be based on the hospital's most recent audited financial records.

(c) The data must be submitted in the form prescribed by the department and at the time established by department rule.

(d) A hospital that does not submit to the department the data required under this section is subject to civil penalties under Section 104.043.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 360, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 797 (S.B. 1326), Sec. 11, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0842, eff. April 2, 2015.

Sec. 311.0335. MENTAL HEALTH AND CHEMICAL DEPENDENCY DATA. (a) A hospital that provides mental health or chemical dependency services shall submit to the department financial and utilization data relating to the mental health and chemical dependency services provided by the hospital, including data for inpatient and outpatient services relating to:

(1) patient demographics, including race, ethnicity, age, gender, and county of residence;

(2) admissions;

(3) discharges, including length of inpatient treatment;

(4) specific diagnoses and procedures according to criteria prescribed by the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition, Revised, or a later version prescribed by department rule;

(5) total charges and the components of the charges;

(6) payor sources; and

(7) use of mechanical restraints.

(b) The data must be submitted in the form prescribed by the department and at the time established by department rule.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 6.02, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0843, eff. April 2, 2015.

Sec. 311.035. USE OF DATA. (a) The department shall use the data collected under this subchapter to publish an annual report regarding:

(1) the amount of charity care, bad debt, and other uncompensated care hospitals provide;

(2) the use of hospital services by indigent patients; and

(3) the effect of indigent care services on hospitals.

(b) Repealed by Acts 1995, 74th Leg., ch. 726, Sec. 5(1), eff. Sept. 1, 1995.

(c) The department shall enter into an interagency agreement with the Texas Department of Insurance relating to the mental health and chemical dependency data collected under Section 311.0335. The agreement shall address the collection, analysis, and sharing of the data by the agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 6.03, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 726, Sec. 3, 5(1), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0844, eff. April 2, 2015.

Sec. 311.036. DATA VERIFICATION. (a) Before the department may publish the report required by Section 311.035 or provide data to the public in any other manner, the department shall give each hospital a copy of the preliminary report or provide the hospital an opportunity in some other manner to verify the data relating to that hospital.

(b) If a hospital does not submit corrected data before the 31st day after the date on which the hospital receives the preliminary report or other data, the department shall presume that the data is correct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 311.037. CONFIDENTIAL DATA; CRIMINAL PENALTY. (a) The following data reported or submitted to the department under this subchapter is confidential:

(1) data regarding a specific patient; or

(2) financial data regarding a provider or facility submitted to the department before September 1, 1987. All financial data regarding a provider or facility submitted after September 1, 1987, are no longer confidential.

(b) Before the department may disclose confidential data under this subchapter, the department must remove any information that identifies a specific patient.

(c) A person commits an offense if the person:

(1) discloses, distributes, or sells confidential data

obtained under this subchapter; or

(2) violates Subsection (b).

(d) An offense under Subsection (c) is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 360, Sec. 3, eff. Sept. 1, 1993.

Sec. 311.039. EXEMPTION. A hospital may, but is not required to, provide the data required by Section 311.033 if the hospital:

(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:

(A) the patient or any person legally obligated to support the patient;

(B) a third party payor; or

(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER D. COMMUNITY BENEFITS AND CHARITY CARE

Sec. 311.041. POLICY STATEMENT. It is the purpose of this subchapter to clarify and set forth the duties, responsibilities, and benefits that apply to hospitals for providing community benefits that include charity care.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 204, Sec. 22.01, eff. Sept. 1, 2003.

Sec. 311.042. DEFINITIONS. In this subchapter:

(1) "Charity care" means those amounts defined as charity care in Section 311.031(2).

(2) "Community benefits" means the unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community

benefits does not include the cost to the hospital of paying any taxes or other governmental assessments.

(3) "Contributions" means the dollar value of cash donations and the fair market value at the time of donation of in-kind donations to the hospital from individuals, organizations, or other entities. Contributions does not include the value of a donation designated or otherwise restricted by the donor for purposes other than charity care.

(3-a) "Department" means the Department of State Health Services.

(4) "Donations" means those amounts defined as donations in Section 311.031(5).

(5) "Education-related costs" means those amounts defined as education-related costs in Section 311.031(6).

(6) "Government-sponsored indigent health care" means those amounts defined as government-sponsored indigent health care in Section 311.031(8).

(7) "Government-sponsored program unreimbursed costs" means the unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the TRICARE program of the United States Department of Defense, and other federal, state, or local government health care programs.

(8) "Net patient revenue" is an accounting term and shall be calculated in accordance with generally accepted accounting principles for hospitals.

(9)(A) "Nonprofit hospital" means a hospital that is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(iii) organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country.

(B) For purposes of this subchapter, a "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including but not limited to the patient or any person legally obligated to support the patient, third-party payors, Medicare,

Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services; or

(iv) is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area.

(10) "Nonprofit supporting entities" means nonprofit entities created by the hospital or its parent entity to further the charitable purposes of the hospital and that are owned or controlled by the hospital or its parent entity.

(11) "Research-related costs" means those amounts defined as research-related costs in Section 311.031(14).

(12) "Tax-exempt benefits" means all of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules, and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(13) "Subsidized health services" means those amounts defined as subsidized health services in Section 311.031(15).

(14) "Unreimbursed costs" means costs as defined in Section 311.031(16).

(15) "Hospital system" means a system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 781, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0845, eff. April 2, 2015.

Sec. 311.043. DUTY OF NONPROFIT HOSPITALS TO PROVIDE COMMUNITY BENEFITS. (a) A nonprofit hospital shall provide health care services to the community and shall comply with all federal, state, and local government requirements for tax exemption in order to maintain such exemption. These health care services to the community shall include charity care and government-sponsored indigent health care and may include other components of community benefits as both terms are defined in Sections 311.031 and 311.042.

(b) In order to qualify as a charitable organization under Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, and to satisfy the requirements of this subchapter, a nonprofit hospital shall provide community benefits, which include charity care and government-sponsored indigent health care, in an amount that satisfies the requirements of Section 311.045. A determination of the amount of charity care and government-sponsored indigent health care provided by a hospital shall be based on the most recently completed and audited prior fiscal year of the hospital.

(c) Reductions in the amount of community benefits, which includes charity care and government-sponsored indigent health care, provided by a nonprofit hospital shall be considered reasonable when the financial reserves of the hospital are reduced to such a level that the hospital would be in violation of any applicable bond covenants, when necessary to prevent the hospital from endangering its ability to continue operations, or if the hospital, as a result of a natural or other disaster, is required substantially to curtail its operations.

(d) A hospital's admissions policy must provide for the admission of financially indigent and medically indigent persons pursuant to its charity care requirements as set forth in this subchapter.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.044. COMMUNITY BENEFITS PLANNING BY NONPROFIT HOSPITALS. (a) A nonprofit hospital shall develop:

(1) an organizational mission statement that identifies the hospital's commitment to serving the health care needs of the community; and

(2) a community benefits plan defined as an operational plan for serving the community's health care needs that sets out goals and objectives for providing community benefits that include charity care and government-sponsored indigent health care, as the terms community benefits, charity care, and government-sponsored indigent health care are defined by Sections 311.031 and 311.042, and that identifies the populations and communities served by the hospital.

(b) When developing the community benefits plan, the hospital shall consider the health care needs of the community as determined by community-wide needs assessments. For purposes of this subsection, "community" means the primary geographic area and patient categories for which the hospital provides health care services; provided, however, that the primary geographic area shall at least encompass the entire county in which the hospital is located.

(c) The hospital shall include at least the following elements in the community benefits plan:

(1) mechanisms to evaluate the plan's effectiveness, including but not limited to a method for soliciting the views of the communities served by the hospital;

(2) measurable objectives to be achieved within a specified time frame; and

(3) a budget for the plan.

(d) In determining the community-wide needs assessment required by Subsection (b), a nonprofit hospital shall consider consulting with and seeking input from representatives of the following entities or organizations located in the community as defined by Subsection (b):

(1) the local health department;

(2) the public health region under Chapter 121;

(3) the public health district;

(4) health-related organizations, including a health professional association or hospital association;

(5) health science centers;

(6) private business;

(7) consumers;

(8) local governments; and

(9) insurance companies and managed care organizations with an active market presence in the community.

(e) Representatives of a nonprofit hospital shall consider meeting with representatives of the entities and organizations listed in Subsection (d) to assess the health care needs of the community and population served by the nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1101, Sec. 1, eff. Sept. 1, 1997.

Sec. 311.045. COMMUNITY BENEFITS AND CHARITY CARE REQUIREMENTS. (a) A nonprofit hospital or hospital system shall annually satisfy the requirements of this subchapter and of Sections 11.18(d)(1), 151.310(a)(2) and (e), and 171.063(a)(1), Tax Code, to provide community benefits which include charity care and government-sponsored indigent health care by complying with one or more of the standards set forth in Subsection (b). The hospital or hospital system shall file a statement with the Center for Health Statistics at the department and the chief appraiser of the local appraisal district no later than the 120th day after the hospital's or hospital system's fiscal year ends, stating which of the standards in Subsection (b) have been satisfied, provided, however, that the first report shall be filed no later than the 120th day after the end of the hospital's or hospital system's fiscal year ending during 1994. For hospitals in a hospital system, the corporate parent may elect to satisfy the charity care requirements of this subchapter for each of the hospitals within the system on a consolidated basis.

(b)(1) A nonprofit hospital or hospital system may elect to provide community benefits, which include charity care and government-sponsored indigent health care, according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital or hospital system, and the tax-exempt benefits received by the hospital or hospital system;

(B) charity care and government-sponsored indigent

health care are provided in an amount equal to at least 100 percent of the hospital's or hospital system's tax-exempt benefits, excluding federal income tax; or

(C) charity care and community benefits are provided in a combined amount equal to at least five percent of the hospital's or hospital system's net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least four percent of net patient revenue.

(2) For purposes of satisfying Subdivision (1)(C), a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(3) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be considered to have provided a reasonable amount of charity care and government-sponsored indigent health care and shall be deemed in compliance with the standards in this subsection.

(c) The providing of charity care and government-sponsored indigent health care in accordance with Subsection (b)(1)(A) shall be guided by the prudent business judgment of the hospital which will ultimately determine the appropriate level of charity care and government-sponsored indigent health care based on the community needs, the available resources of the hospital, the tax-exempt benefits received by the hospital, and other factors that may be unique to the hospital, such as the hospital's volume of Medicare and Medicaid patients. These criteria shall not be determinative factors, but shall be guidelines contributing to the hospital's decision, along with other factors which may be unique to the hospital. The standards set forth in Subsections (b)(1)(B) and (b)(1)(C) shall also not be considered determinative of the amount of charity care and government-sponsored indigent health care that will be considered reasonable under Subsection (b)(1)(A).

(d) For purposes of this section, a hospital that satisfies Subsection (b)(1)(A) or (b)(3) shall be excluded in determining a hospital system's compliance with the standards provided by Subsection (b)(1)(B) or (b)(1)(C).

(e) In any fiscal year that a hospital or hospital system, through unintended miscalculation, fails to meet any of the standards in Subsection (b), the hospital or hospital system shall not lose its

tax-exempt status without the opportunity to cure the miscalculation in the fiscal year following the fiscal year the failure is discovered by both meeting one of the standards and providing an additional amount of charity care and government-sponsored indigent health care that is equal to the shortfall from the previous fiscal year. A hospital or hospital system may apply this provision only once every five years.

(f) A nonprofit hospital or hospital system under contract with a local county to provide indigent health care services under Chapter 61 may credit unreimbursed costs from direct care provided to an eligible county resident toward meeting the nonprofit hospital's or system's charity care and government-sponsored indigent health care requirement.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 781, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 260, Sec. 1, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 654, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1263, Sec. 78, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0846, eff. April 2, 2015.

Sec. 311.0455. ANNUAL REPORT BY THE DEPARTMENT. (a) The department shall submit to the attorney general and comptroller not later than July 1 of each year a report listing each nonprofit hospital or hospital system that did not meet the requirements of Section 311.045 during the preceding fiscal year.

(b) The department shall submit to the attorney general and the comptroller not later than November 1 of each year a report containing the following information for each nonprofit hospital or hospital system during the preceding fiscal year:

(1) the amount of charity care, as defined by Section 311.031, provided;

(2) the amount of government-sponsored indigent health care, as defined by Section 311.031, provided;

(3) the amount of community benefits, as defined by Section 311.042, provided;

(4) the amount of net patient revenue, as defined by

Section 311.042, and the amount constituting four percent of net patient revenue;

(5) the dollar amount of the hospital's or hospital system's charity care and community benefits requirements met;

(6) a computation of the percentage by which the amount described by Subdivision (5) is above or below the dollar amount of the hospital's or hospital system's charity care and community benefits requirements;

(7) the amount of tax-exempt benefits, as defined by Section 311.042, provided, if the hospital is required to report tax-exempt benefits under Section 311.045(b)(1)(A) or (b)(1)(B); and

(8) the amount of charity care expenses reported in the hospital's or hospital system's audited financial statement.

(c) The department shall make the report required by Subsection (b) available to the public and shall issue a press release concerning the availability of the report.

(d) For purposes of Subsection (b), "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1997, 75th Leg., ch. 260, Sec. 2, eff. Jan. 1, 1998.

Sec. 311.0456. ELIGIBILITY AND CERTIFICATION FOR LIMITED LIABILITY. (a) In this section, "nonprofit hospital" has the meaning assigned by Section 311.042(9)(A).

(b) This section applies only to a nonprofit hospital or hospital system that is certified by the department under Subsection (d).

(c) To be eligible for certification under Subsection (d), a nonprofit hospital or hospital system must provide:

(1) charity care in an amount equal to at least eight percent of the net patient revenue of the hospital or hospital system during the most recent fiscal year of the hospital or system; and

(2) at least 40 percent of the charity care provided in the county in which the hospital is located.

(d) To be certified under this subsection, a nonprofit hospital or hospital system must submit a written request for certification to the department not later than May 31 of each year stating that the hospital or system is eligible for certification. The department must determine eligibility for certification not later than December 31 of the year in which the department receives the request by checking the report submitted by the hospital or system under Section 311.033 and the statement of community benefits and charity care submitted by the nonprofit hospital or hospital system under Section 311.045. If a report under Section 311.033 is not available for all hospitals in a county in which a nonprofit hospital meeting the requirement of Subsection (c)(1) is requesting certification, the department shall determine the eligibility of the hospital or hospital system using other sources of verified charity care information available at the time of certification. The department shall certify that the hospital or hospital system has met the requirements for certification. The certification issued under this subsection to a nonprofit hospital or hospital system takes effect on December 31 of that year and expires on the anniversary of that date.

(e) For the purposes of Subsection (b), a corporation certified by the Texas Medical Board as a nonprofit organization under Section 162.001, Occupations Code, whose sole member is a qualifying hospital or hospital system is considered a nonprofit hospital or hospital system.

(f) Notwithstanding any other law, the liability of a nonprofit hospital or hospital system for noneconomic damages as defined by Section 41.001, Civil Practice and Remedies Code, for a cause of action that accrues during the period that the hospital or system is certified under this section is subject to the limitations specified by Section 101.023(b), Civil Practice and Remedies Code, and Subsection (c) of that section does not apply. This subsection establishes the total combined limit of liability of the nonprofit hospital or hospital system and any employee, officer, or director of the hospital or system for noneconomic damages for each person and each single occurrence, as described by Section 101.023(b), Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 22.02, eff. Sept. 1,

2003.
Amended by:
Acts 2005, 79th Leg., Ch. 376 (S.B. 1378), Sec. 1, eff. June 17, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0847, eff. April 2, 2015.

Sec. 311.046. ANNUAL REPORT OF COMMUNITY BENEFITS PLAN. (a) A nonprofit hospital shall prepare an annual report of the community benefits plan and shall include in the report at least the following information:

(1) the hospital's mission statement;

(2) a disclosure of the health care needs of the community that were considered in developing the hospital's community benefits plan pursuant to Section 311.044(b);

(3) a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits;

(4) a statement of its total operating expenses computed in accordance with generally accepted accounting principles for hospitals from the most recent completed and audited prior fiscal year of the hospital; and

(5) a completed worksheet that computes the ratio of cost to charge for the fiscal year referred to in Subdivision (4) and that includes the same requirements as Worksheet 1-A adopted by the department in August 1994 for the 1994 "Annual Statement of Community Benefits Standards".

(b) A nonprofit hospital shall file the annual report of the community benefits plan with the Center for Health Statistics at the department. The report shall be filed no later than April 30 of each year. In addition to the annual report, a completed worksheet as required by Subsection (a)(5) shall be filed no later than 10 working days after the date the hospital files its Medicare cost report.

(c) A nonprofit hospital shall prepare a statement that notifies the public that the annual report of the community benefits plan is public information; that it is filed with the department; and that it is available to the public on request from the department. The statement shall be posted in prominent places throughout the hospital, including but not limited to the emergency

room waiting area and the admissions office waiting area. The statement shall also be printed in the hospital patient guide or other material that provides the patient with information about the admissions criteria of the hospital.

(d) Each hospital shall provide, to each person who seeks any health care service at the hospital, notice, in appropriate languages, if possible, about the charity care program, including the charity care and eligibility policies of the program, and how to apply for charity care. Such notice shall also be conspicuously posted in the general waiting area, in the waiting area for emergency services, in the business office, and in such other locations as the hospital deems likely to give notice of the charity care program and policies. Each hospital shall annually publish notice of the hospital's charity care program and policies in a local newspaper of general circulation in the county. Each notice under this subsection must be written in language readily understandable to the average reader.

(e) For purposes of this section, "nonprofit hospital" includes the following if the hospital is not located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a Health Professionals Shortage Area:

(1) a Medicaid disproportionate share hospital; or

(2) a public hospital that is owned or operated by a political subdivision or municipal corporation of the state, including a hospital district or authority.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 260, Sec. 3, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 654, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0848, eff. April 2, 2015.

Sec. 311.0461. INFORMATIONAL MANUAL. The department shall annually publish a manual that lists each nonprofit hospital in this state with a brief summary of the charity care policies and community benefits that the nonprofit hospital provides.

Added by Acts 2001, 77th Leg., ch. 654, Sec. 3, eff. Sept. 1, 2001.

Sec. 311.047. PENALTIES. The department may assess a civil penalty against a nonprofit hospital that fails to make a report of the community benefits plan as required under this subchapter. The penalty may not exceed $1,000 for each day a report is delinquent after the date on which the report is due. No penalty may be assessed against a hospital under this subsection until 10 business days have elapsed after written notification to the hospital of its failure to file a report.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

Sec. 311.048. RIGHTS AND REMEDIES. The rights and remedies provided for in this subchapter shall not limit, affect, change, or repeal any other statutory or common-law rights or remedies available to the state or a nonprofit hospital.

Added by Acts 1993, 73rd Leg., ch. 360, Sec. 4, eff. Sept. 1, 1993.

SUBCHAPTER E. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS ASSOCIATED WITH NONPROFIT FRATERNAL ORGANIZATIONS

Sec. 311.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hospital that employs or seeks to employ a physician, that primarily provides medical care to children younger than 18 years of age, and that:

(1) is owned or operated by a nonprofit fraternal organization; or

(2) has a governing body the majority of members of which belong to a nonprofit fraternal organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.062. EMPLOYMENT OF PHYSICIANS PERMITTED. (a) A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital if the hospital satisfies the requirements

of this subchapter.

(b) The billing and receipt of third-party reimbursement for medical care at a hospital does not affect the authority granted to the hospital under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.063. DUTIES AND HOSPITAL POLICIES. (a) A hospital that employs physicians under this subchapter shall:

(1) appoint a chief medical officer, who may be a member of the hospital's medical staff;

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital; and

(3) designate the chief medical officer as the contact for the Texas Medical Board for all matters relating to complaints regarding interference or attempted interference with a physician's independent medical judgment or any other matter under this section.

(b) The person appointed as chief medical officer shall report the person's appointment to the Texas Medical Board.

(c) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing;

(B) quality assurance;

(C) utilization review;

(D) peer review; and

(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(d) The policies adopted under this section must be approved by the chief medical officer.

(e) In the event of a conflict between a policy approved by the chief medical officer and any other policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve the conflict.

(f) For all matters relating to the practice of medicine, each

physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer.

(g) The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

Sec. 311.064. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine as prohibited under Subtitle B, Title 3, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 901 (S.B. 761), Sec. 1, eff. June 17, 2011.

SUBCHAPTER F. EMPLOYMENT OF PHYSICIANS BY CERTAIN HOSPITALS

Sec. 311.081. APPLICABILITY AND CONSTRUCTION OF SUBCHAPTER. (a) This subchapter applies only to a hospital that employs or seeks to employ a physician and that:

(1) is designated as a critical access hospital under the authority of and in compliance with 42 U.S.C. Section 1395i-4;

(2) is a sole community hospital, as that term is defined by 42 U.S.C. Section 1395ww(d)(5)(D)(iii); or

(3) is located in a county with a population of 50,000 or less.

(b) This subchapter may not be construed as authorizing the governing body of a hospital to supervise or control the practice of medicine, as prohibited under Subtitle B, Title 3, Occupations Code.

(c) This subchapter applies to medical services provided by a physician at the hospital and other health care facilities owned or operated by the hospital.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.
Redesignated from Health and Safety Code, Section 311.061 by Acts

2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

Sec. 311.082. EMPLOYMENT OF PHYSICIANS PERMITTED. A hospital may employ a physician and retain all or part of the professional income generated by the physician for medical services provided at the hospital and other health care facilities owned or operated by the hospital if the hospital satisfies the requirements of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.
Redesignated from Health and Safety Code, Section 311.062 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

Sec. 311.083. HOSPITAL DUTIES AND POLICIES. (a) A hospital that employs physicians under this subchapter shall:

(1) appoint a chief medical officer who has been recommended by the medical staff of the hospital and approved by the governing board of the hospital; and

(2) adopt, maintain, and enforce policies to ensure that a physician employed by the hospital exercises the physician's independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital.

(b) The policies adopted under this section must include:

(1) policies relating to:

(A) credentialing and privileges;

(B) quality assurance;

(C) utilization review;

(D) peer review and due process; and

(E) medical decision-making; and

(2) the implementation of a complaint mechanism to process and resolve complaints regarding interference or attempted interference with a physician's independent medical judgment.

(c) The policies adopted under this section must be approved by the medical staff of the hospital.

(d) For all matters relating to the practice of medicine, each physician employed by a hospital under this subchapter shall ultimately report to the chief medical officer of the hospital. The policies adopted under this section must be approved by the medical staff of the hospital. In the event of a conflict between a policy adopted by the medical staff and a policy of the hospital, a conflict management process shall be jointly developed and implemented to resolve any such conflict.

(e) The chief medical officer shall notify the Texas Medical Board that the hospital is employing physicians under this subchapter and that the chief medical officer will be the hospital's designated contact with the Texas Medical Board. The chief medical officer shall immediately report to the Texas Medical Board any action or event that the chief medical officer reasonably and in good faith believes constitutes a compromise of the independent medical judgment of a physician in caring for a patient.

(f) The hospital shall give equal consideration regarding the issuance of medical staff membership and privileges to physicians employed by the hospital and physicians not employed by the hospital.

(g) A physician employed by a hospital shall retain independent medical judgment in providing care to patients at the hospital and other health care facilities owned or operated by the hospital and may not be disciplined for reasonably advocating for patient care.

(h) If a hospital provides professional liability coverage for a physician employed by a hospital, the physician may participate in the selection of the professional liability coverage, has the right to an independent defense if the physician pays for that independent defense, and shall retain the right to consent to the settlement of any action or proceeding brought against the physician.

(i) If a physician employed by a hospital enters into an employment agreement that includes a covenant not to compete, the agreement shall be subject to Section 15.50, Business & Commerce Code, and any other applicable provisions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 55 (S.B. 894), Sec. 1, eff. May 12, 2011.
Redesignated from Health and Safety Code, Section 311.063 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(27), eff. September 1, 2013.

CHAPTER 312. MEDICAL AND DENTAL CLINICAL EDUCATION IN PUBLIC HOSPITALS

Sec. 312.001. FINDING; PURPOSE. (a) The legislature finds that the clinical education of medical and dental students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school and the provision of patient care to public hospitals can be more effectively and economically undertaken if those institutions and hospitals coordinate and cooperate, rather than compete, in their common endeavors.

(b) The purpose of this chapter is to authorize coordination and cooperation between medical and dental units, supported medical or dental schools, and public hospitals and to remove impediments to that coordination and cooperation in order to:

(1) enhance the education of students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school;

(2) enhance patient care; and

(3) avoid any waste of public money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(70), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(70), eff. April 2, 2015.

(3) "Coordinating entity" means a nonprofit corporation under the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code, that is a health organization approved and certified by the Texas Medical Board under Chapter 162, Occupations Code.

(3-a) "Department" means the Department of State Health Services.

(4) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.

(5) "Public hospital" means a hospital, clinic, or other facility for the provision of health care or dental care that is owned or operated by the federal government, the state, or a political subdivision or municipal corporation of the state,

including a hospital district or authority.

(6) "Supported medical or dental school" means a medical school or dental school organized as a nonprofit corporation that is under contract with the Texas Higher Education Coordinating Board to provide educational services under Subchapter D, Chapter 61, Education Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.791, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0849, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(70), eff. April 2, 2015.

Sec. 312.003. AGREEMENT REQUIRED. This chapter applies only if the medical and dental unit or supported medical or dental school agrees, either directly or through a coordinating entity, to provide or cause to be provided medical, dental, or other patient care or services or to perform or cause to be performed medical, dental, or clinical education, training, or research activities in a coordinated or cooperative manner in a public or nonprofit hospital.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 726 (S.B. 1066), Sec. 2, eff. June 12, 2017.

Sec. 312.004. CONTRACTS FOR COORDINATION OR COOPERATION. (a) Medical and dental units, supported medical or dental schools, coordinating entities, and public hospitals may make and perform contracts among each other for the coordinated or cooperative clinical education of the students, interns, residents, and fellows enrolled at the units or schools.

(b) Medical and dental units and supported medical or dental schools may undertake coordination or cooperation of clinical education directly or through a coordinating entity.

(c) A medical and dental unit, a supported medical or dental school, and a coordinating entity may contract with the owner or

operator of a public hospital for the clinical education of students, interns, residents, and fellows enrolled at the unit or school.

(d) The contracting parties may determine the terms of and the consideration for a contract authorized under this section.

(e) The contract may provide for the coordinated, cooperative, or exclusive assignment of the interns, residents, fellows, faculty, and associated health care professionals of the participating medical and dental units and supported medical or dental schools to provide or perform health or dental services or research at a public hospital.

(f) Coordinated or cooperative activities authorized under this section may be performed by or on behalf of one or more of the units, schools, or entities involved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.005. APPROVAL OF CONTRACTS. (a) To be effective, a contract under Section 312.004 must be submitted to the department.

(b) The department shall approve the contract if the contract furthers the purposes of this chapter.

(c) The department may disapprove a contract only after notice to all parties and a hearing.

(d) The department may not modify a contract.

(e) The contract takes effect:

(1) when it is approved by the department; or

(2) on the 31st day after the date on which the contract is filed with the department by a medical and dental unit, supported medical or dental school, or coordinating entity that is a party to the contract, if the department does not approve or disapprove the contract within 30 days after the date on which the contract is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0850, eff. April 2, 2015.

Sec. 312.006. LIMITATION ON LIABILITY. (a) A medical and dental unit, supported medical or dental school, or coordinating

entity engaged in coordinated or cooperative medical or dental clinical education under Section 312.004, including patient care and the provision or performance of health or dental services or research at a public hospital, is not liable for its acts and omissions in connection with those activities except to the extent and up to the maximum amount of liability of state government under Section 101.023(a), Civil Practice and Remedies Code, for the acts and omissions of a governmental unit of state government under Chapter 101, Civil Practice and Remedies Code.

(b) The limitation on liability provided by this section applies regardless of whether the medical and dental unit, supported medical or dental school, or coordinating entity is a "governmental unit" as defined by Section 101.001, Civil Practice and Remedies Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 312.007. INDIVIDUAL LIABILITY. (a) A medical and dental unit, supported medical or dental school, or coordinating entity is a state agency, and a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of a medical and dental unit, supported medical or dental school, or coordinating entity is an employee of a state agency for purposes of Chapter 104, Civil Practice and Remedies Code, and for purposes of determining the liability, if any, of the person for the person's acts or omissions while engaged in the coordinated or cooperative activities of the unit, school, or entity.

(b) A judgment in an action or settlement of a claim against a medical and dental unit, supported medical or dental school, or coordinating entity under Chapter 101, Civil Practice and Remedies Code, bars any action involving the same subject matter by the claimant against a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of the unit, school, or entity whose act or omission gave rise to the claim as if the person were an employee of a governmental unit against which the claim was asserted as provided under Section 101.106, Civil Practice and Remedies Code.

(c) A resident engaged in graduate medical education in a public or nonprofit hospital in association with a medical and dental

unit is an employee of a state agency regardless of whether the resident receives a stipend or other payment from the medical and dental unit for services performed as a resident.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 726 (S.B. 1066), Sec. 3, eff. June 12, 2017.

CHAPTER 313. CONSENT TO MEDICAL TREATMENT ACT

Sec. 313.001. SHORT TITLE. This chapter may be cited as the Consent to Medical Treatment Act.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.002. DEFINITIONS. In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.

(3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.

(3-a) "Home and community support services agency" means a facility licensed under Chapter 142.

(4) "Hospital" means a facility licensed under Chapter 241.

(5) "Incapacitated" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.

(6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.

(7) "Nursing home" means a facility licensed under Chapter 242.

(8) "Patient" means a person who:

(A) is admitted to a hospital;

(B) is residing in a nursing home;

(C) is receiving services from a home and community support services agency; or

(D) is an inmate of a county or municipal jail.

(9) "Physician" means:

(A) a physician licensed by the Texas State Board of Medical Examiners; or

(B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.

(10) "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 1, eff. September 1, 2011.

Sec. 313.003. EXCEPTIONS AND APPLICATION. (a) This chapter does not apply to:

(1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166;

(2) a health care decision made under a medical power of attorney under Subchapter D, Chapter 166, or under Subtitle P, Title 2, Estates Code;

(3) consent to medical treatment of minors under Chapter 32, Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 450, Sec. 2.01, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.045, eff. September 1, 2017.

Sec. 313.004. CONSENT FOR MEDICAL TREATMENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and does not have a legal guardian or an agent under a medical power of attorney who is reasonably available after a reasonably diligent inquiry, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is reasonably available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

(1) the patient's spouse;
(2) the patient's adult children;
(3) the patient's parents; or
(4) the patient's nearest living relative.

(a-1) If the patient does not have a legal guardian, an agent under a medical power of attorney, or a person listed in Subsection (a) who is reasonably available after a reasonably diligent inquiry, another physician who is not involved in the medical treatment of the patient may concur with the treatment.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction of proceedings under Title 3, Estates Code.

(c) Any medical treatment consented to under Subsection (a) or concurred with under Subsection (a-1) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:

(1) voluntary inpatient mental health services;
(2) electro-convulsive treatment; or
(3) the appointment of another surrogate decision-maker.

(e) Notwithstanding any other provision of this chapter, if the patient is an adult inmate of a county or municipal jail, a surrogate decision-maker may not also consent to:

(1) psychotropic medication;

(2) involuntary inpatient mental health services; or

(3) psychiatric services calculated to restore competency to stand trial.

(f) A person who is an available adult surrogate, as described by Subsection (a), may consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. At the conclusion of the period, a successor surrogate may not be appointed and only the patient or the patient's appointed guardian of the person, if the patient is a ward under Title 3, Estates Code, may consent to medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.046, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 7, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 915 (H.B. 3162), Sec. 12, eff. September 1, 2023.

Sec. 313.005. PREREQUISITES FOR CONSENT. (a) If an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

(1) patient's comatose state, incapacity, or other mental

or physical inability to communicate in the patient's medical record; and

(2) proposed medical treatment in the patient's medical record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the home and community support services agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 253 (H.B. 1128), Sec. 3, eff. September 1, 2011.

Sec. 313.006. LIABILITY FOR MEDICAL TREATMENT COSTS. Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.

Sec. 313.007. LIMITATION ON LIABILITY. (a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made

in good faith.

(b) An attending physician, home and community support services agency, hospital, or nursing home or a person acting as an agent for or under the control of the physician, home and community support services agency, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

(1) is done in good faith under the consent to medical treatment; and

(2) does not constitute a failure to exercise due care in the provision of the medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1271 (H.B. 3473), Sec. 4, eff. September 1, 2007.

CHAPTER 314. COOPERATIVE AGREEMENTS AMONG HOSPITALS

Sec. 314.001. DEFINITIONS. In this chapter:

(1) "Attorney general" means the attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(2) "Cooperative agreement" means an agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services.

(3) "Department" means the Department of State Health Services.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Hospital" means a general or special hospital licensed under Chapter 241 or a private mental hospital licensed under Chapter 577.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Health & Safety Code Sec. 313.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0851, eff. April 2, 2015.

Sec. 314.002. REVIEW AND CERTIFICATION OF COOPERATIVE AGREEMENTS. (a) A hospital may negotiate and enter into cooperative agreements with other hospitals in the state if the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreements. Acting through their boards of directors, a group of hospitals may conduct discussions or negotiations concerning cooperative agreements, provided that the discussions or negotiations do not involve price fixing or predatory pricing.

(b) Parties to a cooperative agreement may apply to the department for a certification of public advantage governing the cooperative agreement. The application must include a written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the attorney general and to the department at the same time. The department shall charge an application fee in an amount not to exceed $10,000 per application.

(c) The department shall review the application in accordance with the standards set forth in Subsections (e) and (f) and shall, if requested, hold a public hearing in accordance with rules adopted by the executive commissioner. The department shall grant or deny the application within 120 days of the date of filing of the application and that decision must be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the attorney general, and any intervenor within 10 days of its issuance.

(d) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(e) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

(1) enhancement of the quality of hospital and hospital-related care provided to Texas citizens;

(2) preservation of hospital facilities in geographical

proximity to the communities traditionally served by those facilities;

(3) gains in the cost efficiency of services provided by the hospitals involved;

(4) improvements in the utilization of hospital resources and equipment; and

(5) avoidance of duplication of hospital resources.

(f) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(1) the extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, or other health care payors to negotiate optimal payment and service arrangements with hospitals, physicians, allied health care professionals, or other health care providers;

(2) the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons furnishing goods or services to, or in competition with, hospitals;

(3) the extent of any adverse impact on patients in the quality, availability, and price of health care services; and

(4) the availability of arrangements that are less restrictive to competition and achieve similar benefits.

(g) The department shall consult with the attorney general regarding any potential reduction in competition that may result from a cooperative agreement. The attorney general shall review the application and all supporting documents provided by the applicants, any documents or other information provided by any intervenors, and any documents or testimony provided at a public hearing, if any, on the application and shall advise the department whether the proposed cooperative agreement would have inappropriate impact on competition. If the attorney general advises the department to deny an application, the attorney general shall state the basis and reasons for the recommended denial.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Health & Safety Code Sec. 313.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0852, eff. April 2, 2015.

Sec. 314.003. ATTORNEY GENERAL AUTHORITY. (a) The attorney general, at any time after an application is filed under Section 314.002(b), may require by civil investigative demand the attendance and testimony of witnesses and the production of documents in Travis County or the county in which the applicants are located for the purpose of investigating whether the cooperative agreement satisfies the standards set forth in Section 314.002. All nonpublic documents produced and testimony given to the attorney general are subject to the prohibitions on disclosure and use of Section 15.10(i), Business & Commerce Code. The attorney general may seek an order from the district court compelling compliance with a civil investigative demand issued under this section.

(b) The attorney general may seek to enjoin the operation of a cooperative agreement for which an application for certificate of public advantage has been filed by filing suit against the parties to the cooperative agreement in district court. The attorney general may file an action before or after the department acts on the application for a certificate but, except as provided in Subsection (e), the action must be brought not later than 20 days following the attorney general's receipt of a copy of the final and appealable decision of the department.

(c) Upon the filing of the complaint in an action under Subsection (b), the department's certification, if previously issued, must be stayed and the cooperative agreement is of no further force unless the court orders otherwise or until the action is concluded. The attorney general may apply to the court for any ancillary temporary or preliminary relief necessary to stay the cooperative agreement pending final disposition of the case.

(d) In any action brought under Subsection (b), the applicants for a certificate bear the burden of establishing by clear and convincing evidence that in accordance with Sections 314.002(e) and (f), the likely benefits resulting from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement. In assessing disadvantages attributable to a reduction in competition likely to result from the agreement, the court may draw upon the determinations of federal and

Texas courts concerning unreasonable restraint of trade under 15 U.S.C. Sections 1 and 2, and Chapter 15, Business & Commerce Code.

(e) If, at any time following the 20-day period specified in Subsection (b), the attorney general determines that as a result of changed circumstances the benefits resulting from a certified agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the attorney general may file suit in the district court seeking to cancel the certificate of public advantage. The standard for adjudication for an action brought under this subsection is as follows:

(1) except as provided in Subdivision (2), in any action brought under this subsection the attorney general has the burden of establishing by a preponderance of the evidence that as a result of changed circumstances the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to a reduction in competition resulting from the agreement;

(2) in any action under this subsection, if the attorney general first establishes by a preponderance of evidence that the department's certification was obtained as a result of material misrepresentation to the department or the attorney general or as the result of coercion, threats, or intimidation toward any party to the cooperative agreement, then the parties to the agreement bear the burden of establishing by clear and convincing evidence that the benefits resulting from the agreement and the unavoidable costs of canceling the agreement are outweighed by disadvantages attributable to any reduction in competition resulting from the agreement.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Health & Safety Code Sec. 313.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.003, eff. September 1, 2011.

Sec. 314.004. MONITORING OF APPROVED COOPERATIVE AGREEMENTS. (a) If, at any time following the approval of a cooperative agreement by the department, the department determines that as a result of changed circumstances the benefits resulting from an

approved agreement no longer outweigh any disadvantages attributable to a reduction in competition resulting from the agreement, the department may initiate proceedings to terminate the certificate of public advantage.

(b) The department may request documents from the parties to the cooperative agreement regarding the current status of the agreement, including information relative to the continued benefits and any disadvantages of the agreement and shall, if requested, hold a public hearing to solicit additional information concerning the effects of the cooperative agreement.

(c) If the department determines that the likely benefits resulting from an approved cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department may terminate the certificate of public advantage.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.005. JUDICIAL REVIEW OF DEPARTMENT ACTION. Any party aggrieved by a decision of the department in granting or denying an application, refusing to act on an application, or terminating a certificate is entitled to judicial review of the decision in accordance with Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Renumbered by Health & Safety Code Sec. 313.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.006. VALIDITY OF CERTIFIED COOPERATIVE AGREEMENTS. (a) Notwithstanding Section 15.05(a), Business & Commerce Code, or any other provision of law, a cooperative agreement for which a certificate of public advantage has been issued is a lawful agreement. Notwithstanding Section 15.05(a), Business & Commerce Code, or any other provision of law, if the parties to a cooperative agreement file an application for a certificate of public advantage governing the agreement with the department, the conduct of the

parties in negotiating and entering into a cooperative agreement is lawful conduct.

(b) If the department, or in any action by the attorney general the district court, determines that the applicants have not established by clear and convincing evidence that the likely benefits resulting from a cooperative agreement outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the agreement is invalid and has no further force or effect.

(c) Nothing in this chapter exempts hospitals from compliance with the requirements of Chapters 241 or 577 of this code.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.006 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.007. MERGERS AND CONSOLIDATIONS INVOLVING HOSPITALS. The provisions of this chapter do not apply to any agreement among hospitals by which ownership or control over substantially all of the stock, assets of activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.007 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.

Sec. 314.008. EXCLUSIONS; AUTHORITY TO ADOPT RULES. (a) This chapter specifically excludes ground and/or air ambulance services.

(b) The executive commissioner shall have the authority to adopt rules to implement the requirements of this chapter.

Added by Acts 1993, 73rd Leg., ch. 638, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 313.008 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(25), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0853, eff. April 2, 2015.

CHAPTER 314A. MERGER AGREEMENTS AMONG CERTAIN HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 314A.001. DEFINITIONS. In this chapter:

(1) "Attorney general" means the attorney general of Texas or any assistant attorney general acting under the direction of the attorney general of Texas.

(2) "Designated agency" means the state agency designated by the governor under Section 314A.004.

(3) "Hospital" means a nonpublic general hospital that is licensed under Chapter 241 and is not maintained or operated by a political subdivision of this state.

(4) "Merger agreement" or "merger" means an agreement among two or more hospitals for the consolidation by merger or other acquisition or transfer of assets by which ownership or control over substantially all of the stock, assets, or activities of one or more previously licensed and operating hospitals is placed under the control of another licensed hospital or hospitals or another entity that controls the hospitals.

(5) "State agency" means a department, commission, board, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.002. APPLICABILITY. This chapter applies only to a merger agreement among hospitals each of which is located within a county that:

(1) contains two or more hospitals; and

(2) has a population of:

(A) less than 100,000 and is not adjacent to a county with a population of 250,000 or more; or

(B) more than 100,000 and less than 150,000 and is not adjacent to a county with a population of 100,000 or more.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.003. LEGISLATIVE FINDINGS AND PURPOSES; GRANT OF

ANTITRUST IMMUNITY. (a) The legislature finds that:

(1) a merger among hospitals may benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the benefits described by Subdivision (1) resulting from the merger may outweigh any anticompetitive effects of joining together competitors to address unique challenges in providing health care services in rural areas.

(b) The legislature believes it is in the state's best interest to supplant state and federal antitrust laws with a process for regulatory approval and active supervision by the designated agency as provided by this chapter. It is the intent of the legislature that this chapter immunize from all federal and state antitrust laws the execution of merger agreements approved under this chapter and post-merger activities supervised under this chapter.

(c) Nothing in this chapter affects antitrust immunity that may be provided through another provision of state law.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.004. DESIGNATION OF SUPERVISING STATE AGENCY. (a) The governor shall designate an appropriate state agency, other than the office of the attorney general, to:

(1) review and approve or deny applications submitted under this chapter for certificates of public advantage; and

(2) supervise as provided by Subchapter C the activities for which a certificate of public advantage is issued.

(b) After the governor designates a state agency under Subsection (a), the governor may designate another appropriate state agency under that subsection at any time.

(c) A change in the designation of a state agency made under this section does not affect the validity of any action taken under this chapter by a predecessor designated agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.005. RULEMAKING. The designated agency shall adopt

rules for the administration and implementation of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. CERTIFICATE OF PUBLIC ADVANTAGE

Sec. 314A.051. REVIEW AND CERTIFICATION OF MERGER AGREEMENTS REQUIRED. (a) Two or more hospitals may negotiate and enter into a merger agreement, subject to approval by the designated agency as provided by this subchapter.

(b) No merger agreement shall receive immunity under this chapter unless the designated agency issues a certificate of public advantage governing the merger agreement.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.052. APPLICATION. (a) One or more parties to a merger agreement may submit an application to the designated agency for a certificate of public advantage governing the merger agreement. The application must include a written copy of the merger agreement and describe the nature and scope of the merger.

(b) If an applicant believes the documents or other information required to be submitted with an application under Subsection (a) contains proprietary information that is required to remain confidential, the applicant shall:

(1) clearly identify the information; and

(2) submit duplicate applications, one application that has complete information for the designated agency's use and one redacted application that will be made available for public release.

(c) A copy of the application and copies of all additional related materials must be submitted to the attorney general and to the designated agency at the same time.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.053. APPLICATION FEE. (a) The designated agency may

assess a fee for filing an application under Section 314A.052 in an amount not to exceed $75,000. The amount of the fee must be sufficient to cover the reasonable costs of the designated agency and attorney general in reviewing and approving or denying applications under this subchapter.

(b) Fees collected under this section may be appropriated to the designated agency for purposes of covering costs relating to the implementation and administration of this chapter, including the supervision of hospitals under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.054. REVIEW OF APPLICATION BY DESIGNATED AGENCY; GRANT OR DENIAL OF APPLICATION. (a) The designated agency shall review an application for a certificate of public advantage in accordance with the standard prescribed by Section 314A.056(a)(1).

(b) The designated agency shall grant or deny the application not later than the 120th day after the date of the filing of the application. The designated agency's decision must:

(1) be in writing;

(2) specify the basis for the decision; and

(3) provide a copy of the decision to the applicants on the date of the decision.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.055. REVIEW OF APPLICATION BY ATTORNEY GENERAL. (a) The attorney general shall review an application for a certificate of public advantage and all supporting documents and information provided by the applicants. On completion of the review and subject to Subsection (b), the attorney general shall advise the designated agency whether:

(1) the proposed merger agreement would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in

competition that may result from the proposed merger.

(b) The attorney general shall review an application for a certificate of public advantage as soon as practicable, taking into consideration the deadline prescribed by Section 314A.054.

(c) If the attorney general advises the designated agency to deny an application, the attorney general shall state the basis and reasons for the recommended denial.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.056. ISSUANCE OF CERTIFICATE OF PUBLIC ADVANTAGE. (a) The designated agency, after reviewing the application and consulting with the attorney general in accordance with Section 314A.055, shall issue a certificate of public advantage for a merger agreement if:

(1) the designated agency determines under the totality of the circumstances that:

(A) the proposed merger would likely benefit the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(B) the likely benefits resulting from the proposed merger agreement described by Paragraph (A) outweigh any disadvantages attributable to a reduction in competition that may result from the proposed merger; and

(2) the application:

(A) provides specific evidence showing that the proposed merger would likely benefit the public as described by Subdivision (1)(A);

(B) explains in detail how the likely benefits resulting from the proposed merger agreement outweigh any disadvantages attributable to a reduction in competition as described by Subdivision (1)(B); and

(C) sufficiently addresses the factors listed in Subsection (b) and any other factor the designated agency may require based on the circumstances specific to the application.

(b) In making the determination under Subsection (a)(1), the designated agency shall consider the effect of the merger agreement on the following nonexclusive list of factors:

(1) the quality and price of hospital and health care services provided to citizens of this state;

(2) the preservation of sufficient hospitals within a geographic area to ensure public access to acute care;

(3) the cost efficiency of services, resources, and equipment provided or used by the hospitals that are a party to the merger agreement;

(4) the ability of health care payors to negotiate payment and service arrangements with hospitals proposed to be merged under the agreement; and

(5) the extent of any reduction in competition among physicians, allied health professionals, other health care providers, or other persons providing goods or services to, or in competition with, hospitals.

(c) The designated agency may include terms or conditions of compliance in connection with a certificate of public advantage issued under this subchapter if necessary to ensure that the proposed merger likely benefits the public as specified in Subsection (a)(1).

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.057. RECORDS. The designated agency shall maintain records of all merger agreements the designated agency has approved under this chapter, including any terms or conditions of issuing a certificate of public advantage that are imposed by the designated agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.058. TERMINATION OF CERTIFICATE OF PUBLIC ADVANTAGE BY HOSPITAL. A hospital resulting from a merger agreement approved under this chapter may voluntarily terminate its certificate of public advantage by giving the designated agency notice at least 30 days before the date of the termination.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.059. ANNUAL REVIEW OF CERTIFICATE. (a) The designated agency shall annually review an approved certificate of public advantage.

(b) The attorney general may annually review an approved certificate of public advantage.

(c) The designated agency may not complete its annual review of an approved certificate of public advantage under this section until:

(1) the attorney general informs the designated agency whether the attorney general intends to conduct any review of the certificate of public advantage as authorized under this section; and

(2) if the attorney general informs the designated agency of the attorney general's intent to conduct a review of an entity's approved certificate of public advantage, the attorney general has had the opportunity to conduct the review.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. SUPERVISION OF MERGED HOSPITALS UNDER APPROVED MERGER AGREEMENT

Sec. 314A.101. SUPERVISION OF MERGED HOSPITALS. The designated agency shall supervise in the manner provided by this subchapter each hospital operating under a certificate of public advantage issued under this chapter to ensure that the immunized conduct of a merged entity furthers the purposes of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.102. RATE REVIEW. (a) A change in rates for hospital services by a hospital operating under a certificate of public advantage issued under this chapter may not take effect without prior approval of the designated agency as provided by this section.

(b) At least 90 days before the implementation of any proposed change in rates for inpatient or outpatient hospital services and, if applicable, at least 60 days before the execution of a reimbursement

agreement with a third party payor, a hospital operating under a certificate of public advantage shall submit to the designated agency:

(1) any proposed change in rates for inpatient and outpatient hospital services;

(2) if applicable, any change in reimbursement rates under a reimbursement agreement with a third party payor;

(3) for an agreement with a third party payor, other than an agreement described by Subdivision (4) or in which rates are set under the Medicare or Medicaid program, information showing:

(A) that the hospital and the third party payor have agreed to the proposed rates;

(B) whether the proposed rates are less than the corresponding amounts in the producer price index published by the Bureau of Labor Statistics of the United States Department of Labor relating to the hospital services for which the rates are proposed or a comparable price index chosen by the designated agency if the producer price index described by this paragraph is abolished; and

(C) if the proposed rates are above the corresponding amounts in the producer price index as described by Paragraph (B), a justification for proposing rates above the corresponding amounts in the producer price index;

(4) to the extent allowed by federal law, for an agreement with a managed care organization that provides or arranges for the provision of health care services under the Medicare or Medicaid program, information showing:

(A) whether the proposed rates are different from rates under an agreement that was in effect before the date the applicable merger agreement took effect;

(B) whether the proposed rates are different from the rates most recently approved by the designated agency for the applicable hospital, if the designated agency has previously approved rates for the applicable hospital following the issuance of the certificate of public advantage under this chapter that governs the hospital; and

(C) if the proposed rates exceed rates described by Paragraph (A) or (B), a justification for proposing rates in excess of those rates; and

(5) any information concerning costs, patient volume, acuity, payor mix, and other information requested by the designated

agency.

(c) After reviewing the proposed change in rates submitted under Subsection (b), the designated agency shall approve or deny the proposed rate change. The designated agency shall approve the proposed rate change if the designated agency determines that:

(1) the proposed rate change likely benefits the public by maintaining or improving the quality, efficiency, and accessibility of health care services offered to the public; and

(2) the proposed rate does not inappropriately exceed competitive rates for comparable services in the hospital's market area.

(d) If the designated agency determines that the proposed rate change does not satisfy Subsection (c)(1) or (2), the designated agency shall deny or modify the proposed rate change.

(e) The designated agency shall notify the hospital in writing of the agency's decision to approve, deny, or modify the proposed rate change not later than the 30th day before the implementation date of the proposed change.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.103. ANNUAL REPORT. Each hospital operating under a certificate of public advantage shall submit an annual report to the designated agency. The report must include:

(1) information about the extent of the benefits attributable to the issuance of the certificate of public advantage;

(2) if applicable, information about the hospital's actions taken:

(A) in furtherance of any commitments made by the parties to the merger; or

(B) to comply with terms imposed by the designated agency as a condition for approval of the merger agreement;

(3) a description of the activities conducted by the hospital under the merger agreement;

(4) information relating to the price, cost, and quality of and access to health care for the population served by the hospital; and

(5) any other information required by the designated agency

to ensure compliance with this chapter, including information relating to compliance with any terms or conditions for issuance of the certificate of public advantage.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.104. CORRECTIVE ACTION PLAN. (a) The designated agency shall require a hospital operating under a certificate of public advantage to adopt a plan to correct a deficiency in the hospital's activities if the designated agency determines that an activity of the hospital:

(1) does not benefit the public as described by Section 314A.056(a)(1)(A); or

(2) no longer meets the standard prescribed by Section 314A.056(a)(1).

(b) The corrective action plan must include each provision required by the designated agency and must be submitted at the agency's direction.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.105. SUPERVISION FEE. (a) The designated agency may assess an annual supervision fee in an amount that is at least $75,000 but not more than $200,000 against each hospital operating under a certificate of public advantage under this chapter. The amount of the fee imposed on hospitals under this subsection must be based on the assessment by the designated agency of the amount needed to cover the reasonable costs incurred by the designated agency in supervising hospitals under this subchapter and in implementing and administering this chapter.

(b) Fees collected under this section may be appropriated to the designated agency for purposes of covering costs relating to the implementation and administration of this chapter, including the supervision of hospitals under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER D. ENFORCEMENT AUTHORITY BY DESIGNATED AGENCY

Sec. 314A.151. INVESTIGATION; REVOCATION OF CERTIFICATE. With respect to each hospital resulting from a merger agreement for which the designated agency issued a certificate of public advantage under this chapter, and to ensure that the hospital's activities continue to benefit the public under the standard prescribed by Section 314A.056(a)(1) and the purposes of this chapter, the designated agency may:

(1) investigate the hospital's activities; and

(2) require the hospital to perform a certain action or refrain from a certain action or revoke the hospital's certificate of public advantage, if the designated agency determines that:

(A) the hospital is not complying with this chapter or a term or condition of compliance with the certificate of public advantage governing the hospital's immunized activities;

(B) the designated agency's approval and issuance of the certificate of public advantage was obtained as a result of material misrepresentation;

(C) the hospital has failed to pay any fee required under this chapter; or

(D) the benefits resulting from the approved merger no longer outweigh the disadvantages attributable to the reduction in competition resulting from the approved merger.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.152. JUDICIAL REVIEW OF DESIGNATED AGENCY ACTION. (a) A person aggrieved by a decision of the designated agency in granting, denying, or refusing to act on an application for a certificate of public advantage submitted under Subchapter B or revoking a certificate of public advantage issued under this chapter may appeal the final order by filing a petition for judicial review in a district court of Travis County.

(b) The filing of a petition for judicial review of a decision by the designated agency to revoke a certificate of public advantage stays enforcement of the agency's decision.

(c) Not later than the 45th day after the date a person files a petition for judicial review under this section, the designated agency shall submit to the district court the original copy or a certified copy of the entirety of the agency's record regarding the decision under review. By stipulation of all parties, the record may be shortened. The district court may require or permit later corrections or additions to the record. The district court may extend the period prescribed by this subsection for submitting the agency's record to the court.

(d) The district court shall conduct the review sitting without a jury.

(e) The district court may reverse a decision by the designated agency regarding revocation of a certificate of public advantage if the court finds that the decision is:

(1) in violation of a constitutional or statutory provision;

(2) in excess of the agency's statutory authority;

(3) made through unlawful procedure;

(4) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(5) unsupported by substantial and material evidence in light of the record as a whole.

(f) Under Subsection (e)(5), in determining the substantiality of the evidence, the district court:

(1) shall consider other evidence that detracts from the substantiality; and

(2) may not substitute its judgment for the judgment of the designated agency on the weight of the evidence as to a question of fact.

(g) The district court shall issue a written decision setting forth the court's findings of fact and conclusions of law. The designated agency shall add the court's decision to the agency's record.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

SUBCHAPTER E. ATTORNEY GENERAL INVESTIGATION AND ENFORCEMENT AUTHORITY

Sec. 314A.201. CIVIL INVESTIGATIVE DEMAND. (a) The attorney general, at any time after an application is filed under Section 314A.052 and before the designated agency makes a determination on the application, or in connection with the agency's annual review of a certificate of public advantage under Section 314A.059, may require by civil investigative demand the attendance and testimony of witnesses and the production of documents in Travis County or the county in which the applicants are located for the purpose of investigating whether the merger agreement satisfies or, after issuance of the certificate of public advantage, continues to satisfy the standard prescribed by Section 314A.056(a)(1).

(b) All nonpublic documents produced for and testimony given to the attorney general under Subsection (a) are subject to the prohibitions on disclosure and use under Section 15.10(i), Business & Commerce Code.

(c) The attorney general may seek an order from the district court compelling compliance with a civil investigative demand issued under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

Sec. 314A.202. ACTION TO REVOKE CERTIFICATE OF PUBLIC ADVANTAGE FOLLOWING CHANGED CIRCUMSTANCES. (a) If, following an annual review of a certificate of public advantage, the attorney general determines that as a result of changed circumstances the benefits resulting from a certified merger agreement as described by Section 314A.056(a)(1)(A) no longer outweigh any disadvantages attributable to a reduction in competition resulting from the merger agreement, the attorney general may bring an action in a district court in Travis County seeking to revoke the certificate of public advantage in accordance with the procedures prescribed by this section.

(b) Except as provided by Subsection (c), in an action brought under this section, the attorney general has the burden of establishing by clear and convincing evidence that as a result of changed circumstances the benefits resulting from the certified merger agreement and the unavoidable costs of revoking the certificate of public advantage are outweighed by disadvantages attributable to a reduction in competition resulting from the merger

agreement.

(c) In any action brought under this section, if the attorney general first establishes by clear and convincing evidence that the designated agency's certification was obtained as a result of material misrepresentation to the designated agency or the attorney general or as the result of coercion, threats, or intimidation directed toward any party to the merger agreement, then the parties to the merger agreement bear the burden of establishing by clear and convincing evidence that despite changed circumstances the benefits resulting from the certified merger agreement and the unavoidable costs of revoking the certificate of public advantage are not outweighed by disadvantages attributable to a reduction in competition resulting from the merger agreement.

Added by Acts 2019, 86th Leg., R.S., Ch. 1168 (H.B. 3301), Sec. 1, eff. September 1, 2019.

CHAPTER 315. AUTHORITY TO BORROW MONEY FOR PUBLIC HOSPITALS

Sec. 315.001. DEFINITION. In this chapter, "local governmental entity" includes:

(1) a hospital district created under general or special law;

(2) a municipal hospital authority;

(3) a county hospital authority;

(4) a municipality; or

(5) a county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 611 (S.B. 494), Sec. 1, eff. September 1, 2011.

Sec. 315.002. AUTHORITY TO BORROW MONEY FOR PUBLIC HOSPITAL; SECURITY. (a) A local governmental entity may borrow money for purposes of a hospital owned or operated by the entity at a rate not to exceed the maximum annual percentage rate allowed by the law at the time the loan is made for similar obligations of the entity.

(b) To secure a loan under this section, a local governmental entity may pledge:

(1) revenue from the hospital owned or operated by the entity that is not pledged to pay the entity's bonded indebtedness;

or

(2) tax revenue to be collected by the local governmental entity during the 12-month period following the date of the pledge that is not pledged to pay the principal of or interest on bonds.

(c) A loan authorized by this section must mature:

(1) not later than the first anniversary of the date the loan is made, if taxes are pledged to repay the loan; and

(2) not later than the fifth anniversary of the date the loan is made, if hospital revenue is pledged to repay the loan.

Added by Acts 2011, 82nd Leg., R.S., Ch. 611 (S.B. 494), Sec. 1, eff. September 1, 2011.

CHAPTER 316. ESTABLISHMENT OF HEALTH CARE COLLABORATIVES

Sec. 316.001. AUTHORITY TO ESTABLISH HEALTH CARE COLLABORATIVE. A public hospital created under Subtitle C or D or a hospital district created under general or special law may form and sponsor a nonprofit health care collaborative that is certified under Chapter 848, Insurance Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.04, eff. September 28, 2011.

CHAPTER 317. DESIGNATION OF CAREGIVER FOR RECEIPT OF AFTERCARE INSTRUCTION

Sec. 317.001. DEFINITIONS. In this chapter:

(1) "Aftercare" means assistance provided by a designated caregiver to a person after that person's discharge from a hospital, as described by this chapter. The term includes assistance with tasks that are related to the person's condition at the time of that person's discharge from a hospital but does not include those tasks required to be performed by a licensed health care professional.

(2) "Designated caregiver" means an individual designated by a patient, including a relative, partner, friend, or neighbor, who:

(A) is at least 18 years of age;

(B) has a significant relationship with the patient; and

(C) will provide aftercare to the patient.

(3) "Discharge" means a patient's release from a hospital following an inpatient admission.

(4) "Hospital" means a general or special hospital licensed under Chapter 241 or exempt from licensure under Section 241.004(3).

(5) "Patient" means a person that is receiving or has received health care services at a hospital.

(6) "Surrogate decision-maker" has the meaning assigned by Section 313.002.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.0015. APPLICABILITY. This chapter applies only to a patient who is:

(1) 18 years of age or older; or

(2) younger than 18 years of age who has had the disabilities of minority removed.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.002. DESIGNATION OF CAREGIVER. (a) On admission to a hospital or before the patient is discharged or transferred to another facility, the hospital shall provide the patient, the patient's legal guardian, or the patient's surrogate decision-maker the opportunity to designate a caregiver.

(b) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker designates a caregiver, a hospital shall:

(1) document in the patient's medical record:

(A) the name, telephone number, and address of the patient's designated caregiver; and

(B) the relationship of the designated caregiver to the patient; and

(2) request written authorization from the patient, the patient's legal guardian, or the patient's surrogate decision-maker to disclose health care information to the patient's designated caregiver.

(c) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to designate a caregiver, the

hospital shall promptly record in the patient's medical record that the patient, the patient's legal guardian, or the patient's surrogate decision-maker did not wish to designate a caregiver.

(d) If a patient, a patient's legal guardian, or a patient's surrogate decision-maker declines to give authorization to a hospital to disclose health care information to the designated caregiver, a hospital is not required to comply with Sections 317.003 and 317.004.

(e) A patient, a patient's legal guardian, or a patient's surrogate decision-maker may change the patient's designated caregiver at any time, and the hospital must document the change in the patient's medical record.

(f) The designation of a person as the patient's caregiver does not obligate the person to serve as the patient's designated caregiver or to provide aftercare to the patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.003. NOTICE TO DESIGNATED CAREGIVER. (a) Except as provided by Section 317.002(d), as soon as possible before a patient's discharge or transfer to another facility but not later than the time the patient's attending physician issues a discharge order, a hospital shall notify the designated caregiver of the patient's discharge or transfer. The inability of the hospital to contact the designated caregiver may not interfere with, delay, or otherwise affect any medical care provided to the patient or the discharge of the patient.

(b) If the hospital is unable to contact the designated caregiver, the hospital shall promptly record in the patient's medical record that the hospital attempted to contact the designated caregiver.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.004. DISCHARGE PLAN. (a) Except as provided by Section 317.002(d), before a patient's discharge from a hospital, the hospital shall provide to the patient and designated caregiver a written discharge plan that describes the patient's aftercare needs.

(b) A discharge plan must include:

(1) the name and contact information of the designated caregiver and the designated caregiver's relationship to the patient;

(2) a description of the aftercare tasks that the patient requires written in a manner that is culturally competent; and

(3) the contact information for any health care resources necessary to meet the patient's aftercare needs.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.005. INSTRUCTION IN AFTERCARE TASKS. Before a patient's discharge from the hospital to any setting in which health care services are not regularly provided to others, the hospital shall provide the designated caregiver instruction and training as necessary for the caregiver to perform aftercare tasks.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.006. RULES. The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

Sec. 317.007. RIGHTS AND REMEDIES. (a) This chapter may not be construed to:

(1) interfere with the rights of an agent operating under a valid advance directive in accordance with Chapter 166; or

(2) alter, amend, revoke, or supersede any existing right or remedy granted under any other provision of law.

(b) This chapter does not create a private right of action against:

(1) a hospital, a hospital employee, or a person in a contractual relationship with a hospital; or

(2) a designated caregiver.

(c) A hospital, a hospital employee, or a person in a contractual relationship with a hospital may not be held liable in any way for services rendered or not rendered by a patient's designated caregiver to the patient.

(d) A designated caregiver may not be reimbursed by a government or commercial payer for aftercare assistance provided under this chapter.

(e) Nothing in this chapter may be construed:

(1) to alter the obligation of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans to provide coverage required under a health benefit plan;

(2) to affect, impede, or otherwise disrupt or reduce the reimbursement obligations of an insurance company, health service corporation, hospital service corporation, medical service corporation, health maintenance organization, or other entity issuing health benefit plans; or

(3) to affect the time at which a patient may be discharged or transferred from a hospital to another facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 163 (H.B. 2425), Sec. 1, eff. May 26, 2017.

SUBTITLE G. PROVISION OF SERVICES IN CERTAIN FACILITIES
CHAPTER 321. PROVISION OF MENTAL HEALTH, CHEMICAL DEPENDENCY, AND REHABILITATION SERVICES

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(1-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Hospital" has the meaning assigned by Section 241.003.

(3) "License" means a state agency permit, certificate,

approval, registration, or other form of permission required by state law.

(4) "Mental health facility" has the meaning assigned by Section 571.003.

(5) "State health care regulatory agency" means a state agency that licenses a health care professional.

(6) "Treatment facility" has the meaning assigned by Section 464.001.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0854, eff. April 2, 2015.

Sec. 321.002. BILL OF RIGHTS. (a) The executive commissioner by rule shall adopt a "patient's bill of rights" that includes the applicable rights included in this chapter, Subtitle C of Title 7, Chapters 241, 462, 464, and 466, and any other provisions the executive commissioner considers necessary to protect the health, safety, and rights of a patient receiving voluntary or involuntary mental health, chemical dependency, or comprehensive medical rehabilitation services in an inpatient facility. In addition, the executive commissioner shall adopt rules that:

(1) provide standards to prevent the admission of a minor to a facility for treatment of a condition that is not generally recognized as responsive to treatment in an inpatient treatment setting; and

(2) prescribe the procedure for presenting the applicable bill of rights and obtaining each necessary signature if:

(A) the patient cannot comprehend the information because of illness, age, or other factors; or

(B) an emergency exists that precludes immediate presentation of the information.

(b) The executive commissioner by rule shall adopt a "children's bill of rights" for a minor receiving treatment in a child-care facility for an emotional, mental health, or chemical dependency problem.

(c) A "bill of rights" adopted under this section must

specifically address the rights of minors and provide that a minor is entitled to:

(1) appropriate treatment in the least restrictive setting available;

(2) not receive unnecessary or excessive medication;

(3) an individualized treatment plan and to participate in the development of the plan; and

(4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(d) Rules adopted under this section shall provide for:

(1) treatment of minors by persons who have specialized education and training in the emotional, mental health, and chemical dependency problems and treatment of minors;

(2) separation of minor patients from adult patients; and

(3) regular communication between a minor patient and the patient's family, subject only to a restriction in accordance with Section 576.006.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(71), eff. April 2, 2015.

(f) Before a facility may admit a patient for inpatient mental health, chemical dependency, or comprehensive medical rehabilitation services, or before a child-care facility may accept a minor for treatment, the facility shall provide to the person and, if appropriate, to the person's parent, managing conservator, or guardian, a written copy of the applicable "bill of rights" adopted under this section. The facility shall provide the written copies in the person's primary language, if possible. In addition, the facility shall ensure that, within 24 hours after the person is admitted to the facility, the rights specified in the written copy are explained to the person and, if appropriate, to the person's parent, managing conservator, or guardian:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(g) The facility shall ensure that:

(1) each patient admitted for inpatient mental health, chemical dependency, or comprehensive rehabilitation services and each minor admitted for treatment in a child-care facility and, if

appropriate, the person's parent, managing conservator, or guardian signs a copy of the document stating that the person has read the document and understands the rights specified in the document; and

(2) the signed copy is made a part of the person's clinical record.

(h) A facility shall prominently and conspicuously post a copy of the "bill of rights" for display in a public area of the facility that is readily available to patients, residents, employees, and visitors. The "bill of rights" must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0855, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(71), eff. April 2, 2015.

Sec. 321.003. SUIT FOR HARM RESULTING FROM VIOLATION. (a) A treatment facility or mental health facility that violates a provision of, or a rule adopted under, this chapter, Subtitle C of Title 7, or Chapter 241, 462, 464, or 466 is liable to a person receiving care or treatment in or from the facility who is harmed as a result of the violation.

(b) A person who has been harmed by a violation may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(f) A person harmed by a violation must bring suit not later than the second anniversary of the date on which the person's injury

is discovered, except that a minor whose injury is discovered before the minor's 18th birthday may bring suit at any time before the minor's 20th birthday.

(g) This section does not supersede or abrogate any other remedy existing in law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 321.004. PENALTIES. In addition to the penalties prescribed by this chapter, a violation of a provision of this chapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 1.01, eff. Sept. 1, 1993.

CHAPTER 322. USE OF RESTRAINT AND SECLUSION IN CERTAIN HEALTH CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 322.001. DEFINITIONS. In this chapter:

(1) "Facility" means:

(A) a general residential operation, as defined by Section 42.002, Human Resources Code, including a state-operated facility, serving children with an intellectual disability;

(B) an ICF-IID licensed by the Department of Aging and Disability Services under Chapter 252 or operated by that department and exempt under Section 252.003 from the licensing requirements of that chapter;

(C) a mental hospital or mental health facility, as defined by Section 571.003;

(D) an institution, as defined by Section 242.002;

(E) an assisted living facility, as defined by Section 247.002; or

(F) a treatment facility, as defined by Section 464.001.

Text of subdivision effective until April 1, 2025

(2) "Health and human services agency" means an agency listed in Section 531.001, Government Code.

Text of subdivision effective on April 1, 2025

(2) "Health and human services agency" means an agency listed in Section 521.0001, Government Code.

(3) "Seclusion" means the involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0856, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.49, eff. April 1, 2025.

SUBCHAPTER B. RESTRAINTS AND SECLUSION

Sec. 322.051. CERTAIN RESTRAINTS PROHIBITED. (a) A person may not administer to a resident of a facility a restraint that:

(1) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(2) impairs the resident's breathing by putting pressure on the torso; or

(3) interferes with the resident's ability to communicate.

(b) A person may use a prone or supine hold on the resident of a facility only if the person:

(1) limits the hold to no longer than the period specified by rules adopted under Section 322.052;

(2) uses the hold only as a last resort when other less restrictive interventions have proven to be ineffective; and

(3) uses the hold only when an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds and who is not involved in the restraint, is ensuring the resident's breathing is not impaired.

(c) Small residential facilities and small residential service providers are exempt from Subsection (b)(3).

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.0515. AUTHORIZATION FOR USE OF WHEELCHAIR SELF-RELEASE SEAT BELT; EXCEPTION. (a) Except as provided by Subsection (b) and notwithstanding Section 322.051, a facility shall allow a resident to use a wheelchair self-release seat belt while the resident is in the resident's wheelchair if:

(1) the resident demonstrates the ability to release and fasten the seat belt without assistance;

(2) the use of the wheelchair self-release seat belt complies with the resident's plan of care; and

(3) the facility receives written authorization signed by the resident or the resident's legal guardian for the resident to use the wheelchair self-release seat belt.

(b) A facility that advertises as a restraint-free facility is not required to comply with Subsection (a) if the facility:

(1) provides to current and prospective residents a written disclosure stating the facility is restraint-free and is not required to comply with a request under Subsection (a); and

(2) makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt under Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 1138 (H.B. 284), Sec. 1, eff. September 1, 2017.

Sec. 322.052. ADOPTION OF RESTRAINT AND SECLUSION PROCEDURES. (a) For each health and human services agency that regulates the care or treatment of a resident at a facility, the executive commissioner of the Health and Human Services Commission shall adopt rules to:

(1) define acceptable restraint holds that minimize the risk of harm to a facility resident in accordance with this subchapter;

(2) govern the use of seclusion of facility residents; and

(3) develop practices to decrease the frequency of the use of restraint and seclusion.

(b) The rules must permit prone and supine holds only as

transitional holds for use on a resident of a facility.

(b-1) The rules must:

(1) authorize a registered nurse, other than the nurse who initiated the use of restraint or seclusion, who is trained to assess medical and psychiatric stability with demonstrated competence as required by rule to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, not later than one hour after the time the use of restraint or seclusion is initiated; and

(2) require a physician to conduct a face-to-face evaluation of a patient in a hospital or facility licensed under Chapter 241 or 577 or in a state mental hospital, as defined by Section 571.003, and document clinical justification for continuing the restraint or seclusion before issuing or renewing an order that continues the use of the restraint or seclusion.

(c) A facility may adopt procedures for the facility's use of restraint and seclusion on a resident that regulate, more restrictively than is required by a rule of the regulating health and human services agency, the use of restraint and seclusion.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1240 (S.B. 1842), Sec. 1, eff. June 14, 2013.

Sec. 322.053. NOTIFICATION. The executive commissioner of the Health and Human Services Commission by rule shall ensure that each resident at a facility regulated by a health and human services agency and the resident's legally authorized representative are notified of the rules and policies related to restraints and seclusion.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.054. RETALIATION PROHIBITED. (a) A facility may not discharge or otherwise retaliate against:

(1) an employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(2) a client or resident of the facility because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(b) A health and human services agency that registers or otherwise licenses or certifies a facility may:

(1) revoke, suspend, or refuse to renew the license, registration, or certification of a facility that violates Subsection (a); or

(2) place on probation a facility that violates Subsection (a).

(c) A health and human services agency that regulates a facility and that is authorized to impose an administrative penalty against the facility under other law may impose an administrative penalty against the facility for violating Subsection (a). Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of the penalty may not exceed the maximum amount that the agency may impose against the facility under the other law. The agency must follow the procedures it would follow in imposing an administrative penalty against the facility under the other law.

(d) A facility may contest and appeal the imposition of an administrative penalty under Subsection (c) by following the same procedures the facility would follow in contesting or appealing an administrative penalty imposed against the facility by the agency under the other law.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff. September 1, 2005.

Sec. 322.055. MEDICAID WAIVER PROGRAM. A Medicaid waiver program provider, when providing supervised living or residential support, shall comply with this chapter and rules adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 1, eff.

September 1, 2005.

Sec. 322.056. REPORTING REQUIREMENT. A facility shall file with the Department of State Health Services a quarterly report regarding hospital-based inpatient psychiatric services measures related to the use of restraint and seclusion that is required by the federal Centers for Medicare and Medicaid Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1240 (S.B. 1842), Sec. 2, eff. June 14, 2013.

CHAPTER 323. EMERGENCY SERVICES AND FORENSIC EXAMINATION PROGRAMS FOR SURVIVORS OF SEXUAL ASSAULT

SUBCHAPTER A. EMERGENCY SERVICES FOR SURVIVORS OF SEXUAL ASSAULT

Sec. 323.001. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of State Health Services.

(3) "Health care facility" means a general or special hospital licensed under Chapter 241, a general or special hospital owned by this state, or a freestanding emergency medical care facility licensed under Chapter 254.

(3-a) "SAFE-ready facility" means a health care facility designated as a sexual assault forensic exam-ready facility under Section 323.0015. The term includes a SAFE program designated as a SAFE-ready facility under Section 323.052.

(3-b) "SAFE program" has the meaning assigned by Section 323.051.

(4) "Sexual assault" means any act as described by Section 22.011 or 22.021, Penal Code.

(4-a) "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician with specialized training on conducting a forensic medical examination.

(5) "Sexual assault survivor" means an individual who is a victim of a sexual assault, regardless of whether a report is made or a conviction is obtained in the incident.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.001 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 7, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 11, eff. September 1, 2021.

Sec. 323.0015. SAFE-READY FACILITIES. The department shall designate a health care facility as a sexual assault forensic exam-ready facility, or SAFE-ready facility, if the facility notifies the department that the facility employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation to a licensed nurse or physician when conducting a sexual assault forensic medical examination.

Added by Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 2, eff. September 1, 2017.

Sec. 323.002. PLAN FOR EMERGENCY SERVICES. (a) Each health care facility that has an emergency department shall comply with Sections 323.004 and 323.0044. At the request of the department, a health care facility that has an emergency department shall submit to the department for approval a plan for providing the services required by Section 323.004 to sexual assault survivors who arrive for treatment at the emergency department of the health care facility.

(b) The executive commissioner of the Health and Human Services Commission shall adopt procedures for submission, approval, and modification of a plan required under this section.

(c) A health care facility shall submit the plan required by this section not later than the 60th day after the date the

department requests the plan.

(d) The department shall approve or reject the plan not later than the 120th day after the date the plan is submitted.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.002 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(10), eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0857, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 12, eff. September 1, 2021.

Sec. 323.003. REJECTION OF PLAN. (a) If a plan required under Section 323.002 is not approved, the department shall:

(1) return the plan to the health care facility; and

(2) identify the specific provisions under Section 323.004 with which the plan conflicts or does not comply.

(b) Not later than the 90th day after the date the department returns a plan to a health care facility under Subsection (a), the facility shall correct and resubmit the plan to the department for approval.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.003 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(11), eff. September 1, 2007.

Sec. 323.004. MINIMUM STANDARDS FOR EMERGENCY SERVICES. (a)

Except as otherwise provided by Subsection (a-2), after a sexual assault survivor arrives at a health care facility following a sexual assault, the facility shall provide care to the survivor in accordance with Subsection (b).

(a-1) A facility that is not a SAFE-ready facility shall inform the sexual assault survivor that:

(1) the facility is not a SAFE-ready facility and provide to the survivor the name and location of nearby SAFE-ready facilities and the information form required by Section 323.0051; and

(2) the survivor is entitled, at the survivor's option:

(A) to receive the care described by Subsection (b) at that facility, subject to Subsection (b-1); or

(B) to be stabilized and to be referred or transferred to and receive the care described by Subsection (b) at a SAFE-ready facility.

(a-2) If a sexual assault survivor chooses to be transferred under Subsection (a-1)(2)(B), after obtaining the survivor's written, signed consent to the transfer, the facility shall stabilize and transfer the survivor to a SAFE-ready facility, which shall provide care to the survivor in accordance with Subsection (b).

(a-3) Before transferring a sexual assault survivor, a health care facility that is not a SAFE-ready facility shall contact the SAFE-ready facility to which the survivor will be transferred to confirm a sexual assault forensic examiner is available at that facility.

(b) A health care facility providing care to a sexual assault survivor shall provide the survivor with:

(1) subject to Subsection (b-1), a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, and Subchapter G, Chapter 56A, Code of Criminal Procedure;

(2) a private area, if available, to wait or speak with the appropriate medical, legal, or sexual assault crisis center staff or volunteer until a physician, nurse, or physician assistant is able to treat the survivor;

(3) access to a sexual assault program advocate, if available, as provided by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(4) the information form required by Section 323.005;

(5) a private treatment room, if available;

(6) if indicated by the history of contact, access to

appropriate prophylaxis for exposure to sexually transmitted infections;

(7) the name and telephone number of the nearest sexual assault crisis center; and

(8) if the health care facility has shower facilities, access to a shower at no cost to the survivor after the examination described by Subdivision (1).

(b-1) A person may not perform a forensic examination on a sexual assault survivor unless the person has the basic training described by Section 323.0045 or the equivalent education and training.

(c) A health care facility must obtain documented consent before providing the forensic medical examination and treatment. The facility shall presume that an adult sexual assault survivor requesting a forensic medical examination and treatment is competent.

(d) This section does not affect the duty of a health care facility to comply with the requirements of the federal Emergency Medical Treatment and Active Labor Act of 1986 (42 U.S.C. Section 1395dd) that are applicable to the facility.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.004 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(12), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1140 (H.B. 2626), Sec. 4, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 2, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.54, eff. January 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1329 (H.B. 4531), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 13, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 19, eff. September 1, 2023.

Sec. 323.0044. PROVISION OF EMERGENCY SERVICES TO CERTAIN ADULT SEXUAL ASSAULT SURVIVORS. (a) A health care facility shall provide a forensic medical examination and treatment to an adult sexual assault survivor for whom a guardian is appointed under Title 3, Estates Code, without the consent of the survivor's guardian, guardian ad litem, or other legal agent if:

(1) the health care facility determines the survivor understands the nature of the forensic medical examination and treatment; and

(2) the survivor agrees to receive the forensic medical examination and treatment.

(b) Subject to Subsection (c), if an adult sexual assault survivor requests a forensic medical examination and treatment and a health care facility determines the survivor potentially is incapable of consenting to the forensic medical examination and treatment, the health care facility may:

(1) obtain consent from a relative or caretaker of the survivor on the survivor's behalf;

(2) obtain consent from the survivor's guardian, guardian ad litem, or other legal agent; or

(3) petition a court with probate jurisdiction in the county in which the facility is located for an emergency order authorizing the forensic medical examination and treatment, in the manner provided by Section 48.208, Human Resources Code.

(c) If personnel of a health care facility know or have reason to believe that the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent is a suspect or accomplice in the sexual assault of the survivor, the health care facility may not contact the survivor's relative, caretaker, guardian, guardian ad litem, or other legal agent.

(d) A health care facility may not provide a forensic medical examination to an adult sexual assault survivor for whom a guardian is appointed under Title 3, Estates Code, if the survivor refuses the examination, regardless of whether the survivor's guardian requests or consents to the examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 1329 (H.B. 4531), Sec. 2, eff. September 1, 2019.

Sec. 323.0045. BASIC SEXUAL ASSAULT FORENSIC EVIDENCE COLLECTION TRAINING. (a) A person who performs a forensic medical examination on a sexual assault survivor must complete at least two hours of basic forensic evidence collection training or the equivalent education that conforms to the evidence collection protocol developed by the attorney general under Section 420.031, Government Code.

(b) A person who completes a continuing medical or nursing education course in forensic evidence collection described by Section 156.057 or 301.306, Occupations Code, that is approved or recognized by the appropriate licensing board is considered to have completed basic forensic evidence collection training for purposes of this chapter.

(c) Each health care facility that has an emergency department and that is not a SAFE-ready facility shall develop a written policy to ensure that a person described by Subsection (a) completes training on basic forensic evidence collection in accordance with this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 3, eff. September 1, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 4, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 2, eff. September 1, 2023.

Sec. 323.0046. BASIC SEXUAL ASSAULT RESPONSE POLICY AND TRAINING FOR CERTAIN HEALTH CARE FACILITY PERSONNEL. (a) A health care facility that has an emergency department shall provide at least one hour of basic sexual assault response training to facility employees who provide patient admission functions, patient-related administrative support functions, or direct patient care. The training must include instruction on:

(1) the provision of survivor-centered, trauma-informed

care to sexual assault survivors; and

(2) the rights of sexual assault survivors under Chapter 56A, Code of Criminal Procedure, including:

(A) the availability of a forensic medical examination, including an examination that is available when a sexual assault survivor does not report the assault to a law enforcement agency; and

(B) the role of an advocate as defined by Section 420.003, Government Code, in responding to a sexual assault survivor.

(b) An employee described by Subsection (a) who completes a continuing medical or nursing education course in forensic evidence collection described by Section 156.057 or 301.306, Occupations Code, that is approved or recognized by the appropriate licensing board is considered to have completed basic sexual assault response training for purposes of this section.

(c) Each health care facility that has an emergency department and that is not a SAFE-ready facility shall develop a written policy to ensure that all appropriate facility personnel complete the basic sexual assault response training required by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 3, eff. September 1, 2023.

Sec. 323.005. INFORMATION FORM. (a) The commission shall develop a standard information form for sexual assault survivors that must include:

(1) a detailed explanation of the forensic medical examination required to be provided by law, including a statement that photographs may be taken of the genitalia;

(2) information regarding treatment of sexually transmitted infections and pregnancy, including:

(A) generally accepted medical procedures;

(B) appropriate medications; and

(C) any contraindications of the medications prescribed for treating sexually transmitted infections and preventing pregnancy;

(3) information regarding drug-facilitated sexual assault, including the necessity for an immediate urine test for sexual assault survivors who may have been involuntarily drugged;

(4) information regarding crime victims compensation and

regarding the payment of costs and the reimbursements available for care to be provided as described by Subchapter G, Chapter 56A, Code of Criminal Procedure;

(5) an explanation that consent for the forensic medical examination may be withdrawn at any time during the examination;

(6) the name and telephone number of sexual assault crisis centers statewide;

(7) information regarding postexposure prophylaxis for HIV infection;

(8) information regarding the period for which biological evidence collected from the forensic medical examination will be retained and preserved under Article 38.43, Code of Criminal Procedure; and

(9) a statement that the survivor has the right to access a shower for free after the forensic medical examination, if shower facilities are available at the health care facility.

(b) A health care facility shall use the standard form developed under this section.

(c) An individual employed by or under contract with a health care facility may refuse to provide the information form required by this section for ethical or religious reasons. If an individual employed by or under contract with a health care facility refuses to provide the survivor with the information form, the health care facility must ensure that the information form is provided without delay to the survivor by another individual employed by or under contract with the facility.

(d) In addition to providing the information form described by Subsection (a), a health care facility shall ensure that the information described by Subsection (a)(4)(A) is orally communicated to the survivor.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.005 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1140 (H.B. 2626), Sec. 5, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 408 (H.B. 8), Sec. 10, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.55, eff. January 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1037 (H.B. 616), Sec. 6, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 14, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.005, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 20, eff. September 1, 2023.

Sec. 323.0051. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS AT CERTAIN FACILITIES. (a) The commission shall develop a standard information form for sexual assault survivors who arrive at a health care facility that is not a SAFE-ready facility. The information form must include:

(1) information regarding the benefits of a forensic medical examination conducted by a sexual assault forensic examiner;

(2) the Internet website address to the commission's list of SAFE-ready facilities that includes the facilities' physical addresses as required by Section 323.008;

(3) the following statements:

(A) "As a survivor of sexual assault, you have the right to receive a forensic medical examination for sexual assault at this hospital emergency room if you are requesting the examination not later than 120 hours after the assault. For parents or guardians of a minor child, your child has the right to receive the forensic medical examination at any time, regardless of when the assault occurred."; and

(B) "Call 1-800-656-HOPE to be connected to a sexual assault crisis center for free and confidential assistance."; and

(4) information on the procedure for submitting a complaint against the health care facility.

(b) A health care facility that is not a SAFE-ready facility shall provide the standard information form developed under this section to each sexual assault survivor who arrives at the facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 5,

eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1037 (H.B. 616), Sec. 7, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 15, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 21, eff. September 1, 2023.

Sec. 323.0052. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS WHO HAVE NOT REPORTED ASSAULT. (a) The commission shall develop a standard information form that, as described by Subsection (b), is to be provided to sexual assault survivors who have not given signed, written consent to a health care facility to release the evidence as provided by Section 420.0735, Government Code. The form must include the following information:

(1) the Department of Public Safety's policy regarding storage of evidence of a sexual assault or other sex offense that is collected under Subchapter G, Chapter 56A, Code of Criminal Procedure, including:

(A) a statement that the evidence will be stored until the fifth anniversary of the date on which the evidence was collected before the evidence becomes eligible for destruction; and

(B) the department's procedures regarding the notification of the survivor through the statewide electronic tracking system before a planned destruction of the evidence;

(2) a statement that the survivor may request the release of the evidence to a law enforcement agency and report a sexual assault or other sex offense to the agency at any time;

(3) the name, phone number, and e-mail address of the law enforcement agency with jurisdiction over the offense; and

(4) the name and phone number of a local sexual assault crisis center.

(b) A health care facility that provides care to a sexual assault survivor who has not given consent as described by Subsection (a) shall provide the standard form developed under Subsection (a) to the survivor before the survivor is released from the facility.

Added by Acts 2019, 86th Leg., R.S., Ch. 408 (H.B. 8), Sec. 11, eff.

September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 16, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.006, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 22, eff. September 1, 2023.

Sec. 323.006. INSPECTION. The department may conduct an inspection of a health care facility to ensure compliance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 934 (H.B. 677), Sec. 1, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 322.006 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(47), eff. September 1, 2007.

Sec. 323.007. SEXUAL ASSAULT SURVIVORS WHO ARE MINORS. This chapter does not affect participating entities of children's advocacy centers under Subchapter E, Chapter 264, Family Code, or the working protocols set forth by their multidisciplinary teams to ensure access to specialized medical assessments for sexual assault survivors who are minors. To the extent of a conflict with Subchapter E, Chapter 264, Family Code, that subchapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 4, eff. September 1, 2013.

Sec. 323.008. DATA PUBLICATION. The commission shall post on the commission's Internet website a list of all hospitals and other health facilities that are designated as SAFE-ready facilities under this chapter and the facilities' physical addresses. The commission shall update the list quarterly. To the extent possible, the commission shall collect the data required by this section as part of a survey required by the commission under other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 162 (S.B. 1191), Sec. 4, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1063 (H.B. 3152), Sec. 6, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 17, eff. September 1, 2021.

SUBCHAPTER B. SEXUAL ASSAULT FORENSIC EXAMINATION PROGRAMS

Sec. 323.051. DEFINITIONS. In this subchapter:

(1) "SAFE program" means a program that meets the requirements prescribed by Section 323.052. The term does not include a program operated by a health care facility, as defined by Section 323.001.

(2) "Sexual assault examiner," "sexual assault nurse examiner," and "sexual assault program" have the meanings assigned by Section 420.003, Government Code.

(3) "Sexual assault forensic examiner" means a certified sexual assault nurse examiner or a physician licensed under Subtitle B, Title 3, Occupations Code, with specialized training on conducting a forensic medical examination.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18, eff. September 1, 2021.

Sec. 323.052. OPERATION OF SAFE PROGRAM; DESIGNATION OF SAFE PROGRAM AS SAFE-READY FACILITY. (a) A person may operate a SAFE program only if:

(1) the program meets the minimum standards established under Section 323.053; and

(2) the program provides forensic medical examinations to sexual assault survivors in accordance with Section 323.054.

(b) The Health and Human Services Commission shall designate a SAFE program described by Subsection (a) as a SAFE-ready facility under Section 323.0015 if the program notifies the commission that the program employs or contracts with a sexual assault forensic examiner or uses a telemedicine system of sexual assault forensic examiners to provide consultation during a sexual assault forensic

medical examination to a nurse or physician licensed to practice in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18, eff. September 1, 2021.

Sec. 323.053. MINIMUM STANDARDS FOR SAFE PROGRAMS. A SAFE program must:

(1) operate under the active oversight of a medical director who is a physician licensed by and in good standing with the Texas Medical Board;

(2) provide medical treatment under a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by Texas Medical Board rules;

(3) employ or contract with a sexual assault examiner or a sexual assault nurse examiner;

(4) provide access to a sexual assault program advocate, as required by Subchapter H, Chapter 56A, Code of Criminal Procedure;

(5) ensure a sexual assault survivor has access to a private treatment room;

(6) if indicated by a survivor's history or on a survivor's request, provide:

(A) HIV testing and prophylactic medication to the survivor or a referral for the testing and medication; and

(B) counseling and prophylactic medications for exposure to sexually transmitted infections and pregnancy;

(7) provide to survivors the name and telephone number of a nearby sexual assault program that provides to survivors the minimum services described by Subchapter A, Chapter 420, Government Code;

(8) provide to survivors the information form required by Section 323.005, 323.0051, or 323.0052, as applicable, and orally communicate the information regarding crime victims compensation under Section 323.005(a)(4);

(9) collaborate with any sexual assault program, as defined by Section 420.003, Government Code, that provides services to survivors in the county;

(10) engage in efforts to improve the quality of the program;

(11) maintain capacity for appropriate triage or have

agreements with other health facilities to assure that a survivor receives the appropriate level of care indicated for the survivor's medical and mental health needs;

(12) prioritize the safety and well-being of survivors;

(13) provide a trauma-informed approach in the forensic medical care provided to survivors; and

(14) collaborate with:

(A) law enforcement agencies and attorneys representing the state with jurisdiction in the county;

(B) any available local sexual assault response team; and

(C) other interested persons in the community.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18, eff. September 1, 2021.

Sec. 323.054. FORENSIC MEDICAL EXAMINATION BY SAFE PROGRAM; INFORMED CONSENT. (a) A SAFE program shall provide to a sexual assault survivor under the care of the program a forensic medical examination in accordance with Subchapter B, Chapter 420, Government Code, and Subchapter G, Chapter 56A, Code of Criminal Procedure.

(b) Only a sexual assault examiner or a sexual assault nurse examiner may perform a forensic medical examination under a SAFE program.

(c) A sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program must obtain the consent described by Article 56A.303, Code of Criminal Procedure, before performing a forensic medical examination or providing medical treatment to the survivor.

(d) A sexual assault survivor who receives a forensic medical examination from a sexual assault examiner or sexual assault nurse examiner employed by or under contract with a SAFE program may not be required to:

(1) participate in the investigation or prosecution of an offense as a prerequisite to receiving the forensic medical examination or medical treatment; or

(2) pay for any costs described by Article 56A.304(a), Code of Criminal Procedure.

Added by Acts 2021, 87th Leg., R.S., Ch. 822 (H.B. 2706), Sec. 18,

eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 23, eff. September 1, 2023.

CHAPTER 324. CONSUMER ACCESS TO HEALTH CARE INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 324.001. DEFINITIONS. In this chapter:

(1) "Average charge" means the mathematical average of facility charges for an inpatient admission or outpatient surgical procedure. The term does not include charges for a particular inpatient admission or outpatient surgical procedure that exceed the average by more than two standard deviations.

(2) "Billed charge" means the amount a facility charges for an inpatient admission, outpatient surgical procedure, or health care service or supply.

(3) "Costs" means the fixed and variable expenses incurred by a facility in the provision of a health care service.

(4) "Consumer" means any person who is considering receiving, is receiving, or has received a health care service or supply as a patient from a facility. The term includes the personal representative of the patient.

(5) "Department" means the Department of State Health Services.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Facility" means:

(A) an ambulatory surgical center licensed under Chapter 243;

(B) a birthing center licensed under Chapter 244;

(C) a hospital licensed under Chapter 241; or

(D) a freestanding emergency medical care facility, as defined in Section 254.001, including a freestanding emergency medical care facility that is exempt from the licensing requirements of Chapter 254 under Section 254.052(8).

(8) "Facility-based physician" means a radiologist, an anesthesiologist, a pathologist, an emergency department physician, a neonatologist, or an assistant surgeon.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 4, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 185 (S.B. 425), Sec. 4, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 467 (S.B. 481), Sec. 1, eff. September 1, 2015.

Sec. 324.002. RULES. The executive commissioner shall adopt and enforce rules to further the purposes of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

SUBCHAPTER B. CONSUMER GUIDE TO HEALTH CARE

Sec. 324.051. DEPARTMENT WEBSITE. (a) The department shall make available on the department's Internet website a consumer guide to health care. The department shall include information in the guide concerning facility pricing practices and the correlation between a facility's average charge for an inpatient admission or outpatient surgical procedure and the actual, billed charge for the admission or procedure, including notice that the average charge for a particular inpatient admission or outpatient surgical procedure will vary from the actual, billed charge for the admission or procedure based on:

(1) the person's medical condition;

(2) any unknown medical conditions of the person;

(3) the person's diagnosis and recommended treatment protocols ordered by the physician providing care to the person; and

(4) other factors associated with the inpatient admission or outpatient surgical procedure.

(b) The department shall include information in the guide to advise consumers that:

(1) the average charge for an inpatient admission or outpatient surgical procedure may vary between facilities depending on a facility's cost structure, the range and frequency of the

services provided, intensity of care, and payor mix;

(2) the average charge by a facility for an inpatient admission or outpatient surgical procedure will vary from the facility's costs or the amount that the facility may be reimbursed by a health benefit plan for the admission or surgical procedure;

(3) the consumer may be personally liable for payment for an inpatient admission, outpatient surgical procedure, or health care service or supply depending on the consumer's health benefit plan coverage;

(4) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for an inpatient admission, outpatient surgical procedure, or health care service or supply; and

(5) the consumer, if uninsured, may be eligible for a discount on facility charges based on a sliding fee scale or a written charity care policy established by the facility.

(c) The department shall include on the consumer guide to health care website:

(1) an Internet link for consumers to access quality of care data, including:

(A) the Texas Health Care Information Collection website;

(B) the Hospital Compare website within the United States Department of Health and Human Services website;

(C) the Joint Commission on Accreditation of Healthcare Organizations website; and

(D) the Texas Hospital Association's Texas PricePoint website; and

(2) a disclaimer noting the websites that are not provided by this state or an agency of this state.

(d) The department may accept gifts and grants to fund the consumer guide to health care. On the department's Internet website, the department may not identify, recognize, or acknowledge in any format the donors or grantors to the consumer guide to health care.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

SUBCHAPTER C. BILLING OF FACILITY SERVICES AND SUPPLIES

Sec. 324.101. FACILITY POLICIES. (a) Each facility shall develop, implement, and enforce written policies for the billing of facility health care services and supplies. The policies must address:

(1) any discounting of facility charges to an uninsured consumer, subject to Chapter 552, Insurance Code;

(2) any discounting of facility charges provided to a financially or medically indigent consumer who qualifies for indigent services based on a sliding fee scale or a written charity care policy established by the facility and the documented income and other resources of the consumer;

(3) the providing of an itemized statement required by Subsection (e);

(4) whether interest will be applied to any billed service not covered by a third-party payor and the rate of any interest charged;

(5) the procedure for handling complaints;

(6) the providing of a conspicuous written disclosure to a consumer at the time the consumer is first admitted to the facility or first receives services at the facility that:

(A) provides confirmation whether the facility is a participating provider under the consumer's third-party payor coverage on the date services are to be rendered based on the information received from the consumer at the time the confirmation is provided;

(B) informs consumers that a facility-based physician who may provide services to the consumer while the consumer is in the facility may not be a participating provider with the same third-party payors as the facility;

(C) informs consumers that the consumer may receive a bill for medical services from a facility-based physician for the amount unpaid by the consumer's health benefit plan;

(D) informs consumers that the consumer may request a listing of facility-based physicians who have been granted medical staff privileges to provide medical services at the facility; and

(E) informs consumers that the consumer may request information from a facility-based physician on whether the physician has a contract with the consumer's health benefit plan and under what circumstances the consumer may be responsible for payment of any

amounts not paid by the consumer's health benefit plan;

(7) the requirement that a facility provide a list, on request, to a consumer to be admitted to, or who is expected to receive services from, the facility, that contains the name and contact information for each facility-based physician or facility-based physician group that has been granted medical staff privileges to provide medical services at the facility; and

(8) if the facility operates a website that includes a listing of physicians who have been granted medical staff privileges to provide medical services at the facility, the posting on the facility's website of a list that contains the name and contact information for each facility-based physician or facility-based physician group that has been granted medical staff privileges to provide medical services at the facility and the updating of the list in any calendar quarter in which there are any changes to the list.

(b) For services provided in an emergency department of a hospital or as a result of an emergent direct admission, the hospital shall provide the written disclosure required by Subsection (a)(6) before discharging the patient from the emergency department or hospital, as appropriate.

(c) Each facility shall post in the general waiting area and in the waiting areas of any off-site or on-site registration, admission, or business office a clear and conspicuous notice of the availability of the policies required by Subsection (a).

(d) The facility shall provide an estimate of the facility's charges for any elective inpatient admission or nonemergency outpatient surgical procedure or other service on request and before the scheduling of the admission or procedure or service. The estimate must be provided not later than the 10th business day after the date on which the estimate is requested. The facility must advise the consumer that:

(1) the request for an estimate of charges may result in a delay in the scheduling and provision of the inpatient admission, outpatient surgical procedure, or other service;

(2) the actual charges for an inpatient admission, outpatient surgical procedure, or other service will vary based on the person's medical condition and other factors associated with performance of the procedure or service;

(3) the actual charges for an inpatient admission, outpatient surgical procedure, or other service may differ from the

amount to be paid by the consumer or the consumer's third-party payor;

(4) the consumer may be personally liable for payment for the inpatient admission, outpatient surgical procedure, or other service depending on the consumer's health benefit plan coverage; and

(5) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for the inpatient admission, outpatient surgical procedure, or other service.

(e) A facility shall provide to the consumer at the consumer's request an itemized statement of the billed services if the consumer requests the statement not later than the first anniversary of the date the person is discharged from the facility. The facility shall provide the statement to the consumer not later than the 10th business day after the date on which the statement is requested.

(f) A facility shall provide an itemized statement of billed services to a third-party payor who is actually or potentially responsible for paying all or part of the billed services provided to a patient and who has received a claim for payment of those services. To be entitled to receive a statement, the third-party payor must request the statement from the facility and must have received a claim for payment. The request must be made not later than one year after the date on which the payor received the claim for payment. The facility shall provide the statement to the payor not later than the 30th day after the date on which the payor requests the statement. If a third-party payor receives a claim for payment of part but not all of the billed services, the third-party payor may request an itemized statement of only the billed services for which payment is claimed or to which any deduction or copayment applies.

(g) A facility in violation of this section is subject to enforcement action by the appropriate licensing agency.

(h) If a consumer or a third-party payor requests more than two copies of the statement, the facility may charge a reasonable fee for the third and subsequent copies provided. The fee may not exceed the sum of:

(1) a basic retrieval or processing fee, which must include the fee for providing the first 10 pages of the copies and which may not exceed $30;

(2) a charge for each page of:

(A) $1 for the 11th through the 60th page of the provided copies;

(B) 50 cents for the 61st through the 400th page of the provided copies; and

(C) 25 cents for any remaining pages of the provided copies; and

(3) the actual cost of mailing, shipping, or otherwise delivering the provided copies.

(i) If a consumer overpays a facility, the facility must refund the amount of the overpayment not later than the 30th day after the date the facility determines that an overpayment has been made. This subsection does not apply to an overpayment subject to Section 1301.132 or 843.350, Insurance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 5, eff. June 19, 2009.

Sec. 324.102. COMPLAINT PROCESS. A facility shall establish and implement a procedure for handling consumer complaints, and must make a good faith effort to resolve the complaint in an informal manner based on its complaint procedures. If the complaint cannot be resolved informally, the facility shall advise the consumer that a complaint may be filed with the department and shall provide the consumer with the mailing address and telephone number of the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

Sec. 324.103. CONSUMER WAIVER PROHIBITED. The provisions of this chapter may not be waived, voided, or nullified by a contract or an agreement between a facility and a consumer.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 1, eff. September 1, 2007.

CHAPTER 325. NOTICE OF SEX OFFENDER STATUS TO RESIDENTS OF GROUP HOME

Sec. 325.001. DEFINITIONS. In this chapter:

(1) "Director" means the administrator primarily responsible for the operation of a group home.

(2) "Group home" includes:

(A) an assisted living facility, as defined by Section 247.002;

(B) a boarding home facility, as defined by Section 260.001;

(C) a facility as defined by Section 246.002;

(D) a supportive housing facility operated by the state, a local government, or a private agency that provides supportive services to persons with mental illness, substance use conditions, or physical disabilities who require access to rehabilitative services and a stable living arrangement to maintain consistent treatment regimens; and

(E) a transitional housing facility designed to facilitate the transition from inpatient to outpatient care or, within a reasonable time, the transition from homelessness to permanent housing for persons with serious mental illnesses, substance use conditions, or physical disabilities and who may require intensive case management and assistance with long-term goal planning and independent living skills.

(3) "Resident" means a person who resides and receives services at a group home.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.002. APPLICABILITY OF CHAPTER. This chapter does not apply to a group home that accepts or is assigned only residents who are sex offenders required to register under Chapter 62, Code of Criminal Procedure, if the residents receive treatment at the group home from a sex offender treatment provider who is licensed under Chapter 110, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff.

September 1, 2013.

Sec. 325.003. SEX OFFENDER STATUS CHECK. Except as provided by Section 325.002, as soon as practicable after a person requests to live at a group home or is assigned to live at a group home as a condition of community supervision or as a condition of release on parole or to mandatory supervision, the director of the group home shall ascertain whether the person is registered under Chapter 62, Code of Criminal Procedure, by consulting the Internet website maintained by the Department of Public Safety that contains the sex offender database.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.004. NOTICE TO OTHER RESIDENTS REQUIRED. If based on information obtained under Section 325.003 the director ascertains that a person is a registered sex offender, not later than the third day after the date the person becomes a resident of the group home, the director shall provide notice that the person is a sex offender to the legal guardian of each current resident who has a legal guardian and directly to each other resident. The notice must contain all of the information about the person that is available on the website described by Section 325.003.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

Sec. 325.005. IMMUNITY FOR RELEASE OF PUBLIC INFORMATION. A group home or its director is not liable under any law for damages arising from conduct required under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 246 (H.B. 424), Sec. 1, eff. September 1, 2013.

CHAPTER 326. STAFFING REQUIREMENTS FOR FACILITIES PROVIDING CARE TO PERSONS WITH ALZHEIMER'S DISEASE OR RELATED DISORDERS

Sec. 326.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Facility" means:

(A) a nursing facility licensed under Chapter 242;

(B) a continuing care facility regulated under Chapter 246;

(C) an assisted living facility licensed under Chapter 247;

(D) a day activity and health services facility licensed under Chapter 103, Human Resources Code;

(E) an establishment subject to Chapter 105, Human Resources Code;

(F) a community home qualified under Chapter 123, Human Resources Code; and

(G) an adult foster care provider that contracts with the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

Sec. 326.002. WRITTEN POLICY REQUIRED. A facility shall adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a person with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to persons with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a person with Alzheimer's disease or a related disorder meet the specific identified needs of the person relating to the person's diagnosis of Alzheimer's disease or a related disorder.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

Sec. 326.003. ENFORCEMENT. (a) The commission may assess an administrative penalty against a facility for a violation of Section 326.002.

(b) The commission is not required to provide a facility an

opportunity to correct a second or subsequent violation of Section 326.002 that occurs before the second anniversary of the date of the first violation.

(c) A violation of Section 326.002 constitutes a violation of the law regulating a facility, and the commission may initiate for the violation any other enforcement action authorized by that law against the facility, including an adult foster care facility with three or fewer beds.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

Sec. 326.004. RULES. The executive commissioner shall adopt rules related to the administration and implementation of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 16, eff. September 1, 2017.

CHAPTER 327. DISCLOSURE OF PRICES

Sec. 327.001. DEFINITIONS. In this chapter:

(1) "Ancillary service" means a facility item or service that a facility customarily provides as part of a shoppable service.

(2) "Chargemaster" means the list of all facility items or services maintained by a facility for which the facility has established a charge.

(3) "Commission" means the Health and Human Services Commission.

(4) "De-identified maximum negotiated charge" means the highest charge that a facility has negotiated with all third party payors for a facility item or service.

(5) "De-identified minimum negotiated charge" means the lowest charge that a facility has negotiated with all third party payors for a facility item or service.

(6) "Discounted cash price" means the charge that applies to an individual who pays cash, or a cash equivalent, for a facility item or service.

(7) "Facility" means a hospital licensed under Chapter 241.

(8) "Facility items or services" means all items and

services, including individual items and services and service packages, that may be provided by a facility to a patient in connection with an inpatient admission or an outpatient department visit, as applicable, for which the facility has established a standard charge, including:

(A) supplies and procedures;

(B) room and board;

(C) use of the facility and other areas, the charges for which are generally referred to as facility fees;

(D) services of physicians and non-physician practitioners, employed by the facility, the charges for which are generally referred to as professional charges; and

(E) any other item or service for which a facility has established a standard charge.

(9) "Gross charge" means the charge for a facility item or service that is reflected on a facility's chargemaster, absent any discounts.

(10) "Machine-readable format" means a digital representation of information in a file that can be imported or read into a computer system for further processing. The term includes.XML,.JSON, and.CSV formats.

(11) "Payor-specific negotiated charge" means the charge that a facility has negotiated with a third party payor for a facility item or service.

(12) "Service package" means an aggregation of individual facility items or services into a single service with a single charge.

(13) "Shoppable service" means a service that may be scheduled by a health care consumer in advance.

(14) "Standard charge" means the regular rate established by the facility for a facility item or service provided to a specific group of paying patients. The term includes all of the following, as defined under this section:

(A) the gross charge;

(B) the payor-specific negotiated charge;

(C) the de-identified minimum negotiated charge;

(D) the de-identified maximum negotiated charge; and

(E) the discounted cash price.

(15) "Third party payor" means an entity that is, by statute, contract, or agreement, legally responsible for payment of a

claim for a facility item or service.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.002. PUBLIC AVAILABILITY OF PRICE INFORMATION REQUIRED. Notwithstanding any other law, a facility must make public:

(1) a digital file in a machine-readable format that contains a list of all standard charges for all facility items or services as described by Section 327.003; and

(2) a consumer-friendly list of standard charges for a limited set of shoppable services as provided in Section 327.004.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.003. LIST OF STANDARD CHARGES REQUIRED. (a) A facility shall:

(1) maintain a list of all standard charges for all facility items or services in accordance with this section; and

(2) ensure the list required under Subdivision (1) is available at all times to the public, including by posting the list electronically in the manner provided by this section.

(b) The standard charges contained in the list required to be maintained by a facility under Subsection (a) must reflect the standard charges applicable to that location of the facility, regardless of whether the facility operates in more than one location or operates under the same license as another facility.

(c) The list required under Subsection (a) must include the following items, as applicable:

(1) a description of each facility item or service provided by the facility;

(2) the following charges for each individual facility item or service when provided in either an inpatient setting or an outpatient department setting, as applicable:

(A) the gross charge;

(B) the de-identified minimum negotiated charge;

(C) the de-identified maximum negotiated charge;

(D) the discounted cash price; and

(E) the payor-specific negotiated charge, listed by the name of the third party payor and plan associated with the charge and displayed in a manner that clearly associates the charge with each third party payor and plan; and

(3) any code used by the facility for purposes of accounting or billing for the facility item or service, including the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common identifier.

(d) The information contained in the list required under Subsection (a) must be published in a single digital file that is in a machine-readable format.

(e) The list required under Subsection (a) must be displayed in a prominent location on the home page of the facility's publicly accessible Internet website or accessible by selecting a dedicated link that is prominently displayed on the home page of the facility's publicly accessible Internet website. If the facility operates multiple locations and maintains a single Internet website, the list required under Subsection (a) must be posted for each location the facility operates in a manner that clearly associates the list with the applicable location of the facility.

(f) The list required under Subsection (a) must:

(1) be available:

(A) free of charge;

(B) without having to establish a user account or password;

(C) without having to submit personal identifying information; and

(D) without having to overcome any other impediment, including entering a code to access the list;

(2) be accessible to a common commercial operator of an Internet search engine to the extent necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine;

(3) be formatted in a manner prescribed by the commission;

(4) be digitally searchable; and

(5) use the following naming convention specified by the Centers for Medicare and Medicaid Services, specifically:

<ein>_<facility-name>_standardcharges.[json|xml|csv]

(g) In prescribing the format of the list under Subsection (f)(3), the commission shall:

(1) develop a template that each facility must use in formatting the list; and

(2) in developing the template under Subdivision (1):

(A) consider any applicable federal guidelines for formatting similar lists required by federal law or rule and ensure that the design of the template enables health care researchers to compare the charges contained in the lists maintained by each facility; and

(B) design the template to be substantially similar to the template used by the Centers for Medicare and Medicaid Services for purposes similar to those of this chapter, if the commission determines that designing the template in that manner serves the purposes of Paragraph (A) and that the commission benefits from developing and requiring that substantially similar design.

(h) The facility must update the list required under Subsection (a) at least once each year. The facility must clearly indicate the date on which the list was most recently updated, either on the list or in a manner that is clearly associated with the list.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.004. CONSUMER-FRIENDLY LIST OF SHOPPABLE SERVICES. (a) Except as provided by Subsection (c), a facility shall maintain and make publicly available a list of the standard charges described by Sections 327.003(c)(2)(B), (C), (D), and (E) for each of at least 300 shoppable services provided by the facility. The facility may select the shoppable services to be included in the list, except that the list must include:

(1) the 70 services specified as shoppable services by the Centers for Medicare and Medicaid Services; or

(2) if the facility does not provide all of the shoppable services described by Subdivision (1), as many of those shoppable services the facility does provide.

(b) In selecting a shoppable service for purposes of inclusion in the list required under Subsection (a), a facility must:

(1) consider how frequently the facility provides the

service and the facility's billing rate for that service; and

(2) prioritize the selection of services that are among the services most frequently provided by the facility.

(c) If a facility does not provide 300 shoppable services, the facility must maintain a list of the total number of shoppable services that the facility provides in a manner that otherwise complies with the requirements of Subsection (a).

(d) The list required under Subsection (a) or (c), as applicable, must:

(1) include:

(A) a plain-language description of each shoppable service included on the list;

(B) the payor-specific negotiated charge that applies to each shoppable service included on the list and any ancillary service, listed by the name of the third party payor and plan associated with the charge and displayed in a manner that clearly associates the charge with the third party payor and plan;

(C) the discounted cash price that applies to each shoppable service included on the list and any ancillary service or, if the facility does not offer a discounted cash price for one or more of the shoppable or ancillary services on the list, the gross charge for the shoppable service or ancillary service, as applicable;

(D) the de-identified minimum negotiated charge that applies to each shoppable service included on the list and any ancillary service;

(E) the de-identified maximum negotiated charge that applies to each shoppable service included on the list and any ancillary service; and

(F) any code used by the facility for purposes of accounting or billing for each shoppable service included on the list and any ancillary service, including the Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the Diagnosis Related Group (DRG) code, the National Drug Code (NDC), or other common identifier; and

(2) if applicable:

(A) state each location at which the facility provides the shoppable service and whether the standard charges included in the list apply at that location to the provision of that shoppable service in an inpatient setting, an outpatient department setting, or in both of those settings, as applicable; and

(B) indicate if one or more of the shoppable services specified by the Centers for Medicare and Medicaid Services is not provided by the facility.

(e) The list required under Subsection (a) or (c), as applicable, must be:

(1) displayed in the manner prescribed by Section 327.003(e) for the list required under that section;

(2) available:

(A) free of charge;

(B) without having to register or establish a user account or password;

(C) without having to submit personal identifying information; and

(D) without having to overcome any other impediment, including entering a code to access the list;

(3) searchable by service description, billing code, and payor;

(4) updated in the manner prescribed by Section 327.003(h) for the list required under that section;

(5) accessible to a common commercial operator of an Internet search engine to the extent necessary for the search engine to index the list and display the list as a result in response to a search query of a user of the search engine; and

(6) formatted in a manner that is consistent with the format prescribed by the commission under Section 327.003(f)(3).

(f) Notwithstanding any other provision of this section, a facility is considered to meet the requirements of this section if the facility maintains, as determined by the commission, an Internet-based price estimator tool that:

(1) provides a cost estimate for each shoppable service and any ancillary service included on the list maintained by the facility under Subsection (a);

(2) allows a person to obtain an estimate of the amount the person will be obligated to pay the facility if the person elects to use the facility to provide the service; and

(3) is:

(A) prominently displayed on the facility's publicly accessible Internet website; and

(B) accessible to the public:

(i) without charge; and

(ii) without having to register or establish a user account or password.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.005. REPORTING REQUIREMENT. Each time a facility updates a list as required under Sections 327.003(h) and 327.004(e)(4), the facility shall submit the updated list to the commission. The commission may prescribe the form in which the updated list must be submitted to the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.006. MONITORING AND ENFORCEMENT. (a) The commission shall monitor each facility's compliance with the requirements of this chapter using any of the following methods:

(1) evaluating complaints made by persons to the commission regarding noncompliance with this chapter;

(2) reviewing any analysis prepared regarding noncompliance with this chapter;

(3) auditing the Internet websites of facilities for compliance with this chapter; and

(4) confirming that each facility submitted the lists required under Section 327.005.

(b) If the commission determines that a facility is not in compliance with a provision of this chapter, the commission may take any of the following actions, without regard to the order of the actions:

(1) provide a written notice to the facility that clearly explains the manner in which the facility is not in compliance with this chapter;

(2) request a corrective action plan from the facility if the facility has materially violated a provision of this chapter, as determined under Section 327.007; and

(3) impose an administrative penalty on the facility and publicize the penalty on the commission's Internet website if the facility fails to:

(A) respond to the commission's request to submit a corrective action plan; or

(B) comply with the requirements of a corrective action plan submitted to the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.007. MATERIAL VIOLATION; CORRECTIVE ACTION PLAN. (a) A facility materially violates this chapter if the facility fails to:

(1) comply with the requirements of Section 327.002; or

(2) publicize the facility's standard charges in the form and manner required by Sections 327.003 and 327.004.

(b) If the commission determines that a facility has materially violated this chapter, the commission may issue a notice of material violation to the facility and request that the facility submit a corrective action plan. The notice must indicate the form and manner in which the corrective action plan must be submitted to the commission, and clearly state the date by which the facility must submit the plan.

(c) A facility that receives a notice under Subsection (b) must:

(1) submit a corrective action plan in the form and manner, and by the specified date, prescribed by the notice of violation; and

(2) as soon as practicable after submission of a corrective action plan to the commission, act to comply with the plan.

(d) A corrective action plan submitted to the commission must:

(1) describe in detail the corrective action the facility will take to address any violation identified by the commission in the notice provided under Subsection (b); and

(2) provide a date by which the facility will complete the corrective action described by Subdivision (1).

(e) A corrective action plan is subject to review and approval by the commission. After the commission reviews and approves a facility's corrective action plan, the commission may monitor and evaluate the facility's compliance with the plan.

(f) A facility is considered to have failed to respond to the commission's request to submit a corrective action plan if the facility fails to submit a corrective action plan:

(1) in the form and manner specified in the notice provided under Subsection (b); or

(2) by the date specified in the notice provided under Subsection (b).

(g) A facility is considered to have failed to comply with a corrective action plan if the facility fails to address a violation within the specified period of time contained in the plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.008. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a facility in accordance with Chapter 241 if the facility fails to:

(1) respond to the commission's request to submit a corrective action plan; or

(2) comply with the requirements of a corrective action plan submitted to the commission.

(b) The commission may impose an administrative penalty on a facility for a violation of each requirement of this chapter. The commission shall set the penalty in an amount sufficient to ensure compliance by facilities with the provisions of this chapter subject to the limitations prescribed by Subsection (c).

(c) For a facility with one of the following total gross revenues as reported to the Centers for Medicare and Medicaid Services or to another entity designated by commission rule in the year preceding the year in which a penalty is imposed, the penalty imposed by the commission may not exceed:

(1) $10 for each day the facility violated this chapter, if the facility's total gross revenue is less than $10,000,000;

(2) $100 for each day the facility violated this chapter, if the facility's total gross revenue is $10,000,000 or more and less than $100,000,000; and

(3) $1,000 for each day the facility violated this chapter, if the facility's total gross revenue is $100,000,000 or more.

(d) Each day a violation continues is considered a separate violation.

(e) In determining the amount of the penalty, the commission shall consider:

(1) previous violations by the facility's operator;

(2) the seriousness of the violation;

(3) the demonstrated good faith of the facility's operator; and

(4) any other matters as justice may require.

(f) An administrative penalty collected under this chapter shall be deposited to the credit of an account in the general revenue fund administered by the commission. Money in the account may be appropriated only to the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

Sec. 327.009. LEGISLATIVE RECOMMENDATIONS. The commission may propose to the legislature recommendations for amending this chapter, including recommendations in response to amendments by the Centers for Medicare and Medicaid Services to 45 C.F.R. Part 180.

Added by Acts 2021, 87th Leg., R.S., Ch. 1044 (S.B. 1137), Sec. 1, eff. September 1, 2021.

SUBTITLE H. HEALTH FACILITY EMPLOYEES

CHAPTER 331. WORKPLACE VIOLENCE PREVENTION

Sec. 331.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Committee" means the workplace violence prevention committee or other committee responsible for developing a facility's workplace violence prevention plan under Section 331.002.

(3) "Facility" means:

(A) a home and community support services agency licensed or licensed and certified under Chapter 142 to provide home health services as defined by Section 142.001 that employs at least two registered nurses;

(B) a hospital licensed under Chapter 241 and a hospital maintained or operated by an agency of this state that is exempt from licensing under that chapter;

(C) a nursing facility licensed under Chapter 242 that employs at least two registered nurses;

(D) an ambulatory surgical center licensed under Chapter 243;

(E) a freestanding emergency medical care facility as defined by Section 254.001; and

(F) a mental hospital licensed under Chapter 577.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.002. WORKPLACE VIOLENCE PREVENTION COMMITTEE. (a) Each facility shall establish a workplace violence prevention committee or authorize an existing facility committee to develop the workplace violence prevention plan required under Section 331.004.

(b) A committee must include at least:

(1) one registered nurse who provides direct care to patients of the facility;

(2) except as provided by Subsection (c), one physician licensed to practice medicine in this state who provides direct care to patients of the facility; and

(3) one facility employee who provides security services for the facility if any and if practicable.

(c) If a facility described by Section 331.001(3)(A) does not have on staff at least one physician described by Subsection (b)(2), the facility is not required to include a physician on the committee.

(d) A health care system that owns or operates more than one facility may establish a single committee for all of the system's facilities if:

(1) the committee develops a violence prevention plan for implementation at each facility in the system; and

(2) data related to violence prevention remains distinctly identifiable for each facility in the system.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.003. WORKPLACE VIOLENCE PREVENTION POLICY. (a) A facility shall adopt, implement, and enforce a written workplace violence prevention policy in accordance with this section to protect health care providers and employees from violent behavior and threats

of violent behavior occurring at the facility.

(b) The workplace violence prevention policy must:

(1) require the facility to:

(A) provide significant consideration of the violence prevention plan recommended by the facility's committee; and

(B) evaluate any existing facility violence prevention plan;

(2) encourage health care providers and employees of the facility to provide confidential information on workplace violence to the committee;

(3) include a process to protect from retaliation facility health care providers or employees who provide information to the committee; and

(4) comply with commission rules relating to workplace violence.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.004. WORKPLACE VIOLENCE PREVENTION PLAN. (a) A facility shall adopt, implement, and enforce a written workplace violence prevention plan in accordance with this section to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the facility.

(b) A facility's workplace violence prevention plan must:

(1) be based on the practice setting;

(2) adopt a definition of "workplace violence" that includes:

(A) an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and

(B) an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon;

(3) require the facility to provide at least annually workplace violence prevention training or education that may be included in other required training or education provided to the facility's health care providers and employees who provide direct patient care;

(4) prescribe a system for responding to and investigating violent incidents or potentially violent incidents at the facility;

(5) address physical security and safety;

(6) require the facility to solicit information from health care providers and employees when developing and implementing a workplace violence prevention plan;

(7) allow health care providers and employees to report incidents of workplace violence through the facility's existing occurrence reporting systems; and

(8) require the facility to adjust patient care assignments, to the extent practicable, to prevent a health care provider or employee of the facility from treating or providing services to a patient who has intentionally physically abused or threatened the provider or employee.

(c) The written workplace violence prevention plan may satisfy the requirements of Subsection (b) by referencing other internal facility policies and documents.

(d) A committee at least annually shall:

(1) review and evaluate the workplace violence prevention plan; and

(2) report the results of the evaluation to the governing body of the facility.

(e) Each facility shall make available on request an electronic or printed copy of the facility's workplace violence prevention plan to each health care provider or employee of the facility. If the committee determines the plan contains information that would pose a security threat if made public, the committee may redact that information before providing the plan.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.005. RESPONDING TO INCIDENT OF WORKPLACE VIOLENCE. (a) Following an incident of workplace violence, a facility shall at a minimum offer immediate post-incident services, including any necessary acute medical treatment for each health care provider or employee of the facility who is directly involved in the incident.

(b) A facility may not discourage a health care provider or employee from exercising the provider's or employee's right to

contact or file a report with law enforcement regarding an incident of workplace violence.

(c) A person may not discipline, including by suspension or termination of employment, discriminate against, or retaliate against another person who:

(1) in good faith reports an incident of workplace violence; or

(2) advises a health care provider or employee of the provider's or employee's right to report an incident of workplace violence.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

Sec. 331.006. ENFORCEMENT. An appropriate licensing agency may take disciplinary action against a person who violates this chapter as if the person violated an applicable licensing law.

Added by Acts 2023, 88th Leg., R.S., Ch. 31 (S.B. 240), Sec. 1, eff. September 1, 2023.

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY
SUBTITLE A. SANITATION
CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 341.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(72), eff. April 2, 2015.

(2) "Department" means the Department of State Health Services.

(3) "Drinking water" means water distributed by an individual or public or private agency for human consumption, for use in preparing food or beverages, or for use in cleaning a utensil or article used in preparing food or beverages for, or consuming food or beverages by, human beings. The term includes water supplied for human consumption or used by an institution catering to the public.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Human excreta" means the urinary and bowel discharges of a human.

(5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.

(6) "Privy" means a facility for the disposal of human excreta.

(7) "Sanitary" means a condition of good order and cleanliness that precludes the probability of disease transmission.

(8) "Septic tank" means a covered water-tight tank designed for sewage treatment.

(9) "Toilet" means the hopper device for the deposit and discharge of human excreta into a water carriage system.

(10) "Tourist court" means a camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or trailer units housing humans.

(11) "Water supply" means a source or reservoir of water distributed and used for human consumption.

(12) "Water supply system operator" means a person who:

(A) is trained in the purification or distribution of a public water supply;

(B) has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification; and

(C) is capable of conducting and maintaining the purification processes in an efficient manner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0858, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(72), eff. April 2, 2015.

Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION. The executive commissioner may:

(1) adopt rules consistent with the purposes of this chapter; and

(2) establish standards and procedures for the management

and control of sanitation and for health protection measures.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0859, eff. April 2, 2015.

SUBCHAPTER B. NUISANCES AND GENERAL SANITATION

Sec. 341.011. NUISANCE. Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

(2) spoiled or diseased meats intended for human consumption;

(3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;

(4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

(10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 130, Sec. 1, eff. May 27, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 346 (H.B. 819), Sec. 1, eff. June 9, 2015.

Sec. 341.012. ABATEMENT OF NUISANCE. (a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 1, eff. Sept. 1, 1993.

Sec. 341.013. GARBAGE, REFUSE, AND OTHER WASTE. (a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.014. DISPOSAL OF HUMAN EXCRETA. (a) Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the department's specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other public health nuisance.

(b) Effluent from septic tanks constructed after September 4, 1945, shall be disposed of through:

(1) a subsurface drainage field designed in accordance with good public health engineering practices; or

(2) any other method that does not create a public health nuisance.

(c) A privy may not be constructed within 75 feet of a drinking water well or of a human habitation, other than a habitation to which the privy is appurtenant, without approval by the local health authority or the department. A privy may not be constructed or maintained over an abandoned well or over a stream.

(d) The superstructure and floor surrounding the seat riser and hopper device of a privy constructed and maintained in conformity with the department's specifications shall be kept in a sanitary condition at all times and must have adequate lighting and ventilation.

(e) Material and human excreta removed from a privy vault or from any other place shall be handled in a manner that does not create a public health nuisance. The material and human excreta may not be deposited within 300 feet of a highway unless buried or treated in accordance with the instructions of the local health authority or the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0860, eff. April 2, 2015.

Sec. 341.015. SANITATION OF ICE PLANTS. (a) A person may not go on the platform covering the tanks in which ice is frozen in an ice factory unless the person is an officer, employee, or other person whose duties require that action.

(b) An employee whose services are required on tanks shall be provided with clean shoes or boots that may not be used for any other purpose.

(c) Ice contaminated with sand, dirt, cinders, lint, or other foreign substance may not be sold or offered for sale for human consumption.

(d) Water used in the manufacturing of ice must be from an approved source and be of a safe quality.

(e) An ice plant operator shall provide sanitary handwashing and toilet facilities for the employees of the plant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.016. SANITATION OF BUSINESSES; OCCUPATIONAL HEALTH AND SAFETY. (a) A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition known to have a possible adverse effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur.

(b) An industrial establishment shall be continually maintained in a sanitary condition.

(c) The department shall make available to the state's citizens:

(1) current information concerning minimum allowable concentrations of toxic gases; and

(2) environmental standards that relate to the health and safety of the employees of industrial establishments in this state.

(d) The department shall survey industrial establishments to study industrial health and sanitation issues, including water supplies and distribution, waste disposal, and adverse conditions caused by processes that may cause ill health of industrial workers.

(e) The department shall give each surveyed establishment a summary of the studies and findings under Subsection (d) and make necessary recommendations for the adequate protection of the health, safety, and well-being of the workers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.017. SANITATION FACILITIES FOR RAILROAD MAINTENANCE-OF-WAY EMPLOYEES. (a) The executive commissioner shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees.

(b) The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0861, eff. April 2, 2015.

Sec. 341.018. RODENT CONTROL. (a) A person who possesses an enclosed structure used or operated for public trade and who knows that the structure is infested with rodents shall:

(1) attempt to exterminate the rodents by poisoning, trapping, fumigating, or other appropriate means; and

(2) provide every practical means of eliminating rats in the structure.

(b) A public building that is constructed after September 4, 1945, must incorporate rat-proofing features.

(c) The department shall promote rodent control programs in rat-infested areas and in localities in which typhus fever has appeared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0862, eff. April 2, 2015.

Sec. 341.019. MOSQUITO CONTROL ON UNINHABITED RESIDENTIAL PROPERTY. (a) Notwithstanding any other law, a municipality, county, or other local health authority may abate, without notice, a public health nuisance under Section 341.011(7) that:

(1) is located on residential property that is reasonably presumed to be abandoned or that is uninhabited due to foreclosure; and

(2) is an immediate danger to the health, life, or safety of any person.

(b) A public official, agent, or employee charged with the enforcement of health, environmental, or safety laws may enter the premises described by Subsection (a) at a reasonable time to inspect, investigate, or abate the nuisance.

(c) In this section, abatement is limited to the treatment with a mosquito larvicide of stagnant water in which mosquitoes are breeding.

(d) The public official, agent, or employee shall post on the front door of the residence a notice stating:

(1) the identity of the treating authority;

(2) the purpose and date of the treatment;

(3) a description of the areas of the property treated with

larvicide;

(4) the type of larvicide used; and

(5) any known risks of the larvicide to humans or animals.

Added by Acts 2013, 83rd Leg., R.S., Ch. 16 (S.B. 186), Sec. 1, eff. May 10, 2013.

SUBCHAPTER C. SANITARY STANDARDS OF DRINKING WATER; PROTECTION OF PUBLIC WATER SUPPLIES AND BODIES OF WATER

Sec. 341.031. PUBLIC DRINKING WATER. (a) Public drinking water must be free from deleterious matter and must comply with the standards established by the commission or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

(b) In a public place or an establishment catering to the public, a common drinking cup may not be used.

(c) Drinking water may not be served except in sanitary containers or through other sanitary mediums.

(d) In this section, "common drinking cup" means a water or other beverage receptacle used for serving more than one person. The term does not include a water or other beverage receptacle that is properly washed and sterilized after each use.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 6.18, eff. Sept. 1, 1997.

Sec. 341.0315. PUBLIC DRINKING WATER SUPPLY SYSTEM REQUIREMENTS. (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:

(1) supply safe drinking water in adequate quantities;

(2) are financially stable; and

(3) are technically sound.

(b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.

(c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must:

(1) meet the requirements of Section 341.031 and commission rules; and

(2) provide a quantity of water or capacity of water sufficient to serve the number of connections served by the public drinking water supply system.

(c-1) Notwithstanding any other law, the commission by rule shall establish connection equivalency values for each meter size used to serve a recreational vehicle park, as defined by Section 13.087, Water Code, for use in determining the number of connections served by a public drinking water supply system that provides service through meters. When determining the number of connections, the commission may only consider service for which a meter has been installed that conforms with industry standards. The rules must:

(1) establish that eight recreational vehicle or cabin sites at a recreational vehicle park, whether occupied or not, are equivalent to one residential metered connection; and

(2) provide a variance from a connection equivalency value established under this subsection for a public drinking water supply system if actual system usage is more than 10 percent below the equivalency value.

(d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

(e) The commission shall establish a system to provide automatic reminders to public drinking water supply systems about regular reporting requirements applicable to the systems under the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) and this chapter that relate to commission rules adopted under those laws. An automatic reminder provided under this subsection is a courtesy. A public drinking water supply system is responsible for complying with applicable regular reporting requirements regardless of whether the commission provides automatic reminders.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.19, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 383 (H.B. 3142), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 340 (S.B. 594), Sec. 1, eff. September 1, 2023.

Sec. 341.0316. DESALINATION OF MARINE SEAWATER FOR DRINKING WATER. (a) This section applies only to a desalination facility that is intended to treat marine seawater for the purpose of producing water for the public drinking water supply. This section does not apply to a desalination facility used to produce nonpotable water.

(b) The commission shall adopt rules to:

(1) allow water treated by a desalination facility to be used as public drinking water; and

(2) ensure that water treated by a desalination facility meets the requirements of Section 341.031 and rules adopted under that section.

(c) A person may not begin construction of a desalination facility that treats marine seawater for the purpose of removing primary or secondary drinking water contaminants unless the commission approves the construction of the facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 756 (H.B. 2031), Sec. 12, eff. June 17, 2015.

Sec. 341.032. DRINKING WATER PROVIDED BY COMMON CARRIER. (a) Drinking water provided by a common carrier or the common carrier's agent shall be taken only from supplies certified as meeting the standards established by the commission. The drinking water shall be kept and dispensed in a sanitary manner.

(b) A watering point must meet the standards of sanitation and water-handling practices established for those purposes by the commission. The commission shall certify each watering point that meets those standards.

(c) If a sanitary defect exists at the watering point, the commission shall issue a supplemental certification showing that the watering point is only provisionally approved. If a sanitary defect continues after the expiration of a reasonable time provided to correct the defect, the commission shall notify the common carrier not to receive drinking water at the watering point involved.

(d) In this section:

(1) "Common carrier" means a licensed firm, corporation, or

establishment that solicits and operates public freight or passenger transportation service, including a vehicle employed in that transportation service.

(2) "Watering point" means a place where drinking water is placed aboard a vehicle operated as a common carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.12, eff. Sept. 1, 1995.

Sec. 341.033. PROTECTION OF PUBLIC WATER SUPPLIES. (a) A person may not furnish drinking water to the public for a charge unless the production, processing, treatment, and distribution are at all times under the supervision of a water supply system operator holding a license issued by the commission under Chapter 37, Water Code.

(a-1) The licensed operator of a water supply system may be a volunteer. The owner or manager of a water supply system that is operated by a volunteer shall maintain a record of each volunteer operator showing the name of the volunteer, contact information for the volunteer, and the time period for which the volunteer is responsible for operating the water supply system.

(b) An owner, agent, manager, operator, or other person in charge of a water supply system that furnishes water for public or private use may not knowingly furnish contaminated drinking water to a person or allow the appliances of the water supply system to become unsanitary.

(c) The owner or manager of a water supply system furnishing drinking water to at least 25,000 persons shall have the water tested at least once daily to determine its sanitary quality and shall submit monthly reports of the tests to the commission.

(d) The owner or manager of a water supply system furnishing drinking water to less than 25,000 persons shall submit to the commission during each monthly period of the system's operation at least one specimen of water taken from the supply for bacteriological analysis. The population under this subsection shall be determined according to the most recent federal census or other population-determining methods if a federal census is not taken for the area served by the water supply system.

(e) The distribution system of a public drinking water supply

and that of any other water supply may not be physically connected unless the other water is of a safe and sanitary quality and the commission approves the connection.

(f) A public drinking water supply may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage of sewage or contaminated water into the drinking water supply.

(g) On discovery of a connection in violation of Subsection (e) or (f), the local health authority shall give written notice to the owner or agent maintaining the condition. The owner or agent shall make the necessary corrections to eliminate the condition.

(h) Subsections (a)-(d) do not apply to the production, distribution, or sale of raw, untreated surface water.

(i) An owner, agent, manager, operator, or other person in charge of a public water supply system that furnishes water for public or private use or a wastewater system that provides wastewater services for public or private use shall maintain internal procedures to notify the commission immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water supply or wastewater system;

(2) an act of terrorism against the public water supply or wastewater system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water supply or wastewater system;

(4) a theft of property that supports the key activities of the public water supply or wastewater system;

(5) a natural disaster, accident, or act that results in damage to the public water supply or wastewater system; or

(6) for a nonindustrial public water supply system, an unplanned condition that has caused a public water supply outage or the public water supply system to issue a do-not-use advisory, do-not-consume advisory, or boil water notice.

(i-1) The commission may collaborate with the Texas Division of Emergency Management in administering the notification requirement in Subsection (i)(6), including determining the method by which the notifications are provided. Subsection (i)(6) does not require an owner, agent, manager, operator, or other person in charge of a

nonindustrial public water supply system to provide notice of a weather or emergency alert, warning, or watch issued by the National Weather Service, the National Oceanic and Atmospheric Administration, or the Texas Division of Emergency Management or a successor federal or state agency.

(j) An owner, agent, manager, operator, or other person in charge of a public water supply system that furnishes for public or private use drinking water containing added fluoride may not permanently terminate the fluoridation of the water unless the owner, agent, manager, operator, or person provides written notice to the customers of the system and the commission of the termination at least 60 days before the termination.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.13, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 18, eff. June 18, 2005.

Acts 2015, 84th Leg., R.S., Ch. 392 (H.B. 1146), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 386 (H.B. 3552), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 747 (H.B. 3810), Sec. 1, eff. September 1, 2023.

Sec. 341.034. LICENSING AND REGISTRATION OF PERSONS WHO PERFORM DUTIES RELATING TO PUBLIC WATER SUPPLIES. (a) A person who operates a public water supply on a contract or volunteer basis must hold a registration issued by the commission under Chapter 37, Water Code.

(b) A person who performs process control duties in production or distribution of drinking water for a public water system must hold a license issued by the commission under Chapter 37, Water Code, unless:

(1) the duties are provided to a transient, noncommunity water system; and

(2) the water system uses groundwater that is not under the influence of surface water.

(c) A person who repairs or tests the installation or operation

of backflow prevention assemblies must hold a license issued by the commission under Chapter 37, Water Code.

(d) A person who inspects homes and businesses to identify potential or actual cross-connections or other contaminant hazards in public water systems must hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas State Board of Plumbing Examiners as a plumbing inspector or water supply protection specialist.

(e) Unless the person is licensed by the Texas State Board of Plumbing Examiners, a person must hold a license issued by the commission under Chapter 37, Water Code, if, under a contract, the person:

(1) installs, exchanges, connects, maintains, or services potable water treatment equipment and appliances in public or private water systems; or

(2) analyzes water to determine how to treat influent or effluent water, alter or purify water, or add or remove a mineral, chemical, or bacterial content or substance as part of the complete installation, exchange, connection, maintenance, or service of potable water treatment equipment and appliances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 19, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 392 (H.B. 1146), Sec. 2, eff. September 1, 2015.

Sec. 341.035. APPROVED PLANS REQUIRED FOR PUBLIC WATER SUPPLIES. (a) Except as provided by Subsection (d), a person may not begin construction of a public drinking water supply system unless the executive director of the commission approves:

(1) a business plan for the system; and

(2) the plans and specifications for the system.

(b) The prospective owner or operator of the system must submit to the executive director a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of

the system in accordance with applicable laws and rules. The executive director:

(1) shall review the business plan; and

(2) may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

(c) The prospective owner or operator of the proposed system shall provide to the commission completed plans and specifications for review and approval in accordance with commission rules.

(d) A person is not required to file a business plan under Subsection (a)(1) or (b) if the person:

(1) is a county;

(2) is a retail public utility as defined by Section 13.002, Water Code, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision;

(4) is a Class A utility, as defined by Section 13.002, Water Code, that has applied for or been granted an amendment of a certificate of convenience and necessity under Section 13.258, Water Code, for the area in which the construction of the public drinking water supply system will operate; or

(5) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Chapter 361 or 382 of this code or Chapter 26, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 948 (S.B. 1842), Sec. 5, eff. September 1, 2017.

Sec. 341.0351. NOTIFICATION OF SYSTEM CHANGES. Any person,

including a municipality, supplying a drinking water service to the public that intends to make a material or major change in a water supply system that may affect the sanitary features of that utility must give written notice of that intention to the commission before making the change.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(b) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0352. ADVERTISED QUALITY OF WATER SUPPLY. A water supply system owner, manager, or operator or an agent of a water supply system owner, manager, or operator may not advertise or announce a water supply as being of a quality other than the quality that is disclosed by the commission's latest rating.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(c) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0353. DRINKING WATER SUPPLY COMPARATIVE RATING INFORMATION. The commission shall assemble and tabulate all necessary information relating to public drinking water supplies at least once each year and as often during the year as conditions demand or justify. The information forms the basis of an official comparative rating of public drinking water supply systems.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(d) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0354. HIGHWAY SIGNS FOR APPROVED SYSTEM RATING. A

water supply system that attains an approved rating is entitled to erect signs of a design approved by the commission on highways approaching the municipality in which the water supply system is located. The signs shall be immediately removed on notice from the commission if the water supply system does not continue to meet the specified standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(e) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0355. FINANCIAL ASSURANCE FOR CERTAIN SYSTEMS. (a) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Section 341.035, that has a history of noncompliance with this subchapter or commission rules, or that is subject to a commission enforcement action to:

(1) provide the executive director of the commission with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules; and

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules in the form of a bond or as specified by the commission.

(b) If the commission relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account and released only with the approval of the commission.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0356. ORDER TO STOP OPERATIONS. (a) A public water supply system shall stop operations on receipt of a written notification of the executive director of the commission or an order of the commission issued under this section.

(b) The executive director or the commission may order a public water supply system to stop operations if:

(1) the system was constructed without the approval required by Section 341.035; or

(2) the executive director determines that the system presents an imminent health hazard.

(c) A notification or order issued under this section may be delivered by facsimile, by personal service, or by mail.

(d) A water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a commission meeting.

(e) The public water supply system may not resume operations until the commission, the executive director, or a court authorizes the resumption.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0357. IDENTIFICATION REQUIREMENT FOR DEVICE WITH APPEARANCE OF FIRE HYDRANT THAT IS NONFUNCTIONING OR UNAVAILABLE FOR USE IN FIRE EMERGENCY. (a) The owner of any device having the appearance of a fire hydrant that is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located shall paint the device black if the device is nonfunctioning or otherwise unavailable for use by the entity providing fire suppression services in a fire emergency. The owner may place a black tarp over the device instead of painting the device black as required under this section if the device is temporarily nonfunctioning, or temporarily unavailable for use in a fire emergency, for a period not to exceed seven days.

(b) For purposes of this section, a device is considered to be nonfunctioning if the device pumps less than 250 gallons of water per minute.

(c) This section does not apply within the jurisdiction of a governmental entity that maintains its own system for labeling a device having the appearance of a fire hydrant that is nonfunctioning or otherwise unavailable for use in a fire emergency.

(d) This section does not apply within the jurisdiction of a

governmental entity described by Section 341.03571(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 684 (H.B. 1717), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 951 (H.B. 1768), Sec. 1, eff. June 14, 2013.

Sec. 341.03571. IDENTIFICATION REQUIREMENT FOR CERTAIN FIRE HYDRANTS AND FLUSH VALVES IN CERTAIN MUNICIPALITIES. (a) In this section, "hydrant" means:

(1) a fire hydrant; or

(2) a metal flush valve that:

(A) has the appearance of a fire hydrant; and

(B) is located in a place that an entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located.

(b) This section applies only to a county, or a municipality in a county, that:

(1) borders the United Mexican States or is adjacent to a county that borders the United Mexican States;

(2) has a population of at least 400,000 or has a population of at least 20,000 and is adjacent to a county that has a population of at least 400,000; and

(3) is within 200 miles of the Gulf of Mexico.

(c) Each public water system responsible for any hydrant shall:

(1) paint all or the cap of the hydrant white if the hydrant is available to be used only to fill a water tank on a fire truck used for fire suppression services; and

(2) paint all or the cap of the hydrant black if the hydrant is unavailable for use by the entity providing fire suppression services in a fire emergency.

(d) For purposes of Subsection (c)(2), a hydrant is unavailable for use in a fire emergency if it is unavailable for pumping directly from the hydrant or is unavailable for use in filling a water tank on a fire truck used for fire suppression services.

(e) A public water system may place a black tarp over the hydrant or use another means to conceal the hydrant instead of painting all or the cap of the hydrant black as required under

Subsection (c)(2) if the hydrant is temporarily unavailable for use in a fire emergency for a period not to exceed 45 days. Not later than the 45th day after the date a hydrant is concealed as provided by this subsection, the public water system responsible for the hydrant shall:

(1) if the hydrant is available for the provision of fire suppression services, remove the tarp or other means of concealment; or

(2) if the hydrant continues to be unavailable for use in a fire emergency, paint all or the cap of the hydrant black as required by Subsection (c)(2).

(f) A public water system that paints all or the cap of a hydrant black as required by Subsection (c)(2) may also ensure by any reasonable means that the hydrant is identifiable in low-light conditions, including by installing reflectors.

(g) This section does not apply:

(1) within the jurisdiction of a governmental entity that maintains its own system for labeling or color coding its hydrants; or

(2) to any public water system that has entered into a contract with a municipality or volunteer fire department to provide a water supply for fire suppression services if the contract specifies a different system for labeling or color coding hydrants.

(h) For purposes of Subsection (g), a system for labeling or color coding hydrants may include the assignment of different colors to identify hydrants that are available for direct pumping, hydrants that are available for filling a water tank on a fire truck used for fire suppression services, and hydrants that are unavailable for use by an entity providing fire suppression services in a fire emergency.

(i) The fact that all or the cap of a hydrant for which a public water system is responsible under this section is not painted black as described by Subsection (c)(2) or concealed in the manner described by Subsection (e) does not constitute a guarantee by the public water system that the hydrant will deliver a certain amount of water flow at all times. Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a public water system is not liable for a hydrant's inability to provide adequate water supply in a fire emergency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 951 (H.B. 1768), Sec. 2, eff.

June 14, 2013.

Sec. 341.0358. PUBLIC SAFETY STANDARDS. (a) In this section:

(1) "Industrial district" has the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(1-a) "Public utility" has the meaning assigned by Section 13.002, Water Code.

(2) "Regulatory authority" has the meaning assigned by Section 13.002, Water Code.

(3) "Residential area" means:

(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(C) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(b) The regulatory authority for a public utility shall by rule or ordinance adopt standards for installing fire hydrants and maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in a municipality with a population of 1,000,000 or more.

(c) The commission shall assess residential areas in a municipality with a population of 1,000,000 or more to ensure that:

(1) the regulatory authority for the area has adopted the standards required by this section; and

(2) all public utilities serving the residential area are complying with the standards required by this section.

(d) The commission shall require a municipality with a population of 1,000,000 or more and acting as a regulatory authority to make appropriate revisions to standards the commission considers to be inadequate within a reasonable time established by the commission.

(e) The commission shall require a public utility in violation

of a standard required under this section and established by the commission or by a municipality with a population of 1,000,000 or more and acting as a regulatory authority to comply with the standard within a reasonable time established by the commission.

(f) This section does not limit the authority of a municipality with a population of 1,000,000 or more and acting as a regulatory authority to prohibit a public utility in violation of a standard established by the municipality from recovering through the public utility's rates a penalty or fine incurred for a violation of a standard.

(g) This section also applies to:

(1) a municipality with a population of more than 42,500 and less than 48,000 located in two counties, one of which is a county with a population of more than 2.1 million;

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 15,000 and less than 45,700 located in a county with a population of more than 235,000 and less than 255,000; and

(3) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 32,000 and less than 35,000 located in two counties.

Added by Acts 2007, 80th Leg., R.S., Ch. 861 (H.B. 1391), Sec. 1, eff. September 1, 2007.
Renumbered from Health and Safety Code, Section 341.0357 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(54), eff. September 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 122 (H.B. 3661), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 290 (H.B. 1814), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 94, eff. September 1, 2023.

Sec. 341.03585. FIRE HYDRANT FLOW AND PRESSURE STANDARDS IN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Industrial district" has the meaning assigned by Section 42.044, Local Government Code, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(2) "Municipal utility" means a retail public utility, as defined by Section 13.002, Water Code, that is owned by a municipality.

(3) "Residential area" has the meaning assigned by Section 341.0358.

(4) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by Section 13.002, Water Code.

(b) This section applies only to:

(1) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 15,000 and less than 45,700 located in a county with a population of more than 235,000 and less than 255,000; and

(2) a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction, with a population of more than 32,000 and less than 35,000 located in two counties.

(c) The governing body of a municipality by ordinance shall adopt standards requiring a utility to maintain a sufficient water flow and pressure to fire hydrants in a residential area or an industrial district located in the municipality or the municipality's extraterritorial jurisdiction. The standards:

(1) in addition to a utility's maximum daily demand, must provide, for purposes of emergency fire suppression, for:

(A) a sufficient water flow not in excess of 250 gallons per minute for at least two hours; and

(B) a sufficient water pressure not in excess of 20 pounds per square inch;

(2) must require a utility to maintain at least the sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area or an industrial district located

within the municipality or the municipality's extraterritorial jurisdiction; and

(3) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, may not require another utility located in the municipality or the municipality's extraterritorial jurisdiction to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility.

(d) Except as provided by this subsection, an ordinance under Subsection (c) may not require a utility to build, retrofit, or improve fire hydrants and related infrastructure in existence at the time the ordinance is adopted. An ordinance under Subsection (c) may apply to a utility's fire hydrants and related infrastructure that the utility:

(1) installs after the effective date of the ordinance; or

(2) acquires after the effective date of the ordinance if the hydrants and infrastructure comply with the standards adopted by the ordinance at the time the hydrants and infrastructure are acquired.

(e) After adoption of an ordinance under Subsection (c), the municipality shall encourage any responsible emergency services district, as described by Chapter 775, to enter into a written memorandum of understanding with the utility to provide for:

(1) the necessary testing of fire hydrants; and

(2) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this section.

(f) After adoption of an ordinance under Subsection (c), the utility shall paint all fire hydrants in accordance with the ordinance or a memorandum of understanding under Subsection (e) that are located in a residential area or an industrial district within the municipality or the municipality's extraterritorial jurisdiction.

(g) Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a utility is not liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This subsection does not waive a municipality's immunity under Subchapter I, Chapter 271, Local Government Code, or any other law and does not create any liability on the part of a municipality or utility under a joint enterprise theory of liability.

Added by Acts 2013, 83rd Leg., R.S., Ch. 606 (S.B. 1086), Sec. 3, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 95, eff. September 1, 2023.

Sec. 341.0359. FIRE HYDRANT FLOW STANDARDS. (a) In this section:

(1) "Municipal utility" means a retail public utility, as defined by Section 13.002, Water Code, that is owned by a municipality.

(2) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.

(3) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by Section 13.002, Water Code.

(b) The governing body of a municipality by ordinance may adopt standards set by the commission under Subsection (c) requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's extraterritorial jurisdiction.

(c) The commission by rule shall establish standards for adoption by a municipality under Subsection (b). The standards:

(1) in addition to a utility's maximum daily demand, must provide, for purposes of emergency fire suppression, for:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 pounds per square inch;

(2) must require a utility to maintain at least the minimum sufficient water flow and pressure described by Subdivision (1) in fire hydrants in a residential area located within the municipality or the municipality's extraterritorial jurisdiction;

(3) must be based on the density of connections, service demands, and other relevant factors;

(4) notwithstanding Subdivisions (1) and (2), if the municipality owns a municipal utility, may not require another utility located in the municipality or the municipality's

extraterritorial jurisdiction to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the commission; and

(5) if the municipality does not own a municipal utility, may not require a utility located in the municipality or the municipality's extraterritorial jurisdiction to provide a minimum sufficient water flow and pressure greater than the standard established under Subdivision (1).

(d) An ordinance under Subsection (b) may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.

(e) A municipality with a population of less than 1.9 million that adopts standards under Subsection (b) or that seeks to use a utility's water for fire suppression shall enter into a written memorandum of understanding with the utility to provide for:

(1) the necessary testing of fire hydrants; and

(2) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this section.

(f) A municipality may notify the commission of a utility's failure to comply with a standard adopted under Subsection (b).

(g) On receiving the notice described by Subsection (f), the commission shall require a utility in violation of a standard adopted under this section to comply within a reasonable time established by the commission. The commission may approve infrastructure improvements and make corresponding changes to the tariff or rate schedule of a utility that is a public utility as needed to permit compliance with this section.

(h) Notwithstanding any provision of Chapter 101, Civil Practice and Remedies Code, to the contrary, a utility is not liable for a hydrant's or metal flush valve's inability to provide adequate water supply in a fire emergency. This subsection does not waive a municipality's immunity under Subchapter I, Chapter 271, Local Government Code, or any other law and does not create any liability on the part of a municipality under a joint enterprise theory of liability.

Added by Acts 2013, 83rd Leg., R.S., Ch. 332 (H.B. 1973), Sec. 1, eff. September 1, 2013.

Sec. 341.036. SANITARY DEFECTS AT PUBLIC DRINKING WATER SUPPLY SYSTEMS. (a) A sanitary defect at a public drinking water supply system that obtains its water supply from underground sources shall be immediately corrected.

(b) A public drinking water supply system furnishing drinking water from underground sources may not be established in a place subject to possible pollution by floodwaters unless the system is adequately protected against flooding.

(c) Suction wells or suction pipes used in a public drinking water supply system must be constantly protected by practical safeguards against surface and subsurface pollution.

(d) Livestock may not be permitted to enter or remain in the wellhouse enclosure of a public drinking water supply system.

(e) Public drinking water distribution lines must be constructed of impervious materials with tight joints and must be a reasonably safe distance from sewer lines.

(f) Water from a surface public drinking water supply may not be made accessible or delivered to a consumer for drinking purposes unless the water has been treated to make it safe for human consumption. Water treatment plants, including aeration, coagulation, mixing, settling, filtration, and chlorinating units, shall be of a size and type prescribed by good public health engineering practices.

(g) A clear water reservoir shall be covered and be of a type and construction that prevents the entrance of dust, insects, and surface seepage.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.037. PROTECTION OF BODIES OF WATER FROM SEWAGE. The commission shall enforce state laws and take other necessary action to protect a spring, well, pond, lake, reservoir, or other stream in this state from any condition or pollution that results from sewage and that may endanger the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.038. PROTECTION OF IMPOUNDED WATER FROM DISEASE-

BEARING MOSQUITOES. A person that impounds water for public use shall cooperate with the commission and local departments of health to control disease-bearing mosquitoes on the impounded area.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.039. STANDARDS FOR GRAYWATER AND ALTERNATIVE ONSITE WATER. (a) The commission by rule shall adopt and implement minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative onsite water for:

(1) irrigation and other agricultural purposes;

(2) domestic use, to the extent consistent with Subsection (c);

(3) commercial purposes; and

(4) industrial purposes.

(a-1) The standards adopted by the commission under Subsection (a)(2) must allow the use of graywater and alternative onsite water for toilet and urinal flushing.

(b) The standards adopted by the commission under Subsection (a) must assure that the use of graywater or alternative onsite water is not a nuisance and does not threaten human health or damage the quality of surface water and groundwater in this state.

(b-1) The commission by rule may adopt and implement rules providing for the inspection and annual testing of a graywater or alternative onsite water system by the commission.

(b-2) The commission shall develop and make available to the public a regulatory guidance manual to explain the rules adopted under this section.

(c) The commission may not require a permit for the domestic use of less than 400 gallons of graywater or alternative onsite water each day if the water:

(1) originates from a private residence;

(2) is used by the occupants of that residence for gardening, composting, landscaping, or indoor use as allowed by rule, including toilet or urinal flushing, at the residence;

(3) is collected using a system that may be diverted into a sewage collection or on-site wastewater treatment and disposal system;

(4) is, if required by rule, stored in surge tanks that:

(A) are clearly labeled as nonpotable water;

(B) restrict access, especially to children; and

(C) eliminate habitat for mosquitoes and other vectors;

(5) uses piping clearly identified as a nonpotable water conduit, including identification through the use of purple pipe, purple tape, or similar markings;

(6) is generated without the formation of ponds or pools of graywater or alternative onsite water;

(7) does not create runoff across the property lines or onto any paved surface; and

(8) is distributed by a surface or subsurface system that does not spray into the air.

(d) Each builder is encouraged to:

(1) install plumbing in new housing in a manner that provides the capacity to collect graywater or alternative onsite water from all allowable sources; and

(2) design and install a subsurface graywater or alternative onsite water system around the foundation of new housing in a way that minimizes foundation movement or cracking.

(e) In this section:

(1) "Alternative onsite water" means rainwater, air-conditioner condensate, foundation drain water, storm water, cooling tower blowdown, swimming pool backwash and drain water, reverse osmosis reject water, or any other source of water considered appropriate by the commission.

(2) "Graywater" means wastewater from clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for disposal of hazardous or toxic ingredients. The term does not include wastewater:

(A) that has come in contact with toilet waste;

(B) from the washing of material, including diapers, soiled with human excreta; or

(C) from sinks used for food preparation or disposal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 233, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.16, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 689, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 545 (H.B. 1902), Sec. 1, eff. June 16, 2015.

Sec. 341.0391. DIRECT POTABLE REUSE GUIDANCE. (a) In this section, "direct potable reuse" means the introduction of treated reclaimed municipal wastewater either:

(1) directly into a public water system; or

(2) into a raw water supply immediately before the water enters a drinking water treatment plant.

(b) The commission shall develop and make available to the public a regulatory guidance manual to explain commission rules that apply to direct potable reuse.

Added by Acts 2021, 87th Leg., R.S., Ch. 304 (S.B. 905), Sec. 1, eff. September 1, 2021.

Sec. 341.040. DEFINITION. In this subchapter, "commission" means the Texas Commission on Environmental Quality.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.024, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.17, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 861 (H.B. 1391), Sec. 2, eff. September 1, 2007.

Sec. 341.041. FEES. (a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system. The commission may establish a schedule of fees. The amount of the fees must be sufficient to cover the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). Among other factors, the commission shall consider equity among persons required to pay the fees as a factor in determining the amount of the fees. The commission may also use the fees to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the

activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission by rule may assess penalties and interest for late payment of fees owed by persons who own, operate, or maintain public drinking water supply systems. Penalties and interest established under this section may not exceed the rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(c) Revenues collected by the commission under this subchapter shall be deposited to the credit of the water resource management account.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.07, eff. Sept. 1, 2001.

Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The commission shall establish recommended standards relating to the domestic use of harvested rainwater, including health and safety standards for treatment and collection methods for harvested rainwater intended for drinking, cooking, or bathing.

(b) The commission by rule shall provide that if a structure has a rainwater harvesting system and uses a public water supply for an auxiliary water source, the structure must have appropriate cross-connection safeguards.

(b-1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that has an auxiliary water supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the auxiliary water supply. A rainwater harvesting system that meets the requirements of this subsection is considered connected to a public water supply system only for purposes of compliance with minimum water system capacity requirements as determined by commission rule.

(b-2) A person who installs and maintains rainwater harvesting systems that are connected to a public water supply system and are used for potable purposes must be licensed by the Texas State Board of Plumbing Examiners as a master plumber or journeyman plumber and hold an endorsement issued by the board as a water supply protection

specialist.

(b-3) A person who intends to use a public water supply system as an auxiliary water source must give written notice of that intention to the municipality in which the rainwater harvesting system is located or the owner or operator of the public water supply system. The public water supply system used as an auxiliary water source may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

(b-4) A municipally owned water or wastewater utility, a municipality, or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that is connected to a public water supply system and is used for potable purposes if the municipally owned water or wastewater utility, municipality, or public water supply system is in compliance with the sanitary standards for drinking water applicable to the municipally owned water or wastewater utility, municipality, or public water supply system.

(b-5) A municipality or the owner or operator of a public water supply system may not be held liable for any adverse health effects allegedly caused by the consumption of water collected by a rainwater harvesting system that uses a public water supply system or an auxiliary water source and is used for potable purposes if the municipality or the public water supply system is in compliance with the sanitary standards for drinking water adopted by the commission and applicable to the municipality or public water supply system.

(c) Standards and rules adopted by the commission under this chapter governing public drinking water supply systems do not apply to a person:

(1) who harvests rainwater for domestic use; and

(2) whose property is not connected to a public drinking water supply system.

Added by Acts 2005, 79th Leg., Ch. 627 (H.B. 2430), Sec. 2, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 11, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.28, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 349 (H.B. 3372), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1240 (S.B. 1073), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 8, eff. September 1, 2013.

Sec. 341.046. NONAPPLICABILITY OF SUBCHAPTER F. Subchapter F does not apply to this subchapter.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

Sec. 341.047. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) violates a provision of Section 341.031;

(2) violates a provision of Section 341.032(a) or (b);

(3) violates a provision of Section 341.033(a)-(f);

(4) constructs a drinking water supply system without submitting completed plans and specifications as required by Section 341.035(c);

(5) begins construction of a drinking water supply system without the commission's approval as required by Section 341.035(a);

(6) violates a provision of Section 341.0351 or 341.0352;

(7) fails to remove a sign as required by Section 341.0354; or

(8) violates a provision of Section 341.036.

(b) An offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on a trial of the defendant that the defendant has been convicted of an offense under Subsection (a) within a year before the date on which the offense being tried

occurred, the subsequent offense under Subsection (a) is a Class B misdemeanor.

(d) Each day of a continuing violation is a separate offense.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.21, eff. Sept. 1, 1997.

Sec. 341.048. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this subchapter or a rule or order adopted under this subchapter.

(b) A person who causes, suffers, allows, or permits a violation under this subchapter shall be assessed a civil penalty of not less than $50 and not more than $5,000 for each violation. Each day of a continuing violation is a separate violation.

(c) If it appears that a person has violated, is violating, or threatens to violate a provision under this subchapter, the commission, a county, or a municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(d) The commission is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(e) On the commission's request, the attorney general shall institute a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(f) The suit may be brought in:

(1) Travis County;

(2) the county in which the defendant resides; or

(3) the county in which the violation or threat of violation occurs.

(g) In a suit under this section to enjoin a violation or threat of violation of this subchapter, the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing,

and permanent injunctions.

(h) Civil penalties recovered in a suit brought under this section by a county or municipality shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.22, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 519 (S.B. 530), Sec. 1, eff. September 1, 2019.

Sec. 341.0485. WATER UTILITY IMPROVEMENT ACCOUNT. (a) The water utility improvement account is created outside of the state treasury.

(b) A civil or administrative penalty payable to the state that is collected from a utility for a violation of this subchapter shall be deposited in the account.

(c) The comptroller shall manage the account for the benefit of the commission and shall invest the money and deposit interest and other investment proceeds in the account. The comptroller shall release money from the account in the manner provided by the commission. Money in the account may be used only for:

(1) capital improvements to the water or sewer system of a utility that has paid fines or penalties under this chapter or under Chapter 13, Water Code, that have been deposited in the account; or

(2) capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Section 13.4132, Water Code.

(d) Money used under Subsection (c)(1) for a utility's system may not exceed the amount of the civil or administrative penalties the utility has paid. Capital improvements made with money from the account may not be considered as invested capital of the utility for any purpose. If the utility is sold to another owner, a portion of the sales price equivalent to the percentage of the used and useful facilities that were constructed with money under Subsection (c)(1) shall be immediately distributed equally to the current customers of the utility.

(e) Money used under Subsection (c)(2) may not be considered as invested capital of the utility for any purpose.

(f) In this section, "utility" has the meaning assigned by Section 13.002, Water Code.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.32, eff. Sept. 1, 1997.

Sec. 341.049. ADMINISTRATIVE PENALTY. (a) If a person causes, suffers, allows, or permits a violation of this subchapter or a rule or order adopted under this subchapter, the commission may assess a penalty against that person as provided by this section. The penalty shall not be less than $50 and not more than $5,000 for each violation. Each day of a continuing violation may be considered a separate violation.

(b) In determining the amount of the penalty, the commission shall consider:

(1) the nature of the circumstances and the extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violation; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director of the commission concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, and recommending the amount of that proposed penalty. The executive director shall base the recommended

amount of the proposed penalty on the factors provided by Subsection (b) and shall consider each factor for the benefit of the commission.

(d) Not later than the 10th day after the date on which the preliminary report is issued, the executive director of the commission shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 20th day after the date on which notice is received, the person charged may give the commission written consent to the executive director's report including the recommended penalty or may make a written request for a hearing.

(f) If the person charged with the violation consents to the penalty recommended by the executive director of the commission or fails to timely respond to the notice, the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses a penalty, the commission shall give written notice of its decision to the person charged.

(g) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the commission shall consider each of the factors provided by Subsection (b).

(h) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and the commission has assessed a penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (f), the commission shall file notice of its decision with the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within a 30-day period immediately following the day on

which the commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of the fact of the violation, the amount of the penalty, or both:

(A) forward the amount of the penalty to the commission for placement in an escrow account; or

(B) post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) If the person charged fails to forward the money for escrow or post the bond as provided by Subsection (i), the commission or the executive director of the commission may refer the matter to the attorney general for enforcement.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (59), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.23, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 519 (S.B. 530), Sec. 2, eff. September 1, 2019.

Sec. 341.050. PENALTIES CUMULATIVE. All penalties accruing under this subchapter are cumulative of all other remedies, and a suit for recovery of any penalty does not bar or affect the recovery of any other penalty or bar any criminal prosecution against a person or any officer, director, agent, or employee of that person.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

SUBCHAPTER D. SANITATION AND SAFETY OF FACILITIES USED BY PUBLIC

Sec. 341.061. TOILET FACILITIES. An operator, manager, or superintendent of a public building, schoolhouse, theater, filling station, tourist court, bus station, or tavern shall provide and maintain sanitary toilet accommodations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.062. PUBLIC BUILDINGS. A public building constructed after September 4, 1945, shall incorporate the heating, ventilation, plumbing, and screening features necessary to protect the public health and safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.063. SANITATION OF BUS LINE, AIRLINE, AND COASTWISE VESSEL. A person managing or operating a bus line or airline in this state, or a person operating a coastwise vessel along the shores of this state, shall maintain sanitary conditions in its equipment and at all terminals or docking points.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.064. SWIMMING POOLS, ARTIFICIAL SWIMMING LAGOONS, AND BATHHOUSES. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool or an artificial swimming lagoon shall maintain the public swimming pool or artificial swimming lagoon in a sanitary condition.

(b) The bacterial content of the water in a public swimming pool or in an artificial swimming lagoon may not exceed the safe limits prescribed by department standards. A minimum free residual chlorine of 2.0 parts for each one million units of water in a public spa and a minimum free residual chlorine of 1.0 part for each one million units of water in other public swimming pools or in artificial swimming lagoons, or any other method of disinfectant approved by the department, must be maintained in a public swimming pool in use or in an artificial swimming lagoon in use.

(b-1) The department shall approve or reject a request to use another method of disinfectant under Subsection (b) not later than the 90th day after the date the request was made. If the department does not approve or reject the method in accordance with this subsection, the person who made the request may file an action to compel the department to approve or reject the method or to show good cause for an extension of time to make a determination. Venue for an

action brought under this subsection is Travis County.

(c) Water in a public swimming pool or in an artificial swimming lagoon may not show an acid reaction to a standard pH test.

(d) A public bathhouse and its surroundings shall be kept in a sanitary condition at all times.

(e) Facilities shall be provided in a public swimming pool or in an artificial swimming lagoon for adequate protection of bathers against sputum contamination.

(f) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from a public swimming pool and from an artificial swimming lagoon.

(g) The construction and appliances of a public swimming pool and of an artificial swimming lagoon must be such as to reduce to a practical minimum the possibility of drowning or of injury to bathers. The construction after September 4, 1945, of a public swimming pool or the construction after September 1, 2017, of an artificial swimming lagoon must conform to good public health engineering practices.

(h) Bathing suits and towels furnished to bathers shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) Dressing rooms of a public swimming pool or of an artificial swimming lagoon shall contain shower facilities.

(j) A comb or hairbrush used by two or more persons may not be permitted or distributed in a bathhouse of a public swimming pool or of an artificial swimming lagoon.

(k) The operator or manager of a public swimming pool or of an artificial swimming lagoon shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers.

(l) In adopting rules governing lifesaving equipment to be maintained by a public swimming pool, the executive commissioner may not require a separate throwing line longer than two-thirds the maximum width of the pool.

(l-1) Rules adopted under this chapter may not prohibit the consumption of food or beverages in a public swimming pool or artificial swimming lagoon that is privately owned and operated.

(m) Repealed by Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 5, eff. June 15, 2017.

(n) A county or municipality may:

(1) require that the owner or operator of a public swimming

pool or of an artificial swimming lagoon within the jurisdiction of the county or municipality obtain a permit for operation of the public swimming pool or artificial swimming lagoon;

(2) inspect a public swimming pool or an artificial swimming lagoon within the jurisdiction of the county or municipality for compliance with this section; and

(3) impose and collect a reasonable fee in connection with a permit or inspection required under this subsection provided the following are met:

(A) the auditor for the county shall review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(o) A county or municipality may by order close, for the period specified in the order, a public swimming pool or an artificial swimming lagoon within the jurisdiction of the county or municipality if the operation of the public swimming pool or artificial swimming lagoon violates this section or a permitting or inspection requirement imposed by the county or municipality under Subsection (n).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 339, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 618, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0863, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 563 (H.B. 2430), Sec. 1, eff. June 16, 2015.

Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 2, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 3, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 5, eff. June 15, 2017.

Sec. 341.0645. POOL SAFETY. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool, wading pool,

baby pool, hot tub, in-ground spa, water park, spray fountain, or other artificial body of water typically used for recreational swimming, bathing, or play shall comply with relevant pool safety standards adopted under this section.

(b) The executive commissioner shall adopt by rule pool safety standards necessary to prevent drowning. The standards must:

(1) be at least as stringent as those imposed under the federal Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. Section 8001 et seq.); and

(2) comply with and adopt by reference a version of the International Swimming Pool and Spa Code, as defined by Section 214.103, Local Government Code, that is not older than the version in effect on May 1, 2019, regarding all construction, alteration, renovation, enlargement, and repair of commercial swimming pools and spas.

(c) Notwithstanding Subsection (b), the department is not required to adopt Chapter 1 of the International Swimming Pool and Spa Code.

(d) Subsection (b) does not affect requirements for pool yard enclosure imposed under Chapter 757.

(e) The executive commissioner by rule shall authorize a minor addition, alteration, renovation, or repair to an existing pool or spa and related mechanical, electrical, and plumbing systems in the same manner and arrangement as the executive commissioner authorized the construction of the pool or spa and related mechanical, electrical, and plumbing systems.

(f) A person may use, maintain, and repair a pool or spa that was in compliance with the laws of this state on August 31, 2021, and related mechanical, electrical, and plumbing systems in accordance with the laws applicable to the pool or system on that date.

(g) Notwithstanding Subsection (b)(2), this section does not affect the authority of the executive commissioner to adopt rules regarding pool operation and management, water quality, safety standards unrelated to design and construction, signage, and enclosures.

Added by Acts 2009, 81st Leg., R.S., Ch. 828 (S.B. 1732), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0864, eff.

April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 821 (H.B. 1468), Sec. 4, eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 1013 (H.B. 2205), Sec. 1, eff. September 1, 2021.

Sec. 341.0646. CHILD WATER SAFETY REQUIREMENTS FOR CERTAIN ORGANIZATIONS. (a) In this section:

(1) "Body of water" means an artificial or natural body of water, including a swimming pool, lake, or river, typically used for recreational swimming, bathing, or play. The term does not include a wading pool.

(2) "Child" means an individual younger than 12 years of age.

(3) "Organized water activity" means an activity an organization conducts in which a participant will enter or travel on a body of water as part of the activity.

(4) "Wading pool" means a pool, including a pool that contains a public interactive water feature and fountain as defined by department rule, with a maximum water depth of not more than 18 inches.

(b) This section does not apply to:

(1) a youth camp licensed under Chapter 141;

(2) a residential child-care facility as defined by Section 42.002, Human Resources Code; or

(3) a residential boarding school that allows an employee, a family member of an employee, or a guest of an employee to use a body of water at the school for recreational purposes.

(c) An organization, including a day camp, youth camp, school, preschool, kindergarten, nursery school, child-care facility as defined by Section 42.002, Human Resources Code, or any other facility providing child-care services licensed by the Health and Human Services Commission that authorizes a child to engage in an organized water activity shall:

(1) require the child's parent or legal guardian to affirm in writing whether the child is able to swim or is at risk of injury or death when swimming or otherwise accessing a body of water; and

(2) except as provided by Subsection (d):

(A) provide to each child who is unable to swim or is

at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device or a device the executive commissioner determines is equivalent; and

(B) ensure the child is wearing the personal flotation device and the device is properly fitted and fastened for the child.

(d) The organization is not required to provide a child with a flotation device or ensure the child is wearing the device under Subsection (c)(2) if:

(1) the child is actively participating in swim instruction or a competition; and

(2) the organization ensures each child participating in the instruction or a competition is closely supervised during the instruction or competition.

(e) An organization licensed or otherwise regulated by this state that violates this section or rules adopted under this section is subject to disciplinary action, including the imposition of an administrative penalty, by any state regulatory agency with the power to impose disciplinary action on that organization as if the organization violated the agency's licensing or other regulatory laws or rules.

(f) The executive commissioner may adopt rules necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 301 (H.B. 59), Sec. 2, eff. September 1, 2023.

Sec. 341.065. SCHOOL BUILDINGS AND GROUNDS. (a) A school building must be located on grounds that are well drained and maintained in a sanitary condition.

(b) A school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices.

(c) A public school lunchroom must comply with the state food and drug rules.

(d) A public school building and its appurtenances shall be maintained in a sanitary manner.

(e) A building custodian or janitor employed full-time shall know the fundamentals of safety and school sanitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.066. TOURIST COURTS, HOTELS, INNS, AND ROOMING HOUSES. (a) A person operating a tourist court, hotel, inn, or rooming house in this state shall:

(1) provide a safe and ample water supply for the general conduct of the tourist court, hotel, inn, or rooming house; and

(2) submit samples of the water at least once a year before May 1 to the department for bacteriological analysis.

(b) A tourist court, hotel, inn, and rooming house must be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) An owner or operator of a tourist court, hotel, inn, or rooming house shall keep the premises sanitary and shall provide every practical facility essential for that purpose.

(d) An owner or operator of a tourist court, hotel, inn, or rooming house who provides a gas stove for the heating of a unit in the facility shall determine that the stove is properly installed and maintained in a properly ventilated room.

(e) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain sanitary appliances located in the facility in good repair.

(f) Food offered for sale at a tourist court, hotel, inn, or rooming house shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

(g) An owner, manager, or agent of a tourist court, hotel, inn, or rooming house may not rent or furnish a unit to a person succeeding a previous occupant before:

(1) thoroughly cleaning the unit; and

(2) providing clean and sanitary sheets, towels, and pillowcases.

(h) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain the facility in a sanitary condition.

(i) A tourist court, hotel, inn, or rooming house that does not conform to this chapter is a public health nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.067. FAIRGROUNDS, PUBLIC PARKS, AND AMUSEMENT CENTERS. (a) A fairground, public park, or amusement center of any kind shall be maintained in a sanitary condition.

(b) Food and beverages sold in a fairground, public park, or amusement center shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 341.068. RESTROOM AVAILABILITY WHERE THE PUBLIC CONGREGATES. (a) Publicly and privately owned facilities where the public congregates shall be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours.

(b) The executive commissioner shall adopt rules to implement Subsection (a), including a rule that in providing sufficient restrooms a ratio of not less than 2:1 women's-to-men's restrooms or other minimum standards established in consultation with the Texas State Board of Plumbing Examiners shall be maintained if the use of the restrooms is designated by gender. The rules shall apply to facilities where the public congregates and on which construction is started on or after January 1, 1994, or on which structural alterations, repairs, or improvements exceeding 50 percent of the entire facility are undertaken on or after January 1, 1994.

(c) In this section:

(1) "Facilities where the public congregates" means sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, and amusement facilities. The term does not include hotels, churches, restaurants, bowling centers, public or private elementary or secondary schools, or historic buildings.

(2) "Restroom" means toilet, chemical toilet, or water closet.

(d) The executive commissioner may adopt rules consistent with

Subsection (c)(1) to define "facilities where the public congregates."

Added by Acts 1993, 73rd Leg., ch. 624, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0865, eff. April 2, 2015.

Sec. 341.069. ACCESS TO RESTROOM FACILITIES. (a) In this section:

(1) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(2) "Eligible medical condition" means Crohn's disease, ulcerative colitis, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a toilet facility.

(3) "Physician" has the meaning assigned by Section 151.002, Occupations Code.

(4) "Retail establishment" means a place of business open to the general public for the sale of goods or services.

(b) A retail establishment that has a toilet facility for its employees shall allow a customer to use the toilet facility during normal business hours if:

(1) the retail establishment does not have a public restroom that is immediately accessible to the customer;

(2) the employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retail establishment;

(3) the customer requesting use of the employee toilet facility provides the retail establishment with evidence of the customer's eligible medical condition including:

(A) a copy of a statement signed by a physician, a registered nurse, a physician's assistant, or a person acting under the delegation and supervision of a licensed physician in conformance with Subchapter A, Chapter 157, Occupations Code, that indicates the customer suffers from an eligible medical condition or uses an ostomy device; or

(B) an identification card that is issued by a

nationally recognized health organization or a local health department and that indicates the customer suffers from an eligible medical condition or uses an ostomy device; and

(4) three or more employees of the retail establishment are working and physically present on the premises of the retail establishment at the time the customer requests to use the employee toilet facility.

(c) A customer who uses a toilet facility as authorized by this section shall leave the toilet facility in the same condition as it was before the customer used the toilet facility.

(d) In providing access to an employee toilet facility under this section, the retail establishment or employee does not owe the customer to whom access is provided a greater degree of care than is owed to a licensee on the premises.

(e) An employee of a retail establishment who refuses to provide a customer with access to an employee toilet facility as required by this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than $100.

(f) A retail establishment is not required to make any physical changes to an employee toilet facility under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 613 (H.B. 416), Sec. 2, eff. September 1, 2007.

Sec. 341.0695. INTERACTIVE WATER FEATURES AND FOUNTAINS. (a) In this section, "interactive water feature or fountain" means an installation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons and that is maintained for public recreation.

(b) An owner, manager, operator, or other attendant in charge of an interactive water feature or fountain shall maintain the water feature or fountain in a sanitary condition.

(c) The bacterial content of the water in an interactive water feature or fountain may not exceed the safe limits prescribed by the standards adopted under this chapter.

(d) Except as provided by Subsection (f), a minimum free residual chlorine of 1.0 part for each one million units of water used in an interactive water feature or fountain must be maintained.

(e) Water in an interactive water feature or fountain may not

show an acid reaction to a standard pH test.

(f) The executive commissioner may by rule adopt methods other than chlorination for the purpose of disinfecting interactive water features and fountains.

(g) An interactive water feature or fountain that is supplied entirely by drinking water that is not recirculated is not subject to Subsections (d) and (e).

(h) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from an interactive water feature or fountain.

(i) A county, a municipality, or the department may:

(1) require that the owner or operator of an interactive water feature or fountain obtain a permit for operation of the water feature or fountain;

(2) inspect an interactive water feature or fountain for compliance with this section; and

(3) impose and collect a reasonable fee in connection with a permit or inspection required under this subsection provided, if the requirement is imposed by a county or municipality, the following are met:

(A) the auditor for the county or municipality shall review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county or municipality refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(i-1) The executive commissioner by rule shall prescribe the amount of the fee the department may collect under Subsection (i).

(j) A county, a municipality, or the department may by order close, for the period specified in the order, an interactive water feature or fountain if the operation of the fountain or water feature violates this section or a permitting or inspection requirement imposed under Subsection (i).

(k) This section does not apply to a recreational water park that uses freshwater originating from a natural watercourse for recreational purposes and releases the freshwater back into the same natural watercourse.

Added by Acts 2009, 81st Leg., R.S., Ch. 1375 (S.B. 968), Sec. 1, eff. June 19, 2009.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0866, eff. April 2, 2015.

SUBCHAPTER E. AUTHORITY OF HOME-RULE MUNICIPALITIES

Sec. 341.081. AUTHORITY OF HOME-RULE MUNICIPALITIES NOT AFFECTED. This chapter prescribes the minimum requirements of sanitation and health protection in this state and does not affect a home-rule municipality's authority to enact:

(1) more stringent ordinances in matters relating to this chapter; or

(2) an ordinance under:

(A) Section 5, Article XI, Texas Constitution; or

(B) Section 51.072 or 590.0001, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 18.002(b), eff. September 1, 2019.

Sec. 341.082. APPOINTMENT OF ENVIRONMENTAL HEALTH OFFICER IN CERTAIN HOME-RULE MUNICIPALITIES. (a) In a home-rule municipality, an environmental health officer may be appointed to enforce this chapter.

(b) The environmental health officer must be a registered professional engineer. The officer must file a copy of the officer's oath and appointment with the department.

(c) The environmental health officer shall assist the department in enforcing this chapter and is subject to:

(1) the authority of the department; and

(2) removal from office in the same manner as a municipal health authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 76, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 742, Sec. 1, eff. June 17, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0867, eff. April 2, 2015.

SUBCHAPTER F. PENALTIES

Sec. 341.091. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. A person commits an offense if the person violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o). An offense under this section is a misdemeanor punishable by a fine of not less than $10 or more than $200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than $10 or more than $1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 618, Sec. 2, eff. June 20, 2003.

Sec. 341.092. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A person who violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o) shall be assessed a civil penalty. A civil penalty under this section may not be less than $10 or more than $200 for each violation and for each day of a continuing violation.

(c) If it is shown on the trial of the defendant that the defendant has previously violated this section, the defendant shall be assessed a civil penalty of not less than $10 or more than $1,000 for each violation and for each day of a continuing violation.

(d) If it appears that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the department, a county, a municipality, or the attorney general on

request by the district attorney, criminal district attorney, county attorney, or, with the approval of the governing body of the municipality, the attorney for the municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(e) The department is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(f) On the department's request, or as otherwise provided by this chapter, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(g) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(h) In a suit under this section to enjoin a violation or threat of violation of this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant, including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(i) Civil penalties recovered in a suit brought under this section by a county or municipality through its own attorney shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

(j) The state is entitled to civil penalties recovered in a suit instituted by the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 618, Sec. 3, eff. June 20, 2003.

CHAPTER 342. LOCAL REGULATION OF SANITATION
SUBCHAPTER A. MUNICIPAL REGULATION OF SANITATION

Sec. 342.001. MUNICIPAL POWER CONCERNING STAGNANT WATER AND OTHER UNSANITARY CONDITIONS. (a) The governing body of a municipality may require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease.

(b) The governing body of a municipality may require the inspection of all premises.

(c) The governing body of a municipality may impose fines on the owner of premises on which stagnant water is found.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.002. MUNICIPAL POWER CONCERNING SEWERS AND PRIVIES. The governing body of a municipality may:

(1) regulate the making, filling, altering, or repairing of sewers and privies;

(2) direct the mode and material for constructing sewers and privies; and

(3) regulate the cleaning and disinfecting of sewers and privies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.003. MUNICIPAL POWER CONCERNING FILTH, CARRION, AND OTHER UNWHOLESOME MATTER. The governing body of a municipality may regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.004. MUNICIPAL POWER CONCERNING WEEDS OR CERTAIN PUBLIC NUISANCES. The governing body of a municipality may require the owner of real property in the municipality to keep the property free from weeds, brush, and a condition constituting a public nuisance as defined by Section 343.011(c)(1), (2), or (3).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 580 (S.B. 837), Sec. 1, eff. June 14, 2013.

Sec. 342.005. VIOLATION OF ORDINANCE. The governing body of a municipality may punish an owner or occupant of property in the municipality who violates an ordinance adopted under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.006. WORK OR IMPROVEMENTS BY MUNICIPALITY; NOTICE. (a) If the owner of property in the municipality does not comply with a municipal ordinance or requirement under this chapter within seven days of notice of a violation, the municipality may:

(1) do the work or make the improvements required; and

(2) pay for the work done or improvements made and charge the expenses to the owner of the property.

(b) The notice must be given:

(1) personally to the owner in writing;

(2) by letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(3) if personal service cannot be obtained:

(A) by publication at least once;

(B) by posting the notice on or near the front door of each building on the property to which the violation relates; or

(C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) If a municipality mails a notice to a property owner in accordance with Subsection (b), and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

(d) In a notice provided under this section, a municipality may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the municipality without further notice may

correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the municipality has not been informed in writing by the owner of an ownership change, then the municipality without notice may take any action permitted by Subsections (a)(1) and (2) and assess its expenses as provided by Section 342.007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 252, Sec. 1, eff. June 5, 1991; Acts 1993, 73rd Leg., ch. 921, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 209, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 413, Sec. 2, eff. Sept. 1, 2001.

Sec. 342.007. ASSESSMENT OF EXPENSES; LIEN. (a) The governing body of a municipality may assess expenses incurred under Section 342.006 against the real estate on which the work is done or improvements made.

(b) To obtain a lien against the property, the mayor, municipal health authority, or municipal official designated by the mayor must file a statement of expenses with the county clerk of the county in which the municipality is located. The lien statement must state the name of the owner, if known, and the legal description of the property. A signature on a lien statement may be a facsimile signature as defined by Section 618.002, Government Code. The lien attaches upon the filing of the lien statement with the county clerk.

(c) The lien obtained by the municipality's governing body is security for the expenditures made and interest accruing at the rate of 10 percent on the amount due from the date of payment by the municipality.

(d) The lien is inferior only to:

(1) tax liens; and

(2) liens for street improvements.

(e) The governing body of the municipality may bring a suit for foreclosure in the name of the municipality to recover the expenditures and interest due.

(f) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the municipality in doing the work or making the improvements.

(g) The remedy provided by this section is in addition to the remedy provided by Section 342.005.

(h) The governing body of a municipality may foreclose a lien on property under this subchapter in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 921, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1017, Sec. 4, eff. Aug. 28, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1226 (S.B. 577), Sec. 2, eff. June 17, 2011.

Sec. 342.008. ADDITIONAL AUTHORITY TO ABATE DANGEROUS WEEDS. (a) A municipality may abate, without notice, weeds that:

(1) have grown higher than 48 inches; and

(2) are an immediate danger to the health, life, or safety of any person.

(b) Not later than the 10th day after the date the municipality abates weeds under this section, the municipality shall give notice to the property owner in the manner required by Section 342.006.

(c) The notice shall contain:

(1) an identification, which is not required to be a legal description, of the property;

(2) a description of the violations of the ordinance that occurred on the property;

(3) a statement that the municipality abated the weeds; and

(4) an explanation of the property owner's right to request an administrative hearing about the municipality's abatement of the weeds.

(d) The municipality shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the 30th day after the date of the abatement of the weeds, the property owner files with the municipality a written request for a hearing.

(e) An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the municipality's

abatement of the weeds.

(f) A municipality may assess expenses and create liens under this section as it assesses expenses and creates liens under Section 342.007. A lien created under this section is subject to the same conditions as a lien created under Section 342.007.

(g) The authority granted a municipality by this section is in addition to the authority granted by Section 342.006.

Added by Acts 1995, 74th Leg., ch. 359, Sec. 3, eff. Aug. 28, 1995.

SUBCHAPTER B. REGULATION OF SANITATION BY CERTAIN TYPES OF MUNICIPALITIES

Sec. 342.021. POWER OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING CARCASSES OR OTHER UNWHOLESOME MATTER. (a) The governing body of a Type A general-law municipality may:

(1) prevent a person from bringing, depositing, or having in the municipal limits a carcass or other offensive or unwholesome substance or matter; and

(2) require a person to remove or destroy any offensive or unwholesome substance or matter, filth, putrid or unsound beef, pork, or fish, or hides or skins of any kind that the person is responsible for placing in the municipality.

(b) If the person does not comply with a provision adopted under Subsection (a), the municipality's governing body may:

(1) authorize a municipal officer to remove or destroy the offending material; or

(2) require the owner of a dead animal to remove the dead animal to a place designated by the municipality's governing body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 342.022. JOINT SANITARY REGULATIONS OF TYPE A GENERAL-LAW MUNICIPALITY AND COUNTY. The governing body of a Type A general-law municipality may cooperate with the commissioner's court of the county in which the municipality is located in making improvements considered necessary by those entities to:

(1) improve the public health and promote efficient sanitary regulations; and

(2) arrange for the construction of and payment for those

improvements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.002. DEFINITIONS. In this chapter:

(1) "Abate" means to eliminate or remedy:

(A) by removal, repair, rehabilitation, or demolition;

(B) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibition or control of access; and

(C) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized by Chapter 361.

(2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

(3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

(4) "Neighborhood" means:

(A) a platted subdivision; or

(B) property contiguous to and within 300 feet of a platted subdivision.

(5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.

(6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.

(7) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

(8) "Receptacle" means a container that is composed of

durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

(9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

(10-a) "Undeveloped land" means land in a natural, primitive state that lacks improvements, infrastructure, or utilities and that is located in an unincorporated area at least 5,000 feet outside the boundaries of a home-rule municipality.

(11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 36 inches in height; or

(B) creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(12) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 2, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.004, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 441 (H.B. 1643), Sec. 1, eff. June 15, 2015.

Sec. 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW. This chapter does not affect a right, remedy, or penalty under other state law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

Sec. 343.011. PUBLIC NUISANCE. (a) This section applies only to the unincorporated area of a county.

(b) A person may not cause, permit, or allow a public nuisance under this section.

(c) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;

(6) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched and locked gate; and

(B) a cover over the entire swimming pool that cannot be removed by a child;

(7) maintaining on any property in a neighborhood in a county with a population of more than 1.3 million a swimming pool that is not protected with:

(A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or

(B) a cover over the entire swimming pool that cannot be removed by a child;

(8) maintaining a flea market in a manner that constitutes

a fire hazard;

(9) discarding refuse or creating a hazardous visual obstruction on:

(A) county-owned land; or

(B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body;

(10) discarding refuse on the smaller of:

(A) the area that spans 20 feet on each side of a utility line; or

(B) the actual span of the utility easement;

(11) filling or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the county to improve or maintain a drainage easement;

(12) discarding refuse on property that is not authorized for that activity; or

(13) surface discharge from an on-site sewage disposal system as defined by Section 366.002.

(d) This section does not apply to:

(1) a site or facility that is:

(A) permitted and regulated by a state agency for the activity described by Subsection (c); or

(B) licensed or permitted under Chapter 361 for the activity described by Subsection (c); or

(2) agricultural land.

(d-1) This subsection applies only to a county with a population of 3.3 million or more and only in an unincorporated area in the county that is at least 5,000 feet outside the boundaries of a home-rule municipality. Subsections (c)(3) and (4) apply only to undeveloped land in the county for which:

(1) a condition on that land has been found to cause a public nuisance under those provisions in the preceding year; and

(2) a finding of public nuisance could have been applied to that condition when the condition first occurred.

(e) In Subsection (d), "agricultural land" means land that qualifies for tax appraisal under Subchapter C or D, Chapter 23, Tax Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 2, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 523, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 355 (S.B. 1238), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.005, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 438 (S.B. 634), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 441 (H.B. 1643), Sec. 2, eff. June 15, 2015.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 96, eff. September 1, 2023.

Sec. 343.0111. SPECIAL EXCEPTION OR VARIANCE TO PUBLIC NUISANCE CLASSIFICATION. (a) The commissioners court of a county by order may:

(1) describe the circumstances in which a special exception to the application of Section 343.011 is available to a person and may grant the special exception in a specific case if the commissioners court finds that the specific case fits within the special exception, that the grant of the exception promotes justice, that the grant of the exception is not contrary to the public interest, and that the grant of the exception is consistent with the general purpose of Section 343.011; and

(2) authorize in a specific case not covered by a special exception a variance from the terms of Section 343.011 if the commissioners court makes the same findings in connection with the specific case that it makes in connection with a special exception under Subdivision (1) and finds that due to special conditions a

literal enforcement of Section 343.011 would result in an unnecessary hardship.

(b) The commissioners court shall keep a record of its proceedings under this section and must include in the record a showing of the reasons for each decision made under this section.

Added by Acts 1995, 74th Leg., ch. 771, Sec. 3, eff. Aug. 28, 1995. Amended by Acts 1999, 76th Leg., ch. 752, Sec. 2, eff. Sept. 1, 1999.

Sec. 343.012. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person violates Section 343.011(b); and

(2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.

(c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this section, the defendant is punishable by a fine of not less than $200 or more than $1,000, confinement in jail for not more than six months, or both.

(d) Each day a violation occurs is a separate offense.

(e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 4, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 752, Sec. 3, eff. Sept. 1, 1999.

Sec. 343.013. INJUNCTION. (a) A county or district court may by injunction prevent, restrain, abate, or otherwise remedy a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable

attorney's fees and court costs.

(c) A county may bring suit under this section to prohibit or control access to the premises to prevent a continued or future violation of Section 343.011(c)(1), (6), (9), or (10). The court may grant relief under this subsection only if the county demonstrates that:

(1) the person responsible for causing the public nuisance has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought prohibits or controls access of a person other than the owner; or

(2) the owner of the premises knew about the nuisance and has not responded sufficiently to previous attempts to abate a nuisance on the premises, if the relief sought controls access of the owner.

(d) In granting relief under Subsection (c), the court:

(1) may not, in a suit brought under Section 343.011(c)(10), prohibit or control access by the owner or operator of a utility line or utility easement to that utility line or utility easement; and

(2) may not prohibit the owner of the premises from accessing the property but may prohibit a continued or future violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 3, eff. June 15, 2007.

SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

Sec. 343.021. AUTHORITY TO ABATE NUISANCE. (a) If a county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter, the county may abate a nuisance under this chapter:

(1) by demolition or removal, except as provided by Subsection (b);

(2) in the case of a nuisance under Section 343.011(c)(1), (9), or (10), by prohibiting or controlling access to the premises;

(3) in the case of a nuisance under Section 343.011(c)(6), by:

(A) prohibiting or controlling access to the premises and installing a cover that cannot be opened by a child over the entire swimming pool; or

(B) draining and filling the swimming pool; or

(4) in the case of a nuisance under Section 343.011(c)(12), by removal, remediation, storage, transportation, disposal, or other means of waste management authorized under Chapter 361.

(b) In the case of a nuisance under Section 343.011(c)(13), the county may use any means of abatement reasonably necessary to bring the system into compliance with Chapter 366 only after the defendant fails to abate the nuisance as ordered by the court under Section 343.012(e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 4, eff. June 15, 2007.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.006, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 438 (S.B. 634), Sec. 2, eff. September 1, 2013.

Sec. 343.022. ABATEMENT PROCEDURES. (a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee. A person authorized by the person administering the abatement program may administer:

(1) the prohibition or control of access to the premises to prevent a violation of Section 343.011(c)(1), (6), (9), or (10);

(2) the removal or demolition of the nuisance; and

(3) the abatement of a nuisance described by Section

343.011(c)(12).

(b) The abatement procedures must require that written notice be given to:

(1) the owner, lessee, occupant, agent, or person in charge of the premises; and

(2) the person responsible for causing a public nuisance on the premises when:

(A) that person is not the owner, lessee, occupant, agent, or person in charge of the premises; and

(B) the person responsible can be identified.

(c) The notice must state:

(1) the specific condition that constitutes a nuisance;

(2) that the person receiving notice shall abate the nuisance before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises;

(3) that failure to abate the nuisance may result in:

(A) abatement by the county;

(B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and

(C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property;

(4) that the county may prohibit or control access to the premises to prevent a continued or future nuisance described by Section 343.011(c)(1), (6), (9), or (10); and

(5) that the person receiving notice is entitled to submit a written request for a hearing before the:

(A) 31st day after the date on which the notice is served, if the person has not previously received a notice regarding a nuisance on the premises; or

(B) 10th business day after the date on which the notice is served, if the person has previously received a notice regarding a nuisance on the premises.

(d) The notice must be given:

(1) by service in person or by registered or certified

mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person to be notified is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(e) Except as provided in Subsection (f), the abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. The commissioners court may designate a board, commission, or official to conduct each hearing.

(f) A county may, before conducting a hearing, abate a nuisance under Section 343.011(c)(6) by prohibiting or controlling access to the premises on which the nuisance is located and installing a cover that cannot be opened by a child over the entire swimming pool, but only if the county conducts a hearing otherwise in accordance with Subsection (e) after the nuisance is abated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 123, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 5, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.007, eff. September 1, 2009.

Sec. 343.023. ASSESSMENT OF COSTS; LIEN. (a) A county may:

(1) assess:

(A) the cost of abating the nuisance, including management, remediation, storage, transportation, and disposal costs, and damages and other expenses incurred by the county;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than $100 on the

person receiving notice under Section 343.022; or

(2) by resolution or order, assess:

(A) the cost of abating the nuisance;

(B) the cost of legal notification by publication; and

(C) an administrative fee of not more than $100 against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property, and the name of the property owner, if known, with the county clerk of the county in which the property is located.

(d) The county's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county files the notice of lien with the county clerk.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 5, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 771, Sec. 6, eff. Aug. 28, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1366 (H.B. 3581), Sec. 6, eff. June 15, 2007.

Sec. 343.0235. USE OF COUNTY FUNDS. A county is entitled to use any money available under other law for a cleanup or remediation of private property to abate a nuisance described by Section

343.011(c)(1), (9), or (10).

Added by Acts 2005, 79th Leg., Ch. 1050 (H.B. 1287), Sec. 4, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 388 (S.B. 680), Sec. 5, eff. June 15, 2007.

Sec. 343.024. AUTHORITY TO ENTER PREMISES. (a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce this chapter.

(b) Before entering the premises, the official, agent, or employee must exhibit proper identification to the occupant, manager, or other appropriate person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 499, Sec. 6, eff. Sept. 1, 1991.

Sec. 343.025. ENFORCEMENT. A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 344. MOSQUITO CONTROL DISTRICTS

Sec. 344.001. ELECTION ON ESTABLISHMENT AND TAX LEVY. The county judge on being petitioned by at least 200 qualified voters of the county may order an election to determine if the qualified voters of the county desire the:

(1) establishment of a mosquito control district in all or a portion of the county for the purpose of eradicating mosquitoes in the area; and

(2) levy of a tax not to exceed 25 cents on each $100 of the taxable value of property taxable by the district to finance the program provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.002. BALLOT PROPOSITIONS. The ballot for an election under this chapter shall be printed to provide for voting for or against the propositions:

(1) "The establishment of a mosquito control district in _____ County."; and

(2) "The levy of a tax of _____ cents on each $100 of the taxable value of property taxable by the district to finance the mosquito control district within _____ County."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.003. LEVY AND COLLECTION OF TAX. (a) If the election results are in favor of the establishment of a mosquito control district and the levy of a tax, the commissioners court may levy a tax not to exceed the amount fixed by the election.

(b) The commissioners court may lower the tax to any designated sum it may determine if the anticipated revenue exceeds the revenue needed to carry out this chapter.

(c) The taxes levied under this section shall be:

(1) collected by the county tax assessor-collector;

(2) deposited in a separate fund; and

(3) used only to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.004. ADVISORY COMMISSION. (a) The commissioners court in each county in which a mosquito control district is established shall appoint an advisory commission composed of five members who are qualified property taxpaying voters of the county. The commissioners of the commissioners court and the county judge shall each appoint one member of the advisory commission.

(b) Members of the advisory commission serve without compensation.

(c) The advisory commission shall make recommendations to the commissioners court that it considers necessary to carry out this chapter and shall perform any other duties as the commissioners court may determine.

(d) Each advisory commission member must take an oath of office prescribed by the commissioners court. The commissioners court may remove any member of the advisory commission at any time it considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.005. MOSQUITO CONTROL ENGINEER. (a) The commissioners court in each county that has established a mosquito control district may appoint a mosquito control engineer who must be well qualified in the field of mosquito control. The mosquito control engineer serves at a salary determined by the commissioners court.

(b) The commissioners court shall supervise the powers and duties of the engineer.

(c) The engineer shall make recommendations to the commissioners court relating to the number of assistants and employees that may be needed, and the commissioners court shall appoint the assistants and employees it considers necessary for mosquito eradication in the district.

(d) The engineer shall make semiannual reports to the commissioners court or as many reports as are requested by the court concerning the work of mosquito eradication and of the expenses needed for the ensuing year.

(e) The first report shall be made not later than June 30 following the establishment of the mosquito control district, and the second report shall be made not later than December 31 following the first report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.006. MERGER OF DISTRICTS. (a) The commissioners courts of two or more counties operating under this chapter may enter into an agreement to merge their separate districts into a single mosquito control district composed of those counties.

(b) The commissioners courts shall enter into an agreement that complies with this chapter, except that the advisory commission and mosquito control engineer may be appointed for the entire district rather than for each county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 344.007. ELECTION ON DISSOLUTION OF DISTRICT. Each commissioners court that has established a mosquito control district under this chapter shall order an election to dissolve the mosquito control district on a petition of not less than 10 percent of the qualified voters of the county, as determined by the number of votes cast for all candidates for governor in the most recent gubernatorial general election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER

CHAPTER 361. SOLID WASTE DISPOSAL ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 361.001. SHORT TITLE. This chapter may be cited as the Solid Waste Disposal Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.002. POLICY; FINDINGS. (a) It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.

(b) The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous waste to be stored, processed, and disposed of only at permitted hazardous industrial solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 1, eff. Sept. 6, 1990.

Sec. 361.003. DEFINITIONS. Unless the context requires a different definition, in this chapter:

(1) "Advanced recycling facility" means a manufacturing facility that receives, stores, and converts post-use polymers and recoverable feedstocks using advanced recycling technologies and processes including pyrolysis, gasification, solvolysis, and depolymerization. For purposes of this chapter and rules adopted by the commission under this chapter, an advanced recycling facility is not a solid waste facility, final disposal facility, waste-to-energy facility, or incinerator.

(1-a) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(3) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(4) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(5) "Commission" means the Texas Commission on

Environmental Quality.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(6-a) "Depolymerization" means a manufacturing process through which post-use polymers are broken down into:

(A) smaller molecules, including monomers and oligomers; or

(B) raw materials or intermediate or final products, including plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, or coatings.

(7) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(8) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(9) "Executive director" means the executive director of the commission.

(10) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(10-a) "Gasification" means a process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks. The term does not include incineration.

(10-b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 8, eff. May 27, 2023.

(11) "Hazardous substance":

(A) means:

(i) a substance designated under Section

311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(12) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(13) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other

improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(14) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(14-a) "Health care-related facility" means a facility listed under 25 T.A.C. Section 1.134. The term does not include:

(A) a single-family or multifamily dwelling; or

(B) a hotel, motel, or other establishment that provides lodging and related services for the public.

(15) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(16) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(17) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(18) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(18-a) "Medical waste" means treated and untreated special waste from health care-related facilities composed of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps, as those terms are defined by 25 T.A.C. Section 1.132, as well as regulated medical waste, as that term is defined by 49 C.F.R. Section 173.134. The term does not include:

(A) waste produced on a farm or ranch as defined by 34 T.A.C. Section 3.296(f); or

(B) artificial, nonhuman materials removed from a patient and requested by the patient, including orthopedic devices and breast implants.

(19) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(20) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(21) "Notice of intent to file an application" means the notice filed under Section 361.063.

(22) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(23) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(24) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(24-a) "Post-use polymers" means plastics that:

(A) are derived from any industrial, commercial, agricultural, or domestic activity, including preconsumer recovered materials and postconsumer materials;

(B) are sorted from solid waste and other regulated waste and may contain residual amounts of organic material and

incidental contaminants or impurities such as paper labels or metal rings;

(C) are not mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility;

(D) are used or intended for use as a feedstock or for the production of feedstocks, raw materials, or other intermediate or final products using advanced recycling; and

(E) are processed or held prior to processing at an advanced recycling facility.

(25) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include:

(A) pyrolysis, gasification, solvolysis, or depolymerization; or

(B) activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(25-a) "Pyrolysis" means a manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere and the pyrolysis product is converted into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, naphtha, waxes, polymers, or plastic and chemical feedstocks. The term does not include incineration.

(25-b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 8, eff. May 27, 2023.

(26) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the commission under that law.

(26-a) "Recoverable feedstock" means one or more of the

following materials, derived from recoverable waste other than coal refuse, that has been processed so that it may be used as feedstock in an advanced recycling facility or through gasification:

(A) post-use polymers; and

(B) material, including municipal solid waste and other post-industrial waste:

(i) for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 C.F.R. Section 241.3(c); or

(ii) that the commission or the United States Environmental Protection Agency has otherwise determined are feedstocks and not solid waste.

(27) "Recycling" has the meaning assigned by Section 361.421.

(28) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(29) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste

into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(30) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal

Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(31) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(32) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the commission.

(33) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(34) This subdivision expires on delegation of the Resource Conservation and Recovery Act of 1976 authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface

improvements;

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.); or

(iv) post-use polymers or recoverable feedstocks processed through pyrolysis, gasification, solvolysis, or depolymerization that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277 and 361.343 through 361.345.

(35) This subdivision is effective on delegation of the Resource Conservation and Recovery Act of 1976 authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(iii) waste materials that result from activities

associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; or

(iv) post-use polymers or recoverable feedstocks processed through pyrolysis, gasification, solvolysis, or depolymerization that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277 and 361.343 through 361.345.

(36) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units. The term does not include an advanced recycling facility.

(37) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission.

(37-a) "Solvolysis" means a manufacturing process through which post-use polymers are purified with the aid of solvents while heated at low temperatures, pressurized, or both heated at low temperatures and pressurized, to remove additives and contaminants and make useful products, including monomers, intermediates, valuable chemicals, plastic and chemical feedstocks, and raw materials. The process includes hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

(38) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

(39) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare or impairs the usefulness or the public enjoyment of the land or

water for any lawful or reasonable purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.204, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0888, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 407 (H.B. 2244), Sec. 1, eff. June 10, 2015.

Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 1, eff. May 17, 2019.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 1, eff. May 27, 2023.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 8, eff. May 27, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 361.011. COMMISSION'S JURISDICTION: MUNICIPAL SOLID WASTE. (a) The commission is responsible under this section for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, excluding management of hazardous municipal waste, by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter relating to municipal solid waste management, excluding management of hazardous municipal waste, and all other powers necessary or convenient to carry out those responsibilities under this chapter.

(d) In matters relating to municipal solid waste management, excluding management of hazardous municipal waste, the commission shall consider water pollution control and water quality aspects and air pollution control and ambient air quality aspects.

(e) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(1), eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.02, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 28, 60(b)(1), eff. Sept. 1, 1997.

Sec. 361.013. SOLID WASTE DISPOSAL AND TRANSPORTATION FEES. (a) Except as provided by Subsections (e) through (i), the commission shall charge a fee on all solid waste that is disposed of within this state. The fee is 94 cents per ton received for disposal at a municipal solid waste landfill if the solid waste is measured by weight. If the solid waste is measured by volume, the fee for compacted solid waste is 30 cents per cubic yard and the fee for uncompacted solid waste is 19 cents per cubic yard received for disposal at a municipal solid waste landfill. The commission shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The commission may charge comparable fees for other means of solid waste disposal that are used.

(b) The commission may raise or lower the fees established under Subsection (a) in accordance with commission spending levels established by the legislature.

(c) The commission shall charge an annual registration fee to a transporter of municipal solid waste who is required to register with the commission under rules adopted by the commission. The commission by rule shall adopt a fee schedule. The fee shall be reasonably related to the volume, the type, or both the volume and type of waste transported. The registration fee charged under this subsection may not be less than $25 or more than $500.

(d) The operator of each municipal solid waste facility shall

maintain records and report to the commission annually on the amount of solid waste that the facility transfers, processes, stores, treats, or disposes of. Each transporter required to register with the commission shall maintain records and report to the commission annually on the amount of solid waste that the transporter transports. The commission by rule shall establish procedures for recordkeeping and reporting required under this subsection.

(e) The commission may not charge a fee under Subsection (a) for scrap tires that are deposited in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165 and that are temporarily stored for eventual recycling, reuse, or energy recovery.

(f) The commission may not charge a fee under Subsection (a) for source separated materials that are processed at a composting and mulch processing facility, including a composting and mulch processing facility located at a permitted landfill site. The commission shall credit any fee payment due under Subsection (a) for any material received and processed to compost or mulch product at the facility. Any compost or mulch product that is produced at a composting and mulch processing facility that is used in the operation of the facility or is disposed of in a landfill is not exempt from the fee.

(g) The commission shall allow a home-rule municipality that has enacted an ordinance imposing a local environmental protection fee for disposal services as of January 1, 1993, to offer disposal or environmental programs or services to persons within its jurisdiction, from the revenues generated by said fee, as such services are required by state or federal mandates. If such services or programs are offered, the home-rule municipality may require their use by those persons within its jurisdiction.

(h) The commission may not charge a fee under Subsection (a) on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(i) The commission may not charge a fee under Subsection (a)

for the disposal of:

(1) Class I industrial solid waste or hazardous waste subject to the assessment of fees under Section 361.136;

(2) an industrial solid waste for which no permit may be required under Section 361.090; or

(3) sewage sludge that:

(A) has been treated to reduce the density of pathogens to the lowest level provided by commission rules; and

(B) complies with commission rules regarding:

(i) metal concentration limits;

(ii) pathogen reduction; and

(iii) vector attraction reduction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.13, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.08, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 956, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 376, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 3, eff. June 14, 2013.

Sec. 361.0135. COMPOSTING REFUND. (a) The operator of a public or privately owned municipal solid waste facility is entitled to a refund of 15 percent of the solid waste fees collected by the facility under Section 361.013(a) if:

(1) the refunds are used to lease or purchase and operate equipment necessary to compost yard waste;

(2) composting operations are actually performed; and

(3) the finished compost material produced by the facility is returned to beneficial reuse.

(b) The amount of the refund authorized by this section increases to 20 percent of the solid waste fees collected by the facility if, in addition to composting the yard waste, the operator of the facility voluntarily bans the disposal of yard waste at the

facility.

(c) In order to receive a refund authorized by this section, the operator of the facility must submit a composting plan to the commission. The commission by rule may set a fee for reviewing a composting plan in an amount not to exceed the costs of review.

(d) The operator is entitled to a refund of fees collected by the facility under Section 361.013(a) on or after the date on which the commission approves the composting plan. The refund is collectable beginning on the date that the first composting operations occur in accordance with the approved plan. The commission may allow the refund to be applied as a credit against fees required to be collected by the facility under Section 361.013(a).

(e) In this section, the terms "compost," "composting," and "yard waste" have the meanings assigned by Section 361.421.

(f) This section expires September 1, 1999, if the commission on or before that date determines that a market in composting materials has developed sufficiently to ensure that composting activities will continue without the incentives provided by this section.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. (a) Revenue received by the commission under Section 361.013 shall be deposited in the state treasury to the credit of the commission. Of that revenue, 66.7 percent is dedicated to the commission's municipal solid waste permitting programs, enforcement programs, and site remediation programs, and to pay for activities that will enhance the state's solid waste management program. The commission shall issue a biennial report to the legislature describing in detail how the money was spent. The activities to enhance the state's solid waste management program may include:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;

(3) provision of technical assistance to local governments concerning solid waste management;

(4) establishment of a solid waste resource center in the commission and an office of waste minimization and recycling;

(5) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapters 391 and 683, Transportation Code;

(6) conduct of a statewide public awareness program concerning solid waste management;

(7) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) creation of a state municipal solid waste superfund, from funds appropriated, for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup;

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(C) remediation, cleanup, and proper closure of unauthorized recycling sites for which a responsible party is not immediately financially able to perform the remediation, cleanup, and closure;

(10) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments;

(11) provision of funds for the conduct of research by a public or private entity to assist the state in developing new technologies and methods to reduce the amount of municipal waste disposed of in landfills; and

(12) provision of funds for grants to encourage entities

located in an affected county or a nonattainment area, as defined by Section 386.001, to convert heavy-duty vehicles used for municipal solid waste collection into vehicles powered by natural gas engines.

(b) Of the revenue received by the commission under Section 361.013, 33.3 percent is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with this chapter and to update and maintain those plans. Those revenues shall be allocated to municipal solid waste geographic planning regions for use by local governments and regional planning commissions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs. Each planning region shall issue a biennial report to the legislature detailing how the revenue is spent. A project or service funded under this subsection must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(c) Revenue derived from fees charged under Section 361.013(c) to a transporter of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling account.

(d) Revenues allocated to the commission for the purposes authorized by Subsection (a) or (b) shall be deposited to the credit of the waste management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.10, 3.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.21, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 838, Sec. 1, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.205, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 35, eff; Sept. 1, 1997; Acts 2003, 78th Leg., ch. 340, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 4, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 19, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 858 (H.B. 3461), Sec. 16, eff.

September 1, 2023.

Sec. 361.0145. RESPONSE TO OR REMEDIATION OF FIRE OR EMERGENCY. (a) The commission may make an immediate response to or remediation of a fire or other emergency that involves solid waste, including processed or unprocessed material suitable for recycling or composting, as the commission determines necessary to protect the public health or safety.

(b) Notwithstanding Section 361.014(b), revenue otherwise dedicated under that section may be used for an action authorized by Subsection (a).

(c) The commission may recover from a person who is responsible for the solid waste as provided by Section 361.271 the reasonable expenses incurred by the commission during an immediate response and remediation action under Subsection (a). The state may bring an action to recover those reasonable expenses.

(d) If the commission used for an action under Subsection (a) money otherwise dedicated under Section 361.014(b), money recovered under Subsection (c) shall be deposited in the state treasury to the credit of the commission until the amount deposited equals the amount of the dedicated money used. Money credited under this subsection may be used only as provided by Section 361.014(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1362 (H.B. 2541), Sec. 1, eff. September 1, 2007.

Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The commission is the state agency under Chapter 401 that licenses and regulates radioactive waste storage, processing, and disposal activities not preemptively regulated by the federal government.

(b) Except as provided by Subsection (a), the Health and Human Services Commission, acting through the Department of State Health Services or other department as designated by the executive commissioner of the Health and Human Services Commission, is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 31, eff. June 15, 2007.

Sec. 361.0151. RECYCLING. (a) The commission shall establish and administer a waste minimization and recycling office within the commission that provides technical assistance to local governments concerning waste minimization and recycling.

(b) The commission shall work in conjunction with the Texas Department of Commerce to pursue the development of markets for recycled materials, including composting products.

(c) Notwithstanding any other law, the commission or a political subdivision of this state that establishes goals or requirements for recycling or the use of recycled material must base those goals or requirements on the definitions and principles established by Subchapter N. This subsection does not apply to a program described by Subchapter Y or Z.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 4, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 2, eff. May 27, 2023.

Sec. 361.0152. STIMULATE USE OF RECYCLABLE MATERIAL. (a) In this section:

(1) "Manufacturer" means a facility that uses postconsumer or postindustrial derived recyclable material to create a finished product for sale or trade.

(2) "Principal processor" means a facility that receives recyclable materials from generators or collection programs and sorts, cleans, screens, bales, densifies, cures, or creates product that is ready for beneficial reuse immediately after processing or is ready to be used as a feedstock by a subsequent processor or manufacturer.

(3) "Recyclable material" includes paper, plastic, metal, glass, vegetative waste, compost, mulch, tires, electronic waste,

construction and demolition debris, batteries, and paint.

(b) This section does not apply to ferrous or nonferrous metals recycled by a metal recycling entity as defined by Section 1956.001, Occupations Code.

(c) In cooperation with the Texas Economic Development and Tourism Office, the commission shall produce a plan to stimulate the use of recyclable materials as feedstock in processing and manufacturing.

(d) The plan must:

(1) identify the quantity and type of recyclable materials that are being recycled from municipal and industrial sources;

(2) identify and estimate the quantity and type of recyclable materials that are generated but not being recycled;

(3) identify and estimate the current economic benefits of recycling materials and the potential economic benefits to be gained by recycling materials identified under Subdivision (2);

(4) identify the location, processing capacity, and consumption capacity of existing principal processors and manufacturers;

(5) identify the barriers to increasing the use of recyclable materials as feedstock for principal processors and manufacturers and means to eliminate those barriers;

(6) identify and estimate the need and type of principal processing and manufacturing facilities necessary to consume the existing and potential volumes of recyclable materials; and

(7) recommend institutional, financial, administrative, and physical methods, means, and processes that could be applied by this state and by local governments to:

(A) increase the use of recyclable materials;

(B) stimulate the use of recyclable materials by principal processors and manufacturers; and

(C) encourage the expansion of existing principal processors and manufacturers and the development of new principal processors and manufacturers that use recyclable materials.

(e) The plan may not require a generator, collector, or processor of recyclable materials to ship to or use a particular processing or manufacturing facility.

(f) To the extent practicable in preparing the plan, the commission shall use methodologies and information derived from other recycling economic studies already performed.

(g) The commission shall update the plan every four years, and in a year in which the plan is updated, the plan shall be included in the annual summary of municipal solid waste management produced by the municipal solid waste permits section of the commission and delivered to the governor and legislature.

(h) In cooperation with other state agencies, including the governor's office, the commission shall develop an education program intended for the public that must include:

(1) the economic benefits of recycling, including job creation, economic impact, percent of total municipal and industrial solid waste recycled, weight and volume of municipal and industrial solid waste recycled, and taxes and fees paid by the recycling industry;

(2) a spotlight of collectors and processors of recyclable materials and manufacturers based in this state that are using recyclable materials as feedstock; and

(3) the detrimental effects of contamination in the recyclable materials stream and the need to reduce those effects.

(i) The commission shall update the education program required by Subsection (h) at least every four years.

(j) The commission may enter into contracts with public, private, and nonprofit organizations to produce the plan required by Subsection (c) and the education program required by Subsection (h).

Added by Acts 2019, 86th Leg., R.S., Ch. 61 (S.B. 649), Sec. 1, eff. September 1, 2019.

Sec. 361.016. MEMORANDUM OF UNDERSTANDING BY COMMISSION. The commission by rule shall adopt:

(1) any memorandum of understanding between the commission and any other state agency; and

(2) any revision of a memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Sec. 361.017. COMMISSION'S JURISDICTION: INDUSTRIAL SOLID WASTE AND HAZARDOUS MUNICIPAL WASTE. (a) The commission is responsible for the management of industrial solid waste and

hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters relating to industrial solid waste and hazardous municipal waste, the commission shall:

(1) consider the public health aspects and the air pollution control and ambient air quality aspects; and

(2) consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the commission's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the commission shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The commission shall use all available enforcement options.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.03, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.23, eff. Sept. 1, 1995.

Sec. 361.018. COMMISSION'S JURISDICTION OVER HAZARDOUS WASTE COMPONENTS OF RADIOACTIVE WASTE. (a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the management of hazardous waste components of radioactive waste under the jurisdiction of the Department of State Health Services.

(b) The commission shall consult with the Department of State Health Services concerning regulation and management under this section, except for activities solely under the commission's jurisdiction.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0889, eff. April 2, 2015.

Sec. 361.019. APPROVAL OF INDUSTRIAL SOLID WASTE MANAGEMENT IN MUNICIPAL SOLID WASTE FACILITY. (a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted Class I nonhazardous industrial solid wastes or Class II industrial solid wastes if the waste contains no free liquids, is not a hazardous waste as defined in Section 361.003, and satisfies other criteria that may be established by commission rule. Until the commission adopts rules establishing additional criteria, generators of this type of waste shall satisfy the two criteria described in this subsection when these wastes are disposed of in municipal solid waste facilities.

(c) Municipal solid waste may be accepted in an industrial solid waste facility if authorized in writing by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 5, eff. Sept.

6, 1990; Acts 1991, 72nd Leg., ch. 703, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995.

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:

(1) a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and

(2) a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.

(b) As part of the program, the commission may:

(1) advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and

(2) sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.04, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1993.

Sec. 361.0215. POLLUTION PREVENTION ADVISORY COMMITTEE. (a) The pollution prevention advisory committee is composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission and interagency coordination council on:

(1) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(2) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected

by households;

(3) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(4) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

(c) The committee shall advise the commission on the creation and implementation of the strategically directed regulatory structure developed under Section 5.755, Water Code.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.04, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 4, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 965, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 4.04, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.05, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 5, eff. June 16, 1991.

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) The office of waste exchange is an office of the commission.

(b) The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be

in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials, and may act as broker for exchanges of the materials if private brokers are not available.

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange. Biennially the office of waste exchange shall report to the commission on progress in implementing this section, including the plan to provide information on waste exchange, the state's participation in any national or regional waste exchange program, and information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state. The commission shall submit the report by December 1 of each even-numbered year as required by Section 5.178(b), Water Code.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.05, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1082, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.022. PUBLIC POLICY CONCERNING MUNICIPAL SOLID WASTE AND SLUDGE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

(1) source reduction and waste minimization;

(2) reuse or recycling of waste;

(3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not

threaten public health, safety, or the environment; or

(4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

(1) source reduction and minimization of sludge production and concentrations of heavy metals and other toxins in sludge;

(2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;

(3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;

(4) applying sludge to land for beneficial use;

(5) land treatment; or

(6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the commission shall consider the preference of municipal solid waste management methods under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.27, eff. Sept. 1, 1995.

Sec. 361.023. PUBLIC POLICY CONCERNING HAZARDOUS WASTE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of hazardous waste to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

(1) source reduction;

(2) reuse or recycling of waste, or both;

(3) treatment to destroy hazardous characteristics;

(4) treatment to reduce hazardous characteristics;

(5) underground injection; and

(6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred,

but it shall be evaluated in the context of other relevant factors such as transportation hazard, distribution of risk, quality of destruction, operator capability, and site suitability.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 2, eff. Sept. 1, 1991.

Sec. 361.0231. PUBLIC POLICY CONCERNING ADEQUATE CAPACITY FOR INDUSTRIAL AND HAZARDOUS WASTE. (a) To protect the public health and environment taking into consideration the economic development of the state, and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

(b) "Adequate capacity" is the capacity necessary to manage the industrial and hazardous waste that remains after application, to the maximum extent economically and technologically feasible, of waste reduction techniques.

(c) It is further the state's policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 8, eff. Sept. 6, 1990. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.25, eff. Sept. 1, 2001.

Sec. 361.0235. HAZARDOUS WASTE GENERATED IN FOREIGN COUNTRY. (a) Except as otherwise provided by this section, a person may not receive, transport, or cause to be transported into this state, for the purpose of treatment, storage, or disposal in this state, hazardous waste generated in a country other than the United States.

(b) This section may not be construed or applied in a manner that interferes with the authority of the federal government to regulate commerce with foreign nations and among the several states provided by Article I, Section 8, Clause 3, of the United States Constitution.

(c) This section does not apply to a person who transports or receives material from a country other than the United States for:

(1) recycling or reuse of the material; or

(2) use of the material as a feedstock or ingredient in the production of a new product.

(d) This section does not apply to waste transported or received for treatment, storage, or disposal at a hazardous waste management facility that is owned by the generator of the waste or by a parent, subsidiary, or affiliated corporation of the generator.

(e) This section does not apply to waste received by:

(1) a producer of the product or material from which the waste is generated; or

(2) a parent, subsidiary, or affiliated corporation of such producer.

(f) This section does not apply to waste generated in Mexico at an approved maquiladora facility to the extent that such waste:

(1) was generated as a result of the processing or fabrication of materials imported into Mexico from Texas on a temporary basis; and

(2) is required to be re-exported to the United States under Mexican law.

Added by Acts 1991, 72nd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 361.0232 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(27), eff. Sept. 1, 1995.

Sec. 361.024. RULES AND STANDARDS. (a) The commission may adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of solid waste under this chapter.

(b) In developing rules concerning hazardous waste, the commission shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources.

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097-361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used.

(e) Rules shall be adopted as provided by Chapter 2001,

Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 2.06, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.30, eff. Sept. 1, 1995.

Sec. 361.025. EXEMPT ACTIVITIES. (a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.026. ASSISTANCE PROVIDED BY COMMISSION. The commission may:

(1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

(2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

(A) the development of solid waste facilities and management programs; and

(B) research to improve solid waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.31, eff. Sept. 1, 1995.

Sec. 361.027. LICENSURE OF SOLID WASTE FACILITY SUPERVISORS.

The commission may implement a program under Chapter 37, Water Code, to license persons who supervise the operation or maintenance of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.32, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 36, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 20, eff. Sept. 1, 2001.

Sec. 361.028. INDUSTRIAL SOLID AND HAZARDOUS WASTE MATERIALS EXCHANGE. (a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

(1) particular quantities of industrial solid or hazardous waste available in this state for recovery;

(2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and

(3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.029. COLLECTION AND DISPOSAL OF HOUSEHOLD MATERIALS THAT COULD BE CLASSIFIED AS HAZARDOUS WASTE. (a) The commission shall provide by rule for interested persons to engage in activities

that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.33, eff. Sept. 1, 1995.

Sec. 361.030. FEDERAL FUNDS. The commission may accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.031. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS. (a) The commission may administer and spend state funds provided to the commission by legislative appropriations, or otherwise, to make grants to local governments for:

(1) solid waste planning;

(2) installation of solid waste facilities; and

(3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the commission.

(c) The amount of financial assistance granted by the state through the commission to a local government under this chapter must be matched by local government funds at least in equal amounts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.032. INSPECTIONS; RIGHT OF ENTRY. (a) The commission may inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of solid waste.

(b) Agents or employees of the commission or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees of the commission or commission contractors have the right to enter at any reasonable time public or private property to investigate or monitor the release or threatened release of a hazardous substance.

(d) Agents or employees of the commission or commission contractors may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(e) Agents or employees of the commission or commission contractors acting under this section shall observe the establishment's rules on safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.35, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 883, Sec. 3, eff. Aug. 28, 1995.

Sec. 361.033. INSPECTIONS REQUIRED BY ENVIRONMENTAL PROTECTION AGENCY. (a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized

as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.035. RECORDS AND REPORTS; DISPOSAL OF HAZARDOUS WASTE. (a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted.

(c) A penalty collected under Subchapter C or D, Chapter 7, Water Code, for the late filing of a report required by this section shall be deposited to the credit of the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 29, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.008, eff. September 1, 2009.

Sec. 361.036. RECORDS AND MANIFESTS REQUIRED; CLASS I INDUSTRIAL SOLID WASTE OR HAZARDOUS WASTE. The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.037. ACCESS TO HAZARDOUS WASTE RECORDS. (a) Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records

pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the commission, the Department of State Health Services, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.36, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0890, eff. April 2, 2015.

Sec. 361.040. TREATMENT OF STEEL SLAG AS SOLID WASTE. The commission may not consider steel slag as solid waste if the steel slag is:

(1) an intended output or result of the use of an electric arc furnace to make steel;

(2) introduced into the stream of commerce; and

(3) managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

Added by Acts 2015, 84th Leg., R.S., Ch. 786 (H.B. 2598), Sec. 1, eff. September 1, 2015.

Sec. 361.041. TREATMENT OF POST-USE POLYMERS AND RECOVERABLE FEEDSTOCKS AS SOLID WASTE. (a) The commission may not consider post-use polymers or recoverable feedstock to be solid waste if they are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials or valuable intermediate or final products, including plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks.

(b) The recycling and reuse of post-use polymers and recoverable feedstocks classified as hazardous waste under federal law are subject to the federal hazardous waste recycling requirements.

Added by Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 2, eff. May 17, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 3, eff. May 27, 2023.

SUBCHAPTER C. PERMITS

Sec. 361.061. PERMITS; SOLID WASTE FACILITY. Except as provided by Section 361.090 with respect to certain industrial solid waste, the commission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.062. COMPATIBILITY WITH COUNTY'S PLAN. (a) Before the commission issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the commission under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the commission must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan.

(b) Until a local solid waste management plan is approved by

the commission and adopted by rule, the commission may not consider the plan and its contents in the review of an application for a solid waste facility permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.063. PREAPPLICATION LOCAL REVIEW COMMITTEE PROCESS. (a) The commission shall encourage applicants for solid waste facilities or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encouraged to identify issues of concern and work with the applicant to resolve those issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the commission a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the commission initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person,

other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed $25,000. In determining the appropriateness of the award, the commission shall consider whether:

(1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;

(2) the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) the local review committee was established in accordance with commission rules.

(g) Except as provided by Subsection (k), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (k), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by Chapter 2001, Government Code.

(i) A local review committee shall:

(1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the commission with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including

discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under Subsection (f).

(l) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987; or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.38, eff. Sept. 1, 1995.

Sec. 361.0635. PREAPPLICATION MEETING. (a) If requested by a person who intends to file a permit application, the commission shall provide the person an opportunity to meet with one or more staff members of the commission to discuss the permit application that the person intends to file.

(b) The person must make the request in writing to the commission.

(c) A meeting under this section must be held before the person files the permit application with the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 10, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.064. PERMIT APPLICATION FORM AND PROCEDURES. (a) If the commission exercises the power to issue permits for solid waste facilities under this subchapter, the commission, to the extent not otherwise provided by this subchapter, shall prescribe:

(1) the form of and reasonable requirements for the permit

application; and

(2) the procedures for processing the application.

(b) The commission shall provide a thorough and timely review of and a timely issuance or denial of any permit application for a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 11, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.0641. NOTICE TO STATE SENATOR AND REPRESENTATIVE. On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the commission shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.066. SUBMISSION OF ADMINISTRATIVELY COMPLETE PERMIT APPLICATION. (a) An applicant must submit any portion of an application that the commission determines is necessary to make the application administratively complete not later than the deadline set by the commission under Subsection (c).

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

(c) The commission by rule shall establish a deadline for the submission of additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application administratively complete.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.40, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1999.

Sec. 361.0665. NOTICE OF INTENT TO OBTAIN MUNICIPAL SOLID WASTE PERMIT. (a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

(1) a description of the location or proposed location of the facility;

(2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the commission;

(3) the manner in which the commission may be contacted for further information; and

(4) any other information that the commission by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by commission rule.

(d) In addition, the commission shall publish notice in the Texas Register.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(a), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.41, eff. Sept. 1, 1995.

Sec. 361.0666. PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES. (a) An applicant for a permit under this chapter for a new facility that accepts municipal solid wastes may hold a public meeting in the county in which the proposed facility is to be located.

(b) The applicant shall publish notice of the public meeting at least once each week during the three weeks preceding the meeting. The notice must be published in the newspaper of the largest general

circulation that is published in the county in which the proposed facility is to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county.

(c) The applicant shall present to the commission an affidavit certifying that the notice was published as required by Subsection (b). The commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).

(d) The published notice may not be smaller than 96.8 square centimeters or 15 square inches, with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the application.

(e) The applicant shall pay the cost of the notice required under this section. The commission by rule may establish a procedure for payment of those costs.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 2.01, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 1, eff. September 1, 2005.

Sec. 361.067. REVIEW OF PERMIT APPLICATION BY OTHER GOVERNMENTAL ENTITIES. (a) If the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

(1) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and

(2) the county judge and the health authority of the county in which the facility is located.

(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the commission, to present comments and recommendations on the permit application before

the commission acts on the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.42, eff. Sept. 1, 1995.

Sec. 361.0675. APPLICATION FEE FOR PERMIT FOR MUNICIPAL SOLID WASTE FACILITY. The commission shall charge an applicant for a permit for a municipal solid waste facility an application fee of $2,000.

Added by Acts 2019, 86th Leg., R.S., Ch. 175 (H.B. 1331), Sec. 1, eff. September 1, 2019.

Sec. 361.068. ADMINISTRATIVELY COMPLETE APPLICATION. (a) A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the commission.

(b) Once a determination that an application is administratively and technically complete has been made and the permit application has become the subject of a contested case under Section 2001.003, Government Code:

(1) the commission may not revoke the determination that an application is administratively or technically complete;

(2) the commission may request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted material provided that all parties may engage in discovery against all other parties, as provided by applicable law; and

(3) a request for additional information does not render the application incomplete.

(c) Subsection (b) does not:

(1) preclude an informal disposition of a contested case by stipulation, agreed settlement, consent order, or default; or

(2) restrict the right of any party to conduct discovery against any applicable party under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 1, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(62), 11.43, eff. Sept. 1, 1995.

Sec. 361.069. DETERMINATION OF LAND USE COMPATIBILITY. The commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088. In making a determination on the question of land use compatibility, the commission shall not consider the position of a state or federal agency unless the position is fully supported by credible evidence from that agency during the public hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 6, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.44, eff. Sept. 1, 1995.

Sec. 361.078. MAINTENANCE OF STATE PROGRAM AUTHORIZATION UNDER FEDERAL LAW. This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C, to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.079. NOTICE CONCERNING RECEIPT OF PERMIT APPLICATION; HEARING PROCEDURES. (a) Except as provided by Sections 361.080(b) and 361.081(c), the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

(b) The hearings shall be conducted in accordance with the hearing rules and the applicable provisions of Chapter 2001,

Government Code.

(c) To improve the timeliness of notice to the public of a public hearing under Section 361.080 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is submitted to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(b), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.03, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.45, eff. Sept. 1, 1995.

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT. (a) Notwithstanding other law, the commission may hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission may hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) Notwithstanding other law, the commission may hold a public meeting on an application for a new municipal solid waste management facility in the county in which the proposed municipal solid waste management facility is to be located.

(c) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) or (b) if notice is provided as required by this section.

(d) A public meeting under this section is not a contested case hearing under Chapter 2001, Government Code.

(e) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(f) The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the permit application.

(g) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.04, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 3, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 3, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.46, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 2, eff. September 1, 2005.

Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. (a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.05, eff. June 7, 1991.

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY. (a) The commission shall require the applicant to mail notice to each residential or business address located within one-half mile of a new solid waste management facility and to each owner of real property located within one-half mile of a new solid waste management facility listed in the real property appraisal records of the appraisal district in which the solid waste

management facility is sought to be permitted as of the date the commission determines the permit application is administratively complete. The notice must be sent by mail and must be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify to the commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section. Substantial compliance with the notice requirements of Subsection (a) is sufficient for the commission to exercise jurisdiction over an application for a solid waste facility.

(c) In addition to the requirements of Subsection (a), the commission shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(c), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.06, eff. June 7, 1991; Acts 1993, 73rd Leg., ch. 802, Sec. 4, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 4, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission may hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines

is necessary to protect the public health and safety and the environment.

(f) An owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of $20,000.

(h) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.07, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 5.06, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 3, eff. September 1, 2005.

Sec. 361.083. EVIDENCE OF NOTICE OF HEARING. (a) Before the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate appraisal district real property appraisal records at the time of the mailing.

(c) The affidavit of the commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the appraisal district real property appraisal records at the time of mailing, is prima facie evidence of proper mailing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 14, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Unless required for the disposition of ex parte matters authorized by law, or unless permitted by Section 2001.061, Government Code, a hearings examiner may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) Except for communications allowed under Subsection (a), an employee of the commission, a commissioner, or a party to a hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to respond and shall give all parties an opportunity to respond.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991.

Amended by Acts 1993, 73rd Leg., ch. 177, Sec. 1, eff. May 17, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(56), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 106, Sec. 6, eff. Sept. 1, 1995.

Sec. 361.0832. PROPOSAL FOR DECISION; CERTIFIED ISSUES; REVERSAL BY COMMISSION. (a) After hearing evidence and receiving legal arguments, a hearings examiner shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the commission may reject a proposal for

decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.

(g) To the extent of a conflict between this section and Section 2001.058(e), Government Code, this section controls.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 106, Sec. 7, eff. Sept. 1, 1995.

Sec. 361.0833. COSTS FOR INFORMATION PROVIDED BY A PERSON AFFECTED REGARDING HAZARDOUS WASTE PERMIT. (a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

(1) technical studies of the area in which the new hazardous waste facility is proposed to be located;

(2) expert testimony given at a hearing on the permit application; and

(3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

(1) knowingly made false or misleading statements in the application;

(2) knowingly made false or misleading statements during the hearing; or

(3) failed to present information that the applicant had in its possession that would have materially affected the issues of fact and law on which the decision of the commission was based.

(d) The total costs awarded to all persons affected under

Subsection (a) may not exceed $100,000 for a new commercial hazardous waste management facility or $20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed $150,000 for a new commercial hazardous waste management facility or $30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation; and

(2) whether the information would otherwise not have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) An order issued under this section is enforceable as a debt.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.09, eff. June 7, 1991.

Sec. 361.084. COMPLIANCE SUMMARIES. (a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history

developed by the commission under Section 5.754, Water Code. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(b) The compliance summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

(d) The commission shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.10, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.48, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 5, eff. Sept. 1, 2001.

Sec. 361.085. FINANCIAL ASSURANCE AND DISCLOSURE BY PERMIT APPLICANT. (a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the

facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall protect the information accordingly. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing to provide:

(1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and

(2) the amount of that funding.

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) The commission may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(f) The commission shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) Financial requirements established by the commission must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C.

Section 6901 et seq.).

(h) The commission may:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance arrangement to close the facility.

(i) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) In addition to other forms of financial assurance authorized by rules of the commission, the commission may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

(k) The commission may require financial assurance as a condition of issuing a permit or registration for the collection, transportation, or processing of grit trap waste or grease trap waste. The amount of financial assurance required must be consistent with the degree and duration of risk associated with the type of waste authorized to be collected, transported, or processed.

(l) If the commission requires financial assurance as a condition of a permit or registration under Subsection (k), provision of that financial assurance also satisfies any requirement for financial assurance under Chapter 368.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.12, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.49, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 591, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.0855. DEMONSTRATION OF FINANCIAL ASSURANCE. (a) In this section:

(1) "Bonds" means financial obligations issued by a local

government, including general obligation bonds, revenue bonds, and certificates of obligation.

(2) "Local government" includes:

(A) a local government corporation created under Chapter 431, Transportation Code, to act on behalf of a local government; and

(B) a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution.

(b) Notwithstanding any requirement of the commission for the demonstration of financial assurance, a local government that owns or operates a municipal solid waste landfill facility regulated by this chapter is considered to have satisfied all requirements of the commission for the demonstration of financial assurance in relation to closure, post closure, or corrective action, if the local government:

(1) establishes and passes a financial test in accordance with commission rules; and

(2) demonstrates that the outstanding bonds of the local government that are not secured by insurance, a letter of credit, or any other collateral or guarantee have a current rating of AAA, AA, A, or BBB as determined by Standard and Poor's or Aaa, Aa, A, or Baa as determined by Moody's.

(c) A local government must demonstrate financial assurance under this section:

(1) before the date of the initial receipt of waste at the facility; or

(2) as soon as practicable if, on the effective date of this section, the facility was in operation and had received waste.

Added by Acts 2005, 79th Leg., Ch. 154 (H.B. 2131), Sec. 1, eff. May 24, 2005.

Sec. 361.086. SEPARATE PERMIT FOR EACH FACILITY. (a) Except as provided by Subsection (d), a separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving

written notice to and receiving written approval of the agency that issued the permit.

(d) A separate permit is not required for activities authorized by a general permit issued under Section 27.025, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 901 (H.B. 2654), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(10), eff. September 1, 2009.

Sec. 361.0861. SEPARATE RECYCLING OR RECOVERY PERMIT NOT REQUIRED. (a) A permit holder or a municipal solid waste management facility that has or plans to have a recycling, waste separation, energy and material recovery, or gas recovery or transfer facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling, waste separation, energy and material recovery, or gas recovery or transfer facility a separate permit from the commission or to apply for an amendment to an existing permit issued by the commission.

(b) A facility to which this section applies must register with the commission in accordance with commission rules and comply with commission rules adopted under this chapter.

(c) If a permit is otherwise required, the commission shall expedite the permit proceeding if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 15, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.50, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.087. CONTENTS OF PERMIT. A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0871. EVALUATION OF WASTE STREAM; LAND USE AND NEED. (a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a).

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.13, eff. June 7, 1991. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a), eff. Jan. 11, 2004.

Sec. 361.088. PERMIT ISSUANCE, AMENDMENT, EXTENSION AND RENEWAL; NOTICE AND HEARING. (a) The commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures

prescribed by the commission.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Except as provided by Subsection (e), before a permit is issued, amended, extended, or renewed, the commission shall provide an opportunity for a hearing to the applicant and persons affected. The commission may also hold a hearing on its own motion.

(d) In addition to providing an opportunity for a hearing held under this section, the commission shall hold a public meeting and give notice as provided by Section 361.0791.

(e) After complying with Sections 5.552-5.555, Water Code, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(1) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(A) was generated on-site; and

(B) does not include waste generated from other waste transported to the site; and

(2) processing of hazardous waste if:

(A) the waste was generated on-site;

(B) the waste does not include waste generated from other waste transported to the site; and

(C) the processing does not include thermal processing.

(f) Notwithstanding Subsection (e), if the commission determines that an applicant's compliance history under the method for evaluating compliance history developed by the commission under Section 5.754, Water Code, raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

(g) The commission shall review a permit issued under this chapter every five years to assess the permit holder's compliance history.

(h) Before a permit for a proposed municipal solid waste management facility is issued, amended, extended, or renewed, the commission shall inspect the facility or site used or proposed to be used to store, process, or dispose of municipal solid waste to confirm information included in the permit application. The commission by rule shall prescribe the kinds of information in a permit application that require confirmation under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.14, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.51, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1350, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 4.05, 16.11, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 369 (H.B. 1435), Sec. 1, eff. September 1, 2019.

Sec. 361.0885. DENIAL OF APPLICATION; INVOLVEMENT OF FORMER EMPLOYEE. (a) After providing an opportunity for a hearing to an applicant, the state agency shall deny an application for the issuance, amendment, renewal, or transfer of a permit within its jurisdiction and may not issue, amend, renew, or transfer the permit if the state agency determines that a former employee:

(1) participated personally and substantially as a former employee in the state agency's review, evaluation, or processing of that application before leaving employment with the state agency; and

(2) after leaving employment with the state agency, provided assistance on the same application for the issuance, amendment, renewal, or transfer of a permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) Action taken under this section does not prejudice any application in which the former employee did not provide assistance.

(c) In this section, "former employee" means a person:

(1) who was previously employed by the state agency as a supervisory or exempt employee; and

(2) whose duties during employment with that state agency included involvement in or supervision of that state agency's review, evaluation, or processing of applications.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 16, eff. Sept. 6, 1990.

Sec. 361.089. PERMIT DENIAL OR AMENDMENT; NOTICE AND HEARING. (a) The commission may, for good cause, deny or amend a permit it

issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(b) Except as provided by Section 361.110, the commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The commission may also hold a hearing on its own motion.

(c) The commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 2001, Government Code.

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

(1) the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections;

(2) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(4) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that the applicant or permit holder has a compliance history that is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title

or by a rule of the commission.

(g) For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20 percent of the permit holder or applicant and at least 20 percent of another business which operates a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.11, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.52, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 16.12, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.24, eff. September 1, 2011.

Sec. 361.0895. FACILITIES REQUIRED TO OBTAIN FEDERAL APPROVAL. For a commercial hazardous waste disposal well facility originally permitted by the commission after June 7, 1991, and which is required to obtain from the United States Environmental Protection Agency a variance from the federal land disposal restrictions before injecting permitted hazardous wastes:

(1) a permit or other authorization issued to the facility under this chapter is not subject to cancellation, amendment, modification, revocation, or denial of renewal because the permit holder has not commenced construction or operation of the facility; and

(2) the fixed term of each permit or other authorization issued to the facility under this chapter shall commence on the date physical construction of the authorized waste management facility begins.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.090. REGULATION AND PERMITTING OF CERTAIN INDUSTRIAL SOLID WASTE DISPOSAL. (a) The commission may not require a permit under this chapter for the collection, handling, storage, processing,

and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water quality, or otherwise, under Chapter 26, Water Code; or

(2) the authority under Section 361.303.

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0901. REGULATION AND PERMITTING OF CERTAIN COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. (a) In this section:

(1) "Captured facility" has the meaning assigned by Section 361.131.

(2) "Commercial industrial solid waste facility" means any industrial solid waste facility that accepts industrial solid waste for a charge, but does not include a municipal solid waste facility, a captured facility, or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(3) "Publicly owned treatment works" means any device or system used in the treatment, recycling, or reclamation of municipal sewage or industrial waste of a liquid nature that is owned by a state or by a municipality as defined by Section 502(4), Federal Water Pollution Control Act (33 U.S.C. Section 1362). The term includes a sewer, pipe, or other conveyance only if the sewer, pipe, or conveyance conveys wastewater to a publicly owned treatment works providing treatment.

(b) A commercial industrial solid waste facility may not receive industrial solid waste for discharge into a publicly owned treatment works facility without first obtaining from the commission a permit under this chapter or a permit under Chapter 26, Water Code.

(c) This section does not require a commercial industrial solid waste facility to obtain a permit for discharge into a publicly owned treatment works facility liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at a municipal solid waste facility or commercial industrial solid waste landfill facility.

Added by Acts 2005, 79th Leg., Ch. 362 (S.B. 1281), Sec. 1, eff. September 1, 2005.

Sec. 361.0905. REGULATION OF MEDICAL WASTE. (a) The commission is responsible under this section for the regulation of the handling, transportation, storage, and disposal of medical waste.

(b) The commission shall accomplish the purposes of this chapter by requiring a permit, registration, or other authorization for and otherwise regulating the handling, storage, disposal, and transportation of medical waste. The commission shall adopt rules as necessary to accomplish the purposes of this subchapter.

(c) The commission has the powers and duties specifically prescribed by this chapter relating to medical waste regulation and all other powers necessary or convenient to carry out those responsibilities under this chapter.

(d) In matters relating to medical waste regulation, the commission shall consider water pollution control and water quality aspects, air pollution control and ambient air quality aspects, and the protection of human health and safety.

(e) Rules adopted to regulate the operation of municipal solid

waste storage and processing units apply in the same manner to medical waste only to the extent that the rules address:

(1) permit and registration requirements that can be made applicable to a facility that handles medical waste, including requirements related to:

(A) applications;

(B) site development;

(C) notice; and

(D) permit or registration duration and limits;

(2) minor modifications to permits and registrations, including changes in operating hours and buffer zones;

(3) the reconciliation of conflicting site operation plan provisions for a site that conducts activities that require a separate permit or authorization;

(4) waste acceptance and analysis;

(5) facility-generated waste, including wastewater and sludge;

(6) contaminated water management;

(7) on-site storage areas for source-separated or recyclable materials;

(8) the storage of waste:

(A) to prevent the waste from becoming a hazard, including a fire hazard, to human health or safety;

(B) to ensure the use of sufficient containers between collections; and

(C) to prevent the waste from becoming litter;

(9) closure requirements for storage and processing units;

(10) recordkeeping and reporting requirements, except for rules regarding the recordkeeping provisions required to justify the levels of recovered recycled products;

(11) fire protection;

(12) access control;

(13) unloading waste;

(14) spill prevention and control;

(15) operating hours;

(16) facility signage;

(17) control of litter, including windblown material;

(18) noise pollution and visual screening;

(19) capacity overloading and mechanical breakdown;

(20) sanitation, including employee sanitation facilities;

(21) ventilation and air pollution control, except as those rules apply to:

(A) process areas where putrescible waste is processed;

(B) the minimal air exposure for liquid waste; and

(C) the cleaning and maintenance of mobile waste processing unit equipment; and

(22) facility health and safety plans, including employee training in health and safety.

(f) Medical waste facilities, on-site treatment services and mobile treatment units that send treated medical waste and treated medical waste including sharps or residuals of sharps to a solid waste landfill must include a statement to the solid waste landfill that the shipment has been treated by an approved method in accordance with 25 T.A.C. Section 1.136 (relating to Approved Methods of Treatment and Disposition). Home generated wastes are exempted from this requirement.

(g) In a facility that handles medical waste processing or storage, the commission shall not require a minimum separating distance greater than 25 feet between the processing equipment or storage area, and the facility boundary owned or controlled by the owner or operator. A medical waste storage unit is not subject to this subsection, provided that medical waste contained in transport vehicles is refrigerated below 45 degrees if the waste is in the vehicle longer than 72 hours. The commission may consider alternatives to the buffer zone requirements of this subsection for permitted, registered, or otherwise authorized medical waste processing and storage facilities.

Added by Acts 2015, 84th Leg., R.S., Ch. 407 (H.B. 2244), Sec. 2, eff. June 10, 2015.

Sec. 361.091. ENCLOSED CONTAINERS OR VEHICLES; PERMITS; INSPECTIONS. (a) A municipal solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the commission and designed to eliminate putrescible, hazardous, or infectious waste;

(2) the solid waste is delivered to the site or operation

on a date and time designated and approved by the commission to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the commission that includes the approved route, date, and time; and

(4) a commission inspector is present to verify that the solid waste is free of putrescible, hazardous, or infectious waste.

(b) The commission may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The commission may adopt rules of procedure necessary to carry out the permit program.

(c) The commission may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The commission shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the commission for the compensation and expenses as provided by this section.

(d) The commission shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The commission shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the commission shall equitably apportion the costs of the inspection program and issue an order assessing the annual costs against each permit holder. The commission may provide for payments in installments and shall specify the date by which each payment must be made to the commission.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The commission's order assessing costs is effective until the commission:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The commission may adopt rules necessary to carry out this section.

(i) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(j) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.53, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 31, eff. Sept. 1, 1997.

Sec. 361.092. REGISTRATION FOR EXTRACTING MATERIALS FROM CERTAIN SOLID WASTE FACILITIES. (a) The commission may require a registration to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The commission shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 2, eff. Sept. 1, 1995.

Sec. 361.093. REGULATION AND PERMITTING OF RENDERING PLANTS. (a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from

animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.094. PERMIT HOLDER EXEMPT FROM LOCAL LICENSE REQUIREMENTS. If a permit is issued, amended, renewed, or extended by the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995.

Sec. 361.095. LOCAL PERMITS FOR HAZARDOUS WASTE MANAGEMENT AND MUNICIPAL SOLID WASTE FACILITIES. (a) An applicant for a permit under this subchapter is not:

(1) required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state; or

(2) required to obtain a permit for the siting, construction, or operation of a municipal solid waste facility from a local government or other political subdivision of the state as a prerequisite to a permit being issued by the commission.

(b) A local government or other political subdivision of the state may not adopt a rule, order, or ordinance that conflicts with or is inconsistent with:

(1) the requirements for hazardous waste management or municipal solid waste facilities as specified by:

(A) the rules of the commission; or

(B) a permit issued by the commission; or

(2) the requirements for municipal solid waste facilities under Section 361.011.

(c) In an action to enforce a rule, order, or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule, order, or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule, order, or ordinance, or its threatened application, interferes with, impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an issued permit, an application for a permit, or the issuance of a permit for the siting, construction, or operation of a hazardous waste management or municipal solid waste facility.

(e) The local government or other political subdivision whose rule, order, or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule, order, or ordinance in question.

(g) This section may not be construed to prevent or limit the right of:

(1) a county or municipality to exercise the authority granted under Section 363.112 to prohibit the processing or disposal of municipal solid waste;

(2) a county to exercise the authority granted under Section 364.012 to prohibit the disposal of municipal solid waste; or

(3) a local government or other political subdivision to

adopt or enforce a rule, order, or ordinance under the authority of the National Flood Insurance Program governing permits or other approvals for the development of land in areas prone to floods or mudslides.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1005 (H.B. 1598), Sec. 1, eff. June 18, 2023.

Sec. 361.096. EFFECT ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state

penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

Added by Acts 1993, 73rd Leg., ch. 1045, Sec. 12, eff. Sept. 1, 1993.

Sec. 361.097. CONDITION ON ISSUANCE OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall condition the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN. (a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a

100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.15, eff. June 7, 1991.

Sec. 361.099. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT UNIT IN WETLANDS. (a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.100. PROHIBITION ON PERMIT FOR CERTAIN HAZARDOUS WASTE MANAGEMENT UNITS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.101. PROHIBITION ON PERMIT FOR FACILITY ON RECHARGE ZONE OF SOLE SOURCE AQUIFER. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land

treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.1011. PROHIBITION ON PERMIT FOR FACILITY AFFECTED BY FAULT. If a fault exists within two and one-half miles from the proposed or existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, to show:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(B) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.16, eff. June 7, 1991.

Sec. 361.102. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITIES WITHIN A CERTAIN DISTANCE OF RESIDENCE, CHURCH, SCHOOL, DAY CARE CENTER, PARK, OR PUBLIC DRINKING WATER SUPPLY. (a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a

facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(b) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(d) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.17, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.55, eff. Sept. 1, 1995.

Sec. 361.103. OTHER AREAS UNSUITABLE FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

(1) flood hazards;

(2) discharge from or recharge to a groundwater aquifer;

(3) soil conditions;

(4) areas of direct drainage within one mile of a lake used to supply public drinking water;

(5) active geological processes;

(6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or

(7) critical habitat of endangered species.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.104. PROHIBITION ON PERMIT FOR FACILITY IN UNSUITABLE AREA. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.105. PETITION BY LOCAL GOVERNMENT FOR RULE ON HAZARDOUS WASTE FACILITY IN UNSUITABLE AREA. (a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

(b) A rule adopted under this section may not affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.106. PROHIBITION ON PERMIT FOR LANDFILL IF ALTERNATIVE EXISTS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably available to manage the types and classes of hazardous waste that might be disposed of at the landfill.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.107. HYDROGEOLOGIC REPORT FOR CERTAIN HAZARDOUS WASTE FACILITIES. The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.108. ENGINEERING REPORT FOR HAZARDOUS WASTE LANDFILL. The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering

report evaluating:

(1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site;

(2) the costs associated with the above grade construction; and

(3) the potential adverse effects, if any, that would be associated with the above grade construction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.109. GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. (a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that emergency response capabilities are available or will be available before the

facility first receives waste in the area in which the facility is located or proposed to be located to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(e) A permit for a new commercial hazardous waste management facility shall not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology shall conspicuously state that lack of experience in the application or a permit shall not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.18, eff. June 7, 1991.

Sec. 361.110. TERMINATION OF AUTHORIZATION OR PERMIT.

Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.111. COMMISSION SHALL EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES. (a) The commission shall exempt from permit requirements a municipal solid waste management facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality with a population of less than 50,000;

(2) a county with a population of less than 85,000;

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(3) a facility used in the transfer of municipal solid waste that will transfer 125 tons per day or less; and

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted landfill not more than 50 miles from the materials recovery facility.

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted Type I landfill not farther than 50 miles from the materials recovery facility.

(b) The facility must comply with design and operational requirements established by commission rule that are necessary to protect the public's health and the environment.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(c) To qualify for this exemption, the applicant must hold a public meeting on the siting of the facility in the municipality or county where the facility is to be located.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 17, eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 5, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.08, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 10, eff. Sept. 1, 1993.

Sec. 361.112. STORAGE, TRANSPORTATION, AND DISPOSAL OF USED OR SCRAP TIRES. (a) A person may not store more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the commission. This subsection does not apply to the storage, protection, or production of agricultural commodities.

(b) The commission may register a site to store more than 500 used or scrap tires.

(c) A person may not dispose of used or scrap tires in a facility that is not permitted by the commission for that purpose.

(d) The commission may issue a permit for a facility for the disposal of used or scrap tires.

(e) The commission by rule shall adopt application forms and procedures for the registration and permitting processes authorized under this section.

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by commission rule. The commission may grant an exception to this requirement if the commission finds that circumstances warrant the exception. The prohibition provided by this subsection regarding storage does not apply to a registered waste tire energy recovery facility or a waste tire energy recovery facility storage site. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

(g) The commission shall require a person who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a disposal facility that is permitted under this section for that purpose.

(h) The commission may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and commission rule.

(i) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(j) The commission may, for good cause, revoke or amend a permit it issues under this section for reasons concerning public health, air or water pollution, land use, or violation of this section as provided by Section 361.089.

(k) The commission may not register or issue a permit to a facility required by Section 361.479 to provide evidence of financial responsibility unless the facility has complied with that section.

(l) In this section, "scrap tire" means a tire that can no longer be used for its original intended purpose.

(m) The commission may adopt rules to regulate the storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 18, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 3.11, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.56, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 317, Sec. 26, eff. Sept. 1, 1995.

Sec. 361.1125. IMMEDIATE REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCE AT SCRAP TIRE SITE. (a) In this section:

(1) "Scrap tire" has the meaning assigned by Section 361.112.

(2) "Scrap tire site" includes any site at which more than 500 scrap tires are located.

(b) If the executive director after investigation finds that there exists a release or threat of release of a hazardous substance at a scrap tire site and immediate action is appropriate to protect human health and the environment, the commission may, with money available from money appropriated to the commission, undertake immediate remedial or removal action at the scrap tire site to achieve the necessary protection.

(c) The reasonable expenses of immediate remedial or removal action by the commission under this section are recoverable from the persons described in Section 361.271, and the state may bring an action to recover the commission's reasonable expenses.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.01, eff. Sept. 1, 2001.

Sec. 361.113. PERMIT CONDITIONS FOR THE OPERATION OF HAZARDOUS WASTE MANAGEMENT FACILITIES. (a) The commission by rule shall establish requirements for commercial hazardous waste management facilities that will provide the opportunity for periodic monitoring of the operation of those facilities in order to assure that the

facilities are in compliance with the terms of their respective permits.

(b) In proposing and adopting rules to implement this section, the commission shall consider, at a minimum, a requirement that the facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement that operational personnel at the permitted facility be certified by the state as competent to operate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that the facility provide for fence line and ambient air quality monitoring.

(c) A requirement that is established by commission rule to implement this section shall be incorporated as appropriate into the conditions of a permit for a new hazardous waste management facility when the permit is issued and shall be incorporated into the conditions of a permit for an existing hazardous waste management facility when the permit is renewed.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.19, eff. June 7, 1991.

Sec. 361.114. PROHIBITION OF DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS. The commission by rule shall prohibit the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.20, eff. June 7, 1991. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 9.02, eff. Sept. 1, 2001.

Sec. 361.115. CERTIFICATION OF LANDFILL CAPACITY TO MUNICIPALITY; RESTRICTIONS ON CONTRACT. (a) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county, before entering into a contract with a municipality for the disposal of the municipality's solid waste, must certify to the municipality that the facility has the capacity to dispose of the volume of waste proposed in the contract for the duration of the contract, if requested in writing by the

municipality.

(b) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality to dispose of the municipality's solid waste may not enter into a contract to accept solid waste generated from outside the municipality's extraterritorial jurisdiction for disposal at the facility in an amount that would reduce the projected life of the facility to less than the remaining duration of the contract for the disposal of the municipality's waste unless alternative disposal is provided.

(c) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality for the disposal of the municipality's solid waste shall, if requested in writing by the municipality, certify and report to the municipality annually that the owner or operator has the capacity to fulfill its contractual obligations to the municipality for solid waste disposal. The certification if requested must include a statement:

(1) of the remaining permitted solid waste disposal capacity of the facility;

(2) of the contractually committed volumes or tonnages of waste accepted at the facility; and

(3) from the owner or operator that the facility possesses the capacity to fulfill the disposal commitments in the contract with the municipality.

Added by Acts 1993, 73rd Leg., ch. 400, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.116. DISPOSAL OF INCIDENTAL INJECTION WELL WASTE. Notwithstanding Chapter 2001, Government Code, and any other provision of this chapter, the commission shall grant to the owner or operator of a commercial hazardous waste disposal well facility originally permitted after June 7, 1991, a permit modification that authorizes the construction and operation of an on-site or adjoining landfill for the disposal of hazardous and nonhazardous solid waste generated by the operation of the facility if the proposed landfill meets all applicable state and federal design requirements and the commission follows a public notice and comment procedure that is consistent with 40 C.F.R. Section 270.42.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 1, eff. Sept. 1, 1997.

Sec. 361.117. DISPOSAL OF CARCASSES OF ANIMALS KILLED ON ROADWAYS. (a) Notwithstanding any other provision of this chapter, counties and municipalities may dispose of the carcasses of animals killed on county or municipal roadways by burying the carcasses on property owned by the entity that is responsible for road maintenance. No permit shall be required to dispose of animal carcasses on county or municipal property. Disposal shall be conducted in a manner consistent with public health.

(b) Notwithstanding any other provision of this chapter, the Texas Department of Transportation may dispose of the carcasses of animals killed on the state highway system by burying the carcasses on state highway right-of-way. No permit shall be required to dispose of animal carcasses on state highway right-of-way. Disposal shall be conducted in a manner consistent with public health.

Added by Acts 1997, 75th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 361.116 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(67), eff. Sept. 1, 1999.

Sec. 361.118. REMEDIAL ACTION REGARDING INDUSTRIAL SOLID WASTE DISPOSED OF IN MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) This section applies only to a municipal solid waste landfill facility:

(1) for which the commission has issued a permit; and

(2) a portion of which:

(A) has been used for the disposal of more than 15,000 barrels of industrial solid waste;

(B) is closed; and

(C) is the subject of a notice regarding the former use of the property recorded in the real property records of the county in which the facility is located.

(b) If the commission determines that there is a release or that a release is imminent into the environment of industrial solid waste disposed of in the portion of the facility that has been closed, the commission shall require the owner of the facility to remediate as necessary and to the extent practicable to prevent or minimize the release of the waste so that the waste does not migrate

or have the potential to migrate.

(c) If the commission requires the owner of the facility to remediate under Subsection (b), the owner shall develop a remedial action plan and must obtain a major amendment to the permit for the facility approving the plan.

(d) This section does not limit the applicability of Section 26.121, Water Code.

Added by Acts 1999, 76th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1999.

Sec. 361.119. REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. (a) The commission by rule shall ensure that a solid waste processing facility is regulated as a solid waste facility under this chapter and is not allowed to operate unregulated as a recycling facility.

(b) The commission shall adopt rules, including recordkeeping and reporting requirements and limitations on the storage of recyclable material, to ensure that:

(1) recyclable material is reused and not abandoned or disposed of; and

(2) recyclable material does not create a nuisance or threaten or impair the environment or public health and safety.

(c) A facility that reuses or smelts recyclable materials or metals and the operations conducted and materials handled at the facility are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(2) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under this chapter, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(c-1) A facility that reuses or converts recyclable materials through pyrolysis, gasification, solvolysis, or depolymerization, and the operations conducted and materials handled at the facility, are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to convert materials into products for subsequent beneficial use; and

(2) all the solid waste generated from converting the materials is disposed of in a hazardous solid waste management facility or a solid waste facility authorized under this chapter, as appropriate, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(d) A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste is not subject to regulation or requirements for financial assurance under rules adopted under this section.

(e) A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section.

(f) The commission shall adopt rules to ensure that the owner or operator of a recycling facility, including a composting or mulching facility, has in place sufficient financial assurance conditioned on satisfactorily operating and closing the facility and consistent with the requirements of Section 361.085 for a solid waste facility other than a facility for the disposal of hazardous waste. This subsection applies only to an owner or operator of a recycling facility:

(1) at which combustible material is stored outdoors; or

(2) that poses a significant risk to public health and safety as determined by the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 600, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 3, eff. May 17, 2019.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 4, eff. May 27, 2023.

Sec. 361.1191. REGULATION OF CERTAIN RECYCLING FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a municipal solid waste recycling facility that does not hold a permit or

registration issued by the commission that stores combustible materials to produce mulch or compost and is located in a county that:

(1) has a population of more than 1.3 million; and

(2) includes areas designated as a recharge or transition zone of an aquifer as defined under the commission's Edwards Aquifer Protection Program that is the sole or principal source of drinking water for an area designated under Section 1424(e), Safe Drinking Water Act of 1974 (42 U.S.C. Section 300h-3(e)) and by the Environmental Protection Agency as the Edwards Underground Reservoir under 40 Federal Register 58344.

(b) The commission by rule shall:

(1) prescribe time limits for processing and removing materials from a facility;

(2) limit the amount of combustible material that may be stored at a recycling facility;

(3) limit the size of a pile of combustible recyclable or recycled materials, including composting materials or mulch, at a recycling facility;

(4) impose different standards for a recycling facility appropriate to the size and number of piles of combustible materials to be stored or processed at the facility;

(5) require a recycling facility to establish fire lanes between piles of combustible materials;

(6) require buffer zones between a recycling facility and a residence, school, or church; and

(7) for a recycling facility that is located on a recharge or transition zone referenced in Subsection 361.1191(a)(2):

(A) impose more stringent standards; and

(B) require groundwater protection features, such as liners and monitor wells.

(c) A rule adopted by the commission under this section does not become effective until the first anniversary of the date on which the rule was adopted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1362 (H.B. 2541), Sec. 2, eff. September 1, 2007.

Sec. 361.120. NOTICE OF HEARING AND REQUIREMENTS FOR REOPENING

OF CLOSED OR INACTIVE LANDFILLS. (a) This section applies to any municipal solid waste landfill facility permitted by the commission or any of its predecessor or successor agencies that have either stopped accepting waste, or only accepted waste pursuant to an emergency authorization, for a period of five years or longer. This section shall not apply to any solid waste landfill facility that has received a permit but never received waste.

(b) The commission or its successor agencies shall allow any municipal solid waste landfill facility covered by this section to be reopened and to accept waste again only if the permittee demonstrates compliance with all current state, federal, and local requirements, including but not limited to the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and the implementing Texas State regulations.

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of January 1, 2001, the scope of the public hearing is to be limited to land use, as provided by Section 361.069.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.04, eff. Sept. 1, 2001.

Sec. 361.121. LAND APPLICATION OF CERTAIN SLUDGE; PERMIT REQUIRED. (a) In this section:

(1) "Class B sludge" is sewage sludge that meets one of the pathogen reduction requirements of 30 T.A.C. 312.82(b).

(2) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.

(3) "Responsible person" means the person with ultimate responsibility for the land application of the Class B sludge at a

land application unit. The responsible person is:

(A) the owner of the land application unit if the sludge being land applied was generated outside this state; or

(B) the person who is land applying the sludge if the sludge being land applied was generated in this state.

(b) Except as provided by Subsection (m), a responsible person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit for that land application unit issued by the commission under this section on or after September 1, 2003.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal. In addition, at the time published notice of intent to obtain a permit is required under Section 5.552, Water Code, an applicant for a permit, permit amendment, or permit renewal under this section must notify by registered or certified mail each owner of land located within one-quarter mile of the proposed land application unit who lives on that land of the intent to obtain the permit, amendment, or renewal. Notice to landowners must include the information required by Section 5.552(c), Water Code, and information regarding the anticipated date of the first application of the sludge to the proposed land application unit. An owner of land located within one-quarter mile of the proposed land application unit who lives on that land is an affected person for purposes of Section 5.115, Water Code.

(d) In each permit, the commission shall prescribe the conditions under which it is issued, including:

(1) the duration of the permit;

(2) the location of the land application unit;

(3) the maximum quantity of Class B sludge that may be applied or disposed of under the permit;

(4) a requirement that the permit holder submit quarterly to the commission a computer-generated report that includes, at a minimum, information regarding:

(A) the source, quality, and quantity of sludge applied to the land application unit;

(B) the location of the land application unit, either in terms of longitude and latitude or by physical address, including the county;

(C) the date of delivery of Class B sludge;

(D) the date of application of Class B sludge;

(E) the cumulative amount of metals applied to the land application unit through the application of Class B sludge;

(F) crops grown at the land application unit site; and

(G) the suggested agronomic application rate for the Class B sludge;

(5) a requirement that the permit holder submit annually to the commission evidence that the permit holder is complying with the nutrient management plan and the practice standards described by Subsection (h)(4);

(6) a requirement that the permit holder post a sign that is visible from a road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a beneficial application site is located on the premises;

(7) any other monitoring and reporting requirements prescribed by the commission for the permit holder; and

(8) a requirement that the permit holder must report to the commission any noncompliance by the permit holder with the permit conditions or applicable commission rules.

(e) A permit does not become a vested right in the permit holder.

(f) A permit may be issued under this section for a term set by the board not to exceed six years from the date of issuance.

(g) The commission shall charge a fee for the issuance of a permit under this section in an amount not less than $1,000 and not more than $5,000. In determining the fee under this subsection, the commission shall consider the amount of sludge to be applied under the permit.

(h) The commission by rule shall require an applicant for a permit under this section to submit with the application, at a minimum:

(1) information regarding:

(A) the applicant;

(B) the source, quality, and quantity of sludge to be applied; and

(C) the hydrologic characteristics of the surface water and groundwater at and within one-quarter of a mile of the land application unit;

(2) proof evidencing that the applicant has a commercial

liability insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than $3 million;

(3) proof evidencing that the applicant has an environmental impairment insurance policy or similar insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than $3 million; and

(4) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the practice standards of the Natural Resources Conservation Service of the United States Department of Agriculture.

(i) The commission may expand the definition of Class B sludge only by expanding the definition to include sludge that meets more stringent pathogen reduction requirements.

(j) A permit holder must maintain an insurance policy required by Subsection (h) in effect for the duration of the permit.

(k) The commission shall create and operate a tracking system for the land application of Class B sludge. The commission shall require a permit holder to report deliveries and applications of Class B sludge using the tracking system and shall post the reported information on its website. The tracking system must allow a permit holder to report electronically:

(1) the date of delivery of Class B sludge to a land application unit; and

(2) for each application of Class B sludge to a land application unit:

(A) the date of the application; and

(B) the source, quality, and quantity of the sludge

applied.

(l) A permit holder may not accept Class B sludge unless the sludge has been transported to the land application unit in a covered container with the covering firmly secured at the front and back.

(m) A person who holds a registration for the application of Class B sludge for a beneficial use approved by the commission and who, on or before September 1, 2002, has submitted to the commission an administratively complete application for a permit under this section may apply Class B sludge in accordance with the terms of the registration until the commission issues a final decision to issue or deny the permit for which the person has applied.

(n) The insurance requirements under Subsections (h)(2) and (3) do not apply to an applicant that is a political subdivision.

(o) The commission may not issue a permit under this section for a land application unit that is located both:

(1) in a county that borders the Gulf of Mexico; and

(2) 500 feet or less from any water well or surface water.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.05(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 681, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.1215. PERMISSIVE LAND APPLICATION OF DAIRY WASTE. (a) In this section, "dairy waste" means milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation.

(b) Notwithstanding any other law, the commission shall issue an authorization by rule for land application of dairy waste.

(c) The commission shall adopt rules governing the land application of dairy waste authorized under this section.

(d) Rules adopted under Subsection (c) must:

(1) minimize the risk of water quality impairment caused by the land application; and

(2) prescribe the conditions under which an authorization is issued, including:

(A) the duration of the authorization;

(B) the location of the land application unit;

(C) the maximum quantity or application rate of dairy

waste that may be applied or disposed of under the authorization;

(D) the suggested agronomic application rate for the dairy waste or other beneficial uses of the dairy waste; and

(E) best management practices for the handling and disposal of dairy waste.

Added by Acts 2023, 88th Leg., R.S., Ch. 175 (H.B. 692), Sec. 1, eff. September 1, 2023.

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.08, eff. Sept. 1, 2001.

Sec. 361.123. LIMITATION ON LOCATION OF MUNICIPAL SOLID WASTE LANDFILLS. (a) This section applies to an application for a permit for a new Type I or new Type IV municipal solid waste landfill or for a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill to a Type I municipal solid waste landfill only if the landfill or proposed site for the new landfill is located in a county that is adjacent to a county with a population of more than 3.3 million and inside the boundaries of a national forest, as designated by the United States Forest Service, on public or private land.

(b) The commission may not issue a permit for a new Type I or new Type IV municipal solid waste landfill to be located as described by Subsection (a).

(c) The commission may not issue a permit or permit amendment

authorizing the conversion of a Type IV municipal solid waste landfill located as described by Subsection (a) to a Type I municipal solid waste landfill.

(d) This section does not apply to an application for a permit or permit amendment authorizing an areal expansion of an existing Type I municipal solid waste landfill.

Added by Acts 2005, 79th Leg., Ch. 1027 (H.B. 1053), Sec. 1, eff. June 18, 2005.

Sec. 361.1231. LIMITATION ON EXPANSION OF CERTAIN LANDFILLS. (a) This section applies only to a municipally owned Type I municipal solid waste landfill permitted by the state before 1980 that:

(1) is located wholly inside the boundaries of a municipality; and

(2) is owned by a municipality other than the municipality in which it is located.

(b) Notwithstanding any other provision of this subchapter, the commission may not approve an application for the issuance, amendment, or renewal of a permit that seeks to expand the area or capacity of a landfill unless the governing body of the municipality in which the landfill is located first approves by resolution or order the issuance, amendment, or renewal of the permit.

(c) The commission shall provide the members of the legislature who represent the district containing the landfill described in the permit with an opportunity to comment on the application and shall consider those comments in evaluating an application under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 861 (H.B. 281), Sec. 1, eff. June 18, 2015.

Sec. 361.124. ALLOWED WASTES AND EXEMPTIONS FOR CERTAIN SMALL MUNICIPAL SOLID WASTE LANDFILLS IN ARID AREAS. (a) In this section:

(1) "Construction or demolition waste" means any material waste that is the byproduct of a construction or demolition project, including paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(2) "Small municipal solid waste landfill unit" means a

discrete area of land or an excavation that:

(A) receives municipal solid waste or other solid wastes allowed by law; and

(B) disposes of less than 20 tons of municipal solid waste daily based on an annual average.

(b) This section applies only to a small municipal solid waste landfill unit that is permitted as an arid exempt landfill under commission rules.

(c) A small municipal solid waste landfill unit daily may dispose of less than 20 tons of construction or demolition waste in addition to the municipal solid waste the unit normally receives.

(d) The commission, in accordance with state and federal solid wastes laws, may, under rules adopted by the commission, grant a small municipal solid waste landfill unit an exemption from the requirements for groundwater protection design and operation and groundwater monitoring and corrective action if there is no evidence of groundwater contamination from the unit.

(e) The commission shall adopt rules as are necessary to implement this section in a manner that maintains compliance with and state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Added by Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 4, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 361.123 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(48), eff. September 1, 2007.

Sec. 361.126. DISPOSAL OF DEMOLITION WASTE FROM ABANDONED OR NUISANCE BUILDING. (a) This section applies only to a building that has been:

(1) abandoned or found to be a nuisance;

(2) acquired by the county or municipality by means of:

(A) bankruptcy;

(B) tax delinquency; or

(C) condemnation; and

(3) previously owned by a person not financially capable of paying the costs of the disposal of demolition waste at a permitted

solid waste disposal facility, including transportation of the waste to the facility.

(b) The commission may issue a permit by rule to authorize the governing body of a county or municipality with a population of 12,000 or less to dispose of demolition waste from a building if the disposal occurs on land that:

(1) the county or municipality owns or controls; and

(2) would qualify for an arid exemption under commission rules.

(c) The commission shall adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of demolition waste under this section to protect public and private property, rights-of-way, groundwater, and any other right that requires protection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 71 (S.B. 1258), Sec. 1, eff. May 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 449 (S.B. 819), Sec. 1, eff. June 14, 2013.

SUBCHAPTER D. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION, FACILITY, AND MANAGEMENT; FEES AND FUNDS

Sec. 361.131. DEFINITIONS. In this subchapter:

(1) "Captured facility" means a manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(2) "Commercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for a charge.

(3) "Dry weight" means the weight of constituents other than water.

(4) "Generator" means a person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(5) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6901 et seq.).

(6) "Land disposal" does not include the normal application of agricultural chemicals or fertilizers.

(7) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;

(C) a waste pile;

(D) a facility at which land treatment, land farming, or a land application process is used; and

(E) an injection well.

(8) "Noncommercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for no charge or that stores, processes, or disposes of waste generated on site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 19, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 692, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 1, eff. Aug. 30, 1993.

Sec. 361.132. HAZARDOUS AND SOLID WASTE FEES; WASTE MANAGEMENT ACCOUNT. (a) The waste management account is an account in the general revenue fund.

(b) The account consists of money:

(1) collected by the commission under this subchapter as:

(A) fees imposed on generators of industrial solid waste or hazardous waste under Section 361.134;

(B) fees imposed on owners or operators of permitted industrial solid waste or hazardous waste facilities, or owners or operators of industrial solid waste or hazardous waste facilities subject to the requirement of permit authorization, under Section

361.135;

(C) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for noncommercial and commercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136;

(D) fees imposed on applicants for industrial solid waste and hazardous waste permits under Section 361.137; and

(E) interest and penalties imposed under Section 361.140 for late payment of industrial solid waste and hazardous waste fees authorized under this subchapter; or

(2) deposited to the account as otherwise provided by law.

(c) Except as provided by Section 361.136(l)(1), the commission may use the money collected under this subchapter only for regulation of industrial solid and hazardous waste under this chapter, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) Any unobligated balance in the account at the end of the state fiscal year may, at the discretion of the commission, be transferred to the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 20, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.133. HAZARDOUS AND SOLID WASTE REMEDIATION FEE ACCOUNT. (a) The hazardous and solid waste remediation fee account is an account in the general revenue fund.

(b) The account consists of money collected by the commission from:

(1) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for commercial and noncommercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136 and fees imposed under Section 361.138;

(2) interest and penalties imposed under Section 361.140 for late payment of a fee or late filing of a report;

(3) money paid by a person liable for facility cleanup and

maintenance under Section 361.197;

(4) the interest received from the investment of this account, in accounts under the charge of the treasurer, to be credited pro rata to the hazardous and solid waste remediation fee account;

(5) monies transferred from other agencies under provisions of this code or grants or other payments from any person made for the purpose of remediation of facilities under this chapter or the investigation, cleanup, or removal of a spill or release of a hazardous substance;

(6) fees imposed under Section 361.604; and

(7) federal grants received for the implementation or administration of state voluntary cleanup programs or federal brownfields initiatives.

(c) The commission may use the money collected and deposited to the credit of the account under this section, including interest credited under Subsection (b)(4), only for:

(1) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the account for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance;

(3) expenses concerning compliance with:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) as amended;

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I;

(4) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances;

(5) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment;

(6) expenses concerning implementation of the voluntary cleanup program under Subchapter S or federal brownfields initiatives; and

(7) expenses, not to exceed 10 percent of the annually appropriated amount of the fees on batteries collected under Section 361.138, related to lead-acid battery recycling activities, including expenses for programs:

(A) for remediation; and

(B) to create incentives for the adoption of innovative technology in lead-acid battery recycling to increase the efficiency and effectiveness of the recycling process or reduce the negative environmental impacts of the recycling process.

(c-1) Notwithstanding Subsection (c), money in the account attributable to fees imposed under Section 361.138 may be used for reimbursement of environmental remediation at the site of a former battery recycling facility located in the municipal boundaries of a municipality with a population of more than 115,000 and less than 250,000 if a community development corporation serving the municipality is issued an industrial hazardous waste permit by the commission for the site and is paying or has paid for part of the costs of the environmental remediation of the site pursuant to the permit. This subsection expires September 1, 2027.

(d) The commission shall establish the fee rates for waste management under Section 361.136 and revise them as necessary. The amount collected each year shall not exceed $16 million after making payments to counties under Section 361.136(l)(1).

(e) The commission shall monitor the unobligated balance in the hazardous and solid waste remediation fee account and all sources of revenue to the account and may adjust the amount of fees collected under Subsection (d) and Section 361.138, within prescribed limits, to maintain an unobligated balance of no more than $25 million at the end of each fiscal year.

(f) For the purpose of Subsection (e), the unobligated balance in the hazardous and solid waste remediation fee account shall be determined by subtracting from the cash balance of the account at the end of each quarter:

(1) the total of all operating expenses encumbered by the commission from the account;

(2) the sum of the total balances remaining on all contracts entered into by the commission to be paid from the account; and

(3) the estimated total cost of investigation and remedial action at any site eligible for funding under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or Subchapter F or I and not currently under contract.

(g) Notwithstanding Subsection (c), the executive director may use money in the account, including interest credited under Subsection (b)(4), for expenses concerning a cleanup or removal of a spill, release, or potential threat of release of a hazardous substance if the site is eligible for listing under Subchapter F, proposed for listing under Subchapter F, or listed under the state registry before September 1, 1989, and:

(1) immediate action is appropriate to protect human health or the environment and there is a substantial likelihood that the cleanup or removal will prevent the site from needing to be listed under Subchapter F; or

(2) a cleanup or removal:

(A) can be completed without extensive investigation and planning; and

(B) will achieve a significant cost reduction for the site.

(h) If the commission collects a fee that is deposited in a dedicated fund established for the purpose of cleaning up a facility, tank, or site described by this subsection, the commission may not use money in the hazardous and solid waste remediation fee account to clean up a:

(1) waste tire recycling facility;

(2) municipal solid waste facility;

(3) petroleum storage tank; or

(4) used oil collection and recycling site that received used oil after August 31, 1995.

(i) Not later than the 31st day before the date the commission begins a cleanup or removal under Subsection (g), the commission must publish notice of its intent to perform the cleanup or removal in the Texas Register.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 21, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 986, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 38, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.05, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.009, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 123 (H.B. 3765), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 5, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 20, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 823 (H.B. 2708), Sec. 1, eff. June 16, 2021.

Sec. 361.134. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION FEE. (a) The annual generation fee prescribed by this section is imposed on each generator who generates Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of industrial solid waste or hazardous waste to register its activities; and

(2) collect the annual generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than $50 and may not be more than $50,000 for generation of hazardous waste or more than $10,000 for generation of nonhazardous waste.

(d) The commission by rule may exempt generators of small quantities of Class I industrial solid waste or hazardous waste from the payment of a generation fee under this section.

(e) Wastes generated in a removal or remedial action

accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee account shall be exempt from any generation fee assessed under this section.

(f) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under this chapter are exempt from the assessment of hazardous waste generation fees. By rule, the commission may authorize additional exemptions if consistent with state waste management policy. An exemption from fee assessment does not limit a generator's obligation to report waste generation or waste management activity under any applicable regulation of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 4, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 39, eff. Sept. 1, 1997.

Sec. 361.135. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE FACILITY FEE. (a) The annual facility fee prescribed by this section is imposed on each person who holds one or more permits for the management of Class I industrial solid waste or hazardous waste or is operating a waste management unit subject to the requirement for permit authorization to process, store, or dispose of Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged.

(c) The annual facility fee may not be less than $250. The maximum fee for a facility may not exceed $25,000. The annual fee to be charged each Class I industrial solid waste or hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status hazardous waste management requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991.

Sec. 361.136. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT FEE. (a) Except as provided by Subsections (e) through (i), a fee shall be imposed on the owner or operator of a waste storage, processing, or disposal facility for industrial solid waste and hazardous waste that is managed on site. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for management of hazardous waste and commercial disposal of industrial solid waste, as well as the manner of collection, and shall revise the fee amounts as necessary.

(1) Fees under this section may apply only to the following:

(A) commercial and noncommercial storage, processing, or disposal of hazardous waste; or

(B) commercial disposal of Class I nonhazardous industrial solid waste.

(2) A fee established for the commercial disposal of a nonhazardous industrial solid waste shall not exceed 20 percent of the fee established for the disposal of a hazardous waste by the same method of disposal.

(3) A fee under this section shall not be assessed for the disposal of a waste subject to an assessment under Section 361.013.

(c) The waste management fee shall be based on the total weight or volume of a waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The waste management fee for wastes generated in this state may not exceed $40 per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes, shall be established by the commission for the storage, processing, incineration, and disposal of hazardous waste fuels that the commission by rule shall define considering:

(1) Btu content;

(2) metals content;

(3) chlorinated hydrocarbon content; and

(4) the degree to which the waste fuel is used for energy recovery.

(f) A fee imposed on the owner or operator of a commercial industrial solid waste or hazardous waste storage, processing, or disposal facility, for wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this subsection, an affiliate of a commercial industrial solid waste or hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes for fewer than 90 days.

(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of industrial solid wastes or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of money from the hazardous and solid waste remediation fee account or generated in a removal or remedial action in this state conducted by the United States Environmental Protection Agency shall be exempt from the assessment of a waste management fee under this section.

(j) The owner or operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed a fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental

fee for out-of-state wastes, the commission shall consider:

(1) factors specified by Section 361.139;

(2) added costs to the state of regulating the interstate transport and subsequent management and disposal of imported industrial solid wastes and hazardous wastes and their associated risks;

(3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and

(4) contributions in both fees and taxes paid by generators in this state to the support of the state's industrial solid waste and hazardous waste regulatory programs.

(k) A fee for industrial solid wastes or hazardous wastes that are legitimately reclaimed, reused, or recycled at a waste storage, processing, or disposal facility must be the same for wastes generated in state and out of state.

(l) Fees collected under this section shall be credited as follows:

(1) 25 percent of the waste management fees collected from each commercial waste storage, processing, or disposal facility under this section shall be credited to the waste management account to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial industrial solid waste and hazardous waste management facilities; and

(2) of the remaining amount of the commercial waste management fees and of the total amount of the noncommercial waste management fees collected from each waste storage, processing, or disposal facility:

(A) 50 percent of each amount shall be credited to the hazardous and solid waste remediation fee account; and

(B) 50 percent of each amount shall be credited to the waste management account.

(m) Funds due an affected county under Subsection (l)(1) shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

(1) for methods of computing the dry weight of industrial solid waste and hazardous waste; and

(2) for a method to determine or estimate the dry weight of small volumes of waste delivered to waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of industrial solid waste or hazardous waste shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a waste to be disposed.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Renumbered from Sec. 361.138 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 6, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 5, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.137. PERMIT APPLICATION FEE. (a) A permit application fee is imposed on each applicant for an industrial solid waste or hazardous waste permit.

(b) The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than $2,000 nor more than $50,000. An additional fee may not be assessed for a draft permit returned for further processing unless the application is withdrawn.

(c) The commission may also establish a fee rate for approval of applications or petitions other than new permits, including but not limited to minor amendments, modifications, and closure plans, which fee may be less than $2,000.

(d) Application fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 9, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 2, eff. June 20, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 41, eff. Sept. 1, 1997.

Sec. 361.138. FEE ON THE SALE OF BATTERIES. (a) In this section:

(1) "Engaged in business in this state" has the meaning

provided under Sections 151.107(a) and (b), Tax Code.

(2) "Lead-acid battery" means any battery which contains lead and sulfuric acid.

(2-a) "Marketplace provider" has the meaning assigned by Section 151.0242(a), Tax Code.

(3) "Purchased for resale" means acquired by means of a sale for resale as defined in Section 151.006, Tax Code.

(4) "Storage" and "use" have the meanings assigned those terms by Section 151.011, Tax Code.

(b) A wholesale or retail battery dealer who sells or offers to sell, or a marketplace provider who processes sales of or payments for, lead-acid batteries not for resale shall collect at the time and place of sale a fee for each nonexempt lead-acid battery sold, according to the following schedule:

(1) for a lead-acid battery with a capacity of less than 12 volts, a fee of $2;

(2) for a lead-acid battery with a capacity of 12 or more volts, a fee of $3.

(c) A dealer or marketplace provider required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than $50 for a calendar month or less than $150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be available for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the

administration, collection, reporting, and payment of the fees payable or collected under this section.

(g) A person who does not file a report as provided by this section or who possesses a fee collected or payable under this section and who does not remit the fee to the comptroller at the time and in the manner required by this section and the rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(h) Except as provided in this section, the provisions of Chapters 101 and 111-113, Tax Code, apply to the administration, payment, collection and enforcement of fees under this section in the same manner that these provisions apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(i) A dealer or marketplace provider required to collect a fee under this section may retain 2-1/2 cents from each fee the person collects. A dealer or marketplace provider shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(j) The comptroller may deduct a percentage of the fees collected under this section, not to exceed four percent of receipts, to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller under this section shall be deposited to the hazardous and solid waste remediation fee account.

(k) A battery is exempt from this section if it meets all of the following criteria:

(1) the ampere-hour rating of the battery is less than 10 ampere-hours;

(2) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(3) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

(l) A fee is imposed on the storage, use, or other consumption in this state of a lead-acid battery, unless purchased for resale, at

the same rate as provided by Subsection (b).

(m) A person storing, using, or consuming a lead-acid battery in this state is liable for the fee imposed by Subsection (l) and is responsible for reporting and paying it to the comptroller in the same manner as a person required to collect the fee provided for in Subsections (c)(2) and (d).

(n) A person storing, using, or consuming a lead-acid battery in this state is not liable for the fee if the person pays the fee to a wholesaler or retailer engaged in business in this state or other person authorized by the comptroller to collect the fee and receives from the person a receipt showing that the fee has been paid.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 11, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1000, Sec. 64, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 42, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 569 (S.B. 477), Sec. 1, eff. July 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 569 (S.B. 477), Sec. 2, eff. July 1, 2022.

Sec. 361.139. FACTORS TO BE CONSIDERED IN SETTING FEES. (a) To promote the public policy of preferred waste management methods under Section 361.023 and to provide for an equitable fee rate structure, the commission shall consider the following in establishing the fees authorized under this subchapter:

(1) the variation in risks to the public associated with different waste management methods, including storage, specifically:

(A) promoting the establishment and maintenance of industrial solid waste and hazardous waste reclamation, reuse, and recycling facilities;

(B) promoting the public policy of preferred waste management methods for waste streams that are amenable to multiple waste management methods; and

(C) considering whether the waste is ultimately disposed of in the state;

(2) the funding needed to adequately and equitably support the regulation of industrial solid waste and hazardous waste

generation, storage, processing, and disposal activities and the remediation of contaminated disposal sites, considering:

(A) the nature and extent of regulated activities and the variation in the cost of regulating different types of facilities;

(B) the cost to the state of operating an effective program for the regulation of industrial solid waste and hazardous waste which protects human health and the environment and is consistent with state and federal authority;

(C) the higher costs of regulation and oversight that may be required for commercial waste management facilities;

(D) the sources and causes of contamination at sites in need of remediation; and

(E) the benefits and beneficiaries of the regulatory programs and activities supported through fees assessed under this subchapter;

(3) promoting the efficient and effective use of existing industrial solid waste and hazardous waste storage, processing, and disposal facilities within the state;

(4) whether a volume of waste received by a facility has been or will be assessed a waste management fee at other facilities under Section 361.136; and

(5) the prevailing rates of similar fees for industrial solid waste and hazardous waste activities charged in other states to which wastes from this state may be exported or from which wastes may be imported for storage, processing, or disposal.

(b) In addition to the factors prescribed in Subsection (a), the commission, in establishing fees for the management of hazardous waste under Section 361.136, shall also consider:

(1) the amount of state matching funds necessary for remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act; and

(2) the costs of state-funded remedial actions under Subchapter F.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 7, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 7, eff. Aug. 30, 1993.

Sec. 361.140. INTEREST AND PENALTIES. (a) The commission by rule shall establish requirements for the assessment of penalties and interest for late payment of fees owed the state under Sections 361.134 through 361.137. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Interest collected under this section for late payment of a fee shall be deposited in the state treasury to the credit of the respective fund to which the late fee is credited.

(c) Relettered as subsec. (b) by Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 23, eff. Sept. 6, 1990. Renumbered from Sec. 361.137 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 8, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 8, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS

Sec. 361.151. RELATIONSHIP OF COUNTY AUTHORITY TO STATE AUTHORITY. (a) Each county has the solid waste management powers prescribed under this subchapter.

(b) The exercise of the licensing authority and other powers granted to a county by this chapter does not preclude the commission from exercising the powers vested in the commission under other provisions of this chapter, including the provisions authorizing the commission to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste.

(c) The commission, by specific action or directive, may supersede any authority granted to or exercised by a county under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.57, eff. Sept. 1, 1995.

Sec. 361.152. LIMITATION ON COUNTY POWERS CONCERNING INDUSTRIAL SOLID WASTE. The powers specified by Sections 361.154-361.162 and

Section 364.011 (County Solid Waste Control Act) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 570, Sec. 3, eff. Sept. 1, 1999.

Sec. 361.153. COUNTY SOLID WASTE PLANS AND PROGRAMS; FEES. (a) A county may appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services.

(b) As sufficient funds are made available by the commission, a county shall develop county solid waste plans and coordinate those plans with the plans of:

(1) local governments, regional planning agencies, and other governmental entities, as prescribed by Subchapter D, Chapter 363; and

(2) the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 25, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.58, eff. Sept. 1, 1995.

Sec. 361.154. COUNTY LICENSING AUTHORITY. (a) Except as provided by Sections 361.151 and 361.152, a county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(b) If a county exercises licensing authority, it shall adopt and enforce rules for the management of solid waste. The rules must be:

(1) compatible with and not less stringent than those of the commission; and

(2) approved by the commission.

(c) Sections 361.155-361.161 apply if a county exercises licensing authority under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.59, eff. Sept. 1, 1995.

Sec. 361.155. COUNTY NOTIFICATION OF LICENSE APPLICATION TO COMMISSION. The county shall mail a copy of each license application with pertinent supporting data to the commission. The commission has at least 60 days to submit comments and recommendations on the license application before the county may act on the application unless that privilege is waived by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.60, eff. Sept. 1, 1995.

Sec. 361.156. SEPARATE LICENSE FOR EACH FACILITY. (a) A county shall issue a separate license for each solid waste facility.

(b) A license under this subchapter may be issued only to the person in whose name the application is made and only for the facility described in the license.

(c) A license may not be transferred without prior notice to and approval by the county that issued it.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.157. CONTENTS OF LICENSE. A license for a solid waste facility issued by a county must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the license is issued, including the duration of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.158. LICENSE FEE. (a) A county may charge a license fee not to exceed $100, as set by the commissioners court of the

county.

(b) The fees shall be deposited to the credit of the county's general fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.159. LICENSE ISSUANCE; AMENDMENT, EXTENSION, AND RENEWAL. (a) A county may amend, extend, or renew a license it issues in accordance with county rules.

(b) The procedures prescribed by Section 361.155 apply to an application to amend, extend, or renew a license.

(c) A license for the use of a facility to process, store, or dispose of solid waste may not be issued, amended, renewed, or extended without the prior approval of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.61, eff. Sept. 1, 1995.

Sec. 361.160. LICENSE AMENDMENT. (a) A county may, for good cause, after hearing with notice to the license holder and to the commission, amend a license it issues for reasons concerning:

(1) public health;

(2) air or water pollution;

(3) land use; or

(4) a violation of this chapter or of other applicable laws or rules controlling the processing, storage, or disposal of solid waste.

(b) For similar reasons, the commission may for good cause amend a license issued by a county, after hearing with notice to:

(1) the license holder; and

(2) the county that issued the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 33, eff. Sept. 1, 1997.

Sec. 361.161. PERMIT FROM COMMISSION NOT REQUIRED. If a county issues, amends, renews, or extends a license in accordance with

Sections 361.154-361.160, the owner or operator of the facility is not required to obtain a permit from the commission for the same facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995.

Sec. 361.162. DESIGNATION OF AREAS SUITABLE FOR FACILITIES. (a) Subject to the limitation under Sections 361.151 and 361.152, a county may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.

(b) The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.163. COOPERATIVE AGREEMENTS WITH LOCAL GOVERNMENTS. A county may enter into cooperative agreements with local governments and other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for the services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.165. POLITICAL SUBDIVISIONS WITH JURISDICTION IN TWO OR MORE COUNTIES. (a) This section applies to a political subdivision of the state that:

(1) has jurisdiction of territory in more than one county; and

(2) has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities in its jurisdiction.

(b) The governing body of the political subdivision may, by resolution, assume for the political subdivision the exclusive authority to exercise, in the area subject to its jurisdiction, the powers granted by this chapter to a county, to the exclusion of the exercise of the same powers by the counties otherwise having

jurisdiction over the area.

(c) In the exercise of those powers, the political subdivision is subject to the same duties, limitations, and restrictions applicable to a county under this chapter.

(d) A political subdivision that assumes the authority granted under this section:

(1) serves as the coordinator of all solid waste management practices and activities for municipalities, counties, and other governmental entities in its jurisdiction that have solid waste management regulatory powers or engage in solid waste management practices or activities; and

(2) shall exercise the authority as long as the resolution of the political subdivision is effective.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.166. MUNICIPAL RESTRICTIONS. A municipality may not abolish or restrict the use or operation of a solid waste facility in its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence when the municipality was incorporated or was in existence when the municipality annexed the area in which it is located; and

(2) is operated in substantial compliance with applicable state and county regulations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.167. OPERATION OF FACILITY BY POLITICAL SUBDIVISION. A municipality or other political subdivision operating a solid waste facility may not be prevented from operating the solid waste facility on the ground that the facility is located in the limits or extraterritorial jurisdiction of another municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. REGISTRY AND CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES

Sec. 361.181. STATE REGISTRY: ANNUAL PUBLICATION. (a) The commission shall annually publish an updated state registry identifying, to the extent feasible, each facility that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

(b) The registry shall identify the relative priority for action at each listed facility. The relative priority for action at facilities listed on the registry shall be periodically reviewed and revised by the commission as necessary to accurately reflect the need for action at the facilities.

(c) In this subchapter:

(1) "Facility" means any building, structure, installation, equipment, pipe, or pipeline (including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft), or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located. The term does not include any consumer product in consumer use or any vessel.

(2) "Homestead" has the meaning designated by Section 51, Article XVI, Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 2003, 78th Leg., ch. 661, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.182. INVESTIGATIONS. (a) The executive director may conduct investigations of facilities that are listed on the state registry, or that the executive director has reason to believe should be included on the state registry, in accordance with Sections 361.032, 361.033, and 361.037.

(b) If there is a reasonable basis to believe there may be a release or threatened release of a hazardous substance at a facility, the executive director may submit requests for information and requests for the production of documents to any person who has or may have information or documents relevant to:

(1) the identification, nature, or quantity of materials

that have been generated, treated, stored, or disposed of at a facility or transported to a facility;

(2) the identification of soils, groundwater, or surface water at a facility that have been or may be affected by an actual or threatened release of a hazardous substance;

(3) the nature or extent of a release or threatened release of a hazardous substance at or from a facility; or

(4) the ability of a person to pay for or to perform a remedial action.

(c) If the requested information or documents are not produced in a timely manner, the commission may issue an order directing compliance with the requests for information or production of documents. Information or documents requested under Subsection (b) or this subsection are public records, except that the commission shall consider the copied records as confidential if a showing satisfactory to the commission is made by the owner of the records that the records would divulge trade secrets if made public. This subsection does not require the commission to consider the composition or characteristics of hazardous substances being processed, stored, disposed of, or otherwise handled to be held confidential.

(d) The commission shall adopt rules regarding the provision of notice and an opportunity for a hearing before the commission on whether the requested information or documents should be produced.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.183. REGISTRY LISTING PROCEDURE: DETERMINATION OF ELIGIBILITY. (a) Before listing a facility on the state registry, the executive director shall determine whether the potential endangerment to public health and safety or the environment at the facility can be resolved by:

(1) the present owner or operator under the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901);

(2) some or all of the potentially responsible parties identified in Subchapter I, under an agreed administrative order

issued by the commission; or

(3) an agreement under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995.

(b) If the potential endangerment to public health and safety or the environment can be resolved in such a manner, the facility may not be listed on the state registry. Notice of the approach selected to resolve the apparent endangerment to public health and safety or the environment and the fact that this action is being taken in lieu of listing the facility on the state registry shall be published in the Texas Register.

(c) If after reasonable efforts the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of the approaches under Subsection (a), the executive director shall evaluate the facility to determine whether the site exceeds the commission's minimum criteria for listing on the state registry. The commission by rule shall adopt the minimum criteria. The executive director shall also evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List.

(d) The commission shall proceed under this subchapter only if, based on information available to the executive director, the facility is eligible for listing on the state registry but not eligible for the federal National Priorities List.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 3, eff. Sept. 1, 1997.

Sec. 361.184. REGISTRY LISTING PROCEDURE: NOTICES AND HEARING. (a) If the executive director determines that a facility is eligible for listing on the state registry, the commission shall publish in the Texas Register and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list the facility on the state registry. The notice shall at least specify the name and location of the facility, the general nature of the potential endangerment to public health and safety or the environment as determined by information available to the executive director at that time, and the duties and restrictions imposed by

Subsection (c). The notice also shall provide that interested parties may do either or both of the following:

(1) submit written comments to the commission relative to the proposed listing of the facility; or

(2) request a public meeting to discuss the proposed listing by submitting a request not later than the 30th day after the date on which the notice is issued.

(b) If the facility is determined to be eligible for listing on the state registry, the executive director shall make all reasonable efforts to identify all potentially responsible parties for remediation of the facility. Concurrent with the publication of general notice under Subsection (a), the executive director shall provide to each identified potentially responsible party direct, written notification of the proposed listing of the facility on the state registry and of the procedures for requesting a public meeting to discuss the listing and the information included in the general notice as required by Subsection (a). Written notifications under this subsection shall be by certified mail, return receipt requested, to each named responsible party at the party's last known address.

(c) If a public meeting is requested regarding the proposed listing of a facility on the state registry, the commission shall publish general notice of the date, time, and location of the public meeting in the Texas Register and in the same newspaper in which the notice of the opportunity to request the public meeting was published. The public meeting notice shall be provided not later than the 31st day before the date of the meeting. Notice of the meeting also shall be provided by certified mail, return receipt requested, to each identified potentially responsible party at the party's last known address.

(d) Nonreceipt of any notice mailed to a potentially responsible party under Subsection (b) or this subsection does not affect the responsibilities, duties, or liabilities imposed on the party. Contemporaneously with issuing the notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For the purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours.

(e) A public meeting is legislative in nature and not a

contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility relative to the eligibility of the facility for listing on the state registry and the identification of potentially responsible parties.

(f) After the public meeting or after opportunity to request a public meeting has passed, the commission shall file or cause to be filed an affidavit or notice in the real property records of the county in which the facility is located identifying the facility as one proposed for listing on the state registry unless the executive director determines, based on information presented at the public meeting, that efforts to list the facility on the state registry should not be pursued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.185. INVESTIGATION/FEASIBILITY STUDY. (a) After the public meeting or after opportunity to request a public meeting has passed, but before any listing of the facility on the state registry, the commission shall allow all identified potentially responsible parties the opportunity to fund or conduct, if appropriate, a remedial investigation/feasibility study, or a similar study as approved by the executive director, for the facility. Not later than the 90th day after notice under Section 361.184(a) is issued, the potentially responsible parties may make a good faith offer to conduct the study. If a good faith offer from all or some of the potentially responsible parties is received by the commission within that period, those making the offer have an additional 60 days within which to negotiate an agreed administrative order from the commission, which must include a scope of work. In the agreed administrative order the commission may not require the participating potentially responsible parties to agree to perform the remedial action or admit liability for the facility remediation.

(b) If no potentially responsible party makes a good faith offer to conduct the remedial investigation/feasibility study or similar study as approved by the executive director or if the

participating potentially responsible parties fail to conduct or complete an approved study, the commission may conduct or complete the study using funds from the hazardous waste disposal fee fund.

(c) To encourage potentially responsible parties to perform the remedial investigation/feasibility study or other similar study as approved by the executive director, costs for commission oversight of the study may not be assessed against those parties who fund or perform the study. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility under this chapter or who subsequently enter into an agreed order relative to the remediation of the facility may be assessed up to the full costs for commission oversight of the study process. If all potentially responsible parties participate or agree to fund the remedial investigation/feasibility study or other similar study, all commission oversight costs shall be paid from the hazardous waste disposal fee fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.1855. PROPOSAL OF LAND USE OTHER THAN RESIDENTIAL. (a) The executive director shall hold a public meeting to obtain public input and information regarding the appropriate use of land on which a facility is located that is the subject of a remedial investigation/feasibility study if:

(1) a land use other than residential is proposed as appropriate for the land by:

(A) the executive director; or

(B) a potentially responsible party who has entered into an agreed order with the commission;

(2) the proposal is made before the study is completed; and

(3) a local government has not zoned the land as residential only.

(b) Any interested person may comment at the meeting.

(c) The meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code.

(d) Not later than the 31st day before the date of the meeting,

the commission shall:

(1) publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located;

(2) mail notice of the meeting to each potentially responsible party by certified mail, return receipt requested, at the party's most recent address as shown on the records of the commission; and

(3) make the commission's records regarding the facility available to any interested person.

(e) The notice shall:

(1) state the date, time, and place of the meeting; and

(2) provide information regarding the proposed land use.

(f) The failure of a potentially responsible party to receive a notice under this section does not affect the responsibilities, duties, or liabilities of the party.

(g) After the meeting, the executive director shall select the appropriate land use for purposes of selecting a proposed remedial action.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 4, eff. Sept. 1, 1997.

Sec. 361.186. FACILITY ELIGIBLE FOR LISTING: ACTIVITIES AND CHANGE OF USE. (a) If the executive director determines that a facility is eligible for listing on the state registry, a person may not perform at the facility any partial or total removal activities except as authorized by the executive director in appropriate circumstances after notice and opportunity for comment to all other potentially responsible parties. The commission may adopt rules determining what constitutes an appropriate circumstance to take removal action under this subsection. Authorization by the executive director to conduct a partial or total removal action does not constitute:

(1) a final determination of the party's ultimate liability for remediation of the facility; or

(2) a determination of divisibility.

(b) If the facility is determined to be eligible for listing on the state registry, the owner or operator of the facility must provide the executive director with written notice of any substantial

change in use of the facility before the 60th day before the date on which the change in use is made. Notice of a proposed substantial change in use must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use. A substantial change in use shall be defined by rule and must include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) If, within 30 days after the date of the notice, the executive director determines that the proposed substantial change in use will interfere significantly with a proposed or ongoing remedial investigation/feasibility study or similar study approved by the executive director or expose the public health and safety or the environment to a significantly increased threat of harm, the executive director shall notify the owner or operator of the determination. After the determination is made and notification given, the owner or operator may not proceed with the proposed substantial change in use. The owner or operator may request a hearing before the commission on whether the determination should be modified or set aside by submitting a request not later than the 30th day after the receipt of the executive director's determination. If a hearing is requested, the commission shall initiate the hearing not later than the 45th day after the receipt of the request. The hearing shall be conducted in accordance with Chapter 2001, Government Code. The executive director's determination becomes unappealable on the 31st day after issuance if a hearing is not requested.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.187. PROPOSED REMEDIAL ACTION. (a) Within a reasonable time after the completion of the remedial investigation/feasibility study or other similar study, if required,

the executive director shall select a proposed remedial action. After the selection of a proposed remedial action, the commission shall hold a public meeting to discuss the proposed action.

(b) The commission shall publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. The notice shall provide information regarding the proposed remedial action and the date, time, and place of the meeting. The commission shall also mail the same information to each potentially responsible party by certified mail, return receipt requested, at the party's last known address at least 30 days before the public meeting. Contemporaneously with the issuance of notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours. Nonreceipt of any notice mailed to a potentially responsible party under this section does not affect the responsibilities, duties, or liabilities imposed on the party.

(c) The public meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility and the identification of additional potentially responsible parties. Those in attendance may comment on the proposed remedial action, and the executive director may revise the proposed remedial action in light of the presentations.

(d) After the public meeting on the proposed remedial action, the commission shall provide all identified potentially responsible parties an opportunity to fund or perform the proposed remedial action. Not later than the 60th day after the date of the public meeting, the potentially responsible parties may make a good faith offer to fund or perform the proposed remedial action. If a good faith offer is made by all or some of the potentially responsible parties within this period, those parties have an additional 60 days to negotiate an agreed administrative order from the commission, which shall include a scope of work. The commission may not require an admission of liability in the agreed administrative order.

(e) To encourage potentially responsible parties to perform the remedial action, costs for commission oversight of the remedial action may not be assessed against those parties who fund or perform the remedial action. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility may be assessed up to the full costs for commission oversight of the remedial action. If all potentially responsible parties conduct or fund the remedial action, all commission oversight costs shall be paid from the hazardous waste disposal fee fund. Participation in the remedial action does not relieve those who did not conduct or fund the remedial investigation/feasibility study or other similar study approved by the executive director from paying their portion of the oversight costs of that phase of the remediation.

(f) The executive director may authorize a potentially responsible party to conduct a partial remedial action at a portion of the facility if after notice and opportunity for comment to all other potentially responsible parties the executive director determines that the release or threatened release is divisible. In this subchapter, "divisible" means that the hazardous substance released or threatened to be released is capable of being managed separately under the remedial action plan. A determination of divisibility by the executive director does not have res judicata or collateral estoppel effect on a potentially responsible party's ultimate liability for remediation of the facility under Subchapter G or I.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. (a) The commission may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter appear to originate from an up-gradient, off-site source that is not owned or operated by the person;

(2) additional corrective action is not required at the site owned or operated by the person; and

(3) the commission will not undertake a formal enforcement action in the matter.

(b) The commission may not name a land bank established under Chapter 379C, Local Government Code, as a responsible party for an enforcement action or require the land bank to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the land bank and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter:

(A) appear to originate from an up-gradient, off-site source that is not owned or operated by the land bank; or

(B) appear to have been present on the site before the land bank purchased the site; and

(2) the land bank could not have reasonably known about the contaminants at the time the land bank purchased the site.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 11.01, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 1, eff. September 1, 2007.

Sec. 361.188. FINAL ADMINISTRATIVE ORDER. (a) After consideration of all good faith offers to perform a remedial action, the commission shall issue a final administrative order that must:

(1) list the facility on the state registry, thus determining that the facility poses an imminent and substantial endangerment to public health and safety or the environment;

(2) specify the appropriate land use for purposes of selecting the appropriate remedial action;

(3) specify the selected remedial action;

(4) list the parties determined to be responsible for remediating the facility;

(5) make findings of fact describing actions voluntarily undertaken by responsible parties;

(6) order the responsible parties to remediate the facility and, if appropriate, reimburse the hazardous waste disposal fee fund for remedial investigation/feasibility study and remediation costs;

(7) establish a schedule for completion of the remedial action;

(8) state any determination of divisibility of responsible party liability; and

(9) give notice of the duties and restrictions imposed by Section 361.190.

(b) The provisions in Subchapters I, K, and L relating to administrative orders apply to orders issued under this section.

(c) If a potentially responsible party is newly identified after a final administrative order under Subsection (a) has been issued by the commission, that party has 60 days to negotiate an amendment to the existing order. The commission is not prohibited from issuing a separate order for the newly identified potentially responsible party if the commission determines that the circumstances warrant a separate order. The responsible parties identified in the order issued under Subsection (a) shall be allowed to comment on the issuance of a separate order for the newly identified potentially responsible party.

(d) Within a reasonable period after a determination has been made, the commission shall file or cause to be filed in the real property records of the county in which the facility is located an affidavit or notice stating that the facility has been listed on or deleted from the state registry or is no longer proposed for listing on the state registry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.189. DELETIONS FROM REGISTRY. (a) The executive director or an owner or operator or other named responsible party of a facility listed or to be listed on the state registry may request the commission to delete the facility from the state registry, modify

the facility's priority within the state registry, or modify any information regarding the facility by submitting a written statement setting forth the grounds of the request in the form the commission may by rule require.

(b) The commission by rule shall establish procedures, including public meetings, for review of requests submitted under this section.

(c) If the commission deletes a facility from the state registry because the cleanup of the facility is being addressed under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995, the facility automatically reverts to the status the facility had immediately before the facility was deleted from the registry on the date of the executive director's determination that the cleanup of the facility is not being addressed adequately. A public meeting is not required for an action under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.190. CHANGE IN USE OF LISTED FACILITY. (a) After the listing of a facility on the state registry, a person may not substantially change the manner in which the facility is used without notifying the executive director and receiving written approval of the executive director for the change.

(b) A substantial change in use shall be defined by rule and shall include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) The notice must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use.

(d) The executive director shall approve or disapprove the proposed action within 60 days after the date of receipt of the notice of proposed change in use. The executive director may not

approve the proposed change in use if the new use will significantly interfere with a proposed, ongoing, or completed remedial action program at a facility or expose the public health and safety or the environment to a significantly increased threat of harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.191. IMMEDIATE REMOVAL. (a) If the commission, after investigation, finds that there exists a release or threatened release of a hazardous substance at a facility that is causing irreversible or irreparable harm to the public health and safety or the environment and that the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order, the commission may, with the funds available to the commission from the hazardous waste disposal fee fund, undertake immediate removal action at the facility to alleviate the harm.

(b) After the immediate danger of irreversible or irreparable harm has been alleviated, the commission shall proceed under this subchapter.

(c) Findings required under this section must be in writing and may be made ex parte by the commission subject to judicial review under the substantial evidence rule as provided by Chapter 2001, Government Code.

(d) The reasonable expenses of any immediate removal action taken by the commission may be recoverable from the persons described in Subchapter G or I, and the state may seek to recover the reasonable expenses in any court of appropriate jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.192. REMEDIAL ACTION BY COMMISSION. (a) If a person ordered to eliminate an imminent and substantial endangerment to the

public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement the remedial action program for the facility.

(b) The reasonable expenses of implementing the remedial action program by the commission shall be paid by the persons to whom the order was issued and shall be recoverable under Section 361.197.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.193. GOAL OF REMEDIAL ACTION. (a) The goal of any remedial action is the elimination of the imminent and substantial endangerment to the public health and safety or the environment posed by a release or threatened release of a hazardous substance at a facility. The appropriate extent of the remedial action at any particular facility shall be determined by the commission's selection of the remedial alternative that the commission determines is the lowest cost alternative that is technologically feasible and reliable and that effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment.

(b) In considering the appropriate remedial action program at a particular facility, the commission may approve a program that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criterion, or limitation, as required by state or local law, if the commission finds that:

(1) the remedial action selected is only part of a total remedial action that will attain that level or standard of control when completed;

(2) compliance with the requirement at that facility will result in greater risk to public health and safety or the environment than alternative options;

(3) compliance with the requirement is technically impracticable from an engineering perspective;

(4) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise

applicable standard, requirement, criterion, or limitation through use of another method or approach;

(5) with respect to a local standard, requirement, criterion, or limitation, the locality has not consistently applied or demonstrated the intention to consistently apply the standard, requirement, criterion, or limitation in similar circumstances of other remedial actions within the locality; or

(6) with respect to an action using solely state funds, selection of a remedial action that attains those levels or standards of control will not provide a balance between the need for protection of public health and safety or the environment at the facility and the availability of state funds to respond to other sites that present a threat to public health and safety or the environment, taking into consideration the relative immediacy of the threats.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.194. LIEN. (a) In addition to all other remedies available to the state under this chapter or other law, all remediation costs for which a person is liable to the state constitute a lien in favor of the state on the real property and the rights to the real property that are subject to or affected by a remedial action. This provision is cumulative of other remedies available to the state under this chapter.

(b) The lien imposed by this section arises and attaches to the real property subject to or affected by a remedial action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the costs is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director

determines will most likely result in the least overall costs to the state after any cost recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the landowner received financial compensation for the disposal of any substance addressed by the remedial action and whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of $250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the costs;

(2) a description of the real property that is subject to or affected by the remediation action for the costs or claims; and

(3) the amount of the costs and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the costs.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a clean-up action or has knowledge that the state has incurred clean-up costs.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be

brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 8, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 2, eff. Sept. 1, 2003.

Sec. 361.195. PAYMENTS FROM HAZARDOUS AND SOLID WASTE

REMEDIATION FEE ACCOUNT. (a) Money for actions taken or to be taken by the commission in connection with the elimination of an imminent and substantial endangerment to the public health and safety or the environment under this subchapter is payable directly to the commission from the hazardous and solid waste remediation fee account. These payments include any costs of inspection or sampling and laboratory analysis of wastes, soils, air, surface water, and groundwater done on behalf of a state agency and the costs of investigations to identify and locate potentially responsible parties.

(b) The commission shall seek remediation of facilities by potentially responsible parties before expenditure of federal or state funds for the remediations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 44, eff. Sept. 1, 1997.

Sec. 361.196. REMEDIATION: PERMITS NOT REQUIRED; LIABILITY. (a) Potentially responsible parties shall coordinate with ongoing federal and state hazardous waste programs although a state or local permit may not be required for any removal or remedial action conducted on site.

(b) Subject to Section 361.193, the state may enforce any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be required to conform if a permit were required.

(c) An action taken by the person to contain or remove a release or threatened release in accordance with an approved remedial action plan may not be construed as an admission of liability for the release or threatened release.

(d) A person who renders assistance in containing or removing a release or threatened release in accordance with an approved remedial action plan is not liable for any additional remediation costs at the facility resulting solely from acts or omissions of the person in rendering the assistance in compliance with the approvals required by this section, unless the remediation costs were caused by the person's gross negligence or wilful misconduct.

(e) Except as specifically provided by this section, these provisions do not expand or diminish the common law tort liability, if any, of private parties participating in a remediation action for civil damages to third parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.197. COST RECOVERY. (a) The commission shall file a cost recovery action against all responsible parties who have not complied with the terms of an administrative order issued under Section 361.188. The commission shall file the cost recovery action no later than one year after all remedial action has been completed.

(b) The state may seek a judgment against the noncompliant parties for the total amount of the cost of the remedial investigation and feasibility study, the remedial design, and the remedial action, including costs of any necessary studies and oversight costs, minus the amount agreed to be paid or expended by any other responsible parties under an order issued under Section 361.185 or 361.188.

(c) The action may also include a plea seeking civil penalties for noncompliance with the commission's administrative order and a claim for up to triple the state's costs if the responsible party's defenses are determined by the court to be unreasonable, frivolous, or without foundation.

(d) The commission shall file a cost recovery action against each responsible party for the total costs of an action taken under Section 361.133(c)(1), (2), (3), (5), or (6) or Section 361.133(g).

(e) The commission may not file a cost recovery action under this section against an individual if the individual's only significant asset is a homestead that:

(1) includes the facility subject to or affected by a remedial action;

(2) is occupied by the individual as a home; and

(3) has a fair market value of $250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 1, eff. June 8,

1993; Acts 1995, 74th Leg., ch. 883, Sec. 4, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 3, eff. Sept. 1, 2003.

Sec. 361.199. MIXED FUNDING PROGRAM. The commission by rule shall adopt a mixed funding program in which available money from potentially responsible parties is combined with state or federal funds to clean up a facility in a timely manner. Use of the state or federal funds in a mixed funding approach does not preclude the state or federal government from seeking recovery of its costs from nonparticipating potentially responsible parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.200. SETTLEMENT. The commission shall assess and by rule may develop and implement a settlement program. Under the program, the commission shall consider the advantages of developing a final settlement with potentially responsible parties that are responsible for response costs at a facility because of hazardous substances. The settlement program may include:

(1) de minimis settlements;
(2) covenants not to sue;
(3) mixed funding; and
(4) partial settlements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 10, eff. Sept. 1, 1997.

Sec. 361.201. FINANCIAL CAPABILITY AND FUNDING PRIORITY. (a) The commission may determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action. The commission by rule shall adopt the criteria for determination of financial capability.

(b) If no financially capable, potentially responsible parties

exist for a facility, the commission shall issue an administrative order stating its determination that the facility constitutes an imminent and substantial endangerment and that there are no financially capable, potentially responsible parties. The commission shall then conduct its own remediation study and remedial action, using federal funds if available, or, if federal funds are not available, using state funds from the hazardous and solid waste remediation fee account.

(c) Generally, the remediation of listed facilities shall be achieved first by private party funding, second with the aid of federal funds, and third, if necessary, with state funds from the hazardous and solid waste remediation fee account.

(d) The commission shall determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action if the responsible party is an individual whose homestead includes the facility subject to or affected by a remedial action.

(e) The commission by rule shall adopt criteria for determining the financial capability of an individual under Subsection (d). The rules must provide that the value of the individual's homestead may not be included in the total amount of the individual's assets if:

(1) the individual is occupying the homestead as a home; and

(2) the fair market value of the homestead is $250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 45, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 4, eff. Sept. 1, 2003.

Sec. 361.202. DEADLINE EXTENSIONS. The executive director or the commission may extend any period specified in this section if considered appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

SUBCHAPTER I. ENFORCEMENT; ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT

Sec. 361.271. PERSONS RESPONSIBLE FOR SOLID WASTE. (a) Unless otherwise defined in applicable statutes and rules, a person is responsible for solid waste if the person:

(1) is any owner or operator of a solid waste facility;

(2) owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste;

(3) by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, by any other person or entity at:

(A) the solid waste facility owned or operated by another person or entity that contains the solid waste; or

(B) the site to which the solid waste was transported that contains the solid waste; or

(4) accepts or accepted any solid waste for transport to a solid waste facility or site selected by the person.

(b) A political subdivision, a land bank established under Chapter 379C, Local Government Code, or an officer or employee of the political subdivision or land bank is not a person responsible for solid waste released or threatened to be released from a facility or at a site if:

(1) the political subdivision or land bank acquired ownership or control of the facility or site through a tax delinquency or if the subdivision acquired ownership or control of the facility or site through bankruptcy, abandonment, or other circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the political subdivision, land bank, officer, or employee did not cause or contribute to the release or threatened release of solid waste at the facility or site.

(c) A political subdivision that is in a county with a population of 3.3 million or more or is in a county adjacent to a county with a population of 3.3 million or more and that builds or installs a drainage project on a site of a solid waste facility is not a person responsible for solid waste released or threatened to be released from the facility or at a site of the facility if:

(1) the political subdivision acquired ownership or control

of the facility or site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the plans for the drainage project have been submitted to and reviewed by the commission.

(d) A political subdivision that builds or installs a drainage project under Subsection (c) is not subject to civil or criminal liability arising from the building or installation of the drainage project. This subsection does not apply to an injury or property damage claim that results from an act or omission of the political subdivision constituting gross negligence, recklessness, or intentional misconduct.

(e) A fiduciary's responsibility for solid waste is subject to Subchapter T.

(f) A lender's responsibility for solid waste is subject to Subchapter U.

(g) A port authority or navigation district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, is not a person responsible under this chapter for the release or threatened release of hazardous waste from a facility or at a site solely for its activities related to construction or maintenance of waterways to facilitate navigation if, in performing those activities:

(1) the port authority or navigation district is acting by virtue of the authority's or district's function as sovereign;

(2) the port authority or navigation district requires that dredged materials be sampled and analyzed before placement or storage of those materials on land or submerged land; and

(3) the port authority or navigation district, after exercising due diligence, does not accept dredged materials that are hazardous waste.

(h) Subsection (g) may not be construed to relieve a port authority or navigation district of liability if the port authority or navigation district causes or contributes to the generation of hazardous waste.

(i) As used in Subsection (g), activities related to construction or maintenance of waterways to facilitate navigation include:

(1) the dredging of materials from navigable waters or the

banks of navigable waters;

(2) the placement or storage of dredged materials on land or submerged land; and

(3) the construction, operation, or maintenance of a placement area for dredged material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 159, Sec. 1, eff. May 16, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.67, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 34, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 589 (H.B. 1705), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 44, eff. September 1, 2011.

Sec. 361.272. ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT. (a) The commission may issue an administrative order to a person responsible for solid waste if it appears that there is an actual or threatened release of solid waste that presents an imminent and substantial endangerment to the public health and safety or the environment:

(1) from a solid waste facility at which solid waste is stored, processed, or disposed of; or

(2) at any site at which one or more of those activities concerning solid waste have been conducted in the past, regardless of whether the activity was lawful at the time.

(b) An administrative order may be issued under this section to:

(1) restrain the person from allowing or continuing the release or threatened release; and

(2) require the person to take any action necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

(c) An administrative order issued under this section shall:

(1) be delivered to the persons identified by the order by certified mail, return receipt requested;

(2) be delivered by hand delivery to the person identified by the order; or

(3) on failure of delivery of the order by certified mail or hand delivery, be served on the persons by publication:

(A) once in the Texas Register; and

(B) once in a newspaper of general circulation in each county in which a person identified by the order had the person's last known address.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.68, eff. Sept. 1, 1995.

Sec. 361.273. INJUNCTION AS ALTERNATIVE TO ADMINISTRATIVE ORDER. The commission may cause a civil suit for injunctive relief to be brought in a district court in the county in which the actual release is occurring or threatened release may occur to:

(1) restrain a person responsible for solid waste under Section 361.271 from allowing or continuing the release or threatened release; and

(2) require the person to take actions necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995.

Sec. 361.274. NO PRIOR NOTICE CONCERNING ADMINISTRATIVE ORDER. An administrative order under Section 361.272 does not require prior notice or an adjudicative hearing before the commission. An emergency administrative order may be issued under Subchapter L, Chapter 5, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 35, eff. Sept. 1, 1997.

Sec. 361.275. DEFENSES. (a) Except as provided by Section 361.2755, a person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

(1) an act of God;

(2) an act of war;

(3) an act or omission of a third person; or

(4) any combination of Subdivisions (1), (2), and (3).

(b) In a defense under Subsection (a)(3), the defendant must establish by a preponderance of the evidence that the defendant:

(1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(c) The defense under Subsection (a)(3) does not apply if the third person:

(1) is an employee or agent of the defendant; or

(2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship.

(d) In Subsection (c)(2), "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(e) A defendant who enters into a contractual relationship as provided by Subsection (c)(2) is not liable under this subchapter if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility and the defendant establishes by a preponderance of the evidence that:

(A) the defendant has satisfied Subsection (b);

(B) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(C) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(D) the defendant acquired the facility by inheritance or bequest.

(f) To demonstrate the condition under Subsection (e)(2)(B), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

(1) any specialized knowledge or experience of the defendant;

(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obvious presence or likely presence of contamination of the property; and

(5) the defendant's ability to detect the contamination by appropriate inspection.

(g) This section does not decrease the liability of a previous owner or operator of a facility who is liable under this chapter. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(h) Subsections (e)-(g) do not affect the liability under this chapter of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 190 (S.B. 1818), Sec. 1, eff. September 1, 2021.

Sec. 361.2755. SCRAP METAL RECYCLING TRANSACTIONS; DEFENSE. (a) In this section:

(1) "Consuming facility" means the facility where the scrap metal was handled, processed, reclaimed, stored, transported, or otherwise managed by a person other than the person who arranged for recycling of the scrap metal.

(2) "Scrap metal" means bits and pieces of metal parts, such as bars, turnings, rods, sheets, or wire, or metal pieces that may be combined together with bolts or soldering, such as radiators, scrap automobiles, or railroad boxcars, which when worn or superfluous can be recycled. The term does not include:

(A) a shipping container, whether intact or not, that:

(i) has a capacity of not less than 30 liters and not more than 3,000 liters; and

(ii) has any hazardous substance contained in or adhering to the container, other than metal bits and pieces or a hazardous substance that forms an integral part of the container;

(B) any item of material that contained polychlorinated biphenyls at a concentration in excess of 50 parts per million or any new standard adopted pursuant to applicable federal laws;

(C) any material excluded from this definition by commission rule; or

(D) any material excluded from the definition of scrap metal under 42 U.S.C. Section 9627(d) by a federal regulation.

(b) This section:

(1) applies only to a scrap metal transaction that occurs on or after November 29, 1999; and

(2) does not apply to any material that is not scrap metal.

(c) A person who arranges for recycling of scrap metal, other than a person described by Subsection (f), is not responsible for the scrap metal under Section 361.271(a)(3) or (4) if the person can establish by a preponderance of the evidence that the following criteria were met at the time of the recycling transaction:

(1) the scrap metal met a commercial specification grade;

(2) a market existed for the scrap metal;

(3) a substantial portion of the scrap metal was made available for use as feedstock for the manufacture of a new saleable product;

(4) the scrap metal could have been a replacement or substitute for a virgin raw material, or the product to be made from

the scrap metal could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material;

(5) the person was in compliance with any applicable regulations or standards regarding the handling, processing, reclamation, storage, transport, or management of the scrap metal or other activities associated with the recycling of scrap metal;

(6) the person did not melt the scrap metal prior to the transaction; and

(7) the person exercised reasonable care to determine that the consuming facility was in compliance with the substantive provisions of any:

(A) federal, state, or local environmental law or regulation applicable to the handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with scrap metal; or

(B) compliance order or decree issued pursuant to a law or regulation described by Paragraph (A).

(d) For purposes of Subsection (c)(6), thermal separation of two or more materials due to differences in melting points of the materials does not constitute melting.

(e) For purposes of Subsection (c)(7), reasonable care shall be determined using criteria that include:

(1) the price paid for the scrap metal in the recycling transaction;

(2) the ability of the person to detect the nature of the consuming facility's operations concerning the facility's handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with the scrap metal; and

(3) the result of inquiries made by the person to the appropriate federal, state, or local environmental agency regarding the consuming facility's past and current compliance with:

(A) substantive provisions of any law, regulation, order, or decree described by Subsection (c)(7); and

(B) any requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or transport of scrap metal or other management activity associated with scrap metal.

(f) Subsection (c) does not apply to a person who arranges for the recycling of scrap metal if the person:

(1) had an objectively reasonable basis to believe at the time of the scrap metal transaction that:

(A) the scrap metal would not be recycled;

(B) the scrap metal would be burned as fuel or for energy recovery or incineration; or

(C) the consuming facility was not in compliance with:

(i) a substantive provision of any law, regulation, order, or decree described by Subsection (c)(7); or

(ii) a requirement to obtain a permit applicable to the handling, processing, reclamation, storage, or transport of the scrap metal or other management activity associated with the scrap metal;

(2) had reason to believe that hazardous substances had been added to the scrap metal for purposes other than processing for recycling; or

(3) failed to exercise reasonable care with respect to the handling, processing, reclamation, storage, transport, and management of the scrap metal, including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the scrap metal by hazardous substances.

(g) For purposes of Subsection (f)(1), an objectively reasonable basis for belief shall be determined using criteria that include:

(1) the size of the person's business;

(2) customary industry practices, including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the scrap metal by hazardous substances;

(3) the price paid for the scrap metal in the recycling transaction; and

(4) the ability of the person to detect the nature of the consuming facility's operations concerning the facility's handling, processing, reclamation, storage, or transport of scrap metal or other management activities associated with scrap metal.

(h) The commission may adopt rules as necessary to administer this section.

(i) A person who commences an action for contribution against a person who is not responsible for the scrap metal under this section is liable to that person for all reasonable costs incurred in defending that action, including reasonable attorney's fees and expert witness fees.

(j) This section may not be construed to:

(1) affect any defenses or liabilities of any person to whom Subsection (c) does not apply;

(2) create any presumption of liability against any person to whom Subsection (c) does not apply; or

(3) affect the responsibility of a person for solid waste under Section 361.271(a)(1) or (2).

Added by Acts 2021, 87th Leg., R.S., Ch. 190 (S.B. 1818), Sec. 2, eff. September 1, 2021.

Sec. 361.276. APPORTIONMENT OF LIABILITY. (a) If the release or threatened release caused by a person's acts or omissions is proved by a preponderance of the evidence to be divisible, that person is liable only for the elimination of that release or threatened release attributable to the person. If the release or threatened release is not proved to be divisible, persons liable under Section 361.272 or 361.273 are jointly and severally liable for eliminating the release or threatened release.

(b) In this section, "divisible" means that the waste released or threatened to be released has been and is capable of being managed separately under the remedial action plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.277. EFFECT OF SETTLEMENT AGREEMENT WITH STATE. (a) If fewer than all of the persons identified as liable under this subchapter agree with the state to take remedial action to abate an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment under an administrative order issued under section 361.272 or an action filed by the state under this subchapter, the state may seek a judgment against a nonsettling person for the total amount of the cost of the remedial action minus that amount the settling persons agree to pay or spend.

(b) A person who enters a settlement agreement with the state that resolves all liability of the person to the state for a site subject to Subchapter F is released from liability to a person described by Section 361.344(a) for cost recovery, contribution, or

indemnity under Section 361.344 regarding a matter addressed in the settlement agreement.

(c) A settlement agreement does not discharge the liability of a nonsettling person to the state unless the agreement provides otherwise.

(d) Notwithstanding Subsection (c), a settlement agreement reduces the potential liability to the state of the nonsettling persons by the amount of the settlement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 12, eff. Sept. 1, 1997.

Sec. 361.278. LIABILITY OF ENGINEER OR CONTRACTOR. (a) An engineer or contractor performing a program of remedial action or cleanup of hazardous waste or solid waste under a contract with a state agency or political subdivision of the state is liable under this subchapter for any negligent act or omission or for wilful misconduct that results in an actual or threatened release of hazardous waste or solid waste after the abandonment or conclusion of the program only to the extent that the endangerment to public health and safety or the environment is aggravated as a result of the act, omission, or misconduct.

(b) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with:

(1) identifying a hazardous or solid waste site;

(2) developing a plan to clean up the site; or

(3) supervising or implementing the plan to clean up the site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.279. CONTRACTS WITH STATE. A state agency contracting for services or products shall consider whether the person proposing to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and

safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER J. ENFORCEMENT; EMERGENCY ORDER; CORRECTIVE ACTION

Sec. 361.301. EMERGENCY ORDER. The commission may issue an emergency mandatory, permissive, or prohibitory order concerning an activity of solid waste management under its jurisdiction under Section 5.512, Water Code, even if the activity is not covered by a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.70, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 36, eff. Sept. 1, 1997.

SUBCHAPTER K. APPEALS; JOINDER OF PARTIES

Sec. 361.321. APPEALS. (a) A person affected by a ruling, order, decision, or other act of the commission may appeal the action by filing a petition in a district court of Travis County in the time required by Section 5.351, Water Code.

(b) A person affected by a ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted by Section 361.165, may appeal by filing a petition in a district court with jurisdiction in the county or political subdivision.

(c) A petition described by Subsection (b) must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Service of citation of the petition must be accomplished not later than the 30th day after the date on which the petition is filed.

(d) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(e) Except as provided by Section 361.322(e), in an appeal from

an action of the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the issue is whether the action is invalid, arbitrary, or unreasonable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.71, eff. Sept. 1, 1995.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 1, eff. September 1, 2021.

Sec. 361.322. APPEAL OF ADMINISTRATIVE ORDER ISSUED UNDER SECTION 361.272; JOINDER OF PARTIES. (a) Any person subject to an administrative order under Section 361.272 may appeal the order by filing a petition in the time required by Section 5.351, Water Code.

(b) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(c) The filing of a motion for rehearing under Chapter 2001, Government Code is not a prerequisite for an appeal of the order.

(d) The person appealing the order must join the commission as a party and may join as parties any other person named as a responsible party in the administrative order and any other person who is or may be liable for the elimination of the actual or threatened release of solid waste or hazardous substances governed by the administrative order.

(e) The filing of the petition does not prevent the commission from proceeding with the remedial action program under Subchapter F unless the court enjoins the remedial action under its general equity jurisdiction.

(f) The administrative order is final as to a nonappealing party on the date by which the person is required to file a petition under Section 5.351, Water Code.

(g) The district court shall uphold the administrative order if

the commission proves by a preponderance of the evidence that:

(1) there is an actual or threatened release of solid waste or hazardous substances that is an imminent and substantial endangerment to the public health and safety or the environment; and

(2) the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.

(h) If the appropriateness of the selected remedial action is contested in the appeal of the administrative order, the remedial action shall be upheld unless the court determines that the remedy is arbitrary or unreasonable.

(i) A person made a party to the appeal may join as a party any other person who is or may be liable for the elimination of the release or threatened release, but the failure by a party to file an action for contribution or indemnity does not waive any right under this chapter or other law.

(j) In an appeal under this section, the district court on establishing the validity of the order shall issue an injunction requiring any person named or joined against whom liability has been established by the commission or other party to comply with the order.

(k) As between parties determined to be liable under Subchapter I, the court may, as equity requires, apportion cleanup costs in accordance with Section 361.343 and grant any other appropriate relief.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.72, eff. Sept. 1, 1995.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 2, eff. September 1, 2021.

Sec. 361.323. JOINDER OF PARTIES IN ACTION FILED BY STATE. (a) In an action brought by the attorney general under Section 361.273 seeking an injunction to eliminate a release or threatened release, the attorney general shall, and a party may, join as a party a person reasonably believed to be liable for the release or threatened

release in accordance with Section 361.272.

(b) Failure of the attorney general or a party to name or join a person as a party is not a defense to an action against that person for contribution or indemnity.

(c) In an action brought by the attorney general under Section 361.273, the district court shall grant relief on the grounds provided by Section 361.322(d), and Sections 361.322(f) and (g) apply to the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER L. COST RECOVERY

Sec. 361.341. COST RECOVERY BY STATE. (a) The state is entitled to recover reasonable attorney's fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the facility or site if it prevails in:

(1) an appeal of an administrative order issued under Section 361.272 or Section 361.188;

(2) an action to enforce such an administrative order;

(3) a civil suit seeking injunctive relief under Section 361.273; or

(4) a cost recovery suit under Section 361.197.

(b) The court shall apportion the costs among liable parties as it determines is equitable and just.

(c) All such costs recovered by the state under Subchapter F shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste disposal fee fund. All other costs recovered by the state under Sections 361.271 through 361.277 shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste generation and facility fees fund.

(d) If an appeal or third party claim is found by the court to be frivolous, unreasonable, or without foundation, the court may assess damages against the party bringing the appeal or third party claim in an amount not to exceed triple the costs incurred by the state or the third party defendant, including reasonable attorney's fees, reasonable costs of preparing and providing witnesses, and reasonable costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary for the preparation of

the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 2, eff. June 8, 1993.

Sec. 361.342. COST RECOVERY BY APPEALING OR CONTESTING PARTY. If the court finds that an administrative order referred to by Section 361.341 is frivolous, unreasonable, or without foundation with respect to a party named by the order, the party appealing or contesting the order is entitled to recover from the state its reasonable:

(1) attorney's fees;

(2) costs to prepare and provide witnesses; and

(3) costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary to prepare the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.343. APPORTIONMENT OF COSTS. (a) Apportionment of costs for the elimination of the release or threatened release of solid waste among the persons responsible for solid waste under Section 361.271 shall be made according to:

(1) the relationship between the parties' actions in storing, processing, and disposing of solid waste and the remedy required to eliminate the release or threatened release;

(2) the volume of solid waste each party is responsible for at the solid waste facility or site to the extent that the costs of the remedy are based on the volume of solid waste present;

(3) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release; and

(4) a party's cooperation with state agencies, its cooperation or noncooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of solid waste, as well as the degree of care that the party exercised.

(b) In apportioning costs under Subsection (a), the court shall credit against a responsible party's share of the costs of eliminating a release or threatened release of solid waste the party's expenditures related to the cleanup at issue if the commission or the executive director approves the cleanup. If the expenditures were made before the property was proposed to be listed on the state registry and the commission or the executive director approves the cleanup, the court shall also reduce in an equitable and just manner the party's proportionate share of the costs.

(c) The apportionment of costs only adjusts the rights of parties identified by Section 361.271 and does not affect a person's liability to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 13, eff. Sept. 1, 1997.

Sec. 361.344. COST RECOVERY BY LIABLE PARTY OR THIRD PARTY. (a) A person who conducts a removal or remedial action that is approved by the commission and is necessary to address a release or threatened release may bring suit in a district court to recover the reasonable and necessary costs of that action and other costs as the court, in its discretion, considers reasonable. This right is in addition to the right to file an action for contribution, indemnity, or both in an appeal proceeding or in an action brought by the attorney general.

(b) Venue for the suit is:

(1) in the county in which the release or threatened release is or was located; or

(2) in any other county in which venue is proper under Chapter 15, Civil Practice and Remedies Code.

(c) To recover costs under this section in a proceeding that is not an appeal proceeding or an action brought by the attorney general under this subchapter, the person seeking cost recovery must have made reasonable attempts to notify the person against whom cost recovery is sought:

(1) of the existence of the release or threatened release; and

(2) that the person seeking cost recovery intended to take steps to eliminate the release or threatened release.

(d) The court shall determine the amount of cost recovery according to the criteria prescribed by Section 361.343.

(e) A fact determination or ruling by a district court in an appeal of an administrative order under Section 361.322 is not res judicata or collateral estoppel as to an issue brought in a proceeding under this section concerning a party not joined in the appeal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 20.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 14, eff. Sept. 1, 1997.

Sec. 361.345. CREATION OF RIGHTS. Subchapter I and Section 361.344 and the enforcement by the commission of that subchapter and section do not:

(1) create rights or causes of action on behalf of a person other than those expressly stated by this chapter; or

(2) change common law or a rule of decision except as limited by this chapter to actions by the commission to eliminate an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.73, eff. Sept. 1, 1995.

SUBCHAPTER M. REMOVAL AND REMEDIAL ACTION AGREEMENTS

Sec. 361.401. DEFINITIONS. In this subchapter:

(1) "Disposal facility" means a site or area at which a hazardous substance, pollutant, or contaminant has been deposited, stored, disposed of, or placed or otherwise come to be located that no longer receives hazardous substances, pollutants, and contaminants.

(2) "Fund" means the hazardous waste disposal fee fund.

(3) "Petroleum" means crude oil or any fraction of crude oil that is not otherwise listed or designated as a hazardous substance under Section 361.003.

(4) "Pollutant" or "contaminant" means any element, substance, compound, or mixture, including disease-causing agents,

that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(5) "Removal" means:

(A) cleaning up or removing released hazardous substances, pollutants, or contaminants from the environment;

(B) taking necessary action in the event of the threat of release of hazardous substances, pollutants, or contaminants into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous substances, pollutants, or contaminants;

(D) disposing of removed material;

(E) erecting security fencing or taking other measures to limit access;

(F) providing alternate water supplies;

(G) temporarily evacuating and housing threatened individuals not otherwise provided for;

(H) taking action under Section 104(b) of the environmental response law;

(I) providing any emergency assistance under the Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); and

(J) taking other action as may be necessary to prevent, minimize, or mitigate damage to the public health and safety or to the environment that may otherwise result from a release or threat of release.

(6) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, pollutant, or contaminant into the environment to prevent or minimize the release of hazardous substances, pollutants, or contaminants so that they do not migrate to cause substantial danger to present or future public health and safety or the environment. The term:

(A) includes:

(i) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants, contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collections of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those reactions protect the public health and safety or the environment; and

(ii) the costs of permanent relocation of residents and businesses and community facilities where the president of the United States determines that alone or in combination with other measures this relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off site of hazardous substances, pollutants, or contaminants or may otherwise be necessary to protect the public health or safety; but

(B) does not include off-site transport of hazardous substances or the storage, treatment, destruction, or secure disposition off site of the hazardous substances, pollutants, contaminants, or contaminated materials unless the president of the United States determines that those actions:

(i) are more cost-effective than other remedial actions;

(ii) will create new capacity to manage, in compliance with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.), hazardous substances in addition to those located at the affected facility; or

(iii) are necessary to protect the public health and safety or the environment from a present or potential risk that may be created by further exposure to the continued presence of those substances, pollutants, contaminants, or materials.

(7) "Response" means removal and remedial action.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.21, eff. June 7, 1991.

Sec. 361.402. COMMISSION DUTIES AND POWERS. (a) The commission shall:

(1) administer this subchapter; and

(2) cooperate with municipalities and with agencies, departments, and political subdivisions of this state and the United States and its agencies in implementing this section and the environmental response law.

(b) The commission may:

(1) enter into contracts and cooperative agreements with the federal government to carry out removal and remedial action for a specific disposal facility as authorized by Section 104(c)(3) of the environmental response law or to carry out removal and remedial action with regard to a disposal facility under Section 104(d)(1) of the environmental response law;

(2) after notice and hearing, authorize the executive director to enter into contracts and cooperative agreements on behalf of the commission under Subdivision (1) under terms and conditions stated in the commission's order; and

(3) when acting under a cooperative agreement with the federal government under Subdivision (1), undertake the enforcement and remedial actions authorized under the environmental response law as may be reasonably necessary, in lieu of or in conjunction with actions by the federal government.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.403. TERMS AND CONDITIONS OF AGREEMENTS; COSTS. (a) If the commission enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law, the commission shall include in the contract or agreement terms and conditions to:

(1) assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

(2) assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subchapter III of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) for any necessary off-site storage,

destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

(3) assure payment by the state of:

(A) 10 percent of the costs of the remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

(b) A contract entered into with the federal government under Section 104(d)(1) of the environmental response law is subject to the same cost-sharing requirements provided for contracts in Subsection (a)(3).

(c) The state's share of reasonable response costs shall be paid from the fund.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.404. COOPERATION WITH FEDERAL GOVERNMENT. (a) Before entering into a contract or cooperative agreement under Section 361.402, the commission shall consult and work with the federal government in determining the response that will be necessary under the contract or cooperative agreement with regard to the particular disposal facility.

(b) The commission shall collect and shall file with the federal government any information required by the environmental response law and rules adopted under that law.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.405. INDEMNIFICATION OF ENGINEER OR CONTRACTOR. (a) Notwithstanding any other law or rule, the commission may agree in a contract retaining an engineer or contractor to perform a program of removal, remedial action, or cleanup of a hazardous substance in connection with a contract or cooperative agreement under Section

361.402 to indemnify the engineer or contractor against any claim or liability arising from an actual or threatened release of a hazardous substance that occurs during the performance of any work, including:

(1) damages arising from economic loss, personal injury, property damages, or death;

(2) costs and expenses, including the cost of defense of a lawsuit brought against the engineer or contractor; and

(3) claims by third parties for indemnification, contribution, or damages for economic loss, personal injury, property damages, or death.

(b) In determining whether to contract to indemnify an engineer or contractor under this section, the commission shall consider the availability of insurance to the engineer or contractor for the claims and liabilities against which the commission may indemnify the engineer or contractor under this section on the date the engineer or contractor enters into a contract to perform services covered by this section. The commission may not contract to indemnify an engineer or contractor under this section if the engineer or contractor cannot demonstrate that insurance is unavailable at a reasonable cost or if another engineer or contractor submitting a comparable proposal demonstrates that insurance is available at a reasonable cost.

(c) The commission is not obligated to award a contract if it determines that adequate liability insurance is not available to an engineer or contractor and that the award of the contract is not in the public interest.

(d) The commission may not contract to indemnify an engineer or contractor under this section unless the federal government agrees in a contract or cooperative agreement to indemnify in turn the commission under Section 119 of the environmental response law. The commission's decision to contract or not to contract to indemnify an engineer or contractor may be made as an executive act without an adjudicative public hearing and is not subject to judicial review.

(e) An engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 that results in an actual or threatened release of hazardous substance is not liable under Section 361.221, 361.223 through 361.229, or 361.252 for an act or a failure to act during the performance of the contract. This subsection does not in any way limit or otherwise affect the liability of an engineer or contractor

in any other action.

(f) Subsections (a) and (e) do not apply to a grossly negligent act or omission or to wilful misconduct of an engineer or contractor during the performance of a contract. Notwithstanding any other law, an engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 is liable for a grossly negligent act or omission or for wilful misconduct that results in an actual or threatened release of a hazardous substance in violation of Subchapter G or I, or Section 361.252, only to the extent that the act, omission, or misconduct caused the violation.

(g) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with the identification of a site containing a hazardous substance, the development of a plan of response to the site, or the supervision or performance of the response to the site.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

SUBCHAPTER N. WASTE REDUCTION PROGRAMS; DISPOSAL FEES

Sec. 361.421. DEFINITIONS. In this subchapter:

(1) "Compost" is the disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that is put to beneficial reuse as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of

determining the total equivalent costs and benefits of using products over their lifetimes or over any other period of time. These costs and benefits are all associated costs and all associated benefits of each product over the time under consideration and include initial costs, annual operating costs, annual savings, future costs, and residual (salvage) values. The use of this method permits exact comparisons of these total costs and benefits to determine the most cost-effective product.

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that can be or has been recovered or diverted from the waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. The term includes any waste stream, including post-use polymers and recoverable feedstocks that are converted through pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials or valuable intermediate and final products. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) "Recycled material" means materials, goods, or products that consist of recovered recyclable material or materials derived from recoverable feedstocks, post-use polymers, postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a third-party certification system for mass balance attribution identified by the commission under Section 361.4215. The term includes recycled plastics.

(6-a) "Recycled plastics" means products that are produced from:

(A) mechanical recycling of post-use polymers; or

(B) nonmechanical recycling of recoverable feedstocks or post-use polymers that are certified under a third-party certification system for mass balance attribution identified by the commission under Section 361.4215.

(7) "Recycled product" means a product that is eligible to be considered a recycled product under the rules established by the commission under Section 361.427. The term does not include a product sold as fuel.

(8) "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new products. The term does not include incineration of plastics or waste-to-energy processes. Recycling includes:

(A) the composting process if the compost material is put to beneficial reuse as defined by the commission;

(B) the application to land, as organic fertilizer, of processed sludge or biosolids from municipal wastewater treatment plants and other organic matter resulting from poultry, dairy, livestock, or other agricultural operations; and

(C) the conversion of post-use polymers and recoverable feedstocks through pyrolysis, gasification, solvolysis, or depolymerization.

(9) "Source reduction" means an activity or process that avoids the creation of municipal solid waste in the state by reducing waste at the source and includes:

(A) redesigning a product or packaging so that less material is ultimately disposed of;

(B) changing a process for producing a good or providing a service so that less material is disposed of; or

(C) changing the way a material is used so that the amount of waste generated is reduced.

(10) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the

state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(12) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0301, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 4.01, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.74, eff. Sept. 1, 1995. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 48 (H.B. 1953), Sec. 4, eff. May 17, 2019.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 5, eff. May 27, 2023.

Sec. 361.4215. MASS BALANCE ATTRIBUTION. The commission by rule shall identify third-party certification systems for mass balance attribution that may be used for the purposes of Sections 361.421(6) and (6-a).

Added by Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 6, eff. May 27, 2023.

Sec. 361.422. STATE SOURCE REDUCTION AND RECYCLING GOAL. (a) It is the state's goal to reduce by January 1, 1994, the amount of municipal solid waste disposed of in this state by at least 40 percent through source reduction and recycling.

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) The commission shall establish rules and reporting

requirements through which progress toward achieving the established source reduction and recycling goals can be measured. The rules may take into consideration those ongoing community source reduction and recycling programs where substantial progress has already been achieved. The commission may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

(d) For the purpose of measuring progress toward the municipal solid waste reduction goal, the commission shall use the weight of the total municipal solid waste stream in 1991 as a baseline for comparison. To compute progress toward the municipal solid waste reduction goal for a year, the commission shall compare the total number of tons disposed in the year under comparison, either by landfilling or by other disposal methods, to the total number of tons disposed in the base year, adjusting for changes in population, tons of solid waste imported and exported, and other relevant changes between the baseline year and the comparison year.

(e) Before January 1, 1994, the commission shall determine whether the goal established in Subsection (a) is being achieved. If the commission finds that the goal is not being achieved, it shall convene an advisory task force consisting of representatives of the commission, local governments, the Municipal Solid Waste Management and Resource Recovery Advisory Council, and the commercial solid waste disposal industry and may recommend to the legislature a phased-in ban on the disposal of yard waste in a landfill. The task force may recommend a plan to the legislature for implementing the ban after considering how the ban will:

(1) affect the state's disposal capacity;

(2) affect the economy of the state;

(3) affect local governments; and

(4) be accepted and adhered to by the citizens of the state.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.02, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.75, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.423. RECYCLING MARKET DEVELOPMENT IMPLEMENTATION

PROGRAM. (a) The commission, the comptroller, and other consenting state agencies as appropriate shall regularly coordinate the recycling activities of state agencies and shall each pursue an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The commission and the comptroller, on an ongoing basis, shall jointly:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze or take into consideration the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies;

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;

(5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and

(6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section, the commission and the comptroller may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar institutions.

(d) In carrying out this section, the commission and the comptroller shall utilize the pollution prevention advisory committee as set out in Section 361.0215 of the Health and Safety Code.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.76, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 80, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1122 (H.B. 2466), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.91, eff. September 1, 2007.

Sec. 361.425. GOVERNMENTAL ENTITY RECYCLING. (a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

(1) in cooperation with the comptroller or the commission establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and

corrugated cardboard;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

(b) The commission:

(1) by order shall exempt from compliance with this section:

(A) a municipality with a population of less than 5,000 if the commission finds that compliance would work a hardship on the municipality;

(B) a school district with a student enrollment of fewer than 10,000 students; and

(C) an entity described by Subsection (a) if:

(i) the entity petitions the commission for an exemption; and

(ii) the commission finds that compliance would work a hardship on the entity; and

(2) shall adopt rules for administering this subsection.

(c) Expired.

(d) In this section, "recyclable materials" includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.03, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.77, eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.92, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 439 (S.B. 1376), Sec. 2.02, eff. June 4, 2019.

Sec. 361.426. GOVERNMENTAL ENTITY PREFERENCE FOR RECYCLED

PRODUCTS. (a) A state agency, state court, or judicial agency not subject to Subtitle D, Title 10, Government Code, a county, municipality, school district, junior or community college district, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.

(b) An entity subject to this section regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

(1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;

(2) encourage the use of products made of recycled materials; and

(3) ensure to the maximum extent economically feasible that the entity purchases products that may be recycled when they have served their intended use.

(c) In developing new procedures and specifications, the entity shall encourage the use of recycled products and products that may be recycled or reused.

(d) The commission:

(1) by order shall exempt from compliance with this section:

(A) a municipality with a population of less than 5,000 if the commission finds that compliance would work a hardship on the municipality;

(B) a school district with a student enrollment of fewer than 10,000 students; and

(C) an entity described by Subsection (a) if:

(i) the entity petitions the commission for an exemption; and

(ii) the commission finds that compliance would work a hardship on the entity; and

(2) shall adopt rules for administering this subsection.

(e) Expired.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.78, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19, eff. Sept. 1, 1997. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 439 (S.B. 1376), Sec. 2.03, eff.

June 4, 2019.

Sec. 361.427. SPECIFICATIONS FOR RECYCLED PRODUCTS. (a) The commission, in consultation with the comptroller, shall promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product based on:

(1) the percent of the total content of a product that consists of recycled material; or

(2) the portion of the total content of a product that is determined to consist of recycled material according to a third-party certification system for mass balance attribution identified by the commission under Section 361.4215.

(b) The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be postconsumer waste or post-use polymers.

(c) The guidelines established under this section shall be classified by types of products.

(d) The commission's guidelines shall be established taking into consideration the guidelines promulgated by the Environmental Protection Agency for federal procurement of recycled products as authorized by the Solid Waste Disposal Act (42 U.S.C. Sec. 3259 et seq.).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.79, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.93, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 237 (H.B. 3060), Sec. 7, eff. May 27, 2023.

Sec. 361.428. COMPOSTING PROGRAM. (a) The commission shall put in place incentives for a composting program that is capable of achieving at least a 15 percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.

(b) The commission shall adopt rules establishing minimum

standards and guidelines for the issuance of permits for processes or facilities that produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial reuse of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards and a definition of beneficial reuse. The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards. Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.

(c) A composting facility may not accept mixed municipal solid waste from a governmental unit for composting purposes at that facility unless residents have reasonable access to household hazardous waste collection and source-separated recycling programs in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section.

(d) A person may not commercially compost grease trap waste, as defined by the commission, unless the person has first obtained a permit for composting grease trap waste issued by the commission under this section on or after September 1, 2003.

(e) The permit to compost grease trap waste must meet the minimum standards of a permit issued under rules adopted under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.13, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 596, Sec. 1, eff. June 20, 2003.

Sec. 361.429. HOUSEHOLD HAZARDOUS WASTE. The commission shall develop standards for household hazardous waste diversion programs such as collection facilities or waste collection days for municipalities, counties, or regions. The commission's waste management financial assistance program described in Section 363.092 shall be expanded to include matching grants for costs of planning and implementing approved household hazardous waste diversion

programs, excluding costs of disposal.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.80, eff. Sept. 1, 1995.

Sec. 361.430. NEWSPRINT RECYCLING PROGRAM. (a) It is the policy of this state that recycling of all paper products including old newspapers is vital to our economy and the preservation of our environment. It is the purpose of this section to promote the state's policy by encouraging newspaper publishers to promote recycling through purchase of recycled products and by cooperating with local community organizations to establish and promote community collection efforts for all paper products.

(b)(1) In order to observe and promote this policy the newspaper publishers of Texas will work with state officials and state agencies to identify potential sites and offer economic incentives in order to attract additional de-inking facilities and recycled newsprint mills to Texas.

(2) The newspaper publishers of Texas will also assist and participate in the market development study and implementation program established by Section 361.423.

(c) The commission shall promulgate rules and regulations which establish a newsprint recycling program for the state.

(d) The program shall include guidelines which set goals for the use of recycled newsprint by newspaper publishers, using the following target percentages of recycled newsprint in the total newsprint consumption of each newspaper publisher:

(1) 10 percent by the end of the calendar year 1993;

(2) 20 percent by the end of the calendar year 1997; and

(3) 30 percent by the end of the calendar year 2000.

(e) Smaller newspapers may find it difficult to implement use of recycled newsprint. Therefore, larger newspapers will be responsible for the necessary consumption to allow the percentages specified in Subsection (d) to represent total consumption of recycled newsprint by all Texas newspapers.

(f) In this section:

(1) "Newspaper" means a publication that is sold and that is printed on newsprint and published, printed, and distributed in

the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(2) "Recycled newsprint" means newsprint which meets the specified guidelines under Section 361.427 to be classified as a recycled product.

(g)(1) Publishers of newspapers subject to regulation under the newsprint recycling program shall submit annually, on or before January 31, a report to the executive director which states the percentage of recycled newsprint used by the publisher in the preceding year, and, if the target percentage is not met, the publisher must include in the report:

(A) whether the publisher is able to obtain sufficient quantities of recycled newsprint at competitive prices and of satisfactory quality;

(B) whether the publisher has attempted to obtain recycled newsprint from every producer of recycled newsprint that offered to sell recycled newsprint to the publisher during the preceding calendar year; and

(C) the publisher's efforts to obtain recycled newsprint, including the name and address of each producer of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the producers.

(2) The executive director shall develop forms for and regulations governing the submission of the reports required by this subsection.

(h) If the executive director determines that newspaper publishers are not voluntarily meeting the target percentages prescribed by this section for the program, the commission may adopt mandatory enforcement measures.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.81, eff. Sept. 1, 1995.

Sec. 361.431. PRIORITIZATION OF NEW TECHNOLOGY. (a) A political subdivision or solid waste producer shall give preference in contracting for the disposal of solid waste to license or permit holders who use processes and technologies that reduce the volume of sludge and hazardous waste that is being disposed of through

beneficial use land application, landfill disposal, and other methods.

(b) Technology that reduces the volume of solid waste, destroys the solid waste, or renders the solid waste inert is preferred to methods referred to under Subsection (a), to minimize the possibility of hazardous materials entering the state's air, waterways, and water sources.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.06, eff. Sept. 1, 2001.

SUBCHAPTER O. LEAD-ACID BATTERIES

Sec. 361.451. LAND DISPOSAL PROHIBITED. (a) No person may place a used lead-acid battery in mixed municipal solid waste nor discard or otherwise dispose of a lead-acid battery except by delivery to:

(1) a battery retailer or wholesaler;

(2) a secondary lead smelter; or

(3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(b) No battery retailer shall dispose of a used lead-acid battery except by delivery to:

(1) a battery wholesaler or a secondary lead smelter, or an agent thereof;

(2) a battery manufacturer for delivery to a secondary lead smelter; or

(3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(c) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Sec. 361.452. COLLECTION FOR RECYCLING. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail

sale in this state shall:

(1) accept from each customer, if offered, at least one but not more than three lead-acid batteries for recycling; and

(2) post written notice, which must be at least 8-1/2 inches by 11 inches in size, containing the universal recycling symbol and the following language:

(A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";

(B) "Recycle your used batteries."; and

(C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling."

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.14, eff. Aug. 30, 1993.

Sec. 361.453. INSPECTION OF BATTERY RETAILERS. The commission shall produce, print, and distribute the notices required by Section 361.452 to all places where lead-acid batteries are offered for sale at retail. In performing its duties under this section the commission may inspect any place, building, or premises governed by Section 361.452. Failure to post the required notice within three days following warning shall subject the establishment to an administrative or a civil penalty under Chapter 7, Water Code.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.82, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.454. LEAD-ACID BATTERY WHOLESALERS. Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries for recycling, if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.15, eff. Aug. 30, 1993.

SUBCHAPTER Q. POLLUTION PREVENTION

Sec. 361.501. DEFINITIONS. In this subchapter:

(1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(a)(2).

(2) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.

(3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(7) "Generator" and "generator of hazardous waste" have the meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) "Media" and "medium" mean air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation,

or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.431 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.

Sec. 361.502. POLICY AND GOALS FOR SOURCE REDUCTION AND WASTE MINIMIZATION. (a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced pose no threat to the environment and eliminate societal management and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means

for achieving more effective protection of public health and the environment while moving toward source reduction.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.432 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991.

Sec. 361.503. COMMISSION PLANS. (a) Consistent with state and federal regulations, to achieve the policies stated in Section 361.502, the commission by rule shall, to the maximum extent that is technologically and economically feasible:

(1) develop plans to reduce the release of pollutants or contaminants into the air;

(2) develop plans to reduce the release of pollutants or contaminants into water; and

(3) establish reasonable goals for the reduction of the volume of hazardous waste generated in the state and the amount of pollutants and contaminants using source reduction and waste minimization.

(b) The commission by rule shall develop a list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.433 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.84, eff. Sept. 1, 1995.

Sec. 361.504. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to the following persons:

(1) all large-quantity generators of hazardous waste;

(2) all generators other than large-quantity generators and conditionally exempt small-quantity generators; and

(3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.503(b).

(b) The commission by rule shall establish one or more

schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission, and until that date this subchapter applies only to those persons designated by rule of the commission.

(c) This subchapter does not apply to a facility regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.434 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.85, eff. Sept. 1, 1995.

Sec. 361.505. SOURCE REDUCTION AND WASTE MINIMIZATION PLANS. (a) Persons identified under Section 361.504(a)(1) or (a)(3) shall prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

(1) an initial survey that identifies:

(A) for facilities subject to Section 361.504(a)(1), activities that generate hazardous waste; and

(B) for facilities subject to Section 361.504(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.503(b);

(2) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(4) an estimate of the type and amount of reduction anticipated;

(5) a schedule for the implementation of each source reduction and waste minimization project;

(6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(9) an executive summary of the plan; and

(10) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium.

(b) The source reduction and waste minimization plan may include:

(1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(4) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(c) The commission shall adopt rules for the development of simplified, as appropriate, source reduction and waste minimization plans and reports for persons identified under Section 361.504(a)(2).

(d) The commission shall provide information to aid in the preparation of source reduction and waste minimization plans to be

prepared by a person under this section.

(e) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.435 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.86, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Sec. 361.506. SOURCE REDUCTION AND WASTE MINIMIZATION ANNUAL REPORT. (a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission an annual report and a current executive summary according to any schedule developed under Section 361.504.

(b) The annual report shall comply with rules adopted by the commission. The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for facilities subject to Section 361.504(a)(1), the amount of hazardous waste generated and, for facilities subject to Section 361.504(a)(3), the amount of the release of pollutants or contaminants designated under Section 361.503(b) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by the commission; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste

minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.436 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.87, eff. Sept. 1, 1995.

Sec. 361.5061. PLANNING AND REPORTING REQUIREMENTS: INSTITUTIONS OF HIGHER EDUCATION. An institution of higher education that is required to develop a source reduction and waste minimization plan under this subchapter for more than one facility may:

(1) develop and submit one plan that covers all of the facilities; and

(2) submit one annual report and one executive summary under Section 361.506 that covers all of the facilities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 67, eff. September 1, 2013.

Sec. 361.507. ADMINISTRATIVE COMPLETENESS. (a) The commission may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.504, 361.505, or 361.506, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.504 and 361.505 or failure to submit a source reduction and waste minimization annual report in accordance with Section 361.506 is a violation of this chapter.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.437 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.88, eff. Sept. 1, 1995.

Sec. 361.508. CONFIDENTIALITY. (a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 552, Government Code.

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or an employee of the commission does not affect its status as a trade secret.

(e) Information classified by the commission as confidential under this section is not a public record for purposes of Chapter 552, Government Code, and may not be used in a public hearing or disclosed to a person outside the commission unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.438 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.89, eff. Sept. 1, 1995.

Sec. 361.509. SOURCE REDUCTION AND WASTE MINIMIZATION ASSISTANCE. (a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or

contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry in conducting internal source reduction and waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and waste minimization technologies and practices;

(9) establish procedures for setting priorities among key industries and businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and

local regulatory personnel and private business and industry regarding the nature and applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and support, waste exchange programs.

(b) The commission shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission shall develop incentives to promote the implementation of source reduction and waste minimization, including:

(1) commission recommendations to the governor for awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by rules of the commission for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility; and

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization project, considering only the directly affected parts of the permit.

(d) The commission shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.439 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.90, eff. Sept. 1, 1995.

SUBCHAPTER R. USE OF LAND OVER MUNICIPAL SOLID WASTE LANDFILLS

Sec. 361.531. DEFINITIONS. In this subchapter:

(1) "Develop" or "development" means an activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use or occupation of people for a commercial or public purpose or to the construction of residences for three or more families.

(2) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives municipal solid waste or other solid wastes approved under this chapter and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 C.F.R. Section 257.2.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.532. PERMIT REQUIRED FOR DEVELOPMENT OF CERTAIN LAND. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill unit may not develop the land unless the owner or lessee holds a permit for the development issued under this subchapter.

(b) This subchapter does not apply to an activity associated with solid waste disposal that is approved by the commission.

(c) The commission shall charge any applicant for a permit under this subchapter the actual cost of reviewing any application prior to the issuance of a permit.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.92, eff. Sept. 1, 1995.

Sec. 361.533. APPLICATION FOR DEVELOPMENT PERMIT. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill facility may apply for a permit to develop the land. The owner or lessee shall submit to the executive director an application for a permit on forms prescribed by the commission not later than 45 days before the development begins. The application must include a registered professional engineer's verified certification that the proposed development is necessary to reduce a potential threat to public health or the environment or that the proposed development will not increase or create a potential threat

to public health or the environment. The certification must indicate the registered professional engineer's determination of whether the proposed development will damage the integrity or function of any component of the landfill's:

(1) final cover;

(2) containment systems;

(3) monitoring systems; or

(4) liners.

(b) The engineer's certification required under Subsection (a) must include documentation of all studies or data on which the engineer relied.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.534. PERMIT PUBLIC MEETING. (a) The commission may hold a public meeting on an application under this subchapter.

(b) The commission shall hold a public meeting on an application under this subchapter:

(1) on the request of a member of the legislature who represents the general area in which the development is proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed development.

(c) The commission by mail shall notify the applicant of the date, time, and place of the public meeting. The commission shall require the applicant to publish notice of the public meeting in a newspaper that is generally circulated in each county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the public meeting.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 582 (H.B. 1609), Sec. 5, eff. September 1, 2005.

Sec. 361.535. ISSUANCE OF PERMIT; PERMIT CONDITIONS. (a) The commission may issue a permit for the development of land over a closed municipal solid waste landfill facility only if the commission

finds that the proposed development will not increase or create a potential threat to public health or the environment.

(b) The commission may impose conditions on a permit that are designed to prevent a threat to public health or the environment. Conditions may include:

(1) restrictions on building types, construction methods, pilings, boring, or digging;

(2) requiring ventilation, emissions or water quality monitoring devices, soil testing, warnings to subsequent owners or lessees, maintenance of structures or landfill containment, or the placement of additional soil layers or building pads; or

(3) any other conditions the commission finds to be reasonable and necessary to protect the public health or the environment or to ensure compliance with rules or conditions adopted or imposed under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.536. REQUIREMENTS FOR STRUCTURES ON CLOSED MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) The owner or lessee of an existing or new structure that overlies a closed municipal solid waste landfill facility shall install automatic methane gas sensors approved by the commission and designed to trigger an audible alarm if the volumetric concentration of methane in the sampled air is greater than one percent.

(b) In the development of land that overlies a closed municipal solid waste landfill facility, a person may not, unless approved by the commission:

(1) drive piling into or through the final cover or a liner;

(2) bore through or otherwise penetrate the final cover or a liner; or

(3) construct an enclosed area under the natural grade of the land or under the grade of the final cover of the closed landfill.

(c) The owner or lessee of a structure built over a closed municipal solid waste landfill facility shall modify the structure as is necessary to comply with commission rules for a new structure that overlies a landfill to minimize the effects of, or to prevent, gas

accumulation. The commission shall adopt rules to allow the owner or lessee of a structure a reasonable amount of time to make required modifications.

(d) The commission by rule shall require plans for a new structure over a closed municipal solid waste landfill facility to prevent or minimize the effects of harmful gas accumulation. At a minimum, the commission shall require:

(1) ventilation or active gas collection systems;

(2) a low gas-permeable membrane and a vented, permeable layer of an open-graded, clean aggregate material installed between the area below the slab for the structure and the soil of the final cover; and

(3) automatic methane gas sensors that will sound an audible alarm if the sensor detects a methane gas volumetric concentration of greater than one percent installed:

(A) within the venting pipe or permeable layer; and

(B) inside the structure.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.537. LEASE RESTRICTION; NOTICE TO LESSEE. A person may not lease or offer for lease land that overlies a closed municipal solid waste landfill facility unless:

(1) existing development on the land is in compliance with this subchapter; or

(2) the person gives notice to the prospective lessee of what is required to bring the land and any development on the land into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any permit issued for the land under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.538. SOIL TEST REQUIRED BEFORE DEVELOPMENT OF CERTAIN LAND. (a) A person may not undertake the development of a tract of land that is greater than one acre in area unless the person has conducted soil tests, in accordance with commission rules, to determine whether any part of the tract overlies a closed municipal solid waste landfill facility.

(b) Tests under this section must be conducted by a registered professional engineer.

(c) If an engineer who conducts a test under this section determines that part of the tract overlies a closed municipal solid waste landfill facility, the engineer shall notify the following persons of the determination:

(1) each owner and each lessee of the tract;

(2) the commission; and

(3) any local governmental official with the authority to disapprove an application for development.

(d) A local government official who receives a notice under this section shall prepare a written notice stating the legal description of the portion of the tract that overlies a closed municipal solid waste landfill facility, the current owner of the tract, notice of the tract's former use, and notice of the restrictions on the development or lease of the land imposed by this subchapter. The official shall file for record the notice in the real property records in the county where the tract is located.

(e) The owner or lessee of land for which a test is done under this section shall send the test results to the executive director not later than the 30th day before the development begins.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.539. NOTICE TO BUYERS, LESSEES, AND OCCUPANTS. (a) An owner of land that overlies a closed municipal solid waste landfill facility shall prepare a written notice stating the former use of the facility, the legal description of the pertinent part of the land, notice of the restrictions on the development or lease of the land imposed by this subchapter, and the name of the owner. The owner shall file for record the notice in the real property records in the county where the land is located.

(b) An owner of land that overlies a closed municipal solid waste landfill facility shall notify each lessee and each occupant of a structure that overlies the site of:

(1) the land's former use as a landfill; and

(2) the structural controls in place to minimize potential future danger posed by the landfill.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Subchapter S, Medical Waste; Criminal Penalties, consisting of Secs. 361.560 to 361.567, was added by Acts 1995, 74th Leg., ch. 448, Sec. 1.

For another Subchapter S, Voluntary Cleanup Program, added by Acts 1995, 74th Leg., ch. 986, Sec. 1, see Sec. 361.601 et seq., post.

SUBCHAPTER S. MEDICAL WASTE; CRIMINAL PENALTIES

Sec. 361.561. RADIOACTIVE MEDICAL WASTE. Disposal of radioactive medical waste is governed by Chapter 401.

Added by Acts 1995, 74th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1995.

Subchapter S, Voluntary Cleanup Program, consisting of Secs. 361.601 to 361.613, was added by Acts 1995, 74th Leg., ch. 986, Sec. 1.

For another Subchapter S, Medical Waste; Criminal Penalties, added by Acts 1995, 74th Leg., ch. 448, Sec. 1, see Sec. 361.560 et seq., ante.

SUBCHAPTER S. VOLUNTARY CLEANUP PROGRAM

Sec. 361.601. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

(A) solid waste;

(B) hazardous waste;

(C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

(D) a pollutant as defined in Section 26.001, Water Code; and

(E) a hazardous substance:

(i) as defined in Section 361.003; or

(ii) subject to Sections 26.261-26.268, Water Code.

(2) "Environmental assessment" means the assessment described by Section 361.604.

(3) "Response action" means the cleanup or removal of a hazardous substance or contaminant from the environment, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas

under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

(4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.602. PURPOSE. The purpose of the voluntary cleanup program is to provide incentive to remediate property by removing liability of lenders and future landowners. The program does not replace other voluntary actions and is restricted to voluntary actions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.603. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a) Any site is eligible for participation in the voluntary cleanup program except the portion of a site that is subject to a commission permit or order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 361.606; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Text of subsec. (c) effective upon agreement with United States Environmental Protection Agency

(c) Notwithstanding Subsection (a), a site or portion of a site that is subject to a commission permit or order is eligible for participation in the voluntary cleanup program on dismissal of the permit or order. An administrative penalty paid to the general revenue fund under the permit or order is nonrefundable.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 2; Acts 1997, 75th Leg., ch. 1418, Sec. 1.

Text of section effective upon agreement with United

States Environmental Protection Agency

Sec. 361.6035. ELIGIBILITY OF CERTAIN PERSONS FOR RELEASE FROM LIABILITY.

(a) A person who purchased a site before September 1, 1995, is released, on certification under Section 361.609, from all liability to the state for cleanup of contamination that was released at the site covered by the certificate before the purchase date, except for releases or consequences that the person contributed to or caused, if:

(1) the person did not operate the site, or any portion of the site, before the purchase date; and

(2) another person that is a responsible party under Section 361.271 or 361.275(g) successfully completes a voluntary cleanup of the site under this subchapter.

(b) A person described by Subsection (a)(2):

(1) remains liable to the state for any contamination that was released at the site before the date the certificate is issued; and

(2) is not liable to the state for any contamination that was released at the site after the date the certificate is issued unless the person:

(A) contributes to or causes the release of contamination; or

(B) changes the land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1997, 75th Leg., ch. 855, Sec. 3; Acts 1997, 75th Leg., ch. 1418, Sec. 2.

Sec. 361.604. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

Text of subsec. (b) effective until agreement with United States Environmental Protection Agency

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup; and

(ii) the site;

(B) other background information requested by the executive director; and

(C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;

(3) be accompanied by an application fee of $1,000; and

(4) be submitted according to schedules set by commission rule.

Text of subsec. (b) effective upon agreement with United States Environmental Protection Agency

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) whether the voluntary cleanup is subject to Section 361.6035;

(B) other background information requested by the executive director; and

(C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;

(3) be accompanied by an application fee of $1,000; and

(4) be submitted according to schedules set by commission rule.

(c) The environmental assessment required by Subsection (b) must include:

(1) a legal description of the site;

(2) a description of the physical characteristics of the site;

(3) the operational history of the site to the extent that

history is known by the applicant;

(4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and

(5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.

(d) An application shall be processed in the order in which it is received.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 4; Acts 1997, 75th Leg., ch. 1418, Sec. 3.

Sec. 361.605. REJECTION OF APPLICATION. (a) The executive director may reject an application submitted under Section 361.604 if:

(1) an administrative, state, or federal enforcement action is pending that concerns the remediation of the hazardous substance or contaminant described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is not complete or accurate; or

(4) the site is ineligible under Section 361.603.

(b) If an application is rejected because it is not complete or accurate, the executive director, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an additional application fee if the person resubmits the application not later than the 45th day after the date the executive director issues notice that the application has been rejected.

(c) If the executive director rejects the application, the executive director shall:

(1) notify the person that the application has been

rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to resubmit an application.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 855, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.606. VOLUNTARY CLEANUP AGREEMENT. (a) Before the executive director evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement; and

(C) in excess of the amount of fees submitted by the applicant under Section 361.604;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules that must be complied with;

(2) describe any work plan or report to be submitted for review by the executive director, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the executive director on or before the 30th day after good faith negotiations have begun:

(1) the person or the executive director may withdraw from the negotiations; and

(2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for the activity that resulted in the contamination or release.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.607. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The executive director or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the executive director before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the executive director has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the executive director, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.608. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a)

After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the executive director.

(b) The executive director shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The executive director may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the executive director may request the person to submit additional or corrected information.

(d) After considering future land use, the executive director may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.609. CERTIFICATE OF COMPLETION. (a) If the executive director determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the executive director shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion shall:

(1) acknowledge the protection from liability provided by Section 361.610;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's owner at the time the application to participate in the

voluntary cleanup program was filed.

(c) If the executive director determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the executive director shall notify the person who undertook the voluntary cleanup and the current owner of the site that is the subject of the cleanup of this determination.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.610. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible party solely because the person signs the application; and

(2) is released, on certification under Section 361.609, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(b) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the commission issues a certificate of completion under Section 361.609 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(2) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (1); or

(3) changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 855, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.611. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state hazardous waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.612. PUBLIC PARTICIPATION. The commission may adopt rules pertaining to public participation in voluntary cleanup decisions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.613. COST REPORT; BUDGET ALLOCATION. (a) The executive director annually shall calculate the commission's costs to administer the voluntary cleanup program under this subchapter and shall publish in the Texas Register the rates established for the purposes of identifying the costs recoverable by the commission under this subchapter.

(b) Costs recovered under this subchapter and appropriated to the commission shall be budgeted and distributed to each organizational unit of the commission solely on the basis of costs fairly attributable to the voluntary cleanup program.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER T. FIDUCIARY LIABILITY

Sec. 361.651. DEFINITIONS. In this subchapter:

(1) "Fiduciary":

(A) means a person acting for the benefit of another party as a bona fide:

(i) trustee;

(ii) executor;

(iii) administrator;

(iv) custodian;

(v) guardian of an estate or guardian ad litem;

(vi) receiver;

(vii) conservator;

(viii) committee of the estate of an incapacitated person;

(ix) personal representative;

(x) trustee, including a successor to a trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(xi) representative in any other capacity that the commission, after providing public notice, determines to be similar to the capacities described in Subparagraphs (i)-(x); and

(B) does not include:

(i) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person; or

(ii) a person that acquires ownership or control of a solid waste facility with the objective purpose of avoiding liability of the person or of any other person.

(2) "Fiduciary capacity" means the capacity of a person in holding title to a solid waste facility or otherwise having control of or an interest in the solid waste facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(3) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; and

(B) does not include a:

(i) consumer product in consumer use; or

(ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.652. LIABILITY OF FIDUCIARIES. (a) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, the liability of a fiduciary under this code or the Water Code for the release or threatened release of solid waste at, from, or in connection with a solid waste facility held in a fiduciary capacity does not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable independently of the person's ownership of a solid waste facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of solid waste if negligence, gross negligence, or wilful misconduct of a fiduciary causes or contributes to the release or threatened release.

(d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a fiduciary is not liable in the fiduciary's personal capacity under this code or the Water Code for:

(1) undertaking or directing another person to undertake a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator designated under the national contingency plan or a commission-approved cleanup plan;

(2) undertaking or directing another person to undertake any other lawful means of addressing solid waste in connection with the solid waste facility;

(3) terminating the fiduciary relationship;

(4) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law or monitoring or enforcing the term or condition;

(5) monitoring or undertaking one or more inspections of the solid waste facility;

(6) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(7) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(8) administering, as a fiduciary, a solid waste facility that was contaminated before the fiduciary relationship began; or

(9) declining to take an action described by Subdivisions (2)-(8).

(e) This section does not:

(1) affect a right, immunity, or defense available under this code or the Water Code that is applicable to a person subject to this section;

(2) create any liability for a person; or

(3) create a private right of action against a fiduciary or any other person.

(f) This section does not apply to a person if the person:

(1) acts in a capacity other than that of a fiduciary or in a beneficiary capacity and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(g) This section does not preclude a claim under this code or the Water Code against:

(1) the assets of the estate or trust administered by the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER U. LENDER LIABILITY

Sec. 361.701. DEFINITIONS. In this subchapter:

(1) "Extension of credit" includes a lease finance transaction:

(A) in which the lessor does not initially select the leased solid waste facility and does not during the lease term control the daily operations or maintenance of the solid waste facility; or

(B) that conforms with, as appropriate, regulations issued by:

(i) the appropriate federal banking agency or the appropriate state bank supervisor, as those terms are defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813); or

(ii) the National Credit Union Administration Board.

(2) "Financial or administrative function" includes a function such as a function of a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or a similar function.

(3) "Foreclosure" and "foreclose" mean, respectively, acquiring, and to acquire, a solid waste facility through:

(A) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(B) a deed in lieu of foreclosure, or similar conveyance from a trustee;

(C) repossession, if the solid waste facility was security for an extension of credit previously contracted;

(D) conveyance under an extension of credit previously contracted, including the termination of a lease agreement; or

(E) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a solid waste facility in order to protect the security interest of the person.

(4) "Lender" means:

(A) an insured depository institution, as that term is defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813);

(B) an insured credit union, as that term is defined by Section 101, Federal Credit Union Act (12 U.S.C. Section 1752);

(C) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. Section 2001 et seq.);

(D) a leasing or trust company that is an affiliate of an insured depository institution;

(E) any person, including a successor or assignee of any such person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(F) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(G) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person;

(H) a person that provides title insurance and that acquires a solid waste facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement; and

(I) an agency of this state that makes an extension of credit to or acquires a security interest from:

(i) a federal or state agency;

(ii) a county, municipality, or other body politic or corporate of this state, including:

(a) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(b) an interstate compact commission to which this state is a party; or

(c) a nonprofit water supply corporation created and operating under Chapter 67, Water Code; or

(iii) another person.

(5) "Operational function" includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(6) "Security interest" includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(7) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; and

(B) does not include a:

(i) consumer product in consumer use; or

(ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.30, eff. Sept. 1, 1999.

Sec. 361.702. EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT. (a) In Section 361.271, the term "owner or operator" does not include a person that is a lender that:

(1) without participating in the management of a solid waste facility, holds a security interest in or with regard to the solid waste facility; or

(2) did not participate in management of a solid waste facility before foreclosure, notwithstanding the fact that the person:

(A) forecloses on the solid waste facility; and

(B) after foreclosure, sells, re-leases, in the case of a lease finance transaction, or liquidates the solid waste facility, maintains business activities, winds up operations, undertakes a response action with respect to the solid waste facility under the national contingency plan adopted under 42 U.S.C. Section 9605, under

a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, or takes any other measure to preserve, protect, or prepare the solid waste facility before sale or disposition, if the person seeks to sell, re-lease, in the case of a finance transaction, or otherwise divest the person of the facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(b) For purposes of Subsection (a)(2)(B), a lender is presumed to divest the lender of the solid waste facility at the earliest practicable, commercially reasonable time if, within 12 months after foreclosure, the lender:

(1) lists the solid waste facility with a broker, dealer, or agent who deals in that type of property; or

(2) advertises the solid waste facility for sale or other disposition at least monthly in:

(A) a real estate publication;

(B) a trade or other publication appropriate for the solid waste facility being advertised; or

(C) a newspaper of general circulation in the area in which the solid waste facility is located.

(c) For purposes of Subsection (b), the 12-month period begins:

(1) when the lender acquires marketable title if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire marketable title; or

(2) on the date of foreclosure or its equivalent if the lender does not act diligently to acquire marketable title.

(d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a lender is not liable under this code or the Water Code to undertake a removal or remedial action or to pay a fine or penalty arising from the release or threatened release of solid waste at, from, or in connection with the solid waste facility in which the lender maintains a security interest or that the lender has acquired through foreclosure if:

(1) the lender has not participated in management before foreclosure;

(2) the conditions giving rise to the release or threat of release existed before foreclosure; and

(3) the lender seeks to divest the lender of the property under Subsections (a)(2)(B) and (b).

(e) Notwithstanding Subsection (d), if a lender after foreclosure operates, directs the operation of, or maintains the operation of business activities, this section does not exempt or excuse the lender from compliance with legal requirements applicable to the operation of that business. Those operational requirements include permitting, reporting, monitoring, compliance with emission limitations, financial responsibility and assurance requirements, payment of fees, and payment of fines and penalties for noncompliance with those requirements.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.703. PARTICIPATION IN MANAGEMENT. (a) For purposes of Section 361.702, the term "participate in management":

(1) means actually participating in the management or operational affairs of a solid waste facility; and

(2) does not include merely having the capacity to influence, or the unexercised right to control, a solid waste facility or facility operations.

(b) A person that is a lender that holds a security interest in or with regard to a solid waste facility is considered to participate in management only if, while the borrower is still in possession of the solid waste facility encumbered by the security interest, the person:

(1) exercises decision-making control over the environmental compliance related to the solid waste facility such that the person has undertaken responsibility for the solid waste handling or disposal practices related to the solid waste facility; or

(2) exercises control at a level comparable to that of a manager of the solid waste facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the solid waste facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(B) over all or substantially all of the operational functions, as distinguished from financial or administrative

functions, of the solid waste facility other than the function of environmental compliance.

(c) The term "participate in management" does not include:

(1) performing an act or failing to act before the time at which a security interest is created in a solid waste facility;

(2) holding a security interest or abandoning or releasing a security interest;

(3) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(4) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(5) monitoring or undertaking one or more inspections of the solid waste facility;

(6) requiring a response action or other lawful means of addressing the release or threatened release of solid waste in connection with the solid waste facility before, during, or on the expiration of the term of the extension of credit;

(7) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the solid waste facility;

(8) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(9) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(10) conducting a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, if the actions do not rise to the level of participating in management within the meaning of Subsections (a) and (b).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER V. IMMUNITY FROM LIABILITY OF INNOCENT OWNER OR OPERATOR

Sec. 361.751. DEFINITIONS. In this subchapter:

(1) "Contaminant" has the meaning assigned by Section 361.601.

(2) "Innocent owner or operator" means a person that:

(A) is an owner or operator of property that has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property; and

(B) did not cause or contribute to the source or sources of the contamination referred to in Paragraph (A).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.752. IMMUNITY FROM LIABILITY; ACCESS TO PROPERTY. (a) An innocent owner or operator of property is not liable under this code or the Water Code for investigation, monitoring, remediation, or corrective or other response action regarding the conditions attributable to a release or migration of a contaminant or otherwise liable regarding those conditions.

(b) A person that acquires a portion of the tract on which the source of a release of contaminants is located from the person that caused the release is eligible for immunity under Subsection (a) only if, after appropriate inquiry consistent with good commercial or customary practice, the person did not know or have reason to know of the contamination at the time the person acquired the property.

(c) To be eligible for immunity under Subsection (a), an owner or operator must grant reasonable access to the property for purposes of investigation or remediation to a person designated by the executive director. An agreement for reasonable access may provide:

(1) that the designated person may not unreasonably interfere with the use of the property;

(2) for payment of reasonable compensation for access to the property; or

(3) that the owner or operator is indemnified from liability for an intentional or negligent act of the designated person arising from the person's access to and use of the property.

(d) This section does not limit any right of the commission under another provision of this code or the Water Code to obtain access to the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.753. CERTIFICATION. (a) A person may apply to the commission for a certificate confirming that the person is an innocent owner or operator. The application must include a complete site investigation report that demonstrates that:

(1) the property has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property;

(2) the owner or operator has not caused or contributed to the source or sources of the contamination referred to in Subdivision (1); and

(3) the owner or operator is eligible for immunity under Section 361.752(b).

(b) The commission may charge an application fee in an amount not to exceed the cost of reviewing the application. The commission shall deposit a fee collected under this subsection to the credit of the hazardous and solid waste remediation fee account.

(c) Not later than the 45th day after the date the commission receives the application, the commission shall notify the applicant whether the application is complete.

(d) Not later than the 90th day after the date the commission receives the application, the commission shall:

(1) issue or deny the certificate; or

(2) notify the applicant of any additional information needed to review the application.

(e) Not later than the 45th day after the date the commission receives the additional information requested under Subsection (d)(2), the commission shall issue or deny the certificate.

(f) The certificate evidences the immunity from liability of the applicant as provided by Section 361.752.

(g) The commission may condition the issuance of the certificate on the placement of restrictions on the use of the property that are reasonably necessary to protect the public health, including:

(1) institutional controls such as deed restrictions or municipal zoning restrictions; or

(2) at the owner's or operator's option, other control measures.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.010, eff. September 1, 2009.

Sec. 361.754. RIGHTS OF INNOCENT OWNER OR OPERATOR REGARDING CONTAMINATION FROM SOURCE NOT LOCATED ON OR AT PROPERTY. This subchapter does not limit the right of an innocent owner or operator to pursue any remedy available at law or in equity for conditions attributable to the release or migration of contaminants from a source or sources that are not located on or at the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS

Sec. 361.801. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

(A) solid waste;

(B) hazardous waste;

(C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

(D) a pollutant as defined in Section 26.001, Water Code; and

(E) a hazardous substance:

(i) as defined in Section 361.003; or

(ii) subject to Subchapter G, Chapter 26, Water Code.

(2) "Potable water" means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal from the environment of a hazardous substance or contaminant, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8015. LEGISLATIVE FINDINGS. (a) The legislature finds that access to and the use of groundwater may need to be restricted to protect public health and welfare where the quality of groundwater presents an actual or potential threat to human health.

(b) The legislature finds that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a municipal setting designation advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.802. PURPOSE. The purpose of this subchapter is to provide authorization to the executive director to certify municipal setting designations for municipal properties in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING DESIGNATION. A person, including a local government, may submit a request to the executive director for a municipal setting designation for property if:

(1) the property is within the corporate limits or extraterritorial jurisdiction of a municipality authorized by statute; and

(2) a public drinking water supply system exists that satisfies the requirements of Chapter 341 and that supplies or is capable of supplying drinking water to:

(A) the property for which designation is sought; and

(B) property within one-half mile of the property for which designation is sought.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 240 (H.B. 2018), Sec. 1, eff. May 25, 2007.

Sec. 361.804. APPLICATION FOR A MUNICIPAL SETTING DESIGNATION. (a) A person seeking to obtain a municipal setting designation under this subchapter must submit an application to the executive director as prescribed by this section.

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain the following:

(A) the applicant's name and address;

(B) a legal description of the outer boundaries of the proposed municipal setting designation and a specific description of the designated groundwater that will be restricted under the ordinance or restrictive covenant described by Section 361.8065(a)(2) or (c)(2), as applicable;

(C) a statement as to whether the municipalities or the retail public utilities entitled to notice under Section 361.805 support the proposed designation;

(D) an affidavit that affirmatively states that:

(i) the municipal setting designation eligibility criteria contained in Section 361.803 are satisfied;

(ii) true and accurate copies of all documents demonstrating that the municipal setting designation eligibility criteria provided by Section 361.803 have been satisfied are included with the application;

(iii) a true and accurate copy of a legal description of the property for which the municipal setting designation is sought is included with the application; and

(iv) notice was provided in accordance with Section 361.805;

(E) a statement regarding the type of known contamination in the groundwater beneath the property proposed for a municipal setting designation;

(F) proof of notice, as required by Section 361.805(c); and

(G) if available at the time of the application, a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in

Section 361.8065, or a statement that the applicant will provide a copy of the ordinance or restrictive covenant and any required resolutions or other documentation satisfying the requirements described in Section 361.8065 before the executive director certifies the municipal setting designation in accordance with Section 361.807; and

(3) be accompanied by an application fee of $1,000.

(c) Not later than 90 days after receiving an application submitted as provided by Subsection (b), the executive director shall:

(1) issue a municipal setting designation certificate in accordance with Section 361.807;

(2) deny the application in accordance with Section 361.806; or

(3) request additional information for the municipal setting designation application.

(d) Not later than the 45th day after the date the executive director receives any additional information requested under Subsection (c)(3), the executive director shall certify or deny the application.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 1, eff. September 1, 2011.

Sec. 361.805. NOTICE. (a) On or before the date of submission of an application to the executive director, a person seeking a municipal setting designation must provide notice to:

(1) each municipality:

(A) in which the property for which the designation is sought is located;

(B) with a boundary located not more than one-half mile from the property for which the designation is sought; or

(C) that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought;

(2) each owner of a private water well registered with the commission that is located not more than five miles from a boundary of the property for which the designation is sought; and

(3) each retail public utility, as defined by Section 13.002, Water Code, that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought.

(b) The notice must include, at a minimum:

(1) the purpose of the municipal setting designation;

(2) the eligibility criteria for a municipal setting designation;

(3) the location and description of the property for which the designation is sought;

(4) a statement that a municipality described by Subsection (a)(1) or retail public utility described by Subsection (a)(3) may provide written comments on any information relevant to the executive director's consideration of the municipal setting designation;

(5) a statement that the executive director will certify or deny the application or request additional information from the applicant not later than 90 days after receiving the application;

(6) the type of contamination on the property for which the designation is sought;

(7) identification of the party responsible for the contamination of the property, if known; and

(8) if the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant intends to comply with the requirements of Section 361.8065 for issuance of a municipal setting designation certificate under Section 361.807 by complying with the requirements of Section 361.8065(c), a statement that a municipality described by Subsection (a)(1)(B) or (C) of this section or a public utility described by Subsection (a)(3) of this section has 120 days from the date of receipt of the notice required by this section to pass a resolution opposing the application for a municipal setting designation.

(c) The applicant must submit copies of the notice letters delivered in accordance with Subsection (a) and the signed delivery receipts to the executive director with the application.

(d) For the purpose of this section, notice to a municipality must be provided to the city secretary for the municipality and

notice to a retail public utility must be to the registered agent, the owner, or the manager.

(e) A municipality, retail public utility, or private well owner entitled to notice under this section may file comments with the executive director not later than the 60th day after the date the municipality, retail public utility, or private well owner receives the notice under this section.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 2, eff. September 1, 2011.

Sec. 361.806. DENIAL OF APPLICATION. (a) The executive director shall deny an application submitted under Section 361.804 if:

(1) any of the eligibility criteria described in Section 361.803 have not been met for the property for which the municipal setting designation is sought;

(2) the application is incomplete or inaccurate; or

(3) after the 60-day comment period described by Section 361.805(e), the executive director determines that the municipal setting designation would negatively impact the current and future regional water resource needs or obligations of a municipality, a retail public utility, or a private well owner described by Section 361.805(a).

(b) If the executive director determines that an application is incomplete or inaccurate, the executive director, not later than the 90th day after receipt of the application, shall provide the applicant with a list of all information needed to make the application complete or accurate.

(c) If the executive director denies the application, the executive director shall:

(1) notify the applicant that the application has been denied; and

(2) explain the reasons for the denial of the application.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Except as provided by Subsection (c), before the executive director may issue a municipal setting designation certificate under Section 361.807, the applicant must provide documentation of the following:

(1) that the application is supported by a resolution adopted by:

(A) the city council of each municipality described by Section 361.805(a)(1)(B) or (C); and

(B) the governing body of each retail public utility described by Section 361.805(a)(3); and

(2) that the property for which designation is sought is:

(A) subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or

(B) subject to a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(b) A designation described by Subsection (a)(2)(B) must be supported by a resolution passed by the city council of the municipality.

(c) If the property for which the municipal setting designation is sought is located in a municipality that has a population of two million or more and the applicant has complied with the requirements of Section 361.805(b)(8), the applicant is considered to have complied with the requirements of Subsection (a) of this section for eligibility for a municipal setting designation certificate under Section 361.807 if the applicant provides documentation of the following:

(1) that no resolution opposing the application has been adopted within 120 days of receipt of the notice provided under Section 361.805 by:

(A) the city council of any municipality described by Section 361.805(a)(1)(B) or (C); or

(B) the governing body of any retail public utility described by Section 361.805(a)(3); and

(2) that the property for which designation is sought:

(A) is currently or has previously been under the

oversight of the commission or the United States Environmental Protection Agency; and

(B) is subject to:

(i) an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or

(ii) a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(d) The documentation required under Subsection (c)(1) may be in the form of an affidavit of the applicant or the applicant's representative.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 3, eff. September 1, 2011.

Sec. 361.807. CERTIFICATION. (a) If the executive director determines that an applicant has complied with Section 361.8065 and submitted a complete application, the executive director shall issue a copy of the municipal setting designation certificate to:

(1) the applicant for the municipal setting designation;

(2) each municipality, retail public utility, and private well owner described by Section 361.805(a); and

(3) each person who submitted comments on the application for the municipal setting designation and anyone else who requested a copy during the review period.

(b) The municipal setting designation certificate shall:

(1) indicate that the municipal setting designation eligibility criteria described in Section 361.803 are satisfied and that the executive director has certified the municipal setting designation;

(2) indicate that any person addressing environmental impacts for a property located in the certified municipal setting designation shall complete any necessary investigation and response

action requirements in accordance with Section 361.808; and

(3) include a legal description of the outer boundaries of the municipal setting designation.

(c) If the executive director determines that an applicant has submitted a complete application except that an ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065 have not been submitted, the executive director shall issue a letter to the applicant listed in Subsection (a) stating that a municipal setting designation will be certified on submission of a copy of the ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065. On submission of the ordinance or restrictive covenant and any required documentation satisfying the requirements described in Section 361.8065, the executive director shall issue a municipal setting designation certificate in accordance with Subsections (a) and (b).

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 550 (H.B. 2826), Sec. 4, eff. September 1, 2011.

Sec. 361.808. INVESTIGATION AND RESPONSE ACTION REQUIREMENTS. (a) If no potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall not require a person addressing environmental impacts for a property located in the municipal setting designation to:

(1) investigate the nature and extent of contamination in groundwater except to satisfy the requirements of Subsection (b); or

(2) conduct response actions to remove, decontaminate, or control environmental impacts to groundwater based solely on potential potable water use.

(b) Notwithstanding Subsection (a), the executive director shall require a responsible person to complete a response action to address environmental impacts to groundwater in a certified municipal setting designation if action is necessary to ensure:

(1) the protection of humans from exposures to environmental impacts to groundwater that are not related to a potable water use, including exposures from nonconsumptive uses and

exposures resulting from inadvertent contact with contaminated groundwater; or

(2) the protection of ecological resources.

(c) If potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall require a person addressing environmental impacts for a property located in the municipal setting designation to complete an investigation to determine whether groundwater contamination emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation.

(d) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has not caused and is not reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response actions at the property except to the extent that response actions are necessary to satisfy Subsection (b).

(e) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response action at the source property if the person addressing environmental impacts:

(1) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater to meet applicable human health or ecological standards; or

(2) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater that are not related to a potable water use, including actions to protect humans from exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater and actions to protect ecological resources, and:

(A) provides to owners of impacted potable water wells described in Subsection (c) a reliable alternate water supply that

will provide a volume of water sufficient for the intended use for a period not shorter than the period that the impacted wells exceed the human health or ecological standards and, after obtaining permission from such owners, files a restrictive covenant that prohibits the use of groundwater from those wells as potable water and restricts other uses of groundwater in a manner consistent with groundwater quality; or

(B) expands the municipal setting designation in accordance with the procedures under this subchapter relating to the initial application for a municipal setting designation to include the properties with impacted potable water wells described in Subsection (c).

(f) Notwithstanding any other provision of this section, the executive director may require a person responsible for property within a certified municipal setting designation to complete a response action to address environmental impacts to groundwater emanating from the property that has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in an area located more than one-half mile beyond the boundary of the certified municipal setting designation, provided such action is necessary to ensure:

(1) the protection of humans from exposures to environmental impacts to groundwater; or

(2) the protection of ecological resources.

(g) This subchapter relates to the scope of the response action that can be required by the executive director in municipal settings designated under this subchapter. Nothing in this subchapter shall be construed to alter or affect the private rights of action of any person under any statute or common law for personal injury or property damage caused by the release of contaminants. Nothing in this subchapter is meant to alter or supersede any requirement of a federally authorized environmental program administered by the State of Texas.

Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER X. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC REDEVELOPMENT OF BROWNFIELDS

Sec. 361.901. DEFINITIONS. In this subchapter:

(1) "Assessment" means an environmental assessment described by Section 361.904.

(2) "Brownfield" means real property the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of environmental contamination.

(3) "Brownfield program" means a county brownfield cleanup and economic redevelopment program described by Section 361.902.

(4) "Eligible owner" means the owner of a brownfield who demonstrates to the commissioners court of the county in which the brownfield is located that the owner:

(A) became the owner after the contamination occurred;

(B) did not contribute to the contamination as an owner responsible for contamination or through association with previous owners responsible for the contamination;

(C) exercises appropriate care at the brownfield by taking reasonable steps to stop continuing releases, prevent any threatened future releases, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance; and

(D) complies with local, state, and federal laws with respect to land use and requests for information.

(5) "Eligible site" means a property or facility that is owned by a county or, if not owned by a county, for which the owner applies to a county for brownfield assistance or certification and a county determines is a brownfield under the county's brownfield program.

(6) "Licensed professional engineer" means a person licensed as an engineer by the Texas Board of Professional Engineers and Land Surveyors.

(7) "Remediation" means an action included within the meanings of "remedial action" and "removal," as those terms are defined by Section 361.003.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.08, eff. September 1, 2019.

Sec. 361.902. COUNTY BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT PROGRAM. (a) The commissioners court of a county with a population of 250,000 or more may establish a program for the cleanup and economic redevelopment of brownfields located in the county, as authorized by Section 52-a, Article III, Texas Constitution.

(b) A brownfield program must include:

(1) procedures to:

(A) identify eligible sites;

(B) conduct assessments;

(C) prioritize the remediation of eligible sites, with consideration given to:

(i) the number of jobs related to the remediation; and

(ii) the resulting economic and environmental benefits to the county;

(D) conduct the remediation of an eligible site;

(E) conduct the inspection of a property or facility after remediation; and

(F) guide eligible owners in applying for county assistance under the program; and

(2) standards by which the county can determine:

(A) the eligibility of a person for a grant or loan under the program;

(B) the eligibility of a person to enter into a contract with the county to perform remediation or inspection; and

(C) the completeness of the remediation of a property or facility.

(c) The county shall make available to the public and to the commission a draft of the proposed program at least 60 days before a public hearing to receive comments on the proposed program.

(d) The county shall review comments received and make amendments to the draft as appropriate before adopting and implementing the program.

(e) The county shall submit a copy of the final draft of a program adopted under this section to the commission and shall make the final draft available to the public.

(f) The county may amend a program adopted under this section by applying the procedures described by Subsections (c), (d), and (e) to the proposed amendment.

(g) The county may assign current or employ additional staff to implement a program adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.903. BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT FUND. (a) The commissioners court of a county may establish a fund for a brownfield program and deposit to the credit of the fund any money the commissioners court considers appropriate, including revenue from property taxes, sales taxes, fees, gifts or grants, principal and interest payments made to repay loans from the fund, proceeds from the issuance of bonds, and contributions of other resources.

(b) Money from a fund established under this section may be used only to provide for economic growth and development of the county by paying for all or part of:

(1) the cost of an assessment;

(2) the cost of remediating a brownfield;

(3) the cost of inspecting a property or facility after remediation;

(4) a loan to an eligible owner or licensed professional engineer to conduct assessment, eligible site remediation, or inspection of a property or facility after remediation; or

(5) administrative expenses associated with implementing the brownfield program.

(c) For the purposes of the county's brownfield program, a county may solicit and leverage money from other sources, including federal money that may be available for brownfield assessment and eligible site remediation.

(d) Before a county may issue bonds payable from ad valorem taxes to provide money for a fund, the bond issuance must be approved by a majority of the voters voting on the issue at an election held for that purpose.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.904. ENVIRONMENTAL ASSESSMENT. An assessment under

this subchapter must include:

(1) a legal description of the property or facility;

(2) a description of the physical characteristics of the property or facility;

(3) the operational history of the property or facility to the extent that history is known by the owner;

(4) information of which the owner is aware concerning the nature and extent of any relevant contamination or release at the property or facility and immediately contiguous to the property or facility, or wherever the contamination came to be located; and

(5) relevant information of which the owner is aware concerning the potential for human exposure to contamination at the property or facility.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.905. TAX ABATEMENT AGREEMENT INCENTIVES. Subject to the requirements of Subchapter C, Chapter 312, Tax Code, a county may designate an area of the county that contains a brownfield as a reinvestment zone and enter into a tax abatement agreement based on the remediation of the brownfield with the eligible owner of the brownfield.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.906. CONTRACTS FOR SITE REMEDIATION OR INSPECTION. (a) A county may contract with a licensed professional engineer or contractor to:

(1) conduct remediation for an eligible site owned by the county; or

(2) inspect a property or facility after remediation to determine whether it meets county standards for completeness of the remediation.

(b) To be eligible to enter into a contract with a county under this section or to receive a loan under Section 361.907, a licensed professional engineer or contractor at a minimum must provide evidence to the county of previous success in conducting remediation

or inspection, as applicable, of at least one brownfield or other property or facility contaminated by a hazardous substance.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.907. GRANTS AND LOANS. To help finance an assessment, eligible site remediation, or inspection, a county may provide money as a grant or a loan from a county fund established under Section 361.903 to:

(1) an eligible owner; or

(2) a licensed professional engineer or contractor who meets the requirements of Section 361.906.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.908. LIAISON TO ENVIRONMENTAL PROTECTION AGENCY. A county that establishes a brownfield program may act as a liaison between an eligible owner, licensed professional engineer, or contractor and the Environmental Protection Agency to assist in obtaining a federal grant for an assessment or eligible site remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.).

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.909. LIAISON TO COMMISSION. A county that establishes a brownfield program may act as a liaison between the commission and an eligible owner, licensed professional engineer, or contractor to assist in obtaining any available commission assistance for an assessment, eligible site remediation, or property or facility inspection after remediation.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.910. LIMITATIONS ON LIABILITY. (a) A person who is an eligible owner, licensed contractor, or licensed professional engineer engaged in an assessment, eligible site remediation, or property or facility inspection after remediation under a program adopted under this subchapter is not liable for damages or costs resulting from a release or threatened release of a hazardous substance that occurs during the assessment, remediation, or inspection unless the person:

(1) qualified as an eligible owner, licensed professional engineer, or contractor by fraud, misrepresentation, or knowing failure to disclose material information; or

(2) negligently or knowingly contributed to or caused the release or threatened release.

(b) The county shall inspect a property or facility after remediation is completed to determine whether the remediation meets county standards for completeness under the brownfield program. On a finding that the remediation meets the standards, the county shall issue a certificate signifying the satisfactory remediation to the owner of the property or facility and shall file a copy of the certificate in the county property records. The owner or a subsequent owner of a remediated property or facility is not liable for the costs of any additional assessment or remediation for environmental contamination that occurred before the issuance of the certificate.

(c) This subchapter does not limit or impair any immunity or defense to liability or suit that may be available to a county under any other provision of law.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.911. FAILURE TO PASS INSPECTION. The owner of a property or facility who is denied a certificate under Section 361.910:

(1) is entitled to receive a detailed description of actions needed for the property or facility to meet county standards; and

(2) may apply for additional county assistance under the county's brownfield program.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

Sec. 361.912. COMMISSION ASSISTANCE. The commission may provide:

(1) educational, advisory, and technical services concerning assessment, remediation, and inspection of brownfields to a county that establishes a brownfield program under this subchapter; and

(2) assistance to a county in obtaining federal grants for assessment and remediation of brownfields.

Added by Acts 2005, 79th Leg., Ch. 379 (S.B. 1413), Sec. 2, eff. September 1, 2005.

For expiration of this subchapter, see Section 361.966.

SUBCHAPTER Y. COMPUTER EQUIPMENT RECYCLING PROGRAM

Sec. 361.951. SHORT TITLE. This subchapter may be cited as the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.952. DEFINITIONS. In this subchapter:

(1) "Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

(2) "Computer equipment" means a desktop or notebook computer and includes a computer monitor or other display device that does not contain a tuner.

(3) "Consumer" means an individual who uses computer equipment that is purchased primarily for personal or home business use.

(4) "Manufacturer" means a person:

(A) who manufactures or manufactured computer equipment under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(B) who sells or sold computer equipment manufactured by others under a brand that:

(i) the person owns or owned; or

(ii) the person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

(C) who manufactures or manufactured computer equipment without affixing a brand;

(D) who manufactures or manufactured computer equipment to which the person affixes or affixed a brand that:

(i) the person does not or has not owned; or

(ii) the person is not or was not licensed to use; or

(E) who imports or imported computer equipment manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

(5) "Television" means any telecommunication system device that can broadcast or receive moving pictures and sound over a distance and includes a television tuner or a display device peripheral to a computer that contains a television tuner.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.953. LEGISLATIVE FINDINGS AND PURPOSE. (a) Computers and related display devices are critical elements to the strength and growth of this state's economic prosperity and quality of life. Many of those products can be refurbished and reused, and many contain valuable components that can be recycled.

(b) The purpose of this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection, recycling, and reuse of computer equipment that has

reached the end of its useful life. The program is based on individual manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.954. APPLICABILITY. (a) The collection, recycling, and reuse provisions of this subchapter apply to computer equipment used and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

(b) This subchapter does not apply to:

(1) a television, any part of a motor vehicle, a personal digital assistant, or a telephone;

(2) a consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement; or

(3) the sale or lease of computer equipment to an entity when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.955. MANUFACTURER RESPONSIBILITIES. (a) Before a manufacturer may offer computer equipment for sale in this state, the manufacturer must:

(1) adopt and implement a recovery plan; and

(2) affix a permanent, readily visible label to the computer equipment with the manufacturer's brand.

(b) The recovery plan must enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and must include provisions for:

(1) the manufacturer's collection from a consumer of any computer equipment that has reached the end of its useful life and is labeled with the manufacturer's brand; and

(2) recycling or reuse of computer equipment collected under Subdivision (1).

(c) The collection of computer equipment provided under the recovery plan must be:

(1) reasonably convenient and available to consumers in this state; and

(2) designed to meet the collection needs of consumers in this state.

(d) Examples of collection methods that alone or combined meet the convenience requirements of this section include:

(1) a system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail;

(2) a system using a physical collection site that the manufacturer or the manufacturer's designee keeps open and staffed and to which the consumer may return computer equipment; and

(3) a system using a collection event held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

(e) Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and may include electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations.

(f) The recovery plan must include information for the consumer on how and where to return the manufacturer's computer equipment. The manufacturer:

(1) shall include collection, recycling, and reuse information on the manufacturer's publicly available Internet site;

(2) shall provide collection, recycling, and reuse information to the commission; and

(3) may include collection, recycling, and reuse information in the packaging for or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

(g) Information about collection, recycling, and reuse on a manufacturer's publicly available Internet site does not constitute a determination by the commission that the manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(h) Each manufacturer shall submit a report to the commission not later than January 31 of each year that includes:

(1) the weight of computer equipment collected, recycled,

and reused during the preceding calendar year; and

(2) documentation verifying the collection, recycling, and reuse of that computer equipment in a manner that complies with Section 361.964 regarding sound environmental management.

(i) If more than one person is a manufacturer of a certain brand of computer equipment as defined by Section 361.952, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this subchapter for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, the commission may consider any of those persons to be the responsible manufacturer for purposes of this subchapter.

(j) The obligations under this subchapter of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extends to all computer equipment bearing that brand regardless of its date of manufacture.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.956. RETAILER RESPONSIBILITY. (a) A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in this state unless the equipment is labeled with the manufacturer's label and the manufacturer is included on the commission's list of manufacturers that have recovery plans.

(b) Retailers can go to the commission's Internet site as outlined in Section 361.958 and view all manufacturers that are listed as having registered a compliant collection program. Covered electronic products from manufacturers on that list may be sold in or into the State of Texas.

(c) A retailer is not required to collect computer equipment for recycling or reuse under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.957. LIABILITY. (a) A manufacturer or retailer of

computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.958. COMMISSION'S EDUCATION RESPONSIBILITIES. (a) The commission shall educate consumers regarding the collection, recycling, and reuse of computer equipment.

(b) The commission shall host or designate another person to host an Internet site providing consumers with information about the recycling and reuse of computer equipment, including best management practices and information about and links to information on:

(1) manufacturers' collection, recycling, and reuse programs, including manufacturers' recovery plans; and

(2) computer equipment collection events, collection sites, and community computer equipment recycling and reuse programs.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.959. ENFORCEMENT. (a) The commission may conduct audits and inspections to determine compliance with this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against any manufacturer, retailer, or person who recycles or reuses computer equipment for failure to comply with this subchapter.

(c) The attorney general may file suit under Section 7.032, Water Code, to enjoin an activity related to the sale of computer equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the

commission that the retailer's inventory violates this subchapter because it includes computer equipment from a manufacturer that has not submitted the recovery plan required by Section 361.955 must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.960. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.961. ANNUAL REPORT TO LEGISLATURE. The commission shall compile information from manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each year.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.962. FEES NOT AUTHORIZED. This subchapter does not authorize the commission to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.963. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

(b) A consumer is encouraged to learn about recommended methods for recycling and reuse of computer equipment that has reached the end of its useful life by visiting the commission's and manufacturers' Internet sites.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.964. SOUND ENVIRONMENTAL MANAGEMENT. (a) All computer equipment collected under this subchapter must be recycled or reused in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of computer equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Inc., April 25, 2006, or other standards from a comparable nationally recognized organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Sec. 361.965. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of computer equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases computer equipment shall require each prospective bidder to certify the bidder's compliance with this subchapter. Failure to provide that certification renders the prospective bidder ineligible to participate in the bidding.

(d) In considering bids for a contract for computer equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a manufacturer that has a program to recycle the computer equipment of other manufacturers, including collection events and manufacturer initiatives to accept computer equipment labeled with another

manufacturer's brand.

(e) The comptroller and the Department of Information Resources shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 122, eff. September 1, 2019.

Sec. 361.966. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of computer equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 902 (H.B. 2714), Sec. 1, eff. September 1, 2007.

Text of subchapter effective until the date the Texas Commission on Environmental Quality issues a statement under Section 361.992.

SUBCHAPTER Z. TELEVISION EQUIPMENT RECYCLING PROGRAM

Sec. 361.971. DEFINITIONS. In this subchapter:

(1) "Brand" has the meaning assigned by Section 361.952.

(2) "Consumer" means an individual who uses covered television equipment that is purchased primarily for personal or home business use.

(3) "Covered television equipment" means the following equipment marketed to and intended for consumers:

(A) a direct view or projection television with a viewable screen of nine inches or larger whose display technology is based on cathode ray tube, plasma, liquid crystal, digital light processing, liquid crystal on silicon, silicon crystal reflective display, light-emitting diode, or similar technology; or

(B) a display device that is peripheral to a computer

that contains a television tuner.

(4) "Market share allocation" means the quantity of covered television equipment, by weight, that an individual television manufacturer submitting a recovery plan under Section 361.978 is responsible for collecting, reusing, and recycling, as computed by the commission under Section 361.984(g).

(5) "Recycling" means any process by which equipment that would otherwise become solid waste or hazardous waste is collected, separated, and refurbished for reuse or processed to be returned to use in the form of raw material or products. The term does not include incineration.

(6) "Retailer" means a person who owns or operates a business that sells new covered television equipment by any means directly to a consumer. The term does not include a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for leasing of merchandise under a rental-purchase agreement.

(7) "Television" means an electronic device that contains a tuner that locks onto a selected carrier frequency and is capable of receiving and displaying video programming from a broadcast, cable, or satellite source.

(8) "Television manufacturer" means a person that:

(A) manufactures covered television equipment under a brand the person owns or is licensed to use;

(B) manufactures covered television equipment without affixing a brand;

(C) resells covered television equipment produced by other suppliers under a brand the person owns or is licensed to use;

(D) manufactures covered television equipment, supplies it to any person within a distribution network that includes a wholesaler or retailer, and benefits from the sale of the covered television equipment through that distribution network; or

(E) assumes the responsibilities of a television manufacturer under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.972. LEGISLATIVE FINDINGS AND PURPOSE. The purpose of

this subchapter is to establish a comprehensive, convenient, and environmentally sound program for the collection and recycling of television equipment. The program is based on individual television manufacturer responsibility and shared responsibility among consumers, retailers, and the government of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.973. APPLICABILITY. (a) Except as provided by this section and Section 361.991, this subchapter applies only to covered television equipment that is:

(1) offered for sale or sold to a consumer in this state; or

(2) used by a consumer in this state and returned for recycling.

(b) This subchapter does not apply to:

(1) computer equipment as that term is defined by Section 361.952;

(2) a manufacturer of a display device that is peripheral to a computer and contains a television tuner, if that manufacturer collects and recycles the device in accordance with Subchapter Y;

(3) any part of a motor vehicle, including a replacement part;

(4) a device that is functionally or physically part of or connected to another system or piece of equipment:

(A) designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic monitoring or control equipment; or

(B) used for security, sensing, monitoring, antiterrorism, or emergency services purposes;

(5) a device that is contained in exercise equipment intended for home use or an appliance intended for home use including a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, and air purifier;

(6) a telephone of any type;

(7) a personal digital assistant;

(8) a global positioning system;

(9) a consumer's lease of covered television equipment or a consumer's use of covered television equipment under a lease agreement; or

(10) the sale or lease of covered television equipment to an entity when the television manufacturer and the entity enter into a contract that effectively addresses the recycling of equipment that has reached the end of its useful life.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.974. SALES PROHIBITION. A person may not offer for sale in this state new covered television equipment unless the equipment has been labeled in compliance with Section 361.975.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.975. MANUFACTURER'S LABELING REQUIREMENT. A television manufacturer may sell or offer for sale in this state only covered television equipment that is labeled with the television manufacturer's brand. The label must be permanently affixed and readily visible.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.976. MANUFACTURERS' REGISTRATION AND REPORTING. (a) A television manufacturer of covered television equipment shall register with the commission and, except as provided by Section 361.979, pay a registration fee of $2,500. A registered television manufacturer shall renew the registration and, except as provided by Section 361.979, pay the fee on or before January 31 of each year. The registration or registration renewal must include:

(1) a list of all brands the television manufacturer uses in this state on covered television equipment regardless of whether the television manufacturer owns or is licensed to use the brand; and

(2) contact information for the person the commission may

contact regarding the television manufacturer's activities to comply with this subchapter.

(b) Except as provided by Section 361.979, not later than January 31 of each year, each registered television manufacturer of covered television equipment shall report to the commission:

(1) the total weight of covered television equipment for which the television manufacturer is responsible that was sold in this state during the preceding calendar year or, if the manufacturer does not track the weight of covered television equipment it sells by state, the television manufacturer may report the total amount of covered television equipment the television manufacturer sold nationally in the preceding calendar year; and

(2) the total weight of covered television equipment the television manufacturer collected and recycled in this state during the preceding calendar year.

(c) Fees collected under this section shall be deposited to the credit of the television recycling account created under Section 361.977.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.977. TELEVISION RECYCLING ACCOUNT. (a) The television recycling account is an account in the general revenue fund that consists of the:

(1) fees collected under Section 361.976; and

(2) interest earned on the money in the account.

(b) Money in the account may be appropriated only to the commission to be used by the commission to maintain a public Internet website and toll-free telephone number that provide consumers with information about covered television equipment recycling opportunities in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.978. MANUFACTURER'S RECOVERY PLAN AND RELATED RESPONSIBILITIES. (a) This section does not apply to a television manufacturer that participates in a recycling leadership program

described by Section 361.979.

(b) Not later than the first January 31 that occurs after the date the television manufacturer first registers with the commission under Section 361.976, each television manufacturer of covered television equipment sold in this state shall, individually or as a member of a group of television manufacturers, submit to the commission a recovery plan to collect, reuse, and recycle covered television equipment.

(c) An individual television manufacturer that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the television manufacturer's second year of registration, the individual television manufacturer shall collect, reuse, and recycle the quantity of covered television equipment computed by the commission as the television manufacturer's market share allocation.

(d) A group of television manufacturers that submits a recovery plan under Subsection (b) shall collect, reuse, and recycle covered television equipment. Beginning with the second year of registration for a group of television manufacturers, the group of television manufacturers shall collect, reuse, and recycle a quantity of covered television equipment equal to the sum of the combined market share allocations of the group's participants.

(e) A recovery plan under Subsection (b) must include at a minimum:

(1) a statement of whether the television manufacturer intends to collect and recycle its market share allocation through operation of its plan, individually or in partnership with other television manufacturers;

(2) beginning with the television manufacturer's second year of registration, the total weight of covered television equipment collected, reused, and recycled by or on behalf of the television manufacturer during the preceding year; and

(3) collection methods that allow a consumer to recycle covered television equipment without paying a separate fee at the time of recycling.

(f) The commission shall review the recovery plan for satisfaction of the requirements of this subchapter. If the registration and recovery plan are complete, the commission shall include the television manufacturer on the commission's Internet website listing as provided by Section 361.984(a). The commission

may reject the recovery plan if it does not meet all requirements of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.979. MANUFACTURER RECYCLING LEADERSHIP PROGRAM. (a) A group of television manufacturers may establish a recycling leadership program to provide collection, transportation, and recycling infrastructure for covered television equipment in this state.

(b) A recycling leadership program must provide at least 200 individual collection sites or programs in this state in a manner described by Subsection (d) where a consumer may return covered television equipment for reuse or recycling.

(c) A television manufacturer may not charge a separate fee at the time of recycling under this section unless at the time of recycling a financial incentive of equal or greater value to the fee charged is provided by the television manufacturer.

(d) Collection methods that may be used by a recycling leadership program under Subsection (b) for recycling of covered television equipment include:

(1) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers a consumer a physical collection site to return covered television equipment;

(2) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer offers the consumer a method for returning covered television equipment by mail; and

(3) a system by which the television manufacturer, an entity designated by the television manufacturer, or another private or public sector entity associated with the television manufacturer holds a collection event where the consumer may return covered television equipment.

(e) A television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership

program for covered television equipment as of January 1 of any year is not subject during that year to:

(1) the registration fees and renewal fees required by Section 361.976(a); and

(2) the reporting requirements of Section 361.976(b).

(f) Not later than January 31 of each year, each recycling leadership program must provide to the commission a list of the television manufacturers participating in the program for that year.

(g) A television manufacturer of covered television equipment that is sold in this state that participates in a recycling leadership program shall individually or through the recycling leadership program establish and implement a public education program regarding collection, reuse, and recycling opportunities that exist in this state for covered television equipment. The public education program must:

(1) inform consumers about the collection, reuse, and recycling opportunities for covered television equipment available in this state;

(2) work with the commission and other interested parties to develop educational materials that inform consumers about collection, reuse, and recycling opportunities available in this state;

(3) use television manufacturer-developed customer outreach materials, such as packaging inserts, television manufacturers' Internet websites, and other communication methods, to inform consumers about collection, reuse, and recycling opportunities for covered television equipment available in this state; and

(4) use television manufacturer-developed customer outreach materials to provide rural communities with a centralized Internet-based information center that provides information for those communities about:

(A) best practices for collection, reuse, and recycling of covered television equipment; and

(B) collection events and other recycling opportunities in those communities and surrounding areas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.980. RECYCLING LEADERSHIP PROGRAM COLLECTION REPORT. (a) Not later than January 31 of every other year beginning with the television manufacturer's second year of registration, a television manufacturer of covered television equipment sold in this state that is participating in a recycling leadership program under Section 361.979 shall, individually or as a member of the recycling leadership program, submit to the commission a collection report regarding the television manufacturer's collection, reuse, and recycling of covered television equipment.

(b) The collection report must include:

(1) an inventory of covered television equipment collection, reuse, and recycling opportunities that are currently available to consumers through the individual television manufacturer or the recycling leadership program in this state;

(2) documentation of collection opportunities available to consumers in counties with populations of less than 50,000, including an analysis of the number of collection sites available to consumers in those counties compared to the number of opportunities available to consumers in those counties to purchase new covered television equipment;

(3) the amount by weight of the covered television equipment that the individual television manufacturer or the recycling leadership program collected in the two preceding years; and

(4) documentation that the collection, reuse, and recycling of the collected covered television equipment complies with Section 361.990.

(c) The inventory of covered television equipment collection, reuse, and recycling opportunities required by Subsection (b)(1) may be submitted in the form of a map noting the location of the opportunities.

(d) The collection report may include a listing of other existing collection and recycling infrastructure for covered television equipment not associated with the recycling leadership program, including electronic recyclers and repair shops, recyclers of other appropriate commodities, reuse organizations, not-for-profit corporations, retailers, and other suitable operations, including local government collection events, if available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff.

September 1, 2011.

Sec. 361.981. RETAILER RESPONSIBILITY. (a) A retailer may order and sell only products from a television manufacturer that is included on the list published under Section 361.984(a). A retailer shall consult that list before ordering covered television equipment in this state. A retailer is considered to have complied with this subsection and may sell a product in the retailer's inventory if, on the date the product was ordered from the television manufacturer, the television manufacturer was listed on the Internet website described by Section 361.984(a).

(b) A person who is a retailer of covered television equipment shall provide to consumers in writing the information published by the commission regarding the legal disposition and recycling of television equipment. The information may be included with the sales receipt or as part of the packaging of the equipment. Alternatively, the retailer may provide the information required by this subsection through a toll-free telephone number and address of an Internet website provided to consumers.

(c) This subchapter does not require a retailer to collect covered television equipment for recycling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.982. RECYCLER RESPONSIBILITIES. (a) This section does not apply to a television manufacturer.

(b) A person who is engaged in the business of recycling covered television equipment in this state shall:

(1) register with the commission and certify that the person is in compliance with the standards adopted under Section 361.990;

(2) on or before January 31 of each year renew the registration with the commission and certify the person's continued compliance with the standards adopted under Section 361.990;

(3) recycle all covered television equipment accepted for recycling in accordance with the standards adopted under Section 361.990;

(4) maintain a written log recording the weight of all covered television equipment received by the person and the disposition of that equipment; and

(5) annually report to the commission the total weight of covered television equipment received and recycled by the person in the preceding 12 months.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.983. LIABILITY. (a) A television manufacturer, retailer, or person who recycles covered television equipment is not liable in any way for information in any form that a consumer leaves on covered television equipment that is collected or recycled under this subchapter.

(b) This subchapter does not exempt a person from liability under other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.984. COMMISSION RESPONSIBILITIES. (a) The commission shall publish on a publicly accessible Internet website a list of television manufacturers:

(1) whose recovery plans have been approved by the commission;

(2) whose public education programs are in full compliance with this subchapter; and

(3) who are in compliance with the registration and fee requirements of this subchapter, if applicable.

(b) The commission shall remove television manufacturers no longer in compliance under Subsection (a) from the Internet website once each fiscal quarter.

(c) The commission shall educate consumers regarding the collection and recycling of covered television equipment.

(d) The commission shall host or designate another person to host an Internet website and shall provide a toll-free telephone number to provide consumers with information about the recycling of covered television equipment, including best management practices and

information about or links to information about:

(1) television manufacturers' collection and recycling programs, including television manufacturers' recovery plans; and

(2) covered television equipment collection events, collection sites, and community television equipment recycling programs.

(e) Information about collection and recycling provided on a television manufacturer's publicly available Internet website and through a toll-free telephone number does not constitute a determination by the commission that the television manufacturer's recovery plan or actual practices are in compliance with this subchapter or other law.

(f) Not later than November 1 of each year, the commission shall establish the state recycling rate by computing the ratio of the weight of total returns of covered television equipment in this state by television manufacturers submitting a recovery plan under Section 361.978 to the total weight of covered television equipment sold in this state by television manufacturers submitting a recovery plan under Section 361.978 during the preceding year.

(g) Not later than December 1 of each year, the commission shall compute and provide to each registered television manufacturer submitting a recovery plan under Section 361.978 the television manufacturer's market share allocation for collection, reuse, and recycling for that year. A television manufacturer's market share allocation equals the weight of the television manufacturer's covered television equipment sold in this state during the preceding calendar year multiplied by the state recycling rate determined under Subsection (f).

(h) In any year in which more than one recycling leadership program is implemented under Section 361.979, the commission shall review all active recycling leadership programs established under this subchapter to ensure the programs are operating in a manner consistent with the goals of this subchapter, including a balanced recycling effort. Based on the commission's review, the commission may make recommendations to the legislature on ways to improve the balance of the recycling effort.

(i) The commission shall provide to each county and municipality of this state information regarding the legal disposal and recycling of covered television equipment. The information must be provided in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.985. ENFORCEMENT. (a) The commission may conduct audits and inspections to ensure compliance with this subchapter and rules adopted under this subchapter.

(b) The commission and the attorney general, as appropriate, shall enforce this subchapter and, except as provided by Subsections (d) and (e), take enforcement action against a television manufacturer, a retailer, or a person who recycles covered television equipment.

(c) The executive director or the attorney general may institute a suit under Section 7.032, Water Code, to enjoin an activity related to the sale of covered television equipment in violation of this subchapter.

(d) The commission shall issue a warning notice to a person on the person's first violation of this subchapter. The person must comply with this subchapter not later than the 60th day after the date the warning notice is issued.

(e) A retailer who receives a warning notice from the commission that the retailer's inventory violates this subchapter because it includes covered television equipment from a television manufacturer that is not in compliance with this subchapter must bring the inventory into compliance with this subchapter not later than the 60th day after the date the warning notice is issued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.986. FINANCIAL AND PROPRIETARY INFORMATION. Financial or proprietary information submitted to the commission under this subchapter is exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.987. BIENNIAL REPORT TO LEGISLATURE. (a) The

commission shall compile information from television manufacturers and issue an electronic report to the committee in each house of the legislature having primary jurisdiction over environmental matters not later than March 1 of each even-numbered year.

(b) The report must include:

(1) collection information provided to the commission by each television manufacturer's report required by Section 361.976(b) or 361.980(a), as applicable;

(2) a summary of comments that have been received from stakeholders such as television manufacturers, electronic equipment recyclers, local governments, and nonprofit organizations;

(3) any recommendations under Section 361.984(h); and

(4) any other information that would assist the legislature in evaluating the effectiveness of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.988. FEES. (a) Except as provided by Section 361.976(a), this subchapter does not authorize the commission to impose a fee, including a recycling fee, on a consumer, television manufacturer, retailer, or person who recycles covered television equipment.

(b) Fees or costs collected under this subchapter may be used by the commission only to implement this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.989. CONSUMER RESPONSIBILITIES. (a) A consumer is responsible for any information in any form left on the consumer's covered television equipment that is collected or recycled.

(b) A consumer is encouraged to learn about recommended methods for recycling covered television equipment that has reached the end of its useful life by visiting the commission's and television manufacturers' Internet websites or calling their toll-free telephone numbers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff.

September 1, 2011.

Sec. 361.990. MANAGEMENT OF COLLECTED TELEVISION EQUIPMENT. (a) Covered television equipment collected under this subchapter must be disposed of or recycled in a manner that complies with federal, state, and local law.

(b) The commission shall adopt as standards for recycling or reuse of covered television equipment in this state the standards provided by "Electronics Recycling Operating Practices" as approved by the board of directors of the Institute of Scrap Recycling Industries, Incorporated, April 25, 2006, or other standards from a comparable nationally recognized organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.991. STATE PROCUREMENT REQUIREMENTS. (a) In this section, "state agency" has the meaning assigned by Section 2052.101, Government Code.

(b) A person who submits a bid for a contract with a state agency for the purchase or lease of covered television equipment must be in compliance with this subchapter.

(c) A state agency that purchases or leases covered television equipment shall require a prospective bidder to certify the bidder's compliance with this subchapter before the agency may accept the prospective bidder's bid.

(d) In considering bids for a contract for covered television equipment, in addition to any other preferences provided under other laws of this state, the state shall give special preference to a television manufacturer that:

(1) through its recovery plan collects more than its market share allocation; or

(2) provides collection sites or recycling events in any county located in a council of governments region in which there are fewer than six permanent collection sites open at least twice each month.

(e) The comptroller shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

Sec. 361.992. FEDERAL PREEMPTION; EXPIRATION. (a) If federal law establishes a national program for the collection and recycling of covered television equipment and the commission determines that the federal law substantially meets the purposes of this subchapter, the commission may adopt an agency statement that interprets the federal law as preemptive of this subchapter.

(b) This subchapter expires on the date the commission issues a statement under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 605 (S.B. 329), Sec. 1, eff. September 1, 2011.

CHAPTER 362. SOLID WASTE RESOURCE RECOVERY FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 362.001. SHORT TITLE. This chapter may be cited as the Solid Waste Resource Recovery Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.002. POLICY AND PURPOSE. (a) The policy of the state is to safeguard the public health, general welfare, and physical property from solid waste pollution by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(b) It is the policy of the state that the processing of solid waste for reuse is essential to the well-being and survival of state inhabitants and the protection of the environment. That processing will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution by preventing further damage to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.003. DEFINITIONS. In this chapter:

(1) "Bond" includes a note or other evidence of indebtedness.

(2) "Cost" means expenses related or incidental to the acquisition, construction, or improvement of a system, including:

(A) real property acquired for a system;

(B) finance charges;

(C) interest before and during construction and for a period the issuer finds reasonable after completion of construction;

(D) expenses incurred for architectural, engineering, and legal services;

(E) license fees and royalties;

(F) expenses incurred for plans, specifications, surveys, and estimates;

(G) expenses incurred in placing the system in operation; and

(H) administration expenses.

(3) "Issuer" means a district or authority that:

(A) is created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution;

(B) is authorized by law to own a waste disposal system; and

(C) includes within its boundaries all of at least one county.

(4) "Public agency" means:

(A) an issuer;

(B) a municipality; or

(C) another political subdivision or agency of the state authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(5) "Real property" means land, a structure, a franchise or interest in land, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(6) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the issuer's governing body.

(7) "Security agreement" means a trust indenture or other instrument securing bonds.

(8) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(9) "System" means real property, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful:

(A) in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste, or convert it to energy or useful matter or resources including electricity, steam, or other form of energy, metal, fertilizer, glass, or other form of resource; or

(B) in the transportation, receipt, storage, transfer, and handling of solid waste, the preparation, separation, or processing of solid waste for reuse, the handling and transportation of recovered matter, resources, or energy, and the handling, transportation, and disposition of nonrecoverable solid waste residue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.004. EFFECT OF OTHER LAW. (a) This chapter does not limit the authority of the Texas Natural Resource Conservation Commission or a local government to:

(1) perform a power or duty provided by other law; or

(2) adopt and enforce rules to carry out duties under Chapter 361 (Solid Waste Disposal Act).

(b) Chapter 361 (Solid Waste Disposal Act) shall be enforced without regard to ownership of a system financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate, or recover damages for, a condition of pollution or other nuisance. A person purchasing or leasing a system under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the system.

(d) An issuer or public agency may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.031, eff. Aug. 12, 1991.

Sec. 362.005. EXCEPTION FOR CERTAIN MATERIAL PRESORTED TO BE RECYCLED. This chapter does not authorize a public agency to compel burning of material presorted to be recycled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. OPERATION OF SYSTEM

Sec. 362.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY. (a) An issuer may acquire, construct, and improve a system for lease or sale as provided by this chapter and may acquire real property as the issuer considers appropriate for the system.

(b) An issuer may lease its system to another person.

(c) An issuer may sell a system, by installment payments or other method of payment, to any person on conditions the issuer considers desirable.

(d) A lease or sales contract entered into under this chapter may be for the term agreed to by the parties, and must provide that it continues in effect until the bonds specified in the lease or contract, or refunding bonds issued in place of those bonds, are fully paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.012. LOCATION OF SYSTEM. A system may be located on the property of any person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.013. CONTRACT TERMS AND PROCEDURES. (a) The provisions of Chapter 2253, Government Code, that relate to performance and payment bonds apply to a contract entered into by an issuer.

(b) An issuer may contract for the acquisition, construction, and improvement of a system on the terms and under the conditions

that the governing body of the issuer considers appropriate, including a contract under which a person agrees to perform and supply all services and materials required in connection with the design, construction, and placing into operation of a system.

(c) The issuer shall publish notice of the time and place the contract will be let in a newspaper of general circulation within the boundaries of the issuer once a week for two consecutive weeks, with the first publication occurring not later than the 15th day before the date the contract will be let.

(d) The issuer shall analyze competitive proposals received in response to the notice and let the contract to the responsible party making the proposal that is most advantageous to the issuer and that will result in the most economical completion of the system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 362.014. PUBLIC AGENCY CONTRACT. (a) A public agency, on terms it considers appropriate, may contract with an issuer or other person who finances, constructs, or improves a system to sell, lease, or dedicate the use of real property or all or part of a solid waste disposal facility for use as part of the system.

(b) A public agency may contract with any person for the supply, collection, or transportation of solid waste for disposal at a system. The public agency may agree in the contract to supply minimum amounts of solid waste and to pay minimum fees for the right to dispose of the solid waste at the system during the term of the contract. The contract may continue in effect for the term of years that the public agency's governing body determines to be desirable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.015. PAYMENT OF CONTRACT FROM SOURCES OTHER THAN TAXES. (a) A public agency may use any available revenue or resource for, or pledge the revenue or resource to, payment of all or part of the amount due under a contract under Section 362.014. The public agency may agree in the contract to assure availability of payment when required.

(b) The public agency may agree to make sufficient provision in

its annual budget to make all payments under the contract.

(c) The public agency may fix, charge, and collect, from its inhabitants or other users or beneficiaries of a service or facility provided in connection with the contract, a fee, rate, charge, rental, or other amount for the service or facility, including a water charge, sewage charge, solid waste disposal fee or charge, garbage collection or handling fee, or other fee or charge. The public agency may use those amounts for, or pledge them to, payments required under the contract, and may agree in the contract to make that use or pledge in an amount sufficient to make all or part of the payments when due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.016. PAYMENT OF CONTRACT FROM TAXES. (a) A public agency that has taxing power and that, when it enters into a contract under Section 362.014, is using its general funds, including tax revenue, to pay all or part of the cost of providing solid waste collection, transportation, and disposal services may agree that the payments under the contract are an obligation against the public agency's taxing power.

(b) Except as provided by Subsection (c), a person is not entitled to demand payment from taxes during any period unless the contracting person is willing and able to receive and dispose of solid waste during the period as provided by the contract.

(c) A public agency that has taxing power may hold an election substantially in accordance with Chapter 1251, Government Code, applicable to issuance of bonds by a municipality to determine whether a contract may be an obligation secured by the taxing power of the public agency to an extent not permitted by Subsection (b). If it is determined by a favorable vote at the election that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under the contract, and that the payments are to be made unconditionally regardless of whether the contracting person is willing and able to receive and dispose of solid waste as provided by the contract, the contract is an obligation secured by the public agency's taxing power to the extent provided. The ballot proposition at the election must plainly state that ad valorem tax funds may be used to make contract payments if the contractor cannot receive or

dispose of solid waste because of mechanical failure of the facility financed by the bonds or for other reasons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.269, eff. Sept. 1, 2001.

Sec. 362.017. INDUSTRIAL DEVELOPMENT CORPORATION. (a) A public agency that has entered into a contract under Section 362.014 may sponsor the creation of an industrial development corporation under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) The corporation may issue bonds, notes, or other evidences of indebtedness under the Development Corporation Act (Subtitle C1, Title 12, Local Government Code) to finance the cost of a system under the contract regardless of whether the system is located within the boundaries of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.15, eff. April 1, 2009.

Sec. 362.018. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.019. TAXATION. (a) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(b) A system purchased or leased under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer according to state law. An item purchased or leased as part of a system is subject to all applicable state taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BONDS

Sec. 362.031. AUTHORITY TO ISSUE BONDS AND BOND ANTICIPATION NOTES. (a) An issuer may issue bonds, payable from revenues of the issuer, to finance or refinance the cost of acquiring, constructing, or improving a system.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) The issuer may declare an emergency because funds are not available to pay the principal of and interest on its bonds or to meet other needs of the issuer and may issue bond anticipation notes to borrow the needed money. The bond anticipation notes may bear interest at any fixed, floating, or other type of rate, and must mature within one year of their date. The bond anticipation notes shall be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of the notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.032. FORM AND PROCEDURE. (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the issuer's governing body;

(2) be attested by the secretary of the issuer's governing body; and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the issuer's governing body, except that the designation must include:

(1) the name of each person guaranteeing the contractual obligation of each person leasing or purchasing the system; or

(2) a statement, if applicable, that a group of persons

will be leasing or purchasing the system.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.033. TERMS. Bonds issued under this chapter must mature serially or in another manner not more than 40 years after they are issued. The bonds may:

(1) bear interest at a fixed, floating, or other type of rate, and be sold at public or private sale at a price or under terms that the issuer's governing body determines to be the most advantageous reasonably obtainable;

(2) be made callable before maturity at times and prices prescribed by the issuer's governing body;

(3) be in coupon form; and

(4) be registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.034. APPROVAL AND REGISTRATION. (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or contract of sale previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.035. PLEDGE OF REVENUE AND OTHER AMOUNTS AS SECURITY. (a) Bonds are payable solely from and shall be secured by a pledge of:

(1) revenues of the issuer derived from the lease or sale of a system;

(2) amounts attributable to bond proceeds; or

(3) amounts obtained through the exercise of a remedy provided by the governing body's resolution or a security agreement securing the bonds in the manner specified in the resolution or security agreement.

(b) The governing body shall fix and periodically revise payments under a lease or contract for sale of a system so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement.

(c) The governing body may direct the investment of money in the funds created by the resolution or security agreement, and may delegate this authority to its authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.036. SECURITY MAY APPLY TO ADDITIONAL BONDS. (a) A pledge under Section 362.035 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge.

(b) Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.037. TRUST AS SECURITY. (a) The issuer's governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank that has trust powers and that is located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 362.038, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's system as provided by the trust indenture;

(4) provide in other manners for protection and enforcement of bondholders' rights and remedies as is reasonable and proper; and

(5) provide for the issuance of replacement bonds for lost, stolen, or mutilated bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.038. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated system of the issuer's governing body and all property and rights appurtenant to the system.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the system, sell the system to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the system and rights purchased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.039. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.040. INVESTMENT AND USE OF PROCEEDS. (a) The governing body of the issuer may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds shall be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds shall be invested in the manner provided by the resolution or security agreement.

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of sales contract or lease revenue. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.041. REFUNDING BONDS. (a) The governing body of an issuer may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount

sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.042. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;
(2) a savings bank;
(3) a trust company;
(4) a savings and loan association;
(5) an insurance company;
(6) a fiduciary;
(7) a trustee; and
(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 362.043. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 363. MUNICIPAL SOLID WASTE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 363.001. SHORT TITLE. This chapter may be cited as the

Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.002. POLICY. It is this state's policy to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of this chapter, will further that policy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.003. FINDINGS. The legislature finds that:

(1) the growth of the state's economy and population has resulted in an increase in discarded materials;

(2) the improper management of solid waste creates hazards to the public health, can cause air and water pollution, creates public nuisances, and causes a blight on the landscape;

(3) there is increasing public opposition to the location of solid waste land disposal facilities;

(4) because some communities lack sufficient financial resources, municipal solid waste land disposal sites in the state are being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;

(5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;

(6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;

(7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more

economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;

(8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of those private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;

(9) technologies exist to separate usable material from solid waste and to convert solid waste to energy, and it will benefit this state to work in cooperation with private business, nonprofit organizations, and public agencies that have acquired knowledge, expertise, and technology in the fields of energy production and recycling, reuse, reclamation, and collection of materials;

(10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter long-term contracts to supply solid waste to resource recovery systems or to operate those systems;

(11) the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste; and

(12) local governments should be encouraged to contract with waste management firms to meet the requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1045, Sec. 11, eff. Sept. 1, 1993.

Sec. 363.004. DEFINITIONS. In this chapter:

(1) "Advisory council" means the Municipal Solid Waste Management and source Recovery Advisory Council.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(4) "Disposal" means the discharge, deposit, injection,

dumping, spilling, leaking, or placing of containerized or uncontainerized solid waste or hazardous waste into or on land or water so that the solid waste or hazardous waste or any constituent of solid waste or hazardous waste may enter the environment or be emitted into the air or discharged into surface water or groundwater.

(5) "Governing body" means the governing body of a municipality, the commissioners court, the board of directors, the trustees, or a similar body charged by law with governing a public agency.

(6) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(7) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(8) "Local government" means a county, municipality, or other political subdivision of the state exercising the authority granted under Section 361.165 (Solid Waste Disposal Act).

(9) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(10) "Planning fund" means the municipal solid waste management planning fund.

(11) "Planning region" means a region of this state identified by the governor as an appropriate region for municipal solid waste planning as provided by Section 4006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(12) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of hazardous waste so as to:

(A) neutralize hazardous waste;

(B) recover energy or material from hazardous waste;

or

(C) render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.

(13) "Property" means land, structures, interest in land, air rights, water rights, and rights that accompany interest in land, structures, water rights, and air rights and includes easements, rights-of-way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(14) "Public agency" means a municipality, county, or district or authority created and operating under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution, or a combination of two or more of those governmental entities acting under an interlocal agreement and having the authority under this chapter or other law to own and operate a solid waste management system.

(15) "Regional or local solid waste management plan" means a plan adopted by a planning region under Section 363.062 or a local government under Section 363.063.

(16) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body.

(17) "Resource recovery" means recovering materials or energy from solid waste or otherwise converting solid waste to a useful purpose.

(18) "Resource recovery system" means real property, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste or convert it to energy or useful matter or resources, including electricity, steam, or other forms of energy, metal, fertilizer, glass, or other forms of material and resources. The term includes real property, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) transporting, receiving, storing, transferring, and handling solid waste;

(B) preparing, separating, or processing solid waste

for reuse;

(C) handling and transporting recovered matter, resources, or energy; and

(D) handling, transporting, and disposing of nonrecoverable solid waste residue.

(19) "Solid waste" means garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

(A) solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas.

(20) "Solid waste management" means the systematic control of any of the following activities:

(A) generation;

(B) source separation;

(C) collection;

(D) handling;

(E) storage;

(F) transportation;

(G) processing;

(H) treatment;

(I) resource recovery; or

(J) disposal of solid waste.

(21) "Solid waste management system" means a plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment that is acquired, installed, or operated to collect, handle, store, process, recover material or energy from, or dispose of solid waste, and includes sites for those works and equipment.

(22) "State solid waste management plan" means the Solid Waste Management Plan for Texas, Volume 1, Municipal Solid Waste, adopted by the Texas Board of Health, including subsequent amendments by the commission.

(23) "Technical assistance fund" means the municipal solid waste resource recovery applied research and technical assistance fund.

(24) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that result from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 5, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.032, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.93, eff. Sept. 1, 1995.

Sec. 363.005. APPLICATION OF CHAPTER. This chapter applies only to solid waste and hazardous waste as described by Sections 361.011 and 361.012.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.033, eff. Aug. 12, 1991.

Sec. 363.006. CONSTRUCTION OF CHAPTER; EXEMPTIONS. (a) This chapter does not prohibit or limit a person from extracting or using materials that the person generates or legally collects or acquires for recycling or resale.

(b) Materials that are separated or recovered from solid waste for reuse or recycling by the generator, by a private person under contract with the generator, or by a collector of solid waste or recovered materials are not subject to this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.007. STATUTES NOT AFFECTED BY CHAPTER. This chapter

does not affect:

(1) Chapter 361 (Solid Waste Disposal Act);

(2) Chapter 364 (County Solid Waste Control Act); or

(3) Chapter 362 (Solid Waste Resource Recovery Financing Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 363.021. COMMISSION RULEMAKING AUTHORITY. The commission may adopt rules necessary to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.022. COMMISSION POWERS AND DUTIES. (a) The commission shall implement and enforce this chapter.

(b) The commission shall:

(1) provide technical assistance to public agencies and planning regions and cooperate with federal agencies and private organizations in carrying out this chapter;

(2) promote planning for and implementation of the recovery of materials and energy from solid waste;

(3) establish guidelines for regional and local municipal solid waste management plans;

(4) review and approve or disapprove regional and local municipal solid waste management plans;

(5) assist the advisory council in its duties;

(6) provide educational and informational programs to promote effective municipal solid waste management practices and to encourage resource recovery;

(7) provide procedures under which public agencies and planning regions may apply for financial assistance grants;

(8) evaluate applications and award financial assistance grants in accordance with commission rules; and

(9) coordinate programs under this chapter with other state agencies, including the Railroad Commission of Texas and any other state or federal agency having an interest in a program or project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.023. APPLICATION FOR FEDERAL FUNDS; CONTRACTS AND AGREEMENTS WITH FEDERAL GOVERNMENT. The commission may apply for and accept federal funds and enter into contracts and agreements with the federal government relating to planning, developing, maintaining, and enforcing the municipal solid waste management program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

Sec. 363.024. DISBURSEMENT OF FEDERAL FUNDS. (a) The commission may accept and disburse funds received from the federal government for purposes relating to solid waste management and resource recovery in the manner provided by this chapter and by agreement between the federal government and the commission.

(b) State funds provided to public agencies or planning regions under this chapter may be combined with local or regional funds to match federal funds on approved programs for municipal solid waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.94, eff. Sept. 1, 1995.

SUBCHAPTER C. ADVISORY COUNCIL

Sec. 363.041. COMPOSITION OF ADVISORY COUNCIL. The Municipal Solid Waste Management and Resource Recovery Advisory Council is composed of the following 18 members appointed by the commission:

(1) an elected official from a municipality with a population of 750,000 or more;

(2) an elected official from a municipality with a population of 100,000 or more but less than 750,000;

(3) an elected official from a municipality with a population of 25,000 or more but less than 100,000;

(4) an elected official from a municipality with a population of less than 25,000;

(5) two elected officials of separate counties, one of whom

is from a county with a population of less than 150,000;

(6) an official from a municipality or county solid waste agency;

(7) a representative from a private environmental conservation organization;

(8) a representative from a public solid waste district or authority;

(9) a representative from a planning region;

(10) a representative of the financial community;

(11) a representative from a solid waste management organization composed primarily of commercial operators;

(12) two persons representing the public who would not otherwise qualify as members under this section;

(13) a registered waste tire processor;

(14) a professional engineer from a private engineering firm with experience in the design and management of solid waste facilities;

(15) a solid waste professional with experience managing or operating a commercial solid waste landfill; and

(16) a person who is experienced in the management and operation of a composting or recycling facility or an educator with knowledge of the design and management of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 3.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.95, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 1, eff. Sept. 1, 1997.

Sec. 363.042. TERMS; VACANCIES. (a) Advisory council members serve for staggered six-year terms, with the terms of five members expiring August 31 of each odd-numbered year.

(b) The commission shall fill a vacancy on the advisory council for the unexpired term by appointing a person who has the same qualifications as required under Section 363.041 for the person who previously held the vacated position.

(c) A person who is appointed to a term on the advisory council or to fill a vacancy on the advisory council may continue to serve as a member only while the person continues to qualify for the category from which the person is appointed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.96, eff. Sept. 1, 1995.

Sec. 363.043. PRESIDENT. (a) The commission chairman shall appoint one member as advisory council president.

(b) The advisory council president serves for a term of two years expiring August 31 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.97, eff. Sept. 1, 1995.

Sec. 363.044. PAYMENT OF AND REIMBURSEMENT FOR EXPENSES. (a) Each advisory council member is entitled to compensation and reimbursement of travel expenses incurred by the member while conducting the business of the advisory council, as provided in the General Appropriations Act.

(b) The expenses incurred by the advisory council are to be paid from the planning fund, the technical assistance fund, or other money available for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.98, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 408, Sec. 2, eff. Sept. 1, 1997.

Sec. 363.045. MEETINGS. (a) The advisory council shall adopt and may amend procedures for the conduct of advisory council business.

(b) The advisory council shall hold at least one meeting every three months.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.046. DUTIES. The advisory council shall:

(1) review and evaluate the effect of state policies and programs on municipal solid waste management;

(2) make recommendations to the executive director and the commission on matters relating to municipal solid waste management;

(3) recommend legislation to the commission to encourage the efficient management of municipal solid waste;

(4) recommend policies to the commission for the use, allocation, or distribution of the planning fund that include:

(A) identification of statewide priorities for use of funds;

(B) the manner and form of application for financial assistance; and

(C) criteria, in addition to those prescribed by Section 363.093(d), to be evaluated in establishing priorities for providing financial assistance to applicants; and

(5) recommend to the executive director special studies and projects to further the effectiveness of municipal solid waste management and resource recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

SUBCHAPTER D. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS

Sec. 363.061. COMMISSION RULES; APPROVAL OF REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS. (a) The commission shall adopt rules relating to regional and local solid waste management plans, including procedures for review and criteria for approval of those plans.

(b) The commission by rule shall require as criteria for approval of a regional or local solid waste management plan that the plan reflect consideration of the preference of municipal solid waste management methods under Section 361.022 (Solid Waste Disposal Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.99, eff. Sept. 1, 1995.

Sec. 363.0615. RESPONSIBILITY FOR REGIONAL PLANNING. (a) A council of governments has primary responsibility for the regional planning process.

(b) A planning region may be divided into subregions as part of the regional planning process. If a planning region is divided into subregions, the council of governments with jurisdiction in the planning region may assist the local governments constituting a

subregion to develop a joint local solid waste management plan that provides for solid waste services for solid waste generated within that subregion.

(c) A council of governments may:

(1) employ personnel necessary to carry out the regional planning process, including an administrator for each subregion if subregions are established; and

(2) adopt rules necessary to carry out responsibilities concerning the regional planning process.

(d) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(b), eff. Sept. 6, 1990.

Sec. 363.0616. PREPARATION OF REGIONAL PLAN BY OTHER PUBLIC AGENCY IN CERTAIN REGIONS. (a) In a 10-county region with a population of less than 300,000, a council of governments is not required to prepare a regional solid waste management plan for that region if a public agency other than a municipality or county has received state funds for that purpose and has prepared a plan that has been approved by the state agency that administered the state funds.

(b) In this section, "council of governments" means a regional planning commission created under Chapter 391, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 267, Sec. 1, eff. June 5, 1991.

Sec. 363.062. REGIONAL SOLID WASTE MANAGEMENT PLAN. (a) A planning region shall develop a regional solid waste management plan as provided by Section 363.0635 that must conform to the state solid waste management plan.

(b) A regional solid waste management plan shall be submitted to the commission for review.

(c) If the commission determines that a regional solid waste management plan conforms to the requirements adopted by the commission, the commission shall consider the regional solid waste management plan for approval.

(d) In each even-numbered year on the anniversary of the

adoption of a municipal solid waste management plan, each planning region shall report to the commission on the progress of the region's municipal solid waste management program and recycling activities developed under this section. The commission may not require a planning region to submit to the commission information previously submitted to the commission by the planning region in an earlier plan or report.

(e) If the commission determines that a regional solid waste management plan does not conform to the requirements adopted by the commission, the commission shall give written notice to the planning region of each aspect of the plan that must be changed to conform to commission requirements. After the changes have been made in the plan as provided by the commission, the commission shall consider the plan for approval.

(f) The commission by rule shall adopt an approved regional solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(a), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.09, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.100, eff. Sept. 1, 1995.

Sec. 363.063. LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A local government shall develop a local solid waste management plan as provided by Section 363.0635.

(b) A local solid waste management plan must conform to the adopted regional solid waste management plan that covers the area in the local government's jurisdiction.

(c) A local solid waste management plan shall be submitted to the commission for review. If the commission determines that the plan conforms to the requirements adopted by the commission, the commission shall consider the plan for approval.

(d) In each even-numbered year on the anniversary of the adoption of a municipal solid waste management plan, each local government shall report to the commission on the progress of its municipal solid waste management program and recycling activities implemented under this section. The commission may not require a local government to submit to the planning region or to the

commission information previously submitted to the planning region or commission by the local government in an earlier plan or report.

(e) If the commission determines that a local solid waste management plan does not conform to the requirements adopted by the commission, the commission shall give written notice to the local government of each aspect of the plan that must be changed to conform to commission requirements. After changes are made in the plan as requested by the commission, the commission shall consider the plan for approval.

(f) The commission by rule shall adopt an approved local solid waste management plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(c), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 899, Sec. 2.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 14, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.101, eff. Sept. 1, 1995.

Sec. 363.0635. SCHEDULE FOR ADOPTION OF PLANS. (a) The commission shall establish a time schedule by which each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in those planning regions shall develop local solid waste management plans as required by this section.

(b) The time schedule shall be based on the availability of funds to provide financial assistance to planning regions and local governments as prescribed by Sections 363.091 through 363.093 for the development of those plans.

(c) Unless otherwise required by federal law or federal regulations, a planning region or local government is not required to develop a solid waste management plan until after the date on which funds are provided to that planning region or local government by the commission as prescribed by Sections 363.091 through 363.093 for the development of plans.

(d) Each planning region existing on September 1, 1989, shall develop a regional solid waste management plan, and local governments located in that planning region shall develop local solid waste management plans in accordance with the time schedule established by the commission and as provided by this subchapter.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(d), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.102, eff. Sept. 1, 1995.

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling;

(3) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(4) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(5) encourage cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(6) consider the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(7) allow a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(8) establish recycling rate goals appropriate to the area covered by the plan;

(9) recommend composting programs for yard waste and related organic wastes that may include:

(A) creation and use of community composting centers;

(B) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(C) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch;

(10) include an inventory of municipal solid waste landfill units, including:

(A) landfill units no longer in operation;

(B) the exact boundaries of each former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;

(C) a map showing the approximate boundaries of each former landfill unit, if the exact boundaries are not known;

(D) the current owners of the land on which the former landfill units were located; and

(E) the current use of the land;

(11) assess the need for new waste disposal capacity; and

(12) include a public education program.

(b) If the boundaries of a municipal solid waste unit that is no longer operating are known to be wholly on an identifiable tract, the council of governments for the area in which the former landfill unit is located shall notify the owner of land that overlays the former landfill unit of the former use of the land and shall notify the county clerk of the county or counties in which the former landfill unit is located of the former use. The notice to the county clerk must include:

(1) a description of the exact boundaries of the former landfill unit or, if the exact boundaries are not known, the best approximation of each unit's boundaries;

(2) a legal description of the parcel or parcels of land in which the former landfill unit is located;

(3) notice of the former landfill unit's former use; and

(4) notice of the restrictions on the land imposed by this subchapter.

(c) The county clerk shall record the descriptions and notices submitted by a council of governments under Subsection (b). The county clerk may prescribe the method of arranging and indexing the descriptions and notices. The county clerk shall make the descriptions and notices available for public inspection.

(d) The municipalities and counties within each council of governments shall cooperate fully in compiling the inventory of landfill units.

(e) Each council of governments shall provide a copy of the inventory of municipal solid waste landfill units to the commission and to the chief planning official of each municipality and county in

which a unit is located. The commission and the officials shall make the inventory available for public inspection.

(f) The commission may grant money from fees collected under Section 361.013 to a municipality or association of municipalities for the purpose of conducting the inventory required by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(e), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 238, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 303, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 770, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.103, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.01, eff. Jan. 11, 2004.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1276 (H.B. 1435), Sec. 5, eff. September 1, 2013.

Sec. 363.065. PLANNING PROCESS; PLANNING AREA. (a) A regional or local solid waste management plan must result from a planning process that:

(1) is related to proper management of solid waste in the planning area under consideration; and

(2) identifies problems and collects and evaluates data necessary to provide a written public statement of goals, objectives, and recommended actions intended to accomplish those goals and objectives.

(b) A regional solid waste management plan must consider the entire area in an identified planning region.

(c) A local solid waste management plan must consider all the area in the jurisdiction of one or more local governments but may not include an entire planning region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.066. CONFORMITY WITH REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. (a) On the adoption of a regional or local solid

waste management plan by commission rule, public and private solid waste management activities and state regulatory activities must conform to that plan.

(b) The commission may grant a variance from the adopted plan under procedures and criteria adopted by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 31(f), eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.104, eff. Sept. 1, 1995.

Sec. 363.067. STUDY REQUIRED FOR RESOURCE RECOVERY OR OTHER SOLID WASTE MANAGEMENT SYSTEMS. (a) To develop programs to implement regional or local solid waste management plans or other solid waste management alternatives that include resource recovery, a study must be made to determine feasibility and acceptance of the programs.

(b) The study shall be conducted in three phases:

(1) a screening study;

(2) a feasibility study; and

(3) an implementation study.

(c) Public agencies that conduct all or part of one or more phases may qualify for assistance to accomplish other phases or parts of phases.

(d) After each phase, the governing body shall determine whether to proceed to the next phase.

(e) A study may not include final design and working drawings of any request for proposals for project facilities or operations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.068. SCREENING STUDY. (a) A screening study must provide a survey and assessment of the various factors affecting the suitability of resource recovery or other solid waste management systems with the scope and detail needed to make an initial determination of whether those systems are potentially successful alternatives to existing systems.

(b) The survey and assessment must include:

(1) the amount and characteristics of available waste;

(2) the suitability and economics of existing solid waste management systems;
(3) institutional factors affecting potential alternatives;
(4) technologies available;
(5) identification of potential material and energy markets;
(6) economics of alternative systems; and
(7) interest of the local citizenry in available alternatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.069. FEASIBILITY STUDY. A feasibility study must provide an evaluation of alternatives that:
(1) identifies current solid waste management practices and costs;
(2) analyzes the waste stream and its availability by composition and quantity;
(3) identifies potential markets and obtains statements of interest for recovered materials and energy;
(4) identifies and evaluates alternative solid waste management systems;
(5) provides an assessment of potential effects of alternatives in terms of their public health, physical, social, economic, fiscal, environmental, and aesthetic implications;
(6) conducts and evaluates results of public hearings or surveys of local citizens' opinions; and
(7) makes recommendations on alternatives for further consideration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.070. IMPLEMENTATION STUDY. An implementation study must:
(1) provide a recommended course of action for a public agency;
(2) provide for the collection and analysis of data;
(3) identify and characterize solid waste problems and issues;

(4) determine waste stream composition and quantity;
(5) identify and analyze alternatives;
(6) evaluate risk elements of alternatives;
(7) identify and solidify markets;
(8) make site analyses;
(9) evaluate financing options and recommend preferred methods of financing;
(10) evaluate the application of resource recovery technologies;
(11) identify and discuss potential effects of alternative systems;
(12) provide for public participation and recommend preferred alternatives; and
(13) provide for implementation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. PLANNING FUND AND TECHNICAL ASSISTANCE FUND

Sec. 363.091. MUNICIPAL SOLID WASTE MANAGEMENT PLANNING FUND. (a) The municipal solid waste management planning fund is in the state treasury.

(b) In addition to money appropriated by the legislature, money received from other sources, including money received under contracts or agreements entered into under Section 363.116, shall be deposited to the credit of the planning fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.092. PLANNING FUND USE; FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS AND PLANNING REGIONS. (a) The executive director shall administer the financial assistance program and the planning fund under the commission's direction.

(b) The commission shall adopt rules for the use and distribution to public agencies and planning regions of money in the planning fund.

(c) The commission shall use the planning fund to provide financial assistance to:

(1) local governments and planning regions to develop regional and local solid waste management plans;

(2) public agencies and planning regions to prepare screening, feasibility, and implementation studies; and

(3) local governments and planning regions for costs of developing and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

(d) The commission shall use at least 90 percent of the money appropriated to it for the planning fund to provide financial assistance, and not more than 10 percent of the total funds appropriated to the commission for the planning fund may be used to administer the financial assistance program and the planning fund and to pay the expenses of the advisory council.

(e) The planning fund may not be used for construction or to prepare final design and working drawings, acquire land or an interest in land, or pay for recovered resources.

(f) The commission by rule shall allocate a specific percentage of money provided under Subsection (c)(1) to be used to develop plans for community household hazardous waste collection programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 238, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 303, Sec. 7, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.105, eff. Sept. 1, 1995.

Sec. 363.093. APPLICATION FOR FINANCIAL ASSISTANCE. (a) An applicant for financial assistance from the planning fund must agree to comply with:

(1) the state solid waste management plan;

(2) the commission's municipal solid waste management rules; and

(3) other commission requirements.

(b) The commission may not authorize release of funds under a financial assistance application until the applicant furnishes to the commission a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying that:

(1) the applicant will comply with the financial assistance program's provisions and commission requirements;

(2) the funds will be used only for the purposes for which they are provided;

(3) regional or local solid waste management plans or studies developed with the financial assistance will be adopted by the governing body as its policy; and

(4) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(c) Financial assistance provided by the commission to a public agency or planning region must be matched at least equally by funds provided by the recipient, except that this matching requirement does not apply if the recipient is a council of governments created under Chapter 391, Local Government Code, or a municipality or county.

(d) The priority given to applicants in receiving financial assistance must be determined by:

(1) the need to initiate or improve the solid waste management program in the applicant's jurisdiction;

(2) the needs of the state;

(3) the applicant's financial need; and

(4) the degree to which the proposed program will result in improvements that meet the requirements of state, regional, and local solid waste management plans.

(e) The commission may approve an application for financial assistance if:

(1) the application is consistent with the rules adopted by the commission under Section 363.092(b); and

(2) the commission finds that the applicant requires state financial assistance and that it is in the public interest to provide the financial assistance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 737, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.106, eff. Sept. 1, 1995.

Sec. 363.094. MUNICIPAL SOLID WASTE RESOURCE RECOVERY APPLIED RESEARCH AND TECHNICAL ASSISTANCE FUND. (a) The municipal solid waste resource recovery applied research and technical assistance fund is in the state treasury.

(b) The technical assistance fund is composed of legislative appropriations.

(c) The technical assistance fund shall be used to:

(1) accomplish applied research and development studies; and

(2) provide technical assistance to public agencies to carry out investigations and to make studies relating to resource recovery and improved municipal solid waste management.

(d) The executive director shall administer the technical assistance fund under the commission's direction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.107, eff. Sept. 1, 1995.

Sec. 363.095. USE OF TECHNICAL ASSISTANCE FUND. (a) Studies, applied research, investigations, and other purposes accomplished with and technical assistance provided through use of money in the technical assistance fund must comply with:

(1) the state solid waste management plan;

(2) the commission's municipal solid waste management rules; and

(3) other commission policy requirements.

(b) Technical assistance, applied research, investigations, studies, and other purposes for which funds may be provided may include:

(1) an evaluation of the long-term statewide needs of public agencies in financing municipal solid waste systems and consideration of the nature and extent of financial support that the state should provide for those systems;

(2) an evaluation of state of the art waste reduction systems and waste-to-energy systems that include steam generation and electrical production;

(3) establishment and evaluation of a pilot source separation and recycling project;

(4) feasibility studies of appropriate technology that may be applicable to several local governments for the improvement of solid waste management systems;

(5) cost and economic comparisons of alternative solid waste management systems;

(6) an evaluation of available markets for energy and recovered materials;

(7) an evaluation of the availability of recovered

materials and energy resources for new market opportunities; and

(8) a citizen involvement program to educate citizens in solid waste management issues and the improvement of solid waste management practices.

(c) The commission may hire personnel to be paid from the technical assistance fund and may use the technical assistance fund for obtaining consultant services and for entering into interagency agreements with other state agencies, public agencies, or planning regions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.108, eff. Sept. 1, 1995.

SUBCHAPTER F. LOCAL SOLID WASTE SERVICES AND REGULATION

Sec. 363.111. ADOPTION OF RULES BY PUBLIC AGENCY. (a) A governing body may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal.

(b) The rules may not authorize any activity, method of operation, or procedure prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules or regulations of the commission or other state or federal agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.109, eff. Sept. 1, 1995.

Sec. 363.112. PROHIBITION OF PROCESSING OR DISPOSAL OF SOLID WASTE IN CERTAIN AREAS. (a) To prohibit the processing or disposal of municipal or industrial solid waste in certain areas of a municipality or county, the governing body of the municipality or county must by ordinance or order specifically designate the area of the municipality or county, as appropriate, in which the disposal of municipal or industrial solid waste will not be prohibited.

(b) The ordinance or order must be published for two consecutive weeks in a newspaper of general circulation in the area of the municipality or county, as appropriate, before the date the proposed ordinance or order is adopted by the governing body.

(c) The governing body of a municipality or county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that municipality or county for which:

(1) an application for a permit or other authorization under Chapter 361 has been filed with and is pending before the commission; or

(2) a permit or other authorization under Chapter 361 has been issued by the commission.

(d) The commission may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance or order authorized by Subsection (a), unless the governing body of the municipality or county violated Subsection (c) in passing the ordinance or order. The commission by rule may establish procedures for determining whether an application is for the processing or disposal of municipal or industrial solid waste in an area for which that processing or disposal is prohibited by an ordinance or order.

(e) The powers specified by this section may not be exercised by the governing body of a municipality or county with respect to areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.110, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 4, eff. Sept. 1, 1999.

Sec. 363.113. ESTABLISHMENT OF SOLID WASTE MANAGEMENT SERVICES. Each county with a population of more than 30,000 and each municipality shall review the provision of solid waste management services in its jurisdiction and shall assure that those services are provided to all persons in its jurisdiction by a public agency or private person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.114. RESOURCE RECOVERY SERVICE; FEES. (a) A public agency may offer a resource recovery service to persons in its jurisdictional boundaries and may charge fees for that service.

(b) To aid in enforcing collection of fees for a resource recovery service, a public agency, after notice and hearing, may suspend service provided by any utility owned or operated by the public agency to a person who is delinquent in payment of those fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.115. TAX EXEMPT STATUS OF CERTAIN RESOURCE RECOVERY SYSTEMS. A resource recovery system acquired by a public agency to reduce municipal solid waste by mechanical means or incineration is exempt from property taxes of any municipality, county, school district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.116. AUTHORITY TO ENTER CONTRACTS CONCERNING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the public agency's governing body.

(b) A home-rule municipality's charter provision restricting the duration of a municipal contract does not apply to a municipal contract that relates to solid waste management services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.117. SOLID WASTE MANAGEMENT SERVICE CONTRACTS. Under a solid waste management service contract, a public agency may:

(1) acquire and operate all or any part of one or more solid waste management systems, including resource recovery systems;

(2) contract with a person or other public agency to manage solid waste for that person or agency;

(3) contract with a person to purchase or sell, by installments over a term considered desirable by the governing body or otherwise, all or any part of a solid waste management system, including a resource recovery system;

(4) contract with a person or other public agency for the operation of all or any part of a solid waste management system, including a resource recovery system;

(5) lease to or from a person or other public agency, for the term and on the conditions considered desirable by the governing body, all or any part of a solid waste management system, including a resource recovery system;

(6) contract to make all or any part of a solid waste management system available to other persons or public agencies and furnish solid waste management services through the public agency's system, provided the contract:

(A) includes provisions to assure equitable treatment of parties who contract with the public agency for solid waste management services from all or any part of the same solid waste management system;

(B) provides the method of determining the amounts to be paid by the parties;

(C) provides that the public agency shall either operate or contract with a person to operate for the public agency a solid waste management system or part of a solid waste management system;

(D) provides that the public agency is entitled to continued performance of the services after the amortization of the public agency's investment in the solid waste management system during the useful life of the system on payment of reasonable charges for the services, reduced to take into consideration the amortization; and

(E) includes any other provisions and requirements the public agency determines to be appropriate;

(7) contract with another public agency or other persons for solid waste management services, including contracts for the collection and transportation of solid waste and for processing or disposal at a permitted solid waste management facility, including a resource recovery facility, provided the contract may specify:

(A) the minimum quantity and quality of solid waste to be provided by the public agency; and

(B) the minimum fees and charges to be paid by the public agency for the right to have solid waste processed or disposed of at the solid waste management facility;

(8) contract with a person or other public agency to supply materials, fuel, or energy resulting from the operation of a resource recovery facility; and

(9) contract with a person or other public agency to receive or purchase solid waste, materials, fuel, or energy recovered from resource recovery facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.118. INDUSTRIAL DEVELOPMENT CORPORATIONS. (a) A public agency that enters into a contract under Section 363.116 may sponsor the creation of an industrial development corporation as provided by the Development Corporation Act (Subtitle C1, Title 12, Local Government Code).

(b) If the system is located in the public agency's boundaries, the corporation may issue its bonds, notes, or other evidences of indebtedness to finance the costs of a solid waste management system, including a resource recovery system, contemplated under the contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.16, eff. April 1, 2009.

Sec. 363.119. FUNDING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may establish a solid waste management fund to make payments for solid waste management services covered by contracts entered into by the public agency.

(b) A public agency may agree to make sufficient provision in its annual budget to make payments under its contracts.

(c) Payments to be made by a public agency under a contract may also be made from revenues of the public agency's solid waste, water, sewer, electric, or gas system or any combination of utility systems.

(d) As a source of payment or as the sole source of payment, a public agency may use and pledge available revenues or resources for and to the payment of amounts due under contracts and may enter into covenants concerning those sources of payment to assure their availability if required.

(e) A public agency may establish, charge, and collect fees, rates, charges, rentals, and other amounts for services or facilities provided under or in connection with a contract. Those fees, rates, charges, rentals, and other amounts may be charged to and collected from the residents of the public agency, if any, or from users or beneficiaries of the services or facilities and may include water charges, sewage charges, and solid waste disposal fees and charges,

including solid waste collection or handling fees. The public agency may use and pledge those fees, rates, charges, rentals, and other amounts to make payments required under a contract and may enter into a covenant to do so in amounts sufficient to make all or any part of the payments when due.

(f) A public agency that has taxing power, and that at the time of entering into a contract is using its general funds, including its tax revenues, to pay all or part of the costs of providing solid waste collection, transportation, and disposal services, may agree and pledge that the contract is an obligation against the taxing power of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. BONDS

Sec. 363.131. AUTHORITY TO ISSUE BONDS. (a) A public agency may issue bonds in the name of the public agency to acquire, construct, improve, enlarge, and repair all or part of a solid waste management system, including a resource recovery system.

(b) Pending the issuance of definitive bonds, a public agency may issue negotiable interim bonds eligible for exchange or substitution on issuance of definitive bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.132. TERMS; FORM. (a) A public agency may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years after the date of issuance and shall bear interest at a rate permitted by state law.

(c) A public agency's bonds and interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code, and may be:

(1) issued registrable as to principal or as to principal and interest; and

(2) made redeemable before maturity, at the option of the public agency, or may contain a mandatory redemption provision.

(d) A public agency's bonds may be issued in the form, denominations, and manner, and under the terms, and shall be signed

and executed, as provided by the governing body in the resolution or order authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.133. BOND PROVISIONS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the governing body may:

(1) provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of the physical property of the solid waste management system, the revenue of which is pledged.

(b) In the orders or resolutions authorizing the issuance of bonds, the governing body may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued; and

(2) include other provisions as the governing body may determine.

(c) The governing body may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.134. APPROVAL AND REGISTRATION. (a) A public agency shall submit bonds issued by the public agency and records relating to their issuance to the attorney general for examination as to their validity. If the bonds are secured by a pledge of proceeds from a contract, the public agency shall submit to the attorney general for examination a copy of the contract and a copy of the records relating to the contract.

(b) If the attorney general finds that the bonds have been authorized and a contract entered into in accordance with law, the

attorney general shall approve the bonds, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.135. BOND PAYMENT AND SECURITY. A public agency may pay the principal of and interest on bonds:

(1) from the levy and collection of taxes on all taxable property in the public agency's boundaries if the public agency is authorized by law to levy and collect property taxes;

(2) by pledging all or part of the designated revenues from the ownership or operation of physical property of a solid waste management system, including a resource recovery system, or from a contract entered into by a public agency under this chapter; or

(3) from other income of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.136. BOND ELECTION. Bonds secured in whole or in part by taxes may not be issued by a public agency until authorized by a majority vote of the qualified voters of the public agency at an election ordered for that purpose. A bond election shall be held in the manner provided by law for other bond elections of the public agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.137. OTHER SECURITY. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical property of a solid waste management system, including a resource recovery system, of the public agency and rights appurtenant to that property.

(b) The deed of trust or mortgage lien may give the trustee the power to operate the property, sell the property to pay the debt, or take any other action to secure the bonds. A purchaser at a sale under a deed of trust or mortgage lien is the absolute owner of the

property and rights purchased.

(c) Regardless of any deed of trust or mortgage lien under Subsection (a), the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture; and

(3) provide for investment of the public agency's funds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.138. BOND SALE AND EXCHANGE. (a) A public agency may sell bonds at a public or private sale at a price and on terms determined by the governing body.

(b) The public agency may exchange its bonds for property or an interest in property that its governing body considers necessary or convenient to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.139. INVESTMENT AND USE OF PROCEEDS. (a) Money may be set aside out of bond proceeds to provide for:

(1) interest to accrue on the bonds;

(2) administrative expenses up to the estimated date on which the solid waste management system will produce revenue; and

(3) reserve funds created by the resolution that authorized the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.140. REFUNDING BONDS. (a) A public agency may issue

refunding bonds to refund all or part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds:

(1) mature serially or otherwise not more than 50 years after the date of issuance and bear interest at a rate permitted by state law; and

(2) may be payable from the same source as the bonds being refunded or from other additional sources.

(c) Refunding bonds must be approved by the attorney general in the same manner as other bonds.

(d) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the order or resolution authorizing the refunding bonds provides that their proceeds be deposited in the place where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of and interest on the original bonds up to their maturity date or to their option date if the bonds are called for payment before maturity according to their terms.

(e) A public agency may refund bonds in one or several installments.

(f) Instead of the method provided by this section, a public agency may refund bonds, notes, or other obligations as provided by general law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.141. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Public agency bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, or other political subdivision of the state and other public funds of the state, including the permanent school fund.

(b) Public agency bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their value, if accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.142. TAX STATUS OF BONDS. Since a public agency is a public entity performing an essential public function, bonds issued by the public agency, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by a municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.143. FEES FOR SERVICES. (a) While bonds are outstanding, the governing body may adopt and collect fees for services furnished or made available by the solid waste management system, including a resource recovery system.

(b) The fees must be adequate to provide and maintain the funds created by the resolution authorizing the bonds and to pay:

(1) operational costs or expenses allocable to the solid waste management system, including a resource recovery system; and

(2) the principal of and interest on the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.144. ADJUSTMENT OF RATES FOR ADEQUATE REVENUE. A public agency shall adopt and adjust the rates charged for solid waste management services so that revenues, together with taxes levied to support the services, will be sufficient to pay:

(1) the expense of operating and maintaining the solid

waste management system, including a resource recovery system;

(2) the public agency's obligations under a contract; and

(3) the public agency's obligations under and in connection with bonds issued that are secured by revenues from the solid waste management service or a solid waste management system, including a resource recovery system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 363.145. BOND ANTICIPATION NOTES. (a) A public agency may declare an emergency if funds are not available to pay the principal of or interest on the public agency's bonds issued under this chapter.

(b) The public agency may issue negotiable bond anticipation notes to borrow the money needed in an emergency, and the bond anticipation notes may bear interest at any rate authorized by state law and shall mature within one year of the date of issuance.

(c) The bond anticipation notes may be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of bond anticipation notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 364. COUNTY SOLID WASTE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 364.001. SHORT TITLE. This chapter may be cited as the County Solid Waste Control Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.002. PURPOSE. The purpose of this chapter is to authorize a cooperative effort by counties, public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid waste to control pollution in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.003. DEFINITIONS. In this chapter:

(1) "Composting" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(2) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution.

(3) "Public agency" means a district, municipality, regional planning commission created under Chapter 391, Local Government Code, or other political subdivision or state agency authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(4) "Sanitary landfill" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(5) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(6) "Solid waste disposal system" means a plant, composting process plant, incinerator, sanitary landfill, or other works and equipment that are acquired, installed, or operated to collect, handle, store, treat, neutralize, stabilize, or dispose of solid waste, and includes the sites.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 124, eff. Sept. 1, 1991.

SUBCHAPTER B. COUNTY SOLID WASTE MANAGEMENT

Sec. 364.011. COUNTY ADOPTION OF SOLID WASTE RULES. (a) Subject to the limitation provided by Sections 361.151 and 361.152 (Solid Waste Disposal Act), and subject to Subsection (a-1), a commissioners court by rule may regulate solid waste collection, handling, storage, and disposal in areas of the county not in a municipality or the extraterritorial jurisdiction of a municipality.

(a-1) A commissioners court by rule may regulate solid waste collection, handling, storage, and disposal by establishing a mandatory program under Section 364.034 in an area of the county located within the extraterritorial jurisdiction of a municipality if:

(1) the municipality does not provide solid waste disposal services in that area; and

(2) the county:

(A) is adjacent to the United Mexican States;

(B) has a population of less than 300,000; and

(C) contains a municipality with a population of 200,000 or more.

(a-2) Notwithstanding Subsection (a), a commissioners court may, through a competitive bidding process, contract for the provision of solid waste collection, handling, storage, and disposal in an area of the county located within the extraterritorial jurisdiction of a municipality if:

(1) the municipality does not provide solid waste disposal services in that area; and

(2) the county has a population of more than 1.5 million and at least 70 percent of the population resides in a single municipality.

(b) A county, in making any rules, including those under the licensing power granted by Chapter 361 (Solid Waste Disposal Act), may not impose an unreasonable requirement on the disposal of the solid waste in the county not warranted by the circumstances.

(c) A rule adopted under this section may not authorize an activity, method of operation, or procedure that is prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules of the Texas Natural Resource Conservation Commission.

(d) A county may institute legal proceedings to enforce its rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.034, eff. Aug. 12, 1991.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 70 (S.B. 1229), Sec. 1, eff. May 22, 2017.

Acts 2017, 85th Leg., R.S., Ch. 143 (H.B. 1584), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(37), eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 97, eff. September 1, 2023.

Sec. 364.012. PROHIBITING SOLID WASTE DISPOSAL IN COUNTY. (a)

The county may prohibit the disposal of municipal or industrial solid waste in the county if the disposal of the municipal or industrial solid waste is a threat to the public health, safety, and welfare.

(b) To prohibit the disposal of municipal or industrial solid waste in a county, the commissioners court must adopt an ordinance in the general form prescribed for municipal ordinances specifically designating the area of the county in which municipal or industrial solid waste disposal is not prohibited.

(c) An ordinance required by Subsection (b) may be passed on first reading, but the proposed ordinance must be published in a newspaper of general circulation in the county for two consecutive weeks before the commissioners court considers the proposed ordinance. The publication must contain:

(1) a statement of the time, place, and date that the commissioners court will consider the proposed ordinance; and

(2) notice that an interested citizen of the county may testify at the hearing.

(d) A public hearing must be held on a proposed ordinance before it is considered by the commissioners court, and any interested citizen of the county shall be allowed to testify.

(e) The commissioners court of a county may not prohibit the processing or disposal of municipal or industrial solid waste in an area of that county for which:

(1) an application for a permit or other authorization under Chapter 361 has been filed with and is pending before the commission; or

(2) a permit or other authorization under Chapter 361 has been issued by the commission.

(f) The commission may not grant an application for a permit to process or dispose of municipal or industrial solid waste in an area in which the processing or disposal of municipal or industrial solid waste is prohibited by an ordinance, unless the county violated Subsection (e) in passing the ordinance. The commission by rule may specify the procedures for determining whether an application is for the processing or disposal of municipal or industrial solid waste in an area for which that processing or disposal is prohibited by an ordinance.

(g) The powers specified by this section may not be exercised by a county with respect to areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.035, eff. Aug. 12, 1991; Acts 1999, 76th Leg., ch. 570, Sec. 5, eff. Sept. 1, 1999.

Sec. 364.013. COUNTY AUTHORITY. A county may:

(1) acquire, construct, improve, enlarge, repair, operate, and maintain all or part of one or more solid waste disposal systems;

(2) contract with a person to collect, transport, handle, store, or dispose of solid waste for that person;

(3) contract with a person to purchase or sell, by installments for a term considered desirable, all or part of a solid waste disposal system;

(4) enter into an operating agreement with a person, for the terms and on the conditions considered desirable, for the operation of all or part of a solid waste disposal system by that person or by the county; and

(5) lease to or from a person, for the term and on the conditions considered desirable, all or part of a solid waste disposal system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.014. ACQUISITION OF PROPERTY. (a) A county may acquire by purchase, lease, gift, condemnation, or any other manner and may own, maintain, use, and operate property or an interest in property necessary or convenient to the exercise of the powers and purposes provided by this chapter.

(b) The power of eminent domain is restricted to the county and may be exercised in the manner provided by law.

(c) A county may not exercise the power of eminent domain to acquire real property under this section if that power conflicts with a corporation's power of eminent domain as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.015. DUMPING OR GARBAGE DISPOSAL GROUNDS. The commissioners court shall determine the consideration to be paid to acquire real property on which to locate dumping or garbage disposal

grounds. In determining where to locate dumping or garbage disposal grounds, the commissioners court shall consider:

(1) the convenience of the people to be served; and

(2) the general health of, and the annoyance to, the community to be served by the dumping or garbage disposal grounds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.016. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of a county shall be accomplished at the sole expense of the county, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. SOLID WASTE MANAGEMENT SYSTEMS AND SERVICES CONTRACTS

Sec. 364.031. PUBLIC AGENCY CONTRACTS. (a) A public agency may contract with another public agency or a private contractor for the other public agency or private contractor to:

(1) make all or part of a solid waste disposal system available to a public agency, a group of public agencies, or other persons; and

(2) furnish solid waste collection, transportation, handling, storage, or disposal services through the other public agency's or private contractor's system.

(b) The contract may:

(1) be for the duration agreed on by the parties;

(2) provide that the contract remains in effect until bonds issued or to be issued by either public agency and refunding bonds issued for those original bonds are paid;

(3) contain provisions to assure equitable treatment of parties who contract with the other public agency or private contractor for solid waste collection, transportation, handling, storage, or disposal services from the same solid waste disposal system;

(4) provide for the sale or lease to or use by the other public agency or private contractor of a solid waste disposal system owned or to be acquired by the public agency;

(5) provide that the other public agency or private contractor will operate a solid waste disposal system owned or to be acquired by the public agency;

(6) provide that the public agency is entitled to continued performance of services after the amortization of the other public agency's or private contractor's investment in the disposal system during the useful life of the system on payment of reasonable charges, reduced to take into consideration the amortization; and

(7) contain any other provisions and requirements the other public agency or private contractor and the public agency determine to be appropriate or necessary.

(c) The contract must provide the method to determine the amount the public agency will pay to the other public agency or private contractor.

(d) A municipality may provide in its contract that the other public agency or private contractor has the right to use the streets, alleys, and public ways and places in the municipality during the term of the contract.

(e) This section does not expand the authority granted to a county under Section 364.013.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 486, Sec. 1, eff. June 12, 1995.

Sec. 364.032. PUBLIC AGENCY PAYMENTS. (a) Public agency payments to a county for solid waste collection, transportation, handling, storage, or disposal services may be made from income of the public agency's solid waste disposal fund as provided by the contract between the county and the public agency. The payments are an operating expense of the fund, and the revenues of the fund are to be applied toward those payments.

(b) Public agency payments to be made under the contract may be made from revenues of the public agency's water, sewer, electric, or gas system or a combination of utility systems.

(c) Unless the ordinance or resolution authorizing the outstanding bonds of the public agency expressly reserves the right

to accord contract payments a position of parity with, or a priority over, the public agency's bond requirements, the payments under a contract are subordinate to amounts required to be paid from the revenues of the utility system for principal of and interest on bonds of the public agency that are:

(1) outstanding at the time the contract is made; and

(2) payable from those revenues.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.033. ALTERNATIVE PAYMENT PROCEDURE USING TAX FUNDS. (a) A contract between a public agency and a county that is authorized by the public agency's governing body is an obligation against the public agency's taxing power to the extent provided by the contract if:

(1) the public agency holds an election according to applicable procedure provided by Chapter 1251, Government Code, relating to the issuance of bonds by a municipality; and

(2) at the election, it is determined that the public agency's governing body may levy an ad valorem tax to make any payments required of the public agency under the contract.

(b) Except for the levy of a tax under this section, an election is not required for the exercise of a power granted by this chapter.

(c) Only qualified voters of the public agency are entitled to vote at an election held under this section, and except as otherwise provided by this section and by Chapter 1251, Government Code, the Election Code governs an election under this section.

(d) If the alternative procedure for payment provided by this section is followed, payments under the contract may be:

(1) payable from and are solely an obligation against the taxing power of the public agency; or

(2) payable both from taxes and from revenues as provided by the contract.

(e) If the alternative procedure of public agency payment to a county for disposal services provided by this section is not followed, the county or a holder of county bonds is not entitled to demand payment of the public agency's obligation from funds raised or to be raised by taxation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.270, eff. Sept. 1, 2001.

Sec. 364.034. SOLID WASTE DISPOSAL SERVICE; FEES. (a) A public agency or a county may:

(1) offer solid waste disposal service to persons in its territory, including, in the case of a county described by Section 364.011(a-2)(2), an area of the county located within the extraterritorial jurisdiction of a municipality if the municipality does not provide solid waste disposal services in that area;

(2) require the use of the service by those persons, except as provided by Subsection (a-1);

(3) charge fees for the service; and

(4) establish the service as a utility separate from other utilities in its territory.

(a-1) Notwithstanding Subsection (a)(2), a person is not required to use solid waste disposal services offered by a county to persons in an area of the county located within the extraterritorial jurisdiction of a municipality that does not provide solid waste disposal services in that area if:

(1) the person contracts for solid waste disposal services with a provider that meets rules adopted by the commission for the regulation of solid waste disposal; or

(2) the person is a private entity that contracts to provide temporary solid waste disposal services to a construction site or project by furnishing a roll-off container used to transport construction waste or demolition debris to a facility for disposal or recycling.

(a-2) Subsection (a-1) does not affect the authority of a governmental entity to pursue actions under Subchapter B, Chapter 365, to address illegal dumping.

(b) A fee for a service provided under this section may be collected by:

(1) the county;

(2) a private or public entity that contracts with the county to provide the service; or

(3) another private or public entity that contracts with the county to collect the fees.

(c) A county may contract with a public or private utility to

collect a fee for a service provided under this section. The contract may:

(1) require the billing of the fee within the bill for other utility services;

(2) allow a fee to be paid to the utility for billing and collecting the fee;

(3) require a system of accounting for fees collected by an entity other than the county; and

(4) contain other terms as agreed to by the parties.

(d) To aid enforcement of fee collection for the solid waste disposal service:

(1) a county or the public or private entity that has contracted with the county to provide the service may suspend service to a person who is delinquent in payment of solid waste disposal service fees until the delinquent claim is fully paid; and

(2) a public or private utility that bills and collects solid waste disposal service fees under this section may suspend service of that utility, in addition to the suspension of solid waste disposal service, to a person who is delinquent in the payment of the solid waste disposal service fee until the delinquent claim is fully paid.

(e) Except as provided by Subsections (f), (g), and (h), this section does not apply to a person who provides the public or private entity, public agency, or county with written documentation that the person is receiving solid waste disposal services from another entity. Nothing in this section shall limit the authority of a public agency, including a county or a municipality, to enforce its grant of a franchise or contract for solid waste collection and transportation services within its territory. Except as provided by Subsection (f), the governing body of a municipality may provide that a franchise it grants or a contract it enters into for solid waste collection and transportation services under this subchapter or under other law supersedes inside of the municipality's boundaries any other franchise granted or contract entered into under this subchapter.

(f) Notwithstanding the other provisions of this section, a political subdivision, including a county or a municipality, may not restrict the right of an entity to contract with a licensed waste hauler for the collection and removal of domestic septage or of grease trap waste, grit trap waste, lint trap waste, or sand trap

waste.

(g) Except as provided by this subsection, a person is exempt from the application of a requirement adopted by a public agency or county under Subsection (a) if the person, on the date the requirement is adopted, is receiving under a contract in effect on that date solid waste disposal services at a level that is the same as or higher than the level of services that otherwise would be required. The exception provided by this subsection does not apply to a requirement adopted under this section by a municipality. To qualify for the exemption provided by this subsection, the person must provide to the public agency or county written documentation acceptable to the public agency or county not later than the 30th day before the date the otherwise required services are scheduled to begin. The person who provides solid waste disposal services to a person who qualifies for the exemption shall notify the public agency or county that the services under the contract have stopped not later than the 15th day after the date those services are stopped for any reason.

(h) This section does not apply to a private entity that contracts to provide temporary solid waste disposal services to a construction project.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1238, Sec. 1, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 271, Sec. 2, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1394 (H.B. 1251), Sec. 1, eff. June 15, 2007.

Acts 2017, 85th Leg., R.S., Ch. 70 (S.B. 1229), Sec. 2, eff. May 22, 2017.

Acts 2017, 85th Leg., R.S., Ch. 143 (H.B. 1584), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 9.001, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(11), eff. September 1, 2019.

Sec. 364.0341. SOLID WASTE DISPOSAL SERVICES IN EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This

section applies only to a municipality wholly or partly located in a county with a population of more than 57,000 and less than 57,900.

(b) Notwithstanding Sections 364.011(a) and 364.034(a), a county may offer, require the use of, and charge a fee for solid waste disposal services in the extraterritorial jurisdiction of a municipality.

(c) A municipality may not provide solid waste disposal services or charge a fee for those services in the municipality's extraterritorial jurisdiction if the county provides those services under Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1240 (H.B. 3045), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 98, eff. September 1, 2023.

Sec. 364.0345. PENALTIES FOR FAILURE TO USE REQUIRED SERVICE IN CERTAIN AREAS. The commissioners court of a county described by Section 364.011(a-2)(2) that requires the use of a county solid waste disposal service under Section 364.034 in the extraterritorial jurisdiction of a municipality may adopt orders to enforce the requirement, including an order establishing a civil or administrative penalty in an amount reasonable and necessary to ensure compliance with the requirement.

Added by Acts 2017, 85th Leg., R.S., Ch. 70 (S.B. 1229), Sec. 3, eff. May 22, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(12), eff. September 1, 2019.

Sec. 364.035. PUBLIC AGENCY DUTY TO ADJUST RATES CHARGED. (a) A public agency shall establish, maintain, and adjust the rates charged by the public agency for solid waste disposal services if:

(1) the public agency executes a contract with a county under this chapter; and

(2) the payments under the contract are to be made either wholly or partly from the revenues of the public agency's solid waste

disposal fund.

(b) The revenues of the public agency's solid waste disposal fund, and any taxes levied in support, must be sufficient to pay:

(1) the expense of operating and maintaining the solid waste disposal service or system; and

(2) the public agency's obligations to the county under the contract and in connection with bonds issued or that may be issued that are secured by revenues of the solid waste disposal service or system.

(c) A contract between a public agency and a county may require the use of consulting engineers and financial experts to advise the public agency whether and at what time rates are to be adjusted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.036. AUTHORITY TO PROVIDE DISPOSAL SERVICES TO MORE THAN ONE PERSON. A contract or group of contracts under this chapter may provide that:

(1) a county may render concurrently to more than one person services relating to the construction or operation of all or part of a solid waste disposal system; and

(2) the cost of the services will be allocated among the several persons as determined by the contract or group of contracts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.037. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS FOR COLLECTION OF PAST DUE UTILITY OR SOLID WASTE DISPOSAL SERVICES FEES. (a) A county or public agency that offers solid waste disposal services under this subchapter may enter an agreement for the collection of unpaid utility or solid waste disposal services fees with:

(1) another county or public agency that provides solid waste disposal services under this subchapter;

(2) a municipality that operates a utility system, as defined by Section 552.001, Local Government Code; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of

unpaid utility charges or solid waste disposal fees.

(b) The agreement may provide that a county or public agency:

(1) may refuse to provide solid waste disposal services to a person if the person is past due on utility charges or solid waste disposal services fees owed to another party to the agreement; or

(2) may collect an amount equal to the past due utility charges or solid waste disposal services fees owed to another party to the agreement plus a service charge and provide the solid waste disposal services the person requests.

(c) The agreement shall provide for:

(1) the confidentiality of a person's utility or solid waste disposal account information and the prevention of disclosure to a person or other entity that is not a party to the agreement; and

(2) the apportionment of any past due charges, fees, and service charges authorized by Subsection (b)(2) between the collecting entity and the entity to which the fees are owed.

Added by Acts 2003, 78th Leg., ch. 271, Sec. 3, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(2), eff. April 1, 2009.

SUBCHAPTER D. BONDS

Sec. 364.051. AUTHORITY TO ISSUE BONDS. (a) To acquire, construct, improve, enlarge, and repair all or part of a solid waste disposal system, a county may issue bonds payable:

(1) from and secured by a pledge of all or part of the revenues to accrue under a contract entered into under this chapter; and

(2) from other income pledged by the county.

(b) Pending issuance of definitive bonds, a county may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of the definitive bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.052. TERMS; FORM. (a) Bonds issued under this chapter must be in the form and denomination and bear the rate of

interest prescribed by the commissioners court.

(b) The bonds may be:

(1) sold at a public or private sale at a price and on the terms determined by the commissioners court; or

(2) exchanged for property or an interest in property determined by the commissioners court to be necessary or convenient to the purposes authorized by this chapter.

(c) The bonds are investment securities under Chapter 8, Business & Commerce Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.053. APPROVAL AND REGISTRATION. (a) A county may submit bonds that have been authorized by the commissioners court and any record relating to their issuance to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a contract between the county and a public agency, the county may submit to the attorney general a copy of the contract and the proceedings of the public agency authorizing the contract.

(b) If the attorney general finds that the bonds have been authorized and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and the contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.054. DISTRICT BOND VALIDATION BY SUIT. (a) As an alternative for, or in addition to, the procedure provided by Section 364.053, the board of directors of a district may validate its bonds by filing suit under Chapter 1205, Government Code.

(b) The interest rate and sale price of the bonds need not be fixed until after the termination of the validation proceedings or suit.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract made by the district and one or more public agencies, the petition must allege that fact and the notice of the

suit must mention that allegation and each public agency's fund or revenues from which the contract is payable.

(d) The suit is a proceeding in rem, and the judgment is res judicata as to the validity of the bonds and any contract and the pledge of revenues.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.271, eff. Sept. 1, 2001.

Sec. 364.055. INVESTMENT AND USE OF PROCEEDS. (a) The commissioners court may set aside from proceeds of a bond sale:

(1) interest to accrue on the bonds;

(2) administrative expenses to the estimated date when the solid waste disposal system will become revenue producing; and

(3) reserve funds created by the resolution authorizing the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits as specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.056. REFUNDING OF BONDS. A county may refund bonds issued under this chapter on terms and conditions and bearing the rate of interest prescribed by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.057. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee; and

(8) a sinking fund of a municipality, school district, or any other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or of a political subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 364.058. ADJUSTMENT OF RATES AND CHANGES TO MAINTAIN ADEQUATE REVENUE. If bonds are outstanding, the commissioners court shall establish, maintain, and collect rates and charges for services furnished or made available by the solid waste disposal system adequate to:

(1) pay maintenance and operation costs of and expenses allocable to the solid waste disposal system and the principal of and interest on the bonds; and

(2) provide and maintain funds created by the resolution authorizing the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 365. LITTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 365.001. SHORT TITLE. This chapter may be cited as the Texas Litter Abatement Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.002. WATER POLLUTION CONTROLLED BY WATER CODE. The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.005. VENUE AND RECOVERY OF COSTS. (a) Venue for the prosecution of a criminal offense under Subchapter B or Section 365.032 or 365.033 or for a suit for injunctive relief under any of those provisions is in the county in which the defendant resides, in the county in which the offense or the violation occurs, or in Travis County.

(b) If the attorney general or a local government brings a suit for injunctive relief under Subchapter B or Section 365.032 or 365.033, a prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 125, eff. Sept. 1, 1991.

SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

Sec. 365.011. DEFINITIONS. In this subchapter:

(1) "Approved solid waste site" means:

(A) a solid waste site permitted or registered by the Texas Natural Resource Conservation Commission;

(B) a solid waste site licensed by a county under Chapter 361; or

(C) a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(2) "Boat" means a vehicle, including a barge, airboat, motorboat, or sailboat, used for transportation on water.

(3) "Commercial purpose" means the purpose of economic gain.

(4) "Commercial vehicle" means a vehicle that is operated by a person for a commercial purpose or that is owned by a business or commercial enterprise.

(5) "Dispose" and "dump" mean to discharge, deposit, inject, spill, leak, or place litter on or into land or water.

(6) "Litter" means:

(A) decayable waste from a public or private establishment, residence, or restaurant, including animal and vegetable waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking, or consumption of food, but not including sewage, body wastes, or industrial by-products; or

(B) nondecayable solid waste, except ashes, that consists of:

(i) combustible waste material, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, or similar materials;

(ii) noncombustible waste material, including glass, crockery, tin or aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and

(iii) discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

(7) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(8) "Public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

(A) is opened to the public for vehicular traffic;

(B) is used as a public recreational area; or

(C) is under the state's legislative jurisdiction through its police power.

(9) "Solid waste" has the meaning assigned by Section 361.003.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.111, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.206, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 286, Sec. 1, eff. May 26, 1997.

Sec. 365.012. ILLEGAL DUMPING; DISCARDING LIGHTED MATERIALS; CRIMINAL PENALTIES. (a) A person commits an offense if the person disposes or allows or permits the disposal of litter or other solid waste at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, on other public or private property, or into inland or coastal water of the state.

(a-1) A person commits an offense if:

(1) the person discards lighted litter, including a match, cigarette, or cigar, onto open-space land, a private road or the right-of-way of a private road, a public highway or other public road or the right-of-way of a public highway or other public road, or a railroad right-of-way; and

(2) a fire is ignited as a result of the conduct described by Subdivision (1).

(b) A person commits an offense if the person receives litter or other solid waste for disposal at a place that is not an approved solid waste site, regardless of whether the litter or other solid waste or the land on which the litter or other solid waste is disposed is owned or controlled by the person.

(c) A person commits an offense if the person transports litter or other solid waste to a place that is not an approved solid waste site for disposal at the site.

(d) An offense under Subsection (a), (b), or (c) is a Class C misdemeanor if the litter or other solid waste to which the offense applies weighs five pounds or less or has a volume of five gallons or less.

(d-1) An offense under Subsection (a-1) is a misdemeanor under

this subsection if the litter or other solid waste to which the offense applies weighs less than 500 pounds or has a volume of less than 100 cubic feet and is punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed 30 days; or

(3) both such fine and confinement.

(e) An offense under Subsection (a), (b), or (c) is a Class B misdemeanor if the litter or other solid waste to which the offense applies weighs more than five pounds but less than 500 pounds or has a volume of more than five gallons but less than 100 cubic feet.

(f) An offense under this section is a Class A misdemeanor if:

(1) the litter or other solid waste to which the offense applies weighs 500 pounds or more but less than 1,000 pounds or has a volume of 100 cubic feet or more but less than 200 cubic feet; or

(2) the litter or other solid waste is disposed for a commercial purpose and weighs more than five pounds but less than 200 pounds or has a volume of more than five gallons but less than 200 cubic feet.

(g) An offense under this section is a state jail felony if the litter or solid waste to which the offense applies:

(1) weighs 1,000 pounds or more or has a volume of 200 cubic feet or more;

(2) is disposed of for a commercial purpose and weighs 200 pounds or more or has a volume of 200 cubic feet or more; or

(3) is contained in a closed barrel or drum.

(h) If it is shown on the trial of the defendant for an offense under this section that the defendant has previously been convicted of an offense under this section, the punishment for the offense is increased to the punishment for the next highest category.

(i) On conviction for an offense under this section, the court shall provide to the defendant written notice that a subsequent conviction for an offense under this section may result in the forfeiture under Chapter 59, Code of Criminal Procedure, of the vehicle used by the defendant in committing the offense.

(j) The offenses prescribed by this section include the unauthorized disposal of litter or other solid waste in a dumpster or similar receptacle.

(k) This section does not apply to the temporary storage for future disposal of litter or other solid waste by a person on land

owned by that person, or by that person's agent. The commission by rule shall regulate temporary storage for future disposal of litter or other solid waste by a person on land owned by the person or the person's agent.

(l) This section does not apply to an individual's disposal of litter or other solid waste if:

(1) the litter or waste is generated on land the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land the individual owns; and

(4) the disposal is not for a commercial purpose.

(m) A municipality or county may offer a reward of $50 for reporting a violation of this section that results in a prosecution under this section.

(n) An offense under this section may be prosecuted without alleging or proving any culpable mental state, unless the offense is a state jail felony.

(o) For purposes of a prosecution under Subsection (g), a generator creates a rebuttable presumption of lack of culpable mental state if the generator of the solid waste to be disposed of secures, prior to the hauler's receipt of the solid waste, a signed statement from the hauler that the solid waste will be disposed of legally. The statement shall include the hauler's valid Texas driver's license number.

(p) It is an affirmative defense to prosecution under Subsection (a-1) that the person discarded the lighted litter in connection with controlled burning the person was conducting in the area into which the lighted litter was discarded.

(q) The operator of a public conveyance in which smoking tobacco is allowed shall post a sign stating the substance of Subsections (a-1) and (d-1) in a conspicuous place within any portion of the public conveyance in which smoking is allowed.

(r) If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Subsection (a), the actor may be prosecuted only under Subsection (a-1). If conduct that constitutes an offense under Subsection (a-1) also constitutes an offense under Chapter 28, Penal Code, the actor may be prosecuted under Subsection (a-1) or Chapter 28, Penal Code, but not both.

(s) On conviction of an offense under this section, the court

shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

(t) Chapter 15, Penal Code, applies to an offense under this section.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 828, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(28), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 286, Sec. 2, eff. May 26, 1997; Acts 2001, 77th Leg., ch. 995, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 430 (S.B. 1043), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 430 (S.B. 1043), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 829 (H.B. 1884), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1099 (S.B. 1346), Sec. 1, eff. September 1, 2023.

Sec. 365.013. RULES AND STANDARDS; CRIMINAL PENALTY. (a) The Texas Natural Resource Conservation Commission shall adopt rules and standards regarding processing and treating litter disposed in violation of this subchapter.

(b) A person commits an offense if the person violates a rule adopted under this section.

(c) An offense under this section is a Class A misdemeanor.

(d) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.112, eff. Sept. 1, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 829 (H.B. 1884), Sec. 3, eff. September 1, 2017.

Sec. 365.014. APPLICATION OF SUBCHAPTER; DEFENSES; PRESUMPTIONS. (a) This subchapter does not apply to farmers:

(1) in handling anything necessary to grow, handle, and care for livestock; or

(2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products or for conservation projects.

(b) A person who dumps more than five pounds or 13 gallons of litter or other solid waste from a commercial vehicle in violation of this subchapter is presumed to be dumping the litter or other solid waste for a commercial purpose.

(c) It is an affirmative defense to prosecution under Section 365.012 that:

(1) the storage, processing, or disposal took place on land owned or leased by the defendant;

(2) the defendant received the litter or other solid waste from another person;

(3) the defendant, after exercising due diligence, did not know and reasonably could not have known that litter or other solid waste was involved; and

(4) the defendant did not receive, directly or indirectly, compensation for the receipt, storage, processing, or treatment.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 740, Sec. 3, eff. Sept. 1, 1993.

Sec. 365.015. INJUNCTION; VENUE; RECOVERY OF COSTS. (a) A district attorney, a county attorney, or the attorney general may bring a civil suit for an injunction to prevent or restrain a violation of this subchapter. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(b) Venue for a prosecution of a criminal offense under this subchapter or for a civil suit for injunctive relief under this subchapter is in the county in which the defendant resides, the county in which the offense or violation occurred, or in Travis

County.

(c) In a suit for relief under this section, the prevailing party may recover its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.

Sec. 365.016. DISPOSAL OF LITTER IN A CAVE; CRIMINAL PENALTY. (a) A person commits an offense if the person disposes litter, a dead animal, sewage, or any chemical in a cave.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant previously has been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant previously has been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree.

(c) On conviction of an offense under this section, the court shall require the defendant, in addition to any fine or other penalty, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.161, eff. Sept. 1, 1991.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 829 (H.B. 1884), Sec. 4, eff. September 1, 2017.

Sec. 365.017. REGULATION OF LITTER IN CERTAIN COUNTIES. (a) The commissioners court of a county may adopt regulations to control the disposal of litter and the removal of illegally dumped litter from private property in unincorporated areas of that county. The commissioners court may not adopt regulations under this section concerning the disposal of recyclable materials as defined in Chapter 361 of the Health and Safety Code.

(b) Prior to the adoption of regulations the commissioners court of a county must find that the proposed regulations are necessary to promote the public health, safety, and welfare of the residents of that county.

(c) The definitions of Section 365.011 apply in this Act. "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site. "Litter" has the meaning assigned by Section 365.011, except that the term does not include equipment used for agricultural purposes.

(d) The regulations adopted by the commissioners court may require the record property owners to pay for the cost of removal after the commissioners court has given the record property owner 30 days written notice to remove the illegally dumped litter.

(e) Regulations adopted under this section are in addition to any other law regarding this issue and the stricter law shall apply.

(f) In addition to any other remedy provided by law, a district attorney, a county attorney, or the attorney general may bring a civil suit to enjoin violation of regulations adopted under this section and to recover the costs of removal of illegally dumped litter. In such a suit the prevailing party may recover its reasonable attorney fees, court fees, and reasonable investigative costs incurred in relation to that proceeding.

Added by Acts 1993, 73rd Leg., ch. 828, Sec. 4, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 439, Sec. 1, eff. June 9, 1995.

SUBCHAPTER C. SPECIAL PROVISIONS

Sec. 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE. The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) A person commits an offense if the person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can,

refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS; CRIMINAL PENALTY. (a) The definitions provided by Section 365.011 apply to this section.

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a county that has the Gulf of Mexico as one boundary, but does not apply to a beach located in that park.

(d) A person commits an offense if the person discards in a county park any junk, garbage, rubbish, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(e) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 365.034. COUNTY REGULATION OF LITTER NEAR PUBLIC HIGHWAY; CRIMINAL PENALTY. (a) The commissioners court of a county may:

(1) by order prohibit the accumulation of litter for more than 30 days on a person's property within 50 feet of a public highway in the county;

(2) provide for the removal and disposition of litter accumulated near a public highway in violation of an order adopted

under this section; and

(3) provide for the assessment against a person who owns the property from which litter is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the litter.

(b) Before the commissioners court takes any action to remove or dispose of litter under this section, the court shall send a notice by certified mail to the record owners of the property on which the litter is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the litter or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the property from which the litter was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.

(e) In this section:

(1) "Litter" has the meaning assigned by Section 365.011 except that the term does not include equipment used for agricultural purposes.

(2) "Public highway" has the meaning assigned by Section 365.011.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 126, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.162, eff. Sept. 1, 1991.

Sec. 365.035. PROHIBITION ON POSSESSING GLASS CONTAINERS WITHIN BOUNDARY OF STATE-OWNED RIVERBED; PENALTIES. (a) In this section, "glass container" means a glass container designed to contain a beverage, including a bottle or jar.

(b) A person commits an offense if the person knowingly

possesses a glass container within the boundaries of a state-owned riverbed in a county:

(1) that is located within 85 miles of an international border; and

(2) in which at least four rivers are located.

(c) An offense under this section is a Class C misdemeanor.

(d) It is a defense to prosecution under Subsection (b) that the person who possessed the glass container:

(1) did not transport the glass container into the boundaries of the riverbed;

(2) possessed the glass container only for the purpose of lawfully disposing of the glass container in a designated waste receptacle; or

(3) is the owner of property adjacent to the section of the riverbed in which the person possessed the glass container.

(e) It is an exception to the application of Subsection (b) that the person possessed the glass container only for the purpose of water sampling or conducting scientific research as authorized by:

(1) a governmental entity;

(2) a utility as defined by Section 11.004, Utilities Code;

(3) a retail public utility as defined by Section 13.002, Water Code;

(4) a power generation company as defined by Section 31.002, Utilities Code;

(5) a surface coal mining and reclamation operation, as defined by Section 134.004, Natural Resources Code; or

(6) a school-sponsored or university-sponsored educational activity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1124 (H.B. 218), Sec. 1, eff. September 1, 2011.

CHAPTER 366. ON-SITE SEWAGE DISPOSAL SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 366.001. POLICY AND PURPOSE. It is the public policy of this state and the purpose of this chapter to:

(1) eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems;

(2) authorize the commission or authorized agent to impose and collect a permit fee for:

(A) construction, installation, alteration, repair, or extension of on-site sewage disposal systems; and

(B) tests, designs, and inspections of those systems;

(3) authorize the commission or authorized agent to impose a penalty for a violation of this chapter or a rule adopted under this chapter;

(4) authorize the commission to license or register certain persons; and

(5) allow the individual owner of a disposal system to install and repair the system in accordance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 21, eff. Sept. 1, 2001.

Sec. 366.002. DEFINITIONS. In this chapter:

(1) "Authorized agent" means a local governmental entity authorized by the commission to implement and enforce rules under this chapter.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3), (4) Repealed by Acts 2001, 77th Leg., ch. 880, Sec. 25(2), eff. Sept. 1, 2001.

(5) "Local governmental entity" means a municipality, county, river authority, or special district, including an underground water district, soil and water conservation district, or public health district.

(6) "Nuisance" means:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage disposal system, or a blatant discharge from an on-site sewage disposal system.

(7) "On-site sewage disposal system" means one or more

systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on a site on which any part of the system is located.

(8) "Owner" means a person who owns a building or other property served by an on-site sewage disposal system.

(9) "Sewage" means waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.038, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 589, Sec. 1 to 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1127, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 25(2), eff. Sept. 1, 2001.

Sec. 366.003. IMMUNITY. The commission, an authorized agent, or a designated representative is not liable for damages resulting from the commission's or authorized agent's approval of the installation and operation of an on-site sewage disposal system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.004. COMPLIANCE REQUIRED. A person may not construct, alter, repair, or extend, or cause to be constructed, altered, repaired, or extended, an on-site sewage disposal system that does not comply with this chapter and applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.005. NOTICE OF UTILITY SERVICE CONNECTIONS. (a) An

electric utility shall compile a list weekly for each county in this state of the addresses located in an unincorporated area of the county at which the electric utility has made new electric service connections during the preceding week. The electric utility shall submit the list to the county judge of the county, or to a county officer or employee designated by the county judge, who shall forward the list to each authorized agent having jurisdiction over an area in which an address on the list is included. The authorized agent may use the list for the purpose of implementing and enforcing rules under this chapter. This section does not apply to a reconnection of service to a location previously served.

(b) An electric utility may not be held liable for a claim arising from the provision of information under this section.

(c) Information provided by a utility under this section is confidential and not subject to disclosure under Chapter 552, Government Code, or otherwise, except as provided by this section.

(d) The county judge shall forward the list compiled under Subsection (a) to each appraisal district and each emergency communication district in the county.

(e) In this section:

(1) "Appraisal district" means a district established under Section 6.01, Tax Code.

(2) "Electric utility" means an investor-owned utility, electric cooperative corporation, river authority, or municipally owned utility that provides distribution service to retail customers of electricity.

(3) "Emergency communication district" means a district established under Chapter 772.

Added by Acts 1997, 75th Leg., ch. 1127, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 15, Sec. 1, eff. May 3, 1999; Acts 1999, 76th Leg., ch. 333, Sec. 1, eff. Sept. 1, 1999.

Sec. 366.006. CERTAIN LEASED LAND OWNED BY FEDERAL GOVERNMENT. (a) If a tract of land owned by the federal government contains separately leased individual parts, each leased part is considered a separate tract of land for purposes of this chapter or a rule adopted under this chapter.

(b) The commission may adopt rules as necessary to administer

this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 258 (H.B. 1680), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSION AND AUTHORIZED AGENTS

Sec. 366.011. GENERAL SUPERVISION AND AUTHORITY. The commission or authorized agents:

(1) have general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and

(2) shall administer this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.012. RULES CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEMS. (a) To assure the effective and efficient administration of this chapter, the commission shall:

(1) adopt rules governing the installation of on-site sewage disposal systems, including rules concerning the:

(A) review and approval of on-site sewage disposal systems; and

(B) temporary waiver of a permit for an emergency repair; and

(2) adopt rules under this chapter that:

(A) encourage the use of economically feasible alternative techniques and technologies for on-site sewage disposal systems that can be used in soils not suitable for conventional on-site sewage disposal;

(B) address the separation of graywater, as defined by Section 341.039, in a residence served by an on-site sewage disposal system;

(C) allow for an adjustment in the size required of an on-site sewage disposal system if the system is used in conjunction with a graywater system that complies with the rules adopted under Section 341.039;

(D) require on-site sewage disposal systems, including risers and covers, installed after September 1, 2012, to be designed to prevent access to the system by anyone other than:

(i) the owner of the system; or

(ii) a person described by Section 366.071(a) or (b);

(E) for a county with a population of at least 350,000 and not more than 370,000 that is adjacent to the Gulf of Mexico and adjacent to a county with a population of at least 3.3 million, allow for the installation of aerobic drip emitter systems on subdivided or platted properties less than one-half acre in size serving single-family residences supplied by a public drinking water system if site-specific planning materials have been:

(i) submitted by a licensed engineer or registered sanitarian; and

(ii) approved by the appropriate authorized agent; and

(F) for a county with a population of more than 40,000 and less than 50,000 that borders the Red River along the Oklahoma state line and has a major interstate road running through it, allow for the installation of aerobic drip emitter systems on subdivided or platted properties less than one-half acre in size, serving single-family residences supplied by a public drinking water system if site-specific planning materials have been:

(i) submitted by a licensed engineer or registered sanitarian; and

(ii) approved by the appropriate authorized agent.

(b) In rules adopted under this chapter, the commission shall include definitions and detailed descriptions of good management practices and procedures for the construction of on-site sewage disposal systems that:

(1) justify variation in field size or in other standard requirements;

(2) promote the use of good management practices or procedures in the construction of on-site sewage disposal systems;

(3) require the use of one or more specific management practices or procedures as a condition of approval of a standard on-site sewage disposal system if, in the opinion of the commission or authorized agent, site conditions or other problems require the use of additional management practices or procedures to ensure the proper

operation of an on-site sewage disposal system; and

(4) make available general, operational information to the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 22, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 689, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 220 (H.B. 240), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 545 (H.B. 1902), Sec. 2, eff. June 16, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1018 (H.B. 4087), Sec. 1, eff. September 1, 2023.

Sec. 366.013. INSTALLATION AND USE OF WATER SOFTENERS AND REVERSE OSMOSIS SYSTEMS. (a) Except as provided by Subsection (b), an owner may install or use a water softener that discharges effluent into an on-site sewage disposal system only if the installed water softener:

(1) conserves water by design;

(2) regenerates using a demand-initiated regeneration control device, commonly known as a DIR device; and

(3) is clearly labeled as being equipped with a DIR device, with the label affixed to the outside of the system so that it may be inspected and easily read.

(b) An owner may use a water softener that discharges effluent into an on-site sewage disposal system and that does not meet the requirements of Subsection (a) if the water softener was installed before September 1, 2003. The owner must replace the water softener with a water softener that meets the requirements of Subsection (a) if the owner:

(1) replaces the water softener; or

(2) installs a new on-site sewage disposal system for the building or other property served by the existing system.

(c) An owner may install and use a point-of-use reverse osmosis system that discharges effluent into an on-site sewage disposal system.

(d) An owner may install and use a point-of-entry reverse osmosis system that discharges effluent into an on-site sewage disposal system if the calculated volume of effluent:

(1) does not cause hydraulic overloading; or

(2) has been adequately addressed in the design of the on-site sewage disposal system.

(e) This section does not apply to an aerobic, nonstandard, or proprietary on-site sewage treatment system unless the water softener drain line to the system bypasses the treatment system and flows into the pump tank or directly into the discharge method.

(f) The commission by rule shall adopt and implement standards for the use of water softeners and reverse osmosis systems in a building or other property served by an on-site sewage disposal system.

Added by Acts 2003, 78th Leg., ch. 966, Sec. 1, eff. Sept. 1, 2003.

Sec. 366.014. DESIGNATED PERSON. Subject to the requirements of Section 366.071(b), the commission or an authorized agent may designate a person to:

(1) review permit applications, site evaluations, or planning materials; or

(2) inspect on-site sewage disposal systems.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 59, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 23, eff. Sept. 1, 2001.

Sec. 366.016. EMERGENCY ORDERS. The commission or authorized agent may issue an emergency order concerning an on-site sewage disposal system under Section 5.513, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 38, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.011, eff.

September 1, 2009.

Sec. 366.017. REQUIRED REPAIRS; PENALTY. (a) The commission or authorized agent may require a property owner to repair a malfunctioning on-site sewage disposal system on the owner's property:

(1) not later than the 30th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has not been notified of the malfunctioning system during the preceding 12 months;

(2) not later than the 20th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system once during the preceding 12 months; or

(3) not later than the 10th day after the date on which the owner is notified by the commission or authorized agent of the malfunctioning system if the owner has been notified of the malfunctioning system at least twice during the preceding 12 months.

(b) The property owner must take adequate measures as soon as practicable to abate an immediate health hazard.

(c) The property owner may be assessed an administrative or a civil penalty under Chapter 7, Water Code, for each day that the on-site sewage disposal system remains unrepaired.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1127, Sec. 3, eff. Sept. 1, 1997.

SUBCHAPTER C. DESIGNATION OF LOCAL GOVERNMENTAL ENTITY AS AUTHORIZED AGENT

Sec. 366.031. DESIGNATION. (a) The commission shall designate a local governmental entity as an authorized agent if the governmental entity:

(1) notifies the commission that the entity wants to regulate the use of on-site sewage disposal systems in its jurisdiction;

(2) in accordance with commission procedures, holds a

public hearing and adopts an order or resolution that complies with Section 366.032; and

(3) submits the order or resolution to the commission.

(b) The commission in writing may approve the local governmental entity's order or resolution, and the designation takes effect only when the order or resolution is approved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.032. ORDER OR RESOLUTION; REQUIREMENTS. (a) The local governmental entity's order or resolution must:

(1) incorporate the commission's rules on abatement or prevention of pollution and the prevention of injury to the public health;

(2) meet the commission's minimum requirements for on-site sewage disposal systems; and

(3) include a written enforcement plan.

(b) If the order or resolution adopts more stringent standards for on-site sewage disposal systems than this chapter or the commission's standards and provides greater public health and safety protection, the authorized agent's order or resolution prevails over this chapter or the standards.

(c) An authorized agent must obtain commission approval of substantive amendments to the agent's order or resolution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.033. DELEGATION TO LOCAL GOVERNMENTAL ENTITIES. The commission shall delegate to local governmental entities responsibility for the implementation and enforcement of applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.034. INVESTIGATION OF AUTHORIZED AGENTS. (a) The

commission shall:

(1) conduct not more often than once a year an investigation of each authorized agent to determine the authorized agent's compliance with this chapter; and

(2) prepare an annual report concerning the status of the local governmental entity's regulatory program.

(b) If the commission determines that an authorized agent does not consistently enforce the commission's minimum requirements for on-site sewage disposal systems, the commission shall hold a hearing and determine whether to continue the designation as an authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.035. MANDATORY APPLICATION FOR AND MAINTENANCE OF DESIGNATION. A local governmental entity that applies to the Texas Water Development Board for financial assistance under a program for economically distressed areas must take all actions necessary to receive and maintain a designation as an authorized agent of the commission.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.036. COUNTY MAP. (a) If the commission designates a local governmental entity as its authorized agent and if the entity intends to apply to the Texas Water Development Board for financial assistance under a program for economically distressed areas, the commissioners court of the county in which the entity is located shall prepare a map of the county area outside the limits of municipalities. The entity shall give to the commissioners court a written notice of the entity's intention to apply for the assistance. The map must show the parts of the area in which the different types of on-site sewage disposal systems may be appropriately located and the parts in which the different types of systems may not be appropriately located.

(b) The commissioners court shall file the map in the office of

the county clerk.

(c) The commissioners court, at least every five years, shall review the map and make changes to it as necessary to keep the map accurate.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 127, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

SUBCHAPTER D. PERMITS; FEES

Sec. 366.051. PERMITS. (a) A person must hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system.

(b) If the on-site sewage disposal system is located in the jurisdiction of an authorized agent, the permit is issued by the authorized agent; otherwise, the permit is issued by the commission.

(c) A person may not begin to construct, alter, repair, or extend an on-site sewage disposal system that is owned by another person unless the owner or owner's representative shows proof of a permit and approved plan from the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.0512. MULTIPLE TREATMENT SYSTEMS. A multiple system of treatment devices and disposal facilities may be permitted as an on-site disposal system under this chapter if the system:

(1) is located on a tract of land of at least 100 acres in size;

(2) produces not more than 5,000 gallons a day on an annual average basis;

(3) is used only on a seasonal or intermittent basis; and

(4) is used only for disposal of sewage produced on the tract of land on which any part of the system is located.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 20.03, eff. Sept. 1, 2001.

Sec. 366.0513. PERMITS FOR CERTAIN TEMPORARY SYSTEMS. (a) An authorized agent may issue a permit to authorize the use of a temporary on-site sewage disposal system that:

(1) operates in conjunction with the pumping and hauling of wastewater produced by the system; and

(2) serves a property that:

(A) has been subdivided for residential use; and

(B) is of insufficient size to accommodate on-site disposal of all wastewater in compliance with this chapter.

(b) A permit issued under this section:

(1) may authorize the use of a system and the associated pumping and hauling activities described by Subsection (a) for not more than six months from the date of issuance; and

(2) may not be renewed.

Added by Acts 2023, 88th Leg., R.S., Ch. 1018 (H.B. 4087), Sec. 2, eff. September 1, 2023.

Sec. 366.0515. MAINTENANCE CONTRACT AND PERFORMANCE BOND. (a) Except as provided by Subsection (g), an authorized agent or the commission may not condition a permit or the approval of a permit for an on-site sewage disposal system using aerobic treatment for a single-family residence on the system's owner contracting for the maintenance of the system.

(b) Except as provided by Subsection (a), an authorized agent by order or resolution or the commission by rule may condition approval of a permit for an on-site sewage disposal system on the system's owner contracting for the maintenance of the system. If a maintenance contract is required, the owner of the on-site sewage disposal system must submit to the permitting authority:

(1) a signed contract for the maintenance of the on-site sewage disposal system; and

(2) if the on-site sewage disposal system is located in a county with a population of more than 2.8 million, a performance bond obtained from the person with whom the owner of the on-site sewage disposal system has contracted for maintenance of the system.

(c) A performance bond required by Subsection (b) must be:

(1) solely for the protection of the owner of the on-site sewage disposal system;

(2) conditioned on the faithful performance of the maintenance of the on-site sewage disposal system in accordance with plans, specifications, laws, regulations, and ordinances of the state and the authorized agent;

(3) in an amount reasonably related to the cost that the owner of the on-site sewage disposal system would incur if the maintenance company did not adhere to maintenance standards or comply with applicable statutes, rules, or ordinances;

(4) executed by a corporate surety in accordance with Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code);

(5) in a form approved by the permitting authority; and

(6) payable to the owner of the on-site sewage disposal system.

(d) If the owner of the on-site sewage disposal system enters into a new maintenance contract or revises the original maintenance contract, the owner must submit a copy of the new or revised maintenance contract and a new performance bond to the permitting authority not later than the 30th day after the date on which the original contract terminates or is modified.

(e) The permitting authority may establish and collect a reasonable fee to cover the cost of administering the performance bond program.

(f) The installer of an on-site sewage disposal system shall provide the owner of the system with information regarding maintenance of the system at the time the system is installed.

(g) The owner of a single-family residence shall maintain the system directly or through a maintenance contract. If an authorized agent or the commission determines that an owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly has violated this chapter or a rule adopted or order or permit issued under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the violation, shall correct the violation or enter into a contract for the maintenance of the system. If before the third anniversary of the date of the determination the owner is determined to have committed another violation of this chapter or a rule adopted under this chapter, the owner, not later than the 10th day after the date of receipt of notification of the subsequent violation, shall enter into a contract for the maintenance of the

system. An owner of a single-family residence located in a county with a population of at least 40,000 who maintains the owner's system directly and who violates this chapter or a rule adopted or order or permit issued under this chapter is also subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty may not exceed $100.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(k) If, under Subsection (b), an authorized agent or the commission conditions approval of a permit for an on-site sewage disposal system using aerobic treatment on the system's owner contracting for the maintenance of the system, the order, resolution, or rule may require the maintenance company to:

(1) inspect the system at specified intervals;

(2) submit a report on each inspection to the authorized agent or commission; and

(3) provide a copy of each report submitted under Subdivision (2) to the system's owner.

(l) A maintenance company that violates a provision of an order, resolution, or rule described by Subsection (k) is subject to an administrative penalty. The commission may recover the penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code, or the authorized agent may recover the penalty in a proceeding conducted under an order or resolution of the agent. Notwithstanding Section 7.052, Water Code, the amount of the penalty for the first violation of that order, resolution, or rule is $200, and the amount of the penalty for each subsequent violation is $500.

(m) If a maintenance company violates an order, resolution, or rule described by Subsection (k) three or more times, the commission, in the manner provided by Subchapter G, Chapter 7, Water Code, may revoke the license or registration of the maintenance company or any person employed by the maintenance company issued under:

(1) Section 26.0301, Water Code;

(2) Chapter 37, Water Code; or

(3) Section 366.071 of this code.

(n) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

(o) Repealed by Acts 2007, 80th Leg., R.S., Ch. 892, Sec. 3, eff. September 1, 2007.

Added by Acts 1997, 75th Leg., ch. 1127, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. 2482), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. 2482), Sec. 3, eff. September 1, 2007.

Sec. 366.052. PERMIT NOT REQUIRED FOR ON-SITE SEWAGE DISPOSAL ON CERTAIN SINGLE RESIDENCES. (a) Sections 366.051, 366.053, 366.054, and 366.057 do not apply to an on-site sewage disposal system of a single residence that is located on a land tract that is 10 acres or larger in which the field line or sewage disposal line is not closer than 100 feet of the property line.

(b) Effluent from the on-site sewage disposal system on a single residence:

(1) must be retained in the specified limits;

(2) may not create a nuisance; and

(3) may not pollute groundwater.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.053. PERMIT APPLICATION. (a) Application for a permit must:

(1) be made on a form provided by the commission or authorized agent; and

(2) include information required by the commission or authorized agent to establish that the individual sewage disposal system complies with this chapter and rules adopted under this chapter.

(b) The commission shall adopt rules and procedures for the submission, review, and approval or rejection of permit applications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.054. NOTICE FROM INSTALLER. An installer may not begin construction, alteration, repair, or extension of an on-site sewage disposal system unless the installer notifies the commission or authorized agent of the date on which the installer plans to begin work on the system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.055. INSPECTIONS. (a) The commission or authorized agent shall review a proposal for an on-site sewage disposal system and make inspections of the system as necessary to ensure that the on-site sewage disposal system is in substantial compliance with this chapter and the rules adopted under this chapter.

(b) An on-site sewage disposal system may not be used unless it is inspected and approved by the commission or the authorized agent.

(c) A holder of a permit issued under this chapter shall notify the commission, the authorized agent, or a designated representative not later than the fifth working day before the proposed date of the operation of an installation that the installation is ready for inspection.

(d) The inspection shall be made on a date and time mutually agreed on by the holder of a permit and the commission, the authorized agent, or a designated representative.

(e) An installation inspection shall be made not later than the second working day, excluding holidays, after the date on which notification that the installation is completed and ready for inspection is given to the commission, the authorized agent, or a designated representative.

(f) The owner, owner's representative, or occupant of the property on which the installation is located shall give the commission, the authorized agent, or a designated representative reasonable access to the property at reasonable times to make

necessary inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.056. APPROVAL OF ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission or authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections under Section 366.055.

(b) If a system is not approved under this section, the on-site sewage disposal system may not be used until all deficiencies are corrected and the system is reinspected and approved by the commission or authorized agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.057. PERMIT ISSUANCE. (a) The commission shall issue or authorize the issuance of permits and other documents.

(b) A permit and approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system must be issued in the name of the person who owns the system and must identify the specific property location or address for the specific construction, alteration, extension, repair, or operation proposed by the person.

(c) The commission may not issue a permit to construct, alter, repair, or extend an on-site sewage disposal system if the issuance of a permit conflicts with other applicable laws or public policy under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995.

Sec. 366.058. PERMIT FEE. (a) The commission by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system. The commission may also use the fee to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of

any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission at its discretion may provide variances to the uniform application of the permit fee.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 60, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.08, eff. Sept. 1, 2001.

Sec. 366.059. PERMIT FEE PAID TO DEPARTMENT OR AUTHORIZED AGENT. (a) The permit fee shall be paid to the authorized agent or the commission, whichever performs the permitting function.

(b) The commission may assess a reasonable and appropriate charge-back fee, not to exceed $500, to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected. The commission shall base the amount of a charge-back fee under this subsection on the actual cost of issuing a permit under this section. The commission may assess a charge-back fee to a local governmental entity under this subsection if the local governmental entity is an authorized agent that:

(1) has repealed the order, ordinance, or resolution that established the entity as an authorized agent; or

(2) has had its authorization as an authorized agent revoked by the commission.

(c) Fees collected under this section shall be deposited to the credit of the water resource management account.

(d) The commission may not assess a charge-back fee to a local governmental entity if the local governmental entity has repealed the order, ordinance, or resolution that established the entity as an authorized agent or has lost its designation as an authorized agent due to material change in the commission's rules under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 61, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.09, eff. Sept. 1, 2001.

SUBCHAPTER E. REGISTRATION OF INSTALLERS

Sec. 366.071. OCCUPATIONAL LICENSING AND REGISTRATION. (a) A person who constructs, installs, alters, extends, services, maintains, or repairs an on-site sewage disposal system or any part of an on-site sewage disposal system for compensation must hold a license or registration issued by the commission under Chapter 37, Water Code.

(b) A person designated by an authorized agent under Section 366.014 must hold a license issued by the commission under Chapter 37, Water Code.

(c) A person who conducts preconstruction site evaluations, including visiting a site and performing a soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an on-site sewage disposal system must hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas Board of Professional Engineers and Land Surveyors as an engineer.

(d) The commission may implement a program under Chapter 37, Water Code, to register persons who service or maintain on-site sewage disposal systems for compensation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.113, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 24.

Amended by:

Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 2, eff. September 1, 2006.

Acts 2005, 79th Leg., Ch. 1129 (H.B. 2510), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 892 (H.B. 2482), Sec. 2, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.09, eff. September 1, 2019.

SUBCHAPTER F. PENALTIES

Sec. 366.092. INJUNCTION OR CIVIL SUIT. (a) If it appears

that a person has violated, is violating, or is threatening to violate any provision of this chapter, or any rule, permit, or other order of the commission issued pursuant to this chapter, an authorized agent or, at the request of the commission, the attorney general may bring a civil suit for:

(1) mandatory or prohibitory injunctive relief, as warranted by the facts;

(2) a civil penalty as provided by this chapter; or

(3) both injunctive relief and civil penalty.

(b) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(4), eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 589, Sec. 7, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1127, Sec. 5, eff. Sept. 1, 1997.

Sec. 366.0922. COMMISSION ENFORCEMENT AT LOCAL GOVERNMENT REQUEST. A local government may request that the commission initiate an enforcement action under this chapter through a petition filed with the commission. If the commission chooses to initiate an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of enforcement action.

Added by Acts 1993, 73rd Leg., ch. 589, Sec. 8, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1127, Sec. 6, eff. Sept. 1, 1997.

Sec. 366.0923. FEES AND COSTS RECOVERABLE. If an authorized agent or the state prevails in a suit under this subchapter, it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 1993, 73rd Leg., ch. 589, Sec. 8, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1127, Sec. 7, eff. Sept. 1, 1997.

CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH

Sec. 367.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "On-site wastewater treatment system" means a system of treatment devices or disposal facilities that:

(A) is used for the disposal of domestic sewage, excluding liquid waste resulting from the processes used in industrial and commercial establishments;

(B) is located on the site where the sewage is produced; and

(C) produces not more than 5,000 gallons of waste a day.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.039, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.116, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.02, eff. September 1, 2011.

Sec. 367.007. ADMINISTRATION. (a) The commission may accept grants and donations from other sources to supplement the fees collected under Section 367.010. Grants and donations shall be deposited to the credit of the water resource management account and may be disbursed as the commission directs and in accordance with Section 367.008.

(b) Administrative and facilities support costs are payable from the water resources management account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.041, eff. Dec. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.118, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.03, eff. September 1, 2011.

Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The commission shall establish procedures for awarding competitive grants and disbursing grant money.

(b) The commission shall award competitive grants to support applied research and demonstration projects by accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers, including wastewater reuse.

(c) The commission shall seek the advice of relevant experts when choosing research topics and awarding grants under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.042, eff. Dec. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.04, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 867 (H.B. 2771), Sec. 1, eff. September 1, 2017.

Sec. 367.009. APPROPRIATIONS. Money collected and appropriated for the purposes of this chapter shall be disbursed as the commission directs and in accordance with Section 367.008.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.05, eff. September 1, 2011.

Sec. 367.010. FEES. (a) The commission and each county, municipality, public health department, and river authority shall collect a $10 fee for each on-site wastewater treatment permit application processed.

(b) A county, municipality, public health department, or river authority that collects a fee shall forward the fee to the commission.

(c) The commission shall enforce the collection and forwarding of the fee.

(d) The fee proceeds shall be deposited to the credit of the water resources management account and may be used only for the purposes of Sections 367.007 and 367.008.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.119, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 347, Sec. 3, eff. Aug. 27 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 8.06, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 867 (H.B. 2771), Sec. 2, eff. September 1, 2017.

CHAPTER 368. COUNTY REGULATION OF TRANSPORTATION OF WASTE

SUBCHAPTER A. TRANSPORTERS OF GREASE TRAP, SAND TRAP, AND SEPTIC WASTE

Sec. 368.001. REGULATORY PROGRAM. The commissioners court of a county may establish a program regulating transporters of grease trap, sand trap, and septic waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.002. PARTICIPATION BY MUNICIPALITY IN REGULATORY PROGRAM. The commissioners court may enter into a contract with a municipality that provides the terms and conditions under which the municipality may participate in the regulatory program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.003. PERMITS. The commissioners court of a county may:

(1) require a permit for trucks that transport grease trap, sand trap, and septic waste, including trucks serving unincorporated areas of the county;

(2) by order establish guidelines and procedures for issuing permits to trucks that transport grease trap, sand trap, and

septic waste; and

(3) issue a single permit number that allows a municipality participating in the county regulatory program the option to add to that permit number a suffix unique to the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.004. INSPECTIONS. The commissioners court of a county may:

(1) coordinate with municipalities the inspection of trucks that transport grease trap, sand trap, and septic waste;

(2) by order establish guidelines and procedures to coordinate truck inspections; and

(3) assess an inspection fee sufficient to cover the cost to the county of providing the inspection service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.005. CONTRACTS. The commissioners court of a county may contract with a person to provide a service that is part of the regulatory program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.006. FORMS. The commissioners court of a county may develop a single manifest form with a uniform manifest registration and numbering system to be used by the county and each participating municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. REGULATION AND LICENSING OF WASTE HAULERS

Sec. 368.011. DEFINITIONS. In this subchapter:

(1) "Waste" means:

(A) animal and vegetable waste materials resulting from the handling, preparation, cooking, or consumption of food;

(B) discarded paper, rags, cardboard, wood, rubber,

plastics, yard trimmings, fallen leaves, brush materials, and similar combustible items; and

(C) discarded glass, crockery, tin or aluminum cans, metal items, and similar items that are noncombustible at ordinary incinerator temperatures.

(2) "Waste hauler" means a person who, for compensation, transports waste by the use of a motor vehicle.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.012. COUNTY LICENSING AND REGULATION. To protect the public health, safety, or welfare, the commissioners court of a county with a population of less than 375,000 may by ordinance:

(1) require a waste hauler who transports waste in unincorporated areas of the county to be licensed by the county;

(2) establish requirements for obtaining and renewing a waste hauler license;

(3) impose a license issuance or renewal fee in an amount that generates annually the approximate amount of revenue needed to fund the licensing program for a year;

(4) establish standards governing the transportation of waste in unincorporated areas of the county;

(5) establish grounds for suspending or revoking a waste hauler license; and

(6) prescribe any other provisions necessary to administer the licensing program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 426, Sec. 1, eff. May 29, 1997.

Sec. 368.013. EXEMPTIONS FOR CERTAIN WASTE HAULERS. (a) This subchapter does not apply to an entity that transports:

(1) material as part of a recycling program; or

(2) salt water, drilling fluids, or other waste associated with the exploration, development, and production of oil, gas, or geothermal resources.

(b) Except as provided by Subsection (c), a county may not require a waste hauler license to be held by a waste hauler:

(1) while transporting waste on behalf of a municipality or

other governmental entity; or

(2) operating regularly in more than three counties.

(c) A county may require a waste hauler who transports waste on behalf of a municipality or other governmental entity to have a waste hauler license if the hauler deposits any part of that waste in a county other than the county in which all or part of the municipality or other governmental entity is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.014. BOND OR OTHER FINANCIAL ASSURANCE. (a) An applicant for a waste hauler license must execute a surety bond or provide other financial assurance that is payable for the use and benefit of the county or any other person harmed by the waste hauler's actions.

(b) The bond or other financial assurance must be in an amount the commissioners court considers necessary or desirable according to the risk of harm associated with the operation of the waste hauling business.

(c) A bond executed under this section must comply with the insurance laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.015. FEES. Fees or other money received by a county under the licensing program shall be deposited to the credit of the general fund of the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.016. CONFLICT WITH OTHER REGULATIONS. If a requirement or standard established under Section 368.012 conflicts with state law, a rule adopted under state law, or a municipal ordinance or charter, the stricter provision prevails.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.017. INJUNCTION. A county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an ordinance the county adopts under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 368.018. CRIMINAL PENALTY. (a) If a county ordinance adopted under this subchapter defines an offense for a violation of the ordinance, the offense is a Class C misdemeanor.

(b) A separate offense occurs on each day on which all the elements of the offense exist.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 369. PLASTIC CONTAINERS

Sec. 369.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(3) "Plastic bottle" means a plastic container that:

(A) has a neck smaller than the body of the container;

(B) is designed for a screw top, snap cap, or other closure; and

(C) has a capacity of not less than 16 fluid ounces or more than five gallons.

(4) "Rigid plastic container" means a formed or molded container, other than a plastic bottle, that:

(A) is intended for single use;

(B) is composed predominantly of plastic resin;

(C) has a relatively inflexible finite shape or form; and

(D) has a capacity of not less than eight ounces or more than five gallons.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.043, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.120, eff. Sept. 1, 1995.

Sec. 369.002. SYMBOLS FOR CERTAIN PLASTIC CONTAINERS. (a) A person may not manufacture or distribute a plastic bottle or rigid plastic container unless the appropriate symbol indicating the plastic resin used to produce the bottle or container is molded into or imprinted on the bottom or near the bottom of the bottle or container.

(b) A plastic bottle or rigid plastic container with a base cup or other component of a material different from the basic material used in making the bottle or container shall bear the symbol indicating its basic material.

(c) The symbols used under this section must consist of a number placed within a triangle of arrows and of letters placed below the triangle of arrows. The triangle must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow must be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the arrows must depict a clockwise path around the number.

(d) The numbers, letters of the symbols, and the plastic resins represented by the symbols are:

(1) 1 and PETE, representing polyethylene terephthalate;

(2) 2 and HDPE, representing high density polyethylene;

(3) 3 and V, representing vinyl;

(4) 4 and LDPE, representing low density polyethylene;

(5) 5 and PP, representing polypropylene;

(6) 6 and PS, representing polystyrene; and

(7) 7 and OTHER, representing all other resins, including layered plastics of a combination of materials.

(e) The commission may approve the use of another nationally or internationally recognized label coding system for special-purpose plastic bottles or rigid plastic containers which are components of motor vehicles in place of the symbols described by Subsections (c) and (d).

(f) The commission shall:

(1) maintain a list of the symbols; and

(2) provide a copy of that list to any person on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 99, Sec. 1, eff. May 7, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.121, eff. Sept. 1, 1995.

Sec. 369.003. PENALTY. (a) A person who violates Section 369.002(a) or (b) is subject to a civil penalty not to exceed $500 for each act of violation.

(b) If it appears that a person has violated or is violating Section 369.002, the attorney general or a district attorney, criminal district attorney, or county attorney shall institute and conduct a suit in the name of this state to recover the civil penalty imposed under this section.

(c) A civil penalty recovered under this section shall be deposited:

(1) in the state treasury if the attorney general brings the suit; or

(2) in the general fund of the county in which the violation occurred if a district attorney, criminal district attorney, or county attorney brings the suit.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 131, eff. Sept. 1, 1991.

CHAPTER 370. TOXIC CHEMICAL RELEASE REPORTING

Sec. 370.001. SHORT TITLE. This chapter may be cited as the Texas Toxic Chemical Release Reporting Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.002. DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Commission" means the Texas Natural Resource Conservation Commission.

(3) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, and land and all living things.

(4) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(5) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person.

(6) "Manufacture" means to produce, prepare, import, or compound a toxic chemical.

(7) "Person" means an individual, trust, firm, joint-stock company, corporation, including a government corporation, partnership, association, state, commission, municipality or other political subdivision of a state, or interstate body.

(8) "Process" means to prepare a toxic chemical, after its manufacture, for distribution in commerce:

(A) in the same form or physical state as, or in a different form or physical state from, the form in which the chemical was received by the person preparing the chemical; or

(B) as part of an article containing the toxic chemical.

(9) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing into the environment any toxic chemical. The term includes the abandonment or discarding of barrels, containers, and other closed receptacles of any toxic chemical.

(10) "Threshold amount" means the amount established by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

(11) "Toxic chemical" means a chemical designated as a toxic chemical by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

(12) "Toxic chemical release form" means the form published by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.044, eff. Aug. 12, 1991.

Sec. 370.003. TOXIC CHEMICAL RELEASE FORM REQUIRED OF CERTAIN FACILITIES. (a) The owner or operator of a facility shall submit a toxic chemical release form to the executive director if the facility:

(1) has 10 or more full-time employees and a standard industrial classification code between 20 and 39 that was in effect on July 1, 1985, or has been designated as a facility subject to these requirements by the administrator; and

(2) manufactured, processed, or otherwise used a toxic chemical in excess of the threshold amount during the calendar year for which a toxic chemical release form is required.

(b) The owner or operator of a facility subject to Subsection (a) shall submit a toxic chemical release form for each toxic chemical manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold amount.

(c) The form shall be submitted not later than July 1 of each year and must contain data that reflect each release that occurred during the preceding calendar year. The administrator may modify the frequency with which a report must be submitted under this section as provided under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.004. THRESHOLD AMOUNTS FOR REPORTING. (a) The threshold amounts for purposes of reporting a toxic chemical under Section 370.003 are as follows:

(1) for a toxic chemical used, but not manufactured or processed, at a facility, 10,000 pounds of the toxic chemical used at the facility during the preceding calendar year; or

(2) for a toxic chemical manufactured or processed at a facility, 25,000 pounds of the toxic chemical manufactured or processed at the facility during the preceding calendar year.

(b) The administrator may establish a threshold amount for a toxic chemical different from the amount established under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.005. USE OF AVAILABLE DATA. (a) To provide the information required on the toxic chemical release form, the owner or operator of a facility may use:

(1) readily available data, including monitoring data, collected under other law; or

(2) reasonable estimates of the amounts involved if data under Subdivision (1) are not readily available.

(b) This section does not require monitoring or measurement of the quantities, concentration, or frequency of a toxic chemical released into the environment beyond the monitoring and measurement required under other law or regulation.

(c) To ensure consistency, data must be expressed in common units, as designated by the administrator.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991.

Sec. 370.006. PUBLIC AVAILABILITY OF TOXIC CHEMICAL RELEASE FORM. (a) A toxic chemical release form required under this chapter is intended to provide information to the public, including federal, state, and local governments and citizens of the communities surrounding a facility covered under Section 370.003.

(b) A toxic chemical release form shall be made available in a manner consistent with the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.) and Chapter 552, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 370.007. TOXIC CHEMICAL RELEASE REPORTING FUNDS. (a) Toxic chemical release reporting funds consist of money collected by the commission from:

(1) fees imposed on owners and operators of facilities required to submit a toxic chemical release form; and

(2) penalties imposed under this chapter.

(b) The commission may use the money collected under this chapter to pay for:

(1) costs incurred by the commission in implementing this

chapter; and

(2) other commission activities necessary to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.06, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 8, eff. Aug. 30, 1993.

Sec. 370.008. DISPOSITION OF FEES. (a) The owner or operator of a facility required to submit a toxic chemical release form under this chapter shall pay, at the time of the submission, a fee of $25 for each toxic chemical release form submitted.

(b) The maximum fee for a facility may not exceed $250.

(c) The commission by rule may increase or decrease the toxic chemical release form reporting fee as necessary.

(d) Fees collected under this section shall be deposited in the state treasury to the credit of the waste management account.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 132, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 564, Sec. 1.06, eff. June 11, 1993; Acts 1993, 73rd Leg., ch. 746, Sec. 8, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 63, eff. Sept. 1, 1997.

CHAPTER 371. USED OIL COLLECTION, MANAGEMENT, AND RECYCLING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. SHORT TITLE. This chapter may be cited as the Texas Used Oil Collection, Management, and Recycling Act.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1995.

Sec. 371.002. FINDINGS. The legislature finds that:

(1) when properly managed and recycled, used oil is a valuable energy resource;

(2) used oil can be recycled into a number of different products;

(3) improper disposal of used oil is a significant

environmental problem and a waste of a potentially valuable energy resource;

(4) there is a need for an expanded statewide network of used oil collection sites for private citizens who change their own motor oil;

(5) the private sector, with incentives, is best equipped to establish and operate used oil collection centers that are convenient for the public;

(6) the need for publicly operated used oil collection centers is greatest in more sparsely populated areas of the state and should diminish over time;

(7) the United States Environmental Protection Agency has issued final regulations that properly classify and regulate used oil and used oil filters in accordance with the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(8) the current used oil and used oil filter program in this state imposes more stringent management requirements than the regulations of the United States Environmental Protection Agency;

(9) limited public money is needed to finance public and private infrastructure investments to collect, manage, and recycle used motor oil;

(10) the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) establish a balanced approach to the objectives of preserving a valuable resource and protecting the natural environment; and

(11) recycling, reuse, treatment, or proper disposal of used oil produces a more advantageous cost-benefit ratio in accomplishing the goals of state law, and these considerations should be included in the source reduction and waste minimization plans adopted under Section 361.505 to the extent applicable.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 887, Sec. 1, eff. Sept. 1, 1995.

Sec. 371.0025. PURPOSE AND SCOPE. (a) The purposes of this chapter are to:

(1) ensure that this state's used oil program is consistent with and not more stringent than the federal program for the management of used oil under 40 C.F.R. Part 279 unless otherwise

required by state or federal law; and

(2) establish a program to promote public and private do-it-yourselfer used oil collection centers and used oil collection centers.

(b) This chapter does not apply to used oil:

(1) generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code;

(2) exempted under 40 C.F.R. Section 279.10(g) because the oil has been introduced into a crude oil pipeline or is being processed at a petroleum refining facility; or

(3) generated through other activities exempted under 40 C.F.R. Part 271 or 279.

(c) This chapter does not apply to a used oil filter generated in connection with activities regulated by the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Added by Acts 1995, 74th Leg., ch. 887, Sec. 2, eff. Sept. 1, 1995.

Sec. 371.003. DEFINITIONS. In this chapter:

(1) "Aboveground tank" means a tank used to store or process oil that is not an underground storage tank as defined by 40 C.F.R. Section 280.12.

(2) "Automotive oil" means any lubricating oils intended for use in an internal combustion engine, crankcase, transmission, gear box, or differential for an automobile, bus, or truck. The term includes oil that is not labeled specifically for that use but is suitable for that use according to generally accepted industry specifications.

(3) "Commission" means the Texas Natural Resource Conservation Commission.

(4) "Container" means a portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(5) "Do-it-yourselfer used oil collection center" means a site or facility that accepts or aggregates and stores used oil collected only from household do-it-yourselfers. A registered do-it-yourselfer used oil collection center that is also a used oil generator may commingle household do-it-yourselfer used oil with the

used oil it generates.

(6) "Existing tank" means a tank that is used for the storage or processing of used oil and that as of September 1, 1995, is in operation or is being installed. A tank is being installed if the owner or operator has obtained all necessary federal, state, and local approvals or permits and:

(A) a continuous on-site installation program has begun; or

(B) the owner or operator has entered into contractual obligations for installation of the tank that cannot be cancelled or modified without substantial loss.

(7) "Household do-it-yourselfer used oil" means oil that is derived from a household, including used oil generated by an individual through the maintenance of the individual's personal vehicle or equipment.

(8) "Household do-it-yourselfer used oil generator" means an individual who generates household do-it-yourselfer used oil.

(9) "New tank" means a tank for the storage or processing of used oil the installation of which begins on or after September 1, 1995.

(10) "Petroleum refining facility" means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking, or other processes.

(11) "Processing" means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used-oil-derived products, including blending used oil with virgin petroleum products, blending used oils to meet fuel specifications, filtration, simple distillation, chemical or physical separation, and rerefining.

(12) "Reclaiming" means processing material to recover a usable product or regenerating material, including recovering lead from a spent battery and regenerating spent solvents.

(13) "Recycling" means:

(A) preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) burning used oil for energy recovery.

(14) "Rerefining" means applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing.

(15) "Rerefining distillation bottoms" means the heavy fraction of filtered and dehydrated used oil produced by vacuum distillation. The composition of still bottoms varies with column operation and feedstock.

(16) "Tank" means a stationary device designed to contain an accumulation of used oil that is constructed primarily of nonearthen materials that provide structural support, including wood, concrete, steel, and plastic.

(17) "Used oil" means oil that has been refined from crude oil, or synthetic oil, that as a result of use has been contaminated by physical or chemical impurities.

(18) "Used oil aggregation point" means a site or facility that accepts, aggregates, or stores used oil collected from:

(A) used oil generation sites owned or operated by the owner or operator of the used oil aggregation point and transported to the used oil aggregation point in shipments of not more than 55 gallons; or

(B) household do-it-yourselfers.

(19) "Used oil burner" means a facility in which used oil not meeting the specifications in 40 C.F.R. Section 279.11 is burned for energy recovery in a device listed in 40 C.F.R. Section 279.61(a).

(20) "Used oil collection center" means a site or facility that is registered by the commission to manage used oil and accepts, aggregates, or stores used oil collected from:

(A) used oil generators regulated under 40 C.F.R. Part 279, Subpart C, who transport used oil to the used oil collection center in shipments of not more than 55 gallons under 40 C.F.R. Section 279.24; or

(B) household do-it-yourselfers.

(21) "Used oil fuel marketer" means a person who:

(A) directs a shipment of used oil not meeting the specifications in 40 C.F.R. Section 279.11 from the person's facility to a used oil burner; or

(B) first claims that used oil to be burned for energy

recovery meets the used oil specifications in 40 C.F.R. Section 279.11.

(22) "Used oil generator" means a person, by site, whose act or process:

(A) produces used oil; or

(B) first causes used oil to become subject to regulation.

(23) "Used oil processor or rerefiner" means a facility that processes used oil.

(24) "Used oil transfer facility" means a transportation-related facility, including a loading dock, parking area, storage area, or other area, where shipments of used oil are held for more than 24 hours and not more than 35 days during the normal course of transportation. A transfer facility that stores used oil for more than 35 days is subject to 40 C.F.R. Part 279, Subpart F.

(25) "Used oil transporter" means a person who:

(A) transports used oil; or

(B) owns or operates a used oil transfer facility.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.045, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 4.05, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.122, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 3, eff. Sept. 1, 1995.

SUBCHAPTER B. USED OIL RECYCLING PROGRAM

Sec. 371.021. PUBLIC EDUCATION. The commission shall conduct an education program to inform the public of the need for and benefits of the collection and recycling of used oil and used oil filters. The program shall:

(1) establish, maintain, and publicize a used oil information center that prepares and disperses materials and information explaining laws and rules regulating used oil and informing the public of places and methods for proper recycling of used oil;

(2) encourage the voluntary establishment of used oil collection and recycling programs by private businesses and organizations and by local governments and provide technical assistance to persons who organize those programs; and

(3) encourage local governments to procure recycled automotive and industrial oils and oils blended with recycled oils, if those oils meet equipment manufacturer's specifications.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.022. NOTICE BY RETAIL DEALER. A retail dealer who annually sells directly to the public more than 500 gallons of oil in containers for use off-premises shall post in a prominent place a sign provided by the commission:

(1) informing the public that improper disposal of used oil is prohibited by law;

(2) containing instructions for disposal of used oil filters; and

(3) prominently displaying the toll-free telephone number of the state used oil information center established under Section 371.021.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.023. GRANTS TO LOCAL GOVERNMENTS AND PRIVATE ENTITIES. (a) The commission shall develop a grant program for local governments and private entities that encourages the collection, reuse, and recycling of household do-it-yourselfer used oil.

(b) The commission may approve a grant for any project that uses one or more of the following programs:

(1) curbside pickup of containers of household do-it-yourselfer used oil by a local government or its representative;

(2) retrofitting of municipal solid waste equipment to facilitate curbside pickup of household do-it-yourselfer used oil;

(3) establishment of do-it-yourselfer used oil collection centers and used oil collection centers at locations accessible to the public, including landfills, fire stations, retail stores, quick lubrication centers, and automobile repair shops;

(4) provision of containers and other materials and

supplies that can be used to store household do-it-yourselfer used oil for pickup or delivery to a do-it-yourselfer used oil collection center in an environmentally sound manner; and

(5) any other activity the advisory committee established under Subsection (c) determines will encourage the proper recycling of household do-it-yourselfer used oil.

(c) The commission shall appoint an advisory committee for the used oil grant program. The advisory committee consists of seven members who serve at the pleasure of the commission and represent oil manufacturers as defined by Section 371.062, operators of used oil collection centers, and local governments. The advisory committee members serve without compensation and are not entitled to reimbursement for expenses incurred in the performance of their duties. The advisory committee shall:

(1) recommend criteria for grants;

(2) establish guidelines for allowable administrative expenses; and

(3) recommend grant recipients to the commission based on the used oil collection needs of this state.

(d) The commission by rule shall:

(1) establish procedures for the application for and criteria for the award of grants under this section; and

(2) adopt guidelines for allowable administrative expenses in accordance with guidelines established by the advisory committee.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.123, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.024. COLLECTION FACILITIES. (a) All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers.

(b) A do-it-yourselfer used oil collection center and a used oil collection center shall:

(1) register biennially with the commission; and

(2) report annually to the commission the amounts of used oil collected by the center from the public.

(c) The commission shall adopt rules governing the registration

of and reporting by do-it-yourselfer used oil collection centers and used oil collection centers.

(d) The commission by rule shall adopt standards for managing and operating a do-it-yourselfer used oil collection center or a used oil collection center.

(e) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering do-it-yourselfer used oil collection centers and used oil collection centers. A private entity that serves voluntarily as a do-it-yourselfer used oil collection center or a used oil collection center is exempt from the registration fee.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.124, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.0245. REIMBURSEMENT OF USED OIL COLLECTION CENTER'S HAZARDOUS WASTE EXPENSE. (a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered do-it-yourselfer used oil collection center or a used oil collection center for costs associated with the collection center's disposal of:

(1) household do-it-yourselfer used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes or is unfit for recycling;

(2) household do-it-yourselfer used oil collected by the collection center that has been commingled with oils described in Subdivision (1) and is unsuitable for recycling; or

(3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered do-it-yourselfer used oil collection center or used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

(1) the center has established procedures to minimize the risk that the center will mix the used oil the center generates or collects from the public with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than:

(A) five gallons of used oil from any person at any one

time if the center is a registered do-it-yourselfer used oil collection center; or

(B) 55 gallons of used oil from any person at one time if the center is a registered used oil collection center; and

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during any period under review by:

(A) providing a process by which all individuals leaving household do-it-yourselfer used oil at the center are required to provide their names, addresses, and the approximate amounts of used oil brought to the collection center; or

(B) another method approved by the commission.

(c) For the purpose of Subsection (b)(2), the owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may presume that a quantity of used oil collected from a member of the public that does not exceed the applicable collection limit established by that subsection is not mixed with a hazardous substance if the owner or operator acts in good faith in the belief the oil is generated from the individual's personal activity.

(d) In any state fiscal year, a registered do-it-yourselfer used oil collection center or used oil collection center may not be reimbursed for more than $7,500 in total eligible disposal costs, subject to Section 371.0246(d).

(e) Reimbursements made under this section shall be paid out of the water resource management account and may not exceed an aggregate amount of $500,000 each fiscal year.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 65, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 1, eff. September 1, 2017.

Sec. 371.0246. PROCEDURES FOR REIMBURSEMENT. (a) An owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may apply for reimbursement from the commission.

(b) An application for reimbursement shall be submitted on a form approved or provided by the commission.

(c) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and commission registration number of the registered do-it-yourselfer used oil collection center or used oil collection center from which the contaminated oil was removed;

(3) the name, address, telephone number, and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of any shipping documents that accompanied the transportation of the shipment of used oil;

(5) a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full in the form of:

(A) canceled checks;

(B) business receipts from the person who performed the work; or

(C) other documentation approved by the commission;

(6) a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for treatment or disposal; and

(7) any other information that the executive director may reasonably require.

(d) All claims for reimbursement filed under this section and Section 371.0245 are subject to funds available for disbursement in the water resource management account and to Section 371.0245(e). This subchapter does not create an entitlement to money in the water resource management account or any other fund.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 4.07, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 66, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 2, eff. September 1, 2017.

Sec. 371.025. LIMITATION OF LIABILITY. (a) A person may not recover from the owner, operator, or lessor of a registered do-it-yourselfer used oil collection center or used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the commission.

(b) For purposes of this section, the owner, operator, or lessor of a do-it-yourselfer used oil collection center or a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a do-it-yourselfer used oil collection center or a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a do-it-yourselfer used oil collection center or a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.125, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.026. REGISTRATION AND REPORTING REQUIREMENTS OF USED OIL HANDLERS OTHER THAN GENERATORS. (a) The commission shall adopt rules governing registration and reporting of used oil handlers other than generators. The rules shall require that:

(1) a used oil handler other than a generator:

(A) register with the commission;

(B) provide evidence of familiarity with applicable state laws and rules and management procedures applicable to used oil handling; and

(C) provide proof of liability insurance or other evidence of financial responsibility for any liability that may be incurred in handling used oil, except that this provision does not apply to a used oil handler which is owned or otherwise effectively controlled by the owners or operators where the used oil is generated; and

(2) a used oil processor or rerefiner must report to the commission, in the form of a letter on a biennial basis by December 1 of each odd-numbered year, the calendar year covered by the report and the quantities of used oil accepted for processing or rerefining and the manner in which the used oil is processed or rerefined, including the specific processes employed.

(b) The commission by rule shall adopt reasonable management and safety standards for the handling of used oil.

(c) The commission may impose a registration fee in an amount sufficient to cover the actual cost of registering used oil handlers other than generators.

(d) A used oil transporter may consolidate or aggregate loads of used oil for purposes of transportation but may not process used oil, except that a used oil transporter may conduct incidental processing operations, including settling and water separation, that occur in the normal course of the transportation of used oil but that are not designed to produce, or make more amenable for the production of, used-oil-derived products or used oil fuel.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.126, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 389, Sec. 1, eff. Sept. 1, 1997.

Sec. 371.027. GIFTS AND GRANTS. The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out its powers and duties under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

Sec. 371.028. RULES. Not later than January 1, 1996, the commission shall adopt rules, standards, and procedures necessary to implement the used oil recycling program established by this chapter. Unless otherwise required by federal or state law, the rules, standards, and procedures must be consistent with and not more stringent than the used oil management standards under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.127, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 4, eff. Sept. 1, 1995.

SUBCHAPTER C. CERTAIN ACTIONS PROHIBITED; PENALTIES

Sec. 371.041. ACTIONS PROHIBITED. A person may not collect, transport, store, recycle, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. April 1, 1992. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.128, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 40, eff. Sept. 1, 1997.

SUBCHAPTER D. USED OIL RECYCLING FEES

Sec. 371.061. DEPOSIT OF FEES; USE OF FEE REVENUE. (a) The following amounts shall be deposited to the water resource management account:

(1) fees collected under Sections 371.024, 371.026, and

371.062;

(2) interest and penalties imposed under this chapter for late payment of fees, failure to file a report, or other violations of this chapter; and

(3) gifts, grants, donations, or other financial assistance the commission is authorized to receive under Section 371.027.

(b) In addition to other authorized uses of money in the water resource management account, the commission may use money in that account for purposes authorized by this chapter, including:

(1) public education regarding used oil recycling;

(2) grants to public and private do-it-yourselfer used oil collection centers and used oil collection centers;

(3) registration of do-it-yourselfer used oil collection centers, used oil collection centers, and used oil handlers other than generators; and

(4) administrative costs of implementing this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.06, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.131, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 68, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 4, eff. September 1, 2017.

Sec. 371.062. FEE ON SALE OF AUTOMOTIVE OIL. (a) In this section:

(1) "Distributor" means a person who maintains a distribution center or warehouse in this state and annually sells more than 25,000 gallons of automotive oil.

(2) "First sale" means the first actual sale of automotive oil delivered to a location in this state and sold to a purchaser who is not an automotive oil manufacturer or distributor. The term does not include the sale of automotive oil:

(A) exported from this state to a location outside this state for the purpose of sale or use outside this state;

(B) for resale to or use by vessels exclusively engaged in foreign or interstate commerce;

(C) to a subsequent purchaser who maintains a do-it-yourselfer used oil collection center or used oil collection center registered by the commission at the location where the automotive oil is changed, used, consumed, or resold to do-it-yourselfers; or

(D) to the United States.

(3) "Importer" means any person who imports or causes to be imported automotive oil into this state for sale, use, or consumption.

(4) "Oil manufacturer" means any person or entity that formulates automotive oil and packages, distributes, or sells that automotive oil. The term includes any person packaging or repackaging automotive oil.

(b) An oil manufacturer or distributor who makes a first sale of automotive oil is liable for a fee.

(c) An oil importer who imports or causes to be imported automotive oil is liable for the fee at the time the oil is received.

(d) An oil distributor or retailer who exports from this state to a location outside this state oil on which the automotive oil fee has been paid may request from his supplier a refund or credit of the fee paid on the exported oil. The supplier or oil manufacturer and the importer may in turn request a refund of the fee paid to the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(e) An oil manufacturer, importer, distributor, or retailer who makes a sale to a vessel or a sale for resale to a vessel of automotive oil on which the automotive oil fee has been paid may file with the comptroller a request for refund of the fee paid on the oil or, where applicable, may request a refund or credit from the supplier to whom the fee was paid. The supplier may in turn request a refund from the comptroller. The amount of refund that may be claimed under this section may equal but not exceed the amount of the fee paid on the automotive oil.

(f) Each oil manufacturer, distributor, or importer required to pay a fee under this section shall:

(1) prepare and maintain, on a form provided or approved by the comptroller, a report of each first sale or, in the case of an importer, the first receipt in Texas of automotive oil by the person and the price received;

(2) retain the invoice or a copy of the invoice or other

appropriate record of the sale or receipt for four years from the date of sale or receipt; and

(3) on or before the 25th day of the month following the end of each calendar quarter, file a report with the comptroller and remit to the comptroller the amount of fees required to be paid for the preceding quarter.

(g) Records required to be maintained under Subsection (f) shall be available for inspection by the comptroller at all reasonable times.

(h) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(i) Except as provided by this section, Chapters 101 and 111 through 113, Tax Code, apply to the administration, payment, collection, and enforcement of fees under this section in the same manner that those chapters apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(j) The fee imposed under this section is one cent per quart or four cents per gallon of automotive oil.

(k) A person required to pay a fee under this section may retain one percent of the amount of the fees due from each quarterly payment as reimbursement for administrative costs.

(l) The comptroller may deduct a percentage of the fees collected under this section in an amount sufficient to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of fees and all penalties and interest collected under this section shall be deposited to the credit of the water resource management account.

(m) A distributor must obtain a permit from the comptroller. The comptroller shall adopt an application form for the permit, which must include:

(1) the name under which the applicant transacts or intends to transact business;

(2) the location of the applicant's distribution center or warehouse in this state;

(3) if the applicant is a corporation or partnership, the names of the principal officers of the corporation or of the members of the partnership and the address of each officer or member; and

(4) any other information required by the comptroller.

(n) The comptroller may deny or revoke a permit under Subsection (m) if false information is submitted on the application or on a required fuels tax report or supplement.

(o) A permit under Subsection (m) may not be assigned.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.09, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.132, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 887, Sec. 9; Acts 1997, 75th Leg., ch. 333, Sec. 69, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 733 (S.B. 1105), Sec. 5, eff. September 1, 2017.

SUBCHAPTER E. FILTER STORAGE, TRANSPORTATION, OR PROCESSING

Sec. 371.101. DEFINITIONS. In this subchapter:

(1) "Bill of lading" means a shipping document that confirms the receipt of a shipment.

(2) "Bulk filter container" means a portable device that:

(A) is part of an integrated delivery and retrieval system; and

(B) has a capacity greater than 330 gallons.

(3) "Component parts" means the severable parts of an oil filter and includes oil present in an oil filter.

(4) "Do-it-yourselfer" means an individual who removes a used oil filter in the process of an oil change or automotive repair from the engine of a light duty motor vehicle, small utility engine, noncommercial motor vehicle, or farm equipment owned or operated by the individual.

(5) "Generator" means a person whose activities produce used oil filters. The term does not include a do-it-yourselfer.

(6) "Process" means to prepare a used oil filter for recycling, steel recovery, energy recovery, or proper disposal.

(7) "Processor" means a person that processes used oil filters generated by another person. The term does not include a generator that consolidates, drains, or crushes used oil filters for off-site recycling or disposal.

(8) "Store" means to hold in a location for any period.

(9) "Storage facility" means a location that stores used

oil filters before transportation, processing, recycling, or disposal of the filters. The term does not include the location of a generator.

(10) "Transporter" means a person that transports used oil filters to a location for storage, processing, recycling, or disposal.

(11) "Used oil filter" means any device that is an integral part of an oil flow system, the primary purpose of which is to remove contaminants from flowing oil contained in the system, and that, as a result of use, has become contaminated and unsuitable for its original purpose, is removed from service, and contains entrapped used oil. The term does not include a filter attached to the equipment containing the oil flow system. This term continues to apply regardless of prior processing until but not after the filter has been burned for steel recovery or energy recovery or it is separated into its component parts.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.102. APPLICABILITY. (a) This subchapter applies to a used oil filter only if the filter has not been:

(1) separated into its component parts; or

(2) burned for:

(A) steel recovery; or

(B) energy recovery.

(b) This subchapter does not apply to:

(1) an industrial generator that is:

(A) registered with the commission as an industrial or hazardous waste facility; or

(B) under the waste management authority of a state agency other than the commission; or

(2) a do-it-yourselfer.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.103. GENERAL REQUIREMENTS. (a) A person may not store, process, or dispose of a used oil filter in a manner that results in the discharge of oil into soil or water.

(b) A person may not knowingly place on land a used oil filter

that contains oil unless the used oil filter is in a container.

(c) A bulk filter container used to store used oil filters:

(1) must not leak; and

(2) must be securely closed, waterproof, and in good condition.

(d) A used oil filter may not be intentionally or knowingly placed in or accepted for disposal in a landfill permitted by the commission.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.104. REGISTRATION AND REPORTING. (a) A transporter, storage facility, or processor may not store, process, recycle, or dispose of used oil filters unless the person is registered with the commission.

(b) Unless the person is registered with the commission as a storage facility, a person may not store used oil filters:

(1) that in the aggregate have a volume greater than six 55-gallon drums; or

(2) in more than one bulk filter container.

(c) A registered transporter, storage facility, or processor shall:

(1) renew the registration biennially; and

(2) report to the commission biennially the number of used oil filters the person transported, stored, or processed in the two years preceding the date of the report.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.105. SHIPMENT RECORDS. (a) Each shipment of used oil filters must be accompanied by a bill of lading that conforms to commission rules.

(b) In accordance with commission rules, a copy of the bill of lading for each shipment of used oil filters must be maintained by the generator of the filters, transporter of the filters, storage facility at which the filters were stored, and processor of the filters for at least three years after the date the filters were transported, stored, or processed.

(c) The copies of the bills of lading must be made available

for the commission to inspect at any reasonable time.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.106. LIMITATIONS ON STORAGE. (a) A storage facility may not store a used oil filter for more than 120 days.

(b) A transporter may not store a used oil filter for more than 10 days.

(c) A processor may not store a used oil filter for more than 30 days before it is processed.

(d) A processor that stores used oil filters in a container shall label each container clearly with the phrase "Used Oil Filters."

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

Sec. 371.107. VARIANCES. (a) The commission may grant an individual variance to allow:

(1) a generator to store used oil filters in a greater aggregate volume than the volume prescribed by Section 371.104(b); or

(2) a person to store used oil filters for a period longer than the period prescribed for that person by Section 371.106.

(b) The commission may not grant a variance under this section for a period of longer than two years.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.108. SPILL PREVENTION AND CONTROL. Each registered storage facility and each facility of a registered processor shall develop a plan to prevent spills and respond to spills in accordance with the federal spill prevention, control, and countermeasure requirements provided by Title 40, Code of Federal Regulations, Part 112, as amended.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.109. FINANCIAL RESPONSIBILITY. The commission shall adopt rules requiring a person required to register under Section 371.104 to demonstrate adequate financial responsibility.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Sept. 1, 1999.

Sec. 371.110. CIVIL AND ADMINISTRATIVE PENALTIES. (a) Notwithstanding Sections 7.052 and 7.102, Water Code, a person that violates this subchapter or a rule adopted under this subchapter is liable for a civil penalty of not less than $100 or more than $500 for each violation and for each day of a continuing violation.

(b) The commission or the attorney general at the request of the commission may bring a suit under Subchapter D, Chapter 7, Water Code, to recover the penalty.

(c) A local government with jurisdiction over the area in which the violation occurred may bring suit to recover the penalty.

(d) The violation described by Subsection (a) also is subject to an administrative penalty. The commission may recover the administrative penalty in a proceeding conducted as provided by Subchapter C, Chapter 7, Water Code.

Added by Acts 1999, 76th Leg., ch. 366, Sec. 1, eff. Jan. 1, 2000.

CHAPTER 372. ENVIRONMENTAL PERFORMANCE STANDARDS FOR PLUMBING FIXTURES

Sec. 372.001. DEFINITIONS. In this chapter:

(1) "Commercial prerinse spray valve" means a handheld device that is designed and marketed for use with commercial dishwashing and ware washing equipment and that is used to spray water on dishes, flatware, and other food service items to remove food residue before the items are cleaned in a dishwasher or ware washer or by hand.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the commission.

(4) "Plumbing fixture" means a device that receives water, waste, or both and discharges the water, waste, or both into a drainage system. The term includes a kitchen sink, utility sink,

lavatory, bidet, bathtub, shower, urinal, toilet, or drinking water fountain.

(5) "Plumbing fixture fitting" means a device that controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, shower head, or bath filler.

(6) "Pressurized flushing device" means a device that contains a valve that:

(A) is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when the valve is open; and

(B) opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the proper operation of the fixture and gradually closes to avoid water hammer.

(7) "Toilet" means a water closet.

(8) "Water closet" means a plumbing fixture that has a water-containing receptor that receives liquid and solid body waste and, on actuation, conveys the waste through an exposed integral trap seal into a drainage system.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 421.001 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.048, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.133, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 1117 (H.B. 2428), Sec. 1, eff. January 1, 2006.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 1, eff. September 1, 2009.

Sec. 372.002. WATER SAVING PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, distribute, or import into this state a plumbing fixture for use in this state unless:

(1) the plumbing fixture meets the water saving performance standards provided by Subsection (b); and

(2) the plumbing fixture is listed by the commission under Subsection (c).

(b) The water saving performance standards for a plumbing fixture are the following standards:

(1) for a sink or lavatory faucet or a faucet aerator, maximum flow may not exceed 2.2 gallons of water per minute at a pressure of 60 pounds per square inch;

(2) for a shower head, maximum flow may not exceed 2.5 gallons of water per minute at a constant pressure over 80 pounds per square inch;

(3) for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow may not exceed an average of one gallon of water per flush; and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals";

(4) except as provided by Subsection (g), for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) maximum flow may not exceed an average of 0.5 gallons of water per flush; and

(B) the urinal and the associated flush valve, if any, must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; or

(ii) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals";

(5) for a toilet sold, offered for sale, or distributed in this state before January 1, 2014:

(A) maximum flow may not exceed an average of 1.6 gallons of water per flush; and

(B) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(i) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard

B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(ii) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device";

(6) except as provided by Subsection (h), for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014:

(A) the toilet must be a dual flush water closet that meets the following standards:

(i) the average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(a) American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(b) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped With a Dual Flushing Device"; or

(B) the toilet must be a single flush water closet that meets the following standards:

(i) the average flush volume may not exceed 1.28 gallons; and

(ii) the toilet must meet the performance, testing, and labeling requirements prescribed by American Society of Mechanical Engineers Standard A112.19.2-2008 and Canadian Standards Association Standard B45.1-2008 "Vitreous China Plumbing Fixtures and Hydraulic Requirements for Water Closets and Urinals"; and

(7) a drinking water fountain must be self-closing.

(c) The commission shall make and maintain a current list of plumbing fixtures that are certified to the commission by the manufacturer to meet the water saving performance standards established by Subsection (b). To have a plumbing fixture included on the list, a manufacturer must supply to the commission, in the form prescribed by the commission:

(1) the identification and the performance specifications of the plumbing fixture; and

(2) certified test results from a laboratory accredited by the American National Standards Institute verifying that the plumbing fixture meets the water saving performance standards established by Subsection (b).

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(f) This section does not apply to:

(1) a plumbing fixture that has been ordered by or is in the inventory of a building contractor or a wholesaler or retailer of plumbing fixtures on January 1, 1992;

(2) a fixture, such as a safety shower or aspirator faucet, that, because of the fixture's specialized function, cannot meet the standards provided by this section;

(3) a fixture originally installed before January 1, 1992, that is removed and reinstalled in the same building on or after that date;

(4) a fixture imported only for use at the importer's domicile;

(5) a nonwater-supplied urinal; or

(6) a plumbing fixture that has been certified by the United States Environmental Protection Agency under the WaterSense Program.

(g) The water saving performance standards for a urinal and the associated flush valve, if any, sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(3) if the urinal was designed for heavy-duty commercial applications.

(h) The water saving performance standards for a toilet sold, offered for sale, or distributed in this state on or after January 1, 2014, are the standards prescribed by Subsection (b)(5) if the toilet is a water closet that has a design not typically found in a residential application or that is designed for a specialized application, including a water closet that:

(1) is mounted on the wall and discharges to the drainage system through the floor;

(2) is located in a correctional facility, as defined by Section 1.07, Penal Code;

(3) is used in a bariatric application;

(4) is used by children at a day-care facility; or

(5) consists of a non-tank type commercial bowl connected to the plumbing system through a pressurized flushing device.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Jan. 1, 1992. Renumbered from Sec. 421.002 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.134, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 71, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 6, eff. September 1, 2009.

Sec. 372.0025. EXCEPTION: ACTION BY MUNICIPALITY OR COUNTY. The governing body of a municipality or county by ordinance or order may allow the sale in the municipality or county of a urinal or toilet that does not comply with Section 372.002(b)(4) or (6), respectively, if the governing body finds that to flush a public sewer system located in the municipality or county in a manner consistent with public health, a greater quantity of water is required because of the configuration of the drainage systems of buildings located in the municipality or county or the public sewer system.

Added by Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 3, eff. September 1, 2009.

Sec. 372.003. LABELING REQUIREMENTS. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1316, Sec. 6, eff. September 1, 2009.

(c) The commission by rule shall prohibit the sale, offering for sale, distribution, or importation into this state of a new commercial or residential clothes-washing machine, dish-washing machine, or lawn sprinkler unless:

(1) the manufacturer has furnished to the commission, in the form prescribed by the commission, the identification and

performance specifications of the device; and

(2) the clothes-washing or dish-washing machine or lawn sprinkler is labeled in accordance with rules adopted by the commission with a statement that describes the device's water use characteristics.

(d) Rules adopted or amended under this section shall be developed by the commission in conjunction with a technical advisory panel of designated representatives of the Texas Water Development Board and the Texas State Board of Plumbing Examiners.

(e) This section shall not apply to those clothes-washing or dish-washing machines that are subject to and in compliance with the labeling requirements of the National Appliance Energy Conservation Act of 1987, Public Law 100-12.

Added by Acts 1991, 72nd Leg., ch. 293, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 421.003 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.047, eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.049, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.135, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 6, eff. September 1, 2009.

Sec. 372.0035. LEAD IN PLUMBING FIXTURES, PIPE, AND PIPE FITTING. (a) A person may not sell or offer for sale a plumbing fixture, pipe, or pipe fitting that contains more than eight percent lead for installing or repairing:

(1) a public drinking water system; or

(2) plumbing that provides water for human consumption and is connected to a public drinking water system.

(b) A person may not sell or offer for sale solder or flux that contains more than two-tenths percent lead for installing or repairing:

(1) a public drinking water system; or

(2) plumbing that provides water for human consumption and is connected to a public drinking water system.

(c) For purposes of this section, a person engaged in the business of installing or repairing plumbing is considered to have sold or offered for sale a plumbing fixture, pipe, pipe fitting,

solder, or flux if the person uses or offers to use the fixture, pipe, fitting, solder, or flux to install or repair plumbing.

(d) This section does not prohibit the sale or offer for sale of a lead joint necessary for the repair of cast-iron pipe. The commission shall adopt rules to implement this subsection.

(e) The commission may adopt rules to implement this section.

(f) If a person licensed under Chapter 1301, Occupations Code, violates this section, the Texas State Board of Plumbing Examiners may discipline the person under Subchapter I of that chapter as if a violation of this section were a violation of that chapter.

(g) A person commits an offense if the person violates Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor. Each violation is a separate offense and each day of a continuing violation is a separate offense.

(h) Within the jurisdiction of a municipality, a municipal plumbing inspector may issue a citation to a person who violates this section.

Added by Acts 1993, 73rd Leg., ch. 751, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.136, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.787, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 31, eff. May 26, 2021.

Sec. 372.005. COMMERCIAL PRERINSE SPRAY VALVE PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, distribute, lease, or import into this state a commercial prerinse spray valve for use in this state unless the prerinse spray valve:

(1) has a flow rate of 1.6 gallons of water per minute or less, as determined using the standard test method for prerinse spray valves developed by the American Society for Testing and Materials as specified in ASTM F2324-03 as that method existed on January 1, 2006; and

(2) is listed by the commission under Subsection (b).

(b) The commission shall make and maintain a current list of commercial prerinse spray valves that are certified to the commission by the manufacturer or importer to meet the performance standards

provided by Subsection (a)(1). To have a commercial prerinse spray valve included on the list, the manufacturer or importer must supply to the commission, in the form prescribed by the commission, the identification and the performance specifications of the prerinse spray valve. The commission may test a listed commercial prerinse spray valve to determine the accuracy of the manufacturer's or importer's certification and shall remove from the list a prerinse spray valve the commission determines to be inaccurately certified.

(c) The commission may assess against a manufacturer or an importer a reasonable fee for an inspection of a commercial prerinse spray valve to determine the accuracy of the manufacturer's or importer's certification in an amount determined by the commission to cover the expenses incurred in the administration of this chapter. A fee received by the commission under this subsection shall be deposited in the state treasury to the credit of the water resource management account. Fees deposited under this section may be appropriated only for the administration of this chapter.

Added by Acts 2005, 79th Leg., Ch. 1117 (H.B. 2428), Sec. 2, eff. January 1, 2006.

Sec. 372.006. NONWATER-SUPPLIED URINAL PERFORMANCE STANDARDS. (a) A person may not sell, offer for sale, or distribute in this state a nonwater-supplied urinal for use in this state unless the nonwater-supplied urinal:

(1) meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(A) American Society of Mechanical Engineers Standard A112.19.19-2006 "Vitreous China Nonwater Urinals"; or

(B) International Association of Plumbing and Mechanical Officials Standard ANSI Z124.9-2004 "Plastic Urinal Fixtures";

(2) provides a trap seal that complies with the building code of the local government in which the urinal is installed; and

(3) permits the uninhibited flow of waste through the urinal to the sanitary drainage system.

(b) The manufacturer or importer must submit to the commission certified test results from a laboratory accredited by the American National Standards Institute verifying that the nonwater-supplied

urinal conforms to the requirements described by Subsection (a)(1).

(c) A person who installs a nonwater-supplied urinal shall install water distribution and fixture supply piping sized to accommodate a water-supplied urinal to an in-wall point immediately adjacent to the nonwater-supplied urinal location so that the nonwater-supplied urinal can be replaced with a water-supplied urinal if desired by the owner or required by a code enforcement officer.

(d) A person who owns a nonwater-supplied urinal shall clean and maintain the nonwater-supplied urinal in accordance with the manufacturer's instructions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1316 (H.B. 2667), Sec. 3, eff. September 1, 2009.

CHAPTER 373. WATER CONSERVATION

Sec. 373.001. XERISCAPE ASSISTANCE PROGRAM. (a) The board on request shall assist counties and municipalities by providing a model xeriscape code and other technical assistance.

(b) The board shall work with counties and municipalities to promote, through educational programs and publications, the use of xeriscape practices, including the use of compost, in existing residential and commercial development.

(c) In this section:

(1) "Board" means the Texas Water Development Board.

(2) "Xeriscape" has the meaning assigned by Section 2166.404, Government Code.

Added by Acts 1993, 73rd Leg., ch. 642, Sec. 4, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(17), eff. Sept. 1, 1997.

For expiration of this chapter, see Section 374.253.

CHAPTER 374. DRY CLEANER ENVIRONMENTAL RESPONSE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 374.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

(2) "Chlorinated dry cleaning solvent" means any dry

cleaning solvent that contains a compound that has a molecular structure containing the element chlorine, including perchloroethylene, also known as tetrachloroethylene.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Corrective action" means those activities described by Section 374.152 or 374.153.

(5) "Corrective action plan" means a plan approved by the commission to perform corrective action at a dry cleaning facility.

(6) "Dry cleaning drop station" means a retail commercial establishment described in category 812320 of the 2002 North American Industry Classification System as an establishment the primary business of which is to act as a collection point for the drop-off and pick-up of garments or other fabrics that are sent to a dry cleaning facility for processing.

(7) "Dry cleaning facility" means:

(A) a retail commercial establishment, described in category 812320 of the 2002 North American Industry Classification System, that operates, or has operated, in whole or in part for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents;

(B) all contiguous land used in connection with the establishment; and

(C) all structures and other appurtenances and improvements located on the contiguous land and used in connection with the establishment.

(8) "Dry cleaning solvent" includes:

(A) perchloroethylene, also known as tetrachloroethylene, petroleum-based solvents, hydrocarbons, silicone-based solvents, and other nonaqueous solvents used in the cleaning of garments or other fabrics at a dry cleaning facility; and

(B) the chemicals and compounds into which the solvents degrade.

(9) "Dry cleaning unit" means a machine or device that uses dry cleaning solvents to clean garments and other fabrics and any piping, ancillary equipment, and containment system associated with the machine or device.

(10) "Executive director" means the executive director of the commission.

(11) "Fund" means the dry cleaning facility release fund.

(12) "Owner" means a person who owns or leases, or has owned or leased, a dry cleaning facility and who is or has been responsible for the operation of dry cleaning operations at the dry cleaning facility.

(13) "Release" means a spill, emission, discharge, escape, leak, or disposal of dry cleaning solvent from a dry cleaning facility into the soil or water of the state.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 19, eff. September 1, 2005.

Sec. 374.002. APPLICABILITY OF OTHER LAW. To the extent that this chapter is inconsistent or in conflict with Chapter 361 or other general law, this chapter prevails.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.003. APPLICABILITY TO GOVERNMENTAL BODIES. This chapter does not apply to:

(1) a governmental entity, including a governmental agency or prison; or

(2) a political subdivision of this state, including a municipality or a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, that owns or operates a wholesale or retail water supply system, public solid waste system, public storm water and drainage system, or public solid waste disposal system.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.004. ADVISORY COMMITTEE. (a) The executive director shall appoint an advisory committee composed of:

(1) three representatives of the dry cleaning industry who

shall provide professional and practical expertise to the commission;

(2) one public representative of urban areas; and

(3) one public representative of rural areas.

(b) The advisory committee shall:

(1) review and comment on the methodology the commission uses to rank contaminated sites under Section 374.154;

(2) review and comment on the report the commission prepares each biennium under Section 374.056; and

(3) assist in the ongoing development of rules to implement, administer, and enforce this chapter.

(c) A member of the committee serves at the will of the executive director.

(d) A member of the advisory committee serves without compensation but is entitled to be reimbursed by the commission for actual and necessary travel expenses related to the performance of committee duties.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 2, eff. September 1, 2005.

SUBCHAPTER B. RULES, STANDARDS, CRITERIA, AND REPORTS

Sec. 374.051. COMMISSION RULES AND STANDARDS. (a) The commission, with the assistance of the advisory committee, shall adopt rules necessary to administer and enforce this chapter. Rules adopted under this section must be reasonably necessary:

(1) to preserve, protect, and maintain the water and other natural resources of this state; and

(2) to provide for prompt and appropriate corrective action of releases from dry cleaning facilities.

(b) The commission shall adopt rules that establish:

(1) performance standards for dry cleaning facilities;

(2) requirements for the removal of chlorinated dry cleaning solvents and wastes from dry cleaning facilities that are to be closed by the owner to prevent future releases;

(3) criteria to be used in setting priorities for the expenditure of money from the fund after consideration of:

(A) the benefit to be derived from corrective action

compared to the cost of implementing the corrective action;

(B) the degree to which human health and the environment are affected by exposure to contamination;

(C) the present and reasonably foreseeable future uses of affected surface water or groundwater;

(D) the effect that interim or immediate remedial measures may have on future costs;

(E) the amount of money available for corrective action in the fund; and

(F) any additional factors the commission considers relevant; and

(4) criteria under which the commission may determine the level at which corrective action is considered to be complete.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 3, eff. September 1, 2005.

Sec. 374.052. FACILITY RETROFITTING.

(a) The commission by rule shall require dry cleaning facilities operating on or before January 1, 2004, to implement the performance standards adopted under Section 374.053 not later than January 1, 2006.

(b) The commission by rule shall require businesses operating on or before January 1, 2004, whose annual gross receipts are $150,000 or less to implement the performance standards adopted under Sections 374.053(c)(3), (4), and (5) not later than January 1, 2015.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1110, Sec. 19, eff. September 1, 2005.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 19, eff. September 1, 2005.

Sec. 374.053. PERFORMANCE STANDARDS FOR NEW DRY CLEANING FACILITIES. (a) The commission by rule shall adopt performance standards for a new dry cleaning facility.

(b) Rules adopted under this section must allow for the use of new technologies as they become available.

(c) Rules adopted under this section must require:

(1) proper storage and disposal of wastes generated at the facility that contain any quantity of chlorinated dry cleaning solvent;

(2) compliance with emissions standards for hazardous air pollutants for perchloroethylene dry cleaning facilities adopted by the United States Environmental Protection Agency on September 22, 1993;

(3) dikes or other containment structures to be:

(A) installed around each dry cleaning unit that uses chlorinated dry cleaning solvents and each storage area for chlorinated dry cleaning solvents or waste; and

(B) capable of containing any leak, spill, or release of chlorinated dry cleaning solvent;

(4) secondary containment for all new or replaced dry cleaning units, regardless of the solvent used;

(5) all diked floor surfaces on which any chlorinated dry cleaning solvent may leak, spill, or otherwise be released to be made of epoxy, steel, or another material impervious to chlorinated dry cleaning solvents; and

(6) all chlorinated dry cleaning solvents to be delivered to dry cleaning facilities by means of closed, direct-coupled delivery systems, when those systems have become generally available.

(d) Rules adopted under this section shall ensure that wastewater from a dry cleaning unit using chlorinated dry cleaning solvent or discharge of chlorinated dry cleaning solvent is not discharged to a sanitary sewer, to a septic tank, or to water of this state.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 5, eff. September 1, 2005.

Sec. 374.054. COMPLETION CRITERIA. (a) In determining whether a corrective action is complete, the commission shall consider the factors listed under Section 374.051(b)(3) and:

(1) individual site characteristics, including natural remediation processes;

(2) state water quality standards; and

(3) additional factors the commission considers relevant.

(b) A deviation from a state water quality standard may not result in the application of a standard that is more stringent than the applicable standard.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 6, eff. September 1, 2005.

Sec. 374.055. CRITERIA FOR ADMINISTRATION OF CHAPTER. (a) The commission shall administer this chapter in accordance with this section.

(b) To the maximum extent possible, the commission shall deal with contamination from dry cleaning facilities by using money in the fund.

(c) The commission shall use money from the fund as sites are discovered in the normal course of the commission's business.

(d) The commission shall consider interim or early corrective action that may result in an overall reduction of risk to human health and the environment and in the reduction of total costs of corrective action at a site.

(e) The commission, in its discretion, may use innovative technology to perform corrective action.

(f) To the maximum extent possible, money in the fund must be used to address contamination resulting from releases.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.056. REPORT TO GOVERNOR AND LEGISLATURE. On or before December 1 of each even-numbered year, the executive director shall submit to the governor, lieutenant governor, speaker of the house of representatives, and members of the appropriate standing committees

of the senate and the house of representatives a report regarding:

(1) money deposited to the credit of the fund during the two previous fiscal years and the sources of the receipts;

(2) disbursements from the fund during the two previous fiscal years and the purposes of the disbursements;

(3) the extent of corrective action taken under this chapter during the two previous fiscal years; and

(4) the ranking of sites on the date the report is made.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 374.101. DRY CLEANING FACILITY RELEASE FUND. (a) The dry cleaning facility release fund is an account in the general revenue fund.

(b) The fund consists of money from:

(1) proceeds from the charges and fees imposed by this chapter;

(2) interest attributable to investment of money in the fund;

(3) money recovered by the state under this chapter, including any money paid:

(A) under an agreement with the commission; or

(B) as penalties; and

(4) money received by the commission in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of this chapter.

(c) Money in the fund may be appropriated only to the commission for the purposes of this chapter, including any administrative duty imposed on the commission under this chapter.

(d) The commission may annually spend for administrative and start-up expenses incurred in fulfilling its duties under this chapter an amount of money from the fund not to exceed 15 percent of the amount of money credited to the fund in the same fiscal year as the expenditures.

(e) Subject to the limitations of this chapter, the commission shall use only money from the fund to pay for all expenses incurred by the commission in fulfilling its duties under this chapter.

(f) Section 403.095, Government Code, does not apply to money

deposited to the fund.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 7, eff. September 1, 2005.

Sec. 374.102. DRY CLEANING FACILITY OR DROP STATION REGISTRATION; FEE; POSTING. (a) Each owner of an operating dry cleaning facility or dry cleaning drop station shall register with the commission on a form provided by the commission.

(b) An annual registration fee, the total amount of which may be divided into quarterly payments and billed on dates established by the commission, is assessed as follows:

(1) for a dry cleaning facility that:

(A) has gross annual receipts of more than $150,000, a fee of $2,500;

(B) has gross annual receipts of $150,000 or less, a fee of $250;

(C) is designated as nonparticipating under Section 374.104, a fee of $250; or

(D) depends entirely on revenue collected from an associated dry cleaning drop station or drop stations, a fee in accordance with Paragraphs (A) and (B) determined by the combined gross annual receipts of the drop station or drop stations; or

(2) for a dry cleaning drop station that:

(A) has gross annual receipts of more than $150,000, a fee of $750;

(B) has gross annual receipts of $150,000 or less, a fee of $250; or

(C) is designated as nonparticipating under Section 374.104, a fee of $125.

(c) Fees paid under this section shall be deposited to the credit of the fund.

(d) The owner of a dry cleaning facility or drop station shall post the owner's registration number, in a manner prescribed by the commission, in the public area of each of the owner's operating dry cleaning facilities or drop stations.

(e) Registration under this section must be renewed annually.

(f) For each registration application, the commission shall request that the comptroller verify whether the owner submitting the registration application is in good standing with the state and whether the owner's selection on the registration application of the gross annual receipts classification for the dry cleaning facility or drop station agrees with information reported to the comptroller for the same tax or reporting year. Not later than the third business day after the comptroller receives the verification request, based in part on information supplied by the commission, the comptroller shall report to the commission the owner's standing and whether the owner's application information agrees with the comptroller's information.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 8, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 1, eff. June 15, 2007.

Sec. 374.1022. REGISTRATION OF PROPERTY OWNER OR PRECEDING PROPERTY OWNER. (a) The following persons may participate in the fund benefits by registering as provided by this section:

(1) a person who owns real property on which a dry cleaning facility or drop station is or was located; or

(2) a preceding owner of real property on which a dry cleaning facility or drop station is or was located who entered into an agreement with the current owner associated with the sale of the real property to the current owner that requires the person to be responsible for any costs associated with cleaning up contamination covered under this chapter.

(b) For a person described by Subsection (a) to participate in fund benefits, the person must:

(1) register with the commission on or before December 31, 2007, using a form prescribed by the commission;

(2) include on the registration form information identifying the person as a:

(A) property owner; or

(B) preceding property owner; and

(3) pay the annual registration fee of $1,500.

(c) A person described by Subsection (a) may participate in the fund benefits by registering after December 31, 2007, in the same manner as provided by Subsection (b). A person registering after that date must also pay:

(1) all past annual registration fees; and

(2) a late fee of $100 for each month or partial month that has elapsed between December 2007 and the date of the registration.

(d) The annual registration fee may be divided into quarterly payments due over the year on dates established by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 2, eff. June 15, 2007.

Sec. 374.1023. LIEN. (a) In addition to other remedies available under other law, a lien is imposed against the real property that is subject to a corrective action taken under this chapter if the person does not pay a registration fee under Section 374.1022 that is due while the corrective action is ongoing. The amount of the lien is the sum of:

(1) the costs of the action; and

(2) the fees due but not paid during the period of the corrective action.

(b) The lien imposed by this section arises and attaches to the real property subject to the corrective action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the corrective action costs and registration fees is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost and fee recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the real

property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of $250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the corrective action costs and registration fees;

(2) a description of the real property that is subject to or affected by the corrective action; and

(3) the amount of the corrective action costs and registration fees and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the corrective action costs and registration fees.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a corrective action or has knowledge that the state has incurred corrective action costs and is owed registration fees.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 2, eff. June 15, 2007.

Sec. 374.103. FEE ON PURCHASE OF DRY CLEANING SOLVENT; DISPOSITION OF PROCEEDS. (a) Except as provided by Subsection (b) and Section 374.104(d), a fee of $20 per gallon is imposed on the purchase of the dry cleaning solvent perchloroethylene and $3 per gallon on the purchase of any other dry cleaning solvent by an owner of a dry cleaning facility. The person who distributes the solvent shall collect the fees and shall pay to the commission the amount

due, in accordance with Subsection (a-1).

(a-1) A person who distributes dry cleaning solvent must register as a distributor with the commission. A registered distributor is entitled to withhold one percent of the amount of the fee imposed by Subsection (a) for the distributor's administrative expenses if the distributor pays the remaining amount to the commission not later than the date prescribed by the commission.

(b) Subsection (a) does not apply to a dry cleaning facility designated as nonparticipating under Section 374.104.

(c) A person who distributes dry cleaning solvent may not sell the solvent for use in a dry cleaning facility unless the person first obtains and records the registration number of the owner of the facility.

(d) The commission shall adopt any procedures needed for the collection, administration, and enforcement of the fee imposed by this section and shall deposit all remitted fees to the credit of the fund.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 3, eff. June 15, 2007.

Sec. 374.104. OPTION NOT TO PARTICIPATE IN FUND BENEFITS. (a) The owner of a dry cleaning facility or drop station may file with the commission an option for the facility or drop station not to participate in fund benefits.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 800 (S.B. 444), Sec. 1

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

Text of subsection as amended by Acts 2005, 79th Leg., R.S., Ch. 1110

(H.B. 2376), Sec. 10

(b) An option not to participate must be filed on or before February 28, 2006. An owner may not file an option not to participate after September 1, 2005, unless the owner was:

(1) the owner of the dry cleaning facility or drop station on January 1, 2004; and

(2) eligible to file the option on or before January 1, 2004, and inadvertently failed to file before that date.

(b-1) An owner of a dry cleaning facility or drop station who files an option not to participate in accordance with Subsection (b) is entitled to a refund of registration fees paid under Section 374.102 to the extent that a registration fee paid under that section in 2004 or 2005 exceeded the amount due for a nonparticipating dry cleaning facility or drop station.

(c) The commission shall designate a dry cleaning facility or drop station as nonparticipating if the owner:

(1) demonstrates, at the owner's expense and in accordance with commission rules, that:

(A) the owner has never used or allowed the use of the dry cleaning solvent perchloroethylene at any dry cleaning facility or drop station in this state; and

(B) perchloroethylene has never been used at that location;

(2) agrees that perchloroethylene will not be used as a dry cleaning solvent at the facility or drop station; and

(3) obtains the written consent of the person who owns the real property on which the dry cleaning facility or drop station is located.

(d) A facility designated as nonparticipating is not subject to the fees on dry cleaning solvents, other than perchloroethylene, under Section 374.103.

(e) On payment of the registration fee, the commission shall issue a specially marked registration document to the owner of a nonparticipating facility or drop station. The owner shall post the registration document in the public area of the facility or drop station.

(f) After a dry cleaning facility or drop station is designated as nonparticipating:

(1) the facility or drop station is not eligible for any expenditures of money from the fund or other benefits of

participation under this chapter for that facility or drop station; and

(2) that facility or drop station may not later become a participating facility.

(g) A person who is the owner of a dry cleaning drop station who timely files an option not to participate in fund benefits under this section may, as provided by this subsection, retain the status of the drop station as nonparticipating if the person moves the drop station to a new location. A person to whom this section applies must:

(1) provide to the commission the written consent of the property owner at the new location; and

(2) continue to comply with the other requirements of this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 800 (S.B. 444), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 4, eff. June 15, 2007.

SUBCHAPTER D. RESPONSE TO RELEASE; CORRECTIVE ACTION

Sec. 374.151. RESPONSE TO RELEASE. (a) A person may not knowingly allow a release.

(b) A person who knows of a release of more than one quart of a chlorinated dry cleaning solvent or of more than one gallon of a non-chlorinated dry cleaning solvent shall:

(1) immediately contain and control the release; and

(2) notify the commission of the release before the expiration of 24 hours after the person learns of the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 11, eff. September 1, 2005.

Sec. 374.152. INVESTIGATION AND ASSESSMENT OF RELEASE; EMERGENCY ACTION. (a) If a release or a potential release poses a threat to human health or to the environment, the commission shall:

(1) investigate and assess the extent of the resulting contamination; and

(2) take necessary or appropriate emergency action to ensure that human health or safety is not threatened by the release or the potential release.

(b) Emergency action under Subsection (a)(2) may include the treatment, restoration, or replacement of drinking water supplies.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.153. CORRECTIVE ACTION. (a) Subject to Subchapter E, the commission shall take corrective action for a release from a dry cleaning facility that results in contamination, including contamination that may have moved off the dry cleaning facility.

(b) Corrective action includes the cleanup of affected soil, groundwater, or surface water using the most cost-effective method that:

(1) is technologically feasible and reliable;

(2) provides adequate protection of human health and the environment; and

(3) minimizes, to the extent practical, environmental damage.

(c) The commission shall:

(1) operate and maintain corrective action;

(2) monitor releases from a dry cleaning facility, including contamination that may have moved off the dry cleaning facility;

(3) pay the reasonable costs incurred by the commission in providing field and laboratory services; and

(4) pay the reasonable costs of restoring property, as nearly as practicable, to the conditions that existed before the activities associated with:

(A) the investigation of a release;

(B) a cleanup; or

(C) related corrective action.

(d) The commission shall ensure the removal and proper disposal

of wastes generated by a release.

(e) Except as provided by Subchapter E, the commission shall pay the costs of corrective action conducted under this subchapter by the commission or by other entities approved by the commission, regardless of whether the corrective action is included in a corrective action plan.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.1535. SITE RESTRICTIONS AFTER CORRECTIVE ACTION. (a) If the commission has completed corrective action at a dry cleaning site, perchloroethylene may not be used at that site.

(b) If the owner of a dry cleaning site uses perchloroethylene at the site after the completion of corrective action at that site, the site is not eligible for future corrective action using money from the fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 5, eff. June 15, 2007.

Sec. 374.154. RANKING OF CONTAMINATED DRY CLEANING SITES. (a) For a contaminated dry cleaning site that does not require emergency action under Section 374.152, the commission shall assign a rank for the site relative to other sites previously ranked and awaiting corrective action based on information contained in the application for ranking.

(b) The following persons are eligible to apply for a site to be ranked under Subsection (a):

(1) a person who is an owner of the dry cleaning facility or drop station; and

(2) a person who is registered with the commission under Section 374.1022.

(c) If the applicant for ranking:

(1) is not an owner of the real property, the application must include proof that an owner of the real property has been notified of the application;

(2) is an owner of the real property and the dry cleaning facility or drop station is leased, the application must include proof that a lessee has been notified of the application; or

(3) is a person described by Section 374.1022(a)(2), the application must include proof that the owner of the real property and any lessee have been notified of the application.

(d) The application for ranking must contain information and evidence required by commission rule to aid in ranking. The information and evidence required may include:

(1) water or soil samples;

(2) analyses of the water or soil samples;

(3) hydrogeologic information from the contaminated site;

(4) information concerning the site's proximity to a private or public water supply; and

(5) other information or evidence the commission considers necessary.

(e) The costs incurred by an applicant in collecting the information and evidence under Subsection (d) shall be credited against the deductible payable by the applicant under Section 374.203(d).

(f) The commission shall notify the applicant of the relative ranking the commission assigns the applicant's site on or before the 90th day after the date the application is received by the commission.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 6, eff. June 15, 2007.

Sec. 374.155. POWER TO MODIFY COMMISSION RANKINGS OR POSTPONE CORRECTIVE ACTIONS. The commission may:

(1) modify the ranked status of a site as warranted under the system of priorities established under Section 374.051(b)(3); or

(2) postpone temporarily the completion of a corrective action for which money from the fund is being used, if the postponement is necessary to make money available for corrective action at a site with a higher ranking.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. LIABILITY AND RESPONSIBILITY

Sec. 374.202. OWNER RESPONSIBILITY. (a) The commission may hold an owner responsible for up to 100 percent of the costs of corrective action attributable to the owner if the commission finds, after notice and an opportunity for a hearing that:

(1) requiring the owner to bear the responsibility will not prejudice another owner or person who is eligible, under this chapter, to have corrective action costs paid by the fund; and

(2) the owner:

(A) caused a release by operating practices contrary to those generally in use at the time of the release;

(B) is in arrears for money owed under this chapter, after notice and an opportunity to correct the arrearage;

(C) obstructed the efforts of the commission to carry out its obligations under this chapter other than by the exercise of the owner's legal rights;

(D) caused or allowed the release because of a material violation of the performance standards established by this chapter or the rules adopted by the commission under this chapter; or

(E) has more than once violated Section 374.151 or related commission rules.

(b) To the extent that an owner is responsible for corrective action costs under this subsection, the owner is not entitled to the exemption under Section 374.207.

(c) The commission, or the attorney general at the request of the commission, may bring a civil action to recover any amounts owed to the commission under this section. The commission or attorney general, as applicable, may recover court costs, the costs of preparing for litigation, and reasonable attorney's fees incurred in an action brought under this section. An owner is jointly and severally liable with any other defendant for the entire amount of costs.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 13, eff. September 1, 2005.

Sec. 374.203. LIMITATION ON USE OF FUND FOR CORRECTIVE ACTION.

(a) In this section, "contaminated dry cleaning site" means the areal extent of soil or groundwater contamination with dry cleaning solvents.

(b) The commission may not use money from the fund for the payment of costs in excess of $5 million for corrective action at a single contaminated dry cleaning site.

(c) Except for dry cleaning sites that require emergency action under Section 374.152, the commission may not use money from the fund for corrective action at a contaminated dry cleaning site unless an eligible person applies for the ranking under Section 374.154 and is not otherwise ineligible for corrective action under this chapter.

(d) The owner of a dry cleaning facility or drop station, or other person who submits the application for ranking the facility under Section 374.154, shall pay as a nonrefundable deductible the first $5,000 of corrective action costs incurred because of a release from the dry cleaning facility or drop station. The commission may take corrective action regardless of whether the commission obtains the deductible.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 14, eff. September 1, 2005.

Sec. 374.204. LIMITATION ON LIABILITY. The fund, the commission, the executive director, this state, or agents or employees of this state may not be held liable for loss of business, damages, or taking of property associated with any corrective action taken under this chapter.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Sec. 374.205. LIMITATION ON USE OF FUND FOR THIRD PARTIES. Money from the fund may not be used to compensate third parties for bodily injury or property damage caused by a release, other than property damage included in a corrective action plan approved by the commission.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.206. USE OF OTHER SOURCES OF MONEY. This chapter does not create a liability or responsibility on the part of the commission, the executive director, this state, or agents or employees of this state to pay any corrective action costs from a source other than the fund or to take corrective action if the amount of money in the fund is insufficient.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

Sec. 374.207. ELIGIBLE OWNER OR REGISTERED PERSON EXEMPT FROM CERTAIN CLAIMS. If an owner or a person registered under Section 374.1022 is eligible under this chapter to have corrective action costs paid by the fund, an administrative or judicial claim may not be made under state law against the owner or other person by or on behalf of this state or by any other person, except a political subdivision, to compel corrective action or seek recovery of the costs of corrective action that result from the release.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1091 (H.B. 3220), Sec. 7, eff. June 15, 2007.

Sec. 374.208. UNAUTHORIZED PAYMENTS. (a) The commission may pay costs from the fund under this chapter only if the costs are:

(1) integral to corrective action for a release; or

(2) required for the administration or enforcement of this chapter.

(b) The commission may not spend money from the fund:

(1) for corrective action at a site contaminated by solvents normally used in dry cleaning operations, if the contamination did not result from the operation of a dry cleaning facility;

(2) for corrective action at a site, other than a dry cleaning facility, that is contaminated by dry cleaning solvents that were released while being transported to or from a dry cleaning facility by a person other than the owner of the dry cleaning

facility or the owner's agents or employees; or

(3) for the payment of any costs:

(A) associated with a fine or penalty brought against a dry cleaning facility owner under state or federal law; or

(B) related to corrective action at a dry cleaning facility that:

(i) has been included by the United States Environmental Protection Agency on the national priorities list; or

(ii) is a hazardous waste facility eligible for listing on the state registry under Subchapter F, Chapter 361.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. REVIEW OF ORDERS AND DECISIONS; VIOLATIONS; PENALTIES; EXPIRATION

Sec. 374.251. REVIEW OF ORDERS. (a) A person affected by an order of the commission under this chapter may, on or before the 15th day after the date of service of the order, make a written request for a hearing.

(b) A person affected by the final order in an administrative hearing under Subsection (a) is entitled to judicial review and may appeal the order on or before the 31st day after the date on which the order was rendered. If the state prevails in an appeal filed under this subsection, the state is entitled to recover reasonable expenses incurred in obtaining the judgment, including reasonable attorney's fees, costs involved in preparing for the litigation, and witness fees.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 15, eff. September 1, 2005.

Sec. 374.2511. CLOSURE OF UNREGISTERED FACILITY. The commission may issue a notice of violation to the owner or operator of a dry cleaning facility or dry cleaning drop station that is not registered under Section 374.102. The notice must inform the owner or operator of the nature of the violation and state that the commission may order the dry cleaning facility or dry cleaning drop

station to cease operation if the violation is not corrected within 30 days after the receipt of the notice. If the owner or operator does not correct the violation within the prescribed time, the commission may order the dry cleaning facility or dry cleaning drop station to cease operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 963 (H.B. 3547), Sec. 1, eff. September 1, 2009.

Sec. 374.252. VIOLATIONS; PENALTIES. (a) A person is subject to an administrative penalty under Section 7.0525, Water Code, if the person:

(1) operates a dry cleaning facility or drop station in violation of this chapter, rules adopted under this chapter, or orders of the commission made under this chapter;

(2) prevents or hinders a properly identified authorized officer, employee, or agent of the commission, or a properly identified person under order of or contract with the commission, from entering, inspecting, sampling, or responding to a release as authorized by this chapter;

(3) knowingly makes any false material statement or representation in any record, report, or other document filed, maintained, or used for the purpose of compliance with this chapter;

(4) knowingly destroys, alters, or conceals any record that this chapter or rules adopted under this chapter require to be maintained; or

(5) violates Section 374.151 or related commission rules.

(b) If a registration fee is not paid on or before the 30th day after the date the fee is due, the commission may assess a penalty not to exceed $50 per day for each day the fee is not paid.

(c) If a registration application for an operating dry cleaning facility or drop station is not filed with the commission on or before the 30th day after the date the application is due, the commission may assess a penalty not to exceed $50 per day for each day the application is not filed.

(d) The commission may use normal commission procedures for the collection of penalties and interest on a penalty imposed under this section.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Jan. 1, 2004.

Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 16, eff. September 1, 2005.

Sec. 374.253. EXPIRATION. (a) This chapter expires on September 1, 2041.
(b) A corrective action, including any administrative duties associated with the action, for which remediation of a contaminated site has begun before September 1, 2041, shall be completed in accordance with this chapter using money from the fund, to the extent possible, but money may not be collected for or added to the fund on or after that date.
(c) The commission may continue a corrective action that has not progressed beyond the investigative or planning stage after September 1, 2041, to the extent money from the fund is available.
(d) Any unobligated money remaining in the fund after the completion of all corrective actions under Subsection (b) shall be transferred to the general revenue fund to the credit of the commission or a successor agency. The fund is abolished on the date of the transfer.

Added by Acts 2003, 78th Leg., ch. 540, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1110 (H.B. 2376), Sec. 17, eff. September 1, 2005.
Acts 2021, 87th Leg., R.S., Ch. 38 (S.B. 872), Sec. 1, eff. May 15, 2021.

SUBTITLE C. AIR QUALITY
CHAPTER 382. CLEAN AIR ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 382.001. SHORT TITLE. This chapter may be cited as the Texas Clean Air Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 382.002. POLICY AND PURPOSE. (a) The policy of this state and the purpose of this chapter are to safeguard the state's

air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

(b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas Commission on Environmental Quality result in expeditious initiation of enforcement actions as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.139, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0893, eff. April 2, 2015.

Sec. 382.003. DEFINITIONS. In this chapter:

(1) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(1-a) "Advanced clean energy project" means:

(A) a project for which an application for a permit or for an authorization to use a standard permit under this chapter is received by the commission on or after January 1, 2008, and before January 1, 2020, and that:

(i) involves the use of coal, biomass, petroleum coke, solid waste, natural gas, or fuel cells using hydrogen derived from such fuels, in the generation of electricity, or the creation of liquid fuels outside of the existing fuel production infrastructure while co-generating electricity, whether the project is implemented in connection with the construction of a new facility or in connection with the modification of an existing facility and whether the project involves the entire emissions stream from the facility or only a portion of the emissions stream from the facility;

(ii) with regard to the portion of the emissions stream from the facility that is associated with the project, is capable of achieving:

(a) on an annual basis:

(1) a 99 percent or greater reduction of sulfur dioxide emissions;

(2) if the project is designed for the use of feedstock, substantially all of which is subbituminous coal, an emission rate of 0.04 pounds or less of sulfur dioxide per million British thermal units as determined by a 30-day average; or

(3) if the project is designed for the use of one or more combustion turbines that burn natural gas, a sulfur dioxide emission rate that meets best available control technology requirements as determined by the commission;

(b) on an annual basis:

(1) a 95 percent or greater reduction of mercury emissions; or

(2) if the project is designed for the use of one or more combustion turbines that burn natural gas, a mercury emission rate that complies with applicable federal requirements;

(c) an annual average emission rate for nitrogen oxides of:

(1) 0.05 pounds or less per million British thermal units;

(2) if the project uses gasification technology, 0.034 pounds or less per million British thermal units; or

(3) if the project is designed for the use of one or more combustion turbines that burn natural gas, two parts per million by volume; and

(d) an annual average emission rate for filterable particulate matter of 0.015 pounds or less per million British thermal units; and

(iii) captures not less than 50 percent of the carbon dioxide in the portion of the emissions stream from the facility that is associated with the project and sequesters that captured carbon dioxide by geologic storage or other means; or

(B) a project that is a facility:

(i) for which an authorization to use a standard permit was approved after January 1, 2020, but before September 1, 2023; and

(ii) that:

(a) utilizes natural gas to create methanol; and

(b) converts methanol to zero-sulfur transportation fuels.

(2) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(3) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use or enjoyment of animal life, vegetation, or property.

(3-a) "Coal" has the meaning assigned by Section 134.004, Natural Resources Code.

(4) "Commission" means the Texas Commission on Environmental Quality.

(4-a) "Electric vehicle" means a motor vehicle that draws propulsion energy only from a rechargeable energy storage system.

(5) "Executive director" means the executive director of the commission.

(6) "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, well test, or road is not considered to be a facility.

(7) "Federal source" means a facility, group of facilities, or other source that is subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) and includes:

(A) an affected source as defined by Section 402 of the federal Clean Air Act (42 U.S.C. Section 7651a) as added by Section 401 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(B) a major source as defined by Title III of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(C) a major source as defined by Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549);

(D) a source subject to the standards or regulations under Section 111 or 112 of the federal Clean Air Act (42 U.S.C. Sections 7411 and 7412);

(E) a source required to have a permit under Part C or D of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470 et seq. and 7501 et seq.);

(F) a major stationary source or major emitting facility under Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602); and

(G) any other stationary source in a category designated by the United States Environmental Protection Agency as subject to the permitting requirements of Title V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(7-a) "Federally qualified clean coal technology" means a technology or process, including a technology or process applied at the precombustion, combustion, or postcombustion stage, for use at a new or existing facility that will achieve on an annual basis a 97 percent or greater reduction of sulfur dioxide emissions, an emission rate for nitrogen oxides of 0.08 pounds or less per million British thermal units, and significant reductions in mercury emissions associated with the use of coal in the generation of electricity, process steam, or industrial products, including the creation of liquid fuels, hydrogen for fuel cells, and other coproducts. The technology used must comply with applicable federal law regarding mercury emissions and must render carbon dioxide capable of capture, sequestration, or abatement. Federally qualified clean coal technology includes atmospheric or pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, methanation technology, magnetohydrodynamic technology, direct and indirect coal-fired turbines, undiluted high-flame temperature oxygen combustion technology that excludes air, and integrated gasification fuel cells.

(7-b) "Hybrid vehicle" means a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(8) "Local government" means a health district established under Chapter 121, a county, or a municipality.

(9) "Modification of existing facility" means any physical change in, or change in the method of operation of, a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more commission exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to Section 382.057, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emissions of any air contaminant and that does not result in the emission of any air contaminant not previously emitted, provided that the facility:

(i) has received a preconstruction permit or permit amendment or has been exempted pursuant to Section 382.057 from preconstruction permit requirements no earlier than 120 months before the change will occur; or

(ii) uses, regardless of whether the facility has received a permit, an air pollution control method that is at least as effective as the best available control technology, considering technical practicability and economic reasonableness, that the commission required or would have required for a facility of the same class or type as a condition of issuing a permit or permit amendment 120 months before the change will occur;

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit or a multiple plant permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of a pollutant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with Section 382.060 as that section existed prior to September 1, 1991.

(9-a) "Motor vehicle" means a fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway.

(9-b) "Natural gas vehicle" means a motor vehicle that uses only compressed natural gas or liquefied natural gas as fuel.

(10) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(10-a) "Qualifying motor vehicle" means a motor vehicle that meets the requirements of Section 382.210(b).

(11) "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(11-a) "Solid waste" has the meaning assigned by Section 361.003.

(12) "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

(13) "Well test" means the testing of an oil or gas well for a period of time less than 72 hours that does not constitute a major source or major modification under any provision of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 135, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 4, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.140, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 1, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.01, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(55),

eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0894, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 869 (H.B. 3837), Sec. 1, eff. September 1, 2023.

Sec. 382.004. CONSTRUCTION WHILE PERMIT AMENDMENT APPLICATION PENDING. (a) To the extent permissible under federal law, notwithstanding Section 382.0518, and except as provided by Subsection (c), a person who submits an application for a permit amendment may, at the person's own risk, begin construction related to the application after the executive director has issued a draft permit including the permit amendment.

(b) The commission may not consider construction begun under this section in determining whether to grant the permit amendment sought in the application.

(c) A person may not begin construction under this section if the facility that is the subject of the permit amendment is a concrete batch plant located within 880 yards of a property that is used as a residence.

(d) The commission shall adopt rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1134 (H.B. 2726), Sec. 1, eff. January 1, 2020.

Sec. 382.005. EXCLUSIVE JURISDICTION TO REGULATE GREENHOUSE GAS EMISSIONS AND EXPRESS PREEMPTION OF LOCAL REGULATIONS. (a) In this

section, "greenhouse gas emissions" has the meaning assigned by Section 382.05102.

(b) To the extent not preempted by federal law, the state has exclusive jurisdiction over the regulation of greenhouse gas emissions in this state.

(c) A municipality or other political subdivision may not enact or enforce an ordinance or other measure that directly regulates greenhouse gas emissions.

Added by Acts 2023, 88th Leg., R.S., Ch. 198 (S.B. 784), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 382.011. GENERAL POWERS AND DUTIES. (a) The commission shall:

(1) administer this chapter;

(2) establish the level of quality to be maintained in the state's air; and

(3) control the quality of the state's air.

(b) The commission shall seek to accomplish the purposes of this chapter through the control of air contaminants by all practical and economically feasible methods.

(c) The commission has the powers necessary or convenient to carry out its responsibilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.012. STATE AIR CONTROL PLAN. The commission shall prepare and develop a general, comprehensive plan for the proper control of the state's air.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.013. AIR QUALITY CONTROL REGIONS. The commission may designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors,

including atmospheric areas, necessary to provide adequate implementation of air quality standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.014. EMISSION INVENTORY. The commission may require a person whose activities cause emissions of air contaminants to submit information to enable the commission to develop an inventory of emissions of air contaminants in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.0145. CLEAN FUEL INCENTIVE SURCHARGE. (a) The commission shall levy a clean fuel incentive surcharge of 20 cents per MMBtu on fuel oil used between April 15 and October 15 of each year in an industrial or utility boiler that is:

(1) capable of using natural gas; and

(2) located in a consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000 or more that has not met federal ambient air quality standards for ozone.

(b) The commission may not levy the clean fuel incentive surcharge on:

(1) waste oils, used oils, or hazardous waste-derived fuels burned for purposes of energy recovery or disposal, if the commission or the United States Environmental Protection Agency approves or permits the burning;

(2) fuel oil used during:

(A) any period of full or partial natural gas curtailment;

(B) any period when there is a failure to deliver sufficient quantities of natural gas to satisfy contractual obligations to the purchaser; or

(C) a catastrophic event as defined by Section 382.063;

(3) fuel oil used between April 15 and October 15 in equipment testing or personnel training up to an aggregate of the equivalent of 48 hours full-load operation; or

(4) any firm engaged in fixed price contracts with public

works agencies for contracts entered into before August 28, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 136, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.143, eff. Sept. 1, 1995.

Sec. 382.015. POWER TO ENTER PROPERTY. (a) A member, employee, or agent of the commission may enter public or private property, other than property designed for and used exclusively as a private residence housing not more than three families, at a reasonable time to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere.

(b) A member, employee, or agent who enters private property that has management in residence shall:

(1) notify the management, or the person then in charge, of the member's, employee's, or agent's presence; and

(2) show proper credentials.

(c) A member, employee, or agent who enters private property shall observe that establishment's rules concerning safety, internal security, and fire protection.

(d) The commission is entitled to the remedies provided by Sections 382.082-382.085 if a member, employee, or agent is refused the right to enter public or private property as provided by this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.144, eff. Sept. 1, 1995.

Sec. 382.016. MONITORING REQUIREMENTS; EXAMINATION OF RECORDS. (a) The commission may prescribe reasonable requirements for:

(1) measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants subject to the commission's jurisdiction under this chapter; and

(2) the owner or operator of the source to make and maintain records on the measuring and monitoring of emissions.

(b) A member, employee, or agent of the commission may examine during regular business hours any records or memoranda relating to

the operation of any air pollution or emission control equipment or facility, or relating to emission of air contaminants. This subsection does not authorize the examination of records or memoranda relating to the operation of equipment or a facility on property designed for and used exclusively as a private residence housing not more than three families.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.145, eff. Sept. 1, 1995.

Sec. 382.0161. AIR POLLUTANT WATCH LIST. (a) The commission shall establish and maintain an air pollutant watch list. The air pollutant watch list must identify:

(1) each air contaminant that the commission determines, on the basis of federal or state ambient air quality standards for the contaminant, should be included on the air pollutant watch list; and

(2) each geographic area of the state for which ambient air quality monitoring data indicates that the individual or cumulative emissions of one or more air contaminants identified by the commission under Subdivision (1) may cause short-term or long-term adverse human health effects or odors in that area.

(b) The commission shall publish notice of and allow public comment on:

(1) an addition of an air contaminant to or removal of an air contaminant from the air pollutant watch list; or

(2) an addition of an area to or removal of an area from the air pollutant watch list.

(c) When considering the addition or removal of an area to or from the air pollutant watch list, the commission shall provide the monitoring data related to the area to the state senator and representative who represent the area.

(d) The commission may hold a public meeting in an area listed on the air pollutant watch list to provide residents of the area with information regarding:

(1) the reasons for the area's inclusion on the air pollutant watch list; and

(2) commission actions to reduce the emissions of air contaminants contributing to the area's inclusion on the air pollutant watch list.

(e) The air pollutant watch list and the addition or removal of a pollutant or area to or from the list are not matters subject to the requirements of Subchapter B, Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 1, eff. September 1, 2011.

Sec. 382.017. RULES. (a) The commission may adopt rules. The commission shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the commission's judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

(c) Any person may appear and be heard at a hearing to adopt a rule. The executive director shall make a record of the names and addresses of the persons appearing at the hearing. A person heard or represented at the hearing or requesting notice of the commission's action shall be sent by mail written notice of the commission's action.

(d) Subsections (a) and (b) notwithstanding, the commission may adopt rules consistent with Chapter 2001, Government Code, if the commission determines that the need for expeditious adoption of proposed rules requires use of those procedures.

(e) The terms and provisions of a rule adopted by the commission may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the commission shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the commission shall consider:

(1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and

(2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(f) Except as provided by Sections 382.0171-382.021 or to comply with federal law or regulations, the commission by rule may not specify:

(1) a particular method to be used to control or abate air pollution;

(2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

(3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 137, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.33, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.145, eff. Sept. 1, 1995.

Sec. 382.0171. ALTERNATIVE FUELS AND SELECT-USE TECHNOLOGIES. (a) In adopting rules, the commission shall encourage and may allow the use of natural gas and other alternative fuels, as well as select-use technologies, that will reduce emissions.

(b) Any orders or determinations made under this section must be consistent with Section 382.024.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 138, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.146, eff. Sept. 1, 1995.

Sec. 382.0172. INTERNATIONAL BORDER AREAS. (a) In order to qualify for the exceptions provided by Section 179B of the federal Clean Air Act (42 U.S.C. Section 7509a), as added by Section 818 of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), the commission, in developing rules and control programs to be included in an implementation plan for an international border area, shall ensure that the plan or revision:

(1) meets all requirements applicable to the plan or

revision under Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), other than a requirement that the plan or revision demonstrates attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision; and

(2) would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified by the applicable provision of Title I of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) or by a regulation adopted under that provision, but for emissions emanating from outside the United States.

(b) For purposes of any emissions control or permit program adopted or administered by the commission and subject to Subsection (c), the commission, to the extent allowed by federal law, may:

(1) authorize the use of emissions reductions achieved outside the United States to satisfy otherwise applicable emissions reduction requirements if the commission finds that the emissions reductions achieved outside the United States are surplus to requirements imposed by applicable law and are appropriately quantifiable and enforceable; and

(2) allow the use of reductions in emissions of one air contaminant to satisfy otherwise applicable requirements for reductions in emissions of another air contaminant if the commission finds that the air contaminant emissions reductions that will be substituted are of equal or greater significance to the overall air quality of the area affected than reductions in emissions of the other air contaminant.

(c) The commission may authorize or allow substitution of emissions reductions under Subsection (b) only if:

(1) reductions in emissions of one air contaminant for which the area has been designated as nonattainment are substituted for reductions in emissions of another air contaminant for which the area has been designated as nonattainment; or

(2) the commission finds that the substitution will clearly result in greater health benefits for the community as a whole than would reductions in emissions at the original facility.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.02, eff. Sept.

1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 960, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 820 (S.B. 784), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 1, eff. September 1, 2005.

Sec. 382.0173. ADOPTION OF RULES REGARDING CERTAIN STATE IMPLEMENTATION PLAN REQUIREMENTS AND STANDARDS OF PERFORMANCE FOR CERTAIN SOURCES. (a) The commission shall adopt rules to comply with Sections 110(a)(2)(D) and 111(d) of the federal Clean Air Act (42 U.S.C. Sections 7410 and 7411). In adopting the rules, at a minimum the commission shall adopt and incorporate by reference 40 C.F.R. Subparts AA through II and Subparts AAA through III of Part 96 and 40 C.F.R. Subpart HHHH of Part 60. The commission shall adopt a state implementation plan in accordance with the rules and submit the plan to the United States Environmental Protection Agency for approval according to the schedules adopted by that agency.

(b) The commission may require emissions reductions in conjunction with implementation of the rules adopted under Subsection (a) only for electric generating units. The commission shall make permanent allocations that are reflective of the allocation requirements of 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, at no cost to units as defined in 40 C.F.R. Sections 51.123 and 60.4102 using the United States Environmental Protection Agency's allocation method as specified by 40 C.F.R. Section 60.4142(a)(1)(i) or 40 C.F.R. Section 96.142(a)(1)(i), as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c). The commission shall maintain a special reserve of allocations for new units commencing operation on or after January 1, 2001, as defined by 40 C.F.R. Subparts AA through HH and Subparts AAA through HHH of Part 96 and 40 C.F.R. Subpart HHHH of Part 60, as applicable, with the exception of nitrogen oxides which shall be allocated according to the additional requirements of Subsection (c).

(c) Additional requirements regarding NOx allocations:

(1) The commission shall maintain a special reserve of allocations for nitrogen oxide of 9.5 percent for new units. Beginning with the 2015 control period, units shall be considered new for each control period in which they do not have five years of operating data reported to the commission prior to the date of allocation for a given control period. Prior to the 2015 control period, units that commenced operation on or after January 1, 2001, will receive NOx allocations from the special reserve only.

(2) Nitrogen oxide allowances shall be established for the 2009-2014 control periods for units commencing operation before January 1, 2001, using the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(B) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(C) if the fossil fuel fired unit is not subject to Paragraph (A) or (B) of this subdivision, the unit's control period heat input for such year is multiplied by 30 percent.

(3) Before the allocation date specified by EPA for the control period beginning January 1, 2018, and every five years thereafter, the commission shall adjust the baseline for all affected units using the average of the three highest amounts of the unit's adjusted control period heat input for periods one through five of the preceding nine control periods, with the adjusted control period heat input for each year calculated as follows:

(A) for units commencing operation before January 1, 2001:

(i) if the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 90 percent;

(ii) if the unit is natural gas-fired during the year, the unit's control period heat input for such year is multiplied by 50 percent; and

(iii) if the fossil fuel fired unit is not subject to Subparagraph (i) or (ii) of this paragraph, the unit's control

period heat input for such year is multiplied by 30 percent; and

(B) for units commencing operation on or after January 1, 2001, in accordance with the formulas set forth by USEPA in 40 C.F.R. 96.142 with any corrections to this section that may be issued by USEPA prior to the allocation date.

(d) This section applies only while the federal rules cited in this section are enforceable and does not limit the authority of the commission to implement more stringent emissions control requirements.

(e) In adopting rules under Subsection (a), the commission shall incorporate any modifications to the federal rules cited in this section that result from:

(1) a request for rehearing regarding those rules that is filed with the United States Environmental Protection Agency;

(2) a petition for review of those rules that is filed with a court; or

(3) a final rulemaking action of the United States Environmental Protection Agency.

(f) The commission shall take all reasonable and appropriate steps to exclude the West Texas Region and El Paso Region, as defined by Section 39.264(g), Utilities Code, from any requirement under, derived from, or associated with 40 C.F.R. Sections 51.123, 51.124, and 51.125, including filing a petition for reconsideration with the United States Environmental Protection Agency requesting that it amend 40 C.F.R. Sections 51.123, 51.124, and 51.125 to exclude such regions. The commission shall promptly amend the rules it adopts under Subsection (a) of this section to incorporate any exclusions for such regions that result from the petition required under this subsection.

(g) The commission shall study the availability of mercury control technology. The commission shall also examine the timeline for implementing the reductions required under the federal rules, the cost of additional controls both to the plant owners and consumers, and the fiscal impact on the state of higher levels of mercury emissions between 2005 and 2018, and consider the impact of trading on local communities. The commission shall report its findings by September 1, 2006.

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 2, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 56 (S.B. 1672), Sec. 1, eff. May 10, 2007.

For expiration of this section, see Subsection (d).

Sec. 382.0175. AMOUNT OF FOREIGN EMISSIONS IN NONATTAINMENT AREAS; REVISION OF STATE IMPLEMENTATION PLAN. (a) In this section:

(1) "Foreign emissions" means emissions of air contaminants emanating from outside the United States.

(2) "Federal air quality monitor" means a monitor that is used to report data to the United States Environmental Protection Agency to demonstrate compliance with the national ambient air quality standards.

(b) The commission shall estimate the contribution of foreign emissions at each federal air quality monitor located in each nonattainment area in this state with respect to each air contaminant for which the area is designated as being in nonattainment for any national ambient air quality standards for ozone or particulate matter. The commission may contract with a third party to conduct the estimate required by this subsection.

(c) Not later than September 1, 2027, the executive director shall, using the estimate conducted under Subsection (b), report to the commission a recommendation on whether to revise the state implementation plan to account for the contribution of foreign emissions in each nonattainment area in this state in any manner permissible under federal law. In preparing the report to the commission, the executive director shall consider any areas in this state designated as nonattainment for ozone or particulate matter as of September 1, 2026.

(d) This section expires September 1, 2029.

Added by Acts 2023, 88th Leg., R.S., Ch. 634 (H.B. 4932), Sec. 1, eff. June 11, 2023.

Sec. 382.018. OUTDOOR BURNING OF WASTE AND COMBUSTIBLE MATERIAL. (a) Subject to Section 352.082, Local Government Code, and except as provided by Subsections (b) and (d), the commission by rule may control and prohibit the outdoor burning of waste and

combustible material and may include requirements concerning the particular method to be used to control or abate the emission of air contaminants resulting from that burning.

(b) The commission by rule shall authorize outdoor burning of waste if the waste:

(1) consists of trees, brush, grass, leaves, branch trimmings, or other plant growth; and

(2) is burned:

(A) in an area that meets the national ambient air quality standards and that does not contain any part of a city that does not meet national ambient air quality standards; and

(B) on the property on which it was generated and by the owner of the property or any other person authorized by the owner.

(c) Rules adopted under Subsection (b) may not:

(1) require prior commission approval of the burning; or

(2) authorize the burning only when no practical alternative to burning exists.

(d) The commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branch trimmings, or other plant growth if:

(1) the person burning the waste is doing so at a site:

(A) designated for consolidated burning of waste generated from specific residential properties;

(B) located in a county with a population of less than 50,000;

(C) located outside of a municipality; and

(D) supervised at the time of the burning by:

(i) an employee of a fire department who is part of the fire protection personnel, as defined by Section 419.021, Government Code, of the department and is acting in the scope of the person's employment; or

(ii) a volunteer firefighter acting in the scope of the firefighter's volunteer duties; and

(2) the waste was generated from a property for which the site is designated.

(e) A fire department employee who will supervise a burning under Subsection (d)(1)(D) shall notify the commission of each burning supervised by the employee, and the commission shall provide the employee with information on practical alternatives to burning.

(f) If conduct that violates a rule adopted under this section also violates a municipal ordinance, that conduct may be prosecuted only under the municipal ordinance, provided that:

(1) the violation is not a second or subsequent violation of a rule adopted under this section or a municipal ordinance; and

(2) the violation does not involve the burning of heavy oils, asphaltic materials, potentially explosive materials, or chemical wastes.

Text of subsection effective until January 1, 2025

(g) Notwithstanding Section 7.002, Water Code, the provisions of this section and rules adopted under this section may be enforced by a peace officer as described by Article 2.12, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(g) Notwithstanding Section 7.002, Water Code, the provisions of this section and rules adopted under this section may be enforced by a peace officer as described by Article 2A.001, Code of Criminal Procedure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 419 (S.B. 1710), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 904 (H.B. 39), Sec. 1, eff. September 1, 2005.

Reenacted and amended by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.001, eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 145 (H.B. 1619), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 478 (H.B. 2386), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.122, eff. January 1, 2025.

Sec. 382.019. METHODS USED TO CONTROL AND REDUCE EMISSIONS FROM LAND VEHICLES. (a) Except as provided by Section 382.202(j), or another provision of this chapter, the commission by rule may provide

requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

(b) The commission may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or equipment designed to control emissions from motor vehicles if that feature or equipment has been certified, approved, or otherwise authorized under federal law.

(c) The commission or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et seq.), except the commission may adopt rules requiring such vapor recovery systems installed in nonattainment areas if it can be demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Department of State Health Services, it is determined to be necessary for the protection of public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.24, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.147, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(b), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0895, eff. April 2, 2015.

Sec. 382.0191. IDLING OF MOTOR VEHICLE. (a) In this section, "idling" means allowing an engine to run while the motor vehicle is not engaged in forward or reverse motion.

(b) The commission may not prohibit or limit the idling of any motor vehicle with a gross vehicle weight rating greater than 8,500 pounds that is equipped with a 2008 or subsequent model year heavy-duty diesel engine or liquefied or compressed natural gas engine that has been certified by the United States Environmental Protection

Agency or another state environmental agency to emit no more than 30 grams of nitrogen oxides emissions per hour when idling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 390 (S.B. 493), Sec. 1, eff. June 17, 2011.

Sec. 382.0195. COMMERCIAL INFECTIOUS WASTE INCINERATORS. (a) The commission shall adopt rules prescribing the most effective emissions control technology reasonably available to control emissions of air contaminants from a commercial infectious waste incinerator.

(b) Rules adopted under this section must require that the prescribed emissions control technology be installed as soon as practicable at each commercial infectious waste incinerator.

(c) In this section, "commercial infectious waste incinerator" means a facility that accepts for incineration infectious waste generated outside the property boundaries of the facility.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 139, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.148, eff. Sept. 1, 1995.

Sec. 382.020. CONTROL OF EMISSIONS FROM FACILITIES THAT HANDLE CERTAIN AGRICULTURAL PRODUCTS. (a) The commission, when it determines that the control of air pollution is necessary, shall adopt rules concerning the control of emissions of particulate matter from plants at which grain, seed, legumes, or vegetable fibers are handled, loaded, unloaded, dried, manufactured, or processed according to a formula derived from the process weight of the materials entering the process.

(b) A person affected by a rule adopted under this section may use:

(1) the process weight method to control and measure the emissions from the plant; or

(2) any other method selected by that person that the commission or the executive director, if authorized by the commission, finds will provide adequate emission control efficiency and measurement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0201. PROHIBITION ON COMMISSION RULE RELATING TO EMISSIONS FROM CERTAIN HOSPITAL OR MEDICAL DISINFECTANTS. (a) In this section, "hospital or medical disinfectant" means an antimicrobial product that is registered with and meets the performance standards of the United States Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136, 136a).

(b) Except as specifically required to comply with federal law or regulation, the commission may not adopt a rule that lessens the efficacy of a hospital or medical disinfectant in killing or inactivating agents of an infectious disease, including a rule restricting volatile organic compound content of or emissions from the disinfectant.

Added by Acts 1999, 76th Leg., ch. 364, Sec. 1, eff. Sept. 1, 1999.

Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the commission by rule may control air contaminants as necessary to protect against adverse effects related to:

(1) acid deposition;

(2) stratospheric changes, including depletion of ozone; and

(3) climatic changes, including global warming.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.03, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.021. SAMPLING METHODS AND PROCEDURES. (a) The commission may prescribe the sampling methods and procedures to be used in determining violations of and compliance with the commission's rules, variances, and orders, including:

(1) ambient air sampling;

(2) stack-sampling;

(3) visual observation; or

(4) any other sampling method or procedure generally recognized in the field of air pollution control.

(b) The commission may prescribe new sampling methods and procedures if:

(1) in the commission's judgment, existing methods or procedures are not adequate to meet the needs and objectives of the commission's rules, variances, and orders; and

(2) the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.0215. ASSESSMENT OF EMISSIONS DUE TO EMISSIONS EVENTS. (a) In this section:

(1) "Emissions event" means an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.

(2) "Regulated entity" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location.

(a-1) Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

(1) the owner or operator of the regulated entity provides any prior notice or final report that the commission, by rule, may establish;

(2) the notice or final report includes the information required in Subsection (b)(3); and

(3) the actual emissions do not exceed the estimates

submitted in the notice by more than a reportable quantity.

(b) The commission shall require the owner or operator of a regulated entity that experiences emissions events:

(1) to maintain a record of all emissions events at the regulated entity in the manner and for the periods prescribed by commission rule;

(2) to notify the commission in a single report for each emissions event, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and

(3) to report to the commission in a single report for each emissions event, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:

(A) the name of the owner or operator of the reporting regulated entity;

(B) the location of the reporting regulated entity;

(C) the date and time the emissions began;

(D) the duration of the emissions;

(E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;

(F) the processes and equipment involved in the emissions event;

(G) the cause of the emissions; and

(H) any additional information necessary to evaluate the emissions event.

(c) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at concentrations of less than 0.02 percent by weight that is equipped with a continuous emission monitoring system that completes a minimum of one cycle per operation (sampling, analyzing, and data recording) for each successive 15-minute interval who is required to submit excess emission reports by other state or federal regulations, shall, by commission rule, be allowed to submit information from that monitoring system to meet the requirements under Subsection (b)(3) so long as the notice submitted under

Subsection (b)(2) contains the information required under Subsection (b)(3). Such excess emission reports shall satisfy the recordkeeping requirements of Subsection (b)(1) so long as the information in such reports meets commission requirements. This subsection does not require the commission to revise the reportable quantity for boilers and combustion turbines.

(d) The commission shall centrally track emissions events and collect information relating to:

(1) inspections or enforcement actions taken by the commission in response to emissions events; and

(2) the number of emissions events occurring in each commission region and the quantity of emissions from each emissions event.

(e) The commission shall develop the capacity for electronic reporting and shall incorporate reported emissions events into a permanent online centralized database for emissions events. The commission shall develop a mechanism whereby the reporting entity shall be allowed to review the information relative to its reported emissions events prior to such information being included in the database. The database shall be easily searchable and accessible to the public. The commission shall evaluate information in the database to identify persons who repeatedly fail to report reportable emissions events. The commission shall enforce against such persons pursuant to Section 382.0216(i). The commission shall describe such enforcement actions in the report required in Subsection (g).

(f) An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the regulated entity experienced no emissions events during the prior year. An owner or operator of a regulated entity required by Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(g) The commission annually, or at the request of a member of the legislature, shall assess the information received under this section, including actions taken by the commission in response to the emissions events, and shall include the assessment in the report required by Section 5.126, Water Code.

(h) The commission may allow operators of pipelines, gathering

lines, and flowlines to treat all such facilities under common ownership or control in a particular county as a single regulated entity for the purpose of assessment and regulation of emissions events.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(a), eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 1, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 2, eff. September 1, 2011.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) In this section, "emissions event" has the meaning assigned by Section 382.0215.

(b) The commission shall establish criteria for determining when emissions events are excessive. The criteria must include consideration of:

(1) the frequency of the facility's emissions events;

(2) the cause of the emissions event;

(3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(c) The commission shall require a facility to take action to reduce emissions from excessive emissions events. Consistent with commission rules, a facility required to take action under this subsection must either file a corrective action plan or file a letter of intent to obtain authorization for emissions from the excessive emissions events, provided that the emissions are sufficiently frequent, quantifiable, and predictable. If the intended authorization is a permit, a permit application shall be filed within 120 days of the filing of the letter of intent. If the intended

authorization is a permit by rule or standard exemption, the authorization must be obtained within 120 days of the filing of the letter of intent. If the commission denies the requested authorization, within 45 days of receiving notice of the commission's denial, the facility shall file a corrective action plan to reduce emissions from the excessive emissions events.

(d) A corrective action plan filed under Subsection (c) must identify the cause or causes of each emissions event, specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future, and specify a time within which the corrective action plan will be implemented. A corrective action plan must be approved by the commission. A corrective action plan shall be deemed approved 45 days after filing, if the commission has not disapproved the plan; however, an owner or operator may request affirmative commission approval, in which case the commission must take final written action to approve or disapprove the plan within 120 days. An approved corrective action plan shall be made available to the public by the commission, except to the extent information in the plan is confidential information protected under Chapter 552, Government Code. The commission shall establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events. The implementation schedule shall be enforceable by the commission.

(e) The rules may not exclude from the requirement to submit a corrective action plan emissions events resulting from the lack of preventive maintenance or from operator error, or emissions that are a part of a recurring pattern of emissions events indicative of inadequate design or operation.

(f) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1)-(6).

(g) The burden of proof in any claim of a defense to commission enforcement action for an emissions event is on the person claiming the defense.

(h) A person may not claim an affirmative defense to a

commission enforcement action if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

(i) In the event the owner or operator of a facility fails to report an emissions event, the commission shall initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely unless the owner or operator knowingly or intentionally falsified the information in the report.

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's compliance history.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.01(a), eff. Sept. 1, 2001.

Sec. 382.022. INVESTIGATIONS. The executive director may make or require the making of investigations:

(1) that the executive director considers advisable in administering this chapter and the commission's rules, orders, and determinations, including investigations of violations and general air pollution problems or conditions; or

(2) as requested or directed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.023. ORDERS. (a) The commission may issue orders and make determinations as necessary to carry out the purposes of this chapter. Orders authorized by this chapter may be issued only by the commission unless expressly provided by this chapter.

(b) If it appears that this chapter or a commission rule, order, or determination is being violated, the commission, or the executive director if authorized by the commission or this chapter, may proceed under Sections 382.082-382.084, or hold a public hearing and issue orders on the alleged violation, or take any other action

authorized by this chapter as the facts may warrant.

(c) In addition to the notice required by Chapter 2001, Government Code, the commission or the executive director shall give notice to such other interested persons as the commission or the executive director may designate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.149, eff. Sept. 1, 1995.

Sec. 382.024. FACTORS IN ISSUING ORDERS AND DETERMINATIONS. In issuing an order and making a determination, the commission shall consider the facts and circumstances bearing on the reasonableness of emissions, including:

(1) the character and degree of injury to or interference with the public's health and physical property;

(2) the source's social and economic value;

(3) the question of priority of location in the area involved; and

(4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.025. ORDERS RELATING TO CONTROLLING AIR POLLUTION. (a) If the commission determines that air pollution exists, the commission may order any action indicated by the circumstances to control the condition.

(b) The commission shall grant to the owner or operator of a source time to comply with its orders as provided for by commission rules. Those rules must provide for time for compliance gauged to the general situations that the hearings on proposed rules indicate are necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.149, eff. Sept. 1, 1995.

Sec. 382.026. ORDERS ISSUED UNDER EMERGENCIES. The commission may issue an order under an air emergency under Section 5.514, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.150, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 41, eff. Sept. 1, 1997.

Sec. 382.027. PROHIBITION ON COMMISSION ACTION RELATING TO AIR CONDITIONS EXISTING SOLELY IN COMMERCIAL AND INDUSTRIAL FACILITIES. (a) The commission may not adopt a rule, determination, or order that:

(1) relates to air conditions existing solely within buildings and structures used for commercial and industrial plants, works, or shops if the source of the offending air contaminants is under the control of the person who owns or operates the plants, works, or shops; or

(2) affects the relations between employers and their employees relating to or arising out of an air condition from a source under the control of the person who owns or operates the plants, works, or shops.

(b) This section does not limit or restrict the authority or powers granted to the commission under Sections 382.018 and 382.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.151, eff. Sept. 1, 1995.

Sec. 382.0275. COMMISSION ACTION RELATING TO RESIDENTIAL WATER HEATERS. (a) In this section, "residential water heater" means a water heater that:

(1) is designed primarily for residential use; and

(2) has a maximum rated capacity of 75,000 British thermal units per hour (Btu/hr) or less.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 49, Sec. 2, eff. May 8, 2007.

(d) The commission may not adopt or enforce a rule, determination, or order that relates to emissions of residential

water heaters that is below 40 nanograms of NOx per joule unless a lower standard is established by a federal statute or rule. Any commission rule, determination, or order existing on or before the effective date of this subsection related to emission specifications for residential water heaters that is more stringent than the 40 nanograms of NOx per joule standard is hereby repealed.

Added by Acts 2005, 79th Leg., Ch. 59 (H.B. 965), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 1, eff. May 8, 2007.
Acts 2007, 80th Leg., R.S., Ch. 49 (S.B. 1665), Sec. 2, eff. May 8, 2007.

Sec. 382.028. VARIANCES. (a) This chapter does not prohibit the granting of a variance.
(b) A variance is an exceptional remedy that may be granted only on demonstration that compliance with a provision of this chapter or commission rule or order results in an arbitrary and unreasonable taking of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.152, eff. Sept. 1, 1995.

Sec. 382.029. HEARING POWERS. The commission may call and hold hearings, administer oaths, receive evidence at a hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to a hearing, and make findings of fact and decisions relating to administering this chapter or the rules, orders, or other actions of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.0291. PUBLIC HEARING PROCEDURES. (a) Any statements, correspondence, or other form of oral or written communication made by a member of the legislature to a commission official or employee

during a public hearing conducted by the commission shall become part of the record of the hearing, regardless of whether the member is a party to the hearing.

(b) When a public hearing conducted by the commission is required by law to be conducted at a certain location, the commission shall determine the place within that location at which the hearing will be conducted. In making that determination, the commission shall consider the cost of available facilities and the adequacy of a facility to accommodate the type of hearing and anticipated attendance.

(c) The commission shall conduct at least one session of a public hearing after normal business hours on request by a party to the hearing or any person who desires to attend the hearing.

(d) An applicant for a license, permit, registration, or similar form of permission required by law to be obtained from the commission may not amend the application after the 31st day before the date on which a public hearing on the application is scheduled to begin. If an amendment of an application would be necessary within that period, the applicant shall resubmit the application to the commission and must again comply with notice requirements and any other requirements of law or commission rule as though the application were originally submitted to the commission on that date.

(e) If an application for a license, permit, registration, or similar form of permission required by law is pending before the commission at a time when changes take effect concerning notice requirements imposed by law for that type of application, the applicant must comply with the new notice requirements.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 9.02, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995.

Sec. 382.030. DELEGATION OF HEARING POWERS. (a) The commission may delegate the authority to hold hearings called by the commission under this chapter to:

(1) one or more commission members;

(2) the executive director; or

(3) one or more commission employees.

(b) Except for hearings required to be held before the

commission under Section 5.504, Water Code, the commission may authorize the executive director to:

(1) call and hold a hearing on any subject on which the commission may hold a hearing; and

(2) delegate the authority to hold any hearing called by the executive director to one or more commission employees.

(c) The commission may establish the qualifications for individuals to whom the commission or the executive director delegates the authority to hold hearings.

(d) An individual holding a hearing under this section may administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.153, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 42, eff. Sept. 1, 1997.

Sec. 382.031. NOTICE OF HEARINGS. (a) Notice of a hearing under this chapter shall be published at least once in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice must be published not less than 30 days before the date set for the hearing.

(b) Notice of the hearing must describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed to the person at the person's most recent address known to the commission not less than 30 days before the date set for the hearing. If the party is not an individual, the notice may be given to an officer, agent, or legal representative of the party.

(d) The hearing body shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body

at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed by Subsection (c) at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting. In this subsection, "hearing body" means the individual or individuals that hold a hearing under this section.

(e) This section applies to all hearings held under this chapter except as otherwise specified by Section 382.017.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.154, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 43, eff. Sept. 1, 1997.

Sec. 382.032. APPEAL OF COMMISSION ACTION. (a) A person affected by a ruling, order, decision, or other act of the commission or of the executive director, if an appeal to the commission is not provided, may appeal the action by filing a petition in a district court of Travis County.

(b) The petition must be filed in the time required by Section 5.351, Water Code, unless the appeal relates to the commission's failure to take final action on an application for a federal operating permit, a reopening of a federal operating permit, a revision to a federal operating permit, or a permit renewal application for a federal operating permit in accordance with Section 382.0542(b), in which case the petition may be filed at any time before the commission or the executive director takes final action.

(c) Service of citation on the commission must be accomplished within 30 days after the date on which the petition is filed. Citation may be served on the executive director or any commission member.

(d) The plaintiff shall pursue the action with reasonable diligence. If the plaintiff does not prosecute the action within one year after the date on which the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of an action of the commission or executive

director other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a variance must be tried in the same manner as appeals from the justice court to the county court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 5, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 174 (S.B. 211), Sec. 3, eff. September 1, 2021.

Sec. 382.033. CONTRACTS; INSTRUMENTS. The commission may execute contracts and instruments that are necessary or convenient to perform its powers or duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.0335. AIR CONTROL ACCOUNT. (a) The commission may apply for, solicit, contract for, receive, or accept money from any source to carry out its duties under this chapter.

(b) Money received by the commission under this section shall be deposited to the credit of the air control account, an account in the general revenue fund. The commission may use money in the account for any necessary expenses incurred in carrying out commission duties under this chapter.

Added by Acts 1997, 75th Leg., ch. 333, Sec. 72, eff. Sept. 1, 1997.

Sec. 382.034. RESEARCH AND INVESTIGATIONS. The commission shall conduct or require any research and investigations it considers advisable and necessary to perform its duties under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.035. MEMORANDUM OF UNDERSTANDING. The commission by rule shall adopt any memorandum of understanding between the commission and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.036. COOPERATION AND ASSISTANCE. The commission shall:

(1) encourage voluntary cooperation by persons or affected groups in restoring and preserving the purity of the state's air;

(2) encourage and conduct studies, investigations, and research concerning air quality control;

(3) collect and disseminate information on air quality control;

(4) advise, consult, and cooperate with other state agencies, political subdivisions of the state, industries, other states, the federal government, and interested persons or groups concerning matters of common interest in air quality control; and

(5) represent the state in all matters relating to air quality plans, procedures, or negotiations for interstate compacts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.155, eff. Sept. 1, 1995.

Sec. 382.037. NOTICE IN TEXAS REGISTER REGARDING NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE. (a) This section applies only if:

(1) with respect to each active or revoked national ambient air quality standard for ozone referenced in 40 C.F.R. Section 81.344, the United States Environmental Protection Agency has, for each designated area referenced in that section:

(A) designated the area as attainment or unclassifiable/attainment; or

(B) approved a redesignation substitute making a finding of attainment for the area; and

(2) for each designated area described by Subdivision (1), with respect to an action of the United States Environmental Protection Agency described by Subdivision (1)(A) or (B):

(A) the action has been fully and finally upheld following judicial review or the limitations period to seek judicial review of the action has expired; and

(B) the rules under which the action was approved by the agency have been fully and finally upheld following judicial review or the limitations period to seek judicial review of those rules has expired.

(b) Not later than the 30th day after the date the conditions described by Subsection (a) have been met, the commission shall publish notice in the Texas Register that, with respect to each active or revoked national ambient air quality standard for ozone referenced in 40 C.F.R. Section 81.344, the United States Environmental Protection Agency has, for each designated area referenced in that section:

(1) designated the area as attainment or unclassifiable/attainment; or

(2) approved a redesignation substitute making a finding of attainment for the area.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(b-1), eff. August 30, 2017.

Sec. 382.040. DOCUMENTS; PUBLIC PROPERTY. All information, documents, and data collected by the commission in performing its duties are state property. Subject to the limitations of Section 382.041, all commission records are public records open to inspection by any person during regular office hours.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 381.020 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 2, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

Sec. 382.041. CONFIDENTIAL INFORMATION. (a) Except as provided by Subsection (b), a member, employee, or agent of the commission may not disclose information submitted to the commission relating to secret processes or methods of manufacture or production that is identified as confidential when submitted.

(b) A member, employee, or agent of the commission may disclose

information confidential under Subsection (a) to a representative of the United States Environmental Protection Agency on the request of a representative of that agency if:

(1) at the time of disclosure the member, employee, or agent notifies the representative that the material has been identified as confidential when submitted; and

(2) the commission, before the information is disclosed, has entered into an agreement with the United States Environmental Protection Agency that ensures that the agency treats information identified as confidential as though it had been submitted by the originator of the information with an appropriate claim of confidentiality under federal law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 381.022 and amended by Acts 1993, 73rd Leg., ch. 485, Sec. 3, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995.

SUBCHAPTER C. PERMITS

Sec. 382.051. PERMITTING AUTHORITY OF COMMISSION; RULES. (a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate an existing facility affected by Section 382.0518(g); or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519;

(7) an existing facility permit or existing facility flexible permit under Section 382.05183;

(8) a small business stationary source permit under Section 382.05184;

(9) an electric generating facility permit under Section 382.05185 of this code and Section 39.264, Utilities Code;

(10) a pipeline facilities permit under Section 382.05186; or

(11) other permits as necessary.

(c) The commission may issue a federal operating permit for a federal source in violation only if the operating permit incorporates a compliance plan for the federal source as a condition of the permit.

(d) The commission shall adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.06, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 6, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.159, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 5.02, eff. Sept. 1, 2001.

Sec. 382.05101. DE MINIMIS AIR CONTAMINANTS. The commission may develop by rule the criteria to establish a de minimis level of air contaminants for facilities or groups of facilities below which the following types of permits are not required:

(1) a permit under Section 382.0518 or 382.0519;

(2) a standard permit under Section 382.05195, 382.05198, or 382.051985; or

(3) a permit by rule under Section 382.05196.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 3, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 361, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 1, eff. September 1, 2023.

Sec. 382.05102. PERMITTING AUTHORITY OF COMMISSION; GREENHOUSE GAS EMISSIONS. (a) In this section, "greenhouse gas emissions" means emissions of:

(1) carbon dioxide;

(2) methane;

(3) nitrous oxide;

(4) hydrofluorocarbons;

(5) perfluorocarbons; and

(6) sulfur hexafluoride.

(b) To the extent that greenhouse gas emissions require authorization under federal law, the commission may authorize greenhouse gas emissions in a manner consistent with Section 382.051.

(c) The commission shall:

(1) adopt rules to implement this section, including rules specifying the procedures to transition to review by the commission any applications pending with the United States Environmental Protection Agency for approval under 40 C.F.R. Section 52.2305; and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) If authorization to emit greenhouse gas emissions is no longer required under federal law, the commission shall:

(1) repeal the rules adopted under Subsection (c); and

(2) prepare and submit appropriate federal program revisions to the United States Environmental Protection Agency for approval.

Added by Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 2, eff. June 14, 2013.

Sec. 382.0511. PERMIT CONSOLIDATION AND AMENDMENT. (a) The commission may consolidate into a single permit any permits, special permits, standard permits, permits by rule, or exemptions for a facility or federal source.

(b) Consistent with the rules adopted under Subsection (d) and

the limitations of this chapter, including limitations that apply to the modification of an existing facility, the commission may amend, revise, or modify a permit.

(c) The commission may authorize changes in a federal source to proceed before the owner or operator obtains a federal operating permit or revisions to a federal operating permit if:

(1) the changes are de minimis under Section 382.05101; or

(2) the owner or operator:

(A) has obtained a preconstruction permit or permit amendment required by Section 382.0518; or

(B) is operating under:

(i) a standard permit under Section 382.05195, 382.05198, or 382.051985;

(ii) a permit by rule under Section 382.05196; or

(iii) an exemption allowed under Section 382.057.

(d) The commission by rule shall develop criteria and administrative procedures to implement Subsections (b) and (c).

(e) When multiple facilities have been consolidated into a single permit under this section and the consolidated permit is reopened for consideration of an amendment relating to one or more facilities authorized by that permit, the permit is not considered reopened with respect to facilities for which an amendment, revision, or modification is not sought unless this chapter specifically authorizes or requires that additional reopening in order to protect the public's health and physical property.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 7, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.160, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 4, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 361, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 2, eff. September 1, 2023.

Sec. 382.0512. MODIFICATION OF EXISTING FACILITY. (a) Except as provided in Subsection (b), in determining whether a proposed change at an existing facility is a modification, the commission may not consider the effect on emissions of:

(1) any air pollution control method applied to a source; or

(2) any decreases in emissions from other sources.

(b) In determining whether a proposed change at an existing facility that meets the criteria of Section 382.003(9)(E) results in a net increase in allowable emissions, the commission shall consider the effect on emissions of:

(1) any air pollution control method applied to the facility;

(2) any decreases in allowable emissions from other facilities that have received a preconstruction permit or permit amendment no earlier than 120 months before the change will occur; and

(3) any decreases in actual emissions from other facilities that meet the criteria of Section 382.003(9)(E)(i) or (ii).

(c) Nothing in this section shall be construed to limit the application of otherwise applicable state or federal requirements, nor shall this section be construed to limit the commission's powers of enforcement under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 2, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(b), eff. Sept. 1, 1999.

Sec. 382.0513. PERMIT CONDITIONS. The commission may establish and enforce permit conditions consistent with this chapter. Permit conditions of general applicability shall be adopted by rule.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 8, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0514. SAMPLING, MONITORING, AND CERTIFICATION. The commission may require, at the expense of the permit holder and as a condition of the permit:

(1) sampling and monitoring of a permitted federal source

or facility;

(2) certification of the compliance of the owner or operator of the permitted federal source with the terms and conditions of the permit and with all applicable requirements; and

(3) a periodic report of:

(A) the results of sampling and monitoring; and

(B) the certification of compliance.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 9, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0515. APPLICATION FOR PERMIT. A person applying for a permit shall submit to the commission:

(1) a permit application;

(2) copies of all plans and specifications necessary to determine if the facility or source will comply with applicable federal and state air control statutes, rules, and regulations and the intent of this chapter; and

(3) any other information the commission considers necessary.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.05155. EXPEDITED PROCESSING OF APPLICATION. (a) An applicant, in a manner prescribed by the commission, may request the expedited processing of an application filed under this chapter if the applicant demonstrates that the purpose of the application will benefit the economy of this state or an area of this state.

(b) The executive director may grant an expedited processing request if the executive director determines that granting the request will benefit the economy of this state or an area of this state.

(c) The expediting of an application under this section does not affect a contested case hearing or applicable federal, state, and regulatory requirements, including the notice, opportunity for a

public hearing, and submission of public comment required under this chapter.

(d) The commission by rule may add a surcharge to an application fee assessed under this chapter for an expedited application in an amount sufficient to cover the expenses incurred by the expediting, including overtime, costs of full-time equivalent commission employees to support the expedited processing of air permit applications, contract labor, and other costs. The surcharge is considered part of the application fee and shall be deposited with the fee to the credit of the clean air account established under Section 382.0622(b). Money from the surcharge collected under this section may be used to support the expedited processing of air permit applications under this section.

(e) The commission may authorize the use of overtime, full-time equivalent commission employees to support the expedited processing of air permit applications, or contract labor to process expedited applications. The overtime, full-time equivalent commission employees, or contract labor authorized under this section is not included in the calculation of the number of full-time equivalent commission employees allotted under other law.

(f) The commission may pay for compensatory time, overtime, full-time equivalent commission employees supporting the expedited processing of air permit applications, or contract labor used to implement this section. The commission is authorized to set the rate for overtime compensation for full-time equivalent commission employees supporting the expedited processing of air permit applications.

(g) A rule adopted under this section must be consistent with Chapter 2001, Government Code. A rule adopted under this section regarding notice must include a provision to require an indication that the application is being processed in an expedited manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 808 (S.B. 1756), Sec. 1, eff. June 14, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 393 (S.B. 698), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1173 (H.B. 3317), Sec. 16(a), eff. June 14, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.007,

eff. September 1, 2021.

Sec. 382.0516. NOTICE TO STATE SENATOR, STATE REPRESENTATIVE, AND CERTAIN LOCAL OFFICIALS. (a) On receiving an application for a construction permit or an amendment to a construction permit, a special permit, or an operating permit for a facility that may emit air contaminants, the commission shall send notice of the application to the state senator and representative who represent the area in which the facility is or will be located.

(b) In addition to the notice required by Subsection (a), for an application that relates to an existing or proposed concrete batch plant, on receiving an application for a construction permit, an amendment to a construction permit, an operating permit, or an authorization to use a standard permit, the commission shall send notice of the application:

(1) to the county judge of the county in which the facility is or will be located; and

(2) if the facility is or will be located in a municipality or the extraterritorial jurisdiction of a municipality, to the presiding officer of the municipality's governing body.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 382.0511 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.07, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1327, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 5.01, eff. September 1, 2007.

Sec. 382.0517. DETERMINATION OF ADMINISTRATIVE COMPLETION OF APPLICATION. The commission shall determine when an application filed under Section 382.054 or Section 382.0518 is administratively complete. On determination, the commission by mail shall notify the applicant and any interested party who has requested notification. If the number of interested parties who have requested notification makes it impracticable for the commission to notify those parties by mail, the commission shall notify those parties by publication using

the method prescribed by Section 382.031(a).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.161, eff. Sept. 1, 1995.

Sec. 382.0518. PRECONSTRUCTION PERMIT. (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the commission.

(b) The commission shall grant within a reasonable time a permit or permit amendment to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under Section 382.056(k), the commission finds:

(1) the proposed facility for which a permit, permit amendment, or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider the applicant's compliance history in accordance with the method for using compliance history developed by the commission under Section 5.754, Water Code. In considering an applicant's compliance history under this subsection, the commission shall consider as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the permit, permit amendment, or permit renewal is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(d) If the commission finds that the emissions from the proposed facility will contravene the standards under Subsection (b) or will contravene the intent of this chapter, the commission may not grant the permit, permit amendment, or special permit and shall set

out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(e) If the person applying for a permit, permit amendment, or special permit makes the alterations in the person's plans and specifications to meet the commission's specific objections, the commission shall grant the permit, permit amendment, or special permit. If the person fails or refuses to alter the plans and specifications, the commission may not grant the permit, permit amendment, or special permit. The commission may refuse to accept a person's new application until the commission's objections to the plans previously submitted by that person are satisfied.

(f) A person may operate a facility or source under a permit issued by the commission under this section if:

(1) the facility or source is not required to obtain a federal operating permit under Section 382.054; and

(2) within the time and in the manner prescribed by commission rule, the permit holder demonstrates that:

(A) the facility complies with all terms of the existing preconstruction permit; and

(B) operation of the facility or source will not violate the intent of this chapter or standards adopted by the commission.

(g) Subsections (a)-(d) do not apply to a person who has executed a contract or has begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971, and who has complied with the requirements of Section 382.060, as it existed on November 30, 1991. To qualify for any exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972.

(h) Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the amended permit will meet the de minimis criteria defined by commission rule and will not change in character. For a facility affected by Section 382.020, Section 382.056 does not apply to an applicant for a permit amendment under this section if the total emissions increase from all facilities authorized under the permit amendment is not significant and will not change in character. In this subsection, a finding that a total emissions increase is not significant must be made as provided under Section 382.05196 for a finding under that section.

(i) In considering a permit amendment under this section the commission shall consider any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.08, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.162, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 150, Sec. 3, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.13, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.25, eff. September 1, 2011.

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

(1) September 1, 2003, if the facility is located in the East Texas region; or

(2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

(1) March 1, 2007, if the facility is located in the East Texas region; or

(2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

(1) contains all counties traversed by or east of

Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and

(2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The West Texas region includes all counties not contained in the East Texas region.

(e) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(g) An owner or operator of a facility affected by Section 382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(h) A permit application under this chapter for a facility affected by Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.05191.

(i) This section does not apply to a facility eligible for a permit under Section 382.05184.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

(1) the date the facility intends to cease operating;

(2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05183. EXISTING FACILITY PERMIT. (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that the facility will use a control method at least as beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site affected by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05184. SMALL BUSINESS STATIONARY SOURCE PERMIT. (a)

Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 5.135, Water Code, and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) A permit application under this section is not subject to notice and hearing requirements and is not subject to Chapter 2001, Government Code.

(g) The commission may adopt rules as necessary to implement and administer this section.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(b), eff. September 1, 2005.

Sec. 382.05185. ELECTRIC GENERATING FACILITY PERMIT. (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities

Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for criteria pollutants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons of any air contaminant annually.

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For the purposes of this section, a natural-gas-fired electric generating facility includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or pumping facilities affected by Section 382.0518(g) connected to or part of a gathering or transmission pipeline. Pipeline facilities affected by Section 382.0518(g) other than reciprocating internal combustion engines may apply for an existing facility permit or other applicable permit under this chapter other than a pipeline facilities permit.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one reciprocating internal combustion facility connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate permits under this section for discrete and separate reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section

are to be achieved at one source, the reduction may include emissions reductions achieved since January 1, 2001, in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section for a facility or facilities located in the East Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require a 50 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require a 50 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(f) The commission shall grant a permit under this section for facilities located in the West Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require up to a 20 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require up to a 20 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(i) The commission may adopt rules as necessary to implement and administer this section.

(j) A reciprocating internal combustion engine that is subject to this section and to a mass emissions cap as established by commission rule is considered permitted under this section with respect to all air contaminants if the facility is:

(1) located in an area designated nonattainment for an ozone national ambient air quality standard; and

(2) achieving compliance with all state and federal requirements designated for that area.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1023, Sec. 3, eff. June 20, 2003.

Sec. 382.051865. STATIONARY NATURAL GAS ENGINES USED IN COMBINED HEATING AND POWER SYSTEM. (a) In this section, "natural gas engine" includes a natural gas internal combustion engine, natural gas stationary internal combustion reciprocating engine, and natural gas turbine. The term does not include a natural gas engine that powers a motor vehicle as defined by Section 382.003(9-a), Health and Safety Code.

(b) This section applies only to a stationary natural gas engine used in a combined heating and power system.

(c) The commission shall issue a standard permit or permit by rule for stationary natural gas engines used in a combined heating and power system that establishes emission limits for air contaminants released by the engines.

(d) The commission in adopting a standard permit or permit by rule under this section may consider:

(1) the geographic location in which a stationary natural gas engine may be used, including the proximity to an area designated as a nonattainment area;

(2) the total annual operating hours of a stationary natural gas engine;

(3) the technology used by a stationary natural gas engine;

(4) the types of fuel used to power a stationary natural gas engine; and

(5) other emission control policies of the state.

(e) The commission in adopting a standard permit or permit by rule under this section may not distinguish between the end-use functions powered by a stationary natural gas engine.

(f) The commission must provide for the emission limits for stationary natural gas engines subject to this section to be measured in terms of air contaminant emissions per unit of total energy output. The commission shall consider both the primary and secondary functions when determining the engine's emissions per unit of energy output.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1175 (H.B. 3268), Sec. 1, eff. June 17, 2011.

Sec. 382.051866. EMISSIONS REDUCTIONS INCENTIVES ACCOUNT. (a) In this section, "affiliate" means a person that directly or

indirectly controls, is controlled by, or is under common control with another person.

(b) The comptroller of public accounts shall establish an account within the clean air account to be known as the emissions reductions incentives account.

(c) The emissions reductions incentives account consists of money from:

(1) gifts, grants, or donations to the account for a designated or general use;

(2) money from any other source the legislature designates; and

(3) the interest earned on money in the emissions reductions incentives account.

(d) Money in the emissions reductions incentives account may be appropriated only to pay for emissions reduction project incentives under a program developed under Section 382.051867 and administrative expenses associated with providing the incentives or the incentive program established under that section.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1346, Sec. 3, eff. June 15, 2007.

(f) The emissions reductions incentives account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2003, 78th Leg., ch. 1023, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1346 (S.B. 2000), Sec. 3, eff. June 15, 2007.

Sec. 382.0519. VOLUNTARY EMISSIONS REDUCTION PERMIT. (a) Before September 1, 2001, the owner or operator of an existing, unpermitted facility not subject to the requirement to obtain a permit under Section 382.0518(g) may apply for a permit to operate that facility under this section.

(b) The commission shall grant within a reasonable time a permit under this section if, from the information available to the commission, including information presented at any public hearing or through written comment:

(1) the commission finds that the facility will use an air pollution control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility, except as provided by Subdivision (2); or

(2) for a facility located in a near-nonattainment or nonattainment area for a national ambient air quality standard, the commission finds that the facility will use the more stringent of:

(A) a control method at least as beneficial as that described in Section 382.003(9)(E)(ii), considering the age and remaining useful life of the facility; or

(B) a control technology that the commission finds is demonstrated to be generally achievable for facilities in that area of the same type that are permitted under this section, considering the age and remaining useful life of the facility.

(c) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(d) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before work is begun on the construction of the modification.

(e) A permit issued by the commission under this section may defer the implementation of the requirement of reductions in the emissions of certain air contaminants only if the applicant will make substantial emissions reductions in other specific air contaminants. The deferral shall be based on a prioritization of air contaminants by the commission as necessary to meet local, regional, and statewide air quality needs.

(f) The commission shall give priority to the processing of applications for the issuance, amendment, or renewal of a permit for those facilities authorized under Section 382.0518(g) that are located less than two miles from the outer perimeter of a school, child day-care facility, hospital, or nursing home.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05191. EMISSIONS REDUCTION PERMITS: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183,

382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a permit under Section 382.05183, 382.05185(c) or (d), or 382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.04, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(c), eff. September 1, 2005.

Sec. 382.05192. REVIEW AND RENEWAL OF EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185(c) or (d), 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 965, Sec. 5.05, eff. Sept. 1, 2001.

Sec. 382.05193. EMISSIONS PERMITS THROUGH EMISSIONS REDUCTION. (a) The commission may issue a permit under Section 382.0519 for a facility:

(1) that makes a good faith effort to make equipment

improvements and emissions reductions necessary to meet the requirements of that section;

(2) that, in spite of the effort, cannot reduce the facility's emissions to the degree necessary for the issuance of the permit; and

(3) the owner or operator of which acquires a sufficient number of emissions reduction credits to offset the facility's excessive emissions under the program established under Subsection (b).

(b) The commission by rule shall establish a program to grant emissions reduction credits to a facility if the owner or operator conducts an emissions reduction project to offset the facility's excessive emissions. To be eligible for a credit to offset a facility's emissions, the emissions reduction project must reduce emissions in the airshed, as defined by commission rule, in which the facility is located.

(c) The commission by rule shall provide that an emissions reduction project must reduce net emissions from one or more sources in this state in an amount and type sufficient to prevent air pollution to a degree comparable to the amount of the reduction in the facility's emissions that would be necessary to meet the permit requirement. Qualifying emissions reduction projects must include:

(1) generation of electric energy by a low-emission method, including:

(A) wind power;

(B) biomass gasification power; and

(C) solar power;

(2) the purchase and destruction of high-emission automobiles or other mobile sources;

(3) the reduction of emissions from a permitted facility that emits air contaminants to a level significantly below the levels necessary to comply with the facility's permit;

(4) a carpooling or alternative transportation program for the owner's or operator's employees;

(5) a telecommuting program for the owner's or operator's employees; and

(6) conversion of a motor vehicle fleet operated by the owner or operator to a low-sulphur fuel or an alternative fuel approved by the commission.

(d) A permit issued under Section 382.0519 for a facility

participating in the program established under this section must be conditioned on the successful and timely completion of the project or projects for which the facility owner or operator acquires the credits.

(e) To renew the permit of a facility permitted under Section 382.0519 with credits acquired under the program established under this section, the commission shall require the owner or operator of the facility to have:

(1) made equipment improvements and emissions reductions necessary to meet the permit requirements under that section for a new permit; or

(2) acquired additional credits under the program as necessary to meet the permit requirements under that section for a new permit.

(f) Emissions reduction credits acquired under the program established under this section are not transferrable.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.05194. MULTIPLE PLANT PERMIT. (a) The commission may issue a multiple plant permit for multiple plant sites that are owned or operated by the same person or persons under common control if the commission finds that:

(1) the aggregate rate of emission of air contaminants to be authorized under the permit does not exceed the total of:

(A) for previously permitted facilities, the rates authorized in the existing permits; and

(B) for existing unpermitted facilities not subject to the requirement to obtain a preconstruction authorization under Section 382.0518(g) or for facilities authorized under Section 382.0519, the rates that would be authorized under Section 382.0519; and

(2) there is no indication that the emissions from the facilities will contravene the intent of this chapter, including protection of the public's health and physical property.

(b) A permit issued under this section may not authorize emissions from any of the facilities authorized under the permit that exceed the facility's highest historic annual rate or the levels authorized in the facility's most recent permit. In the absence of

records extending back to the original construction of the facility, best engineering judgment shall be used to demonstrate the facility's highest historic annual rate to the commission.

(c) Emissions control equipment previously installed at a facility permitted under this section may not be removed or disabled unless the action is undertaken to maintain or upgrade the control equipment or to otherwise reduce the impact of emissions authorized by the commission.

(d) The commission by rule shall establish the procedures for application and approval for the use of a multiple plant permit.

(e) For a multiple plant permit that applies only to existing facilities for which an application is filed before September 1, 2001, the issuance, amendment, or revocation by the commission of the permit is not subject to Chapter 2001, Government Code.

(f) The commission may adopt rules as necessary to implement and administer this section and may delegate to the executive director under Section 382.061 the authority to issue, amend, or revoke a multiple plant permit.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 935, Sec. 1, eff. June 14, 2001.

Sec. 382.05195. STANDARD PERMIT. (a) The commission may issue a standard permit for new or existing similar facilities if the commission finds that:

(1) the standard permit is enforceable;

(2) the commission can adequately monitor compliance with the terms of the standard permit; and

(3) for permit applications for facilities subject to Sections 382.0518(a)-(d) filed before September 1, 2001, the facilities will use control technology at least as effective as that described in Section 382.0518(b). For permit applications filed after August 31, 2001, all facilities permitted under this section will use control technology at least as effective as that described in Section 382.0518(b).

(b) The commission shall publish notice of a proposed standard permit in the Texas Register and in one or more statewide or regional newspapers designated by the commission by rule that will, in the commission's judgment, provide reasonable notice throughout the

state. If the standard permit will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require additional notice to be given. The notice must include an invitation for written comments by the public to the commission regarding the proposed standard permit and must be published not later than the 30th day before the date the commission issues the standard permit.

(c) The commission shall hold a public meeting to provide an additional opportunity for public comment. The commission shall give notice of a public meeting under this subsection as part of the notice described in Subsection (b) not later than the 30th day before the date of the meeting.

(d) If the commission receives public comment related to the issuance of a standard permit, the commission shall issue a written response to the comments at the same time the commission issues or denies the permit. The response must be made available to the public, and the commission shall mail the response to each person who made a comment.

(e) The commission by rule shall establish procedures for the amendment of a standard permit and for an application for, the issuance of, the renewal of, and the revocation of an authorization to use a standard permit.

(f) A facility authorized to emit air contaminants under a standard permit shall comply with an amendment to the standard permit beginning on the date the facility's authorization to use the standard permit is renewed or the date the commission otherwise provides. Before the date the facility is required to comply with the amendment, the standard permit, as it read before the amendment, applies to the facility.

(g) The adoption or amendment of a standard permit or the issuance, renewal, or revocation of an authorization to use a standard permit is not subject to Chapter 2001, Government Code.

(h) The commission may adopt rules as necessary to implement and administer this section.

(i) The commission may delegate to the executive director the authority to issue, amend, renew, or revoke an authorization to use a standard permit.

(j) If a standard permit for a facility requires a distance, setback, or buffer from other property or structures as a condition

of the permit, the determination of whether the distance, setback, or buffer is satisfied shall be made on the basis of conditions existing at the earlier of:

(1) the date new construction, expansion, or modification of a facility begins; or

(2) the date any application or notice of intent is first filed with the commission to obtain approval for the construction or operation of the facility.

(k) An application for the issuance of a standard permit under this section for a concrete plant that performs wet batching, dry batching, or central mixing, including a permanent, temporary, or specialty concrete batch plant, as defined by the commission, must include a plot plan that clearly shows:

(1) a distance scale;

(2) a north arrow;

(3) all property lines, emission points, buildings, tanks, and process vessels and other process equipment in the area in which the facility will be located;

(4) at least two benchmark locations in the area in which the facility will be located; and

(5) if the permit requires a distance, setback, or buffer from other property or structures as a condition of the permit, whether the required distance or setback will be met.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 422 (S.B. 1740), Sec. 2, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 159 (S.B. 952), Sec. 1, eff. September 1, 2021.

Sec. 382.05196. PERMITS BY RULE. (a) Consistent with Section 382.051, the commission may adopt permits by rule for certain types of facilities if it is found on investigation that the types of facilities will not make a significant contribution of air contaminants to the atmosphere. The commission may not adopt a permit by rule authorizing any facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) or regulations adopted

under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission by rule shall specifically define the terms and conditions for a permit by rule under this section.

Added by Acts 1999, 76th Leg., ch. 406, Sec. 5, eff. Aug. 30, 1999.

Sec. 382.051961. PERMIT FOR CERTAIN OIL AND GAS FACILITIES. (a) This section applies only to new facilities or modifications of existing facilities that belong to Standard Industrial Classification Codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), and 4923 (Natural Gas Transmission and Distribution).

(b) The commission may not adopt a new permit by rule or a new standard permit or amend an existing permit by rule or an existing standard permit relating to a facility to which this section applies unless the commission:

(1) conducts a regulatory analysis as provided by Section 2001.0225, Government Code;

(2) determines, based on the evaluation of credible air quality monitoring data, that the emissions limits or other emissions-related requirements of the permit are necessary to ensure that the intent of this chapter is not contravened, including the protection of the public's health and physical property;

(3) establishes any required emissions limits or other emissions-related requirements based on:

(A) the evaluation of credible air quality monitoring data; and

(B) credible air quality modeling that is not based on the worst-case scenario of emissions or other worst-case modeling scenarios unless the actual air quality monitoring data and evaluation of that data indicate that the worst-case scenario of emissions or other worst-case modeling scenarios yield modeling results that reflect the actual air quality monitoring data and evaluation; and

(4) considers whether the requirements of the permit should be imposed only on facilities that are located in a particular

geographic region of the state.

(c) The air quality monitoring data and the evaluation of that data under Subsection (b):

(1) must be relevant and technically and scientifically credible, as determined by the commission; and

(2) may be generated by an ambient air quality monitoring program conducted by or on behalf of the commission in any part of the state or by another governmental entity of this state, a local or federal governmental entity, or a private organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051962. AUTHORIZATION FOR PLANNED MAINTENANCE, START-UP, OR SHUTDOWN ACTIVITIES RELATING TO CERTAIN OIL AND GAS FACILITIES. (a) In this section, "planned maintenance, start-up, or shutdown activity" means an activity with emissions or opacity that:

(1) is not expressly authorized by commission permit, rule, or order and involves the maintenance, start-up, or shutdown of a facility;

(2) is part of normal or routine facility operations;

(3) is predictable as to timing; and

(4) involves the type of emissions normally authorized by permit.

(b) The commission may adopt one or more permits by rule or one or more standard permits and may amend one or more existing permits by rule or standard permits to authorize planned maintenance, start-up, or shutdown activities for facilities described by Section 382.051961(a). The adoption or amendment of a permit under this subsection must comply with Section 382.051961(b).

(c) An unauthorized emission or opacity event from a planned maintenance, start-up, or shutdown activity is subject to an affirmative defense as established by commission rules as those rules exist on the effective date of this section if:

(1) the emission or opacity event occurs at a facility described by Section 382.051961(a);

(2) an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is submitted to the commission on or before the earlier of:

(A) January 5, 2014; or

(B) the 120th day after the effective date of a new or amended permit adopted by the commission under Subsection (b); and

(3) the affirmative defense criteria in the rules are met.

(d) The affirmative defense described by Subsection (c) is not available for a facility on or after the date that an application or registration to authorize the planned maintenance, start-up, or shutdown activities of the facility is approved, denied, or voided.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051963. AMENDMENT OF CERTAIN PERMITS. (a) A permit by rule or standard permit that has been adopted by the commission under this subchapter and is in effect on the effective date of this section may be amended to require:

(1) the permit holder to provide to the commission information about a facility authorized by the permit, including the location of the facility; and

(2) any facility handling sour gas to be a minimum distance from a recreational area, a residence, or another structure not occupied or used solely by the operator of the facility or by the owner of the property upon which the facility is located.

(b) The amendment of a permit under this section is not subject to Section 382.051961(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.051964. AGGREGATION OF FACILITIES. Notwithstanding any other provision of this chapter, the commission may not aggregate a facility that belongs to a Standard Industrial Classification code identified by Section 382.051961(a) with another facility that belongs to a Standard Industrial Classification code identified by that section for purposes of consideration as an oil and gas site, a stationary source, or another single source in a permit by rule or a standard permit unless the facilities being aggregated:

(1) are under the control of the same person or are under the control of persons under common control;

(2) belong to the same first two-digit major grouping of Standard Industrial Classification codes;

(3) are operationally dependant; and

(4) are located not more than one-quarter mile from a condensate tank, oil tank, produced water storage tank, or combustion facility that:

(A) is under the control of the same person who controls the facilities being aggregated or is under the control of persons under common control;

(B) belongs to the same first two-digit major grouping of Standard Industrial Classification codes as the facilities being aggregated; and

(C) is operationally dependant on the facilities being aggregated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1080 (S.B. 1134), Sec. 1, eff. June 17, 2011.

Sec. 382.05197. MULTIPLE PLANT PERMIT: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05194 shall publish notice of intent to obtain the permit in accordance with Section 382.056, except that the notice of a proposed multiple plant permit for existing facilities shall be published in one or more statewide or regional newspapers that provide reasonable notice throughout the state. If the multiple plant permit for existing facilities will be effective for only part of the state, the notice shall be published in a newspaper of general circulation in the area to be affected. The commission by rule may require that additional notice be given.

(b) The commission may authorize an applicant for a permit for an existing facility that constitutes or is part of a small business stationary source as defined in Section 5.135, Water Code, to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, the cost, and the consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05194 in

the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a multiple plant permit may move for rehearing and is entitled to judicial review under Section 382.032.

Added by Acts 2001, 77th Leg., ch. 935, Sec. 2, eff. June 14, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(d), eff. September 1, 2005.

Sec. 382.05198. STANDARD PERMIT FOR CERTAIN CONCRETE PLANTS. (a) The commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and that meets the following requirements:

(1) production records must be maintained on site while the plant is in operation until the second anniversary of the end of the period to which they relate;

(2) each cement or fly ash storage silo and weigh hopper must be equipped with a fabric or cartridge filter or vented to a fabric or cartridge filter system;

(3) each fabric or cartridge filter, fabric or cartridge filter system, and suction shroud must be maintained and operated properly with no tears or leaks;

(4) excluding the suction shroud filter system, each filter system must be designed to meet a standard of at least 0.01 outlet grain loading as measured in grains per dry standard cubic foot;

(5) each filter system and each mixer loading and batch truck loading emissions control device must meet a performance standard of no visible emissions exceeding 30 seconds in a five-minute period as determined using United States Environmental Protection Agency Test Method 22 as that method existed on September 1, 2003;

(6) if a cement or fly ash silo is filled during nondaylight hours, the silo filter system exhaust must be sufficiently illuminated to enable a determination of compliance with the performance standard described by Subdivision (5);

(7) the conveying system for the transfer of cement or fly ash to and from each storage silo must be totally enclosed, operate properly, and be maintained without any tears or leaks;

(8) except during cement or fly ash tanker connection or disconnection, each conveying system for the transfer of cement or fly ash must meet the performance standard described by Subdivision (5);

(9) a warning device must be installed on each bulk storage silo to alert the operator in sufficient time for the operator to stop loading operations before the silo is filled to a level that may adversely affect the pollution abatement equipment;

(10) if filling a silo results in failure of the pollution abatement system or failure to meet the performance standard described by Subdivision (5), the failure must be documented and reported to the commission;

(11) each road, parking lot, or other area at the plant site that is used by vehicles must be paved with a cohesive hard surface that is properly maintained, cleaned, and watered so as to minimize dust emissions;

(12) each stockpile must be sprinkled with water or dust-suppressant chemicals or covered so as to minimize dust emissions;

(13) material used in the batch that is spilled must be immediately cleaned up and contained or dampened so as to minimize dust emissions;

(14) production of concrete at the plant must not exceed 300 cubic yards per hour;

(15) a suction shroud or other pickup device must be installed at the batch drop point or, in the case of a central mix plant, at the drum feed and vented to a fabric or cartridge filter system with a minimum capacity of 5,000 cubic feet per minute of air;

(16) the bag filter and capture system must be properly designed to accommodate the increased flow from the suction shroud and achieve a control efficiency of at least 99.5 percent;

(17) the suction shroud baghouse exhaust must be located more than 100 feet from any property line;

(18) stationary equipment, stockpiles, and vehicles used at the plant, except for incidental traffic and vehicles as they enter and exit the site, must be located or operated more than 100 feet from any property line; and

(19) the central baghouse must be located at least 440 yards from any building used as a single or multifamily residence, school, or place of worship at the time the application to use the permit is filed with the commission if the plant is located in an

area that is not subject to municipal zoning regulation.

(b) Notwithstanding Subsection (a)(18), the commission shall issue a standard permit for a permanent concrete plant that performs wet batching, dry batching, or central mixing and does not meet the requirements of that subdivision if the plant meets the other requirements of Subsection (a) and:

(1) each road, parking lot, and other traffic area located within the distance of a property line provided by Subsection (a)(18) is bordered by dust-suppressing fencing or another barrier at least 12 feet high; and

(2) each stockpile located within the applicable distance of a property line is contained within a three-walled bunker that extends at least two feet above the top of the stockpile.

(c) An application for the issuance of a standard permit under this section must include a plot plan that meets the requirements of Section 382.05195(k).

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 159 (S.B. 952), Sec. 2, eff. September 1, 2021.

Sec. 382.051985. STANDARD PERMIT FOR CERTAIN TEMPORARY CONCRETE PLANTS FOR PUBLIC WORKS. (a) The commission shall issue a standard permit that meets the requirements of Section 382.05195 for a temporary concrete plant that performs wet batching, dry batching, or central mixing to support a public works project. A plant operating under the permit:

(1) may not support a project that is not related to the public works project; and

(2) must be located in or contiguous to the right-of-way of the public works project.

(b) A plant permitted under this section may occupy a designated site for not more than 180 consecutive days or to supply material for a single project, but not other unrelated projects.

Added by Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 3, eff. September 1, 2023.

Sec. 382.05199. STANDARD PERMIT FOR CERTAIN CONCRETE BATCH PLANTS: NOTICE AND HEARING. (a) A person may not begin construction of a permanent concrete plant that performs wet batching, dry batching, or central mixing under a standard permit issued under Section 382.05198 unless the commission authorizes the person to use the permit as provided by this section. The notice and hearing requirements of Subsections (b)-(g) apply only to an applicant for authorization to use a standard permit issued under Section 382.05198. An applicant for a permit for a concrete plant that does not meet the requirements of a standard permit issued under Section 382.05198 must comply with:

(1) Section 382.058 to obtain authorization to use a standard permit issued under Section 382.05195 or a permit by rule adopted under Section 382.05196; or

(2) Section 382.056 to obtain a permit issued under Section 382.0518.

(b) An applicant for an authorization to use a standard permit under Section 382.05198 must publish notice under this section not later than the earlier of:

(1) the 30th day after the date the applicant receives written notice from the executive director that the application is technically complete; or

(2) the 75th day after the date the executive director receives the application.

(c) The applicant must publish notice at least once in a newspaper of general circulation in the municipality in which the plant is proposed to be located or in the municipality nearest to the proposed location of the plant. If the elementary or middle school nearest to the proposed plant provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant must also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the plant is proposed to be located that is published in the language taught in the bilingual education program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice.

(d) The notice must include:

(1) a brief description of the proposed location and nature of the proposed plant;

(2) a description, including a telephone number, of the

manner in which the executive director may be contacted for further information;

(3) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(4) the location and hours of operation of the commission's regional office at which a copy of the application is available for review and copying; and

(5) a brief description of the public comment process, including the time and location of the public hearing, and the mailing address and deadline for filing written comments.

(e) The public comment period begins on the first date notice is published under Subsection (b) and extends to the close of the public hearing.

(f) Section 382.056 of this code and Chapter 2001, Government Code, do not apply to a public hearing held under this section. A public hearing held under this section is not an evidentiary proceeding. Any person may submit an oral or written statement concerning the application at the public hearing. The applicant may set reasonable limits on the time allowed for oral statements at the public hearing.

(g) The applicant, in cooperation with the executive director, must hold the public hearing not less than 30 days and not more than 45 days after the first date notice is published under Subsection (b). The public hearing must be held in the county in which the plant is proposed to be located.

(h) Not later than the 35th day after the date the public hearing is held, the executive director shall approve or deny the application for authorization to use the standard permit. The executive director shall base the decision on whether the application meets the requirements of Section 382.05198. The executive director shall consider all comments received during the public comment period and at the public hearing in determining whether to approve the application. If the executive director denies the application, the executive director shall state the reasons for the denial and any modifications to the application that are necessary for the proposed plant to qualify for the authorization.

(i) The executive director shall issue a written response to any public comments received related to the issuance of an authorization to use the standard permit at the same time as or as

soon as practicable after the executive director grants or denies the application. Issuance of the response after the granting or denial of the application does not affect the validity of the executive director's decision to grant or deny the application. The executive director shall:

(1) mail the response to each person who filed a comment; and

(2) make the response available to the public.

Added by Acts 2003, 78th Leg., ch. 361, Sec. 3, eff. Sept. 1, 2003.

Sec. 382.052. PERMIT TO CONSTRUCT OR MODIFY FACILITY WITHIN 3,000 FEET OF SCHOOL. In considering the issuance of a permit to construct or modify a facility within 3,000 feet of an elementary, junior high, or senior high school, the commission shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals attending the school facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.163, eff. Sept. 1, 1995.

Sec. 382.053. PROHIBITION ON ISSUANCE OF CONSTRUCTION PERMIT FOR LEAD SMELTING PLANT AT CERTAIN LOCATIONS. (a) The commission may not grant a construction permit for a lead smelting plant at a site:

(1) located within 3,000 feet of an individual's residence; and

(2) at which lead smelting operations have not been conducted before August 31, 1987.

(b) This section does not apply to:

(1) a modification of a lead smelting plant in operation on August 31, 1987;

(2) a lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead each hour; or

(3) a lead smelting plant that, when the plant began operation, was located more than 3,000 feet from the nearest residence.

(c) In this section, "lead smelting plant" means a facility operated as a smeltery for processing lead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.164, eff. Sept. 1, 1995.

Sec. 382.054. FEDERAL OPERATING PERMIT. Subject to Section 382.0511(c), a person may not operate a federal source unless the person has obtained a federal operating permit from the commission under Section 382.0541, 382.0542, or 382.0543.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.09, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 10, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.165, eff. Sept. 1, 1995.

Sec. 382.0541. ADMINISTRATION AND ENFORCEMENT OF FEDERAL OPERATING PERMIT. (a) The commission may:

(1) require a federal source to obtain a permit under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.);

(2) require an existing facility or source to use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(3) require facilities or federal sources that are new or modified and are subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412) to use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating emissions from the proposed facility or federal source; or

(B) any applicable maximum achievable control technology (MACT), including any MACT developed pursuant to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412);

(4) establish maximum achievable control technology requirements in accordance with Section 112(j) of the federal Clean Air Act (42 U.S.C. Section 7412);

(5) issue initial permits with terms not to exceed five

years for federal sources under Title V of the federal Clean Air Act, with terms not to exceed five years for all subsequently issued or renewed permits;

(6) administer the use of emissions allowances under Section 408 of the federal Clean Air Act (42 U.S.C. Section 7651g);

(7) reopen and revise an affected federal operating permit if:

(A) the permit has a term of three years or more remaining in order to incorporate requirements under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) adopted after the permit is issued;

(B) additional requirements become applicable to an affected source under the acid rain program;

(C) the federal operating permit contains a material mistake;

(D) inaccurate statements were made in establishing the emissions standards or other terms or conditions of the federal operating permit; or

(E) a determination is made that the permit must be reopened and revised to assure compliance with applicable requirements;

(8) incorporate a federal implementation plan as a condition of a permit issued by the commission;

(9) exempt federal sources from the obligation to obtain a federal operating permit;

(10) provide that all representations in an application for a permit under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) are binding on the applicant until issuance or denial of the permit;

(11) provide that all terms and conditions of any federal operating permit required under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) shall be a complete and segregable section of the federal operating permit; and

(12) issue initial permits with fixed terms of five years for federal sources under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) with fixed five-year terms for all subsequently issued or renewed permits.

(b) The commission by rule shall provide for objection by the administrator to the issuance of any operating or general permit subject to Title V of the federal Clean Air Act (42 U.S.C. Sections

7661-7661f) and shall authorize the administrator to revoke and reissue, terminate, reopen, or modify a federal operating permit.

(c) This section does not affect the permit requirements of Section 382.0518, except that the commission may consolidate with an existing permit issued under this section a permit required by Section 382.0518.

(d) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(e) Subsections (a)(3) and (4) do not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 11, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.166, eff. Sept. 1, 1995.

Sec. 382.0542. ISSUANCE OF FEDERAL OPERATING PERMIT; APPEAL OF DELAY. (a) A federal source is eligible for a permit required by Section 382.054 if from the information available to the commission, including information presented at a hearing held under Section 382.0561, the commission finds that:

(1) the federal source will use, at a minimum, any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency;

(2) for a federal source that is new or modified and subject to Section 112(g) of the federal Clean Air Act (42 U.S.C. Section 7412), the federal source will use, at a minimum, the more stringent of:

(A) the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions from the proposed federal source; or

(B) any applicable maximum achievable control technology required by the commission or by the United States Environmental Protection Agency; and

(3) the federal source will comply with the following requirements, if applicable:

(A) Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f) and the regulations adopted under that title;

(B) each standard or other requirement provided for in the applicable implementation plan approved or adopted by rule of the United States Environmental Protection Agency under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515) that implements the relevant requirements of that Act, including any revisions to the plan;

(C) each term or condition of a preconstruction permit issued by the commission or the United States Environmental Protection Agency in accordance with rules adopted by the commission or the United States Environmental Protection Agency under Part C or D, Title I of the federal Clean Air Act (42 U.S.C. 7401-7515);

(D) each standard or other requirement established under Section 111 of the federal Clean Air Act (42 U.S.C. Section 7411), including Subsection (d) of that section;

(E) each standard or other requirement established under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) including any requirement concerning accident prevention under Subsection (r)(7) of that section;

(F) each standard or other requirement of the acid rain program established under Title IV of the federal Clean Air Act (42 U.S.C. Sections 7651-7651o) or the regulations adopted under that title;

(G) each requirement established under Section 504(b) or Section 114(a)(3) of the federal Clean Air Act (42 U.S.C. Section 7661c or 7414);

(H) each standard or other requirement governing solid waste incineration established under Section 129 of the federal Clean Air Act (42 U.S.C. Section 7429);

(I) each standard or other requirement for consumer and commercial products established under Section 183(e) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(J) each standard or other requirement for tank vessels established under Section 183(f) of the federal Clean Air Act (42 U.S.C. Section 7511b);

(K) each standard or other requirement of the program to control air pollution from outer continental shelf sources

established under Section 328 of the federal Clean Air Act (42 U.S.C. Section 7627);

(L) each standard or other requirement of regulations adopted to protect stratospheric ozone under Title VI of the federal Clean Air Act (42 U.S.C. Sections 7671-7671q) unless the administrator has determined that the standard or requirement does not need to be contained in a Title V permit; and

(M) each national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act (42 U.S.C. Sections 7470-7492), but only as the standard, increment, or requirement would apply to a temporary source permitted under Section 504(e) of the federal Clean Air Act (42 U.S.C. Section 7661c).

(b) The commission shall:

(1) take final action on an application for a permit, permit revision, or permit renewal within 18 months after the date on which the commission receives an administratively complete application;

(2) under an interim program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the interim program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the interim program;

(3) under the fully approved program, for those federal sources for which initial applications are required to be filed not later than one year after the effective date of the fully approved program, take final action on at least one-third of those applications annually over a period not to exceed three years after the effective date of the program; and

(4) take final action on a permit reopening not later than 18 months after the adoption of the requirement that prompted the reopening.

(c) If the commission fails to take final action as required by Subsection (b)(1) or (4), a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action. A reviewing court may order the commission to act on the application without additional delay if it finds that the commission's failure to act is arbitrary or unreasonable.

(d) Subsection (a)(2) does not prohibit the applicability of at least the best available control technology to a new or modified facility or federal source under Section 382.0518(b)(1).

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.10, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 12, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.0543. REVIEW AND RENEWAL OF FEDERAL OPERATING PERMIT. (a) In accordance with Section 382.0541(a)(5), a federal operating permit issued or renewed by the commission is subject to review at least every five years after the date of issuance to determine whether the authority to operate should be renewed.

(b) The commission by rule shall establish:

(1) the procedures for notifying a permit holder that the permit is scheduled for review in accordance with this section;

(2) a deadline by which the holder of a permit must submit an application for renewal of the permit that is between the date six months before expiration of the permit and the date 18 months before expiration of the permit;

(3) the general requirements for an application; and

(4) the procedures for reviewing and acting on a renewal application.

(c) The commission promptly shall provide to the applicant notice of whether the application is complete. Unless the commission requests additional information or otherwise notifies the applicant that the application is incomplete before the 61st day after the commission receives an application, the application shall be deemed complete.

(d) The commission shall take final action on a renewal application for a federal operating permit within 18 months after the date an application is determined to be administratively complete. If the commission does not act on an application for permit renewal within 18 months after the date on which the commission receives an administratively complete application, a person who participated in the public participation process or a person affected by the commission's failure to act may obtain judicial review under Section 382.032 at any time before the commission takes final action.

(e) In determining whether and under which conditions a permit should be renewed, the commission shall consider:

(1) all applicable requirements in Section 382.0542(a)(3); and

(2) whether the federal source is in compliance with this chapter and the terms of the existing permit.

(f) The commission shall impose as terms and conditions in a renewed federal operating permit any applicable requirements under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The terms or conditions of the renewed permit must provide for compliance with any applicable requirement under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661-7661f). The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Section 382.0541.

(g) If the applicant submits a timely and complete application for federal operating permit renewal, but the commission fails to issue or deny the renewal permit before the end of the term of the previous permit:

(1) all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied; and

(2) the applicant may continue to operate until the permit renewal application is issued or denied, if the applicant submits additional information that is requested in writing by the commission that the commission needs to process the application on or before the time specified in writing by the commission.

(h) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 13, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995.

Sec. 382.055. REVIEW AND RENEWAL OF PRECONSTRUCTION PERMIT. (a) A preconstruction permit issued or renewed by the commission is subject to review to determine whether the authority to operate should be renewed according to the following schedule:

(1) a preconstruction permit issued before December 1, 1991, is subject to review not later than 15 years after the date of

issuance;

(2) a preconstruction permit issued on or after December 1, 1991, is subject to review:

(A) every 10 years after the date of issuance; or

(B) on the filing of an application for an amendment to the permit, if:

(i) the applicant is subject to Section 382.056;

(ii) the application is filed with the commission not more than three years before the date the permit is scheduled to expire; and

(iii) the applicant does not object to having the permit subjected to review at that time; and

(3) for cause, a preconstruction permit issued on or after December 1, 1991, for a facility at a nonfederal source may contain a provision requiring the permit to be renewed at a period of between five and 10 years.

(b) The commission by rule shall establish:

(1) a deadline by which the holder of a preconstruction permit must submit an application to renew the permit;

(2) the general requirements for an application for renewal of a preconstruction permit; and

(3) the procedures for reviewing and acting on renewal applications.

(c) Not less than 180 days before the date on which the renewal application is due, the commission shall provide written notice to the permit holder, by registered or certified mail or as provided by Subsection (c-1), that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a renewal application and the information to be included in the application.

(c-1) A notice under Subsection (c) may be sent by electronic communication if the commission develops a system that reliably replaces registered or certified mail as a means of verifying receipt of the notice.

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code; and

(2) the condition and effectiveness of existing emission control equipment and practices.

(e) The commission shall impose as a condition for renewal of a preconstruction permit only those requirements the commission determines to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. The commission may not impose requirements more stringent than those of the existing permit unless the commission determines that the requirements are necessary to avoid a condition of air pollution or to ensure compliance with otherwise applicable federal or state air quality control requirements. The commission may not impose requirements less stringent than those of the existing permit unless the commission determines that a proposed change will meet the requirements of Sections 382.0518 and 382.0541.

(f) On or before the 180th day after the date on which an application for renewal is filed, the commission shall renew the permit or, if the commission determines that the facility will not meet the requirements for renewing the permit, shall:

(1) set out in a report to the applicant the basis for the commission's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the commission's requirements, that:

(A) includes a final date for meeting the commission's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the commission's requirements in accordance with the schedule, the commission shall renew the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's permit is effective until:

(1) the final date specified by the commission's report to the applicant;

(2) the existing permit is renewed; or

(3) the date specified by a commission order issued following a contested case proceeding held under this section.

(h) If the holder of a preconstruction permit to whom the commission has mailed or otherwise sent notice under this section does not apply for renewal of that permit by the date specified by

the commission under this section, the permit shall expire at the end of the period described in Subsection (a).

(i) This section does not affect the commission's authority to begin an enforcement action under Sections 382.082-382.084.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 14, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 1, eff. May 19, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.14, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 168 (S.B. 1673), Sec. 1, eff. May 22, 2007.

Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 1, eff. September 1, 2017.

Sec. 382.056. NOTICE OF INTENT TO OBTAIN PERMIT OR PERMIT REVIEW; HEARING. (a) Except as provided by Section 382.0518(h), an applicant for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055 shall publish notice of intent to obtain the permit, permit amendment, or permit review not later than the 30th day after the date the commission determines the application to be administratively complete. The commission by rule shall require an applicant for a federal operating permit under Section 382.054 to publish notice of intent to obtain a permit, permit amendment, or permit review consistent with federal requirements and with the requirements of Subsection (b). The applicant shall publish the notice at least once in a newspaper of general circulation in the municipality in which the facility or federal source is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility or federal source. If the elementary or middle school nearest to the facility or proposed facility provides a bilingual education program as required by Subchapter B, Chapter 29, Education Code, the applicant shall also publish the notice at least once in an additional publication of general circulation in the municipality or county in which the facility is located or proposed to be located that is published in the language taught in the bilingual education

program. This requirement is waived if such a publication does not exist or if the publisher refuses to publish the notice. The commission by rule shall prescribe the form and content of the notice and when notice must be published. The commission may require publication of additional notice. The commission by rule shall prescribe alternative procedures for publication of the notice in a newspaper if the applicant is a small business stationary source as defined by Section 5.135, Water Code, and will not have a significant effect on air quality. The alternative procedures must be cost-effective while ensuring adequate notice. Notice required to be published under this section shall only be required to be published in the United States.

(b) The notice must include:

(1) a description of the location or proposed location of the facility or federal source;

(2) the location at which a copy of the application is available for review and copying as provided by Subsection (d);

(3) a description, including a telephone number, of the manner in which the commission may be contacted for further information;

(4) a description, including a telephone number, of the manner in which the applicant may be contacted for further information;

(5) a description of the procedural rights and obligations of the public, printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice, that includes a statement that a person who may be affected by emissions of air contaminants from the facility, proposed facility, or federal source is entitled to request a hearing from the commission;

(6) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application;

(7) the time and location of any public meeting to be held under Subsection (e); and

(8) any other information the commission by rule requires.

(c) At the site of a facility, proposed facility, or federal source for which an applicant is required to publish notice under this section, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the commission may be contacted

for further information. The commission shall adopt any rule necessary to carry out this subsection.

(d) The applicant shall make a copy of the application available for review and copying at a public place in the county in which the facility or federal source is located or proposed to be located.

(e) The applicant, in cooperation with the executive director, may hold a public meeting in the county in which the facility or federal source is located or proposed to be located in order to inform the public about the application and obtain public input.

(f) The executive director shall conduct a technical review of and issue a preliminary decision on the application.

(g) If, in response to the notice published under Subsection (a) for a permit or permit amendment under Section 382.0518 or a permit renewal review under Section 382.055, a person requests during the period provided by commission rule that the commission hold a public hearing and the request is not withdrawn before the date the preliminary decision is issued, the applicant shall publish notice of the preliminary decision in a newspaper, and the commission shall seek public comment on the preliminary decision. The commission shall consider the request for public hearing under the procedures provided by Subsections (i)-(n). The commission may not seek further public comment or hold a public hearing under the procedures provided by Subsections (i)-(n) in response to a request for a public hearing on an amendment, modification, or renewal that would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

(g-1) The notice of intent required by Subsection (a) and the notice of the preliminary decision described by Subsection (g) may be consolidated into one notice if:

(1) not later than the 15th day after the date the application for which the notice is required is received, the commission determines the application to be administratively complete; and

(2) the preliminary decision and draft permit related to the application are available at the time of the commission's determination under Subdivision (1).

(h) If, in response to the notice published under Subsection (a) for a permit under Section 382.054, a person requests during the public comment period provided by commission rule that the commission

hold a public hearing, the commission shall consider the request under the procedures provided by Section 382.0561 and not under the procedures provided by Subsections (i)-(n).

(i) The commission by rule shall establish the form and content of the notice, the manner of publication, and the duration of the public comment period. The notice must include:

(1) the information required by Subsection (b);

(2) a summary of the preliminary decision;

(3) the location at which a copy of the preliminary decision is available for review and copying as provided by Subsection (j);

(4) a description of the manner in which comments regarding the preliminary decision may be submitted; and

(5) any other information the commission by rule requires.

(j) The applicant shall make a copy of the preliminary decision available for review and copying at a public place in the county in which the facility is located or proposed to be located.

(k) During the public comment period, the executive director may hold one or more public meetings in the county in which the facility is located or proposed to be located. The executive director shall hold a public meeting:

(1) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed activity.

(k-1) A permit applicant or the applicant's designated representative is required to attend a public meeting held under this section and must make a reasonable effort to respond to questions relevant to the permit application at the meeting.

(k-2) Notwithstanding any other law, if the commission holds a public meeting for a permit application for which consolidated notice was issued under this subchapter, the commission shall hold open the public comment period and the period for which a contested case hearing may be requested for the permit application for at least 36 hours after the end of the meeting.

(l) The executive director, in accordance with procedures adopted by the commission by rule, shall file with the chief clerk of the commission a response to each relevant and material public comment on the preliminary decision filed during the public comment

period.

(m) The chief clerk of the commission shall transmit the executive director's decision, the executive director's response to public comments, and instructions for requesting that the commission reconsider the executive director's decision or hold a contested case hearing to:

(1) the applicant;

(2) any person who submitted comments during the public comment period;

(3) any person who requested to be on the mailing list for the permit action; and

(4) any person who timely filed a request for a public hearing in response to the notice published under Subsection (a).

(n) Except as provided by Section 382.0561, the commission shall consider a request that the commission reconsider the executive director's decision or hold a public hearing in accordance with the procedures provided by Sections 5.556 and 5.557, Water Code.

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history is classified as unsatisfactory according to commission standards under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(p) The commission by rule shall provide for additional notice, opportunity for public comment, or opportunity for public hearing to the extent necessary to satisfy a requirement to obtain or maintain delegation or approval of a federal program.

(q) The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).

(r) This section does not apply to:

(1) the relocation or change of location of a portable facility to a site where a portable facility has been located at the proposed site at any time during the previous two years;

(2) a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project; or

(3) a facility described by Section 382.065(c), unless that facility is in a county with a population of 3.3 million or more or in a county adjacent to such a county.

(s) For any permit application subject to this section, the measurement of distances to determine compliance with any location or distance restriction required by this chapter shall be taken toward structures that are in use as of the date that the application is filed with the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 15, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.167, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 149, Sec. 2, eff. May 19, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.42, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 11.04(c), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1350, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 935, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 965, Sec. 2.02, 16.15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1327, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 226, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1054, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.0035(e), eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 809 (S.B. 1472), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.26, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 45, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 394 (S.B. 1045), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1102 (S.B. 1397), Sec. 4, eff. September 1, 2023.

Sec. 382.0561. FEDERAL OPERATING PERMIT: HEARING. (a) Public hearings on applications for issuance, revision, reopening, or renewal of a federal operating permit shall be conducted under this section only and not under Chapter 2001, Government Code.

(b) On determination that an application for a federal operating permit under Sections 382.054-382.0542 or a renewal of a

federal operating permit under Section 382.0543 is administratively complete and before the beginning of the public comment period, the commission or its designee shall prepare a draft permit.

(c) The commission or its designee shall hold a public hearing on a federal operating permit, a reopening of a federal operating permit, or renewal application before granting the permit or renewal if within the public comment period a person who may be affected by the emissions or a member of the legislature from the general area in which the facility is located requests a hearing. The commission or its designee is not required to hold a hearing if the basis of the request by a person who may be affected is determined to be unreasonable.

(d) The following shall be available for public inspection in at least one location in the general area where the facility is located:

(1) information submitted by the application, subject to applicable confidentiality laws;

(2) the executive director's analysis of the proposed action; and

(3) a copy of the draft permit.

(e) The commission or its designee shall hold a public comment period on a federal operating permit application, a federal operating permit reopening application, or a federal operating permit renewal application under Sections 382.054-382.0542 or 382.0543. Any person may submit a written statement to the commission during the public comment period. The commission or its designee shall receive public comment for 30 days after the date on which notice of the public comment period is published. The commission or its designee may extend or reopen the comment period if the executive director finds an extension or reopening to be appropriate.

(f) Notice of the public comment period and opportunity for a hearing under this section shall be published in accordance with Section 382.056.

(g) Any person may submit an oral or written statement concerning the application at the hearing. The individual holding the hearing may set reasonable limits on the time allowed for oral statements at the hearing. The public comment period extends to the close of the hearing and may be further extended or reopened if the commission or its designee finds an extension or reopening to be appropriate.

(h) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision of the commission or its designee to issue or deny a permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(i) The commission or its designee shall consider all comments received during the public comment period and at the public hearing in determining whether to issue the permit and what conditions should be included if a permit is issued.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 16, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.168, eff. Sept. 1, 1995.

Sec. 382.0562. NOTICE OF DECISION. (a) The commission or its designee shall send notice of a proposed final action on a federal operating permit by first-class mail or electronic communication to the applicant and all persons who comment during the public comment period or at the public hearing. The notice shall include a response to any comment submitted during the public comment period and shall identify any change in the conditions of the draft permit and the reasons for the change.

(b) The notice required by Subsection (a) shall:

(1) state that any person affected by the decision of the commission or its designee may petition the administrator in accordance with Section 382.0563 and rules adopted under that section;

(2) state the date by which the petition must be filed; and

(3) explain the petition process.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 17, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 381 (H.B. 4181), Sec. 2, eff. September 1, 2017.

Sec. 382.0563. PUBLIC PETITION TO THE ADMINISTRATOR. (a) The commission by rule may provide for public petitions to the administrator in accordance with Section 505 of the federal Clean Air Act (42 U.S.C. Section 7661d).

(b) The petition for review to the administrator under this section does not affect:

(1) a permit issued by the commission or its designee; or

(2) the finality of the commission's or its designee's action for purposes of an appeal under Section 382.032.

(c) The commission or its designee shall resolve any objection that the United States Environmental Protection Agency makes and terminate, modify, or revoke and reissue the permit in accordance with the objection not later than the 90th day after the date the commission receives the objection.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 18, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0564. NOTIFICATION TO OTHER GOVERNMENTAL ENTITIES. The commission by rule may allow for notification of and review by the administrator and affected states of permit applications, revisions, renewals, or draft permits prepared under Sections 382.054-382.0543.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.13, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 19, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995.

Sec. 382.0565. CLEAN COAL PROJECT PERMITTING PROCEDURE. (a) The United States Department of Energy may specify the FutureGen emissions profile for a project in that department's request for proposals or request for a contract. If the United States Department of Energy does not specify in a request for proposals or a request for a contract the FutureGen emissions profile, the profile means emissions of air contaminants at a component of the FutureGen

project, as defined by Section 5.001, Water Code, that equal not more than:

(1) one percent of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10 percent of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units of energy produced at the component; and

(4) 0.005 pounds of particulate matter per million British thermal units of energy produced at the component.

(b) As authorized by federal law, the commission by rule shall implement reasonably streamlined processes for issuing permits required to construct a component of the FutureGen project designed to meet the FutureGen emissions profile.

(c) When acting under a rule adopted under Subsection (b), the commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons.

(d) The permit processes authorized by this section are not subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code.

(e) This section does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

Added by Acts 2005, 79th Leg., Ch. 1097 (H.B. 2201), Sec. 3, eff. June 18, 2005.

Sec. 382.0566. ADVANCED CLEAN ENERGY PROJECT PERMITTING PROCEDURE. (a) As authorized by federal law, not later than nine months after the executive director declares an application for a permit under this chapter for an advanced clean energy project to be administratively complete, the executive director shall complete its technical review of the application.

(b) The commission shall issue a final order issuing or denying the permit not later than nine months after the executive director declares the application technically complete. The commission may

extend the deadline set out in this subsection up to three months if it determines that the number of complex pending applications for permits under this chapter will prevent the commission from meeting the deadline imposed by this subsection without creating an extraordinary burden on the resources of the commission.

(c) The permit process authorized by this section is subject to the requirements relating to a contested case hearing under this chapter, Chapter 5, Water Code, or Subchapters C-G, Chapter 2001, Government Code, as applicable.

(d) The commission shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.

Sec. 382.0567. PROOF THAT TECHNOLOGY IS COMMERCIALLY FEASIBLE NOT REQUIRED; CONSIDERATION OF TECHNOLOGY TO BE ACHIEVABLE FOR CERTAIN PURPOSES PROHIBITED. (a) An applicant for a permit under this chapter for a project in connection with which advanced clean energy technology, federally qualified clean coal technology, or another technology is proposed to be used is not required to prove, as part of an analysis of whether the project will use the best available control technology or reduce emissions to the lowest achievable rate, that the technology proposed to be used has been demonstrated to be feasible in a commercial operation.

(b) The commission may not consider any technology or level of emission reduction to be achievable for purposes of a best available control technology analysis or lowest achievable emission rate analysis conducted by the commission under another provision of this chapter solely because the technology is used or the emission reduction is achieved by a facility receiving an incentive as an advanced clean energy project or new technology project, as described by Section 391.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 1277 (H.B. 3732), Sec. 3, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 4, eff. September 1, 2009.

Sec. 382.057. EXEMPTION. (a) Consistent with Section 382.0511, the commission by rule may exempt from the requirements of Section 382.0518 changes within any facility if it is found on investigation that such changes will not make a significant contribution of air contaminants to the atmosphere. The commission by rule shall exempt from the requirements of Section 382.0518 or issue a standard permit for the installation of emission control equipment that constitutes a modification or a new facility, subject to such conditions restricting the applicability of such exemption or standard permit that the commission deems necessary to accomplish the intent of this chapter. The commission may not exempt any modification of an existing facility defined as "major" under any applicable preconstruction permitting requirements of the federal Clean Air Act or regulations adopted under that Act. Nothing in this subsection shall be construed to limit the commission's general power to control the state's air quality under Section 382.011(a).

(b) The commission shall adopt rules specifically defining the terms and conditions for an exemption under this section in a nonattainment area as defined by Title I of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.14, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 20, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 406, Sec. 6, eff. Aug. 30, 1999.

Sec. 382.058. NOTICE OF AND HEARING ON CONSTRUCTION OF CONCRETE PLANT UNDER PERMIT BY RULE, STANDARD PERMIT, OR EXEMPTION. (a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under a standard permit under Section 382.05195 or a permit by rule adopted by the commission under Section 382.05196 unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of this section, only those persons actually

residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056 as a person who may be affected.

(d) If the commission considers air dispersion modeling information in the course of adopting an exemption under Section 382.057 for a concrete plant that performs wet batching, dry batching, or central mixing, the commission may not require that a person who qualifies for the exemption conduct air dispersion modeling before beginning construction of a concrete plant, and evidence regarding air dispersion modeling may not be submitted at a hearing under Section 382.056.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.169, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 391, Sec. 1, 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 406, Sec. 7, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 10.002, eff. Sept. 1, 2001.

For expiration of this section, see Subsection (g).

Sec. 382.059. HEARING AND DECISION ON PERMIT AMENDMENT APPLICATION OF CERTAIN ELECTRIC GENERATING FACILITIES. (a) This section applies to a permit amendment application submitted solely to allow an electric generating facility to reduce emissions and comply with a requirement imposed by Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412) to use applicable maximum achievable control technology. A permit amendment application shall include a condition that the applicant is required to complete the actions needed for compliance by the time allowed under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412).

(b) The commission shall provide an opportunity for a public hearing and the submission of public comment on the application in the manner provided by Section 382.0561.

(c) Not later than the 45th day after the date the application is received, the executive director shall issue a draft permit.

(d) Not later than the 30th day after the date of issuance of the draft permit under Subsection (c), parties may submit to the commission any legitimate issues of material fact regarding whether the choice of technology approved in the draft permit is the maximum achievable control technology required under Section 112 of the

federal Clean Air Act (42 U.S.C. Section 7412) and may request a contested case hearing before the commission. If a party requests a contested case hearing under this subsection, the commission shall conduct a contested case hearing and issue a final order issuing or denying the permit amendment not later than the 120th day after the date of issuance of the draft permit under Subsection (c).

(e) The commission shall send notice of a decision on an application for a permit amendment under this section in the manner provided by Section 382.0562.

(f) A person affected by a decision of the commission to issue or deny a permit amendment may move for rehearing and is entitled to judicial review under Section 382.032.

(g) This section expires on the sixth anniversary of the date the administrator adopts standards for existing electric generating facilities under Section 112 of the federal Clean Air Act (42 U.S.C. Section 7412), unless a stay of the rules is granted.

(h) The commission shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.27, eff. September 1, 2011.

Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY FORMER OR CURRENT EMPLOYEES. (a) The commission shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the commission determines that:

(1) a former employee participated personally and substantially as an employee in the commission's review, evaluation, or processing of the application before leaving employment with the commission; and

(2) after leaving employment with the commission, that former employee provided assistance to the applicant for the issuance, amendment, renewal, or transfer of the permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) The commission or the executive director may not issue a federal operating permit for a solid waste incineration unit if a member of the commission or the executive director is also responsible in whole or in part for the design and construction or

the operation of the unit.

(c) The commission shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(d) Action taken under this section does not prejudice any application other than an application in which the former employee provided assistance.

(e) In this section, "former employee" means a person:

(1) who was previously employed by the commission as a supervisory or exempt employee; and

(2) whose duties during employment with the commission included involvement in or supervision of the commission's review, evaluation, or processing of applications.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 140, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 22, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.170, eff. Sept. 1, 1995.

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. (a) The commission may delegate to the executive director the powers and duties under Sections 382.051-382.0563 and 382.059, except for the adoption of rules.

(b) An applicant or a person affected by a decision of the executive director may appeal to the commission any decision made by the executive director, with the exception of a decision regarding a federal operating permit, under Sections 382.051-382.055 and 382.059.

(c) Any person, including the applicant, affected by a decision of the executive director regarding federal operating permits may:

(1) petition the administrator in accordance with rules adopted under Section 382.0563; or

(2) file a petition for judicial review under Section 382.032.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.16, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 23, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.171, eff. Sept. 1, 1995.

Sec. 382.062. APPLICATION, PERMIT, AND INSPECTION FEES. (a) The commission shall adopt, charge, and collect a fee for:

(1) each application for:

(A) a permit or permit amendment, revision, or modification not subject to Title IV or V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.);

(B) a renewal review of a permit issued under Section 382.0518 not subject to Title IV or V of the federal Clean Air Act;

(2) inspections of a federal source performed to enforce this chapter or rules adopted by the commission under this chapter until the federal source is required to obtain an operating permit under Section 382.054; and

(3) inspections performed to enforce this chapter or rules adopted by the commission under this chapter at a facility not required to obtain an operating permit under Section 382.054.

(b) The commission may adopt rules relating to charging and collecting a fee for an exemption, for a permit, for a permit by rule, for a voluntary emissions reduction permit, for a multiple plant permit, or for a standard permit and for a variance.

(c) For purposes of the fees, the commission shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than $25 or more than $75,000.

(e) The commission by rule shall establish the fees to be collected under Subsection (a) in amounts sufficient to recover:

(1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and

(2) not less than 50 percent of the commission's actual annual expenditures to:

(A) review and act on permits or special permits;

(B) amend and review permits;

(C) inspect permitted, exempted, and specially permitted facilities; and

(D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter, excluding rules and orders adopted and permits required under Title IV or V of

the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.18, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 485, Sec. 24, eff. June 9, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.172, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 8, eff. Aug. 30, 1999.

Sec. 382.0621. OPERATING PERMIT FEE. (a) The commission shall adopt, charge, and collect an annual fee based on emissions for each source that either:

(1) is subject to permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549); or

(2) is based on plant operations, and the rate of emissions at the time the fee is due would be subject to the permitting requirements if the requirements were in effect on that date.

(b) Fees imposed under this section shall be at least sufficient to cover all reasonably necessary direct and indirect costs of developing and administering the permit program under Titles IV and V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549), including the reasonable costs of:

(1) reviewing and acting on any application for a Title IV or V permit;

(2) implementing and enforcing the terms and conditions of a Title IV or V permit, excluding any court costs or other costs associated with any enforcement action;

(3) emissions and ambient monitoring;

(4) preparing generally applicable regulations or guidance;

(5) modeling, analyses, and demonstrations; and

(6) preparing inventories and tracking emissions.

(c) The commission by rule may provide for the automatic annual increase of fees imposed under this section by the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for calendar year 1989. For purposes of this subsection:

(1) the consumer price index for any calendar year is the average of the Consumer Price Index for All Urban Consumers published

by the United States Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year; and

(2) the revision of the consumer price index that is most consistent with the consumer price index for calendar year 1989 shall be used.

(d) Except as provided by this section, the commission may not impose a fee for any amount of emissions of an air contaminant regulated under the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549) in excess of 4,000 tons per year from any source. On and after September 1, 2001, for a facility that is not subject to the requirement to obtain a permit under Section 382.0518(g) that does not have a permit application pending, the commission shall:

(1) impose a fee under this section for all emissions, including emissions in excess of 4,000 tons; and

(2) treble the amount of the fee imposed for emissions in excess of 4,000 tons each fiscal year.

(e) This section does not restrict the authority of the commission under Section 382.062 to impose fees on sources not subject to the permitting requirements of Title IV or V of the federal Clean Air Act Amendments of 1990 (Pub.L. No. 101-549).

(f) The commission may impose fees for emissions of greenhouse gas only to the extent the fees are necessary to cover the commission's additional reasonably necessary direct costs of implementing Section 382.05102.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.19, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.173, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 406, Sec. 9, eff. Aug. 30, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 272 (H.B. 788), Sec. 3, eff. June 14, 2013.

Sec. 382.0622. CLEAN AIR ACT FEES.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 362 (S.B. 2102), Sec. 1

(a) Clean Air Act fees consist of:

(1) fees collected by the commission under Sections

382.062, 382.0621, 382.202, and 382.302 and as otherwise provided by law;

(2) $2 from the portion of each fee collected for inspections of vehicles other than mopeds and remitted to the state under Sections 548.501 and 548.503, Transportation Code;

(3) $6 from the portion of each fee collected for an inspection of a vehicle and remitted to the state under Section 548.5035, Transportation Code; and

(4) fees collected that are required under Section 185 of the federal Clean Air Act (42 U.S.C. Section 7511d).

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 851 (H.B. 3297), Sec. 1

Text of subsection effective on January 1, 2025

(a) Clean Air Act fees consist of:

(1) fees collected by the commission under Sections 382.062, 382.0621, 382.202, and 382.302 and as otherwise provided by law;

(2) each amount described by Sections 548.510(d)(3) and (e)(3), Transportation Code; and

(3) fees collected that are required under Section 185 of the federal Clean Air Act (42 U.S.C. Section 7511d).

(b) Except as provided by Subsection (b-1), Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air account and shall be used to safeguard the air resources of the state.

(b-1) Fees collected under Section 382.0621(a) on or after September 1, 2003, shall be deposited in the state treasury to the credit of the operating permit fees account. Fees collected under Section 382.0621(a) may not be commingled with any fees in the clean air account or with any other money in the state treasury.

(b-2) Money in the operating permit fees account established under Subsection (b-1) may be appropriated to the commission only to cover the costs of developing and administering the federal permit programs under Title IV or V of the federal Clean Air Act (42 U.S.C. Section 7651 et seq. and Section 7661 et seq.).

(b-3) Section 403.095, Government Code, does not apply to the operating permit fees account established under Subsection (b-1), and any balance remaining in the operating permit fees account at the end of a fiscal year shall be left in the account and used in the next or

subsequent fiscal years only for the purposes stated in Subsection (b-2).

(c) The commission shall request the appropriation of sufficient money to safeguard the air resources of the state, including payments to the Public Safety Commission for incidental costs of administering the vehicle emissions inspection and maintenance program, except that after the date of delegation of the state's permitting program under Title V of the federal Clean Air Act (42 U.S.C. Sections 7661 et seq.), fees collected under Section 382.0621(a) may be appropriated only to cover costs of developing and administering the federal permit program under Titles IV and V of the federal Clean Air Act (42 U.S.C. Sections 7651 et seq. and 7661 et seq.).

(d)(1) Through the option of contracting for air pollution control services, including but not limited to compliance and permit inspections and complaint response, the commission may utilize appropriated money to purchase services from units of local government meeting each of the following criteria:

(A) the unit of local government received federal fiscal year 1990 funds from the United States Environmental Protection Agency pursuant to Section 105 of the federal Clean Air Act (42 U.S.C. Section 7405) for the operation of an air pollution program by formal agreement;

(B) the local unit of government is in a federally designated nonattainment area subject to implementation plan requirements, including automobile emission inspection and maintenance programs, under Title I of the federal Clean Air Act (42 U.S.C. Sections 7401-7515); and

(C) the local unit of government has not caused the United States Environmental Protection Agency to provide written notification that a deficiency in the quality or quantity of services provided by its air pollution program is jeopardizing compliance with a state implementation plan, a federal program delegation agreement, or any other federal requirement for which federal sanctions can be imposed.

(2) The commission may request appropriations of sufficient money to contract for services of local units of government meeting the eligibility criteria of this subsection to ensure that the combination of federal and state funds annually available for an air pollution program is equal to or greater than the program costs for

the operation of an air quality program by the local unit of government. The commission is encouraged to fund an air pollution program operated by a local unit of government meeting the eligibility criteria of this subsection in a manner the commission deems an effective means of addressing federal and state requirements. The services to be provided by an eligible local unit of government under a contractual arrangement under this subsection shall be at least equal in quality and quantity to the services the local unit of government committed to provide in agreements under which it received its federal 1990 air pollution grant. The commission and the local units of government meeting the eligibility criteria of this subsection may agree to more extensive contractual arrangements.

(3) Nothing in this subsection shall prohibit a local unit of government from voluntarily discontinuing an air pollution program and thereby relinquishing this responsibility to the state.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(1), eff. June 8, 2007.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.20, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 485, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.174, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.209, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 74, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1075, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 203, Sec. 2, eff. June 10, 2003; Acts 2003, 78th Leg., ch. 552, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.02, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(1), eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 11, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 5, eff. March 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 21, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 362 (S.B. 2102), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 851 (H.B. 3297), Sec. 1, eff. January 1, 2025.

Sec. 382.063. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE. (a) The commission may issue an emergency order because of catastrophe under Section 5.515, Water Code.

(b) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the operator that makes a facility or its functionally related appurtenances inoperable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.175, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 44, eff. Sept. 1, 1997.

Sec. 382.064. INITIAL APPLICATION DATE. An application for a federal operating permit is not required to be submitted to the commission before the approval of the Title V permitting program by the United States Environmental Protection Agency.

Added by Acts 1993, 73rd Leg., ch. 485, Sec. 26, eff. June 9, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.176, eff. Sept. 1, 1995.

Sec. 382.065. CERTAIN LOCATIONS FOR OPERATING CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the operation of a concrete crushing facility within 440 yards of a building in use as a single or multifamily residence, school, or place of worship at the time the application for a permit to operate the facility at a site near the residence, school, or place of worship is filed with the commission. The measurement of distance for purposes of this subsection shall be taken from the point on the concrete crushing facility that is nearest to the residence, school, or place of worship toward the point on the residence, school, or place of worship that is nearest the concrete crushing facility.

(b) Subsection (a) does not apply to a concrete crushing facility:

(1) at a location for which commission authorization for the operation of a concrete crushing facility was in effect on September 1, 2001;

(2) at a location that satisfies the distance requirements of Subsection (a) at the time the application for the initial authorization for the operation of that facility at that location is filed with the commission, provided that the authorization is granted and maintained, regardless of whether a single or multifamily residence, school, or place of worship is subsequently built or put to use within 440 yards of the facility; or

(3) that:

(A) uses a concrete crusher:

(i) in the manufacture of products that contain recycled materials; and

(ii) that is located in an enclosed building; and

(B) is located:

(i) within 25 miles of an international border; and

(ii) in a municipality with a population of not less than 6,100 but not more than 20,000.

(c) Except as provided by Subsection (d), Subsection (a) does not apply to a concrete crushing facility that:

(1) is engaged in crushing concrete and other materials produced by the demolition of a structure at the location of the structure and the concrete and other materials are being crushed primarily for use at that location;

(2) operates at that location for not more than 180 days;

(3) the commission determines will cause no adverse environmental or health effects by operating at that location; and

(4) complies with conditions stated in commission rules, including operating conditions.

(d) Notwithstanding Subsection (c), Subsection (a) applies to a concrete crushing facility in a county with a population of 3.3 million or more or in a county adjacent to such a county.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 5.07, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1054, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1089 (S.B. 1250), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 46, eff. September 1, 2011.

Sec. 382.066. SHIPYARD FACILITIES. (a) In this section, "shipyard" means a shipbuilding or ship repair operation.

(b) In determining whether to issue, or in conducting a review of, a permit or other authorization issued or adopted under this chapter for a shipyard, the commission:

(1) may not require and may not consider air dispersion modeling results predicting ambient concentrations of noncriteria pollutants over coastal waters of the state; and

(2) shall determine compliance with noncriteria ambient air pollutant standards and guidelines according to the land-based off-property concentrations of air contaminants.

(c) This section does not limit the commission's authority to take an enforcement action in response to a condition that constitutes a nuisance.

Added by Acts 2001, 77th Leg., ch. 1166, Sec. 1, eff. Sept. 1, 2001. Renumbered from Health & Safety Code Sec. 382.065 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(94), eff. Sept. 1, 2003.

Sec. 382.068. POULTRY FACILITY ODOR; RESPONSE TO COMPLAINTS. (a) In this section, "poultry facility" and "poultry litter" have the meanings assigned by Section 26.301, Water Code.

(b) The commission shall respond and investigate not later than 18 hours after receiving:

(1) a second complaint against a poultry facility concerning odor associated with:

(A) the facility; or

(B) the application of poultry litter to land by the poultry facility; or

(2) a complaint concerning odor from a poultry facility at which the commission has substantiated odor nuisance conditions in the previous 12 months.

(c) If after the investigation the commission determines that a

poultry facility is violating the terms of its air quality authorization or is creating a nuisance, the commission shall issue a notice of violation.

(d) The commission by rule or order shall require the owner or operator of a poultry facility for which the commission has issued three notices of violation under this section during a 12-month period to enter into a comprehensive compliance agreement with the commission. The compliance agreement must include an odor control plan that the executive director determines is sufficient to control odors.

(e) The owner or operator of a new poultry facility shall complete a poultry facility training course on the prevention of poultry facility odor nuisances from the poultry science unit of the Texas AgriLife Extension Service not later than the 90th day after the date the facility first accepts poultry to raise. The owner or operator of a new poultry facility shall maintain records of the training and make the records available to the commission for inspection.

(f) The poultry science unit of the Texas AgriLife Extension Service may charge an owner or operator of a poultry facility a training fee to offset the direct cost of providing the training.

Added by Acts 2009, 81st Leg., R.S., Ch. 1386 (S.B. 1693), Sec. 1, eff. September 1, 2009.

Sec. 382.069. TEXAS BACKUP POWER PACKAGE. (a) In this section, "Texas backup power package" has the meaning assigned by Section 34.0201, Utilities Code.

(b) The commission by rule shall adopt a process to expedite the permitting of a Texas backup power package for which a permit is required under this chapter and for which a loan or grant is awarded under Chapter 34, Utilities Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 465 (S.B. 2627), Sec. 4, eff. November 7, 2023.

SUBCHAPTER D. PENALTIES AND ENFORCEMENT

Sec. 382.085. UNAUTHORIZED EMISSIONS PROHIBITED. (a) Except as authorized by a commission rule or order, a person may not cause,

suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

(b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.180, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 45, eff. Sept. 1, 1997.

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Sec. 382.111. INSPECTIONS; POWER TO ENTER PROPERTY. (a) A local government has the same power and is subject to the same restrictions as the commission under Section 382.015 to inspect the air and to enter public or private property in its territorial jurisdiction to determine if:

(1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by:

(A) the commission; or

(B) a municipality's governing body under Section 382.113; or

(2) a person is complying with this chapter or a rule, variance, or order issued by the commission.

(b) A local government shall send the results of its inspections to the commission when requested by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.112. RECOMMENDATIONS TO COMMISSION. A local government may make recommendations to the commission concerning a rule, determination, variance, or order of the commission that affects an area in the local government's territorial jurisdiction. The commission shall give maximum consideration to a local government's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.113. AUTHORITY OF MUNICIPALITIES. (a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

(1) abate a nuisance; and

(2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the commission's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules or orders.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.187, eff. Sept. 1, 1995.

Sec. 382.115. COOPERATIVE AGREEMENTS. A local government may execute cooperative agreements with the commission or other local governments:

(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to a party to the agreement; and

(2) for the transfer of money or property from a party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid, and education.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.189, eff. Sept. 1, 1995.

SUBCHAPTER G. VEHICLE EMISSIONS

Sec. 382.201. DEFINITIONS. In this subchapter:

(1) "Affected county" means a county with a motor vehicle emissions inspection and maintenance program established under Section 548.301, Transportation Code.

(2) "Commercial vehicle" means a vehicle that is owned or

leased in the regular course of business of a commercial or business entity.

(3) "Fleet vehicle" means a motor vehicle operated as one of a group that consists of more than 10 motor vehicles and that is owned and operated by a public or commercial entity or by a private entity other than a single household.

(4) "Participating county" means an affected county in which the commissioners court by resolution has chosen to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized by Section 382.209.

(5) "Retrofit" means to equip, or the equipping of, an engine or an exhaust or fuel system with new, emissions-reducing parts or equipment designed to reduce air emissions and improve air quality, after the manufacture of the original engine or exhaust or fuel system, so long as the parts or equipment allow the vehicle to meet or exceed state and federal air emissions reduction standards.

(6) "Retrofit equipment" means emissions-reducing equipment designed to reduce air emissions and improve air quality that is installed after the manufacture of the original engine or exhaust or fuel system.

(7) "Vehicle" includes a fleet vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.202. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. (a) The commission by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The commission by rule may establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) and its subsequent amendments.

(b) The commission by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.

(c) If the program is established under this section, the commission:

(1) shall adopt vehicle emissions inspection and maintenance requirements for certain areas as required by federal law or regulation; and

(2) shall adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous municipality within the county according to the most recent federal decennial census.

Text of subsection effective until January 1, 2025

(d) Except as provided by Subsection (d-2), on adoption of a resolution by the commission and after proper notice, the Department of Public Safety of the State of Texas shall implement a system that requires, as a condition of obtaining a passing vehicle inspection report issued under Subchapter C, Chapter 548, Transportation Code, in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F of that chapter, that the vehicle, unless the vehicle is not covered by the system, be annually or biennially inspected under the vehicle emissions inspection and maintenance program as required by the state's air quality state implementation plan. The Department of Public Safety shall implement such a system when it is required by any provision of federal or state law, including any provision of the state's air quality state implementation plan.

Text of subsection effective on January 1, 2025

(d) Except as provided by Subsection (d-2), on adoption of a resolution by the commission and after proper notice, the Department of Public Safety of the State of Texas shall implement a system that requires, in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, that a motor vehicle registered in this state, unless the vehicle is not covered by the system, be annually or biennially inspected under the vehicle emissions inspection and maintenance program as required by the state's air quality state implementation plan. The Department of Public Safety shall implement such a system when it is required by any provision of federal or state law, including any provision of the state's air quality state implementation plan.

(d-1) The commission may adopt rules providing for the inclusion on a vehicle inspection report for a vehicle inspected in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, of notification regarding whether the vehicle is subject to a safety recall for which the vehicle has not been repaired or the repairs are incomplete. The commission may accept gifts, grants, and donations from any source, including private and nonprofit organizations, for the purpose of providing the notification described by this subsection.

(d-2) If the state's air quality state implementation plan provides for a three-year emissions inspection period for a vehicle described by Section 548.1025(a), Transportation Code:

(1) the system implemented by the Department of Public Safety of the State of Texas under Subsection (d) shall provide for a three-year emissions inspection period for a vehicle described by Section 548.1025(a), Transportation Code; and

(2) the commission shall establish and assess fees for the emissions inspection of a vehicle described by Section 548.1025(a), Transportation Code, in amounts calculated to provide the same revenue that would be provided if the vehicle was inspected annually or biennially.

(e) The commission may assess fees for vehicle emissions-related inspections performed at inspection or reinspection facilities authorized and licensed by the commission in amounts reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the vehicle emissions inspection and maintenance program. If the program relies on privately operated or contractor-operated inspection or reinspection stations, an appropriate portion of the fee as determined by commission rule may be retained by the station owner, contractor, or operator to recover the cost of performing the inspections and provide for a reasonable margin of profit. Any portion of the fee collected by the commission is a Clean Air Act fee under Section 382.0622.

Text of subsection effective on January 1, 2025

(e-1) The portion of a fee imposed under Subsection (e) that is not authorized to be retained by an inspection station must be collected as provided by Section 548.509, Transportation Code.

(f) The commission:

(1) shall, no less frequently than biennially, review the fee established under Subsection (e); and

(2) may use part of the fee collected under Subsection (e) to provide incentives, including financial incentives, for participation in the testing network to ensure availability of an adequate number of testing stations.

(g) The commission shall:

(1) use part of the fee collected under Subsection (e) to fund low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209; and

(2) to the extent practicable, distribute available funding created under Subsection (e) to participating counties in reasonable proportion to the amount of fees collected under Subsection (e) in those counties or in the regions in which those counties are located.

(h) Regardless of whether different tests are used for different vehicles as determined under Section 382.205, the commission may:

(1) set fees assessed under Subsection (e) at the same rate for each vehicle in a county or region; and

(2) set different fees for different counties or regions.

(i) The commission shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emission standards, compliance with an opacity or other emissions-related standard established by commission rule, or both and shall implement that inspection program if the commission determines the program would minimize emissions. For purposes of this subsection, a diesel engine not used in a vehicle registered for use on public highways is not a diesel vehicle.

(j) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (o) unless the fuel is specifically authorized by the legislature.

(k) The commission by rule may establish classes of vehicles that are exempt from vehicle emissions inspections and by rule may establish procedures to allow and review petitions for the exemption of individual vehicles, according to criteria established by commission rule. Rules adopted by the commission under this

subsection must be consistent with federal law. The commission by rule may establish fees to recover the costs of administering this subsection. Fees collected under this subsection shall be deposited to the credit of the clean air account, an account in the general revenue fund, and may be used only for the purposes of this section.

(l) Except as provided by this subsection, a person who sells or transfers ownership of a motor vehicle for which a passing vehicle inspection report has been issued is not liable for the cost of emission control system repairs that are required for the vehicle subsequently to receive a passing report. This subsection does not apply to repairs that are required because emission control equipment or devices on the vehicle were removed or tampered with before the sale or transfer of the vehicle.

(m) The commission may conduct audits to determine compliance with this section.

(n) The commission may suspend the emissions inspection program as it applies to pre-1996 vehicles in an affected county if:

(1) the department certifies that the number of pre-1996 vehicles in the county subject to the program is 20 percent or less of the number of those vehicles that were in the county on September 1, 2001; and

(2) an alternative testing methodology that meets or exceeds United States Environmental Protection Agency requirements is available.

(o) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(p) The commission may consider, as an alternative method of compliance with Subsection (o), fuels to achieve equivalent emissions reductions.

(q) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

(r) Repealed by Acts 2007, 80th Leg., R.S., Ch. 262, Sec. 1.10(2), eff. June 8, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.25, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 547, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1, Sec. 1, eff. Jan. 31, 1995; Acts 1995,

74th Leg., ch. 34, Sec. 1, 9(1), (3), eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.157, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.207, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 73, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1069, Sec. 1, eff. June 19, 1997. Renumbered from Health & Safety Code Sec. 382.037 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.10(2), eff. June 8, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 6, eff. March 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 971 (S.B. 711), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 362 (S.B. 2102), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 851 (H.B. 3297), Sec. 2, eff. January 1, 2025.

Sec. 382.203. VEHICLES SUBJECT TO PROGRAM; EXEMPTIONS. (a) The inspection and maintenance program applies to any gasoline-powered vehicle that is:

(1) required to be registered in and is primarily operated in an affected county; and

(2) at least two and less than 25 years old; or

(3) subject to test-on-resale requirements under Section 548.3011, Transportation Code.

(b) In addition to a vehicle described by Subsection (a), the program applies to:

(1) a vehicle with United States governmental plates primarily operated in an affected county;

(2) a vehicle operated on a federal facility in an affected county; and

(3) a vehicle primarily operated in an affected county that is exempt from motor vehicle registration requirements or eligible under Chapter 502, Transportation Code, to display an "exempt"

license plate.

Text of subsection effective until January 1, 2025

(c) The Department of Public Safety of the State of Texas by rule may waive program requirements, in accordance with standards adopted by the commission, for certain vehicles and vehicle owners, including:

(1) the registered owner of a vehicle who cannot afford to comply with the program, based on reasonable income standards;

(2) a vehicle that cannot be brought into compliance with emissions standards by performing repairs;

(3) a vehicle:

(A) on which at least $100 has been spent to bring the vehicle into compliance; and

(B) that the department:

(i) can verify was driven fewer than 5,000 miles since the last safety inspection; and

(ii) reasonably determines will be driven fewer than 5,000 miles during the period before the next safety inspection is required; and

(4) a vehicle for which parts are not readily available.

Text of subsection effective on January 1, 2025

(c) The Department of Public Safety of the State of Texas by rule may waive program requirements, in accordance with standards adopted by the commission, for certain vehicles and vehicle owners, including:

(1) the registered owner of a vehicle who cannot afford to comply with the program, based on reasonable income standards;

(2) a vehicle that cannot be brought into compliance with emissions standards by performing repairs;

(3) a vehicle:

(A) on which at least $100 has been spent to bring the vehicle into compliance; and

(B) that the department can verify is driven an average of less than 5,000 miles each year; and

(4) a vehicle for which parts are not readily available.

(d) The program does not apply to a:

(1) motorcycle;

(2) slow-moving vehicle as defined by Section 547.001, Transportation Code; or

(3) vehicle that is registered but not operated primarily in a county or group of counties subject to a motor vehicle emissions inspection program established under Subchapter F, Chapter 548, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0372 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 851 (H.B. 3297), Sec. 3, eff. January 1, 2025.

Sec. 382.204. REMOTE SENSING PROGRAM COMPONENT. (a) The commission and the Department of Public Safety of the State of Texas jointly shall develop a program component for enforcing vehicle emissions testing and standards by use of remote or automatic emissions detection and analysis equipment.

(b) The program component may be employed in any county designated as a nonattainment area within the meaning of Section 107(d) of the Clean Air Act (42 U.S.C. Section 7407) and its subsequent amendments, in any affected county, or in any county adjacent to an affected county.

(c) If a vehicle registered in a county adjacent to an affected county is detected under the program component authorized by this section as operating and exceeding acceptable emissions limitations in an affected county, the department shall provide notice of the violation under Section 548.306, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0373 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.205. INSPECTION EQUIPMENT AND PROCEDURES. (a) The commission by rule may adopt:

(1) standards and specifications for motor vehicle emissions testing equipment;

(2) recordkeeping and reporting procedures; and

(3) measurable emissions standards a vehicle must meet to pass the inspection.

(b) In adopting standards and specifications under Subsection (a), the commission may require different types of tests for different vehicle models.

(c) In consultation with the Department of Public Safety of the State of Texas, the commission may contract with one or more private entities to provide testing equipment, training, and related services to inspection stations in exchange for part of the testing fee. A contract under this subsection may apply to one specified area of the state or to the entire state. The commission at least once during each year shall review each contract entered into under this subsection to determine whether the contracting entity is performing satisfactorily under the terms of the contract. Immediately after completing the review, the commission shall prepare a report summarizing the review and send a copy of the report to the speaker of the house of representatives, the lieutenant governor, and the governor.

(d) The Department of Public Safety of the State of Texas by rule shall adopt:

(1) testing procedures in accordance with motor vehicle emissions testing equipment specifications; and

(2) procedures for issuing a vehicle inspection report following an emissions inspection and submitting information to the inspection database described by Section 548.251, Transportation Code, following an emissions inspection.

(e) The commission and the Department of Public Safety of the State of Texas by joint rule may adopt procedures to encourage a stable private market for providing emissions testing to the public in all areas of an affected county, including:

(1) allowing facilities to perform one or more types of emissions tests; and

(2) any other measure the commission and the Department of Public Safety consider appropriate.

(f) Rules and procedures under this section must ensure that approved repair facilities participating in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under Section 382.209 have access to adequate testing equipment.

(g) Subject to Subsection (h), the commission and the Department of Public Safety of the State of Texas by rule may allow alternative vehicle emissions testing if:

(1) the technology provides accurate and reliable results;

(2) the technology is widely and readily available to persons interested in performing alternative vehicle emissions testing; and

(3) the use of alternative testing is not likely to substantially affect federal approval of the state's air quality state implementation plan.

(h) A rule adopted under Subsection (g) may not be more restrictive than federal regulations governing vehicle emissions testing.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Amended by Acts 1999, 76th Leg., ch. 1189, Sec. 42, eff. Sept. 1, 1999. Renumbered from Sec. 382.0374 and amended by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 7, eff. March 1, 2015.

Sec. 382.206. COLLECTION OF DATA; REPORT. (a) The commission and the Department of Public Safety of the State of Texas may collect inspection and maintenance information derived from the emissions inspection and maintenance program, including:

(1) inspection results;

(2) inspection station information;

(3) information regarding vehicles operated on federal facilities;

(4) vehicle registration information; and

(5) other data the United States Environmental Protection Agency requires.

(b) The commission shall:

(1) report the information to the United States Environmental Protection Agency; and

(2) compare the information on inspection results with registration information for enforcement purposes.

Added by Acts 1997, 75th Leg., ch. 1069, Sec. 2, eff. June 19, 1997. Renumbered from Sec. 382.0375 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.207. INSPECTION STATIONS; QUALITY CONTROL AUDITS. (a) The Department of Public Safety of the State of Texas by rule shall adopt standards and procedures for establishing vehicle emissions inspection stations authorized and licensed by the state.

(b) A vehicle emissions inspection may be performed at a decentralized independent inspection station or at a centralized inspection facility operated or licensed by the state. In developing the program for vehicle emissions inspections, the Department of Public Safety shall make all reasonable efforts to preserve the present decentralized system.

(c) After consultation with the Texas Department of Transportation, the commission shall require state and local transportation planning entities designated by the commission to prepare long-term projections of the combined impact of significant planned transportation system changes on emissions and air quality. The projections shall be prepared using air pollution estimation methodologies established jointly by the commission and the Texas Department of Transportation. This subsection does not restrict the Texas Department of Transportation's function as the transportation planning body for the state or its role in identifying and initiating specific transportation-related projects in the state.

(d) The Department of Public Safety may authorize enforcement personnel or other individuals to remove, disconnect, adjust, or make inoperable vehicle emissions control equipment, devices, or systems and to operate a vehicle in the tampered condition in order to perform a quality control audit of an inspection station or other quality control activities as necessary to assess and ensure the effectiveness of the vehicle emissions inspection and maintenance program.

(e) The Department of Public Safety shall develop a challenge station program to provide for the reinspection of a motor vehicle at the option of the owner of the vehicle to ensure quality control of a vehicle emissions inspection and maintenance system.

(f) The commission may contract with one or more private entities to operate a program established under this section.

(g) In addition to other procedures established by the commission, the commission shall establish procedures by which a private entity with whom the commission has entered into a contract to operate a program established under this section may agree to perform:

(1) testing at a fleet facility or dealership using mobile test equipment;

(2) testing at a fleet facility or dealership using test equipment owned by the fleet or dealership but calibrated and operated by the private entity's personnel; or

(3) testing at a fleet facility or dealership using test equipment owned and operated by the private entity and installed at the fleet or dealership facility.

(h) The fee for a test conducted as provided by Subsection (g) shall be set by the commission in an amount not to exceed twice the fee otherwise provided by law or by rule of the commission. An appropriate portion of the fee, as determined by the commission, may be remitted by the private entity to the fleet facility or dealership.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 547, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 34, Sec. 3, eff. May 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(41), eff. Sept. 1, 1995. Renumbered from Sec. 382.038 by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.208. ATTAINMENT PROGRAM. (a) Except as provided by Section 382.202(j) or another provision of this chapter, the commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

(b) Participating agencies include the Texas Department of Transportation and metropolitan planning organizations designated by the governor.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 2.26, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.158, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(42), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 15.03, eff; Sept. 1, 2001. Renumbered from Sec. 382.039 by Acts 2001, 77th Leg.,

ch; 1075, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10.008(c), eff. Sept. 1, 2003.

Sec. 382.209. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM. (a) The commission and the Public Safety Commission by joint rule shall establish and authorize the commissioners court of a participating county to implement a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program subject to agency oversight that may include reasonable periodic commission audits.

(b) The commission shall provide funding for local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs with available funds collected under Section 382.202, 382.302, or other designated and available funds. The programs shall be administered in accordance with Chapter 783, Government Code. Program costs may include call center management, application oversight, invoice analysis, education, outreach, and advertising. Not more than 10 percent of the money provided to a local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under this section may be used for the administration of the programs, including program costs.

(c) The rules adopted under Subsection (a) must provide procedures for ensuring that a program implemented under authority of that subsection does not apply to a vehicle that is:

(1) registered under Section 504.501 or 504.502, Transportation Code; and

(2) not regularly used for transportation during the normal course of daily activities.

(d) Subject to the availability of funds, a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section shall provide monetary or other compensatory assistance for:

(1) repairs directly related to bringing certain vehicles that have failed a required emissions test into compliance with emissions requirements;

(2) a replacement vehicle or replacement assistance for a vehicle that has failed a required emissions test and for which the cost of repairs needed to bring the vehicle into compliance is uneconomical; and

(3) installing retrofit equipment on vehicles that have failed a required emissions test, if practically and economically feasible, in lieu of or in combination with repairs performed under Subdivision (1). The commission and the Department of Public Safety of the State of Texas shall establish standards and specifications for retrofit equipment that may be used under this section.

(e) A vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section unless:

(1) the vehicle is capable of being operated;

(2) the registration of the vehicle:

(A) is current; and

(B) reflects that the vehicle has been registered in the county implementing the program for at least 12 of the 15 months preceding the application for participation in the program;

(3) the commissioners court of the county administering the program determines that the vehicle meets the eligibility criteria adopted by the commission, the Texas Department of Motor Vehicles, and the Public Safety Commission;

(4) if the vehicle is to be repaired, the repair is done by a repair facility recognized by the Department of Public Safety, which may be an independent or private entity licensed by the state; and

(5) if the vehicle is to be retired under this subsection and Section 382.213, the replacement vehicle is a qualifying motor vehicle.

(f) A fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established and implemented under this section.

(g) A participating county may contract with any appropriate entity, including the regional council of governments or the metropolitan planning organization in the appropriate region, or with another county for services necessary to implement the participating county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. The participating counties in a nonattainment region or counties participating in an early action compact under Subchapter H may agree to have the money collected in any one county be used in any other participating county

in the same region.

(h) Participation by an affected county in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program is not mandatory. To the extent allowed by federal law, any emissions reductions attributable to a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program in a county that are attained during a period before the county is designated as a nonattainment county shall be considered emissions reductions credit if the county is later determined to be a nonattainment county.

(i) Notwithstanding the vehicle replacement requirements provided by Subsection (d)(2), the commission by rule may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, subject to the availability of funds, for the replacement of a vehicle that meets the following criteria:

(1) the vehicle is gasoline-powered and is at least 10 years old;

(2) the vehicle owner meets applicable financial eligibility criteria;

(3) the vehicle meets the requirements provided by Subsections (e)(1) and (2); and

(4) the vehicle has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(j) The commission may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program for a replacement vehicle or replacement assistance for a pre-1996 model year replacement vehicle that passes the required United States Environmental Protection Agency Start-Up Acceleration Simulation Mode Standards emissions test but that would have failed the United States Environmental Protection Agency Final Acceleration Simulation Mode Standards emissions test or failed to meet some other criterion determined by the commission; provided, however, that a replacement vehicle under this subsection must be a qualifying motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 3, eff. June 18,

2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.03, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.01, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.004, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 2, eff. September 1, 2011.

Sec. 382.210. IMPLEMENTATION GUIDELINES AND REQUIREMENTS. (a) The commission by rule shall adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. The guidelines at a minimum shall recommend:

(1) a minimum and maximum amount for repair assistance;

(2) a minimum and maximum amount toward the purchase price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) $3,000 for a replacement car of the current model year or the previous three model years, except as provided by Paragraph (C);

(B) $3,000 for a replacement truck of the current model year or the previous two model years, except as provided by Paragraph (C); and

(C) $3,500 for a replacement vehicle of the current model year or the previous three model years that:

(i) is a hybrid vehicle, electric vehicle, or natural gas vehicle; or

(ii) has been certified to meet federal Tier 2, Bin 3 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(3) criteria for determining eligibility, taking into account:

(A) the vehicle owner's income, which may not exceed 300 percent of the federal poverty level;

(B) the fair market value of the vehicle; and

(C) any other relevant considerations;

(4) safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) the amount of money the vehicle owner has spent on repairs;

(B) the vehicle owner's income; and

(C) any other relevant factors.

(b) A replacement vehicle described by Subsection (a)(2) must:

(1) except as provided by Subsection (c), be a vehicle in a class or category of vehicles that has been certified to meet federal Tier 2, Bin 5 or a cleaner Bin certification under 40 C.F.R. Section 86.1811-04, as published in the February 10, 2000, Federal Register;

(2) have a gross vehicle weight rating of less than 10,000 pounds;

(3) have an odometer reading of not more than 70,000 miles; and

(4) be a vehicle the total cost of which does not exceed:

(A) for a vehicle described by Subsection (a)(2)(A) or (B), $35,000; or

(B) for a vehicle described by Subsection (a)(2)(C), $45,000.

(c) The commission may adopt any revisions made by the federal government to the emissions standards described by Subsection (b)(1).

(d) A participating county shall provide an electronic means for distributing vehicle repair or replacement funds once all program criteria have been met with regard to the repair or replacement. The county shall ensure that funds are transferred to a participating dealer under this section not later than the 10th business day after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

(e) In rules adopted under this section, the commission shall require a mandatory procedure that:

(1) produces a document confirming that a person is eligible to purchase a replacement vehicle in the manner provided by this chapter, and the amount of money available to the participating purchaser;

(2) provides that a person who seeks to purchase a replacement vehicle in the manner provided by this chapter is

required to have the document required by Subdivision (1) before the person enters into negotiation for a replacement vehicle in the manner provided by this chapter; and

(3) provides that a participating dealer who relies on a document issued as required by Subdivision (1) has no duty to otherwise confirm the eligibility of a person to purchase a replacement vehicle in the manner provided by this chapter.

(f) In this section, "total cost" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth as "sales price" in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Motor Vehicles. In a transaction that does not involve the use of that form, the term means an amount of money that is equivalent, or substantially equivalent, to the amount that would appear as "sales price" on the Application for Texas Certificate of Title if that form were involved.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.04, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3F.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 12, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 3, eff. September 1, 2011.

Sec. 382.211. LOCAL ADVISORY PANEL. (a) The commissioners court of a participating county may appoint one or more local advisory panels consisting of representatives of automobile dealerships, the automotive repair industry, safety inspection facilities, the public, antique and vintage car clubs, local nonprofit organizations, and locally affected governments to advise the county regarding the operation of the county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, including the identification of a vehicle make or model with intrinsic value as an existing or future collectible.

(b) The commissioners court may delegate all or part of the

administrative and financial matters to one or more local advisory panels established under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.212. EMISSIONS REDUCTION CREDIT. (a) In this section, "emissions reduction credit" means an emissions reduction certified by the commission that is:

(1) created by eliminating future emissions, quantified during or before the period in which emissions reductions are made;

(2) expressed in tons or partial tons per year; and

(3) banked by the commission in accordance with commission rules relating to emissions banking.

(b) To the extent allowable under federal law, the commission by rule shall authorize:

(1) the assignment of a percentage of emissions reduction credit to a private, commercial, or business entity that purchases, for accelerated retirement, a qualified vehicle under a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program;

(2) the transferability of an assigned emissions reduction credit;

(3) the use of emissions reduction credit by the holder of the credit against any state or federal emissions requirements applicable to a facility owned or operated by the holder of the credit;

(4) the assignment of a percentage of emissions reduction credit, on the retirement of a fleet vehicle, a vehicle owned or leased by a governmental entity, or a commercial vehicle, to the owner or lessor of the vehicle; and

(5) other actions relating to the disposition or use of emissions reduction credit that the commission determines will benefit the implementation of low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs established under Section 382.209.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.213. DISPOSITION OF RETIRED VEHICLE. (a) Except as

provided by Subsection (c) and Subdivision (5) of this subsection, a vehicle retired under an accelerated vehicle retirement program authorized by Section 382.209 may not be resold or reused in its entirety in this or another state. Subject to the provisions of Subsection (i), the automobile dealer who takes possession of the vehicle must submit to the program administrator proof, in a manner adopted by the commission, that the vehicle has been retired. The vehicle must be:

(1) destroyed;

(2) recycled;

(3) dismantled and its parts sold as used parts or used in the program;

(4) placed in a storage facility of a program established under Section 382.209 and subsequently destroyed, recycled, or dismantled and its parts sold or used in the program; or

(5) repaired, brought into compliance, and used as a replacement vehicle under Section 382.209(d)(2).

(a-1) The commission shall establish a partnership with representatives of the steel industry, automobile dismantlers, and the scrap metal recycling industry to ensure that:

(1) vehicles retired under Section 382.209 are scrapped or recycled; and

(2) proof of scrapping or recycling is provided to the commission.

(b) Not more than 10 percent of all vehicles eligible for retirement under this section may be used as replacement vehicles under Subsection (a)(5).

(c) A vehicle identified by a local advisory panel as an existing or future collectible vehicle under Section 382.211 may be sold to an individual if the vehicle:

(1) is repaired and brought into compliance;

(2) is removed from the state;

(3) is removed from an affected county; or

(4) is stored for future restoration and cannot be registered in an affected county except under Section 504.501 or 504.502, Transportation Code.

(d) Notwithstanding Subsection (a)(3), the dismantler of a vehicle shall scrap the emissions control equipment and engine. The dismantler shall certify that the equipment and engine have been scrapped and not resold into the marketplace. A person who causes,

suffers, allows, or permits a violation of this subsection or of a rule adopted under this section is subject to a civil penalty under Subchapter D, Chapter 7, Water Code, for each violation. For purposes of this subsection, a separate violation occurs with each fraudulent certification or prohibited resale.

(e) Notwithstanding Subsection (d), vehicle parts not related to emissions control equipment or the engine may be resold in any state. The only cost to be paid by a recycler for the residual scrap metal of a vehicle retired under this section shall be the cost of transportation of the residual scrap metal to the recycling facility.

(f) Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in this state.

(g) In dismantling a vehicle under this section, the dismantler shall remove any mercury switches in accordance with state and federal law.

(h) The commission shall adopt rules:

(1) defining "emissions control equipment" and "engine" for the purposes of this section; and

(2) providing a procedure for certifying that emissions control equipment and vehicle engines have been scrapped or recycled.

(i) Notwithstanding any other provision of this section, and except as provided by this subsection, a dealer is in compliance with this section and incurs no civil or criminal liability as a result of the disposal of a replaced vehicle if the dealer produces proof of transfer of the replaced vehicle by the dealer to a dismantler. The defense provided by this subsection is not available to a dealer who knowingly and intentionally conspires with another person to violate this section.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.05, eff. June 8, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.005, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 347 (H.B. 3272), Sec. 4, eff. September 1, 2011.

Sec. 382.214. SALE OF VEHICLE WITH INTENT TO DEFRAUD. (a) A

person who with intent to defraud sells a vehicle in an accelerated vehicle retirement program established under Section 382.209 commits an offense that is a third degree felony.

(b) Sale of a vehicle in an accelerated vehicle retirement program includes:

(1) sale of the vehicle to retire the vehicle under the program; and

(2) sale of a vehicle purchased for retirement under the program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.215. SALE OF VEHICLE NOT REQUIRED. Nothing in this subchapter may be construed to require a vehicle that has failed a required emissions test to be sold or destroyed by the owner.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.216. INCENTIVES FOR VOLUNTARY PARTICIPATION IN VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. The commission, the Texas Department of Transportation, and the Public Safety Commission may, subject to federal limitations:

(1) encourage counties likely to exceed federal clean air standards to implement voluntary:

(A) motor vehicle emissions inspection and maintenance programs; and

(B) low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs;

(2) establish incentives for counties to voluntarily implement motor vehicle emissions inspection and maintenance programs and low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs; and

(3) designate a county that voluntarily implements a motor vehicle emissions inspection and maintenance program or a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program as a "Clean Air County" and give preference to a county designated as a Clean Air County in any federal or state clean air grant program.

Added by Acts 2001, 77th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2001.

Sec. 382.218. REQUIRED PARTICIPATION BY CERTAIN COUNTIES. (a) This section applies only to a county that borders the United Mexican States and in which a municipality with a population of 500,000 or more is located.

(b) A county that was at any time required, because of the county's designation as a nonattainment area under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), to participate in the vehicle emissions inspection and maintenance program under this subchapter and Subchapter F, Chapter 548, Transportation Code, shall continue to participate in the program even if the county is designated as an attainment area under the federal Clean Air Act.

Added by Acts 2005, 79th Leg., Ch. 958 (H.B. 1611), Sec. 4, eff. June 18, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 47, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 99, eff. September 1, 2023.

Sec. 382.219. PURCHASE OF REPLACEMENT VEHICLE; AUTOMOBILE DEALERSHIPS. (a) An amount described by Section 382.210(a)(2) may be used as a down payment toward the purchase of a replacement vehicle.

(b) An automobile dealer that participates in the procedures and programs offered by this chapter must be located in the state. No dealer is required to participate in the procedures and programs provided by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.06, eff. June 8, 2007.

Sec. 382.220. USE OF FUNDING FOR LOCAL INITIATIVE PROJECTS. (a) Money that is made available to participating counties under Section 382.202(g) or 382.302 may be appropriated only for programs administered in accordance with Chapter 783, Government Code, to

improve air quality. A participating county may agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments to implement a program under Section 382.202, 382.209, or this section.

(b) A program under this section must be implemented in consultation with the commission and may include a program to:

(1) expand and enhance the AirCheck Texas Repair and Replacement Assistance Program;

(2) develop and implement programs or systems that remotely determine vehicle emissions and notify the vehicle's operator;

(3) develop and implement projects to implement the commission's smoking vehicle program;

(4) develop and implement projects in consultation with the director of the Department of Public Safety for coordinating with local law enforcement officials to reduce the use of counterfeit registration insignia and vehicle inspection reports by providing local law enforcement officials with funds to identify vehicles with counterfeit registration insignia and vehicle inspection reports and to carry out appropriate actions;

(5) develop and implement programs to enhance transportation system improvements; or

(6) develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

(c) Money that is made available for the implementation of a program under Subsection (b) may not be expended for local government fleet or vehicle acquisition or replacement, call center management, application oversight, invoice analysis, education, outreach, or advertising purposes.

(d) Fees collected under Sections 382.202 and 382.302 may be used in an amount not to exceed $7 million per fiscal year for projects described by Subsection (b), of which $2 million may be used only for projects described by Subsection (b)(4). The remaining $5 million may be used for any project described by Subsection (b). The fees shall be made available only to counties participating in the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209 and only on a matching basis, whereby the commission provides money to a county in the same amount that the county dedicates to a project authorized by Subsection (b). The commission may reduce the match requirement

for a county that proposes to develop and implement independent test facility fraud detection programs, including the use of remote sensing technology for coordinating with law enforcement officials to detect, prevent, and prosecute the use of counterfeit registration insignia and vehicle inspection reports.

Added by Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 1.07, eff. June 8, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 13, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1038 (H.B. 2859), Sec. 1, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 8, eff. March 1, 2015.

SUBCHAPTER H. VEHICLE EMISSIONS PROGRAMS IN CERTAIN COUNTIES

Sec. 382.301. DEFINITIONS. In this subchapter:

(1) "Early action compact" means an agreement entered into before January 1, 2003, by the United States Environmental Protection Agency, the commission, the governing body of a county that is in attainment of the one-hour national ambient air quality standard for ozone but that has incidents approaching, or monitors incidents that exceed, the eight-hour national ambient air quality standard for ozone, and the governing body of the most populous municipality in that county that results in the submission of:

(A) an early action plan to the commission that the commission finds to be adequate; and

(B) a state implementation plan revision to the United States Environmental Protection Agency on or before December 31, 2004, that provides for attainment of the eight-hour national ambient air quality standard for ozone on or before December 31, 2007.

(2) "Participating county" means a county that is a party to an early action compact.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

Sec. 382.302. INSPECTION AND MAINTENANCE PROGRAM. (a) A participating county whose early action plan contains provisions for

a motor vehicle emissions inspection and maintenance program and has been found adequate by the commission may formally request the commission to adopt motor vehicle emissions inspection and maintenance program requirements for the county. The request must be made by a resolution adopted by the governing body of the participating county and the governing body of the most populous municipality in the county.

(b) After approving a request made under Subsection (a), the commission by resolution may request the Public Safety Commission to establish motor vehicle emissions inspection and maintenance program requirements for the participating county under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The motor vehicle emissions inspection and maintenance program requirements for the participating county may include exhaust emissions testing, emissions control devices and systems inspections, or other testing methods that meet or exceed United States Environmental Protection Agency requirements, and a remote sensing component as provided by Section 382.204. The motor vehicle emissions inspection and maintenance program requirements adopted for the participating county may apply to all or to a defined subset of vehicles described by Section 382.203.

(c) The commission may assess a fee for a vehicle inspection performed in accordance with a program established under this section. The fee must be in an amount reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the participating county's motor vehicle emissions inspection and maintenance program. An appropriate part of the fee as determined by commission rule may be retained by the station owner, contractor, or operator to recover the cost of performing the inspection and provide for a reasonable margin of profit.

(d) The incentives for voluntary participation established under Section 382.216 shall be made available to a participating county.

(e) A participating county may participate in the program established under Section 382.209.

Added by Acts 2003, 78th Leg., ch. 203, Sec. 1, eff. June 10, 2003.

SUBCHAPTER I. PROGRAMS TO ENCOURAGE THE USE OF INNOVATIVE TECHNOLOGIES

Sec. 382.401. ALTERNATIVE LEAK DETECTION TECHNOLOGY. (a) In this section, "alternative leak detection technology" means technology, including optical gas imaging technology, designed to detect leaks and emissions of air contaminants.

(b) The commission by rule shall establish a program that allows the owner or operator of a facility regulated under this chapter to use voluntarily as a supplemental detection method any leak detection technology that has been incorporated and adopted by the United States Environmental Protection Agency into a program for detecting leaks or emissions of air contaminants. The program must provide regulatory incentives to encourage voluntary use of the alternative leak detection technology at a regulated facility that is capable of detecting leaks or emissions that may not be detected by methods or technology approvable under the commission's regulatory program for leak detection and repair in effect on the date the commission adopts the program. The incentives may include:

(1) on-site technical assistance; and

(2) to the extent consistent with federal requirements:

(A) inclusion of the facility's use of alternative leak detection technology in the owner or operator's compliance history and compliance summaries;

(B) consideration of the implementation of alternative leak detection technology in scheduling and conducting compliance inspections; and

(C) credits or offsets to the facility's emissions reduction requirements based on the emissions reductions achieved by voluntary use of alternative leak detection technology.

(c) The owner or operator of a facility using an alternative leak detection technology shall repair and record an emission or leak of an air contaminant from a component subject to the commission's regulatory program for leak detection and repair that is detected by the alternative technology as provided by the commission's leak detection and repair rules in effect at the time of the detection. A repair to correct an emission or leak detected by the use of alternative leak detection technology may be confirmed using the same technology.

(d) As part of the program of incentives adopted under Subsection (b), the commission shall:

(1) ensure that the owner or operator of a facility records and repairs, if possible and within a reasonable period, any leak or

emission of an air contaminant at the facility that is detected by the voluntary use of alternative leak detection technology from a component not subject to commission rules for leak detection and repair in effect on the date of detection;

(2) establish the reasonable period allowed for the repair of a component causing a leak or emission in a way that includes consideration of the size and complexity of the repair required;

(3) subject to commission reporting requirements only those components that are not repairable within the reasonable time frame established by the commission; and

(4) exempt from commission enforcement a leak or emission that is repaired within the reasonable period established by the commission.

(e) To the extent consistent with federal requirements, the commission may not take an enforcement action against an owner or operator of a facility participating in the program established under this section for a leak or an emission of an air contaminant that would otherwise be punishable as a violation of the law or of the terms of the permit under which the facility operates if the leak or emission was detected by using alternative technology and it would not have been detected under the commission's regulatory program for leak detection and repair in effect on the date of the detection.

Added by Acts 2007, 80th Leg., R.S., Ch. 870 (H.B. 1526), Sec. 1, eff. June 15, 2007.

SUBCHAPTER J. FEDERAL GREENHOUSE GAS REPORTING RULE

Sec. 382.451. DEVELOPMENT OF FEDERAL GREENHOUSE GAS REPORTING RULE. (a) The commission and the Railroad Commission of Texas, the Department of Agriculture, and the Public Utility Commission of Texas shall jointly participate in the federal government process for developing federal greenhouse gas reporting requirements and the federal greenhouse gas registry requirements.

(b) The commission shall adopt rules as necessary to comply with any federal greenhouse gas reporting requirements adopted by the federal government for private and public facilities eligible to participate in the federal greenhouse gas registry. In adopting the rules, the commission shall adopt and incorporate by reference rules implementing the federal reporting requirements and the federal

registry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.
Redesignated from Health and Safety Code, Section 382.501 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

Sec. 382.452. VOLUNTARY ACTIONS INVENTORY. The commission shall:

(1) establish an inventory of voluntary actions taken by businesses in this state or by state agencies since September 1, 2001, to reduce carbon dioxide emissions; and

(2) work with the United States Environmental Protection Agency to give credit for early action under any federal rules that may be adopted for federal greenhouse gas regulation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 29, eff. September 1, 2009.
Redesignated from Health and Safety Code, Section 382.502 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(29), eff. September 1, 2011.

SUBCHAPTER K. OFFSHORE GEOLOGIC STORAGE OF CARBON DIOXIDE

Sec. 382.501. DEFINITIONS. In this subchapter:

(1) "Board" means the School Land Board.

(2) "Bureau" means the Bureau of Economic Geology at The University of Texas at Austin.

(3) "Carbon dioxide repository" means an offshore deep subsurface geologic repository for the storage of anthropogenic carbon dioxide.

(4) "Land commissioner" means the commissioner of the General Land Office.

(5) "Offshore" has the meaning assigned by Section 27.040, Water Code.

(6) "Railroad commission" means the Railroad Commission of Texas.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1,

eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 1, eff. June 9, 2021.

Sec. 382.502. RULES; ENFORCEMENT. (a) The railroad commission by rule may adopt standards for the location, construction, maintenance, monitoring, and operation of a carbon dioxide repository.

(b) If the United States Environmental Protection Agency issues requirements regarding carbon dioxide sequestration, the railroad commission shall ensure that the construction, maintenance, monitoring, and operation of the carbon dioxide repository under this subchapter comply with those requirements.

(c) Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by the railroad commission under this section in the same manner as Subchapter F, Chapter 27, Water Code, applies to the civil, administrative, or criminal enforcement of a rule adopted by the railroad commission under Chapter 27, Water Code.

(d) A penalty collected under this section shall be deposited to the credit of the anthropogenic carbon dioxide storage trust fund established under Section 121.003, Natural Resources Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 2, eff. June 9, 2021.

Sec. 382.503. STUDY; SELECTION OF LOCATION. (a) The land commissioner shall contract with the bureau to conduct a study of state-owned offshore submerged land to identify potential locations for a carbon dioxide repository.

(b) The land commissioner shall recommend suitable sites for carbon dioxide storage to the board based on the findings of the study.

(c) The board shall make the final determination of suitable

locations for carbon dioxide storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.504. CONTRACT FOR NECESSARY INFRASTRUCTURE AND OPERATION. (a) Once the location has been established for the carbon dioxide repository, the board may issue requests for proposals for the lease of permanent school fund land for the construction of any necessary infrastructure for the transportation and storage of carbon dioxide to be stored in the carbon dioxide repository.

(b) The board may contract for construction or operational services for the repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.505. ACCEPTANCE OF CARBON DIOXIDE FOR STORAGE; FEES AND CARBON CREDITS. (a) Once the carbon dioxide repository is established, the board may accept carbon dioxide for storage.

(b) The board by rule may establish a fee for the storage of carbon dioxide in the carbon dioxide repository. If this state participates in a program that facilitates the trading of carbon credits, a fee under this subsection may be established as a percentage of the carbon credits associated with the storage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.506. MEASURING, MONITORING, AND VERIFICATION; ROLE OF BUREAU. (a) The railroad commission by rule may establish standards for the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository.

(b) The bureau shall review any measurement, monitoring, and verification of the permanent storage status of carbon dioxide in the carbon dioxide repository performed by another person at the direction of the state.

(c) The bureau shall serve as a scientific advisor for the measuring, monitoring, and permanent storage status verification of the carbon dioxide repository.

(d) The bureau shall provide to the board data relating to the measurement, monitoring, and verification of the permanent storage status of the carbon dioxide in the carbon dioxide repository, as determined by the board.

(e) The board may use revenue from the fee authorized by Section 382.505 to contract with the bureau to perform the functions described by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 3, eff. June 9, 2021.

Sec. 382.507. OWNERSHIP OF CARBON DIOXIDE. (a) The board shall acquire title to carbon dioxide stored in the carbon dioxide repository on a determination by the board that permanent storage has been verified and that the storage location has met all applicable state and federal requirements for closure of carbon dioxide storage sites.

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the permanent school fund and shall be administered and controlled by the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.508. LIABILITY. (a) The transfer of title to the state under Section 382.507 does not relieve a producer of carbon dioxide of liability for any act or omission regarding the generation of stored carbon dioxide performed before the carbon dioxide was stored.

(b) On the date the permanent school fund, under Section 382.507, acquires the right, title, and interest in carbon dioxide, the producer of the carbon dioxide is relieved of liability for any act or omission regarding the carbon dioxide in the carbon dioxide

repository.

(c) This section does not relieve a person who contracts with the board under Section 382.504(b) of liability for any act or omission regarding the construction or operation, as applicable, of the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

Sec. 382.509. RATES FOR TRANSPORTATION. Neither the railroad commission nor the board may establish or regulate the rates charged for the transportation of carbon dioxide to the carbon dioxide repository.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 4, eff. June 9, 2021.

Sec. 382.510. ANNUAL REPORT. The land commissioner shall issue annually a report regarding the carbon dioxide repository. The report may be submitted electronically by posting on the General Land Office's Internet website. The report must include information regarding:

(1) the total volume of carbon dioxide stored;

(2) the total volume of carbon dioxide received for storage during the year; and

(3) the volume of carbon dioxide received from each producer of carbon dioxide.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 1, eff. September 1, 2009.

SUBCHAPTER L. REGULATION OF HYDROFLUOROCARBONS

Sec. 382.551. SUBSTITUTES FOR HYDROFLUOROCARBON REFRIGERANTS APPLICABLE TO COMMERCIAL OR RESIDENTIAL BUILDINGS OR CONSTRUCTION. A building code or other requirement applicable to commercial or

residential buildings or construction may not prohibit the use of a substitute refrigerant authorized pursuant to 42 U.S.C. Section 7671k.

Added by Acts 2021, 87th Leg., R.S., Ch. 100 (S.B. 1210), Sec. 1, eff. January 1, 2023.

CHAPTER 383. CLEAN AIR FINANCING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 383.001. SHORT TITLE. This chapter may be cited as the Clean Air Financing Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.002. POLICY AND PURPOSE. (a) The policy of the state and the purpose of this chapter are to:

(1) safeguard state air resources from emissions of air contaminants and other pollution;

(2) protect public health, general welfare, physical property, and the esthetic enjoyment of air resources by the public; and

(3) maintain adequate visibility.

(b) It is the policy of the state that the control of air pollution is essential to the well-being and survival of state inhabitants and the protection of the environment. The control, prevention, and abatement of air pollution will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution, by preventing further damage to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.003. DEFINITIONS. In this chapter:

(1) "Air contaminant" has the meaning assigned by Section 382.003 (Texas Clean Air Act).

(2) "Air pollution" has the meaning assigned by Section 382.003 (Texas Clean Air Act).

(3) "Bond" includes a note.

(4) "Coastal basin" means an area that:

(A) is defined and designated as a coastal basin as of April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "Control facility" means a facility that has been certified by the commission, or by its executive secretary if the commission authorizes, as being designed to reduce or eliminate air pollution.

(7) "Disposal system" has the meaning assigned by Section 30.003(10), Water Code.

(8) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, but does not include a district or authority located entirely within a river authority unless the district or authority:

(A) has all or part of at least two municipalities within its boundaries;

(B) is governed by Chapter 56, 60, 61, 62, or 63, Water Code; or

(C) is created for the primary purpose of navigation of its coastal and inland waters.

(9) "Issuer" means a municipality, county, or district.

(10) "Real property" means land, a structure, a franchise or interest in land, water, land under water, riparian rights, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(11) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body of an issuer.

(12) "River authority" has the meaning assigned by Section 30.003(4), Water Code.

(13) "River basin" means an area that:

(A) is defined and designated as a river basin as of

April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(14) "Security agreement" means a trust indenture or other instrument securing bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.198, eff. Sept. 1, 1995.

Sec. 383.004. CERTIFICATION OF CONTROL FACILITY BY COMMISSION. The commission may prescribe necessary criteria and procedures for certifying a control facility and may limit certification to confirmation that a proposed facility is intended to control air pollution. Certification of a control facility's adequacy or expected performance or of other specifications is not necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.199, eff. Sept. 1, 1995.

Sec. 383.005. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this chapter violates the United States Constitution or Texas Constitution, an issuer by resolution may provide an alternate procedure that conforms to those constitutions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.006. EFFECT OF CHAPTER ON OTHER LAW. (a) This chapter does not limit the authority of the commission, a district, or a local government in performing a power or duty provided by other law. This chapter does not limit the authority of the commission or a local government to adopt and enforce rules or carry out duties under Chapter 382 (Texas Clean Air Act).

(b) Chapter 382 (Texas Clean Air Act) shall be enforced without regard to ownership of a control facility financed under this chapter.

(c) This chapter does not affect the right of a private person

to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate or recover damages for a condition of pollution or other nuisance. A person purchasing or using a control facility under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the control facility.

(d) An issuer may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.200, eff. Sept. 1, 1995.

SUBCHAPTER B. OPERATION OF CONTROL FACILITY

Sec. 383.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY. (a) An issuer may acquire, construct, and improve a control facility and may acquire real property as the issuer considers appropriate for the control facility.

(b) An issuer may enter into a lease or other contract under which another person uses or acquires the issuer's control facility. An issuer may sell a control facility, by installment payments or otherwise, to any person on conditions the issuer considers desirable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.012. LOCATION OF CONTROL FACILITY. (a) A control facility may be located on the property of any person.

(b) A control facility of a municipality must be located in whole or in part within:

(1) the boundaries of the municipality; or

(2) the municipality's extraterritorial jurisdiction, as determined under Chapter 42, Local Government Code.

(c) A control facility of a river authority may be located outside the river authority's boundaries if it is located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries. A control facility of a river authority may be located anywhere in the state if it is financed at the same time and with the same bond issue as a control

facility located within the river authority's boundaries or located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries.

(d) A control facility of a county or a district other than a river authority must be located in whole or in part within the county's or district's boundaries.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.013. CONTRACTS. (a) A lease or other contract entered into under this chapter may be for the term agreed to by the parties. The lease or other contract may provide that it continues in effect until specified bonds or refunding bonds issued in place of the specified bonds are fully paid.

(b) The provisions of Chapter 2253, Government Code, that relate to performance and payment bonds apply to a construction contract let by an issuer, except that an issuer is not required to receive construction bids on a project.

(c) Any law requiring competitive bids does not apply to a construction contract for a project authorized by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1064, Sec. 34, eff. Sept. 1, 1999.

Sec. 383.014. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a control facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.015. TAXATION. (a) An issuer is not required to pay a tax or other assessment on a control facility or part of a control facility.

(b) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(c) This chapter does not affect state law relating to an ad valorem tax imposed on a person who is not a public agency or political subdivision or on an interest held by such a person. A control facility purchased or used under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer for the facility's purchase or use as if the contract created a leasehold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BONDS

Sec. 383.021. AUTHORITY TO ISSUE. (a) An issuer may issue negotiable bonds, payable from revenues of the issuer, to pay costs related to the acquisition, construction, or improvement of a control facility, including:

(1) the cost of real property acquired for the control facility;

(2) finance charges;

(3) interest before and during construction and for a period the issuer finds reasonable after completion of construction;

(4) expenses incurred for architectural, engineering, and legal services;

(5) expenses incurred for plans, specifications, surveys, and estimates;

(6) expenses incurred in placing the control facility in operation;

(7) expenses of administration; and

(8) other expenses necessary or incident to the acquisition, construction, or improvement.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) Pending issuance of definitive bonds, the issuer may authorize the delivery of negotiable interim bonds eligible for exchange or substitution by use of the definitive bonds.

(d) An issuer may not issue bonds to acquire an existing control facility solely for the purpose of leasing or selling it back to the person from whom it was acquired or to another person controlled by that person, unless the control facility is to be substantially improved before it is leased or sold back to such a person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.022. FORM AND PROCEDURE. (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the governing body;

(2) be attested by the secretary of the governing body; and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the governing body of the issuer, except that the designation must include for each control facility to be financed with the bonds:

(1) the name of each person using or purchasing the control facility;

(2) the name of each person guaranteeing the contractual obligations of each person using or purchasing the control facility; or

(3) a statement, if applicable, that a group of persons will be using or purchasing the control facility.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.023. TERMS. Bonds issued under this chapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

(1) bear interest at a rate and be sold at a price or under terms that the governing body of the issuer determines to be the most advantageous reasonably obtainable;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds;

(3) be in coupon form; and

(4) be registrable as to principal or as to principal and interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.024. APPROVAL AND REGISTRATION. (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or other contract previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.025. PLEDGE OF REVENUE AS SECURITY; ELECTION. (a) An issuer's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of all or part of the revenues of the issuer derived from:

(1) the use or sale of a control facility or disposal system; or

(2) services rendered by a disposal system.

(b) Except as provided by Section 383.026, before a municipality or county issues bonds secured under Subsection (a), the municipality or county must publish notice of its intention to issue the bonds at least once in a newspaper of general circulation within the boundaries of the municipality or county. Not later than 30 days

after the date of the publication, not less than 10 percent of the qualified voters of the municipality or county may file a petition with the clerk or secretary of the governing body requesting the governing body to order an election on the issuance of the bonds. On the filing of the petition, the governing body shall order an election to be held in the municipality or county to determine whether the bonds may be issued as indicated in the notice. The governing body shall set the date of the election in accordance with Section 41.001, Election Code. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds. If a petition is not filed within the period provided by this subsection, the governing body may issue the bonds without an election.

(c) The governing body shall fix and periodically revise payments under a lease or other contract for the use or sale of a control facility so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement. The governing body may direct the investment of money in the funds created by the resolution or security agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.026. PLEDGE OF OTHER UTILITY REVENUE; ELECTION. (a) In addition to the security under Section 383.025, a municipality's or county's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of other utility revenue of the municipality or county.

(b) Before issuing bonds secured by other utility revenue, the governing body must order an election to determine whether the bonds may be issued. The governing body shall set the date of the election in accordance with Section 41.001, Election Code. The manner of holding the election is governed by Chapter 1251, Government Code. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.272, eff. Sept. 1, 2001.

Sec. 383.027. SECURITY MAY APPLY TO ADDITIONAL BONDS. A pledge under Section 383.025 or 383.026 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge. Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.028. TRUSTS AS SECURITY. (a) The governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank having trust powers located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 383.029, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's control facility on approval of a registered professional engineer selected as provided by the trust indenture;

(4) contain provisions governing issuance of bonds to replace lost, stolen, or mutilated bonds; and

(5) otherwise provide for protecting and enforcing a bondholder's rights and remedies as is reasonable, proper, and lawful.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.029. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated control facility of the governing body and all property and rights appurtenant to the control facility.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the control facility, sell the control facility to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the control facility and rights purchased.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.030. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.031. INVESTMENT AND USE OF PROCEEDS. (a) The governing body may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds must be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds may be invested in:

(1) direct or indirect obligations of the United States government or an agency of the United States government that mature in a manner specified by the resolution or a security agreement; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of lease or other contract revenue. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.032. REFUNDING BONDS. (a) A governing body may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.033. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee; and

(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 383.034. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 384. AREA EMISSION REDUCTION CREDIT ORGANIZATIONS

Sec. 384.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Emission reduction credit" means a credit recognized by the commission and the United States Environmental Protection Agency for reductions in emissions of air pollutants.

(3) "Nonattainment area" means an area so designated within the meaning of Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407).

(4) "Organization" means an area emission reduction credit organization in this state.

(5) "Regional council of governments" means a council of governments designated as the metropolitan planning organization or a metropolitan planning organization in the event the council of governments is not so designated.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.201, eff. Sept. 1, 1995.

Sec. 384.002. PURPOSE. The purpose of an area emission reduction credit organization shall be to promote the coexistence of the improvement of air quality and economic development within the region through the acquisition and distribution of emission reduction credits. Its activities may include the use of emission reduction credits to help meet federal reasonable further progress requirements as well as using emission reduction credits to facilitate the issuance of permits.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.003. ESTABLISHMENT OF ORGANIZATION. A regional council of governments whose area of jurisdiction contains a nonattainment area may establish an organization on approval by the commission of its creation petition as provided by Section 384.015.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.202, eff. Sept. 1, 1995.

Sec. 384.004. FUNCTIONS; ORGANIZATION. An organization created under this chapter shall:

(1) represent all counties within a nonattainment area;

(2) have a board of directors appointed in accordance with the provisions of this chapter;

(3) have the power, authority, and limitations provided by this chapter; and

(4) have bylaws setting forth its organization and procedures, including provisions for conflicts of interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.005. OFFSET REQUIREMENTS. All transactions of an organization involving emission reduction credits shall be subject to the offset requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.006. LOCATION RESTRICTION. There shall not be more than one organization within a metropolitan statistical area or consolidated metropolitan statistical area.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.007. STAFF. The regional council of governments may provide staff to an organization created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.008. BOARD OF DIRECTORS. (a) The board of directors of an organization shall consist of not less than six and not more than 21 appointed members, provided, however, that the number of appointed members is divisible by three. The appointed members are appointed by and may be removed for cause by the governing body of the regional council of governments. The appointed members serve three-year terms, with one-third of the members' terms expiring each year. In order to stagger the terms, the initial appointees of a board of directors shall draw lots to determine which one-third serves for one year, which one-third serves for two years, and which one-third serves for three years. In addition, the board of directors shall have one ex officio nonvoting member from the commission, designated by the executive director of the commission to act as a liaison between the commission and the area emission reduction credit organization.

(b) The appointed members of the board of directors shall represent the general public, large industrial sources of emissions, small regulated businesses, and environmental and economic development interests. Each county in the nonattainment area shall be represented on the board of directors, and other areas in the region shall be represented in a manner that reflects the relative contributions of each area to total emissions or potential emission reductions.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.203, eff. Sept. 1, 1995.

Sec. 384.009. REMOVAL FOR CAUSE. The regional council of governments appointing a member of the board of directors of an organization may remove such member for cause if the member:

(1) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or

(2) is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the board of directors.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.010. CONFLICT OF INTEREST. A member of a board of directors may not vote on a matter in which the member or the member's employer has a direct financial interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.011. AUTHORITY. The board of directors of an organization shall have independent decision-making authority and shall not be required to have its decisions reviewed by the governing body of the regional council of governments. A regional council of governments shall not have any liability under any contracts entered into by an organization.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.012. POWERS AND DUTIES. An organization shall have the authority to:

(1) receive and use funds;

(2) have an account at the Texas Natural Resource Conservation Commission Air Emission Reduction Credit Bank;

(3) acquire emission reduction credits through purchase,

donation, or other means;

(4) transfer emission reduction credits by sale or other means;

(5) identify, evaluate, promote, initiate, and facilitate potential projects and strategies to generate emission reduction credits;

(6) provide financial assistance for projects to generate emission reduction credits;

(7) employ staff;

(8) enter into contracts; and

(9) consider sustainability of projects.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.204, eff. Sept. 1, 1995.

Sec. 384.013. PROHIBITIONS. An organization created under this chapter shall have no regulatory or taxing authority.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.

Sec. 384.014. ANNUAL REPORT. By March 1 of each year each area organization shall file with the commission and the regional council of governments an annual report for the preceding calendar year. The annual report shall contain a financial accounting, an accounting of emission reduction credits, and a listing of all emission reduction credit transactions entered into by the organization.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.205, eff. Sept. 1, 1995.

Sec. 384.015. PROCEDURE FOR FILING AND APPROVAL OF PETITION. (a) A regional council of governments may authorize by resolution the submission of a petition to the commission requesting the creation of an organization under this chapter.

(b) The petition shall contain sufficient information to permit a determination of compliance with the provisions of this chapter and

shall include a copy of the proposed bylaws and a plan for ensuring compliance with the requirements of this chapter.

(c) The commission shall review the petition for compliance with this chapter and hold a hearing in the region to obtain public comment on the petition.

(d) The commission shall approve the petition and creation of the organization if, after hearing, it finds that the requirements of this chapter are met and that such creation would be in the public interest.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.206, eff. Sept. 1, 1995.

Sec. 384.016. AUDIT. The commission shall have the authority to audit any organization created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

Sec. 384.017. WITHDRAWAL OF APPROVAL. The commission shall have the authority to withdraw its approval of an organization created under this chapter and to dissolve such organization if it finds, after notice and hearing, that the organization has failed to comply with the provisions of this chapter.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

Sec. 384.018. DISSOLUTION. An organization created under this chapter shall be dissolved by the commission 12 years after its creation unless the commission approves a petition, submitted and approved in accordance with Section 384.015, for an additional 12-year term. The commission may continue to approve successive 12-year terms for the organization as long as the need for the organization exists.

Added by Acts 1993, 73rd Leg., ch. 128, Sec. 1, eff. May 11, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.207, eff. Sept. 1, 1995.

For expiration of this chapter, see Section 386.002.

CHAPTER 386. TEXAS EMISSIONS REDUCTION PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 386.001. DEFINITIONS. In this chapter:

(1) "Account" means the Texas emissions reduction plan account established under Section 386.251.

(2) "Affected county" includes:

(A) Bastrop County;

(B) Bexar County;

(C) Caldwell County;

(D) Comal County;

(E) Ellis County;

(F) Gregg County;

(G) Guadalupe County;

(H) Harrison County;

(I) Hays County;

(J) Henderson County;

(K) Hood County;

(L) Hunt County;

(M) Johnson County;

(N) Kaufman County;

(O) Nueces County;

(P) Parker County;

(Q) Rockwall County;

(R) Rusk County;

(S) San Patricio County;

(T) Smith County;

(U) Travis County;

(V) Upshur County;

(W) Williamson County;

(X) Wilson County; and

(Y) any other county designated as an affected county by commission rule because of deteriorating air quality.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) Repealed by Acts 2005, 79th Leg., Ch. 1125, Sec. 22, eff. September 1, 2005.

(5) "Fund" means the Texas emissions reduction plan fund established under Section 386.250.

(6) "Incremental cost" means the cost of an applicant's project less a baseline cost that would otherwise be incurred by an applicant in the normal course of business. Incremental costs may include added lease or fuel costs as well as additional capital costs.

(7) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(8) "Nonattainment area" means an area so designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended.

(9) "Plan" means the Texas emissions reduction plan.

(10) "Site" means the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control of the same person or persons under common control.

(10-a) "Stationary engine" means a machine used in a nonmobile application that converts fuel into mechanical motion, including turbines and other internal combustion devices.

(11) "Utility commission" means the Public Utility Commission of Texas.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 22, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 14, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(b-2), eff. August 30, 2017.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-2)(1), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 127 (H.B. 1627), Sec. 1, eff. May 23, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.01, eff. September 1, 2021.

Sec. 386.002. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 3, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.01, eff. June 8, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 15, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(c), eff. August 30, 2017.

SUBCHAPTER B. TEXAS EMISSIONS REDUCTION PLAN

Sec. 386.051. TEXAS EMISSIONS REDUCTION PLAN. (a) The utility commission, the commission, and the comptroller shall establish and administer the Texas emissions reduction plan in accordance with this chapter.

(b) Under the plan, the commission and the comptroller shall provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C, including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D;

(3) the air quality research support program established under Chapter 387;

(4) the clean school bus program established under Chapter 390;

(5) the new technology implementation grant program established under Chapter 391;

(6) the regional air monitoring program established under

Section 386.252(a);

(7) a health effects study as provided by Section 386.252(a);

(8) air quality planning activities as provided by Section 386.252(d);

(9) a contract with the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station for computation of creditable statewide emissions reductions as provided by Section 386.252(a);

(10) the Texas clean fleet program established under Chapter 392;

(11) the Texas alternative fueling facilities program established under Chapter 393;

(12) the Texas natural gas vehicle grant program established under Chapter 394;

(13) other programs the commission may develop that lead to reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds in a nonattainment area or affected county;

(14) other programs the commission may develop that support congestion mitigation to reduce mobile source ozone precursor emissions;

(15) the seaport and rail yard areas emissions reduction program established under Subchapter D-1;

(16) conducting research and other activities associated with making any necessary demonstrations to the United States Environmental Protection Agency to account for the impact of foreign emissions or an exceptional event;

(17) studies of or pilot programs for incentives for port authorities located in nonattainment areas or affected counties as provided by Section 386.252(a);

(18) the governmental alternative fuel fleet grant program established under Chapter 395;

(19) remittance of funds to the state highway fund for use by the Texas Department of Transportation for congestion mitigation and air quality improvement projects in nonattainment areas and affected counties; and

(20) the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G.

(b-1) Under the plan, the commission may establish and administer other programs, including other grants or funding

programs, as determined by the commission to be necessary or effective in fulfilling its duties and achieving the objectives described under Section 386.052. The commission may apply the criteria and requirements applicable to the programs under Subsection (b) to programs established under this subsection, or the commission may establish separate criteria and requirements as necessary to achieve the commission's objectives. The additional programs shall be consistent with and comply with all applicable laws, regulations, and guidelines pertaining to the use of state funds, the awarding and administration of grants and contracts, and achieving reductions in ozone precursors or particulate matter. Under this subsection, the commission may place a priority on programs that address the following goals:

(1) reduction of emissions of oxides of nitrogen or particulate matter from heavy-duty on-road vehicles and non-road equipment, including drayage vehicles, locomotives, and marine vessels, at seaport facilities or servicing seaport facilities in nonattainment areas; and

(2) reduction of emissions from the operation of drilling, production, completions, and related heavy-duty on-road vehicles or non-road equipment in oil and gas production fields where the commission determines that the programs can help prevent that area or an adjacent area from being in violation of national ambient air quality standards.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1230, Sec. 25(1), eff. June 14, 2013.

(d) Equipment purchased before September 1, 2001, is not eligible for a grant or other funding under the plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 3, eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 1, eff.

June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(1), eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(c-1), eff. August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 1, eff. September 1, 2023.

Sec. 386.0515. AGRICULTURAL PRODUCT TRANSPORTATION PROJECTS. (a) In this section:

(1) "Agricultural product transportation" means the transportation of a raw agricultural product from the place of production using a heavy-duty truck to:

(A) a nonattainment area;

(B) an affected county;

(C) a destination inside the clean transportation zone; or

(D) a county adjacent to a county described by Paragraph (B) or that contains an area described by Paragraph (A) or (C).

(2) "Clean transportation zone" has the meaning assigned by Section 393.001.

(b) Notwithstanding other eligibility requirements, the commission shall by rule or policy provide specific eligibility requirements under the Texas Clean Fleet Program established under Chapter 392 and under the Texas natural gas vehicle grant program established under Chapter 394, as added by Chapter 892 (Senate Bill No. 385), Acts of the 82nd Legislature, Regular Session, 2011, for projects relating to agricultural product transportation.

(c) The determining factor for eligibility for participation in a program established under Chapter 392 or 394 for a project relating to agricultural product transportation is the overall accumulative net reduction in emissions of oxides of nitrogen in a nonattainment area, an affected county, or the clean transportation zone.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 2, eff. June 14, 2013.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(c-2), eff. August 30, 2017.

Sec. 386.052. COMMISSION DUTIES. (a) In administering the plan established under this chapter and in accordance with the requirements of this chapter, the commission:

(1) shall:

(A) manage plan funds and oversee the plan;

(B) produce guidelines, protocols, and criteria for eligible projects;

(C) develop methodologies for evaluating project cost-effectiveness;

(D) prepare reports regarding the progress and effectiveness of the plan; and

(E) take all appropriate and necessary actions so that emissions reductions achieved through the plan are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan; and

(2) may hire staff and consultants needed to complete the commission's duties under this section and ensure timely review of applications and reimbursement of grant applicants' eligible project costs.

(b) Appropriate commission objectives include:

(1) achieving maximum reductions in oxides of nitrogen to demonstrate compliance with the state implementation plan;

(2) preventing areas of the state from being in violation of national ambient air quality standards;

(3) achieving cost-saving and multiple benefits by reducing emissions of other pollutants;

(4) achieving reductions of emissions of diesel exhaust from school buses; and

(5) advancing new technologies that reduce oxides of nitrogen and other emissions from facilities and other stationary sources.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 2, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.02, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 6, eff. September 1, 2009.

Sec. 386.053. GUIDELINES AND CRITERIA. (a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) Guidelines must include protocols to calculate projected emissions reductions, project cost-effectiveness, and safeguards to ensure that funded projects generate emissions reductions not otherwise required by state or federal law.

(c) The commission shall make draft guidelines and criteria available to the public and the United States Environmental Protection Agency before the 30th day preceding the date of final adoption and shall hold at least one public meeting to consider public comments on the draft guidelines and criteria before final adoption. The public meeting shall be held in the affected state implementation plan area, and if the guidelines affect more than one state implementation plan area, a public meeting shall be held in each affected state implementation plan area affected by the guidelines.

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may include, among other changes, adding additional pollutants, adding stationary engines or engines used in stationary applications, adding vehicles and equipment that use fuels other than diesel, or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 30th day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

(e) Because the legislature finds that the current state of air quality in the state jeopardizes the state's ability to meet federal

air quality requirements, the commission and the comptroller may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

(f) Except as provided by Subsection (e), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.03, eff. June 8, 2007.

Sec. 386.054. MONITORING PROCEDURES. (a) The commission shall develop procedures for monitoring whether the emissions reductions projected for projects awarded grants under this chapter are actually achieved. Monitoring procedures may include project reviews and contract requirements that the grant recipient provide information semiannually about the project. If the commission requires an annual report, the report shall contain a minimum amount of information required from a recipient and the report format shall be simple and convenient.

(b) Monitoring and reviewing procedures must be sufficient to enable emissions reductions generated by funded projects to be fully credited to air quality plans.

(c) The commission may revise monitoring and review procedures from time to time as necessary or appropriate to enhance the effectiveness of the plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.055. AVAILABILITY OF EMISSIONS REDUCTION CREDITS GENERALLY. (a) A project funded under a program established under this chapter may not be used for credit under any state or federal

emissions reduction credit averaging, banking, or trading program.

(b) An emissions reduction generated by a program established under this chapter:

(1) may not be used as a marketable emissions reduction credit or, except as provided by Section 386.056, to offset any emissions reduction obligation; and

(2) may be used to demonstrate conformity with the state implementation plan.

(c) A project involving a new emissions reduction measure that would otherwise generate marketable credits under state or federal emissions reduction credit averaging, banking, or trading programs is not eligible for funding under a program established under this chapter unless:

(1) the project includes the transfer of the reductions that would otherwise be marketable credits to the state implementation plan or the owner or operator as provided by Section 386.056; and

(2) the reductions are permanently retired.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.056. AVAILABILITY OF EMISSIONS REDUCTIONS IN CERTAIN NONATTAINMENT AREAS. (a) An owner or operator of a site located in the Houston-Galveston or Dallas-Fort Worth nonattainment area may use emissions reductions generated by a program established under this chapter to offset the requirements of commission rules relating to control of air pollution from oxides of nitrogen if:

(1) the owner or operator of the site contributes to the fund $75,000 for each ton of emissions that is used, not to exceed 25 tons annually and not to exceed one-half ton per day;

(2) the owner or operator of the site demonstrates to the commission's satisfaction that the site will be in full compliance with the commission's emissions reduction rules not later than the fifth anniversary of the date on which the emissions reductions would otherwise be required;

(3) emissions from the site are reduced by at least 80 percent from the established baseline; and

(4) the commission approves a petition by the owner or

operator that demonstrates that it is technically infeasible to comply with the commission's emissions reduction requirements above 80 percent.

(b) Funds collected under this section shall be used to generate emissions reductions needed to meet the commission's attainment demonstration.

(c) The commission shall verify that emissions reductions generated from funds collected under this section occur in the same nonattainment area in which the site that purchased the emissions reductions is located.

(d) The commission shall assure that the emissions reductions funded under the programs authorized by this subchapter used to offset commission requirements under this section benefit the community in which the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. In this subsection, "community" means a justice of the peace precinct.

(e) The commission shall assure that emission reduction credits may be received in the Houston-Galveston nonattainment area for energy efficiency and urban heat island programs in connection with the State Implementation Plan for the eight-hour ozone standard.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 2, eff. September 1, 2005.

Sec. 386.057. REVIEW AND REPORTING REQUIREMENTS. (a) The commission annually shall review programs established under the plan, including each project funded under the plan, the amount granted for the project, the emissions reductions attributable to the project, and the cost-effectiveness of the project.

(b) Not later than December 1, 2002, and not later than December 1 of each subsequent second year, the commission shall publish and submit to the legislature a biennial plan report. The report must include:

(1) the information included in the annual reviews

conducted under Subsection (a);

(2) specific information for individual projects as required by Subsection (c);

(3) information contained in reports received under Sections 386.205, 388.003(e), 388.006, and 391.104; and

(4) a summary of the commission's activities under Section 386.052.

(c) For projects funded as part of the infrastructure program under Subchapter C, the report must:

(1) describe and evaluate:

(A) the infrastructure facilities funded under that subchapter;

(B) the degree to which the funded facilities are supporting on-road or non-road diesel projects;

(C) the amount of fuel or electricity dispensed for each facility; and

(D) associated emissions reductions and cost-effectiveness; and

(2) make a finding regarding the need for additional appropriations from the account to improve the ability of the program to achieve its goals.

(d) The report must:

(1) account for money received, money disbursed as grants, money reserved for grants based on project approvals, and any recommended transfer of money between allocations and must estimate future demand for grant funds under the plan;

(2) describe the overall effectiveness of the plan in delivering the emissions reductions that may be credited to air quality plans;

(3) evaluate the effectiveness of the plan in soliciting and evaluating project applications, providing awards in a timely manner, and monitoring project implementation;

(4) describe adjustments made to project selection criteria and recommend any further needed changes or adjustments to the grant programs, including changes in grant award criteria, administrative procedures, or statutory provisions that would enhance the plan's effectiveness and efficiency;

(5) describe adjustments made to the maximum cost-effectiveness amount and award amount;

(6) evaluate the benefits of addressing additional

pollutants as part of the plan; and

(7) include legislative recommendations necessary to improve the effectiveness of the plan.

(e) Not later than October 1 of each year, the Texas Department of Transportation shall report to the commission the following information for all congestion mitigation and air quality improvement projects in nonattainment areas and affected counties that are planned to be funded, or received initial funding during the preceding 10 years, from money received by the department under this chapter:

(1) projects to mitigate congestion and improve air quality that are currently planned;

(2) projects to mitigate congestion and improve air quality that have been completed;

(3) estimated emissions reductions for all planned and completed congestion mitigation projects; and

(4) estimated cost per ton analysis of reduced emissions of nitrogen oxides, particulate matter, or volatile organic compounds for each congestion mitigation project planned or completed.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 22, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(d), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.02, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. DIESEL EMISSIONS REDUCTION INCENTIVE PROGRAM

Sec. 386.101. DEFINITIONS. In this subchapter:

(1) "Cost-effectiveness" means the total dollar amount expended divided by the total number of tons of oxides of nitrogen emissions reduction attributable to that expenditure. Cost-

effectiveness for the program as a whole and for particular projects under the program is calculated as provided by Sections 386.105 and 386.106.

(2) "Fuel cell" means an electrochemical device that uses fuel and oxidant to continuously generate electricity.

(3) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

(4) "Non-road diesel" means a vehicle or piece of equipment, excluding a motor vehicle or on-road diesel, that is powered by a non-road engine, including:

(A) non-road nonrecreational equipment and vehicles;

(B) construction equipment;

(C) locomotives;

(D) marine vessels; and

(E) other high-emitting diesel engine categories established by the commission.

(5) "Non-road engine" means an internal combustion engine that is:

(A) in or on a piece of equipment that is self-propelled or that propels itself and performs another function, excluding a vehicle that is used solely for competition;

(B) in or on a piece of equipment that is intended to be propelled while performing its function; or

(C) designed to be and capable of being carried or moved from one location to another.

(6) "On-road diesel" means an on-road diesel-powered motor vehicle that has a gross vehicle weight rating of 8,500 pounds or more.

(7) "Program" means the diesel emissions reduction incentive program established under this subchapter.

(8) "Qualifying fuel" includes any liquid or gaseous fuel or additives registered or verified by the United States Environmental Protection Agency that is ultimately dispensed into a motor vehicle or on-road or non-road diesel that provides reductions of emissions of oxides of nitrogen beyond reductions required by state or federal law.

(9) "Repower" means to replace an old engine powering an on-road or non-road diesel with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells.

(10) "Retrofit" means to equip an engine and fuel system with new emissions-reducing parts or technology verified by the United States Environmental Protection Agency after manufacture of the original engine and fuel system.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 3, eff. June 20, 2003.

Sec. 386.102. PROGRAM. (a) The commission shall establish and administer a diesel emissions reduction incentive program. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting diesel sources in nonattainment areas and affected counties of the state. The commission shall determine the eligibility of projects.

(b) Projects that may be considered for a grant under the program include:

(1) purchase or lease of on-road or non-road diesels;

(2) emissions-reducing retrofit projects for on-road or non-road diesels;

(3) emissions-reducing repower projects for on-road or non-road diesels;

(4) purchase and use of emissions-reducing add-on equipment for on-road or non-road diesels;

(5) development and demonstration of practical, low-emissions retrofit technologies, repower options, and advanced technologies for on-road or non-road diesels with lower emissions of oxides of nitrogen;

(6) use of qualifying fuel;

(7) implementation of infrastructure projects; and

(8) replacement of on-road or non-road diesels with newer on-road or non-road diesels.

(c) A project listed in Subsection (b) is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in

equipment, vehicles, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of an on-road diesel or equipment required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(e) To improve the success of the program the commission:

(1) shall establish cost-effective limits for grants awarded under the program to an owner or operator of a locomotive or marine vessel that are lower than the cost-effectiveness limits applied to other emissions reductions grants;

(2) shall determine the maximum amount of reductions available from the locomotive and marine sectors and develop strategies to facilitate the maximum amount of reductions in these sectors; and

(3) shall include in the report required by Section 386.057(b) that is due not later than December 1, 2006, an analysis of the cost-effectiveness of the grants in these sectors.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 4, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 6, eff. September 1, 2005.

Sec. 386.103. APPLICATION FOR GRANT. (a) Any person as defined by Section 382.003 that owns one or more on-road or non-road diesels that operate primarily within a nonattainment area or affected county of this state or that otherwise contributes to the state inventory of emissions of oxides of nitrogen may apply for a grant under the program. The commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant in order to improve the ability of the program to achieve its goals.

(b) An application for a grant under this subchapter must be made on an application provided by the commission and must contain information required by the commission, including:

(1) a detailed description of the proposed project;

(2) information necessary for the commission to determine whether the project meets eligibility requirements for the type of project proposed, including a statement of the amounts of any other public financial assistance the project will receive; and

(3) other information the commission may require.

(c) To reduce the administrative burden for the commission and applicants, the commission may streamline the application process by:

(1) reducing data entry and the copying and recopying of applications; and

(2) developing, maintaining, and periodically updating a system to accept applications electronically through the commission's Internet website.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 5, eff. June 20, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(d-1), eff. August 30, 2017.

Sec. 386.104. ELIGIBILITY REQUIREMENTS. (a) The commission shall establish criteria for setting priorities for projects eligible to receive grants under this subchapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project as described in Section 386.102 must meet the requirements of this section to be eligible for a grant under the program.

(c) Except as otherwise provided by this subsection, for a proposed project as described by Section 386.102(b), not less than 75 percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may set the minimum percentage of vehicle miles traveled or hours of operation required to take place in a nonattainment area or affected county at a percentage and for a period that is different from the percentage and period specified by this subsection, provided that the commission may not set the minimum percentage at a level that is less than 55 percent. The commission may allow vehicle travel on highways and roadways, or portions of a

highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement in this subsection.

(c-1) For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to a nonattainment area or affected county of this state for a sufficient percentage of time over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105. The percentage determined by the commission under this subsection may not be less than 55 percent.

(c-2) For a proposed project involving non-road equipment used for natural gas recovery purposes, the equipment must be operated in a nonattainment area or affected county for a sufficient amount of use over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105.

(d) Each proposed project must meet the cost-effectiveness requirements of Sections 386.105 and 386.106.

(e) A proposed repower project must exceed commission requirements relating to baseline emissions levels of the engines being replaced under the project.

(f) A proposed retrofit, repower, replacement, or add-on equipment project must document, in a manner acceptable to the commission, a reduction in emissions of oxides of nitrogen of at least 30 percent compared with the baseline emissions adopted by the commission for the relevant engine year and application. After study of available emissions reduction technologies and after public notice and comment, the commission may revise the minimum percentage reduction in emissions of oxides of nitrogen required by this subsection to improve the ability of the program to achieve its goals.

(f-1) The commission may establish minimum percentage reduction standards alternative to the standards established under Subsection (f) as an incentive for the conversion of heavy-duty diesel on-road vehicle engines or non-road engines to operate under a dual-fuel configuration that uses natural gas and diesel fuels through an alternative fuel conversion system certified by the United States Environmental Protection Agency or the California Air Resources Board. In determining the emissions rate of the converted vehicle

and engine to compute the emissions reductions that can be attributed to the conversion system, the commission may take into account whether the emissions certification requirements for the conversion system prevent fully accounting for the emissions reductions. If the commission determines it to be necessary and appropriate, the commission may consider under this subsection certified engine test information that demonstrates reductions of emissions of nitrogen oxides and other pollutants and other information to verify the emissions reductions.

(g) If a baseline emissions standard does not exist for on-road or non-road diesels in a particular category, the commission, for purposes of this subchapter, shall establish an appropriate baseline emissions level for comparison purposes.

(h) The commission may approve payments to offset the incremental cost, over the expected lifetime of the motor vehicle or on-road or non-road diesel, of the use of qualifying fuel in a motor vehicle or on-road or non-road diesel if the proposed project as a whole, including the incremental fuel cost, meets the requirements of this subchapter. The commission shall develop an appropriate method for converting incremental fuel costs over the lifetime of the motor vehicle or on-road or non-road diesel into an initial cost for purposes of determining cost-effectiveness as required by Section 386.105.

(i) If the commission determines that a heavy-duty motor vehicle or engine under this chapter must be decommissioned, the commission shall require the decommissioning to be carried out by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall provide a means for an applicant to propose an alternative method for complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(j) The executive director may waive any eligibility requirements established under this section on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

(k) The commission shall consider an application under this chapter for the replacement of a vehicle that has been owned, leased,

or otherwise commercially financed by the applicant. If the commission determines that a heavy-duty motor vehicle or engine that is leased or otherwise commercially financed must be decommissioned, the commission shall ensure that the applicant has a legal right to decommission the vehicle or engine before awarding a grant to the applicant.

(l) The commission shall consider an application for a vehicle replacement or a fleet expansion for a project with an activity life of five years or more, or 400,000 miles, whichever is earlier.

(m) The commission shall provide a form that minimizes, to the maximum extent possible, the amount of paperwork required.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 6, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.04, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 835 (H.B. 3399), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 4, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(d-2), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 766 (H.B. 1346), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 3, eff. September 1, 2021.

Sec. 386.105. CALCULATION OF COST-EFFECTIVENESS. (a) In calculating cost-effectiveness, one-time grants of money at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project by the commission, taking into account the interest rate on bonds, interest earned by state funds, and other factors the commission considers appropriate.

(b) The commission shall establish reasonable methodologies for

evaluating project cost-effectiveness consistent with Subsection (a) and with accepted methods.

(c) The commission shall develop protocols for calculating oxides of nitrogen emissions reductions not otherwise required by state or federal law in nonattainment areas and affected counties of this state from representative project types over the life of the projects.

(d) The commission may include in cost-effectiveness determinations only reductions in oxides of nitrogen emissions that are achieved in nonattainment areas and affected counties of this state.

(e) The commission may allow for the apportionment of credits associated with a project between the plan and another program or entity if the part of the credit assigned to the program that is part of the plan still meets any applicable cost-effectiveness criteria.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 7, eff. June 20, 2003.

Sec. 386.106. COST-EFFECTIVENESS CRITERIA; DETERMINATION OF GRANT AMOUNT. (a) Except as otherwise provided by statute, the commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) The commission shall adopt guidelines for capitalizing incremental lease costs so those costs may be offset by a grant under this subchapter.

(c) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on equipment project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.05, eff. June 8, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 5, eff. June 14, 2013.

Sec. 386.107. ADJUSTMENT TO MAXIMUM COST-EFFECTIVENESS AMOUNT AND AWARD AMOUNT. After study of available emissions reduction technologies and costs and after public notice and comment, the commission may change the values of the maximum grant award criteria established in Section 386.106 to account for inflation or to improve the ability of the program to achieve its goals.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e), eff. August 30, 2017.

Sec. 386.108. INFRASTRUCTURE PROJECTS. (a) The commission shall provide funding under Section 386.252(a) for infrastructure projects.

(b) To implement the requirement of Subsection (a), the commission shall:

(1) solicit applications for a balanced mix of projects involving fueling and electrification infrastructure that is linked to motor vehicle and on-road and non-road diesel projects and consistent with program goals;

(2) coordinate infrastructure projects with motor vehicle and on-road and non-road diesel projects representing a broad range of fuels, technologies, and applications as appropriate and consistent with the goals of this chapter;

(3) adopt guidelines and criteria for infrastructure projects to be funded under the program; and

(4) oversee, monitor, and evaluate the use of grants awarded under this program and report on the effectiveness of this grant program in relation to the purposes and goals of this chapter.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 2, eff.

September 1, 2011.

Sec. 386.109. ELIGIBLE INFRASTRUCTURE PROJECTS. (a) The commission may consider for funding under Section 386.108:

(1) the purchase and installation at a site of equipment that is designed primarily to dispense qualifying fuel, other than standard gasoline or diesel, or the purchase of on-site mobile fueling equipment;

(2) infrastructure projects, including auxiliary power units, designed to dispense electricity to:

(A) motor vehicles;

(B) on-road and non-road diesels; and

(C) marine vessels;

(3) a project that involves a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine; and

(4) a project to reduce air pollution and engine idling by relieving congestion through rail relocation or improvement at a rail intersection that is located in a nonattainment or near nonattainment area.

(b) The commission may provide funding to other state agencies to implement projects under Subsection (a)(3), including funding for the lease, purchase, or installation of idle reduction technologies and facilities at rest areas and other public facilities on major highway transportation routes located in areas eligible for funding or for marine vessels operating on water routes eligible for funding. Funding under this subsection may include reasonable operational costs determined by the commission to be needed for the initial start-up and proper operation of the idle reduction technologies. The state agency leasing, owning, or operating the idle reduction facility constructed with funds provided under this subsection may, but is not required to, charge reasonable fees for the provision of idle reduction services provided that those fees are used to directly offset the cost of providing the services.

(c) In evaluating a request for funding of an eligible infrastructure project, the commission shall encourage the use of a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the

vehicle's internal combustion engine at the state's ports and border crossings in affected areas.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.06, eff. June 8, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1165 (H.B. 160), Sec. 2, eff. June 15, 2007.
Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.012, eff. September 1, 2009.

Sec. 386.110. APPLICATION PACKAGE FOR INFRASTRUCTURE PROJECTS. (a) The commission shall develop a simple, standardized application package for infrastructure project grants under this subchapter. The package must include:

(1) an application form;

(2) a brief description of:

(A) the program;

(B) the projects that are eligible for available funding;

(C) the selection criteria and evaluation process; and

(D) the required documentation;

(3) the name of a person or office to contact for more information;

(4) an example of the contract that an applicant will be required to execute before receiving a grant; and

(5) any other information the commission considers useful to inform the applicant and expedite the application process.

(b) The application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required.

(c) The commission may not require an applicant, as part of the application process, to calculate tons of emissions reduced or cost-effectiveness.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.111. APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this subchapter, including an application for a grant for an infrastructure project, immediately on receipt of the application. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.

(b) The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny an application for a project that does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.

(d) Subject to availability of funds, the commission shall award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions or underachievement in dispensing qualifying fuel compared with the volume of emissions reductions or amount of fuel dispensed that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this subchapter.

(e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 7, eff. September 1, 2005.

Sec. 386.112. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE. (a) The commission shall develop a purchase or lease incentive program for new on-road diesels and shall adopt rules necessary to implement the program and to reimburse a purchaser or lessee of a new on-road diesel that is eligible for reimbursement of incremental costs under this subchapter.

(b) The program shall authorize statewide incentives for the reimbursement of incremental costs for the purchase or lease, according to the schedule provided by Section 386.113, of new on-road diesels that are certified by the United States Environmental Protection Agency or the California Air Resources Board to an emissions standard provided by Section 386.113 if the purchaser or lessee of the on-road diesel agrees to register the vehicle in this state and to operate the on-road diesel in this state for not less than 75 percent of the on-road diesel's annual mileage.

(c) Only one incentive will be provided for each new on-road diesel. The incentive shall be provided to the purchaser if the on-road diesel is not purchased for the purpose of leasing the on-road diesel to another person, or to the lessee and not to the purchaser if the on-road diesel is purchased for the purpose of leasing the on-road diesel to another person. A lease incentive for a new on-road diesel shall be prorated based on an eight-year lease term.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 9, eff. June 20, 2003.

Sec. 386.113. ON-ROAD DIESEL PURCHASE OR LEASE INCENTIVE SCHEDULE. A new on-road diesel is eligible for reimbursement of incremental costs according to the following schedule:

Incentive emissions standard (oxides of nitrogen)		Reimbursement amount
Date of manufacture (2001)	Date of manufacture (10/1/02-9/30/06)	
2.5 g/bhp-hr NOx	1.2 g/bhp-hr NOx	up to $15,000
1.5 g/bhp-hr NOx	0.5 g/bhp-hr NOx	up to $25,000

0.0 g/bhp-hr NOx	0.0 g/bhp-hr NOx	up to $25,000

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 386.114. MODIFICATION OF INCENTIVE EMISSIONS STANDARDS. After evaluating new technologies and after public notice and comment, the commission may change the incentive emissions standards established by Section 386.113 to improve the ability of the program to achieve its goals.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e), eff. August 30, 2017.

Sec. 386.115. MODIFICATION OF VEHICLE ELIGIBILITY. After evaluating the availability of vehicles meeting the emissions standards and after public notice and comment, the commission may expand the program to include other on-road vehicles, regardless of fuel type used, that meet the emissions standards, have a gross vehicle weight rating of greater than 8,500 pounds, and are purchased or leased in lieu of a new on-road diesel.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 10, eff. June 20, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e), eff. August 30, 2017.

Sec. 386.116. SMALL BUSINESS INCENTIVES. (a) In this section, "small business" means a business owned by a person who:

(1) owns and operates not more than five vehicles, one of which is:

(A) an on-road diesel; or

(B) a non-road diesel; and

(2) has owned the vehicle described by Subdivision (1)(A)

or (B) for more than two years.

(b) The commission shall develop a method of providing fast and simple access to grants under this subchapter for a small business. The method must:

(1) create a separate small business grant program; or

(2) require the commission to give special consideration to small businesses when implementing another program established under this subchapter.

(c) The commission shall publicize and promote the availability of grants under this subchapter for small businesses to encourage the use of vehicles that produce fewer emissions.

(d) The commission shall include in the biennial plan report required by Section 386.057(b) a report of commission actions and results under this section.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 10, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 8, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-1), eff. August 30, 2017.

Sec. 386.117. REBATE GRANTS. (a) The commission shall adopt a process for awarding grants under this subchapter in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for certain projects. The process adopted under this section must:

(1) designate certain types of projects, such as repowers, replacements, and retrofits, as eligible for rebates;

(2) project standardized oxides of nitrogen emissions reductions for each designated project type;

(3) assign a standardized rebate amount for each designated project type;

(4) allow for processing rebates on an ongoing first-come, first-served basis; and

(5) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(b) The commission may limit or expand the designated project types as necessary to further the goals of the program.

(c) The commission may award rebate grants as a pilot project for a specific region or may award the grants statewide.

(d) The commission may administer the rebate grants or may designate another entity to administer the grants.

(e) The commission shall:

(1) investigate the requirements for establishing an Internet-based application process for rebate grants and report those requirements to the legislature not later than December 31, 2007; or

(2) implement an Internet-based application process for rebate grants not later than June 1, 2008.

(f) The commission or its designee shall notify potential applicants of any changes to the rebate grant process by its e-mail list service and posting those changes on its Internet website at least 30 days before the changes become effective.

Added by Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 9, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.07, eff. June 8, 2007.

SUBCHAPTER D. MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM

Sec. 386.151. DEFINITIONS. In this subchapter:

(1) "Light-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of less than 10,000 pounds.

(2) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.152. APPLICABILITY. The provisions of this subchapter relating to a lessee do not apply to a person who rents or leases a light-duty motor vehicle for a term of 30 days or less.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2),

eff. August 30, 2017.

Sec. 386.153. COMMISSION DUTIES REGARDING LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE PROGRAM. (a) The commission shall develop a purchase or lease incentive program for new light-duty motor vehicles and shall adopt rules necessary to implement the program.

(b) The program shall authorize statewide incentives for the purchase or lease of new light-duty motor vehicles powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drives for a purchaser or lessee who agrees to register and operate the vehicle in this state for a minimum period of time to be established by the commission.

(c) Only one incentive will be provided for each new light-duty motor vehicle. The incentive shall be provided to the lessee and not to the purchaser if the motor vehicle is purchased for the purpose of leasing the vehicle to another person.

(d) The commission by rule may revise the standards for the maximum unloaded vehicle weight rating and gross vehicle weight rating of an eligible vehicle to ensure that all of the vehicle weight configurations available under one general vehicle model may be eligible for an incentive.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.154. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE REQUIREMENTS. (a) A new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas is eligible for a $5,000 incentive if the vehicle:

(1) has four wheels;

(2) was originally manufactured to comply with and has been certified by an original equipment manufacturer or intermediate or final state vehicle manufacturer as complying with, or has been altered to comply with, federal motor vehicle safety standards, state emissions regulations, and any additional federal or state regulations applicable to vehicles powered by compressed natural gas or liquefied petroleum gas;

(3) was manufactured for use primarily on public streets, roads, and highways;

(4) has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system:

(A) installed prior to first sale or within 500 miles of operation of the vehicle following first sale; and

(B) with a range of at least 125 miles as estimated, published, and updated by the United States Environmental Protection Agency;

(5) has, as applicable, a:

(A) compressed natural gas fuel system that complies with the:

(i) 2013 NFPA 52 Vehicular Gaseous Fuel Systems Code; and

(ii) American National Standard for Basic Requirements for Compressed Natural Gas Vehicle (NGV) Fuel Containers, commonly cited as "ANSI/CSA NGV2"; or

(B) liquefied petroleum gas fuel system that complies with:

(i) the 2011 NFPA 58 Liquefied Petroleum Gas Code; and

(ii) Section VII of the 2013 ASME Boiler and Pressure Vessel Code; and

(6) was acquired on or after September 1, 2013, or a later date established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(b) If the commission determines that an updated version of a code or standard described by Subsection (a)(5) is more stringent than the version of the code or standard described by Subsection (a)(5), the commission by rule may provide that a vehicle for which a person applies for an incentive under Subsection (a) is eligible for the incentive only if the vehicle complies with the updated version of the code or standard.

(c) The incentive under Subsection (a) is limited to 1,000 vehicles for each state fiscal biennium.

(d) A new light-duty motor vehicle powered by an electric drive is eligible for a $2,500 incentive if the vehicle:

(1) has four wheels;

(2) was manufactured for use primarily on public streets,

roads, and highways;

(3) has not been modified from the original manufacturer's specifications;

(4) has a maximum speed capability of at least 55 miles per hour;

(5) is propelled to a significant extent by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that:

(A) has a capacity of not less than four kilowatt hours; and

(B) is capable of being recharged from an external source of electricity; and

(6) was acquired on or after September 1, 2013, or a later date as established by the commission, by the person applying for the incentive under this subsection and for use or lease by that person and not for resale.

(e) The incentive under Subsection (d) is limited to 2,000 vehicles for each state fiscal biennium.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.155. MANUFACTURER'S REPORT. (a) At the beginning of but not later than July 1 of each year preceding the vehicle model year, a manufacturer of motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems shall provide to the commission a list of the new vehicle or natural gas or liquefied petroleum gas systems models that the manufacturer intends to sell in this state during that model year that meet the incentive requirements established under Section 386.154. The manufacturer or installer may supplement the list provided to the commission under this section as necessary to include additional new vehicle models the manufacturer intends to sell in this state during the model year.

(b) The commission may supplement the information provided under Subsection (a) with additional information on available vehicle models, including information provided by manufacturers or installers of systems to convert new motor vehicles to operate on natural gas or liquefied petroleum gas before sale as a new vehicle or within 500

miles of operation of the vehicle following first sale.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.156. LIST OF ELIGIBLE MOTOR VEHICLES. (a) On August 1 of each year the commission shall publish a list of new motor vehicle models eligible for inclusion in an incentive under this subchapter. The commission shall publish supplements to that list as necessary to include additional new vehicle models.

(b) The commission shall publish the list of eligible motor vehicle models on the commission's Internet website.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.157. LIGHT-DUTY MOTOR VEHICLE PURCHASE OR LEASE INCENTIVE. (a) A person who purchases or leases a new light-duty motor vehicle described by Section 386.154 and listed under Section 386.156(a) is eligible to apply for an incentive under this subchapter.

(b) A lease incentive for a new light-duty motor vehicle shall be prorated based on a three-year lease term.

(c) To receive money under an incentive program provided by this subchapter, the purchaser or lessee of a new light-duty motor vehicle who is eligible to apply for an incentive under this subchapter shall apply for the incentive in the manner provided by law or by rule of the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.158. COMMISSION TO ACCOUNT FOR MOTOR VEHICLE PURCHASE OR LEASE INCENTIVES. (a) The commission by rule shall develop a method to administer and account for the motor vehicle purchase or lease incentives authorized by this subchapter and to pay incentive money to the purchaser or lessee of a new motor vehicle, on application of the purchaser or lessee as provided by this

subchapter.

(b) The commission shall develop and publish forms and instructions for the purchaser or lessee of a new motor vehicle to use in applying to the commission for an incentive payment under this subchapter. The commission shall make the forms available to new motor vehicle dealers and leasing agents. Dealers and leasing agents shall make the forms available to their prospective purchasers or lessees.

(c) The commission may require the submission of forms and documentation as needed to verify eligibility for an incentive under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.159. PURCHASE OR LEASE INCENTIVES INFORMATION. (a) The commission shall establish a toll-free telephone number available to motor vehicle dealers and leasing agents for the dealers and agents to call to verify that incentives are available. The commission may provide for issuing verification numbers over the telephone line.

(b) Reliance by a dealer or leasing agent on information provided by the commission is a complete defense to an action involving or based on eligibility of a vehicle for an incentive or availability of vehicles eligible for an incentive.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

Sec. 386.160. RESERVATION OF INCENTIVES. The commission may provide for dealers and leasing agents to reserve for a limited time period incentives for vehicles that are not readily available and must be ordered, if the dealer or leasing agent has a purchase or lease order signed by an identified customer.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(e-2), eff. August 30, 2017.

SUBCHAPTER D-1. SEAPORT AND RAIL YARD AREAS EMISSIONS REDUCTION PROGRAM

Sec. 386.181. DEFINITIONS; RULES. (a) In this subchapter:

(1) "Cargo handling equipment" means any heavy-duty non-road, self-propelled vehicle or land-based equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods.

(2) "Drayage truck" means a heavy-duty on-road or non-road vehicle that is used for drayage activities and that operates in or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(3) "Repower" means to replace an old engine powering a vehicle with a new engine, a used engine, a remanufactured engine, or electric motors, drives, or fuel cells.

(b) The commission may include more specific definitions in the rules or guidelines developed to implement the program established by this subchapter in order to reduce emissions in and around seaports in a nonattainment area.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(f-1), eff. August 30, 2017.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(f-2), eff. August 30, 2017.

Sec. 386.182. COMMISSION DUTIES. (a) The commission shall:

(1) develop a purchase incentive program to encourage owners to:

(A) replace older drayage trucks and cargo handling equipment with newer drayage trucks and cargo handling equipment; or

(B) repower drayage trucks and cargo handling equipment; and

(2) adopt guidelines necessary to implement the program described by Subdivision (1).

(b) The commission by rule and guideline shall establish criteria for the engines and the models of drayage trucks and cargo

handling equipment that are eligible for inclusion in an incentive program under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(g), eff. August 30, 2017.

Sec. 386.183. DRAYAGE TRUCK AND CARGO HANDLING EQUIPMENT PURCHASE INCENTIVE. (a) To be eligible for an incentive under this subchapter, a person must:

(1) purchase a replacement drayage truck, piece of cargo handling equipment, or engine that under Subsection (a-1)(1)(A) or (2)(A), as applicable, and the guidelines adopted by the commission under Section 386.182 is eligible for inclusion in the program for an incentive under this subchapter; and

(2) agree to:

(A) register the drayage truck in this state, if the replacement or repowered vehicle is an on-road drayage truck;

(B) operate the replacement or repowered drayage truck or cargo handling equipment in and within a maximum distance established by the commission of a seaport or rail yard in a nonattainment area of this state for not less than 50 percent of the truck's or equipment's annual mileage or hours of operation, as determined by the commission; and

(C) permanently remove the drayage truck, cargo handling equipment, or engine replaced under the program from operation in a nonattainment area of this state by destroying the engine in accordance with guidelines established by the commission and, if the incentive is for a replacement drayage truck or cargo handling equipment, scrapping the truck or equipment after the purchase of the replacement truck or equipment in accordance with guidelines established by the commission.

(a-1) To be eligible for purchase under this program:

(1) a drayage truck or cargo handling equipment must:

(A) be powered by an electric motor or contain an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission;

and

(B) emit oxides of nitrogen at a rate that is at least 25 percent less than the rate at which the truck or equipment being replaced under the program emits such pollutants; and

(2) an engine repowering a drayage truck or cargo handling equipment must:

(A) be an electric motor or an engine certified to the current federal emissions standards applicable to that type of engine, as determined by the commission; and

(B) emit oxides of nitrogen at a rate that is at least 25 percent less than the rate at which the former engine in the truck or equipment being repowered under the program emits such pollutants.

(b) To receive money under an incentive program provided by this subchapter, the purchaser of a drayage truck, piece of cargo handling equipment, or engine eligible for inclusion in the program must apply for the incentive in the manner provided by law, rule, or guideline of the commission.

(c) Not more than one incentive may be provided for each drayage truck or piece of cargo handling equipment purchased or repowered.

(d) An incentive provided under this subchapter may be used to fund not more than 80 percent of, as applicable, the purchase price of:

(1) the drayage truck or cargo handling equipment; or

(2) the engine and any other eligible costs associated with repowering the drayage truck or cargo handling equipment, as determined by the commission.

(e) The commission shall establish procedures to verify that a person who receives an incentive:

(1) has operated in a seaport or rail yard and owned or leased the drayage truck or cargo handling equipment to be replaced or repowered for at least two years prior to receiving the grant; and

(2) as applicable:

(A) after purchase of the replacement drayage truck or cargo handling equipment, permanently destroys the engine and scraps the truck or equipment replaced under the program in accordance with guidelines established by the commission; or

(B) after repowering the drayage truck or cargo handling equipment, permanently destroys the engine that was contained in the truck or equipment in accordance with guidelines

established by the commission.

(f) The commission may modify this program to improve its effectiveness or further the goals of Subchapter B.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 13, eff. June 14, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(g-1), eff. August 30, 2017.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(g-2), eff. August 30, 2017.

SUBCHAPTER E. EVALUATION OF UTILITY COMMISSION ENERGY EFFICIENCY PROGRAMS

Sec. 386.205. EVALUATION OF UTILITY COMMISSION ENERGY EFFICIENCY PROGRAMS. In cooperation with the laboratory, the utility commission shall provide an annual report to the commission that, by county, quantifies the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved from programs implemented under Section 39.905, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 15, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.28, eff. September 1, 2019.

SUBCHAPTER F. TEXAS EMISSIONS REDUCTION PLAN FUND AND ACCOUNT

Sec. 386.250. TEXAS EMISSIONS REDUCTION PLAN FUND. (a) The Texas emissions reduction plan fund is established as a trust fund outside the state treasury to be held by the comptroller and administered by the commission as trustee. Money in the fund may be spent without legislative appropriation and may be used only as provided by this chapter. Interest and other earnings on the balance of the fund shall be credited to the fund.

(b) The fund consists of:

(1) the amount of money deposited to the credit of the fund

under:

(A) Section 386.056;

(B) Sections 151.0515 and 152.0215, Tax Code; and

(C) Sections 501.138, 502.358, and 548.5055, Transportation Code; and

(2) grant money recaptured under Section 386.111(d) and Chapter 391.

(c) Not later than the 30th day after the last day of each state fiscal biennium, the commission shall transfer the unencumbered balance of the fund remaining on the last day of the state fiscal biennium to the credit of the state highway fund for use by the Texas Department of Transportation for projects described by Section 386.051(b)(19).

Added by Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.04, eff. September 1, 2021.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 4, eff. September 1, 2021.

Sec. 386.251. TEXAS EMISSIONS REDUCTION PLAN ACCOUNT. (a) The Texas emissions reduction plan account is an account in the state treasury.

(b) The account is administered by the commission for the benefit of the plan established under this chapter. The account is exempt from the application of Section 403.095, Government Code. Interest earned on the account shall be credited to the account.

(c) The account consists of its accumulated balance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.08, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1296 (H.B. 2357), Sec. 244, eff. January 1, 2012.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.05, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 5, eff. September 1, 2021.

Sec. 386.252. USE OF FUND AND ACCOUNT. (a) Money in the fund and account may be used only to implement and administer programs established under the plan. Subject to the reallocation of funds by the commission under Subsection (h) and after remittance to the state highway fund under Subsection (a-1), money from the fund and account to be used for the programs under Section 386.051(b) shall initially be allocated as follows:

(1) four percent may be used for the clean school bus program under Chapter 390;

(2) eight percent total may be used between the Texas hydrogen infrastructure, vehicle, and equipment grant program established under Subchapter G and the new technology implementation grant program under Chapter 391, from which at least $1 million will be set aside for electricity storage projects related to renewable energy and not more than $8 million may be used for the Texas hydrogen infrastructure, vehicle, and equipment grant program;

(3) five percent may be used for the Texas clean fleet program under Chapter 392;

(4) not more than $3 million may be used by the commission to fund a regional air monitoring program in commission Regions 3 and 4 to be implemented under the commission's oversight, including direction regarding the type, number, location, and operation of, and data validation practices for, monitors funded by the program through a regional nonprofit entity located in North Texas having representation from counties, municipalities, higher education institutions, and private sector interests across the area;

(5) 7.5 percent may be used for the Texas natural gas vehicle grant program under Chapter 394;

(6) not more than $6 million may be used for the Texas alternative fueling facilities program under Chapter 393, of which a specified amount may be used for fueling stations to provide natural gas fuel, except that money may not be allocated for the Texas alternative fueling facilities program for the state fiscal year ending August 31, 2019;

(7) not more than $750,000 may be used each year to support research related to air quality as provided by Chapter 387;

(8) not more than $200,000 may be used for a health effects study;

(9) at least $6 million but not more than 15 percent may be used by the commission for administrative costs, including all direct and indirect costs for administering the plan, costs for conducting outreach and education activities, and costs attributable to the review or approval of applications for marketable emissions reduction credits;

(10) six percent may be used by the commission for the seaport and rail yard areas emissions reduction program established under Subchapter D-1;

(11) 2.5 percent may be used for the light-duty motor vehicle purchase or lease incentive program established under Subchapter D;

(12) not more than $500,000 may be used by the commission to contract with the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station annually for the development and annual computation of creditable statewide emissions reductions for the state implementation plan that are obtained through:

(A) wind and other renewable energy resources;

(B) energy efficiency programs administered by the Public Utility Commission of Texas or the State Energy Conservation Office; or

(C) the implementation of advanced building energy codes;

(13) not more than $500,000 may be used for studies of or pilot programs for incentives for port authorities located in nonattainment areas or affected counties to encourage cargo movement that reduces emissions of nitrogen oxides and particulate matter; and

(14) the balance is to be used by the commission for the diesel emissions reduction incentive program under Subchapter C as determined by the commission.

(a-1) The commission shall remit not less than 35 percent of the amount deposited to the credit of the fund to the state highway fund for use by the Texas Department of Transportation for projects described by Section 386.051(b)(19).

(b) Money in the fund and account may be used by the commission for programs under Sections 386.051(b)(13), (b)(14), and (b-1).

(c) If the legislature does not specify amounts or percentages from the total appropriation to the commission to be allocated under Subsection (a) or (b), the commission shall determine the amounts of the total appropriation to be allocated under each of those subsections, such that the total appropriation is expended while maximizing emissions reductions.

(d) To supplement funding for air quality planning activities in affected counties, $500,000 from the fund is to be deposited annually in the state treasury to the credit of the clean air account created under Section 382.0622.

(e) Money in the fund and account may be used for administrative costs incurred by the Energy Systems Laboratory at the Texas A & M Engineering Experiment Station.

(f) Not more than $2.5 million from the fund and account may be used by the commission to conduct research and other activities associated with making any necessary demonstrations to the United States Environmental Protection Agency to account for the impact of foreign emissions or an exceptional event.

(g) The commission may use money from the fund and account to award grants under the governmental alternative fuel fleet grant program established under Chapter 395, except that the commission may not use for that purpose more than three percent of the balance of the fund as of September 1 of each state fiscal year of the biennium for the governmental alternative fuel fleet grant program in that fiscal year.

(h) Subject to the limitations outlined in this section, money allocated under this section to a particular program may be used for another program under the plan as determined by the commission, based on demand for grants for eligible projects under particular programs after the commission solicits projects to which to award grants according to the initial allocation provisions of this section.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 12, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 3, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 11, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 12, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 2.09, eff. June 8, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 23, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1232 (S.B. 1759), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 589 (S.B. 20), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 589 (S.B. 20), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.003(a), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 16, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 17, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 18, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 19, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(7), eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 25(8), eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(h), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.06, eff. September 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.07, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 6, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 2, eff. September 1, 2023.

SUBCHAPTER G. TEXAS HYDROGEN INFRASTRUCTURE, VEHICLE, AND EQUIPMENT GRANT PROGRAM

Sec. 386.301. DEFINITIONS. In this subchapter:

(1) "Hydrogen vehicle or equipment" means a heavy-duty motor vehicle or piece of heavy-duty equipment that uses hydrogen to operate the vehicle or equipment, including through the use of hydrogen fuel cells or an internal combustion engine that runs on hydrogen.

(2) "Program" means the Texas hydrogen infrastructure, vehicle, and equipment grant program established under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

Sec. 386.302. PROGRAM. (a) The commission shall establish and administer the Texas hydrogen infrastructure, vehicle, and equipment grant program to encourage the adoption of hydrogen infrastructure, vehicles, and equipment. Under the program, the commission shall provide funding for eligible projects to offset the incremental cost of projects that reduce emissions of oxides of nitrogen from high-emitting sources in nonattainment areas and affected counties of this state. The commission shall determine the eligibility of projects.

(b) Projects that may be considered for a grant under the program include:

(1) implementation of hydrogen infrastructure projects;

(2) purchase or lease of on-road or non-road hydrogen vehicles or equipment;

(3) replacement of on-road or non-road heavy-duty vehicles or equipment with newer on-road or non-road hydrogen vehicles or equipment; and

(4) the repower or conversion of on-road or non-road heavy-duty vehicles or equipment with a powertrain that runs on or is

powered by hydrogen.

(c) A project listed in Subsection (b) is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. This subsection does not apply to:

(1) an otherwise qualified project, regardless of the fact that the state implementation plan assumes that the change in vehicles, equipment, or operations will occur, if on the date the grant is awarded the change is not required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document; or

(2) the purchase of a hydrogen vehicle or equipment or facility required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

(d) The commission shall prioritize the awarding of grants under this subchapter in the following order:

(1) projects to replace on-road heavy-duty vehicles with newer on-road hydrogen vehicles;

(2) projects to purchase, lease, repower, or convert on-road heavy-duty vehicles with a powertrain that runs on or is powered by hydrogen;

(3) projects to implement hydrogen refueling infrastructure that will be accessible and available to the public at times designated by the grant contract;

(4) projects to replace non-road heavy-duty vehicles with newer non-road hydrogen vehicles; and

(5) projects to purchase, lease, repower, or convert non-road heavy-duty vehicles with a powertrain that runs on or is powered by hydrogen.

(e) Subject to Subsection (d), in awarding grants under this subchapter, the commission shall give preference to the most cost-effective projects that will result in the greatest reduction in emissions of oxides of nitrogen.

(f) The commission shall establish additional eligibility and prioritization criteria as needed to implement the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

Sec. 386.303. APPLICATION PACKAGE. (a) The commission shall develop a simple, standardized application package for grants under this subchapter. The package must include:

(1) an application form;

(2) a brief description of:

(A) the program;

(B) the projects that are eligible for available funding;

(C) the selection criteria and evaluation process; and

(D) the required documentation;

(3) the name of a person or office to contact for more information;

(4) an example of the contract that an applicant will be required to execute before receiving a grant; and

(5) any other information the commission considers useful to inform the applicant and expedite the application process.

(b) The application form shall require as much information as the commission determines is necessary to properly evaluate each project but shall otherwise minimize the information required.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

Sec. 386.304. APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this subchapter. If the commission determines that an application is incomplete, the commission shall notify the applicant with an explanation of what is missing from the application. The commission shall evaluate the completed application according to the appropriate project criteria. Subject to available funding, the commission shall make a final determination on an application as soon as possible.

(b) The commission shall make every effort to expedite the application review process and to award grants to qualified projects in a timely manner. To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny an application for a project that

does not meet the applicable project criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter and the goals of this chapter.

(d) Subject to availability of funds, the commission shall award a grant under this subchapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described in the recipient's grant application. The contract must incorporate provisions for recapturing grant money in proportion to any loss of emissions reductions compared with the volume of emissions reductions that was projected in awarding the grant. Grant money recaptured under the contract provision shall be deposited in the fund and reallocated for other projects under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 3, eff. September 1, 2023.

CHAPTER 387. AIR QUALITY RESEARCH SUPPORT PROGRAM

Sec. 387.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Program" means the air quality research support program established under this chapter.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 4, eff. Oct. 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 5, eff. September 1, 2011.

Sec. 387.002. AIR QUALITY RESEARCH SUPPORT PROGRAM. (a) The commission shall contract with a nonprofit organization or institution of higher education to establish and administer a program to support research related to air quality.

(b) The board of directors of a nonprofit organization establishing and administering the research program related to air quality under this chapter may not have more than 11 members, must include two persons with relevant scientific expertise to be

nominated by the commission, and may not include more than four county judges selected from counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas. The two persons with relevant scientific expertise to be nominated by the commission may be employees or officers of the commission, provided that they do not participate in funding decisions affecting the granting of funds by the commission to a nonprofit organization on whose board they serve.

(c) The commission shall provide oversight as appropriate for grants provided under the program established under this chapter.

(d) A nonprofit organization or institution of higher education shall submit to the commission for approval a budget for the disposition of funds granted under the program established under this chapter.

(e) A nonprofit organization or institution of higher education shall be reimbursed for costs incurred in establishing and administering the research program related to air quality under this chapter. Reimbursable administrative costs of a nonprofit organization or institution of higher education may not exceed 10 percent of the program budget.

(f) A nonprofit organization that receives grants from the commission under this chapter is subject to Chapters 551 and 552, Government Code.

Redesignated and amended from Health and Safety Code, Section 387.010 by Acts 2011, 82nd Leg., R.S., Ch. 28 (S.B. 527), Sec. 6, eff. September 1, 2011.

Sec. 387.008. ENVIRONMENTAL RESEARCH FUND. (a) The environmental research fund is an account in the general revenue fund. The fund consists of money from gifts, grants, or donations to the fund for designated or general use and from any other source designated by the legislature.

(b) Money in the environmental research fund may be used only by the commission for operations and projects under this chapter.

(c) Sections 403.095 and 404.071, Government Code, do not apply to the fund. Interest earned on the fund shall be credited to the fund.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1,

2001. Amended by Acts 2003, 78th Leg., ch. 29, Sec. 4, eff. May 14, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 11, eff. Oct. 20, 2003.

Sec. 387.009. ADVISORY COMMITTEES. The commission may appoint advisory committees as necessary or desirable to assist the commission in performing its duties under this chapter. An advisory committee may include representatives of industry, environmental groups, consumer groups, local governments, agriculture, the commission, the General Land Office, and the Railroad Commission of Texas. Any senator or representative desiring to do so may participate on any advisory committee appointed under this section. Members of an advisory committee are not entitled to compensation.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 12, eff. Oct. 20, 2003.

CHAPTER 388. TEXAS BUILDING ENERGY PERFORMANCE STANDARDS

Sec. 388.001. LEGISLATIVE FINDINGS. (a) The legislature finds that an effective building energy code is essential to:

(1) reducing the air pollutant emissions that are affecting the health of residents of this state;

(2) moderating future peak electric power demand;

(3) assuring the reliability of the electrical grid; and

(4) controlling energy costs for residents and businesses in this state.

(b) The legislature further finds that this state has a number of unique climate types, all of which require more energy for cooling than for heating, and that there are many cost-effective measures that can reduce peak energy use and reduce cooling and other energy costs in buildings.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 388.002. DEFINITIONS. In this chapter:

(1) "Affected county" has the meaning assigned by Section

386.001.

(2) "Building" has the meaning assigned by the International Building Code.

(3) "Code official" means an individual employed by a local jurisdiction to review construction plans and other documents, inspect construction, or administer and enforce building standards under this chapter.

(4) "Code-certified inspector" means an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International to have met minimum standards for interpretation and enforcement of requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings as adopted by the International Code Council.

(7) "International Energy Conservation Code" means the International Energy Conservation Code as adopted by the International Code Council.

(8) "Laboratory" means the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System.

(9) "Local jurisdiction" means the authority responsible for implementation and enforcement of local building codes.

(10) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(11) "Nonattainment area" has the meaning assigned by Section 386.001.

(12) "Single-family residential" means having the character of a detached one- or two-family dwelling or a multiple single-family dwelling not more than three stories high with separate means of egress, including the accessory structures of the dwelling.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

For expiration of Subsections (j) and (k), see Subsection (k).

Sec. 388.003. ADOPTION OF BUILDING ENERGY EFFICIENCY PERFORMANCE STANDARDS. (a) To achieve energy conservation in single-family residential construction, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2001, is adopted as the energy code in this state for single-family residential construction. On September 1, 2016, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2015, is adopted as the energy code in this state for single-family residential construction. On or after September 1, 2021, the State Energy Conservation Office may adopt and substitute for that energy code the latest published edition of the energy efficiency chapter of the International Residential Code, based on written findings on the stringency of the chapter submitted by the laboratory under Subsection (b-3). The office:

(1) may not adopt an edition under this subsection more often than once every six years; and

(2) by rule shall establish an effective date for an adopted edition that is not earlier than nine months after the date of adoption.

(b) To achieve energy conservation in all other residential, commercial, and industrial construction, the International Energy Conservation Code as it existed on May 1, 2001, is adopted as the energy code for use in this state for all other residential, commercial, and industrial construction. The State Energy Conservation Office may adopt and substitute for that energy code the latest published edition of the International Energy Conservation Code, based on written findings on the stringency of the edition submitted by the laboratory under Subsection (b-3). The office by rule shall establish an effective date for an adopted edition that is not earlier than nine months after the date of adoption.

(b-2) The State Energy Conservation Office by rule shall establish a procedure for persons who have an interest in the adoption of energy codes under Subsection (a) or (b) to have an opportunity to comment on the codes under consideration. The office shall consider persons who have an interest in adoption of those codes to include:

(1) commercial and residential builders, architects, and engineers;

(2) municipal, county, and other local government

authorities;

(3) environmental groups; and

(4) manufacturers of building materials and products.

(b-3) The laboratory shall:

(1) submit to the State Energy Conservation Office written findings on the stringency of the latest published edition of the International Residential Code energy efficiency provisions only if the date of the edition allows the office to adopt the edition under Subsection (a)(1);

(2) submit to the State Energy Conservation Office written findings on the stringency of the latest published edition of the International Energy Conservation Code not later than six months after publication of a new edition; and

(3) in developing the findings, consider the comments submitted under Subsection (b-2).

(c) A municipality shall establish procedures:

(1) for the administration and enforcement of the codes;

(2) to ensure that code-certified inspectors shall perform inspections and enforce the code in the inspectors' jurisdictions; and

(3) to track and report to the state energy conservation office on implementation of the codes.

(d) A municipality may establish procedures to adopt local amendments to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code. Notwithstanding the requirements of Subsection (e), a municipality located in an area defined by Section 388.002(11) or in an affected county may establish procedures to adopt local amendments to the Energy Rating Index Compliance Alternative or subsequent alternative compliance path as described by Subsection (j).

(e) Local amendments may not result in less stringent energy efficiency requirements in nonattainment areas and in affected counties than the energy efficiency chapter of the International Residential Code or International Energy Conservation Code. Local amendments must comply with the National Appliance Energy Conservation Act of 1987 (42 U.S.C. Sections 6291-6309), as amended. The laboratory, at the request of a municipality or county, shall determine the relative impact of proposed local amendments to an energy code, including whether proposed amendments are substantially equal to or less stringent than the unamended code. For the purpose

of establishing uniform requirements throughout a region, and on request of a council of governments, a county, or a municipality, the laboratory may recommend a climatically appropriate modification or a climate zone designation for a county or group of counties that is different from the climate zone designation in the unamended code. The laboratory shall:

(1) report its findings to the council, county, or municipality, including an estimate of any energy savings potential above the unamended code from local amendments; and

(2) annually submit a report to the commission:

(A) identifying the municipalities and counties whose codes are more stringent than the unamended code, and whose codes are equally stringent or less stringent than the unamended code; and

(B) quantifying energy savings and emissions reductions from this program for consideration in the state implementation plan for emissions reduction credit.

(f) Each municipality, and each county that has established procedures under Subsection (d), shall periodically review and consider revisions made by the International Code Council to the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code adopted after May 1, 2001.

(g) The laboratory shall have the authority to set and collect fees to perform certain tasks in support of the requirements in Sections 388.004, 388.007, and 388.008.

(h) Within the boundaries of an airport operated by a joint board created under Subchapter D, Chapter 22, Transportation Code, the constituent agencies of which are populous home-rule municipalities, the powers of a municipality under this section are exclusively the powers of the joint board.

(i) A building certified by a national, state, or local accredited energy efficiency program and determined by the laboratory to be in compliance with the energy efficiency requirements of this section may, at the option of the municipality, be considered in compliance. The United States Environmental Protection Agency's Energy Star Program certification of energy code equivalency shall be considered in compliance. A home energy rating system index utilizing Standard 301 of the American National Standard for the Calculation and Labeling of the Energy Performance of Dwelling and Sleeping Units using an Energy Rating Index, commonly cited as

ANSI/RESNET/ICC 301, as it existed on January 1, 2021, as described by Subsection (j) shall be considered in compliance provided that:

(1) the building meets the mandatory requirements of Section R406.2 of the 2018 International Energy Conservation Code; and

(2) the building thermal envelope is equal to or greater than the levels of efficiency and solar heat gain coefficient in Table R402.1.2 or Table R402.1.4 of the 2018 International Energy Conservation Code.

(j) For the purposes of this chapter, Standard 301 of the American National Standard for the Calculation and Labeling of the Energy Performance of Dwelling and Sleeping Units using an Energy Rating Index, commonly cited as ANSI/RESNET/ICC 301, as it existed on January 1, 2021, used to measure compliance for single-family residential construction that uses an energy rating index is as follows:

(1) for climate zone 2, an energy rating index of:

(A) 63 or lower from September 1, 2019, to August 31, 2022;

(B) 59 or lower on or after September 1, 2022;

(C) 57 or lower on or after September 1, 2025; and

(D) 55 or lower on or after September 1, 2028;

(2) for climate zone 3, an energy rating index of:

(A) 63 or lower from September 1, 2019, to August 31, 2022;

(B) 59 or lower on or after September 1, 2022;

(C) 57 or lower on or after September 1, 2025; and

(D) 55 or lower on or after September 1, 2028; and

(3) for climate zone 4, an energy rating index of:

(A) 67 or lower from September 1, 2019, to August 31, 2022;

(B) 63 or lower on or after September 1, 2022;

(C) 61 or lower on or after September 1, 2025; and

(D) 59 or lower on or after September 1, 2028.

(k) This subsection and Subsection (j) expire September 1, 2031.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 15, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.01, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 11, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.013, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 937 (H.B. 51), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 541 (H.B. 1736), Sec. 1, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 541 (H.B. 1736), Sec. 2(1), eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 541 (H.B. 1736), Sec. 2(2), eff. June 16, 2015.

Acts 2021, 87th Leg., R.S., Ch. 487 (H.B. 3215), Sec. 1, eff. September 1, 2021.

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. (a) For construction outside of the local jurisdiction of a municipality:

(1) a building certified by a national, state, or local accredited energy efficiency program shall be considered in compliance;

(2) a building with inspections from private code-certified inspectors using the energy efficiency chapter of the International Residential Code or International Energy Conservation Code shall be considered in compliance; and

(3) a builder who does not have access to either of the above methods for a building shall certify compliance using a form provided by the laboratory, enumerating the code-compliance features of the building.

(b) A builder shall retain until the third anniversary of the date on which compliance is achieved the original copy of any documentation that establishes compliance under this section. The builder on receipt of any compliance documentation shall provide a copy to the owner of the building.

(c) A single-family residence built in the unincorporated area of a county the construction of which was completed on or after September 1, 2001, but not later than August 31, 2002, shall be considered in compliance.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1331, Sec. 16, eff. June 20, 2003.

Sec. 388.005. ENERGY EFFICIENCY PROGRAMS IN INSTITUTIONS OF HIGHER EDUCATION AND CERTAIN GOVERNMENTAL ENTITIES. (a) In this section:

(1) "Institution of higher education" includes an institution of higher education as defined by Section 61.003, Education Code, and a private institution of higher education that receives funding from the state.

(2) "Political subdivision" means:

(A) an affected county; or

(B) any political subdivision in a nonattainment area or in an affected county other than:

(i) a school district; or

(ii) a district as defined by Section 36.001 or 49.001, Water Code, that had a total annual electricity expense of less than $200,000 in the previous fiscal year of the district.

(3) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of state government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state.

(b) Each political subdivision, institution of higher education, or state agency shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Section 302.004(b), Local Government Code, in order to reduce electricity consumption by the existing facilities of the entity.

(c) Each political subdivision, institution of higher education, or state agency shall establish a goal to reduce the electric consumption by the entity by at least five percent each state fiscal year for seven years, beginning September 1, 2019.

(d) A political subdivision, institution of higher education, or state agency that does not attain the goals established under Subsection (c) must include in the report required by Subsection (e) justification that the entity has already implemented all available cost-effective measures. An entity that submits a report under this subsection indicating that the entity has reviewed its available options, has determined that no additional measures are cost-effective, and has already implemented all available cost-effective measures is exempt from the annual reporting requirement of Subsection (e) if a subsequent report would indicate no change in status. An entity may be required to provide notice that it is exempt to the State Energy Conservation Office.

(e) A political subdivision, institution of higher education, or state agency annually shall report to the State Energy Conservation Office, on forms provided by that office, regarding the entity's goal, the entity's efforts to meet the goal, and progress the entity has made under this section. The State Energy Conservation Office shall provide assistance and information to the entity to help the entity meet goals established under this section. The office must develop and make available a standardized form for reporting purposes.

(f) This section does not apply to a state agency or an institution of higher education that the State Energy Conservation Office determines, before September 1, 2007, adopted a plan for conserving energy under which the agency or institution established a percentage goal for reducing the consumption of electricity. The exemption provided by this section applies only while the agency or institution has an energy conservation plan in effect and only if the agency or institution submits reports on the conservation plan each year to the governor, the Legislative Budget Board, and the State Energy Conservation Office.

(g) Except as provided by Subsection (h), this section does not apply to the electricity consumption of a district as defined by Section 36.001 or 49.001, Water Code, that relates to the operation and maintenance of facilities or improvements for:

(1) wastewater collection and treatment;

(2) water supply and distribution; or

(3) storm water diversion, detention, or pumping.

(h) At least once every five years, a political subdivision that is a district as defined by Section 36.001 or 49.001, Water

Code, shall for district facilities described by Subsection (g):

(1) evaluate the consumption of electricity;

(2) establish goals to reduce the consumption of electricity; and

(3) identify and implement cost-effective energy efficiency measures to reduce the consumption of electricity.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 248, Sec. 1, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.02, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 12, eff. September 1, 2007.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.014, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 637 (S.B. 898), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.12, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.29, eff. September 1, 2019.

Sec. 388.006. STATE ENERGY CONSERVATION OFFICE EVALUATION. The State Energy Conservation Office annually shall provide the laboratory with an evaluation of the effectiveness of state and political subdivision energy efficiency programs, including programs under this chapter. The laboratory shall calculate, based on the evaluation and the forms submitted to the office, the amount of energy savings and estimated reduction in pollution achieved as a result of the implementation of programs. The laboratory shall share the information with the commission, the United States Environmental Protection Agency, and the Electric Reliability Council of Texas to help with long-term forecasting and in estimating pollution reduction.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 637 (S.B. 898), Sec. 2, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.30, eff. September 1, 2019.

Sec. 388.007. DISTRIBUTION OF INFORMATION AND TECHNICAL ASSISTANCE. (a) The laboratory shall make available to builders, designers, engineers, and architects code implementation materials that explain the requirements of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code and that describe methods of compliance acceptable to code officials.

(b) The materials may include software tools, simplified prescriptive options, and other materials as appropriate. The simplified materials may be designed for projects in which a design professional is not involved.

(c) The laboratory may provide local jurisdictions with technical assistance concerning implementation and enforcement of the International Energy Conservation Code and the energy efficiency chapter of the International Residential Code, including local amendments to those codes.

(d) The laboratory may conduct outreach to the real estate industry, including real estate agents, home builders, remodelers, appraisers, and financial institutions, on the value of energy code compliance and verified, above-code, high-performance construction.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 937 (H.B. 51), Sec. 4, eff. September 1, 2011.

Sec. 388.008. DEVELOPMENT OF HOME ENERGY RATINGS. (a) The laboratory shall develop a standardized report format to be used by providers of home energy ratings. The laboratory may develop

different report formats for rating newly constructed residences from those for existing residences. The form must be designed to give potential buyers information on a structure's energy performance, including:

(1) insulation;

(2) types of windows;

(3) heating and cooling equipment;

(4) water heating equipment;

(5) additional energy conserving features, if any;

(6) results of performance measurements of building tightness and forced air distribution; and

(7) an overall rating of probable energy efficiency relative to the minimum requirements of the International Energy Conservation Code or the energy efficiency chapter of the International Residential Code, as appropriate.

(b) The laboratory shall establish a public information program to inform homeowners, sellers, buyers, and others regarding home energy ratings.

(c) The laboratory may cooperate with an industry organization or trade association to:

(1) develop guidelines for home energy ratings;

(2) provide training for individuals performing home energy ratings and providers of home energy ratings; and

(3) provide a registry of completed ratings for newly constructed residences and residential improvement projects for the purpose of computing the energy savings and emissions reductions benefits of the home energy ratings program.

(d) The laboratory shall include information on the benefits attained from this program in an annual report to the commission.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 13, eff. September 1, 2007.

Sec. 388.010. OUTREACH TO NEAR-NONATTAINMENT AREAS. The commission shall conduct outreach to near-nonattainment areas and affected counties on the benefits of implementing energy efficiency

initiatives, including the promotion of energy-efficient building programs and urban heat island mitigation techniques, as a way to meet air quality attainment goals under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), as amended.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 17, eff. June 20, 2003.

Sec. 388.011. CERTIFICATION OF MUNICIPAL BUILDING INSPECTORS. The laboratory shall develop and administer statewide a training program for municipal building inspectors seeking to become code-certified inspectors. The laboratory shall also work with national code organizations to assist participants in the certification program. The laboratory may collect reasonable fees from participants in the program to pay the costs of administering the program.

Acts 2003, 78th Leg., ch. 1148, Sec. 1.
Renumbered from Health and Safety Code, Section 388.009 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(50), eff. September 1, 2005.

Sec. 388.012. DEVELOPMENT OF ALTERNATIVE ENERGY-SAVING METHODS. The laboratory shall develop at least three alternative methods for achieving a 15 percent greater potential energy savings in residential, commercial, and industrial construction than the potential energy savings of construction that is in minimum compliance with Section 388.003. The alternative methods:

(1) may include both prescriptive and performance-based approaches, such as the approach of the United States Environmental Protection Agency's Energy Star qualified new home labeling program; and

(2) must include an estimate of:

(A) the implementation costs and energy savings to consumers; and

(B) the related emissions reductions.

Added by Acts 2005, 79th Leg., Ch. 1095 (H.B. 2129), Sec. 4, eff. September 1, 2005.

CHAPTER 389. EMISSIONS REDUCTION RECOGNITION EFFORTS

Sec. 389.001. DEFINITION. In this chapter, "commission" means the Texas Natural Resource Conservation Commission.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 389.002. USE OF CERTAIN INFORMATION FOR FEDERAL RECOGNITION OF EMISSIONS REDUCTIONS. The commission, using information derived from the reports to the commission under Sections 386.205, 388.003(e), and 388.006, shall take all appropriate and necessary actions so that emissions reductions achieved by means of activities under Chapters 386 and 388 are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan.

Added by Acts 2001, 77th Leg., ch. 967, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 389.003. COMPUTING ENERGY EFFICIENCY EMISSIONS REDUCTIONS AND ASSOCIATED CREDITS. (a) The commission shall develop a method to use in computing emissions reductions obtained through energy efficiency initiatives, including renewable energy initiatives, and the credits associated with those reductions.

(b) The laboratory shall assist the commission and affected political subdivisions in quantifying, as part of the state implementation plan, credits for emissions reductions attributable to energy efficiency programs, including renewable energy programs.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 18, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1125 (H.B. 2481), Sec. 16, eff. September 1, 2005.

For expiration of this chapter, see Section 390.006.

CHAPTER 390. CLEAN SCHOOL BUS PROGRAM

Sec. 390.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on

Environmental Quality.

(1-a) "Diesel exhaust" means one or more of the air pollutants emitted from an engine by the combustion of diesel fuel, including particulate matter, nitrogen oxides, volatile organic compounds, air toxics, and carbon monoxide.

(2) "Incremental cost" has the meaning assigned by Section 386.001.

(3) "Program" means the clean school bus program established under this chapter.

(4) "Qualifying fuel" includes any liquid or gaseous fuel or additive registered or verified by the United States Environmental Protection Agency, other than standard gasoline or diesel, that is ultimately dispensed into a school bus that provides reductions of emissions of particulate matter.

(5) "Retrofit" has the meaning assigned by Section 386.101.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(h-1), eff. August 30, 2017.

Sec. 390.002. PROGRAM. (a) The commission shall establish and administer a clean school bus program designed to reduce the exposure of school children to diesel exhaust in and around diesel-fueled school buses. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects that reduce emissions of diesel exhaust.

(b) Projects that may be considered for a grant under the program include:

(1) diesel oxidation catalysts for school buses built before 1994;

(2) diesel particulate filters for school buses built from 1994 to 1998;

(3) the purchase and use of emission-reducing add-on equipment for school buses, including devices that reduce crankcase emissions;

(4) the use of qualifying fuel;

(5) other technologies that the commission finds will bring

about significant emissions reductions; and

(6) replacement of a pre-2007 model year school bus.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(h-2), eff. August 30, 2017.

Sec. 390.003. APPLICATION FOR GRANT. (a) A school district in this state that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to also apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.

Sec. 390.004. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for setting priorities for projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining unless the applicant agrees to remove the retrofit device at the end of the life of the bus and reinstall the device on another bus.

(c) A school bus proposed for replacement must:

(1) be of model year 2006 or earlier;

(2) have been owned and operated by the applicant for at least the two years before submission of the grant application;

(3) be in good operational condition; and

(4) be currently used on a regular, daily route to and from a school.

(d) A school bus proposed for purchase to replace a pre-2007 model year school bus must be of the current model year or the year before the current model year at the time of submission of the grant application.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(i), eff. August 30, 2017.

Sec. 390.005. RESTRICTION ON USE OF GRANT. (a) A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

(b) A school bus acquired to replace an existing school bus must be purchased and the grant recipient must agree to own and operate the school bus on a regular, daily route to and from a school for at least five years after a start date established by the commission, based on the date the commission accepts documentation of the permanent destruction or permanent removal of the school bus being replaced.

(c) A school bus replaced under this program must be rendered permanently inoperable by crushing the bus, by making a hole in the engine block and permanently destroying the frame of the bus, or by another method approved by the commission, or be permanently removed from operation in this state. The commission shall establish criteria for ensuring the permanent destruction or permanent removal of the engine or bus. The commission shall enforce the destruction and removal requirements.

(d) In this section, "permanent removal" means the permanent export of a school bus or the engine of a school bus to a destination outside of the United States, Canada, or the United Mexican States.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June

17, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(i-1), eff. August 30, 2017.

Sec. 390.006. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2005, 79th Leg., Ch. 766 (H.B. 3469), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 17, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(i-2), eff. August 30, 2017.

For expiration of this chapter, see Section 391.304.

CHAPTER 391. NEW TECHNOLOGY IMPLEMENTATION FOR FACILITIES AND STATIONARY SOURCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 391.001. DEFINITIONS. In this chapter:

(1) "Best available control technology" has the meaning assigned by Section 169 of the federal Clean Air Act (42 U.S.C. Section 7479(3)).

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Facility" has the meaning assigned by Section 382.003.

(4) "Incremental cost" has the meaning assigned by Section 386.001.

(5) "New technology" means emissions control technology that results in emissions reductions that exceed state or federal requirements in effect at the time of submission of a new technology implementation grant application.

(6) "Stationary source" has the meaning assigned by Section 302 of the federal Clean Air Act (42 U.S.C. Section 7602(z)).

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9,

eff. September 1, 2009.

Sec. 391.002. GRANT PROGRAM. (a) The commission shall establish and administer a new technology implementation grant program to assist the implementation of new technologies to reduce emissions from facilities and other stationary sources in this state. The commission may establish a minimum capital expenditure threshold for projects under Subsection (b)(2). Under the program, the commission shall provide grants or other financial incentives for eligible projects to offset the incremental cost of emissions reductions.

(b) Projects that may be considered for a grant under the program include:

(1) advanced clean energy projects, as defined by Section 382.003(1-a)(A);

(2) new technology projects that reduce emissions of regulated pollutants from stationary sources;

(3) new technology projects that reduce emissions from upstream, midstream, or downstream oil and gas production, completions, gathering, storage, processing, transmission, or refining activities through:

(A) the replacement, repower, or retrofit of stationary compressor engines;

(B) the installation of systems to reduce or eliminate the loss of gas, flaring of gas, or burning of gas using other combustion control devices; or

(C) the installation of systems that reduce flaring emissions and other site emissions; and

(4) electricity storage projects related to renewable energy, including projects to store electricity produced from wind and solar generation that provide efficient means of making the stored energy available during periods of peak energy use.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 20, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(j), eff.

August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 695 (H.B. 2361), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 7, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 869 (H.B. 3837), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 889 (H.B. 4885), Sec. 4, eff. September 1, 2023.

Sec. 391.003. GUIDELINES AND CRITERIA. (a) The commission shall adopt grant guidelines and criteria consistent with the requirements of this chapter.

(b) The guidelines must include:

(1) protocols to compute projected emissions reductions and project cost-effectiveness; and

(2) safeguards to ensure that the projects funded result in emissions reductions not otherwise required by state or federal law.

(c) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the program to achieve the program goals.

(d) The commission may adopt emergency rules under Section 2001.034, Government Code, with abbreviated notice, to carry out any rulemaking necessary to implement this chapter.

(e) Except as provided by Subsection (d), the rulemaking requirements of Chapter 2001, Government Code, do not apply to the adoption or revision of guidelines and criteria under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.004. AVAILABILITY OF EMISSIONS REDUCTION CREDITS IN CERTAIN NONATTAINMENT AREAS. A project funded under this chapter must comply with Sections 386.055 and 386.056, as applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

SUBCHAPTER B. GRANT APPLICATIONS AND REVIEW

Sec. 391.101. APPLICATION FOR GRANT. (a) The owner of a facility located in this state may apply for a grant under the program established under Section 391.002. To improve the ability of the program to achieve the program goals, the commission may adopt guidelines to allow a person other than the owner to apply for and receive a grant.

(b) An application for a grant under this chapter must be made on a form provided by the commission and must contain information required by the commission, including:

(1) a detailed description of the proposed project;

(2) information necessary for the commission to determine whether the project meets the commission's eligibility requirements, including a statement of the amounts of any other public financial assistance the project will receive; and

(3) other information the commission may require.

(c) An application for a grant under this chapter must contain a plan for implementation of a program that will provide project information and education to the public in the areas subject to public notice under federal and state permitting requirements for the proposed project until completion of the permitting process. The plan must provide for a publicly accessible informational Internet website.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.102. GRANT APPLICATION REVIEW PROCEDURES. (a) The commission shall review an application for a grant for a project authorized under this chapter according to dates specified in a request for grant applications. If the commission determines that an application is incomplete, the commission shall notify the applicant and provide an explanation of the information missing from the application. The commission shall evaluate the completed application according to the guidelines and criteria adopted under Section 391.003.

(b) To the extent possible, the commission shall coordinate project review and approval with any timing constraints related to project purchases or installations to be made by an applicant.

(c) The commission may deny a grant application for a project that does not meet the applicable criteria or that the commission determines is not made in good faith, is not credible, or is not in compliance with this chapter or the goals of this chapter.

(d) Subject to the availability of funding, the commission shall award a grant under this chapter in conjunction with the execution of a contract that obligates the commission to make the grant and the recipient to perform the actions described by the recipient's grant application. Subject to Section 391.204, the contract must incorporate provisions for recapturing grant money for noncompliance with grant requirements. Grant money recaptured under the contract provisions shall be deposited in the Texas emissions reduction plan fund and reallocated for other projects under this subchapter.

(e) An applicant may seek reimbursement for qualifying equipment installed after the effective date of this program.

(f) In reviewing a grant application under this chapter, the commission may:

(1) solicit review and comments from:

(A) the comptroller to assess:

(i) the financial stability of the applicant;

(ii) the economic benefits and job creation potential associated with the project; and

(iii) any other information related to the duties of that office;

(B) the Public Utility Commission of Texas to assess:

(i) the reliability of the proposed technology;

(ii) the feasibility and cost-effectiveness of electric transmission associated with the project; and

(iii) any other information related to the duties of that agency; and

(C) the Railroad Commission of Texas to assess:

(i) the availability and cost of the fuel involved with the project; and

(ii) any other information related to the duties of that agency; and

(2) consider the comments received under Subdivision (1) in the commission's grant award decision process.

(g) The commission may solicit review and comments from other state agencies or other entities with subject matter expertise

applicable to the review of a grant application.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(j-1), eff. August 30, 2017.

Sec. 391.103. EVIDENCE OF EMISSIONS REDUCTION POTENTIAL REQUIRED. (a) An application for a new technology implementation grant under this chapter must show reasonable evidence that the proposed technology is capable of providing a significant reduction in emissions.

(b) The commission shall consider specifically, for each proposed new technology implementation grant application:

(1) the projected potential for reduced emissions and the cost-effectiveness of the new technology;

(2) the potential for the new technology to contribute significantly to air quality goals; and

(3) the strength of the implementation plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.104. REPORTING REQUIREMENTS. The commission shall include in the biennial plan report required by Section 386.057(b) information that summarizes the applications received and grants awarded in the preceding biennium. Preparation of the information for the report may include the participation of any state agency involved in the review of applications under Section 391.102, if the commission determines participation of the agency is needed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(j-2), eff. August 30, 2017.

SUBCHAPTER C. PROJECT REQUIREMENTS

Sec. 391.201. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission shall establish criteria for prioritizing projects eligible to receive grants under this chapter. The commission shall review and may modify the criteria and priorities as appropriate.

(b) A proposed project must meet the requirements of this section to be eligible for a grant under the program established under Section 391.002.

(c) Each proposed project must meet the cost-effectiveness requirements established by the commission.

(d) A new technology implementation project must document, in a manner acceptable to the commission, an achieved reduction from the baseline emissions adopted by the commission for the relevant facility or stationary source. After studying available emissions reduction technologies, the commission may impose a required minimum percentage reduction of emissions to improve the ability of the program to achieve the program goals.

(e) If a baseline emissions standard does not exist for a facility, the commission, for purposes of this subchapter, shall adopt an appropriate baseline emissions level for comparison purposes.

(f) Planned water usage for proposed projects must be consistent with the state water plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.202. EVALUATING COST-EFFECTIVENESS. The commission shall establish reasonable methodologies for evaluating project cost-effectiveness, consistent with accepted methods.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.203. DETERMINATION OF GRANT AMOUNT. (a) The commission may not award a grant that, net of taxes, provides an amount that exceeds the incremental cost of the proposed project.

(b) In determining the amount of a grant under this subchapter, the commission shall reduce the incremental cost of a proposed

project by the value of any existing financial incentive that directly reduces the cost of the proposed project, including tax credits or deductions, other grants, or any other public financial assistance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.204. COST SHARING; RECAPTURING GRANT. (a) The commission shall require an applicant to bear at least 50 percent of the costs of implementing a project funded under this chapter.

(b) The commission may not require repayment of grant money, except that the commission must require provisions for recapturing grant money for noncompliance with grant requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.205. PREFERENCES. (a) Except as provided by Subsection (c), in awarding grants under this chapter the commission shall give preference to projects that:

(1) involve the transport, use, recovery for use, or prevention of the loss of natural resources originating or produced in this state;

(2) contain an energy efficiency component;

(3) include the use of solar, wind, or other renewable energy sources;

(4) recover waste heat from the combustion of natural resources and use the heat to generate electricity; or

(5) reduce flaring emissions and other site emissions.

(b) Projects that include more than one of the criteria described by Subsection (a) shall be given a greater preference in the award of grants under this chapter.

(c) The commission may give preference under Subsection (a) only if the cost-effectiveness and emission performance of the project are comparable to those of a project not claiming a preference described by that subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9,

eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(k), eff. August 30, 2017.
Acts 2021, 87th Leg., R.S., Ch. 695 (H.B. 2361), Sec. 2, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 8, eff. September 1, 2021.

SUBCHAPTER D. FUNDING; EXPIRATION

Sec. 391.301. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter must use the grant to pay the incremental costs of the purchase, lease, or installation of the project for which the grant is made, which may include reasonable and necessary expenses for the labor needed to install emissions-reducing equipment. The recipient may use the grant for the costs of operating and maintaining the emissions-reducing equipment.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 695 (H.B. 2361), Sec. 3, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 1043 (H.B. 4472), Sec. 9, eff. September 1, 2021.

Sec. 391.302. COMPTROLLER REVIEW OF USE OF GRANT FUNDS. (a) The comptroller annually shall conduct a review of each recipient of a new technology implementation grant under this chapter to ensure that the recipient's use of the grant complies with state law and the terms of the award.

(b) To assist with a review under this section, the commission shall provide the comptroller with all monitoring reports received from grant recipients and any other documentation requested by the comptroller.

(c) On a finding of any misuse of grant money or other noncompliance with grant requirements, the comptroller shall provide a report to the commission with recommendations for subsequent

action, including the recapture of money misused.

(d) A finding of any misuse of grant money by a recipient of a grant under this chapter results in a debt owed to the state, and the comptroller may withhold warrants and electronic funds transfers to the recipient in accordance with Section 403.055, Government Code.

(e) The comptroller may contract with another state agency, an institution of higher education, or a private entity to conduct a review under this section or to assist the comptroller in conducting any part of the review.

(f) The comptroller may adopt rules to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.303. TIME OF USE OF GRANT FUNDING. Money appropriated for grants to be made by the commission under this chapter for a fiscal year may be distributed in subsequent fiscal years if the grant has been awarded and treated as a binding encumbrance by the commission before the end of the appropriation year of the money appropriated for grant purposes. Distribution of the grant money is subject to Section 403.071, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.

Sec. 391.304. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2009, 81st Leg., R.S., Ch. 1125 (H.B. 1796), Sec. 9, eff. September 1, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(k-1), eff. August 30, 2017.

For expiration of this chapter, see Section 392.008.

CHAPTER 392. TEXAS CLEAN FLEET PROGRAM

Sec. 392.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Golf cart" has the meaning assigned by Section 551.401, Transportation Code.

(4) "Hybrid vehicle" means a vehicle with at least two different energy converters and two different energy storage systems on board the vehicle for the purpose of propelling the vehicle.

(5) "Incremental cost" has the meaning assigned by Section 386.001.

(6) "Light-duty motor vehicle" has the meaning assigned by Section 386.151.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(8) "Neighborhood electric vehicle" means a motor vehicle that:

(A) is originally manufactured to meet, and does meet, the equipment requirements and safety standards established for "low-speed vehicles" in Federal Motor Vehicle Safety Standard No. 500 (49 C.F.R. Section 571.500);

(B) is a slow-moving vehicle, as defined by Section 547.001, Transportation Code, that is able to attain a speed of more than 20 miles per hour but not more than 25 miles per hour in one mile on a paved, level surface;

(C) is a four-wheeled motor vehicle;

(D) is powered by electricity or alternative power sources;

(E) has a gross vehicle weight rating of less than 3,000 pounds; and

(F) is not a golf cart.

(9) "Program" means the Texas clean fleet program established under this chapter.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(k-2), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 4, eff. June 14, 2019.

Sec. 392.002. PROGRAM. (a) The commission shall establish and administer the Texas clean fleet program to encourage a person that has a fleet of diesel-powered vehicles to replace them with alternative fuel or hybrid vehicles. Under the program, the commission shall provide grants for eligible projects to offset the incremental cost of projects for fleet owners.

(b) An entity that places 10 or more qualifying vehicles in service for use entirely in this state during a calendar year is eligible to participate in the program.

(c) Notwithstanding Subsection (b), an entity that submits a grant application for 10 or more qualifying vehicles is eligible to participate in the program even if the commission denies approval for one or more of the vehicles during the application process.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(l), eff. August 30, 2017.

Sec. 392.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the eligibility period established by the commission the entity purchases a new on-road vehicle that:

(1) is certified to the appropriate current federal emissions standards as determined by the commission;

(2) replaces a diesel-powered on-road vehicle of the same weight classification and use; and

(3) is a hybrid vehicle or fueled by an alternative fuel.

(b) A vehicle is not a qualifying vehicle if the vehicle:

(1) is a neighborhood electric vehicle;

(2) has been used as a qualifying vehicle to qualify for a

grant under this chapter for a previous reporting period or by another entity; or

(3) has qualified for a similar grant or tax credit in another jurisdiction.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(l-1), eff. August 30, 2017.

Sec. 392.004. APPLICATION FOR GRANT. (a) An entity operating in this state that operates a fleet of at least 75 vehicles may apply for and receive a grant under the program.

(b) The commission may adopt guidelines to allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(d) The commission shall minimize, to the maximum extent possible, the amount of paperwork required for an application.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(l-2), eff. August 30, 2017.

Sec. 392.005. ELIGIBILITY OF PROJECTS FOR GRANTS. (a) The commission by rule shall establish criteria for prioritizing projects eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program, a project must:

(1) result in a reduction in emissions of nitrogen oxides or other pollutants, as established by the commission, of at least 25 percent, based on:

(A) the baseline emission level set by the commission under Subsection (g); and

(B) the certified emission rate of the new vehicle; and

(2) replace a vehicle that:

(A) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(B) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(C) satisfies any minimum percentage of annual usage requirements established by the commission; and

(D) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, registered, and operated in the state by the grant recipient until the earlier of the fifth anniversary of the activity start date established by the commission or the date the vehicle has been in operation for 400,000 miles after the activity start date established by the commission. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in the state.

(c-1) For purposes of Subsection (c), the commission shall establish the activity start date based on the date the commission accepts verification of the disposition of the vehicle being replaced.

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the contract requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A vehicle or engine replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a

hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission that permanently removes the vehicle from operation in this state. The commission shall provide a means for an applicant to propose an alternative method of complying with the requirements of this subsection. The commission shall enforce the requirements of this subsection.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road vehicles being replaced. The commission may consider and establish baseline emission rates for additional pollutants of concern, as determined by the commission.

(h) Mileage requirements established by the commission under Subsection (b)(2)(B) may differ by vehicle weight categories and type of use.

(i) The executive director may waive the requirements of Subsection (b)(2)(A) on a finding of good cause, which may include a waiver for short lapses in registration or operation attributable to economic conditions, seasonal work, or other circumstances.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(m), eff. August 30, 2017.

Sec. 392.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the project for which the grant is made, which may include the initial cost of the alternative fuel vehicle and the reasonable and necessary expenses incurred for the labor needed to install emissions-reducing equipment. The recipient may not use the grant to pay the recipient's administrative expenses.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.

Sec. 392.007. AMOUNT OF GRANT. (a) The amount the commission

shall award for each vehicle being replaced is up to 80 percent, as determined by the commission, of the total cost for replacement of a heavy-duty or light-duty diesel engine.

(b) The commission may revise the standards for determining grant amounts, as needed to reflect changes to federal emission standards and decisions on pollutants of concern.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 21, eff. June 14, 2013.

Sec. 392.008. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Redesignated from Health and Safety Code, Chapter 391 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(30), eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(m-1), eff. August 30, 2017.

For expiration of this chapter, see Section 393.007.

CHAPTER 393. ALTERNATIVE FUELING FACILITIES PROGRAM

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means a fuel other than gasoline or diesel fuel, other than biodiesel fuel, including electricity, compressed natural gas, liquefied natural gas, hydrogen, propane, or a mixture of fuels containing at least 85 percent methanol by volume.

(1-a) "Clean transportation zone" means:

(A) counties containing or intersected by a portion of an interstate highway connecting the cities of Houston, San Antonio, Dallas, and Fort Worth;

(B) counties located within the area bounded by the interstate highways described by Paragraph (A);

(C) counties containing or intersected by a portion of:

(i) an interstate highway connecting San Antonio to Corpus Christi or Laredo;

(ii) the most direct route using highways in the state highway system connecting Corpus Christi and Laredo; or

(iii) a highway corridor connecting Corpus Christi and Houston;

(D) counties located within the area bounded by the highways described by Paragraph (C);

(E) counties in this state all or part of which are included in a nonattainment area designated under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407); and

(F) counties designated as affected counties under Section 386.001.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Program" means the Texas alternative fueling facilities program established under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(m-2), eff. August 30, 2017.

Sec. 393.002. PROGRAM. (a) The commission shall establish and administer the Texas alternative fueling facilities program to provide fueling facilities for alternative fuel in the clean transportation zone. Under the program, the commission shall provide a grant for each eligible facility to offset the cost of those facilities.

(b) An entity that constructs or reconstructs an alternative fueling facility is eligible to participate in the program.

(c) To ensure that alternative fuel vehicles have access to fuel and to build the foundation for a self-sustaining market for alternative fuels in Texas, the commission shall provide for strategically placed fueling facilities in the clean transportation zone to enable an alternative fuel vehicle to travel in those areas relying solely on the alternative fuel.

(d) The commission shall maintain a listing to be made available to the public online of all vehicle fueling facilities that have received grant funding, including location and hours of operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(n), eff. August 30, 2017.

Sec. 393.003. APPLICATION FOR GRANT. (a) An entity operating in this state that constructs or reconstructs a facility to dispense alternative fuels may apply for and receive a grant under the program.

(b) The commission may allow a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, or a private nonprofit organization to apply for and receive a grant to improve the ability of the program to achieve its goals.

(c) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(d) An application for a grant under the program must include a certification that the applicant complies with laws, rules, guidelines, and requirements applicable to taxation of fuel provided by the applicant at each fueling facility owned or operated by the applicant. The commission may terminate a grant awarded under this section without further obligation to the grant recipient if the commission determines that the recipient did not comply with a law, rule, guideline, or requirement described by this subsection. This subsection does not create a cause of action to contest an application or award of a grant.

(e) The commission shall disburse grants under the program through a competitive application selection process to offset a portion of the eligible costs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(n-1), eff. August 30, 2017.

Sec. 393.004. ELIGIBILITY OF FACILITIES FOR GRANTS. (a) In addition to the requirements of this chapter, the commission shall establish additional eligibility and prioritization criteria as needed to implement the program.

(b) The prioritization criteria established under Subsection (a) must provide that, for each grant round, the commission may not award a grant to an entity that does not agree to make the alternative fueling facility accessible and available to the public at times designated by the grant contract until each eligible entity that does agree to those terms has been awarded a grant.

(c) The commission may not award more than one grant for each facility.

(d) The commission may give preference to or otherwise limit grant selections to:

(1) fueling facilities providing specific types of alternative fuels;

(2) fueling facilities in a specified area or location; and

(3) fueling facilities meeting other specified prioritization criteria established by the commission.

(e) For fueling facilities to provide natural gas, the commission shall give preference to:

(1) facilities providing both liquefied natural gas and compressed natural gas at a single location;

(2) facilities located not more than one mile from an interstate highway system;

(3) facilities located in the area in and between the Houston, San Antonio, and Dallas-Fort Worth areas; and

(4) facilities located in the area in and between the Corpus Christi, Laredo, and San Antonio areas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(n-2), eff. August 30, 2017.

Sec. 393.005. RESTRICTION ON USE OF GRANT. (a) A recipient of a grant under this chapter shall use the grant only to pay the costs of the facility for which the grant is made. The recipient may not use the grant to pay the recipient's:

(1) administrative expenses;

(2) expenses for the purchase of land or an interest in land; or

(3) expenses for equipment or facility improvements that are not directly related to the delivery, storage, compression, or dispensing of the alternative fuel at the facility.

(b) Each grant must be awarded using a contract that requires the recipient to meet operational, maintenance, and reporting requirements as specified by the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(o), eff. August 30, 2017.

Sec. 393.006. AMOUNT OF GRANT. (a) Grants awarded under this chapter for a facility to provide alternative fuels other than natural gas may not exceed the lesser of:

(1) 50 percent of the sum of the actual eligible costs incurred by the grant recipient within deadlines established by the commission; or

(2) $600,000.

(b) Grants awarded under this chapter for a facility to provide natural gas may not exceed:

(1) $400,000 for a compressed natural gas facility;

(2) $400,000 for a liquefied natural gas facility; or

(3) $600,000 for a facility providing both liquefied and compressed natural gas.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 24, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(o-1),

eff. August 30, 2017.

Sec. 393.007. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(o-2), eff. August 30, 2017.

For expiration of this chapter, see Section 394.012.

CHAPTER 394. TEXAS NATURAL GAS VEHICLE GRANT PROGRAM

Sec. 394.001. DEFINITIONS. In this chapter:

(1) "Certified" includes:

(A) new vehicle or new engine certification by the United States Environmental Protection Agency; or

(B) certification or approval by the United States Environmental Protection Agency of a system to convert a vehicle or engine to operate on an alternative fuel and a demonstration by the emissions data used to certify or approve the vehicle or engine, if the commission determines the testing used to obtain the emissions data is consistent with the testing required for approval of an alternative fuel conversion system for new and relatively new vehicles or engines under 40 C.F.R. Part 85.

(1-a) "Clean transportation zone" has the meaning assigned by Section 393.001.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Executive director" means the executive director of the Texas Commission on Environmental Quality.

(4) "Heavy-duty motor vehicle" means a motor vehicle that:

(A) has a gross vehicle weight rating of more than 8,500 pounds; and

(B) is certified to or has an engine certified to the United States Environmental Protection Agency's emissions standards for heavy-duty vehicles or engines.

(5) "Incremental cost" has the meaning assigned by Section 386.001.

(6) "Medium-duty motor vehicle" means a motor vehicle with a gross vehicle weight rating of more than 8,500 pounds that:

(A) is certified to the United States Environmental Protection Agency's light-duty emissions standard; or

(B) has an engine certified to the United States Environmental Protection Agency's light-duty emissions standard.

(7) "Motor vehicle" has the meaning assigned by Section 386.151.

(7-a) "Natural gas engine" means an engine that operates:

(A) solely on natural gas, including compressed natural gas, liquefied natural gas, or liquefied petroleum gas; or

(B) on a combination of diesel fuel and natural gas, including compressed natural gas, liquefied natural gas, or liquefied petroleum gas, and is capable of achieving at least 60 percent displacement of diesel fuel with natural gas.

(8) "Natural gas vehicle" means a motor vehicle that is powered by a natural gas engine.

(9) "Program" means the Texas natural gas vehicle grant program established under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(p), eff. August 30, 2017.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-2)(3), eff. August 30, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 9.002, eff. September 1, 2019.

Sec. 394.002. PROGRAM. The commission shall establish and administer the Texas natural gas vehicle grant program to encourage an entity that has a heavy-duty or medium-duty motor vehicle to repower the vehicle with a natural gas engine or replace the vehicle with a natural gas vehicle. Under the program, the commission shall provide grants for eligible heavy-duty motor vehicles and medium-duty motor vehicles to offset the incremental cost for the entity of

repowering or replacing the heavy-duty or medium-duty motor vehicle.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.003. QUALIFYING VEHICLES. (a) A vehicle is a qualifying vehicle that may be considered for a grant under the program if during the eligibility period established by the commission the entity:

(1) purchased, leased, or otherwise commercially financed the vehicle as an on-road heavy-duty or medium-duty motor vehicle that:

(A) is a new natural gas vehicle or, subject to Subsection (c), a used natural gas vehicle;

(B) is certified to the appropriate current federal emissions standards as determined by the commission; and

(C) replaces an on-road heavy-duty or medium-duty motor vehicle of the same weight classification and use; or

(2) repowered the on-road motor vehicle to a natural gas vehicle powered by a natural gas engine that is certified to the appropriate current federal emissions standards as determined by the commission.

(b) A heavy-duty or medium-duty motor vehicle is not a qualifying vehicle if the vehicle or the natural gas engine powering the vehicle:

(1) has been awarded a grant under this chapter for a previous reporting period; or

(2) has received a similar grant or tax credit in another jurisdiction if that grant or tax credit program is relied on for credit in the state implementation plan.

(c) A used natural gas vehicle that is proposed to replace an on-road heavy-duty or medium-duty motor vehicle must be of model year 2017 or later, provided that the model year may not be more than six years older than the current model year at the time of the submission of the grant application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(p-1),

eff. August 30, 2017.

Acts 2021, 87th Leg., R.S., Ch. 450 (H.B. 963), Sec. 1, eff. September 1, 2021.

Sec. 394.004. APPLICATION FOR GRANT. (a) Only an entity operating in this state that operates a heavy-duty or medium-duty motor vehicle may apply for and receive a grant under this chapter.

(b) An application for a grant under this chapter must be made on a form provided by the commission and must contain the information required by the commission.

(c) The commission, after consulting stakeholders, shall:

(1) simplify the application form; and

(2) minimize, to the maximum extent possible, documentation required for an application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Sec. 394.005. ELIGIBILITY FOR GRANTS. (a) The commission shall establish criteria for prioritizing qualifying vehicles eligible to receive grants under this chapter. The commission shall review and revise the criteria as appropriate.

(b) To be eligible for a grant under the program:

(1) the use of the qualifying vehicle must be projected to result in a reduction in emissions of nitrogen oxides of at least 25 percent as compared to the motor vehicle or engine being replaced, based on:

(A) the baseline emission level set by the commission under Subsection (g); and

(B) the certified emission rate of the qualifying vehicle; and

(2) the qualifying vehicle must:

(A) replace a heavy-duty or medium-duty motor vehicle that:

(i) is an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is in operating condition and has at least two years of remaining useful life, as determined in accordance with criteria established by the commission;

(B) replace a heavy-duty or medium-duty motor vehicle that:

(i) is owned by the applicant;

(ii) is an on-road vehicle that has been:

(a) owned, leased, or otherwise commercially financed and operated in Texas as a fleet vehicle for at least the two years immediately preceding the submission of a grant application; and

(b) registered in a county located in the clean transportation zone for at least the two years immediately preceding the submission of a grant application; and

(iii) otherwise satisfies the mileage, usage, and useful life requirements established under Paragraph (A) as determined by documentation associated with the vehicle; or

(C) be a heavy-duty or medium-duty motor vehicle repowered with a natural gas engine that:

(i) is installed in an on-road vehicle that has been owned, leased, or otherwise commercially financed and registered and operated by the applicant in Texas for at least the two years immediately preceding the submission of a grant application;

(ii) satisfies any minimum average annual mileage or fuel usage requirements established by the commission;

(iii) satisfies any minimum percentage of annual usage requirements established by the commission; and

(iv) is installed in an on-road vehicle that, at the time of the vehicle's repowering, was in operating condition and had at least two years of remaining useful life, as determined in accordance with criteria established by the commission.

(c) As a condition of receiving a grant, the qualifying vehicle must be continuously owned, leased, or otherwise commercially financed and registered and operated in the state by the grant recipient until the earlier of the fourth anniversary of the activity start date established by the commission or the date the vehicle has

been in operation for 400,000 miles after the activity start date established by the commission. Not less than 75 percent of the annual use of the qualifying vehicle, either mileage or fuel use as determined by the commission, must occur in the clean transportation zone.

(c-1) For purposes of Subsection (c), the commission shall establish the activity start date based on the date the commission accepts verification of the disposition of the vehicle or engine.

(d) The commission shall include and enforce the usage provisions in the grant contracts. The commission shall monitor compliance with the ownership, leasing, and usage requirements, including submission of reports on at least an annual basis, or more frequently as determined by the commission.

(e) The commission by contract may require the return of all or a portion of grant funds for a grant recipient's noncompliance with the usage and percentage of use requirements under this section.

(f) A heavy-duty or medium-duty motor vehicle replaced under this program must be rendered permanently inoperable by crushing the vehicle, by making a hole in the engine block and permanently destroying the frame of the vehicle, or by another method approved by the commission, or be permanently removed from operation in this state. The commission shall establish criteria for ensuring the permanent destruction or permanent removal of the engine or vehicle. The commission shall enforce the destruction and removal requirements. For purposes of this subsection, "permanent removal" means the permanent export of the vehicle or engine to a destination outside of the United States, Canada, or the United Mexican States.

(g) The commission shall establish baseline emission levels for emissions of nitrogen oxides for on-road heavy-duty or medium-duty motor vehicles being replaced or repowered by using the emission certification for the engine or vehicle being replaced. The commission may consider deterioration of the emission performance of the engine of the vehicle being replaced in establishing the baseline emission level. The commission may consider and establish baseline emission rates for additional pollutants of concern.

(h) Mileage or fuel use requirements established by the commission under Subsection (b)(2)(A)(ii) may differ by vehicle weight categories and type of use.

(i) The executive director may waive the requirements of Subsection (b)(2)(A)(i) or (B)(ii) on a finding of good cause, which

may include short lapses in registration or operation due to economic conditions, seasonal work, or other circumstances.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(p-2), eff. August 30, 2017.
Acts 2021, 87th Leg., R.S., Ch. 450 (H.B. 963), Sec. 2, eff. September 1, 2021.

Sec. 394.006. RESTRICTION ON USE OF GRANT. A recipient of a grant under this chapter shall use the grant to pay the incremental costs of the replacement or vehicle repower for which the grant is made, which may include a portion of the initial cost of the natural gas vehicle or natural gas engine, including the cost of the natural gas fuel system and installation. The recipient may not use the grant to pay the recipient's administrative expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(q), eff. August 30, 2017.

Sec. 394.007. AMOUNT OF GRANT. (a) The commission shall develop a grant schedule that:

(1) assigns a standardized grant in an amount up to 90 percent of the incremental cost of a natural gas vehicle purchase, lease, other commercial finance, or repowering;

(2) is based on:

(A) the certified emission level of nitrogen oxides, or other pollutants as determined by the commission, of the engine powering the natural gas vehicle; and

(B) the usage of the natural gas vehicle; and

(3) may take into account the overall emissions reduction achieved by the natural gas vehicle.

(b) Not less than 60 percent of the total amount of grants awarded under this chapter for the purchase and repowering of motor

vehicles must be awarded to motor vehicles with a gross vehicle weight rating of at least 33,001 pounds. The minimum grant requirement under this subsection does not apply if the commission does not receive enough grant applications to satisfy the requirement for motor vehicles described by this subsection that are eligible to receive a grant under this chapter.

(c) A person may not receive a grant under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded. A person shall return to the commission the amount of a grant awarded under this chapter that, when combined with any other grant, tax credit, or other governmental incentive, exceeds the incremental cost of the vehicle or vehicle repower for which the grant is awarded.

(d) The commission shall reduce the amount of a grant awarded under this chapter as necessary to keep the combined incentive total at or below the incremental cost of the vehicle for which the grant is awarded if the grant recipient is eligible to receive an automatic incentive at or before the time a grant is awarded under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1230 (S.B. 1727), Sec. 22, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(q-1), eff. August 30, 2017.

Sec. 394.008. GRANT PROCEDURES. (a) The commission shall establish procedures for:

(1) awarding grants under this chapter to reimburse eligible costs;

(2) streamlining the grant application, contracting, reimbursement, and reporting process for qualifying natural gas vehicle purchases or repowers; and

(3) preapproving the award of grants to applicants who propose to purchase and replace motor vehicles described by Section 394.005(b)(2)(B).

(b) Procedures established under this section must:

(1) provide for the commission to compile and regularly update a listing of potentially eligible natural gas vehicles and natural gas engines that are certified to the appropriate current federal emissions standards as determined by the commission;

(2) provide a method to calculate the reduction in emissions of nitrogen oxides, volatile organic compounds, carbon monoxide, particulate matter, and sulfur compounds for each replacement or repowering;

(3) assign a standardized grant amount for each qualifying vehicle or engine repower under Section 394.007;

(4) allow for processing applications on an ongoing first-come, first-served basis;

(5) require grant applicants to identify natural gas fueling stations that are available to fuel the qualifying vehicle in the area of its use;

(6) provide for payment not later than the 30th day after the date the request for reimbursement for an approved grant is received;

(7) provide for application submission and application status checks using procedures established by the commission, which may include application submission and status checks to be made over the Internet; and

(8) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting requirements.

(c) The commission, or its designee, shall oversee the grant process and is responsible for final approval of any grant.

(d) Grant recipients are responsible for meeting all grant conditions, including reporting and monitoring as required by the commission through the grant contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(q-2), eff. August 30, 2017.

Sec. 394.012. EXPIRATION. This chapter expires on the last day

of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2011, 82nd Leg., R.S., Ch. 892 (S.B. 385), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r), eff. August 30, 2017.

For expiration of this chapter, see Section 395.015.

CHAPTER 395. GOVERNMENTAL ALTERNATIVE FUEL FLEET GRANT PROGRAM

Sec. 395.001. DEFINITIONS. In this chapter:

(1) "Alternative fuel" means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen fuel cells, or electricity, including electricity to power fully electric motor vehicles and plug-in hybrid motor vehicles.

(2) "Commission" means the Texas Commission on Environmental Quality.

(3) "Incremental cost" has the meaning assigned by Section 386.001.

(4) "Motor vehicle" means a self-propelled device designed for transporting persons or property on a public highway that is required to be registered under Chapter 502, Transportation Code.

(5) "Plug-in hybrid motor vehicle" has the meaning assigned by Section 2158.001, Government Code.

(6) "Political subdivision" means a county, municipality, school district, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.

(7) "Program" means the governmental alternative fuel fleet grant program established under this chapter.

(8) "State agency" has the meaning assigned by Section 2151.002, Government Code, and includes the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.002. PROGRAM. (a) The commission shall establish and

administer a governmental alternative fuel fleet grant program to assist an eligible applicant described by Section 395.003 in purchasing or leasing new motor vehicles that operate primarily on an alternative fuel.

(b) The program may provide a grant to an applicant described by Section 395.003 to:

(1) purchase or lease a new motor vehicle described by Section 395.004; or

(2) purchase, lease, or install refueling infrastructure or equipment or procure refueling services as described by Section 395.005 to store and dispense alternative fuel needed for a motor vehicle described by Subdivision (1) of this subsection.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.003. ELIGIBLE APPLICANTS. (a) A state agency or political subdivision is eligible to apply for a grant under the program if the entity operates a fleet of more than 15 motor vehicles, excluding motor vehicles that are owned and operated by a private company or other third party under a contract with the entity.

(b) A mass transit or school transportation provider or other public entity established to provide public or school transportation services is eligible for a grant under the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.004. MOTOR VEHICLE REQUIREMENTS. (a) A grant recipient may purchase or lease with money from a grant under the program a new motor vehicle that is originally manufactured to operate using one or more alternative fuels or is converted to operate using one or more alternative fuels before the first retail sale of the vehicle, and that:

(1) has a dedicated system, dual-fuel system, or bi-fuel system; and

(2) if the motor vehicle is a fully electric motor vehicle or plug-in hybrid motor vehicle, has a United States Environmental

Protection Agency rating of at least 75 miles per gallon equivalent or a 75-mile combined city and highway range.

(b) A grant recipient may not use money from a grant under the program to replace a motor vehicle, transit bus, or school bus that operates on an alternative fuel unless the replacement vehicle produces fewer emissions and has greater fuel efficiency than the vehicle being replaced.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.005. REFUELING INFRASTRUCTURE, EQUIPMENT, AND SERVICES. A grant recipient may purchase, lease, or install refueling infrastructure or equipment or procure refueling services with money from a grant under the program if:

(1) the purchase, lease, installation, or procurement is made in conjunction with the purchase or lease of a motor vehicle as described by Section 395.004 or the conversion of a motor vehicle to operate primarily on an alternative fuel;

(2) the grant recipient demonstrates that a refueling station that meets the needs of the recipient is not available within five miles of the location at which the recipient's vehicles are stored or primarily used; and

(3) for the purchase or installation of refueling infrastructure or equipment, the infrastructure or equipment will be owned and operated by the grant recipient, and for the lease of refueling infrastructure or equipment or the procurement of refueling services, a third-party service provider engaged by the grant recipient will provide the infrastructure, equipment, or services.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.006. ELIGIBLE COSTS. (a) A motor vehicle lease agreement paid for with money from a grant under the program must have a term of at least three years.

(b) Refueling infrastructure or equipment purchased or installed with money from a grant under the program must be used specifically to store or dispense alternative fuel, as determined by

the commission.

(c) A lease of or service agreement for refueling infrastructure, equipment, or services paid for with money from a grant under the program must have a term of at least three years.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.007. GRANT AMOUNTS. (a) The commission may establish standardized grant amounts based on the incremental costs associated with the purchase or lease of different categories of motor vehicles, including the type of fuel used, vehicle class, and other categories the commission considers appropriate.

(b) In determining the incremental costs and setting the standardized grant amounts, the commission may consider the difference in cost between a new motor vehicle operated using conventional gasoline or diesel fuel and a new motor vehicle operated using alternative fuel.

(c) The amount of a grant for the purchase or lease of a motor vehicle may not exceed the amount of the incremental cost of the purchase or lease.

(d) The commission may establish grant amounts to reimburse the full cost of the purchase, lease, installation, or procurement of refueling infrastructure, equipment, or services or may establish criteria for reimbursing a percentage of the cost.

(e) A grant under the program may be combined with funding from other sources, including other grant programs, except that a grant may not be combined with other funding or grants from the Texas emissions reduction plan. When combined with other funding sources, a grant may not exceed the total cost to the grant recipient.

(f) In providing a grant for the lease of a motor vehicle under this chapter, the commission shall establish criteria:

(1) to offset incremental costs through an up-front payment to lower the cost basis of the lease; or

(2) if determined appropriate by the commission, to provide for reimbursement of lease payments over no more than the period of availability of the contracted funds under applicable state law and regulation, which may be less than the required three-year lease term.

(g) In providing a grant for the lease of refueling infrastructure, equipment, or services, the commission shall establish criteria:

(1) to offset incremental costs through an up-front payment to lower the cost basis of the lease; or

(2) if determined appropriate by the commission, to provide for reimbursement of lease payments over no more than the period of availability of the contracted funds under applicable state law and regulation, which may be less than the required three-year lease term.

(h) Notwithstanding Subsection (d), the commission is not obligated to fund the full cost of the purchase, lease, installation, or procurement of refueling infrastructure, equipment, or services if those costs cannot be incurred and reimbursed over the period of availability of the funds under applicable state law and regulation.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.008. AVAILABILITY OF EMISSIONS REDUCTION CREDITS. (a) A project that is funded from a grant under the program and that would generate marketable emissions reduction credits under a state or federal emissions reduction credit averaging, banking, or trading program is not eligible for funding under the program unless:

(1) the project includes the transfer of the credits, or the reductions that would otherwise be marketable credits, to the commission and, if applicable, the state implementation plan; and

(2) the credits or reductions, as applicable, are permanently retired.

(b) An emissions reduction generated by a purchase or lease under this chapter may be used to demonstrate conformity with the state implementation plan.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.009. USE OF GRANT MONEY. A grant recipient when using money from a grant under the program shall prioritize:

(1) the purchase or lease of new motor vehicles, including

new motor vehicles that are converted to operate on an alternative fuel, when replacing vehicles or adding vehicles to the fleet;

(2) the purchase of new motor vehicles, including new motor vehicles that are converted to operate on an alternative fuel, to replace vehicles that have the highest total mileage and do not use an alternative fuel; and

(3) to the extent feasible, obtaining, whether by purchase, purchase and conversion, or lease, motor vehicles that use compressed natural gas, liquefied natural gas, or liquefied petroleum gas.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.010. GRANT PROCEDURES AND CRITERIA. (a) The commission shall establish specific criteria and procedures in order to implement and administer the program, including the creation and provision of application forms and guidance on the application process.

(b) The commission shall award a grant through a contract between the commission and the grant recipient.

(c) The commission shall provide an online application process for the submission of all required application documents.

(d) The commission may limit funding for a particular period according to priorities established by the commission, including limiting the availability of grants to specific entities, for certain types of vehicles and infrastructure, or to certain geographic areas to ensure equitable distribution of grant funds across the state.

(e) In awarding grants under the program, the commission shall prioritize projects in the following order:

(1) projects that are proposed by a state agency;

(2) projects that are in or near a nonattainment area;

(3) projects that are in an affected county, as that term is defined by Section 386.001; and

(4) projects that will produce the greatest emissions reductions.

(f) In addition to the requirements under Subsection (e), in awarding grants under the program, the commission shall consider:

(1) the total amount of the emissions reduction that would be achieved from the project;

(2) the type and number of vehicles purchased or leased;

(3) the location of the fleet and the refueling infrastructure or equipment;

(4) the number of vehicles served and the rate at which vehicles are served by the refueling infrastructure or equipment;

(5) the amount of any matching funds committed by the applicant; and

(6) the schedule for project completion.

(g) The commission may not award more than 10 percent of the total amount awarded under the program in any fiscal year for purchasing, leasing, installing, or procuring refueling infrastructure, equipment, or services.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.011. FUNDING. The legislature may appropriate money to the commission from the Texas emissions reduction plan account established under Section 386.251 to administer the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1301 (H.B. 3745), Sec. 1.08, eff. September 1, 2021.

Sec. 395.012. ADMINISTRATIVE COSTS. In each fiscal year, the commission may use up to 1.5 percent of the total amount of money allocated to the program in that fiscal year, but not more than $1 million, for the administrative costs of the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.013. RULES. The commission may adopt rules as necessary to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1),

eff. August 30, 2017.

Sec. 395.014. REPORT REQUIRED. On or before November 1 of each even-numbered year, the commission shall submit to the governor, lieutenant governor, and members of the legislature a report that includes the following information regarding awards made under the program during the preceding state fiscal biennium:

(1) the number of grants awarded under the program;

(2) the recipient of each grant awarded;

(3) the number of vehicles replaced;

(4) the number, type, and location of any refueling infrastructure, equipment, or services funded under the program;

(5) the total emissions reductions achieved under the program; and

(6) any other information the commission considers relevant.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

Sec. 395.015. EXPIRATION. This chapter expires on the last day of the state fiscal biennium during which the commission publishes in the Texas Register the notice required by Section 382.037.

Added by Acts 2017, 85th Leg., R.S., Ch. 755 (S.B. 1731), Sec. 8(r-1), eff. August 30, 2017.

SUBTITLE D. NUCLEAR AND RADIOACTIVE MATERIALS

CHAPTER 401. RADIOACTIVE MATERIALS AND OTHER SOURCES OF RADIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 401.0005. SHORT TITLE. This chapter may be cited as the Texas Radiation Control Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 142, eff. Sept. 1, 1991.

Sec. 401.001. POLICY. In furtherance of the state's responsibility to protect occupational and public health and safety

and the environment, it is the policy of the state to institute and maintain:

(1) a regulatory program for sources of radiation that provides for:

(A) compatibility with federal standards and regulatory programs;

(B) a single, effective regulatory system in the state; and

(C) a regulatory system that is to the degree possible compatible with other states' systems; and

(2) a program that permits development and use of sources of radiation for peaceful purposes consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.002. PURPOSE. It is the purpose of this chapter to carry out the policies stated in Section 401.001 by providing a program to:

(1) ensure effective regulation of sources of radiation for protection of the occupational and public health and safety and the environment;

(2) promote an orderly regulatory pattern in the state, among the states, and between the federal government and the state, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to minimize regulatory duplication;

(3) establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) permit maximum use of sources of radiation consistent with public health and safety and environmental protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.003. DEFINITIONS. In this chapter, unless otherwise specifically provided:

(1) "Advisory board" means the radiation advisory board.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

3.1639(74), eff. April 2, 2015.

(3) "By-product material" means:

(A) a radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; and

(B) tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.

(4) "Commission" means the Texas Commission on Environmental Quality.

(5) "Commissioner" means the commissioner of state health services.

(6) "Department" means the Department of State Health Services or other department designated by the executive commissioner.

(7) "Director" means the director of the radiation control program under the department's jurisdiction.

(8) "Disposal" means, with regard to low-level radioactive waste, isolation or removal of low-level radioactive waste from mankind and mankind's environment without intent to retrieve that low-level radioactive waste later. The term does not include emissions and discharges under department rules.

(9) "Electronic product" means a manufactured product or device or component part of a manufactured product or device that has an electronic circuit that during operation can generate or emit a physical field of radiation.

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Federal commission" means the United States Nuclear Regulatory Commission.

(11) "Perpetual care account" means the radiation and perpetual care account.

(12) "General license" means a license issued under department rules for which an application is not required to be filed to transfer, acquire, own, possess, or use quantities of or devices or equipment that make use of by-product, source, special nuclear, or other radioactive material.

(12-a) "Gross receipts" includes, with respect to an entity or affiliated members, owners, shareholders, or limited or general partners, all receipts from the entity's disposal operations in Texas licensed under this chapter including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, or limited or general partners. This term does not include receipts from the entity's operations in Texas, or affiliated members, owners, shareholders, or limited or general partners, for capital reimbursements, bona fide storage and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract. The commission may promulgate rules in establishing the criteria for determining gross receipts consistent with the parameters of this definition.

(12-b) "High-level radioactive waste" has the meaning assigned by 42 U.S.C. Section 10101(12) and includes spent nuclear fuel as defined by 42 U.S.C. Section 10101(23).

(13) "Local government" means a municipality, county, special district, or other political subdivision of the state.

(14) "Person" includes a legal successor to or representative, agent, or agency of any person but does not include the federal commission and federal agencies the federal commission licenses or exempts.

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent to that county, in which nuclear or radioactive material is or will be located; or

(B) is doing business or has a legal interest in land in the county or adjacent county.

(16) "Processing" means the storage, extraction of material, transfer, volume reduction, compaction, or other separation and preparation of low-level radioactive waste for reuse or disposal, including a treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(17) "Radiation" means one or more of the following:

(A) gamma-rays and X-rays, alpha and beta particles,

and other atomic or nuclear particles or rays;

(B) emission of radiation from an electronic device to energy density levels that could reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves emitted from an electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(18) "Radioactive material" means a naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(19) "Radioactive substance" includes:

(A) by-product material;

(B) naturally occurring radioactive material waste, excluding oil and gas NORM waste;

(C) radioactive material;

(D) low-level radioactive waste;

(E) source material;

(F) source of radiation; and

(G) special nuclear material.

(20) Repealed by Acts 1999, 76th Leg., ch. 1367, Sec. 39, eff. Sept. 1, 1999.

(21) "Registration" includes:

(A) notice to the department of the service or use of an electronic product; and

(B) registration under Section 401.105.

(22) "Source material" means:

(A) uranium, thorium, or other material that the governor by order declares to be source material after the federal commission has determined the material to be source material; or

(B) ore that contains one or more of the materials listed in Subdivision (A) to the degree of concentration that the governor by order declares to be source material after the federal commission has determined the material to be of a degree of concentration to be source material.

(23) "Source of radiation" means radioactive material or a device or equipment that emits or is capable of producing radiation intentionally or incidentally.

(24) "Special nuclear material" means:

(A) plutonium, uranium 233, uranium enriched in the isotope 233 or the isotope 235, and any other material other than

source material that the governor by order declares to be special nuclear material after the federal commission determines the material to be special nuclear material; or

(B) material other than source material that is artificially enriched by any of the materials listed in Subdivision (A).

(25) "Specific license" means a license, issued pursuant to an application, to use, manufacture, produce, transfer, receive, acquire, own, possess, process, or dispose of quantities of or devices or equipment using by-product, source, special nuclear, or other radioactive material.

(26) "Naturally occurring radioactive material waste" or "NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted; and

(C) is not exempt by department rule adopted under Section 401.106.

(27) "Oil and gas NORM waste" means solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted;

(C) is not exempt by department rule adopted under Section 401.106; and

(D) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in Section 91.1011 of the Natural Resources Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.208, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 1, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 1, 39, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 1, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0899, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(74), eff. April 2, 2015.

Acts 2021, 87th Leg., 2nd C.S., Ch. 2 (H.B. 7), Sec. 1, eff. September 9, 2021.

Sec. 401.004. LOW-LEVEL RADIOACTIVE WASTE DEFINED. (a) Except as provided by Subsection (b), "low-level radioactive waste" means radioactive material that:

(1) is discarded or unwanted and is not exempt by department rule adopted under Section 401.106;

(2) is waste, as that term is defined by 10 C.F.R. Section 61.2; and

(3) is subject to:

(A) concentration limits established under 10 C.F.R. Section 61.55, or compatible rules established by the executive commissioner or commission, as applicable; and

(B) disposal criteria established under Title 10, Code of Federal Regulations, or established by the department or commission, as applicable.

(b) "Low-level radioactive waste" does not include:

(1) high-level radioactive waste as defined by 10 C.F.R. Section 60.2;

(2) spent nuclear fuel as defined by 10 C.F.R. Section 72.3;

(3) by-product material described by Section 401.003(3)(B);

(4) naturally occurring radioactive material waste that is not oil and gas NORM waste; or

(5) oil and gas NORM waste.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0900, eff. April 2, 2015.

Sec. 401.005. CODE OF FEDERAL REGULATIONS REFERENCES. A reference in this chapter to the "C.F.R." or the "Code of Federal Regulations" means the Code of Federal Regulations as it existed on September 1, 1999.

Added by Acts 1999, 76th Leg., ch. 1367, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 401.011. RADIATION CONTROL AGENCY. (a) The department is the Texas Radiation Control Agency. The department has jurisdiction over activities and substances regulated under this chapter except as provided by Subsection (b) and Subchapters E, F, G, and K.

(b) The commission has jurisdiction to regulate and license:

(1) the disposal of radioactive substances;

(2) the processing or storage of low-level radioactive waste or naturally occurring radioactive material waste received from other persons, except oil and gas NORM;

(3) the recovery or processing of source material in accordance with Subchapter G;

(4) the processing of by-product material as defined by Section 401.003(3)(B); and

(5) sites for the disposal of:

(A) low-level radioactive waste;

(B) by-product material; or

(C) naturally occurring radioactive material waste.

(c) The department and commission each shall exercise its respective powers and duties under this chapter for the protection of the occupational health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 2, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 2, eff. June 15, 2007.

Sec. 401.012. DESIGNATION OF DIRECTOR. The commissioner shall designate the director of the radiation control program under the department's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.013. DUTIES OF DIRECTOR. The director or the director's designee shall perform the department's functions under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 448, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.014. EMPLOYEES. The department and commission each within its jurisdiction may employ, compensate, and prescribe the powers and duties of persons as necessary to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.209, eff. Sept. 1, 1995.

Sec. 401.015. RADIATION ADVISORY BOARD. (a) The radiation advisory board is composed of the following 19 members appointed by the governor:

(1) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

(2) one representative from labor;

(3) one representative from agriculture;

(4) one representative from the insurance industry;

(5) one individual who is engaged in the use and application of nuclear physics in medicine and is certified by the American Board of Radiology or licensed by the Texas Medical Board under Chapter 602, Occupations Code;

(6) one hospital administrator;

(7) one individual licensed by the Texas Medical Board who specializes in nuclear medicine;

(8) one individual licensed by the Texas Medical Board who specializes in pathology;

(9) one individual licensed by the Texas Medical Board who specializes in radiology;

(10) one representative from the nuclear utility industry;

(11) one representative from the radioactive waste industry;

(12) one representative from the petroleum industry;

(13) one health physicist certified by the American Board of Health Physics;

(14) one individual licensed by the State Board of Dental Examiners;

(15) one representative from the uranium mining industry;

(16) one individual licensed by the State Board of Veterinary Medical Examiners; and

(17) three representatives of the public.

(b) Advisory board members serve for staggered six-year terms.

(c) A person is not eligible to be appointed as a representative of the public on the advisory board if that person or that person's spouse is:

(1) engaged in an occupation in the health care field; or

(2) employed by, participates in the management of, or has a financial interest, other than as a consumer, in part of the nuclear utility industry or in a business entity or other organization that is licensed under Subchapter F or Subchapter G.

(d) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the advisory board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health physics or radiological health; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health physics or radiological health.

(e) A person may not be a member of the advisory board or act as the general counsel to the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory board.

(f) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or

national origin of the appointees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 9.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0901, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 9.003, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 255 (S.B. 1592), Sec. 1, eff. May 27, 2023.

Sec. 401.0151. TRAINING FOR ADVISORY BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the advisory board;

(2) the role and functions of the advisory board;

(3) the rules of the advisory board and applicable rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(4) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(5) any applicable ethics policies adopted by the advisory board or the Texas Ethics Commission.

(c) A person appointed to the advisory board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless

of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.0152. INFORMATION ABOUT STANDARDS OF CONDUCT. The department shall provide to members of the advisory board, as often as necessary, information regarding the requirements for office under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0902, eff. April 2, 2015.

Sec. 401.0153. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory board that a member:

(1) does not have at the time of taking office the qualifications required by Section 401.015(a);

(2) does not maintain during service on the advisory board the qualifications required by Section 401.015(a);

(3) is ineligible for membership under Section 401.015(c), (d), or (e);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that it is taken when a ground for removal of an advisory board member exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the advisory board chairman of the potential ground. The advisory board chairman shall

then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the advisory board chairman, the commissioner shall notify the next highest ranking officer of the advisory board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.02, eff. Sept. 1, 1999.

Sec. 401.016. OFFICERS. (a) The governor shall designate a member of the advisory board as the advisory board chairman to serve in that capacity at the will of the governor.

(b) The advisory board shall elect from its members a vice-chairman and secretary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 9.03, eff. Sept. 1, 1999.

Sec. 401.017. SALARY; EXPENSES. A member of the advisory board is not entitled to receive a salary for service on the advisory board but may be reimbursed for actual expenses incurred in attending advisory board meetings or for engaging in authorized advisory board business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.018. MEETINGS. (a) The advisory board shall meet quarterly on dates set by the advisory board.

(b) The advisory board shall hold special meetings that may be called by the advisory board chairman or by five advisory board members.

(c) Advisory board meetings may be held at any designated place in the state determined by the advisory board chairman to best serve the purpose for which the meeting is called.

(d) Each member of the advisory board shall be given timely notice of each advisory board meeting.

(e) A record must be kept of each advisory board meeting.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 554, Sec. 2, eff. Sept. 1, 1997.

Sec. 401.0181. PUBLIC TESTIMONY. The advisory board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 9.04, eff. Sept. 1, 1999.

Sec. 401.019. ADVISORY BOARD DUTIES. The advisory board shall:

(1) review and evaluate state radiation policies and programs;

(2) make recommendations and furnish technical advice to the department, the commission, the Railroad Commission of Texas, and other state agencies that may be required on matters relating to development, use, and regulation of sources of radiation; and

(3) review proposed rules and guidelines of any state agency relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to those matters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 553, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 554, Sec. 3, eff. June 2, 1997.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0903, eff. April 2, 2015.

Sec. 401.020. DUTY OF AGENCIES WITH RADIATION-RELATED PROGRAMS. A state agency shall:

(1) consider the recommendations and advice of the advisory board that concern the agency's policies or programs related to the development, use, or regulation of a source of radiation; and

(2) provide the advisory board a written response to the recommendations or advice.

Added by Acts 1997, 75th Leg., ch. 553, Sec. 2, eff. June 2, 1997.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 401.051. ADOPTION OF RULES AND GUIDELINES. The executive commissioner and commission each within the jurisdiction of that officer or agency may adopt rules and guidelines relating to control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.210, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0904, eff. April 2, 2015.

Sec. 401.052. RULES FOR TRANSPORTATION AND ROUTING. (a) The executive commissioner shall adopt rules that provide for transportation and routing of radioactive material and waste in this state.

(b) Rules adopted under this section for low-level radioactive waste must:

(1) to the extent practicable, be compatible with United States Department of Transportation and federal commission regulations relating to the transportation of low-level radioactive waste;

(2) require each shipper and carrier of low-level radioactive waste to adopt an emergency plan approved by the department for responding to transportation accidents;

(3) require the notification and reporting of accidents to the department and to local emergency planning committees in the county where the accident occurs;

(4) require each shipper to adopt a quality control program approved by the department to verify that shipping containers are suitable for shipment to a licensed disposal facility;

(5) assess a fee on shippers for shipments to a Texas low-level radioactive waste disposal facility of low-level radioactive waste originating in Texas or out-of-state; and

(6) require a carrier to carry liability insurance in an amount the executive commissioner determines is sufficient to cover damages likely to be caused by a shipping accident in accordance with

regulations imposed by the United States Department of Transportation and the federal commission.

(c) In adopting rules under this section, the executive commissioner shall consult with the advisory board and the commission.

(d) Fees assessed under this section:

(1) may provide additional revenue to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission;

(2) may not exceed $10 per cubic foot of shipped low-level radioactive waste;

(3) shall be collected by the department and deposited to the credit of the perpetual care account;

(4) shall be used by the department for emergency planning for and response to transportation accidents involving low-level radioactive waste, including first responder training in counties through which transportation routes are designated in accordance with Subsection (a); and

(5) may not be collected on waste disposed of at a federal waste disposal facility.

(e) Money expended from the perpetual care account to respond to accidents involving low-level radioactive waste must be reimbursed to the perpetual care account by the responsible shipper or carrier according to rules adopted by the executive commissioner.

(f) In this section, "shipper" means a person who generates low-level radioactive waste and ships or arranges with others to ship the waste to a disposal site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 878, Sec. 23, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.211, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0905, eff. April 2, 2015.

Sec. 401.0525. GROUNDWATER PROTECTION STANDARDS. (a) The commission shall adopt and enforce groundwater protection standards compatible with federal standards adopted under the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.).

(b) In adopting any standards relating to nonradioactive constituents the commission shall consider the compatibility of those standards with the commission's groundwater protection standards adopted under other programs.

(c) With the exception of a permit for a facility located at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors operated by a university, the commission may not under the authority given to the agency under Section 301, 304, or 401 of the Clean Water Act (33 U.S.C. Sections 1311, 1314, and 1341) issue a general construction permit or approve a Stormwater Pollution Prevention Plan under Section 26.040, Water Code, or issue a permit under the Texas Pollutant Discharge Elimination System Program under Section 26.027, 26.028, or 26.121, Water Code, for the construction or operation of a facility that is licensed for the storage of high-level radioactive waste by the United States Nuclear Regulatory Commission under 10 C.F.R. Part 72. Section 401.005 does not apply to this subsection.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 144, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.212, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., 2nd C.S., Ch. 2 (H.B. 7), Sec. 2, eff. September 9, 2021.

Sec. 401.053. CLASSIFICATION SYSTEM FOR LOW-LEVEL RADIOACTIVE WASTE. The department may establish a classification system for low-level radioactive waste that is based on radiological, chemical, and biological characteristics and on physical state so that low-level radioactive waste can be managed safely and compatibly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.054. NOTICE AND HEARING. (a) The department shall provide notice and an opportunity for a hearing on a matter under its jurisdiction as provided by its formal hearing procedures and Chapter 2001, Government Code, on written request of a person affected by any of the following procedures:

(1) the denial, suspension, or revocation by the department of a license or registration;

(2) the determination by the department of compliance with or the grant of exemptions from a department rule or order; or

(3) the grant or amendment by the department of a specific license.

(b) This section does not apply to license or registration activities for which other notice and hearing procedures are required by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.213, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 46, eff. Sept. 1, 1997.

Sec. 401.055. ORDERS. The department or commission shall issue and modify necessary orders in connection with proceedings conducted by the agency under this chapter on matters under the agency's jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.214, eff. Sept. 1, 1995.

Sec. 401.056. EMERGENCY ORDERS. (a) If the department or commission finds an emergency exists as a result of a matter under its jurisdiction that requires immediate action to protect the public health and safety and the environment, the agency, without notice or hearing, may issue an order stating the existence of the emergency and requiring that action be taken at the agency's direction to meet the emergency.

(b) The emergency order is effective immediately.

(c) A person to whom an emergency order is directed shall comply immediately with that order.

(d) The agency shall provide a person to whom an emergency order is directed an opportunity for a hearing on written application

to the agency not later than the 30th day following the date of the emergency order.

(e) The agency shall hold a requested hearing not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing application.

(f) The agency shall continue, modify, or revoke an emergency order based on the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.215, eff. Sept. 1, 1995.

Sec. 401.057. RECORDS. (a) The department or commission, within its jurisdiction, shall require each person who possesses or uses a source of radiation to maintain:

(1) records relating to the use, receipt, storage, transfer, or disposal of that source of radiation;

(2) appropriate records that show the radiation exposure of each individual for whom personnel monitoring is required by the agency's rules, licenses, registrations, and orders; and

(3) other records the agency requires.

(b) The executive commissioner or commission by rule may provide exemptions to the records requirements under Subsections (a)(1) and (3).

(c) Copies of records required to be maintained under Subsection (a) shall be submitted to the agency on request.

(d) A person who possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at any time the employee has received exposure that exceeds the maximum permissible levels provided by the agency's rules and on termination of employment. The person shall furnish to an employee on request a copy of the employee's annual exposure record.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0906, eff. April 2, 2015.

Sec. 401.058. INFORMATION. (a) The department shall collect and disseminate information relating to the transportation of sources of radiation. The department and the commission each within its jurisdiction shall collect and disseminate information relating to the control of sources of radiation.

(b) The department and commission each, as part of the collection and dissemination of information, shall maintain:

(1) a file of license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(2) a file of registrants possessing sources of radiation requiring registration under this chapter and any administrative or judicial action relating to those registrants; and

(3) a file of pending and adopted rules and guidelines relating to regulation of sources of radiation and proceedings relating to those rules and guidelines.

(c) The commission, as part of the collection and dissemination of information, shall maintain a file of:

(1) known locations in this state at which radioactive material has been disposed of and at which soil and facilities are contaminated; and

(2) information on inspection reports relating to the radioactive material disposed of and radiation levels at those locations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.216, eff. Sept. 1, 1995.

Sec. 401.059. PROGRAM DEVELOPMENT. (a) The department shall develop programs to evaluate hazards associated with the use of sources of radiation.

(b) The department and commission shall develop programs within their respective jurisdictions with due regard for compatibility with federal programs for the regulation of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.217, eff. Sept. 1, 1995.

Sec. 401.060. STUDIES, INVESTIGATIONS, ETC. The department and

commission each within its jurisdiction shall encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.061. LOW-LEVEL RADIOACTIVE WASTE STUDIES. The department and commission each within its jurisdiction shall conduct studies of the need for low-level radioactive waste processing and disposal facilities and technologies as the agency considers necessary for minimizing the risks to the public and the environment from low-level radioactive waste management.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 4, eff. Sept. 1, 1999.

Sec. 401.062. TRAINING PROGRAMS. (a) The department and commission each may institute training programs to qualify their personnel to carry out this chapter.

(b) The department and commission each may make those personnel available to participate in a program of the federal government, another state, or an interstate agency to carry out this chapter's purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.063. GENERAL INSPECTION AUTHORITY. (a) The department or commission or the agency's representative may enter public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with this chapter and the agency's rules, licenses, registrations, and orders under this chapter.

(b) The department or commission or the agency's representative may enter an area under the jurisdiction of the federal government only with the concurrence of the federal government or its designated

representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.218, eff. Sept. 1, 1995.

Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT. (a) The executive commissioner shall adopt rules relating to the frequency of department inspections of electronic products.

(b) In adopting the rules, the executive commissioner shall consider the threat to human health and safety that the electronic products may present.

(c) The executive commissioner shall adopt an inspection interval of five years for routine inspections of electronic products that present a minimal threat to human health and safety.

(d) The executive commissioner by rule shall require a person who inspects medical, podiatric medical, dental, veterinary, or chiropractic electronic products to have special training in the design and uses of the products.

(e) The department shall conduct inspections of medical, podiatric medical, dental, veterinary, and chiropractic electronic products in a manner designed to cause as little disruption of a medical, podiatric medical, dental, veterinary, or chiropractic practice as is practicable.

(f) In adopting rules under this section relating to the inspection of medical, podiatric medical, dental, veterinary, and chiropractic electronic products, the executive commissioner shall solicit and follow the recommendations of the State Board of Dental Examiners for the inspections of dental electronic products, the Texas Department of Licensing and Regulation for the inspection of podiatric medical electronic products, the Texas Medical Board for the inspection of medical electronic products, the State Board of Veterinary Medical Examiners for the inspection of medical electronic products used in the practice of veterinary medicine, and the Texas Board of Chiropractic Examiners for the inspection of chiropractic electronic products, unless in conflict with federal statutes or federal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 207, Sec. 1, eff. May 19, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 80, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0907, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.008, eff. September 1, 2019.

Sec. 401.065. INSPECTION AGREEMENTS. The department or commission, in matters under its jurisdiction, with the approval of the governor, may enter into an agreement with the federal government, another state, or an interstate agency under which the state, in cooperation with the other parties to the agreement, performs inspections or other functions relating to the control of sources of radiation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.219, eff. Sept. 1, 1995.

Sec. 401.066. SURVEILLANCE PLANS. The department shall prepare and update emergency and environmental surveillance plans for fixed nuclear facilities in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.067. LOCAL GOVERNMENT INSPECTIONS. (a) An agent or employee of a local government may examine and copy during regular business hours records relating to activities licensed under Subchapter F. Examinations and copying of records must be done at the local government's expense and subject to limitations in Chapter 552, Government Code.

(b) Records copied under this section are public records unless the record's owner shows to the satisfaction of the commission that the records if made public will divulge trade secrets. On such a showing, the commission shall consider the copied records confidential.

(c) A local government agent or employee may not enter private property that has management in residence unless the agent or employee notifies the management, or person in charge, of the agent's or employee's presence and exhibits proper credentials. The agent or

employee shall observe the rules of the establishment being inspected relating to safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.220, eff. Sept. 1, 1995.

Sec. 401.068. IMPOUNDING SOURCES OF RADIATION. The department or commission, in an emergency relating to a substance or activity under the agency's jurisdiction, may impound or order impounded sources of radiation that are in the possession of a person who is not equipped to observe or fails to observe this chapter or the agency's rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.069. MEMORANDUM OF UNDERSTANDING. The executive commissioner or commission must adopt as a rule any memorandum of understanding between the department or commission, as appropriate, and another state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0908, eff. April 2, 2015.

Sec. 401.070. RELATIONSHIP WITH OTHER ENTITIES. The department shall advise, consult, and cooperate, on matters under its jurisdiction, with other state agencies, the federal government, other states, interstate agencies, local governments, and groups concerned with the control and transportation of sources of radiation. The commission shall advise, consult, and cooperate with those entities on matters under its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.221, eff. Sept. 1, 1995.

Sec. 401.071. GENERAL POWERS OF COMMISSION IN RELATION TO LOW-LEVEL RADIOACTIVE WASTE. (a) The commission may:

(1) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites for and disposal of low-level radioactive waste; and

(2) advise, consult, and cooperate with the federal government, the state, interstate agencies, local governmental entities in this state, and private entities on matters involving the disposal of low-level radioactive waste.

(b) In carrying out its duties under this section the commission may:

(1) apply for, receive, accept, and administer gifts, grants, and other funds available from any source; and

(2) contract with the federal government, the state, interstate agencies, local governmental agencies, and private entities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 3, eff. Sept. 1, 2003.

Sec. 401.072. DISPOSAL OR STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE. With the exception of storage at the site of currently or formerly operating nuclear power reactors and currently or formerly operating nuclear research and test reactors operated by a university, a person, including the compact waste disposal facility license holder, may not dispose of or store high-level radioactive waste in this state.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 2 (H.B. 7), Sec. 3, eff. September 9, 2021.

SUBCHAPTER D. LICENSING AND REGISTRATION

Sec. 401.101. LICENSE AND REGISTRATION REQUIREMENT. A person may not use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of a source of radiation unless that person has a license, registration, or exemption from the

department or commission as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.102. APPLICATION TO NUCLEAR REACTOR FACILITIES. Nuclear reactor facilities licensed by the federal commission are not required to be licensed or registered under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.

Sec. 401.103. RULES AND GUIDELINES FOR LICENSING AND REGISTRATION. (a) The executive commissioner shall adopt rules and guidelines that provide for licensing and registration for the transportation of sources of radiation.

(b) The executive commissioner and commission each within the jurisdiction of that officer or agency shall adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation.

(c) In adopting rules and guidelines, the executive commissioner and commission shall consider the compatibility of those rules and guidelines with federal regulatory programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0909, eff. April 2, 2015.

Sec. 401.104. LICENSING AND REGISTRATION RULES. (a) Except as provided by Subsections (b) and (e), the executive commissioner by rule shall provide for the general or specific licensing of:

(1) radioactive material; or

(2) devices or equipment using radioactive material.

(b) Except as provided by Subsection (e), the commission by rule shall provide for licensing for the disposal of radioactive substances.

(c) The executive commissioner or commission shall provide in rules of the appropriate agency for the issuance, amendment, suspension, and revocation of licenses.

(d) The executive commissioner or commission, within the jurisdiction of that officer or agency, may require the registration or licensing of other sources of radiation.

(e) The executive commissioner or commission may not require a license for a person that is a party to an order issued under Section 361.188 or 361.272 for sites subject to Subchapter F, Chapter 361, or an agreement entered into under Section 361.606. This subsection does not exempt the person from complying with technical standards that a holder of a license otherwise required by this chapter for the particular activity is required to meet. The exemption granted by this subsection applies only to the assessment and remediation of the contamination at the site.

(f) A separate commercial storage and processing license may be issued for a site also licensed for disposal under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 3, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 3, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0910, eff. April 2, 2015.

Sec. 401.105. RECOGNITION OF OTHER LICENSES. The executive commissioner or commission, each within the jurisdiction of that officer or agency, by rule may recognize other federal or state licenses the executive commissioner or commission, as appropriate, considers desirable, subject to registration requirements the executive commissioner or commission, as appropriate, may prescribe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.222, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0911, eff.

April 2, 2015.

Sec. 401.106. EXEMPTION FROM LICENSING OR REGISTRATION REQUIREMENTS OR FROM APPLICATION OF RULE. (a) The executive commissioner or commission by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter and under the agency's jurisdiction if the executive commissioner or commission finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment.

(b) The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the executive commissioner or commission under this chapter if the department or commission, respectively, determines that the exemption:

(1) is not prohibited by law; and

(2) will not result in a significant risk to public health and safety and the environment.

(c) Notwithstanding any other law, the commission may, on request or its own initiative, authorize on-site disposal of low-level radioactive waste on a specific basis at any site at which low-level radioactive waste disposal operations began before September 1, 1989, if after evaluation of the specific characteristics of the waste, the disposal site, and the method of disposal, the commission finds that the continuation of the disposal activity will not constitute a significant risk to the public health and safety and to the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 4, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0912, eff. April 2, 2015.

Sec. 401.107. LICENSE APPLICATION. (a) An application for a

specific license issued by the department or commission must be in writing and must state the information that the executive commissioner or commission, as appropriate, by rule determines to be necessary to decide the technical, insurance, and financial qualifications or any other of the applicant's qualifications the issuing agency considers reasonable or necessary to protect the occupational and public health and safety and the environment.

(b) The issuing agency at any time after an application is filed with the agency, and if the application is for a renewal, before the expiration of the license, may require further written statements and may make inspections the agency considers necessary to determine if the license should be granted or denied or if the current license should be modified, suspended, or revoked.

(c) The applicant or license holder shall sign each license application and each statement, and the agency may require the applicant or license holder to make the application or statement under oath.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0913, eff. April 2, 2015.

Sec. 401.108. FINANCIAL QUALIFICATIONS. (a) Before a license is issued or renewed by the commission, the applicant shall demonstrate to the commission that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal, by posting security acceptable to the commission.

(b) A license holder shall submit to the department or commission, as appropriate, at intervals required by department or commission rules or the license, proof that the license holder has updated, as appropriate, the security posted under Subsection (a).

(c) The commission at regular intervals not to exceed five years shall reevaluate the qualifications and security provided by a license holder under Subchapter F or Subchapter G. The reevaluation may coincide with license renewal procedures if renewal and reevaluation occur in the same year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 5, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0914, eff. April 2, 2015.

Sec. 401.109. SECURITY. (a) The executive commissioner or commission may require a holder of a license issued by the applicable agency to provide security acceptable to the applicable agency to assure performance of the license holder's obligations under this chapter. The department shall deposit security provided to the department under this section to the credit of the perpetual care account. The executive commissioner by rule shall provide that any evidence of security must be made payable to the credit of the perpetual care account. The commission shall deposit security provided to the commission under this section to the credit of the environmental radiation and perpetual care account. The commission shall provide that security must be made payable to the credit of the environmental radiation and perpetual care account.

(b) The commission shall require a holder of a license that authorizes the disposal of radioactive substances to provide security acceptable to the commission to assure performance of the license holder's obligations under this chapter.

(c) The amount and type of security required shall be determined under the agency's rules in accordance with criteria that include:

(1) the need for and scope of decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;

(2) reasonable estimates of the cost of decontamination, decommissioning, reclamation, and disposal as provided by Section 401.303; and

(3) the cost of perpetual maintenance and surveillance, if any.

(d) In this section "security" includes:

(1) a cash deposit;

(2) a surety bond;
(3) a certificate of deposit;
(4) an irrevocable letter of credit;
(5) a deposit of government securities;
(6) an insurance policy, the form and content of which is acceptable to the agency; and
(7) other security acceptable to the agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 6, eff. June 15, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0915, eff. April 2, 2015.

Sec. 401.110. DETERMINATION ON LICENSE. (a) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the commission may consider an applicant's or license holder's technical competence, financial qualifications, and compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code.

(b) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a license or registration, the department may consider the technical competence, financial qualifications, and compliance history of an applicant, license holder, or registration holder. After an opportunity for a hearing, the department shall deny an application for a license or registration, license or registration amendment, or license or registration renewal if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through significant violations of this chapter or the department's rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 414, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.28, eff. September 1, 2011.

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES. (a) The commission, in adopting rules for the issuance of licenses under the commission's jurisdiction for new sites for processing or disposal of radioactive substances from other persons, shall adopt criteria for the designation of unsuitable sites, including:

(1) flood hazard areas;

(2) areas with characteristics of discharge from or recharge of a groundwater aquifer system; or

(3) areas in which soil conditions make spill cleanup impracticable.

(b) The commission shall consult with the Texas Water Development Board, the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate state agencies in developing proposed rules. The commission by rule shall:

(1) require selection of sites in areas in which natural conditions minimize potential contamination of surface water and groundwater; and

(2) prohibit issuance of licenses for unsuitable sites as defined by the rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 7, eff. June 15, 2007.

Sec. 401.112. LOW-LEVEL RADIOACTIVE WASTE PROCESSING OR DISPOSAL LICENSE APPLICATION AND CONSIDERATIONS. (a) The commission, in making a licensing decision on a specific license

application to process or dispose of low-level radioactive waste from other persons, shall consider:

(1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;

(2) compatibility with present uses of land near the site;

(3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;

(4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;

(5) the applicant's qualifications, including:

(A) financial and technical qualifications and compliance history under the method for using compliance history developed by the commission under Section 5.754, Water Code, for an application to the commission; and

(B) the demonstration of financial qualifications under Section 401.108;

(6) background monitoring plans for the proposed site;

(7) suitability of facilities associated with the proposed activities;

(8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;

(9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;

(10) training programs for the applicant's employees;

(11) a monitoring, record-keeping, and reporting program;

(12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;

(13) decommissioning and postclosure care plans;

(14) security plans;

(15) worker monitoring and protection plans;

(16) emergency plans; and

(17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

(b) An applicant for the specific license must submit with the application information necessary for the commission to consider the

factors under Subsection (a).

(c) The commission by rule shall provide specific criteria for the different types of licensed low-level radioactive waste activities for the listed factors and may include additional factors and criteria that the commission determines necessary for full consideration of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.223, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 16.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 414, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 8, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 4.29, eff. September 1, 2011.

Sec. 401.113. ENVIRONMENTAL ANALYSIS. (a) Before a hearing under Section 401.114 begins, the commission shall prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity that the commission determines has a significant effect on the human environment.

(b) The commission shall make the analysis available to the public not later than the 31st day before the date of a hearing under Section 401.114.

(c) The analysis must include:

(1) an assessment of radiological and nonradiological effects of the activity on the public health;

(2) an assessment of any effect on a waterway or groundwater resulting from the activity;

(3) consideration of alternatives to the activities to be conducted under the license; and

(4) consideration of the long-term effects associated with activities, including decommissioning, decontamination, and reclamation impacts, including the management of low-level radioactive waste, to be conducted under the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.224, eff. Sept. 1, 1995;

Acts 1999, 76th Leg., ch. 1367, Sec. 9, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 9, eff. June 15, 2007.

Sec. 401.114. NOTICE AND HEARING. (a) Before the commission grants or renews a license to process or dispose of low-level radioactive waste from other persons, the commission shall give notice and shall provide an opportunity for a public hearing in the manner provided by the commission's formal hearing procedure and Chapter 2001, Government Code.

(b) In addition to other notice, the commission shall publish notice of the hearing in the manner provided by Chapter 313, Government Code, in the county in which the proposed facility is to be located. The notice shall state the subject and the time, place, and date of the hearing.

(c) The commission shall mail, by certified mail in the manner provided by the commission's rules, written notice to each person who owns property adjacent to the proposed site. The notice must be mailed not later than the 31st day before the date of the hearing and must include the same information that is in the published notice. If true, the commission or the applicant must certify that the notice was mailed as required by this subsection, and at the hearing the certificate is conclusive evidence of the mailing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.225, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 10, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 10, eff. June 15, 2007.

Sec. 401.115. LICENSES FROM OTHER AGENCIES. A holder of a license to operate a facility to process or dispose of low-level radioactive waste may not operate the facility until the holder has obtained all other required licenses or permits from other agencies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 11, eff. Sept. 1, 1999.

Sec. 401.116. LICENSE AMENDMENT. (a) An amendment to a license to process or dispose of low-level radioactive waste from other persons may take effect immediately.

(b) The department or commission, as appropriate, shall publish notice of the license amendment once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and shall give notice to any person who has notified the agency, in advance, of the desire to receive notice of proposed amendment of the license.

(c) Notice under this section must include:

(1) the identity of the license holder;

(2) identification of the license; and

(3) a short and plain statement of the license amendment's substance.

(d) The agency shall give notice and provide for a hearing to be conducted to consider the license amendment if a person affected files a written complaint with the agency before the 31st day after the date on which notice is published under Subsection (b). The agency shall give notice of the hearing as provided by Section 401.114.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.226, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 12, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0916, eff. April 2, 2015.

Sec. 401.117. CONSTRUCTION LIMITATION. The commission shall prohibit major construction relating to activities to be permitted under a license issued by the commission to process or dispose of low-level radioactive waste from other persons until the requirements in Sections 401.113 and 401.114 are completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.227, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 13, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 11, eff. June 15, 2007.

Sec. 401.118. LICENSE FORM AND CONTENT. (a) The department or commission shall prescribe the form and the terms for each license it issues.

(b) Each license is subject to amendment, revision, or modification by rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.228, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0917, eff. April 2, 2015.

Sec. 401.119. LICENSE TRANSFER. A license issued by the department or commission may be assigned only to a person qualified under rules of the issuing agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.229, eff. Sept. 1, 1995.

SUBCHAPTER E. MANAGEMENT OF LOW-LEVEL RADIOACTIVE WASTE

Sec. 401.151. COMPATIBILITY WITH FEDERAL STANDARDS. The department and commission each shall assure that the management of low-level radioactive waste under their respective jurisdictions is compatible with applicable federal commission standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 15, eff. Sept. 1, 1999.

Sec. 401.152. CORRECTIVE ACTION AND MEASURES. (a) If the department or commission, under procedures provided by Section 401.056, finds that low-level radioactive waste under its jurisdiction threatens the public health and safety and the environment and that the license holder managing the low-level

radioactive waste is unable to remove the threat, the agency by order may require any action, including a corrective measure, that is necessary to remove the threat.

(b) The department shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The department shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the license holder;

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the radiation and perpetual care account the amount necessary to pay the costs.

(c) The commission shall use the security provided by the license holder to pay the costs of actions taken or to be taken under this section, including costs associated with the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the license holder;

(2) convert an amount of security to cash, as necessary; and

(3) disburse from the security in the environmental radiation and perpetual care account the amount necessary to pay the costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.230, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 16, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 3, eff. September 1, 2013.

SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING LOW-LEVEL RADIOACTIVE WASTE DISPOSAL

Sec. 401.2005. DEFINITIONS. In this subchapter:

(1) "Compact" means the Texas Low-Level Radioactive Waste

Disposal Compact established under Section 403.006.

(1-a) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation to this state by the compact commission under Section 3.05 of the compact.

(1-b) "Curie capacity" means the amount of the radioactivity of the waste that may be accepted by the compact waste disposal facility as determined by the commission in the compact waste disposal facility license.

(2) "Compact waste disposal facility" means the low-level radioactive waste disposal facility licensed by the commission under this subchapter for the disposal of compact waste.

(3) "Disposal facility site" means the tract of land on which is located the compact waste disposal facility and the federal facility waste disposal facility, if applicable. The term includes the immediate area surrounding the facility or facilities.

(4) "Federal facility waste" means low-level radioactive waste that is the responsibility of the federal government under the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

(5) "Federal facility waste disposal facility" means a facility for the disposal of federal facility waste licensed under Section 401.216.

(6) "Host state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(6-a) "Nonparty compact waste" means low-level radioactive waste imported from a state other than a party state as authorized under Section 3.05(6) of the compact.

(7) "Party state" has the meaning assigned by Section 2.01 of the compact established under Section 403.006.

(8) "Party state compact waste" means low-level radioactive waste generated in a party state.

(9) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 1, eff. September 1, 2011.

Sec. 401.201. REGULATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. The commission shall directly regulate the disposal of low-level radioactive waste in accordance with this subchapter. The person making the disposal shall comply with this subchapter and commission rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.202. LICENSING AUTHORITY. (a) The commission may grant, deny, renew, revoke, suspend, or withdraw licenses for the disposal of low-level radioactive waste from other persons and for the processing of that waste.

(b) The commission shall receive applications for and may issue not more than one license for a single compact waste disposal facility. The commission may issue the license only for a facility that meets:

(1) requirements for licensing provided by this subchapter and by commission rules; and

(2) requirements for disposal adopted by the commission that meet federal requirements for disposal.

(c) Except as provided by Section 401.216, the commission shall provide that the compact waste disposal facility license authorizes only the disposal of compact waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 12, eff.

June 15, 2007.

Sec. 401.204. ACQUISITION OF PROPERTY. (a) An application for a compact waste disposal facility license may not be considered unless the applicant has acquired the title to and any interest in land and buildings as required by commission rule.

(b) If an applicant for a compact waste disposal license is unsuccessful in acquiring a mineral right that the rules adopted under Subsection (a) require the applicant to acquire, the commission may allow the applicant, to the extent permissible under federal law, to enter into a surface use agreement that restricts mineral access, including slant drilling and subsurface mining, to the extent necessary to prevent intrusion into the disposal facility site.

(c) If an applicant cannot reach a surface use agreement described by Subsection (b) with a private landowner, the attorney general shall, on request of the commission, institute condemnation proceedings as provided under Chapter 21, Property Code, to acquire fee simple interest in the mineral right.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF LOW-LEVEL RADIOACTIVE WASTE. (a) The compact waste disposal facility license holder shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of compact waste and the decommissioning of the licensed activity;

(2) convey to the state when the license is issued all required right, title, and interest in land and buildings acquired under commission rules adopted under Section 401.204, together with requisite rights of access to that property; and

(3) formally acknowledge before termination of the license the conveyance to the state of the right, title, and interest in compact waste located on the property conveyed.

(b) The compact waste disposal facility license holder, if

licensed under Section 401.216 to dispose of federal facility waste, shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of federal facility waste and the decommissioning of the licensed federal facility waste disposal activity;

(2) on decommissioning of the licensed federal facility waste disposal activity, convey to the federal government, as provided by the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended, all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204, together with requisite rights of access to that property;

(3) formally acknowledge before termination of the license the conveyance to the federal government of the right, title, and interest in radioactive waste located on the property conveyed; and

(4) before accepting federal facility waste, submit to the commission a written agreement, signed by an official of the federal government, stating that the federal government will assume all required right, title, and interest in land and buildings acquired under commission rules under Section 401.204 for the disposal of federal facility waste, together with requisite rights of access to the land and buildings, in accordance with the federal Nuclear Waste Policy Act of 1982, Subtitle D (42 U.S.C. Section 10171 et seq.), as amended.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.2051. CONVEYANCE OF WASTE. (a) The compact waste disposal facility license holder shall convey to the state at no cost to the state title to the compact waste delivered to the disposal facility for disposal at the time the waste is accepted at the site. Acceptance occurs when the acceptance criteria specified in the license have been satisfied. This section does not apply to federal facility waste accepted at a federal facility waste disposal facility.

(b) The title and all related rights and interest in compact waste conveyed under this section are the property of the commission on the state's behalf. The commission may administer the waste as property in the name of the state.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.206. RESIDENT INSPECTOR. (a) The compact waste disposal facility license holder shall reimburse the commission for the salary and other expenses of two or more resident inspectors employed by the commission.

(b) The commission may require that the compact waste disposal facility license holder provide facilities at the disposal site for the resident inspectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 20, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.207. OUT-OF-STATE WASTE; NONPARTY COMPACT WASTE. (a) The compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) federal facility waste that the license holder is licensed to dispose of under Section 401.216; or

(3) generated from manufactured sources or devices originating in this state.

(b) The compact waste disposal facility license holder may accept for disposal at the compact waste disposal facility approved nonparty compact waste that is classified as Class A, Class B, or Class C low-level radioactive waste in accordance with the compact waste disposal facility license to the extent the acceptance does not diminish the disposal volume or curie capacity available to party states. The license holder may not accept any nonparty compact waste for disposal at the facility until the license has been modified by the commission to specifically authorize the disposal of nonparty

compact waste.

(c) The compact waste disposal facility license holder may not accept waste of international origin for disposal at the facility.

(d) The compact waste disposal facility license holder may not accept for disposal at the compact waste disposal facility nonparty compact waste that does not meet the waste characteristics and waste forms for disposal applicable to compact waste as set forth by the commission in the compact waste disposal facility license. Before the license holder may accept nonparty compact waste for disposal, the commission must certify through a written evaluation that the waste is authorized for disposal under the license. If the disposal is not authorized under the license, the commission must inform the license holder of the license amendments necessary to authorize the disposal.

(d-1) Beginning September 1, 2015, the compact waste disposal facility license holder may accept nonparty compact waste for disposal at the facility only if:

(1) the waste has been volume-reduced, if eligible, by at least a factor of three in a manner consistent with this subchapter as provided by commission rule; and

(2) the compact waste disposal facility license holder collects a surcharge under Subsection (g).

(d-2) If volume reduction of a low-level radioactive waste stream would result in a change of waste classification to a class higher than Class C, the payment of the fee and compliance with other requirements of Subsection (d-1) do not apply.

(d-3) The commission may assess an additional fee on a nonparty compact waste generator for failing to comply with the volume reduction requirements established under this section. The fee shall be deposited to the credit of the low-level radioactive waste fund under Section 401.249. Fees deposited under this subsection may be transferred and used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission under Section 401.251.

(e) The compact waste disposal facility license holder may not collect a fee under this section or enter into a contract for the disposal of nonparty low-level radioactive waste that has been designated as Class A low-level radioactive waste under 10 C.F.R. Section 61.55 and commission rule unless the waste is containerized. The compact waste disposal facility license holder may collect a fee

and dispose of:

(1) not more than the greater of:

(A) 1.167 million curies of nonparty compact waste; or

(B) an amount of nonparty compact waste equal to 30 percent of the initial licensed capacity of the facility; and

(2) not more than 275,000 curies of nonparty compact waste in any fiscal year.

(e-1) The legislature by general law may establish revised limits under Subsection (e) after considering the results of the study under Section 401.208.

(e-2) The commission's executive director, on completion of the study under Section 401.208, may prohibit the license holder from accepting any additional nonparty compact waste if the commission determines from the study that the capacity of the facility will be limited, regardless of whether the limit under Subsection (f) has been reached.

(f) Of the total initial licensed capacity of the compact waste disposal facility:

(1) not more than 30 percent of the volume and curie capacity shall be for nonparty compact waste; and

(2) of the remaining capacity, not less than 80 percent of the volume and curie capacity shall be for compact waste generated in the host state and 20 percent of the volume and curie capacity shall be for compact waste generated in Vermont.

(g) The commission shall assess a surcharge for the disposal of nonparty compact waste at the compact waste disposal facility. The surcharge is 20 percent of the total contracted rate under Section 401.2456 and must be assessed in addition to the total contracted rate under that section.

(h) A surcharge collected under Subsection (g) shall be deposited to the credit of the environmental radiation and perpetual care account.

(h-1) The commission shall conduct a study of the surcharge described by Subsection (g) and, not later than December 1, 2016, shall issue the results of the review to the legislature. The commission shall review the operations and expenses of the compact waste disposal facility license holder and shall require the compact waste disposal facility license holder to provide justification of disposal expenses and historical costs associated with the facility through appropriate evidentiary and empirical records, studies, and

other applicable methodologies. The commission shall consider the impact of the surcharge on the overall revenue generated for the state and may request the assistance of the comptroller in conducting the analysis of the impact of the surcharge.

(i) The Texas Low-Level Radioactive Waste Disposal Compact Commission by rule shall adopt procedures and forms for the approval of the importation of nonparty compact waste.

(j) An application for the approval of the importation of nonparty compact waste may be submitted to the Texas Low-Level Radioactive Waste Disposal Compact Commission only by the generator of the waste.

(k) The commission, in coordination with the Texas Low-Level Radioactive Waste Disposal Compact Commission, shall adopt rules establishing criteria and thresholds by which incidental commingling of party state compact waste and waste from other sources at a commercial processing facility is considered and reasonably limited. The criteria and thresholds for commingling under this subsection established by commission rule are binding on any criteria and thresholds that may be established by the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 4, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 1(a), eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 1(b), eff. September 1, 2019.

Sec. 401.208. STUDY OF CAPACITY. (a) At least once every four years, the commission shall conduct a study on the available volume and curie capacity of the compact waste disposal facility for the disposal of party state compact waste and nonparty compact waste.

(a-1) In order to conduct the study under this section, the commission may require a generator of low-level radioactive waste to provide annually:

(1) information reasonably necessary to evaluate the adequacy of the capacity of the compact waste disposal facility as accurately as possible, including the amount in volume and curies that the generator intends to export or dispose of at a facility other than the compact waste disposal facility;

(2) the amount in volume and curies of low-level radioactive waste that was stored on-site at the generator's facility in the preceding year; and

(3) the length of time waste was stored at the generator's facility.

(b) The commission shall consider and make recommendations regarding:

(1) the future volume and curie capacity needs of party state and nonparty state generators and any additional reserved capacity necessary to meet those needs;

(2) the calculation of radioactive decay related to the compact waste disposal facility and radiation dose assessments based on the curie capacity;

(3) the necessity of containerization of the waste;

(4) the effects of the projected volume and radioactivity of the waste on the health and safety of the public; and

(5) the costs and benefits of volume reduction and stabilized waste forms.

(c) The commission shall submit a final report of the results of the study to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

(d) The Texas Low-Level Radioactive Waste Disposal Compact Commission shall use the study to anticipate the future capacity needs of the compact waste disposal facility.

(e) The commission may conduct a study described by Subsection (a) at any time if the commission determines that a study is necessary.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 2, eff. June 15, 2017.

Sec. 401.2085. REVIEW OF FINANCIAL ASSURANCE. (a) The commission shall conduct a review of the adequacy of the financial assurance mechanisms of the compact waste disposal facility license holder that were approved by the commission before January 1, 2011, against projected post-closure costs, including a review of the adequacy of funds for unplanned events. The review shall consider:

(1) the segregation of financial assurance funds from other funds;

(2) the degree of risk that the financial instruments are subject to financial reversal;

(3) potential post-closure risks associated with the compact waste disposal facility; and

(4) the adequacy of the financial instruments to cover the state's liabilities.

(b) Not later than December 1, 2012, the commission shall submit a final report of the results of the review to the standing committees of the senate and the house of representatives with jurisdiction over the disposal of low-level radioactive waste.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 3, eff. September 1, 2011.

Sec. 401.209. ACQUISITION AND OPERATION OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITES. (a) The commission may acquire the fee simple title in land, affected mineral rights, and buildings at which low-level radioactive waste can be or is being disposed of in a manner consistent with public health and safety and the environment.

(b) Property acquired under this section may be used only for disposing of low-level radioactive waste until the commission determines that another use would not endanger the health, safety, or general welfare of the public or the environment.

(c) The commission may lease property acquired under this

section for operating a disposal site for low-level radioactive waste.

(d) The right, title, and interest in low-level radioactive waste accepted for disposal at property and facilities acquired under this section and any other interest acquired under this chapter are the property of the commission, acting on behalf of the state, and shall be administered and controlled by the commission in the name of the state.

(e) A right, title, or interest acquired under this chapter does not vest in any fund created by the Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 145, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Low-level radioactive waste and land and buildings transferred to the state or to the federal government under this chapter shall be transferred to the state or to the federal government without cost, other than administrative and legal costs incurred in making the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.211. LIABILITY. (a) The transfer of the title to low-level radioactive waste and land and buildings to the state or to the federal government does not relieve a license holder of liability for any act or omission performed before the transfer or while the low-level radioactive waste or land and buildings are in the possession and control of the license holder.

(b) The acceptance, storage, or disposal of federal facility waste by the compact waste disposal facility license holder at a federal facility waste disposal facility does not create any liability under state law on the part of the state, or on the part of any officer or agency of the state, for damages, removal, or remedial

action with respect to the land, the facility, or the waste accepted, stored, or disposed of.

(c) The compact waste disposal facility license must require the license holder to indemnify the state for any liability imposed on the state under state or federal law, as required by the commission for the disposal of federal facility waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. The commission may undertake monitoring, maintenance, and emergency measures that are necessary to protect the public health and safety and the environment in connection with low-level radioactive waste and property for which it has assumed custody.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.213. INTERSTATE COMPACTS. The commission shall cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, to develop regional sites that divide among the states the disposal burden of low-level radioactive waste generated in the region.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.231, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1367, Sec. 21, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.214. REGIONAL DISPOSAL FACILITY UNDER COMPACT. The compact waste disposal facility licensed under this subchapter is the regional disposal facility established and operated under the compact established under Chapter 403 for purposes of the federal Low-Level

Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.215. ACCEPTANCE OF LOW-LEVEL RADIOACTIVE WASTE. Subject to limitations provided by Sections 401.207 and 401.248, the compact waste disposal facility shall accept for disposal all compact waste that is presented to it and that is properly processed and packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.216. FEDERAL FACILITY WASTE DISPOSAL. (a) The commission may license the compact waste disposal facility license holder to dispose of federal facility waste. The commission may license federal facility waste disposal only at a separate and distinct facility that is operated exclusively for the disposal of federal facility waste and that is adjacent to the compact waste disposal facility.

(b) For the first five years after a license under this section is issued, the commission shall limit the overall capacity of the federal facility waste disposal facility to not more than three million cubic yards. Of that amount, the commission shall limit the total volume of waste accepted at the federal facility waste disposal facility that must be disposed of in accordance with Section 401.218 to not more than 300,000 cubic yards.

(c) Unless the commission makes an affirmative finding that increasing the capacity of the federal facility waste disposal facility would pose a significant risk to human health, public safety, or the environment, on the fifth anniversary of the date the license under this section is issued, the commission shall increase the overall capacity of the federal facility waste disposal facility by three million cubic yards, for a total capacity of six million cubic yards, and shall increase the acceptable volume of waste that must be disposed of in accordance with Section 401.218 by 300,000 cubic yards, for a total volume of 600,000 cubic yards.

(d) The commission may not allow commingling of compact waste and federal facility waste.

(e) The compact waste disposal facility license holder may not accept federal facility waste at a federal facility waste disposal facility until the license holder begins accepting compact waste at the compact waste disposal facility.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.217. LOCATION OF DISPOSAL FACILITY SITE. The commission may not issue a license for a compact waste disposal facility or license the operation of a federal facility waste disposal facility if the disposal facility site is located:

(1) in a county any part of which is located 62 miles or less from an international boundary;

(2) in a county in which the average annual rainfall is greater than 20 inches;

(3) in a county that adjoins river segment 2309, 2310, or 2311 as identified by the commission in the Texas Surface Water Quality Standards, 30 T.A.C. Section 307.10(3);

(4) in a 100-year flood plain; or

(5) less than 20 miles upstream of or up-drainage from the maximum elevation of the surface of a reservoir project that:

(A) has been constructed or is under construction by the United States Bureau of Reclamation or the United States Army Corps of Engineers; or

(B) has been approved for construction by the Texas Water Development Board as part of the state water plan under Subchapter C, Chapter 16, Water Code.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.218. DISPOSAL OF CERTAIN WASTE. (a) In this section, "Class A low-level radioactive waste," "Class B low-level radioactive waste," and "Class C low-level radioactive waste" have the meanings assigned by commission rule.

(b) The compact waste disposal facility license holder shall dispose of Class B low-level radioactive waste and Class C low-level radioactive waste:

(1) within a reinforced concrete container and within a reinforced concrete barrier or within containment structures made of

materials technologically equivalent or superior to reinforced concrete; and

(2) in such a manner that the waste can be monitored and retrieved.

(c) The commission by rule may require a compact waste disposal facility license holder to dispose of certain Class A low-level radioactive wastes that present a hazard because of their high radiation levels in the manner required for Class B low-level radioactive waste and Class C low-level radioactive waste under Subsection (b). To the extent practicable, rules adopted under this subsection shall be consistent with federal rules regarding classification of low-level radioactive waste under 10 C.F.R. Part 61.

(d) In addition to the fees charged to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission, the commission's executive director may charge a license holder a fee to cover the administrative costs of the executive director's action to adjust, correct, or otherwise modify a license.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 6, eff. September 1, 2013.

Sec. 401.219. TECHNIQUES FOR MANAGING LOW-LEVEL RADIOACTIVE WASTE. (a) As a condition for obtaining a compact waste disposal facility license, an applicant must submit to the commission or its designee evidence relating to the reasonableness of any technique for managing low-level radioactive waste to be practiced at the proposed disposal facility or facilities.

(b) Before determining the techniques to be used for managing low-level radioactive waste, an applicant shall study alternative techniques, including:

(1) waste processing and reduction at the site of waste generation and at the disposal facility; and

(2) the use of aboveground isolation facilities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.220. DESIGN OF FACILITY. The design of a disposal facility should incorporate, to the extent practicable, safeguards against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.221. MIXED WASTE. (a) In this section, "mixed waste" means a combination of hazardous waste as defined by Chapter 361 and low-level radioactive waste and includes federal mixed waste.

(b) The compact waste disposal facility license holder in accepting mixed waste at the compact waste disposal facility or a federal facility waste disposal facility shall comply with Chapter 361, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended, and this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.222. TERM OF LICENSE. The compact waste disposal facility license issued under this subchapter expires on the 15th anniversary of its date of issuance and may be renewed for one or more terms of 10 years.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.223. HEALTH SURVEILLANCE SURVEY. The commission, the department, and local public health officials shall develop a health surveillance survey for the population located in the vicinity of the disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.224. PACKAGING OF RADIOACTIVE WASTE. The executive commissioner shall adopt rules relating to the packaging of radioactive waste.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0918, eff. April 2, 2015.

Sec. 401.225. SHIPMENT OF LOW-LEVEL RADIOACTIVE WASTE. (a) On arrival of a shipment of low-level radioactive waste at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder must determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level radioactive waste before the waste is accepted for disposal at the facility.

(b) A person making a shipment of low-level radioactive waste that is in excess of 75 cubic feet shall give the compact waste disposal facility license holder written notice of the shipment at least 72 hours before shipment to the compact waste disposal facility or a federal facility waste disposal facility begins. The written notice must contain information required by the department.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.226. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL RADIOACTIVE WASTE. (a) If low-level radioactive waste that is not properly processed or packaged arrives at the compact waste disposal facility or a federal facility waste disposal facility, the compact waste disposal facility license holder shall properly process and package the waste for disposal and charge the person making the shipment a fee to have the low-level radioactive waste properly processed and packaged.

(b) The compact waste disposal facility license holder shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level radioactive waste any person who delivers to the compact waste disposal facility or a federal facility waste disposal facility low-level radioactive waste that is not properly processed or packaged.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.227. SELECTION OF APPLICATION FOR COMPACT WASTE DISPOSAL FACILITY LICENSE. (a) In selecting an application for the compact waste disposal facility license, the commission shall:

(1) issue notice of the opportunity to submit an application to dispose of low-level radioactive waste in accordance with Section 401.228;

(2) review all applications received under Subdivision (1) for administrative completeness;

(3) evaluate all administratively complete applications in accordance with the evaluation criteria established by Sections 401.233-401.236 and shall select the application that has the highest comparative merit in accordance with Section 401.232; and

(4) review the selected application under Subdivision (3) for technical completeness and issue a draft license in accordance with Sections 401.237 and 401.238.

(b) If the selected application is rejected or denied by the commission, the commission may select the next highest comparative merit application and proceed in accordance with Subsection (a)(4).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.228. NOTICE TO RECEIVE APPLICATIONS. Not later than January 1, 2004, the commission shall give to the secretary of state for publication in the Texas Register notice that:

(1) the commission will accept applications for a 30-day period, beginning 180 days after the date of the Texas Register notice, for the siting, construction, and operation of a facility or facilities for disposal of low-level radioactive waste;

(2) applications must comply with Chapter 401, Health and Safety Code, the rules of the commission, and any other applicable requirements in the commission's discretion;

(3) applications must include a nonrefundable $500,000 application processing fee;

(4) applications received within the 30-day application receipt period will be evaluated by the commission for administrative completeness;

(5) applications deemed administratively complete will be evaluated by the commission in accordance with the statutory evaluation criteria under Sections 401.233-401.236; and

(6) based on the commission's evaluation, one application will be selected to be processed by the commission.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.229. APPLICATION PROCESSING FEE. An application for a compact waste disposal facility license must include payment to the commission of an application processing fee of $500,000. The commission may not review an application for administrative completeness until the commission receives the application processing fee. The application processing fee is nonrefundable. If the commission's costs in processing an application under this subchapter exceed the $500,000 application processing fee, the commission may assess and collect additional fees from the applicant to recover the costs. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.230. RECEIPT OF APPLICATIONS. (a) For a 30-day period beginning 180 days after the date notice is published under Section 401.228, the commission shall accept applications for a compact waste disposal facility license.

(b) Not later than the 45th day after the date an application is received, the commission shall issue an administrative notice of deficiency to each applicant whose application is timely submitted but is determined by the commission to be administratively incomplete.

(c) The commission shall provide an applicant for whom an administrative notice of deficiency is issued not more than three 30-day opportunities to cure the noted deficiencies in the application.

(d) The commission shall reject any application that, after the period for correcting deficiencies has expired, is not administratively complete.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.231. ADMINISTRATIVELY COMPLETE APPLICATION. The commission shall consider as administratively complete an application for which the commission has received the portions of the application necessary to allow the commission to review the technical merits of the application, including:

(1) the identity and qualifications of the applicant;

(2) a description of the proposed disposal facility or facilities and disposal facility site;

(3) a description of the character of the proposed activities and the types and quantities of waste to be managed at the disposal facility or facilities;

(4) a description of the proposed schedules for construction, receipt of waste, and closure;

(5) a description of the financial assurance mechanism to be used;

(6) a description of the design features of the facility or facilities, along with a description of the methods of construction and operation of the facility or facilities;

(7) a characterization of the area and disposal facility site characteristics, including ecology, geology, soils, hydrology, natural radiation background, climatology, meteorology, demography, and current land uses;

(8) a description of the safety programs to be used at the proposed facility or facilities;

(9) a copy of the warranty deed or other conveyance showing required right, title, and interest in the land and buildings on which the facility or facilities are proposed to be located is owned in fee by the applicant as required by Section 401.204;

(10) an application processing fee in the amount prescribed by Section 401.229 and proof of additional funds sufficient to cover any further costs of processing the application as estimated by the commission; and

(11) a copy of a resolution of support of the proposed facility or facilities from the commissioners court of the county in which the facility or facilities are proposed to be located.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.232. EVALUATION OF APPLICATIONS; COMMISSION

SELECTION. (a) The commission shall have prepared by commission personnel or an independent contractor a written evaluation of each administratively complete application in terms of the criteria established under Sections 401.233-401.236.

(b) The commission shall conduct at least one public meeting in the county or counties where a compact waste disposal facility or federal facility waste disposal facility is to be located to receive public comments on the administratively complete applications. The commission shall set the time and place of the meetings as soon as practicable after the close of the period for administrative review of the applications.

(c) The commission may issue a request for further information to each applicant whose application is determined by the commission to be insufficient for the purposes of the commission's evaluation.

(d) The commission shall provide an applicant for whom a request for further information is issued two 30-day opportunities to adequately respond in the discretion of the commission.

(e) The commission shall use the written evaluations and application materials to evaluate each application according to the statutory criteria established by Sections 401.233-401.236. The commission shall evaluate each application for each statutory criterion for purposes of comparing the relative merit of the applications, giving:

(1) equal weight to each criterion within a tier of criteria; and

(2) the greatest weight to tier 1 criteria, greater weight to tier 2 criteria than to tier 3 criteria, and the least weight to tier 4 criteria.

(f) Before publication of the notice of the commission's intention to accept applications under Section 401.228, the commission by rule may adopt criteria in addition to the criteria under Sections 401.233-401.236 by which the commission may evaluate applications. The criteria must be consistent with those sections.

(g) Not later than the 270th day after it receives the last timely filed application, the commission, based on the written evaluations and application materials, shall select the application that has the highest comparative merit.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.233. TIER 1 CRITERIA. (a) The commission shall consider as tier 1 criteria:

(1) the natural characteristics of the disposal facility site for a proposed disposal facility or facilities;

(2) the adequacy of the proposed facility or facilities and activities to safely isolate, shield, and contain low-level radioactive waste from mankind and mankind's environment; and

(3) the adequacy of financial assurance related to the proposed activities.

(b) Natural characteristics of the disposal facility site include:

(1) the suitability of the site for the proposed activities, including the site's:

(A) geological characteristics;

(B) topography, including features relating to erosion;

(C) surface and underground hydrology;

(D) meteorological factors; and

(E) natural hazards;

(2) the compatibility of disposal activities with any uses of land near the site that could affect the natural performance of the site or that could affect monitoring of the disposal facility or facilities and disposal facility site;

(3) the adequacy of plans for the collection of prelicense monitoring data and background monitoring plans for the disposal facility site, including analysis of the ambient conditions of the site and established trends of the site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site;

(4) the possible effects of disposal activities on flora and fauna at or near the site; and

(5) the ease of access to the site.

(c) Adequacy of the proposed disposal facility or facilities and activities includes:

(1) the capability of the proposed facility or facilities

and activities to isolate, shield, and contain low-level radioactive waste in conformity with federal standards;

(2) acceptable operational safety; and

(3) acceptable long-term safety as demonstrated by analysis or study.

(d) Financial assurance criteria include:

(1) adequacy of the applicant's financial qualifications to:

(A) conduct the licensed activities as proposed, including:

(i) any required decontamination, decommissioning, reclamation, or disposal; and

(ii) control and maintenance of the disposal facility site and facility or facilities after the cessation of active operations; and

(B) address any unanticipated extraordinary events that would pose a risk to public health and safety and the environment and that may occur at the disposal facility site after decommissioning and closure of the disposal facility or facilities;

(2) the adequacy of the applicant's financial assurance in an amount and type acceptable to the commission and adequate to cover potential injury to any property or person;

(3) the adequacy of the applicant's financial security, as required by commission rules; and

(4) the degree of certainty that the applicant will be able to maintain adequate financial security.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.234. TIER 2 CRITERIA. The commission shall consider as tier 2 criteria:

(1) the suitability of facilities at the site that are associated with proposed activities and the adequacy of their engineering and design; and

(2) the suitability of the proposed disposal facility or facilities for the chemical, radiological, and biological characteristics of the low-level radioactive waste as classified under the system established under Section 401.053.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.235. TIER 3 CRITERIA. The commission shall consider as tier 3 criteria the applicant's:

(1) technical qualifications to receive, store, process, and dispose of low-level radioactive waste;

(2) experience in management and disposal of low-level radioactive waste and other radioactive materials;

(3) previous operating practices in this state and elsewhere, including the practices of a parent, subsidiary, or affiliated entity of the applicant, related to radioactive materials;

(4) record of compliance with environmental statutes, rules, and licenses in this state and in any other jurisdiction, including the records of a parent or subsidiary of the applicant, subject to Section 401.243;

(5) training programs proposed for its employees whose duties relate to the proposed disposal facility site and activities;

(6) monitoring, recordkeeping, and reporting plans;

(7) low-level radioactive waste spill detection and cleanup plans for the proposed disposal facility site and activities;

(8) decommissioning and postclosure plans;

(9) security plans;

(10) monitoring and protection plans for workers;

(11) emergency plans;

(12) plans for background monitoring during the license period, including analysis of the ambient conditions of the disposal facility site and analysis of established trends of the disposal facility site's natural parameters, including:

(A) natural background radioactivity levels;

(B) radon gas levels;

(C) air particulate levels;

(D) soil characteristics, including chemical characteristics;

(E) surface water and groundwater characteristics; and

(F) flora and fauna at the site; and

(13) ability to adequately manage the proposed disposal facility or facilities and activities for the term of the license.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.236. TIER 4 CRITERIA. The commission shall consider as tier 4 criteria:

(1) the compatibility of uses of land near the proposed disposal facility site that could be affected by the construction and operation of the disposal facility or facilities; and

(2) possible socioeconomic effects on communities in the host county of:

(A) the proposed disposal facility or facilities;

(B) the operation of the proposed disposal facility or facilities; and

(C) related transportation of low-level radioactive waste to the disposal facility or facilities.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.237. TECHNICAL REVIEW. (a) Immediately on the commission's selection of the application that has the highest comparative merit in accordance with Section 401.232, the commission shall begin a technical review of the selected application.

(b) The commission shall complete the technical review and prepare a draft license not later than the 15th month after the month in which the technical review begins.

(c) The commission shall give priority to the review of the selected application over all other radioactive materials and waste licensing and registration matters pending before the commission, except those the executive director of the commission determines necessary to avert or address a health and safety emergency.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.238. NOTICE OF DRAFT LICENSE AND OPPORTUNITY FOR HEARING. On completion of the technical review of the selected application and preparation of the draft license, the commission shall publish, at the applicant's expense, notice of the draft license and specify the requirements for requesting a contested case hearing by a person affected. The notice shall include a statement that the draft license is available for review on the commission's website and that the draft license and the application materials are available for review at the offices of the commission and in the

county or counties in which the proposed disposal facility site is located. Notice shall be published in the Texas Register and in a newspaper of general circulation in each county in which the proposed disposal facility site is located. The applicant shall mail the notice by certified mail to each person who owns land adjacent to the proposed disposal facility site.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.239. CONTESTED CASE; FINAL ACTION ON APPLICATION. (a) An administrative law judge of the State Office of Administrative Hearings shall conduct a contested case hearing on the application and draft license if the applicant or a person affected requests a hearing.

(b) The administrative law judge may not admit as a party to the contested case hearing a person other than the applicant, the executive director of the commission, or a person affected.

(c) The administrative law judge shall issue a proposal for decision not later than the first anniversary of the publication date of the notice of draft license published under Section 401.238.

(d) The commission shall take final action on the proposal for decision of the administrative law judge not later than the 90th day after the date the proposal is issued.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.240. JUDICIAL REVIEW. (a) Notwithstanding any other law, a person affected by an action of the commission under this subchapter may file a petition for judicial review of the action only after the commission takes final action on a license application under Section 401.239(d). A petition must be filed not later than the 30th day after the date of the final action.

(b) In its review of an action under this subchapter, a court may not substitute its judgment for the judgment of the commission on the weight of the evidence the commission considered, but:

(1) may affirm the action in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the administrative findings, inferences,

conclusions, or decisions:

(A) are in violation of a constitutional or statutory provision;

(B) are in excess of the commission's statutory authority;

(C) are made through unlawful procedure;

(D) are affected by other error of law;

(E) are not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) are arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.241. SECURITY. (a) In determining the amount of security required of a compact waste disposal facility license holder under Section 401.109, the commission shall also consider the need for financial security to address and prevent unplanned events that pose a risk to public health and safety and that may occur after the decommissioning and closure of the compact waste disposal facility or a federal facility waste disposal facility licensed under Section 401.216.

(b) The amount of security required of a license holder under this section may not be less than $20 million at the time the disposal facility site is decommissioned. The commission shall use interest earned on the security to offset any other financial obligations incurred by the license holder to the commission. The commission shall establish a schedule for the total payment of the amount of the security required under this section based on:

(1) the amount of low-level radioactive waste received at the site;

(2) the long-term risk to health, safety, and the environment posed by the waste; and

(3) the need to address and prevent unplanned events that pose a risk to public health and safety.

(c) The payment schedule required under this section must be sufficient to ensure that the amount of security provided by the license holder at any time between the issuance of the license and

the time at which the facility is decommissioned is sufficient to:

(1) address any increase in the risk to public health and safety that accompanies an increase in the volume of waste accepted by the license holder; and

(2) meet the requirements of the commission for addressing unplanned events that may occur after the site has been closed.

(d) The commission may require a license holder under this subchapter to provide security in the forms listed under Section 401.109(d).

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.242. ACCEPTANCE OF WASTE. (a) The commission shall require the compact waste disposal facility license holder to follow, as closely as is possible, the schedule submitted to the commission under Section 401.231. If the compact waste disposal facility license holder holds a permit to process, store, or dispose of hazardous waste under Chapter 361, the license holder may accept hazardous waste according to the schedule under Section 401.231 before the compact waste disposal facility begins operation.

(b) If the commission finds that the compact waste disposal facility license holder has violated this chapter or any commission rule in a manner that may endanger public health or safety, the commission may prohibit the license holder from accepting low-level radioactive waste at either the compact waste disposal facility or the federal facility waste disposal facility until the commission finds that the license holder is in compliance with the statute or rule found to be violated.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.243. COMPLIANCE HISTORY. After an opportunity for a hearing, the commission shall deny an application for a license under this subchapter or an amendment or renewal for a license under this subchapter if the applicant's compliance history reveals a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process through a history of violations of this chapter or the commission's rules under this chapter.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 7, eff. Sept. 1, 2003.

Sec. 401.244. HOST COUNTY PUBLIC PROJECTS. (a) The compact waste disposal facility license holder each quarter shall transfer to the commissioners court of the host county five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

(b) The commissioners court of the host county may:

(1) spend the money for public projects in the host county; or

(2) disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects.

(c) Money received from the compact waste disposal facility license holder under this section may be spent only for public projects in the host county that are for the use and benefit of the public at large.

(d) Money received by the commissioners court of the host county under this section is not a loan or grant-in-aid subject to review by a regional planning commission under Chapter 391, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 878, Sec. 16, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 32, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.252 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 8, eff. Sept. 1, 2003.

Sec. 401.2445. STATE FEE. The compact waste disposal facility license holder each quarter shall transfer to the state general revenue fund five percent of the gross receipts from:

(1) compact waste received at the compact waste disposal facility; and

(2) any federal facility waste received at a federal facility waste disposal facility licensed under Section 401.216.

Added by Acts 2017, 85th Leg., R.S., Ch. 790 (H.B. 2662), Sec. 3(b),

eff. September 1, 2019.

Sec. 401.245. PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) A compact waste disposal facility license holder who receives party state compact waste for disposal pursuant to the compact shall have collected a waste disposal fee to be paid by each person who delivers party state compact waste to the compact waste disposal facility for disposal.

(b) The commission by rule shall adopt and periodically revise party state compact waste disposal fees under this section according to a schedule that is based on the projected annual volume of low-level radioactive waste received, the relative hazard presented by each type of low-level radioactive waste that is generated by the users of radioactive materials, and the costs identified in Section 401.246.

(c) In determining relative hazard, the commission shall consider the radioactive, physical, and chemical properties of each type of low-level radioactive waste.

(d) Rules adopted under this section may include provisions establishing:

(1) classification of customers and services; and

(2) applicability of fees.

(e) Fees adopted under this section must be consistent with the criteria listed under Section 401.246.

(f) A rule or order adopted by the commission under this section may not conflict with a ruling of a federal regulatory body.

(g) For the purposes of a contested case involving the adoption of fees under this section, only a party state generator of low-level radioactive waste may be considered a person affected.

(h) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(1), eff. September 1, 2013.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 5.01, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 17, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 33, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.272 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(1), eff. September 1, 2013.

Sec. 401.2455. INTERIM PARTY STATE COMPACT WASTE DISPOSAL FEES. (a) The commission's executive director may establish interim party state compact waste disposal fees effective only for the period beginning on the date the compact waste disposal facility license holder is approved to accept waste at the disposal facility and ending on the effective date of the rules establishing the fees under Section 401.245. A generator is not entitled to a refund, and may not be charged a surcharge, for the disposal of waste under interim fees once the final fees have been adopted.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(2), eff. September 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(2), eff. September 1, 2013.

Sec. 401.2456. CONTRACTS FOR NONPARTY COMPACT WASTE DISPOSAL. (a) At any time after the commission has granted approval to begin operating the compact waste disposal facility, the compact waste disposal facility license holder may contract rates with nonparty compact waste generators for the disposal of nonparty compact waste at the facility in accordance with the compact waste disposal facility license.

(b) Rates and contract terms negotiated under this section are subject to review and approval by the commission's executive director to ensure they meet all of the requirements of this section.

(c) Rates negotiated under this section must be set both by a price per curie and a price per cubic foot. Fees resulting from the negotiated rates must be greater than, as applicable:

(1) the compact waste disposal fees under Section 401.245 as set by the commission that are in effect at the time the rates are negotiated; or

(2) the interim compact waste disposal fees under Section 401.2455 as set by the commission's executive director that are in effect at the time the rates are negotiated.

(d) A contract under this section must:

(1) be negotiated in good faith;

(2) conform to applicable antitrust statutes and regulations; and

(3) be nondiscriminatory.

(e) Rates set under this section must generate fees sufficient to meet the criteria for party state compact waste under Sections 401.246(a) and (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 6, eff. September 1, 2011.

Sec. 401.246. WASTE DISPOSAL FEE CRITERIA. (a) Party state compact waste disposal fees adopted by the commission under Section 401.245 must be sufficient to:

(1) allow the compact waste facility license holder to recover costs of operating and maintaining the compact waste disposal facility and a reasonable profit on the operation of that facility;

(2) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the compact waste disposal facility and the compact waste disposal facility portion of the disposal facility site;

(3) provide an amount to fund local public projects under Section 401.244;

(4) provide a reasonable rate of return on capital investment in the facilities used for management or disposal of compact waste at the compact waste disposal facility;

(5) provide an amount necessary to pay compact waste disposal facility licensing fees, to pay compact waste disposal facility fees set by rule or statute, and to provide security for the compact waste disposal facility as required by the commission under law and commission rules; and

(6) provide an amount necessary to support the activities

of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(b) To the extent practicable, the commission shall use the methods used by the Public Utility Commission of Texas under Sections 36.051, 36.052, and 36.053, Utilities Code, when establishing overall revenues, reasonable return, and invested capital for the purpose of setting fees under Subsection (a).

(c) In determining compact waste disposal fees, the commission shall only consider capital investment in property by the compact waste disposal facility license holder that is used and useful to the compact waste disposal facility as authorized under this chapter. The commission may not consider the capital investment costs or related costs incurred before September 1, 2003, in determining disposal fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 804, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 449, Sec. 34, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 878, Sec. 19, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(30), eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 402.273 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 7, eff. September 1, 2011.

Sec. 401.247. REASONABLE AND NECESSARY EXPENSES. Fees paid under this subchapter are reasonable and necessary expenses for ratemaking purposes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.03, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 402.276 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 11, eff. Sept. 1, 2003.

Sec. 401.248. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL. (a) The commission by rule shall exclude from a disposal facility certain types of low-level radioactive waste that are

incompatible with disposal operations.

(b) The state may enter into compacts with another state or several states for the disposal in this state of low-level radioactive waste only if the compact:

(1) limits the total volume of all low-level radioactive waste to be disposed of in this state from the other party state or party states to 20 percent of the annual average of low-level radioactive waste projected to be disposed of in this state from 1995 through 2045;

(2) gives this state full administrative control over management and operation of the compact waste disposal facility;

(3) requires the other state or states to join this state in any legal action necessary to prevent states that are not members of the compact from disposing of low-level radioactive waste at the compact waste disposal facility;

(4) allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility;

(5) requires the other state or states to join in any legal action involving liability from the compact waste disposal facility;

(6) requires the other state or states to share the full cost of constructing the compact waste disposal facility;

(7) allows this state to regulate, in accordance with federal law, the means and routes of transportation of the low-level radioactive waste in this state;

(8) requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than $1 million or 10 percent of the amount contributed by the other state or states;

(9) is agreed to by the Texas Legislature, the legislature of the other state or states, and the United States Congress; and

(10) complies with all applicable federal law.

(c) This section does not affect the ability of this state to transfer low-level radioactive waste to another state.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1244, Sec. 11, eff. September 1, 2011.

(e) The compact waste disposal facility license holder may not accept compact waste at the compact waste disposal facility unless the compact commission established by the compact under Section 403.006 has adopted bylaws necessary to carry out the terms of the compact.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 583, Sec. 5, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0511, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 13, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 29, eff. Sept. 1, 1999. Renumbered from Health and Safety Code Sec. 402.219 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 10, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 11, eff. September 1, 2011.

Sec. 401.249. LOW-LEVEL RADIOACTIVE WASTE FUND. (a) The low-level radioactive waste fund is in the state treasury.

(b) The low-level radioactive waste fund is an interest-bearing fund. Interest earned on money in the fund shall be deposited to the credit of the fund.

(c) Except as otherwise provided by this chapter, money collected by the commission, including fees collected under Section 401.229, any additional fees collected to recover costs of processing a license application, annual fees, and any other fees necessary to administer this subchapter shall be deposited to the credit of the low-level radioactive waste fund.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(74), eff. April 2, 2015.

(e) The commission may transfer money from the low-level radioactive waste fund to the environmental radiation and perpetual care account to make payments required by the commission under Section 401.303. The commission shall notify the Texas Low-Level Radioactive Waste Disposal Compact Commission of an action the commission takes under this subsection.

(f) The commission shall deposit in the fund the portion of the fee collected under Section 401.245 that is calculated in accordance with Section 401.246(a) to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission, as required by Section 4.04(4), Texas Low-Level Radioactive Waste Disposal Compact

(Section 403.006 of this code). The fee shall be assessed for party state compact waste and nonparty compact waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 148, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 804, Sec. 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 878, Sec. 20, eff. June 18, 1993; Acts 1999, 76th Leg., ch. 1367, Sec. 35, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 580, Sec. 11, eff. Sept. 1, 2003. Renumbered from Health and Safety Code Sec. 402.275 and amended by Acts 2003, 78th Leg., ch. 1067, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 7, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(74), eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 598 (S.B. 1330), Sec. 1, eff. September 1, 2017.

Sec. 401.250. PAYMENTS BY PARTY STATES. (a) Notwithstanding any other provision of law, Act of the legislature or the executive branch, or any other agreement, the initial payment of $12.5 million due from each nonhost party state under Section 5.01 of the compact established under Section 403.006 is due not later than November 1, 2003. In accordance with Section 7.01 of the compact, the host state establishes the following terms and conditions for a state to become a party state to the compact after January 1, 2011:

(1) the state must make an initial payment of half of the total amount due to the host state under Subsection (b) on the later of September 1, 2011, or the date the state becomes a party state; and

(2) the state must pay the remainder of the amount owed under Subsection (b) on the later of the date of the opening of the compact waste disposal facility or the date the facility first accepts waste from the state.

(b) Each state that becomes a party state:

(1) after January 1, 2011, and before September 1, 2018, shall contribute a total of $30 million to the host state, including the initial payment under Subsection (a)(1); and

(2) on or after September 1, 2018, and before September 1, 2023, shall contribute $50 million to the host state, including the initial payment under Subsection (a)(1).

(c) The requirements of this section apply to a state that becomes a party state after January 1, 2011, regardless of whether the state had previously been a party to the compact. A state that has withdrawn as a party state shall pay the previously committed fee of $25 million in addition to the fees set in Subsection (b).

(d) A payment made under this section may not be refunded, even if a party state withdraws from the compact.

(e) For the purposes of calculating the amount of a payment required under Section 4.05(5) of the compact, the amount of a payment under this section is considered to be a payment under Article V of the compact.

(f) This section prevails over any other law or agreement in conflict or inconsistent with this section.

Added by Acts 2003, 78th Leg., ch. 1067, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 9, eff. September 1, 2011.

Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal compact commission account is an account in the general revenue fund.

(b) On the first day of each state fiscal year, the comptroller shall transfer from the low-level radioactive waste fund to the low-level radioactive waste disposal compact commission account an amount equal to the amount appropriated for that state fiscal year. On September 30 of each fiscal year, the comptroller shall transfer the unexpended and unencumbered money from the previous fiscal year in the low-level radioactive waste disposal compact commission account to the low-level radioactive waste fund.

(c) Money in the low-level radioactive waste disposal compact commission account may be used only to support the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 6.02, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 8, eff. September 1, 2013.

SUBCHAPTER G. SPECIAL PROVISIONS CONCERNING BY-PRODUCT MATERIAL

Sec. 401.261. SUBCHAPTER APPLICATION. In this subchapter:

(1) "By-product material" does not include that by-product material defined by Section 401.003(3)(A).

(2) "Processing" means the possession, use, storage, extraction of material, transfer, volume reduction, compaction, or other separation incidental to recovery of source material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.232, eff. Sept. 1, 1995.

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The commission has sole and exclusive authority to assure that processing and disposal sites are closed and that by-product material is managed and disposed of in compliance with:

(1) the federal commission's applicable standards; and

(2) closure criteria the federal commission and the United States Environmental Protection Agency have determined are protective of human health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 4, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 13, eff. June 15, 2007.

Sec. 401.2625. LICENSING AUTHORITY. The commission has sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for source material recovery and processing or for storage, processing, or disposal of by-product material.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 143, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 5, eff. June 20, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 14, eff. June 15, 2007.

Sec. 401.263. APPLICATION; ENVIRONMENTAL ANALYSIS. (a) If the commission is considering the issuance, renewal, or amendment of a license to process materials that produce by-product materials or a license to dispose of by-product material and the commission determines that the licensed activity will have a significant impact on the human environment, the commission shall prepare or have prepared a written environmental analysis.

(b) The analysis must include:

(1) an assessment of the radiological and nonradiological effects of the licensed activity on the public health;

(2) an assessment of any effect of the licensed activity on a waterway or groundwater;

(3) consideration of alternatives to the licensed activity, including alternative sites and engineering methods; and

(4) consideration of decommissioning, decontamination, reclamation, and other long-term effects associated with a licensed activity, including management of by-product material.

(c) The commission shall give notice of the analysis as provided by commission rule and shall make the analysis available to the public for written comment not later than the 31st day before the date of the hearing on the license.

(d) After notice is given, the commission shall provide an opportunity for written comments by persons affected.

(e) The analysis shall be included as part of the record of the commission's proceedings.

(f) The commission by rule shall prohibit major construction with respect to an activity that is to be licensed until the requirements of Subsections (a), (b), (c), and (e) are completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 6, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 15, eff. June 15, 2007.

Sec. 401.264. NOTICE AND HEARING. (a) The commission on its own motion may or on the written request of a person affected shall provide an opportunity for a public hearing on an application over which the commission has jurisdiction to determine whether to issue, renew, or amend a license to process materials that produce by-product materials or a license to dispose of by-product materials in the manner provided by Chapter 2001, Government Code, and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

(b) A person affected may become a party to a proceeding on a determination that the person possesses a justiciable interest in the result of the proceeding.

(c) The commission shall make a record of the proceedings and provide a transcript of the hearing on request of, and payment for, the transcript or provision of a sufficient deposit to assure payment by any person requesting the transcript.

(d) The commission shall provide an opportunity to obtain a written determination of action to be taken. The determination must be based on evidence presented to the commission and include findings. The written determination is available to the public.

(e) The determination is subject to judicial review in a district court of Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 7, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 16, eff. June 15, 2007.

Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES. The commission shall prescribe conditions in a radioactive substances license issued, renewed, or amended for an activity that results in production of by-product material to minimize or, if

possible, eliminate the need for long-term maintenance and monitoring before the termination of the license, including conditions that:

(1) the license holder will comply with the applicable decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the commission and that are compatible with the federal commission's standards for sites at which those ores were processed and at which the by-product material is deposited; and

(2) the ownership of a disposal site, other than a disposal well covered by a permit issued under Chapter 27, Water Code, and the by-product material resulting from the licensed activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

(B) the federal government if the state declines to acquire the site, the by-product material, or both the site and the by-product material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 8, eff. June 20, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 17, eff. June 15, 2007.

Sec. 401.266. TRANSFER OF LAND REQUIRED. (a) The commission by rule or order may require that before a license covering land used for the disposal of by-product material is terminated, the land, including any affected interests in the land, must be transferred to the federal government or to the state unless:

(1) the federal commission determines before the license terminates that the transfer of title to the land and the by-product material is unnecessary to protect the public health, safety, or welfare or to minimize danger to life or property; or

(2) the land is held in trust by the federal government for an Indian tribe, is owned by an Indian tribe subject to a restriction against alienation imposed by the federal government, is owned by the federal government, or is owned by the state.

(b) By-product material transferred to the state under this section shall be transferred without cost to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 9, eff. June 20, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 18, eff. June 15, 2007.

Sec. 401.267. ACQUISITION AND SALE OF CERTAIN BY-PRODUCT MATERIALS AND SITES. (a) The commission may acquire by-product material and fee simple title in land, affected mineral rights, and buildings at which that by-product material is disposed of and abandoned so that the by-product material and property can be managed in a manner consistent with protecting public health, safety, and the environment.

(b) The commission may sell land acquired under this section at the land's fair market value after the commission has taken corrective action to restore the land to a condition that does not compromise the public health or safety or the environment. The General Land Office shall negotiate and close a transaction under this subsection on behalf of the commission using procedures under Section 31.158(c), Natural Resources Code. Proceeds from the transaction shall be deposited in the Texas capital trust fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 10, eff. June 20, 1997; Acts 1999, 76th Leg., ch. 244, Sec. 1, eff. Aug. 30, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 19, eff. June 15, 2007.

Sec. 401.268. LIABILITY. The transfer of the title to by-product material, land, and buildings under Section 401.267 does not relieve a license holder of liability for acts performed before the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. (a) The commission may undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody under Section 401.267 that are necessary to protect the public health and safety and the environment.

(b) The commission shall maintain the by-product material and property transferred to it in a manner that will protect the public health and safety and the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1338, Sec. 11, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 20, eff. June 15, 2007.

Sec. 401.270. CORRECTIVE ACTION AND MEASURES. (a) If the commission finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety or the environment, the commission by order may require any action, including a corrective measure, that is necessary to correct or remove the threat.

(b) The commission may issue an emergency order to a person responsible for an activity, including a past activity, concerning the recovery or processing of source material or the disposal of by-product material if it appears that there is an actual or threatened release of source material or by-product material that presents an imminent and substantial danger to the public health and safety or the environment, regardless of whether the activity was lawful at the time. The emergency order may be issued without notice or hearing.

(c) An emergency order may be issued under Subsection (b) to:

(1) restrain the person from allowing or continuing the release or threatened release; and

(2) require the person to take any action necessary to provide and implement an environmentally sound remedial action plan designed to eliminate the release or threatened release.

(d) An emergency order issued under Subsection (b) shall:

(1) be delivered to the person identified by the order by

certified mail, return receipt requested;

(2) be delivered by hand delivery to the person identified by the order; or

(3) on failure of delivery of the order by certified mail or hand delivery, be served on the person by publication:

(A) once in the Texas Register; and

(B) once in a newspaper of general circulation in each county in which was located the last known address of a person identified by the order.

(e) The commission shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The commission shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

(1) enforce security supplied by the licensee;

(2) convert an amount of security into cash, as necessary; and

(3) disburse from the security in the perpetual care account the amount necessary to pay the costs.

(f) If an order issued by the commission under this section is adopted without notice or hearing, the order shall set a time, at least 10 but not more than 30 days following the date of issuance of the emergency order, and a place for a hearing to be held in accordance with the rules of the commission. As a result of this hearing, the commission shall decide whether to affirm, modify, or set aside the emergency order. All provisions of the emergency order shall remain in force and effect during the pendency of the hearing, unless otherwise altered by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1072, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1338, Sec. 12, eff. June 20, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 14, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 21, eff. June 15, 2007.

Sec. 401.271. STATE FEE ON RADIOACTIVE SUBSTANCES. (a) A holder of a license issued by the commission under this chapter that authorizes the disposal of a radioactive substance from other persons shall remit each quarter an amount equal to 10 percent of the license holder's gross receipts received from disposal operations under a license issued under this chapter that occur after the effective date of the Act enacting this section as follows:

(1) five percent shall be remitted to the comptroller for deposit to the credit of the general revenue fund; and

(2) five percent shall be remitted to the host county in accordance with Sections 401.244(b) and (d).

(b) Subsection (a) does not apply to compact waste or federal facility waste as defined by Section 401.2005 or industrial solid waste as defined by Section 361.003.

(c) A holder of a license or permit issued by the commission under this chapter or Chapter 361 that authorizes the storage, other than disposal, of a radioactive waste or elemental mercury from other persons shall remit each quarter to the commission for deposit into the general revenue fund an amount equal to 20 percent of the license or permit holder's gross receipts received from the storage of the substance for any period exceeding one year. This subsection applies only to the storage of the substance for any period exceeding one year. This subsection applies only to the storage of radioactive waste or elemental mercury at or adjacent to the compact waste disposal facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 22, eff. June 15, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1244 (S.B. 1504), Sec. 10, eff. September 1, 2011.

Sec. 401.272. AUDIT AUTHORITY. The commission may audit a license holder's financial records and waste manifest information to ensure that the fees imposed under this chapter are accurately paid. The license holder shall comply with the commission's audit-related requests for information.

Added by Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 22, eff. June 15, 2007.

SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 401.301. LICENSE AND REGISTRATION FEES. (a) The commission and department may collect a fee for each license and registration the agency issues.

(b) The commission and the executive commissioner each by rule shall set the fee in an amount that may not exceed the actual expenses annually incurred to:

(1) process applications for licenses or registrations;

(2) amend or renew licenses or registrations;

(3) make inspections of license holders and registrants; and

(4) enforce this chapter and rules, orders, licenses, and registrations under this chapter.

(c) The commission and department may collect a fee, in addition to the license and registration fee, of not less than 20 percent of the amount of the license and registration fee nor more than $10,000 from each licensee or registrant who fails to pay the fees authorized by this section.

(d) The commission and executive commissioner shall require that each person who holds a specific license issued by the commission or department pay to the applicable agency an additional five percent of the appropriate fee set under Subsection (b). Fees collected by the department under this subsection shall be deposited to the credit of the perpetual care account. Fees collected by the commission under this subsection shall be deposited to the environmental radiation and perpetual care account. The fees are not refundable. The holder of a specific license authorizing the extraction, processing, or concentration of uranium or thorium from ore is not required to pay the additional fee described by this subsection before the beginning of operations under the license.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1159, Sec. 13(3), eff. September 1, 2013.

(f) Notwithstanding any other provision of this section, the department may not assess a fee on a local law enforcement agency for the licensing and registration of an X-ray machine that is used to screen packages or other objects the agency suspects may contain an explosive or other item that would pose a danger to the public health and safety. Except as otherwise provided by this subsection, a local

law enforcement agency is subject to the licensing and registration requirements of this chapter.

(g) The commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for administrative review, technical review, and hearings on the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 17.04, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.233, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1367, Sec. 22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1009, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 580, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 15, 16, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1061 (H.B. 2285), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 23, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.015, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.016, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 13(3), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0919, eff. April 2, 2015.

Sec. 401.302. NUCLEAR REACTOR AND FIXED NUCLEAR FACILITY FEE. (a) The executive commissioner, in coordination with the commission, by rule may set an annual fee to be collected by the department from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

(b) The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 24, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0920, eff. April 2, 2015.

Sec. 401.303. PAYMENT FOR MAINTENANCE, SURVEILLANCE, OR OTHER CARE. (a) The executive commissioner or commission may require the holder of a license issued by the agency to pay annually to the issuing agency an amount determined by the issuing agency if continuing or perpetual maintenance, surveillance, or other care is required after termination of a licensed activity.

(b) The issuing agency annually shall review the license holder's payments under this section to determine if the payment schedule is adequate for the maintenance and surveillance that the licensed activity requires or may require in the future.

(c) The issuing agency may review estimates of costs that are required to be incurred under this chapter in accordance with the need, nature, and cost of decontamination, stabilization, decommissioning, reclamation, and disposal activity and the maintenance and surveillance required for public health and safety and the environment.

(d) The issuing agency shall set the charges for maintenance and perpetual care at amounts consistent with existing technology.

(e) The issuing agency may not impose charges that exceed the amount that the issuing agency projects to be required for maintenance, surveillance, and other necessary care required after the licensed activity is terminated.

(f) An increase in costs may not be applied retroactively but may apply to increases in subsequent annual payments.

(g) If a license holder satisfies the obligations under this chapter, the issuing agency shall have the comptroller promptly refund to the license holder from the perpetual care account or the environmental radiation and perpetual care account, as applicable, the excess of the amount of all payments made by the license holder to the issuing agency and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive

material conveyed to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 580, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 17, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 10, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0921, eff. April 2, 2015.

Sec. 401.304. ACCEPTANCE AND ADMINISTRATION OF FUNDS. The department and commission each may accept and administer conditional or other loans, grants, gifts, or other funds from the federal government or other sources to carry out their respective functions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.234, eff. Sept. 1, 1995.

Sec. 401.305. RADIATION AND PERPETUAL CARE ACCOUNT. (a) The radiation and perpetual care account is an account in the general revenue fund.

(b) The department shall deposit to the credit of the perpetual care account money and security it receives under this chapter, including an administrative penalty collected by the department under Sections 401.384-401.390 but excluding fees collected under Sections 401.301(a)-(c) and 401.302. Interest earned on money in the perpetual care account shall be credited to the perpetual care account.

(c) Money and security in the perpetual care account may be administered by the department only for storage, maintenance, and distribution of mammography medical records or the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the perpetual care account may not be used for normal operating expenses of the department.

(e) The department may use money in the perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the department to meet the requirements of this chapter or of department rules;

(2) to assure the protection of the public health and safety and the environment from the adverse effects of ionizing radiation; and

(3) to protect the health and safety of mammography patients by assuring mammography medical records are made available to affected patients.

(f) The department may provide, by the terms of a contract or lease entered into between the department and any person, by the terms of a mammography certification issued by the department to any person, or by the terms of a license issued to any person, for the storage, maintenance, and distribution of mammography medical records. The department may provide, by the terms of a contract or lease entered into between the department and any person or by the terms of a license issued by the department to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to department jurisdiction under this chapter as needed to carry out the purpose of this chapter.

(g) The existence of the perpetual care account does not make the department liable for the costs of storage, maintenance, and distribution of mammography medical records arising from a mammography certification holder's failure to store, maintain, and make available mammography medical records or for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 146, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.235, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1009, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th

Leg., ch. 580, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 18, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 25, eff. June 15, 2007.
Acts 2009, 81st Leg., R.S., Ch. 515 (S.B. 1082), Sec. 1, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 11, eff. September 1, 2013.

Sec. 401.306. ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT. (a) The environmental radiation and perpetual care account is an account in the general revenue fund to support the activities of the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(b) The commission shall deposit to the credit of the environmental radiation and perpetual care account money and security it receives under this chapter, including fees collected under Section 401.301(d). Interest earned on money in the environmental radiation and perpetual care account shall be credited to the environmental radiation and perpetual care account.

(c) Money and security in the environmental radiation and perpetual care account may be administered by the commission only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive substances for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the environmental radiation and perpetual care account may not be used for normal operating expenses of the commission.

(e) The commission may use money in the environmental radiation and perpetual care account to pay for measures:

(1) to prevent or mitigate the adverse effects of abandonment of radioactive substances, default on a lawful obligation, insolvency, or other inability by the holder of a license issued by the commission to meet the requirements of this chapter or of commission rules; and

(2) to ensure the protection of the public health and safety and the environment.

(f) The commission may provide, by the terms of a contract or lease entered into between the commission and any person, or by the terms of a license issued to any person, for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site or facility subject to commission jurisdiction under this chapter as needed to carry out the purposes of this chapter.

(g) The existence of the environmental radiation and perpetual care account does not make the commission liable for the costs of decontamination, transfer, transportation, reclamation, surveillance, or disposal of radioactive substances arising from a license holder's abandonment of radioactive substances, default on a lawful obligation, insolvency, or inability to meet the requirements of this chapter or of commission rules.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 12, eff. September 1, 2013.

Sec. 401.307. PERPETUAL CARE ACCOUNT AND ENVIRONMENTAL RADIATION AND PERPETUAL CARE ACCOUNT CAPS. (a) The fees imposed under Sections 401.052(d) and 401.301(d) are suspended when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account reaches $100 million. The fees are reinstated when the sum of the balances of the perpetual care account and the environmental radiation and perpetual care account falls to $50 million or less.

(b) The surcharge collected under Section 401.207(g) is collected without regard to the balances of the perpetual care account and the environmental radiation and perpetual care account.

(c) Notwithstanding Subsection (a), a fee imposed by the commission under Section 401.301(d) on the holder of a license authorizing the extraction, processing, or concentration of uranium or thorium from ore is suspended when the amount in the environmental radiation and perpetual care account attributable to those fees reaches $2 million. If the amount in that account attributable to those fees is reduced to $1.5 million or less, the fee is reinstated until the amount reaches $2 million.

(d) Notwithstanding Subsection (a), a fee imposed under Section 401.052(d) is suspended from imposition against a party state compact waste generator when the amount in the perpetual care account

attributable to those fees reaches $500,000. If the amount in that account attributable to those fees is reduced to $350,000 or less, the fee is reinstated until the amount reaches $500,000.

(e) This section does not relieve a generator from liability for a transportation accident involving low-level radioactive waste.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1159 (S.B. 347), Sec. 12, eff. September 1, 2013.

SUBCHAPTER I. COURT PROCEEDINGS

Sec. 401.341. JUDICIAL REVIEW. A person who is affected by a final decision of the department and who has exhausted all administrative remedies available in the appropriate agency is entitled to judicial review under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 48, eff. Sept. 1, 1997.

Sec. 401.342. SUIT BY ATTORNEY GENERAL. (a) The attorney general, at the request of the department regarding an activity under its jurisdiction, shall institute an action in a district court in Travis County or in any county in which a violation occurs or is about to occur if in the department's judgment a person has engaged in or is about to engage in an act or practice that violates or will violate this chapter, a rule adopted by the executive commissioner under this chapter, or a license, registration, or order issued by the department under this chapter. The attorney general may determine the court in which suit will be instituted.

(b) The attorney general may petition the court for:

(1) an order enjoining the act or practice or an order directing compliance and reimbursement of the perpetual care account, if applicable;

(2) civil penalties as provided by Section 401.381; or

(3) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person engaged in or is about to engage in any of the acts or practices.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 49, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 9, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 19, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0922, eff. April 2, 2015.

Sec. 401.343. RECOVERY OF SECURITY. (a) The department or commission shall seek reimbursement, either by an order of the department or commission or a suit filed by the attorney general at the request of the department or commission, of security from the perpetual care account used by the department or commission to pay for actions, including corrective measures, to remedy spills or contamination by radioactive substances resulting from a violation of this chapter relating to an activity under the jurisdiction of the department or commission, a violation of a rule adopted under this chapter, or a violation of a license, registration, or order issued by the department or commission under this chapter.
(b) On request by the department or commission, the attorney general shall file suit to recover security under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.236, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 50, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 580, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1067, Sec. 20, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 26, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0923, eff. April 2, 2015.

SUBCHAPTER J. ENFORCEMENT

Sec. 401.381. GENERAL CIVIL PENALTIES. (a) A person who causes, suffers, allows, or permits a violation of this chapter, a department rule or order, or a license or registration condition is subject to a civil penalty of not less than $100 or more than $25,000

for each violation and for each day that a continuing violation occurs.

(b) The attorney general may file suit to recover a civil penalty under this section in a district court in Travis County or in the county in which the violation occurred. If the attorney general seeks to recover civil penalties for violations that have occurred in more than one county, the attorney general may join all of the violations in one suit and may file the suit either in a district court in Travis County or in a district court in a county in which at least one of the violations occurred.

(c) The civil penalty provided by this section is cumulative of any other remedy provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.237, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 51, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 5, eff. Sept. 1, 2001.

Sec. 401.382. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly violates a provision of this chapter other than the offense described by Section 401.383.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 401.383. CRIMINAL PENALTY FOR CERTAIN ACTS RELATED TO LOW-LEVEL RADIOACTIVE WASTE. (a) A person commits an offense if the person intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of low-level radioactive waste without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor, unless it is shown at the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is punishable by a fine of not less than $2,000 or more than $100,000, confinement in the county jail for not more than

one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1367, Sec. 37, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 10.003, eff. Sept. 1, 2001.

Sec. 401.384. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty as provided by this section and Sections 401.385-401.390 against a person who causes, suffers, allows, or permits a violation of a provision of this chapter relating to an activity under the department's jurisdiction, a rule adopted by the executive commissioner under this chapter, an order issued by the department under this chapter, or a condition of a license or registration issued by the department under this chapter.

(b) The penalty for each violation may not exceed $10,000 a day for a person who violates this chapter or a rule, order, license, or registration issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the public health or safety;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice requires.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.238, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0924, eff. April 2, 2015.

Sec. 401.385. PRELIMINARY REPORT OF VIOLATION. If the department, after an investigation, concludes that a violation relating to an activity under its jurisdiction has occurred, the

department may issue a preliminary report:

(1) stating the facts that support the conclusion;

(2) recommending that an administrative penalty under Section 401.384 be imposed; and

(3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the facts surrounding the violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.239, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 53, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 7, eff. Sept. 1, 2001.

Sec. 401.386. NOTICE OF PRELIMINARY REPORT. (a) The department shall give written notice of its preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued.

(b) The notice must include:

(1) a brief summary of the charges;

(2) a statement of the recommended penalty amount; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date on which the notice is sent, the person charged may consent in writing to the report, including the recommended penalty, or make a written request for a hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.240, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 54, eff. Sept. 1, 1997.

Sec. 401.387. CONSENT TO PENALTY. (a) If the person charged with the violation consents to the penalty recommended by the department or does not respond to the notice on time, the department by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report.

(b) If the department assesses the recommended penalty, the department shall give written notice to the person charged of the

decision and that person must pay the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 55, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0925, eff. April 2, 2015.

Sec. 401.388. HEARING AND DECISION. (a) If the person charged requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings and shall give notice of a hearing to be held by that office.

(b) The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall make findings of fact and promptly issue to the department a written proposal for decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and the recommendations of the administrative law judge, the department by order may find that a violation has occurred and assess an administrative penalty or may find that no violation occurred.

(e) All proceedings under Subsections (a)-(d) are subject to Chapter 2001, Government Code.

(f) The department shall give notice to the person charged of the department's decision, and if the department finds that a violation has occurred and an administrative penalty has been assessed, the department shall give to the person charged written notice of:

(1) the department's findings;

(2) the amount of the penalty; and

(3) the person's right to judicial review of the department's order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 56, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0926, eff. April 2, 2015.

Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date on which the department's order is final, the person charged with the penalty shall pay the full amount of the penalty or file a petition for judicial review.

(b) If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (a), shall:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond in a form approved by the court for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-1) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) The department may request enforcement by the attorney general if the person charged fails to comply with this section.

(d) Judicial review of the order or decision of the department assessing the penalty shall be under Subchapter G, Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 57, eff. Sept. 1, 1997.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0927, eff. April 2, 2015.

Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS. (a) On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if a supersedeas bond has been posted.

(b) Accrued interest on amounts remitted by the department shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the department under Section 401.389(a) and ending on the date the penalty is remitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.241, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 58, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0928, eff. April 2, 2015.

Sec. 401.393. COMMISSION ENFORCEMENT. The commission may enforce the provisions of this chapter under the commission's jurisdiction as provided by Chapter 7, Water Code.

Added by Acts 1997, 75th Leg., ch. 1072, Sec. 59, eff. Sept. 1, 1997.

SUBCHAPTER K. LICENSING AUTHORITY OF TEXAS COMMISSION ON ENVIRONMENTAL QUALITY AND THE RAILROAD COMMISSION OF TEXAS

Sec. 401.412. COMMISSION LICENSING AUTHORITY. (a) Notwithstanding any other provision of this chapter and subject to

Sections 401.102 and 401.415, the commission has sole and exclusive authority to directly regulate and to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the disposal of radioactive substances.

(b) Notwithstanding any other provision of this chapter, the commission has the sole and exclusive authority to grant, deny, renew, revoke, suspend, amend, or withdraw licenses for the recovery and processing of source material or disposal of by-product material under Subchapter G.

(c) The commission may adopt any rules and guidelines reasonably necessary to exercise its authority under this section. In adopting rules and guidelines, the commission shall consider the compatibility of those rules and guidelines with federal regulatory programs and the rules and guidelines of the executive commissioner.

(d) The commission may assess and collect an annual fee for each license and registration and for each application in an amount sufficient to recover its reasonable costs to administer its authority under this chapter.

(e) The commission may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facilities in the state that uses special nuclear material. The amount of the fees collected may not exceed the actual expenses that arise from emergency response activities, including training.

(f) The commission shall establish by rule the amounts appropriate for the fees collected under this section. The fees collected under this section shall be deposited in the waste management account and reappropriated for use by the commission for expenses incurred by the commission in administering the provisions of this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 992, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 75, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1338, Sec. 13, eff. June 20, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 28, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0929, eff. April 2, 2015.

Sec. 401.413. COMMISSION DISPOSAL LICENSE REQUIRED. A person required by another section of this chapter to obtain a license for the disposal of a radioactive substance is required to obtain the license from the commission and not from the department.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.243, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1338, Sec. 14, eff. June 20, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 29, eff. June 15, 2007.

Sec. 401.414. MEMORANDA OF UNDERSTANDING. The Texas Commission on Environmental Quality, the executive commissioner for the Health and Human Services Commission, and the Railroad Commission of Texas by rule shall adopt memoranda of understanding defining their respective duties under this chapter.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1332 (S.B. 1604), Sec. 30, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0930, eff. April 2, 2015.

Sec. 401.415. OIL AND GAS NORM WASTE. (a) Notwithstanding any other provision of this chapter, the Railroad Commission of Texas:
(1) has sole authority to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste; and
(2) may, in order to protect public health and safety and the environment, require the owner or operator of oil and gas equipment used in exploration, production, or disposal to:
(A) determine whether the equipment contains or is contaminated with oil and gas NORM waste; and
(B) identify any equipment determined to contain or be

contaminated with oil and gas NORM.

(b) The Railroad Commission of Texas may adopt any rules reasonably necessary to exercise its authority under this section.

(c) The Railroad Commission of Texas may enforce this section or any rule, order, license, or permit adopted or issued under this section in the manner and subject to the conditions provided in Title 3 of the Natural Resources Code, including the authority to seek and obtain civil penalties and injunctive relief as provided in that title.

(d) The Railroad Commission of Texas shall consult with the department and the Texas Natural Resource Conservation Commission as appropriate regarding administration of this section.

(e) To ensure that the State of Texas retains its Agreement Status with the federal commission, and to ensure that radioactive materials are managed consistently to protect the public health and safety and the environment, the Railroad Commission of Texas shall issue rules on the management of oil and gas NORM waste and in so doing shall consult with the commission and the department regarding protection of the public health and the environment. The rules of the railroad commission shall provide protection for public health, safety, and the environment equivalent to the protection provided by rules applicable to disposal of other NORM wastes having similar properties, quantities, and distribution, although the approved methods and sites for disposing of oil and gas NORM wastes may be different from those approved for other NORM wastes.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.050, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 810, Sec. 2, 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(29), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 276, Sec. 1, eff. May 22, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0931, eff. April 2, 2015.

SUBCHAPTER L. CERTIFICATION OF MAMMOGRAPHY SYSTEMS

Sec. 401.421. DEFINITIONS. In this subchapter:

(1) "Certification" means an authorization for the use of a mammography system.

(2) "Mammography" means the use of radiation to produce an image of the breast on film, paper, or digital display that may be used to detect the presence of pathological conditions of the breast.

(3) "Mammography system" includes the following:

(A) an x-ray unit used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiological technologist who performs a mammography; and

(F) a physician who engages in, and who meets the requirements provided by department rule relating to, the reading, evaluation, and interpretation of mammograms.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0932, eff. April 2, 2015.

Sec. 401.422. CERTIFICATION REQUIRED. (a) A person may not perform mammography unless the mammography system used has been issued a certification under this subchapter.

(b) A certification under Subsection (a) is required in addition to any license, registration, or other requirement under this chapter.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. July 1, 1994.

Sec. 401.423. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The department shall:

(1) prescribe application forms for original and renewal certifications; and

(2) take other action necessary to enforce this

subchapter.

(a-1) The executive commissioner shall adopt rules for the administration of this subchapter.

(b) The department shall apply under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b) to become an accreditation body and carry out the certification program requirements and to implement the standards established by the United States Secretary of Health under that Act in this state. If the United States Secretary of Health grants the department's application, the department shall assume those responsibilities.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 759, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0933, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0934, eff. April 2, 2015.

Sec. 401.424. MAMMOGRAPHY CERTIFICATION STANDARDS. (a) To receive a mammography certification under this subchapter, the mammography system must, at a minimum:

(1) meet criteria at least as stringent as the American College of Radiology mammography accreditation program;

(2) be specifically designed and used for the performance of mammography;

(3) be operated by an individual certified as a medical radiologic technologist under Chapter 601, Occupations Code, who meets, at a minimum, the requirements for personnel who perform mammography established by the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b); and

(4) be used in a facility that:

(A) meets, at minimum, the requirements for certification of the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b);

(B) has a licensed medical physicist specialized in radiology under Chapter 602, Occupations Code, who at least annually provides on-site consultation to the facility, including a complete evaluation of the entire mammography system to ensure compliance with

this subchapter;

(C) maintains records of the consultations required under Paragraph (B) for not less than seven years after the date the consultation was performed;

(D) establishes a quality control program that meets requirements that are at least as stringent as those of the American College of Radiology mammography accreditation program; and

(E) maintains and makes available to a patient of the facility original mammograms performed at the facility until the earlier of either:

(i) the fifth anniversary of the mammography or, if an additional mammogram of the same patient is not performed by the facility, the 10th anniversary of the mammography; or

(ii) at the request of the patient, the date the patient's medical records are forwarded to another medical institution.

(b) To protect the public health, the executive commissioner by rule may adopt more stringent or additional requirements for:

(1) the certification of mammography systems; and

(2) the retention of original mammograms.

(c) To protect the public health, the executive commissioner by rule shall adopt qualifications for a physician who reads, evaluates, and interprets a mammogram that are no less stringent than the standards of the American College of Radiology.

(d) The department shall make available to the public copies of the criteria of the American College of Radiology mammography accreditation program or the modified criteria provided by department rule.

(e) Notwithstanding any other provision of this chapter, the standards imposed for certification under this chapter may not be less stringent than the standards imposed on a facility under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b).

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 759, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.792, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0935, eff. April 2, 2015.

Sec. 401.426. APPLICATION FOR CERTIFICATION. (a) A person who owns, leases, or uses or the agent of a person who owns, leases, or uses a mammography system must file a written application for certification under Section 401.424 on a form prescribed by the department.

(b) The department may require, at any time after an application is filed, further information from the applicant and conduct inspections necessary to determine whether the application for certification should be granted or denied.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 759, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0936, eff. April 2, 2015.

Sec. 401.427. CERTIFICATION RENEWAL; FEES. (a) A certification is valid for three years.

(b) The executive commissioner by rule may adopt a system under which certifications under this subchapter expire on various dates during the year.

(c) The executive commissioner by rule shall set and the department shall collect an annual fee for certification holders in an amount reasonable and necessary to administer this subchapter. A certification holder who fails to pay the annual fee before the date set by the executive commissioner shall pay the annual fee and a late fee set by the executive commissioner. The department may revoke the certification of a certification holder who does not pay the annual fee and late fee before the required date.

(d) A certification holder may renew the certification by filing an application for renewal and paying the annual fee before the date the certification expires. If a certification holder fails to renew the certification by the required date, the certification holder may renew the certification on payment of the annual fee and a late fee set by the executive commissioner. If the certification is not renewed before the 181st day after the date on which the certification expired, the certification holder must apply for an original certification under this subchapter.

(e) A mammography system may not be used after the expiration

date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certification as provided under Section 2001.054, Government Code, and a final determination of the application by the department has not been made.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(57), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 759, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0937, eff. April 2, 2015.

Sec. 401.428. DENIAL, SUSPENSION, REVOCATION, OR REINSTATEMENT OF CERTIFICATION. (a) The department may deny, suspend, revoke, or reinstate a certification.

(b) The executive commissioner shall adopt rules establishing the grounds for denial, suspension, revocation, or reinstatement of a certification and establishing procedures for disciplinary actions.

(c) Proceedings relating to the suspension or revocation of a certification issued under this subchapter are subject to Chapter 2001, Government Code.

(d) A person whose certification has been revoked may apply for a new certification on the expiration of one year after the date the certification was revoked.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0938, eff. April 2, 2015.

Sec. 401.429. CERTIFICATION FOR MULTIPLE MAMMOGRAPHY SYSTEMS. (a) An applicant for certification under Section 401.426 must obtain a separate certification for each mammography system that is owned, leased, or used by the applicant.

(b) Certification of multiple mammography systems by a single applicant may be recorded on a single certification document. If

multiple mammography systems are recorded on a single certification document, each specific machine certified, if any, must be identified on the certification document by referring to the machine's manufacturer, model number, and serial number.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.

Sec. 401.430. INSPECTIONS. (a) The department shall inspect each mammography system that has not been fully certified under the Mammography Quality Standards Act of 1992 (42 U.S.C. Section 263b) not later than the 60th day after the date the certification under this subchapter is issued.

(b) The executive commissioner by rule shall establish the routine inspection frequency for mammography systems that receive certification under this subchapter.

(c) The department shall make reasonable attempts to coordinate inspections under this section with other inspections required under this chapter for the facility where the mammography system is used.

(d) After each satisfactory inspection, the department shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection must be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection shall:

(1) specifically identify the mammography system inspected;

(2) state the name and address of the facility where the mammography system was used at the time of the inspection; and

(3) state the date of the inspection.

(e) A notice of a mammography system's failure to satisfy department standards shall be posted:

(1) on the mammography system at a conspicuous place if the system is a machine; or

(2) near the place where the mammography system practices if the system is an individual.

(f) If a facility's mammography system fails to meet the department's certification standards and the failure is a Severity Level I violation under the department's rules, the facility shall notify each patient on whom the facility performed a mammography during the period in which the system failed to meet the department's certification standards. The facility shall:

(1) inform the patient that the mammography system failed to satisfy the department's certification standards;

(2) recommend that the patient consult with the patient's physician regarding the need for another mammogram; and

(3) list the three facilities closest to the original testing facility that have a certified mammography system.

(g) In addition to the requirement of Subsection (f), the department may require a facility to notify a patient of any other failure of the facility's mammography system to meet the department's certification standards.

(h) To protect the public health, the executive commissioner may adopt rules concerning the grounds for posting a failure notice and the placement and size of the failure notice, and for patient notification under Subsections (f) and (g), as appropriate.

Added by Acts 1993, 73rd Leg., ch. 138, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 759, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1009, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1355 (S.B. 527), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0939, eff. April 2, 2015.

SUBCHAPTER M. LASER HAIR REMOVAL

Sec. 401.501. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(1-a) "Department" means the Texas Department of Licensing and Regulation.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(74), eff. April 2, 2015.

(2) "Executive director" means the executive director of the department.

(3) "Laser hair removal" means the use of a laser or pulsed light device for nonablative hair removal procedures.

(4) "Laser hair removal facility" means a business location that provides laser hair removal.

(5) "Laser or pulsed light device" means a device approved

by the department and the United States Food and Drug Administration for laser hair removal.

(6) "Nonablative hair removal procedure" means a hair removal procedure using a laser or pulsed light device that does not remove the epidermis.

(7) "Operator" means the owner of a laser hair removal facility, an agent of an owner, or an independent contractor of a laser hair removal facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(74), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.225, eff. September 1, 2017.

Sec. 401.5011. GENERAL POWERS AND DUTIES. The executive director shall administer and enforce this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.226, eff. September 1, 2017.

Sec. 401.502. EXAMINATION. The commission may adopt rules to govern the development and administration of an examination for an applicant under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.227, eff. September 1, 2017.

Sec. 401.503. APPLICATION PROCESS. (a) An application for a certificate or license under this subchapter must be submitted in the manner and on a form prescribed by the executive director.

(b) The application must require an applicant to provide sworn statements relating to the applicant's education and to provide other

information required by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.228, eff. September 1, 2017.

Sec. 401.504. CERTIFICATE FOR INDIVIDUALS REQUIRED. (a) A person may not perform or attempt to perform laser hair removal unless the person holds the appropriate certificate under this subchapter.

(b) A certificate issued under this subchapter only authorizes a person to perform nonablative cosmetic laser hair removal. The certificate does not authorize the person to diagnose, treat, or offer to treat any client for any illness, disease, injury, defect, or deformity of the human body. The certificate holder shall specifically disclose this limitation in writing to all clients and prospective clients.

(c) This subchapter does not require a health professional licensed under another law to hold a certificate under this subchapter to perform laser hair removal if the performance of laser hair removal is within the scope of that professional's practice as determined by the professional's licensing board.

(d) This subchapter does not apply to a physician or to a physician's employee or delegate acting under Chapter 157, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.505. CERTIFIED LASER HAIR REMOVAL PROFESSIONAL. (a) An applicant for a laser hair removal professional certificate must:

(1) be certified by a recognized certifying agency, including the Society for Clinical and Medical Hair Removal or another certification entity approved by the department;

(2) meet the requirements for a senior laser hair removal technician certificate under Section 401.506; and

(3) pass an examination required by the department.

(b) A certified laser hair removal professional acting under the protocol established with a consulting physician may perform laser hair removal without supervision.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.229, eff. September 1, 2017.

Sec. 401.506. SENIOR LASER HAIR REMOVAL TECHNICIAN. (a) Except as provided by Subsection (b), an applicant for a senior laser hair removal technician certificate must:

(1) meet the requirements for a laser hair removal technician certificate under Section 401.507; and

(2) have supervised at least 100 laser hair removal procedures, as audited by a certified laser hair removal professional.

(b) The qualifications for eligibility for an applicant for a senior laser hair removal technician certificate who is a licensed health professional shall be established by the entity that issues licenses for that health profession.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.507. LASER HAIR REMOVAL TECHNICIAN. An applicant for a laser hair removal technician certificate must:

(1) meet the requirements for a laser hair removal apprentice-in-training certificate under Section 401.508; and

(2) have performed at least 100 laser hair removal procedures under the direct supervision of a senior laser hair removal technician or a certified laser hair removal professional.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.508. LASER HAIR REMOVAL APPRENTICE-IN-TRAINING. (a)

An applicant for a laser hair removal apprentice-in-training certificate must have at least 24 hours of training in safety, laser physics, skin typing, skin reactions, treatment protocols, burns, eye protection, emergencies, and posttreatment protocols.

(b) A laser hair removal apprentice-in-training must work directly under the supervision of a senior laser hair removal technician or a certified laser hair removal professional.

(c) A person must be at least 18 years of age to qualify to be a laser hair removal apprentice-in-training.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.509. CONTINUING EDUCATION. The commission by rule shall establish continuing education requirements for renewal of a certificate under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 3.001, eff. September 1, 2019.

Sec. 401.510. FACILITY LICENSE REQUIRED. (a) A person may not operate a laser hair removal facility unless the person holds a license issued under this subchapter to operate the facility.

(b) A separate license is required for each laser hair removal facility.

(c) This section does not apply to:

(1) a facility owned or operated by a physician for the practice of medicine;

(2) a licensed hospital; or

(3) a clinic owned or operated by a licensed hospital.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.512. TERM OF CERTIFICATE OR LICENSE. (a) A certificate or license expires on the second anniversary of the date of issuance and may be renewed.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec.

1.297(3), eff. September 1, 2017.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.297(3), eff. September 1, 2017.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.230, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.231, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.297(3), eff. September 1, 2017.

Sec. 401.513. DISPLAY OF LICENSE OR CERTIFICATE. A person holding a license or certificate under this subchapter shall display the person's license or certificate in an open public area of the laser hair removal facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.514. LASER OR PULSED LIGHT DEVICE. (a) A laser or pulsed light device used for laser hair removal in a laser hair removal facility must comply with all applicable federal and state laws and regulations.

(b) A person who adulterates or misbrands a laser or pulsed light device violates Chapter 431. The department may investigate a person accused of adulterating or misbranding a laser or pulsed light device.

(c) A person may only use a laser or pulsed light device approved for laser hair removal by the federal Food and Drug Administration for that purpose and may only use the device at the settings expected to safely remove hair.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.515. CUSTOMER NOTICE; LIABILITY. (a) A laser hair removal facility shall give each customer a written statement outlining the relevant risks associated with laser hair removal, including a warning that failure to use the eye protection provided to the customer by the laser hair removal facility may result in damage to the eyes.

(b) The commission shall adopt rules relating to the customer notice.

(c) Compliance with the notice requirement does not affect the liability of the laser hair removal facility operator or a manufacturer of a laser or pulsed light device.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.232, eff. September 1, 2017.

Sec. 401.516. WARNING SIGNS. (a) A laser hair removal facility shall post a warning sign as prescribed by the commission in a conspicuous location readily visible to a person entering the facility. The sign must provide a toll-free telephone number and e-mail address for the department and inform the customer that the customer may contact the department.

(b) The commission shall adopt rules specifying the size, content, and design of the sign, with wording listing the potential dangers involved.

(c) The department shall include with a license application and an application for renewal of a license a description of the design standards required for a sign under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.233, eff. September 1, 2017.

Sec. 401.517. OPERATIONAL REQUIREMENTS. (a) Except as provided by Subsection (b), a laser hair removal facility shall have

a certified laser hair removal professional or a licensed health professional described by Section 401.504(c) present to supervise the laser hair removal procedures performed at the facility during the facility's operating hours.

(b) A laser hair removal facility may continue to perform laser hair removal procedures after the facility's certified laser hair removal professional leaves the facility if a senior laser hair removal technician is present to perform or supervise each procedure. Not later than the 45th day after the date the facility's certified laser hair removal professional leaves the facility:

(1) the facility's senior laser hair removal technician must become certified as a laser hair removal professional under Section 401.505; or

(2) the facility must hire a new certified laser hair removal professional.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.

Sec. 401.518. SAFETY. (a) A laser hair removal facility operator is responsible for maintaining the laser hair removal facility's compliance with the requirements of this subchapter and commission rules relating to laser and pulsed light devices.

(b) A laser hair removal facility operator may not claim, advertise, or distribute promotional materials that claim that laser hair removal is free from risk or provides any medical benefit.

(c) A laser hair removal facility operator may not produce false or misleading advertising regarding the services offered at the facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.234, eff. September 1, 2017.

Sec. 401.519. CONSULTING PHYSICIAN. (a) A laser hair removal facility must have a written contract with a consulting physician to:

(1) establish proper protocols for the services provided at

the facility; and

(2) audit the laser hair removal facility's protocols and operations.

(b) Under the rules of the commission, a laser hair removal facility must document with the department the facility's contractual relationship with the consulting physician.

(c) The consulting physician must be available for emergency consultation with the facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client. If the consulting physician is unavailable for an emergency consultation, another designated physician must be available for the consultation with the facility relating to care for the client.

(d) This subchapter does not relieve a consulting physician or another health care professional from complying with applicable regulations prescribed by a state or federal agency.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.235, eff. September 1, 2017.

Sec. 401.520. DISCLOSURE OF RECORD PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), an operator or other person may not disclose a customer record required to be kept by the department.

(b) An operator or other person may disclose a customer record if:

(1) the customer or a person authorized to act on behalf of the customer requests the record;

(2) the department, the Texas Medical Board, a health authority, or an authorized agent requests the record;

(3) the customer consents in writing to disclosure of the record to another person;

(4) the customer is a victim, witness, or defendant in a criminal proceeding and the record is relevant to that proceeding;

(5) the record is requested in a criminal or civil proceeding by court order or subpoena; or

(6) disclosure is otherwise required by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2009.

Sec. 401.521. PROHIBITED PRACTICE. (a) A person may not operate a laser or pulsed light device with the intent to treat an illness, disease, injury, or physical defect or deformity unless the person is:

(1) a physician;

(2) acting under a physician's order; or

(3) authorized under other law to treat the illness, disease, injury, or physical defect or deformity in that manner.

(b) A person who violates Subsection (a) is practicing medicine in violation of Subtitle B, Title 3, Occupations Code, and is subject to the penalties under that subtitle and Subchapter F, Chapter 51, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.236, eff. September 1, 2017.

Sec. 401.522. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of an administrative penalty imposed for a violation of this subchapter or a rule adopted or order issued under this subchapter may not exceed $5,000 for each violation.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.297(4), eff. September 1, 2017.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.297(4), eff. September 1, 2017.

Added by Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 1, eff. September 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.237, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.238, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.297(4),

eff. September 1, 2017.

CHAPTER 403. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT

Sec. 403.0005. DEFINITIONS. In this chapter:

(1) "Commission" means the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact.

(2) "Host state commissioner" means a person who is appointed from this state to serve on the commission under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 2, eff. September 1, 2011.

Sec. 403.001. MEMBERS OF COMMISSION. (a) The governor shall appoint six members to represent this state on the commission established by Article III of the Texas Low-Level Radioactive Waste Disposal Compact. One of the voting members of the compact commission shall be a legal resident of the host county.

(b) The governor may provide an alternate for each commissioner appointed under this section.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 2003, 78th Leg., ch. 1067, Sec. 21, eff. Sept. 1, 2003.

Sec. 403.002. TERMS OF COMMISSION MEMBERS; VACANCY. Host state commissioners serve staggered six-year terms, with the terms of two host state commissioners expiring on September 1 of each odd-numbered year. A host state commissioner serves until a successor is appointed and qualified. A vacancy in the office of host state commissioner is filled for the unexpired term by appointment of the governor.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 3, eff. September 1, 2011.

Sec. 403.003. OATH. A host state commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform the duties of commissioner.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.

Sec. 403.004. COMPENSATION. A host state commissioner is not entitled to compensation for performing the duties of host state commissioner but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of host state commissioner.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 3, eff. September 1, 2011.

Sec. 403.005. POWERS AND DUTIES. (a) The Texas Low-Level Radioactive Waste Disposal Compact Commission and the members of the commission have the powers and duties prescribed by the compact. The members of the commission are responsible for administering the provisions of the compact.

(b) The commission may conduct other activities not described by the federal law governing the commission or the compact, as long as those activities are consistent with the policies and procedures of this state.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 403 (S.B. 1667), Sec. 1, eff. June 1, 2017.

Sec. 403.0051. COMMISSION AS INDEPENDENT ENTITY; FUNDING. (a) The commission is an independent entity established by federal law and governed by the compact and is not an agency of this state or a program, department, or other division of, or administratively

attached to, an agency of this state.

(b) The legislature may appropriate money to the commission. Money for the commission may not be appropriated as part of an appropriation for the Texas Commission on Environmental Quality.

(c) The comptroller may:

(1) assign the commission an agency code; and

(2) from funds appropriated to the commission, provide for the reimbursement of a commission member or employee or a person who contracts with the commission for purchases approved by the commission, including state and local sales tax.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 403 (S.B. 1667), Sec. 2, eff. June 1, 2017.

Sec. 403.0053. ATTORNEY GENERAL TO REPRESENT COMMISSION. The attorney general shall represent the commission under this chapter in all matters before the state courts and any court of the United States.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.0054. APPLICABILITY OF SUNSET ACT. (a) The commission is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency subject to review under that chapter, but may not be abolished under that chapter.

(b) The commission shall be reviewed during each period in which the Texas Commission on Environmental Quality is reviewed.

(c) The commission shall pay the cost incurred by the Sunset Advisory Commission in performing a review of the commission under this section. The Sunset Advisory Commission shall determine the cost, and the commission shall pay the amount promptly on receipt of a statement from the Sunset Advisory Commission detailing the cost.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.0055. AUDIT. The commission is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1102 (S.B. 1605), Sec. 4, eff. September 1, 2011.

Sec. 403.006. TEXT OF COMPACT. The Texas Low-Level Radioactive Waste Disposal Compact reads as follows:

ARTICLE I. POLICY AND PURPOSE

Sec. 1.01. The party states recognize a responsibility for each state to seek to manage low-level radioactive waste generated within its boundaries, pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j). They also recognize that the United States Congress, by enacting the Act, has authorized and encouraged states to enter into compacts for the efficient management and disposal of low-level radioactive waste. It is the policy of the party states to cooperate in the protection of the health, safety, and welfare of their citizens and the environment and to provide for and encourage the economical management and disposal of low-level radioactive waste. It is the purpose of this compact to provide the framework for such a cooperative effort; to promote the health, safety, and welfare of the citizens and the environment of the party states; to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof; and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of this compact.

ARTICLE II. DEFINITIONS

Sec. 2.01. As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Act" means the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. Sections 2021b-2021j).

(2) "Commission" means the Texas Low-Level Radioactive Waste Disposal Compact Commission established in Article III of this

compact.

(3) "Compact facility" or "facility" means any site, location, structure, or property located in and provided by the host state for the purpose of management or disposal of low-level radioactive waste for which the party states are responsible.

(4) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(5) "Generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(6) "Generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the commission.

(7) "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(8) "Host state" means a party state in which a compact facility is located or is being developed. The state of Texas is the host state under this compact.

(9) "Institutional control period" means that period of time following closure of the facility and transfer of the facility license from the operator to the custodial agency in compliance with the appropriate regulations for long-term observation and maintenance.

(10) "Low-level radioactive waste" has the same meaning as that term is defined in Section 2(9) of the Act (42 U.S.C. Section 2021b(9)), or in the host state statute so long as the waste is not incompatible with management and disposal at the compact facility.

(11) "Management" means collection, consolidation, storage, packaging, or treatment.

(12) "Operator" means a person who operates a disposal facility.

(13) "Party state" means any state that has become a party in accordance with Article VII of this compact. Texas, Maine, and Vermont are initial party states under this compact.

(14) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(15) "Transporter" means a person who transports low-level radioactive waste.

ARTICLE III. THE COMMISSION

Sec. 3.01. There is hereby established the Texas Low-Level Radioactive Waste Disposal Compact Commission. The commission shall consist of one voting member from each party state except that the host state shall be entitled to six voting members. Commission members shall be appointed by the party state governors, as provided by the laws of each party state. Each party state may provide alternates for each appointed member.

Sec. 3.02. A quorum of the commission consists of a majority of the members. Except as otherwise provided in this compact, an official act of the commission must receive the affirmative vote of a majority of its members.

Sec. 3.03. The commission is a legal entity separate and distinct from the party states and has governmental immunity to the same extent as an entity created under the authority of Article XVI, Section 59, of the Texas Constitution. Members of the commission shall not be personally liable for actions taken in their official capacity. The liabilities of the commission shall not be deemed liabilities of the party states.

Sec. 3.04. The commission shall:

(1) Compensate its members according to the host state's law.

(2) Conduct its business, hold meetings, and maintain public records pursuant to laws of the host state, except that notice of public meetings shall be given in the nonhost party states in accordance with their respective statutes.

(3) Be located in the capital city of the host state.

(4) Meet at least once a year and upon the call of the chair, or any member. The governor of the host state shall appoint a chair and vice-chair.

(5) Keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission shall be conducted by an independent certified public accountant, and the audit report shall be made a part of the annual report of the commission.

(6) Approve a budget each year and establish a fiscal year that conforms to the fiscal year of the host state.

(7) Prepare, adopt, and implement contingency plans for the

disposal and management of low-level radioactive waste in the event that the compact facility should be closed. Any plan which requires the host state to store or otherwise manage the low-level radioactive waste from all the party states must be approved by at least four host state members of the commission. The commission, in a contingency plan or otherwise, may not require a nonhost party state to store low-level radioactive waste generated outside of the state.

(8) Submit communications to the governors and to the presiding officers of the legislatures of the party states regarding the activities of the commission, including an annual report to be submitted on or before January 31 of each year.

(9) Assemble and make available to the party states and to the public information concerning low-level radioactive waste management needs, technologies, and problems.

(10) Keep a current inventory of all generators within the party states, based upon information provided by the party states.

(11) By no later than 180 days after all members of the commission are appointed under Section 3.01 of this article, establish by rule the total volume of low-level radioactive waste that the host state will dispose of in the compact facility in the years 1995-2045, including decommissioning waste. The shipments of low-level radioactive waste from all nonhost party states shall not exceed 20 percent of the volume estimated to be disposed of by the host state during the 50-year period. When averaged over such 50-year period, the total of all shipments from nonhost party states shall not exceed 20,000 cubic feet a year. The commission shall coordinate the volumes, timing, and frequency of shipments from generators in the nonhost party states in order to assure that over the life of this agreement shipments from the nonhost party states do not exceed 20 percent of the volume projected by the commission under this paragraph.

Sec. 3.05. The commission may:

(1) Employ staff necessary to carry out its duties and functions. The commission is authorized to use to the extent practicable the services of existing employees of the party states. Compensation shall be as determined by the commission.

(2) Accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal or state government. The nature, amount, and condition, if any, of any donation, grant, or other resources accepted pursuant to this

paragraph and the identity of the donor or grantor shall be detailed in the annual report of the commission.

(3) Enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission shall bind a party state.

(4) Adopt, by a majority vote, bylaws and rules necessary to carry out the terms of this compact. Any rules promulgated by the commission shall be adopted in accordance with Chapter 2001, Government Code.

(5) Sue and be sued and, when authorized by a majority vote of the members, seek to intervene in administrative or judicial proceedings related to this compact.

(6) Enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The commission may adopt such conditions and restrictions in the agreement as it deems advisable.

(7) Upon petition, allow an individual generator, a group of generators, or the host state of the compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The commission may approve the petition only by a majority vote of its members. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the commission.

(8) Monitor the exportation outside of the party states of material which otherwise meets the criteria of low-level radioactive waste, where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility.

Sec. 3.06. Jurisdiction and venue of any action contesting any action of the commission shall be in the United States District Court in the district where the commission maintains its office.

ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

Sec. 4.01. The host state shall develop and have full administrative control over the development, management, and operation of a facility for the disposal of low-level radioactive waste generated within the party states. The host state shall be

entitled to unlimited use of the facility over its operating life. Use of the facility by the nonhost party states for disposal of low-level radioactive waste, including such waste resulting from decommissioning of any nuclear electric generation facilities located in the party states, is limited to the volume requirements of Section 3.04(11) of Article III.

Sec. 4.02. Low-level radioactive waste generated within the party states shall be disposed of only at the compact facility, except as provided in Section 3.05(7) of Article III.

Sec. 4.03. The initial states of this compact cannot be members of another low-level radioactive waste compact entered into pursuant to the Act.

Sec. 4.04. The host state shall do the following:

(1) Cause a facility to be developed in a timely manner and operated and maintained through the institutional control period.

(2) Ensure, consistent with any applicable federal and host state laws, the protection and preservation of the environment and the public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the disposal facilities within the host state.

(3) Close the facility when reasonably necessary to protect the public health and safety of its citizens or to protect its natural resources from harm. However, the host state shall notify the commission of the closure within three days of its action and shall, within 30 working days of its action, provide a written explanation to the commission of the closure, and implement any adopted contingency plan.

(4) Establish reasonable fees for disposal at the facility of low-level radioactive waste generated in the party states based on disposal fee criteria set out in Sections 402.272 and 402.273, Texas Health and Safety Code. The same fees shall be charged for the disposal of low-level radioactive waste that was generated in the host state and in the nonhost party states. Fees shall also be sufficient to reasonably support the activities of the commission.

(5) Submit an annual report to the commission on the status of the facility, including projections of the facility's anticipated future capacity, and on the related funds.

(6) Notify the commission immediately upon the occurrence of any event that could cause a possible temporary or permanent closure of the facility and identify all reasonable options for the

disposal of low-level radioactive waste at alternate compact facilities or, by arrangement and commission vote, at noncompact facilities.

(7) Promptly notify the other party states of any legal action involving the facility.

(8) Identify and regulate, in accordance with federal and host state law, the means and routes of transportation of low-level radioactive waste in the host state.

Sec. 4.05. Each party state shall do the following:

(1) Develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for the facility to conform to packaging, processing, and waste form specifications of the host state.

(2) Maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at the facility, including but not limited to the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.

(3) Develop and enforce procedures requiring generators within its borders to minimize the volume of low-level radioactive waste requiring disposal. Nothing in this compact shall prohibit the storage, treatment, or management of waste by a generator.

(4) Provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.

(5) Pay for community assistance projects designated by the host county in an amount for each nonhost party state equal to 10 percent of the payment provided for in Article V for each such state. One-half of the payment shall be due and payable to the host county on the first day of the month following ratification of this compact agreement by congress and one-half of the payment shall be due and payable on the first day of the month following the approval of a facility operating license by the host state's regulatory body.

(6) Provide financial support for the commission's activities prior to the date of facility operation and subsequent to the date of congressional ratification of this compact under Section 7.07 of Article VII. Each party state will be responsible for annual payments equaling its pro-rata share of the commission's expenses, incurred for administrative, legal, and other purposes of the

commission.

(7) If agreed by all parties to a dispute, submit the dispute to arbitration or other alternate dispute resolution process. If arbitration is agreed upon, the governor of each party state shall appoint an arbitrator. If the number of party states is an even number, the arbitrators so chosen shall appoint an additional arbitrator. The determination of a majority of the arbitrators shall be binding on the party states. Arbitration proceedings shall be conducted in accordance with the provisions of 9 U.S.C. Sections 1 through 16. If all parties to a dispute do not agree to arbitration or alternate dispute resolution process, the United States District Court in the district where the commission maintains its office shall have original jurisdiction over any action between or among parties to this compact.

(8) Provide on a regular basis to the commission and host state:

(A) an accounting of waste shipped and proposed to be shipped to the compact facility, by volume and curies;

(B) proposed transportation methods and routes; and

(C) proposed shipment schedules.

(9) Seek to join in any legal action by or against the host state to prevent nonparty states or generators from disposing of low-level radioactive waste at the facility.

Sec. 4.06. Each party state shall act in good faith and may rely on the good faith performance of the other party states regarding requirements of this compact.

ARTICLE V. PARTY STATE CONTRIBUTIONS

Sec. 5.01. Each party state, except the host state, shall contribute a total of $25 million to the host state. Payments shall be deposited in the host state treasury to the credit of the low-level waste fund in the following manner except as otherwise provided. Not later than the 60th day after the date of congressional ratification of this compact, each nonhost party state shall pay to the host state $12.5 million. Not later than the 60th day after the date of the opening of the compact facility, each nonhost party state shall pay to the host state an additional $12.5 million.

Sec. 5.02. As an alternative, the host state and the nonhost states may provide for payments in the same total amount as stated above to be made to meet the principal and interest expense

associated with the bond indebtedness or other form of indebtedness issued by the appropriate agency of the host state for purposes associated with the development, operation, and post-closure monitoring of the compact facility. In the event the member states proceed in this manner, the payment schedule shall be determined in accordance with the schedule of debt repayment. This schedule shall replace the payment schedule described in Section 5.01 of this article.

ARTICLE VI. PROHIBITED ACTS AND PENALTIES

Sec. 6.01. No person shall dispose of low-level radioactive waste generated within the party states unless the disposal is at the compact facility, except as otherwise provided in Section 3.05(7) of Article III.

Sec. 6.02. No person shall manage or dispose of any low-level radioactive waste within the party states unless the low-level radioactive waste was generated within the party states, except as provided in Section 3.05(6) of Article III. Nothing herein shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 C.F.R. Section 20.302.

Sec. 6.03. Violations of this article may result in prohibiting the violator from disposing of low-level radioactive waste in the compact facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the commission.

ARTICLE VII. ELIGIBILITY; ENTRY INTO EFFECT; CONGRESSIONAL CONSENT; WITHDRAWAL; EXCLUSION

Sec. 7.01. The states of Texas, Maine, and Vermont are party states to this compact. Any other state may be made eligible for party status by a majority vote of the commission and ratification by the legislature of the host state, subject to fulfillment of the rights of the initial nonhost party states under Section 3.04(11) of Article III and Section 4.01 of Article IV, and upon compliance with those terms and conditions for eligibility that the host state may establish. The host state may establish all terms and conditions for the entry of any state, other than the states named in this section, as a member of this compact; provided, however, the specific provisions of this compact, except for those pertaining to the composition of the commission and those pertaining to Section 7.09 of this article, may not be changed except upon ratification by the legislatures of the party states.

Sec. 7.02. Upon compliance with the other provisions of this compact, a state made eligible under Section 7.01 of this article may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened after the executive order is issued, unless before the adjournment, the legislature enacts this compact.

Sec. 7.03. Any party state may withdraw from this compact by repealing enactment of this compact subject to the provisions herein. In the event the host state allows an additional state or additional states to join the compact, the host state's legislature, without the consent of the nonhost party states, shall have the right to modify the composition of the commission so that the host state shall have a voting majority on the commission; provided, however, that any modification maintains the right of each initial party state to retain one voting member on the commission.

Sec. 7.04. If the host state withdraws from the compact, the withdrawal shall not become effective until five years after enactment of the repealing legislation and the nonhost party states may continue to use the facility during that time. The financial obligation of the nonhost party states under Article V shall cease immediately upon enactment of the repealing legislation. If the host state withdraws from the compact or abandons plans to operate a facility prior to the date of any nonhost party state payment under Sections 4.05(5) and (6), of Article IV or Article V, the nonhost party states are relieved of any obligations to make the contributions. This section sets out the exclusive remedies for the nonhost party states if the host state withdraws from the compact or is unable to develop and operate a compact facility.

Sec. 7.05. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal shall not become effective until two years after the effective date of the repealing legislation. During this two-year period the party state will continue to have access to the facility. The withdrawing party shall remain liable for any payments under Sections 4.05(5) and (6) of Article IV that were due during the two-year period and shall not be entitled to any refund of payments previously made.

Sec. 7.06. Any party state that substantially fails to comply

with the terms of the compact or to fulfill its obligations hereunder may have its membership in the compact revoked by a seven-eighths vote of the commission following notice that a hearing will be scheduled not less than six months from the date of the notice. In all other respects, revocation proceedings undertaken by the commission will be subject to Chapter 2001, Government Code, except that a party state may appeal the commission's revocation decision to the United States District Court in accordance with Section 3.06 of Article III. Revocation shall take effect one year from the date such party state receives written notice from the commission of a final action. Written notice of revocation shall be transmitted immediately following the vote of the commission, by the chair, to the governor of the affected party state, all other governors of party states, and to the United States Congress.

Sec. 7.07. This compact shall take effect following its enactment under the laws of the host state and any other party state and thereafter upon the consent of the United States Congress and shall remain in effect until otherwise provided by federal law. If Texas and either Maine or Vermont ratify this compact, the compact shall be in full force and effect as to Texas and the other ratifying state, and this compact shall be interpreted as follows:

(1) Texas and the other ratifying state are the initial party states.

(2) The commission shall consist of two voting members from the other ratifying state and six from Texas.

(3) Each party state is responsible for its pro-rata share of the commission's expenses.

Sec. 7.08. This compact is subject to review by the United States Congress and the withdrawal of the consent of congress every five years after its effective date, pursuant to federal law.

Sec. 7.09. The host state legislature, with the approval of the governor, shall have the right and authority, without the consent of the nonhost party states, to modify the provisions contained in Section 3.04(11) of Article III to comply with Section 402.219(c)(1), Texas Health and Safety Code, as long as the modification does not impair the rights of the initial nonhost party states.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

Sec. 8.01. The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party shall not be infringed upon unnecessarily.

Sec. 8.02. This compact does not affect any judicial proceeding pending on the effective date of this compact.

Sec. 8.03. No party state acquires any liability, by joining this compact, resulting from the siting, operation, maintenance, long-term care, or any other activity relating to the compact facility. No nonhost party state shall be liable for any harm or damage from the siting, operation, maintenance, or long-term care relating to the compact facility. Except as otherwise expressly provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act or failure to act. Generators, transporters, owners, and operators of the facility shall be liable for their acts, omissions, conduct, or relationships in accordance with applicable law. By entering into this compact and securing the ratification by congress of its terms, no party state acquires a potential liability under Section 5(d)(2)(C) of the Act (42 U.S.C. Section 2021e(d)(2)(C)) that did not exist prior to entering into this compact.

Sec. 8.04. If a party state withdraws from the compact pursuant to Section 7.03 of Article VII or has its membership in this compact revoked pursuant to Section 7.06 of Article VII, the withdrawal or revocation shall not affect any liability already incurred by or chargeable to the affected state under Section 8.03 of this article.

Sec. 8.05. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared by a court of competent jurisdiction to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby to the extent the remainder can in all fairness be given effect. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters.

Sec. 8.06. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:

(1) the United States Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.); or

(2) an agreement state under Section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2021).

Sec. 8.07. Nothing in this compact confers any new authority on the states or commission to do any of the following:

(1) Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the United States Nuclear Regulatory Commission or the United States Department of Transportation.

(2) Regulate health, safety, or environmental hazards from source, by-product, or special nuclear material.

(3) Inspect the activities of licensees of the agreement states or of the United States Nuclear Regulatory Commission.

Added by Acts 1993, 73rd Leg., ch. 460, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBTITLE F. LIGHT POLLUTION

CHAPTER 425. REGULATION OF CERTAIN OUTDOOR LIGHTING

Sec. 425.001. DEFINITIONS. In this chapter:

(1) "Cutoff luminaire" means a luminaire in which 2.5% or less of the lamp lumens are emitted above a horizontal plane through the luminaire's lowest part and 10% or less of the lamp lumens are emitted at a vertical angle 80 degrees above the luminaire's lowest point.

(2) "Light pollution" means the night sky glow caused by the scattering of artificial light in the atmosphere.

(3) "Outdoor lighting fixture" means any type of fixed or movable lighting equipment that is designed or used for illumination outdoors. The term includes billboard lighting, street lights, searchlights and other lighting used for advertising purposes, and area lighting. The term does not include lighting equipment that is required by law to be installed on motor vehicles or lighting required for the safe operation of aircraft.

(4) "State funds" means:

(A) money appropriated by the legislature; or

(B) bond revenues of the state.

Added by Acts 1999, 76th Leg., ch. 713, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 421.001 by Acts 2001, 77th Leg., ch. 1420, Sec.

21.001(76), eff. Sept. 1, 2001.

Sec. 425.002. STANDARDS FOR STATE-FUNDED OUTDOOR LIGHTING FIXTURES. (a) An outdoor lighting fixture may be installed, replaced, maintained, or operated using state funds only if:

(1) the new or replacement outdoor lighting fixture is a cutoff luminaire if the rated output of the outdoor lighting fixture is greater than 1,800 lumens;

(2) the minimum illuminance adequate for the intended purpose is used with consideration given to nationally recognized standards;

(3) for lighting of a designated highway of the state highway system, the Texas Department of Transportation determines that the purpose of the outdoor lighting fixture cannot be achieved by the installation of reflective road markers, lines, warning or informational signs, or other effective passive methods; and

(4) full consideration has been given to energy conservation, reducing glare, minimizing light pollution, and preserving the natural night environment.

(b) For purposes of Subsection (a)(4), "energy conservation" means reducing energy costs and resources used and includes using a light with lower wattage or a timer switch.

(c) Subsection (a) does not apply if:

(1) a federal law, rule, or regulation preempts state law;

(2) the outdoor lighting fixture is used on a temporary basis because emergency personnel require additional illumination for emergency procedures;

(3) the outdoor lighting fixture is used on a temporary basis for nighttime work;

(4) special events or situations require additional illumination;

(5) the outdoor lighting fixture is used solely to enhance the aesthetic beauty of an object; or

(6) a compelling safety interest exists that cannot be addressed by another method.

(d) Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures

from direct view and to minimize upward lighting and light pollution.

Added by Acts 1999, 76th Leg., ch. 713, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 421.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(76), eff. Sept. 1, 2001.

SUBTITLE G. ENVIRONMENTAL HEALTH
CHAPTER 427. TEXAS ENVIRONMENTAL HEALTH INSTITUTE

Sec. 427.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Department" means the Department of State Health Services.

(3) "Federal superfund site" means a site defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended.

(4) "Immediately surrounding area" means an area determined by the commission to have been significantly exposed to one or more pollutants from the identified site.

(5) "Institute" means the Texas Environmental Health Institute.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.017, eff. September 1, 2009.

Sec. 427.002. TEXAS ENVIRONMENTAL HEALTH INSTITUTE. The commission shall enter into an agreement with the department to jointly establish the Texas Environmental Health Institute in order to examine ways to identify, treat, manage, prevent, and reduce health problems associated with environmental contamination.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

Sec. 427.003. PURPOSES. The purposes of the institute are to:

(1) develop a statewide plan to identify health conditions, related or potentially related to environmental contamination, of residents of this state who live or have lived within the immediately surrounding area of a federal superfund site or a state superfund site;

(2) develop a plan to promote and protect the health and safety of residents in immediately surrounding areas by preventing or reducing their health risks from exposure to chemical and biological contaminants, radioactive materials, and other hazards in the environment and the workplace;

(3) develop a plan for informing and educating citizens in immediately surrounding areas about the identified health risks and ways to prevent or reduce exposure;

(4) identify private and federal funding opportunities for institute operations; and

(5) conduct, coordinate, or pursue funding for research concerning short-term and long-term impacts of exposure to environmental contamination.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

Sec. 427.004. PROGRAMS. The commission and the department may establish at the institute any programs necessary to carry out the institute's established purposes under this chapter. The commission and the executive commissioner of the Health and Human Services Commission may contract with public or private entities to carry out the institute's purposes.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.018, eff. September 1, 2009.

Sec. 427.005. GIFTS AND GRANTS. The commission and the department may accept and administer gifts and grants to fund the institute from any individual, corporation, trust, or foundation or the United States, subject to limitations or conditions imposed by

law.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 19.01, eff. Sept. 1, 2001.

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES
SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS
CHAPTER 430. GENERAL PROVISIONS

Sec. 430.001. DEFINITIONS. In this subtitle:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0940, eff. April 2, 2015.

CHAPTER 431. TEXAS FOOD, DRUG, AND COSMETIC ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. SHORT TITLE. This chapter may be cited as the Texas Food, Drug, and Cosmetic Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.002. DEFINITIONS. In this chapter:

(1) "Advertising" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Animal feed," as used in Subdivision (23), in Section 512 of the federal Act, and in provisions of this chapter referring to those paragraphs or sections, means an article intended for use as food for animals other than man as a substantial source of nutrients in the diet of the animals. The term is not limited to a mixture intended to be the sole ration of the animals.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

3.1639(75), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(5) "Butter" means the food product usually known as butter that is made exclusively from milk or cream, or both, with or without common salt or additional coloring matter, and containing not less than 80 percent by weight of milk fat, after allowing for all tolerances.

(6)(A) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; and

(ii) when added or applied to a food, drug, or cosmetic, or to the human body or any part of the human body, is capable, alone or through reaction with other substance, of imparting color. The term does not include any material exempted under the federal Act.

(B) "Color" includes black, white, and intermediate grays.

(C) Paragraph (A) does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest.

(7) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(8) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), or The Virus-Serum-Toxin Act (21 U.S.C. 151 et seq.);

(C) a drug subject to the provisions of Section 431.113(c)(1) or Section 503(b)(1) of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

(9) "Contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(10) "Cosmetic" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of the human body for cleaning, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of those articles. The term does not include soap.

(11) "Counterfeit drug" means a drug, or the container or labeling of a drug, that, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug, and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer, or distributor.

(12) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(13) "Device," except when used in Sections 431.003, 431.021(l), 431.082(g), 431.112(c) and 431.142(c), means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or

other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes.

(14) "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories. A food for which a claim is made in accordance with Section 403(r) of the federal Act, and for which the claim is approved by the secretary, is not a drug solely because the label or labeling contains such a claim.

(15) "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

(16) "Food" means:

(A) articles used for food or drink for man;

(B) chewing gum; and

(C) articles used for components of any such article.

(17) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(A) a pesticide chemical in or on a raw agricultural

commodity;

(B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(C) a color additive;

(D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041 (codified as amended in various sections of 21 U.S.C.), pursuant to the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of 1906 (21 U.S.C. 601 et seq.); or

(E) a new animal drug.

(18) "Health authority" means a physician designated to administer state and local laws relating to public health.

(19) "Immediate container" does not include package liners.

(20) "Infant formula" means a food that is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

(21) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information that appears on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of the article, or is easily legible through the outside container or wrapper.

(22) "Labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

(23) "Manufacture" means:

(A) the process of combining or purifying food or packaging food for sale to a person at wholesale or retail, and includes repackaging, labeling, or relabeling of any food;

(B) the process of preparing, propagating, compounding, processing, packaging, repackaging, labeling, testing, or quality control of a drug or drug product, but does not include compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or prepackaging that is done in accordance with Section

562.154, Occupations Code;

(C) the process of preparing, fabricating, assembling, processing, packing, repacking, labeling, or relabeling a device; or

(D) the making of any cosmetic product by chemical, physical, biological, or other procedures, including manipulation, sampling, testing, or control procedures applied to the product.

(24) "New animal drug" means any drug intended for use for animals other than man, including any drug intended for use in animal feed:

(A) the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of the drug (except that such an unrecognized drug is not deemed to be a "new animal drug" if at any time before June 25, 1938, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use);

(B) the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under those conditions, has become recognized but that has not, otherwise than in the investigations, been used to a material extent or for a material time under those conditions; or

(C) is composed wholly or partly of penicillin, streptomycin, chloratetracycline, chloramphenicol, or bacitracin, or any derivative of those substances, unless:

(i) a published order of the secretary is in effect that declares the drug not to be a new animal drug on the grounds that the requirement of certification of batches of the drug, as provided by Section 512(n) of the federal Act, is not necessary to ensure that the objectives specified in Section 512(n)(3) of that Act are achieved; and

(ii) Paragraph (A) or (B) of this subdivision does not apply to the drug.

(25) "New drug" means:

(A) any drug, except a new animal drug, the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use

under the conditions prescribed, recommended, or suggested in the labeling thereof (except that such an unrecognized drug is not a "new drug" if at any time before May 26, 1985, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use); or

(B) any drug, except a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(26) "Official compendium" means the official United States Pharmacopoeia National Formulary, or any supplement to it.

(27) "Package" means any container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term includes wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. The term does not include:

(A) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(B) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings do not bear printed matter relating to any particular commodity; or

(C) containers subject to the provisions of the Standard Barrel Act (Apple Barrels) (15 U.S.C. 231, 21 U.S.C. 20) or the Standard Barrel Act (Fruits and Vegetables) (15 U.S.C. 234-236).

(28) "Person" includes individual, partnership, corporation, and association.

(29) "Pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is a "pesticide" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), as now in force or as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(30) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined

under normal and customary conditions of display for retail sale.

(31) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(32) "Saccharin" includes calcium saccharin, sodium saccharin, and ammonium saccharin.

(33) "Safe" refers to the health of humans or animals.

(34) "Secretary" means the secretary of the United States Department of Health and Human Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 149, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0941, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0942, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Sec. 431.003. ARTICLE MISBRANDED BECAUSE OF MISLEADING LABELING OR ADVERTISING. If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or any combination of these, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or

advertising relates under the conditions of use prescribed in the labeling or advertising thereof, or under such conditions of use as are customary or usual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 150, eff. Sept. 1, 1991.

Sec. 431.004. REPRESENTATION OF DRUG AS ANTISEPTIC. The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that the drug is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.005. PROVISIONS REGARDING SALE OF FOOD, DRUGS, DEVICES, OR COSMETICS. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.006. CERTAIN COMBINATION PRODUCTS. If the United States Food and Drug Administration determines, with respect to a product that is a combination of a drug and a device, that:

(1) the primary mode of action of the product is as a drug, a person who engages in wholesale distribution of the product is subject to licensure under Subchapter I; and

(2) the primary mode of action of the product is as a device, a distributor or manufacturer of the product is subject to licensure under Subchapter L.

Added by Acts 1999, 76th Leg., ch. 132, Sec. 1, eff. May 20, 1999.

Sec. 431.007. COMPLIANCE WITH OTHER LAW; MOLLUSCAN SHELLFISH. A person who is subject to this chapter and who handles molluscan shellfish, as that term is defined by Section 436.002, shall comply with Section 436.105.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 1, eff. June 18, 1999. Renumbered from Sec. 431.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(78), eff. Sept. 1, 2001.

Sec. 431.008. APPLICABILITY OF CHAPTER TO DISTRESSED OR RECONDITIONED MERCHANDISE AND CERTAIN LICENSED ENTITIES. (a) This chapter applies to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432 or that has been subject to reconditioning in accordance with Chapter 432.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person licensed under Chapter 432.

(c) A person who holds a license under Chapter 432 and is engaging in conduct within the scope of that license is not required to hold a license as a wholesale drug distributor under Subchapter I, a food wholesaler under Subchapter J, or a device distributor under Subchapter L.

Added by Acts 2001, 77th Leg., ch. 265, Sec. 1, eff. May 22, 2001.

Sec. 431.009. APPLICABILITY OF CHAPTER TO FROZEN DESSERTS. (a) This chapter applies to a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix for one of those products subject to Chapter 440. A frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, or a mix for one of those products is food for purposes of this chapter.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person licensed under Chapter 440.

(c) A person who holds a license under Chapter 440 related to the manufacturing of a product regulated under that chapter and is engaging in conduct within the scope of that license is not required

to hold a license as a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 1, eff. Sept. 1, 2003.

Sec. 431.010. APPLICABILITY OF CHAPTER TO MILK AND MILK PRODUCTS. (a) This chapter applies to milk or a milk product subject to Chapter 435. Milk or a milk product is a food for purposes of this chapter.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person who holds a permit under Chapter 435.

(c) A person who holds a permit under Chapter 435 related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and who is engaging in conduct within the scope of that permit is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2003, 78th Leg., ch. 757, Sec. 1, eff. Sept. 1, 2003.

Sec. 431.011. APPLICABILITY OF CHAPTER TO CONSUMABLE HEMP PRODUCTS AND MANUFACTURERS. (a) This chapter applies to a consumable hemp product subject to Chapter 443. An article regulated under this chapter may not be deemed to be adulterated solely on the basis that the article is a consumable hemp product.

(b) Except as provided by Subsection (c), this chapter applies to the conduct of a person who holds a license under Chapter 443.

(c) A person who holds a license under Chapter 443 related to the processing of hemp or the manufacturing of a consumable hemp product regulated under that chapter and is engaging in conduct within the scope of that license is not required to hold a license as a food manufacturer or food wholesaler under Subchapter J.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 4, eff. June 10, 2019.

SUBCHAPTER B. PROHIBITED ACTS

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and

prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the use, removal, or disposal of a detained or embargoed

article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the department, to a health authority, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or

distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1); or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal

Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N, as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate;

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition;

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department under this chapter;

(bb) failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department;

(cc) performing, causing the performance of, or aiding and

abetting the performance of an act described by Subsection (x);

(dd) purchasing or otherwise receiving a prescription drug from a pharmacy in violation of Section 431.411(a);

(ee) selling, distributing, or transferring a prescription drug to a person who is not authorized under state or federal law to receive the prescription drug in violation of Section 431.411(b);

(ff) failing to deliver prescription drugs to specified premises as required by Section 431.411(c);

(gg) failing to maintain or provide pedigrees as required by Section 431.412 or 431.413;

(hh) failing to obtain, pass, or authenticate a pedigree as required by Section 431.412 or 431.413;

(ii) the introduction or delivery for introduction into commerce of a drug or prescription device at a flea market;

(jj) the receipt of a prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such a drug for payment or otherwise; or

(kk) the alteration, mutilation, destruction, obliteration, or removal of all or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 151, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 440, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1047, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 282, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1138, Sec. 2, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 198, Sec. 2.71, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(i), eff. March 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0943, eff.

April 2, 2015.

Sec. 431.0211. EXCEPTION. Any provision of Section 431.021 that relates to a prescription drug does not apply to a prescription drug manufacturer, or an agent of a prescription drug manufacturer, who is obtaining or attempting to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 2, eff. September 1, 2007.

Sec. 431.022. OFFENSE: TRANSFER OF PRODUCT CONTAINING EPHEDRINE. (a) A person commits an offense if the person knowingly sells, transfers, or otherwise furnishes a product containing ephedrine to a person 17 years of age or younger, unless:

(1) the actor is:

(A) a practitioner or other health care provider licensed by this state who has obtained, as required by law, consent to the treatment of the person to whom the product is furnished; or

(B) the parent, guardian, or managing conservator of the person to whom the product is furnished;

(2) the person to whom the product is furnished has had the disabilities of minority removed for general purposes under Chapter 31, Family Code; or

(3) the product is a drug.

(b) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section, in which event the offense is a Class B misdemeanor.

(c) A product containing ephedrine that is not described in Subsection (a)(3) must be labeled in accordance with department rules to indicate that sale to persons 17 years of age or younger is prohibited.

Added by Acts 1999, 76th Leg., ch. 151, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0944, eff. April 2, 2015.

Sec. 431.023. LIMITED EXEMPTION FOR DISTRESSED FOOD, DRUGS, DEVICES, OR COSMETICS. In relation to a food, drug, device, or cosmetic that is distressed merchandise for purposes of Chapter 432, Sections 431.021(a), (c), and (d) do not prohibit:

(1) the introduction or delivery for introduction into commerce of the merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for sale to the ultimate consumer;

(2) the receipt in commerce of the merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for sale to the ultimate consumer;

(3) the holding of merchandise for the purpose of reconditioning in accordance with Chapter 432 and not for resale to the ultimate consumer; or

(4) the reconditioning of the merchandise in accordance with Chapter 432.

Added by Acts 2001, 77th Leg., ch. 265, Sec. 2, eff. May 22, 2001.

SUBCHAPTER C. ENFORCEMENT

Sec. 431.041. DEFINITION. In this subchapter, "detained or embargoed article" means a food, drug, device, cosmetic, or consumer commodity that has been detained or embargoed under Section 431.048.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.042. INSPECTION. (a) To enforce this chapter, the department or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times an establishment, including a factory or warehouse, in which a food, drug, device, or cosmetic is manufactured, processed, packed, or held for introduction into commerce or held after the introduction;

(2) enter a vehicle being used to transport or hold the food, drug, device, or cosmetic in commerce; or

(3) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the establishment or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement

of this chapter.

(b) The inspection of an establishment, including a factory, warehouse, or consulting laboratory, in which a prescription drug or restricted device is manufactured, processed, packed, or held for introduction into commerce extends to any place or thing, including a record, file, paper, process, control, or facility, in order to determine whether the drug or device:

(1) is adulterated or misbranded;

(2) may not be manufactured, introduced into commerce, sold, or offered for sale under this chapter; or

(3) is otherwise in violation of this chapter.

(c) An inspection under Subsection (b) may not extend to:

(1) financial data;

(2) sales data other than shipment data;

(3) pricing data;

(4) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under this chapter;

(5) research data other than data:

(A) relating to new drugs, antibiotic drugs, and devices; and

(B) subject to reporting and inspection under regulations issued under Section 505(i) or (j), 519, or 520(g) of the federal Act; or

(6) data relating to other drugs or devices that, in the case of a new drug, would be subject to reporting or inspection under regulations issued under Section 505(j) of the federal Act.

(d) An inspection under Subsection (b) shall be started and completed with reasonable promptness.

(e) This section does not apply to:

(1) a pharmacy that:

(A) complies with Subtitle J, Title 3, Occupations Code;

(B) regularly engages in dispensing prescription drugs or devices on prescriptions of practitioners licensed to administer the drugs or devices to their patients in the course of their professional practice; and

(C) does not, through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process a drug or device for sale other than in the regular course of its business of

dispensing or selling drugs or devices at retail;

(2) a practitioner licensed to prescribe or administer a drug who manufactures, prepares, propagates, compounds, or processes the drug solely for use in the course of the practitioner's professional practice;

(3) a practitioner licensed to prescribe or use a device who manufactures or processes the device solely for use in the course of the practitioner's professional practice; or

(4) a person who manufactures, prepares, propagates, compounds, or processes a drug or manufactures or processes a device solely for use in research, teaching, or chemical analysis and not for sale.

(f) The executive commissioner may exempt a class of persons from inspection under this section if the executive commissioner finds that inspection as applied to the class is not necessary for the protection of the public health.

(g) The department or a health authority who makes an inspection under this section to enforce the provisions of this chapter applicable to infant formula shall be permitted, at all reasonable times, to have access to and to copy and verify records:

(1) in order to determine whether the infant formula manufactured or held in the inspected facility meets the requirements of this chapter; or

(2) that are required by this chapter.

(h) If the department or a health authority while inspecting an establishment, including a factory or warehouse, obtains a sample, the department or health authority before leaving the establishment shall give to the owner, operator, or the owner's or operator's agent a receipt describing the sample.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.793, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 111, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0945, eff. April 2, 2015.

Sec. 431.043. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or Section 519 or 520(g) of the

federal Act or a person who is in charge or custody of those records shall, at the request of the department or a health authority, permit the department or health authority at all reasonable times access to and to copy and verify the records, including records that verify that the hemp in a consumable hemp product was produced in accordance with Chapter 122, Agriculture Code, or 7 U.S.C. Chapter 38, Subchapter VII.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0946, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 5, eff. June 10, 2019.

Sec. 431.044. ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE. (a) To enforce this chapter, a carrier engaged in commerce or other person receiving a food, drug, device, or cosmetic in commerce or holding a food, drug, device, or cosmetic received in commerce shall, at the request of the department or a health authority, permit the department or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the food, drug, device, or cosmetic;

(2) the holding of the food, drug, device, or cosmetic after movement in commerce; and

(3) the quantity, shipper, and consignee of the food, drug, device, or cosmetic.

(b) The carrier or other person may not refuse access to and copying of the requested record if the request is accompanied by a written statement that specifies the nature or kind of food, drug, device, or cosmetic to which the request relates.

(c) Evidence obtained under this section or evidence that is directly or indirectly derived from the evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence is obtained.

(d) A carrier is not subject to other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a food, drug, device, or cosmetic in the usual course of

business as a carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0947, eff. April 2, 2015.

Sec. 431.045. EMERGENCY ORDER. (a) The commissioner or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the manufacture or distribution of a food, drug, device, or cosmetic in the department's jurisdiction if the commissioner or the person designated by the commissioner determines that:

(1) the manufacture or distribution of the food, drug, device, or cosmetic creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or a person designated by the commissioner may issue the emergency order without notice and hearing if the commissioner or a person designated by the commissioner determines this is practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall propose a time and place for a hearing and refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall set the time and place for the hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code, and the department's formal hearing rules.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 629, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0948, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Sec. 431.046. VIOLATION OF RULES. A violation of a rule adopted under this chapter is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.047. VIOLATION; INJUNCTION. (a) The department or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation of Subchapter B or a threat of a continuing violation of Subchapter B if the department or health authority finds that:

(1) a person has violated, is violating, or is threatening to violate Subchapter B; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) A district court, on petition of the department or a health authority, and on a finding by the court that a person is violating or threatening to violate Subchapter B shall grant any injunctive relief warranted by the facts.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

(d) The department and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses. The expenses recovered by the department may be used by the department for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 3, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0949, eff. April 2, 2015.

Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The department shall affix to an article that is a food, drug, device, cosmetic, or consumer commodity a tag or other appropriate marking that gives notice that the article is, or is suspected of being, adulterated or misbranded and that the article has been detained or embargoed if the department finds or has probable cause to believe that the article:

(1) is adulterated;

(2) is misbranded so that the article is dangerous or fraudulent under this chapter; or

(3) violates Section 431.084, 431.114, or 431.115.

(b) The tag or marking on a detained or embargoed article must warn all persons not to use the article, remove the article from the premises, or dispose of the article by sale or otherwise until permission for use, removal, or disposal is given by the department or a court.

(c) A person may not use a detained or embargoed article, remove a detained or embargoed article from the premises, or dispose of a detained or embargoed article by sale or otherwise without permission of the department or a court. The department may permit perishable goods to be moved to a place suitable for proper storage.

(d) The department shall remove the tag or other marking from an embargoed or detained article if the department finds that the article is not adulterated or misbranded.

(e) The department may not detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under Chapter 432 and that is being held for the purpose of reconditioning in accordance with Chapter 432, unless the department finds or has probable cause to believe that the article cannot be adequately reconditioned in accordance with that chapter and applicable rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 282, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 265, Sec. 3, eff. May 22, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0950, eff. April 2, 2015.

Sec. 431.049. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE. (a) If the claimant of the detained or embargoed articles or the claimant's agent fails or refuses to transfer the articles to a secure place after the tag or other appropriate marking has been affixed as provided by Section 431.048, the department may order the transfer of the articles to one or more secure storage areas to prevent their unauthorized use, removal, or disposal.

(b) The department may provide for the transfer of the article if the claimant of the article or the claimant's agent does not carry out the transfer order in a timely manner. The costs of the transfer shall be assessed against the claimant of the article or the claimant's agent.

(c) The claimant of the article or the claimant's agent shall pay the costs of the transfer.

(d) The department may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 152, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 282, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0951, eff. April 2, 2015.

Sec. 431.0495. RECALL ORDERS. (a) In conjunction with the issuance of an emergency order under Section 431.045 or the detention or embargo of an article under Section 431.048, the commissioner may order a food, drug, device, cosmetic, or consumer commodity to be recalled from commerce.

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the department.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided

by Section 431.048(a) or in conjunction with the commissioner's issuance of an emergency order under Section 431.045.

(e) The recall order is effective until the order:

(1) expires on its own terms;

(2) is withdrawn by the commissioner;

(3) is reversed by a court in an order denying condemnation under Section 431.050; or

(4) is set aside at the hearing provided to affirm, modify, or set aside an emergency order under Section 431.045.

(f) The claimant of the articles or the claimant's agent shall pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring an action in the district court of Travis County to recover the costs of the recall. In a judgment in favor of the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 153, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0952, eff. April 2, 2015.

Sec. 431.050. CONDEMNATION. An action for the condemnation of an article may be brought before a court in whose jurisdiction the article is located, detained, or embargoed if the article is adulterated, misbranded, or in violation of Section 431.084, 431.114, or 431.115.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.051. DESTRUCTION OF ARTICLE. (a) A court shall order the destruction of a sampled article or a detained or embargoed article if the court finds that the article is adulterated or

misbranded.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the article.

(c) The claimant of the article shall pay the cost of the destruction of the article.

(d) The court shall tax against the claimant of the article or the claimant's agent all court costs and fees, and storage and other proper expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.052. CORRECTION BY PROPER LABELING OR PROCESSING. (a) A court may order the delivery of a sampled article or a detained or embargoed article that is adulterated or misbranded to the claimant of the article for labeling or processing under the supervision of the department if:

(1) the decree has been entered in the suit;

(2) the costs, fees, and expenses of the suit have been paid;

(3) the adulteration or misbranding can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the adulteration or misbranding by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of the supervision.

(c) The court shall order that the article be returned to the claimant and the bond discharged on the representation to the court by the department that the article no longer violates this chapter and that the expenses of the supervision are paid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0953, eff. April 2, 2015.

Sec. 431.053. CONDEMNATION OF PERISHABLE ARTICLES. (a) The department shall immediately condemn or render by any means unsalable as human food an article that is a nuisance under Subsection (b) and that the department finds in any room, building, or other structure

or in a vehicle.

(b) Any meat, seafood, poultry, vegetable, fruit, or other perishable article is a nuisance if it:

(1) is unsound;

(2) contains a filthy, decomposed, or putrid substance; or

(3) may be poisonous or deleterious to health or otherwise unsafe.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0954, eff. April 2, 2015.

Sec. 431.054. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates Subchapter B or an order adopted or registration issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 4, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0955, eff. April 2, 2015.

Sec. 431.055. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, an administrative law judge of the

State Office of Administrative Hearings shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0956, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) If the person seeks judicial review within the period prescribed by Subsection (b), the person may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the

amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0957, eff. April 2, 2015.

Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0958, eff. April 2, 2015.

Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0959, eff. April 2, 2015.

Sec. 431.0585. CIVIL PENALTY. (a) At the request of the department, the attorney general or a district, county, or city attorney shall institute an action in district court to collect a civil penalty from a person who has violated Section 431.021.

(b) The civil penalty may not exceed $25,000 a day for each violation. Each day of violation constitutes a separate violation for purposes of the penalty assessment.

(c) The court shall consider the following in determining the amount of the penalty:

(1) the person's history of any previous violations of Section 431.021;

(2) the seriousness of the violation;

(3) any hazard posed to the public health and safety by the violation; and

(4) demonstrations of good faith by the person charged.

(d) Venue for a suit brought under this section is in the city or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this section shall be paid to that local government.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 154, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0960, eff. April 2, 2015.

Sec. 431.059. CRIMINAL PENALTY; DEFENSES. (a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. A first offense under this subsection is a Class A misdemeanor unless it is shown on the trial of an offense under this subsection that the defendant was previously convicted of an offense under this subsection, in which event the offense is a state jail felony. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in Section 431.021 to establish criminal responsibility for the violation.

(a-1) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(a-2) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(b) A person is not subject to the penalties of Subsection (a):

(1) for having received an article in commerce and having delivered or offered delivery of the article, if the delivery or offer was made in good faith, unless the person refuses to furnish, on request of the department or a health authority, the name and address of the person from whom the article was received and copies of any documents relating to the receipt of the article;

(2) for having violated Section 431.021(a) or (e) if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom the person received in good faith the article, to the effect that:

(A) in the case of an alleged violation of Section 431.021(a), the article is not adulterated or misbranded within the meaning of this chapter; and

(B) in the case of an alleged violation of Section 431.021(e), the article is not an article that may not, under the provisions of Section 404 or 405 of the federal Act or Section 431.084 or 431.114, be introduced into commerce;

(3) for having violated Section 431.021, if the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated under the federal Act, if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that the color additive was from a batch certified in accordance with the applicable regulations promulgated under the

federal Act;

(4) for having violated Section 431.021(b), (c), or (k) by failure to comply with Section 431.112(i) with respect to an article received in commerce to which neither Section 503(a) nor Section 503(b)(1) of the federal Act applies if the delivery or offered delivery was made in good faith and the labeling at the time of the delivery or offer contained the same directions for use and warning statements as were contained in the labeling at the same time of the receipt of the article; or

(5) for having violated Section 431.021(l)(2) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing would result in a drug being a counterfeit drug, or for having violated Section 431.021(l)(3) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(c) A publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of the false advertisement, unless the person has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this state who caused the person to disseminate the advertisement.

(d) A person is not subject to the penalties of Subsection (a) for a violation of Section 431.021 involving misbranded food if the violation exists solely because the food is misbranded under Section 431.082 because of its advertising, and a person is not subject to the penalties of Subsection (a) for such a violation unless the violation is committed with the intent to defraud or mislead.

(e) It is an affirmative defense to prosecution under Subsection (a) that the conduct charged is exempt, in accordance with Section 431.023, from the application of Section 431.021.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 155, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 265, Sec. 4, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 111, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 982, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(h), eff. March 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14 Sec. 14, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0961, eff. April 2, 2015.

Sec. 431.060. INITIATION OF PROCEEDINGS. (a) The attorney general, or a district, county, or municipal attorney to whom the department or a health authority reports a violation of this chapter, shall initiate and prosecute appropriate proceedings without delay.

(b) The department or attorney general may, as authorized by Section 307 of the federal Act, bring in the name of this state a suit for civil penalties or to restrain a violation of Section 401 or Section 403(b) through (i), (k), (q), or (r) of the federal Act if the food that is the subject of the proceedings is located in this state.

(c) The department or attorney general may not bring a proceeding under Subsection (b):

(1) before the 31st day after the date on which the state has given notice to the secretary of its intent to bring a suit;

(2) before the 91st day after the date on which the state has given notice to the secretary of its intent to bring a suit if the secretary has, not later than the 30th day after receiving notice from the state, commenced an informal or formal enforcement action pertaining to the food that would be the subject of the suit brought by the state; or

(3) if the secretary is diligently prosecuting a suit in court pertaining to that food, has settled a suit pertaining to that food, or has settled the informal or formal enforcement action pertaining to that food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0962, eff.

April 2, 2015.

Sec. 431.061. MINOR VIOLATION. This chapter does not require the department or a health authority to report for prosecution or the institution of proceedings under this chapter a minor violation of this chapter if the department or health authority believes that the public interest is adequately served by a suitable written notice or warning.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0963, eff. April 2, 2015.

SUBCHAPTER D. FOOD

Sec. 431.0805. DEFINITIONS. In this subchapter:

(1) "Analogue product" means a food product derived by combining processed plant products, insects, or fungus with food additives to approximate the texture, flavor, appearance, or other aesthetic qualities or the chemical characteristics of any specific type of egg, egg product, fish, meat, meat food product, poultry, or poultry product.

(2) "Cell-cultured product" means a food product derived by harvesting animal cells and artificially replicating those cells in a growth medium in a laboratory to produce tissue.

(3) "Close proximity" means:

(A) immediately before or after the name of the product;

(B) in the line of the label immediately before or after the line containing the name of the product; or

(C) within the same phrase or sentence containing the name of the product.

(4) "Egg" has the meaning assigned by Section 4(g), Egg Products Inspection Act (21 U.S.C. Section 1033(g)). The term does not include an analogue product or a cell-cultured product.

(5) "Egg product" has the meaning assigned by Section 4(f), Egg Products Inspection Act (21 U.S.C. Section 1033(f)). The term does not include an analogue product or a cell-cultured product.

(6) "Fish" has the meaning assigned by Section 403 of the federal Act (21 U.S.C. Section 343(q)(4)(E)). The term does not include an analogue product or a cell-cultured product.

(7) "Meat" has the meaning assigned by 9 C.F.R. Section 301.2. The term does not include an analogue product or a cell-cultured product.

(8) "Meat food product" has the meaning assigned by Section 1(j), Federal Meat Inspection Act (21 U.S.C. Section 601(j)). The term does not include an analogue product or a cell-cultured product.

(9) "Poultry" has the meaning assigned by Section 4(e), Poultry Products Inspection Act (21 U.S.C. Section 453(e)). The term does not include an analogue product or a cell-cultured product.

(10) "Poultry product" has the meaning assigned by Section 4(f), Poultry Products Inspection Act (21 U.S.C. Section 453(f)). The term does not include an analogue product or a cell-cultured product.

Added by Acts 2023, 88th Leg., R.S., Ch. 32 (S.B. 664), Sec. 1, eff. September 1, 2023.

Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to be adulterated:

(a) if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health;

(2) it:

(A) bears or contains any added poisonous or added deleterious substance, other than one that is a pesticide chemical in or on a raw agricultural commodity, a food additive, a color additive, or a new animal drug which is unsafe within the meaning of Section 431.161;

(B) is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 431.161(a);

(C) is, or it bears or contains, any food additive which is unsafe within the meaning of Section 431.161(a); provided,

that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 431.161(a), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 431.161 and Section 409 of the federal Act, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(D) is, or it bears or contains, a new animal drug, or a conversion product of a new animal drug, that is unsafe under Section 512 of the federal Act;

(3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods;

(4) it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(5) it is, in whole or in part, the product of a diseased animal, an animal which has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse;

(6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect in accordance with Section 409 of the federal Act;

(b) if:

(1) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(2) any substance has been substituted wholly or in part therefor;

(3) damage or inferiority has been concealed in any manner;

(4) any substance has been added thereto or mixed or packed

therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is;

(5) it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared; or

(6) it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Department of Agriculture, the Animal and Plant Health Inspection Service (A.P.H.I.S.) or by department rules;

(c) if it is, or it bears or contains, a color additive that is unsafe under Section 431.161(a); or

(d) if it is confectionery and:

(1) has any nonnutritive object partially or completely imbedded in it; provided, that this subdivision does not apply if, in accordance with department rules, the object is of practical, functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol, other than alcohol not in excess of five percent by volume. Any confectionery that bears or contains any alcohol in excess of one-half of one percent by volume derived solely from the use of flavoring extracts and less than five percent by volume:

(A) may not be sold to persons under the legal age necessary to consume an alcoholic beverage in this state;

(B) must be labeled with a conspicuous, readily legible statement that reads, "Sale of this product to a person under the legal age necessary to consume an alcoholic beverage is prohibited";

(C) may not be sold in a form containing liquid alcohol such that it is capable of use for beverage purposes as that term is used in the Alcoholic Beverage Code;

(D) may not be sold through a vending machine;

(E) must be labeled with a conspicuous, readily legible statement that the product contains not more than five percent alcohol by volume; and

(F) may not be sold in a business establishment which derives less than 50 percent of its gross sales from the sale of confectioneries; or

(3) bears or contains any nonnutritive substance; provided, that this subdivision does not apply to a nonnutritive

substance that is in or on the confectionery by reason of its use for a practical, functional purpose in the manufacture, packaging, or storage of the confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter; and provided further, that the executive commissioner may, for the purpose of avoiding or resolving uncertainty as to the application of this subdivision, adopt rules allowing or prohibiting the use of particular nonnutritive substances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 439, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0964, eff. April 2, 2015.

Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular or fails to conform with the requirements of Section 431.181;

(b) if, in the case of a food to which Section 411 of the federal Act applies, its advertising is false or misleading in a material respect or its labeling is in violation of Section 411(b)(2) of the federal Act;

(c) if it is offered for sale under the name of another food;

(d) if it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" and immediately thereafter the name of the food imitated;

(d-1) if it is an analogue product of meat, a meat food product, poultry, a poultry product, an egg product, or fish, unless its label bears in prominent type equal to or greater in size than the surrounding type and in close proximity to the name of the product one of the following:

(1) "analogue";

(2) "meatless";

(3) "plant-based";

(4) "made from plants"; or

(5) a similar qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product;

(e) if its container is so made, formed, or filled as to be misleading;

(f) if in package form unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer, or distributor; and

(2) an accurate statement, in a uniform location on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by department rules;

(g) if any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(h) if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or department rules as provided by Section 431.245, unless:

(1) it conforms to such definition and standard; and

(2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by those regulations or rules, the common names of ingredients, other than spices, flavoring, and coloring, present in such food;

(i) if it purports to be or is represented as:

(1) a food for which a standard of quality has been prescribed by federal regulations or department rules as provided by Section 431.245, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by federal regulations or department rules as provided by Section 431.245, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a

statement that it falls below such standard;

(j) unless its label bears:

(1) the common or usual name of the food, if any; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, and if the food purports to be a beverage containing vegetable or fruit juice, a statement with appropriate prominence on the information panel of the total percentage of the fruit or vegetable juice contained in the food; except that spices, flavorings, and colors not required to be certified under Section 721(c) of the federal Act, other than those sold as such, may be designated as spices, flavorings, and colors, without naming each; provided that, to the extent that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by department rules;

(k) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the executive commissioner determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses;

(l) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by department rules. The provisions of this subsection and Subsections (h) and (j) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

(m) if it is a raw agricultural commodity that is the produce of the soil and bears or contains a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical, except that the declaration is not required while the commodity, after removal from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade;

(n) if it is a product intended as an ingredient of another food and if used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(o) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements applicable to the color additive as may be contained in regulations issued under Section 721 of the federal Act;

(p) if its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473);

(q)(1) if it is a food intended for human consumption and is offered for sale, unless its label or labeling bears nutrition information that provides:

(A)(i) the serving size that is an amount customarily consumed and that is expressed in a common household measure that is appropriate to the food; or

(ii) if the use of the food is not typically expressed in a serving size, the common household unit of measure that expresses the serving size of the food;

(B) the number of servings or other units of measure per container;

(C) the total number of calories in each serving size or other unit of measure that are:

(i) derived from any source; and

(ii) derived from fat;

(D) the amount of total fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugar, dietary fiber, and total protein contained in each serving size or other unit of measure; and

(E) any vitamin, mineral, or other nutrient required to be placed on the label and labeling of food under the federal Act; or

(2)(A) if it is a food distributed at retail in bulk display cases, or a food received in bulk containers, unless it has nutrition labeling prescribed by the secretary; and

(B) if the secretary determines it is necessary, nutrition labeling will be mandatory for raw fruits, vegetables, and fish, including freshwater or marine finfish, crustaceans, mollusks including shellfish, amphibians, and other forms of aquatic animal life, except that:

(3)(A) Subdivisions (1) and (2) do not apply to food:

(i) that is served in restaurants or other establishments in which food is served for immediate human

consumption or that is sold for sale or use in those establishments;

(ii) that is processed and prepared primarily in a retail establishment, that is ready for human consumption, that is of the type described in Subparagraph (i), that is offered for sale to consumers but not for immediate human consumption in the establishment, and that is not offered for sale outside the establishment;

(iii) that is an infant formula subject to Section 412 of the federal Act;

(iv) that is a medical food as defined in Section 5(b) of the Orphan Drug Act (21 U.S.C. Section 360ee(b)); or

(v) that is described in Section 405, clause (2), of the federal Act;

(B) Subdivision (1) does not apply to the label of a food if the secretary determines by regulation that compliance with that subdivision is impracticable because the package of the food is too small to comply with the requirements of that subdivision and if the label of that food does not contain any nutrition information;

(C) if the secretary determines that a food contains insignificant amounts of all the nutrients required by Subdivision (1) to be listed in the label or labeling of food, the requirements of Subdivision (1) do not apply to the food if the label, labeling, or advertising of the food does not make any claim with respect to the nutritional value of the food, provided that if the secretary determines that a food contains insignificant amounts of more than half the nutrients required by Subdivision (1) to be in the label or labeling of the food, the amounts of those nutrients shall be stated in a simplified form prescribed by the secretary;

(D) if a person offers food for sale and has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers that is not more than $50,000, the requirements of this subsection do not apply to food sold by that person to consumers unless the label or labeling of food offered by that person provides nutrition information or makes a nutrition claim;

(E) if foods are subject to Section 411 of the federal Act, the foods shall comply with Subdivisions (1) and (2) in a manner prescribed by the rules; and

(F) if food is sold by a food distributor,

Subdivisions (1) and (2) do not apply if the food distributor principally sells food to restaurants or other establishments in which food is served for immediate human consumption and the food distributor does not manufacture, process, or repackage the food it sells;

(r) if it is a food intended for human consumption and is offered for sale, and a claim is made on the label, labeling, or retail display relating to the nutrient content or a nutritional quality of the food to a specific disease or condition of the human body, except as permitted by Section 403(r) of the federal Act; or

(s) if it is a food intended for human consumption and its label, labeling, and retail display do not comply with the requirements of Section 403(r) of the federal Act pertaining to nutrient content and health claims.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 156, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0965, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 32 (S.B. 664), Sec. 2, eff. September 1, 2023.

Sec. 431.083. FOOD LABELING EXEMPTIONS. (a) Except as provided by Subsection (c), the executive commissioner shall adopt rules exempting from any labeling requirement of this chapter:

(1) small open containers of fresh fruits and fresh vegetables; and

(2) food that is in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on conditions that the food is not adulterated or misbranded under the provisions of this chapter when removed from the processing, labeling, or repacking establishment.

(b) Food labeling exemptions adopted under the federal Act apply to food in this state except as modified or rejected by department rules.

(c) The executive commissioner may not adopt rules under

Subsection (a) to exempt foods from the labeling requirements of Sections 403(q) and (r) of the federal Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 4, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0966, eff. April 2, 2015.

Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH MICROORGANISMS. (a) The department shall provide for the issuance of temporary permits to a manufacturer, processor, or packer of a class of food in any locality that provides conditions for the manufacture, processing, or packing for the class of food as necessary to protect the public health only if the department finds after investigation that:

(1) the distribution in this state of a class of food may, because the food is contaminated with microorganisms during the manufacture, processing, or packing of the food in any locality, be injurious to health; and

(2) the injurious nature of the food cannot be adequately determined after the food has entered commerce.

(b) The executive commissioner by rule shall establish standards and procedures for the enforcement of this section.

(c) During the period for which permits are issued for a class of food determined by the department to be injurious under Subsection (a), a person may not introduce or deliver for introduction into commerce the food unless the person is a manufacturer, processor, or packer who has a permit issued by the department as authorized by rules adopted under this section.

(d) The department may immediately suspend a permit issued under this section if a condition of the permit is violated. An immediate suspension is effective on notice to the permit holder.

(e) A holder of a permit that has been suspended may at any time apply for the reinstatement of the permit. Immediately after a hearing and an inspection of the permit holder's establishment, the department shall reinstate the permit if adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

(f) A permit holder shall provide access to the permit holder's factory or establishment to the department to allow the department to determine whether the permit holder complies with the conditions of the permit. Denial of access is grounds for suspension of the permit until the permit holder freely provides the access.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0967, eff. April 2, 2015.

SUBCHAPTER E. DRUGS AND DEVICES

Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device shall be deemed to be adulterated:

(a)(1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or

(2)(A) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or

(B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or

(3) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(4) if it:

(A) bears or contains, for purposes of coloring only, a color additive that is unsafe under Section 431.161(a); or

(B) is a color additive, the intended use of which in or on drugs or devices is for purposes of coloring only, and is unsafe under Section 431.161(a); or

(5) if it is a new animal drug that is unsafe under Section 512 of the federal Act;

(b) if it purports to be or is represented as a drug, the name

of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standards of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. Whenever a drug is recognized in The United States Pharmacopeia and The National Formulary (USP-NF), it shall be subject to the requirements of the USP-NF;

(c) if it is not subject to Subsection (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) if it is a drug and any substance has been:

(1) mixed or packed therewith so as to reduce its quality or strength; or

(2) substituted wholly or in part therefor;

(e) if it is, or purports to be or is represented as, a device that is subject to a performance standard established under Section 514 of the federal Act, unless the device is in all respects in conformity with the standard;

(f)(1) if it is a class III device:

(A)(i) that is required by a regulation adopted under Section 515(b) of the federal Act to have an approval under that section of an application for premarket approval and that is not exempt from Section 515 as provided by Section 520(g) of the federal Act; and

(ii)(I) for which an application for premarket approval or a notice of completion of a product development protocol was not filed with the United States Food and Drug Administration by the 90th day after the date of adoption of the regulation; or

(II) for which that application was filed and approval was denied or withdrawn, for which that notice was filed and was declared incomplete, or for which approval of the device under the protocol was withdrawn;

(B) that was classified under Section 513(f) of the

federal Act into class III, which under Section 515(a) of the federal Act is required to have in effect an approved application for premarket approval, that is not exempt from Section 515 as provided by Section 520(g) of the federal Act, and that does not have the application in effect; or

(C) that was classified under Section 520(l) of the federal Act into class III, which under that section is required to have in effect an approved application under Section 515 of the federal Act, and that does not have the application in effect, except that:

(2)(A) in the case of a device classified under Section 513(f) of the federal Act into class III and intended solely for investigational use, Subdivision (1)(B) does not apply to the device during the period ending on the 90th day after the date of adoption of the regulations prescribing the procedures and conditions required by Section 520(g)(2) of the federal Act; and

(B) in the case of a device subject to a regulation adopted under Section 515(b) of the federal Act, Subdivision (1) does not apply to the device during the period ending on whichever of the following dates occurs later:

(i) the last day of the 30-day calendar month beginning after the month in which the classification of the device into class III became effective under Section 513 of the federal Act; or

(ii) the 90th day after the date of adoption of the regulation;

(g) if it is a banned device;

(h) if it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installations are not in conformity with applicable requirements under Section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under Section 520(f)(2) of the federal Act; or

(i) if it is a device for which an exemption has been granted under Section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 440, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0968, eff. April 2, 2015.

Sec. 431.112. MISBRANDED DRUG OR DEVICE. A drug or device shall be deemed to be misbranded:

(a)(1) if its labeling is false or misleading in any particular; or

(2) if its labeling or packaging fails to conform with the requirements of Section 431.181.

(b) if in a package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the secretary under the federal Act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d)(1) if it is a drug, unless:

(A) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in Subdivision (3)) of the drug, if any; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any

derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph shall apply only to prescription drugs; and

(B) for any prescription drug the established name of the drug or ingredient, as the case may be, on the label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of Paragraph (A)(ii) or this paragraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(2) if it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name (as defined in Subdivision (4)) prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device, except that to the extent compliance with this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(3) as used in Subdivision (1), the term "established name," with respect to a drug or ingredient thereof, means:

(A) the applicable official name designated pursuant to Section 508 of the federal Act; or

(B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then the common or usual name, if any, of such drug or of such ingredient; provided further, that where Paragraph (B) applies to an article recognized in the United States Pharmacopoeia National Formulary, the official title used in the United States Pharmacopoeia National Formulary shall apply;

(4) as used in Subdivision (2), the term "established name" with respect to a device means:

(A) the applicable official name of the device designated pursuant to Section 508 of the federal Act;

(B) if there is no such name and such device is an article recognized in an official compendium, then the official title

thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then any common or usual name of such device;

(e) unless its labeling bears:

(1) adequate directions for use; and

(2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in such manner and form, as are necessary for the protection of users unless the drug or device has been exempted from those requirements by the regulations adopted by the secretary;

(f) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein unless the method of packing has been modified with the consent of the secretary. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling. If there is an inconsistency between the requirements of this subsection and those of Subsection (d) as to the name by which the drug or its ingredients shall be designated, the requirements of Subsection (d) prevail;

(g) if it has been found by the secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health;

(h) if:

(1) it is a drug and its container is so made, formed, or filled as to be misleading; or

(2) it is an imitation of another drug; or

(3) it is offered for sale under the name of another drug;

(i) if it is dangerous to health when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(j) if it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, as may be contained in rules

issued under Section 431.161(b);

(k) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(1) the established name as defined in Subsection (d), printed prominently and in type at least half as large as that used for any trade or brand name;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Subsection (d); and

(3) other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations issued under Section 701(e) of the federal Act;

(l) if it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not registered under Section 510 of the federal Act, if it was not included in a list required by Section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or Section 510(k) of the federal Act, or if it does not bear symbols from the uniform system for identification of devices prescribed under Section 510(e) of the federal Act as required by regulation;

(m) if it is a drug and its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473);

(n) if a trademark, trade name, or other identifying mark, imprint or device of another, or any likeness of the foregoing has been placed thereon or on its container with intent to defraud;

(o) in the case of any restricted device distributed or offered for sale in this state, if:

(1) its advertising is false or misleading in any particular; or

(2) it is sold, distributed, or used in violation of regulations prescribed under Section 520(e) of the federal Act;

(p) in the case of any restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other

descriptive printed matter issued by the manufacturer, packer, or distributor with respect to that device:

(1) a true statement of the device's established name as defined in Section 502(e) of the federal Act, printed prominently and in type at least half as large as that used for any trade or brand name thereof; and

(2) a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications and in the case of specific devices made subject to regulations issued under the federal Act, a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations under the federal Act;

(q) if it is a device subject to a performance standard established under Section 514 of the federal Act, unless it bears such labeling as may be prescribed in such performance standard; or

(r) if it is a device and there was a failure or refusal:

(1) to comply with any requirement prescribed under Section 518 of the federal Act respecting the device; or

(2) to furnish material required by or under Section 519 of the federal Act respecting the device.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 282, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 111, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 2, eff. Sept. 1, 2003.

Sec. 431.113. EXEMPTION FOR CERTAIN DRUGS AND DEVICES. (a) The executive commissioner shall adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices that are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged on condition that such drugs and devices are not adulterated or misbranded under the provisions of this chapter on removal from such processing, labeling, or repacking establishment.

(b) Drugs and device labeling or packaging exemptions adopted under the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by department rules.

(c)(1) A drug intended for use by man that:

(A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(B) is limited by an approved application under Section 505 of the federal Act to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only:

(i) on a written prescription of a practitioner licensed by law to administer such drug; or

(ii) on an oral prescription of such practitioner that is reduced promptly to writing and filed by the pharmacist; or

(iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act that results in a drug being misbranded while held for sale.

(2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of Section 431.112, except Sections 431.112(a)(1), (h)(2), and (h)(3), and the packaging requirements of Sections 431.112(f), (g), and (m), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drugs dispensed in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of Subdivision (1).

(3) A drug that is subject to Subdivision (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear at a minimum, the symbol "RX Only." A drug to which Subdivision (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 111, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0969, eff. April 2, 2015.

Sec. 431.114. NEW DRUGS. (a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) an application with respect thereto has been approved and the approval has not been withdrawn under Section 505 of the federal Act; and

(2) a copy of the letter of approval or approvability issued by the United States Food and Drug Administration is on file with the department if the product is manufactured in this state.

(b) A person shall not use in or on human beings or animals a new drug or new animal drug limited to investigational use unless the person has filed with the United States Food and Drug Administration a completed and signed investigational new drug (IND) application in accordance with 21 C.F.R. 312.20-312.38 and the exemption has not been terminated. The drug shall be plainly labeled in compliance with Section 505(i) of the federal Act.

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in the federal Act;

(2) to any drug that is licensed under the Public Health Service Act (42 U.S.C. 201 et seq.); or

(3) to any drug approved by the department by the authority of any prior law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 157, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 111, Sec. 6, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0970, eff. April 2, 2015.

Sec. 431.115. NEW ANIMAL DRUGS. (a) A new animal drug shall, with respect to any particular use or intended use of the drug, be deemed unsafe for the purposes of this chapter unless:

(1) there is in effect an approval of an application filed pursuant to Section 512(b) of the federal Act with respect to the use or intended use of the drug; and

(2) the drug, its labeling, and the use conforms to the approved application.

(b) A new animal drug shall not be deemed unsafe for the purposes of this chapter if the article is for investigational use and conforms to the terms of an exemption in effect with respect thereto under Section 512(j) of the federal Act.

(c) This section does not apply to any drug:

(1) licensed under the virus-serum-toxin law of March 4, 1913 (21 U.S.C. 151-159);

(2) approved by the United States Department of Agriculture; or

(3) approved by the department by the authority of any prior law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 158, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0971, eff. April 2, 2015.

Sec. 431.116. AVERAGE MANUFACTURER PRICE. (a) In this section, "average manufacturer price" has the meaning assigned by 42 U.S.C. Section 1396r-8(k), as amended.

(b) A person who manufactures a drug, including a person who manufactures a generic drug, that is sold in this state shall file with the department:

(1) the average manufacturer price for the drug; and

(2) the price that each wholesaler in this state pays the manufacturer to purchase the drug.

(c) The information required under Subsection (b) must be filed annually or more frequently as determined by the department.

(d) The department and the attorney general may investigate the manufacturer to determine the accuracy of the information provided

under Subsection (b). The attorney general may take action to enforce this section.

(e) Repealed by Acts 2005, 79th Leg., Ch. 349, Sec. 29, eff. September 1, 2007.

(f) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section may be provided by the department only to the Medicaid vendor drug program for its sole use. The Medicaid vendor drug program may use the information only as necessary to administer its drug programs, including Medicaid drug programs.

(g) Notwithstanding any other state law, pricing information disclosed by manufacturers or labelers under this section is confidential and, except as necessary to permit the attorney general to enforce state and federal laws, may not be disclosed by the Health and Human Services Commission or any other state agency in a form that discloses the identity of a specific manufacturer or labeler or the prices charged by a specific manufacturer or labeler for a specific drug.

(h) The attorney general shall treat information obtained under this section in the same manner as information obtained by the attorney general through a civil investigative demand under Section 36.054, Human Resources Code.

(i) Notwithstanding any other state law, the penalties for unauthorized disclosure of confidential information under Chapter 552, Government Code, apply to unauthorized disclosure of confidential information under this section.

Added by Acts 2001, 77th Leg., ch. 1003, Sec. 2, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.199, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 29, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0972, eff. April 2, 2015.

Sec. 431.117. PRIORITY FOR HEALTH CARE PROVIDERS IN DISTRIBUTION OF INFLUENZA VACCINE. The executive commissioner shall study the wholesale distribution of influenza vaccine in this state

to determine the feasibility of implementing a system that requires giving a priority in filling orders for influenza vaccine to physicians and other licensed health care providers authorized to administer influenza vaccine over retail establishments. The executive commissioner may implement such a system if it is determined to be feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 922 (H.B. 3184), Sec. 2, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0973, eff. April 2, 2015.

SUBCHAPTER F. COSMETICS

Sec. 431.141. ADULTERATED COSMETIC. A cosmetic shall be deemed to be adulterated:

(a) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon; "Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness"; and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subsection and Subsection (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(b) if it consists in whole or in part of any filthy, putrid, or decomposed substance;

(c) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(d) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(e) if it is not a hair dye and it is, or it bears or

contains, a color additive that is unsafe within the meaning of Section 431.161(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be deemed to be misbranded:

(a) if:

(1) its labeling is false or misleading in any particular; and

(2) its labeling or packaging fails to conform with the requirements of Section 431.181;

(b) if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, which statement shall be separately and accurately stated in a uniform location on the principal display panel of the label; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by department rules;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements, applicable to the color additive, prescribed under Section 721 of the federal Act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes, as defined by Section 431.141(a); or

(f) if its packaging or labeling is in violation of an applicable regulation issued pursuant to Section 3 or 4 of the

federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473).

(2) The executive commissioner shall adopt rules exempting from any labeling requirement of this chapter cosmetics that are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, on condition that the cosmetics are not adulterated or misbranded under the provisions of this chapter on removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act shall apply to cosmetics in this state except insofar as modified or rejected by department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 159, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0974, eff. April 2, 2015.

SUBCHAPTER G. POISONOUS OR DELETERIOUS SUBSTANCES

Sec. 431.161. POISONOUS OR DELETERIOUS SUBSTANCES. (a) Any poisonous or deleterious substance, food additive, pesticide chemical in or on a raw agricultural commodity, or color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of Section 431.081(a)(2) with respect to any food, Section 431.111(a) with respect to any drug or device, or Section 431.141 with respect to any cosmetic. However, if a rule adopted under Section 431.181 or Subsection (b) is in effect that limits the quantity of that substance, and if the use or intended use of that substance conforms to the terms prescribed by the rule, a food, drug, or cosmetic shall not, by reason of bearing or containing that substance in accordance with the rules, be considered adulterated within the meaning of Section 431.081(a)(1), 431.111, or 431.141.

(b) The executive commissioner, whenever public health or other considerations in the state so require or on the petition of an interested party, may adopt rules prescribing tolerances for any added, poisonous, or deleterious substances, food additives, pesticide chemicals in or on raw agricultural commodities, or color additives, including zero tolerances and exemptions from tolerances

in the case of pesticide chemicals in or on raw agricultural commodities. The rules may prescribe the conditions under which a food additive or a color additive may be safely used and may prescribe exemptions if the food additive or color additive is to be used solely for investigational or experimental purposes. Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal Food and Drug Administration or its successor. A person petitioning for the adoption of a rule shall establish by data submitted to the executive commissioner that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner are not sufficient to allow the executive commissioner to determine whether the rules should be adopted, the executive commissioner may require additional data to be submitted. The petitioner's failure to comply with the request is sufficient grounds to deny the request. In adopting rules relating to those substances, the executive commissioner shall consider, among other relevant factors, the following information furnished by the petitioner, if any:

(1) the name and all pertinent information concerning the substance, including, if available, its chemical identity and composition, a statement of the conditions of the proposed use, directions, recommendations, and suggestions, specimens of proposed labeling, all relevant data bearing on the physical or other technical effect, and the quantity required to produce that effect;

(2) the probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of that substance;

(3) the probable consumption of that substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(4) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of those substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(5) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(A) that substance in or on an article;

(B) any substance formed in or on an article because of the use of that substance; and

(C) the pure substance and all intermediates and impurities; and

(6) facts supporting a contention that the proposed use of that substance will serve a useful purpose.

(c) The executive commissioner may adopt emergency rules under Chapter 2001, Government Code, to establish tolerance levels of poisonous or deleterious substances in food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0975, eff. April 2, 2015.

SUBCHAPTER G-1. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 431.171. DESIGNATION OF CONSUMER COMMODITY AS ABUSABLE SYNTHETIC SUBSTANCE. (a) The commissioner may designate a consumer commodity as an abusable synthetic substance if the commissioner determines that the consumer commodity is likely an abusable synthetic substance and the importation, manufacture, distribution, or retail sale of the commodity poses a threat to public health.

(b) In determining whether a consumer commodity is an abusable synthetic substance, the commissioner may consider:

(1) whether the commodity is sold at a price higher than similar commodities are ordinarily sold;

(2) any evidence of clandestine importation, manufacture, distribution, or diversion from legitimate channels;

(3) any evidence suggesting the product is intended for human consumption, regardless of any consumption prohibitions or warnings on the packaging of the commodity; or

(4) whether any of the following factors suggest the commodity is an abusable synthetic substance intended for illicit drug use:

(A) the appearance of the packaging of the commodity;

(B) oral or written statements or representations of a person who sells, manufactures, distributes, or imports the commodity;

(C) the methods by which the commodity is distributed; and

(D) the manner in which the commodity is sold to the public.

Added by Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 2, eff. September 1, 2015.

Sec. 431.172. APPLICABILITY OF CHAPTER TO ABUSABLE SYNTHETIC SUBSTANCE. A commodity classified as an abusable synthetic substance by the commissioner under Section 431.171 is subject to:

(1) the provisions of this chapter that apply to food and cosmetics, including provisions relating to adulteration, packaging, misbranding, and inspection; and

(2) all enforcement actions under Subchapter C.

Added by Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 2, eff. September 1, 2015.

SUBCHAPTER H. FAIR PACKAGING AND LABELING; FALSE ADVERTISING

Sec. 431.181. FAIR PACKAGING AND LABELING. (a) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) and the regulations promulgated pursuant thereto; provided, that consumer commodities exempted from the requirements of Section 4 of the Fair Packaging and Labeling Act shall also be exempt from this subsection.

(b) The label of any package of a consumer commodity that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (a), but nothing in this subsection shall prohibit supplemental statements at other places on the package describing in nondeceptive terms the net quantity of contents; provided, that the supplemental statements of net quantity

of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(d) Whenever the executive commissioner determines that rules containing prohibitions or requirements other than those prescribed by Subsection (a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the executive commissioner shall adopt with respect to that commodity rules effective to:

(1) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this subdivision shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose any commodity;

(2) regulate the placement on any package containing any commodity, or on any label affixed to the commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of Section 431.002) bear:

(A) the common or usual name of the consumer commodity, if any; and

(B) in case the consumer commodity consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional slack-fill of packages containing consumer commodities. For the purpose of this subdivision, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than:

(A) protection of the contents of the package; or

(B) the requirements of the machine used for enclosing the contents in the package.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0976, eff. April 2, 2015.

Sec. 431.182. FALSE ADVERTISEMENT. (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) The advertising of a food that incorporates a health claim not in conformance with or defined by Section 403(r) of the federal Act is deemed to be false or misleading for the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 459, Sec. 5, eff. Sept. 1, 1993.

Sec. 431.183. FALSE ADVERTISEMENT OF DRUG OR DEVICE. (a) An advertisement of a drug or device is false if the advertisement represents that the drug or device affects:

(1) infectious and parasitic diseases;

(2) neoplasms;

(3) endocrine, nutritional, and metabolic diseases and immunity disorders;

(4) diseases of blood and blood-forming organs;

(5) mental disorders;

(6) diseases of the nervous system and sense organs;

(7) diseases of the circulatory system;

(8) diseases of the respiratory system;

(9) diseases of the digestive system;

(10) diseases of the genitourinary system;

(11) complications of pregnancy, childbirth, and the puerperium;

(12) diseases of the skin and subcutaneous tissue;

(13) diseases of the musculoskeletal system and connective tissue;

(14) congenital anomalies;

(15) certain conditions originating in the perinatal period;

(16) symptoms, signs, and ill-defined conditions; or

(17) injury and poisoning.

(b) Subsection (a) does not apply to an advertisement of a drug or device if the advertisement does not violate Section 431.182 and is disseminated:

(1) to the public for self-medication and is consistent with the labeling claims permitted by the federal Food and Drug Administration;

(2) only to members of the medical, dental, and veterinary professions and appears only in the scientific periodicals of those professions; or

(3) only for the purpose of public health education by a person not commercially interested, directly or indirectly, in the sale of the drug or device.

(c) The executive commissioner by rule shall authorize the advertisement of a drug having a curative or therapeutic effect for a disease listed under Subsection (a) if the executive commissioner determines that an advance in medical science has made any type of self-medication safe for the disease. The executive commissioner may impose conditions and restrictions on the advertisement of the drug necessary in the interest of public health.

(d) This section does not indicate that self-medication for a disease other than a disease listed under Subsection (a) is safe or effective.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 160, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0977, eff. April 2, 2015.

SUBCHAPTER I. WHOLESALE DISTRIBUTORS OF NONPRESCRIPTION DRUGS

Sec. 431.201. DEFINITIONS. In this subchapter:

(1) "Nonprescription drug" means any drug that is not a prescription drug as defined by Section 431.401.

(2) "Place of business" means each location at which a drug for wholesale distribution is located.

(3) "Wholesale distribution" means distribution to a person

other than a consumer or patient, and includes distribution by a manufacturer, repackager, own label distributor, broker, jobber, warehouse, or wholesaler.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(b), eff. March 1, 2006.

Sec. 431.2011. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of nonprescription drugs.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(c), eff. March 1, 2006.

Sec. 431.202. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of nonprescription drugs in this state unless the person holds a wholesale drug distribution license issued by the department under this subchapter or Subchapter N.

(b) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department or electronically on the state electronic Internet portal.

(c) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 161, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 539, Sec. 5, eff. Sept. 1, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(d), eff. March 1, 2006.
Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 28, eff. June 17, 2011.

Sec. 431.203. CONTENTS OF LICENSE STATEMENT. The license statement must contain:

(1) the name under which the business is conducted;

(2) the address of each place of business that is licensed;

(3) the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation, if the business is a corporation;

(5) the names and residence addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of an individual in charge of each place of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 7, eff. Sept. 1, 1991.

Sec. 431.2031. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this chapter and the minimum standards adopted under this chapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state, if after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and department rules.

(d) The department shall consider each licensing statement filed by a person who wishes to engage in wholesale distribution of

drugs in this state on an individual basis.

Added by Acts 1991, 72nd Leg., ch. 539, Sec. 8, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0978, eff. April 2, 2015.

Sec. 431.204. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.206; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and appropriated to the department to carry out the administration and enforcement of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(e), eff. March 1, 2006.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0979, eff. April 2, 2015.

Sec. 431.206. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the licensee shall notify the department in writing of the licensee's intent to change

the location of a licensed place of business.

(b) The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the licensee shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are deemed adequate if the licensee sends the notices by certified mail, return receipt requested, to the central office of the department or submits them electronically through the state electronic Internet portal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(f), eff. March 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 29, eff. June 17, 2011.

Sec. 431.207. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The department may refuse an application for a license or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of

the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this chapter or the rules implementing this chapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483;

(8) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain; or

(9) fails to complete a license application or submits an application that contains false, misleading, or incorrect information or contains information that cannot be verified by the department.

(b) The executive commissioner by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 9, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(f), eff. March 1, 2006.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0980, eff. April 2, 2015.

Sec. 431.208. REPORTING OF PURCHASE PRICE. (a) On the department's request, a person who engages in the wholesale distribution of drugs in this state shall file with the department information showing the actual price at which the wholesale distributor sells a particular drug to a retail pharmacy.

(b) The executive commissioner shall adopt rules to implement this section.

(c) The department and the attorney general may investigate the distributor to determine the accuracy of the information provided under Subsection (a). The attorney general may take action to enforce this section.

(d) Repealed by Acts 2005, 79th Leg., Ch. 349, Sec. 29, eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1003, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 29, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0981, eff. April 2, 2015.

SUBCHAPTER J. FOOD MANUFACTURERS, FOOD WHOLESALERS, AND WAREHOUSE OPERATORS

Sec. 431.221. DEFINITIONS. In this subchapter:

(1) "Place of business" means:

(A) each location where:

(i) a person manufactures food; or

(ii) food for wholesale is distributed; or

(B) a warehouse where food is stored.

(2) "Food manufacturer" means a person who combines, purifies, processes, or packages food for sale through a wholesale outlet. The term also includes a retail outlet that packages or labels food before sale and a person that represents itself as responsible for the purity and proper labeling of an article of food by labeling the food with the person's name and address. The term does not include a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food manufacturer under this subdivision.

(3) "Food wholesaler" means a person who distributes food for resale, either through a retail outlet owned by that person or through sales to another person. The term "food wholesaler" shall not include:

(A) a commissary which distributes food primarily

intended for immediate consumption on the premises of a retail outlet under common ownership;

(B) an establishment engaged solely in the distribution of nonalcoholic beverages in sealed containers; or

(C) a restaurant that provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be considered a food wholesaler under this subdivision.

(4) Deleted by Acts 1997, 75th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1997

(5) "Direct seller" means an individual:

(A) who is not affiliated with a permanent retail establishment and who engages in the business of:

(i) in-person sales of prepackaged nonperishable foods, including dietary supplements, to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home; or

(ii) sales of prepackaged nonperishable foods, including dietary supplements, in a home;

(B) who receives substantially all remuneration for a service, whether in cash or other form of payment, which is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(C) who performs services under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to federal tax purposes.

(6) "Licensed nonprofit organization" means an organization that is licensed under any statutory authority of the State of Texas and is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, as an organization described in Section 501(c)(3) of that code.

(7) "Warehouse operator" means a person that operates a warehouse where food is stored.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 348, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1047, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch.

1378, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 334, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(51), eff. September 1, 2005.

Sec. 431.2211. APPLICATION OF SUBCHAPTER. (a) A person is not required to hold a license under this subchapter if the person is:

(1) a person, firm, or corporation that only harvests, packages, or washes raw fruits or vegetables for shipment at the location of harvest;

(2) an individual who only sells prepackaged nonperishable foods, including dietary supplements, from a private home as a direct seller;

(3) a person who holds a license under Chapter 432 and who only engages in conduct within the scope of that license; or

(4) a restaurant that:

(A) provides food for immediate human consumption to a political subdivision or to a licensed nonprofit organization if the restaurant would not otherwise be required to hold a license under this subchapter; or

(B) sells food directly to an individual consumer if:

(i) the restaurant holds a permit as a food service establishment under Chapter 437;

(ii) the restaurant complies with Section 437.026; and

(iii) the restaurant is not otherwise required to hold a license under this subchapter.

(a-1) A person is not required to hold a license under this subchapter if the person holds a license under Chapter 440 and is engaging in conduct within the scope of that license.

(a-2) A person is not required to hold a license under this subchapter if the person holds a permit under Chapter 435 related to the processing, producing, bottling, receiving, transferring, or transporting of Grade A milk or milk products and is engaging in conduct within the scope of that permit.

(a-3) A person is not required to hold a license under this subchapter if the person holds a license under Chapter 443 and is

engaging in conduct within the scope of that license.

(b) An exemption from the licensing requirements prescribed by this subchapter does not exempt the person from other provisions prescribed by this subchapter or from rules adopted by the executive commissioner to administer and enforce those provisions.

(c) This subchapter does not apply to the distribution of beverages in sealed containers by holders of licenses or permits issued under Chapter 19, 20, 23, or 64, Alcoholic Beverage Code. The provisions of the Alcoholic Beverage Code prevail to the extent of any conflict with this chapter.

(d) A food wholesaler is not required to obtain a license under this subchapter for a place of business if all of the food distributed from that place of business will be stored in a warehouse licensed under this subchapter.

(e) A food wholesaler that is not required to obtain a license for a place of business under Subsection (d) shall register that place of business with the department. The executive commissioner shall adopt rules for the registration of food wholesalers under this section.

Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 348, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 629, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1378, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 262, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 112, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 334, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 383, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 757, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 1, eff. September 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0982, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 6, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 392, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 242 (H.B. 1276), Sec. 2, eff. June 4, 2021.

Sec. 431.222. LICENSE REQUIRED; LICENSING FEES. (a) Except as provided by Section 431.2211, a food manufacturer, food wholesaler, or warehouse operator in this state must apply for and obtain from the department every two years a license for each place of business that the food manufacturer, food wholesaler, or warehouse operator operates in this state. The food manufacturer, food wholesaler, or warehouse operator must pay a licensing fee for each establishment.

(b) The department shall require a food manufacturer that distributes only food manufactured by that firm to obtain only a license as a food manufacturer. A person that does not manufacture food and serves only as a food wholesaler must obtain only a food wholesaler's license. A person that distributes both its own manufactured food and food it does not manufacture must obtain only a food manufacturer's license. A warehouse operator who also distributes food is required to obtain only a warehouse operator license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 162, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 383, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0983, eff. April 2, 2015.

Sec. 431.223. CONTENTS OF LICENSE APPLICATION. (a) The person applying for a license under this subchapter must provide, at a minimum, the following information in a license application:

(1) the name under which the food manufacturer, wholesale distributor, or warehouse operator conducts business;

(2) the address of each place of business in this state that is licensed;

(3) if the food manufacturer, wholesale distributor, or warehouse operator is an individual, a partnership, or an association, the name or names of:

(A) the proprietor, if the business is a sole

proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) if the food manufacturer, wholesale distributor, or wholesale operator is a corporation, the date and place of incorporation and the name and address of its registered agent in this state;

(5) the names and residences of the individuals in an administrative capacity, showing:

(A) the managing proprietor, if the business is a sole proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of a person in charge of each place of business.

(b) The license application must be signed, verified, and filed on a form furnished by the department according to department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 383, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0984, eff. April 2, 2015.

Sec. 431.224. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.2251; and

(3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The department may charge fees every two years.

(c) The executive commissioner by rule shall set the fees in

amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(d) The department shall use not less than one-half of license fees collected for inspecting a licensed place of business or enforcing this subchapter, and the remainder for the administration of this subchapter.

(e) All license fees received by the department under this subchapter shall be deposited in the state treasury to the credit of the food and drug registration account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 163, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0985, eff. April 2, 2015.

Sec. 431.2245. PROCESSING OF LICENSING FEES. (a) The department shall establish a system for processing licensing fees under this chapter, including vended water facility licensing fees.

(b) Under the fee processing system, the maximum time for processing a fee payment made by a negotiable instrument may not exceed 48 hours, beginning at the time that the negotiable instrument is first received by the department and ending at the time that the fee payment is submitted for deposit by the department to the treasury division of the office of the comptroller.

(c) The comptroller shall cooperate with the department in developing the fee processing system.

Added by Acts 1999, 76th Leg., ch. 697, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0986, eff. April 2, 2015.

Sec. 431.225. EXPIRATION DATE. (a) The executive commissioner by rule may provide that licenses expire on different dates.

(b) If the license expiration date is changed, license fees shall be prorated so that each license holder pays only that portion of the license fee allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 164, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0987, eff. April 2, 2015.

Sec. 431.2251. CHANGE IN LOCATION OF PLACE OF BUSINESS. Not later than the 31st day before the date of the change, the license holder shall notify in writing the department of the license holder's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the place of business. Not later than the 10th day after the completion of the change of location, the license holder shall forward to the department the name and residence address of the individual in charge of the new place of business. Notice is considered adequate if the license holder provides the intent and verification notices to the department by certified mail, return receipt requested, mailed to the central office of the department.

Added by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0988, eff. April 2, 2015.

Sec. 431.226. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The department may refuse an application for a license or may suspend or revoke a license.

(b) The executive commissioner by rule shall establish minimum standards for granting and maintaining a license. In adopting rules

under this section, the executive commissioner shall:

(1) ensure that the minimum standards prioritize safe handling of fruits and vegetables based on known safety risks, including any history of outbreaks of food-borne communicable diseases; and

(2) consider acceptable produce safety standards developed by a federal agency, state agency, or university.

(c) The refusal or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0989, eff. April 2, 2015.

Sec. 431.227. FOOD SAFETY BEST PRACTICE EDUCATION PROGRAM. (a) The department shall approve food safety best practice education programs for places of business licensed under this chapter.

(b) A place of business that completes a food safety best practice education program approved by the department shall receive a certificate valid for five years from the date of completion of the program.

(c) When determining which places of business to inspect under Section 431.042, the appropriate inspecting authority shall consider whether the place of business holds a valid certificate from a food safety best practice education program under this section.

(d) The executive commissioner shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0990, eff. April 2, 2015.

SUBCHAPTER K. GENERAL ADMINISTRATIVE PROVISIONS AND RULEMAKING AUTHORITY

Sec. 431.241. RULEMAKING AUTHORITY. (a) The executive commissioner may adopt rules for the efficient enforcement of this chapter.

(b) The executive commissioner may conform rules adopted under this chapter, if practicable, with regulations adopted under the federal Act.

(c) The enumeration of specific federal laws and regulations in Sections 431.244 and 431.245 does not limit the general authority granted to the executive commissioner in Subsection (b) to conform rules adopted under this chapter to those adopted under the federal Act.

(d) The executive commissioner may adopt the federal regulations issued by the secretary pursuant to the Prescription Drug Marketing Act of 1987 (21 U.S.C. Sections 331, 333, 353, and 381), as necessary or desirable so that the state wholesale drug distributor licensing program in Subchapter N may achieve compliance with that Act.

(e) The executive commissioner shall not establish a drug formulary that restricts by any prior or retroactive approval process a physician's ability to treat a patient with a prescription drug that has been approved and designated as safe and effective by the United States Food and Drug Administration, in compliance with federal law and subject to review by the executive commissioner.

(f) Nothing in this section shall effect a prior approval program in operation on the effective date of this section nor shall any portion of this chapter prohibit a prior approval process on any federally exempted products.

(g) The department may assess a fee for the issuance of a certificate of free sale and another certification issued under this chapter. The executive commissioner by rule shall set each fee in an amount sufficient to recover the cost to the department of issuing the particular certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 675, Sec. 7, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0991, eff. April 2, 2015.

Sec. 431.242. CONTESTED CASE HEARINGS AND APPEALS. A hearing under this chapter or an appeal from a final administrative decision shall be conducted under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 431.244. FEDERAL REGULATIONS ADOPTED AS STATE RULES. (a) A regulation adopted by the secretary under the federal Act concerning pesticide chemicals, food additives, color additives, special dietary use, processed low acid food, acidified food, infant formula, bottled water, or vended bottled water is a rule for the purposes of this chapter, unless the executive commissioner modifies or rejects the rule.

(b) A regulation adopted under the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of this chapter, unless the executive commissioner modifies or rejects the rule. The executive commissioner may not adopt a rule that conflicts with the labeling requirements for the net quantity of contents required under Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1453) and the regulations adopted under that Act.

(c) A regulation adopted by the secretary under Sections 403(b) through (i) of the federal Act is a rule for the purposes of this chapter unless the executive commissioner modifies or rejects the rule. The executive commissioner may not adopt a rule that conflicts with the limitations provided by Sections 403(q) and (r) of the federal Act.

(d) A federal regulation that this section provides as a rule for the purposes of this chapter is effective:

(1) on the date that the regulation becomes effective as a federal regulation; and

(2) whether or not the executive commissioner or department has fulfilled the rulemaking provisions of Chapter 2001, Government Code.

(e) If the executive commissioner modifies or rejects a federal regulation, the executive commissioner shall comply with the rulemaking provisions of Chapter 2001, Government Code.

(f) For any federal regulation adopted as a state rule under this chapter, including a regulation considered to be a rule for purposes of this chapter under Subsection (a), (b), or (c), the department shall provide on its Internet website:

(1) a link to the text of the federal regulation;

(2) a clear explanation of the substance of and purpose for the regulation; and

(3) information on providing comments in response to any proposed or pending federal regulation, including an address to which and the manner in which comments may be submitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 459, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0992, eff. April 2, 2015.

Sec. 431.245. DEFINITION OR STANDARD OF IDENTITY, QUALITY, OR FILL OF CONTAINER. (a) A definition or standard of identity, quality, or fill of container of the federal Act is a definition or standard of identity, quality, or fill of container in this chapter, except as modified by department rules.

(b) The executive commissioner by rule may establish definitions and standards of identity, quality, and fill of container for a food if:

(1) a federal regulation does not apply to the food; and

(2) the executive commissioner determines that adopting the rules will promote honest and fair dealing in the interest of consumers.

(c) A temporary permit granted for interstate shipment of an experimental pack of food that varies from the requirements of federal definitions and standards of identity is automatically

effective in this state under the conditions of the permit.

(d) The department may issue additional permits if the department determines that:

(1) it is necessary for the completion of an otherwise adequate investigation; and

(2) the interests of consumers are safeguarded.

(e) A permit issued under Subsection (d) is subject to the terms and conditions of department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0993, eff. April 2, 2015.

Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The executive commissioner shall adopt rules that provide a system for removing adulterated items from the shelves of a grocery store or other retail establishment selling those items.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0994, eff. April 2, 2015.

Sec. 431.247. DELEGATION OF POWERS OR DUTIES. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(75), eff. April 2, 2015.

(b) A health authority may, unless otherwise restricted by law, delegate a power or duty imposed on the health authority by this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(75), eff. April 2, 2015.

Sec. 431.248. MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT OF AGRICULTURE. (a) The department and the Department of Agriculture shall execute a memorandum of understanding that:

(1) requires each agency to disclose to the other agency any positive results of testing conducted by the agency for pesticides in food; and

(2) specifies how each agency will assist the other in performing its duties regarding pesticides in food.

(b) The executive commissioner and the Department of Agriculture shall adopt the memorandum of understanding as a rule.

(c) The department and the Department of Agriculture shall request the federal Food and Drug Administration to join in execution of the memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0995, eff. April 2, 2015.

Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The department may publish reports summarizing the judgments, decrees, and court orders rendered under this chapter, including the nature and disposition of the charge.

(b) The department may disseminate information regarding a food, drug, device, or cosmetic in a situation that the department determines to involve imminent danger to health or gross deception of consumers.

(c) This section does not prohibit the department from collecting, reporting, and illustrating the results of an investigation by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0996, eff. April 2, 2015.

Sec. 431.250. PUBLIC COMMENTS FOR FEDERAL GRANTS AND CONTRACTS. (a) The department shall annually solicit comments from interested persons regarding the grants and contracts the department has

requested from or entered into with the United States Food and Drug Administration for implementing the federal Act and its amendments, including the Food Safety Modernization Act (21 U.S.C. Section 2201 et seq.).

(b) The department shall solicit comments by posting on the department's Internet website a detailed description of and providing notice to interested persons of each grant and contract described by Subsection (a) requested or entered into during the previous year. The description and notice must include the benefits to this state, the department, the regulated community, and the public.

(c) The department shall respond to questions and comments about a grant or contract described by Subsection (a) to the best of the department's knowledge. If an interested person requests that the department decline to receive future federal funding from the grant or contract, the department shall consider the request and determine whether the benefits of the grant or contract outweigh the person's concerns.

Added by Acts 2015, 84th Leg., R.S., Ch. 749 (H.B. 1846), Sec. 1, eff. September 1, 2015.

SUBCHAPTER L. DEVICE DISTRIBUTORS AND MANUFACTURERS

Sec. 431.271. DEFINITIONS. In this subchapter:

(1) "Distributor" means a person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user. The term includes an importer or an own-label distributor. The term does not include a person who repackages a finished device or who otherwise changes the container, wrapper, or labelling of the finished device or the finished device package.

(2) "Finished device" means a device, or any accessory to a device, that is suitable for use, without regard to whether it is packaged or labelled for commercial distribution.

(3) "Importer" means any person who initially distributes a device imported into the United States.

(4) "Manufacturer" means a person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include a person who only distributes a finished

device.

(5) "Place of business" means each location at which a finished device is manufactured or held for distribution.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 2, eff. Sept. 1, 1995.

Sec. 431.272. LICENSE REQUIRED; MINIMUM STANDARDS. (a) Except as provided by Section 431.273, a person may not operate as a distributor or manufacturer of devices in this state unless the person has a license from the department for each place of business.

(b) A distributor or manufacturer of devices in this state must comply with the minimum requirements specified in the federal Act and in this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0997, eff. April 2, 2015.

Sec. 431.273. EXEMPTION FROM LICENSING. (a) A person is exempt from licensing under this subchapter if the person engages only in the following types of device distribution:

(1) intracompany sales;

(2) distribution from a place of business located outside of this state; or

(3) the sale, purchase, or trade of a distressed or reconditioned device by a salvage broker or a salvage operator licensed under Chapter 432 (Texas Food, Drug, Device, and Cosmetic Salvage Act).

(a-1) A person is exempt from licensing under this subchapter if the person holds a registration certificate issued under Chapter 266, Occupations Code, and engages only in conduct within the scope of that registration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of

this chapter or the rules adopted by the executive commissioner to administer and enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 1047, Sec. 3, eff. Sept. 1, 1995.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 302 (H.B. 1395), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0998, eff. April 2, 2015.

Sec. 431.274. LICENSE APPLICATION. (a) A person applying for a license under this subchapter shall provide, at a minimum, the following information on a license application form furnished by the department:

(1) the name under which the business is conducted;

(2) the address of each place of business that is licensed;

(3) the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation if the business is a corporation;

(5) the names and residence addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of an individual in charge of each place of business.

(b) The license application must be signed, verified, and completed in a manner described in department rules.

(c) A person applying for a license under this subchapter must pay a licensing fee for each place of business.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0999, eff. April 2, 2015.

Sec. 431.276. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including notification of a change of location of a licensed place of business required under Section 431.278, a change of the name of an association or corporation, or a change in the ownership of the licensee; and

(3) an inspection performed to enforce this subchapter and rules adopted under this subchapter.

(b) The department may charge fees every two years.

(c) The executive commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license or renewal license;

(2) amending a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(d) At least half of the licensing fees collected shall be used to inspect an applicant or licensed place of business.

(e) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and may be appropriated to the department only to carry out this chapter.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1000, eff. April 2, 2015.

Sec. 431.278. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a)

Not fewer than 30 days in advance of the change, the licensee shall notify the department in writing of the licensee's intent to change the location of a licensed place of business. The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(b) Not later than the 10th day after the date of completion of the change of location, the licensee shall notify the department in writing to verify the change of location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address.

(c) Notice is adequate if the licensee provides the intent and verification notices to the department by certified mail, return receipt requested, mailed to the central office of the department.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1001, eff. April 2, 2015.

Sec. 431.279. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The department may refuse an application or may suspend or revoke a license if the applicant or licensee:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; or

(5) has not complied with this chapter or the rules implementing this chapter.

(b) The department may refuse an application for a license or may suspend or revoke a license if the department determines from evidence presented during a hearing that the applicant or licensee:

(1) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or

(3) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain.

(c) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the department's formal hearing procedures and the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 440, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1002, eff. April 2, 2015.

SUBCHAPTER M. DRUG DONATION PROGRAM

Sec. 431.321. DEFINITIONS. (a) "Charitable medical clinic" means a clinic, including a licensed pharmacy that is a community pharmaceutical access program provider, that provides medical care or drugs without charge or for a substantially reduced charge, complies with the insurance requirements of Chapter 84, Civil Practice and Remedies Code, and is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) or 501(c)(4) of the code and is operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community.

(b) "Seller" means a person, other than a charitable drug donor, as defined in Chapter 82, Civil Practice and Remedies Code.

(c) "Manufacturer" means a person, other than a charitable drug donor, as defined in Chapter 82, Civil Practice and Remedies Code.

(d) "Charitable drug donor" means a licensed convalescent or nursing home or related institution, licensed hospice, hospital, physician, pharmacy, or a pharmaceutical seller or manufacturer that donates drugs pursuant to a qualified patient assistance program, that donates drugs to a charitable medical clinic.

(d-1) In this subchapter, "community pharmaceutical access program" means a program offered by a licensed pharmacy under which the pharmacy assists financially disadvantaged persons to access prescription drugs at no charge or at a substantially reduced charge.

(e) In this subchapter, "patient assistance program" means a qualified program offered by a pharmaceutical manufacturer under which the manufacturer provides drugs to financially disadvantaged persons at no charge or at a substantially reduced cost. The term does not include the provision of a drug as part of a clinical trial.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 820 (S.B. 1896), Sec. 2, eff. June 15, 2007.

Sec. 431.322. DONATION OF UNUSED DRUGS TO CHARITABLE MEDICAL CLINIC. (a) A charitable drug donor may donate certain unused prescription drugs to a charitable medical clinic, and a charitable clinic may accept, dispense, or administer the donated drugs in accordance with this subchapter.

(b) A seller or manufacturer of a drug may not donate drugs to a charitable medical clinic except pursuant to a qualified patient assistance program. A seller or manufacturer of a drug that donates drugs through a qualified patient assistance program shall be considered a charitable drug donor.

(c) The charitable drug donor shall use appropriate safeguards established by department rule to ensure that the drugs are not compromised or illegally diverted while being stored or transported to the charitable medical clinic.

(d) The charitable medical clinic may not accept the donated

drugs unless:

(1) the charitable drug donor certifies that the drugs have been properly stored while in the possession of the donor or of the person for whom the drugs were originally dispensed;

(2) the charitable drug donor provides the clinic with a verifiable address and telephone number; and

(3) the person transferring possession of the drugs presents the charitable medical clinic with photographic identification.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1003, eff. April 2, 2015.

Sec. 431.323. CIRCUMSTANCES UNDER WHICH DONATED DRUGS MAY BE ACCEPTED AND DISPENSED. (a) A charitable medical clinic may accept and dispense or administer donated drugs only in accordance with this subchapter.

(b) The donated drugs must be drugs that require a prescription. A donated drug may not be a controlled substance under Chapter 481.

(c) The donated drugs must be approved by the federal Food and Drug Administration and:

(1) be sealed in the manufacturer's unopened original tamper-evident packaging and either:

(A) individually packaged; or

(B) packaged in unit-dose packaging;

(2) be oral or parenteral medication in sealed single-dose containers approved by the federal Food and Drug Administration;

(3) be topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or

(4) be parenteral medication in sealed multiple-dose containers approved by the federal Food and Drug Administration from which no doses have been withdrawn; and

(5) must not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(d) The charitable medical clinic may dispense or administer

the donated drugs only:

(1) before the expiration date or within the recommended shelf life of the donated drugs, as applicable; and

(2) after a licensed pharmacist has determined that the drugs are of an acceptable integrity.

(e) The donated drugs may be accepted and dispensed or administered by the charitable medical clinic only in accordance with department rules.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1004, eff. April 2, 2015.

Sec. 431.324. RULES. The executive commissioner shall adopt rules to implement this subchapter that are designed to protect the public health and safety.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1005, eff. April 2, 2015.

Sec. 431.325. LIMITATION ON LIABILITY. (a) Charitable drug donors, charitable medical clinics, and their employees are not liable for harm caused by the accepting, dispensing, or administering of drugs donated in strict compliance with this subchapter unless the harm is caused by:

(i) willful or wanton acts of negligence;

(ii) conscious indifference or reckless disregard for the safety of others; or

(iii) intentional conduct.

(b) This section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer pursuant to Chapter 82, Civil Practice and Remedies Code.

(c) This section shall not apply where harm results from the failure to fully and completely comply with the requirements of this subchapter.

(d) This section shall not apply to a charitable medical clinic

that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1138, Sec. 1, eff. Jan. 1, 2002.

SUBCHAPTER N. WHOLESALE DISTRIBUTORS OF PRESCRIPTION DRUGS

Sec. 431.401. DEFINITIONS. In this subchapter:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree for the drug has occurred.

(2) "Authorized distributor of record" means a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products in accordance with Section 431.4011.

(3) "Pharmacy warehouse" means a location for which a person holds a wholesale drug distribution license under this subchapter, that serves as a central warehouse for drugs or devices, and from which intracompany sales or transfers of drugs or devices are made to a group of pharmacies under common ownership and control.

(3-a) "Co-licensed product partner" means one of two or more parties that have the right to engage in the manufacturing or marketing of a prescription drug consistent with the United States Food and Drug Administration's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293).

(3-b) "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug, or by the manufacturer's co-licensed product partner, third-party logistics provider, or exclusive distributor, in which:

(A) the wholesale distributor takes title but not physical possession of the prescription drug;

(B) the wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer the drug to a patient; and

(C) the pharmacy, pharmacy warehouse, or other authorized person receives delivery of the prescription drug directly from the manufacturer or the manufacturer's third-party logistics provider or exclusive distributor.

(4) "Logistics provider" means a person that receives prescription drugs only from the original manufacturer, delivers the

prescription drugs at the direction of that manufacturer, and does not purchase, sell, trade, or take title to any prescription drug.

(4-a) "Manufacturer" means a person licensed or approved by the United States Food and Drug Administration to engage in the manufacture of drugs or devices, consistent with the federal agency's definition of "manufacturer" under the agency's regulations and guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293). The term does not include a pharmacist engaged in compounding that is done within the practice of pharmacy and pursuant to a prescription drug order or initiative from a practitioner for a patient or prepackaging that is done in accordance with Section 562.154, Occupations Code.

(4-b) "Manufacturer's exclusive distributor" means a person who holds a wholesale distributor license under this subchapter, who contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who takes title to, but does not have general responsibility to direct the sale or disposition of, the manufacturer's prescription drug. A manufacturer's exclusive distributor must be an authorized distributor of record to be considered part of the normal distribution channel.

(5) "Normal distribution channel" means a chain of custody for a prescription drug, either directly or by drop shipment, from the manufacturer of the prescription drug, the manufacturer to the manufacturer's co-licensed product partner, the manufacturer to the manufacturer's third-party logistics provider, or the manufacturer to the manufacturer's exclusive distributor, to:

(A) a pharmacy to:

(i) a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(B) an authorized distributor of record to:

(i) a pharmacy to a patient; or

(ii) another designated person authorized by law to dispense or administer the drug to a patient;

(C) an authorized distributor of record to a wholesale distributor licensed under this chapter to another designated person authorized by law to administer the drug to a patient;

(D) an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy;

(E) a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy or another designated person authorized by law to dispense or administer the drug to a patient;

(F) a person authorized by law to prescribe a prescription drug that by law may be administered only under the supervision of the prescriber; or

(G) an authorized distributor of record to one other authorized distributor of record to a licensed practitioner for office use.

(6) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of a prescription drug, from sale by a manufacturer, through acquisition and sale by any wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the prescription drug.

(7) "Place of business" means each location at which a drug for wholesale distribution is located.

(8) "Prescription drug" has the meaning assigned by 21 C.F.R. Section 203.3.

(9) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling of a drug to further the distribution of a prescription drug. The term does not include repackaging by a pharmacist to dispense a drug to a patient.

(10) "Repackager" means a person who engages in repackaging.

(10-a) "Third-party logistics provider" means a person who holds a wholesale distributor license under this subchapter, who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of the manufacturer, and who does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider must be an authorized distributor of record to be considered part of the normal distribution channel.

(11) "Wholesale distribution" means distribution of prescription drugs to a person other than a consumer or patient. The term does not include:

(A) intracompany sales of prescription drugs, which means transactions or transfers of prescription drugs between a division, subsidiary, parent, or affiliated or related company that

is under common ownership and control, or any transaction or transfer between co-license holders of a co-licensed product;

(B) the sale, purchase, distribution, trade, or transfer of prescription drugs or the offer to sell, purchase, distribute, trade, or transfer a prescription drug for emergency medical reasons;

(C) the distribution of prescription drug samples by a representative of a manufacturer;

(D) the return of drugs by a hospital, health care entity, or charitable institution in accordance with 21 C.F.R. Section 203.23;

(E) the sale of reasonable quantities by a retail pharmacy of a prescription drug to a licensed practitioner for office use;

(F) the sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug under a prescription;

(G) the sale, transfer, merger, or consolidation of all or part of the business of a pharmacy from or with another pharmacy, whether accomplished as a purchase and sale of stock or business assets;

(H) the sale, purchase, or trade of a drug, or the offer to sell, purchase, or trade a drug, for emergency medical reasons, including a transfer of a prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(I) the delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, if the common carrier does not store, warehouse, or take legal ownership of the prescription drug; or

(J) the sale or transfer from a retail pharmacy or pharmacy warehouse of expired, damaged, returned, or recalled prescription drugs to the original manufacturer or to a third-party returns processor.

(12) "Wholesale distributor" means a person engaged in the wholesale distribution of prescription drugs, including a manufacturer, repackager, own-label distributor, private-label distributor, jobber, broker, manufacturer warehouse, distributor warehouse, or other warehouse, manufacturer's exclusive distributor,

authorized distributor of record, drug wholesaler or distributor, independent wholesale drug trader, specialty wholesale distributor, third-party logistics provider, retail pharmacy that conducts wholesale distribution, and pharmacy warehouse that conducts wholesale distribution.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 3, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1384 (S.B. 1645), Sec. 3, eff. June 19, 2009.

Sec. 431.4011. ONGOING RELATIONSHIP. In this subchapter, "ongoing relationship" means an association that exists when a manufacturer and distributor enter into a written agreement under which the distributor is authorized to distribute the manufacturer's products for a period of time or for a number of shipments. If the distributor is not authorized to distribute the manufacturer's entire product line, the agreement must identify the specific drug products that the distributor is authorized to distribute.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.4012. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the wholesale distribution of prescription drugs.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.402. LICENSE REQUIRED. (a) A person may not engage in wholesale distribution of prescription drugs in this state unless the person holds a wholesale drug distribution license under this subchapter for each place of business.
(b) A license issued under this subchapter expires on the second anniversary of the date of issuance.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.403. EXEMPTION FROM LICENSING. (a) A person who engages in wholesale distribution of prescription drugs in this state for use in humans is exempt from this subchapter if the person is exempt under:

(1) the Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy manual of the United States Food and Drug Administration.

(b) An exemption from the licensing requirements under this section does not constitute an exemption from the other provisions of this chapter or the rules adopted under this chapter to administer and enforce the other provisions of this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.4031. EXEMPTION FROM CERTAIN PROVISIONS FOR CERTAIN WHOLESALE DISTRIBUTORS. (a) A wholesale distributor that distributes prescription drugs that are medical gases or a wholesale distributor that is a manufacturer or a third-party logistics provider on behalf of a manufacturer is exempt from Sections 431.404(a)(5) and (6), (b), and (c), 431.4045(2), 431.405, and 431.407.

(b) A state agency or a political subdivision of this state that distributes prescription drugs using federal or state funding to nonprofit health care facilities, local mental health authorities, or local intellectual and developmental disability authorities for distribution to a pharmacy, practitioner, or patient is exempt from Sections 431.405(b), 431.407, 431.412, and 431.413.

(c) The executive commissioner by rule may exempt specific purchases of prescription drugs by state agencies and political subdivisions of this state if the executive commissioner determines

that the requirements of this subchapter would result in a substantial cost to the state or a political subdivision of the state.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 4, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1384 (S.B. 1645), Sec. 4, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1006, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. 970), Sec. 9, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.04, eff. September 1, 2023.

Sec. 431.404. LICENSE APPLICATION. (a) An applicant for a license under this subchapter must submit an application to the department on the form prescribed by the department. The application must contain:

(1) the name, full business address, and telephone number of the applicant;

(2) all trade or business names under which the business is conducted;

(3) the address, telephone number, and name of a contact person for each of the applicant's places of business;

(4) the type of business entity and:

(A) if the business is a sole proprietorship, the name of the proprietor;

(B) if the business is a partnership, the name of the partnership and each of the partners; or

(C) if the business is a corporation, the name of the corporation, the place of incorporation, and the name and title of each corporate officer and director;

(5) the name and telephone number of, and any information necessary to complete a criminal history record check on, a designated representative of each place of business; and

(6) a list of all licenses and permits issued to the applicant by any other state under which the applicant is permitted to purchase or possess prescription drugs.

(b) Each person listed in Subsection (a)(5) shall provide the following to the department:

(1) the person's places of residence for the past seven years;

(2) the person's date and place of birth;

(3) the person's occupations, positions of employment, and offices held during the past seven years;

(4) the business name and address of any business, corporation, or other organization in which the person held an office under Subdivision (3) or in which the person conducted an occupation or held a position of employment;

(5) a statement of whether during the preceding seven years the person was the subject of a proceeding to revoke a license or a criminal proceeding and the nature and disposition of the proceeding;

(6) a statement of whether during the preceding seven years the person has been enjoined, either temporarily or permanently, by a court from violating any federal or state law regulating the possession, control, or distribution of prescription drugs, including the details concerning the event;

(7) a written description of any involvement by the person as an officer or director with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, that manufactured, administered, prescribed, distributed, or stored pharmaceutical products and any lawsuits in which the businesses were named as a party;

(8) a description of any misdemeanor or felony offense for which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere;

(9) a description of any criminal conviction of the person under appeal, a copy of the notice of appeal for that criminal offense, and a copy of the final written order of an appeal not later than the 15th day after the date of the appeal's disposition; and

(10) a photograph of the person taken not earlier than 180 days before the date the application was submitted.

(c) The information submitted under Subsection (b) must be

attested to under oath.

(d) An applicant or license holder shall submit to the department any change in or correction to the information required under this section in the form and manner prescribed by department rule.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 5, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1007, eff. April 2, 2015.

Sec. 431.4045. INSPECTION REQUIRED. The department may not issue a wholesale distributor license to an applicant under this subchapter unless the department:

(1) conducts a physical inspection of the place of business at the address provided by the applicant under Section 431.404 or determines that an inspection is unnecessary after thoroughly evaluating the information in the application, the compliance history of the applicant and the applicant's principals, and the risk of counterfeiting in the applicant's product; and

(2) determines that the designated representative of the place of business meets the qualifications required by Section 431.405.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 6, eff. September 1, 2007.

Sec. 431.405. QUALIFICATIONS FOR LICENSE. (a) The department may not issue a wholesale distributor license to an applicant without considering the minimum federal information and related qualification requirements published in federal regulations at 21 C.F.R. Part 205, including:

(1) factors in reviewing the qualifications of persons who engage in wholesale distribution, 21 C.F.R. Section 205.6;

(2) appropriate education and experience for personnel employed in wholesale distribution, 21 C.F.R. Section 205.7; and

(3) the storage and handling of prescription drugs and the establishment and maintenance of prescription drug distribution records, 21 C.F.R. Section 205.50.

(b) In addition to meeting the minimum federal requirements as provided by Subsection (a), to qualify for the issuance or renewal of a wholesale distributor license under this subchapter, the designated representative of an applicant or license holder must:

(1) be at least 21 years of age;

(2) have been employed full-time for at least three years by a pharmacy or a wholesale distributor in a capacity related to the dispensing or distributing of prescription drugs, including recordkeeping for the dispensing or distributing of prescription drugs;

(3) be employed by the applicant full-time in a managerial-level position;

(4) be actively involved in and aware of the actual daily operation of the wholesale distributor;

(5) be physically present at the applicant's place of business during regular business hours, except when the absence of the designated representative is authorized, including sick leave and vacation leave;

(6) serve as a designated representative for only one applicant at any one time, except in a circumstance, as the department determines reasonable, in which more than one licensed wholesale distributor is colocated in the same place of business and the wholesale distributors are members of an affiliated group, as defined by Section 1504, Internal Revenue Code of 1986;

(7) not have been convicted of a violation of any federal, state, or local laws relating to wholesale or retail prescription drug distribution or the distribution of controlled substances; and

(8) not have been convicted of a felony under a federal, state, or local law.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 7, eff. September 1, 2007.

Sec. 431.406. EFFECT OF OPERATION IN OTHER JURISDICTIONS; REPORTS. (a) A person who engages in the wholesale distribution of drugs outside this state may engage in the wholesale distribution of drugs in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with this subchapter and the minimum standards adopted under this subchapter.

(c) The department may issue a license to a person who engages in the wholesale distribution of drugs outside this state to engage in the wholesale distribution of drugs in this state if, after an examination of the reports of the person's compliance history and current compliance record, the department determines that the person is in compliance with this subchapter and the rules adopted under this subchapter.

(d) The department shall consider each license application and any related documents or reports filed by or in connection with a person who wishes to engage in wholesale distribution of drugs in this state on an individual basis.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.407. CRIMINAL HISTORY RECORD INFORMATION. The department shall submit to the Department of Public Safety the fingerprints provided by a person with an initial or a renewal license application to obtain the person's criminal history record information and may forward the fingerprints to the Federal Bureau of Investigation for a federal criminal history check.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.

Sec. 431.409. FEES. (a) The department shall collect fees for:

(1) a license that is filed or renewed;

(2) a license that is amended, including a notification of a change in the location of a licensed place of business required under Section 431.410; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The executive commissioner by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department in:

(1) reviewing and acting on a license;

(2) amending and renewing a license;

(3) inspecting a licensed facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a license issued under this subchapter.

(c) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and appropriated to the department to carry out this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1008, eff. April 2, 2015.

Sec. 431.4095. RENEWAL NOTIFICATION; CHANGE OR RENEWAL. (a) Before the expiration of a license issued under this subchapter, the department shall send to each licensed wholesale distributor a form containing a copy of the information the distributor provided to the department under Section 431.404.

(b) Not later than the 30th day after the date the wholesale distributor receives the form under Subsection (a), the wholesale distributor shall identify and state under oath to the department any change in or correction to the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 9, eff. September 1, 2007.

Sec. 431.410. CHANGE OF LOCATION OF PLACE OF BUSINESS. (a) Not fewer than 30 days in advance of the change, the license holder shall notify the department in writing of the license holder's intent to change the location of a licensed place of business.

(b) The notice shall include the address of the new location and the name and residence address of the individual in charge of the business at the new location.

(c) Not more than 10 days after the completion of the change of location, the license holder shall notify the department in writing to confirm the completion of the change of location and provide verification of the information previously provided or correct and confirm any information that has changed since providing the notice of intent.

(d) The notice and confirmation required by this section are considered adequate if the license holder sends the notices by certified mail, return receipt requested, to the central office of the department or submits the notices electronically through the state electronic Internet portal.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 973 (H.B. 1504), Sec. 30, eff. June 17, 2011.

Sec. 431.411. MINIMUM RESTRICTIONS ON TRANSACTIONS. (a) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or pharmacy warehouse in accordance with the terms and conditions of the agreement between the wholesale distributor and the pharmacy or pharmacy warehouse. An expired, damaged, recalled, or otherwise nonsalable prescription drug that is returned to the wholesale distributor may be distributed by the wholesale distributor only to either the original manufacturer or a third-party returns processor. The returns or exchanges, salable or otherwise, received by the wholesale distributor as provided by this subsection, including any redistribution of returns or exchanges by the wholesale distributor, are not subject to the pedigree requirement under Section 431.412 if the returns or exchanges are exempt from pedigree under:

(1) Section 4, Prescription Drug Marketing Act of 1987 (21 U.S.C. Section 353(c)(3)(B));

(2) the regulations adopted by the secretary to administer and enforce that Act; or

(3) the interpretations of that Act set out in the compliance policy guide of the United States Food and Drug Administration.

(a-1) Each wholesale distributor and pharmacy shall administer the process of drug returns and exchanges to ensure that the process is secure and does not permit the entry of adulterated or counterfeit drugs into the distribution channel.

(a-2) Notwithstanding any provision of state or federal law to the contrary, a person that has not otherwise been required to obtain a wholesale license under this subchapter and that is a pharmacy engaging in the sale or transfer of expired, damaged, returned, or recalled prescription drugs to the originating wholesale distributor or manufacturer and pursuant to federal statute, rules, and regulations, including the United States Food and Drug Administration's applicable guidances implementing the Prescription Drug Marketing Act of 1987 (Pub. L. No. 100-293), is exempt from wholesale licensure requirements under this subchapter.

(b) A manufacturer or wholesale distributor may distribute prescription drugs only to a person licensed by the appropriate state licensing authorities or authorized by federal law to receive the drug. Before furnishing prescription drugs to a person not known to the manufacturer or wholesale distributor, the manufacturer or wholesale distributor must verify that the person is legally authorized by the appropriate state licensing authority to receive the prescription drugs or authorized by federal law to receive the drugs.

(c) Except as otherwise provided by this subsection, prescription drugs distributed by a manufacturer or wholesale distributor may be delivered only to the premises listed on the license. A manufacturer or wholesale distributor may distribute prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(1) the identity and authorization of the recipient is properly established; and

(2) delivery is made only to meet the immediate needs of a particular patient of the authorized person.

(d) Prescription drugs may be distributed to a hospital pharmacy receiving area if a pharmacist or an authorized receiving person signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug received. Any discrepancy between

the receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor not later than the next business day after the date of delivery to the pharmacy receiving area.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 10, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1009, eff. April 2, 2015.

Sec. 431.412. PEDIGREE REQUIRED. (a) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager but excluding the original manufacturer, shall provide a pedigree for each prescription drug for human consumption that leaves or at any time has left the normal distribution channel and is sold, traded, or transferred to any other person.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(b-1) A retail pharmacy or pharmacy warehouse is required to comply with this section only if the pharmacy or warehouse engages in the wholesale distribution of a prescription drug.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 980, Sec. 14.

(d) A person who is engaged in the wholesale distribution of a prescription drug, including a repackager, but excluding the original manufacturer of the finished form of a prescription drug, and who is in possession of a pedigree for a prescription drug must verify before distributing the prescription drug that each transaction listed on the pedigree has occurred.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 11, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 14 eff. September 1, 2007.

Sec. 431.413. PEDIGREE CONTENTS. (a) A pedigree must include all necessary identifying information concerning each sale in the product's chain of distribution from the manufacturer, through acquisition and sale by a wholesale distributor or repackager, until final sale to a pharmacy or other person dispensing or administering the drug. At a minimum, the chain of distribution information must include:

(1) the name, address, telephone number, and, if available, the e-mail address of each person who owns the prescription drug and each wholesale distributor of the prescription drug;

(2) the name and address of each location from which the product was shipped, if different from the owner's name and address;

(3) the transaction dates; and

(4) certification that each recipient has authenticated the pedigree.

(b) The pedigree must include, at a minimum, the:

(1) name of the prescription drug;

(2) dosage form and strength of the prescription drug;

(3) size of the container;

(4) number of containers;

(5) lot number of the prescription drug; and

(6) name of the manufacturer of the finished dosage form.

(c) Each pedigree statement must be:

(1) maintained by the purchaser and the wholesale distributor for at least three years; and

(2) available for inspection and photocopying not later than the second business day after the date a request is submitted by the department or a peace officer in this state.

(d) The executive commissioner shall adopt rules to implement this section.

(e-1) If, after consulting with manufacturers, distributors, and pharmacies responsible for the sale and distribution of prescription drugs in this state, the department determines that electronic track and trace pedigree technology is universally available across the entire prescription pharmaceutical supply chain, the department shall establish a targeted implementation date for electronic track and trace pedigree technology. After the department has established a targeted implementation date, the department may revise the date. The targeted implementation date may not be earlier than July 1, 2010.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 12, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1010, eff. April 2, 2015.

Sec. 431.414. REFUSAL TO LICENSE; SUSPENSION OR REVOCATION OF LICENSE. (a) The department may refuse an application for a license or may suspend or revoke a license if the applicant or license holder:

(1) has been convicted of a felony or misdemeanor that involves moral turpitude;

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has not complied with this subchapter or the rules implementing this subchapter;

(6) has violated Section 431.021(l)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(7) has violated Chapter 481 or 483; or

(8) has violated the rules of the public safety director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or license holder to maintain.

(a-1) The department may suspend or revoke a license if the

license holder no longer meets the qualifications for obtaining a license under Section 431.405.

(b) The executive commissioner by rule shall establish minimum standards required for the issuance or renewal of a license under this subchapter.

(c) The department shall deny a license application that is incomplete, contains false, misleading, or incorrect information, or contains information that cannot be verified by the department.

(d) The refusal to license an applicant or the suspension or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 980 (S.B. 943), Sec. 13, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1011, eff. April 2, 2015.

Sec. 431.415. ORDER TO CEASE DISTRIBUTION. (a) The department shall issue an order requiring a person, including a manufacturer, distributor, or retailer of a prescription drug, to immediately cease distribution of the drug if the department determines there is a reasonable probability that:

(1) a wholesale distributor has:

(A) violated this subchapter;

(B) falsified a pedigree; or

(C) sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use that could cause serious adverse health consequences or death; and

(2) other procedures would result in unreasonable delay.

(b) An order under Subsection (a) must provide the person subject to the order with an opportunity for an informal hearing on the actions required by the order to be held not later than the 10th day after the date of issuance of the order.

(c) If, after providing an opportunity for a hearing, the

department determines that inadequate grounds exist to support the actions required by the order, the commissioner shall vacate the order.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 3(g), eff. March 1, 2006.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1012, eff. April 2, 2015.

CHAPTER 432. FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ACT

Sec. 432.001. SHORT TITLE. This chapter may be cited as the Texas Food, Drug, Device, and Cosmetic Salvage Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.002. PURPOSE. The purpose of this chapter is to protect the health of the people of this state by preventing the sale or distribution of adulterated or misbranded food, drugs, devices, or cosmetics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.003. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(3) "Cosmetic" means an article or a substance, or a component of an article or substance, that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term does not include soap.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

(5) "Device" means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument,

apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals, or that is designed or intended to affect the structure or any function of the body of a human or other animal.

(6) "Distressed merchandise" means any food, drug, device, or cosmetic that is adulterated or misbranded for purposes of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food), 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded Cosmetic), as interpreted by department rule and judicial decision. The term includes a food, drug, device, or cosmetic that:

(A) has lost its label or is otherwise unidentified;

(B) has been subjected to prolonged or improper storage;

(C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation;

(D) has been subjected to conditions that result in either its strength, purity, or quality falling below that which it purports or is represented to possess; or

(E) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.

(7) "Drug" means an article or substance, other than a device, that is:

(A) recognized in The United States Pharmacopeia and The National Formulary (USP-NF) or the Homoeopathic Pharmacopoeia of the United States (HPUS), or a supplement to those publications;

(B) designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

(D) intended for use as a component of an article or substance specified by this subdivision.

(8) "Food" means an article or a component of an article of human food or drink, and includes chewing gum.

(9) "Manufacture" means the combining, purifying, processing, packing, or repacking of food, drugs, devices, or cosmetics for wholesale or retail sale.

(10) "Manufacturer" includes a person who represents himself as responsible for the purity and proper labeling of a food, drug, device, or cosmetic.

(11) "Nonprofit organization" means an organization that has received an exemption from federal taxation under 26 U.S.C. Section 501 and is described by Subsection (c)(3) of that section.

(12) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards for the consumption or use of that merchandise by the public.

(13) "Sale or distribution" means the act of selling or distributing, whether or not for compensation. The term includes delivery, holding or offering for sale, transfer, auction, storage, or any other means of handling or trafficking.

(14) "Salvage broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in distressed or salvaged merchandise, but who does not operate a salvage establishment.

(15) "Salvage establishment" means a place of business that is engaged in reconditioning or otherwise salvaging distressed merchandise, or that buys, sells, or distributes salvaged merchandise for human use.

(16) "Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

(17) "Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment to hold distressed or salvaged merchandise.

(18) "Salvaged merchandise" means distressed merchandise that has been reconditioned.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 5, eff. May 22, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1013, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(76), eff. April 2, 2015.

Sec. 432.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a manufacturer, distributor, or processor of a food, drug, device, or cosmetic who, in the normal course of business, reconditions the items manufactured, distributed, or processed by or for that person and not purchased by that person solely for the purpose of reconditioning and sale;

(2) a common carrier, or the common carrier's agent, who disposes of or otherwise transfers undamaged or distressed food, drugs, devices, or cosmetics to a person who is exempt under this section or to a licensed salvage broker or salvage operator;

(3) a person who transfers distressed merchandise to a licensed salvage broker or salvage operator; or

(4) a nonprofit organization that distributes food to the needy under Chapter 76, Civil Practice and Remedies Code (Good Faith Donor Act), but that does not recondition the food.

(b) In this chapter, a pharmacist licensed under the law of this state is not considered a manufacturer when the pharmacist fills a prescription from a licensed practitioner or when the pharmacist compounds or mixes drugs or medicine in the pharmacist's professional capacity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.005. LICENSE REQUIRED. (a) A person may not operate a salvage establishment in this state without a salvage operator license issued by the department.

(b) A person may not act as a salvage broker in this state without a salvage broker license issued by the department.

(c) A salvage operator or salvage broker who is engaging only within the scope of the license issued under this chapter is not required to also be licensed under Chapter 431.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 6, eff. May 22, 2001.

Sec. 432.006. LICENSE APPLICATION. An applicant for a salvage broker license or salvage operator license must:

(1) file a license application on a form prescribed by the department;

(2) pay a nonrefundable license fee to the department; and

(3) cooperate with the department in any required prelicensing inspections.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.007. ISSUANCE OF LICENSE. (a) The department shall issue a license to an applicant who complies with Section 432.006 and who meets the minimum qualifications established by department rule.

(b) A license issued under this chapter expires two years after the date of issuance.

(c) A separate license is required for each salvage establishment.

(d) A license may not be transferred from one person to another or from one location to another.

(e) A salvage operator or salvage broker shall display the license in accordance with department rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1014, eff. April 2, 2015.

Sec. 432.008. LICENSE RENEWAL. (a) A license holder under this chapter may renew the license by filing with the department, before the expiration date of the current license, a renewal application on a form prescribed by the department, accompanied by a nonrefundable renewal fee.

(b) After an inspection to determine the license holder's compliance with department rules, the department shall renew the license of a license holder who submits a renewal application and pays the renewal fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1015, eff. April 2, 2015.

Sec. 432.009. FEES. (a) The executive commissioner by rule

shall adopt, and the department shall collect, fees for each license application or renewal application submitted under this chapter and for inspections performed to enforce this chapter and the department rules adopted under this chapter.

(b) The executive commissioner by rule shall set the fees in amounts that are reasonable and necessary and allow the department to recover the biennial expenditures of state funds by the department to:

(1) review and act on licenses;

(2) amend and renew licenses;

(3) inspect establishments operated by license holders; and

(4) implement and enforce this chapter and rules and orders adopted and licenses issued under this chapter.

(c) A nonprofit organization is exempt from the payment of a fee imposed under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1016, eff. April 2, 2015.

Sec. 432.0095. PROCESSING OF FOOD SALVAGE ESTABLISHMENT LICENSING FEES. (a) The commissioner shall establish a system for processing food salvage establishment licensing fees.

(b) Under the fee processing system, the maximum time for processing a fee payment made by a negotiable instrument may not exceed 48 hours, beginning at the time that the negotiable instrument is first received by the department and ending at the time that the fee payment is submitted for deposit by the department to the treasury division of the office of the comptroller.

(c) The comptroller shall cooperate with the commissioner in developing the fee processing system.

Added by Acts 1999, 76th Leg., ch. 697, Sec. 2, eff. Aug. 30, 1999.

Sec. 432.010. DEPOSIT OF FEES. A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1017, eff. April 2, 2015.

Sec. 432.011. MINIMUM STANDARDS. (a) The executive commissioner shall adopt rules prescribing minimum standards or related requirements for:

(1) the operation of salvage establishments and salvage warehouses; and

(2) qualifications for licenses issued under this chapter.

(b) The rules shall prescribe standards for food, drugs, devices, and cosmetics in separate subchapters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 7, eff. May 22, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1018, eff. April 2, 2015.

Sec. 432.012. POWERS OF DEPARTMENT. The department may:

(1) enter into contracts or agreements necessary to implement this chapter;

(2) conduct inspections and secure samples;

(3) establish and maintain educational programs for salvage operators and salvage brokers; and

(4) compile and publish statistical and other studies on the nature and scope of the salvage industry in this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.013. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke the license of an applicant or license holder who fails to comply with this chapter or the rules adopted under this chapter.

(b) When there is an imminent threat to the health or safety of the public, the department may suspend a license without notice in accordance with rules adopted by the executive commissioner for the

emergency suspension of licenses.

(c) The department's hearing rules and the applicable provisions of Chapter 2001, Government Code, govern a hearing for the denial, suspension, emergency suspension, or revocation of a license and any appeal from that hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1019, eff. April 2, 2015.

Sec. 432.014. REINSTATEMENT OF LICENSE. (a) Not later than the 30th day after the date of the denial or emergency suspension, a person whose license application has been denied or whose license has been placed under an emergency suspension may request a reinspection for the purpose of granting or reinstating the license.

(b) The department shall perform the reinspection not later than the 10th day after the date of receipt of a written request for reinspection from the applicant or license holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.015. EFFECT OF OPERATION IN OTHER JURISDICTION; REPORTS. (a) A person who operates a salvage establishment or acts as a salvage broker outside this state may sell, distribute, or otherwise traffic in distressed or salvaged merchandise in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.016. MUNICIPAL REGULATION. A municipality by ordinance may regulate salvage operators, salvage brokers, and salvage establishments. An ordinance may be stricter than the minimum standards established under this chapter or by rules adopted

under this chapter, but it may not be less strict.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.017. USE OF SALVAGE WAREHOUSE. A person may not use a salvage warehouse to recondition merchandise or to sell to consumers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 432.018. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or municipal attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the act or an order directing compliance;

(2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person is engaged in or is about to engage in any of the acts;

(3) the assessment and recovery of a civil penalty; or

(4) both the injunctive relief and civil penalty.

(b) The penalty may be in an amount not to exceed $25,000 for each violation. Each day a violation continues is a separate violation.

(c) In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the demonstrated good faith of the person charged; and

(5) other matters as justice may require.

(d) Venue for a suit brought under this section is in the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner and the attorney general may each recover

reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.019. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) operates a salvage establishment or acts as a salvage broker without a license issued under this chapter; or

(2) fails to comply with a rule adopted under Section 432.011.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.020. EMERGENCY ORDER. (a) The commissioner or the commissioner's designee may issue an emergency order, either mandatory or prohibitory, concerning the sale or distribution of distressed foods, drugs, devices, or cosmetics in the department's jurisdiction if the commissioner or the commissioner's designee determines that:

(1) the sale or distribution of those foods, drugs, devices, or cosmetics creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or the commissioner's designee may issue the emergency order without notice and hearing if the commissioner or the commissioner's designee determines it is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department, not later than the 30th day after the date on which the emergency order is issued, shall determine a time and place for a hearing at which the emergency order will be affirmed, modified, or

set aside. The hearing shall be held under departmental formal hearing rules.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.021. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates a rule adopted under Section 432.011 or an order adopted or license issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) other matters as justice may require.

(c) The penalty may not exceed $25,000 for each violation. Each day a violation continues is a separate violation.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1020, eff. April 2, 2015.

Sec. 432.022. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, an administrative law judge of the State Office of Administrative Hearings shall make findings of fact and shall issue a written proposal for decision regarding the occurrence of the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) After making a determination under this section that a penalty is to be assessed, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(76), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1021, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(76), eff. April 2, 2015.

Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date of issuance of an order finding that a violation has occurred, the department shall inform the person against whom the order is issued of the amount of the penalty.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the

person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1022, eff. April 2, 2015.

Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1023, eff. April 2, 2015.

Sec. 432.025. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general, at the request of the commissioner, may bring a civil action to recover an administrative penalty under this chapter.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.026. DETAINED OR EMBARGOED ARTICLE. In accordance with Subchapter C, Chapter 431, the department may detain or embargo

an article, including an article that is distressed merchandise, that is in the possession of a person licensed under this chapter and that is being held for the purpose of reconditioning in accordance with this chapter if the department makes the finding required by Section 431.048(e).

Added by Acts 2001, 77th Leg., ch. 265, Sec. 8, eff. May 22, 2001.

CHAPTER 433. TEXAS MEAT AND POULTRY INSPECTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 433.001. SHORT TITLE. This chapter may be cited as the Texas Meat and Poultry Inspection Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.002. POLICY. (a) Meat and meat food products are an important source of the nation's total food supply. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, unadulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products:

(1) injure the public welfare;

(2) destroy markets for wholesome, unadulterated, and properly labeled and packaged meat and meat food products;

(3) cause losses to livestock producers and processors of meat and meat food products;

(4) cause injury to consumers; and

(5) can be sold at lower prices and compete unfairly with wholesome, unadulterated, and properly labeled and packaged articles, to the detriment of consumers and the public.

(b) Regulation by the department and cooperation by this state and the United States as provided by this chapter are appropriate to protect the health and welfare of consumers and otherwise accomplish the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1024, eff.

April 2, 2015.

Sec. 433.003. DEFINITIONS. In this chapter:

(1) "Animal food manufacturer" means a person in the business of manufacturing or processing animal food any part of which is derived from a carcass, or a part or product of a carcass, of livestock.

(2) "Capable of use as human food" means:

(A) not naturally inedible by humans; or

(B) not denatured or otherwise identified as required by department rule to deter its use as human food.

(3) "Color additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(77), eff. April 2, 2015.

(5) "Exotic animal" means a member of a species of game not indigenous to this state, including an axis deer, nilgai antelope, red sheep, or other cloven-hooved ruminant animal.

(6) "Food additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(7) "Inedible animal product" means a product, other than a meat food product, any part of which is made from a carcass, or a part or product of a carcass, of livestock.

(8) "Interstate commerce" means commerce between this state and:

(A) another state of the United States; or

(B) a foreign country.

(9) "Label" means a display of written, printed, or other graphic matter on the product or the immediate container, other than a package liner, of an article.

(10) "Labeling" means:

(A) a label; or

(B) other written, printed, or graphic material on an article or any container or wrapper of an article, or accompanying an article.

(11) "Livestock" means cattle, bison, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(12) "Meat broker" means a person in the business of buying

or selling, on commission, carcasses, parts of carcasses, meat, or meat food products of livestock, or otherwise negotiating purchases or sales of those articles other than for the person's own account or as an employee of another person.

(13) "Meat food product" means a product that is capable of use as human food and that is made in whole or part from meat or other portion of the carcass of livestock, except a product that:

(A) contains meat or other portions of the carcass only in a relatively small proportion or that historically has not been considered by consumers as a product of the meat food industry; and

(B) is exempted from the definition of meat food product by department rule under conditions assuring that the meat or other portions of the carcass contained in the product are unadulterated and that the product is not represented as a meat food product.

(14) "Official certificate" means a certificate prescribed by department rule for issuance by an inspector or other person performing official functions under this chapter.

(15) "Official marking device" means a device prescribed or authorized by department rule for use in applying an official mark.

(16) "Official establishment" means an establishment designated by the department at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under this chapter.

(17) "Official inspection legend" means a symbol prescribed by department rule showing that an article was inspected and passed as provided by this chapter.

(18) "Official mark" means the official inspection legend or other symbol prescribed by department rule to identify the status of an article or animal under this chapter.

(19) "Pesticide chemical" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(20) "Poultry" means a live or dead domesticated bird.

(21) "Poultry product" means a poultry carcass, part of a poultry carcass, or a product any part of which is made from a poultry carcass or part of a poultry carcass, except a product that:

(A) contains poultry ingredients only in a relatively small proportion or that historically has not been considered by consumers as a product of the poultry food industry; and

(B) is exempted from the definition of poultry product

by department rule under conditions assuring that the poultry ingredients in the product are unadulterated and that the product is not represented as a poultry product.

(22) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, stuffed, or manufactured or processed in any other manner.

(23) "Processing establishment" means a slaughtering, packing, meat-canning, or rendering establishment or a similar establishment.

(24) "Raw agricultural commodity" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(25) "Renderer" means a person in the business of rendering carcasses, or parts or products of carcasses, of livestock, other than rendering conducted under inspection under Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 41, Sec. 2, eff. May 15, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1025, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(77), eff. April 2, 2015.

Sec. 433.004. ADULTERATION. A carcass, part of a carcass, meat, or a meat food product is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless:

(A) the substance is not an added substance; and

(B) the quantity of the substance in or on the article does not ordinarily render it injurious to health;

(2) it bears or contains, because of administration of a substance to a live animal or otherwise, an added poisonous or deleterious substance that the department has reason to believe makes the article unfit for human food, other than a:

(A) pesticide chemical in or on a raw agricultural commodity;

(B) food additive; or

(C) color additive;

(3) any part of it is a raw agricultural commodity that bears or contains a pesticide chemical that is unsafe under Section 408, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 346a);

(4) it bears or contains a food additive that is unsafe under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348) or a color additive that is unsafe for purposes of Section 721 of that Act (21 U.S.C. Section 379e);

(5) it is not adulterated under Subdivision (3) or (4), but use of the pesticide chemical, food additive, or color additive that the article bears or contains is prohibited by department rule in establishments at which inspection is maintained under Subchapter B;

(6) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food;

(7) it is prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

(8) any part of it is the product of an animal, including an exotic animal, that has died in a manner other than slaughter;

(9) any part of its container is composed of a poisonous or deleterious substance that may render the contents injurious to health;

(10) it is intentionally subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(11) any part of a valuable constituent is omitted or abstracted from it, or a substance is substituted for all or part of it;

(12) damage or inferiority is concealed;

(13) a substance has been added to or mixed or packed with it in a manner that:

(A) increases its bulk or weight;

(B) reduces its quality or strength; or

(C) makes it appear better or of greater value than it is; or

(14) it is margarine containing animal fat and any part of the raw material used in it consists of a filthy, putrid, or decomposed substance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1026, eff. April 2, 2015.

Sec. 433.005. MISBRANDING. (a) A livestock or poultry product is misbranded if:

(1) any part of its labeling is false or misleading;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" immediately followed by the name of the food imitated;

(4) its container is made, formed, or filled so as to be misleading;

(5) except as provided by Subsection (b), it does not bear a label showing:

(A) the manufacturer's, packer's, or distributor's name and place of business; and

(B) an accurate statement of the quantity of the product by weight, measure, or numerical count;

(6) a word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling in sufficient terms and with sufficient conspicuousness, compared with other words, statements, designs, or devices in the label or labeling, to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by department rule under Section 433.043 unless:

(A) it conforms to the definition and standard; or

(B) its label bears:

(i) the name of the food specified in the definition and standard; and

(ii) to the extent required by department rule, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;

(8) it purports to be or is represented as a food for which a standard of fill of container has been prescribed by department

rule under Section 433.043 and the food does not meet the standard of fill of container, unless its label bears, in the manner and form prescribed by department rule, a statement that it does not meet the standard;

(9) except as provided by Subsection (c), it does not purport to be or is not represented as a food for which a standard of identity or composition has been prescribed by department rule unless its label bears:

(A) any common or usual name of the food; and

(B) if it is fabricated from two or more ingredients, the common or usual name of each ingredient;

(10) it purports to be or is represented for special dietary uses and its label does not bear the information concerning its vitamin, mineral, and other dietary properties that the department, after the executive commissioner or department consults with the United States Secretary of Agriculture, has determined, and the executive commissioner has prescribed by rule, to be necessary to fully inform purchasers of its value for those uses;

(11) it bears or contains artificial flavoring, artificial coloring, or a chemical preservative unless it bears labeling stating that fact, except as otherwise prescribed by department rule for situations in which compliance with this subdivision is impracticable; or

(12) it does not bear on itself or its container, as prescribed by department rule:

(A) the inspection legend and establishment number of the establishment in which the product was prepared; and

(B) notwithstanding any other provision of this section, other information required by department rule to assure that the product will not have false or misleading labeling and that the public will be informed of the manner of handling required to keep the product in wholesome condition.

(b) The executive commissioner may adopt rules:

(1) exempting from Subsection (a)(5) livestock products not in containers; and

(2) providing reasonable variations from Subsection (a)(5)(B) and exempting from that subsection small packages of livestock products or poultry products.

(c) For products subject to Subsection (a)(9), the department may authorize the designation of spices, flavorings, and colorings

without naming them. The executive commissioner may adopt rules establishing exemptions from Subsection (a)(9)(B) to the extent that compliance with that subsection is impracticable or would result in deception or unfair competition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1027, eff. April 2, 2015.

Sec. 433.006. EXEMPTION FOR PERSONAL USE OR DONATION TO NONPROFIT FOOD BANK. (a) The provisions of this chapter requiring inspection of the slaughter of livestock and the preparation of carcasses, parts of carcasses, meat, and meat food products at establishments conducting those operations do not apply to the slaughtering of livestock or the preparation and transportation in intrastate commerce of those articles if:

(1) the articles are:

(A) livestock exclusively for personal use by the owner of the livestock, a member of the owner's family, or a nonpaying guest of the owner; or

(B) exotic animals exclusively for donation by a hunter to a nonprofit food bank, as defined by Section 418.026(a), Government Code;

(2) the slaughter or preparation is conducted at the owner's premises, the premises where the hunter killed the exotic animal, or at a processing establishment; and

(3) the transportation is limited to moving the carcasses, parts of carcasses, meat, and meat food products to and from:

(A) the owner's premises and a processing establishment; or

(B) the premises where the hunter killed the exotic animal, the processing establishment, and the nonprofit food bank.

(b) The adulteration and misbranding provisions of this chapter, other than the requirement of an inspection legend, apply to articles prepared by a processing establishment under Subsection (a).

(c) This section does not grant a personal use exemption to an owner who intends to give carcasses, parts of carcasses, meat, or meat food products to any person other than a person listed in

Subsection (a)(1).

(d) An article described by Subsection (a)(1)(B) may not be combined with:

(1) a meat food product regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.); or

(2) a poultry product regulated under the federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 338 (H.B. 2213), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 338 (H.B. 2213), Sec. 2, eff. September 1, 2021.

Sec. 433.0065. ANIMAL SHARE EXEMPTION; CIVIL PENALTY. (a) In this section, "animal share" means an ownership interest in one or more identified livestock animals created by a contract between a farmer or rancher who owns the livestock and a prospective co-owner of the livestock.

(b) An animal share executed by a co-owner and a farmer or rancher under this section must include:

(1) a bill of sale the farmer or rancher provides to the co-owner conveying an ownership interest in the livestock;

(2) a provision authorizing the farmer or rancher to board the livestock and arrange preparation of the livestock as meat and meat food products for the co-owner; and

(3) a provision entitling the co-owner to a share of meat and meat food products derived from the livestock.

(c) The provisions of this chapter requiring inspection of livestock before slaughter and inspection of the preparation of meat and meat food products do not apply to the slaughter of livestock and preparation of meat and meat food products if:

(1) ownership of the livestock under an animal share is established before the livestock is slaughtered and the meat and meat food products are prepared;

(2) the meat and meat food products are:

(A) prepared from livestock subject to an animal share

and delivered to the establishment preparing the products by the farmer or rancher boarding the livestock; and

(B) following preparation, delivered directly to the co-owner;

(3) on delivery of the meat or meat food products to the co-owner, the establishment provides to the co-owner notice that the department has not inspected the meat or meat food products in:

(A) a separate written statement that prominently displays the warning; or

(B) a warning statement prominently displayed on a label affixed to the meat or meat food product packaging;

(4) the label affixed to the meat or meat food product clearly and conspicuously states "Not for Sale"; and

(5) the farmer or rancher provides to the co-owner information describing the standards the farmer or rancher followed in maintaining livestock health and preparing the meat and meat food products derived from the livestock.

(d) A person may not sell, donate, or commercially redistribute meat or meat food products produced in accordance with this section. A person who violates this subsection is liable to this state for a civil penalty in the amount of $10,000 for each violation. The attorney general may bring an action to recover a civil penalty authorized under this subsection and may recover reasonable expenses incurred in obtaining the civil penalty, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

(e) A farmer or rancher may not publish a statement that implies department approval or endorsement regarding meat or meat food products delivered pursuant to an animal share.

(f) The adulteration and misbranding provisions of this chapter, other than the requirement of an inspection legend, apply to meat or meat food products prepared by a processing establishment under this section.

(g) This section does not authorize the preparation of meat or meat food products in violation of the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.).

Added by Acts 2023, 88th Leg., R.S., Ch. 1137 (S.B. 691), Sec. 1, eff. September 1, 2023.

Sec. 433.007. CONSTRUCTION WITH OTHER LAW. (a) This chapter prevails over any other law, including Chapter 431 (Texas Food, Drug, and Cosmetic Act), to the extent of any conflict.

(b) This chapter applies to a person, establishment, animal, or article regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 2, eff. Sept. 1, 1997.

Sec. 433.008. RULES. (a) The executive commissioner shall adopt rules necessary for the efficient execution of this chapter.

(b) The executive commissioner shall adopt and use federal rules, regulations, and procedures for meat and poultry inspection, as applicable.

(c) The executive commissioner may adopt rules requiring a processing establishment that processes livestock under Section 433.006(a)(2) to obtain a grant of custom exemption for that activity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 539, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1028, eff. April 2, 2015.

Sec. 433.009. FEES. The department may collect fees for overtime and special services rendered to establishments, and may collect a fee for services required to be performed under this chapter relating to the inspection of animals, birds, or products that are not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.). The executive commissioner by rule shall set the inspection fee in an amount sufficient to recover the department's costs of providing those services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1029, eff. April 2, 2015.

SUBCHAPTER B. INSPECTION AND OTHER REGULATION

Sec. 433.021. INSPECTION BEFORE SLAUGHTER. (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the department shall examine and inspect each livestock animal before it is allowed to enter a processing establishment in this state in which slaughtering and preparation of meat and meat food products of livestock are conducted solely for intrastate commerce.

(b) Any livestock animal found on inspection to show symptoms of disease shall be set apart and slaughtered separately from other livestock. The carcass of the animal shall be carefully examined and inspected as provided by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1030, eff. April 2, 2015.

Sec. 433.022. INSPECTION OF CARCASSES. (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the department shall inspect each livestock carcass or part of a carcass capable of use as human food that is to be prepared at a processing establishment in this state in which those articles are prepared solely for intrastate commerce. If a carcass or part of a carcass is brought into the processing establishment, the inspection shall be made before a carcass or part of a carcass is allowed to enter a department in which it is to be treated and prepared for meat food products. The department shall also inspect products that have left a processing establishment and are returned to a processing establishment in which inspection is maintained.

(b) The inspector shall mark, stamp, tag, or label a carcass or part of a carcass found on inspection to be unadulterated as "inspected and passed," and one found adulterated as "inspected and condemned."

(c) If an inspector considers a subsequent inspection necessary, the inspector may reinspect any carcass or part of a carcass and condemn it if it has become adulterated.

(d) The processing establishment, in the presence of an inspector, shall destroy for food purposes each condemned carcass or part of a carcass. If the establishment fails to destroy a condemned carcass or part of a carcass, the department may remove the inspectors from the establishment.

(e) The executive commissioner may adopt rules that limit the entry of carcasses, parts of carcasses, meat, or meat food products into an establishment in which inspection under this chapter is maintained to assure that entry of the article into the establishment is consistent with the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1031, eff. April 2, 2015.

Sec. 433.023. INVESTIGATION OF DISEASE FINDINGS; QUARANTINE. (a) The department may investigate a disease finding by a livestock inspector if the department determines that the investigation is in the best interest of public health.

(b) If a disease adverse to the public health is found under this chapter, the commissioner may quarantine the premises where an animal is located that is afflicted with any stage of a disease that may be transmitted to man or other animals. A quarantined animal may be removed from a quarantined area only on permission from and under supervision by the commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1032, eff. April 2, 2015.

Sec. 433.024. INSPECTION OF PROCESSING AND SLAUGHTERING ESTABLISHMENTS. (a) The department shall inspect each processing establishment in which livestock is slaughtered and meat and meat food products of the livestock are prepared solely for intrastate

commerce as necessary to obtain information about the establishment's sanitary conditions.

(b) The department shall inspect each slaughtering establishment whose primary business is the selling of livestock to be slaughtered by the purchaser on premises owned or operated by the seller. This subsection does not nullify the provisions in Section 433.006 relating to exemptions or Section 433.0065 relating to an animal share exemption.

(c) The executive commissioner shall adopt rules governing sanitation maintenance in processing and slaughtering establishments as defined by this section.

(d) If sanitary conditions of a processing establishment render meat or meat food products adulterated, the department shall prohibit the meat or meat food products from being labeled, marked, stamped, or tagged as "Texas inspected and passed."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 308, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1033, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 338 (H.B. 2213), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1137 (S.B. 691), Sec. 2, eff. September 1, 2023.

Sec. 433.0245. REQUIREMENTS FOR CERTAIN LOW-VOLUME LIVESTOCK PROCESSING ESTABLISHMENTS. (a) Except as provided by this section, the inspection and regulatory provisions of this chapter do not apply to a low-volume livestock processing establishment that is exempt from federal inspection.

(a-1) For purposes of this section, a low-volume livestock processing establishment:

(1) includes an establishment that processes fewer than 10,000 domestic rabbits or more than 1,000 but fewer than 10,000 poultry in a calendar year; and

(2) does not include an establishment that processes 1,000 or fewer poultry raised by the operator of the establishment in a calendar year.

(b) Except as provided by Subsections (e) and (f), a low-volume livestock processing establishment that is exempt from federal inspection shall register with the department in accordance with rules adopted by the executive commissioner for registration.

(c) Except as provided by Subsections (e) and (f), a low-volume livestock processing establishment that is exempt from federal inspection shall develop a sanitary operation procedures plan.

(d) Except as provided by Subsection (f), if contaminated livestock can be reasonably traced to a low-volume livestock processing establishment that is exempt from federal inspection, the department may request the attorney general or the district or county attorney in the jurisdiction where the facility is located to institute a civil suit to enjoin the operation of the establishment until the department determines that the establishment has been sanitized and is operating safely.

(e) A low-volume livestock processing establishment that is exempt from federal inspection and processes fewer than 500 domestic rabbits in a calendar year is not required to comply with Subsection (b) or (c).

(f) An establishment described by Subsection (a-1)(2):

(1) is not subject to additional state regulation; and

(2) may sell poultry products directly to consumers.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1034, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1032 (H.B. 410), Sec. 1, eff. September 1, 2019.

Sec. 433.025. INSPECTION OF MEAT FOOD PRODUCTS. (a) To prevent the use in intrastate commerce of adulterated meat food products, the department shall examine and inspect all meat food products prepared in a processing establishment solely for intrastate commerce. To make the examination and inspection, an inspector shall be given access at all times to each part of the establishment, regardless of whether the establishment is being operated.

(b) The inspector shall mark, stamp, tag, or label products found unadulterated as "Texas inspected and passed" and those found

adulterated as "Texas inspected and condemned."

(c) The establishment shall, in the manner provided for condemned livestock or carcasses, destroy for food purposes each condemned meat food product. If the establishment does not destroy a condemned meat food product, the department may remove inspectors from the establishment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1035, eff. April 2, 2015.

Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a) The department shall provide for inspection at night of livestock slaughtered at night and food products prepared at night for the purposes of intrastate commerce.

(b) If the department determines that a person's operating hours are capricious or unnecessarily difficult, the department may set the person's time and duration of operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1036, eff. April 2, 2015.

Sec. 433.027. INSPECTORS. (a) The department shall hire inspectors of livestock that is subject to inspection under this chapter, and of carcasses, parts of carcasses, meat, meat food products, and sanitary conditions of establishments in which meat and meat food products are prepared. An inspector is an employee of the department and is under supervision of the chief officer in charge of inspection.

(b) The department shall designate at least one state inspector for each state representative district.

(c) The chief officer in charge of inspection is responsible for animal health as it relates to public health. The chief officer in charge of inspection must be licensed to practice veterinary medicine in this state or must be eligible for such a license when employed and must obtain the license not later than two years after

the date of employment.

(d) An inspector shall perform the duties provided by this chapter and department rules. An inspection or examination must be performed as provided by department rules.

(e) An inspector may not stamp, mark, tag, or label a carcass, part of a carcass, or a meat food product unless it has been inspected and found unadulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1037, eff. April 2, 2015.

Sec. 433.028. REFUSAL TO INSPECT. (a) The department may withdraw or refuse to provide inspection service under this subchapter from an establishment for the period the department determines necessary to carry out the purposes of this chapter if the department determines after opportunity for hearing that the applicant for or recipient of the service is unfit to engage in a business requiring inspection under this subchapter because the applicant or recipient, or a person responsibly connected with the applicant or recipient, has been convicted in a federal or state court of a felony or more than one violation of another law based on:

(1) acquiring, handling, or distributing unwholesome, mislabeled, or deceptively packaged food; or

(2) fraud in connection with a transaction in food.

(b) The department's determination and order under this section is final unless, not later than the 30th day after the effective date of the order, the affected applicant or recipient files an application for judicial review in the appropriate court as provided by Section 433.082. Judicial review of the order is on the record from which the determination and order was made.

(c) This section does not affect the provisions of this subchapter relating to withdrawal of inspection services from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts of carcasses, meat, or meat food products.

(d) For the purposes of this section, a person is responsibly connected with the business if the person is a partner, officer, director, holder or owner of 10 percent or more of the business's

voting stock, or managerial or executive employee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1038, eff. April 2, 2015.

Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION. (a) Under this subchapter, the department may not inspect an establishment for the slaughter of livestock or the preparation of carcasses, parts of carcasses, or products of livestock if the articles are not intended for use as human food. Before offered for sale or transportation in intrastate commerce, those articles, unless naturally inedible by humans, shall be denatured or identified as provided by department rule to deter their use for human food.

(b) A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce a carcass, part of a carcass, meat, or a meat food product that is not intended for use as human food unless the article is naturally inedible by humans, denatured, or identified as required by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1039, eff. April 2, 2015.

Sec. 433.030. DETENTION. (a) The department may detain a carcass, part of a carcass, meat, a meat food product of livestock, a product exempted from the definition of meat food product, or a dead, dying, disabled, or diseased livestock animal if the department finds the article on premises where it is held for purposes of intrastate commerce, or during or after distribution in intrastate commerce, and there is reason to believe that the article:

(1) is adulterated or misbranded and is capable of use as human food; or

(2) has not been inspected as required by, or has been or is intended to be distributed in violation of:

(A) this subchapter;

(B) the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.);

(C) the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.); or

(D) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(b) An article may be detained for not more than 20 days and only pending action under Section 433.031 or notification of a federal authority having jurisdiction over the article.

(c) A person may not move a detained article from the place where it is detained until the article is released by the department.

(d) The department may require that each official mark be removed from the article before it is released, unless the department determines that the article is eligible to bear the official mark.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1040, eff. April 2, 2015.

Sec. 433.031. SEIZURE. (a) A carcass, part of a carcass, meat, or a meat food product of livestock, or a dead, dying, disabled, or diseased livestock animal, that is being transported in intrastate commerce or held for sale after transportation in intrastate commerce may be proceeded against, seized, and condemned if the article:

(1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;

(2) is capable of use as human food and is adulterated or misbranded; or

(3) is otherwise in violation of this chapter.

(b) An action against an article under this section must be on a complaint in the proper court in the county in which the article is found. To the extent possible, the law governing admiralty cases applies to a case under this section, except that:

(1) either party may demand trial by jury of an issue of fact in the case; and

(2) the proceedings must be brought by and in the name of

this state.

(c) After entry of the decree, a condemned article shall be destroyed or sold as the court directs. If the article is sold, the proceeds, minus court costs, court fees, and storage and other proper expenses, shall be deposited in the state treasury. An article may not be sold in violation of this chapter, the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). On execution and delivery of a good and sufficient bond conditioned that the article will not be disposed of in violation of this chapter or federal law, the court may direct the article to be delivered to its owner by the department subject to supervision as necessary to ensure compliance with applicable laws.

(d) If a decree of condemnation is entered against the article and it is released under bond or destroyed, the court shall award court costs, court fees, and storage and other proper expenses against any person intervening as claimant of the article.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1041, eff. April 2, 2015.

Sec. 433.032. STORAGE AND HANDLING. (a) The executive commissioner may adopt rules prescribing conditions under which carcasses, parts of carcasses, meat, and meat food products of livestock must be stored and handled by a person in the business of buying, selling, freezing, storing, or transporting those articles in or for intrastate commerce if the executive commissioner considers the rules necessary to prevent adulterated or misbranded articles from being delivered to a consumer.

(b) A person may not violate a rule adopted under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1042, eff. April 2, 2015.

Sec. 433.033. EQUINE PRODUCTS. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, a carcass, part of a carcass, meat, or a meat food product of a horse, mule, or other equine unless the article is plainly and conspicuously marked or labeled or otherwise identified, as required by department rule, to show the kind of animal from which the article was derived. The department may require an establishment at which inspection is maintained under this chapter to prepare those articles in an establishment separate from one in which livestock other than equines is slaughtered or carcasses, parts of carcasses, meat, or meat food products of livestock other than equines are prepared.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1043, eff. April 2, 2015.

Sec. 433.034. RECORDS. (a) A person engaged for intrastate commerce in any of the following business activities shall keep records of each of the person's business transactions:

(1) slaughtering livestock;

(2) preparing, freezing, packaging, or labeling a livestock carcass or a part or product of a livestock carcass for use as human food or animal food;

(3) transporting, storing, buying, or selling, as a meat broker, wholesaler, or otherwise, a livestock carcass or a part or product of a livestock carcass;

(4) rendering; or

(5) buying, selling, or transporting dead, dying, disabled, or diseased livestock, or a part of a carcass of a livestock animal that died in a manner other than slaughter.

(b) On notice by the department, a person required to keep records shall at all reasonable times give the department and any representative of the United States Secretary of Agriculture accompanying the department staff:

(1) access to the person's place of business; and

(2) an opportunity to:

(A) examine the facilities, inventory, and records;

(B) copy the records required by this section; and

(C) take a reasonable sample of the inventory, on payment of the fair market value of the sample.

(c) The person shall maintain a record required by this section for the period prescribed by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1044, eff. April 2, 2015.

Sec. 433.035. INSPECTION AND OTHER REGULATION OF EXOTIC ANIMALS IN INTERSTATE COMMERCE. (a) The department has the same rights of examination, inspection, condemnation, and detention of live exotic animals and carcasses, parts of carcasses, meat, and meat food products of exotic animals slaughtered and prepared for shipment in interstate commerce as the department has with respect to exotic animals slaughtered and prepared for shipment in intrastate commerce.

(b) The department has the same rights of inspection of establishments handling exotic animals slaughtered and prepared for shipment in interstate commerce as the department has with respect to establishments handling exotic animals slaughtered and prepared for intrastate commerce.

(c) The record-keeping requirements of Section 433.034 that apply to persons slaughtering, preparing, buying, selling, transporting, storing, or rendering in intrastate commerce apply to persons performing similar functions with exotic animals in interstate commerce.

(d) A rulemaking power of the executive commissioner relating to animals in intrastate commerce applies to exotic animals in interstate commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1045, eff. April 2, 2015.

SUBCHAPTER C. LABELING AND OTHER STANDARDS

Sec. 433.041. LABELING PASSED PRODUCTS. (a) When meat or a

meat food product prepared for intrastate commerce that has been inspected as provided by this chapter and marked "Texas inspected and passed" is placed or packed in a container or covering in an establishment in which inspection is performed under this chapter, the person preparing the product shall attach a label to the container or covering stating that the contents have been "Texas inspected and passed" under this chapter. The inspector shall supervise the attachment of the label and the sealing or enclosing of the meat or meat food product in the container or covering.

(b) When an inspected carcass, part of a carcass, meat, or a meat food product is found to be unadulterated and leaves the establishment, it must bear legible information on itself or its container, as required by department rule, to prevent it from being misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1046, eff. April 2, 2015.

Sec. 433.0415. LABELING CELL-CULTURED PRODUCT. (a) In this section:

(1) "Cell-cultured product" has the meaning assigned by Section 431.0805.

(2) "Close proximity" means:

(A) immediately before or after the name of the product;

(B) in the line of the label immediately before or after the line containing the name of the product; or

(C) within the same phrase or sentence containing the name of the product.

(b) A cell-cultured product must be labeled in prominent type equal to or greater in size than the surrounding type and in close proximity to the name of the product using one of the following:

(1) "cell-cultured";

(2) "lab-grown"; or

(3) a similar qualifying term or disclaimer intended to clearly communicate to a consumer the contents of the product.

(c) The provisions of this subchapter apply to a cell-cultured

product, as applicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 32 (S.B. 664), Sec. 3, eff. September 1, 2023.

Sec. 433.042. SALE OF MISLABELED ARTICLES PROHIBITED. A person may not sell an article subject to this chapter or offer the article for sale, in intrastate commerce, under a false or misleading name or other marking or in a container of a misleading form or size. An established trade name, other marking and labeling, or a container that is not false or misleading and that is approved by the department is permitted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1047, eff. April 2, 2015.

Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL. (a) If the executive commissioner determines that standards are necessary to protect the public, the executive commissioner may adopt rules prescribing:

(1) the style and type size that must be used for material required to be incorporated in labeling to avoid false or misleading labeling of an article subject to this subchapter or Subchapter B; and

(2) subject to Subsection (b), a definition or standard of identity or composition or a standard of fill of container for an article subject to this subchapter.

(b) A standard prescribed under Subsection (a)(2) must be consistent with standards established under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). To avoid inconsistency, the department shall consult with the United States Secretary of Agriculture before the standard is prescribed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1048, eff. April 2, 2015.

Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE. (a) If the department has reason to believe that a marking or labeling or the size or form of a container in use or proposed for use in relation to an article subject to this subchapter is false or misleading, the department may prohibit the use until the marking, labeling, or container is modified in the manner the department prescribes to prevent it from being false or misleading.

(b) The person using or proposing to use the marking, labeling, or container may request a hearing. The department may prohibit the use pending a final determination by the department.

(c) A hearing and any appeal under this section are governed by the department's rules for a contested case hearing and Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1049, eff. April 2, 2015.

Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND CERTIFICATE. A person may not:

(1) cast, print, lithograph, or make in any other manner, except as authorized by the department in accordance with department rules:

(A) a device containing or label bearing an official mark or a simulation of an official mark; or

(B) a form of official certificate or simulation of an official certificate;

(2) forge an official device, mark, or certificate;

(3) without the department's authorization, use, alter, detach, deface, or destroy an official device, mark, or certificate or use a simulation of an official device, mark, or certificate;

(4) detach, deface, destroy, or fail to use an official device, mark, or certificate, in violation of a department rule;

(5) knowingly possess, without promptly notifying the

department:

(A) an official device;

(B) a counterfeit, simulated, forged, or improperly altered official certificate; or

(C) a device, label, animal carcass, or part or product of an animal carcass, bearing a counterfeit, simulated, forged, or improperly altered official mark;

(6) knowingly make a false statement in a shipper's certificate or other certificate provided for by department rule; or

(7) knowingly represent that an article has been inspected and passed, when it has not, or is exempted, when it is not.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1050, eff. April 2, 2015.

SUBCHAPTER D. MISCELLANEOUS PROHIBITIONS

Sec. 433.051. SLAUGHTER OR PREPARATION NOT IN COMPLIANCE WITH CHAPTER. A person, at an establishment preparing articles only for intrastate commerce, may not slaughter a livestock animal or prepare a carcass, part of a carcass, meat, or a meat food product of a livestock animal, capable of use as human food, except in compliance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.052. SALE, RECEIPT, OR TRANSPORTATION OF ARTICLES NOT IN COMPLIANCE WITH CHAPTER. A person may not:

(1) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, livestock or a carcass, part of a carcass, meat, or a meat food product of livestock that is:

(A) capable of use as human food and is adulterated or misbranded when sold, offered, transported, or received for transportation; or

(B) required to be inspected by this chapter but has not been inspected and passed; or

(2) perform an act with respect to livestock or a carcass,

part of a carcass, meat, or a meat food product of livestock, while the article is being transported in intrastate commerce or held for sale after transportation in intrastate commerce, that causes or is intended to cause the article to be adulterated or misbranded.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, slaughtered poultry from which blood, feathers, feet, head, or viscera have not been removed as provided by department rule, except as authorized by department rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1051, eff. April 2, 2015.

Sec. 433.054. DEAD, DYING, DISABLED, AND DISEASED ANIMALS; ANIMALS DYING IN MANNER OTHER THAN SLAUGHTER. (a) If registration is required by department rule, a person may not engage in any of the following businesses, in or for intrastate commerce, unless the person has registered with the department:

(1) meat brokering or rendering;

(2) manufacturing animal food;

(3) wholesaling or warehousing for the public livestock or any part of a carcass of livestock, regardless of whether it is intended for human food; or

(4) buying, selling, or transporting dead, dying, disabled, or diseased livestock or part of a carcass of livestock.

(b) A registration must include the person's name, each of the person's places of business, and each trade name under which the person does business.

(c) A person may not engage in the business of selling, buying, or transporting in intrastate commerce dead, dying, disabled, or diseased livestock or part of the carcass of livestock that died otherwise than by slaughter unless the transaction or transportation complies with department rules adopted to assure that the animals or

unwholesome parts or products of the animals are not used for human food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1052, eff. April 2, 2015.

Sec. 433.055. MISCELLANEOUS PROHIBITIONS APPLICABLE TO EXOTIC ANIMALS IN INTERSTATE COMMERCE. The prohibitions of Sections 433.051-433.054 that apply to intrastate commerce also apply to exotic animals in interstate commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.056. INEDIBLE ANIMAL PRODUCTS. A person in the business of buying, selling, or transporting, in intrastate commerce, may not offer an inedible animal product for sale unless:

(1) the sale is for further sterilization processing; or

(2) the product has been processed in a manner that prevents the survival of disease-producing organisms or deleterious substances in the processed material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. COOPERATION WITH FEDERAL GOVERNMENT

Sec. 433.071. RESPONSIBLE AGENCY. (a) The department is the state agency responsible for cooperating with the United States Secretary of Agriculture under Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454).

(b) The department shall cooperate with the secretary of agriculture in developing and administering the meat and poultry inspection program of this state under this chapter in a manner that will achieve the purposes of this chapter and federal law and that will ensure that the requirements will be at least equal to those imposed under Titles I and IV, Federal Meat Inspection Act (21 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1-4, 6-10, and

12-22, Federal Poultry Products Inspection Act (21 U.S.C. Sections 451-453, 455-459, and 461-467d), not later than the dates prescribed by federal law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1053, eff. April 2, 2015.

Sec. 433.072. ADVISORY COMMITTEES. The commissioner may recommend to the United States Secretary of Agriculture state officials or employees for appointment to advisory committees provided for by Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454). The commissioner shall serve as the representative of the governor for consultation with the secretary of agriculture under those Acts unless the governor selects another representative.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND TRAINING PROGRAM. The department may accept from the United States Secretary of Agriculture:

(1) advisory assistance in planning and otherwise developing the state program;

(2) technical and laboratory assistance;

(3) training, including necessary curricular and instructional materials and equipment; and

(4) financial and other aid for administration of the program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1054, eff. April 2, 2015.

Sec. 433.074. FINANCING. The department may spend state funds

appropriated for administration of this chapter to pay 50 percent of the estimated total cost of cooperation with the federal government under this subchapter, and all of the costs of performing services in relation to the inspection of animals or products not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1055, eff. April 2, 2015.

SUBCHAPTER F. ENFORCEMENT

Sec. 433.081. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter for which this chapter does not provide another criminal penalty.

(b) Except as provided by Subsection (c), an offense under this section is punishable by a fine of not more than $1,000, imprisonment for not more than one year, or both.

(c) If an offense under this section involves intent to defraud or a distribution or attempted distribution of an adulterated article, except adulteration described by Section 433.004(11), (12), or (13), the offense is punishable by a fine of not more than $10,000, imprisonment for not more than three years, or both.

(d) A person does not commit an offense under this section by receiving for transportation an article in violation of this chapter if the receipt is in good faith and if the person furnishes, on request of the department:

(1) the name and address of the person from whom the article is received; and

(2) any document pertaining to the delivery of the article.

(e) This chapter does not require the department to report for prosecution, or for institution of complaint or injunction proceedings, a minor violation of this chapter if the department believes that the public interest will be adequately served by a suitable written warning notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1056, eff. April 2, 2015.

Sec. 433.0815. INTERFERENCE WITH INSPECTION; CRIMINAL PENALTIES. (a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with a livestock inspector while the inspector is performing a duty under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.

Sec. 433.082. JURISDICTION FOR VIOLATION. The district court has jurisdiction of:

(1) an action to enforce and to prevent and restrain a violation of this chapter; and

(2) any other case arising under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 433.083. INVESTIGATION BY DEPARTMENT. The department may investigate and gather and compile information concerning the organization, business, conduct, practices, and management of a person engaged in intrastate commerce and the person's relation to other persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1057, eff. April 2, 2015.

Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes of this chapter, the department at all reasonable times shall be given access to documentary evidence of a person being investigated or

proceeded against to examine or copy the evidence. The department by subpoena may require the attendance and testimony of a witness and the production of documentary evidence relating to a matter under investigation, at a designated place of hearing in a county in which the witness resides, is employed, or has a place of business.

(b) The commissioner or the commissioner's designee may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. On disobedience of a subpoena, the department may request the district court to require attendance and testimony of a witness and the production of documentary evidence, and the district court having jurisdiction over the inquiry may order the compliance. Failure to obey the court's order is punishable as contempt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1058, eff. April 2, 2015.

Sec. 433.085. REPORT TO DEPARTMENT. The department, by general or special order, may require a person engaged in intrastate commerce to file with the department an annual report, special report, or both, or answers in writing to specific questions furnishing the department information that the department requires concerning the person's organization, business, conduct, practices, management, and relation to other persons filing written answers and reports. The department may prescribe the form of the report or answers, require the report or answers to be given under oath, and prescribe a reasonable deadline for filing the report or answers, subject to the granting of additional time by the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1059, eff. April 2, 2015.

Sec. 433.086. MANDAMUS TO COMPEL COMPLIANCE. On application of the attorney general at the request of the department, the district court may issue a writ of mandamus ordering a person to comply with this chapter or an order under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1060, eff. April 2, 2015.

Sec. 433.087. DEPOSITIONS. (a) The department may order testimony to be taken before a person designated by the department and having power to administer oaths at any stage of a proceeding or investigation under this chapter. A person may be compelled to appear and depose or produce documentary evidence at a deposition in the same manner as a witness may be compelled to appear and testify and produce documentary evidence before the department under this chapter.

(b) The person taking the deposition shall transcribe or supervise the transcription of the testimony. The transcript must be signed by the person deposed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1061, eff. April 2, 2015.

Sec. 433.088. COMPENSATION OF WITNESS OR REPORTER. A witness summoned before the department is entitled to the same fees and mileage paid a witness in a state court. A witness whose deposition is taken and the person taking the deposition are each entitled to the same fees paid for similar services in a state court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1062, eff. April 2, 2015.

Sec. 433.089. IMMUNITY. (a) A person is not excused from attending and testifying or producing documentary evidence before the department or in obedience to the department's subpoena, whether signed by the commissioner or the commissioner's designee, or in a cause or proceeding based on or growing out of an alleged violation

of this chapter, on the ground that the required testimony or evidence may tend to incriminate the person or subject the person to penalty or forfeiture.

(b) A person may not be prosecuted or subjected to a penalty or forfeiture for or because of a transaction or matter concerning which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination.

(c) The person testifying under this section is not exempt from prosecution and punishment for perjury committed in that testimony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1063, eff. April 2, 2015.

Sec. 433.090. CONTEMPT. (a) A person commits an offense if the person neglects or refuses to attend and testify or answer a lawful inquiry or to produce documentary evidence, if the person has the power to do so, in obedience to a subpoena or lawful requirement of the department.

(b) An offense under this section is punishable by a fine of not less than $1,000 or more than $5,000, imprisonment for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1064, eff. April 2, 2015.

Sec. 433.091. FALSE REPORT; FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) makes or causes to be made a false entry in an account, record, or memorandum kept by a person subject to this chapter;

(2) neglects or fails to make or cause to be made full entries in an account, record, or memorandum kept by a person subject to this chapter of all facts and transactions pertaining to the person's business;

(3) removes from the jurisdiction of this state or

mutilates, alters, or otherwise falsifies documentary evidence of a person subject to this chapter; or

(4) refuses to submit to the department, for inspection and copying, documentary evidence in the person's possession or control of a person subject to this chapter.

(b) An offense under this section is punishable by a fine of not less than $1,000 or more than $5,000, imprisonment for not more than three years, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1065, eff. April 2, 2015.

Sec. 433.092. FAILURE TO REPORT; CIVIL PENALTY. (a) If a person required by this chapter to file an annual or special report does not file the report before the deadline for filing set by the department and the failure continues for 30 days after notice of the default, the person forfeits to the state $100 for each day the failure continues.

(b) An amount due under this section is payable to the state treasury and is recoverable in a civil suit in the name of the state brought in the district court of the county in which the person's principal office is located or in which the person does business.

(c) Each district attorney, under the direction of the attorney general, shall prosecute for the recovery of an amount due under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1066, eff. April 2, 2015.

Sec. 433.093. UNLAWFUL DISCLOSURE; CRIMINAL PENALTY. (a) A state officer or employee commits an offense if the officer or employee, without the approval of the commissioner, makes public information obtained by the department.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $5,000, imprisonment for not more than one

year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1067, eff. April 2, 2015.

Sec. 433.094. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this chapter, a rule adopted under the authority of this chapter, or an order or license issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) such other matters as justice may require.

(c) The penalty may not exceed $25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1068, eff. April 2, 2015.

Sec. 433.095. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the administrative law judge shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the department shall issue an order requiring that the person pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(77), eff. April 2, 2015.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1069, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(77), eff. April 2, 2015.

Sec. 433.096. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the fact of the violation, or both.

(b-1) Within the period prescribed by Subsection (b), a person who files a petition for judicial review may:

(1) stay the enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(b-2) If the department receives a copy of an affidavit under

Subsection (b-1)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) A bond posted under this section must be in a form approved by the court and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to, post the bond with, or file the affidavit with the court within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1070, eff. April 2, 2015.

Sec. 433.097. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released if the person has posted a bond.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1071, eff. April 2, 2015.

Sec. 433.098. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 388, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1072, eff. April 2, 2015.

Sec. 433.099. INJUNCTION. (a) If it appears that a person has violated or is violating this chapter or a rule adopted under this chapter, the department may request the attorney general or the district attorney or county attorney in the jurisdiction where the violation is alleged to have occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation; or

(2) a permanent or temporary injunction, a temporary restraining order, or other appropriate remedy, if the department shows that the person has engaged in or is engaging in a violation.

(b) Venue for a suit brought under this section is in the county in which the violation occurred or in Travis County.

(c) The department or the attorney general may recover reasonable expenses incurred in obtaining injunctive relief under this section, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses. The expenses recovered by the department under this section may be used for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be used by the attorney general for any purpose.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1073, eff. April 2, 2015.

Sec. 433.100. EMERGENCY WITHDRAWAL OF MARK OR SUSPENSION OF INSPECTION SERVICES. (a) The department may immediately withhold the mark of inspection or suspend or withdraw inspection services if:

(1) the department determines that a violation of this chapter presents an imminent threat to public health and safety; or

(2) a person affiliated with the processing establishment impedes an inspection under this chapter.

(b) An affected person is entitled to a review of an action of the department under Subsection (a) in the same manner that a refusal or withdrawal of inspection services may be reviewed under Section 433.028.

Added by Acts 2001, 77th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1074, eff. April 2, 2015.

CHAPTER 434. PUBLIC HEALTH PROVISIONS RELATING TO PRODUCTION OF BAKED GOODS

SUBCHAPTER A. BAKERIES

Sec. 434.001. DEFINITION. In this subchapter "bakery" means a business producing, preparing, storing, or displaying bakery products intended for sale for human consumption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.002. BAKERY REQUIREMENTS. (a) A building used or occupied as a bakery shall be clean and properly lighted, drained, and ventilated.

(b) A bakery shall have adequate plumbing and drainage facilities, including suitable wash sinks and restroom facilities. Restroom facilities shall be separate from the rooms in which the bakery products are produced or handled. Each wash sink area and restroom facility shall be clean, sanitary, well lit, and ventilated.

(c) The floors, walls, and ceilings of a room in which dough is mixed or handled, pastry is prepared for baking, or bakery products or the ingredients of those products are otherwise handled or stored shall be clean, wholesome, and sanitary. Each opening into the room, including a window or door, shall be properly screened or otherwise protected to exclude flies.

(d) A showcase, shelf, or other place from which bakery products are sold shall at all times be clean, wholesome, covered, properly ventilated, and protected from dust and flies.

(e) A workroom may not be used for purposes other than those directly connected with the preparation, baking, storage, or handling of food. A workroom may not be used as a washing, sleeping, or

living room and shall at all times be kept separate and closed from living and sleeping rooms.

(f) Each bakery shall provide, separate from the workrooms, a dressing room for the changing and hanging of wearing apparel. Each dressing room shall be kept clean at all times.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.003. SANITARY REQUIREMENTS. (a) A person may not sit or lie on any table, bench, trough, or shelf intended for dough or bakery products.

(b) Animals or fowl may not be kept or allowed in any bakery or other place where bakery products are produced or stored.

(c) A person engaged in the preparation or handling of bakery products shall wash the person's arms and hands thoroughly before beginning the preparation, mixing, or handling of ingredients used in baking. A bakery shall provide sufficient soap, washbasins, and clean towels for that purpose.

(d) A person may not use tobacco in any form in any room in which a bakery product is manufactured, wrapped, or prepared for sale.

(e) A person with a communicable disease may not work in a bakery, handle any product in the bakery, or deliver a product from the bakery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.004. WHOLESOME INGREDIENTS REQUIRED. (a) Materials used in the production or preparation of bakery products shall be stored, handled, and maintained in a manner that protects the materials from spoiling and contamination. Materials may not be used if spoiled, contaminated, or otherwise likely to make the bakery product unwholesome or unfit as food.

(b) The ingredients used in the production of bakery products and the sale or offering for sale of those products shall comply with the laws relating to the adulteration and misbranding of food. Ingredients may not be used that may make the bakery product injurious to health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.005. REQUIREMENTS FOR TRANSPORTATION OF BAKERY PRODUCTS. A vehicle, box, basket, or other receptacle in which bakery products are transported shall at all times be kept clean and free from dust, flies, or other contaminants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.006. STORAGE RECEPTACLE REQUIREMENTS. (a) A box or other receptacle for the storage or receipt of bakery products shall be:

(1) constructed and placed to be free from contamination from streets, alleys, and sidewalks;

(2) raised at least 10 inches above the level of the street or sidewalk; and

(3) clean and sanitary.

(b) Bread may not be placed in a storage box with other food except other bakery products.

(c) A storage box shall be equipped with a private lock and shall be kept locked except when opened to receive or remove bakery products or when being cleaned.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.007. WEIGHT STANDARDS FOR BREAD LOAVES. (a) Loaves of bread made by persons in the business of wholesaling and retailing bread must comply with the weight standards in this section.

(b) The standard weights for a loaf of bread are:

(1) one pound;

(2) 1-1/2 pounds; or

(3) any other multiple of one pound.

(c) This section does not prohibit the sale of bread slices in properly labeled packages weighing eight ounces or less.

(d) Variations in the weight standard may not exceed one ounce a pound within 24 hours after baking.

(e) This section does not affect the authority of the Department of Agriculture under Subchapter B, Chapter 13, Agriculture

Code.

(f) This section does not apply to a food service establishment as defined under Chapter 437 or a food establishment licensed under Chapter 431 as a food manufacturer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1534, Sec. 1, eff. Sept. 1, 1999.

Sec. 434.008. CRIMINAL PENALTY. (a) A person who violates this subchapter commits an offense.

(b) An offense under this section is punishable by a fine of not less than $25 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. ADULTERATED INGREDIENTS

Sec. 434.021. BAKING POWDER. Baking powder that contains less than 10 percent of available carbon dioxide is adulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 434.022. SELF-RISING FLOUR. (a) In this section, "self-rising flour" means a combination of flour, salt, and chemical leavening ingredients. The flour must be at least of the "straight" grade, and the chemical leavening ingredients must be bicarbonate of soda and:

(1) calcium acid phosphate;

(2) sodium aluminum sulphate;

(3) cream of tartar;

(4) tartaric acid; or

(5) a combination of those ingredients.

(b) A self-rising flour or other compound by that name must produce when sold not less than one-half percent by weight of available carbon dioxide gas and may not contain more than 3-1/2 percent chemical leavening ingredients.

(c) A self-rising flour or other compound by that name that does not meet the requirements of Subsection (b) is adulterated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 435. DAIRY PRODUCTS

SUBCHAPTER A. MILK OFFERED FOR SALE AND MILK GRADING

Sec. 435.001. DEFINITIONS. In this subchapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Person" means an individual, plant operator, partnership, corporation, company, firm, trustee, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1075, eff. April 2, 2015.

Sec. 435.0015. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.010(c), Chapter 431 applies to a person and milk or a milk product regulated under this chapter.

Added by Acts 2003, 78th Leg., ch. 757, Sec. 3, eff. Sept. 1, 2003.

Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. The executive commissioner may regulate the grading and labeling of milk and milk products. The department shall supervise the grading and labeling of milk and milk products according to the standards, specifications, and requirements adopted by the executive commissioner for each grade and in conformity with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1076, eff. April 2, 2015.

Sec. 435.003. MILK SPECIFICATIONS. (a) The executive commissioner by rule may:

(1) define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, Grade "A" pasteurized milk products, milk for manufacturing purposes, and dairy products; and

(2) provide specifications for the production and handling of milk and milk products listed in Subdivision (1) according to the safety and food value of the milk or milk products and the sanitary conditions under which they are produced and handled.

(b) The rules must be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1077, eff. April 2, 2015.

Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY DEPARTMENT. (a) The department shall sample, test, or inspect Grade "A" pasteurized milk and milk products, Grade "A" raw milk and milk products for pasteurization, milk for manufacturing purposes, and dairy products that are offered for sale.

(b) Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization that come from beyond the limits of state inspection shall be sampled, tested, or inspected to determine if department standards and requirements for milk and milk products are met.

(c) Sampling, testing, and inspection of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk for pasteurization shall include, in addition to any other tests that may be required, tests for:

(1) plate count or direct microscopic count;

(2) antibiotics;

(3) sediments;

(4) phosphatase; and

(5) water and any elements foreign to the natural contents of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1387, Sec. 5, eff. September 1, 2007.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1078, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1079, eff. April 2, 2015.

Sec. 435.005. INSPECTION OF MILK AND MILK PRODUCTS BY OTHER ENTITIES. (a) The department may contract with a county or municipality to act as the agent of the department to inspect milk and milk products and to perform other regulatory functions necessary to enforce this subchapter.

(b) A municipality, county, or other political subdivision may test and inspect milk or milk products. In the absence of a contract under Subsection (a), the municipality, county, or other political subdivision must pay the cost of the test or inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1080, eff. April 2, 2015.

Sec. 435.006. PERMIT TO SELL MILK. (a) A person who offers milk or milk products for sale or to be sold in this state must hold a permit issued by the department. The person must apply to the department for a permit.

(b) After receiving the application, the department may

determine and award the grade of milk or milk products offered for sale by each applicant according to the specifications for grades established under this chapter.

(c) The department shall maintain a list of the names of all applicants to whom the department has awarded permission to use a Grade "A" label and remove from the list the name of a person whose permit is revoked.

(d) The department may not issue a permit to a person for a producer dairy located in an area infected with or at a high risk for bovine tuberculosis, as determined epidemiologically and defined by rule of the Texas Animal Health Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 445, Sec. 2, eff. June 4, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1081, eff. April 2, 2015.

Sec. 435.007. USE OF MISLEADING LABEL. (a) A person may not use a label, device, or design marked Grade "A," or any other grade, statement, device, or design related to the safety, sanitary quality, or food value, on milk or milk products produced, offered for sale, or sold in this state that is misleading or does not conform to the requirements of this subchapter.

(b) A person may not represent, publish, label, or advertise milk or milk products as being Grade "A" unless the milk or milk products are:

(1) produced or processed by a person having a permit to use a Grade "A" label as provided by this subchapter; and

(2) produced, treated, and handled in accordance with the specifications and requirements adopted by the executive commissioner for Grade "A" milk and milk products.

(c) A person may not sell to a consumer milk or a milk product labeled Grade "A" that has not been produced or processed by a person who has a Grade "A" permit under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1082, eff. April 2, 2015.

Sec. 435.008. MILK FOR RESALE. A person is not required to hold a permit to resell or offer for resale in the same container any milk or milk products that are represented or advertised as a grade of milk or milk products and that are purchased from a person holding a permit authorizing that representation or advertisement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.009. FEES. (a) A political subdivision or agency of this state, other than the department, may not impose a fee on milk or a milk product, or on a person for the movement, distribution, or sale of milk or a milk product.

(b) The department shall impose the following fees only:

(1) a permit fee of $200 every two years for a producer dairy farm;

(2) a permit fee of $800 every two years for a processing or bottling plant;

(3) a permit fee of $800 every two years for a receiving and transfer station;

(4) a permit fee of $200 every two years for a milk transport tanker;

(5) a fee of 4-1/2 cents for each 100 pounds of milk or milk products processed and distributed in this state by a processing or bottling plant in this state, or processed by an out-of-state processing or bottling plant and sold in this state; and

(6) a fee of 1-1/2 cents for each 100 pounds of dairy products processed by a processing or bottling plant in this state.

(c) The executive commissioner shall adopt rules for the department to assess and collect the fees imposed by Subsections (b)(5) and (6) monthly, quarterly, semiannually, or annually according to amounts due by the plant. Monthly fees shall be assessed and collected in accordance with department rules.

(d) A permit issued under this chapter is valid for two years and must be renewed not later than September 1 of the year in which the permit expires.

(e) The department shall prorate fees paid for permits issued under this chapter after the beginning of a permit year.

(f) In this section:

(1) "Dairy farm" means a place where one or more cows or goats are kept and from which milk or milk products are provided, sold, or offered for sale to a milk plant or transfer station.

(2) "Transfer station" means a place where milk or milk products are transferred directly from one transport tank to another.

(g) Subject to legislative appropriation, the department may use money collected under Subsection (b)(5) only for milk inspection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 411, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1387 (S.B. 1714), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1083, eff. April 2, 2015.

Sec. 435.010. RECORDS. The executive commissioner by rule shall establish minimum standards for recordkeeping by persons required to pay a fee under this subchapter. Those persons shall make the records available to the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1084, eff. April 2, 2015.

Sec. 435.011. HEARING. (a) The executive commissioner shall establish a procedure by which a person aggrieved by the application of a department rule may receive a hearing under Chapter 2001, Government Code.

(b) The refusal or the suspension or revocation of a permit by the department and the appeal of that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 757, Sec. 4, eff. Sept. 1, 2003.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1085, eff. April 2, 2015.

Sec. 435.012. REFUSAL TO GRANT PERMIT; SUSPENSION OR REVOCATION OF PERMIT. (a) The department may refuse an application for a permit under this chapter or may suspend or revoke a permit issued under this chapter.

(b) The department may revoke and regrade permits if on inspection the department finds that the use of the grade label does not conform to the specifications or requirements adopted by the executive commissioner under this chapter.

(c) The executive commissioner by rule shall:

(1) provide for the denial, suspension, or revocation of a permit; and

(2) establish reasonable minimum standards for granting and maintaining a permit issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1086, eff. April 2, 2015.

Sec. 435.013. MUNICIPAL REGULATION AUTHORIZED. A municipality by ordinance may allow only pasteurized milk and pasteurized milk products to be sold at retail in that municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 435.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by a fine of not less than $25 or more than $200.

(c) Each violation constitutes a separate offense.

(d) The penalty prescribed by this section is subject to either the sanctions prescribed in the Grade A Pasteurized Milk Ordinance for products covered by the ordinance or any civil or administrative

penalty or sanction otherwise imposed by Chapter 431 or other law for products not covered by the ordinance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 757, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER B. SPECIAL REQUIREMENTS; SALE OF MILK

Sec. 435.021. IMPORTED MILK. (a) In this section:

(1) "Political subdivision" means a county or municipality or a school, junior college, water, hospital, reclamation, or other special-purpose district.

(2) "State agency" means an agency, department, board, or commission of the state or a state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(b) A state agency or political subdivision may not purchase milk, cream, butter, or cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States.

(c) This section does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 435.022 by Acts 1989, 71st Leg., ch. 1100, Sec. 5.06(b), eff. Sept. 1, 1989.

CHAPTER 436. AQUATIC LIFE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 436.001. SHORT TITLE. This chapter may be cited as the Texas Aquatic Life Act.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.002. DEFINITIONS. In this chapter:

(1) "Approved area" means a molluscan shellfish growing area determined to be acceptable for harvesting of molluscan shellfish for direct marketing according to the National Shellfish Sanitation Program.

(2) "Approved source" means a source of molluscan shellfish acceptable to the department.

(3) "Aquatic life" means animals and plants that live in water.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(6) "Closed area" means a molluscan shellfish growing area where the taking including the harvesting for sale, the harvesting for transplant, or the gathering for depuration of molluscan shellfish is temporarily or permanently not permitted. A closed area status may be placed on any one of the five classified area designations established by the National Shellfish Sanitation Program.

(7) "Conditionally approved area" means a molluscan shellfish growing area determined to meet approved area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally approved area is a closed area when the area does not meet the approved area criteria.

(8) "Conditionally restricted area" means a molluscan shellfish growing area determined to meet restricted area criteria for a predictable period conditioned on performance standards specified in a management plan. A conditionally restricted area is open for transplanting or gathering for depuration only during the times it meets the restricted area criteria and is specified as a conditionally restricted area by the department. A conditionally restricted area is a closed area at all times for harvesting of molluscan shellfish for direct marketing.

(9) "Container" means the physical material in contact with or immediately surrounding molluscan shellfish or crabmeat that confines it into a single unit.

(10) "Crabmeat" means the edible meat of steamed or cooked crabs that has not been processed other than by picking, packing, and chilling.

(11) "Crabmeat processing license" means a numbered document issued by the department that authorizes a person to process crabmeat for sale.

(12) "Crabmeat processor" means a person who cooks and backs crabs and who picks, packs, or pasteurizes crabmeat.

(13) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(14) "Depletion" means the removal of all existing commercial quantities of market-size molluscan shellfish.

(15) "Depuration" means the process of using any approved artificially controlled aquatic environment to reduce the level of bacteria and viruses in molluscan shellfish.

(16) "Depuration plant" means a place where depuration of molluscan shellfish occurs.

(17) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(78), eff. April 2, 2015.

(18) "Growing area" means an area that supports or could support live molluscan shellfish.

(19) "Health authority" means a physician authorized to administer state or local laws relating to public health.

(20) "Label" means written, printed, or graphic matter appearing on a container of molluscan shellfish or crabmeat, including any written, printed, or graphic matter on any wrappers or accompanying any molluscan shellfish or crabmeat.

(21) "Molluscan shellfish" means an edible species of oyster, clam, or mussel that is shucked, in the shell, fresh, or fresh frozen, in whole or in part, as defined by the National Shellfish Sanitation Program.

(22) "National Shellfish Sanitation Program" means the cooperative program by the states, the United States Food and Drug Administration, and the shellfish industry that classifies molluscan shellfish growing areas and certifies interstate molluscan shellfish shippers according to the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish or its successor program and documents.

(23) "Open area" means a molluscan shellfish growing area where harvesting for sale, harvesting for transplant, or gathering for depuration of molluscan shellfish is permitted. An open area status may be placed on any one of the classified area designations established by the National Shellfish Sanitation Program except for a prohibited area.

(24) "Pasteurization plant" means a place where crabmeat is heat-treated in compliance with department rules, without complete sterilization, to improve the keeping qualities of the meat.

(25) "Picking plant" means a place where crabs are cooked

and edible meat is picked from the crabs.

(26) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, agent, bailee, or custodian for another.

(27) "Prohibited area" means an area where the department finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption. A prohibited area for molluscan shellfish means a molluscan shellfish growing area determined to be unacceptable for transplanting, gathering for depuration, or harvesting of molluscan shellfish. The only molluscan shellfish removal permitted from a prohibited area is for the purpose of depletion.

(28) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for sale.

(29) "Public water" means all bodies of water that are the property of the state under Section 1.011, Parks and Wildlife Code.

(30) "Restricted area" means a molluscan shellfish growing area that is determined to be unacceptable for harvesting of molluscan shellfish for direct marketing but that is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the area does not meet the restricted area criteria established by the National Shellfish Sanitation Program.

(31) "Sale" means the transfer of ownership or the right of possession of an item to a person for consideration and includes barter.

(32) "Shellfish certificate" means a numbered document issued by the department that authorizes a person to process molluscan shellfish for sale.

(33) "Shellfish processor" means a person who depurates, shucks, packs, or repacks molluscan shellfish.

(34) "Take" means catch, hook, net, snare, trap, kill, or capture by any means, including the attempt to take.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1087, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(78),

eff. April 2, 2015.

Sec. 436.003. HEALTH AUTHORITY POWER TO DELEGATE. A health authority may delegate any power or duty imposed on the health authority in this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves, unless otherwise restricted by law.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1088, eff. April 2, 2015.

SUBCHAPTER B. PROHIBITED ACTS

Sec. 436.011. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(1) taking, selling, offering for sale, or holding for sale molluscan shellfish from a closed area;

(2) taking, selling, offering for sale, or holding for sale molluscan shellfish from a restricted or conditionally restricted area without complying with a department rule to ensure that the molluscan shellfish have been purified, unless:

(A) permission is first obtained from the Parks and Wildlife Department and the transplanting is supervised by that department; and

(B) the Parks and Wildlife Department furnishes a copy of the transplant permit to the department before transplanting activities begin;

(3) possessing a species of aquatic life taken from a prohibited area while the area was prohibited for that species;

(4) operating as a molluscan shellfish processor without a shellfish certificate for each plant or place of business;

(5) operating as a crabmeat processor without a crabmeat processing license for each plant;

(6) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that has not been picked, handled,

packaged, or pasteurized in accordance with department rules;

(7) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat from facilities for the handling and packaging of molluscan shellfish or crabmeat that do not comply with department rules;

(8) selling, offering for sale, or holding for sale molluscan shellfish or crabmeat that is not labeled in accordance with department rules;

(9) selling, offering for sale, or holding for sale molluscan shellfish that is not in a container bearing a valid certificate number from a state or nation whose molluscan shellfish certification program conforms to the current National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish issued by the Food and Drug Administration or its successor, except selling molluscan shellfish removed from a container bearing a valid certificate number for on-premises consumption; in the event the Texas Molluscan Shellfish Program is found to be out of conformity with the current guide, selling, offering for sale, or holding for sale molluscan shellfish in a container bearing a valid Texas certificate number shall not be considered a violation of this chapter provided all other requirements of this chapter are complied with and the shellfish have come from an approved source;

(10) processing, transporting, storing for sale, possessing with intent to sell, offering for sale, or selling molluscan shellfish or crabmeat for human consumption that is adulterated or misbranded;

(11) removing or disposing of a detained or embargoed article in violation of Section 436.028;

(12) altering, mutilating, destroying, obliterating, or removing all or part of the labeling of a container;

(13) adulterating or misbranding molluscan shellfish or crabmeat in commerce;

(14) refusing to permit entry or inspection, to permit the taking of a sample, or to permit access to or copying by the department as required by this chapter;

(15) failing to establish or maintain a record or report required by this chapter or by a department rule; or

(16) violating a department rule or order.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1089, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 436.021. DEFINITION. In this subchapter, "detained or embargoed article" means molluscan shellfish or crabmeat that has been detained or embargoed under Section 436.028.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.022. INSPECTION. (a) The department or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times, including when processing is conducted, an establishment or location in which molluscan shellfish or crabmeat is processed, packed, pasteurized, or held for introduction into commerce or held after introduction into commerce;

(2) enter a vehicle being used to transport or hold the molluscan shellfish or crabmeat in commerce; or

(3) inspect the establishment, location, or vehicle, including equipment, records, files, papers, materials, containers, labels, or other items, and obtain samples necessary for enforcement of this chapter.

(b) The inspection of an establishment or location is to determine whether the molluscan shellfish or crabmeat:

(1) is adulterated or misbranded;

(2) may not be processed, introduced into commerce, sold, or offered for sale under this chapter or department rules; or

(3) is otherwise in violation of this chapter.

(c) The department or a health authority may not inspect:

(1) financial data;

(2) sales data, other than shipment data;

(3) pricing data;

(4) personnel data, other than personnel data relating to the qualifications of technical and professional personnel; or

(5) research data.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1090, eff. April 2, 2015.

Sec. 436.023. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or a department rule or a person who is in charge or custody of those records on request shall permit the department or health authority at all reasonable times to have access to and to copy the records.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1091, eff. April 2, 2015.

Sec. 436.024. ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE. (a) A commercial carrier or other person receiving or holding molluscan shellfish or crabmeat in commerce on request shall permit the department or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the molluscan shellfish or crabmeat;

(2) the holding after movement in commerce of the molluscan shellfish or crabmeat; or

(3) the quantity, shipper, and consignee of the molluscan shellfish or crabmeat.

(b) The carrier or other person may not refuse access to and copying of the requested records if the request is accompanied by a written statement that specifies the nature or kind of molluscan shellfish or crabmeat to which the request relates.

(c) A carrier is not subject to other provisions of this chapter solely because of the carrier's receipt, carriage, holding, or delivery of molluscan shellfish or crabmeat in the usual course of business as a carrier.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1092, eff. April 2, 2015.

Sec. 436.025. EMERGENCY ORDER. (a) The department may issue an emergency order that mandates or prohibits the taking, processing, or sale of molluscan shellfish or crabmeat in the department's jurisdiction if:

(1) the processing or sale of the molluscan shellfish or crabmeat creates or poses an immediate threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the threat will result in unreasonable delay.

(b) The department may issue the emergency order without notice and hearing if the department or a person designated by the department determines that issuing the emergency order without notice and hearing is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine the earliest time and place for a hearing at which the emergency order shall be affirmed, modified, or set aside. The hearing shall be held under department rules.

(d) This section prevails over Section 12.001.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1093, eff. April 2, 2015.

Sec. 436.026. VIOLATION; INJUNCTION. (a) The department or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation or a threat of a continuing violation of Section 436.011 if the department or health authority believes that:

(1) a person has violated, is violating, or is threatening to violate a provision of Section 436.011; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) If the court finds that a person is violating or threatening to violate Section 436.011, the court shall grant injunctive relief.

(c) Venue for a suit brought under this section is in the

county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Amended by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1094, eff. April 2, 2015.

Sec. 436.027. CIVIL PENALTY. (a) At the request of the department, the attorney general or a district, county, or municipal attorney shall institute an action in district or county court to collect a civil penalty from a person who has violated Section 436.011.

(b) A person who violates Section 436.011 is liable for a civil penalty not to exceed $25,000 a day for each violation. Each day of a continuing violation constitutes a separate violation for purposes of penalty assessment.

(c) In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations under this chapter;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the demonstrated good faith of the person; and

(5) other matters as justice may require.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) Venue for a suit to collect a civil penalty brought under this section is in the municipality or county in which the violation occurred or in Travis County.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1095, eff. April 2, 2015.

Sec. 436.028. DETAINED OR EMBARGOED ARTICLE. (a) The department may detain or embargo molluscan shellfish or crabmeat if the department believes or has probable cause to believe that the molluscan shellfish or crabmeat:

(1) is adulterated; or

(2) is misbranded so that the molluscan shellfish or crabmeat is dangerous or fraudulent under this chapter.

(b) The department shall affix to any molluscan shellfish or crabmeat a tag or other appropriate marking that gives notice that the molluscan shellfish or crabmeat is, or is suspected of being, adulterated or misbranded and that the molluscan shellfish or crabmeat has been detained or embargoed.

(c) The tag or marking on a detained or embargoed article must prohibit the removal or disposal of the article unless permission is given by the department or a court.

(d) A person may not remove a detained or embargoed article from the premises or dispose of it without permission of the department or a court. The department may permit perishable goods to be moved to a place suitable for proper storage.

(e) The department shall remove the tag or other marking from a detained or embargoed article if the department believes that the article is not adulterated or misbranded.

(f) The claimant of a detained or embargoed article may move the article to a secure storage area with the permission of the department.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1096, eff. April 2, 2015.

Sec. 436.029. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE. (a) The department may order the claimant or the claimant's agent to move a detained or embargoed article to a secure place to prevent the unauthorized disposal or removal of the article.

(b) If the claimant fails to carry out the order, the department may move the article.

(c) If the department moves the article, the department shall assess the cost of removal against the claimant.

(d) The department may request the attorney general to bring an action in the district court in Travis County to recover the costs of removal. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1097, eff. April 2, 2015.

Sec. 436.030. RECALL FROM COMMERCE. (a) The department may order a recall of molluscan shellfish or crabmeat with:

(1) the detention or embargo of molluscan shellfish or crabmeat;

(2) the issuance of an emergency order under Section 436.025; or

(3) both.

(b) The recall order may require that the molluscan shellfish or crabmeat be removed to one or more secure areas approved by the department.

(c) The recall order must be in writing and be signed by the commissioner and may be issued:

(1) before or in conjunction with a tag or other marking as provided by Section 436.028;

(2) with an emergency order authorized by Section 436.025; or

(3) both.

(d) The recall order is effective until it expires by its own terms, is withdrawn by the department, is reversed by a court in an order denying condemnation, or is set aside at a hearing authorized by Section 436.025.

(e) The claimant shall pay the costs of the removal and storage of a recalled product. If the claimant or the claimant's agent fails to carry out the recall order, the department may recall the product. The department shall assess the costs of the recall against the claimant.

(f) The department may request the attorney general to bring an action in a district court in Travis County to recover the costs of

recall. In a judgment in favor of the state, the court may award costs, attorney fees, and interest from the date the expense was incurred until the date the department is reimbursed.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1098, eff. April 2, 2015.

Sec. 436.031. CONDEMNATION. If molluscan shellfish or crabmeat is adulterated or misbranded, an action for the condemnation of the molluscan shellfish or crabmeat may be filed in a district court in whose jurisdiction the molluscan shellfish or crabmeat is located.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.032. DESTRUCTION OF MOLLUSCAN SHELLFISH OR CRABMEAT. (a) The court may order the destruction of sampled, detained, or embargoed molluscan shellfish or crabmeat if the court finds that the article is adulterated or misbranded.

(b) After entry of the court's order, the department shall supervise the destruction of the article.

(c) The claimant shall pay the cost of the destruction of the article.

(d) The court shall order the claimant or the claimant's agent to pay court costs, storage fees, and other proper expenses.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1099, eff. April 2, 2015.

Sec. 436.033. CORRECTION BY PROPER LABELING. (a) A court may order the delivery of sampled, detained, or embargoed molluscan shellfish or crabmeat that is misbranded to the claimant for relabeling under the supervision of the department if:

(1) the court costs and other expenses have been paid;

(2) proper labeling can correct the misbranding; and

(3) the claimant executes a bond, conditioned on the correction of the misbranding by proper labeling.

(b) The claimant shall pay the costs of the supervision.

(c) The court shall order the return of the molluscan shellfish or crabmeat to the claimant if the department represents to the court that the molluscan shellfish or crabmeat no longer violates this chapter and that the expenses of supervision are paid.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1100, eff. April 2, 2015.

Sec. 436.034. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates Section 436.011 or an order issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) the hazard to the health and safety of the public;

(4) the person's demonstrated good faith; and

(5) other matters as justice may require.

(c) The penalty may not exceed $25,000 a day for each violation.

(d) Each day of a continuing violation constitutes a separate violation.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1101, eff. April 2, 2015.

Sec. 436.035. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) The department may assess an administrative penalty only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is to be held, the department shall refer the matter to the State Office of Administrative Hearings, and an

administrative law judge of that office shall make findings of fact and shall issue a written proposal for decision regarding the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) The department shall issue an order requiring a person to pay a penalty assessed under this section.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1102, eff. April 2, 2015.

Sec. 436.036. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date an order is issued under Section 436.035(d), the department shall notify the person against whom the penalty is assessed of the order and the amount of the penalty.

(b) Not later than the 30th day after the date notice of the order is given to the person, the person shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review of the department's order contesting the amount of the penalty, the findings of the department, or both.

(c) If the person seeks judicial review within the period prescribed by Subsection (b), the person may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond for the amount of the penalty; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c-1) If the department receives a copy of an affidavit under

Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) A bond posted under this section must be in a form approved by the court and must be effective until judicial review of the order or decision is final.

(e) A person who does not send the money to, post the bond with, or file the affidavit with the court within the period described by Subsection (b) waives all rights to contest the violation or the amount of the penalty.

(f) The attorney general, at the request of the department, may bring a civil action to recover an administrative penalty assessed under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1103, eff. April 2, 2015.

Sec. 436.037. REFUND OF ADMINISTRATIVE PENALTY. On the date the court's judgment that an administrative penalty against a person should be reduced or not assessed becomes final, the court shall order that:

(1) the appropriate amount of any penalty payment plus accrued interest be remitted to the person not later than the 30th day after that date; or

(2) the bond be released, if the person has posted a bond.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1104, eff. April 2, 2015.

Sec. 436.038. CRIMINAL PENALTY; DEFENSES. (a) A person

commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence commits an unlawful act under Section 436.011.

(b) A violation of Section 436.011(1), (2), or (3) is a Class B Parks and Wildlife Code misdemeanor under Section 12.405, Parks and Wildlife Code. Each day of a continuing violation constitutes a separate offense. Commissioned officers of the Parks and Wildlife Department shall enforce Sections 436.011(1), (2), and (3).

(c) If it is shown at trial that the defendant has been convicted once within five years before the trial date of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Class A Parks and Wildlife Code misdemeanor under Section 12.404, Parks and Wildlife Code.

(d) If it is shown at trial that the defendant has been convicted two or more times within five years before the trial date of a violation of Section 436.011(1) or (2), a violation by the defendant under Section 436.011(1) or (2) is a Parks and Wildlife Code felony under Section 12.407, Parks and Wildlife Code.

(e) A violation of Section 436.011(4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) is a Class A misdemeanor. Each day of a continuing violation constitutes a separate offense.

(f) A person is not subject to the penalties of Subsection (e) if the person received molluscan shellfish or crabmeat in commerce and delivered or offered to deliver the molluscan shellfish or crabmeat in good faith, unless the person refuses to furnish on request of the department or a health authority the name and address of the person from whom the product was received and copies of any documents relating to the receipt of the product.

(g) A publisher, radiobroadcast licensee, or agency or medium for the publication or broadcast of an advertisement, except the harvester, processor, distributor, or seller of molluscan shellfish or crabmeat to which a false advertisement relates, is not liable under this section for the publication or broadcast of the false advertisement unless the person has refused to furnish, on the request of the department, the name and address of the harvester, processor, distributor, seller, or advertising agency residing in this state who caused the person to publish or broadcast the advertisement.

(h) A person is not subject to the penalties of Subsection (e) for a violation of Section 436.011 involving misbranded molluscan

shellfish or crabmeat if the violation exists only because the product is misbranded because of a mistake in advertising, unless the violation is committed with intent to defraud or mislead.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1105, eff. April 2, 2015.

Sec. 436.039. INITIATION OF PROCEEDINGS. The attorney general or a district, county, or municipal attorney to whom the department or a health authority reports a violation of this chapter shall prosecute without delay.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1106, eff. April 2, 2015.

Sec. 436.040. MINOR VIOLATION. This chapter does not require the department or a health authority to report for prosecution a minor violation of this chapter if the department or health authority believes that the public interest is adequately served by a written warning.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1107, eff. April 2, 2015.

SUBCHAPTER D. ADULTERATED AQUATIC LIFE

Sec. 436.061. ADULTERATED AQUATIC LIFE. (a) A species of aquatic life is adulterated if it has been taken from an area declared prohibited for that species by the department.

(b) Molluscan shellfish or crabmeat is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless the substance is a naturally occurring substance and the quantity of the substance

in the molluscan shellfish or crabmeat does not ordinarily render the substance injurious to health;

(2) it consists in whole or in part of a diseased, contaminated, filthy, or putrid substance or if it is otherwise unfit for human consumption;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or may have been rendered diseased, unwholesome, or injurious to health;

(4) it is in whole or in part the product of diseased aquatic life or has died otherwise than by taking;

(5) its container is made in whole or in part of a poisonous or deleterious substance that may render the contents injurious to health;

(6) it has been intentionally exposed to radiation, unless the use of the radiation complied with a regulation or an exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(7) a substance has been substituted in whole or in part for it;

(8) damage to or inferiority of the product has been concealed;

(9) a substance has been added, mixed, or packed to increase its bulk or weight, to reduce its quality or strength, or to make it appear better or of greater value than it is;

(10) it contains a chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative that is not approved by the Animal and Plant Health Inspection Service or by department rules;

(11) the molluscan shellfish have been taken from a closed area;

(12) the molluscan shellfish have been taken from a restricted or conditionally restricted area and have not been purified under department rules;

(13) the molluscan shellfish have been processed by a person without a shellfish certificate;

(14) the molluscan shellfish have not been handled and packaged in accordance with department rules;

(15) the crabmeat has been processed by a person without a crabmeat processing license; or

(16) the crabmeat was not picked, packed, or pasteurized in accordance with department rules.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1108, eff. April 2, 2015.

SUBCHAPTER E. MISBRANDING

Sec. 436.071. MISBRANDED MOLLUSCAN SHELLFISH AND CRABMEAT. Molluscan shellfish or crabmeat is misbranded if:

(1) its labeling is false, misleading, or fails to conform with the requirements of Section 436.081;

(2) it is offered for sale under the name of another food;

(3) its container is made, formed, or filled so as to be misleading;

(4) a word, statement, or other information required by this chapter or a rule adopted under this chapter to appear on a label is not prominently and conspicuously placed on the label and is not likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(5) it does not have a label containing:

(A) the name, address, and certification or license number of the processor;

(B) an accurate statement in a uniform location on the principal display panel of the quantity of the contents in terms of weight, measure, or numerical count; and

(C) a date as provided by department rules.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1109, eff. April 2, 2015.

SUBCHAPTER F. LABELING AND PACKAGING

Sec. 436.081. FAIR PACKAGING AND LABELING. (a) A label on molluscan shellfish or crabmeat shall conform to the requirements for the declaration of net quantity of contents under Section 1453, Fair Packaging and Labeling Act (15 U.S.C. Section 1453), and the

regulations adopted under that Act.

(b) The label on a package of molluscan shellfish or crabmeat that represents the number of servings contained in the package shall state the net quantity in terms of weight, measure, or numerical count of each serving.

(c) A person may not distribute or cause to be distributed in commerce any molluscan shellfish or crabmeat if a qualifying word or phrase appears with the statement of the net quantity of contents required by Subsection (a). A supplemental statement at another place on the package may contain descriptions in nondeceptive terms of the net quantity of contents, except the supplemental statement of net quantity of contents may not include a term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the shellfish or crabmeat in the package.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.082. FALSE ADVERTISEMENT. An advertisement of molluscan shellfish or crabmeat is false if it is false or misleading in any manner.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. AQUATIC LIFE FROM PROHIBITED AREAS

Sec. 436.091. DECLARATION OF PROHIBITED AREAS. (a) The department by order shall declare a body of public water to be a prohibited area if:

(1) the department finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption; or

(2) aquatic life from a prohibited area may have been transferred to that body of public water.

(b) The department shall modify or revoke an order according to the results of a sanitary, chemical, or bacteriological survey conducted by the department. The department shall file the order in the department's office and shall furnish without charge a copy of the order describing prohibited areas on request.

(c) The department shall conspicuously outline prohibited areas on maps and shall furnish the maps without charge on request. The

failure of a person to obtain that information does not relieve that person from liability under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1110, eff. April 2, 2015.

SUBCHAPTER H. MOLLUSCAN SHELLFISH

Sec. 436.101. CLASSIFICATION OF GROWING AREAS. (a) The department by order shall designate an area that is coastal water according to the rules of the Parks and Wildlife Commission as an approved area, a conditionally approved area, a restricted area, a conditionally restricted area, or a prohibited area, according to the classification categories in the current National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish or its successor. Coastal water is a prohibited area for the taking of molluscan shellfish unless designated otherwise by the department.

(b) The department shall prohibit the taking of molluscan shellfish for a specified period from water to which molluscan shellfish may have been transferred from a restricted or conditionally restricted area.

(c) The department by order shall designate growing areas as closed areas or open areas. The department shall modify or revoke an order according to the results of sanitary and bacteriological surveys conducted by the department. The department shall file the order in the department's office and shall furnish without charge a copy of the order describing the open or closed area on request.

(d) The department shall conspicuously outline the classifications of areas for the taking of molluscan shellfish on maps and shall furnish the maps without charge on request. The failure of a person to obtain that information does not relieve that person from liability under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1111, eff. April 2, 2015.

Sec. 436.102. DEPURATION. (a) The department may allow depuration by artificial means of molluscan shellfish taken from a restricted or conditionally restricted area, subject to department rules and under the supervision the department considers necessary to protect public health.

Text of subsection effective until January 1, 2025

(b) A molluscan shellfish plant operator may employ an off-duty peace officer to monitor the gathering of shellfish for depuration from a restricted or conditionally restricted area as provided by the rules adopted under Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2.12, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(b) A molluscan shellfish plant operator may employ an off-duty peace officer to monitor the gathering of shellfish for depuration from a restricted or conditionally restricted area as provided by the rules adopted under Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2A.001, Code of Criminal Procedure.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1112, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.123, eff. January 1, 2025.

Sec. 436.103. FEE ON OYSTER SALES; PENALTIES. (a) The first certified shellfish dealer who harvests, purchases, handles, stores, packs, labels, unloads at dockside, or holds oysters taken from the water of this state shall pay the state a fee of $1 for each barrel of oysters harvested, purchased, handled, or processed by the certified shellfish dealer.

(b) For purposes of assessing the fee required by this section, three 100-pound containers of oysters is the equivalent of one barrel of oysters. A certified shellfish dealer may not purchase or pack oysters in containers that, when packed, exceed 110 pounds in weight. A dealer who violates this subsection is liable for a penalty of $5 for each container that exceeds 110 pounds.

(c) A certified shellfish dealer shall pay a fee or penalty imposed by Subsection (a) or (b) not later than the 20th day of the month following the month in which the barrel of oysters was handled. A dealer who fails to pay the fee or penalty in full within the prescribed period is liable for the amount of the fee or penalty and an additional penalty of 10 percent of the amount of the fee or penalty due. On certification by the comptroller that a fee is past due, the department may suspend, until the fee, penalty, or additional penalty is paid, the shellfish certificate of a certified shellfish dealer who fails to timely pay the fee, penalty, or additional penalty in full. The department, on certification from the comptroller that a certified shellfish dealer has refused to pay a fee, penalty, or additional penalty on written demand, may revoke the shellfish certificate of a certified shellfish dealer who refuses to pay a fee, penalty, or additional penalty.

(d) The comptroller shall collect fees and penalties under this section and may adopt rules, forms, and procedures for submission of fees and penalties under this section. Each month the comptroller shall report to the department the fees and penalties that are submitted to the comptroller.

(e) Before any other disposition of the fees and penalties collected under this section is made, two percent of the amount of the fees and penalties shall be deposited in the state treasury for appropriation for the use of the comptroller in the administration and enforcement of this section. The remainder of the fees and penalties collected under this section shall be deposited to the credit of the oyster sales account in the general revenue fund to be allocated each year for oyster-related activities, including:

(1) collecting bay water and shellfish meat samples;

(2) contracting for sample analysis for classification and opening or closing of oyster harvesting areas;

(3) marking the boundaries of areas that are designated open or closed under this subchapter;

(4) studying oyster diseases and other concerns affecting the availability of oysters for harvest;

(5) studying and analyzing organisms that may be associated with human illness and that can be transmitted through the consumption of oysters;

(6) contributing to the support of the oyster shell recovery and replacement program created under Section 76.020, Parks

and Wildlife Code; and

(7) other oyster-related activities authorized or required by this chapter.

(f) After deducting the amount deposited into the state treasury for the comptroller's use under Subsection (e), the comptroller at the beginning of each state fiscal year shall allocate $100,000 of the unencumbered balance deposited to the credit of the oyster sales account in the general revenue fund to Texas A&M University at Galveston for use in performing the activities described by Subsection (e)(5). The remainder of the money in the oyster sales account may be allocated only for the purposes described by Subsection (e).

(g) Subtitles A and B, Title 2, Tax Code, apply to the comptroller's administration, collection, and enforcement of this section to the same extent as if the fee imposed under this section were a tax imposed under Title 2, Tax Code.

(h) In monitoring compliance with the payment of fees imposed under this section, the comptroller shall monthly or annually, as determined by the comptroller, compare records of fees collected under this section to data collected by the Parks and Wildlife Department relating to oyster barrel purchases. If the comptroller finds a discrepancy between the two sources of information, the comptroller may consult the dealer's log required by the National Shellfish Sanitation Program to resolve the discrepancy. The comptroller may use the process described by this subsection in place of any other administrative process used by the comptroller in determining compliance with this section.

(i) A finding by the comptroller under Subsection (h) of a discrepancy that reflects an underreporting of oysters harvested, purchased, handled, or processed by a dealer constitutes prima facie evidence of a violation of this section in any administrative proceeding under this chapter.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1298, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 28, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 965 (H.B. 1903), Sec. 1, eff. September 1, 2013.

Sec. 436.104. OYSTER PROGRAM. (a) The department shall conduct sanitary surveys, bay water and shellfish meat sampling, and any other activities that are necessary to classify the bays from which oysters are harvested from private leases or public reefs as authorized by Section 436.101.

(b) The department shall conduct reasonable and prudent sampling activities at the earliest possible time following the designation as a closed area of an area from which oysters are harvested from private leases or public reefs:

(1) if a question exists about the closure, to confirm the need for the closure; or

(2) if there is reason to believe that the sampling will result in opening the area.

(c) In implementing the oyster program, the department shall follow standards that are at least as stringent as the guidelines adopted by the National Shellfish Sanitation Program. The department's approach shall be consistent with the purpose and intent of the National Shellfish Sanitation Program and the federal Food and Drug Administration policy statements regarding the consumption of raw molluscan shellfish.

(d) Until Vibrio parahaemolyticus guidelines are formally adopted into the National Shellfish Sanitation Program, the department shall follow standards that are at least as stringent as guidelines of the Interim Control Plan for Vibrio parahaemolyticus of the Interstate Shellfish Sanitation Conference for the purpose of designating harvest areas as closed areas related to Vibrio parahaemolyticus.

(e) The department shall open harvest areas designated as closed areas due to excessive levels of Vibrio parahaemolyticus in shellfish meat samples when the levels of Vibrio parahaemolyticus in the shellfish meat samples return to baseline levels.

(f) The department shall open harvest areas designated as closed areas due to sporadic non-outbreak illnesses as specified in the Interim Control Plan when the levels in shellfish meats return to baseline levels or, if tdh+ serotypes were confirmed as the cause of the illnesses, when the virulent serotypes of Vibrio parahaemolyticus are absent in two consecutive samples of shellfish meats collected from the Vibrio parahaemolyticus sample stations in the closed area.

(g) The department shall open harvest areas designated as closed areas due to a confirmed Vibrio parahaemolyticus outbreak when

the department determines that Vibrio parahaemolyticus strains of virulent serotypes are absent in those situations where 03:K6 or other tdh+ serotypes were confirmed as the cause of the outbreak. For purposes of this subsection, in Galveston Bay, Vibrio parahaemolyticus virulent strains shall be considered absent when 25 shellfish meat samples from any delineated harvest area that has been designated as a closed area do not result in reporting of the virulent strain that caused the outbreak.

(h) If a second confirmed outbreak of Vibrio parahaemolyticus illness occurs in an area, the department shall open a harvest area designated as closed when 50 shellfish samples do not result in the reporting of the virulent strain that caused the outbreak.

(i) If harvest areas designated as closed areas as a result of Vibrio parahaemolyticus cannot be opened as a result of the sampling under Subsection (f) or (g), the areas may be opened when environmental conditions develop that are unfavorable for Vibrio parahaemolyticus growth or when environmental conditions shift to conditions that are historically unrelated to outbreaks of Vibrio parahaemolyticus.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.105. TEMPERATURE REQUIREMENTS. Following initial refrigeration after unloading from a harvest boat, molluscan shellfish shall be refrigerated in air temperatures at or below 45 degrees Fahrenheit at all times except during transfer from one storage area or transportation vehicle to another. Except for an immediate transfer, molluscan shellfish may not remain unrefrigerated during transfer from one storage area or transportation vehicle to another.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.106. TEMPERATURE ABUSE. If temperature abuse of oysters associated with possible Vibrio parahaemolyticus illnesses is identified at any point in the market chain from harvest to consumer, the department may not designate a harvest area as a closed area if the temperature abuse is the probable cause of the illness. This section does not preclude closures for investigations conducted in

accordance with the National Shellfish Sanitation Program that are necessary to protect public health. If a harvest area has been designated as a closed area because the investigation could not be completed within the time required in the National Shellfish Sanitation Program and temperature abuse is determined, as a result of the investigation, to be the probable cause of the illnesses, the harvest area must be immediately designated as an open area.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.

Sec. 436.107. TEXAS OYSTER COUNCIL. (a) The Texas Oyster Council is created.

(b) The council is composed of:

(1) two members appointed by the executive commissioner as nominated by the Texas Oyster Growers and Dealers Association or a successor organization;

(2) one member appointed by the executive commissioner as nominated by the Coastal Oyster Leaseholder's Association;

(3) two members appointed by the executive commissioner from a list of oyster dealers who have held a shellfish certificate in this state for not less than six months of each of the three years preceding the nomination and who are certified at the time of appointment;

(4) one representative appointed by the chairman of the Interstate Shellfish Sanitation Conference; and

(5) three consumer members, including one person professionally licensed or with work experience in the field of environmental survey, environmental sanitation, environmental engineering, or a similar field related to environmental or pollution conditions and their effect on molluscan shellfish harvest areas, appointed by the speaker of the house of representatives.

(c) Members of the Texas Oyster Council serve one-year terms expiring August 31 of each year and may be reappointed at the end of a term.

(d) A member of the Texas Oyster Council may not receive compensation for service on the council, but is entitled to reimbursement of expenses incurred by the member while conducting the business of the council, as provided by the General Appropriations Act.

(e) A person is not eligible for appointment as a consumer member of the Texas Oyster Council if the person or the person's spouse:

(1) is a harvester, processor, or wholesaler regulated under this chapter;

(2) is employed by a harvester, processor, or wholesaler regulated under this chapter;

(3) is a retailer of molluscan shellfish; or

(4) is employed by a retailer of molluscan shellfish.

(f) The Texas Oyster Council shall elect a presiding officer from among its members.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.
Amended by Acts 2001, 77th Leg., ch. 28, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1113, eff. April 2, 2015.

Sec. 436.108. POWERS AND DUTIES OF TEXAS OYSTER COUNCIL. (a) The Texas Oyster Council shall:

(1) advise the department on the criteria used by the department under Section 436.101 to designate growing areas as open or closed areas;

(2) advise the department on the development of standards and procedures relating to the licensing of molluscan shellfish processors under this chapter;

(3) advise the department on the content of the rules adopted by the executive commissioner to implement the provisions of this chapter relating to molluscan shellfish;

(4) perform any other functions requested by the department in implementing and administering the provisions of this chapter relating to molluscan shellfish; and

(5) review information brought before the council relating to molluscan shellfish.

(b) The Texas Oyster Council is entitled to:

(1) obtain information that is furnished to the department or developed by the department as part of an investigation of a food-borne illness that is suspected of being related to molluscan shellfish, including:

(A) location and handling practices where suspect food may have been served;

(B) product labeling and records;

(C) distribution agent, methods, and handling practices;

(D) sources of product;

(E) sample collection and laboratory analysis; and

(F) any other nonmedical information that may aid in determining causes or routes of transmission of food-borne illness or suspected food-borne illness; and

(2) review the information provided under Subdivision (1) and report to the department on any matter of concern.

(c) The Texas Oyster Council may establish procedures for:

(1) meetings of the council;

(2) submission, consideration, and resolution of issues before the council; and

(3) reporting relating to the council's activities.

(d) The Texas Oyster Council may meet at the request of the department, may meet periodically to review completed activities of the department, or may meet to review ongoing activities of the department if the department appears to have exceeded the guidelines established in the National Shellfish Sanitation Program.

(e) A member of the Texas Oyster Council who receives information under Subsection (b) from confidential communications or records, as identified by the department, may not disclose the information outside of the council or the department. The department, by providing to the council public information that is confidential or otherwise excepted from public disclosure under law, does not waive or affect the confidentiality of the information for the purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information.

(f) The Texas Oyster Council is subject to Chapter 551, Government Code. The Texas Oyster Council is not required to conduct an open meeting to deliberate confidential communications and records provided under this section relating to the investigation of a food-borne illness that is suspected of being related to molluscan shellfish.

(g) A report produced by the Texas Oyster Council is public information.

Added by Acts 1999, 76th Leg., ch. 1298, Sec. 3, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1114, eff. April 2, 2015.

SUBCHAPTER I. GENERAL ADMINISTRATIVE PROVISIONS AND RULEMAKING AUTHORITY

Sec. 436.111. DEFINITIONS. In this subchapter:

(1) "Certificate" means a shellfish certificate issued by the department.

(2) "License" means a crabmeat processing license issued by the department.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.

Sec. 436.112. RULEMAKING AUTHORITY. The executive commissioner may adopt rules for the enforcement of this chapter. The executive commissioner shall adopt rules establishing specifications for molluscan shellfish processing and crabmeat processing, and the department shall furnish without charge printed copies of the rules on request.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1115, eff. April 2, 2015.

Sec. 436.113. CERTIFICATION AND LICENSING PROCEDURES. (a) A person may not operate as a molluscan shellfish or crabmeat processor unless the person submits an application for a certificate or a license to the department according to department rules and receives a certificate or license for each plant or place of business.

(b) When an application has been properly filed with the department, the department shall inspect the property identified in the application, including buildings and equipment, and the operating procedures under which the product is processed.

(c) The department shall issue a certificate or license to a person who operates a plant or place of business that conforms to the

requirements of this chapter and department rules.

(d) A certificate is nontransferrable and expires at 11:59 p.m. on August 31 of the second year of issuance.

(e) A license is nontransferrable and expires at 11:59 p.m. on the last day of February of the second year of issuance.

(f) A person shall apply for a new certificate or license each year for each plant or place of business.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1116, eff. April 2, 2015.

Sec. 436.114. REFUSAL TO CERTIFY OR LICENSE; SUSPENSION OR REVOCATION OF CERTIFICATE OR LICENSE. (a) After notice to the applicant and opportunity for a hearing, the department may refuse an application for a certificate or a license or may suspend or revoke a certificate or license.

(b) The executive commissioner by rule shall establish minimum standards for a certificate or license and criteria for the refusal to issue a certificate or license and the suspension or revocation of a certificate or license.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1117, eff. April 2, 2015.

Sec. 436.115. HEARINGS AND APPEALS. (a) A hearing under this chapter is governed by the procedures for a contested case hearing under Chapter 2001, Government Code, and the department's formal hearing rules.

(b) An appeal from a final administrative decision under this chapter shall be conducted under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1118, eff. April 2, 2015.

CHAPTER 437. REGULATION OF FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS

Sec. 437.001. DEFINITIONS. In this chapter:

(1) "Acidified canned goods" means food with a finished equilibrium pH value of 4.6 or less that is thermally processed before being placed in an airtight container.

(1-a) "Beekeeper" has the meaning assigned by Section 131.001, Agriculture Code.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(79), eff. April 2, 2015.

(2-a) "Baked good" includes cookies, cakes, breads, Danish, donuts, pastries, pies, and other items that are prepared by baking the item in an oven.

(2-b) "Cottage food production operation" means an individual, operating out of the individual's home, who:

(A) produces at the individual's home, subject to Section 437.0196:

(i) a baked good that is not a time and temperature control for safety food, as defined by Section 437.0196;

(ii) candy;

(iii) coated and uncoated nuts;

(iv) unroasted nut butters;

(v) fruit butters;

(vi) a canned jam or jelly;

(vii) a fruit pie;

(viii) dehydrated fruit or vegetables, including dried beans;

(ix) popcorn and popcorn snacks;

(x) cereal, including granola;

(xi) dry mix;

(xii) vinegar;

(xiii) pickled fruit or vegetables, including beets and carrots, that are preserved in vinegar, brine, or a similar solution at an equilibrium pH value of 4.6 or less;

(xiv) mustard;

(xv) roasted coffee or dry tea;

(xvi) a dried herb or dried herb mix;

(xvii) plant-based acidified canned goods;

(xviii) fermented vegetable products, including products that are refrigerated to preserve quality;

(xix) frozen raw and uncut fruit or vegetables; or

(xx) any other food that is not a time and temperature control for safety food, as defined by Section 437.0196;

(B) has an annual gross income of $50,000 or less from the sale of food described by Paragraph (A);

(C) sells the foods produced under Paragraph (A) only directly to consumers; and

(D) delivers products to the consumer at the point of sale or another location designated by the consumer.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(79), eff. April 2, 2015.

(3-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(79), eff. April 2, 2015.

(3-b) "Farm stand" means a premises owned and operated by a producer of agricultural food products at which the producer or other persons may offer for sale produce or foods described by Subdivision (2-b)(A).

(3-c) "Fermented vegetable product" means a low-acid vegetable food product subjected to the action of certain microorganisms that produce acid during their growth and reduce the pH value of the food to 4.6 or less.

(4) "Food," "food service establishment," "retail food store," "mobile food unit," "roadside food vendor," and "temporary food service establishment" have the meanings assigned to those terms by rules adopted under this chapter.

(5) "Home" means a primary residence that contains a kitchen and appliances designed for common residential usage.

(6) "Produce" means fresh fruits or vegetables.

(7) "Small honey production operation" means a beekeeper that:

(A) produces less than 2,500 pounds of honey each year;

(B) sells or distributes the honey or honeycomb that the beekeeper produces either personally or with the help of the beekeeper's immediate family members;

(C) only sells or distributes honey or honeycomb:

(i) that is produced from a hive that is:

(a) located in the state; and

(b) owned and managed by the beekeeper;

(ii) that is pure honey as defined by Section 131.001, Agriculture Code, and that is raw and not blended with any other product or otherwise adulterated; and

(iii) directly to consumers at the beekeeper's home, a farmer's market, a farm stand, or a municipal, county, or nonprofit fair, festival, or event; and

(D) delivers the honey or honeycomb that the beekeeper produces to the consumer at the point of sale or another location designated by the consumer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1119, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(79), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 1, eff. September 1, 2019.

Sec. 437.002. ENFORCEMENT OF STATE LAW BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A county or public health district may enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

(b) This chapter does not authorize a county or public health district to adopt orders establishing standards for the operation of food service establishments, retail food stores, mobile food units, or roadside food vendors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.003. COUNTY AUTHORITY TO REQUIRE PERMIT. To enforce state law and rules adopted under state law, the commissioners court of a county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.004. PUBLIC HEALTH DISTRICT AUTHORITY TO REQUIRE PERMIT. (a) A public health district that is established by at least one county and one or more municipalities in the county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in the district to obtain a permit from the district.

(b) If the public health district has an administrative board, the administrative board must adopt the order in accordance with its procedures.

(c) If the district does not have an administrative board, the governing body of each member of the district must adopt the order. The order is effective throughout the public health district on the 30th day after the first date on which the governing bodies of all members have adopted the order.

(d) This chapter does not restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.005. PUBLIC HEARING. (a) A commissioners court, governing body, or administrative board, as applicable, may adopt an order under Section 437.003 or 437.004 only after conducting a public hearing on the proposed order.

(b) At least two weeks' public notice must be given before a public hearing may be held.

(c) The notice must be published in a newspaper of general circulation in the county or public health district on three consecutive days and be printed in 10 point bold-faced type.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0055. PERMIT FROM DEPARTMENT REQUIRED IN AREAS NOT REGULATED BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A person may not operate a food service establishment, retail food store, mobile food unit, or temporary food service establishment located in an area in which a county or public health district does not require a permit or conduct inspections under this chapter unless the person has a permit issued by the department.

(b) A person required to obtain a permit under Subsection (a) must apply every two years for the permit and must pay any fees required by the department.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1120, eff. April 2, 2015.

Sec. 437.0056. RULEMAKING AUTHORITY. The executive commissioner may adopt rules for the efficient enforcement of this chapter by the department in an area not regulated under this chapter by a county or public health district. The executive commissioner by rule shall establish minimum standards for granting and maintaining a permit in an area not regulated under this chapter by a county or public health district. The commissioner may refuse an application for a permit or suspend or revoke a permit in an area not regulated under this chapter by a county or public health district.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 2, eff. Jan. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1121, eff. April 2, 2015.

Sec. 437.0057. REGULATION OF FOOD HANDLERS AND OTHER FOOD SERVICE EMPLOYEES BY COUNTIES, PUBLIC HEALTH DISTRICTS, AND THE DEPARTMENT. (a) A county, a public health district, or the department may require certification under Subchapter D, Chapter 438, for each food handler who is employed by a food service establishment in which food is prepared on-site for sale to the public and which holds a permit issued by the county, the public health district, or the department. This section applies without regard to whether the food service establishment is at a fixed location or is a mobile food unit.

(b) The requirements of certification under this section may not be more stringent than the requirements of Subchapter D, Chapter 438.

(c) A county, a public health district, or the department may not require an establishment that handles only prepackaged food and does not prepare or package food to employ certified food handlers under this section.

(d) A county, a public health district, or the department may exempt a food service establishment from the requirement that the county, public health district, or department has imposed under Subsection (a) if the county, the public health district, or the department determines that the application of Subsection (a) to that establishment is not necessary to protect public health and safety.

(e) A county, a public health district, or the department may require a food service establishment to:

(1) post a sign in a place conspicuous to employees, in a form adopted by the executive commissioner, describing a food service employee's responsibilities to report certain health conditions to the permit holder under rules adopted by the executive commissioner; or

(2) require that each food service employee sign a written agreement in a form adopted by the executive commissioner to report those health conditions.

Added by Acts 2009, 81st Leg., R.S., Ch. 926 (H.B. 3012), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1122, eff. April 2, 2015.

Sec. 437.006. MORE THAN ONE PERMIT PROHIBITED. A food service establishment or retail food store may not be required under this chapter to obtain more than one permit for each location.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0065. PERMITS FOR CERTAIN FARMERS AND FOOD PRODUCERS. (a) In this section, "farmers' market" and "food producer" have the meanings assigned by Section 437.020.

(b) This section applies only to a permit issued under this chapter to:

(1) a farmer for the sale of food directly to consumers at a farmers' market, a farm stand, or the farmer's farm; and

(2) a food producer, other than a farmer, for the sale of food directly to consumers at a farmers' market.

(c) A permit issued under Section 437.003, 437.004, 437.0055, or 437.0201 to a person described by Subsection (b):

(1) must be valid for a term of not less than one year;

(2) may impose an annual fee in an amount not to exceed $100 for the issuance or renewal; and

(3) must cover sales at all locations the permit holder is authorized to sell food under Subsection (b), including farmers' markets, farm stands, and farms within the jurisdiction of the permitting authority.

(d) A farmer or food producer who is charged an annual fee in an amount that exceeds the amount authorized by Subsection (c)(2) or whose permit does not otherwise comply with this section may bring an action against the governmental entity that charged the fee or issued the permit to recover:

(1) the amount the farmer or food producer was charged in excess of the annual fee authorized by Subsection (c)(2); and

(2) reasonable and necessary attorney's fees incurred in bringing the action.

Added by Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 577 (S.B. 617), Sec. 1, eff. June 14, 2021.

Sec. 437.007. NONPROFIT ORGANIZATIONS EXEMPT. A county or public health district may not require a nonprofit organization to obtain a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0073. MEDALLION FOR MOBILE FOOD UNITS IN CERTAIN POPULOUS MUNICIPALITIES. (a) This section applies only to a municipality with a population of 1.5 million or more.

(b) Any person desiring to operate one or more mobile food units in a municipality subject to this section other than restricted operations mobile food units shall obtain an individual medallion for each operating mobile food unit from the health officer of the municipality. Each medallion will be issued unit-by-unit only after an inspection reveals satisfactory compliance with the provisions of this chapter and applicable municipal regulations or ordinances relating to mobile food units. The medallions shall remain the property of the municipality.

(c) A person may not operate or cause to be operated any mobile food unit that does not possess a valid medallion issued by the health officer.

(d) A medallion shall be affixed by the health officer or the health officer's authorized agents on the mobile food unit in a conspicuous place where it can be viewed by patrons.

(e) Application for a medallion shall be made on forms provided by the health officer and must include:

(1) the applicant's full name and mailing address;

(2) the address of the location at which the mobile food unit is stationed when not in use;

(3) the business name and address of the commissary or other fixed food service establishment from which potentially hazardous food supplies are obtained;

(4) the address of the servicing area;

(5) a description of the mobile food unit that includes the manufacturer's make, model, and serial number;

(6) the vehicle's state registration number; and

(7) the signature of the applicant.

(f) All of the provisions of this chapter and applicable municipal regulations or ordinances pertaining to food service

establishments apply to the commissary or other fixed food service establishment from which the food supplies are obtained. Any suspension or revocation of the food dealer's permit for a food service establishment is cause for suspension or revocation of the medallion of any mobile food unit that is supplied or serviced by the establishment.

Added by Acts 2009, 81st Leg., R.S., Ch. 403 (H.B. 1802), Sec. 1, eff. June 19, 2009.

Sec. 437.0074. MOBILE FOOD UNITS IN CERTAIN POPULOUS COUNTIES. (a) A county with a population of at least 2.8 million, or a municipality or public health district in the county, shall require a mobile food unit to:

(1) return to the food service establishment or commissary from which the unit operates within the 24-hour period preceding operation of the mobile food unit to have cleaning and other services performed on the unit; and

(2) obtain, on completion of an inspection following servicing, written documentation that the mobile food unit has been serviced daily as required by Subdivision (1).

(b) A county, municipality, or public health district that has installed an electronic tagging system shall register and record confirmation that the unit has been serviced as required by Subsection (a)(1).

(c) A municipality with a population of 1.5 million or more in a county with a population of 2.8 million or more shall require a mobile food unit, other than a mobile food unit that handles only prepackaged food and does not prepare or package food, to obtain a time and date stamp on the documentation required under Subsection (a)(2) from a time and date stamp unit that is constructed to prevent tampering and approved by the municipality's governing body. A record kept by the municipality regarding the time and date stamp on the documentation under Subsection (a)(2) by means of an electronic tagging system under Subsection (b) controls if that record is inconsistent with the record kept by the mobile food unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1276 (H.B. 3672), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 403 (H.B. 1802), Sec. 2, eff. January 1, 2010.

Sec. 437.0075. FOOD MANAGERS IN CERTAIN POPULOUS COUNTIES. (a) A county with a population of at least four million may require a certified or trained food manager to be on duty during the operating hours of a food establishment.

(b) The training required of food managers can be no more extensive than that specified under Subchapter D, Chapter 438.

(c) A food establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

Added by Acts 1999, 76th Leg., ch. 1378, Sec. 7, eff. June 19, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 911 (S.B. 1158), Sec. 1, eff. September 1, 2017.

Sec. 437.0076. CERTIFIED FOOD MANAGER. (a) A county or public health district may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that holds a permit issued by the county or public health district to employ a food manager certified under Subchapter G, Chapter 438.

(b) The executive commissioner may require each fixed or mobile location retail establishment in which food is prepared on-site for sale to the public that is required to be operated under a permit under Section 437.0055 to employ a food manager certified under Subchapter G, Chapter 438.

(c) An establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(d) The executive commissioner by rule may exempt establishments other than the establishments described by Subsection (c) from the requirement imposed under this section if the executive commissioner determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(e) A county or public health district may exempt establishments other than the establishments exempt under Subsections (c) and (d) from the requirement imposed by the county or public health district under this section if the county or public health district determines that the application of the requirement to those establishments is not necessary to protect public health and safety.

(f) A child-care facility, as that term is defined by Section 42.002, Human Resources Code, is exempt from the requirements imposed under this section.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1123, eff. April 2, 2015.

Sec. 437.008. PERMIT RENEWAL. A county or public health district may require the annual renewal of a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.009. INSPECTIONS; INSPECTION FOLLOWING ADOPTION OF CERTAIN LOCAL ORDERS; PROHIBITED DISCIPLINARY ACTION. (a) Authorized agents or employees of the department, a county, or a public health district may enter the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under the department's, county's, or district's jurisdiction during normal operating hours to conduct inspections to determine compliance with:

(1) state law, including a requirement to hold and display written authorization under Section 437.021;

(2) rules adopted under state law; and

(3) orders adopted by the department, county, or district.

(b) A municipality or public health district of which the municipality is a member may not conduct an inspection to determine compliance with an ordinance the municipality adopts that differs from state law or department rules or orders before the 60th day following the date the municipality or district submits a copy of the ordinance to the department for inclusion in the registry established under Section 437.0091.

(c) Notwithstanding any other law, the department, a county, a municipality, or a public health district, including an authorized agent or employee, that conducts an inspection authorized under this section may not take disciplinary action against or otherwise penalize a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment for failing to adhere to easily cleanable surface requirements for wall and ceiling surfaces, decorative items, or attachments in a consumer area, provided the surfaces, items, or attachments are kept clean. For purposes of this subsection, a consumer area includes a dining room, outdoor dining area, or bar seating area in which customers consume food but does not include a table, bar top, or other similar surface where food is regularly prepared or consumed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1402 (H.B. 3138), Sec. 1, eff. June 15, 2007.
Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.

Sec. 437.0091. MUNICIPAL ORDINANCE REGISTRY. The department shall establish and maintain on the department's Internet website a registry for municipal ordinances submitted under Section 437.009(b) and post in the registry each submitted ordinance not later than the 10th day after the date the department receives the ordinance.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.

Sec. 437.0095. DETENTION. The commissioner or an authorized agent may detain an article of food that is located on the premises of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment and is adulterated or misbranded under Chapter 431.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.010. SUBMISSION OF PLANS AND SUBSEQUENT INSPECTION. (a) Before issuing a permit, a county or public health district may require an applicant to provide plans of the food preparation, storage, and sales areas to determine if the applicant is in compliance with state law and rules adopted under state law governing the applicant.

(b) The county or public health district may deny the permit after initial inspection only if the applicant is not in compliance with the plans approved by the county or district.

(c) If the county or public health district finds on inspection that an applicant is not in compliance with state law and rules adopted under state law, the county or public health district may reinspect the applicant at a later date to determine if the applicant is in compliance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.011. INSPECTION OF EXISTING ENTITIES ON ADOPTION OF ORDER. (a) When a county or public health district requires a permit, the county or district shall make an initial inspection of the facilities of any existing entity applying for the permit.

(b) An existing entity is entitled to continue to operate pending its initial inspection.

(c) If the county or public health district determines on inspection that an entity does not meet the standards established by state law or rules adopted under state law, the county or district may start revocation proceedings as if the entity had obtained a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.012. COUNTY AND PUBLIC HEALTH DISTRICT FEES. (a) A county or public health district may require the payment of a fee for issuing or renewing a permit.

(b) The fee charged by a county or public health district for issuing or renewing a permit may not exceed the amount necessary to recover the county's or district's cost under Subsection (d).

(c) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees

collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(d) Fees deposited as provided by this section may be spent only for conducting inspections required by this chapter and issuing permits.

(e) This section does not apply to a county or public health district covered by Section 437.0123.

(f) A county or public health district may, by rule or order, adopt a variable scale to determine the fee charged for a permit under this section. In adopting a rule or order under this subsection, the county or public health district may consider:

(1) the size of the food service establishment, retail food store, mobile food unit, or roadside food vendor;

(2) the number of people employed at the food service establishment, retail food store, mobile food unit, or roadside food vendor; and

(3) the gross sales of the food service establishment, retail food store, mobile food unit, or roadside food vendor.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(1), eff. September 1, 2019.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(1), eff. September 1, 2019.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 156, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 72, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(1), eff. September 1, 2019.

Sec. 437.0123. COUNTY AND PUBLIC HEALTH DISTRICT FEES IN CERTAIN POPULOUS COUNTIES. (a) A county that has a population of at least 2.8 million or a public health district at least part of which is in a county that has a population of at least 2.8 million may require the payment of a fee for issuing or renewing a permit or for

performing an inspection to enforce this chapter or a rule adopted under this chapter. A county with a population of at least 2.8 million may require a trained food manager to be on duty during each day of operation of a food service establishment. The training required of food managers can be no more extensive than the training offered by an education or training program accredited under Subchapter D, Chapter 438. A food service establishment that handles only prepackaged food and does not prepare or package food may not be required to have a certified food manager under this section.

(b) A county or public health district that requires payment of a fee under Subsection (a) shall set the fee in an amount that does not exceed the amount necessary to recover the annual expenditures by the county or district for:

(1) reviewing and acting on a permit;

(2) amending and renewing a permit;

(3) inspecting a facility as provided by this chapter and rules adopted under this chapter; and

(4) otherwise administering this chapter and rules adopted under this chapter.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(2), eff. September 1, 2019.

(d) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(e) Fees deposited as provided by this section may be spent only for a purpose described by Subsection (b).

Added by Acts 1997, 75th Leg., ch. 156, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 480, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1124, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 4(2), eff. September 1, 2019.

Sec. 437.01235. FEES FOR PREMISES WITH ALCOHOLIC BEVERAGE PERMIT OR LICENSE. A county or a municipality with a public health district that charges a fee for issuance or renewal of a permit under Section 437.012 or 437.0123 for a premises located in the county or municipality and permitted or licensed by the Texas Alcoholic Beverage Commission may not also charge a fee under Section 11.38 or 61.36, Alcoholic Beverage Code, for issuance of an alcoholic beverage permit or license for the premises.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.

Sec. 437.0124. COUNTY AND PUBLIC HEALTH DISTRICT FEE SCHEDULE. A county or public health district shall establish a fee schedule for any fees collected under this chapter and revise the fee schedule as necessary.

Added by Acts 2019, 86th Leg., R.S., Ch. 458 (H.B. 2755), Sec. 3, eff. September 1, 2019.

Sec. 437.0125. DEPARTMENT FEES. (a) The department shall collect fees for:

(1) filing, renewing, or amending a permit; and

(2) an inspection performed to enforce this chapter or a rule adopted under this chapter.

(b) The department may charge fees every two years.

(c) The executive commissioner by rule shall set the fees for issuing and renewing permits in amounts as prescribed by Section 12.0111 and other fees in amounts that allow the department to recover at least 50 percent of the expenditures by the department for:

(1) reviewing and acting on a permit;

(2) amending a permit;

(3) inspecting a facility as provided by this chapter and rules adopted under this chapter; and

(4) implementing and enforcing this chapter, including a department rule or an order adopted or a license issued by the department.

(d) The department shall spend not less than 50 percent of the

permit fees collected to inspect facilities and to enforce and administer this chapter.

(e) All permit fees collected by the department under this chapter shall be deposited in the state treasury to the credit of the food and drug retail fee account.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 4, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1125, eff. April 2, 2015.

Sec. 437.013. AUDITED STATEMENT. (a) A county or public health district shall file an audited statement with the department on or before January 15 of each year.

(b) The statement must include the receipts of funds collected under this chapter, all expenditures of funds, and fund balances.

(c) A county or public health district that fails to timely file the statement may not require the payment of a fee for issuing or renewing a permit until the statement is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1126, eff. April 2, 2015.

Sec. 437.014. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) A county or public health district may refuse to issue a permit or may suspend or revoke a permit if the county or district finds that the food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with state law, rules adopted under state law, or orders adopted by the county or district.

(b) A permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing.

(c) A county or public health district that requires a permit to operate a food service establishment, retail food store, mobile food unit, or roadside food vendor shall adopt procedures for denying, suspending, or revoking a permit that afford due process to the applicant or permit holder.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0145. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend the license of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment or order the immediate closing of the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment if:

(1) the department finds the food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the public.

(b) An order suspending a license or closing a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(c) An order suspending a license or ordering an immediate closing of a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment is valid for 10 days after the effective date of the order.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.015. INJUNCTION. A city attorney, county attorney, or district attorney may sue in district court to enjoin a food service establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit if a permit is required.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 437.0155. DEPARTMENT INJUNCTION. (a) If it appears that a person has violated, is violating, or threatens to violate this chapter or a rule adopted under this chapter, the department may

institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation.

(b) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that:

(1) a person is violating or threatening to violate this chapter or a rule or order adopted under this chapter; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(c) On the department's request, the attorney general shall institute a suit in the name of the state for injunctive relief.

(d) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(e) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred.

Added by Acts 1999, 76th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1999.

Sec. 437.016. CRIMINAL PENALTY: VIOLATION OF COUNTY AND PUBLIC HEALTH DISTRICT PERMIT REQUIREMENTS. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by the county or public health district in which the entity is operating.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 617, Sec. 5, eff. Sept. 1, 1993.

Sec. 437.0165. CRIMINAL PENALTY: VIOLATION OF DEPARTMENT PERMIT REQUIREMENT. (a) A person commits an offense if the person

operates a food service establishment, retail food store, mobile food unit, or temporary food service establishment without a permit that is required by the department under Section 437.0055.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day on which a violation occurs constitutes a separate offense.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994.

Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The Alcoholic Beverage Code and rules adopted by the Texas Alcoholic Beverage Commission control to the extent of a conflict between this chapter or an order adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1127, eff. April 2, 2015.

Sec. 437.018. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person who holds a permit or who is regulated under this chapter and who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $10,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department shall issue an order that states the facts on which the determination is based, including an assessment of the penalty.

(e) Within 14 days after the date the order is issued, the department shall give written notice of the order to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall hold the hearing. The department shall give written notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a

petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court

shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 617, Sec. 6, eff. Jan. 1, 1994.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1128, eff. April 2, 2015.

Sec. 437.0185. ADMINISTRATIVE PENALTY BY PUBLIC HEALTH DISTRICT OR COUNTY. (a) The director of a public health district or the commissioners court of a county may impose an administrative penalty on a person the district or county requires to hold a permit under Section 437.003 or 437.004 if the person violates this chapter or a rule or order adopted under this chapter.

(b) The amount of the penalty may not exceed $500 per day, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court. A person who cannot afford to pay the penalty may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs.

(d) Not later than the 20th day after the date the person receives notice of the penalty, the person in writing may:

(1) accept the determination and pay the recommended penalty of the director or commissioners court; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(e) The justice of the peace for the justice precinct in which the retail food store or food establishment is located or the mobile food establishment or roadside food vendor is based shall hold a hearing requested under Subsection (d).

(f) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(g) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(h) If the person paid the penalty to the clerk of the court and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount be remitted to the person.

Added by Acts 2007, 80th Leg., R.S., Ch. 1202 (H.B. 1585), Sec. 1, eff. September 1, 2007.

Sec. 437.0186. ASSESSMENT OF ADMINISTRATIVE PENALTY. An administrative penalty may be imposed for a violation of this chapter or a rule or order under this chapter by the state under Section 437.018 or by the director of a public health district or commissioners court of a county under Section 437.0185, but not both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1202 (H.B. 1585), Sec. 1, eff. September 1, 2007.

Sec. 437.019. EXEMPTION FOR CERTAIN BED AND BREAKFAST ESTABLISHMENTS. (a) Except as provided by Subsection (c), a bed and breakfast establishment with seven or fewer rooms for rent that serves only breakfast to its overnight guests is not a food service establishment for purposes of this chapter. An owner or manager of a bed and breakfast establishment covered by this subsection shall successfully complete a food manager's certification course accredited by the department.

(b) Except as provided by Subsection (c), a bed and breakfast establishment that has more than seven rooms for rent, or that provides food service other than breakfast to its overnight guests, is a food service establishment for purposes of this chapter but may not be required to meet all criteria applicable to a larger food service establishment such as a restaurant. The executive commissioner, commissioners court, governing body, or administrative board, as applicable, shall adopt minimum standards for a bed and breakfast establishment covered by this subsection.

(c) A bed and breakfast establishment that provides food service other than to overnight guests is a food service establishment for purposes of this chapter and is subject to all rules and regulations applicable to a food service establishment.

Added by Acts 1995, 74th Leg., ch. 689, Sec. 1, eff. June 15, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1129, eff. April 2, 2015.

Sec. 437.0191. EXEMPTION FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) A cottage food production operation is not a food service establishment for purposes of this chapter.

(b) The exemption provided by Subsection (a) does not affect the application of Sections 431.045, 431.0495, and 431.247 authorizing the department or other local health authority to act to prevent an immediate and serious threat to human life or health.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 2, eff. September 1, 2013.

Sec. 437.0192. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS BY LOCAL GOVERNMENT AUTHORITIES PROHIBITED; COMPLAINTS. (a) A local government authority, including a local health department, may not regulate the production of food at a cottage food production operation.

(b) Each local health department and the department shall maintain a record of a complaint made by a person against a cottage food production operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 3, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 4, eff. September 1, 2013.

Sec. 437.0193. PACKAGING AND LABELING REQUIREMENTS FOR COTTAGE FOOD PRODUCTION OPERATIONS. (a) Food described by Section 437.001(2-b)(A) sold by a cottage food production operation must be packaged in a manner that prevents product contamination, except that a food item is not required to be packaged if it is too large or bulky for conventional packaging.

(b) The executive commissioner shall adopt rules requiring a cottage food production operation to label all of the foods described in Section 437.001(2-b)(A) that the operation sells to consumers. The label must include:

(1) the name and address of the cottage food production operation; and

(2) a statement that the food is not inspected by the department or a local health department.

(c) For foods not required to be packaged under Subsection (a), the information required to be included on the label under Subsection (b) must be provided to the consumer on an invoice or receipt.

(d) A cottage food production operation that sells frozen raw

and uncut fruit or vegetables must include on the label of the frozen fruit or vegetables or on an invoice or receipt provided with the frozen fruit or vegetables when sold the following statement in at least 12-point font: "SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria, keep this food frozen until preparing for consumption."

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 5, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 2, eff. September 1, 2019.

Sec. 437.0194. CERTAIN SALES BY COTTAGE FOOD PRODUCTION OPERATIONS PROHIBITED OR RESTRICTED. (a) A cottage food production operation may not sell any of the foods described in Section 437.001(2-b)(A) at wholesale.

(b) A cottage food production operation may sell a food described by Section 437.001(2-b)(A) in this state through the Internet or by mail order only if:

(1) the consumer purchases the food through the Internet or by mail order from the operation and the operator personally delivers the food to the consumer; and

(2) subject to Subsection (c), before the operator accepts payment for the food, the operator provides all labeling information required by Section 437.0193(d) and department rules to the consumer by:

(A) posting a legible statement on the operation's Internet website;

(B) publishing the information in a catalog; or

(C) otherwise communicating the information to the consumer.

(c) The operator of a cottage food production operation that sells a food described by Section 437.001(2-b)(A) in this state in the manner described by Subsection (b):

(1) is not required to include the address of the operation in the labeling information required under Subsection (b)(2) before

the operator accepts payment for the food; and

(2) shall provide the address of the operation on the label of the food in the manner required by Section 437.0193(b) after the operator accepts payment for the food.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 5, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 3, eff. September 1, 2019.

Sec. 437.0195. PRODUCTION OF COTTAGE FOOD PRODUCTS. (a) An individual who operates a cottage food production operation must have successfully completed a basic food safety education or training program for food handlers accredited under Subchapter D, Chapter 438.

(b) An individual may not process, prepare, package, or handle cottage food products unless the individual:

(1) meets the requirements of Subsection (a);

(2) is directly supervised by an individual described by Subsection (a); or

(3) is a member of the household in which the cottage food products are produced.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 6, eff. September 1, 2013.

Sec. 437.01951. REQUIREMENTS FOR SALE OF CERTAIN COTTAGE FOODS. (a) A cottage food production operation that sells to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods shall:

(1) use a recipe that:

(A) is from a source approved by the department under Subsection (d);

(B) has been tested by an appropriately certified laboratory that confirmed the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less; or

(C) is approved by a qualified process authority; or

(2) if the operation does not use a recipe described by Subdivision (1), test each batch of the recipe with a calibrated pH meter to confirm the finished fruit or vegetable, product, or good has an equilibrium pH value of 4.6 or less.

(b) A cottage food production operation may not sell to consumers pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods before the operator complies with Subsection (a).

(c) For each batch of pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods, a cottage food production operation must:

(1) label the batch with a unique number; and

(2) for a period of at least 12 months, keep a record that includes:

(A) the batch number;

(B) the recipe used by the producer;

(C) the source of the recipe or testing results, as applicable; and

(D) the date the batch was prepared.

(d) The department shall:

(1) approve sources for recipes that a cottage food production operation may use to produce pickled fruit or vegetables, fermented vegetable products, or plant-based acidified canned goods; and

(2) semiannually post on the department's Internet website a list of the approved sources for recipes, appropriately certified laboratories, and qualified process authorities.

(e) The department shall develop and implement a process by which an individual may request that the department approve an additional source for recipes under Subsection (d). The process must allow an individual to submit with the individual's request documentation supporting the request.

(f) A source for recipes approved by the department under Subsection (d) must be scientifically validated and may be from a government entity, academic institution, state extension service, or other qualified source with:

(1) expert knowledge of processing requirements for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods; and

(2) adequate facilities for scientifically validating

recipes for pickled fruit or vegetables, fermented vegetable products, or acidified canned goods.

(g) This section does not apply to pickled cucumbers.

(h) For purposes of this section, "process authority" means a person who has expert knowledge acquired through appropriate training and experience in the pickling, fermenting, or acidification and processing of pickled, fermented, or acidified foods.

Added by Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 4, eff. September 1, 2019.

Sec. 437.01952. REQUIREMENTS FOR SALE OF FROZEN FRUIT OR VEGETABLES. A cottage food production operation that sells to consumers frozen raw and uncut fruit or vegetables shall:

(1) store and deliver the frozen fruit or vegetables at an air temperature of not more than 32 degrees Fahrenheit; and

(2) label the fruit or vegetables in accordance with Section 437.0193(d).

Added by Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 4, eff. September 1, 2019.

Sec. 437.0196. TIME AND TEMPERATURE CONTROL FOR SAFETY FOOD; PROHIBITION FOR COTTAGE FOOD PRODUCTION OPERATIONS; EXCEPTION. (a) In this section, "time and temperature control for safety food" means a food that requires time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A time and temperature control for safety food may include a food that contains protein and moisture and is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products, pasteurized and unpasteurized milk and dairy products, raw seed sprouts, baked goods that require refrigeration, including cream or custard pies or cakes, and ice products. The term does not include a food that uses time and temperature control for safety food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

(b) Except as otherwise provided by this chapter, a cottage food production operation may not sell to consumers time and temperature control for safety foods.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 6, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 590 (S.B. 572), Sec. 5, eff. September 1, 2019.

Sec. 437.0197. EXEMPTION FOR SMALL HONEY PRODUCTION OPERATION. A small honey production operation is not a food service establishment for purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 2, eff. September 1, 2015.

Sec. 437.0198. REGULATION OF SMALL HONEY PRODUCTION OPERATION PROHIBITED. A local government authority, including a local health department, may not regulate the production of honey or honeycomb at a small honey production operation.

Added by Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 2, eff. September 1, 2015.

Sec. 437.0199. LABELING REQUIREMENTS FOR SMALL HONEY PRODUCTION OPERATION. Honey or honeycomb sold or distributed by a small honey production operation must be labeled in accordance with Subchapter E, Chapter 131, Agriculture Code. The label must include:

(1) the net weight of the honey expressed in both the avoirdupois and metric systems;

(2) the beekeeper's name and address; and

(3) the statement "Bottled or packaged in a facility not inspected by the Texas Department of State Health Services."

Added by Acts 2015, 84th Leg., R.S., Ch. 265 (S.B. 1766), Sec. 2, eff. September 1, 2015.

Sec. 437.020. REGULATION OF FOOD SAMPLES AT FARMS AND FARMERS' MARKETS. (a) In this section:

(1) "Farmers' market" means a designated location used for a recurring event at which a majority of the vendors are farmers or other food producers who sell food directly to consumers.

(2) "Food" means an agricultural, apicultural, horticultural, silvicultural, viticultural, or vegetable product for human consumption, in either its natural or processed state, that has been produced or processed or otherwise has had value added to the product in this state. The term includes:

(A) fish or other aquatic species;

(B) livestock, a livestock product, or a livestock by-product;

(C) planting seed;

(D) poultry, a poultry product, or a poultry by-product;

(E) wildlife processed for food or by-products;

(F) a product made from a product described by this subdivision by a farmer or other producer, including a cottage food production operation, who grew or processed the product; or

(G) produce.

(3) "Food producer" means a person who grew, raised, processed, prepared, manufactured, or otherwise added value to the food product the person is selling. The term does not include a person who only packaged or repackaged a food product.

(b) Except as provided by this section and Sections 437.0065, 437.0201, 437.0202, and 437.0203:

(1) this chapter does not regulate the provision of samples of food or the sale of food to consumers at a farm or farmers' market; and

(2) a rule adopted under state law may not regulate the provision of samples of food or the sale of food to consumers at a farm or farmers' market.

(b-1) The department or a local government authority, including a local health department, may not require a person to obtain a permit under this chapter to provide samples of food at a farm or farmers' market under this section.

(b-2) A local government authority, including a local health department, may not regulate the provision of samples of food at a farm or farmers' market except as provided by this chapter.

(b-3) The department or a local government authority, including a local health department, may:

(1) perform an inspection to enforce the requirements of this section for preparing and distributing samples of food at a farm or farmers' market; and

(2) require a person to obtain a permit under this chapter to offer for sale or distribution to consumers food cooked at a farm or farmers' market.

(c) Samples of food may be prepared and distributed at a farm or farmers' market if the following sanitary conditions exist:

(1) samples must be distributed in a sanitary manner;

(2) a person preparing produce samples on-site must:

(A) wear clean, disposable plastic gloves when preparing samples; or

(B) observe proper hand washing techniques immediately before preparing samples;

(3) produce intended for sampling must be washed in potable water to remove any soil or other visible material;

(4) potable water must be available for washing;

(5) except as provided by Section 437.0202(b), potentially hazardous food, as determined by rule of the department, must be maintained at or below 41 degrees Fahrenheit or disposed of within two hours after cutting or preparing; and

(6) utensils and cutting surfaces used for cutting samples must be smooth, nonabsorbent, and easily cleaned or disposed of.

(d) A person who sells or provides a sample of meat or poultry or food containing meat or poultry must comply with Chapter 433.

(e) This section does not authorize the sale of or provision of samples of raw milk or raw milk products at a farmers' market.

(f) A cottage food production operation may only provide samples of food described by Section 437.001(2-b)(A) produced by the operation.

(g) This section does not apply to a person who:

(1) provides samples of food at a farm or farmers' market; and

(2) does not sell food directly to consumers at the farm or farmers' market.

Added by Acts 2005, 79th Leg., Ch. 191 (H.B. 894), Sec. 1, eff. May 27, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 373 (H.B. 1694), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 373 (H.B. 1694), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 577 (S.B. 617), Sec. 2, eff. June 14, 2021.

Sec. 437.0201. REGULATION OF FOOD AT FARMERS' MARKETS UNDER TEMPORARY FOOD ESTABLISHMENT PERMITS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) The department or a local health department may issue a temporary food establishment permit to a person who sells food at a farmers' market, subject to Section 437.0065.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 4, eff. September 1, 2019.

(d) This section does not apply to a farmers' market in a county:

(1) that has a population of less than 50,000; and

(2) over which no local health department has jurisdiction.

(e) The executive commissioner, a state enforcement agency, or a local government authority, including a local health department, may not adopt a rule requiring a farmers' market to pay a permit fee for:

(1) conducting a cooking demonstration if the demonstration is conducted for a bona fide educational purpose; or

(2) providing samples of food.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 7, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 3, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 3, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 339 (S.B. 932), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 373 (H.B. 1694), Sec. 3, eff. September 1, 2019.

Sec. 437.0202. TEMPERATURE REQUIREMENTS FOR FOOD AT FARMERS' MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) The executive commissioner by rule may adopt temperature requirements for food sold at, prepared on-site at, or transported to or from a farmers' market under Section 437.020, 437.0201, or 437.0203. Food prepared on-site at a farmers' market may be sold or distributed at the farmers' market only if the food is prepared in compliance with the temperature requirements adopted under this section.

(c) Except as provided by Subsection (d), the executive commissioner or a state or local enforcement agency may not mandate a specific method for complying with the temperature control requirements adopted under Subsection (b).

(d) The municipality in which a municipally owned farmers' market is located may adopt rules specifying the method or methods that must be used to comply with the temperature control requirements adopted under Subsection (b).

(e) This section does not apply to a farmers' market in a county:

(1) that has a population of less than 50,000; and

(2) over which no local health department has jurisdiction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1317 (S.B. 81), Sec. 7, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 4, eff. September 1, 2013.

Sec. 437.0203. REGULATION OF COOKING DEMONSTRATIONS AT FARMERS' MARKETS. (a) In this section, "farmers' market" and "food" have the meanings assigned by Section 437.020.

(b) Except as provided by this section and Sections 437.020, 437.0201, and 437.0202:

(1) this chapter does not regulate cooking demonstrations at a farmers' market; and

(2) a rule adopted under state law may not regulate cooking demonstrations at a farmers' market.

(c) A person may conduct a cooking demonstration at a farmers' market only if:

(1) regardless of whether the demonstrator provides a sample of food to consumers, the farmers' market that hosts the demonstration:

(A) has an establishment operator with a valid certification under Subchapter D, Chapter 438, supervising the demonstration; and

(B) complies with Sections 437.020 and 437.0202, the requirements of a temporary food establishment under this chapter, and rules adopted under this chapter; and

(2) when the demonstrator provides a sample of food to consumers:

(A) the demonstrator provides a sample only and not a full serving; and

(B) samples of food prepared during a demonstration are disposed of not later than two hours after the beginning of the demonstration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1275 (H.B. 1382), Sec. 5, eff. September 1, 2013.

Sec. 437.021. AUTHORITY TO OPERATE ON CERTAIN PROPERTY. A person operating a mobile food unit, roadside food vendor, or temporary food service establishment in a county with a population of more than 3.3 million shall acquire written authorization from the owner of the property on which the unit, vendor, or establishment is operating. The written authorization must:

(1) be notarized;

(2) provide that the operator has the property owner's permission to operate the unit, vendor, or establishment on the property; and

(3) be prominently displayed in the unit, vendor, or

establishment in plain view of the public at all times.

Added by Acts 2007, 80th Leg., R.S., Ch. 1402 (H.B. 3138), Sec. 2, eff. June 15, 2007.

Sec. 437.023. SERVICE ANIMALS. (a) A food service establishment, retail food store, or other entity regulated under this chapter may not deny a service animal admittance into an area of the establishment or store or of the physical space occupied by the entity that is open to customers and is not used to prepare food if:

(1) the service animal is accompanied and controlled by a person with a disability; or

(2) the service animal is in training and is accompanied and controlled by an approved trainer.

(b) If a service animal is accompanied by a person whose disability is not readily apparent, for purposes of admittance to a food service establishment, retail food store, or physical space occupied by another entity regulated under this chapter, a staff member of the establishment, store, or entity may only inquire about:

(1) whether the service animal is required because the person has a disability; and

(2) what type of work the service animal is trained to perform.

(c) In this section, "service animal" means a canine that is specially trained or equipped to help a person with a disability. An animal that provides only comfort or emotional support to a person is not a service animal under this section. The tasks that a service animal may perform in order to help a person with a disability must be directly related to the person's disability and may include:

(1) guiding a person who has a visual impairment;

(2) alerting a person who has a hearing impairment or who is deaf;

(3) pulling a wheelchair;

(4) alerting and protecting a person who has a seizure disorder;

(5) reminding a person who has a mental illness to take prescribed medication; and

(6) calming a person who has post-traumatic stress disorder.

Added by Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 1, eff. January 1, 2014.

Sec. 437.025. REQUIREMENTS FOR DOGS IN OUTDOOR DINING AREAS; MUNICIPAL PREEMPTION. (a) A food service establishment may permit a customer to be accompanied by a dog in an outdoor dining area if:

(1) the establishment posts a sign in a conspicuous location in the area stating that dogs are permitted;

(2) the customer and dog access the area directly from the exterior of the establishment;

(3) the dog does not enter the interior of the establishment;

(4) the customer keeps the dog on a leash and controls the dog;

(5) the customer does not allow the dog on a seat, table, countertop, or similar surface; and

(6) in the area, the establishment does not:

(A) prepare food; or

(B) permit open food other than food that is being served to a customer.

(b) A municipality may not adopt or enforce an ordinance, rule, or similar measure that imposes a requirement on a food service establishment for a dog in an outdoor dining area that is more stringent than the requirements described by Subsection (a).

(c) The requirements described by Subsection (a) do not apply to a service animal, as defined by Section 437.023(c).

Added by Acts 2019, 86th Leg., R.S., Ch. 423 (S.B. 476), Sec. 1, eff. September 1, 2019.

Sec. 437.026. SALE OF CERTAIN FOOD BY FOOD SERVICE ESTABLISHMENT. (a) Except as provided by Subsection (b), a food service establishment that holds a permit under this chapter may sell directly to an individual consumer food, other than prepared food, that:

(1) is labeled, which may include a handwritten label, with any information required by the department's food service establishment rules;

(2) for a meat product or poultry product, is obtained from a source that is appropriately inspected and bears an official mark of inspection from the department or the United States Department of Agriculture; and

(3) for food requiring refrigeration other than whole, uncut produce, is:

(A) maintained at or below 41 degrees Fahrenheit until the establishment sells or donates the food; and

(B) protected from contamination.

(b) A food service establishment described by Subsection (a) may not sell directly to an individual consumer food that is:

(1) in a package exhibiting damage; or

(2) distressed because the food:

(A) has been subjected to fire, flooding, excessive heat, smoke, radiation, or another environmental contamination;

(B) is not held at the correct temperature for the food type; or

(C) is not in good condition.

(c) A municipality or public health district may not require a food service establishment that sells food directly to an individual consumer under this section to obtain a food manufacturer license or permit if the establishment:

(1) complies with this section; and

(2) is not required to hold a food manufacturer license or permit under other state law.

Added by Acts 2021, 87th Leg., R.S., Ch. 242 (H.B. 1276), Sec. 1, eff. June 4, 2021.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 2, see other Sec. 437.027.

Sec. 437.027. PROHIBITED RESTRICTIONS ON PACKAGING, UTENSILS, AND STRAWS. Notwithstanding any other law, the department, a county, a municipality, or a public health district may not restrict the type or quantity of packaging, utensils, or straws a food service establishment, retail food store, mobile food unit, roadside food vendor, or temporary food service establishment provides to

customers.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, eff. September 1, 2023.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 2

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 1, see other Sec. 437.027.

Sec. 437.027. FOOD ALLERGEN AWARENESS POSTER. (a) A food service establishment shall display a poster relating to food allergen awareness in an area of the establishment regularly accessible to the establishment's food service employees. The department shall:

(1) collaborate with individuals with expertise and knowledge regarding food allergies to determine the form and content of the poster;

(2) post a sample poster on the department's Internet website; and

(3) update the poster as necessary to ensure the poster contains current information about food allergens and remains consistent with standards promulgated by the United States Food and Drug Administration.

(b) The poster must include information regarding:

(1) the risk of an allergic reaction to a food allergen;

(2) symptoms of an allergic reaction;

(3) the major food allergens, as determined by federal law and regulations of the United States Food and Drug Administration;

(4) the procedures for preventing an allergic reaction; and

(5) appropriate responses for assisting an individual who is having an allergic reaction.

(c) The executive commissioner shall adopt rules necessary to implement this section.

(d) This section does not create a private cause of action or change any common law or statutory duty.

(e) Notwithstanding any other law, a county, municipality, or public health district may not adopt or enforce an order, ordinance, rule, or other measure related to food allergens that is inconsistent with or exceeds the requirements of this section or Chapter 438.

Added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 2, eff. September 1, 2023.

CHAPTER 437A. MOBILE FOOD SERVICE ESTABLISHMENTS OPERATING IN CERTAIN COUNTIES IN MORE THAN ONE MUNICIPALITY

Sec. 437A.001. DEFINITIONS. In this chapter:

(1) "Food," "mobile food unit," and "roadside food vendor" have the meanings assigned by rules adopted under Chapter 437.

(2) "Mobile food service establishment" means one or more mobile food units or roadside food vendors operating from a single preparation facility under the managerial authority of a single permit or license holder.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.002. APPLICABILITY. This chapter applies only to a county:

(1) with a population of more than 2.1 million; and

(2) in which is located partly or wholly:

(A) an airport operating under Subchapter D, Chapter 22, Transportation Code; and

(B) an airport owned by the principal municipality in the county that does not offer commercial air service.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.003. COUNTY PERMIT REQUIRED. (a) Notwithstanding any other law, a mobile food service establishment may not operate in a county to which this chapter applies unless the establishment obtains a permit from the county.

(b) A permit issued by a county under this chapter must authorize a mobile food service establishment to operate in any municipality located in the county.

(c) A permit issued by a county under this chapter is considered a permit issued by a county under Chapter 437 for purposes of that chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.004. COUNTY RESPONSE TO PERMIT APPLICATION. A county shall approve or deny a mobile food service establishment's application for a permit to operate in the county not later than the third business day after the date the county receives the application and all information necessary for the county to consider the application.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.005. REFUSAL TO ISSUE PERMIT. (a) A county may refuse to issue a permit for a mobile food service establishment to operate in the county if the establishment is not in good standing in another jurisdiction or if the county has previously imposed on the establishment a citation or fine that raises public health and safety concerns.

(b) If a county refuses to issue a permit authorizing a mobile food service establishment to operate in the county, the county shall provide the establishment with written notice regarding the basis for the county's refusal and advise the establishment of any remedial actions the establishment may take to become eligible for a permit.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.006. INSPECTION BY COUNTY. (a) A mobile food service establishment is subject to periodic and unannounced inspections by the county that issues the permit to operate in the county under this chapter.

(b) A mobile food service establishment shall allow the county access to the establishment for an inspection.

(c) If an inspection by the county determines a mobile food service establishment committed a violation, the county may issue a fine to the establishment or suspend the establishment's permit.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.007. PERMIT RENEWAL; NOTICE. A mobile food service establishment annually shall renew the establishment's permit under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

Sec. 437A.008. RULES. The executive commissioner may adopt the rules necessary to implement this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 845 (H.B. 2878), Sec. 1, eff. September 1, 2023.

CHAPTER 438. PUBLIC HEALTH MEASURES RELATING TO FOOD

SUBCHAPTER A. UNPACKAGED FOODS

Sec. 438.001. DEFINITIONS. In this subchapter:

(1) "Gravity feed type container" means a self-service container in which food is dispensed by operating a mechanism that permits the food to drop into a receptacle.

(2) "Scoop utensil type container" means a self-service container from which food is dispensed by using a utensil provided with the container.

(3) "Unpackaged food" means food that is:

(A) not in individual packaging or wrapping;

(B) offered for sale by a retail food store; and

(C) sold in bulk from a container that permits a customer to dispense the food directly into a receptacle.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.002. EXEMPTIONS. This subchapter does not apply to:

(1) a beverage;

(2) fresh fruit or vegetables;

(3) food that is intended to be shelled or cooked before

consumption; or

(4) food, such as milk products, eggs, meat, poultry, fish, or shellfish, that is capable of supporting rapid and progressive growth of infectious or toxic microorganisms.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.003. SALE FROM SELF-SERVICE CONTAINERS. (a) A person may sell unpackaged food that is displayed and sold in bulk from a self-service container if:

(1) the self-service container has a tight-fitting lid that is securely attached to the container; and

(2) the container, lid, and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.

(b) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.

(c) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispensing the food.

(d) The seller shall:

(1) keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and

(2) post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.004. STRICTER RULES. (a) The executive commissioner by rule may establish requirements stricter than the requirements prescribed by Section 438.003 for the display and sale of unpackaged foods if the transmission of a disease infestation or contamination is directly related to a method of displaying and selling unpackaged food authorized by this subchapter.

(b) The stricter requirement must be:

(1) adopted according to laboratory evidence supporting the specific relationship between the disease infestation or contamination and the method of dispensing the unpackaged food; and

(2) applied uniformly to all nonexempted food sources and

dispensing methods.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1130, eff. April 2, 2015.

Sec. 438.005. SALE OF UNPACKAGED FOOD; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally sells unpackaged food in a manner that does not comply with Section 438.003 or a rule adopted under Section 438.004.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.006. EFFECT ON OTHER LAWS. (a) This subchapter supersedes an ordinance or rule adopted by a political subdivision to regulate the method of dispensing unpackaged food.

(b) This subchapter does not affect an ordinance or rule adopted and enforced by a political subdivision to require the maintenance of sanitary conditions in the sale of unpackaged food dispensed in a manner authorized by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. CLEANING AND STERILIZATION OF FOOD SERVICE ITEMS

Sec. 438.011. DEFINITIONS. In this subchapter:

(1) "Dish" includes a vessel of any shape or size, made of any type of material, commonly used in eating or drinking.

(2) "Food factory" includes a place in which, as a business, food is manufactured or prepared for human consumption.

(3) "Receptacle" includes a vessel, tray, pot, pan, or other article used for holding food.

(4) "Utensil" includes a vessel or article of any shape or size, made of any material, commonly used in preparing, holding, storing, transporting, serving, or eating food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.012. USE OF UNCLEAN DISHES. A person who operates or manages a food factory may not use or keep for use a dish or utensil or a food-grinding machine or implement that after its previous use has not been cleaned in the manner required by Section 438.013(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.013. CLEANING DISHES, RECEPTACLES, AND UTENSILS. (a) A person who operates or manages a hotel, cafe, restaurant, dining car, drugstore, soda fountain, meat market, bakery, confectionery, liquor dispensary, or other establishment where food or drink is served to the public may not furnish to a person a dish, receptacle, or utensil that after its previous use has not been washed in warm water containing soap or alkali cleanser until the item is clean to the sight and touch.

(b) A dish or utensil that has been cleaned or polished with a poisonous substance may not be offered for use to a person or used in the manufacturing of food unless all traces of the poisonous substance have been removed from the dish or utensil.

(c) In this section, "liquor dispensary" means a place where malt beverages, wine, or any other alcoholic beverage is stored, prepared, labeled, bottled, served, or handled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 393, eff. September 1, 2021.

Sec. 438.014. STERILIZATION OF FOOD SERVICE ITEMS. (a) After cleaning dishes, receptacles, utensils, food-grinding machines, and implements as required by Section 438.012 or 438.013, the items shall be:

(1) placed in a wire cage and immersed in a still bath of clear water for at least:

(A) three minutes in water heated to a minimum temperature of 170 degrees Fahrenheit; or

(B) two minutes in water heated to a minimum

temperature of 180 degrees Fahrenheit;

(2) immersed for at least two minutes in a lukewarm chlorine bath made up at a strength of 100 parts per milliliter or more of hypochlorites and not reduced to less than 50 parts per milliliter available chlorine, or a concentration of equal bacteriacidal strength if chloramines are used; or

(3) sterilized by any other chemical method approved by the department.

(b) A three-compartment vat shall be used to sterilize dishes, receptacles, and utensils if a chlorine solution is used. The first compartment of the vat shall be used for washing, the second compartment for plain rinsing, and the third compartment for chlorine immersion. A satisfactory rinsing or spraying device may be substituted for the second rinsing compartment on an existing installation.

(c) The same chlorine solution may not be used as bacteriacidal treatment for more than one day.

(d) After sterilization, all dishes, receptacles, and utensils shall be stored in a manner that protects the food service items from contaminants.

(e) Subsections (a)-(d) do not apply to an establishment that uses electrically operated dishwashing and glasswashing machines that clean and sterilize mechanically.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1131, eff. April 2, 2015.

Sec. 438.015. USE OF DAMAGED DISHES, RECEPTACLES, OR UTENSILS. A public eating or drinking establishment or a person who operates or manages a food factory may not use or keep for use a dish, receptacle, or utensil that is made or damaged in a manner that makes cleaning or sterilizing the item impossible or doubtful.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.016. NAPKINS. A napkin, cloth, or other article used by a person shall be laundered or sterilized before it is furnished

for use to another person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.017. PROTECTION OF OTHER FOOD SERVICE ITEMS. (a) A paper receptacle, ice cream cone, or other single service utensil to be used for serving food or drink shall be kept in a sanitary manner, protected from dust, flies, and other contaminants.

(b) A napkin, straw, toothpick, or other article may not be offered for the use of a person unless the article has been securely protected from dust, dirt, insects, rodents, and, as necessary and by all reasonable means, other contaminants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.018. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this subchapter is punishable by a fine of not less than $5 or more than $100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. FOOD SERVICE EMPLOYEES

Sec. 438.031. DEFINITION. In this subchapter, "food" includes simple, mixed, or compounded articles used for food, drink, flavoring, confectionery, and condiment for human consumption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.032. INFECTED PERSONS; FOOD HANDLING PROHIBITED. (a) A person may not handle food, utensils, dishes, or serving implements that are for public sale or for the consumption or use by another if the person:

(1) is infected with a disease that is transmissible through the handling of food;

(2) resides in a household in which there is a transmissible case of a communicable disease that may be food borne;

(3) is known to be a carrier of the organisms causing a communicable disease that may be food borne; or

(4) has a local infection that is commonly transmitted through the handling of food.

(b) A person, firm, corporation, or organization operating or managing a public eating place or vehicle or other place where food is manufactured, processed, prepared, dispensed, or handled in a manner or under circumstances that would permit the probable transmission of disease from a handler to a consumer may not employ a person described in Subsection (a) to handle the food, utensils, dishes, or serving implements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.033. PHYSICAL EXAMINATION; DOCTOR'S CERTIFICATE. (a) On the request of an employer, the department or the department's representative, or the local health authority or the local health authority's representative, a person employed or seeking employment in an activity regulated under Section 438.032:

(1) shall be examined by a licensed physician; and

(2) must receive a certificate signed by the physician stating that the examination has been performed and that to the best of the physician's knowledge the person examined did not have on the date of the examination a transmissible condition of a communicable disease or a local infection commonly transmitted through the handling of food.

(b) The examination must be actual and thorough and conducted with practical scientific procedures to determine the existence of a communicable disease that may be transmitted through the handling of food.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1132, eff. April 2, 2015.

Sec. 438.034. EMPLOYEE CLEANLINESS. (a) A person handling food or unsealed food containers shall:

(1) maintain personal cleanliness;

(2) wear clean outer garments;

(3) keep the person's hands clean; and

(4) wash the person's hands and exposed portions of the person's arms with soap and water:

(A) before starting work;

(B) during work as often as necessary to avoid cross-contaminating food; and

(C) to maintain cleanliness, after smoking, eating, and each visit to the toilet.

(b) A person handling food or unsealed food containers may not contact with bare hands exposed ready-to-eat food unless:

(1) documentation is maintained at the food service establishment listing the foods and food handling activities that involve bare-hand contact; and

(2) the food service establishment uses two or more of the following contamination control measures:

(A) requiring employees to perform double hand washing;

(B) requiring employees to use fingernail brushes while hand washing;

(C) requiring employees to use a hand sanitizer after hand washing;

(D) implementing an incentive program that encourages employees not to come to work when ill; and

(E) any other contamination control measure approved by the regulatory authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1068, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 926 (H.B. 3012), Sec. 2, eff. September 1, 2009.

Sec. 438.035. USE OF UNLAUNDERED TOWELS. A person at a place where food for public consumption is handled or sold may not use a towel unless the towel has been thoroughly laundered after it has been previously used by another person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.036. CRIMINAL PENALTY. (a) A person, firm, corporation, or organization commits an offense if the person, firm, corporation, or organization violates this subchapter.

(b) An offense under this section is punishable by a fine of not less than $10 or more than $200.

(c) Each day of a violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.037. MUNICIPAL ORDINANCES. This subchapter does not affect the authority granted under Section 5, Article XI, Texas Constitution, Subchapter F of this chapter, and the applicable chapters of the Local Government Code to a Type A general-law municipality or a home-rule municipality to adopt an ordinance relating to this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 18.002(c), eff. September 1, 2019.

SUBCHAPTER D. FOOD SERVICE PROGRAMS

Sec. 438.041. DEFINITION. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(80), eff. April 2, 2015.

(2) "Food handler" means a food service employee who works with unpackaged food, food equipment or utensils, or food-contact surfaces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1299 (S.B. 552), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(80), eff. April 2, 2015.

Sec. 438.042. DUTIES OF EXECUTIVE COMMISSIONER. (a) The executive commissioner shall adopt standards and procedures for the

accreditation of education and training programs for persons employed in the food service industry.

(b) The executive commissioner shall adopt standards and procedures for the accreditation of education and training programs for recertification of persons employed in the food service industry who have previously completed a program accredited in accordance with this subchapter or have been certified by a local health jurisdiction and have completed training and testing requirements substantially similar to those required by this subchapter for program accreditation. The requirements for accreditation in Section 438.043 need not be met by an education or training program for recertification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 15, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 885, Sec. 1, eff. Aug. 26, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1133, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1134, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1135, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(81), eff. April 2, 2015.

Sec. 438.043. REQUIREMENTS FOR ACCREDITATION. (a) The department may not accredit an education or training program unless the program includes:

(1) four hours of training on the subject of food, including:

(A) a description of food-borne disease and its cause and prevention;

(B) protection of food in location, receipt, storage, preparation, service, and transportation; and

(C) the food allergen awareness information described by Section 437.027(b);

(2) four hours of training on the subject of food service facilities, including:

(A) waste disposal and sanitary plumbing and water;

(B) cleaning and sanitization of dishes and utensils;

(C) storage of equipment and utensils;

(D) housekeeping procedures and schedules;

(E) proper handling of nonfood supplies, including single service items, linens, and toxic materials; and

(F) cleanliness of the physical plant, including building construction, ventilation, lighting, pest control, and general safety of the environment;

(3) two hours of training on the subject of sanitary habits for food handlers, including:

(A) personal hygiene, including proper dress, handwashing, personal habits, and illness;

(B) food handling practices, including minimum handling and proper use of food service utensils; and

(C) operational problems, including identification and correction of commonly occurring deficiencies; and

(4) four hours of training on the subject of management in the food service industry, including:

(A) self-inspection promotion and techniques;

(B) motivation, including safety, the economics of safe food handling, and planning to meet sanitation guidelines; and

(C) personnel training, including management responsibility, resources, and methods.

(b) In addition to the course requirements in Subsection (a), the department shall require that, to receive accreditation, a course include an examination of at least one hour to allow the instructor to evaluate the students' comprehension of the subject matter covered.

(c) The department shall ensure that each accredited program may be presented in not less than 15 hours.

(d) The course requirements in Subsection (a) do not apply to an education or training program for recertification.

(e) The department may modify the requirements of Subsection (a), (b), or (c) for a course used in training employees under the common control of a single entity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 885, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 822, Sec. 1, eff. Aug. 28, 1995.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 3, eff. September 1, 2023.

Sec. 438.0431. BASIC FOOD SAFETY ACCREDITATION. (a) Notwithstanding Section 438.043, the department may accredit an education or training program for basic food safety for food handlers as provided by this section.

(b) The executive commissioner shall by rule define the basic food safety training or education required to be included in a course curriculum. The course curriculum must include the food allergen awareness information described by Section 437.027(b). The course length may not exceed two hours.

(c) A training or education program accredited under this section may require a participant to achieve a passing score on an examination to successfully complete the course for certification.

(d) A program accredited under this section may be delivered through the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 1299 (S.B. 552), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1136, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 4, eff. September 1, 2023.

Sec. 438.044. APPLICATION FOR ACCREDITATION. (a) A person seeking accreditation for an education or training program must apply to the department for accreditation. The applicant must demonstrate to the department the contents of the course.

(b) The department shall accredit a course that meets the minimum requirements of this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.045. AUDIT OF EDUCATION AND TRAINING PROGRAMS. The department shall conduct a regular audit of each program accredited

under this subchapter to ensure compliance with this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 438.046. LIST OF ACCREDITED PROGRAMS. (a) The department shall maintain a registry of course programs accredited under this subchapter.

(b) A food service worker trained in a course for the employees of a single entity is considered to have met a local health jurisdiction's training, testing, and permitting requirements only as to food service performed for that entity.

(b-1) A food service worker trained in a food handler training course that is accredited by the American National Standards Institute or that is accredited by the department and listed with the registry is considered to have met a local health jurisdiction's training, testing, and permitting requirements. A local health jurisdiction may require a food establishment, as that term is defined by Section 438.101, to maintain on the premises of the food establishment a certificate of completion of the training course for employees of the food establishment.

(c) A local health jurisdiction may not charge a fee or require or issue a local food handler card for a certificate issued to a food service worker who provides proof of completion of an accredited course described by Subsection (b-1).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 539, Sec. 16, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 822, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 843 (S.B. 582), Sec. 1, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 728 (S.B. 1089), Sec. 1, eff. June 12, 2017.

Sec. 438.047. FEES. The department in accordance with department rules shall charge an application fee and an audit fee sufficient to cover the entire cost of accreditation, audit, and maintenance of the registry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1137, eff. April 2, 2015.

SUBCHAPTER F. FOOD INSPECTIONS

Sec. 438.061. FOOD INSPECTIONS BY TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may regulate the inspection of beef, pork, flour, meal, salt, and other provisions.

(b) The governing body of a Type A general-law municipality may appoint weighers, gaugers, and inspectors, and may prescribe their duties and regulate their fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. CERTIFICATION OF FOOD MANAGERS

Sec. 438.101. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(82), eff. April 2, 2015.

(2) "Food establishment" means a fixed or mobile location retail establishment in which food is prepared on-site for sale to the public.

(3) "Food manager" means an individual who conducts, manages, or operates a food establishment.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(82), eff. April 2, 2015.

Sec. 438.102. CERTIFICATION PROGRAM. (a) The executive commissioner shall establish a certification program for food managers in accordance with this subchapter.

(b) The executive commissioner by rule shall prescribe the requirements for issuance and renewal of a food manager certificate under this subchapter.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1138, eff. April 2, 2015.

Sec. 438.103. CERTIFICATION AND RENEWAL OF CERTIFICATION; EXAMINATION REQUIRED. (a) A person who satisfies the requirements of this subchapter may receive and renew a food manager certificate by passing a state-approved examination.

(b) A state-approved examination for issuance or renewal of a food manager certificate must test an applicant on the food allergen awareness information described by Section 437.027(b).

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 5, eff. September 1, 2023.

Sec. 438.104. APPROVAL OF EXAMINATIONS; SELECTION OF EXAMINATION SITES. (a) The executive commissioner shall adopt criteria to approve examinations.

(b) In administering this subchapter, the department shall consider the impact of the traveling distance and time required for a food manager to obtain certification. The department shall give particular consideration to mitigating the impact of this subchapter on food managers in rural areas. The department shall use the Internet to implement the certification and may develop a system to permit administration of the examination using the Internet.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1139, eff. April 2, 2015.

Sec. 438.105. CERTIFICATE AS EVIDENCE OF COMPLIANCE WITH OTHER LAW. A food manager certificate, including a renewal certificate, obtained under this subchapter shall be accepted as meeting the training and testing requirements under Section 438.046(b).

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.

Sec. 438.1055. PROHIBITED REQUIREMENT OF LOCAL FOOD MANAGER CARD OR LOCAL FEE. A local health jurisdiction may not require a food manager who holds a food manager certificate issued under this subchapter to hold a local food manager card or charge a fee for issuance of the certificate under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 245 (S.B. 577), Sec. 2, eff. September 1, 2023.

Sec. 438.106. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER; FEES. (a) The executive commissioner by rule may adopt a fee for issuance or renewal of a food manager certificate under this subchapter in amounts reasonable and necessary to administer this subchapter, but not to exceed $35.

(b) The executive commissioner by rule may adopt a fee, in an amount not to exceed $10, for an examination administered by the department under this subchapter.

(c) The executive commissioner may adopt rules for the denial, suspension, and revocation of a food manager certificate issued under this subchapter.

(d) The executive commissioner by rule may prescribe standards for:

(1) examination sites;

(2) expenses of administration of examinations under this subchapter; and

(3) site audits for administration of this subchapter.

Added by Acts 2001, 77th Leg., ch. 317, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1140, eff. April 2, 2015.

SUBCHAPTER H. INFORMATION ON DEPARTMENT OR LOCAL HEALTH JURISDICTION FOOD REGULATION

Sec. 438.151. DEFINITION. In this subchapter, "local health jurisdiction" means a public health district, county, or municipality

that regulates food service establishments, retail food stores, mobile food units, temporary food service establishments, or roadside food vendors.

Added by Acts 2019, 86th Leg., R.S., Ch. 309 (H.B. 2107), Sec. 2, eff. September 1, 2019.

Sec. 438.152. REQUEST FOR INFORMATION. Unless otherwise prohibited by state or federal law, on receipt of a written request for information pertaining to the regulation of food under this subtitle, the department or a local health jurisdiction shall provide a reasonable and substantial response to the request not later than the 30th day after the date the department or local health jurisdiction receives the request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 309 (H.B. 2107), Sec. 3, eff. September 1, 2019.

Sec. 438.153. REQUEST FOR OFFICIAL DETERMINATION. (a) On receipt of a written request regarding the applicability to a specific circumstance of a regulation or the requirements for compliance with the regulation, the department or local health jurisdiction shall provide an official written determination regarding the applicability of the regulation or the requirements for compliance with the regulation to the requestor not later than the 30th day after the date the department or local health jurisdiction receives the request.

(b) An official determination made under this section is valid until the regulation that is the subject of the determination is amended by statute, department rule, or local health jurisdiction regulation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 309 (H.B. 2107), Sec. 4, eff.

September 1, 2019.

Sec. 438.154. EFFECT OF OFFICIAL DETERMINATION. An inspector may not issue to a person a citation for a violation of a food regulation governed by this subtitle if the person provides the inspector with an official determination made under Section 438.153 that contradicts the opinion of the inspector.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

Sec. 438.155. RULES. (a) The executive commissioner shall adopt rules to implement this subchapter.

(b) The executive commissioner periodically shall evaluate the department's food safety rules and modify the rules as necessary to improve consistency and communication in food regulation in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 918 (H.B. 1392), Sec. 1, eff. September 1, 2013.

SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 438.201. NO PRIVATE CAUSE OF ACTION. The provisions of this chapter related to food allergens do not create a private cause of action or change any common law or statutory duty.

Added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 6, eff. September 1, 2023.

Sec. 438.202. CERTAIN REGULATIONS PROHIBITED. Notwithstanding any other law, a county, municipality, or public health district may not adopt or enforce an order, ordinance, rule, or other measure related to food allergens that is inconsistent with or exceeds the requirements of this chapter or Section 437.027.

Added by Acts 2023, 88th Leg., R.S., Ch. 1031 (S.B. 812), Sec. 6, eff. September 1, 2023.

CHAPTER 439. MANUFACTURE AND DISTRIBUTION OF CERTAIN DRUGS

SUBCHAPTER A. LAETRILE

Sec. 439.001. DEFINITION. In this chapter, "laetrile" means amygdalin.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.002. MANUFACTURE AND SALE. Unless prohibited by federal law, laetrile may be manufactured in this state in accordance with Chapter 431 (Texas Food, Drug, and Cosmetic Act) and may be sold in this state for distribution by licensed physicians.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1141, eff. April 2, 2015.

Sec. 439.003. PRESCRIPTION AND ADMINISTRATION. (a) Unless prohibited by federal law, a licensed physician may prescribe or administer laetrile in the treatment of cancer.

(b) A physician acting in accordance with federal and state law is not subject to disciplinary action by the Texas Medical Board for prescribing or administering laetrile to a patient under the physician's care who has requested the substance unless that board makes a formal finding that the substance is harmful.

(c) A finding under Subsection (b) must be made in a hearing conducted as provided by Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1142, eff. April 2, 2015.

Sec. 439.005. RECORDS; DISCIPLINARY ACTIONS. (a) A physician shall keep records of the physician's purchases and disposals,

including sales and dispensations, of laetrile. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving laetrile, and the reason for the disposal of laetrile to that person.

(b) The Texas Medical Board may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of laetrile;

(2) prescribes or dispenses laetrile to a person known to be a habitual user of narcotic or dangerous drugs or to a person who the physician should have known was a habitual user of narcotic or dangerous drugs;

(3) uses any advertising that tends to mislead or deceive the public; or

(4) is unable to practice medicine with reasonable skill and safety to patients because of any mental or physical condition, including age, illness, or drunkenness, or because of excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) Subsection (b)(2) does not apply to a person being treated by the physician for narcotic use after the physician notifies the Texas Medical Board in writing of the name and address of the patient being treated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1143, eff. April 2, 2015.

SUBCHAPTER B. DIMETHYL SULFOXIDE

Sec. 439.011. DEFINITION. In this subchapter, "DMSO" means sterile and pyrogen-free dimethyl sulfoxide.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.012. MANUFACTURE AND SALE. DMSO may be manufactured in this state and may be sold in this state for human use when prescribed or administered by a licensed physician or dispensed by a licensed pharmacist as prescribed by a licensed physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.013. PRESCRIPTION, ADMINISTRATION, AND DISPENSATION. (a) Except as prohibited by Subsection (b), a licensed physician may prescribe or administer DMSO.

(b) A physician may not prescribe or administer DMSO in a formulation not approved for human use by the Food and Drug Administration of the United States Department of Health and Human Services unless the physician:

(1) provides a written statement to the patient informing the patient that DMSO, in the formulation to be prescribed or administered, has not been approved for human use by the United States Food and Drug Administration; and

(2) informs the patient of the alternative methods of treatment for the patient's disorder and the potential of alternative methods for cure.

(c) A licensed pharmacist may dispense DMSO on the written prescription of a licensed physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.014. REGULATION BY HEALTH CARE FACILITY. (a) A hospital or health care facility may not forbid or restrict the use of DMSO prescribed or administered by a licensed physician having staff privileges at that hospital or facility unless the hospital or facility:

(1) makes a formal finding that the DMSO as prescribed or administered by the physician is or will be harmful to the patient; or

(2) determines that the prescription or administration of DMSO creates an immediate danger to the public.

(b) A hospital or health care facility that forbids or restricts the use of DMSO under Subsection (a)(2) shall conduct a hearing on the restriction or prohibition as soon as practicable after its determination.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.015. RECORDS; DISCIPLINARY ACTIONS. (a) A physician shall keep records of the physician's purchases and disposals, including sales and dispensations, of DMSO. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving DMSO, and the reason for the disposal of DMSO to that person.

(b) The Texas Medical Board may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of DMSO in a formulation not approved for human use; or

(2) prescribes or administers DMSO in a manner that has been proven, in a formal hearing held by the board, to be harmful to the patient.

(c) The Texas Medical Board may temporarily suspend the license of a physician who prescribes or administers DMSO in a manner that, in the board's opinion, creates an immediate danger to the public. The board must conduct a hearing on the temporary suspension as soon as practicable after the suspension.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1144, eff. April 2, 2015.

Sec. 439.016. MISREPRESENTATION; CRIMINAL PENALTY. (a) A person commits an offense if, in connection with advertising or promoting the sale of DMSO, the person knowingly or intentionally represents DMSO as a cure for any human disease, ailment, or disorder.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 439.017. RESTRICTIONS ON MANUFACTURE, DISTRIBUTION, AND SALE; CRIMINAL PENALTY. (a) A person commits an offense if the person manufactures, distributes, or sells a dimethyl sulfoxide formulation that is not sterile and pyrogen-free unless the substance is packaged in a container with a label that includes:

(1) information about the concentration of the dimethyl sulfoxide; and

(2) the following statement: "Avoid contact with your skin. This dimethyl sulfoxide is not sterile and pyrogen-free DMSO approved for human use. It may contain harmful impurities that can be absorbed through the skin. Dimethyl sulfoxide is a potent solvent that may have adverse effects on fabrics, plastics, and other materials."

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. PRESERVATION AND DISTRIBUTION OF CERTAIN UNUSED DRUGS

Sec. 439.021. SHIPMENT TO FOREIGN COUNTRIES. (a) A consulting pharmacist of a nursing home may select, from a supply of drugs due for destruction, certain drugs to be used for shipment to a foreign country as provided by this subchapter.

(b) The supply of drugs due for destruction are those drugs accumulated because of the death of a resident of the nursing home or because a physician has ordered the use of the drug to be discontinued.

(c) Quarterly, before the drugs are destroyed, the consulting pharmacist may, in the pharmacist's professional judgment, select the drugs to be used under this subchapter and seal them in a box for shipment.

(d) The consulting pharmacist shall account to the department for all drugs selected for shipment under this subchapter.

(e) This subchapter does not apply if the unused drug is a controlled substance as defined by Chapter 481 (Texas Controlled Substances Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1145, eff. April 2, 2015.

Sec. 439.022. ADMINISTRATION. (a) The executive commissioner shall adopt rules consistent with federal and state law to implement this subchapter, including rules relating to:

(1) the packaging and inventory of drugs for shipment;

(2) the manner of shipment of the drugs from original shipment under this subchapter until the final destination; and

(3) safeguards to ensure the proper handling of and accounting for all drugs shipped.

(b) The executive commissioner by rule shall determine, in consultation with the United States Department of State and other appropriate federal agencies, the foreign countries to receive the drugs.

(c) The salvaging of drugs under this subchapter is not subject to Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1146, eff. April 2, 2015.

Sec. 439.023. CONTRACTS; FUNDS. (a) The department may contract with other entities, including local governments and civic organizations, to implement this subchapter.

(b) The department may accept gifts, grants, and any other funds to implement this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1147, eff. April 2, 2015.

Text of subchapter effective on September 1, 2024

SUBCHAPTER D. INSULIN

Text of section effective on September 1, 2024

Sec. 439.101. DEFINITION. In this subchapter, "manufacturer" has the meaning assigned by Section 531.070, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 244 (S.B. 241), Sec. 1, eff. September 1, 2024.

Text of section effective on September 1, 2024

Sec. 439.102. WRITTEN VERIFICATION REQUIRED FOR BRAND NAME INSULIN DRUG MANUFACTURER. (a) The manufacturer of a brand name insulin prescription drug for which a generic or biosimilar prescription drug is not available and that is included in the Medicaid vendor drug program formulary must submit to the Health and Human Services Commission a written verification stating whether or not the unavailability of the generic or biosimilar prescription drug is the result, wholly or partly, of:

(1) a scheme by the manufacturer to pay a generic or biosimilar prescription drug manufacturer to delay manufacturing or marketing the generic or biosimilar drug;

(2) a legal or business strategy to extend the life of a patent on the brand name prescription drug;

(3) the manufacturer directly manipulating a patent on the brand name prescription drug; or

(4) the manufacturer facilitating an action described by Subdivisions (1)-(3) on behalf of another entity.

(b) The executive commissioner shall adopt rules prescribing the form and manner for submission of the written verification required under Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 244 (S.B. 241), Sec. 1, eff. September 1, 2024.

CHAPTER 440. FROZEN DESSERTS MANUFACTURER LICENSING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 440.001. SHORT TITLE. This chapter may be cited as the Frozen Desserts Manufacturer Licensing Act.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.002. PURPOSE. The legislature finds that a statewide licensing act is needed to:

(1) regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(2) provide for uniformity of inspections of the premises of frozen dessert manufacturers;

(3) protect the health and safety of consumers by preventing the manufacture or distribution of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products that do not meet state standards or related requirements of purity or labeling; and

(4) assist manufacturers in meeting state standards or related requirements.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.003. DEFINITIONS. In this Act:

(1) "Adulterated or misbranded frozen desserts mix" means any frozen dessert or mix that contains an unwholesome substance or, if defined in this standard, that does not conform with its definition or that does not comply with Chapter 431 (Texas Food, Drug, and Cosmetic Act) or any other applicable regulation.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(5) "Frozen dessert" means any of the following: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit water ice, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert. The term includes the mix used in the freezing of one of those frozen desserts.

(6) "Frozen desserts manufacturer" means a person who manufactures, processes, converts, partially freezes, or freezes any mix (regardless of whether it is dairy, nondairy, imitation, pasteurized or unpasteurized), frozen desserts, imitation frozen desserts, or nondairy frozen desserts for distribution or sale at wholesale. The term does not include a frozen desserts retail establishment.

(7) "Frozen desserts plant" means premises where a frozen dessert or mix is manufactured, processed, or frozen for sale.

(8) "Frozen desserts retail establishment" means premises,

including a retail store, approved type stand, hotel, restaurant, vehicle, or mobile unit, where frozen dessert mixes are frozen or partially frozen and dispensed for retail sale or distribution.

(9) "Health authority" means the department, the municipal or county health officer or the officer's representative, or any other agency having jurisdiction or control over the matters embraced within the specifications and requirements of this chapter.

(10) "Imitation frozen dessert" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, that is made in imitation or semblance of any of the following products or is prepared or frozen in the manner in which any of the following products is customarily prepared or frozen and that is not the product: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat yogurt, nonfat yogurt, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert.

(11) "Manufacture" means the processing, freezing, or packaging of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products for sale at wholesale. The term does not include a retailer purchasing those products from a manufacturer displaying the retailer's brand name.

(12) "Mix" means the pasteurized or unpasteurized, liquid or dry, unfrozen combination of the ingredients permitted in a frozen dessert with or without fruits, fruit juices, candy, baked goods and confections, nutmeats, or other harmless flavor or color.

(13) "Official laboratory" means a biological, chemical, or physical laboratory that is under the supervision of a state or local health authority.

(14) "Sale" means the:

(A) manufacture, production, processing, packing, exposure, offer, or holding of any frozen dessert product for sale;

(B) sale, dispensing, or giving of any frozen dessert product; or

(C) supplying or applying of any frozen dessert product in the conduct of any frozen desserts retail establishment.

(15) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(85), eff. April 2, 2015.

(16) "Wholesale" means the exposing, offering, possessing,

selling, dispensing, holding, or giving of any frozen dessert, imitation frozen dessert, product sold in semblance of frozen dessert, or a mix for one of those products to other than the ultimate consumer. The term does not include sale by a retail store.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1148, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(85), eff. April 2, 2015.

Sec. 440.004. EXEMPTIONS. This chapter does not apply to:

(1) a person operating a frozen desserts retail establishment; or

(2) a person operating a retail store unless the person is also a manufacturer.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.005. HEARINGS. A hearing conducted in the administration of this chapter is governed by Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1149, eff. April 2, 2015.

Sec. 440.006. POWERS OF EXECUTIVE COMMISSIONER. The executive commissioner may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including standards or requirements for the:

(A) health, cleanliness, education, and training of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured merchandise, and merchandise held for sale;

(C) design, construction, installation, and cleanliness of equipment and utensils;

(D) sanitary facilities and controls of the establishments;

(E) establishment construction and maintenance, including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of records to be maintained by the establishment; and

(2) adopt rules prescribing procedures for the enforcement of the standards or related requirements prescribed under Subdivision (1), including procedures for the:

(A) requirement of a valid license to operate an establishment;

(B) issuance, suspension, revocation, and reinstatement of licenses;

(C) administrative hearings held under this chapter;

(D) institution of certain court proceedings by the department or its designee;

(E) inspection of establishments and securing of samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(F) access to the establishments and to the vehicles used in operations;

(G) compliance by manufacturers outside the jurisdiction of the state; and

(H) review of plans for future construction.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1150, eff. April 2, 2015.

Sec. 440.007. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.009(c), Chapter 431 applies to a person or product

regulated under this chapter, including a frozen dessert manufacturer, a frozen dessert, an imitation frozen dessert, a product sold in semblance of a frozen dessert, and a mix for one of those products.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 3, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSING

Sec. 440.011. PROHIBITED ACT. (a) A person may not operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products in this state unless the person has a valid license issued under this chapter.

(b) A political subdivision or agency of the state, other than the department, may not impose a license fee on any manufacturer covered by this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.012. LICENSE. (a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products may apply to the department for a license. A license shall be granted under the department's procedural rules and shall be issued only for the purpose and use as stated on the application for a license.

(b) The department shall inspect the establishment under Section 440.031 before issuing a license.

(c) A license may not be issued to a person who does not comply with the standards prescribed by department rule under this chapter.

(d) A license issued under this chapter must be renewed every two years in accordance with department rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1151, eff. April 2, 2015.

Sec. 440.013. FEES. (a) A nonrefundable fee for each establishment in an amount set by the executive commissioner by rule as prescribed by Section 12.0111 must accompany each application for a license.

(b) The department also shall assess the following fees in the amounts set by the executive commissioner by rule as prescribed by Section 12.0111:

(1) a fee for a frozen dessert manufacturer located in this state in an amount per 100 pounds of manufactured or processed frozen dessert manufactured or processed and distributed in this state by that manufacturer;

(2) a fee for a frozen dessert manufacturer not located in this state in an amount per 100 pounds of frozen desserts manufactured or processed by the manufacturer in another state and imported for sale in this state; and

(3) a fee for the actual cost of analyzing samples of frozen desserts for a frozen dessert manufacturer not located in this state.

(c) The executive commissioner shall adopt rules to collect fees imposed under this section monthly based on amounts due by the frozen dessert manufacturer.

(d) The department may revoke a license to operate a frozen desserts plant if the licensee fails to make a timely payment of the monthly fees required under this section. The department's rules of procedure for a contested case hearing and Chapter 2001, Government Code govern the revocation of a license.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1152, eff. April 2, 2015.

Sec. 440.014. RECORDKEEPING. The executive commissioner shall adopt rules establishing minimum standards for recordkeeping by persons required to pay fees under this chapter and the records shall be made available to the department on request.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1153, eff. April 2, 2015.

Sec. 440.015. ESTABLISHMENTS OUTSIDE STATE. A frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products from a manufacturer located outside this state may be sold or distributed in this state if the manufacturer complies with this chapter or complies with other regulatory requirements that are substantially equivalent to those of this state. To determine the extent of the manufacturer's compliance, the department may accept reports from responsible authorities in the jurisdiction in which the manufacturer is located.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.016. TEMPORARY PERMIT. The department may issue a temporary permit to continue the operation of an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or mix for one of those products until the department performs the inspection required by this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.

Sec. 440.017. REFUSAL TO GRANT LICENSE; SUSPENSION OR REVOCATION OF LICENSE. In accordance with rules adopted under Section 440.006, the department may refuse an application for a license under this chapter or may suspend or revoke a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 112, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1154, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 440.031. INSPECTION BY DEPARTMENT. (a) Under rules adopted by the executive commissioner, the department's authorized representatives have free access at all reasonable hours to any establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products or to any vehicle being used to transport in commerce a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products for the purpose of:

(1) inspecting the establishment or vehicle to determine compliance with the standards or related requirements prescribed under this chapter; or

(2) securing samples of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or a mix for one of those products for the purpose of making or causing to be made an examination of the samples to determine compliance with the standards or related requirements prescribed under this chapter.

(b) A political subdivision or an agency other than the department that collects samples described by Subsection (a)(2) shall bear the cost of the samples and any analyses of the samples.

(c) The inspection procedures provided by this section are in addition to the procedures provided by Chapter 431.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 112, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1155, eff. April 2, 2015.

Sec. 440.032. PENALTIES. (a) A person commits an offense if the person knowingly or intentionally violates Section 440.011 or a rule adopted under this chapter.

(b) An offense under this section is a Class C misdemeanor.

(c) The penalty prescribed by this section is in addition to any civil or administrative penalty or sanction otherwise imposed under Chapter 431 or other law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 167, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 112, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1156, eff. April 2, 2015.

CHAPTER 441. DRUG COST TRANSPARENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 441.0001. DEFINITIONS. In this chapter:

(1) "Animal health product" means a medical product approved and licensed for use in animal or veterinary medicine, including a pharmaceutical, a biologic, an insecticide, and a parasiticide.

(2) "Pharmaceutical drug manufacturer" means a person engaged in the business of producing, preparing, propagating, compounding, converting, processing, packaging, labeling, or distributing a drug. The term does not include a wholesale distributor or retailer of prescription drugs or a pharmacist licensed under Subtitle J, Title 3, Occupations Code.

(3) "Prescription drug" and "drug" have the meanings assigned by Section 551.003, Occupations Code, except that the term "prescription drug" does not include a device or an animal health product.

(4) "Wholesale acquisition cost" means, with respect to a drug, the pharmaceutical drug manufacturer's list price for the drug charged to wholesalers or direct purchasers in the United States, as reported in wholesale price guides or other publications of drug pricing data. The cost does not include any rebates, prompt pay or other discounts, or other reductions in price.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.

Sec. 441.0003. RULES. The executive commissioner may adopt rules to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. PRESCRIPTION DRUG PRICE DISCLOSURE

Sec. 441.0051. ANNUAL REPORT. Not later than the 15th day of

each calendar year, a pharmaceutical drug manufacturer shall submit a report to the department stating the current wholesale acquisition cost information for the United States Food and Drug Administration-approved prescription drugs sold in or into this state by that manufacturer.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended from Health and Safety Code, Section 441.0002 by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0052. PRESCRIPTION DRUG PRICE INFORMATION INTERNET WEBSITE. The department shall develop an Internet website to provide to the general public prescription drug price information submitted under Section 441.0051. The Internet website shall be made available on the department's Internet website with a dedicated link that is prominently displayed on the home page or by a separate easily identifiable Internet address.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0053. PRESCRIPTION DRUG COST INCREASE REPORT AND INFORMATION. (a) This subsection applies only to a prescription drug with a wholesale acquisition cost of at least $100 for a 30-day supply before the effective date of an increase described by this subsection. Not later than the 30th day after the effective date of an increase of 40 percent or more over the preceding three calendar years or 15 percent or more in the preceding calendar year in the wholesale acquisition cost of a prescription drug to which this subsection applies, a pharmaceutical drug manufacturer shall submit a report to the executive commissioner. The report must include the following information:

(1) the name of the prescription drug;

(2) whether the prescription drug is a brand name or generic;

(3) the effective date of the change in wholesale acquisition cost; and

(4) a statement regarding the factor or factors that caused the increase in the wholesale acquisition cost and an explanation of the role of each factor's impact on the cost.

(b) If during a calendar year a prescription drug with a wholesale acquisition cost of at least $100 for a 30-day supply increases in price by 40 percent or more over the preceding three calendar years or 15 percent or more in the preceding calendar year in the wholesale acquisition cost of the prescription drug, the pharmaceutical drug manufacturer must include in the annual report submitted under Section 441.0051 the following information:

(1) aggregate, company-level research and development costs for the most recent year for which final audit data is available;

(2) the name of each of the manufacturer's prescription drugs approved by the United States Food and Drug Administration in the previous three calendar years; and

(3) the name of each of the manufacturer's prescription drugs that lost patent exclusivity in the United States in the previous three calendar years.

(c) The quality and types of information and data that a pharmaceutical drug manufacturer submits to the department under Subsections (a) and (b) must be consistent with the quality and types of information and data that the manufacturer includes in the manufacturer's annual consolidated report on Securities and Exchange Commission Form 10-K or any other public disclosure.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0054. PUBLICATION OF COST INCREASE INFORMATION. Not later than the 60th day after receipt of the report submitted under Section 441.0051 or 441.0053(a), the department shall publish the cost increase information required by Section 441.0053 on the department's prescription drug price information Internet website.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 1, eff. September 1, 2019.

Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 3, eff. September 1, 2021.

Sec. 441.0055. FEE. (a) A pharmaceutical drug manufacturer shall submit a fee in the amount provided by department rule with each report submitted under this subchapter.

(b) The executive commissioner by rule shall set the fee in the amount necessary for the department to administer this chapter, not to exceed $400.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 4, eff. September 1, 2021.

SUBCHAPTER C. ENFORCEMENT

Sec. 441.0101. RIGHT TO CORRECT. (a) If the department determines that a pharmaceutical drug manufacturer failed to submit a report or fee required under, or failed to submit the report or fee in the manner prescribed by, Subchapter B and the rules adopted under this chapter, the department shall provide written notice of the failure to the manufacturer.

(b) On receipt of notice described by Subsection (a), a pharmaceutical drug manufacturer shall submit, as applicable:

(1) a report that:

(A) complies with Subchapter B and rules adopted under this chapter; and

(B) addresses the issues raised in the notice; or

(2) the fee required by Section 441.0055.

(c) The department may not assess an administrative penalty under Section 441.0102 against a pharmaceutical drug manufacturer that submits to the department the required report or fee, as applicable, on or before the 45th day after the date the manufacturer receives notice under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 5, eff. September 1, 2021.

Sec. 441.0102. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates this

chapter or a rule adopted under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation;

(3) the person's demonstrated good faith; and

(4) any other matters as justice may require.

(c) The penalty may not exceed $1,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation.

(e) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(f) The attorney general may sue to collect the penalty. Money collected under this section shall be deposited in the state treasury and may be appropriated only to the department for the purposes of administrating this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 5, eff. September 1, 2021.

Sec. 441.0103. ADMINISTRATIVE PROCEDURE. A proceeding to impose an administrative penalty under Section 441.0102 is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 5, eff. September 1, 2021.

CHAPTER 442. DONATION OF PRESCRIPTION DRUGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 442.001. DEFINITIONS. In this chapter:

(1) "Donor" means an individual, a prescription drug manufacturer, or a health care facility, including a pharmacy, that

donates unused prescription drugs under this chapter to a participating provider.

(2) "Health care facility" means a facility that provides health care services to patients and maintains a pharmacy in the facility. The term includes the following facilities if a pharmacy is maintained in the facility:

(A) a general or special hospital as defined by Chapter 241;

(B) an ambulatory surgical center licensed under Chapter 243; and

(C) an institution licensed under Chapter 242.

(3) "Health care professional" means an individual licensed, certified, or otherwise authorized to administer health care and prescribe prescription drugs, for profit or otherwise, in the ordinary course of business or professional practice. The term does not include a health care facility.

(4) "Participating provider" means a health care facility or pharmacy, or a pharmacist who is an employee of the facility or pharmacy, that elects to participate in the collection and redistribution of donated prescription drugs under this chapter.

(5) "Pharmacist" means a person licensed under Chapter 558, Occupations Code.

(6) "Pharmacy" means an entity licensed under Chapter 560, Occupations Code.

(6-a) "Prepackage" means the act of repackaging and relabeling varying quantities of prescription drugs from a manufacturer's original commercial container into a prescription container, unit-dose packaging, or a multi-compartment container for a pharmacist to dispense to a consumer.

(7) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

(8) "Recipient" means an individual who voluntarily receives donated prescription drugs under this chapter.

(9) "Tamper-evident" means packaging that allows for detection of unauthorized access to a prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 761 (H.B. 4331), Sec. 1, eff.

September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 762 (H.B. 4332), Sec. 1, eff. September 1, 2023.

Sec. 442.002. RULEMAKING AUTHORITY. The executive commissioner may adopt rules to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.003. CONSTRUCTION WITH OTHER LAW. This chapter does not limit the authority of this state or a political subdivision of this state to regulate or prohibit a prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

SUBCHAPTER B. DONATION AND REDISTRIBUTION OF UNUSED PRESCRIPTION DRUGS

Sec. 442.051. DONATION AND REDISTRIBUTION OF PRESCRIPTION DRUGS. (a) A donor may donate unused prescription drugs to a participating provider in accordance with this chapter and rules adopted under this chapter.

(b) A participating provider may dispense donated prescription drugs to a recipient in accordance with this chapter and rules adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.0515. REDISTRIBUTION OF DONATED PREPACKAGED PRESCRIPTION DRUGS. (a) A participating provider may dispense to a recipient donated prescription drugs that are prepackaged and labeled in accordance with this section and rules adopted by the Texas State Board of Pharmacy.

(b) A prepackaged prescription drug a participating provider dispenses to a recipient must contain a label that includes:

(1) the drug's brand name or, for a generic version of the drug, the drug's generic name and the manufacturer or distributor of the drug;

(2) the amount of the drug in a given dose;

(3) the drug's lot number;

(4) the earliest expiration date of the drug for that drug lot number; and

(5) the quantity of any drug the provider dispenses in more than one dose.

(c) A participating provider shall maintain a record of each prepackaged prescription drug dispensed to a recipient. The record must include:

(1) the drug's name, the amount of the drug in a given dose, and the dosage size or frequency;

(2) the provider's lot number for that drug;

(3) the drug's manufacturer or distributor;

(4) the manufacturer's lot number for that drug;

(5) the expiration dates of the drug from that drug's lot number;

(6) the quantity of the drug in each prepackaged unit;

(7) the number of prepackaged units that include the drug;

(8) the date the drug was prepackaged;

(9) the name, initials, or written or electronic signature of the individual who prepackaged the drug; and

(10) the written or electronic signature of the pharmacist responsible for the drug's prepackaging.

Added by Acts 2023, 88th Leg., R.S., Ch. 762 (H.B. 4332), Sec. 2, eff. September 1, 2023.

Sec. 442.052. STANDARDS FOR DONATION AND REDISTRIBUTION. (a) The executive commissioner by rule shall adopt standards and procedures for:

(1) accepting, storing, labeling, and dispensing donated prescription drugs; and

(2) inspecting donated prescription drugs to determine whether the drugs are adulterated and whether the drugs are safe and suitable for redistribution.

(b) In adopting standards and procedures under this section,

the executive commissioner shall ensure that the donation and redistribution process is consistent with public health and safety standards.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.053. REQUIREMENTS FOR DONATED PRESCRIPTION DRUGS. (a) A donated prescription drug may be accepted or dispensed under this chapter only if the drug is in its original, unopened, sealed, and tamper-evident bottle, container, or unit-dose packaging. A drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single unit-dose packaging is unopened.

(b) A donated prescription drug may not be accepted or dispensed under this chapter if:

(1) the drug is a controlled substance;

(2) the drug is adulterated or misbranded;

(3) the drug is not stored in compliance with the drug's product label; or

(4) the United States Food and Drug Administration requires the drug to have a risk evaluation or mitigation strategy.

(c) A participating provider shall comply with all applicable provisions of state and federal law relating to the inspection, storage, labeling, and dispensing of prescription drugs.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 758 (H.B. 4166), Sec. 1, eff. September 1, 2023.

Sec. 442.054. DONATION PROCESS. (a) Before being dispensed to a recipient, a prescription drug donated under this chapter must be inspected by the participating provider in accordance with federal law, laws of this state, and department rule to determine whether the drug is adulterated or misbranded and whether the drug has been stored in compliance with the requirements of the product label.

(b) A donated prescription drug dispensed to a recipient under

this chapter must be prescribed by a health care professional for use by the recipient.

(c) A participating provider may charge a handling fee not to exceed $20 to a recipient to cover the costs of inspecting, storing, labeling, and dispensing the donated prescription drug. A participating provider may not resell a prescription drug donated under this chapter. A donor may not sell a prescription drug to a participating provider.

(d) A participating provider may not submit a claim or otherwise seek reimbursement from any public or private third-party payor for donated prescription drugs dispensed to a recipient under this chapter. A public or private third-party payor is not required to provide reimbursement for donated drugs dispensed to a recipient under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.055. DONOR FORM. Before donating a prescription drug under this chapter, a donor shall sign a form prescribed by the department stating that:

(1) the donor is the owner of the donated prescription drug;

(2) the donated prescription drug has been properly stored and the container has not been opened or tampered with;

(3) the donated prescription drug has not been adulterated or misbranded; and

(4) the donor is voluntarily donating the prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.056. RECIPIENT FORM. Before accepting a donated prescription drug under this chapter, a recipient shall sign a form prescribed by the department stating that:

(1) the recipient acknowledges that if the donor is an individual, prescription drug manufacturer, or health care facility other than a pharmacy, the donor is not a pharmacist and the donor

took ordinary care of the prescription drug;

(2) the recipient acknowledges that the donor is known to the participating provider and that there is no reason to believe that the prescription drug was improperly handled or stored;

(3) by accepting the prescription drug, the recipient accepts any risk that an accidental mishandling could create; and

(4) the recipient releases the donor, participating provider, and manufacturer of the drug from liability related to the prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 761 (H.B. 4331), Sec. 2, eff. September 1, 2023.

Sec. 442.057. LIMITATION OF LIABILITY. (a) A donor or participating provider who acts in good faith in donating, accepting, storing, labeling, distributing, or dispensing prescription drugs under this chapter:

(1) is not criminally liable and is not subject to professional disciplinary action for those activities; and

(2) is not civilly liable for damages for bodily injury, death, or property damage that arises from those activities unless the injury, death, or damage arises from the donor or participating provider's recklessness or intentional conduct.

(b) A manufacturer of a prescription drug that donates a drug under this chapter is not, in the absence of bad faith, criminally or civilly liable for bodily injury, death, or property damage arising from the donation, acceptance, or dispensing of the drug, including the manufacturer's failure to communicate to a donor or other person:

(1) product or consumer information about the donated prescription drug; or

(2) the expiration date of the donated prescription drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

Sec. 442.058. DATABASE OF PARTICIPATING PROVIDERS. The

department shall establish and maintain an electronic database that lists each participating provider. The department shall post the database on its Internet website.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 7(a), eff. September 1, 2017.

For expiration of this chapter, see Section 442A.201.

CHAPTER 442A. PRESCRIPTION DRUG SAFE DISPOSAL PILOT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 442A.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Pharmacy.

(2) "Controlled substance" has the meaning assigned by Section 481.002.

(3) "Pharmacy" means a facility licensed under Chapter 560, Occupations Code.

(4) "Pilot program" means the prescription drug safe disposal pilot program established under this chapter.

(5) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

(6) "Ultimate user" has the meaning assigned by 21 U.S.C. Section 802.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.002. PRESCRIPTION DRUG SAFE DISPOSAL PILOT PROGRAM. The board by rule shall develop and implement a prescription drug safe disposal pilot program to increase the number of locations in this state where unused, unwanted, or expired prescription drugs are collected from the public for safe disposal.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. PHARMACY PARTICIPATION

Sec. 442A.051. PHARMACY ELIGIBILITY. A pharmacy operating in this state may apply to the board to participate in the pilot program

if the pharmacy:

(1) is registered as an authorized drug collection site with the United States Drug Enforcement Administration;

(2) is not the subject of state or federal opioid litigation; and

(3) meets the eligibility requirements established by 21 C.F.R. Section 1317.40 and board rules.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.052. APPLICATION AND SELECTION PROCESSES. (a) The board shall adopt rules prescribing:

(1) the form and manner for a pharmacy to apply for participation in the pilot program; and

(2) evaluation and selection criteria and processes.

(b) The board shall give priority to a pharmacy applicant that:

(1) does not collect unused ultimate user prescription drugs under 21 C.F.R. Part 1317 at the time the applicant submits the application; or

(2) is located in a rural or underserved area the board designates.

(c) A pharmacy that operates multiple locations must submit an application for each location.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.053. COLLECTION RECEPTACLE REQUIREMENTS. (a) A participating pharmacy that provides a collection receptacle for the safe disposal of prescription drugs shall ensure the receptacle:

(1) meets the requirements of 21 C.F.R. Section 1317.75;

(2) is accessible during the pharmacy's regular hours of operation;

(3) allows for the anonymous deposit of unused controlled substance prescription drugs listed in Schedules II, III, IV, and V; and

(4) provides disposal of unused prescription drugs at no cost to the ultimate user.

(b) Controlled substance prescription drugs and noncontrolled substance prescription drugs may be collected together and comingled.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.054. MAIL-BACK PROGRAM REQUIREMENTS. (a) A participating pharmacy that provides a collection receptacle for the safe disposal of prescription drugs may, under limited circumstances as the pharmacy determines necessary, provide at the time the pharmacy dispenses a controlled substance prescription drug to the ultimate user a vendor's mail-back envelope, at no cost to the ultimate user. The mail-back envelope must:

(1) be pre-addressed and return postage paid; and

(2) meet the requirements of 21 C.F.R. Section 1317.70.

(b) A participating pharmacy may provide not more than 250 mail-back envelopes during the duration of the pilot program to encourage use of the pharmacy's collection receptacle.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.055. PHARMACY MANAGEMENT; RECORDS. A participating pharmacy is responsible for the daily management and recordkeeping of the pharmacy's prescription drug safe disposal program in accordance with the pharmacy's United States Drug Enforcement Administration registration and board rules.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.056. TEXAS PREMIER PHARMACY DESIGNATION. (a) The board shall designate each pharmacy participating in the pilot program as a Texas premier pharmacy provider committed to safe prescription drug disposal.

(b) A participating pharmacy may use the designation for marketing purposes.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. BOARD DUTIES

Sec. 442A.101. PILOT PROGRAM INCENTIVES. (a) The board shall assist each pharmacy participating in the pilot program, including by paying the costs of:

(1) maintaining one collection receptacle at each participating pharmacy location and destroying through incineration of the receptacle's full inner liner the prescription drugs deposited in the receptacle;

(2) ordering and distributing pre-addressed, return postage paid mail-back envelopes from a third-party mail-back program and destroying through incineration the returned mail-back envelopes containing the collected prescription drugs; and

(3) other operational needs the board determines appropriate.

(b) The board:

(1) shall directly reimburse a participating pharmacy for costs the pharmacy incurs under Subsection (a); and

(2) may not reimburse a participating pharmacy for the cost of using a third-party incineration facility unless the facility is appropriately registered with the United States Drug Enforcement Administration.

(c) Subject to money available for purposes of this chapter, the board may provide financial incentives to a pharmacy to continue providing prescription drug collection services or expand those services to accommodate controlled substance prescriptions. The board may provide financial incentives to a chain retail pharmacy for not more than 15 locations.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.102. COMMUNITY OUTREACH. (a) The board shall:

(1) develop and distribute educational outreach materials for the public about the availability of safe prescription drug disposal in this state;

(2) post the materials on the board's Internet website; and

(3) provide the materials to other state agencies for those agencies to conduct the community outreach.

(b) The educational outreach materials must be in English, Spanish, and for specific areas of this state as the board determines appropriate, another language spoken by a substantial portion of the area's residents.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

Sec. 442A.103. REPORT. Not later than December 1 of each even-numbered year, the board shall submit to the governor and the legislature a report that:

(1) summarizes the results of the pilot program, including:

(A) the number and geographic distribution of collection receptacles at participating pharmacies;

(B) the estimated amount of prescription drugs collected by participating pharmacies under the program, measured by:

(i) the number of inner liners fully filled with collected prescription drugs and sent for incineration by the pharmacies;

(ii) the number of mail-back envelopes distributed by the pharmacies; and

(iii) the weight, measured in pounds, of:

(a) inner liners described by Subparagraph (i); and

(b) returned mail-back envelopes filled with collected prescription drugs;

(C) the amount of money distributed under the pilot program and the identity of each participating pharmacy to which money is distributed; and

(D) a description of the board's educational efforts and outcomes; and

(2) recommends whether the pilot program should continue, be expanded, or terminate or whether the board should permanently implement a prescription drug safe disposal program.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER D. FUNDING

Sec. 442A.151. FUNDING. (a) Money contained in the opioid abatement account established under Section 403.505, Government Code, as added by Chapter 781 (S.B. 1827), Acts of the 87th Legislature, Regular Session, 2021, may be appropriated to the board to fund the pilot program established under this chapter.

(b) The board may collect gifts, grants, and donations to fund the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

SUBCHAPTER E. EXPIRATION

Sec. 442A.201. EXPIRATION. This chapter expires on the second anniversary of the date that all money appropriated for the pilot program has been expended.

Added by Acts 2023, 88th Leg., R.S., Ch. 293 (S.B. 2173), Sec. 1, eff. September 1, 2023.

CHAPTER 443. MANUFACTURE, DISTRIBUTION, AND SALE OF CONSUMABLE HEMP PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 443.001. DEFINITIONS. In this chapter:

(1) "Consumable hemp product" means food, a drug, a device, or a cosmetic, as those terms are defined by Section 431.002, that contains hemp or one or more hemp-derived cannabinoids, including cannabidiol.

(2) "Department" means the Department of State Health Services.

(3) "Establishment" means each location where a person processes hemp or manufactures a consumable hemp product.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Hemp" has the meaning assigned by Section 121.001, Agriculture Code.

(6) "License" means a consumable hemp product

manufacturer's license issued under this chapter.

(7) "License holder" means an individual or business entity holding a license.

(8) "Manufacture" has the meaning assigned by Section 431.002.

(9) "Process" means to extract a component of hemp, including cannabidiol or another cannabinoid, that is:

(A) sold as a consumable hemp product;

(B) offered for sale as a consumable hemp product;

(C) incorporated into a consumable hemp product; or

(D) intended to be incorporated into a consumable hemp product.

(10) "QR code" means a quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing or leading a user to additional information.

(11) "Smoking" means burning or igniting a substance and inhaling the smoke or heating a substance and inhaling the resulting vapor or aerosol.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.002. APPLICABILITY OF OTHER LAW. Except as provided by Section 431.011(c), Chapter 431 applies to a license holder and a consumable hemp product regulated under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.003. LOCAL REGULATION PROHIBITED. A municipality, county, or other political subdivision of this state may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the processing of hemp or the manufacturing or sale of a consumable hemp product as authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.004. SEVERABILITY. (a) A provision of this chapter or its application to any person or circumstance is invalid if the secretary of the United States Department of Agriculture determines that the provision or application conflicts with 7 U.S.C. Chapter 38, Subchapter VII, and prevents the approval of the state plan submitted under Chapter 121, Agriculture Code.

(b) The invalidity of a provision or application under Subsection (a) does not affect the other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 443.051. RULEMAKING AUTHORITY OF EXECUTIVE COMMISSIONER. The executive commissioner shall adopt rules and procedures necessary to administer and enforce this chapter. Rules and procedures adopted under this section must be consistent with:

(1) an approved state plan submitted to the United States Department of Agriculture under Chapter 121, Agriculture Code; and

(2) 7 U.S.C. Chapter 38, Subchapter VII, and federal regulations adopted under that subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER C. CONSUMABLE HEMP PRODUCT MANUFACTURER LICENSE

Sec. 443.101. LICENSE REQUIRED; EXCEPTIONS. A person may not process hemp or manufacture a consumable hemp product in this state unless the person holds a license under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.102. LICENSE INELIGIBILITY. (a) An individual who is or has been convicted of a felony relating to a controlled substance

under federal law or the law of any state may not, before the 10th anniversary of the date of the conviction:

(1) hold a license under this subchapter; or

(2) be a governing person of an establishment that holds a license under this subchapter.

(b) The department may not issue a license under this subchapter to a person who materially falsifies any information contained in an application submitted to the department under Section 443.103.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.103. APPLICATION; ISSUANCE. An individual or establishment may apply for a license under this subchapter by submitting an application to the department on a form and in the manner prescribed by the department. The application must be accompanied by:

(1) a legal description of each location where the applicant intends to process hemp or manufacture consumable hemp products and the global positioning system coordinates for the perimeter of each location;

(2) written consent from the applicant or the property owner if the applicant is not the property owner allowing the department, the Department of Public Safety, and any other state or local law enforcement agency to enter onto all premises where hemp is processed or consumable hemp products are manufactured to conduct a physical inspection or to ensure compliance with this chapter and rules adopted under this chapter;

(3) any fees required by the department to be submitted with the application; and

(4) any other information required by department rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.104. TERM; RENEWAL. (a) A license is valid for one year and may be renewed as provided by this section.

(b) The department shall renew a license if the license holder:

(1) is not ineligible to hold the license under Section 443.102;

(2) submits to the department any license renewal fee; and

(3) does not owe any outstanding fees to the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.105. REVOCATION. The department shall revoke a license if the license holder is convicted of a felony relating to a controlled substance under federal law or the law of any state.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER D. TESTING OF CONSUMABLE HEMP PRODUCTS

Sec. 443.151. TESTING REQUIRED. (a) A consumable hemp product must be tested as provided by:

(1) Subsections (b) and (c); or

(2) Subsection (d).

(b) Before a hemp plant is processed or otherwise used in the manufacture of a consumable hemp product, a sample representing the plant must be tested, as required by the executive commissioner, to determine:

(1) the concentration of various cannabinoids; and

(2) the presence or quantity of heavy metals, pesticides, and any other substance prescribed by the department.

(c) Before material extracted from hemp by processing is sold as, offered for sale as, or incorporated into a consumable hemp product, the material must be tested, as required by the executive commissioner, to determine:

(1) the presence of harmful microorganisms; and

(2) the presence or quantity of:

(A) any residual solvents used in processing, if applicable; and

(B) any other substance prescribed by the department.

(d) Except as otherwise provided by Subsection (e), before a consumable hemp product is sold at retail or otherwise introduced into commerce in this state, a sample representing the hemp product

must be tested:

(1) by a laboratory that is accredited by an accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard to determine the delta-9 tetrahydrocannabinol concentration of the product; and

(2) by an appropriate laboratory to determine that the product does not contain a substance described by Subsection (b) or (c) in a quantity prohibited for purposes of those subsections.

(e) A consumable hemp product is not required to be tested under Subsection (d) if each hemp-derived ingredient of the product:

(1) has been tested in accordance with:

(A) Subsections (b) and (c); or

(B) Subsection (d); and

(2) does not have a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.152. PROVISIONS RELATED TO TESTING. (a) A consumable hemp product that has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent may not be sold at retail or otherwise introduced into commerce in this state.

(b) A person licensed under Chapter 122, Agriculture Code, shall provide to a license holder who is processing hemp harvested by the person or otherwise using that hemp to manufacture a consumable hemp product the results of a test conducted under that chapter, if available, as proof that the delta-9 tetrahydrocannabinol concentration of the hemp does not exceed 0.3 percent, including for purposes of Section 443.151(b)(1).

(c) A license holder shall make available to a seller of a consumable hemp product processed or manufactured by the license holder the results of testing required by Section 443.151. The results may accompany a shipment to the seller or be made available to the seller electronically. If the results are not able to be made available, the seller may have the testing required under Section 443.151 performed on the product and shall make the results available to a consumer.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

SUBCHAPTER E. RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

Sec. 443.201. POSSESSION, TRANSPORTATION, AND SALE OF CONSUMABLE HEMP PRODUCTS. (a) A person may possess, transport, sell, or purchase a consumable hemp product processed or manufactured in compliance with this chapter.

(b) The executive commissioner by rule must provide to a retailer of consumable hemp products fair notice of a potential violation concerning consumable hemp products sold by the retailer and an opportunity to cure a violation made unintentionally or negligently.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.202. REGULATION OF CERTAIN CANNABINOID OILS. (a) This section does not apply to low-THC cannabis regulated under Chapter 487.

(b) Notwithstanding any other law, a person may not sell, offer for sale, possess, distribute, or transport a cannabinoid oil, including cannabidiol oil, in this state:

(1) if the oil contains any material extracted or derived from the plant Cannabis sativa L., other than from hemp produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(2) unless a sample representing the oil has been tested by a laboratory that is accredited by an independent accreditation body in accordance with International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard and found to have a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent.

(c) The department and the Department of Public Safety shall establish a process for the random testing of cannabinoid oil, including cannabidiol oil, at various retail and other establishments that sell, offer for sale, distribute, or use the oil to ensure that the oil:

(1) does not contain harmful ingredients;

(2) is produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; and

(3) has a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.2025. REGISTRATION REQUIRED FOR RETAILERS OF CERTAIN PRODUCTS. (a) This section does not apply to low-THC cannabis regulated under Chapter 487.

(b) A person may not sell consumable hemp products containing cannabidiol at retail in this state unless the person registers with the department each location owned, operated, or controlled by the person at which those products are sold. A person is not required to register a location associated with an employee or independent contractor described by Subsection (d).

(c) The department may issue a single registration under Subsection (b) covering multiple locations owned, operated, or controlled by a person.

(d) A person is not required to register with the department under Subsection (b) if the person is:

(1) an employee of a registrant; or

(2) an independent contractor of a registrant who sells the registrant's products at retail.

(e) A registration is valid for one year and may be renewed as prescribed by department rule.

(f) The department by rule may adopt a registration fee schedule that establishes reasonable fee amounts for the registration of:

(1) a single location at which consumable hemp products containing cannabidiol are sold; and

(2) multiple locations at which consumable hemp products containing cannabidiol are sold under a single registration.

(g) The department shall adopt rules to implement and administer this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.203. DECEPTIVE TRADE PRACTICE. (a) A person who sells, offers for sale, or distributes a cannabinoid oil, including cannabidiol oil, that the person claims is processed or manufactured in compliance with this chapter commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, if the oil is not processed or manufactured in accordance with this chapter.

(b) A person who sells, offers for sale, or distributes a cannabinoid oil commits a false, misleading, or deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, if the oil:

(1) contains harmful ingredients;

(2) is not produced in compliance with 7 U.S.C. Chapter 38, Subchapter VII; or

(3) has a delta-9 tetrahydrocannabinol concentration of more than 0.3 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.204. RULES RELATED TO SALE OF CONSUMABLE HEMP PRODUCTS. Rules adopted by the executive commissioner regulating the sale of consumable hemp products must to the extent allowable by federal law reflect the following principles:

(1) hemp-derived cannabinoids, including cannabidiol, are not considered controlled substances or adulterants;

(2) products containing one or more hemp-derived cannabinoids, such as cannabidiol, intended for ingestion are considered foods, not controlled substances or adulterated products;

(3) consumable hemp products must be packaged and labeled in the manner provided by Section 443.205; and

(4) the processing or manufacturing of a consumable hemp product for smoking is prohibited.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.205. PACKAGING AND LABELING REQUIREMENTS. (a) Before a consumable hemp product that contains or is marketed as containing

more than trace amounts of cannabinoids may be distributed or sold, the product must be labeled in the manner provided by this section with the following information:

(1) batch identification number;

(2) batch date;

(3) product name;

(4) a uniform resource locator (URL) that provides or links to a certificate of analysis for the product or each hemp-derived ingredient of the product;

(5) the name of the product's manufacturer; and

(6) a certification that the delta-9 tetrahydrocannabinol concentration of the product or each hemp-derived ingredient of the product is not more than 0.3 percent.

(b) The label required by Subsection (a) may be in the form of:

(1) a uniform resource locator (URL) for the manufacturer's Internet website that provides or links to the information required by that subsection; and

(2) a QR code or other bar code that may be scanned and that leads to the information required by that subsection.

(c) The label required by Subsection (a) must appear on each unit of the product intended for individual retail sale. If that unit includes inner and outer packaging, the label may appear on any of that packaging.

(d) This section does not apply to sterilized seeds incapable of beginning germination.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.206. RETAIL SALE OF OUT-OF-STATE CONSUMABLE HEMP PRODUCTS. Retail sales of consumable hemp products processed or manufactured outside of this state may be made in this state when the products were processed or manufactured in another state or jurisdiction in compliance with:

(1) that state or jurisdiction's plan approved by the United States Department of Agriculture under 7 U.S.C. Section 1639p;

(2) a plan established under 7 U.S.C. Section 1639q if that plan applies to the state or jurisdiction; or

(3) the laws of that state or jurisdiction if the products

are tested in accordance with, or in a manner similar to, Section 443.151.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Sec. 443.207. TRANSPORTATION AND EXPORTATION OF CONSUMABLE HEMP PRODUCTS OUT OF STATE. Consumable hemp products may be legally transported across state lines and exported to foreign jurisdictions in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

Added by Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 7, eff. June 10, 2019.

Chapter 444, consisting of Secs. 444.001 to 444.007, was added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2.

For another Chapter 444, consisting of Secs. 444.001 to 444.007, added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, see Sec. 444.001 et seq., post.

CHAPTER 444. MANUFACTURE, DISTRIBUTION, AND SALE OF KRATOM PRODUCTS

Sec. 444.001. DEFINITIONS. In this chapter:

(1) "Food" has the meaning assigned by Section 431.002.

(2) "Kratom" means any part of the leaf of the plant Mitragyna speciosa.

(3) "Kratom processor" means a person who:

(A) manufactures, prepares, distributes, or maintains kratom products for sale;

(B) advertises, represents, or holds oneself out as a manufacturer, preparer, or seller of kratom products;

(C) is responsible for ensuring the purity and proper labeling of kratom products; or

(D) packages or labels kratom products.

(4) "Kratom product" means a food, including an extract, capsule, or pill, containing any form of kratom.

(5) "Kratom retailer" means a kratom processor who sells kratom products to consumers or who advertises, represents, or holds oneself out as a person who sells kratom products to consumers.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.

Sec. 444.002. LABEL REQUIRED. (a) A kratom processor shall label each kratom product with the product use directions necessary to ensure safe use of the product by a consumer, including the recommended serving size for the product.

(b) A kratom retailer may only sell a kratom product that is properly labeled in accordance with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.

Sec. 444.003. ADULTERATED, CONTAMINATED, AND PROHIBITED KRATOM PRODUCTS. A kratom processor or kratom retailer may not prepare, distribute, sell, or offer to sell a kratom product that:

(1) is adulterated with a dangerous non-kratom substance affecting the quality or strength of the product to a degree that renders the product injurious to a consumer;

(2) is contaminated with a poisonous or otherwise deleterious non-kratom substance, including any substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act);

(3) contains a level of 7-hydroxymitragynine in the alkaloid fraction that is greater than two percent of the overall alkaloid composition of the product; or

(4) contains any synthetic alkaloids, including synthetic 7-hydroxymitragynine and synthetically derived compounds from a kratom plant.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.

Sec. 444.004. OFFENSE FOR DISTRIBUTION OR SALE OF KRATOM PRODUCT TO MINOR. (a) A person commits an offense if the person distributes, sells, or exposes for sale a kratom product to an individual younger than 18 years of age.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.

Sec. 444.005. CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty in the amount of:

(1) $250 for the first violation;

(2) $500 for the second violation; and

(3) $1,000 for each subsequent violation.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(c) A kratom retailer is not liable for a civil penalty under this section for a violation of Section 444.002 or 444.003 if the kratom retailer proves by a preponderance of the evidence that the violation was unintentional and due to the kratom retailer's good faith reliance on the representation of another kratom processor.

(d) The attorney general or the district or county attorney for the county or municipal attorney for the municipality in which the violation is alleged to have occurred may bring an action to recover a civil penalty under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.

Sec. 444.006. PENALTIES UNDER OTHER LAW. The penalties prescribed by this chapter are in addition to any other penalties prescribed by law, including penalties prescribed by Chapters 431 and 481.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.

Sec. 444.007. RULES. The executive commissioner may adopt rules consistent with this chapter as necessary to ensure the safe consumption and distribution of kratom and kratom products.

Added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, eff. September 1, 2023.

Chapter 444, consisting of Secs. 444.001 to 444.007, was added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2.

For another Chapter 444, consisting of Secs. 444.001 to 444.007, added by Acts 2023, 88th Leg., R.S., Ch. 2 (S.B. 497), Sec. 2, see Sec. 444.001 et seq., post.

CHAPTER 444. WHOLESALE PRESCRIPTION DRUG IMPORTATION PROGRAM

Sec. 444.001. DEFINITIONS. In this chapter:

(1) "Canadian supplier" means a manufacturer, wholesale distributor, or pharmacy that is appropriately licensed or permitted under Canadian federal or provincial laws and rules to manufacture, distribute, or dispense prescription drugs.

(2) "Commission" means the Health and Human Services Commission.

(3) "Prescription drug wholesaler" means a person licensed as a wholesale distributor under Subchapter N, Chapter 431, that contracts with this state to import prescription drugs under the program.

(4) "Program" means the wholesale prescription drug importation program established under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.002. ESTABLISHMENT OF WHOLESALE PRESCRIPTION DRUG IMPORTATION PROGRAM. (a) The commission shall establish the wholesale prescription drug importation program to provide lower cost prescription drugs available outside of the United States to consumers in this state at the lower cost.

(b) The commission shall implement the program by:

(1) contracting with one or more prescription drug wholesalers and Canadian suppliers to import prescription drugs and provide prescription drug cost savings to consumers in this state;

(2) developing a registration process for health benefit plan issuers, health care providers, and pharmacies to obtain and dispense prescription drugs imported under the program;

(3) developing a list of prescription drugs, including the prices of those drugs, that meet the requirements of Section 444.003 and publishing the list on the commission's Internet website;

(4) establishing an outreach and marketing plan to generate

program awareness;

(5) establishing and administering a telephone call center or electronic portal to provide information about the program;

(6) ensuring the program and the prescription drug wholesalers that contract with this state under Subdivision (1) comply with the tracking, tracing, verification, and identification requirements of 21 U.S.C. Section 360eee-1;

(7) prohibiting the distribution, dispensing, or sale of prescription drugs imported under this chapter outside the boundaries of this state; and

(8) performing any other duties the executive commissioner determines necessary to implement the program.

(c) The commission shall ensure that the program meets the requirements of 21 U.S.C. Section 384.

(d) In developing the program, the commission may consult with interested parties.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.003. ELIGIBLE PRESCRIPTION DRUGS. A prescription drug may be imported into this state under the program only if the drug:

(1) meets the United States Food and Drug Administration's standards related to prescription drug safety, effectiveness, misbranding, and adulteration;

(2) does not violate any federal patent laws through its importation;

(3) is expected to generate cost savings for consumers; and

(4) is not:

(A) listed as a controlled substance under state or federal law;

(B) a biological product;

(C) an infused drug;

(D) an intravenously injected drug;

(E) a drug that is inhaled during surgery; or

(F) a parenteral drug.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.004. ANTICOMPETITIVE BEHAVIOR MONITORING. The commission, in consultation with the attorney general, shall identify and monitor any potential anticompetitive activities in industries affected by the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.005. PROGRAM FUNDING. In addition to money appropriated by the legislature, the commission may impose a fee on each prescription drug sold under the program or establish another funding method to administer the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.006. AUDIT PROCEDURES. The executive commissioner by rule shall develop procedures to effectively audit a prescription drug wholesaler participating in the program.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

Sec. 444.007. ANNUAL REPORTING. Not later than December 1 of each year, the commission shall submit a report to the governor and the legislature regarding the operation of the program during the preceding state fiscal year, including:

(1) which prescription drugs and Canadian suppliers are included in the program;

(2) the number of health benefit plan issuers, health care providers, and pharmacies participating in the program;

(3) the number of prescriptions dispensed through the program;

(4) the estimated cost savings to consumers, health plans, employers, and this state since the establishment of the program and during the preceding state fiscal year;

(5) information regarding the implementation of the audit procedures under Section 444.006; and

(6) any other information:

(A) the governor or the legislature requests; or

(B) the commission considers necessary.

Added by Acts 2023, 88th Leg., R.S., Ch. 655 (H.B. 25), Sec. 2, eff. September 1, 2023.

SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS
CHAPTER 461A. DEPARTMENT OF STATE HEALTH SERVICES: CHEMICAL DEPENDENCY SERVICES AND RELATED PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 461A.001. POLICY. Chemical dependency is a preventable and treatable illness and public health problem affecting the general welfare and the economy of this state. The legislature recognizes the need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation. It is the policy of this state that a person with a chemical dependency shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.002. DEFINITIONS. In this chapter:

(1) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(2) "Commission" means the Health and Human Services Commission.

(3) "Commissioner" means the commissioner of state health services.

(4) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481.

(5) "Department" means the Department of State Health

Services.

(6) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(7) "Intervention" means the interruption of the onset or progression of chemical dependency in the early stages.

(8) "Prevention" means the reduction of a person's risk of abusing alcohol or a controlled substance or becoming chemically dependent.

(9) "Rehabilitation" means the reestablishment of the social and vocational life of a person after treatment.

(10) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the person.

(11) "Treatment" means the initiation and promotion, in a planned, structured, and organized manner, of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(12) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the department under Chapter 464, or a facility licensed or operated under Title 7 that provides treatment services. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.003. IMPLEMENTATION BY DEPARTMENT. The department shall implement this chapter for the purpose of preventing broken homes and the loss of lives.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.004. COOPERATION WITH DEPARTMENT. (a) Each department, agency, officer, and employee of the state, when requested by the department, shall cooperate with the department in appropriate activities to implement this chapter.

(b) This section does not give the department control over existing facilities, institutions, or agencies or require the facilities, institutions, or agencies to serve the department in a manner that is inconsistent with the functions, the authority, or the laws and rules governing the activities of the facilities, institutions, or agencies.

(c) This section does not authorize the department to use a private institution or agency without its consent or to pay a private institution or agency for services that a public institution or agency is willing and able to provide.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 461A.005. CONFLICT WITH OTHER LAW. To the extent a power or duty given to the department or commissioner by this chapter conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.50, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 461A.005. CONFLICT WITH OTHER LAW. To the extent a power or duty given to the department or commissioner by this chapter conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);

(4) Section 524.0202; and
(5) Section 525.0254.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.50, eff. April 1, 2025.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT, COMMISSIONER, AND EXECUTIVE COMMISSIONER

Sec. 461A.051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. The executive commissioner shall:

(1) adopt rules governing the functions of the department in relation to chemical dependency services and related programs, including rules that prescribe the policies and procedures followed by the department in administering chemical dependency services and related programs; and

(2) by rule and based on criteria proposed by the department, establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.052. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall:

(1) provide for research and study of the problems of chemical dependency in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency in cooperation with federal and state agencies, local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:

(A) other state, federal, and local agencies;

(B) hospitals and clinics;

(C) public health, welfare, and criminal justice system authorities;

(D) educational and medical agencies and organizations; and

(E) other related public and private groups and persons;

(4) expand chemical dependency services for children when funds are available because of the long-term benefits of those services to this state and its citizens;

(5) sponsor, promote, and conduct educational programs on the prevention and treatment of chemical dependency, and maintain a public information clearinghouse to purchase and provide books, literature, audiovisuals, and other educational material for the programs;

(6) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify the service needs of persons with a chemical dependency and their families;

(7) require programs rendering services to persons with a chemical dependency to safeguard those persons' legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) maximize the use of available funds for direct services rather than administrative services;

(9) consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under Subdivision (9) a matter of public record;

(11) license treatment facilities under Chapter 464;

(12) use funds appropriated to the department for purposes of providing chemical dependency services and related programs to carry out those purposes and maximize the overall state allotment of federal funds;

(13) plan, develop, coordinate, evaluate, and implement constructive methods and programs to provide healthy alternatives for

youth at risk of selling controlled substances; and

(14) submit to the federal government reports and strategies necessary to comply with Section 1926 of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. No. 102-321 (42 U.S.C. Section 300x-26), and coordinate the reports and strategies with appropriate state governmental entities.

Text of subsection effective until April 1, 2025

(b) The department may establish regional alcohol advisory committees consistent with the regions established under Section 531.024, Government Code.

Text of subsection effective on April 1, 2025

(b) The department may establish regional alcohol advisory committees consistent with the regions established under Section 525.0151, Government Code.

(c) The department may appoint advisory committees to assist the department in performing its duties under this chapter. A member of an advisory committee appointed under this subsection may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

(d) The department shall comply with federal and state laws related to program and facility accessibility.

(e) The commissioner shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services under this chapter.

(f) Subsection (a)(15) does not apply to a 12-step or similar self-help alcohol dependency recovery program:

(1) that does not offer or purport to offer an alcohol dependency treatment program;

(2) that does not charge program participants; and

(3) in which program participants may maintain anonymity.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 948 (S.B. 1480), Sec. 14, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.51, eff. April 1, 2025.

Sec. 461A.053. EMERGENCY TREATMENT RESOURCES. The commissioner may develop emergency treatment resources for persons who appear to be:

(1) chemically dependent;

(2) under the influence of alcohol or a controlled substance and in need of medical attention; or

(3) undergoing withdrawal or experiencing medical complications related to a chemical dependency.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.054. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL JUSTICE SYSTEM. (a) The commissioner may establish programs for the referral, treatment, or rehabilitation of persons from the criminal justice system within the terms of bail, probation, conditional discharge, parole, or other conditional release.

(b) A referral may not be inconsistent with medical or clinical judgment or conflict with this chapter or Chapter 462 or applicable federal regulations.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.055. REPORTING OF CHILDREN INVOLVED IN SUBSTANCE ABUSE OR FROM FAMILY INVOLVED IN SUBSTANCE ABUSE. (a) The department in the context of mental health services, the commission, the Department of Aging and Disability Services, and the Texas Juvenile Justice Department shall:

(1) attempt to determine whether a child under the agency's jurisdiction is involved in substance abuse or is from a substance-abusing family;

(2) record its determination in the case record of the child; and

(3) record the information for statistical reporting purposes.

(b) The agencies shall revise their assessment forms, as

needed, to include a determination under this section.

(c) The department shall coordinate the efforts of the agencies described by Subsection (a) in complying with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.056. STATEWIDE SERVICE DELIVERY PLAN.

Text of subsection effective until April 1, 2025

(a) The department shall develop and adopt a statewide service delivery plan. The department shall update the plan not later than February 1 of each even-numbered year. The plan must include:

(1) a statement of the department's mission, goals, and objectives regarding chemical dependency prevention, intervention, and treatment;

(2) a statement of how chemical dependency services and chemical dependency case management services should be organized, managed, and delivered;

(3) a comprehensive assessment of:

(A) chemical dependency services available in this state at the time the plan is prepared; and

(B) future chemical dependency services needs;

(4) a service funding process that ensures equity in the availability of chemical dependency services across this state and within each service region established under Section 531.024, Government Code;

(5) a provider selection and monitoring process that emphasizes quality in the provision of services;

(6) a description of minimum service levels for each region;

(7) a mechanism for the department to obtain and consider local public participation in identifying and assessing regional needs for chemical dependency services;

(8) a process for coordinating and assisting administration and delivery of services among federal, state, and local public and private chemical dependency programs that provide similar services; and

(9) a process for coordinating the department's activities with those of other state health and human services agencies and criminal justice agencies to avoid duplications and inconsistencies in the efforts of the agencies in chemical dependency prevention, intervention, treatment, rehabilitation, research, education, and training.

Text of subsection effective on April 1, 2025

(a) The department shall develop and adopt a statewide service delivery plan. The department shall update the plan not later than February 1 of each even-numbered year. The plan must include:

(1) a statement of the department's mission, goals, and objectives regarding chemical dependency prevention, intervention, and treatment;

(2) a statement of how chemical dependency services and chemical dependency case management services should be organized, managed, and delivered;

(3) a comprehensive assessment of:

(A) chemical dependency services available in this state at the time the plan is prepared; and

(B) future chemical dependency services needs;

(4) a service funding process that ensures equity in the availability of chemical dependency services across this state and within each service region established under Section 525.0151, Government Code;

(5) a provider selection and monitoring process that emphasizes quality in the provision of services;

(6) a description of minimum service levels for each region;

(7) a mechanism for the department to obtain and consider local public participation in identifying and assessing regional needs for chemical dependency services;

(8) a process for coordinating and assisting administration and delivery of services among federal, state, and local public and private chemical dependency programs that provide similar services; and

(9) a process for coordinating the department's activities with those of other state health and human services agencies and criminal justice agencies to avoid duplications and inconsistencies in the efforts of the agencies in chemical dependency prevention,

intervention, treatment, rehabilitation, research, education, and training.

(b) The department shall gather information needed for the development of the plan through systematic methods designed to include local, regional, and statewide perspectives.

(c) In developing the plan, the department shall analyze the costs of implementation of proposed features of the plan by both the department and service providers. The department shall use the analysis to maximize the efficiency of service delivery under the final plan.

(d) The plan must provide a priority for obtaining treatment services for individuals in need of treatment who are parents of a child in foster care.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.52, eff. April 1, 2025.

Sec. 461A.057. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for substance abuse services for use by each state agency that provides or pays for substance abuse services. The department shall provide the model standards to each agency that provides substance abuse services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of substance abuse services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.059. OPIOID ANTAGONIST PROGRAM. (a) In this section, "opioid antagonist" has the meaning assigned by Section

483.101.

(b) From funds available for that purpose, the executive commissioner shall operate a program to provide opioid antagonists for the prevention of opioid overdoses in a manner determined by the executive commissioner to best accomplish that purpose.

(c) The executive commissioner may provide opioid antagonists under the program to emergency medical services personnel, first responders, public schools, institutions of higher education as defined by Section 481.134, community centers, and other persons likely to be in a position to respond to an opioid overdose.

(d) The commission may accept gifts, grants, and donations to be used in administering this section.

(e) The executive commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 6, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 924 (S.B. 867), Sec. 1, eff. June 17, 2023.

SUBCHAPTER C. SERVICES AND PROGRAMS

Sec. 461A.101. LOCAL BEHAVIORAL HEALTH AUTHORITIES. The department may designate and provide services through local behavioral health authorities as provided by Section 533.0356 and rules adopted by the executive commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.102. EDUCATION AND RESEARCH PROGRAMS CONCERNING CONTROLLED SUBSTANCES. (a) In this section, "controlled substances" means those substances designated as controlled substances by Chapter 481.

(b) The department, in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with those programs the department may:

(1) promote better recognition of the problems of misuse

and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid those groups in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of problems that exist and ways to combat those problems; and

(6) assist in educating and training state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(c) The department shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of Chapter 481, the commissioner may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of Chapter 481;

(B) determine patterns and social effects of misuse and abuse of controlled substances; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) contract with public agencies, institutions of higher education, and private organizations or individuals to conduct research, demonstrations, or special projects that directly pertain to the misuse and abuse of controlled substances.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.103. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG USERS. (a) In this section, "HIV" means human immunodeficiency virus.

(b) The department may fund community outreach programs that have direct contact with intravenous drug users.

(c) An outreach program funded by the department must:

(1) provide education on HIV infection based on the model education program developed by the department;

(2) encourage behavior changes to reduce the possibility of HIV transmission;

(3) promote other HIV risk reduction activities; and

(4) encourage behavior consistent with state criminal laws.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.104. MINIMUM PROGRAM REQUIREMENTS. (a) In this section, "coping skills training" means instruction in the elements and practice of and reasons for the skills of communication, stress management, problem solving, daily living, and decision making.

(b) A chemical dependency intensive intervention, outpatient, residential treatment, or rehabilitation program that is provided by the department or that is funded wholly or partly by funds allocated through the department must include:

(1) coping skills training;

(2) education regarding the manifestations and dynamics of dysfunctional relationships within the family; and

(3) support group opportunities for children and adults.

(c) This section does not apply to:

(1) a detoxification program or that part of a program that provides detoxification; or

(2) a program provided by the Texas Juvenile Justice Department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.105. RELAPSE RATE REPORTING. (a) A treatment program provided or funded by the department shall report to the department on the effectiveness of the chemical dependency treatment

program.

(b) The report must show to the extent possible, without violating the confidentiality of information received by the program, the rate of relapse of persons who have received treatment services.

(c) The executive commissioner by rule may provide for the content of a report and the procedure for reporting under this section. Reports must be uniform in classifications of persons receiving treatment according to the severity of addiction, substance abused, age of person treated, and modality of treatment. A report may not reveal the name of an individual subject to treatment or of a family member or acquaintance of an individual treated and may not describe circumstances from which any of those individuals may be identified.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.106. COMPULSIVE GAMBLING PROGRAM. (a) The department shall establish a program for:

(1) public education, research, and training regarding problem or compulsive gambling; and

(2) the treatment and prevention of problem or compulsive gambling.

(b) The department's program under Subsection (a) must include:

(1) establishing and maintaining a list of Internet sites and toll-free "800" telephone numbers of nonprofit entities that provide crisis counseling and referral services to families experiencing difficulty as a result of problem or compulsive gambling;

(2) promoting public awareness regarding the recognition and prevention of problem or compulsive gambling;

(3) facilitating, through in-service training and other means, the availability of effective assistance programs for problem or compulsive gamblers; and

(4) conducting studies to identify adults and juveniles in this state who are, or who are at risk of becoming, problem or compulsive gamblers.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

SUBCHAPTER D. SERVICE CONTRACTS

Sec. 461A.151. CLIENT SERVICE CONTRACT STANDARDS. (a) In each contract for the purchase of chemical dependency program-related client services, the department shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) Contract goals must include a standard developed by the department that is based on a percentage of program clients who maintain long-term recovery for an extended period as defined by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.152. CONTRACT MONITORING. The department shall establish a formal program to monitor program-related client services contracts made by the department. The department must:

(1) monitor compliance with financial and performance requirements using a risk assessment methodology; and

(2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.153. TECHNICAL ASSISTANCE PROGRAM. The department shall adopt technical assistance policies and procedures for a technical assistance program that:

(1) is clearly separate from the department's contract monitoring activities;

(2) has a single office for technical assistance requests; and

(3) includes explicit response time frames.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

SUBCHAPTER E. FUNDING

Sec. 461A.201. FINANCES. (a) The department may accept gifts and grants for the purposes of providing chemical dependency services and related programs.

(b) The department is the state agency that receives and administers federal funds for alcohol and drug abuse, including applying for, administering, and disbursing funds under the federal Drug Abuse Prevention, Treatment, and Rehabilitation Act (21 U.S.C. Section 1101 et seq.). The executive commissioner prescribes all necessary department policies relating to alcohol and drug abuse.

(c) An organization or other entity is not eligible for a grant of state funds from the department under this chapter unless the organization or entity provides matching funds in either cash or in-kind contributions equal to at least five percent of the total grant of state funds from the department. The department may waive that requirement if the department determines that the requirement may jeopardize the provision of needed services.

(d) In allocating grant funds, the department shall consider the state facility hospitalization rate of substance abusers who are from the service area of the entity requesting the grant. An organization or other entity is not eligible for a grant of state funds for a treatment or rehabilitation program unless the program will, at a minimum, reduce state facility hospitalization of substance abusers by a percentage established by the department.

(e) As a condition to receiving contract or grant funds under this chapter, a public or private organization or entity must provide to the department information relating to:

(1) the number of persons with a chemical dependency the organization or entity served, if any, during the preceding year, the municipalities and counties of residence of those persons, and the number of persons served from each municipality and county; and

(2) the number of persons with a chemical dependency the organization or entity expects to serve during the term of the requested grant or contract, the expected municipalities and counties

of residence for those persons, and the expected number of persons served from each municipality and county.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.202. SERVICES FUNDING. (a) The executive commissioner by rule shall adopt a system of funding the provision of chemical dependency services that includes competitive and noncompetitive procedures to:

(1) maximize the range of treatment services available in each service region;

(2) provide reasonable access in each region to available services; and

(3) include local public participation in making regional funding decisions and formal funding recommendations.

(b) The system must require that the department award each proposed chemical dependency services contract to the applicant that the department determines has made the bid that provides the best value.

(c) In determining the best value bid for a contract under this section, the department shall consider:

(1) the quality of the proposed service;

(2) cost;

(3) the applicant's ability to:

(A) perform the contract;

(B) provide the required services; and

(C) provide continuity of service;

(4) whether the applicant can perform the contract or provide the services within the period required, without delay or interference;

(5) the applicant's history of:

(A) contract performance; and

(B) compliance with the laws relating to the applicant's business operations and the affected services;

(6) whether the applicant's financial resources are sufficient to perform the contract and to provide the services;

(7) whether necessary or desirable support and ancillary services are available to the applicant;

(8) the degree of community support for the applicant;

(9) the quality of the facilities and equipment available to or proposed by the applicant;

(10) the ability of the applicant to meet all applicable written department policies, principles, and rules;

(11) state investment in the applicant; and

(12) other factors the department determines relevant.

(d) Rules adopted under this section must set out the department's provider selection processes, including:

(1) service purchase methods;

(2) eligibility criteria;

(3) provider selection criteria; and

(4) selection determination procedures.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.203. FUNDING POLICY MANUAL. (a) The department shall publish a funding policy manual that explains:

(1) the department's funding priorities and provider selection criteria; and

(2) the methods the department used to develop funding policies.

(b) The department shall update the manual annually.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

Sec. 461A.204. UNIT RATE REIMBURSEMENT. (a) In this section, "unit rate reimbursement" means reimbursement for a service paid at a specified rate for a unit of the service provided to a client multiplied by the number of units provided.

(b) The department shall study the procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis.

(c) If the department determines, after consideration of the study, that procurement of and payment for chemical dependency treatment services on a unit rate reimbursement basis in appropriate areas of the state would result in obtaining the highest quality

treatment services at the best price and the lowest administrative cost to the department, the department shall adopt a unit rate reimbursement system for those services. The system must:

(1) include competitive procurement;

(2) monitor provider performance;

(3) monitor the reasonableness of provider costs and expenditures;

(4) verify provider costs before and after a contract term to ensure rates are set appropriately;

(5) ensure accountability of providers; and

(6) contain costs.

(d) The department may procure and pay for chemical dependency prevention and intervention services under a unit rate reimbursement system when the department determines it is appropriate.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1158, eff. April 2, 2015.

CHAPTER 462. TREATMENT OF PERSONS WITH CHEMICAL DEPENDENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 462.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who files an application for emergency detention, protective custody, or commitment of a person with a chemical dependency.

(2) "Certificate" means a sworn certificate of medical examination for chemical dependency executed under this chapter.

(3) "Chemical dependency" means:

(A) the abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(88), eff. April 2, 2015.

(5) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).

(5-a) "Department" means the Department of State Health Services.

(5-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Legal holiday" means a state holiday listed in Section 662.021, Government Code, or an officially declared county holiday applicable to a court in which proceedings under this chapter are held.

(7) "Proposed patient" means a person named in an application for emergency detention, protective custody, or commitment under this chapter.

(8) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(9) "Treatment" means the initiation and promotion of a person's chemical-free status or the maintenance of a person free of illegal drugs.

(10) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed by the department under Chapter 464, a facility licensed by the department under Title 7, or a facility operated by the department under Title 7 that has been designated by the department to provide chemical dependency treatment. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 671, Sec. 1, eff. June 15, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1160, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(88), eff. April 2, 2015.

Sec. 462.002. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a court having original jurisdiction under this chapter must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

(1) the date on which the paper is filed;

(2) the docket number; and

(3) the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this chapter would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for the extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This subsection does not affect another provision of this chapter requiring the release or discharge of a person.

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 8, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 5.03, eff. Aug. 30, 1993.

Sec. 462.0025. COURT HOURS. (a) The probate court or court

having probate jurisdiction shall be open for proceedings under this chapter during normal business hours.

(b) The probate judge or magistrate shall be available at all times at the request of a person taken into custody or detained under Subchapter C or a proposed patient under Subchapter D.

Amended by Acts 1991, 72nd Leg., ch. 567, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 14 (S.B. 348), Sec. 1, eff. May 3, 2005.

Sec. 462.003. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for commitment proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the:

(1) county judge;

(2) judge of a court that has probate jurisdiction; or

(3) judge of a district court having jurisdiction in the county.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this chapter.

(e) This section does not affect access of law enforcement personnel to necessary information in the execution of a writ or warrant.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.004. REPRESENTATION OF STATE. In a hearing on court-ordered treatment held under this chapter:

(1) the county attorney shall represent the state; or

(2) if the county has no county attorney, the district attorney shall represent the state.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.005. COSTS. (a) The laws relating to the payment of the costs of commitment, support, maintenance, and treatment and to the securing of reimbursement for the actual costs applicable to court-ordered mental health, probation, or parole services apply to each item of expense incurred by the state or the county in connection with the commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this chapter.

(b) A county that enters an order of commitment or detention under this chapter is liable for payment of the costs of any proceedings related to that order, including:

(1) court-appointed attorney fees;

(2) physician examination fees;

(3) compensation for language or sign interpreters;

(4) compensation for masters; and

(5) expenses to transport a patient to a hearing or to a treatment facility.

(c) A county or the state is entitled to reimbursement from any of the following persons for costs actually paid by the county or state and that relate to an order of commitment or detention:

(1) the patient;

(2) the applicant; or

(3) a person or estate liable for the patient's support in a treatment facility.

(d) On a motion of the county or district attorney or on the court's own motion, the court may require an applicant to file a cost bond with the court.

(e) The state shall pay the costs of transporting a discharged

patient to the patient's home or of returning to a treatment facility a patient absent without permission unless the patient or a person responsible for the patient is able to pay the costs.

(f) The state or the county may not pay any costs for a patient committed to a private hospital unless no public facilities are available and unless authorized by the department or the commissioners court of the county, as appropriate.

(g) Notwithstanding Subsection (c), a person who files an application for the commitment of another while acting in the person's capacity as an employee of a local mental health authority is not liable for the payment of any costs under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 10, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1161, eff. April 2, 2015.

Sec. 462.006. WRIT OF HABEAS CORPUS. This chapter does not limit a person's right to obtain a writ of habeas corpus.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.007. LIMITATION OF LIABILITY. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, commitment, treatment, or discharge of a proposed patient or in the performance of any act required or authorized by this chapter and who acts in good faith, reasonably, and without malice or negligence is not civilly or criminally liable for that action.

(b) A physician performing a medical examination or providing information to a court in a court proceeding under this chapter or providing information to a peace officer to demonstrate the necessity to apprehend a person under Section 462.041 is considered an officer of the court and is not civilly or criminally liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for release is notified that the person assumes all responsibility for the patient on discharge.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 11, eff. Sept. 1, 1991.

Sec. 462.008. CRIMINAL PENALTY; ENFORCEMENT. (a) A person commits an offense if the person intentionally causes, conspires with another person to cause, or assists another to cause the unwarranted commitment of a person to a treatment facility.

(b) A person commits an offense if the person knowingly violates this chapter.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

(g) The appropriate district or county attorney shall prosecute violations of this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 12, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 705, Sec. 3.05, eff. Sept. 1, 1993.

Sec. 462.009. CONSENT TO TREATMENT. (a) A patient receiving treatment in a treatment facility is entitled to refuse a medication, therapy, or treatment unless:

(1) the patient is younger than 18 years of age, the patient is admitted under Section 462.022(a)(3)(A), and the patient's parent, managing conservator, or guardian consents to the medication, therapy, or treatment on behalf of the patient;

(2) the patient has been adjudicated to be incompetent to manage the patient's personal affairs or to make a decision to refuse the medication, therapy, or treatment and the patient's guardian of the person or another person legally authorized to consent to medical treatment consents to the medication, therapy, or treatment on behalf of the patient; or

(3) a physician treating the patient determines that the medication is necessary to prevent imminent serious physical harm to the patient or to another individual and the physician issues a written order, or a verbal order if authenticated in writing by the physician within 24 hours, to administer the medication to the patient.

(b) The decision of a guardian or of a person legally authorized to consent to medical treatment on the patient's behalf under Subsection (a)(2) must be based on knowledge of what the patient would desire, if known.

(c) A patient's refusal to receive medication, therapy, or treatment under Subsection (a), or a patient's attempt to refuse if the patient's right to refuse is limited by that subsection, shall be documented in the patient's clinical record together with the patient's expressed reason for refusal.

(d) If a physician orders a medication to be administered to a patient under Subsection (a)(3), the physician shall document in the patient's clinical record in specific medical and behavioral terms the reasons for the physician's determination of the necessity of the

order.

(e) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf for the administration of a medication, therapy, or treatment is valid only if:

(1) for consent to therapy or treatment:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) before administration of the therapy or treatment, the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor explains to the patient and to the person giving consent, in simple, nontechnical language:

(i) the specific condition to be treated;

(ii) the beneficial effects on that condition expected from the therapy or treatment;

(iii) the probable health and mental health consequences of not consenting to the therapy or treatment;

(iv) the side effects and risks associated with the therapy or treatment;

(v) the generally accepted alternatives to the therapy or treatment, if any, and whether an alternative might be appropriate for the patient; and

(vi) the proposed course of the therapy or treatment;

(2) for consent to the administration of medication:

(A) the consent is given voluntarily and without coercive or undue influence; and

(B) the treating physician provides each explanation required by Subdivision (1)(B) to the patient and to the person giving consent in simple, nontechnical language; and

(3) for consent to medication, therapy, or treatment, the informed consent is evidenced in the patient's clinical record by a signed form prescribed by the department for this purpose or by a statement of the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor who obtained the consent that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(f) A person who consents to the administration of a

medication, therapy, or treatment may revoke the consent at any time and for any reason, regardless of the person's capacity. Revocation of consent is effective immediately and further medication, therapy, or treatment may not be administered unless new consent is obtained in accordance with this section.

(g) Consent given by a patient or by a person authorized by law to consent to treatment on the patient's behalf applies to a series of doses of medication or to multiple therapies or treatments for which consent was previously granted. If the treating physician or the psychologist, social worker, professional counselor, or chemical dependency counselor obtains new information relating to a therapy or treatment for which consent was previously obtained, the physician or the psychologist, social worker, professional counselor, or chemical dependency counselor must explain the new information and obtain new consent. If the treating physician obtains new information relating to a medication for which consent was previously obtained, the physician must explain the new information and obtain new consent.

(h) This section does not apply to a treatment facility licensed by the department under Chapter 464.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.14, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1216, Sec. 2, eff. June 15, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1162, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 2, eff. June 19, 2015.

Sec. 462.010. CONSENT TO TREATMENT AT CERTAIN FACILITIES. (a) A treatment facility licensed by the department under Chapter 464 may not provide treatment to a patient without the patient's legally adequate consent.

(b) The executive commissioner by rule shall prescribe standards for obtaining a patient's legally adequate consent under this section, including rules prescribing reasonable efforts to obtain a patient's consent and requiring documentation for those

efforts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.011. CONSENT TO MEDICATION. Consent to the administration of prescription medication given by a patient receiving treatment in a treatment facility licensed by the department under Chapter 464 or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient are informed in writing that consent may be revoked; and

(3) the consent is evidenced in the patient's clinical record by a signed form prescribed by the treatment facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.012. RIGHT TO REFUSE MEDICATION. (a) Each patient receiving treatment in a treatment facility licensed by the department under Chapter 464 has the right to refuse unnecessary or excessive medication.

(b) Medication may not be used by the treatment facility:

(1) as punishment; or

(2) for the convenience of the staff.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.013. MEDICATION INFORMATION. (a) The executive commissioner by rule shall require the treating physician of a patient admitted to a treatment facility licensed by the department

under Chapter 464 or a person designated by the physician to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(c) If the treating physician designates another person to provide the information under Subsection (a), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided consent for the administration of the medications under Section 462.011, to review the information and answer any questions.

(d) The treating physician or the person designated by the physician shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.014. LIST OF MEDICATIONS. (a) On the request of a patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any, the facility administrator of a treatment facility licensed by the department under Chapter 464 shall provide to the patient, the person designated by the patient, and the patient's legal guardian or managing conservator, a list of

the medications prescribed for administration to the patient while the patient is in the treatment facility. The list must include for each medication:

(1) the name of the medication;

(2) the dosage and schedule prescribed for the administration of the medication; and

(3) the name of the physician who prescribed the medication.

(b) The list must be provided before the expiration of four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any. If sufficient time to prepare the list before discharge is not available, the list may be mailed before the expiration of 24 hours after discharge to the patient, the person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

Added by Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 3, eff. June 19, 2015.

Sec. 462.015. OUTPATIENT TREATMENT SERVICES PROVIDED USING TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY. (a) An outpatient chemical dependency treatment program provided by a treatment facility licensed under Chapter 464 may provide services under the program to adult and adolescent clients, consistent with commission rule, using telecommunications or information technology.

(b) The executive commissioner shall adopt rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 624 (H.B. 4), Sec. 8, eff. June 15, 2021.

SUBCHAPTER B. VOLUNTARY TREATMENT OR REHABILITATION

Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may

admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the department to provide the necessary services;

(B) a facility licensed by the department under Title 7; or

(C) a facility operated by the department under Title 7 that has been designated by the department to provide chemical dependency treatment; and

(2) the admission is appropriate under the facility's admission policies.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 671, Sec. 2, eff. June 15, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1163, eff. April 2, 2015.

Sec. 462.022. VOLUNTARY ADMISSION OF MINOR. (a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the department to provide the necessary services to minors;

(B) a facility licensed by the department under Title 7; or

(C) a facility operated by the department under Title 7 that has been designated by the department to provide chemical dependency treatment;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent, managing conservator, or guardian of the minor; or

(B) the minor, without parental consent, if the minor is 16 years of age or older.

(b) The admission of a minor under Subsection (a) is considered a voluntary admission.

(c) A person or agency appointed as the guardian or a managing

conservator of a minor and acting as an employee or agent of the state or a political subdivision of the state may request admission of the minor only with the minor's consent.

(d) In this section, "minor" means an individual younger than 18 years of age for whom the disabilities of minority have not been removed.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 573, Sec. 3.03(a), eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 671, Sec. 3, eff. June 15, 1993; Acts 2001, 77th Leg., ch. 1216, Sec. 3, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1164, eff. April 2, 2015.

Sec. 462.023. DISCHARGE OR RELEASE. (a) Except as provided by Subsection (b), a facility shall release a voluntary patient within a reasonable time, not to exceed 96 hours, after the patient requests in writing to be released.

(b) A facility is not required to release the patient if before the end of the 96-hour period:

(1) the patient files a written withdrawal of the request;

(2) an application for court-ordered treatment or emergency detention is filed and the patient is detained in accordance with this chapter; or

(3) the patient is a minor under the age of 16 admitted with the consent of a parent, guardian, or conservator and that person, after consulting with facility personnel, objects in writing to the release of the patient.

(c) Subsection (a) applies to a minor admitted under Section 462.022 if the request for release is made in writing to the facility by the person who requested the initial admission.

(d) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which the person may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained until 4 p.m. on the first succeeding business day.

The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 13, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1216, Sec. 4, eff. June 15, 2001.

Sec. 462.0235. DISCHARGE OR RELEASE OF MINOR 16 OR 17 YEARS OF AGE. (a) Except as provided by this section, a facility shall release a minor who is 16 or 17 years of age within a reasonable time, not to exceed 96 hours, after:

(1) the minor requests in writing to be released; or

(2) for a minor admitted under Section 462.022(a)(3)(A), the minor's parent, managing conservator, or guardian requests the release in writing.

(b) A facility is not required to release a minor who is 16 or 17 years of age within the period described by Subsection (a) if:

(1) the request is filed with the facility by the minor before the 15th day after the date of the minor's admission to the facility; or

(2) the request is filed with the facility by the minor on or after the 15th day after the minor's date of admission to the facility and, not later than 96 hours after the request is filed:

(A) the minor files with the facility a written withdrawal of the minor's request; or

(B) an examining physician places in the minor's medical record a certificate of medical examination described by Subsection (c).

(c) The certificate of medical examination placed in a minor's medical record under Subsection (b)(2)(B) must include:

(1) the name and address of the examining physician;

(2) the name and address of the examined minor;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined minor's physical and mental condition;

(5) the period, if any, during which the examined minor has been under the care of the examining physician;

(6) an accurate description of the chemical dependency treatment, if any, administered to the examined minor by or under the

direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined minor is a person with a chemical dependency;

(B) there is no reasonable alternative to the treatment the physician recommends for the examined minor; and

(C) as a result of the examined minor's chemical dependency, the minor, if released, is likely to cause serious harm to the minor or others or:

(i) would suffer severe and abnormal mental, emotional, or physical distress;

(ii) would experience a substantial mental or physical deterioration of the minor's ability to function independently that would be manifested by the minor's inability, for reasons other than indigence, to provide for the minor's basic needs, including food, clothing, health, and safety; and

(iii) would not be able to make a rational and informed decision as to whether to submit to treatment.

(d) A facility shall release a minor whose release was postponed under Subsection (b)(2)(B) on the 15th day after the date of the most recent examination for which a certificate described by Subsection (c) is performed unless the physician conducts an additional examination of the minor and places another certificate of examination described by Subsection (c) in the minor's medical record.

(e) If a minor who is 16 or 17 years of age requests to be released from a facility on or after the 60th day after the date of the minor's admission to the facility, the facility shall release the minor within a reasonable time, not to exceed 96 hours, unless:

(1) an application for court-ordered treatment of the minor or for emergency detention of the minor is filed; and

(2) the minor is detained in accordance with this chapter.

(f) If extremely hazardous weather conditions exist or a disaster occurs, the facility administrator may request the judge of a court that has jurisdiction over proceedings brought under Subchapter D to extend the period during which a minor may be detained under this section. The judge or a magistrate appointed by the judge may, by written order made each day, extend the period during which the minor may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an

emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 2001, 77th Leg., ch. 1216, Sec. 5, eff. June 15, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1165, eff. April 2, 2015.

Sec. 462.024. APPLICATION FOR COURT-ORDERED TREATMENT DURING VOLUNTARY INPATIENT CARE. (a) An application for court-ordered treatment may not be filed against a patient receiving voluntary care under this subchapter unless:

(1) a request for release of the patient has been filed; or

(2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered treatment and:

(A) is absent from the facility without authorization;

(B) is unable to consent to appropriate and necessary treatment; or

(C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for chemical dependency that, in addition to the information required by Section 462.064, includes the opinion of the physician that:

(i) there is no reasonable alternative to the treatment recommended by the physician; and

(ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered treatment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 903, Sec. 1.15, eff. Aug. 30, 1993.

Sec. 462.025. INTAKE, SCREENING, ASSESSMENT, AND ADMISSION. (a) The executive commissioner shall adopt rules governing the

voluntary admission of a patient to a treatment facility, including rules governing the intake, screening, and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

(1) reviewing a prospective patient's finances and insurance benefits;

(2) explaining to a prospective patient the patient's rights; and

(3) explaining to a prospective patient the facility's services and treatment process.

(b-1) The rules governing the screening process shall establish minimum standards for determining whether a prospective patient presents sufficient signs, symptoms, or behaviors indicating a potential chemical dependency disorder to warrant a more in-depth assessment by a qualified professional. The screening must be reviewed and approved by a qualified professional.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by department rules.

(d) The rules governing the assessment process shall prescribe:

(1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(d-1) The rules governing the intake, screening, and assessment procedures shall establish minimum standards for providing intake, screening, and assessment using telecommunications or information technology.

(e) In accordance with department rule, a treatment facility shall provide annually a minimum of two hours of inservice training regarding intake and screening for persons who will be conducting an intake or screening for the facility. A person may not conduct intake or screenings without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for chemical dependency treatment in a treatment facility unless the facility's administrator or a person designated by the administrator has agreed to accept the prospective patient and has

signed a statement to that effect.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a qualified professional before admission.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a treatment facility.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1211 , Sec. 5, eff. June 19, 2015.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the treatment facility and the facility's treatment and services.

(4) "Screening" means the process a treatment facility uses to determine whether a prospective patient presents sufficient signs, symptoms, or behaviors to warrant a more in-depth assessment by a qualified professional after the patient is admitted.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.08, eff. Aug. 30, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 345 (H.B. 3146), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1166, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 4, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1211 (S.B. 1560), Sec. 5, eff. June 19, 2015.

Acts 2021, 87th Leg., R.S., Ch. 624 (H.B. 4), Sec. 9, eff. June 15, 2021.

SUBCHAPTER C. EMERGENCY DETENTION

Sec. 462.041. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

(a) A peace officer, without a warrant, may take a person into custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is chemically dependent; and

(B) because of that chemical dependency there is a substantial risk of harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental or physical condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1) the nearest appropriate inpatient treatment facility; or

(2) if an appropriate inpatient treatment facility is not available, a facility considered suitable by the county's health authority.

(e) A person may not be detained in a jail or similar detention facility except in an extreme emergency. A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(f) A peace officer shall immediately file an application for detention after transporting a person to a facility under this section. The application for detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences chemical dependency;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(g) The person shall be released on completion of a preliminary examination conducted under Section 462.044 unless the examining physician determines that emergency detention is necessary and provides the statement prescribed by Section 462.044(b). If a person is not admitted to a facility, is not arrested, and does not object, arrangements shall be made to immediately return the person to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(h) The county in which the person was apprehended shall pay the costs of the person's return.

(i) A treatment facility may provide to a person medical assistance regardless of whether the facility admits the person or refers the person to another facility.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.042. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY DETENTION. (a) An adult may file a written application for emergency detention of a minor or another adult.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person who is the subject of the application is a person with a chemical dependency;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the relationship, if any, of the applicant to the person.

(c) The application may be accompanied by any relevant information.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1167, eff. April 2, 2015.

Sec. 462.043. ISSUANCE OF WARRANT. (a) An applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsection (f), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The judge or magistrate shall deny the application unless the judge or magistrate finds that there is reasonable cause to believe that:

(1) the person who is the subject of the application is a person with a chemical dependency;

(2) the person evidences a substantial risk of serious harm to the person or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without

emergency detention.

(c) The judge or magistrate shall issue a warrant for the person's immediate apprehension if the judge or magistrate finds that each criteria under Subsection (b) is satisfied.

(d) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 462.044 to:

(1) a treatment facility; or

(2) another appropriate facility if a treatment facility is not readily available.

(e) The warrant and copies of the application for the warrant shall be served on the person as soon as possible and transmitted to the facility.

(f) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 243, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1168, eff. April 2, 2015.

Sec. 462.044. PRELIMINARY EXAMINATION. (a) A physician shall conduct a preliminary examination of the apprehended person as soon as possible within 24 hours after the time the person is apprehended under Section 462.041 or 462.043.

(b) The person shall be released on completion of the preliminary examination unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria specified by Section 462.043(b).

(c) A person released under Subsection (b) is entitled to reasonably prompt return to the location of apprehension or other suitable place unless the person is arrested or objects to the return.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.045. DETENTION PERIOD. (a) A person apprehended under this subchapter may be detained for not longer than 24 hours after the time that the person is presented to the facility unless an application for court-ordered treatment is filed and a written order for further detention is obtained under Section 462.065.

(b) If the 24-hour period ends on a Saturday, Sunday, or legal holiday, the person may be detained until 4 p.m. on the next day that is not a Saturday, Sunday, or legal holiday. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.046. INFORMATION TO BE PROVIDED ON ADMISSION. (a) The personnel of a treatment facility shall immediately advise a person admitted under Section 462.044 that:

(1) the person may be detained for treatment for not longer than 24 hours after the time of the initial detention unless an order for further detention is obtained;

(2) if the administrator finds that the statutory criteria for emergency detention no longer apply, the administrator shall release the person;

(3) not later than the 24th hour after the hour of the initial detention, the facility administrator may file in a court having original jurisdiction under this chapter a petition to have the person committed for court-ordered treatment under Subchapter D;

(4) if the administrator files a petition for court-ordered treatment, the person is entitled to a judicial probable cause hearing not later than the 72nd hour after the hour the detention begins under an order of protective custody to determine whether the person should remain detained in the facility;

(5) when the application for court-ordered services is filed, the person has the right to have counsel appointed if the person does not have an attorney;

(6) the person has the right to communicate with counsel at

any reasonable time and to have assistance in contacting the counsel;

(7) the person's communications to the personnel of the treatment facility may be used in making a determination relating to detention, may result in the filing of a petition for court-ordered treatment, and may be used at a court hearing;

(8) the person is entitled to present evidence and to cross-examine witnesses who testify on behalf of the petitioner at a hearing;

(9) the person may refuse medication unless there is an imminent likelihood of serious physical injury to the person or others if the medication is refused;

(10) beginning on the 24th hour before a hearing for court-ordered treatment, the person may refuse to take medication unless the medication is necessary to save the person's life; and

(11) the person is entitled to request that a hearing be held in the county of the person's residence, if the county is in the state.

(b) The personnel of the treatment facility shall provide the information required by Subsection (a) to the person orally, in writing, and in simple, nontechnical terms.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.047. RELEASE FROM EMERGENCY DETENTION. (a) A person detained under this subchapter shall be released if the facility administrator or the administrator's designee determines at any time during the emergency detention period that one of the criteria prescribed by Section 462.043(b) no longer applies.

(b) If a person is released from emergency detention and is not arrested and does not object, arrangements shall be made to return the person to the location of apprehension or other suitable place.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.048. RIGHTS OF PERSON APPREHENDED OR DETAINED. (a) A person apprehended or detained under this subchapter has the right:

(1) to be advised of the location of detention, the reasons

for the detention, and the fact that detention could result in a longer period of involuntary commitment;

(2) to contact an attorney of the person's choice and to a reasonable opportunity to contact that attorney;

(3) to be transported to the location of apprehension or other suitable place if the person is not admitted for emergency detention, unless the person is arrested or objects to the return;

(4) to be released from a facility as provided by Section 462.047; and

(5) to be advised that communications to a chemical dependency treatment professional may be used in proceedings for further detention.

(b) Within 24 hours after the time of admission, a person apprehended or detained under this subchapter shall be advised, orally, in writing, and in simple, nontechnical terms, of the rights provided by this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

SUBCHAPTER D. COURT-ORDERED TREATMENT

Sec. 462.061. COURT-ORDERED TREATMENT; JURISDICTION. (a) A proceeding for court-ordered treatment under this chapter shall be held in a constitutional county court, a statutory county court having probate jurisdiction, or a statutory probate court in the county in which the proposed patient resides, is found, or is receiving court-ordered treatment or treatment under Section 462.041 when the application is filed unless otherwise specifically designated.

(b) If the hearing is to be held in a constitutional county court in which the judge is not a licensed attorney, the proposed patient may request that the proceeding be transferred to a statutory court having probate jurisdiction or to a district court. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) The commitment of a juvenile under this subchapter must be heard in a district court or statutory court that has juvenile or probate jurisdiction. The commitment of a juvenile under Section

462.081 may be heard only in a court that has juvenile jurisdiction.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.062. APPLICATION FOR COURT-ORDERED TREATMENT. (a) A county or district attorney or other adult may file a sworn written application for court-ordered treatment of another person. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination for chemical dependency.

(b) The application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is found; or

(3) is receiving treatment services by court order or under Section 462.041.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) The application must be styled using the initials of the proposed patient and not the proposed patient's full name.

(e) The application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address, including the county in which the proposed patient resides, if known;

(2) a statement that the proposed patient is a person with a chemical dependency who:

(A) is likely to cause serious harm to the person or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3) a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(f) Subsection (e)(3) does not apply if the proposed patient is a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined by Section 51.03, Family Code.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1169, eff. April 2, 2015.

Sec. 462.063. PREHEARING PROCEDURE. (a) When the application is filed, the court shall set a date for a hearing on the merits of the application to be held within 14 days after the date on which the application is filed. The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects. The court may grant one or more continuances of the hearing on motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed.

(b) Immediately after the date for the hearing is set, the clerk shall give written notice of the hearing and a copy of the application to the proposed patient and the proposed patient's attorney in the manner the court directs.

(c) The court shall appoint an attorney to represent the proposed patient if the proposed patient does not retain an attorney of the proposed patient's choice.

(d) The court shall appoint an attorney for a proposed patient who is a minor, regardless of the ability of the proposed patient or the proposed patient's family to afford an attorney.

(e) The court shall allow a court-appointed attorney a reasonable fee for services. The fee shall be collected as costs of the court.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.064. CERTIFICATE OF MEDICAL EXAMINATION FOR CHEMICAL

DEPENDENCY. (a) A hearing on court-ordered treatment may not be held unless there are on file with the court at least two certificates of medical examination for chemical dependency completed by different physicians each of whom has examined the proposed patient not earlier than the 30th day before the date the final hearing is held.

(b) If the certificates are not filed with the application, the court may appoint the necessary physicians to examine the proposed patient and file the certificates. The court may order the proposed patient to submit to the examinations and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examinations.

(c) A certificate must be dated and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;

(2) the name and address of the proposed patient;

(3) the date and place of the examination;

(4) the period, if any, during which the proposed patient has been under the care of the examining physician;

(5) an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6) the examining physician's opinions whether the proposed patient is a person with a chemical dependency and:

(A) is likely to cause serious harm to the person;

(B) is likely to cause serious harm to others; or

(C) will continue to suffer abnormal mental, emotional, or physical distress and to deteriorate in ability to function independently if not treated and is unable to make a rational and informed choice as to whether or not to submit to treatment.

(d) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

(e) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for chemical dependency may be filed, and the person may

be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 14, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1170, eff. April 2, 2015.

Sec. 462.065. ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered treatment is pending. The motion may be filed by the county or district attorney or on the court's own motion.

(b) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(c) The motion must be accompanied by a certificate of medical examination for chemical dependency prepared by a physician who has examined the proposed patient not earlier than the fifth day before the date the motion is filed.

(d) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence.

(e) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines that:

(1) a physician has stated the physician's opinion and the detailed basis for the physician's opinion that the proposed patient is a person with a chemical dependency; and

(2) the proposed patient presents a substantial risk of serious harm to the person or others if not immediately restrained pending the hearing.

(f) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence that the proposed patient cannot remain at liberty. The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by this subsection from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided. The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(g) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the administrator of the facility designated to detain the proposed patient agrees to the detention.

(h) A protective custody order shall direct a peace officer or other designated person to take the proposed patient into protective custody and transport the proposed patient immediately to a treatment facility or other suitable place for detention. The proposed patient shall be detained in the facility until a hearing is held under Section 462.066.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1171, eff. April 2, 2015.

Sec. 462.066. PROBABLE CAUSE HEARING AND DETENTION. (a) The court shall set a hearing to determine if there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others if not restrained until the hearing on the application. The hearing must be held not later than 72 hours after the protective custody order is signed unless the proposed patient waives the right to a hearing. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the

hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or on the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(b) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master is entitled to reasonable compensation.

(c) The proposed patient and the proposed patient's attorney are entitled to an opportunity at the hearing to appear and present evidence on any allegation or statement in the certificate of medical examination for chemical dependency. The magistrate or master may consider any evidence. The state may prove its case on the certificate.

(d) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate shall order that a proposed patient be detained until the hearing on the court-ordered treatment or until the administrator of the facility determines that the proposed patient no longer meets the criteria for detention under this section if the magistrate or master determines that probable cause does exist to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered treatment.

(f) The magistrate or master shall arrange for a proposed patient detained under Subsection (e) to be returned to the treatment facility or other suitable place, along with a copy of the certificate of medical examination for chemical dependency, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (g). A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(g) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20___, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given written notice that the proposed
(attorney)
patient was placed under an order of protective custody and the reasons for such order on _____.
(date of notice)

I have examined the certificate of medical examination for chemical dependency and _____. Based on
(other evidence considered)
this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes ___ or no ___) or others (yes ___ or no ___) such that the proposed patient cannot be at liberty pending final hearing because
_____
(reasons for finding; type of risk found)

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1172, eff. April 2, 2015.

Sec. 462.067. HEARING ON APPLICATION FOR COURT-ORDERED TREATMENT. (a) A hearing on court-ordered treatment must be before a jury unless the proposed patient and the proposed patient's attorney waive the right to a jury. The waiver may be filed at any time after the proposed patient is served with the application and receives notice of the hearing. The waiver must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney.

(b) The proposed patient is entitled to a hearing and to be present at the hearing, but the proposed patient or the proposed

patient's attorney may waive either right.

(c) A court hearing may be held at any suitable location in the county. On the request of the proposed patient or the proposed patient's attorney, the hearing shall be held in the county courthouse.

(d) The Texas Rules of Civil Procedure and Texas Rules of Evidence apply to a hearing unless the rules are inconsistent with this chapter. The hearing is on the record, and the state must prove each issue by clear and convincing evidence.

(e) In addition to the rights prescribed by this chapter, the proposed patient is entitled to:

(1) present evidence on the proposed patient's own behalf;

(2) cross-examine witnesses who testify on behalf of the applicant;

(3) view and copy all petitions and reports in the court file of the cause; and

(4) elect to have the hearing open or closed to the public.

(f) The proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit as evidence the certificates of medical examination for chemical dependency. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive the right to cross-examine witnesses, the court shall hear testimony. The testimony must include competent medical or psychiatric testimony.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 567, Sec. 15, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 10.0031, eff. Sept. 1, 2001.

Sec. 462.068. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered treatment if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with a chemical dependency and meets the criteria for court-ordered treatment.

(b) If the court denies the application, the court shall order

the discharge of a proposed patient who is not at liberty.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1173, eff. April 2, 2015.

Sec. 462.069. COURT ORDER AND PLACE OF TREATMENT. (a) The court shall commit the proposed patient to a treatment facility approved by the department to accept court commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

(b) The judge may, on request by the proposed patient, enter an order requiring the proposed patient to participate in a licensed outpatient treatment facility or services provided by a private licensed physician, psychologist, social worker, or professional counselor if the judge finds that the participation is in the proposed patient's best interest considering the proposed patient's impairment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1174, eff. April 2, 2015.

Sec. 462.070. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient care or services may set a hearing to determine if the order should be modified to specifically require inpatient treatment. The court may set the hearing on its own motion, at the request of the person responsible for the care or treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the

patient if a hearing is held. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 462.063 for notice before a hearing on court-ordered treatment.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.071. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient care or treatment or the administrator of the outpatient treatment facility in which a patient receives care or treatment shall file a sworn application for the patient's temporary detention pending the modification hearing.

(b) The application must state the applicant's opinion and detail the basis for the applicant's opinion that:

(1) the patient meets the criteria described by Section 462.072; and

(2) detention in an approved inpatient treatment facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the order for temporary detention is signed, the court shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 72 hours after the time the detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1) that the patient has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

(f) A temporary detention order shall direct a peace officer or

other designated person to take the patient into custody and transport the patient immediately to:

(1) the nearest appropriate approved inpatient treatment facility; or

(2) a suitable facility if an appropriate approved inpatient treatment facility is not available.

(g) A patient may be detained under a temporary detention order for not more than 72 hours. The exceptions applicable to the 72-hour limitation for holding a probable cause hearing for an order of protective custody under Section 462.066(a) apply to detention under this section.

(h) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention was authorized after a modification hearing was held within the period prescribed by Subsection (g).

(i) A patient released from an inpatient treatment facility under Subsection (h) continues to be subject to the order committing the person to an approved outpatient treatment facility, if the order has not expired.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.072. MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient continues to meet the applicable criteria for court-ordered treatment prescribed by this chapter and that:

(1) the patient has not complied with the court's order; or

(2) the patient's condition has deteriorated to the extent that outpatient care or services are no longer appropriate.

(b) A court may refuse to modify the order and may direct the patient to continue to participate in outpatient care or treatment in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for chemical

dependency signed by a physician who examined the patient not earlier than the seventh day before the date the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient care or treatment under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an approved treatment facility for inpatient care.

(e) A court may not extend the provision of court-ordered treatment beyond the period prescribed in the original order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.073. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) The administrator of a facility to which a patient is committed for inpatient treatment may request the court that entered the commitment order to modify the order to require the patient to participate in outpatient care or services.

(b) The facility administrator's request must explain in detail the reason for the request. The request must be accompanied by a certificate of medical examination for chemical dependency signed by a physician who examined the patient during the preceding seven days.

(c) The patient shall be given notice of the request.

(d) On request of the patient or any other interested person, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the patient at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting certificate.

(f) If the court modifies the order, the court shall identify a person to be responsible for the outpatient care or services.

(g) The person responsible for the care or services shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(h) A modified order may not extend beyond the term of the original order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.0731. OUTPATIENT CARE IN CERTAIN COUNTIES. (a) This section applies to a chemically dependent patient who is a resident of a county with a population of more than 3.3 million, according to the most recent federal decennial census, and whose inpatient commitment is modified to an outpatient commitment, who is furloughed from an inpatient facility, or who is committed to treatment on an outpatient basis.

(b) The department shall arrange and furnish alternative settings for outpatient care, treatment, and supervision in the patient's county of residence. The services must be provided as close as possible to the patient's residence.

(c) A patient receiving services under this section shall report at least weekly to the person responsible for the patient's outpatient care and services.

(d) The person responsible for the patient's outpatient care or treatment shall notify the committing court of the patient's treatment plan and condition at least monthly until the end of the commitment period.

Added by Acts 1991, 72nd Leg., ch. 567, Sec. 16, eff. Sept. 1, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 48, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1175, eff. April 2, 2015.

Sec. 462.074. HOSPITALIZATION OUTSIDE TREATMENT FACILITY. (a) A patient receiving court-ordered treatment in a treatment facility may be transferred to a hospital if, in the opinion of a licensed physician, the patient requires immediate medical care and treatment.

(b) The hospital may, with the patient's consent, provide any necessary medical treatment, including surgery. The hospital may provide medical treatment without the patient's consent to the extent

provided by other law.

(c) The patient shall be returned to the treatment facility if the order for court-ordered treatment has not expired at the completion of the hospital treatment.

(d) An order for court-ordered treatment may be renewed while the person is in the hospital.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.075. RENEWAL OF ORDER FOR COURT-ORDERED TREATMENT. (a) A court may renew an order for court-ordered treatment entered under this subchapter.

(b) An applicant who has reasonable cause to believe that a patient remains chemically dependent and that, because of the chemical dependency, the patient is likely to cause serious physical harm to himself or others may file an application to renew the original order for court-ordered treatment. The application must comply with the requirements of Section 462.062. The applicant must file the application not later than the 14th day before the date on which the previous order expires.

(c) The application must be accompanied by two new certificates of medical examination for chemical dependency. The certificates must comply with the requirements of Section 462.064.

(d) An application for renewal is considered an original application for court-ordered treatment. The provisions of this subchapter relating to notice, hearing procedure, and the proposed patient's rights apply to the application for renewal.

(e) The court shall enter an order denying an application for court-ordered treatment if the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with a chemical dependency and meets the criteria for court-ordered treatment. If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

(f) The court shall commit the proposed patient to a treatment facility approved by the department to accept commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1176, eff. April 2, 2015.

Sec. 462.076. APPEAL. (a) The appeal of an order requiring court-ordered treatment must be filed in the court of appeals for the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the case is pending may:

(1) stay the order and release the person from custody pending the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under Section 462.065; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend any rule concerning the time for filing briefs and docketing cases.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.077. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for inpatient services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a

longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.078. RETURN TO FACILITY UNDER FACILITY ADMINISTRATOR'S CERTIFICATE OR COURT ORDER. (a) The administrator of a facility to which a patient was admitted for court-ordered inpatient services may have an absent patient taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the patient's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the patient's return.

(b) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the certificate as prescribed by this section. The facility head may sign or file the certificate if the facility head reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(c) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by the facility administrator's certificate or the court order. The peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.079. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health or chemical dependency professional if the person is not directly involved in treating the patient.

(c) The hearing is informal, and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 462.078(b)(1) or (2).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1177, eff. April 2, 2015.

Sec. 462.080. RELEASE FROM COURT-ORDERED TREATMENT. (a) The administrator of a facility to which a person has been committed for treatment shall discharge the person when the court order expires.

(b) The administrator may discharge a patient before the court order expires if the administrator determines that the patient no longer meets the criteria for court-ordered treatment.

(c) The administrator of a facility to which the patient has been committed for inpatient services shall consider before discharging the patient whether the patient should receive outpatient court-ordered care or services in accordance with:

(1) a furlough under Section 462.077; or

(2) a modified order under Section 462.073 that directs the

patient to participate in outpatient treatment.

(d) A discharge terminates the court order, and the person discharged may not be compelled to submit to involuntary treatment unless a new order is issued in accordance with this subchapter.

(e) When a person is discharged under this section, the administrator shall prepare a certificate of discharge and file it with the court that issued the order.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Sec. 462.081. COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of a court with jurisdiction of misdemeanor cases may remand the defendant to a treatment facility approved by the department to accept court commitments for care and treatment for not more than 90 days, instead of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty of an offense classified as a Class A or B misdemeanor;

(2) the court finds that the offense resulted from or was related to the defendant's chemical dependency;

(3) a treatment facility approved by the department is available to treat the defendant; and

(4) the treatment facility agrees in writing to admit the defendant under this section.

(b) A defendant who, in the opinion of the court, is a person with mental illness is not eligible for sentencing under this section.

(c) The court's sentencing order is a final conviction, and the order may be appealed in the same manner as appeals are made from other judgments of that court.

(d) A juvenile court may remand a child to a treatment facility for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1) the court finds that the child has engaged in delinquent conduct or conduct indicating a need for supervision and that the conduct resulted from or was related to the child's chemical dependency;

(2) a treatment facility approved by the department to

accept court commitments is available to treat the child; and

(3) the facility agrees in writing to receive the child under this section.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 175, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1178, eff. April 2, 2015.

CHAPTER 464. FACILITIES TREATING PERSONS WITH A CHEMICAL DEPENDENCY

SUBCHAPTER A. REGULATION OF CHEMICAL DEPENDENCY TREATMENT FACILITIES

Sec. 464.001. DEFINITIONS. In this subchapter:

(1) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(90), eff. April 2, 2015.

(3) "Controlled substance" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

(3-a) "Department" means the Department of State Health Services.

(3-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Treatment" means a planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs.

(5) "Treatment facility" means:

(A) a public or private hospital;

(B) a detoxification facility;

(C) a primary care facility;

(D) an intensive care facility;

(E) a long-term care facility;

(F) an outpatient care facility;

(G) a community mental health center;

(H) a health maintenance organization;

(I) a recovery center;

(J) a halfway house;
(K) an ambulatory care facility; or
(L) any other facility that offers or purports to offer treatment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1180, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(90), eff. April 2, 2015.

Sec. 464.002. LICENSE REQUIRED. A person may not offer or purport to offer chemical dependency treatment without a license issued under this subchapter, unless the person is exempted under Subchapter C or is working for or providing counseling with a program exempted under Subchapter C.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 663, Sec. 3, eff. Sept. 1, 1997.

Sec. 464.003. EXEMPTIONS. This subchapter does not apply to:
(1) a facility maintained or operated by the federal government;
(2) a facility directly operated by the state;
(3) a facility licensed by the department under Chapter 241, 243, 248, 466, or 577;
(4) an educational program for intoxicated drivers;
(5) the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office;
(6) an individual who personally provides counseling or support services to a person with a chemical dependency but does not offer or purport to offer a chemical dependency treatment program;
(7) a 12-step or similar self-help chemical dependency recovery program:

(A) that does not offer or purport to offer a chemical dependency treatment program;

(B) that does not charge program participants; and

(C) in which program participants may maintain anonymity;

(8) a juvenile justice facility or juvenile justice program, as defined by Section 261.405, Family Code; or

(9) a satellite office or location in which the person providing services is operating under the supervision of a licensed outpatient care facility and the services delivered at the satellite site fall within the scope of the licensure of the outpatient care facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 180, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 410, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 8, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1181, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 747 (S.B. 1314), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1323 (H.B. 4298), Sec. 1, eff. September 1, 2019.

Sec. 464.004. LICENSE APPLICATION AND ISSUANCE. (a) To receive a license to operate a treatment facility to treat persons with a chemical dependency, a person must:

(1) file a written application on a form prescribed by the department;

(2) cooperate with the review of the facility; and

(3) comply with the licensing standards.

(b) The department shall issue a license to an applicant:

(1) whose application meets the content requirements prescribed by the department and by department rules;

(2) who receives approval of the facility after the department's review; and

(3) who timely complies with the licensing standards.

(c) The license is issued only for the person named in the

license and not the legal successors of that person.

(d) The license expires two years after the date on which the license is issued.

(e) A license may be issued without prior notice and an opportunity for a hearing. A person other than the applicant or the department may not contest the issuance of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 181, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1182, eff. April 2, 2015.

Sec. 464.005. LICENSE RENEWAL. (a) The department shall provide renewal application forms and information relating to renewal procedures to each license holder.

(b) The department may require an inspection before renewing a license, unless the applicant submits an accreditation review from the Commission on Accreditation of Rehabilitation Facilities, The Joint Commission, or another national accreditation organization recognized by the department in accordance with Section 464.0055.

(c) The executive commissioner may establish deadlines for receiving and acting on renewal applications.

(d) A license may be renewed without prior notice and an opportunity for a hearing. A person other than the applicant or the department may not contest the renewal of a license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 181, eff. Sept. 1, 1991. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1096 (S.B. 1449), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1183, eff. April 2, 2015.

Sec. 464.0055. ACCREDITATION REVIEW TO SATISFY INSPECTION REQUIREMENTS. (a) In this section, "accreditation commission" means the Commission on Accreditation of Rehabilitation Facilities, The Joint Commission, or another national accreditation organization

recognized by the department.

(b) The department shall accept an accreditation review from an accreditation commission for a treatment facility instead of an inspection by the department for renewal of a license under Section 464.005, but only if:

(1) the treatment facility is accredited by that accreditation commission;

(2) the accreditation commission maintains and updates an inspection or review program that, for each treatment facility, meets the department's applicable minimum standards;

(3) the accreditation commission conducts a regular on-site inspection or review of the treatment facility according to the accreditation commission's guidelines; and

(4) the treatment facility submits to the department a copy of its most recent accreditation review from the accreditation commission in addition to the application, fee, and any report or other document required for renewal of a license.

(c) This section does not limit the department in performing any duties, investigations, or inspections authorized by this chapter, including authority to take appropriate action relating to a treatment facility, such as closing the treatment facility.

(d) This section does not require a treatment facility to obtain accreditation from an accreditation commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1096 (S.B. 1449), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1184, eff. April 2, 2015.

Sec. 464.006. INSPECTIONS. The department or its representative may without notice enter the premises of a treatment facility at reasonable times, including any time treatment services are provided, to conduct an inspection or investigation the department considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 182, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1185, eff.

April 2, 2015.

Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The department shall collect nonrefundable application and review fees for a license or renewal license. The department may collect a fee for approving a facility to treat court committed clients.

(b) If the General Appropriations Act does not specify the amount of the fee, the executive commissioner by rule shall establish reasonable fees to administer this subchapter in amounts necessary for the fees to cover at least 50 percent of the costs of the licensing program.

(c) The department may not maintain unnecessary fund balances under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 183, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1186, eff. April 2, 2015.

Sec. 464.008. APPLICABILITY OF OTHER LAW TO APPLICATION AND INSPECTION FEES. All application and inspection fees collected by the department under this subchapter are subject to Subchapter F, Chapter 404, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 577, Sec. 8, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1187, eff. April 2, 2015.

Sec. 464.009. RULES AND STANDARDS. (a) The department shall license treatment facilities in a manner consistent with state and federal law and rules, including department licensing standards.

(b) The executive commissioner shall adopt rules for:

(1) a treatment facility's organization and structure, policies and procedures, and minimum staffing requirements;

(2) the services to be provided by a facility, including:

(A) the categories of services the facility may provide;

(B) the client living environment the facility requires; and

(C) the requirement that a facility provide discharge planning and client follow-up contact;

(3) client rights and standards for medication, nutrition, and emergency situations;

(4) the client records kept by a facility;

(5) the general physical plant requirements for a facility, including environmental considerations, fire protection, safety, and other conditions to ensure the health and comfort of the clients;

(6) standards necessary to protect the client, including standards required or authorized by federal or other state law; and

(7) the approval of a facility to treat adult or minor clients who are referred by the criminal justice system or by a court order for involuntary civil or criminal commitment or detention.

(c) The executive commissioner shall adopt rules to protect the rights of individuals receiving services from a treatment facility and to maintain the confidentiality of client records as required by state and federal law.

(d) The executive commissioner by rule may not restrict competitive bidding or advertising by a facility regulated by the department under this chapter except to prohibit false, misleading, or deceptive practices by the facility. However, those rules may not:

(1) restrict the facility's use of any medium for advertising;

(2) restrict in an advertisement the personal appearance of a person representing the facility or the use of that person's voice;

(3) regulate the size or duration of an advertisement by the facility; or

(4) restrict the facility's advertisement under a trade name.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 184, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1188, eff. April 2, 2015.

Sec. 464.0095. RESTRAINT AND SECLUSION. A person providing services to a client at a treatment facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 5, eff. September 1, 2005.

Sec. 464.010. REPORTS OF ABUSE OR NEGLECT. (a) A person, including treatment facility personnel, who believes that a client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the department. This requirement is in addition to the requirements prescribed by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(b) The executive commissioner shall prescribe procedures for the investigation of reports under Subsection (a) and for coordination with law enforcement agencies or other agencies.

(c) An individual who in good faith reports to the department under this section is immune from civil or criminal liability based on the report. That immunity extends to participation in a judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect.

(d) The department may request the attorney general's office to file a petition for temporary care and protection of a client of a residential treatment facility if it appears that immediate removal of the client is necessary to prevent further abuse.

(e) All records made by the department during its investigation of alleged abuse or neglect are confidential and may not be released except that the release may be made:

(1) on court order;

(2) on written request and consent of the person under investigation or that person's authorized attorney; or

(3) as provided by Section 464.011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 185, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 7.44, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1189, eff. April 2, 2015.

Sec. 464.011. DISCLOSURE OF DEPARTMENT RECORDS. Unless prohibited or limited by federal or other state law, the department may make its licensing and investigatory records that identify a client available to a state or federal agency or law enforcement authority on request and for official purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 186, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1190, eff. April 2, 2015.

Sec. 464.012. HIV INFECTION EDUCATION, TESTING, AND COUNSELING. (a) A treatment facility licensed under this chapter shall provide to employees of the facility education regarding methods of transmitting and preventing human immunodeficiency virus infection based on the model education program developed by the department and shall make the education available to facility clients.

(b) Employees of the facility who counsel clients shall provide counseling in accordance with the model protocol for counseling related to HIV infection developed by the department.

(c) A treatment facility licensed under this chapter shall make available or make referrals to voluntary, anonymous, and affordable counseling and testing services concerning human immunodeficiency virus infection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 187, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1191, eff. April 2, 2015.

Sec. 464.014. DENIAL, REVOCATION, SUSPENSION, OR NONRENEWAL OF LICENSE. (a) The department shall deny, revoke, suspend, or refuse to renew a license, place on probation a person whose license has

been suspended, or reprimand a license holder if the applicant or license holder or the owner, director, administrator, or a clinical staff member of the facility:

(1) has a documented history of client abuse or neglect; or

(2) violates this subchapter or a department rule.

(b) If a license suspension is probated, the department may establish the conditions for completion or violation of the probation.

(c) The denial, revocation, suspension, probation, or nonrenewal takes effect on the 30th day after the date on which the notice was mailed unless:

(1) the department secures an injunction under Section 464.015; or

(2) an administrative appeal is requested.

(d) The department may restrict attendance at an appeals hearing to the parties and their agents. A license holder whose license is suspended or revoked may not admit new clients until the license is reissued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.06, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 577, Sec. 9, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1192, eff. April 2, 2015.

Sec. 464.0145. DISCIPLINARY ACTION HEARING. (a) If the department proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Procedures for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code.

(c) Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 1997, 75th Leg., ch. 577, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1193, eff. April 2, 2015.

Sec. 464.015. INJUNCTION. (a) The department may petition a district court to restrain a person or facility that violates the rules, standards, or licensing requirements provided under this subchapter in a manner that causes immediate threat to the health and safety of individual clients.

(b) A suit for injunctive relief, civil penalties authorized by Section 464.017, or both, must be brought in Travis County or the county in which the violation occurs.

(c) A district court, on petition of the department, the attorney general, or a district or county attorney, and on a finding by the court that a person or facility is violating or has violated this subchapter or a standard adopted under this subchapter, shall grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(d) The court granting injunctive relief shall order the person or facility to reimburse the department and the party bringing the suit for all costs of investigation and litigation, including reasonable attorney's fees, reasonable investigative expenses, court costs, witness fees, deposition expenses, and civil administrative costs.

(e) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by Subsection (a) in the name of this state.

(f) On his own initiative, the attorney general or a district attorney or county attorney may maintain an action for injunctive relief in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.

(g) The injunctive relief and civil penalty authorized by this section and Section 464.017 are in addition to any other civil, administrative, or criminal penalty provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 188, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 705, Sec. 3.07, eff. Sept. 1, 1993.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1194, eff. April 2, 2015.

Sec. 464.016. CRIMINAL PENALTY. (a) A person commits an offense if the person establishes, conducts, manages, or operates a treatment facility without a license. Each day of violation constitutes a separate offense.

(b) A person commits an offense if the person intentionally, maliciously, or recklessly makes a false report under Section 464.010.

(c) A person commits an offense if the person has reasonable grounds to suspect that abuse or neglect of a client may have occurred and does not report the suspected or possible abuse or neglect to the department as required by Section 464.010.

(d) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 189, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1195, eff. April 2, 2015.

Sec. 464.017. CIVIL PENALTY. (a) A person or facility is subject to a civil penalty of not more than $25,000 for each day of violation and for each act of violation of this subchapter or a rule adopted under this subchapter. In determining the amount of the civil penalty, the court shall consider:

(1) the person's or facility's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility; and

(5) the amount necessary to deter future violations.

(b) The department may:

(1) combine a suit to assess and recover civil penalties

with a suit for injunctive relief brought under Section 464.015; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of this state. The department and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(d) The civil penalty authorized by this section is in addition to any other civil, administrative, or criminal penalty provided by law.

(e) On his own initiative, the attorney general, a district attorney, or a county attorney may maintain an action for civil penalties in the name of the state for a violation of this subchapter or a standard adopted under this subchapter.

(f) Penalties collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. Penalties collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.08, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 577, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1196, eff. April 2, 2015.

Sec. 464.018. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on the attorney general's own initiative under Section 464.015 or 464.017, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice

of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a client. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.09, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1197, eff. April 2, 2015.

Sec. 464.019. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred, the department may issue a report that states the facts on which the determination is based and the department's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the department shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person

has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, an administrative law judge shall set a hearing and the department shall give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the

rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

(s) The commission shall post on the commission's Internet website current administrative penalty schedules applicable to a person licensed or regulated under this chapter. The commission shall ensure that the administrative penalties listed in the posted schedules are accurate.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.09, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1198, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 970 (S.B. 2013), Sec. 2, eff. September 1, 2021.

Sec. 464.0195. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under Section 464.019 and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 2.091, eff. Sept. 1, 1993.

Sec. 464.020. ADDITIONAL REQUIREMENTS FOR DISCIPLINARY

ALTERNATIVE EDUCATION TREATMENT PROGRAMS. (a) A disciplinary alternative education program under Section 37.008, Education Code, may apply for a license under this chapter to offer chemical dependency treatment services.

(b) The board of trustees of a school district with a disciplinary alternative education program, or the board's designee, shall employ a mental health professional, as defined by Section 164.003, to provide the services authorized by a license issued under this chapter to the disciplinary alternative education program.

(c) The department may not issue a license that authorizes a disciplinary alternative education program to provide detoxification or residential services.

(d) The board of trustees of a school district with a disciplinary alternative education program, or the board's designee, may contract with a private treatment facility or a person employed by or under contract with a private treatment facility to provide chemical dependency treatment services. The contract may not permit the services to be provided at a site that offers detoxification or residential services. Section 164.006 applies to a contract made under this section.

Added by Acts 1999, 76th Leg., ch. 1112, Sec. 2, eff. June 18, 1999.
Amended by Acts 2003, 78th Leg., ch. 1055, Sec. 29, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1199, eff. April 2, 2015.

SUBCHAPTER B. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS AND CENTERS

Sec. 464.031. DEFINITIONS. In this subchapter:

(1) "Alcoholism program or center" means a public or private alcoholism prevention, intervention, treatment, or rehabilitation program or center.

(2) "Department" means the Department of State Health Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1200, eff. April 2, 2015.

Sec. 464.032. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS OR CENTERS. (a) A county or a group of counties acting together may contract with an alcoholism program or center to provide prevention, treatment, and rehabilitation services to persons suffering from alcoholism or at risk of becoming alcoholics.

(b) The county or group of counties may contract only with a program or center included in a list submitted under Section 464.034.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 464.033. APPLICATION FOR CONTRACT. (a) To be eligible to contract with a county, an alcoholism program or center providing prevention or intervention services must submit an application to the regional alcoholism advisory committee established by the department to serve the area in which the program or center is located or in which the program or center will provide services.

(b) To be eligible to contract with a county, an alcoholism program or center providing treatment or rehabilitation services must:

(1) submit an application as provided by Subsection (a); and

(2) be licensed by the department.

(c) A regional alcoholism advisory committee shall adopt rules governing the procedure for submitting an application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1201, eff. April 2, 2015.

Sec. 464.034. REVIEW OF CONTRACT APPLICATIONS; LIST. (a) A regional alcoholism advisory committee shall:

(1) review each application received; and

(2) rank the applications using guidelines for reviewing funding applications established by the department in accordance with department rules.

(b) At least twice each year, each regional alcoholism advisory

committee shall submit a ranked list of all applications received during the preceding six months to each county in the region the committee serves.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1202, eff. April 2, 2015.

Sec. 464.035. PAYMENT OF CONTRACT AMOUNTS. To pay for services provided under a contract with an alcoholism program or center, the commissioners court by order may dedicate for payment to the program or center a percentage of the money received by the county as fines for alcohol-related offenses committed while operating a motor vehicle under Sections 49.04 and 49.07, Penal Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.41, eff. Sept. 1, 1995.

SUBCHAPTER C. FAITH-BASED CHEMICAL DEPENDENCY TREATMENT PROGRAMS

Sec. 464.051. DEFINITIONS. In this subchapter:

(1) "Chemical dependency" has the meaning assigned by Section 464.001.

(2) "Department" has the meaning assigned by Section 464.001.

(2-a) "Executive commissioner" has the meaning assigned by Section 464.001.

(3) "Religious organization" means a church, synagogue, mosque, or other religious institution:

(A) the purpose of which is the propagation of religious beliefs; and

(B) that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being listed as an exempt organization under Section 501(c) of that code (26 U.S.C. Section 501(c)).

(4) "Treatment" has the meaning assigned by Section 464.001.

(5) "Treatment facility" has the meaning assigned by Section 464.001.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1203, eff. April 2, 2015.

Sec. 464.052. EXEMPTION FOR FAITH-BASED CHEMICAL DEPENDENCY TREATMENT PROGRAM. (a) Subchapter A does not apply to a chemical dependency treatment program that:

(1) is conducted by a religious organization;

(2) is exclusively religious, spiritual, or ecclesiastical in nature;

(3) does not treat minors; and

(4) is registered under Section 464.053.

(b) The department may not prohibit the use, by a program exempted under this subchapter, of the term "counseling," "treatment," or "rehabilitation."

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1204, eff. April 2, 2015.

Sec. 464.053. EXEMPT PROGRAM REGISTRATION. The executive commissioner by rule shall establish a simple procedure for a faith-based chemical dependency treatment program to register the program's exemption under Section 464.052.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1205, eff. April 2, 2015.

Sec. 464.054. MEDICAL SERVICES PROHIBITED. A program exempted under this subchapter may not provide medical care, medical detoxification, or medical withdrawal services.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.055. REPRESENTATIONS IN PROGRAM ADVERTISING OR LITERATURE. A program exempted under this subchapter shall conspicuously include in any advertisement or literature that promotes or describes the program or the program's chemical dependency treatment services the following statement:

"The treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the Department of State Health Services. This program offers only nonmedical treatment and recovery methods such as prayer, moral guidance, spiritual counseling, and scriptural study."

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1206, eff. April 2, 2015.

Sec. 464.056. DECLARATION ON ADMISSION. (a) A program exempted under this subchapter may not admit a person unless the person signs the following statement on admission:

"DECLARATION:

"I understand that:

(1) the treatment and recovery services at (name of program) are exclusively religious in nature and are not subject to licensure or regulation by the Department of State Health Services; and

(2) (name of program) offers only nonmedical treatment and recovery methods, such as prayer, moral guidance, spiritual counseling, and scriptural study."

signed _____ date _____

(b) The program shall:

(1) keep the original signed statement on file; and

(2) provide a copy of the signed statement to the person admitted.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1207, eff. April 2, 2015.

Sec. 464.057. REVOCATION OF EXEMPTION. The department may revoke the exemption after notice and hearing if:

(1) the organization conducting the program fails to timely inform the department of any material change in the program's registration information;

(2) any program advertisement or literature fails to include the statements required by Section 464.055; or

(3) the organization violates this subchapter or a department rule adopted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1208, eff. April 2, 2015.

Sec. 464.058. GENERAL DIRECTIVE TO STATE AGENCIES. A state agency may not deny to an individual a state or federal social service benefit on the basis that the individual is participating in a faith-based residential chemical dependency treatment program.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.059. RELIGION NOT ENDORSED. This subchapter is not intended to aid religion. This subchapter is intended to aid persons with a chemical dependency by supporting programs that serve the valid public purpose of combating chemical dependency, regardless of whether the programs are religious, spiritual, or ecclesiastical in nature. The exemption of faith-based chemical dependency treatment programs from licensure and regulation is not an endorsement or sponsorship by the state of the religious character, expression, beliefs, doctrines, or practices of the treatment programs.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1209, eff. April 2, 2015.

Sec. 464.060. DIRECT PUBLIC FUNDING PROHIBITED. A program

exempted under this subchapter is not eligible to compete against a licensed program for direct federal or state treatment funding.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

Sec. 464.061. EFFECT ON HEALTH AND SAFETY DUTIES OR POWERS. This subchapter does not affect the authority of a local, regional, or state health department official, the state fire marshal, or a local fire prevention official to inspect a facility used by a program exempted under this subchapter.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 465. LOCAL DRUG AND ALCOHOL EDUCATION PROGRAMS

Sec. 465.001. COMMISSION. A municipality or county may create and support with public funds a commission to:

(1) educate the public on drug and alcohol abuse;

(2) promote drug and alcohol education at all levels of the schools;

(3) study the effectiveness of efforts, including the commission's efforts, in reducing drug and alcohol abuse; and

(4) create and administer a program to counsel or treat drug and alcohol abusers or to provide both counseling and treatment.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

Sec. 465.002. INDIVIDUAL OR JOINT ACTION. The municipality or county may create the commission by its own action or jointly by agreement with another municipality or county or a private foundation, nonprofit organization, church, or other entity. If the commission is created by agreement, all matters regarding the creation and operation of the commission are governed as provided by the agreement.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

Sec. 465.003. REPORT. The commission shall report annually to

each entity that participates in the creation of the commission regarding the commission's activities.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 191.

CHAPTER 466. REGULATION OF NARCOTIC DRUG TREATMENT PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 466.001. LEGISLATIVE INTENT. (a) It is the intent of the legislature that the department exercise its administrative powers and regulatory authority to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic dependency.

(b) Treatment of narcotic addiction by permitted treatment programs is recognized as a specialty chemical dependency treatment area using the medical model.

(c) Short-term goals should have an emphasis of personal and public health, crime prevention, reintegration of persons with a narcotic addiction into the public work force, and social and medical stabilization. Narcotic treatment programs are an important component of the state's effort to prevent the further proliferation of the AIDS virus. Total drug abstinence is recognized as a long-term goal of treatment, subject to medical determination of the medical appropriateness and prognosis of the person with a narcotic addiction.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.12, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1210, eff. April 2, 2015.

Sec. 466.002. DEFINITIONS. In this chapter:

(1) "Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance or detoxification of a person physiologically addicted to the opiate class of drugs.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(91), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

3.1639(91), eff. April 2, 2015.

(4) "Commissioner" means the commissioner of state health services.

(5) "Department" means the Department of State Health Services.

(5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility" includes a medical office, an outpatient clinic, a general or special hospital, a community mental health center, and any other location in which a structured narcotic dependency program is conducted.

(7) "Narcotic drug" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.13, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1211, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(91), eff. April 2, 2015.

Sec. 466.003. EXCLUSION OF COCAINE. Cocaine is excluded for the purpose of this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.004. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The executive commissioner shall adopt and the department shall administer and enforce rules to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic drug dependency, including rules that:

(1) require an applicant or a permit holder to make annual, periodic, and special reports that the department determines are necessary;

(2) require an applicant or permit holder to keep records that the department determines are necessary;

(3) provide for investigations that the department

determines are necessary; and

(4) provide for the coordination of the approval of narcotic drug treatment programs by the United States Food and Drug Administration and the United States Drug Enforcement Administration.

(b) The executive commissioner shall adopt rules for the issuance of permits to operate narcotic drug treatment programs including rules:

(1) governing the submission and review of applications;

(2) establishing the criteria for the issuance and renewal of permits; and

(3) establishing the criteria for the suspension and revocation of permits.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.14, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1212, eff. April 2, 2015.

SUBCHAPTER B. PERMIT

Sec. 466.021. PERMIT REQUIRED. A person may not operate a narcotic drug treatment program unless the person has a permit issued under this chapter.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe, order, or administer a narcotic drug for the purpose of treating drug dependency unless the physician prescribes, orders, or administers an approved narcotic drug for the maintenance or detoxification of persons with a drug dependency as part of a program permitted by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.15, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1213, eff.

April 2, 2015.

Sec. 466.023. APPLICATION FOR PERMIT; FEES. (a) The department shall issue a permit to an applicant who qualifies under rules and standards adopted by the executive commissioner.

(b) A permit issued under this section is valid until suspended or revoked by the department or surrendered by the permit holder in accordance with department rules.

(c) A person must obtain a permit for each facility that the person operates.

(d) A permit issued by the department is not transferable from one facility to another facility and must be returned to the department if the permit holder sells or otherwise conveys the facility to another person.

(e) The executive commissioner by rule shall establish and the department shall collect a nonrefundable application fee to defray the cost to the department of processing each application for a permit. The application fee must be submitted with the application. An application may not be considered unless the application is accompanied by the application fee.

(f) The executive commissioner shall adopt rules that set permit fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

(1) amend permits;

(2) inspect facilities operated by permit holders; and

(3) implement and enforce this chapter.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(92), eff. April 2, 2015.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1214, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(92), eff. April 2, 2015.

Sec. 466.024. PERMIT LIMITATIONS. (a) The department may issue a permit to:

(1) a person constituting a legal entity organized and operating under the laws of this state; or

(2) a physician.

(b) The department may issue a permit to a person other than a physician only if the person provides health care services under the supervision of one or more physicians licensed by the Texas Medical Board.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1215, eff. April 2, 2015.

Sec. 466.025. INSPECTION. (a) The department may enter the facility of a person who is an applicant for a permit or who is a permit holder during any hours in which the facility is in operation for the purpose of inspecting the facility to determine:

(1) if the person meets the standards set in department rules for the issuance of a permit; or

(2) if a person who holds a permit is in compliance with this chapter, the standards set in department rules for the operation of a facility, any special provisions contained in the permit, or an order of the commissioner or the department.

(b) The inspection may be conducted without prior notice to the applicant or the permit holder.

(c) The department shall provide the applicant or permit holder with a copy of the inspection report. An inspection report shall be made a part of the applicant's submission file or the permit holder's compliance record.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1216, eff. April 2, 2015.

Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The department shall work with representatives from permitted narcotic treatment programs in this state to develop recommendations for a plan to prevent the simultaneous multiple enrollment of persons in narcotic treatment programs. The executive commissioner may adopt rules to implement these recommendations.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1217, eff. April 2, 2015.

Sec. 466.027. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) After notice to an applicant or a permit holder and after the opportunity for a hearing, the department may:

(1) deny an application of the person if the person fails to comply with this chapter or the rules establishing minimum standards for the issuance of a permit adopted under this chapter; or

(2) suspend or revoke the permit of a person who has violated this chapter, an order issued under this chapter, or a minimum standard required for the issuance of a permit.

(b) The executive commissioner may adopt rules that establish the criteria for the denial, suspension, or revocation of a permit.

(c) Hearings, appeals from, and judicial review of final administrative decisions under this section shall be conducted according to the contested case provisions of Chapter 2001, Government Code, and the department's formal hearing rules.

(d) This section does not prevent the informal reconsideration of a case before the setting of a hearing or before the issuance of the final administrative decision under this section. The program rules must contain provisions establishing the procedures for the initiation and conduct of the informal reconsideration by the department.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1218, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 466.041. EMERGENCY ORDERS. (a) The department may issue an emergency order, either mandatory or prohibitory in nature, in relation to the operation of a permitted facility or the treatment of patients by the facility staff, in the department's jurisdiction. The order may be issued if the department determines that the treatment of patients by the staff of the permit holder creates or poses an immediate and serious threat to human life or health and other procedures available to the department to remedy or prevent the occurrence of the situation will result in an unreasonable delay.

(b) The department may issue the emergency order, including an emergency order suspending or revoking a permit issued by the department, without notice and hearing, if the department determines that action to be practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under the contested case provisions of Chapter 2001, Government Code, and the department's formal hearing rules.

(d) If an emergency order is issued to suspend or revoke the permit, the department shall ensure that treatment services for the patients are maintained at the same location until appropriate referrals to an alternate treatment program are made.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1219, eff. April 2, 2015.

Sec. 466.042. INJUNCTION. (a) The department may request the attorney general or a district, county, or municipal attorney to petition the district court for a temporary restraining order to restrain:

(1) a continuing violation of this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter; or

(2) a threat of a continuing violation of this chapter, a rule, or an order or permit.

(b) To request a temporary restraining order, the department must find that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter and:

(1) the violation or threatened violation creates an immediate threat to the health and safety of the public; or

(2) there is reasonable cause to believe that the permit holder or the staff of the permit holder is party to the diversion of a narcotic drug or drugs in violation of Chapter 481 (Texas Controlled Substances Act).

(c) On finding by the court that a person is violating or threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the court shall grant the injunctive relief warranted by the facts.

(d) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1220, eff. April 2, 2015.

Sec. 466.043. ADMINISTRATIVE PENALTY. If a person violates this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the department may assess an administrative penalty against the person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1221, eff. April 2, 2015.

Sec. 466.044. CRIMINAL PENALTY. (a) A person commits an offense if the person operates a narcotic drug treatment program without a permit issued by the department.

(b) An offense under this section is a Class A misdemeanor.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Sec. 466.045. CIVIL PENALTY. (a) If it appears that a person has violated this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the department may request the attorney general or the district, county, or municipal attorney of the municipality or county in which the violation occurred to institute a civil suit for the assessment and recovery of a civil penalty.

(b) The penalty may be in an amount not to exceed $10,000 for each violation.

(c) In determining the amount of the penalty, the court shall consider:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public; and

(4) the demonstrated good faith of the person charged.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the General Revenue Fund. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 193, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1222, eff. April 2, 2015.

CHAPTER 467. PEER ASSISTANCE PROGRAMS

Sec. 467.001. DEFINITIONS. In this chapter:

(1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the executive commissioner and any additional criteria established by that licensing or disciplinary authority.

(2) "Department" means the Department of State Health Services.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Law as described by Section 1.008(m), Business Organizations Code; or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, social worker, chemical dependency counselor, occupational therapist, speech-language pathologist, audiologist, licensed dietitian, or dental or dental hygiene school faculty member.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

(7) "Student" means an individual enrolled in an educational program or course of study leading to initial licensure as a professional as such program or course of study is defined by the appropriate licensing or disciplinary authority.

(8) "Impaired student" means a student whose ability to perform the services of the profession for which the student is preparing for licensure would be, or would reasonably be expected to be, impaired by chemical dependency on drugs or alcohol or by mental illness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 17, Sec. 27, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 892, Sec. 26, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 21, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1223, eff. April 2, 2015.

Sec. 467.002. OTHER PEER ASSISTANCE PROGRAMS. This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the executive commissioner and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the executive commissioner and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the executive commissioner or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 22, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1224, eff. April 2, 2015.

Sec. 467.0035. PROVISION OF SERVICES TO STUDENTS. (a) An approved peer assistance program may provide services to impaired students. A program that elects to provide services to impaired students is not required to provide the same services to those students that it provides to impaired professionals.

(b) An approved peer assistance program that provides services to students shall comply with any criteria for those services that are adopted by the appropriate licensing or disciplinary authority.

Added by Acts 1995, 74th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1995.

Sec. 467.004. FUNDING. (a) Except as provided by Section 467.0041(b) of this code and Section 504.058, Occupations Code, a licensing or disciplinary authority may add a surcharge of not more than $10 to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 194, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 493, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 24, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 1, eff. June 17, 2011.

Sec. 467.0041. FUNDING FOR STATE BOARD OF DENTAL EXAMINERS. (a) Except as provided by this section, the State Board of Dental Examiners is subject to Section 467.004.

(b) The board may add a surcharge of not more than $10 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than $50 each month from a participant in an approved peer assistance program.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Subtitle D, Title 3, Occupations Code, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 195, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 2, Sec. 19, eff. Feb. 6, 1995; Acts 1997, 75th Leg., ch. 493, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1314, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch; 1423, Sec. 10.07, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1225, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1226, eff. April 2, 2015.

Sec. 467.005. REPORTS. (a) A person who knows or suspects

that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program. The program shall notify the person making the report and the appropriate licensing or disciplinary authority if the person fails to participate in the program as required by the appropriate licensing or disciplinary authority.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 414, Sec. 1, eff. Sept. 1, 1997.

Sec. 467.006. ASSISTANCE TO IMPAIRED PROFESSIONALS. (a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

(1) refer the professional to an approved peer assistance program; or

(2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and

rehabilitation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 467.007. CONFIDENTIALITY. (a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person. An order entered by a licensing or disciplinary authority may be confidential only if the licensee subject to the order agrees to the order and there is no previous or pending action, complaint, or investigation concerning the licensee involving malpractice, injury, or harm to any member of the public. It is the intent of the legislature to encourage impaired professionals to seek treatment for their impairments.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 245, Sec. 1, eff. Sept. 1, 1991.

Sec. 467.0075. CONSENT TO DISCLOSURE. An impaired professional

who is reported to a peer assistance program by a third party shall, as a condition of participation in the program, give consent to the program that at a minimum authorizes the program to disclose the impaired professional's failure to successfully complete the program to the appropriate licensing or disciplinary authority.

Added by Acts 1997, 75th Leg., ch. 414, Sec. 2, eff. Sept. 1, 1997.

Sec. 467.008. CIVIL IMMUNITY. (a) A person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

(1) an approved peer assistance program;

(2) the professional association or licensing or disciplinary authority operating the peer assistance program;

(3) a member, employee, or agent of the program, association, or authority;

(4) a person who reports or provides information concerning an impaired professional;

(5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and

(6) a person who employs an impaired professional in connection with the professional's rehabilitation, unless the person:

(A) knows or should have known that the professional is incapable of performing the job functions involved; or

(B) fails to take reasonable precautions to monitor the professional's job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 468. PROGRAMS AND INITIATIVES TO PREVENT THE MANUFACTURE AND USE OF METHAMPHETAMINE

SUBCHAPTER B. PREVENTION AND EDUCATION PROGRAMS

Sec. 468.051. PROGRAMS DESIGNED TO HELP STUDENTS. In administering human services programs as required by Section 1001.073, the Department of State Health Services shall:

(1) administer, coordinate, and contract for the delivery of programs designed to prevent the use of methamphetamine among students enrolled in a public or private school in this state; and

(2) provide education to appropriate school personnel and parents of school-age children on identifying and helping children who use methamphetamine or who are exposed to chemicals and other hazardous materials used in the manufacture of methamphetamine.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

Sec. 468.052. EDUCATION REGARDING ANHYDROUS AMMONIA. (a) In cooperation with other state agencies, the Office of the Texas State Chemist of the Texas Agricultural Experiment Station shall distribute materials used to educate distributors, farmers, retail dealers, cooperatives, and other appropriate persons regarding:

(1) the use of anhydrous ammonia in the illicit manufacture of methamphetamine; and

(2) practices and equipment that can be used to deter the theft of anhydrous ammonia.

(b) In the materials distributed under this section, the Office of the Texas State Chemist shall encourage local law enforcement and community groups to cooperate in deterring the theft of anhydrous ammonia.

Added by Acts 2005, 79th Leg., Ch. 283 (S.B. 66), Sec. 1, eff. June 15, 2005.

CHAPTER 469. VOLUNTARY ACCREDITATION OF RECOVERY HOUSING

Sec. 469.001. DEFINITIONS. In this chapter:

(1) "Accrediting organization" means a nonprofit organization the commission approves under Section 469.002 that develops and administers recovery housing accreditation programs.

(2) "Commission" means the Health and Human Services Commission.

(3) "Recovery house" means a shared living environment that:

(A) promotes sustained recovery from substance use disorders by integrating residents into the surrounding community and providing a setting that connects residents to supports and services promoting sustained recovery from substance use disorders;

(B) is centered on peer support; and

(C) is free from alcohol and drug use.

(4) "State health care regulatory agency" has the meaning assigned by Section 161.131.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.002. VOLUNTARY ACCREDITATION OF RECOVERY HOUSING. (a) The commission shall adopt minimum standards for accreditation as a recovery house that are consistent with the quality standards established by the National Alliance for Recovery Residences and the Oxford House Incorporated. The standards must prohibit an accredited recovery house from providing personal care services, as defined by Section 247.002.

(b) The commission may approve only the National Alliance for Recovery Residences or the Oxford House Incorporated to serve as an accrediting organization in the development and administration of a voluntary accreditation program for recovery housing in accordance with this chapter.

(c) An accrediting organization the commission approves under this section must:

(1) establish recovery house accreditation requirements that at a minimum include the accreditation standards the commission adopts;

(2) establish procedures to:

(A) administer the issuance of recovery house accreditation under this chapter, including application, accreditation, reaccreditation, and disciplinary procedures; and

(B) assess application accreditation and reaccreditation fees;

(3) provide training to recovery house responsible parties designated under Section 469.004 and staff concerning the accreditation standards the commission adopts;

(4) develop a code of ethics; and

(5) provide information to the commission for the commission to compile the annual report required under Section 469.005.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.003. PLACES INELIGIBLE FOR ACCREDITATION AS RECOVERY HOUSE. The following places are ineligible for accreditation as a recovery house:

(1) a home and community support services agency licensed under Chapter 142;

(2) a nursing facility licensed under Chapter 242;

(3) a continuing care facility regulated under Chapter 246;

(4) an assisted living facility licensed under Chapter 247;

(5) an intermediate care facility for individuals with an intellectual disability licensed under Chapter 252;

(6) a boarding home facility as defined by Section 260.001;

(7) a chemical dependency treatment facility licensed under Subchapter A, Chapter 464;

(8) a child-care facility licensed under Chapter 42, Human Resources Code;

(9) a family violence shelter center as defined by Section 51.002, Human Resources Code;

(10) an entity qualified as a community home under Chapter 123, Human Resources Code; and

(11) a hotel, as defined by Section 156.001, Tax Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.004. REQUIRED DESIGNATION OF RECOVERY HOUSE RESPONSIBLE PARTY BY CERTAIN RECOVERY HOUSES. (a) This section does not apply to a recovery house accredited by Oxford House Incorporated.

(b) The standards the commission adopts must require at least one individual to be designated to serve as the responsible party of an accredited recovery house.

(c) A designated individual:

(1) must satisfactorily complete training the accrediting organization provides concerning the commission's accreditation standards and the organization's accreditation requirements; and

(2) is responsible for administering the recovery house in accordance with the accreditation standards and requirements.

(d) An accredited recovery house required to designate a responsible party under this section must notify the accrediting organization that issued the recovery house's accreditation before the 30th business day after the date of any change to the designated responsible party.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.005. ANNUAL REPORT. The commission shall prepare an annual report that includes information on:

(1) the total number of accredited recovery houses;

(2) the number of recovery houses accredited during the preceding year;

(3) any issues concerning the accreditation or reaccreditation process;

(4) the number of accredited recovery houses that had an accreditation revoked during the preceding year; and

(5) the reasons for the revocation.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.006. SOLICITING. A recovery house responsible party designated under Section 469.004 or a recovery house's employee or agent may not offer to pay or agree to accept, directly or indirectly, overtly or covertly, remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.007. CERTAIN ADVERTISING PROHIBITED. (a) A recovery house may not advertise or otherwise communicate that the recovery house is accredited by an accrediting organization unless the recovery house is accredited by an accrediting organization in accordance with this chapter.

(b) A recovery house may not advertise or cause to be advertised in any manner any false, misleading, or deceptive information about the recovery house.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Sec. 469.008. ENFORCEMENT. If an accredited recovery house violates this chapter, the accrediting organization that issued the accreditation to the recovery house may suspend the accreditation for a period not to exceed six months while the accrediting organization conducts an audit of the recovery house. After the audit is complete, the accrediting organization may implement a corrective action plan or revoke the accreditation.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2023.

Text of section effective on September 1, 2025

Sec. 469.009. FUNDING. A recovery house that is not accredited by an accrediting organization in accordance with this chapter is ineligible for and may not receive state money.

Added by Acts 2023, 88th Leg., R.S., Ch. 1113 (H.B. 299), Sec. 1, eff. September 1, 2025.

SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES
CHAPTER 481. TEXAS CONTROLLED SUBSTANCES ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 481.001. SHORT TITLE. This chapter may be cited as the Texas Controlled Substances Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.002. DEFINITIONS. In this chapter:

(1) "Administer" means to directly apply a controlled substance by injection, inhalation, ingestion, or other means to the body of a patient or research subject by:

(A) a practitioner or an agent of the practitioner in the presence of the practitioner; or

(B) the patient or research subject at the direction and in the presence of a practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouseman, or employee of a carrier or warehouseman acting in the usual and lawful course of employment.

(3) "Commissioner" means the commissioner of state health services or the commissioner's designee.

(4) "Controlled premises" means:

(A) a place where original or other records or documents required under this chapter are kept or are required to be kept; or

(B) a place, including a factory, warehouse, other establishment, or conveyance, where a person registered under this chapter may lawfully hold, manufacture, distribute, dispense, administer, possess, or otherwise dispose of a controlled substance or other item governed by the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.) or this chapter, including a chemical precursor and a chemical laboratory apparatus.

(5) "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. The term does not include hemp, as defined by Section 121.001, Agriculture Code, or the tetrahydrocannabinols in hemp.

(6) "Controlled substance analogue" means:

(A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, or 2-A; or

(B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 1-B, 2, or 2-A.

(7) "Counterfeit substance" means a controlled substance that, without authorization, bears or is in a container or has a label that bears an actual or simulated trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Deliver" means to transfer, actually or constructively, to another a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, counterfeit substance, or drug paraphernalia.

(9) "Delivery" or "drug transaction" means the act of delivering.

(10) "Designated agent" means an individual designated under Section 481.074(b-2) to communicate a practitioner's instructions to a pharmacist in an emergency.

(11) "Director" means the director of the Department of Public Safety or an employee of the department designated by the director.

(12) "Dispense" means the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.

(13) "Dispenser" means a practitioner, institutional practitioner, pharmacist, or pharmacy that dispenses a controlled substance.

(14) "Distribute" means to deliver a controlled substance other than by administering or dispensing the substance.

(15) "Distributor" means a person who distributes.

(16) "Drug" means a substance, other than a device or a component, part, or accessory of a device, that is:

(A) recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to either pharmacopoeia or the formulary;

(B) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) intended to affect the structure or function of the body of man or animals but is not food; or

(D) intended for use as a component of a substance described by Paragraph (A), (B), or (C).

(17) "Drug paraphernalia" means equipment, a product, or material that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this chapter or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting a species of plant that is a controlled substance or from which a controlled substance may be derived;

(B) a material, compound, mixture, preparation, or kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of a species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a dilutant or adulterant, such as quinine hydrochloride, mannitol, inositol, nicotinamide, dextrose, lactose, or absorbent, blotter-type material, that is used or intended to be used to increase the amount or weight of or to transfer a controlled substance regardless of whether the dilutant or adulterant diminishes the efficacy of the controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, including:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

(18) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or its successor statute.

(19) "Federal Drug Enforcement Administration" means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(20) "Hospital" means:

(A) a general or special hospital as defined by Section 241.003;

(B) an ambulatory surgical center licensed under Chapter 243 and approved by the federal government to perform surgery

paid by Medicaid on patients admitted for a period of not more than 24 hours; or

(C) a freestanding emergency medical care facility licensed under Chapter 254.

(21) "Human consumption" means the injection, inhalation, ingestion, or application of a substance to or into a human body.

(22) "Immediate precursor" means a substance the director finds to be and by rule designates as being:

(A) a principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

(B) a substance that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(C) a substance the control of which is necessary to prevent, curtail, or limit the manufacture of a controlled substance.

(23) "Institutional practitioner" means an intern, resident physician, fellow, or person in an equivalent professional position who:

(A) is not licensed by the appropriate state professional licensing board;

(B) is enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Federal Drug Enforcement Administration; and

(C) is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(24) "Lawful possession" means the possession of a controlled substance that has been obtained in accordance with state or federal law.

(25) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the packaging or repackaging of the substance or labeling or relabeling of its container. However, the term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to the practitioner's administering or dispensing a controlled substance in

the course of professional practice; or

(B) by a practitioner, or by an authorized agent under the supervision of the practitioner, for or as an incident to research, teaching, or chemical analysis and not for delivery.

(26) "Marihuana" means the plant Cannabis sativa L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;

(B) the mature stalks of the plant or fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

(D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;

(E) the sterilized seeds of the plant that are incapable of beginning germination; or

(F) hemp, as that term is defined by Section 121.001, Agriculture Code.

(27) "Medical purpose" means the use of a controlled substance for relieving or curing a mental or physical disease or infirmity.

(28) "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.

(29) "Narcotic drug" means any of the following, produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) opium and opiates, and a salt, compound, derivative, or preparation of opium or opiates;

(B) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical to a substance listed in Paragraph (A) other than the isoquinoline alkaloids of opium;

(C) opium poppy and poppy straw; or

(D) cocaine, including:

(i) its salts, its optical, position, or geometric

isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves; and

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(30) "Opiate" means a substance that has an addiction-forming or addiction-sustaining liability similar to morphine or is capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes its racemic and levorotatory forms. The term does not include, unless specifically designated as controlled under Subchapter B, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).

(31) "Opium poppy" means the plant of the species Papaver somniferum L., other than its seeds.

(32) "Patient" means a human for whom or an animal for which a drug:

(A) is administered, dispensed, delivered, or prescribed by a practitioner; or

(B) is intended to be administered, dispensed, delivered, or prescribed by a practitioner.

(33) "Person" means an individual, corporation, government, business trust, estate, trust, partnership, association, or any other legal entity.

(34) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.

(35) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with this chapter and other laws relating to pharmacy.

(36) "Pharmacy" means a facility licensed by the Texas State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law.

(37) "Poppy straw" means all parts, other than the seeds, of the opium poppy, after mowing.

(38) "Possession" means actual care, custody, control, or management.

(39) "Practitioner" means:

(A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(C) a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in that state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054, Occupations Code.

(40) "Prescribe" means the act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

(41) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

(A) the date of issue;

(B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(C) the name and quantity of the controlled substance prescribed with the quantity shown numerically followed by the number written as a word if the order is written or, if the order is communicated orally or telephonically, with the quantity given by the practitioner and transcribed by the pharmacist numerically;

(D) directions for the use of the drug;

(E) the intended use of the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(F) the legibly printed or stamped name, address, Federal Drug Enforcement Administration registration number, and telephone number of the practitioner at the practitioner's usual place of business.

(42) "Principal place of business" means a location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance. The term does not include a location where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location.

(43) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(44) "Raw material" means a compound, material, substance, or equipment used or intended for use, alone or in any combination, in manufacturing a controlled substance.

(45) "Registrant" means a person who has a current Federal Drug Enforcement Administration registration number.

(46) "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(47) "Official prescription form" means a prescription form that is used for a Schedule II controlled substance under Section 481.0755 and contains the prescription information required by Section 481.0755(e).

(48) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administering to an animal owned by the person or by a member of the person's household.

(49) "Adulterant or dilutant" means any material that increases the bulk or quantity of a controlled substance, regardless of its effect on the chemical activity of the controlled substance.

(50) "Abuse unit" means:

(A) except as provided by Paragraph (B):

(i) a single unit on or in any adulterant, dilutant, or similar carrier medium, including marked or perforated blotter paper, a tablet, gelatin wafer, sugar cube, or stamp, or other medium that contains any amount of a controlled substance listed in Penalty Group 1-A, if the unit is commonly used in abuse of that substance; or

(ii) each quarter-inch square section of paper, if the adulterant, dilutant, or carrier medium is paper not marked or

perforated into individual abuse units; or

(B) if the controlled substance is in liquid or solid form, 40 micrograms of the controlled substance including any adulterant or dilutant.

(51) "Chemical precursor" means:

(A) Methylamine;

(B) Ethylamine;

(C) D-lysergic acid;

(D) Ergotamine tartrate;

(E) Diethyl malonate;

(F) Malonic acid;

(G) Ethyl malonate;

(H) Barbituric acid;

(I) Piperidine;

(J) N-acetylanthranilic acid;

(K) Pyrrolidine;

(L) Phenylacetic acid;

(M) Anthranilic acid;

(N) Ephedrine;

(O) Pseudoephedrine;

(P) Norpseudoephedrine; or

(Q) Phenylpropanolamine.

(52) "Department" means the Department of Public Safety.

(53) "Chemical laboratory apparatus" means any item of equipment designed, made, or adapted to manufacture a controlled substance or a controlled substance analogue, including:

(A) a condenser;

(B) a distilling apparatus;

(C) a vacuum drier;

(D) a three-neck or distilling flask;

(E) a tableting machine;

(F) an encapsulating machine;

(G) a filter, Buchner, or separatory funnel;

(H) an Erlenmeyer, two-neck, or single-neck flask;

(I) a round-bottom, Florence, thermometer, or filtering flask;

(J) a Soxhlet extractor;

(K) a transformer;

(L) a flask heater;

(M) a heating mantel; or

(N) an adaptor tube.

(54) "Health information exchange" means an organization that:

(A) assists in the transmission or receipt of health-related information among organizations transmitting or receiving the information according to nationally recognized standards and under an express written agreement;

(B) as a primary business function, compiles or organizes health-related information that is designed to be securely transmitted by the organization among physicians, health care providers, or entities within a region, state, community, or hospital system; or

(C) assists in the transmission or receipt of electronic health-related information among physicians, health care providers, or entities within:

(i) a hospital system;

(ii) a physician organization;

(iii) a health care collaborative, as defined by Section 848.001, Insurance Code;

(iv) an accountable care organization participating in the Pioneer Model under the initiative by the Innovation Center of the Centers for Medicare and Medicaid Services; or

(v) an accountable care organization participating in the Medicare shared savings program under 42 U.S.C. Section 1395jjj.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1227, eff. April 2, 2015

(55) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 2

(55) "Board" means the Texas State Board of Pharmacy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(b), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 351, Sec. 27, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 15, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 2.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 1, 2, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 1, 5(1), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch.

251, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1188, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 9, eff. May 20, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 23, eff. November 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1227, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 64 (S.B. 172), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 65 (S.B. 173), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 2, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 764 (H.B. 1325), Sec. 8, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 1, eff. September 1, 2021.

Sec. 481.003. RULES. (a) The director may adopt rules to administer and enforce this chapter, other than Sections 481.074, 481.075, 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.07636, 481.0764, 481.0765, 481.0766, 481.0767, 481.0768, and 481.0769. The board may adopt rules to administer Sections 481.074, 481.075, 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.07636, 481.0764, 481.0765, 481.0766, 481.0767, 481.0768, and 481.0769.

(b) The director by rule shall prohibit a person in this state, including a person regulated by the Texas Department of Insurance under the Insurance Code or the other insurance laws of this state, from using a practitioner's Federal Drug Enforcement Administration number for a purpose other than a purpose described by federal law or

by this chapter. A person who violates a rule adopted under this subsection commits a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 3, eff. Jan. 1, 1998.
Amended by Acts 1999, 76th Leg., ch. 1266, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 3, eff. June 20, 2015.
Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 1, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 3, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 5, eff. September 1, 2019.

SUBCHAPTER B. SCHEDULES

Sec. 481.031. NOMENCLATURE. Controlled substances listed in Schedules I through V and Penalty Groups 1 through 4 are included by whatever official, common, usual, chemical, or trade name they may be designated.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.032. SCHEDULES. (a) The commissioner shall establish and modify the following schedules of controlled substances under this subchapter: Schedule I, Schedule II, Schedule III, Schedule IV, and Schedule V.

(b) A reference to a schedule in this chapter means the most current version of the schedule established or altered by the commissioner under this subchapter and published in the Texas Register on or after January 1, 1998.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 2, eff. Sept. 1, 2001.

Sec. 481.033. EXCLUSION FROM SCHEDULES AND APPLICATION OF ACT.

(a) A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(b) The commissioner may not include in the schedules:

(1) a substance described by Subsection (a); or

(2) distilled spirits, wine, malt beverages, or tobacco.

(c) A compound, mixture, or preparation containing a stimulant substance listed in Schedule II and having a potential for abuse associated with a stimulant effect on the central nervous system is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a stimulant effect on the central nervous system.

(d) A compound, mixture, or preparation containing a depressant substance listed in Schedule III or IV and having a potential for abuse associated with a depressant effect on the central nervous system is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a depressant effect on the central nervous system.

(e) A nonnarcotic prescription substance is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt prescription product under 21 C.F.R. Section 1308.32 and its subsequent amendments.

(f) A chemical substance that is intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or other animal is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt chemical preparation under 21 C.F.R. Section 1308.24 and

its subsequent amendments.

(g) An anabolic steroid product, which has no significant potential for abuse due to concentration, preparation, mixture, or delivery system, is exempted from Schedules I through V and the application of this chapter to the same extent that the substance has been exempted from the application of the Federal Controlled Substances Act, if the substance is listed as an exempt anabolic steroid product under 21 C.F.R. Section 1308.34 and its subsequent amendments.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 532, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 481.037 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.034. ESTABLISHMENT AND MODIFICATION OF SCHEDULES BY COMMISSIONER. (a) The commissioner shall annually establish the schedules of controlled substances. These annual schedules shall include the complete list of all controlled substances from the previous schedules and modifications in the federal schedules of controlled substances as required by Subsection (g). Any further additions to and deletions from these schedules, any rescheduling of substances and any other modifications made by the commissioner to these schedules of controlled substances shall be made:

(1) in accordance with Section 481.035;

(2) in a manner consistent with this subchapter; and

(3) with approval of the executive commissioner.

(b) Except for alterations in schedules required by Subsection (g), the commissioner may not make an alteration in a schedule unless the commissioner holds a public hearing on the matter in Austin and obtains approval from the executive commissioner.

(c) The commissioner may not:

(1) add a substance to the schedules if the substance has been deleted from the schedules by the legislature;

(2) delete a substance from the schedules if the substance has been added to the schedules by the legislature; or

(3) reschedule a substance if the substance has been placed in a schedule by the legislature.

(d) In making a determination regarding a substance, the

commissioner shall consider:

(1) the actual or relative potential for its abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of its abuse;

(5) the scope, duration, and significance of its abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychological or physiological dependence liability; and

(8) whether the substance is a controlled substance analogue, chemical precursor, or an immediate precursor of a substance controlled under this chapter.

(e) After considering the factors listed in Subsection (d), the commissioner shall make findings with respect to those factors. If the commissioner finds the substance has a potential for abuse, the executive commissioner shall adopt a rule controlling the substance.

(f) Repealed by Acts 2003, 78th Leg., ch. 1099, Sec. 17.

(g) Except as otherwise provided by this subsection, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that fact is given to the commissioner, the commissioner similarly shall control the substance under this chapter. After the expiration of a 30-day period beginning on the day after the date of publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, the commissioner similarly shall designate, reschedule, or delete the substance, unless the commissioner objects during the period. If the commissioner objects, the commissioner shall publish the reasons for the objection and give all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish a decision, which is final unless altered by statute. On publication of an objection by the commissioner, control as to that particular substance under this chapter is stayed until the commissioner publishes the commissioner's decision.

(h) Not later than the 10th day after the date on which the commissioner designates, deletes, or reschedules a substance under Subsection (a), the commissioner shall give written notice of that action to the director and to each state licensing agency having

jurisdiction over practitioners.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 481.038 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998; Acts 2003, 78th Leg., ch. 1099, Sec. 5, 17, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1228, eff. April 2, 2015.

Sec. 481.035. FINDINGS. (a) The commissioner shall place a substance in Schedule I if the commissioner finds that the substance:

(1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(b) The commissioner shall place a substance in Schedule II if the commissioner finds that:

(1) the substance has a high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to severe psychological or physical dependence.

(c) The commissioner shall place a substance in Schedule III if the commissioner finds that:

(1) the substance has a potential for abuse less than that of the substances listed in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(d) The commissioner shall place a substance in Schedule IV if the commissioner finds that:

(1) the substance has a lower potential for abuse than that of the substances listed in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to a more limited physical or psychological dependence than that of the substances

listed in Schedule III.

(e) The commissioner shall place a substance in Schedule V if the commissioner finds that the substance:

(1) has a lower potential for abuse than that of the substances listed in Schedule IV;

(2) has currently accepted medical use in treatment in the United States; and

(3) may lead to a more limited physical or psychological dependence liability than that of the substances listed in Schedule IV.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 481.039 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.0355. EMERGENCY SCHEDULING; LEGISLATIVE REPORT. (a) Except as otherwise provided by Subsection (b) and subject to Subsection (c), the commissioner may emergency schedule a substance as a controlled substance if the commissioner determines the action is necessary to avoid an imminent hazard to the public safety.

(b) The commissioner may not emergency schedule a substance as a controlled substance under this section if:

(1) the substance is already scheduled;

(2) an exemption or approval is in effect for the substance under Section 505, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355); or

(3) the substance is an over-the-counter drug that qualifies for recognition as safe and effective under conditions established by federal regulations of the United States Food and Drug Administration governing over-the-counter drugs.

(c) Before emergency scheduling a substance as a controlled substance under this section, the commissioner shall consult with the Department of Public Safety and may emergency schedule the substance only in accordance with any recommendations provided by the department.

(d) In determining whether a substance poses an imminent hazard to the public safety, the commissioner shall consider:

(1) the scope, duration, symptoms, or significance of abuse;

(2) the degree of detriment that abuse of the substance may cause;

(3) whether the substance has been temporarily scheduled under federal law; and

(4) whether the substance has been temporarily or permanently scheduled under the law of another state.

(e) If the commissioner emergency schedules a substance as a controlled substance under this section, an emergency exists for purposes of Section 481.036(c) and the action takes effect on the date the schedule is published in the Texas Register.

(f) Except as otherwise provided by Subsection (f-1), an emergency scheduling under this section expires on September 1 of each odd-numbered year for any scheduling that occurs before January 1 of that year.

(f-1) The commissioner may extend the emergency scheduling of a substance under this section not more than once and for a period not to exceed one year by publishing the extension in the Texas Register. If the commissioner extends the emergency scheduling of a substance, an emergency exists for purposes of Section 481.036(c) and the action takes effect on the date the extension is published in the Texas Register.

(g) The commissioner shall post notice about each emergency scheduling of a substance or each extension of an emergency scheduling of a substance under this section on the Internet website of the Department of State Health Services.

(h) Not later than December 1 of each even-numbered year, the commissioner shall submit a report about each emergency scheduling action taken under this section during the preceding two-year period to the governor, the lieutenant governor, the speaker of the house of representatives, and each legislative standing committee with primary jurisdiction over the department and each legislative standing committee with primary jurisdiction over criminal justice matters.

Added by Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 4, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 499 (H.B. 2804), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 499 (H.B. 2804), Sec. 2, eff. September 1, 2017.

Sec. 481.036. PUBLICATION OF SCHEDULES. (a) The commissioner shall publish the schedules by filing a certified copy of the schedules with the secretary of state for publication in the Texas Register not later than the fifth working day after the date the commissioner takes action under this subchapter.

(b) Each published schedule must show changes, if any, made in the schedule since its latest publication.

(c) An action by the commissioner that establishes or modifies a schedule under this subchapter may take effect not earlier than the 21st day after the date on which the schedule or modification is published in the Texas Register unless an emergency exists that necessitates earlier action to avoid an imminent hazard to the public safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 481.040 and amended by Acts 1997, 75th Leg., ch. 745, Sec. 4, eff. Jan. 1, 1998.

Sec. 481.037. CARISOPRODOL. Schedule IV includes carisoprodol.

Added by Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 4, eff. June 19, 2009.

SUBCHAPTER C. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSATION OF CONTROLLED SUBSTANCES, CHEMICAL PRECURSORS, AND CHEMICAL LABORATORY APPARATUS

Sec. 481.061. FEDERAL REGISTRATION REQUIRED. (a) Except as otherwise provided by this chapter, a person who is not registered with or exempt from registration with the Federal Drug Enforcement Administration may not manufacture, distribute, prescribe, possess, analyze, or dispense a controlled substance in this state.

(b) A person who is registered with the Federal Drug Enforcement Administration to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may possess, manufacture, distribute, analyze, dispense, or conduct research with that substance to the extent authorized by the person's registration and in conformity with this chapter.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1268 , Sec. 25(1), eff. September 1, 2016.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1268 , Sec. 25(1), eff. September 1, 2016.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 5, eff. Jan. 1, 1998.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 4, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 5, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 25(1), eff. September 1, 2016.

Sec. 481.062. EXEMPTIONS. (a) The following persons may possess a controlled substance under this chapter without registering with the Federal Drug Enforcement Administration:

(1) an agent or employee of a manufacturer, distributor, analyzer, or dispenser of the controlled substance who is registered with the Federal Drug Enforcement Administration and acting in the usual course of business or employment;

(2) a common or contract carrier, a warehouseman, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of the controlled substance under a lawful order of a practitioner or in lawful possession of the controlled substance if it is listed in Schedule V;

(4) an officer or employee of this state, another state, a political subdivision of this state or another state, or the United States who is lawfully engaged in the enforcement of a law relating to a controlled substance or drug or to a customs law and authorized to possess the controlled substance in the discharge of the person's official duties;

(5) if the substance is tetrahydrocannabinol or one of its

derivatives:

(A) a Department of State Health Services official, a medical school researcher, or a research program participant possessing the substance as authorized under Subchapter G; or

(B) a practitioner or an ultimate user possessing the substance as a participant in a federally approved therapeutic research program that the commissioner has reviewed and found, in writing, to contain a medically responsible research protocol; or

(6) a dispensing organization licensed under Chapter 487 that possesses low-THC cannabis.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1268 , Sec. 25(1), eff. September 1, 2016.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 6, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(79), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1229, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 2, eff. June 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 6, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 25(1), eff. September 1, 2016.

Sec. 481.0621. EXCEPTIONS. (a) This subchapter does not apply to an educational or research program of a school district or a public or private institution of higher education. This subchapter does not apply to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or furnishes materials covered by this subchapter to those educational or research programs.

(b) The department and the Texas Higher Education Coordinating Board shall adopt a memorandum of understanding that establishes the responsibilities of the board, the department, and the public or private institutions of higher education in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and

chemical laboratory apparatus used in educational or research activities of institutions of higher education.

(c) The department and the Texas Education Agency shall adopt a memorandum of understanding that establishes the responsibilities of the agency, the department, and school districts in implementing and maintaining a program for reporting information concerning controlled substances, controlled substance analogues, chemical precursors, and chemical laboratory apparatus used in educational or research activities of those schools and school districts.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(e), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.45, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 745, Sec. 7, eff; Jan. 1, 1998.

Sec. 481.065. AUTHORIZATION FOR CERTAIN ACTIVITIES. (a) The director may authorize the possession, distribution, planting, and cultivation of controlled substances by a person engaged in research, training animals to detect controlled substances, or designing or calibrating devices to detect controlled substances. A person who obtains an authorization under this subsection does not commit an offense involving the possession or distribution of controlled substances to the extent that the possession or distribution is authorized.

(b) A person may conduct research with or analyze substances listed in Schedule I in this state only if the person is a practitioner registered under federal law to conduct research with or analyze those substances and the person provides the director with evidence of federal registration.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.067. RECORDS. (a) A person who is registered with the Federal Drug Enforcement Administration to manufacture, distribute, analyze, or dispense a controlled substance shall keep records and maintain inventories in compliance with recordkeeping and inventory requirements of federal law and with additional rules the board or director adopts.

(b) The pharmacist-in-charge of a pharmacy shall maintain the

records and inventories required by this section.

(c) A record required by this section must be made at the time of the transaction that is the basis of the record. A record or inventory required by this section must be kept or maintained for at least two years after the date the record or inventory is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 7, eff. September 1, 2016.

Sec. 481.068. CONFIDENTIALITY. (a) The director may authorize a person engaged in research on the use and effects of a controlled substance to withhold the names and other identifying characteristics of individuals who are the subjects of the research. A person who obtains the authorization may not be compelled in a civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of the research for which the authorization is obtained.

(b) Except as provided by Sections 481.074 and 481.075, a practitioner engaged in authorized medical practice or research may not be required to furnish the name or identity of a patient or research subject to the department, the Department of State Health Services, or any other agency, public official, or law enforcement officer. A practitioner may not be compelled in a state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(c) The director may not provide to a federal, state, or local law enforcement agency the name or identity of a patient or research subject whose identity could not be obtained under Subsection (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 251, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1230, eff. April 2, 2015.

Sec. 481.070. ADMINISTERING OR DISPENSING SCHEDULE I CONTROLLED SUBSTANCE. Except as permitted by this chapter, a person may not administer or dispense a controlled substance listed in Schedule I.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.071. MEDICAL PURPOSE REQUIRED BEFORE PRESCRIBING, DISPENSING, DELIVERING, OR ADMINISTERING CONTROLLED SUBSTANCE. (a) A practitioner defined by Section 481.002(39)(A) may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice.

(b) An anabolic steroid or human growth hormone listed in Schedule III may only be:

(1) dispensed, prescribed, delivered, or administered by a practitioner, as defined by Section 481.002(39)(A), for a valid medical purpose and in the course of professional practice; or

(2) dispensed or delivered by a pharmacist according to a prescription issued by a practitioner, as defined by Section 481.002(39)(A) or (C), for a valid medical purpose and in the course of professional practice.

(c) For the purposes of Subsection (b), bodybuilding, muscle enhancement, or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone listed in Schedule III by a person who is in good health is not a valid medical purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(b), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 745, Sec. 11, eff. Jan. 1, 1998.

Sec. 481.072. MEDICAL PURPOSE REQUIRED BEFORE DISTRIBUTING OR DISPENSING SCHEDULE V CONTROLLED SUBSTANCE. A person may not distribute or dispense a controlled substance listed in Schedule V except for a valid medical purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.074. PRESCRIPTIONS. (a) A pharmacist may not:

(1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice;

(2) dispense a controlled substance if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship;

(3) fill a prescription that is not prepared or issued as prescribed by this chapter;

(4) permit or allow a person who is not a licensed pharmacist or pharmacist intern to dispense, distribute, or in any other manner deliver a controlled substance even if under the supervision of a pharmacist, except that after the pharmacist or pharmacist intern has fulfilled his professional and legal responsibilities, a nonpharmacist may complete the actual cash or credit transaction and delivery; or

(5) permit the delivery of a controlled substance to any person not known to the pharmacist, the pharmacist intern, or the person authorized by the pharmacist to deliver the controlled substance without first requiring identification of the person taking possession of the controlled substance, except as provided by Subsection (n).

(b) Except in an emergency as defined by board rule under Subsection (b-1) or as otherwise provided by Section 481.075(j) or (m) or 481.0755, a person may not dispense or administer a controlled substance without an electronic prescription that meets the requirements of and is completed by the practitioner in accordance with Section 481.075.

(b-1) In an emergency as defined by board rule, a person may dispense or administer a controlled substance on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall:

(1) if the person is a prescribing practitioner or a pharmacist, promptly comply with Subsection (c); or

(2) if the person is not a prescribing practitioner or a pharmacist, promptly write the oral or telephonically communicated prescription and include in the written record of the prescription the name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state of the

prescribing practitioner, all information required to be provided by a practitioner under Section 481.075(e)(1), and all information required to be provided by a dispensing pharmacist under Section 481.075(e)(2).

(b-2) In an emergency described by Subsection (b-1), an agent designated in writing by a practitioner defined by Section 481.002(39)(A) may communicate a prescription by telephone. A practitioner who designates a different agent shall designate that agent in writing and maintain the designation in the same manner in which the practitioner initially designated an agent under this subsection. On the request of a pharmacist, a practitioner shall furnish a copy of the written designation. This subsection does not relieve a practitioner or the practitioner's designated agent from the requirement of Subchapter A, Chapter 562, Occupations Code. A practitioner is personally responsible for the actions of the designated agent in communicating a prescription to a pharmacist.

(c) Not later than the seventh day after the date a prescribing practitioner authorizes an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause an electronic prescription, completed in the manner required by Section 481.075, to be delivered to the dispensing pharmacist at the pharmacy where the prescription was dispensed. On receipt of the electronic prescription, the pharmacist shall annotate the electronic prescription record with the original authorization and date of the emergency oral or telephonically communicated prescription.

(d) Except as specified in Subsections (e) and (f), the board, by rule and in consultation with the Texas Medical Board, shall establish the period after the date on which the prescription is issued that a person may fill a prescription for a controlled substance listed in Schedule II. A person may not refill a prescription for a substance listed in Schedule II.

(d-1) Notwithstanding Subsection (d), a prescribing practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance if:

(1) each separate prescription is issued for a legitimate medical purpose by a prescribing practitioner acting in the usual course of professional practice;

(2) the prescribing practitioner provides instructions on each prescription to be filled at a later date indicating the

earliest date on which a pharmacy may fill each prescription;

(3) the prescribing practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse; and

(4) the issuance of multiple prescriptions complies with other applicable state and federal laws.

(e) The partial filling of a prescription for a controlled substance listed in Schedule II is permissible in accordance with applicable federal law.

(f) A prescription for a Schedule II controlled substance for a patient in a long-term care facility (LTCF) or for a hospice patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question about whether a hospice patient may be classified as having a terminal illness, the pharmacist must contact the practitioner before partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill hospice patient. The pharmacist must record the prescription in the electronic prescription record and must indicate in the electronic prescription record whether the patient is a "terminally ill hospice patient" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill hospice patient" or "LTCF patient" is considered to have been filled in violation of this chapter. For each partial filling, the dispensing pharmacist shall record in the electronic prescription record the date of the partial filling, the quantity dispensed, the remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. Before any subsequent partial filling, the pharmacist must determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings may not exceed the total quantity prescribed. Schedule II prescriptions for patients in a long-term care facility or hospice patients with a medical diagnosis documenting a terminal illness are valid for a period not to exceed 60 days following the issue date unless sooner terminated by discontinuance of the medication.

(g) A person may not dispense a controlled substance in Schedule III or IV that is a prescription drug under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without

a prescription of a practitioner defined by Section 481.002(39)(A) or (D), except that the practitioner may dispense the substance directly to an ultimate user. A prescription for a controlled substance listed in Schedule III or IV may not be filled or refilled later than six months after the date on which the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner. A prescription under this subsection must comply with other applicable state and federal laws.

(h) A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V under a prescription issued by a practitioner defined by Section 481.002(39)(C) only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. A prescription described by this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(i) A person may not dispense a controlled substance listed in Schedule V and containing 200 milligrams or less of codeine, or any of its salts, per 100 milliliters or per 100 grams, or containing 100 milligrams or less of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams, without the prescription of a practitioner defined by Section 481.002(39)(A), except that a practitioner may dispense the substance directly to an ultimate user. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(j) A practitioner or institutional practitioner may not allow a patient, on the patient's release from the hospital, to possess a controlled substance prescribed by the practitioner unless:

(1) the substance was dispensed under a medication order while the patient was admitted to the hospital;

(2) the substance is in a properly labeled container; and

(3) the patient possesses not more than a seven-day supply of the substance.

(k) A prescription for a controlled substance must show:

(1) the quantity of the substance prescribed:

(A) numerically, if the prescription is electronic; or

(B) if the prescription is communicated orally or

telephonically, as transcribed by the receiving pharmacist;

(2) the date of issue;

(2-a) if the prescription is issued for a Schedule II controlled substance to be filled at a later date under Subsection (d-1), the earliest date on which a pharmacy may fill the prescription;

(3) the name, address, and date of birth or age of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(4) the name and strength of the controlled substance prescribed;

(5) the directions for use of the controlled substance;

(6) the intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and

(7) the name, address, Federal Drug Enforcement Administration number, and telephone number of the practitioner at the practitioner's usual place of business.

(l) A pharmacist may exercise his professional judgment in refilling a prescription for a controlled substance in Schedule III, IV, or V without the authorization of the prescribing practitioner provided:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of prescription drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(l-1) Notwithstanding Subsection (l), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day

supply of a prescription drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the Texas State Board of Pharmacy, through its executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a prescription drug.

(l-2) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a prescription drug under Subsection (l-1).

(m) A pharmacist may permit the delivery of a controlled substance by an authorized delivery person, by a person known to the pharmacist, a pharmacist intern, or the authorized delivery person, or by mail to the person or address of the person authorized by the prescription to receive the controlled substance. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the pharmacy for a period of not less than two years:

(1) the name of the authorized delivery person, if delivery is made by that person;

(2) the name of the person known to the pharmacist, a pharmacist intern, or the authorized delivery person if delivery is made by that person; or

(3) the mailing address to which delivery is made, if delivery is made by mail.

(n) A pharmacist may permit the delivery of a controlled substance to a person not known to the pharmacist, a pharmacist intern, or the authorized delivery person without first requiring the identification of the person to whom the controlled substance is delivered if the pharmacist determines that an emergency exists and that the controlled substance is needed for the immediate well-being of the patient for whom the controlled substance is prescribed. If a pharmacist permits delivery of a controlled substance under this subsection, the pharmacist shall retain in the records of the

pharmacy for a period of not less than two years all information relevant to the delivery known to the pharmacist, including the name, address, and date of birth or age of the person to whom the controlled substance is delivered.

(o) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(p) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(q) Each dispensing pharmacist shall send all required information to the board by electronic transfer or another form approved by the board not later than the next business day after the date the prescription is completely filled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(h), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 615, Sec. 10, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 761, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 351, Sec. 28, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 16, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 745, Sec. 12, 13, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 10, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 21(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 44(a), eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 535 (S.B. 994), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 567 (S.B. 1658), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 2.

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.007, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 9, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

Sec. 481.075. SCHEDULE II PRESCRIPTIONS. (a) A practitioner who prescribes a controlled substance listed in Schedule II shall, except as provided by Section 481.074(b-1) or 481.0755 or a rule adopted under Section 481.0761, record the prescription in an electronic prescription that includes the information required by this section.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(e) Each prescription used to prescribe a Schedule II controlled substance must contain:

(1) information provided by the prescribing practitioner, including:

(A) the date the prescription is issued;

(B) the controlled substance prescribed;

(C) the quantity of controlled substance prescribed, shown numerically;

(D) the intended use of the controlled substance, or the diagnosis for which the controlled substance is prescribed, and the instructions for use of the substance;

(E) the practitioner's name, address, and Federal Drug Enforcement Administration number issued for prescribing a controlled

substance in this state;

(F) the name, address, and date of birth or age of the person for whom the controlled substance is prescribed; and

(G) if the prescription is issued to be filled at a later date under Section 481.074(d-1), the earliest date on which a pharmacy may fill the prescription;

(2) information provided by the dispensing pharmacist, including the date the prescription is filled; and

(3) the prescribing practitioner's electronic signature or other secure method of validation authorized by federal law.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(g) Except for an emergency oral or telephonically communicated prescription described by Section 481.074(b-1), the prescribing practitioner shall:

(1) record or direct a designated agent to record in the electronic prescription each item of information required to be provided by the prescribing practitioner under Subsection (e)(1), unless the practitioner determines that:

(A) under rule adopted by the board for this purpose, it is unnecessary for the practitioner or the practitioner's agent to provide the patient identification number; or

(B) it is not in the best interest of the patient for the practitioner or practitioner's agent to provide information regarding the intended use of the controlled substance or the diagnosis for which it is prescribed; and

(2) electronically sign or validate the electronic prescription as authorized by federal law and transmit the prescription to the dispensing pharmacy.

(h) In the case of an emergency oral or telephonically communicated prescription described by Section 481.074(b-1), the prescribing practitioner shall give the dispensing pharmacy the information needed to complete the electronic prescription record.

(i) Each dispensing pharmacist shall:

(1) note in the electronic prescription record each item of information given orally to the dispensing pharmacy under Subsection (h) and the date the prescription is filled and appropriately record the identity of the dispensing pharmacist in the electronic prescription record;

(2) retain with the records of the pharmacy for at least

two years:

(A) the electronic prescription record; and

(B) the name or other patient identification required by Section 481.074(m) or (n);

(3) send all required information, including any information required to complete an electronic prescription record, to the board by electronic transfer or another form approved by the board not later than the next business day after the date the prescription is completely filled; and

(4) if the pharmacy does not dispense any controlled substance prescriptions during a period of seven consecutive days, send a report to the board indicating that the pharmacy did not dispense any controlled substance prescriptions during that period, unless the pharmacy has obtained a waiver or permission to delay reporting to the board.

(j) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be recorded in an electronic prescription record that meets the requirements of this section.

(k) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(l) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

(m) A pharmacy in this state may fill a prescription for a controlled substance listed in Schedule II issued by a practitioner in another state if:

(1) a share of the pharmacy's business involves the dispensing and delivery or mailing of controlled substances;

(2) the prescription is issued by a prescribing practitioner in the other state in the ordinary course of practice; and

(3) the prescription is filled in compliance with a written plan providing the manner in which the pharmacy may fill a Schedule II prescription issued by a practitioner in another state that:

(A) is submitted by the pharmacy to the board; and

(B) is approved by the board.

(n) A person dispensing a Schedule II controlled substance under a prescription shall provide written notice, as defined by board rule adopted under Subsection (o), on the safe disposal of controlled substance prescription drugs, unless:

(1) the Schedule II controlled substance prescription drug is dispensed at a pharmacy or other location that:

(A) is authorized to take back those drugs for safe disposal; and

(B) regularly accepts those drugs for safe disposal; or

(2) the dispenser provides to the person to whom the Schedule II controlled substance prescription drug is dispensed, at the time of dispensation and at no cost to the person:

(A) a mail-in pouch for surrendering unused controlled substance prescription drugs; or

(B) chemicals to render any unused drugs unusable or non-retrievable.

(o) The board shall adopt rules to prescribe the form of the written notice on the safe disposal of controlled substance prescription drugs required under Subsection (n). The notice must include information on locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal. The notice, in lieu of listing those locations, may provide the address of an Internet website specified by the board that provides a searchable database of locations at which Schedule II controlled substance prescription drugs are accepted for safe disposal.

(p) The board may take disciplinary action against a person who fails to comply with Subsection (n).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(i), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 789, Sec. 17, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 745, Sec. 14, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 3, 5(2), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 251, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 2, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 10, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 3, eff.

September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 798 (H.B. 2088), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 16, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.001, eff. September 1, 2019.

Sec. 481.0755. WRITTEN, ORAL, AND TELEPHONICALLY COMMUNICATED PRESCRIPTIONS. (a) Notwithstanding Sections 481.074 and 481.075, a prescription for a controlled substance is not required to be issued electronically and may be issued in writing if the prescription is issued:

(1) by a veterinarian;

(2) in circumstances in which electronic prescribing is not available due to temporary technological or electronic failure, as prescribed by board rule;

(3) by a practitioner to be dispensed by a pharmacy located outside this state, as prescribed by board rule;

(4) when the prescriber and dispenser are in the same location or under the same license;

(5) in circumstances in which necessary elements are not supported by the most recently implemented national data standard that facilitates electronic prescribing;

(6) for a drug for which the United States Food and Drug Administration requires additional information in the prescription that is not possible with electronic prescribing;

(7) for a non-patient-specific prescription pursuant to a standing order, approved protocol for drug therapy, collaborative drug management, or comprehensive medication management, in response to a public health emergency or in other circumstances in which the practitioner may issue a non-patient-specific prescription;

(8) for a drug under a research protocol;

(9) by a practitioner who has received a waiver under Section 481.0756 from the requirement to use electronic prescribing;

(10) under circumstances in which the practitioner has the present ability to submit an electronic prescription but reasonably determines that it would be impractical for the patient to obtain the drugs prescribed under the electronic prescription in a timely manner and that a delay would adversely impact the patient's medical condition; or

(11) before January 1, 2021.

(b) A dispensing pharmacist who receives a controlled substance prescription in a manner other than electronically is not required to verify that the prescription is exempt from the requirement that it be submitted electronically. The pharmacist may dispense a controlled substance pursuant to an otherwise valid written, oral, or telephonically communicated prescription consistent with the requirements of this subchapter.

(c) Except in an emergency, a practitioner must use a written prescription to submit a prescription described by Subsection (a). In an emergency, the practitioner may submit an oral or telephonically communicated prescription as authorized under Section 481.074(b-1).

(d) A written prescription for a controlled substance other than a Schedule II controlled substance must include the information required under Section 481.074(k) and the signature of the prescribing practitioner.

(e) A written prescription for a Schedule II controlled substance must be on an official prescription form and include the information required for an electronic prescription under Section 481.075(e), the signature of the practitioner, and the signature of the dispensing pharmacist after the prescription is filled.

(f) The board by rule shall authorize a practitioner to determine whether it is necessary to obtain a particular patient identification number and to provide that number on the official prescription form.

(g) On request of a practitioner, the board shall issue official prescription forms to the practitioner for a fee covering the actual cost of printing, processing, and mailing the forms. Before mailing or otherwise delivering prescription forms to a practitioner, the board shall print on each form the number of the form and any other information the board determines is necessary.

(h) Each official prescription form must be sequentially numbered.

(i) A person may not obtain an official prescription form unless the person is a practitioner as defined by Section 481.002(39)(A) or an institutional practitioner.

(j) Not more than one Schedule II prescription may be recorded on an official prescription form.

(k) Not later than the 30th day after the date a practitioner's Federal Drug Enforcement Administration number or license to practice has been denied, suspended, canceled, surrendered, or revoked, the practitioner shall return to the board all official prescription forms in the practitioner's possession that have not been used for prescriptions.

(l) Each prescribing practitioner:

(1) may use an official prescription form only to submit a prescription described by Subsection (a);

(2) shall date or sign an official prescription form only on the date the prescription is issued; and

(3) shall take reasonable precautionary measures to ensure that an official prescription form issued to the practitioner is not used by another person to violate this subchapter or a rule adopted under this subchapter.

(m) In the case of an emergency oral or telephonically communicated prescription described by Section 481.074(b-1), the prescribing practitioner shall give the dispensing pharmacy the information needed to complete the official prescription form if the pharmacy is not required to use the electronic prescription record.

(n) Each dispensing pharmacist receiving an oral or telephonically communicated prescription under Subsection (m) shall:

(1) fill in on the official prescription form each item of information given orally to the dispensing pharmacy under Subsection (m) and the date the prescription is filled and fill in the dispensing pharmacist's signature;

(2) retain with the records of the pharmacy for at least two years:

(A) the official prescription form; and

(B) the name or other patient identification required by Section 481.074(m) or (n); and

(3) send all required information, including any information required to complete an official prescription form, to

the board by electronic transfer or another form approved by the board not later than the next business day after the date the prescription is completely filled.

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 7, eff. September 1, 2019.

Sec. 481.0756. WAIVERS FROM ELECTRONIC PRESCRIBING. (a) The appropriate regulatory agency that issued the license, certification, or registration to a prescriber is authorized to grant a prescriber a waiver from the electronic prescribing requirement under the provisions of this section.

(b) The board shall convene an interagency workgroup that includes representatives of each regulatory agency that issues a license, certification, or registration to a prescriber.

(c) The work group described by Subsection (b) shall establish recommendations and standards for circumstances in which a waiver from the electronic prescribing requirement is appropriate and a process under which a prescriber may request and receive a waiver.

(d) The board shall adopt rules establishing the eligibility for a waiver, including:

(1) economic hardship;

(2) technological limitations not reasonably within the control of the prescriber; or

(3) other exceptional circumstances demonstrated by the prescriber.

(e) Each regulatory agency that issues a license, certification, or registration to a prescriber shall adopt rules for the granting of waivers consistent with the board rules adopted under Subsection (d).

(f) A waiver may be issued to a prescriber for a period of one year. A prescriber may reapply for a subsequent waiver not earlier than the 30th day before the date the waiver expires if the circumstances that necessitated the waiver continue.

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 7, eff. September 1, 2019.

Sec. 481.076. OFFICIAL PRESCRIPTION INFORMATION; DUTIES OF

TEXAS STATE BOARD OF PHARMACY. (a) The board may not permit any person to have access to information submitted to the board under Section 481.074(q) or 481.075 except:

(1) the board, the Texas Medical Board, the Texas Department of Licensing and Regulation, with respect to the regulation of podiatrists, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, the Texas Board of Nursing, or the Texas Optometry Board for the purpose of:

(A) investigating a specific license holder; or

(B) monitoring for potentially harmful prescribing or dispensing patterns or practices under Section 481.0762;

(2) an authorized employee of the board engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(3) the department or other law enforcement or prosecutorial official engaged in the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state, if the board is provided a warrant, subpoena, or other court order compelling the disclosure;

(4) a medical examiner conducting an investigation;

(5) provided that accessing the information is authorized under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and regulations adopted under that Act:

(A) a pharmacist or a pharmacist-intern, pharmacy technician, or pharmacy technician trainee, as defined by Section 551.003, Occupations Code, acting at the direction of a pharmacist, who is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the pharmacist; or

(B) a practitioner who:

(i) is a physician, dentist, veterinarian, podiatrist, optometrist, or advanced practice nurse or is a physician assistant described by Section 481.002(39)(D) or an employee or other agent of a practitioner acting at the direction of a practitioner; and

(ii) is inquiring about a recent Schedule II, III, IV, or V prescription history of a particular patient of the practitioner;

(6) a pharmacist or practitioner who is inquiring about the person's own dispensing or prescribing activity or a practitioner who is inquiring about the prescribing activity of an individual to whom

the practitioner has delegated prescribing authority;

(7) one or more states or an association of states with which the board has an interoperability agreement, as provided by Subsection (j);

(8) a health care facility certified by the federal Centers for Medicare and Medicaid Services; or

(9) the patient, the patient's parent or legal guardian, if the patient is a minor, or the patient's legal guardian, if the patient is an incapacitated person, as defined by Section 1002.017(2), Estates Code, inquiring about the patient's prescription record, including persons who have accessed that record.

(a-1) A person authorized to receive information under Subsection (a)(4), (5), or (6) may access that information through a health information exchange, subject to proper security measures to ensure against disclosure to unauthorized persons.

(a-2) A person authorized to receive information under Subsection (a)(5) may include that information in any form in the medical or pharmacy record of the patient who is the subject of the information. Any information included in a patient's medical or pharmacy record under this subsection is subject to any applicable state or federal confidentiality or privacy laws.

(a-3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

(a-4) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

(a-5) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

(a-6) A patient, the patient's parent or legal guardian, if the patient is a minor, or the patient's legal guardian, if the patient is an incapacitated person, as defined by Section 1002.017(2), Estates Code, is entitled to a copy of the patient's prescription record as provided by Subsection (a)(9), including a list of persons who have accessed that record, if a completed patient data request form and any supporting documentation required by the board is submitted to the board. The board may charge a reasonable fee for providing the copy. The board shall adopt rules to implement this subsection, including rules prescribing the patient data request form, listing the documentation required for receiving a copy of the prescription record, and setting the fee.

(b) This section does not prohibit the board from creating,

using, or disclosing statistical data about information submitted to the board under this section if the board removes any information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information.

(c) The board by rule shall design and implement a system for submission of information to the board by electronic or other means and for retrieval of information submitted to the board under this section and Sections 481.074 and 481.075. The board shall use automated information security techniques and devices to preclude improper access to the information. The board shall submit the system design to the director and the Texas Medical Board for review and comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it is unreasonable to do so.

(d) Information submitted to the board under this section may be used only for:

(1) the administration, investigation, or enforcement of this chapter or another law governing illicit drugs in this state or another state;

(2) investigatory, evidentiary, or monitoring purposes in connection with the functions of an agency listed in Subsection (a)(1);

(3) the prescribing and dispensing of controlled substances by a person listed in Subsection (a)(5); or

(4) dissemination by the board to the public in the form of a statistical tabulation or report if all information reasonably likely to reveal the identity of each patient, practitioner, or other person who is a subject of the information has been removed.

(e) The board shall remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the board not later than the end of the 36th calendar month after the month in which the identity is entered into the system. However, the board may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the 30th day after the end of the month in which the necessity for retention of the identity ends.

(f) If the board accesses information under Subsection (a)(2) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board shall notify and cooperate with that

agency regarding the disposition of the matter before taking action against the person, unless the board determines that notification is reasonably likely to interfere with an administrative or criminal investigation or prosecution.

(g) If the board provides access to information under Subsection (a)(3) relating to a person licensed or regulated by an agency listed in Subsection (a)(1), the board shall notify that agency of the disclosure of the information not later than the 10th working day after the date the information is disclosed.

(h) If the board withholds notification to an agency under Subsection (f), the board shall notify the agency of the disclosure of the information and the reason for withholding notification when the board determines that notification is no longer likely to interfere with an administrative or criminal investigation or prosecution.

(i) Information submitted to the board under Section 481.074(q) or 481.075 is confidential and remains confidential regardless of whether the board permits access to the information under this section.

(j) The board may enter into an interoperability agreement with one or more states or an association of states authorizing the board to access prescription monitoring information maintained or collected by the other state or states or the association, including information maintained on a central database such as the National Association of Boards of Pharmacy Prescription Monitoring Program InterConnect. Pursuant to an interoperability agreement, the board may authorize the prescription monitoring program of one or more states or an association of states to access information submitted to the board under Sections 481.074(q) and 481.075, including by submitting or sharing information through a central database such as the National Association of Boards of Pharmacy Prescription Monitoring Program InterConnect.

(k) A person authorized to access information under Subsection (a)(4) or (5) who is registered with the board for electronic access to the information is entitled to directly access the information available from other states pursuant to an interoperability agreement described by Subsection (j).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 965, Sec. 81, eff. June 16, 1995; Acts

1997, 75th Leg., ch. 745, Sec. 15, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 145, Sec. 4, 5(3), eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1342 (S.B. 1273), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 11, eff. September 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 12, eff. June 20, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 12, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.009, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.002, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 10, eff. September 1, 2019.

Sec. 481.0761. RULES; AUTHORITY TO CONTRACT. (a) The board shall by rule establish and revise as necessary a standardized database format that may be used by a pharmacy to transmit the information required by Sections 481.074(q) and 481.075(i) to the board electronically or to deliver the information on storage media, including disks, tapes, and cassettes.

(b) The director shall consult with the Department of State Health Services, the Texas State Board of Pharmacy, and the Texas Medical Board and by rule may:

(1) remove a controlled substance listed in Schedules II through V from the official prescription program, if the director determines that the burden imposed by the program substantially outweighs the risk of diversion of the particular controlled substance; or

(2) return a substance previously removed from Schedules II

through V to the official prescription program, if the director determines that the risk of diversion substantially outweighs the burden imposed by the program on the particular controlled substance.

(c) The board by rule may:

(1) establish a procedure for the issuance of multiple prescriptions of a Schedule II controlled substance under Section 481.074(d-1);

(2) remove from or return to the official prescription program any aspect of a practitioner's or pharmacist's hospital practice, including administering or dispensing;

(3) waive or delay any requirement relating to the time or manner of reporting;

(4) establish compatibility protocols for electronic data transfer hardware, software, or format, including any necessary modifications for participation in a database described by Section 481.076(j);

(5) establish a procedure to control the release of information under Sections 481.074, 481.075, and 481.076; and

(6) establish a minimum level of prescription activity below which a reporting activity may be modified or deleted.

(d) The board by rule shall authorize a practitioner to determine whether it is necessary to obtain a particular patient identification number and to provide that number in the electronic prescription record.

(e) In adopting a rule relating to the electronic transfer of information under this subchapter, the board shall consider the economic impact of the rule on practitioners and pharmacists and, to the extent permitted by law, act to minimize any negative economic impact, including the imposition of costs related to computer hardware or software or to the transfer of information.

(f) The board may authorize a contract between the board and another agency of this state or a private vendor as necessary to ensure the effective operation of the official prescription program.

(g) The board may adopt rules providing for a person authorized to access information under Section 481.076(a)(5) to be enrolled in electronic access to the information described by Section 481.076(a) at the time the person obtains or renews the person's applicable professional or occupational license or registration.

(h) The board, in consultation with the department and the regulatory agencies listed in Section 481.076(a)(1), shall identify

prescribing practices that may be potentially harmful and patient prescription patterns that may suggest drug diversion or drug abuse. The board shall determine the conduct that constitutes a potentially harmful prescribing pattern or practice and develop indicators for levels of prescriber or patient activity that suggest a potentially harmful prescribing pattern or practice may be occurring or drug diversion or drug abuse may be occurring.

(i) The board, based on the indicators developed under Subsection (h), may send an electronic notification to a dispenser or prescriber if the information submitted under Section 481.074(q) or 481.075 indicates a potentially harmful prescribing pattern or practice may be occurring or drug diversion or drug abuse may be occurring.

(j) The board by rule may develop guidelines identifying behavior suggesting a patient is obtaining controlled substances that indicate drug diversion or drug abuse is occurring. A pharmacist who observes behavior described by this subsection by a person who is to receive a controlled substance shall access the information under Section 481.076(a)(5) regarding the patient for whom the substance is to be dispensed.

(k) The board by rule may develop guidelines identifying patterns that may indicate that a particular patient to whom a controlled substance is prescribed or dispensed is engaging in drug abuse or drug diversion. These guidelines may be based on the frequency of prescriptions issued to and filled by the patient, the types of controlled substances prescribed, and the number of prescribers who prescribe controlled substances to the patient. The board may, based on the guidelines developed under this subsection, send a prescriber or dispenser an electronic notification if there is reason to believe that a particular patient is engaging in drug abuse or drug diversion.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 16, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 145, Sec. 5(4), eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 774 (S.B. 904), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 13, eff. June 20, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 13, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 8, eff. September 1, 2019.

Sec. 481.0762. MONITORING BY REGULATORY AGENCY. (a) Each regulatory agency that issues a license, certification, or registration to a prescriber shall promulgate specific guidelines for prescribers regulated by that agency for the responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol.

(b) A regulatory agency that issues a license, certification, or registration to a prescriber shall periodically access the information submitted to the board under Sections 481.074(q) and 481.075 to determine whether a prescriber is engaging in potentially harmful prescribing patterns or practices.

(c) If the board sends a prescriber an electronic notification authorized under Section 481.0761(i), the board shall immediately send an electronic notification to the appropriate regulatory agency.

(d) In determining whether a potentially harmful prescribing pattern or practice is occurring, the appropriate regulatory agency, at a minimum, shall consider:

(1) the number of times a prescriber prescribes opioids, benzodiazepines, barbiturates, or carisoprodol; and

(2) for prescriptions described by Subdivision (1), patterns of prescribing combinations of those drugs and other dangerous combinations of drugs identified by the board.

(e) If, during a periodic check under this section, the regulatory agency finds evidence that a prescriber may be engaging in potentially harmful prescribing patterns or practices, the regulatory agency may notify that prescriber.

(f) A regulatory agency may open a complaint against a prescriber if the agency finds evidence during a periodic check under this section that the prescriber is engaging in conduct that violates

this subchapter or any other statute or rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.

Sec. 481.0763. REGISTRATION BY REGULATORY AGENCY. A regulatory agency that issues a license, certification, or registration to a prescriber or dispenser shall provide the board with any necessary information for each prescriber or dispenser, including contact information for the notifications described by Sections 481.0761(i) and (k), to register the prescriber or dispenser with the system by which the prescriber or dispenser receives information as authorized under Section 481.076(a)(5).

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.

Sec. 481.07635. CONTINUING EDUCATION. (a) A person authorized to receive information under Section 481.076(a)(5) shall, not later than the first anniversary after the person is issued a license, certification, or registration to prescribe or dispense controlled substances under this chapter, complete two hours of professional education related to approved procedures of prescribing and monitoring controlled substances.

(b) A person authorized to receive information may annually take the professional education course under this section to fulfil hours toward the ethics education requirement of the person's license, certification, or registration.

(c) The regulatory agency that issued the license, certification, or registration to a person authorized to receive information under Section 481.076(a)(5) shall approve professional education to satisfy the requirements of this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 9, eff. September 1, 2019.

Sec. 481.07636. OPIOID PRESCRIPTION LIMITS. (a) In this section, "acute pain" means the normal, predicted, physiological

response to a stimulus such as trauma, disease, and operative procedures. Acute pain is time limited. The term does not include:

(1) chronic pain;

(2) pain being treated as part of cancer care;

(3) pain being treated as part of hospice or other end-of-life care; or

(4) pain being treated as part of palliative care.

(b) For the treatment of acute pain, a practitioner may not:

(1) issue a prescription for an opioid in an amount that exceeds a 10-day supply; or

(2) provide for a refill of an opioid.

(c) Subsection (b) does not apply to a prescription for an opioid approved by the United States Food and Drug Administration for the treatment of substance addiction that is issued by a practitioner for the treatment of substance addiction.

(d) A dispenser is not subject to criminal, civil, or administrative penalties for dispensing or refusing to dispense a controlled substance under a prescription that exceeds the limits provided by Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 9, eff. September 1, 2019.

Sec. 481.0764. DUTIES OF PRESCRIBERS, PHARMACISTS, AND RELATED HEALTH CARE PRACTITIONERS. (a) A person authorized to receive information under Section 481.076(a)(5), other than a veterinarian, shall access that information with respect to the patient before prescribing or dispensing opioids, benzodiazepines, barbiturates, or carisoprodol.

(b) A person authorized to receive information under Section 481.076(a)(5) may access that information with respect to the patient before prescribing or dispensing any controlled substance.

(c) A veterinarian authorized to access information under Subsection (b) regarding a controlled substance may access the information for prescriptions dispensed only for the animals of an owner and may not consider the personal prescription history of the owner.

(d) A violation of Subsection (a) is grounds for disciplinary action by the regulatory agency that issued a license, certification,

or registration to the person who committed the violation.

(e) This section does not grant a person the authority to issue prescriptions for or dispense controlled substances.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 7, eff. September 1, 2019.

Sec. 481.0765. EXCEPTIONS. (a) A prescriber is not subject to the requirements of Section 481.0764(a) if:

(1) the patient has been diagnosed with cancer or sickle cell disease or the patient is receiving hospice care; and

(2) the prescriber clearly notes in the prescription record that the patient was diagnosed with cancer or sickle cell disease or is receiving hospice care, as applicable.

(b) A dispenser is not subject to the requirements of Section 481.0764(a) if it is clearly noted in the prescription record that the patient has been diagnosed with cancer or sickle cell disease or is receiving hospice care.

(c) A prescriber or dispenser is not subject to the requirements of Section 481.0764(a) and a dispenser is not subject to a rule adopted under Section 481.0761(j) if the prescriber or dispenser makes a good faith attempt to comply but is unable to access the information under Section 481.076(a)(5) because of circumstances outside the control of the prescriber or dispenser.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 640 (S.B. 1564), Sec. 1, eff. June 10, 2019.

Sec. 481.0766. REPORTS OF WHOLESALE DISTRIBUTORS. (a) A wholesale distributor shall report to the board the distribution of all Schedules II, III, IV, and V controlled substances by the distributor to a person in this state. The distributor shall report the information to the board in the same format and with the same

frequency as the information is reported to the Federal Drug Enforcement Administration.

(b) Information reported to the board under Subsection (a) is confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The board shall make the information reported under Subsection (a) available to the State Board of Veterinary Medical Examiners for the purpose of routine inspections and investigations.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 6, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 449 (S.B. 1947), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.003, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 2, eff. September 1, 2019.

Sec. 481.0767. ADVISORY COMMITTEE. (a) The board shall establish an advisory committee to make recommendations regarding information submitted to the board and access to that information under Sections 481.074, 481.075, 481.076, and 481.0761, including recommendations for:

(1) operational improvements to the electronic system that stores the information, including implementing best practices and improvements that address system weaknesses and workflow challenges;

(2) resolutions to identified data concerns;

(3) methods to improve data accuracy, integrity, and security and to reduce technical difficulties; and

(4) the addition of any new data set or service to the information submitted to the board or the access to that information.

(b) The board shall appoint the following members to the advisory committee:

(1) a physician licensed in this state who practices in pain management;

(2) a physician licensed in this state who practices in

family medicine;

(3) a physician licensed in this state who performs surgery;

(4) a physician licensed in this state who practices in emergency medicine at a hospital;

(5) a physician licensed in this state who practices in psychiatry;

(6) an oral and maxillofacial surgeon;

(7) a physician assistant or advanced practice registered nurse to whom a physician has delegated the authority to prescribe or order a drug;

(8) a pharmacist working at a chain pharmacy;

(9) a pharmacist working at an independent pharmacy;

(10) an academic pharmacist; and

(11) two representatives of the health information technology industry, at least one of whom is a representative of a company whose primary line of business is electronic medical records.

(c) Members of the advisory committee serve three-year terms. Each member shall serve until the member's replacement has been appointed.

(d) The advisory committee shall annually elect a presiding officer from its members.

(e) The advisory committee shall meet at least two times a year and at the call of the presiding officer or the board.

(f) A member of the advisory committee serves without compensation but may be reimbursed by the board for actual expenses incurred in performing the duties of the advisory committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 3, eff. September 1, 2019.

Sec. 481.0768. ADMINISTRATIVE PENALTY: DISCLOSURE OR USE OF INFORMATION. (a) A person authorized to receive information under Section 481.076(a) may not disclose or use the information in a manner not authorized by this subchapter or other law.

(b) A regulatory agency that issues a license, certification, or registration to a prescriber or dispenser shall periodically update the administrative penalties, or any applicable disciplinary guidelines concerning the penalties, assessed by that agency for

conduct that violates Subsection (a).

(c) The agency shall set the penalties in an amount sufficient to deter the conduct.

Added by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 3, eff. September 1, 2019.

Sec. 481.0769. CRIMINAL OFFENSES RELATED TO PRESCRIPTION INFORMATION. (a) A person authorized to receive information under Section 481.076(a) commits an offense if the person discloses or uses the information in a manner not authorized by this subchapter or other law.

(b) A person requesting information under Section 481.076(a-6) commits an offense if the person makes a material misrepresentation or fails to disclose a material fact in the request for information under that subsection.

(c) An offense under Subsection (a) is a Class A misdemeanor.

(d) An offense under Subsection (b) is a Class C misdemeanor.

Added by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 3, eff. September 1, 2019.

Sec. 481.077. CHEMICAL PRECURSOR RECORDS AND REPORTS. (a) Except as provided by Subsection (l), a person who sells, transfers, or otherwise furnishes a chemical precursor to another person shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The director by rule may:

(1) name an additional chemical substance as a chemical precursor for purposes of Subsection (a) if the director determines that public health and welfare are jeopardized by evidenced proliferation or use of the chemical substance in the illicit manufacture of a controlled substance or controlled substance analogue; or

(2) exempt a chemical precursor from the requirements of Subsection (a) if the director determines that the chemical precursor does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(b-1) If the director names a chemical substance as a chemical precursor for purposes of Subsection (a) or designates a substance as an immediate precursor, a substance that is a precursor of the chemical precursor or the immediate precursor is not subject to control solely because it is a precursor of the chemical precursor or the immediate precursor.

(c) This section does not apply to a person to whom a registration has been issued by the Federal Drug Enforcement Agency or who is exempt from such registration.

(d) Before selling, transferring, or otherwise furnishing to a person in this state a chemical precursor subject to Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification certificate issued by the department that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the chemical precursor is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the chemical precursor is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616

), Sec. 4.011(1), eff. September 1, 2019.

(i) A manufacturer, wholesaler, retailer, or other person who discovers a loss or theft of a chemical precursor subject to Subsection (a) shall:

(1) submit a report of the transaction to the director in accordance with department rule; and

(2) include in the report:

(A) any difference between the amount of the chemical precursor actually received and the amount of the chemical precursor shipped according to the shipping statement or invoice; or

(B) the amount of the loss or theft.

(j) A report under Subsection (i) must:

(1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and

(2) if the discrepancy, loss, or theft occurred during a shipment of the chemical precursor, include the name of the common carrier or person who transported the chemical precursor and the date that the chemical precursor was shipped.

(k) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any chemical precursor subject to Subsection (a), or a commercial purchaser or other person who receives a chemical precursor subject to Subsection (a):

(1) shall maintain records and inventories in accordance with rules established by the director;

(2) shall allow a member of the department or a peace officer to conduct audits and inspect records of purchases and sales and all other records made in accordance with this section at any reasonable time; and

(3) may not interfere with the audit or with the full and complete inspection or copying of those records.

(l) This section does not apply to the sale or transfer of any compound, mixture, or preparation containing ephedrine, pseudoephedrine, or norpseudoephedrine that is in liquid, liquid capsule, or liquid gel capsule form.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(k), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 745, Sec. 17, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 12, eff. Sept. 1, 2001; Acts 2003,

78th Leg., ch. 570, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1099, Sec. 6, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 4, eff. August 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 14, eff. September 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.001, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(1), eff. September 1, 2019.

Sec. 481.0771. RECORDS AND REPORTS ON PSEUDOEPHEDRINE. (a) A wholesaler who sells, transfers, or otherwise furnishes a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to a retailer shall:

(1) before delivering the product, obtain from the retailer the retailer's address, area code, and telephone number; and

(2) make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The wholesaler shall make all records available to the director in accordance with department rule, including:

(1) the information required by Subsection (a)(1);

(2) the amount of the product containing ephedrine, pseudoephedrine, or norpseudoephedrine delivered; and

(3) any other information required by the director.

(c) Not later than 10 business days after receipt of an order for a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that requests delivery of a suspicious quantity of the product as determined by department rule, a wholesaler shall submit to the director a report of the order in accordance with department rule.

(d) A wholesaler who, with reckless disregard for the duty to report, fails to report as required by Subsection (c) may be subject to disciplinary action in accordance with department rule.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 5, eff. August 1, 2005.

Sec. 481.080. CHEMICAL LABORATORY APPARATUS RECORD-KEEPING REQUIREMENTS. (a) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes a chemical laboratory apparatus shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction.

(b) The director may adopt rules to implement this section.

(c) The director by rule may:

(1) name an additional item of equipment as a chemical laboratory apparatus for purposes of Subsection (a) if the director determines that public health and welfare are jeopardized by evidenced proliferation or use of the item of equipment in the illicit manufacture of a controlled substance or controlled substance analogue; or

(2) exempt a chemical laboratory apparatus from the requirement of Subsection (a) if the director determines that the apparatus does not jeopardize public health and welfare or is not used in the illicit manufacture of a controlled substance or a controlled substance analogue.

(d) This section does not apply to a person to whom a registration has been issued by the Federal Drug Enforcement Agency or who is exempt from such registration.

(d-1) This section does not apply to a chemical manufacturer engaged in commercial research and development:

(1) whose primary business is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials;

(2) that operates a secure, restricted location that contains a physical plant not open to the public, the ingress into which is constantly monitored by security personnel; and

(3) that holds:

(A) a Voluntary Protection Program Certification under Section (2)(b)(1), Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.); or

(B) a Facility Operations Area authorization under the Texas Risk Reduction Program (30 T.A.C. Chapter 350).

(e) Before selling, transferring, or otherwise furnishing to a person in this state a chemical laboratory apparatus subject to

Subsection (a), a manufacturer, wholesaler, retailer, or other person shall:

(1) if the recipient does not represent a business, obtain from the recipient:

(A) the recipient's driver's license number or other personal identification certificate number, date of birth, and residential or mailing address, other than a post office box number, from a driver's license or personal identification certificate issued by the department that contains a photograph of the recipient;

(B) the year, state, and number of the motor vehicle license of the motor vehicle owned or operated by the recipient;

(C) a complete description of how the apparatus is to be used; and

(D) the recipient's signature; or

(2) if the recipient represents a business, obtain from the recipient:

(A) a letter of authorization from the business that includes the business license or comptroller tax identification number, address, area code, and telephone number and a complete description of how the apparatus is to be used; and

(B) the recipient's signature; and

(3) for any recipient, sign as a witness to the signature and identification of the recipient.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(i) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

(j) A manufacturer, wholesaler, retailer, or other person who discovers a loss or theft of such an apparatus shall:

(1) submit a report of the transaction to the director in accordance with department rule; and

(2) include in the report:

(A) any difference between the number of the apparatus actually received and the number of the apparatus shipped according to the shipping statement or invoice; or

(B) the number of the loss or theft.

(k) A report under Subsection (j) must:

(1) be made not later than the third day after the date that the manufacturer, wholesaler, retailer, or other person learns of the discrepancy, loss, or theft; and

(2) if the discrepancy, loss, or theft occurred during a shipment of the apparatus, include the name of the common carrier or person who transported the apparatus and the date that the apparatus was shipped.

(l) This subsection applies to a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any chemical laboratory apparatus subject to Subsection (a) and to a commercial purchaser or other person who receives such an apparatus. A person covered by this subsection:

(1) shall maintain records and inventories in accordance with rules established by the director;

(2) shall allow a member of the department or a peace officer to conduct audits and inspect records of purchases and sales and all other records made in accordance with this section at any reasonable time; and

(3) may not interfere with the audit or with the full and complete inspection or copying of those records.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(l), eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 19, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 14, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 83 (S.B. 1666), Sec. 1, eff. May 22, 2015.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.002, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.003, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.011(3), eff. September 1, 2019.

SUBCHAPTER D. OFFENSES AND PENALTIES

Sec. 481.101. CRIMINAL CLASSIFICATION. For the purpose of establishing criminal penalties for violations of this chapter, controlled substances, including a material, compound, mixture, or

preparation containing the controlled substance, are divided into Penalty Groups 1 through 4.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(n), eff. Sept. 1, 1989.

Sec. 481.102. PENALTY GROUP 1. Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Allylprodine;
Alphacetylmethadol;
Benzethidine;
Betaprodine;
Clonitazene;
Diampromide;
Diethylthiambutene;
Difenoxin not listed in Penalty Group 3 or 4;
Dimenoxadol;
Dimethylthiambutene;
Dioxaphetyl butyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxeridine;
Furethidine;
Hydroxypethidine;
Ketobemidone;
Levophenacylmorphan;
Meprodine;
Methadol;
Moramide;
Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;
Norpipanone;

Phenadoxone;
Phenampromide;
Phenomorphan;
Phenoperidine;
Piritramide;
Proheptazine;
Properidine;
Propiram;
Tilidine; and
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine, except hydrochloride salt;
Heroin;
Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Monoacetylmorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine; and
Thebacon;

(3) the following substances, however produced, except those narcotic drugs listed in another group:

(A) Opium and opiate not listed in Penalty Group 3 or 4, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine derived butorphanol, nalmefene and its salts, naloxone and its salts, and naltrexone and its salts, but including:

Codeine not listed in Penalty Group 3 or 4;
Dihydroetorphine;
Ethylmorphine not listed in Penalty Group 3 or 4;
Granulated opium;
Hydrocodone not listed in Penalty Group 3;
Hydromorphone;
Metopon;
Morphine not listed in Penalty Group 3;
Opium extracts;
Opium fluid extracts;
Oripavine;
Oxycodone;
Oxymorphone;
Powdered opium;
Raw opium;
Thebaine; and
Tincture of opium;

(B) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves; and

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(E) concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy;

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alphaprodine;
Anileridine;
Bezitramide;
Dihydrocodeine not listed in Penalty Group 3 or 4;
Diphenoxylate not listed in Penalty Group 3 or 4;
Isomethadone;
Levomethorphan;
Levorphanol;
Metazocine;
Methadone;
Methadone-Intermediate, 4-cyano-2-dimethylamino- 4, 4-diphenyl butane;
Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
PEPAP (1-(2-phenethyl)-4-phenyl-4- acetoxypiperidine);
Pethidine (Meperidine);
Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
Pethidine-Intermediate-B, ethyl-4- phenylpiperidine-4 carboxylate;
Pethidine-Intermediate-C, 1-methyl-4- phenylpiperidine-4-carboxylic acid;
Phenazocine;
Piminodine;
Racemethorphan; and
Racemorphan;

(5) Flunitrazepam (trade or other name: Rohypnol);

(6) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine;

(8) Phencyclidine, including its salts;

(9) Gamma hydroxybutyric acid (some trade or other names: gamma hydroxybutyrate, GHB), including its salts;

(10) Ketamine;

(11) Phenazepam;

(12) U-47700;
(13) AH-7921;
(14) ADB-FUBINACA;
(15) AMB-FUBINACA; and
(16) MDMB-CHMICA.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(n), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 761, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 21, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 459, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1099, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 1, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 491 (H.B. 2671), Sec. 1, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 2, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 2, eff. September 1, 2023.

Sec. 481.1021. PENALTY GROUP 1-A. (a) Penalty Group 1-A consists of:
(1) lysergic acid diethylamide (LSD), including its salts, isomers, and salts of isomers; and
(2) compounds structurally derived from 2,5-dimethoxyphenethylamine by substitution at the 1-amino nitrogen atom with a benzyl substituent, including:
(A) compounds further modified by:
(i) substitution in the phenethylamine ring at the 4-position to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents); or
(ii) substitution in the benzyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents); and
(B) by example, compounds such as:
4-Bromo-2,5-dimethoxy-N-(2-

methoxybenzyl)phenethylamine (trade or other names: 25B-NBOMe, 2C-B-NBOMe);

4-Chloro-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25C-NBOMe, 2C-C-NBOMe);

2,5-Dimethoxy-4-methyl-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25D-NBOMe, 2C-D-NBOMe);

4-Ethyl-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25E-NBOMe, 2C-E-NBOMe);

2,5-Dimethoxy-N-(2- methoxybenzyl)phenethylamine (some trade and other names: 25H-NBOMe, 2C-H-NBOMe);

4-Iodo-2,5-dimethoxy-N-(2-methoxybenzyl)phenethylamine (some trade and other names: 25I-NBOMe, 2C-I-NBOMe);

4-Iodo-2,5-dimethoxy-N- benzylphenethylamine (trade or other name: 25I-NB);

4-Iodo-2,5-dimethoxy-N-(2,3-methylenedioxybenzyl)phenethylamine (trade or other name: 25I-NBMD);

4-Iodo-2,5-dimethoxy-N-(2-fluorobenzyl)phenethylamine (trade or other name: 25I-NBF);

4-Iodo-2,5-dimethoxy-N-(2-hydroxybenzyl)phenethylamine (trade or other name: 25I-NBOH);

2,5-Dimethoxy-4-nitro-N-(2-methoxybenzyl)phenethylamine (trade or other names: 25N-NBOMe, 2C-N-NBOMe); and

2,5-Dimethoxy-4-(n)-propyl-N-(2-methoxybenzyl)phenethylamine (some trade and other names: 25P-NBOMe, 2C-P-NBOMe).

(b) To the extent Subsection (a)(2) conflicts with another provision of this subtitle or another law, the other provision or the other law prevails.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 22, eff. Jan. 1, 1998.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 64 (S.B. 172), Sec. 2, eff. September 1, 2015.

Sec. 481.1022. PENALTY GROUP 1-B. Penalty Group 1-B consists of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

Alfentanil;

Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2- phenethyl)-4-piperidinyl] -N-phenylpropanamide);

Beta-hydroxy-3-methylfentanyl;

Carfentanil;

Fentanyl, alpha-methylfentanyl, and any other derivative of fentanyl;

3-methylfentanyl(N-[3-methyl-1-(2-phenylethyl)- 4-piperidyl]-N-phenylpropanamide);

3-methylthiofentanyl(N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);

Para-fluorofentanyl(N-(4-fluorophenyl)-N-1-(2-phenylethyl)-4-piperidinylpropanamide);

Remifentanil;

Sufentanil; and

Thiofentanyl(N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).

Added by Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 3, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 3, eff. September 1, 2023.

Sec. 481.103. PENALTY GROUP 2. (a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical

designation:

5-(2-aminopropyl)benzofuran (5-APB);

6-(2-aminopropyl)benzofuran (6-APB);

5-(2-aminopropyl)-2,3-dihydrobenzofuran (5-APDB);

6-(2-aminopropyl)-2,3-dihydrobenzofuran (6-APDB);

5-(2-aminopropyl)indole (5-IT,5-API);

6-(2-aminopropyl)indole (6-IT,6-API);

1-(benzofuran-5-yl)-N-methylpropan-2-amine (5-MAPB);

1-(benzofuran-6-yl)-N-methylpropan-2-amine (6-MAPB);

Benzothiophenylcyclohexylpiperidine (BTCP);

8-bromo-alpha-methyl-benzo[1,2-b:4,5-b']difuran- 4-ethanamine (trade or other name: Bromo-DragonFLY);

Desoxypipradrol (2-benzhydrylpiperidine);

2, 5-dimethoxyamphetamine (some trade or other names: 2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);

Diphenylprolinol (diphenyl(pyrrolidin-2-yl) methanol, D2PM);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (some trade or other names for Dronabinol: (a6aR-trans)-6a,7,8,10a-tetrahydro- 6,6, 9- trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9- (trans)-tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1- phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

2-ethylamino-2-(3-methoxyphenyl)cyclohexanone (trade or other name: methoxetamine);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

5-iodo-2-aminoindane (5-IAI);

Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

4-methoxymethamphetamine (PMMA);

2-(2-methoxyphenyl)-2-(methylamino)cyclohexanone (some trade and other names: 2-MeO-ketamine; methoxyketamine);

1-methyl- 4-phenyl-4-propionoxypiperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4-methyl-2, 5-dimethoxy-alpha- methylphenethylamine; "DOM"; "STP");

3,4-methylenedioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

3,4-methylenedioxy N-ethylamphetamine (Also known as N-ethyl MDA);

5,6-methylenedioxy-2-aminoindane (MDAI);

Nabilone (Another name for nabilone: (+)-trans- 3-(1,1-dimethylheptyl)- 6,6a, 7,8,10,10a-hexahydro-1-hydroxy- 6, 6-dimethyl-9H-dibenzo[b,d] pyran-9-one;

N-benzylpiperazine (some trade or other names: BZP; 1-benzylpiperazine);

N-ethyl-3-piperidyl benzilate;

N-hydroxy-3,4-methylenedioxyamphetamine (Also known as N-hydroxy MDA);

4-methylaminorex;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexanecarbonitrile (PCC);

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers; or

compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;

Thiophene Analog of Phencyclidine (some trade or other

names: 1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP);

1-pyrrolidine (some trade or other name: TCPy);

1-(3-trifluoromethylphenyl)piperazine (trade or other name: TFMPP); and

3,4,5-trimethoxy amphetamine;

(2) Phenylacetone (some trade or other names: Phenyl-2-propanone; P2P, Benzymethyl ketone, methyl benzyl ketone);

(3) unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

Aminorex (some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5- phenyl-2-oxazolamine);

Amphetamine, its salts, optical isomers, and salts of optical isomers;

Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2- aminopropiophenone);

Etaqualone and its salts;

Etorphine Hydrochloride;

Fenethylline and its salts;

Lisdexamfetamine, including its salts, isomers, and salts of isomers;

Mecloqualone and its salts;

Methaqualone and its salts;

Methcathinone (some trade or other names: 2-methylamino-propiophenone; alpha-(methylamino)propriophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropriophenone; monomethylpropion; ephedrone, N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR 1431);

N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers; and

N,N-dimethylamphetamine (some trade or other names: N,N,alpha-trimethylbenzeneethanamine; N,N,alpha-trimethylphenethylamine), its salts, optical isomers, and salts of optical isomers;

(4) any compound structurally derived from 2-aminopropanal by substitution at the 1-position with any monocyclic or fused-

polycyclic ring system, including:

(A) compounds further modified by:

(i) substitution in the ring system to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), whether or not further substituted in the ring system by other substituents;

(ii) substitution at the 3-position with an alkyl substituent; or

(iii) substitution at the 2-amino nitrogen atom with alkyl, benzyl, dialkyl, or methoxybenzyl groups, or inclusion of the 2-amino nitrogen atom in a cyclic structure; and

(B) by example, compounds such as:

4-Methylmethcathinone (Also known as Mephedrone);

3,4-Dimethylmethcathinone (Also known as 3,4-DMMC);

3-Fluoromethcathinone (Also known as 3-FMC);

4-Fluoromethcathinone (Also known as Flephedrone);

3,4-Methylenedioxy-N-methylcathinone (Also known as Methylone);

3,4-Methylenedioxypyrovalerone (Also known as MDPV);

alpha-Pyrrolidinopentiophenone (Also known as alpha-PVP);

Naphthylpyrovalerone (Also known as Naphyrone);

alpha-Methylamino-valerophenone (Also known as Pentedrone);

beta-Keto-N-methylbenzodioxolylpropylamine (Also known as Butylone);

beta-Keto-N-methylbenzodioxolylpentanamine (Also known as Pentylone);

beta-Keto-Ethylbenzodioxolylbutanamine (Also known as Eutylone); and

3,4-methylenedioxy-N-ethylcathinone (Also known as Ethylone);

(5) any compound structurally derived from tryptamine (3-(2-aminoethyl)indole) or a ring-hydroxy tryptamine:

(A) by modification in any of the following ways:

(i) by substitution at the amine nitrogen atom of the sidechain to any extent with alkyl or alkenyl groups or by inclusion of the amine nitrogen atom of the side chain (and no other atoms of the side chain) in a cyclic structure;

(ii) by substitution at the carbon atom adjacent to

the nitrogen atom of the side chain (alpha-position) with an alkyl or alkenyl group;

(iii) by substitution in the 6-membered ring to any extent with alkyl, alkoxy, haloalkyl, thioaklyl, alkylenedioxy, or halide substituents; or

(iv) by substitution at the 2-position of the tryptamine ring system with an alkyl substituent; and

(B) including:

(i) ethers and esters of the controlled substances listed in this subdivision; and

(ii) by example, compounds such as:

alpha-ethyltryptamine;

alpha-methyltryptamine;

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)- 5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N- dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

Dimethyltryptamine (trade or other name: DMT);

5-methoxy-N, N-diisopropyltryptamine (5-MeO-DiPT);

O-Acetylpsilocin (Trade or other name: 4-Aco-DMT);

Psilocin; and

Psilocybin;

(6) 2,5-Dimethoxyphenethylamine and any compound structurally derived from 2,5-Dimethoxyphenethylamine by substitution at the 4-position of the phenyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), including, by example, compounds such as:

4-Bromo-2,5-dimethoxyphenethylamine (trade or other name: 2C-B);

4-Chloro-2,5-dimethoxyphenethylamine (trade or other name: 2C-C);

2,5-Dimethoxy-4-methylphenethylamine (trade or other name: 2C-D);

4-Ethyl-2,5-dimethoxyphenethylamine (trade or other name: 2C-E);

4-Iodo-2,5-dimethoxyphenethylamine (trade or other name:

2C-I);

2,5-Dimethoxy-4-nitrophenethylamine (trade or other name: 2C-N);

2,5-Dimethoxy-4-(n)-propylphenethylamine (trade or other name: 2C-P);

4-Ethylthio-2,5-dimethoxyphenethylamine (trade or other name: 2C-T-2);

4-Isopropylthio-2,5-dimethoxyphenethylamine (trade or other name: 2C-T-4); and

2,5-Dimethoxy-4-(n)-propylthiophenethylamine (trade or other name: 2C-T-7); and

(7) 2,5-Dimethoxyamphetamine and any compound structurally derived from 2,5-Dimethoxyamphetamine by substitution at the 4-position of the phenyl ring to any extent (including alkyl, alkoxy, alkylenedioxy, haloalkyl, or halide substituents), including, by example, compounds such as:

4-Ethylthio-2,5-dimethoxyamphetamine (trade or other name: Aleph-2);

4-Isopropylthio-2,5-dimethoxyamphetamine (trade or other name: Aleph-4);

4-Bromo-2,5-dimethoxyamphetamine (trade or other name: DOB);

4-Chloro-2,5-dimethoxyamphetamine (trade or other name: DOC);

2,5-Dimethoxy-4-ethylamphetamine (trade or other name: DOET);

4-Iodo-2,5-dimethoxyamphetamine (trade or other name: DOI);

2,5-Dimethoxy-4-methylamphetamine (trade or other name: DOM);

2,5-Dimethoxy-4-nitroamphetamine (trade or other name: DON);

4-Isopropyl-2,5-dimethoxyamphetamine (trade or other name: DOIP); and

2,5-Dimethoxy-4-(n)-propylamphetamine (trade or other name: DOPR).

(b) For the purposes of Subsection (a)(1) only, the term "isomer" includes an optical, position, or geometric isomer.

(c) To the extent Subsection (a)(4), (5), (6), or (7) conflicts with another provision or this subtitle or another law, the other

provision or the other law prevails. If a substance listed in this section is also listed in another penalty group, the listing in the other penalty group controls.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 384 (S.B. 227), Sec. 1, and Ch. 491 (H.B. 2671), Sec. 3, eff. September 1, 2017.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 23, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1099, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 784 (H.B. 2118), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 64 (S.B. 172), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 384 (S.B. 227), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 491 (H.B. 2671), Sec. 3, eff. September 1, 2017.

Sec. 481.1031. PENALTY GROUP 2-A. (a) In this section:

(1) "Core component" is one of the following: azaindole, benzimidazole, benzothiazole, carbazole, imidazole, indane, indazole, indene, indole, pyrazole, pyrazolopyridine, pyridine, or pyrrole.

(2) "Group A component" is one of the following: adamantane, benzene, cycloalkylmethyl, isoquinoline, methylpiperazine, naphthalene, phenyl, quinoline, tetrahydronaphthalene, tetramethylcyclopropane, amino oxobutane, amino dimethyl oxobutane, amino phenyl oxopropane, methyl methoxy oxobutane, methoxy dimethyl oxobutane, methoxy phenyl oxopropane, or an amino acid.

(3) "Link component" is one of the following functional groups: carboxamide, carboxylate, hydrazide, methanone (ketone), ethanone, methanediyl (methylene bridge), or methine.

(b) Penalty Group 2-A consists of any material, compound, mixture, or preparation that contains any quantity of a natural or synthetic chemical substance, including its salts, isomers, and salts of isomers, listed by name in this subsection or contained within one

of the structural classes defined in this subsection:

(1) WIN-55,212-2;

(2) Cyclohexylphenol: any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring, (N-methylpiperidin-2-yl)alkyl, (4-tetrahydropyran)alkyl, or 2-(4-morpholinyl)alkyl, whether or not substituted in the cyclohexyl ring to any extent, including:

JWH-337;

JWH-344;

CP-55,940;

CP-47,497; and

analogues of CP-47,497;

(3) Cannabinol derivatives, except where contained in marihuana, including tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabinol or of its tetrahydro derivatives, such as:

Nabilone;

HU-210; and

HU-211;

(4) Tetramethylcyclopropyl thiazole: any compound structurally derived from 2,2,3,3-tetramethyl-N-(thiazol- 2-ylidene)cyclopropanecarboxamide by substitution at the nitrogen atom of the thiazole ring, whether or not further substituted in the thiazole ring to any extent, whether or not substituted in the tetramethylcyclopropyl ring to any extent, including:

A-836,339;

(5) any compound containing a core component substituted at the 1-position to any extent, and substituted at the 3-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including:

Naphthoylindane;

Naphthoylindazole (THJ-018);

Naphthyl methyl indene (JWH-171);

Naphthoylindole (JWH-018);

Quinolinoyl pyrazole carboxylate (Quinolinyl fluoropentyl fluorophenyl pyrazole carboxylate);

Naphthoyl pyrazolopyridine; and

Naphthoylpyrrole (JWH-030);

(6) any compound containing a core component substituted at the 1-position to any extent, and substituted at the 2-position with

a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including:

Naphthoylbenzimidazole (JWH-018 Benzimidazole); and

Naphthoylimidazole;

(7) any compound containing a core component substituted at the 3-position to any extent, and substituted at the 2-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including:

Naphthoyl benzothiazole; and

(8) any compound containing a core component substituted at the 9-position to any extent, and substituted at the 3-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including:

Naphthoylcarbazole (EG-018).

Added by Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 65 (S.B. 173), Sec. 2, eff. September 1, 2015.

Sec. 481.104. PENALTY GROUP 3. (a) Penalty Group 3 consists of:

(1) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Methylphenidate and its salts; and

Phenmetrazine and its salts;

(2) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise described by this subsection;

a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients that are not listed in any penalty group;

a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

Alprazolam;

Amobarbital;

Bromazepam;

Camazepam;

Carisoprodol;

Chlordiazepoxide;

Chlorhexadol;

Clobazam;

Clonazepam;

Clorazepate;

Clotiazepam;

Cloxazolam;

Delorazepam;

Diazepam;

Estazolam;

Ethyl loflazepate;

Etizolam;

Fludiazepam;

Flurazepam;

Glutethimide;

Halazepam;

Haloxzolam;

Ketazolam;

Loprazolam;

Lorazepam;

Lormetazepam;

Lysergic acid, including its salts, isomers, and salts of isomers;

Lysergic acid amide, including its salts, isomers, and salts of isomers;

Mebutamate;

Medazepam;

Methyprylon;
Midazolam;
Nimetazepam;
Nitrazepam;
Nordiazepam;
Oxazepam;
Oxazolam;
Pentazocine, its salts, derivatives, or compounds or mixtures thereof;
Pentobarbital;
Pinazepam;
Prazepam;
Quazepam;
Secobarbital;
Sulfondiethylmethane;
Sulfonethylmethane;
Sulfonmethane;
Temazepam;
Tetrazepam;
Tiletamine and zolazepam in combination, and its salts. (some trade or other names for a tiletamine-zolazepam combination product: Telazol, for tiletamine: 2-(ethylamino)- 2-(2-thienyl)-cyclohexanone, and for zolazepam: 4-(2- fluorophenyl)-6, 8-dihydro-1,3,8,-trimethylpyrazolo-[3,4- e](1,4)-d diazepin-7(1H)-one, flupyrazapon);
Tramadol;
Triazolam;
Zaleplon;
Zolpidem; and
Zopiclone;

(3) Nalorphine;

(4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit,

with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) a material, compound, mixture, or preparation that contains any quantity of the following substances:

Barbital;

Chloral betaine;

Chloral hydrate;

Ethchlorvynol;

Ethinamate;

Meprobamate;

Methohexital;

Methylphenobarbital (Mephobarbital);

Paraldehyde;

Petrichloral; and

Phenobarbital;

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as Lophophora, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(7) unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;
Cathine [(+)-norpseudoephedrine];
Chlorphentermine;
Clortermine;
Diethylpropion;
Fencamfamin;
Fenfluramine;
Fenproporex;
Mazindol;
Mefenorex;
Modafinil;
Pemoline (including organometallic complexes and their chelates);
Phendimetrazine;
Phentermine;
Pipradrol;
Sibutramine; and
SPA [(-)-1-dimethylamino-1,2-diphenylethane];

(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:

Dextropropoxyphene (Alpha-(+)-4-dimethylamino- 1,2-diphenyl-3-methyl-2-propionoxybutane);

(9) an anabolic steroid, including any drug or hormonal substance, or any substance that is chemically or pharmacologically related to testosterone, other than an estrogen, progestin,

dehydroepiandrosterone, or corticosteroid, and promotes muscle growth, including the following drugs and substances and any salt, ester, or ether of the following drugs and substances:

Androstanediol;
Androstanedione;
Androstenediol;
Androstenedione;
Bolasterone;
Boldenone;
Calusterone;
Clostebol;
Dehydrochlormethyltestosterone;
Delta-1-dihydrotestosterone;
Dihydrotestosterone (4-dihydrotestosterone);
Drostanolone;
Ethylestrenol;
Fluoxymesterone;
Formebulone;
Furazabol;
13beta-ethyl-17beta-hydroxygon-4-en-3-one;
4-hydroxytestosterone;
4-hydroxy-19-nortestosterone;
Mestanolone;
Mesterolone;
Methandienone;
Methandriol;
Methenolone;
17alpha-methyl-3beta, 17 beta-dihydroxy-5alpha-androstane;
17alpha-methyl-3alpha, 17 beta-dihydroxy-5alpha-androstane;
17alpha-methyl-3beta, 17beta-dihydroxyandrost-4- ene;
17alpha-methyl-4-hydroxynandrolone;
Methyldienolone;
Methyltestosterone;
Methyltrienolone;
17alpha-methyl-delta-1-dihydrotestosterone;
Mibolerone;
Nandrolone;
Norandrostenediol;

Norandrostenedione;
Norbolethone;
Norclostebol;
Norethandrolone;
Normethandrolone;
Oxandrolone;
Oxymesterone;
Oxymetholone;
Stanozolol;
Stenbolone;
Testolactone;
Testosterone;
Tetrahydrogestrinone; and
Trenbolone; and

(10) Salvia divinorum, unless unharvested and growing in its natural state, meaning all parts of that plant, whether growing or not, the seeds of that plant, an extract from a part of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant, its seeds, or extracts, including Salvinorin A.

(b) Penalty Group 3 does not include a compound, mixture, or preparation containing a stimulant substance listed in Subsection (a)(1) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a stimulant effect on the central nervous system.

(c) Penalty Group 3 does not include a compound, mixture, or preparation containing a depressant substance listed in Subsection (a)(2) or (a)(5) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a depressant effect on the central nervous system.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 24, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 739 (S.B. 449), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1254 (H.B. 124), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 491 (H.B. 2671), Sec. 2, eff. September 1, 2017.

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing any quantity of the narcotic drug Buprenorphine or Butorphanol or a salt of either; and

(3) unless specifically exempted or excluded or unless listed in another penalty group, any material, compound, mixture, or preparation that contains any quantity of pyrovalerone, a substance having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers.

Amended by Acts 1997, 75th Leg., ch. 745, Sec. 25, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 19, eff. Sept. 1, 2001.

Sec. 481.106. CLASSIFICATION OF CONTROLLED SUBSTANCE ANALOGUE. For the purposes of the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance, Penalty Groups 1, 1-A, 1-B, 2, and 2-A include a controlled substance analogue that:

(1) has a chemical structure substantially similar to the chemical structure of a controlled substance listed in the applicable penalty group; or

(2) is specifically designed to produce an effect substantially similar to, or greater than, a controlled substance listed in the applicable penalty group.

Added by Acts 2003, 78th Leg., ch. 1099, Sec. 9, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 65 (S.B. 173), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 5, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 4, eff. September 1, 2021.

Sec. 481.108. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 36, eff. Sept. 1, 1995.

Sec. 481.111. EXEMPTIONS. (a) The provisions of this chapter relating to the possession and distribution of peyote do not apply to the use of peyote by a member of the Native American Church in bona fide religious ceremonies of the church or to a person who supplies the substance to the church. An exemption granted to a member of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

(b) The provisions of this chapter relating to the possession of denatured sodium pentobarbital do not apply to possession by personnel of a humane society or an animal control agency for the purpose of destroying injured, sick, homeless, or unwanted animals if

the humane society or animal control agency is registered with the Federal Drug Enforcement Administration. The provisions of this chapter relating to the distribution of denatured sodium pentobarbital do not apply to a person registered as required by Subchapter C, who is distributing the substance for that purpose to a humane society or an animal control agency registered with the Federal Drug Enforcement Administration.

(c) A person does not violate Section 481.113, 481.116, 481.1161, 481.121, or 481.125 if the person possesses or delivers tetrahydrocannabinols or their derivatives, or drug paraphernalia to be used to introduce tetrahydrocannabinols or their derivatives into the human body, for use in a federally approved therapeutic research program.

(d) The provisions of this chapter relating to the possession and distribution of anabolic steroids do not apply to the use of anabolic steroids that are administered to livestock or poultry.

(e) Sections 481.120, 481.121, 481.122, and 481.125 do not apply to a person who engages in the acquisition, possession, production, cultivation, delivery, or disposal of a raw material used in or by-product created by the production or cultivation of low-THC cannabis if the person:

(1) for an offense involving possession only of marihuana or drug paraphernalia, is a patient for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code, or the patient's legal guardian, and the person possesses low-THC cannabis obtained under a valid prescription from a dispensing organization; or

(2) is a director, manager, or employee of a dispensing organization and the person, solely in performing the person's regular duties at the organization, acquires, possesses, produces, cultivates, dispenses, or disposes of:

(A) in reasonable quantities, any low-THC cannabis or raw materials used in or by-products created by the production or cultivation of low-THC cannabis; or

(B) any drug paraphernalia used in the acquisition, possession, production, cultivation, delivery, or disposal of low-THC cannabis.

(f) For purposes of Subsection (e):

(1) "Dispensing organization" has the meaning assigned by Section 487.001.

(2) "Low-THC cannabis" has the meaning assigned by Section

169.001, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(d), eff. Sept. 1, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 3, eff. June 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.004, eff. September 1, 2019.

Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than

15 years, and a fine not to exceed $250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.095, eff. September 1, 2009.
Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 4, eff. September 1, 2023.

Sec. 481.1121. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-A. (a) Except as provided by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-A.

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the second degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the first degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000; and

(4) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed $250,000, if the number of abuse units of the controlled substance is 4,000 or more.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 26, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 1188, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.096, eff. September 1, 2009.
Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 5, eff. September 1, 2023.

Sec. 481.1122. MANUFACTURE OF SUBSTANCE IN PENALTY GROUP 1: PRESENCE OF CHILD. If it is shown at the punishment phase of a trial for the manufacture of a controlled substance listed in Penalty Group 1 that when the offense was committed a child younger than 18 years of age was present on the premises where the offense was committed:

(1) the punishments specified by Sections 481.112(b) and (c) are increased by one degree;

(2) the minimum term of imprisonment specified by Section 481.112(e) is increased to 15 years and the maximum fine specified by that section is increased to $150,000; and

(3) the minimum term of imprisonment specified by Section 481.112(f) is increased to 20 years and the maximum fine specified by that section is increased to $300,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 840 (H.B. 946), Sec. 1, eff. September 1, 2007.

Sec. 481.1123. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1-B. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 1-B.

(b) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $20,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed $200,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 20 years, and a fine not to exceed $500,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Added by Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 5, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 6, eff. September 1, 2023.

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2 OR 2-A. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 2 or 2-A.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal

Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.097, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 4, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 7, eff. September 1, 2023.

Sec. 481.1131. CAUSE OF ACTION FOR SALE OR PROVISION OF SYNTHETIC CANNABINOID. (a) In this section, "synthetic cannabinoid" means a substance included in Penalty Group 2-A under Section 481.1031.

(b) This section does not affect the right of a person to bring a common law cause of action against an individual whose consumption or ingestion of a synthetic cannabinoid resulted in causing the person bringing the suit to suffer personal injury or property damage.

(c) Providing, selling, or serving a synthetic cannabinoid may be made the basis of a statutory cause of action under this section on proof that the intoxication of the recipient of the synthetic cannabinoid was a proximate cause of the damages suffered.

(d) The liability provided under this section for the actions of a retail establishment's employees, customers, members, or guests who are or become intoxicated by the consumption or ingestion of a synthetic cannabinoid is in lieu of common law or other statutory law warranties and duties of retail establishments.

(e) This chapter does not impose obligations on a retail establishment other than those expressly stated in this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 539 (S.B. 341), Sec. 3, eff.

September 1, 2017.

Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the first degree, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1188, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.098, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 8, eff. September 1, 2023.

Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1 OR 1-B. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses

a controlled substance listed in Penalty Group 1 or 1-B, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 200 grams.

(e) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(f) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(g) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) The defense to prosecution provided by Subsection (g) is

not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(i) The defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.099, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 6, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 9, eff. September 1, 2023.

Sec. 481.1151. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1-A. (a) Except as provided by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 1-A.

(b) An offense under this section is:

(1) a state jail felony if the number of abuse units of the controlled substance is fewer than 20;

(2) a felony of the third degree if the number of abuse units of the controlled substance is 20 or more but fewer than 80;

(3) a felony of the second degree if the number of abuse units of the controlled substance is 80 or more but fewer than 4,000;

(4) a felony of the first degree if the number of abuse units of the controlled substance is 4,000 or more but fewer than 8,000; and

(5) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 15 years and a fine not to exceed $250,000, if the number of abuse units of the controlled substance is 8,000 or more.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical

assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 26, eff. Jan. 1, 1998.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.100, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 10, eff. September 1, 2023.

Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a

controlled substance listed in Penalty Group 2, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than one gram.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, one gram or more but less than four grams.

(d) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the

actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.101, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 4, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 11, eff. September 1, 2023.

Sec. 481.1161. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2-A. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly possesses a controlled substance listed in Penalty Group 2-A, unless the person obtained the

substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under this section is:

(1) a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, two ounces or less;

(2) a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, four ounces or less but more than two ounces;

(3) a state jail felony if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 50 pounds or less but more than 5 pounds;

(5) a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 2,000 pounds or less but more than 50 pounds; and

(6) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, more than 2,000 pounds.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is

not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 5, eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 5, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 12, eff. September 1, 2023.

Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3. (a) Except as authorized by this chapter, a person commits

an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the second degree, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.118(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.102, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 6, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 13, eff. September 1, 2023.

Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a

controlled substance listed in Penalty Group 4, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of practice.

(b) An offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams.

(d) An offense under Subsection (a) is a felony of the second degree, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.

(e) An offense under Subsection (a) is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than five years, and a fine not to exceed $50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

(f) It is a defense to prosecution for an offense punishable under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(g) The defense to prosecution provided by Subsection (f) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place

from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.119(c), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(h) The defense to prosecution provided by Subsection (f) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (f) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.103, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 7, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 14, eff. September 1, 2023.

Sec. 481.119. OFFENSE: MANUFACTURE, DELIVERY, OR POSSESSION OF MISCELLANEOUS SUBSTANCES. (a) A person commits an offense if the person knowingly manufactures, delivers, or possesses with intent to deliver a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty

group. An offense under this subsection is a Class A misdemeanor, except that the offense is:

(1) a state jail felony, if the person has been previously convicted of an offense under this subsection; or

(2) a felony of the third degree, if the person has been previously convicted two or more times of an offense under this subsection.

(b) A person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group. An offense under this subsection is a Class B misdemeanor.

(c) It is a defense to prosecution for an offense under Subsection (b) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this

chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.121(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1188, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1030 (H.B. 1424), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 8, eff. September 1, 2021.

Sec. 481.1191. CIVIL LIABILITY FOR ENGAGING IN OR AIDING IN PRODUCTION, DISTRIBUTION, SALE, OR PROVISION OF SYNTHETIC SUBSTANCES. (a) In this section:

(1) "Minor" means a person younger than 18 years of age.

(2) "Synthetic substance" means an artificial substance that produces and is intended by the manufacturer to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002.

(b) A person is liable for damages proximately caused by the consumption or ingestion of a synthetic substance by another person if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the other person; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the other person.

(c) A person is strictly liable for all damages caused by the consumption or ingestion of a synthetic substance by a minor if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the minor; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the minor.

(d) A person who is found liable under this section or other law for any amount of damages arising from the consumption or ingestion by another of a synthetic substance is jointly and severally liable with any other person for the entire amount of damages awarded.

(e) Chapter 33, Civil Practice and Remedies Code, does not apply to an action brought under this section or an action brought under Section 17.50, Business & Commerce Code, based on conduct made actionable under Subsection (f) of this section.

(f) Conduct for which Subsection (b) or (c) creates liability is a false, misleading, or deceptive act or practice or an unconscionable action or course of action for purposes of Section 17.50, Business & Commerce Code, and that conduct is:

(1) actionable under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) subject to any remedy prescribed by that subchapter.

(g) An action brought under this section may include a claim for exemplary damages, which may be awarded in accordance with Section 41.003, Civil Practice and Remedies Code.

(h) Section 41.008, Civil Practice and Remedies Code, does not apply to the award of exemplary damages in an action brought under this section.

(i) Section 41.005, Civil Practice and Remedies Code, does not apply to a claim for exemplary damages in an action brought under this section.

(j) It is an affirmative defense to liability under this section that the synthetic substance produced, distributed, sold, or provided was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve a substance for use, sale, or distribution.

(k) It is not a defense to liability under this section that a synthetic substance was in packaging labeled with "Not for Human Consumption" or other wording indicating the substance is not intended to be ingested.

Added by Acts 2017, 85th Leg., R.S., Ch. 861 (H.B. 2612), Sec. 1, eff. September 1, 2017.

Sec. 481.120. OFFENSE: DELIVERY OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a state jail felony if the amount of marihuana delivered is five pounds or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is 50 pounds or less but more than five pounds;

(5) a felony of the first degree if the amount of marihuana delivered is 2,000 pounds or less but more than 50 pounds; and

(6) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed $100,000, if the amount of marihuana delivered is more than 2,000 pounds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.104, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 15, eff. September 1, 2023.

Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a) Except

as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;

(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a state jail felony if the amount of marihuana possessed is five pounds or less but more than four ounces;

(4) a felony of the third degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds;

(5) a felony of the second degree if the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and

(6) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed $50,000, if the amount of marihuana possessed is more than 2,000 pounds.

(c) It is a defense to prosecution for an offense punishable under Subsection (b)(1) or (2) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place

from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), or 481.118(b), or an offense under Section 481.119(b), 481.125(a), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.125(g), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.105, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 9, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 16, eff. September 1, 2023.

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO CHILD. (a) A person commits an offense if the person knowingly delivers a controlled substance listed in Penalty Group 1, 1-A, 1-B, 2, or 3 or knowingly delivers marihuana and the person delivers the controlled substance or marihuana to a person:

(1) who is a child;

(2) who is enrolled in a public or private primary or secondary school; or

(3) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person described by Subdivision (1) or (2).

(b) It is an affirmative defense to prosecution under this section that:

(1) the actor was a child when the offense was committed; or

(2) the actor:

(A) was younger than 21 years of age when the offense was committed;

(B) delivered only marihuana in an amount equal to or less than one-fourth ounce; and

(C) did not receive remuneration for the delivery.

(c) An offense under this section is a felony of the second degree.

(d) In this section, "child" means a person younger than 18 years of age.

(e) If conduct that is an offense under this section is also an offense under another section of this chapter, the actor may be prosecuted under either section or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 27, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 20, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 8, eff. September 1, 2021.

Sec. 481.123. DEFENSE TO PROSECUTION FOR OFFENSE INVOLVING CONTROLLED SUBSTANCE ANALOGUE. (a) It is an affirmative defense to the prosecution of an offense under this subchapter involving the manufacture, delivery, or possession of a controlled substance analogue that the analogue:

(1) was a substance for which there is an approved new drug application under Section 505 of the Federal Food, Drug, and Cosmetic

Act (21 U.S.C. Section 355); or

(2) was a substance for which an exemption for investigational use has been granted under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), if the actor's conduct with respect to the substance is in accord with the exemption.

(b) For the purposes of this section, Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355) applies to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 745, Sec. 28, eff. Jan. 1, 1998; Acts 2003, 78th Leg., ch. 1099, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 712 (H.B. 1212), Sec. 6, eff. September 1, 2015.

Sec. 481.124. OFFENSE: POSSESSION OR TRANSPORT OF CERTAIN CHEMICALS WITH INTENT TO MANUFACTURE CONTROLLED SUBSTANCE. (a) A person commits an offense if, with intent to unlawfully manufacture a controlled substance, the person possesses or transports:

(1) anhydrous ammonia;

(2) an immediate precursor; or

(3) a chemical precursor or an additional chemical substance named as a precursor by the director under Section 481.077(b)(1).

(b) For purposes of this section, an intent to unlawfully manufacture the controlled substance methamphetamine is presumed if the actor possesses or transports:

(1) anhydrous ammonia in a container or receptacle that is not designed and manufactured to lawfully hold or transport anhydrous ammonia;

(2) lithium metal removed from a battery and immersed in kerosene, mineral spirits, or similar liquid that prevents or retards hydration; or

(3) in one container, vehicle, or building, phenylacetic acid, or more than nine grams, three containers packaged for retail sale, or 300 tablets or capsules of a product containing ephedrine or

pseudoephedrine, and:

(A) anhydrous ammonia;

(B) at least three of the following categories of substances commonly used in the manufacture of methamphetamine:

(i) lithium or sodium metal or red phosphorus, iodine, or iodine crystals;

(ii) lye, sulfuric acid, hydrochloric acid, or muriatic acid;

(iii) an organic solvent, including ethyl ether, alcohol, or acetone;

(iv) a petroleum distillate, including naphtha, paint thinner, or charcoal lighter fluid; or

(v) aquarium, rock, or table salt; or

(C) at least three of the following items:

(i) an item of equipment subject to regulation under Section 481.080, if the person is not a registrant; or

(ii) glassware, a plastic or metal container, tubing, a hose, or other item specially designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine.

(c) For purposes of this section, a substance is presumed to be anhydrous ammonia if the substance is in a container or receptacle that is:

(1) designed and manufactured to lawfully hold or transport anhydrous ammonia; or

(2) not designed and manufactured to lawfully hold or transport anhydrous ammonia, if:

(A) a properly administered field test of the substance using a testing device or instrument designed and manufactured for that purpose produces a positive result for anhydrous ammonia; or

(B) a laboratory test of a water solution of the substance produces a positive result for ammonia.

(d) An offense under this section is:

(1) a felony of the second degree if the controlled substance is listed in Penalty Group 1, 1-A, or 1-B;

(2) a felony of the third degree if the controlled substance is listed in Penalty Group 2;

(3) a state jail felony if the controlled substance is listed in Penalty Group 3 or 4; or

(4) a Class A misdemeanor if the controlled substance is

listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group.

(e) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(f) This section does not apply to a chemical precursor exempted by the director under Section 481.077(b)(2) from the requirements of that section.

Added by Acts 2001, 77th Leg., ch. 1188, Sec. 7, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 570, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 6, eff. August 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 16, eff. September 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 9, eff. September 1, 2021.

Sec. 481.1245. OFFENSE: POSSESSION OR TRANSPORT OF ANHYDROUS AMMONIA; USE OF OR TAMPERING WITH EQUIPMENT. (a) A person commits an offense if the person:

(1) possesses or transports anhydrous ammonia in a container or receptacle that is not designed or manufactured to hold or transport anhydrous ammonia;

(2) uses, transfers, or sells a container or receptacle that is designed or manufactured to hold anhydrous ammonia without the express consent of the owner of the container or receptacle; or

(3) tampers with equipment that is manufactured or used to hold, apply, or transport anhydrous ammonia without the express consent of the owner of the equipment.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 7, eff. August 1, 2005.

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA. (a) A person commits an offense if the person

knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(c) A person commits an offense if the person commits an offense under Subsection (b), is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is younger than 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) is a Class C misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) or (c), in which event the offense is punishable by confinement in jail for a term of not more than one year or less than 90 days.

(f) An offense under Subsection (c) is a state jail felony.

(g) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(h) The defense to prosecution provided by Subsection (g) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 483.041(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 483 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 483.041(e), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(i) The defense to prosecution provided by Subsection (g) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (g) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 10, eff. September 1, 2021.

Sec. 481.126. OFFENSE: ILLEGAL BARTER, EXPENDITURE, OR INVESTMENT. (a) A person commits an offense if the person:

(1) barters property or expends funds the person knows are derived from the commission of a first degree felony offense under this chapter punishable by imprisonment in the Texas Department of Criminal Justice for life;

(2) barters property or expends funds the person knows are derived from the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5);

(3) barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense for which the punishment is described by Subdivision (1); or

(4) barters property or finances or invests funds the person knows or believes are intended to further the commission of an offense under Section 481.121(a) that is punishable under Section 481.121(b)(5).

(b) An offense under Subsection (a)(1) or (3) is a felony of the first degree. An offense under Subsection (a)(2) or (4) is a felony of the second degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 37, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 251, Sec. 21, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 712, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.106, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 17, eff. September 1, 2023.

Sec. 481.127. OFFENSE: UNAUTHORIZED DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person knowingly gives, permits, or obtains unauthorized access to information submitted to the board under Section 481.074(q) or 481.075.

(b) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 29, eff. Jan. 1, 1998.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 17, eff. September 1, 2016.

Sec. 481.128. OFFENSE AND CIVIL PENALTY: COMMERCIAL MATTERS. (a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Subchapter C;

(2) manufactures a controlled substance not authorized by the person's Federal Drug Enforcement Administration registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter;

(4) prints, manufactures, possesses, or produces an official prescription form without the approval of the board;

(5) delivers or possesses a counterfeit official prescription form;

(6) refuses an entry into a premise for an inspection authorized by this chapter;

(7) refuses or fails to return an official prescription form as required by Section 481.0755(k);

(8) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted by the director or the board; or

(9) refuses or fails to maintain security required by this chapter or a rule adopted under this chapter.

(b) If the registrant or dispenser knowingly refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information or maintain security required by a rule adopted by the director or the board, the registrant or dispenser is liable to the state for a civil penalty of not more than $5,000 for each act.

(c) An offense under Subsection (a) is a state jail felony.

(d) If a person commits an act that would otherwise be an

offense under Subsection (a) except that it was committed without the requisite culpable mental state, the person is liable to the state for a civil penalty of not more than $1,000 for each act.

(e) A district attorney of the county where the act occurred may file suit in district court in that county to collect a civil penalty under this section, or the district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 30, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 22, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 18, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 6, eff. September 1, 2019.

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 1, eff. September 1, 2011.

Sec. 481.129. OFFENSE: FRAUD. (a) A person commits an offense if the person knowingly:

(1) distributes as a registrant or dispenser a controlled substance listed in Schedule I or II, unless the person distributes the controlled substance as authorized under the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.);

(2) uses in the course of manufacturing, prescribing, or distributing a controlled substance a Federal Drug Enforcement Administration registration number that is fictitious, revoked, suspended, or issued to another person;

(3) issues a prescription bearing a forged or fictitious signature;

(4) uses a prescription issued to another person to prescribe a Schedule II controlled substance;

(5) possesses, obtains, or attempts to possess or obtain a controlled substance or an increased quantity of a controlled substance:

(A) by misrepresentation, fraud, forgery, deception, or subterfuge;

(B) through use of a fraudulent prescription form;

(C) through use of a fraudulent oral or telephonically communicated prescription; or

(D) through the use of a fraudulent electronic prescription; or

(6) furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

(a-1) A person commits an offense if the person, with intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(b) A person commits an offense if the person knowingly or intentionally:

(1) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce an actual or simulated trademark, trade name, or other identifying mark, imprint, or device of another on a controlled substance or the container or label of a container for a controlled substance, so as to make the controlled substance a counterfeit substance; or

(2) manufactures, delivers, or possesses with intent to deliver a counterfeit substance.

(c) A person commits an offense if the person knowingly or intentionally:

(1) delivers a prescription or a prescription form for other than a valid medical purpose in the course of professional practice; or

(2) possesses a prescription for a controlled substance or a prescription form unless the prescription or prescription form is possessed:

(A) during the manufacturing or distribution process;

(B) by a practitioner, practitioner's agent, or an institutional practitioner for a valid medical purpose during the course of professional practice;

(C) by a pharmacist or agent of a pharmacy during the professional practice of pharmacy;

(D) under a practitioner's order made by the practitioner for a valid medical purpose in the course of professional practice; or

(E) by an officer or investigator authorized to enforce this chapter within the scope of the officer's or investigator's official duties.

(d) An offense under Subsection (a) is:

(1) a felony of the second degree if the controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if the controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if the controlled substance that is the subject of the offense is listed in Schedule V.

(d-1) An offense under Subsection (a-1) is:

(1) a felony of the second degree if any controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if any controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

(e) An offense under Subsection (b) is a Class A misdemeanor.

(f) An offense under Subsection (c)(1) is:

(1) a felony of the second degree if the defendant delivers:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II; and

(2) a felony of the third degree if the defendant delivers a prescription for a controlled substance listed in Schedule III, IV, or V.

(g) An offense under Subsection (c)(2) is:

(1) a state jail felony if the defendant possesses:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II or III; and

(2) a Class B misdemeanor if the defendant possesses a prescription for a controlled substance listed in Schedule IV or V.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(p), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 745, Sec. 31, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 23, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 19, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 11, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 7, eff. September 1, 2019.

Sec. 481.130. PENALTIES UNDER OTHER LAW. A penalty imposed for an offense under this chapter is in addition to any civil or administrative penalty or other sanction imposed by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.131. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) A person commits an offense if the person intentionally or knowingly:

(1) converts to the person's own use or benefit a controlled substance property or plant seized under Section 481.152 or 481.153; or

(2) diverts to the unlawful use or benefit of another person a controlled substance property or plant seized under Section 481.152 or 481.153.

(b) An offense under this section is a state jail felony.

Added by Acts 1991, 72nd Leg., ch. 141, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.02, eff. Sept. 1, 1994.

Sec. 481.132. MULTIPLE PROSECUTIONS. (a) In this section, "criminal episode" means the commission of two or more offenses under this chapter under the following circumstances:

(1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme, plan, or continuing course of conduct; or

(2) the offenses are the repeated commission of the same or similar offenses.

(b) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode. If a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, not later than the 30th day before the date of the trial, the state shall file written notice of the action.

(c) If a judgment of guilt is reversed, set aside, or vacated

and a new trial is ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecution official at the time the first prosecution began.

(d) If the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which the accused has been found guilty shall be pronounced, and those sentences run concurrently.

(e) If it appears that a defendant or the state is prejudiced by a joinder of offenses, the court may order separate trials of the offenses or provide other relief as justice requires.

(f) This section provides the exclusive method for consolidation and joinder of prosecutions for offenses under this chapter. This section is not a limitation of Article 36.09 or 36.10, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 193, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 481.131 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(17a), eff. Nov. 12, 1991.

Sec. 481.133. OFFENSE: FALSIFICATION OF DRUG TEST RESULTS. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use any substance or device designed to falsify drug test results.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver a substance or device designed to falsify drug test results.

(c) In this section, "drug test" means a lawfully administered test designed to detect the presence of a controlled substance or marihuana.

(d) An offense under Subsection (a) is a Class B misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 274, Sec. 1, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 481.131 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(17b), eff. Nov. 12, 1991.

Sec. 481.134. DRUG-FREE ZONES. (a) In this section:

(1) "Minor" means a person who is younger than 18 years of age.

(2) "Institution of higher education" means any public or private technical institute, junior college, senior college or university, medical or dental unit, or other agency of higher education as defined by Section 61.003, Education Code.

(3) "Playground" means any outdoor facility that is not on the premises of a school and that:

(A) is intended for recreation;

(B) is open to the public; and

(C) contains three or more play stations intended for the recreation of children, such as slides, swing sets, and teeterboards.

(4) "Premises" means real property and all buildings and appurtenances pertaining to the real property.

(5) "School" means a private or public elementary or secondary school or a day-care center, as defined by Section 42.002, Human Resources Code.

(6) "Video arcade facility" means any facility that:

(A) is open to the public, including persons who are 17 years of age or younger;

(B) is intended primarily for the use of pinball or video machines; and

(C) contains at least three pinball or video machines.

(7) "Youth center" means any recreational facility or gymnasium that:

(A) is intended primarily for use by persons who are 17 years of age or younger; and

(B) regularly provides athletic, civic, or cultural activities.

(8) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(b) An offense otherwise punishable as a state jail felony under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or 481.120 is punishable as a felony of the third degree, an offense otherwise punishable as a felony of the third degree under any of those sections is punishable as a felony of the second degree, and an offense otherwise punishable as a felony of the second degree under any of those sections is punishable as a felony of the first degree,

if it is shown at the punishment phase of the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of premises owned, rented, or leased by an institution of higher learning, the premises of a public or private youth center, or a playground;

(2) in, on, or within 300 feet of the premises of a public swimming pool or video arcade facility; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(c) The minimum term of confinement or imprisonment for an offense otherwise punishable under Section 481.112(c), (d), (e), or (f), 481.1121(b)(2), (3), or (4), 481.1123(b), (c), (d), (e), or (f), 481.113(c), (d), or (e), 481.114(c), (d), or (e), 481.115(c)-(f), 481.1151(b)(2), (3), (4), or (5), 481.116(c), (d), or (e), 481.1161(b)(4), (5), or (6), 481.117(c), (d), or (e), 481.118(c), (d), or (e), 481.120(b)(4), (5), or (6), or 481.121(b)(4), (5), or (6) is increased by five years and the maximum fine for the offense is doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises of a school, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(d) An offense otherwise punishable under Section 481.112(b), 481.1121(b)(1), 481.113(b), 481.114(b), 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(3), 481.120(b)(3), or 481.121(b)(3) is a felony of the third degree if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by

a general residential operation operating as a residential treatment center.

(e) An offense otherwise punishable under Section 481.117(b), 481.119(a), 481.120(b)(2), or 481.121(b)(2) is a state jail felony if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(f) An offense otherwise punishable under Section 481.118(b), 481.119(b), 481.120(b)(1), or 481.121(b)(1) is a Class A misdemeanor if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of any real property that is owned, rented, or leased to a school or school board, the premises of a public or private youth center, or a playground;

(2) on a school bus; or

(3) by any unauthorized person 18 years of age or older, in, on, or within 1,000 feet of premises owned, rented, or leased by a general residential operation operating as a residential treatment center.

(g) Subsection (f) does not apply to an offense if:

(1) the offense was committed inside a private residence; and

(2) no minor was present in the private residence at the time the offense was committed.

(h) Punishment that is increased for a conviction for an offense listed under this section may not run concurrently with punishment for a conviction under any other criminal statute.

Added by Acts 1993, 73rd Leg., ch. 888, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 260, Sec. 39, eff. May 30, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 38, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1063, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 570, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 452 (H.B. 2467), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 452 (H.B. 2467), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 170 (S.B. 331), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 839 (S.B. 236), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 10, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 16, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 17, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.002, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 18, eff. September 1, 2023.

Sec. 481.135. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution under Section 481.134, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of drug-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment

is increased under Section 481.134; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 1993, 73rd Leg., ch. 888, Sec. 3, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.004, eff. September 1, 2005.

Sec. 481.136. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL PRECURSOR. (a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical precursor subject to Section 481.077(a) and the person:

(1) does not comply with Section 481.077 or 481.0771;

(2) knowingly makes a false statement in a report or record required by Section 481.077 or 481.0771; or

(3) knowingly violates a rule adopted under Section 481.077 or 481.0771.

(b) An offense under this section is a state jail felony, unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section or Section 481.137, in which event the offense is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 24, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 8, eff. August 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.005, eff. September 1, 2019.

Sec. 481.137. OFFENSE: TRANSFER OF PRECURSOR SUBSTANCE FOR UNLAWFUL MANUFACTURE. (a) A person commits an offense if the person sells, transfers, or otherwise furnishes a chemical precursor subject to Section 481.077(a) with the knowledge or intent that the recipient will use the chemical precursor to unlawfully manufacture a controlled substance or controlled substance analogue.

(b) An offense under this section is a felony of the third

degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 25, eff. Sept. 1, 2001.

Sec. 481.138. OFFENSE: UNLAWFUL TRANSFER OR RECEIPT OF CHEMICAL LABORATORY APPARATUS. (a) A person commits an offense if the person sells, transfers, furnishes, or receives a chemical laboratory apparatus subject to Section 481.080(a) and the person:

(1) does not comply with Section 481.080;

(2) knowingly makes a false statement in a report or record required by Section 481.080; or

(3) knowingly violates a rule adopted under Section 481.080.

(b) An offense under this section is a state jail felony, unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section, in which event the offense is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 26, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.006, eff. September 1, 2019.

Sec. 481.139. OFFENSE: TRANSFER OF CHEMICAL LABORATORY APPARATUS FOR UNLAWFUL MANUFACTURE. (a) A person commits an offense if the person sells, transfers, or otherwise furnishes a chemical laboratory apparatus with the knowledge or intent that the recipient will use the apparatus to unlawfully manufacture a controlled substance or controlled substance analogue.

(b) An offense under Subsection (a) is a felony of the third degree.

Added by Acts 1997, 75th Leg., ch. 745, Sec. 32, eff. Jan. 1, 1998.
Amended by Acts 2001, 77th Leg., ch. 251, Sec. 27, eff. Sept. 1, 2001.

Sec. 481.140. USE OF CHILD IN COMMISSION OF OFFENSE. (a) If it is shown at the punishment phase of the trial of an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, 481.120, or 481.122 that the defendant used or attempted to use a child younger than 18 years of age to commit or assist in the commission of the offense, the punishment is increased by one degree, unless the defendant used or threatened to use force against the child or another to gain the child's assistance, in which event the punishment for the offense is a felony of the first degree.

(b) Notwithstanding Article 42.08, Code of Criminal Procedure, if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

Added by Acts 2001, 77th Leg., ch. 786, Sec. 1, eff. June 14, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 11, eff. September 1, 2021.

Sec. 481.141. MANUFACTURE OR DELIVERY OF CONTROLLED SUBSTANCE CAUSING DEATH OR SERIOUS BODILY INJURY. (a) If at the guilt or innocence phase of the trial of an offense described by Subsection (b), the judge or jury, whichever is the trier of fact, determines beyond a reasonable doubt that a person died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing into the person's body any amount of the controlled substance manufactured or delivered by the defendant, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant, the punishment for the offense is increased by one degree.

(b) This section applies to an offense otherwise punishable as a state jail felony, felony of the third degree, or felony of the second degree under Section 481.112, 481.1121, 481.1123, 481.113, 481.114, or 481.122.

(c) Notwithstanding Article 42.08, Code of Criminal Procedure,

if punishment for a defendant is increased under this section, the court may not order the sentence for the offense to run concurrently with any other sentence the court imposes on the defendant.

(d) Punishment may not be increased under this section if the defendant is also prosecuted under Section 19.02(b)(4), Penal Code, for conduct occurring during the same criminal episode.

Added by Acts 2003, 78th Leg., ch. 712, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 12, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 19, eff. September 1, 2023.

SUBCHAPTER E. FORFEITURE

Sec. 481.151. DEFINITIONS. In this subchapter:

(1) "Controlled substance property" means a controlled substance, mixture containing a controlled substance, controlled substance analogue, counterfeit controlled substance, drug paraphernalia, chemical precursor, chemical laboratory apparatus, or raw material.

(2) "Controlled substance plant" means a species of plant from which a controlled substance listed in Schedule I or II may be derived.

(2-a) "Crime laboratory" has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(2-b) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code, and includes a local government corporation described by Section 411.0011 of that code.

(3) "Summary destruction" or "summarily destroy" means destruction without the necessity of any court action, a court order, or further proceedings.

(4) "Summary forfeiture" or "summarily forfeit" means forfeiture without the necessity of any court action, a court order, or further proceedings.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 251, Sec. 28, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 1, eff. May

21, 2007.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 1, eff. September 1, 2021.

Sec. 481.152. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PLANTS. (a) Controlled substance plants are subject to seizure and summary forfeiture to the state if:

(1) the plants have been planted, cultivated, or harvested in violation of this chapter;

(2) the plants are wild growths; or

(3) the owners or cultivators of the plants are unknown.

(b) Subsection (a) does not apply to unharvested peyote growing in its natural state.

(c) If a person who occupies or controls land or premises on which the plants are growing fails on the demand of a peace officer to produce an appropriate registration or proof that the person is the holder of the registration, the officer may seize and summarily forfeit the plants.

(d) If a controlled substance plant is seized and forfeited under this section, a court may order the disposition of the plant under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 2, eff. May 21, 2007.

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 3, eff. May 21, 2007.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 3, eff. September 1, 2021.

Sec. 481.153. SEIZURE, SUMMARY FORFEITURE, AND SUMMARY DESTRUCTION OR OTHER DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY. (a) Controlled substance property that is manufactured, delivered, or possessed in violation of this chapter is subject to seizure and summary forfeiture to the state.

(b) If an item of controlled substance property is seized and forfeited under this section, a court may order the disposition of the property under Section 481.159, or the department, a criminal justice agency, or a peace officer may summarily destroy the property under the rules of the department or dispose of the property in lieu of destruction as provided by Section 481.161.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 4, eff. May 21, 2007.

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 5, eff. May 21, 2007.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 4, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 5, eff. September 1, 2021.

Sec. 481.154. RULES. (a) The director may adopt reasonable rules and procedures, not inconsistent with the provisions of this chapter, concerning:

(1) summary forfeiture and summary destruction of controlled substance property or plants;

(2) establishment and operation of a secure storage area;

(3) delegation by a law enforcement agency head of the authority to access a secure storage area; and

(4) minimum tolerance for and the circumstances of loss or destruction during an investigation.

(b) The rules for the destruction of controlled substance property or plants must require:

(1) more than one person to witness the destruction of the property or plants;

(2) the preparation of an inventory of the property or plants destroyed; and

(3) the preparation of a statement that contains the names of the persons who witness the destruction and the details of the destruction.

(c) A document prepared under a rule adopted under this section must be completed, retained, and made available for inspection by the director.

Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 152 (S.B. 722), Sec. 6, eff. May 21, 2007.

Sec. 481.159. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) If a district court orders the forfeiture of a controlled substance property or plant under Chapter 59, Code of Criminal Procedure, or under this code, the court shall also order a law enforcement agency or a criminal justice agency to which the law enforcement agency transferred the property or plant for analysis and storage to:

(1) retain the property or plant for official law enforcement purposes, including use in the investigation of offenses under this code;

(2) deliver the property or plant to a government agency for official purposes;

(3) deliver the property or plant to a person authorized by the court to receive it;

(4) deliver the property or plant to a person authorized by the director to receive it; or

(5) destroy the property or plant that is not otherwise disposed of in the manner prescribed by this subchapter.

(b) The district court may not require the department to receive, analyze, or retain a controlled substance property or plant forfeited to a law enforcement agency other than the department.

(c) In order to ensure that a controlled substance property or plant is not diluted, substituted, diverted, or tampered with while being used in the investigation of offenses under this code, law enforcement agencies using the property or plant for this purpose shall:

(1) employ a qualified individual to conduct qualitative

and quantitative analyses of the property or plant before and after their use in an investigation;

(2) maintain the property or plant in a secure storage area accessible only to the law enforcement agency head and the individual responsible for analyzing, preserving, and maintaining security over the property or plant; and

(3) maintain a log documenting:

(A) the date of issue, date of return, type, amount, and concentration of property or plant used in an investigation; and

(B) the signature and the printed or typed name of the peace officer to whom the property or plant was issued and the signature and the printed or typed name of the individual issuing the property or plant.

(d) A law enforcement agency may contract with another law enforcement agency to provide security that complies with Subsection (c) for controlled substance property or plants.

(e) A law enforcement agency may adopt a written policy with more stringent requirements than those required by Subsection (c). The director may enter and inspect, in accordance with Section 481.181, a location at which an agency maintains records or controlled substance property or plants as required by this section.

(f) If a law enforcement agency uses a controlled substance property or plant in the investigation of an offense under this code and the property or plant has been transported across state lines before the forfeiture, the agency shall cooperate with a federal agency in the investigation if requested to do so by the federal agency.

(g) Under the rules of the department, a law enforcement agency head may grant to another person access to a secure storage facility under Subsection (c)(2).

(h) A county, justice, or municipal court may order forfeiture of a controlled substance property or plant, unless the lawful possession of and title to the property or plant can be ascertained. If the court determines that a person had lawful possession of and title to the controlled substance property or plant before it was seized, the court shall order the controlled substance property or plant returned to the person, if the person so desires. The court may only order the destruction of a controlled substance property or plant that is not otherwise disposed of in the manner prescribed by Section 481.160.

(i) If a controlled substance property or plant seized under this chapter was forfeited to an agency for the purpose of destruction or disposition under Section 481.161 in lieu of destruction or for any purpose other than investigation, the property or plant may not be used in an investigation unless a district court orders disposition under this section and permits the use of the property or plant in the investigation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 12, Sec. 5(a), eff. Oct. 18, 1989; Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 20, eff. September 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 6, eff. September 1, 2021.

Sec. 481.160. DISPOSITION OF EXCESS QUANTITIES. (a) If a controlled substance property or plant is forfeited under this code or under Chapter 59, Code of Criminal Procedure, the law enforcement agency that seized the property or plant or to which the property or plant is forfeited or a criminal justice agency to which the law enforcement agency transferred the property or plant for analysis and storage may summarily destroy the property or plant without a court order, or otherwise dispose of the property or plant in lieu of destruction in accordance with Section 481.161, before the disposition of a case arising out of the forfeiture if the agency ensures that:

(1) at least five random and representative samples are taken from the total amount of the property or plant and a sufficient quantity is preserved to provide for discovery by parties entitled to discovery;

(2) photographs are taken that reasonably depict the total amount of the property or plant; and

(3) the gross weight or liquid measure of the property or plant is determined, either by actually weighing or measuring the property or plant or by estimating its weight or measurement after making dimensional measurements of the total amount seized.

(b) If the property consists of a single container of liquid,

taking and preserving one representative sample complies with Subsection (a)(1).

(c) A representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance property or plant was offered in evidence, regardless of whether the remainder of the property or plant has been destroyed or otherwise disposed of. An inference or presumption of spoliation does not apply to a property or plant destroyed or otherwise disposed of under this section.

(d) If hazardous waste, residuals, contaminated glassware, associated equipment, or by-products from illicit chemical laboratories or similar operations that create a health or environmental hazard or are not capable of being safely stored are forfeited, those items may be disposed of under Subsection (a) or may be seized by and summarily forfeited to a law enforcement agency and destroyed by the law enforcement agency or by a criminal justice agency to which the law enforcement agency transferred the items for analysis and storage without a court order before the disposition of a case arising out of the forfeiture if current environmental protection standards are followed.

(e) A law enforcement agency seizing and destroying or disposing of materials described in Subsection (d) shall ensure that photographs are taken that reasonably depict the total amount of the materials seized and the manner in which the materials were physically arranged or positioned before seizure.

(f) Repealed by Acts 2005, 79th Leg., Ch. 1224, Sec. 19(2), eff. September 1, 2005.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.02(r), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 199, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 141, Sec. 1, eff. Sept; 1, 1991; Acts 1991, 72nd Leg., ch. 285, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 745, Sec. 33, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 251, Sec. 29, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1224 (H.B. 1068), Sec. 19(2), eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 7, eff.

September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 8, eff. September 1, 2021.

Sec. 481.161. DISPOSITION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT IN LIEU OF DESTRUCTION. (a) Controlled substance property or plants subject to summary destruction or ordered destroyed by a court may be disposed of in accordance with this section.

(b) A law enforcement agency or criminal justice agency may transfer the controlled substance property or plants to a crime laboratory to be used for the purposes of laboratory research, testing results validation, and training of analysts.

(c) The crime laboratory to which the controlled substance property or plants are transferred under Subsection (b) shall destroy or otherwise properly dispose of any unused quantities of the controlled substance property or plants.

(d) This section does not apply to evidence described by Section 481.160(d).

(e) The director may adopt rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 603 (S.B. 1125), Sec. 9, eff. September 1, 2021.

SUBCHAPTER F. INSPECTIONS, EVIDENCE, AND MISCELLANEOUS LAW ENFORCEMENT PROVISIONS

Sec. 481.181. INSPECTIONS. (a) The director may enter controlled premises at any reasonable time and inspect the premises and items described by Subsection (b) in order to inspect, copy, and verify the correctness of a record, report, or other document required to be made or kept under this chapter and to perform other functions under this chapter. For purposes of this subsection, "reasonable time" means any time during the normal business hours of the person or activity regulated under this chapter or any time an activity regulated under this chapter is occurring on the premises. The director shall:

(1) state the purpose of the entry;

(2) display to the owner, operator, or agent in charge of the premises appropriate credentials; and

(3) deliver to the owner, operator, or agent in charge of the premises a written notice of inspection authority.

(b) The director may:

(1) inspect and copy a record, report, or other document required to be made or kept under this chapter;

(2) inspect, within reasonable limits and in a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished drugs, other substances, and materials, containers, labels, records, files, papers, processes, controls, and facilities as appropriate to verify a record, report, or document required to be kept under this chapter or to administer this chapter;

(3) examine and inventory stock of a controlled substance and obtain samples of the controlled substance;

(4) examine a hypodermic syringe, needle, pipe, or other instrument, device, contrivance, equipment, control, container, label, or facility relating to a possible violation of this chapter; and

(5) examine a material used, intended to be used, or capable of being used to dilute or adulterate a controlled substance.

(c) Unless the owner, operator, or agent in charge of the controlled premises consents in writing, the director may not inspect:

(1) financial data;

(2) sales data other than shipment data; or

(3) pricing data.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 11, eff. Sept. 1, 2003.

Sec. 481.182. EVIDENTIARY RULES RELATING TO OFFER OF DELIVERY. For the purpose of establishing a delivery under this chapter, proof of an offer to sell must be corroborated by:

(1) a person other than the person to whom the offer is made; or

(2) evidence other than a statement of the person to whom the offer is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 12, eff. Sept. 1, 2003.

Sec. 481.183. EVIDENTIARY RULES RELATING TO DRUG PARAPHERNALIA. (a) In considering whether an item is drug paraphernalia under this chapter, a court or other authority shall consider, in addition to all other logically relevant factors, and subject to rules of evidence:

(1) statements by an owner or person in control of the object concerning its use;

(2) the existence of any residue of a controlled substance on the object;

(3) direct or circumstantial evidence of the intent of an owner or other person in control of the object to deliver it to a person whom the person knows or should reasonably know intends to use the object to facilitate a violation of this chapter;

(4) oral or written instructions provided with the object concerning its use;

(5) descriptive material accompanying the object that explains or depicts its use;

(6) the manner in which the object is displayed for sale;

(7) whether the owner or person in control of the object is a supplier of similar or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(9) the existence and scope of uses for the object in the community;

(10) the physical design characteristics of the item; and

(11) expert testimony concerning the item's use.

(b) The innocence of an owner or other person in charge of an object as to a direct violation of this chapter does not prevent a finding that the object is intended or designed for use as drug paraphernalia.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 13, eff. Sept. 1, 2003.

Sec. 481.184. BURDEN OF PROOF; LIABILITIES. (a) The state is not required to negate an exemption or exception provided by this chapter in a complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. A

person claiming the benefit of an exemption or exception has the burden of going forward with the evidence with respect to the exemption or exception.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this chapter.

(c) This chapter does not impose a liability on an authorized state, county, or municipal officer engaged in the lawful performance of official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 14, eff. Sept. 1, 2003.

Sec. 481.185. ARREST REPORTS. (a) Each law enforcement agency in this state shall file monthly with the director a report of all arrests made for drug offenses and quantities of controlled substances seized during the preceding month. The agency shall make the report on a form provided by the director and shall provide the information required by the form.

(b) The director shall publish an annual summary of all drug arrests and controlled substances seized in the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 481.186. COOPERATIVE ARRANGEMENTS. (a) The director shall cooperate with federal and state agencies in discharging the director's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. The director may:

(1) arrange for the exchange of information among government officials concerning the use and abuse of controlled substances;

(2) cooperate in and coordinate training programs concerning controlled substances law enforcement at local and state levels;

(3) cooperate with the Federal Drug Enforcement Administration and state agencies by establishing a centralized unit

to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders in this state and, except as provided by Section 481.068, make the information available for federal, state, and local law enforcement purposes; and

(4) conduct programs of eradication aimed at destroying wild or illegal growth of plant species from which controlled substances may be extracted.

(b) In the exercise of regulatory functions under this chapter, the director may rely on results, information, and evidence relating to the regulatory functions of this chapter received from the Federal Drug Enforcement Administration or a state agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1099, Sec. 15, eff. Sept. 1, 2003.

SUBCHAPTER G. THERAPEUTIC RESEARCH PROGRAM

Sec. 481.201. RESEARCH PROGRAM; REVIEW BOARD. (a) The executive commissioner may establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this chapter.

(b) If the executive commissioner establishes the program, the executive commissioner shall create a research program review board. The review board members are appointed by the executive commissioner and serve at the will of the executive commissioner.

(c) The review board shall be composed of:

(1) a licensed physician certified by the American Board of Ophthalmology;

(2) a licensed physician certified by the American Board of Internal Medicine and certified in the subspecialty of medical oncology;

(3) a licensed physician certified by the American Board of Psychiatry;

(4) a licensed physician certified by the American Board of Surgery;

(5) a licensed physician certified by the American Board of Radiology; and

(6) a licensed attorney with experience in law pertaining

to the practice of medicine.

(d) Members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1232, eff. April 2, 2015.

Sec. 481.202. REVIEW BOARD POWERS AND DUTIES. (a) The review board shall review research proposals submitted and medical case histories of persons recommended for participation in a research program and determine which research programs and persons are most suitable for the therapy and research purposes of the program. The review board shall approve the research programs, certify program participants, and conduct periodic reviews of the research and participants.

(b) The review board, after approval of the executive commissioner, may seek authorization to expand the research program to include diseases not covered by this subchapter.

(c) The review board shall maintain a record of all persons in charge of approved research programs and of all persons who participate in the program as researchers or as patients.

(d) The executive commissioner may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as the executive commissioner determines necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1233, eff. April 2, 2015.

Sec. 481.203. PATIENT PARTICIPATION. (a) A person may not be considered for participation as a recipient of tetrahydrocannabinols and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician who is licensed by the Texas Medical Board and is attending the person.

(b) A physician may not recommend a person for the research program unless the person:

(1) has glaucoma or cancer;

(2) is not responding to conventional treatment for glaucoma or cancer or is experiencing severe side effects from treatment; and

(3) has symptoms or side effects from treatment that may be alleviated by medical use of tetrahydrocannabinols or their derivatives.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1234, eff. April 2, 2015.

Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED SUBSTANCES. (a) The executive commissioner shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations adopted by the institute, the United States Food and Drug Administration, and the Federal Drug Enforcement Administration.

(b) The executive commissioner shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives of tetrahydrocannabinols may be distributed only by the person in charge of the research program to physicians caring for program participant patients, under rules adopted by the executive commissioner in such a manner as to prevent unauthorized diversion of the substances and in compliance with all requirements of the Federal Drug Enforcement Administration. The physician is responsible for dispensing the substances to patients.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1235, eff. April 2, 2015.

Sec. 481.205. RULES; REPORTS. (a) The executive commissioner shall adopt rules necessary for implementing the research program.

(b) If the executive commissioner establishes a program under this subchapter, the commissioner shall publish a report not later than January 1 of each odd-numbered year on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1236, eff. April 2, 2015.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 481.301. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates Section 481.067, 481.077, 481.0771, or 481.080 or a rule or order adopted under any of those sections.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 21, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.007, eff. September 1, 2019.

Sec. 481.302. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $20,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.303. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report to the person by certified mail, registered mail, personal delivery, or another manner of delivery that records the person's receipt of the notice.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.304. PENALTY TO BE PAID OR INFORMAL HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 481.303, the person in writing may:

(1) accept the determination and recommended penalty; or

(2) make a request for an informal hearing held by the department on the occurrence of the violation, the amount of the penalty, or both.

(b) At the conclusion of an informal hearing requested under Subsection (a), the department may modify the amount of the recommended penalty.

(c) If the person accepts the determination and recommended penalty, including any modification of the amount, or if the person fails to timely respond to the notice, the director by order shall approve the determination and impose the recommended penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.305. FORMAL HEARING. (a) The person may request a formal hearing only after participating in an informal hearing.

(b) The request must be submitted in writing and received by the department before the 21st day after the date the person is notified of the decision from the informal hearing.

(c) If a timely request for a formal hearing is not received, the director by order shall approve the determination from the informal hearing and impose the recommended penalty.

(d) If the person timely requests a formal hearing, the director shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the director and to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(e) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the director a proposal for a decision about the occurrence of the violation and the amount of any proposed penalty.

(f) If a penalty is proposed under Subsection (e), the administrative law judge shall include in the proposal for a decision a finding setting out costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding. The director may adopt the finding and impose the costs, fees, and expenses on the person as part of the final order entered in the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.306. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the director by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the director's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person

to judicial review of the order.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 481.306 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.308. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 481.307, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the director by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the director may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as

soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.309. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.310. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.311. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.312. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.313. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

Sec. 481.314. DISPOSITION OF PENALTY. The department shall send any amount collected as a penalty under this subchapter to the comptroller for deposit to the credit of the general revenue fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1391 (S.B. 1879), Sec. 5, eff. September 1, 2007.

SUBCHAPTER I. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP

Sec. 481.351. INTERAGENCY PRESCRIPTION MONITORING WORK GROUP. The interagency prescription monitoring work group is created to evaluate the effectiveness of prescription monitoring under this chapter and offer recommendations to improve the effectiveness and efficiency of recordkeeping and other functions related to the regulation of dispensing controlled substances by prescription.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4,

eff. September 1, 2013.

Sec. 481.352. MEMBERS. The work group is composed of:

(1) the executive director of the board or the executive director's designee, who serves as chair of the work group;

(2) the commissioner of state health services or the commissioner's designee;

(3) the executive director of the Texas Medical Board or the executive director's designee;

(4) the executive director of the Texas Board of Nursing or the executive director's designee;

(5) the executive director of the Texas Physician Assistant Board or the executive director's designee;

(6) the executive director of the State Board of Dental Examiners or the executive director's designee;

(7) the executive director of the Texas Optometry Board or the executive director's designee;

(8) the executive director of the Texas Department of Licensing and Regulation or the executive director's designee;

(9) the executive director of the State Board of Veterinary Medical Examiners or the executive director's designee; and

(10) a medical examiner appointed by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 22, eff. June 20, 2015.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 61, eff. September 1, 2017.

Sec. 481.353. MEETINGS. (a) The work group shall meet when necessary as determined by the board.

(b) The work group is subject to Chapter 551, Government Code.

(c) The work group shall proactively engage stakeholders and solicit and take into account input from the public.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.004, eff. September 1, 2019.

Sec. 481.354. REPORT. Not later than December 1 of each even-numbered year, the work group shall submit to the legislature its recommendations relating to prescription monitoring.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 4, eff. September 1, 2013.

CHAPTER 482. SIMULATED CONTROLLED SUBSTANCES

Sec. 482.001. DEFINITIONS. In this chapter:

(1) "Controlled substance" has the meaning assigned by Sec. 481.002 (Texas Controlled Substances Act).

(2) "Deliver" means to transfer, actually or constructively, from one person to another a simulated controlled substance, regardless of whether there is an agency relationship. The term includes offering to sell a simulated controlled substance.

(3) "Manufacture" means to make a simulated controlled substance and includes the preparation of the substance in dosage form by mixing, compounding, encapsulating, tableting, or any other process.

(4) "Simulated controlled substance" means a substance that is purported to be a controlled substance, but is chemically different from the controlled substance it is purported to be.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance

in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

(1) acting in the discharge of the person's official duties as a peace officer;

(2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.03, eff. Sept. 1, 1994.

Sec. 482.003. EVIDENTIARY RULES. (a) In determining whether a person has represented a simulated controlled substance to be a controlled substance in a manner that would lead a reasonable person to believe the substance was a controlled substance, a court may consider, in addition to all other logically relevant factors, whether:

(1) the simulated controlled substance was packaged in a manner normally used for the delivery of a controlled substance;

(2) the delivery or intended delivery included an exchange of or demand for property as consideration for delivery of the substance and the amount of the consideration was substantially in excess of the reasonable value of the simulated controlled substance;

and

(3) the physical appearance of the finished product containing the substance was substantially identical to a controlled substance.

(b) Proof of an offer to sell a simulated controlled substance must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 482.004. SUMMARY FORFEITURE. A simulated controlled substance seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in the same manner as is a controlled substance property under Subchapter E, Chapter 481.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 141, Sec. 3, eff. Sept. 1, 1991.

Sec. 482.005. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this chapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 39, eff. Sept. 1, 1995.

CHAPTER 483. DANGEROUS DRUGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 483.0001. SHORT TITLE. This Act may be cited as the Texas Dangerous Drug Act.

Added by Acts 1993, 73rd Leg., ch. 789, Sec. 18, eff. Sept. 1, 1993.

Sec. 483.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Pharmacy.

(2) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that

bears or is required to bear the legend:

(A) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(B) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(3) "Deliver" means to sell, dispense, give away, or supply in any other manner.

(4) "Designated agent" means:

(A) a licensed nurse, physician assistant, pharmacist, or other individual designated by a practitioner to communicate prescription drug orders to a pharmacist;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom the practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to carry out a prescription drug order for dangerous drugs under Subchapter B, Chapter 157, Occupations Code.

(5) "Dispense" means to prepare, package, compound, or label a dangerous drug in the course of professional practice for delivery under the lawful order of a practitioner to an ultimate user or the user's agent.

(6) "Manufacturer" means a person, other than a pharmacist, who manufactures dangerous drugs. The term includes a person who prepares dangerous drugs in dosage form by mixing, compounding, encapsulating, entableting, or any other process.

(7) "Patient" means:

(A) an individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(B) an owner or the agent of an owner of an animal for which a dangerous drug is prescribed or to which a dangerous drug is administered.

(8) "Person" includes an individual, corporation, partnership, and association.

(9) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy.

(10) "Pharmacy" means a facility where prescription drug or medication orders are received, processed, dispensed, or distributed under this chapter, Chapter 481 of this code, and Subtitle J, Title

3, Occupations Code. The term does not include a narcotic drug treatment program that is regulated by Chapter 466, Health and Safety Code.

(11) "Practice of pharmacy" means:

(A) provision of those acts or services necessary to provide pharmaceutical care;

(B) interpretation and evaluation of prescription drug orders or medication orders;

(C) participation in drug and device selection as authorized by law, drug administration, drug regimen review, or drug or drug-related research;

(D) provision of patient counseling;

(E) responsibility for:

(i) dispensing of prescription drug orders or distribution of medication orders in the patient's best interest;

(ii) compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager, or distributor of nonprescription drugs and commercially packaged prescription drugs and devices;

(iii) proper and safe storage of drugs and devices; or

(iv) maintenance of proper records for drugs and devices. In this subdivision, "device" has the meaning assigned by Subtitle J, Title 3, Occupations Code; or

(F) performance of a specific act of drug therapy management for a patient delegated to a pharmacist by a written protocol from a physician licensed by the state under Subtitle B, Title 3, Occupations Code.

(12) "Practitioner" means:

(A) a person licensed by:

(i) the Texas Medical Board, State Board of Dental Examiners, Texas Optometry Board, or State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs; or

(ii) the Texas Department of Licensing and Regulation, with respect to podiatry, to prescribe and administer dangerous drugs;

(B) a person licensed by another state in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs;

(C) a person licensed in Canada or Mexico in a health

field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054, Occupations Code.

(13) "Prescription" means an order from a practitioner, or an agent of the practitioner designated in writing as authorized to communicate prescriptions, or an order made in accordance with Subchapter B, Chapter 157, Occupations Code, or Section 203.353, Occupations Code, to a pharmacist for a dangerous drug to be dispensed that states:

(A) the date of the order's issue;

(B) the name and address of the patient;

(C) if the drug is prescribed for an animal, the species of the animal;

(D) the name and quantity of the drug prescribed;

(E) the directions for the use of the drug;

(F) the intended use of the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient;

(G) the name, address, and telephone number of the practitioner at the practitioner's usual place of business, legibly printed or stamped; and

(H) the name, address, and telephone number of the licensed midwife, registered nurse, or physician assistant, legibly printed or stamped, if signed by a licensed midwife, registered nurse, or physician assistant.

(14) "Warehouseman" means a person who stores dangerous drugs for others and who has no control over the disposition of the drugs except for the purpose of storage.

(15) "Wholesaler" means a person engaged in the business of distributing dangerous drugs to a person listed in Sections 483.041(c)(1)-(6).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(h), 5.04(b), eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 200, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 237, Sec. 10, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 588, Sec. 26, eff. Sept. 1, 1991; Acts 1993,

73rd Leg., ch. 351, Sec. 29, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 6, 82, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1095, Sec. 18, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1180, Sec. 22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 112, Sec. 6, eff. May 11, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.795, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 10, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 54, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 24, eff. November 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.010, eff. September 1, 2019.

Sec. 483.002. RULES. The board may adopt rules for the proper administration and enforcement of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.003. DEPARTMENT OF STATE HEALTH SERVICES HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The Department of State Health Services may hold public hearings in accordance with Chapter 2001, Government Code, to determine whether there is compelling evidence that a dangerous drug has been abused, either by being prescribed for nontherapeutic purposes or by the ultimate user.

(b) On finding that a dangerous drug has been abused, the Department of State Health Services may limit the availability of the abused drug by permitting its dispensing only on the prescription of a practitioner described by Section 483.001(12)(A), (B), or (D).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1180, Sec. 23, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 112, Sec. 7, eff. May 11, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1237, eff.

April 2, 2015.

Sec. 483.004. COMMISSIONER OF STATE HEALTH SERVICES EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the commissioner of state health services has compelling evidence that an immediate danger to the public health exists as a result of the prescription of a dangerous drug by practitioners described by Section 483.001(12)(C), the commissioner may use the commissioner's existing emergency authority to limit the availability of the drug by permitting its prescription only by practitioners described by Section 483.001(12)(A), (B), or (D).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 8, eff. May 11, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1238, eff. April 2, 2015.

SUBCHAPTER B. DUTIES OF PHARMACISTS, PRACTITIONERS, AND OTHER PERSONS

Sec. 483.021. DETERMINATION BY PHARMACIST ON REQUEST TO DISPENSE DRUG. (a) A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a practitioner shall determine, in the exercise of the pharmacist's professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a dangerous drug if the pharmacist knows or should have known that the prescription was issued without a valid patient-practitioner relationship.

(b) A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a therapeutic optometrist shall determine, in the exercise of the pharmacist's professional judgment, whether the prescription is for a dangerous drug that a therapeutic optometrist is authorized to prescribe under Section 351.358, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 588, Sec. 27, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1254, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.796, eff. Sept. 1, 2001.

Sec. 483.022. PRACTITIONER'S DESIGNATED AGENT; PRACTITIONER'S RESPONSIBILITIES. (a) A practitioner shall provide in writing the name of each designated agent as defined by Section 483.001(4)(A) and (C), and the name of each healthcare facility which employs persons defined by Section 483.001(4)(B).

(b) The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents or healthcare facilities as defined by Section 483.001(4).

(c) The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a designated agent as defined by Section 483.001(4) on the pharmacist's request.

(d) This section does not relieve a practitioner or the practitioner's designated agent from the requirements of Subchapter A, Chapter 562, Occupations Code.

(e) A practitioner remains personally responsible for the actions of a designated agent who communicates a prescription to a pharmacist.

(f) A practitioner may designate a person who is a licensed vocational nurse or has an education equivalent to or greater than that required for a licensed vocational nurse to communicate prescriptions of an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Subchapter B, Chapter 157, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 201, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 237, Sec. 11, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 789, Sec. 19, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 428, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.797, eff. Sept. 1, 2001.

Sec. 483.023. RETENTION OF PRESCRIPTIONS. A pharmacy shall retain a prescription for a dangerous drug dispensed by the pharmacy for two years after the date of the initial dispensing or the last refilling of the prescription, whichever date is later.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL. The

following persons shall maintain a record of each acquisition and each disposal of a dangerous drug for two years after the date of the acquisition or disposal:

(1) a pharmacy;

(2) a practitioner;

(3) a person who obtains a dangerous drug for lawful research, teaching, or testing purposes, but not for resale;

(4) a hospital that obtains a dangerous drug for lawful administration by a practitioner; and

(5) a manufacturer or wholesaler licensed by the Department of State Health Services under Chapter 431 (Texas Food, Drug, and Cosmetic Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1239, eff. April 2, 2015.

Sec. 483.025. INSPECTIONS; INVENTORIES. A person required to keep records relating to dangerous drugs shall:

(1) make the records available for inspection and copying at all reasonable hours by any public official or employee engaged in enforcing this chapter; and

(2) allow the official or employee to inventory all stocks of dangerous drugs on hand.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 483.041. POSSESSION OF DANGEROUS DRUG. (a) A person commits an offense if the person possesses a dangerous drug unless the person obtains the drug from a pharmacist acting in the manner described by Section 483.042(a)(1) or a practitioner acting in the manner described by Section 483.042(a)(2).

(b) Except as permitted by this chapter, a person commits an offense if the person possesses a dangerous drug for the purpose of selling the drug.

(c) Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the

performance of official duties by the following persons or an agent or employee of the person:

(1) a pharmacy licensed by the board;

(2) a practitioner;

(3) a person who obtains a dangerous drug for lawful research, teaching, or testing, but not for resale;

(4) a hospital that obtains a dangerous drug for lawful administration by a practitioner;

(5) an officer or employee of the federal, state, or local government;

(6) a manufacturer or wholesaler licensed by the Department of State Health Services under Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(7) a carrier or warehouseman;

(8) a home and community support services agency licensed under and acting in accordance with Chapter 142;

(9) a licensed midwife who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 203.353, Occupations Code;

(10) a salvage broker or salvage operator licensed under Chapter 432; or

(11) a certified laser hair removal professional under Subchapter M, Chapter 401, who possesses and uses a laser or pulsed light device approved by and registered with the Department of State Health Services and in compliance with department rules for the sole purpose of cosmetic nonablative hair removal.

(d) An offense under this section is a Class A misdemeanor.

(e) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(f) The defense to prosecution provided by Subsection (e) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), or 485.031(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 485;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), or 485.031(c); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(g) The defense to prosecution provided by Subsection (e) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (e) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(f), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 16, Sec. 2, eff. April 2, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 20, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 307, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 41, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1095, Sec. 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1129, Sec. 2,

eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 265, Sec. 9, eff. May 22, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.798, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 55, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 303 (H.B. 449), Sec. 2, eff. September 1, 2010.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1240, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 11, eff. September 1, 2021.

Sec. 483.042. DELIVERY OR OFFER OF DELIVERY OF DANGEROUS DRUG. (a) A person commits an offense if the person delivers or offers to deliver a dangerous drug:

(1) unless:

(A) the dangerous drug is delivered or offered for delivery by a pharmacist under:

(i) a prescription issued by a practitioner described by Section 483.001(12)(A) or (B);

(ii) a prescription signed by a registered nurse or physician assistant in accordance with Subchapter B, Chapter 157, Occupations Code; or

(iii) an original written prescription issued by a practitioner described by Section 483.001(12)(C); and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the pharmacy from which the drug is delivered or offered for delivery;

(ii) the date the prescription for the drug is dispensed;

(iii) the number of the prescription as filed in the prescription files of the pharmacy from which the prescription is dispensed;

(iv) the name of the practitioner who prescribed the drug and, if applicable, the name of the registered nurse or physician assistant who signed the prescription;

(v) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(vi) directions for the use of the drug as contained in the prescription; or

(2) unless:

(A) the dangerous drug is delivered or offered for delivery by:

(i) a practitioner in the course of practice; or

(ii) a registered nurse or physician assistant in the course of practice in accordance with Subchapter B, Chapter 157, Occupations Code; and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the practitioner who prescribed the drug, and if applicable, the name and address of the registered nurse or physician assistant;

(ii) the date the drug is delivered;

(iii) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(iv) the name of the drug, the strength of the drug, and directions for the use of the drug.

(b) Subsection (a) does not apply to the delivery or offer for delivery of a dangerous drug to a person listed in Section 483.041(c) for use in the usual course of business or practice or in the performance of official duties by the person.

(c) Proof of an offer to sell a dangerous drug must be corroborated by a person other than the offeree or by evidence other than a statement by the offeree.

(d) An offense under this section is a state jail felony.

(e) The labeling provisions of Subsection (a) do not apply to a dangerous drug prescribed or dispensed for administration to a patient who is institutionalized. The board shall adopt rules for the labeling of such a drug.

(f) Provided all federal requirements are met, the labeling provisions of Subsection (a) do not apply to a dangerous drug prescribed or dispensed for administration to food production animals in an agricultural operation under a written medical directive or

treatment guideline from a veterinarian licensed under Chapter 801, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.03(g), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 287, Sec. 34, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 789, Sec. 21, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 2.04, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 965, Sec. 7, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1180, Sec. 24, eff. Sept; 1, 1997; Acts 1999, 76th Leg., ch. 1404, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.799, eff. Sept. 1, 2001.

Sec. 483.043. MANUFACTURE OF DANGEROUS DRUG. (a) A person commits an offense if the person manufactures a dangerous drug and the person is not authorized by law to manufacture the drug.

(b) An offense under this section is a state jail felony.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.05, eff. Sept. 1, 1994.

Sec. 483.045. FORGING OR ALTERING PRESCRIPTION. (a) A person commits an offense if the person:

(1) forges a prescription or increases the prescribed quantity of a dangerous drug in a prescription;

(2) issues a prescription bearing a forged or fictitious signature;

(3) obtains or attempts to obtain a dangerous drug by using a forged, fictitious, or altered prescription;

(4) obtains or attempts to obtain a dangerous drug by means of a fictitious or fraudulent telephone call; or

(5) possesses a dangerous drug obtained by a forged, fictitious, or altered prescription or by means of a fictitious or fraudulent telephone call.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.046. FAILURE TO RETAIN PRESCRIPTION. (a) A pharmacist commits an offense if the pharmacist:

(1) delivers a dangerous drug under a prescription; and

(2) fails to retain the prescription as required by Section 483.023.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.047. REFILLING PRESCRIPTION WITHOUT AUTHORIZATION. (a) Except as authorized by Subsections (b) and (b-1), a pharmacist commits an offense if the pharmacist refills a prescription unless:

(1) the prescription contains an authorization by the practitioner for the refilling of the prescription, and the pharmacist refills the prescription in the manner provided by the authorization; or

(2) at the time of refilling the prescription, the pharmacist is authorized to do so by the practitioner who issued the prescription.

(b) A pharmacist may exercise his professional judgment in refilling a prescription for a dangerous drug without the authorization of the prescribing practitioner provided:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred which prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of drug dispensed does not exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's

agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(b-1) Notwithstanding Subsection (b), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a dangerous drug without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the board, through the executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a dangerous drug.

(b-2) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a dangerous drug under Subsection (b-1).

(c) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 789, Sec. 22, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 1, eff. September 1, 2015.

Sec. 483.048. UNAUTHORIZED COMMUNICATION OF PRESCRIPTION. (a) An agent of a practitioner commits an offense if the agent communicates by telephone a prescription unless the agent is designated in writing under Section 483.022 as authorized by the practitioner to communicate prescriptions by telephone.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant

has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.049. FAILURE TO MAINTAIN RECORDS. (a) A person commits an offense if the person is required to maintain a record under Section 483.023 or 483.024 and the person fails to maintain the record in the manner required by those sections.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.050. REFUSAL TO PERMIT INSPECTION. (a) A person commits an offense if the person is required to permit an inspection authorized by Section 483.025 and fails to permit the inspection in the manner required by that section.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.051. USING OR REVEALING TRADE SECRET. (a) A person commits an offense if the person uses for the person's advantage or reveals to another person, other than to an officer or employee of the board or to a court in a judicial proceeding relevant to this chapter, information relating to dangerous drugs required to be kept under this chapter, if that information concerns a method or process subject to protection as a trade secret.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.052. VIOLATION OF OTHER PROVISION. (a) A person commits an offense if the person violates a provision of this chapter other than a provision for which a specific offense is otherwise described by this chapter.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.053. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this subchapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 40, eff. Sept. 1, 1995.

SUBCHAPTER D. CRIMINAL AND CIVIL PROCEDURE

Sec. 483.071. EXCEPTIONS; BURDEN OF PROOF. (a) In a complaint, information, indictment, or other action or proceeding brought for the enforcement of this chapter, the state is not required to negate an exception, excuse, proviso, or exemption contained in this chapter.

(b) The defendant has the burden of proving the exception, excuse, proviso, or exemption.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.072. UNCORROBORATED TESTIMONY. A conviction under this chapter may be obtained on the uncorroborated testimony of a party to the offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.073. SEARCH WARRANT. A peace officer may apply for a

search warrant to search for dangerous drugs possessed in violation of this chapter. The peace officer must apply for and execute the search warrant in the manner prescribed by the Code of Criminal Procedure.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.074. SEIZURE AND DESTRUCTION. (a) A dangerous drug that is manufactured, sold, or possessed in violation of this chapter is contraband and may be seized by an employee of the board or by a peace officer authorized to enforce this chapter and charged with that duty.

(b) If a dangerous drug is seized under Subsection (a), the board may direct an employee of the board or an authorized peace officer to destroy the drug. The employee or authorized peace officer directed to destroy the drug must act in the presence of another employee of the board or authorized peace officer and shall destroy the drug in any manner designated as appropriate by the board.

(c) Before the dangerous drug is destroyed, an inventory of the drug must be prepared. The inventory must be accompanied by a statement that the dangerous drug is being destroyed at the direction of the board, by an employee of the board or an authorized peace officer, and in the presence of another employee of the board or authorized peace officer. The statement must also contain the names of the persons in attendance at the time of destruction, state the capacity in which each of those persons acts, be signed by those persons, and be sworn to by those persons that the statement is correct. The statement shall be filed with the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 237, Sec. 12, eff. Sept. 1, 1991.

Sec. 483.075. INJUNCTION. The board may institute an action in its own name to enjoin a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 483.076. LEGAL REPRESENTATION OF BOARD. (a) If the board institutes a legal proceeding under this chapter, the board may be represented only by a county attorney, a district attorney, or the attorney general.

(b) The board may not employ private counsel in any legal proceeding instituted by or against the board under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. OPIOID ANTAGONISTS

Sec. 483.101. DEFINITIONS. In this subchapter:

(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

(2) "Opioid antagonist" means any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors.

(3) "Opioid-related drug overdose" means a condition, evidenced by symptoms such as extreme physical illness, decreased level of consciousness, constriction of the pupils, respiratory depression, or coma, that a layperson would reasonably believe to be the result of the consumption or use of an opioid.

(4) "Prescriber" means a person authorized by law to prescribe an opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.102. PRESCRIPTION OF OPIOID ANTAGONIST; STANDING ORDER. (a) A prescriber may, directly or by standing order, prescribe an opioid antagonist to:

(1) a person at risk of experiencing an opioid-related drug overdose; or

(2) a family member, friend, or other person in a position to assist a person described by Subdivision (1).

(b) A prescription issued under this section is considered as issued for a legitimate medical purpose in the usual course of

professional practice.

(c) A prescriber who, acting in good faith with reasonable care, prescribes or does not prescribe an opioid antagonist is not subject to any criminal or civil liability or any professional disciplinary action for:

(1) prescribing or failing to prescribe the opioid antagonist; or

(2) if the prescriber chooses to prescribe an opioid antagonist, any outcome resulting from the eventual administration of the opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.103. DISPENSING OF OPIOID ANTAGONIST. (a) A pharmacist may dispense an opioid antagonist under a valid prescription to:

(1) a person at risk of experiencing an opioid-related drug overdose; or

(2) a family member, friend, or other person in a position to assist a person described by Subdivision (1).

(b) A prescription filled under this section is considered as filled for a legitimate medical purpose in the usual course of professional practice.

(c) A pharmacist who, acting in good faith and with reasonable care, dispenses or does not dispense an opioid antagonist under a valid prescription is not subject to any criminal or civil liability or any professional disciplinary action for:

(1) dispensing or failing to dispense the opioid antagonist; or

(2) if the pharmacist chooses to dispense an opioid antagonist, any outcome resulting from the eventual administration of the opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.104. DISTRIBUTION OF OPIOID ANTAGONIST; STANDING ORDER. A person or organization acting under a standing order issued

by a prescriber may store an opioid antagonist and may distribute an opioid antagonist, provided the person or organization does not request or receive compensation for storage or distribution.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.105. POSSESSION OF OPIOID ANTAGONIST. Any person may possess an opioid antagonist, regardless of whether the person holds a prescription for the opioid antagonist.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.106. ADMINISTRATION OF OPIOID ANTAGONIST. (a) A person who, acting in good faith and with reasonable care, administers or does not administer an opioid antagonist to another person whom the person believes is suffering an opioid-related drug overdose is not subject to criminal prosecution, sanction under any professional licensing statute, or civil liability, for an act or omission resulting from the administration of or failure to administer the opioid antagonist.

(b) Emergency services personnel are authorized to administer an opioid antagonist to a person who appears to be suffering an opioid-related drug overdose, as clinically indicated.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

Sec. 483.107. CONFLICT OF LAW. To the extent of a conflict between this subchapter and another law, this subchapter controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 958 (S.B. 1462), Sec. 1, eff. September 1, 2015.

CHAPTER 484. ABUSABLE SYNTHETIC SUBSTANCES

Sec. 484.001. DEFINITIONS. In this chapter:

(1) "Abusable synthetic substance" means a substance that:

(A) is not otherwise regulated under this title or under federal law;

(B) is intended to mimic a controlled substance or controlled substance analogue; and

(C) when inhaled, ingested, or otherwise introduced into a person's body:

(i) produces an effect on the central nervous system similar to the effect produced by a controlled substance or controlled substance analogue;

(ii) creates a condition of intoxication, hallucination, or elation similar to a condition produced by a controlled substance or controlled substance analogue; or

(iii) changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination in a manner similar to a controlled substance or controlled substance analogue.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(4) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.002. PROHIBITED ACTS. (a) A person commits an offense if in the course of business the person knowingly produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) An offense under this section is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted of an offense under this section or of an offense under Section 32.42(b)(4), Penal Code, and the adulterated or mislabeled commodity was an abusable synthetic substance.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, the person may be prosecuted under either this section or the other provision.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.003. CIVIL PENALTY. (a) The attorney general or a district, county, or city attorney may institute an action in district court to collect a civil penalty from a person who in the course of business produces, distributes, sells, or offers for sale a mislabeled abusable synthetic substance.

(b) The civil penalty may not exceed $25,000 a day for each offense. Each day an offense is committed constitutes a separate violation for purposes of the penalty assessment.

(c) The court shall consider the following in determining the amount of the penalty:

(1) the person's history of any previous offenses under Section 484.002 or under Section 32.42(b)(4), Penal Code, relating to the sale of a mislabeled abusable synthetic substance;

(2) the seriousness of the offense;

(3) any hazard posed to the public health and safety by the offense; and

(4) demonstrations of good faith by the person charged.

(d) Venue for a suit brought under this section is in the city or county in which the offense occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this section shall be paid to that local government.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.004. AFFIRMATIVE DEFENSE. It is an affirmative defense to prosecution or liability under this chapter that:

(1) the abusable synthetic substance was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve the substance's use, sale, or distribution; and

(2) the abusable synthetic substance was lawfully produced,

distributed, sold, or offered for sale by the person who is the subject of the criminal or civil action.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

Sec. 484.005. NO DEFENSE. In a prosecution or civil action under this chapter, the fact that the abusable synthetic substance was in packaging labeled with "Not for Human Consumption," or other wording indicating the substance is not intended to be ingested, is not a defense.

Added by Acts 2015, 84th Leg., R.S., Ch. 187 (S.B. 461), Sec. 1, eff. September 1, 2015.

CHAPTER 485. ABUSABLE VOLATILE CHEMICALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 485.001. DEFINITIONS. In this chapter:

(1) "Abusable volatile chemical" means:

(A) a chemical, including aerosol paint, that:

(i) is packaged in a container subject to the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and regulations adopted under that Act and is labeled with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under that Act or those regulations;

(ii) when inhaled, ingested, or otherwise introduced into a person's body, may:

(a) affect the person's central nervous system;

(b) create or induce in the person a condition of intoxication, hallucination, or elation; or

(c) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination; and

(iii) is not:

(a) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(b) a food, drug, or cosmetic subject to

Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(c) a beverage subject to the Federal Alcohol Administration Act (27 U. S.C. Section 201 et seq.), as amended; or

(B) nitrous oxide that is not:

(i) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended.

(2) "Aerosol paint" means an aerosolized paint product, including a clear or pigmented lacquer or finish.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(94), eff. April 2, 2015.

(4) "Commissioner" means the commissioner of state health services.

(5) "Deliver" means to make the actual or constructive transfer from one person to another of an abusable volatile chemical, regardless of whether there is an agency relationship. The term includes an offer to sell an abusable volatile chemical.

(6) "Delivery" means the act of delivering.

(7) "Department" means the Department of State Health Services.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) "Inhalant paraphernalia" means equipment or materials of any kind that are intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable volatile chemical. The term includes a tube, balloon, bag, fabric, bottle, or other container used to concentrate or hold in suspension an abusable volatile chemical or vapors of the chemical.

(9) "Sell" includes a conveyance, exchange, barter, or trade.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1241, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(94), eff. April 2, 2015.

Sec. 485.002. RULES. The executive commissioner may adopt rules necessary to comply with any labeling requirements concerning precautions against inhalation of an abusable volatile chemical established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or under regulations adopted under that Act.

Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1242, eff. April 2, 2015.

SUBCHAPTER B. SALES PERMITS AND SIGNS

Sec. 485.011. PERMIT REQUIRED. A person may not sell an abusable volatile chemical at retail unless the person or the person's employer holds, at the time of the sale, a volatile chemical sales permit for the location of the sale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 485.012 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.012. ISSUANCE AND RENEWAL OF PERMIT. (a) To be eligible for the issuance or renewal of a volatile chemical sales permit, a person must:

(1) hold a sales tax permit that has been issued to the person;

(2) complete and return to the department an application as required by the department; and

(3) pay to the department the application fee established under Section 485.013 for each location at which an abusable volatile chemical may be sold by the person holding a volatile chemical sales permit.

(b) The executive commissioner shall adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permit holder reasonable notice of permit expiration and renewal requirements.

(c) The department shall issue or deny a permit and notify the applicant of the department's action not later than the 60th day after the date on which the department receives the complete application and appropriate fee. If the department denies an application, the department shall include in the notice the reasons for the denial.

(d) A permit issued or renewed under this chapter is valid for two years from the date of issuance or renewal.

(e) A permit is not valid if the permit holder has been convicted more than once in the preceding year of an offense committed:

(1) at a location for which the permit is issued; and

(2) under Section 485.031, 485.032, or 485.033.

(f) A permit issued by the department is the property of the department and must be surrendered on demand by the department.

(g) The department shall prepare an annual roster of permit holders.

(h) The department shall monitor and enforce compliance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 203, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.013 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1243, eff. April 2, 2015.

Sec. 485.013. FEE. The executive commissioner by rule may establish fees in amounts as prescribed by Section 12.0111.

Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1244, eff. April 2, 2015.

Sec. 485.014. PERMIT AVAILABLE FOR INSPECTION. A permit holder must have the volatile chemical sales permit or a copy of the permit available for inspection by the public at each location where the permit holder sells an abusable volatile chemical.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.015. REFUSAL TO ISSUE OR RENEW PERMIT. A proceeding for the failure to issue or renew a volatile chemical sales permit under Section 485.012 or for an appeal from that proceeding is governed by the contested case provisions of Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.016. DISPOSITION OF FUNDS; EDUCATION AND PREVENTION PROGRAMS. (a) The department shall account for all amounts received under Section 485.013 and send those amounts to the comptroller.

(b) The comptroller shall deposit the amounts received under Subsection (a) in the state treasury to the credit of the general revenue fund to be used only by the department to:

(1) administer, monitor, and enforce this chapter; and

(2) finance statewide education projects concerning the hazards of abusable volatile chemicals and the prevention of inhalant abuse.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 204, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.017. SIGNS. A business establishment that sells an abusable volatile chemical at retail shall display a conspicuous sign, in English and Spanish, that states the following:

It is unlawful for a person to sell or deliver an abusable volatile chemical to a person under 18 years of

age. Except in limited situations, such an offense is a state jail felony.

It is also unlawful for a person to abuse a volatile chemical by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use a volatile chemical in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.018. PROHIBITED ORDINANCE AND RULE. (a) A political subdivision or an agency of this state may not enact an ordinance or rule that requires a business establishment to display an abusable volatile chemical, other than aerosol paint, in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business.

(b) This section does not apply to an ordinance or rule that was enacted before September 1, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 205, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 28, eff. September 1, 2009.

Sec. 485.019. RESTRICTION OF ACCESS TO AEROSOL PAINT. (a) A business establishment that holds a permit under Section 485.012 and that displays aerosol paint shall display the paint:

(1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours;

(2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or

(3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

(b) This section does not apply to a business establishment that has in place a computerized checkout system at the point of sale for merchandise that alerts the cashier that a person purchasing aerosol paint must be over 18 years of age.

(c) A court may issue a warning to a business establishment or impose a civil penalty of $50 on the business establishment for a first violation of this section. After receiving a warning or penalty for the first violation, the business establishment is liable to the state for a civil penalty of $100 for each subsequent violation.

(d) For the third violation of this section in a calendar year, a court may issue an injunction prohibiting the business establishment from selling aerosol paint for a period of not more than two years. A business establishment that violates the injunction is liable to the state for a civil penalty of $100, in addition to any other penalty authorized by law, for each day the violation continues.

(e) If a business establishment fails to pay a civil penalty under this section, the court may issue an injunction prohibiting the establishment from selling aerosol paint until the establishment pays the penalty, attorney's fees, and court costs.

(f) The district or county attorney for the county in which a violation of this section is alleged to have occurred, or the attorney general, if requested by the district or county attorney for that county, may file suit for the issuance of a warning, the collection of a penalty, or the issuance of an injunction.

(g) A penalty collected under this section shall be sent to the comptroller for deposit in the state treasury to the credit of the general revenue fund.

(h) This section applies only to a business establishment that is located in a county with a population of 75,000 or more.

Added by Acts 1997, 75th Leg., ch. 593, Sec. 4, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 485.031. POSSESSION AND USE. (a) A person commits an offense if the person inhales, ingests, applies, uses, or possesses

an abusable volatile chemical with intent to inhale, ingest, apply, or use the chemical in a manner:

(1) contrary to directions for use, cautions, or warnings appearing on a label of a container of the chemical; and

(2) designed to:

(A) affect the person's central nervous system;

(B) create or induce a condition of intoxication, hallucination, or elation; or

(C) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution for an offense under Subsection (a) that the actor:

(1) was the first person to request emergency medical assistance in response to the possible overdose of another person and:

(A) made the request for medical assistance during an ongoing medical emergency;

(B) remained on the scene until the medical assistance arrived; and

(C) cooperated with medical assistance and law enforcement personnel; or

(2) was the victim of a possible overdose for which emergency medical assistance was requested, by the actor or by another person, during an ongoing medical emergency.

(d) The defense to prosecution provided by Subsection (c) is not available if:

(1) at the time the request for emergency medical assistance was made:

(A) a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made; or

(B) the actor is committing another offense, other than an offense punishable under Section 481.115(b), 481.1151(b)(1), 481.116(b), 481.1161(b)(1) or (2), 481.117(b), 481.118(b), or 481.121(b)(1) or (2), or an offense under Section 481.119(b), 481.125(a), or 483.041(a);

(2) the actor has been previously convicted of or placed on deferred adjudication community supervision for an offense under this chapter or Chapter 481 or 483;

(3) the actor was acquitted in a previous proceeding in which the actor successfully established the defense under that subsection or Section 481.115(g), 481.1151(c), 481.116(f), 481.1161(c), 481.117(f), 481.118(f), 481.119(c), 481.121(c), 481.125(g), or 483.041(e); or

(4) at any time during the 18-month period preceding the date of the commission of the instant offense, the actor requested emergency medical assistance in response to the possible overdose of the actor or another person.

(e) The defense to prosecution provided by Subsection (c) does not preclude the admission of evidence obtained by law enforcement resulting from the request for emergency medical assistance if that evidence pertains to an offense for which the defense described by Subsection (c) is not available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 808 (H.B. 1694), Sec. 12, eff. September 1, 2021.

Sec. 485.032. DELIVERY TO A MINOR. (a) A person commits an offense if the person knowingly delivers an abusable volatile chemical to a person who is younger than 18 years of age.

(b) It is a defense to prosecution under this section that:

(1) the abusable volatile chemical that was delivered contains additive material that effectively discourages intentional abuse by inhalation; or

(2) the person making the delivery is not the manufacturer of the chemical and the manufacturer of the chemical failed to label the chemical with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or regulations subsequently adopted under that Act.

(c) It is an affirmative defense to prosecution under this section that:

(1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of

age and:

(A) the adult permits the use of the abusable volatile chemical only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

(B) the adult removes the chemical from the person younger than 18 years of age on completion of that use; or

(2) the person to whom the abusable volatile chemical was delivered presented to the defendant an apparently valid Texas driver's license or an identification certificate, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

(d) Except as provided by Subsections (e) and (f), an offense under this section is a state jail felony.

(e) An offense under this section is a Class B misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer held a volatile chemical sales permit for the location of the sale.

(f) An offense under this section is a Class A misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer:

(1) did not hold a volatile chemical sales permit but did hold a sales tax permit for the location of the sale; and

(2) had not been convicted previously under this section for an offense committed after January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.06, eff. Sept. 1, 1994. Renumbered from Health & Safety Code Sec. 485.033 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.033. INHALANT PARAPHERNALIA. (a) A person commits an offense if the person knowingly uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable volatile chemical in violation of Section 485.031.

(b) A person commits an offense if the person:

(1) knowingly:

(A) delivers or sells inhalant paraphernalia;

(B) possesses, with intent to deliver or sell, inhalant paraphernalia; or

(C) manufactures, with intent to deliver or sell, inhalant paraphernalia; and

(2) at the time of the act described by Subdivision (1), knows that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the human body a volatile chemical in violation of Section 485.031.

(c) An offense under Subsection (a) is a Class B misdemeanor, and an offense under Subsection (b) is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 206, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.034 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.034. FAILURE TO POST SIGN. (a) A person commits an offense if the person sells an abusable volatile chemical in a business establishment and the person does not display the sign required by Section 485.017.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.035 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.035. SALE WITHOUT PERMIT. (a) A person commits an offense if the person sells an abusable volatile chemical in violation of Section 485.011 and the purchaser is 18 years of age or older.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.036 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.036. PROOF OF OFFER TO SELL. Proof of an offer to

sell an abusable volatile chemical must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 485.037 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.037. SUMMARY FORFEITURE. An abusable volatile chemical or inhalant paraphernalia seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in the same manner as controlled substance property under Subchapter E, Chapter 481.

Added by Acts 1991, 72nd Leg., ch. 141, Sec. 5, eff. Sept. 1, 1991.
Renumbered from Health & Safety Code Sec. 485.038 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.038. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this subchapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 43, eff. Sept. 1, 1995.
Renumbered from Health & Safety Code Sec. 485.039 by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 485.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person who sells abusable glue or aerosol paint at retail who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.102. AMOUNT OF PENALTY. (a) The amount of the

penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 485.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1245, eff. April 2, 2015.

Sec. 485.105. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1246, eff. April 2, 2015.

Sec. 485.106. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1247, eff. April 2, 2015.

Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the department under Section 485.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1248, eff. April 2, 2015.

Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 485.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under

Subsection (a)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1249, eff. April 2, 2015.

Sec. 485.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.
(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.
(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after

the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

CHAPTER 486. OVER-THE-COUNTER SALES OF EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 486.001. DEFINITIONS. (a) In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(95), eff. April 2, 2015.

(3) "Department" means the Department of State Health Services.

(4) "Ephedrine," "pseudoephedrine," and "norpseudoephedrine" mean any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers. The term does not include any compound, mixture, or preparation that is in liquid, liquid capsule, or liquid gel capsule form.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Sale" includes a conveyance, exchange, barter, or trade.

(6) "Real-time electronic logging system" means a system intended to be used by law enforcement agencies and pharmacies or other business establishments that:

(A) is installed, operated, and maintained free of any one-time or recurring charge to the business establishment or to the state;

(B) is able to communicate in real time with similar systems operated in other states and similar systems containing information submitted by more than one state;

(C) complies with the security policy of the Criminal Justice Information Services division of the Federal Bureau of Investigation;

(D) complies with information exchange standards adopted by the National Information Exchange Model;

(E) uses a mechanism to prevent the completion of a sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that would violate state or federal law regarding the purchase of a product containing those substances; and

(F) is equipped with an override of the mechanism described in Paragraph (E) that:

(i) may be activated by an employee of a business establishment; and

(ii) creates a record of each activation of the override.

(b) A term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1250, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(95), eff. April 2, 2015.

Sec. 486.002. APPLICABILITY. This chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose and in the course of professional practice.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.003. RULES. The executive commissioner shall adopt rules necessary to implement and enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1251, eff. April 2, 2015.

Sec. 486.004. FEES. (a) The department shall collect fees for an inspection performed in enforcing this chapter and rules adopted under this chapter.
(b) The executive commissioner by rule shall set the fees in amounts that allow the department to recover the biennial expenditures of state funds by the department in implementing and enforcing this chapter.
(c) Fees collected under this section shall be deposited to the credit of a special account in the general revenue fund and appropriated to the department to implement and enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1252, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 4.001, eff. September 1, 2017.

Sec. 486.005. STATEWIDE APPLICATION AND UNIFORMITY. (a) To ensure uniform and equitable implementation and enforcement throughout this state, this chapter constitutes the whole field of regulation regarding over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(b) This chapter preempts and supersedes a local ordinance, rule, or regulation adopted by a political subdivision of this state pertaining to over-the-counter sales of products that contain ephedrine, pseudoephedrine, or norpseudoephedrine.

(c) This section does not preclude a political subdivision from imposing administrative sanctions on the holder of a business or professional license or permit issued by the political subdivision who engages in conduct that violates this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

SUBCHAPTER B. OVER-THE-COUNTER SALES

Sec. 486.011. SALES BY PHARMACIES. A business establishment that operates a pharmacy licensed by the Texas State Board of Pharmacy may engage in over-the-counter sales of ephedrine, pseudoephedrine, and norpseudoephedrine.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.013. RESTRICTION OF ACCESS TO EPHEDRINE, PSEUDOEPHEDRINE, AND NORPSEUDOEPHEDRINE. A business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine shall:

(1) if the establishment operates a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind the pharmacy counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a pharmacy counter staffed by an employee of the establishment; or

(2) if the establishment does not operate a pharmacy licensed by the Texas State Board of Pharmacy, maintain those products:

(A) behind a sales counter; or

(B) in a locked case within 30 feet and in a direct line of sight from a sales counter continuously staffed by an employee of the establishment.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.014. PREREQUISITES TO AND RESTRICTIONS ON SALE. (a) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall:

(1) require the person making the purchase to:

(A) display a driver's license or other form of government-issued identification containing the person's photograph and indicating that the person is 16 years of age or older; and

(B) sign for the purchase;

(2) make a record of the sale, including the name and date of birth of the person making the purchase, the address of the purchaser, the date and time of the purchase, the type of identification displayed by the person and the identification number, and the item and number of grams purchased; and

(3) transmit the record of sale as required by Section 486.0141.

(b) A business establishment may not sell to a person who makes over-the-counter purchases of one or more products containing ephedrine, pseudoephedrine, or norpseudoephedrine:

(1) within any calendar day, more than 3.6 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances; and

(2) within any 30-day period, more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 2, eff. September 1, 2011.

Sec. 486.0141. TRANSMISSION OF SALES INFORMATION TO REAL-TIME ELECTRONIC LOGGING SYSTEM. (a) Before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine, a business establishment that engages in those sales shall transmit the information in the record made under Section 486.014(a)(2) to a real-time electronic logging system.

(b) Except as provided by Subsection (c), a business establishment may not complete an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine if the real-time electronic logging system returns a report that the completion of the sale would result in the person obtaining an amount of ephedrine, pseudoephedrine, norpseudoephedrine, or a combination of those substances greater than the amount described by Section 486.014(b), regardless of whether all or some of the products previously obtained by the buyer were sold at the establishment or another business establishment.

(c) An employee of a business establishment may complete a sale prohibited by Subsection (b) by using the override mechanism described by Section 486.001(a)(6)(F) only if the employee has a reasonable fear of imminent bodily injury or death from the person attempting to obtain ephedrine, pseudoephedrine, or norpseudoephedrine.

(d) On request of the Department of Public Safety, the administrators of a real-time electronic logging system shall make available to the department a copy of each record of an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine that is submitted by a business establishment located in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0142. TEMPORARY EXEMPTION. (a) On application by a business establishment that operates a pharmacy and engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine as authorized by Section 486.011, the Texas State Board of Pharmacy may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

(b) On application by a business establishment that engages in over-the-counter sales of products containing ephedrine, pseudoephedrine, or norpseudoephedrine, the department may grant that business establishment a temporary exemption, not to exceed 180 days, from the requirement of using a real-time electronic logging system under this chapter.

(c) A business establishment granted a temporary exemption under this section must keep records of sales in the same manner required under Section 486.0143 for a business establishment that experiences a mechanical or electronic failure of the real-time electronic logging system.

(d) An exemption granted under this section does not relieve a business establishment of any duty under this chapter other than the duty to use a real-time electronic logging system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1254, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 4.002, eff. September 1, 2017.

Sec. 486.0143. WRITTEN LOG OR OTHER ELECTRONIC RECORDKEEPING. If a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine experiences a mechanical or electronic failure of the real-time electronic logging system, the business shall:

(1) maintain a written record or an electronic record made by any means that satisfies the requirements of Section 486.014(a)(2); and

(2) enter the information in the real-time electronic

logging system as soon as practicable after the system becomes operational.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0144. ONLINE PORTAL. The administrators of a real-time electronic logging system shall provide real-time access to the information in the system to the Department of Public Safety if the department executes a memorandum of understanding with the administrators.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0145. LIMITATION ON CIVIL LIABILITY. A person is not liable for an act done or omission made in compliance with the requirements of Section 486.014 or 486.0141.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.0146. PRIVACY PROTECTIONS. (a) The privacy protections provided an individual under 21 C.F.R. Section 1314.45 apply to information entered or stored in a real-time electronic logging system.

(b) A business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may disclose information entered or stored in a real-time electronic logging system only to the United States Drug Enforcement Administration and other federal, state, and local law enforcement agencies.

(c) A business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine may not use information entered or stored in a real-time electronic logging system for any purpose other than for a disclosure authorized by Subsection (b) or to comply with the requirements of this chapter.

(d) Notwithstanding Subsection (c), a business establishment that engages in over-the-counter sales of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine or an employee or agent of the business establishment is not civilly liable for the release of information entered or stored in a real-time electronic logging system unless the release constitutes negligence, recklessness, or wilful misconduct.

Added by Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 3, eff. September 1, 2011.

Sec. 486.015. MAINTENANCE OF RECORDS. (a) Except as provided by Subsection (b), a business establishment shall maintain each record made under Section 486.014(a)(2) until at least the second anniversary of the date the record is made and shall make each record available on request by the department or any local, state, or federal law enforcement agency, including the United States Drug Enforcement Administration.

(b) Subsection (a) does not apply to a business establishment that has used a real-time electronic logging system for longer than two years.

(c) A business establishment that has used a real-time electronic logging system for longer than two years shall destroy all paper records maintained under this section unless the destruction is otherwise prohibited by law.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 742 (H.B. 1137), Sec. 4, eff. September 1, 2011.

SUBCHAPTER C. ADMINISTRATIVE PENALTY

Sec. 486.021. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates this chapter.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.022. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $20,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.023. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.024. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Before the 21st day after the date the person receives notice under Section 486.023, the person in writing may:

(1) accept the determination and recommended penalty; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1255, eff. April 2, 2015.

Sec. 486.025. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date, and the department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1256, eff. April 2, 2015.

Sec. 486.026. DECISION. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in the manner provided by Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1257, eff. April 2, 2015.

Sec. 486.027. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Before the 31st day after the date the order under Section 486.026 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.028. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 486.027, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department by certified mail.

(b) Following receipt of a copy of an affidavit under Subsection (a)(2), the department may file with the court, before the sixth day after the date of receipt, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as

soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1258, eff. April 2, 2015.

Sec. 486.029. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.030. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.031. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person before the 31st day after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the

date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.032. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

Sec. 486.033. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty under this subchapter is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 9, eff. August 1, 2005.

CHAPTER 487. TEXAS COMPASSIONATE-USE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 487.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Director" means the public safety director of the department.

(3) "Dispensing organization" means an organization licensed by the department to cultivate, process, and dispense low-THC cannabis to a patient for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code.

(4) "Low-THC cannabis" has the meaning assigned by Section 169.001, Occupations Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff.

June 1, 2015.

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 487.051. DUTIES OF DEPARTMENT. The department shall administer this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.052. RULES. The director shall adopt any rules necessary for the administration and enforcement of this chapter, including rules imposing fees under this chapter in amounts sufficient to cover the cost of administering this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.053. LICENSING OF DISPENSING ORGANIZATIONS AND REGISTRATION OF CERTAIN ASSOCIATED INDIVIDUALS. (a) The department shall:

(1) issue or renew a license to operate as a dispensing organization to each applicant who satisfies the requirements established under this chapter; and

(2) register directors, managers, and employees of each dispensing organization.

(b) Subject to Section 411.503, Government Code, the department shall enforce compliance of licensees and registrants and shall adopt procedures for suspending or revoking a license or registration issued under this chapter and for renewing a license or registration issued under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.008, eff. September 1, 2019.

Sec. 487.054. COMPASSIONATE-USE REGISTRY. (a) The department shall establish and maintain a secure online compassionate-use registry that contains:

(1) the name of each physician who registers as the prescriber for a patient under Section 169.004, Occupations Code, the name and date of birth of the patient, the dosage prescribed, the means of administration ordered, and the total amount of low-THC cannabis required to fill the patient's prescription; and

(2) a record of each amount of low-THC cannabis dispensed by a dispensing organization to a patient under a prescription.

(b) The department shall ensure the registry:

(1) is designed to prevent more than one qualified physician from registering as the prescriber for a single patient;

(2) is accessible to law enforcement agencies and dispensing organizations for the purpose of verifying whether a patient is one for whom low-THC cannabis is prescribed and whether the patient's prescriptions have been filled; and

(3) allows a physician qualified to prescribe low-THC cannabis under Section 169.002, Occupations Code, to input safety and efficacy data derived from the treatment of patients for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

SUBCHAPTER C. LICENSE TO OPERATE AS DISPENSING ORGANIZATION

Sec. 487.101. LICENSE REQUIRED. A license issued by the department under this chapter is required to operate a dispensing organization.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.102. ELIGIBILITY FOR LICENSE. An applicant for a license to operate as a dispensing organization is eligible for the license if:

(1) as determined by the department, the applicant possesses:

(A) the technical and technological ability to

cultivate and produce low-THC cannabis;

(B) the ability to secure:

(i) the resources and personnel necessary to operate as a dispensing organization; and

(ii) premises reasonably located to allow patients listed on the compassionate-use registry access to the organization through existing infrastructure;

(C) the ability to maintain accountability for the raw materials, the finished product, and any by-products used or produced in the cultivation or production of low-THC cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products; and

(D) the financial ability to maintain operations for not less than two years from the date of application;

(2) each director, manager, or employee of the applicant is registered under Subchapter D; and

(3) the applicant satisfies any additional criteria determined by the director to be necessary to safely implement this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.103. APPLICATION. (a) A person may apply for an initial or renewal license to operate as a dispensing organization by submitting a form prescribed by the department along with the application fee in an amount set by the director.

(b) The application must include the name and address of the applicant, the name and address of each of the applicant's directors, managers, and employees, and any other information considered necessary by the department to determine the applicant's eligibility for the license.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.104. ISSUANCE, RENEWAL, OR DENIAL OF LICENSE. (a) The department shall issue or renew a license to operate as a dispensing organization only if:

(1) the department determines the applicant meets the eligibility requirements described by Section 487.102; and

(2) issuance or renewal of the license is necessary to ensure reasonable statewide access to, and the availability of, low-THC cannabis for patients registered in the compassionate-use registry and for whom low-THC cannabis is prescribed under Chapter 169, Occupations Code.

(b) If the department denies the issuance or renewal of a license under Subsection (a), the applicant is entitled to a hearing. Chapter 2001, Government Code, applies to a proceeding under this section.

(c) A license issued or renewed under this section expires as determined by the department in accordance with Section 411.511, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.009, eff. September 1, 2019.

Sec. 487.105. CRIMINAL HISTORY BACKGROUND CHECK. (a) An applicant for the issuance or renewal of a license to operate as a dispensing organization shall provide the department with the applicant's name and the name of each of the applicant's directors, managers, and employees.

(b) Before a dispensing organization licensee hires a manager or employee for the organization, the licensee must provide the department with the name of the prospective manager or employee. The licensee may not transfer the license to another person before that prospective applicant and the applicant's directors, managers, and employees pass a criminal history background check and are registered as required by Subchapter D.

(c) The department shall conduct a criminal history background check on each individual whose name is provided to the department under Subsection (a) or (b). The director by rule shall:

(1) require each individual whose name is provided to the department under Subsection (a) or (b) to submit a complete set of fingerprints to the department on a form prescribed by the department

for purposes of a criminal history background check under this section; and

(2) establish criteria for determining whether an individual passes the criminal history background check for the purposes of this section.

(d) After conducting a criminal history background check under this section, the department shall notify the relevant applicant or organization and the individual who is the subject of the criminal history background check as to whether the individual passed the criminal history background check.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 4.010, eff. September 1, 2019.

Sec. 487.106. DUTY TO MAINTAIN ELIGIBILITY. A dispensing organization must maintain compliance at all times with the eligibility requirements described by Section 487.102.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.107. DUTIES RELATING TO DISPENSING PRESCRIPTION. (a) Before dispensing low-THC cannabis to a person for whom the low-THC cannabis is prescribed under Chapter 169, Occupations Code, the dispensing organization must verify that the prescription presented:

(1) is for a person listed as a patient in the compassionate-use registry;

(2) matches the entry in the compassionate-use registry with respect to the total amount of low-THC cannabis required to fill the prescription; and

(3) has not previously been filled by a dispensing organization as indicated by an entry in the compassionate-use registry.

(b) After dispensing low-THC cannabis to a patient for whom the low-THC cannabis is prescribed under Chapter 169, Occupations Code, the dispensing organization shall record in the compassionate-use

registry the form and quantity of low-THC cannabis dispensed and the date and time of dispensation.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

Sec. 487.108. LICENSE SUSPENSION OR REVOCATION. (a) The department may at any time suspend or revoke a license issued under this chapter if the department determines that the licensee has not maintained the eligibility requirements described by Section 487.102 or has failed to comply with a duty imposed under this chapter.

(b) The director shall give written notice to the dispensing organization of a license suspension or revocation under this section and the grounds for the suspension or revocation. The notice must be sent by certified mail, return receipt requested.

(c) After suspending or revoking a license issued under this chapter, the director may seize or place under seal all low-THC cannabis and drug paraphernalia owned or possessed by the dispensing organization. If the director orders the revocation of the license, a disposition may not be made of the seized or sealed low-THC cannabis or drug paraphernalia until the time for administrative appeal of the order has elapsed or until all appeals have been concluded. When a revocation order becomes final, all low-THC cannabis and drug paraphernalia may be forfeited to the state as provided under Subchapter E, Chapter 481.

(d) Chapter 2001, Government Code, applies to a proceeding under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

SUBCHAPTER D. REGISTRATION OF CERTAIN INDIVIDUALS

Sec. 487.151. REGISTRATION REQUIRED. (a) An individual who is a director, manager, or employee of a dispensing organization must apply for and obtain a registration under this section.

(b) An applicant for a registration under this section must:

(1) be at least 18 years of age;

(2) submit a complete set of fingerprints to the department in the manner required by department rule; and

(3) pass a fingerprint-based criminal history background check as required by Section 487.105.

(c) A registration expires on the second anniversary of the date of the registration's issuance, unless suspended or revoked under rules adopted under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

SUBCHAPTER E. DUTIES OF COUNTIES AND MUNICIPALITIES

Sec. 487.201. COUNTIES AND MUNICIPALITIES MAY NOT PROHIBIT LOW-THC CANNABIS. A municipality, county, or other political subdivision may not enact, adopt, or enforce a rule, ordinance, order, resolution, or other regulation that prohibits the cultivation, production, dispensing, or possession of low-THC cannabis, as authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 1, eff. June 1, 2015.

SUBCHAPTER F. COMPASSIONATE-USE RESEARCH AND REPORTING

Sec. 487.251. DEFINITIONS. In this subchapter:

(1) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Institutional review board" means a compassionate-use institutional review board established under Section 487.253.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.252. RULES. (a) Except as otherwise provided by Subsection (b), the executive commissioner shall adopt all necessary rules to implement this subchapter, including rules designating the medical conditions for which a patient may be treated with low-THC cannabis as part of an approved research program conducted under this subchapter.

(b) The Texas Medical Board may adopt rules regarding the certification of a physician by an institutional review board.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.253. COMPASSIONATE-USE INSTITUTIONAL REVIEW BOARDS. (a) One or more compassionate-use institutional review boards may be established to:

(1) evaluate and approve proposed research programs to study the medical use of low-THC cannabis in treating a medical condition designated by rule of the executive commissioner under Section 487.252(a); and

(2) oversee patient treatment undertaken as part of an approved research program, including the certification of treating physicians.

(b) An institutional review board must be affiliated with a dispensing organization and meet one of the following conditions:

(1) be affiliated with a medical school, as defined by Section 61.501, Education Code;

(2) be affiliated with a hospital licensed under Chapter 241 that has at least 150 beds;

(3) be accredited by the Association for the Accreditation of Human Research Protection Programs;

(4) be registered by the United States Department of Health and Human Services, Office for Human Research Protections, in accordance with 21 C.F.R. Part 56; or

(5) be accredited by a national accreditation organization acceptable to the Texas Medical Board.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.254. REPORTS BY INSTITUTIONAL REVIEW BOARDS. Each institutional review board shall submit written reports that describe and assess the research findings of each approved research program to:

(1) the Health and Human Services Commission, not later than October 1 of each year; and

(2) the legislature, not later than October 1 of each even-numbered year.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.255. PATIENT TREATMENT. (a) Patient treatment provided as part of an approved research program under this subchapter may be administered only by a physician certified by an institutional review board to participate in the program.

(b) A patient participating in a research program under this subchapter must be a permanent resident of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

Sec. 487.256. INFORMED CONSENT. (a) Before receiving treatment under an approved research program, each patient must sign a written informed consent form.

(b) If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator may provide informed consent on the patient's behalf.

(c) An institutional review board overseeing a research program under this subchapter may adopt a form to be used for the informed consent required by this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 1, eff. September 1, 2021.

CHAPTER 488. OVER-THE-COUNTER SALES OF DEXTROMETHORPHAN

Sec. 488.001. DEFINITIONS. (a) In this chapter:

(1) "Dextromethorphan" means any compound, mixture, or preparation containing any detectable amount of that substance, including its salts, optical isomers, and salts of optical isomers.

(2) "Sale" includes a conveyance, exchange, barter, or trade.

(b) A term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Section 481.002 if the term is defined in that section.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff.

September 1, 2019.

Sec. 488.002. NONAPPLICABILITY. (a) This chapter does not apply to the sale of any product dispensed or delivered by a pharmacist according to a prescription issued by a practitioner for a valid medical purpose within the scope of the practitioner's practice as authorized by the practitioner's license issued under Title 3, Occupations Code.

(b) This chapter does not require a business establishment to:

(1) keep specific records of transactions covered by this chapter; or

(2) store dextromethorphan in a specific location in a business establishment or otherwise restrict the availability of dextromethorphan to customers.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

Sec. 488.003. DISTRIBUTION TO MINORS PROHIBITED; PREREQUISITE TO SALE. (a) A business establishment may not dispense, distribute, or sell dextromethorphan to a customer under 18 years of age.

(b) Before dispensing, distributing, or selling dextromethorphan over the counter, a business establishment must require the customer obtaining the drug to display a driver's license or other form of identification containing the customer's photograph and indicating that the customer is 18 years of age or older, unless from the customer's outward appearance the person making the sale may reasonably presume the customer to be 27 years of age or older.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

Sec. 488.004. VIOLATION; CIVIL PENALTY. (a) A county or district attorney shall issue a warning to a business establishment for a first violation of this chapter.

(b) After receiving a warning for the first violation under Subsection (a), a business establishment is liable to the state for a civil penalty of:

(1) $150 for the second violation; and

(2) $250 for each subsequent violation.

(c) It is a defense in an action brought under this section that the person to whom the dextromethorphan was dispensed, distributed, or sold presented to the business establishment apparently valid proof of identification.

(d) A proof of identification satisfies the requirements of Subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(e) It is a defense in an action brought under this section that the business establishment made a good faith effort to comply with this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

Sec. 488.005. PROHIBITED LOCAL REGULATION. (a) A political subdivision of this state may not adopt or enforce an ordinance, order, rule, regulation, or policy that governs the sale, distribution, or possession of dextromethorphan.

(b) An ordinance, order, rule, regulation, or policy described by Subsection (a) is void and unenforceable.

Added by Acts 2019, 86th Leg., R.S., Ch. 46 (H.B. 1518), Sec. 1, eff. September 1, 2019.

CHAPTER 489. ACCESS TO INVESTIGATIONAL TREATMENTS FOR PATIENTS WITH TERMINAL ILLNESSES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 489.001. DEFINITIONS. In this chapter:

(1) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial but has not yet been approved for general use by the United States Food and Drug Administration and

remains under investigation in the clinical trial.

(2) "Terminal illness" means an advanced stage of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

SUBCHAPTER B. ACCESS TO INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES FOR PATIENTS WITH TERMINAL ILLNESSES

Sec. 489.051. PATIENT ELIGIBILITY. A patient is eligible to access and use an investigational drug, biological product, or device under this chapter if:

(1) the patient has a terminal illness, attested to by the patient's treating physician; and

(2) the patient's physician:

(A) in consultation with the patient, has considered all other treatment options currently approved by the United States Food and Drug Administration and determined that those treatment options are unavailable or unlikely to prolong the patient's life; and

(B) has recommended or prescribed in writing that the patient use a specific class of investigational drug, biological product, or device.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.052. INFORMED CONSENT. (a) Before receiving an investigational drug, biological product, or device, an eligible patient must sign a written informed consent. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent or legal guardian may provide informed consent on the patient's behalf.

(b) The executive commissioner of the Health and Human Services Commission by rule may adopt a form for the informed consent under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.053. PROVISION OF INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE BY MANUFACTURER. (a) A manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to eligible patients in accordance with this chapter if the patient provides to the manufacturer the informed consent required under Section 489.052.

(b) This chapter does not require that a manufacturer make available an investigational drug, biological product, or device to an eligible patient.

(c) If a manufacturer makes available an investigational drug, biological product, or device to an eligible patient under this subchapter, the manufacturer must provide the investigational drug, biological product, or device to the eligible patient without receiving compensation.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.054. NO CAUSE OF ACTION CREATED. This chapter does not create a private or state cause of action against a manufacturer of an investigational drug, biological product, or device or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device for any harm done to the eligible patient resulting from the investigational drug, biological product, or device.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

Sec. 489.055. STATE MAY NOT INTERFERE WITH ACCESS TO INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE. An official, employee, or agent of this state may not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

SUBCHAPTER C. HEALTH INSURANCE

Sec. 489.101. EFFECT ON HEALTH CARE COVERAGE FOR CLINICAL TRIAL ENROLLEES. This chapter does not affect the coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

SUBCHAPTER D. PHYSICIANS

Sec. 489.151. ACTION AGAINST PHYSICIAN'S LICENSE PROHIBITED. Notwithstanding any other law, the Texas Medical Board may not revoke, fail to renew, suspend, or take any action against a physician's license under Subchapter B, Chapter 164, Occupations Code, based solely on the physician's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device, provided that the recommendations made to the patient meet the medical standard of care.

Added by Acts 2015, 84th Leg., R.S., Ch. 502 (H.B. 21), Sec. 2, eff. June 16, 2015.

CHAPTER 490. ACCESS TO INVESTIGATIONAL TREATMENTS FOR PATIENTS WITH SEVERE CHRONIC DISEASES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 490.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial but the United States Food and Drug Administration or its international equivalent has not yet approved for general use and that remains under investigation in the

clinical trial. The term does not include low-THC cannabis, as defined by Section 169.001, Occupations Code, or a product containing marihuana, as defined by Section 481.002, regardless of whether the cannabis or product successfully completed phase one of a clinical trial.

(4) "Severe chronic disease" means a condition, injury, or illness that:

(A) may be treated;

(B) may not be cured or eliminated; and

(C) entails significant functional impairment or severe pain.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.002. DESIGNATION OF SEVERE CHRONIC DISEASES. The commissioner shall designate the medical conditions considered to be severe chronic diseases under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.003. RULES. The executive commissioner shall adopt rules necessary to administer this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

SUBCHAPTER B. ACCESS TO INVESTIGATIONAL DRUGS, BIOLOGICAL PRODUCTS, AND DEVICES FOR PATIENTS WITH SEVERE CHRONIC DISEASES

Sec. 490.051. PATIENT ELIGIBILITY. A patient is eligible to access and use an investigational drug, biological product, or device under this chapter if:

(1) the patient has a severe chronic disease the commissioner designates under Section 490.002 that the patient's treating physician confirms in writing;

(2) the use of the investigational drug, biological product, or device is consistent with this chapter and rules adopted

under this chapter; and

(3) the patient's physician:

(A) in consultation with the patient, considers all other treatment options the United States Food and Drug Administration has currently approved and determines those treatment options are unavailable or unlikely to provide relief for the significant impairment or severe pain associated with the patient's severe chronic disease; and

(B) recommends or prescribes in writing the patient's use of a specific class of investigational drug, biological product, or device.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.052. INFORMED CONSENT. (a) Before receiving an investigational drug, biological product, or device, an eligible patient must sign a written informed consent. If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator may provide informed consent on the patient's behalf.

(b) The commissioner may prescribe a form for the informed consent required under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.053. PROVISION OF INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE BY MANUFACTURER. (a) A manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to eligible patients in accordance with this chapter if the patient provides to the manufacturer the informed consent required under Section 490.052.

(b) This chapter does not require a manufacturer to make available an investigational drug, biological product, or device to an eligible patient.

(c) If a manufacturer makes available an investigational drug, biological product, or device to an eligible patient under this

subchapter, the manufacturer must provide the investigational drug, biological product, or device to the eligible patient without receiving compensation.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.054. CAUSE OF ACTION NOT CREATED. This chapter does not create a private or state cause of action against a manufacturer of an investigational drug, biological product, or device or against any other person or entity involved in the care of an eligible patient using the investigational drug, biological product, or device for any harm to the patient resulting from the investigational drug, biological product, or device.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

Sec. 490.055. STATE MAY NOT INTERFERE WITH ACCESS TO INVESTIGATIONAL DRUG, BIOLOGICAL PRODUCT, OR DEVICE. An official, employee, or agent of this state may not block or attempt to block an eligible patient's access to an investigational drug, biological product, or device under this chapter unless the drug, biological product, or device is considered adulterated or misbranded under Chapter 431. For purposes of this section, a governmental entity may not consider the drug, biological product, or device to be adulterated or misbranded based solely on the United States Food and Drug Administration not yet finally approving the drug, biological product, or device.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

SUBCHAPTER C. HEALTH INSURANCE

Sec. 490.101. EFFECT ON HEALTH CARE COVERAGE FOR CLINICAL TRIAL ENROLLEES. This chapter does not affect the coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

SUBCHAPTER D. PHYSICIANS

Sec. 490.151. ACTION AGAINST PHYSICIAN'S LICENSE PROHIBITED. Notwithstanding any other law, the Texas Medical Board may not revoke, fail to renew, suspend, or take any action against a physician's license under Subchapter B, Chapter 164, Occupations Code, based solely on the physician's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device, provided that the recommendations meet the requirements of this chapter and rules adopted under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1082 (S.B. 773), Sec. 2, eff. June 18, 2023.

SUBTITLE D. HAZARDOUS SUBSTANCES

CHAPTER 501. HAZARDOUS SUBSTANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(96), eff. April 2, 2015.

(2) "Commerce" includes the operation of a business or service establishment and other commerce in this state that is subject to the jurisdiction of this state.

(3) "Commissioner" means the commissioner of state health services.

(4) "Department" means the Department of State Health Services.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Label" means a display of written, printed, or other graphic matter:

(A) on the immediate container, excluding the package liner, of any substance; or

(B) directly on the article or on a tag or other suitable material affixed to the article, if the article is

unpackaged or not packaged in an immediate container intended or suitable for delivery to the ultimate consumer.

(6) "Misbranded hazardous substance" means either of the following that is not properly packaged or does not bear a proper label required by this chapter:

(A) a hazardous substance; or

(B) a toy or other article intended for use by children that bears or contains a hazardous substance in a manner that is accessible by a child to whom the toy or other article is entrusted, intended, or packaged in a form suitable for use in a household or by children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1259, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(96), eff. April 2, 2015.

Sec. 501.002. HAZARDOUS SUBSTANCE DESCRIBED. (a) A hazardous substance is:

(1) a substance or mixture of substances that is toxic, corrosive, extremely flammable, flammable, combustible, an irritant, or a strong sensitizer, or that generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(2) a toy or other article, other than clothing, that is intended for use by a child and that presents an electrical, mechanical, or thermal hazard; or

(3) a radioactive substance designated as a hazardous substance under Section 501.003.

(b) A substance is corrosive if, when in contact with living tissue, it causes destruction of that tissue by chemical action. A chemical action on an inanimate surface is not corrosive for the purpose of this section.

(c) An article is an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it may cause, because of its design or manufacture, personal injury or illness by electric shock.

(d) A substance or article is extremely flammable, flammable, or combustible if it is defined as extremely flammable, flammable, or combustible by rule adopted by the executive commissioner. The executive commissioner shall define the terms as they are defined by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by federal regulations adopted under that Act. The terms each have the meaning assigned by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) and by federal regulations adopted under that Act, as of September 1, 2001.

(e) A substance is an irritant if it is noncorrosive and if, on immediate, prolonged, or repeated contact with normal living tissue, it induces a local inflammatory reaction.

(f) An article is a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article or a part or accessory of the article;

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article or a part or accessory of the article may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

(g) A substance is radioactive if it emits ionizing radiation.

(h) A substance is a strong sensitizer if, when on normal living tissue, it causes, through an allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of

the same substance.

(i) An article is a thermal hazard if, in normal use or when subject to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness because of heat, including heat from heated parts, substances, or surfaces.

(j) A substance is toxic if it is capable of producing personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface and it is not radioactive.

(k) The following are not hazardous substances:

(1) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.);

(2) a food, drug, or cosmetic subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(3) a beverage complying with or subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

(4) a substance intended for use as fuel that is stored in a container and used in the heating, cooking, or refrigeration system of a private residence; and

(5) source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954 (42 U.S.C. Chapter 23) and regulations issued under that Act by the United States Nuclear Regulatory Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1260, eff. April 2, 2015.

Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS HAZARDOUS. The executive commissioner by rule shall designate a radioactive substance to be a hazardous substance if, with respect to the substance as used in a particular class of article or as packaged, the executive commissioner finds that the substance is sufficiently hazardous as to require labeling as a hazardous substance under this chapter in order to protect the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1261, eff. April 2, 2015.

Sec. 501.004. DESIGNATION OF STRONG SENSITIZER. Before designating a substance as a strong sensitizer, the department must determine that the substance has a significant potential for causing hypersensitivity considering the frequency of occurrence and the severity of the reaction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 501.005. EXCLUSION. This chapter does not apply to the manufacture, distribution, sale, or use of diapers.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. REGULATION OF SUBSTANCES

Sec. 501.021. FLAMMABILITY STANDARDS; DETERMINATION OF FLAMMABILITY. (a) The executive commissioner by rule shall establish the methods for determining the flammability of solids, fabrics, children's clothing, household furnishings, and the contents of self-pressurized containers that the executive commissioner finds are generally applicable to those materials or containers.

(b) The executive commissioner by rule shall establish flammability standards for articles described by Subsection (a). The standards must conform to standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended. Until the executive commissioner adopts standards, the flammability standards for articles described by Subsection (a) are the standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) as of

September 1, 2001.

(c) The department may obtain samples of articles described by Subsection (a) and determine the flammability of the articles for compliance with applicable standards established under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1262, eff. April 2, 2015.

Sec. 501.022. DESIGNATION OF BANNED HAZARDOUS SUBSTANCES. (a) The executive commissioner by rule shall designate as a banned hazardous substance any article, including clothing intended for the use of children, that is not properly packaged or that does not comply with applicable flammability standards established by the executive commissioner. The executive commissioner's determination that articles of clothing of a specified range of sizes are intended for the use of a child 14 years of age or younger is conclusive.

(b) The executive commissioner by rule shall designate as a banned hazardous substance any toy or other article, other than clothing, intended for the use of children that is a hazardous substance or bears or contains a hazardous substance in a manner accessible by a child to whom the toy or other article is entrusted.

(c) The executive commissioner by rule shall designate as a banned hazardous substance any hazardous substance intended or packaged in a form suitable for use in a household that, notwithstanding cautionary labeling required by this chapter, is potentially so dangerous or hazardous when present or used in a household that the protection of the public health and safety may be adequately served only by keeping the substance out of commerce.

(d) The executive commissioner by rule shall designate as a banned hazardous substance any article subject to this chapter that cannot be labeled adequately to protect the public health and safety or that presents an imminent danger to the public health and safety.

(e) This section does not apply to a toy or article such as a chemical set that because of its functional purpose requires the inclusion of a hazardous substance or necessarily presents an electrical, mechanical, or thermal hazard if the toy or article:

(1) bears labeling that in the judgment of the department gives adequate directions and warnings for safe use; and

(2) is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed those directions and warnings.

(f) This section does not apply to the manufacture, sale, distribution, or use of fireworks of any class.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1263, eff. April 2, 2015.

Sec. 501.023. GENERAL LABELING AND PACKAGING REQUIREMENTS. (a) The department shall ensure that each hazardous substance is labeled sufficiently to inform its user of the dangers involved in using, storing, or handling the substance, of actions to be taken or avoided, and to give instructions as necessary for proper first aid treatment. The department shall develop labeling instructions consistent with and in conformity with federal requirements.

(b) A statement required by Subsection (a) must be located prominently and written in English in conspicuous and legible type that contrasts in typography, layout, or color with other printed matter on the label. The department may also require the statement to be written in Spanish.

(c) The statement must also appear:

(1) on the outside container or wrapper of a substance and on a container sold separately and intended for the storage of a hazardous substance unless the statement required by Subsection (a) is easily legible through the outside container or wrapper; and

(2) on all accompanying literature containing directions for use, whether written or in other form.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 5, eff. Sept. 1, 2001.

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES. (a) Toys or games intended for use by children, including the parts of those

toys or games, shall be labeled in the manner required by department rule. The rules adopted under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the executive commissioner adopts rules under this subsection, the toys, games, and parts shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

(b) Latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by department rule. The rules adopted under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the executive commissioner adopts rules under this subsection, latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1264, eff. April 2, 2015.

Sec. 501.0232. REVIEW AND LABELING OF HAZARDOUS ART MATERIALS. (a) Art materials shall be reviewed by a toxicologist.

(b) Art materials shall be labeled in the manner required by department rule. The rules adopted under this subsection shall be consistent with the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and federal regulations adopted under that Act. Until the executive commissioner adopts rules under this subsection, art materials shall be labeled in the manner required by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and federal regulations adopted under that Act, as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1265, eff. April 2, 2015.

Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES. Hazardous substances shall be packaged in the manner required by special packaging rules adopted by the executive commissioner. The rules adopted under this section shall be consistent with federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended. Until the executive commissioner adopts rules under this section, hazardous substances shall be packaged in the manner required by federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1266, eff. April 2, 2015.

Sec. 501.024. REGISTRATION. (a) A person who manufactures, imports, or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state under the person's private brand name shall have on file with the department a registration statement as provided by this section.

(b) The executive commissioner by rule shall detail the registration requirements and prescribe the contents of the registration statement.

(c) The person must file the registration statement with the department:

(1) before beginning business in this state as a manufacturer, importer, repacker, or distributor of a hazardous substance; and

(2) in each succeeding year that the person continues the business in this state, not later than the anniversary of the initial filing.

(d) The initial registration statement and each annual

registration statement must be accompanied by a fee prescribed by the executive commissioner by rule.

(e) The department, after notice and hearing, may refuse to register or may cancel, revoke, or suspend the registration of a person who manufactures, imports, repacks, or distributes a hazardous substance if the person fails to comply with the requirements of this chapter.

(f) A hazardous substance is subject to seizure and disposition under Section 501.033 if the person who manufactures, imports, repacks, or distributes the hazardous substance does not, after notice by the department, register with the department and make timely payment of the fee under this section.

(g) This section does not apply to a retailer who distributes a hazardous substance to the general public unless the retailer distributes a hazardous substance made to its specifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1267, eff. April 2, 2015.

Sec. 501.0245. NOTICE OF RADIOACTIVE SUBSTANCE RELEASE. (a) In this section, "radioactive substance" has the meaning assigned by Section 401.003.

(b) Notwithstanding Subchapter H, Chapter 418, Government Code, or any other law requiring confidentiality, the department or any other state agency that receives a required report of a release of a radioactive substance into the environment shall immediately provide notice to each political subdivision of this state into which the substance was released. The notice must include the name, quantity, and state of matter of the radioactive substance released, if known.

(c) The information contained in the notice provided to a political subdivision under Subsection (b) is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 311 (H.B. 2203), Sec. 1, eff. May 31, 2019.

Sec. 501.025. RULES. The executive commissioner may adopt reasonable rules necessary for the efficient administration and enforcement of this chapter. The rules must conform with regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, and the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended, as applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1268, eff. April 2, 2015.

Sec. 501.026. FEES. The executive commissioner by rule shall set reasonable registration fees in an amount as prescribed by Section 12.0111.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 9, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1269, eff. April 2, 2015.

SUBCHAPTER C. ENFORCEMENT

Sec. 501.031. EXAMINATIONS AND INVESTIGATIONS. (a) To enforce this chapter, an officer, employee, or agent of the department, on the presentation of appropriate credentials to the owner, operator, or agent, at reasonable times may enter a factory, warehouse, or establishment in which a hazardous substance is manufactured, processed, packaged, or held for introduction into commerce in this state or in which a hazardous substance is held after introduction into commerce, or a vehicle used to transport or hold a hazardous substance in commerce, for the purpose of inspecting within reasonable limits and in a reasonable manner the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling in the factory, warehouse, establishment, or vehicle.

(b) The officer, employee, or agent of the department may obtain samples of any materials, packaging, labeling, or finished product.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 10, eff. Sept. 1, 2001.

Sec. 501.032. RECORDS OF HAZARDOUS SUBSTANCE IN COMMERCE. (a) For the enforcement of this chapter, a carrier engaged in commerce, a person receiving a hazardous substance in commerce, or a person holding a hazardous substance received in commerce, on request of the department shall permit a representative of the department at reasonable times to have access to and to copy all records showing the movement in commerce or the holding after movement in commerce of any hazardous substance and the quantity, consignees, and shipper of the hazardous substance.

(b) Evidence obtained under this section may not be used in the criminal prosecution of the person from whom the evidence is obtained.

(c) A carrier is not subject to the other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a hazardous substance in the usual course of the carrier's business.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 501.033. SEIZURE AND DISPOSITION OF BANNED OR MISBRANDED HAZARDOUS SUBSTANCE. (a) If an authorized agent of the department has good reason to believe that a hazardous substance is a banned or misbranded hazardous substance, the agent shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected to be a banned or misbranded hazardous substance and that the article has been detained, and warning all persons not to remove the article from the premises or dispose of the article by sale or in any other manner until permission to do so is given by the agent or a court.

(b) The department shall petition a district court of Travis County or of the county in which the article is located to authorize the destruction of the article. If the court determines that the

article is a banned or misbranded hazardous substance, the department shall destroy the article, and the court shall impose all court costs and fees and storage and other proper expenses against the claimant of the article. However, if the court finds that misbranding occurred in good faith and can be corrected by proper labeling, the court may direct that the article be delivered to the claimant for proper labeling with the approval of the department.

(c) If the court finds that the article is not a banned or misbranded hazardous substance, the court shall order the department to remove the tags or other markings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 11, eff. Sept. 1, 2001.

Sec. 501.034. PROHIBITED ACTS. (a) A person may not hold or offer for sale, sell, or introduce or deliver for introduction into commerce a misbranded hazardous substance or banned hazardous substance.

(b) A person may not alter, mutilate, destroy, or remove all or part of the label of a hazardous substance, or do any other act relating to a hazardous substance, when the substance is in commerce or is held for sale, whether or not the first sale, after shipment in commerce, if the act results in the hazardous substance being a banned or misbranded hazardous substance.

(c) A person may not receive a banned or misbranded hazardous substance in commerce or deliver or offer to deliver a banned or misbranded hazardous substance for pay or otherwise.

(d) A person may not fail to permit entry or inspection as authorized by this chapter or to provide records as required by this chapter.

(e) A person may not use to his own advantage or reveal to any person other than the department or a court, if relevant to a judicial proceeding under this chapter, information acquired in an inspection authorized by this chapter and relating to a method or process that is entitled to protection as a trade secret.

(f) A person may not remove or dispose of a detained article or substance in violation of Section 501.035.

(g) A person may not manufacture, import, or repack a hazardous substance that is to be distributed in this state or otherwise

distribute a hazardous substance in this state without complying with Section 501.024.

(h) A person may not package a hazardous substance in a new or reused food, drug, or cosmetic container that is identifiable as a food, drug, or cosmetic container by its labeling or other identification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 12, eff. Sept. 1, 2001.

Sec. 501.035. OFFENSES; EXCEPTIONS. (a) A person commits an offense if the person intentionally, knowingly, or recklessly violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) This section does not apply to a person who delivers or receives a banned or misbranded hazardous substance if the delivery or receipt is made in good faith and if the person subsequently delivers on request:

(1) the name and address of the person from whom the substance was purchased or received; and

(2) copies of all documents, if any, relating to the original delivery of the substance to the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 13, eff. Sept. 1, 2001.

Sec. 501.036. INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or city attorney of the county or municipality in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation or an order directing compliance; or

(2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person has engaged in, is engaging in, or is about to engage in a violation of this chapter or a rule adopted or order issued under this chapter.

(b) Venue for a suit brought under this section is in the

county or municipality in which the violation occurred or in Travis County.

(c) The commissioner and either the attorney general or the district, county, or city attorney, as appropriate, may each recover from the violator reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. Expenses recovered by the commissioner may be appropriated only to the department to administer and enforce this chapter. Expenses recovered by the attorney general may be appropriated only to the attorney general.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

Sec. 501.037. RECALL ORDERS. (a) In conjunction with the detention of an article under Section 501.033, the commissioner may order that a hazardous substance be recalled from commerce.

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the commissioner or an authorized agent of the commissioner.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 501.033.

(e) The recall order is effective until the order:

(1) expires on its own terms;

(2) is withdrawn by the commissioner; or

(3) is reversed by a court in an order denying destruction under Section 501.033.

(f) The claimant of the articles or the claimant's agent shall pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent does not implement the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring an action in a district court of Travis County to recover costs of

the recall. In a judgment in favor of the state, the court may award costs, attorney's fees, and court costs related to the recall together with interest on those costs from the time an expense was incurred through the date the department is reimbursed.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 501.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person:

(1) who manufactures or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state; and

(2) who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1,

1999.

Sec. 501.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 501.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the department by order shall impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1270, eff. April 2, 2015.

Sec. 501.105. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date. The department shall give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a written proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1271, eff. April 2, 2015.

Sec. 501.106. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the department's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1272, eff. April 2, 2015.

Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date an order of the department under Section 501.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the department's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1273, eff. April 2, 2015.

Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 501.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1274, eff. April 2, 2015.

Sec. 501.109. COLLECTION OF PENALTY. (a) If the person does

not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond

after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

CHAPTER 502. HAZARD COMMUNICATION ACT

Sec. 502.001. SHORT TITLE. This chapter may be cited as the Hazard Communication Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons working in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during normal employment activities, during emergency situations, or as a result of proximity to the manufacture or use of those chemicals; and

(2) many employers in this state have established suitable information programs for their employees and that access to the information is required of most employers under the federal Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard.

(b) It is the intent and purpose of this chapter to assure that employers provide information regarding hazardous chemicals in the workplace to employees who may be exposed to those chemicals in their workplace.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.0021. FEDERAL LAWS AND REGULATIONS. In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.003. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(97), eff. April 2, 2015.

(3) "Chemical manufacturer" means an employer in North American Industry Classification System (NAICS) Codes 31-33 with a workplace where chemicals are produced for use or distribution.

(4) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard classification.

(5) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(6) "Department" means the Department of State Health Services.

(7) "Designated representative" means the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter, except that a recognized or certified collective bargaining agent is a designated representative regardless of written employee authorization.

(8) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(97), eff. April 2, 2015.

(9) "Distributor" means a business in North American Industry Classification System (NAICS) Code 424 or 425 that supplies hazardous chemicals to an employer who must comply with this chapter.

(10) "Employee" means a person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies, and includes a person working for this state, a person working for a political subdivision of this state, or a member of a volunteer emergency service organization or, if the applicable OSHA standard or MSHA standard is not in effect, a person working for a private employer. Workers such as office workers or accountants who encounter hazardous chemicals only in nonroutine, isolated instances are not employees for purposes of this chapter.

(11) "Employer" means a person engaged in private business who is regulated by the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.) or the Federal Mine Safety and Health Act of 1977 (30 U.S.C. Section 801 et seq.) on September 1, 1993, or the state or a political subdivision of the state, including a state, county, or municipal agency, a public school, a college or university, a river authority or publicly owned utility, a volunteer emergency service organization, and other similar employers. The term does not include any person to whom the federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.) or the Federal Mine Safety and Health Act of 1977 (30 U.S.C. Section 801 et seq.) is applicable if that employer is covered by the OSHA standard or the other two federal laws.

(11-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(12) "Expose" or "exposure" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption. The term includes potential, possible, or accidental exposure under normal conditions of use or in a reasonably foreseeable emergency.

(13) "Hazardous chemical" or "chemical" means an element, compound, or mixture of elements or compounds that is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR Section 1910.1200(c), or a hazardous substance as classified under

the OSHA standard in 29 CFR Section 1910.1200(d)(3), or by OSHA's written interpretations. A hazard determination may be made by employers who choose not to rely on the evaluations made by their suppliers if there are relevant qualitative or quantitative differences. A hazard determination shall involve the best professional judgment.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the workplace chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(18) "MSHA standard" means the Hazard Communication Standard issued by the Mine Safety and Health Administration.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(20-a) "Safety Data Sheet" ("SDS") means written or printed material concerning a hazardous chemical that is prepared in accordance with the requirements of the OSHA standard for that material.

(21) "Temporary workplace" means a stationary workplace that is staffed less than 20 hours a week. A temporary workplace may be considered to be a work area of the headquarters workplace from which employees are routinely dispatched. Temporary workplaces may include pumping stations, emergency response sites, and similar workplaces.

(22) "Work area" means a room, a defined space, a utility structure, or an emergency response site in a workplace where hazardous chemicals are present, produced, or used and where

employees are present.

(23) "Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas, with or without buildings, that is staffed 20 or more hours a week.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1275, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1276, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(97), eff. April 2, 2015.

Sec. 502.004. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies only to employers who are not required to comply with the OSHA standard, the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).

(b) Chemical manufacturers, importers, and distributors shall provide MSDSs as required by Section 502.006. Penalties provided by Sections 502.014, 502.015, and 502.016 may be assessed against chemical manufacturers, importers, and distributors for failure to provide MSDSs.

(c) If an employer is covered by both this chapter and Chapter 125, Agriculture Code, the employer is required to comply only with this chapter.

(d) This chapter, except Section 502.009, does not apply to a hazardous chemical in a sealed and labeled package that is received and subsequently sold or transferred in that package if:

(1) the seal and label remain intact while the chemical is in the workplace; and

(2) the chemical does not remain in the workplace longer than five working days.

(e) This chapter does not require labeling of the following chemicals:

(1) any pesticide, as that term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;

(2) any food, food additive, color additive, drug, cosmetic, or medical or veterinary device, including materials intended for use as ingredients in those products such as flavors and fragrances, as those terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) and regulations issued under that Act, when they are subject to the labeling requirements under that Act by the Food and Drug Administration;

(3) any distilled spirits that are beverage alcohols, wine, or malt beverages intended for nonindustrial use, as those terms are defined in the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.) and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms; and

(4) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, when subject to a consumer product safety standard or labeling requirement of those Acts or regulations issued under those Acts by the Consumer Product Safety Commission.

(f) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency;

(2) a chemical in a laboratory under the direct supervision or guidance of a technically qualified individual if:

(A) labels on incoming containers of chemicals are not removed or defaced;

(B) the employer complies with Sections 502.006 and 502.009 with respect to laboratory employees; and

(C) the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;

(3) tobacco or tobacco products;

(4) wood or wood products;

(5) articles;

(6) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(7) food, drugs, or cosmetics intended for personal consumption by an employee while in the workplace;

(8) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the workplace in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(9) any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.); and

(10) radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1277, eff. April 2, 2015.

Sec. 502.005. WORKPLACE CHEMICAL LIST. (a) For the purpose of worker right-to-know, an employer shall compile and maintain a workplace chemical list that contains the following information for each hazardous chemical normally present in the workplace or temporary workplace in excess of 55 gallons or 500 pounds or in excess of an amount that the executive commissioner determines by rule for certain highly toxic or dangerous hazardous chemicals:

(1) the identity used on the SDS and container label; and

(2) the work area in which the hazardous chemical is normally present.

(b) The employer shall update the workplace chemical list as necessary but at least by December 31 of each year. Each workplace chemical list shall be dated and signed by the person responsible for compiling the information.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area or temporary workplace and must be readily available to employees and their representatives. All employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(d) An employer shall maintain a workplace chemical list for at least 30 years. The employer shall send complete records to the department if the employer ceases to operate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1278, eff. April 2, 2015.

Sec. 502.006. SAFETY DATA SHEET. (a) A chemical manufacturer or distributor shall provide appropriate safety data sheets to employers who acquire hazardous chemicals in this state with each initial shipment and with the first shipment after an SDS is updated. The SDSs must conform to the most current requirements of the OSHA standard.

(b) An employer shall maintain a legible copy of a current SDS for each hazardous chemical purchased. If the employer does not have a current SDS for a hazardous chemical when the chemical is received at the workplace, the employer shall request an SDS in writing from the manufacturer or distributor in a timely manner or shall otherwise obtain a current SDS. The manufacturer or distributor shall respond with an appropriate SDS in a timely manner.

(c) Safety data sheets shall be readily available, on request, for review by employees or designated representatives at each workplace.

(d) A copy of an SDS maintained by an employer under this section shall be provided to the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1279, eff. April 2, 2015.

Sec. 502.007. LABEL. (a) A label on an existing container of a hazardous chemical may not be removed or defaced unless it is illegible, inaccurate, or does not conform to the OSHA standard or other applicable labeling requirement. Primary containers must be relabeled with at least the identity appearing on the SDS, the pertinent physical and health hazards, including the organs that would be affected, and the manufacturer's name and address. Except as provided by Subsection (b), secondary containers must be relabeled with at least the identity appearing on the SDS and appropriate hazard warnings.

(b) An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1280, eff. April 2, 2015.

Sec. 502.008. OUTREACH PROGRAM. (a) The department shall develop an outreach program that:

(1) consists of an education and training program in the form of instructional materials to assist employers in fulfilling the requirements of Section 502.009; and

(2) includes the development and distribution of a supply of informational leaflets concerning employer's duties, employee rights, the outreach program, and the effects of hazardous chemicals.

(b) The department may contract with a public institution of higher education or other public or private organization to develop and implement the outreach program.

(c) The department shall develop and provide to each employer a suitable form of notice providing employees with information relating to employee rights under this chapter.

(d) The department shall publicize the availability of information to answer inquiries from employees, employers, or the public in this state concerning the effects of hazardous chemicals.

(e) In cooperation with the department, an employer may provide

an outreach program in the community.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.009 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1281, eff. April 2, 2015.

Sec. 502.009. EMPLOYEE EDUCATION PROGRAM. (a) An employer shall provide an education and training program for employees who use or handle hazardous chemicals.

(b) An employer shall develop, implement, and maintain at the workplace a written hazard communication program for the workplace that describes how the criteria specified in this chapter will be met.

(c) An education and training program must include, as appropriate:

(1) information on interpreting labels and SDSs and the relationship between those two methods of hazard communication;

(2) the location by work area, acute and chronic effects, and safe handling of hazardous chemicals known to be present in the employees' work area and to which the employees may be exposed;

(3) the proper use of protective equipment and first aid treatment to be used with respect to the hazardous chemicals to which the employees may be exposed; and

(4) general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals.

(d) Training may be conducted by categories of chemicals. An employer must advise employees that information is available on the specific hazards of individual chemicals through the MSDSs. Protective equipment and first aid treatment may be by categories of hazardous chemicals.

(e) An employer shall provide additional instruction to an employee when the potential for exposure to hazardous chemicals in the employee's work area increases significantly or when the employer receives new and significant information concerning the hazards of a chemical in the employee's work area. The addition of new chemicals alone does not necessarily require additional training.

(f) An employer shall provide training to a new or newly assigned employee before the employee works with or in a work area containing a hazardous chemical.

(g) An employer shall keep the written hazard communication program and a record of each training session given to employees, including the date, a roster of the employees who attended, the subjects covered in the training session, and the names of the instructors. Those records shall be maintained for at least five years by the employer. The department shall have access to those records and may interview employees during inspections.

(h) Emergency service organizations shall provide, to their members or employees who may encounter hazardous chemicals during an emergency, information on recognizing, evaluating, and controlling exposure to the chemicals.

(i) As part of an outreach program created in accordance with Section 502.008, the department shall develop an education and training assistance program to assist employers who are unable to develop the programs because of size or other practical considerations. The program shall be made available to those employers on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.010 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1282, eff. April 2, 2015.

Sec. 502.010. LIABILITY UNDER OTHER LAW. Providing information to an employee does not affect:

(1) the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals;

(2) the employer's responsibility to take any action to prevent occupational disease as required under other law; or

(3) any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Health & Safety Code Sec. 502.011 and amended by Acts 1993, 73rd Leg., ch. 528, eff. Sept. 1, 1993.

Sec. 502.011. COMPLAINTS AND INVESTIGATIONS. (a) The department or the department's representative shall investigate in a timely manner a complaint received in writing from an employee or an employee's designated representative relating to an alleged violation of this chapter by an employer.

(b) A complaint received from a person relating to an alleged violation shall be referred to the federal Occupational Safety and Health Administration (OSHA) or to the federal Mine Safety and Health Administration (MSHA) if the complaint is related to an applicable OSHA or MSHA requirement and the applicable OSHA or MSHA standard is in effect. The department or the department's representative shall investigate the complaint if:

(1) the applicable OSHA or MSHA standard is not in effect; or

(2) the complaint is based on a requirement of this chapter.

(c) On presentation of appropriate credentials, a department representative may enter a workplace at reasonable times to inspect and investigate complaints.

(d) The department may find multiple violations by an employer based on distinct requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.012 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1283, eff. April 2, 2015.

Sec. 502.012. REPORTING FATALITIES AND INJURIES. (a) Within 48 hours after the occurrence of an employee accident that directly or indirectly involves chemical exposure or that involves asphyxiation, and that is fatal to one or more employees or results in the hospitalization of five or more employees, the employer of any of the employees so injured or killed shall report the accident

either orally or in writing to the department.

(b) The report to the department shall relate the circumstances of the accident, the number of fatalities, and the extent of any injuries. If it is necessary to complete the investigation of an incident, the department may require additional reports in writing as necessary.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.014. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against an employer who violates this chapter, department rules adopted under this chapter, or an order issued under this chapter.

(b) If the department finds one or more violations of this chapter, the department may issue a notice of violation to the employer. The notice of violation shall specifically describe the violation, refer to the applicable section or subsection of the chapter, and state the amount of the penalty, if any, to be assessed by the department.

(c) An employer who receives a notice of violation may respond to the department in writing within 15 days after the date of receipt of the notice of violation in one of the ways provided by Subsection (d), (e), or (f).

(d) If the employer disputes the validity of the violation and has reason to believe that the findings of the department were based on inaccurate or incomplete information, the employer may request an informal conference with representatives of the department. The purpose of an informal conference is to permit the employer to meet with department representatives to discuss the basis of the violation and to provide information to the department. The department shall schedule the informal conference. A request for an informal conference made in bad faith is a violation of this chapter.

(e) The employer may correct the violation and certify to the department that the corrections have been made.

(f) The employer may request a hearing.

(g) Following an informal conference, the department shall respond in writing to the employer, stating whether the department intends to withdraw the notice of violation or pursue it. If the department intends to pursue the notice of violation, the employer

may respond as provided by either Subsection (h) or (i) within 10 days after the date of receipt of the department's correspondence.

(h) The employer may correct the violation and certify to the department that the corrections have been made.

(i) The employer may request a hearing.

(j) A request for an informal conference or a statement by an employer that the employer is in compliance with the provision of this chapter does not waive the employer's right to a hearing.

(k) The department may not assess an administrative penalty for any violation that has been corrected within 15 days after the date of receipt of the notice of violation, the date of receipt of the department's response by the employer, or 10 days after the date of receipt by the employer of the department's response to the informal conference provided for in Subsection (g), whichever is later.

(l) In determining the amount of the penalty, the department shall consider:

(1) the employer's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the employee;

(4) the employer's demonstrated good faith;

(5) the duration of the violation; and

(6) other matters as justice may require.

(m) Each day a violation continues may be considered a separate violation.

(n) The penalty may not exceed $500 for each violation.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1284, eff. April 2, 2015.

Sec. 502.0141. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after an employer charged with a violation is given an opportunity for a hearing.

(b) If a hearing is to be held, the department shall refer the matter to the State Office of Administrative Hearings and an administrative law judge of that office shall make findings of fact and shall issue to the department a written proposal for decision regarding the occurrence of the violation and the amount of the

penalty that may be warranted.

(c) If the employer charged with the violation does not request a hearing in a timely manner, the department may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against an employer, the department shall issue an order requiring that the employer pay the penalty.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(98), eff. April 2, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1285, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(98), eff. April 2, 2015.

Sec. 502.0142. PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the department shall inform the employer against whom the order is issued of the amount of the penalty for the violation.

(b) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the employer shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, an employer who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for

placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the employer stating that the employer is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) Subsection (c)(1) does not apply to the state or a political subdivision. The penalty may not be enforced against the state or a political subdivision until all judicial review has been exhausted.

(e) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The employer who files an affidavit has the burden of proving that the employer is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(f) If the employer does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(g) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(h) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the employer to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(i) When the judgment of the court becomes final, the court

shall proceed under this subsection. If the employer paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the employer. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the employer gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the employer gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the employer pays the amount.

(j) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1286, eff. April 2, 2015.

Sec. 502.015. CIVIL PENALTY; INJUNCTION. (a) If it appears that an employer has violated, is violating, or is threatening to violate this chapter or any rule adopted or order issued under this chapter, the department may request the attorney general or the district, county, or city attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) injunctive relief to restrain the employer from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty for a violation; or

(3) both the injunctive relief and the civil penalty.

(b) The penalty may be in an amount not to exceed $2,000 a day for each violation, with a total not to exceed $20,000 for that violation.

(c) In determining the amount of the penalty, the court shall consider the employer's history of previous violations, the

seriousness of the violation, any hazard to health and safety of the public, the demonstrated good faith of the employer charged, and other matters as justice may require.

(d) Any civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury to the credit of the general revenue fund. Any civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(e) This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1287, eff. April 2, 2015.

Sec. 502.016. CRIMINAL PENALTY. An employer who is required to disclose hazard information under this chapter and who proximately causes an occupational disease or injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information provided on an MSDS commits an offense that is punishable by a fine of not more than $10,000 for each violation. Each day of violation constitutes a separate offense, except that the fine may not exceed $100,000 for that violation. This section does not affect any other right of an employee or any other employer to receive compensation for damages under other law.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.017. EMPLOYEE NOTICE; RIGHTS OF EMPLOYEES. (a) An employer shall post and maintain adequate notice, at locations where notices are normally posted, informing employees of their rights under this chapter. If the department does not prepare the notice under Section 502.008, the employer shall prepare the notice.

(b) Employees who may be exposed to hazardous chemicals shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for the hazardous chemicals. Employees, on request, shall be provided a copy of a specific MSDS with any trade

secret information deleted. In addition, employees shall receive training concerning the hazards of the chemicals and measures they can take to protect themselves from those hazards. Employees shall be provided with appropriate personal protective equipment. These rights are guaranteed.

(c) An employer may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an employee because the employee has:

(1) filed a complaint;

(2) assisted an inspector of the department who may make or is making an inspection under Section 502.011;

(3) instituted or caused to be instituted any proceeding under or related to this chapter;

(4) testified or is about to testify in a proceeding under this chapter; or

(5) exercised any rights afforded under this chapter on behalf of the employee or on behalf of others.

(d) Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.

(e) A waiver by an employee of the benefits or requirements of this chapter is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.013 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1288, eff. April 2, 2015.

Sec. 502.018. STANDARD FOR PHYSICIAN TREATMENT. For the purposes of this chapter, the requirements in the OSHA standard for physicians treating employees (29 CFR Section 1910.1200(i)) apply to physicians treating persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.015 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1289, eff. April 2, 2015.

Sec. 502.019. RULES. The executive commissioner may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 502.016 and amended by Acts 1993, 73rd Leg., ch. 528, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1290, eff. April 2, 2015.

Sec. 502.020. WORKPLACE SAFETY FOR INMATES. A person imprisoned in a facility operated by or for the Texas Department of Criminal Justice is not an employee for the purposes of this chapter. The Texas Department of Criminal Justice shall provide a person imprisoned in a facility operated by or for the Texas Department of Criminal Justice the protections from exposure to hazardous chemicals in the workplace as provided for in this chapter.

Added by Acts 1999, 76th Leg., ch. 1332, Sec. 1, eff. June 19, 1999; Acts 1999, 76th Leg., ch. 1501, Sec. 1, eff. June 19, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.004, eff. Sept. 1, 2001.

CHAPTER 503. HEALTH RISK ASSESSMENT OF TOXIC SUBSTANCES AND HARMFUL PHYSICAL AGENTS

Sec. 503.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(99), eff. April 2, 2015.

(2) "Committee" means the Toxic Substances Coordinating Committee.

(3) "Department" means the Department of State Health Services.

(4) "Harmful physical agent" means a physical phenomenon, other than a toxic substance, that has or may have carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and

includes:

(A) ionizing radiation, X-rays, gamma rays, ultraviolet light, or other electromagnetic radiation; and

(B) acoustical, thermal, or mechanical vibration.

(5) "Health risk assessment" means the use of objective data to characterize the potential adverse health effects that exposure to a toxic substance or a harmful physical agent may have on a person.

(6) "Toxic substance" means a substance that has or may have toxic, carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes a product that contains a toxic substance that poses or may pose a substantial hazard to human health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1291, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(99), eff. April 2, 2015.

Sec. 503.002. TOXIC SUBSTANCES COORDINATING COMMITTEE. (a) The Toxic Substances Coordinating Committee is composed of one representative from the:

(1) department;

(2) Department of Agriculture;

(3) Texas Commission on Environmental Quality;

(4) Parks and Wildlife Department;

(5) Department of Public Safety of the State of Texas; and

(6) Railroad Commission of Texas.

(b) The chief administrative officer of each agency shall appoint the agency representative to the committee. A representative serves at the will of the chief administrative officer or until the representative terminates employment with the agency, whichever occurs first.

(c) The representative of the department serves as chairman of the committee.

(d) The department shall provide administrative support to the committee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.250, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1292, eff. April 2, 2015.

Sec. 503.003. MEETINGS; NOTICE. (a) The committee shall meet:

(1) at the call of the chief administrative officer of any member agency; or

(2) at least once each quarter on a meeting date set by the committee.

(b) The committee must provide public notice of the meeting date not later than the 15th day before the date on which the committee holds the meeting.

(c) The committee shall adopt rules for the conduct of its meetings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.004. DUTIES OF COMMITTEE. (a) The committee shall coordinate communication among member agencies concerning each agency's efforts to regulate toxic substances and harmful physical agents.

(b) The committee shall develop a plan that provides for:

(1) intergovernmental cooperation concerning regulations to prevent and control the adverse health effects of toxic substances and harmful physical agents;

(2) a health risk assessment of emergency responses to accidents involving toxic substances or harmful physical agents;

(3) the coordination of agency programs relating to the prevention and control of adverse health effects resulting from exposure to toxic substances or harmful physical agents;

(4) the establishment of an integrated system to collect and manage information relating to toxic substances and harmful physical agents; and

(5) public education concerning the use of toxic substances and harmful physical agents and the potential adverse health effects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.005. HEALTH RISK ASSESSMENTS. (a) In its capacity to protect the public health, the department shall coordinate health risk assessments conducted under this chapter.

(b) Each agency represented on the committee shall consult with and advise the department concerning health risk assessment activities when beginning a health risk assessment. The agency shall consult with and advise the department when taking the action in an emergency or as soon as possible after taking the action. This section does not require department approval of the agency's action or health risk assessment.

(c) Each agency represented on the committee shall use federal standards and health risk assessments, if appropriate, and avoid duplicating federal efforts.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.006. POWERS OF DEPARTMENT. (a) The department may establish an information management system and may collect and evaluate information relating to the use of toxic substances and harmful physical agents.

(b) The department may enter into agreements or contracts with federal, state, or local governmental entities, planning regions, and other public or private entities to implement this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 503.007. EFFECT ON OTHER LAWS. This chapter does not amend or affect the regulatory activities or procedures authorized under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 505. MANUFACTURING FACILITY COMMUNITY RIGHT-TO-KNOW ACT

Sec. 505.001. SHORT TITLE. This chapter may be cited as the Manufacturing Facility Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the commission to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1293, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 3, eff. September 1, 2015.

Sec. 505.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS. (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to North American Industry Classification System (NAICS), to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including

information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1294, eff. April 2, 2015.

Sec. 505.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(3-a) "Commission" means the Texas Commission on Environmental Quality.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(1), eff. September 1, 2015.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency

Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(8-a) "Executive director" means the executive director of the commission.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person, and that is in North American Industry Classification System (NAICS) Codes 31-33.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the administrative head of a fire department, including a volunteer fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the

safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(20-a) "Safety data sheet" or "SDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the commission under Section 505.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the commission for administering its functions related to EPCRA.

(24) "Workplace chemical list" means a list of hazardous chemicals developed under 29 CFR Section 1910.1200(e)(1)(i).

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1295, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1296, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(100), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(1), eff. September 1, 2015.

Sec. 505.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in NAICS Codes 31-33 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste, as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) foods, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The commission shall develop and implement an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1297, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 5, eff. September 1, 2015.

Sec. 505.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by commission rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the commission, along with the appropriate fee, according to the procedures specified by commission rules.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA Section 311, but a fee may not be associated with filing the report.

(e) Except as provided by Section 505.0061(c), a facility operator shall file the tier two form with the commission not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance.

(e-1) Except as provided by Section 505.0061(c), a facility operator shall file an updated tier two form with the commission:

(1) not later than the 90th day after the date on which the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of a previously reported hazardous chemical or extremely hazardous substance; and

(2) as otherwise required by commission rule.

(e-2) A facility operator shall furnish a copy of each tier two form and updated tier two form filed with the commission under this section to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a safety data sheet with the commission on the commission's request.

(g) The commission shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 505.015, documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1298, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 6, eff. September 1, 2015.

Sec. 505.0061. REPORTING FOR FACILITIES STORING AMMONIUM NITRATE USED IN FERTILIZER. (a) In this section, "ammonium nitrate" and "ammonium nitrate storage facility" have the meanings assigned by Section 63.151, Agriculture Code.

(b) As soon as practicable but not later than 72 hours after the commission receives a tier two form reporting the presence of ammonium nitrate at an ammonium nitrate storage facility, the commission shall furnish a copy of the form to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal shall furnish a copy of the form to the chief of the fire department having jurisdiction over the facility. The Texas Division of Emergency Management shall furnish a copy of the form to the appropriate local emergency planning committee.

(c) The operator of an ammonium nitrate storage facility shall file:

(1) a tier two form with the commission not later than 72 hours after the operator:

(A) begins operation; or

(B) has a reportable addition, at the appropriate threshold, of previously unreported ammonium nitrate; and

(2) an updated tier two form not later than 72 hours after the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of previously reported ammonium nitrate.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 7, eff. September 1, 2015.

Sec. 505.007. DIRECT CITIZEN ACCESS TO INFORMATION. (a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under

Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the commission.

(d) Any facility electing to furnish the material to the commission under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the commission and refer the request to the commission for that filing period. The notice to persons making requests shall state the address of the commission and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 8, eff. September 1, 2015.

Sec. 505.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the executive director, the fire chief, or the local emergency planning committee a copy of the SDS for any chemical on the tier two form furnished under Section 505.006 or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(2), eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1299, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 9, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(2), eff.

September 1, 2015.

Sec. 505.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, a commission representative may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1300, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 10, eff. September 1, 2015.

Sec. 505.015. TRADE SECRETS. Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 505.016. RULES; FEES. (a) The commission may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The commission by rule may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee for facilities may not exceed:

(1) $100 for each required submission having no more than 25 hazardous chemicals or hazardous chemical categories;

(2) $200 for each required submission having no more than 50 hazardous chemicals or hazardous chemical categories;

(3) $300 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories;

(4) $400 for each required submission having no more than 100 hazardous chemicals or hazardous chemical categories; or

(5) $500 for each required submission having more than 100 hazardous chemicals or chemical categories.

(c) To minimize the fees, the commission by rule shall provide

for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The commission may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA. An amount not to exceed 15 percent of the fees collected under this chapter and Chapter 506, or 15 percent of the amount of fees paid by the state and its political subdivisions under Chapter 506, whichever is greater, may be used by the Department of State Health Services to administer Chapter 502.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1304, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 11, eff. September 1, 2015.

Sec. 505.017. NOTICE ISSUED UNDER EMERGENCIES. (a) When immediate notification of a release by a facility to the state emergency response commission is required in accordance with EPCRA, the state agency responsible for the information submitted to the state emergency response commission, on receipt of the required notification, shall make a determination as to whether the release reported will substantially endanger human health or the environment.

(b) If the responsible state agency determines that a release will substantially endanger human health or the environment, the agency shall, on request, notify the state senator or representative who represents the area in which the facility is located of the release within four hours of receipt of the original notification.

Added by Acts 2011, 82nd Leg., R.S., Ch. 780 (H.B. 1981), Sec. 3, eff. September 1, 2011.

Sec. 505.018. ENFORCEMENT. (a) A facility operator may not violate this chapter, commission rules adopted under this chapter, or an order issued under this chapter.

(b) The commission may enforce this chapter under Chapter 7,

Water Code, including by issuing an administrative order that assesses a penalty or orders a corrective action.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 12, eff. September 1, 2015.

CHAPTER 506. PUBLIC EMPLOYER COMMUNITY RIGHT-TO-KNOW ACT

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Public Employer Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the manufacture or use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the commission to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1305, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 13, eff. September 1, 2015.

Sec. 506.003. FEDERAL LAWS AND REGULATIONS; OTHER STANDARDS. (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to nomenclature systems developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS), or to other information, including information such as classification codes, performance standards, systematic names, standards, and systems described in publications sponsored by private technical or trade organizations, means a reference to the most current version of the publication.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 506.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(101), eff. April 2, 2015.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(3-a) "Commission" means the Texas Commission on Environmental Quality.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(3), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(101), eff. April 2, 2015.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(8-a) "Executive director" means the executive director of the commission.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites, that are owned or operated by the same person, or by any person who controls, is controlled by, or is under common control with that person and that is operated by the state or a political subdivision of the state.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the administrative head of a fire department, including a volunteer fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means any chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list, the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(21) "Public employer" means:

(A) the state and political subdivisions of the state, including state, county, and municipal agencies;

(B) public schools, colleges, and universities;

(C) river authorities and publicly owned utilities;

(D) volunteer emergency service organizations; and

(E) other similar employers who are not covered by the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596), the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. No. 91-173), or the Federal Mine Safety and Health Amendments Act of 1977 (Pub. L. No. 95-164).

(21-a) "Safety data sheet" or "SDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for

that document.

(22) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(23) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established by the EPA pursuant to EPCRA, Section 302.

(24) "Tier two form" means:

(A) a form specified by the commission under Section 506.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the commission for administering its functions related to EPCRA.

(25) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005(a).

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1306, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1307, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(101), eff. April 2, 2015.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(3), eff. September 1, 2015.

Sec. 506.005. APPLICABILITY OF CHAPTER. (a) Public employers shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer

than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The commission shall develop and implement an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1308, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 15, eff. September 1, 2015.

Sec. 506.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by commission rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the commission, along with the appropriate fee, according to the procedures specified by commission rules.

(d) A facility operator shall file the tier two form with the commission not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance, but a fee may not be associated with filing this report.

(d-1) A facility operator shall file an updated tier two form with the commission:

(1) not later than the 90th day after the date on which the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of a previously reported hazardous chemical or extremely hazardous substance; and

(2) as otherwise required by commission rule.

(d-2) A facility operator shall furnish a copy of each tier two form and updated tier two form filed with the commission under this section to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(e) A facility operator shall file a safety data sheet with the

commission on the commission's request.

(f) The commission shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(g) Documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1309, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 16, eff. September 1, 2015.

Sec. 506.007. DIRECT CITIZEN ACCESS TO INFORMATION. (a) Except as otherwise provided by this section, a person may request in writing copies of the facility's existing workplace chemical list for community right-to-know purposes.

(b) Except as otherwise provided by this section, any facility covered by this chapter shall furnish or mail, within 10 working days of the date of receipt of a request under Subsection (a), either a copy of the facility's existing workplace chemical list or a modified version of the most recent tier two form using a 500-pound threshold.

(c) Any facility that has received five requests under Subsection (a) in a calendar month, four requests in a calendar month for two or more months in a row, or more than 10 requests in a year may elect to furnish the material to the commission.

(d) Any facility electing to furnish the material to the commission under Subsection (c) may during that same filing period inform persons making requests under Subsection (a) of the availability of the information at the commission and refer the request to the commission for that filing period. The notice to persons making requests shall state the address of the commission and shall be mailed within seven days of the date of receipt of the request, if by mail, and at the time of the request if in person.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 17, eff. September 1, 2015.

Sec. 506.008. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the executive director, the fire chief, or the local emergency planning committee a copy of the SDS for any chemical on the tier two form furnished under Section 506.006 or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(4), eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1310, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 18, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(4), eff. September 1, 2015.

Sec. 506.009. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, a commission representative may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1311, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 19, eff. September 1, 2015.

Sec. 506.017. RULES; FEES. (a) The commission may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The commission by rule may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. The fee may not exceed:

(1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) $100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the commission by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The commission may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA. An amount not to exceed 15 percent of the fees collected under Chapter 505 and this chapter, or 15 percent of the amount of fees paid by the state and its political subdivisions under this chapter, whichever is greater, may be used by the Department of State Health Services to administer Chapter 502.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1317, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 20, eff. September 1, 2015.

Sec. 506.018. ENFORCEMENT. (a) A facility operator may not violate this chapter, commission rules adopted under this chapter, or an order issued under this chapter.

(b) The commission may enforce this chapter under Chapter 7, Water Code, including by issuing an administrative order that assesses a penalty or orders a corrective action.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 21, eff. September 1, 2015.

CHAPTER 507. NONMANUFACTURING FACILITIES COMMUNITY RIGHT-TO-KNOW ACT

Sec. 507.001. SHORT TITLE. This chapter may be cited as the Nonmanufacturing Facilities Community Right-To-Know Act.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.002. FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the health and safety of persons living in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during emergency situations or as a result of proximity to the use of those chemicals; and

(2) many facility operators in this state have established suitable information programs for their communities and that access to the information is required of most facility operators under the federal Emergency Planning and Community Right-To-Know Act (EPCRA).

(b) It is the intent and purpose of this chapter to ensure that accessibility to information regarding hazardous chemicals is provided to:

(1) fire departments responsible for dealing with chemical hazards during an emergency;

(2) local emergency planning committees and other emergency planning organizations; and

(3) the commission to make the information available to the public through specific procedures.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1318, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 22, eff. September 1, 2015.

Sec. 507.003. FEDERAL LAWS AND REGULATIONS. (a) In this chapter, a reference to a federal law or regulation means a reference to the most current version of that law or regulation.

(b) In this chapter, a reference to the North American Industry Classification System (NAICS) means a reference to the most current

version of that system.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 23, eff. September 1, 2015.

Sec. 507.004. DEFINITIONS. In this chapter:

(1) "Article" means a manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 2015.

(3) "Chemical name" means:

(A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or

(B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

(3-a) "Commission" means the Texas Commission on Environmental Quality.

(4) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(5), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 2015.

(7) "EPA" means the United States Environmental Protection Agency.

(8) "EPCRA" or "SARA Title III" means the federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, Pub. L. No. 99-499 et seq.

(8-a) "Executive director" means the executive director of the commission.

(9) "Extremely hazardous substance" means any substance as defined in EPCRA, Section 302, or listed by the United States Environmental Protection Agency in 40 CFR Part 355, Appendices A and B.

(10) "Facility" means all buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person, and that is in North American Industry Classification System (NAICS) Codes 11-23 or Codes 42-92. The term does not include a facility subject to Chapter 506.

(11) "Facility operator" or "operator" means the person who controls the day-to-day operations of the facility.

(12) "Fire chief" means the administrative head of a fire department, including a volunteer fire department.

(13) "Hazardous chemical" has the meaning given that term by 29 CFR 1910.1200(c), except that the term does not include:

(A) any food, food additive, color additive, drug, or cosmetic regulated by the United States Food and Drug Administration;

(B) any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(C) any substance to the extent that it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(D) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; and

(E) any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

(14) "Health hazard" has the meaning given that term by the OSHA standard (29 CFR 1910.1200(c)).

(15) "Identity" means a chemical or common name, or alphabetical or numerical identification, that is indicated on the safety data sheet (SDS) for the chemical. The identity used must permit cross-references to be made among the facility chemical list,

the label, and the SDS.

(16) "Label" means any written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.

(17) "Local emergency planning committee" means a committee formed under the requirements of EPCRA, Section 301, and recognized by the state emergency response commission for the purposes of emergency planning and public information.

(19) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(20) "Physical hazard" means a chemical that is classified as posing one of the following hazardous effects: explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid, or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas.

(20-a) "Safety data sheet" or "SDS" means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(21) "State emergency response commission" means the state emergency management council or other committee appointed by the governor in accordance with EPCRA.

(22) "Threshold planning quantity" means the minimum quantity of an extremely hazardous substance for which a facility owner or operator must participate in emergency planning, as established by the EPA pursuant to EPCRA, Section 302.

(23) "Tier two form" means:

(A) a form specified by the commission under Section 507.006 for listing hazardous chemicals as required by EPCRA; or

(B) a form accepted by the EPA under EPCRA for listing hazardous chemicals together with additional information required by the commission for administering its functions related to EPCRA.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1319, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1320, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(102), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 24, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(5), eff. September 1, 2015.

Sec. 507.005. APPLICABILITY OF CHAPTER. (a) Facility operators whose facilities are in North American Industry Classification System (NAICS) Codes 11-23 or NAICS Codes 42-92 and who are not subject to Chapter 506 shall comply with this chapter.

(b) This chapter does not apply to a hazardous chemical in a sealed package that is received and subsequently sold or transferred in that package if:

(1) the seal remains intact while the chemical is in the facility;

(2) the chemical does not remain in the facility longer than five working days; and

(3) the chemical is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR Part 355, Appendices A and B.

(c) This chapter does not apply to:

(1) any hazardous waste as that term is defined by the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), when subject to regulations issued under that Act by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products;

(4) articles;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined by the Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) and Federal Hazardous Substances Act (15 U.S.C.

Section 1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation, including storage incident to that transportation, of any substance or chemical subject to this chapter, including the transportation and distribution of natural gas; and

(10) radioactive waste.

(d) The commission shall develop and implement an outreach program concerning the public's ability to obtain information under this chapter similar to the outreach program under Section 502.008.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1321, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 25, eff. September 1, 2015.

Sec. 507.006. FACILITY CHEMICAL LIST. (a) For the purpose of community right-to-know, a facility operator covered by this chapter shall compile and maintain a tier two form that contains information on hazardous chemicals present in the facility in quantities that meet or exceed thresholds determined by the EPA in 40 CFR Part 370, or at any other reporting thresholds as determined by commission rule for certain highly toxic or extremely hazardous substances.

(b) Multiple facilities may be reported on the same tier two form, with appropriate facility identifiers, if the hazardous chemicals or hazardous chemical categories present at the multiple facilities are in the same ranges. In multiple facility reporting, the reporting thresholds must be applied to each facility rather than to the total quantities present at all facilities.

(c) Each tier two form shall be filed annually with the commission, along with the appropriate fee, according to the procedures specified by commission rules.

(d) The tier two form shall be used to comply with the updating requirements in EPCRA, Section 311, but a fee may not be associated with filing the report.

(e) Except as provided by Section 507.0061(c), a facility operator shall file the tier two form with the commission not later than the 90th day after the date on which the operator begins operation or has a reportable addition, at the appropriate threshold, of a previously unreported hazardous chemical or extremely hazardous substance.

(e-1) Except as provided by Section 507.0061(c), a facility operator shall file an updated tier two form with the commission:

(1) not later than the 90th day after the date on which the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of a previously reported hazardous chemical or extremely hazardous substance; and

(2) as otherwise required by commission rule.

(e-2) A facility operator shall furnish a copy of each tier two form and updated tier two form filed with the commission under this section to the fire chief of the fire department having jurisdiction over the facility and to the appropriate local emergency planning committee.

(f) A facility operator shall file a safety data sheet with the commission on the commission's request.

(g) The commission shall maintain records of the tier two forms and other documents filed under this chapter or EPCRA for at least 30 years.

(h) Except as provided by Section 507.012, documents filed under this chapter are subject to Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1322, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 26, eff. September 1, 2015.

Sec. 507.0061. REPORTING FOR FACILITIES STORING AMMONIUM

NITRATE USED IN FERTILIZER. (a) In this section, "ammonium nitrate" and "ammonium nitrate storage facility" have the meanings assigned by Section 63.151, Agriculture Code.

(b) As soon as practicable but not later than 72 hours after the commission receives a tier two form reporting the presence of ammonium nitrate at an ammonium nitrate storage facility, the commission shall furnish a copy of the form to the state fire marshal and the Texas Division of Emergency Management. The state fire marshal shall furnish a copy of the form to the chief of the fire department having jurisdiction over the facility. The Texas Division of Emergency Management shall furnish a copy of the form to the appropriate local emergency planning committee.

(c) The operator of an ammonium nitrate storage facility shall file:

(1) a tier two form with the commission not later than 72 hours after the operator:

(A) begins operation; or

(B) has a reportable addition, at the appropriate threshold, of previously unreported ammonium nitrate; and

(2) an updated tier two form with the commission not later than 72 hours after the operator has a change in the chemical weight range, as listed in 40 C.F.R. Part 370, of previously reported ammonium nitrate.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 27, eff. September 1, 2015.

Sec. 507.007. EMERGENCY PLANNING INFORMATION. (a) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the tier two form for the sole purpose of planning fire department activities in case of an emergency.

(b) A facility operator, on request, shall give the fire chief or the local emergency planning committee such additional information on types and amounts of hazardous chemicals present at a facility as the requestor may need for emergency planning purposes. A facility operator, on request, shall give the executive director, the fire chief, or the local emergency planning committee a copy of the SDS for any chemical on the tier two form furnished under Section 507.006

or for any chemical present at the facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 515 , Sec. 36(6), eff. September 1, 2015.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1323, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 28, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 36(6), eff. September 1, 2015.

Sec. 507.008. COMPLAINTS AND INVESTIGATIONS. On presentation of appropriate credentials, a commission representative may enter a facility at reasonable times to inspect and investigate complaints.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1324, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 29, eff. September 1, 2015.

Sec. 507.012. TRADE SECRETS. Facility operators must substantiate trade secret claims to the administrator of the EPA in accordance with EPCRA, Section 322.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.

Sec. 507.013. RULES; FEES. (a) The commission may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The commission by rule may authorize the collection of annual fees from facility operators for the filing of tier two forms required by this chapter. Except as provided by Subsection (d), fees may be used only to fund activities under this chapter. The fee may not exceed:

(1) $50 for each required submission having no more than 75 hazardous chemicals or hazardous chemical categories; or

(2) $100 for each required submission having more than 75 hazardous chemicals or chemical categories.

(c) To minimize the fees, the commission by rule shall provide for consolidated filings of multiple tier two forms for facility operators covered by Subsection (b) if each of the tier two forms contains fewer than 25 items.

(d) The commission may use up to 20 percent of the fees collected under this section as grants to local emergency planning committees to assist them to fulfill their responsibilities under EPCRA.

Added by Acts 1993, 73rd Leg., ch. 528, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1328, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 30, eff. September 1, 2015.

Sec. 507.014. ENFORCEMENT. (a) A facility operator may not violate this chapter, commission rules adopted under this chapter, or an order issued under this chapter.

(b) The commission may enforce this chapter under Chapter 7, Water Code, including by issuing an administrative order that assesses a penalty or orders a corrective action.

Added by Acts 2015, 84th Leg., R.S., Ch. 515 (H.B. 942), Sec. 31, eff. September 1, 2015.

CHAPTER 508. AREA QUARANTINE FOR ENVIRONMENTAL OR TOXIC AGENT

Sec. 508.001. DEFINITIONS. In this chapter:

(1) "Environmental or toxic agent" means any bacterium or other disease-producing organism, toxic substance, radioactive substance, or other hazardous substance capable of causing widespread human illness, death, or substantial negative economic impact.

(2) "Health authority" means a physician appointed as a health authority or a regional director under Chapter 121.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

Sec. 508.002. APPLICABILITY. This chapter applies to any circumstance in which an environmental or toxic agent is introduced into the environment, including an act of terrorism.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.

Sec. 508.003. AREA QUARANTINE. (a) If the commissioner of state health services or one or more health authorities determine that the introduction of an environmental or toxic agent into the environment has occurred, the commissioner or authorities may impose an area quarantine in the manner and subject to the procedures provided for an area quarantine imposed under Section 81.085. The commissioner of state health services or a health authority may, with respect to an area quarantine imposed under this chapter, exercise any power for a response to the introduction of an environmental or toxic agent into the environment under this section that is authorized by Section 81.085 for a response to an outbreak of a communicable disease. The area quarantine must be accomplished by the least restrictive means necessary to protect public health considering the availability of resources.

(b) A quarantine imposed by a health authority under this section expires at the earlier of:

(1) the 24th hour after the time the quarantine is imposed; or

(2) the time that appropriate action to terminate the quarantine or impose superseding requirements is taken under Chapter 418, Government Code, or is taken by the commissioner of state health services under this section.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1329, eff. April 2, 2015.

Sec. 508.004. CRIMINAL PENALTY. A person commits an offense if the person knowingly fails or refuses to obey an order or instruction

of the commissioner of state health services or a health authority issued under this chapter and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 1022, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1330, eff. April 2, 2015.

TITLE 7. MENTAL HEALTH AND INTELLECTUAL DISABILITY
SUBTITLE A. SERVICES FOR PERSONS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY
CHAPTER 531. PROVISIONS GENERALLY APPLICABLE TO MENTAL HEALTH AND INTELLECTUAL DISABILITY SERVICES

Sec. 531.001. PURPOSE; POLICY. (a) It is the purpose of this subtitle to provide for the effective administration and coordination of mental health and intellectual disability services at the state and local levels.

(b) Recognizing that a variety of alternatives for serving persons with mental illness or an intellectual disability exists, it is the purpose of this subtitle to ensure that a continuum of services is provided. The continuum of services includes:

(1) mental health facilities operated by the Department of State Health Services and community services for persons with mental illness provided by the department and other entities through contracts with the department; or

(2) state supported living centers operated by the Department of Aging and Disability Services and community services for persons with an intellectual disability provided by the department and other entities through contracts with the department.

(c) It is the goal of this state to provide a comprehensive range of services for persons with mental illness or an intellectual disability who need publicly supported care, treatment, or habilitation. In providing those services, efforts will be made to coordinate services and programs with services and programs provided by other governmental entities to minimize duplication and to share with other governmental entities in financing those services and programs.

(d) It is the policy of this state that, when appropriate and feasible, persons with mental illness or an intellectual disability shall be afforded treatment in their own communities.

(e) It is the public policy of this state that mental health and intellectual disability services be the responsibility of local agencies and organizations to the greatest extent possible. The Department of State Health Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of mental health services. The Department of Aging and Disability Services shall assist the local agencies and organizations by coordinating the implementation of a statewide system of intellectual disability services. Each department shall ensure that mental health and intellectual disability services, as applicable, are provided. Each department shall provide technical assistance for and regulation of the programs that receive funding through contracts with that department.

(f) It is the public policy of this state to offer services first to those persons who are most in need. Therefore, funds appropriated by the legislature for mental health and intellectual disability services may be spent only to provide services to the priority populations identified in the applicable department's long-range plan.

(g) It is the goal of this state to establish at least one special officer for mental health assignment in each county. To achieve this goal, the Department of State Health Services shall assist a local law enforcement agency that desires to have an officer certified under Section 1701.404, Occupations Code.

(h) It is the policy of this state that the Department of State Health Services serves as the state's mental health authority and the Department of Aging and Disability Services serves as the state's intellectual disability authority. The executive commissioner is responsible for the planning, policy development, and resource development and allocation for and oversight of mental health and intellectual disability services in this state. It is the policy of this state that, when appropriate and feasible, the executive commissioner may delegate the executive commissioner's authority to a single entity in each region of the state that may function as the local mental health or intellectual and developmental disability authority for one or more service areas in the region.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 19, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.800, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1333, eff. April 2, 2015.

Sec. 531.002. DEFINITIONS. In this subtitle:

(1) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

(2) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(3) "Commission" means the Health and Human Services Commission.

(4) "Commissioner" means:

(A) the commissioner of state health services in relation to mental health services; and

(B) the commissioner of aging and disability services in relation to intellectual disability services.

(5) "Community center" means a center established under Subchapter A, Chapter 534.

(6) "Department" means:

(A) the Department of State Health Services in relation to mental health services; and

(B) the Department of Aging and Disability Services in relation to intellectual disability services.

(7) "Effective administration" includes continuous planning and evaluation within the system that result in more efficient fulfillment of the purposes and policies of this subtitle.

(8) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(9) "ICF-IID" means the medical assistance program serving individuals with an intellectual or developmental disability who receive care in intermediate care facilities.

(10) "Intellectual disability services" includes all services concerned with research, prevention, and detection of intellectual disabilities, and all services related to the education, training, habilitation, care, treatment, and supervision of persons with an intellectual disability, but does not include the education of school-age persons that the public educational system is authorized to provide.

(11) "Local agency" means:

(A) a municipality, county, hospital district, rehabilitation district, school district, state-supported institution of higher education, or state-supported medical school; or

(B) any organizational combination of two or more of those entities.

(12) "Local intellectual and developmental disability authority" means an entity to which the executive commissioner delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of intellectual disability services to persons with intellectual and developmental disabilities in the most appropriate and available setting to meet individual needs in one or more local service areas.

(13) "Local mental health authority" means an entity to which the executive commissioner delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(14) "Mental health services" includes all services concerned with research, prevention, and detection of mental disorders and disabilities, and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental disorder or disability, including persons whose mental disorders or disabilities result from a substance abuse disorder.

(15) "Person with a developmental disability" means an individual with a severe, chronic disability attributable to a mental

or physical impairment or a combination of mental and physical impairments that:

(A) manifests before the person reaches 22 years of age;

(B) is likely to continue indefinitely;

(C) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of a lifelong or extended duration and are individually planned and coordinated; and

(D) results in substantial functional limitations in three or more of the following categories of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

(16) "Person with an intellectual disability" means a person, other than a person with a mental disorder, whose mental deficit requires the person to have special training, education, supervision, treatment, or care in the person's home or community or in a state supported living center.

(17) "Priority population" means those groups of persons with mental illness or an intellectual disability identified by the applicable department as being most in need of mental health or intellectual disability services.

(18) "Region" means the area within the boundaries of the local agencies participating in the operation of community centers established under Subchapter A, Chapter 534.

(19) "State supported living center" means a state-supported and structured residential facility operated by the Department of Aging and Disability Services to provide to clients with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.01, eff. Aug. 30,

1993; Acts 1995, 74th Leg., ch. 821, Sec. 2, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 17, eff. June 11, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 1, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1333, eff. April 2, 2015.

Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT. (a) A reference in law to a "state school" means a state supported living center.
(b) A reference in law to a "superintendent," to the extent the term is intended to refer to the person in charge of a state supported living center, means the director of a state supported living center.
(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(1), eff. September 1, 2023.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 18, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1333, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.05, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(1), eff. September 1, 2023.

CHAPTER 532. GENERAL PROVISIONS RELATING TO DEPARTMENT OF STATE HEALTH SERVICES

Sec. 532.001. DEFINITIONS; MENTAL HEALTH COMPONENTS OF DEPARTMENT. (a) In this chapter:
(1) "Commissioner" means the commissioner of state health services.
(2) "Department" means the Department of State Health Services.

(b) The department includes community services operated by the department and the following facilities:

(1) the central office of the department;
(2) the Austin State Hospital;
(3) the Big Spring State Hospital;
(4) the Kerrville State Hospital;
(5) the Rusk State Hospital;
(6) the San Antonio State Hospital;
(7) the Terrell State Hospital;
(8) the North Texas State Hospital;
(9) the Rio Grande State Center;
(10) the Waco Center for Youth; and
(11) the El Paso Psychiatric Center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 821, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 500, Sec. 1, eff. May 31, 1997; Acts 1999, 76th Leg., ch. 543, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 893, Sec. 1, eff. June 14, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 19, eff. June 11, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532.002. MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as the medical director under this section, a person must:

(1) be a physician licensed to practice in this state; and
(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in department mental health facilities or under contract to the department in relation to mental health

services; and

(2) leadership in physician recruitment and retention and peer review.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.07, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 1187, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.10, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532.003. HEADS OF DEPARTMENTAL MENTAL HEALTH FACILITIES. (a) The commissioner shall appoint the head of each mental health facility the department administers.

(b) The head of a facility serves at the will of the commissioner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 208, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 821, Sec. 4, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532.004. ADVISORY COMMITTEES. (a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's mental health programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532.013. FORENSIC DIRECTOR. (a) In this section:

(1) "Forensic patient" means a person with mental illness or a person with an intellectual disability who is:

(A) examined on the issue of competency to stand trial by an expert appointed under Subchapter B, Chapter 46B, Code of Criminal Procedure;

(B) found incompetent to stand trial under Subchapter C, Chapter 46B, Code of Criminal Procedure;

(C) committed to court-ordered mental health services under Subchapter E, Chapter 46B, Code of Criminal Procedure;

(D) found not guilty by reason of insanity under Chapter 46C, Code of Criminal Procedure;

(E) examined on the issue of fitness to proceed with juvenile court proceedings by an expert appointed under Chapter 51, Family Code; or

(F) found unfit to proceed under Subchapter C, Chapter 55, Family Code.

(2) "Forensic services" means a competency examination, competency restoration services, or mental health or intellectual disability services provided to a current or former forensic patient in the community or at a department facility.

(b) The commissioner shall appoint a forensic director.

(c) To be qualified for appointment as forensic director, a person must have proven expertise in the social, health, and legal systems for forensic patients, and in the intersection of those systems.

(d) The forensic director reports to the commissioner and is responsible for:

(1) statewide coordination and oversight of forensic services;

(2) coordination of programs operated by the department relating to evaluation of forensic patients, transition of forensic patients from inpatient to outpatient or community-based services, community forensic monitoring, or forensic research and training; and

(3) addressing issues with the delivery of forensic services in the state, including:

(A) significant increases in populations with serious mental illness and criminal justice system involvement;

(B) adequate availability of department facilities for civilly committed forensic patients;

(C) wait times for forensic patients who require competency restoration services;

(D) interruption of mental health services of recently released forensic patients;

(E) coordination of services provided to forensic patients by state agencies;

(F) provision of input regarding the regional allocation of mental health beds for certain forensic patients and other patients with mental illness under Section 533.0515; and

(G) provision of input regarding the development and maintenance of a training curriculum for judges and attorneys for treatment alternatives to inpatient commitment to a state hospital for certain forensic patients under Section 1001.086.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1212 (S.B. 562), Sec. 26, eff. June 14, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 23, eff. September 1, 2019.

CHAPTER 532A. GENERAL PROVISIONS RELATING TO DEPARTMENT OF AGING AND DISABILITY SERVICES

Sec. 532A.001. DEFINITIONS; INTELLECTUAL DISABILITY COMPONENTS OF DEPARTMENT. (a) In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(b) The department includes community services operated by the department and the following facilities:

(1) the central office of the department;

(2) the Abilene State Supported Living Center;

(3) the Austin State Supported Living Center;

(4) the Brenham State Supported Living Center;

(5) the Corpus Christi State Supported Living Center;

(6) the Denton State Supported Living Center;
(7) the Lubbock State Supported Living Center;
(8) the Lufkin State Supported Living Center;
(9) the Mexia State Supported Living Center;
(10) the Richmond State Supported Living Center;
(11) the San Angelo State Supported Living Center;
(12) the San Antonio State Supported Living Center; and
(13) the El Paso State Supported Living Center.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532A.002. MEDICAL DIRECTOR. (a) The commissioner shall appoint a medical director.

(b) To be qualified for appointment as the medical director under this section, a person must:

(1) be a physician licensed to practice in this state; and

(2) have proven administrative experience and ability in comprehensive health care or human service operations.

(c) The medical director reports to the commissioner and is responsible for the following duties under this title:

(1) oversight of the quality and appropriateness of clinical services delivered in state supported living centers or under contract to the department in relation to intellectual disability services; and

(2) leadership in physician recruitment and retention and peer review.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532A.003. HEADS OF STATE SUPPORTED LIVING CENTERS. (a) The commissioner shall appoint the head of each state supported living center the department administers.

(b) The head of a state supported living center serves at the will of the commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

Sec. 532A.004. ADVISORY COMMITTEES. (a) The executive commissioner shall appoint any advisory committees the executive commissioner considers necessary to assist in the effective administration of the department's intellectual disability programs.

(b) The department may reimburse committee members for travel costs incurred in performing their duties as provided by Section 2110.004, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1334, eff. April 2, 2015.

CHAPTER 533. POWERS AND DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533.0001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Department facility" means a facility listed in Section 532.001(b).

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.22, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Text of section effective on April 1, 2025

Sec. 533.0002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.53, eff. April 1, 2025.

Text of section effective until April 1, 2025

Sec. 533.0002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.53, eff. April 1, 2025.

Sec. 533.001. GIFTS AND GRANTS. (a) The department may negotiate with a federal agency to obtain grants to assist in expanding and improving mental health services in this state.

(b) The department may accept gifts and grants of money, personal property, and real property to expand and improve the mental health services available to the people of this state.

(c) The department may accept gifts and grants of money, personal property, and real property on behalf of a department facility to expand and improve the mental health services available at the facility.

(d) The department shall use a gift or grant made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(e) The department shall keep a record of each gift or grant in

the department's central office in the city of Austin.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer mental health program in a local mental health authority or a community center, the department may allocate available funds appropriated for providing volunteer mental health services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer mental health services in local mental health authorities and community centers.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.004. LIENS. (a) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a patient with mental illness in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Section 552.017 if the patient received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the patient received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the patient or by a person legally responsible for the patient's support;

(2) a judgment of a court in this state or a decision of a

public agency in a proceeding brought by or on behalf of the patient to recover damages for an injury for which the patient was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the patient for an injury for which the patient was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the patient, or the person legally responsible for the patient's support, owns property; or

(2) the patient received or is receiving services.

(e) The notice must contain:

(1) the name and address of the patient;

(2) the name and address of the person legally responsible for the patient's support, if applicable;

(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the patient and the person legally responsible for the patient's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The executive commissioner by rule shall prescribe the procedures to contest the charges.

(g) The county clerk shall record on the written notice the name of the patient, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the patient's support. The clerk shall index the notice record in the name of the patient and, if requested by the person filing the lien, in the name of the person legally responsible for the patient's support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The superintendent or director of the facility or center must swear to

the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the superintendent or director of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.005. EASEMENTS. The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.007. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) Subject to the requirements of Chapter 250, the department, in relation to services provided under this title, or a local mental health authority or community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The executive commissioner shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.02, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 790, Sec. 46(26), eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1209, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, in relation to services provided under this title, or a local mental health authority or community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Added by Acts 1993, 73rd Leg., ch. 646, Sec. 2, eff. Aug. 30, 1993.
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness or an intellectual disability in the facility's or center's service area.

(b) In making the assessment, the department facility or

community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 655, Sec. 6.04, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.009. EXCHANGE OF PATIENT RECORDS. (a) Department facilities, local mental health authorities, community centers, other designated providers, and subcontractors of mental health services are component parts of one service delivery system within which patient records may be exchanged without the patient's consent.

(b) The executive commissioner shall adopt rules to carry out the purposes of this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0095. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) ordered by a court to receive inpatient mental health services under Chapter 574 or under Chapter 46C, Code of Criminal Procedure; or

(2) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Added by Acts 2005, 79th Leg., Ch. 831 (S.B. 837), Sec. 3, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.010. INFORMATION RELATING TO CONDITION. (a) A person, including a hospital, nursing facility, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental illness and intellectual disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the

information only to advance mental health and intellectual disability research and education in order to reduce mental illness and intellectual disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and intellectual disability research and education; or

(3) releases or publishes generally a summary of a study.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.012. COOPERATION OF STATE AGENCIES. At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.134, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.05, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.03, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.014. RESPONSIBILITY OF LOCAL MENTAL HEALTH AUTHORITIES IN MAKING TREATMENT RECOMMENDATIONS. (a) The executive commissioner shall adopt rules that:

(1) relate to the responsibility of the local mental health authorities to make recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services, including individuals who are in contact with the criminal justice system and individuals detained in local jails and juvenile detention facilities;

(2) govern commitments to a local mental health authority;

(3) govern transfers of patients that involve a local mental health authority; and

(4) provide for emergency admission to a department mental health facility if obtaining approval from the authority could result in a delay that might endanger the patient or others.

(b) The executive commissioner's first consideration in developing rules under this section must be to satisfy individual patient treatment needs in the most appropriate setting. The executive commissioner shall also consider reducing patient inconvenience resulting from admissions and transfers between providers.

(c) The department shall notify each judge who has probate jurisdiction in the service area and any other person the local mental health authority considers necessary of the responsibility of the local mental health authority to make recommendations relating to the most appropriate and available treatment alternatives and the procedures required in the area.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 3, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 367, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1214, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.015. UNANNOUNCED INSPECTIONS. The department may make

any inspection of a department facility or program under the department's jurisdiction under this title without announcing the inspection.

Added by Acts 1995, 74th Leg., ch. 531, Sec. 2, eff. Aug. 28, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS.

Text of subsection effective until April 1, 2025

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(a-1) A state agency, local agency, or local mental health authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of mental health services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533.017 or in accordance with:

(1) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(2) this section, if the entity is not covered by Subdivision (1).

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications.

(e) The state auditor or the executive commissioner may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff.

April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.54, eff. April 1, 2025.

Sec. 533.017. PARTICIPATION IN PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM.

Text of subsection effective until April 1, 2025

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local mental health authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of mental health services to purchase goods or services with the public money by participating in:

(1) a contract the executive commissioner has made to purchase goods or services; or

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of mental health services.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.55, eff. April 1, 2025.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF MENTAL HEALTH SERVICES

Sec. 533.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "Extended care unit" means a residential unit in a department facility that contains patients with chronic mental illness who require long-term care, maintenance, limited programming, and constant supervision.

(3) "Transitional living unit" means a residential unit that is designed for the primary purpose of facilitating the return of hard-to-place psychiatric patients with chronic mental illness from acute care units to the community through an array of services appropriate for those patients.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 1, eff. June 16, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.032. LONG-RANGE PLANNING.

Text of subsection effective until April 1, 2025

(a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Section 531.023, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with mental illness the department serves are met.

Text of subsection effective on April 1, 2025

(a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Sections 525.0154, 525.0155, and 525.0156, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with mental illness the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local mental health authorities;

(B) community representatives;

(C) consumers of mental health services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state hospitals;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state hospital will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its patients with mental illness; and

(B) input solicited from consumers of services of state hospitals.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;

(D) speaker of the house of representatives;

(E) Legislative Budget Board; and

(F) commission; and

(3) update the department's long-range plan biennially and include the report in the plan.

(h) The department shall, in coordination with the commission, evaluate the current and long-term costs associated with serving inpatient psychiatric needs of persons living in counties now served by at least three state hospitals within 120 miles of one another. This evaluation shall take into consideration the condition of the physical plants and other long-term asset management issues associated with the operation of the hospitals, as well as other issues associated with quality psychiatric care. After such determination is made, the commission shall begin to take action to influence the utilization of these state hospitals in order to ensure efficient service delivery.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(103), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1187, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(8), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(91), eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(91), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.004, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.56, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1147 (S.B. 956), Sec. 3, eff. September 1, 2023.

Sec. 533.0325. CONTINUUM OF SERVICES IN CAMPUS FACILITIES. The

executive commissioner by rule shall establish criteria regarding the uses of the department's campus-based facilities as part of a full continuum of services under this title.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.033. DETERMINATION OF REQUIRED RANGE OF MENTAL HEALTH SERVICES. (a) Consistent with the purposes and policies of this subtitle, the commissioner biennially shall determine:

(1) the types of mental health services that can be most economically and effectively provided at the community level for persons exhibiting various forms of mental disability; and

(2) the types of mental health services that can be most economically and effectively provided by department facilities.

(b) In the determination, the commissioner shall assess the limits, if any, that should be placed on the duration of mental health services provided at the community level or at a department facility.

(c) The department biennially shall review the types of services the department provides and shall determine if a community provider can provide services of a comparable quality at a lower cost than the department's costs.

(d) The commissioner's findings shall guide the department in planning and administering services for persons with mental illness.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(9), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(92), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED SERVICES. The department may cooperate, negotiate, and contract

with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.73, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0345. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for mental health services for use by each state agency that provides or pays for mental health services. The department shall provide the model standards to each agency that provides mental health services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of mental health services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.035. LOCAL MENTAL HEALTH AUTHORITIES. (a) The executive commissioner shall designate a local mental health authority in one or more local service areas. The executive commissioner may delegate to the local authority the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of mental health services in the most appropriate and available setting

to meet individual needs in that service area. The executive commissioner may designate a single entity as both the local mental health authority under this chapter and the local intellectual and developmental disability authority under Chapter 533A for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local mental health authority department federal and department state funds to be spent in the local service area for:

(1) community mental health and intellectual disability services; and

(2) chemical dependency services for persons who are dually diagnosed as having both chemical dependency and mental illness or an intellectual disability.

(c) A local mental health authority, with the approval of the department, shall use the funds received under Subsection (b) to ensure mental health and chemical dependency services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of mental health services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local mental health authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) Subject to Section 533.0358, in assembling a network of service providers, a local mental health authority may serve as a provider of services only as a provider of last resort and only if the local authority demonstrates to the department in the local authority's local network development plan that:

(1) the local authority has made every reasonable attempt to solicit the development of an available and appropriate provider base that is sufficient to meet the needs of consumers in its service area; and

(2) there is not a willing provider of the relevant

services in the local authority's service area or in the county where the provision of the services is needed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.03, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 869, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1209, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.74, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 2, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 7, eff. June 16, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0351. REQUIRED COMPOSITION OF LOCAL MENTAL HEALTH AUTHORITY GOVERNING BODY. (a) If a local mental health authority has a governing body, the governing body must include:

(1) for a local authority that serves only one county, the sheriff of the county as an ex officio nonvoting member; and

(2) for a local authority that serves two or more counties, two sheriffs chosen in accordance with Subsection (b) as ex officio nonvoting members.

(b) A local mental health authority that serves two or more counties shall take the median population size of each of those counties and choose:

(1) one sheriff of a county with a population above the median population size to serve as an ex officio nonvoting member under Subsection (a); and

(2) one sheriff of a county with a population below the median population size to serve as an ex officio nonvoting member under Subsection (a).

(c) A sheriff may designate a representative to serve in the sheriff's place as an ex officio nonvoting member under Subsection (a). Except as provided by Subsection (c-1), a sheriff or representative of the sheriff serves as an ex officio nonvoting

member under Subsection (a) for the duration of the applicable sheriff's term in office.

(c-1) A local mental health authority may rotate the positions of ex officio nonvoting members as chosen in accordance with Subsection (b) among the other sheriffs of the counties served by the local authority. A local authority shall consult with each sheriff of the counties served by the local authority in rotating the positions of ex officio nonvoting members under this subsection.

(d) A local mental health authority may not bar or restrict a sheriff or representative of a sheriff who serves as an ex officio nonvoting member under Subsection (a) from speaking or providing input at a meeting of the local authority's governing body.

(e) If a local mental health authority does not have a governing body, the local authority shall:

(1) for a local authority that serves only one county, consult with the sheriff of the county or a representative of the sheriff regarding the use of funds received under Section 533.035(b); or

(2) for a local authority that serves two or more counties, take the median population size of each of those counties and consult with both:

(A) a sheriff or a representative of a sheriff of a county with a population above the median population size regarding the use of funds received under Section 533.035(b); and

(B) a sheriff or a representative of a sheriff of a county with a population below the median population size regarding the use of funds received under Section 533.035(b).

(f) This section does not prevent a sheriff or representative of a sheriff from being included in the governing body of a local mental health authority as a voting member of the body.

Added by Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 1, eff. September 1, 2019.

Sec. 533.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA. (a) Each local mental health authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the

relative priority of those needs. Each local mental health authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533.032.

(c) The department and a local mental health authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local mental health authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based mental health services and members of the families of those consumers;

(C) local law enforcement agencies; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to minimize the need for state hospital and community hospital care;

(C) goals to divert consumers of services from the criminal justice system;

(D) goals to ensure that a child with mental illness remains with the child's parent or guardian as appropriate to the child's care; and

(E) opportunities for innovation in services and service delivery.

(e) The department and the local mental health authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and

units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local mental health authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Added by Acts 2003, 78th Leg., ch. 358, Sec. 1, eff. June 18, 2003.
Renumbered from Health and Safety Code, Section 533.0354 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(52), eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 2, eff. September 1, 2019.

Sec. 533.03521. LOCAL NETWORK DEVELOPMENT PLAN CREATION AND APPROVAL. (a) A local mental health authority shall develop a local network development plan regarding the configuration and development of the local mental health authority's provider network. The plan must reflect local needs and priorities and maximize consumer choice and access to qualified service providers.

(b) The local mental health authority shall submit the local network development plan to the department for approval.

(c) On receipt of a local network development plan under this section, the department shall review the plan to ensure that the plan:

(1) complies with the criteria established by Section 533.0358 if the local mental health authority is providing services under that section; and

(2) indicates that the local mental health authority is reasonably attempting to solicit the development of a provider base that is:

(A) available and appropriate; and

(B) sufficient to meet the needs of consumers in the local authority's local service area.

(d) If the department determines that the local network development plan complies with Subsection (c), the department shall

approve the plan.

(e) At least biennially, the department shall review a local mental health authority's local network development plan and determine whether the plan complies with Subsection (c).

(f) As part of a local network development plan, a local mental health authority annually shall post on the local authority's website a list of persons with whom the local authority had a contract or agreement in effect during all or part of the previous year, or on the date the list is posted, related to the provision of mental health services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 4, eff. June 16, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0354. DISEASE MANAGEMENT PRACTICES AND JAIL DIVERSION MEASURES OF LOCAL MENTAL HEALTH AUTHORITIES. (a) A local mental health authority shall ensure the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for adults with bipolar disorder, schizophrenia, or clinically severe depression and for children with serious emotional illnesses. The local mental health authority shall ensure that individuals are engaged with treatment services that are:

(1) ongoing and matched to the needs of the individual in type, duration, and intensity;

(2) focused on a process of recovery designed to allow the individual to progress through levels of service;

(3) guided by evidence-based protocols and a strength-based paradigm of service; and

(4) monitored by a system that holds the local authority accountable for specific outcomes, while allowing flexibility to maximize local resources.

(a-1) In addition to the services required under Subsection (a) and using money appropriated for that purpose or money received under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), a local mental health authority may ensure,

to the extent feasible, the provision of assessment services, crisis services, and intensive and comprehensive services using disease management practices for children with serious emotional, behavioral, or mental disturbance not described by Subsection (a) and adults with severe mental illness who are experiencing significant functional impairment due to a mental health disorder not described by Subsection (a) that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

(1) major depressive disorder, including single episode or recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) obsessive-compulsive disorder;

(5) anxiety disorder;

(6) attention deficit disorder;

(7) delusional disorder;

(8) bulimia nervosa, anorexia nervosa, or other eating disorders not otherwise specified; or

(9) any other diagnosed mental health disorder.

(a-2) The local mental health authority shall ensure that individuals described by Subsection (a-1) are engaged with treatment services in a clinically appropriate manner.

(b) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices for managing adults with schizophrenia and bipolar disorder to reduce the involvement of those client populations with the criminal justice system.

(b-1) The department shall require each local mental health authority to incorporate jail diversion strategies into the authority's disease management practices to reduce the involvement of the criminal justice system in managing adults with the following disorders as defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), who are not described by Subsection (b):

(1) post-traumatic stress disorder;

(2) schizoaffective disorder, including bipolar and depressive types;

(3) anxiety disorder; or

(4) delusional disorder.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.75, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(93), eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 2, eff. January 1, 2014.
Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 6.06, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0356. LOCAL BEHAVIORAL HEALTH AUTHORITIES. (a) The department may designate a local behavioral health authority in a local service area to provide mental health and chemical dependency services in that area. The department may delegate to an authority designated under this section the authority and responsibility for planning, policy development, coordination, resource allocation, and resource development for and oversight of mental health and chemical dependency services in that service area. An authority designated under this section has:

(1) all the responsibilities and duties of a local mental health authority provided by Section 533.035 and by Subchapter B, Chapter 534; and

(2) the responsibility and duty to ensure that chemical dependency services are provided in the service area as described by the statewide service delivery plan adopted under Section 461A.056.

(c) In the planning and implementation of services, the authority shall give proportionate priority to mental health services and chemical dependency services that ensures that funds purchasing services are used in accordance with specific regulatory and statutory requirements that govern the respective funds.

(d) A local mental health authority may apply to the department for designation as a local behavioral health authority.

(e) The department, by contract or by a case-rate or capitated arrangement or another method of allocation, may disburse money, including federal money, to a local behavioral health authority for services.

(f) A local behavioral health authority, with the approval of

the department as provided by contract, shall use money received under Subsection (e) to ensure that mental health and chemical dependency services are provided in the local service area at the same level as the level of services previously provided through:

(1) the local mental health authority; and

(2) the department.

(g) In determining whether to designate a local behavioral health authority for a service area and in determining the functions of the authority if designated, the department shall solicit and consider written comments from any interested person including community representatives, persons who are consumers of the proposed services of the authority, and family members of those consumers.

(h) An authority designated under this section shall demonstrate to the department that services involving state funds that the authority oversees comply with relevant state standards.

(i) The executive commissioner may adopt rules to govern the operations of local behavioral health authorities. The department may assign the local behavioral health authority the duty of providing a single point of entry for mental health and chemical dependency services.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0357. BEST PRACTICES CLEARINGHOUSE FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In coordination with local mental health authorities, the department shall establish an online clearinghouse of information relating to best practices of local mental health authorities regarding the provision of mental health services, development of a local provider network, and achievement of the best return on public investment in mental health services.

(b) The department shall solicit and collect from local mental health authorities that meet established outcome and performance measures, community centers, consumers and advocates with expertise in mental health or in the provision of mental health services, and other local entities concerned with mental health issues examples of best practices related to:

(1) developing and implementing a local network development plan;

(2) assembling and expanding a local provider network to increase consumer choice;

(3) creating and enforcing performance standards for providers;

(4) managing limited resources;

(5) maximizing available funding;

(6) producing the best client outcomes;

(7) ensuring consumers of mental health services have control over decisions regarding their health;

(8) developing procurement processes to protect public funds;

(9) achieving the best mental health consumer outcomes possible; and

(10) implementing strategies that effectively incorporate consumer and family involvement to develop and evaluate the provider network.

(c) The department may contract for the services of one or more contractors to develop, implement, and maintain a system of collecting and evaluating the best practices of local mental health authorities as provided by this section.

(d) The department shall encourage local mental health authorities that successfully implement best practices in accordance with this section to mentor local mental health authorities that have service deficiencies.

(e) Before the executive commissioner may remove a local mental health authority's designation under Section 533.035(a) as a local mental health authority, the executive commissioner shall:

(1) assist the local mental health authority in attaining training and mentorship in using the best practices established in accordance with this section; and

(2) track and document the local mental health authority's improvements in the provision of service or continued service deficiencies.

(f) Subsection (e) does not apply to the removal of a local mental health authority's designation initiated at the request of a local government official who has responsibility for the provision of mental health services.

(g) The department shall implement this section using only

existing resources.

(h) The department shall ensure that a local mental health authority providing best practices information to the department or mentoring another local mental health authority complies with Section 533.03521(f).

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0358. LOCAL MENTAL HEALTH AUTHORITY'S PROVISION OF SERVICES AS PROVIDER OF LAST RESORT. (a) A local mental health authority may serve as a provider of services under Section 533.035(e) only if, through the local network development plan process, the local authority determines that at least one of the following applies:

(1) interested qualified service providers are not available to provide services or no service provider meets the local authority's procurement requirements;

(2) the local authority's network of providers does not provide a minimum level of consumer choice by:

(A) presenting consumers with two or more qualified service providers in the local authority's network for service packages; and

(B) presenting consumers with two or more qualified service providers in the local authority's network for specific services within a service package;

(3) the local authority's provider network does not provide consumers in the local service area with access to services at least equal to the level of access provided as of a date the executive commissioner specifies;

(4) the combined volume of services delivered by qualified service providers in the local network does not meet all of the local authority's service capacity for each service package identified in the local network development plan;

(5) the performance of the services by the local authority is necessary to preserve critical infrastructure and ensure

continuous provision of services; or

(6) existing contracts or other agreements restrict the local authority from contracting with qualified service providers for services in the local network development plan.

(b) If a local mental health authority continues to provide services in accordance with this section, the local authority shall identify in the local authority's local network development plan:

(1) the proportion of its local network services that the local authority will provide; and

(2) the local authority's basis for its determination that the local authority must continue to provide services.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0359. RULEMAKING FOR LOCAL MENTAL HEALTH AUTHORITIES. (a) In developing rules governing local mental health authorities under Sections 533.035, 533.03521, 533.0357, and 533.0358, the executive commissioner shall use rulemaking procedures under Subchapter B, Chapter 2001, Government Code.

(b) The executive commissioner by rule shall prohibit a trustee or employee of a local mental health authority from soliciting or accepting from another person a benefit, including a security or stock, a gift, or another item of value, that is intended to influence the person's conduct of authority business.

Added by Acts 2007, 80th Leg., R.S., Ch. 478 (H.B. 2439), Sec. 6, eff. June 16, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.05(b), eff. September 1, 2015.

Sec. 533.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a) The department may provide mental health services through halfway

houses, sheltered workshops, community centers, and other mental health services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1) purchase supplies, materials, services, and equipment;

(2) pay salaries of and wages to participants and employees;

(3) construct, maintain, repair, and renovate facilities and equipment; and

(4) establish and maintain a petty cash fund of not more than $100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.040. SERVICES FOR CHILDREN AND YOUTH. (a) The department shall ensure the development of programs and the expansion of services at the community level for children with mental illness, or with a dual diagnosis of mental illness and an intellectual disability, and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

(b) The department shall designate an employee authorized in the department's schedule of exempt positions to be responsible for planning and coordinating services and programs for children and youth. The employee shall perform budget and policy review and provide interagency coordination of services for children and youth.

(c) The department shall designate an employee as a youth suicide prevention officer. The officer shall serve as a liaison to the Texas Education Agency and public schools on matters relating to the prevention of and response to suicide or attempted suicide by public school students.

(d) The department and the Department of Assistive and Rehabilitative Services shall:

(1) jointly develop:

(A) a continuum of care for children younger than seven years of age who have mental illness; and

(B) a plan to increase the expertise of the department's service providers in mental health issues involving children younger than seven years of age; and

(2) coordinate, if practicable, the departments' activities and services involving children with mental illness and their families.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.46, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 57, Sec. 1, eff. May 15, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice

Department, the Department of Family and Protective Services, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b) The task force consists of:

(1) one clinical professional and one training staff member from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The commission shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The executive commissioner and the agencies shall review and by rule revise the memorandum not later than August each year.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.04, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.47, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 13, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 15, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing facility may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The treating physician shall conduct the evaluation of an elderly resident of a department facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local mental health authority.

(f) A local mental health authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local mental health authority shall have the right of access to all residents and records of residents who request continuing care services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 5, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.043. PROPOSALS FOR GERIATRIC, EXTENDED, AND TRANSITIONAL CARE. (a) The department shall solicit proposals from community providers to operate:

(1) community residential programs that will provide at least the same services that an extended care unit provides for the population the provider proposes to serve; or

(2) transitional living units that will provide at least the same services that the department traditionally provides in facility-based transitional care units.

(b) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(c) A proposal for extended care services may be designed to serve all or part of an extended care unit's population.

(d) A proposal to operate transitional living units may provide that the community provider operate the transitional living unit in a community setting or on the grounds of a department facility.

(e) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local mental health authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(f) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (e) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(g) The appropriate local mental health authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

(h) The department is responsible for the care of a patient in an extended care program funded under this section. The department may terminate a contract for extended care services if the program ends or does not provide the required services. The department shall provide the services or find another program to provide the services if the department terminates a contract.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.051. ALLOCATION OF OUTPATIENT MENTAL HEALTH SERVICES AND BEDS IN STATE HOSPITALS. (a) To ensure the appropriate and timely provision of mental health services to patients who voluntarily receive those services or who are ordered by a court to receive those services in civil or criminal proceedings, the department, in conjunction with the commission, shall plan for the proper and separate allocation of outpatient or community-based mental health services provided by secure and nonsecure outpatient facilities that provide residential care alternatives and mental health services and for the proper and separate allocation of beds in the state hospitals for the following two groups of patients:

(1) patients who are voluntarily receiving outpatient or community-based mental health services, voluntarily admitted to a state hospital under Chapter 572, admitted to a state hospital for emergency detention under Chapter 573, or ordered by a court under Chapter 574 to receive inpatient mental health services at a state hospital or outpatient mental health services from an outpatient facility that provides residential care alternatives and mental health services; and

(2) patients who are ordered to participate in an outpatient treatment program to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or committed to a state hospital or other facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure, or to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The plan developed by the department under Subsection (a) must include:

(1) a determination of the needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) a determination of the minimum number of beds that the state hospital system must maintain to adequately serve the two groups of patients;

(3) a statewide plan for and the allocation of sufficient funds for meeting the outpatient mental health service needs of and for the maintenance of beds by the state hospitals for the two groups of patients; and

(4) a process to address and develop, without adverse impact to local service areas, the accessibility and availability of sufficient outpatient mental health services provided to and beds provided by the state hospitals to the two groups of patients based on the success of contractual outcomes with mental health service providers and facilities under Sections 533.034 and 533.052.

(c) To assist in the development of the plan under Subsection (a), the department shall establish and meet at least monthly with an advisory panel composed of the following persons:

(1) one representative designated by the Texas Department of Criminal Justice;

(2) one representative designated by the Texas Association of Counties;

(3) two representatives designated by the Texas Council of Community Centers, including one representative of an urban local service area and one representative of a rural local service area;

(4) two representatives designated by the County Judges and Commissioners Association of Texas, including one representative who is the presiding judge of a court with jurisdiction over mental health matters;

(5) one representative designated by the Sheriffs' Association of Texas;

(6) two representatives designated by the Texas Municipal League, including one representative who is a municipal law enforcement official;

(7) one representative designated by the Texas Conference of Urban Counties;

(8) two representatives designated by the Texas Hospital Association, including one representative who is a physician;

(9) one representative designated by the Texas Catalyst for Empowerment; and

(10) four representatives designated by the department's Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders, including:

(A) the chair of the council;

(B) one representative of the council's members who is

a consumer of or advocate for mental health services;

(C) one representative of the council's members who is a consumer of or advocate for substance abuse treatment; and

(D) one representative of the council's members who is a family member of or advocate for persons with mental health and substance abuse disorders.

(d) In developing the plan under Subsection (a), the department and advisory panel shall consider:

(1) needs for outpatient mental health services of the two groups of patients described by Subsection (a);

(2) the frequency of use of beds and the historical patterns of use of beds in the state hospitals and other facilities by the two groups of patients;

(3) local needs and demands for outpatient mental health services by the two groups of patients;

(4) local needs and demands for beds in the state hospitals and other facilities for the two groups of patients;

(5) the availability of outpatient mental health service providers and inpatient mental health facilities that may be contracted with to provide outpatient mental health services and beds for the two groups of patients;

(6) the differences between the two groups of patients with regard to:

(A) admission to and discharge from a state hospital or outpatient facility;

(B) rapid stabilization and discharge to the community;

(C) length of stay in a state hospital or outpatient facility;

(D) disputes arising from the determination of a patient's length of stay in a state hospital by a health maintenance organization or a managed care organization;

(E) third-party billing; and

(F) legal challenges or requirements related to the examination and treatment of the patients; and

(7) public input provided to the department or advisory panel in a form and at a time and place that is effective and appropriate and in a manner that complies with any applicable laws, including administrative rules.

(e) The department shall update the plan biennially.

(i) While the plan required by Subsection (a) is being

developed and implemented, the department may not, pursuant to any rule, contract, or directive, impose a sanction, penalty, or fine on a local mental health authority for the authority's noncompliance with any methodology or standard adopted or applied by the department relating to the allocation of beds by authorities for the two groups of patients described by Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0515. REGIONAL ALLOCATION OF MENTAL HEALTH BEDS. (a) In this section, "inpatient mental health facility" has the meaning assigned by Section 571.003.

(b) The commission, with input from local mental health authorities, local behavioral health authorities, stakeholders, and the forensic director appointed under Section 532.013, and after considering any plan developed under Section 533.051, shall divide the state into regions for the purpose of allocating to each region state-funded beds in the state hospitals and other inpatient mental health facilities for patients who are:

(1) voluntarily admitted to a state hospital or other inpatient mental health facility under Subchapter B, Chapter 462, or Chapter 572;

(2) admitted to a state hospital or other inpatient mental health facility for emergency detention under Subchapter C, Chapter 462, or Chapter 573;

(3) ordered by a court to receive at a state hospital or other inpatient mental health facility inpatient chemical dependency treatment under Subchapter D, Chapter 462, or inpatient mental health services under Chapter 574;

(4) committed to a state hospital or other inpatient mental health facility to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or

(5) committed to a state hospital or other inpatient mental health facility to receive inpatient mental health services following an acquittal by reason of insanity under Chapter 46C, Code of

Criminal Procedure.

(c) The department, in conjunction with the commission, shall convene the advisory panel described by Section 533.051(c) at least quarterly in order for the advisory panel to:

(1) develop, make recommendations to the executive commissioner or department, as appropriate, and monitor the implementation of updates to:

(A) a bed day allocation methodology for allocating to each region designated under Subsection (b) a certain number of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b) based on the identification and evaluation of factors that impact the use of state-funded beds by patients in a region, including clinical acuity, the prevalence of serious mental illness, and the availability of resources in the region; and

(B) a bed day utilization review protocol that includes a peer review process to:

(i) evaluate:

(a) the use of state-funded beds in state hospitals and other inpatient mental health facilities by patients described by Subsection (b);

(b) alternatives to hospitalization for those patients;

(c) the readmission rate for those patients; and

(d) the average length of admission for those patients; and

(ii) conduct a review of the diagnostic and acuity profiles of patients described by Subsection (b) for the purpose of assisting the department, commission, and advisory panel in making informed decisions and using available resources efficiently and effectively; and

(2) receive and review status updates from the department regarding the implementation of the bed day allocation methodology and the bed day utilization review protocol.

(d) Not later than December 1 of each even-numbered year, the advisory panel shall submit to the executive commissioner for consideration a proposal for an updated bed day allocation methodology and bed day utilization review protocol, and the executive commissioner shall adopt an updated bed day allocation

methodology and bed day utilization review protocol.

(e) Not later than December 1 of each even-numbered year, the department, in conjunction with the commission and the advisory panel, shall prepare and submit to the governor, the lieutenant governor, the speaker of the house of representatives, the senate finance committee, the house appropriations committee, and the standing committees of the legislature having jurisdiction over mental health and human services a report that includes:

(1) a summary of the activities of the commission, department, and advisory panel to develop or update the bed day allocation methodology and bed day utilization review protocol;

(2) the outcomes of the implementation of the bed day allocation methodology by region, including an explanation of how the actual outcomes aligned with or differed from the expected outcomes;

(3) for planning purposes, for each region, the actual value of a bed day for the two years preceding the date of the report and the projected value of a bed day for the five years following the date of the report, as calculated by the department;

(4) for each region, an evaluation of the factors in Subsection (c)(1)(A), including the availability of resources in the region, that impact the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b);

(5) the outcomes of the implementation of the bed day utilization review protocol and the impact of the use of the protocol on the use of state-funded beds in state hospitals and other inpatient mental health facilities by the patients described by Subsection (b); and

(6) any recommendations of the department, commission, or advisory panel to enhance the effective and efficient allocation of state-funded beds in state hospitals and other inpatient mental health facilities for the patients described by Subsection (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 2, eff. May 28, 2015.

Sec. 533.052. CONTRACTING WITH CERTAIN MENTAL HEALTH SERVICE PROVIDERS AND FACILITIES TO PROVIDE SERVICES AND BEDS FOR CERTAIN PERSONS. The department shall make every effort, through

collaboration and contractual arrangements with local mental health authorities, to contract with and use a broad base of local community outpatient mental health service providers and inpatient mental health facilities, as appropriate, to make available a sufficient and appropriately located amount of outpatient mental health services and a sufficient and appropriately located number of beds in inpatient mental health facilities, as specified in the plan developed by the department under Section 533.051, to ensure the appropriate and timely provision of mental health services to the two groups of patients described by Section 533.051(a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.053. INFORMING COURTS OF COMMITMENT OPTIONS. The department shall develop and implement a procedure through which a court that has the authority to commit a person who is incompetent to stand trial or who has been acquitted by reason of insanity under Chapters 46B and 46C, Code of Criminal Procedure, is aware of all of the commitment options for the person, including jail diversion and community-based programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 3, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

Sec. 533.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The department shall determine the degree to which the costs of operating department facilities for persons with mental illness in compliance with applicable standards are affected as populations in the facilities fluctuate.

(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based mental health programs any savings realized in operating department facilities for persons with mental illness.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a facility may be expanded, closed, or consolidated.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To the extent provided by this subtitle, the department, in coordination with the executive commissioner, may lease, transfer, or otherwise dispose of any surplus real property related to the provision of services under this title, including any improvements under its management and control, or authorize the lease, transfer, or disposal

of the property. Surplus property is property the executive commissioner designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds may be appropriated only for improvements to the department's system of mental health facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The executive commissioner shall adopt forms, rules, and contracts that, in the executive commissioner's best judgment, will protect the state's interests. The executive commissioner may reject any or all bids.

(d) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide mental health services without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(5), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1175, Sec. 2, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.79, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.0844. MENTAL HEALTH COMMUNITY SERVICES ACCOUNT. (a) The mental health community services account is an account in the general revenue fund that may be appropriated only for the provision of mental health services by or under contract with the department.

(b) The department shall deposit to the credit of the mental health community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.80, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

(1) inmates with mental illness in the custody of the Texas Department of Criminal Justice; or

(2) persons with mental illness paroled or released under the supervision of the Texas Department of Criminal Justice.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.107, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533.087. LEASE OF REAL PROPERTY. (a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, including any improvements under the department's management and control,

regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The commission shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the executive commissioner determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service contract.

(d) The executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide mental health services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 1995, 74th Leg., ch. 821, Sec. 10, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1175, Sec. 3, eff. June 18,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local mental health authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) assertive community treatment services;

(ii) inpatient crisis respite services;

(iii) medication management services;

(iv) short-term residential services;

(v) shelter care services;

(vi) crisis respite residential services;

(vii) outpatient integrated mental health services;

(viii) co-occurring substance abuse treatment services;

(ix) psychiatric rehabilitation and service coordination services;

(x) continuity of care services; and

(xi) services consistent with the Texas Correctional Office on Offenders with Medical or Mental Impairments model;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local mental health authority developing a system, training, or a model program under Subsection (a) shall collaborate

with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local mental health authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

Added by Acts 2003, 78th Leg., ch. 1214, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

CHAPTER 533A. POWERS AND DUTIES OF DEPARTMENT OF AGING AND DISABILITY SERVICES

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 533A.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a facility listed in Section 532A.001(b).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 533A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.57, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 533A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;
(2) Section 524.0101;
(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.57, eff. April 1, 2025.

Sec. 533A.003. USE OF FUNDS FOR VOLUNTEER PROGRAMS IN LOCAL AUTHORITIES AND COMMUNITY CENTERS. (a) To develop or expand a volunteer intellectual disability program in a local intellectual and developmental disability authority or a community center, the department may allocate available funds appropriated for providing volunteer intellectual disability services.

(b) The department shall develop formal policies that encourage the growth and development of volunteer intellectual disability services in local intellectual and developmental disability authorities and community centers.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.004. LIENS. (a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department and each community center has a lien to secure reimbursement for the cost of providing support, maintenance, and treatment to a client with an intellectual disability in an amount equal to the amount of reimbursement sought.

(b) The amount of the reimbursement sought may not exceed:

(1) the amount the department is authorized to charge under Subchapter D, Chapter 593, if the client received the services in a department facility; or

(2) the amount the community center is authorized to charge under Section 534.017 if the client received the services in a community center.

(c) The lien attaches to:

(1) all nonexempt real and personal property owned or later acquired by the client or by a person legally responsible for the client's support;

(2) a judgment of a court in this state or a decision of a public agency in a proceeding brought by or on behalf of the client to recover damages for an injury for which the client was admitted to a department facility or community center; and

(3) the proceeds of a settlement of a cause of action or a claim by the client for an injury for which the client was admitted to a department facility or community center.

(d) To secure the lien, the department or community center must file written notice of the lien with the county clerk of the county in which:

(1) the client, or the person legally responsible for the client's support, owns property; or

(2) the client received or is receiving services.

(e) The notice must contain:

(1) the name and address of the client;

(2) the name and address of the person legally responsible for the client's support, if applicable;

(3) the period during which the department facility or community center provided services or a statement that services are currently being provided; and

(4) the name and location of the department facility or community center.

(f) Not later than the 31st day before the date on which the department files the notice of the lien with the county clerk, the department shall notify by certified mail the client and the person legally responsible for the client's support. The notice must contain a copy of the charges, the statutory procedures relating to filing a lien, and the procedures to contest the charges. The executive commissioner by rule shall prescribe the procedures to

contest the charges.

(g) The county clerk shall record on the written notice the name of the client, the name and address of the department facility or community center, and, if requested by the person filing the lien, the name of the person legally responsible for the client's support. The clerk shall index the notice record in the name of the client and, if requested by the person filing the lien, in the name of the person legally responsible for the client's support.

(h) The notice record must include an attachment that contains an account of the charges made by the department facility or community center and the amount due to the facility or center. The director or superintendent of the facility or center must swear to the validity of the account. The account is presumed to be correct, and in a suit to cancel the debt and discharge the lien or to foreclose on the lien, the account is sufficient evidence to authorize a court to render a judgment for the facility or center.

(i) To discharge the lien, the director or superintendent of the department facility or community center or a claims representative of the facility or center must execute and file with the county clerk of the county in which the lien notice is filed a certificate stating that the debt covered by the lien has been paid, settled, or released and authorizing the clerk to discharge the lien. The county clerk shall record a memorandum of the certificate and the date on which it is filed. The filing of the certificate and recording of the memorandum discharge the lien.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.005. EASEMENTS. The department, in coordination with the executive commissioner, may grant a temporary or permanent easement or right-of-way on land held by the department that relates to services provided under this title. The department, in coordination with the executive commissioner, must grant an easement or right-of-way on terms and conditions the executive commissioner considers to be in the state's best interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.006. REPORTING OF ALLEGATIONS AGAINST PHYSICIAN. (a) The executive commissioner shall submit a report to the Texas Medical Board not later than 30 days after the last day of a month during which any allegation is received by the commission that a physician employed by or under contract with the commission in relation to services provided under this title has committed an action that constitutes a ground for the denial or revocation of the physician's license under Section 164.051, Occupations Code. The report must be made in the manner provided by Section 154.051, Occupations Code.

(b) The department shall provide to the Texas Medical Board a printed and electronic copy of any report or finding relating to an investigation of an allegation reported to that board.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.31, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 15, eff. September 1, 2021.

Sec. 533A.007. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) Subject to any applicable requirements of Chapter 250, the department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may deny employment or volunteer status to an applicant if:

(1) the department, authority, or community center determines that the applicant's criminal history record information indicates that the person is not qualified or suitable; or

(2) the applicant fails to provide a complete set of fingerprints if the department establishes that method of obtaining criminal history record information.

(b) The executive commissioner shall adopt rules relating to the use of information obtained under this section, including rules that prohibit an adverse personnel action based on arrest warrant or wanted persons information received by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0075. EXCHANGE OF EMPLOYMENT RECORDS. The department, in relation to services provided under this title, or a local intellectual and developmental disability authority or community center, may exchange with one another the employment records of an employee or former employee who applies for employment at the department, authority, or community center.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.008. EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY. (a) Each department facility and community center shall annually assess the feasibility of converting entry level support positions into employment opportunities for individuals with mental illness or an intellectual disability in the facility's or center's service area.

(b) In making the assessment, the department facility or community center shall consider the feasibility of using an array of job opportunities that may lead to competitive employment, including sheltered employment and supported employment.

(c) Each department facility and community center shall annually submit to the department a report showing that the facility or center has complied with Subsection (a).

(d) The department shall compile information from the reports and shall make the information available to each designated provider in a service area.

(e) Each department facility and community center shall ensure that designated staff are trained to:

(1) assist clients through the Social Security Administration disability determination process;

(2) provide clients and their families information related to the Social Security Administration Work Incentive Provisions; and

(3) assist clients in accessing and utilizing the Social Security Administration Work Incentive Provisions to finance training, services, and supports needed to obtain career goals.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.009. EXCHANGE OF CLIENT RECORDS. (a) Department facilities, local intellectual and developmental disability authorities, community centers, other designated providers, and subcontractors of intellectual disability services are component parts of one service delivery system within which client records may be exchanged without the client's consent.

(b) The executive commissioner shall adopt rules to carry out the purposes of this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0095. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING PERSONS FOUND NOT GUILTY BY REASON OF INSANITY. (a) The executive commissioner by rule shall require the department to collect information and maintain current records regarding a person found not guilty of an offense by reason of insanity under Chapter 46C, Code of Criminal Procedure, who is:

(1) committed by a court for long-term placement in a residential care facility under Chapter 593 or under Chapter 46C, Code of Criminal Procedure; or

(2) ordered by a court to receive outpatient or community-based treatment and supervision.

(b) Information maintained by the department under this section must include the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.010. INFORMATION RELATING TO CONDITION. (a) A person, including a hospital, nursing facility, medical society, or other organization, may provide to the department or a medical organization, hospital, or hospital committee any information, including interviews, reports, statements, or memoranda relating to a person's condition and treatment for use in a study to reduce mental illness and intellectual disabilities.

(b) The department or a medical organization, hospital, or hospital committee receiving the information may use or publish the information only to advance mental health and intellectual disability research and education in order to reduce mental illness and intellectual disabilities. A summary of the study may be released for general publication.

(c) The identity of a person whose condition or treatment is studied is confidential and may not be revealed under any circumstances. Information provided under this section and any finding or conclusion resulting from the study is privileged information.

(d) A person is not liable for damages or other relief if the person:

(1) provides information under this section;

(2) releases or publishes the findings and conclusions of the person or organization to advance mental health and intellectual disability research and education; or

(3) releases or publishes generally a summary of a study.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.011. RETURN OF PERSON WITH AN INTELLECTUAL DISABILITY TO STATE OF RESIDENCE. (a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may return a nonresident person with an intellectual disability who is committed to a department facility in this state to the proper agency of the person's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a facility for persons with an intellectual disability in another state.

(c) The department may enter into reciprocal agreements with

the proper agencies of other states to facilitate the return of persons committed to department facilities in this state, or facilities for persons with an intellectual disability in another state, to the state of their residence.

(d) The director of a department facility may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a person with an intellectual disability returned to this state.

(e) The state returning a person with an intellectual disability to another state shall bear the expenses of returning the person.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.012. COOPERATION OF STATE AGENCIES. At the department's request and in coordination with the executive commissioner, all state departments, agencies, officers, and employees shall cooperate with the department in activities that are consistent with their functions and that relate to services provided under this title.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.015. UNANNOUNCED INSPECTIONS. The department may make any inspection of a department facility or program under the department's jurisdiction under this title without announcing the inspection.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.016. CERTAIN PROCUREMENTS OF GOODS AND SERVICES BY SERVICE PROVIDERS.

Text of subsection effective until April 1, 2025

(a) This section does not apply to a "health and human

services agency," as that term is defined by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001, Government Code.

(a-1) A state agency, local agency, or local intellectual and developmental disability authority that expends public money to acquire goods or services in connection with providing or coordinating the provision of intellectual disability services may satisfy the requirements of any state law requiring procurements by competitive bidding or competitive sealed proposals by procuring goods or services with the public money in accordance with Section 533A.017 or in accordance with:

(1) Section 32.043 or 32.044, Human Resources Code, if the entity is a public hospital subject to those laws; or

(2) this section, if the entity is not covered by Subdivision (1).

(b) An agency or authority under Subsection (a-1)(2) may acquire goods or services by any procurement method that provides the best value to the agency or authority. The agency or authority shall document that the agency or authority considered all relevant factors under Subsection (c) in making the acquisition.

(c) Subject to Subsection (d), the agency or authority may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the agency's or authority's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the agency or authority to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from

persons with disabilities;

(7) the total long-term cost to the agency or authority of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the agency's or authority's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the agency or authority in the context of a particular acquisition.

(d) If a state agency to which this section applies acquires goods or services with a value that exceeds $100,000, the state agency shall consult with and receive approval from the commission before considering factors other than price and meeting specifications.

(e) The state auditor or the executive commissioner may audit the agency's or authority's acquisitions of goods and services under this section to the extent state money or federal money appropriated by the state is used to make the acquisitions.

(f) The agency or authority may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.58, eff. April 1, 2025.

Sec. 533A.017. PARTICIPATION IN PURCHASING CONTRACTS OR GROUP PURCHASING PROGRAM.

Text of subsection effective until April 1, 2025

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(a) This section does not apply to a "health and human services agency," as that term is defined by Section 521.0001,

Government Code.

(b) The executive commissioner may allow a state agency, local agency, or local intellectual and developmental disability authority that expends public money to purchase goods or services in connection with providing or coordinating the provision of intellectual disability services to purchase goods or services with the public money by participating in:

(1) a contract the executive commissioner has made to purchase goods or services; or

(2) a group purchasing program established or designated by the executive commissioner that offers discounts to providers of intellectual disability services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.59, eff. April 1, 2025.

Sec. 533A.018. REVENUE FROM SPECIAL OLYMPICS TEXAS LICENSE PLATES. Annually, the department shall distribute the money deposited under Section 504.621, Transportation Code, to the credit of the account created in the trust fund created under Section 504.6012, Transportation Code, to Special Olympics Texas to be used only to pay for costs associated with training and with area and regional competitions of the Special Olympics Texas.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES RELATING TO PROVISION OF INTELLECTUAL DISABILITY SERVICES

Sec. 533A.031. DEFINITIONS. In this subchapter:

(1) "Elderly resident" means a person 65 years of age or older residing in a department facility.

(2) "ICF-IID and related waiver programs" includes ICF-IID Section 1915(c) waiver programs, home and community-based services, Texas home living waiver services, or another Medicaid program serving persons with an intellectual disability.

(3) "Qualified service provider" means an entity that meets requirements for service providers established by the executive commissioner.

(4) "Section 1915(c) waiver program" means a federally funded Medicaid program of the state that is authorized under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.032. LONG-RANGE PLANNING.

Text of subsection effective until April 1, 2025

(a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Section 531.023, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with an intellectual disability the department serves are met.

Text of subsection effective on April 1, 2025

(a) The department shall have a long-range plan relating to the provision of services under this title covering at least six years that includes at least the provisions required by Sections 525.0154, 525.0155, and 525.0156, Government Code, and Chapter 2056, Government Code. The plan must cover the provision of services in and policies for state-operated institutions and ensure that the medical needs of the most medically fragile persons with an intellectual disability the department serves are met.

(b) In developing the plan, the department shall:

(1) solicit input from:

(A) local intellectual and developmental disability authorities;

(B) community representatives;

(C) consumers of intellectual disability services, including consumers of campus-based and community-based services, and family members of consumers of those services; and

(D) other interested persons; and

(2) consider the report developed under Subsection (c).

(c) The department shall develop a report containing information and recommendations regarding the most efficient long-term use and management of the department's campus-based facilities. The report must:

(1) project future bed requirements for state supported living centers;

(2) document the methodology used to develop the projection of future bed requirements;

(3) project maintenance costs for institutional facilities;

(4) recommend strategies to maximize the use of institutional facilities; and

(5) specify how each state supported living center will:

(A) serve and support the communities and consumers in its service area; and

(B) fulfill statewide needs for specialized services.

(d) In developing the report under Subsection (c), the department shall:

(1) conduct two public meetings, one meeting to be held at the beginning of the process and the second meeting to be held at the end of the process, to receive comments from interested parties; and

(2) consider:

(A) the medical needs of the most medically fragile of its clients with an intellectual disability;

(B) the provision of services to clients with a severe and profound intellectual disability and to persons with an intellectual disability who are medically fragile or have behavioral problems;

(C) the program and service preference information collected under Section 533A.038; and

(D) input solicited from consumers of services of state supported living centers.

(g) The department shall:

(1) attach the report required by Subsection (c) to the department's legislative appropriations request for each biennium;

(2) at the time the department presents its legislative appropriations request, present the report to the:

(A) governor;

(B) governor's budget office;

(C) lieutenant governor;
(D) speaker of the house of representatives;
(E) Legislative Budget Board; and
(F) commission; and
(3) update the department's long-range plan biennially and include the report in the plan.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.56, eff. April 1, 2025.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.60, eff. April 1, 2025.
Acts 2023, 88th Leg., R.S., Ch. 1147 (S.B. 956), Sec. 4, eff. September 1, 2023.

Sec. 533A.0325. CONTINUUM OF SERVICES IN DEPARTMENT FACILITIES. The executive commissioner by rule shall establish criteria regarding the uses of department facilities as part of a full continuum of services under this title.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0335. COMPREHENSIVE ASSESSMENT AND RESOURCE ALLOCATION PROCESS.

Text of subsection effective until April 1, 2025
(a) In this section:
(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code.
(2) "Functional need," "ICF-IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 534.001, Government Code.

Text of subsection effective on April 1, 2025
(a) In this section:

(1) "Advisory committee" means the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 542.0052, Government Code.

(2) "Functional need," "ICF-IID program," and "Medicaid waiver program" have the meanings assigned those terms by Section 542.0001, Government Code.

(b) Subject to the availability of federal funding, the department shall develop and implement a comprehensive assessment instrument and a resource allocation process for individuals with intellectual and developmental disabilities as needed to ensure that each individual with an intellectual or developmental disability receives the type, intensity, and range of services that are both appropriate and available, based on the functional needs of that individual, if the individual receives services through one of the following:

(1) a Medicaid waiver program;

(2) the ICF-IID program; or

(3) an intermediate care facility operated by the state and providing services for individuals with intellectual and developmental disabilities.

(c) The department, in consultation with the advisory committee, shall establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program. The process must ensure that supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program are available only to individuals for whom a more independent setting is not appropriate or available.

(d) The department shall cooperate with the advisory committee to establish the prior authorization process required by Subsection (c). This subsection expires January 1, 2024.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.61, eff. April 1, 2025.

Sec. 533A.034. AUTHORITY TO CONTRACT FOR COMMUNITY-BASED

SERVICES. The department may cooperate, negotiate, and contract with local agencies, hospitals, private organizations and foundations, community centers, physicians, and other persons to plan, develop, and provide community-based intellectual disability services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0345. STATE AGENCY SERVICES STANDARDS. (a) The executive commissioner by rule shall develop model program standards for intellectual disability services for use by each state agency that provides or pays for intellectual disability services. The department shall provide the model standards to each agency that provides intellectual disability services as identified by the commission.

(b) Model standards developed under Subsection (a) must be designed to improve the consistency of intellectual disability services provided by or through a state agency.

(c) Biennially the department shall review the model standards developed under Subsection (a) and determine whether each standard contributes effectively to the consistency of service delivery by state agencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.035. LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITIES. (a) The executive commissioner shall designate a local intellectual and developmental disability authority in one or more local service areas. The executive commissioner may delegate to the local authority the authority and responsibility of the executive commissioner, the commission, or a department of the commission related to planning, policy development, coordination, including coordination with criminal justice entities, resource allocation, and resource development for and oversight of intellectual disability services in the most appropriate and available setting to meet individual needs in that service area. The executive commissioner may designate a single entity as both the local mental health authority under Chapter 533 and the local intellectual and

developmental disability authority under this chapter for a service area.

(b) The department by contract or other method of allocation, including a case-rate or capitated arrangement, may disburse to a local intellectual and developmental disability authority department federal and department state funds to be spent in the local service area for community intellectual disability services.

(c) A local intellectual and developmental disability authority, with the approval of the department, shall use the funds received under Subsection (b) to ensure intellectual disability services are provided in the local service area. The local authority shall consider public input, ultimate cost-benefit, and client care issues to ensure consumer choice and the best use of public money in:

(1) assembling a network of service providers;

(2) making recommendations relating to the most appropriate and available treatment alternatives for individuals in need of intellectual disability services; and

(3) procuring services for a local service area, including a request for proposal or open-enrollment procurement method.

(d) A local intellectual and developmental disability authority shall demonstrate to the department that the services that the authority provides directly or through subcontractors and that involve state funds comply with relevant state standards.

(e) A local intellectual and developmental disability authority may serve as a provider of ICF-IID and related waiver programs only if:

(1) the local authority complies with the limitations prescribed by Section 533A.0355(d); or

(2) the ICF-IID and related waiver programs are necessary to ensure the availability of services and the local authority demonstrates to the commission that there is not a willing ICF-IID and related waiver program qualified service provider in the local authority's service area where the service is needed.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0352. LOCAL AUTHORITY PLANNING FOR LOCAL SERVICE AREA. (a) Each local intellectual and developmental disability

authority shall develop a local service area plan to maximize the authority's services by using the best and most cost-effective means of using federal, state, and local resources to meet the needs of the local community according to the relative priority of those needs. Each local intellectual and developmental disability authority shall undertake to maximize federal funding.

(b) A local service area plan must be consistent with the purposes, goals, and policies stated in Section 531.001 and the department's long-range plan developed under Section 533A.032.

(c) The department and a local intellectual and developmental disability authority shall use the local authority's local service plan as the basis for contracts between the department and the local authority and for establishing the local authority's responsibility for achieving outcomes related to the needs and characteristics of the authority's local service area.

(d) In developing the local service area plan, the local intellectual and developmental disability authority shall:

(1) solicit information regarding community needs from:

(A) representatives of the local community;

(B) consumers of community-based intellectual disability services and members of the families of those consumers;

(C) consumers of services of state supported living centers, members of families of those consumers, and members of state supported living center volunteer services councils, if a state supported living center is located in the local service area of the local authority; and

(D) other interested persons; and

(2) consider:

(A) criteria for assuring accountability for, cost-effectiveness of, and relative value of service delivery options;

(B) goals to ensure a client with an intellectual disability is placed in the least restrictive environment appropriate to the person's care;

(C) opportunities for innovation to ensure that the local authority is communicating to all potential and incoming consumers about the availability of services of state supported living centers for persons with an intellectual disability in the local service area of the local authority;

(D) goals to divert consumers of services from the criminal justice system; and

(E) opportunities for innovation in services and service delivery.

(e) The department and the local intellectual and developmental disability authority by contract shall enter into a performance agreement that specifies required standard outcomes for the programs administered by the local authority. Performance related to the specified outcomes must be verifiable by the department. The performance agreement must include measures related to the outputs, costs, and units of service delivered. Information regarding the outputs, costs, and units of service delivered shall be recorded in the local authority's automated data systems, and reports regarding the outputs, costs, and units of service delivered shall be submitted to the department at least annually as provided by department rule.

(f) The department and the local intellectual and developmental disability authority shall provide an opportunity for community centers and advocacy groups to provide information or assistance in developing the specified performance outcomes under Subsection (e).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0355. LOCAL INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITY RESPONSIBILITIES. (a) The executive commissioner shall adopt rules establishing the roles and responsibilities of local intellectual and developmental disability authorities.

(b) In adopting rules under this section, the executive commissioner must include rules regarding the following local intellectual and developmental disability authority responsibilities:

(1) access;

(2) intake;

(3) eligibility functions;

(4) enrollment, initial person-centered assessment, and service authorization;

(5) utilization management;

(6) safety net functions, including crisis management services and assistance in accessing facility-based care;

(7) service coordination functions;

(8) provision and oversight of state general revenue services;

(9) local planning functions, including stakeholder involvement, technical assistance and training, and provider complaint and resolution processes; and

(10) processes to assure accountability in performance, compliance, and monitoring.

(c) In determining eligibility under Subsection (b)(3), a local intellectual and developmental disability authority must offer a state supported living center as an option among the residential services and other community living options available to an individual who is eligible for those services and who meets the department's criteria for state supported living center admission, regardless of whether other residential services are available to the individual.

(d) In establishing a local intellectual and developmental disability authority's role as a qualified service provider of ICF-IID and related waiver programs under Section 533A.035(e), the executive commissioner shall require the local intellectual and developmental disability authority to:

(1) base the local authority's provider capacity on the local authority's August 2004 enrollment levels for the waiver programs the local authority operates and, if the local authority's enrollment levels exceed those levels, to reduce the levels by attrition; and

(2) base any increase in the local authority's provider capacity on:

(A) the local authority's state-mandated conversion from an ICF-IID program to a Section 1915(c) waiver program allowing for a permanent increase in the local authority's provider capacity in accordance with the number of persons who choose the local authority as their provider;

(B) the local authority's voluntary conversion from an ICF-IID program to a Section 1915(c) waiver program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider;

(C) the local authority's refinancing from services funded solely by state general revenue to a Medicaid program allowing for a temporary increase in the local authority's provider capacity, to be reduced by attrition, in accordance with the number of persons who choose the local authority as their provider; or

(D) other extenuating circumstances that:

(i) are monitored and approved by the department;

(ii) do not include increases that unnecessarily promote the local authority's provider role over its role as a local intellectual and developmental disability authority; and

(iii) may include increases necessary to accommodate a family-specific or consumer-specific circumstance and choice.

(e) Any increase based on extenuating circumstances under Subsection (d)(2)(D) is considered a temporary increase in the local intellectual and developmental disability authority's provider capacity, to be reduced by attrition.

(f) At least biennially, the department shall review and determine the local intellectual and developmental disability authority's status as a qualified service provider in accordance with criteria that includes the consideration of the local authority's ability to assure the availability of services in its area, including:

(1) program stability and viability;

(2) the number of other qualified service providers in the area; and

(3) the geographical area in which the local authority is located.

(g) The department shall ensure that local services delivered further the following goals:

(1) to provide individuals with the information, opportunities, and support to make informed decisions regarding the services for which the individual is eligible;

(2) to respect the rights, needs, and preferences of an individual receiving services; and

(3) to integrate individuals with intellectual and developmental disabilities into the community in accordance with relevant independence initiatives and permanency planning laws.

(h) The department shall ensure that local intellectual and developmental disability authorities are informing and counseling individuals and their legally authorized representatives, if applicable, about all program and service options for which the individuals are eligible in accordance with Section 533A.038(d), including options such as the availability and types of ICF-IID placements for which an individual may be eligible while the

individual is on a department interest list or other waiting list for other services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.03551. FLEXIBLE, LOW-COST HOUSING OPTIONS. (a) To the extent permitted under federal law and regulations, the executive commissioner shall adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with disabilities, including individuals with intellectual and developmental disabilities, in urban and rural areas, including:

(1) a selection of community-based housing options that comprise a continuum of integration, varying from most to least restrictive, that permits individuals to select the most integrated and least restrictive setting appropriate to the individual's needs and preferences;

(2) provider-owned and non-provider-owned residential settings;

(3) assistance with living more independently; and

(4) rental properties with on-site supports.

Text of subsection effective until April 1, 2025

(b) The department, in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 534.053, Government Code, shall coordinate with federal, state, and local public housing entities as necessary to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

Text of subsection effective on April 1, 2025

(b) The department, in cooperation with the Texas Department of Housing and Community Affairs, the Department of Agriculture, the Texas State Affordable Housing Corporation, and the Intellectual and Developmental Disability System Redesign Advisory Committee established under Section 542.0052, Government Code, shall coordinate with federal, state, and local public housing entities as necessary

to expand opportunities for accessible, affordable, and integrated housing to meet the complex needs of individuals with disabilities, including individuals with intellectual and developmental disabilities.

(c) The department shall develop a process to receive input from statewide stakeholders to ensure the most comprehensive review of opportunities and options for housing services described by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.62, eff. April 1, 2025.

Sec. 533A.03552. BEHAVIORAL SUPPORTS FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES AT RISK OF INSTITUTIONALIZATION; INTERVENTION TEAMS. (a) Subject to the availability of federal funding, the department shall develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization.

(b) Subject to the availability of federal funding, the department shall establish one or more behavioral health intervention teams to provide services and supports to individuals with intellectual and developmental disabilities and behavioral health needs who are at risk of institutionalization. An intervention team may include a:

(1) psychiatrist or psychologist;
(2) physician;
(3) registered nurse;
(4) pharmacist or representative of a pharmacy;
(5) behavior analyst;
(6) social worker;
(7) crisis coordinator;
(8) peer specialist; and
(9) family partner.

(c) In providing services and supports, a behavioral health intervention team established by the department shall:

(1) use the team's best efforts to ensure that an individual remains in the community and avoids institutionalization;

(2) focus on stabilizing the individual and assessing the individual for intellectual, medical, psychiatric, psychological, and other needs;

(3) provide support to the individual's family members and other caregivers;

(4) provide intensive behavioral assessment and training to assist the individual in establishing positive behaviors and continuing to live in the community; and

(5) provide clinical and other referrals.

(d) The department shall ensure that members of a behavioral health intervention team established under this section receive training on trauma-informed care, which is an approach to providing care to individuals with behavioral health needs based on awareness that a history of trauma or the presence of trauma symptoms may create the behavioral health needs of the individual.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.037. SERVICE PROGRAMS AND SHELTERED WORKSHOPS. (a) The department may provide intellectual disability services through halfway houses, sheltered workshops, community centers, and other intellectual disability services programs.

(b) The department may operate or contract for the provision of part or all of the sheltered workshop services and may contract for the sale of goods produced and services provided by a sheltered workshop program. The goods and services may be sold for cash or on credit.

(c) An operating fund may be established for each sheltered workshop the department operates. Each operating fund must be in a national or state bank that is a member of the Federal Deposit Insurance Corporation.

(d) Money derived from gifts or grants received for sheltered workshop purposes and the proceeds from the sale of sheltered workshop goods and services shall be deposited to the credit of the

operating fund. The money in the fund may be spent only in the operation of the sheltered workshop to:

(1) purchase supplies, materials, services, and equipment;

(2) pay salaries of and wages to participants and employees;

(3) construct, maintain, repair, and renovate facilities and equipment; and

(4) establish and maintain a petty cash fund of not more than $100.

(e) Money in an operating fund that is used to pay salaries of and wages to participants in the sheltered workshop program is money the department holds in trust for the participants' benefit.

(f) This section does not affect the authority or jurisdiction of a community center as prescribed by Chapter 534.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.038. FACILITIES AND SERVICES FOR CLIENTS WITH AN INTELLECTUAL DISABILITY. (a) In this section, "department facility" includes the ICF-IID component of the Rio Grande State Center.

(a-1) The department may designate all or any part of a department facility as a special facility for the diagnosis, special training, education, supervision, treatment, or care of clients with an intellectual disability.

(b) The department may specify the facility in which a client with an intellectual disability under the department's jurisdiction is placed.

(c) The department may maintain day classes at a department facility for the convenience and benefit of clients with an intellectual disability of the community in which the facility is located and who are not capable of enrollment in a public school system's regular or special classes.

(d) A person with an intellectual disability, or a person's legally authorized representative, seeking residential services shall receive a clear explanation of programs and services for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section

1396n(c)), or other services. The preferred programs and services chosen by the person or the person's legally authorized representative shall be documented in the person's record. If the preferred programs or services are not available, the person or the person's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting list.

(e) The department shall ensure that the information regarding program and service preferences collected under Subsection (d) is documented and maintained in a manner that permits the department to access and use the information for planning activities conducted under Section 533A.032.

(f) The department may spend money appropriated for the state supported living center system only in accordance with limitations imposed by the General Appropriations Act.

(g) In addition to the explanation required under Subsection (d), the department shall ensure that each person inquiring about residential services receives:

(1) a pamphlet or similar informational material explaining that any programs and services for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services, may be an option available to an individual who is eligible for those services; and

(2) information relating to whether appropriate residential services are available in each program and service for which the person is determined to be eligible, including state supported living centers, community ICF-IID programs, waiver services under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)), or other services located nearest to the residence of the proposed resident.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.040. SERVICES FOR CHILDREN AND YOUTH. The department shall ensure the development of programs and the expansion of services at the community level for children with an intellectual

disability, or with a dual diagnosis of an intellectual disability and mental illness, and for their families. The department shall:

(1) prepare and review budgets for services for children;

(2) develop departmental policies relating to children's programs and service delivery; and

(3) increase interagency coordination activities to enhance the provision of services for children.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0415. MEMORANDUM OF UNDERSTANDING ON INTERAGENCY TRAINING. (a) The executive commissioner, the Texas Juvenile Justice Department, and the Texas Education Agency by rule shall adopt a joint memorandum of understanding to develop interagency training for the staffs of the department, the Texas Juvenile Justice Department, and the Texas Education Agency who are involved in the functions of assessment, case planning, case management, and in-home or direct delivery of services to children, youth, and their families under this title. The memorandum must:

(1) outline the responsibility of each agency in coordinating and developing a plan for interagency training on individualized assessment and effective intervention and treatment services for children and dysfunctional families; and

(2) provide for the establishment of an interagency task force to:

(A) develop a training program to include identified competencies, content, and hours for completion of the training with at least 20 hours of training required each year until the program is completed;

(B) design a plan for implementing the program, including regional site selection, frequency of training, and selection of experienced clinical public and private professionals or consultants to lead the training; and

(C) monitor, evaluate, and revise the training program, including the development of additional curricula based on future training needs identified by staff and professionals.

(b) The task force consists of:

(1) one clinical professional and one training staff member

from each agency, appointed by that agency; and

(2) 10 private sector clinical professionals with expertise in dealing with troubled children, youth, and dysfunctional families, two of whom are appointed by each agency.

(c) The task force shall meet at the call of the department.

(d) The commission shall act as the lead agency in coordinating the development and implementation of the memorandum.

(e) The executive commissioner and the agencies shall review and by rule revise the memorandum not later than August each year.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.042. EVALUATION OF ELDERLY RESIDENTS. (a) The department shall evaluate each elderly resident at least annually to determine if the resident can be appropriately served in a less restrictive setting.

(b) The department shall consider the proximity to the resident of family, friends, and advocates concerned with the resident's well-being in determining whether the resident should be moved from a department facility or to a different department facility. The department shall recognize that a nursing facility may not be able to meet the special needs of an elderly resident.

(c) In evaluating an elderly resident under this section and to ensure appropriate placement, the department shall identify the special needs of the resident, the types of services that will best meet those needs, and the type of facility that will best provide those services.

(d) The appropriate interdisciplinary team shall conduct the evaluation of an elderly resident of a department facility.

(e) The department shall attempt to place an elderly resident in a less restrictive setting if the department determines that the resident can be appropriately served in that setting. The department shall coordinate the attempt with the local intellectual and developmental disability authority.

(f) A local intellectual and developmental disability authority shall provide continuing care for an elderly resident placed in the authority's service area under this section.

(g) The local intellectual and developmental disability

authority shall have the right of access to all residents and records of residents who request continuing care services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.043. PROPOSALS FOR GERIATRIC CARE. (a) The department shall solicit proposals from community providers to operate community residential programs for elderly residents at least every two years.

(b) The department shall require each provider to:

(1) offer adequate assurances of ability to:

(A) provide the required services;

(B) meet department standards; and

(C) safeguard the safety and well-being of each resident; and

(2) sign a memorandum of agreement with the local intellectual and developmental disability authority outlining the responsibilities for continuity of care and monitoring, if the provider is not the local authority.

(c) The department may fund a proposal through a contract if the provider agrees to meet the requirements prescribed by Subsection (b) and agrees to provide the services at a cost that is equal to or less than the cost to the department to provide the services.

(d) The appropriate local intellectual and developmental disability authority shall monitor the services provided to a resident placed in a program funded under this section. The department may monitor any service for which it contracts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO ICF-IID PROGRAM

Sec. 533A.062. PLAN ON LONG-TERM CARE FOR PERSONS WITH AN INTELLECTUAL DISABILITY. (a) The department shall biennially develop a proposed plan on long-term care for persons with an intellectual disability.

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with an intellectual disability and the

number and levels of new ICF-IID beds to be authorized in each region. In developing the proposed plan, the department shall consider:

(1) the needs of the population to be served;

(2) projected appropriation amounts for the biennium; and

(3) the requirements of applicable federal law.

(b-1) As part of the proposed plan, the commission shall review the statewide bed capacity of community ICF-IID facilities for individuals with an intellectual disability or a related condition and, based on the review, develop a process to reallocate beds held in suspension by the commission. The process may include:

(1) criteria by which ICF-IID program providers may apply to the commission to receive reallocated beds; and

(2) a means to reallocate the beds among health services regions.

(c) Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the commission for approval.

(d) The commission may modify the proposed plan as necessary before its final approval.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(8), eff. September 1, 2021.

(f) After legislative action on the appropriation for long-term care services for persons with an intellectual disability, the commission shall adjust the plan to ensure that the number of ICF-IID beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the commission shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the commission.

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with an intellectual disability adopted in accordance with 42 U.S.C. Section 1396n(c).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335,

eff. April 2, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.32, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1153 (H.B. 3117), Sec. 1, eff. June 14, 2019.
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(8), eff. September 1, 2021.

Sec. 533A.066. INFORMATION RELATING TO ICF-IID PROGRAM. (a) At least annually, the department shall sponsor a conference on the ICF-IID program to:
(1) assist providers in understanding survey rules;
(2) review deficiencies commonly found in ICF-IID facilities; and
(3) inform providers of any recent changes in the rules or in the interpretation of the rules relating to the ICF-IID program.
(b) The department also may use any other method to provide necessary information to providers, including publications.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER D. POWERS AND DUTIES RELATING TO DEPARTMENT FACILITIES

Sec. 533A.081. DEVELOPMENT OF FACILITY BUDGETS. The department, in budgeting for a facility, shall use uniform costs for specific types of services a facility provides unless a legitimate reason exists and is documented for the use of other costs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.082. DETERMINATION OF SAVINGS IN FACILITIES. (a) The department shall determine the degree to which the costs of operating department facilities for persons with an intellectual disability in compliance with applicable standards are affected as populations in the facilities fluctuate.
(b) In making the determination, the department shall:

(1) assume that the current level of services and necessary state of repair of the facilities will be maintained; and

(2) include sufficient funds to allow the department to comply with the requirements of litigation and applicable standards.

(c) The department shall allocate to community-based intellectual disability programs any savings realized in operating department facilities for persons with an intellectual disability.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.083. CRITERIA FOR EXPANSION, CLOSURE, OR CONSOLIDATION OF FACILITY. The department shall establish objective criteria for determining when a new facility may be needed and when a state supported living center may be expanded, closed, or consolidated.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.084. MANAGEMENT OF SURPLUS REAL PROPERTY. (a) To the extent provided by this subtitle, the department, in coordination with the executive commissioner, may lease, transfer, or otherwise dispose of any surplus real property related to the provision of services under this title, including any improvements under its management and control, or authorize the lease, transfer, or disposal of the property. Surplus property is property the executive commissioner designates as having minimal value to the present service delivery system and projects to have minimal value to the service delivery system as described in the department's long-range plan.

(b) The proceeds from the lease, transfer, or disposal of surplus real property, including any improvements, shall be deposited to the credit of the department in the Texas capital trust fund established under Chapter 2201, Government Code. The proceeds may be appropriated only for improvements to the department's system of intellectual disability facilities.

(c) A lease proposal shall be advertised at least once a week for four consecutive weeks in at least two newspapers. One newspaper

must be a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location. The other newspaper must have statewide circulation. Each lease is subject to the attorney general's approval as to substance and form. The executive commissioner shall adopt forms, rules, and contracts that, in the executive commissioner's best judgment, will protect the state's interests. The executive commissioner may reject any or all bids.

(d) This section does not authorize the executive commissioner or department to close or consolidate a state supported living center without first obtaining legislative approval.

(e) Notwithstanding Subsection (c), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.0846. INTELLECTUAL DISABILITY COMMUNITY SERVICES ACCOUNT. (a) The intellectual disability community services account is an account in the general revenue fund that may be appropriated only for the provision of intellectual disability services by or under contract with the department.

(b) The department shall deposit to the credit of the intellectual disability community services account any money donated to the state for inclusion in the account, including life insurance proceeds designated for deposit to the account.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.085. FACILITIES FOR INMATE AND PAROLEE CARE. (a) With the written approval of the governor, the department may contract with the Texas Department of Criminal Justice to transfer facilities to the Texas Department of Criminal Justice or otherwise provide facilities for:

(1) inmates with an intellectual disability in the custody of the Texas Department of Criminal Justice; or

(2) persons with an intellectual disability paroled or released under the supervision of the Texas Department of Criminal Justice.

(b) An agency must report to the governor the agency's reasons for proposing to enter into a contract under this section and request the governor's approval.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

Sec. 533A.087. LEASE OF REAL PROPERTY. (a) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title, including any improvements under the department's management and control, regardless of whether the property is surplus property. Except as provided by Subsection (c), the department, in coordination with the executive commissioner, may award a lease of real property only:

(1) at the prevailing market rate; and

(2) by competitive bid.

(b) The commission shall advertise a proposal for lease at least once a week for four consecutive weeks in:

(1) a newspaper published in the municipality in which the property is located or the daily newspaper published nearest to the property's location; and

(2) a newspaper of statewide circulation.

(c) The department, in coordination with the executive commissioner, may lease real property related to the provision of services under this title or an improvement for less than the prevailing market rate, without advertisement or without competitive bidding, if:

(1) the executive commissioner determines that sufficient public benefit will be derived from the lease; and

(2) the property is leased to:

(A) a federal or state agency;

(B) a unit of local government;

(C) a not-for-profit organization; or

(D) an entity related to the department by a service

contract.

(d) The executive commissioner shall adopt leasing rules, forms, and contracts that will protect the state's interests.

(e) The executive commissioner may reject any bid.

(f) This section does not authorize the executive commissioner or department to close or consolidate a facility used to provide intellectual disability services without legislative approval.

(g) Notwithstanding Subsections (a) and (b), the executive commissioner, in coordination with the department, may enter into a written agreement with the General Land Office to administer lease proposals. If the General Land Office administers a lease proposal under the agreement, notice that the property is offered for lease must be published in accordance with Section 32.107, Natural Resources Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

SUBCHAPTER E. JAIL DIVERSION PROGRAM

Sec. 533A.108. PRIORITIZATION OF FUNDING FOR DIVERSION OF PERSONS FROM INCARCERATION IN CERTAIN COUNTIES. (a) A local intellectual and developmental disability authority may develop and may prioritize its available funding for:

(1) a system to divert members of the priority population, including those members with co-occurring substance abuse disorders, before their incarceration or other contact with the criminal justice system, to services appropriate to their needs, including:

(A) screening and assessment services; and

(B) treatment services, including:

(i) short-term residential services;

(ii) crisis respite residential services; and

(iii) continuity of care services;

(2) specialized training of local law enforcement and court personnel to identify and manage offenders or suspects who may be members of the priority population; and

(3) other model programs for offenders and suspects who may be members of the priority population, including crisis intervention training for law enforcement personnel.

(b) A local intellectual and developmental disability authority

developing a system, training, or a model program under Subsection (a) shall collaborate with other local resources, including local law enforcement and judicial systems and local personnel.

(c) A local intellectual and developmental disability authority may not implement a system, training, or a model program developed under this section until the system, training, or program is approved by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1335, eff. April 2, 2015.

CHAPTER 534. COMMUNITY SERVICES

SUBCHAPTER A. COMMUNITY CENTERS

Sec. 534.0001. DEFINITIONS. In this subchapter:

(1) "Commissioner" means:

(A) the commissioner of state health services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the commissioner of aging and disability services in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

(2) "Department" means:

(A) the Department of State Health Services in relation to:

(i) a community mental health center; or

(ii) the mental health services component of a community mental health and intellectual disability center; and

(B) the Department of Aging and Disability Services in relation to:

(i) a community intellectual disability center; or

(ii) the intellectual disability services component of a community mental health and intellectual disability center.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.001. ESTABLISHMENT. (a) A county, municipality, hospital district, or school district, or an organizational combination of two or more of those local agencies, may establish and operate a community center.

(b) In accordance with this subtitle, a community center may be:

(1) a community mental health center that provides mental health services;

(2) a community intellectual disability center that provides intellectual disability services; or

(3) a community mental health and intellectual disability center that provides mental health and intellectual disability services.

(c) A community center is:

(1) an agency of the state, a governmental unit, and a unit of local government, as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code;

(2) a local government, as defined by Section 791.003, Government Code;

(3) a local government for the purposes of Chapter 2259, Government Code; and

(4) a political subdivision for the purposes of Chapter 172, Local Government Code.

(d) A community center may be established only if:

(1) the proposed center submits a copy of the contract between the participating local agencies, if applicable, to:

(A) the Department of State Health Services for a proposed center that will provide mental health services;

(B) the Department of Aging and Disability Services for a proposed center that will provide intellectual disability services; or

(C) both departments if the proposed center will provide mental health and intellectual disability services;

(2) each appropriate department approves the proposed center's plan to develop and make available to the region's residents an effective mental health or intellectual disability program, or both, through a community center that is appropriately structured to include the financial, physical, and personnel resources necessary to

meet the region's needs; and

(3) each department from which the proposed center seeks approval determines that the center can appropriately, effectively, and efficiently provide those services in the region.

(e) Except as provided by this section, a community center operating under this subchapter may operate only for the purposes and perform only the functions defined in the center's plan. The executive commissioner by rule shall specify the elements that must be included in a plan and shall prescribe the procedure for submitting, approving, and modifying a center's plan. In addition to the services described in a center's plan, the center may provide other health and human services and supports as provided by a contract with or a grant received from a local, state, or federal agency.

(f) Each function performed by a community center under this title is a governmental function if the function is required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power. Notwithstanding any other law, a community center is subject to Chapter 554, Government Code.

(g) An entity is, for the purpose of operating a psychiatric center, a governmental unit and a unit of local government under Chapter 101, Civil Practice and Remedies Code, and a local government under Chapter 102, Civil Practice and Remedies Code, if the entity:

(1) is not operated to make a profit;

(2) is created through an intergovernmental agreement between a community mental health center and any other governmental unit; and

(3) contracts with the community mental health center and any other governmental unit that created it to operate a psychiatric center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.07, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 601, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 835, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.276, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.82, eff. Sept. 1, 2006.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0015. PURPOSE AND POLICY. (a) A community center created under this subchapter is intended to be a vital component in a continuum of services for persons in this state with mental illness or an intellectual disability.

(b) It is the policy of this state that community centers strive to develop services for persons with mental illness or an intellectual disability, and may provide requested services to persons with developmental disabilities or with chemical dependencies, that are effective alternatives to treatment in a large residential facility.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.08, eff. Aug. 30, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 3, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.002. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY ONE LOCAL AGENCY. (a) The board of trustees of a community center established by one local agency is composed of:

(1) the members of the local agency's governing body;

(2) not fewer than five or more than nine qualified voters who reside in the region to be served by the center and who are appointed by the local agency's governing body; and

(3) a sheriff or a representative of a sheriff of a county in the region served by the community center who is appointed by the local agency's governing body to serve as an ex officio nonvoting member.

(b) If a qualified voter appointed to a community center under Subsection (a)(2) is the sheriff of the only county in the region served by a community center, Subsection (a)(3) does not apply.

(c) If a qualified voter appointed to a community center under Subsection (a)(2) is a sheriff of a county in the region served by a community center and the region served by the community center consists of more than one county, under Subsection (a)(3) the local agency's governing body shall appoint a sheriff or a representative of a sheriff from a different county in the region served by the community center.

(d) Subsection (a)(3) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.09, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 3, eff. September 1, 2019.

Sec. 534.003. BOARD OF TRUSTEES FOR CENTER ESTABLISHED BY AT LEAST TWO LOCAL AGENCIES. (a) Except as provided by Subsection (a-1), the board of trustees of a community center established by an organizational combination of local agencies is composed of not fewer than five or more than 13 members.

(a-1) In addition to the members described by Subsection (a), the board of trustees of a community center must include:

(1) if the region served by the community center consists of only one county, the sheriff of that county or a representative of the sheriff to serve as an ex officio nonvoting member; or

(2) if the region served by the community center consists of more than one county, sheriffs from at least two of the counties in the region served by the community center or representatives of the sheriffs to serve as ex officio nonvoting members.

(a-2) Subsection (a-1) does not prevent a sheriff or representative of a sheriff from being included on the board of trustees of a community center as a voting member of the board.

(b) The governing bodies of the local agencies shall appoint the board members either from among the membership of the governing

bodies or from among the qualified voters who reside in the region to be served by the center.

(c) When the center is established, the governing bodies shall enter into a contract that stipulates the number of board members and the group from which the members are chosen. They may renegotiate or amend the contract as necessary to change the:

(1) method of choosing the members; or

(2) membership of the board of trustees to more accurately reflect the ethnic and geographic diversity of the local service area.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.10, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.200, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 962 (S.B. 632), Sec. 4, eff. September 1, 2019.

Sec. 534.004. PROCEDURES RELATING TO BOARD OF TRUSTEES MEMBERSHIP. (a) The local agency or organizational combination of local agencies that establishes a community center shall prescribe:

(1) the application procedure for a position on the board of trustees;

(2) the procedure and criteria for making appointments to the board of trustees;

(3) the procedure for posting notice of and filling a vacancy on the board of trustees; and

(4) the grounds and procedure for removing a member of the board of trustees.

(b) The local agency or organizational combination of local agencies that appoints the board of trustees shall, in appointing the members, attempt to reflect the ethnic and geographic diversity of the local service area the community center serves. The local agency or organizational combination shall include on the board of trustees one or more persons otherwise qualified under this chapter who are consumers of the types of services the center provides or who are family members of consumers of the types of services the center

provides.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.11, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1187, Sec. 12, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.005. TERMS; VACANCIES. (a) Appointed members of the board of trustees who are not members of a local agency's governing body serve staggered two-year terms. In appointing the initial members, the appointing authority shall designate not less than one-third or more than one-half of the members to serve one-year terms and shall designate the remaining members to serve two-year terms.

(b) A vacancy on a board of trustees composed of qualified voters is filled by appointment for the remainder of the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.12, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1187, Sec. 13, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.006. TRAINING. (a) The executive commissioner by rule shall establish:

(1) an annual training program for members of a board of trustees administered by the professional staff of that community center, including the center's legal counsel; and

(2) an advisory committee to develop training guidelines that includes representatives of advocates for persons with mental illness or an intellectual disability and representatives of boards of trustees.

(b) Before a member of a board of trustees may assume office, the member shall attend at least one training session administered by that center's professional staff to receive information relating to:

(1) the enabling legislation that created the community

center;

(2) the programs the community center operates;

(3) the community center's budget for that program year;

(4) the results of the most recent formal audit of the community center;

(5) the requirements of Chapter 551, Government Code, and Chapter 552, Government Code;

(6) the requirements of conflict of interest laws and other laws relating to public officials; and

(7) any ethics policies adopted by the community center.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), (88), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0065. QUALIFICATIONS; CONFLICT OF INTEREST; REMOVAL. (a) As a local public official, a member of the board of trustees of a community center shall uphold the member's position of public trust by meeting and maintaining the applicable qualifications for membership and by complying with the applicable requirements relating to conflicts of interest.

(b) A person is not eligible for appointment as a member of a board of trustees if the person or the person's spouse:

(1) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the community center by contract or other method; or

(2) uses or receives a substantial amount of tangible goods or funds from the community center, other than:

(A) compensation or reimbursement authorized by law for board of trustees membership, attendance, or expenses; or

(B) as a consumer or as a family member of a client or patient receiving services from the community center.

(c) The primary residence of a member of the board of trustees must be in the local service area the member represents.

(d) A member of the board of trustees is subject to Chapter

171, Local Government Code.

(e) A member of the board of trustees may not:

(1) refer for services a client or patient to a business entity owned or controlled by a member of the board of trustees, unless the business entity is the only business entity that provides the needed services within the jurisdiction of the community center;

(2) use a community center facility in the conduct of a business entity owned or controlled by that member;

(3) solicit, accept, or agree to accept from another person or business entity a benefit in return for the member's decision, opinion, recommendation, vote, or other exercise of discretion as a local public official or for a violation of a duty imposed by law;

(4) receive any benefit for the referral of a client or a patient to the community center or to another business entity;

(5) appoint, vote for, or confirm the appointment of a person to a paid office or position with the community center if the person is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree; or

(6) solicit or receive a political contribution from a supplier to or contractor with the community center.

(f) Not later than the date on which a member of the board of trustees takes office by appointment or reappointment and not later than the anniversary of that date, each member shall annually execute and file with the community center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal prescribed by this chapter.

(g) In addition to any grounds for removal adopted under Section 534.004(a), it is a ground for removal of a member of a board of trustees if the member:

(1) violates Chapter 171, Local Government Code;

(2) is not eligible for appointment to the board of trustees at the time of appointment as provided by Subsections (b) and (c);

(3) does not maintain during service on the board of trustees the qualifications required by Subsections (b) and (c);

(4) violates a provision of Subsection (e);

(5) violates a provision of Section 534.0115; or

(6) does not execute the affidavit required by Subsection (f).

(h) If a board of trustees is composed of members of the governing body of a local agency or organizational combination of local agencies, this section applies only to the qualifications for and removal from membership on the board of trustees.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.13, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.007. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES; OFFENSE. (a) A former officer or employee of a community center who ceases service or employment with the center may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for salary group 17, Schedule A, or salary group 9, Schedule B, of the position classification salary schedule; or

(2) a former officer or employee who is employed by a state agency or another community center.

(c) Subsection (a) does not apply to a proceeding related to policy development that was concluded before the officer's or employee's service or employment ceased.

(d) A former officer or employee of a community center commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

(e) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, proceeding

related to the development of policy, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1187, Sec. 14, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.008. ADMINISTRATION BY BOARD. (a) The board of trustees is responsible for the effective administration of the community center.

(b) The board of trustees shall make policies that are consistent with the applicable rules and standards of each appropriate department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.14, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.009. MEETINGS. (a) The board of trustees shall adopt rules for the holding of regular and special meetings.

(b) Board meetings are open to the public to the extent required by and in accordance with Chapter 551, Government Code.

(c) The board of trustees shall keep a record of its proceedings in accordance with Chapter 551, Government Code. The record is open for public inspection in accordance with that law.

(d) The board of trustees shall send to each appropriate department and each local agency that appoints the members a copy of the approved minutes of board of trustees meetings by:

(1) mailing a copy appropriately addressed and with the necessary postage paid using the United States Postal Service; or

(2) another method agreed to by the board of trustees and the local agency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.15, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(84), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.010. EXECUTIVE DIRECTOR. (a) The board of trustees shall appoint an executive director for the community center.

(b) The board of trustees shall:

(1) adopt a written policy governing the powers that may be delegated to the executive director; and

(2) annually report to each local agency that appoints the members the executive director's total compensation and benefits.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.16, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.011. PERSONNEL. (a) The executive director, in accordance with the policies of the board of trustees, shall employ and train personnel to administer the community center's programs and services. The community center may recruit those personnel and contract for recruiting and training purposes.

(b) The board of trustees shall provide employees of the community center with appropriate rights, privileges, and benefits.

(c) The board of trustees may provide workers' compensation benefits.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.17, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0115. NEPOTISM. (a) The board of trustees or executive director may not hire as a paid officer or employee of the community center a person who is related to a member of the board of trustees by affinity within the second degree or by consanguinity within the third degree.

(b) An officer or employee who is related to a member of the board of trustees in a prohibited manner may continue to be employed if the person began the employment not later than the 31st day before the date on which the member was appointed.

(c) The officer or employee or the member of the board of trustees shall resign if the officer or employee began the employment later than the 31st day before the date on which the member was appointed.

(d) If an officer or employee is permitted to remain in employment under Subsection (b), the related member of the board of trustees may not participate in the deliberation of or voting on an issue that is specifically applicable to the officer or employee unless the issue affects an entire class or category of employees.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.18, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.012. ADVISORY COMMITTEES. (a) The board of trustees may appoint committees, including medical committees, to advise the board of trustees on matters relating to mental health and intellectual disability services.

(b) Each committee must be composed of at least three members.

(c) The appointment of a committee does not relieve the board of trustees of the final responsibility and accountability as provided by this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.19, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.013. COOPERATION OF DEPARTMENTS. Each appropriate department shall provide assistance, advice, and consultation to local agencies, boards of trustees, and executive directors in the planning, development, and operation of a community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.014. BUDGET; REQUEST FOR FUNDS. (a) Each community center shall annually provide to each local agency that appoints members to the board of trustees a copy of the center's:

(1) approved fiscal year operating budget;
(2) most recent annual financial audit; and
(3) staff salaries by position.

(b) The board of trustees shall annually submit to each local agency that appoints the members a request for funds or in-kind assistance to support the center.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.20, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.015. PROVISION OF SERVICES. (a) The board of trustees may adopt rules to regulate the administration of mental health or intellectual disability services by a community center. The rules must be consistent with the purposes, policies, principles, and standards prescribed by this subtitle.

(b) The board of trustees may contract with a local agency or a qualified person or organization to provide a portion of the mental health or intellectual disability services.

(c) With the approval of each appropriate commissioner, the

board of trustees may contract with the governing body of another county or municipality to provide mental health and intellectual disability services to residents of that county or municipality.

(d) A community center may provide services to a person who voluntarily seeks assistance or who has been committed to that center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0155. FOR WHOM SERVICES MAY BE PROVIDED. (a) This subtitle does not prevent a community center from providing services to:

(1) a person with a chemical dependency;

(2) a person with a developmental disability; or

(3) a person younger than four years of age who is eligible for early childhood intervention services.

(b) A community center may provide those services by contracting with a public or private agency in addition to the appropriate department.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.21, eff. Aug. 30, 1993. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 7(a), eff. Aug. 30, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1292 (H.B. 2303), Sec. 4, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.016. SCREENING AND CONTINUING CARE SERVICES. (a) A community center shall provide screening services for:

(1) a person who requests voluntary admission to a Department of State Health Services facility for persons with mental illness; and

(2) a person for whom proceedings for involuntary commitment to a Department of State Health Services or Department of

Aging and Disability Services facility for persons with mental illness or an intellectual disability have been initiated.

(b) A community center shall provide continuing mental health and physical care services for a person referred to the center by a Department of State Health Services facility and for whom the facility superintendent has recommended a continuing care plan.

(c) Services provided under this section must be consistent with the applicable rules and standards of each appropriate department.

(d) The appropriate commissioner may designate a facility other than the community center to provide the screening or continuing care services if:

(1) local conditions indicate that the other facility can provide the services more economically and effectively; or

(2) the commissioner determines that local conditions may impose an undue burden on the community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.017. FEES FOR SERVICES. (a) A community center shall charge reasonable fees for services the center provides, unless prohibited by other service contracts or law.

(b) The community center may not deny services to a person because of inability to pay for the services.

(c) The community center has the same rights, privileges, and powers for collecting fees for treating patients or clients that each appropriate department has by law.

(d) The county or district attorney of the county in which the community center is located shall represent the center in collecting fees when the center's executive director requests the assistance.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.22, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0175. TRUST EXEMPTION. (a) If a patient or client is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the patient or client or the patient's or client's estate and is not liable for the patient's or client's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the patient or client or the patient's or client's estate and are liable for the patient's or client's support.

(b) To qualify for the exemption provided by Subsection (a), the trust and the trustee must comply with the requirements prescribed by Sections 552.018 and 593.081.

Added by Acts 1993, 73rd Leg., ch. 166, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 1020, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.018. GIFTS AND GRANTS. A community center may accept gifts and grants of money, personal property, and real property to use in providing the center's programs and services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.019. CONTRIBUTION BY LOCAL AGENCY. A participating local agency may contribute land, buildings, facilities, other real and personal property, personnel, and funds to administer the community center's programs and services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.020. ACQUISITION AND CONSTRUCTION OF PROPERTY AND FACILITIES BY COMMUNITY CENTER. (a) A community center may purchase or lease-purchase real and personal property and may construct buildings and facilities.

(b) The board of trustees shall require that an appraiser certified by the Texas Appraiser Licensing and Certification Board conduct an independent appraisal of real estate the community center intends to purchase. The board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the preceding two years. A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless:

(1) the purchase or lease-purchase of that property at that price is necessary;

(2) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and

(3) a majority of the board approves the transaction.

(c) The board of trustees shall establish in accordance with relevant rules of each appropriate department competitive bidding procedures and practices for capital purchases and for purchases involving department funds or required local matching funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.23, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 8, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.021. APPROVAL AND NOTIFICATION REQUIREMENTS. (a) A community center must receive from each appropriate department prior written approval to acquire real property, including a building, if the acquisition involves the use of funds of that department or local funds required to match funds of that department. In addition, for acquisition of nonresidential property, the community center must notify each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire the property.

(b) A community center must notify each appropriate department and each local agency that appoints members to the board of trustees not later than the 31st day before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of funds of that department or local funds required to match funds of that department. Each appropriate commissioner, on request, may waive the 30-day requirement on a case-by-case basis.

(c) The executive commissioner shall adopt rules relating to the approval and notification process.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 9(a), eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.022. FINANCING OF PROPERTY AND IMPROVEMENTS. (a) To acquire or to refinance the acquisition of real and personal property, to construct improvements to property, or to finance all or part of a payment owed or to be owed on a credit agreement, a community center may contract in accordance with Subchapter A, Chapter 271, Local Government Code, or issue, execute, refinance, or refund bonds, notes, obligations, or contracts. The community center may secure the payment of the bonds, notes, obligations, or contracts with a security interest in or pledge of its revenues or by granting a mortgage on any of its properties.

(a-1) For purposes of Subsection (a), "revenues" includes the following, as those terms are defined by Section 9.102, Business &

Commerce Code:

(1) an account;

(2) a chattel paper;

(3) a commercial tort claim;

(4) a deposit account;

(5) a document;

(6) a general intangible;

(7) a health care insurance receivable;

(8) an instrument;

(9) investment property;

(10) a letter-of-credit right; and

(11) proceeds.

(b) Except as provided by Subsection (f), the community center shall issue the bonds, notes, or obligations in accordance with Chapters 1201 and 1371, Government Code. The attorney general must approve before issuance:

(1) notes issued in the form of public securities, as that term is defined by Section 1201.002, Government Code;

(2) obligations, as that term is defined by Section 1371.001, Government Code; and

(3) bonds.

(c) A limitation prescribed in Subchapter A, Chapter 271, Local Government Code, relating to real property and the construction of improvements to real property, does not apply to a community center.

(e) A county or municipality acting alone or two or more counties or municipalities acting jointly pursuant to interlocal contract may create a public facility corporation to act on behalf of one or more community centers pursuant to Chapter 303, Local Government Code. Such counties or municipalities may exercise the powers of a sponsor under that chapter, and any such corporation may exercise the powers of a corporation under that chapter (including but not limited to the power to issue bonds). The corporation may exercise its powers on behalf of community centers in such manner as may be prescribed by the articles and bylaws of the corporation, provided that in no event shall one community center ever be liable to pay the debts or obligation or be liable for the acts, actions, or undertakings of another community center.

(f) The board of trustees of a community center may authorize the issuance of an anticipation note in the same manner, using the same procedure, and with the same rights under which an eligible

school district may authorize issuance under Chapter 1431, Government Code, except that anticipation notes issued for the purposes described by Section 1431.004(a)(2), Government Code, may not, in the fiscal year in which the attorney general approves the notes for a community center, exceed 50 percent of the revenue anticipated to be collected in that year.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.24, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 161, Sec. 1, eff. May 16, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 11, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 8.277, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 826 (S.B. 812), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(13), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(97), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.023. SALE OF REAL PROPERTY ACQUIRED SOLELY THROUGH PRIVATE GIFT OR GRANT. (a) Except as provided by Subsection (d), a community center may sell center real property, including a building, without the approval of each appropriate department or any local agency that appoints members to the board of trustees, only if the real property was acquired solely through a gift or grant of money or real property from a private entity, including an individual.

(b) A community center that acquires real property by gift or grant shall, on the date the center acquires the gift or grant, notify the private entity providing the gift or grant that:

(1) the center may subsequently sell the real property; and

(2) the sale is subject to the provisions of this section.

(c) Except as provided by Subsection (d), real property sold under Subsection (a) must be sold for the property's fair market value.

(d) Real property sold under Subsection (a) may be sold for less than fair market value only if the board of trustees adopts a

resolution stating:

(1) the public purpose that will be achieved by the sale; and

(2) the conditions and circumstances for the sale, including conditions to accomplish and maintain the public purpose.

(e) A community center must notify each appropriate department and each local agency that appoints members to the board of trustees not later than the 31st day before the date the center enters into a binding obligation to sell real property under this section. Each appropriate commissioner, on request, may waive the 30-day notice requirement on a case-by-case basis.

(f) The executive commissioner shall adopt rules relating to the notification process.

(g) A community center may use proceeds received from a sale of real property under this section only for a purpose authorized by this subchapter or for a public purpose authorized for a community center by state or federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 231 (H.B. 243), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.031. SURPLUS PERSONAL PROPERTY. The executive commissioner, in coordination with the appropriate department, may transfer, with or without reimbursement, ownership and possession of surplus personal property under that department's control or jurisdiction to a community center for use in providing mental health or intellectual disability services, as appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.032. RESEARCH. A community center may engage in research and may contract for that purpose.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.033. LIMITATION ON DEPARTMENT CONTROL AND REVIEW. (a) It is the intent of the legislature that each department limit its control over, and routine reviews of, community center programs to those programs that:

(1) use funds from that department or use required local funds that are matched with funds from that department;

(2) provide core or required services;

(3) provide services to former clients or patients of a facility of that department; or

(4) are affected by litigation in which that department is a defendant.

(b) Each appropriate department may review any community center program if the department has reason to suspect that a violation of a department rule has occurred or if the department receives an allegation of patient or client abuse.

(c) Each appropriate department may determine whether a particular program uses funds from that department or uses required local matching funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.27, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.035. REVIEW, AUDIT, AND APPEAL PROCEDURES. (a) The executive commissioner by rule shall establish review, audit, and appeal procedures for community centers. The procedures must ensure that reviews and audits are conducted in sufficient quantity and type to provide reasonable assurance that a community center has adequate and appropriate fiscal controls.

(b) In a community center plan approved under Section 534.001,

the center must agree to comply with the review and audit procedures established under this section.

(c) If, by a date prescribed by each appropriate commissioner, the community center fails to respond to a deficiency identified in a review or audit to the satisfaction of that commissioner, that department may sanction the center in accordance with department rules.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.28, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.036. FINANCIAL AUDIT. (a) The executive commissioner shall prescribe procedures for financial audits of community centers. The executive commissioner shall develop the procedures with the assistance of the state agencies and departments that contract with community centers. The executive commissioner shall coordinate with each of those state agencies and departments to incorporate each agency's financial and compliance requirements for a community center into a single audit that meets the requirements of Section 534.068 or 534.121, as appropriate. Before prescribing or amending the procedures, the executive commissioner shall set a deadline for those state agencies and departments to submit to the executive commissioner proposals relating to the financial audit procedures. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) Each state agency or department that contracts with a community center shall comply with the procedures developed under this section.

(c) The executive commissioner shall develop protocols for a state agency or department to conduct additional financial audit activities of a community center.

Added by Acts 1997, 75th Leg., ch. 869, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.037. PROGRAM AUDIT. (a) The executive commissioner shall coordinate with each state agency or department that contracts with a community center to prescribe procedures based on risk assessment for coordinated program audits of the activities of a community center. The procedures must be consistent with any requirements connected with federal funding received by the community center.

(b) A program audit of a community center must be performed in accordance with procedures developed under this section.

(c) This section does not prohibit a state agency or department or an entity providing funding to a community center from investigating a complaint against or performing additional contract monitoring of a community center.

(d) A program audit under this section must evaluate:

(1) the extent to which the community center is achieving the desired results or benefits established by the legislature or by a state agency or department;

(2) the effectiveness of the community center's organizations, programs, activities, or functions; and

(3) whether the community center is in compliance with applicable laws.

Added by Acts 1997, 75th Leg., ch. 869, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.038. APPOINTMENT OF MANAGER OR MANAGEMENT TEAM. (a) Each appropriate commissioner may appoint a manager or management team to manage and operate a community center if the commissioner finds that the center or an officer or employee of the center:

(1) intentionally, recklessly, or negligently failed to discharge the center's duties under a contract with that department;

(2) misused state or federal money;

(3) engaged in a fraudulent act, transaction, practice, or course of business;

(4) endangers or may endanger the life, health, or safety

of a person served by the center;

(5) failed to keep fiscal records or maintain proper control over center assets as prescribed by Chapter 783, Government Code;

(6) failed to respond to a deficiency in a review or audit;

(7) substantially failed to operate within the functions and purposes defined in the center's plan; or

(8) otherwise substantially failed to comply with this subchapter or rules of that department.

(b) Each appropriate department shall give written notification to the center and local agency or combination of agencies responsible for making appointments to the local board of trustees regarding:

(1) the appointment of the manager or management team; and

(2) the circumstances on which the appointment is based.

(c) Each appropriate commissioner may require the center to pay costs incurred by the manager or management team.

(d) The center may appeal a commissioner's decision to appoint a manager or management team as prescribed by rules of that department. The filing of a notice of appeal stays the appointment unless the commissioner based the appointment on a finding under Subsection (a)(2) or (4).

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 839, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.039. POWERS AND DUTIES OF MANAGEMENT TEAM. (a) As each appropriate commissioner determines for each appointment, a manager or management team appointed under Section 534.038 may:

(1) evaluate, redesign, modify, administer, supervise, or monitor a procedure, operation, or the management of a community center;

(2) hire, supervise, discipline, reassign, or terminate the employment of a center employee;

(3) reallocate a resource and manage an asset of the center;

(4) provide technical assistance to an officer or employee

of the center;

(5) require or provide staff development;

(6) require that a financial transaction, expenditure, or contract for goods and services must be approved by the manager or management team;

(7) redesign, modify, or terminate a center program or service;

(8) direct the executive director, local board of trustees, chief financial officer, or a fiscal or program officer of the center to take an action;

(9) exercise a power or duty of an officer or employee of the center; or

(10) make a recommendation to the local agency or combination of agencies responsible for appointments to the local board of trustees regarding the removal of a center trustee.

(b) The manager or management team shall supervise the exercise of a power or duty by the local board of trustees.

(c) The manager or management team shall report monthly to each appropriate commissioner and local board of trustees on actions taken.

(d) A manager or management team appointed under this section may not use an asset or money contributed by a county, municipality, or other local funding entity without the approval of the county, municipality, or entity.

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.040. RESTORING MANAGEMENT TO CENTER. (a) Each month, each appropriate commissioner shall evaluate the performance of a community center managed by a manager or team appointed under Section 534.038 to determine the feasibility of restoring the center's management and operation to a local board of trustees.

(b) The authority of the manager or management team continues until each appropriate commissioner determines that the relevant factors listed under Section 534.038(a) no longer apply.

(c) Following a determination under Subsection (b), each

appropriate commissioner shall terminate the authority of the manager or management team and restore authority to manage and operate the center to the center's authorized officers and employees.

Added by Acts 1999, 76th Leg., ch. 1520, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 839, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

SUBCHAPTER B. COMMUNITY-BASED MENTAL HEALTH SERVICES

Sec. 534.051. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.052. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority under this subchapter.

(b) The department shall send a copy of the rules to each local mental health authority or other provider receiving contract funds as a local mental health authority or designated provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.29, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.053. REQUIRED COMMUNITY-BASED MENTAL HEALTH SERVICES.

(a) The department shall ensure that, at a minimum, the following services are available in each service area:

(1) 24-hour emergency screening and rapid crisis stabilization services;

(2) community-based crisis residential services or hospitalization;

(3) community-based assessments, including the development of interdisciplinary treatment plans and diagnosis and evaluation services;

(4) medication-related services, including medication clinics, laboratory monitoring, medication education, mental health maintenance education, and the provision of medication; and

(5) psychosocial rehabilitation programs, including social support activities, independent living skills, and vocational training.

(b) The department shall arrange for appropriate community-based services to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall:

(1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area;

(2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and

(3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032, 42A.104, or 42A.506, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 4.021, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.69, eff. January 1, 2017.

Sec. 534.0535. JOINT DISCHARGE PLANNING. (a) The executive commissioner shall adopt or amend, and the department shall enforce, rules that require continuity of services and planning for patient care between department facilities and local mental health authorities.

(b) At a minimum, the rules must:

(1) specify the local mental health authority's responsibility for ensuring the successful transition of patients who are determined by the facility to be medically appropriate for discharge; and

(2) require participation by a department facility in joint discharge planning with a local mental health authority before the facility discharges a patient or places the patient on an extended furlough with an intent to discharge.

(c) The local mental health authority shall plan with the department facility to determine the appropriate community services for the patient.

(d) The local mental health authority shall arrange for the provision of the services upon discharge.

(e) The commission shall require each facility to designate at least one employee to provide transition support services for patients who are determined medically appropriate for discharge from the facility.

(f) Transition support services provided by the local mental health authority must be designed to complement joint discharge planning efforts and may include:

(1) enhanced services and supports for complex or high-need patients, including services and supports necessary to create viable discharge or outpatient management plans; and

(2) post-discharge monitoring for up to one year after the discharge date to reduce the likelihood of readmission.

(g) The commission shall ensure that each department facility concentrates the provision of transition support services for patients who have been:

(1) admitted to and discharged from a facility multiple times during a 30-day period; or

(2) in the facility for longer than 365 consecutive days.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.30, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 6, eff. September 1, 2023.

Sec. 534.054. DESIGNATION OF PROVIDER. (a) The department shall identify and contract with a local mental health authority for each service area to ensure that services are provided to patient populations determined by the department. A local mental health authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.052.

(c) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1) cannot negotiate a contract with a local mental health authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local mental health authority does not have the capacity to ensure the availability of that service.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.31, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 869, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.055. CONTRACTS FOR CERTAIN COMMUNITY SERVICES. (a) The executive commissioner shall design a competitive procurement or similar system that a mental health authority shall use in awarding an initial contract for the provision of services at the community level for persons with mental illness, including residential services, if the contract involves the use of state money or money

for which the state has oversight responsibility.

(b) The system must require that each local mental health authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(c) Each local mental health authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.32, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 13, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.056. COORDINATION OF ACTIVITIES. A local mental health authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.33, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.058. STANDARDS OF CARE. (a) The executive commissioner shall develop standards of care for the services provided by a local mental health authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of the community-based mental health services is consistent with the quality of care available in department facilities.

(c) In conjunction with local mental health authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.34, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.059. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. (a) The department shall evaluate a local mental health authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local mental health authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local mental health authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local mental health authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local mental health authority to monthly distributions.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.35, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1209, Sec. 9, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.060. PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES. (a) The department shall develop mechanisms for monitoring the services provided by a local mental health authority.

(b) The department shall review the program quality and program performance results of a local mental health authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local mental health authority and the department must authorize the department to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.36, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 869, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1209, Sec. 10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0601. COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local mental health authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local mental health authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local mental health authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local mental health authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0602. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall prescribe procedures for a financial audit of a local mental health authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local mental health authority. The executive commissioner shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.068.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local mental health authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local mental health authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the executive commissioner.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.0603. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local mental health authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local mental health authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section, do not apply to an audit conducted under Chapter 321, Government Code.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff.

April 2, 2015.

Sec. 534.061. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) The local mental health authority shall monitor the services of a provider who contracts with the authority to provide services for persons with mental illness to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local mental health authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) The department may withdraw funding from a local mental health authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with department rules.

(d) The executive commissioner by rule shall prescribe procedures a local mental health authority must follow in remedying a problem with a provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1209, Sec. 12, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.063. PEER REVIEW ORGANIZATION. The department shall assist a local mental health authority in developing a peer review organization to provide self-assessment of programs and to supplement

department reviews under Section 534.060.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.37, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.064. CONTRACT RENEWAL. The executive commissioner may refuse to renew a contract with a local mental health authority and may select other agencies, entities, or organizations to be the local mental health authority if the department's evaluation of the authority's performance under Section 534.059 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 14, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.065. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES. (a) A local mental health authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of mental health services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local mental health authority may renew the contract only if the contract meets the criteria provided by Section 533.016.

(c) The local mental health authority and private provider shall negotiate a contract renewal at arm's length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 821, Sec. 15, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1187, Sec. 15, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.066. LOCAL MATCH REQUIREMENT. (a) The department shall include in a contract with a local mental health authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other mental health programs, as appropriate.

(b) Patient fee income, third-party insurance income, services and facilities contributed by the local mental health authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local mental health authority. The department may disallow or reduce the value of services claimed as support.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 821, Sec. 16, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.067. FEE COLLECTION POLICY. The executive commissioner shall establish a uniform fee collection policy for all local mental health authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff.

April 2, 2015.

Sec. 534.0675. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The executive commissioner by rule, in cooperation with local mental health authorities, consumers, consumer advocates, and service providers, shall establish a uniform procedure that each local mental health authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.38, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 646, Sec. 11, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.068. AUDITS. (a) As a condition to receiving funds under this subtitle, a local mental health authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local mental health authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local mental health authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local mental health authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with

the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local mental health authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.39, eff. Aug. 30, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 68, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 16, eff. September 1, 2021.

Sec. 534.069. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS. (a) The executive commissioner by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with mental illness.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment

obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.070. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each local mental health authority that receives prospective payment funds shall submit to the department a quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The executive commissioner by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a local mental health authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a local mental health authority to provide community services to certain persons with mental illness.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.071. ADVISORY COMMITTEE. A local mental health authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of mental health services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

Added by Acts 1999, 76th Leg., ch. 1209, Sec. 13, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

SUBCHAPTER B-1. COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES

Sec. 534.101. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Department facility" means a state supported living center, including the ICF-IID component of the Rio Grande State Center.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1229, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.530, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.102. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based intellectual disability services through a local intellectual and developmental disability authority under this subchapter.

(b) The department shall send a copy of the rules to each local intellectual and developmental disability authority or other provider receiving contract funds as a local intellectual and developmental disability authority or designated provider.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.531, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.103. REQUIRED COMMUNITY-BASED INTELLECTUAL DISABILITY SERVICES. (a) The department shall ensure that, at a minimum, the following services are available in each service area:

(1) community-based assessments, including diagnosis and evaluation services;

(2) respite care; and

(3) case management services.

(b) The department shall arrange for appropriate community-based services, including the assignment of a case manager, to be available in each service area for each person discharged from a department facility who is in need of care.

(c) To the extent that resources are available, the department shall ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.532, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.104. JOINT DISCHARGE PLANNING. (a) The executive commissioner shall adopt, and the department shall enforce, rules that require continuity of services and planning for client care between department facilities and local intellectual and developmental disability authorities.

(b) At a minimum, the rules must require joint discharge planning between a department facility and a local intellectual and developmental disability authority before a facility discharges a client or places the client on an extended furlough with an intent to discharge.

(c) The local intellectual and developmental disability authority shall plan with the department facility and determine the appropriate community services for the client.

(d) The local intellectual and developmental disability

authority shall arrange for the provision of the services if department funds are to be used and may subcontract with or make a referral to a local agency or entity.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.802, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.533, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.105. DESIGNATION OF PROVIDER. (a) The department shall identify and contract with a local intellectual and developmental disability authority for each service area to ensure that services are provided to client populations determined by the department. A local intellectual and developmental disability authority shall ensure that services to address the needs of priority populations are provided as required by the department and shall comply with the rules and standards adopted under Section 534.102.

(b) The department may contract with a local agency or a private provider or organization to act as a designated provider of a service if the department:

(1) cannot negotiate a contract with a local intellectual and developmental disability authority to ensure that a specific required service for priority populations is available in that service area; or

(2) determines that a local intellectual and developmental disability authority does not have the capacity to ensure the availability of that service.

Added by Acts 1997, 75th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.106. CONTRACTS FOR CERTAIN COMMUNITY SERVICES. (a) The executive commissioner shall design a competitive procurement or similar system that an intellectual and developmental disability

authority shall use in awarding an initial contract for the provision of services at the community level for persons with an intellectual disability, including residential services, if the contract involves the use of state money or money for which the state has oversight responsibility.

(b) The system must require that each local intellectual and developmental disability authority:

(1) ensure public participation in the authority's decisions regarding whether to provide or to contract for a service;

(2) make a reasonable effort to give notice of the intent to contract for services to each potential private provider in the local service area of the authority; and

(3) review each submitted proposal and award the contract to the applicant that the authority determines has made the lowest and best bid to provide the needed services.

(c) Each local intellectual and developmental disability authority, in determining the lowest and best bid, shall consider any relevant information included in the authority's request for bid proposals, including:

(1) price;

(2) the ability of the bidder to perform the contract and to provide the required services;

(3) whether the bidder can perform the contract or provide the services within the period required, without delay or interference;

(4) the bidder's history of compliance with the laws relating to the bidder's business operations and the affected services and whether the bidder is currently in compliance;

(5) whether the bidder's financial resources are sufficient to perform the contract and to provide the services;

(6) whether necessary or desirable support and ancillary services are available to the bidder;

(7) the character, responsibility, integrity, reputation, and experience of the bidder;

(8) the quality of the facilities and equipment available to or proposed by the bidder;

(9) the ability of the bidder to provide continuity of services; and

(10) the ability of the bidder to meet all applicable written departmental policies, principles, and regulations.

Added by Acts 1999, 76th Leg., ch. 1187, Sec. 16, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.107. COORDINATION OF ACTIVITIES. A local intellectual and developmental disability authority shall coordinate its activities with the activities of other appropriate agencies that provide care and treatment for persons with drug or alcohol problems.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.1075. RESPITE CARE. (a) The executive commissioner shall adopt rules relating to the provision of respite care and shall develop a system to reimburse providers of in-home respite care.

(b) The rules must:

(1) encourage the use of existing local providers;

(2) encourage family participation in the choice of a qualified provider;

(3) establish procedures necessary to administer this section, including procedures for:

(A) determining the amount and type of in-home respite care to be authorized;

(B) reimbursing providers;

(C) handling appeals from providers;

(D) handling complaints from recipients of in-home respite care;

(E) providing emergency backup for in-home respite care providers; and

(F) advertising for, selecting, and training in-home respite care providers; and

(4) specify the conditions and provisions under which a provider's participation in the program can be canceled.

(c) The executive commissioner shall establish service and performance standards for department facilities and designated providers to use in operating the in-home respite care program. The

executive commissioner shall establish the standards from information obtained from the families of clients receiving in-home respite care and from providers of in-home respite care. The executive commissioner may obtain the information at a public hearing or from an advisory group.

(d) The service and performance standards established by the executive commissioner under Subsection (c) must:

(1) prescribe minimum personnel qualifications the executive commissioner determines are necessary to protect health and safety;

(2) establish levels of personnel qualifications that are dependent on the needs of the client; and

(3) permit a health professional with a valid Texas practitioner's license to provide care that is consistent with the professional's training and license without requiring additional training unless the executive commissioner determines that additional training is necessary.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.108. STANDARDS OF CARE. (a) The executive commissioner shall develop standards of care for the services provided by a local intellectual and developmental disability authority and its subcontractors under this subchapter.

(b) The standards must be designed to ensure that the quality of community-based intellectual disability services is consistent with the quality of care available in department facilities.

(c) In conjunction with local intellectual and developmental disability authorities, the executive commissioner shall review the standards biennially to determine if each standard is necessary to ensure the quality of care.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.109. CONTRACT COMPLIANCE FOR LOCAL AUTHORITIES. (a)

The department shall evaluate a local intellectual and developmental disability authority's compliance with its contract to ensure the provision of specific services to priority populations.

(b) If, by a date set by the commissioner, a local intellectual and developmental disability authority fails to comply with its contract to ensure the provision of services to the satisfaction of the commissioner, the department may impose a sanction as provided by the applicable contract rule until the dispute is resolved. The department shall notify the authority in writing of the department's decision to impose a sanction.

(c) A local intellectual and developmental disability authority may appeal the department's decision to impose a sanction on the authority. The executive commissioner by rule shall prescribe the appeal procedure.

(d) The filing of a notice of appeal stays the imposition of the department's decision to impose a sanction except when an act or omission by a local intellectual and developmental disability authority is endangering or may endanger the life, health, welfare, or safety of a person.

(e) While an appeal under this section is pending, the department may limit general revenue allocations to a local intellectual and developmental disability authority to monthly distributions.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.110. PROGRAM AND SERVICE MONITORING AND REVIEW OF LOCAL AUTHORITIES. (a) The department shall develop mechanisms for monitoring the services provided by a local intellectual and developmental disability authority.

(b) The department shall review the program quality and program performance results of a local intellectual and developmental disability authority in accordance with a risk assessment and evaluation system appropriate to the authority's contract requirements. The department may determine the scope of the review.

(c) A contract between a local intellectual and developmental disability authority and the department must authorize the department

to have unrestricted access to all facilities, records, data, and other information under the control of the authority as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with department funds.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.111. COORDINATED PROGRAM AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall coordinate with each agency or department of the state that contracts with a local intellectual and developmental disability authority to prescribe procedures for a coordinated program audit of the authority. The procedures must be:

(1) consistent with the requirements for the receipt of federal funding by the authority; and

(2) based on risk assessment.

(b) A program audit must evaluate:

(1) the extent to which a local intellectual and developmental disability authority is achieving the results or benefits established by an agency or department of the state or by the legislature;

(2) the effectiveness of the authority's organization, program, activities, or functions; and

(3) the authority's compliance with law.

(c) A program audit of a local intellectual and developmental disability authority must be performed in accordance with the procedures prescribed under this section.

(d) The department may not implement a procedure for a program audit under this section without the approval of the executive commissioner.

(e) This section does not prohibit an agency, department, or other entity providing funding to a local intellectual and developmental disability authority from investigating a complaint against the authority or performing additional contract monitoring of the authority.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.112. FINANCIAL AUDITS OF LOCAL AUTHORITIES. (a) The executive commissioner shall prescribe procedures for a financial audit of a local intellectual and developmental disability authority. The procedures must be consistent with requirements for the receipt of federal funding by the authority.

(b) The executive commissioner shall develop the procedures with the assistance of each agency or department of the state that contracts with a local intellectual and developmental disability authority. The executive commissioner shall incorporate each agency's or department's financial or compliance requirements for an authority into a single audit that meets the requirements of Section 534.121.

(c) Before prescribing or amending a procedure under this section, the executive commissioner must set a deadline for agencies and departments of the state that contract with local intellectual and developmental disability authorities to submit proposals relating to the procedure.

(d) An agency or department of the state that contracts with a local intellectual and developmental disability authority must comply with a procedure developed under this section.

(e) The department may not implement a procedure under this section without the approval of the executive commissioner.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.113. ADDITIONAL FINANCIAL AUDIT ACTIVITY. (a) The executive commissioner shall develop protocols for an agency or department of the state to conduct additional financial audit activities of a local intellectual and developmental disability authority.

(b) An agency or department of the state may not conduct additional financial audit activities relating to a local intellectual and developmental disability authority without the approval of the executive commissioner.

(c) This section, and a protocol developed under this section,

do not apply to an audit conducted under Chapter 321, Government Code.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.114. PROGRAM AND SERVICE MONITORING AND REVIEW OF CERTAIN COMMUNITY SERVICES. (a) The local intellectual and developmental disability authority shall monitor the services of a provider who contracts with the authority to provide services to persons with an intellectual disability to ensure that the provider is delivering the services in a manner consistent with the provider's contract.

(b) Each provider contract involving the use of state funds or funds for which the state has oversight responsibility must authorize the local intellectual and developmental disability authority or the authority's designee and the department or the department's designee to have unrestricted access to all facilities, records, data, and other information under the control of the provider as necessary to enable the department to audit, monitor, and review the financial and program activities and services associated with the contract.

(c) The department may withdraw funding from a local intellectual and developmental disability authority that fails to cancel a contract with a provider involving the use of state funds or funds for which the state has oversight responsibility if:

(1) the provider is not fulfilling its contractual obligations; and

(2) the authority has not taken appropriate action to remedy the problem in accordance with department rules.

(d) The executive commissioner by rule shall prescribe procedures a local intellectual and developmental disability authority must follow in remedying a problem with a provider.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.115. PEER REVIEW ORGANIZATION. The department shall

assist a local intellectual and developmental disability authority in developing a peer review organization to provide self-assessment of programs and to supplement department reviews under Section 534.110.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.116. CONTRACT RENEWAL. The executive commissioner may refuse to renew a contract with a local intellectual and developmental disability authority and may select other agencies, entities, or organizations to be the local intellectual and developmental disability authority if the department's evaluation of the authority's performance under Section 534.109 indicates that the authority cannot ensure the availability of the specific services to priority populations required by the department and this subtitle.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.117. RENEWAL OF CERTAIN CONTRACTS FOR COMMUNITY SERVICES. (a) A local intellectual and developmental disability authority shall review a contract scheduled for renewal that:

(1) is between the authority and a private provider;

(2) is for the provision of intellectual disability services at the community level, including residential services; and

(3) involves the use of state funds or funds for which the state has oversight responsibility.

(b) The local intellectual and developmental disability authority may renew the contract only if the contract meets the criteria provided by Section 533A.016.

(c) The local intellectual and developmental disability authority and private provider shall negotiate a contract renewal at arm's length and in good faith.

(d) This section applies to a contract renewal regardless of the date on which the original contract was initially executed.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.118. LOCAL MATCH REQUIREMENT. (a) The department shall include in a contract with a local intellectual and developmental disability authority a requirement that some or all of the state funds the authority receives be matched by local support in an amount or proportion jointly agreed to by the department and the authority's board of trustees and based on the authority's financial capability and its overall commitment to other intellectual disability programs, as appropriate.

(b) Client fee income, third-party insurance income, services and facilities contributed by the local intellectual and developmental disability authority, contributions by a county or municipality, and other locally generated contributions, including local tax funds, may be counted when calculating the local support for a local intellectual and developmental disability authority. The department may disallow or reduce the value of services claimed as support.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.119. FEE COLLECTION POLICY. The executive commissioner shall establish a uniform fee collection policy for all local intellectual and developmental disability authorities that is equitable, provides for collections, and maximizes contributions to local revenue.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.120. NOTICE OF DENIAL, REDUCTION, OR TERMINATION OF SERVICES. The executive commissioner by rule, in cooperation with local intellectual and developmental disability authorities, consumers, consumer advocates, and service providers, shall establish

a uniform procedure that each local intellectual and developmental disability authority shall use to notify consumers in writing of the denial, involuntary reduction, or termination of services and of the right to appeal those decisions.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.121. AUDITS. (a) As a condition to receiving funds under this subtitle, a local intellectual and developmental disability authority other than a state facility designated as an authority must annually submit to the department a financial and compliance audit prepared by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. To ensure the highest degree of independence and quality, the local intellectual and developmental disability authority shall use an invitation-for-proposal process as prescribed by the executive commissioner to select the auditor.

(a-1) The audit required under Subsection (a) may be published electronically on the local intellectual and developmental disability authority's Internet website. An authority that electronically publishes an audit under this subsection shall notify the department that the audit is available on the authority's Internet website on or before the date the audit is due.

(b) The audit must meet the minimum requirements as shall be, and be in the form and in the number of copies as may be, prescribed by the executive commissioner, subject to review and comment by the state auditor.

(c) The local intellectual and developmental disability authority shall file the required number of copies of the audit report with the department by the date prescribed by the executive commissioner. From the copies filed with the department, copies of the report shall be submitted to the governor and Legislative Budget Board.

(d) The local intellectual and developmental disability authority shall either approve or refuse to approve the audit report. If the authority refuses to approve the report, the authority shall include with the department's copies a statement detailing the

reasons for refusal.

(e) The commissioner and state auditor have access to all vouchers, receipts, journals, or other records the commissioner or auditor considers necessary to review and analyze the audit report.

(f) The department shall annually submit to the governor, Legislative Budget Board, and Legislative Audit Committee a summary of the significant findings identified during the department's reviews of fiscal audit activities.

(g) The report required under Subsection (f) may be published electronically on the department's Internet website. The department shall notify each entity entitled to receive a copy of the report that the report is available on the department's Internet website on or before the date the report is due.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.122. CRITERIA FOR PROVIDING FUNDS FOR START-UP COSTS. (a) The executive commissioner by rule shall develop criteria to regulate the provision of payment to a private provider for start-up costs associated with the development of residential and other community services for persons with an intellectual disability.

(b) The criteria shall provide that start-up funds be awarded only as a last resort and shall include provisions relating to:

(1) the purposes for which start-up funds may be used;

(2) the ownership of capital property and equipment obtained by the use of start-up funds; and

(3) the obligation of the private provider to repay the start-up funds awarded by the department by direct repayment or by providing services for a period agreed to by the parties.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.123. USE OF PROSPECTIVE PAYMENT FUNDS. (a) Each local intellectual and developmental disability authority that receives prospective payment funds shall submit to the department a

quarterly report that clearly identifies how the provider or program used the funds during the preceding fiscal quarter.

(b) The executive commissioner by rule shall prescribe the form of the report, the specific information that must be included in the report, and the deadlines for submitting the report.

(c) The department may not provide prospective payment funds to a local intellectual and developmental disability authority that fails to submit the quarterly reports required by this section.

(d) In this section, "prospective payment funds" means money the department prospectively provides to a local intellectual and developmental disability authority to provide community services to certain persons with an intellectual disability.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.124. ADVISORY COMMITTEE. A local intellectual and developmental disability authority may appoint a committee to advise its governing board on a matter relating to the oversight and provision of intellectual disability services. The appointment of a committee does not relieve the authority's governing board of a responsibility prescribed by this subtitle.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATIONS

Sec. 534.151. HEALTH MAINTENANCE ORGANIZATION CERTIFICATE OF AUTHORITY. (a) One or more community centers may create or operate a nonprofit corporation pursuant to the laws of this state for the purpose of accepting capitated or other at-risk payment arrangements for the provision of services designated in a plan approved by each appropriate department under Subchapter A.

(b) Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by each appropriate department under Subchapter A, the nonprofit

corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization pursuant to Chapter 843, Insurance Code.

(c) Before submitting any bids, a nonprofit corporation operating under this subchapter shall disclose in an open meeting the services to be provided by the community center through any capitated or other at-risk payment arrangement by the nonprofit corporation. Notice of the meeting must be posted in accordance with Sections 551.041, 551.043, and 551.054, Government Code. Each appropriate department shall verify that the services provided under any capitated or other at-risk payment arrangement are within the scope of services approved by each appropriate department in each community center's plan required under Subchapter A.

(d) The board of the nonprofit corporation shall:

(1) provide for public notice of the nonprofit corporation's intent to submit a bid to provide or arrange services through a capitated or other at-risk payment arrangement through placement as a board agenda item on the next regularly scheduled board meeting that allows at least 15 days' public review of the plan; and

(2) provide an opportunity for public comment on the services to be provided through such arrangements and on the consideration of local input into the plan.

(e) The nonprofit corporation shall provide:

(1) public notice before verification and disclosure of services to be provided by the community center through any capitated or other at-risk payment arrangements by the nonprofit corporation;

(2) an opportunity for public comment on the community center services within the capitated or other at-risk payment arrangements offered by the nonprofit corporation;

(3) published summaries of all relevant documentation concerning community center services arranged through the nonprofit corporation, including summaries of any similar contracts the nonprofit corporation has entered into; and

(4) public access and review of all relevant documentation.

(f) A nonprofit corporation operating under this subchapter:

(1) is subject to the requirements of Chapters 551 and 552, Government Code;

(2) shall solicit public input on the operations of the nonprofit corporation and allow public access to information on the

operations, including services, administration, governance, revenues, and expenses, on request unless disclosure is expressly prohibited by law or the information is confidential under law; and

(3) shall publish an annual report detailing the services, administration, governance, revenues, and expenses of the nonprofit corporation, including the disposition of any excess revenues.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.152. LAWS AND RULES. A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 843, Insurance Code, the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code, and rules of the Texas Department of Insurance.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.153. APPLICATION OF LAWS AND RULES. A health maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code, from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.154. APPLICABILITY OF SPECIFIC LAWS. (a) A nonprofit health maintenance organization created under Section 534.151 is a health care provider that is a nonprofit health maintenance organization created and operated by a community center for purposes of Section 84.007(e), Civil Practice and Remedies Code. The nonprofit health maintenance organization is not a governmental unit or a unit of local government, for purposes of Chapters 101 and 102, Civil Practice and Remedies Code, respectively, or a local government for purposes of Chapter 791, Government Code.

(b) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844, Insurance Code.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.155. CONSIDERATION OF BIDS. Each appropriate department shall give equal consideration to bids submitted by any entity, whether it be public, for-profit, or nonprofit, if the department accepts bids to provide services through a capitated or at-risk payment arrangement and if the entities meet all other criteria as required by the department.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff. April 2, 2015.

Sec. 534.156. CONDITIONS FOR CERTAIN CONTRACTS. A contract between each appropriate department and a health maintenance organization formed by one or more community centers must provide that the health maintenance organization may not form a for-profit entity unless the organization transfers all of the organization's assets to the control of the boards of trustees of the community centers that formed the organization.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1336, eff.

April 2, 2015.

SUBTITLE B. STATE FACILITIES
CHAPTER 551. GENERAL PROVISIONS
SUBCHAPTER A. GENERAL POWERS AND DUTIES RELATING TO STATE FACILITIES

Sec. 551.001. DEFINITIONS. In this subtitle:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means:

(A) the commissioner of state health services in relation to mental health services; and

(B) the commissioner of aging and disability services in relation to intellectual disability services.

(3) "Department" means:

(A) the Department of State Health Services in relation to mental health services; and

(B) the Department of Aging and Disability Services in relation to intellectual disability services.

(4) "Department facility" means:

(A) a facility for persons with mental illness under the jurisdiction of the Department of State Health Services; and

(B) a facility for persons with an intellectual disability under the jurisdiction of the Department of Aging and Disability Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.002. PROHIBITION OF INTEREST. The superintendent or director of a department facility or a person connected with that department facility may not:

(1) sell or have a concern in the sale of merchandise, supplies, or other items to a department facility; or

(2) have an interest in a contract with a department

facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.003. DEPOSIT OF PATIENT OR CLIENT FUNDS. (a) The superintendent or director of a department facility is the custodian of the personal funds that belong to a facility patient or client and that are on deposit with the institution.

(b) The superintendent or director may deposit or invest those funds in:

(1) a bank in this state;

(2) federal bonds or obligations; or

(3) bonds or obligations for which the faith and credit of the United States are pledged.

(c) The superintendent or director may combine the funds of facility patients or clients only to deposit or invest the funds.

(d) The person performing the function of business manager at that facility shall maintain records of the amount of funds on deposit for each facility patient or client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.004. BENEFIT FUND. (a) The superintendent or director may deposit the interest or increment accruing from funds deposited or invested under Section 551.003 into a fund to be known as the benefit fund. The superintendent or director is the trustee of the fund.

(b) The superintendent or director may spend money from the benefit fund for:

(1) educating or entertaining the patients or clients;

(2) barber or cosmetology services for the patients or clients; and

(3) the actual expense incurred in maintaining the fund.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.005. DISBURSEMENT OF PATIENT OR CLIENT FUNDS. Funds in the benefit fund or belonging to a facility patient or client may be disbursed only on the signatures of both the facility's superintendent or director and the person performing the function of business manager at that facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.006. FACILITY STANDARDS. (a) The executive commissioner by rule shall prescribe standards for department facilities relating to building safety and the number and quality of staff. The staff standards must provide that adequate staff exist to ensure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients and clients of a department facility.

(b) Each department shall approve facilities of that department that meet applicable standards and, when requested, shall certify the approval to the Centers for Medicare and Medicaid Services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.007. BUILDING AND IMPROVEMENT PROGRAM. (a) The executive commissioner, in coordination with the appropriate department, shall design, construct, equip, furnish, and maintain buildings and improvements authorized by law at department facilities.

(b) The executive commissioner may employ architects and

engineers to prepare plans and specifications and to supervise construction of buildings and improvements. The executive commissioner shall employ professional, technical, and clerical personnel to carry out the design and construction functions prescribed by this section, subject to the General Appropriations Act and other applicable law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.008. REGIONAL LAUNDRY CENTERS. A regional laundry center operated by the commission to provide laundry services to department facilities may contract with federal agencies, other state agencies, or local political subdivisions to provide or receive laundry services.

Added by Acts 2019, 86th Leg., R.S., Ch. 111 (S.B. 1234), Sec. 1, eff. May 22, 2019.

Sec. 551.009. HILL COUNTRY LOCAL MENTAL HEALTH AUTHORITY CRISIS STABILIZATION UNIT. (a) In this section, "department" means the Department of State Health Services.

(a-1) The department shall contract with the local mental health authority serving the Hill Country area, including Kerr County, to operate a crisis stabilization unit on the grounds of the Kerrville State Hospital as provided by this section. The unit must be a 16-bed facility separate from the buildings used by the Kerrville State Hospital.

(b) The department shall include provisions in the contract requiring the local mental health authority to ensure that the crisis stabilization unit provides short-term residential treatment, including medical and nursing services, designed to reduce a patient's acute symptoms of mental illness and prevent a patient's admission to an inpatient mental health facility.

(c) The local mental health authority shall contract with Kerrville State Hospital to provide food service, laundry service, and lawn care to the local mental health authority operating a crisis

stabilization unit on the grounds of the Kerrville State Hospital as provided by this section.

(d) The crisis stabilization unit may not be used to provide care to:

(1) children; or

(2) adults committed to or court ordered to a department facility as provided by Chapter 46C, Code of Criminal Procedure.

(e) The local mental health authority operating the crisis stabilization unit under contract shall use, for the purpose of operating the 16-bed unit, the money appropriated to the department for operating 16 beds in state hospitals that is allocated to the local mental health authority. The department shall ensure that the local mental health authority retains the remainder of the local authority's state hospital allocation that is not used for operating the 16-bed unit. The department may allocate additional funds appropriated to the department for state hospitals to the crisis stabilization unit.

(f) The department shall reduce the number of beds the department operates in the state hospital system by 16. The department, in collaboration with the local mental health authority, shall ensure that the 16 beds in the crisis stabilization unit are made available to other mental health authorities for use as designated by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1188 (H.B. 654), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 83 (S.B. 1054), Sec. 2, eff. May 20, 2009.

Acts 2009, 81st Leg., R.S., Ch. 83 (S.B. 1054), Sec. 3, eff. May 20, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 111 (S.B. 1234), Sec. 2, eff. May 22, 2019.

SUBCHAPTER B. PROVISIONS APPLICABLE TO FACILITY SUPERINTENDENT OR DIRECTOR

Sec. 551.022. POWERS AND DUTIES OF SUPERINTENDENT. (a) The

superintendent of a department facility for persons with mental illness is the administrative head of that facility.

(b) The superintendent has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the facility.

(c) The superintendent shall:

(1) oversee the admission and discharge of patients;

(2) keep a register of all patients admitted to or discharged from the facility;

(3) supervise repairs and improvements to the facility;

(4) ensure that facility money is spent judiciously and economically;

(5) keep an accurate and detailed account of all money received and spent, stating the source of the money and to whom and the purpose for which the money is spent; and

(6) keep a full record of the facility's operations.

(d) In accordance with department rules and departmental operating procedures, the superintendent may:

(1) establish policy to govern the facility that the superintendent considers will best promote the patients' interest and welfare;

(2) appoint subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) remove an officer, teacher, or employee for good cause.

(e) This section does not apply to a state supported living center or the director of a state supported living center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 821, Sec. 17, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 20, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.0225. POWERS AND DUTIES OF STATE SUPPORTED LIVING CENTER DIRECTOR. (a) The director of a state supported living center is the administrative head of the center.

(b) The director of a state supported living center has the custody of and responsibility to care for the buildings, grounds, furniture, and other property relating to the center.

(c) The director of a state supported living center shall:

(1) oversee the admission and discharge of residents and clients;

(2) keep a register of all residents and clients admitted to or discharged from the center;

(3) ensure that the civil rights of residents and clients of the center are protected;

(4) ensure the health, safety, and general welfare of residents and clients of the center;

(5) supervise repairs and improvements to the center;

(6) ensure that center money is spent judiciously and economically;

(7) keep an accurate and detailed account of all money received and spent, stating the source of the money and on whom and the purpose for which the money is spent;

(8) keep a full record of the center's operations;

(9) monitor the arrival and departure of individuals to and from the center as appropriate to ensure the safety of residents; and

(10) ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

(d) In accordance with department rules and operating procedures, the director of a state supported living center may:

(1) establish policy to govern the center that the director considers will best promote the residents' interest and welfare;

(2) hire subordinate officers, teachers, and other employees and set their salaries, in the absence of other law; and

(3) dismiss a subordinate officer, teacher, or employee for good cause.

(e) The Department of Aging and Disability Services shall, with input from residents of a state supported living center, and the family members and legally authorized representatives of those residents, develop a policy that defines "serious event" for purposes of Subsection (c)(10).

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 21, eff. June 11, 2009.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.024. SUPERINTENDENT'S OR DIRECTOR'S DUTY TO ADMIT COMMISSIONER AND EXECUTIVE COMMISSIONER. (a) The superintendent or director shall admit into every part of the department facility the commissioner of that department and the executive commissioner.

(b) The superintendent or director shall on request show any book, paper, or account relating to the department facility's business, management, discipline, or government to the commissioner of that department or the executive commissioner.

(c) The superintendent or director shall give to the commissioner of that department or the executive commissioner any requested copy, abstract, or report.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.025. DUTY TO REPORT MISSING PATIENT OR CLIENT. If a person receiving inpatient intellectual disability services or court-ordered inpatient mental health services leaves a department facility without notifying the facility or without the facility's consent, the facility director or superintendent shall immediately report the person as a missing person to an appropriate law enforcement agency in the area in which the facility is located.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.026. PERSON PERFORMING BUSINESS MANAGER FUNCTION. (a) The person performing the function of business manager of a department facility is the chief disbursing officer of the department facility.

(b) The person performing the function of business manager of a department facility is directly responsible to the superintendent or director.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

SUBCHAPTER C. POWERS AND DUTIES RELATING TO PATIENT OR CLIENT CARE

Sec. 551.041. MEDICAL AND DENTAL TREATMENT. (a) Each department shall provide or perform recognized medical and dental treatment or services to a person admitted or committed to that department's care. Each department may perform this duty through an authorized agent.

(b) Each department may contract for the support, maintenance, care, or medical or dental treatment or service with a municipal, county, or state hospital, a private physician, a licensed nursing facility or hospital, or a hospital district. The authority to contract provided by this subsection is in addition to other contractual authority granted to the department. A contract entered into under this subsection may not assign a lien accruing to this state.

(c) If a department requests consent to perform medical or dental treatment or services from a person or the guardian of the person whose consent is considered necessary and a reply is not obtained immediately, or if there is no guardian or responsible relative of the person to whom a request can be made, the superintendent or director of a department facility shall order:

(1) medical treatment or services for the person on the advice and consent of three primary care providers, at least two of whom are physicians licensed by the Texas Medical Board; or

(2) dental treatment or services for the person on the advice and consent of two dentists licensed by the State Board of Dental Examiners and of one physician licensed by the Texas Medical Board.

(d) This section does not authorize the performance of an operation involving sexual sterilization or a frontal lobotomy.

(e) For purposes of this section, "primary care provider" means

a health care professional who provides health care services to a defined population of residents. The term includes a physician licensed by the Texas Medical Board, an advanced practice registered nurse licensed by the Texas Board of Nursing, and a physician assistant licensed by the Texas Physician Assistant Board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 437 (S.B. 1565), Sec. 1, eff. September 1, 2017.

Sec. 551.042. OUTPATIENT CLINICS. (a) If funds are available, the Department of State Health Services may establish in locations the department considers necessary outpatient clinics to treat persons with mental illness.

(b) As necessary to establish and operate the clinics:

(1) the department may:

(A) acquire facilities;

(B) hire personnel; and

(C) contract with persons, corporations, and local, state, and federal agencies; and

(2) the executive commissioner may adopt rules.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

Sec. 551.044. OCCUPATIONAL THERAPY PROGRAMS. (a) Each department may provide equipment, materials, and merchandise for occupational therapy programs at department facilities.

(b) The superintendent or director of a department facility may, in accordance with rules of that department, contract for the provision of equipment, materials, and merchandise for occupational therapy programs. If the contractor retains the finished or semi-finished product, the contract shall provide for a fair and reasonable rental payment to the applicable department by the

contractor for the use of facility premises or equipment. The rental payment is determined by the amount of time the facility premises or equipment is used in making the products.

(c) The finished products made in an occupational therapy program may be sold and the proceeds placed in the patients' or clients' benefit fund, the patients' or clients' trust fund, or a revolving fund for use by the patients or clients. A patient or client may keep the finished product if the patient or client purchases the material for the product from the state.

(d) Each department may accept donations of money or materials for use in occupational therapy programs and may use a donation in the manner requested by the donor if not contrary to the policy of that department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1337, eff. April 2, 2015.

CHAPTER 552. STATE HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 552.001. HOSPITAL DISTRICTS. (a) The department shall divide the state into hospital districts.

(b) The department may change the districts.

(c) The department shall designate the state hospitals to which persons with mental illness from each district shall be admitted.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.0011. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(104), eff. April 2, 2015.

(2) "Department" means the Department of State Health Services.

(3) "Direct care employee" means a state hospital employee who provides direct delivery of services to a patient.

(4) "Direct supervision" means supervision of the employee by the employee's supervisor with the supervisor physically present and providing the employee with direction and assistance while the

employee performs his or her duties.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(104), eff. April 2, 2015.

(6) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(7) "Patient" means an individual who is receiving voluntary or involuntary mental health services at a state hospital.

(8) "State hospital" means a hospital operated by the department primarily to provide inpatient care and treatment for persons with mental illness.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(104), eff. April 2, 2015.

Sec. 552.002. CARRYING OF HANDGUN BY LICENSE HOLDER IN STATE HOSPITAL. (a) In this section:

(1) "License holder" has the meaning assigned by Section 46.03, Penal Code.

(2) "State hospital" means the following facilities:

(A) the Austin State Hospital;

(B) the Big Spring State Hospital;

(C) the El Paso Psychiatric Center;

(D) the Kerrville State Hospital;

(E) the North Texas State Hospital;

(F) the Rio Grande State Center;

(G) the Rusk State Hospital;

(H) the San Antonio State Hospital;

(I) the Terrell State Hospital; and

(J) the Waco Center for Youth.

(3) "Written notice" means a sign that is posted on property and that:

(A) includes in both English and Spanish written language identical to the following: "Pursuant to Section 552.002, Health and Safety Code (carrying of handgun by license holder in state hospital), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property

with a handgun";

(B) appears in contrasting colors with block letters at least one inch in height; and

(C) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(b) A state hospital may prohibit a license holder from carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of the hospital by providing written notice.

(c) A license holder who carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on the property of a state hospital at which written notice is provided is liable for a civil penalty in the amount of:

(1) $100 for the first violation; or

(2) $500 for the second or subsequent violation.

(d) The attorney general or an appropriate prosecuting attorney may sue to collect a civil penalty under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 7, eff. September 1, 2017.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 12, eff. September 1, 2021.

SUBCHAPTER B. INDIGENT AND NONINDIGENT PATIENTS

Sec. 552.012. CLASSIFICATION AND DEFINITION OF PATIENTS. (a) A patient is classified as either indigent or nonindigent.

(b) An indigent patient is a patient who:

(1) possesses no property;

(2) has no person legally responsible for the patient's support; and

(3) is unable to reimburse the state for the costs of the patient's support, maintenance, and treatment.

(c) A nonindigent patient is a patient who:

(1) possesses property from which the state may be reimbursed for the costs of the patient's support, maintenance, and treatment; or

(2) has a person legally responsible for the patient's support.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.013. SUPPORT OF INDIGENT AND NONINDIGENT PATIENTS. (a) A person may not be denied services under this subtitle because of an inability to pay for the services.

(b) The state shall support, maintain, and treat indigent and nonindigent patients at the expense of the state.

(c) The state is entitled to reimbursement for the support, maintenance, and treatment of a nonindigent patient.

(d) A patient who does not own a sufficient estate shall be maintained at the expense:

(1) of the patient's spouse, if able to do so; or

(2) if the patient is younger than 18 years of age, of the patient's father or mother, if able to do so.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.014. CHILD SUPPORT PAYMENTS FOR BENEFIT OF PATIENT. (a) Child support payments for the benefit of a patient paid or owed by a parent under court order are considered the property and estate of the patient, and the state may be reimbursed for the costs of a patient's support, maintenance, and treatment from those amounts.

(b) The state shall credit the amount of child support a parent actually pays for a patient against charges for which the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a patient is liable for the charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a patient to require payment of the child support directly to the state hospital or facility in which the patient resides for the patient's support, maintenance, and treatment if:

(1) the patient's parent fails to pay child support as required by the order; or

(2) the patient's parent who receives child support fails to pay charges based on the amount of child support payments

received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a patient paid directly to the patient's state hospital or facility to the extent that the state is entitled to reimbursement of the patient's charges from the child support obligation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.015. INVESTIGATION TO DETERMINE MEANS OF SUPPORT. (a) The department may demand and conduct an investigation in a county court to determine whether a patient possesses or is entitled to property or whether a person other than the patient is liable for the payment of the costs of the patient's support, maintenance, and treatment.

(b) The department may have citation issued and witnesses summoned to be heard on the investigation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 552.016. FEES. (a) Except as provided by this section, the department may not charge a fee that exceeds the cost to the state to support, maintain, and treat a patient.

(b) The executive commissioner may use the projected cost of providing inpatient services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule may establish the maximum fee according to one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the executive commissioner by rule may establish a fee in excess of the department's projected cost of providing inpatient services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1338, eff. April 2, 2015.

Sec. 552.017. SLIDING FEE SCHEDULE. (a) The executive commissioner by rule shall establish a sliding fee schedule for the payment by the patient's parents of the state's total costs for the support, maintenance, and treatment of a patient younger than 18 years of age.

(b) The executive commissioner shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their current financial statement or most recent federal income tax return.

(d) In determining the portion of the costs of the patient's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 278, Sec. 1, eff. June 5, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1339, eff. April 2, 2015.

Sec. 552.018. TRUST PRINCIPALS. (a) If a patient is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust is not considered to be the property of the patient or the patient's estate and is not liable for the patient's support. If the aggregate principal of the trust exceeds $250,000, only the portion of the corpus of the trust that exceeds that amount and the income attributable to that portion are considered to be the property of the patient or the patient's estate and are liable for the patient's support.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a financial statement if the court finds that the trustee has failed to provide the statement.

(e) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship administered under the Estates Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1020, Sec. 2, eff. June 15, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1340, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 8, eff. September 1, 2019.

Sec. 552.019. FILING OF CLAIMS. (a) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court

of competent jurisdiction to require the person responsible for a patient to appear in court and show cause why the state should not have judgment against the person for the costs of the patient's support, maintenance, and treatment.

(b) On a sufficient showing, the court may enter judgment against the person responsible for the patient for the costs of the patient's support, maintenance, and treatment.

(c) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the superintendent of the hospital in which the patient is being treated, or has been treated, as to the amount due.

(d) The judgment may be enforced as in other cases.

(e) The county or district attorney representing the state is entitled to a commission of 10 percent of the amount collected.

(f) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

(g) In this section, "person responsible for a patient" means the guardian of a patient, a person liable for the support of the patient, or both.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1341, eff. April 2, 2015.

Sec. 552.020. APPLICATION. Except as provided by Subchapter C, Chapter 73, Education Code, this subchapter does not apply to The University of Texas M. D. Anderson Cancer Center.

Added by Acts 1995, 74th Leg., ch. 3, Sec. 4, eff. Sept. 1, 1995.

SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT RELATING TO STATE HOSPITALS

Sec. 552.051. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a state hospital employee who knows or reasonably suspects that another state hospital employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that

knowledge or reasonable suspicion to the superintendent of the state hospital.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.052. STATE HOSPITAL EMPLOYEE TRAINING. (a) Before a state hospital employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a state hospital employee. Upon completion of such training and instruction, the department shall evaluate the employee for competency. The department shall ensure the basic state hospital employee competency course focuses on:

(1) the uniqueness of the individuals the state hospital employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with mental illness; and

(3) the conduct expected of state hospital employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding topics relevant to providing care for individuals with mental illness, including:

(1) the general operation and layout of the state hospital at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to mental illness;

(3) an introduction to substance abuse;

(4) an introduction to dual diagnosis;

(5) the rights of individuals with mental illness who receive services from the department;

(6) respecting personal choices made by patients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with mental illness;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the

workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of state hospital employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide the direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each patient for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of patients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination; and

(7) trauma-informed care.

(d) In addition to the training required by Subsection (c), the department shall provide, in accordance with the specialized needs of the population being served, a direct care employee with training and instructional information as necessary regarding:

(1) seizure safety;

(2) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(3) working with aging patients;

(4) assisting patients:

(A) who have a visual impairment;

(B) who have a hearing deficit; or

(C) who require the use of adaptive devices and specialized equipment;

(5) communicating with patients who use augmentative and alternative devices for communication;

(6) assisting patients with personal hygiene;

(7) recognizing appropriate food textures;

(8) using proper feeding techniques to assist patients with meals; and

(9) physical and nutritional management plans.

(e) The executive commissioner shall adopt rules that require a state hospital to provide refresher training courses to employees at least annually, unless the department determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.053. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. The department shall develop an information management, reporting, and tracking system for each state hospital to provide the department with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.054. RISK ASSESSMENT PROTOCOLS. The department shall develop risk assessment protocols for state hospital employees for use in identifying and assessing possible instances of abuse or neglect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

SUBCHAPTER D. INSPECTOR GENERAL DUTIES

Text of section effective until January 1, 2025

Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law

enforcement agency in the investigation of an alleged criminal offense involving a patient of a state hospital. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.124, eff. January 1, 2025.

Text of section effective on January 1, 2025

Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a patient of a state hospital. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.124, eff. January 1, 2025.

Sec. 552.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) governor;

(6) lieutenant governor;

(7) speaker of the house of representatives;

(8) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(9) state auditor; and

(10) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the Department of Family and Protective Services, the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is

aggregated and disaggregated by individual state hospital regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a state hospital employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) commissioner of state health services;

(3) commissioner of the Department of Family and Protective Services;

(4) State Health Services Council;

(5) Family and Protective Services Council;

(6) governor;

(7) lieutenant governor;

(8) speaker of the house of representatives;

(9) standing committees of the senate and house of representatives with primary jurisdiction over state hospitals;

(10) state auditor; and

(11) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

Sec. 552.104. RETALIATION PROHIBITED. The department or a state hospital may not retaliate against a department employee, a state hospital employee, or any other person who in good faith cooperates with the inspector general under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 3, eff. June 14, 2013.

SUBCHAPTER E. STATE HOSPITAL OPERATIONS

Sec. 552.151. TRANSITION PLANNING FOR CONTRACTED OPERATIONS OF A CERTAIN STATE HOSPITAL. The commission shall establish a plan under which the commission may contract with a local public institution of higher education to transfer the operations of Austin State Hospital from the commission to a local public institution of higher education.

Added by Acts 2019, 86th Leg., R.S., Ch. 676 (S.B. 2111), Sec. 1, eff. September 1, 2019.

Sec. 552.152. PLAN REQUIREMENTS. (a) In developing the plan, the commission shall:

(1) consult with local public institutions of higher education;

(2) establish procedures and policies to ensure that a local public institution of higher education that contracts with the commission to operate Austin State Hospital operates the hospital at a quality level at least equal to the quality level achieved by the commission; and

(3) establish procedures and policies to monitor the care of affected state hospital patients.

(b) The procedures and policies required to be established under Subsection (a) must ensure that the commission is able to obtain and maintain information on activities carried out under the contract without violating privacy or confidentiality rules. The procedures and policies must account for the commission obtaining and maintaining information on:

(1) client outcomes;

(2) individual and average lengths of stay, including computation of lengths of stay according to the number of days a patient is in the facility during each calendar year, regardless of discharge and readmission;

(3) the number of incidents in which patients were restrained or secluded;

(4) the number of incidents of serious assaults in the hospital setting; and

(5) the number of occurrences in the hospital setting involving contacts with law enforcement personnel.

Added by Acts 2019, 86th Leg., R.S., Ch. 676 (S.B. 2111), Sec. 1, eff. September 1, 2019.

Sec. 552.153. REPORT. Not later than September 1, 2020, the commission shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislature a written report containing the plan and any recommendations for legislation or other actions necessary.

Added by Acts 2019, 86th Leg., R.S., Ch. 676 (S.B. 2111), Sec. 1, eff. September 1, 2019.

SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

Sec. 552.201. DEFINITION. In this chapter, "essential caregiver" means a family member, friend, guardian, or other individual a patient, patient's guardian, or patient's legally authorized representative selects for in-person visits.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.202. PATIENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A patient, the patient's guardian, or the patient's legally authorized representative has the right to designate an essential caregiver with whom a state hospital may not prohibit in-person visitation.

(b) If a patient is a minor, the patient's parent, guardian, or managing conservator may designate both of the minor patient's parents as essential caregivers under Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.203. ESSENTIAL CAREGIVER POLICIES, PROCEDURES, AND SAFETY PROTOCOLS. (a) Notwithstanding Section 552.202, the executive commissioner by rule shall develop guidelines to assist state hospitals in establishing essential caregiver visitation policies and procedures. The guidelines must require the hospitals to:

(1) allow a patient, patient's guardian, or patient's legally authorized representative or, for a minor patient, the patient's parent, guardian, or managing conservator, to designate for in-person visitation an essential caregiver;

(2) establish a visitation schedule allowing the essential caregiver to visit the patient for at least two hours each day;

(3) establish procedures to enable physical contact between the patient and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying the caregiver will follow the hospital's safety protocols and any other policies, procedures, or rules established under this section.

(b) A state hospital may not establish safety protocols under this section that are more stringent than the safety protocols the hospital establishes for hospital staff.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.204. REVOCATION OF ESSENTIAL CAREGIVER DESIGNATION. (a) A state hospital may revoke an individual's designation as an essential caregiver if the individual violates the hospital's policies, procedures, or safety protocols established under Section 552.203.

(b) If a state hospital revokes an individual's designation as an essential caregiver under this section, the patient, patient's guardian, or patient's legally authorized representative or, for a minor patient, the patient's parent, guardian, or managing conservator, has the right to immediately designate another individual as the patient's essential caregiver.

(c) The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff.

September 1, 2023.

Sec. 552.205. TEMPORARY SUSPENSION OF ESSENTIAL CAREGIVER VISITS. (a) A state hospital may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the hospital's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk.

(b) A state hospital may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension for a period that exceeds seven days, and the hospital must separately request each extension.

(c) A state hospital may not suspend in-person essential caregiver visitation in any year for more than 14 consecutive days or 45 days total.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

Sec. 552.206. PROVISION OF NECESSARY PATIENT CARE BY ESSENTIAL CAREGIVER. This subchapter may not be construed as requiring an essential caregiver to provide necessary care to a patient, and a state hospital may not require an essential caregiver to provide the necessary care.

Added by Acts 2023, 88th Leg., R.S., Ch. 1038 (S.B. 52), Sec. 1, eff. September 1, 2023.

CHAPTER 553. SAN ANTONIO STATE SUPPORTED LIVING CENTER

Sec. 553.022. SAN ANTONIO STATE SUPPORTED LIVING CENTER. (a) The San Antonio State Supported Living Center is for the education, care, and treatment of persons with an intellectual disability.

(b) The Department of Aging and Disability Services may enter into agreements with the Department of State Health Services for use of the excess facilities of a public health hospital as defined by Section 13.033 in the operation of the state supported living center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 107, Sec. 8, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1344, eff. April 2, 2015.

CHAPTER 554. STATE CENTERS AND HOMES

Sec. 554.0001. DEFINITION. In this chapter, "department" means the Department of State Health Services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1345, eff. April 2, 2015.

Sec. 554.001. ADMISSION OF CERTAIN JUVENILES. (a) The department shall use the Waco Center for Youth as a residential treatment facility for emotionally disturbed juveniles who:

(1) have been admitted under Subtitle C to a facility of the department; or

(2) are under the managing conservatorship of the Department of Family and Protective Services and have been admitted under Subtitle C to the Waco Center for Youth.

(b) An emotionally disturbed juvenile who has been found to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, may not be admitted to the Waco Center for Youth.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.077, eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 427 (S.B. 957), Sec. 1, eff. June 17, 2011.

Sec. 554.002. SERVICES. (a) The department shall provide without charge appropriate education services for all clients residing at the Waco Center for Youth.

(b) The department shall pay for those services from funds appropriated to the center for that purpose.

(c) A client of the center who is not a resident of the Waco Independent School District may receive education services from the Waco Independent School District only with the prior approval of the superintendent of the district.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

CHAPTER 555. STATE SUPPORTED LIVING CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 555.001. DEFINITIONS. In this chapter:

(1) "Alleged offender resident" means a person with an intellectual disability who:

(A) was committed to or transferred to a state supported living center under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or

(B) is a child committed to or transferred to a state supported living center under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(2) "Center" means the state supported living centers and the ICF-IID component of the Rio Grande State Center.

(3) "Center employee" means an employee of a state supported living center or the ICF-IID component of the Rio Grande State Center.

(4) "Client" means a person with an intellectual disability who receives ICF-IID services from a state supported living center or the ICF-IID component of the Rio Grande State Center.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(107), eff. April 2, 2015.

(6) "Complaint" means information received by the office of independent ombudsman regarding a possible violation of a right of a resident or client and includes information received regarding a failure by a state supported living center or the ICF-IID component of the Rio Grande State Center to comply with the department's policies and procedures relating to the community living options information process.

(7) "Department" means the Department of Aging and Disability Services.

(8) "Direct care employee" means a center employee who provides direct delivery of services to a resident or client.

(9) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(107), eff. April 2, 2015.

(10) "High-risk alleged offender resident" means an alleged offender resident who has been determined under Section 555.003 to be at risk of inflicting substantial physical harm to another.

(10-a) "ICF-IID" has the meaning assigned by Section 531.002.

(11) "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers.

(12) "Inspector general" means the Health and Human Services Commission's office of inspector general.

(13) "Interdisciplinary team" has the meaning assigned by Section 591.003.

(14) "Office" means the office of independent ombudsman for state supported living centers established under Subchapter C.

(15) "Resident" means a person with an intellectual disability who resides in a state supported living center or the ICF-IID component of the Rio Grande State Center.

(16) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1346, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(107), eff. April 2, 2015.

Sec. 555.002. FORENSIC STATE SUPPORTED LIVING CENTERS. (a) The department shall designate separate forensic state supported living centers for the care of high-risk alleged offender residents. The department shall designate the Mexia and San Angelo State Supported Living Centers for this purpose.

(b) In establishing the forensic state supported living centers, the department shall:

(1) transfer an alleged offender resident already residing in a center who is classified as a high-risk alleged offender resident in accordance with Section 555.003, to a forensic state supported living center;

(2) place high-risk alleged offender residents in appropriate homes at a forensic state supported living center based on whether an individual is:

(A) an adult or a person younger than 18 years of age; or

(B) male or female;

(3) place alleged offender residents who are charged with or convicted of a felony offense or who are alleged by petition or have been found to have engaged in delinquent conduct defined as a felony offense, at the time the residents are initially committed to or transferred to a center, in a forensic state supported living center until a determination under Section 555.003 has been completed;

(4) transfer all residents who request a transfer, other than high-risk alleged offender residents and alleged offender residents described by Subdivision (3) and for whom a determination has not been completed under Section 555.003, from a forensic state supported living center; and

(5) provide training regarding the service delivery system for high-risk alleged offender residents to direct care employees of a forensic state supported living center.

(c) An alleged offender resident committed to a forensic state supported living center, for whom a determination under Section 555.003 has been completed and who is not classified as a high-risk alleged offender resident, may request a transfer to another center in accordance with Subchapter B, Chapter 594.

(d) The department shall ensure that each forensic state supported living center:

(1) complies with the requirements for ICF-IID certification under the Medicaid program, as appropriate; and

(2) has a sufficient number of center employees, including direct care employees, to protect the safety of center employees, residents, and the community.

(e) The department shall collect data regarding the commitment of alleged offender residents to state supported living centers, including any offense with which an alleged offender resident is

charged, the location of the committing court, whether the alleged offender resident has previously been in the custody of the Texas Juvenile Justice Department or the Department of Family and Protective Services, and whether the alleged offender resident receives mental health services or previously received any services under a Section 1915(c) waiver program. The department shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the legislature with primary subject matter jurisdiction over state supported living centers a report of the information collected under this section. The report may not contain personally identifiable information for any person in the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1347, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 207 (S.B. 1300), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 207 (S.B. 1300), Sec. 2, eff. September 1, 2017.

Sec. 555.003. DETERMINATION OF HIGH-RISK ALLEGED OFFENDER STATUS. (a) Not later than the 30th day after the date an alleged offender resident is first committed to a state supported living center and, if the resident is classified as a high-risk alleged offender resident, annually on the anniversary of that date, an interdisciplinary team shall determine whether the alleged offender resident is at risk of inflicting substantial physical harm to another and should be classified or remain classified as a high-risk alleged offender resident.

(b) In making a determination under Subsection (a), the interdisciplinary team shall document and collect evidence regarding the reason the alleged offender resident is determined to be at risk of inflicting substantial physical harm to another.

(c) The interdisciplinary team shall provide the team's findings regarding whether the alleged offender resident is at risk of inflicting substantial physical harm to another and the

documentation and evidence collected under this section to:

(1) the department;

(2) the director of the state supported living center;

(3) the independent ombudsman;

(4) the alleged offender resident or the alleged offender resident's parent if the resident is a minor; and

(5) the alleged offender resident's legally authorized representative.

(d) An alleged offender resident who is determined to be at risk of inflicting substantial physical harm to another and is classified as a high-risk alleged offender resident is entitled to an administrative hearing with the department to contest that determination and classification.

(e) An individual who has exhausted the administrative remedies provided by Subsection (d) may bring a suit to appeal the determination and classification in district court in Travis County. The suit must be filed not later than the 30th day after the date the final order in the administrative hearing is provided to the individual. An appeal under this section is by trial de novo.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS. (a) The department, the Department of State Health Services, and the Health and Human Services Commission shall perform a state and federal criminal history background check on a person:

(1) who is:

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(C) a volunteer with the agency;

(D) an applicant for a volunteer position with the agency;

(E) an applicant for a contract with the agency; or

(F) a contractor of the agency; and

(2) who would be placed in direct contact with a resident or client.

(b) The department, the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Each agency shall obtain electronic updates from the Department of Public Safety of arrests and convictions of a person:

(1) for whom the agency performs a background check under Subsection (a); and

(2) who remains an employee, contractor, or volunteer of the agency and continues to have direct contact with a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1027 (H.B. 2673), Sec. 10, eff. June 14, 2013.

Sec. 555.022. DRUG TESTING; POLICY. (a) The executive commissioner shall adopt a policy regarding random testing and reasonable suspicion testing for the illegal use of drugs by a center employee.

(b) The policy adopted under Subsection (a) must provide that a center employee may be terminated solely on the basis of a single positive test for illegal use of a controlled substance. The policy must establish an appeals process for a center employee who tests positively for illegal use of a controlled substance.

(c) The director of a state supported living center or the superintendent of the Rio Grande State Center shall enforce the policy adopted under Subsection (a) by performing necessary drug testing of the center employees for the use of a controlled substance as defined by Section 481.002.

(d) Testing under this section may be performed on a random basis or on reasonable suspicion of the use of a controlled substance.

(e) For purposes of this section, a report made under Section 555.023 is considered reasonable suspicion of the use of a controlled

substance.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The executive commissioner shall adopt a policy requiring a center employee who knows or reasonably suspects that another center employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002, to report that knowledge or reasonable suspicion to the director of the state supported living center or the superintendent of the Rio Grande State Center, as appropriate.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a center employee begins to perform the employee's duties without direct supervision, the department shall provide the employee with competency training and a course of instruction about the general duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

(1) the uniqueness of the individuals the center employee serves;

(2) techniques for improving quality of life for and promoting the health and safety of individuals with an intellectual disability; and

(3) the conduct expected of center employees.

(b) The department shall ensure the training required by Subsection (a) provides instruction and information regarding the following topics:

(1) the general operation and layout of the center at which the person is employed, including armed intruder lockdown procedures;

(2) an introduction to intellectual disabilities;

(3) an introduction to autism;

(4) an introduction to mental illness and dual diagnosis;

(5) the rights of individuals with an intellectual disability who receive services from the department;

(6) respecting personal choices made by residents and clients;

(7) the safe and proper use of restraints;

(8) recognizing and reporting:

(A) evidence of abuse, neglect, and exploitation of individuals with an intellectual disability;

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in the workplace;

(D) workplace violence; or

(E) sexual harassment in the workplace;

(9) preventing and treating infection;

(10) first aid;

(11) cardiopulmonary resuscitation;

(12) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); and

(13) the rights of center employees.

(c) In addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, the department shall provide a direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each resident or client for whom the direct care employee will provide direct care, including the following topics:

(1) prevention and management of aggressive or violent behavior;

(2) observing and reporting changes in behavior, appearance, or health of residents and clients;

(3) positive behavior support;

(4) emergency response;

(5) person-directed plans;

(6) self-determination;

(7) seizure safety;

(8) techniques for:

(A) lifting;

(B) positioning; and

(C) movement and mobility;

(9) working with aging residents and clients;

(10) assisting residents and clients:

(A) who have a visual impairment;
(B) who have a hearing deficit; or
(C) who require the use of adaptive devices and specialized equipment;
(11) communicating with residents and clients who use augmentative and alternative devices for communication;
(12) assisting residents and clients with personal hygiene;
(13) recognizing appropriate food textures;
(14) using proper feeding techniques to assist residents and clients with meals;
(15) physical and nutritional management plans; and
(16) home and community-based services, including the principles of community inclusion and participation and the community living options information process.

(d) The executive commissioner shall adopt rules that require a center to provide refresher training courses to direct care employees on a regular basis.

(e) A center may allow an employee of an ICF-IID licensed by the department, an employee of a person licensed or certified to provide Section 1915(c) waiver program services, or another employee or professional involved in the provision of services to persons with an intellectual disability to receive information and training under this section, as appropriate. The center may charge an administrative fee in an amount not to exceed the cost of providing the information or training.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1348, eff. April 2, 2015.

Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section, "private space" means a place in a center in which a resident or client has a reasonable expectation of privacy, including:
(1) a bedroom;
(2) a bathroom;
(3) a place in which a resident or client receives medical or nursing services;

(4) a place in which a resident or client meets privately with visitors; or

(5) a place in which a resident or client privately makes phone calls.

(b) The department shall install and operate video surveillance equipment in a center for the purpose of detecting and preventing the exploitation or abuse of residents and clients.

(c) Except as provided by Subchapter E, the department may not install or operate video surveillance equipment in a private space or in a location in which video surveillance equipment can capture images within a private space.

(d) The department shall ensure that the use of video surveillance equipment under this section complies with federal requirements for ICF-IID certification.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 1, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1349, eff. April 2, 2015.

Sec. 555.026. DRINKING WATER QUALITY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY GUIDANCE ON LEAD AND COPPER TESTING. To ensure the quality of water provided by public drinking water supply systems to state supported living centers, the department or its successor agency, with guidance from the Texas Commission on Environmental Quality, shall:

(1) develop:

(A) a testing plan and monitoring strategy;

(B) outreach and educational materials for distribution to residents and department staff;

(C) requirements for using an accredited laboratory and sample chain of custody procedures; and

(D) guidance for compliance with the federal lead and copper rules (40 C.F.R. Part 141, Subpart I);

(2) review:

(A) public notification procedures to staff, residents,

and visitors regarding water quality;

(B) sampling protocols and procedures;

(C) locations of taps used for monitoring;

(D) analytical data on lead or copper levels exceeding the applicable action level;

(E) remediation activities; and

(F) customer service inspection reports;

(3) compile a list of qualified customer service inspectors; and

(4) perform:

(A) on-site training and evaluation of sampling; and

(B) on-site evaluation of customer service inspections through licensed customer service inspectors.

Added by Acts 2017, 85th Leg., R.S., Ch. 559 (S.B. 546), Sec. 1, eff. June 9, 2017.

Sec. 555.027. ANATOMICAL GIFT. (a) The executive commissioner by rule shall prescribe a form that a resident's guardian may sign on behalf of a resident if the resident's guardian elects to make an anatomical gift on behalf of the resident in accordance with Chapter 692A.

(b) Subsection (a) does not preclude a guardian from executing a document in accordance with Chapter 692A that supersedes the form executed under that subsection.

Added by Acts 2019, 86th Leg., R.S., Ch. 843 (H.B. 2734), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE SUPPORTED LIVING CENTERS

Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of residents and clients of state supported living centers and the ICF-IID component of the Rio Grande State Center. The office is administratively attached to the department. The department shall provide administrative support and resources to the office as necessary for the office to perform its duties.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1350, eff. April 2, 2015.

Sec. 555.052. INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The governor shall appoint the independent ombudsman for a term of two years expiring February 1 of odd-numbered years.

(b) The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with an intellectual disability.

(c) A person appointed as independent ombudsman may be reappointed.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 573 (S.B. 747), Sec. 1, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1351, eff. April 2, 2015.

Sec. 555.054. ASSISTANT OMBUDSMEN. (a) The independent ombudsman shall:

(1) hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; and

(2) station an assistant ombudsman at each center.

(b) The independent ombudsman may hire as assistant ombudsmen

only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with an intellectual disability.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1352, eff. April 2, 2015.

Sec. 555.055. CONFLICT OF INTEREST. A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.056. REPORT. (a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers a report that is both aggregated and disaggregated by individual center and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the department;

(3) any recommendations that the independent ombudsman has

in relation to the duties of the independent ombudsman; and

(4) any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation at an individual center or at all centers.

(b) The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over the Department of Aging and Disability Services any particularly serious or flagrant:

(1) case of abuse or injury of a resident or client about which the independent ombudsman is made aware;

(2) problem concerning the administration of a center program or operation; or

(3) interference by a center, the department, or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any resident or client, authorized representative of a resident or client, family member of a resident or client, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident or client;

(2) share with the inspector general a communication that may involve an alleged criminal offense;

(3) share with the regulatory services division of the department a communication that may involve a violation of an ICF-IID standard or condition of participation; and

(4) disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other personally identifiable information of a resident or client, legally authorized representative of a resident or client, family member of a resident or client, center, center employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center involved in the investigation, the department, the Department of Family and Protective Services, and the inspector general.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1353, eff. April 2, 2015.

Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public, residents, clients, and center employees of:

(1) how the office may be contacted;

(2) the purpose of the office; and

(3) the services the office provides.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.059. DUTIES AND POWERS. (a) The independent ombudsman shall:

(1) evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;

(2) evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;

(3) immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4) refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-IID standard or condition of participation to the regulatory services division of the department;

(5) refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;

(6) conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A) a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B) a complaint raises the possibility of a systemic issue in the center's provision of services;

(7) conduct biennial on-site audits at each center of:

(A) the ratio of direct care employees to residents;

(B) the provision and adequacy of training to:

(i) center employees; and

(ii) direct care employees; and

(C) if the center serves alleged offender residents, the provision of specialized training to direct care employees;

(8) conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A) the right to file a complaint; and

(B) the right to due process;

(9) prepare and deliver an annual report regarding the findings of each audit to the:

(A) executive commissioner;

(B) commissioner;

(C) Aging and Disability Services Council;

(D) governor;

(E) lieutenant governor;

(F) speaker of the house of representatives;

(G) standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(H) state auditor;

(10) require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11) review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the department, and the inspector general regarding a complaint referred by the independent ombudsman;

(12) provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(13) make appropriate referrals under any of the duties and powers listed in this subsection; and

(14) monitor and evaluate the department's actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b) The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.

(c) To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1354, eff. April 2, 2015.

Sec. 555.060. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, center employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident or client.

(b) The office shall ensure that:

(1) the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center; and

(2) a resident, a client, the legally authorized representative of a resident or client, and a center employee have confidential access to a telephone for the purpose of calling the toll-free number.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER D. INSPECTOR GENERAL DUTIES

Text of section effective until January 1, 2025

Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.125, eff. January 1, 2025.

Text of section effective on January 1, 2025

Sec. 555.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. The inspector general shall employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a resident or client of a center. A peace officer employed and commissioned by the inspector general is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.125, eff. January 1, 2025.

Sec. 555.102. SUMMARY REPORT. (a) The inspector general shall prepare a summary report for each investigation conducted with the assistance of the inspector general under this subchapter. The inspector general shall ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) The summary report must include:

(1) a summary of the activities performed during an investigation for which the inspector general provided assistance;

(2) a statement regarding whether the investigation resulted in a finding that an alleged criminal offense was committed; and

(3) a description of the alleged criminal offense that was committed.

(c) The inspector general shall deliver the summary report to the:

(1) executive commissioner;

(2) governor;

(3) lieutenant governor;

(4) speaker of the house of representatives;

(5) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(6) state auditor;

(7) independent ombudsman and the assistant ombudsman for the center involved in the report; and

(8) alleged victim or the alleged victim's legally authorized representative.

(d) A summary report regarding an investigation is subject to required disclosure under Chapter 552, Government Code. All information and materials compiled by the inspector general in connection with an investigation are confidential, and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the inspector general or the inspector general's employees or agents involved in the investigation, except that this information may be disclosed to the office of the attorney general, the state auditor's office, and law enforcement agencies.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.33, eff. September 1, 2019.

Sec. 555.103. ANNUAL STATUS REPORT. (a) The inspector general shall prepare an annual status report of the inspector general's activities under this subchapter. The annual report may not contain

personally identifiable information of an individual mentioned in the report.

(b) The annual status report must include information that is aggregated and disaggregated by individual center regarding:

(1) the number and type of investigations conducted with the assistance of the inspector general;

(2) the number and type of investigations involving a center employee;

(3) the relationship of an alleged victim to an alleged perpetrator, if any;

(4) the number of investigations conducted that involve the suicide, death, or hospitalization of an alleged victim; and

(5) the number of completed investigations in which commission of an alleged offense was confirmed or unsubstantiated or in which the investigation was inconclusive, and a description of the reason that allegations were unsubstantiated or the investigation was inconclusive.

(c) The inspector general shall submit the annual status report to the:

(1) executive commissioner;

(2) governor;

(3) lieutenant governor;

(4) speaker of the house of representatives;

(5) standing committees of the senate and house of representatives with primary jurisdiction over centers;

(6) state auditor; and

(7) comptroller.

(d) An annual status report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.34, eff. September 1, 2019.

Sec. 555.104. RETALIATION PROHIBITED. The department or a center may not retaliate against a department employee, a center employee, or any other person who in good faith cooperates with the

inspector general under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 22, eff. June 11, 2009.

SUBCHAPTER E. ELECTRONIC MONITORING OF RESIDENT'S ROOM

Sec. 555.151. DEFINITIONS. In this subchapter:

(1) "Authorized electronic monitoring" means the placement of an electronic monitoring device in a resident's room and making tapes or recordings with the device after making a request to the center to allow electronic monitoring.

(2) "Electronic monitoring device":

(A) includes:

(i) video surveillance cameras installed in a resident's room; and

(ii) audio devices installed in a resident's room designed to acquire communications or other sounds occurring in the room; and

(B) does not include an interception device that is specifically used for the nonconsensual interception of wire or electronic communications.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.14, eff. January 1, 2019.

Sec. 555.152. CRIMINAL AND CIVIL LIABILITY. (a) It is a defense to prosecution under Section 16.02, Penal Code, or any other statute of this state under which it is an offense to intercept a communication or disclose or use an intercepted communication, that the communication was intercepted by an electronic monitoring device placed in a resident's room.

(b) This subchapter does not affect whether a person may be held to be civilly liable under other law in connection with placing an electronic monitoring device in a resident's room or in connection with using or disclosing a tape or recording made by the device except:

(1) as specifically provided by this subchapter; or

(2) to the extent that liability is affected by:

(A) a consent or waiver signed under this subchapter; or

(B) the fact that authorized electronic monitoring is required to be conducted with notice to persons who enter a resident's room.

(c) A communication or other sound acquired by an audio electronic monitoring device installed under the provisions of this subchapter concerning authorized electronic monitoring is not considered to be:

(1) an oral communication as defined by Article 18A.001, Code of Criminal Procedure; or

(2) a communication as defined by Section 123.001, Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.15, eff. January 1, 2019.

Sec. 555.153. COVERT USE OF ELECTRONIC MONITORING DEVICE; LIABILITY OF DEPARTMENT OR CENTER. (a) For purposes of this subchapter, the placement and use of an electronic monitoring device in a resident's room are considered to be covert if:

(1) the placement and use of the device are not open and obvious; and

(2) the center and the department are not informed about the device by the resident, by a person who placed the device in the room, or by a person who is using the device.

(b) The department and the center may not be held to be civilly liable in connection with the covert placement or use of an electronic monitoring device in a resident's room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.154. REQUIRED FORM ON ADMISSION. The executive

commissioner by rule shall prescribe a form that must be completed and signed on a resident's admission to a center by or on behalf of the resident. The form must state:

(1) that a person who places an electronic monitoring device in a resident's room or who uses or discloses a tape or other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another;

(2) that a person who covertly places an electronic monitoring device in a resident's room or who consents to or acquiesces in the covert placement of the device in a resident's room has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device;

(3) that a resident or the resident's guardian or legal representative is entitled to conduct authorized electronic monitoring under this subchapter, and that if the center refuses to permit the electronic monitoring or fails to make reasonable physical accommodations for the authorized electronic monitoring the person should contact the department;

(4) the basic procedures that must be followed to request authorized electronic monitoring;

(5) the manner in which this subchapter affects the legal requirement to report abuse, neglect, or exploitation when electronic monitoring is being conducted; and

(6) any other information regarding covert or authorized electronic monitoring that the executive commissioner considers advisable to include on the form.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.155. AUTHORIZED ELECTRONIC MONITORING: WHO MAY REQUEST. (a) If a resident has capacity to request electronic monitoring and has not been judicially declared to lack the required capacity, only the resident may request authorized electronic monitoring under this subchapter.

(b) If a resident has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring, only the guardian of the resident may request electronic monitoring under this subchapter.

(c) If a resident does not have capacity to request electronic monitoring but has not been judicially declared to lack the required capacity, only the legal representative of the resident may request electronic monitoring under this subchapter. The executive commissioner by rule shall prescribe:

(1) guidelines that will assist centers, family members of residents, advocates for residents, and other interested persons to determine when a resident lacks the required capacity; and

(2) who may be considered to be a resident's legal representative for purposes of this subchapter, including:

(A) persons who may be considered the legal representative under the terms of an instrument executed by the resident when the resident had capacity; and

(B) persons who may become the legal representative for the limited purpose of this subchapter under a procedure prescribed by the executive commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.156. AUTHORIZED ELECTRONIC MONITORING: FORM OF REQUEST; CONSENT OF OTHER RESIDENTS IN ROOM. (a) A resident or the guardian or legal representative of a resident who wishes to conduct authorized electronic monitoring must make the request to the center on a form prescribed by the executive commissioner.

(b) The form prescribed by the executive commissioner must require the resident or the resident's guardian or legal representative to:

(1) release the center from any civil liability for a violation of the resident's privacy rights in connection with the use of the electronic monitoring device;

(2) choose, when the electronic monitoring device is a video surveillance camera, whether the camera will always be unobstructed or whether the camera should be obstructed in specified circumstances to protect the dignity of the resident; and

(3) obtain the consent of other residents in the room, using a form prescribed for this purpose by the executive commissioner, if the resident resides in a multiperson room.

(c) Consent under Subsection (b)(3) may be given only:

(1) by the other resident or residents in the room;

(2) by the guardian of a person described by Subdivision (1), if the person has been judicially declared to lack the required capacity; or

(3) by the legal representative who under Section 555.155(c) may request electronic monitoring on behalf of a person described by Subdivision (1), if the person does not have capacity to sign the form but has not been judicially declared to lack the required capacity.

(d) The form prescribed by the executive commissioner under Subsection (b)(3) must condition the consent of another resident in the room on the other resident also releasing the center from any civil liability for a violation of the person's privacy rights in connection with the use of the electronic monitoring device.

(e) Another resident in the room may:

(1) when the proposed electronic monitoring device is a video surveillance camera, condition consent on the camera being pointed away from the consenting resident; and

(2) condition consent on the use of an audio electronic monitoring device being limited or prohibited.

(f) If authorized electronic monitoring is being conducted in a resident's room and another resident is moved into the room who has not yet consented to the electronic monitoring, authorized electronic monitoring must cease until the new resident has consented in accordance with this section.

(g) The executive commissioner may include other information that the executive commissioner considers to be appropriate on either of the forms that the executive commissioner is required to prescribe under this section.

(h) The executive commissioner by rule may prescribe the place or places that a form signed under this section must be maintained and the period for which it must be maintained.

(i) Authorized electronic monitoring:

(1) may not commence until all request and consent forms required by this section have been completed and returned to the center; and

(2) must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.157. AUTHORIZED ELECTRONIC MONITORING: GENERAL PROVISIONS. (a) A center shall permit a resident or the resident's guardian or legal representative to monitor the resident's room through the use of electronic monitoring devices.

(b) The center shall require a resident who conducts authorized electronic monitoring or the resident's guardian or legal representative to post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(c) Authorized electronic monitoring conducted under this subchapter is not compulsory and may be conducted only at the request of the resident or the resident's guardian or legal representative.

(d) A center may not refuse to admit an individual to residency in the center and may not remove a resident from the center because of a request to conduct authorized electronic monitoring. A center may not remove a resident from the center because covert electronic monitoring is being conducted by or on behalf of a resident.

(e) A center shall make reasonable physical accommodation for authorized electronic monitoring, including:

(1) providing a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(2) providing access to power sources for the video surveillance camera or other electronic monitoring device.

(f) The resident or the resident's guardian or legal representative must pay for all costs associated with conducting electronic monitoring, other than the costs of electricity. The resident or the resident's guardian or legal representative is responsible for:

(1) all costs associated with installation of equipment; and

(2) maintaining the equipment.

(g) A center may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. The executive commissioner by rule may adopt guidelines regarding the safe placement of an electronic monitoring device.

(h) If authorized electronic monitoring is conducted, the center may require the resident or the resident's guardian or legal representative to conduct the electronic monitoring in plain view.

(i) A center may but is not required to place a resident in a different room to accommodate a request to conduct authorized electronic monitoring.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.158. REPORTING ABUSE, NEGLECT, OR EXPLOITATION. (a) A person who is conducting authorized electronic monitoring under this subchapter and who has cause to believe, based on the viewing of or listening to a tape or recording, that a resident is in a state of abuse, neglect, or exploitation or has been abused, neglected, or exploited shall:

(1) report that information to the Department of Family and Protective Services as required by Section 48.051, Human Resources Code; and

(2) provide the original tape or recording to the Department of Family and Protective Services.

(b) If the Department of Family and Protective Services has cause to believe that a resident has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense, the department shall immediately notify law enforcement and the inspector general as provided by Section 48.1522, Human Resources Code, and provide a copy of the tape or recording to law enforcement or the inspector general on request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.159. USE OF TAPE OR RECORDING BY AGENCY OR COURT. (a) Subject to applicable rules of evidence and procedure and the requirements of this section, a tape or recording created through the use of covert or authorized electronic monitoring described by this subchapter may be admitted into evidence in a civil or criminal court action or administrative proceeding.

(b) A court or administrative agency may not admit into

evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless:

(1) if the tape or recording is a video tape or recording, the tape or recording shows the time and date that the events acquired on the tape or recording occurred;

(2) the contents of the tape or recording have not been edited or artificially enhanced; and

(3) if the contents of the tape or recording have been transferred from the original format to another technological format, the transfer was done by a qualified professional and the contents of the tape or recording were not altered.

(c) A person who sends more than one tape or recording to the department shall identify for the department each tape or recording on which the person believes that an incident of abuse or exploitation or evidence of neglect may be found. The executive commissioner by rule may encourage persons who send a tape or recording to the department to identify the place on the tape or recording where an incident of abuse or evidence of neglect may be found.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.160. NOTICE AT ENTRANCE TO CENTER. Each center shall post a notice at the entrance to the center stating that the rooms of some residents may be being monitored electronically by or on behalf of the residents and that the monitoring is not necessarily open and obvious. The executive commissioner by rule shall prescribe the format and the precise content of the notice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.161. ENFORCEMENT. The department may impose appropriate sanctions under this chapter on a director of a center who knowingly:

(1) refuses to permit a resident or the resident's guardian or legal representative to conduct authorized electronic monitoring;

(2) refuses to admit an individual to residency or allows the removal of a resident from the center because of a request to conduct authorized electronic monitoring;

(3) allows the removal of a resident from the center because covert electronic monitoring is being conducted by or on behalf of the resident; or

(4) violates another provision of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

Sec. 555.162. INTERFERENCE WITH DEVICE; CRIMINAL PENALTY. (a) A person who intentionally hampers, obstructs, tampers with, or destroys an electronic monitoring device installed in a resident's room in accordance with this subchapter or a tape or recording made by the device commits an offense. An offense under this subsection is a Class B misdemeanor.

(b) It is a defense to prosecution under Subsection (a) that the person took the action with the effective consent of the resident on whose behalf the electronic monitoring device was installed or the resident's guardian or legal representative.

Added by Acts 2013, 83rd Leg., R.S., Ch. 184 (S.B. 33), Sec. 2, eff. May 25, 2013.

SUBCHAPTER F. RIGHT TO ESSENTIAL CAREGIVER VISITS

Sec. 555.201. DEFINITION. In this chapter, "essential caregiver" means a family member, friend, guardian, or other individual selected by a resident, resident's guardian, or resident's legally authorized representative for in-person visits.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 3, eff. September 1, 2021.

Sec. 555.202. RESIDENT'S RIGHT TO ESSENTIAL CAREGIVER VISITS. (a) A resident of a state supported living center, the resident's guardian, or the resident's legally authorized representative has the right to designate an essential caregiver with whom the center may

not prohibit in-person visitation.

(b) Notwithstanding Subsection (a), the executive commissioner by rule shall develop guidelines to assist state supported living centers in establishing essential caregiver visitation policies and procedures. The guidelines must require the centers to:

(1) allow a resident, resident's guardian, or resident's legally authorized representative to designate for in-person visitation an essential caregiver;

(2) establish a visitation schedule allowing the essential caregiver to visit the resident for at least two hours each day;

(3) establish procedures to enable physical contact between the resident and essential caregiver; and

(4) obtain the signature of the essential caregiver certifying that the caregiver will follow the center's safety protocols and any other rules adopted under this section.

(c) A state supported living center may revoke an individual's designation as an essential caregiver if the essential caregiver violates the center's safety protocols or rules adopted under this section. If a state supported living center revokes an individual's designation as an essential caregiver under this subsection, the resident, resident's guardian, or resident's legally authorized representative has the right to immediately designate another individual as the resident's essential caregiver. The commission by rule shall establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver under this subsection.

(d) Safety protocols adopted by a state supported living center for an essential caregiver under this section may not be more stringent than safety protocols for center staff.

(e) A state supported living center may petition the commission to suspend in-person essential caregiver visits for not more than seven days if in-person visitation poses a serious community health risk. The commission may deny the state supported living center's request to suspend in-person essential caregiver visitation if the commission determines that in-person visitation does not pose a serious community health risk. A state supported living center may request an extension from the commission to suspend in-person essential caregiver visitation for more than seven days. The commission may not approve an extension under this subsection for a period that exceeds seven days, and a state supported living center

must separately request each extension. A state supported living center may not suspend in-person essential caregiver visitation in any year for a number of days that exceeds 14 consecutive days or a total of 45 days.

(f) This section may not be construed as requiring an essential caregiver to provide necessary care to a resident, and a state supported living center may not require an essential caregiver to provide necessary care.

Added by Acts 2021, 87th Leg., R.S., Ch. 531 (S.B. 25), Sec. 3, eff. September 1, 2021.

SUBTITLE C. TEXAS MENTAL HEALTH CODE
CHAPTER 571. GENERAL PROVISIONS

Sec. 571.001. SHORT TITLE. This subtitle may be cited as the Texas Mental Health Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.002. PURPOSE. The purpose of this subtitle is to provide to each person having severe mental illness access to humane care and treatment by:

(1) facilitating treatment in an appropriate setting;

(2) enabling the person to obtain necessary evaluation, care, treatment, and rehabilitation with the least possible trouble, expense, and embarrassment to the person and the person's family;

(3) eliminating, if requested, the traumatic effect on the person's mental health of public trial and criminal-like procedures;

(4) protecting the person's right to a judicial determination of the person's need for involuntary treatment;

(5) defining the criteria the state must meet to order involuntary care and treatment;

(6) establishing the procedures to obtain facts, carry out examinations, and make prompt and fair decisions;

(7) safeguarding the person's legal rights so as to advance and not impede the therapeutic and protective purposes of involuntary care; and

(8) safeguarding the rights of the person who voluntarily requests inpatient care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.003. DEFINITIONS. In this subtitle:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(108), eff. April 2, 2015.

(2) "Commissioner" means the commissioner of state health services.

(3) "Commitment order" means a court order for involuntary inpatient mental health services under this subtitle.

(4) "Community center" means a center established under Subchapter A, Chapter 534 that provides mental health services.

(5) "Department" means the Department of State Health Services.

(5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(6) "Facility administrator" means the individual in charge of a mental health facility.

(7) "General hospital" means a hospital operated primarily to diagnose, care for, and treat persons who are physically ill.

(8) "Hospital administrator" means the individual in charge of a hospital.

(9) "Inpatient mental health facility" means a mental health facility that can provide 24-hour residential and psychiatric services and that is:

(A) a facility operated by the department;

(B) a private mental hospital licensed by the department;

(C) a community center, facility operated by or under contract with a community center or other entity the department designates to provide mental health services;

(D) a local mental health authority or a facility operated by or under contract with a local mental health authority;

(E) an identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided and that is licensed by the department; or

(F) a hospital operated by a federal agency.

(10) "Legal holiday" includes a holiday listed in Section 662.021, Government Code, and an officially designated county holiday applicable to a court in which proceedings under this subtitle are

held.

(11) "Local mental health authority" means an entity to which the executive commissioner delegates the executive commissioner's authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

(12) "Mental health facility" means:

(A) an inpatient or outpatient mental health facility operated by the department, a federal agency, a political subdivision, or any person;

(B) a community center or a facility operated by a community center;

(C) that identifiable part of a general hospital in which diagnosis, treatment, and care for persons with mental illness is provided; or

(D) with respect to a reciprocal agreement entered into under Section 571.0081, any hospital or facility designated as a place of commitment by the department, a local mental health authority, and the contracting state or local authority.

(13) "Mental hospital" means a hospital:

(A) operated primarily to provide inpatient care and treatment for persons with mental illness; or

(B) operated by a federal agency that is equipped to provide inpatient care and treatment for persons with mental illness.

(14) "Mental illness" means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as demonstrated by recent disturbed behavior.

(15) "Non-physician mental health professional" means:

(A) a psychologist licensed to practice in this state and designated as a health-service provider;

(B) a registered nurse with a master's or doctoral degree in psychiatric nursing;

(C) a licensed clinical social worker;

(D) a licensed professional counselor licensed to practice in this state;

(E) a licensed marriage and family therapist licensed to practice in this state; or

(F) a physician assistant licensed to practice in this state who has expertise in psychiatry or is currently working in a mental health facility.

(16) "Patient" means an individual who is receiving voluntary or involuntary mental health services under this subtitle.

(17) "Person" includes an individual, firm, partnership, joint-stock company, joint venture, association, and corporation.

(18) "Physician" means:

(A) a person licensed to practice medicine in this state;

(B) a person employed by a federal agency who has a license to practice medicine in any state; or

(C) a person authorized to perform medical acts under a physician-in-training permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

(19) "Political subdivision" includes a county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(20) "Private mental hospital" means a mental hospital operated by a person or political subdivision.

(21) "State mental hospital" means a mental hospital operated by the department.

(22) Repealed by Acts 2001, 77th Leg., ch. 367, Sec. 19, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.01, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 500, Sec. 2, eff. May 31, 1997; Acts 1999, 76th Leg., ch. 75, Sec. 1, eff. May 12, 1999; Acts 1999, 76th Leg., ch. 543, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 722, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 367, Sec. 4, 19, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892,

Sec. 27, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1355, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(108), eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 335 (H.B. 2093), Sec. 1, eff. September 1, 2021.

Sec. 571.004. LEAST RESTRICTIVE APPROPRIATE SETTING. The least restrictive appropriate setting for the treatment of a patient is the treatment setting that:

(1) is available;

(2) provides the patient with the greatest probability of improvement or cure; and

(3) is no more restrictive of the patient's physical or social liberties than is necessary to provide the patient with the most effective treatment and to protect adequately against any danger the patient poses to himself or others.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.005. TEXAS MENTAL HEALTH CODE INFORMATION PROGRAM. (a) The department shall hold seminars as necessary to increase understanding of and properly implement revisions to this subtitle.

(b) The department may arrange for community centers, other state agencies, and other public and private organizations or programs to prepare instructional materials and conduct the seminars.

(c) The department may solicit, receive, and expend funds it receives from public or private organizations to fund the seminars.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.006. EXECUTIVE COMMISSIONER AND DEPARTMENT POWERS. (a) The executive commissioner may adopt rules as necessary for the proper and efficient treatment of persons with mental illness.

(b) The department may:

(1) prescribe the form and content of applications, certificates, records, and reports provided for under this subtitle;

(2) require reports from a facility administrator relating to the admission, examination, diagnosis, release, or discharge of any patient;

(3) regularly visit each mental health facility to review the commitment procedure for each new patient admitted after the last visit; and

(4) visit a mental health facility to investigate a complaint made by a patient or by a person on behalf of a patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1356, eff. April 2, 2015.

Sec. 571.0065. TREATMENT METHODS. (a) The executive commissioner by rule may adopt procedures for an advisory committee to review treatment methods for persons with mental illness.

(b) A state agency that has knowledge of or receives a complaint relating to an abusive treatment method shall report that knowledge or forward a copy of the complaint to the department.

(c) A mental health facility, physician, or other mental health professional is not liable for an injury or other damages sustained by a person as a result of the failure of the facility, physician, or professional to administer or perform a treatment prohibited by statute or rules adopted by the executive commissioner.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 3.01(a), eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 337, Sec. 1, eff. May 27, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 22(14), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(98), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1357, eff. April 2, 2015.

Sec. 571.0066. PRESCRIPTION MEDICATION INFORMATION. (a) The executive commissioner by rule shall require a mental health facility that admits a patient under this subtitle to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the patient's treating physician.

(b) At a minimum, the required information must:

(1) identify the major types of prescription medications; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(c) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.01, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 571.0065 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(32), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1358, eff. April 2, 2015.

Sec. 571.0067. RESTRAINT AND SECLUSION. A person providing services to a patient of a mental hospital or mental health facility shall comply with Chapter 322 and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 6, eff. September 1, 2005.

Sec. 571.007. DELEGATION OF POWERS AND DUTIES. (a) Except as otherwise expressly provided by this subtitle, an authorized, qualified department employee may exercise a power granted to or perform a duty imposed on the department.

(b) Except as otherwise expressly provided by this subtitle, an authorized, qualified person designated by a facility administrator may exercise a power granted to or perform a duty imposed on the facility administrator.

(c) The delegation of a duty under this section does not relieve the department or a facility administrator from responsibility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.008. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE. (a) The department may return a nonresident patient committed to a department mental health facility or other mental health facility under Section 571.0081 to the proper agency of the patient's state of residence.

(b) The department may permit the return of a resident of this state who is committed to a mental health facility in another state.

(c) Subject to Section 571.0081, the department may enter into reciprocal agreements with the state or local authorities, as defined by Section 571.0081, of other states to facilitate the return of persons committed to mental health facilities in this state or another state to the states of their residence.

(d) A department facility administrator may detain for not more than 96 hours pending a court order in a commitment proceeding in this state a patient returned to this state from another state where the person was committed.

(e) The state returning a committed patient to another state shall bear the expenses of returning the patient, unless the state agrees to share costs under a reciprocal agreement under Section 571.0081.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 2, eff. September 1, 2013.

Sec. 571.0081. RETURN OF COMMITTED PATIENT TO STATE OF RESIDENCE; RECIPROCAL AGREEMENTS. (a) In this section, "state or local authority" means a state or local government authority or agency or a representative of a state or local government authority or agency acting in an official capacity.

(b) If a state or local authority of another state petitions the department, the department shall enter into a reciprocal agreement with the state or local authority to facilitate the return of persons committed to mental health facilities in this state to the state of their residence unless the department determines that the terms of the agreement are not acceptable.

(c) A reciprocal agreement entered into by the department under Subsection (b) must require the department to develop a process for returning persons committed to mental health facilities to their state of residence. The process must:

(1) provide suitable care for the person committed to a mental health facility;

(2) use available resources efficiently; and

(3) consider commitment to a proximate mental health facility to facilitate the return of the committed patient to the patient's state of residence.

(d) For the purpose of this section, the department shall coordinate, as appropriate, with a mental health facility, a mental hospital, health service providers, courts, and law enforcement personnel located in the geographic area nearest the petitioning state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 169 (S.B. 1889), Sec. 3, eff. September 1, 2013.

Sec. 571.009. EFFECT OF CERTAIN CONDITIONS ON ADMISSION OR COMMITMENT. A person with mental illness may not be denied admission or commitment to a mental health facility because the person also suffers from epilepsy, dementia, substance abuse, or intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1359, eff. April 2, 2015.

Sec. 571.010. AGENT FOR SERVICE OF PROCESS. (a) The facility administrator or the superintendent, supervisor, or manager of an inpatient mental health facility is the agent for service of process on a patient confined in the facility.

(b) The person receiving process shall sign a certificate with the person's name and title that states that the person is aware of the provisions of this subtitle. The certificate shall be attached to the citation and returned by the serving officer.

(c) The person receiving process, not later than the third day after its receipt, shall forward it by registered mail to the patient's legal guardian or personally deliver it to the patient, whichever appears to be in the patient's best interest.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.011. APPLICATION TO PERSONS CHARGED WITH CRIME. (a) A child alleged to have engaged in delinquent conduct or conduct indicating a need for supervision under Title 3, Family Code, is not considered under this subtitle to be a person charged with a criminal offense.

(b) The provisions in this subtitle relating to the discharge, furlough, or transfer of a patient do not apply to a person charged with a criminal offense who is admitted to a mental health facility under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 35, Sec. 9, eff. Jan. 1, 2004.

Sec. 571.012. COURT HOURS; AVAILABILITY OF JUDGE OR MAGISTRATE. The probate court or court having probate jurisdiction shall be open for proceedings under this subtitle during normal business hours. The probate judge or magistrate shall be available at all times at the request of a person apprehended or detained under Chapter 573, or a proposed patient under Chapter 574.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 485, Sec. 1, eff. June 11, 2001.

Sec. 571.013. METHOD OF GIVING NOTICE. Except as otherwise provided by this subtitle, notice required under this subtitle may be given by delivering a copy of the notice or document in person or in another manner directed by the court that is reasonably calculated to give actual notice.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.014. FILING REQUIREMENTS. (a) Each application, petition, certificate, or other paper permitted or required to be filed in a probate court or court having probate jurisdiction under this subtitle must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing on it:

(1) the date on which the paper is filed;

(2) the docket number; and

(3) the clerk's official signature.

(c) A person may initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the hour on which the initial filing is made. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the filing period is extended until 4 p.m. on the first succeeding business day. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the filing period until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster. If a person detained under this subtitle would otherwise be released because the original signed copy of a paper is not filed within the 72-hour period but for the extension of the filing period under this section, the person may be detained until the expiration of the extended filing period. This subsection does not affect another provision of this subtitle requiring the release or discharge of a person.

(d) If the clerk does not receive the original signed copy of a paper within the period prescribed by this section, the judge may dismiss the proceeding on the court's own motion or on the motion of a party and, if the proceeding is dismissed, shall order the immediate release of a proposed patient who is not at liberty.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.42, eff. Aug. 30, 1993.

Sec. 571.015. INSPECTION OF COURT RECORDS. (a) Each paper in a docket for mental health proceedings in the county clerk's office, including the docket book, indexes, and judgment books, is a public record of a private nature that may be used, inspected, or copied only under a written order issued by the county judge, a judge of a court that has probate jurisdiction, or a judge of a district court having jurisdiction in the county in which the docket is located.

(b) A judge may not issue an order under Subsection (a) unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and in the public interest; or

(2) the paper is to be released to the person to whom it relates or to a person designated in a written release signed by the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b), if a law relating to confidentiality of mental health information or physician-patient privilege applies, the judge must find that the reasons for the use, inspection, or copying fall within the applicable statutory exemptions.

(d) The papers shall be released to an attorney representing the proposed patient in a proceeding held under this subtitle.

(e) This section does not affect access of law enforcement personnel to necessary information in execution of a writ or warrant.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.016. REPRESENTATION OF STATE. Unless specified otherwise, in a hearing held under this subtitle, including a hearing held under Subchapter G, Chapter 574:

(1) the county attorney shall represent the state; or

(2) if the county has no county attorney, the district attorney, the criminal district attorney, or a court-appointed special prosecutor shall represent the state.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 322, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 770, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 832 (H.B. 3342), Sec. 1, eff. June 17, 2011.

Sec. 571.0165. EXTENSION OF DETENTION PERIOD. (a) If extremely hazardous weather conditions exist or a disaster occurs, the judge of a court having jurisdiction of a proceeding under Chapters 572, 573, 574, and 575 or a magistrate appointed by the judge may by written order made each day extend the period during which the person may be detained under those chapters until 4 p.m. on the first succeeding business day.

(b) The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) This section does not apply to a situation for which a specific procedure is prescribed by this subtitle for extending the detention period because of extremely hazardous weather conditions or the occurrence of a disaster.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.43, eff. Aug. 30, 1993.

Sec. 571.0166. PROCEEDINGS ON BEHALF OF THE STATE. All applications under this subtitle shall be filed on behalf of the State of Texas and styled "The State of Texas for the Best Interest and Protection of (NAME) the (patient or proposed patient)."

Added by Acts 1995, 74th Leg., ch. 770, Sec. 2, eff. June 16, 1995.

Sec. 571.0167. HABEAS CORPUS PROCEEDINGS. (a) A petition for a writ of habeas corpus arising from a commitment order must be filed

in the court of appeals for the county in which the order is entered.

(b) The state shall be made a party in a habeas corpus proceeding described in Subsection (a). The appropriate attorney prescribed by Section 571.016 shall represent the state.

(c) In a habeas corpus proceeding in which a department inpatient mental health facility or a physician employed by a department inpatient mental health facility is a party as a result of enforcing a commitment order, the appropriate attorney prescribed by Section 571.016 shall represent the facility or physician, or both the facility and physician if both are parties, unless the attorney determines that representation violates the Texas Disciplinary Rules of Professional Conduct.

Added by Acts 2011, 82nd Leg., R.S., Ch. 832 (H.B. 3342), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1360, eff. April 2, 2015.

Sec. 571.017. COMPENSATION OF COURT-APPOINTED PERSONNEL. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subtitle.

(b) The compensation paid shall be taxed as costs in the case.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 2, eff. September 1, 2009.

Sec. 571.018. COSTS. (a) The costs for a hearing or proceeding under this subtitle shall be paid by:

(1) the county in which emergency detention procedures are initiated under Subchapter A or B, Chapter 573; or

(2) if no emergency detention procedures are initiated, the county that accepts an application for court-ordered mental health services, issues an order for protective custody, or issues an order for temporary mental health services.

(b) The county responsible for the costs of a hearing or

proceeding under Subsection (a) shall pay the costs of all subsequent hearings or proceedings for that person under this subtitle until the person is discharged from mental health services. The costs shall be billed by the clerk of the court conducting the hearings.

(c) Costs under this section include:

(1) attorney's fees;

(2) physician examination fees;

(3) compensation for court-appointed personnel listed under Section 571.017;

(4) expenses of transportation to a mental health facility or to a federal agency not to exceed $50 if transporting within the same county and not to exceed the reasonable cost of transportation if transporting between counties;

(5) costs and salary supplements authorized under Sections 574.031(i) and (j);

(6) prosecutor's fees authorized under Section 574.031(k); and

(7) court reporter costs.

(d) A county is entitled to reimbursement for costs actually paid by the county from:

(1) the patient; or

(2) a person or estate liable for the patient's support in a department mental health facility.

(e) The state shall pay the cost of transporting a discharged or furloughed patient to the patient's home or of returning a patient absent without authority unless the patient or someone responsible for the patient is able to pay the costs.

(f) A proposed patient's county of residence shall pay the court-approved expenses incurred under Section 574.010 if ordered by the court under that section.

(g) A judge who holds hearings at locations other than the county courthouse is entitled to additional compensation as provided by Sections 574.031(h) and (i).

(h) The state or a county may not pay any costs for a patient committed to a private mental hospital, other than a filing fee or other cost associated with a hearing or proceeding under this subtitle, unless:

(1) a public facility is not available; and

(2) the commissioners court of the county authorizes the payment, if appropriate.

(i) The county may not require a person other than the patient to pay any costs associated with a hearing or proceeding under this subtitle, including a filing fee or other court costs imposed under Chapter 118, Local Government Code, Chapter 51, Government Code, or other law, unless the county first determines that:

(1) the costs relate to services provided or to be provided in a private mental hospital; or

(2) the person charged with the costs is a person or estate liable for the patient's support in a department mental health facility.

(j) The judge of a court conducting a hearing or proceeding under this subtitle shall order the clerk of the court to refund court costs paid or advanced for a person by an inpatient mental health facility as defined under Section 571.003(9)(A), (B), (D), or (E) on the filing of an affidavit with the clerk of the court certifying that:

(1) the facility has received no compensation or reimbursement for the treatment of the person;

(2) the facility provided treatment for the person under a contract with a local mental health authority; or

(3) the facility provided treatment for the person and only received reimbursement under Medicaid.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.44, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 174, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 770, Sec. 3, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1354, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 527, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1512, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 723 (H.B. 1329), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 237 (H.B. 1213), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.06, eff. January 1, 2022.

Acts 2023, 88th Leg., R.S., Ch. 1017 (H.B. 4085), Sec. 1, eff. September 1, 2023.

Sec. 571.019. LIMITATION OF LIABILITY. (a) A person who participates in the examination, certification, apprehension, custody, transportation, detention, treatment, or discharge of any person or in the performance of any other act required or authorized by this subtitle and who acts in good faith, reasonably, and without negligence is not criminally or civilly liable for that action.

(b) A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle or providing information to a peace officer to demonstrate the necessity to apprehend a person under Chapter 573 is considered an officer of the court and is not liable for the examination or testimony when acting without malice.

(c) A physician or inpatient mental health facility that discharges a voluntary patient is not liable for the discharge if:

(1) a written request for the patient's release was filed and not withdrawn; and

(2) the person who filed the written request for discharge is notified that the person assumes all responsibility for the patient on discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.020. CRIMINAL PENALTIES. (a) A person commits an offense if the person intentionally causes, conspires with another to cause, or assists another to cause the unwarranted commitment of a person to a mental health facility.

(b) A person commits an offense if the person knowingly violates a provision of this subtitle.

(c) An individual who commits an offense under this section is subject on conviction to:

(1) a fine of not less than $50 or more than $25,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than two years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(d) A person other than an individual who commits an offense under this section is subject on conviction to a fine of not less than $500 or more than $100,000 for each violation and each day of a continuing violation.

(e) If it is shown on the trial of an individual that the individual has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than $100 or more than $50,000 for each violation and each day of a continuing violation;

(2) confinement in jail for not more than four years for each violation and each day of a continuing violation; or

(3) both fine and confinement.

(f) If it is shown on the trial of a person other than an individual that the person previously has been convicted of an offense under this section, the offense is punishable by a fine of not less than $1,000 or more than $200,000 for each violation and each day of a continuing violation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.45, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 3.10(a), eff. Sept. 1, 1993.

Sec. 571.021. ENFORCEMENT OFFICERS. The state attorney general and the district and county attorneys within their respective jurisdictions shall prosecute violations of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 571.022. INJUNCTION. (a) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct in the name of the state a suit for a violation of this subtitle or a rule adopted under this subtitle.

(b) On his own initiative, the attorney general or district or county attorney may maintain an action for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(c) Venue may be maintained in Travis County or in the county in which the violation occurred.

(d) The district court may grant any prohibitory or mandatory injunctive relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.023. CIVIL PENALTY. (a) A person is subject to a civil penalty of not more than $25,000 for each day of violation and for each act of violation of this subtitle or a rule adopted under this subtitle. In determining the amount of the civil penalty, the court shall consider:

(1) the person's or facility's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person or facility; and

(5) the amount necessary to deter future violations.

(b) The department or party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 571.022 or 577.019; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the department, the attorney general or the appropriate district or county attorney shall institute and conduct the suit authorized by Subsection (b) in the name of the state.

(d) On his own initiative, the attorney general, district attorney, or county attorney may maintain an action as authorized by Subsection (b) for a violation of this subtitle or a rule adopted under this subtitle in the name of the state.

(e) The department and the party bringing the suit may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

(f) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

(g) The civil penalty and injunctive relief authorized by this section and Sections 571.022 and 577.019 are in addition to any other civil, administrative, or criminal remedies provided by law.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.024. NOTICE OF SUIT. Not later than the seventh day before the date on which the attorney general intends to bring suit on his own initiative, the attorney general shall provide to the department notice of the suit. The attorney general is not required to provide notice of a suit if the attorney general determines that waiting to bring suit until the notice is provided will create an immediate threat to the health and safety of a patient. This section does not create a requirement that the attorney general obtain the permission of or a referral from the department before filing suit.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993.

Sec. 571.025. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

(b) The penalty for a violation may be in an amount not to exceed $25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) enforcement costs relating to the violation, including investigation costs, witness fees, and deposition expenses;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the department determines that a violation has occurred,

the department may issue a report that states the facts on which the determination is based and the department's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the department shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the department or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the department, the department by order shall impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the department shall set a hearing and give notice of the hearing to the person. The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the department's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the department's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and

the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(l) The department on receipt of a copy of an affidavit under Subsection (k)(2) may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the

person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.11, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1361, eff. April 2, 2015.

Sec. 571.026. RECOVERY OF COSTS. If the attorney general brings an action to enforce an administrative penalty assessed under this chapter and the court orders the payment of the penalty, the attorney general may recover reasonable expenses incurred in the investigation, initiation, or prosecution of the enforcement suit, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 3.111, eff. Sept. 1, 1993.

CHAPTER 572. VOLUNTARY MENTAL HEALTH SERVICES

See note following this section.

Sec. 572.001. REQUEST FOR ADMISSION. (a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. Subject to Subsection (c-1), the parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.

(a-1) A person eligible to consent to treatment for the person under Section 32.001(a)(1), (2), or (3), Family Code, may request temporary authorization for the admission of the person to an inpatient mental health facility by petitioning under Chapter 35A, Family Code, in the district court in the county in which the person resides for an order for temporary authorization to consent to voluntary mental health services under this section. The petitioner for temporary authorization may be represented by the county attorney or district attorney.

(a-2) Except as provided by Subsection (c-1), an inpatient mental health facility may admit or provide services to a person 16 years of age or older and younger than 18 years of age if the person's parent, managing conservator, or guardian consents to the admission or services, even if the person does not consent to the admission or services.

(b) An admission request must be in writing and signed by the person requesting the admission.

(c) A person or agency appointed as the guardian or a managing conservator of a person younger than 18 years of age and acting as an employee or agent of the state or a political subdivision of the state may request admission of the person younger than 18 years of age to an inpatient mental health facility only as provided by Subsection (c-2) or pursuant to an application for court-ordered mental health services or emergency detention or an order for protective custody.

(c-1) A person younger than 18 years of age may not be involuntarily committed unless provided by this chapter, Chapter 55, Family Code, or department rule.

(c-2) The Department of Family and Protective Services may request the admission to an inpatient mental health facility of a minor in the managing conservatorship of that department only if a physician states the physician's opinion, and the detailed reasons for that opinion, that the minor is a person:

(1) with mental illness or who demonstrates symptoms of a serious emotional disorder; and

(2) who presents a risk of serious harm to self or others if not immediately restrained or hospitalized.

(c-3) The admission to an inpatient mental health facility under Subsection (c-2) of a minor in the managing conservatorship of the Department of Family and Protective Services is a significant event for purposes of Section 264.018, Family Code, and the Department of Family and Protective Services shall provide notice of the significant event:

(1) in accordance with that section to all parties entitled to notice under that section; and

(2) to the court with continuing jurisdiction before the expiration of three business days after the minor's admission.

(c-4) The Department of Family and Protective Services periodically shall review the need for continued inpatient treatment of a minor admitted to an inpatient mental health facility under Subsection (c-2). If following the review that department determines there is no longer a need for continued inpatient treatment, that department shall notify the facility administrator designated to detain the minor that the minor may no longer be detained unless an application for court-ordered mental health services is filed.

(d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

(e) A request for admission as a voluntary patient must state that the person for whom admission is requested agrees to voluntarily remain in the facility until the person's discharge and that the person consents to the diagnosis, observation, care, and treatment provided until the earlier of:

(1) the person's discharge; or

(2) the period prescribed by Section 572.004.

Amendments to this section made by Acts 2017, 85th Leg., R.S., Ch.

317 (H.B. 7), take effect on September 1, 2018, but only if a specific appropriation is provided as described by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 74, which states: Subchapter F, Chapter 261, Family Code, as added by this Act, Section 262.206, Family Code, as added by this Act, Section 572.001, Health and Safety Code, as amended by this Act, and Section 25.07(a), Penal Code, as amended by this Act, take effect only if a specific appropriation for the implementation of those sections is provided in a general appropriations act of the 85th Legislature.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 4.01, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 393, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 1000, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 2, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 41, eff. September 1, 2018.

Acts 2019, 86th Leg., R.S., Ch. 988 (S.B. 1238), Sec. 2, eff. September 1, 2019.

Sec. 572.002. ADMISSION. The facility administrator or the administrator's authorized, qualified designee may admit a person for whom a proper request for voluntary inpatient or outpatient services is filed if the administrator or the designee determines:

(1) from a preliminary examination that the person has symptoms of mental illness and will benefit from the inpatient or outpatient services;

(2) that the person has been informed of the person's rights as a voluntary patient; and

(3) that the admission was voluntarily agreed to:

(A) by the person, if the person is 16 years of age or older; or

(B) by the person's parent, managing conservator, or guardian, if the person is younger than 18 years of age.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 393, Sec. 2, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 1000, Sec. 2, eff. June 20, 2003.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 3, eff. June 14, 2013.

Sec. 572.0022. INFORMATION ON MEDICATIONS. (a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.03, eff. May 1, 1994.
Amended by Acts 1997, 75th Leg., ch. 337, Sec. 2, eff. May 27, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1363, eff. April 2, 2015.

Sec. 572.0025. INTAKE, ASSESSMENT, AND ADMISSION. (a) The executive commissioner shall adopt rules governing the voluntary admission of a patient to an inpatient mental health facility, including rules governing the intake and assessment procedures of the admission process.

(b) The rules governing the intake process shall establish minimum standards for:

(1) reviewing a prospective patient's finances and insurance benefits;

(2) explaining to a prospective patient the patient's rights; and

(3) explaining to a prospective patient the facility's services and treatment process.

(c) The assessment provided for by the rules may be conducted only by a professional who meets the qualifications prescribed by department rules.

(d) The rules governing the assessment process shall prescribe:

(1) the types of professionals who may conduct an assessment;

(2) the minimum credentials each type of professional must have to conduct an assessment; and

(3) the type of assessment that professional may conduct.

(e) In accordance with department rule, a facility shall provide annually a minimum of eight hours of inservice training regarding intake and assessment for persons who will be conducting an intake or assessment for the facility. A person may not conduct intake or assessments without having completed the initial and applicable annual inservice training.

(f) A prospective voluntary patient may not be formally accepted for treatment in a facility unless:

(1) the facility has a physician's order admitting the prospective patient, which order may be issued orally, electronically, or in writing, signed by the physician, provided that, in the case of an oral order or an electronically transmitted unsigned order, a signed original is presented to the mental health facility within 24 hours of the initial order; the order must be from:

(A) an admitting physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted a physical and psychiatric examination within:

(i) 72 hours before admission; or

(ii) 24 hours after admission; or

(B) an admitting physician who has consulted with a physician who has, either in person or through the use of audiovisual or other telecommunications technology, conducted an examination within:

(i) 72 hours before admission; or

(ii) 24 hours after admission; and

(2) the facility administrator or a person designated by the administrator has agreed to accept the prospective patient and has signed a statement to that effect.

(f-1) A person who is admitted to a facility before the performance of the physical and psychiatric examination required by Subsection (f) must be discharged by the physician immediately if the physician conducting the physical and psychiatric examination determines the person does not meet the clinical standards to receive inpatient mental health services.

(f-2) A facility that discharges a patient under the circumstances described by Subsection (f-1) may not bill the patient

or the patient's third-party payor for the temporary admission of the patient to the inpatient mental health facility.

(f-3) Section 572.001(c-2) applies to the admission of a minor in the managing conservatorship of the Department of Family and Protective Services to an inpatient mental health facility.

(g) An assessment conducted as required by rules adopted under this section does not satisfy a statutory or regulatory requirement for a personal evaluation of a patient or a prospective patient by a physician.

(h) In this section:

(1) "Admission" means the formal acceptance of a prospective patient to a facility.

(2) "Assessment" means the administrative process a facility uses to gather information from a prospective patient, including a medical history and the problem for which the patient is seeking treatment, to determine whether a prospective patient should be examined by a physician to determine if admission is clinically justified.

(3) "Intake" means the administrative process for gathering information about a prospective patient and giving a prospective patient information about the facility and the facility's treatment and services.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.03, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 422, Sec. 1, eff. June 9, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.83, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1364, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 988 (S.B. 1238), Sec. 3, eff. September 1, 2019.

Sec. 572.0026. VOLUNTARY ADMISSION RESTRICTIONS. The facility administrator of an inpatient mental health facility or the administrator's designee may only approve the admission of a person for whom a proper request for voluntary inpatient services is filed if, at the time the request is filed, there is available space at the inpatient mental health facility.

Added by Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 7, eff.

September 1, 2023.

Sec. 572.003. RIGHTS OF PATIENTS. (a) A person's voluntary admission to an inpatient mental health facility under this chapter does not affect the person's civil rights or legal capacity or affect the person's right to obtain a writ of habeas corpus.

(b) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under this chapter has the right:

(1) to be reviewed periodically to determine the person's need for continued inpatient treatment; and

(2) to have an application for court-ordered mental health services filed only as provided by Section 572.005.

(c) A person admitted to an inpatient mental health facility under this chapter shall be informed of the rights provided under this section and Section 572.004:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted, and in writing in the person's primary language, if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

(d) The patient's parent, managing conservator, or guardian shall also be informed of the patient's rights as required by this section if the patient is a minor.

(e) In addition to the rights provided by this subtitle, a person voluntarily admitted to an inpatient mental health facility under Section 572.002(3)(B) has the right to be evaluated by a physician at regular intervals to determine the person's need for continued inpatient treatment. The executive commissioner by rule shall establish the intervals at which a physician shall evaluate a person under this subsection.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.02, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1000, Sec. 3, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1365, eff. April 2, 2015.

Sec. 572.004. DISCHARGE. (a) A voluntary patient is entitled to leave an inpatient mental health facility in accordance with this section after a written request for discharge is filed with the facility administrator or the administrator's designee. The request must be signed, timed, and dated by the patient or a person legally responsible for the patient and must be made a part of the patient's clinical record. If a patient informs an employee of or person associated with the facility of the patient's desire to leave the facility, the employee or person shall, as soon as possible, assist the patient in creating the written request and present it to the patient for the patient's signature.

(b) The facility shall, within four hours after a request for discharge is filed, notify the physician responsible for the patient's treatment. If that physician is not available during that period, the facility shall notify any available physician of the request.

(c) The notified physician shall discharge the patient before the end of the four-hour period unless the physician has reasonable cause to believe that the patient might meet the criteria for court-ordered mental health services or emergency detention.

(d) A physician who has reasonable cause to believe that a patient might meet the criteria for court-ordered mental health services or emergency detention shall examine the patient as soon as possible within 24 hours after the time the request for discharge is filed. The physician shall discharge the patient on completion of the examination unless the physician determines that the person meets the criteria for court-ordered mental health services or emergency detention. If the physician makes a determination that the patient meets the criteria for court-ordered mental health services or emergency detention, the physician shall, not later than 4 p.m. on the next succeeding business day after the date on which the examination occurs, either discharge the patient or file an application for court-ordered mental health services or emergency detention and obtain a written order for further detention. The physician shall notify the patient if the physician intends to detain the patient under this subsection or intends to file an application for court-ordered mental health services or emergency detention. A decision to detain a patient under this subsection and the reasons

for the decision shall be made a part of the patient's clinical record.

(e) If extremely hazardous weather conditions exist or a disaster occurs, the physician may request the judge of a court that has jurisdiction over proceedings brought under Chapter 574 to extend the period during which the patient may be detained. The judge or a magistrate appointed by the judge may by written order made each day extend the period during which the patient may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(f) The patient is not entitled to leave the facility if before the end of the period prescribed by this section:

(1) a written withdrawal of the request for discharge is filed; or

(2) an application for court-ordered mental health services or emergency detention is filed and the patient is detained in accordance with this subtitle.

(g) A plan for continuing care shall be prepared in accordance with Section 574.081 for each patient discharged. If sufficient time to prepare a continuing care plan before discharge is not available, the plan may be prepared and mailed to the appropriate person within 24 hours after the patient is discharged.

(h) The patient or other person who files a request for discharge of a patient shall be notified that the person filing the request assumes all responsibility for the patient on discharge.

(i) On receipt of a written request for discharge from a patient admitted under Section 572.002(3)(B) who is younger than 18 years of age, a facility shall consult with the patient's parent, managing conservator, or guardian regarding the discharge. If the parent, managing conservator, or guardian objects in writing to the patient's discharge, the facility shall continue treatment of the patient as a voluntary patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.46, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.02, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 1000, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 48 (H.B. 224), Sec. 1, eff. May 17,

2005.

Sec. 572.005. APPLICATION FOR COURT-ORDERED TREATMENT. (a) An application for court-ordered mental health services may not be filed against a patient receiving voluntary inpatient services unless:

(1) a request for release of the patient has been filed with the facility administrator; or

(2) in the opinion of the physician responsible for the patient's treatment, the patient meets the criteria for court-ordered mental health services and:

(A) is absent from the facility without authorization;

(B) is unable to consent to appropriate and necessary psychiatric treatment; or

(C) refuses to consent to necessary and appropriate treatment recommended by the physician responsible for the patient's treatment and that physician completes a certificate of medical examination for mental illness that, in addition to the information required by Section 574.011, includes the opinion of the physician that:

(i) there is no reasonable alternative to the treatment recommended by the physician; and

(ii) the patient will not benefit from continued inpatient care without the recommended treatment.

(b) The physician responsible for the patient's treatment shall notify the patient if the physician intends to file an application for court-ordered mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.04, eff. Aug. 30, 1993.

Sec. 572.0051. TRANSPORTATION OF PATIENT TO ANOTHER STATE. A person may not transport a patient to a mental health facility in another state for inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 566 (S.B. 718), Sec. 4, eff. June 14, 2013.

CHAPTER 573. EMERGENCY DETENTION

SUBCHAPTER A. APPREHENSION BY PEACE OFFICER OR TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN

Sec. 573.0001. DEFINITIONS. In this chapter:

(1) "Emergency medical services personnel" and "emergency medical services provider" have the meanings assigned by Section 773.003.

(2) "Law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 1, eff. June 9, 2017.

Sec. 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT. (a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer:

(1) has reason to believe and does believe that:

(A) the person is a person with mental illness; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately:

(1) transport the apprehended person to:

(A) the nearest appropriate inpatient mental health facility; or

(B) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available; or

(2) transfer the apprehended person to emergency medical services personnel of an emergency medical services provider in accordance with a memorandum of understanding executed under Section 573.005 for transport to a facility described by Subdivision (1)(A) or (B).

(e) A jail or similar detention facility may not be deemed suitable except in an extreme emergency.

(f) A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(g) A peace officer who takes a person into custody under Subsection (a) shall immediately inform the person orally in simple, nontechnical terms:

(1) of the reason for the detention; and

(2) that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility, as provided by Section 573.025(b).

(h) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of Article 18.191, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 776 (S.B. 1189), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1366, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(33), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 2, eff. June

9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 988 (S.B. 1238), Sec. 4, eff. September 1, 2019.

Sec. 573.002. PEACE OFFICER'S NOTIFICATION OF DETENTION. (a) A peace officer shall immediately file with a facility a notification of detention after transporting a person to that facility in accordance with Section 573.001. Emergency medical services personnel of an emergency medical services provider who transport a person to a facility at the request of a peace officer made in accordance with a memorandum of understanding executed under Section 573.005 shall immediately file with the facility the notification of detention completed by the peace officer who made the request.

(b) The notification of detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences mental illness;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to the person or others;

(3) a specific description of the risk of harm;

(4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by or reliably reported to the officer;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

(c) The facility where the person is detained shall include in the detained person's clinical file the notification of detention described by this section.

(d) The peace officer shall provide the notification of detention on the following form:

Notification--Emergency Detention NO. _____

DATE:_____ TIME:_____

THE STATE OF TEXAS

FOR THE BEST INTEREST AND PROTECTION OF:
_____

NOTIFICATION OF EMERGENCY DETENTION

Now comes _____, a peace officer with (name of agency) _____, of the State of Texas, and states as follows:

1. I have reason to believe and do believe that (name of person to be detained) _____ evidences mental illness.

2. I have reason to believe and do believe that the above-named person evidences a substantial risk of serious harm to himself/herself or others based upon the following:

_____
_____
_____
_____

3. I have reason to believe and do believe that the above risk of harm is imminent unless the above-named person is immediately restrained.

4. My beliefs are based upon the following recent behavior, overt acts, attempts, statements, or threats observed by me or reliably reported to me:

_____
_____
_____
_____

5. The names, addresses, and relationship to the above-named person of those persons who reported or observed recent behavior, acts, attempts, statements, or threats of the above-named person are (if applicable):

_____
_____
_____
_____

For the above reasons, I present this notification to seek temporary admission to the (name of facility) _____ inpatient mental health facility or hospital facility for the detention of (name of person to be detained) _____ on an emergency basis.

6. Was the person restrained in any way? Yes No

_____ BADGE NO. _____

PEACE OFFICER'S SIGNATURE
Address: _____ Zip Code: _____
Telephone: _____
_____
SIGNATURE OF EMERGENCY MEDICAL SERVICES PERSONNEL (if applicable)
Address: _____ Zip Code: _____
Telephone: _____
A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than this form as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001, Health and Safety Code, and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005, Health and Safety Code.

(e) A mental health facility or hospital emergency department may not require a peace officer or emergency medical services personnel to execute any form other than the form provided by Subsection (d) as a predicate to accepting for temporary admission a person detained by a peace officer under Section 573.001 and transported by the officer under that section or by emergency medical services personnel of an emergency medical services provider at the request of the officer made in accordance with a memorandum of understanding executed under Section 573.005.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 2, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 3, eff. June 9, 2017.

Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE COURTS. As soon as practicable, but not later than the first working day after the date a peace officer takes a person who is a ward into custody, the peace officer shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a facility in accordance with Section 573.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 313 (S.B. 1096), Sec. 13, eff. September 1, 2017.

Sec. 573.003. TRANSPORTATION FOR EMERGENCY DETENTION BY GUARDIAN. (a) A guardian of the person of a ward who is 18 years of age or older, without the assistance of a peace officer, may transport the ward to an inpatient mental health facility for a preliminary examination in accordance with Section 573.021 if the guardian has reason to believe and does believe that:

(1) the ward is a person with mental illness; and

(2) because of that mental illness there is a substantial risk of serious harm to the ward or to others unless the ward is immediately restrained.

(b) A substantial risk of serious harm to the ward or others under Subsection (a)(2) may be demonstrated by:

(1) the ward's behavior; or

(2) evidence of severe emotional distress and deterioration in the ward's mental condition to the extent that the ward cannot remain at liberty.

Added by Acts 2003, 78th Leg., ch. 692, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1367, eff. April 2, 2015.

Sec. 573.004. GUARDIAN'S APPLICATION FOR EMERGENCY DETENTION. (a) After transporting a ward to a facility under Section 573.003, a guardian shall immediately file an application for detention with the facility.

(b) The application for detention must contain:

(1) a statement that the guardian has reason to believe and does believe that the ward evidences mental illness;

(2) a statement that the guardian has reason to believe and does believe that the ward evidences a substantial risk of serious harm to the ward or others;

(3) a specific description of the risk of harm;

(4) a statement that the guardian has reason to believe and does believe that the risk of harm is imminent unless the ward is

immediately restrained;

(5) a statement that the guardian's beliefs are derived from specific recent behavior, overt acts, attempts, or threats that were observed by the guardian; and

(6) a detailed description of the specific behavior, acts, attempts, or threats.

(c) The guardian shall immediately provide written notice of the filing of an application under this section to the court that granted the guardianship.

Added by Acts 2003, 78th Leg., ch. 692, Sec. 6, eff. Sept. 1, 2003.

Sec. 573.005. TRANSPORTATION FOR EMERGENCY DETENTION BY EMERGENCY MEDICAL SERVICES PROVIDER; MEMORANDUM OF UNDERSTANDING. (a) A law enforcement agency and an emergency medical services provider may execute a memorandum of understanding under which emergency medical services personnel employed by the provider may transport a person taken into custody under Section 573.001 by a peace officer employed by the law enforcement agency.

(b) A memorandum of understanding must:

(1) address responsibility for the cost of transporting the person taken into custody; and

(2) be approved by the county in which the law enforcement agency is located and the local mental health authority that provides services in that county with respect to provisions of the memorandum that address the responsibility for the cost of transporting the person.

(c) A peace officer may request that emergency medical services personnel transport a person taken into custody by the officer under Section 573.001 only if:

(1) the law enforcement agency that employs the officer and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section; and

(2) the officer determines that transferring the person for transport is safe for both the person and the personnel.

(d) Emergency medical services personnel may, at the request of a peace officer, transport a person taken into custody by the officer under Section 573.001 to the appropriate facility, as provided by that section, if the law enforcement agency that employs the officer

and the emergency medical services provider that employs the personnel have executed a memorandum of understanding under this section.

(e) A peace officer who transfers a person to emergency medical services personnel under a memorandum of understanding executed under this section for transport to the appropriate facility must provide:

(1) to the person the notice described by Section 573.001(g); and

(2) to the personnel a completed notification of detention about the person on the form provided by Section 573.002(d).

Added by Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 4, eff. June 9, 2017.

SUBCHAPTER B. JUDGE'S OR MAGISTRATE'S ORDER FOR EMERGENCY APPREHENSION AND DETENTION

Sec. 573.011. APPLICATION FOR EMERGENCY DETENTION. (a) An adult may file a written application for the emergency detention of another person.

(b) The application must state:

(1) that the applicant has reason to believe and does believe that the person evidences mental illness;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats; and

(7) a detailed description of the applicant's relationship to the person whose detention is sought.

(c) The application may be accompanied by any relevant information.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 573.012. ISSUANCE OF WARRANT. (a) Except as provided by Subsection (h), an applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate shall examine the application and may interview the applicant. Except as provided by Subsections (g) and (h), the judge of a court with probate jurisdiction by administrative order may provide that the application must be:

(1) presented personally to the court; or

(2) retained by court staff and presented to another judge or magistrate as soon as is practicable if the judge of the court is not available at the time the application is presented.

(b) The magistrate shall deny the application unless the magistrate finds that there is reasonable cause to believe that:

(1) the person evidences mental illness;

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) the necessary restraint cannot be accomplished without emergency detention.

(c) A substantial risk of serious harm to the person or others under Subsection (b)(2) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(d) The magistrate shall issue to an on-duty peace officer a warrant for the person's immediate apprehension if the magistrate finds that each criterion under Subsection (b) is satisfied.

(d-1) A peace officer who transports an apprehended person to a facility in accordance with this section:

(1) is not required to remain at the facility while the person is medically screened or treated or while the person's insurance coverage is verified; and

(2) may leave the facility immediately after:

(A) the person is taken into custody by appropriate facility staff; and

(B) the peace officer provides to the facility the required documentation.

(e) A person apprehended under this section who is not

physically located in a mental health facility at the time the warrant is issued under Subsection (h-1) shall be transported for a preliminary examination in accordance with Section 573.021 to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority, if an appropriate inpatient mental health facility is not available.

(f) The warrant serves as an application for detention in the facility. The warrant and a copy of the application for the warrant shall be immediately transmitted to the facility.

(g) If there is more than one court with probate jurisdiction in a county, an administrative order regarding presentation of an application must be jointly issued by all of the judges of those courts.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 18

(h) A judge or magistrate shall permit an applicant who is a physician to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) another secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 982 (S.B. 2479), Sec. 3

(h) A judge or magistrate may permit an applicant who is a physician or a licensed mental health professional employed by a local mental health authority to present an application by:

(1) e-mail with the application attached as a secure document in a portable document format (PDF); or

(2) secure electronic means, including:

(A) satellite transmission;

(B) closed-circuit television transmission; or

(C) any other method of two-way electronic communication that:

(i) is secure;

(ii) is available to the judge or magistrate; and

(iii) provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between the judge or magistrate and the applicant.

(h-1) After the presentation of an application under Subsection (h), the judge or magistrate may transmit a warrant to the applicant:

(1) electronically, if a digital signature, as defined by Article 2.26, Code of Criminal Procedure, is transmitted with the document; or

(2) by e-mail with the warrant attached as a secure document in a portable document format (PDF), if the identifiable legal signature of the judge or magistrate is transmitted with the document.

(h-2) A facility may detain a person who is physically located in the facility to perform a preliminary examination in accordance with Section 573.021 if:

(1) a judge or magistrate transmits a warrant to the facility under Subsection (h-1) for the detention of the person; and

(2) the person is not under an order under this chapter or Chapter 574.

(h-3) The Office of Court Administration of the Texas Judicial System shall develop and implement a process for an applicant for emergency detention to electronically present the application under Subsection (h) and for a judge or magistrate to electronically transmit a warrant under Subsection (h-1).

(i) The judge or magistrate shall provide for a recording of the presentation of an application under Subsection (h) to be made and preserved until the patient or proposed patient has been released or discharged. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.19, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 243, Sec. 3, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 367, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1145 (S.B. 778), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 510 (H.B. 1829), Sec. 1, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 939 (S.B. 1624), Sec. 18, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 982 (S.B. 2479), Sec. 3, eff. September 1, 2023.

SUBCHAPTER C. EMERGENCY DETENTION, RELEASE, AND RIGHTS

Sec. 573.021. PRELIMINARY EXAMINATION. (a) A facility shall temporarily accept a person for whom an application for detention is filed or for whom a peace officer or emergency medical services personnel of an emergency medical services provider transporting the person in accordance with a memorandum of understanding executed under Section 573.005 files a notification of detention completed by the peace officer under Section 573.002(a).

(b) A person accepted for a preliminary examination may be detained in custody for not longer than 48 hours after the time the person is presented to the facility unless a written order for protective custody is obtained. The 48-hour period allowed by this section includes any time the patient spends waiting in the facility for medical care before the person receives the preliminary examination. If the 48-hour period ends on a Saturday, Sunday, legal holiday, or before 4 p.m. on the first succeeding business day, the person may be detained until 4 p.m. on the first succeeding business day. If the 48-hour period ends at a different time, the person may be detained only until 4 p.m. on the day the 48-hour period ends. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

(c) A physician shall examine the person as soon as possible

within 12 hours after the time the person is apprehended by the peace officer or transported for emergency detention by the person's guardian.

(d) A facility must comply with this section only to the extent that the commissioner determines that a facility has sufficient resources to perform the necessary services under this section.

(e) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 623, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 692, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 202 (H.B. 518), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 333 (H.B. 888), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 541 (S.B. 344), Sec. 5, eff. June 9, 2017.

Sec. 573.022. EMERGENCY ADMISSION AND DETENTION. (a) A person may be admitted to a facility for emergency detention only if the physician who conducted the preliminary examination of the person makes a written statement that:

(1) is acceptable to the facility;

(2) states that after a preliminary examination it is the physician's opinion that:

(A) the person is a person with mental illness;

(B) the person evidences a substantial risk of serious harm to the person or to others;

(C) the described risk of harm is imminent unless the person is immediately restrained; and

(D) emergency detention is the least restrictive means by which the necessary restraint may be accomplished; and

(3) includes:

(A) a description of the nature of the person's mental illness;

(B) a specific description of the risk of harm the person evidences that may be demonstrated either by the person's behavior or by evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty; and

(C) the specific detailed information from which the physician formed the opinion in Subdivision (2).

(b) A mental health facility that has admitted a person for emergency detention under this section may transport the person to a mental health facility deemed suitable by the local mental health authority for the area. On the request of the local mental health authority, the judge may order that the proposed patient be detained in a department mental health facility.

(c) A facility that has admitted a person for emergency detention under Subsection (a) or to which a person has been transported under Subsection (b) may transfer the person to an appropriate mental hospital with the written consent of the hospital administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 842, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 510 (H.B. 1829), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1368, eff. April 2, 2015.

Sec. 573.023. RELEASE FROM EMERGENCY DETENTION. (a) A person apprehended by a peace officer or transported for emergency detention under Subchapter A or detained under Subchapter B shall be released on completion of the preliminary examination unless the person is admitted to a facility under Section 573.022.

(b) A person admitted to a facility under Section 573.022 shall be released if the facility administrator determines at any time during the emergency detention period that one of the criteria prescribed by Section 573.022(a)(2) no longer applies.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 692, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1369, eff. April 2, 2015.

Sec. 573.024. TRANSPORTATION AFTER RELEASE. (a) Arrangements shall be made to transport a person who is entitled to release under Section 573.023 to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(b) Subsection (a) does not apply to a person who is arrested or who objects to the transportation.

(c) If the person was apprehended by a peace officer under Subchapter A, arrangements must be made to immediately transport the person. If the person was transported for emergency detention under Subchapter A or detained under Subchapter B, the person is entitled to reasonably prompt transportation.

(d) The county in which the person was apprehended shall pay the costs of transporting the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 692, Sec. 9, eff. Sept. 1, 2003.

Sec. 573.025. RIGHTS OF PERSONS APPREHENDED, DETAINED, OR TRANSPORTED FOR EMERGENCY DETENTION. (a) A person apprehended, detained, or transported for emergency detention under this chapter has the right:

(1) to be advised of the location of detention, the reasons for the detention, and the fact that the detention could result in a longer period of involuntary commitment;

(2) to a reasonable opportunity to communicate with and retain an attorney;

(3) to be transported to a location as provided by Section 573.024 if the person is not admitted for emergency detention, unless the person is arrested or objects;

(4) to be released from a facility as provided by Section 573.023;

(5) to be advised that communications with a mental health

professional may be used in proceedings for further detention;

(6) to be transported in accordance with Sections 573.026 and 574.045, if the person is detained under Section 573.022 or transported under an order of protective custody under Section 574.023; and

(7) to a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.

(b) A person apprehended, detained, or transported for emergency detention under this subtitle shall be informed of the rights provided by this section and this subtitle:

(1) orally in simple, nontechnical terms, within 24 hours after the time the person is admitted to a facility, and in writing in the person's primary language if possible; or

(2) through the use of a means reasonably calculated to communicate with a hearing or visually impaired person, if applicable.

(c) The executive commissioner by rule shall prescribe the manner in which the person is informed of the person's rights under this section and this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1512, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 692, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 318 (H.B. 1738), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1370, eff. April 2, 2015.

Sec. 573.026. TRANSPORTATION AFTER DETENTION. A person being transported after detention under Section 573.022 shall be transported in accordance with Section 574.045.

Added by Acts 1999, 76th Leg., ch. 1512, Sec. 3, eff. Sept. 1, 1999.

CHAPTER 574. COURT-ORDERED MENTAL HEALTH SERVICES

SUBCHAPTER A. APPLICATION FOR COMMITMENT AND PREHEARING PROCEDURES

Sec. 574.001. APPLICATION FOR COURT-ORDERED MENTAL HEALTH

SERVICES. (a) A county or district attorney or other adult may file a sworn written application for court-ordered mental health services. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination.

(b) Except as provided by Subsection (f), the application must be filed with the county clerk in the county in which the proposed patient:

(1) resides;

(2) is found; or

(3) is receiving mental health services by court order or under Subchapter A, Chapter 573.

(c) If the application is not filed in the county in which the proposed patient resides, the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is shown, transfer the application to that county.

(d) An application may be transferred to the county in which the person is being detained under Subchapter B if the county to which the application is to be transferred approves such transfer. A transfer under this subsection does not preclude the proposed patient from filing a motion to transfer under Subsection (c).

(e) An order transferring a criminal defendant against whom all charges have been dismissed to the appropriate court for a hearing on court-ordered mental health services in accordance with Subchapter F, Chapter 46B, Code of Criminal Procedure, serves as an application under this section. The order must state that all charges have been dismissed.

(f) An application in which the proposed patient is a child in the custody of the Texas Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile Justice Department was ordered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 770, Sec. 4, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1086, Sec. 38, eff. June 19, 1997; Acts 2003, 78th Leg., ch. 35, Sec. 10, eff. Jan. 1, 2004.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1371, eff. April 2, 2015.

Sec. 574.002. FORM OF APPLICATION. (a) An application for court-ordered mental health services must be styled using the proposed patient's initials and not the proposed patient's full name.

(b) The application must state whether the application is for temporary or extended mental health services. An application for extended inpatient mental health services must state that the person has received court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months. An application for extended outpatient mental health services must state that the person has received:

(1) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(2) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(c) Any application must contain the following information according to the applicant's information and belief:

(1) the proposed patient's name and address;

(2) the proposed patient's county of residence in this state;

(3) a statement that the proposed patient is a person with mental illness and meets the criteria in Section 574.034, 574.0345, 574.035, or 574.0355 for court-ordered mental health services; and

(4) whether the proposed patient is charged with a criminal offense.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 35, Sec. 11, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 166 (S.B. 118), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1372, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 8, eff. September 1, 2019.

Sec. 574.003. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a proposed patient within 24 hours after the time an application for court-ordered mental health services is filed if the proposed patient does not have an attorney. At that time, the judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the proposed patient's primary language.

(b) The court shall inform the attorney in writing of the attorney's duties under Section 574.004.

(c) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to have access to all hospital and physicians' records.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.004. DUTIES OF ATTORNEY. (a) An attorney representing a proposed patient shall interview the proposed patient within a reasonable time before the date of the hearing on the application.

(b) The attorney shall thoroughly discuss with the proposed patient the law and facts of the case, the proposed patient's options, and the grounds on which the court-ordered mental health services are being sought. A court-appointed attorney shall also inform the proposed patient that the proposed patient may obtain personal legal counsel at the proposed patient's expense instead of accepting the court-appointed counsel.

(c) The attorney may advise the proposed patient of the wisdom of agreeing to or resisting efforts to provide mental health services, but the proposed patient shall make the decision to agree to or resist the efforts. Regardless of an attorney's personal opinion, the attorney shall use all reasonable efforts within the bounds of law to advocate the proposed patient's right to avoid court-ordered mental health services if the proposed patient expresses a desire to avoid the services. If the proposed patient desires, the attorney shall advocate for the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(d) Before a hearing, the attorney shall:

(1) review the application, the certificates of medical

examination for mental illness, and the proposed patient's relevant medical records;

(2) interview supporting witnesses and other witnesses who will testify at the hearing; and

(3) explore the least restrictive treatment alternatives to court-ordered inpatient mental health services.

(e) The attorney shall advise the proposed patient of the proposed patient's right to attend a hearing or to waive the right to attend a hearing and shall inform the court why a proposed patient is absent from a hearing.

(f) The attorney shall discuss with the proposed patient:

(1) the procedures for appeal, release, and discharge if the court orders participation in mental health services; and

(2) other rights the proposed patient may have during the period of the court's order.

(g) To withdraw from a case after interviewing a proposed patient, an attorney must file a motion to withdraw with the court. The court shall act on the motion as soon as possible. An attorney may not withdraw from a case unless the withdrawal is authorized by court order.

(h) The attorney is responsible for a person's legal representation until:

(1) the application is dismissed;

(2) an appeal from an order directing treatment is taken;

(3) the time for giving notice of appeal expires by operation of law; or

(4) another attorney assumes responsibility for the case.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.005. SETTING ON APPLICATION. (a) The judge or a magistrate designated under Section 574.021(e) shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b) The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of

the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the judge or magistrate may, by written order made each day, postpone the hearing for 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.006. NOTICE. (a) The proposed patient and his attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to the proposed patient's:

(1) parent, if the proposed patient is a minor;

(2) appointed guardian, if the proposed patient is the subject of a guardianship; or

(3) each managing and possessory conservator that has been appointed for the proposed patient.

(c) Notice may be given to the proposed patient's next of kin if the relative is the applicant and the parent cannot be located and a guardian or conservator has not been appointed.

(d) Notice of the time and place of any hearing and of the name, telephone number, and address of any attorneys known or believed to represent the state or the proposed patient shall be furnished to any person stating that that person has evidence to present upon any material issue, without regard to whether such evidence is on behalf of the state or of the proposed patient. The notice shall not include the application, medical records, names or addresses of other potential witnesses, or any other information whatsoever. Any clerk, judge, magistrate, court coordinator, or other officer of the court shall provide such information and shall be entitled to judicial immunity in any civil suit seeking damages as a result of providing such notice. Should such evidence be offered at trial and the adverse party claim surprise, the hearing may be

continued under the provisions of Section 574.005, and the person producing such evidence shall be entitled to timely notice of the date and time of such continuance.

Any officer, employee, or agent of the department shall refer any inquiring person to the court authorized to provide the notice if such information is in the possession of the department. The notice shall be provided in the form that is most understandable to the person making such inquiry.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 623, Sec. 1, eff. Aug. 28, 1995.

Sec. 574.007. DISCLOSURE OF INFORMATION. (a) The proposed patient's attorney may request information from the county or district attorney in accordance with this section if the attorney cannot otherwise obtain the information.

(b) If the proposed patient's attorney requests the information at least 48 hours before the time set for the hearing, the county or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

(1) the provisions of this subtitle that will be relied on at the hearing to establish that the proposed patient requires court-ordered temporary or extended inpatient mental health services;

(2) the reasons voluntary outpatient services are not considered appropriate for the proposed patient;

(3) the name, address, and telephone number of each witness who may testify at the hearing;

(4) a brief description of the reasons court-ordered temporary or extended inpatient or outpatient, as appropriate, mental health services are required; and

(5) a list of any acts committed by the proposed patient that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under Subsection (b) if the admission would not deprive the proposed patient of a fair opportunity to contest the evidence or testimony.

(d) Except as provided by this subsection, not later than 48 hours before the time set for the hearing on the petition for commitment, the county or district attorney shall inform the proposed

patient through the proposed patient's attorney whether the county or district attorney will request that the proposed patient be committed to inpatient services or outpatient services. The proposed patient, the proposed patient's attorney, and the county or district attorney may agree to waive the requirement of this subsection. The waiver must be made by the proposed patient:

(1) orally and in the presence of the court; or

(2) in writing and signed and sworn to under oath by the proposed patient and the proposed patient's attorney.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 744, Sec. 1, eff. Sept. 1, 1997.

Sec. 574.008. COURT JURISDICTION AND TRANSFER. (a) A proceeding under Subchapter C or E must be held in the statutory or constitutional county court that has the jurisdiction of a probate court in mental illness matters.

(b) If the hearing is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request and the receiving court shall hear the case as if it had been originally filed in that court.

(c) If a patient is receiving temporary inpatient mental health services in a county other than the county that initiated the court-ordered inpatient mental health services and the patient requires extended inpatient mental health services, the county in which the proceedings originated shall pay the expenses of transporting the patient back to the county for the hearing unless the court that entered the temporary order arranges with the appropriate court in the county in which the patient is receiving services to hold the hearing on court-ordered extended inpatient mental health services before the original order expires.

(d) If an order for outpatient services designates that such services be provided in a county other than the county in which the order was initiated, the court shall transfer the case to the appropriate court in the county in which the services are being provided. That court shall thereafter have exclusive, continuing

jurisdiction of the case, including the receipt of the general treatment program required by Section 574.037(b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 770, Sec. 5, eff. June 16, 1995.

Sec. 574.0085. ASSOCIATE JUDGES. (a) The county judge may appoint a full-time or a part-time associate judge to preside over the proceedings for court-ordered mental health services if the commissioners court of a county in which the court has jurisdiction authorizes the employment of an associate judge.

(b) To be eligible for appointment as an associate judge, a person must be a resident of this state and have been licensed to practice law in this state for at least four years or be a retired county judge, statutory or constitutional, with at least 10 years of service.

(c) An associate judge shall be paid as determined by the commissioners court of the county in which the associate judge serves. If an associate judge serves in more than one county, the associate judge shall be paid as determined by agreement of the commissioners courts of the counties in which the associate judge serves. The associate judge may be paid from county funds available for payment of officers' salaries.

(d) An associate judge who serves a single court serves at the will of the judge of that court. The services of an associate judge who serves more than two courts may be terminated by a majority vote of all the judges of the courts the associate judge serves. The services of an associate judge who serves two courts may be terminated by either of the judges of the courts the associate judge serves.

(e) To refer cases to an associate judge, the referring court must issue an order of referral. The order of referral may limit the power or duties of an associate judge.

(f) Except as limited by an order of referral, an associate judge appointed under this section has all the powers and duties set forth in Section 201.007, Family Code.

(g) A bailiff may attend a hearing held by an associate judge if directed by the referring court.

(h) A witness appearing before an associate judge is subject to

the penalties for perjury provided by law. A referring court may issue attachment against and may fine or imprison a witness whose failure to appear before an associate judge after being summoned or whose refusal to answer questions has been certified to the court.

(i) At the conclusion of any hearing conducted by an associate judge and on the preparation of an associate judge's report, the associate judge shall transmit to the referring court all papers relating to the case, with the associate judge's signed and dated report. After the associate judge's report has been signed, the associate judge shall give to the parties participating in the hearing notice of the substance of the report. The associate judge's report may contain the associate judge's findings, conclusions, or recommendations. The associate judge's report must be in writing in a form as the referring court may direct. The form may be a notation on the referring court's docket sheet. After the associate judge's report is filed, the referring court may adopt, approve, or reject the associate judge's report, hear further evidence, or recommit the matter for further proceedings as the referring court considers proper and necessary in the particular circumstances of the case.

(j) If a jury trial is demanded or required, the associate judge shall refer the entire matter back to the referring court for trial.

(k) An associate judge appointed under this section has the judicial immunity of a county judge.

(l) An associate judge appointed in accordance with this section shall comply with the Code of Judicial Conduct in the same manner as the county judge.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 6.47, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 6, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.45, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 3, eff. September 1, 2009.

Sec. 574.009. REQUIREMENT OF MEDICAL EXAMINATION. (a) A hearing on an application for court-ordered mental health services may not be held unless there are on file with the court at least two

certificates of medical examination for mental illness completed by different physicians each of whom has examined the proposed patient during the preceding 30 days. At least one of the physicians must be a psychiatrist if a psychiatrist is available in the county.

(b) If the certificates are not filed with the application, the judge or magistrate designated under Section 574.021(e) may appoint the necessary physicians to examine the proposed patient and file the certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examination and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examination.

(d) If the certificates required under this section are not on file at the time set for the hearing on the application, the judge shall dismiss the application and order the immediate release of the proposed patient if that person is not at liberty. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may by written order made each day extend the period during which the two certificates of medical examination for mental illness may be filed, and the person may be detained until 4 p.m. on the first succeeding business day. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.48, eff. Aug. 30, 1993.

Sec. 574.010. INDEPENDENT PSYCHIATRIC EVALUATION AND EXPERT TESTIMONY. (a) The court may order an independent evaluation of the proposed patient by a psychiatrist chosen by the proposed patient if the court determines that the evaluation will assist the finder of fact. The psychiatrist may testify on behalf of the proposed patient.

(b) If the court determines that the proposed patient is indigent, the court may authorize reimbursement to the attorney ad litem for court-approved expenses incurred in obtaining expert testimony and may order the proposed patient's county of residence to pay the expenses.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.011. CERTIFICATE OF MEDICAL EXAMINATION FOR MENTAL ILLNESS. (a) A certificate of medical examination for mental illness must be sworn to, dated, and signed by the examining physician. The certificate must include:

(1) the name and address of the examining physician;

(2) the name and address of the person examined;

(3) the date and place of the examination;

(4) a brief diagnosis of the examined person's physical and mental condition;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the mental health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the examining physician's opinion that:

(A) the examined person is a person with mental illness; and

(B) as a result of that illness the examined person is likely to cause serious harm to the person or to others or is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) not able to make a rational and informed decision as to whether to submit to treatment.

(b) The examining physician must specify in the certificate which criterion listed in Subsection (a)(7)(B) forms the basis for the physician's opinion.

(c) If the certificate is offered in support of an application for extended mental health services, the certificate must also include the examining physician's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the certificate is offered in support of a motion for a

protective custody order, the certificate must also include the examining physician's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior or by evidence of severe emotional distress and deterioration in the examined person's mental condition to the extent that the examined person cannot remain at liberty.

(e) The certificate must include the detailed reason for each of the examining physician's opinions under this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 744, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1373, eff. April 2, 2015.

Sec. 574.012. RECOMMENDATION FOR TREATMENT. (a) The local mental health authority in the county in which an application is filed shall file with the court a recommendation for the most appropriate treatment alternative for the proposed patient.

(b) The court shall direct the local mental health authority to file, before the date set for the hearing, its recommendation for the proposed patient's treatment.

(c) If outpatient treatment is recommended, the local mental health authority will also file a statement as to whether the proposed mental health services are available.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this subtitle to diagnose, care for, or treat persons with mental illness.

(f) This section does not apply to a person for whom treatment in a private mental health facility is proposed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 744, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 367, Sec. 8, eff. Sept. 1, 2001.

Sec. 574.0125. IDENTIFICATION OF PERSON RESPONSIBLE FOR COURT-ORDERED OUTPATIENT MENTAL HEALTH SERVICES. Not later than the third day before the date of a hearing that may result in the judge ordering the patient to receive court-ordered outpatient mental health services, the judge shall identify the person the judge intends to designate to be responsible for those services under Section 574.037.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 1, eff. September 1, 2013.

Sec. 574.013. LIBERTY PENDING HEARING. The proposed patient is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.014. COMPILATION OF MENTAL HEALTH COMMITMENT RECORDS. (a) The clerk of each court with jurisdiction to order commitment under this chapter shall provide the Office of Court Administration each month with a report of the number of applications for commitment orders for involuntary mental health services filed with the court and the disposition of those cases, including the number of commitment orders for inpatient and outpatient mental health services. The Office of Court Administration shall make the reported information available to the Health and Human Services Commission annually.

(b) Subsection (a) does not require the production of confidential information or information protected under Section 571.015.

Added by Acts 1997, 75th Leg., ch. 744, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.35, eff. September 1, 2019.

SUBCHAPTER B. PROTECTIVE CUSTODY

Sec. 574.021. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for court-ordered mental health services is pending.

(b) The motion may be filed by the county or district attorney or on the court's own motion.

(c) The motion must state that:

(1) the judge or county or district attorney has reason to believe and does believe that the proposed patient meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the proposed patient's conduct; or

(C) the circumstances under which the proposed patient is found.

(d) The motion must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders, including a magistrate appointed by the judge of another court if the magistrate has at least the qualifications required for a magistrate of the court in which the application is pending. A magistrate's duty under this section is in addition to the magistrate's duties prescribed by other law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1278, Sec. 1, eff. June 15, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 202 (H.B. 518), Sec. 2, eff. September 1, 2007.

Sec. 574.022. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed

patient is a person with mental illness; and

(2) the proposed patient presents a substantial risk of serious harm to the proposed patient or others if not immediately restrained pending the hearing.

(b) The determination that the proposed patient presents a substantial risk of serious harm may be demonstrated by the proposed patient's behavior or by evidence of severe emotional distress and deterioration in the proposed patient's mental condition to the extent that the proposed patient cannot remain at liberty.

(c) The judge or magistrate may make a determination that the proposed patient meets the criteria prescribed by Subsection (a) from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(e) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the facility administrator designated to detain the proposed patient agrees to the detention.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1374, eff. April 2, 2015.

Sec. 574.023. APPREHENSION UNDER ORDER. (a) A protective custody order shall direct a person authorized to transport patients under Section 574.045 to take the proposed patient into protective custody and transport the person immediately to a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The proposed patient shall be detained in the facility until a hearing is held under Section 574.025.

(c) A facility must comply with this section only to the extent

that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(d) A person may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1512, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 9, eff. Sept. 1, 2001.

Sec. 574.024. APPOINTMENT OF ATTORNEY. (a) When a protective custody order is signed, the judge or designated magistrate shall appoint an attorney to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before a hearing is held under Section 574.025, the court that ordered the protective custody shall provide to the proposed patient and the proposed patient's attorney a written notice that states:

(1) that the proposed patient has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.025. PROBABLE CAUSE HEARING. (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to the proposed patient or others to the extent that the proposed patient cannot be at liberty pending the hearing on court-ordered mental health services; and

(2) a physician has stated the physician's opinion and the detailed reasons for the physician's opinion that the proposed patient is a person with mental illness.

(b) The hearing must be held not later than 72 hours after the time that the proposed patient was detained under a protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a

Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing each day for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions or the occurrence of a disaster that threatens the safety of the proposed patient or another essential party to the hearing.

(c) The hearing shall be held before a magistrate or, at the discretion of the presiding judge, before an associate judge appointed by the presiding judge. Notwithstanding any other law or requirement, an associate judge appointed to conduct a hearing under this section may practice law in the court the associate judge serves. The associate judge is entitled to reasonable compensation.

(d) The proposed patient and the proposed patient's attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(e) The magistrate or associate judge may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent commitment hearing.

(f) The state may prove its case on the physician's certificate of medical examination filed in support of the initial motion.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 101, Sec. 1, eff. May 16, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 4, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1375, eff. April 2, 2015.

Sec. 574.026. ORDER FOR CONTINUED DETENTION. (a) The magistrate or associate judge shall order that a proposed patient remain in protective custody if the magistrate or associate judge determines after the hearing that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others to the extent that he cannot remain at liberty pending the hearing on court-ordered mental health services.

(b) The magistrate or associate judge shall arrange for the

proposed patient to be returned to the mental health facility or other suitable place, along with copies of the certificate of medical examination, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 20__, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that the proposed patient presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney _____ have been given written notice that the
(attorney)

proposed patient was placed under an order of protective custody and the reasons for such order on _____.
(date of notice)

I have examined the certificate of medical examination for mental illness and _____. Based on
(other evidence considered)

this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to the proposed patient (yes ___ or no ___) or others (yes ___ or no ___) such that the proposed patient cannot be at liberty pending final hearing because

_____

_____.

(reasons for finding; type of risk found)

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 5, eff.

September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1376, eff. April 2, 2015.

Sec. 574.027. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order shall be detained in a mental health facility deemed suitable by the local mental health authority for the area. On request of the local mental health authority, the judge may order that the proposed patient be detained in an inpatient mental health facility operated by the department.

(b) The facility administrator or the administrator's designee shall detain a person under a protective custody order in the facility until a final order for court-ordered mental health services is entered or the person is released or discharged under Section 574.028.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime except because of and during an extreme emergency and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The county health authority shall ensure that proper care and medical attention are made available to a person who is detained in a nonmedical facility under Subsection (c).

(e) Repealed by Acts 2001, 77th Leg., ch. 367, Sec. 19, eff. Sept. 1, 2001.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 367, Sec. 10, 19, eff. Sept. 1, 2001.

Sec. 574.028. RELEASE FROM DETENTION. (a) The magistrate or associate judge shall order the release of a person under a protective custody order if the magistrate or associate judge determines after the hearing under Section 574.025 that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

(1) the location of the person's apprehension;

(2) the person's residence in this state; or

(3) another suitable location.

(c) A facility administrator shall discharge a person held under a protective custody order if:

(1) the facility administrator does not receive notice that the person's continued detention is authorized after a probable cause hearing held within 72 hours after the detention began, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for extreme emergencies;

(2) a final order for court-ordered mental health services has not been entered within the time prescribed by Section 574.005; or

(3) the facility administrator or the administrator's designee determines that the person no longer meets the criteria for protective custody prescribed by Section 574.022.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 6, eff. September 1, 2009.

SUBCHAPTER C. PROCEEDINGS FOR COURT-ORDERED MENTAL HEALTH SERVICES

Sec. 574.031. GENERAL PROVISIONS RELATING TO HEARING. (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for court-ordered mental health services at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the proposed patient.

(b) On the request of the proposed patient or the proposed patient's attorney the hearing on the application shall be held in the county courthouse.

(c) The proposed patient is entitled to be present at the hearing. The proposed patient or the proposed patient's attorney may waive this right.

(d) The hearing must be open to the public unless the proposed patient or the proposed patient's attorney requests that the hearing

be closed and the judge determines that there is good cause to close the hearing.

(d-1) In a hearing for temporary inpatient or outpatient mental health services under Section 574.034 or 574.0345, the proposed patient or the proposed patient's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and, if that right is waived, the court may admit, as evidence, the certificates of medical examination for mental illness. The certificates admitted under this subsection constitute competent medical or psychiatric testimony, and the court may make its findings solely from the certificates. If the proposed patient or the proposed patient's attorney does not waive in writing the right to cross-examine witnesses, the court shall proceed to hear testimony. The testimony must include competent medical or psychiatric testimony.

(d-2) In a hearing for extended inpatient or outpatient mental health services under Section 574.035 or 574.0355, the court may not make its findings solely from the certificates of medical examination for mental illness but shall hear testimony. The court may not enter an order for extended mental health services unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical or psychiatric testimony.

(e) The Texas Rules of Evidence apply to the hearing unless the rules are inconsistent with this subtitle.

(f) The court may consider the testimony of a nonphysician mental health professional in addition to medical or psychiatric testimony.

(g) The hearing is on the record, and the state must prove each element of the applicable criteria by clear and convincing evidence.

(h) A judge who holds a hearing under this section in hospitals or locations other than the county courthouse is entitled to be reimbursed for the judge's reasonable and necessary expenses related to holding a hearing at that location. The judge shall furnish the presiding judge of the statutory probate courts or the presiding judge of the administrative region, as appropriate, an accounting of the expenses for certification. The presiding judge shall provide a certification of expenses approved to the county judge responsible for payment of costs under Section 571.018.

(i) A judge who holds hearings at locations other than the

county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court.

(j) Notwithstanding other law, a judge who holds a hearing under this section may assess for the judge's services a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

(k) Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed $50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018. For a mental health proceeding, the fee assessed under this subsection includes costs incurred for the preparation of documents related to the proceeding. The court may award as court costs fees for other costs of a mental health proceeding against the county responsible for the payment of the costs of the hearing under Section 571.018.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1354, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1252, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 10.006, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 9, eff. September 1, 2019.

Sec. 574.032. RIGHT TO JURY. (a) A hearing for temporary mental health services must be before the court unless the proposed patient or the proposed patient's attorney requests a jury.

(b) A hearing for extended mental health services must be before a jury unless the proposed patient or the proposed patient's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney unless the proposed patient or the attorney orally waives the right to a jury in the court's presence.

(d) The court may permit an oral or written waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made not later than the eighth day before the date on which the

hearing is scheduled.

(e) A court may not require a jury fee.

(f) In a hearing before a jury, the jury shall determine if the proposed patient is a person with mental illness and meets the criteria for court-ordered mental health services. The jury may not make a finding about the type of services to be provided to the proposed patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1377, eff. April 2, 2015.

Sec. 574.033. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered temporary or extended mental health services if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a person with mental illness and meets the applicable criteria for court-ordered mental health services.

(b) If the court denies the application, the court shall order the immediate release of a proposed patient who is not at liberty.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1378, eff. April 2, 2015.

Sec. 574.034. ORDER FOR TEMPORARY INPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered temporary inpatient mental health services only if the judge or jury finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness; and

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

(c) If the judge or jury finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the judge or jury must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) To be clear and convincing under Subsection (a), the evidence must include expert testimony and, unless waived, evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

(g) An order for temporary inpatient mental health services shall provide for a period of treatment not to exceed 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(h) A judge may not issue an order for temporary inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1170, Sec. 11, eff. September 1, 2013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.49, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 770, Sec. 7, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 744, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 11, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1379, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 11, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(1), eff. September 1, 2019.

Sec. 574.0345. ORDER FOR TEMPORARY OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered temporary outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(D) the proposed patient has an inability to participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed

patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment.

(b) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(c) An order for temporary outpatient mental health services shall state that treatment is authorized for not longer than 45 days, except that the order may specify a period not to exceed 90 days if the judge finds that the longer period is necessary.

(d) A judge may not issue an order for temporary outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Added by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 12, eff. September 1, 2019.

Sec. 574.035. ORDER FOR EXTENDED INPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended inpatient mental health services only if the jury, or the judge if the right to a jury is waived, finds, from clear and convincing evidence, that:

(1) the proposed patient is a person with mental illness;

(2) as a result of that mental illness the proposed patient:

(A) is likely to cause serious harm to the proposed patient;

(B) is likely to cause serious harm to others; or

(C) is:

(i) suffering severe and abnormal mental, emotional, or physical distress;

(ii) experiencing substantial mental or physical deterioration of the proposed patient's ability to function independently, which is exhibited by the proposed patient's inability, except for reasons of indigence, to provide for the proposed patient's basic needs, including food, clothing, health, or safety; and

(iii) unable to make a rational and informed decision as to whether or not to submit to treatment;

(3) the proposed patient's condition is expected to continue for more than 90 days; and

(4) the proposed patient has received court-ordered inpatient mental health services under this subtitle or under Chapter 46B, Code of Criminal Procedure, for at least 60 consecutive days during the preceding 12 months.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

(c) If the jury or judge finds that the proposed patient meets the commitment criteria prescribed by Subsection (a), the jury or judge must specify which criterion listed in Subsection (a)(2) forms the basis for the decision.

(d) The jury or judge is not required to make the finding under Subsection (a)(4) if the proposed patient has already been subject to an order for extended mental health services.

(e) To be clear and convincing under Subsection (a), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the likelihood of serious harm to the proposed patient or others; or

(2) the proposed patient's distress and the deterioration of the proposed patient's ability to function.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

(h) An order for extended inpatient mental health services must provide for a period of treatment not to exceed 12 months.

(i) A judge may not issue an order for extended inpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1170, Sec. 11, eff. September 1, 2013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 8, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 312, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 744, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 238, Sec. 1, eff. May 28, 1999; Acts 2003, 78th Leg., ch. 35, Sec. 12, eff. Jan. 1, 2004.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 11, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1380, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 13, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 14, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 27(2), eff. September 1, 2019.

Sec. 574.0355. ORDER FOR EXTENDED OUTPATIENT MENTAL HEALTH SERVICES. (a) The judge may order a proposed patient to receive court-ordered extended outpatient mental health services only if:

(1) the judge finds that appropriate mental health services are available to the proposed patient; and

(2) the judge or jury finds, from clear and convincing evidence, that:

(A) the proposed patient is a person with severe and persistent mental illness;

(B) as a result of the mental illness, the proposed patient will, if not treated, experience deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community without court-ordered outpatient mental health services;

(C) outpatient mental health services are needed to prevent a relapse that would likely result in serious harm to the proposed patient or others;

(D) the proposed patient has an inability to

participate in outpatient treatment services effectively and voluntarily, demonstrated by:

(i) any of the proposed patient's actions occurring within the two-year period that immediately precedes the hearing; or

(ii) specific characteristics of the proposed patient's clinical condition that significantly impair the proposed patient's ability to make a rational and informed decision whether to submit to voluntary outpatient treatment;

(E) the proposed patient's condition is expected to continue for more than 90 days; and

(F) the proposed patient has received:

(i) court-ordered inpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, for a total of at least 60 days during the preceding 12 months; or

(ii) court-ordered outpatient mental health services under this subtitle or under Subchapter D or E, Chapter 46B, Code of Criminal Procedure, during the preceding 60 days.

(b) The jury or judge is not required to make the finding under Subsection (a)(2)(F) if the proposed patient has already been subject to an order for extended mental health services.

(c) To be clear and convincing under Subsection (a)(2), the evidence must include expert testimony and evidence of a recent overt act or a continuing pattern of behavior that tends to confirm:

(1) the deterioration of the ability to function independently to the extent that the proposed patient will be unable to live safely in the community;

(2) the need for outpatient mental health services to prevent a relapse that would likely result in serious harm to the proposed patient or others; and

(3) the proposed patient's inability to participate in outpatient treatment services effectively and voluntarily.

(d) An order for extended outpatient mental health services must provide for a period of treatment not to exceed 12 months.

(e) A judge may not issue an order for extended outpatient mental health services for a proposed patient who is charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

Added by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 15, eff.

September 1, 2019.

Sec. 574.036. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be a person with mental illness and to meet the criteria for court-ordered temporary or extended mental health services.

(b) The judge may hear additional evidence relating to alternative settings for care before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the most appropriate treatment alternative filed under Section 574.012.

(d) The judge shall order the mental health services provided in the least restrictive appropriate setting available.

(e) The judge may enter an order:

(1) committing the person to a mental health facility for inpatient care if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.034(a) or 574.035(a); or

(2) committing the person to outpatient mental health services if the trier of fact finds that the person meets the commitment criteria prescribed by Section 574.0345(a) or 574.0355(a).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 744, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1381, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 16, eff. September 1, 2019.

Sec. 574.037. COURT-ORDERED OUTPATIENT SERVICES. (a) The court, in an order that directs a patient to participate in outpatient mental health services, shall designate the person identified under Section 574.0125 as responsible for those services or may designate a different person if necessary. The person designated must be the facility administrator or an individual involved in providing court-ordered outpatient services. A person

may not be designated as responsible for the ordered services without the person's consent unless the person is the facility administrator of a department facility or the facility administrator of a community center that provides mental health services:

(1) in the region in which the committing court is located; or

(2) in a county where a patient has previously received mental health services.

(b) The person responsible for the services shall submit to the court a general program of the treatment to be provided as required by this subsection and Subsection (b-2). The program must be incorporated into the court order. The program must include:

(1) services to provide care coordination; and

(2) any other treatment or services, including medication and supported housing, that are available and considered clinically necessary by a treating physician or the person responsible for the services to assist the patient in functioning safely in the community.

(b-1) If the patient is receiving inpatient mental health services at the time the program is being prepared, the person responsible for the services under this section shall seek input from the patient's inpatient treatment providers in preparing the program.

(b-2) The person responsible for the services shall submit the program to the court before the hearing under Section 574.0345 or 574.0355 or before the court modifies an order under Section 574.061, as appropriate.

(c) The person responsible for the services shall inform the court of:

(1) the patient's failure to comply with the court order; and

(2) any substantial change in the general program of treatment that occurs before the order expires.

(c-1) A patient subject to court-ordered outpatient services may petition the court for specific enforcement of the court order.

(c-2) A court may set a status conference in accordance with Section 574.0665.

(c-3) The court shall order the patient to participate in the program but may not compel performance. If a court receives information under Subsection (c)(1) that a patient is not complying with the court's order, the court may:

(1) set a modification hearing under Section 574.062; and

(2) issue an order for temporary detention if an application is filed under Section 574.063.

(c-4) The failure of a patient to comply with the program incorporated into a court order is not grounds for punishment for contempt of court under Section 21.002, Government Code.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated mental health facility has sufficient resources to perform the necessary services.

(e) A patient may not be detained in a private mental health facility without the consent of the facility administrator.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 17, eff. September 1, 2019.

SUBCHAPTER D. DESIGNATION OF FACILITY AND TRANSPORTATION OF PATIENT

Sec. 574.041. DESIGNATION OF FACILITY. (a) In an order for temporary or extended mental health services specifying inpatient care, the court shall commit the patient to a designated inpatient mental health facility. The court shall commit the patient to:

(1) a mental health facility deemed suitable by the local mental health authority for the area;

(2) a private mental hospital under Section 574.042;

(3) a hospital operated by a federal agency under Section 574.043; or

(4) an inpatient mental health facility of the Texas Department of Criminal Justice under Section 574.044.

(b) On request of the local mental health authority, the judge may commit the patient directly to an inpatient mental health facility operated by the department.

(c) A court may not commit a patient to an inpatient mental health facility operated by a community center or other entity designated by the department to provide mental health services unless the facility is licensed under Chapter 577 and the court notifies the local mental health authority serving the region in which the

commitment is made.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 543, Sec. 3, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 11, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.108, eff. September 1, 2009.

Sec. 574.0415. INFORMATION ON MEDICATIONS. (a) A mental health facility shall provide to a patient in the patient's primary language, if possible, and in accordance with department rules information relating to prescription medication ordered by the patient's treating physician.

(b) The facility shall also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.05, eff. May 1, 1994.
Amended by Acts 1997, 75th Leg., ch. 337, Sec. 3, eff. May 27, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1382, eff. April 2, 2015.

Sec. 574.042. COMMITMENT TO PRIVATE FACILITY. The court may order a patient committed to a private mental hospital at no expense to the state if the court receives:

(1) an application signed by the patient or the patient's guardian or next friend requesting that the patient be placed in a designated private mental hospital at the patient's or applicant's expense; and

(2) written agreement from the hospital administrator of the private mental hospital to admit the patient and to accept responsibility for the patient in accordance with this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.043. COMMITMENT TO FEDERAL FACILITY. (a) A court may

order a patient committed to a federal agency that operates a mental hospital if the court receives written notice from the agency that facilities are available and that the patient is eligible for care or treatment in a facility. The court may place the patient in the agency's custody for transportation to the mental hospital.

(b) A patient admitted under court order to a hospital operated by a federal agency, regardless of location, is subject to the agency's rules.

(c) The hospital administrator has the same authority and responsibility with respect to the patient as the facility administrator of an inpatient mental health facility operated by the department.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the patient's mental condition and the necessity of the patient's continued hospitalization.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 12, eff. Sept. 1, 2001.

Sec. 574.044. COMMITMENT TO FACILITY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. The court shall commit an inmate patient to an inpatient mental health facility of the Texas Department of Criminal Justice if the court enters an order requiring temporary mental health services for the inmate patient under an application filed by a psychiatrist under Section 501.057, Government Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.50, eff. Aug. 30, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.109, eff. September 1, 2009.

Sec. 574.045. TRANSPORTATION OF PATIENT. (a) The court may authorize, in the following order of priority, the transportation of a committed patient or a patient detained under Section 573.022 or 574.023 to the designated mental health facility by:

(1) a special officer for mental health assignment

certified under Section 1701.404, Occupations Code;

(2) the facility administrator of the designated mental health facility, unless the administrator notifies the court that facility personnel are not available to transport the patient;

(3) a representative of the local mental health authority, who shall be reimbursed by the county, unless the representative notifies the court that local mental health authority personnel are not qualified to ensure the safety of the patient during transport;

(4) a qualified transportation service provider selected from the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court authorizing the transportation is located;

(5) the sheriff or constable; or

(6) a relative or other responsible person who has a proper interest in the patient's welfare and who receives no remuneration, except for actual and necessary expenses.

(a-1) A person who under Subsection (a)(1), (2), or (5) is authorized by the court to transport a person to a mental health facility may contract with a qualified transportation service provider that is included on the list established and maintained as required by Section 574.0455 by the commissioners court of the county in which the court is located to provide the transportation authorized by the court.

(b) The court shall require appropriate medical personnel to accompany the person transporting the patient if there is reasonable cause to believe that the patient will require medical assistance or the administration of medication during the transportation. The payment of an expense incurred under this subsection is governed by Section 571.018.

(c) The patient's friends and relatives may accompany the patient at their own expense.

(d) A female patient must be accompanied by a female attendant unless the patient is accompanied by her father, husband, or adult brother or son.

(e) The patient may not be transported in a marked police or sheriff's car or accompanied by a uniformed officer unless other means are not available.

(f) The patient may not be transported with a state prisoner.

(g) The patient may not be physically restrained unless necessary to protect the health and safety of the patient or of a

person traveling with the patient. If the treating physician or the person transporting a patient determines that physical restraint of the patient is necessary, that person shall document the reasons for that determination and the duration for which the restraints are needed. The person transporting the patient shall deliver the document to the facility at the time the patient is delivered. The facility shall include the document in the patient's clinical record.

(h) The patient must be transported directly to the facility within a reasonable amount of time and without undue delay.

(i) All vehicles used to transport patients under this section must be adequately heated in cold weather and adequately ventilated in warm weather.

(j) Special diets or other medical precautions recommended by the patient's physician must be followed.

(k) The person transporting the patient shall give the patient reasonable opportunities to get food and water and to use a bathroom.

(l) A patient restrained under Subsection (g) may be restrained only during the apprehension, detention, or transportation of the patient. The method of restraint must permit the patient to sit in an upright position without undue difficulty unless the patient is being transported by ambulance.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.20, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 60, Sec. 20, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1512, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.804, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1122 (H.B. 167), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 889 (H.B. 978), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 674 (S.B. 1129), Sec. 1, eff. June 17, 2015.

Sec. 574.0455. LIST OF QUALIFIED TRANSPORTATION SERVICE PROVIDERS. (a) The commissioners court of a county may:

(1) establish and maintain a list of qualified transportation service providers that a court may authorize or with

whom a person may contract to transport a person to a mental health facility in accordance with Section 574.045;

(2) establish an application procedure for a person to be included on the list, including an appropriate application fee to be deposited in the county general fund;

(3) contract with qualified transportation service providers on terms acceptable to the county;

(4) allow officers and employees of the county to utilize persons on the list on a rotating basis if the officer or employee is authorized to provide transportation under Section 574.045 and chooses to utilize a qualified transportation service provider in accordance with the terms of the contract approved by the commissioners court; and

(5) ensure that the list is made available to any person authorized to provide transportation under Section 574.045.

(b) The executive commissioner shall prescribe uniform standards:

(1) that a person must meet to be listed as a qualified transportation service provider under Subsection (a); and

(2) prescribing requirements relating to how the transportation of a person to a mental health facility by a qualified transportation service provider is provided.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1122 (H.B. 167), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1383, eff. April 2, 2015.

Sec. 574.0456. TRANSPORTATION OF PATIENT TO ANOTHER STATE. A person may not transport a patient to a mental health facility in another state for court-ordered inpatient mental health services under this chapter unless transportation to that facility is authorized by a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 889 (H.B. 978), Sec. 2, eff. September 1, 2013.

Sec. 574.046. WRIT OF COMMITMENT. The court shall direct the

court clerk to issue to the person authorized to transport the patient two writs of commitment requiring the person to take custody of and transport the patient to the designated mental health facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.047. TRANSCRIPT. (a) The court clerk shall prepare a certified transcript of the proceedings in the hearing on court-ordered mental health services.

(b) The clerk shall send the transcript and any available information relating to the medical, social, and economic status and history of the patient and the patient's family to the designated mental health facility with the patient. The person authorized to transport the patient shall deliver the transcript and information to the facility personnel in charge of admissions.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.048. ACKNOWLEDGMENT OF PATIENT DELIVERY. The facility administrator, after receiving a copy of the writ of commitment and after admitting the patient, shall:

(1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and

(2) file a copy of the statement with the clerk of the committing court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER E. POST-COMMITMENT PROCEEDINGS

Sec. 574.061. MODIFICATION OF ORDER FOR INPATIENT TREATMENT. (a) The facility administrator of a facility to which a patient is committed for inpatient mental health services, not later than the 30th day after the date the patient is committed to the facility, shall assess the appropriateness of transferring the patient to outpatient mental health services. The facility administrator may recommend that the court that entered the commitment order modify the

order to require the patient to participate in outpatient mental health services.

(b) A facility administrator's recommendation under Subsection (a) must explain in detail the reason for the recommendation. The recommendation must be accompanied by a supporting certificate of medical examination for mental illness signed by a physician who examined the patient during the seven days preceding the recommendation.

(c) The patient shall be given notice of a facility administrator's recommendation under Subsection (a).

(d) On request of the patient or any other interested person, the court shall hold a hearing on a facility administrator's recommendation that the court modify the commitment order. The court shall appoint an attorney to represent the patient at the hearing and shall consult with the local mental health authority before issuing a decision. The hearing shall be held before the court without a jury and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make a decision regarding a facility administrator's recommendation based on:

(1) the recommendation;

(2) the supporting certificate; and

(3) consultation with the local mental health authority concerning available resources to treat the patient.

(f) If the court modifies the order, the court shall designate a person to be responsible for the outpatient services as prescribed by Section 574.037.

(g) The person responsible for the services must comply with Section 574.037(b).

(h) A modified order may extend beyond the term of the original order, but may not exceed the term of the original order by more than 60 days.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 3, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 18, eff. September 1, 2019.

Sec. 574.062. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient mental health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the person responsible for the treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is scheduled. The patient shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 574.006 for notice before a hearing on court-ordered mental health services.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 574.031. The patient shall be represented by an attorney and receive proper notice.

(d) The court shall set a date for a hearing on the motion to be held not later than the seventh day after the date the motion is filed. The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. Except as provided by Subsection (e), the court shall hold the hearing not later than the 14th day after the date the motion is filed.

(e) If extremely hazardous weather conditions exist or a disaster occurs that threatens the safety of the proposed patient or other essential parties to the hearing, the court, by written order made each day, may postpone the hearing for not more than 24 hours. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 191, Sec. 1, eff. Sept. 1, 1997.

Sec. 574.063. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient treatment or the facility administrator of the outpatient facility in which a patient receives treatment may file a sworn application for the patient's

temporary detention pending the modification hearing under Section 574.062.

(b) The application must state the applicant's opinion and detail the reasons for the applicant's opinion that:

(1) the patient meets the criteria described by Section 574.064(a-1); and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if a modification hearing is set and the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the temporary detention order is signed, the judge shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the patient and the patient's attorney a written notice that states:

(1) that the patient has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 4, eff. September 1, 2013.

Sec. 574.064. APPREHENSION AND RELEASE UNDER TEMPORARY DETENTION ORDER. (a) A temporary detention order shall direct a peace officer or other designated person to take the patient into custody and transport the patient immediately to:

(1) the nearest appropriate inpatient mental health facility; or

(2) a mental health facility deemed suitable by the local mental health authority for the area, if an appropriate inpatient mental health facility is not available.

(a-1) A physician shall evaluate the patient as soon as

possible within 24 hours after the time detention begins to determine whether the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others so that the patient cannot be at liberty pending the probable cause hearing under Subsection (b). The determination that the patient presents a substantial risk of serious harm to the patient or others may be demonstrated by:

(1) the patient's behavior; or

(2) evidence of severe emotional distress and deterioration in the patient's mental condition to the extent that the patient cannot live safely in the community.

(a-2) If the physician who conducted the evaluation determines that the patient does not present a substantial risk of serious harm to the patient or others, the facility shall:

(1) notify:

(A) the person designated under Section 574.037 as responsible for providing outpatient mental health services or the facility administrator of the outpatient facility treating the patient; and

(B) the court that entered the order directing the patient to receive court-ordered outpatient mental health services; and

(2) release the patient.

(b) A patient who is not released under Subsection (a-2) may be detained under a temporary detention order for more than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 574.025(b) for an extreme emergency only if, after a hearing held before the expiration of that period, the court, a magistrate, or a designated associate judge finds that there is probable cause to believe that:

(1) the patient, due to mental illness, presents a substantial risk of serious harm to the patient or others, using the criteria prescribed by Subsection (a-1), to the extent that the patient cannot be at liberty pending the final hearing under Section 574.062; and

(2) detention in an inpatient mental health facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) If probable cause is found under Subsection (b), the patient may be detained under the temporary detention until the

hearing set under Section 574.062 is completed.

(d) A facility administrator shall immediately release a patient held under a temporary detention order if the facility administrator does not receive notice that the patient's continued detention is authorized:

(1) after a probable cause hearing held within 72 hours after the patient's detention begins; or

(2) after a modification hearing held within the period prescribed by Section 574.062.

(e) A patient released from an inpatient mental health facility under Subsection (a-2) or (d) continues to be subject to the order for court-ordered outpatient services, if the order has not expired.

(f) A person detained under this section may not be detained in a nonmedical facility used to detain persons charged with or convicted of a crime.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 191, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 367, Sec. 13, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 7, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 5, eff. September 1, 2013.

Sec. 574.065. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES. (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the patient meets the applicable criteria for court-ordered inpatient mental health services prescribed by Section 574.034(a) or 574.035(a).

(b) The court may refuse to modify the order and may direct the patient to continue to participate in outpatient mental health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be supported by at least one certificate of medical examination for mental illness signed by a physician who examined the patient not earlier than the seventh day before the date on which the hearing is held.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient mental health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for commitment to an inpatient mental health facility.

(e) A court may not extend the provision of mental health services beyond the period prescribed in the original order.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 744, Sec. 8, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 6, eff. September 1, 2013.

Sec. 574.066. RENEWAL OF ORDER FOR EXTENDED MENTAL HEALTH SERVICES. (a) A county or district attorney or other adult may file an application to renew an order for extended mental health services.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the patient to extended inpatient mental health services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by two certificates of medical examination for mental illness signed by physicians who examined the patient during the 30 days preceding the date on which the application is filed.

(d) The court shall appoint an attorney to represent the patient when an application is filed.

(e) The patient, the patient's attorney, or other individual may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for court-ordered extended mental health services.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended mental health services prescribed by Sections 574.035(a)(1), (2), and (3). The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) If a hearing is not requested or set, the court may admit into evidence the certificates of medical examination for mental illness. The certificates constitute competent medical or psychiatric testimony and the court may make its findings solely from the certificates and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient mental health services, may modify the order to provide for outpatient mental health services in accordance with Section 574.037.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.0665. STATUS CONFERENCE. A court on its own motion may set a status conference with the patient, the patient's attorney, and the person designated to be responsible for the patient's court-ordered outpatient services under Section 574.037.

Added by Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 19, eff. September 1, 2019.

Sec. 574.067. MOTION FOR REHEARING. (a) The court may set aside an order requiring court-ordered mental health services and grant a motion for rehearing for good cause shown.

(b) Pending the hearing, the court may:

(1) stay the court-ordered mental health services and release the proposed patient from custody before the hearing if the court is satisfied that the proposed patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.068. REQUEST FOR REEXAMINATION. (a) A patient receiving court-ordered extended mental health services, or any interested person on the patient's behalf and with the patient's consent, may file a request with a court for a reexamination and a hearing to determine if the patient continues to meet the criteria for the services.

(b) The request must be filed in the county in which the patient is receiving the services.

(c) The court may, for good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the facility administrator of the facility providing mental health services to the patient.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended mental health services is entered or after a similar request is filed.

(e) After receiving the court's notice, the facility administrator shall arrange for the patient to be reexamined.

(f) The facility administrator or the administrator's qualified authorized designee shall immediately discharge the patient if the facility administrator or designee determines that the patient no longer meets the criteria for court-ordered extended mental health services.

(g) If the facility administrator or the administrator's designee determines that the patient continues to meet the criteria for court-ordered extended mental health services, the facility administrator or designee shall file a certificate of medical examination for mental illness with the court within 10 days after the date on which the request for reexamination and hearing is filed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.069. HEARING ON REQUEST FOR REEXAMINATION. (a) A court that required a patient's reexamination under Section 574.068 may set a date and place for a hearing on the request if, not later than the 10th day after the date on which the request is filed:

(1) a certificate of medical examination for mental illness stating that the patient continues to meet the criteria for court-ordered extended mental health services has been filed; or

(2) a certificate has not been filed and the patient has not been discharged.

(b) At the time the hearing is set, the judge shall:

(1) appoint an attorney to represent a patient who does not have an attorney; and

(2) give notice of the hearing to the patient, the patient's attorney, and the facility administrator.

(c) The judge shall appoint a physician to examine the patient and file a certificate of medical examination for mental illness with the court. The judge shall appoint a physician who is not on the staff of the mental health facility in which the patient is receiving services and who is a psychiatrist if a psychiatrist is available in the county. The court shall ensure that the patient may be examined by a physician of the patient's choice and at the patient's own expense if requested by the patient.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for court-ordered mental health services.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the patient continues to meet the criteria for court-ordered extended mental health services prescribed by Section 574.035 or 574.0355.

(f) The judge shall order the facility administrator to discharge the patient if the court fails to find from clear and convincing evidence that the patient continues to meet the criteria.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 20, eff. September 1, 2019.

Sec. 574.070. APPEAL. (a) An appeal from an order requiring court-ordered mental health services, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may:

(1) stay the order and release the patient from custody before the appeal if the judge is satisfied that the patient does not meet the criteria for protective custody under Section 574.022; and

(2) if the proposed patient is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER F. FURLOUGH, DISCHARGE, AND TERMINATION OF COURT-ORDERED MENTAL HEALTH SERVICES

Sec. 574.081. CONTINUING CARE PLAN BEFORE FURLOUGH OR DISCHARGE. (a) The physician responsible for the patient's treatment shall prepare a continuing care plan for a patient who is scheduled to be furloughed or discharged unless the patient does not require continuing care.

(a-1) Subject to available resources, Subsections (a), (b), (c), (c-1), and (c-2) apply to a patient scheduled to be furloughed or discharged from:

(1) a state hospital; or

(2) any psychiatric inpatient bed funded under a contract with the Health and Human Services Commission or operated by or funded under a contract with a local mental health authority or a behavioral mental health authority.

(b) The physician shall prepare the plan as prescribed by Health and Human Services Commission rules and shall consult the patient and the local mental health authority in the area in which the patient will reside before preparing the plan. The local mental health authority shall be informed of and must participate in planning the discharge of a patient.

(c) The plan must address the patient's mental health and physical needs, including, if appropriate:

(1) the need for outpatient mental health services following furlough or discharge; and

(2) the need for sufficient psychoactive medication on furlough or discharge to last until the patient can see a physician.

(c-1) Except as otherwise specified in the plan and subject to available funding provided to the Health and Human Services Commission and paid to a private mental health facility for this

purpose, a private mental health facility is responsible for providing or paying for psychoactive medication and any other medication prescribed to the patient to counteract adverse side effects of psychoactive medication on furlough or discharge sufficient to last until the patient can see a physician.

(c-2) The Health and Human Services Commission shall adopt rules to determine the quantity and manner of providing psychoactive medication, as required by this section. The executive commissioner may not adopt rules requiring a mental health facility to provide or pay for psychoactive medication for more than seven days after furlough or discharge.

(d) The physician shall deliver the plan and other appropriate information to the community center or other provider that will deliver the services if:

(1) the services are provided by:

(A) a community center or other provider that serves the county in which the patient will reside and that has been designated by the commissioner to perform continuing care services; or

(B) any other provider that agrees to accept the referral; and

(2) the provision of care by the center or provider is appropriate.

(e) The facility administrator or the administrator's designee shall have the right of access to discharged patients and records of patients who request continuing care services.

(f) A patient who is to be discharged may refuse the continuing care services.

(g) A physician who believes that a patient does not require continuing care and who does not prepare a continuing care plan under this section shall document in the patient's treatment record the reasons for that belief.

(h) Subsection (c) does not create a mandate that a facility described by Section 571.003(9)(B) or (E) provide or pay for a medication for a patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 12, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.04, 4.05, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(33), eff. Sept. 1,

1995; Acts 2001, 77th Leg., ch. 367, Sec. 14, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1066, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 21, eff. September 1, 2019.

Sec. 574.082. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for temporary or extended inpatient mental health services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.

(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.083. RETURN TO FACILITY UNDER CERTIFICATE OF FACILITY ADMINISTRATOR OR COURT ORDER. (a) The facility administrator of a facility to which a patient was admitted for court-ordered inpatient health care services may authorize a peace officer of the municipality or county in which the facility is located to take an absent patient into custody, detain the patient, and return the patient to the facility by issuing a certificate as prescribed by Subsection (c) to a law enforcement agency of the municipality or county.

(b) If there is reason to believe that an absent patient may be outside the municipality or county in which the facility is located, the facility administrator may file an affidavit as prescribed by Subsection (c) with a magistrate requesting the magistrate to issue an order for the patient's return. The magistrate with whom the affidavit is filed may issue an order directing a peace or health officer to take an absent patient into custody and return the patient to the facility. An order issued under this subsection extends to any part of this state and authorizes any peace officer to whom the

order is directed or transferred to execute the order, take the patient into custody, detain the patient, and return the patient to the facility.

(c) The certificate issued or affidavit filed under Subsection (a) or (b) must set out facts establishing that the patient is receiving court-ordered inpatient mental health services at the facility and show that the facility administrator reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(d) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by a certificate issued or court order issued under this section.

(e) A peace or health officer may take the patient into custody without having the certificate or court order in the officer's possession.

(f) A peace or health officer who cannot immediately return a patient to the facility named in the order may transport the patient to a local facility for detention. The patient may not be detained in a nonmedical facility that is used to detain persons who are charged with or convicted of a crime unless detention in the facility is warranted by an extreme emergency. If the patient is detained at a nonmedical facility:

(1) the patient:

(A) may not be detained in the facility for more than 24 hours; and

(B) must be isolated from all persons charged with or convicted of a crime; and

(2) the facility must notify the county health authority of the detention.

(g) The local mental health authority shall ensure that a patient detained in a nonmedical facility under Subsection (f) receives proper care and medical attention.

(h) Notwithstanding other law regarding confidentiality of

patient information, the facility administrator may release to a law enforcement official information about the patient if the administrator determines the information is needed to facilitate the return of the patient to the facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 1016, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1187, Sec. 19, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 367, Sec. 15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 2001.

Sec. 574.084. REVOCATION OF FURLOUGH. (a) A furlough may be revoked only after an administrative hearing held in accordance with department rules. The hearing must be held within 72 hours after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The hearing officer may be a mental health professional if the person is not directly involved in treating the patient.

(c) The hearing is informal and the patient is entitled to present information and argument.

(d) The hearing officer may revoke the furlough if the officer determines that the revocation is justified under Section 574.083(c).

(e) A hearing officer who revokes a furlough shall place in the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility under the furlough if the hearing officer determines that the furlough should not be revoked.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.085. DISCHARGE ON EXPIRATION OF COURT ORDER. The facility administrator of a facility to which a patient was committed or from which a patient was required to receive temporary or extended inpatient or outpatient mental health services shall discharge the patient when the court order expires.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.086. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The facility administrator of a facility to which a patient was committed for inpatient mental health services or the person responsible for providing outpatient mental health services may discharge the patient at any time before the court order expires if the facility administrator or person determines that the patient no longer meets the criteria for court-ordered mental health services.

(b) The facility administrator of a facility to which the patient was committed for inpatient mental health services shall consider before discharging the patient whether the patient should receive outpatient court-ordered mental health services in accordance with:

(1) a furlough under Section 574.082; or

(2) a modified order under Section 574.061 that directs the patient to participate in outpatient mental health services.

(c) A discharge under Subsection (a) terminates the court order, and the person discharged may not be required to submit to involuntary mental health services unless a new court order is entered in accordance with this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.087. CERTIFICATE OF DISCHARGE. The facility administrator or the person responsible for outpatient care who discharges a patient under Section 574.085 or 574.086 shall prepare a discharge certificate and file it with the court that entered the order requiring mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 574.088. RELIEF FROM DISABILITIES IN MENTAL HEALTH CASES. (a) A person who is furloughed or discharged from court-ordered mental health services may petition the court that entered the commitment order for an order stating that the person qualifies for relief from a firearms disability.

(b) In determining whether to grant relief, the court must hear

and consider evidence about:

(1) the circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);

(2) the person's mental history;

(3) the person's criminal history; and

(4) the person's reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(1) the person is no longer likely to act in a manner dangerous to public safety; and

(2) removing the person's disability to purchase a firearm is in the public interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 950 (H.B. 3352), Sec. 2, eff. September 1, 2009.

Sec. 574.089. TRANSPORTATION PLAN FOR FURLOUGH OR DISCHARGE. (a) The facility administrator of a mental health facility, in conjunction with the local mental health authority, shall create a transportation plan for a person scheduled to be furloughed or discharged from the facility.

(b) The transportation plan must account for the capacity of the person, must be in writing, and must specify:

(1) who is responsible for transporting the person;

(2) when the person will be transported; and

(3) where the person will arrive.

(c) If the person consents, the facility administrator shall forward the transportation plan to a family member of the person before the person is transported.

Added by Acts 2009, 81st Leg., R.S., Ch. 1020 (H.B. 4276), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT ORDER FOR MENTAL HEALTH SERVICES

Sec. 574.101. DEFINITIONS. In this subchapter:

(1) "Capacity" means a patient's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives

to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a patient to prevent:

(A) imminent probable death or substantial bodily harm to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the patient overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993.

Sec. 574.102. APPLICATION OF SUBCHAPTER. This subchapter applies to the application of medication to a patient subject to a court order for mental health services under this chapter or other law.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30,

1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 9, eff. June 16, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 1, eff. June 17, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 8, eff. September 1, 2013.

Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES. (a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless:

(1) the patient is having a medication-related emergency;

(2) the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal; or

(3) the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 2003, 78th Leg., ch. 692, Sec. 11, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1170 (S.B. 646), Sec. 9, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1384, eff. April 2, 2015.

Sec. 574.104. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a patient may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication

regardless of the patient's refusal if:

(1) the physician believes that the patient lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the patient;

(3) the patient is under an order for inpatient mental health services under this chapter or other law or an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed for the patient; and

(4) the patient, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

(1) that the physician believes that the patient lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the patient to take;

(3) whether an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 has been filed;

(4) whether a court order for inpatient mental health services for the patient has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the patient; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) The hearing on the application may be held on the date of a hearing on an application for court-ordered mental health services under Section 574.034, 574.0345, 574.035, or 574.0355 but shall be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same day as the application for court-ordered mental health services under those sections and the patient is transferred to a mental health facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the patient has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 322, Sec. 2, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 770, Sec. 10, eff. June 16, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 2, eff. June 17, 2005.
Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 22, eff. September 1, 2019.

Sec. 574.105. RIGHTS OF PATIENT. A patient for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled to:

(1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the patient's questions or concerns;

(3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) be told, at the time personal notice of the hearing is given, of the patient's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) oral notification, at the conclusion of the hearing, of the court's determinations of the patient's capacity and best interests.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 11, eff. June 16, 1995.

Sec. 574.106. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

(1) is under a court order to receive inpatient mental health services; or

(2) is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

(a-1) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the patient lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the patient; or

(2) if the patient was ordered to receive inpatient mental health services by a criminal court with jurisdiction over the patient, that treatment with the proposed medication is in the best interest of the patient and either:

(A) the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated as a result of a mental disorder or mental defect as determined under Section 574.1065; or

(B) the patient:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the patient or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 574.1065.

(b) In making the finding that treatment with the proposed medication is in the best interest of the patient, the court shall consider:

(1) the patient's expressed preferences regarding treatment with psychoactive medication;

(2) the patient's religious beliefs;

(3) the risks and benefits, from the perspective of the

patient, of taking psychoactive medication;

(4) the consequences to the patient if the psychoactive medication is not administered;

(5) the prognosis for the patient if the patient is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the patient's agreement to take the psychoactive medication.

(c) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (d).

(d) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required in this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(e) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court within three days after the report is issued. The hearing de novo shall be held within 30 days of the filing of the application for an order to authorize psychoactive medication.

(f) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed patient or the proposed patient's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(g) As soon as practicable after the conclusion of the hearing, the patient is entitled to have provided to the patient and the patient's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(h) An order entered under this section shall authorize the administration to a patient, regardless of the patient's refusal, of

one or more classes of psychoactive medications specified in the application and consistent with the patient's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(i) The classes of psychoactive medications in the order must conform to classes determined by the department.

(j) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(k) This section does not apply to a patient who receives services under an order of protective custody under Section 574.021.

(l) For a patient described by Subsection (a-1)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the patient in a correctional facility for competency restoration treatment.

(m) An order issued under this section authorizes the taking of a patient's blood sample to conduct reasonable and medically necessary evaluations and laboratory tests to safely administer a psychoactive medication authorized by the order.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 770, Sec. 12, eff. June 16, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 3, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 4, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 8, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 1, eff. June 19, 2009.

Acts 2023, 88th Leg., R.S., Ch. 982 (S.B. 2479), Sec. 4, eff. September 1, 2023.

Sec. 574.1065. FINDING THAT PATIENT PRESENTS A DANGER. In making a finding under Section 574.106(a-1)(2) that, as a result of a mental disorder or mental defect, the patient presents a danger to the patient or others in the inpatient mental health facility in which the patient is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the patient's present mental condition;

(2) whether the patient has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the patient's self or to another while in the facility; and

(3) whether the patient, in the six months preceding the date the patient was placed in the facility, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to another that resulted in the patient being placed in the facility.

Added by Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 5, eff. June 17, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 2, eff. June 19, 2009.

Sec. 574.107. COSTS. (a) The costs for a hearing under this subchapter shall be paid in accordance with Sections 571.017 and 571.018.

(b) The county in which the applicable criminal charges are pending or were adjudicated shall pay as provided by Subsection (a) the costs of a hearing that is held under Section 574.106 to evaluate the court-ordered administration of psychoactive medication to:

(1) a patient ordered to receive mental health services as described by Section 574.106(a)(1) after having been determined to be incompetent to stand trial or having been acquitted of an offense by reason of insanity; or

(2) a patient who:

(A) is awaiting trial after having been determined to be competent to stand trial; and

(B) was ordered to receive mental health services as described by Section 574.106(a)(2).

Added by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1307 (S.B. 867), Sec. 20, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 624 (H.B. 1233), Sec. 3, eff. June 19, 2009.

Sec. 574.108. APPEAL. (a) A patient may appeal an order under this subchapter in the manner provided by Section 574.070 for an appeal of an order requiring court-ordered mental health services.

(b) An order authorizing the administration of medication regardless of the refusal of the patient is effective pending an appeal of the order.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.107 by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Sec. 574.109. EFFECT OF ORDER. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 574.106.

(b) The issuance of an order under Section 574.106 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.108 by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.

Sec. 574.110. EXPIRATION OF ORDER. (a) Except as provided by Subsection (b), an order issued under Section 574.106 expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued.

(b) An order issued under Section 574.106 for a patient who is returned to a correctional facility, as defined by Section 1.07, Penal Code, to await trial in a criminal proceeding continues to be in effect until the earlier of the following dates, as applicable:

(1) the 180th day after the date the defendant was returned to the correctional facility;

(2) the date the defendant is acquitted, is convicted, or enters a plea of guilty; or

(3) the date on which charges in the case are dismissed.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.08, eff. Aug. 30, 1993. Renumbered from Health & Safety Code Sec. 574.109 and amended by Acts 1995, 74th Leg., ch. 770, Sec. 13, eff. June 16, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 6, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 718 (H.B. 748), Sec. 5, eff. September 1, 2011.

SUBCHAPTER H. VOLUNTARY ADMISSION FOR CERTAIN PERSONS FOR WHOM MOTION FOR COURT-ORDERED SERVICES HAS BEEN FILED

Sec. 574.151. APPLICABILITY. This subchapter applies only to a person for whom a motion for court-ordered mental health services is filed under Section 574.001, for whom a final order on that motion has not been entered under Section 574.034, 574.0345, 574.035, or 574.0355 and who requests voluntary admission to an inpatient mental health facility:

(1) while the person is receiving at that facility involuntary inpatient services under Subchapter B or under Chapter 573; or

(2) before the 31st day after the date the person was released from that facility under Section 573.023 or 574.028.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 23, eff. September 1, 2019.

Sec. 574.152. CAPACITY TO CONSENT TO VOLUNTARY ADMISSION. A

person described by Section 574.151 is rebuttably presumed to have the capacity to consent to admission to the inpatient mental health facility for voluntary inpatient mental health services.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

Sec. 574.153. RIGHTS OF PERSON ADMITTED TO VOLUNTARY INPATIENT TREATMENT. (a) A person described by Section 574.151 who is admitted to the inpatient mental health facility for voluntary inpatient mental health services has all of the rights provided by Chapter 576 for a person receiving voluntary or involuntary inpatient mental health services.

(b) A right assured by Section 576.021 may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

Sec. 574.154. PARTICIPATION IN RESEARCH PROGRAM. Notwithstanding any other law, a person described by Section 574.151 may not participate in a research program in the inpatient mental health facility unless:

(1) the patient provides written consent to participate in the research program under a protocol that has been approved by the facility's institutional review board; and

(2) the institutional review board specifically reviews the patient's consent under the approved protocol.

Added by Acts 2001, 77th Leg., ch. 1309, Sec. 1, eff. June 16, 2001.

SUBCHAPTER I. USE OF VIDEO TECHNOLOGY AT PROCEEDINGS

Sec. 574.201. APPLICATION OF SUBCHAPTER. This subchapter applies only to a hearing or proceeding related to court-ordered mental health services under this chapter.

Added by Acts 2003, 78th Leg., ch. 358, Sec. 3, eff. June 18, 2003.

Sec. 574.202. CERTAIN TESTIMONY BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED. (a) A judge or magistrate may permit a physician or a nonphysician mental health professional to testify at a hearing or proceeding by closed-circuit video teleconferencing if:

(1) closed-circuit video teleconferencing is available to the judge or magistrate for that purpose;

(2) the proposed patient and the attorney representing the proposed patient do not file with the court a written objection to the use of closed-circuit video teleconferencing;

(3) the closed-circuit video teleconferencing system provides for a simultaneous, compressed full-motion video and interactive communication of image and sound between all persons involved in the hearing; and

(4) on request of the proposed patient, the proposed patient and the proposed patient's attorney can communicate privately without being recorded or heard by the judge or magistrate or by the attorney representing the state.

(b) The judge or magistrate must provide written notice of the use of closed-circuit video teleconferencing to the proposed patient, the proposed patient's attorney, and the attorney representing the state not later than the third day before the date of the hearing.

(c) On motion of the proposed patient or of the attorney representing the state the court shall, or on the court's discretion the court may, terminate testimony by closed-circuit video teleconferencing under this section at any time during the testimony and require the physician or nonphysician mental health professional to testify in person.

(d) A recording of the testimony under Subsection (a) shall be made and preserved with the court's record of the hearing.

Added by Acts 2003, 78th Leg., ch. 358, Sec. 3, eff. June 18, 2003.

Sec. 574.203. USE OF SECURE ELECTRONIC COMMUNICATION METHOD IN CERTAIN PROCEEDINGS UNDER THIS CHAPTER. (a) A hearing may be conducted in accordance with this chapter but conducted by secure electronic means, including satellite transmission, closed-circuit television transmission, or any other method of two-way electronic communication that is secure, available to the parties, approved by the court, and capable of visually and audibly recording the

proceedings, if:

(1) written consent to the use of a secure electronic communication method for the hearing is filed with the court by:

(A) the proposed patient or the attorney representing the proposed patient; and

(B) the county or district attorney, as appropriate;

(2) the secure electronic communication method provides for a simultaneous, compressed full-motion video, and interactive communication of image and sound among the judge or associate judge, the county or district attorney, the attorney representing the proposed patient, and the proposed patient; and

(3) on request of the proposed patient or the attorney representing the proposed patient, the proposed patient and the attorney can communicate privately without being recorded or heard by the judge or associate judge or by the county or district attorney.

(b) On the motion of the patient or proposed patient, the attorney representing the patient or proposed patient, or the county or district attorney or on the court's own motion, the court may terminate an appearance made through a secure electronic communication method at any time during the appearance and require an appearance by the patient or proposed patient in open court.

(c) The court shall provide for a recording of the communication to be made and preserved until any appellate proceedings have been concluded. The patient or proposed patient may obtain a copy of the recording on payment of a reasonable amount to cover the costs of reproduction or, if the patient or proposed patient is indigent, the court shall provide a copy on the request of the patient or proposed patient without charging a cost for the copy.

Added by Acts 2007, 80th Leg., R.S., Ch. 1145 (S.B. 778), Sec. 3, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 9, eff. September 1, 2009.

CHAPTER 575. ADMISSION AND TRANSFER PROCEDURES FOR INPATIENT SERVICES

SUBCHAPTER A. ADMISSION PROCEDURES

Sec. 575.001. AUTHORIZATION FOR ADMISSION. (a) The facility administrator of an inpatient mental health facility may admit and

detain a patient under the procedures prescribed by this subtitle.

(b) The facility administrator of an inpatient mental health facility operated by a community center or other entity the department designates to provide mental health services may not admit or detain a patient under an order for temporary or extended court-ordered mental health services unless the facility is licensed under Chapter 577.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.002. ADMISSION OF VOLUNTARY PATIENT TO PRIVATE MENTAL HOSPITAL. This subtitle does not prohibit the voluntary admission of a patient to a private mental hospital in any lawful manner.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.003. ADMISSION OF PERSONS WITH CHEMICAL DEPENDENCY AND PERSONS CHARGED WITH CRIMINAL OFFENSE. This subtitle does not affect the admission to a state mental health facility of:

(1) a person with a chemical dependency admitted under Chapter 462; or

(2) a person charged with a criminal offense admitted under Subchapter D or E, Chapter 46B, Code of Criminal Procedure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 35, Sec. 13, eff. Jan. 1, 2004.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1385, eff. April 2, 2015.

SUBCHAPTER B. TRANSFER PROCEDURES

Sec. 575.011. TRANSFER TO DEPARTMENT MENTAL HEALTH FACILITY OR LOCAL MENTAL HEALTH AUTHORITY. (a) The department may transfer a patient, if the transfer is considered advisable, from an inpatient mental health facility operated by the department to:

(1) another inpatient mental health facility operated by the department; or

(2) a mental health facility deemed suitable by the local

mental health authority if the authority consents.

(b) A local mental health authority may transfer a patient from one authority facility to another if the transfer is considered advisable.

(c) A voluntary patient may not be transferred under Subsection (a) or (b) without the patient's consent.

(d) The facility administrator of an inpatient mental health facility may, for any reason, transfer an involuntary patient to a mental health facility deemed suitable by the local mental health authority for the area.

(e) The facility administrator shall notify the committing court and the local mental health authority before transferring a patient under Subsection (d).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 16, eff. Sept. 1, 2001.

Sec. 575.012. TRANSFER OF PERSON WITH AN INTELLECTUAL DISABILITY TO AN INPATIENT MENTAL HEALTH FACILITY OPERATED BY THE DEPARTMENT. (a) An inpatient mental health facility may not transfer a patient who is also a person with an intellectual disability to a department mental health facility unless, before initiating the transfer, the facility administrator of the inpatient mental health facility obtains from the commissioner a determination that space is available in a department facility unit that is specifically designed to serve such a person.

(b) The department shall maintain an appropriate number of hospital-level beds for persons with an intellectual disability who are committed for court-ordered mental health services to meet the needs of the local mental health authorities. The number of beds the department maintains must be determined according to the previous year's need.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 17, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1386, eff. April 2, 2015.

Sec. 575.013. TRANSFER OF PERSON WITH AN INTELLECTUAL DISABILITY TO STATE SUPPORTED LIVING CENTER. (a) The facility administrator of an inpatient mental health facility operated by the department may transfer an involuntary patient in the facility to a state supported living center for persons with an intellectual disability if:

(1) an examination of the patient indicates that the patient has symptoms of an intellectual disability to the extent that training, education, rehabilitation, care, treatment, and supervision in a state supported living center are in the patient's best interest;

(2) the director of the state supported living center to which the patient is to be transferred agrees to the transfer; and

(3) the facility administrator coordinates the transfer with the director of that state supported living center.

(b) A certificate containing the diagnosis and the facility administrator's recommendation of transfer to a specific state supported living center shall be furnished to the committing court.

(c) The patient may not be transferred before the judge of the committing court enters an order approving the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 367, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1387, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1388, eff. April 2, 2015.

Sec. 575.014. TRANSFER TO PRIVATE MENTAL HOSPITAL. The hospital administrator of a private mental hospital may transfer a patient to another private mental hospital, or the department may transfer a patient to a private mental hospital, at no expense to the state if:

(1) the patient or the patient's guardian or next friend signs an application requesting the transfer at the patient's or

applicant's expense;

(2) the hospital administrator of the private mental hospital to which the person is to be transferred agrees in writing to admit the patient and to accept responsibility for the patient as prescribed by this subtitle; and

(3) written notice of the transfer is sent to the committing court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.015. TRANSFER TO FEDERAL FACILITY. The department or the hospital administrator of a private mental hospital may transfer an involuntary patient to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in a facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 575.016. TRANSFER FROM FACILITY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE. (a) The Texas Department of Criminal Justice shall transfer a patient committed to an inpatient mental health facility under Section 574.044 to a noncorrectional mental health facility on the day the inmate is released on parole or mandatory supervision.

(b) A patient transferred to a department mental health facility shall be transferred as prescribed by Section 575.011 or 575.012 to the facility that serves the location to which the patient is released on parole or mandatory supervision.

(c) The mental health facility to which a patient is transferred under this section is solely responsible for the patient's treatment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.110, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.111, eff. September 1, 2009.

Sec. 575.017. TRANSFER OF RECORDS. The facility administrator of the transferring inpatient mental health facility shall send the patient's appropriate hospital records, or a copy of the records, to the hospital or facility administrator of the mental hospital or state supported living center to which the patient is transferred.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1389, eff. April 2, 2015.

CHAPTER 576. RIGHTS OF PATIENTS

SUBCHAPTER A. GENERAL RIGHTS

Sec. 576.001. RIGHTS UNDER CONSTITUTION AND LAW. (a) A person with mental illness in this state has the rights, benefits, responsibilities, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) Unless a specific law limits a right under a special procedure, a patient has:

(1) the right to register and vote at an election;

(2) the right to acquire, use, and dispose of property, including contractual rights;

(3) the right to sue and be sued;

(4) all rights relating to the grant, use, and revocation of a license, permit, privilege, or benefit under law;

(5) the right to religious freedom; and

(6) all rights relating to domestic relations.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.002. PRESUMPTION OF COMPETENCY. (a) The provision of court-ordered, emergency, or voluntary mental health services to a person is not a determination or adjudication of mental incompetency

and does not limit the person's rights as a citizen, or the person's property rights or legal capacity.

(b) There is a rebuttable presumption that a person is mentally competent unless a judicial finding to the contrary is made under the Estates Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 2, eff. June 16, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.047, eff. September 1, 2017.

Sec. 576.003. WRIT OF HABEAS CORPUS. A petition for a writ of habeas corpus must be filed in the court of appeals for the county in which the order is entered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 994 (H.B. 2096), Sec. 1, eff. June 17, 2011.

Sec. 576.004. EFFECT ON GUARDIANSHIP. This subtitle, or an action taken or a determination made under this subtitle, does not affect a guardianship established under law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.005. CONFIDENTIALITY OF RECORDS. Records of a mental health facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 1007, Sec. 1, eff. June 19, 1993; Acts 1997, 75th Leg., ch. 481, Sec. 1, eff. Sept. 1, 1997.

Sec. 576.0055. DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the administrator of a mental health facility shall release to the representative the name, date of birth, or date of death of a person who was a patient at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

Added by Acts 2003, 78th Leg., ch. 174, Sec. 1, eff. May 27, 2003.

Sec. 576.006. RIGHTS SUBJECT TO LIMITATION. (a) A patient in an inpatient mental health facility has the right to:

(1) receive visitors;

(2) communicate with a person outside the facility by telephone and by uncensored and sealed mail; and

(3) communicate by telephone and by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to the general rules of the facility. The physician ultimately responsible for the patient's treatment may also restrict a right only to the extent that the restriction is necessary to the patient's welfare or to protect another person but may not restrict the right to communicate with legal counsel, the department, the courts, or the state attorney general.

(c) If a restriction is imposed under this section, the physician ultimately responsible for the patient's treatment shall document the clinical reasons for the restriction and the duration of the restriction in the patient's clinical record. That physician shall inform the patient and, if appropriate, the patient's parent, managing conservator, or guardian of the clinical reasons for the

restriction and the duration of the restriction.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.06, eff. Aug. 30, 1993.

Sec. 576.007. NOTIFICATION OF RELEASE. (a) The department or facility shall make a reasonable effort to notify an adult patient's family before the patient is discharged or released from a facility providing voluntary or involuntary mental health services if the patient grants permission for the notification.

(b) The department shall notify each adult patient of the patient's right to have his family notified under this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.008. NOTIFICATION OF PROTECTION AND ADVOCACY SYSTEM. A patient shall be informed in writing, at the time of admission and discharge, of the existence, purpose, telephone number, and address of the protection and advocacy system established in this state under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Sec. 10801, et seq.).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.51, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 705, Sec. 4.06, eff. Aug. 30, 1993.

Sec. 576.009. NOTIFICATION OF RIGHTS. A patient receiving involuntary inpatient mental health services shall be informed of the rights provided by this subtitle:

(1) orally, in simple, nontechnical terms, and in writing that, if possible, is in the person's primary language; or

(2) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.07, eff. Aug. 30,

1993.

Sec. 576.010. NOTIFICATION OF TRUST EXEMPTION. (a) At the time a patient is admitted to an inpatient mental health facility for voluntary or involuntary inpatient mental health services, the facility shall provide to the patient, and the parent if the patient is a minor or the guardian of the person of the patient, written notice, in the person's primary language, that a trust that qualifies under Section 552.018 is not liable for the patient's support. In addition, the facility shall ensure that, within 24 hours after the patient is admitted to the facility, the notification is explained to the patient:

(1) orally, in simple, nontechnical terms in the patient's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a patient who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the patient's support.

(c) This section applies only to state-operated mental health facilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 481 (S.B. 584), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. RIGHTS RELATING TO TREATMENT

Sec. 576.021. GENERAL RIGHTS RELATING TO TREATMENT. (a) A patient receiving mental health services under this subtitle has the right to:

(1) appropriate treatment for the patient's mental illness in the least restrictive appropriate setting available;

(2) not receive unnecessary or excessive medication;

(3) refuse to participate in a research program;

(4) an individualized treatment plan and to participate in developing the plan; and

(5) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs.

(b) Participation in a research program does not affect a right

provided by this chapter.

(c) A right provided by this section may not be waived by the patient, the patient's attorney or guardian, or any other person acting on behalf of the patient.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1309, Sec. 3, eff. June 16, 2001.

Sec. 576.022. ADEQUACY OF TREATMENT. (a) The facility administrator of an inpatient mental health facility shall provide adequate medical and psychiatric care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The facility administrator of an inpatient mental health facility may give the patient accepted psychiatric treatment and therapy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.023. PERIODIC EXAMINATION. The facility administrator is responsible for the examination of each patient of the facility at least once every six months and more frequently as practicable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.024. USE OF PHYSICAL RESTRAINT. (a) A physical restraint may not be applied to a patient unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 576.025. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a)

A person may not administer a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless:

(1) the patient is having a medication-related emergency;

(2) the patient is younger than 16 years of age, or the patient is younger than 18 years of age and is a patient admitted for voluntary mental health services under Section 572.002(3)(B), and the patient's parent, managing conservator, or guardian consents to the administration on behalf of the patient;

(3) the refusing patient's representative authorized by law to consent on behalf of the patient has consented to the administration;

(4) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 574.106; or

(5) the administration of the medication regardless of the patient's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a patient or by a person authorized by law to consent on behalf of the patient is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provided the following information, in a standard format approved by the department, to the patient and, if applicable, to the patient's representative authorized by law to consent on behalf of the patient:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health and mental health consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the patient and, if appropriate, the patient's

representative authorized by law to consent on behalf of the patient is informed in writing that consent may be revoked; and

(4) the consent is evidenced in the patient's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the patient and, if appropriate, the patient's representative who provided the consent, to review the information and answer any questions.

(d) A patient's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the patient's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the patient's condition.

(f) If a physician issues an order to administer psychoactive medication to a patient without the patient's consent because the patient is having a medication-related emergency:

(1) the physician shall document in the patient's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the patient with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the patient's personal liberty.

(g) In this section, "medication-related emergency" and "psychoactive medication" have the meanings assigned by Section

574.101.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 322, Sec. 3, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1477, Sec. 31, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 35, Sec. 14, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 48 (H.B. 224), Sec. 2, eff. May 17, 2005.

Acts 2005, 79th Leg., Ch. 717 (S.B. 465), Sec. 7, eff. June 17, 2005.

Sec. 576.026. INDEPENDENT EVALUATION. (a) A patient receiving inpatient mental health services under this subtitle is entitled to obtain at the patient's cost an independent psychiatric, psychological, or medical examination or evaluation by a psychiatrist, physician, or nonphysician mental health professional chosen by the patient. The facility administrator shall allow the patient to obtain the examination or evaluation at any reasonable time.

(b) If the patient is a minor, the minor and the minor's parent, legal guardian, or managing or possessory conservator is entitled to obtain the examination or evaluation. The cost of the examination or evaluation shall be billed by the professional who performed the examination or evaluation to the person responsible for payment of the minor's treatment as a cost of treatment.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 576.027. LIST OF MEDICATIONS. (a) The facility administrator of an inpatient mental health facility shall provide to a patient, a person designated by the patient, and the patient's legal guardian or managing conservator, if any, a list of the medications prescribed for administration to the patient while the patient is in the facility. The list must include for each medication:

(1) the name of the medication;

(2) the dosage and schedule prescribed for the

administration of the medication; and

(3) the name of the physician who prescribed the medication.

(b) The list must be provided within four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator and on the discharge of the patient. If sufficient time to prepare the list before discharge is not available, the list may be mailed within 24 hours after discharge to the patient, a person designated by the patient, and the patient's legal guardian or managing conservator.

(c) A patient or the patient's legal guardian or managing conservator, if any, may waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.10, eff. Aug. 30, 1993.

CHAPTER 577. PRIVATE MENTAL HOSPITALS AND OTHER MENTAL HEALTH FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

Sec. 577.001. LICENSE REQUIRED. (a) A person or political subdivision may not operate a mental hospital without a license issued by the department under this chapter.

(b) A community center or other entity designated by the department to provide mental health services may not operate a mental health facility that provides court-ordered mental health services without a license issued by the department under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.02, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1390, eff. April 2, 2015.

Sec. 577.002. EXEMPTIONS. (a) A mental health facility

operated by the department or a federal agency need not be licensed under this chapter.

(b) This chapter does not apply to a psychiatric residential youth treatment facility certified under Chapter 577A.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1391, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 3, eff. September 1, 2021.

Sec. 577.003. ADDITIONAL LICENSE NOT REQUIRED. A mental hospital licensed under this chapter that the department designates to provide mental health services is not required to obtain an additional license to provide court-ordered mental health services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1392, eff. April 2, 2015.

Sec. 577.004. LICENSE APPLICATION. (a) An applicant for a license under this chapter must submit a sworn application to the department on a form prescribed by the department.

(b) The department shall prepare the application form and make the form available on request.

(c) The application must be accompanied by a nonrefundable application fee and by a license fee. The department shall return the license fee if the application is denied.

(d) The application must contain:

(1) the name and location of the mental hospital or mental health facility;

(2) the name and address of the physician to be in charge of the hospital care and treatment of the patients;

(3) the names and addresses of the mental hospital owners, including the officers, directors, and principal stockholders if the owner is a corporation or other association, or the names and addresses of the members of the board of trustees of the community center or the directors of the entity designated by the department to provide mental health services;

(4) the bed capacity to be authorized by the license;

(5) the number, duties, and qualifications of the professional staff;

(6) a description of the equipment and facilities of the mental hospital or mental health facility; and

(7) other information required by the department, including affirmative evidence of ability to comply with the department's rules and standards.

(e) The applicant must submit a plan of the mental hospital or mental health facility premises that describes the buildings and grounds and the manner in which the various parts of the premises are intended to be used.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.005. INVESTIGATION AND LICENSE ISSUANCE. (a) The department shall conduct an investigation as considered necessary after receiving the proper license application and the required fees.

(b) The department shall issue a license if it finds that the premises are suitable and that the applicant is qualified to operate a mental hospital or a mental health facility that provides court-ordered inpatient mental health services, in accordance with the requirements and standards prescribed by law and the department.

(c) A license is issued to the applicant for the premises described and for the bed capacity specified by the license.

(d) The license is not transferable or assignable.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.006. FEES. (a) The department shall charge each hospital every two years a license fee for an initial license or a license renewal.

(b) The executive commissioner by rule shall adopt the fees

authorized by Subsection (a) in accordance with Section 12.0111 and according to a schedule under which the number of beds in the hospital determines the amount of the fee. A minimum license fee may be established.

(c) The executive commissioner by rule shall adopt fees for hospital plan reviews according to a schedule under which the amounts of the fees are based on the estimated construction costs.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(109), eff. April 2, 2015.

(e) The department shall charge a fee for field surveys of construction plans reviewed under this section. The executive commissioner by rule shall adopt a fee schedule for the surveys that provides a minimum fee and a maximum fee for each survey conducted.

(f) The department annually shall review the fee schedules to ensure that the fees charged are based on the estimated costs to and level of effort expended by the department.

(g) The executive commissioner may establish staggered license renewal dates and dates on which fees are due.

(h) A fee adopted under this chapter must be based on the estimated cost to and level of effort expended by the department to conduct the activity for which the fee is imposed.

(i) All license fees collected shall be deposited to the credit of the general revenue fund.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 8.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1393, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(109), eff. April 2, 2015.

Sec. 577.007. CHANGE IN BED CAPACITY. A mental hospital or mental health facility may increase the bed capacity authorized by the license at any time with the department's approval and may decrease the capacity at any time by notifying the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.008. REQUIREMENT OF PHYSICIAN IN CHARGE. Each licensed private mental hospital shall be in the charge of a physician who has at least three years experience as a physician in psychiatry in a mental hospital or who is certified by the American Board of Psychiatry and Neurology or by the American Osteopathic Board of Psychiatry and Neurology.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.009. LIMITATION ON CERTAIN CONTRACTS. A community center or other entity the department designates to provide mental health services may not contract with a mental health facility to provide court-ordered mental health services unless the facility is licensed by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.04, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1394, eff. April 2, 2015.

Sec. 577.010. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules and standards the executive commissioner considers necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility required to obtain a license under this chapter.

(b) The rules must encourage mental health facilities licensed under this chapter to provide inpatient mental health services in ways that are appropriate for the diversity of the state.

(c) The standards for community-based crisis stabilization and crisis residential services must be less restrictive than the standards for mental hospitals.

(d) The department shall send a copy of the rules to each mental hospital or mental health facility licensed under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 573, Sec. 4.05, eff. Sept. 1,

1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1395, eff. April 2, 2015.

Sec. 577.0101. NOTIFICATION OF TRANSFER OR REFERRAL. (a) The executive commissioner shall adopt rules governing the transfer or referral of a patient from a private mental hospital to an inpatient mental health facility.

(b) The rules must provide that before a private mental hospital may transfer or refer a patient, the hospital must:

(1) provide to the receiving inpatient mental health facility notice of the hospital's intent to transfer a patient;

(2) provide to the receiving inpatient mental health facility information relating to the patient's diagnosis and condition; and

(3) obtain verification from the receiving inpatient mental health facility that the facility has the space, personnel, and services necessary to provide appropriate care to the patient.

(c) The rules must also require that the private mental hospital send the patient's appropriate records, or a copy of the records, if any, to the receiving inpatient mental health facility.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 4.07, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1396, eff. April 2, 2015.

Sec. 577.011. RECORDS AND REPORTS. The department may require a license holder to make annual, periodical, or special reports to the department and to keep the records the department considers necessary to ensure compliance with this subtitle and the department's rules and standards.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.012. DESTRUCTION OF RECORDS. (a) A private mental

hospital licensed under this chapter may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when last treated, the hospital may authorize the disposal of records relating to the patient on or after the later of the patient's 20th birthday or the 10th anniversary of the date on which the patient was last treated.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows that the litigation has not been finally resolved.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.013. INVESTIGATIONS. (a) The department may make investigations it considers necessary and proper to obtain compliance with this subtitle and the department's rules and standards.

(b) An agent of the department may at any reasonable time enter the premises of a private mental hospital or mental health facility licensed under this chapter to:

(1) inspect the facilities and conditions;

(2) observe the hospital's or facility's care and treatment program; and

(3) question the employees of the hospital or facility.

(c) An agent of the department may examine or transcribe any records or documents relevant to the investigation.

(d) Except as provided by Subsection (e), all information and materials in the possession of or obtained or compiled by the commission in connection with a complaint and investigation concerning a mental hospital licensed under this chapter are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the commission or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with the commission in the enforcement action against the licensed mental hospital;

(2) the licensed mental hospital that is the subject of the enforcement action, or the licensed mental hospital's authorized

representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the licensed mental hospital has been deleted.

(e) The following information is subject to disclosure in accordance with Chapter 552, Government Code, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the licensed mental hospital's alleged violation, which must include the provisions of law the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;

(2) the number of investigations the commission has conducted of the licensed mental hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the licensed mental hospital for the alleged violation;

(4) the outcome of each investigation the commission conducted of the licensed mental hospital, including:

(A) the issuance of a reprimand;

(B) the denial or revocation of a license;

(C) the adoption of a corrective action plan; or

(D) the imposition of an administrative penalty and the penalty amount; and

(5) a final decision, investigative report, or order issued by the commission to address the alleged violation.

(f) Not later than the 90th day after the date the commission issues a final decision, investigative report, or order to address a licensed mental hospital's alleged violation, the commission shall post on the commission's Internet website:

(1) the notice of alleged violation described by Subsection (e)(1);

(2) the name of the licensed mental hospital;

(3) the geographic location of the licensed mental hospital;

(4) the date the commission issued the final decision,

investigative report, or order; and

(5) the outcome of the commission's investigation of the licensed mental hospital that includes the information described by Subsection (e)(4).

(g) The commission may not remove information posted on the commission's Internet website under Subsection (f) before the second anniversary of the date the information is posted on the Internet website.

(h) Nothing in this section precludes a licensed mental hospital from releasing medical records in the licensed mental hospital's possession:

(1) on request of the patient who is the subject of the record; or

(2) to the patient, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased.

(i) In this section, "commission" means the Health and Human Services Commission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1444, Sec. 16, eff. Aug. 30, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 42 (H.B. 49), Sec. 2, eff. September 1, 2023.

Sec. 577.014. OATHS. The department or its agent may administer oaths, receive evidence, and examine witnesses in conducting an investigation or other proceeding under this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.015. SUBPOENAS. (a) The department or its agent, in conducting an investigation or other proceeding under this chapter, may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents or records anywhere in this state that are related to the matter under inquiry.

(b) If a person refuses to obey a subpoena, the department may apply to the district court of Travis County for an order requiring

obedience to the subpoena.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.016. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license if the department finds that the applicant or licensee has substantially failed to comply with:

(1) department rules;

(2) this subtitle; or

(3) Chapters 104 and 225.

(b) The department must give the applicant or license holder notice of the proposed action, an opportunity to demonstrate or achieve compliance, and an opportunity for a hearing before taking the action.

(c) The department may suspend a license for 10 days pending a hearing if after an investigation the department finds that there is an immediate threat to the health or safety of the patients or employees of a private mental hospital or mental health facility licensed under this chapter. The department may issue necessary orders for the patients' welfare.

(d) The department shall send the license holder or applicant a copy of the department's decision by registered mail. If the department denies, suspends, or revokes a license, the department shall include the findings and conclusions on which the department based its decision.

(e) A license holder whose license is suspended or revoked may not admit new patients until the license is reissued.

(f) If the department finds that a private mental hospital or mental health facility is in repeated noncompliance under Subsection (a) but that the noncompliance does not endanger public health and safety, the department may schedule the hospital or facility for probation rather than suspending or revoking the license of the hospital or facility. The department shall provide notice to the hospital or facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the hospital or facility will remain under probation. During the probation period, the hospital or

facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(g) The department may suspend or revoke the license of a private mental hospital or mental health facility that does not comply with the applicable requirements within the applicable probation period.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.12, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 802, Sec. 14, 15, eff. June 20, 2003.

Sec. 577.017. HEARINGS. (a) The department's legal staff may participate in a hearing under this chapter.

(b) The hearing proceedings shall be recorded in a form that can be transcribed if notice of appeal is filed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.018. JUDICIAL REVIEW OF DEPARTMENT DECISION. (a) An applicant or license holder may appeal from a department decision by filing notice of appeal in the district court of Travis County and with the department not later than the 30th day after receiving a copy of the department's decision.

(b) The department shall certify and file with the court a transcript of the case proceedings on receiving notice of appeal. The transcript may be limited by stipulation.

(c) The court shall hear the case on the record and may consider other evidence the court determines necessary to determine properly the issues involved. The substantial evidence rule does not apply.

(d) The court may affirm or set aside the department decision or may remand the case to the department for further proceedings.

(e) The department shall pay the cost of the appeal unless the court affirms the department's decision, in which case the applicant or license holder shall pay the cost of the appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 577.019. INJUNCTION. (a) The department, in the name of the state, may maintain an action in a district court of Travis County or in the county in which the violation occurs for an injunction or other process against any person to restrain the person from operating a mental hospital or mental health facility that is not licensed as required by this chapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

(c) At the request of the department or on the initiative of the attorney general or district or county attorney, the attorney general or the appropriate district or county attorney shall institute and conduct a suit authorized by this section in the name of the state. The attorney general may recover reasonable expenses incurred in instituting and conducting a suit authorized by this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 705, Sec. 3.13, eff. Sept. 1, 1993.

CHAPTER 577A. PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 577A.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the commission.

(3) "Psychiatric residential youth treatment facility" means a private facility that provides psychiatric health treatments and services in a residential, nonhospital setting exclusively to individuals who are 21 years of age or younger and is licensed as a general residential operation under Chapter 42, Human Resources Code. The term includes a facility that provides room and board.

(4) "Severe emotional disturbance" means a mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits an individual's role or ability to function in family, school, or

community activities.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.002. EXEMPTIONS. This chapter does not apply to:

(1) a mental hospital; or

(2) a private mental hospital or other mental health facility licensed under Chapter 577.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.003. LICENSING AND OTHER REQUIREMENTS NOT AFFECTED. This chapter does not affect any licensing or other requirements of or create a separate license for a psychiatric residential youth treatment facility under Chapter 42, Human Resources Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.004. RULES. The executive commissioner shall adopt rules necessary to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

SUBCHAPTER B. CERTIFICATION, FEES, AND INSPECTIONS

Sec. 577A.051. VOLUNTARY QUALITY STANDARDS CERTIFICATION. The commission shall, using existing resources to the extent feasible, develop and implement a voluntary quality standards certification process to certify a psychiatric residential youth treatment facility that meets standards for certification under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.052. CERTIFICATE APPLICATION. (a) To obtain a certificate under this chapter, an applicant must submit to the commission an application in the form and manner prescribed by the commission.

(b) Each application must be accompanied by a fee established by the executive commissioner under Section 577A.053.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.053. FEES. The executive commissioner by rule shall establish a nonrefundable certificate application fee and a nonrefundable certificate renewal fee in amounts necessary to cover the costs of administering this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.054. ISSUANCE AND RENEWAL OF CERTIFICATE. (a) The commission shall issue a certificate to an applicant if on inspection and investigation the commission determines the applicant meets the requirements of this chapter and commission rules. The commission may not issue to an applicant a certificate under this chapter unless the applicant is licensed as a general residential operation under Chapter 42, Human Resources Code.

(b) A certificate issued under this chapter expires on the second anniversary of the date the certificate is issued or renewed.

(c) The commission shall renew a certificate if:

(1) the certificate holder submits to the commission a fee established by the executive commissioner under Section 577A.053; and

(2) on inspection and investigation the commission determines the certificate holder meets the requirements of this chapter and commission rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.055. INSPECTIONS. In addition to the inspections

required under Section 577A.054, the commission shall conduct an inspection not later than the first anniversary of the date a certificate is issued or renewed to ensure the certificate holder remains in compliance with the requirements of this chapter and commission rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

SUBCHAPTER C. REGULATION OF CERTIFIED PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITIES

Sec. 577A.101. MINIMUM STANDARDS. The executive commissioner by rule shall establish minimum standards for the certification of psychiatric residential youth treatment facilities under this chapter. The minimum standards must require a facility to:

(1) obtain accreditation by The Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation, or another accrediting organization approved by the commission; and

(2) provide and prescribe guidelines for the provision of the following activities, treatments, and services:

(A) development and implementation of individual plans of care, including the provision of services provided by a licensed psychiatrist or physician to develop individual plans of care;

(B) individual therapy;

(C) family engagement activities;

(D) consultation services with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners;

(E) 24-hour nursing services; and

(F) direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

Sec. 577A.102. ADMISSION CRITERIA. A facility certified under this chapter may not admit or provide treatments or services to an

individual unless the individual:

(1) is 21 years of age or younger;

(2) has been diagnosed with a severe emotional disturbance by a licensed mental health professional;

(3) requires residential psychiatric treatment under the direction of a licensed physician to improve the individual's condition; and

(4) was referred for treatments or services in a psychiatric residential youth treatment facility by a licensed mental health professional.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

SUBCHAPTER D. ENFORCEMENT

Sec. 577A.151. PENALTIES. A facility certified under this chapter is subject to a civil penalty under Section 571.023 or an administrative penalty under Section 571.025, as applicable, for a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1032 (H.B. 3121), Sec. 2, eff. September 1, 2021.

CHAPTER 578. ELECTROCONVULSIVE AND OTHER THERAPIES

Sec. 578.001. APPLICATION. This chapter applies to the use of electroconvulsive therapy by any person, including a private physician who uses the therapy on an outpatient basis.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

Sec. 578.002. USE OF ELECTROCONVULSIVE THERAPY. (a) Electroconvulsive therapy may not be used on a person who is younger than 16 years of age.

(b) Unless the person consents to the use of the therapy in accordance with Section 578.003, electroconvulsive therapy may not be used on:

(1) a person who is 16 years of age or older and who is

voluntarily receiving mental health services; or

(2) an involuntary patient who is 16 years of age or older and who has not been adjudicated by an appropriate court of law as incompetent to manage the patient's personal affairs.

(c) Electroconvulsive therapy may not be used on an involuntary patient who is 16 years of age or older and who has been adjudicated incompetent to manage the patient's personal affairs unless the patient's guardian of the person consents to the treatment in accordance with Section 578.003. The decision of the guardian must be based on knowledge of what the patient would desire, if known.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01.

Sec. 578.003. CONSENT TO THERAPY. (a) The executive commissioner by rule shall adopt a standard written consent form to be used when electroconvulsive therapy is considered. The executive commissioner by rule shall also prescribe the information that must be contained in the written supplement required under Subsection (c). In addition to the information required under this section, the form must include the information required by the Texas Medical Disclosure Panel for electroconvulsive therapy. In developing the form, the executive commissioner shall consider recommendations of the panel. Use of the consent form prescribed by the executive commissioner in the manner prescribed by this section creates a rebuttable presumption that the disclosure requirements of Sections 74.104 and 74.105, Civil Practice and Remedies Code, have been met.

(b) The written consent form must clearly and explicitly state:

(1) the nature and purpose of the procedure;

(2) the nature, degree, duration, and probability of the side effects and significant risks of the treatment commonly known by the medical profession, especially noting the possible degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and the possibility of death;

(3) that there is a division of opinion as to the efficacy of the procedure; and

(4) the probable degree and duration of improvement or remission expected with or without the procedure.

(c) Before a patient receives each electroconvulsive treatment, the hospital, facility, or physician administering the therapy shall

ensure that:

(1) the patient and the patient's guardian of the person, if any, receives a written copy of the consent form that is in the person's primary language, if possible;

(2) the patient and the patient's guardian of the person, if any, receives a written supplement that contains related information that pertains to the particular patient being treated;

(3) the contents of the consent form and the written supplement are explained to the patient and the patient's guardian of the person, if any:

(A) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(B) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable;

(4) the patient or the patient's guardian of the person, as appropriate, signs a copy of the consent form stating that the person has read the consent form and the written supplement and understands the information included in the documents; and

(5) the signed copy of the consent form is made a part of the patient's clinical record.

(d) Consent given under this section is not valid unless the person giving the consent understands the information presented and consents voluntarily and without coercion or undue influence.

(e) For a patient 65 years of age or older, before each treatment series begins, the hospital, facility, or physician administering the procedure shall:

(1) ensure that two physicians have signed an appropriate form that states the procedure is medically necessary;

(2) make the form described by Subdivision (1) available to the patient or the patient's guardian of the person; and

(3) inform the patient or the patient's guardian of the person of any known current medical condition that may increase the possibility of injury or death as a result of the treatment.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1323, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 137 (H.B. 740), Sec. 1, eff. September

1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1397, eff. April 2, 2015.

Sec. 578.004. WITHDRAWAL OF CONSENT. (a) A patient or guardian who consents to the administration of electroconvulsive therapy may revoke the consent for any reason and at any time.

(b) Revocation of consent is effective immediately.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.

Sec. 578.005. PHYSICIAN REQUIREMENT. (a) Only a physician may administer electroconvulsive therapy.

(b) A physician may not delegate the act of administering the therapy. A nonphysician who administers electroconvulsive therapy is considered to be practicing medicine in violation of Subtitle B, Title 3, Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.805, eff. Sept. 1, 2001.

Sec. 578.006. REGISTRATION OF EQUIPMENT. (a) A person may not administer electroconvulsive therapy unless the equipment used to administer the therapy is registered with the department.

(b) A mental hospital or facility administering electroconvulsive therapy or a private physician administering the therapy on an outpatient basis must file an application for registration under this section. The applicant must submit the application to the department on a form prescribed by department rule.

(c) The application must be accompanied by a nonrefundable application fee. The executive commissioner by rule shall set the fee in a reasonable amount not to exceed the cost to the department to administer this section.

(d) The application must contain:

(1) the model, manufacturer, and age of each piece of

equipment used to administer the therapy; and

(2) any other information required by department rule.

(e) The department may conduct an investigation as considered necessary after receiving the proper application and the required fee.

(f) The executive commissioner by rule may prohibit the registration and use of equipment of a type, model, or age the executive commissioner determines is dangerous.

(g) The department may deny, suspend, or revoke a registration if the department determines that the equipment is dangerous. The denial, suspension, or revocation of a registration is a contested case under Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1398, eff. April 2, 2015.

Sec. 578.007. REPORTS. (a) A mental hospital or facility administering electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness or a physician administering the therapy on an outpatient basis shall submit to the department quarterly reports relating to the administration of the therapy in the hospital or facility or by the physician.

(b) A report must state for each quarter:

(1) the number of patients who received the therapy, including:

(A) the number of persons voluntarily receiving mental health services who consented to the therapy;

(B) the number of involuntary patients who consented to the therapy; and

(C) the number of involuntary patients for whom a guardian of the person consented to the therapy;

(2) the age, sex, and race of the persons receiving the therapy;

(3) the source of the treatment payment;

(4) the average number of nonelectroconvulsive treatments;

(5) the average number of electroconvulsive treatments administered for each complete series of treatments, but not including maintenance treatments;

(6) the average number of maintenance electroconvulsive treatments administered per month;

(7) the number of fractures, reported memory losses, incidents of apnea, and cardiac arrests without death;

(8) autopsy findings if death followed within 14 days after the date of the administration of the therapy; and

(9) any other information required by department rule.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1399, eff. April 2, 2015.

Sec. 578.008. USE OF INFORMATION. The department shall use the information received under Sections 578.006 and 578.007 to analyze, audit, and monitor the use of electroconvulsive therapy, psychosurgery, pre-frontal sonic sound treatment, or any other convulsive or coma-producing therapy administered to treat mental illness.

Added by Acts 1993, 73rd Leg., ch. 705, Sec. 5.01, eff. Sept. 1, 1993.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 17, eff. September 1, 2021.

CHAPTER 579. MENTAL HEALTH SERVICES DISTRICTS CREATED BY CERTAIN HOSPITAL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 579.001. PURPOSE. The purpose of this chapter is to authorize certain hospital districts to create a special district to provide mental health services to the residents of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff.

September 1, 2023.

Sec. 579.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Director" means a member of the board.

(3) "District" means a mental health services district created by a hospital district under this chapter.

(4) "Hospital district" means a hospital district created under the authority of Sections 4-11, Article IX, Texas Constitution.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.003. APPLICABILITY. This chapter applies only to the:

(1) Midland County Hospital District of Midland County, Texas; and

(2) Ector County Hospital District.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. CREATION AND DISSOLUTION OF DISTRICT

Sec. 579.051. CREATION BY CONCURRENT ORDERS. (a) The hospital districts to which this chapter applies may create a district by adopting concurrent orders.

(b) A concurrent order to create a district must:

(1) be approved by the governing body of each creating hospital district;

(2) contain identical provisions; and

(3) define the boundaries of the district to be coextensive with the combined boundaries of each creating hospital district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.052. CONTRACT TERMS. (a) Each creating hospital district shall contract with the district for the district to provide

mental health services to the hospital district's residents. The contract must:

(1) state the term of the contract;

(2) specify the purpose, terms, rights, and duties of the district, as authorized by this chapter;

(3) specify the financial contributions to be made by each party to the contract to fund the district; and

(4) specify the land, buildings, improvements, equipment, and other assets owned by a party to the contract that the district will be required to manage and operate, if any.

(b) Chapter 791, Government Code, does not apply to a contract made under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.053. DISSOLUTION. A district shall be dissolved if the creating hospital districts adopt concurrent orders to dissolve the district and the concurrent orders contain identical provisions.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.054. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After dissolution of a district under Section 579.053, the board shall continue to control and administer any property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) If, after administering any property and assets, the board determines that the district's property and assets are insufficient to pay the debts of the district, the district shall transfer the remaining debts to the creating hospital districts in proportion to the funds contributed to the district by each hospital district.

(c) If, after complying with Subsection (b) and administering the property and assets, the board determines that unused funds remain, the board shall transfer the unused funds to the creating hospital districts in proportion to the funds contributed to the district by each hospital district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.055. ACCOUNTING AFTER DISSOLUTION. After the district has paid all its debts and has disposed of all its assets and funds as prescribed by Section 579.054, the board shall provide an accounting to each creating hospital district. The accounting must show the manner in which the assets and debts of the district were distributed.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 579.101. BOARD OF DIRECTORS; TERMS; VACANCY. (a) The board consists of six appointed directors. Each creating hospital district shall appoint three directors to the board.

(b) Directors serve staggered two-year terms, with one-half of the directors' terms expiring each year.

(c) A vacancy in the office of director shall be filled for the unexpired term in the same manner as the original appointment.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.102. OFFICERS. (a) The board shall elect from among its members a president.

(b) The board shall appoint a secretary, who need not be a director.

(c) Each officer of the board serves for a term of one year.

(d) The board shall fill a vacancy in a board office for the unexpired term.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.103. QUALIFICATIONS FOR OFFICE. (a) To be eligible

to serve as a director, a person must be a resident or an officer of the hospital district that appoints the person under Section 579.101.

(b) An employee of the district may not serve as a director.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.104. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other district records; and

(2) approved by the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 579.151. TRANSFER OF CERTAIN RESPONSIBILITIES OF CREATING HOSPITAL DISTRICT. On creation of a district, each creating hospital district may transfer to the district:

(1) management and operation of any real property, improvements, and equipment located wholly in the district that are owned by the creating hospital district and are used to provide mental health services, as specified in the contract under Section 579.052; and

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the creating hospital district to provide mental health services for residents of the district, as specified in the contract under Section 579.052.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.152. POWERS AND DUTIES. A district may, if necessary to provide mental health services to the residents of the creating hospital districts:

(1) acquire and hold title to, construct, operate, manage, and maintain real property, including improvements to real property;

(2) acquire, operate, manage, and maintain equipment and other personal property;

(3) enter into and perform contracts;

(4) appoint and employ officers, agents, and employees;

(5) sue and be sued;

(6) seek and accept gifts, grants, and donations; and

(7) perform other acts necessary to accomplish the purpose of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.153. RULES. The board may adopt rules governing the operation of the district and the duties, functions, and responsibilities of the district's staff and employees.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.154. DISTRICT ADMINISTRATOR; ASSISTANT ADMINISTRATOR. (a) The board shall appoint a qualified person as district administrator.

(b) The board may appoint assistant administrators.

(c) The district administrator and any assistant administrator serve at the will of the board and are entitled to the compensation determined by the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 579.201. DISTRICT FUNDING; LIMITATION. (a) Each creating hospital district shall provide funding for the district's operation as specified in the contract under Section 579.052.

(b) The district may not impose a tax or issue bonds or other obligations.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.202. BUDGET. (a) The district administrator shall prepare an annual budget for approval by the board.

(b) The proposed budget must contain a complete financial statement of:

(1) the outstanding obligations of the district;

(2) the cash on hand in each district fund;

(3) the money received by the district from all sources during the previous year;

(4) the money available to the district from all sources during the ensuing year;

(5) the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated revenue and balances available to cover the proposed budget; and

(7) the proposed expenditures and disbursements and the estimated receipts and collections for the following fiscal year.

(c) The board shall provide in each annual budget for the payment of all operation and maintenance expenses of the district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.203. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) At least 10 days before the date of the hearing, the board shall publish notice of the hearing in a newspaper of general circulation in the district.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the district administrator. The board may make any changes in the proposed budget that the board judges to be in the interest of the district's residents and that the law warrants.

(e) The budget is effective only after adoption by the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.204. AMENDMENTS TO BUDGET. The budget may be amended as required by circumstances. The board must approve all amendments.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.205. RESTRICTION ON EXPENDITURES. Money may be spent only for an expense included in the budget or an amendment to the budget.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.206. FISCAL YEAR. The district operates according to a fiscal year that begins on October 1 and ends on September 30. The board may change the fiscal year.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.207. AUDIT. The board shall have an independent audit made of the district's financial condition for each fiscal year.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.208. INSPECTION OF AUDIT AND DISTRICT RECORDS. The audit and other district records shall be open to inspection at the principal office of each creating hospital district.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

Sec. 579.209. FINANCIAL REPORT. As soon as practicable after the close of each fiscal year, the district administrator shall prepare for the board:

(1) a complete sworn statement of all district money; and

(2) a complete account of the disbursements of that money.

Added by Acts 2023, 88th Leg., R.S., Ch. 120 (H.B. 492), Sec. 1, eff. September 1, 2023.

SUBTITLE D. PERSONS WITH AN INTELLECTUAL DISABILITY ACT

CHAPTER 591. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 591.001. SHORT TITLE. This subtitle may be cited as the Persons with an Intellectual Disability Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1401, eff. April 2, 2015.

Sec. 591.002. PURPOSE. (a) It is the public policy of this state that persons with an intellectual disability have the opportunity to develop to the fullest extent possible their potential for becoming productive members of society.

(b) It is the purpose of this subtitle to provide and assure a continuum of quality services to meet the needs of all persons with an intellectual disability in this state.

(c) The state's responsibility to persons with an intellectual disability does not replace or impede parental rights and responsibilities or terminate the activities of persons, groups, or associations that advocate for and assist persons with an intellectual disability.

(d) It is desirable to preserve and promote living at home if feasible. If living at home is not possible and placement in a residential care facility is necessary, a person must be admitted in accordance with basic due process requirements, giving appropriate consideration to parental desires if possible. The person must be admitted to a facility that provides habilitative training for the person's condition, that fosters the personal development of the

person, and that enhances the person's ability to cope with the environment.

(e) Because persons with an intellectual disability have been denied rights solely because they are persons with an intellectual disability, the general public should be educated to the fact that persons with an intellectual disability who have not been adjudicated incompetent and for whom a guardian has not been appointed by a due process proceeding in a court have the same rights and responsibilities enjoyed by all citizens of this state. All citizens are urged to assist persons with an intellectual disability in acquiring and maintaining rights and in participating in community life as fully as possible.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1402, eff. April 2, 2015.

Sec. 591.003. DEFINITIONS. In this subtitle:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(110), eff. April 2, 2015.

(3) "Care" means the life support and maintenance services or other aid provided to a person with an intellectual disability, including dental, medical, and nursing care and similar services.

(4) "Client" means a person receiving intellectual disability services from the department or a community center. The term includes a resident.

(4-a) "Commission" means the Health and Human Services Commission.

(5) "Commissioner" means the commissioner of aging and disability services.

(6) "Community center" means an entity organized under Subchapter A, Chapter 534, that provides intellectual disability services.

(7) "Department" means the Department of Aging and

Disability Services.

(7-a) "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(8) "Interdisciplinary team" means a group of intellectual disability professionals and paraprofessionals who assess the treatment, training, and habilitation needs of a person with an intellectual disability and make recommendations for services for that person.

(9) "Director" means the director or superintendent of a residential care facility.

(9-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(10) "Group home" means a residential arrangement, other than a residential care facility, operated by the department or a community center in which not more than 15 persons with an intellectual disability voluntarily live and under appropriate supervision may share responsibilities for operation of the living unit.

(11) "Guardian" means the person who, under court order, is the guardian of the person of another or of the estate of another.

(12) "Habilitation" means the process, including programs of formal structured education and training, by which a person is assisted in acquiring and maintaining life skills that enable the person to cope more effectively with the person's personal and environmental demands and to raise the person's physical, mental, and social efficiency.

(13) Repealed by Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(2), eff. September 1, 2023.

(14) "Intellectual disability services" means programs and assistance for persons with an intellectual disability that may include a determination of an intellectual disability, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(15) "Minor" means a person younger than 18 years of age who:

(A) is not and has not been married; or

(B) has not had the person's disabilities of minority removed for general purposes.

(15-a) "Person with an intellectual disability" means a person determined by a physician or psychologist licensed in this state or certified by the department to have subaverage general intellectual functioning with deficits in adaptive behavior.

(16) Repealed by Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(2), eff. September 1, 2023.

(17) "Resident" means a person living in and receiving services from a residential care facility.

(18) "Residential care facility" means a state supported living center or the ICF-IID component of the Rio Grande Center.

(19) "Service provider" means a person who provides intellectual disability services.

(20) "Subaverage general intellectual functioning" refers to measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used.

(21) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(110), eff. April 2, 2015.

(22) "Training" means the process by which a person with an intellectual disability is habilitated and may include the teaching of life and work skills.

(23) "Treatment" means the process by which a service provider attempts to ameliorate the condition of a person with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 272 (H.B. 1481), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1403, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(110), eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 14.01(2), eff. September 1, 2023.

Sec. 591.004. RULES. The executive commissioner by rule shall ensure the implementation of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1404, eff. April 2, 2015.

Sec. 591.005. LEAST RESTRICTIVE ALTERNATIVE. The least restrictive alternative is:

(1) the available program or facility that is the least confining for a client's condition; and

(2) the service and treatment that is provided in the least intrusive manner reasonably and humanely appropriate to the person's needs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.006. CONSENT. (a) Consent given by a person is legally adequate if the person:

(1) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(2) understands the information; and

(3) consents voluntarily, free from coercion or undue influence.

(b) The person giving the consent must be informed of and understand:

(1) the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure;

(2) that the withdrawal or refusal of consent will not prejudice the future provision of care and services; and

(3) the method used in the proposed procedure if the person is to receive unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER B. DUTIES OF DEPARTMENT

Sec. 591.011. DEPARTMENT RESPONSIBILITIES. (a) Subject to the executive commissioner's authority to adopt rules and policies, the department shall make all reasonable efforts consistent with available resources to:

(1) assure that each identified person with an intellectual disability who needs intellectual disability services is given while these services are needed quality care, treatment, education, training, and rehabilitation appropriate to the person's individual needs other than those services or programs explicitly delegated by law to other governmental agencies;

(2) initiate, carry out, and evaluate procedures to guarantee to persons with an intellectual disability the rights listed in this subtitle;

(3) carry out this subtitle, including planning, initiating, coordinating, promoting, and evaluating all programs developed;

(4) provide either directly or by cooperation, negotiation, or contract with other agencies and those persons and groups listed in Section 533A.034, a continuum of services to persons with an intellectual disability; and

(5) provide, either directly or by contract with other agencies, a continuum of services to children, juveniles, or adults with an intellectual disability committed into the department's custody by the juvenile or criminal courts.

(b) The services provided by the department under Subsection (a)(4) shall include:

(1) treatment and care;

(2) education and training, including sheltered workshop programs;

(3) counseling and guidance; and

(4) development of residential and other facilities to enable persons with an intellectual disability to live and be habilitated in the community.

(c) The facilities provided under Subsection (b) shall include group homes, foster homes, halfway houses, and day-care facilities for persons with an intellectual disability to which the department has assigned persons with an intellectual disability.

(d) The department shall exercise periodic and continuing supervision over the quality of services provided under this section.

(e) The department shall have the right of access to all clients and records of clients who are placed with residential service providers.

(f) The department's responsibilities under this subtitle are in addition to all other responsibilities and duties of the department under other law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 646, Sec. 13, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1405, eff. April 2, 2015.

Sec. 591.013. LONG-RANGE PLAN. (a) The commission shall develop a long-range plan for services to persons with intellectual and developmental disabilities.

(b) The executive commissioner shall appoint the necessary staff to develop the plan through research of appropriate topics and public hearings to obtain testimony from persons with knowledge of or interest in state services to persons with intellectual and developmental disabilities.

(c) In developing the plan, the commission shall consider existing plans or studies made by the commission or department.

(d) The plan must address at least the following topics:

(1) the needs of persons with intellectual and developmental disabilities;

(2) how state services should be structured to meet those needs;

(3) how the ICF-IID program, the waiver program under Section 1915(c), federal Social Security Act, other programs under Title XIX, federal Social Security Act, and other federally funded programs can best be structured and financed to assist the state in delivering services to persons with intellectual and developmental disabilities;

(4) the statutory limits and rule or policy changes necessary to ensure the controlled growth of the programs under Title XIX, federal Social Security Act, and other federally funded programs;

(5) methods for expanding services available through the ICF-IID program to persons with related conditions as defined by federal regulations relating to the medical assistance program; and

(6) the cost of implementing the plan.

(e) The commission and the department shall, if necessary, modify their respective long-range plans and other existing plans relating to the provision of services to persons with intellectual and developmental disabilities to incorporate the provisions of the plan.

(f) The commission shall review and revise the plan biennially. The commission and the department shall consider the most recent revision of the plan in any modifications of the commission's or department's long-range plans and in each future budget request.

(g) This section does not affect the authority of the commission and the department to carry out their separate functions as established by state and federal law.

(h) In this section, "ICF-IID program" means the medical assistance program serving persons with intellectual and developmental disabilities who receive care in intermediate care facilities.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1406, eff. April 2, 2015.

SUBCHAPTER C. PENALTIES AND REMEDIES

Sec. 591.021. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly causes, conspires with another to cause, or assists another to cause the unlawful continued detention in or unlawful admission or commitment of a person to a facility specified in this subtitle with the intention of harming that person.

(b) An offense under this section is a Class B misdemeanor.

(c) The district and county attorney within their respective jurisdictions shall prosecute a violation of this section.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.022. CIVIL PENALTY. (a) A person who intentionally violates the rights guaranteed by this subtitle to a person with an intellectual disability is liable to the person injured by the violation in an amount of not less than $100 or more than $5,000.

(b) A person who recklessly violates the rights guaranteed by this subtitle to a person with an intellectual disability is liable to the person injured by the violation in an amount of not less than $100 or more than $1,000.

(c) A person who intentionally releases confidential information or records of a person with an intellectual disability in violation of law is liable to the person injured by the unlawful disclosure for $1,000 or three times the actual damages, whichever is greater.

(d) A cause of action under this section may be filed by:

(1) the injured person;

(2) the injured person's parent, if the person is a minor;

(3) a guardian, if the person has been adjudicated incompetent; or

(4) the injured person's next friend in accordance with Rule 44, Texas Rules of Civil Procedure.

(e) The cause of action may be filed in a district court in Travis County or in the county in which the defendant resides.

(f) This section does not supersede or abrogate other remedies existing in law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1407, eff. April 2, 2015.

Sec. 591.023. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) A district court, in an action brought in the name of the state by the state attorney general or a district or county attorney within the attorney's respective jurisdiction, may issue a temporary restraining order, a temporary injunction, or a permanent injunction to:

(1) restrain and prevent a person from violating this subtitle or a rule adopted by the executive commissioner under this subtitle; or

(2) enforce compliance with this subtitle or a rule adopted

by the executive commissioner under this subtitle.

(b) A person who violates the terms of an injunction issued under this section shall forfeit and pay to the state a civil penalty of not more than $5,000 for each violation, but not to exceed a total of $20,000.

(c) In determining whether an injunction has been violated, the court shall consider the maintenance of procedures adopted to ensure compliance with the injunction.

(d) The state attorney general or the district or county attorney, acting in the name of the state, may petition the court issuing the injunction for recovery of civil penalties under this section.

(e) A civil penalty recovered under this section shall be paid to the state for use in intellectual disability services.

(f) An action filed under this section may be brought in a district court in Travis County or in the county in which the defendant resides.

(g) This section does not supersede or abrogate other remedies existing at law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1408, eff. April 2, 2015.

Sec. 591.024. CIVIL ACTION AGAINST DEPARTMENT EMPLOYEE. (a) The state attorney general shall provide legal counsel to represent a department employee in a civil action brought against the person under this subtitle for a claim of alleged negligence or other act of the person while employed by the department. The person shall cooperate fully with the state attorney general in the defense of the claim, demand, or suit.

(b) The state shall hold harmless and indemnify the person against financial loss arising out of a claim, demand, suit, or judgment by reason of the negligence or other act by the person, if:

(1) at the time the claim arose or damages were sustained, the person was acting in the scope of the person's authorized duties; and

(2) the claim or cause of action or damages sustained did

not result from an intentional and wrongful act or the person's reckless conduct.

(c) To be eligible for assistance under this section, the person must deliver to the department the original or a copy of the summons, complaint, process, notice, demand, or pleading not later than the 10th day after the date on which the person is served with the document. The state attorney general may assume control of the person's representation on delivery of the document or a copy of the document to the department.

(d) This section does not impair, limit, or modify rights and obligations existing under an insurance policy.

(e) This section applies only to a person named in this section and does not affect the rights of any other person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 591.025. LIABILITY. An officer or employee of the department or a community center, acting reasonably within the scope of the person's employment and in good faith, is not civilly or criminally liable under this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

CHAPTER 592. RIGHTS OF PERSONS WITH AN INTELLECTUAL DISABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 592.001. PURPOSE. The purpose of this chapter is to recognize and protect the individual dignity and worth of each person with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1410, eff. April 2, 2015.

Sec. 592.002. RULES. The executive commissioner by rule shall ensure the implementation of the rights guaranteed in this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1411, eff. April 2, 2015.

SUBCHAPTER B. BASIC BILL OF RIGHTS

Sec. 592.011. RIGHTS GUARANTEED. (a) Each person with an intellectual disability in this state has the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state.

(b) The rights specifically listed in this subtitle are in addition to all other rights that persons with an intellectual disability have and are not exclusive or intended to limit the rights guaranteed by the constitution and laws of the United States and this state.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.012. PROTECTION FROM EXPLOITATION AND ABUSE. Each person with an intellectual disability has the right to protection from exploitation and abuse because of the person's intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.013. LEAST RESTRICTIVE LIVING ENVIRONMENT. Each person with an intellectual disability has the right to live in the least restrictive setting appropriate to the person's individual needs and abilities and in a variety of living situations, including living:

(1) alone;
(2) in a group home;
(3) with a family; or

(4) in a supervised, protective environment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.014. EDUCATION. Each person with an intellectual disability has the right to receive publicly supported educational services, including those services provided under the Education Code, that are appropriate to the person's individual needs regardless of:

(1) the person's chronological age;

(2) the degree of the person's intellectual disability;

(3) the person's accompanying disabilities or handicaps; or

(4) the person's admission or commitment to intellectual disability services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.015. EMPLOYMENT. An employer, employment agency, or labor organization may not deny a person equal opportunities in employment because of the person's intellectual disability, unless:

(1) the person's intellectual disability significantly impairs the person's ability to perform the duties and tasks of the position for which the person has applied; or

(2) the denial is based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.016. HOUSING. An owner, lessee, sublessee, assignee,

or managing agent or other person having the right to sell, rent, or lease real property, or an agent or employee of any of these, may not refuse to sell, rent, or lease to any person or group of persons solely because the person is a person with an intellectual disability or a group that includes one or more persons with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.017. TREATMENT AND SERVICES. Each person with an intellectual disability has the right to receive for the person's intellectual disability adequate treatment and habilitative services that:

(1) are suited to the person's individual needs;

(2) maximize the person's capabilities;

(3) enhance the person's ability to cope with the person's environment; and

(4) are administered skillfully, safely, and humanely with full respect for the dignity and personal integrity of the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.018. DETERMINATION OF AN INTELLECTUAL DISABILITY. A person thought to be a person with an intellectual disability has the right promptly to receive a determination of an intellectual disability using diagnostic techniques that are adapted to that person's cultural background, language, and ethnic origin to determine if the person is in need of intellectual disability services as provided by Subchapter A, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.019. ADMINISTRATIVE HEARING. A person who files an application for a determination of an intellectual disability has the right to request and promptly receive an administrative hearing under Subchapter A, Chapter 593, to contest the findings of the determination of an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.020. INDEPENDENT DETERMINATION OF AN INTELLECTUAL DISABILITY. A person for whom a determination of an intellectual disability is performed or a person who files an application for a determination of an intellectual disability under Section 593.004 and who questions the validity or results of the determination of an intellectual disability has the right to an additional, independent determination of an intellectual disability performed at the person's own expense.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

Sec. 592.021. ADDITIONAL RIGHTS. Each person with an intellectual disability has the right to:

(1) presumption of competency;

(2) due process in guardianship proceedings; and

(3) fair compensation for the person's labor for the economic benefit of another, regardless of any direct or incidental therapeutic value to the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1412, eff. April 2, 2015.

SUBCHAPTER C. RIGHTS OF CLIENTS

Sec. 592.031. RIGHTS IN GENERAL. (a) Each client has the same rights as other citizens of the United States and this state unless the client's rights have been lawfully restricted.

(b) Each client has the rights listed in this subchapter in addition to the rights guaranteed by Subchapter B.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.032. LEAST RESTRICTIVE ALTERNATIVE. Each client has the right to live in the least restrictive habilitation setting and to be treated and served in the least intrusive manner appropriate to the client's individual needs.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.033. INDIVIDUALIZED PLAN. (a) Each client has the right to a written, individualized habilitation plan developed by appropriate specialists.

(b) The client, and the parent of a client who is a minor or the guardian of the person, shall participate in the development of the plan.

(c) The plan shall be implemented as soon as possible but not later than the 30th day after the date on which the client is admitted or committed to intellectual disability services.

(d) The content of an individualized habilitation plan is as required by department rule and as may be required by the department by contract.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 3, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1413, eff.

April 2, 2015.

Sec. 592.034. REVIEW AND REEVALUATION. (a) Each client has the right to have the individualized habilitation plan reviewed at least:

(1) once a year if the client is in a residential care facility; or

(2) quarterly if the client has been admitted for other services.

(b) The purpose of the review is to:

(1) measure progress;

(2) modify objectives and programs if necessary; and

(3) provide guidance and remediation techniques.

(c) Each client has the right to a periodic reassessment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 4, eff. Sept. 1, 1993.

Sec. 592.035. PARTICIPATION IN PLANNING. (a) Each client, and parent of a client who is a minor or the guardian of the person, have the right to:

(1) participate in planning the client's treatment and habilitation; and

(2) be informed in writing at reasonable intervals of the client's progress.

(b) If possible, the client, parent, or guardian of the person shall be given the opportunity to choose from several appropriate alternative services available to the client from a service provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.036. WITHDRAWAL FROM VOLUNTARY SERVICES. (a) Except as provided by Section 593.030, a client, the parent if the client is a minor, or a guardian of the person may withdraw the client from intellectual disability services.

(b) This section does not apply to a person who was committed to a residential care facility as provided by Subchapter C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1414, eff. April 2, 2015.

Sec. 592.037. FREEDOM FROM MISTREATMENT. Each client has the right not to be mistreated, neglected, or abused by a service provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.038. FREEDOM FROM UNNECESSARY MEDICATION. (a) Each client has the right to not receive unnecessary or excessive medication.

(b) Medication may not be used:

(1) as punishment;

(2) for the convenience of the staff;

(3) as a substitute for a habilitation program; or

(4) in quantities that interfere with the client's habilitation program.

(c) Medication for each client may be authorized only by prescription of a physician and a physician shall closely supervise its use.

(d) Each client has the right to refuse psychoactive medication, as provided by Subchapter F.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 1, eff. September 1, 2013.

Sec. 592.039. GRIEVANCES. A client, or a person acting on behalf of a person with an intellectual disability or a group of persons with an intellectual disability, has the right to submit complaints or grievances regarding the infringement of the rights of a person with an intellectual disability or the delivery of intellectual disability services against a person, group of persons, organization, or business to the Health and Human Services

Commission's ombudsman for individuals with an intellectual or developmental disability as provided under Section 531.9934, Government Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1415, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 741 (H.B. 3462), Sec. 16, eff. June 12, 2023.

Sec. 592.040. INFORMATION ABOUT RIGHTS. (a) On admission for intellectual disability services, each client, and the parent if the client is a minor or the guardian of the person of the client, shall be given written notice of the rights guaranteed by this subtitle. The notice shall be in plain and simple language.

(b) Each client shall be orally informed of these rights in plain and simple language.

(c) Notice given solely to the parent or guardian of the person is sufficient if the client is manifestly unable to comprehend the rights.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1416, eff. April 2, 2015.

SUBCHAPTER D. RIGHTS OF RESIDENTS

Sec. 592.051. GENERAL RIGHTS OF RESIDENTS. Each resident has the right to:

(1) a normal residential environment;
(2) a humane physical environment;
(3) communication and visits; and
(4) possess personal property.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.052. MEDICAL AND DENTAL CARE AND TREATMENT. Each

resident has the right to prompt, adequate, and necessary medical and dental care and treatment for physical and mental ailments and to prevent an illness or disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.053. STANDARDS OF CARE. Medical and dental care and treatment shall be performed under the appropriate supervision of a licensed physician or dentist and shall be consistent with accepted standards of medical and dental practice in the community.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.054. DUTIES OF DIRECTOR. (a) Except as limited by this subtitle, the director shall provide without further consent necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident.

(b) Notwithstanding Subsection (a), consent is required for:

(1) all surgical procedures; and

(2) as provided by Section 592.153, the administration of psychoactive medications.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1417, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1418, eff. April 2, 2015.

Sec. 592.055. UNUSUAL OR HAZARDOUS TREATMENT. This subtitle does not permit the department to perform unusual or hazardous treatment procedures, experimental research, organ transplantation, or nontherapeutic surgery for experimental research.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 592.056. NOTIFICATION OF TRUST EXEMPTION. (a) At the time a resident is admitted to a residential care facility, the facility shall provide to the resident, and the parent if the resident is a minor or the guardian of the person of the resident, written notice, in the person's primary language, that a trust that qualifies under Section 593.081 is not liable for the resident's support. In addition, the facility shall ensure that, within 24 hours after the resident is admitted to the facility, the notification is explained to the resident, and the parent if the resident is a minor or the guardian of the person of the resident:

(1) orally, in simple, nontechnical terms in the person's primary language, if possible; or

(2) through a means reasonably calculated to communicate with a person who has an impairment of vision or hearing, if applicable.

(b) Notice required under Subsection (a) must also be attached to any request for payment for the resident's support.

Added by Acts 2009, 81st Leg., R.S., Ch. 481 (S.B. 584), Sec. 2, eff. June 19, 2009.

SUBCHAPTER E. USE OF RESTRAINTS IN STATE SUPPORTED LIVING CENTERS

Sec. 592.102. USE OF RESTRAINTS. (a) The executive commissioner shall adopt rules to ensure that:

(1) a mechanical or physical restraint is not administered to a resident of a state supported living center unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a mechanical or physical restraint to a resident of a state supported living center ends immediately once the imminent risk of physical injury abates; and

(3) a mechanical or physical restraint is not administered to a resident of a state supported living center as punishment or as part of a behavior plan.

(b) The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state supported living center except as transitional holds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.103. STANDING ORDERS FOR RESTRAINTS PROHIBITED. (a) A person may not issue a standing order to administer on an as-needed basis mechanical or physical restraints to a resident of a state supported living center.

(b) A person may not administer mechanical or physical restraints to a resident of a state supported living center pursuant to a standing order to administer restraints on an as-needed basis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.104. STRAITJACKETS PROHIBITED. A person may not use a straitjacket to restrain a resident of a state supported living center.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.105. DUTY TO REPORT. A state supported living center shall report to the executive commissioner each incident in which a physical or mechanical restraint is administered to a resident of a state supported living center. The report must contain information and be in the form required by rules of the executive commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a conflict between this subchapter and Chapter 322, this subchapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 361 (S.B. 41), Sec. 1, eff. June 17, 2011.

SUBCHAPTER F. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

Sec. 592.151. DEFINITIONS. In this subchapter:

(1) "Capacity" means a client's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a client to prevent:

(A) imminent probable death or substantial bodily harm to the client because the client:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the client is unable to satisfy the client's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the client overtly or continually makes or commits.

(3) "Psychoactive medication" means a medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. "Psychoactive medication" includes the following categories when used as described in this subdivision:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.152. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) A person may not administer a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless:

(1) the client is having a medication-related emergency;

(2) the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration;

(3) the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.156; or

(4) the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086, Code of Criminal Procedure.

(b) Consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client is valid only if:

(1) the consent is given voluntarily and without coercive or undue influence;

(2) the treating physician or a person designated by the physician provides the following information, in a standard format approved by the department, to the client and, if applicable, to the client's representative authorized by law to consent on behalf of the client:

(A) the specific condition to be treated;

(B) the beneficial effects on that condition expected from the medication;

(C) the probable health care consequences of not consenting to the medication;

(D) the probable clinically significant side effects and risks associated with the medication;

(E) the generally accepted alternatives to the medication, if any, and why the physician recommends that they be rejected; and

(F) the proposed course of the medication;

(3) the client and, if appropriate, the client's

representative authorized by law to consent on behalf of the client are informed in writing that consent may be revoked; and

(4) the consent is evidenced in the client's clinical record by a signed form prescribed by the residential care facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) If the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, the physician shall meet with the client and, if appropriate, the client's representative who provided the consent, to review the information and answer any questions.

(d) A client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, shall be documented in the client's clinical record.

(e) In prescribing psychoactive medication, a treating physician shall:

(1) prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically; and

(2) administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) If a physician issues an order to administer psychoactive medication to a client without the client's consent because the client is having a medication-related emergency:

(1) the physician shall document in the client's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and

(2) treatment of the client with the psychoactive medication shall be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.153. ADMINISTRATION OF MEDICATION TO CLIENT COMMITTED TO RESIDENTIAL CARE FACILITY. (a) In this section, "ward" has the meaning assigned by Section 1002.030, Estates Code.

(b) A person may not administer a psychoactive medication to a client who refuses to take the medication voluntarily unless:

(1) the client is having a medication-related emergency;

(2) the client is under an order issued under Section 592.156 authorizing the administration of the medication regardless of the client's refusal; or

(3) the client is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1419, eff. April 2, 2015.

Sec. 592.154. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a client may file an application in a probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal if:

(1) the physician believes that the client lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the client; and

(3) the client has been committed to a residential care facility under Subchapter C, Chapter 593, or other law or an application for commitment to a residential care facility under

Subchapter C, Chapter 593, has been filed for the client.

(b) An application filed under this section must state:

(1) that the physician believes that the client lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the client to take;

(3) whether an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed;

(4) whether an order committing the client to a residential care facility has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the client; and

(6) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section must be filed separately from an application for commitment to a residential care facility.

(d) The hearing on the application may be held on the same date as a hearing on an application for commitment to a residential care facility under Subchapter C, Chapter 593, but the hearing must be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing is not held on the same date as the application for commitment to a residential care facility under Subchapter C, Chapter 593, and the client is transferred to a residential care facility in another county, the court may transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing shall be held not later than 30 days after the filing of the application, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.155. RIGHTS OF CLIENT. A client for whom an application for an order to authorize the administration of a psychoactive medication is filed is entitled:

(1) to be represented by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the client's questions or concerns;

(3) to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) to be informed, at the time personal notice of the hearing is given, of the client's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) to be present at the hearing;

(6) to request from the court an independent expert; and

(7) to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interest.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.156. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a client who:

(1) has been committed to a residential care facility; or

(2) is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing under this section.

(b) The court may issue an order under this section only if the court finds by clear and convincing evidence after the hearing:

(1) that the client lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the client; or

(2) if the client was committed to a residential care

facility by a criminal court with jurisdiction over the client, that treatment with the proposed medication is in the best interest of the client, and either:

(A) the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect as determined under Section 592.157; or

(B) the client:

(i) has remained confined in a correctional facility, as defined by Section 1.07, Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment; and

(ii) presents a danger to the client or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 592.157.

(c) In making the finding that treatment with the proposed medication is in the best interest of the client, the court shall consider:

(1) the client's expressed preferences regarding treatment with psychoactive medication;

(2) the client's religious beliefs;

(3) the risks and benefits, from the perspective of the client, of taking psychoactive medication;

(4) the consequences to the client if the psychoactive medication is not administered;

(5) the prognosis for the client if the client is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

(d) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may effectuate the notice, set hearing dates, and appoint attorneys as required by this subchapter. A record is not required if the hearing is held by a

magistrate or court-appointed associate judge.

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court before the fourth day after the date the report is issued. The hearing de novo shall be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) If a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, the proposed client or the proposed client's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(h) As soon as practicable after the conclusion of the hearing, the client is entitled to have provided to the client and the client's attorney written notification of the court's determinations under this section. The notification shall include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) An order entered under this section shall authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. The order shall permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) The classes of psychoactive medications in the order must conform to classes determined by the department.

(k) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

(l) For a client described by Subsection (b)(2)(B), an order issued under this section:

(1) authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer; and

(2) does not constitute authorization to retain the client in a correctional facility for competency restoration treatment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.157. FINDING THAT CLIENT PRESENTS A DANGER. In making a finding under Section 592.156(b)(2) that, as a result of a mental disorder or mental defect, the client presents a danger to the client or others in the residential care facility in which the client is being treated or in the correctional facility, as applicable, the court shall consider:

(1) an assessment of the client's present mental condition; and

(2) whether the client has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.158. APPEAL. (a) A client may appeal an order under this subchapter in the manner provided by Section 593.056 for an appeal of an order committing the client to a residential care facility.

(b) An order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.159. EFFECT OF ORDER. (a) A person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 592.156.

(b) The issuance of an order under Section 592.156 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the

person's property rights or legal capacity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

Sec. 592.160. EXPIRATION OF ORDER. (a) Except as provided by Subsection (b), an order issued under Section 592.156 expires on the anniversary of the date the order was issued.

(b) An order issued under Section 592.156 for a client awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. An order continued under this subsection shall be reviewed by the issuing court every six months.

Added by Acts 2013, 83rd Leg., R.S., Ch. 504 (S.B. 34), Sec. 3, eff. September 1, 2013.

CHAPTER 593. ADMISSION AND COMMITMENT TO INTELLECTUAL DISABILITY SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 593.001. ADMISSION. A person may be admitted for intellectual disability services offered by the department or a community center, admitted voluntarily to a residential care program, or committed to a residential care facility, only as provided by this chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1421, eff. April 2, 2015.

Sec. 593.002. CONSENT REQUIRED. (a) Except as provided by Subsection (b), the department or a community center may not provide intellectual disability services to a client without the client's legally adequate consent.

(b) The department or community center may provide nonresidential intellectual disability services, including a

determination of an intellectual disability, to a client without the client's legally adequate consent if the department or community center has made all reasonable efforts to obtain consent.

(c) The executive commissioner by rule shall prescribe the efforts to obtain consent that are reasonable and the documentation for those efforts.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 5, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1422, eff. April 2, 2015.

Sec. 593.003. REQUIREMENT OF DETERMINATION OF AN INTELLECTUAL DISABILITY. Except as provided by Sections 593.027, 593.0275, and 593.028, a person is not eligible to receive intellectual disability services unless the person first is determined to be a person with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1423, eff. April 2, 2015.

Sec. 593.004. APPLICATION FOR DETERMINATION OF AN INTELLECTUAL DISABILITY. (a) In this section, "authorized provider" means:

(1) a physician licensed to practice in this state;

(2) a psychologist licensed to practice in this state;

(3) a professional licensed to practice in this state and certified by the department; or

(4) a provider certified by the department before September 1, 2013.

(b) A person believed to be a person with an intellectual disability, the parent if the person is a minor, or the guardian of the person may make written application to an authorized provider for a determination of an intellectual disability using forms provided by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1424, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1425, eff. April 2, 2015.

Sec. 593.005. DETERMINATION OF AN INTELLECTUAL DISABILITY. (a) In this section, "authorized provider" has the meaning assigned by Section 593.004.

(a-1) An authorized provider shall perform the determination of an intellectual disability. The department may charge a reasonable fee for certifying an authorized provider.

(b) The authorized provider shall base the determination on an interview with the person and on a professional assessment that, at a minimum, includes:

(1) a measure of the person's intellectual functioning;

(2) a determination of the person's adaptive behavior level; and

(3) evidence of origination during the person's developmental period.

(c) The authorized provider may use a previous assessment, social history, or relevant record from a school district, a public or private agency, or a physician or psychologist if the authorized provider determines that the assessment, social history, or record is valid.

(d) If the person is indigent, the determination of an intellectual disability shall be performed at the department's expense by an authorized provider.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1426, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1427, eff. April 2, 2015.

Sec. 593.006. REPORT. A person who files an application for a determination of an intellectual disability under Section 593.004 shall be promptly notified in writing of the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1428, eff. April 2, 2015.

Sec. 593.007. NOTIFICATION OF CERTAIN RIGHTS. The department shall inform the person who filed an application for a determination of an intellectual disability of the person's right to:

(1) an independent determination of an intellectual disability under Section 592.020; and

(2) an administrative hearing under Section 593.008 by the agency that conducted the determination of an intellectual disability to contest the findings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 6, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1429, eff. April 2, 2015.

Sec. 593.008. ADMINISTRATIVE HEARING. (a) The proposed client and contestant by right may:

(1) have a public hearing unless the proposed client or contestant requests a closed hearing;

(2) be present at the hearing; and

(3) be represented at the hearing by a person of their choosing, including legal counsel.

(b) The proposed client, contestant, and their respective representative by right may:

(1) have reasonable access at a reasonable time before the hearing to any records concerning the proposed client relevant to the proposed action;

(2) present oral or written testimony and evidence, including the results of an independent determination of an intellectual disability; and

(3) examine witnesses.

(c) The hearing shall be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(d) Any interested person may appear and give oral or written testimony.

(e) The executive commissioner by rule shall implement the hearing procedures.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 7, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1430, eff. April 2, 2015.

Sec. 593.009. HEARING REPORT; FINAL DECISION. (a) After each hearing, the hearing officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported unless a party files an appeal within that period.

(c) The filing of an appeal suspends the hearing officer's decision, and a party may not take action on the decision.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.010. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for the appeal is in the county court of Travis

County or the county in which the proposed client resides.

(c) The appeal is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.011. FEES FOR SERVICES. (a) The department shall charge reasonable fees to cover the costs of services provided to nonindigent persons.

(b) The department shall provide services free of charge to indigent persons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.012. ABSENT WITHOUT AUTHORITY. (a) The director of a residential care facility to which a client has been admitted for court-ordered care and treatment may have a client who is absent without authority taken into custody, detained, and returned to the facility by issuing a certificate to a law enforcement agency of the municipality or county in which the facility is located or by obtaining a court order issued by a magistrate in the manner prescribed by Section 574.083.

(b) The client shall be returned to the residential care facility in accordance with the procedures prescribed by Section 574.083.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 1016, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1187, Sec. 20, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1006, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1431, eff. April 2, 2015.

Sec. 593.013. INTERDISCIPLINARY TEAM RECOMMENDATION. (a) Except as provided by Section 593.0511, a person may not be admitted or committed to a residential care facility unless an interdisciplinary team recommends that placement.

(b) An interdisciplinary team shall:

(1) interview the person with an intellectual disability, the person's parent if the person is a minor, and the person's guardian;

(2) review the person's:

(A) social and medical history;

(B) medical assessment, which shall include an audiological, neurological, and vision screening;

(C) psychological and social assessment; and

(D) determination of adaptive behavior level;

(3) determine the person's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessment necessary to plan services;

(5) identify the person's habilitation and service preferences and needs; and

(6) recommend services to address the person's needs that consider the person's preferences.

(c) The interdisciplinary team shall give the person, the person's parent if the person is a minor, and the person's guardian an opportunity to participate in team meetings.

(d) The interdisciplinary team may use a previous assessment, social history, or other relevant record from a school district, public or private agency, or appropriate professional if the interdisciplinary team determines that the assessment, social history, or record is valid.

(e) The interdisciplinary team shall prepare a written report of its findings and recommendations that is signed by each team member and shall promptly send a copy of the report and recommendations to the person, the person's parent if the person is a minor, and the person's guardian.

(f) If the court has ordered the interdisciplinary team report and recommendations under Section 593.041, the team shall promptly send a copy of the report and recommendations to the court, the person with an intellectual disability or the person's legal representative, the person's parent if the person is a minor, and the person's guardian.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 8, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1432, eff.

April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 2, eff. September 1, 2023.

Sec. 593.014. EPILEPSY. A person may not be denied admission to a residential care facility because the person suffers from epilepsy.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Transferred, redesignated, and amended from Health and Safety Code, Section 553.001 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1343, eff. April 2, 2015.

SUBCHAPTER B. APPLICATION AND ADMISSION TO VOLUNTARY INTELLECTUAL DISABILITY SERVICES

Sec. 593.021. APPLICATION FOR VOLUNTARY SERVICES. (a) The proposed client or the parent if the proposed client is a minor may apply for voluntary intellectual disability services under Section 593.022, 593.026, 593.027, 593.0275, or 593.028.

(b) The guardian of the proposed client may apply for services under this subchapter under Section 593.022, 593.027, 593.0275, or 593.028.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 809, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1434, eff. April 2, 2015.

Sec. 593.022. ADMISSION TO VOLUNTARY INTELLECTUAL DISABILITY SERVICES. (a) An eligible person who applies for intellectual disability services may be admitted as soon as appropriate services are available.

(b) The department facility or community center shall develop a plan for appropriate programs or placement in programs or facilities

approved or operated by the department.

(c) The programs or placement must be suited to the needs of the proposed client and consistent with the rights guaranteed by Chapter 592.

(d) The proposed client, the parent if the client is a minor, and the client's guardian shall be encouraged and permitted to participate in the development of the planned programs or placement.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1435, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1436, eff. April 2, 2015.

Sec. 593.023. RULES RELATING TO PLANNING OF SERVICES OR TREATMENT. (a) The executive commissioner by rule shall develop and adopt procedures permitting a client, a parent if the client is a minor, or a guardian of the person to participate in planning the client's treatment and habilitation, including a decision to recommend or place a client in an alternative setting.

(b) The procedures must inform clients, parents, and guardians of the due process provisions of Sections 594.015-594.017, including the right to an administrative hearing and judicial review in county court of a proposed transfer or discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1437, eff. April 2, 2015.

Sec. 593.024. APPLICATION FOR VOLUNTARY RESIDENTIAL CARE SERVICES. (a) An application for voluntary admission to a residential care facility must be made according to department rules and contain a statement of the reasons for which placement is requested.

(b) Voluntary admission includes regular voluntary admission, emergency admission, and respite care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.025. PLACEMENT PREFERENCE. Preference for requested, voluntary placement in a residential care facility shall be given to the facility located nearest the residence of the proposed resident, unless there is a compelling reason for placement elsewhere.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.026. REGULAR VOLUNTARY ADMISSION. A regular voluntary admission is permitted if:

(1) space is available at the facility for which placement is requested; and

(2) the facility director determines that the facility provides services that meet the needs of the proposed resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1438, eff. April 2, 2015.

Sec. 593.027. EMERGENCY ADMISSION. (a) An emergency admission to a residential care facility is permitted without a determination of an intellectual disability and an interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;

(2) space is available at the facility for which placement is requested;

(3) the proposed resident has an urgent need for services that the facility director determines the facility provides; and

(4) the facility can provide relief for the urgent need within a year after admission.

(b) A determination of an intellectual disability and an interdisciplinary team recommendation for the person admitted under this section shall be performed within 30 days after the date of admission.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 9, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1439, eff. April 2, 2015.

Sec. 593.0275. EMERGENCY SERVICES. (a) A person may receive emergency services without a determination of an intellectual disability if:

(1) there is persuasive evidence that the person is a person with an intellectual disability;

(2) emergency services are available; and

(3) the person has an urgent need for emergency services.

(b) A determination of an intellectual disability for the person served under this section shall be performed within 30 days after the date the services begin.

Added by Acts 1993, 73rd Leg., ch. 60, Sec. 10, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1440, eff. April 2, 2015.

Sec. 593.028. RESPITE CARE. (a) A person may be admitted to a residential care facility for respite care without a determination of an intellectual disability and interdisciplinary team recommendation if:

(1) there is persuasive evidence that the proposed resident is a person with an intellectual disability;

(2) space is available at the facility for which respite care is requested;

(3) the facility director determines that the facility provides services that meet the needs of the proposed resident; and

(4) the proposed resident or the proposed resident's family urgently requires assistance or relief that can be provided within a period not to exceed 30 consecutive days after the date of admission.

(b) If the relief sought by the proposed resident or the proposed resident's family has not been provided within 30 days, one 30-day extension may be allowed if:

(1) the facility director determines that the relief may be provided in the additional period; and

(2) the parties agreeing to the original placement consent to the extension.

(c) If an extension is not granted the resident shall be released immediately and may apply for other services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 11, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1441, eff. April 2, 2015.

Sec. 593.029. TREATMENT OF MINOR WHO REACHES MAJORITY. When a facility resident who is voluntarily admitted as a minor approaches 18 years of age and continues to be in need of residential services, the facility director shall ensure that when the resident becomes an adult:

(1) the resident's legally adequate consent for admission to the facility is obtained from the resident or the guardian of the person; or

(2) an application is filed for court commitment under Subchapter C.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1442, eff. April 2, 2015.

Sec. 593.030. WITHDRAWAL FROM SERVICES. A resident voluntarily admitted to a residential care facility may not be detained more than 96 hours after the time the resident, the resident's parents if the resident is a minor, or the guardian of the resident's person requests discharge of the resident as provided by department rules, unless:

(1) the facility director determines that the resident's condition or other circumstances are such that the resident cannot be discharged without endangering the safety of the resident or the general public;

(2) the facility director files an application for judicial commitment under Section 593.041; and

(3) a court issues a protective custody order under Section 593.044 pending a final determination on the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1443, eff. April 2, 2015.

SUBCHAPTER C. COMMITMENT TO RESIDENTIAL CARE FACILITY

Sec. 593.041. APPLICATION FOR PLACEMENT; JURISDICTION. (a) A proposed resident, if an adult, a parent if the proposed resident is a minor, the guardian of the person, the court, or any other interested person, including a community center or agency that conducted a determination of an intellectual disability of the proposed resident, may file an application for an interdisciplinary team report and recommendation that the proposed client is in need of long-term placement in a residential care facility.

(b) Except as provided by Subsection (e), the application must be filed with the county clerk in the county in which the proposed resident resides. If the director of a residential care facility files an application for judicial commitment of a voluntary resident, the county in which the facility is located is considered the resident's county of residence.

(c) The county court has original jurisdiction of all judicial proceedings for commitment of a person with an intellectual disability to residential care facilities.

(d) Except as provided by Section 593.0511, a person may not be committed to the department for placement in a residential care facility under this subchapter unless a report by an interdisciplinary team recommending the placement has been completed during the six months preceding the date of the court hearing on the application. If the report and recommendations have not been completed or revised during that period, the court shall order the report and recommendations on receiving the application.

(e) An application in which the proposed patient is a child in the custody of the Texas Juvenile Justice Department may be filed in the county in which the child's commitment to the Texas Juvenile

Justice Department was ordered.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1086, Sec. 39, eff. June 19, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1444, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 3, eff. September 1, 2023.

Sec. 593.042. FORM OF APPLICATION. (a) An application for commitment of a person to a residential care facility must:
(1) be executed under oath; and
(2) include:
(A) the name, birth date, sex, and address of the proposed resident;
(B) the name and address of the proposed resident's parent or guardian, if applicable;
(C) a short, plain statement of the facts demonstrating that commitment to a facility is necessary and appropriate; and
(D) a short, plain statement explaining the inappropriateness of admission to less restrictive services.
(b) If the report required under Section 593.013 is completed, a copy must be included in the application.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 13, eff. Sept. 1, 1993.

Sec. 593.043. REPRESENTATION BY COUNSEL; APPOINTMENT OF ATTORNEY. (a) The proposed resident shall be represented by an attorney who shall represent the rights and legal interests of the proposed resident without regard to who initiates the proceedings or pays the attorney's fee.
(b) If the proposed resident cannot afford counsel, the court shall appoint an attorney not later than the 11th day before the date set for the hearing.
(c) An attorney appointed under this section is entitled to a reasonable fee. The county in which the proceeding is brought shall

pay the attorney's fee from the county's general fund.

(d) The parent, if the proposed resident is a minor, or the guardian of the person may be represented by legal counsel during the proceedings.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.044. ORDER FOR PROTECTIVE CUSTODY. (a) The court in which an application for a hearing is filed may order the proposed resident taken into protective custody if the court determines from certificates filed with the court that the proposed resident is:

(1) believed to be a person with an intellectual disability; and

(2) likely to cause injury to the proposed resident or others if not immediately restrained.

(b) The judge of the court may order a health or peace officer to take the proposed resident into custody and transport the person to:

(1) a designated residential care facility in which space is available; or

(2) a place deemed suitable by the county health authority.

(c) If the proposed resident is a voluntary resident, the court for good cause may order the resident's detention in:

(1) the facility to which the resident was voluntarily admitted; or

(2) another suitable location to which the resident may be transported under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1445, eff. April 2, 2015.

Sec. 593.045. DETENTION IN PROTECTIVE CUSTODY. (a) A person under a protective custody order may be detained for not more than 20 days after the date on which custody begins pending an order of the court.

(b) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons charged with

or convicted of a crime, unless an extreme emergency exists and in no case for longer than 24 hours.

(c) The county health authority shall ensure that the detained person receives proper care and medical attention pending removal to a residential care facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.046. RELEASE FROM PROTECTIVE CUSTODY. (a) The administrator of a facility in which a person is held in protective custody shall discharge the person not later than the 20th day after the date on which custody begins if the court that issued the protective custody order has not issued further detention orders.

(b) A facility administrator who believes that the person is a danger to himself or others shall immediately notify the court that issued the protective custody order of this belief.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.047. SETTING ON APPLICATION. On the filing of an application the court shall immediately set the earliest practicable date for a hearing to determine the appropriateness of the proposed commitment.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.048. HEARING NOTICE. (a) Not later than the 11th day before the date set for the hearing, a copy of the application, notice of the time and place of the hearing and, if appropriate, the order for the determination of an intellectual disability and interdisciplinary team report and recommendations shall be served on:

(1) the proposed resident or the proposed resident's representative;

(2) the parent if the proposed resident is a minor;

(3) the guardian of the person; and

(4) the department.

(b) The notice must specify in plain and simple language:

(1) the right to an independent determination of an

intellectual disability under Section 593.007; and

(2) the provisions of Sections 593.043, 593.047, 593.049, 593.050, and 593.053.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 14, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1446, eff. April 2, 2015.

Sec. 593.049. HEARING BEFORE JURY; PROCEDURE. (a) On request of a party to the proceedings, or on the court's own motion, the hearing shall be before a jury.

(b) The Texas Rules of Civil Procedure apply to the selection of the jury, the court's charge to the jury, and all other aspects of the proceedings and trial unless the rules are inconsistent with this subchapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.050. CONDUCT OF HEARING. (a) The hearing must be open to the public unless the proposed resident or the resident's representative requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(b) The proposed resident is entitled to be present throughout the hearing. If the court determines that the presence of the proposed resident would result in harm to the proposed resident, the court may waive the requirement in writing clearly stating the reason for the decision.

(c) The proposed resident is entitled to and must be provided the opportunity to confront and cross-examine each witness.

(d) The Texas Rules of Evidence apply. The results of the determination of an intellectual disability and the current interdisciplinary team report and recommendations, except in the case of a long-term placement under Section 593.0511, shall be presented in evidence.

(e) The party who filed the application has the burden to prove beyond a reasonable doubt that long-term placement of the proposed resident in a residential care facility is appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 15, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 10.007, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1447, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 4, eff. September 1, 2023.

Sec. 593.051. DISMISSAL AFTER HEARING. If long-term placement in a residential care facility is not found to be appropriate, the court shall enter a finding to that effect, dismiss the application, and if appropriate, recommend application for admission to voluntary services under Subchapter B.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.0511. LONG-TERM PLACEMENT WITHOUT INTERDISCIPLINARY TEAM RECOMMENDATION. A court may commit a proposed resident to long-term placement in a residential care facility without an interdisciplinary team recommendation under Section 593.013 if the court determines beyond a reasonable doubt that the proposed resident meets the requirements for commitment to a residential care facility under Section 593.052.

Added by Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 5, eff. September 1, 2023.

Sec. 593.052. ORDER FOR COMMITMENT. (a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with an intellectual disability;

(2) a petition to the court to issue a commitment order by the guardian of the proposed resident or, if the proposed resident is a minor, the parent of the proposed resident or the current interdisciplinary team report and recommendations, if applicable, show that because of the proposed resident's intellectual disability, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to the proposed resident or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1448, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1145 (S.B. 944), Sec. 6, eff. September 1, 2023.

Sec. 593.053. DECISION. The court in each case shall promptly report in writing the decision and findings of fact.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.054. NOT A JUDGMENT OF INCOMPETENCE. An order for commitment is not an adjudication of mental incompetency.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.055. DESIGNATION OF FACILITY. If placement in a residential facility is necessary, preference shall be given to the facility nearest to the residence of the proposed resident unless:

(1) space in the facility is unavailable;

(2) the proposed resident, parent if the resident is a minor, or guardian of the person requests otherwise; or

(3) there are other compelling reasons.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.056. APPEAL. (a) A party to a commitment proceeding has the right to appeal the judgment to the appropriate court of appeals.

(b) The Texas Rules of Civil Procedure apply to an appeal under this section.

(c) An appeal under this section shall be given a preference setting.

(d) The county court may grant a stay of commitment pending appeal.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER D. FEES

Sec. 593.071. APPLICATION OF SUBCHAPTER. This subchapter applies only to a resident admitted to a residential care facility operated by the department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.072. INABILITY TO PAY. A resident may not be denied residential care because of an inability to pay for the care.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.073. DETERMINATION OF RESIDENTIAL COSTS. The executive commissioner by rule may determine the cost of support, maintenance, and treatment of a resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1449, eff. April 2, 2015.

Sec. 593.074. MAXIMUM FEES. (a) Except as provided by this section, the department may not charge for a resident total fees from all sources that exceed the cost to the state to support, maintain, and treat the resident.

(b) The executive commissioner may use the projected cost of providing residential services to establish by rule the maximum fee that may be charged to a payer.

(c) The executive commissioner by rule may establish maximum fees on one or a combination of the following:

(1) a statewide per capita;

(2) an individual facility per capita; or

(3) the type of service provided.

(d) Notwithstanding Subsection (b), the executive commissioner by rule may establish a fee in excess of the department's projected cost of providing residential services that may be charged to a payer:

(1) who is not an individual; and

(2) whose method of determining the rate of reimbursement to a provider results in the excess.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1450, eff. April 2, 2015.

Sec. 593.075. SLIDING FEE SCHEDULE. (a) The executive commissioner by rule shall establish a sliding fee schedule for the payment by the resident's parents of the state's total costs for the support, maintenance, and treatment of a resident younger than 18 years of age.

(b) The executive commissioner by rule shall set the fee according to the parents' net taxable income and ability to pay.

(c) The parents may elect to have their net taxable income determined by their most current financial statement or federal income tax return.

(d) In determining the portion of the costs of the resident's support, maintenance, and treatment that the parents are required to pay, the department, in accordance with rules adopted by the executive commissioner, shall adjust, when appropriate, the payment required under the fee schedule to allow for consideration of other factors affecting the ability of the parents to pay.

(e) The executive commissioner shall evaluate and, if necessary, revise the fee schedule at least once every five years.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 278, Sec. 2, eff. June 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1451, eff. April 2, 2015.

Sec. 593.076. FEE SCHEDULE FOR DIVORCED PARENTS. (a) If the parents of a resident younger than 18 years of age are divorced, the fee charged each parent for the cost of the resident's support, maintenance, and treatment is determined by that parent's own income.

(b) If the divorced parents' combined fees exceed the maximum fee authorized under the fee schedule, the department shall equitably allocate the maximum fee between the parents in accordance with department rules, but a parent's fee may not exceed the individual fee determined for that parent under Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.077. CHILD SUPPORT PAYMENTS FOR BENEFIT OF RESIDENT. (a) Child support payments for the benefit of a resident paid or owed by a parent under court order are considered the property and estate of the resident and the:

(1) department may be reimbursed for the costs of a resident's support, maintenance, and treatment from those amounts; and

(2) executive commissioner by rule may establish a fee based on the child support obligation in addition to other fees authorized by this subchapter.

(b) The department shall credit the amount of child support a parent actually pays for a resident against monthly charges for which

the parent is liable, based on ability to pay.

(c) A parent who receives child support payments for a resident is liable for the monthly charges based on the amount of child support payments actually received in addition to the liability of that parent based on ability to pay.

(d) The department may file a motion to modify a court order that establishes a child support obligation for a resident to require payment of the child support directly to the residential care facility in which the resident resides for the resident's support, maintenance, and treatment if:

(1) the resident's parent fails to pay child support as required by the order; or

(2) the resident's parent who receives child support fails to pay charges based on the amount of child support payments received.

(e) In addition to modification of an order under Subsection (d), the court may order all past due child support for the benefit of a resident paid directly to the resident's residential care facility to the extent that the department is entitled to reimbursement of the resident's charges from the child support obligation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1452, eff. April 2, 2015.

Sec. 593.078. PAYMENT FOR ADULT RESIDENTS. (a) A parent of a resident who is 18 years of age or older is not required to pay for the resident's support, maintenance, and treatment.

(b) Except as provided by Section 593.081, a resident and the resident's estate are liable for the costs of the resident's support, maintenance, and treatment regardless of the resident's age.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.080. STATE CLAIMS FOR UNPAID FEES. (a) Unpaid charges accruing after January 1, 1978, and owed by a parent for the support, maintenance, and treatment of a resident are a claim in

favor of the state for the cost of support, maintenance, and treatment of the resident and constitute a lien against the parent's property and estate as provided by Section 533.004, but do not constitute a lien against any other estate or property of the resident.

(b) Except as provided by Section 593.081, costs determined under Section 593.073 constitute a claim by the state against the entire estate or property of the resident, including any share the resident may have by gift, descent, or devise in the estate of the resident's parent or any other person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.081. TRUST EXEMPTION. (a) If the resident is the beneficiary of a trust that has an aggregate principal of $250,000 or less, the corpus or income of the trust for the purposes of this subchapter is not considered to be the property of the resident or the resident's estate, and is not liable for the resident's support, maintenance, and treatment regardless of the resident's age.

(b) To qualify for the exemption provided by Subsection (a), the trust must be created by a written instrument, and a copy of the trust instrument must be provided to the department.

(c) A trustee of the trust shall, on the department's request, provide to the department a current financial statement that shows the value of the trust estate.

(d) The department may petition a district court to order the trustee to provide a current financial statement if the trustee does not provide the statement before the 31st day after the date on which the department makes the request. The court shall hold a hearing on the department's petition not later than the 45th day after the date on which the petition is filed. The court shall order the trustee to provide to the department a current financial statement if the court finds that the trustee has failed to provide the statement.

(e) Failure of the trustee to comply with the court's order is punishable by contempt.

(f) For the purposes of this section, the following are not considered to be trusts and are not entitled to the exemption provided by this section:

(1) a guardianship administered under the Estates Code;

(2) a trust established under Chapter 142, Property Code;

(3) a facility custodial account established under Section 551.003;

(4) the provisions of a divorce decree or other court order relating to child support obligations;

(5) an administration of a decedent's estate; or

(6) an arrangement in which funds are held in the registry or by the clerk of a court.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 498, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1453, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 9, eff. September 1, 2019.

Sec. 593.082. FILING OF CLAIMS. (a) In this section:

(1) "Person responsible for a resident" means the resident, a person liable for the support of the resident, or both.

(2) "Resident" means a person admitted to a residential care facility operated by the department for persons with an intellectual disability.

(b) A county or district attorney shall, on the written request of the department, represent the state in filing a claim in probate court or a petition in a court of competent jurisdiction to require a person responsible for a resident to appear in court and show cause why the state should not have judgment against the person for the resident's support and maintenance in a residential care facility operated by the department.

(c) On a sufficient showing, the court may enter judgment against the person responsible for the resident for the costs of the resident's support and maintenance.

(d) Sufficient evidence to authorize the court to enter judgment is a verified account, sworn to by the director of the residential care facility in which the person with an intellectual disability resided or has resided, as to the amount due.

(e) The judgment may be enforced as in other cases.

(f) The county or district attorney representing the state is

entitled to a commission of 10 percent of the amount collected.

(g) The attorney general shall represent the state if the county and district attorney refuse or are unable to act on the department's request.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1454, eff. April 2, 2015.

SUBCHAPTER E. ADMISSION AND COMMITMENT UNDER PRIOR LAW

Sec. 593.091. ADMISSION AND COMMITMENT. A resident admitted or committed to a department residential care facility under law in force before January 1, 1978, may remain in the facility until:

(1) necessary and appropriate alternate placement is found; or

(2) the resident can be admitted or committed to a facility as provided by this chapter, if the admission or commitment is necessary to meet the due process requirements of this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 593.092. DISCHARGE OF PERSON VOLUNTARILY ADMITTED TO RESIDENTIAL CARE FACILITY. (a) Except as otherwise provided, a resident voluntarily admitted to a residential care facility under a law in force before January 1, 1978, shall be discharged not later than the 96th hour after the time the facility director receives written request from the person on whose application the resident was admitted, or on the resident's own request.

(b) The facility director may detain the resident for more than 96 hours in accordance with Section 593.030.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1455, eff. April 2, 2015.

Sec. 593.093. REIMBURSEMENT TO COUNTY. (a) The state shall reimburse a county an amount not to exceed $50 for the cost of a hearing held by the county court to commit a resident of a department

facility who was committed under a law in force before January 1, 1978, and for whom the due process requirements of this subtitle require another commitment proceeding.

(b) The commissioners court of a county entitled to reimbursement under this section may file a claim for reimbursement with the comptroller.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

CHAPTER 594. TRANSFER AND DISCHARGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 594.001. APPLICABILITY OF CHAPTER. (a) A client may not be transferred or discharged except as provided by this chapter and department rules.

(b) This chapter does not apply to the:

(1) transfer of a client for emergency medical, dental, or psychiatric care for not more than 30 consecutive days;

(2) voluntary withdrawal of a client from intellectual disability services; or

(3) discharge of a client by a director because the person is not a person with an intellectual disability according to the results of the determination of an intellectual disability.

(c) A discharge under Subsection (b)(3) is without further hearings, unless an administrative hearing under Subchapter A, Chapter 593, to contest the determination of an intellectual disability is requested.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 16, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1456, eff. April 2, 2015.

Sec. 594.002. LEAVE; FURLOUGH. The director may grant or deny a resident a leave of absence or furlough.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1457, eff.

April 2, 2015.

Sec. 594.003. HABEAS CORPUS. This chapter does not alter or limit a resident's right to obtain a writ of habeas corpus.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER B. TRANSFER OR DISCHARGE

Sec. 594.011. SERVICE PROVIDER. A service provider shall transfer a client, furlough a client to an alternative placement, or discharge a client if the service provider determines:

(1) that the client's placement is no longer appropriate to the person's individual needs; or

(2) that the client can be better treated and habilitated in another setting; and

(3) placement in another setting that can better treat and habilitate the client has been secured.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.012. REQUEST BY CLIENT, PARENT, OR GUARDIAN. (a) A client, the parent of a client who is a minor, or the guardian of the person may request a transfer or discharge.

(b) The service provider shall determine the appropriateness of the requested transfer or discharge.

(c) If a request is denied, the client, parent, or guardian of the person is entitled to a hearing under Section 594.015 to contest the decision.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.013. NOTICE OF TRANSFER OR DISCHARGE; APPROVAL. (a) A client and the parent or guardian must be notified not later than the 31st day before the date of the proposed transfer or discharge of the client.

(b) A client may not be transferred to another facility without the prior approval and knowledge of the parents or guardian of the

client.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.014. RIGHT TO ADMINISTRATIVE HEARING. (a) A client and the parent or the guardian shall be informed of the right to an administrative hearing to contest a proposed transfer or discharge.

(b) A client may not be transferred to another facility or discharged from intellectual disability services unless the client is given the opportunity to request and receive an administrative hearing to contest the proposed transfer or discharge.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1458, eff. April 2, 2015.

Sec. 594.015. ADMINISTRATIVE HEARING. (a) An administrative hearing to contest a transfer or discharge decision must be held:

(1) as soon as possible, but not later than the 30th day after the date of the request;

(2) in a convenient location; and

(3) after reasonable notice.

(b) The client, the parent of a client who is a minor, the guardian of the person, and the director have the right to:

(1) be present and represented at the hearing; and

(2) have reasonable access at a reasonable time before the hearing to any records concerning the client relevant to the proposed action.

(c) Evidence, including oral and written testimony, shall be presented.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1459, eff. April 2, 2015.

Sec. 594.016. DECISION. (a) After each case, the hearing

officer shall promptly report to the parties in writing the officer's decision, findings of fact, and the reasons for those findings.

(b) The hearing officer's decision is final on the 31st day after the date on which the decision is reported, unless an appeal is filed within that period.

(c) The filing of an appeal suspends the decision of the hearing officer, and a party may not take action on the decision.

(d) If an appeal is not filed from a final order granting a request for a transfer or discharge, the director shall proceed with the transfer or discharge.

(e) If an appeal is not filed from a final order denying a request for a transfer or discharge, the client shall remain in the same program or facility at which the client is receiving services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1460, eff. April 2, 2015.

Sec. 594.017. APPEAL. (a) A party to a hearing may appeal the hearing officer's decision without filing a motion for rehearing with the hearing officer.

(b) Venue for an appeal is the county court of Travis County or the county in which the client resides.

(c) The appeal is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.018. NOTICE TO COMMITTING COURT. When a resident is discharged, the department shall notify the court that committed the resident to a residential care facility under Subchapter C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.019. ALTERNATIVE SERVICES. (a) The department shall provide appropriate alternative or follow-up supportive services consistent with available resources by agreement among the

department, the local intellectual and developmental disability authority in the area in which the client will reside, and the client, parent of a client who is a minor, or guardian of the person. The services shall be consistent with the rights guaranteed in Chapter 592.

(b) Placement in a residential care facility, other than by transfer from another residential care facility, may be made only as provided by Subchapters B and C, Chapter 593.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1461, eff. April 2, 2015.

SUBCHAPTER C. TRANSFER TO STATE MENTAL HOSPITAL

Sec. 594.0301. DEFINITION. In this subchapter, "state mental hospital" has the meaning assigned by Section 571.003.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1462, eff. April 2, 2015.

Sec. 594.031. TRANSFER OF VOLUNTARY RESIDENT. A voluntary resident may not be transferred to a state mental hospital without legally adequate consent to the transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.032. TRANSFER OF COURT-COMMITTED RESIDENT. (a) The director may transfer a resident committed to a residential care facility under Subchapter C, Chapter 593, to a state mental hospital for mental health care if:

(1) an examination of the resident by a licensed physician indicates symptoms of mental illness to the extent that care, treatment, and rehabilitation in a state mental hospital is in the best interest of the resident;

(2) the hospital administrator of the state mental hospital to which the resident is to be transferred agrees to the transfer; and

(3) the director coordinates the transfer with the hospital administrator of the state mental hospital.

(b) A resident transferred from a residential care facility to a state mental hospital may not remain in the hospital for longer than 30 consecutive days unless the transfer is authorized by a court order under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1463, eff. April 2, 2015.

Sec. 594.033. EVALUATION; COURT ORDER. The hospital administrator of the state mental hospital to which a court-committed resident is transferred shall immediately have an evaluation of the resident's condition performed.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.034. REQUEST FOR TRANSFER ORDER. (a) If the evaluation performed under Section 594.033 reveals that continued hospitalization is necessary for longer than 30 consecutive days, the hospital administrator of the state mental hospital to which a court-committed resident is transferred shall promptly request from the court that originally committed the resident to the residential care facility an order transferring the resident to the hospital.

(b) In support of the request, the hospital administrator shall send two certificates of medical examination for mental illness as described in Section 574.011, stating that the resident is:

(1) a person with mental illness; and

(2) requires observation or treatment in a mental hospital.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.035. HEARING DATE. When the committing court receives the hospital administrator's request and the certificates of medical examination, the court shall set a date for the hearing on the proposed transfer.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.036. NOTICE. (a) A copy of the transfer request and notice of the transfer hearing shall be personally served on the resident not later than the eighth day before the date set for the hearing.

(b) Notice shall also be served on the parents if the resident is a minor and on the guardian for the resident's person if the resident has been declared to be incapacitated and a guardian has been appointed in a proceeding under Title 3, Estates Code.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 1039, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1464, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 10, eff. September 1, 2019.

Sec. 594.037. HEARING LOCATION. (a) The judge may hold a transfer hearing on the petition at any suitable place in the county.

(b) The hearing should be held in a physical setting that is not likely to have a harmful effect on the resident.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.038. HEARING BEFORE JURY. (a) The transfer hearing must be held before a jury unless a waiver of trial by jury is made in writing under oath by the resident, the parent if the resident is a minor, or the resident's guardian of the person.

(b) Notwithstanding the executed waiver, a jury shall determine the issue of the case if the resident, the parent, the guardian of the person, or the resident's legal representative demands a jury trial at any time before the hearing's determination is made.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.039. RESIDENT PRESENT AT HEARING. The resident is entitled to be present at the transfer hearing unless the court determines it is in the resident's best interest to not be present.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.040. OPENING HEARING. The transfer hearing must be open to the public unless the court:

(1) finds that it is in the best interest of the resident to close the hearing; and

(2) obtains the consent of the resident, a parent of a resident who is a minor, the resident's guardian of the person, and the resident's legal representative to close the hearing.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.041. MEDICAL EVIDENCE. (a) At least two physicians, at least one of whom must be a psychiatrist, must testify at the transfer hearing. The physicians must have examined the resident not earlier than the 15th day before the date set for the hearing.

(b) A person may not be transferred to a state mental hospital except on competent medical or psychiatric testimony.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1465, eff. April 2, 2015.

Sec. 594.042. HEARING DETERMINATION. The court by order shall approve the transfer of the resident to a state mental hospital if the court or jury determines that the resident:

(1) is a person with mental illness; and

(2) requires a transfer to a state mental hospital for treatment for the resident's own welfare and protection or for the protection of others.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.043. DISCHARGE OF RESIDENT. A resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital or a residential care facility shall be discharged.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 594.044. TRANSFER TO RESIDENTIAL CARE FACILITY. (a) Except as provided by Section 594.045, a resident who is transferred to a state mental hospital and no longer requires treatment in a state mental hospital but requires treatment in a residential care facility shall be returned to the residential care facility from which the resident was transferred.

(b) The hospital administrator of the state mental hospital shall notify the director of the facility from which the resident was transferred that hospitalization in a state mental hospital is not necessary or appropriate for the resident. The director shall immediately provide for the return of the resident to the facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1466, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1467, eff. April 2, 2015.

Sec. 594.045. RETURN OF COURT-ORDERED TRANSFER RESIDENT. (a) If a resident has been transferred to a state mental hospital under a court order under this subchapter, the hospital administrator of the state mental hospital shall:

(1) send a certificate to the committing court stating that the resident does not require hospitalization in a state mental hospital but requires care in a residential care facility because of the resident's intellectual disability; and

(2) request that the resident be transferred to a residential care facility.

(b) The transfer may be made only if the judge of the committing court approves the transfer as provided by Section 575.013.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1468, eff. April 2, 2015.

CHAPTER 595. RECORDS

Sec. 595.001. CONFIDENTIALITY OF RECORDS. Records of the identity, diagnosis, evaluation, or treatment of a person that are maintained in connection with the performance of a program or activity relating to an intellectual disability are confidential and may be disclosed only for the purposes and under the circumstances authorized by this chapter, subject to applicable federal and other state law.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1469, eff. April 2, 2015.

Sec. 595.002. RULES. The executive commissioner shall adopt rules to carry out this chapter that are necessary or proper to:

(1) prevent circumvention or evasion of the chapter; or

(2) facilitate compliance with the chapter.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1470, eff. April 2, 2015.

Sec. 595.003. CONSENT TO DISCLOSURE. (a) The content of a confidential record may be disclosed in accordance with the prior written consent of:

(1) the person about whom the record is maintained;

(2) the person's parent if the person is a minor;

(3) the guardian if the person has been adjudicated incompetent to manage the person's personal affairs; or

(4) if the person is dead:

(A) the executor or administrator of the deceased's

estate; or

(B) if an executor or administrator has not been appointed, the deceased's spouse or, if the deceased was not married, an adult related to the deceased within the first degree of consanguinity.

(b) Disclosure is permitted only to the extent, under the circumstances, and for the purposes allowed under department rules.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.004. RIGHT TO PERSONAL RECORD. (a) The content of a confidential record shall be made available on the request of the person about whom the record was made unless:

(1) the person is a client; and

(2) the qualified professional responsible for supervising the client's habilitation states in a signed written statement that having access to the record is not in the client's best interest.

(b) The parent of a minor or the guardian of the person shall be given access to the contents of any record about the minor or person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.005. EXCEPTIONS. (a) The content of a confidential record may be disclosed without the consent required under Section 595.003 to:

(1) medical personnel to the extent necessary to meet a medical emergency;

(2) qualified personnel for management audits, financial audits, program evaluations, or research approved by the department; or

(3) personnel legally authorized to conduct investigations concerning complaints of abuse or denial of rights of persons with an intellectual disability.

(b) A person who receives confidential information under Subsection (a)(2) may not directly or indirectly identify a person receiving services in a report of the audit, evaluation, or research, or otherwise disclose any identities.

(c) The department may disclose without the consent required

under Section 595.003 a person's educational records to a school district that provides or will provide educational services to the person.

(d) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, the content of a record may be disclosed without the consent required under Section 595.003. In determining whether there is good cause, a court shall weigh the public interest and need for disclosure against the injury to the person receiving services. On granting the order, the court, in determining the extent to which any disclosure of all or any part of a record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1471, eff. April 2, 2015.

Sec. 595.0055. DISCLOSURE OF NAME AND BIRTH AND DEATH DATES FOR CERTAIN PURPOSES. (a) In this section, "cemetery organization" and "funeral establishment" have the meanings assigned by Section 711.001.

(b) Notwithstanding any other law, on request by a representative of a cemetery organization or funeral establishment, the director of a residential care facility shall release to the representative the name, date of birth, or date of death of a person who was a resident at the facility when the person died, unless the person or the person's guardian provided written instructions to the facility not to release the person's name or dates of birth and death. A representative of a cemetery organization or a funeral establishment may use a name or date released under this subsection only for the purpose of inscribing the name or date on a grave marker.

Added by Acts 2003, 78th Leg., ch. 174, Sec. 2, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1472, eff. April 2, 2015.

Sec. 595.006. USE OF RECORD IN CRIMINAL PROCEEDINGS. Except as authorized by a court order under Section 595.005, a confidential record may not be used to:

(1) initiate or substantiate a criminal charge against a person receiving services; or

(2) conduct an investigation of a person receiving services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.007. CONFIDENTIALITY OF PAST SERVICES. The prohibition against disclosing information in a confidential record applies regardless of when the person received services.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.008. EXCHANGE OF RECORDS. The prohibitions against disclosure apply to an exchange of records between government agencies or persons, except for exchanges of information necessary for:

(1) delivery of services to clients; or

(2) payment for intellectual disability services as defined in this subtitle.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1473, eff. April 2, 2015.

Sec. 595.009. RECEIPT OF INFORMATION BY PERSONS OTHER THAN CLIENT OR PATIENT. (a) A person who receives information that is confidential under this chapter may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(b) This section does not apply to the person about whom the record is made, or the parent, if the person is a minor, or the guardian of the person.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 595.010. DISCLOSURE OF PHYSICAL OR MENTAL CONDITION. This chapter does not prohibit a qualified professional from disclosing the current physical and mental condition of a person with an intellectual disability to the person's parent, guardian, relative, or friend.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1474, eff. April 2, 2015.

CHAPTER 597. CAPACITY OF CLIENTS TO CONSENT TO TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 597.001. DEFINITIONS. In this chapter:

(1) "Highly restrictive procedure" means the application of aversive stimuli, exclusionary time-out, physical restraint, or a requirement to engage in an effortful task.

(2) "Client" means a person receiving services in a community-based ICF-IID.

(3) "Committee" means a surrogate consent committee established under Section 597.042.

(4) "ICF-IID" has the meaning assigned by Section 531.002.

(5) "Interdisciplinary team" means those interdisciplinary teams defined in the Code of Federal Regulations for participation in the intermediate care facilities for individuals with intellectual and developmental disabilities.

(6) "Major medical and dental treatment" means a medical, surgical, dental, or diagnostic procedure or intervention that:

(A) has a significant recovery period;

(B) presents a significant risk;

(C) employs a general anesthetic; or

(D) in the opinion of the primary physician, involves a significant invasion of bodily integrity that requires the extraction of bodily fluids or an incision or that produces substantial pain, discomfort, or debilitation.

(7) "Psychoactive medication" means any medication

prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that is used to exercise an effect upon the central nervous system for the purposes of influencing and modifying behavior, cognition, or affective state.

(8) "Surrogate decision-maker" means an individual authorized under Section 597.041 to consent on behalf of a client residing in an ICF-IID.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1475, eff. April 2, 2015.

Sec. 597.002. RULES. The executive commissioner may adopt rules necessary to implement this chapter.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1476, eff. April 2, 2015.

Sec. 597.003. EXCEPTIONS. (a) This chapter does not apply to decisions for the following:

(1) experimental research;
(2) abortion;
(3) sterilization;
(4) management of client funds; and
(5) electroconvulsive treatment.

(b) This chapter does not apply to campus-based facilities operated by the department.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

SUBCHAPTER B. ASSESSMENT OF CLIENT'S CAPACITY; INCAPACITATED CLIENTS WITHOUT GUARDIANS

Sec. 597.021. ICF-IID ASSESSMENT OF CLIENT'S CAPACITY TO CONSENT TO TREATMENT. (a) The executive commissioner by rule shall require an ICF-IID certified in this state to assess the capacity of each adult client without a legal guardian to make treatment decisions when there is evidence to suggest the individual is not capable of making a decision covered under this chapter.

(b) The rules must require the use of a uniform assessment process prescribed by department rule to determine a client's capacity to make treatment decisions.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1477, eff. April 2, 2015.

SUBCHAPTER C. SURROGATE CONSENT FOR ICF-IID CLIENTS

Sec. 597.041. SURROGATE DECISION-MAKERS. (a) If the results of an assessment conducted in accordance with Section 597.021 indicate that an adult client who does not have a legal guardian or a client under 18 years of age who has no parent, legal guardian, or managing or possessory conservator lacks the capacity to make a major medical or dental treatment decision, an adult surrogate from the following list, in order of descending preference, who has decision-making capacity and who is willing to consent on behalf of the client may consent to major medical or dental treatment on behalf of the client:

(1) an actively involved spouse;

(2) an actively involved adult child who has the waiver and consent of all other actively involved adult children of the client to act as the sole decision-maker;

(3) an actively involved parent or stepparent;

(4) an actively involved adult sibling who has the waiver and consent of all other actively involved adult siblings of the client to act as the sole decision-maker; and

(5) any other actively involved adult relative who has the

waiver and consent of all other actively involved adult relatives of the client to act as the sole decision-maker.

(b) Any person who consents on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

(c) Consent given by the surrogate decision-maker is valid and competent to the same extent as if the client had the capacity to consent and had consented.

(d) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record under Title 3, Estates Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1479, eff. April 2, 2015.

Sec. 597.042. SURROGATE CONSENT COMMITTEE ESTABLISHED; DEPARTMENTAL SUPPORT. (a) For cases in which there is no guardian or surrogate decision-maker available, the department shall establish and maintain a list of individuals qualified to serve on a surrogate consent committee.

(b) The department shall provide the staff and assistance necessary to perform the duties prescribed by this subchapter.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.043. COMMITTEE MEMBERSHIP. (a) A surrogate consent committee considering an application for a treatment decision shall be composed of at least three but not more than five members, and consent on behalf of clients shall be based on consensus of the members.

(b) A committee considering an application for a treatment decision must consist of individuals who:

(1) are not employees of the facility;

(2) do not provide contractual services to the facility;

(3) do not manage or exercise supervisory control over:

(A) the facility or the employees of the facility; or

(B) any company, corporation, or other legal entity that manages or exercises control over the facility or the employees of the facility;

(4) do not have a financial interest in the facility or in any company, corporation, or other legal entity that has a financial interest in the facility; and

(5) are not related to the client.

(c) The list of qualified individuals from which committee members are drawn shall include:

(1) health care professionals licensed or registered in this state who have specialized training in medicine, psychopharmacology, nursing, or psychology;

(2) persons with an intellectual disability or parents, siblings, spouses, or children of a person with an intellectual disability;

(3) attorneys licensed in this state who have knowledge of legal issues of concern to persons with an intellectual disability or to the families of persons with an intellectual disability;

(4) members of private organizations that advocate on behalf of persons with an intellectual disability; and

(5) persons with demonstrated expertise or interest in the care and treatment of persons with an intellectual disability.

(d) At least one member of the committee must be an individual listed in Subsection (c)(1) or (5).

(e) A member of a committee shall participate in education and training as required by department rule.

(f) The department shall designate a committee chair.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 2, eff. Sept. 1, 1997.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1480, eff. April 2, 2015.

Sec. 597.044. APPLICATION FOR TREATMENT DECISION. (a) If the results of the assessment conducted in accordance with Section 597.021 indicate that a client who does not have a legal guardian or surrogate decision-maker lacks the capacity to make a treatment decision about major medical or dental treatment, psychoactive medication, or a highly restrictive procedure, the ICF-IID must file an application for a treatment decision with the department.

(b) An application must be in the form prescribed by the department, must be signed by the applicant, and must:

(1) state that the applicant has reason to believe and does believe that the client has a need for major medical or dental treatment, psychoactive medication, or a highly restrictive procedure;

(2) specify the condition proposed to be treated;

(3) provide a description of the proposed treatment, including the risks and benefits to the client of the proposed treatment;

(4) provide a description of generally accepted alternatives to the proposed treatment, including the risks and potential benefits to the client of the alternatives, and the reasons the alternatives were rejected;

(5) state the applicant's opinion on whether the proposed treatment promotes the client's best interest and the grounds for the opinion;

(6) state the client's opinion about the proposed treatment, if known;

(7) provide any other information necessary to determine the client's best interest regarding the treatment; and

(8) state that the client does not have a guardian of the person and does not have a parent, spouse, child, or other person with demonstrated interest in the care and welfare of the client who is able and willing to become the client's guardian or surrogate decision-maker.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 2, eff. Sept. 1, 1997.
Reenacted and amended by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1481, eff.

April 2, 2015.

Sec. 597.045. NOTICE OF REVIEW OF APPLICATION FOR TREATMENT DECISION. (a) Following receipt of an application for a treatment decision that meets the requirements of Section 597.044(b), the department shall appoint a surrogate consent committee.

(b) The ICF-IID with assistance from the department shall schedule a review of the application.

(c) The ICF-IID with assistance from the department shall send notice of the date, place, and time of the review to the surrogate consent committee, the client who is the subject of the application, the client's actively involved parent, spouse, adult child, or other person known to have a demonstrated interest in the care and welfare of the client, and any other person as prescribed by department rule. The ICF-IID shall include a copy of the application and a statement of the committee's procedure for consideration of the application, including the opportunity to be heard or to present evidence and to appeal.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Act 1997, 75th Leg., ch. 450, Sec. 4, eff. Sept. 1, 1997.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1482, eff. April 2, 2015.

Sec. 597.046. PREREVIEW OF APPLICATION. (a) Before the date of the review of an application for a treatment decision the committee chair shall review the application to determine whether additional information may be necessary to assist the committee in determining the client's best interest under the circumstances.

(b) A committee member may consult with a person who might assist in the determination of the best interest of the client or in learning the personal opinions, beliefs, and values of the client.

(c) If a committee that does not include in its membership an individual listed in Section 597.043(c)(1) is to review an application for a treatment decision about psychoactive medication,

the department shall provide consultation with a health care professional licensed or registered in this state to assist the committee in the determination of the best interest of the client.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 4, eff. Sept. 1, 1997.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.047. CONFIDENTIAL INFORMATION. Notwithstanding any other state law, a person licensed by this state to provide services related to health care or to the treatment or care of a person with an intellectual disability, a developmental disability, or a mental illness shall provide to the committee members any information the committee requests that is relevant to the client's need for a proposed treatment.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1483, eff. April 2, 2015.

Sec. 597.048. REVIEW OF APPLICATION. (a) The committee shall review the application at the time, place, and date provided in the notice under Section 597.045.

(b) A person notified under Section 597.045 is entitled to be present and to present evidence personally or through a representative.

(c) The committee may take testimony or review evidence from any person who might assist the committee in determining a client's best interest.

(d) Formal rules of evidence do not apply to committee proceedings.

(e) If practicable, the committee shall interview and observe the client before making a determination of the client's best interest, and in those cases when a client is not interviewed, the reason must be documented in the committee's record.

(f) At any time before the committee makes its determination of a client's best interest under Section 597.049, the committee chair may suspend the review of the application for not more than five days if any person applies for appointment as the client's guardian of the person in accordance with the Estates Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 5, eff. Sept. 1, 1997.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1484, eff. April 2, 2015.

Sec. 597.049. DETERMINATION OF BEST INTEREST. (a) The committee shall make a determination, based on clear and convincing evidence, of whether the proposed treatment promotes the client's best interest and a determination that:

(1) a person has not been appointed as the guardian of the client's person before the sixth day after proceedings are suspended under Section 597.048(f); or

(2) there is a medical necessity, based on clear and convincing evidence, that the determination about the proposed treatment occur before guardianship proceedings are completed.

(b) In making its determination of the best interest of the client, the committee shall consider fully the preference of the client as articulated at any time.

(c) According to its determination of the client's best interest, the committee shall consent or refuse the treatment on the client's behalf.

(d) The committee shall determine a date on which the consent becomes effective and a date on which the consent expires.

(e) A person serving on a committee who consents or refuses to consent on behalf of a client and who acts in good faith, reasonably, and without malice is not criminally or civilly liable for that action.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 6, eff. Sept. 1, 1997.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18,

1999.

Sec. 597.050. NOTICE OF DETERMINATION. (a) The committee shall issue a written opinion containing each of its determinations and a separate statement of the committee's findings of fact.

(b) The ICF-IID shall send a copy of the committee's opinion to:

(1) each person notified under Section 597.045; and

(2) the department.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 450, Sec. 7, eff. Sept. 1, 1997.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1485, eff. April 2, 2015.

Sec. 597.051. EFFECT OF COMMITTEE'S DETERMINATION. This chapter does not limit the availability of other lawful means of obtaining a client's consent for medical treatment.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. June 18, 1999.
Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.052. SCOPE OF CONSENT. (a) The committee or the surrogate decision-maker may consent to the release of records related to the client's condition or treatment to facilitate treatment to which the committee or surrogate decision-maker has consented.

(b) The interdisciplinary team may consent to psychoactive medication subsequent to the initial consent for administration of psychoactive medication made by a surrogate consent committee in accordance with rules of the department until the expiration date of the consent.

(c) Unless another decision-making mechanism is provided for by law, a client, a client's authorized surrogate decision-maker if

available, or the client's interdisciplinary team may consent to decisions which involve risk to client protection and rights not specifically reserved to surrogate decision-makers or surrogate consent committees.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 450, Sec. 8, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.053. APPEALS. (a) A person notified under Section 597.045 may appeal the committee's decision by filing a petition in the probate court or court having probate jurisdiction for the county in which the client resides or in Travis County. The person must file the appeal not later than the 15th day after the effective date of the committee's determination.

(b) If the hearing is to be held in a probate court in which the judge is not a licensed attorney, the person filing the appeal may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The probate court judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(c) A copy of the petition must be served on all parties of record in the proceedings before the committee.

(d) After considering the nature of the condition of the client, the proposed treatment, and the need for timely medical attention, the court may issue a temporary restraining order to facilitate the appeal. If the order is granted, the court shall expedite the trial.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.

Sec. 597.054. PROCEDURES. (a) Each ICF-IID shall develop procedures for the surrogate consent committees in accordance with the rules adopted under Section 597.002.

(b) A committee is not subject to Chapter 2001, Government

Code, Chapter 551, Government Code, or Chapter 552, Government Code.

Added by Acts 1993, 73rd Leg., ch. 530, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (82), (88), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 450, Sec. 9, eff. Sept. 1, 1997. Reenacted by Acts 1999, 76th Leg., ch. 538, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1486, eff. April 2, 2015.

SUBTITLE E. SPECIAL PROVISIONS RELATING TO MENTAL ILLNESS AND INTELLECTUAL DISABILITY

CHAPTER 611. MENTAL HEALTH RECORDS

Sec. 611.001. DEFINITIONS. In this chapter:

(1) "Patient" means a person who consults or is interviewed by a professional for diagnosis, evaluation, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction.

(2) "Professional" means:

(A) a person authorized to practice medicine in any state or nation;

(B) a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder; or

(C) a person the patient reasonably believes is authorized, licensed, or certified as provided by this subsection.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 611.002. CONFIDENTIALITY OF INFORMATION AND PROHIBITION AGAINST DISCLOSURE. (a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004, 611.0041, or 611.0045.

(b-1) No exception to the privilege of confidentiality under Section 611.004 may be construed to create an independent duty or

requirement to disclose the confidential information to which the exception applies.

(c) This section applies regardless of when the patient received services from a professional.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.11, eff. Aug. 30, 1993.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 633 (H.B. 549), Sec. 1, eff. September 1, 2021.

Sec. 611.003. PERSONS WHO MAY CLAIM PRIVILEGE OF CONFIDENTIALITY. (a) The privilege of confidentiality may be claimed by:

(1) the patient;

(2) a person listed in Section 611.004(a)(4) or (a)(5) who is acting on the patient's behalf; or

(3) the professional, but only on behalf of the patient.

(b) The authority of a professional to claim the privilege of confidentiality on behalf of the patient is presumed in the absence of evidence to the contrary.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 611.004. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information only:

(1) to a governmental agency if the disclosure is required or authorized by law;

(2) to medical, mental health, or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;

(3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4) to a person who has the written consent of the patient,

or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5) to the patient's personal representative if the patient is deceased;

(6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);

(9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; or

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code.

(a-1) No civil, criminal, or administrative cause of action exists against a person described by Section 611.001(2)(A) or (B) for the disclosure of confidential information in accordance with Subsection (a)(2). A cause of action brought against the person for the disclosure of the confidential information must be dismissed with prejudice.

(b) Personnel who receive confidential information under Subsection (a)(3) may not directly or indirectly identify or otherwise disclose the identity of a patient in a report or in any other manner.

(c) The exception in Subsection (a)(8) applies only to records

created by the state hospital or state school or by the employees of the hospital or school. Information or records that identify a patient may be released only with the patient's proper consent.

(d) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information. This subsection does not apply to a person listed in Subsection (a)(4) or (a)(5) who is acting on the patient's behalf.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 856, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 138 (H.B. 741), Sec. 1, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 633 (H.B. 549), Sec. 2, eff. September 1, 2021.

Sec. 611.0041. REQUIRED DISCLOSURE OF CONFIDENTIAL INFORMATION OTHER THAN IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) In this section:

(1) "Patient" has the meaning assigned by Section 552.0011.

(2) "State hospital" has the meaning assigned by Section 552.0011.

(b) To the extent permitted by federal law, a professional shall disclose confidential information to the descendant of a patient of a state hospital if:

(1) the patient has been deceased for at least 50 years; and

(2) the professional does not have information indicating that releasing the medical record is inconsistent with any prior expressed preference of the deceased patient or personal representatives of the deceased patient's estate.

(c) A person who receives information from confidential communications or records may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the person first obtained the information.

Added by Acts 2019, 86th Leg., R.S., Ch. 1088 (H.B. 1901), Sec. 1,

eff. September 1, 2019.

Sec. 611.0045. RIGHT TO MENTAL HEALTH RECORD. (a) Except as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient.

(b) The professional may deny access to any portion of a record if the professional determines that release of that portion would be harmful to the patient's physical, mental, or emotional health.

(c) If the professional denies access to any portion of a record, the professional shall give the patient a signed and dated written statement that having access to the record would be harmful to the patient's physical, mental, or emotional health and shall include a copy of the written statement in the patient's records. The statement must specify the portion of the record to which access is denied, the reason for denial, and the duration of the denial.

(d) The professional who denies access to a portion of a record under this section shall redetermine the necessity for the denial at each time a request for the denied portion is made. If the professional again denies access, the professional shall notify the patient of the denial and document the denial as prescribed by Subsection (c).

(e) If a professional denies access to a portion of a confidential record, the professional shall allow examination and copying of the record by another professional if the patient selects the professional to treat the patient for the same or a related condition as the professional denying access.

(f) The content of a confidential record shall be made available to a person listed by Section 611.004(a)(4) or (5) who is acting on the patient's behalf.

(g) A professional shall delete confidential information about another person who has not consented to the release, but may not delete information relating to the patient that another person has provided, the identity of the person responsible for that information, or the identity of any person who provided information that resulted in the patient's commitment.

(h) If a summary or narrative of a confidential record is requested by the patient or other person requesting release under this section, the professional shall prepare the summary or

narrative.

(i) The professional or other entity that has possession or control of the record shall grant access to any portion of the record to which access is not specifically denied under this section within a reasonable time and may charge a reasonable fee.

(j) Notwithstanding Section 159.002, Occupations Code, this section applies to the release of a confidential record created or maintained by a professional, including a physician, that relates to the diagnosis, evaluation, or treatment of a mental or emotional condition or disorder, including alcoholism or drug addiction.

(k) The denial of a patient's access to any portion of a record by the professional or other entity that has possession or control of the record suspends, until the release of that portion of the record, the running of an applicable statute of limitations on a cause of action in which evidence relevant to the cause of action is in that portion of the record.

Added by Acts 1993, 73rd Leg., ch. 903, Sec. 1.12, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.806, eff. Sept. 1, 2001.

Sec. 611.005. LEGAL REMEDIES FOR IMPROPER DISCLOSURE OR FAILURE TO DISCLOSE. (a) A person aggrieved by the improper disclosure of or failure to disclose confidential communications or records in violation of this chapter may petition the district court of the county in which the person resides for appropriate relief, including injunctive relief. The person may petition a district court of Travis County if the person is not a resident of this state.

(b) In a suit contesting the denial of access under Section 611.0045, the burden of proving that the denial was proper is on the professional who denied the access.

(c) The aggrieved person also has a civil cause of action for damages.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 903, Sec. 1.13, eff. Aug. 30, 1993.

Sec. 611.006. AUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION

IN JUDICIAL OR ADMINISTRATIVE PROCEEDING. (a) A professional may disclose confidential information in:

(1) a judicial or administrative proceeding brought by the patient or the patient's legally authorized representative against a professional, including malpractice proceedings;

(2) a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of a professional;

(3) a judicial or administrative proceeding in which the patient waives the patient's right in writing to the privilege of confidentiality of information or when a representative of the patient acting on the patient's behalf submits a written waiver to the confidentiality privilege;

(4) a judicial or administrative proceeding to substantiate and collect on a claim for mental or emotional health services rendered to the patient;

(5) a judicial proceeding if the judge finds that the patient, after having been informed that communications would not be privileged, has made communications to a professional in the course of a court-ordered examination relating to the patient's mental or emotional condition or disorder, except that those communications may be disclosed only with respect to issues involving the patient's mental or emotional health;

(6) a judicial proceeding affecting the parent-child relationship;

(7) any criminal proceeding, as otherwise provided by law;

(8) a judicial or administrative proceeding regarding the abuse or neglect, or the cause of abuse or neglect, of a resident of an institution, as that term is defined by Chapter 242;

(9) a judicial proceeding relating to a will if the patient's physical or mental condition is relevant to the execution of the will;

(10) an involuntary commitment proceeding for court-ordered treatment or for a probable cause hearing under:

(A) Chapter 462;

(B) Chapter 574; or

(C) Chapter 593; or

(11) a judicial or administrative proceeding where the court or agency has issued an order or subpoena.

(b) On granting an order under Subsection (a)(5), the court, in

determining the extent to which disclosure of all or any part of a communication is necessary, shall impose appropriate safeguards against unauthorized disclosure.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

Sec. 611.007. REVOCATION OF CONSENT. (a) Except as provided by Subsection (b), a patient or a patient's legally authorized representative may revoke a disclosure consent to a professional at any time. A revocation is valid only if it is written, dated, and signed by the patient or legally authorized representative.

(b) A patient may not revoke a disclosure that is required for purposes of making payment to the professional for mental health care services provided to the patient.

(c) A patient may not maintain an action against a professional for a disclosure made by the professional in good faith reliance on an authorization if the professional did not have notice of the revocation of the consent.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

Sec. 611.008. REQUEST BY PATIENT. (a) On receipt of a written request from a patient to examine or copy all or part of the patient's recorded mental health care information, a professional, as promptly as required under the circumstances but not later than the 15th day after the date of receiving the request, shall:

(1) make the information available for examination during regular business hours and provide a copy to the patient, if requested; or

(2) inform the patient if the information does not exist or cannot be found.

(b) Unless provided for by other state law, the professional may charge a reasonable fee for retrieving or copying mental health care information and is not required to permit examination or copying until the fee is paid unless there is a medical emergency.

(c) A professional may not charge a fee for copying mental health care information under Subsection (b) to the extent the fee is prohibited under Subchapter M, Chapter 161.

Added by Acts 1995, 74th Leg., ch. 856, Sec. 9, eff. Sept. 1, 1995.

CHAPTER 612. INTERSTATE COMPACT ON MENTAL HEALTH

Sec. 612.001. EXECUTION OF INTERSTATE COMPACT. This state enters into a compact with all other states legally joining in the compact in substantially the following form:

"INTERSTATE COMPACT ON MENTAL HEALTH

"The contracting states solemnly agree that:

"ARTICLE I

"The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

"ARTICLE II

"As used in this compact:

"(a) 'Sending state' shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

"(b) 'Receiving state' shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

"(c) 'Institution' shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

"(d) 'Patient' shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

"(e) 'After-care' shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

"(f) 'Mental illness' shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

"(g) 'Mental deficiency' shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

"(h) 'State' shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"ARTICLE III

"(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

"(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

"(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

"(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an

interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

"(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

"ARTICLE IV

"(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

"(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

"(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

"ARTICLE V

"Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the

jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

"ARTICLE VI

"The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

"ARTICLE VII

"(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

"(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

"(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

"(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

"ARTICLE VIII

"(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and

responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

"(b) The term guardian as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

"ARTICLE IX

"(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to the incarceration in a penal or correctional institution.

"(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

"ARTICLE X

"(a) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of

activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

"(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XI

"The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

"ARTICLE XII

"This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

"ARTICLE XIII

"(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

"(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

"ARTICLE XIV

"This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party

state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.002. COMPACT ADMINISTRATOR. (a) Under the compact, the governor shall appoint the executive commissioner of the Health and Human Services Commission as the compact administrator.

(b) The compact administrator may appoint a designee to perform the administrator's duties.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1487, eff. April 2, 2015.

Sec. 612.004. GENERAL POWERS AND DUTIES OF ADMINISTRATOR. (a) The compact administrator, acting jointly with like officers of other states that are parties to the compact, may adopt rules to carry out the compact more effectively.

(b) The compact administrator shall cooperate with all departments, agencies, and officers of this state and its subdivisions in facilitating the proper administration of the compact or of a supplementary agreement entered into by this state under the compact.

(c) For informational purposes, the compact administrator shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.005. SUPPLEMENTARY AGREEMENTS. (a) The compact

administrator may enter into supplementary agreements with appropriate officials of other states under Articles VII and XI of the compact.

(b) If a supplementary agreement requires or contemplates the use of an institution or facility of this state or requires or contemplates the provision of a service by this state, the supplementary agreement does not take effect until approved by the executive commissioner and the head of the department or agency:

(1) under whose jurisdiction the institution or facility is operated; or

(2) that will perform the service.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1488, eff. April 2, 2015.

Sec. 612.006. FINANCIAL AGREEMENTS. The compact administrator may make or arrange for the payments necessary to discharge the financial obligations imposed on this state by the compact or by a supplementary agreement entered into under the compact, subject to the approval of the comptroller.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

Sec. 612.007. REQUIREMENTS AFFECTING TRANSFERS OF CERTAIN PATIENTS. (a) The compact administrator shall consult with the immediate family of any person proposed to be transferred.

(b) If a person is proposed to be transferred from an institution in this state to an institution in another state that is a party to the compact, the compact administrator may not take final action without the approval of the district court of the district in which the person resides.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.

CHAPTER 613. KIDNEY DONATION BY WARD WITH INTELLECTUAL DISABILITY

Sec. 613.001. DEFINITION. In this chapter, "ward with an

intellectual disability" means a ward who is a person with an intellectual disability, as defined by Subtitle D.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.08, eff. September 1, 2023.

Sec. 613.002. COURT ORDER AUTHORIZING KIDNEY DONATION. A district court may authorize the donation of a kidney of a ward with an intellectual disability to a father, mother, son, daughter, brother, or sister of the ward if:

(1) the guardian of the ward with an intellectual disability consents to the donation;

(2) the ward is 12 years of age or older;

(3) the ward assents to the kidney transplant;

(4) the ward has two kidneys;

(5) without the transplant the donee will soon die or suffer severe and progressive deterioration, and with the transplant the donee will probably benefit substantially;

(6) there are no medically preferable alternatives to a kidney transplant for the donee;

(7) the risks of the operation and the long-term risks to the ward are minimal;

(8) the ward will not likely suffer psychological harm; and

(9) the transplant will promote the ward's best interests.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.09, eff. September 1, 2023.

Sec. 613.003. PETITION FOR COURT ORDER. The guardian of the person of a ward with an intellectual disability may petition a district court having jurisdiction of the guardian for an order authorizing the ward to donate a kidney under Section 613.002.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.10, eff. September 1, 2023.

Sec. 613.004. COURT HEARING. (a) The court shall hold a hearing on the petition filed under Section 613.003.

(b) A party to the proceeding is entitled on request to a preferential setting for the hearing.

(c) The court shall appoint an attorney ad litem and a guardian ad litem to represent the interest of the ward with an intellectual disability. Neither person appointed may be related to the ward within the second degree by consanguinity.

(d) The hearing must be adversary in order to secure a complete record, and the attorney ad litem shall advocate the ward's interest, if any, in not being a donor.

(e) The petitioner has the burden of establishing good cause for the kidney donation by establishing the prerequisites prescribed by Section 613.002.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.11, eff. September 1, 2023.

Sec. 613.005. INTERVIEW AND EVALUATION ORDER BY COURT. (a) Before the eighth day after the date of the hearing, the court shall interview the ward with an intellectual disability to determine if the ward assents to the donation. The interview shall be conducted in chambers and out of the presence of the guardian.

(b) If the court considers it necessary, the court may order the performance of a determination of intellectual disability, as provided by Section 593.005, to help the court evaluate the ward's capacity to agree to the donation.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 60, Sec. 17, eff. Sept. 1, 1993.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 6.12, eff. September 1, 2023.

CHAPTER 614. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS

Sec. 614.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Case management" means a process by which a person or team responsible for establishing and continuously maintaining contact with a person with mental illness, a developmental disability, or an intellectual disability provides that person with access to services required by the person and ensures the coordinated delivery of those services to the person.

(3) "Committee" means the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments.

(3-a) "Continuity of care and services" refers to the process of:

(A) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service needs of an offender with medical or mental impairments;

(B) developing a plan for meeting the treatment, care, and service needs of the offender with medical or mental impairments; and

(C) coordinating the provision of treatment, care, and services between the various agencies who provide treatment, care, or services such that they may continue to be provided to the offender at the time of arrest, while charges are pending, during post-adjudication or post-conviction custody or criminal justice supervision, and for pretrial diversion.

(4) "Developmental disability" means a severe, chronic disability that:

(A) is attributable to a mental or physical impairment or a combination of physical and mental impairments;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

(i) self-care;

(ii) self-direction;

(iii) learning;

(iv) receptive and expressive language;
(v) mobility;
(vi) capacity for independent living; or
(vii) economic self-sufficiency; and
(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services of extended or lifelong duration that are individually planned and coordinated.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Mental illness" has the meaning assigned by Section 571.003.

(6) "Mental impairment" means a mental illness, an intellectual disability, or a developmental disability.

(7) "Intellectual disability" has the meaning assigned by Section 591.003.

(8) "Offender with a medical or mental impairment" means a juvenile or adult who is arrested or charged with a criminal offense and who:

(A) is a person with:
(i) a mental impairment; or
(ii) a physical disability, terminal illness, or significant illness; or
(B) is elderly.

(9) "Office" means the Texas Correctional Office on Offenders with Medical or Mental Impairments.

(10) "Person with an intellectual disability" means a juvenile or adult with an intellectual disability that is not a mental disorder who, because of the mental deficit, requires special training, education, supervision, treatment, care, or control in the person's home or community or in a private school or state supported living center for persons with an intellectual disability.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.52, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 856, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1489, eff.

April 2, 2015.

Sec. 614.002. COMPOSITION OF COMMITTEE; DUTIES. (a) The Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments is composed of 28 members.

(b) The governor shall appoint, with the advice and consent of the senate:

(1) four at-large members who have expertise in mental health, intellectual disabilities, or developmental disabilities, three of whom must be forensic psychiatrists or forensic psychologists;

(2) one at-large member who is the judge of a district court with criminal jurisdiction;

(3) one at-large member who is a prosecuting attorney;

(4) one at-large member who is a criminal defense attorney;

(5) two at-large members who have expertise in the juvenile justice or criminal justice system; and

(6) one at-large member whose expertise can further the mission of the committee.

(c)(1) The following entities, by September 1 of each even-numbered year, shall submit to the governor for consideration a list of five candidates from their respective fields for at-large membership on the committee:

(A) the Texas District and County Attorneys Association;

(B) the Texas Criminal Defense Lawyers Association;

(C) the Texas Association of Counties;

(D) the Texas Medical Association;

(E) the Texas Society of Psychiatric Physicians;

(F) the Texas Psychological Association;

(G) the Sheriffs' Association of Texas;

(H) the court of criminal appeals;

(I) the County Judges and Commissioners Association of Texas; and

(J) the Texas Conference of Urban Counties.

(2) The Texas Medical Association, the Texas Society of Psychiatric Physicians, and the Texas Psychological Association may submit a candidate for membership only if the candidate has

documented expertise and educational training in, as appropriate, medical forensics, forensic psychology, or forensic psychiatry.

(d) A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee.

(e) The executive head of each of the following agencies, divisions of agencies, or associations, or that person's designated representative, shall serve as a member of the committee:

(1) the correctional institutions division of the Texas Department of Criminal Justice;

(2) the Department of State Health Services;

(3) the parole division of the Texas Department of Criminal Justice;

(4) the community justice assistance division of the Texas Department of Criminal Justice;

(5) the Texas Juvenile Justice Department;

(6) the Department of Assistive and Rehabilitative Services;

(7) the Correctional Managed Health Care Committee;

(8) Mental Health America of Texas;

(9) the Board of Pardons and Paroles;

(10) the Texas Commission on Law Enforcement;

(11) the Texas Council of Community Centers;

(12) the Commission on Jail Standards;

(13) the Texas Council for Developmental Disabilities;

(14) the Arc of Texas;

(15) the National Alliance on Mental Illness of Texas;

(16) the Parent Association for the Retarded of Texas, Inc.;

(17) the Health and Human Services Commission; and

(18) the Department of Aging and Disability Services.

(f) In making the appointments under Subsection (b), the governor shall attempt to reflect the geographic and economic diversity of the state. Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) It is a ground for removal from the committee that an at-large member:

(1) does not have at the time of taking office the

qualifications required by Subsection (b);

(2) does not maintain during service on the committee the qualifications required by Subsection (b);

(3) is ineligible for membership under Subsection (d);

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee; or

(6) is absent from more than two consecutive regularly scheduled committee meetings that the member is eligible to attend.

(h) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(i) If the director of the committee has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(j) A representative designated by the executive head of a state agency must be an officer or employee of the agency when designated and while serving on the committee.

(k) The committee shall advise the board and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments and perform other duties imposed by the board.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 321, Sec. 2.020, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.50, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 79, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1188, Sec. 3.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 856, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 27.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 9.005, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1112 (H.B. 2384), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.112, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 8, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.39, eff. May 18, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1490, eff. April 2, 2015.

Sec. 614.003. TEXAS CORRECTIONAL OFFICE ON OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS; DIRECTOR. The Texas Correctional Office on Offenders with Medical or Mental Impairments shall perform duties imposed on or assigned to the office by this chapter, other law, the board, and the executive director of the Texas Department of Criminal Justice. The executive director of the Texas Department of Criminal Justice shall hire a director of the office. The director serves at the pleasure of the executive director. The director shall hire the employees for the office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 4, eff. Sept. 1, 2003.

Sec. 614.0031. TRAINING PROGRAM. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the committee and the office;

(2) the programs operated by the committee and the office;

(3) the role and functions of the committee and the office;

(4) the rules of the committee and the office;

(5) the current budget for the committee and the office;

(6) the results of the most recent formal audit of the committee and the office;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 5, eff. Sept. 1, 2003.

Sec. 614.0032. SPECIAL DUTIES RELATED TO MEDICALLY RECOMMENDED SUPERVISION; DETERMINATIONS REGARDING MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a) The office shall:

(1) perform duties imposed on the office by Section 508.146, Government Code; and

(2) periodically identify state jail felony defendants suitable for release under Article 42A.561, Code of Criminal Procedure, and perform other duties imposed on the office by that article.

(b) The office shall approve and make generally available in electronic format a standard form for use by experts in reporting competency examination results under Chapter 46B, Code of Criminal Procedure.

(c) The office shall approve and make generally available in electronic format a standard form for use by a person providing a written report under Article 16.22(a)(1)(B), Code of Criminal Procedure.

Added by Acts 2003, 78th Leg., ch. 856, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 324 (S.B. 679), Sec. 35, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1269 (H.B. 2194), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 617 (H.B. 431), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 8.003, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 44, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 12.019, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.70, eff. January 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 34, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 748 (S.B. 1326), Sec. 35(3), eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 24, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1276 (H.B. 601), Sec. 25, eff. September 1, 2019.

Sec. 614.004. TERMS. The at-large members of the committee serve for staggered six-year terms with the terms of approximately one-third of the at-large members expiring on February 1 of each odd-numbered year.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 27.02, eff. Sept. 1, 2003.

Sec. 614.005. OFFICERS; MEETINGS. (a) The governor shall designate a member of the committee as the presiding officer of the committee to serve in that capacity at the pleasure of the governor.

(b) The committee shall meet at least four times each year and may meet at other times at the call of the presiding officer or as provided by committee rule.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1188, Sec. 3.03, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 856, Sec. 8, eff. Sept. 1, 2003.

Sec. 614.006. APPLICABILITY OF CERTAIN GOVERNMENT CODE PROVISIONS. (a) The provisions of Chapter 2110, Government Code, other than Section 2110.002(a), apply to the committee.

(b) A member of the committee is not entitled to compensation for performing duties on the committee but is entitled to receive reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided for state employees in the General Appropriations Act.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 9, eff. Sept. 1, 2003.

Sec. 614.007. POWERS AND DUTIES. The office shall:

(1) determine the status of offenders with medical or mental impairments in the state criminal justice system;

(2) identify needed services for offenders with medical or mental impairments;

(3) develop a plan for meeting the treatment, rehabilitative, and educational needs of offenders with medical or mental impairments that includes a case management system and the development of community-based alternatives to incarceration;

(4) cooperate in coordinating procedures of represented agencies for the orderly provision of services for offenders with medical or mental impairments;

(5) evaluate programs in this state and outside this state for offenders with medical or mental impairments and recommend to the directors of state programs methods of improving the programs;

(6) collect and disseminate information about available programs to judicial officers, law enforcement officers, probation and parole officers, providers of social services or treatment, and the public;

(7) provide technical assistance to represented agencies and organizations in the development of appropriate training programs;

(8) apply for and receive money made available by the federal or state government or by any other public or private source to be used by the office to perform its duties;

(9) distribute to political subdivisions, private organizations, or other persons money appropriated by the legislature to be used for the development, operation, or evaluation of programs for offenders with medical or mental impairments;

(10) develop and implement pilot projects to demonstrate a cooperative program to identify, evaluate, and manage outside of incarceration offenders with medical or mental impairments; and

(11) assess the need for demonstration projects and provide management for approved projects.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 312, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1188, Sec. 3.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 856, Sec. 10, eff. Sept. 1, 2003.

Sec. 614.008. COMMUNITY-BASED DIVERSION PROGRAM FOR OFFENDERS WITH MEDICAL OR MENTAL IMPAIRMENTS. (a) The office may maintain at least one program in a county selected by the office to employ a cooperative community-based alternative system to divert from the state criminal justice system offenders with mental impairments or offenders who are identified as being elderly or persons with physical disabilities, terminal illnesses, or significant illnesses and to rehabilitate those offenders.

(b) The office may contract for or employ and train a case management team to carry out the purposes of the program and to coordinate the joint efforts of agencies represented on the committee.

(c) The agencies represented on the committee shall perform

duties and offer services as required by the office to further the purposes of the program and the office.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 107, Sec. 6.53(a), eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 856, Sec. 11, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1491, eff. April 2, 2015.

Sec. 614.009. BIENNIAL REPORT. Not later than February 1 of each odd-numbered year, the office shall present to the board and file with the governor, lieutenant governor, and speaker of the house of representatives a report giving the details of the office's activities during the preceding biennium. The report must include:

(1) an evaluation of any demonstration project undertaken by the office;

(2) an evaluation of the progress made by the office toward developing a plan for meeting the treatment, rehabilitative, and educational needs of offenders with special needs;

(3) recommendations of the office made in accordance with Section 614.007(5);

(4) an evaluation of the development and implementation of the continuity of care and service programs established under Sections 614.013, 614.014, 614.015, 614.016, and 614.018, changes in rules, policies, or procedures relating to the programs, future plans for the programs, and any recommendations for legislation; and

(5) any other recommendations that the office considers appropriate.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 488, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 856, Sec. 12, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.009, eff. June 19, 2009.

Sec. 614.0101. PUBLIC ACCESS. The committee shall develop and implement policies that provide the public with a reasonable

opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee or office.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.05, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 13, eff. Sept. 1, 2003.

Sec. 614.0102. COMPLAINTS. (a) The office shall maintain a file on each written complaint filed with the office. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the office;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(b) The office shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(c) The office, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 3.05, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 856, Sec. 14, eff. Sept. 1, 2003.

Sec. 614.013. CONTINUITY OF CARE FOR OFFENDERS WITH MENTAL IMPAIRMENTS. (a) The Texas Department of Criminal Justice, the Department of State Health Services, the bureau of identification and records of the Department of Public Safety, representatives of local mental health or intellectual and developmental disability

authorities appointed by the commissioner of the Department of State Health Services, and the directors of community supervision and corrections departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders with mental impairments in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the office;

(2) developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, the Department of State Health Services and the Department of Aging and Disability Services, local mental health or intellectual and developmental disability authorities, the Commission on Jail Standards, and local jails;

(3) identifying the services needed by offenders with mental impairments to reenter the community successfully; and

(4) establishing a process to report implementation activities to the office.

(b-1) Subject to available resources, and to the extent feasible, the methods established under Subsection (b) must ensure that each offender with a mental impairment is identified and qualified for the continuity of care system and serve adults with severe and persistent mental illness who are experiencing significant functional impairment due to a mental health disorder that is defined by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5), including:

(1) major depressive disorder, including single episode or recurrent major depressive disorder;

(2) post-traumatic stress disorder;

(3) schizoaffective disorder, including bipolar and depressive types;

(4) psychotic disorder;

(5) anxiety disorder;

(6) delusional disorder; or

(7) any other diagnosed mental health disorder that is

severe or persistent in nature.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, local mental health or intellectual and developmental disability authorities, and community supervision and corrections departments shall:

(1) operate the continuity of care and service program for offenders with mental impairments in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

(d) Local and state criminal justice agencies shall, whenever possible, contract with local mental health or intellectual and developmental disability authorities to maximize Medicaid funding and improve on the continuity of care and service program for offenders with mental impairments in the criminal justice system.

(e) The office, in coordination with each state agency identified in Subsection (b)(2), shall develop a standardized process for collecting and reporting the memorandum of understanding implementation outcomes by local and state criminal justice agencies and local and state mental health or intellectual and developmental disability authorities. The findings of these reports shall be submitted to the office by September 1 of each even-numbered year and shall be included in recommendations to the board in the office's biennial report under Section 614.009.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 312, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 165, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 856, Sec. 15, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1492, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 753 (H.B. 1908), Sec. 1, eff. September 1, 2015.

Sec. 614.014. CONTINUITY OF CARE FOR ELDERLY OFFENDERS. (a) The Texas Department of Criminal Justice and the executive

commissioner by rule shall adopt a memorandum of understanding that establishes the respective responsibilities of the Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services to institute a continuity of care and service program for elderly offenders in the criminal justice system. The office shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying elderly offenders in the criminal justice system;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on elderly offenders by local and state criminal justice agencies, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services; and

(3) identifying the services needed by elderly offenders to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Assistive and Rehabilitative Services shall:

(1) operate the continuity of care and service program for elderly offenders in the criminal justice system with funds appropriated for that purpose; and

(2) actively seek federal grants or funds to operate and expand the program.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 16, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1493, eff. April 2, 2015.

Sec. 614.015. CONTINUITY OF CARE FOR OFFENDERS WITH PHYSICAL DISABILITIES, TERMINAL ILLNESSES, OR SIGNIFICANT ILLNESSES. (a) The Texas Department of Criminal Justice and the executive commissioner

by rule shall adopt a memorandum of understanding that establishes the respective responsibilities of the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services to institute a continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses. The council shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses by local and state criminal justice agencies, the Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services; and

(3) identifying the services needed by offenders who are persons with physical disabilities, terminal illnesses, or significant illnesses to reenter the community successfully.

(c) The Texas Department of Criminal Justice, the Department of Assistive and Rehabilitative Services, the Department of State Health Services, and the Department of Aging and Disability Services shall:

(1) operate, with funds appropriated for that purpose, the continuity of care and service program for offenders in the criminal justice system who are persons with physical disabilities, terminal illnesses, or significant illnesses; and

(2) actively seek federal grants or funds to operate and expand the program.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 835, Sec. 26, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1494, eff. April 2, 2015.

Sec. 614.016. CONTINUITY OF CARE FOR CERTAIN OFFENDERS BY LAW ENFORCEMENT AND JAILS. (a) The office, the Texas Commission on Law Enforcement, the bureau of identification and records of the Department of Public Safety, and the Commission on Jail Standards by rule shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

(b) The memorandum of understanding must establish methods for:

(1) identifying offenders in the criminal justice system who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly;

(2) developing procedures for the exchange of information relating to offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly by the office, the Texas Commission on Law Enforcement, and the Commission on Jail Standards for use in the continuity of care and services program; and

(3) adopting rules and standards that assist in the development of a continuity of care and services program for offenders who are persons with mental impairments, physical disabilities, terminal illnesses, or significant illnesses, or who are elderly.

Added by Acts 1993, 73rd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 17, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.40, eff. May 18, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1495, eff. April 2, 2015.

Sec. 614.017. EXCHANGE OF INFORMATION. (a) An agency shall:

(1) accept information relating to a special needs offender or a juvenile with a mental impairment that is sent to the agency to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential; and

(2) disclose information relating to a special needs offender or a juvenile with a mental impairment, including information about the offender's or juvenile's identity, needs, treatment, social, criminal, and vocational history, supervision status and compliance with conditions of supervision, and medical and mental health history, if the disclosure serves the purposes of continuity of care and services.

(b) Information obtained under this section may not be used as evidence in any juvenile or criminal proceeding, unless obtained and introduced by other lawful evidentiary means.

(c) In this section:

(1) "Agency" includes any of the following entities and individuals, a person with an agency relationship with one of the following entities or individuals, and a person who contracts with one or more of the following entities or individuals:

(A) the Texas Department of Criminal Justice and the Correctional Managed Health Care Committee;

(B) the Board of Pardons and Paroles;

(C) the Department of State Health Services;

(D) the Texas Juvenile Justice Department;

(E) the Department of Assistive and Rehabilitative Services;

(F) the Texas Education Agency;

(G) the Commission on Jail Standards;

(H) the Department of Aging and Disability Services;

(I) the Texas School for the Blind and Visually Impaired;

(J) community supervision and corrections departments and local juvenile probation departments;

(K) personal bond pretrial release offices established under Article 17.42, Code of Criminal Procedure;

(L) local jails regulated by the Commission on Jail Standards;

(M) a municipal or county health department;

(N) a hospital district;

(O) a judge of this state with jurisdiction over juvenile or criminal cases;

(P) an attorney who is appointed or retained to represent a special needs offender or a juvenile with a mental impairment;

(Q) the Health and Human Services Commission;

(R) the Department of Information Resources;

(S) the bureau of identification and records of the Department of Public Safety, for the sole purpose of providing real-time, contemporaneous identification of individuals in the Department of State Health Services client data base; and

(T) the Department of Family and Protective Services.

(2) "Special needs offender" includes an individual for whom criminal charges are pending or who after conviction or adjudication is in custody or under any form of criminal justice supervision.

(3) "Juvenile with a mental impairment" means a juvenile with a mental impairment in the juvenile justice system.

(d) An agency shall manage confidential information accepted or disclosed under this section prudently so as to maintain, to the extent possible, the confidentiality of that information.

(e) A person commits an offense if the person releases or discloses confidential information obtained under this section for purposes other than continuity of care and services, except as authorized by other law or by the consent of the person to whom the information relates. An offense under this subsection is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 321, Sec. 1.107, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 312, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1067, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1188, Sec. 3.06, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 247, Sec. 1, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 6, Sec. 1, 2, 6, eff. April 10, 2003; Acts 2003, 78th Leg., ch. 856, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 706 (S.B. 396), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1306 (S.B. 839), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.007, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.008, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 2.003, eff. September 1, 2011.

Sec. 614.018. CONTINUITY OF CARE FOR JUVENILES WITH MENTAL IMPAIRMENTS. (a) The Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Aging and Disability Services, the Department of Family and Protective Services, the Texas Education Agency, and local juvenile probation departments shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care and service program for juveniles with mental impairments in the juvenile justice system. The Texas Correctional Office on Offenders with Medical and Mental Impairments shall coordinate and monitor the development and implementation of the memorandum of understanding.

(b) The memorandum of understanding must establish methods for:

(1) identifying juveniles with mental impairments in the juvenile justice system and collecting and reporting relevant data to the office;

(2) developing interagency rules, policies, and procedures for the coordination of care of and the exchange of information on juveniles with mental impairments who are committed to or treated, served, or supervised by the Texas Juvenile Justice Department, the Department of Public Safety, the Department of State Health Services, the Department of Family and Protective Services, the Department of Aging and Disability Services, the Texas Education Agency, local juvenile probation departments, local mental health or intellectual and developmental disability authorities, and independent school districts; and

(3) identifying the services needed by juveniles with mental impairments in the juvenile justice system.

(c) For purposes of this section, "continuity of care and service program" includes:

(1) identifying the medical, psychiatric, or psychological care or treatment needs and educational or rehabilitative service

needs of a juvenile with mental impairments in the juvenile justice system;

(2) developing a plan for meeting the needs identified under Subdivision (1); and

(3) coordinating the provision of continual treatment, care, and services throughout the juvenile justice system to juveniles with mental impairments.

Added by Acts 2009, 81st Leg., R.S., Ch. 1187 (H.B. 3689), Sec. 4.006, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 2.004, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1496, eff. April 2, 2015.

Sec. 614.019. PROGRAMS FOR JUVENILES. (a) The office, in cooperation with the Department of State Health Services, the Department of Family and Protective Services, the Texas Juvenile Justice Department, and the Texas Education Agency, may establish and maintain programs, building on existing successful efforts in communities, to address prevention, intervention, and continuity of care for juveniles with mental health and substance abuse disorders.

(b) A child with mental illness who is receiving continuity of care services during parole from the Texas Juvenile Justice Department and who is no longer eligible to receive services from a local mental health authority when the child becomes 17 years of age because the child does not meet the requirements of a local service area plan under Section 533.0352(a) may continue to receive continuity of care services from the office until the child completes the child's parole.

(c) A child with mental illness or an intellectual disability who is discharged from the Texas Juvenile Justice Department under Section 244.011, Human Resources Code, may receive continuity of care services from the office for a minimum of 90 days after discharge from the department and for as long as necessary for the child to demonstrate sufficient stability to transition successfully to mental health or intellectual disability services provided by a local mental health or intellectual and developmental disability authority.

Added by Acts 2001, 77th Leg., ch. 328, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 856, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1038 (H.B. 4451), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.015, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1497, eff. April 2, 2015.

Sec. 614.020. YOUTH ASSERTIVE COMMUNITY TREATMENT PROGRAM. (a) The office may establish and maintain in Tarrant County an assertive community treatment program to provide treatment, rehabilitation, and support services to individuals in that county who:

(1) are under 18 years of age;

(2) have severe and persistent mental illness;

(3) have a history of:

(A) multiple hospitalizations;

(B) poor performance in school;

(C) placement in emergency shelters or residential treatment facilities; or

(D) chemical dependency or abuse; and

(4) have been placed on probation by a juvenile court.

(b) The program must be modeled after other assertive community treatment programs established by the Department of State Health Services. The program is limited to serving not more than 30 program participants at any time.

(c) If the office creates and maintains a program under this section, the office shall provide for the program a team of licensed or degreed professionals in the clinical treatment or rehabilitation field to administer the program. A team provided under this subsection must include:

(1) a registered nurse to provide full-time direct services to the program participants; and

(2) a psychiatrist available to the program for 10 or more hours each week.

(d) In administering the program, the program's professional team shall:

(1) provide psychiatric, substance abuse, and employment services to program participants;

(2) maintain a ratio of one or more team members for each 10 program participants to the extent practicable;

(3) be available to program participants during evening and weekend hours;

(4) meet the needs of special populations;

(5) maintain at all times availability for addressing and managing a psychiatric crisis of any program participant; and

(6) cover the geographic areas served by the program.

(e) The office and the program shall cooperate with or contract with local agencies to avoid duplication of services and to maximize federal Medicaid funding.

Added by Acts 2001, 77th Leg., ch. 1499, Sec. 1, eff. Sept. 1, 2001. Renumbered from Health & Safety Sec. 614.019 and amended by Acts 2003, 78th Leg., ch. 856, Sec. 20, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1498, eff. April 2, 2015.

Sec. 614.0205. APPROPRIATION CONTINGENCY. The office is required to provide a service or program under Section 614.019(a) or 614.020 only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the office may, but is not required to, provide a service or program under Section 614.019(a) or 614.020 using other appropriations available for that purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 785 (H.B. 2119), Sec. 1, eff. June 17, 2011.

Sec. 614.021. SERVICES FOR WRONGFULLY IMPRISONED PERSONS. (a) In this section, "wrongfully imprisoned person" has the meaning assigned by Section 501.101, Government Code.

(b) The office shall develop a plan to use existing case management functions to assist wrongfully imprisoned persons who are discharged from the Texas Department of Criminal Justice in:

(1) accessing medical and dental services, including

assistance in completing documents required for application to federal entitlement programs;

(2) obtaining mental health treatment and related support services through the public mental health system for as long as the wrongfully imprisoned person requires assistance; and

(3) obtaining appropriate support services, as identified by the wrongfully imprisoned person and the assigned case manager, to assist the person in making the transition from incarceration into the community.

(c) The office shall submit an annual report to the legislature on the provision of services under this section to wrongfully imprisoned persons.

Added by Acts 2009, 81st Leg., R.S., Ch. 180 (H.B. 1736), Sec. 11, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(10), eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1499, eff. April 2, 2015.

CHAPTER 615. MISCELLANEOUS PROVISIONS

Sec. 615.001. COUNTY RESPONSIBILITY. Each commissioners court shall provide for the support of a person with mental illness or an intellectual disability who is:

(1) a resident of the county;

(2) unable to provide self-support; and

(3) cannot be admitted to a state mental health or intellectual disability facility.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1500, eff. April 2, 2015.

Sec. 615.002. ACCESS TO RECORDS BY PROTECTION AND ADVOCACY SYSTEM. (a) Notwithstanding other state law, the protection and advocacy system established in this state under the federal Protection and Advocacy for Individuals with Mental Illness Act (42

U.S.C. Sec. 10801 et seq.) and the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. Sec. 15001 et seq.) is entitled to access to records relating to persons with mental illness or developmental disabilities to the extent authorized by federal law.

(b) If the person consents to notification, the protection and advocacy system shall notify the Department of State Health Services or the Department of Aging and Disability Services, as appropriate, if the system decides to investigate a complaint of abuse, neglect, or rights violation that relates to a person with mental illness or a developmental disability who is a patient or client in a facility or program operated by, licensed by, certified by, or in a contractual relationship with that department.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1500, eff. April 2, 2015.

TITLE 8. DEATH AND DISPOSITION OF THE BODY
SUBTITLE A. DEATH
CHAPTER 671. DETERMINATION OF DEATH AND AUTOPSY REPORTS
SUBCHAPTER A. DETERMINATION OF DEATH

Sec. 671.001. STANDARD USED IN DETERMINING DEATH. (a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.

(c) Death must be pronounced before artificial means of supporting a person's respiratory and circulatory functions are terminated.

(d) A registered nurse, including an advanced practice registered nurse, or physician assistant may determine and pronounce a person dead in situations other than those described by Subsection

(b) if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person. Those policies must include physician assistants who are credentialed or otherwise permitted to practice at the facility, institution, or entity. If the facility, institution, or entity has an organized nursing staff and an organized medical staff or medical consultant, the nursing staff and medical staff or consultant shall jointly develop and approve those policies. The executive commissioner of the Health and Human Services Commission shall adopt rules to govern policies for facilities, institutions, or entities that do not have organized nursing staffs and organized medical staffs or medical consultants.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 201, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 8, eff. June 16, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1501, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 412 (S.B. 919), Sec. 2, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 2, eff. September 1, 2017.

Sec. 671.002. LIMITATION OF LIABILITY. (a) A physician who determines death in accordance with Section 671.001(b) or a registered nurse, including an advanced practice registered nurse, or physician assistant who determines death in accordance with Section 671.001(d) is not liable for civil damages or subject to criminal prosecution for the physician's, registered nurse's, or physician assistant's actions or the actions of others based on the determination of death.

(b) A person who acts in good faith in reliance on a physician's, registered nurse's, or physician assistant's determination of death is not liable for civil damages or subject to criminal prosecution for the person's actions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 201, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 965, Sec. 9, eff. June 16, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 412 (S.B. 919), Sec. 3, eff. June 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 3, eff. September 1, 2017.

SUBCHAPTER B. AUTOPSY REPORTS

Sec. 671.011. DEFINITION. (a) In this subchapter, "autopsy report" includes:

(1) the report of the postmortem examination of the body of a person, including x-rays and photographs taken during the actual postmortem examination; and

(2) the toxicology report, if any, and other reports that involve an examination of the internal organs and structures of the body after dissection.

(b) An autopsy report does not include investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.

Added by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.

Sec. 671.012. FILING AUTOPSY REPORT. A designated physician who performs an autopsy provided for by state law shall file an autopsy report with the office designated by the autopsy order not later than the 30th day after the date of request for the autopsy unless:

(1) a required test cannot be completed within that time; and

(2) the physician certifies when the autopsy report is filed that a required test could not be completed within the 30-day limit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 671.011 by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.

Sec. 671.013. RELEASE OF REPORTS; FEES. (a) An autopsy report shall be released on request to an authorized person in

connection with the determination of the cause of death in relation to a workers' compensation or insurance claim.

(b) A person who receives information under Subsection (a) may disclose the information to others only to the extent consistent with the authorized purposes for which the information was obtained.

(c) The commissioners court of the county having custody of an autopsy report shall establish a fee to be charged for a copy of the autopsy report as follows:

(1) for written portions of the report, an amount reasonably necessary to recover the cost of providing the copy, not to exceed $25; and

(2) for x-rays and photographs, the actual cost of reproduction, including the reasonable cost of overhead.

(d) Except as provided by Subsection (e), an autopsy report released in connection with the determination of the cause of death in relation to a workers' compensation claim under Subsection (a) shall be released not later than the 15th business day after the date the request is received from the authorized person.

(e) If the report has not been filed as provided by Section 671.012, a representative of the office designated by the autopsy order shall, not later than the 10th business day after the date of the request, notify the requesting person that the report has not been filed and of the date, to the best of the knowledge of the representative, that the requesting person may anticipate receiving the report.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 671.012 and amended by Acts 1999, 76th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1190 (H.B. 251), Sec. 2, eff. June 18, 2005.

CHAPTER 671A. NOTICE REQUIRED AT PRIVATE AUTOPSY FACILITY

Sec. 671A.001. DEFINITION. In this chapter, "private autopsy facility" means a facility that is owned or operated by a physician who performs autopsy services for a fee or that employs a physician to perform autopsy services for a fee, including autopsy services performed on the order of a justice of the peace. The term does not

include a medical examiner's office.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

Sec. 671A.002. NOTICE FOR COMPLAINTS REQUIRED. (a) A private autopsy facility shall post a notice in a conspicuous place in a public area of the facility that substantially complies with the notice published by the Texas Medical Board under this section.

(b) The notice must state in English and in Spanish that a person may file with the Texas Medical Board a complaint against a physician who performs autopsy services and must include the appropriate mailing address and telephone number of the Texas Medical Board for filing complaints against physicians.

(c) The Texas Medical Board by rule shall adopt a sample form of the notice. The board shall publish the notice on the board's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

Sec. 671A.003. CRIMINAL PENALTY FOR FAILURE TO POST NOTICE. (a) A private autopsy facility commits an offense if the facility fails to post the notice required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 374 (S.B. 256), Sec. 1, eff. September 1, 2011.

CHAPTER 672. ADULT FATALITY REVIEW AND INVESTIGATION

Sec. 672.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting emotional or physical harm leading to death; or

(B) sexual abuse of an adult, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code, or Chapter 22, Penal Code.

(2) "Autopsy" and "inquest" have the meanings assigned by Article 49.01, Code of Criminal Procedure.

(3) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(4) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including dental and mental health evaluation or treatment.

(5) "Review" means a reexamination of information regarding a deceased adult from relevant agencies, professionals, and health care providers.

(6) "Review team" means an unexpected fatality review team established under this chapter.

(7) "Unexpected death" includes a death of an adult that before investigation appears:

(A) to have occurred without anticipation or forewarning; and

(B) to have been caused by suicide, family violence, or abuse.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.002. ESTABLISHMENT OF REVIEW TEAM. (a) A multidisciplinary and multiagency unexpected fatality review team may be established for a county to conduct reviews of unexpected deaths that occur within the county. A review team for a county with a population of less than 50,000 may join with an adjacent county or counties to establish a combined review team.

(b) The commissioners court of a county may oversee the activities of the review team or may designate a county department to oversee those activities. The commissioners court may designate a nonprofit agency or a political subdivision of the state involved in the support or treatment of victims of family violence, abuse, or suicide to oversee the activities of the review team if the governing body of the nonprofit agency or political subdivision concurs.

(c) Any person who may be a member of a review team under Subsection (d) may initiate the establishment of a review team and call the first organizational meeting of the team.

(d) A review team may include:

(1) a criminal prosecutor involved in prosecuting crimes involving family violence;

(2) a peace officer;

(3) a justice of the peace or medical examiner;

(4) a public health professional;

(5) a representative of the Department of Family and Protective Services engaged in providing adult protective services;

(6) a mental health services provider;

(7) a representative of the family violence shelter center providing services to the county;

(8) the victim witness advocate in the county prosecutor's office;

(9) a representative from the battering intervention and prevention program for the county; and

(10) a community supervision and corrections department officer.

(e) Members of a review team may select additional team members according to community resources and needs.

(f) A review team shall select a presiding officer from its members.

(g) Members selected under Subsection (e) must reflect the geographical, cultural, racial, ethnic, and gender diversity of the county or counties represented.

(h) Members selected under this section should have experience in abuse, neglect, suicide, family violence, or elder abuse.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1502, eff. April 2, 2015.

Sec. 672.003. PURPOSE AND POWERS OF REVIEW TEAM. (a) The purpose of a review team is to decrease the incidence of preventable adult deaths by:

(1) promoting cooperation, communication, and coordination among agencies involved in responding to unexpected deaths;

(2) developing an understanding of the causes and incidence of unexpected deaths in the county or counties in which the review team is located; and

(3) advising the legislature, appropriate state agencies, and local law enforcement agencies on changes to law, policy, or practice that will reduce the number of unexpected deaths.

(b) To achieve its purpose, a review team shall:

(1) develop and implement, according to local needs and resources, appropriate protocols;

(2) meet on a regular basis to review fatality cases suspected to have resulted from suicide, family violence, or abuse and recommend methods to improve coordination of services and investigations between agencies that are represented on the team;

(3) collect and maintain data, as appropriate; and

(4) submit the report required under Section 672.008.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.004. DUTIES OF PRESIDING OFFICER. The presiding officer of a review team may:

(1) send notices to the review team members of a meeting to review a fatality involving suspected suicide, family violence, or abuse;

(2) provide a list to the review team members of each fatality to be reviewed at the meeting; and

(3) ensure that the review team operates according to the protocols developed by the review team.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.005. REVIEW PROCEDURE. (a) The review team of the county in which the event that was the cause of the unexpected death occurred, as stated on the death certificate or as otherwise indicated by the medical examiner or justice of the peace notified of the death, may review the death.

(b) On receipt of the list of fatalities under Section 672.004, each review team member shall review available records for information regarding each listed unexpected death.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.006. ACCESS TO INFORMATION. (a) A review team may request information and records regarding adult deaths resulting from suicide, family violence, or abuse as necessary to carry out the review team's purpose and duties. Records and information that may be requested under this section include:

(1) medical, dental, and mental health care information; and

(2) information and records maintained by any state or local government agency, including:

(A) a birth certificate;

(B) law enforcement investigative data;

(C) medical examiner investigative data;

(D) juvenile court records;

(E) parole and probation information and records; and

(F) adult protective services information and records.

(b) On request of the presiding officer of a review team, the custodian of the relevant information or records relating to the deceased adult shall provide the information or records to the review team. A law enforcement agency or a medical examiner may decline to provide investigative data to a review team until after the conclusion of the investigation.

(c) This section does not authorize the release of the original or copies of the mental health or medical records of any member of the deceased adult's family, the guardian or caretaker of the deceased adult, or an alleged or suspected perpetrator of family violence or abuse of the adult that are in the possession of any state or local government agency as provided in Subsection (a)(2). Information relating to the mental health or medical condition of a member of the deceased adult's family, the guardian or caretaker of the deceased adult, or the alleged or suspected perpetrator of family violence or abuse of the deceased adult acquired as part of an investigation by a state or local government agency as provided in Subsection (a)(2) may be provided to the review team.

(d) This section does not authorize any interference with a criminal investigation, inquest, or autopsy.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.007. MEETING OF REVIEW TEAM. (a) A meeting of a

review team is closed to the public and not subject to the open meetings law, Chapter 551, Government Code.

(b) This section does not prohibit a review team from requesting the attendance at a closed meeting of a person who is not a member of the review team and who has information regarding a fatality resulting from suicide, family violence, or abuse.

(c) Except as necessary to carry out a review team's purpose and duties, members of a review team and persons attending a review team meeting may not disclose what occurred at the meeting.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.008. REPORT. (a) Not later than December 15 of each even-numbered year, each review team shall submit to the Department of Family and Protective Services a report on deaths reviewed.

(b) Subject to Section 672.009, the Department of Family and Protective Services shall make the reports received under Subsection (a) available to the public.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1503, eff. April 2, 2015.

Sec. 672.009. USE OF INFORMATION AND RECORDS; CONFIDENTIALITY. (a) Information and records acquired by a review team in the exercise of its purpose and duties under this chapter are confidential and exempt from disclosure under the open records law, Chapter 552, Government Code, and may only be disclosed as necessary to carry out the review team's purpose and duties.

(b) A report of a review team or a statistical compilation of data reports is a public record subject to the open records law, Chapter 552, Government Code, as if the review team were a governmental body under that chapter, if the report or statistical compilation does not contain any information that would permit the identification of an individual and is not otherwise confidential or privileged.

(c) A member of a review team may not disclose any information that is confidential under this section.

(d) A person commits an offense if the person discloses information made confidential by this section. An offense under this subsection is a Class A misdemeanor.

(e) Information, documents, and records that are confidential as provided by this section are not subject to subpoena or discovery and may not be introduced into evidence in any civil or criminal proceeding. A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under this subsection solely because the document or information was acquired by a review team in the exercise of its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 268 (H.B. 3303), Sec. 1, eff. September 1, 2009.

Sec. 672.010. CIVIL LIABILITY FOR DISCLOSURE OF INFORMATION. Subject to the limits described in Section 101.023(b), Civil Practice and Remedies Code, a team organized pursuant to this chapter, or any member thereof, may be civilly liable for damages caused by the disclosure of information gathered pursuant to an investigation if such disclosure is made in violation of Section 672.007 and Section 672.009.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.011. GOVERNMENTAL UNIT. Subject to Section 672.010, a review team established under this chapter is a local governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.012. REPORT OF UNEXPECTED FATALITY. (a) A person, including a health care provider, who knows of the death of an adult that resulted from, or that occurred under circumstances indicating death may have resulted from, suicide, family violence, or abuse, shall immediately report the death to the medical examiner of the

county in which the death occurred or, if the death occurred in a county that does not have a medical examiner's office or that is not part of a medical examiner's district, to a justice of the peace in that county.

(b) The requirement of this section is in addition to any other reporting requirement imposed by law.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

Sec. 672.013. PROCEDURE IN THE EVENT OF REPORTABLE DEATH. (a) A medical examiner or justice of the peace notified of a death under Section 672.012 may hold an inquest under Chapter 49, Code of Criminal Procedure, to determine whether the death was caused by suicide, family violence, or abuse.

(b) Without regard to whether an inquest is held under Subsection (a), the medical examiner or justice of the peace shall immediately notify the county or entity designated under Section 672.002(b) of:

(1) each notification of death received under Section 672.012;

(2) each death found to be caused by suicide, family violence, or abuse; or

(3) each death that may be a result of suicide, family violence, or abuse, without regard to whether the suspected suicide, family violence, or abuse is determined to be a sole or contributing cause and without regard to whether the cause of death is conclusively determined.

Added by Acts 2001, 77th Leg., ch. 1486, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 672A. PROHIBITED PUBLICATION OF CERTAIN PHOTOGRAPHS OF HUMAN REMAINS

Sec. 672A.001. DEFINITIONS. In this chapter:

(1) "Human remains" has the meaning assigned by Section 711.001.

(2) "Publish" means to display, present, or release a photograph to an unauthorized person, or to cause a photograph to be displayed, presented, or released to an unauthorized person.

Added by Acts 2023, 88th Leg., R.S., Ch. 1151 (S.B. 997), Sec. 2, eff. September 1, 2023.

Sec. 672A.002. PROHIBITED PUBLICATION OF CERTAIN PHOTOGRAPHS DEPICTING HUMAN REMAINS. (a) An individual may not publish a photograph of human remains that the individual obtained while acting within the course and scope of the individual's duties as an officer or employee of this state or a political subdivision of this state.

(b) For purposes of Subsection (a), a photograph is considered to have been published if the photograph is:

(1) displayed to an unauthorized person;

(2) released to an unauthorized person by any delivery method, including text message, e-mail, or facsimile;

(3) posted on a social media platform; or

(4) sold to a news publication.

Added by Acts 2023, 88th Leg., R.S., Ch. 1151 (S.B. 997), Sec. 2, eff. September 1, 2023.

Sec. 672A.003. CIVIL PENALTY. (a) An individual who violates Section 672A.002 is liable for a civil penalty in an amount not to exceed $10,000 for each violation.

(b) The attorney general or the appropriate county or district attorney may sue to collect the civil penalty provided by Subsection (a) and may recover attorney's fees and costs incurred in obtaining relief under this section.

(c) It is a defense to liability for a civil penalty under this section that:

(1) the individual published the photograph of human remains for an official law enforcement, scientific, educational, research, or medical purpose, or as part of a civil proceeding; or

(2) the photograph was published in a documentary film or television show with the approval of the chief medical examiner, coroner, or commissioners court, as applicable, and the remains are unidentifiable.

(d) A defendant may not assert official immunity as a defense in an action brought under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1151 (S.B. 997), Sec. 2,

eff. September 1, 2023.

CHAPTER 673. SUDDEN INFANT DEATH SYNDROME

Sec. 673.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of state health services.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1504, eff. April 2, 2015.

Sec. 673.002. AUTOPSY. (a) The death in this state of a child 12 months old or younger shall be immediately reported to the justice of the peace, medical examiner, or other proper official as prescribed by law if the child dies suddenly or is found dead and if the cause of death is unknown.

(b) The justice of the peace or medical examiner shall inform the child's legal guardian or parents that an autopsy shall be performed on the child. The state shall reimburse a county $500 for the cost of the autopsy if the primary cause of death of the child is sudden infant death syndrome. The executive commissioner shall adopt rules that:

(1) define sudden infant death syndrome; and

(2) describe the method for obtaining reimbursement for the cost of an autopsy.

(c) Reimbursement required by Subsection (b) is subject to the availability of funds.

(d) After the autopsy is completed, the child's parents or legal guardian shall be notified of the autopsy results.

(e) This section does not affect the duties of the justice of the peace or medical examiner prescribed by other laws.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 785, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1505, eff. April 2, 2015.

Sec. 673.003. DESIGNATION OF SUDDEN INFANT DEATH SYNDROME AS PRIMARY CAUSE OF DEATH. Sudden infant death syndrome may be used as a primary cause of death on a death certificate required by Chapter 193.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 674. FETAL AND INFANT MORTALITY REVIEW

Sec. 674.001. DEFINITIONS. In this chapter:

(1) "Decedent" means:

(A) a person for whom a fetal death certificate must be filed; or

(B) a deceased infant.

(2) "Fetal death certificate" means a death certificate filed for any fetus weighing 350 grams or more or, if the weight is unknown, a fetus age 20 weeks or more as calculated from the start date of the last normal menstrual period to the date of delivery.

(3) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including mental health evaluation or treatment.

(4) "Infant" means a child younger than one year of age.

(5) "Local health authority" means:

(A) a municipal or county health authority;

(B) a director of a local health department or public health district; or

(C) a regional director of a public health region.

(6) "Review" means a reexamination of information regarding a decedent from relevant agencies, professionals, health care providers, and the family of the decedent.

(7) "Review team" means the fetal and infant mortality review team.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.002. REVIEW TEAM. (a) A fetal and infant mortality review team may be established only:

(1) by a local health authority or other local health official or by the Department of State Health Services; or

(2) under a contract or in accordance with a memorandum of agreement with a local health authority or other local health official or the Department of State Health Services.

(b) Local health authorities or other local health officials for two or more adjacent counties or municipalities may join to establish a joint review team.

(c) A review team must be composed of culturally diverse members representing multiple disciplines, including professionals and representatives of agencies that provide services or community resources for families in the community and community representatives. The review team may include:

(1) a physician, including a pediatrician, an obstetrician, or a physician practicing in another relevant specialty;

(2) a registered nurse;

(3) a certified nurse-midwife or licensed midwife;

(4) a county attorney or a designee of a county attorney;

(5) a representative of a school district;

(6) a representative of the local health department;

(7) a forensic pathologist;

(8) a mental health professional;

(9) a representative from a local hospital;

(10) a local registrar of births and deaths;

(11) a person working in a supervisory position in local administration of the state Medicaid program;

(12) a person working with local implementation of the Special Supplemental Nutrition Program for Women, Infants, and Children;

(13) an educator;

(14) a pastoral counselor;

(15) a member of the health committee of a chamber of commerce; and

(16) other community representatives.

(d) Members of a review team may select additional members according to the resources of the review team and its needs.

(e) The review team shall select a presiding officer from its members.

(f) A local health authority or other local health official or the Department of State Health Services is not required to establish a review team for a particular municipality or county.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.003. PURPOSE AND POWERS AND DUTIES OF REVIEW TEAM. (a) The purpose of a review team is to:

(1) improve the health and well-being of women, infants, and families;

(2) reduce racial disparities in the rates of and the overall rates of fetal and infant mortality;

(3) facilitate the operations of the review team and train review team members on the review team process; and

(4) develop and deliver reports of findings to the community.

(b) For a death or fetal death subject to review, the review team shall collect information relating to the death of the decedent, including medical, dental, and mental health care records or information, autopsy reports, social services records, and other pertinent records related to the decedent and the family of the decedent.

(c) Before review at a meeting of the review team, the names and addresses of the decedent and the decedent's family and the name and address of each health care provider that provided services to the decedent or decedent's family shall be removed from information collected under Subsection (b). A summary of the information, with the identifying information described by this subsection removed, shall be prepared for consideration of the review team.

(d) The review team shall:

(1) compile statistics of fetal and infant mortality;

(2) analyze the causes of fetal and infant mortality; and

(3) recommend measures to decrease fetal and infant mortality to a community action team formed for this purpose or to state or local governmental officials or other appropriate members of the community.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.004. GOVERNMENTAL UNIT. A review team is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code. A review team is a unit of local government under that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.005. MEETINGS. (a) Meetings of a review team are closed to the public and are not subject to Chapter 551, Government Code.

(b) A member of a review team participating in the review of a death or fetal death, and any person employed by or acting in an advisory capacity to the review team and who provides counsel or services to the review team, are immune from civil or criminal liability arising from information presented in a review team meeting or recommendations resulting from the meeting.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.006. DISCLOSURE OF INFORMATION TO REVIEW TEAM. (a) A review team may request information regarding a decedent or the decedent's family as necessary to carry out the review team's purpose and duties, including any information described by Section 674.003(b).

(b) On the request of the review team, a health care provider or other custodian of the requested information shall provide the information to the review team. The information shall be provided without the authorization of the decedent's parent, guardian, or other representative.

(c) A health care provider or other person who provides information to a review team is not subject to a civil action for damages or other relief as a result of having provided the information. This subsection does not apply if the information provided was false and the health care provider or other person knew or had reason to know that the information was false.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.007. CONFIDENTIALITY OF RECORDS; PRIVILEGE. (a) Information is confidential for purposes of this chapter if the disclosure of the information would compromise the privacy of the decedent or the decedent's family. Confidential information includes any information pertaining to the decedent's death.

(b) Confidential information that is acquired by the review team and that permits the identification of an individual or health care provider is privileged and may not be disclosed to any person except to the extent necessary to carry out the purposes of the review team. Information that may not be disclosed under this subsection includes:

(1) names and addresses of the decedent or the decedent's family;

(2) services received by the decedent or the decedent's family;

(3) the social and economic condition of the decedent or the decedent's family;

(4) medical, dental, and mental health care information related to the decedent or the decedent's family, including diagnoses, conditions, diseases, or disability; and

(5) the identity of health care providers that provided services to the decedent or the decedent's family.

(c) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are confidential and are not subject to disclosure under Chapter 552, Government Code. This subsection does not prevent a review team from releasing information described by Subsection (d) or (e).

(d) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider, such as:

(1) total expenditures made for specified purposes;

(2) the number of families served by particular health care providers or agencies;

(3) aggregated data on social and economic conditions;

(4) medical data and information related to health care services that do not include any identifying information relating to a decedent or the decedent's family; and

(5) other statistical information.

(e) A review team may publish statistical studies and research reports based on information that is confidential under this section, provided that the information published may not identify a decedent or the decedent's family and may not include any information that could be used to identify a decedent or the decedent's family.

(f) A review team shall adopt and follow practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.008. IMMUNITY FROM SUBPOENA AND DISCOVERY. (a) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are privileged, are not subject to subpoena or discovery, and may not be introduced into evidence in any civil or criminal proceeding against a member of the family of a decedent or a health care provider.

(b) A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under Subsection (a) solely because the document or other information was presented during a meeting of a review team or because a record of the document or other information is maintained by the review team.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.009. UNAUTHORIZED DISCLOSURE BY REVIEW TEAM MEMBER; OFFENSE. (a) A person commits an offense if the person is a member of a review team and the person knowingly:

(1) discloses confidential information in violation of Section 674.007; or

(2) inspects confidential information without authority granted in accordance with procedures established by the review team.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.010. IMMUNITY. A member of a review team is not liable for damages to a person for an action taken or a recommendation made within the scope of the functions of the review team if the member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the review team member.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

Sec. 674.011. INAPPLICABILITY OF CHAPTER. This chapter does not apply to disclosure of records pertaining to voluntary or therapeutic termination of pregnancy, and those records may not be disclosed under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 1, eff. September 1, 2007.

SUBTITLE B. DISPOSITION OF THE BODY

CHAPTER 691. DONATION OF BODIES AND ANATOMICAL SPECIMENS

SUBCHAPTER A. GENERAL PROVISIONS; STATE ANATOMICAL ADVISORY COMMITTEE

Sec. 691.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the State Anatomical Advisory Committee.

(1-a) "Anatomical facility" means a facility in this state inspected and approved by the commission under Section 691.034 that does not operate as a willed body program or a non-transplant anatomical donation organization.

(2) "Body" means a human corpse.

(3) "Anatomical specimen" means a part of a human corpse.

(4) "Commission" means the Texas Funeral Service Commission.

(5) "Non-transplant anatomical donation organization" means a person accredited to engage in the recovery, receipt, screening, testing, processing, storage, or distribution of tissue or human remains for any purpose other than transplantation into a living individual in this state.

(6) "Willed body program" means a program operated at an institution of higher education in this state that allows a living individual to donate the individual's body or anatomical specimen for educational or research purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.03, eff. September 1, 2023.

Sec. 691.002. ADVISORY COMMITTEE. (a) The State Anatomical Advisory Committee is established to advise and provide expertise to the commission on matters related to the regulation and operation of willed body programs, non-transplant anatomical donation organizations, and anatomical facilities in this state.

(b) The advisory committee is composed of seven members appointed by the commission as follows:

(1) two members who represent institutions of higher education that operate willed body programs;

(2) two members who represent non-transplant anatomical donation organizations;

(3) two members who represent anatomical facilities; and

(4) one public member.

(c) Members of the advisory committee serve two-year terms.

(d) An advisory committee member may be reappointed.

(e) Appointments to the advisory committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(f) Sections 2110.002 and 2110.008, Government Code, do not apply to the advisory committee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.04, eff. September 1, 2023.

Sec. 691.010. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission under this chapter and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission by rule shall establish methods by which service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notification by including the information on each written contract relating to bodies willed or donated to an entity regulated by the commission or authorized by the commission to receive bodies.

(c) The commission shall keep an information file about each complaint filed with the commission relating to its functions under this chapter. If a written complaint is filed with the commission relating to a person or an entity regulated by the commission under this chapter, the commission shall periodically notify the parties to the complaint of the status of the complaint until final disposition unless notice would jeopardize an undercover investigation.

(d) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.07, eff. September 1, 2023.

Sec. 691.011. RECORDS. The commission shall keep identification records of each body donated to the commission and of each body or anatomical specimen distributed by the commission.

Acts 1989, 71st Leg., R.S., ch. 678 (H.B. 2136), Sec. 1, eff. Sept.

1, 1989. Amended by Acts 2003, 78th Leg., R.S., Ch. 948 (S.B. 1419), Sec. 2, eff. Sept. 1, 2003.
Redesignated and amended by Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.05, eff. September 1, 2023.

Sec. 691.012. FEES. (a) The commission by rule may set and collect fees in amounts reasonable and necessary to cover the cost of administering this chapter, including fees for:

(1) receiving and distributing bodies and anatomical specimens;

(2) conducting inspections and other verification activities authorized under Section 691.034; and

(3) registering willed body programs and non-transplant anatomical donation organizations.

(b) A non-transplant anatomical donation organization is exempt from a fee described by Subsection (a)(1).

Acts 1989, 71st Leg., R.S., ch. 678 (H.B. 2136), Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., R.S., Ch. 948 (S.B. 1419), Sec. 3, eff. Sept. 1, 2003.
Redesignated and amended by Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.06, eff. September 1, 2023.

SUBCHAPTER B. DONATION AND DISTRIBUTION OF BODIES AND ANATOMICAL SPECIMENS

Sec. 691.021. DEFINITION. In this subchapter, "political subdivision" means a municipality, county, or special district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.022. GENERAL DUTIES. (a) The commission shall distribute bodies and anatomical specimens to persons authorized to receive a body or specimen under this chapter. This subsection does not apply to a body or specimen donated to a registered non-transplant anatomical donation organization.

(b) The commission shall adopt rules to ensure that each body and anatomical specimen is treated with respect while in the custody of the commission or person authorized to receive the body or

specimen.

(c) The commission shall adopt rules, establish procedures, and prescribe forms necessary to administer and enforce this chapter, including rules establishing registration and inspection requirements and procedures. The commission may issue a reprimand, assess an administrative penalty, impose other penalties, or revoke, suspend, or probate a registration or other authorization for a violation of this chapter or a commission rule adopted under this chapter, including a violation related to an inspection conducted under Section 691.034, in the manner provided by Chapter 651, Occupations Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 1, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.08, eff. September 1, 2023.

Sec. 691.0225. INFORMATIONAL DOCUMENT. The commission shall develop a document to inform a person making a gift of a decedent's body or anatomical specimen about the options for donation authorized under this chapter. The commission shall make the document available on the commission's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 875 (S.B. 187), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 2, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.09, eff. September 1, 2023.

Sec. 691.023. DUTY TO DELIVER CERTAIN BODIES TO COMMISSION. (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution having charge or control of a body not claimed for burial or a body required to be buried at public expense shall:

(1) notify the commission or the commission's representative of the body's existence when the body comes into the person's possession, charge, or control if notified in writing to do so by the commission or the commission's representative;

(2) deliver the body in accordance with the direction of the commission; and

(3) allow the commission, the commission's representative, or a physician designated by the commission who complies with this chapter to remove the body to be used for the advancement of medical or forensic science.

(b) If the commission does not require a political subdivision or agency of the political subdivision to deliver a body under this section, the political subdivision shall pay all costs of preparation for burial, including costs of embalming.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 3, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.10, eff. September 1, 2023.

Sec. 691.024. PERSONS WHO MAY CLAIM BODY FOR BURIAL. (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution is not required to give notice or deliver a body as required by Section 691.023 if the body is claimed for burial.

(b) A relative, bona fide friend, or representative of an organization to which the deceased belonged may claim the body for burial. The person in charge of the body shall release the body to the claimant without requiring payment when the person is satisfied that the claimed relationship exists.

(c) A claimant alleging to be a bona fide friend or a representative of an organization to which the deceased belonged must present a written statement of the relationship under which the claimant qualifies as a bona fide friend or organization representative.

(d) For purposes of this section, a bona fide friend means a person who is like one of the family, and does not include:

(1) an ordinary acquaintance;

(2) an officer, employee, or representative of the state, of a political subdivision, or of an institution having charge of a body not claimed for burial or a body required to be buried at public expense;

(3) an employee of an entity listed in Subdivision (2) with which the deceased was associated; or

(4) a patient, inmate, or ward of an institution with which the deceased was associated.

(e) A person covered by Subsection (d) may qualify as a bona fide friend if the friendship existed before the deceased entered the institution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 691.025. PROCEDURE AFTER DEATH. (a) If a body is not claimed for burial immediately after death, the body shall be embalmed within 24 hours.

(b) For 72 hours after death, the person in charge of the institution having charge or control of the body shall make due effort to find a relative of the deceased and notify the relative of the death. If the person is not able to find a relative, the person shall file with the county clerk an affidavit stating that the person has made a diligent inquiry to find a relative and stating the inquiry the person made.

(c) A body that is not claimed for burial within 48 hours after a relative receives notification shall be delivered as soon as possible to the commission or the commission's representative.

(d) A relative of the deceased may claim the body within 60 days after the body has been delivered to an institution or other entity authorized to receive the body. The body shall be released without charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.11, eff. September 1, 2023.

Sec. 691.026. BODY OF TRAVELER. If an unclaimed body is the

body of a traveler who died suddenly, the commission shall direct the institution or other person receiving the body to retain the body for six months for purposes of identification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 4, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.12, eff. September 1, 2023.

Sec. 691.027. AUTOPSY. Only the commission may grant permission to perform an autopsy on an unclaimed body. The commission may grant permission after receiving a specific request for an autopsy that shows sufficient evidence of medical urgency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.13, eff. September 1, 2023.

Sec. 691.028. DONATION OF BODY BY WRITTEN INSTRUMENT. (a) An adult living in this state who is of sound mind may donate the adult's body by will or other written instrument to the commission, a willed body program of a medical or dental school, a non-transplant anatomical donation organization, or another donee authorized by the commission to be used for the advancement of medical or forensic science.

(b) To be effective, the donor must provide informed consent by signing the will or other written instrument and it must be witnessed by two adults. The donor is not required to use a particular form or particular words in making the donation, but the will or other instrument must clearly convey:

(1) the donor's intent; and

(2) the donor's acknowledgment that the donor was informed about:

(A) the consequences of the donation before providing consent;

(B) the use the donee plans for the donated body parts;

and

(C) if applicable, any body part and the condition in which the body part will be returned to the person designated by the donor.

(b-1) For purposes of Subsection (b), the donor must be informed in writing about the information described by Subsection (b)(2) in a clear manner on a single piece of paper that is 8-1/2 by 11 inches with 14-point type. The commission by rule shall design and adopt a form that complies with this subsection that willed body programs and non-transplant anatomical donation organizations must use.

(c) Appointment of an administrator or executor or acquisition of a court order is not necessary before the body may be delivered under this chapter.

(d) A donor may revoke a donation made under this section by executing a written instrument in a manner similar to the original donation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 5, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.14, eff. September 1, 2023.

Sec. 691.029. AUTHORITY TO RECEIVE, DISTRIBUTE, AND TRANSFER BODIES OR ANATOMICAL SPECIMENS. The commission may receive, distribute, and transfer a body or anatomical specimen from inside or outside this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.15, eff. September 1, 2023.

Sec. 691.030. COMMISSION'S AUTHORITY TO DISTRIBUTE BODIES AND ANATOMICAL SPECIMENS. (a) The commission or the commission's representative shall distribute bodies donated to it and may

redistribute bodies donated to medical or dental schools or other donees authorized by the commission to:

(1) willed body programs of schools and colleges of chiropractic, osteopathy, medicine, or dentistry incorporated in this state;

(2) forensic science programs;

(3) search and rescue organizations or recovery teams that are recognized by the commission, are exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, and use human remains detection canines with the authorization of a local or county law enforcement agency;

(4) physicians;

(5) anatomical facilities; and

(6) other persons as provided by this section.

(b) In making the distribution, the commission shall give priority to the schools and colleges that need bodies for lectures and demonstrations.

(c) If the commission has remaining bodies, the commission or the commission's representative shall distribute or redistribute those bodies to the schools and colleges proportionately and equitably according to the number of students in each school or college receiving instruction or demonstration in normal or morbid anatomy and operative surgery. The dean of each school or college shall certify that number to the commission when required by the commission.

(d) The commission may transport a body or anatomical specimen to an authorized recipient in another state if the commission determines that the supply of bodies or anatomical specimens in this state exceeds the need for bodies or anatomical specimens in this state and if:

(1) the deceased donated the deceased's body in compliance with Section 691.028 and at the time of the donation authorized the commission to transport the body outside this state; or

(2) the body was donated in compliance with Chapter 692A and the person authorized to make the donation under Section 692A.009 authorized the commission to transport the body outside this state.

(e) This section does not apply to a body or anatomical specimen donated to a registered non-transplant anatomical donation organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 6, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.16, eff. September 1, 2023.

Sec. 691.031. TRANSPORTATION OF BODIES; RECORDS. (a) The commission shall adopt rules to ensure that:

(1) each body or anatomical specimen received or distributed under this chapter is properly transported;

(2) a label with a statement that the container's contents are derived from human tissue is affixed to the container in which the body or anatomical specimen is transported; and

(3) each person who has control or possession of a body or anatomical specimen:

(A) satisfactorily completes the information required on a chain-of-custody form prescribed by the commission;

(B) maintains a copy of the form for the person's records; and

(C) transfers the form to any other person to whom control or possession of the body or anatomical specimen is transferred.

(b) The commission may employ a public carrier to transport bodies or anatomical specimens received or distributed by the commission.

(c) Each body or anatomical specimen shall be carefully deposited and transported with the least possible public display.

(d) A person or institution who sends a body or anatomical specimen under this chapter shall keep on permanent file a description of the body or anatomical specimen that includes the deceased's name, if known, color, sex, age, place and supposed cause of death, and any other information available for identification of the body or anatomical specimen, such as the existence of scars or deformities.

(e) The sender shall mail or otherwise safely convey to the

person or institution to whom the body is sent a copy of the description required by Subsection (d). The person or institution receiving the body or anatomical specimen shall immediately and safely transmit to the sender a receipt containing the full terms of the description furnished by the sender.

(f) The sender and receiver of each body or anatomical specimen shall file the records required under this section in accordance with commission rules so that the commission or a district or county attorney may inspect the records at any time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 875 (S.B. 187), Sec. 2, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.17, eff. September 1, 2023.

Sec. 691.032. COSTS OF DISTRIBUTION. A person or institution receiving a body or anatomical specimen under this chapter shall pay in a manner specified by the commission, or as otherwise agreed on, all costs incurred in distributing the body or anatomical specimen so that the state, a county, a municipality, or an officer, employee, or representative of the state, a county, or a municipality does not incur any expense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.18, eff. September 1, 2023.

Sec. 691.033. USE OF BODIES AND ANATOMICAL SPECIMENS. (a) To further medical or forensic science, a willed body program, non-transplant anatomical donation organization, anatomical facility, or other person designated by the commission may use, dissect, operate on, examine, and experiment on a body or anatomical specimen distributed under this chapter.

(b) A willed body program, non-transplant anatomical donation

organization, or other person shall keep a permanent record of each body or anatomical specimen received from the commission or the commission's representative. The record:

(1) must be sufficient to identify the body or anatomical specimen;

(2) must track the body or anatomical specimen from intake to final disposition; and

(3) may be inspected by the commission or the commission's representative.

(c) A law relating to the prevention of mutilation of a body does not apply to the use of a body as authorized under this section or a dissection, operation, examination, or experiment performed under this section.

(d) To aid prosecutions under Section 42.08, Penal Code, the commission shall adopt rules that clearly state the activities that are authorized by the commission in relation to the use or dissection of a body.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.42, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 948, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 7, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.19, eff. September 1, 2023.

Sec. 691.034. REGULATION AND REGISTRATION OF PERSONS AND INSTITUTIONS USING BODIES AND ANATOMICAL SPECIMENS. (a) A willed body program or non-transplant anatomical donation organization may not operate in this state unless the program or organization registers with the commission in the form and manner prescribed by the commission.

(a-1) To be eligible for registration under this section, a non-transplant anatomical donation organization must be accredited by the American Association of Tissue Banks under the association's Standards for Non-Transplant Anatomical Donation. The commission may issue conditional registration to a non-transplant anatomical donation organization that is not yet accredited.

(a-2) The commission shall inspect and may approve willed body programs and anatomical facilities for the receipt and use of bodies and anatomical specimens under this chapter.

(a-3) The commission shall establish a process to periodically verify a non-transplant anatomical donation organization's compliance with the Standards for Non-Transplant Anatomical Donation published by the American Association of Tissue Banks. The process:

(1) may authorize the commission to inspect a non-transplant anatomical donation organization; and

(2) may not:

(A) be duplicative of the accreditation process described by Subsection (a-1); or

(B) occur more frequently than once every five years.

(b) The commission may investigate a willed body program, non-transplant anatomical donation organization, anatomical facility, or other person if the commission has reason to believe that the program, organization, facility, or person has improperly used a body or anatomical specimen.

(b-1) The commission may inspect a non-transplant anatomical donation organization as part of an investigation described by Subsection (b).

(c) The commission may suspend or revoke a willed body program's, non-transplant anatomical donation organization's, anatomical facility's, or other person's registration or other authorization to receive and use or dissect bodies or anatomical specimens if the commission determines that the program, organization, facility, or person has improperly used a body or anatomical specimen.

(d) A willed body program, non-transplant anatomical donation organization, anatomical facility, or other person is entitled to a hearing before the commission or a hearing examiner appointed by the commission before the commission may revoke the program's, organization's, facility's, or person's registration or other authorization to receive and use or dissect bodies or anatomical specimens. The commission shall make all final decisions to suspend or revoke an authorization.

(e) A registered non-transplant anatomical donation organization must inform the commission within the time prescribed by commission rule if the organization loses its accreditation with the American Association of Tissue Banks.

(f) A commission member or holder of any license issued by the commission may not hold an ownership interest in a registered non-transplant anatomical donation organization.

(g) The commission shall adopt rules and procedures necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 948, Sec. 11, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 8, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.20, eff. September 1, 2023.

Sec. 691.035. CRIMINAL PENALTY. (a) A person commits an offense if the person has a duty imposed under this chapter and refuses, neglects, or omits to perform the duty as required by this chapter.

(b) An offense under this section is punishable by a fine of not less than $100 or more than $500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 692A. REVISED UNIFORM ANATOMICAL GIFT ACT

Sec. 692A.001. SHORT TITLE. This chapter may be cited as the Revised Uniform Anatomical Gift Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.002. DEFINITIONS. In this chapter:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual:

(A) authorized to make health care decisions on the principal's behalf by a medical power of attorney; or

(B) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Commissioner" means the commissioner of state health services.

(5) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than this chapter, a fetus.

(6) "Department" means the Department of State Health Services.

(7) "Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 692A.011.

(8) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry.

(9) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(10) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.

(11) "Driver's license" means a license or permit issued by the Department of Public Safety to operate a vehicle, whether or not conditions are attached to the license or permit.

(11-a) "Education" with respect to the purposes authorized by law for making an anatomical gift includes forensic science education and related training.

(12) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(13) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem.

(14) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by

the United States, a state, or a subdivision of a state.

(15) "Identification card" means an identification card issued by the Department of Public Safety.

(16) "Imminent death" means a patient who requires mechanical ventilation, has a severe neurologic injury, and meets certain clinical criteria indicating that neurologic death is near or a patient for whom withdrawal of ventilatory support is being considered.

(17) "Know" means to have actual knowledge.

(18) "Minor" means an individual who is under 18 years of age.

(19) "Organ procurement organization" means a person designated by the secretary of the United States Department of Health and Human Services as an organ procurement organization.

(20) "Parent" means a parent whose parental rights have not been terminated.

(21) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(23) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(24) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(25) "Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal.

(26) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(27) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(28) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium

and is retrievable in perceivable form.

(29) "Refusal" means a record created under Section 692A.007 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part.

(30) "Sign" means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(32) "Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator.

(33) "Timely notification" means notification of an imminent death to the organ procurement organization within one hour of the patient's meeting the criteria for imminent death and before the withdrawal of any life sustaining therapies. With respect to cardiac death, timely notification means notification to the organ procurement organization within one hour of the cardiac death.

(34) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.

(35) "Tissue bank" means a person licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(36) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(37) "Visceral organ" means the heart, kidney, or liver or another organ or tissue that requires a patient support system to maintain the viability of the organ or tissue.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 9, eff.

September 1, 2015.

Sec. 692A.003. APPLICABILITY. This chapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.004. PERSONS AUTHORIZED TO MAKE ANATOMICAL GIFT BEFORE DONOR'S DEATH. Subject to Section 692A.008, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 692A.005 by:

(1) the donor, if the donor is an adult or if the donor is a minor and is:

(A) emancipated; or

(B) authorized under state law to apply for a driver's license because the donor is at least 16 years of age and:

(i) circumstances allow the donation to be actualized prior to 18 years of age; and

(ii) an organ procurement organization obtains signed written consent from the minor's parent, guardian, or custodian as in Subdivision (3);

(2) an agent of the donor, unless the medical power of attorney or other record prohibits the agent from making an anatomical gift;

(3) a parent of the donor, if the donor is an unemancipated minor; or

(4) the donor's guardian.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.005. MANNER OF MAKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) A donor may make an anatomical gift:

(1) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's

driver's license or identification card;

(2) in a will;

(3) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) as provided in Subsection (b) or (b-1).

(b) A donor or other person authorized to make an anatomical gift under Section 692A.004 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(b-1) A donor or other person authorized to make an anatomical gift under Section 692A.004 may make a gift through an online registry. The online registration:

(1) does not require the consent of another person or require a witness to sign at the donor's request or a notary public to acknowledge the gift; and

(2) constitutes a legal document under this chapter that remains binding after the donor's death.

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card on which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect on the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 363 (S.B. 2186), Sec. 1, eff. September 1, 2023.

Sec. 692A.006. AMENDING OR REVOKING ANATOMICAL GIFT BEFORE DONOR'S DEATH. (a) Subject to Section 692A.008, a donor or other person authorized to make an anatomical gift under Section 692A.004 may amend or revoke an anatomical gift by:

(1) a record signed by:

(A) the donor;

(B) the other person; or

(C) subject to Subsection (b), another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) a later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to Subsection (a)(1)(C) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(c) Subject to Section 692A.008, a donor or other person authorized to make an anatomical gift under Section 692A.004 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 363 (S.B. 2186), Sec. 2, eff. September 1, 2023.

Sec. 692A.007. REFUSAL TO MAKE ANATOMICAL GIFT; EFFECT OF REFUSAL. (a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) a record signed by:

(A) the individual; or

(B) subject to Subsection (b), another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) the individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to Subsection (a)(1)(B) must:

(1) be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual, or be acknowledged before a notary public; and

(2) state that the record has been signed and witnessed or acknowledged as provided in Subdivision (1).

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) in the manner provided in Subsection (a) for making a refusal;

(2) by subsequently making an anatomical gift pursuant to Section 692A.005 that is inconsistent with the refusal; or

(3) by destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in Section 692A.008(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 363 (S.B. 2186), Sec. 3, eff. September 1, 2023.

Sec. 692A.008. PRECLUSIVE EFFECT OF ANATOMICAL GIFT, AMENDMENT, OR REVOCATION. (a) Except as otherwise provided in Subsection (g) and subject to Subsection (f), in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 692A.005 or an amendment to an anatomical gift of the donor's body or part under Section 692A.006.

(b) A donor's revocation of an anatomical gift of the donor's body or part under Section 692A.006 is not a refusal and does not bar another person specified in Section 692A.004 or Section 692A.009 from making an anatomical gift of the donor's body or part under Section 692A.005 or Section 692A.010.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 692A.005 or an amendment to an anatomical gift of the donor's body or part under Section 692A.006, another person may not make, amend, or revoke the gift of the donor's body or part under Section 692A.010.

(d) A revocation of an anatomical gift of a donor's body or part under Section 692A.006 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 692A.005 or Section 692A.010.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 692A.004, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 692A.004, an anatomical gift of a part for one or more of the purposes set forth in Section 692A.004 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 692A.005 or Section 692A.010.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an

anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.009. WHO MAY MAKE ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (a) Subject to Subsections (b) and (c) and unless barred by Section 692A.007 or Section 692A.008, an anatomical gift of a decedent's body or part for the purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) an agent of the decedent at the time of death who could have made an anatomical gift under Section 692A.004(2) immediately before the decedent's death;

(2) the spouse of the decedent;

(3) adult children of the decedent;

(4) parents of the decedent;

(5) adult siblings of the decedent;

(6) adult grandchildren of the decedent;

(7) grandparents of the decedent;

(8) an adult who exhibited special care and concern for the decedent;

(9) the persons who were acting as the guardians of the person of the decedent at the time of death;

(10) the hospital administrator; and

(11) any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in Subsection (a)(1), (3), (4), (5), (6), (7), or (9) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 692A.011 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of

the decedent's death, a person in a prior class under Subsection (a) is reasonably available to make or to object to the making of an anatomical gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.010. MANNER OF MAKING, AMENDING, OR REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART. (a) A person authorized to make an anatomical gift under Section 692A.009 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to Subsection (c), an anatomical gift by a person authorized under Section 692A.009 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under Section 692A.009 may be:

(1) amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under Subsection (b) is effective only if, before an incision has been made to remove a part from the donor's body or before the initiation of invasive procedures to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.011. PERSONS THAT MAY RECEIVE ANATOMICAL GIFT; PURPOSE OF ANATOMICAL GIFT. (a) An anatomical gift may be made to the following persons named in the document of gift:

(1) an organ procurement organization to be used for transplantation, therapy, research, or education;

(2) a hospital to be used for research;

(3) subject to Subsection (d), an individual designated by the person making the anatomical gift if the individual is the recipient of the part;

(4) an eye bank or tissue bank, except that use of a gift of a whole body must be coordinated through the Texas Funeral Service Commission;

(5) a forensic science program at:

(A) a general academic teaching institution as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code;

(6) a search and rescue organization or recovery team that is recognized by the Texas Funeral Service Commission, is exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, and uses human remains detection canines with the authorization of a local or county law enforcement agency;

(7) the Texas Funeral Service Commission; or

(8) a non-transplant anatomical donation organization.

(b) Except for donations described by Subsections (a)(1) through (6), the Texas Funeral Service Commission or a non-transplant anatomical donation organization shall be the donee of gifts of bodies or parts of bodies made for the purpose of education or research that are subject to distribution by the commission or organization under Chapter 691.

(c) A forensic science program that receives a donation under Subsection (a)(5) must submit a report to the Texas Funeral Service Commission on a quarterly basis that lists:

(1) the number of bodies or parts of bodies that the program received; and

(2) the method in which the program used the bodies or parts of bodies for education or research.

(d) If an anatomical gift to an individual under Subsection (a)(3) cannot be transplanted into the individual, the part passes in accordance with Subsection (i) in the absence of an express, contrary indication by the person making the anatomical gift.

(e) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in Subsection (a) but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) if the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2) if the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3) if the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; and

(4) if the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(f) For the purpose of Subsection (e), if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(g) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in Subsection (a) and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (i).

(h) If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with Subsection (i).

(i) For purposes of Subsections (d), (g), and (h), the following rules apply:

(1) if the part is an eye, the gift passes to the appropriate eye bank;

(2) if the part is tissue, the gift passes to the appropriate tissue bank; and

(3) if the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(j) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under Subsection (a)(3), passes to the organ procurement organization as custodian of the organ.

(k) If an anatomical gift does not pass pursuant to Subsections (a) through (j) or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(l) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 692A.005 or Section 692A.010 or if the person knows that the decedent made a refusal under Section 692A.007 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(m) Except as otherwise provided in Subsection (a)(3), nothing in this chapter affects the allocation of organs for transplantation or therapy.

(n) A donee may accept or reject a gift.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 624 (S.B. 1214), Sec. 10, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 2.03, eff. September 1, 2023.

Sec. 692A.012. SEARCH AND NOTIFICATION. The donor card of a person who is involved in an accident or other trauma shall accompany the person to the hospital or other health care facility. The driver's license or personal identification certificate indicating an affirmative statement of gift of a person who is involved in an accident or other trauma shall accompany the person to the hospital or health care facility if the person does not have a donor card.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.013. DELIVERY OF DOCUMENT OF GIFT NOT REQUIRED; RIGHT TO EXAMINE. (a) A document of gift need not be delivered during the

donor's lifetime to be effective.

(b) On or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 692A.011.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.014. RIGHTS AND DUTIES OF PROCUREMENT ORGANIZATION AND OTHERS. (a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 692A.011 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this chapter, an examination under Subsection (c) or (d) may include an examination of all medical and dental records of the donor or prospective donor.

(f) On the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) On referral by a hospital under Subsection (a), a procurement organization shall make a reasonable search for any person listed in Section 692A.009 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to Sections 692A.011(k) and 693.002, the rights of the person to which a part passes under Section 692A.011 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift wholly or partly. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 692A.011, on the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) The physician who attends the decedent at death or the physician who determines the time of the decedent's death may not participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.015. COORDINATION OF PROCUREMENT AND USE; HOSPITAL PROCEDURES. Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts. Each hospital must have a

protocol that ensures its maintenance of an effective donation system in order to maximize organ, tissue, and eye donation. The protocol must:

(1) be available to the public during the hospital's normal business hours;

(2) establish a procedure for the timely notification to an organ procurement organization of individuals whose death is imminent or who have died in the hospital;

(3) establish procedures to ensure potential donors are declared dead by an appropriate practitioner in an acceptable time frame;

(4) establish procedures to ensure that hospital staff and organ procurement organization staff maintain appropriate medical treatment of potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place;

(5) ensure that all families are provided the opportunity to donate organs, tissues, and eyes, including vascular organs procured from asystolic donors;

(6) provide that the hospital use appropriately trained persons from an organ procurement organization, tissue bank, or eye bank to make inquiries relating to donations;

(7) provide for documentation of the inquiry and of its disposition in the decedent's medical records;

(8) require an organ procurement organization, tissue bank, or eye bank that makes inquiries relating to donations to develop a protocol for making those inquiries;

(9) encourage sensitivity to families' beliefs and circumstances in all discussions relating to the donations;

(10) provide that the organ procurement organization determines medical suitability for organ donation and, in the absence of alternative arrangements by the hospital, the organ procurement organization determines medical suitability for tissue and eye donation, using the definition of potential tissue and eye donor and the notification protocol developed in consultation with the tissue and eye banks identified by the hospital for this purpose;

(11) ensure that the hospital works cooperatively with the designated organ procurement organization, tissue bank, and eye bank in educating staff on donation issues;

(12) ensure that the hospital works with the designated organ procurement organization, tissue bank, and eye bank in

reviewing death records; and

(13) provide for monitoring of donation system effectiveness, including rates of donation, protocols, and policies, as part of the hospital's quality improvement program.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.016. SALE OR PURCHASE OF PARTS PROHIBITED. (a) Except as otherwise provided in Subsection (b), a person commits an offense if the person for valuable consideration knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death. An offense under this subsection is a Class A misdemeanor.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

(c) If conduct that constitutes an offense under this section also constitutes an offense under other law, the actor may be prosecuted under this section, the other law, or both this section and the other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.017. OTHER PROHIBITED ACTS. (a) A person commits an offense if the person, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal. An offense under this section is a Class A misdemeanor.

(b) If conduct that constitutes an offense under this section also constitutes an offense under other law, the actor may be prosecuted under this section, the other law, or both this section and the other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.018. IMMUNITY. (a) A person who acts in good faith in accordance with this chapter is not liable for civil damages or subject to criminal prosecution for the person's action if the prerequisites for an anatomical gift are met under the laws applicable at the time and place the gift is made.

(b) A person that acts in accordance with this chapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(c) A person who acts in good faith in accordance with this chapter is not liable as a result of the action except in the case of an act or omission of the person that is intentional, wilfully or wantonly negligent, or done with conscious indifference or reckless disregard. For purposes of this subsection, "good faith" in determining the appropriate person authorized to make a donation under Section 692A.009 means making a reasonable effort to locate and contact the member or members of the highest priority class who are reasonably available at or near the time of death.

(d) Neither a person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(e) In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely on representations of an individual listed in Section 692A.009(a)(2), (3), (4), (5), (6), (7), or (8) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.019. LAW GOVERNING VALIDITY; CHOICE OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT; PRESUMPTION OF VALIDITY. (a) A document of gift is valid if executed in accordance with:

(1) this chapter;

(2) the laws of the state or country where it was executed; or

(3) the laws of the state or country where the person making the anatomical gift was domiciled, had a place of residence,

or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.020. GLENDA DAWSON DONATE LIFE-TEXAS REGISTRY; EDUCATION PROGRAM. (a) A nonprofit organization designated by the Department of Public Safety shall maintain and administer a statewide donor registry, to be known as the Glenda Dawson Donate Life-Texas Registry.

(b) The nonprofit organization administering the registry must include representatives from each organ procurement organization in this state.

(c) The nonprofit organization shall establish and maintain a statewide Internet-based registry of organ, tissue, and eye donors.

(d) The Department of Public Safety at least monthly shall electronically transfer to the nonprofit organization administering the registry the name, date of birth, driver's license number, most recent address, and any other relevant information in the possession of the Department of Public Safety for any person who indicates on the person's driver's license application under Section 521.401, Transportation Code, that the person would like to make an anatomical gift.

(e) The nonprofit organization administering the registry shall:

(1) make information obtained from the Department of Public Safety under Subsection (d) available to procurement organizations;

(2) allow potential donors to submit information in writing directly to the organization for inclusion in the Internet-based registry;

(3) maintain the Internet-based registry in a manner that allows procurement organizations to immediately access organ, tissue, and eye donation information 24 hours a day, seven days a week through electronic and telephonic methods; and

(4) protect the confidentiality and privacy of the individuals providing information to the Internet-based registry, regardless of the manner in which the information is provided.

(f) Except as otherwise provided by Subsection (e)(3) or this subsection, the Department of Public Safety, the nonprofit organization administering the registry, or a procurement organization may not sell, rent, or otherwise share any information provided to the Internet-based registry. A procurement organization may share any information provided to the registry with an organ procurement organization or a health care provider or facility providing medical care to a potential donor as necessary to properly identify an individual at the time of donation.

(g) The Department of Public Safety, the nonprofit organization administering the registry, or the procurement organizations may not use any demographic or specific data provided to the Internet-based registry for any fund-raising activities. Data may only be transmitted from the selected organization to procurement organizations through electronic and telephonic methods using secure, encrypted technology to preserve the integrity of the data and the privacy of the individuals providing information.

(h) In each office authorized to issue driver's licenses or personal identification certificates, the Department of Public Safety shall make available educational materials developed by the nonprofit organization administering the registry.

(i) The Glenda Dawson Donate Life-Texas Registry fund is created as a trust fund outside the state treasury to be held by the comptroller and administered by the Department of Public Safety as trustee on behalf of the statewide donor registry maintained for the benefit of the citizens of this state. The fund is composed of money deposited to the credit of the fund under Sections 502.405(b), 521.008, and 522.0295, Transportation Code, as provided by those sections. Money in the fund shall be disbursed at least monthly, without appropriation, to the nonprofit organization administering the registry to pay the costs of:

(1) maintaining, operating, and updating the Internet-based registry and establishing procedures for an individual to be added to the registry;

(2) designing and distributing educational materials for prospective donors as required under this section; and

(3) providing education under this chapter.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 121, Sec. 6(a), eff. May 18, 2013.

(k) To the extent funds are available and as part of the donor registry program, the nonprofit organization administering the registry may educate residents about anatomical gifts. The education provided under this section shall include information about:

(1) the laws governing anatomical gifts, including Subchapter Q, Chapter 521, Transportation Code, Chapter 693, and this chapter;

(2) the procedures for becoming an organ, eye, or tissue donor or donee; and

(3) the benefits of organ, eye, or tissue donation.

(l) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 121, Sec. 6(a), eff. May 18, 2013.

(m) The nonprofit organization administering the registry may:

(1) implement a training program for all appropriate Department of Public Safety and Texas Department of Transportation employees on the benefits of organ, tissue, and eye donation and the procedures for individuals to be added to the Internet-based registry; and

(2) conduct the training described by Subdivision (1) on an ongoing basis for new employees.

(n) The nonprofit organization administering the registry may develop a program to educate health care providers and attorneys in this state about anatomical gifts.

(o) The nonprofit organization administering the registry shall encourage:

(1) attorneys to provide organ donation information to clients seeking advice for end-of-life decisions;

(2) medical and nursing schools in this state to include mandatory organ donation education in the schools' curricula; and

(3) medical schools in this state to require a physician in a neurology or neurosurgery residency program to complete an advanced course in organ donation education.

(p) The nonprofit organization administering the registry may not use the registry to solicit voluntary donations of money from a registrant.

(q) Except as provided by Subsection (p), the nonprofit organization administering the registry may accept voluntary donations of money and perform fund-raising on behalf of the registry

for the purpose of supporting registering donors.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 554 (H.B. 2904), Sec. 1, eff. January 1, 2012.
Acts 2013, 83rd Leg., R.S., Ch. 121 (S.B. 1815), Sec. 1, eff. May 18, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 121 (S.B. 1815), Sec. 6(a), eff. May 18, 2013.
Acts 2023, 88th Leg., R.S., Ch. 614 (H.B. 3798), Sec. 6, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.003, eff. September 1, 2023.

Sec. 692A.021. EFFECT OF ANATOMICAL GIFT ON ADVANCE DIRECTIVE. (a) In this section:

(1) "Advance directive" means a medical power of attorney or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor.

(2) "Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

(3) "Health-care decision" means any decision made regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if the agent is not reasonably available, another person authorized by law other than this chapter to make health-care decisions on behalf of the prospective donor, shall act on the prospective donor's behalf to

resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 692A.009. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor.

(c) If the conflict cannot be resolved, an expedited review of the matter must be initiated by an ethics or medical committee of the appropriate health care facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.022. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

Sec. 692A.023. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.), but does not modify, limit, or supersede Section 101(a) of that Act (15 U.S.C. Section 7001(a)), or authorize electronic delivery of any of the notices described in Section 103 of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 1, eff. September 1, 2009.

CHAPTER 693. REMOVAL OF BODY PARTS, BODY TISSUE, AND CORNEAL TISSUE

SUBCHAPTER A. REMOVAL OF BODY PARTS OR TISSUE

Sec. 693.001. DEFINITION. In this subchapter, "visceral organ" means the heart, kidney, liver, or other organ or tissue that

requires a patient support system to maintain the viability of the organ or tissue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.002. REMOVAL OF BODY PART OR TISSUE FROM DECEDENT WHO DIED UNDER CIRCUMSTANCES REQUIRING AN INQUEST. (a) (1) On a request from an organ procurement organization, as defined by Section 692A.002, the medical examiner, justice of the peace, county judge, or physician designated by the justice of the peace or county judge may permit the removal of organs from a decedent who died under circumstances requiring an inquest by the medical examiner, justice of the peace, or county judge if consent is obtained pursuant to Sections 692A.005 through 692A.010 or Section 693.003.

(2) If no autopsy is required, the organs to be transplanted shall be released in a timely manner to the organ procurement organization, as defined by Section 692A.002, for removal and transplantation.

(3) If an autopsy is required and the medical examiner, justice of the peace, county judge, or designated physician determines that the removal of the organs will not interfere with the subsequent course of an investigation or autopsy, the organs shall be released in a timely manner for removal and transplantation. The autopsy will be performed in a timely manner following the removal of the organs.

(4) If the medical examiner is considering withholding one or more organs of a potential donor for any reason, the medical examiner shall be present during the removal of the organs. In such case, the medical examiner may request a biopsy of those organs or deny removal of the anatomical gift. If the medical examiner denies removal of the anatomical gift, the medical examiner shall explain in writing the reasons for the denial. The medical examiner shall provide the explanation to:

(A) the organ procurement organization; and

(B) any person listed in Section 692A.009 who consented to the removal.

(5) If the autopsy is not being performed by a medical examiner and one or more organs may be withheld, the justice of the peace, county judge, or designated physician shall be present during

the removal of the organs and may request the biopsy or deny removal of the anatomical gift. If removal of the anatomical gift is denied, the justice of the peace, county judge, or physician shall provide the written explanation required by Subdivisions (4)(A) and (B).

(6) If, in performing the duties required by this subsection, the medical examiner or, in those cases in which an autopsy is not performed by a medical examiner, the justice of the peace, county judge, or designated physician is required to be present at the hospital to examine the decedent prior to removal of the organs or during the procedure to remove the organs, the qualified organ procurement organization shall on request reimburse the county or the entity designated by the county for the actual costs incurred in performing such duties, not to exceed $1,000. Such reimbursements shall be deposited in the general fund of the county. The payment shall be applied to the additional costs incurred by the office of the medical examiner, justice of the peace, or county judge in performing such duties, including the cost of providing coverage beyond regular business hours. The payment shall be used to facilitate the timely procurement of organs in a manner consistent with the preservation of the organs for the purposes of transplantation.

(7) At the request of the medical examiner or, in those cases in which an autopsy is not performed by a medical examiner, the justice of the peace, county judge, or designated physician, the health care professional removing organs from a decedent who died under circumstances requiring an inquest shall file with the medical examiner, justice of the peace, or county judge a report detailing the condition of the organs removed and their relationship, if any, to the cause of death.

(b) On a request from a tissue bank, as defined by Section 692A.002, the medical examiner may permit the removal of tissue believed to be clinically usable for transplants or other therapy or treatment from a decedent who died under circumstances requiring an inquest if consent is obtained pursuant to Sections 692A.005 through 692A.010 or Section 693.003 or, if consent is not required by those sections, no objection by a person listed in Section 692A.009 is known by the medical examiner. If the medical examiner denies removal of the tissue, the medical examiner shall explain in writing the reasons for the denial. The medical examiner shall provide the explanation to:

(1) the tissue bank; and

(2) the person listed in Section 692A.009 who consented to the removal.

(c) If the autopsy is not being performed by a medical examiner, the justice of the peace, county judge, or designated physician may permit the removal of tissue in the same manner as a medical examiner under Subsection (b). If removal of the anatomical gift is denied, the justice of the peace, county judge, or physician shall provide the written explanation required by Subsections (b)(1) and (2).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 523, Sec. 1, eff. June 13, 1995; Acts 2003, 78th Leg., ch. 1220, Sec. 1, eff. July 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 5, eff. September 1, 2009.

Sec. 693.003. CONSENT NOT REQUIRED IN CERTAIN CIRCUMSTANCES. If a person listed in Section 692A.009 cannot be identified and contacted within four hours after death is pronounced and the county court determines that no reasonable likelihood exists that a person can be identified and contacted during the four-hour period, the county court may permit the removal of a nonvisceral organ or tissue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 6, eff. September 1, 2009.

Sec. 693.005. IMMUNITY FROM DAMAGES IN CIVIL ACTION. In a civil action brought by a person listed in Section 692A.009 who did not object before the removal of tissue or a body part specified by Section 693.002, a medical examiner, justice of the peace, county judge, medical facility, physician acting on permission of a medical examiner, justice of the peace, or county judge, or person assisting a physician is not liable for damages on a theory of civil recovery

based on a contention that the plaintiff's consent was required before the body part or tissue could be removed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1220, Sec. 1, eff. July 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 7, eff. September 1, 2009.

Sec. 693.006. REMOVAL OF CORNEAL TISSUE. On a request from an eye bank, as defined in Section 692A.002, the medical examiner, justice of the peace, county judge, or physician designated by the justice of the peace or county judge may permit the removal of corneal tissue subject to the same provisions that apply to removal of a visceral organ on the request of a procurement organization under this subchapter. The provisions of Chapter 692A relating to immunity and consent apply to the removal of the corneal tissue.

Added by Acts 2005, 79th Leg., Ch. 1069 (H.B. 1544), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 8, eff. September 1, 2009.

SUBCHAPTER C. EYE ENUCLEATION

Sec. 693.021. DEFINITION. In this chapter, "ophthalmologist" means a person licensed to practice medicine who specializes in treating eye diseases.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.022. PERSONS WHO MAY ENUCLEATE EYE AS ANATOMICAL GIFT. Only the following persons may enucleate an eye that is an anatomical gift:

(1) a licensed physician;

(2) a licensed doctor of dental surgery or medical dentistry;

(3) a licensed embalmer; or

(4) a technician supervised by a physician.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.023. EYE ENUCLEATION COURSE. Each person, other than a licensed physician, who performs an eye enucleation must complete a course in eye enucleation taught by an ophthalmologist and must possess a certificate showing that the course has been completed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 693.024. REQUISITES OF EYE ENUCLEATION COURSE. The course in eye enucleation prescribed by Section 693.023 must include instruction in:

(1) the anatomy and physiology of the eye;

(2) maintaining a sterile field during the procedure;

(3) use of the appropriate instruments; and

(4) procedures for the sterile removal of the corneal button and the preservation of it in a preservative fluid.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 694. BURIAL

Sec. 694.001. DUTIES OF DEPARTMENT OF STATE HEALTH SERVICES. The Department of State Health Services shall regulate the disposal, transportation, interment, and disinterment of dead bodies to the extent reasonable and necessary to protect public health and safety.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1506, eff. April 2, 2015.

Sec. 694.002. DUTY OF COMMISSIONERS COURT CONCERNING DISPOSITION OF BODY OF DECEASED PAUPERS. (a) The commissioners court of each county shall provide for the disposition of the body of a deceased pauper. The commissioners court may adopt rules to

implement this section.

(b) The commissioners court shall consider any information, including the religious affiliation of the deceased pauper, provided by a person listed in Section 711.002(a).

(c) If a county discovers cash in the possession of a deceased pauper, a county may use the cash to pay the actual costs incurred by the county in disposing of the pauper's body.

(d) If any cash remains after the county has paid the costs of disposing of the body under Subsection (c), the county shall place the cash in trust. A person having a claim to the money in trust must exercise the right to collect the money not later than the first anniversary of the date of disposition of the pauper's body.

(e) A county may create a fund to be used by the county to pay the costs incurred in disposing of the bodies of deceased paupers and administering the county's body disposition activities. If money placed in a trust under Subsection (d) is not claimed by the first anniversary of the date of disposition of the pauper's body, the county may transfer the money to the fund created under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 211, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 929, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 404 (H.B. 1843), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 480 (S.B. 530), Sec. 1, eff. June 19, 2009.

Sec. 694.003. POWER OF GOVERNING BODY OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING BURIAL. The governing body of a Type A general-law municipality may regulate the burial of the dead.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 695. IN-CASKET IDENTIFICATION

Sec. 695.001. DEFINITIONS. In this chapter:

(1) "Casket" means a container used to hold the remains of a deceased person.

(2) "Commission" means the Texas Funeral Service Commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

Sec. 695.002. IDENTIFICATION OF DECEASED PERSON. The commission shall ensure a casket contains identification of the deceased person, including the person's name, date of birth, and date of death.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

Sec. 695.003. RULES. The commission may adopt rules to enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 2, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03, eff. September 1, 2009.

CHAPTER 696. DISPOSITION OF UNCLAIMED CREMATED REMAINS

Sec. 696.001. DEFINITIONS. In this chapter:

(1) "Verification information" means data required by the United States Department of Veterans Affairs to verify whether a person is a veteran or a veteran's dependent eligible for burial in a veterans cemetery, including a copy of the person's death certificate and the person's name, service number, social security number, date of birth, date of death, and place of birth.

(2) "Veterans' service organization" means:

(A) a veterans' organization that is chartered by the United States Congress;

(B) a veterans' service organization recognized by the

United States Department of Veterans Affairs; or

(C) a veterans' service organization that is organized for verifying whether a person is a veteran or a veteran's dependent and providing for interment of veterans and their dependents and that is exempt from the payment of federal income taxes under Section 501(c) of the Internal Revenue Code of 1986 by being listed as an exempt organization under Section 501(c)(3) or 501(c)(19) of that code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.002. APPLICABILITY. This chapter applies to any person who possesses unclaimed cremated remains, including a funeral establishment or funeral director licensed under Chapter 651, Occupations Code, a coroner, or a crematory.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.003. AUTHORIZATION TO RELEASE INFORMATION. A person who possesses unclaimed cremated remains may release to the United States Department of Veterans Affairs or a veterans' service organization verification information associated with the remains to verify whether the remains are the remains of a person who was a veteran or a veteran's dependent eligible to be interred in a veterans cemetery if:

(1) the person has possessed the cremated remains for at least five years;

(2) the person authorized to dispose of the decedent's remains under Section 711.002 has not claimed the cremated remains; and

(3) the person made a reasonable effort to locate a relative of the decedent to claim the remains, including publishing notice in a newspaper of general circulation in the county in which the person is located, and more than 30 days have passed since the person first made an effort to locate a relative of the decedent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff.

September 1, 2013.

Sec. 696.004. TRANSFER OF UNCLAIMED CREMATED REMAINS. A person who receives notice from the United States Department of Veterans Affairs or a veterans' service organization that the unclaimed cremated remains are the remains of a veteran or veteran's dependent eligible to be interred in a veterans cemetery may:

(1) transport the cremated remains to the veterans cemetery for burial; or

(2) transfer the cremated remains to a veterans' service organization that will ensure that the cremated remains are interred in a veterans cemetery.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

Sec. 696.005. CIVIL IMMUNITY. (a) A person who releases verification information as authorized by this chapter or who transfers cremated remains to a veterans' service organization or a veterans cemetery as authorized by this chapter is immune from civil liability for damages resulting from the release or transfer.

(b) A veterans' service organization that inters cremated remains in a veterans cemetery as authorized by this chapter is immune from civil liability for damages arising from the interment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 1, eff. September 1, 2013.

CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

Sec. 697.001. PURPOSE. The purpose of this chapter is to express the state's profound respect for the life of the unborn by providing for a dignified disposition of embryonic and fetal tissue remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.002. DEFINITIONS. In this chapter:

(1) "Cremation" means the irreversible process of reducing remains to bone fragments through direct flame, extreme heat, and evaporation.

(2) "Department" means the Department of State Health Services.

(3) "Embryonic and fetal tissue remains" means an embryo, a fetus, body parts, or organs from a pregnancy that terminates in the death of the embryo or fetus and for which the issuance of a fetal death certificate is not required by state law. The term does not include the umbilical cord, placenta, gestational sac, blood, or body fluids.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Incineration" means the process of burning remains in an incinerator.

(6) "Interment" means the disposition of remains by entombment, burial, or placement in a niche.

(7) "Steam disinfection" means the act of subjecting remains to steam under pressure to disinfect the remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.003. APPLICABILITY OF OTHER LAW. Embryonic and fetal tissue remains are not pathological waste under state law. Unless otherwise provided by this chapter, Chapters 711 and 716 of this code and Chapter 651, Occupations Code, do not apply to the disposition of embryonic and fetal tissue remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.004. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS. (a) Subject to Section 241.010, a health care facility in this state that provides health or medical care to a pregnant woman shall dispose of embryonic and fetal tissue remains that are passed or delivered at the facility by:

(1) interment;

(2) cremation;

(3) incineration followed by interment; or

(4) steam disinfection followed by interment.

(b) The ashes resulting from the cremation or incineration of embryonic and fetal tissue remains:

(1) may be interred or scattered in any manner as authorized by law for human remains; and

(2) may not be placed in a landfill.

(c) A health care facility responsible for disposing of embryonic and fetal tissue remains may coordinate with an entity in the registry established under Section 697.005 in an effort to offset the cost associated with burial or cremation of the embryonic and fetal tissue remains of an unborn child.

(d) Notwithstanding any other law, the umbilical cord, placenta, gestational sac, blood, or body fluids from a pregnancy terminating in the death of the embryo or fetus for which the issuance of a fetal death certificate is not required by state law may be disposed of in the same manner as and with the embryonic and fetal tissue remains from that same pregnancy as authorized by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.005. BURIAL OR CREMATION ASSISTANCE REGISTRY. The department shall:

(1) establish and maintain a registry of:

(A) participating funeral homes and cemeteries willing to provide free common burial or low-cost private burial; and

(B) private nonprofit organizations that register with the department to provide financial assistance for the costs associated with burial or cremation of the embryonic and fetal tissue remains of an unborn child; and

(2) make the registry information available on request to a physician, health care facility, or agent of a physician or health care facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.006. ETHICAL FETAL REMAINS GRANT PROGRAM. The department shall develop a grant program that uses private donations to provide financial assistance for the costs associated with disposing of embryonic and fetal tissue remains.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.007. SUSPENSION OR REVOCATION OF LICENSE. The department may suspend or revoke the license of a health care facility that violates this chapter or a rule adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.008. CIVIL PENALTY. (a) A person that violates this chapter or a rule adopted under this chapter is liable for a civil penalty in an amount of $1,000 for each violation.

(b) The attorney general, at the request of the department, may sue to collect the civil penalty. The attorney general may recover reasonable expenses incurred in collecting the civil penalty, including court costs, reasonable attorney's fees, investigation costs, witness fees, and disposition expenses.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

Sec. 697.009. RULES. The executive commissioner shall adopt rules to implement this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 13, eff. September 1, 2017.

SUBTITLE C. CEMETERIES AND CREMATORIES
CHAPTER 711. GENERAL PROVISIONS RELATING TO CEMETERIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 711.001. DEFINITIONS. In this chapter:

(1) "Abandoned cemetery" means a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person.

(2) "Burial park" means a tract of land that is used or intended to be used for interment in graves.

(3) "Campus" means the area:

(A) within the boundaries of one or more adjacent tracts, parcels, or lots under common ownership;

(B) on which the principal church building and related structures and facilities of an organized religious society or sect are located; and

(C) that may be subject to one or more easements for street, utility, or pipeline purposes.

(4) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.

(5) "Cemetery element" means a grave, memorial, crypt, mausoleum, columbarium, or other item that is associated with the cemetery, including a fence, road, curb, wall, path, gate, or bench and the lighting and landscaping.

(6) "Cemetery broker" means a person who sells the exclusive right of sepulture for another person. The term does not include a person who:

(A) is an officer, agent, or employee of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization; or

(B) originally purchased the exclusive right of sepulture for personal use.

(7) "Cemetery organization" means:

(A) an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or

(B) a corporation, as defined by Section 712.001(b)(3), that is authorized by its certificate of formation or its registration to conduct a business for cemetery purposes.

(8) "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating,

improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

(9) "Columbarium" means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.

(10) "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.

(11) "Cremated remains" or "cremains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(12) "Cremation" means the irreversible process of reducing human remains to bone fragments through extreme heat and evaporation, which may include the processing or the pulverization of bone fragments.

(13) "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(14) "Crematory and columbarium" means a durable, fireproof structure containing both a crematory and columbarium.

(15) "Crypt" means a chamber in a mausoleum of sufficient size to inter human remains.

(16) "Directors" means the governing body of a cemetery organization.

(17) "Entombment" means interment in a crypt.

(18) "Funeral establishment" means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in copartnership, or through corporate status, are engaged or represent themselves to be engaged in the business of embalming or funeral directing.

(19) "Grave" means a space of ground that contains interred human remains or is in a burial park and that is used or intended to be used for interment of human remains in the ground.

(20) "Human remains" means the body of a decedent.

(21) "Interment" means the permanent disposition of remains by entombment, burial, or placement in a niche.

(22) "Interment right" means the right to inter the remains of one decedent in a plot.

(23) "Inurnment" means the placement of cremated remains in

an urn.

(24) "Lawn crypt" means a subsurface receptacle installed in multiple units for ground burial of human remains.

(25) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.

(26) "Memorial" means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.

(27) "Niche" means a space in a columbarium or cremains receptacle used or intended to be used for the placement of cremated remains in an urn or other container.

(28) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.

(29) "Perpetual care" or "endowment care" means the maintenance, repair, and care of all places in the cemetery.

(30) "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712.

(31) "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.

(32) "Plot owner" means a person:

(A) in whose name a plot is listed in a cemetery organization's office as the owner of the exclusive right of sepulture; or

(B) who holds, from a cemetery organization, a certificate of ownership or other instrument of conveyance of the exclusive right of sepulture in a particular plot in the organization's cemetery.

(33) "Prepaid funeral contract" means a written contract providing for prearranged or prepaid funeral services or funeral merchandise.

(34) "Remains" means either human remains or cremated remains.

(35) "Unidentified grave" means a grave that is not marked in a manner that provides the identity of the interment.

(36) "Unknown cemetery" means an abandoned cemetery evidenced by the presence of marked or unmarked graves that does not appear on a map or in deed records.

(37) "Unmarked grave" means the immediate area where one or more human interments are found that:

(A) is not in a recognized and maintained cemetery;

(B) is not owned or operated by a cemetery organization;

(C) is not marked by a tomb, monument, gravestone, or other structure or thing placed or designated as a memorial of the dead; or

(D) is located on land designated as agricultural, timber, recreational, park, or scenic land under Chapter 23, Tax Code.

(38) "Unverified cemetery" means a location having some evidence of interment but in which the presence of one or more unmarked graves has not been verified by a person described by Section 711.0105(a) or by the Texas Historical Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 212, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1389, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. 350), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 38, eff. September 1, 2019.

Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER. (a)

Except as provided by Subsection (l), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and in accordance with Subsection (a-3) are liable for the reasonable cost of interment:

(1) the person designated in a written instrument signed by the decedent;

(2) the decedent's surviving spouse;

(3) any one of the decedent's surviving adult children;

(4) either one of the decedent's surviving parents;

(5) any one of the decedent's surviving adult siblings;

(6) any one or more of the duly qualified executors or administrators of the decedent's estate; or

(7) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(a-1) If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the 6th day after the date the person received notice of the decedent's death or the 10th day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition, and:

(1) the person's right to control the disposition is terminated; and

(2) the right to control the disposition is passed to the following persons in the following priority:

(A) any other person in the same priority class under Subsection (a) as the person whose right was terminated; or

(B) a person in a different priority class, in the priority listed in Subsection (a).

(a-2) If a United States Department of Defense Record of Emergency Data, DD Form 93, or a successor form, was in effect at the time of death for a decedent who died in a manner described by 10 U.S.C. Sections 1481(a)(1) through (8), the DD Form 93 controls over any other written instrument described by Subsection (a)(1) or (g) with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding Subsections (b) and (c), the form is legally sufficient if it is properly completed, signed by the

decedent, and witnessed in the manner required by the form.

(a-3) A person exercising the right to control the disposition of remains under Subsection (a), other than a duly qualified executor or administrator of the decedent's estate, is liable for the reasonable cost of interment and may seek reimbursement for that cost from the decedent's estate. When an executor or administrator exercises the right to control the disposition of remains under Subsection (a)(6), the decedent's estate is liable for the reasonable cost of interment, and the executor or administrator is not individually liable for that cost.

(b) The written instrument referred to in Subsection (a)(1) may be in substantially the following form:

APPOINTMENT FOR DISPOSITION OF REMAINS

I, _____,

(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____

(name of agent)

in accordance with Sections 711.002 and 711.004, Health and Safety Code, and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

_____

_____

_____

_____

_____

AGENT:

Name: _____

Address: _____

Telephone Number: _____

SUCCESSORS:

If my agent or a successor agent dies, becomes legally disabled, resigns, or refuses to act, or if my marriage to my agent or successor agent is dissolved by divorce, annulled, or declared void

before my death and this instrument does not state that the agent or successor agent continues to serve after my marriage to that agent or successor agent is dissolved by divorce, annulled, or declared void, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: _____

Address: _____

Telephone Number: _____

2. Second Successor

Name: _____

Address: _____

Telephone Number: _____

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTIONS 711.002 AND 711.004, HEALTH AND SAFETY CODE.

SIGNATURES:

This written instrument and my appointments of an agent and any successor agent in this instrument are valid without the signature of my agent and any successor agents below. Each agent, or a successor agent, acting pursuant to this appointment must indicate acceptance of the appointment by signing below before acting as my agent.

Signed this _____ day of _____, 20___.

_____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____ (date) by _____ (name of principal).

_____

(signature of notarial officer)

(Seal, if any, of notary)

_____

(printed name)

My commission expires:

_____

ACCEPTANCE AND ASSUMPTION BY AGENT:

I have no knowledge of or any reason to believe this Appointment for Disposition of Remains has been revoked. I hereby accept the appointment made in this instrument with the understanding that I will be individually liable for the reasonable cost of the decedent's interment, for which I may seek reimbursement from the decedent's estate.

Acceptance of Appointment: _____

(signature of agent)

Date of Signature: _____

Acceptance of Appointment: _____

(signature of first successor)

Date of Signature: _____

Acceptance of Appointment: _____

(signature of second successor)

Date of Signature: _____

(c) A written instrument is legally sufficient under Subsection (a)(1) if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent. Unless the instrument provides otherwise, the designation of the decedent's spouse as an agent or successor agent in the instrument is revoked when the marriage of the decedent and the spouse appointed as an agent or successor agent is dissolved by divorce, annulled, or declared void before the decedent's death. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(d) A person listed in Subsection (a) has the right, duty, and liability provided by that subsection only if there is no person in a priority listed before the person.

(e) If there is no person with the duty to inter under Subsection (a) and:

(1) an inquest is held, the person conducting the inquest shall inter the remains; and

(2) an inquest is not held, the county in which the death occurred shall inter the remains.

(f) A person who represents that the person knows the identity of a decedent and, in order to procure the disposition, including cremation, of the decedent's remains, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damages that result, directly or indirectly, from that warrant.

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. A party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

(h) If the directions are in a will, they shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

(i) A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall not be liable for carrying out the

written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent's remains.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 707, Sec. 3, eff. June 17, 2011.

(k) Any dispute among any of the persons listed in Subsection (a) concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court with jurisdiction over probate proceedings for the decedent, regardless of whether a probate proceeding has been initiated. A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

(l) A person listed in Subsection (a) may not control the disposition of the decedent's remains if:

(1) in connection with the decedent's death, the person has been arrested or an arrest warrant has been issued for the person for a crime under Chapter 19, Penal Code, that involves family violence against the decedent; or

(2) the decedent had filed an application for a protective order against or with respect to the person under Subchapter A, Chapter 7B, Code of Criminal Procedure, Article 17.292, Code of Criminal Procedure, Section 6.504, Family Code, or Subtitle B, Title 4, Family Code, or an order has been issued against or with respect to the person under one of those provisions.

(l-1) A person regulated under Chapter 651, Occupations Code, who knowingly allows a person described by Subsection (l) to control the disposition of the decedent's remains in violation of that subsection commits a prohibited practice under Section 651.460, Occupations Code, and the Texas Funeral Service Commission may take disciplinary action or assess an administrative penalty against the regulated person under that chapter.

(l-2) A court with jurisdiction over probate proceedings shall expedite the proceedings to resolve any dispute over the right to control the disposition of a decedent's remains among the persons listed in Subsection (a) if the dispute involves the control of the disposition of the remains by a prohibited person described by Subsection (l).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 213, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 967, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1385, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 95 (H.B. 74), Sec. 1, eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(28), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 619 (S.B. 988), Sec. 2, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1103 (H.B. 3070), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 807 (H.B. 2248), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 284 (S.B. 1300), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 737 (H.B. 3161), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.004, eff. September 1, 2023.

Sec. 711.003. RECORDS OF INTERMENT. A record shall be kept of each interment in a cemetery. The record must include:

(1) the date the remains are received;

(2) the date the remains are interred;

(3) the name and age of the person interred if those facts can be conveniently obtained; and

(4) the identity of the plot in which the remains are interred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 3, eff. Sept. 1, 1993.

Sec. 711.004. REMOVAL OF REMAINS. (a) Remains interred in a cemetery may be removed from a plot in the cemetery with the written consent of the cemetery organization operating the cemetery and the written consent of the current plot owner or owners and the following persons, in the priority listed:

(1) the person designated in a written instrument signed by the decedent, as described by Section 711.002(a)(1);

(2) the decedent's surviving spouse;

(3) any one of the decedent's surviving adult children;

(4) either one of the decedent's surviving parents;

(5) any one of the decedent's surviving adult siblings;

(6) any one of the duly qualified executors or administrators of the decedent's estate; or

(7) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(b) A person listed in Subsection (a) may consent to the removal only if there is no person in a priority listed before that person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of a county court of the county in which the cemetery is located. Before the date of application to the court for permission to remove remains under this subsection, notice must be given to:

(1) the cemetery organization operating the cemetery in which the remains are interred or if the cemetery organization cannot be located or does not exist, the Texas Historical Commission;

(2) each person whose consent is required for removal of the remains under Subsection (a); and

(3) any other person or entity that the court subsequently requires to be served.

(d) For the purposes of Subsection (c) and except as provided by this subsection or Subsection (d-1) or (k), personal notice must be given not later than the 11th day before the date of application to the court for permission to remove the remains, or notice by certified or registered mail must be given not later than the 16th day before the date of application. In an emergency circumstance

described by Subsection (l) that necessitates immediate removal of remains from a plot, the court shall hear an application for permission to remove remains under Subsection (c) not later than the first business day after the application is made. In an emergency circumstance described by this subsection, personal notice may be given on the date the application is made.

(d-1) If the court subsequently requires an additional person or entity to be served under Subsection (c)(3), that additional service must be performed not later than the 11th day after the date of the judge's order. Service may not be required for any court appointed representative or other court appointed official.

(e) Subsections (a)-(d) and (k) do not apply to the removal of remains:

(1) from one plot to another plot in the same cemetery, if the cemetery:

(A) is a family, fraternal, or community cemetery that is not larger than 10 acres;

(B) is owned or operated by an unincorporated association of plot owners not operated for profit;

(C) is owned or operated by a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(D) is a public cemetery owned by this state, a county, or a municipality;

(2) by the cemetery organization from a plot for which the purchase price is past due and unpaid, to another suitable place;

(3) on the order of a court or person who conducts inquests; or

(4) from a plot in a cemetery owned and operated by the Veterans' Land Board.

(f) Except as is authorized for a justice of the peace acting as coroner or medical examiner under Chapter 49, Code of Criminal Procedure, remains may not be removed from a cemetery except on the written order of the state registrar or the state registrar's designee. The cemetery organization shall keep a duplicate copy of the order as part of its records. The Texas Funeral Service Commission may adopt rules to implement this subsection.

(f-1) For unmarked graves contained within an abandoned, unknown, or unverified cemetery, a justice of the peace acting as coroner or medical examiner under Chapter 49, Code of Criminal

Procedure, or a person described by Section 711.0105(a) may investigate or remove remains without written order of the state registrar or the state registrar's designee.

(g) A person who removes remains from a cemetery shall keep a record of the removal that includes:

(1) the date the remains are removed;

(2) the name and age at death of the decedent if those facts can be conveniently obtained;

(3) the place to which the remains are removed; and

(4) the cemetery and plot from which the remains are removed.

(h) If the remains are not reinterred, the person who removes the remains shall:

(1) make and keep a record of the disposition of the remains; and

(2) not later than the 30th day after the date the remains are removed, provide notice by certified mail to the Texas Funeral Service Commission and the Department of State Health Services of the person's intent not to reinter the remains and the reason the remains will not be reinterred.

(i) A person who removes remains from a cemetery shall give the cemetery organization operating the cemetery a copy of the record made as required by Subsections (g) and (h).

(j) A cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the written consent required under Subsection (a) if the cemetery seeks consent by sending written notice by certified mail, return receipt requested, to the last known address of the current owner of the plot from which the remains are to be removed or to the person designated under Subsection (a). The notice must indicate that the remains will be removed, the reason for the removal of the remains, and the proposed location of the reinterment of the remains. The cemetery may transfer the remains to another plot in accordance with this subsection if an objection is not received in response to the notice before the 31st day after the date the notice is sent. A cemetery may not remove remains under this subsection for a fraudulent purpose or to allow the sale of the plot in which the remains are located to another person.

(k) In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains before the date on

which the court is required to hear an application for permission to remove remains under Subsection (d), a cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the court hearing. A cemetery association that removes remains under this subsection shall send written notice of the removal by certified mail, return receipt requested, to the last known address of the person designated under Subsection (a) not later than the fifth day after the date the remains are removed. The notice must indicate that the remains were removed, the reason for the removal of the remains, and the location of the reinterment of the remains.

(l) For purposes of Subsections (d) and (k), "emergency circumstance" means:

(1) a natural disaster; or

(2) an error in the interment of remains.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 214, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 504, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 32, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 2, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 807 (H.B. 2248), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 817 (H.B. 2430), Sec. 1, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 284 (S.B. 1300), Sec. 1, eff. September 1, 2023.

Sec. 711.007. NUISANCE; ABATEMENT AND INJUNCTION. (a) A district court of the county in which a cemetery is located may, by order, abate the cemetery as a nuisance and enjoin its continuance if the cemetery is:

(1) maintained, located, or used in violation of this

chapter or Chapter 712; or

(2) neglected so that it is offensive to the inhabitants of the surrounding section.

(b) The proceeding may be brought by:

(1) the attorney general;

(2) the Banking Commissioner of Texas;

(3) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;

(4) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (3);

(5) the owner of a residence:

(A) in or near the municipality in which the cemetery is located; or

(B) in the area proscribed for the location of a cemetery by Section 711.008; or

(6) the owner of a plot in the cemetery.

(c) The court shall grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.

(d) If a cemetery nuisance under Subsection (a)(2) is located in a municipality, the governing body of the municipality may authorize the removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery.

(e) Notice of an action under this section must be provided to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit.

(f) In an action under this section, the court shall determine:

(1) whether the cemetery nuisance must be abated by repair and restoration or by removal of the cemetery; and

(2) the party or parties liable for the costs associated with the abatement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 6, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 33, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 3, eff.

September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 1, eff. September 1, 2019.

Sec. 711.008. LOCATION OF CEMETERY. (a) Except as provided by Subsections (b), (f), (g), (g-1), (g-2), (g-3), (g-4), (h), (k), and (m), an individual, corporation, partnership, firm, trust, or association may not establish or operate a cemetery, or use any land for the interment of remains, located:

(1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;

(2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;

(3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;

(4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or

(5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

(b) Subsection (a) does not apply to:

(1) a cemetery heretofore established and operating;

(2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or sect;

(3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:

(A) is owned by the society or sect; and

(B) is part of the campus on which an existing principal church building is located;

(4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that

is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus;

(5) the establishment and use of a mausoleum that is:

(A) constructed beneath the principal church building owned by an organized religious society or sect that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and

(ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and

(B) used only for the interment of the remains of ordained clergy of that organized religious society or sect;

(6) the establishment and operation, if authorized in accordance with Subsection (h), of a perpetual care cemetery by an organized religious society or sect that:

(A) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(B) has been in existence for at least five years;

(C) has at least $500,000 in assets; and

(D) establishes and operates the cemetery on land that:

(i) is owned by the society or sect;

(ii) together with any other land owned by the society or sect and adjacent to the land on which the cemetery is located, is not less than 10 acres; and

(iii) is in a municipality with a population of at least one million that is located predominantly in a county that has a total area of less than 1,000 square miles;

(7) the establishment and use of a private family cemetery by an organization that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that is:

(A) owned by the organization; and

(B) located in a county:

(i) with a population of more than 165,000; and

(ii) that is adjacent to a county that has a population of more than 1.5 million and in which more than 70 percent of the population lives in a single municipality; or

(8) the establishment and use of a private family cemetery located at the site of a presidential library and museum.

(c) Subsection (a) does not apply to a private family cemetery that:

(1) was established and operating on or before September 1, 2009; or

(2) is established and operating on land outside the boundaries of a municipality that has been owned or occupied by members of the same family for at least three generations and that is within 10 miles of the largest prison cemetery in this state.

(d) Subsection (a) does not apply to a cemetery established and operating before September 1, 1995, in a county with a population of more than 315,000 and less than 351,000 that borders the Gulf of Mexico.

(e) For the purpose of determining where a cemetery may be located under Subsection (a), the boundary of an area annexed by a municipality is not considered to be a boundary of the municipality if:

(1) no more than 10 percent of the boundary of the annexed area is composed of a part of the boundary of the annexing municipality as it existed immediately before the annexation; or

(2) the annexed area cannot be developed as residential or commercial property and is primarily used for flood control.

(f) This subsection applies only to a municipality with a population of at least 60,000 that is located in a county with a population of no more than 155,000. Not later than December 1, 2001, a charitable nonprofit corporation may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(g) Not later than December 1, 2003, a corporation may file a written application with the governing body of a municipality that has a population of at least 27,000 and not more than 30,000 and that is located in a county with a population of at least 245,000 and not more than 250,000 to establish or use a cemetery located outside the

municipality but within two miles of the municipal boundaries. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(g-1) Not later than September 1, 2020, a nonprofit organization may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that is wholly or partly located in a county with a population of more than 3.3 million.

(g-2) Not later than December 1, 2022, an individual, corporation, partnership, firm, trust, or association may file a written application with the governing body of a municipality to establish or use a cemetery located inside the legal boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that has a population of:

(1) at least 55,000 and not more than 60,000 and that is located in two counties, each of which has a population of less than 132,000; or

(2) at least 24,000 and not more than 26,000 and that is the county seat of a county that has a population of at least 130,000 and not more than 135,000.

(g-3) An individual, corporation, partnership, firm, trust, or association may file a written application with the governing body of a municipality to establish or use a cemetery located inside the limits of the municipality. The governing body by ordinance shall

prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the governing body determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that is located in:

(1) a county with a population of more than 750,000; or

(2) a county adjacent to a county with a population of more than 750,000.

(g-4) An individual, corporation, partnership, firm, trust, or association may file a written application with the commissioners court of a county to establish or use a cemetery located inside the limits of the county. The commissioners court by order shall prescribe the information to be included in the application. The commissioners court by order may authorize the establishment or use of the cemetery if the commissioners court determines and states in the order that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a county:

(1) with a population of more than 750,000; or

(2) that is adjacent to a county with a population of more than 750,000.

(h) The governing body of a municipality described by Subsection (b)(6)(D)(iii) may authorize the establishment and use in accordance with Subsection (b)(6) of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(i) A person may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that:

(1) is located in three or more counties;

(2) has a population of 18,000 or more; and

(3) does not have a cemetery within its boundaries, other than a family cemetery.

(j) Deleted by Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993.

(k) This subsection applies only to a municipality with a population of 115,000 or more that is located in a county with a population of less than 132,000. Not later than September 1, 1994, a person may file a written application with the governing body of the municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(l) Subsection (a) does not apply to a cemetery established and operating before September 1, 2023, in a municipality:

(1) with a population of not less than 75,000 and not more than 95,000; and

(2) in which a state veterans cemetery is located.

(m) Not later than September 1, 2024, an organized religious society or sect may file a written application with the governing body of a municipality to establish or use a cemetery within the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included on the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the establishment or use does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality with a population of 200,000 or more located in a county with a population of less than 300,000 that is adjacent to this state's international border with Mexico.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 215, 216, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 77, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 736, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 1, eff. May 21, 2001; Acts 2001, 77th Leg., ch.

631, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 39, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 98, Sec. 1, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. 350), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1026 (H.B. 1614), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 373 (H.B. 1404), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 487 (S.B. 662), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 367 (S.B. 131), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 721 (H.B. 788), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 49, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.007, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 287 (H.B. 1415), Sec. 1, eff. June 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 470 (H.B. 2214), Sec. 1, eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 292 (H.B. 2634), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1275 (H.B. 515), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 26 (H.B. 2005), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 464 (H.B. 1526), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 465 (H.B. 1571), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 579 (H.B. 2732), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 100, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 670 (H.B. 783), Sec. 1, eff. September 1, 2023.

Sec. 711.009. AUTHORITY OF CEMETERY KEEPER. (a) The superintendent, sexton, or other person in charge of a cemetery has the same powers, duties, and immunities granted by law to:

(1) a police officer in the municipality in which the cemetery is located; or

(2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce the cemetery organization's rules, state law, and municipal ordinances in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property.

(c) This section applies only to a cemetery located in a municipality with a population of 40,000 or more or in a county with a population of 290,000 or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 8, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 5, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.008, eff. September 1, 2013.

Sec. 711.010. ABANDONED, UNKNOWN, OR UNVERIFIED CEMETERY. (a) The owner of property on which an unknown cemetery is discovered or on which an abandoned cemetery is located may not construct improvements on the property in a manner that would disturb the cemetery until the human remains interred in the cemetery are removed under a written order issued by the state registrar or the state registrar's designee under Section 711.004(f) and under an order of a

district court as provided by this section, except as provided by Section 711.004(f-1).

(b) On petition of the owner of the property, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if the court finds that the removal of the dedication is in the public interest. If a court orders the removal of a dedication of a cemetery and all human remains in that cemetery have not previously been removed, the court shall order the removal of the human remains from the cemetery to:

(1) a perpetual care cemetery;

(2) a municipal or county cemetery; or

(3) any other place on the owner's property that the district court finds is in the public interest.

(c) In addition to any notice required by Section 711.004, notice of a petition filed under Subsection (b) must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The court may consult the Texas Historical Commission and the county historical commission in making a decision under this section. The court may also designate or appoint any person, party, court appointed representative, or official the court considers necessary to assist in determining whether the removal is in the public interest.

(d) The Texas Historical Commission, with consent of the landowner, may investigate a suspected but unverified cemetery or may delegate the investigation to a qualified person described by Section 711.0105(a).

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 251 (H.B. 1011), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 5, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 817 (H.B. 2430), Sec. 2, eff. June 10, 2019.

Sec. 711.0105. METHOD OF REMOVAL OF REMAINS. (a) The removal of remains authorized under this chapter shall be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist.

(b) The person removing the remains shall make a good faith effort to locate and remove all human remains, any casket or other covering of the remains, and any funerary objects associated with the remains.

(c) Remains that have been moved must be reburied unless a court, medical examiner, coroner, other authorized official, or next of kin approves a different disposition of the remains.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 6, eff. September 1, 2009.

Sec. 711.011. FILING RECORD OF UNKNOWN OR ABANDONED CEMETERY. (a) A person who discovers an unknown or abandoned cemetery shall file notice of the discovery of the cemetery with the county clerk of the county in which the cemetery is located and concurrently mail notice to the landowner on record in the county appraisal district not later than the 10th day after the date of the discovery. The notice must contain a legal description of the land on which the unknown or abandoned cemetery was found and describe the approximate location of the cemetery and the evidence of the cemetery that was discovered.

(b) A county clerk may not charge a fee for filing notice under this section.

(c) The county clerk shall send a copy of the notice to the Texas Historical Commission and file the notice in the deed records of the county, with an index entry referencing the land on which the cemetery was discovered.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 6, eff. September 1, 2017.

Sec. 711.0111. NOTICE OF UNVERIFIED CEMETERY. (a) A person who discovers an unverified cemetery shall file notice and evidence of the discovery with the Texas Historical Commission on a form provided by the Texas Historical Commission, and shall concurrently provide a copy of the notice to the landowner on record in the county appraisal district on whose land the unverified cemetery is located.

(b) The landowner described by Subsection (a) may send a response or comments to the Texas Historical Commission concerning the notice not later than the 30th day after the date the notice is filed.

(c) The Texas Historical Commission shall evaluate the notice of the unverified cemetery, the evidence submitted with the notice, and the response of the landowner, if any, and shall determine whether there is sufficient evidence of the existence of a cemetery.

(d) If the Texas Historical Commission determines sufficient evidence supports the existence of a cemetery, the Texas Historical Commission shall inform the landowner and may file notice of the existence of the cemetery under Section 711.011.

(e) If the Texas Historical Commission determines sufficient evidence supports a determination that a cemetery does not exist, the Texas Historical Commission shall notify the landowner on record in the appraisal district of its determination, amend the notice to include the commission's determination, and ensure any notice filed with a county clerk under Section 711.011 is corrected.

Added by Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 7, eff. September 1, 2017.

Sec. 711.012. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 711.038, 711.0381, 711.040-711.042, 711.052, 711.061, 711.063, and 711.064 relating to perpetual care cemeteries.

(b) The Texas Funeral Service Commission may adopt rules, establish procedures, and prescribe forms to enforce and administer

Section 711.0105.

(c) The Texas Historical Commission may adopt rules to:

(1) enforce and administer Sections 711.010 and 711.011; and

(2) enforce and administer Sections 711.004, 711.007, 711.0105, 711.035, and 711.036 relating to cemeteries that are not perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 34, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 8, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 39, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. CEMETERY CORPORATIONS

Sec. 711.021. FORMATION OF CORPORATION TO MAINTAIN AND OPERATE CEMETERY. (a) An individual, corporation, partnership, firm, trust, or association may not engage in a business for cemetery purposes in this state unless the person is a corporation organized for those purposes.

(b) A corporation conducting a business for cemetery purposes, including the sale of plots, may be formed only as provided by this section. The corporation must be a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code.

(b-1) The formation and governance of a nonprofit corporation for cemetery purposes is subject to Sections 711.022 and 711.023.

(c) The charter of a cemetery corporation formed after May 15, 1947, but before September 1, 1993, must state whether the corporation:

(1) is operated for profit or not for profit; and

(2) is operating a perpetual care cemetery or a nonperpetual care cemetery.

(d) A corporation formed before September 3, 1945, under statutory authority other than Section 5, Chapter 340, Acts of the 49th Legislature, Regular Session, 1945 (Article 912a-5, Vernon's Texas Civil Statutes), to maintain and operate a cemetery is governed by this chapter only to the extent that this chapter does not conflict with the charter or articles of incorporation of the corporation.

(e) This section does not apply to a corporation chartered by the state before September 3, 1945, that, under its charter, bylaws, or dedication, created a perpetual care trust fund and maintains that fund in accordance with the corporation's trust agreement, Chapter 712, and this chapter. The corporation may operate a perpetual care cemetery without amending the corporation's charter as if it had been incorporated under this section.

(f) Any cemetery that begins its initial operations on or after September 1, 1993, shall be operated as a perpetual care cemetery in accordance with Chapter 712.

(g) This section does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery belonging to this state or a county or municipality.

(h) A cemetery corporation, including a corporation described by Subsection (d), that does not operate as a perpetual care cemetery in accordance with Chapter 712 may not use the words "perpetual care" or "endowment care," or any other term that suggests "perpetual care" or "endowment care" standards, in:

(1) the cemetery's name; or

(2) any advertising relating to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 9, eff. Sept. 1, 1993; Acts

2001, 77th Leg., ch. 405, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 3, eff. September 1, 2013.

Sec. 711.022. FORMATION OF NONPROFIT CEMETERY CORPORATION BY PLOT OWNERS. (a) Plot owners may organize a nonprofit corporation to receive title to land previously dedicated to cemetery purposes.

(b) The plot owners must:

(1) publish notice of the time and place of the organizational meeting in a newspaper in the county, if there is a newspaper, for 30 days before the date of the meeting; and

(2) post written notice at the cemetery of the time and place of the meeting for 30 days before the date of the meeting.

(c) A majority of the plot owners present and voting at the meeting shall decide whether to incorporate and to convey the land to the corporation.

(d) If the plot owners vote to incorporate, at the same meeting they shall select from the plot owners a board of directors to be named in the charter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 711.023. RIGHTS OF PLOT OWNERS IN CEMETERY OPERATED BY NONPROFIT CEMETERY CORPORATION. (a) A person who purchases a plot from a nonprofit cemetery corporation is a shareholder of the corporation. The person may vote in the election of corporate officers and on other matters to the same extent as a stockholder in another corporation.

(b) An owner of a plot in a cemetery operated by a nonprofit corporation is a shareholder in any corporation that owns the cemetery. The plot owner may exercise the rights and privileges of a shareholder, whether the owner acquired title to the plot from the corporation or before the corporation was organized.

(c) This section does not apply to a nonprofit cemetery corporation formed before September 1, 1963, if:

(1) the corporation was formed under Subdivision 87, Article 1302, Revised Statutes; and

(2) the charter or the articles of incorporation of the corporation provide that the corporation has no capital stock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1284, Sec. 1, eff. Sept. 1, 2003.

Sec. 711.024. AUTHORITY OF NONPROFIT CEMETERY CORPORATION. A nonprofit cemetery corporation organized by plot owners may divide cemetery property into lots and subdivisions for cemetery purposes and charge assessments on the property for the purposes of general improvement and maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. CEMETERY ORGANIZATIONS

Sec. 711.031. RULES; CIVIL PENALTY. (a) A cemetery organization may adopt and enforce rules:

(1) concerning the use, care, control, management, restriction, and protection of the cemetery operated by the cemetery organization;

(2) to restrict the use of cemetery property;

(3) to regulate the placement, uniformity, class, and kind of markers, monuments, effigies, and other structures in any part of the cemetery;

(4) to regulate the planting and care of plants in the cemetery;

(5) to prevent the interment of remains not entitled to be interred in the cemetery;

(6) to prevent the use of a plot for a purpose that violates the cemetery organization's restrictions;

(7) to regulate the conduct of persons on cemetery property and to prevent improper meetings at the cemetery; and

(8) for other purposes the directors consider necessary for the proper conduct of the cemetery organization's business, and for the protection of the premises and the principles, plans, and ideals on which the cemetery was organized.

(b) Rules adopted under this section must be plainly printed or typed and maintained for inspection in the cemetery organization's office or another place in the cemetery prescribed by the directors.

(c) The directors may prescribe a penalty for the violation of a rule adopted under this section. The cemetery organization may recover the amount of the penalty in a civil action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 11, eff. Sept. 1, 1993.

Sec. 711.032. DISCRIMINATION BY RACE, COLOR, OR NATIONAL ORIGIN PROHIBITED. (a) A cemetery organization may not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent.

(b) A provision of a contract entered into by a cemetery organization or of a certificate of ownership or other instrument of conveyance issued by a cemetery organization that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 13, eff. Sept. 1, 1993.

Sec. 711.033. PROPERTY ACQUISITION BY CEMETERY ORGANIZATION; RECORDING TITLE. (a) A cemetery organization may acquire by purchase, donation, or devise property consisting of land, a mausoleum, a crematory and columbarium, or other property in which remains may be interred under law.

(b) A cemetery organization operating a cemetery located and operated in accordance with the distance requirements prescribed in Section 711.008 may acquire land adjacent to the cemetery for cemetery purposes. In this subsection, "adjacent" means that some part of the property to be acquired has a common boundary with the existing cemetery, or a common boundary with a public easement, a utility easement, or a railroad right-of-way, some part of which has a common boundary with the cemetery. In no event shall the closest points of the property to be acquired and the cemetery be more than 200 feet apart.

(c) A cemetery organization that acquires property may record title to its property with the county clerk of the county in which the property is located if its president and secretary or other authorized officer acknowledge a declaration executed by the cemetery

organization that describes the property and declares the cemetery organization's intention to use the property or a part of the property for interment purposes.

(d) Filing under Subsection (b) is constructive notice as of the date of the filing of the use of the property for interment.

(e) A cemetery organization may by condemnation acquire property in which remains may be interred, and the acquisition of that property is for a public purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 14, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 2, eff. May 21, 2001.

Sec. 711.034. DEDICATION. (a) A cemetery organization that acquires property for interment purposes shall:

(1) in the case of land, survey and subdivide the property into gardens or sections, with descriptive names or numbers, and make a map or plat of the property showing the plots contained within the perimeter boundary and showing a specific unique number for each plot; or

(2) in the case of a mausoleum or a crematory and columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers and showing a specific unique number for each crypt, lawn crypt, or niche.

(b) The cemetery organization shall file the map or plat with the county clerk of each county in which the property or any part of the property is located.

(c) The cemetery organization shall file with the map or plat a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to cemetery purposes. The certificate or declaration must be:

(1) in a form prescribed by the directors or officers of the cemetery organization;

(2) signed by the president or vice-president and the secretary of the cemetery organization, or by another person authorized by the directors; and

(3) acknowledged.

(d) Filing a map or plat and a certificate or declaration under this section dedicates the property for cemetery purposes and is

constructive notice of that dedication.

(e) The certificate or declaration may contain a provision permitting the directors by order to resurvey and change the shape and size of the property for which the associated map or plat is filed if that change does not disturb any interred remains. Except as provided by Subsection (e-1), if a change is made, the cemetery organization shall:

(1) file an amended map or plat not later than the last day of the next calendar quarter; and

(2) indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or columbarium niche.

(e-1) A cemetery organization that holds a certificate of authority to operate a perpetual care cemetery under Chapter 712 is not required to file an amended map or plat if:

(1) the only change to the property is:

(A) the placement of a cremains receptacle that contains not more than four niches on a plot; or

(B) the alteration of an existing cremains receptacle on a plot; and

(2) the cemetery organization maintains records, as required by rules adopted by the Finance Commission of Texas, that specify the location of the cremains receptacle.

(f) The county clerk shall number and file the map or plat and record the certificate or declaration in the county deed records.

(g) A cemetery association is civilly liable to the state in an amount not to exceed $1,000 for each map or plat that fails to comply with Subsection (a), (b), (c), or (e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 502, Sec. 1, eff. Oct. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 4, eff. September 1, 2013.

Sec. 711.035. EFFECT OF DEDICATION. (a) Property may be dedicated for cemetery purposes, and the dedication is permitted in respect for the dead, for the disposition of remains, and in fulfillment of a duty to and for the benefit of the public.

(b) Dedication of cemetery property and title to the exclusive right of sepulture of a plot owner are not affected by the dissolution of the cemetery organization, nonuse by the cemetery organization, alienation, encumbrance, or forced sale of the property.

(c) Dedication of cemetery property may not be invalidated because of a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

(d) A railroad, street, road, alley, pipeline, telephone, telegraph, electric line, wind turbine, cellular telephone tower, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of:

(1) the directors of the cemetery organization that owns or operates the cemetery; or

(2) at least two-thirds of the owners of plots in the cemetery.

(e) All property of a dedicated cemetery, including a road, alley, or walk in the cemetery:

(1) is exempt from public improvements assessments, fees, and public taxation; and

(2) may not be sold on execution or applied in payment of debts due from individual owners and plots.

(f) Dedicated cemetery property shall be used exclusively for cemetery purposes until the dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance under Section 711.007.

(g) Property is considered to be dedicated cemetery property if:

(1) one or more human burials are present on the property; or

(2) a dedication of the property for cemetery use is recorded in the deed records of the county where the land is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 16, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 9, eff. September 1, 2009.

Sec. 711.036. REMOVAL OF DEDICATION. (a) A cemetery organization may petition a district court of the county in which its dedicated cemetery is located to remove the dedication with respect to all or any portion of the cemetery if:

(1) all the remains have been removed from that portion of the cemetery where the dedication is to be removed; or

(2) no interments were made in that portion of the cemetery where the dedication is to be removed and that portion of the cemetery is not used or necessary for interment purposes.

(b) An owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist may petition a district court of the county in which the cemetery is located to remove any human remains and the dedication for all or any portion of the cemetery. In addition to the notice required by Section 711.004, notice of a petition filed under this subsection must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The court may consult the Texas Historical Commission and the county historical commission in making a decision under this section. The court may also designate or appoint any person, party, court appointed representative, or official the court considers necessary to assist in determining whether the removal is in the public interest. Unknown next of kin of deceased persons buried in the cemetery shall be served by publication of a notice in a newspaper of general circulation in the county in which the cemetery is located, or if there is not a newspaper of general circulation in the county, in a newspaper of general circulation in an adjacent county. A reasonable good faith effort shall be made to remove all remains and monuments from the cemetery or that portion of the cemetery for which the dedication is to be removed.

(c) The court shall order the removal of the human remains and the dedication on notice and proof satisfactory to the court that the removal is in the public interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 17, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 10, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 817 (H.B. 2430), Sec. 3, eff.

June 10, 2019.

Sec. 711.037. LIEN AGAINST CEMETERY PROPERTY. (a) A cemetery organization by contract may incur indebtedness as required to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

(b) A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 18, eff. Sept. 1, 1993.

Sec. 711.038. SALE OF PLOTS BY CEMETERY ORGANIZATIONS. (a) A cemetery organization may sell and convey the exclusive right of sepulture in a plot:

(1) after a map or plat and a certificate or declaration of dedication are filed as provided by Section 711.034;

(2) subject to the rules of the cemetery organization and the restrictions in the certificate of ownership or other instrument of conveyance; and

(3) after payment in full of the purchase price of the plot.

(b) A certificate of ownership or other instrument evidencing the conveyance of the exclusive right of sepulture by a cemetery organization must be signed by the president or vice-president and the secretary or other officers authorized by the cemetery organization.

(c) A conveyance of the exclusive right of sepulture must be filed and recorded in the cemetery organization's office.

(d) A plot or a part of a plot that is conveyed as a separate plot by a certificate of ownership or other instrument may not be divided without the consent of the cemetery organization.

(e) A person is not required to be licensed or registered to sell a plot in a dedicated cemetery.

(f) A cemetery organization may not resell the exclusive right of sepulture in a plot unless the exclusive right of sepulture has been reacquired by the cemetery organization. A sanction or other penalty may not be imposed on a cemetery organization that violates this subsection unless:

(1) the state agency authorized to enforce this section provides the cemetery organization written notice of the violation; and

(2) the cemetery organization does not correct the violation before the 91st day after the date on which the cemetery organization received the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 19, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 4, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 40, eff. September 1, 2019.

Sec. 711.0381. SALE OR RESALE OF PLOTS BY CERTAIN PERSONS. (a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(7), eff. September 1, 2019.

(b) Resale of the exclusive right of sepulture in a plot is subject to the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. A quitclaim agreement or other instrument evidencing the conveyance of the exclusive right of sepulture must be:

(1) in a form authorized by or otherwise acceptable to the cemetery organization, subject to Subsection (c);

(2) signed by:

(A) the grantee named in the certificate of ownership or other instrument of conveyance as filed and recorded in the cemetery organization's office in accordance with Section 711.038 or

711.039(g)(2), as the seller or transferor;

(B) the designated purchaser or transferee; and

(C) each cemetery broker or other agent assisting in the transfer of the interment rights; and

(3) filed and recorded with the cemetery organization not later than the third business day after the date of the sale.

(c) On request of a person acting as a cemetery broker, a cemetery organization shall provide its rules, conveyance forms, and written guidelines and procedures for brokered sales, if any.

(d) The resale of the exclusive right of sepulture in a group of interment rights that were conveyed collectively may not be divided without the consent of the cemetery organization.

(e) A person acting as a cemetery broker that sells or resells the right of sepulture in a plot shall collect and remit to the cemetery organization:

(1) all fees required by law; and

(2) any other fee required by the rules of the cemetery organization, subject to Subsection (f).

(f) A fee required by a rule of the cemetery organization for the sale or resale of the right of sepulture in a plot under this section may not exceed the fee charged by the cemetery organization on the sale of the right of sepulture in a plot under Section 711.038.

(g) A person acting as a cemetery broker must keep a record of each sale or resale under this section. The record must include:

(1) the name and address of the purchaser;

(2) the date of the purchase;

(3) a copy of the purchase agreement, with the name and address of the cemetery;

(4) a specific description of the interment rights;

(5) the purchase price;

(6) the amount of fees collected and remitted in accordance with Subsection (e); and

(7) information on the disposal of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 5, eff. January 1, 2014.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 47(7), eff.

September 1, 2019.

Sec. 711.039. RIGHTS OF INTERMENT IN PLOT. (a) A plot in which the exclusive right of sepulture is conveyed is presumed to be the separate property of the person named as grantee in the certificate of ownership or other instrument of conveyance.

(b) The spouse of a person to whom the exclusive right of sepulture in a plot is conveyed has a vested right of interment of the spouse's remains in the plot while the spouse is married to the plot owner or if the spouse is married to the plot owner at the time of the owner's death.

(c) An attempted conveyance or other action without the joinder or written, attached consent of the spouse of the plot owner does not divest the spouse of the vested right of interment.

(d) The vested right of interment is terminated:

(1) on the final decree of divorce between the plot owner and the owner's former spouse unless the decree provides otherwise; or

(2) when the remains of the person having the vested right are interred elsewhere.

(e) Unless a plot owner who has the exclusive right of sepulture in a plot and who is interred in that plot has made a specific disposition of the plot by express reference to the plot in the owner's will or by written declaration filed and recorded in the office of the cemetery organization:

(1) a grave, niche, or crypt in the plot shall be reserved for the surviving spouse of the plot owner; and

(2) the owner's children, in order of need, may be interred in any remaining graves, niches, or crypts of the plot without the consent of a person claiming an interest in the plot.

(f) The surviving spouse or a child of an interred plot owner may each waive his right of interment in the plot in favor of a relative of the owner or relative of the owner's spouse. The person in whose favor the waiver is made may be interred in the plot.

(g) The exclusive right of sepulture in an unused grave, niche, or crypt of a plot in which the plot owner has been interred may be conveyed only by:

(1) specific disposition of the unused grave, niche, or crypt by express reference to it in a will or by written declaration

of the plot owner filed and recorded in the office of the cemetery organization; or

(2) the surviving spouse, if any, and the heirs-at-law of the owner.

(h) Unless a deceased plot owner who has the exclusive right of sepulture in a plot and who is not interred in the plot has otherwise made specific disposition of the plot, the exclusive right of sepulture in the plot, except the one grave, niche, or crypt reserved for the surviving spouse, if any, vests on the death of the owner in the owner's heirs-at-law and may be conveyed by them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 20, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 502, Sec. 1, eff. Sept. 1, 2001.

Sec. 711.0395. MULTIPLE INTERMENTS IN SAME PLOT. A cemetery organization may not make more than one interment in a plot unless each owner of the plot consents to the interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 6, eff. September 1, 2009.

Sec. 711.040. MULTIPLE OWNERS OF PLOT. Two or more owners of a plot may designate a person to represent the plot and file with the cemetery organization written notice of the designation. If notice is not filed, the cemetery organization may inter or permit an interment in the plot at the request or direction of a registered co-owner of the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 21, eff. Sept. 1, 1993.

Sec. 711.041. ACCESS TO CEMETERY. (a) Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. This right of access extends only to visitation during the hours determined by the owner or owners of the

lands under Subsection (b) or at a reasonable time as provided by Subsection (c) and only for purposes usually associated with cemetery visits.

(b) The owner or owners of the lands surrounding the cemetery or private burial grounds may designate the routes of reasonable ingress and egress and reasonable hours of availability.

(c) At a time other than the time provided by Subsection (b), the owner or owners of the lands surrounding a cemetery or private burial grounds must allow a person to enter and exit the owner's land for the purpose of visiting the cemetery or private burial grounds if:

(1) the person provides written notice to the owner or owners of the lands surrounding the cemetery or private burial grounds of the person's visit;

(2) the person provides the notice required by Subdivision (1) not later than the 14th day before the date the person wishes to visit the cemetery; and

(3) the time of the visit is reasonable.

(d) This section does not apply to an unverified cemetery.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 22, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 8, eff. September 1, 2017.

Sec. 711.042. AUTHORITY OF NONPROFIT CEMETERY ORGANIZATION. A nonprofit cemetery organization organized by plot owners may:

(1) divide cemetery property into lots and subdivisions for cemetery purposes;

(2) charge assessments on the property for the purposes of general improvement and maintenance; and

(3) take any action, to the same extent and for the same purposes as a for-profit cemetery corporation, that is necessary to carry out the organization's business purposes, which include the business purposes necessarily incident to the burial and disposal of human remains, including any action necessary to:

(A) convey property or other assets of the

organization;

(B) borrow money;

(C) pledge or mortgage the property or other assets of the organization to secure the organization's indebtedness or other obligations;

(D) lend money and take security for the loan in furtherance of its business purposes; and

(E) conduct any business activity or business directly or by or through one or more subsidiaries.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 2, eff. June 18, 1999.

SUBCHAPTER D. ENFORCEMENT

Sec. 711.051. ENFORCEMENT BY ATTORNEY GENERAL; PROCEEDINGS TO FORFEIT CHARTER FOR NONCOMPLIANCE. (a) A cemetery corporation that violates this chapter or Chapter 712 forfeits the corporation's charter and right to do business in this state unless the corporation corrects the violation before the 30th day after the date of receiving notice of the violation from the attorney general.

(b) When the attorney general learns that a cemetery corporation has violated this chapter or Chapter 712, the attorney general shall serve notice of the violation on the corporation.

(c) If the violation is not corrected before the 30th day after the date of the notice, the attorney general shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the violation occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 5, eff. September 1, 2013.

Sec. 711.0515. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTIVE RELIEF. In addition to bringing an action under Section 711.051, the attorney general may bring an action for injunctive relief to enforce this chapter or a rule or order adopted by the Texas Funeral Service Commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 8, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 11, eff. September 1, 2009.
Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.008, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 3, eff. September 1, 2019.

Sec. 711.052. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2) fails or refuses to keep records of interment as required by Sections 711.003 and 711.004;

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5) makes more than one interment in a plot in a cemetery operated by a cemetery organization other than as provided by Section 711.0395;

(6) removes remains from a plot in a cemetery operated by a cemetery organization without complying with Section 711.004;

(7) offers or receives monetary inducement to solicit business for a cemetery broker; or

(8) fails or refuses to keep records of sales or resales or to collect and remit fees as required by Section 711.0381.

(b) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery

organization, officer, agent, or employee offers any inducement, pecuniary or otherwise, to any person or entity for the purpose of securing or attempting to secure business for that cemetery organization. This subsection does not prohibit the offering or payment by a cemetery organization of any such inducement, pecuniary or otherwise, to an officer, employee, agent, subcontractor, or representative of the cemetery organization.

(c) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee of a cemetery organization offers a free plot in a drawing, in a lottery, or in another manner, unless the offer is for the immediate burial of an indigent person.

(d) Except as provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under Subsection (a)(5) or (6) is a felony of the second degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 217, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 23, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 7, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 10.001, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 41, eff. September 1, 2019.

Sec. 711.0521. ACCESS TO CEMETERIES; CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person interferes with a person's reasonable right to ingress and egress under Section 711.041.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 9, eff. September 1, 2009.

Sec. 711.053. DEFINITION. In this subchapter, "commissioner" means the banking commissioner of Texas.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.054. ENFORCEMENT BY FINANCE COMMISSION OF TEXAS. The Finance Commission of Texas may use remedies available under Chapter 712 to enforce a section listed under Section 711.012(a) relating to perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter 2001, Government Code, applies to a proceeding under this section.

(b) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the Texas Department of Banking; or

(2) engages in a pattern of violations, as determined by the commissioner.

(c) The amount of the penalty for each violation may not exceed $1,000 for each day the violation occurs.

(d) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(e) In addition to any penalty that may be imposed under Subsection (b), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (b) that has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. The civil action may be brought in the district court of the county in which the cemetery is operated.

(f) The commissioner may issue an order to cease and desist if a violation described in Subsection (b) has not been corrected within

30 days after receipt by the person of written notice of the violation from the commissioner. Any order proposed under this subsection shall be served on the person, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which may not be less than 15 days after receipt by the person. Unless the person requests a hearing within 15 days after the receipt, the order is effective as proposed.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.056. PATTERN OF WILFUL DISREGARD. (a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

(b) For the purposes of this section, violations corrected as provided by Section 711.055 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 8, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 42, eff. September 1, 2019.

Sec. 711.057. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot.

(b) An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.058. RESTITUTION. The commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person:

(1) failed to remit a fee in accordance with Section 711.0381; or

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.059. SEIZURE OF ACCOUNTS AND RECORDS. (a) The commissioner may issue an order to seize accounts in which funds from the sale or resale of the exclusive right of sepulture in a plot, including earnings, may be held and may issue an order to seize the records that relate to the sale or resale of the exclusive right of sepulture in a plot if the commissioner finds, by examination or other credible evidence, that the person:

(1) failed to remit a fee in accordance with Section 711.0381;

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance; or

(3) refused to submit to examination by the department.

(b) An order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) An order takes effect immediately and remains in effect unless stayed by the commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot. If such a threat does not exist, the order must state the effective date, which may not be before the 16th day after the date the order is mailed.

(d) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(e) A nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

(f) After the issuance of an order under this section, the commissioner may initiate an administrative claim for ancillary relief, including a claim for:

(1) costs incurred in the administration, transfer, or other disposition of the seized assets and records; or

(2) costs reasonably expected to be incurred in connection with the administration and performance of any outstanding certificate of ownership or other instrument of conveyance that is a part of a sale by the person subject to the order.

(g) The remedy provided by Subsection (f) is not exclusive. The commissioner may seek an additional remedy authorized under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 43, eff. September 1, 2019.

SUBCHAPTER E. LAWN CRYPTS

Sec. 711.061. REQUIREMENTS FOR LAWN CRYPTS. (a) A lawn crypt may not be installed unless:

(1) the lawn crypt is constructed of concrete and reinforced steel or other comparably durable material;

(2) the lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material;

(3) the lawn crypt provides a method to drain water out of the lawn crypt;

(4) the outside top surface of the lawn crypt at the time of installation is at least 1-1/2 feet below the surface of the ground as required by Section 714.001(a)(2) and is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery;

(5) the lawn crypt is installed in a garden or other section of the cemetery that has been dedicated for lawn crypt interment purposes in accordance with Section 711.034; and

(6) the lawn crypt is installed in multiple units of 10 or more or as prescribed by Subsection (b).

(b) A lawn crypt that is part of a private estate may be installed in fewer than 10 units. For purposes of this subsection, a private estate is a small section of a cemetery that has the following characteristics:

(1) is sold under a single contract;

(2) is usually offset from other burial sites;

(3) allows for interment of several members of the same family or their designees; and

(4) is identified on the plat for cemetery property as a private estate in accordance with Section 711.034.

Added by Acts 1997, 75th Leg., ch. 1389, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 3, eff. September 1, 2011.

Sec. 711.063. CONSTRUCTION; DEFAULT. (a) A cemetery in which undeveloped lawn crypt spaces are being sold or reserved for sale shall begin construction on the lawn crypt section not later than 48 months after the date of the first sale or reservation, whichever is earlier, and must complete construction not later than 60 months after the date of the first sale or reservation, whichever is earlier.

(b) If construction of a lawn crypt section described by Subsection (a) does not begin or has not been completed by the dates specified in Subsection (a), on the buyer's written request, the cemetery shall refund the entire amount paid for the undeveloped lawn crypt space not later than the 30th day after the date of the buyer's request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

Sec. 711.064. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped lawn crypt space must contain terms, whether in English or Spanish, that inform the buyer:

(1) that the buyer may, after providing written notice, cancel the contract for failure by the cemetery or contractor to construct the lawn crypt space within the time limits specified by Section 711.063(a) and receive a refund of the entire amount paid under the contract for the undeveloped lawn crypt space as described by Section 711.063(b); and

(2) of the options available under a fully paid contract if the person to be interred in the undeveloped lawn crypt space dies before completion of the related lawn crypt section, including the option to:

(A) select a replacement lawn crypt space or other interment acceptable to the buyer or the buyer's representative;

(B) elect temporary interment of the human remains or cremated remains in an existing mausoleum space until the undeveloped lawn crypt space is completed, at which time the cemetery shall disinter and reinter the human remains or cremated remains at no additional charge to the buyer; or

(C) cancel the contract on written notice of the buyer or the buyer's representative and receive a refund of the entire amount paid under the contract for the undeveloped lawn crypt space if:

(i) the cemetery does not offer a temporary interment option; or

(ii) the buyer or the buyer's representative does not accept a replacement lawn crypt or other interment.

(b) A sales contract for undeveloped lawn crypt space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Each notice required by this section must be written in plain language designed to be easily understood by the average consumer and must be printed in an easily readable font and type size.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

SUBCHAPTER F. POWERS AND DUTIES OF DEPARTMENT RELATING TO CEMETERY BROKERS

Sec. 711.081. DEFINITIONS. In this subchapter:

(1) "Commission" means the Finance Commission of Texas.

(2) "Commissioner" means the banking commissioner of Texas.

(3) "Department" means the Texas Department of Banking.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.082. ADMINISTRATION; FEES. (a) The department shall administer Subchapter C relating to cemetery brokers.

(b) The commission may adopt reasonable rules concerning:

(1) fees to defray the cost of administering Subchapter C;

(2) the retention and inspection of records relating to the sale or resale of the exclusive right of sepulture in a plot;

(3) changes in the management or control of a cemetery

broker's business; and

(4) any other matter relating to the enforcement and administration of Subchapter C.

(c) A fee set by the commission may not produce unnecessary fund balances.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 44, eff. September 1, 2019.

Sec. 711.083. RECORDS; EXAMINATION. (a) A person acting as a cemetery broker shall maintain records in accordance with this subchapter and Section 711.0381.

(b) The department shall examine the records of each person acting as a cemetery broker if the commissioner determines the examination is necessary to:

(1) safeguard the interests of purchasers and beneficiaries of the exclusive right of sepulture in a plot; and

(2) efficiently enforce applicable law.

(c) A person may maintain and provide a record required to be maintained under this section in an electronic format if the record is reliable and can be retrieved in a timely manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.084. EXAMINATION FEE. (a) For each examination conducted under Section 711.083, the commissioner or the commissioner's agent shall impose on the cemetery broker a fee in an amount set by the commission under Section 711.082.

(b) The amount of the fee must be sufficient to cover:

(1) the cost of the examination, including:

(A) salary and travel expenses for department employees, including travel to and from the place where the records are kept; and

(B) any other expense necessarily incurred in conducting the examination;

(2) the equitable or proportionate cost of maintaining and operating the department; and

(3) the cost of enforcing this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

CHAPTER 712. PERPETUAL CARE CEMETERIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 712.001. DEFINITIONS. (a) The definitions provided by Section 711.001 apply to this chapter.

(b) In this chapter:

(1) "Banking department" or "department" means the Banking Department of Texas.

(2) "Commissioner" means the Banking Commissioner of Texas.

(3) "Corporation" means a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code, or an entity that is organized under this chapter, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in this state.

(4) "Fund" means a perpetual care trust fund established by one or more corporations under this chapter or any corresponding statute in effect before September 1, 1993.

(4-a) "Preconstruction trust" means a trust established by a corporation under this chapter for the purpose of administering proceeds from sales of undeveloped mausoleum spaces.

(4-b) "Preconstruction trustee" means the trustee of a preconstruction trust.

(5) "Trustee" means the trustee of a cemetery perpetual care trust fund.

(6) "Undeveloped mausoleum space" means a crypt or niche in a mausoleum or mausoleum section that is designed to contain at least 10 crypt or niche interments and that is not ready for the interment of human remains or cremated remains on the date an interment right pertaining to the mausoleum space is sold. The term does not include a private mausoleum or mausoleum section in which all mausoleum spaces are intended to be sold under a single contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 24, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 5, eff. September 1, 2011.

Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery owned by this state, a county, or a municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 25, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 36, eff. Sept. 1, 2003.

Sec. 712.003. REGISTRATION REQUIRED; MINIMUM CAPITAL. (a) A perpetual care cemetery may not be operated in this state unless a certificate of formation for a domestic filing entity or registration to transact business for a foreign filing entity is filed with the secretary of state showing:

(1) subscriptions and payments in cash for 100 percent of the entity's ownership or membership interests;

(2) the location of its perpetual care cemetery; and

(3) a certificate showing the deposit in its fund of the minimum amount required under Section 712.004.

(b) A corporation chartered on or after September 5, 1955, and before September 1, 1993, must have a minimum capital of:

(1) $15,000, if the cemetery serves a municipality with a population of less than 15,000;

(2) $30,000, if the cemetery serves a municipality with a population of 15,000 to 25,000; or

(3) $50,000, if the cemetery serves a municipality with a population of at least 25,000.

(c) A corporation chartered on or after September 1, 1993, and before September 1, 2013, must have:

(1) a minimum capital of $75,000; and

(2) a minimum of $75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013.

(c-1) A corporation whose certificate of formation takes effect on or after September 1, 2013, must have a minimum of $75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

(d) A nonprofit association or corporation operated solely for the benefit of plot owners seeking to convert a cemetery to a perpetual care cemetery under this chapter is not required to meet the requirements prescribed by this section and Section 712.004 if the cemetery has existed for at least 75 years and the association or corporation has operated the cemetery for the preceding 10 years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 218, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 26, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 7, eff. September 1, 2013.

Sec. 712.0032. CERTIFICATE OF AUTHORITY REQUIREMENT. A

corporation must hold a certificate of authority issued under this chapter to operate a perpetual care cemetery.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0033. CERTIFICATE OF AUTHORITY APPLICATION; FEES. (a) To obtain a certificate of authority to operate a perpetual care cemetery, an applicant must, not later than the 30th day after the date a corporation files its certificate of formation or application for registration with the secretary of state:

(1) file an application, made under oath, on a form prescribed by the department; and

(2) pay a filing fee in an amount set by the Finance Commission of Texas under Section 712.008.

(b) If the corporation fails to comply with Subsection (a), the commissioner may instruct the secretary of state to remove the corporation from the secretary's active records or cancel the corporation's registration. On an instruction from the commissioner under this subsection, the secretary of state shall remove the corporation from the secretary's active records or cancel the corporation's registration and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(c) A fee or cost paid under this chapter in connection with an application or renewal is not refundable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY; INVESTIGATION. (a) The commissioner may:

(1) investigate an applicant before issuing a certificate of authority; and

(2) recover from the applicant reasonable costs the

commissioner incurs in the investigation.

(b) To qualify for a certificate of authority under this chapter, an applicant must demonstrate to the satisfaction of the commissioner that:

(1) the applicant's business ability, experience, character, financial condition, and general fitness warrant the public's confidence;

(2) the cemetery operations manager has at least two years of experience in cemetery management;

(3) the issuance of the certificate of authority is in the public interest;

(4) the applicant, a principal of the applicant, or a person who controls the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other amount imposed under this chapter or a rule adopted or order issued under this chapter; and

(5) the applicant corporation:

(A) is in good standing and statutory compliance with this state;

(B) is authorized to engage in the perpetual care cemetery business in this state;

(C) does not owe any delinquent franchise or other taxes to this state; and

(D) wholly owns all land on which the perpetual care cemetery will be located.

(c) For purposes of Subsection (b)(5)(D), an applicant corporation is considered to wholly own land regardless of whether the land is subject to a mortgage, deed of trust, or other lien.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 1, eff. September 1, 2019.

Sec. 712.0035. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall issue a certificate of authority if the commissioner finds that:

(1) the applicant meets the qualifications listed in Section 712.0034 and it is reasonable to believe that the applicant's cemetery business will be conducted fairly and lawfully, according to applicable state and federal law, and in a manner commanding the public's trust and confidence;

(2) the issuance of the certificate of authority is in the public interest;

(3) the documentation and forms required to be submitted by the applicant are acceptable; and

(4) the applicant has satisfied all requirements for issuance of a certificate of authority.

(b) The applicant is entitled, on request, to a hearing on a denial of the application. The request must be filed with the commissioner not later than the 30th day after the date the notice of denial is mailed. The hearing must be held not later than the 60th day after the date of the request unless the administrative law judge extends the period for good cause or the parties agree to a later hearing date. The hearing is a contested case under Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0036. TERM OF CERTIFICATE OF AUTHORITY. (a) The Finance Commission of Texas by rule shall prescribe the term of and renewal procedures for a certificate of authority issued under this chapter.

(b) If the Finance Commission of Texas prescribes the term of a certificate of authority issued under this chapter for a period other than one year, the finance commission shall prorate any applicable fees as necessary to reflect the term of the certificate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8,

eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 45, eff. September 1, 2019.

For expiration of Subsections (a-1) and (a-2), see Subsection (a-2).

Sec. 712.0037. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) As a condition of renewal, a certificate holder must meet the qualifications and satisfy the requirements that apply to an applicant for a new certificate of authority. Additionally, not later than the certificate's renewal date, a certificate holder shall:

(1) pay a renewal fee in an amount established by Finance Commission of Texas rule; and

(2) submit a renewal report under oath and in the form and medium required by the commissioner that demonstrates that the certificate holder meets the qualifications and requirements for holding a certificate.

(a-1) Notwithstanding Subsection (a), a certificate holder holding a certificate of authority issued before September 1, 2017, that does not on that date satisfy the ownership requirement under Section 712.0034(b)(5)(D) is not required to satisfy that ownership requirement as a condition of renewal until September 1, 2022. The commissioner may extend the period of compliance for the ownership requirement if the certificate holder:

(1) files a written application for the extension in the form and manner required by the department; and

(2) shows good cause for the extension.

(a-2) This subsection and Subsection (a-1) expire September 1, 2028.

(b) If the department does not receive a certificate holder's renewal fee and complete renewal report on or before the certificate's renewal date, the commissioner:

(1) shall notify the certificate holder in writing that the certificate holder must submit the renewal report and pay the renewal fee not later than the 30th day after the certificate's renewal date; and

(2) may require the certificate holder to pay a late fee, in an amount established by Finance Commission of Texas rule and not

subject to appeal, for each business day after the certificate's renewal date that the commissioner does not receive the completed renewal report and renewal fee.

(c) On timely receipt of a certificate holder's complete renewal report and renewal fee and any late fee, the department shall review the report and the commissioner may:

(1) renew the certificate of authority; or

(2) refuse to renew the certificate of authority and take other action the commissioner considers appropriate.

(d) The applicant on request is entitled to a hearing to contest the commissioner's refusal to renew the certificate. The request must be filed with the commissioner not later than the 30th day after the date the notice of refusal to renew is mailed. The hearing is a contested case under Chapter 2001, Government Code.

(e) The holder or principal of or the person in control of the holder of an expired certificate of authority, or the holder or principal of or person in control of the holder of a certificate of authority surrendered under Section 712.00395, who wishes to conduct activities for which a certificate of authority is required under this chapter shall file a new application for a certificate of authority and satisfy all requirements for the certificate that apply at the time the new application is filed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 46, eff. September 1, 2019.

Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A certificate of authority issued under this chapter may not be transferred or assigned.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8,

eff. September 1, 2011.

Sec. 712.0039. TRANSFER OF BUSINESS OWNERSHIP; CHANGE OF CONTROL. (a) A certificate holder shall notify the department in writing of a transfer of ownership of the certificate holder's business or a transfer of 25 percent or more of the stock or other ownership or membership interest of the corporation as follows:

(1) in the case of a voluntary transfer, not later than the seventh day after the date the contract for transfer is executed; and

(2) in the case of an involuntary transfer, not later than one business day after receiving notice of the impending foreclosure or other involuntary transfer.

(b) If the proposed transferee would own more than 50 percent of the stock or other ownership or membership interest of the corporation and is not a certificate holder, the proposed transferee shall file any necessary documents with the secretary of state and an application for a certificate of authority with the department as required by this chapter. If the proposed transferee is required to apply for a certificate of authority under this subsection, the transfer of the perpetual care fund may not occur until after the date a certificate of authority is issued to the transferee applicant.

(c) If the commissioner denies the application, a hearing may be requested and conducted according to the procedures in Section 712.0035(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 8, eff. September 1, 2013.

Sec. 712.00395. SURRENDER OF CERTIFICATE OF AUTHORITY; FEE. (a) A certificate holder may apply to the commissioner for permission to surrender the certificate of authority if the holder:

(1) is a cemetery that qualified for an exemption under

Section 711.021(g), but voluntarily elected to become a perpetual care cemetery;

(2) has performed not more than 10 burials per year during each of the last five years;

(3) is not larger than 10 acres; and

(4) has a perpetual care fund that is less than $30,000.

(b) The application for permission to surrender a certificate of authority must be sworn to and be on a form prescribed by the department.

(c) The certificate holder shall publish a notice of intention to surrender a certificate of authority to operate a perpetual care cemetery one time in a newspaper of general circulation in each county in which the cemetery is located. The notice must:

(1) be in the form and include the information required by the banking commissioner;

(2) state that:

(A) the certificate holder is applying to surrender the holder's certificate of authority to operate a perpetual care cemetery;

(B) a cemetery plot owner or cemetery plot owner's heir may request a hearing to contest the surrender; and

(C) a request for a hearing must be filed with the department not later than the 14th day after the date the notice is published.

(d) The certificate holder shall submit, not later than the seventh day after the date the notice is published, a publisher's affidavit evidencing publication of the notice.

(e) If a request for hearing is timely filed by a plot owner or plot owner's heir, the commissioner shall hold a hearing in accordance with Chapter 2001, Government Code.

(f) If a request for a hearing is not timely filed by a plot owner or plot owner's heir, the commissioner may approve or deny the application.

(g) If an application is denied, and if a hearing is not held before the denial, the applicant may request a hearing to appeal the denial of the application. The applicant's request for a hearing must be filed with the commissioner not later than the 30th day after the date the notice of denial is mailed. The hearing is a contested case under Chapter 2001, Government Code.

(h) An order approving the surrender of a certificate of

authority must impose four conditions that are not subject to objection. Failure to satisfy any of these conditions constitutes a violation of the commissioner's order, and the certificate holder is subject to an enforcement action under this chapter. The order approving the surrender must:

(1) require the perpetual care fund to remain in an irrevocable trust, with the permissible distributions to be used for perpetual care of the cemetery in general and for those plots that were purchased before the certificate was surrendered;

(2) require that the cemetery remove any signage or other announcement stating that the cemetery is a perpetual care cemetery;

(3) require each contract and other evidence of ownership entered into after the date of the order to clearly state that the cemetery is not regulated by the Texas Department of Banking and may not use the term "perpetual care cemetery"; and

(4) state the location of cemetery records and require the cemetery to:

(A) retain existing records regarding the perpetual care fund for five years after the date of the order; and

(B) continue to comply with all recordkeeping requirements of Chapter 711.

(i) Not later than the 10th day after the date an order approving the surrender of a certificate of authority is signed, the certificate holder shall deliver the original certificate of authority to the commissioner along with a written notice of surrender that includes the location of the certificate holder's records and the name, address, telephone number, and other contact information for an individual who is authorized to provide access to the records.

(j) The surrender of a certificate of authority does not reduce or eliminate a certificate holder's administrative, civil, or criminal liability arising from any acts or omissions that occur before the surrender of the certificate.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 2, eff.

September 1, 2017.

Sec. 712.004. PERPETUAL CARE TRUST FUND REQUIRED. (a) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 3, 1945, and before September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund:

(1) $15,000, if the corporation has capital stock of $15,000;

(2) $30,000, if the corporation has capital stock of $30,000; or

(3) $50,000, if the corporation has capital stock of $50,000 or more.

(b) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund an amount of not less than $50,000 for each perpetual care cemetery operated in this state.

(c) The fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 28, eff. Sept. 1, 1993.

Sec. 712.005. CANCELLATION OF CHARTER FOR FAILURE TO BEGIN OPERATION OF PERPETUAL CARE CEMETERY. (a) If a corporation chartered under Section 712.003 does not begin actual operation of its perpetual care cemetery for six months after the charter is granted and delivered, the commissioner may instruct the secretary of state to cancel the charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(b) The commissioner may rescind the order of cancellation on:

(1) the application of the directors;

(2) the payment to the commissioner of a penalty set by the commissioner in an amount not to exceed $500;

(3) the execution and delivery to the commissioner of an agreement to begin actual operation of the perpetual care cemetery

not later than one month after the date of the agreement; and

(4) a proper showing by the trustee that the fund is on deposit.

(c) If the corporation does not begin actual operation as agreed, the commissioner by order may set aside the order of rescission and the cancellation is final. The commissioner shall make a full report of the cancellation to the attorney general for liquidation of the corporation, if liquidation is necessary.

(d) If no sale of the dedicated cemetery property of the corporation is made, a certified copy of the order of cancellation authorizes the trustee to refund the fund to the incorporators who signed the corporation's articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 29, eff. Sept. 1, 1993.

Sec. 712.007. NOTICE OF PERPETUAL CARE REQUIRED. (a) A corporation shall post a sign at or near a cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following:

(1) "Perpetual Care Cemetery," or "Endowment Care Cemetery";

(2) the names and telephone numbers of two of the corporation's officers or directors; and

(3) the name of each bank or trust company entrusted with the fund.

(c) A corporation must include the following statement in each sales contract, certificate of ownership, or other instrument of conveyance of the exclusive right of sepulture:

"This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to maintain, repair, and care for the cemetery, including the roads on cemetery property."

(d) The term "endowment care" may be substituted for the term "perpetual care" in the statement required by Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 30, eff. March 1, 1994.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 341 (H.B. 1031), Sec. 1, eff. September 1, 2009.

Sec. 712.008. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

(b) The Finance Commission of Texas shall adopt rules establishing reasonable standards for:

(1) timely placement of burial markers or monuments in a perpetual care cemetery; and

(2) timely response to consumer complaints made to a corporation that operates a perpetual care cemetery.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 13, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 37, eff. Sept. 1, 2003.

Sec. 712.009. LIMITATIONS ON BURIALS; DAMAGES. (a) The Finance Commission of Texas shall adopt rules to administer and enforce this section.

(b) An individual, corporation, partnership, firm, trust, or association that operates or owns a perpetual care cemetery may not inter the remains of an individual who may have caused the death of another person if:

(1) the victim is interred in that cemetery; and

(2) the person having the right to control the disposition of the victim's remains under Section 711.002(a) gives written notice to the cemetery requesting that the individual not be interred in that cemetery if:

(A) the individual was convicted under Section 19.02, 19.03, 19.05, or 49.08, Penal Code, for causing the death of the victim, or convicted under a similar statute of another state; or

(B) the individual was identified as causing the death of the victim, in violation of a provision described by Paragraph (A), by the medical examiner or law enforcement agency having jurisdiction over the offense, and the individual dies before being

convicted of the offense.

(c) An individual, corporation, partnership, firm, trust, or association that violates Subsection (b) is liable to the person having the right to control the disposition of the victim's remains under Section 711.002(a) for:

(1) any actual damages incurred;

(2) punitive damages not to exceed $10,000; and

(3) reasonable attorney's fees and court costs incurred in an effort to enforce compliance with Subsection (b).

(d) Damages under Subsection (c) may not be assessed if the individual, corporation, partnership, firm, trust, or association that operates the cemetery proves by a preponderance of the evidence that:

(1) the cemetery is the only cemetery serving the municipality or county in which the victim and individual causing the victim's death lived; and

(2) the bodies of the victim and individual causing the victim's death were placed as far apart as possible in, or in different parts of, the cemetery.

(e) An individual, corporation, partnership, firm, trust, or association operating or owning a perpetual care cemetery and barred from interring remains of an individual under this section may not be held liable for damages by a person having the right to control the disposition of the individual's remains under Section 711.002(a), including damages for failure to provide for interment under a contract executed before the delivery of the written notice under Subsection (b)(2).

(f) A notice under Subsection (b)(2) expires seven years after the date the notice is delivered. A new notice may be delivered on the expiration of each previous notice.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 14, eff. Sept. 1, 2001.

SUBCHAPTER B. PERPETUAL CARE TRUST FUND

Sec. 712.020. CONFLICT WITH OTHER LAW. To the extent of any conflict between this subchapter and Subtitle B, Title 9, Property Code, this subchapter controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 1, eff. May 15, 2015.

Sec. 712.021. ESTABLISHMENT AND PURPOSES OF FUND. (a) Except as provided by Subsection (h), a corporation that operates a perpetual care cemetery in this state shall have a fund established with a trust company or a bank with trust powers that is located in this state. The trust company or bank may not have more than one director who is also a director of the corporation.

(b) Except as otherwise provided by this chapter, the principal of the fund may not be reduced voluntarily, and it must remain inviolable. The trustee shall maintain the principal of the fund separate from all operating funds of the corporation.

(c) In establishing a fund, the corporation may adopt plans for the general care, maintenance, and embellishment of its perpetual care cemetery.

(d) The fund and the trustee are governed by the Texas Trust Code (Section 111.001 et seq., Property Code).

(e) A corporation that establishes a fund may receive and hold for the fund and as a part of the fund or as an incident to the fund any property contributed to the fund.

(f) The fund and contributions to the fund are for charitable purposes. The perpetual care financed by the fund is:

(1) the discharge of a duty due from the corporation to persons interred and to be interred in its perpetual care cemetery; and

(2) for the benefit and protection of the public by preserving and keeping the perpetual care cemetery from becoming a place of disorder, reproach, and desolation in the community in which the perpetual care cemetery is located.

(g) In this subsection, "master trust account" means an account containing the perpetual care trust funds of two or more certificate holders for the purpose of collective investment and administration. The trustors of two or more perpetual care trust funds may establish a master trust account in which deposits required by this chapter are made, provided that separate records of principal and income are maintained for each perpetual care cemetery for the benefit of which the master trust account is established, and further provided that the income attributable to each perpetual care cemetery is used only for the perpetual care of that cemetery.

(h) A corporation may apply to the commissioner for temporary

relief and placement of a perpetual care trust fund in a segregated interest bearing account at a Texas financial institution, as defined by Section 201.101, Finance Code, if the corporation:

(1) has been operating a perpetual care cemetery in this state for at least two years; and

(2) has a perpetual care trust fund with a balance of less than $100,000, the income of which is insufficient to pay trustee fees.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 31, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 2, eff. May 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 71 (S.B. 1402), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 864 (H.B. 2950), Sec. 1, eff. September 1, 2019.

Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A corporation authorized by law to operate a perpetual care cemetery but not doing so may do so if the corporation:

(1) complies with the requirements of this chapter for obtaining a certificate of authority; and

(2) establishes a fund as provided by Section 712.021 in an amount equal to the larger of:

(A) the amount that would have been paid into the fund if the cemetery operated as a perpetual care cemetery from the date of the cemetery's first sale of plots; or

(B) the minimum amount provided by Section 712.004.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 32, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 9, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 9, eff. September 1, 2011.

Sec. 712.023. VALIDITY OF CONTRIBUTIONS. A contribution to a fund for perpetual care is not invalid because of:

(1) indefiniteness or uncertainty of the person designated as beneficiary in the instrument establishing the fund; or

(2) a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 33, eff. Sept. 1, 1993.

Sec. 712.024. AMENDMENT OF TRUST INSTRUMENT. A corporation and the trustee of a fund may, by agreement, amend the instrument that established the fund to include any provision that is consistent with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 34, eff. Sept. 1, 1993.

Sec. 712.025. USE OF FUND DISTRIBUTIONS. Fund distributions may be used only to provide the perpetual care described by the instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 35, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 38, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 4, eff. September 1, 2017.

Sec. 712.0255. JUDICIAL MODIFICATION OR TERMINATION OF FUND. (a) The commissioner may petition a court to modify or terminate a fund under Section 112.054, Property Code. In addition to the grounds described by that section, the commissioner may petition a

court under that section if the permissible distributions from the fund are inadequate to maintain, repair, and care for the perpetual care cemetery and another source for providing additional contributions to the fund is unavailable.

(b) If feasible, the corporation for the perpetual care cemetery and the trustee of the fund are necessary parties to an action described by this section. A court may not modify or terminate the fund without the consent of the commissioner.

(c) At the request or with the consent of the commissioner, the court may order the distribution and transfer of all or a portion of the assets in the fund to a nonprofit corporation, municipality, county, or other appropriate person who is willing to accept, continue to care for, and maintain the perpetual care cemetery. A transfer under this subsection does not limit the court's ability to modify or terminate the fund under an action described by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 3, eff. May 15, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 5, eff. September 1, 2017.

Sec. 712.026. SUIT BY PLOT OWNERS TO MAINTAIN PERPETUAL CARE. (a) If the directors of a corporation do not generally care for and maintain the corporation's perpetual care cemetery, the district court of the county in which the perpetual care cemetery is located may:

(1) by injunction compel the directors to expend the permissible distributions from the corporation's fund as required by this chapter; or

(2) appoint a receiver to take charge of the fund and expend the permissible distributions from the fund as required by this chapter.

(b) The suit for relief under this section must be brought by at least five owners of plots located in the perpetual care cemetery.

(c) In a suit for relief under this section, court costs and attorney's fees shall be awarded:

(1) to the directors of the corporation, if it is found

that the directors are substantially expending the permissible distributions from the fund as required by this subchapter; or

(2) to the plot owners initiating the suit, if it is found that the directors are not substantially expending the permissible distributions from the fund as required by this subchapter.

(d) Fund assets may not be used to pay court costs and attorney's fees awarded under Subsection (c).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 36, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 106, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 6, eff. September 1, 2017.

Sec. 712.027. INVESTMENT OF FUND. (a) A trustee shall invest and manage the investment of the principal of a fund in accordance with the Texas Trust Code (Section 111.001 et seq., Property Code).

(b) An investment must be made at not more than the prevailing market value of the securities at the time of acquisition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 37, eff. Sept. 1, 1993.

Sec. 712.028. AMOUNT OF FUND DEPOSITS FROM SALES. (a) A corporation shall deposit in its fund an amount that is at least:

(1) the greater of:

(A) $1.75 a square foot of ground area conveyed as perpetual care property; or

(B) 15 percent of the total purchase price of that ground area;

(2) the greater of:

(A) $105 for each crypt interment right for mausoleum interment or lawn crypt interment conveyed as perpetual care property, or $60 for each crypt interment right if that crypt is accessible only through another crypt; or

(B) seven percent of the total purchase price of that crypt interment right; and

(3) the greater of:

(A) $35 for each niche interment right for columbarium interment conveyed; or

(B) 15 percent of the total purchase price of that niche interment right.

(b) Subsection (a) does not apply to deposits from sales required to be made by a corporation in its fund before September 1, 1993, under a corresponding statute in effect before that date.

(c) If a plot owner exchanges a plot for another plot in a corporation's perpetual care cemetery, the amount to be deposited in the corporation's fund in respect of the plot received by the plot owner in the exchange may be reduced by the amount deposited in the fund in respect of the plot contributed by the plot owner in the exchange. The amount required to be deposited with respect to an exchanged plot is the amount required at the time the plot owner originally contracted to purchase the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 219, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 38, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 39, eff. Sept. 1, 2003.

Sec. 712.029. ACCOUNTING FOR AND DEPOSITING AMOUNTS. (a) The part of the purchase price of a plot in a perpetual care cemetery that is to be deposited in a fund must be shown separately on the original purchase agreement from the total purchase price. A copy of the agreement shall be delivered to the purchaser of the plot.

(b) On the sale of a plot, a commission may not be paid to a broker or salesman on the amount to be deposited in the fund.

(c) A corporation shall deposit in its fund the amount required under Section 712.028 not later than the 20th day after the end of the month in which the original purchase agreement has been paid in full. A corporation may prepay funds into its fund at any time and, if a surplus exists in the fund from the prepayments, may credit against the surplus the amounts otherwise required to be deposited in the fund under Section 712.028 until the surplus has been depleted. In determining whether a surplus exists from prepayments, no part of the fund resulting from gifts to the fund under Section 712.030 may be considered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1991, 72nd Leg., ch. 14, Sec. 220, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 39, eff. Sept. 1, 1993.

Sec. 712.030. USE OF GIFT FOR SPECIAL CARE OF PLOT IN PERPETUAL CARE CEMETERY. (a) A trustee may take and hold property transferred to the trustee in trust in order to apply the principal, proceeds, or income of the property for any purpose consistent with the terms of the trust and the purpose of a corporation's perpetual care cemetery, including:

(1) the improvement or embellishment of any part of the perpetual care cemetery;

(2) the erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the perpetual care cemetery;

(3) planting or cultivating plants in or around the perpetual care cemetery; or

(4) taking special care of or embellishing a plot, section, or building in the perpetual care cemetery.

(b) Except as provided by this subsection, the assets of a trust established under this section are not considered assets of the fund. If a gift in trust is specifically intended to serve the same general purpose as the fund, the trust may be merged with the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 40, eff. Sept. 1, 1993. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 7, eff. September 1, 2017.

SUBCHAPTER B-1. DISTRIBUTIONS FROM FUND

Sec. 712.0351. DEFINITIONS. In this subchapter:

(1) "Net income fund" means a fund from which permissible distributions are calculated based on the net income method.

(2) "Net income method" means calculation of permissible annual distributions by the trustee as equal to the annual net income of the fund.

(3) "Total return fund" means a fund from which permissible distributions are calculated based on the total return method.

(4) "Total return method" means the calculation of permissible annual distributions by the trustee as equal to the average fair market value of the assets in the fund, determined under Section 712.0353, multiplied by the total return percentage.

(5) "Total return percentage" means the annual percentage selected by the trustee in accordance with Section 712.0354.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0352. MODIFICATION OF DISTRIBUTION METHOD. (a) Except as otherwise provided by this subchapter, the trustee of a fund shall use the net income method to determine permissible distributions from the fund to the corporation.

(b) A corporation on concurrence of the corporation's trustee may modify the terms of the trust instrument governing the fund to require the trustee to use the total return method in determining permissible distributions to the corporation. To convert a net income fund to a total return fund, at least 60 days before the effective date of the conversion, which must be the first day of the fund's next fiscal year, the corporation shall submit written documentation to the commissioner in support of the conversion that includes:

(1) a copy of the trust instrument governing the fund and any proposed amendments to the instrument necessary to authorize the conversion;

(2) the trustee's estimates of the current fair market value and the average fair market value of the fund as of the effective date of the conversion, as determined under Section 712.0353, and actions by the trustee to finalize the trustee's determination of both current and average fair market value of the fund and to advise the corporation and the commissioner as soon as reasonably possible after the effective date;

(3) a description of the method the trustee used or will use to determine the fair market value of any unique and hard-to-value asset in the fund, and identification and explanation of any asset the trustee excluded or will exclude from the average fair market value calculation;

(4) the total return percentage selected by the trustee

under Section 712.0354, and the reasons for the selection;

(5) a copy of the written investment policy for the fund as modified to support use of the total return method; and

(6) any additional information required by rules adopted under this chapter.

(c) A corporation that converts the corporation's fund to a total return fund under this section may elect to reconvert the fund to a net income fund and modify the terms of the trust instrument governing the fund to require the trustee to calculate permissible distributions under the net income method. To reconvert a total return fund to a net income fund, the corporation must submit written documentation to the commissioner in support of the reconversion before the proposed effective date of the reconversion, that includes:

(1) a copy of the trust instrument governing the fund and any proposed amendments to the instrument necessary to authorize the reconversion;

(2) the proposed effective date of the reconversion, provided that the effective date must be the first day of the fund's next fiscal year unless the total distributions received or to be received from the fund in the current fiscal year would not exceed the distributions permissible for a net income fund at the beginning of the current fiscal year; and

(3) any additional information required by rules adopted under this chapter.

(d) The trustee of a net income fund or a total return fund shall make distributions to the corporation, annually or in more frequent installments agreed to by the trustee and the corporation, to be used by the corporation in the manner required by Section 712.025.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0353. DETERMINATION OF FAIR MARKET VALUE. (a) The trustee of a total return fund, or of a net income fund seeking to convert to a total return fund, shall determine for the corporation, in the trustee's sole discretion and in accordance with this section, the average fair market value of the fund at the beginning of each

fiscal year.

(b) The trustee shall derive the average fair market value of the fund at least annually by averaging the fair market value of fund assets, determined on an asset-by-asset basis, as of the beginning of the current fiscal year and in each of the two previous years, or for the entire term of the trust with less than two previous years, using the valuation date or averages of valuation dates as the trustee considers appropriate. The trustee shall exclude from the fair market value calculation any asset described in Section 712.030(b) and any asset for which the trustee is not able to reasonably ascertain a fair market value. In determining the average fair market value, the trustee shall adjust the fair market value for each year used in the calculation as follows:

(1) for assets added to the fund during the years used to determine the average, the trustee shall add the amount of each addition to all years in which the addition is not included; and

(2) for assets withdrawn from the fund during the years used to determine the average, other than in satisfaction of permissible distributions, the trustee shall subtract the amount of each withdrawal from all years in which the withdrawal is not included.

(c) Before the 31st day after the beginning of each fiscal year, the trustee of a total return fund shall send written notice to the commissioner and to the corporation of the trustee's determination of the current fair market value of the fund as of the beginning of the current fiscal year and the average fair market value of the fund for determining permissible distributions for the fiscal year, with identification and explanation of any asset excluded from the determination. If the trustee alters the methodology of determining fair market value in a manner that changes the fair market value of the fund during a fiscal year, the trustee shall send written notice to the commissioner and to the corporation of the revised current and average fair market value of the fund and the reason for the revision before the first distribution is made based on the revised average fair market value.

(d) This section does not alter or otherwise affect a fiduciary duty under other law to evaluate and monitor the fair market value of assets held in trust.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1,

eff. September 1, 2017.

Sec. 712.0354. DETERMINATION OF TOTAL RETURN PERCENTAGE. (a) Consistent with the prudent investor rule, the trustee in the exercise of the trustee's sole discretion shall select the total return percentage to be used in determining permissible distributions from a total return trust at least annually, in an amount that represents a reasonable current return from the fund in light of the investment policy currently applicable to the fund, provided that the total return percentage does not exceed five percent.

(b) Before the 31st day after the beginning of each fiscal year, the trustee of a total return fund shall send written notice to the commissioner and to the corporation of the trustee's determination of the total return percentage to be applied in the fiscal year. If the trustee alters the total return percentage during a fiscal year, the trustee shall send written notice to the commissioner and to the corporation of the revised total return percentage and the reason for the revision before the first distribution is made based on the new total return percentage.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0355. REGULATORY LIMITS ON DISTRIBUTIONS. (a) After notice and an opportunity for hearing, the commissioner by order may convert a total return fund to a net income fund, limit or prohibit distributions from the fund, or both, if:

(1) the current fair market value of the fund at the beginning of a fiscal year is less than the original principal of the fund, consisting of the sum of all required deposits into the fund under this chapter, including deposits required by Sections 712.004 and 712.028;

(2) the average fair market value of the fund declines by 10 percent or more over a two-year period; or

(3) the trustee or other fiduciary of the fund responsible for investment policy has demonstrated a lack of sufficient knowledge and expertise or has failed to ensure that an investment policy is in place to support the use of the total return method of calculating

distributions in a manner consistent with achieving the purposes of the fund as provided by Section 712.021(f).

(b) The commissioner may decline to impose corrective measures under Subsection (a) if the commissioner finds that:

(1) the cause of the adverse trend in the fair market value of the fund is due to one or more unusual or temporary factors not within the control of the corporation or trustee of the corporation's fund and could not have been reasonably anticipated;

(2) the current, written investment policy of the fund, in light of anticipated distributions from the fund, is reasonably designed to protect the fund from further declines in fair market value; and

(3) the exception appears to be both necessary and appropriate for the continued protection and perpetual existence of the fund.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0356. RULES. The Finance Commission of Texas may adopt rules to implement and clarify this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

Sec. 712.0357. NATURE OF TOTAL RETURN DISTRIBUTIONS. (a) A distribution from a total return fund is considered a distribution of all income of the fund that reasonably apportions the total return of the fund, and may not be considered a fundamental departure from applicable state law.

(b) Unless the trust instrument provides otherwise, the trustee of a total return fund shall treat a distribution as first being made from the following sources in order of priority:

(1) from net accounting income;

(2) from ordinary accounting income not allocable to net accounting income;

(3) from net realized short-term capital gains;

(4) from net realized long-term capital gains; and

(5) from the principal of the fund.

Added by Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 1, eff. September 1, 2017.

SUBCHAPTER C. REGULATION AND ENFORCEMENT

Sec. 712.041. ANNUAL STATEMENT OF FUNDS. (a) A corporation shall file in its office and with the commissioner a statement for each perpetual care cemetery operated in this state in duplicate that shows:

(1) the principal amount of its fund;

(2) the amount of the fund invested in bonds and other securities;

(3) the amount of cash on hand in the fund;

(4) any other item that shows the financial condition of the fund;

(5) the number of crypts, niches, and square feet of ground area conveyed under perpetual care before and after March 15, 1934, listed separately; and

(6) the number of crypts, niches, and square feet of ground area conveyed under perpetual care after March 15, 1934, for which the minimum deposits required for perpetual care have not been paid to the fund.

(b) The corporation's president and secretary, or two principal officers, shall verify the information on the statement.

(c) The corporation shall revise and post and file the statement on or before March 1 of each year.

(d) A copy of the statement shall be available to the public upon request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 41, eff. Sept. 1, 1993.

Sec. 712.042. FEES. On filing a statement of funds under Section 712.041, a corporation shall pay the commissioner a reasonable and necessary fee set by rule adopted by the Finance Commission of Texas under Section 712.008 to defray the cost of administering this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 221, eff. Sept. 1, 1991; Acts

1993, 73rd Leg., ch. 634, Sec. 42, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 15, eff. Sept. 1, 2001.

Sec. 712.043. ADDITIONAL FUND REPORT. The commissioner may require, as often as the commissioner determines necessary, the trustee of a corporation's fund to make under oath a detailed report of the condition of the fund. The report must include:

(1) a detailed description of the assets of the fund;

(2) a description of securities held by the fund;

(3) if a security held by the fund is a lien, a description of the property against which the lien is taken;

(4) each security's acquisition cost;

(5) each security's market value at the time of acquisition;

(6) each security's current market value;

(7) each security's status with reference to default;

(8) a statement that a security is not encumbered by debt; and

(9) any other information the commissioner determines is pertinent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 43, eff. Sept. 1, 1993.

Sec. 712.0435. INVESTIGATIONS. The commissioner may:

(1) conduct an investigation to administer and enforce this chapter; and

(2) recover reasonable costs incurred by the commissioner in the investigation from the subject of the investigation if the commissioner determines a violation occurred.

Added by Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 2, eff. September 1, 2019.

Sec. 712.044. EXAMINATION OF RECORDS; EXAMINATION FEES AND EXPENSES. (a) The commissioner may examine on a periodic basis as

the commissioner reasonably considers necessary or appropriate to protect the interest of plot owners and efficiently administer and enforce this chapter:

(1) the books and records of a corporation relating to its fund, including deposits to or withdrawals from the fund, income of the fund, and uses and expenditures of distributions from the fund;

(2) the books and records of a corporation relating to sales of undeveloped mausoleum spaces and any preconstruction trust established by the corporation as provided by Section 712.063, including deposits to or withdrawals from the preconstruction trust, income of the preconstruction trust, and uses and expenditures of principal and income of the preconstruction trust; and

(3) the consumer complaint files of a corporation relating to the fund, sales of undeveloped mausoleum spaces, a preconstruction trust, or to discharge of the corporation's perpetual care responsibilities, minutes of the corporation's board of directors, cemetery dedication statements and plat maps, and mausoleum and lawn crypt construction contracts and specifications.

(b) A corporation that is examined under this section shall make the specified books and records available for examination by the banking department upon reasonable notice to the corporation and shall pay to the commissioner for the examination a reasonable and necessary fee set by rules adopted by the Finance Commission of Texas under Section 712.008 to defray:

(1) the cost of examination;

(2) the equitable or proportionate cost of maintenance and operation of the department; and

(3) the cost of administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 44, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 699, Sec. 16, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 10, eff.

September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1051 (H.B. 1948), Sec. 8, eff. September 1, 2017.

Sec. 712.0441. ENFORCEMENT. (a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the banking department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed $1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(d) In addition to any penalty that may be imposed under Subsection (a), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (a) that has not been corrected within 30 days after the receipt by the person of written notice from the commissioner of the violation. Any such civil action may be brought in a district court of Travis County or a county in which the perpetual care cemetery is operated.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1336, Sec. 15, eff. September 1, 2011.

(f) The commissioner may issue an order requiring restitution by a person to the cemetery's fund or to a preconstruction trust if, after notice and opportunity for hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not made a deposit in the fund as required by Section 712.028 or in the preconstruction trust as required by Section 712.063.

(f-1) The commissioner may issue an order requiring restitution by a person if, after notice and opportunity for a hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not ordered memorials, as defined by Section 711.001, in compliance with the deadlines established by rules adopted under this chapter.

(g) If a violation described in Subsection (a) has not been corrected before the 31st day after the date the corporation receives written notice from the commissioner of the violation, the commissioner may report the violation to the attorney general, who shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the corporation's perpetual care cemetery is operated.

(h) If a fund is misappropriated by its trustee or is not otherwise handled as required by this chapter, the commissioner may take action against the trustee as provided in Chapter 185, Finance Code.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 45, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 769, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.66, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 17, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 15, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 4, eff. May

15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 110 (S.B. 1630), Sec. 9, eff. September 1, 2017.

Sec. 712.0442. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that the maximum administrative penalty permitted under Section 712.0441 be imposed on the person committing the violation or that the commissioner cancel or not renew the corporation's certificate of authority under this chapter if the person holds such a certificate.

(b) For the purposes of this section, violations corrected as provided by Section 712.0441 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 18, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 12, eff. September 1, 2011.

Sec. 712.0443. CEASE AND DESIST ORDER. (a) The commissioner may issue an order to cease and desist to a person if:

(1) the commissioner finds by examination or other credible evidence that the person has violated a law of this state relating to perpetual care cemeteries, including a violation of this chapter, the commissioner's final order, or a Finance Commission of Texas rule; and

(2) the violation was not corrected by the 31st day after the date the person receives written notice of the violation from the department.

(b) An order proposed under this section shall be served on the person and must state the grounds for the proposed order with

reasonable certainty and the proposed effective date, which may not be less than the 20th day after the date the order is mailed or delivered. The order becomes effective on the proposed date unless the person requests a hearing not later than the 19th day after the date the order is mailed or delivered. If the person requests a hearing, the hearing shall be conducted in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) If a cease and desist order issued under this section names an officer, director, or employee of a perpetual care cemetery, the order may require the person named in the order to take corrective action to remedy the violation described by the order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 3, eff. September 1, 2019.

Sec. 712.0444. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a plot owner, marker purchaser, or other person whose interests are protected by this chapter.

(a-1) An emergency order must:

(1) state the grounds on which the order is granted;

(2) advise the person against whom the order is directed that the order takes effect immediately;

(3) to the extent applicable, require the person to:

(A) immediately cease and desist from the conduct or violation that is the basis of the order; or

(B) take the affirmative action stated in the order as necessary to correct a condition resulting from the conduct or violation that is the basis of the order or as otherwise appropriate;

(4) be delivered by personal delivery or sent by certified mail, return receipt requested, to the person at the person's last known address; and

(5) notify the person against whom the order is directed that the person may request a hearing on the order by filing a written request for a hearing with the commissioner not later than the 18th day after the date the order is delivered or mailed, whichever is earlier.

(b) The emergency order takes effect as soon as the person against whom the order is directed has actual or constructive knowledge of the issuance of the order. An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the emergency order may request in writing, not later than the 18th day after the date the order is delivered or mailed, whichever is earlier, a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing not later than the 21st day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

(e) Unless the commissioner receives a written request for a hearing in accordance with Subsection (c), the order is final on the 19th day after the date the order is delivered or mailed, whichever is earlier, and may not be appealed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 19 (S.B. 656), Sec. 5, eff. May 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(28), eff. September 1, 2017.

Sec. 712.0445. RECEIVERSHIP PROCEEDINGS. (a) In conjunction with a proceeding to forfeit the right to do business in this state brought by the attorney general, the attorney general may seek the appointment of a receiver. This remedy is in addition to other grounds for the appointment of a receiver.

(b) If the receiver is a private party, the receiver shall be

compensated from the corporation or, if the corporation has no assets available to pay the receiver, from the income only of the perpetual care fund. The receiver may not invade the principal of the fund.

(c) The court may appoint a department employee as receiver. If the receiver is a department employee, the employee may not receive compensation for serving as receiver in addition to the employee's regular salary. The department may receive reimbursement from the corporation for the travel expenses and the fully allocated personnel costs associated with the employee's service as receiver.

(d) A department employee serving as receiver is not personally liable for damages arising from the employee's official act or omission unless the act or omission is corrupt or malicious. The attorney general shall defend an action brought against an employee serving as receiver because of an official act or omission as receiver regardless of whether the employee has terminated service with the department before the action commences.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.

Sec. 712.045. REVOCATION OR SUSPENSION OF CERTIFICATE OF AUTHORITY. (a) The commissioner by order may revoke or suspend a certificate of authority issued under this chapter if the commissioner determines through an investigation or other credible evidence that the certificate holder:

(1) violated this chapter, a rule adopted or order issued under this chapter, or another law of this state relating to cemeteries;

(2) misrepresented or concealed a material fact in the certificate application; or

(3) obtained or attempted to obtain the certificate by misrepresentation, concealment, or fraud.

(b) An order issued under Subsection (a) must state:

(1) with reasonable certainty, the grounds for the order; and

(2) the effective date of the order, which may not be earlier than the 16th day after the date the order is mailed.

(c) The commissioner shall provide an order described by Subsection (a) to the person named in the order by certified mail, return receipt requested, at the person's last known address.

(d) A person may request a hearing on an order described by Subsection (a) not later than the 15th day after the date the order is mailed. If the person requests a hearing, the order is stayed until the hearing is resolved. A hearing is a contested case under Chapter 2001, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 274 (S.B. 1821), Sec. 4, eff. September 1, 2019.

Sec. 712.048. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person sells, offers to sell, or advertises for sale an interment right in a plot and, before a fund is established for the cemetery in which the plot is located as provided by this chapter, represents that the plot is under perpetual care. An offense under this subsection is a Class A misdemeanor. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages caused by an injury resulting from an offense under this subsection.

(b) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person knowingly defalcates or misappropriates assets of a fund. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code.

(c) A person commits an offense if the person collects money for the purchase of a memorial, as defined by Section 711.001, and knowingly defalcates or misappropriates the funds. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages, or the commissioner from maintaining an administrative action for restitution, caused by an injury resulting from an offense under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 46, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 14, eff. September 1, 2011.

SUBCHAPTER D. SALE OF UNDEVELOPED MAUSOLEUM SPACE

Sec. 712.061. OFFER AND SALE OF UNDEVELOPED MAUSOLEUM SPACE. (a) A corporation may not directly or indirectly sell or offer for sale an undeveloped mausoleum space unless before the sale or offer the corporation:

(1) establishes a preconstruction trust as provided by Section 712.063 or executes and submits a performance bond payable to the commissioner as provided by Section 712.067; and

(2) submits a written notice to the commissioner as required by Subsection (b).

(b) The written notice to the commissioner must set forth:

(1) the date the corporation anticipates that sales of undeveloped mausoleum spaces will begin;

(2) a copy of the sales contract proposed for use that complies with Section 712.066;

(3) if the corporation establishes a preconstruction trust as provided by Section 712.063, a copy of the executed preconstruction trust agreement that complies with this subchapter and identifies the preconstruction trustee;

(4) if the corporation submits a performance bond payable to the commissioner as provided by Section 712.067, the executed, original performance bond in the amount required by Section 712.067 and documentation supporting the corporation's computation of that amount; and

(5) other information the commissioner reasonably requires to properly administer and enforce this subchapter.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has established a preconstruction trust may substitute a performance bond that meets the requirements of Section 712.067. On acceptance of the performance bond by the commissioner,

the corporation may terminate and withdraw all proceeds deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.062. DEPOSITS TO FUND. This subchapter does not affect the corporation's obligation to make deposits to its fund as provided in Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.063. PRECONSTRUCTION TRUST. (a) Except as provided by Section 712.067, a corporation that intends to directly or indirectly sell or offer for sale undeveloped mausoleum spaces shall establish a preconstruction trust by written declaration and agreement appointing as preconstruction trustee a financial institution with trust powers that is located in this state.

(b) The corporation shall deposit in the preconstruction trust an amount equal to at least 40 percent of all proceeds received directly or indirectly from the sale of undeveloped mausoleum spaces, not including interest, finance charges, sales taxes, credit life insurance premiums, or deposits to the corporation's fund required by Section 712.029(c).

(c) On application, the commissioner may authorize a corporation to deposit less than the amount required by Subsection (b) if the corporation demonstrates to the reasonable satisfaction of the commissioner that:

(1) the sales projections of the corporation are prudent and based on reasonable assumptions;

(2) the projected cost of construction is objectively determined based on documentation similar to that required by Section 712.067(b); and

(3) the amount of money projected to be deposited in the

preconstruction trust under the proposed lesser amount will equal or exceed 120 percent of the cost of constructing the mausoleum or mausoleum section.

(d) The corporation shall deposit the required amount into the preconstruction trust on or before the 30th day after the end of the month in which payment is received. At the time of making a deposit, the corporation shall furnish to the preconstruction trustee the name of each payor and the amount of payment on each account for which the deposit is being made. A contract between the corporation and an agent or third party developer may not restrict or waive the corporation's primary liability for making the deposits required by this section.

(e) The preconstruction trustee may commingle deposits received if the accounting records accurately establish a separate account for each contract and reflect the amounts deposited and the income and loss allocable to each contract.

(f) Money in a preconstruction trust may be invested only in:

(1) demand deposits, savings accounts, certificates of deposit, or other accounts in financial institutions if the amounts deposited in those accounts are fully covered by federal deposit insurance or otherwise fully secured by a separate fund of securities in the manner provided by Section 184.301, Finance Code;

(2) marketable notes, bonds, evidences of indebtedness, or obligations with a term to maturity of five years or less and:

(A) issued by the United States or an instrumentality of the United States; or

(B) the principal and interest of which are guaranteed by the full faith and credit of the United States; and

(3) a mutual fund the portfolio of which consists wholly of investments permitted by Subdivisions (1) and (2).

(g) The preconstruction trustee may withdraw money from earnings on a preconstruction trust for the purpose of paying reasonable and necessary costs of operation of the preconstruction trust, including trustee or depository fees and expenses, and any special examination fees due to the department related to an examination of the preconstruction trust that is not incidental to examination of the corporation's fund. With the department's prior approval, the corporation may withdraw money from earnings on a preconstruction trust to pay any tax incurred because of the existence of the preconstruction trust.

(h) The preconstruction trust and the preconstruction trustee are governed by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.064. CONSTRUCTION; DEFAULT. (a) The corporation shall start construction of the mausoleum or mausoleum section in which sales or reservations for sale of undeveloped mausoleum spaces are being made on or before a date that is 48 months after the date of the first of those sales or reservations and shall complete construction on or before a date that is 60 months after the date of the first of those sales or reservations. The commissioner may grant extensions for good cause shown.

(b) If construction of a mausoleum or mausoleum section related to an undeveloped mausoleum space has not begun or been completely constructed by the applicable time specified by Subsection (a), on the written request of the buyer, the corporation and the preconstruction trustee shall, on or before the 30th day after the date of the buyer's request, refund the entire amount paid for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust. The corporation is liable to a buyer for any portion of the purchase price paid for undeveloped mausoleum spaces that was not deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.065. RELEASE OF TRUST FUNDS TO CORPORATION. (a) On completion of construction of a mausoleum or mausoleum section subject to this subchapter, the corporation may withdraw all money deposited in the preconstruction trust and the net income earned on the money after submitting to the preconstruction trustee a sworn affidavit of completion executed by an officer or agent of the

corporation on a form prescribed by the department.

(b) During construction of the mausoleum or mausoleum section containing the undeveloped mausoleum spaces, the corporation may periodically withdraw from the preconstruction trust an amount equal to the previously unreimbursed cost of performed labor or delivered materials after submitting to the preconstruction trustee a sworn affidavit of expenditures for construction cost executed by an officer or agent of the corporation on a form prescribed by the department.

(c) If the corporation delivers a completed mausoleum space acceptable to the buyer in lieu of the undeveloped mausoleum space purchased, the corporation may withdraw all money deposited to the preconstruction trust for that buyer and related income earned on the money after submitting to the preconstruction trustee a sworn affidavit of performance executed by an officer or agent of the corporation on a form prescribed by the department.

(d) The corporation shall maintain copies of the affidavits required by this section for examination by the department.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.066. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped mausoleum space, whether in English or Spanish, must inform the buyer:

(1) that the buyer by written notice may cancel the contract for the failure of the corporation or its agent or contractor to construct the mausoleum or mausoleum section containing the undeveloped mausoleum space within the time limits specified by Section 712.064(a) and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b);

(2) of the options available under a fully paid contract in the event that the person to be interred in the undeveloped mausoleum space dies before completion of the related mausoleum or mausoleum

section, which may include an option to:

(A) select a replacement mausoleum space or other interment that is acceptable to the buyer or buyer's representative; or

(B) elect temporary interment of the human remains or cremated remains in an existing mausoleum space until the undeveloped mausoleum space is completed, at which time the corporation shall disinter and reinter the human remains or cremated remains at no additional charge; and

(3) if the corporation does not offer a temporary interment option and the buyer does not accept a replacement mausoleum space or other interment, that the buyer or the buyer's representative by written notice may cancel the contract and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b).

(b) A corporation's sales contract for undeveloped mausoleum space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Required notices to buyers must be written in plain language designed to be easily understood by the average consumer and be printed in an easily readable font and type size.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.067. BOND IN LIEU OF PRECONSTRUCTION TRUST. (a) In lieu of establishing the preconstruction trust required by Section 712.063, a corporation may execute and submit a bond issued by a surety company authorized to do business in this state and reasonably acceptable to the commissioner. The bond must be payable to the commissioner and conditioned on the faithful performance of the contracts for sale of undeveloped mausoleum spaces.

(b) The amount of the bond must equal or exceed 120 percent of the cost of construction of the related mausoleum or mausoleum

section. The cost of construction of the mausoleum or mausoleum section must be based on:

(1) estimates of the design architect and two or more bids for the construction from qualified contractors authorized to do business in this state;

(2) the actual cost of construction set forth in an executed contract with a qualified contractor authorized to do business in this state; or

(3) if the corporation intends to construct the mausoleum or mausoleum section itself, an amount equal to 120 percent of the estimated cost of construction, including direct and allocated labor and material costs.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has submitted a performance bond may establish a preconstruction trust that meets the requirements of Section 712.063. On acceptance of the substituted preconstruction trust by the commissioner, the corporation may terminate and withdraw the previously submitted performance bond.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.068. REPORTS. On or before the date the corporation's annual statement of funds is due as required by Section 712.041, the corporation shall cause the preconstruction trustee to file with the department, in the form prescribed by the department, a full and true statement regarding the activities of any preconstruction trust that was subject to this subchapter at any time during the preceding calendar year.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

CHAPTER 713. LOCAL REGULATION OF CEMETERIES

SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a municipality may:

(1) purchase, establish, and regulate a cemetery; and

(2) enclose and improve a cemetery owned by the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 47, eff. Sept. 1, 1993.

Sec. 713.002. LOCAL TRUST FOR CEMETERY. (a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES. (a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

(1) the depositor's name;

(2) the amount and purpose of the deposit;

(3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and

(4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.004. USE OF FUNDS. (a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.005. DEPOSIT RECORDS. (a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:

(1) the name of the depositor, listed in alphabetical order;

(2) the purpose and amount of the deposit;

(3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;

(4) the condition and status of the trust imposed; and

(5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the

deed records of that county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.006. TAX. (a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each $100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE. The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:

(1) the occasion demands the appointment; or

(2) a vacancy occurs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 310 (H.B. 2198), Sec. 1

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 855 (H.B. 2812), Sec. 1, see other Sec. 713.008.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. (a) The governing body of a municipality in a county with a population of at least 128,000 but not more than 300,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

(b) The governing body of a municipality in a county with a population of at least 40,000 but not more than 80,000 and that

contains a portion of the Angelina National Forest may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery. Termination of a trust fund under this subsection does not constitute renouncement of a trust or failure to act as its trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. 1103), Sec. 1, eff. May 23, 2009.

Acts 2019, 86th Leg., R.S., Ch. 310 (H.B. 2198), Sec. 1, eff. September 1, 2019.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 855 (H.B. 2812), Sec. 1

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 310 (H.B. 2198), Sec. 1, see other Sec. 713.008.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. (a) This section applies to the governing body of a municipality in a county with a population of:

(1) at least 128,000 but not more than 300,000; or

(2) at least 20,000 but not more than 21,000.

(b) The governing body of a municipality to which this section applies may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. 1103), Sec. 1, eff. May 23, 2009.

Acts 2019, 86th Leg., R.S., Ch. 855 (H.B. 2812), Sec. 1, eff.

September 1, 2019.

Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY. (a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and (f), a district court on petition of a resident of the county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare. The district court and the nonprofit corporation must comply with the requirements of Chapter 715 in assuming responsibility for the cemetery.

(c) In accordance with Chapter 715, a district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the municipality or corporation, as appropriate, shall present a plan to:

(1) remove or repair any fences, walls, or other improvements;

(2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and

(3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by

the records in the county clerk's office to have an interest in the cemetery, to the Texas Historical Commission, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale, except as provided by Subsection (f-1).

(f-1) A municipality that has taken possession and control of a cemetery under this section for at least 25 years may sell additional burial spaces in the cemetery if, after a public hearing, the governing body of the municipality by official action finds that:

(1) the cemetery has been consistently maintained in accordance with Section 713.011; and

(2) the sale and use of additional burial spaces in the cemetery will not endanger the public health, safety, comfort, or welfare.

(f-2) A municipality shall provide written notice of a public hearing required under Subsection (f-1). The notice must:

(1) describe the municipality's proposed action;

(2) identify the cemetery that is the subject of the hearing by name and location;

(3) be published in a newspaper of general circulation:

(A) once a week for three consecutive weeks:

(i) in a county in which the cemetery is located; or

(ii) in the absence of a newspaper in that county, in the neighboring county nearest to the cemetery that has a newspaper of general circulation; and

(B) with a final date of publication that is not less than one week and not more than two weeks before the date of the hearing; and

(4) be mailed to the Texas Historical Commission not less than one week before the date of the hearing.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

(1) a perpetual care cemetery incorporated under the laws of this state; or

(2) a private family cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 12, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 1, eff. September 1, 2023.

Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 33, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 13, eff. September 1, 2009.

Sec. 713.011. MAINTENANCE OF MUNICIPAL CEMETERIES. (a) A municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

(b) A municipality's responsibility to maintain a cemetery under this section includes:

(1) repairing and maintaining any fences, walls, buildings, roads, or other improvements;

(2) leveling or straightening markers or memorials;

(3) properly maintaining lawns, shrubbery, and other plants;

(4) removing debris, including dead flowers and

deteriorated plastic ornaments; and

(5) promptly restoring gravesites following an interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 14, eff. September 1, 2009.

Sec. 713.012. ABANDONED PLOTS IN CERTAIN CEMETERIES IN MUNICIPAL POSSESSION AND CONTROL. (a) This section applies only to a cemetery for which the governing body of a municipality by official action issues the findings described by Section 713.009(f-1).

(b) After notice provided in accordance with Subsection (c) and a public hearing, the governing body of a municipality may by official action declare a plot in a cemetery subject to this section as presumed abandoned if:

(1) the municipality does not have any record of ownership or sale of the plot;

(2) the plot has not been used for interment; and

(3) the plot is not within a family enclosure or area of plots of related persons.

(c) A municipality shall provide written notice of the public hearing required under Subsection (b) that satisfies the notice requirements described by Section 713.009(f-2).

(d) The municipality may combine the notice and hearing required under this section with the notice and hearing required under Sections 713.009(f-1) and (f-2).

(e) A municipality has the exclusive right of sepulture in an abandoned plot in a cemetery subject to this section and may convey that right in the plot.

(f) A person may rebut the presumption of abandonment by submitting to the municipality a deed, certificate of ownership, bill of sale, receipt, instrument of conveyance, or other evidence of ownership under which the person may claim the exclusive right of sepulture in the plot in accordance with Section 711.039.

Added by Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 2, eff. September 1, 2023.

Sec. 713.013. APPEAL OF FINDING OF ABANDONMENT. (a) Not later than the 10th day after the date the governing body of a municipality

declares a plot abandoned under Section 713.012, a person aggrieved by the declaration or a taxpayer residing in the municipality may file with a district court, county court, or county court at law of the county in which the cemetery is located a verified petition that states the decision is wholly or partly illegal and the grounds of the illegality.

(b) On the filing of the petition, the court may grant a writ of certiorari directed to the governing body to review the governing body's decision. The writ must require the governing body's return to be made and served on the petitioner not later than the 10th day after the date the writ is issued, unless otherwise extended by the court. Granting of the writ does not stay the proceedings on appeal, but on application and after notice to the governing body, the court may grant a restraining order.

(c) The governing body's return must be verified and concisely state any pertinent facts that show the grounds of the decision under appeal. The governing body is not required to return the original documents on which the governing body acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(d) If a court determines at the hearing that testimony is necessary for proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court makes a decision.

(e) The court may wholly or partly reverse or affirm or modify the appealed decision. The court may not assess costs against the governing body unless the court determines that the governing body acted with gross negligence, bad faith, or malice in making the decision.

Added by Acts 2023, 88th Leg., R.S., Ch. 136 (H.B. 2371), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES

Sec. 713.021. COUNTY TRUST FOR CEMETERY. A commissioners court by resolution may establish a perpetual trust fund to provide

maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY. (a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.

(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make a gift to the trust fund for maintenance of the cemetery.

(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.

(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The certificate must state:

(1) the amount and purpose of the gift; and

(2) other information determined necessary by the trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.023. USE OF FUNDS. (a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government securities.

(b) The principal of the fund must be kept intact as a permanent principal trust fund.

(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE. If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to

execute the trust.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.025. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person:

(1) has an interest in the grave or burial lot; or

(2) is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in a cemetery maintained by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 34, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 15, eff. September 1, 2009.

Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS. (a) Except as provided by Sections 713.027, 713.0271, and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 3, eff. June 7, 2019.

Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS. (a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.0271. CEMETERY OWNED BY CERTAIN COUNTIES. A county with a population of more than 800,000 that borders a county with a population of more than 3.3 million may own, operate, and maintain a cemetery.

Added by Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 1, eff. June 7, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 101, eff. September 1, 2023.

Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS. (a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to maintain a cemetery that

is at least 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

(c) At the discretion of the commissioners court, a county may permit the use of public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to open and close graves in a cemetery described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1168, Sec. 1, eff. June 15, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 853 (S.B. 951), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1187 (H.B. 129), Sec. 2, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 492 (H.B. 4179), Sec. 2, eff. June 7, 2019.

Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUNDS FOR VETERANS. (a) A commissioners court may purchase burial grounds to be used exclusively for the burial of honorably discharged persons who:

(1) have served in the United States armed forces during a war in which the United States participated; and

(2) die without leaving sufficient means to pay funeral expenses.

(b) A commissioners court may not purchase burial grounds under this section if there is a national military cemetery or other military plot in the county in which honorably discharged veterans of the United States armed forces may be buried free of charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 714. MISCELLANEOUS PROVISIONS RELATING TO CEMETERIES

Sec. 714.001. DEPTH OF GRAVES; CRIMINAL PENALTY. (a) The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is:

(1) less than two feet below the surface of the ground if

the container is not made of an impermeable material; or

(2) less than 1-1/2 feet below the surface of the ground if the container is made of an impermeable material.

(b) The governing body of a political subdivision of this state may, because of subsurface soil conditions or other relevant considerations, permit, by ordinance or rule, burials in that political subdivision at a shallower depth than that required by Subsection (a).

(c) This section does not apply to burials in a sealed surface reinforced concrete burial vault.

(d) A person commits an offense if the person buries the body of a decedent in violation of this section or in violation of an ordinance or rule adopted under this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.002. LIMITATION ON LOCATION OF FEED OR SLAUGHTER PENS NEAR CEMETERY. (a) The maintenance or location of a feed pen for hogs, cattle, or horses, a slaughter pen, or a slaughterhouse 500 feet or nearer to an established cemetery in a county with a population of at least 525,000 is a nuisance.

(b) The cemetery owner or a lot owner may bring suit to abate the nuisance and to prohibit its continuance. If a nuisance under this section exists or is threatened, the court shall grant a permanent injunction against the person responsible for the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.003. ABANDONED PLOTS IN PRIVATE CEMETERIES. (a) The ownership or right of sepulture in an unoccupied plot for which adequate perpetual care has not been provided in a private cemetery operated by a nonprofit organization reverts to the cemetery on a finding by a court that the plot is abandoned. A cemetery may convey title to any plot that has reverted to the cemetery.

(b) A plot is presumed to be abandoned if for 10 consecutive years an owner or an owner's successor in interest does not:

(1) maintain the plot in a condition consistent with other

plots in the cemetery; or

(2) pay any assessments for maintenance charged by the cemetery.

(c) An owner or an owner's successors in interest may rebut the presumption of abandonment by:

(1) delivering to the governing body or by filing with the court written notice claiming ownership of or right of sepulture in the plot; and

(2) paying the cemetery for any past due maintenance charges on the plot plus interest at the maximum legal rate.

(d) A notice for rebuttal of a presumption must be given by delivery in person or by prepaid United States mail, properly addressed. If the notice is mailed, delivery is effective on the date the envelope containing the notice is postmarked.

(e) The governing body may petition a court of competent jurisdiction for an order declaring that a plot is abandoned if, not later than the 91st day and not earlier than the 120th day before the date the petition is filed, the governing body gives written notice of its claim of the plot to the owner or, if the owner is deceased or his address is unknown, to the owner's known successors in interest. The notice must be delivered in person or by prepaid United States mail, sent to the last known address of the owner or the owner's successors in interest.

(f) If after reasonable effort the governing body cannot locate or ascertain the identity of an owner or an owner's successors in interest, the governing body must give the notice required by this section by publishing it once each week for four consecutive weeks in a newspaper of general circulation in the county in which the cemetery is located.

(g) After deducting reasonable expenses related to the reacquisition and sale of an abandoned plot, including restoration, expenses of the sale, court costs and legal fees, a cemetery shall deposit the balance of the funds from the sale of the plot into an account to be used for the care of the cemetery.

(h) This section prevails over Sections 711.035, 711.036, 711.038, 711.039, and 711.040 to the extent of any conflict.

(i) In this section:

(1) "Governing body" means the person in a nonprofit organization responsible for conducting a cemetery business.

(2) "Nonprofit organization" means an organization

described by Section 501(c)(13), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(13)).

(3) "Plot" means a grave space in a cemetery that has not been used to inter human remains.

(4) "Private cemetery" means a cemetery that is not owned or operated by the United States, this state, or a political subdivision of this state, but is owned and operated by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1124, Sec. 1, 2, eff. June 18, 1999.

Sec. 714.004. REMOVAL OF REMAINS FROM ABANDONED CEMETERY IN COUNTY OF AT LEAST 525,000. (a) If an abandoned and neglected cemetery in a county with a population of at least 525,000 for which no perpetual care and endowment fund has been regularly and legally established is abated as a nuisance, the court abating the nuisance and enjoining its continuance or the governing body of the municipality in which the cemetery is located may authorize the removal of all bodies, monuments, tombs, and other similar items from the cemetery to a perpetual care cemetery as defined by Section 711.001.

(b) If there is no perpetual care cemetery in the county that under its rules permits the interment of the bodies of the persons that are to be removed, the bodies, monuments, tombs, and other similar items may be removed to a nonperpetual care cemetery that has provided for assessments for the cemetery's future care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 715. CERTAIN HISTORIC CEMETERIES

Sec. 715.001. DEFINITIONS. In this chapter:

(1) "Burial park," "cemetery purposes," "crematory," "mausoleum," and "plot" have the meanings assigned by Section 711.001.

(2) "Cemetery" means a place that is used for interment, including a graveyard, burial park, or a mausoleum located on the grounds of a graveyard or burial park.

(3) "Nonprofit corporation" means a corporation not for

profit subject to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes).

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.002. PETITION OF NONPROFIT CORPORATION. A nonprofit corporation organized under this chapter to restore, operate, and maintain a historic cemetery may petition the district court of the county in which the cemetery is located to authorize the nonprofit corporation to restore, operate, and maintain the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.003. PARTIES TO ACTION. An action commenced under this chapter shall be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. The necessary parties to the action on which citation shall be served under Section 715.006 are:

(1) the record owners of the real property comprising the historic cemetery;

(2) the owners of plots in the cemetery, who may be designated as a class in the petition; and

(3) the Texas Historical Commission.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 40, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 4, eff. September 1, 2019.

Sec. 715.004. CONTENTS OF PETITION. (a) A petition filed by a nonprofit corporation under this chapter must contain a legal description of the real property comprising the historic cemetery and must aver to the court that:

(1) the nonprofit corporation, through its members and incorporators, has a religious, ethnic, historic, or cultural relationship to the cemetery;

(2) the cemetery was established more than 75 years before the date the action was commenced;

(3) a viable organization of plot owners of the cemetery does not exist; and

(4) the cemetery threatens or endangers the public health, safety, comfort, or welfare.

(b) The petition must be accompanied by the written plan described by Section 715.005.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.005. WRITTEN PLAN. (a) The written plan accompanying the nonprofit corporation's petition must include:

(1) a description of the actions to be taken by the nonprofit corporation to restore, operate, and maintain the historic cemetery, which must include:

(A) repair of any fences;

(B) straightening, leveling, and resetting of memorials or embellishments in the cemetery that are a threat or danger to the public health, safety, comfort, or welfare;

(C) taking proper steps to restore and continuously operate and maintain the cemetery in an orderly and decent fashion that does not endanger the public health, safety, comfort, or welfare;

(D) restoration of damaged memorials; and

(E) restoration and maintenance of cemetery elements as defined by Section 711.001;

(2) the anticipated costs of the actions described under Subdivision (1);

(3) the time that the actions described by Subdivision (1) will be commenced and the time that it is anticipated the actions will be completed;

(4) a description of the actions to be taken by the nonprofit corporation for the proper conduct of its business and for the protection of the cemetery and the principles, plans, and ideals on which the cemetery was established;

(5) the percentage of the total purchase price of each plot in the cemetery sold and conveyed by the nonprofit corporation to be deposited in the trust fund established under Section 715.011, which

must be at least 10 percent of the total purchase price of the plot; and

(6) a description of the records to be maintained by the nonprofit corporation, including records regarding:

(A) the sale of plots in the cemetery;

(B) the interments in the cemetery;

(C) the total purchase price received from the sale of each plot in the cemetery;

(D) the percentage of the total purchase price of each plot in the cemetery deposited in the trust fund established under Section 715.011; and

(E) the income received by the nonprofit corporation from the trust fund established under Section 715.011 and the manner in which the income is used by the nonprofit corporation for the maintenance and care of the cemetery.

(b) After the written plan is filed, the court may require that the nonprofit corporation modify the plan to include other matters specified by the court.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 16, eff. September 1, 2009.

Sec. 715.006. SERVICE OF CITATION. (a) Before the 31st day after the date an action is commenced by a nonprofit corporation under this chapter, the nonprofit corporation shall cause citation to be issued and served by certified mail, return receipt requested, on:

(1) the record owners of the real property comprising the cemetery at their last known addresses;

(2) the owners of plots in the cemetery at their last known addresses;

(3) the Texas Historical Commission at its office in Austin, Texas; and

(4) the county auditor of the county in which the cemetery is located.

(b) The citation must be accompanied by a copy of the petition.

(c) Except as provided by Section 17.032, Civil Practice and Remedies Code, if the address or identity of a plot owner is not

known and cannot be ascertained with reasonable diligence, service by publication shall be made on the plot owner by publishing notice on the public information Internet website maintained as required by Section 72.034, Government Code, and at least three times in a newspaper of general circulation in the county in which the cemetery is located.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 41, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 5, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 10.12, eff. June 1, 2020.

Sec. 715.007. HEARING. (a) Not later than the 90th day after the date the petition is filed, the court shall hold a hearing on the petition.

(b) Notice of the hearing shall be given by the nonprofit corporation to the parties listed in Section 715.003 not later than the 30th day before the date of the hearing.

(c) The notice shall be given in the manner prescribed by Section 715.006 for service of citation.

(d) At the hearing, each of the parties listed in Section 715.003 shall be given an opportunity to be heard by the court and to answer the petition of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.008. COURT ORDER. (a) The court shall issue an order authorizing the nonprofit corporation to restore, operate, and maintain the cemetery if the court finds that:

(1) the facts stated in the petition filed by a nonprofit corporation under this chapter are true and correct;

(2) the written plan accompanying the petition demonstrates the nonprofit corporation's ability to restore, operate, and maintain the historic cemetery in accordance with this chapter; and

(3) authorizing the nonprofit corporation to restore,

operate, and maintain the cemetery is in the best interest of the public.

(b) The written plan must be incorporated in the court's order.

(c) The court's order is binding on all parties to the action.

(d) The court retains continuing jurisdiction to monitor and review compliance with the court's order.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.009. NONPROFIT CORPORATION. (a) The members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery are the plot and property owners of the cemetery.

(b) Each plot owner may exercise the rights and privileges of a member of the nonprofit corporation without regard to whether the plot owner acquired the plot before or after the nonprofit corporation was organized.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.010. ORGANIZATIONAL MEETING. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery shall, not later than the 10th day after the date of the order of the court under Section 715.008:

(1) publish notice of the time and place of the organizational meeting of the members of the nonprofit corporation in a newspaper having general circulation in the county in which the cemetery is located or, if there is no newspaper of general circulation in the county in which the cemetery is located, in a newspaper of general circulation in an adjoining county; and

(2) post written notice of the time and place of the meeting at the cemetery.

(b) The notice published under Subsection (a)(1) must be published not later than the 30th day before the date of the meeting and repeated twice before the date of the meeting. The notice may not be published more than once a week.

(c) The written notice posted under Subsection (a)(2) must be posted not later than the 30th day before the date of the hearing and must remain posted until the date of the hearing.

(d) At the organizational meeting of the members of a nonprofit

corporation authorized to restore, operate, and maintain a historic cemetery, a majority of the members present and voting at the meeting shall elect a board of directors of the nonprofit corporation. Directors and officers are not required to be members of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.011. POWERS AND DUTIES OF NONPROFIT CORPORATION; TRUST FUND. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may divide cemetery property into lots and subdivisions for cemetery purposes and charge reasonable assessments on the property for the purposes of general improvement and maintenance of the cemetery.

(b) The nonprofit corporation may sell and convey the exclusive right of sepulture in any unsold plot in the cemetery if, before the sale and conveyance of any right of sepulture, the nonprofit corporation establishes a trust fund to provide for the perpetual maintenance of the cemetery.

(c) The county auditor of the county in which the cemetery is located shall act as the trustee of the trust fund.

(d) The nonprofit corporation shall deposit in the trust fund the amount required under the written plan incorporated in the court's order not later than the 20th day after the last day of the month in which the total purchase price of a plot has been paid in full.

(e) The nonprofit corporation shall file a monthly statement with the county auditor, signed by the president and secretary of the nonprofit corporation, that verifies that all funds required to be deposited in the trust fund during the preceding month have been deposited in the trust fund and that any income disbursed from the trust fund during the preceding month was used by the nonprofit corporation for the maintenance and care of the cemetery.

(f) The principal of a trust fund established under this section may not be reduced voluntarily, and it must remain inviolable.

(g) The trust fund and the trustee are governed by Title 9, Property Code.

(h) The trustee may receive and hold as part of the trust fund

any property contributed as a gift or grant to the trust fund for the perpetual maintenance of the historic cemetery.

(i) The income of the trust fund may be applied in the manner the directors of the nonprofit corporation determine to be for the best interest of the cemetery and may be used only for the maintenance and care of the cemetery.

(j) A district court of the county in which the historic cemetery is located shall appoint a suitable successor trustee of a trust fund established under this section if the county auditor resigns the position of trustee of the trust fund or fails to act as its trustee.

(k) The county auditor or other person who acts as the trustee of a trust fund established under this section is not civilly or criminally liable for acts performed in the good faith administration of the trust fund.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.012. CREMATORY PROHIBITED. A nonprofit corporation authorized to restore, operate, and maintain a cemetery under this chapter may not construct, establish, or maintain a crematory.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.013. ADJACENT OR CONTIGUOUS CEMETERY. A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may not acquire land for cemetery purposes that is adjacent or contiguous to the cemetery unless the adjacent or contiguous land is operated as a perpetual care cemetery under Chapter 712. The nonprofit corporation may not petition the district court of the county in which the cemetery is located to remove the dedication with respect to all or any portion of the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.014. CEMETERY OPEN TO PUBLIC. A historic cemetery restored, operated, and maintained by a nonprofit corporation under this chapter must remain open to the public.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.015. EXEMPTION. This chapter does not apply to:

(1) a perpetual care cemetery; or

(2) a family cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

CHAPTER 716. CREMATORIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 716.001. DEFINITIONS. In this chapter:

(1) "Authorizing agent" means a person authorized to dispose of a decedent's remains under Section 711.002.

(2) "Cemetery" has the meaning assigned by Section 711.001.

(3) "Commission" means the Texas Funeral Service Commission.

(4) "Cremated remains" means the recoverable human remains after the completion of the cremation process. The term may include the residue of any nonhuman matter cremated with the deceased human body including casket material, bridgework, eyeglasses, or other material.

(5) "Cremation" means the irreversible process of reducing human remains to bone fragments through direct flame, extreme heat, and evaporation. The term may include pulverization, which is the process of reducing identifiable bone fragments after cremation and processing granulated particles by manual or mechanical means.

(6) "Cremation chamber" means an enclosed retort used exclusively for cremation of human remains.

(7) "Cremation container" means a casket or other container designed to transport a deceased human body and for placement in a cremation chamber during cremation.

(8) "Cremation interment container" means a rigid outer container composed of concrete, steel, fiberglass, or similar material used for the ground burial of cremated remains that meets a cemetery's specifications.

(9) "Crematory" means a structure containing a retort used or intended to be used for cremation of human remains.

(10) "Crematory establishment" means a business that

operates a crematory for which a license is required under Subchapter N, Chapter 651, Occupations Code.

(10-a) "First responder" has the meaning assigned by Section 421.095, Government Code.

(11) "Funeral director" has the meaning assigned by Section 651.001, Occupations Code.

(12) "Funeral establishment" has the meaning assigned by Section 651.001, Occupations Code.

(13) "Scattering area" means an area designated for scattering cremated remains. The term includes dedicated cemetery property on which cremated remains may be:

(A) mixed with or placed on top of soil or ground cover; or

(B) commingled and buried in an underground receptacle.

(14) "Temporary container" means a receptacle composed of cardboard, plastic, or similar material designed to temporarily store cremated remains until the remains are placed in an urn or other permanent container.

(15) "Urn" means a container designed to permanently store cremated remains.

(16) "Veteran" means an individual who:

(A) has served in:

(i) the army, navy, air force, coast guard, or marine corps of the United States;

(ii) the state military forces as defined by Section 431.001, Government Code; or

(iii) an auxiliary service of one of those branches of the armed forces; and

(B) has been honorably discharged from the branch of the service in which the individual served.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 474 (H.B. 587), Sec. 1, eff. September 1, 2023.

Sec. 716.002. CREMATION RULES. The commission may adopt rules consistent with this chapter and Chapter 651, Occupations Code, to govern the cremation of human remains.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.003. LOCATION OF CREMATORY. (a) A crematory may be constructed on or adjacent to a perpetual care cemetery or adjacent to a funeral establishment.

(b) A crematory, other than a crematory registered with the commission on September 1, 2003, must:

(1) be adjacent to a perpetual care cemetery or funeral establishment; and

(2) be owned or operated by the person that owns or operates the perpetual care cemetery or funeral establishment.

(c) In this section, "adjacent to" means that a part of the property on which the crematory is to be constructed has a common boundary with:

(1) the perpetual care cemetery or property on which the funeral establishment is located; or

(2) a public easement, a utility easement, or a railroad right-of-way that has a common boundary with the perpetual care cemetery or property on which the funeral establishment is located.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.0035. ACCEPTANCE OF REMAINS. A crematory establishment may accept deceased human remains for refrigeration before it receives authorization to cremate the remains under Subchapter B.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 10, eff. September 1, 2009.

Sec. 716.004. WAITING PERIOD FOR CREMATION. (a) A crematory establishment may not cremate human remains within 48 hours of the time of death indicated on a death certificate unless the waiting period is waived in writing by:

(1) a justice of the peace or medical examiner of the county in which the death occurred; or

(2) a court order.

(b) A justice of the peace or medical examiner's office

authorized to grant a waiver under Subsection (a) shall adopt a written policy for requesting a waiver under Subsection (a). In adopting the written policy, the justice of the peace or medical examiner's office shall consider how a person makes a request, and how the justice of the peace or medical examiner may process the request as quickly as possible. The written policy must outline the process of making a request for a waiver under Subsection (a) during regular business hours and outside of regular business hours, including on a weekend day or holiday.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(1), eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 237 (S.B. 292), Sec. 1, eff. May 29, 2015.

Sec. 716.005. CREMATORY ESTABLISHMENT PROCEDURES. A crematory establishment may adopt procedures not inconsistent with this chapter for the management and operation of a crematory.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.006. APPLICABILITY OF CHAPTER TO OTHER LAW. This chapter may not be construed to require a funeral director to perform any act not otherwise authorized by other law.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER B. AUTHORIZATION REQUIREMENTS

Sec. 716.051. CREMATION AUTHORIZATION. Except as otherwise provided in this chapter, a crematory establishment may not cremate deceased human remains until it receives:

(1) a cremation authorization form signed by an authorizing agent; and

(2) a death certificate or other death record that indicates the deceased human remains may be cremated.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.052. CREMATION AUTHORIZATION FORM. (a) A cremation authorization form must:

(1) identify the deceased person and the time and date of death;

(2) include the name and address of the funeral director or other person that contracted to provide for the cremation;

(3) identify the authorizing agent and the relationship between the authorizing agent and the deceased person;

(4) include a statement by the authorizing agent that:

(A) the authorizing agent has the right to authorize the cremation of the deceased person and is not aware of any person with a superior or equal priority right; or

(B) if another person has an equal priority right to authorize cremation, the authorizing agent:

(i) has made all reasonable efforts but failed to contact that person and believes the person would not object to the cremation; and

(ii) agrees to indemnify and hold harmless the funeral establishment and the crematory establishment for any liability arising from performing the cremation without the person's authorization;

(5) authorize the crematory establishment to cremate the human remains;

(6) declare that to their knowledge the human remains do not contain a pacemaker or any other material or implant that may potentially be hazardous or cause damage to the cremation chamber or the person performing the cremation;

(7) include the name of the funeral establishment or other person authorized to receive the cremated remains from the crematory establishment;

(8) detail the manner of permanent disposition of the cremated remains, if known;

(9) list any items of value delivered to the crematory establishment along with the human remains and include instructions on the handling of the items;

(10) specify whether the authorizing agent has arranged for a viewing of the deceased person or service with the deceased person

present before cremation and the date and time of the viewing or service; and

(11) include the signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form.

(b) A cremation authorization form must include a written notice to the authorizing agent that:

(1) the authorizing agent assumes responsibility for the disposition of the cremated remains; and

(2) the crematory establishment may:

(A) release to the authorizing agent, in person, the cremated remains of the deceased person;

(B) ship the cremated remains to the authorizing agent if the agent authorizes shipment and provides a shipping address on the authorization form; or

(C) dispose of the cremated remains in accordance with this chapter not earlier than the 121st day following the date of cremation if the cremated remains have not been claimed by the authorizing agent.

(c) A funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains must sign the cremation authorization form.

(d) A crematory establishment shall provide a cremation authorization form to an authorizing agent on request.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.053. DELEGATION OF CREMATION AUTHORIZATION AUTHORITY. (a) An authorizing agent may delegate to a representative in writing the authority to execute a cremation authorization form.

(b) An authorizing agent's written delegation of authority must be notarized and include:

(1) the name and address of the authorizing agent and the relationship of the authorizing agent to the deceased person;

(2) the name and address of the representative; and

(3) an acknowledgment by the authorizing agent that the representative may serve as the authorizing agent and execute the cremation authorization form.

(c) A crematory establishment is not liable in a civil action

for relying on a cremation authorization form executed by a representative of the authorizing agent to whom authority is delegated in accordance with this section.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) This section applies and a cremation authorization form is not required under this chapter if:

(1) the deceased person has left written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g); and

(2) the authorizing agent refuses for any reason to sign a cremation authorization form.

(b) The crematory establishment may cremate the deceased person's human remains without receipt of a cremation authorization form signed by the authorizing agent if:

(1) cremation costs are paid; and

(2) the authorizing agent provides positive written identification that the human remains to be cremated are the human remains of the deceased person.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 11, eff. September 1, 2009.

SUBCHAPTER C. RECEIPT AND IDENTIFICATION OF REMAINS

Sec. 716.101. UNIDENTIFIED HUMAN REMAINS. (a) Except as provided by Subsection (b), a crematory establishment may not accept for cremation unidentified human remains.

(b) Notwithstanding any other provision of this chapter, a crematory establishment may accept for cremation unidentified human remains from a county on the order of:

(1) the county commissioners court; or

(2) a court located in the county.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 747 (S.B. 571), Sec. 1, eff. June 19, 2009.

Sec. 716.102. RECEIPT ACKNOWLEDGING ACCEPTANCE OF REMAINS. (a) A crematory establishment shall furnish to a representative of a funeral establishment who delivers deceased human remains to the crematory establishment a receipt that includes:

(1) the signature and printed name of the representative who delivered the remains;

(2) the date and time of the delivery;

(3) the type of cremation container in which the remains were delivered;

(4) the name of the funeral establishment or other entity that contracted to provide for the cremation;

(5) the name of the individual who received the human remains on behalf of the crematory; and

(6) the name of the deceased person.

(b) The crematory establishment shall retain a copy of the receipt required by Subsection (a) in the crematory establishment's records.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY. (a) A crematory establishment shall place on the exterior of a cremation container a label with the deceased person's name as provided by the authorizing agent unless the crematory establishment knows the name is incorrect.

(b) A crematory establishment shall place, with the cremated remains, in the temporary container, urn, or other permanent container, a permanent metal identification disc, bracelet, or other item that can be used to identify the deceased person.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 12, eff. September 1, 2009.

Sec. 716.104. IDENTIFICATION RESPONSIBILITIES OF FUNERAL DIRECTOR OR ESTABLISHMENT. (a) Except as provided by Section

716.054, a funeral director or funeral establishment shall provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053.

(b) An authorizing agent or the delegated representative of the agent may identify a deceased person in person or by photograph. The authorizing agent may waive the right of identification.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 13, eff. September 1, 2009.

SUBCHAPTER D. CREMATION PROCEDURES

Sec. 716.151. CREMATION CONTAINERS. (a) Human remains must be placed in a cremation container that:

(1) is made of combustible materials suitable for cremation;

(2) provides a complete covering of the body;

(3) is resistant to leakage or spillage;

(4) is rigid for easy handling; and

(5) protects the health and safety of crematory personnel.

(b) A crematory establishment may not remove human remains from a cremation container and must cremate the cremation container with the human remains.

(c) Except as provided by this section, a crematory establishment may not:

(1) require that deceased human remains be placed in a casket before cremation or that remains be cremated in a casket; or

(2) refuse to accept for cremation remains that have not been placed in a casket.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.152. CREMATION PROCESS. (a) A crematory establishment is not required to accept a cremation container that evidences leakage of human body fluids.

(b) A person other than a crematory establishment employee, the authorizing agent, or representatives delegated as provided by Section 716.053 and approved by the crematory establishment may not be present in a crematory area during:

(1) the cremation of deceased human remains; or

(2) the removal of the remains from the cremation chamber.

(c) Immediately before placing deceased human remains in a cremation chamber, a crematory establishment employee must verify and remove the identification label from the cremation container and place the label near the cremation chamber control panel until the cremation process is complete.

(d) To the extent practicable, the crematory establishment shall remove all recoverable cremation residue from the cremation chamber following cremation and pulverize any bone fragments to a particle size of one-eighth inch or less as necessary. The crematory establishment shall remove and dispose of any other material included with the residue.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 14, eff. September 1, 2009.

Sec. 716.153. SIMULTANEOUS CREMATION. (a) A crematory establishment may not simultaneously cremate the deceased human remains of more than one person in the same cremation chamber unless authorized in writing by the authorizing agent of each deceased person.

(b) A crematory establishment is not civilly or criminally liable for commingling human remains during cremation if each authorizing agent provides a signed written statement authorizing the simultaneous cremation.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.154. PACEMAKERS. (a) A crematory establishment may not knowingly cremate deceased human remains containing a pacemaker or other potentially hazardous implant.

(b) An authorizing agent who knows of the existence of a

pacemaker or other potentially hazardous implant in deceased human remains shall notify the funeral director and crematory establishment. The authorizing agent shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before cremation.

(c) If an authorizing agent discloses to the funeral director on the cremation authorization form the presence of a pacemaker or other potentially hazardous implant in the deceased human remains, the funeral director shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before delivering the remains to the crematory establishment.

(d) An authorizing agent or funeral director that violates Subsection (b) or (c) is liable to the crematory establishment in a civil action for any damages resulting from cremation of the remains containing the pacemaker or other potentially hazardous implant.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.155. TEMPORARY CONTAINER OR URN. (a) A crematory establishment shall place the cremated remains with proper identification in a temporary container or urn unless otherwise instructed in writing by the authorizing agent.

(b) The crematory establishment may not commingle the cremated remains with other cremated remains or include any other object or material in the temporary container or urn unless authorized in writing by the authorizing agent unless otherwise provided by this chapter.

(c) A crematory establishment shall place a label on a temporary container that:

(1) discloses the temporary container is not intended for the permanent storage of cremated remains in a niche, crypt, cremation interment container, or interment space;

(2) includes the deceased person's name; and

(3) includes the name of the crematory establishment.

(d) A crematory establishment shall release all cremated remains to an authorizing agent, a representative delegated as provided by Section 716.053, or an employee of the funeral establishment if the authorizing agent authorized the release on the authorization form. Any cremated remains that do not fit in a

temporary container or urn must be returned to the authorizing agent, representative, or employee in a separate temporary container that meets the requirements of this section.

(e) A crematory establishment may ship cremated remains only by a method with an internal tracking system that provides a receipt signed by the person accepting delivery. The outside of the container in which the cremated remains are placed for shipment must display a label that includes:

(1) the deceased person's name;

(2) the name of the crematory establishment; and

(3) a warning that the container is temporary, if a temporary container is used.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.156. RELEASE OF REMAINS. (a) A crematory establishment shall:

(1) release the cremated remains to a representative of the funeral establishment that delivered the deceased human remains to the crematory establishment;

(2) release the cremated remains to the person authorized to receive the remains on the cremation authorization form;

(3) ship the remains to the shipping address provided by the authorizing agent on the cremation authorization form not later than the 30th day following the date of cremation; or

(4) release the cremated remains according to written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g).

(b) A crematory establishment shall furnish to a person who receives the cremated remains a receipt that includes:

(1) the date and time of release;

(2) the printed name of the person who receives the cremated remains;

(3) the name of the funeral establishment or other entity who contracted to provide for the cremation;

(4) the printed name of the person who released the cremated remains on behalf of the crematory establishment; and

(5) the name of the deceased person.

(c) A crematory establishment shall retain a copy of the

receipt required by this section in the crematory establishment's records.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 15, eff. September 1, 2009.

Sec. 716.157. INCINERATION OF UNITED STATES FLAG OR STATE FLAG THROUGH CREMATION PROCESS. (a) A crematory establishment may incinerate through the cremation process and separately from human remains one or more United States flags or state flags at the request of any person, including a family member of a deceased veteran, deceased first responder, or deceased spouse or child of a veteran or first responder for the purpose of spreading the ashes on the grave or memorial site of the veteran, first responder, spouse, or child. A crematory establishment may only incinerate a flag during the week preceding and the week after the following national holidays:

(1) Memorial Day;

(2) Flag Day; and

(3) Independence Day.

(b) The commission shall adopt rules necessary to implement this section. The rules must:

(1) establish guidelines on:

(A) crematory sanitation;

(B) the release of ashes from an incinerated United States flag or state flag to the person who requested incineration of the flag; and

(C) the disposal of ashes from an incinerated flag; and

(2) ensure that incineration of the flag is in accordance with 4 U.S.C. Section 8 and Chapter 3100, Government Code, as applicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 474 (H.B. 587), Sec. 2, eff. September 1, 2023.

SUBCHAPTER E. DISPUTES AND LIABILITY

Sec. 716.201. CREMATION DISPUTE. (a) Until authorized by a valid court order, a crematory establishment, funeral establishment,

cemetery, or other person may refuse to accept deceased human remains or to perform a cremation if the crematory establishment, funeral establishment, cemetery, or person is aware of:

(1) a dispute that has not been resolved or settled concerning the cremation of the remains;

(2) a reasonable basis for questioning any representation made by the authorizing agent; or

(3) any other lawful reason for refusing to accept or cremate the remains.

(b) A crematory establishment, funeral establishment, cemetery, or other person aware of any dispute concerning the release or disposition of the cremated remains may refuse to release the remains until:

(1) the dispute has been resolved or settled; or

(2) authorized by a valid court order to release or dispose of the remains.

(c) A crematory establishment, funeral establishment, cemetery, or other person is not liable in a civil action or criminal prosecution for refusing to accept or cremate human remains in accordance with Subsection (a) or for refusing to release or dispose of or releasing or disposing of cremated remains in accordance with Subsection (b).

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.202. LIABILITY OF AUTHORIZING AGENT. An authorizing agent who signs a cremation authorization form is subject to Section 711.002(f) and attests to the truthfulness of the facts set forth in the form, including the identity of the deceased person and the agent's authority under this chapter and Section 711.002.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.203. LIABILITY OF CREMATORY ESTABLISHMENT, FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, CEMETERY, OR OTHER PERSON. (a) A crematory establishment, funeral establishment, funeral director, cemetery, or other person that contracts to provide for a cremation, accepts human remains, cremates human remains, or releases or disposes of the cremated remains as provided on a cremation

authorization form is not criminally or civilly liable for performing the actions authorized.

(b) A crematory establishment or funeral establishment is not criminally or civilly liable for disposing of cremated remains after the 120th day after the date of cremation in accordance with this chapter if:

(1) the authorizing agent did not authorize shipment of the remains or provide a shipping address on the authorization form; and

(2) the authorizing agent did not claim the remains before the 121st day following the date of cremation.

(c) A crematory establishment is not liable in a civil action or criminal prosecution for any valuables delivered with human remains if the crematory establishment exercises reasonable care in protecting the valuables.

(d) A crematory establishment, funeral establishment, funeral director, cemetery, or other person is not liable in a civil action for representations made by the authorizing agent or the agent's representative in the cremation authorization form.

(e) The commission may not initiate disciplinary action against a crematory establishment on the basis of a complaint based on the conduct of an employee, agent, or representative of the establishment that is:

(1) performed outside of the scope and authority of employment; or

(2) contrary to the written instructions of the crematory establishment.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY; WRITTEN DIRECTIONS. (a) In this section:

(1) "Cemetery organization" has the meaning assigned by Section 711.001.

(2) "Embalmer" has the meaning assigned by Section 651.001, Occupations Code.

(b) If Section 716.054(a) applies, a cemetery organization, a business operating a crematory or columbarium, a funeral director, an embalmer, or a funeral establishment is not criminally liable or liable in a civil action for:

(1) cremating the human remains of a deceased person; or
(2) carrying out the written directions of the deceased person.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 16, eff. September 1, 2009.

SUBCHAPTER F. RECORDS

Sec. 716.251. CREMATORY ESTABLISHMENT RECORDS. (a) A crematory establishment shall maintain a record at its place of business of each cremation. The record must contain:
(1) the name of the deceased person;
(2) the date of the cremation;
(3) the final disposition of the cremated remains; and
(4) any other document required by this chapter.
(b) A record must be kept on file at least until the fifth anniversary of the cremation.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER G. DISPOSITION OF REMAINS

Sec. 716.301. TRANSPORT OF CREMATED REMAINS. On delivery of the cremated remains by a crematory establishment, an authorizing agent or the representative delegated by the authorizing agent as provided by Section 716.053 may transport the remains without a permit in any manner in this state and finally dispose of the cremated remains in accordance with this subchapter.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.302. DISPOSITION OF CREMATED REMAINS. (a) An authorizing agent shall provide to a crematory establishment a signed written statement disclosing the final disposition of the cremated remains, if known. The crematory establishment shall retain a copy of the statement in the crematory establishment's records.
(b) The authorizing agent is responsible for disposing of cremated remains.
(c) Not earlier than the 121st day following the date of

cremation, if the authorizing agent or the agent's representative has not specified the final disposition of or claimed the cremated remains, the crematory establishment or funeral establishment, if the cremated remains have been released to an employee of the funeral establishment in accordance with the authorization form, may dispose of the cremated remains in accordance with this subchapter. The crematory establishment or funeral establishment, as applicable, shall retain a record of the disposition in the establishment's records.

(d) An authorizing agent is responsible for all reasonable expenses incurred in disposing of the cremated remains under Subsection (c).

(e) A person may dispose of cremated remains only:

(1) in a crypt, niche, grave, or scattering area of a dedicated cemetery;

(2) by scattering the remains over uninhabited public land, sea, or other public waterways in accordance with Section 716.304; or

(3) on private property as directed by the authorizing agent with the written consent of the property owner in accordance with Section 716.304.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.303. COMMINGLING OF REMAINS. Unless authorized in writing by the authorizing agent, a person may not:

(1) dispose of or scatter cremated remains in a manner or at a location that commingles the remains with other cremated remains, except by air over a scattering area or by sea; or

(2) place the cremated remains of more than one deceased person in the same urn or other container.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.

Sec. 716.304. SCATTERING REMAINS. A person may scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner. Unless the container is biodegradable, the cremated remains must be removed from the container before being scattered.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 17, eff. September 1, 2009.

SUBCHAPTER H. PENALTY

Sec. 716.351. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) cremates human remains without receipt of:

(A) a cremation authorization form signed by an authorizing agent; or

(B) written directions for the disposition by cremation of the deceased person's human remains as provided in Section 711.002(g);

(2) signs a cremation authorization form with actual knowledge that the form contains false or incorrect information; or

(3) represents to the public that the person may cremate human remains without being licensed as provided by Subchapter N, Chapter 651, Occupations Code.

(b) An offense under Subsection (a) is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 18, eff. September 1, 2009.

TITLE 9. SAFETY

SUBTITLE A. PUBLIC SAFETY

CHAPTER 751. MASS GATHERINGS

Sec. 751.001. SHORT TITLE. This chapter may be cited as the Texas Mass Gatherings Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.002. DEFINITIONS. In this chapter:

(1) "Mass gathering" means a gathering:

(A) that is held outside the limits of a municipality;

(B) that attracts or is expected to attract:

(i) more than 2,500 persons; or

(ii) more than 500 persons, if 51 percent or more of those persons may reasonably be expected to be younger than 21 years of age and it is planned or may reasonably be expected that alcoholic beverages will be sold, served, or consumed at or around the gathering; and

(C) at which the persons will remain:

(i) for more than five continuous hours; or

(ii) for any amount of time during the period beginning at 10 p.m. and ending at 4 a.m.

(2) "Person" means an individual, group of individuals, firm, corporation, partnership, or association.

(3) "Promote" includes organize, manage, finance, or hold.

(4) "Promoter" means a person who promotes a mass gathering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 553, Sec. 1, eff. June 18, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 692 (S.B. 270), Sec. 1, eff. June 17, 2005.

Sec. 751.0021. APPLICABILITY TO CERTAIN HORSE AND GREYHOUND RACES.

(a) This chapter applies to a horse or greyhound race that attracts or is expected to attract at least 100 persons, except that this chapter does not apply if the race is held at a location at which pari-mutuel wagering is authorized under Subtitle A-1, Title 13, Occupations Code (Texas Racing Act).

(b) This section does not legalize any activity prohibited under the Penal Code or other state law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1274 (S.B. 917), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.05, eff. April 1, 2019.

Sec. 751.003. PERMIT REQUIREMENT. A person may not promote a mass gathering without a permit issued under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.004. APPLICATION PROCEDURE. (a) At least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the county judge of the county in which the mass gathering will be held.

(b) The application must include:

(1) the promoter's name and address;

(2) a financial statement that reflects the funds being supplied to finance the mass gathering and each person supplying the funds;

(3) the name and address of the owner of the property on which the mass gathering will be held;

(4) a certified copy of the agreement between the promoter and the property owner;

(5) the location and a description of the property on which the mass gathering will be held;

(6) the dates and times that the mass gathering will be held;

(7) the maximum number of persons the promoter will allow to attend the mass gathering and the plan the promoter intends to use to limit attendance to that number;

(8) the name and address of each performer who has agreed to appear at the mass gathering and the name and address of each performer's agent;

(9) a description of each agreement between the promoter and a performer;

(10) a description of each step the promoter has taken to ensure that minimum standards of sanitation and health will be maintained during the mass gathering;

(11) a description of all preparations being made to provide traffic control, to ensure that the mass gathering will be conducted in an orderly manner, and to protect the physical safety of the persons who attend the mass gathering;

(12) a description of the preparations made to provide adequate medical and nursing care; and

(13) a description of the preparations made to supervise minors who may attend the mass gathering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.005. INVESTIGATION. (a) After a permit application is filed with the county judge, the county judge shall send a copy of the application to the county health authority, the county fire marshal or the person designated under Subsection (c), and the sheriff.

(b) The county health authority shall inquire into preparations for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county health authority shall submit to the county judge a report stating whether the health authority believes that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders will be maintained.

(c) The county fire marshal shall investigate preparations for the mass gathering. If there is no county fire marshal in that county, the commissioners court shall designate a person to act under this section. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county fire marshal or the commissioners court designee shall submit to the county judge a report stating whether the fire marshal or designee believes that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders will be maintained.

(d) The sheriff shall investigate preparations for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the sheriff shall submit to the county judge a report stating whether the sheriff believes that the minimum standards for ensuring public safety and order that are prescribed by state and local laws, rules, and orders will be maintained.

(e) The county judge may conduct any additional investigation that the judge considers necessary.

(f) The county health authority, county fire marshal or commissioners court designee, and sheriff shall be available at the hearing prescribed by Section 751.006 to give testimony relating to

their reports.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 553, Sec. 2, eff. June 18, 1999.

Sec. 751.0055. DELEGATION OF DUTIES OF COUNTY JUDGE. (a) The county judge of a county may file an order with the commissioners court of the county delegating to another county officer the duty to hear applications for a permit under this chapter. The order may provide for allowing the county officer to revoke a permit under Section 751.008.

(b) An order of a county officer acting under the delegated authority of the county judge in regard to a permit has the same effect as an order of the county judge.

(c) During the period in which the order is in effect, the county judge may withdraw the authority delegated in relation to an application and the county judge may hear the application.

(d) The county judge may at any time revoke an order delegating duties under this section.

Added by Acts 2001, 77th Leg., ch. 1, Sec. 1, effective March 26, 2001.

Sec. 751.006. HEARING. (a) Not later than the 10th day before the date on which a mass gathering will begin, the county judge shall hold a hearing on the application. The county judge shall set the date and time of the hearing.

(b) Notice of the time and place of the hearing shall be given to the promoter and to each person who has an interest in whether the permit is granted or denied.

(c) At the hearing, any person may appear and testify for or against granting the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.007. FINDINGS AND DECISION OF COUNTY JUDGE. (a) After the completion of the hearing prescribed by Section 751.006, the county judge shall enter his findings in the record and shall

either grant or deny the permit.

(b) The county judge may deny the permit if he finds that:

(1) the application contains false or misleading information or omits required information;

(2) the promoter's financial backing is insufficient to ensure that the mass gathering will be conducted in the manner stated in the application;

(3) the location selected for the mass gathering is inadequate for the purpose for which it will be used;

(4) the promoter has not made adequate preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minors attending the mass gathering;

(5) the promoter does not have assurance that scheduled performers will appear;

(6) the preparations for the mass gathering do not ensure that minimum standards of sanitation and health will be maintained;

(7) the preparations for the mass gathering do not ensure that the mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected;

(8) adequate arrangements for traffic control have not been provided; or

(9) adequate medical and nursing care will not be available.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.008. PERMIT REVOCATION. (a) The county judge may revoke a permit issued under this chapter if the county judge finds that preparations for the mass gathering will not be completed by the time the mass gathering will begin or that the permit was obtained by fraud or misrepresentation.

(b) The county judge must give notice to the promoter that the permit will be revoked at least 24 hours before the revocation. If requested by the promoter, the county judge shall hold a hearing on the revocation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.009. APPEAL. A promoter or a person affected by the

granting, denying, or revoking of a permit may appeal that action to a district court having jurisdiction in the county in which the mass gathering will be held.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1, Sec. 2, eff. March 26, 2001.

Sec. 751.010. RULES. (a) After notice and a public hearing, the executive commissioner of the Health and Human Services Commission shall adopt rules relating to minimum standards of health and sanitation to be maintained at mass gatherings.

(b) After notice and a public hearing, the Department of Public Safety shall adopt rules relating to minimum standards that must be maintained at a mass gathering to protect public safety and maintain order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1507, eff. April 2, 2015.

Sec. 751.011. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 751.003.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000, confinement in the county jail for not more than 90 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 751.012. INSPECTIONS. (a) The county health authority may inspect a mass gathering during the mass gathering to ensure that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders are being maintained. If the county health authority determines a violation of the minimum standards is occurring, the health authority may order the promoter of the mass gathering to correct the violation.

(b) The county fire marshal or the person designated under Section 751.005(c) may inspect a mass gathering during the mass

gathering to ensure that the minimum standards for ensuring public fire safety and order as prescribed by state and local laws, rules, and orders are being maintained. If the marshal or commissioners court designee determines a violation of the minimum standards is occurring, the marshal or designee may order the promoter of the mass gathering to correct the violation.

(c) The sheriff may inspect a mass gathering during the mass gathering to ensure that the minimum standards for ensuring public safety and order prescribed by state and local laws, rules, and orders are being maintained. If the sheriff determines a violation of the minimum standards is occurring, the sheriff may order the promoter of the mass gathering to correct the violation.

(d) A promoter who fails to comply with an order issued under this section commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 1999, 76th Leg., ch. 553, Sec. 3, eff. June 18, 1999.

Sec. 751.013. INSPECTION FEES. (a) A commissioners court may establish and collect a fee for an inspection performed under Section 751.012. The fee may not exceed the amount necessary to defray the costs of performing the inspections. The fee shall be deposited into the general fund of the county.

(b) A commissioners court may use money collected under this section to reimburse the county department or, if a state agency performs the inspection on behalf of the county, the state agency, the cost of performing the inspection.

Added by Acts 1999, 76th Leg., ch. 553, Sec. 3, eff. June 18, 1999.

CHAPTER 752. HIGH VOLTAGE OVERHEAD LINES

Sec. 752.001. DEFINITIONS. In this chapter:

(1) "High voltage" means more than 600 volts measured between conductors or between a conductor and the ground.

(2) "Overhead line" means a bare or insulated electrical conductor installed above ground but does not include a conductor that is de-energized and grounded or that is enclosed in a rigid metallic conduit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.002. EXEMPTION FOR CERTAIN EMPLOYEES AND ACTIVITIES. (a) This chapter does not apply to the construction, reconstruction, operation, or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment that are part of a rail transportation system, an electrical generating, transmission, or distribution system, or a communication system.

(b) In this section, "authorized person" means:

(1) an employee of a light and power company, an electric cooperative, or a municipality working on his employer's electrical system;

(2) an employee of a transportation system working on the system's electrical circuits;

(3) an employee of a communication utility;

(4) an employee of a state, county, or municipal agency that has authorized circuit construction on the poles or structures that belong to an electric power company, an electric cooperative, a municipal or transportation system, or a communication system;

(5) an employee of an industrial plant who works on the plant's electrical system; or

(6) an employee of an electrical or communications contractor who is working under the contractor's supervision.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.003. TEMPORARY CLEARANCE OF LINES. (a) A person, firm, corporation, or association responsible for temporary work or a temporary activity or function closer to a high voltage overhead line than the distances prescribed by this chapter must notify the operator of the line at least 48 hours before the work begins.

(b) A person, firm, corporation, or association may not begin the work, activity, or function under this section until the person, firm, corporation, or association responsible for the work, activity, or function and the owner or operator, or both, of the high voltage overhead line have negotiated a satisfactory mutual arrangement to provide temporary de-energization and grounding, temporary relocation

or raising of the line, or temporary mechanical barriers to separate and prevent contact between the line and the material or equipment or the person performing the work, activity, or function.

(c) The person, firm, corporation, or association responsible for the work, activity, or function shall pay the operator of the high voltage overhead line the actual expense incurred by the operator in providing the clearance prescribed in the agreement. The operator may require payment in advance and is not required to provide the clearance until the person, firm, corporation, or association responsible for the work, activity, or function makes the payment.

(d) If the actual expense of providing the clearance is less than the amount paid, the operator of the high voltage overhead line shall refund the surplus amount.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.004. RESTRICTION ON ACTIVITIES NEAR LINES. (a) Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not perform a function or activity on land, a building, a highway, or other premises if at any time it is possible that the person performing the function or activity may:

(1) move or be placed within six feet of a high voltage overhead line while performing the function or activity; or

(2) bring any part of a tool, equipment, machine, or material within six feet of a high voltage overhead line while performing the function or activity.

(b) A person, firm, corporation, or association may not require an employee to perform a function or activity prohibited by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.005. RESTRICTION ON OPERATION OF MACHINERY AND PLACEMENT OF STRUCTURES NEAR LINES. Unless a person, firm, corporation, or association effectively guards against danger by

contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not:

(1) erect, install, transport, or store all or any part of a house, building, or other structure within six feet of a high voltage overhead line;

(2) install, operate, transport, handle, or store all or any part of a tool, machine, or equipment within six feet of a high voltage overhead line; or

(3) transport, handle, or store all or any part of supplies or materials within six feet of a high voltage overhead line.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.007. CRIMINAL PENALTY. (a) A person, firm, corporation, or association or an agent or employee of a person, firm, corporation, or association commits an offense if the person, firm, corporation, association, agent, or employee violates this chapter.

(b) An offense under this section is punishable by a fine of not less than $100 or more than $1,000, confinement in jail for not more than one year, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 752.008. LIABILITY FOR DAMAGES. If a violation of this chapter results in physical or electrical contact with a high voltage overhead line, the person, firm, corporation, or association that committed the violation is liable to the owner or operator of the line for all damages to the facilities and for all liability that the owner or operator incurs as a result of the contact.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 753. FLAMMABLE LIQUIDS

Sec. 753.001. DEFINITIONS. In this chapter and in the rules adopted under this chapter:

(1) "Board" means the State Board of Insurance.

(2) "Bulk plant" means that portion of a property operated in conjunction with a retail service station where flammable liquids are received by tank vessel, tank car, or tank vehicle and are stored or blended in bulk for distribution by tank car, tank vehicle, or container.

(3) "Flammable liquid" means a liquid having a flash point below 140%A1 Fahrenheit and having a vapor pressure of not more than 40 pounds per square inch (absolute) at 100%A1 Fahrenheit. The term does not include a liquefied petroleum gas.

(4) "Mobile service unit" means a vehicle, tank truck, or other mobile device from which a flammable liquid used as motor fuel may be dispensed as an act of retail sale into the fuel tank of a motor vehicle parked on an off-street parking facility.

(5) "Person" means an individual, firm, association, corporation, or other private entity.

(6) "Retail service station" means that portion of a property where a flammable liquid used as motor fuel is stored and dispensed as an act of retail sale from fixed equipment into the fuel tank of a motor vehicle. The term does not include a marina.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 223, eff. Sept. 1, 1991.

Sec. 753.0011. TRANSFER OF POWERS AND DUTIES; REFERENCES IN CHAPTER. The powers and duties assigned to the State Board of Insurance under this chapter are transferred to the Texas Commission on Fire Protection. All references in this chapter to the State Board of Insurance mean the Texas Commission on Fire Protection.

Added by Acts 1991, 72nd Leg., ch. 628, Sec. 7, eff. Sept. 1, 1991.

Sec. 753.002. MOBILE SERVICE UNITS. (a) The board shall adopt rules for the safe movement and operation of mobile service units and the safe dispensing of flammable liquids by mobile service units.

(b) A municipality may require a license for the operation of each mobile service unit in the municipality and may charge a reasonable license fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.003. FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS. (a) The board shall administer this chapter through the state fire marshal and shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations.

(b) The rules must substantially conform to the most recent published standards of the National Fire Protection Association, including standards in effect on or after August 1, 1989, for the storage, handling, and use of flammable liquids at retail service stations.

(c) In adopting rules, the board may use recognized standards, including:

(1) standards recognized by the federal government;

(2) standards published by a nationally recognized standards-making organization; and

(3) specifications and instructions of manufacturers.

(d) This chapter or a rule adopted under this chapter does not prohibit or permit the prohibition of an unattended self-service gasoline station operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 224, eff. Sept. 1, 1991.

Sec. 753.004. STORAGE TANKS. (a) Except as provided by Subsection (d), flammable liquids may not be stored at a retail service station in a tank that has a gross capacity of more than 60 gallons above the surface of the ground. The individual or combined capacity or size of an underground flammable liquid tank at a retail service station may not be limited.

(b) A retail service station may operate in conjunction with a bulk plant that has aboveground storage tanks if:

(1) there are separate underground tanks having a capacity of not less than 550 gallons each for final storage and dispensing of flammable liquids into motor vehicle fuel tanks; and

(2) any piping that connects the bulk plant storage tanks with the retail service station's underground tanks is equipped with a valve that is within the control of the retail service station operator and that is kept closed and locked when the underground

tanks are not being filled.

(c) Each aboveground tank at a bulk plant that is operated in conjunction with a retail service station that is on the same or contiguous property must be equipped with emergency vents of the types and capacities prescribed by standards adopted under Section 753.003.

(d) Except as provided by Subsection (d-1), gasoline, diesel fuel, or kerosene may be stored in an aboveground storage tank at a retail service station located in an unincorporated area or in a municipality with a population of less than 5,000.

(d-1) A commissioners court of a county with a population of 3.3 million or more may by order limit the maximum volume of an aboveground storage tank in an unincorporated area of the county in accordance with the county fire code.

(e) Under Subsection (d), a retail service station may have a tank for each separate grade of gasoline, diesel fuel, or kerosene, but may not have more than one tank for the same grade.

(f) A new aboveground storage tank may not be constructed within:

(1) 15 feet of an adjoining property line, including the full width of the right-of-way of a public road that runs between the property on which the proposed tank site is located and an adjoining property;

(2) 15 feet of the right-of-way line of a public road that is nearest to the proposed tank site;

(3) five feet of an established place of business or other building designated by board rule;

(4) 100 feet of the property line of any established school, hospital, nursing home, day-care center, preschool, or nursery school; or

(5) 15 feet of any fuel dispenser.

(g) In adopting rules under Section 753.003, the board shall include rules concerning the design, construction, and installation of tanks permitted to be used under Subsection (d). Except as provided by Subsection (f), the rules may not be more stringent than the standards of the National Fire Protection Association.

(h) The authority of a retail service station to store flammable liquids in an aboveground storage tank under Subsection (d) is not affected by a change in the boundaries or population of a municipality that occurs after the date the retail service station

begins operation, unless prohibited by municipal ordinance. A municipal ordinance prohibiting the use of aboveground storage tanks may not take effect before the second anniversary of the date on which the ordinance was adopted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 225, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 902, Sec. 1, eff. June 16, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 388 (H.B. 239), Sec. 1, eff. June 10, 2015.

Sec. 753.005. VEHICLE REGULATIONS. The size and weight of and load carried by a vehicle used to transport or deliver flammable liquid from a point of origin to a point of destination may not be limited unless the limitation is in accordance with an applicable state motor vehicle and highway law and a municipal or county ordinance or rule in effect on September 1, 1969.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.006. UNIFORMITY AND CONFORMITY. (a) A county or municipality may not enact or enforce an ordinance or rule that is inconsistent with this chapter or the board's rules unless allowed by this chapter.

(b) If a municipality by ordinance adopted rules relating to mobile service units not later than 180 days after the board adopted rules relating to mobile service units and the rules adopted by the municipality are more restrictive than the board's rules, the rules are not invalid under Subsection (a).

(c) This chapter does not invalidate a municipal or county ordinance or rule that was in effect on September 1, 1969, and that relates to the storage of flammable liquids or relates to or prohibits mobile service units.

(d) The board rules must provide that a facility that is in service before the effective date of an applicable rule and that is not in strict conformity with the rule may continue in service if the facility does not constitute a distinct hazard to life or property. The rules may delineate the type of nonconformities that should be

considered distinctly hazardous and the nonconformities that should be evaluated in light of local conditions. The rules must provide that a person who owns a facility affected by the rules receives reasonable notice of intent to evaluate the need for compliance and the time and place at which the person may appear to offer evidence on that issue.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.007. CITATION IN ACTION FOR DECLARATORY JUDGMENT. In an action for declaratory judgment on the validity or applicability of a rule adopted by the board under this chapter, citation shall be served on the state fire marshal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 226, eff. Sept. 1, 1991.

Sec. 753.008. ENFORCEMENT. (a) The Texas Natural Resource Conservation Commission has concurrent jurisdiction with the board regarding the inspection of initial installation and other administrative supervision of aboveground tanks authorized and regulated by this chapter. The Texas Natural Resource Conservation Commission has the primary authority for inspection of initial installation of the tanks. The Texas Natural Resource Conservation Commission shall report all violations of this chapter in regard to aboveground storage tanks to the state fire marshal for enforcement proceedings.

(b) Under the board's supervision, the state fire marshal and each county fire marshal and municipal fire marshal shall enforce this chapter and the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 227, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.253, eff. Sept. 1, 1995.

Sec. 753.009. INJUNCTIVE RELIEF. (a) The board may bring suit against a person who appears to be violating or threatening to violate a rule adopted under this chapter to restrain the person from

violating or continuing to violate the rule.

(b) The suit shall be brought in the district court having jurisdiction in the county in which the violation or threat of violation occurs. At the board's request, the attorney general shall represent the board.

(c) In the suit, the court may grant the board any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.010. CIVIL PENALTY. (a) A person who violates a rule adopted under this chapter is liable to the state for a civil penalty of not more than $100 for each day the person violates the rule.

(b) The civil penalty is recoverable in a district court in:

(1) Travis County;

(2) the county in which the person resides; or

(3) the county in which the violation occurs.

(c) At the board's request, the attorney general shall institute and conduct a suit in the name of the state to recover the penalty.

(d) The civil penalty provided by this section may be in addition to or in lieu of the criminal penalty prescribed by Section 753.011.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 753.011. CRIMINAL PENALTY. (a) A person who is engaged in the business of storing, selling, or handling flammable liquids commits an offense if the person violates a rule adopted under this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day a person continues to violate a rule adopted under this chapter constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 228, eff. Sept. 1, 1991.

CHAPTER 754. ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

Sec. 754.011. DEFINITIONS. In this chapter:

(1) "Acceptance inspection" means an inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(2) "Accident" means an event involving equipment that results in death or serious bodily injury to a person.

(3) "Alteration" means a change in existing equipment. The term does not include testing, maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(4) "Annual inspection" means an inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(5) "ASCE" means the American Society of Civil Engineers.

(6) "ASCE Code 21" means the American Society of Civil Engineers Code 21 for people movers operated by cables, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(7) "ASME" means the American Society of Mechanical Engineers.

(8) "ASME Code A17.1" means the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (Bi-national standard with CSA B44-2007), ASME A17.1/CSA-B44, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(9) "ASME Code A17.3" means the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3.

(10) "ASME Code A18.1" means the American Society of Mechanical Engineers Safety Code for Platform Lifts and Stairway Chairlifts A18.1, as it existed on January 1, 2004, or any subsequent revision of that code adopted after a review by the commission, as required by law.

(11) "Board" means the elevator advisory board.

(12) "Commission" means the Texas Commission of Licensing

and Regulation.

(13) "Contractor" means a person engaged in the installation, alteration, testing, repair, or maintenance of equipment. The term does not include an employee of a contractor or a person engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable.

(14) "Department" means the Texas Department of Licensing and Regulation.

(15) "Equipment" means an elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(16) "Executive director" means the executive director of the department.

(17) "Industrial facility" means a facility to which access is primarily limited to employees or contractors working in that facility.

(18) "Inspector" means a person engaged in the inspection and witnessing of the tests specified in the adopted standards of ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, to determine compliance with those standards.

(19) "Owner" means a person, company, corporation, authority, commission, board, governmental entity, institution, or other entity that holds title to a building or facility in which equipment regulated by this chapter is located.

(20) "Qualified historic building or facility" means a building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(21) "Related equipment" means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an escalator, a chairlift, a platform lift, an automated people mover operated by cables, or a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(22) "Serious bodily injury" means a major impairment to

bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(23) "Unit of equipment" means one elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 1, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 4, eff. June 16, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 1, eff. September 1, 2013.

Sec. 754.0111. EXEMPTIONS. (a) This chapter does not apply to equipment in a private building for a labor union, trade association, private club, or charitable organization that has two or fewer floors.

(b) This chapter does not apply to an elevator located in a single-family dwelling, except as provided by Section 754.0141.

(c) This chapter does not apply to equipment located in a building owned and operated by the federal government.

(d) This chapter does not apply to equipment in an industrial facility, or in a grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited primarily to employees of or working in that facility or structure.

Added by Acts 1995, 74th Leg., ch. 974, Sec. 2, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 2, eff. September 1, 2013.

Sec. 754.0112. INSTITUTION OF HIGHER EDUCATION: EMPLOYEE

DUTIES AND INSURANCE REQUIREMENT. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) Notwithstanding any contrary provision of this chapter, this chapter does not prohibit a registered elevator inspector or registered contractor from performing an activity regulated by this chapter or the rules adopted under this chapter if the inspector or contractor is performing the activity as an employee of an institution of higher education.

(c) Notwithstanding any contrary provision of this chapter, this chapter does not prohibit a registered elevator inspector or registered contractor performing an activity described by Subsection (b) as an employee of an institution of higher education from providing written evidence of self-insurance coverage to satisfy an insurance requirement under this chapter or rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 3, eff. September 1, 2013.

Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) The elevator advisory board is composed of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) a representative of the insurance industry or a registered elevator inspector;

(2) a representative of equipment constructors;

(3) a representative of owners or managers of a building having fewer than six stories and having equipment;

(4) a representative of owners or managers of a building having six stories or more and having equipment;

(5) a representative of independent equipment maintenance companies;

(6) a representative of equipment manufacturers;

(7) a licensed or registered engineer or architect;

(8) a public member; and

(9) a public member with a physical disability.

(b) Board members serve at the will of the commission.

(c) The presiding officer of the commission, with the

commission's approval, shall appoint a presiding officer of the board to serve for two years.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(3), eff. September 1, 2021.

(e) A board member serves without compensation but is entitled to reimbursement for travel as provided for in the General Appropriations Act.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 4, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(3), eff. September 1, 2021.

Sec. 754.013. BOARD DUTIES. To protect public safety and to identify and correct potential hazards, the board shall advise the commission on:

(1) the adoption of appropriate standards for the installation, maintenance, alteration, operation, testing, and inspection of equipment;

(2) the status of equipment used by the public in this state;

(3) sources of information relating to equipment safety;

(4) public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and

(5) any other matter considered relevant by the commission.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 5, eff.

September 1, 2013.

Sec. 754.014. STANDARDS ADOPTED BY COMMISSION. (a) The commission by rule shall adopt standards for the installation, maintenance, alteration, operation, testing, removal from service, and inspection of equipment used by the public in:

(1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and

(2) buildings that contain equipment that is open to the general public, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other commercial establishment.

(b) Standards adopted under commission rules may not contain requirements in addition to the requirements in the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The standards must allow alteration of existing equipment if the alteration does not diminish the safety of the equipment below the level required by this chapter at the time of alteration.

(c) Standards adopted under commission rules must require equipment to comply with the installation requirements of the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21 that was in effect and applicable on the date of installation of the equipment.

(d) Standards adopted under commission rules must require equipment to comply with the installation requirements of the ASME Code A17.3 that contains minimum safety standards for all equipment, regardless of the date of installation.

(e) The executive director may grant a delay for compliance with the codes and adopted standards until a specified time if the executive director determines that the noncompliance does not constitute a significant threat to passenger or worker safety. The accumulated total time of all delays for a specific noncompliant condition may not exceed three years, except as determined by the executive director.

(g) The executive director may grant a waiver of compliance from an applicable code requirement if the executive director finds that:

(1) the building in which the equipment is located is a qualified historic building or facility or the noncompliance is due to structural components of the building;

(2) noncompliance will not constitute a significant threat to passenger safety; and

(3) noncompliance, with adequate alternative safeguards, will not constitute a significant threat to worker safety.

(h) The executive director shall grant a waiver of compliance if the noncompliance resulted from compliance with a municipal equipment construction code at the time of the original installation and the noncompliance does not pose imminent and significant danger.

(h-1) The executive director may grant a waiver of compliance with the firefighter's service provisions of the ASME Code A17.1 or the ASME Code A17.3 in an elevator that exclusively serves a vehicle parking garage in a building that:

(1) is used only for parking;

(2) is constructed of noncombustible materials; and

(3) is not greater than 75 feet in height.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(3), eff. September 1, 2013.

(j) One application for a waiver or delay may contain all requests related to a unit of equipment.

(k) For purposes of determining the applicable standards and codes under this chapter, the date of installation or alteration of equipment is the date that the owner of the real property entered into a contract for the installation or alteration of the equipment. If that date cannot be established, the date of installation or alteration is the date of issuance of the municipal building permit under which the equipment was installed or altered or, if a municipal building permit was not issued, the date that electrical consumption began for the construction of the building in which the equipment was installed.

(l) Standards adopted under commission rules may include and be guided by revised versions of ASME Code A17.1, ASME Code A18.1, and ASCE Code 21, as appropriate.

(m) The executive director may on application of a person and in accordance with procedures adopted under commission rules, grant a variance to allow the installation of new technology if the new component, system, subsystem, function, or device is equivalent or superior to the standards adopted under commission rules.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995;

Acts 1995, 74th Leg., ch. 974, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1268, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 2, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1181 (H.B. 3628), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 23(3), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 423 (H.B. 3741), Sec. 1, eff. June 10, 2015.

Sec. 754.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY DWELLINGS; REQUIRED INFORMATION. (a) Elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as applicable, and must be inspected by a registered elevator inspector after the installation is complete. The inspector shall provide the dwelling owner a copy of the inspection report.

(b) The commission shall adopt rules containing minimum safety standards that must be used by registered elevator inspectors when inspecting elevators, chairlifts, and platform lifts installed in single-family dwellings.

(c) A municipality may withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the inspection report to the municipality.

(d) A contractor is not required to report to the department any information concerning equipment in a single-family dwelling or the contractor's work on the equipment.

(e) On completing installation of equipment in a single-family dwelling, a contractor shall provide the dwelling owner with relevant information, in writing, about use, safety, and maintenance of the equipment, including the advisability of having the equipment periodically and timely inspected by a registered elevator inspector.

(f) An inspection by a registered elevator inspector of equipment in a single-family dwelling may be performed only at the request and with the consent of the owner. The owner of a single-family dwelling is not subject to Section 754.0231, 754.0232, 754.0233, 754.0234, or 754.0235.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 110 (S.B. 972), Sec. 1, eff. May 18, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 2, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 7, eff. September 1, 2013.

Sec. 754.015. RULES. (a) The commission by rule shall provide for:

(1) an annual inspection and certification of the equipment covered by standards adopted under this chapter;

(2) enforcement of those standards;

(3) registration, including certification, of elevator inspectors;

(4) registration of contractors;

(5) the procedures by which a certificate of compliance is issued and displayed;

(6) notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;

(7) approval of continuing education programs for registered elevator inspectors;

(8) standards of conduct for individuals who are registered under this chapter;

(9) general liability insurance written by an insurer authorized to engage in the business of insurance in this state or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code, as a condition of contractor registration with coverage of not less than:

(A) $1 million for each single occurrence of bodily

injury or death; and

(B) $500,000 for each single occurrence of property damage;

(10) the submission and review of plans for the installation or alteration of equipment;

(11) continuing education requirements for renewal of contractor registration;

(12) maintenance control programs, maintenance, repair, and parts manuals, and product-specific inspection, testing, and maintenance procedures;

(13) the method and manner of reporting accidents and reportable conditions to the department; and

(14) an owner's designation of an agent for purposes of this chapter.

(b) The commission by rule may not:

(1) require inspections of equipment to be made more often than every 12 months, except as provided by Subsection (c); or

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration, except as otherwise provided by this chapter.

(c) The commission by rule may require a reinspection or recertification of equipment if:

(1) the equipment has been altered;

(2) the equipment poses a significant threat to passenger or worker safety; or

(3) an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an elevator inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) submitting for review plans for the installation or

alteration of equipment;

(6) reviewing and approving continuing education providers and courses for renewal of elevator inspector and contractor registrations;

(7) applying for a waiver, new technology variance, or delay;

(8) attending a continuing education program sponsored by the department for registered elevator inspectors; and

(9) applying to remove equipment from service.

(e) The commission by rule may require inspection reports, other documents, and fees to be filed in a manner prescribed by the department, including electronically.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 574 (S.B. 1729), Sec. 3, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 8, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 423 (H.B. 3741), Sec. 2, eff. June 10, 2015.

Sec. 754.016. INSPECTION REPORTS AND CERTIFICATES OF COMPLIANCE. (a) Inspection reports and certificates of compliance required under this chapter must cover all equipment in a building or structure appurtenant to the building, including a parking facility, that are owned by the same person or persons.

(b) A registered elevator inspector shall issue an inspection report to the owner not later than the fifth calendar day after the date of inspection in accordance with the procedures established by commission rule.

(c) The executive director shall issue a certificate of

compliance to the owner.

(d) The commission by rule shall:

(1) require that a certificate of compliance for any equipment be posted in a publicly visible area of the building; and

(2) determine what constitutes a "publicly visible area" under Subdivision (1).

(e) The department shall prescribe the format and the required information contained in the inspection reports, the certificates of compliance, and other documents.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 10.002, eff. September 1, 2015.

Sec. 754.017. REGISTERED ELEVATOR INSPECTORS. (a) In order to inspect equipment, an individual must:

(1) be registered with the department;

(2) attend educational programs approved by the department;

(3) be certified as an inspector in accordance with the rules adopted by the commission;

(4) comply with the continuing education requirements established by commission rule for registration renewal; and

(5) pay all applicable fees.

(b) A person assisting a registered elevator inspector and working under the direct, on-site supervision of the inspector is not required to be registered.

(c) A registration expires on the first anniversary of the date of issuance.

(d) A registered elevator inspector may not inspect equipment if the inspector or the inspector's employer has a financial or personal conflict of interest or the appearance of impropriety

related to the inspection of that equipment.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 10, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 11, eff. September 1, 2013.

Sec. 754.0171. CONTRACTOR REGISTRATION. (a) A person may not install, repair, alter, test, or maintain equipment without registering as a contractor with the department as required by this chapter.

(b) A contractor shall submit an application for registration or renewal of registration, as applicable, and pay appropriate fees to the department. The registration application form shall require:

(1) information concerning the background, experience, and identity of the applicant;

(2) designation of and information regarding the responsible party or parties under Section 754.0173; and

(3) documentation of fulfillment of the continuing education requirements for renewal of registration, if applicable.

(c) A registration expires on the first anniversary of the date of issuance.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(4), eff. September 1, 2013.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 558, Sec. 23(4), eff. September 1, 2013.

(f) Installation, repair, alteration, testing, and maintenance standards for contractors must be consistent with ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 3, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 12, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 23(4), eff. September 1, 2013.

Sec. 754.0172. INSPECTION FEE. The amount charged for an inspection or the performance of an inspection of equipment under this chapter may not be contingent on the existence of a maintenance contract between the person performing the inspection and any other person.

Added by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 754.0171 and amended by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 13, eff. September 1, 2013.

Sec. 754.0173. DESIGNATION OF RESPONSIBLE PARTY OR PARTIES. (a) Each contractor who registers with the department must designate at least one but not more than two responsible parties.

(b) A responsible party designated under this section must:

(1) have a minimum of three years of elevator contractor experience related to elevator installation, repair, and maintenance; and

(2) comply with continuing education requirements as determined by commission rule in order for an elevator contractor to renew an elevator contractor registration.

(c) The commission shall adopt rules regarding documentation of the completion of the continuing education to accompany the application for registration.

(d) A responsible party may be added to or removed from the registration at any time by providing written notice to the

department. If a responsible party is added to a registration, the written notice must include evidence that the responsible party meets the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 4, eff. June 17, 2011.

Sec. 754.018. POWERS OF MUNICIPALITIES. Subject to Section 754.014(h), if a municipality operates a program for the installation, maintenance, alteration, inspection, testing, or certification of equipment, this chapter shall not apply to the equipment in that municipality, provided that the standards of installation, maintenance, alteration, inspection, testing, and certification are at least equivalent to those contained in this chapter.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 16, eff. September 1, 2013.

Sec. 754.019. DUTIES OF OWNERS. (a) The owner shall:

(1) have the equipment inspected annually by a registered elevator inspector, unless the equipment has been removed from service in accordance with commission rules;

(2) obtain an inspection report from the inspector evidencing that all equipment in a building on the real property was inspected in accordance with this chapter and rules adopted under this chapter;

(3) file with the executive director each inspection report, and all applicable fees, not later than the 30th calendar day after the date on which an inspection is made under this chapter;

(4) display the certificate of compliance for the equipment in a publicly visible area as defined by commission rule; and

(5) maintain the equipment in compliance with the standards and codes adopted under commission rules.

(b) When an inspection report is filed, the owner shall submit to the executive director, as applicable:

(1) verification that any deficiencies in the registered elevator inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into; or

(2) any application for delay or waiver of an applicable standard.

(c) For the purpose of determining timely filing under Subsection (a)(3) and Section 754.016(b), an inspection report and filing fees are considered filed on the earlier of:

(1) the date of personal delivery;

(2) the date of postmark by United States mail if properly addressed to the executive director; or

(3) the date of deposit with a commercial courier service, if properly addressed to the executive director.

(d) A fee may not be charged or collected for a certificate of compliance for an institution of higher education as defined in Section 61.003, Education Code.

(e) An owner shall report to the department each accident involving equipment not later than 24 hours following the accident.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 17, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 18, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 423 (H.B. 3741), Sec. 3, eff. June 10, 2015.

Sec. 754.020. CHIEF ELEVATOR INSPECTOR. The executive director may appoint a chief elevator inspector to administer the equipment inspection and registration program. The chief elevator inspector:

(1) may not have a financial or commercial interest in the

manufacture, maintenance, repair, inspection, installation, or sale of equipment; and

(2) must possess the certification or obtain the certification required under Section 754.017 within six months after becoming chief elevator inspector.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 10, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 19, eff. September 1, 2013.

Sec. 754.021. LIST OF REGISTERED ELEVATOR INSPECTORS AND CONTRACTORS; PERSONNEL. The executive director shall:

(1) compile a list of elevator inspectors and contractors who are registered with the department; and

(2) employ personnel who are necessary to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 65, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 865, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 816, Sec. 9.001, 26.006, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 538 (S.B. 540), Sec. 11, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 20, eff. September 1, 2013.

Sec. 754.0231. INSPECTIONS AND INVESTIGATIONS. (a) Except as provided by Subsection (b), the department may conduct an inspection or investigation of equipment regulated under this chapter in accordance with Chapter 51, Occupations Code. The department shall be granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or

investigation of the equipment.

(b) If there is good cause for the executive director to believe that equipment on the property poses an imminent and significant danger or that an accident involving equipment occurred on the property, the executive director or the executive director's designee may at any time enter the property to inspect the equipment or investigate the danger or accident. The executive director or the executive director's designee must be granted access to any location in the building that is inaccessible to the public in order to conduct a full inspection or investigation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0232. REGISTRATION PROCEEDINGS. (a) The commission or executive director may deny, suspend, or revoke a registration under this chapter and may assess an administrative penalty for:

(1) obtaining registration by fraud or false representation;

(2) falsifying a report submitted to the executive director; or

(3) violating this chapter or a rule adopted under this chapter.

(b) Proceedings for the denial, suspension, or revocation of a registration and appeals from these proceedings are governed by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0233. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general or the executive director may institute an action for injunctive relief to prevent or restrain a violation or threatened violation of this chapter or a rule adopted under this chapter.

(b) The attorney general or the executive director may institute an action to collect a civil penalty from a person that appears to be violating or threatening to violate this chapter or a rule adopted under this chapter. A civil penalty assessed under this

subsection may not exceed $5,000 per day for each violation.

(c) An action filed under this section must be filed in a district court in Travis County.

(d) The attorney general and the department may recover reasonable expenses incurred in obtaining injunctive relief or civil penalties under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0234. EMERGENCY ORDERS. (a) The executive director may issue an emergency order as necessary to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director shall issue an emergency order in accordance with Chapter 51, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.0235. ORDERS TO DISCONNECT POWER TO OR LOCK OUT EQUIPMENT. (a) An emergency order issued in accordance with Section 754.0234 may also direct an owner to disconnect power to or lock out equipment if:

(1) the department determines imminent and significant danger to passenger or worker safety exists if action is not taken immediately; or

(2) an annual inspection has not been performed in more than two years.

(b) If an emergency order to disconnect power or lock out equipment is issued, the owner may have the power reconnected or the equipment unlocked only if a registered elevator inspector or contractor or a department representative verifies in writing to the department that the imminent and significant danger has been removed by repair, replacement, or other means.

(c) If an emergency order to disconnect power or lock out equipment is issued and the owner later notifies the department that

the imminent and significant danger no longer exists, the executive director or the executive director's designee shall, after the requirements of Subsection (b) are satisfied, issue written permission to reconnect power or unlock the equipment and notify the owner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 21, eff. September 1, 2013.

Sec. 754.025. APPLICATION OF CERTAIN LAW. Sections 51.401 and 51.4041, Occupations Code, do not apply to this chapter, except those sections do apply to Sections 754.017 and 754.0171.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 9.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 935, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 558 (S.B. 673), Sec. 22, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 586 (H.B. 3742), Sec. 3, eff. September 1, 2015.

Sec. 754.026. DISCLOSURE OF E-MAIL ADDRESS. Notwithstanding any other law, an e-mail address provided to the department relating to an inspection or review of plans under this chapter is not confidential and is subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 5.001, eff. September 1, 2019.

CHAPTER 755. BOILERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 755.001. DEFINITIONS. In this chapter:

(1) "Alteration" means a substantial change in an original design.

(2) "Board" means the board of boiler rules.

(3) "Boiler" means:

(A) a heating boiler;

(B) a nuclear boiler;

(C) a power boiler;

(D) an unfired steam boiler; or

(E) a process steam generator.

(4) "Certificate inspection" means the required internal or external boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.

(5) "Certificate of operation" means a certificate issued by the executive director to allow the operation of a boiler.

(6) "Commission" means the Texas Commission of Licensing and Regulation.

(7) "Department" means the Texas Department of Licensing and Regulation.

(7-a) "Executive director" means the executive director of the department.

(8) "External inspection" means an inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(9) "Heating boiler" means a steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(10) "High-temperature water boiler" means a water boiler designed for operation at pressures exceeding 160 pounds per square inch or temperatures exceeding 250 degrees Fahrenheit.

(11) "Hot water heating boiler" means a boiler designed for operation at a pressure not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet.

(12) "Hot water supply boiler" means a boiler designed for operation at pressures not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet if the boiler's:

(A) heat input exceeds 200,000 British thermal units per hour;

(B) water temperature exceeds 210 degrees Fahrenheit; or

(C) nominal water-containing capacity exceeds 120 gallons.

(13) "Inspection agency" means an authorized inspection

agency providing inspection services.

(14) "Inspector" means the chief inspector, a deputy inspector, or an authorized inspector.

(15) "Internal inspection" means a complete and thorough inspection of the interior waterside and fireside areas of a boiler as construction allows.

(16) "Nuclear boiler" means a nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks, that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(17) "Portable boiler" means a boiler primarily intended for use at a temporary location.

(18) "Potable water heater" means a boiler designed for operation at pressures not exceeding 160 pounds per square inch and water temperatures not exceeding 210 degrees Fahrenheit if the boiler's:

(A) heat input exceeds 200,000 British thermal units per hour; or

(B) nominal water-containing capacity exceeds 120 gallons.

(19) "Power boiler" means:

(A) a high-temperature water boiler; or

(B) a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch for a purpose external to the boiler.

(20) "Process steam generator" means an evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a processing system that contains a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(21) "Repair" means the work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(22) "Safety appliance" means a safety device such as a safety valve or a safety relief valve for a boiler provided to diminish the danger of accidents.

(23) "Standard boiler" means a boiler that bears a Texas stamp, the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard

of construction equivalent to the standard required by the executive director.

(23-a) "Steam cooker" means a steam heating boiler that is:

(A) designed to steam cook food;

(B) operated at a pressure not exceeding five pounds per square inch; and

(C) equipped with a safety appliance operated at a pressure not exceeding five pounds per square inch.

(24) "Steam heating boiler" means a boiler designed for operation at pressures not exceeding 15 pounds per square inch.

(25) "Unfired steam boiler" means an unfired pressure vessel in which steam is generated. The term does not include:

(A) vessels known as evaporators or heat exchangers; or

(B) vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 229, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 352, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 5.001, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 88 (S.B. 506), Sec. 1, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 1, eff. May 29, 2017.

SUBCHAPTER B. BOARD OF BOILER RULES

Sec. 755.011. COMPOSITION OF BOARD. (a) The Board of Boiler Rules is in the department.

(b) The board is composed of the following 11 members appointed by the presiding officer of the commission, with the commission's approval:

(1) three members representing persons who own or use boilers in this state;

(2) three members representing companies that insure boilers in this state;

(3) one member representing boiler manufacturers or installers;

(4) one member representing organizations that repair or alter boilers in this state;

(5) one member representing a labor union; and

(6) two public members.

(c) All members except the members appointed under Subsection (b)(6) must have experience with boilers. To the extent possible, at least four members should be professional engineers registered in this state.

(d) The executive director serves as an ex officio board member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 18, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 816, Sec. 5.002, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 1, eff. September 1, 2009.

Sec. 755.012. TERMS. Board members serve for staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.013. PRESIDING OFFICER. The chief inspector serves as presiding officer of the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.003, eff. Sept. 1, 2003.

Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY. (a) The commission may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The presiding officer of the commission shall appoint, in the same manner as the

original appointment, a person to serve for the remainder of the unexpired term.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.004, eff. Sept. 1, 2003.

Sec. 755.015. COMPENSATION. A board member may not receive a salary but is entitled to reimbursement for actual expenses incurred in performing board duties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.017. POWERS AND DUTIES. The board shall advise the commission in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.006, eff. Sept. 1, 2003.

Sec. 755.018. MAJORITY VOTE REQUIRED. A board decision is not effective unless supported by the vote of at least five board members.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BOILER REGISTRATION AND INSPECTION

Sec. 755.021. REGISTRATION AND CERTIFICATE. Except as provided by Section 755.022, each boiler operated in this state must:

(1) be registered with the department; and

(2) have qualified for a current certificate of operation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 755.022. EXEMPTIONS FOR CERTAIN BOILERS. (a) This chapter does not apply to:

(1) boilers owned or operated by the federal government;

(2) pressure vessels or process steam generators, other than steam collection or liberation drums of process steam generators;

(3) manually fired miniature boilers that:

(A) are constructed or maintained for locomotives, boats, tractors, or stationary engines only as a hobby for exhibition, recreation, education, or historical purposes and not for commercial use;

(B) have an inside diameter of 12 inches or less or a grate area of two square feet or less; and

(C) are equipped with a safety valve of adequate size, a water level indicator, and a pressure gauge;

(4) boilers that are designed for operation only at atmospheric pressure and that are equipped with two independent means to prevent the buildup of pressure;

(5) steam cookers; or

(6) espresso machines.

(b) Heating boilers used to heat buildings that are exclusively for residential use and that have accommodations for not more than four families are exempt from Sections 755.025, 755.027, 755.029, and 755.030.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 498, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 352, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 88 (S.B. 506), Sec. 2, eff. May 18, 2013.

Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 2, eff. May 29, 2017.

Sec. 755.023. APPOINTMENT OF INSPECTORS AND OTHER PERSONNEL. (a) The executive director shall appoint a chief inspector of boilers to administer the boiler program. The chief inspector must:

(1) be a resident of this state and a citizen of the United States;

(2) have at least five years' experience in the construction, installation, inspection, operation, maintenance, or

repair of boilers; and

(3) pass a written examination that demonstrates the necessary ability to judge the safety of boilers.

(b) The chief inspector may not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or boiler appurtenances.

(c) As needed, the executive director shall appoint persons with qualifications similar to those of the chief inspector to serve as deputy inspectors.

(d) The executive director may employ clerical assistants as necessary to carry out this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.008, eff. Sept. 1, 2003.

Sec. 755.024. AUTHORIZED INSPECTORS; EXAMINATIONS. (a) To be an authorized inspector, a person must obtain a commission as a boiler inspector from the executive director and must be continuously employed by an inspection agency.

(b) The executive director, by written examination, shall determine the qualifications of an applicant for a commission to be an authorized inspector.

(c) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(d) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(e) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

(f) After proper investigation, the executive director may accept an inspection commission issued to a person by any other jurisdiction that has a written examination equal to that of this state.

(g) For good cause, the executive director may rescind a commission issued by this state.

(h) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 230, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.014(1), 26.009, eff. Sept. 1, 2003.

Sec. 755.025. INSPECTION. (a) The executive director shall require each boiler to be inspected internally and externally at the

time of initial installation and at subsequent intervals as provided by this section. The executive director may provide that the inspection be performed by any inspector.

(b) Power boilers, unfired steam boilers, and steam collection or liberation drums of process steam generators must receive an annual certificate inspection and an annual external inspection.

(c) Steam heating boilers and hot water heating boilers must receive a certificate inspection biennially.

(d) Hot water supply boilers and potable water heaters must receive a certificate inspection triennially.

(e) The commission by rule shall establish the subsequent intervals and manner of inspection for a portable boiler.

(f) The executive director shall designate the manner of inspection for nuclear boilers, the form of the inspection report, and the information to be reported. The executive director and the owner of a nuclear boiler shall establish the intervals of inspection for the boiler.

(g) The executive director may authorize the inspection of a boiler at any reasonable time if the executive director determines that the boiler may be in an unsafe condition. The executive director shall notify the inspection agency that insures that boiler and request the authorized inspector employed by that agency to participate with the chief inspector or a deputy inspector in a joint inspection of the boiler not later than the 20th day after the date on which the executive director notifies the inspection agency. An additional charge may not be made for the joint inspection.

(h) Notwithstanding any other law, an e-mail address provided to the department relating to an inspection under this chapter is not confidential and is subject to disclosure under Chapter 552, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.010, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 3, eff. May 29, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 6.001, eff. September 1, 2019.

Sec. 755.026. EXTENSIONS. (a) With the approval of the executive director and the inspection agency that has jurisdiction for the power boiler, the interval between internal inspections may be extended to a period not exceeding a total of 60 months. For unfired steam boilers or steam collection or liberation drums of process steam generators, the inspection interval may be extended to the next scheduled downtime of the boiler, but not exceeding a total of:

(1) 84 months for unfired steam boilers;

(2) 120 months for steam collection or liberation drums of process steam generators manufactured before January 1, 1970; or

(3) 144 months for steam collection or liberation drums of process steam generators manufactured on or after January 1, 1970.

(b) The interval between internal inspections of a boiler may be extended only if:

(1) continuous water treatment under competent and experienced supervision to control and limit corrosion and deposits has been in effect since its last internal inspection;

(2) the last internal and current external inspection of the boiler indicates that the interval may safely be extended; and

(3) accurate and complete records are available that show:

(A) that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not exceeding 24 hours of operation and that the water condition in the boiler is satisfactorily controlled;

(B) the dates that the boiler was out of service since the last internal inspection and the reasons that the boiler was taken out of service; and

(C) the nature of the repairs made to the boiler and the reasons that those repairs were made.

(c) In addition to an extension authorized under Subsection (a), the executive director and the inspection agency may grant an emergency extension for a period not exceeding 120 days to the inspection interval covered by the boiler's certificate of operation on receipt of a request for extension stating that an emergency exists. Before the extension may be granted, the inspection agency must make an external inspection of the boiler, and the conditions imposed under Subsection (b) must be met. The commissioner and the inspection agency may not grant more than one emergency extension under this subsection in an interval between internal inspections.

(c-1) The executive director and the inspection agency on request may grant an extension for a period not to exceed 24 months in addition to the extension authorized under Subsection (a)(2). The request must include a report issued by an engineer licensed by the Texas Board of Professional Engineers certifying:

(1) completion in accordance with industry standards of a quantitative engineering assessment for in-service equipment, repairs, and alterations prescribed by the National Board Inspection Code NB23; and

(2) based on the assessment, the steam collection or liberation drums of the process steam generator are safe to operate.

(d) If an extended period between internal inspections is approved by the executive director and the inspection agency, the executive director shall issue a new certificate of operation for the extended period of operation.

(e) If the interval between internal inspections of a gas fired boiler is extended under Subsection (a), the executive director and inspection agency shall require that an inspection of the gas regulator or pressure reducing valve that services the boiler be performed as part of the next regularly scheduled external certificate inspection of the boiler to verify proper venting of gas to a safe point of discharge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1242, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 352, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 18, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 816, Sec. 26.011, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 190 (H.B. 2228), Sec. 1, eff. September 1, 2019.

Sec. 755.027. REPORTS BY INSPECTION AGENCY; JOINT INSPECTIONS. (a) Not later than the 30th day after the date on which a certificate inspection is performed by an authorized inspector, the inspection agency employing the authorized inspector shall file a report with the executive director in the manner specified by the executive director.

(b) A boiler inspected by an authorized inspector is exempt

from other inspections and inspection fees under this chapter, other than an inspection authorized under Section 755.025(g).

(c) An inspection agency shall notify the executive director in writing of the cancellation or expiration of any insurance policy issued by that agency to cover a boiler located in this state, and shall include in the notice the reason for the cancellation or expiration. The notice must state the date the policy was issued and the date on which the cancellation or expiration takes effect.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.012, eff. Sept. 1, 2003.

Sec. 755.028. SPECIAL INSPECTIONS. The executive director may provide a special inspection service to the owners, operators, and manufacturers of boilers. The service may include surveys required for certification to construct, assemble, or repair boilers or pressure vessels.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.013, eff. Sept. 1, 2003.

Sec. 755.029. CERTIFICATE OF OPERATION. (a) The executive director shall issue to the owner or operator of a boiler a certificate of operation for the boiler if after a certificate inspection:

(1) the boiler is found to be in a safe condition for operation; and

(2) the owner or operator has paid the fees assessed under Section 755.030.

(b) The certificate of operation is valid for not longer than the interval required for certificate inspections of that boiler.

(c) A certificate of operation must be posted in a conspicuous place on or near the boiler for which it is issued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 231, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 352, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.014, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 6.002, eff. September 1, 2019.

Sec. 755.030. FEES. (a) In addition to the fees described by Section 51.202, Occupations Code, the commission may authorize the collection of fees for:

(1) boiler inspections, including fees for special inspections; and

(2) other activities administered by the boiler inspection section and authorized by rule of the commission.

(b) The commission shall consider the advice of the board in setting the amount of a fee for:

(1) a boiler inspection, including a fee for a special inspection;

(2) a certificate of operation;

(3) the administration of an examination under this chapter; or

(4) any other activity administered by the boiler inspection section.

(c) The fees, travel, and per diem collected under this chapter may be appropriated only to the department.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 474, Sec. 1, eff. June 11, 1991; Acts 2001, 77th Leg., ch. 836, Sec. 4, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.807, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 5.007, eff. Sept. 1, 2003.

Sec. 755.032. RULES. (a) The commission may adopt and enforce rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers. The commission may adopt standards for an inspection agency to be authorized by the department to provide inspections under this chapter.

(b) The executive director may exchange information, including data on experience, with other authorities that inspect boilers or their appurtenances, to obtain information necessary to adopt rules.

(c) The executive director or a department employee may not prescribe the make, brand, or kind of boilers or any appurtenances on the boiler to purchase.

(d) The executive director or a department employee may not prescribe the make, brand, or kind of boilers to purchase.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 352, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 5.008, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 574 (H.B. 3091), Sec. 1, eff. June 16, 2015.

Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The executive director shall enter into interagency agreements with the Department of State Health Services, the Texas Commission on Fire Protection, and the Texas Department of Insurance under which inspectors, marshals, or investigators from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the executive director.

(b) The executive director may enter into analogous agreements with local fire marshals.

(c) The commission shall adopt rules relating to the terms and conditions of an interagency agreement entered into under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 233, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 8, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.009, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1508, eff. April 2, 2015.

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 755.041. REGULATION OF UNSAFE BOILERS. (a) If an inspection shows that a boiler is unsafe, the chief inspector or any deputy inspector shall issue a written preliminary order requiring

repairs and alterations as necessary to make the boiler safe for use. The inspector may also order discontinuing the use of the boiler until the repairs and alterations are made or the unsafe conditions are remedied.

(b) On written request, an owner or operator who does not comply with a preliminary order is entitled to a hearing before the executive director to show cause for not enforcing the preliminary order. If, after the hearing, the executive director determines that the boiler is unsafe and that the preliminary order should be enforced, or that other acts are necessary to make the boiler safe, the executive director may order or confirm the withholding of the certificate of operation for that boiler, and may impose additional requirements as necessary for the repair or alteration of the boiler or the correction of the unsafe conditions.

(c) The chief inspector may issue a temporary certificate of operation for a period not to exceed 30 days pending the completion of the replacement or repairs.

(d) This section does not limit the executive director's authority under Section 755.028 or the commission's authority under Section 755.032.

(e) A boiler that cannot be made safe for use shall be condemned and the use of that boiler prohibited.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.010, eff. Sept. 1, 2003.

Sec. 755.042. PROSECUTION; INJUNCTION. (a) A prosecution may not be maintained if the issuance or renewal of a certificate of operation has been requested for a boiler but has not been acted on. However, the executive director may petition a district court for an injunction to restrain the operation of the boiler until the condition restraining its use is corrected and a certificate of operation is issued if the executive director determines that the operation of the boiler without a certificate of operation constitutes a serious menace to the life and safety of the persons in or about the premises. The attorney general or the district or county attorney may bring the suit, and venue is in the county in which the boiler is located or in Travis County. It is not necessary for the prosecutor to verify the pleadings or for the state to

execute a bond.

(b) The executive director's affidavit that a certificate of operation or an application for a certificate does not exist for a boiler, and the affidavit of the chief inspector or a deputy inspector that the operation of the boiler constitutes a menace to the life and safety of persons in or about the premises, are sufficient proof to warrant the immediate issuance of a temporary restraining order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 234, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 26.015, eff. Sept. 1, 2003.

Sec. 755.043. GENERAL CRIMINAL PENALTY. (a) A person, firm, or corporation commits an offense if:

(1) the person, firm, or corporation owns a boiler in this state, has the custody, management, use, or operation of a boiler in this state, or is otherwise subject to this chapter or a rule adopted under this chapter; and

(2) the person, firm, or corporation violates this chapter, a rule adopted under this chapter, or an order issued by the commission, the executive director, or a regularly employed inspector authorized to enforce this chapter and rules and orders.

(b) An offense under this section is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 235, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 816, Sec. 5.011, eff. Sept. 1, 2003.

Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE PROSECUTION. A criminal action may not be maintained against any person relating to the violation of a rule adopted or an order issued under this chapter until the commission gives notice of the rule or order.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.012, eff. Sept. 1, 2003.

Sec. 755.046. AFFIDAVIT OF ORDERS. An affidavit is admissible as evidence in any civil or criminal action involving an order adopted by the commission or the executive director and the publication of the order, without further proof of the order's issuance or publication or of the contents of the order, if the affidavit:

(1) is issued under the seal of the commission or the executive director;

(2) is executed by the commission, the executive director, the chief inspector, or a deputy inspector;

(3) states the terms of the order;

(4) states that the order was issued and published; and

(5) states that the order was in effect during the period specified by the affidavit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 5.013, eff. Sept. 1, 2003.

SUBCHAPTER E. REGULATION OF BOILERS AND FUEL GAS SYSTEMS

Sec. 755.071. RESTRICTION ON REGULATION. Notwithstanding any other law, a state agency or political subdivision may not restrict the use or installation of a specific fuel gas pipe product that is approved for use and installation by the International Fuel Gas Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 4, eff. May 29, 2017.

Sec. 755.072. CONFLICT OF LAW. To the extent of a conflict between this subchapter and another law, this subchapter controls.

Added by Acts 2017, 85th Leg., R.S., Ch. 284 (H.B. 3257), Sec. 4, eff. May 29, 2017.

CHAPTER 756. MISCELLANEOUS HAZARDOUS CONDITIONS

SUBCHAPTER A. COVERING WELLS, CISTERNS, AND HOLES

Sec. 756.001. COVERING LARGE WELL OR CISTERN; CRIMINAL PENALTY. (a) The owner or operator of a well or cistern that is at least 10 feet deep and not less than 10 inches nor more than six feet

in diameter shall keep it entirely covered at all times except when the owner or operator is actually using the well or cistern.

(b) The cover required by this section must be capable of sustaining at least 200 pounds of weight.

(c) A person commits an offense if the person fails to cover a well or cistern as required by this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 or more than $500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.002. COVERING OR PLUGGING SMALL WELL OR HOLE; CRIMINAL PENALTY. (a) A person who drills, digs, or otherwise creates or causes to be drilled, dug, or otherwise created a well or hole that is at least 10 feet deep and less than 10 inches in diameter may not abandon the hole unless the person first:

(1) completely fills the well or hole from its total depth to the surface; or

(2) plugs the well or hole with a permanent plug not less than 10 feet from the surface and completely fills the well or hole from the plug to the surface.

(b) A person commits an offense if the person abandons a well or hole in violation of this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 or more than $500.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. REFRIGERATORS AND OTHER CONTAINERS

Sec. 756.011. TYPES OF REFRIGERATORS AND CONTAINERS COVERED. This subchapter applies only to a refrigerator, ice box, or other airtight or semi-airtight container that has:

(1) a capacity of at least 1-1/2 cubic feet;

(2) an opening of at least 50 square inches; and

(3) a door or lid equipped with a latch or other fastening device capable of securing the door or lid shut.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.012. LEAVING REFRIGERATOR OR CONTAINER ACCESSIBLE TO CHILDREN. (a) A person may not place a container described by Section 756.011 outside of a structure or in a warehouse, storage room, or unoccupied or abandoned structure so that the container is accessible to children.

(b) A person may not permit a container described by Section 756.011 to remain in an area specified by Subsection (a) so that the container is accessible to children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 756.013. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 756.012.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $5 or more than $200.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. TRENCH SAFETY

Sec. 756.021. DEFINITION. In this subchapter, "trench" has the meaning assigned by the standards adopted by the Occupational Safety and Health Administration.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991.

Sec. 756.022. TRENCH EXCAVATION IN STATE. (a) The bid documents, if bids are used, and the contract for a construction project in this state on which a contractor is employed and that includes a trench excavation exceeding a depth of five feet must include:

(1) a reference to the Occupational Safety and Health Administration standards for trench safety that will be in effect during the period of construction of the project;

(2) a copy of special shoring requirements, if any, of the state or of a political subdivision in which the construction project is located, with a separate pay item for the special shoring

requirements;

(3) a copy of any geotechnical information that was obtained by the owner for use in the design of the trench safety system; and

(4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench excavation safety protection must be based on the linear feet of trench excavated. The separate pay item for special shoring requirements, if any, of the state or of any political subdivision in which the construction project is located must be based on the square feet of shoring used.

(c) A municipality may adopt an ordinance that requires the refusal of a building permit to a person who fails to certify in writing that the requirement of Subsection (a) has been satisfied. A municipality, in lieu of or in addition to the written certification, may require an applicant for a building permit to produce for inspection or file with the municipality a copy of a contract that complies with Subsection (a) as a condition of issuance of a building permit.

(d) This section does not apply to a contract:

(1) governed by Section 756.023;

(2) governed by Subtitle D, Title 10, Government Code; or

(3) entered into by a person subject to the safety standards adopted under and the administrative penalty provisions of Subchapter E, Chapter 121, Utilities Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from Health & Safety Code Sec. 756.021 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.31, eff. Sept. 1, 1999.

Sec. 756.023. TRENCH EXCAVATION FOR POLITICAL SUBDIVISION. (a) On a project for a political subdivision of the state in which trench excavation will exceed a depth of five feet, the bid documents provided to all bidders and the contract must include:

(1) a reference to the Occupational Safety and Health Administration standards for trench safety in effect during the period of construction of the project;

(2) a copy of special shoring requirements, if any, of the political subdivision, with a separate pay item for the special shoring requirements;

(3) a copy of any geotechnical information that was obtained by the owner for use by the contractor in the design of the trench safety system; and

(4) a separate pay item for trench excavation safety protection.

(b) The separate pay item for trench excavation safety protection must be based on the linear feet of trench excavated. The separate pay item for special shoring requirements, if any, of the political subdivision must be based on the square feet of shoring used.

(c) A political subdivision may require a bidder to attend a prebid conference to coordinate a geotechnical investigation of the project site by bidders. In awarding a contract, a political subdivision may not consider a bid from a bidder who failed to attend a required prebid conference.

(d) This section does not apply to a person subject to the safety standards adopted under and the administrative penalty provisions of Subchapter E, Chapter 121, Utilities Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Redesignated from Health & Safety Code Sec. 756.022 and amended by Acts 1991, 72nd Leg., ch. 14, Sec. 237, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.32, eff. Sept. 1, 1999.

SUBCHAPTER D. OUTDOOR SHOOTING RANGES

Sec. 756.041. DEFINITION. In this subchapter, "outdoor shooting range" means an outdoor shooting range, outdoor firing range, or other open property on which persons may fire a weapon for a fee or other remuneration but does not include a deer lease or other similar leases of property for the purpose of hunting or an archery range.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.0411. APPLICABILITY. This subchapter applies only to an outdoor shooting range located in a county with a population of

more than 150,000.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.042. CONSTRUCTION STANDARDS. The owner of an outdoor shooting range shall construct and maintain the range according to standards that are at least as stringent as the standards printed in the National Rifle Association range manual.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.043. CIVIL PENALTY. (a) The owner of an outdoor shooting range who fails to comply with Section 756.042 is liable within 60 days after a finding of noncompliance for a civil penalty of $50 for each day of noncompliance; the aggregate amount not to exceed $500.

(b) The attorney general or the appropriate district attorney, criminal district attorney, or county attorney shall recover the civil penalty in a suit on behalf of the state. If the attorney general brings the suit, the penalty shall be deposited in the state treasury to the credit of the general revenue fund. If another attorney brings the suit, the penalty shall be deposited in the general fund of the county in which the violation occurred.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.044. CRIMINAL PENALTIES. (a) The owner of an outdoor shooting range commits an offense if the owner intentionally or recklessly fails to comply with Section 756.042 and that failure results in injury to another person.

(b) An offense under this section is a Class C misdemeanor, except that if it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

Sec. 756.045. INSURANCE REQUIRED. (a) The owner of an outdoor shooting range shall purchase and maintain an insurance policy that provides coverage of at least $500,000 for bodily injuries or death and another policy that provides that level of coverage for property damage resulting from firing any weapon while on the shooting range.

(b) The owner of an outdoor shooting range shall prominently display a sign at the shooting range stating that the owner has purchased insurance to cover bodily injury, death, or property damage occurring from activities at the shooting range.

Added by Acts 1991, 72nd Leg., ch. 310, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER E. PUBLICLY FUNDED PLAYGROUNDS

Sec. 756.061. COMPLIANCE WITH SAFETY STANDARDS. (a) Notwithstanding any other rule or statute, and except as provided by Subsection (b), on or after September 1, 2009, public funds may not be used:

(1) to purchase playground equipment that:

(A) does not comply with each applicable provision of ASTM Standard F1487-07ae1, "Consumer Safety Performance Specification for Playground Equipment for Public Use" published by ASTM International; or

(B) has a horizontal bare metal platform or a bare metal step or slide, unless the bare metal is shielded from direct sun by a covering provided with the equipment or by a shaded area in the location where the equipment is installed;

(2) to purchase surfacing for the area under and around playground equipment if the surfacing will not comply, on completion of installation of the surfacing, with each applicable provision of ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing" published by ASTM International; or

(3) to pay for installation of playground equipment or surfacing if the installation will not comply, on completion of the installation, with each applicable provision of the specifications described by Subdivision (1) or (2), as applicable.

(b) Public funds may be used for maintenance of playground equipment or surfacing for the area under and around playground equipment that was purchased before September 1, 2009, even if the equipment or surfacing does not comply, on completion of the

maintenance, with each applicable provision of the specifications described by Subsections (a)(1) and (a)(2).

(c) This section:

(1) does not create, increase, decrease, or otherwise affect a person's liability for damages for injury, death, or other harm caused by playground equipment, surfacing, or the installation of the equipment or surfacing; and

(2) is not a waiver of sovereign immunity of any governmental entity.

Added by Acts 1995, 74th Leg., ch. 896, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1009 (H.B. 4127), Sec. 1, eff. September 1, 2009.

SUBCHAPTER F. SECURITY BARS

Sec. 756.081. DEFINITIONS. In this chapter:

(1) "Bedroom" means an area of a dwelling intended as sleeping quarters.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(113), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(113), eff. April 2, 2015.

(4) "Residential dwelling" includes a single-family home, a duplex, a triplex, an apartment, a motel or hotel, and a mobile home.

(5) "Security bars" means burglar bars or other bars located on the inside or outside of a door or window of a residential dwelling.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(113), eff. April 2, 2015.

Sec. 756.082. SECURITY BARS ON RESIDENTIAL DWELLING. A person may not install security bars on a door or window of a bedroom in a residential dwelling unless:

(1) the security bars on at least one door or window in the bedroom have an interior release mechanism; or

(2) at least one window or door from the bedroom to the exterior may be opened for emergency escape or rescue.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Sec. 756.083. LABELING REQUIREMENT. (a) Except as provided by Subsection (b), a person may not sell security bars or offer security bars for sale in this state unless the security bars or their packaging are labeled in accordance with rules adopted by the state fire marshal. The required label must state the requirements of Section 756.082.

(b) A person who is not regularly and actively engaged in business as a wholesale or retail dealer may sell or offer to sell security bars in this state provided that proper written notice of the requirements of Section 756.082 is provided to the buyer in a form approved by the state fire marshal.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

Sec. 756.084. RECOMMENDED RELEASE MECHANISM. (a) The state fire marshal or a testing laboratory under conditions and procedures approved by the state fire marshal may recommend an interior release mechanism that has been shown to be effective.

(b) The state fire marshal shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 1522, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. MUNICIPAL LANDSCAPING SERVICES

Sec. 756.101. AUTHORIZATION. To protect the public health, safety, or welfare, a municipality may provide landscaping services, including tree-trimming, tree disposal, remediation, cleanup, and recycling services, to any person who resides or business that operates inside or outside the corporate limits of the municipality only if the governing body of the municipality makes written findings as required by Section 756.102.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.102. FINDINGS REQUIRED. The written findings must:

(1) identify the problem requiring the need for providing municipal landscaping services;

(2) identify the public health, safety, or welfare concern;

(3) describe any reasonable actions previously taken to alleviate the problem; and

(4) specify a period of definite duration necessary to address the problem.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

Sec. 756.103. EXCEPTION. The limitations and requirements of this subchapter do not apply to a municipality in times of emergency, catastrophe, or other calamity.

Added by Acts 2003, 78th Leg., ch. 340, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER H. CONSTRUCTION AFFECTING PIPELINE EASEMENTS AND RIGHTS-OF-WAY

Sec. 756.121. DEFINITIONS. In this subchapter:

(1) "Construction" means a building, structure, driveway, roadway, or other construction any part of which is physically located on, across, over, or under the easement or right-of-way of a pipeline facility or that physically impacts or creates a risk to a pipeline facility.

(2) "Constructor" means a person that builds, operates, repairs, replaces, or maintains a construction or causes a construction to be built, operated, repaired, maintained, or replaced.

(3) "Pipeline facility" means a pipeline used to transmit or distribute natural gas or to gather or transmit oil, gas, or the products of oil or gas.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.
Renumbered from Health and Safety Code, Section 756.101 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1,

2005.

Sec. 756.122. APPLICABILITY. (a) This subchapter applies to a construction or the repair, replacement, or maintenance of a construction unless there is a written agreement, including a Texas Department of Transportation right-of-way agreement, to the contrary between the owner or operator of the affected pipeline facility and the person that places or causes a construction to be placed on the easement or right-of-way of a pipeline facility.

(b) This subchapter does not apply to:

(1) construction done by a municipality on property owned by the municipality, unless the construction is for private commercial use; or

(2) construction or repair, replacement, or maintenance of construction on property owned by a navigation district or port authority created or operating under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.
Renumbered from Health and Safety Code, Section 756.102 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.123. PROHIBITION OF CONSTRUCTION WITHOUT NOTICE. A person may not build, repair, replace, or maintain a construction on, across, over, or under the easement or right-of-way for a pipeline facility unless notice of the construction is given the operator of the pipeline facility and:

(1) the operator of the pipeline facility determines that the construction will not increase a risk to the public or increase a risk of a break, leak, rupture, or other damage to the pipeline facility;

(2) if the operator of the pipeline facility determines that the construction will increase risk to the public or the pipeline facility, the constructor pays the reasonable, necessary, and documented cost of the additional fortifications, barriers, conduits, or other changes or improvements necessary to protect the

public or pipeline facility from that risk before proceeding with the construction;

(3) the building, repair, replacement, or maintenance is conducted under an existing written agreement; or

(4) the building, repair, replacement, or maintenance is required to be done promptly by a regulated utility company because of the effects of a natural disaster.

Added by Acts 2003, 78th Leg., ch. 1082, Sec. 2(a), eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.
Renumbered from Health and Safety Code, Section 756.103 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(53), eff. September 1, 2005.

Sec. 756.124. CIVIL LIABILITY. A constuctor who violates this subchapter is liable to the owner or operator of a pipeline facility for damages to the facility proximately caused by the violation, including any liability the owner or operator of the pipeline facility incurs as a result of the violation. This section does not affect the right of a surface owner to recover for any damages to the owner's property.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Sec. 756.125. INJUNCTIVE RELIEF. (a) A suit for injunctive relief to prevent or abate the violation of this subchapter may be brought by the county attorney for the county in which the pipeline facility is located, by the attorney general, or by the owner or operator of the pipeline facility.

(b) The court in which the suit is brought may grant any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 2, eff. September 1, 2005.

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Railroad Commission of Texas shall adopt and enforce rules prescribing safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

Added by Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 19, eff. June 18, 2005.
Renumbered from Health and Safety Code, Section 756.106 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(49), eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 8, eff. September 1, 2017.

CHAPTER 757. POOL YARD ENCLOSURES

Sec. 757.001. DEFINITIONS. In this chapter:

(1) "Self-closing and self-latching device" means a device that causes a gate to automatically close without human or electrical power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(2) "Doorknob lock" means a lock that is in a doorknob and that is operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(3) "Dwelling" or "rental dwelling" means one or more rooms rented to one or more tenants for use as a permanent residence under a lease. The term does not include a room rented to overnight guests.

(4) "French doors" means double doors, sometimes called double-hinged patio doors, that provide access from a dwelling interior to the exterior and in which each of the two doors are hinged and closable so that the edge of one door closes immediately adjacent to the edge of the other door with no partition between the

doors. "French door" means either one of the two doors.

(5) "Keyed dead bolt" means a door lock that is not in the doorknob, that locks by a bolt in the doorjamb, that has a bolt with at least a one-inch throw if installed after September 1, 1993, and that is operated from the exterior by a key, card, or combination and operated from the interior by a knob or lever without a key, card, or combination. The term includes a doorknob lock that contains a bolt with at least a one-inch throw.

(6)(A) "Keyless bolting device" means a door lock not in the doorknob that locks:

(i) with a bolt with a one-inch throw into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

(ii) by a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint which protrudes from the doorjamb and which is affixed to the doorjamb frame by means of three case-hardened screws at least three inches in length. One half of the central plate must overlap the interior surface of the door and the other half of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door; or

(iii) by a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three inches in length and must be screwed into the door frame stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the door frame stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(B) The term does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded nightlatch, foot bolt, or other lock or latch.

(7) "Multiunit rental complex" means two or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium project. The term does not include:

(A) a facility primarily renting rooms to overnight guests; or

(B) a single-family home or adjacent single-family homes that are not part of a condominium project.

(8) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over 18 inches deep, located at ground level, above ground, below ground, or indoors.

(9) "Pool yard" means an area that contains a pool.

(10) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool.

(11) "Property owners association" means an association of property owners for a residential subdivision, condominium, cooperative, town home project, or other project involving residential dwellings.

(12) "Sliding door handle latch" means a latch or lock that is near the handle on a sliding glass door, that is operated with or without a key, and that is designed to prevent the door from being opened.

(13) "Sliding door pin lock" means a pin or rod that is inserted from the interior side of a sliding glass door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(14) "Sliding door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the sliding panel of the door from being opened.

(15) "Tenant" means a person who is obligated to pay rent or other consideration and who is authorized to occupy a dwelling, to the exclusion of others, under a verbal or written lease or rental agreement.

(16) "Window latch" means a device on a window or window screen that prevents the window or window screen from being opened

and that is operated without a key and only from the interior.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.002. APPLICATION. This chapter applies only to:

(1) a pool owned, controlled, or maintained by the owner of a multiunit rental complex or by a property owners association; and

(2) doors and windows of rental dwellings opening into the pool yard of a multiunit rental complex or condominium, cooperative, or town home project.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.003. ENCLOSURE FOR POOL YARD. (a) Except as otherwise provided by Section 757.005, the owner of a multiunit rental complex with a pool or a property owners association that owns, controls, or maintains a pool shall completely enclose the pool yard with a pool yard enclosure.

(b) The height of the pool yard enclosure must be at least 48 inches as measured from the ground on the side away from the pool.

(c) Openings under the pool yard enclosure may not allow a sphere four inches in diameter to pass under the pool yard enclosure.

(d) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least 45 inches, the openings may not allow a sphere four inches in diameter to pass through the enclosure.

(e) If the pool yard enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is less than 45 inches, the openings may not allow a sphere 1-3/4 inches in diameter to pass through the enclosure.

(f) The use of chain link fencing materials is prohibited entirely for a new pool yard enclosure that is constructed after January 1, 1994. The use of diagonal fencing members that are lower than 49 inches above the ground is prohibited for a new pool yard enclosure that is constructed after January 1, 1994.

(g) Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than 1-3/4 inches in any direction.

(h) Indentations or protrusions in a solid pool yard enclosure

without any openings may not be greater than normal construction tolerances and tooled masonry joints on the side away from the pool.

(i) Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.

(j) The wall of a building may be part of the pool yard enclosure only if the doors and windows in the wall comply with Sections 757.006 and 757.007.

(k) The owner of a multiunit rental complex with a pool or a property owners association that owns, controls, or maintains a pool is not required to:

(1) build a pool yard enclosure at specified locations or distances from the pool other than distances for minimum walkways around the pool; or

(2) conform secondary pool yard enclosures, located inside or outside the primary pool yard enclosure, to the requirements of this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.004. GATES. (a) Except as otherwise provided by Section 757.005, a gate in a fence or wall enclosing a pool yard as required by Section 757.003 must:

(1) have a self-closing and self-latching device;

(2) have hardware enabling it to be locked, at the option of whoever controls the gate, by a padlock or a built-in lock operated by key, card, or combination; and

(3) open outward away from the pool yard.

(b) Except as otherwise provided by Subsection (c) and Section 757.005, a gate latch must be installed so that it is at least 60 inches above the ground, except that it may be installed lower if:

(1) the latch is installed on the pool yard side of the gate only and is at least three inches below the top of the gate; and

(2) the gate or enclosure has no opening greater than one-half inch in any direction within 18 inches from the latch, including the space between the gate and the gate post to which the gate latches.

(c) A gate latch may be located 42 inches or higher above the

ground if the gate cannot be opened except by key, card, or combination on both sides of the gate.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.005. EXISTING POOL YARD ENCLOSURES. (a) If a pool yard enclosure is constructed or modified before January 1, 1994, and no municipal ordinance containing standards for pool yard enclosures were applicable at the time of construction or modification, the enclosure must comply with the requirements of Sections 757.003 and 757.004, except that:

(1) if the enclosure is constructed with chain link metal fencing material, the openings in the enclosure may not allow a sphere 2-1/4 inches in diameter to pass through the enclosure; or

(2) if the enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least 36 inches, the openings in the enclosure may not allow a sphere four inches in diameter to pass through the enclosure.

(b) If a pool yard enclosure is constructed or modified before January 1, 1994, and if the enclosure is in compliance with applicable municipal ordinances existing on January 1, 1994, and containing standards for pool yard enclosures, Sections 757.003, 757.004(a)(3), and 757.004(b) do not apply to the enclosure.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.006. DOOR. (a) A door, sliding glass door, or French door may not open directly into a pool yard if the date of electrical service for initial construction of the building or pool is on or after January 1, 1994.

(b) A door, sliding glass door, or French door may open directly into a pool yard if the date of electrical service for initial construction of the building or pool is before January 1, 1994, and the pool yard enclosure complies with Subsection (c), (d), or (e), as applicable.

(c) If a door of a building, other than a sliding glass door or screen door, opens into the pool yard, the door must have a:

(1) latch that automatically engages when the door is closed;

(2) spring-loaded door-hinge pin, automatic door closer, or similar device to cause the door to close automatically; and

(3) keyless bolting device that is installed not less than 36 inches or more than 48 inches above the interior floor.

(d) If French doors of a building open to the pool yard, one of the French doors must comply with Subsection (c)(1) and the other door must have:

(1) a keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door, and a keyless bolting device capable of insertion into the floor or threshold; or

(2) a bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the doorjamb above the door and another bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the floor or threshold.

(e) If a sliding glass door of a building opens into the pool yard, the sliding glass door must have:

(1) a sliding door handle latch or sliding door security bar that is installed not more than 48 inches above the interior floor; and

(2) a sliding door pin lock that is installed not more than 48 inches above the interior floor.

(f) A door, sliding glass door, or French door that opens into a pool yard from an area of a building that is not used by residents and that has no access to an area outside the pool yard is not required to have a lock, latch, dead bolt, or keyless bolting device.

(g) A keyed dead bolt, keyless bolting device, sliding door pin lock, or sliding door security bar installed before September 1, 1993, may be installed not more than 54 inches from the floor.

(h) A keyed dead bolt or keyless dead bolt, as described by Section 757.001(6)(A)(i), installed in a dwelling on or after September 1, 1993, must have a bolt with a throw of not less than one inch.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.007. WINDOW AND WINDOW SCREENS. A wall of a building constructed before January 1, 1994, may not be used as part of a pool

yard enclosure unless each window in the wall has a latch and unless each window screen on a window in the wall is affixed by a window screen latch, screws, or similar means. This section does not require the installation of window screens. A wall of a building constructed on or after January 1, 1994, may not be used as part of a pool yard enclosure unless each ground floor window in the wall is permanently closed and unable to be opened.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.008. BUILDING IN POOL YARD. Each door, sliding glass door, window, and window screen of each dwelling unit in a residential building located in the enclosed pool yard must comply with Sections 757.006 and 757.007.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.009. INSPECTION, REPAIR, AND MAINTENANCE. (a) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise ordinary and reasonable care to inspect, maintain, repair, and keep in good working order the pool yard enclosures, gates, and self-closing and self-latching devices required by this chapter and within the control of the owner or property owners association.

(b) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise ordinary and reasonable care to maintain, repair, and keep in good working order the window latches, sliding door handle latches, sliding door pin locks, and sliding door security bars required by this chapter and within the control of the owner or property owners association after request or notice from the tenant that those devices are malfunctioning or in need of repair or replacement. A request or notice under this subsection may be given orally unless a written lease applicable to the tenant or written rules governing the property owners association require the request or notice to be in writing. The requirement in the lease or rules

must be in capital letters and underlined or in 10-point boldfaced print.

(c) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall inspect the pool yard enclosures, gates, and self-closing and self-latching devices on gates no less than once every 31 days.

(d) An owner's or property owners association's duty of inspection, repair, and maintenance under this section may not be waived under any circumstances and may not be enlarged except by written agreement with a tenant or occupant of a multiunit rental complex or a member of a property owners association or as may be otherwise allowed by this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.010. COMPLIANCE WITH CHAPTER. (a) Except as provided by Subsection (b) and Section 757.011, a person who constructs or modifies a pool yard enclosure to conform with this chapter may not be required to construct the enclosure differently by a local governmental entity, common law, or any other law.

(b) An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool may, at the person's option, exceed the standards of this chapter or those adopted under Section 757.011. A tenant or occupant in a multiunit rental complex and a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

(c) A municipality may continue to require greater overall height requirements for pool yard enclosures if the requirements exist under the municipality's ordinances on January 1, 1994.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1509, eff. April 2, 2015.

Sec. 757.011. RULEMAKING AUTHORITY. The executive commissioner

of the Health and Human Services Commission may adopt rules requiring standards for design and construction of pool yard enclosures that exceed the requirements of this chapter and that apply to all pools and pool yards subject to this chapter. An owner of a multiunit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall comply with and shall be liable for failure to comply with those rules to the same extent as if they were part of this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1510, eff. April 2, 2015.

Sec. 757.012. ENFORCEMENT. (a) A tenant of an owner of a multiunit rental complex, a member of a property owners association, a governmental entity, or any other person or the person's representative may maintain an action against the owner or property owners association for failure to comply with the requirements of this chapter. In that action, the person may obtain:

(1) a court order directing the owner or property owners association to comply with this chapter;

(2) a judgment against the owner or property owners association for actual damages resulting from the failure to comply with the requirements of this chapter;

(3) a judgment against the owner or property owners association for punitive damages resulting from the failure to comply with the requirements of this chapter if the actual damages to the person were caused by the owner's or property owners association's intentional, malicious, or grossly negligent actions;

(4) a judgment against the owner or property owners association for actual damages, and if appropriate, punitive damages, where the owner or association was in compliance with this chapter at the time of the pool-related damaging event but was consciously indifferent to access being repeatedly gained to the pool yard by unauthorized persons; or

(5) a judgment against the owner or property owners association for a civil penalty of not more than $5,000 if the owner

or property owners association fails to comply with this chapter within a reasonable time after written notice by a tenant of the multiunit rental complex or a member of the property owners association.

(b) A court may award reasonable attorney fees and costs to the prevailing party in an action brought under Subsection (a)(5).

(c) The attorney general, a local health department, a municipality, or a county having jurisdiction may enforce this chapter by any lawful means, including inspections, permits, fees, civil fines, criminal prosecutions, injunctions, and, after required notice, governmental construction or repair of pool yard enclosures that do not exist or that do not comply with this chapter.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.013. TENANT'S REQUEST FOR REPAIRS. A tenant in a multiunit rental complex with a pool may verbally request repair of a keyed dead bolt, keyless bolting device, sliding door latch, sliding door pin lock, sliding door security bar, window latch, or window screen latch unless a provision of a written lease executed by the tenant requires that the request be made in writing and the provision is in capital letters and underlined or in 10-point boldfaced print. A request for repair may be given to the owner or the owner's managing agent.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.014. APPLICATION TO OTHER BODIES OF WATER AND RELATED FACILITIES. The owner of a multiunit rental complex or a property owners association is not required to enclose a body of water or construct barriers between the owner's or property owners association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.015. EFFECT ON OTHER LAWS. (a) The duties established by this chapter for an owner of a multiunit dwelling project, an owner of a dwelling in a condominium, cooperative, or town home project, and a property owners association supersede those established by common law, the Property Code, the Health and Safety Code, the Local Government Code other than Section 214.101, and local ordinances relating to duties to inspect, install, repair, or maintain:

(1) pool yard enclosures;

(2) pool yard enclosure gates and gate latches, including self-closing and self-latching devices;

(3) keyed dead bolts, keyless bolting devices, sliding door handle latches, sliding door security bars, self-latching and self-closing devices, and sliding door pin locks on doors that open into a pool yard area and that are owned and controlled by the owner or property owners association; and

(4) latches on windows that open into a pool yard area and that are owned and controlled by the owner or property owners association.

(b) This chapter does not affect any duties of a rental dwelling owner, lessor, sublessor, management company, or managing agent under Subchapter D, Chapter 92, Property Code.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.016. NONEXCLUSIVE REMEDIES. The remedies contained in this chapter are not exclusive and are not intended to affect existing remedies allowed by law or other procedure.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

Sec. 757.017. INTERPRETATION AND APPLICATION. The provisions of this chapter shall be liberally construed to promote its underlying purpose which is to prevent swimming pool deaths and injuries in this state.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 2, eff. Jan. 1, 1994.

CHAPTER 758. BICYCLE SAFETY

Sec. 758.001. DEFINITIONS. In this chapter:

(1) "Bicycle" means a human-powered vehicle with two wheels in tandem designed to transport by a pedaling action of a person seated on a saddle seat.

(2) "Department" means the Department of Public Safety.

(3) "Operator" means a person who travels by pedaling on a bicycle seated on a saddle seat.

(4) "Other public right-of-way" means any right-of-way, other than a public roadway or public bicycle path, that is accessible by the public and designed for use by vehicular or pedestrian traffic.

(5) "Public bicycle path" means a right-of-way under the jurisdiction and control of this state or a local political subdivision for use primarily by bicycles or by bicycles and pedestrians.

(6) "Public roadway" means a right-of-way under the jurisdiction and control of this state or a local political subdivision for use primarily by motor vehicles.

(7) "Tricycle" means a three-wheeled human-powered vehicle that is designed to have a seat no more than two feet from the ground and be used as a toy by a child younger than six years of age.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994. Renumbered from Health & Safety Code Sec. 757.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

Sec. 758.002. BICYCLE SAFETY EDUCATION PROGRAM. (a) The department may establish and administer a statewide bicycle safety education program and may adopt rules to implement the program. The program must include instruction concerning:

(1) the safe handling and use of bicycles;

(2) high risk traffic situations;

(3) bicycle and traffic handling skills;

(4) on-bike training;

(5) correct use of bicycle helmets; and

(6) traffic laws and regulations.

(b) The department may issue a certificate or other evidence of completion to a person who has successfully completed a bicycle

education course.

(c) Subject to the establishment of a bicycle education program by the department, a person born after December 31, 1985, who resides in a metropolitan statistical area as defined by the United States Office of Management and Budget may complete a bicycle education course approved by the department before operating a bicycle on a public roadway, public bicycle path, or other public right-of-way. The course may be completed before the person's 10th birthday.

(d) The department may charge a fee for the course not to exceed $15.

(e) The department may:

(1) determine the qualifications for an instructor in the bicycle education program;

(2) use volunteer instructors; and

(3) certify organizations to recruit and train instructors for the program.

(f) In administering this section, the department may contract with an educational institution, state agency, local government, or nonprofit organization interested in bicycle education.

(g) The department may accept gifts, grants, and donations to be used in administering this section.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994. Renumbered from Health & Safety Code Sec. 757.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

Sec. 758.003. FUND. (a) A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the bicycle safety fund. The department by rule may establish a procedure to allow an educational institution, state agency, local government, or nonprofit organization interested in bicycle safety to retain an amount from the fees collected to cover actual and necessary expenses.

(b) The fund may be used by the department only to:

(1) defray the costs of administering this chapter;

(2) provide a bicycle training course for a child younger than 10 years of age who comes from a low income family; and

(3) if funding permits, assist children from low income families in purchasing bicycle helmets.

Added by Acts 1993, 73rd Leg., ch. 801, Sec. 1, eff. Jan. 1, 1994. Renumbered from Health & Safety Code Sec. 757.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(34), eff. Sept. 1, 1995.

CHAPTER 759. ROLLER-SKATING CENTERS

Sec. 759.001. DEFINITIONS. In this chapter:

(1) "Operator" means a person who owns, controls, or has operational responsibility for a roller-skating center.

(2) "Roller-skating center" means a facility or a portion of a facility that is specifically designed for roller skating by the public.

(3) "Spectator" means an individual who is present in a roller-skating center only to observe skating activity, regardless of whether the skating activity is recreational or competitive.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.002. DUTIES OF OPERATOR. An operator shall:

(1) provide at least one individual to act as a floor guard for approximately every 200 skaters;

(2) require each floor guard to:

(A) wear attire that identifies the individual as a floor guard;

(B) be on duty at all times while skating is allowed;

(C) direct and supervise skaters and spectators; and

(D) watch for foreign objects that may have fallen on the floor;

(3) inspect and maintain in good condition the roller-skating surface and the railings, kickboards, and walls surrounding the roller-skating surface;

(4) inspect and maintain in good mechanical condition roller-skating equipment that the operator leases or rents to roller skaters;

(5) comply with the Roller-Skating Rink Safety Standards, 1980 edition, published by the Roller Skating Rink Operators Association of America;

(6) post the duties of roller skaters and spectators prescribed by this chapter in conspicuous places in the roller-skating center; and

(7) maintain the stability and legibility of all required signs, symbols, and posted notices.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.003. DUTIES OF ROLLER SKATERS. (a) A roller skater:

(1) shall comply with each posted sign or warning that relates to the behavior and responsibility of the roller skater in the roller-skating center;

(2) shall obey instructions given by the operator, floor guard, or other roller-skating center personnel;

(3) shall maintain reasonable control over the speed and direction of the roller skater's skating at all times;

(4) shall be reasonably aware of other roller skaters or objects in the roller-skating center to avoid colliding with other roller skaters or objects;

(5) shall know the roller skater's ability to control the intended direction of skating and shall skate within the limits of that ability; and

(6) may not act in a manner that may cause injury to others.

(b) The conduct of a child shall be evaluated based on the child's experience, intelligence, capacity, and age to determine if the child violated this section or Section 757.004.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.004. DUTY OF SPECTATOR. A spectator shall comply with each posted sign or warning that relates to the behavior of the spectator in the roller-skating center.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993.

Renumbered from Health & Safety Code Sec. 757.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

Sec. 759.005. LIABILITY. (a) The liability of an operator is limited to those injuries or damages proximately caused by a breach of the operator's duties prescribed by Section 757.002.

(b) The determination of the percentage of responsibility for an injury or damage shall be made according to Chapter 33, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 909, Sec. 1, eff. Sept. 1, 1993. Renumbered from Health & Safety Code Sec. 757.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(35), eff. Sept. 1, 1995.

CHAPTER 760. ICE SKATING CENTERS

Sec. 760.001. DEFINITIONS. In this chapter:

(1) "Ice skating center" means that portion of a facility that is designed for ice skating by the public.

(2) "Operator" means a person who owns, controls, or has operational responsibility for an ice skating center.

(3) "Spectator" means an individual who is present in an ice skating center only to observe ice skating, regardless of whether the skating is recreational or competitive.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.002. DUTIES OF OPERATOR. An operator shall:

(1) provide at least one individual to act as a rink monitor for approximately every 200 ice skaters at any time public skating is allowed;

(2) require a rink monitor to:

(A) wear attire that identifies the individual as a rink monitor;

(B) direct and supervise skaters and spectators; and

(C) watch for and remove in a timely fashion all foreign objects that may have fallen on the ice skating surface;

(3) inspect and maintain in good condition the ice skating surface and the floors, railings, boards, and walls surrounding the

ice skating surface;

(4) inspect and maintain in good mechanical condition ice skating equipment that the operator leases or rents to ice skaters;

(5) comply with the risk management guidelines for ice skating rinks endorsed by the board of directors of the Ice Skating Institute of America on August 27, 1996;

(6) post the duties of ice skaters and spectators prescribed by this chapter in conspicuous places in the ice skating center;

(7) maintain the stability and legibility of all required signs, symbols, and posted notices; and

(8) maintain liability insurance of at least $500,000 combined single limits for personal injury, death, or property damage.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.003. DUTIES OF ICE SKATERS. (a) An ice skater shall:

(1) comply with each posted sign or warning that relates to the behavior and responsibility of the ice skater in the ice skating center;

(2) obey instructions given by the operator, rink monitor, or other ice skating center personnel;

(3) maintain reasonable control over the speed and direction of the ice skater's skating at all times;

(4) be reasonably aware of other ice skaters or objects in the ice skating center to avoid colliding with other ice skaters or objects; and

(5) know the ice skater's ability to control the intended direction of skating and skate within the limits of that ability.

(b) An ice skater may not act in a manner that may cause injury to others.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.004. DUTY OF SPECTATOR. A spectator shall comply with each posted sign or warning that relates to the behavior of the spectator in the ice skating center.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.005. DUTY OF CHILD. In determining whether the conduct of a child violates Section 760.003 or 760.004, the conduct shall be evaluated based on the child's experience, intelligence, capacity, and age.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

Sec. 760.006. LIABILITY. (a) Except for actions against an operator for gross negligence, malice, or intentional conduct, an operator is not liable in negligence for damages for personal injury, property damage, or death unless the personal injury, property damage, or death is caused by a breach of a duty prescribed in Section 760.002.

(b) Chapter 33, Civil Practice and Remedies Code, applies to an action brought against an operator.

Added by Acts 1997, 75th Leg., ch. 141, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 765. CRIMINAL HISTORY RECORD INFORMATION CHECKS OF EMPLOYEES OF RESIDENTIAL DWELLING PROJECTS

Sec. 765.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Public Safety.

(2) "Dwelling" means one or more rooms rented for residential purposes to one or more tenants.

(3) "Employer" means a person who employs employees to work at a residential dwelling project.

(4) "Employee" means an individual who performs services for compensation at a residential dwelling project and who is employed by the entity that owns the project or represents the owner in managing or leasing dwellings in the project. The term does not include an independent contractor.

(5) "Occupant" means an individual who resides in a dwelling in a residential dwelling project, other than:

(A) a tenant of the dwelling; or

(B) the owner or manager of the dwelling.

(6) "Residential dwelling project" means a house,

condominium, apartment building, duplex, or similar facility that is used as a dwelling or a facility that provides lodging to guests for compensation including a hotel, motel, inn, bed and breakfast facility, or similar facility. The term does not include a nursing home or other related institution regulated under Chapter 242.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.001 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.002. APPLICATION OF CHAPTER; EXCEPTION. (a) This chapter applies to each applicant for a position of employment in a residential dwelling project to whom an offer of employment is made and who, in the course and scope of the employment, may be reasonably required to have access to a dwelling in the residential dwelling project.

(b) This chapter does not apply to a person employed by an occupant or tenant of a dwelling in a residential dwelling project.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.002 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.003. VERIFICATION OF CRIMINAL HISTORY RECORD INFORMATION. (a) An employer may request an applicant to disclose to the employer the applicant's criminal history at any time before or after an offer of employment is made to the applicant. After an offer of employment is made, the employer may verify through the department any criminal history record information that is maintained by the department relating to that applicant and that the department is authorized to release under Chapter 411, Government Code. The employer may verify the information only with the authorization of the applicant and in compliance with this section.

(b) The department may adopt rules or apply rules adopted under Section 411.086, Government Code, regarding the method of requesting information under this chapter.

(c) The department may adopt rules relating to an employer's

access to criminal history record information, including requirements for submission of:

(1) the employer's complete name, current street address, and federal employer identification number;

(2) an affidavit by an authorized representative of the employer that the individual whose criminal history is requested has been offered a position of employment by the employer in a residential dwelling project and that, in the course and scope of the employment, the individual may be reasonably required to have access to a dwelling in the residential dwelling project; and

(3) the complete name, date of birth, social security number, and current street address of the individual signing the affidavit.

(d) An affidavit submitted under Subsection (c) must include a statement, executed by the individual offered the position of employment, that authorizes the employer to obtain the criminal history record of the individual.

(e) The department may not provide an employer with the criminal history record information of an applicant under this chapter unless the employer is entitled to receive the information under Section 411.118, Government Code.

(f) This chapter does not require an employer to obtain criminal history record information under this chapter.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(57), eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.003 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.004. PRIVILEGE. Criminal history record information received by an employer under this chapter is privileged and is for the exclusive use of the employer. The employer may disclose the information to an authorized officer, employee, or agent of the employer only for the purpose of making a determination regarding the suitability of an individual for employment. Otherwise, an employer, or any individual to whom the employer may have disclosed information, may not release or otherwise disclose the information received under this chapter to any person or governmental entity

except on court order or with the written consent of the individual being investigated.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.004 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.005. PENALTY. An individual who is an officer, employee, or agent of an employer and who knowingly or intentionally violates Section 765.004 or submits false information to the department commits an offense. An offense under this section is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1194, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.005 and amended by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.006. EFFECT OF SUBMISSION OF FALSE INFORMATION. An employer may terminate the employment of an individual who, at the time of the individual's application for employment or after the individual has been employed by the employer, submits false information relating to the individual's criminal history.

Added by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from V.T.C.A, Human Resources Code Sec. 135.006 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

Sec. 765.007. OTHER INFORMATION. This chapter does not prevent an employer from asking an applicant for employment or an employee to provide other information if the request for that information is not otherwise prohibited by law.

Added by Acts 1993, 73rd Leg., ch. 694, Sec. 1, eff. Sept. 1, 1993. Renumbered from Human Resources Code Sec. 135.007 by Acts 1997, 75th Leg., ch. 572, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 766. FIRE SAFETY IN RESIDENTIAL DWELLINGS

SUBCHAPTER A. SMOKE DETECTORS AND FIRE SAFETY INFORMATION

Sec. 766.001. DEFINITIONS. In this chapter:

(1) "Carbon monoxide alarm" means a device that detects and sounds an alarm to indicate the presence of a harmful level of carbon monoxide gas.

(2) "Department" means the Texas Department of Insurance.

(3) "Fossil fuel" includes coal, kerosene, oil, wood, fuel gases, and other petroleum or hydrocarbon products.

(4) "One-family or two-family dwelling" means a structure that has one or two residential units that are occupied as, or designed or intended for occupancy as, a residence by individuals.

(5) "Smoke detector" means a device or a listed component of a system that detects and sounds an alarm to indicate the presence of visible or invisible products of combustion in the air.

(6) "Smoke detector for hearing-impaired persons" has the meaning assigned by Section 792.001.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.002. SMOKE DETECTOR REQUIREMENT. (a) Each one-family or two-family dwelling constructed in this state must have working smoke detectors installed in the dwelling in accordance with the smoke detector requirements of the building code in effect in the political subdivision in which the dwelling is located, including performance, location, and power source requirements.

(b) If a one-family or two-family dwelling does not comply with the smoke detector requirements of the building code in effect in the political subdivision in which the dwelling is located, any home improvement to the dwelling that requires the issuance of a building permit must include the installation of smoke detectors in accordance with the building code in effect in the political subdivision in which the dwelling is located, including performance, location, and power source requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.0021. SMOKE DETECTOR FOR HEARING-IMPAIRED PERSONS. (a) A purchaser under a written contract for the sale of a one-family or two-family dwelling may require the seller to install smoke detectors for hearing-impaired persons if:

(1) the purchaser or a member of the purchaser's family who will reside in the dwelling is a hearing-impaired person;

(2) the purchaser provides written evidence of the hearing impairment signed by a licensed physician; and

(3) not later than the 10th day after the effective date of the contract, the purchaser requests in writing that the seller install smoke detectors for hearing-impaired persons and specifies the locations in the dwelling where the smoke detectors are to be installed.

(b) If the seller is required to install smoke detectors for hearing-impaired persons under Subsection (a), the seller and purchaser may agree:

(1) which party will bear the cost of installing the smoke detectors; and

(2) which brand of smoke detectors to install.

(c) The seller must install the smoke detectors not later than the closing date of the sale of the dwelling.

(d) A purchaser may terminate the contract to purchase the dwelling if the seller fails to install smoke detectors for hearing-impaired persons as required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.0025. FRATERNITY AND SORORITY HOUSES. (a) In this section, "fraternity or sorority house" means a dwelling that:

(1) is a separate structure and that is not a multiunit residential property composed of multiple independent residential units; and

(2) serves as living quarters for members of a fraternity or sorority.

(b) The owner of a fraternity or sorority house must have working smoke detectors installed in the fraternity house or sorority house in accordance with the smoke detector requirements of the building code in effect in the political subdivision in which the

fraternity or sorority house is located, including performance, location, and power source requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

Sec. 766.003. INFORMATION RELATING TO FIRE SAFETY AND CARBON MONOXIDE DANGERS. (a) The department shall prepare information of public interest relating to:

(1) fire safety in the home; and

(2) the dangers of carbon monoxide.

(b) The information must inform the public about:

(1) ways to prevent fires in the home, and actions to take if a fire occurs in the home;

(2) the need to test smoke detectors every month to ensure the smoke detector is working;

(3) replacing the battery in a battery-operated smoke detector every six months;

(4) the need to have fire safety equipment in the home, including fire extinguishers and emergency escape ladders;

(5) the need to develop and practice a fire escape plan;

(6) the availability of carbon monoxide detectors;

(7) using carbon monoxide alarms as a backup to prevent carbon monoxide poisoning; and

(8) the need to properly use and maintain fossil fuel-burning appliances.

(c) The department shall distribute the information described by this section to the public in any manner the department determines is cost-effective, including providing the information on the department's Internet website and publishing informational pamphlets.

Added by Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 10, eff. September 1, 2007.

SUBCHAPTER B. FIRE PROTECTION SPRINKLER SYSTEMS IN CERTAIN RESIDENTIAL HIGH-RISE BUILDINGS IN CERTAIN COUNTIES

Sec. 766.051. DEFINITIONS. In this subchapter:

(1) "Fire protection sprinkler system" means an assembly of underground or overhead piping or conduits that conveys water with or

without other agents to dispersal openings or devices to:

(A) extinguish, control, or contain fire; and

(B) provide protection from exposure to fire or the products of combustion.

(2) "Residential high-rise building" means a building used primarily for a residential purpose and that extends 75 feet or more from the ground.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

Sec. 766.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a residential high-rise building:

(1) that is located in a county with a population of more than 1.5 million in which more than 70 percent of the population resides in a single municipality;

(2) in which at least 50 percent of the residents are elderly individuals, individuals with a disability, or individuals with a mobility impairment; and

(3) that is not designated as a historically or archaeologically significant site by the Texas Historical Commission or the governing body of the county or municipality in which the building is located.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 102, eff. September 1, 2023.

Sec. 766.053. FIRE PROTECTION SPRINKLER SYSTEMS REQUIRED; STANDARD. (a) A residential high-rise building must be equipped with a complete fire protection sprinkler system that is in good working order and is in compliance with this section.

(b) The governing body of a municipality in which a residential high-rise building subject to this subchapter is located or, if the building is not located in a municipality, the commissioners court of the county in which the building is located shall adopt a standard for the installation of fire protection sprinkler systems in a

residential high-rise building.

(c) The standard adopted must be in compliance with National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems. Until the governing body of the municipality or commissioners court of the county, as applicable, adopts a standard as required by this section, the standard is the Standard for the Installation of Sprinkler Systems of the National Fire Protection Association, as that standard existed on September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

For expiration of this section, see Subsection (i).

Sec. 766.054. PHASE-IN COMPLIANCE FOR OWNERS OF CERTAIN RESIDENTIAL HIGH-RISE BUILDINGS. (a) This section applies only to an owner of a residential high-rise building built before September 1, 2015.

(b) Not later than September 1, 2018, an owner of a residential high-rise building shall provide notice of the owner's intent to comply with this subchapter to:

(1) if the building is located in a municipality, the appropriate code official of the municipality in which the building is located; or

(2) if the building is not located in a municipality, the county clerk of the county in which the building is located.

(c) Not later than September 1, 2021, the owner of a residential high-rise building shall install a water supply on all floors of the building in accordance with National Fire Protection Association 13: Standard for the Installation of Sprinkler Systems.

(d) Not later than September 1, 2024, the owner of a residential high-rise building shall install a fire protection sprinkler system in accordance with this subchapter on at least 50 percent of the floors of the building.

(e) Not later than September 1, 2027, the owner of a residential high-rise building shall install a fire protection sprinkler system in accordance with this subchapter on all floors of the building.

(f) Notwithstanding Subsections (b), (c), (d), and (e), an owner of multiple residential high-rise buildings built before

September 1, 2015, is considered to have met the requirements of this section if a fire protection sprinkler system is installed on all floors of:

(1) at least 33 percent of the owner's residential high-rise buildings not later than September 1, 2021;

(2) at least 66 percent of the owner's residential high-rise buildings not later than September 1, 2024; and

(3) all of the owner's residential high-rise buildings not later than September 1, 2027.

(g) If a residential high-rise building is a condominium as defined by Section 81.002 or 82.003, Property Code, the apartment or unit owners of the condominium may comply with this subchapter by acting jointly through the council of owners or unit owners' association, as applicable, of the condominium.

(h) For purposes of Sections 766.055 and 766.056, a residential high-rise building is in compliance with this subchapter if the owner of the building has met the requirements of this section.

(i) This section expires September 1, 2028.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

Sec. 766.055. INJUNCTION. (a) The attorney general, the county attorney of a county in which a residential high-rise building is located, or the district attorney of a county in which the building is located may bring an action in the name of the state for an injunction to enforce this subchapter against the owner or person in charge of a residential high-rise building not in compliance with this subchapter.

(b) The action must be brought in the district court of the county in which the residential high-rise building is located.

(c) The attorney general, county attorney of the county in which the residential high-rise building is located, or district attorney of the county in which the building is located, as applicable, shall give the owner or person in charge of the building notice of the time and place of a hearing for an action brought under this section not later than the 10th day before the date of the hearing.

(d) A district judge may issue a mandatory injunction against

the owner or person in charge of a residential high-rise building not in compliance with this subchapter to enforce this subchapter. Violation of an injunction issued under this section constitutes contempt of court and is punishable in the manner provided for contempt.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

Sec. 766.056. CRIMINAL PENALTY. (a) A person commits an offense if the person is the owner of a residential high-rise building that is not in compliance with this subchapter.

(b) A person commits an offense if the person serves as an agent for an owner who is not a resident of this state in the care, management, supervision, control, or rental of a residential high-rise building not in compliance with this subchapter.

(c) An offense under this section is punishable by a fine of not more than $10,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 871 (H.B. 3089), Sec. 2, eff. September 1, 2015.

CHAPTER 768. CHILDREN PARTICIPATING IN RODEOS

Sec. 768.001. DEFINITIONS. In this chapter:

(1) "Bull riding helmet" means a rodeo helmet that is designed to provide substantial protection for a person's head and face during bull riding.

(2) "Child" means a person under 18 years of age.

(3) "Department" means the Department of State Health Services.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Protective vest" means protective clothing that covers a person's chest and torso to prevent or mitigate injury to those areas.

(6) "Rodeo" means an exhibition or competition, without regard to whether the participants are compensated, involving activities related to cowboy skills, including:

(A) riding a horse, with or without a saddle, with the

goal of remaining on the horse while it attempts to throw off the rider;

(B) riding a bull;

(C) roping an animal, including roping as part of a team;

(D) wrestling a steer; and

(E) riding a horse in a pattern around preset barrels or other obstacles.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.002. PROTECTIVE GEAR REQUIRED FOR CHILDREN ENGAGING IN CERTAIN RODEO ACTIVITIES. (a) A child may not engage in, and a parent or legal guardian of the child may not knowingly or recklessly permit the child to engage in, bull riding, including engaging in bull riding outside a rodeo for the purpose of practicing bull riding, unless the child is wearing a bull riding helmet and a protective vest.

(b) To satisfy the requirements of this section, a helmet or protective vest must meet the standards adopted under Section 768.004.

(c) In a cause of action in which damages are sought for injuries or death suffered by a child in connection with bull riding, the failure of the child or of the parent or legal guardian of the child to comply with this chapter does not constitute responsibility causing or contributing to the cause of the child's injuries or death for purposes of Chapter 33, Civil Practice and Remedies Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.003. RODEOS ASSOCIATED WITH SCHOOL. (a) This section applies only to a primary or secondary school that sponsors, promotes, or otherwise is associated with a rodeo in which children who attend the school are likely to participate.

(b) A primary or secondary school to which this section applies shall, before the first rodeo associated with the school in each school year, conduct a mandatory educational program on safety,

including the proper use of protective gear, for children planning to participate in the rodeo. The educational program may consist of an instructional video, subject to department approval.

(c) A child may not participate in a rodeo associated with the child's school during a school year unless the child has completed the educational program under Subsection (b) not more than one year before the first day of the rodeo.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Sec. 768.004. RULES. (a) The executive commissioner by rule shall adopt standards for:

(1) bull riding helmets; and

(2) protective vests.

(b) For purposes of this section, the executive commissioner may adopt standards established under federal law or adopted by a federal agency or a nationally recognized organization.

(c) The executive commissioner shall adopt rules establishing requirements for the educational program under Section 768.003.

Added by Acts 2009, 81st Leg., R.S., Ch. 868 (S.B. 2505), Sec. 1, eff. June 19, 2009.

Chapter 769, consisting of Secs. 769.001 to 769.003, was added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1.

For another Chapter 769, consisting of Secs. 769.001 to 769.002, added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 1, see Sec. 769.001 et seq., post.

CHAPTER 769. REGULATION OF CERTAIN GROUP HOMES

Sec. 769.001. DEFINITION. In this chapter, "group home" means an establishment that:

(1) provides, in one or more buildings, lodging to three or more residents who are unrelated by blood or marriage to the owner of the establishment; and

(2) provides those residents with community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration

of medication but does not provide personal care services as defined by Section 247.002.

Added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, eff. September 1, 2023.

Sec. 769.002. EXEMPTIONS. This chapter does not apply to:

(1) a person who holds a license issued under Chapter 142, 242, 246, 247, or 252;

(2) a person, establishment, or facility exempt from licensing under Section 142.003(a)(19), 242.003(3), or 247.004(4);

(3) a hotel as defined by Section 156.001, Tax Code;

(4) a retirement community;

(5) a monastery or convent;

(6) a child-care facility as defined by Section 42.002, Human Resources Code;

(7) a family violence shelter center as defined by Section 51.002, Human Resources Code; or

(8) a sorority or fraternity house or other dormitory associated with an institution of higher education.

Added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, eff. September 1, 2023.

Sec. 769.003. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR APPLICANTS AND EMPLOYEES; CRIMINAL PENALTY. (a) An owner or operator of a group home shall obtain criminal history record information maintained by the Department of Public Safety of the State of Texas on each individual who is an applicant for employment with or an employee of the group home.

(b) An owner or operator of a group home may not hire or continue to employ an individual for whom the owner or operator obtains criminal history record information on the applicant's or employee's conviction of an offense under Chapter 19, 20, 20A, 21, 22, 25, 28, 29, 30, 31, 32, 33, 33A, 34, 35, 35A, or 71, Penal Code, or Section 48.015, 48.02, 48.03, or 48.04, Penal Code, or any other offense punishable as a Class A misdemeanor or a felony.

(c) An owner or operator of a group home who violates Subsection (b) commits an offense. An offense under this section is a

Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, eff. September 1, 2023.

Chapter 769, consisting of Secs. 769.001 to 769.002, was added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 1.

For another Chapter 769, consisting of Secs. 769.001 to 769.003, added by Acts 2023, 88th Leg., R.S., Ch. 141 (S.B. 188), Sec. 1, see Sec. 769.001 et seq., post.

CHAPTER 769. SEXUALLY ORIENTED PERFORMANCES

Sec. 769.001. DEFINITIONS. In this chapter:

(1) "Premises" has the meaning assigned by Section 46.03, Penal Code.

(2) "Sexually oriented performance" has the meaning assigned by Section 43.28, Penal Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 1, eff. September 1, 2023.

Sec. 769.002. CERTAIN SEXUALLY ORIENTED PERFORMANCES PROHIBITED ON PREMISES OF COMMERCIAL ENTERPRISE; CIVIL PENALTY; INJUNCTION. (a) A person who controls the premises of a commercial enterprise may not allow a sexually oriented performance to be presented on the premises in the presence of an individual younger than 18 years of age.

(b) A person who violates this section is liable to this state for a civil penalty of not more than $10,000 for each violation.

(c) The attorney general may bring an action to:

(1) recover the civil penalty imposed under this section; or

(2) obtain a temporary or permanent injunction to restrain the violation.

(d) An action under this section may be brought in a district court in:

(1) Travis County; or

(2) a county in which any part of the violation occurs.

(e) The attorney general shall deposit a civil penalty collected under this section in the state treasury to the credit of

the general revenue fund.

(f) The attorney general may recover reasonable expenses incurred in bringing an action under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 1, eff. September 1, 2023.

SUBTITLE B. EMERGENCIES

CHAPTER 771. STATE ADMINISTRATION OF EMERGENCY COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 771.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Commission on State Emergency Communications.

(2) "Business service user" means a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned telephone switch.

(3) "Emergency communication district" means:

(A) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or

(B) a district created under Subchapter B, C, D, F, G, or H, Chapter 772.

(4) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 73.01, eff. September 28, 2011.

(5) "Local exchange service provider" means a telecommunications carrier providing telecommunications service in a local exchange service area under a certificate of public convenience and necessity issued by the Public Utility Commission of Texas.

(5-a) "Next generation 9-1-1 service" has the meaning assigned by 47 U.S.C. Section 942.

(5-b) "Next generation 9-1-1 service fund" means the next generation 9-1-1 service fund established under Section 771.0713.

(6) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system. The term includes next generation 9-1-1 service.

(7) "Public agency" means the state, a municipality, a

county, an emergency communication district, a regional planning commission, an appraisal district, or any other political subdivision or district that provides, participates in the provision of, or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services.

(8) "Public safety agency" means the division of a public agency that provides fire-fighting, police, medical, or other emergency services, or a private entity that provides emergency medical or ambulance services.

(9) "Public safety answering point" means a continuously operated communications facility that is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 9-1-1 calls to appropriate public safety agencies.

(10) "Regional planning commission" means a planning commission established under Chapter 391, Local Government Code.

(11) "Business service" means a telecommunications service classified as a business service under rules adopted by the Public Utility Commission of Texas or under the applicable tariffs of the principal service supplier.

(12) "Wireless service provider" means a provider of commercial mobile service under Section 332(d), Federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service. The term does not include a provider of:

(A) a service whose users do not have access to 9-1-1 service;

(B) a communication channel used only for data transmission;

(C) a wireless roaming service or other nonlocal radio access line service; or

(D) a private telecommunications service.

(13) "Wireless telecommunications connection" means any voice-capable wireless communication mobile station that is provided to a customer by a wireless service provider.

(14) "Service provider" means a local exchange service

provider, a wireless service provider, and any other provider of local exchange access lines or equivalent local exchange access lines.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 735, Sec. 1, eff. June 16, 1993; Acts 1993, 73rd Leg., ch. 936, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1246, Sec. 1, eff; Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1406, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.01, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.02, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 2, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

Sec. 771.031. COMPOSITION OF COMMISSION. (a) The Commission on State Emergency Communications is composed of nine appointed members and three ex officio members as provided by this section.

(b) The following individuals serve as nonvoting ex officio members:

(1) the executive director of the Public Utility Commission of Texas, or an individual designated by the executive director;

(2) the executive director of the Department of Information Resources, or an individual designated by the executive director; and

(3) the executive commissioner of the Health and Human Services Commission, or an individual designated by the executive commissioner.

(c) The lieutenant governor and the speaker of the house of

representatives each shall appoint two members as representatives of the general public.

(d) The governor shall appoint:

(1) one member who serves on the governing body of a regional planning commission;

(2) one member who serves as a director of or is on the governing body of an emergency communication district;

(3) one member who serves on the governing body of a county;

(4) one member who serves on the governing body of a home-rule municipality that operates a 9-1-1 system that is independent of the state's system; and

(5) one member as a representative of the general public.

(e) Appointed members of the commission serve staggered terms of six years, with the terms of one-third of the members expiring September 1 of each odd-numbered year.

(f) A vacancy in an appointed position on the commission shall be filled in the same manner as the position of the member whose departure created the vacancy.

(g) The governor shall designate an appointed member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1405, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 1, eff. September 1, 2009.

Sec. 771.0315. ELIGIBILITY FOR MEMBERSHIP OR TO BE GENERAL COUNSEL. (a) A person is not eligible for appointment under Section 771.031 to represent the general public if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of telecommunications;

(2) is employed by or participates in the management of a

business entity or other organization receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of telecommunications or emergency communications;

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of telecommunications or emergency communications;

(3) the person is an officer, employee, or paid consultant of a Texas association of regional councils; or

(4) the person's spouse is an officer, manager, or paid consultant of a Texas association of regional councils.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(d) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 4, eff. Sept. 1, 1999.

Sec. 771.0316. GROUNDS FOR REMOVAL OF COMMISSION MEMBER. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 771.031;

(2) does not maintain during service the qualifications required by Section 771.031;

(3) is ineligible for membership under Section 771.031 or 771.0315;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 4, eff. Sept. 1, 1999.

Sec. 771.032. APPLICATION OF SUNSET ACT. The Commission on State Emergency Communications is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2029.

Added by Acts 1995, 74th Leg., ch. 970, Sec. 2.01, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 1, eff. June 17, 2011.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 3.03, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 1.12, eff. June 18, 2023.

Sec. 771.033. MEETINGS. The commission shall meet in Austin and at other places fixed by the commission at the call of the presiding officer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 6, eff. Sept. 1, 1999.

Sec. 771.034. EXPENSES. The expenses of a member of the commission shall be paid as provided by the General Appropriations Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 7, eff. Sept. 1, 1999.

Sec. 771.035. STAFF; PERSONNEL POLICIES. (a) The commission may employ persons as necessary to carry out its functions.

(b) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(c) The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance

with state and federal law.

(d) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (c)(1); and

(3) filed with the governor's office.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 8, eff. Sept. 1, 1999.

Sec. 771.036. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the commission and to employees of the commission, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 9, eff. Sept. 1, 1999.

Sec. 771.037. COMMISSION MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget of the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government

Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether the attendance of the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 10, eff. Sept. 1, 1999.

Sec. 771.038. PUBLIC COMMENTS. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 11, eff. Sept. 1, 1999.

Sec. 771.039. COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 12, eff. Sept. 1, 1999.

Sec. 771.040. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 2, eff. June 17, 2011.

SUBCHAPTER C. ADMINISTRATION OF STATE EMERGENCY COMMUNICATIONS

Sec. 771.051. POWERS AND DUTIES OF COMMISSION. (a) The commission is the state's authority on emergency communications. The commission shall:

(1) administer the implementation of statewide 9-1-1 service and the poison control network, including poison control centers under Chapter 777;

(2) develop minimum performance standards for equipment and

operation of 9-1-1 service to be followed in developing regional plans under Section 771.055, including requirements that the plans provide for:

(A) automatic number identification by which the telephone number of the caller is automatically identified at the public safety answering point receiving the call; and

(B) other features the commission considers appropriate;

(3) examine and approve or disapprove regional plans as provided by Section 771.056;

(4) recommend minimum training standards, assist in training, and provide assistance in the establishment and operation of 9-1-1 service;

(5) allocate money to prepare and operate regional plans as provided by Section 771.056;

(6) develop and provide public education materials and training;

(7) plan, implement, operate, and maintain poison control center databases and assist in planning, supporting, and facilitating 9-1-1 databases, as needed;

(8) provide grants or contracts for services that enhance the effectiveness of 9-1-1 service;

(9) coordinate emergency communications services and providers;

(10) make reasonable efforts to gain voluntary cooperation in the commission's activities of emergency communications authorities and providers outside the commission's jurisdiction, including:

(A) making joint communications to state and federal regulators; and

(B) arranging cooperative purchases of equipment or services; and

(11) accept, receive, and deposit in its account in the general revenue fund gifts, grants, and royalties from public and private entities. Gifts, grants, and royalties may be used for the purposes of the commission.

(b) The commission shall comply with state laws requiring state agencies, boards, or commissions generally to submit appropriations requests to the Legislative Budget Board and the governor and to develop a strategic plan for operations.

(c) The commission may obtain a commercial license or sublicense to sell 9-1-1 or poison control public education and training materials in this state or in other states. The commission may use all profits from sales for purposes of the commission.

(d) The commission shall develop and implement policies that clearly separate the policy making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 1.05, eff. April 19, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1377, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 13, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 2, eff. September 1, 2009.

Sec. 771.0511. EMERGENCY SERVICES INTERNET PROTOCOL NETWORK; EMERGENCY COMMUNICATIONS ADVISORY COMMITTEE. (a) In this section:

(1) "Advisory committee" means the Emergency Communications Advisory Committee.

(2) "State-level emergency services Internet Protocol network" means a private Internet Protocol network or Virtual Private Network that:

(A) is used for communications between and among public safety answering points and other entities that support or are supported by public safety answering points in providing emergency call handling and response; and

(B) will be a part of the Texas Next Generation Emergency Communications System.

(b) The commission, with the assistance of an advisory committee, may coordinate the development, implementation, and management of an interconnected, state-level emergency services Internet Protocol network.

(c) If the commission acts under Subsection (b), the commission shall establish policy and oversee agency involvement in the development and implementation of the interconnected, state-level emergency services Internet Protocol network.

(d) If the commission acts under Subsection (b), the commission shall appoint an advisory committee. The advisory committee must include at least:

(1) one representative from a regional planning commission;

(2) one representative from an emergency communication district, as that term is defined by Section 771.001(3)(A); and

(3) one representative from an emergency communication district, as that term is defined by Section 771.001(3)(B).

(e) In appointing members of an advisory committee, the commission shall consult with regional planning commissions and emergency communication districts throughout the state. The commission shall ensure that each member of the advisory committee has appropriate training, experience, and knowledge in 9-1-1 systems and network management to assist in the implementation and operation of a complex network.

Added by Acts 2011, 82nd Leg., R.S., Ch. 511 (H.B. 1861), Sec. 3, eff. June 17, 2011.

Sec. 771.0512. OBLIGATIONS OR REQUIREMENTS CONCERNING VOICE OVER INTERNET PROTOCOL, INTERNET PROTOCOL ENABLED SERVICE, OR COMMERCIAL MOBILE SERVICE OR WIRELINE SERVICE. Defining "9-1-1 service" as a communications service and other amendments effective September 1, 2013, do not expand or change the authority or jurisdiction of a public agency or the commission over commercial mobile service or wireline service including Voice over Internet Protocol service or Internet Protocol enabled service or expand the authority of a public agency or the commission to assess 911 fees. Nothing in this chapter affects Section 52.002(d), Utilities Code. In this section, "Voice over Internet Protocol service," "Internet Protocol enabled service," and "commercial mobile service" have the meanings assigned by Sections 51.002 and 51.003, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 10, eff. September 1, 2013.

Sec. 771.052. AGENCY COOPERATION. Each public agency and regional planning commission shall cooperate with the commission to the fullest extent possible.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 14, eff. Sept. 1, 1999.

Sec. 771.053. STATEWIDE LIMITATION ON LIABILITY OF SERVICE PROVIDERS AND CERTAIN PUBLIC OFFICERS. (a) A service provider of communications service involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, a developer of software used in providing 9-1-1 service, a third party or other entity involved in providing 9-1-1 service, or an officer, director, or employee of the service provider, manufacturer, developer, third party, or other entity involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(b) A member of the commission or of the governing body of a public agency is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.

(c) This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1405, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 3, eff. September 1, 2013.

Sec. 771.054. EFFECT OF CHAPTER ON EMERGENCY COMMUNICATION DISTRICTS. Except as expressly provided by this chapter, this chapter does not affect the existence or operation of an emergency

communication district or prevent the addition of territory to the area served by an emergency communication district as provided by law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 771.055. STRATEGIC PLANNING. (a) Each regional planning commission shall develop a regional plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The 9-1-1 service must meet the standards established by the commission.

(b) A regional plan must describe how the 9-1-1 service is to be administered. The 9-1-1 service may be administered by an emergency communication district, municipality, or county, by a combination formed by interlocal contract, or by other appropriate means as determined by the regional planning commission. In a region in which one or more emergency communication districts exist, a preference shall be given to administration by those districts and expansion of the area served by those districts.

(c) A regional plan must be updated at least once every state fiscal biennium and must include:

(1) a description of how money allocated to the region under this chapter is to be allocated in the region;

(2) projected financial operating information for the two state fiscal years following the submission of the plan; and

(3) strategic planning information for the five state fiscal years following submission of the plan.

(d) In a region in which one or more emergency communication districts exist, if a district chooses to participate in the regional plan, the district shall assist in the development of the regional plan.

(e) For each state fiscal biennium, the commission shall prepare a strategic plan for statewide 9-1-1 service for the following five state fiscal years using information from the strategic information contained in the regional plans and provided by emergency communication districts and home-rule municipalities that operate 9-1-1 systems independent of the state system. The commission shall present the strategic plan to the governor and the Legislative Budget Board, together with the commission's legislative

appropriations request. The strategic plan must:

(1) include a survey of the current performance, efficiency, and degree of implementation of emergency communications services throughout the whole state;

(2) provide an assessment of the progress made toward meeting the goals and objectives of the previous strategic plan and a summary of the total expenditures for emergency communications services in this state;

(3) provide a strategic direction for emergency communications services in this state;

(4) establish goals and objectives relating to emergency communications in this state;

(5) provide long-range policy guidelines for emergency communications in this state;

(6) identify major issues relating to improving emergency communications in this state;

(7) identify priorities for this state's emergency communications system; and

(8) detail the financial performance of each regional planning commission in implementing emergency communications service including an accounting of administrative expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 16, eff. Sept. 1, 1999.

Sec. 771.056. SUBMISSION OF REGIONAL PLAN TO COMMISSION. (a) The regional planning commission shall submit a regional plan, or an amendment to the plan, to the commission for approval or disapproval.

(b) In making its determination, the commission shall consider whether the plan or amendment satisfies the standards established by the commission under this chapter, the cost and effectiveness of the plan or amendment, and the appropriateness of the plan or amendment in the establishment of statewide 9-1-1 service.

(c) The commission shall notify a regional planning commission of the approval or disapproval of the plan or amendment not later than the 90th day after the date the commission receives an administratively complete plan or amendment. If the commission disapproves the plan, it shall specify the reasons for disapproval and set a deadline for submission of a modified plan.

(d) If the commission approves the plan, it shall allocate to the region from the money collected under Sections 771.071, 771.0711, and 771.072 and appropriated to the commission the amount that the commission considers appropriate to operate 9-1-1 service in the region according to the plan and contracts executed under Section 771.078.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 17, eff. Sept. 1, 1999.

Sec. 771.057. AMENDMENT OF PLAN. A regional plan may be amended according to the procedure determined by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 18, eff. Sept. 1, 1999.

Sec. 771.058. OPTIONAL PARTICIPATION IN PLAN. (a) In a county with a population of 120,000 or less, the county or another public agency, other than the state, located in the county is not required to participate in the regional plan applicable to the regional planning commission in which it is located, and the fee imposed under this chapter may not be charged to a customer in the county or territory of the public agency other than the county, unless the county or other public agency chooses to participate in the plan by resolution of its governing body.

(b) On approval by the commission, an emergency communication district may choose to participate in the regional plan applicable to the regional planning commission region in which the district is located. An emergency communication district described by Section 771.001(3)(A) may choose to participate in the regional plan by resolution of its governing body or by adoption of an ordinance. An emergency communication district described by Section 771.001(3)(B) may choose to participate in the regional plan by order of the district's board after a public hearing held in the manner required for a public hearing on the continuation of the district under the law governing the district. Following the adoption of the resolution, ordinance, or order and approval by the commission, the regional planning commission shall amend the regional plan to take into account the participation of the emergency communication

district.

(c) Participation in the regional plan by an emergency communication district does not affect the organization or operation of the district, except that the district may not collect an emergency communication fee or other special fee for 9-1-1 service not permitted by this chapter. Participation by the district in the plan does not affect the district's authority to set its own fees in the territory under its jurisdiction on January 1, 1988. Participation in the regional plan by a public agency or group of public agencies operating as an emergency communication district as provided by Subsection (d) does not affect the authority of the public agency or group of public agencies to set its own fees in territory:

(1) under its jurisdiction at the time of recognition; or

(2) added to the district after the recognition.

(d) In a county with a population of 120,000 or less, a public agency or group of public agencies acting jointly that contracted with a service provider before September 1, 1987, to provide 9-1-1 service by resolution of its governing body may withdraw from a regional plan in which it chooses to participate. A public agency or group of public agencies that withdraws from a regional plan under this subsection shall be recognized and operate as an emergency communication district in the agency's or group's geographic jurisdiction. As an emergency communication district, the public agency or group of agencies:

(1) is governed by Subchapter D, Chapter 772; and

(2) may collect all fees authorized by that subchapter or other applicable law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 670, Sec. 2, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1405, Sec. 19, eff. Sept. 1, 1999.

Sec. 771.059. TARGET DATE FOR STATEWIDE NEXT GENERATION 9-1-1 SERVICE. Before September 1, 2025, all parts of the state must be covered by next generation 9-1-1 service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 2, eff.

September 1, 2021.

Sec. 771.060. BUSINESS PROVIDING RESIDENTIAL TELEPHONE SWITCHES. A business service user that provides residential facilities and owns or leases a private telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is providing to other residential end users in the area participating in the regional plan under Section 771.051(a)(2).

Added by Acts 1993, 73rd Leg., ch. 936, Sec. 3, eff. Aug. 30, 1993.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 11.005, eff. September 1, 2023.

Sec. 771.061. STATEWIDE CONFIDENTIALITY OF INFORMATION. (a) Information that a service provider of communications service is required to furnish to a governmental entity, including a regional planning commission, emergency communications district, or public safety answering point, in providing 9-1-1 service or that a service provider, third party, or other entity voluntarily furnishes at the request of a governmental entity in providing 9-1-1 service is confidential and is not available for public inspection. Information that is contained in an address database maintained by a governmental entity or a third party used in providing 9-1-1 service is confidential and is not available for public inspection. The service provider or third party is not liable to any person who uses a 9-1-1 service for the release of information furnished by the service provider or third party in providing 9-1-1 service, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(b) Information that a service provider furnishes to the commission or an emergency communication district to verify or audit emergency service fees or surcharge remittances and that includes access line or market share information of an individual service provider is confidential and not available for public inspection.

(c) This section shall be interpreted to provide protection relating to confidentiality and immunity and protection from

liability with at least the same scope and to at least the same extent as described by federal law, including 47 U.S.C. Section 615a and 47 U.S.C. Section 1472.

Added by Acts 1997, 75th Leg., ch. 1377, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 20, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 4, eff. September 1, 2013.

Sec. 771.062. LOCAL ADOPTION OF STATE RULE. (a) An emergency communication district may adopt any provision of this chapter or any commission rule. The commission may enforce a provision or rule adopted by an emergency communication district under this section.

(b) The commission shall maintain and update at least annually a list of provisions or rules that have been adopted by emergency communication districts under this section.

(c) An emergency communication district or home-rule municipality that operates a 9-1-1 system independent of the state system may voluntarily submit strategic planning information to the commission for use in preparing the strategic plan for statewide 9-1-1 service. This information as determined by the commission, if reported, may:

(1) include a survey of the current performance, efficiency, and degree of implementation of emergency communications services;

(2) detail the progress made toward meeting the goals and objectives of the previous strategic plan;

(3) describe the strategic direction, goals, and objectives for emergency communications services;

(4) identify major issues, long-range policy guidelines, and priorities relating to improving emergency communications services; and

(5) detail the financial performance of each district in implementing emergency communications services.

(d) The commission shall establish reasonable guidelines for use by districts and home-rule municipalities in preparing information for the strategic plan for statewide 9-1-1 services.

These guidelines shall include the time frames of information and instructions for submission.

Added by Acts 1997, 75th Leg., ch. 1377, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 21, eff. Sept. 1, 1999.

Sec. 771.063. DEFINITION OF LOCAL EXCHANGE ACCESS LINE AND EQUIVALENT LOCAL EXCHANGE ACCESS LINE. (a) The advisory commission shall determine by rulemaking what constitutes a local exchange access line and an equivalent local exchange access line for all 9-1-1 emergency services fees imposed statewide.

(b) By October 1, 1999, the advisory commission shall adopt definitions of a local exchange access line and an equivalent local exchange access line that exclude a line from a telecommunications service provider to an Internet service provider for the Internet service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages.

(c) The advisory commission shall annually review the definitions of a local exchange access line and an equivalent local exchange access line to address technical and structural changes in the provision of telecommunications and data services. In that annual review, the advisory commission may include previously excluded Internet service provider data modem lines if it determines that circumstances have changed sufficiently enough that 9-1-1 emergency calls through those lines are done on a regular basis or that the data lines are voice-capable or that the lines are functionally equivalent.

(d) An emergency communication district described by Section 771.001(3)(A) or (B) that has not participated in a regional plan shall use the advisory commission's definitions of a local exchange access line and an equivalent local exchange access line for purposes of imposing its emergency service fees and may not impose an emergency service fee on any line excluded from the advisory commission's definitions.

(e) A service provider shall collect and remit the emergency service fees to the advisory commission or the appropriate emergency communication district, as applicable, in accordance with the

advisory commission's definition of a local exchange access line and an equivalent local exchange access line.

Added by Acts 1999, 76th Leg., ch. 1203, Sec. 1, eff. June 18, 1999.

SUBCHAPTER D. FINANCING STATE EMERGENCY COMMUNICATIONS

Sec. 771.071. EMERGENCY SERVICE FEE. (a) Except as otherwise provided by this subchapter, the commission may impose a 9-1-1 emergency service fee on each local exchange access line or equivalent local exchange access line, including lines of customers in an area served by an emergency communication district participating in the applicable regional plan. If a business service user provides residential facilities, each line that terminates at a residential unit, and that is a communication link equivalent to a residential local exchange access line, shall be charged the 9-1-1 emergency service fee. The fee may not be imposed on a line to coin-operated public telephone equipment or to public telephone equipment operated by coin or by card reader. The fee may also not be imposed on any line that the commission excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063.

(b) The amount of the fee may not exceed 50 cents a month for each line.

(c) The commission may set the fee in a different amount in each regional planning commission region based on the cost of providing 9-1-1 service to each region.

(d) The fee does not apply to an emergency communication district not participating in the applicable regional plan. A customer in an area served by an emergency communication district not participating in the regional plan may not be charged a fee under this section. Money collected under this section may not be allocated to an emergency communication district not participating in the applicable regional plan.

(e) A service provider shall collect the fees imposed on its customers under this section. Not later than the 30th day after the last day of the month in which the fees are collected, the service provider shall deliver the fees to the comptroller. The comptroller shall deposit money from the fees to the credit of the 9-1-1 services fee account in the general revenue fund. The comptroller may

establish alternative dates for payment of fees under this section, provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the fees are collected.

(f) The commission shall distribute money appropriated to the commission from the 9-1-1 services fee fund to regional planning commissions for use in providing 9-1-1 services as provided by contracts executed under Section 771.078. The regional planning commissions shall distribute the money to public agencies for use in providing those services.

(g) Repealed by Acts 1999, 76th Leg., ch. 1045, Sec. 18, eff. June 18, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 4, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1157, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1045, Sec. 18, eff. June 18, 1999, Acts 1999, 76th Leg., ch. 1203, Sec. 2, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1405, Sec. 22, eff. Sept; 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 80, eff. Jan. 1, 2002.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.03, eff. September 28, 2011.

Sec. 771.0711. EMERGENCY SERVICE FEE FOR WIRELESS TELECOMMUNICATIONS CONNECTIONS. (a) To provide for automatic number identification and automatic location identification of wireless 9-1-1 calls, the commission shall impose on each wireless telecommunications connection a 9-1-1 emergency service fee. A political subdivision may not impose another fee on a wireless service provider or subscriber for 9-1-1 emergency service.

(b) A wireless service provider shall collect the fee in an amount equal to 50 cents a month for each wireless telecommunications connection from its subscribers and shall pay the money collected to the comptroller not later than the 30th day after the last day of the month during which the fees were collected. The comptroller may establish alternative dates for payment of fees under this section. The wireless service provider may retain an administrative fee of one percent of the amount collected. The comptroller shall deposit the

money from the fees to the credit of the 9-1-1 services fee account. Until deposited to the credit of the 9-1-1 services fee account as required by Subsection (c), money the comptroller collects under this subsection remains in a trust fund with the state treasury.

(c) Money collected under Subsection (b) may be used only for services related to 9-1-1 services, including automatic number identification and automatic location information services, or as authorized by Section 771.079(c). Not later than the 15th day after the end of the month in which the money is collected, the commission shall distribute to each emergency communication district that does not participate in the state system a portion of the money that bears the same proportion to the total amount collected that the population of the area served by the district bears to the population of the state. The remaining money collected under Subsection (b) shall be deposited to the 9-1-1 services fee account.

(d) A service provider of telecommunications service involved in providing wireless 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of wireless 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(e) A member of the commission, the governing body of a public agency, or the Department of Information Resources is not liable for any claim, damage, or loss arising from the provision of wireless 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action.

(f) A wireless service provider is not required to take legal action to enforce the collection of any wireless 9-1-1 service fee. The comptroller may establish collection procedures and recover the cost of collection from the subscriber liable for the fee. The comptroller may institute legal proceedings to collect a fee and in those proceedings is entitled to recover from the subscriber court costs, attorney's fees, and interest on the amount delinquent.

(g) Repealed by Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 4, eff. September 1, 2021.

(h) Information that a wireless service provider is required to furnish to a governmental entity in providing 9-1-1 service is confidential and exempt from disclosure under Chapter 552, Government Code. The wireless service provider is not liable to any person who uses a 9-1-1 service created under this subchapter for the release of

information furnished by the wireless service provider in providing 9-1-1 service. Information that is confidential under this section may be released only for budgetary calculation purposes and only in aggregate form so that no provider-specific information may be extrapolated.

(i) Nothing in this section may be construed to apply to wireline 9-1-1 service.

(j) Repealed by Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 4, eff. September 1, 2021.

Added by Acts 1997, 75th Leg., ch. 1246, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 81, eff. Jan. 1, 2002. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.07, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 6, eff. June 14, 2013.

Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 4, eff. September 1, 2021.

Sec. 771.0712. PREPAID 9-1-1 EMERGENCY SERVICE FEE. (a) To ensure that all 9-1-1 agencies under Section 418.051, Government Code, are adequately funded, beginning on June 1, 2010, a prepaid wireless 9-1-1 emergency services fee of two percent of the purchase price of each prepaid wireless telecommunications service purchased by any method, shall be collected by the seller from the consumer at the time of each retail transaction of prepaid wireless telecommunications service occurring in this state and remitted to the comptroller consistent with Chapter 151, Tax Code, and distributed consistent with the procedures in place for the emergency services fee in Section 771.0711, Health and Safety Code. A seller may deduct and retain two percent of prepaid wireless 9-1-1 emergency services fees that it collects under this section to offset its costs in administering this fee.

(b) The comptroller shall adopt rules to implement this section by June 1, 2010.

(c) A seller who fails to file a report or remit a fee collected or payable as provided by this section and comptroller

rules shall pay five percent of the amount due and payable as a penalty, and if the seller fails to file the report or remit the fee within 30 days after the day the fee or report is due, the seller shall pay an additional five percent of the amount due and payable as an additional penalty.

(d) In addition to any other penalty authorized by this section, a seller who fails to file a report as provided by this section shall pay a penalty of $50. The penalty provided by this subsection is assessed without regard to whether the seller subsequently files the report or whether any taxes were due from the seller for the reporting period under the required report.

(e) A marketplace provider, as defined by Section 151.0242(a), Tax Code, shall:

(1) collect on behalf of the seller the fee imposed by this section on a sale made through the marketplace; and

(2) after making the deduction authorized to be made by a seller under Subsection (a), remit the fee to the comptroller in the same manner a seller remits collected fees under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 3.03a, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 14.10, eff. October 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 569 (S.B. 477), Sec. 3, eff. July 1, 2022.

For expiration of this section, see Subsection (g).

Sec. 771.0713. NEXT GENERATION 9-1-1 SERVICE FUND. (a) The next generation 9-1-1 service fund is created as a fund in the state treasury outside the general revenue fund.

(b) Notwithstanding any other law and except as provided by federal law, the comptroller shall transfer to the credit of the next generation 9-1-1 service fund any amount available from federal money provided to this state from the Coronavirus State and Local Fiscal Recovery Funds under Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) or from any other state or federal governmental source for purposes of this chapter, including money appropriated or otherwise credited to the fund. The comptroller

shall transfer the money as soon as practicable following:

(1) the receipt by this state of a sufficient amount of federal money for the transfer; or

(2) the effective date of the most recent legislative appropriation for purposes of this chapter.

(c) Money deposited to the credit of the next generation 9-1-1 service fund may be used only for the purpose of supporting the deployment and reliable operation of next generation 9-1-1 service, including the costs of equipment, operations, and administration. Money in the fund may be distributed to only the commission and emergency communication districts and must be used in a manner that complies with federal law.

(c-1) Except as provided by Subsection (c-2), the commission shall distribute from money appropriated to the commission for purposes of this chapter to each emergency communications district that does not participate in the state system a portion of the appropriated money in an amount proportional to the population of the area served by the district compared to the population of this state.

(c-2) For each emergency communication district created under Chapter 772 that is entitled to a portion of the money distributed under Subsection (c-1), the commission shall:

(1) reduce the portion to which that district is entitled by an amount equal to nine percent of that portion and distribute that resulting amount in equal shares to all the emergency communication districts created under Chapter 772; and

(2) distribute to that district the remainder of the portion to which the district is entitled under Subsection (c-1) that is not distributed under Subdivision (1).

(c-3) The remaining money appropriated to the commission for purposes of this chapter that is not otherwise distributed under Subsection (c-1) or (c-2) shall be deposited to the 9-1-1 services fee account.

(d) Interest earned on money deposited to the credit of the next generation 9-1-1 service fund is exempt from Section 404.071, Government Code. Interest on money in the fund shall be retained in the fund.

(e) The comptroller may issue guidelines for use by the commission and emergency communication districts in implementing this section.

(f) All money in the fund from the Coronavirus State and Local

Fiscal Recovery Funds under Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) shall be distributed in accordance with this section not later than August 31, 2024, and all money distributed under this section from the Coronavirus State and Local Fiscal Recovery Funds under Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) shall be spent not later than December 31, 2026, for the deployment and reliable operation of next generation 9-1-1 service.

(g) This section expires December 31, 2028.

Added by Acts 2021, 87th Leg., R.S., Ch. 830 (H.B. 2911), Sec. 3, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 189 (H.B. 3290), Sec. 1, eff. September 1, 2023.

Sec. 771.072. EQUALIZATION SURCHARGE. (a) In addition to the fees imposed under Sections 771.071 and 771.0711, the commission shall impose a 9-1-1 equalization surcharge on each local exchange access line or equivalent local exchange access line and each wireless telecommunications connection. The surcharge may not be imposed on:

(1) a line to coin-operated public telephone equipment or to public telephone equipment operated by coin or by card reader;

(2) any line that the commission excluded from the definition of a local exchange access line or an equivalent local exchange access line under Section 771.063; or

(3) any wireless telecommunications connection that constitutes prepaid wireless telecommunications service subject to Section 771.0712.

(b) The surcharge must be a fixed amount, not to exceed 10 cents per month for each local exchange access line, equivalent local exchange access line, or wireless telecommunications connection.

(c) Except as provided by Section 771.073(f), each service provider shall collect the surcharge imposed on its customers under this section and shall deliver the surcharges to the comptroller not later than the date specified by the comptroller, provided that the required payment date be no earlier than the 30th day after the last day of the reporting period in which the surcharge is collected. If

the comptroller does not specify a date, the provider shall deliver the surcharges to the comptroller not later than the 30th day after the last day of the month in which the surcharges are collected.

(d) From the revenue received from the surcharge imposed under this section, not more than 40 percent of the amount derived from the application of the surcharge shall be allocated to regional planning commissions or other public agencies designated by the regional planning commissions for use in carrying out the regional plans provided for by this chapter. The allocations to the regional planning commissions are not required to be equal, but should be made to carry out the policy of this chapter to implement 9-1-1 service statewide. Money collected under this section may be allocated to an emergency communication district regardless of whether the district is participating in the applicable regional plan.

(e) From the revenue received from the surcharge imposed by this section, not more than 60 percent of the amount derived from the application of the surcharge shall be periodically allocated to fund grants awarded under Section 777.009 and other activities related to the poison control centers as required by Chapter 777.

(f) The comptroller shall deposit the surcharges and any prior balances in accounts in the general revenue fund in the state treasury until they are allocated to regional planning commissions, other 9-1-1 jurisdictions, and regional poison control centers in accordance with this section. From those accounts, the amount necessary for the commission to fund approved plans of regional planning commissions and regional poison control centers and to carry out its duties under this chapter shall be appropriated to the commission. Section 403.095, Government Code, does not apply to an account established by this subsection.

(g) Notwithstanding any other law, revenue derived from the equalization surcharge imposed under this section may be appropriated to the commission only for the purposes described by Section 771.156 and Sections 773.122 through 773.124.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 1.06, eff. Aug. 31, 1994; Acts 1993, 73rd Leg., ch. 670, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 4, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1045, Sec. 15, eff. June 18, 1999, Acts 1999, 76th Leg., ch. 1405, Sec. 24, eff. Sept; 1, 1999; Acts 2001, 77th Leg., ch.

1158, Sec. 82, eff. Jan. 1, 2002.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 3, eff. September 1, 2009.
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.04, eff. September 28, 2011.
Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 2, eff. September 1, 2023.

Sec. 771.0725. ESTABLISHMENT OF RATES FOR FEES. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.
(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.
(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.
(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 448, Sec. 1, eff. September 1, 2013.
(e) The commission shall establish the rate for the equalization surcharge imposed under Section 771.072 for each state fiscal biennium in an amount that ensures the aggregate of the anticipated surcharges collected from all customers for the following 12 months does not exceed the aggregate of the surcharges collected from all customers during the preceding 12 months. Any change in the equalization surcharge rate may not become effective before the 90th day after the date notice of the change is provided by the commission to the service providers.

Added by Acts 1997, 75th Leg., ch. 1241, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.33, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1405, Sec. 25, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.05, eff. September 28, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 448 (S.B. 809), Sec. 1, eff. September 1, 2013.

Sec. 771.073. COLLECTION OF FEES AND SURCHARGES. (a) A

customer on which a fee or surcharge is imposed under this subchapter is liable for the fee or surcharge in the same manner as the customer is liable for the charges for services provided by the service provider. The service provider shall collect the fees and surcharges in the same manner it collects those charges for service, except that the service provider is not required to take legal action to enforce the collection of the fees or surcharges. Other than the fee imposed under Section 771.0712, a fee or surcharge imposed under this subchapter must be either stated separately on the customer's bill or combined in an appropriately labeled single line item on the customer's bill with all other fees and surcharges that are imposed under this subchapter or that are imposed for 9-1-1 emergency service by a political subdivision. A service provider that combines the fees and surcharges into a single line item for billing purposes must maintain books and records reflecting the collection of each separate fee and surcharge.

(b) A business service user that provides residential facilities and owns or leases a private telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the comptroller. A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action. A court may award to the comptroller court costs, attorney's fees, and interest on the amount delinquent, to be paid by the nonpaying business service user. A certificate of the comptroller specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(c) The comptroller may establish collection procedures and recover the cost of collection from the customer liable for the fee or surcharge. The comptroller may institute legal proceedings to collect a fee or surcharge and in those proceedings is entitled to recover from the customer court costs, attorney's fees, and an interest on the amount delinquent.

(d) A service provider may not disconnect services for nonpayment of a fee or surcharge imposed under this subchapter.

(e) A service provider collecting fees or surcharges under this subchapter may retain as an administrative fee an amount equal to one percent of the total amount collected.

(f) The commission may establish payment schedules and minimum

payment thresholds for fees and surcharges imposed under this subchapter.

(g) A 9-1-1 service provider is responsible for correctly billing and remitting applicable 9-1-1 fees, charges, and equalization surcharges. Any 9-1-1 fees, charges, or equalization surcharges erroneously billed to a subscriber by a 9-1-1 service provider and erroneously remitted to the commission or an emergency communication district may not be recovered from the commission or emergency communication district unless the fees or charges were adjusted due to a refund to the subscriber by the local exchange carrier or interexchange carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1377, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 26, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 83, eff. Jan. 1, 2002.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.06, eff. September 28, 2011.

Sec. 771.0735. SOURCING OF CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES. The federal Mobile Telecommunications Sourcing Act (4 U.S.C. Sections 116-126) governs the sourcing of charges for mobile telecommunications services. In accordance with that Act:

(1) mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, shall be deemed to be provided by the customer's home service provider;

(2) all charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider in accordance with the Act are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services; and

(3) the fee and the surcharge imposed on wireless telecommunications bills shall be administered in accordance with Section 151.061, Tax Code.

Added by Acts 2001, 77th Leg., ch. 370, Sec. 4, eff. Aug. 1, 2002.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 73.07, eff. September 28, 2011.

Sec. 771.074. EXEMPTION. A fee or surcharge authorized by this subchapter, Chapter 772, or a home-rule municipality may not be imposed on or collected from the state or the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1377, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 84, eff. Jan. 1, 2002.

Sec. 771.075. USE OF REVENUE. Except as provided by Section 771.0751, 771.072(e), 771.072(f), or 771.073(e), fees and surcharges collected under this subchapter may be used only for planning, development, provision, and enhancement of the effectiveness of 9-1-1 service as approved by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 670, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 936, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 6, eff; Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1405, Sec. 27, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 258, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1324, Sec. 1, eff. June 20, 2003.

Text of section added by Acts 2003, 78th Leg., ch. 1324, Sec. 2

For text of section as added by Acts 2003, 78th Leg., ch. 258, Sec. 2, see other Sec. 771.0751

Sec. 771.0751. USE OF REVENUE IN CERTAIN COUNTIES. (a) This section applies only to the use of fees and surcharges collected under this subchapter in the county that has the highest population

within a region subject to this subchapter.

(b) In addition to use authorized or required by Section 771.072(e) or (f), 771.073(e), or 771.075, fees and surcharges collected under this subchapter may be used for any costs considered necessary by the commission and attributable to:

(1) designing a 9-1-1 system; or

(2) obtaining and maintaining equipment and personnel necessary to establish and operate:

(A) a public safety answering point and related operations; or

(B) other related answering points and operations.

Added by Acts 2003, 78th Leg., ch. 1324, Sec. 2, eff. June 20, 2003.

Text of section added by Acts 2003, 78th Leg., ch. 258, Sec. 2

For text of section as added by Acts 2003, 78th Leg., ch. 1324, Sec. 2, see other Sec. 771.0751

Sec. 771.0751. USE OF REVENUE IN CERTAIN COUNTIES. (a) This section applies only to the use of fees and surcharges collected under this subchapter in a county subject to this subchapter with a population of at least 1.2 million.

(b) In addition to use authorized or required by Section 771.072(e) or (f), 771.073(e), or 771.075, fees and surcharges collected under this subchapter may be used for any costs considered necessary by the commission and attributable to:

(1) designing a 9-1-1 system; or

(2) obtaining and maintaining equipment and personnel necessary to establish and operate:

(A) a public safety answering point and related operations; or

(B) other related answering points and operations.

Added by Acts 2003, 78th Leg., ch. 258, Sec. 2, eff. June 18, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 50, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 103, eff. September 1, 2023.

Sec. 771.076. AUDITS. (a) The commission or an employee of the commission may notify the comptroller of any irregularity that may indicate that an audit of a service provider collecting a fee or surcharge under this subchapter is warranted. The comptroller also may audit a service provider at the comptroller's discretion, without first receiving a notification from the commission or an employee of the commission. The cost of the audit shall not be assessed against the service provider. The commission may require at its own expense that an audit be conducted of a public agency receiving money under this chapter.

(b) If the comptroller conducts an audit of a service provider that collects and disburses fees or surcharges under this subchapter, the comptroller shall also audit those collections and disbursements to determine if the provider is complying with this chapter.

(c) At the request of the Public Utility Commission of Texas, the state auditor may audit a regional planning commission or other public agency designated by the regional planning commission that receives money under this subchapter.

(d) The audit of a public agency under Subsection (a) or (c) must be limited to the collection, remittance, and expenditure of money collected under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1241, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1405, Sec. 28, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 85, eff. Jan. 1, 2002.

Sec. 771.077. COLLECTION OF FEES AND SURCHARGES. (a) The comptroller may establish collection procedures to collect past due amounts and may recover the costs of collection from a service provider or business service user that fails to timely deliver the fees and the equalization surcharge to the comptroller. Subtitles A and B, Title 2, Tax Code, apply to the administration and collection of amounts by the comptroller under this subchapter.

(b) The comptroller may establish procedures to be used by the commission to notify the comptroller of a service provider's or business service user's failure to timely deliver the fees or surcharges.

(c) The comptroller shall deposit amounts received as costs of

collection in the general revenue fund.

(d) The comptroller shall:

(1) remit to the commission money collected under this section for fees provided by Section 771.0711 and associated late penalties;

(2) deposit to the 9-1-1 services fee account any money collected under this section for fees provided by Section 771.071 and associated late penalties; and

(3) deposit to the account as authorized by Section 771.072 any money collected under this section for fees provided by Section 771.072 and associated late penalties.

(e) The commission shall:

(1) deposit or distribute the money remitted under Subsection (d)(1) as Section 771.0711 provides for fees received under that section; and

(2) distribute the money remitted under Subsection (d)(2) and appropriated to the commission under contracts as provided by Section 771.078(b)(1).

Added by Acts 1995, 74th Leg., ch. 638, Sec. 7, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 29, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1158, Sec. 86, eff. Jan. 1, 2002.

Sec. 771.078. CONTRACTS FOR SERVICES. (a) The commission shall contract with regional planning commissions for the provision of 9-1-1 service. The commission by rule shall adopt standard provisions for the contracts.

(b) In making contracts under this section, the commission shall ensure that each regional planning commission receives money for 9-1-1 service in two separately computed amounts as provided by this subsection. The commission must provide each regional planning commission with:

(1) an amount of money equal to the total of the revenue from the emergency service fees collected under Section 771.071 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the amount of those fees collected from the region and the denominator of which is the total amount of those fees collected in this state; and

(2) an amount of money equal to the total of the revenue

from the emergency service fee for wireless telecommunications connections under Section 771.0711 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the population of the region and the denominator of which is the population of this state.

(c) Contracts under this section must provide for:

(1) the reporting of financial information regarding administrative expenses by regional planning commissions in accordance with generally accepted accounting principles;

(2) the reporting of information regarding the current performance, efficiency, and degree of implementation of emergency communications services in each regional planning commission's service area;

(3) the collection of efficiency data on the operation of 9-1-1 answering points;

(4) standards for the use of answering points and the creation of new answering points;

(5) quarterly disbursements of money due under the contract, except as provided by Subdivision (6);

(6) the commission to withhold disbursement to a regional planning commission that does not follow a standard imposed by the contract, a commission rule, or a statute; and

(7) a means for the commission to give an advance on a quarterly distribution under the contract to a regional planning commission that has a financial emergency.

(d) Not more than 10 percent of the money received by a regional planning commission under Subsection (b) may be used for the regional planning commission's indirect costs. In this subsection, "indirect costs" means costs that are not directly attributable to a single action of a commission. The governor shall use the federal Office of Management and Budget circulars A-87 and A-122 or use any rules relating to the determination of indirect costs adopted under Chapter 783, Government Code, in administering this section.

(e) The commission may allocate surcharges under Section 771.072(d) by means of a contract under this section.

(f) Promptly after the commission receives a request from a regional planning commission, the commission shall provide the regional planning commission with adequate documentation and financial records of the amount of money collected in that region or of an amount of money allocated to the regional planning commission

in accordance with this section.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 30, eff. Sept. 1, 1999.

Sec. 771.079. 9-1-1 SERVICES FEE FUND. (a) The 9-1-1 services fee fund is an account in the general revenue fund.

(b) The account consists of:

(1) fees deposited in the fund as provided by Sections 771.071 and 771.0711;

(2) money deposited to the account under Section 771.0713(c-3); and

(3) notwithstanding Section 404.071, Government Code, all interest attributable to money held in the account.

(c) Except as provided by Subsection (c-1), money in the account may be appropriated only to the commission for planning, development, provision, or enhancement of the effectiveness of 9-1-1 service or for contracts with regional planning commissions for 9-1-1 service, including for the purposes of:

(1) maintaining 9-1-1 service levels while providing for a transition to a system capable of addressing newer technologies and capable of addressing other needs;

(2) planning and deploying statewide, regional, and local emergency network systems; and

(3) updating geospatial mapping technologies.

(c-1) The legislature may appropriate money from the account to provide assistance to volunteer fire departments under Subchapter G, Chapter 614, Government Code, only if:

(1) the purposes described by Subsection (c) have been accomplished or are fully funded for the fiscal period for which an appropriation under this subsection is made; and

(2) all other sources of revenue dedicated for the purposes of providing assistance to volunteer fire departments under Subchapter G, Chapter 614, Government Code, are obligated for the fiscal period for which an appropriation under this subsection is made.

(d) Section 403.095, Government Code, does not apply to the account.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 31, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 7, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 189 (H.B. 3290), Sec. 2, eff. September 1, 2023.

SUBCHAPTER E. EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS

Sec. 771.102. ESTABLISHMENT OF THE EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS PROGRAM. (a) The commission, with the assistance of the advisory council appointed under Section 773.012, shall administer the program in which emergency medical dispatchers located in regional emergency medical dispatch resource centers are used to provide life-saving and other emergency medical instructions to persons who need guidance while awaiting the arrival of emergency medical personnel. The purpose of a regional emergency medical dispatch resource center is not to dispatch personnel or equipment resources but to serve as a resource to provide pre-arrival instructions that may be accessed by selected public safety answering points that are not adequately staffed or funded to provide those services.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 457 , Sec. 7, eff. September 1, 2015.

(c) The commission, with the assistance of the advisory council, shall:

(1) design criteria and protocols and provide oversight as needed to conduct the program;

(2) collect the necessary data to evaluate the program; and

(3) report its findings to the legislature.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 7, eff.

September 1, 2015.

Sec. 771.103. PARTICIPATION IN PROGRAM. (a) The commission shall determine which public safety answering points are interested in participating in the program.

(b) Participating public safety answering points must agree to participate in any required training and to provide regular reports required by the commission for the program.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 2, eff. September 1, 2015.

Sec. 771.104. SELECTION OF PROGRAM PARTICIPANTS AND REGIONAL EMERGENCY MEDICAL DISPATCH RESOURCE CENTERS. (a) The commission, with the assistance of the advisory council, may select public safety answering points to participate in the program or to serve as regional emergency medical dispatch resource centers. A public safety answering point may participate in the program and serve as a regional emergency medical dispatch resource center. A public safety answering point selected for the program or to serve as a resource center must:

(1) have a fully functional quality assurance program that measures each emergency medical dispatcher's compliance with the medical protocol;

(2) have dispatch personnel who meet the requirements for emergency medical dispatcher certification or the equivalent as determined by the Department of State Health Services;

(3) use emergency medical dispatch protocols approved by a physician medical director knowledgeable in emergency medical dispatch;

(4) have sufficient experience in providing pre-arrival

instructions; and

(5) have sufficient resources to handle the additional workload and responsibilities of the program.

(b) In selecting an existing public safety answering point to act as a resource center, the commission shall consider a public safety answering point's ability to keep records and produce reports to measure the effectiveness of the program. The commission shall share information regarding a public safety answering point's abilities with the advisory council.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 2, eff. September 1, 2015.

Sec. 771.105. CRITERIA FOR EMERGENCY MEDICAL DISPATCH INTERVENTION. The commission, with the assistance of the advisory council, shall define criteria that establish the need for emergency medical dispatch intervention to be used by participating public safety answering points to determine which calls are to be transferred to the regional emergency medical dispatch resource center for emergency medical dispatch intervention.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 2, eff. September 1, 2015.

Sec. 771.106. FUNDING OF PROGRAM. (a) State funds may be appropriated to the commission to fund the program.

(b) The commission may seek grant funding for the program.

(c) A political subdivision that participates in the program may pay an appropriate share of the cost of the program.

(d) The provisions in this subchapter that require the commission to conduct and evaluate the program are contingent on the commission receiving funding in accordance with this section. If a sufficient number of political subdivisions in a region that could be served by a program offer to pay the commission an amount that in the aggregate, together with any other funding received under this section, is sufficient to fund the program for the region, the commission:

(1) shall enter into contracts with the offering political subdivisions under which each will pay an appropriate share of the cost; and

(2) when the amount under the signed contracts, together with any other funding received under this section, is sufficient to fund the program for the region, shall implement the program for the region.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 167, Sec. 1, eff. May 27, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 3, eff. September 1, 2015.

Sec. 771.107. REPORT TO LEGISLATURE. The commission shall biennially report its findings to the governor, the presiding officer of each house of the legislature, and the advisory council no later than January 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 167, Sec. 2, eff. May 27, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 4, eff. September 1, 2015.

Sec. 771.108. LIABILITY. The operations of the regional emergency medical dispatch resource center are considered to be the provision of 9-1-1 services for purposes of Section 771.053. Employees of and volunteers at the center have the same protection from liability as a member of the governing body of a public agency under Section 771.053.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1345, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Sec. 771.109. WORK GROUP. (a) The commission may appoint a program work group to assist the commission in implementing and evaluating the program and preparing a report on the commission's findings.

(b) A member of the work group receives no additional compensation for serving on the program work group and may not be reimbursed for travel or other expenses incurred while conducting the business of the program work group.

(c) The program work group is not subject to Chapter 2110, Government Code.

Added by Acts 2003, 78th Leg., ch. 167, Sec. 3, eff. May 27, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 15 (S.B. 523), Sec. 1, eff. May 3, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1196 (H.B. 1412), Sec. 6, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 457 (H.B. 479), Sec. 5, eff. September 1, 2015.

For expiration of this subchapter, see Section 771.160.

SUBCHAPTER F. NEXT GENERATION 9-1-1 TELEMEDICINE MEDICAL SERVICES AND TELEHEALTH SERVICES PILOT PROJECT

Sec. 771.151. DEFINITIONS. In this subchapter:

(1) "Center" means the area health education center at the Texas Tech University Health Sciences Center that meets the requirements of 42 U.S.C. Section 294a and has been awarded federal funding as an area health education center.

(2) "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(3) "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medical services personnel to provide emergency medical services.

(4) "Emergency prehospital care" means care provided to a sick or injured individual before or during transportation of the individual to a medical facility, and includes any necessary stabilization of the individual in connection with that transportation.

(5) "Pilot project" means a pilot project established under Section 771.152.

(6) "Regional trauma resource center" means a trauma facility the center selects to participate in the pilot project.

(7) "Rural area" means:

(A) a county with a population of 50,000 or less; or

(B) a large, isolated, and sparsely populated area of a county with a population of more than 50,000.

(8) "Telehealth service" and "telemedicine medical service" have the meanings assigned by Section 111.001, Occupations Code.

(9) "Trauma facility" means a health care facility equipped and staffed to provide comprehensive treatment of seriously injured individuals as part of an emergency medical services and trauma care system.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.152. ESTABLISHMENT OF PILOT PROJECT. (a) The commission, with the assistance of the center, shall establish a pilot project to provide emergency medical services instruction and emergency prehospital care instruction through a telemedicine medical service or telehealth service provided by regional trauma resource centers to:

(1) health care providers in rural area trauma facilities; and

(2) emergency medical services providers in rural areas.

(b) The commission shall provide technical assistance to the center in implementing the pilot project.

(c) The center, with the assistance of the commission, shall:

(1) design criteria and protocols for each telemedicine medical service or telehealth service offered and the related instruction, and provide the oversight necessary to conduct the pilot project;

(2) define criteria to determine when a telemedicine medical service or telehealth service that provides instruction for emergency medical services, emergency prehospital care, and trauma care should be transferred to an emergency medical resource center for intervention; and

(3) collect the data necessary to evaluate the project.

(d) The center may make available appropriate resources for individuals who do not speak English.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.153. PERSONNEL. The center shall provide the telemedicine medical service or telehealth service and related instruction for the pilot project through health care providers in regional trauma resource centers, including physicians, pharmacists, emergency medical personnel, and other health professionals.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.154. PARTICIPATION IN PILOT PROJECT. (a) The center shall determine the trauma facilities and emergency medical services

providers interested in participating in the pilot project.

(b) A trauma facility or emergency medical services provider participating in the pilot project must agree to successfully complete any required training and to provide all reports required by the center for the project.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.155. SELECTION OF PILOT PROJECT PARTICIPANTS AND REGIONAL TRAUMA RESOURCE CENTERS. (a) The center, with the assistance of the commission, may select trauma facilities and emergency medical services providers to participate in the pilot project and select trauma facilities to serve as regional trauma resource centers.

(b) The center may not select a trauma facility to participate in the pilot project or to serve as a regional trauma resource center unless the facility:

(1) has a quality assurance program that measures each health care provider's compliance with the medical protocol;

(2) uses emergency medical services and emergency prehospital care protocols approved by a physician medical director knowledgeable in emergency medical services and emergency prehospital care;

(3) has experience in providing emergency medical services and emergency prehospital care that the center determines is sufficient; and

(4) has resources sufficient to provide the additional telemedicine medical services or telehealth services and related instruction required for the project in addition to the health care services the facility already provides.

(c) In selecting a trauma facility to serve as a regional trauma resource center, the center shall consider the facility personnel's ability to maintain records and produce reports to measure the effectiveness of the pilot project. The center shall share information regarding that ability with the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.156. FUNDING OF PILOT PROJECT. (a) Money collected under Section 771.072(f) may be appropriated to the commission to fund the pilot project.

(b) The center may seek grants to fund the pilot project.

(c) A political subdivision with a trauma facility that participates in the pilot project may pay part of the project costs.

(d) If a sufficient number of political subdivisions in a region that may be served by the pilot project agree to pay the center an amount that together with other funding received under this section is sufficient to fund the project for the region, the center shall:

(1) contract with the political subdivisions for each subdivision to pay an appropriate share of the cost; and

(2) implement the project for the region when the amounts agreed to in the contracts and any other funding received under this section are sufficient to fund the project for the region.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.157. REPORT TO LEGISLATURE. The center, in cooperation with the commission, shall report its findings to the governor and the presiding officer of each house of the legislature not later than December 31, 2028.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.158. LIABILITY. The operations of the center and a regional trauma resource center are considered to be the provision of 9-1-1 services for purposes of Section 771.053. Employees of and volunteers at the regional trauma resource center have the same protection from liability as a member of the governing body of a public agency under Section 771.053.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.159. PROJECT WORK GROUP. (a) The center may appoint a project work group to assist the center in developing, implementing, and evaluating the pilot project and preparing a report on the center's findings.

(b) A member of the project work group is not entitled to compensation for serving on the project work group and may not be reimbursed for travel or other expenses incurred while conducting the business of the project work group.

(c) The project work group is not subject to Chapter 2110, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

Sec. 771.160. EXPIRATION. This subchapter expires September 1, 2029.

Added by Acts 2023, 88th Leg., R.S., Ch. 667 (H.B. 617), Sec. 1, eff. September 1, 2023.

CHAPTER 771A. ACCESS TO EMERGENCY COMMUNICATIONS SERVICES IN GENERAL

Sec. 771A.001. DIRECT ACCESS TO 9-1-1 SERVICE REQUIRED. (a) In this chapter:

(1) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system.

(2) "Business service user" means a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned or controlled telephone switch.

(3) "Commission" means the Commission on State Emergency Communications.

(4) "Emergency communication district" means:

(A) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or

(B) a district created under Subchapter B, C, D, F, or G, Chapter 772.

(5) "Internet Protocol enabled service" has the meaning

assigned by Section 51.002, Utilities Code.

(6) "Telephone system" includes a multiline telephone system.

(b) This section applies to the extent the section is not inconsistent with or preempted by federal law.

(c) Notwithstanding any other law, a business service user that owns or controls a telephone system or an equivalent system that uses Internet Protocol enabled service and provides outbound dialing capacity or access shall configure the telephone system or equivalent system to allow a person initiating a 9-1-1 call on the system to directly access 9-1-1 service by dialing the digits 9-1-1 without an additional code, digit, prefix, postfix, or trunk-access code.

(d) A business service user that provides residential or business facilities, owns or controls a telephone system or an equivalent system that uses Internet Protocol enabled service, and provides outbound dialing capacity or access shall configure the telephone system or equivalent system to provide a notification to a central location on the site of the residential or business facility when a person within the residential or business facility dials 9-1-1 if the system is able to be configured to provide the notification without an improvement to the system's hardware. This subsection does not require a business service user to have a person available at the central location to receive a notification.

(e) The commission or the applicable emergency communication district shall grant a one-year waiver of the requirements under this section to a business service user if:

(1) the requirements would be unduly and unreasonably cost prohibitive for a business service user to comply with; and

(2) the business service user provides an affidavit not later than September 1 of each year stating:

(A) the manufacturer and model number of the telephone system or equivalent system that needs to be reprogrammed or replaced;

(B) that the business service user made a good faith attempt to reprogram or replace the system; and

(C) if the telephone system or equivalent system does not comply with Subsection (c), that the business service user agrees to place an instructional sticker immediately adjacent to each telephone that is accessed using the noncompliant system indicating that during the waiver period the telephone is unable to directly

dial 9-1-1 and providing instructions for accessing 9-1-1 in case of an emergency. The instructional sticker must be printed in at least 16-point boldface type in a contrasting color using a font that is easily readable.

(f) The commission may adopt rules to implement this section for areas that are governed by a regional plan, and an emergency communication district may adopt those rules in accordance with Section 771.062.

(g) On the request of the business service user, the commission, an emergency communication district, or a home-rule municipality that independently operates a 9-1-1 system shall provide assistance to a business service user that is within the applicable governmental entity's jurisdiction in complying with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 21 (S.B. 788), Sec. 2, eff. May 15, 2015.

CHAPTER 772. LOCAL ADMINISTRATION OF EMERGENCY COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 772.001. DEFINITIONS. In this chapter:

(1) "Automatic location identification" means a feature corresponding to automatic number identification by which the number provided by the automatic number identification feature is matched with the address or location of the telephone from which the call is made and is presented to the public safety answering point along with the number in a computerized 9-1-1 system.

(2) "Automatic number identification" means a feature that enables a service supplier to identify the telephone number of a caller and that operates by forwarding the caller's telephone number to the public safety answering point, where the data is received by equipment that translates it into a visual display.

(3) "Base rate" means the rate or rates billed by a service supplier, as stated in the service supplier's charges approved by the appropriate regulatory authority, that represent the service supplier's recurring charges for local exchange access lines or their equivalent, exclusive of all taxes, fees, license costs, or similar charges.

(4) "Dispatch method" means the method of responding to a telephone request for emergency service by which a public safety

answering point decides on the proper action to be taken and dispatches, when necessary, the appropriate emergency service unit.

(4-a) "Emergency services district" means an emergency services district created under Chapter 775.

(5) "Local exchange access lines" means all types of lines or trunks that connect a service user to the service supplier's local telephone exchange office.

(6) "9-1-1 service" means a communications service that connects users to a public safety answering point through a 9-1-1 system.

(7) "9-1-1 system" means a system of processing emergency 9-1-1 calls.

(8) "Participating jurisdiction" means a public agency that by vote consents to receive 9-1-1 service from an emergency communication district.

(9) "Principal service supplier" means the entity that provides the most central office lines to an emergency communication district.

(10) "Private safety entity" means a private entity that provides emergency fire-fighting, ambulance, or medical services.

(11) "Public agency" means a municipality or county in this state that provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(12) "Public safety agency" means the division of a public agency that provides fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(13) "Public safety answering point" means a communications facility that:

(A) is operated continuously;

(B) is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch emergency response services directly or to transfer or relay emergency 9-1-1 calls to other public safety agencies;

(C) is the first point of reception by a public safety agency of a 9-1-1 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(14) "Relay method" means the method of responding to a telephone request for emergency service by which a public safety answering point notes pertinent information and relays that

information to the appropriate public safety agency or other provider of emergency services for appropriate action.

(15) "Selective routing" means the feature provided with computerized 9-1-1 service by which 9-1-1 calls are automatically routed to the answering point serving the place from which the call originates.

(16) "Service supplier" means an entity providing local exchange access lines to a service user in an emergency communication district.

(17) "Service user" means a person that is provided local exchange access lines, or their equivalent, in an emergency communication district.

(18) "Transfer method" means the method of responding to a telephone request for emergency service by which a public safety answering point transfers the call directly to the appropriate public safety agency or other provider of emergency services for appropriate action.

(19) "Data base" means the information stored in a management system that is a system of manual procedures and computer programs used to create, store, and update the data required for the selective routing and automatic location identification features in the provision of computerized 9-1-1 service.

(20) "Business service user" means a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned telephone switch.

(21) "Business service" means a telecommunications service classified as a business service under rules adopted by the Public Utility Commission of Texas or under the applicable tariffs of the principal service supplier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 7, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 8, eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 5, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 1, eff. June 14, 2019.

Sec. 772.002. INFORMATION RELATING TO COLLECTION AND REMITTANCE OF 9-1-1 EMERGENCY SERVICE FEE. (a) This section applies only to a district created under this chapter that collects a 9-1-1 emergency service fee from a service supplier or business service user. This section does not apply to an incumbent local exchange company as defined in Section 51.002, Utilities Code.

(b) The board of managers of a district by order may require a service supplier or business service user to provide to the district any information the board requires so long as that information and the format requested are readily available for the service provider's records to determine whether the service provider or business service user is correctly billing and collecting the 9-1-1 emergency service fee and remitting the fee to the district. The information required from a service provider under this subsection may include:

(1) the number of local exchange access lines that the service provider has in the district; and

(2) the number of those local exchange access lines that the Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line under Section 771.063.

(c) The district shall maintain the confidentiality of information provided under this section that a service provider or business service user claims is confidential for competitive purposes. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(d) The district may bring suit to enforce this section or to collect fees billed and collected by a service provider or business service user but not remitted to the district. In a proceeding to collect unremitted fees, a sworn affidavit of the district specifying the amount of unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) The Public Utility Commission of Texas may impose an administrative penalty under Subchapter B, Chapter 15, Utilities Code, against a service provider who is a person regulated under the Utilities Code if the person:

(1) does not provide information required by a district under this section; or

(2) bills and collects a 9-1-1 emergency service fee as required by this chapter but does not remit the fee to the appropriate district.

Added by Acts 2005, 79th Leg., Ch. 952 (H.B. 1583), Sec. 1, eff. September 1, 2005.

Sec. 772.003. OBLIGATIONS OR REQUIREMENTS CONCERNING VOICE OVER INTERNET PROTOCOL, INTERNET PROTOCOL ENABLED SERVICE, OR COMMERCIAL MOBILE SERVICE OR WIRELINE SERVICE. Defining "9-1-1 service" as a communications service and other amendments effective September 1, 2013, do not expand or change the authority or jurisdiction of a public agency or the commission over commercial mobile service or wireline service including Voice over Internet Protocol service or Internet Protocol enabled service or expand the authority of a public agency or the commission to assess 911 fees. Nothing in this chapter affects Section 52.002(d), Utilities Code. In this section, "Voice over Internet Protocol service," "Internet Protocol enabled service," and "commercial mobile service" have the meanings assigned by Sections 51.002 and 51.003, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 11, eff. September 1, 2013.

SUBCHAPTER B. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER 3.3 MILLION

Sec. 772.101. SHORT TITLE. This subchapter may be cited as the 9-1-1 Emergency Number Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.102. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of the units to develop and improve emergency communication procedures and facilities in a manner that makes possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.103. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "District" means a communication district created under this subchapter.

(3) "Principal municipality" means the municipality with the largest population in a county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.104. APPLICATION OF SUBCHAPTER. This subchapter applies to a county with a population of more than 3.3 million and the adjacent territory described by Section 772.105 in which a district was created under Chapter 97, Acts of the 68th Legislature, Regular Session, 1983, before January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 41, eff. Sept. 1, 2001.

Sec. 772.105. TERRITORY OF DISTRICT. (a) The territory of a district consists of:

(1) the territory of the county for which the district is established; and

(2) for each municipality partially located in the county for which the district is established, the territory of that municipality located in another county.

(b) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(c) A public agency located wholly or partly in a county adjoining the county for which the district is created and that has received 9-1-1 service through a regional planning commission interlocal agreement with the district for at least 10 years may become part of the district by resolution of the agency's governing body and approval by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 314 (S.B. 621), Sec. 1, eff. September 1, 2005.

Sec. 772.106. BOARD OF MANAGERS. (a) The district is governed by a board of managers consisting of:

(1) one member appointed by the commissioners court of the county;

(2) two members appointed by the mayor of the principal municipality, with approval of the city council;

(3) one member appointed jointly by the volunteer fire departments operating in whole or part in the district, with the selection process coordinated by the county fire marshal;

(4) one member appointed jointly by the municipalities other than the principal municipality that are participating jurisdictions; and

(5) one member appointed by the principal service supplier.

(b) The board member appointed by the principal service supplier is a nonvoting member.

(c) Board members are appointed for staggered terms of two years, with three members' terms expiring each year.

(d) A board member may be removed from office at will by the entity that appointed the member.

(e) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that

position.

(f) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(g) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(h) The director of the district or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer or other member presiding at the meeting shall read and sign the record and the secretary shall attest the record.

(i) A majority of the voting members of the board constitutes a quorum.

(j) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 772.107. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.108. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the board considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board

requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.109. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must be approved by the board and then presented to and approved by the commissioners court of the county for which the district is established and the governing body of the principal municipality. A revision of the budget must be approved by the same entities in the same manner as the budget.

(b) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to all participating public agencies in writing a sworn statement of all money received by the district and how the money was disbursed or otherwise disposed of during the preceding fiscal year. The report must show in detail the operations of the district for the period covered by the report.

(c) The board shall perform an independent financial audit of the district annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.110. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features or equivalent state-of-the-art technology:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification; or

(6) selective routing.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the

jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system. A 9-1-1 system in a district under this subchapter must be computerized.

(e) 9-1-1 service is mandatory for each individual telephone subscriber in the district and is not an optional service under any definitions of terms relating to telephone service.

(f) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 9, eff. Sept. 1, 1995.

Sec. 772.111. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.112. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call

originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed in order to gain access to emergency services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 2, eff. June 14, 2019.

Sec. 772.113. POWERS OF DISTRICT. (a) The district is a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may receive federal, state, county, or municipal funds and private funds and may spend those funds for the purpose of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.114. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district if authorized to do so by a majority of the votes cast in the election to confirm the creation of the district and by a majority vote of the governing body of each participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.

(b) The fee may be imposed only on the base rate charge or its

equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line, shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate charged a service user by the principal service supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district as required by this subsection or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, at a later date, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee authorized to be charged in a district applies to new territory added to the district under Section 772.105(b) when the territory becomes part of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 8, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 3, eff. June 18, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1342 (S.B. 314), Sec. 1, eff. September 1, 2005.

Sec. 772.115. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.114 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due quarterly. The service supplier shall remit the amount collected in a calendar quarter to the district not later than the 60th day after the last day of the calendar quarter. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects

under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If legal proceedings are established, the court may award the district court costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 9, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 10, eff. Sept. 1, 1995.

Sec. 772.116. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.117. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.118. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscribers and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or a business service user under Subsection (b) is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 10, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 11, eff. Sept. 1, 1995.

Sec. 772.119. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may

choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.120. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the principal part of the district was located shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee by the county after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and resolutions authorizing creation of the debts.

(c) The commissioners court by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.121. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; or

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.122. REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.123. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.124. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and

executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.125. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.126. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.127. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general in the same manner as the district's other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.128. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;
(5) an insurance company;
(6) a fiduciary;
(7) a trustee;
(8) a guardian; and
(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.129. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER 1.5 MILLION

Sec. 772.201. SHORT TITLE. This subchapter may be cited as the Emergency Communication District Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.202. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a

manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.203. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district created under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.204. APPLICATION OF SUBCHAPTER. This subchapter applies to a county with a population of more than 1.5 million in which an emergency communication district was created under Chapter 7, Acts of the 68th Legislature, 2nd Called Session, 1984, before January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 51, eff. September 1, 2011.

Sec. 772.205. ADDITIONAL TERRITORY. (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in the county for which the district is created or a public agency located in whole or part in a county adjoining the county for which the district is created, by resolution adopted by its governing body and approved by the board of the district, may become part of the district and subject to its benefits and requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.206. BOARD OF MANAGERS. (a) A district is governed by a board of managers consisting of:

(1) one member appointed by the commissioners court of the county for which the district is established;

(2) two members appointed by the governing body of the most populous municipality located wholly or partly in the county for which the district is established, if that municipality has a population of more than 150,000, or, if that municipality has a population of 150,000 or less, one member appointed by the governing body;

(3) one member appointed by the governing body of the second most populous municipality located wholly or partly in the county for which the district is established;

(4) one member appointed by the governing body of the third most populous municipality located wholly or partly in the county for which the district is established;

(5) one member appointed by the principal service supplier;

(6) one member appointed by the governing body of the most populous municipality that is a member of the district and is located wholly outside the county for which the district is established; and

(7) one member appointed as provided by this section to represent the other municipalities located wholly or partly in the district.

(b) The board member appointed by the principal service supplier is a nonvoting member.

(c) The board member appointed under Subsection (a)(7) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member. The governing bodies of those municipalities, by agreement of their presiding officers, shall set the time and place to meet and the procedures for selecting the board member.

(d) Board members are appointed for staggered terms of two years, with as near as possible to one-half of the members' terms expiring each year.

(e) A board member may be removed from office at will by the entity that appointed the member.

(f) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(g) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(h) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(i) The director or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(j) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

(k) A majority of the voting members of the board constitutes a quorum.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 238, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1288, Sec. 1, eff. Sept. 1, 2001.

Sec. 772.207. POWERS AND DUTIES OF BOARD. (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.208. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.209. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

(1) be approved by the board;

(2) be presented to the commissioners court of the county in which the majority of the district is located;

(3) be presented to the governing body of each municipality eligible to appoint a member of the board of managers under Sections 772.206(a)(2)-(4) and (6);

(4) be presented to the governing body of each other participating jurisdiction as provided by Subsection (b); and

(5) subject to Subsection (c), be approved by a majority of the entities to which the budget must be presented under Subdivisions (2) through (4).

(b) For purposes of Subsection (a)(4), the proposed budget must

be presented to:

(1) the mayor's council established to administer urban development block grant funds, if one exists in the district; or

(2) if a mayor's council does not exist in the district, the governing bodies of the other participating jurisdictions.

(c) For the purpose of determining approval by a majority under Subsection (a)(5) if the budget is required to be presented under Subsection (b)(2), the other participating jurisdictions are considered to be acting jointly as one entity.

(d) A revision of the budget must be approved in the same manner as the budget.

(e) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must state in detail the operations of the district for the fiscal year covered by the report.

(f) The board shall have an independent financial audit of the district performed annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1288, Sec. 2, eff. Sept. 1, 2001.

Sec. 772.210. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification;

(6) selective routing; or

(7) any equivalent method.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1

system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system. A 9-1-1 system in a district created under this subchapter must be computerized.

(e) A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 12, eff. Sept. 1, 1995.

Sec. 772.211. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.212. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services, such as poison control, suicide prevention, and civil defense, with the approval of the board and the consent of the participating jurisdiction.

(b) A public safety answering point may transmit emergency

response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed in order to gain access to emergency services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 3, eff. June 14, 2019.

Sec. 772.213. POWERS OF DISTRICT. (a) The district is a body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.214. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local

exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate charged a service user by the principal service supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date the board approves making the public agency a participating jurisdiction. The fee authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 11, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 4, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1340 (S.B. 171), Sec. 1, eff. September 1, 2005.

Sec. 772.215. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.214 until the fee is

paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than the 60th day after the last day of the calendar month. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees, and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 13, eff. Sept. 1, 1995.

Sec. 772.216. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.217. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing and operating a 9-1-1 system and costs for related services that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 39, Sec. 1, eff. Sept. 1, 2003.

Sec. 772.218. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1

service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A business service user that owns or leases a publicly or privately owned telephone switch used to provide telephone services to nonaffiliated businesses shall provide to those business end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other business end users in the district.

(e) A business service user that owns or leases a publicly or privately owned telephone switch used to consolidate telephone services at two or more physical addresses shall provide a level of 9-1-1 service that identifies an accurate physical address and telephone number for each 9-1-1 call. For purposes of this section, each floor of a multitenant building is a different physical address.

(f) A hotel, motel, or similar lodging facility that does not operate with a 24-hour, seven-day on-site telephone operator must use a system that furnishes the telephone number and location of the individual unit from which a 9-1-1 call is placed.

(g) A service supplier, business service user, or lodging facility that implements the network and database enhancements necessary to provide a service described in Subsection (b), (d), (e), or (f), including a supplier, user, or facility that is not required to provide the service, is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in this section.

(h) Subsections (d) and (e) do not apply to a telecommunications system installed by a public school district or a state agency.

(i) Subsections (d), (e), and (f) apply only to a telecommunications system installed on or after September 1, 2003.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 13, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 14, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 84, Sec. 1, eff. Sept. 1, 2003.

Sec. 772.219. PUBLIC REVIEW. (a) Periodically, the board

shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.220. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire the outstanding bonded indebtedness of the district, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding bonded indebtedness of the district.

(b) The commissioners court shall retire the district's indebtedness to the extent practicable according to the terms of the bonds and the terms of the orders and resolutions authorizing issuance of the bonds.

(c) The commissioners court by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.221. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.222. REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.223. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.224. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.225. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.226. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds

issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations according to their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.227. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.226 and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several

installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.228. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.229. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER 20,000

Sec. 772.301. SHORT TITLE. This subchapter may be cited as the Emergency Telephone Number Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.302. PURPOSE. It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.303. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district

created under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.304. APPLICATION OF SUBCHAPTER. (a) This subchapter applies only to a county with a population of more than 20,000 or to a group of two or more contiguous counties each with a population of 20,000 or more in which an emergency communication district was created under Chapter 288, Acts of the 69th Legislature, Regular Session, 1985, before January 1, 1988, or to a public agency or group of public agencies that withdraws from participation in a regional plan under Section 771.058(d).

(b) This subchapter does not affect the authority of a public agency to operate under another law authorizing the creation of a district in which 9-1-1 service is provided.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1405, Sec. 32, eff. Sept. 1, 1999.

Sec. 772.305. ADDITIONAL TERRITORY. (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in whole or part in a county adjoining the district, by resolution adopted by its governing body and approved by the board of the district, may become part of the district and subject to its benefits and requirements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.3051. REMOVAL OF CERTAIN MUNICIPAL TERRITORY. (a) A municipality that is a participating jurisdiction may request that the municipality be removed from the district if the municipality operated a consolidated public safety answering point with at least three emergency communication districts described by Section 771.001(3)(A) for at least a three-year period before September 1, 2019.

(b) The board of a district that receives a request under Subsection (a) shall approve the request and, not later than the 91st

day before the date the removal will take effect, notify each service supplier providing service in the district of the scheduled removal. The removal must take effect on a date that:

(1) allows the board to comply with the notice requirements of this section; and

(2) is not later than the 180th day after the date the board receives the request.

(c) Removal of a municipality under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(d) If a municipality is removed under this section, the municipality shall compensate the district in an amount equal to the municipality's pro rata share of the district's indebtedness at the time the municipality is removed. The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the municipality's pro rata share of the district's indebtedness.

Added by Acts 2019, 86th Leg., R.S., Ch. 819 (H.B. 2461), Sec. 1, eff. June 10, 2019.

Sec. 772.306. BOARD OF MANAGERS. (a) A district is governed by a board of managers.

(b) If the most populous municipality in the district has a population of more than 140,000, the board consists of:

(1) one member for each county in the district appointed by the commissioners court of each county;

(2) two members appointed by the governing body of the most populous municipality in the district;

(3) one member appointed by the governing body of the second most populous municipality in the district;

(4) one member appointed as provided by this section to represent the other municipalities located in whole or part in the district; and

(5) one member appointed by the principal service supplier.

(c) If Subsection (b) does not apply to a district, the board consists of:

(1) the following members representing the county or counties in the district:

(A) if the district contains only one county, two members appointed by the commissioners court of the county;

(B) if the district originally contained only one county but contains more than one county when the appointment is made, two members appointed by the commissioners court of the county in which the district was originally located, and one member appointed by the commissioners court of each other county in the district; or

(C) if the district originally contained more than one county and the district contains more than one county when the appointment is made, one member appointed by the commissioners court of each county in the district;

(2) two members appointed jointly by the majority vote of the municipalities voting on the appointment and located in whole or part in the district;

(3) one member appointed jointly by the volunteer fire departments operating wholly or partly in the district, with the appointment process coordinated by the county fire marshal or marshals of the county or counties in the district; and

(4) one member appointed by the principal service supplier.

(d) The board member appointed by the principal service supplier is a nonvoting member. If the board is appointed under Subsection (c), the principal service supplier may waive its right to appoint the board member and designate another service supplier serving all or part of the district to make the appointment.

(e) The board member appointed under Subsection (b)(4) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member.

(f) The initial board members appointed by municipalities under Subsection (c)(2) are appointed by all the municipalities located in whole or part in the district.

(g) Board members are appointed for staggered terms of two years, with as near as possible to one-half of the members' terms expiring each year.

(h) A board member may be removed from office at will by the entity that appointed the member.

(i) A vacancy on the board shall be filled for the remainder of

the term in the manner provided for the original appointment to that position.

(j) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(k) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(l) The director or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(m) Voting members of the board may meet in executive session in accordance with Chapter 551, Government Code.

(n) A majority of the voting members of the board constitutes a quorum.

(o) In a district subject to this subchapter located wholly in a county with a population of less than 40,000, the board consists of:

(1) the appropriate members listed in Subsection (c); and

(2) a peace officer licensed under Chapter 1701, Occupations Code, appointed by the county sheriff.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 638, Sec. 15, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 901, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 622 (H.B. 1187), Sec. 1, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 239 (H.B. 1228), Sec. 1, eff. September 1, 2021.

Sec. 772.307. POWERS AND DUTIES OF BOARD. (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of

a 9-1-1 system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.308. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.309. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

(1) be approved by the board;

(2) be presented to and approved by the commissioners court of each county in the district;

(3) be presented to and approved by the governing body of the most populous municipality in the district, if that municipality has a population of more than 140,000; and

(4) be presented to the governing body of each other participating jurisdiction and approved by a majority of those jurisdictions.

(b) The board shall submit a draft of the proposed budget to the governing bodies of the participating jurisdictions not later than the 45th day before the date the board adopts the budget. The participating jurisdictions shall review the proposed budget and submit any comments regarding the budget to the board.

(c) If the governing body of a county, municipality, or other participating jurisdiction does not approve or disapprove the budget before the 61st day after the date the body received the proposed budget for review, the budget is approved by operation of law.

(d) A revision of the budget must be approved in the same manner as the budget.

(e) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must show in detail the operations of the district for the fiscal year covered by the report.

(f) The board shall have an independent financial audit of the district performed annually.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1406, Sec. 2, eff. Aug. 30, 1999.

Sec. 772.310. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification;

(6) selective routing; or

(7) any equivalent method.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system.

(e) A service supplier involved in providing 9-1-1 service, a

manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 16, eff. Sept. 1, 1995.

Sec. 772.311. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.312. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 4, eff. June 14, 2019.

Sec. 772.313. POWERS OF DISTRICT. (a) The district is a body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter. The board shall determine the method and sources of funding for the district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.314. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single business entity at a single location, unless the lines are used by residents of the location. The fee may also not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed six percent of the monthly base rate in a service year charged a service user by the principal service supplier in the participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.

(c-1) The board may impose the fee at the rate authorized by Subsection (c) regardless of whether an election was held for the district under Chapter 288 (S.B. 750), Acts of the 69th Legislature, Regular Session, 1985, or former Article 1432e, Vernon's Texas Civil

Statutes, at which the voters authorized a different rate.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue generated by the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money generated by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district.

(g) For the purposes of this section, the jurisdiction of the county is the unincorporated area of the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 14, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 5, eff. June 18, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 819 (H.B. 2461), Sec. 2, eff. June 10, 2019.

Sec. 772.315. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.314 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier. A business service user

that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than the 60th day after the last day of the calendar month. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records or the books and records of a business service user described by Subsection (a) with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees,

and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 15, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 17, eff. Sept. 1, 1995.

Sec. 772.316. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.317. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.318. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under

Subsection (b) is not liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 16, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 18, eff. Sept. 1, 1995.

Sec. 772.319. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerks. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.320. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located or, if the district contains more than one county, the commissioners courts of those counties acting jointly, shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners

court or courts acting jointly shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court or courts. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court or courts shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and resolutions authorizing creation of the debts.

(c) The commissioners court or courts by order may adopt the rules necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.321. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.322. REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.323. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and the rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security

of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.324. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.325. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledge revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or

other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.326. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations according to their terms for all purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.327. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.326 and shall be registered by the comptroller on the surrender and cancellation of the bonds refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded

are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.328. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.329. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. EMERGENCY COMMUNICATION SERVICE: COUNTIES WITH POPULATION OVER 2.5 MILLION

Sec. 772.402. APPLICATION OF SUBCHAPTER. This subchapter applies only to a county having a population of more than 2.5 million in which a communication district has not been created under Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 52, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 106, eff. September 1, 2023.

Sec. 772.403. IMPLEMENTATION OF 9-1-1 SERVICE AND FEE. (a) A county to which this subchapter applies may implement a system for providing 9-1-1 service in the unincorporated areas of the county and may impose a service fee on local exchange telephone service customers in the area served. The fee may not be imposed on any line that the Advisory Commission on State Emergency Communications excluded from the definition of a local exchange access line or an equivalent local exchange access line pursuant to Section 771.063. If a business service user provides residential facilities, each line that terminates at a residential unit and that is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee.

(b) The commissioners court shall set the fee in an amount reasonable to cover the costs of providing the 9-1-1 service.

(c) Revenue from the fee may be used only for the planning, development, and provision of 9-1-1 service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 17, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1203, Sec. 6, eff. June 18, 1999.

Sec. 772.404. COLLECTION OF FEE. (a) A telecommunications carrier providing local exchange service in a county that imposes a fee under this subchapter shall collect the fees and deliver them to the commissioners court not later than the 60th day after the last day of the month during which the fees were collected.

(b) A customer on whom a fee is imposed under this subchapter is liable for the fee in the same manner the customer is liable for charges for service provided by the local exchange service provider. The fee must be stated separately in the customer's bill.

(c) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the county.

(d) A local exchange service provider collecting fees under this subchapter may retain as an administrative fee an amount equal to two percent of the total amount of the fees it collects.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 936, Sec. 18, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 638, Sec. 19, eff. Sept. 1, 1995.

Sec. 772.405. AUDIT OF SERVICE PROVIDER. The commissioners court of a county may require at the county's expense an audit of a local exchange service provider collecting fees or surcharges under this subchapter. The audit must be limited to the collection and remittance of money collected under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 772.406. NUMBER AND LOCATION IDENTIFICATION. A business

service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service relating to number and location identification that a service supplier provides to other residential end users in the county.

Added by Acts 1993, 73rd Leg., ch. 936, Sec. 19, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 638, Sec. 20, eff. Sept. 1, 1995.

Sec. 772.407. LIABILITY OF SERVICE PROVIDERS. A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 1995, 74th Leg., ch. 638, Sec. 21, eff. Sept. 1, 1995.

SUBCHAPTER F. CONSOLIDATED DISTRICTS

Sec. 772.451. CONSOLIDATION PROCEDURE. (a) Two or more districts governed by this chapter may consolidate into a single district as provided by this section.

(b) If the board of managers of each district to be consolidated finds that the consolidation of the districts would benefit the participating jurisdictions of the district, the board may call and hold an election in the district's participating jurisdictions to approve the consolidation.

(c) The election in each district must be held on the same uniform election date provided by Chapter 41, Election Code.

(d) Each district shall pay the election expenses for its participating jurisdictions.

(e) The ballot for the election to approve the consolidation must be printed to permit voting for or against the proposition that the district may consolidate with other named districts.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.452. CONSOLIDATION PLANNING. (a) If a majority of the voters voting at the election approve the consolidation, the board of managers of the district shall conduct a planning meeting with the boards of managers of the other districts whose voters have approved the consolidation.

(b) The meeting must be a public meeting. At the meeting, the boards of managers shall devise a consolidation plan to:

(1) combine the debts and assets of the districts;

(2) pay outstanding bonds of the districts and issue refunding bonds as necessary to pay the bonds;

(3) impose a uniform 9-1-1 emergency service fee; and

(4) adjust the membership and qualifications of the board of managers of the consolidated district.

(c) If a consolidated district is not created under Section 772.453 before the first anniversary of the date of the election held under Section 772.451, a consolidated district may not be created until:

(1) the districts make another finding that the consolidation would benefit the participating jurisdictions; and

(2) the consolidation is approved at another election held under Section 772.451.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.453. CREATION OF CONSOLIDATED DISTRICT. (a) When the board of managers of each district has adopted the same consolidation plan, the combined boards of managers shall declare the consolidated district created.

(b) If the board of managers of a district does not agree to a consolidation plan, the remaining districts may consolidate on the terms of a mutually agreeable consolidation plan.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.454. BOARD OF MANAGERS. (a) The consolidated district is governed by a board of managers appointed in accordance

with the order issued by the temporary board of managers under Subsection (b). The members of the boards of managers of all the districts consolidated serve as a temporary board until all members of the initial board of managers are appointed and qualify. The temporary board has all authority necessary to operate and administer the district.

(b) Before the 45th day after the date the district is created, the temporary board of managers by order shall adjust the membership of the board. The order must be substantially in accordance with the consolidation plan and must specify:

(1) the number of members of the board;

(2) the entity or combination of entities that appoints each member;

(3) whether each member may or may not vote; and

(4) the term of each member of the initial board so that as near to one-half of the members as is practical serve terms that expire in even-numbered years and the remaining members serve terms that expire in odd-numbered years.

(c) The order issued under Subsection (b) must preserve as nearly as possible the proportional representation of interests exhibited by the memberships of the boards of managers of the several districts before consolidation.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

Sec. 772.455. GOVERNANCE OF CONSOLIDATED DISTRICT. The consolidated district and its board of managers are governed by the provisions of this chapter that governed the most populous of the districts before the consolidation, except as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 1406, Sec. 3, eff. Aug. 30, 1999.

SUBCHAPTER G. REGIONAL EMERGENCY COMMUNICATIONS DISTRICTS: STATE PLANNING REGION WITH POPULATION OVER 1.5 MILLION

Sec. 772.501. SHORT TITLE. This subchapter may be cited as the Regional Emergency Communications District Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff.

September 1, 2013.

Sec. 772.502. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "District" means a regional emergency communications district created under this subchapter.

(3) "Participating jurisdiction" means a county or principal municipality that adopts a resolution to participate in a district created under this subchapter.

(4) "Principal municipality" means the municipality with the largest population in a region.

(5) "Region" means a state planning region established under Chapter 391, Local Government Code.

(6) "Regional planning commission" means a commission or council of governments created under Chapter 391, Local Government Code, for a designated region.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.503. APPLICATION OF SUBCHAPTER. This subchapter applies to a region:

(1) with a population of more than 1.5 million;

(2) composed of counties and municipalities that operate a 9-1-1 system solely through a regional planning commission; and

(3) in which the governing bodies of each county and the principal municipality in the region adopt a resolution under Section 772.504 to participate in the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.504. CREATION OF DISTRICT. (a) A district is created when the governing bodies of each county and the principal municipality in a region adopt a resolution approving the district's creation and the county's or municipality's participation in the district. The district's creation is effective on the date the last county or municipal governing body in the region adopts the

resolution.

(b) The district shall file with the county clerk of each county in which the district is located a certificate declaring the creation of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.505. POLITICAL SUBDIVISION; DISTRICT POWERS. (a) A district is a political subdivision of this state created to carry out essential governmental functions.

(b) A district may exercise all powers necessary or convenient to carry out the purposes and provisions of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.506. TERRITORY OF DISTRICT. (a) The territory of a district consists of:

(1) the territory of the region in which the district is established; and

(2) for each municipality partially located in the region, the territory of that municipality located in another region.

(b) If a municipality in the district annexes territory that is outside the boundaries of the district, the annexed territory becomes part of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.507. BOARD. (a) A district is governed by a board of managers composed of the members of the governing body of the regional planning commission for the region in which the district is established. Service on the board by a member of the governing body is an additional duty of the member's office or employment.

(b) A board member serves without compensation. The district shall pay all reasonable expenses necessarily incurred by the board member in performing the board's functions under this subchapter.

(c) A majority of the voting members of the board constitutes a quorum.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.508. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board may adopt orders, rules, and policies governing the operations of the board and the district.

(c) The board may contract with any person to carry out the purposes of this subchapter.

(d) The board shall determine the nature and sources of funding for the district. The board may accept grants or other funding from the federal or state government, a county, a municipality, or a private person.

(e) The board may sue in the district's name.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.509. ADVISORY COMMITTEE. (a) The board shall appoint an advisory committee consisting of representatives of the participating jurisdictions. The advisory committee shall review, advise, and provide recommendations to the board on district issues, including equipment, training, budget, and general operational issues.

(b) An advisory committee member must have the training and experience necessary to perform the duties assigned by the board.

(c) Chapter 2110, Government Code, does not apply to the advisory committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.510. DIRECTOR OF DISTRICT; STAFF. (a) The executive director of the regional planning commission in the district's region serves as director of the district.

(b) The director shall:

(1) perform all duties required by the board;

(2) ensure that board policies and procedures are implemented for the purposes of this subchapter; and

(3) assign employees of the regional planning commission to perform duties under this subchapter as necessary to carry out the district's operations.

(c) The director may use district money to compensate an employee assigned duties under this subchapter and the director.

(d) The director and an employee assigned duties under this subchapter are employees of the regional planning commission for all purposes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.511. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare, under the direction of the board, an annual budget for the district. The budget and any revision of the budget must be approved by the board.

(b) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board a written report of all money received by the district and how the money was spent during the preceding fiscal year. The report must show, in detail, the operations of the district for the period covered by the report.

(c) The board annually shall have an independent financial audit made of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.512. PROVISION OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features or equivalent state-of-the-art technology:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;
(5) automatic location identification; or
(6) selective routing.

(b) The district shall recommend minimum standards for a 9-1-1 system. The 9-1-1 system must be computerized.

(c) For each individual telephone subscriber in the district, 9-1-1 service is mandatory and is not an optional service under any definition of terms relating to telephone service.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.513. LIABILITY. A service supplier involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service supplier involved in providing 9-1-1 service may not be held liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.514. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system:

(1) may maintain a separate number for an emergency telephone call; and
(2) shall maintain a separate number for a nonemergency telephone call.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.515. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of

transmitting requests for firefighting, law enforcement, ambulance, and medical services to a public safety agency that provides the requested service at the location from which the call originates. A 9-1-1 system may provide for transmitting requests for other emergency services, including poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed to gain access to emergency services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 5, eff. June 14, 2019.

Sec. 772.516. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or the charge's equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on:

(1) more than 100 local exchange access lines or the lines' equivalent for a single business entity at a single location, unless the lines are used by residents of the location; or

(2) any line that the Commission on State Emergency Communications has excluded from the definition of a local exchange access line or equivalent local exchange access line under Section 771.063.

(c) If a business service user provides residential facilities, each line that terminates at a residential unit and is a communication link equivalent to a residential local exchange access

line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application throughout the district and be imposed in each participating jurisdiction in the district.

(d) The rate of the fee may not exceed six percent of the monthly base rate the principal service supplier in the participating jurisdiction charges a service user.

(e) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(f) In imposing the fee, the board shall attempt to match the district's revenues to the district's operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district as required by this subsection or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(g) For a county or municipality whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date specified by the board. The board may charge the incoming county or municipality an additional amount of money to cover the initial cost of providing 9-1-1 service to that county or municipality. The fee authorized to be charged in a district applies to new territory added to the district under Section 772.506(b) when the territory becomes part of the district.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.517. COLLECTION OF FEE. (a) Each billed service user is liable for the fee imposed under Section 772.516 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the service

supplier's regular billing practice. A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the 9-1-1 emergency service fee and transmit the fees monthly to the district.

(b) The amount collected by a service supplier from the fee is due quarterly. The service supplier shall remit the amount collected in a calendar quarter to the district not later than the 60th day after the last day of the calendar quarter. With each payment, the service supplier shall file a return in a form prescribed by the board.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees the service supplier or business service user collects until at least the second anniversary of the date of collection. The board may require, at the board's expense, an annual audit of the service supplier's or business service user's books and records with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier may retain an administrative fee of two percent of the amount of fees the service supplier collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. The service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent and of the amount of the delinquent fee. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may file legal proceedings against a service user to collect fees not paid by the service user and may establish internal collection procedures and recover the cost of collection

from the nonpaying service user. If legal proceedings are filed by the district, the court may award costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at the legal rate beginning on the date the payment becomes due.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.518. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository until the second anniversary of the date of selection and until a successor depository is selected and qualified.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.519. ALLOWABLE EXPENSES. A district's allowable operating expenses include all costs attributable to designing a 9-1-1 system and all equipment and personnel necessary to establish and operate a public safety answering point and other related operations that the board considers necessary.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.520. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish, for each call, the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under Subsection (b) may not be held liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.521. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held on or before the third anniversary of the date of the district's creation. Subsequent hearings shall be held on or before the third anniversary of the date each resolution required by Subsection (c) is adopted.

(b) The board shall publish notice of the time and place of a hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) After the hearing, the board shall adopt a resolution on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.522. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued. The regional planning commission for the district's region shall assume the district's assets, provide 9-1-1 service, and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the regional planning commission shall continue to impose the 9-1-1 emergency service fee, and each service supplier shall continue to collect the fee for the regional planning commission. Proceeds from the imposition of the fee by the regional planning commission after dissolution of the

district may be used only to retire the outstanding debts of the district.

(b) The regional planning commission shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the resolutions authorizing creation of the debts.

(c) The governing body of the regional planning commission for the district's region may adopt rules necessary to administer this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.523. ISSUANCE OF BONDS. The board may issue bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to provide 9-1-1 service to each participating jurisdiction; or

(2) the installation of equipment necessary for the district to provide 9-1-1 service to each participating jurisdiction.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.524. REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest on district bonds by pledging all or part of the district's revenues from the 9-1-1 emergency service fee or from other sources.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.525. ADDITIONAL SECURITY FOR BONDS. (a) District bonds may be additionally secured by a deed of trust or mortgage lien on all or part of the district's physical properties and rights appurtenant to the properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and any other power necessary for the further security of

the bonds.

(b) The bond trust indenture, regardless of the existence of a deed of trust or mortgage lien on the properties, may:

(1) contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate; and

(2) make provisions for:

(A) amendment or modification; and

(B) investment of district funds.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate the properties.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.526. FORM OF BONDS. (a) A district may issue bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after the bonds' date of issuance. Bonds shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons:

(1) are investment securities under Chapter 8, Business & Commerce Code;

(2) may be issued registrable as to principal or to both principal and interest; and

(3) may be made redeemable before maturity or contain a mandatory redemption provision at the option of the district.

(d) A district may issue bonds in the form, denomination, and manner and under the terms and conditions provided by the board in the resolution authorizing the bonds' issuance. The bonds must be signed and executed as provided by the board in the resolution.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.527. PROVISIONS OF BONDS. (a) In this section, "resolution" means a board resolution authorizing the issuance of bonds, including refunding bonds.

(b) In a resolution, the board may:

(1) provide for the flow of funds and the establishment and maintenance of an interest and sinking fund, reserve fund, or other fund; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(c) A resolution may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue; or

(2) reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(d) A resolution may contain other provisions and covenants determined by the board.

(e) The board may adopt and have executed any other proceedings or instruments necessary or convenient for issuance of bonds.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.528. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve the bonds. On approval by the attorney general, the comptroller shall register the bonds.

(c) After approval and registration, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with the bonds' terms for all purposes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.529. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of the district's outstanding bonds, including matured and unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise, as determined by the board, not more than 25 years after the bonds' date of issuance. Bonds shall bear interest at any rate permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) Refunding bonds must be approved by the attorney general in the same manner as the district's other bonds. The comptroller shall register the refunding bonds on the surrender and cancellation of the bonds being refunded.

(e) A resolution authorizing the issuance of refunding bonds may provide that the bonds be sold and the proceeds deposited in a place at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to the bonds' maturity dates or option dates, if the bonds have been duly called for payment before maturity according to the bonds' terms, must be deposited in the place at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of the bonds being refunded.

(f) A refunding may be accomplished in one or more installment deliveries. Refunding bonds and the bonds' interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) Instead of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.530. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a credit union;

(4) a trust company;

(5) a savings and loan association;
(6) an insurance company;
(7) a fiduciary;
(8) a trustee;
(9) a guardian; and
(10) a sinking fund of a municipality, county, school district, special district, and other political subdivision of this state and other public funds of this state and state agencies, including the permanent school fund.

(b) District bonds may secure deposits of public funds of the state or a municipality, county, school district, or other political subdivision of this state. The bonds are lawful and sufficient security for deposits to the extent of the bonds' value if accompanied by all unmatured coupons.

(c) District bonds are authorized investments under Chapter 2256, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.531. EXEMPTION FROM TAXATION. A bond issued by the district under this subchapter, any transaction relating to the bond, and profits made in the sale or redemption of the bond are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

Sec. 772.532. TRANSFER OF ASSETS. If a regional emergency communications district is established under this subchapter, the regional planning commission for the region in which the district is established may transfer to the district any land, buildings, improvements, equipment, and other assets acquired by the regional planning commission in relation to the provision of 9-1-1 service.

Added by Acts 2013, 83rd Leg., R.S., Ch. 552 (S.B. 628), Sec. 1, eff. September 1, 2013.

SUBCHAPTER H. REGIONAL EMERGENCY COMMUNICATION DISTRICTS: STATE PLANNING REGIONS WITH 9-1-1 POPULATION SERVED LESS THAN 1.5 MILLION

Sec. 772.601. SHORT TITLE. This subchapter may be cited as the Regional Emergency Communication Districts Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.602. DEFINITIONS. In this subchapter:

(1) "9-1-1 region" means the portion of a state planning region established under Chapter 391, Local Government Code, composed of counties and municipalities that on September 1, 2015, exclusively received 9-1-1 system services provided by a 9-1-1 system operated through a regional planning commission.

(2) "Board" means the board of managers of a district.

(3) "District" means a regional emergency communication district created under this subchapter.

(4) "Regional planning commission" means a commission or council of governments created under Chapter 391, Local Government Code, for a designated region.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.603. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to a 9-1-1 region:

(1) in which the total population served by the 9-1-1 system operated through a regional planning commission was less than 1.5 million on September 1, 2015; and

(2) in which the governing bodies of each participating county and municipality in the 9-1-1 region adopt a resolution under Section 772.604 to participate in the district.

(b) This subchapter does not affect:

(1) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service;

(2) a district created under Subchapter B, C, D, F, or G; or

(3) the distribution of funds under Section 771.072.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.604. CREATION OF DISTRICT. (a) A district is created when the governing bodies of each participating county and municipality in a 9-1-1 region adopt a resolution approving the district's creation. The district's creation is effective on the date the last resolution is adopted by a participating county or municipality.

(b) The district shall file with the county clerk of each county in which the district is located a certificate declaring the creation of the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.605. POLITICAL SUBDIVISION; DISTRICT POWERS. (a) A district is a political subdivision of this state created to carry out essential governmental functions.

(b) A district may exercise all powers necessary to carry out the purposes and provisions of this subchapter.

(c) A district created under this subchapter may enter into an interlocal agreement with an emergency communication district established under Subchapter B, C, D, F, or G to promote enhanced public safety and increased fiscal and service efficiencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.606. TERRITORY OF DISTRICT. The territory of a district:

(1) consists of the territory of each participating county or municipality located in a 9-1-1 region; and

(2) does not include any land that is located in the territory of an emergency communication district authorized under Subchapter B, C, D, F, or G.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff.

September 1, 2015.

Sec. 772.607. BOARD OF MANAGERS. (a) A district is governed by a board of managers.

(b) A district's initial board is composed of members who are appointed by the governing bodies of each participating county and municipality. At least two-thirds of the initial board members must be elected officials of the participating counties and municipalities.

(c) The initial board appointed under Subsection (b) shall establish the size of the board and the qualifications of board members.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.608. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board shall approve, adopt, and amend an annual budget.

(c) The board may adopt orders, rules, bylaws, policies, and procedures governing the operations of the board and the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.609. DIRECTOR OF DISTRICT; STAFF; FISCAL AND ADMINISTRATIVE AGENT. (a) The regional planning commission for the 9-1-1 region in which the district is established shall serve as the fiscal and administrative agent for the district.

(b) The executive director of the regional planning commission for the 9-1-1 region may serve as director of the district.

(c) The director is responsible for:

(1) performing all duties required by the board;

(2) ensuring that board policies and procedures are implemented for the purposes of this subchapter;

(3) preparing an annual budget; and

(4) employing and assigning employees of the regional planning commission to perform duties under this subchapter in

accordance with the district's approved annual budget.

(d) The director may use district money to compensate an employee assigned duties under this subchapter.

(e) The director and an employee assigned duties under this subchapter are employees of the regional planning commission for all purposes.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.610. AUDIT AND REPORTING REQUIREMENTS. The district shall prepare an annual report that includes:

(1) the amount and source of funds received by the district;

(2) the amount and source of funds spent by the district; and

(3) the results of an audit of the district's affairs prepared by an independent certified public accountant in compliance with the district's policies and procedures.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.611. PROVISION OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating county or municipality through one or a combination of the following methods and features or equivalent state-of-the-art technology:

(1) the transfer method;

(2) the relay method;

(3) the dispatch method;

(4) automatic number identification;

(5) automatic location identification; or

(6) selective routing.

(b) The district shall design, implement, and operate a 9-1-1 system for each participating county and municipality in the district.

(c) For each individual telephone subscriber in the district, 9-1-1 service is mandatory and is not an optional service under any definition of terms relating to telephone service.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.612. LIABILITY. The liability protection provided by Section 771.053 applies to services provided under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.613. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system:

(1) may maintain a separate number for an emergency telephone call; and

(2) shall maintain a separate number for a nonemergency telephone call.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.614. TRANSMITTING REQUESTS FOR EMERGENCY AID. (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for firefighting, law enforcement, ambulance, and medical services to a public safety agency that provides the requested service at the location from which the call originates. A 9-1-1 system may provide for transmitting requests for other emergency services, including poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of each participating jurisdiction and emergency services district serving the relevant area. A participating jurisdiction's or emergency services district's consent may be withdrawn at any time.

(c) With the consent of a participating county or municipality, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1

to be dialed to gain access to emergency services.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1194 (H.B. 4350), Sec. 6, eff. June 14, 2019.

Sec. 772.615. 9-1-1 EMERGENCY SERVICE FEE. (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or the charge's equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on:

(1) more than 100 local exchange access lines or the lines' equivalent for a single business entity at a single location, unless the lines are used by residents of the location; or

(2) any line that the Commission on State Emergency Communications has excluded from the definition of a local exchange access line or equivalent local exchange access line under Section 771.063.

(c) If a business service user provides residential facilities, each line that terminates at a residential unit and is a communication link equivalent to a residential local exchange access line shall be charged the 9-1-1 emergency service fee. The fee must have uniform application throughout the district and be imposed in each participating county or municipality in the district.

(d) The amount of the fee may not exceed 50 cents per month for each line.

(e) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(f) In imposing the fee, the board shall attempt to match the district's revenues to the district's operating expenditures, including the current and planned expenditures for the purchase, installation, and maintenance of 9-1-1 emergency services in accordance with the district's approved annual budget and operating policies.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.616. COLLECTION OF FEE. (a) A service supplier or a business service user that provides residential facilities and owns or leases a publicly or privately owned telephone switch used to provide telephone service to facility residents shall collect the fees imposed on a customer under Section 772.615.

(b) Not later than the 30th day after the last day of the month in which the fees are collected, the service supplier or business service user shall deliver the fees to the district in the manner determined by the district. The district may establish an alternative date for payment of fees under this section, provided that the required payment date is not earlier than the 30th day after the last day of the report period in which the fees are collected. The service supplier or business service user shall file with each payment to the district a receipt in the form prescribed by the district.

(c) Both a service supplier and a business service user under Subsection (a) shall maintain records of the amount of fees the service supplier or business service user collects until at least the second anniversary of the date of collection. The board may require, at the board's expense, an annual audit of the service supplier's or business service user's books and records with respect to the collection and remittance of the fees.

(d) A business service user that does not collect and remit the 9-1-1 emergency service fee as required is subject to a civil cause of action under Subsection (g). A sworn affidavit by the district specifying the unremitted fees is prima facie evidence that the fees were not remitted and of the amount of the unremitted fees.

(e) A service supplier may retain an administrative fee of two percent of the amount of fees the service supplier collects under this section.

(f) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. The service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee

included in the certificate is delinquent and of the amount of the delinquent fee. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(g) The district may file legal proceedings against a service user to collect fees not paid by the service user and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in a legal proceeding filed under this subsection, the court shall award costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at the legal rate beginning on the date the payment becomes due.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.617. DISTRICT DEPOSITORY. The board shall select a depository for the district in the manner provided by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.618. ALLOWABLE EXPENSES. A district's allowable operating expenses include all costs attributable to designing a 9-1-1 system and all equipment and personnel necessary to establish and maintain a public safety answering point and other related operations that the board considers necessary.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.619. NUMBER AND LOCATION IDENTIFICATION. (a) As part of 9-1-1 service, a service supplier shall furnish, for each call, the telephone number of the subscriber and the address associated with the number.

(b) A business service user that provides residential facilities and owns or leases a publicly or privately owned telephone

switch used to provide telephone service to facility residents shall provide to those residential end users the same level of 9-1-1 service that a service supplier is required to provide under Subsection (a) to other residential end users in the district.

(c) Information furnished under this section is confidential and is not available for public inspection.

(d) A service supplier or business service user under Subsection (b) may not be held liable to a person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsections (a) and (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.620. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held on or before the third anniversary of the date of the district's creation. Subsequent hearings shall be held on or before the third anniversary of the date each resolution required by Subsection (c) is adopted.

(b) The board shall publish notice of the time and place of a hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) After the hearing, the board shall adopt a resolution on the continuation or dissolution of the district and the 9-1-1 emergency service fee.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.621. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued in compliance with the district's policies and bylaws and must be administered in accordance with Chapter 771.

(b) The regional planning commission for the district's 9-1-1 region shall assume the district's assets, provide 9-1-1 service, and

pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the regional planning commission shall continue to impose the 9-1-1 emergency service fee in compliance with Section 772.615, and each service supplier shall continue to collect the fee for the regional planning commission. Proceeds from the imposition of the fee by the regional planning commission after dissolution of the district may be used only to retire the outstanding debts of the district.

(c) The regional planning commission shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the resolutions authorizing creation of the debts.

(d) The governing body of the regional planning commission for the district's 9-1-1 region may adopt rules necessary to administer this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

Sec. 772.622. TRANSFER OF ASSETS. If a district is established under this subchapter, the regional planning commission for the 9-1-1 region in which the district is established may transfer to the district any land, buildings, improvements, equipment, and other assets acquired by the regional planning commission in relation to the provision of 9-1-1 service in accordance with Chapter 771.

Added by Acts 2015, 84th Leg., R.S., Ch. 80 (S.B. 1108), Sec. 1, eff. September 1, 2015.

CHAPTER 773. EMERGENCY MEDICAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 773.001. SHORT TITLE. This chapter may be cited as the Emergency Health Care Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 1, eff. September 1, 2005.

Sec. 773.002. PURPOSE. The purpose of this chapter is to provide for the prompt and efficient transportation of sick and injured patients, after necessary stabilization, and to encourage public access to that transportation in each area of the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.003. DEFINITIONS. In this chapter:

(1) "Advanced life support" means emergency prehospital care that uses invasive medical acts.

(2) "Basic life support" means emergency prehospital care that uses noninvasive medical acts.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

(6) "Commissioner" means the commissioner of state health services.

(7) "Department" means the Department of State Health Services.

(7-a) "Emergency medical care" means bona fide emergency services provided after the sudden onset of a medical or traumatic condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(8) "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(9) "Emergency medical services and trauma care system" means an arrangement of available resources that are coordinated for the effective delivery of emergency health care services in

geographical regions consistent with planning and management standards.

(10) "Emergency medical services personnel" means:

(A) emergency care attendant;

(B) emergency medical technicians;

(C) advanced emergency medical technicians;

(D) emergency medical technicians--paramedic; or

(E) licensed paramedic.

(11) "Emergency medical services provider" means a person who uses or maintains emergency medical services vehicles, medical equipment, and emergency medical services personnel to provide emergency medical services.

(12) "Emergency medical services vehicle" means:

(A) a basic life-support emergency medical services vehicle;

(B) an advanced life-support emergency medical services vehicle;

(C) a mobile intensive-care unit; or

(D) a specialized emergency medical services vehicle.

(13) "Emergency medical services volunteer" means emergency medical services personnel who provide emergency prehospital care without remuneration, except reimbursement for expenses.

(14) "Emergency medical services volunteer provider" means an emergency medical services provider that has at least 75 percent of its total personnel as volunteers and is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service.

(15) "Emergency prehospital care" means care provided to the sick or injured before or during transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

(15-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(16) "First responder organization" means a group or association of certified emergency medical services personnel that, working in cooperation with a licensed emergency medical services provider, provides immediate on-scene care to ill or injured persons but does not transport those persons.

(17) "Governmental entity" means a county, municipality, school district, or special district or authority created in accordance with the Texas Constitution.

(18) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under Subtitle B, Title 3, Occupations Code, and the rules adopted under that subtitle by the Texas Medical Board.

(19) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and is a part of an emergency medical services and trauma care system.

(20) "Trauma patient" means a critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and

(B) found to require medical care in a trauma facility.

(21) [Blank].

(22) "Trauma services" includes services provided to a severely or seriously injured patient who has a principal diagnosis listed in the Injuries and Poisonings Chapter of the International Classification of Diseases, Clinical Modification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 239, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 853, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1377, Sec. 2.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.808, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(29), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1511, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(114), eff. April 2, 2015.

Sec. 773.004. VEHICLES AND PERSONNEL EXCLUDED FROM CHAPTER. (a) This chapter does not apply to:

(1) air transfer that does not advertise as an ambulance

service and that is not licensed by the department;

(2) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

(3) an industrial ambulance; or

(4) a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

(b) In this section, "industrial ambulance" means a vehicle owned and operated by an industrial facility that is not available for hire or use by the public except to assist the local community in a disaster or when existing ambulance service is not available, and includes a ground vehicle at an industrial site used:

(1) for the initial transportation or transfer of the unstable urgently sick or injured; or

(2) to transport from the job site to an appropriate medical facility a person who becomes sick, injured, wounded, or otherwise incapacitated in the course of employment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 240, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 376, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 14(a), eff. September 1, 2007.

Sec. 773.0043. FIRE FIGHTER EXEMPTION FOR CERTAIN PATIENTS; MEDICAL TREATMENT AND TRANSPORT OPERATING GUIDELINES. (a) In this section, "fire fighter" means:

(1) an individual who is defined as fire protection personnel under Section 419.021, Government Code; or

(2) an individual who is a volunteer fire fighter certified by the Texas Commission on Fire Protection or the State Firefighters'

and Fire Marshals' Association of Texas.

(b) Notwithstanding Section 773.041, a fire fighter, regardless of whether the fire fighter is licensed as an emergency medical services provider, may transport a sick or injured patient to a health care facility in a vehicle other than an emergency medical services vehicle if:

(1) the appropriate emergency medical services provider:

(A) is notified of the patient's clinical condition; and

(B) is unable to provide emergency medical services imminently at the patient's location; and

(2) the medical treatment and transport operating guidelines for the patient's apparent clinical condition authorize transport of the patient in a vehicle other than an emergency medical services vehicle.

(c) Each trauma service area regional advisory council shall develop the medical treatment and transport operating guidelines necessary to implement this section for the area served by the council and provide notice of the guidelines to the emergency medical services providers and fire fighters in that area.

Added by Acts 2023, 88th Leg., R.S., Ch. 122 (H.B. 624), Sec. 1, eff. September 1, 2023.

Sec. 773.0045. TEMPORARY EXEMPTIONS FOR EMERGENCY MEDICAL SERVICES PERSONNEL PRACTICING IN RURAL AREA. (a) In this section, "rural area" means:

(1) a county with a population of 50,000 or less; or

(2) a relatively large, isolated, and sparsely populated area in a county with a population of more than 50,000.

(b) The department on a case-by-case basis may temporarily exempt emergency medical services personnel who primarily practice in a rural area from a requirement imposed either by Section 773.050 or 773.055 or by a department rule adopted under Section 773.050 or 773.055 if specific circumstances that affect the rural area served by the emergency medical services personnel justify the exemption. The department may temporarily exempt the emergency medical services personnel from a requirement imposed:

(1) by a department rule adopted under Section 773.050 or

773.055 only if the department finds that, under the circumstances, imposing the requirement would not be in the best interests of the people in the rural area who are served by the emergency medical services personnel; and

(2) by Section 773.050 or 773.055 only if the department finds that, under the circumstances, there is a substantial risk that imposing the requirement will detrimentally affect the health or safety of one or more persons in the affected rural area or hinder the ability of emergency medical services personnel who practice in the area to alleviate a threat to the health or safety of one or more persons in the area.

(c) The exemption must be in writing, include the findings required by Subsection (b), and expire at a stated time. The written findings must be accompanied by a concise and explicit statement that specifically describes the circumstances that support the finding.

(d) In granting the exemption, the department in writing must require the affected emergency medical services personnel or the appropriate emergency medical services provider to adopt a written plan under which the applicable requirement will be met as soon as possible.

(e) A temporary exemption under this section may allow emergency medical services personnel who are applicants for certification at a higher level of training to temporarily practice at the higher level.

Added by Acts 2003, 78th Leg., ch. 848, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1512, eff. April 2, 2015.

Sec. 773.006. FUND FOR EMERGENCY MEDICAL SERVICES, TRAUMA FACILITIES, AND TRAUMA CARE SYSTEMS. (a) The fund for emergency medical services, trauma facilities, and trauma care systems is established as an account in the general revenue fund. Money in the account may be appropriated only to the department for the purposes specified by Section 773.122.

(b) The account is composed of money deposited to the account under Article 102.0185, Code of Criminal Procedure.

(c) Section 404.071, Government Code, does not apply to the

account.

Added by Acts 2003, 78th Leg., ch. 1213, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1513, eff. April 2, 2015.

Sec. 773.007. SUPERVISION OF EMERGENCY PREHOSPITAL CARE. (a) The provision of advanced life support must be under medical supervision and a licensed physician's control.

(b) The provision of basic life support may be under medical supervision and a licensed physician's control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.008. CONSENT FOR EMERGENCY CARE. Consent for emergency care of an individual is not required if:

(1) the individual is:

(A) unable to communicate because of an injury, accident, or illness or is unconscious; and

(B) suffering from what reasonably appears to be a life-threatening injury or illness;

(2) a court of record orders the treatment of an individual who is in an imminent emergency to prevent the individual's serious bodily injury or loss of life; or

(3) the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.009. LIMITATION ON CIVIL LIABILITY. A person who authorizes, sponsors, supports, finances, or supervises the functions of emergency room personnel and emergency medical services personnel is not liable for civil damages for an act or omission connected with training emergency medical services personnel or with services or treatment given to a patient or potential patient by emergency

medical services personnel if the training, services, or treatment is performed in accordance with the standard of ordinary care.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.011. SUBSCRIPTION PROGRAMS. (a) An emergency medical services provider may create and operate a subscription program to fund and provide emergency medical services.

(b) The executive commissioner shall adopt rules establishing minimum standards for the creation and operation of a subscription program.

(c) The executive commissioner shall adopt a rule that requires an emergency medical services provider to secure a surety bond in the amount of sums to be subscribed before soliciting subscriptions and creating and operating a subscription program. The surety bond must be issued by a company that is licensed by or eligible to do business in this state.

(d) The executive commissioner may adopt rules for waiver of the surety bond.

(e) The Insurance Code does not apply to a subscription program established under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 242, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1514, eff. April 2, 2015.

Sec. 773.012. ADVISORY COUNCIL. (a) The governor shall appoint an advisory council to advise the department regarding matters related to the responsibilities of the executive commissioner, commissioner, and department under this chapter. In making appointments to the advisory council, the governor shall ensure that approximately one-half of the members of the advisory council are residents of rural areas of the state.

(b) The advisory council is composed of the following 19 members appointed by the governor:

(1) a board-certified emergency physician, appointed from a

list of names recommended by a statewide professional association of emergency physicians;

(2) a licensed physician who is an emergency medical services medical director, appointed from a list of names recommended by a statewide professional association of emergency medical services medical directors;

(3) a registered nurse, appointed from a list of names recommended by a statewide professional association of emergency nurses;

(4) a fire chief for a municipality that provides emergency medical services, appointed from a list of names recommended by a statewide fire chiefs association;

(5) an officer or employee of a private provider of emergency medical services who is involved with the development of a Texas Trauma System, appointed from a list of names recommended by a statewide association of private providers of emergency medical services;

(6) a volunteer who provides emergency medical services, appointed from a list of names recommended by a statewide association of volunteers;

(7) an educator in the field of emergency medical services;

(8) a member of an emergency medical services air medical team or unit, appointed from a list of names recommended by a statewide emergency medical services air medical association;

(9) a representative of a fire department that provides emergency medical services, appointed from a list of names recommended by a statewide association of firefighters;

(10) a representative of hospitals who is affiliated with a hospital that is a designated trauma facility in an urban community, appointed from a list of names recommended by a statewide association of hospitals;

(11) a representative of hospitals, who is affiliated with a hospital that is a designated trauma facility in a rural community, appointed from a list of names recommended by a statewide association of hospitals;

(12) a representative of a county provider of emergency medical services;

(13) one licensed physician who is a pediatrician with trauma or emergency care expertise;

(14) one trauma surgeon;

(15) one registered nurse with trauma expertise;

(16) a representative of a stand-alone emergency medical services agency in a municipality or taxing district, appointed from a list of names recommended by a statewide association representing emergency medical services agencies;

(17) a certified paramedic, appointed from a list of names recommended by a statewide association representing emergency medical services agencies or emergency medical services personnel; and

(18) two representatives of the general public who are not qualified to serve under another subdivision of this subsection.

(c) A person may not be a public member of the advisory council if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of emergency medical services;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the department other than reimbursement authorized by law for advisory council membership, attendance, or expenses.

(d) In this subsection, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest. A person may not be a member of the advisory council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of emergency medical services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of emergency medical services.

(e) A person may not be a member of the advisory council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation

on behalf of a profession related to the operation of the department.

(f) Members of the advisory council serve staggered six-year terms with the terms of six or seven members expiring January 1 of each even-numbered year. A vacancy on the advisory council is filled in the same manner as the original appointment for the unexpired term.

(g) The governor shall appoint the presiding officer of the advisory council.

(h) A member of the advisory council serves without compensation. Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory council.

(i) The advisory council shall meet at least quarterly in the city of Austin. The advisory council shall meet as provided by procedural rules adopted by the advisory council or at the call of the presiding officer. The advisory council may appoint committees it considers necessary to perform its duties.

(j) The advisory council periodically shall review department rules relating to this chapter and may recommend changes in those rules to the department. The department shall ensure that the advisory council is given adequate time and opportunity to review and comment on each rule proposed for adoption by the executive commissioner under this chapter, including the amendment or repeal of an existing rule, but not including an emergency rule.

(k) The advisory council shall assess the need for emergency medical services in the rural areas of the state.

(l) The advisory council shall develop a strategic plan for:

(1) refining the educational requirements for certification and maintaining certification as emergency medical services personnel; and

(2) developing emergency medical services and trauma care systems.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.01, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1515, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1084 (H.B. 1869), Sec. 1, eff. June 14, 2019.

Sec. 773.013. PEER ASSISTANCE PROGRAM. The department may establish, approve, and fund a peer assistance program in accordance with Section 467.003 and department rules.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1516, eff. April 2, 2015.

Sec. 773.014. ADMINISTRATION OF EPINEPHRINE BY EMERGENCY MEDICAL SERVICES PERSONNEL. (a) An emergency medical services provider and a first responder organization may acquire and possess epinephrine auto-injector devices in accordance with this section. Emergency medical services personnel may carry and administer epinephrine auto-injector devices in accordance with this section.

(b) The executive commissioner shall adopt rules designed to protect the public health and safety to implement this section. The rules must provide that emergency medical services personnel may administer an epinephrine auto-injector device to another only if the person has successfully completed a training course, approved by the department, in the use of the device that is consistent with the national standard training curriculum for emergency medical technicians.

(c) An emergency medical services provider or first responder organization may acquire, possess, maintain, and dispose of epinephrine auto-injector devices, and emergency medical services personnel may carry, maintain, administer, and dispose of epinephrine auto-injector devices, only in accordance with:

(1) rules adopted under this section; and

(2) a delegated practice agreement that provides for medical supervision by a licensed physician who either:

(A) acts as a medical director for an emergency medical services system or a licensed hospital; or

(B) has knowledge and experience in the delivery of emergency care.

(c-1) A licensed physician acting as a medical director for an emergency medical services system may restrict the use and

administration of epinephrine auto-injector devices to certain emergency medical services personnel of the system through:

(1) the delegated practice agreement; or

(2) the adoption of policies governing the use of the devices by personnel within the system.

(d) Emergency medical services personnel who administer epinephrine auto-injector devices to others shall immediately report the use to the physician supervising the activities of the emergency medical services personnel.

(e) The administration of an epinephrine auto-injector device to another under this section is considered to be the administration of emergency care for the purposes of any statute relating to liability for the provision of emergency care. The administration of an epinephrine auto-injector device to another in accordance with the requirements of this section does not constitute the unlawful practice of any health care profession.

(f) A person otherwise authorized to sell or provide an epinephrine auto-injector device to another may sell or provide the devices to an emergency medical services provider or a first responder organization authorized to acquire and possess the devices under this section.

(g) This section does not prevent emergency medical services personnel who are also licensed health care professionals under another health care licensing law and who are authorized to acquire, possess, and administer an epinephrine auto-injector device under the other health care licensing law from acting under the other law.

(h) This section does not impose a standard of care not otherwise required by law.

Added by Acts 2001, 77th Leg., ch. 874, Sec. 4, eff. Jan. 1, 2002; Acts 2001, 77th Leg., ch. 1131, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1079 (H.B. 2827), Sec. 1, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1517, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1321 (H.B. 4260), Sec. 1, eff. September 1, 2019.

Sec. 773.0145. POSSESSION AND ADMINISTRATION OF EPINEPHRINE BY CERTAIN ENTITIES. (a) This section applies to:

(1) an amusement park, as defined by Section 46.03, Penal Code;

(2) a child-care facility, as defined by Section 42.002, Human Resources Code;

(3) a day camp or youth camp, as defined by Section 141.002;

(4) a private or independent institution of higher education, as defined by Section 61.003, Education Code;

(5) a restaurant, as defined by Section 17.821, Business & Commerce Code;

(6) a sports venue, as defined by Section 504.151, Local Government Code;

(7) a youth center, as defined by Section 481.134; or

(8) subject to Subsection (b), any other entity that the executive commissioner by rule designates as an entity that would benefit from the possession and administration of epinephrine auto-injectors.

(b) This section does not apply to a governmental entity.

(c) An entity described by Subsection (a) may adopt a policy regarding the maintenance, administration, and disposal of epinephrine auto-injectors.

(d) A policy adopted under Subsection (c) must provide that only an entity employee or volunteer who is authorized and trained may administer an epinephrine auto-injector to a person who is reasonably believed to be experiencing anaphylaxis on the premises of the entity.

(e) The executive commissioner shall adopt rules regarding the maintenance, administration, and disposal of an epinephrine auto-injector by an entity subject to a policy adopted under Subsection (c). The rules must establish:

(1) the number of epinephrine auto-injectors and the dosages of the auto-injectors available at each entity;

(2) the process for each entity to verify the inventory of epinephrine auto-injectors at regular intervals for expiration and replacement; and

(3) the amount of training required for an entity employee or volunteer to administer an epinephrine auto-injector.

(f) Each entity that adopts a policy under Subsection (c) must

have at least one entity employee or volunteer authorized and trained to administer an epinephrine auto-injector present during all hours the entity is open to the public or to the population that the entity serves, as applicable.

(g) The supply of epinephrine auto-injectors at each entity must:

(1) be stored in accordance with the manufacturer's instructions in a secure location; and

(2) be easily accessible to an entity employee or volunteer authorized and trained to administer an epinephrine auto-injector.

(h) Each entity that adopts a policy under Subsection (c) is responsible for training the entity's employees and volunteers in the administration of an epinephrine auto-injector.

(i) Employee and volunteer training under this section must:

(1) include information on:

(A) the signs and symptoms of anaphylaxis;

(B) the recommended dosages for an adult and a child;

(C) the administration of an epinephrine auto-injector;

(D) the implementation of emergency procedures, if necessary, after administering an epinephrine auto-injector; and

(E) the proper disposal of used or expired epinephrine auto-injectors; and

(2) be completed annually in a formal training session or through online education.

(j) Each entity shall maintain records on the training completed by each employee and volunteer under this section.

(k) A physician or person who has been delegated prescriptive authority under Chapter 157, Occupations Code, may prescribe epinephrine auto-injectors in the name of an entity.

(l) A physician or other person who prescribes epinephrine auto-injectors under Subsection (k) shall provide the entity with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

(m) The standing order under Subsection (l) is not required to be patient-specific, and the epinephrine auto-injector may be administered to a person without a previously established physician-patient relationship.

(n) Notwithstanding any other law, supervision or delegation by a physician is considered adequate if the physician:

(1) periodically reviews the order; and

(2) is available through direct telecommunication as needed for consultation, assistance, and direction.

(o) For purposes of Subsection (n)(2), a person who has been delegated prescriptive authority under Chapter 157, Occupations Code, is not engaged in the unauthorized practice of telemedicine or acting outside the person's scope of practice by consulting a physician as provided by that subdivision when prescribing an epinephrine auto-injector in accordance with this section.

(p) An order issued under this section must contain:

(1) the name and signature of the prescriber;

(2) the name of the entity to which the order is issued;

(3) the quantity of epinephrine auto-injectors to be obtained and maintained under the order; and

(4) the date of issue.

(q) A pharmacist may dispense an epinephrine auto-injector to an entity without requiring the name or any other identifying information relating to the user.

(r) A person who in good faith takes, or fails to take, any action under this section is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

(1) issuing an order for epinephrine auto-injectors;

(2) supervising or delegating the administration of an epinephrine auto-injector;

(3) possessing, maintaining, storing, or disposing of an epinephrine auto-injector;

(4) prescribing an epinephrine auto-injector;

(5) dispensing an epinephrine auto-injector;

(6) administering, or assisting in administering, an epinephrine auto-injector;

(7) providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or

(8) undertaking any other act permitted or required under this section.

(s) The immunities and protections provided by this section are in addition to other immunities or limitations of liability provided by law.

(t) Notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or

create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under this section.

(u) A cause of action does not arise from an act or omission described by this section.

(v) An entity and entity employees or volunteers are immune from suit resulting from an act, or failure to act, under this section, including an act or failure to act under related policies and procedures.

(w) An act or failure to act by entity employees or volunteers under this section, including an act or failure to act under related policies and procedures, is the exercise of judgment or discretion on the part of the entity employee or volunteer and is not considered to be a ministerial act for purposes of liability of the entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 1321 (H.B. 4260), Sec. 2, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 13, eff. September 1, 2021.

Sec. 773.015. IDENTIFICATION OF CERTAIN PATIENTS RECEIVING EMERGENCY PREHOSPITAL CARE. Emergency medical services personnel or emergency room medical or admissions personnel may take the thumbprint of a person who receives emergency prehospital care if the person:

(1) does not possess personal identification at the time the care is administered;

(2) is unconscious;

(3) is transported across the Texas-Mexico border by ambulance or helicopter while receiving emergency prehospital care; and

(4) is delivered to a hospital that has digital fingerprinting capabilities.

Added by Acts 2005, 79th Leg., Ch. 517 (H.B. 805), Sec. 1, eff. September 1, 2005.

Sec. 773.016. DUTIES OF EMERGENCY MEDICAL SERVICES PERSONNEL; CERTAIN EMERGENCY PREHOSPITAL CARE SITUATIONS. (a) In this section,

"cardiopulmonary resuscitation" has the meaning assigned by Section 166.002.

(b) Emergency medical services personnel who are providing emergency prehospital care to a person are subject to Chapter 166, including Section 166.102.

(c) If a person's personal physician is present and assumes responsibility for the care of the person under the applicable requirements of Chapter 197, Title 22, Texas Administrative Code, while the person is receiving emergency prehospital care, the physician may order the termination of cardiopulmonary resuscitation only if, based on the physician's professional medical judgment, the physician determines that resuscitation should be discontinued.

(d) If a person's personal physician is not present or does not assume responsibility for the care of the person while the person is receiving emergency prehospital care, the emergency medical services system's medical director or online physician:

(1) shall be responsible for directing the emergency medical services personnel who are providing emergency prehospital care to the person; and

(2) may order the termination of cardiopulmonary resuscitation only if, based on the medical director's or online physician's professional medical judgment, the medical director or online physician determines that resuscitation should be discontinued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 710 (H.B. 577), Sec. 2, eff. June 17, 2011.

Sec. 773.017. USE OF CERTAIN EXTERNAL MOTOR VEHICLE MARKINGS OR FEATURES PROHIBITED; CRIMINAL OFFENSE. (a) A person may not operate a motor vehicle in this state that resembles an emergency medical services vehicle unless the person uses the motor vehicle:

(1) as an emergency medical services vehicle under this chapter; or

(2) for other legitimate governmental functions, including police or firefighting services.

(b) A motor vehicle resembles an emergency medical services vehicle if the motor vehicle has on the exterior of the motor vehicle any of the following markings or features:

(1) the word "ambulance" or a derivation of that word;

(2) a star of life as trademarked by the National Highway Traffic Safety Administration;

(3) a Maltese cross commonly used by fire departments;

(4) forward-facing flashing red, white, or blue lights;

(5) a siren;

(6) the words "critical care transport," "emergency," "emergency medical services," or "mobile intensive care unit"; or

(7) the acronym "EMS" or "MICU".

(c) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

(d) This section does not apply to a motor vehicle bearing a license plate issued or approved under Section 504.501 or 504.502, Transportation Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 253 (H.B. 1249), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. STATE PLAN FOR EMERGENCY SERVICES

Sec. 773.021. STATE PLAN. (a) The department shall develop a state plan for the prompt and efficient delivery of adequate emergency medical services to acutely sick or injured persons.

(b) The state plan must include an emergency radio communication plan to be used by local governments and districts that provide emergency medical services to develop an emergency radio communication network linking emergency medical services providers with local hospitals or trauma centers.

(c) The advisory council shall consider the department's actions under Subsection (a), and the department shall review the council's recommendations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 488, Sec. 1, eff. June 12, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1518, eff. April 2, 2015.

Sec. 773.022. SERVICE DELIVERY AREAS. The department shall divide the state into emergency medical services delivery areas that

coincide, to the extent possible, with other regional planning areas.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1519, eff. April 2, 2015.

Sec. 773.023. AREA PLANS. (a) The department shall:

(1) identify all public or private agencies and institutions that are used or may be used for emergency medical services in each delivery area; and

(2) enlist the cooperation of all concerned agencies and institutions in developing a well-coordinated plan for delivering emergency medical services in each delivery area.

(b) A delivery area plan must include an interagency communications network that facilitates prompt and coordinated response to medical emergencies by the Department of Public Safety, local police departments, ambulance personnel, medical facilities, and other concerned agencies and institutions.

(c) A delivery area plan may include the use of helicopters that may be available from the Department of Public Safety, the National Guard, or the United States Armed Forces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1520, eff. April 2, 2015.

Sec. 773.024. FEDERAL PROGRAMS. The department is the state agency designated to develop state plans required for participation in federal programs involving emergency medical services. The department may receive and disburse available federal funds to implement the service programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1521, eff. April 2, 2015.

Sec. 773.025. ACCESSIBILITY OF TRAINING. (a) The department shall identify all individuals and public or private agencies and institutions that are or may be engaged in emergency medical services training in each delivery area.

(b) A delivery area plan must include provisions for encouraging emergency medical services training so as to reduce the cost of training to emergency medical services providers and to make training more accessible to low population or remote areas.

(c) A governmental entity that sponsors or wishes to sponsor an emergency medical services provider may request the department to provide emergency medical services training for emergency care attendants at times and places that are convenient for the provider's personnel, if the training is not available locally.

(d) A governmental entity or nongovernmental organization that sponsors or wishes to sponsor an emergency medical services provider or first responder organization in a rural or underserved area may request the department to provide or facilitate the provision of initial training for emergency care attendants, if the training is not available locally. The department shall ensure that the training is provided. The department shall provide the training without charge, or contract with qualified instructors to provide the training without charge, to students who agree to perform emergency care attendant services for at least one year with the local emergency medical services provider or first responder organization. The training must be provided at times and places that are convenient to the students. The department shall require that at least three students are scheduled to take any class offered under this subsection.

(e) To facilitate all levels of emergency medical services training, the department shall consult with and solicit comment from emergency medical services providers, first responder organizations, persons who provide emergency medical services training, and other entities interested in emergency medical services training programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 874, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1522, eff. April 2, 2015.

SUBCHAPTER C. LICENSES, CERTIFICATION, AND QUALIFICATIONS

Sec. 773.041. LICENSE OR CERTIFICATE REQUIRED. (a) A person may not operate, conduct, or maintain an emergency medical service, advertise that the person is an emergency medical services provider, or otherwise engage in or profess to be engaged in the provision of emergency medical services unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter.

(a-1) A person may not transport a patient by stretcher in a vehicle unless the person holds a license as an emergency medical services provider issued by the department in accordance with this chapter. For purposes of this subsection, "person" means an individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

(b) A person may not practice as any type of emergency medical services personnel unless the person is certified under this chapter and rules adopted under this chapter.

(c) A certificate or license issued under this chapter is not transferable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 244, eff. Sept. 1, 1991. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 14(b), eff. September 1, 2007.

Sec. 773.0415. LIMITATION ON INFORMATION REQUIRED FOR CERTIFICATE RENEWAL. The requirements and procedures adopted by the executive commissioner for the renewal of a certificate to practice as emergency medical services personnel issued under this chapter:

(1) may not require an applicant to provide unchanged criminal history information already included in one or more of the applicant's previous applications for certification or for certificate renewal filed with the department; and

(2) may require the applicant to provide only information relevant to the period occurring since the date of the applicant's last application for certification or for certificate renewal, as applicable, including information relevant to any new requirement

applicable to the certificate held by the applicant.

Added by Acts 2009, 81st Leg., R.S., Ch. 332 (H.B. 846), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1523, eff. April 2, 2015.

Sec. 773.042. BASIC LIFE-SUPPORT EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. A provider qualifies as a basic life-support emergency medical services provider if it provides a vehicle that is designed for transporting the sick or injured, has personnel and sufficient equipment and supplies for providing basic life support, and is capable of providing emergency and nonemergency transportation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 3, eff. Aug. 28, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 2, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 5, eff. September 1, 2005.

Sec. 773.043. ADVANCED LIFE-SUPPORT EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. A provider qualifies as an advanced life-support emergency medical services provider if it:

(1) meets the requirements of a basic life-support emergency medical services provider; and

(2) has personnel and sufficient equipment and supplies for providing intravenous therapy and endotracheal or esophageal intubation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 4, eff. Aug. 28, 1995.

Sec. 773.044. MOBILE INTENSIVE-CARE PROVIDER QUALIFICATIONS. A provider qualifies as a mobile intensive-care provider if it:

(1) meets the requirements of an advanced life-support emergency medical services provider; and

(2) has personnel and sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio communication.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 5, eff. Aug. 28, 1995.

Sec. 773.045. SPECIALIZED EMERGENCY MEDICAL SERVICES PROVIDER QUALIFICATIONS. (a) A provider using a vehicle, including a helicopter, boat, fixed-wing aircraft, or ground vehicle, qualifies as a specialized emergency medical services provider if:

(1) the vehicle is designed for transporting the sick or injured by air, water, or ground transportation; and

(2) the provider has personnel and sufficient equipment and supplies to provide for the specialized needs of the patient transported.

(b) A rotor or fixed-wing aircraft and staff based in this state and used to transport a patient by stretcher and that holds itself out as an air ambulance service is required to be licensed by the department.

(c) An air ambulance company based in another state that transports patients from a point in this state is required to be licensed by the department as an emergency medical services provider. The department shall issue a license to an air ambulance company under this subsection if the company applies as required by this chapter and has met the qualifications specified in department rules for safely transporting patients. An air ambulance company accredited by the Commission on Accreditation of Medical Transport Systems is rebuttably presumed to have met the department's qualifications.

(d) An air ambulance company licensed under Subsection (c) must include information regarding the physical location of the company's base operations in any advertising by the company in this state. This subsection does not prohibit an air ambulance company with multiple locations from listing those locations in advertising, provided that the air ambulance company meets all the provisions of this chapter.

(e) An air ambulance company that is not located in this state and that advertises within this state must have at least one physical location in this state.

(f) This section does not require an air transportation provider to be licensed if, in addition to the company's normal air transportation service, the air transportation company provides only voluntary, mercy-flight transportation at the company's own expense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 245, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 376, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 6, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1182, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1524, eff. April 2, 2015.

Sec. 773.046. EMERGENCY CARE ATTENDANT QUALIFICATIONS. (a) An individual qualifies as an emergency care attendant if the individual is certified by the department as minimally proficient to provide emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.

(b) The department may not require an individual to have a high school diploma or a high school equivalency certificate for certification as an emergency care attendant under this chapter if the individual certifies that the individual will serve only as an emergency care attendant volunteer during the certification period.

(c) The executive commissioner shall adopt rules as necessary to administer this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 246, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1035, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1525, eff. April 2, 2015.

Sec. 773.047. EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS. An individual qualifies as an emergency medical technician if the

individual is certified by the department as minimally proficient to perform emergency prehospital care that is necessary for basic life support and that includes cardiopulmonary resuscitation and the control of hemorrhaging.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 247, eff. Sept. 1, 1991.

Sec. 773.048. ADVANCED EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS. An individual qualifies as an advanced emergency medical technician if the individual is certified by the department as minimally proficient to provide emergency prehospital care by initiating under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 248, eff. Sept. 1, 1991. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1526, eff. April 2, 2015.

Sec. 773.049. EMERGENCY MEDICAL TECHNICIAN--PARAMEDIC QUALIFICATIONS. An individual qualifies as an emergency medical technician-paramedic if the individual is certified by the department as minimally proficient to provide advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 249, eff. Sept. 1, 1991.

Sec. 773.0495. LICENSED PARAMEDIC QUALIFICATIONS. An individual qualifies as a licensed paramedic if the department determines that the individual is minimally proficient to provide advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac

defibrillation or cardioversion, and drug therapy. In addition, a licensed paramedic must complete a curriculum that includes college-level course work in accordance with department rules.

Added by Acts 1997, 75th Leg., ch. 435, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1526, eff. April 2, 2015.

Sec. 773.0496. SCOPE OF EMERGENCY MEDICAL TECHNICIAN-PARAMEDIC AND LICENSED PARAMEDIC DUTIES. (a) In this section:

(1) "Advanced life support" means health care provided to sustain life in an emergency, life-threatening situation. The term includes the initiation of intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy procedures.

(2) "Direct supervision" means supervision of an emergency medical technician-paramedic or licensed paramedic by a licensed physician who is present in the same area or an area adjacent to the area where an emergency medical technician-paramedic or licensed paramedic performs a procedure and who is immediately available to provide assistance and direction during the performance of the procedure.

(b) Notwithstanding other law, a person who is certified under this chapter as an emergency medical technician-paramedic or a licensed paramedic, is acting under the delegation and direct supervision of a licensed physician, and is authorized to provide advanced life support by a health care facility may in accordance with department rules provide advanced life support in the facility's emergency or urgent care clinical setting, including a hospital emergency room and a freestanding emergency medical care facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 1054 (H.B. 2020), Sec. 1, eff. June 19, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 1, eff. June 19, 2015.

Sec. 773.050. MINIMUM STANDARDS. (a) Each basic life-support emergency medical services vehicle when in service must be staffed by

at least two individuals certified as emergency care attendants or certified at a higher level of training.

(b) The executive commissioner by rule shall establish minimum standards for:

(1) staffing an advanced life-support emergency medical services vehicle, a mobile intensive-care unit, or a specialized emergency medical services vehicle;

(2) emergency medical services personnel certification and performance, including provisional certification, certification, decertification, recertification, suspension, emergency suspension, and probation;

(3) the approval of courses and training programs, the certification of program instructors, examiners, and course coordinators for emergency medical services personnel training, and the revocation and probation of an approval or certification;

(4) examinations of emergency medical services personnel;

(5) medical supervision of basic and advanced life-support systems;

(6) granting, suspending, and revoking a license for emergency medical services providers; and

(7) emergency medical services vehicles.

(c) The executive commissioner shall consider the education, training, criminal background, and experience of allied health professionals in adopting the minimum standards for emergency medical services personnel certification and may establish criteria for interstate reciprocity of emergency medical services personnel. Each out-of-state application for certification must be accompanied by a nonrefundable fee of not more than $120. The executive commissioner may also establish criteria for out-of-country emergency medical services personnel certification. Each out-of-country application for certification must be accompanied by a nonrefundable fee of not more than $180.

(c-1) In this subsection, "United States military" means the United States Army, the United States Navy, the United States Air Force, the United States Marine Corps, the United States Coast Guard, any reserve or auxiliary component of any of those services, or the National Guard. The executive commissioner by rule shall provide that an individual is eligible for emergency medical services personnel certification through reciprocity if the individual:

(1) successfully completed emergency medical services

training provided by the United States military;

(2) has emergency medical services personnel credentials from the United States military; and

(3) is certified by the National Registry of Emergency Medical Technicians.

(d) The executive commissioner may not adopt a rule that requires any system, service, or agency to provide advanced life-support or staffing beyond basic life-support levels except for providers of:

(1) advanced life-support emergency medical services;

(2) mobile intensive care; or

(3) specialized emergency medical services.

(e) The executive commissioner shall adopt minimum standards for recognition of first responder organizations.

(f) The executive commissioner shall recognize, prepare, or administer continuing education programs for certified personnel. A certificate holder must participate in the programs to the extent required by the executive commissioner to remain certified.

(g) Rules adopting minimum standards under this section shall require:

(1) an emergency medical services vehicle to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis; and

(2) emergency medical services personnel to complete continuing education training in the administration of anaphylaxis treatment.

(h) The department may provide a prescreening criminal history record check for an emergency medical services personnel applicant to determine the applicant's eligibility to receive certification before enrollment in the educational and training requirements mandated by the executive commissioner. The executive commissioner by rule may prescribe a reasonable fee for the costs associated with prescreening to charge each applicant who requests prescreening. The department shall collect the prescribed fee.

(i) The department may develop and administer at least twice each calendar year a jurisprudence examination to determine the knowledge that an applicant for an emergency medical services provider license or emergency medical services personnel certification has of this chapter, department rules, and any other applicable laws affecting the applicant's activities regulated under

this chapter. Department rules must specify who must take the examination on behalf of an entity applying for an emergency medical services provider license.

(j) Consistent with rules adopted under Section 773.112, the executive commissioner by rule shall require that each applicable emergency medical services provider have a plan for providing a dialysis patient who places an emergency 9-1-1 telephone call during a declared disaster an alternative mode of transportation directly to and from an outpatient end stage renal disease facility if the patient's normal and alternative modes of transportation cannot be used during the disaster. An emergency medical services provider's plan under this subsection may prioritize providing transportation for a patient suffering from an acute emergency condition over transportation for a dialysis patient. For purposes of this subsection:

(1) "Disaster" has the meaning assigned by Section 418.004, Government Code. The term includes a disaster declared by:

(A) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.); and

(B) the governor under Section 418.014, Government Code.

(2) "End stage renal disease facility" has the meaning assigned by Section 251.001.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 250, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 1, eff. May 23, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 7, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1411, Sec. 19.02, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1079 (H.B. 2827), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 970 (H.B. 1960), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1527, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 2, eff. June 19, 2015.

Acts 2023, 88th Leg., R.S., Ch. 966 (S.B. 2133), Sec. 1, eff. September 1, 2023.

Sec. 773.0505. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt rules restricting advertising or competitive bidding by a license or certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In rules to prohibit false, misleading, or deceptive practices, the executive commissioner may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license or certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license or certificate holder; or

(4) restricts the license or certificate holder's advertisement under a trade name.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1528, eff. April 2, 2015.

Sec. 773.051. MUNICIPAL REGULATION. A municipality may establish standards for an emergency medical services provider that are stricter than the minimum standards of this chapter and department rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 8, eff. Aug. 28, 1995.

Sec. 773.052. VARIANCES. (a) An emergency medical services provider with a specific hardship may apply to the department for a variance from a rule adopted under this chapter.

(b) On receipt of a request for a variance, the department shall consider any relevant factors, including:

(1) the nearest available service;

(2) geography; and

(3) demography.

(c) The department shall grant to an emergency medical services provider who is the sole provider for a service area a variance from the minimum staffing standards for the provision of emergency medical services in that service area.

(d) An applicant for a variance under Subsection (c) must submit a letter to the department from the commissioners court of the county or the governing body of the municipality in which the provider intends to operate an emergency medical services vehicle in the provision of emergency medical services in a service area of the county or municipality.

(e) The department shall grant a variance under Subsection (c) if the department determines that the provider qualifies and may deny the variance if the department determines that the provider does not qualify. The department shall give a provider whose application is denied the opportunity for a contested case hearing under Chapter 2001, Government Code.

(f) The department shall issue an emergency medical services license to a provider granted a variance under this section. The license is subject to annual review by the department. A provider is encouraged to upgrade staffing to meet the minimum standards set by the rules adopted under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 251, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(b), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1529, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 95 (S.B. 1588), Sec. 1, eff. September 1, 2023.

Sec. 773.054. APPLICATIONS FOR PERSONNEL CERTIFICATION AND

TRAINING PROGRAM APPROVAL. (a) This section applies to an application for:

(1) examination for certification of emergency medical services personnel;

(2) approval of a course or training program; or

(3) certification of a program instructor, examiner, or course coordinator.

(b) Each application must be made to the department on a form prescribed by the department and under department rules.

(c) Each application under Subsection (a)(3) must be accompanied by a nonrefundable fee of not more than $30 for a program instructor or examiner or $60 for a course coordinator. The department may not require a fee for a certification from an instructor, examiner, or coordinator who does not receive compensation for providing services.

(d) Each application under Subsection (a)(2) must be accompanied by a nonrefundable fee of not more than $30 for a basic course or training program or $60 for an advanced course or training program. The department may not require a fee for approval of a course or training program if the course coordinator or sponsoring agency does not receive compensation for providing the course or training program.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 253, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 9, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(c), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1530, eff. April 2, 2015.

Sec. 773.055. CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL. (a) A nonrefundable fee must accompany each application for emergency medical services personnel certification. The fee may not exceed:

(1) $90 for an emergency medical technician-paramedic or advanced emergency medical technician;

(2) $60 for an emergency medical technician or emergency care attendant;

(3) $90 for recertification of an emergency medical technician-paramedic or advanced emergency medical technician;

(4) $60 for recertification of an emergency medical technician or emergency care attendant; or

(5) $120 for certification or recertification of a licensed paramedic.

(b) Except as provided by Subsection (c), the department shall notify each examinee of the results of an examination for certification not later than the 30th day after the date on which the examination is administered.

(c) The department shall notify an examinee of the results of an examination not later than the 14th day after the date on which the department receives the results if the examination is graded or reviewed by a national testing service. If the notice of the examination results will be delayed longer than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(d) The department shall furnish a person who fails an examination for certification with an analysis of the person's performance on the examination if requested in writing by that person. The executive commissioner may adopt rules to allow a person who fails the examination to retake all or part of the examination. A fee of not more than $30 must accompany each application for reexamination.

(e) The department shall issue certificates to emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 773.050. A certificate is valid for four years from the date of issuance. The department shall charge a fee of not more than $10 to replace a lost certificate.

(f) A fee required by this section is the obligation of the applicant but may be paid by the emergency medical services provider. If an applicant is required to be certified as a condition of employment, the emergency medical services provider shall pay for all fees required by this section, except for a fee to replace a lost certificate, in addition to any other compensation paid to that applicant if the provider is a municipality. A municipality that requires a fire fighter to be certified as emergency medical services personnel shall pay the fees required by this section.

(g) The executive commissioner by rule may adopt a system under

which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the department shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

(h) The department shall ensure that the written examinations and any other tests that the department requires a person to take and pass to obtain or retain certification as emergency medical services personnel shall be administered during the course of a year at various locations around the state so that a person who resides in any part of the state will be able to take the examinations or tests without having to travel a distance that as a practical matter requires either travel by air or an overnight stay.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 254, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 2, eff. May 23, 1993; Acts 1995, 74th Leg., ch. 915, Sec. 10, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 19.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(d), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1531, eff. April 2, 2015.

Sec. 773.0551. DISEASE PREVENTION AND PREPAREDNESS INFORMATION ON CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL. (a) In this section:

(1) "Applicant" means an individual who files an application for certification or recertification as emergency medical services personnel under Section 773.055.

(2) "Immunization registry" means the immunization registry established under Section 161.007.

(b) The executive commissioner by rule shall adopt a system under which the Health and Human Services Commission provides an applicant immunization information. The system must require the commission to provide:

(1) if the applicant's immunization history is included in the immunization registry, written notice of the applicant's immunization history, using information from the immunization registry; or

(2) if the applicant's immunization history is not included in the immunization registry, the following information:

(A) details about the program developed under Section 161.00707; and

(B) the specific risks to emergency medical services personnel when responding rapidly to an emergency of exposure to and infection by a potentially serious or deadly communicable disease that an immunization may prevent.

Added by Acts 2019, 86th Leg., R.S., Ch. 240 (H.B. 1418), Sec. 1, eff. May 27, 2019.

Sec. 773.056. APPROVAL OF TRAINING PROGRAMS; CERTIFICATION OF INSTRUCTORS, EXAMINERS, AND COORDINATORS. (a) The department shall approve each course or training program that meets the minimum standards adopted under Section 773.050.

(b) The department shall issue a certificate to each program instructor, examiner, or course coordinator who meets the minimum standards adopted under Section 773.050. The certificate is valid for two years. The department shall charge a fee of not more than $10 to replace a lost or stolen certificate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 255, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 11, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(e), eff. Sept. 1, 2003.

Sec. 773.057. EMERGENCY MEDICAL SERVICES PROVIDERS LICENSE. (a) An emergency medical services provider must submit an application for a license in accordance with procedures prescribed by the executive commissioner.

(b) A nonrefundable application and vehicle fee determined by the executive commissioner by rule must accompany each application. The application fee may not exceed $500 for each application and the vehicle fee may not exceed $180 for each emergency medical services

vehicle operated by the provider.

(c) The department may delegate vehicle inspections to the commissioners court of a county or the governing body of a municipality. The delegation must be made:

(1) at the request of the commissioners court or governing body; and

(2) in accordance with criteria and procedures adopted by the executive commissioner.

(d) The commissioners court of a county or governing body of a municipality that conducts inspections under Subsection (c) shall collect and retain the fee for vehicles it inspects.

(e) In addition to any other qualifications that an emergency medical services provider must possess to obtain the type of license sought, all emergency medical services providers must possess the qualifications required for a basic emergency medical services provider under Section 773.042.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 256, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 915, Sec. 12, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(f), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 305 (S.B. 521), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1532, eff. April 2, 2015.

Sec. 773.0571. REQUIREMENTS FOR PROVIDER LICENSE. The department shall issue to an emergency medical services provider applicant a license that is valid for two years if the department is satisfied that:

(1) the applicant has adequate staff to meet the staffing standards prescribed by this chapter and the rules adopted under this chapter;

(2) each emergency medical services vehicle is adequately constructed, equipped, maintained, and operated to render basic or advanced life support services safely and efficiently;

(3) the applicant offers safe and efficient services for emergency prehospital care and transportation of patients;

(4) the applicant:

(A) possesses sufficient professional experience and qualifications to provide emergency medical services; and

(B) has not been excluded from participation in the state Medicaid program;

(5) the applicant holds a letter of approval issued under Section 773.0573 by the governing body of the municipality or the commissioners court of the county in which the applicant is located and is applying to provide emergency medical services, as applicable;

(6) the applicant employs a medical director;

(7) the applicant operates out of a physical location in compliance with Section 773.05715;

(8) the applicant owns or has a long-term lease agreement for all equipment necessary for safe operation of an emergency medical services provider, as provided by Section 773.05716; and

(9) the applicant complies with the rules adopted under this chapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 257, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 13, eff. Aug. 28, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(a), eff. September 1, 2013.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 3, eff. June 19, 2015.

Sec. 773.05711. ADDITIONAL EMERGENCY MEDICAL SERVICES PROVIDER LICENSE REQUIREMENTS.

Text of subsection effective until April 1, 2025

(a) In addition to the requirements for obtaining or renewing an emergency medical services provider license under this subchapter, a person who applies for a license or for a renewal of a license must:

(1) provide the department with a letter of credit issued by a federally insured bank or savings institution in the amount of:

(A) $100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(B) $75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(C) $50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued; and

(D) $25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(2) if the applicant participates in the medical assistance program operated under Chapter 32, Human Resources Code, the Medicaid managed care program operated under Chapter 533, Government Code, or the child health plan program operated under Chapter 62 of this code, provide the Health and Human Services Commission with a surety bond in the amount of $50,000; and

(3) submit for approval by the department the name and contact information of the provider's administrator of record who satisfies the requirements under Section 773.05712.

Text of subsection effective on April 1, 2025

(a) In addition to the requirements for obtaining or renewing an emergency medical services provider license under this subchapter, a person who applies for a license or for a renewal of a license must:

(1) provide the department with a letter of credit issued by a federally insured bank or savings institution in the amount of:

(A) $100,000 for the initial license and for renewal of the license on the second anniversary of the date the initial license is issued;

(B) $75,000 for renewal of the license on the fourth anniversary of the date the initial license is issued;

(C) $50,000 for renewal of the license on the sixth anniversary of the date the initial license is issued; and

(D) $25,000 for renewal of the license on the eighth anniversary of the date the initial license is issued;

(2) if the applicant participates in the medical assistance program operated under Chapter 32, Human Resources Code, the Medicaid managed care program operated under Chapters 540 and 540A, Government Code, or the child health plan program operated under Chapter 62 of

this code, provide the Health and Human Services Commission with a surety bond in the amount of $50,000; and

(3) submit for approval by the department the name and contact information of the provider's administrator of record who satisfies the requirements under Section 773.05712.

(b) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.63, eff. April 1, 2025.

Sec. 773.05712. ADMINISTRATOR OF RECORD. (a) The administrator of record for an emergency medical services provider licensed under this subchapter:

(1) may not be employed or otherwise compensated by another private for-profit emergency medical services provider;

(2) must meet the qualifications required for an emergency medical technician or other health care professional license or certification issued by this state; and

(3) must submit to a criminal history record check at the applicant's expense.

(b) Section 773.0415 does not apply to information an administrator of record is required to provide under this section.

(c) An administrator of record initially approved by the department may be required to complete an education course for new administrators of record. The executive commissioner shall recognize, prepare, or administer the education course for new administrators of record, which must include information about the laws and department rules that affect emergency medical services providers.

(d) An administrator of record approved by the department under Section 773.05711(a) annually must complete at least eight hours of continuing education following initial approval. The executive commissioner shall recognize, prepare, or administer continuing

education programs for administrators of record, which must include information about changes in law and department rules that affect emergency medical services providers.

(e) Subsection (a)(2) does not apply to an emergency medical services provider that held a license on September 1, 2013, and has an administrator of record who has at least eight years of experience providing emergency medical services.

(f) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.

Sec. 773.05713. REPORT TO LEGISLATURE. Not later than December 1 of each even-numbered year, the department shall electronically submit a report to the lieutenant governor, the speaker of the house of representatives, and the standing committees of the house and senate with jurisdiction over the department on the effect of Sections 773.05711 and 773.05712 that includes:

(1) the total number of applications for emergency medical services provider licenses submitted to the department and the number of applications for which licenses were issued or licenses were denied by the department;

(2) the number of emergency medical services provider licenses that were suspended or revoked by the department for violations of those sections and a description of the types of violations that led to the license suspension or revocation;

(3) the number of occurrences and types of fraud committed by licensed emergency medical services providers related to those sections;

(4) the number of complaints made against licensed emergency medical services providers for violations of those sections and a description of the types of complaints, reported in the manner required by Section 773.0605(d); and

(5) the status of any coordination efforts of the department and the Texas Medical Board related to those sections.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 2,

eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(b), eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 4, eff. June 19, 2015.

Sec. 773.05715. PHYSICAL LOCATION REQUIRED. (a) An emergency medical services provider must have a permanent physical location as the provider's primary place of business. An applicant for an emergency medical services provider license must demonstrate proof of the location of the primary place of business in the manner required by the department.

(b) The physical location may be owned or leased by the emergency medical services provider.

(c) The emergency medical services provider must remain in the same physical location for the period of licensure, unless the department approves a change in location.

(d) The emergency medical services provider must maintain all patient care records in the physical location that is the provider's primary place of business, unless the department approves an alternate location.

(e) Only one emergency medical services provider may operate out of a single physical location.

Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 5, eff. June 19, 2015.

Sec. 773.05716. NECESSARY EQUIPMENT. (a) An emergency medical services provider must own or hold a long-term lease for all equipment necessary for the safe operation of an emergency medical services provider, including emergency medical services vehicles, heart rate monitors, defibrillators, stretchers, and any other equipment the department determines is required.

(b) An applicant for an emergency medical services provider license must demonstrate proof of compliance with this section in the manner required by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 5,

eff. June 19, 2015.

Sec. 773.0572. PROVISIONAL LICENSES. The executive commissioner by rule shall establish conditions under which an emergency medical services provider who fails to meet the minimum standards prescribed by this chapter may be issued a provisional license. The department may issue a provisional license to an emergency medical services provider under this chapter if the department finds that issuing the license would serve the public interest and that the provider meets the requirements of the rules adopted under this section. A nonrefundable fee of not more than $30 must accompany each application for a provisional license.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 258, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 14, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(g), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1533, eff. April 2, 2015.

Sec. 773.0573. LETTER OF APPROVAL FROM LOCAL GOVERNMENTAL ENTITY. (a) An emergency medical services provider applicant must obtain a letter of approval from:

(1) the governing body of the municipality in which the applicant is located and is applying to provide emergency medical services; or

(2) if the applicant is not located in a municipality, the commissioners court of the county in which the applicant is located and is applying to provide emergency medical services.

(b) A governing body of a municipality or a commissioners court of a county may issue a letter of approval to an emergency medical services provider applicant who is applying to provide emergency medical services in the municipality or county only if the governing body or commissioners court determines that:

(1) the addition of another licensed emergency medical services provider will not interfere with or adversely affect the provision of emergency medical services by the licensed emergency

medical services providers operating in the municipality or county;

(2) the addition of another licensed emergency medical services provider will remedy an existing provider shortage that cannot be resolved through the use of the licensed emergency medical services providers operating in the municipality or county; and

(3) the addition of another licensed emergency medical services provider will not cause an oversupply of licensed emergency medical services providers in the municipality or county.

(c) An emergency medical services provider is prohibited from expanding operations to or stationing any emergency medical services vehicles in a municipality or county other than the municipality or county from which the provider obtained the letter of approval under this section until after the second anniversary of the date the provider's initial license was issued, unless the expansion or stationing occurs in connection with:

(1) a contract awarded by another municipality or county for the provision of emergency medical services;

(2) an emergency response made in connection with an existing mutual aid agreement; or

(3) an activation of a statewide emergency or disaster response by the department.

(d) This section does not apply to:

(1) renewal of an emergency medical services provider license; or

(2) a municipality, county, emergency services district, hospital, or emergency medical services volunteer provider organization in this state that applies for an emergency medical services provider license.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 3, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(c), eff. September 1, 2013.

Sec. 773.058. VOLUNTEERS EXEMPT FROM FEES. An individual who is an emergency medical services volunteer is exempt from the payment of fees under Section 773.055 if the individual does not receive compensation for providing emergency medical services. If an individual accepts compensation during the certification period, the

individual shall pay to the department a prorated application fee for the duration of the certification period. In this section, "compensation" does not include reimbursement for actual expenses for medical supplies, gasoline, clothing, meals, and insurance incurred in providing emergency medical services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 259, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 5, eff. Sept. 1, 1991.

Sec. 773.0581. PROVIDERS EXEMPT FROM FEES. (a) An emergency medical services provider is exempt from the payment of fees under this subchapter if the provider uses emergency medical services volunteers exclusively to provide emergency prehospital care. However, an emergency medical services provider is not disqualified from the exemption if the provider compensates physicians who provide medical supervision and not more than five full-time staff or their equivalent.

(b) This chapter does not prohibit an emergency medical services provider who uses volunteer emergency medical services personnel but has more than five paid staff from using the word "volunteer" in advertising if the organization is composed of at least 75 percent volunteer personnel.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 260, eff. Sept. 1, 1991.

Sec. 773.059. LATE RECERTIFICATION. (a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require certification until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may become certified by complying with the requirements and procedures, including the examination requirements, for an original certification.

(e) A person who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for the two years preceding the date of application may become certified without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for certification.

(f) Not later than the 30th day before the date a person's certificate is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(g) A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the president of the United States, or a declaration of war by the United States Congress is eligible for recertification under Section 773.050 on the person's demobilization for one calendar year after the date of demobilization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 261, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 605, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 251, Sec. 3, eff. May 23, 1993; Acts 1999, 76th Leg., ch. 1411, Sec. 19.05, eff. Sept. 1, 1999.

Sec. 773.060. DISPOSITION OF FUNDS. (a) The department shall account for all fees and other funds it receives under this chapter.

(b) The department shall deposit the fees and other funds in the state treasury to the credit of the bureau of emergency management account in the general revenue fund. The account may be used only to administer this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1534, eff. April 2, 2015.

Sec. 773.0605. COMPLAINTS AND INVESTIGATIONS. (a) The department shall track and keep records of:

(1) each complaint received by the department regarding emergency medical services providers and emergency medical services personnel;

(2) each investigation initiated by the department under this chapter; and

(3) each disciplinary action initiated by the department under this chapter.

(b) The department shall develop a formal process to refer complaints outside the department's jurisdiction to the appropriate agency for disposition.

(c) The department shall track the types of complaints received outside the department's jurisdiction. The department shall separately track complaints outside the department's jurisdiction relating to potential billing fraud and make information relating to those complaints available to the appropriate state agency.

(d) The department shall annually report statistical information regarding each complaint received, and each investigation or disciplinary action initiated, under this chapter. The report must include:

(1) the reason and basis for each complaint;

(2) the origin of each investigation, including whether the investigation:

(A) resulted from a complaint brought by a consumer;

(B) resulted from a complaint brought by another source; or

(C) was initiated by the department in the absence of a complaint;

(3) the average time to resolve each complaint from the date the complaint is received;

(4) the disposition of each investigation, including:

(A) the number of investigations commenced in which no disciplinary action was taken, and the reasons no disciplinary action was taken;

(B) the number of investigations resulting in disciplinary action, and the disciplinary actions taken; and

(C) the number of complaints referred to another agency for disposition; and

(5) the number, type, and age of each open investigation at

the end of each fiscal year.

(e) The department shall make the report required by Subsection (d) available to the public through publication on the department's website and on request.

(f) The department may not include in the report required by Subsection (d) any information, including personal information, that could be used to identify an individual involved in or the location of a complaint that has been dismissed or has not reached a final determination.

Added by Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 6, eff. June 19, 2015.

Sec. 773.061. DISCIPLINARY ACTIONS. (a) For a violation of this chapter or a rule adopted under this chapter, the department shall revoke, suspend, or refuse to renew a license or certificate of or shall reprimand:

(1) emergency medical services personnel;

(2) a program instructor, examiner, or course coordinator; and

(3) an emergency medical services provider license holder.

(b) For a violation of this chapter or a rule adopted under this chapter, the department shall revoke, suspend, or refuse to renew approval of a course or training program.

(c) For a violation of this chapter or a rule adopted under this chapter, the department may place on emergency suspension emergency medical services personnel.

(d) The department may place on probation a course or training program or a person, including emergency medical services personnel, an emergency medical services provider license holder, or a program instructor, examiner, or course coordinator, whose certificate, license, or approval is suspended. If a suspension is probated, the department may require the person or the sponsor of a course or training program, as applicable:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the department; or

(3) to continue or review professional education until the

person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(e) Except as provided by Section 773.062, the procedures by which the department takes action under this section and the procedures by which that action is appealed are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 262, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1411, Sec. 19.06, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1535, eff. April 2, 2015.

Sec. 773.0611. INSPECTIONS. (a) The department or its representative may enter an emergency medical services vehicle or the premises of an emergency medical services provider's place of business at reasonable times to ensure compliance with this chapter and the rules adopted under this chapter.

(b) The department or its representative may conduct an unannounced inspection of a vehicle or a place of business if the department has reasonable cause to believe that a person is in violation of this chapter or a rule adopted under this chapter.

(c) The executive commissioner shall adopt rules for unannounced inspections authorized under this section. The department or its representative shall perform unannounced inspections in accordance with those rules. An emergency medical services provider shall pay to the department a nonrefundable fee of not more than $30 if reinspection is necessary to determine compliance with this chapter and the rules adopted under this chapter.

(d) The department may use an inspection performed by an entity to which the department has delegated inspection authority as a basis for a disciplinary action under Section 773.061.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 263, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 15, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(h), eff. Sept. 1,

2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1536, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1226 (S.B. 1899), Sec. 7, eff. June 19, 2015.

Sec. 773.0612. ACCESS TO RECORDS. (a) The department or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification or an applicant for a certification or license is considered to have given consent to a representative of the department entering and inspecting a vehicle or place of business in accordance with this chapter.
(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with department rules.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 264, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1537, eff. April 2, 2015.

Sec. 773.0613. INFORMATION REPORT TO DEPARTMENT. (a) An emergency medical services provider licensed under this chapter shall annually submit a report to the department containing information relating to the number and types of runs the emergency medical services provider makes.
(b) The executive commissioner shall adopt rules relating to the type of information an emergency medical services provider must provide under this section and the manner in which the information must be provided.
(c) The department shall post the information the department receives under Subsection (a) in summary form on the department's Internet website. The department may not post any health information that is made confidential by another statute.

Added by Acts 2003, 78th Leg., ch. 871, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1538, eff. April 2, 2015.

Sec. 773.0614. AUTHORITY TO REVOKE, SUSPEND, DISQUALIFY FOR, OR DENY CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL FOR CERTAIN CRIMINAL OFFENSES. (a) In addition to the grounds under Section 773.061, the department may suspend or revoke a certificate, disqualify a person from receiving a certificate, or deny a person the opportunity to take a certification examination on the grounds that the person has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of emergency medical services personnel.

(b) For purposes of Subsection (a), the department may not consider offenses described by Section 542.304, Transportation Code.

(c) A certificate holder's certificate shall be revoked if the certificate holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition for:

(1) an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (17), Code of Criminal Procedure; or

(2) an offense, other than an offense described by Subdivision (1), committed on or after September 1, 2009, for which the person is subject to registration under Chapter 62, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 757 (H.B. 1476), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1539, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.71, eff. January 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 4, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1137 (H.B. 2758), Sec. 4, eff.

September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1115 (H.B. 1227), Sec. 2, eff. September 1, 2023.

Sec. 773.06141. SUSPENSION, REVOCATION, OR DENIAL OF EMERGENCY MEDICAL SERVICES PROVIDER LICENSE. (a) The department may suspend, revoke, or deny an emergency medical services provider license on the grounds that the provider's administrator of record, employee, or other representative:

(1) has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, an offense that directly relates to the duties and responsibilities of the administrator, employee, or representative, other than an offense described by Section 542.304, Transportation Code;

(2) has been convicted of or placed on deferred adjudication community supervision or deferred disposition for an offense, including:

(A) an offense listed in Article 42A.054(a)(2), (3), (4), (7), (8), (9), (11), or (17), Code of Criminal Procedure; or

(B) an offense, other than an offense described by Subdivision (1), for which the person is subject to registration under Chapter 62, Code of Criminal Procedure; or

Text of subdivision effective until April 1, 2025

(3) has been convicted of Medicare or Medicaid fraud, has been excluded from participation in the state Medicaid program, or has a hold on payment for reimbursement under the state Medicaid program under Subchapter C, Chapter 531, Government Code.

Text of subdivision effective on April 1, 2025

(3) has been convicted of Medicare or Medicaid fraud, has been excluded from participation in the state Medicaid program, or has a hold on payment for reimbursement under the state Medicaid program under Subchapter G, Chapter 544, Government Code.

(b) An emergency medical services provider that is directly operated by a governmental entity is exempt from this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1089 (H.B. 3556), Sec. 4, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 9(d), eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1540, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.72, eff. January 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1137 (H.B. 2758), Sec. 5, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.64, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1115 (H.B. 1227), Sec. 3, eff. September 1, 2023.

Sec. 773.0615. FACTORS CONSIDERED IN SUSPENSION, REVOCATION, OR DENIAL OF CERTIFICATE. (a) In determining whether an offense directly relates to the duties and responsibilities of emergency medical services personnel under Section 773.0614(a), the department shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring certification to engage in emergency medical services;

(3) the extent to which certification might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of emergency medical services personnel.

(b) In determining the fitness to perform the duties and discharge the responsibilities of emergency medical services personnel for a person who has been convicted of, or placed on deferred adjudication community supervision or deferred disposition for, a crime the department shall consider, in addition to the factors listed in Subsection (a):

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated, after release, or since imposition of community supervision or deferred adjudication; and

(6) other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors, law enforcement officers, correctional officers, or community supervision officers who prosecuted, arrested, or had custodial or other responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the person.

(c) The applicant or certificate holder has the responsibility, to the extent possible, to obtain and provide to the department the recommendations of the persons required by Subsection (b)(6).

(d) In addition to providing evidence related to the factors under Subsection (b), the applicant or certificate holder shall furnish proof in the form required by the department that the applicant or certificate holder has:

(1) maintained a record of steady employment;

(2) supported the applicant's or certificate holder's dependents;

(3) maintained a record of good conduct; and

(4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or certificate holder has been convicted, been placed on community supervision, or received deferred adjudication.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1541, eff. April 2, 2015.

Sec. 773.0616. PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT; GUIDELINES. (a) A proceeding to consider the issues under Section 773.0615 is governed by Chapter 2001, Government Code.

(b) The executive commissioner shall issue guidelines relating

to the department's decision-making under Sections 773.0614 and 773.0615. The guidelines must state the reasons a particular crime is considered to relate to emergency medical services personnel and include any other criterion that may affect the decisions of the department.

(c) The executive commissioner shall file the guidelines with the secretary of state for publication in the Texas Register.

(d) The department annually shall issue any amendments to the guidelines.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1542, eff. April 2, 2015.

Sec. 773.0617. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, DISQUALIFICATION FOR, OR DENIAL OF CERTIFICATION. (a) If the department suspends or revokes a certification, denies a person a certificate, or denies the opportunity to be examined for a certificate under Section 773.0614, the department shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Subsection (b); and

(3) the earliest date the person may appeal the action of the department.

(b) A person whose certificate has been suspended or revoked or who has been denied a certificate or the opportunity to take an examination and who has exhausted the person's administrative appeals may file an action in the district court in Travis County for review of the evidence presented to the department and the decision of the department.

(c) The petition for an action under Subsection (b) must be filed not later than the 30th day after the date the department's decision is final.

Added by Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1543, eff. April 2, 2015.

Sec. 773.062. EMERGENCY SUSPENSION. (a) The commissioner shall issue an emergency order to suspend a certificate or license issued under this chapter if the commissioner has reasonable cause to believe that the conduct of any certificate or license holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the certificate or license holder. Notice must also be given to the sponsoring governmental entity if the holder is a provider exempt from payment of fees under Section 773.0581.

(c) The holder may request in writing a hearing on the emergency suspension. The department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct the hearing not earlier than the 10th day or later than the 30th day after the date on which the request is received by the department, shall make findings of fact, and shall issue a written proposal for decision regarding whether the department should continue, modify, or rescind the suspension. The department's hearing rules and Chapter 2001, Government Code, govern the hearing and any appeal from a disciplinary action related to the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 265, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1544, eff. April 2, 2015.

Sec. 773.063. CIVIL PENALTY. (a) The attorney general, a district attorney, or a county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty

may not exceed $250 a day for each violation.

(c) Civil penalties recovered in a suit brought by the state at the department's request shall be deposited in the state treasury to the credit of the general revenue fund.

(d) Civil penalties recovered in a suit brought by a local government shall be paid to the local government that brought the suit. A municipality or county is encouraged to use the amount of recovered penalties that exceed the cost of bringing suit to improve the delivery of emergency medical services in the municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 773.064. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly practices as, attempts to practice as, or represents himself to be an emergency medical technician-paramedic, advanced emergency medical technician, emergency medical technician, emergency care attendant, or licensed paramedic and the person does not hold an appropriate certificate issued by the department under this chapter. An offense under this subsection is a Class A misdemeanor.

(b) An emergency medical services provider commits an offense if the provider knowingly advertises or causes the advertisement of a false, misleading, or deceptive statement or representation concerning emergency medical services staffing, equipment, and vehicles. An offense under this subsection is a Class A misdemeanor.

(c) A person commits an offense if the person knowingly uses or permits to be used a vehicle that the person owns, operates, or controls to transport a sick or injured person unless the person is licensed as an emergency medical services provider by the department. An offense under this subsection is a Class A misdemeanor.

(d) It is an exception to the application of Subsection (c) that the person transports a sick or injured person:

(1) to medical care as an individual citizen not ordinarily engaged in that activity;

(2) in a casualty situation that exceeds the basic vehicular capacity or capability of an emergency medical services provider; or

(3) as an emergency medical services provider in a vehicle

for which a variance has been granted under Section 773.052.

(e) Venue for prosecution of an offense under this section is in the county in which the offense is alleged to have occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 266, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 435, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1545, eff. April 2, 2015.

Sec. 773.065. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against an emergency medical services provider or a course coordinator who violates this chapter or a rule adopted or an order issued under this chapter.

(b) In determining the amount of the penalty, the department shall consider:

(1) the emergency medical services provider's or course coordinator's previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the emergency medical services provider's or course coordinator's demonstrated good faith; and

(5) any other matter as justice may require.

(c) The penalty may not exceed $7,500 for each violation. The executive commissioner by rule shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(d) Each day a violation continues may be considered a separate violation.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 16, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 435, Sec. 5, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.84(i), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1546, eff. April 2, 2015.

Sec. 773.066. ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) An administrative penalty may be assessed only after an emergency medical services provider or course coordinator charged with a violation is provided notice and given an opportunity to request a hearing.

(b) If a hearing is held, the department shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of that office shall conduct the hearing, make findings of fact, and issue to the department a written proposal for decision regarding whether the emergency medical services provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(c) If the emergency medical services provider or course coordinator charged with the violation does not request a hearing, the department shall determine whether the provider or course coordinator committed a violation and the amount of any penalty to be assessed.

(d) After making a determination under this section that a penalty is to be assessed against an emergency medical services provider or a course coordinator, the department shall issue an order requiring that the emergency medical services provider or course coordinator pay the penalty.

(e) Not later than the 30th day after the date an order is issued under Subsection (d), the department shall give written notice of the order to the emergency medical services provider or course coordinator.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(114), eff. April 2, 2015.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 17, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1547, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(114), eff. April 2, 2015.

Sec. 773.067. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not

later than the 30th day after the date on which an order charging the emergency medical services provider or course coordinator with a penalty is final as provided by Chapter 2001, Government Code, the person charged shall:

(1) pay the penalty in full;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the department's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and

the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(e) Judicial review of the order of the department:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(f) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(g) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 915, Sec. 18, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1548, eff. April 2, 2015.

Sec. 773.069. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general at the request of the department may bring a civil action to recover an administrative penalty assessed under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1549, eff. April 2, 2015.

Sec. 773.070. DENIAL OF CERTIFICATION OR LICENSURE FOR FAILURE TO PROVIDE CERTAIN CRIMINAL HISTORY RECORD INFORMATION. The department may deny licensure or certification to an applicant who does not provide a complete set of the required fingerprints to obtain criminal history record information.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 7, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 790, Sec. 46(17), eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1550, eff. April 2, 2015.

Sec. 773.071. FEES. (a) To the extent feasible, the executive commissioner by rule shall set the fees under this subchapter in amounts necessary for the department to recover the cost of administering this subchapter.
(b) Subsection (a) does not apply to fees for which Section 773.059 prescribes the method for determining the amount of the fees.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(j), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1551, eff. April 2, 2015.

SUBCHAPTER D. CONFIDENTIAL COMMUNICATIONS

Sec. 773.091. CONFIDENTIAL COMMUNICATIONS. (a) A communication between certified emergency medical services personnel or a physician providing medical supervision and a patient that is made in the course of providing emergency medical services to the patient is confidential and privileged and may not be disclosed except as provided by this chapter.
(b) Records of the identity, evaluation, or treatment of a

patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

(c) Any person who receives information from confidential communications or records as described by this chapter, other than a person listed in Section 773.092 who is acting on the survivor's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was obtained.

(d) This subchapter governs confidential communications or records concerning a patient regardless of when the patient received the services of emergency medical services personnel or a physician providing medical supervision.

(e) Notwithstanding Rule 501, Texas Rules of Evidence, the privilege of confidentiality may be claimed in any criminal, civil, or administrative proceeding and may be claimed by the patient or the emergency medical services personnel or physician acting on the patient's behalf.

(f) If the emergency medical services personnel or physician claims the privilege of confidentiality on behalf of the patient, the authority to do so is presumed in the absence of evidence to the contrary.

(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services. Nothing in this subsection shall be construed as requiring or permitting emergency services personnel to make a diagnosis.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 10.008, eff. Sept. 1, 2001.

Sec. 773.092. EXCEPTIONS. (a) Exceptions to the confidentiality or privilege in court or administrative proceedings exist:

(1) when proceedings are brought by the patient against

emergency medical services personnel, a physician providing medical supervision, or an emergency medical services provider, and in any criminal proceeding or certification revocation or license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claim or defense of emergency medical services personnel, a physician providing medical supervision, or an emergency medical services provider;

(2) when the patient or someone authorized to act on behalf of the patient submits a written consent to release any of the confidential information as provided by Section 773.093;

(3) when the purpose of the proceedings is to substantiate and collect on a claim for emergency medical services rendered to the patient;

(4) in any civil litigation or administrative proceeding, if relevant, brought by the patient or someone on the patient's behalf, if the patient is attempting to recover monetary damages for any physical or mental condition, including death of the patient;

(5) when the proceeding is a disciplinary investigation or proceeding against emergency medical services personnel conducted under this chapter, provided that the department shall protect the identity of any patient whose medical records are examined, unless the patient is covered under Subdivision (1) or has submitted written consent to the release of the patient's emergency medical services records under Section 773.093; or

(6) when the proceeding is a criminal prosecution in which the patient is a victim, witness, or defendant.

(b) Information under Subsection (a)(4) is discoverable in any court or administrative proceeding in this state if the court or administrative body has jurisdiction of the subject matter, pursuant to rules of procedure specified for the matter.

(c) Subsection (a)(5) does not authorize the release of confidential information to instigate or substantiate criminal charges against a patient.

(d) Confidential records or communications are not discoverable in a criminal proceeding until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or any portion of the records or communications. A determination that confidential records or communications are discoverable is not a determination as to the admissibility of the records or communications.

(e) Communications and records that are confidential under this section may be disclosed to:

(1) medical or law enforcement personnel if the emergency medical services personnel, the physician providing medical supervision, or the emergency medical services provider determines that there is a probability of imminent physical danger to any person or if there is a probability of immediate mental or emotional injury to the patient;

(2) governmental agencies if the disclosure is required or authorized by law;

(3) qualified persons to the extent necessary for management audits, financial audits, program evaluation, system improvement, or research, except that any report of the research, audit, or evaluation may not directly or indirectly identify a patient;

(4) any person who bears a written consent of the patient or other persons authorized to act on the patient's behalf for the release of confidential information as provided by Section 773.093;

(5) the department for data collection or complaint investigation;

(6) other emergency medical services personnel, other physicians, and other personnel under the direction of a physician who are participating in the diagnosis, evaluation, or treatment of a patient; or

(7) individuals, corporations, or governmental agencies involved in the payment or collection of fees for emergency medical services rendered by emergency medical services personnel.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 435, Sec. 6, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1552, eff. April 2, 2015.

Sec. 773.093. CONSENT. (a) Consent for the release of confidential information must be in writing and signed by the patient, a parent or legal guardian if the patient is a minor, a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs, an attorney ad litem appointed

for the patient, or a personal representative if the patient is deceased. The written consent must specify:

(1) the information or records to be covered by the release;

(2) the reasons or purpose for the release; and

(3) the person to whom the information is to be released.

(b) The patient or other person authorized to consent may withdraw consent to the release of any information by submitting a written notice of withdrawal to the person or program to which consent was provided. Withdrawal of consent does not affect any information disclosed before the date on which written notice of the withdrawal was received.

(c) A person who receives information made confidential by this chapter may disclose the information to others only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Sec. 773.094. INJUNCTION; DAMAGES. A person aggrieved by an unauthorized disclosure of communications or records that are confidential under this subchapter may petition the district court of the county in which the person resides or, in the case of a nonresident of the state, a district court of Travis County for appropriate injunctive relief. The petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law. A person injured by an unauthorized disclosure of communications or records that are confidential under this subchapter may bring an action for damages.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

Sec. 773.095. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The proceedings and records of organized committees of hospitals, medical societies, emergency medical services providers, emergency medical services and trauma care systems, or first responder organizations relating to the review, evaluation, or improvement of an emergency medical services provider, a first responder organization, an emergency medical services and trauma care system, or emergency

medical services personnel are confidential and not subject to disclosure by court subpoena or otherwise.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section does not apply to records made or maintained in the regular course of business by an emergency medical services provider, a first responder organization, or emergency medical services personnel.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 435, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 874, Sec. 6, eff. Sept. 1, 2001.

Sec. 773.096. IMMUNITY FOR COMMITTEE MEMBERS. A member of an organized committee under Section 773.095 is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

Added by Acts 1991, 72nd Leg., ch. 605, Sec. 8, eff. Sept. 1, 1991.

SUBCHAPTER E. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 773.111. LEGISLATIVE FINDINGS. (a) The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical care systems, and medical facilities reduce the occurrence of unnecessary mortality.

(b) It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program.

(c) In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care

to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.081 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.112. RULES. (a) The executive commissioner by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The executive commissioner by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies. The executive commissioner shall consider guidelines adopted by the American College of Surgeons and the American College of Emergency Physicians in adopting rules under this section.

(b) The rules must provide specific requirements for the care of trauma patients, must ensure that the trauma care is fully coordinated with all hospitals and emergency medical services in the delivery area, and must reflect the geographic areas of the state, considering time and distance.

(c) The rules must include:

(1) prehospital care management guidelines for triage and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifications of the health care personnel, including physicians and surgeons, treating trauma patients within a facility;

(6) requirements for data collection, including trauma incidence reporting, system operation, and patient outcome;

(7) requirements for periodic performance evaluation of the system and its components; and

(8) assurances that designated trauma facilities will not refuse to accept the transfer of a trauma patient from another

facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 966 (S.B. 2133), Sec. 2, eff. September 1, 2023.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.082 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 623, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1553, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1554, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 961 (S.B. 1876), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 966 (S.B. 2133), Sec. 2, eff. September 1, 2023.

Sec. 773.113. DUTIES OF DEPARTMENT. (a) The department shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

(b) The department may grant an exception to a rule adopted under Section 773.112 if it finds that compliance with the rule would

not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

(c) The department shall develop performance measures for regional advisory councils in trauma service areas to:

(1) promote the provision of a minimum level of emergency medical services in a trauma service area in accordance with the rules adopted under Section 773.112;

(2) promote the provision of quality care and service by the emergency medical services and trauma care system in accordance with the rules adopted under Section 773.112; and

(3) maximize the accuracy of information provided by a regional advisory council to the department for increased council effectiveness.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991.
Redesignated from Health & Safety Code Sec. 773.083 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1555, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1556, eff. April 2, 2015.

Sec. 773.114. SYSTEM REQUIREMENTS. (a) Each emergency medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by department rule.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991.
Redesignated from Health & Safety Code Sec. 773.084 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1557, eff.

April 2, 2015.

Sec. 773.1141. INFORMATION, GUIDELINES, AND PROTOCOLS RELATED TO CERTAIN PATIENT TRANSFERS AND RELATED SERVICES. (a) This section applies only to a trauma service area regional advisory council serving a geographic area that includes:

(1) at least one county located on the international border of this state; and

(2) at least one county adjacent to the Gulf of Mexico.

(b) For each trauma service area regional advisory council to which this section applies, the executive commissioner by rule shall:

(1) require the council to create an advisory committee composed of equally represented designated trauma hospital system members located within the geographic boundaries of the council or require the council to direct an existing advisory committee of the council established for a purpose similar to that described by this subsection to:

(A) develop guidelines for patient transfers; and

(B) periodically review patient transfers to ensure compliance with applicable guidelines;

(2) for the purpose of ensuring that patients located in the council's geographic boundaries receive health care at the health care facility closest to and most appropriate for the patients, require the council to develop regional protocols and processes to assist the council in managing the dispatch, triage, transport, and transfer of patients; and

(3) require each hospital and emergency medical services provider operating within the council's geographic boundaries to collect and report to the council data on patients transferred outside the council's geographic boundaries.

Added by Acts 2021, 87th Leg., R.S., Ch. 882 (S.B. 1397), Sec. 1, eff. June 16, 2021.

Sec. 773.115. TRAUMA FACILITIES. (a) The department may designate trauma facilities that are a part of an emergency medical services and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in

accordance with the American College of Surgeons guidelines for level I and II trauma facilities and department rules for level III and IV trauma facilities. In adopting rules under this section, the executive commissioner may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the department may not deny designation solely on these criteria. The executive commissioner may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the department for designation as a trauma facility, and the department shall grant the designation if the facility meets the requirements for designation prescribed by department rules.

(c) A health care facility may not use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.085 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 435, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 874, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1558, eff. April 2, 2015.

Sec. 773.1151. USE OF TELEMEDICINE MEDICAL SERVICE BY CERTAIN TRAUMA FACILITIES. (a) In this section, "telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

(b) A health care facility located in a county with a population of less than 30,000 may satisfy a Level IV trauma facility designation requirement relating to physicians through the use of telemedicine medical service in which an on-call physician who has special competence in the care of critically injured patients provides patient assessment, diagnosis, consultation, or treatment or transfers medical data to a physician, advanced practice registered nurse, or physician assistant located at the facility.

(c) In establishing the requirements for designating a facility as a Level IV trauma facility, the executive commissioner may not adopt rules that:

(1) require the physical presence or physical availability of a physician who has special competence in the care of critically injured patients; or

(2) prohibit the use of telemedicine medical service that meets the requirements of Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 254 (H.B. 871), Sec. 1, eff. September 1, 2019.

Sec. 773.116. FEES. (a) The department shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The executive commissioner by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility. The amount of the fee may not exceed:

(1) $5,000 for a Level I or II facility;

(2) $2,500 for a Level III facility; or

(3) $1,000 for a Level IV facility.

(c) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(l).

(d) To the extent feasible, the executive commissioner by rule shall set the fee in an amount necessary for the department to recover the cost directly related to designating trauma facilities under this subchapter.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.086 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.84(k), (l), eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1559, eff. April 2, 2015.

Sec. 773.117. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION. (a) The department may deny, suspend, or revoke a health care facility's designation as a trauma facility if the facility fails to comply with the rules adopted under this subchapter.

(b) The denial, suspension, or revocation of a designation by the department and the appeal from that action are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.087 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 773.119. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The executive commissioner by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to department rules. A grant awarded under this section is governed by Chapter 783, Government Code, and by the rules adopted under that chapter.

(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.089 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1560, eff. April 2, 2015.

Sec. 773.120. ACCEPTANCE OF GIFTS. A trauma facility or an emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 267, eff. Sept. 1, 1991. Redesignated from Health & Safety Code Sec. 773.090 by Acts 1991, 72nd Leg., ch. 605, Sec. 9, eff. Sept. 1, 1991.

Sec. 773.122. PAYMENTS FROM THE ACCOUNTS. (a) The commissioner, with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money in the accounts established under Sections 771.072(f) and 773.006 to fund county and regional emergency medical services, designated trauma facilities, and trauma care systems in accordance with this section.

(a-1) A grant recipient may not before the fourth anniversary of the date a grant is awarded under Subsection (a) dispose of an ambulance for which the total costs of purchasing the ambulance were paid only from grants awarded under Subsection (a) or Section 780.004(a) unless the grant recipient obtains the department's prior approval.

(b) The commissioner shall maintain a reserve of $500,000 of money appropriated from the accounts for extraordinary emergencies.

(c) In any fiscal year the commissioner shall use 50 percent of the appropriated money remaining from the accounts, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated

as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council to be used during the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council during the following fiscal year shall be returned to the account.

(d) In any fiscal year, the commissioner may use not more than 20 percent of the appropriated money remaining from the accounts, after any amount necessary to maintain the reserve established by Subsection (b) is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of the code. A regional advisory council's share of money distributed under this section shall be based on the relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council to be used during the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council during the following fiscal year shall be returned to the account.

(e) In any fiscal year, the commissioner may use not more than three percent of the appropriated money from the accounts after any amount necessary to maintain the reserve established by Subsection

(b) is deducted to fund the administrative costs of the department associated with administering the state emergency medical services program, the trauma program, and the accounts and to fund the costs of monitoring and providing technical assistance for those programs and the accounts.

(f) In any fiscal year, the commissioner shall use at least 27 percent of the appropriated money remaining from the accounts after any amount necessary to maintain the reserve established by Subsection (b) is deducted and the money from the accounts not otherwise distributed under this section to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department. The administrator of a designated facility may request a regional advisory council chairperson to petition the department for disbursement of funds to a designated trauma facility in the chairperson's trauma service area that has provided uncompensated trauma care. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(g) The department shall review the percentages for disbursement of funds in the accounts on an annual basis and shall make recommendations for proposed changes to ensure that appropriate and fair funding is provided under this section.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1045, Sec. 16, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1411, Sec. 19.07, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1213, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 638 (S.B. 901), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1561, eff. April 2, 2015.

Sec. 773.123. CONTROL OF EXPENDITURES FROM ACCOUNTS. Money distributed from the accounts established under Sections 771.072(f) and 773.006 shall be used in accordance with Section 773.122 on the authorization of the executive committee of the trauma service area

regional advisory council.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1045, Sec. 17, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1411, Sec. 19.08, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1213, Sec. 3, eff. Sept. 1, 2003.

Sec. 773.124. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the department, the department may not disburse money under Section 773.122 to a trauma service area regional advisory council, county, municipality, or local recipient that the department finds used money in violation of that section.

Added by Acts 1997, 75th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 19.09, eff. Sept. 1, 1999.

SUBCHAPTER F. MEDICAL INFORMATION PROVIDED BY CERTAIN EMERGENCY MEDICAL SERVICES CALL TAKERS

Sec. 773.141. DEFINITIONS. In this subchapter:

(1) "Emergency call" means a telephone call or other similar communication from a member of the public, as part of a 9-1-1 system or otherwise, made to obtain emergency medical services.

(2) "Emergency medical services call taker" means a person who, as a volunteer or employee of a public agency, as that term is defined by Section 771.001, receives emergency calls.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1563, eff. April 2, 2015.

Sec. 773.142. APPLICATION OF SUBCHAPTER. This subchapter does not apply to a physician or other licensed person who may provide medical information under law.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.

Sec. 773.143. PROVISION OF MEDICAL INFORMATION. An emergency medical services call taker may provide medical information to a member of the public during an emergency call if:

(1) the call taker has successfully completed an emergency medical services call taker training program and holds a certificate issued under Section 773.144; and

(2) the information provided substantially conforms to the protocol for delivery of the information adopted by the executive commissioner under Section 773.145.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1564, eff. April 2, 2015.

Sec. 773.144. TRAINING PROGRAMS. (a) The department may offer emergency medical services call taker training programs and may approve training programs offered by other persons. The executive commissioner by rule shall establish minimum standards for approval of training programs and certification and decertification of program instructors.

(b) The provider of an emergency medical services call taker training program shall issue an emergency medical services call taker a certificate evidencing completion of the training program. The executive commissioner by rule may require that, before issuance of the certificate, the call taker successfully complete an examination administered by the department, by the provider of the training program, or by another person.

(c) The executive commissioner by rule may provide that a certificate issued under Subsection (b) expires at the end of a specified period not less than one year after the date on which the certificate is issued and may adopt requirements, including additional training or examination, for renewal of the certificate.

(d) The executive commissioner by rule may adopt other

requirements relating to emergency medical services call taker training programs. The establishment of minimum standards under this section does not prohibit the entity that is employing or accepting the volunteer services of the emergency medical services call taker from imposing additional training standards or procedures.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1565, eff. April 2, 2015.

Sec. 773.145. MEDICAL INFORMATION. The executive commissioner by rule shall adopt a protocol that must be used to provide medical information under Section 773.143. The protocol may include the use of a flash-card system or other similar system designed to make the information readily accessible to the emergency medical services call taker in an understandable form.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1566, eff. April 2, 2015.

Sec. 773.146. LIMITATION ON CIVIL LIABILITY. (a) An emergency medical services call taker who holds a certificate under Section 773.144 is not liable for damages that arise from the provision of medical information according to the protocol adopted under Section 773.145 if the information is provided in good faith. This subsection does not apply to an act or omission of the call taker that constitutes gross negligence, recklessness, or intentional misconduct. This subsection does not affect any liability imposed on a public agency for the conduct of the emergency medical services call taker under Section 101.062, Civil Practice and Remedies Code.

(b) Section 101.062, Civil Practice and Remedies Code, governs the liability of a public agency the employees or volunteers of which provide medical information under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1567, eff. April 2, 2015.

Sec. 773.147. FEES. (a) The executive commissioner by rule may adopt fees for:

(1) training programs provided by the department under Section 773.144; and

(2) the approval of program instructors and of training programs offered by other persons.

(b) The fees adopted under this section may not exceed the amount necessary for the department to recover the cost of administering this subchapter.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 19.10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1568, eff. April 2, 2015.

SUBCHAPTER G. PEDIATRIC EMERGENCY MEDICAL SERVICES

Sec. 773.171. EMERGENCY MEDICAL SERVICES FOR CHILDREN PROGRAM. (a) The emergency medical services for children program is in the department.

(b) The department shall provide coordination and support for a statewide pediatric emergency services system.

(c) The department may solicit, receive, and spend funds it receives from the federal government and public or private sources to carry out the purposes of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 513, Sec. 1, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1569, eff. April 2, 2015.

Sec. 773.173. RULES. (a) On the recommendation of the

advisory council, the executive commissioner shall adopt minimum standards and objectives to implement a pediatric emergency services system, including rules that:

(1) provide guidelines for categorization of a facility's pediatric capability;

(2) provide for triage, transfer, and transportation policies for pediatric care;

(3) establish guidelines for:

(A) prehospital care management for triage and transportation of a pediatric patient;

(B) prehospital and hospital equipment that is necessary and appropriate for the care of a pediatric patient;

(C) necessary pediatric emergency equipment and training in long-term care facilities; and

(D) an interhospital transfer system for a critically ill or injured pediatric patient; and

(4) provide for data collection and analysis.

(b) The executive commissioner and the advisory council shall consider guidelines endorsed by the American Academy of Pediatrics and the American College of Surgeons in recommending and adopting rules under this section.

(c) The department may grant an exception to a rule adopted under this section if it finds that compliance with the rule would not be in the best interests of persons served in the affected local pediatric emergency medical services system.

(d) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Added by Acts 1993, 73rd Leg., ch. 513, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1570, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1571, eff. April 2, 2015.

SUBCHAPTER H. EMERGENCY STROKE SERVICES

Sec. 773.201. LEGISLATIVE INTENT. The legislature finds that a strong system for stroke survival is needed in the state's

communities in order to treat stroke victims in a timely manner and to improve the overall treatment of stroke victims. Therefore, the legislature intends to construct an emergency treatment system in this state so that stroke victims may be quickly identified and transported to and treated in appropriate stroke treatment facilities.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.202. DEFINITIONS. In this subchapter:

(1) "Advisory council" means the advisory council established under Section 773.012.

(2) "Stroke committee" means the committee appointed under Section 773.203.

(3) "Stroke facility" means a health care facility that:

(A) is capable of primary or comprehensive treatment of stroke victims;

(B) is part of an emergency medical services and trauma care system as defined by Section 773.003;

(C) has a health care professional available 24 hours a day, seven days a week who is knowledgeable about stroke care and capable of carrying out acute stroke therapy; and

(D) records patient treatment and outcomes.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.203. STROKE COMMITTEE. (a) The advisory council shall appoint a stroke committee to assist the advisory council in the development of a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke committee must include the following members:

(1) a licensed physician appointed from a list of physicians eligible for accreditation in vascular neurology from the Accreditation Council for Graduate Medical Education, recommended by a statewide organization of neurologists;

(2) a licensed interventional neuroradiologist appointed from a list of neuroradiologists recommended by a statewide

organization of radiologists;

(3) a neurosurgeon with stroke expertise;

(4) a member of the Texas Council on Cardiovascular Disease and Stroke who has expertise in stroke care;

(5) a licensed physician appointed from a list of physicians recommended by a statewide organization of emergency physicians;

(6) a neuroscience registered nurse with stroke expertise; and

(7) a volunteer member of a nonprofit organization specializing in stroke treatment, prevention, and education.

(c) Chapter 2110, Government Code, does not apply to the stroke committee.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

Sec. 773.204. DUTIES OF STROKE COMMITTEE; DEVELOPMENT OF STROKE EMERGENCY TRANSPORT PLAN AND STROKE FACILITY CRITERIA. (a) The advisory council, with the assistance of the stroke committee and in collaboration with the Texas Council on Cardiovascular Disease and Stroke, shall develop a statewide stroke emergency transport plan and stroke facility criteria.

(b) The stroke emergency transport plan must include:

(1) training requirements on stroke recognition and treatment, including emergency screening procedures;

(2) a list of appropriate early treatments to stabilize patients;

(3) protocols for rapid transport to a stroke facility when rapid transport is appropriate and it is safe to bypass another health care facility; and

(4) plans for coordination with statewide agencies or committees on programs for stroke prevention and community education regarding stroke and stroke emergency transport.

(c) In developing the stroke emergency transport plan and stroke facility criteria, the stroke committee shall consult the criteria for stroke facilities established by national medical organizations such as The Joint Commission.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff.

September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1572, eff. April 2, 2015.

Sec. 773.205. RULES. The executive commissioner may adopt rules regarding a statewide stroke emergency transport plan and stroke facility criteria based on recommendations from the advisory council.

Added by Acts 2005, 79th Leg., Ch. 299 (S.B. 330), Sec. 3, eff. September 1, 2005.

SUBCHAPTER I. EMERGENCY MEDICAL SERVICES ASSISTANCE PROGRAM

Sec. 773.251. DEFINITIONS. In this subchapter:

(1) "Educational curriculum" means a distance-learning emergency medical services curriculum that provides remote courses of instruction and training to emergency medical services personnel who serve a rural area.

(2) "General academic teaching institution," "medical and dental unit," "other agency of higher education," and "public technical institute" have the meanings assigned by Section 61.003, Education Code.

(3) "Program" means the emergency medical services assistance program established under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.252. ESTABLISHMENT OF PROGRAM. (a) The department shall establish the emergency medical services assistance program to provide financial and educational assistance to eligible emergency medical services providers.

(b) The program includes grants to eligible emergency medical services providers and an educational curriculum to provide training to rural emergency medical services personnel.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1,

eff. September 1, 2017.

Sec. 773.253. RULES. (a) The executive commissioner shall adopt rules necessary to implement this subchapter, including rules for:

(1) determining eligibility under the program;

(2) establishing requirements for the educational curriculum; and

(3) establishing requirements for a general academic teaching institution, medical and dental unit, other agency of higher education, or public technical institute that develops and offers the educational curriculum.

(b) The rules must require that:

(1) an emergency medical services provider demonstrate financial need to be eligible for assistance under the program;

(2) a general academic teaching institution, medical and dental unit, other agency of higher education, or public technical institute applying to offer the educational curriculum demonstrate the qualifications necessary to develop and offer the educational curriculum; and

(3) the educational curriculum provide to rural emergency medical services personnel the remote instructional courses and training necessary for the personnel to achieve department certification under Subchapter C.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.254. APPLICATION BY EMERGENCY MEDICAL SERVICES PROVIDER. (a) An emergency medical services provider may apply to the department in the form and manner provided by department rule to receive assistance under the program.

(b) If the department determines an applicant is eligible for assistance under the program, the department may provide a grant under Section 773.257 to the applicant.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.255. EDUCATIONAL CURRICULUM. (a) A general academic teaching institution, medical and dental unit, other agency of higher education, or public technical institute may apply to the department in the form and manner provided by department rule to develop and offer the educational curriculum under this subchapter.

(b) The department may contract with not more than three qualified general academic teaching institutions, medical and dental units, other agencies of higher education, or public technical institutes to develop and offer the educational curriculum under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.256. ADMINISTRATIVE SUPPORT. The department may provide administrative support to the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

Sec. 773.257. GRANTS. (a) The commissioner may use money from the permanent fund for emergency medical services and trauma care established under Section 403.106, Government Code, to provide grants, in addition to funding available from other sources, to emergency medical services providers applying for assistance under the program or to provide funding to a general academic teaching institution, medical and dental unit, other agency of higher education, or public technical institute offering the educational curriculum under this subchapter.

(b) The commissioner shall ensure that at least 60 percent of the grants provided under this section are provided to emergency medical services providers that serve a rural area.

(c) The executive commissioner by rule shall establish a procedure for the Governor's EMS and Trauma Advisory Council to establish priorities for issuance of grants under this section.

(d) The department shall distribute grants under this section in accordance with the requirements of Subsection (b) and the grant priorities established under Subsection (c).

Added by Acts 2017, 85th Leg., R.S., Ch. 1009 (H.B. 1407), Sec. 1, eff. September 1, 2017.

CHAPTER 774. LOCAL PROVISION OF EMERGENCY MEDICAL SERVICES

Sec. 774.001. MUTUAL ASSISTANCE AMONG MUNICIPALITIES AND COUNTIES IN PROVIDING EMERGENCY MEDICAL SERVICES. (a) On request, a county shall provide emergency medical services for a municipality within that county or for a county bordering that county if:

(1) an agreement has been executed between the county and the requesting municipality or county;

(2) an emergency exists in the requesting municipality or county;

(3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the county receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the county providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county.

(b) On request, a municipality shall provide emergency medical services for the county in which that municipality is located or for a municipality located within 30 miles of that municipality if:

(1) an agreement has been executed between the municipality and the requesting municipality or county;

(2) an emergency exists in the requesting municipality or county;

(3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;

(4) the request is for services that the municipality receiving the request provides or contracts to provide for persons within its jurisdiction; and

(5) the municipality providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 774.002. EDUCATIONAL INCENTIVE PAY FOR EMERGENCY MEDICAL TECHNICIANS. (a) A municipality or other political subdivision that employs emergency medical technicians may pay educational incentive pay to employees holding certificates from the Department of State Health Services as emergency medical technicians.

(b) The educational incentive pay is in addition to any other form of compensation provided by law for emergency medical technicians.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1573, eff. April 2, 2015.

Sec. 774.003. EMERGENCY AMBULANCE SERVICE PROVIDED BY COUNTIES. (a) The commissioners court of a county may provide for emergency ambulance service in the county, including the provision of necessary equipment, personnel, and maintenance for the service.

(b) In providing for the services authorized by Subsection (a), a commissioners court may enter into exclusive agreements with any municipality, hospital district, sheriff's office, fire department, private ambulance service, or other agency or entity that the commissioners court finds to be suitably organized to provide efficient emergency ambulance service in the county. The governing body of a municipality or hospital district in which emergency ambulance service is to be rendered must approve an agreement made with the commissioners court to provide that service in the municipality or hospital district.

(c) A commissioners court operating under this section may expend county funds to defray the expense of establishing, operating, and maintaining the emergency ambulance service in the county. The funds may be expended whether the service is provided directly by the county or by agreement with some other governmental agency or private entity.

(d) A commissioners court providing emergency ambulance service under this section shall establish reasonable fees for the service. The commissioners court or any other agency or entity performing the service may charge and collect the fees.

(e) A commissioners court may make special provisions for

rendering emergency ambulance service to indigent persons.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 915, Sec. 20, eff. Aug. 28, 1995.

Sec. 774.004. MUNICIPAL POLICE OFFICER RESPONSE ACCOMPANYING MUNICIPAL AMBULANCE RESPONSE OUTSIDE MUNICIPALITY. (a) This section applies to an agreement between two municipalities under Section 774.001(b) or between a county and a municipality under Section 774.001(b) or 774.003.

(b) The agreement may authorize police officers employed by the responding municipality to secure the scene of an emergency, accident, fire, or disaster to which the municipality's emergency ambulance service responds under the agreement.

Added by Acts 2005, 79th Leg., Ch. 479 (H.B. 233), Sec. 1, eff. June 17, 2005.

CHAPTER 775. EMERGENCY SERVICES DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 775.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of emergency services commissioners.

(2) "District" means an emergency services district created under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.002. LIBERAL CONSTRUCTION. This chapter and a proceeding under this chapter shall be liberally construed to achieve the purposes of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.003. AUTHORIZATION. An emergency services district may be organized as provided by Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th

Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and by this chapter to protect life and health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 775.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by at least 100 qualified voters who own taxable real property in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "_____ County Emergency Services District No. _____," with the name of the county and the proper consecutive number inserted.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by at least 100 qualified voters who own taxable real property that is located in the county in which that judge presides and in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "_____ Emergency Services District No. _____." The name of each county must be inserted in the first blank, and the next available district number must be inserted into the second blank.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 1, eff. Sept. 1, 1999.

Sec. 775.013. CONTENTS OF PETITION. (a) The petition prescribed by Section 775.011 or 775.012 must show:

(1) that the district is to be created and is to operate under Article III, Section 48-e, Texas Constitution, and Chapter 775;

(2) the name of the proposed district;

(3) the proposed district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) the services that the proposed district will provide;

(5) that the creation of the proposed district complies with Sections 775.020 and 775.0205;

(6) the mailing address of each petitioner; and

(7) the name of each municipality whose consent must be obtained under Section 775.014.

(a-1) A statement that the boundaries of the district are coextensive with the boundaries of another political subdivision, as those boundaries exist on a particular date, is a sufficient legal description for purposes of Subsection (a)(3).

(b) The petition must contain an agreement signed by at least two petitioners that obligates them to pay not more than $150 of the costs incident to the formation of the district, including the costs of publishing notices, election costs, and other necessary and incidental expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1333, Sec. 1, eff. June 16, 2001; Acts 2001, 77th Leg., ch. 886, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10.009, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 87 (S.B. 718), Sec. 1, eff. May 17, 2005.

Sec. 775.014. CREATION OF DISTRICT THAT INCLUDES MUNICIPAL TERRITORY. (a) Before a district may be created that contains territory in a municipality's limits or extraterritorial jurisdiction, a written request to be included in the district must be presented to the municipality's governing body after the petition is filed under Section 775.015. Except as provided by Subsection

(c), that territory may not be included in the district unless the municipality's governing body gives its written consent on or before the 60th day after the date on which the municipality receives the request.

(b) If the municipality's governing body does not consent to inclusion within the 60-day period prescribed by Subsection (a), a majority of the qualified voters and the owners of at least 50 percent of the territory in the municipality's limits or extraterritorial jurisdiction that would have been included in the district may petition the governing body to make fire control and emergency medical and ambulance services available. The petition must be submitted to the governing body not later than the 90th day after the date on which the municipality receives the request under Subsection (a).

(c) If the municipality's governing body refuses or fails to act on the petition requesting fire protection and emergency medical and ambulance services within six months after the date on which the petition submitted under Subsection (b) is received, the governing body's refusal or failure to act constitutes consent for the territory that is the subject of the petition to be included in the proposed district.

(d) If the proposed district will include territory designated by a municipality as an industrial district under Section 42.044, Local Government Code, consent to include the industrial district must be obtained from the municipality's governing body in the same manner provided by this section for obtaining consent to include territory within the limits or extraterritorial jurisdiction of a municipality.

(e) If the municipality's governing body consents to inclusion of territory within its limits or extraterritorial jurisdiction, or in an industrial district, the territory may be included in the district in the same manner as other territory is included under this chapter.

(f) A governing body's consent to include territory in the district and to initiate proceedings to create a district as prescribed by this chapter expires six months after the date on which the consent is given.

(g) This section does not apply if the proposed district contains territory in the unincorporated area of a county with a population of 3.3 million or more.

Without reference to the amendment of this subsection, this subsection was repealed by Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(1), eff. March 1, 2024.

(h) The governing body of a municipality with a population of more than one million may negotiate with the commissioners court of a county with a population of less than 2.1 million that is the county in which the majority of the territory inside the municipality's corporate boundaries is located conditions under which the municipality will grant its consent to the inclusion of its extraterritorial jurisdiction in the district. The negotiated conditions may:

(1) limit the district's ability to incur debt;

(2) require the district to ensure that its equipment is compatible with the municipality's equipment; and

(3) require the district to enter into mutual aid agreements.

(i) If a request under this section is submitted to a municipality that has a population of more than one million and the majority of the territory inside the municipality's corporate boundaries is located inside a county with a population of less than 2.1 million, the request must include:

(1) a copy of the petition submitted under Section 775.015; and

(2) a sufficient legal description of the portion of the municipality and its extraterritorial jurisdiction that would be included in the district territory.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 5, Sec. 1, eff. Feb. 28, 1991; Acts 1999, 76th Leg., ch. 496, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 886, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 53, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 1, eff. March 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(1), eff. March 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 107, eff. September 1, 2023.

Sec. 775.015. FILING OF PETITION AND NOTICE OF HEARING. (a) If the petition is in proper form, the county judge may receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall give notice of the hearing. The notice must state:

(1) that creation of a district is proposed;

(2) that the district is to be created and is to operate under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987;

(3) the name of the proposed district;

(4) the district's boundaries as stated in the petition;

(5) the place, date, and time of the hearing; and

(6) that each person who has an interest in the creation of the district may attend the hearing and present grounds for or against creation of the district.

(d) The county clerk shall retain a copy of the notice and shall deliver sufficient copies of the notice to the sheriff for posting and publication as prescribed by Subsection (e).

(e) Not later than the 21st day before the date on which the hearing will be held, the sheriff shall post one copy of the notice at the courthouse door. The sheriff shall also have the notice published in a newspaper of general circulation in the proposed district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

(f) The return of each officer executing notice must:

(1) be endorsed or attached to a copy of the notice;

(2) show the execution of the notice;

(3) specify each date on which the notice was posted or published; and

(4) include a printed copy of the published notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.016. HEARING. (a) At the time and place set for the hearing or at a later date then set, the commissioners court shall consider the petition and each issue relating to creation of the district.

(b) Any interested person may appear before the commissioners court in person or by attorney to support or oppose the creation of the district and may offer pertinent testimony.

(c) The commissioners court has exclusive jurisdiction to determine each issue relating to the creation of the district and may issue incidental orders it considers proper in relation to the issues before the commissioners court. The commissioners court may adjourn the hearing as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 886, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 2, eff. March 1, 2024.

Sec. 775.017. PETITION APPROVAL. (a) If after the hearing the commissioners court finds that creation of the district is feasible and will promote the public safety, welfare, health, and convenience of persons residing in the proposed district, the commissioners court shall grant the petition and fix the district's boundaries. If the proposed district, according to its boundaries stated in the petition, is located wholly in a county with a population of more than 3.3 million, the commissioners court may amend the petition to change the boundaries of the proposed district if the commissioners court finds the change is necessary or desirable. For the purposes of this provision, the population of the county is determined according to the most recent federal decennial census available at the time the petition is filed.

(b) If the proposed district will include territory in the municipal limits or extraterritorial jurisdiction of one or more municipalities, the commissioners court of the county in which the municipality is located must determine if the district would still

meet the requirements prescribed by Subsection (a) if the territory in the municipality's limits or extraterritorial jurisdiction is excluded from the district. The commissioners court must make this finding for each municipality the territory of which will be included in the district.

(c) If the commissioners court finds that the proposed district does not meet the requirements prescribed by Subsection (a), the commissioners court shall deny the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 269, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 886, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 54, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 3, eff. March 1, 2024.

Sec. 775.018. ELECTION. (a) On the granting of a petition, the commissioners court shall order an election to confirm the district's creation and authorize the imposition of a tax not to exceed the rate allowed by Section 48-e, Article III, Texas Constitution.

(b) Repealed by Acts 2005, 79th Leg., Ch. 123, Sec. 2, eff. September 1, 2005.

(c) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(d) Subject to Section 4.003, Election Code, the notice of the election shall be given in the same manner as the notice of the petition hearing.

(e) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(f) If the territory of a district proposed under this chapter overlaps with the boundaries of another district created under this chapter, the commissioners court of each county in which the proposed

district is located shall send to the board of the existing district a copy of the petition for creation of the proposed district. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

(g) The board of the existing district shall adopt a statement before the date of the election required by this section that specifies the types of emergency services the existing district will provide or continue to provide in the overlapping territory if the proposed district is created. This subsection does not apply to a proposed district located wholly in a county with a population of more than three million.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 270, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 294, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 496, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 886, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1140, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 1, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 4, eff. March 1, 2024.

Sec. 775.019. ELECTION RESULT AND COMMISSIONERS COURT ORDER. (a) A district is created and organized under this chapter if a majority of the votes cast in the election favor creation of the district.

(b) A district may not include territory in a municipality's limits or extraterritorial jurisdiction unless a majority of the voters residing in that territory who vote at the election vote in favor of creating the district and imposing a tax. The exclusion of that territory does not affect the creation of a district that includes the remainder of the proposed territory if the commissioners court's findings under Section 775.017 are favorable to the

district's creation.

(c) Repealed by Acts 1991, 72nd Leg., ch. 620, Sec. 2, eff. June 16, 1991.

(d) If a majority of those voting at the election vote against creation of the district, the commissioners court may not order another election for at least one year after the date of the official canvass of the most recent election concerning creation of the district. A subsequent election must be held in the same manner provided by this chapter for the original creation election.

(e) When a district is created, the commissioners court of each county in which the district is located shall enter in its minutes an order that reads substantially as follows:

Whereas, at an election held on the _____ day of _____, 19___, in that part of _____ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into an emergency services district under state law; and

Whereas, at the election _____ votes were cast in favor of formation of the district and _____ votes were cast against formation; and

Whereas, the formation of the emergency services district received the affirmative vote of the majority of the votes cast at the election as provided by law;

Now, therefore, the Commissioners Court of _____ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into an emergency services district (or a portion thereof) under the name of _____, under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and has the powers vested by law in the district.

(f) Repealed by Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(2), eff. March 1, 2024.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 620, Sec. 2, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 886, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 5, eff.

March 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(2), eff. March 1, 2024.

Sec. 775.020. OVERLAPPING DISTRICTS LOCATED WHOLLY IN POPULOUS COUNTY. (a) This section applies only to a district located wholly in a county with a population of more than three million.

(b) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter, a district converted under this chapter, or a district converted under former Section 794.100, the most recently created district may not provide services in the overlapping territory that duplicate the services provided by the other district at the time the overlapping district was created.

(c) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing regarding approval of the petition for creation of the district was most recently held.

(d) The creation of a district with boundaries that overlap the boundaries of another district does not affect the validity of either district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1333, Sec. 2, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 1204, Sec. 1.001, eff. Sept. 1, 2003.

Sec. 775.0205. OVERLAPPING DISTRICTS. (a) If the territory in a district created under this chapter overlaps with the boundaries of another district created under this chapter, the most recently created district may not provide services in the overlapping territory that duplicate the services described in the statement required by Section 775.018(g).

(b) If the territory in more than two districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(c) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing regarding approval of the petition for creation of the district was most recently held.

(d) The creation of a district with boundaries that overlap the boundaries of another district does not affect the validity of either district.

(d-1) The legislature finds that the performance of non-duplicative emergency services in the overlapping territory of emergency service districts is complementary to and not in conflict with the powers and duties of the respective districts.

(d-2) A person may serve as an emergency services commissioner of a district created under this chapter at the same time that the person serves as an emergency services commissioner of another district with overlapping territory created under this chapter.

(d-3) A person serving as a commissioner of more than one district under this section:

(1) may receive compensation for serving on only one board; and

(2) is entitled to reimbursement for reasonable and necessary expenses incurred in performing official duties for both boards.

(e) This section does not apply to a district located wholly in a county with a population of more than three million.

Added by Acts 2001, 77th Leg., ch. 1333, Sec. 3, eff. June 16, 2001.
Amended by Acts 2003, 78th Leg., ch. 1204, Sec. 1.002, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 2, eff. June 17, 2011.

Sec. 775.021. EXCLUSION OF TERRITORY LOCATED WITHIN OTHER TAXING AUTHORITY. (a) This section applies only to a district located in whole or in part in a county that:

(1) borders the Gulf of Mexico; and

(2) has a population of less than 1.5 million.

(b) The board of a district may exclude from the district the territory located within the boundaries of another taxing authority if the other taxing authority provides the same services to the territory as those provided by the district.

(c) The board, at its discretion, may hold a hearing to consider the exclusion of the territory.

(d) The board shall hold a hearing to consider the exclusion of the territory if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters who own taxable real property in the district. A petition submitted under this subsection must describe the proposed new boundaries of the district or describe the boundaries of the territory to be excluded from the district.

(e) The board shall issue a notice of a hearing to be held under Subsection (c) or (d). The provisions of Section 775.015 relating to the procedure for issuing notice of a hearing to create the district apply to the notice for the hearing under this section. The notice must state:

(1) the proposed new boundaries of the district or of the territory to be excluded;

(2) the time and place of the hearing; and

(3) that each person who has an interest in the exclusion or nonexclusion of the territory may attend the hearing and present the person's opinion for or against the exclusion of the territory.

(f) After the hearing the board either may order an election on the question of the exclusion of the territory or may declare by resolution the territory excluded from the district. However, the board may not declare the territory as excluded if the owners of at least three percent of the property located in the district protest the exclusion.

(g) If the board excludes the territory by resolution, the board shall state in the resolution the new boundaries of the district. The board shall file a copy of the resolution in the office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the resolution in the county records. After the resolution is recorded, the excluded territory is no longer a part of the district.

(h) The board shall order an election on the question of exclusion if:

(1) the owners of at least three percent of the property

located in the district protest the exclusion; or

(2) the board:

(A) despite the lack of a protest, refuses to exclude the territory; and

(B) after refusing to exclude the territory, receives a petition requesting an election that is signed by a majority of the qualified voters who own taxable real property in the territory proposed to be excluded.

(i) Except as otherwise required by the Election Code, the election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the applicable provisions of this chapter relating to the original election to create the district.

(j) If a majority of the voters voting in the election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and stating the new boundaries of the district. The board shall file a copy of the order in the office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the order in the county records. After the order is recorded, the excluded territory is no longer a part of the district.

(k) If a majority of the voters voting in the election do not favor excluding the territory, the board may not act on a petition to exclude all or part of the territory until the first anniversary of the date of the most recent election to exclude the territory from the district.

(l) The exclusion of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(m) Territory excluded under this section is not released from the payment of its pro rata share of the district's indebtedness. The district shall continue to levy taxes each year on the excluded territory at the same rate levied on territory in the district until the taxes collected from the excluded territory equal its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied exclusively to the payment of the excluded territory's pro rata share of the indebtedness. The owner of all or part of the excluded territory may pay in full, at any time, the owner's share of the pro rata share of the district's indebtedness.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 271, eff. Sept. 1, 1991.

Sec. 775.022. REMOVAL OF TERRITORY BY MUNICIPALITY. (a) If a municipality completes all other procedures necessary to annex territory in a district and if the municipality intends to remove the territory from the district and be the sole provider of emergency services to the territory by the use of municipal personnel or by some method other than by use of the district, the municipality shall send written notice of those facts to the board. The municipality must send the notice to the secretary of the board by certified mail, return receipt requested. The territory remains part of the district and does not become part of the municipality until the secretary of the board receives the notice. On receipt of the notice, the board shall immediately change its records to show that the territory has been disannexed from the district and shall cease to provide further services to the residents of that territory. This subsection does not require a municipality to remove from a district territory the municipality has annexed.

(b) The disannexation of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district including loans and lease-purchase agreements.

(c) If a municipality removes territory from a district that the municipality has annexed, the municipality shall compensate the district immediately after disannexation of the territory under Subsection (a) in an amount equal to the annexed territory's pro rata share of the district's bonded and other indebtedness as computed according to the formula in Subsection (e) or (e-1), whichever yields the greater amount. The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the annexed territory's pro rata share of the district's bonded and other indebtedness.

(d) On the district's request, a municipality shall purchase from the district at fair market value any real or personal property used to provide emergency services in territory disannexed under this section.

(e) Unless Subsection (e-1) would yield a greater amount, the amount of compensation under Subsection (c) shall be determined by multiplying the district's total indebtedness at the time of the

annexation by a fraction the numerator of which is the assessed value of the property to be annexed based on the most recent certified county property tax rolls at the time of annexation and the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation.

(e-1) Unless Subsection (e) would yield a greater amount, the amount of compensation under Subsection (c) shall be determined by multiplying the district's total indebtedness at the time of the annexation by a fraction:

(1) the numerator of which is the assessed value of the property to be annexed based on the most recent certified county property tax rolls at the time of annexation plus the total amount of the district's sales and use tax revenue collected by retailers located in the property to be annexed in the 12 months preceding the date of annexation, as reported by the comptroller; and

(2) the denominator of which is the total assessed value of the property of the district based on the most recent certified county property tax rolls at the time of annexation plus the total amount of the district's sales and use tax revenue collected by retailers located in the district in the 12 months preceding the date of annexation, as reported by the comptroller.

(f) For purposes of this section, total indebtedness includes loans and lease-purchase agreements but does not include:

(1) a loan or lease-purchase agreement the district enters into after the district receives notice of the municipality's intent to annex district territory; or

(2) any indebtedness attributed to any real or personal property that the district requires a municipality to purchase under Subsection (d).

(g) The amount of compensation under Subsection (c) shall be determined under Subsection (e) regardless of whether Subsection (e-1) would yield a greater amount if:

(1) the municipality has a population of more than one million and the majority of the territory inside the municipality's corporate boundaries is located inside a county with a population of less than 2.1 million; and

(2) the municipality and the district enter into an agreement on or before September 1, 2019, regarding the district's bonded and other indebtedness.

Added by Acts 1991, 72nd Leg., ch. 620, Sec. 1, eff. June 16, 1991. Amended by Acts 1997, 75th Leg., ch. 392, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 496, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 235, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 907, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1363 (S.B. 1596), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 618 (S.B. 1083), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 6, eff. March 1, 2024.

Sec. 775.0221. ARBITRATION REGARDING REMOVED TERRITORY. (a) The municipality and the district shall negotiate an agreement on the amount of compensation required under Section 775.022. If the municipality and the district cannot reach an agreement, the municipality and the district shall resolve the dispute using binding arbitration.

(b) A request for binding arbitration must be in writing and may not be made before the 60th day after the date the municipality receives notice from the district regarding the amount of compensation required under Section 775.022.

(c) The municipality and the district must agree on the arbitrator. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the mayor of the municipality shall immediately request a list of seven neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. An arbitrator included in the list must be a resident of this state and may not be a resident of a county in which any part of the municipality or any part of the district is located. The municipality and the district must agree on the appointment of an arbitrator included in the list. If the municipality and the district cannot agree on the arbitrator before the 11th business day after the date the list is provided to the parties, each party or the party's designee may alternately strike a name from the list. The remaining person on the list shall be

appointed as the arbitrator. In this subsection, "business day" means a day other than a Saturday, Sunday, or state or national holiday.

(d) The arbitrator shall:

(1) set a hearing to be held not later than the 10th day after the date the arbitrator is appointed; and

(2) notify the parties to the arbitration in writing of the time and place of the hearing not later than the eighth day before the date of the hearing.

(e) The arbitrator may:

(1) receive in evidence any documentary evidence or other information the arbitrator considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the arbitrator for determination.

(f) Unless the parties to the dispute agree otherwise, the arbitrator shall complete the hearing within two consecutive days. The arbitrator shall permit each party one day to present evidence and other information. The arbitrator, for good cause shown, may schedule an additional hearing to be held not later than the seventh day after the date of the first hearing. Unless otherwise agreed to by the parties, the arbitrator must issue a decision in writing and deliver a copy of the decision to the parties not later than the 14th day after the date of the final hearing.

(g) The municipality and the district shall share the cost of arbitration.

Added by Acts 2003, 78th Leg., ch. 235, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 907, Sec. 2, eff. Sept. 1, 2003.

Sec. 775.0235. REMOVAL OF CERTAIN TERRITORY ON REQUEST OF MUNICIPALITY. (a) The board shall remove territory from a district as provided by this section, on request of a municipality, if the territory:

(1) was included in the corporate limits of the municipality at the time the territory was first included in the

district;

(2) is included in any part of a district that is composed of two or more territories that are not contiguous to each other; and

(3) is surrounded on at least three sides by territory inside the municipal boundaries of a municipality with a population of 400,000 or more.

(b) The board shall, on request of the municipality, immediately disannex the territory from the district and shall cease to provide further services to the residents of that territory.

(c) On request by the municipality, in connection with a disannexation under Subsection (b), the board shall immediately disannex all territory in the district that is included in the municipality's extraterritorial jurisdiction and shall cease to provide further services to the residents of such additional territory.

(d) The disannexation of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(e) If territory is disannexed under this section, the municipality shall compensate the district in an amount equal to the disannexed territory's pro rata share of the district's indebtedness at the time the territory is disannexed. The district shall apply compensation received from a municipality under this subsection exclusively to the payment of the disannexed territory's pro rata share of the district's indebtedness.

(f) On the district's request, a municipality shall purchase from the district at fair market value any real or personal property used to provide emergency services in territory disannexed under this section. If any part of the indebtedness for which the district receives compensation under Subsection (e) was for the purchase of the real or personal property that the municipality purchases under this subsection, the fair market value of that property for the purpose of this subsection is reduced by a percentage equal to the disannexed territory's pro rata share under Subsection (e).

Added by Acts 1999, 76th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1999.

Sec. 775.024. CONSOLIDATION OF EMERGENCY SERVICES DISTRICTS.

(a) Two or more emergency services districts may consolidate into a single emergency services district as provided by this section. Before consolidating, the board of each district must:

(1) determine that consolidation would allow the districts to provide services more economically and efficiently; and

(2) adopt a joint order of consolidation that includes:

(A) the name and proposed territory of the consolidated district;

(B) the proposed date on which the existing districts dissolve and the consolidated district is created and will start offering services;

(C) if the maximum ad valorem tax rates in the districts are different, a statement that the districts will consolidate only if voters approve an equalized ad valorem tax rate at the election required by Section 775.0241; and

(D) a statement that the district will be consolidated only if the residents of the district and the residents of at least one other district approve the consolidation in an election held for that purpose.

(b) The boards shall agree on a name for the proposed consolidated district and choose five commissioners from among the membership of the boards to serve on the initial board for the proposed district. The boards shall agree to stagger the terms appropriately.

(c) If the boards do not make the appointments before the 31st day after the date the boards adopted the joint order:

(1) for a consolidated district to which Section 775.0345 or 775.035 does not apply, the commissioners court shall appoint five commissioners to the board of the consolidated district; or

(2) for a consolidated district to which Section 775.0345 or 775.035 does apply, the board of the consolidated district is initially composed of the two commissioners from each existing board who have served the longest terms.

(c-1) The number of initial emergency services commissioners on a board described by Subsection (c)(2) is not required to be five.

(d) The ballot for the election to approve a consolidation shall be printed to permit voting for or against the proposition: "The consolidation of the _____ (insert district names) to create the _____ (insert name of proposed district), which assumes all outstanding debts of the existing districts." The ballot shall

include a proposition for an election required under Section 775.0241, if applicable.

(e) If a majority of the voters voting in at least two of the districts proposed to be consolidated favor the consolidation, the consolidated district is created and is composed of the districts that favored the consolidation. If less than a majority of the voters voting in any of the districts are in favor of the consolidation, that district is not part of any consolidated district.

(f) The consolidated district is created on the latest of:

(1) the date stated in the joint order;

(2) the date the consolidation is approved in an election described by Subsection (d); or

(3) the date the maximum ad valorem tax rate the consolidated district may impose under Section 775.0241 is established, if necessary.

(g) The consolidated district assumes all powers, rights, duties, assets, and liabilities of the former districts without a change in status. The consolidation does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or obligations of the district.

(h) For a consolidated district to which Section 775.0345 or 775.035 applies, the initial commissioners of the consolidated district serve until the next available uniform election date after the date the joint order is adopted and that allows sufficient time to comply with other requirements of law. After an election is held under Section 775.0345 or 775.035:

(1) the two commissioners who receive the fewest votes of the elected commissioners serve terms ending on December 31 of the second year following the year in which the election is held; and

(2) the remaining elected commissioners serve terms ending on December 31 of the fourth year following the year in which the election is held.

Added by Acts 2005, 79th Leg., Ch. 1101 (H.B. 2235), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 3, eff. June 17, 2011.

Sec. 775.0241. TAXES FOR CONSOLIDATED DISTRICT. (a) If two districts that want to consolidate under Section 775.024 have different maximum ad valorem tax rates, the board of the district with the lower maximum ad valorem tax rate shall order an election in its district under Section 775.0745 to authorize the imposition of taxes in the territory of that district at a maximum rate that equals the maximum rate authorized in the district with the higher maximum rate.

(b) If a majority of the voters do not favor the increase in the maximum ad valorem tax rate under Subsection (a), the districts may not proceed with the consolidation.

(c) If the districts have different sales and use tax rates, the board of the consolidated district shall:

(1) designate the territory of the former districts as subdistricts;

(2) continue to impose the sales and use tax in each subdistrict at the rate the tax was imposed by the former district; and

(3) send to the comptroller by registered or certified mail:

(A) a copy of the joint order described by Section 775.024(a)(2); and

(B) a map of the consolidated district that clearly shows the territory of each subdistrict.

(d) Subsection (c) does not limit the authority of the board of the consolidated district to order an election under Section 775.0752 in a subdistrict or in the entire district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 4, eff. June 17, 2011.

Sec. 775.025. EXCLUSION OF CERTAIN TERRITORY SUBJECT TO ASSESSMENTS. (a) The board shall hold a hearing to consider the exclusion from the district of territory in a planned community if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters residing in the territory proposed to be excluded from the district. A petition submitted under this subsection must describe the boundaries of the territory to be excluded from the district.

(b) The board shall give notice of a hearing under this section. The procedure under Section 775.015 for issuing notice of a hearing to create the district applies to the notice under this section. The notice must state:

(1) the boundaries of the territory proposed to be excluded;

(2) the time and place of the hearing; and

(3) that each person who has an interest in the exclusion or nonexclusion of the territory may attend the hearing and present the person's opinion for or against the exclusion of the territory.

(c) After the hearing, if the board finds that the entity responsible for administering and collecting the ad valorem or annual variable budget based assessments in the territory to be excluded provides or contracts for the provision of substantially the same services as provided by the district, the board shall:

(1) order an election on the question of exclusion; or

(2) declare by resolution the territory excluded from the district.

(d) The board may not exclude territory by resolution if at least three percent of the qualified voters residing in the territory to be excluded from the district protest the exclusion in writing at the hearing.

(e) In a resolution excluding territory, the board shall describe the new boundaries of the district.

(f) The board shall order an election in the territory proposed to be excluded on the question of exclusion if:

(1) at least three percent of the qualified voters residing in the territory to be excluded protest the exclusion in writing at the hearing; or

(2) the board:

(A) despite the lack of a sufficient protest, refuses to exclude the territory; and

(B) not later than the 90th day after refusing to exclude the territory, receives a petition requesting an election that is signed by at least 10 percent of the qualified voters residing in the territory proposed to be excluded.

(g) Except as otherwise provided by the Election Code, the provisions of this chapter relating to the election creating the district apply to the election notice, the manner and time of giving the notice, and the manner of holding the election under this

section.

(h) For purposes of the election, the order calling the election shall divide the territory proposed to be excluded from the district into one or more precincts.

(i) If a majority of the votes in an election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and describing the new boundaries of the district.

(j) The board shall file a copy of a resolution or order with the county clerk of each county in which the district is located. Each county clerk shall record the resolution or order. After the resolution or order is recorded, the excluded territory is no longer part of the district.

(k) If a majority of the votes in the election are against excluding the territory, the board may not act on a petition to exclude all or any part of the territory before the first anniversary of the date of the most recent election to exclude the territory.

(l) The exclusion of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations. The district shall continue to impose taxes each year on the excluded territory at the same rate imposed on other territory in the district until the total amount of taxes collected from the excluded territory equals its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied only to the payment of the excluded territory's pro rata share of indebtedness. The owner of all or part of the excluded territory at any time may pay in full the owner's share of the excluded territory's pro rata share of the district's indebtedness at the time the territory was excluded.

(m) On or after the date on which the appropriate county clerk records the resolution or order excluding the territory from the district, the district or a fire department or ambulance service that contracts with the district is not required to provide to the excluded territory emergency service facilities, emergency services, or other services to protect the life and health of residents in the territory.

(n) For purposes of Subsection (o)(1), land ownership that is separated only by the claim of title by the state to the beds and banks of rivers or streams is considered contiguous. Land ownership

that is separated by a farm-to-market road right-of-way, whether fee simple ownership or an easement, is not considered contiguous.

(o) In this section:

(1) "Planned community" means a planned community of 15,000 or more acres of land originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.) that is:

(A) located in a county adjacent to a county with a population of 2,800,000 or more according to the most recent federal census; and

(B) subject to restrictive covenants containing ad valorem or annual variable budget based assessments on real property for use in part to finance services of the same general type provided by the district.

(2) "Territory in a planned community" means territory that:

(A) on the effective date of this section comprises all or part of a planned community; or

(B) on the effective date of this section is contiguous to a planned community and later becomes part of that planned community.

Added by Acts 1997, 75th Leg., ch. 1424, Sec. 1, eff. June 20, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 1, eff. April 22, 2005.

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 2, eff. April 22, 2005.

Acts 2005, 79th Leg., Ch. 3 (S.B. 267), Sec. 3, eff. April 22, 2005.

Sec. 775.026. CONVERSION OF RURAL FIRE PREVENTION DISTRICTS TO EMERGENCY SERVICES DISTRICTS. (a) Each rural fire prevention district created under former Chapter 794 is converted to an emergency services district operating under this chapter.

(b) The name of a district converted under this section is changed to "___ Emergency Services District No. ___," with the name of the county or counties in which the district is located and an appropriate number inserted to distinguish one district from another

district.

(c) The emergency services district to which a rural fire prevention district converts assumes all obligations and outstanding indebtedness of the rural fire prevention district.

(d) A fire commissioner of a rural fire prevention district is an emergency services commissioner of the converted district on conversion of the district under this section and shall serve until the term for which the commissioner was appointed or elected expires.

Added by Acts 2003, 78th Leg., ch. 1204, Sec. 1.003, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 383 (S.B. 1435), Sec. 1, eff. September 1, 2005.

SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES

Sec. 775.031. DISTRICT POWERS. (a) A district is a political subdivision of the state. To perform the functions of the district and to provide emergency services, a district may:

(1) acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property;

(2) enter into and perform necessary contracts;

(3) appoint and employ necessary officers, agents, and employees;

(4) sue and be sued;

(5) impose and collect taxes as prescribed by this chapter;

(6) accept and receive donations;

(7) lease, own, maintain, operate, and provide emergency services vehicles and other necessary or proper apparatus, instrumentalities, equipment, and machinery to provide emergency services;

(8) construct, lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain emergency services vehicles and equipment;

(9) contract with other entities, including other districts or municipalities, to make emergency services facilities and emergency services available to the district;

(10) contract with other entities, including other districts or municipalities, for reciprocal operation of services and

facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the district;

(11) borrow money; and

(12) perform other acts necessary to carry out the intent of this chapter.

(b) A district located wholly within a county with a population of more than 3.3 million may not provide fire prevention or fire-fighting services unless the district:

(1) was originally a rural fire prevention district and was converted to an emergency services district under this chapter or former Section 794.100; or

(2) is created after September 1, 2003.

(b-1) A district that was formerly a rural fire prevention district that is not otherwise prohibited by statute from providing fire prevention or fire-fighting services may provide those services.

(c) A district may contract with the state or a political subdivision for law enforcement services or for enforcement of the district's fire code. A district may commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, as a peace officer.

(d) A district is not required to perform all the functions authorized by this chapter. A district may be created to provide limited services.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(3), eff. March 1, 2024.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 272, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 392, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 496, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 886, Sec. 7, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1204, Sec. 1.004, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 55, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 791 (S.B. 1425), Sec. 1, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 298 (S.B. 1794), Sec. 7(3), eff. March 1, 2024.

Sec. 775.0315. LEGAL REPRESENTATION. (a) This section applies only to a district located wholly in a county with a population of 2.1 million or more in which two or more cities with a population of 350,000 or more are located.

(b) A district may employ or contract with private legal counsel to represent the district on any legal matter. If the district does not employ or contract with private legal counsel on a legal matter, the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district.

(c) A district that receives legal services from a county attorney, district attorney, or criminal district attorney may employ additional private legal counsel on the board's determination that additional counsel is advisable. A district that contracts or employs private legal counsel under Subsection (b) may request and receive additional legal services from the county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters on the board's determination that additional counsel is necessary.

(d) If the district receives legal services from a county attorney, district attorney, or criminal district attorney, the district shall contribute money to be credited to the county's general fund account for the county attorney, district attorney, or criminal district attorney, as appropriate, in amounts sufficient to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district.

Added by Acts 2015, 84th Leg., R.S., Ch. 402 (H.B. 2038), Sec. 1, eff. June 10, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 108, eff. September 1, 2023.

Sec. 775.032. CERTAIN BUSINESSES NOT SUBJECT TO AD VALOREM TAX OR DISTRICT POWERS. (a) A business entity is not subject to the ad

valorem tax authorized by this chapter or subject to the district's powers if the business entity:

(1) provides its own fire prevention and fire control services and owns or operates fire-fighting equipment or systems equivalent to or better than standards developed by the National Fire Protection Association or another nationally recognized association and for which the business entity receives the appropriate approval from the Texas Industrial Emergency Services Board of the State Firemen's and Fire Marshals' Association of Texas;

(2) provides and operates its own equipped industrial ambulance with a licensed driver and provides industrial victim care by an emergency care attendant trained to provide the equivalent of ordinary basic life support, as defined by Section 773.003; and

(3) provides ordinary emergency services for the business entity, such as emergency response, as defined by 29 C.F.R. Sec. 1910.120, rescue, disaster planning, or security services, as recognized by the Texas Industrial Emergency Services Board of the State Firemen's and Fire Marshals' Association of Texas, and provides the equipment, training, and facilities necessary to safely handle emergencies and protect the business entity and its neighbors in the community.

(b) This section shall not be construed to exempt a business from a sales and use tax authorized by Section 775.0751.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 273, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1204, Sec. 1.005, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 558 (H.B. 1267), Sec. 1, eff. September 1, 2005.

Sec. 775.033. LIABILITY OF DISTRICT. (a) A district is not liable for a claim arising from the act or omission of an employee or volunteer under an oral or written contract with the district if the act or omission:

(1) is in the course and scope of the employee's or volunteer's duties for the district;

(2) takes place during the provision of emergency services;

(3) is not in violation of a statute or ordinance applicable to emergency action; and

(4) is not wilful or wantonly negligent.

(b) This section does not expand the liability of a district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.034. APPOINTMENT OF BOARD IN DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) The commissioners court of a county in which a single-county district is located shall appoint a five-member board of emergency services commissioners to serve as the district's governing body. To serve as a member of the board a person must be:

(1) at least 18 years of age; and

(2) a resident citizen of the state and:

(A) a qualified voter within areas served by the district; or

(B) the owner of land subject to taxation in the district.

(b) Except as prescribed by Subsection (c), commissioners serve two-year terms.

(c) After the votes are canvassed and the commissioners court enters the order creating the district, the commissioners court shall appoint the initial emergency services commissioners to serve until January 1 of the year following the district election. On January 1, the court shall designate three of those emergency services commissioners to serve a two-year term and two of those emergency services commissioners to serve a one-year term.

(d) On January 1 of each year, the commissioners court shall appoint a successor for each emergency services commissioner whose term has expired.

(e) The commissioners court shall fill a vacancy on the board for the remainder of the unexpired term.

(f) A member of the board who, because of municipal annexation, is no longer a qualified voter of an area served by the district or no longer owns land subject to taxation by the district may continue to serve until the expiration of the member's term.

(g) The commissioners court shall consider relevant factors in determining the individuals to appoint as emergency services commissioners, including whether the individuals have knowledge that

relates to fire prevention or emergency medical services and that is relevant to the common policies and practices of the board.

(h) This section does not apply to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 1, eff. September 1, 2013.

Sec. 775.0341. APPOINTMENT OF BOARD IN CERTAIN DISTRICTS LOCATED IN MORE THAN ONE COUNTY. (a) This section applies only to a district that was authorized to have a board of emergency services commissioners appointed under former Section 776.0345 and that is located:

(1) partly in a county with a population of less than 22,000; and

(2) partly in a county with a population of more than 54,000.

(b) A five-member board of emergency services commissioners appointed under this section serves as the district's governing body. A commissioner serves a two-year term.

(c) The commissioners court of the smallest county in which the district is located shall appoint two commissioners to the board. The commissioners court of the largest county in which the district is located shall appoint three commissioners to the board.

(d) To be eligible for appointment as an emergency services commissioner under this section, a person must be at least 18 years

of age and reside in the district. Two commissioners must reside in the smallest county in which the district is located, and three commissioners must reside in the largest county in which the district is located.

(e) On January 1 of each year, a commissioners court shall appoint a successor for each emergency services commissioner appointed by that commissioners court whose term has expired.

(f) The appropriate commissioners court shall fill a vacancy on the board for the remainder of the unexpired term.

Added by Acts 2017, 85th Leg., R.S., Ch. 220 (H.B. 2788), Sec. 1, eff. May 29, 2017.

Sec. 775.0345. ELECTION OF BOARD IN CERTAIN COUNTIES. (a) This section applies only to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(b) The governing body of a district consists of a five-person board of emergency services commissioners elected as prescribed by this section. Except as provided by Subsections (h) and (h-1), emergency services commissioners serve four-year terms.

(b-1) Notwithstanding Subsection (b), the governing body of a district described by Subsection (a)(2) is governed by a five-member board of emergency services commissioners elected from single-member districts. One director is elected from each single-member district. As soon as possible after the district is created, the commissioners court of the county in which the district is located shall divide the district into five numbered single-member districts.

(c) After a district is created, the county judge shall establish a convenient day provided by Section 41.001, Election Code, to conduct an election to elect the initial emergency services commissioners.

(d) To be eligible to be a candidate for emergency services commissioner, a person must be at least 18 years of age and a resident of the district.

(d-1) Notwithstanding Subsection (d), to be eligible to be a

candidate for emergency services commissioner in a single-member district on an initial board in a district described by Subsection (a)(2), a person must be at least 18 years of age and a resident of that single-member district.

(e) A candidate for emergency services commissioner on an initial board must give the voter registrar of the county a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for emergency services commissioner. If the person intends to run for emergency services commissioner in a single-member district in a district described by Subsection (a)(2), the notice must also specify the single-member district the person seeks to represent. On receipt of the notice, the voter registrar of the county shall have the candidate's name placed on the ballot.

(f) The voter registrar of the county shall appoint an election judge to certify the results of the election.

(g) After the election is held, the voter registrar or deputy registrar of the county shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse the county for the county's election costs.

(h) The initial emergency services commissioners' terms of office begin 30 days after canvassing of the election results. The two commissioners who received the fewest votes serve a term that expires on December 31 of the second year following the year in which the election was held. The other emergency services commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(h-1) Notwithstanding Subsection (h), the five initial emergency services commissioners elected from single-member districts in a district described by Subsection (a)(2) shall draw lots to determine which two commissioners serve terms that expire on December 31 of the second year following the year in which the election was held and which three commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(i) The board shall hold the general election for commissioner every two years on an authorized uniform election date as provided by Chapter 41, Election Code. The board may change the election date

from one authorized election date to another authorized election date and shall adjust the terms of office to conform to the new election date.

(j) Subchapter C, Chapter 146, Election Code, applies to a write-in candidate for emergency services commissioner under this section in the same manner it applies to a write-in candidate for a city office under that subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 454 (H.B. 2529), Sec. 1, eff. January 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 3, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 72 (H.B. 2494), Sec. 1, eff. September 1, 2021.

Sec. 775.035. ELECTION OF BOARD IN DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) The governing body of a district located in more than one county consists of a five-person board of emergency services commissioners elected as prescribed by this section. Except as provided by Subsection (g), emergency services commissioners serve four-year terms.

(b) After a district located in more than one county is created, the county judges of each county in the district shall mutually establish a convenient day provided by Section 41.001, Election Code, to conduct an election to elect the initial emergency services commissioners.

(c) To be eligible to be a candidate for emergency services commissioner of a district located in more than one county, a person must be at least 18 years of age and a resident of the district.

(d) A candidate for emergency services commissioner must give the county clerk of each county in the district a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for emergency services commissioner. On

receipt of the notice, the county clerk shall have the candidate's name placed on the ballot.

(e) The county clerks of each county in the district shall jointly appoint an election judge to certify the results of the election.

(f) After the election is held, the county clerk of each county or the clerk's deputy shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse each county for the county's election costs.

(g) The initial emergency services commissioners' terms of office begin 30 days after canvassing of the election results. The two commissioners who received the fewest votes serve a term that expires on December 31 of the second year following the year in which the election was held. The other emergency services commissioners serve terms that expire on December 31 of the fourth year following the year in which the election was held.

(h) The general election for commissioner shall be held every two years on an authorized uniform election date as provided by Chapter 41, Election Code. The board may change the election date from one authorized election date to another authorized election date and shall adjust the terms of office to conform to the new election date.

(i) Subchapter C, Chapter 146, Election Code, applies to a write-in candidate for emergency services commissioner under this section in the same manner it applies to a write-in candidate for a city office under that subchapter.

(j) This section does not apply to a district described by Section 775.0341.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 7, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 272, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 384 (S.B. 1437), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 454 (H.B. 2529), Sec. 2, eff. January 1, 2010.

Acts 2017, 85th Leg., R.S., Ch. 220 (H.B. 2788), Sec. 2, eff. May 29, 2017.

Sec. 775.0355. DISQUALIFICATION OF EMERGENCY SERVICES COMMISSIONERS IN CERTAIN COUNTIES. (a) In this section, "emergency services organization" means:

(1) a volunteer fire department;

(2) a career or combination fire department;

(3) a municipal fire department;

(4) an emergency medical services organization under the jurisdiction of the Department of State Health Services;

(5) any other agency under the jurisdiction of the state fire marshal's office; or

(6) any other organization or corporation that governs an emergency services organization.

(b) This section applies only to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(c) A person is disqualified from serving as an emergency services commissioner if that person:

(1) is related within the third degree of affinity or consanguinity to:

(A) a person providing professional services to the district;

(B) a commissioner of the same district; or

(C) a person who is an employee or volunteer of an emergency services organization providing emergency services to the district;

(2) is an employee of a commissioner of the same district, attorney, or other person providing professional services to the district;

(3) is serving as an attorney, consultant, or architect or in some other professional capacity for the district or an emergency services organization providing emergency services to the district; or

(4) fails to maintain the qualifications required by law to serve as a commissioner.

(d) Any rights obtained by a third party through official action of a board covered by this section are not impaired or affected by the disqualification under this section of an emergency services commissioner to serve, provided that the third party had no knowledge, at the time the rights were obtained, of the fact that the commissioner was disqualified to serve.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 3, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 4, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 5, eff. September 1, 2013.

Sec. 775.036. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) hold regular monthly meetings and other meetings as necessary;

(2) keep minutes and records of its acts and proceedings;

(3) give reports required by the state fire marshal, commissioner of health, and other authorized persons;

(4) on a written request from the commissioners court of a county in which the district is located received on or before December 31, give a written report not later than February 1 of the following year to the commissioners court regarding the district's budget, tax rate, and debt service for the preceding fiscal year; and

(5) administer the district in accordance with this chapter.

(b) The board may adopt and enforce a fire code, including fines for any violations, that does not conflict with a fire code adopted by any county that also contains within its boundaries any portion of the land contained in the district and may require inspections in the district relating to the causes and prevention of fires and medical emergencies, except as provided by Section 775.031(b). The fire code must be similar to standards adopted by a nationally recognized standards-making association. The board may not enforce the district's fire code within the boundaries of a municipality that has adopted a fire code, except for an area that

has been annexed only for limited purposes in which the municipality does not enforce a fire code. The board of a district located wholly within a county with a population of three million or more may not adopt a fire code or a fine for a violation of the district's fire code unless the commissioners court of the county consents to the adoption of the code or fine.

(b-1) If a county that contains within its boundaries any portion of the land contained in the district adopts a fire code after the district adopts a code under Subsection (b), the board may continue to enforce its fire code in the area subject to the county fire code. To the extent of any conflict between the county's code and the district's code, the more stringent provision prevails.

(c) The board may promote educational programs it considers proper to help carry out the purposes of this chapter.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 308, Sec. 4, eff. June 19, 2009.

(e) Chapter 551, Government Code, does not apply to a meeting of a committee:

(1) of the board if less than a board quorum attends; or

(2) composed of representatives of more than one board, if less than a quorum of any of the boards attends.

(f) Each January, the board shall publish the street address of the district's administrative office in eight-point type in the legal notices section of a newspaper of general circulation in the district. In a district's first year of operation, the board shall publish the notice not later than the 60th day after the date the initial board is appointed.

(g) The board may commission a peace officer or employ a person who holds a permanent peace officer license issued under Section 1701.307, Occupations Code, to inspect for fire hazards any structure, appurtenance, fixture, or other real property located in the district. The board may adopt procedures to order the owner or occupant of the property that fails an inspection to correct the hazardous situation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 274, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 195, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 282, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 496, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch.

272, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 1, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 4, eff. June 19, 2009.

Sec. 775.0362. LIMIT ON REGULATION OF FIREWORKS. Except as provided by Section 775.0363, the district may not regulate the sale, use, or transportation of fireworks.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 5, eff. June 17, 2011.

Sec. 775.0363. REGULATION OF FIREWORKS. The district may adopt a rule relating to fireworks that is the same as or less stringent than a rule adopted or enforced by the commissioner of insurance and the state fire marshal under Chapter 2154, Occupations Code, relating to retail fireworks stands, fireworks bulk manufacturing and storage facilities, fireworks sales buildings, or any other structure used in public pyrotechnic displays to which the rules adopted under Chapter 2154, Occupations Code, apply.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 5, eff. June 17, 2011.

Sec. 775.0365. BOARD TRAINING. (a) An emergency services commissioner shall complete at least six hours of continuing education relating to the performance of the duties of an emergency services commissioner at least once in a two-year period.
(b) Continuing education instruction required by Subsection (a) must be certified by an institution of higher education as defined by Section 61.003, Education Code.
(c) For purposes of Subsection (a), an emergency services commissioner may carry forward from one two-year period to the next two-year period not more than three continuing education hours that

the commissioner completes in excess of the required six hours.

(d) For purposes of removal under Section 775.0422 or 775.0423, "incompetency" includes the failure of an emergency services commissioner to comply with Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 6, eff. June 17, 2011.

Sec. 775.0366. SERVICE CONTRACTS. (a) In this section, "local government" has the meaning assigned by Section 791.003, Government Code.

(b) The board may contract with a local government, including another district, to provide staff, facilities, equipment, programs, or services the board considers necessary to provide or obtain emergency services that the district or the local government is authorized to provide.

(c) A person acting under a contract under this section, including an emergency services commissioner, does not, because of that action, hold more than one civil office of emolument or more than one office of honor, trust, or profit.

(d) Except as provided by Subsection (e), if a district contracts with a local government under this section to provide or obtain emergency services, the district is responsible for any civil liability that arises from furnishing those services if the district would have been responsible for furnishing the services in the absence of the contract.

(e) The parties to a contract between governmental entities under this section may agree to assign responsibility for civil liability that arises from services provided under the contract in any manner agreed to by the parties. The parties must assign that responsibility in a written provision of the contract that specifically refers to this subsection and states that the assignment of liability is intended to be different from liability otherwise assigned under Subsection (d).

(f) This section does not change the liability limits and immunities for a governmental unit under Chapter 101, Civil Practice and Remedies Code, or other law.

(g) A contract under this section is not a joint enterprise for liability purposes.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 6, eff. June 17, 2011.

Sec. 775.037. OFFICERS OF BOARD. (a) The emergency services commissioners shall elect from among their members a president, vice-president, secretary, treasurer, and assistant treasurer to perform the duties usually required of the respective offices. The office of secretary and treasurer may be combined.

(b) The treasurer must execute and file with the county clerk a bond conditioned on the faithful execution of the treasurer's duties. The treasurer of a district located in more than one county shall file the bond with the county clerk of the county with the largest population in the district. The county judge of the county in which the bond is to be filed must determine the amount and sufficiency of the bond before it is filed.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.038. COMPENSATION; CONFLICT OF INTEREST. (a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

(a-1) A commissioner of a district is entitled to receive compensation in the same manner and amount as are provided by Section 49.060, Water Code.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

(d) Commissioners are subject to Chapter 171, Local Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 392, Sec. 3, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 219 (H.B. 2504), Sec. 2, eff. September 1, 2017.

Sec. 775.039. DIFFERENTIAL PAY AND BENEFITS FOR EMPLOYEES OF EMERGENCY SERVICES DISTRICTS. (a) A board may provide differential pay to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty if:

(1) the board adopts a policy providing for differential pay for all similarly situated employees; and

(2) the employee's military pay is less than the employee's gross pay from the district.

(b) The combination of differential pay and military pay may not exceed the employee's actual gross pay from the district.

(c) For purposes of this section, military pay does not include money the employee receives:

(1) for service in a combat zone;

(2) as hardship pay; or

(3) for being separated from the employee's family.

(d) The differential pay provided by Subsection (a) begins when the benefits allowed under Section 437.202, Government Code, are exhausted and continues until the employee's active military duty terminates.

(e) The board may extend the insurance benefits provided by the district to a district employee who is a member of the state military forces or a reserve component of the United States armed forces who is called to active duty and to the employee's dependents. The extension period begins when the benefits allowed under Section 437.202, Government Code, are exhausted and continues until the employee's active military duty terminates.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1097 (S.B. 1477), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.12, eff. September 1, 2013.

Sec. 775.040. FEES FOR PROVIDING SERVICES. A district, or a person authorized by contract on the district's behalf, may charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 4, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 496, Sec. 9, eff. Sept. 1, 1999.

Sec. 775.041. FEE PAYMENT AND COLLECTION. (a) A fee imposed by a district under Section 775.040 must be paid within a reasonable amount of time as established by the district.

(b) If the fee has not been paid in the amount of time established by the district, the district may collect the fee by filing a complaint in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(c) If the district prevails in any suit to collect the fee, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district in the suit. The court shall determine the amount of the attorney's fees.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 10, eff. Sept. 1, 1999.

Sec. 775.042. REMOVAL OF BOARD MEMBER BY BOARD. (a) A board may remove a member if:

(1) the member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board; and

(2) the other members of the board unanimously vote to remove that member.

(b) Not later than the 30th day after the date of a vote to remove a member under Subsection (a), that member may file a written appeal for reinstatement to the commissioners court of the county in which a single-county district is located or, if the district is located in more than one county, the commissioners court of the county where the member resides. The court may reinstate the member if it finds the removal unwarranted after considering:

(1) a reason for an absence;

(2) the time and place of a missed meeting;

(3) the business conducted at a missed meeting; and

(4) any other factors or circumstances the court considers relevant.

(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 10, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 3, eff. June 19, 2009.

Sec. 775.0422. REMOVAL OF APPOINTED BOARD MEMBER BY COMMISSIONERS COURT. (a) This section does not apply to a district unless the commissioners court of the county in which the district is located adopts this section by resolution.

(a-1) This section applies only to an appointed board member. This section does not apply to a board member who:

(1) is elected; or

(2) is appointed to fill a vacancy in an elected board member position.

(b) The commissioners court of the county in which a district is located, by an order adopted by a majority vote after a hearing, may remove a board member for:

(1) incompetency, as defined by Section 87.011, Local Government Code;

(2) official misconduct, as defined by Section 87.011, Local Government Code; or

(3) misconduct, as defined by Section 178.001, Local Government Code.

(b-1) Section 551.0745, Government Code, applies to a deliberation regarding a removal of a board member in the same manner as that section applies to a deliberation regarding a dismissal of a member of an advisory body.

(c) Not later than the 30th day before the date on which the hearing is held, a commissioners court seeking removal under this section must:

(1) notify the board members that it is considering that action; and

(2) provide the board member with an opportunity to show cause why the board member should not be removed.

(d) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 308 (H.B. 527), Sec. 2, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 116 (H.B. 1917), Sec. 1, eff. May 21, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 116 (H.B. 1917), Sec. 2, eff. May 21, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 7, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 8, eff. June 17, 2011.

Sec. 775.0423. REMOVAL OF ELECTED BOARD MEMBER. (a) This section applies only to a board member who:
(1) is elected; or
(2) is appointed to fill a vacancy in an elected board member position.
(b) A board member may be removed using the procedures provided by Chapter 87, Local Government Code, for:
(1) incompetency, as defined by Section 87.011, Local Government Code;
(2) official misconduct, as defined by Section 87.011, Local Government Code;
(3) intoxication, as described by Section 87.013, Local Government Code; or
(4) misconduct, as defined by Section 178.001, Local Government Code.
(c) The validity of a board action is not affected because it is taken when a ground for removal of a board member exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 9, eff. June 17, 2011.

Sec. 775.043. EXEMPTION FROM INVESTMENT TRAINING. (a) Section 2256.008, Government Code, does not apply to an officer or employee of a district created under this chapter.
(b) A district may invest funds only in the authorized investments set forth under Government Code Section 2256.009

(obligations of, or guaranteed by governmental entities), 2256.010 (certificates of deposit and share certificates), or 2256.016 (investment pools), unless the treasurer, chief financial officer (if not the treasurer), and the investment officer of the district attend and successfully complete the training requirements under Section 2256.008, Government Code.

Added by Acts 1999, 76th Leg., ch. 914, Sec. 1, eff. June 18, 1999. Renumbered from Health & Safety Code Sec. 775.041 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(80), eff. Sept. 1, 2001.

Sec. 775.044. VACANCY ON BOARD OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Not later than the 90th day after a board vacancy for a district located in more than one county occurs, the remaining board members shall appoint a person to fill the unexpired term.

(b) If the board has not filled the vacancy before the 91st day after the date of the vacancy, the commissioners court of the county where the previous board member resided shall appoint a person to fill the vacancy.

(c) A person appointed under this section must be eligible to serve under Section 775.035.

Added by Acts 2005, 79th Leg., Ch. 384 (S.B. 1437), Sec. 2, eff. September 1, 2005.

Sec. 775.0445. VACANCY ON BOARD OF DISTRICT LOCATED IN CERTAIN COUNTIES. (a) In this section, "vacancy" means a vacancy in the office of director that occurs for any reason, including an office that is vacant because:

(1) a director was disqualified under Section 775.0355; or

(2) no candidate filed for election to the office.

(b) This section applies only to a district located wholly in a county:

(1) with a population of more than three million;

(2) with a population of more than 200,000 that borders Lake Palestine; or

(3) with a population of less than 200,000 that borders another state and the Gulf Intracoastal Waterway.

(c) Not later than the 90th day after a board vacancy occurs,

the remaining board members shall appoint a person to fill the unexpired term.

(d) A person appointed under this section must be eligible to serve under Section 775.0345.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 4, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 6, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1347 (S.B. 1265), Sec. 7, eff. September 1, 2013.

Sec. 775.045. APPLICABILITY OF CERTAIN LAWS. (a) Except as provided by Subsection (b), notwithstanding any other law:

(1) Section 1301.551(i), Occupations Code, applies to a district as if the district were a municipality; and

(2) Section 233.062, Local Government Code, applies to a district as if the district were in an unincorporated area of a county.

(b) Subsection (a) does not apply to a district:

(1) that before February 1, 2013, has adopted a fire code, fire code amendments, or other requirements in conflict with Subsection (a); and

(2) whose territory is located:

(A) in or adjacent to a general law municipality with a population of less than 4,000 that is served by a water control and improvement district governed by Chapter 51, Water Code; and

(B) in a county that has a population of more than 1.2 million and is adjacent to a county with a population of more than 600,000.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1363 (S.B. 1596), Sec. 2, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 109, eff. September 1, 2023.

SUBCHAPTER D. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT

Sec. 775.051. EXPANSION OF DISTRICT TERRITORY. (a) Qualified voters who own taxable real property in a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be signed by at least 50 qualified voters who own taxable real property in the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The hearing may be held not earlier than the 31st day after the date on which the board issues the order.

(c) The secretary of the board shall give notice of the hearing. The notice must contain the time and place for the hearing and a description of the territory proposed to be annexed into the district.

(d) The secretary shall:

(1) post copies of the notice in three public places in the district and one public place in the territory proposed to be annexed into the district for at least 15 days before the date of the hearing; and

(2) not later than the 16th day before the date on which the hearing will be held, publish the notice once in a newspaper of general circulation in the county.

(e) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a change is necessary or desirable.

(f) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(g) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the _____ Emergency Services District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the _____ Emergency Services District, if it is added to the district."

(h) The election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the other provisions of this chapter relating to those matters to the extent that those provisions can be made applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.052. PETITION FOR DISSOLUTION; NOTICE OF HEARING. (a) Before a district may be dissolved, the district's board must receive a petition signed by at least 10 percent of the registered voters in the district.

(b) If the petition is in proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(c) The board shall give notice of the hearing. The notice must include:

(1) the name of the district;

(2) a description of the district's boundaries;

(3) the proposal that the district be dissolved; and

(4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.053. HEARING. (a) At the hearing on the petition to dissolve the district, the board shall consider the petition and each issue relating to the dissolution of the district.

(b) Any interested person may appear before the board to support or oppose the dissolution.

(c) The board shall grant or deny the petition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.054. ELECTION TO CONFIRM DISSOLUTION. (a) On the granting of a petition to dissolve the district, the board shall order an election to confirm the district's dissolution.

(b) Notice of the election shall be given in the same manner as the notice of the petition hearing.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law and that occurs after the date on which the board grants the petition.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the _____ Emergency Services District."

(e) A copy of the tabulation of results shall be filed with the county clerk of each county in which the district is located.

(f) If a majority of those voting at the election vote to dissolve the district, the board shall proceed with dissolution. An election to create a new district in the boundaries of the old district may not be held for at least one year after dissolution.

(g) If a majority of those voting at the election vote against dissolving the district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.055. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After a vote to dissolve a district, the board shall continue to control and administer the property, debts, and assets of the district until all funds are disposed of and all district debts are paid or settled.

(b) The board may not dispose of the district's assets except for due compensation unless the debts are transferred to another governmental entity or agency within or embracing the district and the transfer will benefit the district's residents.

(c) After the board issues the dissolution order, the board shall:

(1) determine the debt owed by the district; and

(2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

(d) Each taxpayer may pay the tax imposed by the district under this section at once.

(e) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(f) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused tax money to each district taxpayer. A taxpayer may request that the taxpayer's share of surplus tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

(g) After the district pays all its debts and disposes of all its assets and funds as prescribed by this section, the board shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district. Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

(h) Each emergency services commissioner is discharged from liability under the emergency services commissioner's bond on entry of the order prescribed by Subsection (g).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.056. TRANSFER OF TERRITORY BETWEEN DISTRICTS. (a) After a hearing, a district may make mutually agreeable changes in boundaries with another district, provided that the maximum tax rate authorized for such a district does not exceed the maximum tax rate previously authorized for any territory added to that district. The districts shall agree on an effective date for the changes in boundaries.

(b) The changes in boundaries under this section do not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations.

(c) A district shall compensate the district that loses

territory in an amount equal to that territory's pro rata share of the losing district's bonded and other indebtedness based on the unpaid principal balances and the actual property values at the time the changes in boundaries are made. The district that loses territory shall apply compensation received from the annexing district under this subsection exclusively to the payment of the annexed territory's pro rata share of the losing district's bonds or other debt.

Added by Acts 2001, 77th Leg., ch. 1140, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 10, eff. June 17, 2011.

SUBCHAPTER E. FINANCES AND BONDS

Sec. 775.071. LIMITATION ON INDEBTEDNESS. (a) Except as provided by Subsection (b), a district may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand and anticipated revenues for the year.

(b) This section does not apply to Sections 775.051, 775.072, 775.076, 775.077, 775.078, and 775.085.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 496, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1140, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.072. DEPOSITORIES. (a) The board shall designate one or more banks to serve as depositories for district funds.

(b) The board shall deposit all district funds in a depository bank, except that the board:

(1) may deposit funds pledged to pay bonds or notes with banks named in the trust indenture or in the bond or note resolution; and

(2) shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

(c) The district may not deposit funds in a depository or trustee bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the excess funds are secured in the manner provided by law for the security of county

funds.

(d) The resolution or trust indenture securing the bonds or notes may require that any or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.073. EXPENDITURES. (a) Except as otherwise provided by this section, district funds may be disbursed only by check, draft, order, or other instrument that:

(1) is signed by at least a majority of the board's commissioners; or

(2) is signed by the treasurer, or by the assistant treasurer if the treasurer is absent or unavailable, and countersigned by the president, or by the vice president if the president is absent or unavailable.

(b) The board by resolution may allow a district employee who has executed a bond in an amount equal to the amount required for the district treasurer to sign an instrument to disburse district funds. An expenditure of more than $2,000 may not be paid unless the expenditure is presented to the board and the board approves the expenditure.

(c) The board may authorize the disbursement of district funds transferred by federal reserve wire system. The board by resolution may authorize wire transfers to accounts in the district's name or accounts not in the district's name.

(d) Any property, including an interest in property, purchased or leased using district funds, wholly or partly, must remain the property of the district, regardless of whether the property is used by a third party under a contract for services or otherwise, until the property is disposed of in accordance with Section 775.0735.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 816, Sec. 1, eff. Aug. 28, 1995. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1107 (H.B. 3798), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 411 (H.B. 2519), Sec. 1, eff. September 1, 2015.

Sec. 775.0735. DISPOSITION OF PROPERTY. (a) The district may dispose of property owned by the district only by:

(1) selling the property to a third party following the procedures authorized under Section 263.001, 263.007, or 263.008, Local Government Code;

(2) selling or disposing of the property following the procedures authorized under Subchapter D, Chapter 263, Local Government Code;

(3) selling or disposing of the property in accordance with Subchapter J; or

(4) selling the property using an Internet auction site.

(b) The district may contract with a private vendor to assist with the sale of the property.

(c) The district shall sell the property using the method of sale that the board determines is the most advantageous to the district under the circumstances. The board shall adopt rules establishing guidelines for making that determination.

(d) In using an Internet auction site to sell property under this section, the district shall post the property on the site for at least 10 days.

(e) The district may reject any or all bids or proposals for the purchase of the property.

Added by Acts 2015, 84th Leg., R.S., Ch. 411 (H.B. 2519), Sec. 2, eff. September 1, 2015.

Sec. 775.074. AD VALOREM TAX. (a) The board shall annually impose an ad valorem tax on all real and personal property located in the district and subject to district taxation for the district's support and the purposes authorized by this chapter.

(b) If a district issues bonds or notes that are payable wholly from ad valorem taxes, the board shall, when bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds or notes as the interest and principal come due and to provide reserve funds if prescribed in the resolution authorizing, or the trust indenture securing, the bonds or notes.

(c) If a district issues bonds or notes that are payable from

ad valorem taxes and from revenues, income, or receipts of the district, the board shall, when the bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds and notes and to create and maintain any reserve funds.

(d) In establishing the rate of the ad valorem tax to be collected for a year, the board shall consider the money that will be available to pay the principal of and interest on any bonds or notes issued and to create any reserve funds to the extent and in the manner permitted by the resolution authorizing, or the trust indenture securing, the bonds or notes.

(d-1) The board may not set the tax rate for a fiscal year before the date the board adopts a budget for that fiscal year.

(e) The board shall certify the ad valorem tax rate to the county tax assessor-collector, who is the assessor-collector for the district.

(f) Repealed by Acts 1999, 76th Leg. ch. 496, Sec. 14, eff. September 1, 1999.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 275, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 496, Sec. 14, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 11, eff. June 17, 2011.

Sec. 775.0745. ELECTION TO INCREASE TAX RATE. (a) If the board decides to increase the maximum tax rate of the district to any rate at or below the rate allowed by this chapter or Section 48-e, Article III, Texas Constitution, the board must order an election to authorize the increase. The proposition on the ballot must state the proposed maximum tax rate to be authorized at the election.

(b) The board shall give notice of the election as provided by Section 4.003, Election Code. The notice shall contain the information required by Section 4.004, Election Code.

(c) The election shall be held on the first uniform election date provided by the Election Code after the date of the board's order that allows sufficient time to comply with any requirements of

law.

(d) If a majority of the votes cast in the election favor the increase in the maximum tax rate, the maximum tax rate for the district is increased to the rate authorized by the election. The increase in the maximum tax rate does not apply to a tax year for which the board adopts a tax rate before the date of the election.

(e) Repealed by Acts 2005, 79th Leg., Ch. 123, Sec. 2, eff. September 1, 2005.

Added by Acts 2001, 77th Leg., ch. 1140, Sec. 3, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1204, Sec. 1.007, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 123 (S.B. 1621), Sec. 2, eff. September 1, 2005.

Sec. 775.075. REDUCTION OF AD VALOREM TAX RATE. (a) The qualified voters of a district may petition in the manner provided by Sections 775.052 through 775.054 for dissolution of a district to reduce the ad valorem tax rate of the district.

(b) The petition must state the new tax rate desired by the voters.

(c) The tax rate may not be reduced below the rate needed to pay any outstanding bonded indebtedness.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 2, eff. Sept. 1, 1989.

Sec. 775.0751. SALES AND USE TAX. (a) A district may adopt a sales and use tax, change the rate of its sales and use tax, or abolish its sales and use tax at an election held as provided by Section 775.0752. The district may impose the tax at a rate from one-eighth of one percent to two percent in increments of one-eighth of one percent. Revenue from the tax may be used for any purpose for which ad valorem tax revenue of the district may be used.

(b) Chapter 323, Tax Code, applies to the application, collection, and administration of the tax imposed under this section. The comptroller may make rules for the collection and administration

of this tax in the same manner as for a tax imposed under Chapter 323, Tax Code. Where a county and a hospital district both impose a sales and use tax, the comptroller may by rule provide for proportionate allocation of sales and use tax collections between a county and a hospital district on the basis of the period of time each tax is imposed and the relative tax rates.

(c) Except as provided by Subsection (c-1), a district may not adopt a tax under this section or increase the rate of the tax if as a result of the adoption of the tax or the tax increase the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the district would exceed two percent at any location in the district.

(c-1) A district that otherwise would be precluded from adopting a sales and use tax under Subsection (c) may adopt a sales and use tax, change the rate of its sales and use tax, or abolish its sales and use tax at an election held as provided by Section 775.0752, if the board:

(1) excludes from the applicability of any proposed sales and use tax any territory in the district where the sales and use tax is then at two percent; and

(2) not later than the 30th day after the date on which the board issues the election order, gives, for informational purposes, written or oral notice on the proposed imposition, increase, or abolition of the sales and use tax, including the reasons for the proposed change, to the commissioners court of each county in which the district is located.

(d) If the voters of a district approve the adoption of the tax or an increase in the tax rate at an election held on the same election date on which another political subdivision of this state adopts a sales and use tax or approves the increase in the rate of its sales and use tax and as a result the combined rate of all sales and use taxes imposed by the district and other political subdivisions of this state having territory in the portion of the district in which the district sales and use tax will apply would exceed two percent at any location in that portion of the district, the election to adopt a sales and use tax or to increase the rate of the sales and use tax in the district under this subchapter has no effect.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept.

1, 1989. Amended by Acts 2003, 78th Leg., ch. 235, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1385 (S.B. 1502), Sec. 1, eff. June 15, 2007.

Acts 2017, 85th Leg., R.S., Ch. 604 (S.B. 1727), Sec. 1, eff. June 9, 2017.

Sec. 775.0752. SALES AND USE TAX ELECTION PROCEDURES. (a) Except as otherwise provided by this subchapter, an election to adopt or abolish a district's sales and use tax or to change the rate of the tax is governed by the provisions of Subchapter E, Chapter 323, Tax Code, applicable to an election to adopt or abolish a county sales and use tax.

(b) An election is called by the adoption of a resolution by the board. The board shall call an election if a number of qualified voters of the district equal to at least five percent of the number of registered voters in the district petitions the board to call the election.

(c) At an election to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at the rate of (proposed tax rate) percent."

(d) At an election to abolish the tax, the ballot shall be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in (name of district)."

(e) At an election to change the rate of the tax, the ballot shall be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed by (name of district) from (tax rate on election date) percent to (proposed tax rate) percent."

(f) At an election described by Section 775.0751(c-1) to adopt the tax, the ballot shall be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in (name of district) at a rate not to exceed (proposed tax rate) percent in any location in the district."

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept.

1, 1989.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 604 (S.B. 1727), Sec. 2, eff. June 9, 2017.

Sec. 775.0753. SALES AND USE TAX EFFECTIVE DATE; BOUNDARY CHANGE. (a) The adoption or abolition of the tax or change in the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election.

(b) If the comptroller determines that an effective date provided by Subsection (a) will occur before the comptroller can reasonably take the action required to begin collecting the tax or to implement the abolition of the tax or the tax rate change, the effective date may be extended by the comptroller until the first day of the next succeeding calendar quarter.

(c) Except as provided by Section 775.0754, the provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter in the event of a change in the district's boundaries.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 40, Sec. 3, eff. Sept. 1, 1989.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1060 (H.B. 3159), Sec. 1, eff. September 1, 2013.

Sec. 775.0754. SALES AND USE TAX AGREEMENT WITH MUNICIPALITY AFTER ANNEXATION. (a) This section applies when:

(1) a municipality annexes for full purposes part of a district that imposes a sales and use tax; and

(2) the annexed area is not removed from the district.

(b) The municipality and the district may, before or after the annexation, agree on an allocation between the municipality and the district of revenue from the sales and use tax imposed in the annexed area.

(c) Under policies and procedures that the comptroller considers reasonable, the comptroller shall pay the amounts agreed to between the municipality and the district.

(d) A municipality that enters into an agreement under this section is not required to provide emergency services in that annexed territory. To the extent of a conflict between this subsection and Section 43.056, Local Government Code, or any other law, this subsection controls.

(e) Section 321.102(f), Tax Code, does not apply if the municipality and the district enter into an agreement under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1060 (H.B. 3159), Sec. 2, eff. September 1, 2013.

Sec. 775.076. BONDS AND NOTES AUTHORIZED. (a) The board may issue bonds and notes as prescribed by this chapter to perform any of its powers.

(a-1) Before the board may issue bonds or notes authorized by this section, the commissioners court of each county in which the district is located must approve the issuance of the bonds or notes by a majority vote. This subsection does not apply to a district located wholly in a county with a population of more than three million.

(b) The board may issue bonds and notes in one or more issues or series that are payable from and secured by liens on and pledges of:

(1) ad valorem taxes;

(2) all or part of the district's revenues, income, or receipts; or

(3) a combination of those taxes, revenues, income, and receipts.

(c) The bonds and notes may be issued to mature in not more than 40 years from the date of their issuance.

(d) Provision may be made for the subsequent issuance of additional parity bonds or notes or subordinate lien bonds or notes under terms and conditions stated in the resolution authorizing the issuance of the bonds or notes.

(e) to (g) Repealed by Acts 2001, 77th Leg., ch. 1140, Sec.

23(2), eff. Sept. 1, 2001.

(h) If provided by the resolution, the proceeds from the sale of the bonds or notes may be used for:

(1) paying interest on the bonds or notes during the period of the acquisition or construction of a facility to be provided through the issuance of the bonds or notes;

(2) paying expenses of operation and maintenance of the facility;

(3) creating a reserve fund to pay the principal of and interest on the bonds or notes; and

(4) creating other funds.

(i) As provided in the resolution, proceeds from the sale of the bonds and notes may be placed on time deposit or invested until needed.

(j) If the bonds or notes are issued payable by a pledge of revenues, income, or receipts, the district may pledge all or any part of its revenues, income, or receipts from fees, rentals, rates, charges, and proceeds and payments from contracts to the payment of the bonds or notes, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds or notes. The pledged fees, rentals, rates, charges, proceeds, and payments must be established and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for:

(1) all payments of principal, interest, and any other amounts required in connection with the bonds or notes; and

(2) the payment of expenses in connection with the bonds or notes and the operation, maintenance, and other expenses in connection with the facilities to the extent required by the resolution authorizing, or the trust indenture securing, the issuance of the bonds or notes.

(k) The district shall impose a tax as prescribed by Section 775.074 if the bonds or notes are payable wholly or partly from ad valorem taxes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1140, Sec. 7, 23(2), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 7, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 5, eff. September 1, 2007.

Sec. 775.077. ELECTION TO APPROVE BONDS AND NOTES. (a) A district may not authorize bonds and notes secured in whole or in part by taxes unless a majority of the district's qualified voters who vote at an election ordered for that purpose approve the issuance of the bonds and notes.

(b) The board may order an election on the bonds and notes. The order must contain the same information contained in the notice of the election.

(c) The board shall publish notice of the election at least once in a newspaper of general circulation in the district. The notice must be published not later than the 31st day before election day.

(d) In addition to the contents of the notice required by the Election Code, the notice must state:

(1) the amount of bonds or notes to be authorized; and

(2) the maximum maturity of the bonds or notes.

(e) At an election to approve bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)."

(f) At an election to approve bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.078. BOND ANTICIPATION NOTES. (a) A district may issue bond anticipation notes from time to time to carry out one or more of its powers.

(b) The bond anticipation notes may be secured by a pledge of all or part of the district's ad valorem taxes and revenues, income, or receipts.

(c) A district may from time to time authorize the issuance of

bonds to provide proceeds to pay the principal of and interest on bond anticipation notes. The bonds must be secured by a pledge of all or part of the district's ad valorem taxes or revenues, income, or receipts and may be issued on a parity with or subordinate to outstanding district bonds.

(d) If the resolution authorizing the issuance of, or the trust indenture securing, the bond anticipation notes includes a covenant that the notes are payable from the proceeds of the subsequently issued bonds, it is not necessary for the district to demonstrate, in order to receive the approval of the attorney general or registration by the comptroller, that the ad valorem taxes or revenues, income, or receipts that may be pledged to payment of the notes will be sufficient to pay the principal of and interest on the notes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 775.082. AUDIT OF DISTRICT IN LESS POPULOUS COUNTIES. (a) The county auditor of a county that contains any part of the district shall have access to the books, records, officials, and assets of the district.

(b) A district shall prepare and file with the commissioners court of each county that contains any part of the district on or before June 1 of each year an audit report of the district's fiscal accounts and records. The audit shall be performed and the report shall be prepared at the expense of the district. The county auditor, with the approval of the commissioners court, shall adopt rules relating to the format of the audit and report. If a district is located in more than one county, the county auditors, with the approval of the commissioners court of each county in which the district is located, shall adopt uniform rules relating to the format of the audit and report.

(c) The person who performs the audit and issues the report must be an independent certified public accountant or firm of certified public accountants licensed in this state, unless the commissioners court by order requires the audit to be performed by the county auditor at least 120 days before the end of the district's fiscal year.

(d) The commissioners court, on application made to the commissioners court by the district, may extend up to an additional

30 days the deadline for filing the audit report.

(e) If the district fails to complete and file the audit report within the time provided by Subsection (b) or (d), the commissioners court may order the county auditor to perform the audit and issue the report. If a district is located in more than one county, the commissioners court of each county in which the district is located shall designate by joint order a county auditor of one of the counties to perform the audit and issue the report.

(e-1) When a district located wholly in one county fails to complete and file the audit report by September 1 of each year and a county auditor is not ordered to prepare the report, the president and treasurer of the board are removed from the board and the commissioners court shall fill the vacancies as provided by Section 775.034.

(f) The district shall pay all costs incurred by the county auditor to perform an audit and issue the report required by this section, unless otherwise ordered by the commissioners court or by joint order of the commissioners courts, if the district is located in more than one county.

(g) This section does not apply to a district located wholly in a county with a population of more than three million.

Added by Acts 1993, 73rd Leg., ch. 195, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 392, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 120 (S.B. 1436), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 12, eff. June 17, 2011.

Sec. 775.0821. ALTERNATIVE TO AUDIT OF DISTRICT IN LESS POPULOUS COUNTIES. (a) This section applies only to a district to which Section 775.082 applies that:

(1) did not have any outstanding bonds secured by ad valorem taxes or any outstanding liabilities secured by ad valorem

taxes having a term of more than one year during the previous fiscal year;

(2) did not receive more than a total of $250,000 in gross receipts from operations, loans, taxes, or contributions during the previous fiscal year; and

(3) did not have a total of more than $250,000 in cash and temporary investments during the previous fiscal year.

(b) Instead of filing an audit report under Section 775.082, a district to which this section applies may file compiled financial statements with the commissioners court of each county in which any part of the district is located.

(c) The district must file with the compiled financial statements an affidavit signed by an authorized district representative attesting to the accuracy and authenticity of the statements.

(d) The provisions of Section 775.082 relating to deadlines for filing an audit and the procedures and penalties relating to the failure of a district to file an audit apply to the filing of compiled financial statements under this section.

(e) A district that files compiled financial statements in accordance with Subsection (b) and that maintains an Internet website shall have posted on the district's website the compiled financial statements for the most recent three years.

Added by Acts 2013, 83rd Leg., R.S., Ch. 719 (H.B. 3764), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1068 (H.B. 2257), Sec. 1, eff. September 1, 2015.

Sec. 775.0825. AUDIT OF DISTRICT IN CERTAIN POPULOUS COUNTIES. (a) This section applies only to a district located wholly in a county with a population of more than three million.

(b) A district shall prepare on or before July 1 of each year an audit of the district's fiscal accounts and records.

(c) The audit shall be performed and the report shall be prepared at the expense of the district.

(d) The audit shall be available for review and inspection at the administrative office of the district.

(e) A copy of the audit shall be filed with the clerk of the county commissioner's court within 30 days after receipt by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 900 (H.B. 2653), Sec. 8, eff. September 1, 2007.

Sec. 775.083. ANNUAL REPORT. (a) On or before January 1 of each year, a district shall file with the Texas Division of Emergency Management an annual report that includes the following:

(1) the district's name;

(2) the name of each county in which the district is located;

(3) the district's business address;

(4) the name, mailing address, and term of office of each commissioner;

(5) the name, mailing address, and term of office of the district's general manager, executive director, and fire chief;

(6) the name of each legal counsel or other consultant for the district; and

(7) the district's annual budget and tax rate for the preceding fiscal year.

(b) The Texas Division of Emergency Management may not charge a fee for filing the report.

(c) The Texas Division of Emergency Management shall develop and maintain an Internet-based system that enables:

(1) a district to securely file the report and update the district's information; and

(2) the public to view, in a searchable format, the reports filed by districts under this section.

(d) If the information included in a district's annual report changes, the district shall update the district's information using the Internet-based system before the end of the calendar quarter in which the district's information changes.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 6, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 235, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 112 (H.B. 1918), Sec. 98, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1019 (H.B. 1510), Sec. 2, eff. September 1, 2017.

Sec. 775.084. COMPETITIVE BIDS. (a) Except as provided by Subsection (i), the board must submit to competitive bids an expenditure of more than $50,000 for:

(1) one item or service; or

(2) more than one of the same or a similar type of item or service in a fiscal year.

(b) The board shall request bids on items to be purchased or leased or services to be performed as provided by this subsection. The board shall notify suppliers, vendors, or providers by advertising for bids or by providing at least three suppliers, vendors, or purchasers with written notice by mail of the intended purchase. If the board decides to advertise for bids, the advertisement must be published in accordance with Section 262.025(a), Local Government Code. If the board receives fewer than three bids in response to the advertisement, the board shall give written notice directly to at least three suppliers, vendors, or providers of the intended purchase. If three suppliers, vendors, or providers are not available or known to the board, the board shall give written notice by mail directly to each supplier, vendor, or provider known to the board.

(c) The advertisement or notice for competitive bidding must:

(1) describe the work to be performed or the item to be purchased or leased;

(2) state the location at which the bidding documents, plans, specifications, or other data may be examined; and

(3) state the time and place for submitting bids and the time and place that bids will be opened.

(d) The board may not prepare restrictive bid specifications.

(e) Bids may be opened only by the board at a public meeting or by a district officer or employee at or in a district office.

(f) The board may reject any bid. The board may not award a contract to a bidder who is not the lowest bidder unless, before the bid is awarded, the lowest bidder is given notice of the proposed award and an opportunity to appear before the board or its designated representative and present evidence concerning the bidder's responsibility.

(g) A contract awarded in violation of this section is void.

(h) This section applies to an expenditure of district tax revenues by any party or entity for the purchase of services, vehicles, equipment, or goods.

(i) This section does not apply to:

(1) the purchase or lease of real property;

(2) an item or service that the board determines can be obtained from only one source;

(3) a contract for fire extinguishment and suppression services, emergency rescue services, or ambulance services;

(4) an emergency expenditure;

(5) the purchase of vehicle fuel;

(6) the purchase of firefighter bunker gear;

(7) the purchase of insurance coverage; or

(8) repairs funded by a payment made under an insurance claim.

(j) Subsection (i) does not prohibit the board from soliciting competitive bids for any item, service, or contract listed in Subsection (i).

(k) A contract for a public works project must be administered in the manner provided by Subchapter B or H, Chapter 271, Local Government Code, except as provided by this section.

Added by Acts 1997, 75th Leg., ch. 392, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 235, Sec. 10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 8, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1304 (H.B. 2957), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1248 (H.B. 2667), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 8, eff. September 1, 2007.

Sec. 775.085. LOAN FOR REAL PROPERTY OR EMERGENCY SERVICES EQUIPMENT. (a) The board, on the behalf of the district, may borrow money and make other financial arrangements to purchase real property or emergency services equipment or construct emergency services facilities in the amount and subject to a rate of interest or other

conditions the board considers advisable.

(b) To secure a loan under this section, the board may pledge:

(1) tax revenues or funds on hand that are not otherwise pledged to pay a debt of the district; or

(2) the real property acquired or improved or equipment acquired with the borrowed money.

(c) If tax revenues are pledged to pay a loan, the loan must mature not later than the:

(1) 10th anniversary of the date the loan is made, if the loan is for equipment; or

(2) 20th anniversary of the date the loan is made, if the loan is for real property.

(d) Section 775.077 does not apply to a loan secured under this section, including a loan made before the effective date of this subsection.

Added by Acts 1999, 76th Leg., ch. 496, Sec. 13, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1140, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 235, Sec. 11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 930, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 13, eff. June 17, 2011.

SUBCHAPTER F. FIRE MARSHAL

Sec. 775.101. CREATION. (a) A district may create the office of district fire marshal if a county in which the district is located does not have a county fire marshal.

(b) The district shall appoint an individual to serve in the office of fire marshal.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.102. TERM. The fire marshal serves a two-year term.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.103. BOND. The fire marshal shall post a bond in the

amount required by the district and conditioned on the faithful and strict performance of the fire marshal's duties under this subchapter.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.104. CONFLICT OF INTEREST. The fire marshal may not:

(1) have a direct or indirect financial interest in the sale of fire-fighting equipment; or

(2) be engaged in the business of fire insurance.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.105. ADMINISTRATIVE SUPPORT. The district may provide facilities, equipment, transportation, employees, and other services and assistance to the fire marshal, including investigators.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.106. JURISDICTION. (a) Except as provided by Section 775.107 or 775.115, the fire marshal may not exercise the powers granted under this subchapter in:

(1) the territory of a municipality that has a municipal fire marshal; or

(2) the territory of a county that has a county fire marshal.

(b) This subchapter does not change or otherwise limit the authority of any state agency to prevent and extinguish forest and grass fires.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.107. TRANSFER OF JURISDICTION. (a) This section applies if:

(1) a county in which a district is located creates a county fire marshal under Subchapter B, Chapter 352, Local Government Code; or

(2) a municipality located in the district creates a municipal fire marshal.

(b) Not later than the 30th day after the creation of the county or municipal fire marshal, the jurisdiction of the district fire marshal in that county or municipality ceases. The new county or municipal fire marshal shall assume control over any pending investigations, court proceedings, or other matters being handled by the district fire marshal in the county or municipality.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.108. GENERAL POWERS AND DUTIES. The fire marshal shall:

(1) investigate the cause, origin, and circumstances of each fire that damages property;

(2) determine whether the fire was caused by negligent or intentional conduct; and

(3) enforce all state, county, and district orders and rules that relate to fires, explosions, or damages caused by a fire or an explosion.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.109. INVESTIGATIONS. (a) The fire marshal shall begin an investigation within 24 hours after notification of a fire. The 24-hour period does not include Sunday.

(b) The fire marshal may investigate attempted fires.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.110. INSPECTION. (a) The fire marshal may, at any time of day, enter and inspect:

(1) property where a fire has occurred; and

(2) property adjacent to where a fire occurred.

(b) The fire marshal shall conduct this inspection in a manner least inconvenient to any persons living on the property.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.111. INSPECTION FOR FIRE HAZARDS. (a) In this section, "fire hazard" means any of the following conditions that endanger the safety of a structure or its occupants and promote or cause fire or combustion:

(1) the presence of a flammable substance;

(2) a dangerous or dilapidated wall, ceiling, or other structural element;

(3) improper lighting, heating, or other facilities;

(4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring; or

(5) dangerous storage.

(b) In the interest of safety and fire prevention, the fire marshal may inspect for fire hazards any structure, appurtenance, fixture, or real property located in the district and within 200 feet of a structure, appurtenance, or fixture. If the fire marshal determines the presence of a fire hazard, the fire marshal may order the owner or occupant of the premises to correct the hazardous situation.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.112. RECORDS. The fire marshal shall keep a record of each fire that the fire marshal is required to investigate. The record must include the facts, statistics, and circumstances determined by the investigation, including the origin of the fire and the estimated amount of the loss.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.113. ADDITIONAL INVESTIGATION POWERS. (a) If the fire marshal determines that further investigation of a fire or of an attempt to set a fire is necessary, the fire marshal may:

(1) subpoena witnesses to testify regarding the fire or attempt;

(2) administer oaths to the witnesses;

(3) take and preserve written statements, including statements under oath such as an affidavit or deposition; and

(4) require the production of a document or item related to the investigation.

(b) As part of an investigation, the fire marshal may:

(1) conduct an investigation or examination in private;

(2) exclude a person who is not under examination; and

(3) separate witnesses from each other until each witness is examined.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.114. INSURANCE. (a) An action taken by the fire marshal in the investigation of a fire does not affect the rights of a policyholder or of an insurer regarding a loss caused by the fire.

(b) The records of an investigation by the fire marshal relating to the detection, investigation, or prosecution of a crime may be admitted in evidence in the trial of a civil action unless those records are subject to an exception under Sections 552.108(a)(1) and (b)(1), Government Code.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.115. COOPERATION WITH OTHER FIRE MARSHALS. (a) The district fire marshal shall cooperate with the state fire marshal to conduct:

(1) fire prevention activities;

(2) fire-fighting activities; and

(3) fire investigations.

(b) The district fire marshal shall aid or conduct an investigation in a municipality or a county if requested by the municipality or the county.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.116. ENFORCEMENT. (a) The fire marshal shall file in court a complaint charging arson, attempted arson, conspiracy to defraud, or any other related crime against a person the fire marshal believes to be guilty.

(b) The fire marshal shall file charges in court against a

witness who refuses to cooperate with the investigation.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.117. SERVICE OF PROCESS. A constable or sheriff may serve process under this subchapter. The process must be signed by the fire marshal.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.118. CRIMINAL PENALTY; CONTEMPT OF FIRE INVESTIGATION. (a) A person commits an offense if the person is a witness in connection with an investigation by the fire marshal and:

(1) refuses to be sworn;

(2) refuses to appear and testify; or

(3) fails to produce to the fire marshal any document or item relating to an investigation under this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $25.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

Sec. 775.119. CRIMINAL PENALTY; FAILURE TO COMPLY WITH ORDER. (a) An owner or occupant of real property who is subject to an order issued by the fire marshal commits an offense if the person fails to comply with the order.

(b) An offense under this section is a Class B misdemeanor.

(c) Each failure to comply with an order is a separate offense.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 5, eff. Sept. 1, 2001.

SUBCHAPTER G. HAZARDOUS MATERIALS

Sec. 775.151. DEFINITIONS. In this subchapter:

(1) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or

"solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended;

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S. C. Section 6901 et seq.), as amended;

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), as amended; or

(D) Chapter 361.

(2) "Responsible party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.152. HAZARDOUS MATERIALS SERVICE. A district may provide hazardous materials services, including a response to an incident involving hazardous material that has been:

(1) leaked, spilled, or otherwise released; or

(2) abandoned.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.153. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A district, or a person authorized by contract on the district's behalf, may charge a reasonable fee to a responsible party for responding to a hazardous materials service call.

(b) An individual who is a responsible party does not have to pay the fee if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving

the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

Sec. 775.154. EXEMPTION FOR GOVERNMENTAL ENTITIES. This subchapter does not apply to hazardous materials owned or possessed by a governmental entity.

Added by Acts 2001, 77th Leg., ch. 272, Sec. 6, eff. Sept. 1, 2001.

SUBCHAPTER H. CHANGE IN BOUNDARIES OF DISTRICT WITH PLANNED COMMUNITY

Sec. 775.201. DEFINITION. In this subchapter, "planned community" means a planned community of 25,000 or more acres of land originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.) that is:

(1) located wholly or partly in a county with a population of 2.8 million or more; and

(2) subject to restrictive covenants containing ad valorem or annual variable budget-based assessments on real property for use in part to finance services of the same general type provided by the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.202. AGREEMENT ON BOUNDARIES WITH PROPERTY OWNERS IN PLANNED COMMUNITY. (a) After a hearing, a district located wholly in a county with a population of 2.8 million or more may exclude territory by making changes in the district's boundaries in accordance with an agreement among the district and the owners of two-thirds or more in acreage and two-thirds or more in taxable value, according to the most recent certified county property tax rolls, of a defined area of territory of a planned community.

(b) The agreement must be in writing and describe:

(1) the affected territory by metes and bounds, including the changes in the boundaries to be made;

(2) the amount of any compensation to be paid to the district under Section 775.205;

(3) the effective date for the changes in boundaries; and

(4) any other applicable terms.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.203. NOTICE OF HEARING. (a) The board secretary shall give notice of the hearing.

(b) The notice must contain the time and place for the hearing and a description of the territory proposed to be excluded.

(c) The secretary shall:

(1) post copies of the notice for at least 15 days before the date of the hearing in three public places in the district, one of which must be in the territory proposed to be excluded; and

(2) not later than the 16th day before the date on which the hearing is held, publish the notice once in a newspaper of general circulation in each county in which the excluded territory is located.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.204. ADOPTION OF AGREEMENT AND APPROVAL OF EXCLUSION. After the hearing, if the board finds that the exclusion of the territory would be feasible and would benefit the district, the board shall by a resolution entered in its minutes:

(1) adopt the agreement; and

(2) approve the exclusion.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.205. EFFECT OF ADOPTION OF AGREEMENT AND APPROVAL OF

EXCLUSION. (a) After adoption and approval under Section 775.204, the district's tax on the property in the excluded territory continues until all agreed compensation has been paid in full.

(b) The district shall apply the compensation received under this section toward the payment of the obligations described by Subsection (c).

(c) The agreement must provide for the excluded territory to compensate the district in an amount equal to the excluded territory's pro rata share of the outstanding and unpaid bonds, warrants, or other direct and indirect obligations, including loans and lease-purchase agreements and written funding assistance agreements of the district and any not-for-profit fire departments and ambulance agencies or associations, for the financing and payment for firefighting, emergency medical service and emergency rescue equipment, fire and ambulance stations, or similar long-term capital assets to serve the district.

(d) The excluded territory's pro rata share is the unpaid principal balances of the outstanding loans and other obligations enumerated by Subsection (c) multiplied by a fraction, the numerator of which is the taxable value of the property in the excluded territory and the denominator of which is the taxable value of the entire district, including the excluded territory. The taxable value calculated under this subsection for property in the excluded territory, including as part of the entire district, does not include any special appraisal or exemptions for the property.

(e) The agreement to compensate the district does not include the following expenses incurred by the district after the boundaries change:

(1) expenses for district operations and maintenance; and

(2) expenses for district services.

(f) The agreement to compensate the district is required regardless of whether the loans and other obligations are subject to non-appropriation by the district or termination by either party before payment in full of the unpaid principal balance.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

Sec. 775.206. NO EFFECT ON OUTSTANDING OBLIGATIONS. A change

in boundaries under this subchapter does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other district obligations.

Added by Acts 2007, 80th Leg., R.S., Ch. 828 (H.B. 492), Sec. 1, eff. September 1, 2007.

SUBCHAPTER I. DIVISION OF DISTRICT

Sec. 775.221. AUTHORITY TO DIVIDE DISTRICT. (a) This subchapter applies only to a district located wholly in:

(1) a county with a population of 20,000 or less; or

(2) a county with a population of more than 30,000 but less than 41,000 that is adjacent to a county with a population of more than 200,000 but less than 233,500.

(b) The board of a district described by Subsection (a) may create a new district by disannexing territory from the existing district and ordering a new district to be created in the disannexed territory in the manner provided by this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1241 (H.B. 3203), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 110, eff. September 1, 2023.

Sec. 775.222. PETITION FOR DIVISION; NOTICE OF HEARING. (a) Before the existing district may be divided, the district's board must receive a petition for division signed by at least seven percent of the district's qualified voters or at least 100 of the district's qualified voters, whichever is the lesser number.

(b) A petition for division must include:

(1) the name of the new district to be created; and

(2) a description of the territory proposed to be the new district's territory.

(c) On receipt of a petition in the proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(d) The board shall issue a notice of the hearing that includes:

(1) the name of the proposed district;

(2) a description of the proposed district's boundaries; and

(3) the place, date, and time of the hearing on the petition.

(e) The board shall publish the notice in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.223. HEARING ON DIVISION OF DISTRICT. (a) At the hearing on the petition for division of the existing district, the board shall consider the petition and each issue relating to the division of the district.

(b) Any interested person may appear before the board to support or oppose the division.

(c) The board shall approve the petition not later than the 10th day after the date of the hearing if the board finds that:

(1) the petition contains the number of signatures required under Section 775.222(a); and

(2) the proposed division is feasible.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1241 (H.B. 3203), Sec. 2, eff. September 1, 2019.

Sec. 775.224. APPEAL. A resident of the district or an owner of real or personal property located in the district may appeal the board's decision on the division of the district by filing an appeal in the district court in the county in which a district is located only on the basis that the board incorrectly tabulated the number of signatures on the petition.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.225. ELECTION TO CONFIRM DIVISION. (a) On granting a petition to divide the district, the board shall order an election to be held in the territory of the proposed new district to confirm the division of the existing district.

(b) Notice of the election shall be given in the same manner as the notice of hearing under Section 775.222.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law.

(d) The ballot shall be printed to provide for voting for or against the proposition: "Dividing the _____ Emergency Services District to create a new emergency services district."

(e) If a majority of voters voting at the election vote to divide the district, the board shall order the division.

(f) If a majority of those voting at the election vote against dividing the existing district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election.

(g) The existing district and the new district each shall pay a pro rata share of the cost of an election held under this section, based on the assessed value of real property in each district subject to ad valorem taxation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.226. DIVISION ORDER. A board order to divide a district must:

(1) disannex the land of the new district from the existing district contingent on the approval of the creation of the new district at the election held under this subchapter;

(2) create the new district in accordance with this chapter;

(3) name the new district; and

(4) include the metes and bounds description of the

territory of the new district and the existing district after disannexation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.227. ADMINISTRATION OF DISTRICTS AFTER DIVISION. (a) The existing board continues in existence to govern the territory of the existing district after disannexation.

(b) If the new district is located wholly in one county, the commissioners court shall appoint a board in the manner described by Section 775.034 not later than the 14th day after the date of the board order dividing the district.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.228. TAXATION FOR OUTSTANDING BONDED DEBT. The disannexation of territory from a district under this subchapter does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of that district. Property disannexed under this subchapter is not released from its pro rata share of any of the district's bonded indebtedness on the date of the disannexation, and the district may continue to tax property in the disannexed territory until that debt is paid as if the territory had not been disannexed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

Sec. 775.229. FURTHER DIVISION PROHIBITED. Once a district has been divided under this subchapter, neither the existing district nor the new district may be divided under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1134 (H.B. 2212), Sec. 1, eff. June 19, 2009.

SUBCHAPTER J. SURPLUS AND SALVAGE PROPERTY

Sec. 775.251. SALE AND DISPOSITION OF SURPLUS OR SALVAGE PROPERTY. (a) In this section:

(1) "Salvage property" means personal property, other than wastepaper, that because of use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(2) "Surplus property" means personal property that is in excess of the needs of its owner, that is not required for the owner's foreseeable needs, and that possesses some usefulness for the purpose for which it was intended or for some other purpose.

(3) "Volunteer fire department" means an association that:

(A) operates firefighting equipment;

(B) is organized primarily to provide and actively provides firefighting services;

(C) does not pay its members compensation other than nominal compensation; and

(D) does not distribute any of its income to its members, officers, or governing body, other than for reimbursement of expenses.

(b) Notwithstanding other law, a district may sell surplus firefighting equipment, including equipment described by Sections 419.040 and 419.041, Government Code, to any volunteer fire department or district in this state for fair market value if the equipment:

(1) met the National Fire Protection Association Standards at the original time of purchase; and

(2) at the time of the sale:

(A) meets the National Fire Protection Association Standards in effect at the original time of purchase; or

(B) meets the National Fire Protection Association Standards in effect.

(c) A district may contract to supply surplus property to any volunteer fire department or district in this state at fair market value.

(d) A district may sell salvage property to any person in this state for fair market value. If a district is unable to sell the property for fair market value, the district may destroy or otherwise dispose of the property as worthless.

(e) The district may determine the fair market value of surplus

and salvage property sold under Subsections (b), (c), and (d).

Redesignated from Health and Safety Code, Subchapter I, Chapter 775 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(31), eff. September 1, 2011.

SUBCHAPTER K. DISTRICTS IN CERTAIN COUNTIES

Sec. 775.301. DEFINITION. In this subchapter, "commissioners court" means the commissioners court of a county that:

(1) borders the United Mexican States;

(2) contains a municipality with a population of more than 500,000; and

(3) appoints a board of emergency services commissioners under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 111, eff. September 1, 2023.

Sec. 775.302. APPLICABILITY. (a) This subchapter applies only to a district that is located wholly in a county:

(1) that borders the United Mexican States;

(2) that contains a municipality with a population of more than 500,000; and

(3) for which the commissioners court appoints a board of emergency services commissioners under Section 775.034.

(b) This subchapter controls over a provision of this chapter or other law to the extent of a conflict.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 112, eff. September 1, 2023.

Sec. 775.303. DELEGATION OR WAIVER BY COMMISSIONERS COURT. (a)

The commissioners court may adopt a resolution to:

(1) delegate to the board of a district a duty assigned to the commissioners court under this subchapter that relates to that district; or

(2) waive a requirement in this subchapter that the commissioners court approve an action of a district.

(b) A resolution adopted under this section may apply to more than one board or district.

(c) The commissioners court may by resolution terminate the delegation of a duty or the waiver of an approval requirement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.304. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT. (a) The commissioners court may establish policies and procedures the board must comply with when:

(1) constructing, purchasing, acquiring, contracting for, leasing, adding to, maintaining, operating, developing, regulating, selling, exchanging, or conveying real or personal property, a property right, equipment, goods, services, a facility, or a system to maintain a building or other facility or to provide a service to or required by the district; or

(2) providing services through and using public funds for a volunteer fire department or emergency service provider.

(b) The policies and procedures:

(1) may include requiring the board to submit to the commissioners court periodic reports on the district's compliance with the policies and procedures;

(2) must establish the types of transactions, including maximum dollar amounts, the board may make when conducting an activity described by Subsection (a) without the approval of the commissioners court, if any;

(3) must designate by name, title, or position a person in the county as the primary point of contact between the commissioners court and the board; and

(4) may not be established until the commissioners court consults with the board.

(c) This section does not authorize the commissioners court or

the board to use real or personal property, a property right, equipment, a facility, or a system to provide a telecommunications service, advanced communications service, or information service as defined by 47 U.S.C. Section 153, or a video service as defined by Section 66.002, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.305. BUDGET. (a) The commissioners court shall establish a schedule for a district to prepare an annual budget, tax rate calculations and notices, and a recommended tax rate and to submit the budget, calculations, notices, and recommendation to the commissioners court for final approval.

(b) The schedule must take into account requirements of this chapter, Chapter 26, Tax Code, and Section 21, Article VIII, Texas Constitution, applicable to adopting a district tax rate and provide the commissioners court a reasonable amount of time to review the submissions required under Subsection (a).

(c) The board shall:

(1) prepare an annual budget and submit the budget to the commissioners court for final approval according to the schedule established under this section; and

(2) submit to the commissioners court and the county auditor tax rate calculations and notices and a recommended tax rate according to the schedule established under this section.

(d) If the commissioners court does not approve or deny a budget submitted to the commissioners court under this section before the 31st day after the date the budget is submitted, the commissioners court is considered to have approved the budget.

(e) If the commissioners court does not approve or deny a tax rate recommended to the commissioners court under this section before the 31st day after the date the recommended tax rate is submitted, the commissioners court is considered to have approved the recommended tax rate and the recommended tax rate is the rate for the year in which the rate is recommended.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

Sec. 775.306. BUSINESS PARTICIPATION. The board shall encourage and promote participation by all sectors of the business community, including small businesses and businesses owned by members of a minority group or by women, in the process by which the district enters into contracts. The board shall develop a plan for the district to identify and remove barriers that do not have a definite or objective relationship to quality or competence and that unfairly discriminate against small businesses and businesses owned by members of a minority group or by women. These barriers may include contracting procedures and contract specifications or conditions.

Added by Acts 2013, 83rd Leg., R.S., Ch. 21 (S.B. 332), Sec. 1, eff. September 1, 2013.

CHAPTER 777. REGIONAL POISON CONTROL CENTERS

Sec. 777.001. REGIONAL POISON CONTROL CENTERS. (a) Six regional centers for poison control are designated as the regional poison control centers for the state as follows:

(1) The University of Texas Medical Branch at Galveston;

(2) the Dallas County Hospital District/North Texas Poison Center;

(3) The University of Texas Health Science Center at San Antonio;

(4) the University Medical Center of El Paso, El Paso County Hospital District;

(5) the Texas Tech University Health Sciences Center at Amarillo; and

(6) Scott and White Memorial Hospital, Temple, Texas.

(b) The poison control centers shall coordinate poison control activities within the designated health and human services regions for the state. The Commission on State Emergency Communications shall adopt rules designating the region for each poison control center. The Commission on State Emergency Communications may adopt rules permitting poison control centers to provide services for regions served by other poison control centers in this state as necessary to maximize efficient use of resources and provide appropriate services in each region.

(c) The Commission on State Emergency Communications may standardize the operations of and implement management controls to

improve the efficiency of regional poison control centers.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 41, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 27.01, eff. September 28, 2011.

Sec. 777.002. TELEPHONE SERVICES. (a) A poison control center established by this chapter shall provide a 24-hour toll-free telephone referral and information service for the public and health care professionals according to the requirements of the American Association of Poison Control Centers.

(b) Each public safety answering point, as that term is defined by Section 771.001, shall have direct telephone access to at least one poison control center. Regional poison information services may be available directly from the center for the region or from another poison control center but shall be available through all 9-1-1 services in the region, as the term "9-1-1 service" is defined by Section 771.001. The 9-1-1 service calls pertaining to poisonings may be routed to a poison control answering site, if possible, if the routing does not adversely affect the immediate availability of poisoning management services.

(c) A poison control center shall ensure that poison control activities within the designated region meet the criteria established by the American Association of Poison Control Centers. A center may meet the criteria directly or may affiliate with other poison control centers or poison treatment facilities, if possible. A center shall ensure that treatment facilities and services are available within the region and shall identify and make available to the public and to appropriate health professionals information concerning analytical toxicology, emergency and critical care, and extracorporeal capabilities within the region.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 41, Sec. 2, eff. Sept. 1, 1997.

Sec. 777.003. COMMUNITY PROGRAMS AND ASSISTANCE. A poison control center shall provide:

(1) community education programs on poison prevention methods to inform the public, such as presentations to persons attending a primary or secondary school, a parent-teacher association meeting, an employee safety meeting at an industrial company, or other interested groups;

(2) information and education to health professionals involved in the management of poison and overdose victims, including information regarding appropriate therapeutic use of medications, their compatibility and stability, and adverse drug reactions and interactions;

(3) professional and technical assistance to state agencies requesting toxicologic assistance; and

(4) consultation services concerning medical toxicology, for which a fee may be charged in an amount set by the institution in which the center is located to cover the costs of the service.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.004. STAFF. (a) A poison control center established under this chapter shall use physicians, pharmacists, nurses, other professionals, and support personnel trained in various aspects of toxicology and poison control and prevention.

(b) A poison control center shall make available resources, if possible, to accommodate persons who do not speak English.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.005. RESEARCH PROGRAMS. (a) A poison control center may conduct a toxicology poison treatment research program to improve treatments for poisoning victims and to reduce the severity of injuries from poisonings.

(b) A poison control center may accept grants or contributions from public or private sources to be used for research.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.006. INFORMATION AT BIRTH. The Commission on State Emergency Communications shall assist the regional poison control centers in providing informational packets on poison prevention to parents of newborns.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 5, eff. September 1, 2009.

Sec. 777.007. STATE LIABILITY. The state shall indemnify a poison control center and an employee of a poison control center under Chapter 104, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.

Sec. 777.008. COORDINATING COMMITTEE. (a) The coordinating committee on poison control shall coordinate the activities of the regional poison control centers designated under Section 777.001(a) and advise the Commission on State Emergency Communications.

(b) The committee is composed of:

(1) one public member appointed by the Commission on State Emergency Communications;

(2) six members who represent the six regional poison control centers, one appointed by the chief executive officer of each center;

(3) one member appointed by the commissioner of state health services; and

(4) one member who is a health care professional designated as the poison control program coordinator appointed by the Commission on State Emergency Communications.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 6, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1574, eff. April 2, 2015.

Sec. 777.009. FUNDING. (a) The Commission on State Emergency Communications shall establish a program to award grants to fund the regional poison control centers.

(b) The Commission on State Emergency Communications shall adopt rules to establish criteria for awarding the grants. The rules must require the agency to consider:

(1) the need of the region based on population served for poison control services and the extent to which the grant would meet the identified need;

(2) the assurance of providing quality services;

(3) the availability of other funding sources;

(4) achieving or maintaining certification as a poison control center with the American Association of Poison Control Centers;

(5) maintenance of effort; and

(6) the development or existence of telecommunications systems.

(c) The Commission on State Emergency Communications may approve grants according to commission rules. A grant awarded under this section is governed by Chapter 783, Government Code, and the rules adopted under that chapter.

(d) The Commission on State Emergency Communications may accept gifts or grants from any source for purposes of this chapter.

Added by Acts 1993, 73rd Leg., ch. 670, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 6, eff. September 1, 2009.

Sec. 777.010. OUT-OF-REGION SERVICES; SERVICES FOR PRIVATE ENTITIES. (a) On approval by and in coordination with the governor, the Commission on State Emergency Communications may enter into a contract for the provision of telephone referral and information services or any program or service described by Section 777.003 to any person, including:

(1) another state or a political subdivision of another state; and

(2) another country or a political subdivision of another country.

(b) The Commission on State Emergency Communications shall contract with one or more regional poison control centers to provide the services required under a contract entered into under Subsection (a). The commission may not enter into a contract under this subsection if, in the opinion of the commission, the regional poison control center's performance of the contract would result in a diminishment in the services provided in the region.

(c) A contract described by Subsection (a) must recover the cost of providing the services and may include a reasonable additional amount to support poison control center services in this state. Revenue from a contract described by Subsection (a) must be deposited to the credit of the regional poison control services account.

Added by Acts 1997, 75th Leg., ch. 41, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 7, eff. September 1, 2009.

Sec. 777.011. REGIONAL POISON CONTROL SERVICES ACCOUNT. The regional poison control services account is an account in the general revenue fund. The account is composed of money deposited to the account under Section 777.010(c). Money in the account may be appropriated only to the Commission on State Emergency Communications:

(1) for administration of and payment for contracts entered into under Section 777.010(b); and

(2) to fund grants awarded under Section 777.009.

Added by Acts 1997, 75th Leg., ch. 41, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 8, eff. September 1, 2009.

Sec. 777.012. NUMBER AND LOCATION IDENTIFICATION SERVICE. (a) In this section:

(1) "Service provider" means an entity providing local exchange access lines to a service user and includes a business service user that provides residential facilities and owns or leases

a public or private telephone switch used to provide telephone service to facility residents.

(2) "Service user" means a person that is provided local exchange access lines, or their equivalent.

(b) A service provider shall furnish to a poison control center for each call to an emergency line of the center the telephone number of the subscribers and the address associated with the number.

(c) Information furnished to a poison control center under this section is confidential and is not available for public inspection. Information contained in an address database used to provide the number or location identification information under this section is confidential and is not available for public inspection. The service provider or a third party that maintains an address database is not liable to any person for the release of information furnished by the service provider or third party in providing number or location identification information under this section, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

Added by Acts 1999, 76th Leg., ch. 1405, Sec. 33, eff. Sept. 1, 1999.

Sec. 777.013. COOPERATION AND COORDINATION WITH THE DEPARTMENT OF STATE HEALTH SERVICES. (a) The Department of State Health Services, on request of the Commission on State Emergency Communications, shall provide epidemiological support to the regional poison control centers under this chapter to:

(1) maximize the use of data collected by the poison control network;

(2) assist the regional poison control centers with quality control and quality assurance;

(3) assist with research; and

(4) coordinate poison control activities with other public health activities.

(b) Each regional poison control center shall provide the Department of State Health Services with access to all data and information collected by the regional poison control center for public health activities and epidemiological and toxicological investigations.

(c) The Commission on State Emergency Communications and the

Department of State Health Services shall enter into a memorandum of understanding that delineates the responsibilities of each agency under this section and amend the memorandum of understanding as necessary to reflect the changes in those responsibilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 347 (H.B. 1093), Sec. 9, eff. September 1, 2009.

CHAPTER 778. EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Sec. 778.001. EXECUTION OF INTERSTATE COMPACT. This state enacts the Emergency Management Assistance Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

ARTICLE I--PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II--GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many

emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III--PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing

the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV--LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is

understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V--LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI--LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII--SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the

machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII--COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX--REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X--EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in

which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI--IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII--VALIDITY

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII--ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of

military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

Added by Acts 1997, 75th Leg., ch. 169, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 778A. RECOGNITION OF EMERGENCY MEDICAL SERVICES PERSONNEL LICENSURE INTERSTATE COMPACT ("REPLICA")

Sec. 778A.001. EXECUTION OF INTERSTATE COMPACT. This state enacts the EMS Personnel Licensure Interstate Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

EMS PERSONNEL LICENSURE INTERSTATE COMPACT.

Section 1. PURPOSE. In order to protect the public through verification of competency and ensure accountability for patient care related activities all states license emergency medical services (EMS) personnel, such as emergency medical technicians (EMTs), advanced EMTs and paramedics. This compact is intended to facilitate the day to day movement of EMS personnel across state boundaries in the performance of their EMS duties as assigned by an appropriate authority and authorize state EMS offices to afford immediate legal recognition to EMS personnel licensed in a member state. This compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of EMS personnel and that such state regulation shared among the member states will best protect public health and safety. This compact is designed to achieve the following purposes and objectives:

1. increase public access to EMS personnel;

2. enhance the states' ability to protect the public's health and safety, especially patient safety;

3. encourage the cooperation of member states in the areas of EMS personnel licensure and regulation;

4. support licensing of military members who are separating from an active duty tour and their spouses;

5. facilitate the exchange of information between member states regarding EMS personnel licensure, adverse action and significant

investigatory information;

6. promote compliance with the laws governing EMS personnel practice in each member state; and

7. invest all member states with the authority to hold EMS personnel accountable through the mutual recognition of member state licenses.

Section 2. DEFINITIONS. In this compact:

A. "Advanced emergency medical technician (AEMT)" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

B. "Adverse action" means: any administrative, civil, equitable or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions and state court judgments enforcing adverse actions by the state EMS authority.

C. "Alternative program" means: a voluntary, non-disciplinary substance abuse recovery program approved by a state EMS authority.

D. "Certification" means: the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.

E. "Commission" means: the national administrative body of which all states that have enacted the compact are members.

F. "Emergency medical technician (EMT)" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

G. "Home state" means: a member state where an individual is licensed to practice emergency medical services.

H. "License" means: the authorization by a state for an individual to practice as an EMT, AEMT, paramedic, or a level in between EMT and paramedic.

I. "Medical director" means: a physician licensed in a member state who is accountable for the care delivered by EMS personnel.

J. "Member state" means: a state that has enacted this compact.

K. "Privilege to practice" means: an individual's authority to

deliver emergency medical services in remote states as authorized under this compact.

L. "Paramedic" means: an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

M. "Remote state" means: a member state in which an individual is not licensed.

N. "Restricted" means: the outcome of an adverse action that limits a license or the privilege to practice.

O. "Rule" means: a written statement by the interstate commission promulgated pursuant to Section 12 of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of the compact; or is an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.

P. "Scope of practice" means: defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.

Q. "Significant investigatory information" means:

1. investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or

2. investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.

R. "State" means: any state, commonwealth, district, or territory of the United States.

S. "State EMS authority" means: the board, office, or other agency with the legislative mandate to license EMS personnel.

Section 3. HOME STATE LICENSURE. A. Any member state in which an individual holds a current license shall be deemed a home state for purposes of this compact.

B. Any member state may require an individual to obtain and

retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.

C. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

1. currently requires the use of the National Registry of Emergency Medical Technicians (NREMT) examination as a condition of issuing initial licenses at the EMT and paramedic levels;

2. has a mechanism in place for receiving and investigating complaints about individuals;

3. notifies the commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

4. no later than five years after activation of the compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. Section 731.202 and submit documentation of such as promulgated in the rules of the commission; and

5. complies with the rules of the commission.

Section 4. COMPACT PRIVILEGE TO PRACTICE. A. Member states shall recognize the privilege to practice of an individual licensed in another member state that is in conformance with Section 3.

B. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:

1. be at least 18 years of age;

2. possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and

3. practice under the supervision of a medical director.

C. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.

D. Except as provided in Section 4.C. of this compact, an individual practicing in a remote state will be subject to the remote

state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action it shall promptly notify the home state and the commission.

E. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

F. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

Section 5. CONDITIONS OF PRACTICE IN A REMOTE STATE. An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the commission, and under the following circumstances:

1. the individual originates a patient transport in a home state and transports the patient to a remote state;

2. the individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

3. the individual enters a remote state to provide patient care and/or transport within that remote state;

4. the individual enters a remote state to pick up a patient and provide care and transport to a third member state; or

5. other conditions as determined by rules promulgated by the commission.

Section 6. RELATIONSHIP TO EMERGENCY MANAGEMENT ASSISTANCE COMPACT. Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact (EMAC), all relevant terms and provisions of EMAC shall apply and to the extent any terms or provisions of this compact conflicts with EMAC, the terms of EMAC shall prevail with respect to any individual practicing in the remote state in response to such declaration.

Section 7. VETERANS, SERVICE MEMBERS SEPARATING FROM ACTIVE DUTY MILITARY, AND THEIR SPOUSES. A. Member states shall consider a

veteran, active military service member, and member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted NREMT certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

B. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour, and their spouses.

C. All individuals functioning with a privilege to practice under this section remain subject to the adverse actions provisions of Section 8 of this compact.

Section 8. ADVERSE ACTIONS. A. A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.

B. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

1. All home state adverse action orders shall include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's EMS authority.

2. An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from both the home state and remote state's EMS authority.

C. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission.

D. A remote state may take adverse action on an individual's privilege to practice within that state.

E. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member state, so long as each state follows its own procedures for imposing such adverse action.

F. A home state's EMS authority shall investigate and take

appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

G. Nothing in this compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

Section 9. ADDITIONAL POWERS INVESTED IN A MEMBER STATE'S EMS AUTHORITY. A member state's EMS authority, in addition to any other powers granted under state law, is authorized under this compact to:

1. issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence; subpoenas issued by a member state's EMS authority for the attendance and testimony of witnesses, and/or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings; the issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

2. issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

Section 10. ESTABLISHMENT OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE. A. The compact states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.

1. The commission is a body politic and an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings. 1. Each member state shall have and be limited to one delegate. The responsible official of the state EMS authority or his designee shall be the delegate to this compact for each member state. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the governor of the state will determine which entity will be responsible for assigning the delegate.

2. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 12 of this compact.

5. The commission may convene in a closed, non-public meeting if the commission must discuss:

a. non-compliance of a member state with its obligations under the compact;

b. the employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

c. current, threatened, or reasonably anticipated litigation;

d. negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. accusing any person of a crime or formally censuring

any person;

f. disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. disclosure of investigatory records compiled for law enforcement purposes;

i. disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

j. matters specifically exempted from disclosure by federal or member state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this section, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the delegates, prescribe bylaws and/or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including but not limited to:

1. establishing the fiscal year of the commission;

2. providing reasonable standards and procedures:

a. for the establishment and meetings of other committees; and

b. governing any general or specific delegation of any authority or function of the commission;

3. providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions

designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;

4. establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the commission;

5. providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission; notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

6. promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;

7. providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and/or reserving of all of its debts and obligations;

8. the commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any;

9. the commission shall maintain its financial records in accordance with the bylaws; and

10. the commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

D. The commission shall have the following powers:

1. the authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact; the rules shall have the force and effect of law and shall be binding in all member states;

2. to bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected;

3. to purchase and maintain insurance and bonds;

4. to borrow, accept, or contract for services of

personnel, including, but not limited to, employees of a member state;

5. to hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. to accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

7. to lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;

8. to sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

9. to establish a budget and make expenditures;

10. to borrow money;

11. to appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

12. to provide and receive information from, and to cooperate with, law enforcement agencies;

13. to adopt and use an official seal; and

14. to perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of EMS personnel licensure and practice.

E. Financing of the Commission. 1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The commission may levy on and collect an annual

assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

F. Qualified Immunity, Defense, and Indemnification. 1. The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed

to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Section 11. COORDINATED DATABASE. A. The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the coordinated database on all individuals to whom this compact is applicable as required by the rules of the commission, including:

1. identifying information;

2. licensure data;

3. significant investigatory information;

4. adverse actions against an individual's license;

5. an indicator that an individual's privilege to practice is restricted, suspended or revoked;

6. non-confidential information related to alternative program participation;

7. any denial of application for licensure, and the reason or reasons for such denial; and

8. other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

D. Member states contributing information to the coordinated database may designate information that may not be shared with the

public without the express permission of the contributing state.

E. Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the coordinated database.

Section 12. RULEMAKING. A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Prior to promulgation and adoption of a final rule or rules by the commission, and at least 60 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. on the website of the commission; and

2. on the website of each member state EMS authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. the text of the proposed rule or amendment and the reason for the proposed rule;

3. a request for comments on the proposed rule from any interested person; and

4. the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. at least 25 persons;

2. a governmental subdivision or agency; or

3. an association having at least 25 members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than 5 business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule. For the purposes of this provision, an emergency rule is

one that must be adopted immediately in order to:

1. meet an imminent threat to public health, safety, or welfare;

2. prevent a loss of commission or member state funds;

3. meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. protect public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

Section 13. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT. A. Oversight.

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the commission.

3. The commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

B. Default, Technical Assistance, and Termination. 1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

a. provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the commission; and

b. provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the compact, unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution. 1. Upon request by a member state, the commission shall attempt to resolve disputes related to the compact that arise among member states and between member and non-member states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement. 1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this

compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with the provisions of the compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

Section 14. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT. A. The compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's EMS authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

D. Nothing contained in this compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this compact.

E. This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Section 15. CONSTRUCTION AND SEVERABILITY. This compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any state member thereto, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 778 (H.B. 2498), Sec. 1, eff. September 1, 2015.

CHAPTER 779. AUTOMATED EXTERNAL DEFIBRILLATORS

Sec. 779.001. DEFINITION. In this chapter, "automated external defibrillator" means a heart monitor and defibrillator that:

(1) has received approval from the United States Food and Drug Administration of its premarket notification filed under 21 U.S.C. Section 360(k), as amended;

(2) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without interpretation of cardiac rhythm by an operator, whether defibrillation should be performed; and

(3) on determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.003. ACQUISITION, MAINTENANCE, AND INSPECTION OF AUTOMATED EXTERNAL DEFIBRILLATOR. A person or entity that owns or leases an automated external defibrillator shall:

(1) maintain and test the automated external defibrillator according to the manufacturer's guidelines; and

(2) conduct a monthly inspection to verify the automated external defibrillator:

(A) is placed at its designated location;

(B) reasonably appears to be ready for use; and

(C) does not reasonably appear to be damaged in a

manner that could prevent operation.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 545 (S.B. 199), Sec. 1, eff. September 1, 2021.

Sec. 779.004. USING AN AUTOMATED EXTERNAL DEFIBRILLATOR. A person or entity that provides emergency care to a person in cardiac arrest by using an automated external defibrillator shall promptly notify the local emergency medical services provider.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.005. NOTIFYING LOCAL EMERGENCY MEDICAL SERVICES PROVIDER. When a person or entity acquires an automated external defibrillator, the person or entity shall notify the local emergency medical services provider of the existence, location, and type of automated external defibrillator.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

Sec. 779.006. LIABILITY EXEMPTION. (a) Unless the conduct is wilfully or wantonly negligent, a physician who prescribes or is otherwise involved in the acquisition of an automated external defibrillator and any person or entity that provides training in the use of an automated external defibrillator are not liable for civil damages related to:

(1) the prescription, acquisition, or training in the use of the automated external defibrillator; or

(2) any use or attempted use of or the failure to use the automated external defibrillator.

(b) Any person or entity that acquires an automated external defibrillator and any person or entity that owns, occupies, manages, or is otherwise responsible for the designated location where the automated external defibrillator is placed are not liable for civil damages related to the use or attempted use of or the failure to use the automated external defibrillator unless the conduct is wilfully

or wantonly negligent.

(c) The immunity provided by this section is in addition to any other immunity or limitations of liability provided by other law.

(d) The immunity described by this section applies regardless of whether the person who uses, attempts to use, or fails to use the automated external defibrillator received training in the use of an automated external defibrillator.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 545 (S.B. 199), Sec. 2, eff. September 1, 2021.

Sec. 779.007. POSSESSION OF AUTOMATED EXTERNAL DEFIBRILLATORS. Each person or entity, other than a licensed practitioner, that acquires an automated external defibrillator that has not been approved by the United States Food and Drug Administration for over-the-counter sale shall ensure that:

(1) the automated external defibrillator has been delivered to that person or entity by a licensed practitioner in the course of his professional practice or upon a prescription or other order lawfully issued in the course of his professional practice; or

(2) if the automated external defibrillator is acquired for the purpose of sale or lease, the person or entity shall be in conformance with the applicable requirements found in Section 483.041, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 38 (H.B. 92), Sec. 1, eff. May 8, 2007.

Sec. 779.008. HOSPITAL EXEMPTION. This chapter shall not apply to hospitals licensed under Chapter 241, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 679, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 780. TRAUMA FACILITIES AND EMERGENCY MEDICAL SERVICES

Sec. 780.001. DEFINITIONS. In this chapter:

(1) "Account" means the designated trauma facility and emergency medical services account established under Section 780.003.

(2) "Commissioner" means the commissioner of state health services.

(3) "Department" means the Department of State Health Services.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1123 (H.B. 2470), Sec. 1, eff. September 1, 2005.

Sec. 780.002. CERTAIN DEPOSITS TO ACCOUNT. The comptroller shall deposit any gifts, grants, donations, and legislative appropriations made for the purposes of the designated trauma facility and emergency medical services account established under Section 780.003 to the credit of the account.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 2.05, eff. Jan. 11, 2004.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 6, eff. September 1, 2019.

Sec. 780.003. ACCOUNT. (a) The designated trauma facility and emergency medical services account is created as a dedicated account in the general revenue fund of the state treasury. Money in the account may be appropriated only to:

(1) the department for the purposes described by Section 780.004; or

(2) the Texas Higher Education Coordinating Board for graduate-level:

(A) medical education programs; or

(B) nursing education programs.

(b) The account is composed of money deposited to the credit of the account under Sections 542.4031, 709.002, and 1006.153,

Transportation Code, and under Section 780.002 of this code.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 448 , Sec. 46(3), eff. September 1, 2015.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 8, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 23, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 46(3), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 372 (H.B. 1631), Sec. 4, eff. June 2, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.008, eff. September 1, 2021.

Sec. 780.004. PAYMENTS FROM THE ACCOUNT. (a) The commissioner:

(1) with advice and counsel from the chairpersons of the trauma service area regional advisory councils, shall use money appropriated from the account established under this chapter to fund designated trauma facilities, county and regional emergency medical services, and trauma care systems in accordance with this section; and

(2) after consulting with the executive commissioner of the Health and Human Services Commission, may transfer to an account in the general revenue fund money appropriated from the account established under this chapter to maximize the receipt of federal funds under the medical assistance program established under Chapter 32, Human Resources Code, and to fund provider reimbursement payments as provided by Subsection (j).

(a-1) A grant recipient may not before the fourth anniversary of the date a grant is awarded under Subsection (a) dispose of an ambulance for which the total costs of purchasing the ambulance were paid only from grants awarded under Subsection (a) or Section

773.122(a) unless the grant recipient obtains the department's prior approval.

(b) In each fiscal year, the commissioner shall reserve $500,000 of any money appropriated from the account for extraordinary emergencies. Money that is not spent in a fiscal year shall be transferred to the reserve for the following fiscal year.

(c) In any fiscal year, the commissioner shall use at least 94 percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, to fund a portion of the uncompensated trauma care provided at facilities designated as state trauma facilities by the department or an undesignated facility in active pursuit of designation. Funds may be disbursed under this subsection based on a proportionate share of uncompensated trauma care provided in the state and may be used to fund innovative projects to enhance the delivery of patient care in the overall emergency medical services and trauma care system.

(d) In any fiscal year, the commissioner shall use three percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, to fund, in connection with an effort to provide coordination with the appropriate trauma service area, the cost of supplies, operational expenses, education and training, equipment, vehicles, and communications systems for local emergency medical services. The money shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. The share of the money allocated to the eligible recipients in a county's geographic area shall be based on the relative geographic size and population of the county and on the relative number of emergency or trauma care runs performed by eligible recipients in the county. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council for use in the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council in that

following fiscal year shall be returned to the department to be used in accordance with Subsection (c).

(e) In any fiscal year, the commissioner shall use two percent of the money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve is deducted, for operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas. Money distributed under this subsection shall be distributed on behalf of eligible recipients in each county to the trauma service area regional advisory council for that county. To receive a distribution under this subsection, the regional advisory council must be incorporated as an entity that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3) of that code. A regional advisory council's share of money distributed under this section shall be based on the relative geographic size and population of each trauma service area and on the relative amount of trauma care provided. Money that is not disbursed by a regional advisory council to eligible recipients for approved functions by the end of the fiscal year in which the funds were disbursed may be retained by the regional advisory council for use in the following fiscal year in accordance with this subsection. Money that is not disbursed by the regional advisory council in that following fiscal year shall be returned to the department to be used in accordance with Subsection (c).

(f) In any fiscal year, the commissioner may use not more than one percent of money appropriated from the account, after any amount the commissioner is required by Subsection (b) to reserve, to fund the administrative costs of the bureau of emergency management of the department associated with administering the trauma program, the state emergency medical services program, and the account and to fund the costs of monitoring and providing technical assistance for those programs and that account.

(g) In a trauma service area that includes a county with a population of 3.3 million or more, a trauma service area regional advisory council may enter into an agreement with a regional council of governments to execute its responsibilities and functions under this chapter.

(h) For purposes of this section "pursuit of designation" means:

(1) submission of an application with the state or appropriate agency for trauma verification and designation;

(2) submission of data to the department trauma registry;

(3) participation in trauma service area regional advisory council initiatives; and

(4) creation of a hospital trauma performance committee.

(i) This subsection applies only to an undesignated facility that applies for trauma verification and designation after September 1, 2005, and is in active pursuit of designation. The facility must file a statement of intent to seek the designation, comply with Subsection (h) not later than the 180th day after the date the statement of intent is filed, and notify the department of the facility's compliance with that subsection. If trauma designation is not attained by an undesignated facility in active pursuit of designation on or before the second anniversary of the date the facility notified the department of the facility's compliance with Subsection (h), any funds received by the undesignated facility for unreimbursed trauma services must be returned to the state.

(j) Money in the account described by Subsection (a)(2) may be appropriated only to the Health and Human Services Commission to fund provider reimbursement payments under the medical assistance program established under Chapter 32, Human Resources Code, including reimbursement enhancements to the statewide dollar amount (SDA) rate used to reimburse designated trauma hospitals under the program.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1123 (H.B. 2470), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 638 (S.B. 901), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.14, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1094 (H.B. 2048), Sec. 8, eff. September 1, 2019.

Sec. 780.005. CONTROL OF EXPENDITURES FROM THE ACCOUNT. Money distributed under Section 780.004 shall be used in compliance with

Section 780.004 on the authorization of the executive committee of the trauma service area regional advisory council.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

Sec. 780.006. LOSS OF FUNDING ELIGIBILITY. For a period of not less than one year or more than three years, as determined by the commissioner, the department may not disburse money under Section 780.004 to a county, municipality, or local recipient that the commissioner finds used money in violation of that section.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.02, eff. Sept. 1, 2003.

CHAPTER 784. CRITICAL INCIDENT STRESS MANAGEMENT AND CRISIS RESPONSE SERVICES

Sec. 784.001. DEFINITIONS. In this chapter:

(1) "Crisis response service" means consultation, risk assessment, referral, and on-site crisis intervention services provided by an emergency response team member to an emergency service provider affected by a crisis or disaster.

(2) "Critical incident stress" means the acute or cumulative psychological stress or trauma that an emergency service provider may experience in providing emergency services in response to a critical incident, including a crisis, disaster, or emergency. The stress or trauma is an unusually strong emotional, cognitive, or physical reaction that has the potential to interfere with normal functioning, including:

(A) physical and emotional illness;

(B) failure of usual coping mechanisms;

(C) loss of interest in the job;

(D) personality changes; and

(E) loss of ability to function.

(3) "Critical incident stress management service" means a service providing a process of crisis intervention designed to assist an emergency service provider in coping with critical incident stress. The term includes consultation, counseling, debriefing, defusing, intervention services, case management services,

prevention, and referral.

(4) "Emergency response team member" means an individual providing critical incident stress management services or crisis response services, or both, who is designated by an appropriate state or local governmental unit to provide those services as a member of an organized team or in association with the governmental unit.

(5) "Emergency service provider" means an individual who provides emergency response services, including a law enforcement officer, firefighter, emergency medical services provider, dispatcher, or rescue service provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.002. CLOSED MEETINGS. (a) Except as provided by Subsection (b) and notwithstanding Chapter 551, Government Code, or any other law, a meeting in which critical incident stress management services or crisis response services are provided to an emergency service provider:

(1) is closed to the general public; and

(2) may be closed to any individual who was not directly involved in the critical incident or crisis.

(b) Subsection (a) does not apply if:

(1) the emergency service provider or the legal representative of the provider expressly agrees that the meeting may be open to the general public or to certain individuals; or

(2) the emergency service provider is deceased.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.003. CONFIDENTIALITY. (a) Except as otherwise provided by this section:

(1) a communication made by an emergency service provider to an emergency response team member while the provider receives critical incident stress management services or crisis response services is confidential and may not be disclosed in a civil, criminal, or administrative proceeding; and

(2) a record kept by an emergency response team member

relating to the provision of critical incident stress management services or crisis response services to an emergency service provider by the team is confidential and is not subject to subpoena, discovery, or introduction into evidence in a civil, criminal, or administrative proceeding.

(b) A court in a civil or criminal case or the decision-making entity in an administrative proceeding may allow disclosure of a communication or record described by Subsection (a) if the court or entity finds that the benefit of allowing disclosure of the communication or record is more important than protecting the privacy of the individual.

(c) A communication or record described by Subsection (a) is not confidential if:

(1) the emergency response team member reasonably needs to make an appropriate referral of the emergency service provider to or consult about the provider with another member of the team or an appropriate professional associated with the team;

(2) the communication conveys information that the emergency service provider is or appears to be an imminent threat to the provider or anyone else;

(3) the communication conveys information relating to a past, present, or future criminal act that does not directly relate to the critical incident or crisis;

(4) the emergency service provider or the legal representative of the provider expressly agrees that the communication or record is not confidential; or

(5) the emergency service provider is deceased.

(d) A communication or record described by Subsection (a) is not confidential to the extent that it conveys information concerning the services and care provided to or withheld by the emergency service provider to an individual injured in the critical incident or during the crisis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

Sec. 784.004. LIMITATION ON LIABILITY. (a) Except as provided by Subsection (b), an emergency response team or an emergency response team member providing critical incident stress management

services or crisis response services is not liable for damages, including personal injury, wrongful death, property damage, or other loss related to the team's or member's act, error, or omission in the performance of the services, unless the act, error, or omission constitutes wanton, wilful, or intentional misconduct.

(b) Subsection (a) limits liability for damages in any civil action, other than an action under Chapter 74, Civil Practice and Remedies Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 651 (S.B. 1065), Sec. 1, eff. September 1, 2011.

CHAPTER 785. SEARCH AND RESCUE DOGS

Sec. 785.001. DEFINITIONS. In this chapter:

(1) "Handler" means a person who handles a search and rescue dog and who is certified by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency.

(2) "Housing accommodations" has the meaning assigned by Section 121.002(3), Human Resources Code.

(3) "Public facility" means a facility described by Section 121.002(5), Human Resources Code.

(4) "Search and rescue dog" means a canine that is trained or being trained to assist a nationally recognized search and rescue agency in search and rescue activities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.002. DISCRIMINATION PROHIBITED. (a) The owner, manager, or operator of a public facility, or an employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog admittance to the facility.

(b) The owner, manager, or operator of a public facility, or an employee or other agent of the owner, manager, or operator, may not deny a search and rescue dog's handler admittance to the facility because of the presence of the handler's search and rescue dog.

(c) The owner, manager, or operator of a common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public

conveyance or mode of transportation operating within this state, or an employee or other agent of the owner, manager, or operator, may not:

(1) refuse to accept as a passenger a search and rescue dog or the dog's handler; or

(2) require the dog's handler to pay an additional fare because of the search and rescue dog.

(d) The discrimination prohibited by this section includes:

(1) refusing to allow a search and rescue dog or the dog's handler to use or be admitted to a public facility;

(2) a ruse or subterfuge calculated to prevent or discourage a search and rescue dog or the dog's handler from using or being admitted to a public facility; and

(3) failing to make a reasonable accommodation in a policy, practice, or procedure to allow a search and rescue dog or the dog's handler to be admitted to a public facility.

(e) A policy relating to the use of a public facility by a designated class of persons from the general public may not prohibit the use of the particular public facility by a search and rescue dog or the dog's handler.

(f) A search and rescue dog's handler is entitled to full and equal access, in the same manner as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to any condition or limitation established by law that applies to all persons, except that the handler may not be required to pay an extra fee or charge or security deposit for the search and rescue dog.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.003. PENALTY FOR DISCRIMINATION. (a) A person who violates Section 785.002 commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than $300 or more than $1,000.

(b) It is a defense to prosecution under Subsection (a) that the actor requested the search and rescue dog handler's credentials under Section 785.005 and the handler failed to provide the actor with the credentials.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.004. RESPONSIBILITIES OF HANDLERS; CIVIL LIABILITY. (a) A handler who accompanies a search and rescue dog shall keep the dog properly harnessed or leashed. A person may maintain a cause of action against a dog's handler for personal injury, property damage, or death resulting from the failure of the dog's handler to properly harness or leash the dog under the same law applicable to other causes brought for the redress of injuries caused by animals.

(b) The handler of a search and rescue dog is liable for any property damage caused by the search and rescue dog to a public facility or to housing accommodations.

(c) A governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 101, Civil Practice and Remedies Code. A public servant, as defined by Section 108.001, Civil Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 108, Civil Practice and Remedies Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

Sec. 785.005. CANINE HANDLER CREDENTIALS. A person may ask a search and rescue dog handler to display proof that the handler is a person with a certification issued by the National Association for Search and Rescue or another state or nationally recognized search and rescue agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 466 (S.B. 1010), Sec. 1, eff. September 1, 2013.

SUBTITLE C. FIRE

CHAPTER 791. FIRE ESCAPES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 791.001. DEFINITIONS. In this chapter:

(1) "Owner" includes an individual, firm, association, or

private corporation.

(2) "Story" has its usual architectural meaning and includes:

(A) a basement that extends five feet or more above the grade line on one or more sides of a building;

(B) a balcony or mezzanine floor of a building;

(C) a roof garden; or

(D) an attic used for any purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.002. FIRE ESCAPE REQUIRED. (a) The owner of a building shall equip the building with at least one fire escape and with additional fire escapes as required by Subchapters C and D if the building has at least:

(1) three stories and is used as a facility subject to Subchapter C; or

(2) two stories and is used as a school.

(b) A fire escape required by this chapter must meet the specifications provided by this chapter for an exterior stairway fire escape, an exterior chute fire escape, a combination of those exterior fire escapes, or an interior fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.003. COMPLIANCE. A building constructed after September 1, 1925, and subject to this chapter shall be equipped with fire escapes and must meet all other requirements of this chapter before the building is wholly or partially occupied or used.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.004. EXEMPTIONS. (a) This chapter does not apply to the construction of a structure in a municipality that has in effect a nationally recognized model building code governing the construction if the building code requires at least one one-hour fire-resistive means of escape with a total width equal to or greater than the total exit width required under this chapter for a structure

of three or more stories.

(b) This chapter does not apply to a grain elevator constructed of:

(1) steel;

(2) steel and concrete; or

(3) wood if fewer than five persons are employed at the grain elevator.

(c) This chapter does not apply to a county courthouse that:

(1) was constructed before September 1, 1989; and

(2) is located in a county with a population of less than 50,000.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 171 (S.B. 888), Sec. 1, eff. May 24, 2023.

Sec. 791.005. LOCATION OF FIRE ESCAPES. Consistent with accessibility, each fire escape subject to this chapter must be located as far as possible from stairways, elevator hatchways, and other openings in the floors of the building served by the fire escape. If possible, each fire escape must be located at the end of a hallway or unobstructed passageway and as far apart as is consistent with the construction and location of the building.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.006. INSPECTION; APPROVAL. (a) A fire escape subject to this chapter and each extension or addition to that fire escape shall be inspected before being approved for use.

(b) The inspection may be conducted by:

(1) the state fire marshal;

(2) an inspector of the State Board of Insurance;

(3) the chief of a municipal fire department; or

(4) a municipal fire marshal.

(c) A fire escape or an addition or extension to a fire escape may not be approved unless it meets the requirements of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.007. TESTS; AFFIDAVIT. (a) The person who erects a fire escape shall test the fire escape, on its completion and before final approval of the fire escape, by the application of a live load of 160 pounds per square foot of area of balcony floor and stair treads, or a dead load of 240 pounds per square foot of area of balcony floor and stair treads. The weight must be simultaneously imposed on each balcony and the stairways connecting the balconies that lead both up and down.

(b) Sand, gravel, concrete blocks, or any other suitable commodity may be used in performing the tests. The load must be accurately weighed and applied as specified in this section.

(c) A dead load must be placed in position in whole or in part by mechanical means without a person present on the fire escape when the test is made. A live load must be placed in position by mechanical means or by persons, and persons must be present on the fire escape as part of the load when the test is made.

(d) The person who erects the fire escape shall conduct the tests in the presence of:

(1) the state fire marshal;

(2) an appointed representative of the state fire marshal;

(3) the chief of a fire department; or

(4) a municipal fire marshal.

(e) If an official listed in Subsection (d) cannot be present to witness the test, any of the officials instead may accept an affidavit from the person who erects the fire escape that states that the minimum required test has been made and that the fire escape has passed the test.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. MINIMUM SPECIFICATIONS FOR FIRE ESCAPES

Sec. 791.011. GENERAL REQUIREMENTS. (a) A fire escape shall be constructed and arranged in a manner that:

(1) permits exit on the fire escape from each floor of the building above the first floor; and

(2) provides an uninterrupted exit from the building to the grade.

(b) The materials, construction, erection, and test of a fire escape must comply with the minimum specifications established under this subchapter for that type of fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.012. MINIMUM SPECIFICATIONS FOR EXTERIOR STAIRWAY FIRE ESCAPES. (a) An exterior stairway fire escape is a structure that:

(1) is located on the exterior of a building;

(2) is constructed of iron, steel, or reinforced concrete; and

(3) consists of balconies and stairways.

(b) An exterior stairway fire escape may be constructed in:

(1) superimposed form;

(2) straight run form;

(3) superimposed form with intermediate balconies; or

(4) a combination of those forms.

(c) The balconies for a superimposed form stairway fire escape attached to the building at two or more floors must equal in length the horizontal length of the stair runs plus an amount at each end equal to the width of the stairs. Each balcony must be as long as the width of the exit opening in the building wall and must be at least 50 inches wide inside the balcony railings.

(d) The balconies for a superimposed form stairway fire escape with intermediate balconies attached to the building at two or more floors must be at least equal in width to the combined width of the stairways connected by the balconies leading both up and down. The landings at the head and foot of the stairs must be as deep as the width of the stairs and as long as the width of the exit opening in the building wall.

(e) The balconies for a straight run form stairway fire escape must be at least equal in width to the width of the stairs and as long as the width of the exit opening in the building wall.

(f) The floor of an iron or steel balcony must be either solid or slatted. If solid, the floor must have a scored surface to prevent slipping and, to provide drainage, must be pitched at a slope of not less than one-half inch in 10 feet. If slatted, the slats may not be placed more than three-quarters inch apart and must be secured with rivets or bolts. Material used in the floor must be at least

three-sixteenths inch thick.

(g) The railing enclosures of a balcony must be at least two feet nine inches high. If of vertical and horizontal slat or grill construction, a space between slats or within the grill may not have a horizontal width of more than eight inches. If of truss construction, the span of a panel may not exceed three feet. An opening in the railing enclosures on any type of construction may not exceed two square feet. A railing enclosure must be free throughout its length from obstructions that tend to break handholds, and the passage space must be smooth and free from obstructions or projections. A railing enclosure must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(h) A balcony must be anchored to the building with bolts at least one inch in diameter, extending through the wall of the building and provided with a wall bearing plate on the interior that is at least five inches square and three-eighths inch thick, or must be anchored by such bolts set in concrete or masonry or made integral in new buildings. A balcony may not be placed above or more than one foot below the top of the sill of the exit opening in the building wall and preferably should be level with the sill.

(i) A concrete balcony must meet the requirements of this section and must be made of reinforced concrete composed of one part cement, two parts sand, and four parts stone or gravel. The railing enclosure of a concrete balcony must meet the specifications of this section or be made of reinforced concrete, with balusters spaced not more than one foot apart.

(j) The pitch of a fire escape stairway may not exceed 45 degrees.

(k) The stairway treads must be at least eight inches wide, excluding nosings, and at least 24 inches long. Treads must be placed so that the rise, either open or closed, does not exceed eight inches. If solid, treads must have a scored surface. If slatted, the slats must be placed not more than three-quarters inch apart and be well secured by bolts or rivets. Material used in the treads must be at least three-sixteenths inch thick.

(l) Railings must be provided on both sides of stairs. The railings must be at least two feet nine inches high, measured vertically from the center of the stair treads, and must be supported by balusters spaced not more than one foot apart. If an intermediate

rail is provided, it shall be provided halfway between the top rail and the stair stringers and the balusters must be placed not more than five feet apart. Stair railings must permit at least 24 inches of unobstructed passageway and must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(m) Concrete stairs must comply with the requirements of this section and must be made of reinforced concrete composed in the same mix as provided by Subsection (i). Railing enclosures for concrete stairs must be either as provided by Subsection (g) or of reinforced concrete balustrade with balusters spaced not more than one foot apart.

(n) Stairways must be built stationary to grade where possible and must be built stationary to grade for buildings such as schools or hospitals.

(o) If a fire escape terminates over a street, alley, private driveway, or other similar situation and terminates in a hinged and counterbalanced section of stairway, the construction of that section of stairs must conform to the stationary parts of the stairway and must be balanced so that the weight of one person on the third or fourth tread will lower the stairway to the landing. Bearings for counterbalanced stairs must be either bronze bushings or have sufficient clearance to prevent sticking caused by corrosion. A latch or lock may not be attached to the counterbalanced stairs in the up position, but a latch must be provided to hold the stairs in the down position when they have been swung to the ground. The connection between stair railings on the stationary part of the stairway and the counterbalanced part of the stairway must be designed to prevent the probability of injury to persons who use the fire escape. If necessary, a suitable opening must be provided in any awning, roof, or other intervening obstruction to admit the counterbalanced stairs and permit the passage of persons on the stairs.

(p) The fire escape must be connected to the roof of the building to which it is attached. If the roof of the building is designed in such a way that escape by way of the roof may be necessary, the fire escape must extend to the roof. If the connection is only for use by the fire department, it must be made with a gooseneck-type ladder with stringers made of material at least three-eighths inch thick, and rungs at least three-quarters inch in

diameter, 16 inches long, and not more than 14 inches apart. The ladder must be anchored to the wall.

(q) The minimum unobstructed width of an exterior passageway in the fire escape, whether parallel to the building or at right angles to it, is 24 inches.

(r) The clearance at all points on balconies and stairs, as measured vertically, must be at least six feet six inches.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.013. MINIMUM SPECIFICATIONS FOR EXTERIOR CHUTE FIRE ESCAPES. (a) An exterior chute fire escape is a structure that is located on the exterior of a building and constructed of iron or steel and that consists of balconies and a straight or spiral gravity chute.

(b) An exterior straight chute fire escape may be in:

(1) superimposed form parallel to or at right angles to the building;

(2) straight run form parallel to or at right angles to the building; or

(3) a combination of those two forms.

(c) An exterior spiral chute fire escape must be constructed in a spiral form around a central column and must rest on and be anchored to a concrete base at least 18 inches thick.

(d) The chute and any intervening balconies must be constructed in a manner that provides a continuous gravity slide from the top floor to the grade and must be accessible from all floors of the building. An exterior straight chute must be placed at an angle that does not exceed 45 degrees.

(e) The balconies must meet the specifications imposed under Section 791.012 for the balconies of exterior stairway fire escapes.

(f) A straight chute must be composed of material equal to at least 14-gauge iron or steel. A spiral chute must be composed of material equal to at least 16-gauge iron or steel. The material used must be blue annealed or of equal type and must be capable of taking a smooth or polished surface.

(g) The interior of a straight chute must be 20 inches wide and 18 inches deep, and in cross section must have a concave bottom and straight sides. The interior of a spiral chute must be at least 30

inches wide. The interior of either form of chute must be free from obstructions or sharp edges.

(h) The top edges of a straight chute must be stiffened and protected throughout the length of the chute with iron or steel angles free from sharp edges. The angles must be of the size necessary to carry the maximum possible load. The chute must be reinforced crosswise underneath with iron or steel angles.

(i) The slideway of a spiral chute must be banked at the outer edge to prevent a passenger from being thrown against a guardrail or enclosure and must be enclosed by either a continuous wall or guardrail at least 30 inches high constructed of at least 18-gauge iron or steel. A spiral chute may not terminate more than two feet above the grade and must be constructed and arranged so that a normal landing is in a standing position.

(j) A landing composed of the same material as the chute must be provided at the lower end of a straight chute and must be of sufficient length in proportion to the length of the chute and the concavity of its surface to check the momentum attained through gravity and to provide a safe stop. The landing must be six inches wider than the chute on each side if wall construction does not interfere and must be without sharp edges or ragged projections. The landing must rest on and be anchored to a concrete base at least six inches thick.

(k) All rivets exposed inside a chute and on the top side of a landing of a straight chute must be countersunk and ground smooth.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.014. MINIMUM SPECIFICATIONS FOR INTERIOR FIRE ESCAPES. (a) An interior fire escape may be:

(1) a stairway composed of iron, steel, or concrete; or

(2) a straight or spiral chute composed of iron or steel.

(b) The fire escape must be enclosed with a noncombustible material. All door and window openings in the enclosure must be protected with self-closing fireproof shutters.

(c) Balconies or landings used with an interior fire escape must meet the construction requirements imposed under Section 791.012, except that a balcony used with an interior fire escape must permit at least 40 inches of unobstructed passageway, and the

balconies or landings must be located on a level with the floors of the building.

(d) The stairs of an interior stairway fire escape must meet the requirements imposed under Section 791.012, except that the stairs must permit at least 40 inches of unobstructed passageway in all parts. An interior stairway fire escape may not use stairs of the types known as "spirals" or "winders".

(e) An interior stairway fire escape must be continuous, starting at the ground floor, and may not descend to any basement. It must extend through the roof of the building and must terminate in a penthouse constructed of noncombustible material equipped with a self-closing fire door as specified in this section.

(f) An interior chute fire escape must meet the requirements of Section 791.013.

(g) An interior fire escape must be accessible from all parts of the building it is designed to serve. Each lobby, hall, or passageway that leads to a fire escape and is used in connection with it must be at least 36 inches wide and at least six feet six inches high and must be level with the floor on which the fire escape opens and which it serves. The fire escape must be constructed at the lower end in a manner that permits direct exit to the outside of the building at the grade.

(h) The enclosing walls of an interior fire escape may be constructed of:

(1) brick;

(2) plain solid concrete;

(3) reinforced stone or gravel concrete;

(4) reinforced cinder concrete;

(5) hollow terra-cotta blocks;

(6) hollow concrete blocks composed of stone or cinder concrete mortar;

(7) gypsum blocks; or

(8) metal lath on steel studding.

(i) If the enclosing walls are of brick or plain solid concrete, they must be at least eight inches thick for the top 30 feet, increasing four inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least eight inches thick for the entire height if the walls are wholly supported at intervals not to exceed 30 feet. If the enclosing walls are of reinforced stone or gravel concrete, they must be at least five inches thick for the top

30 feet, increasing two inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least three inches thick for the entire height if supported at vertical intervals not to exceed 20 feet and if braced as necessary with lateral supports or suitable steel uprights. If the enclosing walls are of reinforced cinder concrete, the concrete must be at least five inches thick for the entire height of the enclosing walls, and the walls must be supported at vertical intervals not to exceed 15 feet and must be braced as necessary with lateral supports or suitable steel uprights.

(j) If the enclosing walls are composed of hollow terra-cotta blocks, the blocks must be laid in cement mortar, and the walls must be at least five inches thick overall. If the enclosing walls are composed of hollow concrete blocks of either stone or cinder concrete mortar, the enclosing walls must be at least five inches thick overall. If the walls are constructed of gypsum blocks, the blocks may be either solid or hollow but must contain not more than 25 percent by weight of cinders, asbestos fiber, wood chips, or vegetable fiber. The gypsum blocks must be laid in gypsum plaster or cement mortar tempered with lime, and the enclosing walls must be at least five inches thick overall. If the walls are constructed of metal lath on steel studding, they must be covered with portland cement mortar or gypsum plaster of a finished thickness of at least two inches in the case of solid partitions or of at least three inches in the case of hollow partitions. Each opening in a wall or partition must have substantial steel framing, the vertical members of which must be securely attached to the floor construction above and below.

(k) Each door opening in an interior fire escape must be protected by the use of an automatic or self-closing fire door of standard manufacture, bearing the Underwriters Laboratory label. If an automatic fire door is used, it must be enclosed in a recessed partition. All doors must be arranged and equipped to remain in closed positions at all times and under all conditions except during actual use.

(l) Each window opening must be equipped with a metal sash bearing the Underwriters Laboratory label and with wire glass.

(m) Each interior fire escape must be provided at each landing with at least one light equal in power to a 10-watt electric globe. The lighting must be on a separate circuit from that of the rest of the building and must be designed to operate if the regular lighting

system of the building is disabled.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.015. EXIT LIGHTS; GUIDE SIGNS. (a) At least one red light must be installed and maintained in good condition at each exit to a fire escape in a building subject to Section 791.002. An exit light must be painted with the words "fire escape exit."

(b) One guide sign must be installed and maintained in good condition at each hallway intersection. An additional guide sign must be provided for every 25 lineal feet of hallway leading to a fire escape. A guide sign must be painted with the words "fire escape" and with an arrow or hand pointing to the nearest fire escape exit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.016. PAINTING AND MAINTENANCE REQUIREMENTS. (a) A fire escape constructed of iron or steel must be painted with at least two coats of good metallic paint when erected. The fire escape must be repainted at least every two years or more frequently if necessary to preserve the fire escape from rust or climatic influences.

(b) The slideway of a straight or spiral chute fire escape must be thoroughly cleaned and painted at least once each year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN FACILITIES

Sec. 791.021. ADDITIONAL FIRE ESCAPES FOR CERTAIN FACILITIES. (a) This section applies to:

(1) a hospital;

(2) a seminary;

(3) a college;

(4) an academy;

(5) a school;

(6) a dormitory;

(7) a hotel or other facility for the accommodation of transient guests;

(8) a lodging house, apartment house, rooming house, or boardinghouse;

(9) a lodge hall;

(10) a theater or other public place of amusement; or

(11) any other facility used for public gatherings.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and

(2) the area in excess of the largest multiple of 5,000 square feet contained in the facility's lot area if that excess is more than 2,000 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.022. ADDITIONAL FIRE ESCAPES FOR CERTAIN OFFICE BUILDINGS, STORES, OR INDUSTRIAL PLANTS. (a) This section applies to:

(1) an office building;

(2) a wholesale or retail mercantile establishment or store;

(3) a workshop or manufacturing establishment; or

(4) an industrial plant.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 6,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 6,000 square feet of area in excess of the initial 6,000 square feet; and

(2) the area in excess of the largest multiple of 6,000 square feet contained in the facility's lot area if that excess is more than 2,500 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.023. ADDITIONAL FIRE ESCAPES FOR CERTAIN WAREHOUSES AND MILLS. (a) This section applies to a warehouse, storehouse, or mill building.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 8,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 8,000 square feet of area in excess of the initial 8,000 square feet; and

(2) the area in excess of the largest multiple of 8,000 square feet contained in the facility's lot area if that excess is more than 3,500 square feet.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.024. ADDITIONAL FIRE ESCAPES FOR NONSCHOOL PUBLIC BUILDINGS. (a) This section applies to a building, other than a school building, that is owned by this state or by a municipality or county of this state and in which public assemblies or sleeping apartments are permitted on any floor above the first floor.

(b) Each building subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and

(2) the area in excess of the largest multiple of 5,000 square feet contained in the building's lot area if that excess is more than 2,000 square feet.

(c) Each person who has charge or supervision of a facility subject to this section, or who has charge or supervision of the letting of contracts for the construction of the facility, shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN SCHOOL BUILDINGS

Sec. 791.031. DEFINITIONS. (a) In this subchapter, "story"

means the space between two successive floor levels of a building, and a basement is a story if the floor level immediately above the basement is at least 10 feet above the grade line on at least one side of the building.

(b) In this subchapter, types of construction are classified as "fireproof," "semifireproof," or "ordinary," as those terms are defined in the most recent edition of the building code published by the successor organization to the National Board of Fire Underwriters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.032. APPLICATION. This subchapter applies to a building in which a school of any kind is conducted and that is:

(1) at least two stories high; and

(2) owned by a school district.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.033. COMPLIANCE REQUIREMENTS. Each person who has charge or supervision of a school building subject to this subchapter, or who has charge or supervision of the letting of contracts for the construction of the building, shall comply with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.034. ADMINISTRATION; ENFORCEMENT. (a) The state fire marshal shall administer and supervise the enforcement of this subchapter and Section 791.024.

(b) The state fire marshal, an inspector of the State Board of Insurance, the chief of any fire department, and any municipal fire marshal shall enforce this subchapter and Section 791.024 by all lawful means.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.035. FIRE ESCAPE REQUIREMENT. (a) A school building of at least three stories and of fireproof construction, semifireproof construction, or ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.

(b) A school building of two stories and of ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.

(c) A school building of two stories that is of fireproof or semifireproof construction or that has stairways and hallways of that type of construction is not required to have a fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.036. REQUIRED TYPES OF FIRE ESCAPES; SPECIFICATIONS. (a) A fire escape for a school building constructed before March 17, 1950, may be either an interior fire escape or an exterior fire escape.

(b) A school building constructed on or after March 17, 1950, that consists of at least three stories of fireproof construction or at least two stories of ordinary construction shall have interior fire escapes.

(c) An exterior fire escape for a school building constructed before March 17, 1950, may be:

(1) an iron, steel, or concrete stairway;

(2) an iron or steel straight chute;

(3) an iron or steel spiral chute; or

(4) a fire escape that is a combination of those types.

(d) Exterior fire escapes used in school buildings must meet the construction requirements of this section or similar construction requirements approved by the successor organization to the National Board of Fire Underwriters. Except as otherwise provided by this section, exterior fire escapes must be:

(1) constructed throughout of noncombustible materials;

(2) designed for a live load of 100 pounds per square foot; and

(3) supported by vertical steel columns.

(e) If it is impossible to use vertical steel columns in the construction of an exterior fire escape, the use of steel brackets with bolts extending through the entire thickness of the wall may be approved.

(f) The landings and treads of exterior fire escapes must be of solid hatched steel plate or of steel gratings with interstices that do not exceed three-fourths inch and must be designed so that any accumulation of ice and snow is reduced to a minimum.

(g) The guardrails of exterior fire escapes must be at least three feet six inches high and must be substantially constructed. The guardrails must be faced either with heavy wire mesh or by steel balusters or rails not more than 9-1/2 inches o.c.

(h) The fire escape must have handrails on each side of the stairs that must be securely attached to the guardrails or to the building walls. Handrails must be two feet four inches to two feet six inches above the nosings.

(i) The calculated live load of an exterior fire escape must be clearly stated on the plans submitted for approval.

(j) Exterior fire escapes must be:

(1) free from obstruction;

(2) constructed in a manner that provides a safe exit for children;

(3) conveniently accessible from each floor above the first floor; and

(4) of sufficient width and strength so that each step and landing may accommodate two adults at the same time.

(k) If the Texas Education Agency approves that construction as providing a convenient and safe passage, doorways may be used as exits from each floor. The base of a doorway must be at the same level as the corresponding floor of the building and the landing of the fire escape to which the doorway leads. A doorway must be at least three feet wide and six feet six inches high and must be fitted with panic hardware approved by the successor organization to the National Board of Fire Underwriters. If there are two or more rooms or hallways adjacent and convenient to the landing of a fire escape, each room or hallway must have a doorway leading to that landing.

(l) The design of an interior fire escape used in a school building must meet the specifications required under Section 791.014, and must have:

(1) stairs and landings at least three feet six inches long

and at least three feet wide;

(2) treads at least nine inches wide with a one inch nosing; and

(3) risers of not more than 7-1/4 inches.

(m) A rise in a single run may not exceed nine feet six inches. A longer run must be interrupted by landings at least as deep as the width of the stairs.

(n) Stairs must extend continuously to the ground. Counterbalanced or swinging sections may not be approved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.51, eff. Sept. 1, 1997.

Sec. 791.037. EXTERIOR FIRE ESCAPE EXITS. (a) An exit door leading to an exterior fire escape must open on a landing that is at least the width of the doors. The door must swing outward and be:

(1) at least three feet by six feet six inches;

(2) glazed with wire glass; and

(3) level at the bottom with the floors of the rooms or hallways and landings that it serves.

(b) An exit door may be secured only by panic hardware approved by the successor organization to the National Board of Fire Underwriters. Hooks, latches, bolts, locks, and similar devices are prohibited.

(c) A window may not be used as a means of access to an exterior fire escape.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.038. WINDOWS. A window located beneath or within 10 feet of a fire escape must be glazed with wire glass.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. ENFORCEMENT AND PENALTY PROVISIONS

Sec. 791.051. ENFORCEMENT. (a) The attorney general, the county attorney of a county in which a building is maintained in violation of this chapter, or the district attorney of a district in

which such a building is located may bring an action in the name of the state for an injunction or other process to enforce this chapter against the owner or person in charge of the building.

(b) The action shall be brought in the district court of the county in which the building is located.

(c) The action may be prosecuted by the attorney general, the county attorney, or the district attorney on that person's own motion, or on the relation of any individual, including the state fire marshal, an inspector of the State Board of Insurance, the chief of a municipal fire department, or a municipal fire marshal.

(d) A district judge may issue a mandatory injunction or other writ against a person to enforce this chapter. Disobedience of the injunction constitutes contempt of court and is punishable in the manner provided for contempt.

(e) The court may hear the case and may grant an injunction after the defendant has received 10 days' notice of the time and place set for the hearing on the injunction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 791.052. CRIMINAL PENALTY. (a) A person commits an offense if the person obstructs a fire escape or a hallway or entrance leading to a fire escape in a manner that prevents free access to or use of the fire escape. A door equipped with a lock requiring a key to operate is an obstruction.

(b) A person commits an offense if the person is the owner of a building required to be equipped with fire escapes and the person fails or refuses to comply with this chapter.

(c) A person commits an offense if the person serves as an agent in the care, management, supervision, control, or renting of a building for an owner who is not a resident of this state and the owner fails or refuses to comply with this chapter as it applies to that building.

(d) An offense under this section is punishable by a fine of not less than $20 or more than $50. If the defendant is a corporation, each officer or member of the board of directors of the corporation is subject to the fine.

(e) Each day's failure or refusal to comply constitutes a separate offense. Each day that an agent represents a nonresident

owner who is not in compliance constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 792. SMOKE DETECTORS IN HOTELS

Sec. 792.001. DEFINITIONS. In this chapter:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration, including a hotel, motel, tourist home, tourist house, tourist court, hostel, lodging house, rooming house, or inn. The term does not include:

(A) a hospital, sanitarium, or nursing home; or

(B) a building in which all or substantially all of the occupants have the right to use or possess their sleeping accommodations for at least 28 consecutive days.

(2) "Person" has the meaning assigned by Section 1.07, Penal Code.

(3) "Smoke detector" means a device that is:

(A) designed to detect the presence of visible or invisible products of combustion in the air; and

(B) designed with an alarm audible throughout the room in which it is installed to alert the occupants of the room of the presence of visible or invisible products of combustion in the air of the room.

(4) "Smoke detector for hearing-impaired persons" means a smoke detector that, in addition to the sound alarm, uses a xenon design strobe light with a visible effective intensity of not less than 100 candela, as tested and labeled in accordance with ANSI/UL Standard 1638, and with a flash rate of not less than 60 nor more than 120 flashes per minute.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 792.002. SMOKE DETECTORS IN HOTELS; CRIMINAL PENALTY. (a) A person who operates a hotel commits an offense if the person:

(1) does not maintain a smoke detector in good working order in every room of the hotel that is regularly used for sleeping;

(2) does not maintain smoke detectors for hearing-impaired persons as prescribed by Subsection (b); or

(3) does not comply with the requirements of Subsection (c)

if a hotel patron requests a room with a smoke detector for hearing-impaired persons.

(b) A person who operates a hotel shall maintain one smoke detector for hearing-impaired persons for each 60, or fraction of 60, rooms of the hotel that are regularly used for sleeping, except that the operator is not required to maintain more than five smoke detectors for hearing-impaired persons.

(c) If a hotel patron requests a room with a smoke detector for hearing-impaired persons, the operator of the hotel shall:

(1) assign the patron to a room in which a hard-wired smoke detector for hearing-impaired persons has been properly installed; or

(2) install in the patron's room a portable smoke detector for hearing-impaired persons using a receptacle that cannot be controlled by a wall switch.

(d) An offense under this section is a Class B misdemeanor.

(e) A person commits a separate offense under this section on each calendar day the person commits the offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 792.003. SMOKE DETECTOR LIST. (a) To qualify for use under this chapter, a smoke detector must be listed by the state fire marshal after the device has been tested and shown to be effective by the state fire marshal or by a testing laboratory under conditions and procedures approved by the state fire marshal.

(b) In lieu of or in addition to the list made under Subsection (a), the state fire marshal may substitute or use a list of devices that comply with standards of manufacture and installation adopted under Article 5.43-2, Insurance Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 628, Sec. 9, eff. Sept. 1, 1991.

CHAPTER 793. DISABLING FIRE EXIT ALARMS

Sec. 793.001. DEFINITIONS. In this chapter:

(1) "Fire exit" means a door, window, or other means of egress from a building that has been expressly designated as a fire escape or emergency exit by a sign, light, or other device located on

or in the immediate vicinity of the fire escape or exit.

(2) "Fire exit alarm" means a device designed to sound an alarm when a fire exit is opened or an attempt to open a fire exit is made.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 793.002. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person intentionally or knowingly causes a fire exit alarm to fail to sound an alarm; and

(2) the person is not authorized to do so by a person having lawful custody or control of the building or the part of the building in which the fire exit is located.

(b) An offense under this section is a Class A misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 795. USE OF CERTAIN FIRE TRUCKS

Sec. 795.001. DEFINITION. In this chapter, "fire department" means:

(1) a volunteer fire department; or

(2) a department of a municipality, county, or special district or authority that provides fire-fighting services.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

Sec. 795.002. GOOD AND DEPENDABLE CONDITION REQUIRED. (a) This chapter applies only to a fire truck in a good and dependable operating condition. A fire truck is considered to be in a good and dependable operating condition if:

(1) the truck complies with the standards established by or under state law for the operating condition of a fire truck; and

(2) the fire department that uses the truck has secured certification by an underwriters laboratory that meets NATIONAL FIRE PROTECTION STANDARDS 1901.

(b) A fire truck may not be considered to be in a condition other than a good and dependable operating condition solely because

the truck is 25 years old or older.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

Sec. 795.003. CERTAIN RESTRICTIONS INVOLVING AGE OF FIRE TRUCK PROHIBITED. A contract, including any form of an insurance contract, or an order, ordinance, rule, or similar decree of a local government or state agency may not:

(1) restrict a fire department from using a fire truck that is 25 years old or older; or

(2) prevent any benefit from being claimed because the claim arises out of circumstances in which a fire truck that is 25 years old or older is used.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 279, eff. Sept. 1, 1991.

CHAPTER 796. CIGARETTE FIRE SAFETY STANDARDS

Sec. 796.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person licensed by the comptroller to purchase and affix adhesive or meter stamps on packages of cigarettes.

(2) "Cigarette" means a roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; or

(B) that is wrapped in any substance containing tobacco that, because of the roll's appearance, the type of tobacco used in the filler, or the roll's packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette.

(3) "Manufacturer" means:

(A) a person that manufactures or otherwise produces cigarettes for sale in this state, including cigarettes intended to be sold through an importer; or

(B) the first purchaser that intends to resell in this state cigarettes manufactured anywhere that the original manufacturer does not intend to be sold in this state.

(4) "Retailer" means a person, other than a wholesale dealer, engaged in selling cigarettes or tobacco products.

(5) "Sale" means any transfer of title or possession or

both, exchange or barter, conditional or otherwise, in any manner or by any means or any agreement. The term includes, in addition to sales using cash or credit, the giving of a cigarette as a sample, prize, or gift and the exchange of a cigarette for any consideration other than money.

(6) "Sell" means to sell or to offer or agree to sell.

(7) "Wholesale dealer" means a person who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale, including a person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in premises owned or occupied by another person.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.002. REQUIREMENTS FOR SALE OF CIGARETTE. A cigarette may not be sold or offered for sale in this state unless:

(1) the cigarette has been tested in accordance with Section 796.003;

(2) the cigarette meets the performance standard under Section 796.003;

(3) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 796.005; and

(4) the cigarette has been marked in accordance with Section 796.006.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.003. TESTING. (a) A manufacturer of cigarettes shall ensure that tests on cigarettes are conducted:

(1) in accordance with Standard Test Method for Measuring the Ignition Strength of Cigarettes, E2187-04, by the American Society of Testing and Materials, as that standard existed on January 1, 2007;

(2) on 10 layers of filter paper; and

(3) in a complete test trial of 40 replica tests.

(b) Not more than 25 percent of the cigarettes tested in a test

trial in accordance with this section may exhibit full-length burns.

(c) The performance standard required by this section shall only be applied to a complete test trial.

(d) A written certification shall be based on testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization, or another comparable accreditation standard required by the state fire marshal.

(e) A laboratory testing in accordance with this section shall implement a quality control and quality assurance program to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. The program must include a procedure to determine the repeatability of the testing results. The repeatability value may not be greater than 0.19. For purposes of this subsection, "repeatability value" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(f) The state fire marshal may adopt a subsequent ASTM Standard Test Method for Measuring the Ignition Strength of Cigarettes on finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in Subsection (b).

(g) A cigarette submitted for testing that uses lowered permeability bands in the cigarette paper to comply with the performance standard under this section must have at least two nominally identical bands on the paper surrounding the tobacco column and at least one complete band not less than 15 millimeters from the lighting end of the cigarette. A cigarette on which the bands are positioned by design must have at least two bands located not less than 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(h) This section does not require additional testing if a cigarette is tested in a manner that is consistent with this chapter for any other purpose.

(i) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard

required under this section shall be conducted in accordance with this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.004. ALTERNATIVE TEST METHODS. (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with Section 796.003 shall propose a test method and performance standard for the cigarette to the state fire marshal. If the state fire marshal determines that the performance standard proposed by the manufacturer is equivalent to the performance standard under Section 796.003, the manufacturer may use the proposed test method.

(b) Unless the state fire marshal demonstrates a reasonable basis why an alternative test should not be accepted under this chapter, the state fire marshal shall authorize a manufacturer to employ the alternative test method and performance standard to certify a cigarette for sale in this state if the state fire marshal:

(1) determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter; and

(2) finds that the officials responsible for implementing those requirements have approved an alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.005. CERTIFICATION. (a) Before a cigarette may be sold or offered for sale in this state, the cigarette's manufacturer must certify in writing to the state fire marshal that the cigarette has been tested in accordance with and meets the performance standard in Section 796.003 or 796.004.

(b) A certification filed under this section must include the following information:

(1) brand or trade name on the package;
(2) style, such as light or ultra light;
(3) length in millimeters;
(4) circumference in millimeters;
(5) flavor, such as menthol or chocolate, if applicable;
(6) filter or nonfilter;
(7) package description, such as soft pack or box;
(8) marking approved in accordance with Section 796.006;
(9) the name, address, and telephone number of the laboratory, if different from the manufacturer that conducted the test; and
(10) the date that the testing occurred.

(c) The state fire marshal shall retain a copy of a certification and provide a copy to the comptroller to ensure compliance with this chapter.

(d) A cigarette certified under this section shall be recertified every three years.

(e) For each cigarette included in a certification, a manufacturer shall pay to the state fire marshal a fee in the amount of $250, to be deposited only to the Texas Department of Insurance operating account in the general revenue fund.

(f) A cigarette certified under this section that is altered by the manufacturer in a way likely to alter its compliance with the reduced cigarette ignition propensity standards required by this chapter may not be sold or offered for sale in this state unless the manufacturer retests the cigarette in accordance with Section 796.003 or 796.004 and maintains the records required by Section 796.007.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.006. MARKING OF PACKAGE. (a) A manufacturer shall mark, in eight-point or larger type, cigarettes certified by the manufacturer in accordance with Section 796.005 to indicate compliance with the requirements of Section 796.003. The marking must consist of:

(1) modification of the product Universal Product Code to include a visible mark printed at or around the area of the Universal Product Code and permanently stamped, engraved, embossed, or printed

in conjunction with the Universal Product Code;

(2) a visible combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap; or

(3) other printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

(b) A manufacturer shall present its proposed marking to the state fire marshal for approval. Proposed markings are considered approved if the state fire marshal fails to disapprove the proposed markings on or before the 10th business day after the date the proposed markings are received. The state fire marshal must approve a marking:

(1) in use and approved for sale in another state; or

(2) with the letters "FSC" for Fire Standards Compliant appearing in eight-point or larger type and permanently printed, stamped, engraved, or embossed on the package at or near the Universal Product Code.

(c) A manufacturer shall use only one type of marking and shall apply the marking uniformly to all packages, including packs, cartons, and cases, and brands marketed by the manufacturer in this state.

(d) A manufacturer may not modify its approved marking unless the state fire marshal has approved the modification.

(e) A manufacturer shall provide sufficient copies of an illustration of the package marking to a wholesale dealer and agent to which the manufacturer sells cigarettes and provide sufficient copies of an illustration of the package marking used by the manufacturer under this section for each retailer to which the wholesale dealers or agents will sell cigarettes. A wholesale dealer and an agent shall provide a copy of package markings received from a manufacturer to a retail dealer to which the wholesale dealer or agent sells cigarettes. A wholesale dealer, agent, and retail dealer shall permit the state fire marshal, the comptroller, and the attorney general to inspect markings of cigarette packaging marked in accordance with this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.007. MANUFACTURER RECORDS AND REPORTING. (a) A manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for the previous three years and shall make copies of the reports available to the state fire marshal on the state fire marshal's written request.

(b) A manufacturer that fails to make copies of the reports available not later than 60 days after the date the manufacturer receives a written request shall be subject to a civil penalty, imposed as provided by Section 796.010, in an amount not to exceed $10,000 per violation. Each day that the manufacturer does not make the copies available is a separate violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.008. RULES. The state fire marshal may adopt rules to administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.009. INSPECTION. (a) The state fire marshal may inspect the records and the stock of cigarettes of a person who manufactures, stores, or sells cigarettes to establish whether the person is complying with this chapter.

(b) The comptroller may, in the course of an inspection under Chapter 154, Tax Code, inspect cigarettes for a marking required under Section 796.006 and report the comptroller's findings to the state fire marshal.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.010. CIVIL PENALTY; INJUNCTION. (a) A person who knowingly violates this chapter or a rule adopted under this chapter is subject to a civil penalty in the following amounts:

(1) if the person is a manufacturer, wholesale dealer, or agent knowingly selling or offering to sell a cigarette in violation

of this chapter, a civil penalty not to exceed $100 for each pack of cigarettes sold or offered for sale, but not more than $100,000 for all violations occurring within a 30-day period;

(2) if the person is a retailer knowingly selling or offering to sell a cigarette in violation of this chapter, a civil penalty not to exceed $100 for each pack of cigarettes sold or offered for sale, but not more than $25,000 for all violations occurring within a 30-day period;

(3) if the person knowingly makes a false certification under Section 796.005, a civil penalty not to exceed $75,000 for a first violation or $250,000 for a second or subsequent violation; and

(4) if the person violates another provision of this chapter, other than Section 796.007(b), or another rule adopted under this chapter, a civil penalty not to exceed $1,000 for a first violation or $5,000 for a second or subsequent violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the attorney general, as determined by the attorney general or on request of the state fire marshal, may bring a civil action in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(c) A cigarette sold or offered for sale in violation of this chapter is subject to forfeiture under Chapter 154, Tax Code, except that before a forfeited cigarette may be destroyed, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

(d) A civil penalty collected under this section shall be deposited to the credit of the fire prevention and public safety account.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.011. FIRE PREVENTION AND PUBLIC SAFETY ACCOUNT. (a) The fire prevention and public safety account is a separate account in the general revenue fund.

(b) The account consists of civil penalties collected under Section 796.010.

(c) Money in the account may be appropriated only to the state fire marshal to support fire safety and prevention programs.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.012. SALE OUTSIDE OF TEXAS. This chapter does not prohibit a person from manufacturing or selling cigarettes that do not meet the requirements of this chapter if:

(1) the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States; and

(2) the person has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.013. INTERPRETATION. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform this chapter with the laws of those states that have enacted reduced cigarette ignition propensity laws.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.014. CONSUMER TESTING. This chapter does not prohibit the sale of a cigarette solely for the purpose of the cigarette's assessment conducted by a manufacturer, or under the control and direction of a manufacturer, to evaluate consumer acceptance of the cigarette by using only the quantity of cigarettes that is reasonably necessary for the assessment.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.015. LOCAL REGULATION. A political subdivision of this state may not adopt or enforce any ordinance or other regulation conflicting with, or preempted by, any provision of this chapter or with any policy of this state expressed by this chapter, whether that policy be expressed by inclusion of a provision in the chapter or by exclusion of that subject from the chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.016. FEDERAL REGULATION. On and after the date that a federal reduced cigarette ignition propensity standard that preempts this chapter is adopted and becomes effective, this chapter has no effect.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

Sec. 796.017. REPORTS. Not later than January 1 of each odd-numbered year, the state fire marshal shall:

(1) review the effectiveness of this chapter;

(2) submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate committees of the legislature on the state fire marshal's administration of this chapter; and

(3) make recommendations to improve the effectiveness of this chapter, if appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 909 (H.B. 2935), Sec. 1, eff. January 1, 2009.

CHAPTER 797. PORTABLE FIRE EXTINGUISHERS

Sec. 797.001. DEFINITIONS. In this chapter:

(1) "NFPA" means the National Fire Protection Association.

(2) "Portable fire extinguisher" means a device that contains liquid, powder, or gases for suppressing or extinguishing fires.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 1, eff. September 1, 2013.

Sec. 797.002. PORTABLE FIRE EXTINGUISHERS. A person may not use the term "portable fire extinguisher" or "fire extinguisher" in the sale or advertisement of an aerosol fire suppression device or similar fire suppression device unless the device conforms to NFPA Standard 10 (2010), "Standard for Portable Fire Extinguishers," or a successor standard adopted by the commissioner of insurance that is at least as stringent as the NFPA Standard 10, and is specifically listed for that use by a testing laboratory approved by the Texas Department of Insurance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 1, eff. September 1, 2013.

SUBTITLE D. INTERAGENCY SAFETY INITIATIVES

CHAPTER 810. INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE

Sec. 810.001. DEFINITIONS. In this chapter:

(1) "Client" means a child, an individual with a disability, or an elderly individual receiving services or care from a participating state agency, a designated user, or a facility or entity that is licensed, certified, or otherwise regulated by a participating state agency.

(2) "Department" means the Department of Information Resources.

(3) "Designated user" means a person designated by the department or a participating state agency under Section 810.004 to use the search engine.

(4) "License" has the meaning assigned by Section 2001.003, Government Code.

(5) "Participating state agency" means a state agency listed in Section 810.002.

(6) "Reportable conduct" means a participating state agency's determination:

(A) that an individual engaged in abuse, neglect, exploitation, or misconduct; and

(B) for which the agency has:

(i) provided any required notice or opportunity to contest the determination; and

(ii) issued a final determination.

(7) "Search engine" means the interagency reportable conduct search engine established under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.002. APPLICABILITY. This chapter applies to the following state agencies:

(1) the Department of Family and Protective Services;

(2) the Health and Human Services Commission;

(3) the Texas Education Agency; and

(4) the Texas Juvenile Justice Department.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.003. ESTABLISHMENT OF INTERAGENCY REPORTABLE CONDUCT SEARCH ENGINE. (a) The department, in collaboration with each participating state agency, shall establish an interagency reportable conduct search engine for persons to search information on reportable conduct in accordance with this chapter and rules adopted under this chapter maintained by:

(1) the Department of Family and Protective Services in the central registry established under Section 261.002, Family Code;

(2) the Health and Human Services Commission in the employee misconduct registry established under Chapter 253;

(3) the Texas Education Agency in the registry established under Section 22.092, Education Code; and

(4) the Texas Juvenile Justice Department in the integrated certification information system and in any informal list the Texas Juvenile Justice Department maintains.

(b) The department shall ensure the search engine results are machine-readable and accessible to each participating state agency and designated users in accordance with this chapter for the purpose of identifying individuals who may be ineligible for employment, a contract, certification, or licensure based on reportable conduct.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.004. ELIGIBILITY TO ACCESS SEARCH ENGINE; USER CREDENTIALS. (a) The executive head of each participating state agency shall designate agency employees or contractors who are eligible to access the search engine and the agency's automation systems to determine whether an individual has engaged in reportable conduct.

(b) In addition to the eligible individuals described by Subsection (a), each participating state agency shall designate additional users who are eligible to access the search engine and may require those users to determine whether an individual has engaged in reportable conduct. The additional designated users may include controlling persons, hiring managers, or administrators of:

(1) licensed or certified long-term care providers, including:

(A) home and community support services agencies licensed under Chapter 142;

(B) nursing facilities licensed under Chapter 242;

(C) assisted living facilities licensed under Chapter 247;

(D) prescribed pediatric extended care centers licensed under Chapter 248A;

(E) intermediate care facilities for individuals with an intellectual disability licensed under Chapter 252;

(F) state supported living centers, as defined by Section 531.002; and

(G) day activity and health services facilities licensed under Chapter 103, Human Resources Code;

(2) providers under a Section 1915(c) waiver program, as defined by Section 531.001, Government Code;

(3) juvenile probation departments and registered juvenile justice facilities;

(4) independent school districts, districts of innovation, open-enrollment charter schools, other charter entities, as defined by Section 21.006, Education Code, regional education service centers, education shared services arrangements, or any other educational entity or provider that is authorized to access the

registry established under Section 22.092, Education Code;

(5) private schools that:

(A) offer a course of instruction for students in this state in one or more grades from prekindergarten through grade 12; and

(B) are:

(i) accredited by an organization recognized by the Texas Education Agency or the Texas Private School Accreditation Commission;

(ii) listed in the database of the National Center for Education Statistics of the United States Department of Education; or

(iii) otherwise authorized by Texas Education Agency rule to access the search engine; and

(6) nonprofit teacher organizations approved by the commissioner of education for the purpose of participating in the tutoring program established under Section 33.913, Education Code.

(c) The department and each participating state agency shall develop a process to issue user credentials to each designated user that authorizes the user to access the search engine. The process must require the revocation of user credentials for a person who is no longer eligible to access the search engine.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.005. INFORMATION ACCESSIBLE THROUGH SEARCH ENGINE; ADDITIONAL INFORMATION SHARING. (a) For each individual identified by a participating state agency as having engaged in reportable conduct, the search engine results for that individual must include:

(1) the individual's full name;

(2) at least one of the following:

(A) the individual's date of birth; or

(B) the last four digits of the individual's social security number;

(3) at least one of the following:

(A) information relevant to determining whether the individual is eligible for employment, a contract, certification, or licensure; or

(B) the type or a description of the reportable conduct;

(4) any available date on which:

(A) the reportable conduct occurred; or

(B) a final determination was issued on the reportable conduct; and

(5) the participating state agency that maintains the reportable conduct information.

(b) An individual who engaged in reportable conduct that requires the individual's inclusion in search engine results is not entitled to notice or an opportunity for a hearing before the individual's information is included in the search engine results or shared with the department, a participating state agency, or a designated user in accordance with this chapter and rules adopted under this chapter.

(c) A participating state agency may share with other participating agencies additional information on an individual included in search engine results to supplement the information contained in those results for purposes authorized under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.006. REQUIRED SEARCH QUERY AND USE OF SEARCH ENGINE RESULTS. (a) Each participating state agency and designated user shall conduct a search query using the search engine to determine whether an individual who may have access to a client has engaged in reportable conduct and, if the individual has engaged in reportable conduct, whether the individual is ineligible for:

(1) employment, a volunteer position, or a contract with the agency, the user, or a facility or entity licensed, certified, or otherwise regulated by the agency; or

(2) licensure or certification by the agency in a profession or for the operation of a facility or entity that the agency regulates.

(b) A participating state agency's or designated user's determination under Subsection (a) that an individual is ineligible for employment, a volunteer position, a contract, a license, or a

certification must be based on standards authorized or required by law, including agency rules.

(c) A participating state agency or designated user must conduct a search query required under Subsection (a) before the agency or user employs, places in a volunteer position, enters into a contract with, or issues a license or certification to an individual. Each participating state agency by rule shall establish procedures for conducting periodic search queries using the search engine to monitor whether an individual the agency or a designated user employs, places in a volunteer position, contracts with, or issues a license or certification to engages in reportable conduct.

(d) Each participating state agency, including the Texas Education Agency in collaboration with the State Board for Educator Certification, by rule may:

(1) authorize an individual who is determined to have engaged in reportable conduct to be employed or placed in a volunteer position by, enter into a contract with, or receive a license or certification from the agency or a designated user in accordance with standards prescribed by agency rules and as otherwise permitted by law; and

(2) prescribe the manner in which information contained in search engine results may be used based on:

(A) the nature of the reportable conduct;

(B) the date the reportable conduct occurred;

(C) the severity of the reportable conduct; and

(D) any other factors the agency determines necessary.

(e) Notwithstanding any provision of this chapter, a private school is not required to conduct search queries using the search engine for the purposes described by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.007. NOTICE AND HEARING. (a) A participating state agency or designated user that does not enter into a contract with or issue a license or certification to an individual based on a determination of the individual's ineligibility under Section 810.006 shall notify the individual of that determination.

(b) Each participating state agency may provide an individual

to whom notice is provided under this section an opportunity for a hearing regarding the determination of the individual's ineligibility under Section 810.006 on the individual's written request. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(c) Notwithstanding any other law, in a hearing conducted under this section a participating state agency:

(1) is not required to prove that an individual engaged in reportable conduct; and

(2) must prove by a preponderance of the evidence that an individual is ineligible under Section 810.006.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.008. OFFICE OF INTERAGENCY COORDINATION ON REPORTABLE CONDUCT. (a) The Office of Interagency Coordination on Reportable Conduct is established within the Department of Family and Protective Services to facilitate:

(1) coordination among the department and each participating state agency in administering this chapter; and

(2) communication between the department, each participating state agency, designated users, interested persons, and the public regarding any relevant search engine information.

(b) The Department of Family and Protective Services, in collaboration with the department and each other participating state agency, shall adopt rules on the establishment and operation of the Office of Interagency Coordination on Reportable Conduct.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

Sec. 810.009. MEMORANDUM OF UNDERSTANDING. The department and each participating state agency shall enter into a memorandum of understanding on the implementation and administration of this chapter. The memorandum must specify each agency's roles and duties with respect to establishing and maintaining the search engine.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff.

September 1, 2023.

Sec. 810.010. CONFIDENTIALITY. Information contained in search engine results and additional information shared by a participating state agency under Section 810.005(c), including documents, is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 3, eff. September 1, 2023.

TITLE 10. HEALTH AND SAFETY OF ANIMALS
CHAPTER 821. TREATMENT AND DISPOSITION OF ANIMALS
SUBCHAPTER A. TREATMENT OF ANIMALS

Sec. 821.001. DEFINITION. In this subchapter, "animal" includes every living nonhuman creature.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1593, eff. April 2, 2015.

Sec. 821.002. TREATMENT OF IMPOUNDED ANIMALS. (a) A person who impounds or causes the impoundment of an animal under state law or municipal ordinance shall supply the animal with sufficient wholesome food and water during its confinement.

(b) If an animal impounded under Subsection (a) continues to be without necessary food and water for more than 12 successive hours, any person may enter the pound or corral as often as necessary to supply the animal with necessary food and water. That person may recover the reasonable cost of the food and water from the owner of the animal. The animal is not exempt from levy and sale on execution of a judgment issued to recover those costs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 821.003. TREATMENT OF LIVE BIRDS. (a) This section

applies to a person who receives live birds for transportation or for confinement:

(1) on wagons or stands;

(2) by a person who owns a grocery store, commission house, or other market house; or

(3) by any other person if the birds are to be closely confined.

(b) The person shall immediately place the birds in coops, crates, or cages that are made of open slats or wire on at least three sides and that are of a height so that the birds can stand upright without touching the top.

(c) The person shall keep clean water and suitable food in troughs or other receptacles in the coops, crates, or cages. The troughs or other receptacles must be easily accessible to the confined birds and must be placed so that the birds cannot defile their contents.

(d) The person shall keep the coops, crates, or cages in a clean and wholesome condition and may place in each coop, crate, or cage only the number of birds that have room to move around and to stand without crowding each other.

(e) The person may not expose the birds to undue heat or cold and shall immediately remove all injured, diseased, or dead birds from the coops, crates, or cages.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 821.004. KNOWLEDGE OR ACTS OF CORPORATE AGENT OR EMPLOYEE. The knowledge and acts of an agent or employee of a corporation in regard to an animal transported, owned, or used by or in the custody of the corporation are the knowledge and acts of the corporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. DISPOSITION OF CRUELLY TREATED ANIMALS

Sec. 821.021. DEFINITIONS. In this subchapter:

(1) "Cruelly treated" includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, caused to fight with another animal, or subjected to conduct prohibited by Section

21.09, Penal Code.

(2) "Nonprofit animal welfare organization" means a nonprofit organization that has as its purpose:

(A) the prevention of cruelty to animals; or

(B) the sheltering of, caring for, and providing homes for lost, stray, and abandoned animals.

(3) "Owner" includes a person who owns or has custody or control of an animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 6, eff. September 1, 2017.

Text of section effective until January 1, 2025

Sec. 821.0211. ADDITIONAL DEFINITION. In this subchapter, "magistrate" means any officer as defined in Article 2.09, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts of appeals, judges or associate judges of statutory probate courts, or judges or associate judges of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

Acts 2003, 78th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 10, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.126, eff. January 1, 2025.

Text of section effective on January 1, 2025

Sec. 821.0211. ADDITIONAL DEFINITION. In this subchapter, "magistrate" means any officer as defined in Article 2A.151, Code of Criminal Procedure, except that the term does not include justices of the supreme court, judges of the court of criminal appeals, or courts

of appeals, judges or associate judges of statutory probate courts, or judges or associate judges of district courts that give preference to family law matters or family district courts under Subchapter D, Chapter 24, Government Code.

Acts 2003, 78th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 334 (H.B. 890), Sec. 10, eff. September 1, 2009.
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.126, eff. January 1, 2025.

Sec. 821.022. SEIZURE OF CRUELLY TREATED ANIMAL. (a) If a peace officer or an officer who has responsibility for animal control in a county or municipality has reason to believe that an animal has been or is being cruelly treated, the officer may apply to a justice court or magistrate in the county or to a municipal court in the municipality in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court or magistrate shall issue the warrant and set a time within 10 calendar days of the date of issuance for a hearing in the appropriate justice court or municipal court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 387, Sec. 1, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.

Sec. 821.023. HEARING; ORDER OF DISPOSITION OR RETURN OF ANIMAL. (a) A finding in a court of competent jurisdiction that the owner of an animal is guilty of an offense under Section 42.09 or 42.092, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(a-1) A finding in a court of competent jurisdiction that a person is guilty of an offense under Section 21.09, Penal Code, is prima facie evidence at a hearing authorized by Section 821.022 that any animal in the person's possession has been cruelly treated, regardless of whether the animal was subjected to conduct prohibited by Section 21.09, Penal Code.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 576 (S.B. 762), Sec. 2, and Ch. 739 (S.B. 1232), Sec. 8, eff. September 1, 2017.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) If the court finds that the animal's owner has cruelly treated the animal, the owner shall be divested of ownership of the animal, and the court shall:

(1) order a public sale of the animal by auction;

(2) order the animal given to a municipal or county animal shelter or a nonprofit animal welfare organization; or

(3) order the animal humanely destroyed if the court decides that the best interests of the animal or that the public health and safety would be served by doing so.

(e) After a court finds that an animal's owner has cruelly treated the animal, the court shall order the owner to pay all court costs, including:

(1) the administrative costs of:

(A) investigation;

(B) expert witnesses; and

(C) conducting any public sale ordered by the court; and

(2) the costs incurred by a municipal or county animal shelter or a nonprofit animal welfare organization in:

(A) housing and caring for the animal during its impoundment; and

(B) humanely destroying the animal if destruction is ordered by the court.

(e-1) After a court finds that an animal's owner has cruelly treated the animal, the court shall determine the estimated costs likely to be incurred by a municipal or county animal shelter or a nonprofit animal welfare organization to house and care for the impounded animal during the appeal process.

(e-2) After making the determination under Subsection (e-1), the court at the time of entering the judgment shall set the amount

of bond for an appeal equal to the sum of:

(1) the amount of the court costs ordered under Subsection (e); and

(2) the amount of the estimated costs determined under Subsection (e-1).

(e-3) A court may not require a person to provide a bond in an amount greater than or in addition to the amount determined by the court under Subsection (e-2) to perfect an appeal under Section 821.025.

(e-4) Notwithstanding any other law, the amount of court costs that a court may order under Subsection (e) and the amount of bond that a court determines under Subsection (e-2) are excluded in determining the court's jurisdiction under Subtitle A, Title 2, Government Code.

(f) The court may order that an animal disposed of under Subsection (d)(1) or (d)(2) be spayed or neutered at the cost of the receiving party.

(g) The court shall order the animal returned to the owner if the court does not find that the animal's owner has cruelly treated the animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 157, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 14.43, 14.44, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 576 (S.B. 762), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 7, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 8, eff. September 1, 2017.

Sec. 821.024. SALE OR DISPOSITION OF CRUELLY TREATED ANIMAL. (a) Notice of an auction ordered under this subchapter must be

posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to any costs owed by the former owner under Section 821.023(e). The officer conducting the auction shall pay any excess proceeds to the justice or municipal court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, the officer may cause the animal to be humanely destroyed or may give the animal to a municipal or county animal shelter or a nonprofit animal welfare organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 387, Sec. 2, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 3, eff. September 1, 2011.

Sec. 821.025. APPEAL. (a) An owner divested of ownership of an animal under Section 821.023 may appeal the order to a county court or county court at law in the county in which the justice or municipal court is located.

(b) As a condition of perfecting an appeal, not later than the 10th calendar day after the date the order is issued, the owner must file a notice of appeal and a cash bond or surety bond in an amount set by the court under Section 821.023(e-2).

(c) Not later than the fifth calendar day after the date the notice of appeal and bond is filed, the court from which the appeal is taken shall deliver a copy of the clerk's record to the clerk of the county court or county court at law to which the appeal is made.

(d) Not later than the 10th calendar day after the date the county court or county court at law, as appropriate, receives a copy of the clerk's record, the court shall consider the matter de novo and dispose of the appeal. A party to the appeal is entitled to a jury trial on request.

(e) The decision of the county court or county court at law

under this section is final and may not be further appealed.

(f) Notwithstanding Section 30.00014, Government Code, or any other law, a person filing an appeal from a municipal court under Subsection (a) is not required to file a motion for a new trial to perfect an appeal.

(g) Notwithstanding any other law, a county court or a county court at law has jurisdiction to hear an appeal filed under this section.

(h) While an appeal under this section is pending, the animal may not be:

(1) sold or given away as provided by Sections 821.023 and 821.024; or

(2) destroyed, except under circumstances which would require the humane destruction of the animal to prevent undue pain to or suffering of the animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1043, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 11(a), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 4, eff. September 1, 2011.

Sec. 821.026. CONFLICT OF LAWS. In the event of a conflict between this subchapter and another provision of any other law relating to an appeal of a disposition regarding a cruelly treated animal, including the bond required for that appeal, this subchapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1278 (H.B. 963), Sec. 5, eff. September 1, 2011.

SUBCHAPTER C. EUTHANASIA OF ANIMALS

Sec. 821.051. DEFINITIONS. In this subchapter:

(1) "Animal" has the meaning assigned by Section 821.001.

(2) "Animal shelter" means a facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

3.1639(118), eff. April 2, 2015.

(4) "Department" means the Department of State Health Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 1, eff. May 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(118), eff. April 2, 2015.

Sec. 821.052. METHODS OF EUTHANASIA. (a) A person may euthanize a dog or cat in the custody of an animal shelter only by administering sodium pentobarbital.

(b) A person may euthanize all other animals in the custody of an animal shelter, including birds and reptiles, only in accordance with the applicable methods, recommendations, and procedures set forth in the edition of the American Veterinary Medical Association Guidelines for the Euthanasia of Animals that is approved by the executive commissioner.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 2, eff. May 10, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1594, eff. April 2, 2015.

Sec. 821.053. REQUIREMENTS FOR USE OF SODIUM PENTOBARBITAL. (a) The executive commissioner by rule shall establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter.

(b) A person may administer sodium pentobarbital to euthanize an animal in the custody of an animal shelter only in accordance with the requirements and procedures established by department rule.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1595, eff. April 2, 2015.

Sec. 821.054. REQUIREMENTS FOR USE OF COMMERCIALLY COMPRESSED CARBON MONOXIDE. (a) The executive commissioner by rule shall establish:

(1) standards for a carbon monoxide chamber used to euthanize an animal to which Section 821.052(b) applies; and

(2) requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal to which Section 821.052(b) applies.

(b) A person administering commercially compressed carbon monoxide to euthanize an animal to which Section 821.052(b) applies:

(1) may use only a carbon monoxide chamber that meets the standards established by department rule; and

(2) may administer the commercially compressed carbon monoxide only in accordance with the requirements and procedures established by department rule.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 23 (S.B. 360), Sec. 3, eff. May 10, 2013.

Sec. 821.055. TRAINING FOR EUTHANASIA TECHNICIANS. (a) A person may not euthanize an animal in the custody of an animal shelter unless the person has successfully completed, not more than three years before the date the person euthanizes the animal, a training course in the proper methods and techniques for euthanizing animals. The training course curriculum must include:

(1) the pharmacology, proper administration, and storage of euthanasia solutions;

(2) federal and state law regulating the storage and accountability of euthanasia solutions;

(3) euthanasia technician stress management;

(4) proper restraint and handling of an animal during euthanasia;

(5) the procedures for administering commercially compressed carbon monoxide to an animal;

(6) techniques for verifying an animal's death; and

(7) the proper disposal of a euthanized animal.

(b) The department must approve the sponsors and curriculum of the training course required by this section.

(c) This section does not apply to a person licensed to practice veterinary medicine in this state.

(d) Notwithstanding Subsection (a), an employee of an animal shelter is not required to have successfully completed the training course before the 120th day following the date of initial employment.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Jan. 1, 2005.

Sec. 821.056. OFFENSE AND PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1596, eff. April 2, 2015.

Sec. 821.057. INJUNCTION. A court of competent jurisdiction, on the petition of any person, may prohibit by injunction the substantial violation of this subchapter or a rule adopted under this subchapter.

Added by Acts 2003, 78th Leg., ch. 30, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1597, eff. April 2, 2015.

SUBCHAPTER E. UNLAWFUL RESTRAINT OF DOG

Sec. 821.101. DEFINITIONS. In this subchapter:

(1) "Adequate shelter" means a sturdy structure:

(A) that provides the dog protection from inclement

weather; and

(B) with dimensions that allow the dog while in the shelter to stand erect, sit, turn around, and lie down in a normal position.

(2) "Collar" means a band of material specifically designed to be placed around the neck of a dog.

(3) "Harness" means a set of straps constructed of nylon, leather, or similar material, specifically designed to restrain or control a dog.

(4) "Inclement weather" includes rain, hail, sleet, snow, high winds, extreme low temperatures, or extreme high temperatures.

(5) "Owner" means a person who owns or has custody or control of a dog.

(6) "Properly fitted" means, with respect to a collar or harness, a collar or harness that:

(A) is appropriately sized for the dog based on the dog's measurements and body weight;

(B) does not choke the dog or impede the dog's normal breathing or swallowing; and

(C) does not cause pain or injury to the dog.

(7) "Restraint" means a chain, rope, tether, leash, cable, or other device that attaches a dog to a stationary object or trolley system.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

Sec. 821.102. UNLAWFUL RESTRAINT OF DOG; OFFENSE. (a) An owner may not leave a dog outside and unattended by use of a restraint unless the owner provides the dog access to:

(1) adequate shelter;

(2) an area that allows the dog to avoid standing water and exposure to excessive animal waste;

(3) shade from direct sunlight; and

(4) potable water.

(b) An owner may not restrain a dog outside and unattended by use of a restraint that:

(1) is a chain;

(2) has weights attached;

(3) is shorter in length than the greater of:

(A) five times the length of the dog, as measured from the tip of the dog's nose to the base of the dog's tail; or

(B) 10 feet; or

(4) is attached to a collar or harness not properly fitted.

(c) A person commits an offense if the person knowingly violates this section. The restraint of each dog that is in violation is a separate offense.

(d) An offense under this section is a Class C misdemeanor, except that the offense is a Class B misdemeanor if the person has previously been convicted under this section.

(e) If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

Sec. 821.103. EXCEPTIONS. (a) Section 821.102 does not apply to:

(1) the use of a restraint on a dog in a public camping or recreational area in compliance with the requirements of the public camping or recreational area as defined by a federal, state, or local authority or jurisdiction;

(2) the use of a restraint on a dog while the owner and dog engage in, or actively train for, an activity conducted under a valid license issued by this state provided the activity is associated with the use or presence of a dog;

(3) the use of a restraint on a dog while the owner and dog engage in conduct directly related to the business of shepherding or herding cattle or livestock;

(4) the use of a restraint on a dog while the owner and dog engage in conduct directly related to the business of cultivating agricultural products;

(5) a dog left unattended in an open-air truck bed only for the time reasonably necessary for the owner to complete a temporary task that requires the dog to be left unattended in the truck bed;

(6) a dog taken by the owner, or another person with the owner's permission, from the owner's residence or property and

restrained by the owner or the person for not longer than the time necessary for the owner to engage in an activity that requires the dog to be temporarily restrained; or

(7) a dog restrained while the owner and dog are engaged in, or actively training for, hunting or field trialing.

(b) Section 821.102(b)(3) does not apply to a restraint attached to a trolley system that allows a dog to move along a running line for a distance equal to or greater than the lengths specified under that subdivision.

(c) This subchapter does not prohibit a person from walking a dog with a handheld leash.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

Sec. 821.104. EFFECT OF SUBCHAPTER ON OTHER LAW. This subchapter does not preempt a local regulation relating to the restraint of a dog or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the restraint of a dog if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue not specifically addressed by this subchapter.

Added by Acts 2021, 87th Leg., 3rd C.S., Ch. 6 (S.B. 5), Sec. 1, eff. January 18, 2022.

CHAPTER 822. REGULATION OF ANIMALS

SUBCHAPTER A. GENERAL PROVISIONS; DOGS THAT ATTACK PERSONS OR ARE A DANGER TO PERSONS

Sec. 822.001. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area in which the dog is kept or the county sheriff in an area that does not have an animal control office.

(2) "Serious bodily injury" means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a

medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

(3) "Dangerous dog," "dog," "owner," and "secure enclosure" have the meanings assigned by Section 822.041.

(4) "Secure" means to take steps that a reasonable person would take to ensure a dog remains on the owner's property, including confining the dog in an enclosure that is capable of preventing the escape or release of the dog.

Amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 3, eff. September 1, 2007.

Sec. 822.0011. APPLICATION TO CERTAIN PROPERTY. For purposes of this subchapter, a person's property includes property the person is entitled to possess or occupy under a lease or other agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 4, eff. September 1, 2007.

Sec. 822.0012. ANIMAL CONTROL AUTHORITY IN CERTAIN MUNICIPALITIES. (a) This section applies only to an incorporated municipality that has a population of more than 1,000 and that is the county seat of a county with a population of 1,380 or more but less than 1,600.

(b) Notwithstanding the definition in Section 822.001(1), for purposes of this subchapter the police department of a municipality described by Subsection (a) is the animal control authority for the municipality in all areas in which a dog is kept and that are subject to the authority of the police department.

Added by Acts 2017, 85th Leg., R.S., Ch. 976 (S.B. 2283), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 113, eff. September 1, 2023.

Sec. 822.002. SEIZURE OF A DOG CAUSING DEATH OF OR SERIOUS BODILY INJURY TO A PERSON. (a) A justice court, county court, or municipal court shall order the animal control authority to seize a dog and shall issue a warrant authorizing the seizure:

(1) on the sworn complaint of any person, including the county attorney, the city attorney, or a peace officer, that the dog has caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person; and

(2) on a showing of probable cause to believe that the dog caused the death of or serious bodily injury to the person as stated in the complaint.

(b) The animal control authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 822.001 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.003. HEARING. (a) The court shall set a time for a hearing to determine whether the dog caused the death of or serious bodily injury to a person by attacking, biting, or mauling the person. The hearing must be held not later than the 10th day after the date on which the warrant is issued.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county attorney or city attorney, is entitled to present evidence at the hearing.

(d) The court shall order the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;

(2) the person from whom the dog was seized; or

(3) any other person authorized to take possession of the

dog.

(e) The court may order the dog destroyed if the court finds that the dog caused serious bodily injury to a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;

(2) the person from whom the dog was seized; or

(3) any other person authorized to take possession of the dog.

(f) The court may not order the dog destroyed if the court finds that the dog caused the serious bodily injury to a person by attacking, biting, or mauling the person and:

(1) the dog was being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and:

(A) the enclosure was reasonably certain to prevent the dog from leaving the enclosure on its own and provided notice of the presence of a dog; and

(B) the injured person was at least eight years of age, and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(2) the dog was not being used for the protection of a person or person's property, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the injured person was at least eight years of age and was trespassing in the enclosure when the attack, bite, or mauling occurred;

(3) the attack, bite, or mauling occurred during an arrest or other action of a peace officer while the peace officer was using the dog for law enforcement purposes;

(4) the dog was defending a person from an assault or person's property from damage or theft by the injured person; or

(5) the injured person was younger than eight years of age, the attack, bite, or mauling occurred in an enclosure in which the dog was being kept, and the enclosure was reasonably certain to keep a person younger than eight years of age from entering.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.002 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.004. DESTRUCTION OF DOG. The destruction of a dog under this subchapter must be performed by:

(1) a licensed veterinarian;

(2) personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals; or

(3) personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 822.003 by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Sec. 822.005. ATTACK BY DOG. (a) A person commits an offense if the person is the owner of a dog and the person:

(1) with criminal negligence, as defined by Section 6.03, Penal Code, fails to secure the dog and the dog makes an unprovoked attack on another person that occurs at a location other than the owner's real property or in or on the owner's motor vehicle or boat and that causes serious bodily injury, as defined by Section 1.07, Penal Code, or death to the other person; or

(2) knows the dog is a dangerous dog by learning in a manner described by Section 822.042(g) that the person is the owner of a dangerous dog, and the dangerous dog makes an unprovoked attack on another person that occurs at a location other than a secure enclosure in which the dog is restrained in accordance with Subchapter D and that causes serious bodily injury, as defined by Section 822.001, or death to the other person.

(b) An offense under this section is a felony of the third degree unless the attack causes death, in which event the offense is a felony of the second degree.

(c) If a person is found guilty of an offense under this section, the court may order the dog destroyed by a person listed in Section 822.004.

(d) A person who is subject to prosecution under this section and under any other law may be prosecuted under this section, the other law, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Renumbered from Health & Safety Code Sec. 822.004 and amended by Acts 1997, 75th Leg., ch. 99, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 5, eff. September 1, 2007.

Sec. 822.006. DEFENSES. (a) It is a defense to prosecution under Section 822.005(a) that the person is a veterinarian, a veterinary clinic employee, a peace officer, a person employed by a recognized animal shelter, or a person employed by this state or a political subdivision of this state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.005(a) that the person is an employee of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes and is training or using the dog in connection with the person's official capacity.

(c) It is a defense to prosecution under Section 822.005(a) that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code, and has temporary ownership, custody, or control of the dog in connection with that position.

(d) It is a defense to prosecution under Section 822.005(a) that the person is a person with a disability and uses the dog to provide assistance, the dog is trained to provide assistance to a person with a disability, and the person is using the dog to provide assistance in connection with the person's disability.

(e) It is a defense to prosecution under Section 822.005(a) that the person attacked by the dog was at the time of the attack engaged in conduct prohibited by Chapters 19, 20, 21, 22, 28, 29, and 30, Penal Code.

(f) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized search and rescue effort at the request of law enforcement.

(g) It is an affirmative defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person and the dog are participating in an organized dog show or event sponsored by a nationally recognized or state-recognized kennel club.

(h) It is an affirmative defense to prosecution under Section

822.005(a) that, at the time of the conduct charged, the person and the dog are engaged in:

(1) a lawful hunting activity; or

(2) a farming or ranching activity, including herding livestock, typically performed by a working dog on a farm or ranch.

(i) It is a defense to prosecution under Section 822.005(a) that, at the time of the conduct charged, the person's dog was on a leash and the person:

(1) was in immediate control of the dog; or

(2) if the person was not in control of the dog, the person was making immediate and reasonable attempts to regain control of the dog.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 6, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1598, eff. April 2, 2015.

Sec. 822.007. LOCAL REGULATION OF DOGS. This subchapter does not prohibit a municipality or county from adopting leash or registration requirements applicable to dogs.

Added by Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 6, eff. September 1, 2007.

SUBCHAPTER B. DOGS AND COYOTES THAT ARE A DANGER TO ANIMALS

Sec. 822.011. DEFINITIONS. In this subchapter:

(1) "Dog or coyote" includes a crossbreed between a dog and a coyote.

(2) "Livestock" includes exotic livestock as defined by Section 161.001, Agriculture Code.

Added by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.012. CERTAIN DOGS AND COYOTES PROHIBITED FROM RUNNING AT LARGE; CRIMINAL PENALTY. (a) The owner, keeper, or person in control of a dog or coyote that the owner, keeper, or person knows is

accustomed to run, worry, or kill livestock, domestic animals, or fowls may not permit the dog or coyote to run at large.

(b) A person who violates this section commits an offense. An offense under this subsection is punishable by a fine of not more than $100.

(c) Each time a dog or coyote runs at large in violation of this section constitutes a separate offense.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.011 and amended by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

Sec. 822.013. DOGS OR COYOTES THAT ATTACK ANIMALS. (a) A dog or coyote that is attacking, is about to attack, or has recently attacked livestock, domestic animals, or fowls may be killed by:

(1) any person witnessing the attack; or

(2) the attacked animal's owner or a person acting on behalf of the owner if the owner or person has knowledge of the attack.

(b) A person who kills a dog or coyote as provided by this section is not liable for damages to the owner, keeper, or person in control of the dog or coyote.

(c) A person who discovers on the person's property a dog or coyote known or suspected of having killed livestock, domestic animals, or fowls may detain or impound the dog or coyote and return it to its owner or deliver the dog or coyote to the local animal control authority. The owner of the dog or coyote is liable for all costs incurred in the capture and care of the dog or coyote and all damage done by the dog or coyote.

(d) The owner, keeper, or person in control of a dog or coyote that is known to have attacked livestock, domestic animals, or fowls shall control the dog or coyote in a manner approved by the local animal control authority.

(e) A person is not required to acquire a hunting license under Section 42.002, Parks and Wildlife Code, to kill a dog or coyote under this section.

Added by Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 822.033 and amended by Acts 2003, 78th Leg., ch. 1002, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. COUNTY REGISTRATION AND REGULATION OF DOGS

Sec. 822.021. APPLICATION TO COUNTIES THAT ADOPT SUBCHAPTER. This subchapter applies only to a county that adopts this subchapter by a majority vote of the qualified voters of the county voting at an election held under this subchapter. This subchapter shall not apply to any county or municipality that enacts or has enacted registration or restraint laws pursuant to Chapter 826 (Rabies Control Act of 1981).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 489, Sec. 1, eff. Aug. 28, 1995.

Sec. 822.022. PETITION FOR ELECTION. (a) On receiving a petition signed by at least 100 qualified property taxpaying voters of the county or a majority of the qualified property taxpaying voters of the county, whichever is less, the commissioners court of a county shall order an election to determine whether the registration of and registration fee for dogs will be required in the county.

(b) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.023. NOTICE. In addition to the notice required by Section 4.003, Election Code, notice of an election under this subchapter shall be published at least once in an English language newspaper of general circulation in the county. If there is no English language newspaper of general circulation in the county, the notice shall be posted at the courthouse door for at least one week before the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.024. BALLOT PROPOSITION. The ballot for an election under this subchapter shall be printed to provide for voting for or

against the proposition: "Registration of and registration fee for dogs."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.025. ELECTION RESULT. (a) If a majority of those voting at the election vote in favor of the measure, the requirement that dogs be registered takes effect in the county on the 10th day after the date on which the result of the election is declared.

(b) The county judge shall issue a proclamation declaring the result of the election if the vote is in favor of the measure. The proclamation shall be published at least once in an English language newspaper of general circulation in the county or, if there is no English language newspaper of general circulation in the county, the proclamation shall be posted at the courthouse door.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.026. INTERVAL BETWEEN ELECTIONS. (a) If the result of an election is against the registration of and registration fee for dogs, another election on that subject may not be held for six months after the date of the election.

(b) If the result of an election is for the registration of and registration fee for dogs, an election to repeal the registration and fee may not be held for two years from the date of the election.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.027. REGISTRATION TAGS AND CERTIFICATE. (a) The commissioners court of a county shall furnish the county treasurer the necessary dog identification tags.

(b) The tags must be numbered consecutively and must be printed or impressed with the name of the county issuing the tags.

(c) The county treasurer shall assign a registration number to each dog registered with the county and shall give the owner or person having control of the dog the identification tag and a registration certificate.

(d) The county treasurer shall record the registration of a

dog, including the age, breed, color, sex, and registration date of the dog. If the registration information is not recorded on microfilm, as may be permitted under other law, it shall be recorded in a book kept for that purpose.

(e) If the ownership of a dog is transferred, the dog's registration certificate shall be transferred to the new owner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.028. REGISTRATION FEE. (a) An owner of a dog registered under this subchapter must pay a registration fee of $1. However, the commissioners court of the county may set the fee in an amount of more than $1 but not more than $5, and if the court sets the amount of the fee the owner must pay that amount.

(b) Registration is valid for one year from the date of registration.

(c) If a dog is moved to another county, the owner may present the registration certificate to the county treasurer of the county to which the dog is moved and receive without additional cost a registration certificate. The new registration certificate is valid for one year from the date of registration in the county from which the dog was moved.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 870, Sec. 1, eff. June 14, 2001.

Sec. 822.029. DISPOSITION OF FEE. (a) The fee collected for the registration of a dog shall be deposited to the credit of a special fund of the county and used only to:

(1) defray the cost of administering this subchapter in the county, including the costs of registration and the identification tags; and

(2) reimburse the owner of any sheep, goats, calves, or other domestic animals or fowls killed in the county by a dog not owned by the person seeking reimbursement.

(b) Reimbursement under Subsection (a)(2) shall be made on the order of the commissioners court only on satisfactory proof of the killing.

(c) The commissioners court shall determine the amount and time

of reimbursement. If there is insufficient money in the fund to reimburse all injured persons in full, reimbursement shall be made on a pro rata basis.

(d) The county treasurer shall keep an accurate record showing all amounts received into and paid from the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.030. REGISTRATION REQUIRED; EXCEPTION FOR TEMPORARY VISITS. (a) The owner or person having control of a dog six months of age or older in a county that has adopted this subchapter must register the dog not later than the 30th day after the date on which the proclamation is published or adopted.

(b) A dog brought into a county for not more than 10 days for breeding purposes, trial, or show is not required to be registered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.031. UNREGISTERED DOGS PROHIBITED FROM RUNNING AT LARGE. The owner or person having control of a dog at least six months of age in a county adopting this subchapter may not allow the dog to run at large unless the dog:

(1) is registered under this subchapter with the county in which the dog runs at large; and

(2) has fastened about its neck a dog identification tag issued by the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.035. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) fails or refuses to register a dog required to be registered under this subchapter;

(2) fails or refuses to allow a dog to be killed when ordered by the proper authorities to do so; or

(3) violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $100, confinement in the county jail for

not more than 30 days, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. DANGEROUS DOGS

Sec. 822.041. DEFINITIONS. In this subchapter:

(1) "Animal control authority" means a municipal or county animal control office with authority over the area where the dog is kept or a county sheriff in an area with no animal control office.

(2) "Dangerous dog" means a dog that:

(A) makes an unprovoked attack on a person that causes bodily injury and occurs in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own; or

(B) commits unprovoked acts in a place other than an enclosure in which the dog was being kept and that was reasonably certain to prevent the dog from leaving the enclosure on its own and those acts cause a person to reasonably believe that the dog will attack and cause bodily injury to that person.

(3) "Dog" means a domesticated animal that is a member of the canine family.

(4) "Secure enclosure" means a fenced area or structure that is:

(A) locked;

(B) capable of preventing the entry of the general public, including children;

(C) capable of preventing the escape or release of a dog;

(D) clearly marked as containing a dangerous dog; and

(E) in conformance with the requirements for enclosures established by the local animal control authority.

(5) "Owner" means a person who owns or has custody or control of the dog.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.0411. ANIMAL CONTROL AUTHORITY IN CERTAIN MUNICIPALITIES. (a) This section applies only to an incorporated municipality that has a population of more than 1,000 and that is the

county seat of a county with a population of 1,380 or more but less than 1,600.

(b) Notwithstanding the definition in Section 822.041(1), for purposes of this subchapter the police department of a municipality described by Subsection (a) is the animal control authority for the municipality in all areas in which a dog is kept and that are subject to the authority of the police department.

Added by Acts 2017, 85th Leg., R.S., Ch. 976 (S.B. 2283), Sec. 2, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 114, eff. September 1, 2023.

Sec. 822.042. REQUIREMENTS FOR OWNER OF DANGEROUS DOG. (a) Not later than the 30th day after a person learns that the person is the owner of a dangerous dog, the person shall:

(1) register the dangerous dog with the animal control authority for the area in which the dog is kept;

(2) restrain the dangerous dog at all times on a leash in the immediate control of a person or in a secure enclosure;

(3) obtain liability insurance coverage or show financial responsibility in an amount of at least $100,000 to cover damages resulting from an attack by the dangerous dog causing bodily injury to a person and provide proof of the required liability insurance coverage or financial responsibility to the animal control authority for the area in which the dog is kept; and

(4) comply with an applicable municipal or county regulation, requirement, or restriction on dangerous dogs.

(b) The owner of a dangerous dog who does not comply with Subsection (a) shall deliver the dog to the animal control authority not later than the 30th day after the owner learns that the dog is a dangerous dog.

(c) If, on application of any person, a justice court, county court, or municipal court finds, after notice and hearing as provided by Section 822.0423, that the owner of a dangerous dog has failed to comply with Subsection (a) or (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order

its seizure and shall provide for the impoundment of the dog in secure and humane conditions.

(d) The owner shall pay any cost or fee assessed by the municipality or county related to the seizure, acceptance, impoundment, or destruction of the dog. The governing body of the municipality or county may prescribe the amount of the fees.

(e) Subject to Subsection (e-1), the court shall order the animal control authority to humanely destroy the dog if the owner has not complied with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority. The court shall order the authority to return the dog to the owner if the owner complies with Subsection (a) before the 11th day after the date on which the dog is seized or delivered to the authority.

(e-1) Notwithstanding any other law or local regulation:

(1) any order to destroy a dog is stayed for a period of 10 calendar days from the date the order is issued, during which period the dog's owner may file a notice of appeal; and

(2) a court, including a justice court, may not order the destruction of a dog during the pendency of an appeal under Section 822.0424.

(f) The court may order the humane destruction of a dog if the owner of the dog has not been located before the 15th day after the seizure and impoundment of the dog.

(g) For purposes of this section, a person learns that the person is the owner of a dangerous dog when:

(1) the owner knows of an attack described in Section 822.041(2)(A) or (B);

(2) the owner receives notice that a justice court, county court, or municipal court has found that the dog is a dangerous dog under Section 822.0423; or

(3) the owner is informed by the animal control authority that the dog is a dangerous dog under Section 822.0421.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 96, Sec. 1, eff. May 17, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 899 (H.B. 3340), Sec. 1, eff.

September 1, 2021.

Sec. 822.0421. DETERMINATION THAT DOG IS DANGEROUS. (a) If a person reports an incident described by Section 822.041(2), the animal control authority may investigate the incident. If, after receiving the sworn statements of any witnesses, the animal control authority determines the dog is a dangerous dog, the animal control authority shall notify the owner in writing of the determination.

(b) Notwithstanding any other law, including a municipal ordinance, an owner, not later than the 15th day after the date the owner is notified that a dog owned by the owner is a dangerous dog, may appeal the determination of the animal control authority to a justice, county, or municipal court of competent jurisdiction.

(c) To file an appeal under Subsection (b), the owner must:

(1) file a notice of appeal of the animal control authority's dangerous dog determination with the court;

(2) attach a copy of the determination from the animal control authority; and

(3) serve a copy of the notice of appeal on the animal control authority by mailing the notice through the United States Postal Service.

(d) An owner may appeal the decision of the justice or municipal court under Subsection (b) in the manner described by Section 822.0424.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 2, eff. September 1, 2015.

Sec. 822.0422. REPORTING OF INCIDENT IN CERTAIN COUNTIES AND MUNICIPALITIES. (a) This section applies only to a county with a population of more than 2,800,000, to a county in which the commissioners court has entered an order electing to be governed by this section, and to a municipality in which the governing body has adopted an ordinance electing to be governed by this section.

(b) A person may report an incident described by Section 822.041(2) to a municipal court, a justice court, or a county court.

The owner of the dog shall deliver the dog to the animal control authority not later than the fifth day after the date on which the owner receives notice that the report has been filed. The authority may provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog.

(c) If the owner fails to deliver the dog as required by Subsection (b), the court shall order the animal control authority to seize the dog and shall issue a warrant authorizing the seizure. The authority shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog. The owner shall pay any cost incurred in seizing the dog.

(d) The court shall determine, after notice and hearing as provided in Section 822.0423, whether the dog is a dangerous dog.

(e) The court, after determining that the dog is a dangerous dog, may order the animal control authority to continue to impound the dangerous dog in secure and humane conditions until the court orders disposition of the dog under Section 822.042 and the dog is returned to the owner or destroyed.

(f) The owner shall pay a cost or fee assessed under Section 822.042(d).

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 96, Sec. 2, eff. May 17, 1999.

Sec. 822.0423. HEARING. (a) The court, on receiving a report of an incident under Section 822.0422 or on application under Section 822.042(c), shall set a time for a hearing to determine whether the dog is a dangerous dog or whether the owner of the dog has complied with Section 822.042. The hearing must be held not later than the 10th day after the date on which the dog is seized or delivered.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county or city attorney, is entitled to present evidence at the hearing.

(c-1) The court shall determine the estimated costs to house

and care for the impounded dog during the appeal process and shall set the amount of bond for an appeal adequate to cover those estimated costs.

(d) An owner or person filing the action may appeal the decision of the municipal or justice court in the manner described by Section 822.0424.

Added by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 3, eff. September 1, 2015.

Sec. 822.0424. APPEAL. (a) A party to an appeal under Section 822.0421(d) or a hearing under Section 822.0423 may appeal the decision to a county court or county court at law in the county in which the justice or municipal court is located and is entitled to a jury trial on request.

(b) As a condition of perfecting an appeal, not later than the 10th calendar day after the date the decision is issued, the appellant must file a notice of appeal and, if applicable, an appeal bond in the amount determined by the court from which the appeal is taken.

(c) Notwithstanding Section 30.00014, Government Code, or any other law, a person filing an appeal from a municipal court under Subsection (a) is not required to file a motion for a new trial to perfect an appeal.

(d) A decision of a county court or county court at law under this section may be appealed in the same manner as an appeal for any other case in a county court or county court at law.

(e) Notwithstanding any other law, a county court or a county court at law has jurisdiction to hear an appeal filed under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 530 (H.B. 1436), Sec. 4, eff. September 1, 2015.

Sec. 822.043. REGISTRATION. (a) An animal control authority for the area in which the dog is kept shall annually register a dangerous dog if the owner:

(1) presents proof of:

(A) liability insurance or financial responsibility, as required by Section 822.042;

(B) current rabies vaccination of the dangerous dog; and

(C) the secure enclosure in which the dangerous dog will be kept; and

(2) pays an annual registration fee of $50.

(b) The animal control authority shall provide to the owner registering a dangerous dog a registration tag. The owner must place the tag on the dog's collar.

(c) If an owner of a registered dangerous dog sells or moves the dog to a new address, the owner, not later than the 14th day after the date of the sale or move, shall notify the animal control authority for the area in which the new address is located. On presentation by the current owner of the dangerous dog's prior registration tag and payment of a fee of $25, the animal control authority shall issue a new registration tag to be placed on the dangerous dog's collar.

(d) An owner of a registered dangerous dog shall notify the office in which the dangerous dog was registered of any attacks the dangerous dog makes on people.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

Sec. 822.044. ATTACK BY DANGEROUS DOG. (a) A person commits an offense if the person is the owner of a dangerous dog and the dog makes an unprovoked attack on another person outside the dog's enclosure and causes bodily injury to the other person.

(b) An offense under this section is a Class C misdemeanor.

(c) If a person is found guilty of an offense under this section, the court may order the dangerous dog destroyed by a person listed in Section 822.004.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 669, Sec. 8, eff. September 1, 2007.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 669 (H.B. 1355), Sec. 8, eff. September 1, 2007.

Sec. 822.045. VIOLATIONS. (a) A person who owns or keeps custody or control of a dangerous dog commits an offense if the person fails to comply with Section 822.042 or Section 822.0422(b) or an applicable municipal or county regulation relating to dangerous dogs.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor.

(c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1997.

Sec. 822.046. DEFENSE. (a) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a veterinarian, a peace officer, a person employed by a recognized animal shelter, or a person employed by the state or a political subdivision of the state to deal with stray animals and has temporary ownership, custody, or control of the dog in connection with that position.

(b) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is an employee of the institutional division of the Texas Department of Criminal Justice or a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes.

(c) It is a defense to prosecution under Section 822.044 or Section 822.045 that the person is a dog trainer or an employee of a guard dog company under Chapter 1702, Occupations Code.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.809, eff. Sept. 1, 2001.

Sec. 822.047. LOCAL REGULATION OF DANGEROUS DOGS. A county or

municipality may place additional requirements or restrictions on dangerous dogs if the requirements or restrictions:

(1) are not specific to one breed or several breeds of dogs; and

(2) are more stringent than restrictions provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 916, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER E. DANGEROUS WILD ANIMALS

Sec. 822.101. DEFINITIONS. In this subchapter:

(1) "Animal registration agency" means the municipal or county animal control office with authority over the area where a dangerous wild animal is kept or a county sheriff in an area that does not have an animal control office.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(119), eff. April 2, 2015.

(3) "Commercial activity" means:

(A) an activity involving a dangerous wild animal conducted for profit that is not inherent to the animal's nature;

(B) an activity for which a fee is charged and that is entertainment using or an exhibition of the animal; or

(C) the selling, trading, bartering, or auctioning of a dangerous wild animal or a dangerous wild animal's body parts.

(4) "Dangerous wild animal" means:

(A) a lion;

(B) a tiger;

(C) an ocelot;

(D) a cougar;

(E) a leopard;

(F) a cheetah;

(G) a jaguar;

(H) a bobcat;

(I) a lynx;

(J) a serval;

(K) a caracal;

(L) a hyena;

(M) a bear;

(N) a coyote;

(O) a jackal;
(P) a baboon;
(Q) a chimpanzee;
(R) an orangutan;
(S) a gorilla; or
(T) any hybrid of an animal listed in this subdivision.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Owner" means any person who owns, harbors, or has custody or control of a dangerous wild animal.

(6) "Person" means an individual, partnership, corporation, trust, estate, joint stock company, foundation, or association of individuals.

(7) "Primary enclosure" means any structure used to immediately restrict an animal to a limited amount of space, including a cage, pen, run, room, compartment, or hutch.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1599, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(119), eff. April 2, 2015.

Sec. 822.102. APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to:

(1) a county, municipality, or agency of the state or an agency of the United States or an agent or official of a county, municipality, or agency acting in an official capacity;

(2) a research facility, as that term is defined by Section 2(e), Animal Welfare Act (7 U.S.C. Section 2132), and its subsequent amendments, that is licensed by the secretary of agriculture of the United States under that Act;

(3) an organization that is an accredited member of the Association of Zoos and Aquariums;

(4) an injured, infirm, orphaned, or abandoned dangerous wild animal while being transported for care or treatment;

(5) an injured, infirm, orphaned, or abandoned dangerous wild animal while being rehabilitated, treated, or cared for by a

licensed veterinarian, an incorporated humane society or animal shelter, or a person who holds a rehabilitation permit issued under Subchapter C, Chapter 43, Parks and Wildlife Code;

(6) a dangerous wild animal owned by and in the custody and control of a transient circus company that is not based in this state if:

(A) the animal is used as an integral part of the circus performances; and

(B) the animal is kept within this state only during the time the circus is performing in this state or for a period not to exceed 30 days while the circus is performing outside the United States;

(7) a dangerous wild animal while in the temporary custody or control of a television or motion picture production company during the filming of a television or motion picture production in this state;

(8) a dangerous wild animal owned by and in the possession, custody, or control of a college or university solely as a mascot for the college or university;

(9) a dangerous wild animal while being transported in interstate commerce through the state in compliance with the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act;

(10) a nonhuman primate owned by and in the control and custody of a person whose only business is supplying nonhuman primates directly and exclusively to biomedical research facilities and who holds a Class "A" or Class "B" dealer's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments;

(11) a dangerous wild animal that is:

(A) owned by or in the possession, control, or custody of a person who is a participant in a species survival plan of the Association of Zoos and Aquariums for that species; and

(B) an integral part of that species survival plan; and

(12) in a county west of the Pecos River that has a population of less than 25,000, a cougar, bobcat, or coyote in the possession, custody, or control of a person that has trapped the cougar, bobcat, or coyote as part of a predator or depredation control activity.

(b) This subchapter does not require a municipality that does not have an animal control office to create that office.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 31, eff. June 18, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1600, eff. April 2, 2015.

Sec. 822.103. CERTIFICATE OF REGISTRATION; FEES. (a) A person may not own, harbor, or have custody or control of a dangerous wild animal for any purpose unless the person holds a certificate of registration for that animal issued by an animal registration agency.
(b) A certificate of registration issued under this subchapter is not transferrable and is valid for one year after its date of issuance or renewal unless revoked.
(c) The animal registration agency may establish and charge reasonable fees for application, issuance, and renewal of a certificate of registration in order to recover the costs associated with the administration and enforcement of this subchapter. The fee charged to an applicant may not exceed $50 for each animal registered and may not exceed $500 for each person registering animals, regardless of the number of animals owned by the person. The fees collected under this section may be used only to administer and enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.104. CERTIFICATE OF REGISTRATION APPLICATION. (a) An applicant for an original or renewal certificate of registration for a dangerous wild animal must file an application with an animal registration agency on a form provided by the animal registration agency.
(b) The application must include:
(1) the name, address, and telephone number of the applicant;
(2) a complete identification of each animal, including species, sex, age, if known, and any distinguishing marks or

coloration that would aid in the identification of the animal;

(3) the exact location where each animal is to be kept;

(4) a sworn statement that:

(A) all information in the application is complete and accurate; and

(B) the applicant has read this subchapter and that all facilities used by the applicant to confine or enclose the animal comply with the requirements of this subchapter; and

(5) any other information the animal registration agency may require.

(c) An applicant shall include with each application:

(1) the nonrefundable fee;

(2) proof, in a form acceptable by the animal registration agency, that the applicant has liability insurance, as required by Section 822.107;

(3) a color photograph of each animal being registered taken not earlier than the 30th day before the date the application is filed;

(4) a photograph and a statement of the dimensions of the primary enclosure in which each animal is to be kept and a scale diagram of the premises where each animal will be kept, including the location of any perimeter fencing and any residence on the premises; and

(5) if an applicant holds a Class "A" or Class "B" dealer's license or Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments, a clear and legible photocopy of the license.

(d) In addition to the items required under Subsection (c), an application for renewal must include a statement signed by a veterinarian licensed to practice in this state stating that the veterinarian:

(1) inspected each animal being registered not earlier than the 30th day before the date of the filing of the renewal application; and

(2) finds that the care and treatment of each animal by the owner meets or exceeds the standards prescribed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.105. DENIAL OR REVOCATION OF CERTIFICATE OF REGISTRATION; APPEAL. (a) If the animal registration agency finds that an application for an original or renewal certificate of registration under this subchapter does not meet the requirements of Section 822.104 or, after inspection, that an applicant has not complied with this subchapter, the animal registration agency shall deny the applicant a certificate of registration and give the applicant written notice of the denial and the reasons for the denial.

(b) If the animal registration agency finds, after inspection, that a registered owner provided false information in or in connection with the application or has not complied with this subchapter, the animal registration agency shall revoke the certificate of registration and give the owner written notice of the revocation and the reasons for the revocation.

(c) A person may appeal the denial of an original or renewal certificate of registration or the revocation of a certificate of registration to the justice court for the precinct in which the animal is located or the municipal court in the municipality in which the animal is located not later than the 15th day after the date the certificate of registration is denied or revoked. Either party may appeal the decision of the justice or municipal court to a county court or county court at law in the county in which the justice or municipal court is located. The decision of the county court or county court at law may not be appealed.

(d) The filing of an appeal of the denial or revocation of a certificate of registration under Subsection (c) stays the denial or revocation until the court rules on the appeal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.106. DISPLAY OF CERTIFICATE OF REGISTRATION. (a) A holder of a certificate of registration shall prominently display the certificate at the premises where each animal that is the subject of the certificate of registration is kept.

(b) Not later than the 10th day after the date a person receives a certificate of registration, the person shall file a clear

and legible copy of the certificate of registration with the Department of State Health Services. The executive commissioner shall establish a procedure for filing a certificate of registration and by rule shall establish a reasonable fee to be collected by the department in an amount sufficient to recover the cost associated with filing a certificate of registration under this subsection.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1601, eff. April 2, 2015.

Sec. 822.107. LIABILITY INSURANCE. An owner of a dangerous wild animal shall maintain liability insurance coverage in an amount of not less than $100,000 for each occurrence for liability for damages for destruction of or damage to property and death or bodily injury to a person caused by the dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.108. INSPECTION. An owner of a dangerous wild animal, at all reasonable times, shall allow the animal registration agency, its staff, its agents, or a designated licensed veterinarian to enter the premises where the animal is kept and to inspect the animal, the primary enclosure for the animal, and the owner's records relating to the animal to ensure compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.109. RELOCATION OR DISPOSITION OF ANIMAL. (a) An owner of a dangerous wild animal may not permanently relocate the animal unless the owner first notifies the animal registration agency in writing of the exact location to which the animal will be relocated and provides the animal registration agency, with respect to the new location, the information required by Section 822.104.

(b) Within 10 days after the death, sale, or other disposition of the animal, the owner of the animal shall notify the animal registration agency in writing of the death, sale, or other

disposition.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.110. ATTACK BY ANIMAL; ESCAPE OF ANIMAL; LIABILITY. (a) An owner of a dangerous wild animal shall notify the animal registration agency of any attack of a human by the animal within 48 hours of the attack.

(b) An owner of a dangerous wild animal shall immediately notify the animal registration agency and the local law enforcement agency of any escape of the animal.

(c) An owner of a dangerous wild animal that escapes is liable for all costs incurred in apprehending and confining the animal.

(d) An animal registration agency, a law enforcement agency, or an employee of an animal registration agency or law enforcement agency is not liable to an owner of a dangerous wild animal for damages arising in connection with the escape of a dangerous wild animal, including liability for damage, injury, or death caused by the animal during or after the animal's escape, or for injury to or death of the animal as a result of apprehension or confinement of the animal after escape.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.111. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER; CAGING REQUIREMENTS AND STANDARDS. (a) The executive commissioner by rule shall establish caging requirements and standards for the keeping and confinement of a dangerous wild animal to ensure that the animal is kept in a manner and confined in a primary enclosure that:

(1) protects and enhances the public's health and safety;

(2) prevents escape by the animal; and

(3) provides a safe, healthy, and humane environment for the animal.

(b) An owner of a dangerous wild animal shall keep and confine the animal in accordance with the caging requirements and standards established by the executive commissioner.

(c) An animal registration agency may approve a deviation from the caging requirements and standards established by the executive commissioner, only if:

(1) the animal registration agency has good cause for the deviation; and

(2) the deviation:

(A) does not compromise the public's health and safety;

(B) does not reduce the total area of the primary enclosure below that established by the executive commissioner; and

(C) does not otherwise adversely affect the overall welfare of the animal involved.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1602, eff. April 2, 2015.

Sec. 822.112. CARE, TREATMENT, AND TRANSPORTATION OF ANIMAL. (a) For each dangerous wild animal, the owner shall comply with all applicable standards of the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments and the regulations adopted under that Act relating to:

(1) facilities and operations;

(2) animal health and husbandry; and

(3) veterinary care.

(b) An owner of a dangerous wild animal shall maintain a separate written log for each dangerous wild animal documenting the animal's veterinary care and shall make the log available to the animal registration agency or its agent on request. The log must:

(1) identify the animal treated;

(2) provide the date of treatment;

(3) describe the type or nature of treatment; and

(4) provide the name of the attending veterinarian, if applicable.

(c) When transporting a dangerous wild animal, the owner of the animal, or a designated carrier or intermediate handler of the animal, shall comply with all transportation standards that apply to that animal under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments or the regulations adopted under that Act.

(d) A person is exempt from the requirements of this section if the person is caring for, treating, or transporting an animal for

which the person holds a Class "A" or Class "B" dealer's license or a Class "C" exhibitor's license issued by the secretary of agriculture of the United States under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and its subsequent amendments.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.113. OFFENSE AND PENALTY. (a) A person commits an offense if the person violates Section 822.103(a), Section 822.106, or Section 822.110(a) or (b). Each animal with respect to which there is a violation and each day that a violation continues is a separate offense.

(b) A person commits an offense if the person knowingly sells or otherwise transfers ownership of a dangerous wild animal to a person who does not have a certificate of registration for that animal as required by this subchapter.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.114. CIVIL PENALTY. (a) A person who violates Section 822.103(a) is liable for a civil penalty of not less than $200 and not more than $2,000 for each animal with respect to which there is a violation and for each day the violation continues.

(b) The county or municipality in which the violation occurs may sue to collect a civil penalty. A civil penalty collected under this subsection may be retained by the county or municipality.

(c) The county or municipality in which the violation occurs may also recover the reasonable costs of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the animal registration agency in the civil action. Costs or fees recovered under this subsection shall be credited to the operating account from which payment for the animal registration agency's expenditures was made.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.115. INJUNCTION. Any person who is directly harmed or

threatened with harm by a violation of this subchapter or a failure to enforce this subchapter may sue an owner of a dangerous wild animal to enjoin a violation of this subchapter or to enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

Sec. 822.116. EFFECT OF SUBCHAPTER ON OTHER LAW. (a) This subchapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of this state or a political subdivision of this state.

(b) This subchapter does not prevent a municipality or county from prohibiting or regulating by ordinance or order the ownership, possession, confinement, or care of a dangerous wild animal.

Added by Acts 2001, 77th Leg., ch. 54, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 823. ANIMAL SHELTERS

Sec. 823.001. DEFINITIONS. In this chapter:

(1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(120), eff. April 2, 2015.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(120), eff. April 2, 2015.

(4) "Department" means the Department of State Health Services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1603, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(120), eff. April 2, 2015.

Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES, CLINICS, AND FACILITIES. This chapter does not apply to:

(1) a county having a population of less than 75,000;

(2) a veterinary medicine clinic; or
(3) a livestock commission facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 280, eff. Sept. 1, 1991.

Sec. 823.003. STANDARDS FOR ANIMAL SHELTERS; CRIMINAL PENALTY. (a) Each animal shelter operated in this state shall comply with the standards for:

(1) housing and sanitation as provided in Chapter 826 for quarantine and impoundment facilities; and

(2) animal control officer training adopted under Chapter 829.

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) An animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Each person who operates an animal shelter shall employ a veterinarian at least once a year to inspect the shelter to determine whether it complies with the requirements of this chapter and Chapter 829. The veterinarian shall file copies of the veterinarian's report with the person operating the shelter and with the department on forms prescribed by the department.

(e) The executive commissioner of the Health and Human Services Commission may require each person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A person commits an offense if the person substantially violates this section. An offense under this subsection is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1604, eff. April 2, 2015.

Sec. 823.004. MICROCHIP SCAN REQUIRED. As soon as practicable after an animal is placed in the custody of an animal shelter or a releasing agency as defined by Section 828.001, including an animal rescue organization, the shelter, agency, or organization shall scan the animal to determine whether a microchip is implanted in the animal.

Added by Acts 2021, 87th Leg., R.S., Ch. 136 (H.B. 604), Sec. 1, eff. September 1, 2021.

Sec. 823.005. ADVISORY COMMITTEE. (a) The governing body of a county or municipality in which an animal shelter is located shall appoint an advisory committee to assist in complying with the requirements of this chapter.

(b) The advisory committee must be composed of at least one licensed veterinarian, one county or municipal official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.007. INJUNCTION. A court of competent jurisdiction may, on the petition of any person, prohibit by injunction the substantial violation of this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 823.008. ENFORCEMENT BY COUNTY. (a) A county may enforce this chapter.

(b) This section does not authorize a county to establish standards for operating an animal shelter.

(c) A county may not enforce this chapter at an animal shelter operated by a municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 924 (H.B. 3004), Sec. 1, eff. June 19, 2009.

Sec. 823.009. CIVIL PENALTY. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A civil penalty under this chapter may not be less than $100 or more than $500 for each violation and for each day of a continuing violation. This subsection does not apply at an animal shelter operated by a municipality.

(c) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the county or municipality in which the violation occurs may institute a civil suit in district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of the civil penalty; or

(3) both injunctive relief and the civil penalty.

(d) A bond is not required in an action brought under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 924 (H.B. 3004), Sec. 1, eff. June 19, 2009.

CHAPTER 824. KENNELS

Sec. 824.001. DEFINITIONS. In this chapter:

(1) "Fire protection sprinkler system" has the meaning assigned by Section 766.051.

(2) "Kennel" means a facility, including a veterinary medicine clinic, that provides boarding and related services to dogs or cats for breeding, sheltering, training, hunting, or similar purposes in exchange for compensation or other consideration.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

Sec. 824.002. EXCEPTIONS TO APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) an animal shelter as defined by Chapter 823; or

(2) a kennel that boards not more than three dogs or cats at any time.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

Sec. 824.003. REQUIRED INFORMED CONSENT FOR BOARDING OR PROVIDING SERVICES TO DOG OR CAT TO BE LEFT UNATTENDED. A kennel owner or operator who is boarding or providing services to a dog or cat at the kennel may not leave the dog or cat unattended without an employee present unless:

(1) the kennel owner or operator provides to the owner of the dog or cat written notice that:

(A) the dog or cat will be left unattended at the kennel without an employee present during the hours specified in the notice; and

(B) if the kennel is not equipped with a functioning fire protection sprinkler system, the facility does not have a fire protection sprinkler system; and

(2) the owner of the dog or cat provides to the kennel owner or operator a signed document consenting to the dog or cat being left unattended as provided in the notice.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

Sec. 824.004. CIVIL PENALTY. (a) A kennel owner or operator who violates Section 824.003 is liable for a civil penalty in an amount equal to $500 for each animal subject to the violation and for each day the violation continues.

(b) The attorney general or the appropriate district or county attorney may:

(1) bring an action on behalf of this state to collect the civil penalty under this section; and

(2) recover attorney's fees and costs incurred in bringing the action.

Added by Acts 2023, 88th Leg., R.S., Ch. 294 (H.B. 2063), Sec. 1, eff. September 1, 2023.

CHAPTER 825. PREDATORY ANIMALS AND ANIMAL PESTS

SUBCHAPTER A. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN CONTROLLING PREDATORY ANIMALS AND RODENTS

Sec. 825.001. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN CONTROLLING PREDATORY ANIMALS AND RODENTS. The state shall cooperate through The Texas A&M University System with the appropriate federal officers and agencies in controlling coyotes, mountain lions, bobcats, Russian boars, and other predatory animals and in controlling prairie dogs, pocket gophers, jackrabbits, ground squirrels, rats, and other rodent pests to protect livestock, food and feed supplies, crops, and ranges.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.002. COOPERATIVE AGREEMENT. The director of the Texas Agricultural Extension Service shall execute a cooperative agreement with the appropriate federal officers or agencies to perform the cooperative work in predatory animal and rodent control in the manner and under the regulations stated in the agreement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.003. EXPENDITURE OF APPROPRIATIONS. The state funds appropriated to administer this subchapter shall be spent in amounts as authorized by the Board of Regents of The Texas A&M University System and disbursed on vouchers or payrolls certified by the director of the extension service.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.004. APPROPRIATIONS BY LOCAL GOVERNMENTS. The commissioners court of a county or the governing body of a municipality may appropriate funds to perform predatory animal and rodent control work described by this subchapter and, in cooperation

with federal and state authorities, may employ labor and purchase and provide supplies required to effectively perform that work.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.005. SALE OF FURS, SKINS, AND SPECIMENS. (a) Except as provided by Subsection (b), all furs, skins, and specimens of value taken by hunters or trappers paid from state funds under this subchapter shall be sold under rules adopted by The Texas A&M University System. The proceeds of the sales shall be deposited to the credit of the fund established for predatory animal and rodent control.

(b) Any specimen taken under this subchapter may be presented free of charge to any state, county, or federal institution for scientific purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.006. BOUNTIES PROHIBITED. (a) A hunter or trapper acting under this subchapter may not collect a bounty from a county or any other source for an animal taken under this subchapter.

(b) The scalp of each animal taken under this subchapter shall be destroyed and each skin that has commercial value shall be sold.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.007. CONSTRUCTION WITH PARKS AND WILDLIFE CODE. Section 71.004(b), Parks and Wildlife Code, does not apply to a hunter or trapper while performing duties under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.008. TAMPERING WITH TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person maliciously or wilfully tampers with all or any part of a trap set under this subchapter or removes a trap from the position in which it is placed by a hunter or trapper acting under this subchapter.

(b) An offense under this section is punishable by a fine of not less than $50 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.009. STEALING TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person steals or fraudulently takes a trap belonging to the state or the United States Department of the Interior.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.010. STEALING ANIMALS FROM TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person steals an animal listed in Section 825.001 from a trap set under this subchapter or takes the animal from the trap without authority.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.

(c) An animal stolen or taken in violation of this section is the property of the state. A complaint alleging a violation of this section must allege that the animal is owned by the state, and the only proof necessary to establish ownership shall consist of proving that the animal was taken from a trap that had been set by a hunter or trapper acting under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. PURCHASE OF POISON TO DESTROY CERTAIN ANIMAL PESTS

Sec. 825.021. COMMISSIONERS COURT MAY PURCHASE POISON. (a) The commissioners court of a county may purchase poisons and related accessories required by citizens of the county to destroy prairie dogs, wildcats, gophers, ground squirrels, wolves, coyotes, rats, English sparrows, and ravens.

(b) The commissioners court may furnish the poison to citizens of the county free or at cost.

(c) The commissioners court shall pay for the poison from the

general fund of the county and shall deposit the proceeds of any sale to the credit of that fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.022. NOTICE CONCERNING POISON. (a) The commissioners court of a county acting under this subchapter shall determine the days on which the poison will be put out and shall give notice at least 20 days before the first day it is put out.

(b) The notice required by this section must be:

(1) published in at least one county newspaper, if one is available, for three successive issues; and

(2) posted in public places.

(c) The notice must state when the poison will be put out, the fact that it may be obtained from the commissioners court, and the terms on which it may be obtained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.024. DUTIES OF LAND HOLDERS, LESSEES, AND TENANTS. (a) Each land holder whose premises are infested with any pests listed in Section 825.021 shall obtain and apply the poison as provided in the plans furnished by the commissioner of agriculture.

(b) Each lessee or tenant occupying any premises under contract shall obtain the poison and destroy any pests listed in Section 825.021 that infest the premises. Any expenses incurred under this subsection by a lessee or tenant shall be charged against the landowner and are collectible as any other valid debt.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. BOUNTIES FOR PREDATORY ANIMALS

Sec. 825.031. BOUNTIES FOR PREDATORY ANIMALS. (a) The commissioners court of a county may pay bounties for killing predatory animals not listed on any state or federal protected species list.

(b) The commissioners court may determine which animals are predatory animals in that county.

(c) The commissioners court may determine the amount of a bounty to be paid under this section for each animal. The bounty shall be paid from the general fund of the county by a warrant drawn on that fund by the county judge on presentation of proof of destruction required by the commissioners court. A bounty paid under this section may not exceed $50 for each animal unless approved by the Texas Parks and Wildlife Commission.

(d) The commissioners court may determine eligibility criteria for receiving a bounty under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 84, Sec. 1,2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 1279, Sec. 1, eff. Aug. 30, 1999.

Sec. 825.032. ANGELINA, HENDERSON, OR TRINITY COUNTY: WOLVES AND OTHER PREDATORY ANIMALS. (a) The Commissioners Court of Angelina, Henderson, or Trinity County may pay bounties for the destruction of wolves and other predatory animals in the county.

(b) The commissioners court may, by resolution entered on its minutes, provide for the destruction of wolves and other predatory animals, the method of destruction and proof necessary to entitle the person destroying the animal to receive the bounty, and the amount of the bounty to be paid for each animal.

(c) A bounty paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge on presentation of proof of destruction required by the commissioners court.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.033. ARANSAS, BEE, REFUGIO, OR SAN PATRICIO COUNTY: RATTLESNAKES, WOLVES, COYOTES, PANTHERS, BOBCATS, AND OTHER PREDATORY ANIMALS. (a) The Commissioners Court of Aransas, Bee, Refugio, or San Patricio County may pay bounties for the destruction of rattlesnakes, wolves, coyotes, panthers, bobcats, and other predatory animals in the county to preserve game and to protect the interests of livestock and poultry raisers.

(b) The commissioners court may set the bounty in an amount not to exceed:

(1) $5 for each wolf, coyote, panther, or bobcat;

(2) 50 cents for each raccoon, skunk, opossum, or other similar animal; and

(3) 10 cents for each rattlesnake.

(c) The commissioners court shall, by resolution entered on its minutes, specify the amount of the bounty to be paid for each animal and prescribe regulations and require proof necessary to protect the county's interest.

(d) The bounties paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.034. PANOLA COUNTY: WOLVES. (a) The Commissioners Court of Panola County may pay bounties on wolves in order to preserve game.

(b) The commissioners court may set the bounty in an amount not to exceed $25 for each wolf killed. The bounty shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one wolf has been killed for each wolf paid for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.035. BORDEN COUNTY: RABBITS. (a) The Commissioners Court of Borden County may pay bounties for lawfully killing wild rabbits in the county to prevent property damage.

(b) The bounty may not exceed 10 cents for each rabbit and shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one rabbit has been killed for each rabbit paid for.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.036. PRAIRIE DOGS. Prairie dogs are a public nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 825.037. EFFECT OF OTHER LAWS. This subchapter does not authorize:

(1) the killing of an animal if the killing is prohibited by federal or state law or rule; or

(2) the payment of a bounty for killing an animal if the killing is prohibited by federal or state law or rule.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. CONTROL OF PREDATORY ANIMALS

Sec. 825.051. MUNICIPAL CONTROL OF COYOTES. A municipality with a population density of more than 2,500 persons per square mile may capture, relocate, or euthanize a coyote located within the municipality or the municipality's extraterritorial jurisdiction. The municipality may request assistance from Texas Wildlife Services to capture, relocate, or euthanize a coyote.

Added by Acts 2019, 86th Leg., R.S., Ch. 1333 (H.B. 4544), Sec. 1, eff. June 14, 2019.

CHAPTER 826. RABIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 826.001. SHORT TITLE. This chapter may be cited as the Rabies Control Act of 1981.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.002. DEFINITIONS. In this chapter:

(1) "Animal" means a warm-blooded animal.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(121), eff. April 2, 2015.

(3) "Cat" means Felis catus.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 3.1639(121), eff. April 2, 2015.

(5) "Department" means the Department of State Health

Services.

(6) "Dog" means Canis familiaris.

(7) "Epizootic" means the occurrence in a given geographic area or population of cases of a disease clearly in excess of the expected frequency.

(7-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(8) "Licensed veterinarian" means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.

(9) "Quarantine" means strict confinement of an animal specified in an order of the department or its designee:

(A) on the private premises of the animal's owner or at a facility approved by the department or its designee; and

(B) under restraint by closed cage or paddock or in any other manner approved by department rule.

(10) "Rabies" means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.

(11) "Stray" means roaming with no physical restraint beyond the premises of an animal's owner or keeper.

(12) "Livestock" means an animal raised for human consumption or an equine animal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 1, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1605, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1639(121), eff. April 2, 2015.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER, DEPARTMENT, AND LOCAL GOVERNMENTS

Sec. 826.011. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT. (a) The department or its designee, with the cooperation of the governing bodies of counties and municipalities, shall administer the rabies control program established by this chapter.

(b) The executive commissioner shall adopt rules necessary to

effectively administer this chapter.

(c) The department or its designee may enter into contracts or agreements with public or private entities to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(d) Subject to any limitations or conditions prescribed by the legislature, the department or its designee may seek, receive, and spend funds received through appropriations, grants, or donations from public or private sources for the rabies control program established by this chapter.

(e) The department or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the public.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1607, eff. April 2, 2015.

Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This chapter and the rules adopted by the executive commissioner under this chapter are the minimum standards for rabies control.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1608, eff. April 2, 2015.

Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT CHAPTER. The governing body of a municipality or the commissioners court of a county may adopt this chapter and the standards adopted by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1609, eff. April 2, 2015.

Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a) The commissioners court of a county may adopt ordinances or rules that establish a local rabies control program in the county and set local standards that are compatible with and equal to or more stringent than the program established by this chapter and the department rules adopted under this chapter.

(b) County ordinances or rules adopted under this section supersede this chapter and the department rules adopted under this chapter within that county so that dual enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1610, eff. April 2, 2015.

Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES. (a) The governing body of a municipality may adopt ordinances or rules that establish a local rabies control program in the municipality and set local standards that are compatible with and equal to or more stringent than:

(1) the ordinances or rules adopted by the county in which the municipality is located; and

(2) the program established by this chapter and the department rules adopted under this chapter.

(b) Municipal ordinances or rules adopted under this section supersede ordinances or rules adopted by the county in which the municipality is located, this chapter, and the department rules adopted under this chapter within that municipality so that multiple enforcement will not occur.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1611, eff. April 2, 2015.

Sec. 826.016. CONTRACTS. The governing body of a municipality and the commissioners court of a county may enter into contracts or agreements with public or private entities to carry out the activities required or authorized under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.017. DESIGNATION OF LOCAL RABIES CONTROL AUTHORITY. (a) The commissioners court of each county and the governing body of each municipality shall designate an officer to act as the local rabies control authority for the purposes of this chapter.

(b) Except as restricted by department rule, the officer designated as the local rabies control authority may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate.

(c) Among other duties, the local rabies control authority shall enforce:

(1) this chapter and the department rules that comprise the minimum standards for rabies control;

(2) the ordinances or rules of the municipality or county that the local rabies control authority serves; and

(3) the rules adopted by the executive commissioner under the area rabies quarantine provisions of Section 826.045.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 2, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1612, eff. April 2, 2015.

Sec. 826.018. LOCAL RABIES CONTROL PROGRAMS. (a) This section applies to a veterinarian who:

(1) is employed by a county or municipality; and

(2) administers or supervises the administration of rabies vaccine as part of a local rabies control program established by a county or municipality under this chapter.

(b) A veterinarian described by Subsection (a) is not required to establish a veterinarian-client-patient relationship before administering rabies vaccine or supervising the administration of rabies vaccine.

(c) To the extent of any conflict between this section and any other law or rule relating to the administration of rabies vaccine,

this section controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 52 (H.B. 1740), Sec. 1, eff. May 21, 2015.

SUBCHAPTER C. RABIES VACCINATIONS

Sec. 826.021. VACCINATION OF DOGS AND CATS REQUIRED. (a) Except as otherwise provided by department rule, the owner of a dog or cat shall have the animal vaccinated against rabies by the time the animal is four months of age and at regular intervals thereafter as prescribed by department rule.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the animal's owner a vaccination certificate in a form that meets the minimum standards approved by the executive commissioner.

(c) A county or municipality may not register or license an animal that has not been vaccinated in accordance with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1613, eff. April 2, 2015.

Sec. 826.0211. CONFIDENTIALITY OF CERTAIN INFORMATION IN RABIES VACCINATION CERTIFICATE; CRIMINAL PENALTY. (a) Information contained in a rabies vaccination certificate or in any record compiled from the information contained in one or more certificates that identifies or tends to identify an owner or an address, telephone number, or other personally identifying information of an owner of a vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the certificate or record may not include the social security number or the driver's license number of the owner of the vaccinated animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that

receives the information, including a county or municipality that registers dogs and cats under Subchapter D, must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than 180 days; or

(3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1235 (H.B. 1426), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 686 (H.B. 1728), Sec. 1, eff. June 15, 2007.

Sec. 826.022. VACCINATION; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to have each dog or cat owned by the person vaccinated against rabies and the animal is required to be vaccinated under:

(1) Section 826.021 and department rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

(c) If on the trial of an offense under this section the court finds that the person has been previously convicted of an offense under this section, the offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 3, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1614, eff. April 2, 2015.

Sec. 826.023. USE AND SALE OF RABIES VACCINE. (a) Rabies vaccine for animals may be administered only by or under the direct supervision of a veterinarian.

(b) A veterinarian may not administer or directly supervise the administration of rabies vaccine in this state unless the person is:

(1) licensed by the State Board of Veterinary Medical Examiners to practice veterinary medicine; or

(2) practicing veterinary medicine on an installation of the armed forces or National Guard.

(c) A person may not sell or distribute rabies vaccine for animals to any person except a licensed veterinarian or to a person working in a veterinary clinic who accepts the vaccine on behalf of the veterinarian.

(d) This section does not prohibit a pharmacy licensed by the Texas State Board of Pharmacy from supplying rabies vaccine for animals to a licensed veterinarian.

(e) This section does not prohibit a veterinarian licensed by the State Board of Veterinary Medical Examiners from selling or dispensing rabies vaccine to an individual with whom the veterinarian has a veterinarian-client-patient relationship as described by Chapter 801, Occupations Code, for the sole purpose of allowing that individual to administer the rabies vaccine to that individual's own livestock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 5, eff. May 5, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 14.810, eff. Sept. 1, 2001.

Sec. 826.024. USE AND SALE OF RABIES VACCINE; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) administers or attempts to administer rabies vaccine in a manner not authorized by Section 826.023;

(2) dispenses or attempts to dispense rabies vaccine in a manner not authorized by Section 826.023; or

(3) sells or distributes rabies vaccine for animals in violation of Section 826.023(c).

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.025. PROVISION OF VACCINE AND SERUM. (a) The department may provide vaccine and hyperimmune serum in accordance with department policies or procedures for the use and benefit of a person exposed, or suspected of having been exposed, to rabies.

(b) In accordance with department rules and eligibility standards, the department is entitled to be reimbursed by or on behalf of the person receiving the vaccine or serum for actual costs incurred in providing the vaccine or serum.

(c) At the written request of the department, the attorney general or the county or district attorney for the county in which the recipient of the vaccine or serum resides may bring suit or start other proceedings in the name of the state to collect the reimbursement owed the department for the vaccine or serum.

(d) A suit or other proceeding may be brought against:

(1) the recipient;

(2) the parent, guardian, or other person legally responsible for the support of the recipient; or

(3) a responsible third party.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1615, eff. April 2, 2015.

SUBCHAPTER D. REGISTRATION AND RESTRAINT OF DOGS AND CATS

Sec. 826.031. REGISTRATION OF DOGS AND CATS BY LOCAL GOVERNMENTS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 requiring the registration of each dog and cat within the jurisdiction of the municipality or county.

(b) A dog or cat may not be subject to dual registration.

(c) The enforcing agency may collect a fee set by ordinance for the registration of each dog or cat and may retain the fees collected. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.0311. CONFIDENTIALITY OF CERTAIN INFORMATION IN DOG AND CAT REGISTRY; CRIMINAL PENALTY. (a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code. The information contained in the registry may not include the social security number or the driver's license number of the owner of the registered animal.

(b) The information may be disclosed only to a governmental entity or a person that, under a contract with a governmental entity, provides animal control services or animal registration services for the governmental entity for purposes related to the protection of public health and safety. A governmental entity or person that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to the protection of public health and safety.

(c) A person commits an offense if the person distributes information that is confidential under this section. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than 180 days; or

(3) both the fine and confinement.

Added by Acts 1999, 76th Leg., ch. 1069, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 686 (H.B. 1728), Sec. 2, eff. June 15, 2007.

Sec. 826.032. REGISTRATION; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to register or present for registration a dog or cat owned by the person; and

(2) the animal is required to be registered under the ordinances or rules adopted under this chapter by a county or

municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 826.033. RESTRAINT, IMPOUNDMENT, AND DISPOSITION OF DOGS AND CATS. (a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 to require that:

(1) each dog or cat be restrained by its owner;

(2) each stray dog or cat be declared a public nuisance;

(3) each unrestrained dog or cat be detained or impounded by the local rabies control authority or that officer's designee;

(4) each stray dog or cat be impounded for a period set by ordinance or rule; and

(5) a humane disposition be made of each unclaimed stray dog or cat on the expiration of the required impoundment period.

(b) A jurisdiction may not be subject to dual restraint ordinances or rules.

(c) The enforcing agency may adopt an ordinance setting a fee for the impoundment and board of a dog or cat during the impoundment period. The animal's owner must pay the fee before the animal may be released.

(d) The enforcing agency shall deposit the fees collected in the treasury of the enforcing agency. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 6, eff. May 5, 1995.

Sec. 826.034. RESTRAINT; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to restrain a dog or cat owned by the person; and

(2) the animal is required to be restrained under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. REPORTS AND QUARANTINE

Sec. 826.041. REPORTS OF RABIES. (a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local rabies control authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

(b) The report must include:

(1) the name and address of the victim and of the animal's owner, if known; and

(2) any other information that may help in locating the victim or animal.

(c) The local rabies control authority shall investigate a report filed under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 7, eff; May 5, 1995.

Sec. 826.042. QUARANTINE OF ANIMALS. (a) The executive commissioner shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine.

(b) The local rabies control authority or a veterinarian shall quarantine or test in accordance with department rules any animal that the local rabies control authority or veterinarian has probable cause to believe is rabid, may have been exposed to rabies, or may have exposed a person to rabies.

(c) An owner shall submit for quarantine an animal that:

(1) is reported to be rabid or to have exposed an individual to rabies; or

(2) the owner knows or suspects is rabid or has exposed an individual to rabies.

(d) The owner shall submit the animal to the local rabies control authority of the county or municipality in which the exposure occurs.

(e) A veterinarian shall quarantine an animal that:

(1) is in the possession of the veterinarian; and

(2) the veterinarian knows or suspects is rabid or has exposed an individual to rabies.

(f) At the time an owner submits for quarantine an animal described by Subsection (b), the veterinarian or local rabies control authority, as applicable, shall:

(1) provide written notification to the animal's owner of the date the animal enters quarantine and the date the animal will be released from quarantine;

(2) obtain and retain with the animal's records a written statement signed by the animal's owner and a supervisor employed by the veterinarian or local rabies control authority acknowledging that the information required by Subdivision (1) has been provided to the animal's owner; and

(3) provide the animal's owner a copy of the signed written statement obtained under Subdivision (2).

(g) A veterinarian or local rabies control authority, as applicable, shall identify each animal quarantined under this section with a placard or other marking on the animal's kennel that indicates the animal is quarantined under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 8, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1616, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 1, eff. September 1, 2017.

Sec. 826.043. RELEASE OR DISPOSITION OF QUARANTINED ANIMAL. (a) If a veterinarian determines that a quarantined animal does not show the clinical signs of rabies, the veterinarian or local rabies control authority shall release the animal to its owner when the quarantine period ends if:

(1) the owner has an unexpired rabies vaccination certificate for the animal; or

(2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(b) If a veterinarian determines that a quarantined animal

shows the clinical signs of rabies, the veterinarian or local rabies control authority shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the veterinarian or local rabies control authority shall remove the head or brain of the animal and submit it to the nearest department laboratory for testing.

(c) The owner of an animal that is quarantined under this chapter shall pay to the veterinarian or local rabies control authority the reasonable costs of the quarantine and disposition of the animal. The veterinarian or local rabies control authority may bring suit to collect those costs. The county in which the veterinarian is located may reimburse the veterinarian in a reasonable amount set by the county for the costs of the quarantine and disposition of an animal whose owner is unable to pay.

(d) Except as provided by Subsection (e), the veterinarian or local rabies control authority may sell the animal and retain the proceeds or keep, grant, or destroy an animal if the owner or custodian does not take possession of the animal before the fourth day following the final day of the quarantine period.

(e) A veterinarian or local rabies control authority may not destroy an animal following the final day of the quarantine period unless the veterinarian or local rabies control authority has notified the animal's owner, if available, of the animal's scheduled destruction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 9, eff. May 5, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 2, eff. September 1, 2017.

Sec. 826.044. QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

(1) is required to be placed in quarantine or presented for testing under Section 826.042 and department rules; or

(2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1617, eff. April 2, 2015.

Sec. 826.045. AREA RABIES QUARANTINE. (a) If rabies is known to exist in an area, the department or its designee may declare an area rabies quarantine to prevent or contain a rabies epizootic.

(b) On the declaration that a quarantine exists, the executive commissioner shall:

(1) define the borders of the quarantine area; and

(2) adopt permanent or emergency rules.

(c) The rules adopted under Subsection (b)(2) may include conditions for the restraint of carnivorous animals and the transportation of carnivorous animals into and out of the quarantine area.

(d) The quarantine remains in effect until the 181st day after the date on which the last case of rabies is diagnosed in a dog, cat, or other animal species that caused the department or its designee to declare a quarantine, unless the department or its designee, by declaration, removes the quarantine before that date.

(e) While the quarantine is in effect, the rules adopted by the executive commissioner supersede all other applicable ordinances or rules applying to the quarantine area and apply until the department or its designee removes the quarantine by declaration or until the rules expire or are revoked by the executive commissioner.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1618, eff. April 2, 2015.

Sec. 826.046. VIOLATION OF AREA RABIES QUARANTINE; CRIMINAL PENALTY. (a) A person commits an offense if the person violates or attempts to violate a department rule adopted under Section 826.045 governing an area rabies quarantine.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1619, eff. April 2, 2015.

Sec. 826.047. LIMITATION ON LIABILITY. A veterinarian performing duties under this chapter is not liable to the owner of an animal for the death of or injury to the animal except in a case of wilful misconduct or gross negligence.

Added by Acts 1995, 74th Leg., ch. 44, Sec. 11, eff. May 5, 1995.

Sec. 826.048. EXEMPTION FROM QUARANTINE REQUIREMENT FOR POLICE SERVICE ANIMALS. (a) In this section, "handler or rider" and "police service animal" have the meanings assigned by Section 38.151, Penal Code.

(b) A police service animal is exempt from the quarantine requirement of this subchapter if the animal bites a person while the animal is under routine veterinary care or while the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes. If after biting the person the animal exhibits any abnormal behavior, the law enforcement agency and the animal's handler or rider shall make the animal available within a reasonable time for testing by the local health authority.

Added by Acts 2001, 77th Leg., ch. 979, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER F. QUARANTINE AND IMPOUNDMENT FACILITIES

Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND IMPOUNDMENT FACILITIES. (a) The executive commissioner shall adopt rules governing the types of facilities that may be used to quarantine animals.

(b) The executive commissioner by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

(c) In accordance with department rules, a local rabies control authority may contract with one or more public or private entities to provide and operate a quarantine facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 12, eff. May 5, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1620, eff. April 2, 2015.

Sec. 826.052. INSPECTIONS. An employee of the department, on the presentation of appropriate credentials to the local rabies control authority or the authority's designee, may conduct a reasonable inspection of a quarantine or impoundment facility at a reasonable hour to determine if the facility complies with:

(1) the minimum standards adopted by the executive commissioner for those facilities; and

(2) the requirements for animal control officer training adopted under Chapter 829.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 13, eff. May 5, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 3, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1621, eff. April 2, 2015.

Sec. 826.053. HEARING. (a) A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required of the department by this chapter may request a hearing.

(b) A hearing held under this section must be conducted in accordance with Chapter 2001, Government Code, and the department's formal hearing rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1622, eff. April 2, 2015.

Sec. 826.054. SUITS TO ENJOIN OPERATION OF QUARANTINE OR IMPOUNDMENT FACILITY. (a) At the request of the commissioner, the attorney general may bring suit in the name of the state to enjoin the operation of a quarantine or impoundment facility that fails to meet the minimum standards established by this chapter and department rules.

(b) The suit shall be brought in a district court in the county in which the facility is located.

(c) When a court issues an order to a facility to cease operation, the local rabies control authority shall remove all animals housed in the facility to a shelter approved by the department. The county or municipality within whose jurisdiction the facility is located shall pay the cost of relocating the animals to an approved shelter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 44, Sec. 14, eff. May 5, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1623, eff. April 2, 2015.

Sec. 826.055. QUARANTINE OR IMPOUNDMENT FACILITY; CRIMINAL PENALTY. (a) A person commits an offense if the person operates a facility for quarantined or impounded animals that fails to meet standards for approval established by:

(1) department rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality.

(b) An offense under this section is a Class C misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1624, eff. April 2, 2015.

CHAPTER 828. DOG AND CAT STERILIZATION

Sec. 828.001. DEFINITIONS. In this chapter:

(1) "New owner" means a person who is legally competent to enter into a binding contract and who is adopting a dog or cat from a

releasing agency.

(2) "Releasing agency" means a public or private animal pound, shelter, or humane organization. The term does not include an individual who occasionally renders humane assistance or shelter in the individual's home to a dog or cat.

(3) "Sterilization" means the surgical removal of the reproductive organs of a dog or cat or the use of nonsurgical methods and technologies approved by the United States Food and Drug Administration or the United States Department of Agriculture to permanently render the animal unable to reproduce.

(4) "Veterinarian" means a person licensed to practice veterinary medicine by the State Board of Veterinary Medical Examiners.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 1, eff. May 27, 2005.

Sec. 828.002. REQUIREMENTS FOR ADOPTION. Except as provided by Section 828.013, a releasing agency may not release a dog or cat for adoption unless the animal has been sterilized or the release is made to a new owner who signs an agreement to have the animal sterilized.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.003. STERILIZATION AGREEMENT. (a) The sterilization agreement used by a releasing agency must contain:

(1) the date of the agreement;

(2) the names, addresses, and signatures of the releasing agency and the new owner;

(3) a description of the animal to be adopted;

(4) the sterilization completion date; and

(5) a statement, printed in conspicuous, bold print, that sterilization of the animal is required under Chapter 828, Health and Safety Code, and that a violation of this chapter is a criminal offense punishable as a Class C misdemeanor.

(b) The sterilization completion date contained in the sterilization agreement must be:

(1) the 30th day after the date of adoption in the case of an adult animal;

(2) the 30th day after a specified date estimated to be the date an adopted infant female animal becomes six months old or an adopted infant male animal becomes eight months old; or

(3) if the releasing agency has a written policy recommending sterilization of certain infant animals at an earlier date, the 30th day after the date contained in the written policy.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.0035. STATE BOARD OF VETERINARY MEDICAL EXAMINERS. The State Board of Veterinary Medical Examiners shall:

(1) develop information sheets regarding surgical or nonsurgical sterilization to be distributed by a releasing agency to a new owner; and

(2) adopt rules requiring an animal that has been sterilized under this chapter to receive an identification marker in a manner authorized by the board.

Added by Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 2, eff. May 27, 2005.

Sec. 828.004. STERILIZATION REQUIRED. (a) Except as provided by this section, a new owner who signs an agreement under Section 828.002 shall have the adopted animal sterilized on or before the sterilization completion date stated in the agreement.

(b) If the sterilization completion date falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the first day that is not a Saturday, Sunday, or legal holiday.

(c) A releasing agency may extend the deadline for 30 days on presentation of a written report from a licensed veterinarian stating that the life or health of the adopted animal may be jeopardized by sterilization. There is no limit on the number of extensions that may be granted under this subsection.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 3, eff. May 27,

2005.

Sec. 828.0045. NONSURGICAL STERILIZATION. A licensed veterinarian may use nonsurgical methods and technologies as labeled and approved by the United States Food and Drug Administration or the United States Department of Agriculture for use by veterinarians to humanely and permanently render a dog or cat unable to reproduce.

Added by Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 4, eff. May 27, 2005.

Sec. 828.005. CONFIRMATION OF STERILIZATION. (a) Except as provided by Section 828.006 or 828.007, each new owner who signs a sterilization agreement under Section 828.002 shall deliver to the releasing agency from which the animal was adopted a letter signed by the veterinarian who performed the sterilization.

(b) The letter must be delivered in person or by mail not later than the seventh day after the date on which the animal was sterilized.

(c) The letter must state that the animal has been sterilized, briefly describe the animal, and provide the date of sterilization.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 5, eff. May 27, 2005.

Sec. 828.006. LETTER CONCERNING ANIMAL'S DEATH. (a) If an adopted animal dies on or before the sterilization completion date agreed to under Section 828.002, the new owner shall deliver to the releasing agency a signed letter stating that the animal is dead.

(b) The letter must be delivered not later than the seventh day after the date of the animal's death and must describe the cause of death, if known, and provide the date of death.

(c) The letter required by this section is in lieu of the letter required by Section 828.005.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.007. LETTER CONCERNING LOST OR STOLEN ANIMAL. (a) If an adopted animal is lost or stolen before the sterilization completion date agreed to under Section 828.002, the new owner shall deliver to the releasing agency a signed letter stating that the animal is lost or stolen.

(b) The letter must be delivered not later than the seventh day after the date of the animal's disappearance and must describe the circumstances surrounding the disappearance and provide the approximate date of the disappearance.

(c) The letter required by this section is in lieu of the letter required by Section 828.005.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.008. NOTICE OF FAILURE TO RECEIVE LETTER. A releasing agency that does not receive a letter under Section 828.005, 828.006, or 828.007 before the expiration of the seventh day after the sterilization completion date agreed to under Section 828.002 shall cause a complaint to be filed against the new owner. It is a presumption under this law that the failure of the new owner to deliver to the releasing agency a signed letter as required under Section 828.005, 828.006, or 828.007 is the result of the new owner's refusal to have the adopted animal sterilized. The new owner may rebut this presumption at the time of the hearing with the proof required under the above-mentioned sections.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.009. RECLAMATION. (a) A releasing agency that does not receive a letter under Section 828.005, 828.006, or 828.007 after the expiration of the seventh day after the sterilization completion date agreed to under Section 828.002 may promptly reclaim the animal from the new owner.

(b) A person may not prevent, obstruct, or interfere with a reclamation under this section.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.010. CRIMINAL PENALTY. (a) A new owner that violates this chapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.011. ADOPTION STANDARDS. (a) Each releasing agency may set its own standards for potential adopters if those standards are applied in a fair and equal manner.

(b) If the releasing agency is a public facility, the standards must be reasonably related to the prevention of cruelty to animals and the responsible management of dogs and cats in the interest of preserving public health and welfare.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.

Sec. 828.012. SURGERY AND OTHER VETERINARY SERVICES. (a) Surgery or nonsurgical sterilization performed in accordance with this chapter must be performed by a veterinarian or a full-time student of an accredited college of veterinary medicine as provided by Chapter 801, Occupations Code.

(b) A veterinarian employed by a releasing agency may not perform nonemergency veterinary services other than sterilization on an animal that the releasing agency knows or should know has an owner. However, this subsection does not prevent a veterinarian employed by a releasing agency from performing veterinary services on an animal whose owner is indigent.

(c) A person associated with a releasing agency may not interfere with the independent professional judgment of a veterinarian employed by or under contract with the releasing agency.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.811, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 230 (S.B. 248), Sec. 6, eff. May 27, 2005.

Sec. 828.013. EXEMPTIONS. This chapter does not apply to:

(1) a dog or cat that is claimed from a releasing agency by a person who already owns the animal;

(2) a releasing agency located in a municipality that has in effect an ordinance providing standards for dog and cat sterilization that exceed the requirements provided by this chapter;

(3) an institution of higher education that purchases or otherwise procures a dog or cat for the purpose of biomedical research, testing, or teaching; or

(4) a releasing agency located in:

(A) a county with a population of 20,000 or less; or

(B) a municipality with a population of 10,000 or less.

Added by Acts 1991, 72nd Leg., ch. 373, Sec. 1, eff. Jan. 1, 1992.
Amended by Acts 1993, 73rd Leg., ch. 794, Sec. 1, eff. June 18, 1993.

Sec. 828.014. ANIMAL FRIENDLY ACCOUNT; DEDICATION. (a) The animal friendly account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under former Section 502.291, Transportation Code, and under Section 504.605, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The Department of State Health Services administers the account.

(b-1) The Department of State Health Services may spend money credited to the account or money deposited to the associated trust fund account created under Section 504.6012, Transportation Code, only to:

(1) make grants to eligible organizations that sterilize animals owned by the general public at minimal or no cost; and

(2) defray the cost of administering the account.

(c) The Department of State Health Services may accept gifts, donations, and grants from any source for the benefit of the account. The executive commissioner of the Health and Human Services Commission by rule shall establish guidelines for spending money

described by Subsection (b-1).

(d) In this section "eligible organization" means:

(1) a releasing agency;

(2) an organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code, that has as its primary purpose:

(A) animal welfare; or

(B) sterilizing animals owned by the general public at minimal or no cost; or

(3) a local nonprofit veterinary medical association that has an established program for sterilizing animals owned by the general public at minimal or no cost.

Added by Acts 1997, 75th Leg., ch. 657, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1292, Sec. 1, eff. June 16, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1625, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1626, eff. April 2, 2015.

CHAPTER 829. ANIMAL CONTROL OFFICER TRAINING

Sec. 829.001. DEFINITIONS. In this chapter:

(1) "Animal control officer" means a person who:

(A) is employed, appointed, or otherwise engaged primarily to enforce laws relating to animal control; and

(B) is not a peace officer.

(2) "Department" means the Department of State Health Services.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.0015. APPLICABILITY OF CHAPTER. The commissioners court of a county that has a population of 75,000 or less may adopt an order exempting the county from the application of this chapter. This chapter does not apply within the boundaries of a county for which an order is adopted under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.002. TRAINING REQUIRED. A person may not perform the duties of an animal control officer unless:

(1) the person:

(A) completes a basic animal control course under this chapter not later than the first anniversary of the date the person assumes animal control duties; or

(B) completed a personnel training course on or before June 30, 2008, under Section 823.004 as it existed on that date; and

(2) the person completes 30 hours of continuing education under this chapter during each three-year period following:

(A) the date the person completes the basic animal control course; or

(B) June 30, 2008, if the person completed a personnel training course under Subdivision (1)(B).

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.003. TRAINING COURSES. (a) The department shall prescribe the standards and curriculum for basic and continuing education animal control courses. The curriculum for both the basic and continuing education courses must include the following topics:

(1) state laws governing animal control and protection and animal cruelty;

(2) animal health and disease recognition, control, and prevention;

(3) the humane care and treatment of animals;

(4) standards for care and control of animals in an animal shelter;

(5) standards and procedures for the transportation of animals;

(6) principles and procedures for capturing and handling stray domestic animals and wildlife, including principles and procedures to be followed with respect to an instrument used specifically for deterring the bite of an animal;

(7) first aid for injured animals;

(8) the documentation of animal cruelty evidence and courtroom procedures;

(9) animal shelter operations and administration;

(10) spaying and neutering, microchipping, and adoption;

(11) communications and public relations;

(12) state and federal laws for possession of controlled substances and other medications; and

(13) any other topics pertinent to animal control and animal shelter personnel.

(b) In prescribing the standards and curriculum of courses under this chapter, the department shall:

(1) determine what is considered satisfactory completion of a course;

(2) determine what is considered a passing grade on any postcourse tests and practical applications; and

(3) require that a person attend all sessions of a course.

(c) A basic animal control course must be at least 12 hours.

(d) In developing and approving the criteria and curriculum for animal control courses, the department shall consult with the Texas Animal Control Association and other animal control and animal protection organizations as the department considers appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 299 (H.B. 405), Sec. 2, eff. June 19, 2009.

Sec. 829.004. AVAILABILITY OF COURSES. (a) The department or the department's designee shall offer at least two basic animal control courses every calendar year in each of the department's zoonosis control regions.

(b) The department or the department's designee shall offer at least 12 hours of continuing education animal control courses each calendar year in each of the department's zoonosis control regions.

(c) The department shall ensure the additional availability of animal control courses through sponsors approved by the department, which may include the Texas Animal Control Association.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.005. FEE. The department and any authorized animal control course sponsor, in accordance with department rules, may collect reasonable fees to cover the cost of arranging and conducting an animal control course.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1627, eff. April 2, 2015.

Sec. 829.006. ISSUANCE OF CERTIFICATE. (a) The department or the department's designee shall:

(1) maintain the training records for each person satisfactorily completing any course offered under this chapter for the purpose of documenting and ensuring that the person is in compliance with the requirements of this chapter; and

(2) issue a certificate to each person satisfactorily completing a course offered under this chapter that contains:

(A) the person's name;

(B) the name of the course; and

(C) the date the course was completed.

(b) The department or the department's designee may charge a reasonable fee to cover the cost of issuing a certificate required by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.007. FACILITY CERTIFICATE. The department shall issue a certificate to an animal shelter inspected under Section 823.003 or a quarantine or impoundment facility inspected under Section 826.052 that the department or the veterinarian conducting the inspection, as applicable, determines complies with this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.008. PAYMENT OF FEE. A political subdivision of this state may require that an individual pay a fee for a course or certificate under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

Sec. 829.009. CIVIL REMEDY. A person may sue for injunctive relief to prevent or restrain a substantial violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 1, eff. July 1, 2008.

TITLE 11. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS
CHAPTER 841. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 841.001. LEGISLATIVE FINDINGS. The legislature finds that a small but extremely dangerous group of sexually violent predators exists and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. Thus, the legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.002. DEFINITIONS. In this chapter:

(1) "Attorney representing the state" means a district attorney, criminal district attorney, or county attorney with felony criminal jurisdiction who represents the state in a proceeding under this chapter.

(2) "Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

(3) "Case manager" means a person employed by or under contract with the office to perform duties related to the treatment and supervision of a person committed under this chapter.

(3-a) "Civil commitment proceeding" means a trial or hearing conducted under Subchapter D, F, or G.

(4) "Office" means the Texas Civil Commitment Office.

(5) "Predatory act" means an act directed toward individuals, including family members, for the primary purpose of victimization.

(6) "Repeat sexually violent offender" has the meaning assigned by Section 841.003.

(7) "Secure correctional facility" means a county jail or a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice.

(7-a) "Sexually motivated conduct" means any conduct involving the intent to arouse or gratify the sexual desire of any person immediately before, during, or immediately after the commission of an offense.

(8) "Sexually violent offense" means:

(A) an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code;

(B) an offense under Section 20.04(a)(4), Penal Code, if the person committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under Section 30.02, Penal Code, if the offense is punishable under Subsection (d) of that section and the person entered the habitation with the intent to commit an offense listed in Paragraph (A) or (B) or committed or attempted to commit an

offense listed in Paragraph (A) or (B);

(D) an offense under Section 19.02 or 19.03, Penal Code, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during a civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), or (D);

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E); or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in Paragraph (A), (B), (C), (D), or (E).

(9) "Sexually violent predator" has the meaning assigned by Section 841.003.

(10) "Tracking service" means an electronic monitoring service, global positioning satellite service, or other appropriate technological service that is designed to track a person's location.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 16, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.45, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 1, eff. June 17, 2015.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 21, eff. September 1, 2023.

Sec. 841.003. SEXUALLY VIOLENT PREDATOR. (a) A person is a sexually violent predator for the purposes of this chapter if the person:

(1) is a repeat sexually violent offender; and

(2) suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

(b) A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(1) the person:

(A) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(B) enters a plea of guilty or nolo contendere for a sexually violent offense in return for a grant of deferred adjudication; or

(C) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Juvenile Justice Department under Section 54.04(d)(3) or (m), Family Code; and

(2) after the date on which under Subdivision (1) the person is convicted, receives a grant of deferred adjudication, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person is convicted, but only if the sentence for the offense is imposed.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1323 (S.B. 511), Sec. 9, eff. December 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 2, eff. June 17, 2015.

Sec. 841.005. OFFICE OF STATE COUNSEL FOR OFFENDERS. (a) Except as provided by Subsection (b), the Office of State Counsel for

Offenders shall represent an indigent person subject to a civil commitment proceeding under this chapter.

(b) If for any reason the Office of State Counsel for Offenders is unable to represent an indigent person described by Subsection (a) at a civil commitment proceeding under this chapter, the court shall appoint other counsel to represent the indigent person.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.

Sec. 841.006. APPLICATION OF CHAPTER. This chapter does not:

(1) prohibit a person committed under this chapter from filing at any time a petition for release under this chapter; or

(2) create for the committed person a cause of action against another person for failure to give notice within a period required by Subchapter B, C, or D.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.

Sec. 841.007. DUTIES OF TEXAS CIVIL COMMITMENT OFFICE. The Texas Civil Commitment Office is responsible for:

(1) providing appropriate and necessary treatment and supervision for committed persons through the case management system; and

(2) developing and implementing a sex offender treatment program for persons committed under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 17, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 3, eff. June 17, 2015.

SUBCHAPTER B. NOTICE OF POTENTIAL PREDATOR; INITIAL DETERMINATIONS

Sec. 841.021. NOTICE OF POTENTIAL PREDATOR. (a) Subject to Subsection (a-1) and except as provided by Subsection (d), before the person's anticipated release date, the Texas Department of Criminal Justice shall give to the multidisciplinary team established under Section 841.022 written notice of the anticipated release of a person who:

(1) is serving a sentence for:

(A) a sexually violent offense described by Section 841.002(8)(A), (B), or (C); or

(B) what is, or as described by this chapter what the department reasonably believes may be determined to be, a sexually violent offense described by Section 841.002(8)(D); and

(2) may be a repeat sexually violent offender.

(a-1) Regardless of whether any exigent circumstances are present, the Texas Department of Criminal Justice may give notice under this section with respect to a person who is scheduled to be released on parole or to mandatory supervision only if the person's anticipated release date is not later than 24 months after the date on which the notice will be given. The department may not give notice with respect to a person who is currently released on parole or to mandatory supervision, but the multidisciplinary team may perform the functions described by Section 841.022(c) within the applicable period required by that subsection if the written notice required by this section was received by the team before the date of the person's release.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 845 , Sec. 39(2), eff. June 17, 2015.

(c) The Texas Department of Criminal Justice shall give the notice described by Subsection (a) not later than the first day of the 24th month before the person's anticipated release date, but under exigent circumstances may give the notice at any time before that date, except as provided by Subsection (a-1). The notice must contain the following information:

(1) the person's name, identifying factors, anticipated residence after release, and criminal history;

(2) documentation of the person's institutional adjustment and actual treatment; and

(3) an assessment of the likelihood that the person will commit a sexually violent offense after release.

(d) The Texas Department of Criminal Justice may not provide notice under Subsection (a) of the anticipated release of a person for whom the department has previously provided notice under this section and who has been previously recommended for an assessment under Section 841.022 unless, after the recommendation for assessment was made:

(1) the person is convicted of a new sexually violent offense; or

(2) the person's parole or mandatory supervision is revoked based on:

(A) the commission of a new sexually violent offense;

(B) failure to adhere to the requirements of sex offender treatment and supervision; or

(C) failure to register as a sex offender.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 4, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 39(2), eff. June 17, 2015.

Sec. 841.022. MULTIDISCIPLINARY TEAM. (a) The executive director of the Texas Department of Criminal Justice shall establish a multidisciplinary team to review available records of a person referred to the team under Section 841.021. The team must include:

(1) a mental health professional from the Department of State Health Services;

(2) two persons from the Texas Department of Criminal Justice as follows:

(A) one person from the victim services division; and

(B) one person from the sex offender rehabilitation program in the rehabilitation programs division;

(3) a licensed peace officer who is employed by the

Department of Public Safety and who has at least five years' experience working for that department or the officer's designee;

(4) two persons from the office; and

(5) a licensed sex offender treatment provider from the Council on Sex Offender Treatment.

(a-1) The Texas Department of Criminal Justice, in consultation with the office, shall provide training to the members of the multidisciplinary team regarding the civil commitment program under this chapter, including training regarding:

(1) eligibility criteria for commitment;

(2) the process for evaluating persons for commitment; and

(3) the sex offender treatment program for persons committed under this chapter.

(b) The multidisciplinary team may request the assistance of other persons in making an assessment under this section.

(c) Not later than the 60th day after the date the multidisciplinary team receives notice under Section 841.021(a), the team shall:

(1) assess whether the person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release;

(2) give notice of that assessment to the Texas Department of Criminal Justice; and

(3) recommend the assessment of the person for a behavioral abnormality, as appropriate.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 18, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1628, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 5, eff. June 17, 2015.

Sec. 841.023. ASSESSMENT FOR BEHAVIORAL ABNORMALITY. (a) Not later than the 60th day after the date of a recommendation under

Section 841.022(c), the Texas Department of Criminal Justice shall assess whether the person suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence. To aid in the assessment, the department shall use an expert to examine the person. The department may contract for the expert services required by this subsection. The expert shall make a clinical assessment based on testing for psychopathy, a clinical interview, and other appropriate assessments and techniques to aid the department in its assessment.

(b) If as a result of the assessment the Texas Department of Criminal Justice believes that the person suffers from a behavioral abnormality, not later than the 60th day after the date of a recommendation under Section 841.022(c) the department shall give notice of that assessment and provide corresponding documentation to the attorney representing the state for the county in which the person was most recently convicted of a sexually violent offense.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 19, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 7, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 6, eff. June 17, 2015.

SUBCHAPTER C. PETITION ALLEGING PREDATOR STATUS

Sec. 841.041. PETITION ALLEGING PREDATOR STATUS. (a) If a person is referred to the attorney representing the state under Section 841.023, the attorney may file a petition alleging that the person is a sexually violent predator and stating facts sufficient to support the allegation.

(b) A petition described by Subsection (a) must be:

(1) filed in a district court in the county of the person's most recent conviction for a sexually violent offense;

(2) filed not later than the 90th day after the date the person is referred to the attorney representing the state; and

(3) served on the person as soon as practicable after the date the petition is filed.

(c) To the extent feasible, in filing the petition in a district court described by Subsection (b)(1), the attorney representing the state shall give preference to filing the petition in the applicable court of conviction.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 20, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 7, eff. June 17, 2015.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 2, eff. September 1, 2021.

Sec. 841.042. ASSISTANCE FROM SPECIAL PROSECUTION UNIT. On request of the attorney representing the state, the special prosecution unit shall provide legal, financial, and technical assistance to the attorney for a proceeding conducted under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 8, eff. June 17, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 22, eff. September 1, 2023.

SUBCHAPTER D. TRIAL

Sec. 841.061. TRIAL. (a) The judge shall commence a trial to determine whether the person is a sexually violent predator:

(1) except as provided by Section 841.063, not later than the 270th day after the date a petition is served on the person under Section 841.041; and

(2) not later than the person's sentence discharge date unless the judge determines that a delay is necessary in the due administration of justice.

(b) The person or the state is entitled to a jury trial on demand. A demand for a jury trial must be filed in writing not later than the 10th day before the date the trial is scheduled to begin.

(c) The person and the state are each entitled to an immediate

clinical interview of the person by an expert. All components of the clinical interview must be completed not later than the 90th day before the date the trial begins.

(d) Additional rights of the person at the trial include the following:

(1) the right to appear at the trial;

(2) the right to waive the right to appear at the trial and appear through the person's attorney;

(3) except as provided by Subsection (f), the right to present evidence on the person's behalf;

(4) the right to cross-examine a witness who testifies against the person; and

(5) the right to view and copy all petitions and reports in the court file.

(e) The attorney representing the state may rely on the petition filed under Section 841.041 and supplement the petition with documentary evidence or live testimony.

(f) A person who is on trial to determine the person's status as a sexually violent predator is required to submit to all expert clinical interviews that are required or permitted of the state to prepare for the person's trial. A person who fails to submit to a clinical interview on the state's behalf as required by this subsection is subject to the following consequences:

(1) the person's failure to participate may be used as evidence against the person at trial;

(2) the person may be prohibited from offering into evidence the results of a clinical interview performed on the person's behalf; and

(3) the person may be subject to contempt proceedings if the person violates a court order by failing to submit to a clinical interview on the state's behalf.

(g) A judge assigned to preside over a trial under this subchapter is not subject to an objection under Section 74.053, Government Code, other than an objection made under Section 74.053(d), Government Code.

(h) Notwithstanding any other provision in this subchapter, the person may appear at the trial through the use of remote technology, including teleconference and videoconference technology.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1,

1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 21, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 7, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 9, eff. June 17, 2015.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 3, eff. September 1, 2021.

Sec. 841.062. DETERMINATION OF PREDATOR STATUS. (a) The judge or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. Either the state or the person is entitled to appeal the determination and to a retrial if an appellate court remands the case to the trial court for a new trial.
(b) A jury determination in a civil commitment proceeding must be by unanimous verdict. If one or two of the 12 jurors have been discharged and there are no alternate jurors to be seated, the remaining jurors may render a verdict. If fewer than 12 jurors render a verdict, the verdict must be signed by each juror rendering the verdict.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 4, eff. September 1, 2021.

Sec. 841.063. CONTINUANCE. (a) Except as provided by Subsection (b), the judge may continue a trial or hearing conducted under this chapter if the person is not substantially prejudiced by the continuance and:
(1) on the request of either party and a showing of good cause; or
(2) on the judge's own motion in the due administration of justice.
(b) The judge may not continue a trial conducted under this chapter to a date occurring later than the person's sentence

discharge date unless the judge determines that a continuance is necessary in the due administration of justice.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 22, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 10, eff. June 17, 2015.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 5, eff. September 1, 2021.

Sec. 841.064. RETRIAL. (a) A trial following a mistrial must commence not later than the 90th day after the date a mistrial was declared in the previous trial, unless the later trial is continued as provided by Section 841.063.
(b) If an appellate court remands the case to the trial court for a new trial, the judge shall commence the retrial not later than the 90th day after the date the appellate court remanded the case. The retrial may be continued as provided by Section 841.063.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 6, eff. September 1, 2021.

Sec. 841.065. AGREED ORDER. An agreed order of civil commitment must require the person to submit to the treatment and supervision administered by the office.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 11, eff. June 17, 2015.

SUBCHAPTER E. CIVIL COMMITMENT

Sec. 841.081. CIVIL COMMITMENT OF PREDATOR. (a) If at a trial conducted under Subchapter D the judge or jury determines that the person is a sexually violent predator, the judge shall commit the

person for treatment and supervision to be coordinated by the office. The commitment order is effective immediately on entry of the order, except that the treatment and supervision begins on the person's release from a secure correctional facility and continues until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(b) At any time after entry of a commitment order under Subsection (a), the office may provide to the person instruction regarding the requirements associated with the order, regardless of whether the person is incarcerated at the time of the instruction.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 23, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 12, eff. June 17, 2015.

Sec. 841.082. COMMITMENT REQUIREMENTS. (a) Before entering an order directing a person's civil commitment, the judge shall impose on the person requirements necessary to ensure the person's compliance with treatment and supervision and to protect the community. The requirements shall include:

(1) requiring the person to reside where instructed by the office;

(2) prohibiting the person's contact with a victim of the person;

(3) requiring the person's participation in and compliance with the sex offender treatment program provided by the office and compliance with all written requirements imposed by the office;

(4) requiring the person to submit to appropriate supervision and:

(A) submit to tracking under a particular type of tracking service, if the person:

(i) while residing at a civil commitment center, leaves the center for any reason;

(ii) is in one of the two most restrictive tiers of treatment, as determined by the office;

(iii) is on disciplinary status, as determined by the office; or

(iv) resides in the community; and

(B) if required to submit to tracking under Paragraph (A), refrain from tampering with, altering, modifying, obstructing, removing, or manipulating the tracking equipment; and

(5) prohibiting the person from leaving the state without prior authorization from the office.

(b) A tracking service to which a person is required to submit under Subsection (a)(4) must:

(1) track the person's location in real time;

(2) be able to provide a real-time report of the person's location to the office on request; and

(3) periodically provide a cumulative report of the person's location to the office.

(c) The judge shall provide a copy of the requirements imposed under Subsection (a) to the person and to the office. The office shall provide a copy of those requirements to the case manager and to the service providers.

(d) The committing court retains jurisdiction of the case with respect to a proceeding conducted under this subchapter, other than a criminal proceeding involving an offense under Section 841.085, or to a civil commitment proceeding conducted under Subchapters F and G.

(e) The requirements imposed under Subsection (a) may be modified by the committing court at any time after notice to each affected party to the proceedings and a hearing.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 24, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 7(1), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.12, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 8, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 13, eff.

June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 16, eff. September 1, 2017.

Sec. 841.0821. SEX OFFENDER TREATMENT BEFORE RELEASE FROM SECURE CORRECTIONAL FACILITY. (a) The Texas Department of Criminal Justice shall prioritize enrolling in a sex offender treatment program established by the department any committed person who has not yet been released by the department.

(b) The Texas Department of Criminal Justice and the office shall adopt a memorandum of understanding that establishes their respective responsibilities to institute a continuity of care for committed persons enrolled in a sex offender treatment program established by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 14, eff. June 17, 2015.

Sec. 841.0822. REQUIRED PROCEDURES BEFORE RELEASE FROM SECURE CORRECTIONAL FACILITY. Before a committed person is released from a secure correctional facility, the Texas Department of Criminal Justice shall ensure that:

(1) the Department of Public Safety issues a personal identification card to the person; and

(2) the person completes an application for the following federal benefits, as appropriate, for which the person may be eligible:

(A) social security benefits, including disability benefits, administered by the United States Social Security Administration; and

(B) veterans benefits administered by the United States Department of Veterans Affairs.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 14, eff. June 17, 2015.

Sec. 841.083. TREATMENT; SUPERVISION. (a) The office shall determine the conditions of supervision and treatment of a committed

person.

(b) The office shall provide supervision to the person. The provision of supervision must include a tracking service and, if determined necessary by the office, supervised housing.

(c) The office shall enter into appropriate memoranda of understanding with the Texas Department of Criminal Justice for the provision of a tracking service and with the Department of Public Safety and local law enforcement authorities for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.

(d) The office shall enter into appropriate contracts for the provision of any necessary supervised housing and other related services and may enter into appropriate contracts for medical and mental health services and sex offender treatment.

(e) The case manager shall:

(1) coordinate the treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision; and

(2) provide a report to the office, semiannually or more frequently as necessary, which must include any known change in the person's status that affects proper treatment and supervision.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.94, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 15, eff. June 17, 2015.

Sec. 841.0831. TIERED PROGRAM. (a) The office shall develop a tiered program for the supervision and treatment of a committed person.

(b) The tiered program must provide for the seamless transition

of a committed person from a total confinement facility to less restrictive housing and supervision and eventually to release from civil commitment, based on the person's behavior and progress in treatment.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.

Sec. 841.0832. HOUSING FACILITIES. (a) The office shall operate, or contract with a vendor to operate, one or more facilities provided for the purpose of housing committed persons.

(b) The office shall designate all or part of a facility under Subsection (a) to serve as an intake and orientation facility for committed persons on release from a secure correctional facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 17, eff. September 1, 2017.

Sec. 841.0833. SECURITY AND MONITORING; CONFIDENTIALITY. (a) The office shall develop procedures for the security and monitoring of committed persons in each programming tier.

(b) Information regarding the security and monitoring procedures developed under Subsection (a) is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 18, eff. September 1, 2017.

Sec. 841.0834. MOVEMENT BETWEEN PROGRAMMING TIERS. (a) The office shall transfer between programming tiers a committed person required to reside in a total confinement facility if the transfer is in the best interests of the person and conditions can be imposed

that adequately protect the community.

(b) Without the office's approval, a committed person may file a petition with the court for transfer to the next less restrictive tier. The court shall deny the transfer if the petition is filed before the 180th day after the date an order was entered under Subchapter D, F, or G or a previous order was entered under this section. The court shall grant the transfer if the court determines by clear and convincing evidence that the transfer is in the best interests of the person and that the office can impose conditions that adequately protect the community.

(c) A committed person who files a petition under Subsection (b) shall serve a copy of the petition on the office and the attorney representing the state.

(d) The office shall transfer a committed person who is not required to reside in a total confinement facility back to a more restrictive setting in a total confinement facility if the office considers the transfer necessary to further treatment and to protect the community. The decision to transfer the person must be based on the person's behavior or progress in treatment.

(e) Not later than the 90th day after the date a committed person is returned to a more restrictive setting in a total confinement facility under Subsection (d), the committing court shall hold a hearing via videoconference to review the office's determination. The court shall order the office to transfer the person to a less restrictive tier only if the court determines by clear and convincing evidence that the office's determination was not made in accordance with Subsection (d). The committed person may waive the right to a hearing under this subsection.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 19, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 12, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 23, eff. September 1, 2023.

Sec. 841.0835. COMMITTED PERSONS WITH SPECIAL NEEDS. (a) The Health and Human Services Commission, after coordination with the office, shall provide psychiatric services, disability services, and housing for a committed person with an intellectual or developmental disability, a mental illness, or a physical disability that prevents the person from effectively participating in the sex offender treatment program administered by the office.

(b) For a committed person who the office has determined is unable to effectively participate in the sex offender treatment program because the person's mental illness prevents the person from understanding and internalizing the concepts presented by the program's treatment material, the Health and Human Services Commission shall provide inpatient mental health services until the person is able to participate effectively in the sex offender treatment program.

(c) A person who is adjudicated as a sexually violent predator under this chapter and who has a mental illness that prevents the person from effectively participating in a sex offender treatment program presents a substantial risk of serious harm to the person or others for purposes of Chapter 574.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 301 (S.B. 613), Sec. 1, eff. September 1, 2017.

Sec. 841.0836. RELEASE FROM HOUSING. (a) A committed person released from housing operated by or under contract with the office shall be released to:

(1) the county in which the person was most recently convicted of a sexually violent offense; or

(2) if the county described by Subdivision (1) does not provide adequate opportunities for the person's treatment and for the person's housing or other supervision, as determined by the office, a county designated by the office.

(b) The office may require a committed person released to a

county under Subsection (a)(2) to change the person's residence to the county described by Subsection (a)(1) if the office determines that adequate opportunities for the person's treatment and for the person's housing or other supervision become available in that county.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 16, eff. June 17, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 20, eff. September 1, 2017.

Sec. 841.0837. EMERGENCY DETENTION ORDER. The office may issue an emergency detention order for a committed person's immediate apprehension and transportation to an office-designated location for the purpose of:

(1) returning the person to a more restrictive setting following:

(A) a transfer to less restrictive housing and supervision under Section 841.0834; or

(B) a release under Section 841.0836; or

(2) for a recently committed person who is not in the custody of the Texas Department of Criminal Justice at the time the commitment order is entered, bringing the person under the supervision of the office.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 21, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 8, eff. September 1, 2021.

Sec. 841.0838. USE OF RESTRAINTS. (a) An employee of the office, or a person who contracts with the office or an employee of that person, may use mechanical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center only if:

(1) the employee or person completes a training program approved by the office on the use of mechanical restraints that:

(A) includes instruction on the office's approved mechanical restraint techniques and devices and the office's verbal de-escalation policies, procedures, and practices; and

(B) requires the employee or person to demonstrate competency in the use of the mechanical restraint techniques and devices; and

(2) the mechanical restraint is:

(A) considered necessary to maintain the safety and security of the center or staff;

(B) considered necessary to maintain the safety of the public; and

(C) the least restrictive restraint necessary, used for the minimum duration necessary.

(b) An employee of the office, or a person who contracts with the office or an employee of that person, may use chemical restraints on a committed person residing in a civil commitment center or while transporting a committed person who resides at the center only if:

(1) the employee or person completes a training program approved by the office on the use of chemical restraints that:

(A) includes instruction on the office's approved chemical restraint techniques and devices and the office's verbal de-escalation policies, procedures, and practices; and

(B) requires the employee or person to demonstrate competency in the use of chemical restraint techniques and devices; and

(2) the chemical restraint is:

(A) used as a last resort;

(B) necessary to prevent or stop:

(i) physical injury to the committed person or another;

(ii) threatening behavior by the committed person;

(iii) a disturbance by a group of committed persons; or

(iv) an absconsion from the center; and

(C) the least restrictive restraint necessary, used for the minimum duration necessary, to prevent injury, property damage, or absconsion.

(c) The office shall develop procedures governing the use of mechanical or chemical restraints on committed persons.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 21, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 24, eff. September 1, 2023.

Sec. 841.084. PAYMENT OF COSTS BY COMMITTED PERSON. (a) Notwithstanding Section 841.146(c), a civilly committed person who is not indigent:

(1) is responsible for the cost of:

(A) housing and treatment provided under this chapter;

(B) the tracking service required by Section 841.082; and

(C) repairs to or replacement of the tracking equipment required by Section 841.082, if the person intentionally caused the damage to or loss of the equipment, as determined by the office; and

(2) shall pay to the office:

(A) a monthly amount that the office determines will be necessary to defray the cost of providing the housing, treatment, and service with respect to the person; and

(B) as directed by the office, any amount for which the person is responsible under Subdivision (1)(C).

(b) Money collected under this section shall be deposited to the credit of the account from which the costs were originally paid.

(c) A committed person, on request, shall provide to the office any financial records or other information regarding the person's income, assets, and expenses to assist the office in determining whether the person is indigent for purposes of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.13, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 10, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 17, eff. June 17, 2015.
Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 22, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 9, eff.

September 1, 2021.

Sec. 841.0845. NOTICE OF INTENT REGARDING NEW RESIDENCE OR FACILITY. (a) The office shall provide advance notice of any intent to house one or more committed persons at a new residence or facility that has not previously served as housing for committed persons under this chapter.

(b) A vendor shall provide advance notice of any intent to submit a proposal to the office for the construction or renovation of a residence or facility that will serve as a new location for housing committed persons under this chapter.

(c) Notice must be provided in writing to each member of the legislature who represents a district containing territory in the affected county as follows:

(1) by a vendor, not later than the 30th day before the date that the vendor will submit a proposal described by Subsection (b) to the office; and

(2) by the office:

(A) as soon as practicable after awarding a contract for the construction or renovation of a residence or facility that will serve as a new location for housing committed persons under this chapter; or

(B) if a construction or renovation contract is unnecessary for the purpose, not later than the 30th day before the date that the residence or facility will first be used as housing for committed persons under this chapter, except as provided by Subsection (d).

(d) The office may provide notice required by Subsection (c)(2)(B) not later than 72 hours before transferring a committed person to the residence or facility if the transfer is necessary due to:

(1) a medical emergency;

(2) a serious behavioral or health and safety issue; or

(3) release from a secure correctional facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 18, eff. June 17, 2015.

Sec. 841.085. CRIMINAL PENALTY; PROSECUTION OF OFFENSE. (a) A person commits an offense if, after having been adjudicated and civilly committed as a sexually violent predator under this chapter, the person violates a civil commitment requirement imposed under Section 841.082(a)(1), (2), (4), or (5).

(b) An offense under this section is a felony of the third degree.

(c) On request of the local prosecuting attorney, the special prosecution unit may assist in the trial of an offense under this section.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 8, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 19, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 39(2), eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 23, eff. September 1, 2017.

SUBCHAPTER F. COMMITMENT REVIEW

Sec. 841.101. BIENNIAL EXAMINATION. (a) A person committed under Section 841.081 shall receive a biennial examination. The office shall contract for an expert to perform the examination.

(b) In preparation for a judicial review conducted under Section 841.102, the office shall provide a report of the biennial examination to the judge and to the person. The report must include consideration of whether to modify a requirement imposed on the person under this chapter and whether to release the person from all requirements imposed on the person under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 20, eff.

June 17, 2015.

Sec. 841.102. BIENNIAL REVIEW. (a) Not later than the 60th day after the date of receipt of the report submitted under Section 841.101, the judge shall conduct a biennial review of the status of the committed person and issue an order concluding the review or setting a hearing under Subsection (c).

(b) The person is entitled to be represented by counsel at the biennial review, but the person is not entitled to be present at that review.

(c) The judge shall set a hearing if the judge determines by a preponderance of the evidence at the biennial review that:

(1) a requirement imposed on the person under this chapter should be modified; or

(2) the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 21, eff. June 17, 2015.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 25, eff. September 1, 2023.

Sec. 841.103. HEARING. (a) At a hearing set by the judge under Section 841.102, the person and the state are entitled to an immediate examination of the person by an expert.

(b) If the hearing is set under Section 841.102(c)(1), hearsay evidence is admissible if it is considered otherwise reliable by the judge.

(c) If the hearing is set under Section 841.102(c)(2), the committed person is entitled to be present and to have the benefit of all constitutional protections provided to the person at the initial civil commitment proceeding. On the request of the person or the attorney representing the state, the court shall conduct the hearing before a jury. The burden of proof at that hearing is on the state

to prove beyond a reasonable doubt that the person's behavioral abnormality has not changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

SUBCHAPTER G. PETITION FOR RELEASE

Sec. 841.121. AUTHORIZED PETITION FOR RELEASE. (a) If the office determines that the committed person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence, the office shall authorize the person to petition the court for release.

(b) The petitioner shall serve a petition under this section on the court and the attorney representing the state.

(c) The judge shall set a hearing on a petition under this section not later than the 30th day after the date the judge receives the petition. The petitioner and the state are entitled to an immediate examination of the petitioner by an expert.

(d) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(e) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 22, eff. June 17, 2015.

Sec. 841.122. RIGHT TO FILE UNAUTHORIZED PETITION FOR RELEASE. On a person's commitment and annually after that commitment, the office shall provide the person with written notice of the person's right to file with the court and without the office's authorization a petition for release.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1,

1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 23, eff. June 17, 2015.

Sec. 841.123. REVIEW OF UNAUTHORIZED PETITION FOR RELEASE. (a) If the committed person files a petition for release without the office's authorization, the person shall serve the petition on the court, the attorney representing the state, and the office.

(b) The judge shall review and issue a ruling on a petition for release filed by the committed person without the office's authorization not later than the 60th day after the date of filing of the petition.

(c) Except as provided by Subsection (d), the judge shall deny without a hearing a petition for release filed without the office's authorization if:

(1) the judge determines by a preponderance of the evidence that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence; or

(2) the petitioner has filed the petition for release before the 180th day after the date an order was entered under Subchapter D or F or a previous order was entered under this section.

(d) The judge is not required to deny a petition under Subsection (c)(2) if the judge determines by a preponderance of the evidence that the petitioner's behavioral abnormality has changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 24, eff. June 17, 2015.
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 26, eff. September 1, 2023.

Sec. 841.124. HEARING ON UNAUTHORIZED PETITION FOR RELEASE.

(a) If as authorized by Section 841.123 the judge does not deny a petition for release filed by the committed person without the office's authorization, the judge shall conduct a hearing on the petition not later than the 60th day after the date of filing of the petition.

(b) The petitioner and the state are entitled to an immediate examination of the person by an expert.

(c) On request of the petitioner or the attorney representing the state, the court shall conduct the hearing before a jury.

(d) The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the petitioner's behavioral abnormality has not changed to the extent that the petitioner is no longer likely to engage in a predatory act of sexual violence.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 25, eff. June 17, 2015.

SUBCHAPTER H. MISCELLANEOUS PROVISIONS

Sec. 841.141. RULEMAKING AUTHORITY. (a) The office by rule shall administer this chapter. Rules adopted by the office under this section must be consistent with the purposes of this chapter.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 40(2), eff. September 1, 2017.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 12, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 26, eff. June 17, 2015.
Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 40(2), eff. September 1, 2017.

Sec. 841.142. RELEASE OR EXCHANGE OF INFORMATION. (a) To protect the public and to enable an assessment or determination

relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under this chapter.

(b) To protect the public and to enable the provision of supervision and treatment to a person who is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to the office.

(c) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of Criminal Justice, the office, a service provider contracting with one of those agencies, the multidisciplinary team, and the applicable attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(d) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the office, a service provider contracting with one of those agencies, the multidisciplinary team, and the applicable attorney representing the state may exchange any available information relating to the person.

(e) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 27, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 27, eff. June 17, 2015.

Sec. 841.143. REPORT, RECORD, OR STATEMENT SUBMITTED TO COURT. (a) A psychological report, drug and alcohol report, treatment record, diagnostic report, medical record, or victim impact statement submitted to the court under this chapter is part of the record of the court.

(b) Notwithstanding Subsection (a), the report, record, or statement must be sealed and may be opened only:

(1) on order of the judge;

(2) as provided by this chapter; or

(3) in connection with a criminal proceeding as otherwise provided by law.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Sec. 841.144. COUNSEL. (a) Immediately after the filing of a petition under Section 841.041, a person subject to a civil commitment proceeding under this chapter is entitled to the assistance of counsel at all stages of the proceeding.

(b) If the person is indigent, the court shall appoint counsel as appropriate under Section 841.005 to assist the person.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 28, eff. Sept. 1, 2003.

Sec. 841.145. EXPERT. (a) At the person's own expense, a person who is examined under this chapter may retain an expert to perform an examination or participate in a civil commitment proceeding on the person's behalf, including a biennial examination or other civil commitment proceeding to assess the person's status as a sexually violent predator.

(b) On the request of an indigent person examined under this chapter, the judge shall determine whether expert services for the person are necessary. If the judge determines that the services are necessary, the judge shall appoint an expert to perform an examination or participate in a civil commitment proceeding on the

person's behalf and shall approve compensation for the expert as appropriate under Subsection (c).

(c) The court shall approve reasonable compensation for expert services rendered on behalf of an indigent person on the filing of a certified compensation claim supported by a written statement specifying:

(1) time expended on behalf of the person;

(2) services rendered on behalf of the person;

(3) expenses incurred on behalf of the person; and

(4) compensation received in the same case or for the same services from any other source.

(d) The court shall ensure that an expert retained or appointed under this section has for purposes of examination reasonable access to a person examined under this chapter, as well as to all relevant medical and psychological records and reports.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 5, eff. September 1, 2005.

Sec. 841.146. CIVIL COMMITMENT PROCEEDING; PROCEDURE AND COSTS. (a) On request, a person subject to a civil commitment proceeding under this chapter and the attorney representing the state are entitled to a jury trial or a hearing before a jury for that proceeding, except for a proceeding set by the judge under Section 841.102(c)(1). The jury shall consist of 12 qualified jurors. The judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Each party is entitled to 10 peremptory challenges to the 12 qualified jurors and one peremptory challenge to the qualified alternate jurors.

(b) Except as otherwise provided by this subsection, a civil commitment proceeding is subject to the rules of procedure and appeal for civil cases. To the extent of any conflict between this chapter and the rules of procedure and appeal for civil cases, this chapter controls.

(c) In an amount not to exceed $2,500, the State of Texas shall

pay all costs associated with a civil commitment proceeding conducted under Subchapter D. The State of Texas shall pay the reasonable costs of state or appointed counsel or experts for any other civil commitment proceeding conducted under this chapter and shall pay the reasonable costs of the person's treatment and supervision.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 29, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 28, eff. June 17, 2015.
Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 10, eff. September 1, 2021.

Sec. 841.1461. CERTAIN EXPERT TESTIMONY NOT REQUIRED FOR CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR. A person who suffers from a behavioral abnormality as determined under this chapter is not because of that abnormality a person of unsound mind for purposes of Section 15-a, Article I, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.1462. PRIVILEGE FOR PERSONAL INFORMATION THAT IDENTIFIES VICTIM. Personal information, including a home address, home telephone number, and social security account number, that identifies the victim of a person subject to a civil commitment proceeding under this chapter is privileged from discovery by that person.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.1463. FAILURE TO GIVE NOTICE WITHIN RELEVANT PERIOD NOT JURISDICTIONAL ERROR. The periods within which notice must be given under this chapter are binding on all appropriate persons as provided by this chapter, but a failure to give notice within the relevant period is not a jurisdictional error.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.

Sec. 841.147. IMMUNITY. The following persons are immune from liability for good faith conduct under this chapter:

(1) an employee or officer of the Texas Department of Criminal Justice or the office;

(2) a member of the multidisciplinary team established under Section 841.022;

(3) the applicable attorney representing the state and an employee of the attorney; and

(4) a person providing, or contracting, appointed, or volunteering to perform, a tracking service or another service under this chapter.

Added by Acts 1999, 76th Leg., ch. 1188, Sec. 4.01, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 347, Sec. 31, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 9, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 29, eff. June 17, 2015.

Sec. 841.150. EFFECT OF SUBSEQUENT DETENTION, CONFINEMENT, OR COMMITMENT ON ORDER OF CIVIL COMMITMENT. (a) The duties imposed on the office and the judge by this chapter are suspended for the duration of a detention or confinement of a committed person in a correctional facility, secure correctional facility, or secure detention facility, or if applicable any other commitment of the person to a community center, mental health facility, or state supported living center, by governmental action.

(b) In this section:

(1) "Community center" means a center established under Subchapter A, Chapter 534.

(2) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(3) "Mental health facility" has the meaning assigned by Section 571.003.

(4) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(5) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2003, 78th Leg., ch. 347, Sec. 30, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 849 (S.B. 912), Sec. 6, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 15, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1629, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 30, eff. June 17, 2015.

Sec. 841.151. NOTICE OF RELEASE OF SEXUALLY VIOLENT PREDATOR. (a) In this section:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Secure correctional facility" and "secure detention facility" have the meanings assigned by Section 51.02, Family Code.

(b) This section applies to a person who has been civilly committed under this chapter and who is detained or confined in a correctional facility, secure correctional facility, or secure detention facility as a result of violating:

(1) a civil commitment requirement imposed under Section 841.082(a)(1), (2), (4), or (5); or

(2) a law of this state.

(c) Except as provided by Subsection (c-1), as soon as practicable before, but not later than the third business day preceding, the date a correctional facility, secure correctional facility, or secure detention facility releases a person who, at the time of the person's detention or confinement, was civilly committed under this chapter as a sexually violent predator, the facility shall notify the office and the person's case manager in writing of the anticipated date and time of the person's release.

(c-1) Subsection (c) does not apply with respect to a person whom a court orders to be immediately released from a correctional facility, secure correctional facility, or secure detention facility.

(d) A case manager, on request, shall provide a correctional facility, a secure correctional facility, or a secure detention facility with the case manager's appropriate contact information for notification under Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1201 (S.B. 166), Sec. 16, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 845 (S.B. 746), Sec. 31, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 24, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 431 (S.B. 906), Sec. 11, eff. September 1, 2021.

Sec. 841.152. CERTAIN HEARINGS BY CLOSED-CIRCUIT VIDEO TELECONFERENCING PERMITTED. (a) Notwithstanding Section 841.103(c), on motion by the attorney representing the state, the court shall require a committed person to appear via closed-circuit video teleconferencing at a hearing on the modification of civil commitment requirements under Section 841.082 or a hearing under Subchapter F or G.

(b) A recording of a hearing conducted as provided by Subsection (a) shall be made and preserved with the court's record of the hearing.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 25, eff. September 1, 2017.

Sec. 841.153. STATE-ISSUED IDENTIFICATION; NECESSARY DOCUMENTATION. (a) On the release of a committed person from a correctional facility, secure correctional facility, or secure detention facility, as those terms are defined by Section 841.151, the office shall:

(1) determine whether the person has:

(A) a valid license issued under Chapter 521 or 522,

Transportation Code; or

(B) a valid personal identification certificate issued under Chapter 521, Transportation Code; and

(2) if the person does not have a valid license or certificate described by Subdivision (1), submit to the Department of Public Safety on behalf of the person a request for the issuance of a personal identification certificate under Chapter 521, Transportation Code.

(b) The office shall submit a request under Subsection (a)(2) as soon as practicable.

(c) The office, the Department of Public Safety, and the vital statistics unit of the Department of State Health Services by rule shall adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a personal identification certificate to a committed person, including responsibilities related to verification of the person's identity. The memorandum of understanding must require the Department of State Health Services to electronically verify the birth record of a committed person whose name and any other personal information is provided by the office and to electronically report the recorded filing information to the Department of Public Safety to validate the identity of a committed person under this section.

(d) The office shall reimburse the Department of Public Safety or the Department of State Health Services, as applicable, for the actual costs incurred by those agencies in performing responsibilities established under this section. The office may charge a committed person for the actual costs incurred under this section or for the fees required by Section 521.421, Transportation Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 25, eff. September 1, 2017.

SUBCHAPTER I. ADMINISTRATION OF CERTAIN MEDICATION TO CERTAIN SEXUALLY VIOLENT PREDATORS

Sec. 841.201. DEFINITIONS. In this subchapter:

(1) "Capacity" means a committed person's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives

to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(2) "Medication-related emergency" means a situation in which it is immediately necessary to administer medication to a committed person to prevent:

(A) imminent probable death or substantial bodily harm to the committed person because the committed person:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the committed person is unable to satisfy the committed person's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempted acts, or acts the committed person overtly or continually makes or commits.

(3) "Psychoactive medication" has the meaning assigned by Section 574.101.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.202. ADMINISTRATION OF MEDICATION TO COMMITTED PERSON. A person may not administer a psychoactive medication to a committed person who refuses to take the medication voluntarily unless:

(1) the committed person is having a medication-related emergency; or

(2) the committed person is under an order issued under Section 841.205 authorizing the administration of medication regardless of the committed person's refusal.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.203. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) A physician who is treating a committed person may, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive

medication regardless of the committed person's refusal if:

(1) the physician believes that the committed person lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the committed person;

(3) the committed person is receiving mental health services under Section 841.0835 or other law; and

(4) the committed person, verbally or by other indication, refuses to take the medication voluntarily.

(b) An application filed under this section must state:

(1) that the physician believes that the committed person lacks the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;

(2) each medication the physician wants the court to compel the committed person to take;

(3) whether the committed person is receiving mental health services under Section 841.0835 or other law;

(4) the physician's diagnosis of the committed person; and

(5) the proposed method for administering the medication and, if the method is not customary, an explanation justifying the departure from the customary methods.

(c) An application filed under this section is separate from an application for court-ordered mental health services.

(d) A hearing on the application must be held not later than the 30th day after the date the application was filed. If the committed person is transferred to a mental health facility in another county, the court may transfer the application to the county where the committed person has been transferred.

(e) Subject to the requirement in Subsection (d) that the hearing be held not later than the 30th day after the date the application was filed, the court may grant one continuance on a party's motion and for good cause shown. The court may grant more than one continuance only with the agreement of the parties.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.204. RIGHTS OF COMMITTED PERSON. A committed person

for whom an application under Section 841.203 is filed is entitled to:

(1) representation by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the committed person's questions or concerns;

(3) receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

(4) be told, at the time personal notice of the hearing is given, of the committed person's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;

(5) be present at the hearing;

(6) request from the court an independent expert; and

(7) be notified orally, at the conclusion of the hearing, of the court's determinations of the committed person's capacity and best interests.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.205. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) The court may issue an order authorizing the administration of one or more classes of psychoactive medication to a committed person who is receiving mental health services under Section 841.0835 or other law.

(b) The court may issue an order under this section only if the court finds by clear and convincing evidence after a hearing that the committed person:

(1) lacks the capacity to make a decision regarding the administration of the proposed medication and treatment with the proposed medication is in the best interest of the committed person; or

(2) as determined under Section 841.206, presents a danger to the committed person or others in the civil commitment center in which the committed person is being treated.

(c) In making the finding that treatment with the proposed

medication is in the best interest of the committed person, the court shall consider:

(1) the committed person's expressed preferences regarding treatment with psychoactive medication;

(2) the committed person's religious beliefs;

(3) the risks and benefits, from the perspective of the committed person, of taking psychoactive medication;

(4) the consequences to the committed person if the psychoactive medication is not administered;

(5) the prognosis for the committed person if the committed person is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the committed person's agreement to take the psychoactive medication.

(d) A hearing under this subchapter shall be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) A judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The magistrate or associate judge may provide the notice, set hearing dates, and appoint attorneys as required by this subchapter. A record is not required if the hearing is held by a magistrate or court-appointed associate judge.

(f) A party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court not later than the third day after the date the report is issued. The hearing de novo must be held not later than the 30th day after the date the application under Section 841.203 was filed.

(g) If a hearing or an appeal of a magistrate's or associate judge's report is to be held in a county court in which the judge is not a licensed attorney, the committed person or the committed person's attorney may request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. The county judge shall transfer the case after receiving the request, and the receiving court shall hear the case as if it had been originally filed in that court.

(h) As soon as practicable after the conclusion of the hearing, the committed person is entitled to have provided to the committed

person and the committed person's attorney written notification of the court's determinations under this section. The notification must include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) An order issued under this section shall authorize the administration to a committed person, regardless of the committed person's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the committed person's diagnosis. The order shall permit an increase or decrease in a medication's dosage, continuation of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) The classes of psychoactive medications in the order must conform to classes determined by the Health and Human Services Commission.

(k) An order issued under this section may be reauthorized or modified on the petition of a party. The order remains in effect pending action on a petition for reauthorization or modification. For the purpose of this subsection, "modification" means a change of a class of medication authorized in the order.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.206. FINDING THAT COMMITTED PERSON PRESENTS A DANGER. In making a finding under Section 841.205(b)(2) that the committed person presents a danger to the committed person or others in the civil commitment center in which the committed person is being treated, the court shall consider:

(1) an assessment of the committed person's present mental condition;

(2) whether the committed person has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to the committed person's self or to another while in the center; and

(3) whether the committed person, in the 180-day period preceding the date the committed person was placed in the center, has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical or emotional harm to another.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.207. COSTS. (a) The court shall order the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and associate judges appointed under this subchapter. The compensation paid shall be assessed as court costs.

(b) The agency responsible for services under Section 841.0835(a) shall pay as provided by Subsection (a) the costs of a hearing held under Section 841.205 regarding an order for the administration of psychoactive medication to a committed person.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.208. APPEAL. (a) An appeal from an order issued under Section 841.205, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is issued.

(c) When an appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) An order issued under Section 841.205 is effective pending an appeal of the order.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

Sec. 841.209. EXPIRATION OF ORDER. An order issued under Section 841.205 expires on the first anniversary of the date the order was issued.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 27, eff. September 1, 2023.

TITLE 12. HEALTH AND MENTAL HEALTH
CHAPTER 1001. DEPARTMENT OF STATE HEALTH SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. DEFINITIONS. In this title:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of state health services.

(3) "Council" means the State Health Services Council.

(4) "Department" means the Department of State Health Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1630, eff. April 2, 2015.

Sec. 1001.002. AGENCY AND AGENCY FUNCTIONS.

Text of subsection effective until April 1, 2025

(a) In this section, "function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under Section 531.02012, Government Code.

Text of subsection effective on April 1, 2025

(a) In this section, "function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under former Section 531.02012, Government Code.

(b) The department is an agency of the state.

Text of subsection effective until April 1, 2025

(c) In accordance with Subchapter A-1, Chapter 531, Government

Code, and notwithstanding any other law, the department performs only functions related to public health, including health care data collection and maintenance of the Texas Health Care Information Collection program.

Text of subsection effective on April 1, 2025

(c) In accordance with former Subchapter A-1, Chapter 531, Government Code, and notwithstanding any other law, the department performs only functions related to public health, including health care data collection and maintenance of the Texas Health Care Information Collection program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.16, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.65, eff. April 1, 2025.

Sec. 1001.003. SUNSET PROVISION. The Department of State Health Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2027.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.03, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.09, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.11, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.03, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.08, eff. June 10, 2019.

Text of section effective until April 1, 2025

Sec. 1001.004. REFERENCES IN LAW MEANING DEPARTMENT. In this code or any other law, a reference to the department in relation to a function described by Section 1001.002(c) means the department. A reference in law to the department in relation to any other function has the meaning assigned by Section 531.0011, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.17, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.66, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1001.004. REFERENCES IN LAW MEANING DEPARTMENT. In this code or any other law, a reference to the department in relation to a function described by Section 1001.002(c) means the department. A reference in law to the department in relation to any other function has the meaning assigned by Section 521.0002, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.17, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.66, eff. April 1, 2025.

Text of section effective until April 1, 2025

Sec. 1001.005. REFERENCES IN LAW MEANING COMMISSIONER OR DESIGNEE. In this code or in any other law, a reference to the commissioner in relation to a function described by Section 1001.002(c) means the commissioner. A reference in law to the commissioner in relation to any other function has the meaning assigned by Section 531.0012, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.17, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.67, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1001.005. REFERENCES IN LAW MEANING COMMISSIONER OR DESIGNEE. In this code or in any other law, a reference to the commissioner in relation to a function described by Section 1001.002(c) means the commissioner. A reference in law to the commissioner in relation to any other function has the meaning assigned by Section 521.0003, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.17, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.67, eff. April 1, 2025.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 1001.028. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The commission shall make the information available to the public and appropriate state governmental entities.

(b) The executive commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for directing complaints to the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.029. PUBLIC ACCESS AND TESTIMONY. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner

regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(c) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.030. POLICYMAKING AND MANAGEMENT RESPONSIBILITIES. The commissioner, with the advice of the council and subject to the approval of the executive commissioner, shall develop and the department shall implement policies that clearly delineate the policymaking responsibilities of the executive commissioner from the management responsibilities of the commission, the commissioner, and the staff of the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.0305. LOCAL HEALTH ENTITY POLICY. In developing policy related to funding local health entities as defined by Section 117.001, the department shall consult with the Public Health Funding and Policy Committee established under Chapter 117.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1237 (S.B. 969), Sec. 2, eff. September 1, 2011.

Sec. 1001.032. OFFICES. The department shall maintain its central office in Austin. The department may maintain offices in other areas of the state as necessary.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.033. APPLICATION REQUIREMENT FOR COLONIAS PROJECTS. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921, Water Code;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

(d) Regarding any projects funded by the commission that provide assistance to colonias, the commission shall require an applicant for the funds to submit to the commission a colonia classification number, if one exists, for each colonia that may be served by the project proposed in the application. If a colonia does not have a classification number, the commission may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the commission, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2005, 79th Leg., Ch. 828 (S.B. 827), Sec. 5, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 16, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.09, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 2.10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(3), eff. September 1, 2019.

Sec. 1001.034. INVESTIGATION OF DEPARTMENT. The executive commissioner shall investigate the conduct of the work of the department. For that purpose, the executive commissioner shall have access at any time to all department books and records and may require an officer or employee of the department to furnish written or oral information.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Transferred, redesignated and amended from Health and Safety Code, Section 11.014 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0007, eff. April 2, 2015.

Sec. 1001.035. ADVISORY COMMITTEES. (a) The executive commissioner may appoint advisory committees to assist the executive commissioner and department in performing duties related to department functions.

(b) If the executive commissioner appoints an advisory committee under this section, the appointment must be made in a manner that provides for:

(1) a balanced representation of persons with knowledge and interest in the committee's field of work;

(2) the inclusion on the committee of at least two members who represent the interests of the public; and

(3) a balanced representation of the geographic regions of the state.

(d) A member of an advisory committee appointed under this section may receive reimbursement for travel expenses as provided by Section 2110.004, Government Code.

(e) The executive commissioner shall specify each committee's purpose, powers, and duties, and shall require each committee to report to the executive commissioner or department in the manner specified by the executive commissioner concerning the committee's activities and the results of its work.

(f) The executive commissioner shall establish procedures for receiving reports relating to the activities and accomplishments of an advisory committee established by statute to advise the department or executive commissioner on matters related to department functions. The executive commissioner may appoint additional members to those advisory committees and may establish additional duties of those committees as the executive commissioner determines to be necessary.

(g) The executive commissioner shall adopt rules to implement this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 2, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1411, Sec. 1.17, eff. Sept. 1, 1999. Transferred, redesignated and amended from Health and Safety Code,

Section 11.016 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0008, eff. April 2, 2015.

SUBCHAPTER C. PERSONNEL

Sec. 1001.051. COMMISSIONER. (a) The executive commissioner shall appoint a commissioner of the department with the approval of the governor. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

Text of subsection effective until April 1, 2025

(a-1) The executive commissioner shall employ the commissioner in accordance with Section 531.0056, Government Code.

Text of subsection effective on April 1, 2025

(a-1) The executive commissioner shall employ the commissioner in accordance with Subchapter B, Chapter 524, Government Code, and Section 524.0101(b), Government Code.

(a-2) Except as provided in Subsection (a-3), the commissioner must:

(1) have at least five years of experience in the administration of public health systems; and

(2) be a person licensed to practice medicine in this state.

(a-3) The executive commissioner may, based on the qualifications and experience in administering public health systems, employ a person other than a physician as the commissioner.

(a-4) If the executive commissioner employs a person as commissioner who is not a physician, then the executive commissioner shall designate a person licensed to practice medicine in this state as chief medical executive.

(b) The commissioner serves at the pleasure of the executive commissioner.

(b-1) The executive commissioner may supplement the salary of the commissioner with the approval of the governor. The salary may not exceed 1.5 times the salary of the governor, from funds appropriated to the department. The use of funds from other sources are not limited by this subsection.

Text of subsection effective until April 1, 2025

(c) Subject to the control of the executive commissioner, the commissioner shall:

(1) act as the department's chief administrative officer;

(2) in accordance with the procedures prescribed by Section 531.00551, Government Code, assist the executive commissioner in the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) in accordance with the procedures adopted by the executive commissioner under Section 531.00551, Government Code, assist the executive commissioner in the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

Text of subsection effective on April 1, 2025

(c) Subject to the control of the executive commissioner, the commissioner shall:

(1) act as the department's chief administrative officer;

(2) in accordance with the procedures prescribed by Section 524.0152, Government Code, assist the executive commissioner in the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) in accordance with the procedures adopted by the executive commissioner under Section 524.0152, Government Code, assist the executive commissioner in the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

Text of subsection effective until April 1, 2025

(d) The commissioner shall administer this chapter under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Text of subsection effective on April 1, 2025

(d) The commissioner shall administer this chapter under operational policies established by the executive commissioner and in accordance with the memorandum of understanding under Section

524.0101(a), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0006, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1631, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.68, eff. April 1, 2025.

Sec. 1001.0515. OFFICE OF CHIEF STATE EPIDEMIOLOGIST. (a) The commissioner shall:

(1) establish an Office of Chief State Epidemiologist within the department to provide expertise in public health activities and policy in this state by:

(A) evaluating epidemiologic, medical, and health care information; and

(B) identifying pertinent research and evidence-based best practices; and

(2) appoint a physician licensed to practice medicine in this state as the chief state epidemiologist to administer the Office of Chief State Epidemiologist.

(b) The chief state epidemiologist must:

(1) be board certified in a medical specialty; and

(2) have significant experience in public health and an advanced degree in public health, epidemiology, or a related field.

(c) The chief state epidemiologist serves as:

(1) the department expert on epidemiological matters and on communicable and noncommunicable diseases; and

(2) the department's senior science representative and primary contact for the Centers for Disease Control and Prevention and other federal agencies related to epidemiologic science and disease surveillance.

(d) The chief state epidemiologist may provide professional and scientific consultation regarding epidemiology and disease control, harmful exposure, and injury prevention to state agencies, health facilities, health service regions, local health authorities, local

health departments, and other entities.

(e) Notwithstanding any other law, the chief state epidemiologist may access information from the department to implement duties of the epidemiologist's office. Reports, records, and information provided to the Office of Chief State Epidemiologist that relate to an epidemiologic or toxicologic investigation of human illness or conditions and of environmental exposure that are harmful or believed to be harmful to the public health are confidential and not subject to disclosure under Chapter 552, Government Code, and may not be released or made public on subpoena or otherwise, except for statistical purposes if released in a manner that prevents identification of any person.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 15, eff. June 16, 2021.

Sec. 1001.052. PERSONNEL. (a) The department may employ, compensate, and prescribe the duties of personnel necessary and suitable to administer this chapter.

(b) The executive commissioner shall prepare and by rule adopt personnel standards.

(c) A personnel position may be filled only by an individual selected and appointed on a nonpartisan merit basis.

(d) The commissioner, with the advice of the council, shall develop and the department shall implement policies that clearly define the responsibilities of the staff of the department.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.053. INFORMATION ABOUT QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner or the commissioner's designee shall provide to department employees, as often as necessary, information regarding the requirements for employment under this chapter or rules adopted by the executive commissioner, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.054. MERIT PAY. Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be given under the system established under this section or under rules adopted by the executive commissioner.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.055. CAREER LADDER. The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry-level positions concurrently with any public posting.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.056. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) Subject to rules adopted by the executive commissioner, the commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Unless the following are included in a policy statement adopted by the executive commissioner that is applicable to the department, the policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and

(3) filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1632, eff. April 2, 2015.

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 1001.071. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO HEALTH CARE. (a) The department is the state agency with primary responsibility to administer or provide health services, including:

(1) disease prevention;

(2) health promotion;

(3) indigent health care;

(4) certain acute care services;

(5) licensing of certain health professions; and

(6) other health-related services as provided by law.

(b) The department is responsible for administering human services programs regarding the public health, including:

(1) implementing the state's public health care delivery programs under the authority of the department;

(2) administering state health facilities, hospitals, and health care systems;

(3) developing and providing health care services, as directed by law;

(4) providing for the prevention and control of communicable diseases;

(5) providing public education on health-related matters, as directed by law;

(6) compiling and reporting health-related information, as directed by law;

(7) acting as the lead agency for implementation of state policies regarding the human immunodeficiency virus and acquired immunodeficiency syndrome and administering programs related to the human immunodeficiency virus and acquired immunodeficiency syndrome;

(8) investigating the causes of injuries and methods of prevention;

(9) administering a grant program to provide appropriated money to counties, municipalities, public health districts, and other

political subdivisions for their use to provide or pay for essential public health services;

(10) administering the registration of vital statistics;

(11) licensing, inspecting, and enforcing regulations regarding health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services;

(12) implementing established standards and procedures for the management and control of sanitation and for health protection measures;

(13) enforcing regulations regarding radioactive materials;

(14) enforcing regulations regarding food, drugs, cosmetics, and health devices;

(15) enforcing regulations regarding food service establishments, retail food stores, mobile food units, and roadside food vendors;

(16) enforcing regulations controlling hazardous substances in households and workplaces; and

(17) implementing a mental health program for veterans.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0005(a), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0005(b), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.020, eff. September 1, 2015.

Sec. 1001.0711. SCHOOL HEALTH ADVISORY COMMITTEE. (a) The executive commissioner by rule shall establish a School Health Advisory Committee at the department to provide assistance to the council in establishing a leadership role for the department in support for and delivery of coordinated school health programs and school health services.

(b) The committee shall include at least:

(1) one representative from the Department of Agriculture, appointed by the commissioner of agriculture; and

(2) one representative from the Texas Education Agency, appointed by the commissioner of education.

(c) Section 2110.008, Government Code, does not apply to a committee created under this section.

Added by Acts 2005, 79th Leg., Ch. 784 (S.B. 42), Sec. 9, eff. June 17, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1633, eff. April 2, 2015.

Sec. 1001.072. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO MENTAL HEALTH. The department is responsible for administering human services programs regarding mental health, including:

(1) administering and coordinating mental health services at the local and state level;

(2) operating the state's mental health facilities; and

(3) inspecting, licensing, and enforcing regulations regarding mental health facilities, other than long-term care facilities regulated by the Department of Aging and Disability Services.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.073. GENERAL POWERS AND DUTIES OF DEPARTMENT RELATED TO SUBSTANCE ABUSE. The department is responsible for administering human services programs regarding substance abuse, including:

(1) administering, coordinating, and contracting for the delivery of substance abuse prevention and treatment programs at the state and local level;

(2) inspecting, licensing, and enforcing regulations regarding substance abuse treatment facilities; and

(3) providing public education on substance abuse issues, as directed by law.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Sec. 1001.074. INFORMATION REGARDING COMPLAINTS. (a) The

department shall maintain a file on each written complaint filed with the department. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(b) The department shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the executive commissioner's and the department's policies and procedures relating to complaint investigation and resolution.

(c) The department, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.

Text of section effective until April 1, 2025

Sec. 1001.075. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.69, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1001.075. RULES. The executive commissioner may adopt

rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 524.0101(a), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.09.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.69, eff. April 1, 2025.

Sec. 1001.077. ADULT DIABETES EDUCATION PROGRAM. (a) In counties with populations of more than 100,000, the department may assist hospital districts and county hospital systems in providing an adult diabetes education program. The program must be based on a curriculum developed by the Texas Diabetes Council.

(b) A hospital district or county hospital system that participates in the program shall:

(1) make the adult diabetes education program available in English and Spanish using the curriculum developed by the Texas Diabetes Council; and

(2) make the education program available in the county, including at each rural health clinic the district or system may have.

(c) The Texas Diabetes Council shall develop for the adult diabetes education program a curriculum emphasizing life choices that enable a diabetic patient to control the disease and improve the patient's standard of living.

Added by Acts 2011, 82nd Leg., R.S., Ch. 217 (H.B. 123), Sec. 1, eff. September 1, 2011.

Sec. 1001.078. FUNDING FORMULA; PUBLIC HEALTH EVALUATION. (a) In this section:

(1) "Health service region" means a public health region designated under Section 121.007.

(2) "Local health department" means a local health department established under Subchapter D, Chapter 121.

(3) "Local health unit" has the meaning assigned by Section 121.004.

(4) "Public health district" means a health district established under Subchapter E, Chapter 121.

(b) The department, in collaboration with the Public Health Funding and Policy Committee established under Section 117.051, shall:

(1) develop funding formulas for federal and state funds appropriated to the department to be allocated to local health departments, local health units, public health districts, and health service regions' regional headquarters, based on population, population density, disease burden, social determinants of health, local efforts to prevent disease, and other relevant factors as determined by the department and committee;

(2) evaluate the feasibility and benefits of placing a cap on the percentage of public health funds that can be used on administrative costs at local health departments, local health units, public health districts, and health service regions' regional headquarters; and

(3) evaluate public health functions provided by the department, local health departments, local health units, public health districts, and health service regions' regional headquarters and determine if another entity, including a private entity, can provide those functions more effectively.

Added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1, eff. September 1, 2013.

Sec. 1001.079. PUBLIC HEALTH THREAT POLICY. (a) In this section, "local health department" means a local health department established under Subchapter D, Chapter 121.

(b) The department shall create a policy to allow a local health department flexibility, to the extent allowed under federal law, in the use of personnel and other resources during disaster response activities, outbreaks, and other appropriate public health threats.

Added by Acts 2013, 83rd Leg., R.S., Ch. 732 (S.B. 127), Sec. 1, eff. September 1, 2013.

Sec. 1001.080. HEALTH INSURANCE COVERAGE INFORMATION. (a) In

this section, "individual's legally authorized representative" means:

(1) a parent, managing conservator, or guardian of an individual, if the individual is a minor;

(2) a guardian of an individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or

(3) an agent of the individual authorized under a medical power of attorney for health care.

(b) This section applies to health or mental health benefits, services, or assistance provided by the department that the department anticipates will be impacted by a health insurance exchange as defined by Section 1001.081(a), including:

(1) community primary health care services provided under Chapter 31;

(2) women's and children's health services provided under Chapter 32;

(3) services for children with special health care needs provided under Chapter 35;

(4) epilepsy program assistance provided under Chapter 40;

(5) hemophilia program assistance provided under Chapter 41;

(6) kidney health care services provided under Chapter 42;

(7) human immunodeficiency virus infection and sexually transmitted disease prevention programs and services provided under Chapter 85;

(8) immunization programs provided under Chapter 161;

(9) programs and services provided by the Rio Grande State Center under Chapter 252;

(10) mental health services for adults provided under Chapter 534;

(11) mental health services for children provided under Chapter 534;

(12) programs and services provided by community mental health hospitals under Chapter 552;

(13) programs and services provided by state mental health hospitals under Chapter 552; and

(14) any other health or mental health program or service designated by the department.

(c) Subject to Subsection (d), the department may not provide health or mental health benefits, services, or assistance described

in Subsection (b) unless the individual applying to receive the benefits, services, or assistance submits to the department on the form prescribed by the department:

(1) a statement by the individual or the individual's legally authorized representative attesting that the individual does not have access to private health care insurance that provides coverage for the benefit, service, or assistance; or

(2) if the individual has access to private health care insurance that provides coverage for the benefit, service, or assistance, the information and authorization necessary for the department to submit a claim for reimbursement from the insurer for the benefit, service, or assistance.

(d) The department may waive the prohibition under Subsection (c) for an individual or for health or mental health benefits, services, or assistance described in Subsection (b) if the department determines that a benefit, service, or assistance is necessary during a crisis or emergency.

(e) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 765 (S.B. 1057), Sec. 1, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1634, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 2.27, eff. September 1, 2015.

Sec. 1001.081. HEALTH INSURANCE EXCHANGE INFORMATION. (a) In this section:

(1) "Health insurance exchange" means an American Health Benefit Exchange administered by the federal government under 42 U.S.C. Section 18041 or created under 42 U.S.C. Section 18031.

(2) "Individual's legally authorized representative" has the meaning assigned by Section 1001.080(a).

(b) The department may develop informational materials regarding health care insurance coverage and subsidies available under a health insurance exchange.

(c) The department shall provide the informational materials

regarding health care insurance coverage and subsidies available under a health insurance exchange to an individual or the individual's legally authorized representative who:

(1) applies to receive health or mental health benefits, services, or assistance described in Section 1001.080(b); and

(2) has an income above 100 percent of the federal poverty level.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 765 (S.B. 1057), Sec. 1, eff. June 14, 2013.

Text of section as added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1635

For text of section as redesignated by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(34), see other Sec. 1001.084.

Sec. 1001.084. CONTRACTING AND AUDITING AUTHORITY; DELEGATION.

Text of subsection effective until April 1, 2025

(a) The executive commissioner, as authorized by Section 531.0055, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

Text of subsection effective on April 1, 2025

(a) The executive commissioner, as authorized by Section 524.0002, Government Code, may delegate to the department the executive commissioner's authority under that section for contracting and auditing relating to the department's powers, duties, functions, and activities.

(b) If the executive commissioner does not make a delegation under Subsection (a), a reference in law to the department with respect to the department's contracting or auditing authority means the executive commissioner. If the executive commissioner makes a delegation under Subsection (a), a reference in law to the department's contracting or auditing authority means that authority the executive commissioner has delegated to the department.

(c) If the executive commissioner revokes all or part of a delegation made under Subsection (a), a reference in law to the department with respect to a function for which the delegation was revoked means the executive commissioner or another entity to which the executive commissioner delegates that authority.

Text of subsection effective until April 1, 2025

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for contracting and auditing at each health and human services agency as provided by Section 531.0055, Government Code. A statute enacted on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

(1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 531.0055, Government Code.

Text of subsection effective on April 1, 2025

(d) It is the legislature's intent that the executive commissioner retain the authority over and responsibility for contracting and auditing at each health and human services agency as provided by Section 524.0002, Government Code. A statute enacted on or after January 1, 2015, that references the contracting or auditing authority of the department does not give the department direct contracting or auditing authority unless the statute expressly provides that the contracting or auditing authority:

(1) is given directly to the department; and

(2) is an exception to the exclusive contracting and auditing authority given to the executive commissioner under Section 524.0002, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1635, eff. April 2, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.70, eff. April 1, 2025.

Text of section as redesignated by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(34)

For text of section as added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1635, see other Sec. 1001.084.

For expiration of Subsections (d), (d-1), and (d-2), see Subsection (d-2).

Sec. 1001.084. MENTAL HEALTH AND SUBSTANCE ABUSE PUBLIC REPORTING SYSTEM. (a) The department, in collaboration with the commission, shall establish and maintain a public reporting system of performance and outcome measures relating to mental health and substance use services established by the commission. The system must allow external users to view and compare the performance and outcomes of:

(1) local mental health authorities;

(2) local behavioral health authorities; and

(3) local intellectual and developmental disability authorities.

(b) The public reporting system must allow external users to view and compare the performance and outcomes of the Medicaid managed care programs that provide mental health services.

(c) The department shall post the performance and outcome measures on the department's Internet website so that the information is accessible to the public. The department shall post the measures monthly, or as frequently as possible.

(d) The public reporting system must include outcome measures that capture:

(1) inpatient psychiatric care diversion;

(2) avoidance of emergency room use;

(3) criminal justice diversion;

(4) the numbers of people who are homeless served;

(5) access to timely and adequate screening and rapid crisis stabilization services;

(6) timely access to and appropriate treatment from community-based crisis residential services and hospitalization;

(7) improved functioning as a result of medication-related and psychosocial rehabilitation services;

(8) information related to the number of people referred to a state hospital, state supported living center, or community-based hospital, the length of time between referral and admission, the

length of stay, and the length of time between the date a person is determined ready for discharge or transition and the date of discharge or transition;

(9) the rate of denial of services or requests for assistance from jails and other entities and the reason for denial;

(10) quality of care in community-based mental health services and state facilities;

(11) the average number of hours of service provided to individuals in a full level of care compared to the recommended number of hours of service for each level of care; and

(12) any other relevant information to determine the quality of services provided during the reporting period.

(d-1) A local intellectual and developmental disability authority is only required to report information described by Subsection (d)(8) that is related to a state supported living center.

(d-2) This subsection and Subsections (d) and (d-1) expire September 1, 2025.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 10, eff. September 1, 2023.

(f) The department shall ensure that information reported through the public reporting system does not permit the identification of an individual.

(g) In this section:

(1) "Local behavioral health authority" means an authority designated by the commission under Section 533.0356.

(2) "Local intellectual and developmental disability authority" and "local mental health authority" have the meanings assigned by Section 531.002.

(3) "State hospital" has the meaning assigned by Section 552.0011.

(4) "State supported living center" has the meaning assigned by Section 531.002.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1143 (S.B. 58), Sec. 3, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1147 (S.B. 126), Sec. 1, eff. September 1, 2013.
Redesignated from Health and Safety Code, Section 1001.078 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(34), eff. September 1, 2015.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 8, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 1035 (S.B. 26), Sec. 10, eff. September 1, 2023.

Text of section effective until April 1, 2025

Sec. 1001.085. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under Chapter 531, Government Code, to manage and direct the operations of the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1635, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.71, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1001.085. MANAGEMENT AND DIRECTION BY EXECUTIVE COMMISSIONER. The department's powers and duties prescribed by this chapter and other law, including enforcement activities and functions, are subject to the executive commissioner's oversight under the revised provisions derived from Chapter 531, Government Code, as that chapter existed on March 31, 2025, to manage and direct the operations of the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1635, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.71, eff. April 1, 2025.

Sec. 1001.086. TREATMENT ALTERNATIVES TRAINING CURRICULUM FOR JUDGES AND ATTORNEYS. (a) The department, with input from the court

of criminal appeals and the forensic director appointed under Section 532.013, shall develop and maintain a training curriculum for judges and attorneys that provides information on inpatient and outpatient treatment alternatives to inpatient commitment to a state hospital for a patient whom a court is ordering to receive mental health services:

(1) to attain competency to stand trial under Chapter 46B, Code of Criminal Procedure; or

(2) following an acquittal by reason of insanity under Chapter 46C, Code of Criminal Procedure.

(b) The training curriculum developed and maintained under Subsection (a) must include a guide to treatment alternatives, other than inpatient treatment at a state hospital, from which a patient described by Subsection (a) may receive mental health services.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 3, eff. May 28, 2015.

Sec. 1001.087. CONTRACTING FOR AND ADMINISTRATION OF CERTAIN FUNCTIONS RELATING TO SUBSTANCE ABUSE. (a) The department may contract only with local mental health authorities and local behavioral health authorities to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services. A local mental health authority or local behavioral health authority may subcontract with a substance abuse or behavioral health service provider to provide those services.

(b) A local mental health authority or local behavioral health authority who contracts with the department to administer outreach, screening, assessment, and referral functions relating to the provision of substance abuse services shall develop an integrated service delivery model that, to the extent feasible, uses providers who have historically administered outreach, screening, assessment, and referral functions.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 3, eff. May 28, 2015.

Sec. 1001.088. MENTAL HEALTH AND SUBSTANCE ABUSE HOTLINES. The department shall ensure that each local mental health authority and

local behavioral health authority operates a toll-free telephone hotline that enables a person to call a single hotline number to obtain information from the authority about mental health services, substance abuse services, or both.

Added by Acts 2015, 84th Leg., R.S., Ch. 207 (S.B. 1507), Sec. 3, eff. May 28, 2015.

Sec. 1001.089. PUBLIC HEALTH DATA. (a) In this section:

(1) "Essential public health services" has the meaning assigned by Section 121.002.

(2) "Local public health entity" means a local health authority, local health unit, local health department, or public health district.

(b) Notwithstanding Sections 81.103, 82.009, 88.002(b), 92.006, and 192.002(b), the department may enter into an agreement with a local public health entity that provides essential public health services to provide the entity access to:

(1) identified public health data relating to the entity's jurisdiction and any public health data relating to a jurisdiction contiguous to the entity; and

(2) deidentified public health data maintained by the department relating to the jurisdiction of any other local public health entity.

(c) The public health data obtained through the agreement may be used only in the provision of essential public health services.

(d) Access to public health data includes necessary identified public health data required for an infectious disease investigation conducted under Chapter 81.

(e) For any public health data request that is not subject to Subsection (b), (c), or (d) and except as provided by Subsection (f), the department shall establish a review process for the consideration of public health data requests relating to essential public health services or public health research. The process must evaluate:

(1) the public health benefit and purpose of the request;

(2) the privacy of the individuals whose data is requested;

(3) the management of the data by the requestor, including management of public health data released to the requestor in previous requests; and

(4) other relevant law.

(f) A local public health entity seeking public health data for human subject research purposes must submit a request to the department's institutional review board for review and consideration.

(g) A local public health entity receiving public health data from the department under this section shall:

(1) maintain the integrity and security of the data; and

(2) comply with state and federal privacy laws.

Added by Acts 2019, 86th Leg., R.S., Ch. 1184 (H.B. 3704), Sec. 1, eff. September 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 16, eff. June 16, 2021.

Text of subchapter effective on September 1, 2009, but only if a specific appropriation is provided as described by Acts 2009, 81st Leg., R.S., Ch. 1238, Sec. 7(f), which states: This section does not make an appropriation. This section takes effect only if a specific appropriation for the implementation of the section is provided in a general appropriations act of the 81st Legislature.

SUBCHAPTER F. TEXAS MEDICAL CHILD ABUSE RESOURCES AND EDUCATION SYSTEM (MEDCARES)

Sec. 1001.151. TEXAS MEDICAL CHILD ABUSE RESOURCES AND EDUCATION SYSTEM GRANT PROGRAM. (a) The department shall establish the Texas Medical Child Abuse Resources and Education System (MEDCARES) grant program to award grants for the purpose of developing and supporting regional programs to improve the assessment, diagnosis, and treatment of child abuse and neglect as described by the report submitted to the 80th Legislature by the committee on pediatric centers of excellence relating to abuse and neglect in accordance with Section 266.0031, Family Code, as added by Chapter 1406 (S.B. 758), Acts of the 80th Legislature, Regular Session, 2007.

(b) The department may award grants to hospitals or academic health centers with expertise in pediatric health care and a demonstrated commitment to developing basic and advanced programs and centers of excellence for the assessment, diagnosis, and treatment of child abuse and neglect.

(c) The department shall encourage collaboration among grant recipients in the development of program services and activities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.152. USE OF GRANT. A grant awarded under this subchapter may be used to support:

(1) comprehensive medical evaluations, psychosocial assessments, treatment services, and written and photographic documentation of abuse;

(2) education and training for health professionals, including physicians, medical students, resident physicians, child abuse fellows, and nurses, relating to the assessment, diagnosis, and treatment of child abuse and neglect;

(3) education and training for community agencies involved with child abuse and neglect, law enforcement officials, child protective services staff, and children's advocacy centers involved with child abuse and neglect;

(4) medical case reviews and consultations and testimony regarding those reviews and consultations;

(5) research, data collection, and quality assurance activities, including the development of evidence-based guidelines and protocols for the prevention, evaluation, and treatment of child abuse and neglect;

(6) the use of telemedicine and other means to extend services from regional programs into underserved areas; and

(7) other necessary activities, services, supplies, facilities, and equipment as determined by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.154. GIFTS AND GRANTS. The department may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.155. REQUIRED REPORT. Not later than December 1 of each even-numbered year, the department shall submit a report to the governor and the legislature regarding the grant activities of the program and grant recipients, including the results and outcomes of grants provided under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.12(b), eff. September 1, 2015.

Sec. 1001.156. RULES. The executive commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

Sec. 1001.157. APPROPRIATION REQUIRED. The department is not required to award a grant under this subchapter unless the department is specifically appropriated money for purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1238 (S.B. 2080), Sec. 7(a), eff. September 1, 2009.

SUBCHAPTER H. MENTAL HEALTH FIRST AID TRAINING

Sec. 1001.201. DEFINITIONS. In this subchapter:

(1) "Child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Educator" means a person who is required to hold a certificate issued under Subchapter B, Chapter 21, Education Code.

(3) "First responder" has the meaning assigned by Section 421.095, Government Code.

(4) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(5) "Local behavioral health authority" means an authority designated by the commission under Section 533.0356.

(6) "Local mental health authority" has the meaning assigned by Section 531.002.

(7) "Open-enrollment charter school" and "private school" have the meanings assigned by Section 5.001, Education Code.

(8) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

(9) "School district employee" means a person employed by a school district who regularly interacts with students through the course of the person's duties, including an educator, a secretary, a school bus driver, or a cafeteria worker.

(10) "School resource officer" has the meaning assigned by Section 1701.601, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 1, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 2.28, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 45 (S.B. 1533), Sec. 1, eff. May 19, 2017.

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 1, eff. September 1, 2023.

Sec. 1001.202. GRANTS FOR TRAINING OF MENTAL HEALTH FIRST AID TRAINERS. (a) To the extent money is appropriated to the commission for that purpose, the commission shall make grants to local mental health authorities or local behavioral health authorities to contract with persons approved by the commission to train employees or contractors of the authorities as mental health first aid trainers.

(b) The commission shall make each grant to a local mental health authority or local behavioral health authority under this section in the amount the commission determines necessary to cover the costs of training employees or contractors of the authority whose training as mental health first aid trainers will be paid by the grant.

(d) The executive commissioner shall adopt rules to establish the requirements for a person to be approved by the commission to

train employees or contractors of a local mental health authority or local behavioral health authority as mental health first aid trainers. The rules must ensure that a person who is approved by the commission is qualified to provide training in:

(1) the potential risk factors and warning signs for various mental illnesses, including depression, anxiety, trauma, psychosis, eating disorders, substance use disorders, and self-injury;

(2) the prevalence of various mental illnesses in the United States and the need to reduce the stigma associated with mental illness;

(3) an action plan for use by the employees or contractors that involves the use of skills, resources, and knowledge to assess a situation and develop and implement an appropriate intervention to help an individual experiencing a mental health crisis obtain appropriate professional care; and

(4) the evidence-based professional, peer, social, and self-help resources available to help individuals with mental illness.

(e) Two or more local mental health authorities or local behavioral health authorities may collaborate and share resources to provide training for employees or contractors of the authorities under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 3, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 8(1), eff. June 17, 2015.

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 2, eff. September 1, 2023.

Sec. 1001.203. GRANTS FOR TRAINING CERTAIN INDIVIDUALS IN MENTAL HEALTH FIRST AID. (a) To the extent money is appropriated for the purpose, the commission shall make grants to local mental health authorities or local behavioral health authorities to provide at no cost an approved mental health first aid training program

administered by mental health first aid trainers to the following individuals at the discretion of the authorities:

(1) school district employees and school resource officers;

(2) employees of:

(A) an institution of higher education;

(B) an open-enrollment charter school; or

(C) a private school;

(3) employees and contractors of a child-care facility;

(4) youth;

(5) individuals with direct and recurring contact with students;

(6) first responders;

(7) military service members, veterans, or immediate family members of military service members or veterans;

(8) judges and attorneys, as applicable based on the practice of law of the judge or attorney; or

(9) contractors of an institution of higher education, an open-enrollment charter school, a private school, or a school district.

(c) The commission shall grant to a local mental health authority or local behavioral health authority the amount the commission determines necessary to cover the costs of training each individual described by Subsection (a) who successfully completes a mental health first aid training program provided by the authority under this section.

(d) A mental health first aid training program provided by a local mental health authority or local behavioral health authority under this section must:

(1) be conducted by a person trained as a mental health first aid trainer;

(2) provide participants with the skills necessary to help an individual experiencing a mental health crisis until the individual is able to obtain appropriate professional care; and

(3) include:

(A) instruction in a five-step strategy for helping an individual experiencing a mental health crisis, including assessing risk, listening respectfully to and supporting the individual, and identifying professional help and other supports for the individual;

(B) an introduction to the risk factors and warning signs for mental illness and substance use problems;

(C) experiential activities to increase participants' understanding of the impact of mental illness on individuals and families; and

(D) a presentation of evidence-supported treatment and self-help strategies.

(e) A local mental health authority or local behavioral health authority may contract with a regional education service center to provide under this section a mental health first aid training program to school district employees and contractors, school resource officers, open-enrollment charter school employees and contractors, private school employees and contractors, and employees and contractors of an institution of higher education.

(f) Two or more local mental health authorities or local behavioral health authorities may collaborate and share resources to develop and operate a mental health first aid training program under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 4, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 8(2), eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 45 (S.B. 1533), Sec. 3, eff. May 19, 2017.

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 3, eff. September 1, 2023.

Sec. 1001.204. PLANS FOR MENTAL HEALTH FIRST AID TRAINING PROGRAMS. (a) Not later than July 1 of each even-numbered year for which a local mental health authority or local behavioral health authority will seek a grant from the commission under Section 1001.203, the authority shall submit to the commission a plan demonstrating the manner in which grants made to the authority under that section will be used:

(1) to train individuals in mental health first aid throughout the authority's local service area to maximize the number of children who have direct contact with an individual who has

successfully completed a mental health first aid training program provided by the authority;

(2) to meet the greatest needs of the authority's local service area, as identified by the authority; and

(3) to complement existing resources and not duplicate established mental health first aid training efforts.

(b) The commission may not make a grant to a local mental health authority or local behavioral health authority under Section 1001.203 unless the commission has evaluated a plan submitted by the authority under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 6, eff. June 17, 2015.
Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 4, eff. September 1, 2023.

Sec. 1001.205. REPORTS. (a) Not later than September 30 of each year, a local mental health authority or local behavioral health authority shall provide to the commission the number of:

(1) employees and contractors of the authority who were trained as mental health first aid trainers under Section 1001.202 during the preceding fiscal year, the number of trainers who left the program for any reason during the preceding fiscal year, and the number of active trainers;

(2) school district employees and contractors, school resource officers, open-enrollment charter school employees and contractors, private school employees and contractors, and employees and contractors of an institution of higher education who completed a mental health first aid training program offered by the authority under Section 1001.203 during the preceding fiscal year categorized by:

(A) local mental health authority or local behavioral health authority region;

(B) school district, open-enrollment charter school, private school, and institution of higher education, as applicable; and

(C) category of personnel;

(3) child-care facility employees and contractors, youth, individuals with direct and recurring contact with students, first responders, judges, and attorneys who completed a mental health first aid training program offered by the authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region; and

(4) military service members, veterans, and immediate family members of military service members and veterans who completed the veterans module or standard version of a mental health first aid training program offered by the authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region and the training program completed.

(b) Not later than December 1 of each year, the commission shall compile the information submitted by local mental health authorities or local behavioral health authorities as required by Subsection (a) and submit a report to the legislature containing:

(1) the number of authority employees and contractors trained as mental health first aid trainers during the preceding fiscal year, the number of trainers who left the program for any reason during the preceding fiscal year, and the number of active trainers;

(2) the number of school district employees and contractors, school resource officers, open-enrollment charter school employees and contractors, private school employees and contractors, and employees and contractors of an institution of higher education who completed a mental health first aid training program provided by an authority during the preceding fiscal year categorized by:

(A) local mental health authority region or local behavioral health authority region;

(B) school district, open-enrollment charter school, private school, and institution of higher education, as applicable; and

(C) category of personnel;

(3) the number of child-care facility employees and contractors, youth, individuals with direct and recurring contact with students, first responders, judges, and attorneys who completed a mental health first aid training program provided by an authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region;

(4) the number of military service members, veterans, and immediate family members of military service members and veterans who completed the veterans module or standard version of a mental health first aid training program provided by an authority during the preceding fiscal year categorized by local mental health authority or local behavioral health authority region and the training program completed; and

(5) a detailed accounting of expenditures of money appropriated for the purpose of implementing this subchapter.

(c) The commission shall develop and provide to local mental health authorities and local behavioral health authorities a form to be used for the reporting of information required under Subsection (a), including the reporting of each category of personnel described by that subsection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 836 (S.B. 133), Sec. 7, eff. June 17, 2015.

Acts 2017, 85th Leg., R.S., Ch. 45 (S.B. 1533), Sec. 5, eff. May 19, 2017.

Acts 2019, 86th Leg., R.S., Ch. 352 (H.B. 18), Sec. 2.01, eff. December 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 755 (H.B. 1070), Sec. 1, eff. December 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1327 (H.B. 4429), Sec. 2, eff. September 1, 2019.
Reenacted and amended by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 10.009, eff. September 1, 2021.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 5, eff. September 1, 2023.

Sec. 1001.206. LIABILITY. A person who has completed a mental health first aid training program offered by a local mental health authority or local behavioral health authority under this subchapter and who in good faith attempts to assist an individual experiencing a mental health crisis is not liable in civil damages for an act

performed in attempting to assist the individual unless the act is wilfully or wantonly negligent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1306 (H.B. 3793), Sec. 4, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 324 (H.B. 2059), Sec. 6, eff. September 1, 2023.

Sec. 1001.207. PROGRAM PROMOTION. (a) The commission shall make available on its official Internet website information about the mental health first aid training program for the purpose of promoting public awareness of the program. An electronic link to an outside source of information is not sufficient.

(b) The Texas Education Agency shall make available on its official Internet website information about the mental health first aid training program for the purpose of promoting public awareness of the program. An electronic link to an outside source of information is not sufficient.

Added by Acts 2019, 86th Leg., R.S., Ch. 352 (H.B. 18), Sec. 2.02, eff. December 1, 2019.

SUBCHAPTER I. MENTAL HEALTH SERVICES FOR VETERANS

Sec. 1001.221. DEFINITIONS. In this subchapter:

(1) "Peer" means a person who is a veteran or a veteran's family member.

(1-a) "Peer service coordinator" means a person who recruits and retains veterans, peers, and volunteers to participate in the mental health program for veterans and related activities.

(2) "Veteran" means a person who has served in:

(A) the army, navy, air force, coast guard, or marine corps of the United States;

(B) the state military forces as defined by Section 431.001, Government Code; or

(C) an auxiliary service of one of those branches of the armed forces.

(3) Repealed by Acts 2017, 85th Leg., R.S., Ch. 512 (S.B. 27), Sec. 8(2), eff. September 1, 2017.

Added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, eff. September 1, 2013.
Redesignated from Health and Safety Code, Section 1001.201 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(35), eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 512 (S.B. 27), Sec. 5, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 512 (S.B. 27), Sec. 8(2), eff. September 1, 2017.

Sec. 1001.222. GENERAL POWERS AND DUTIES. (a) The department shall develop a mental health intervention program for veterans. The program must include:

(1) peer-to-peer counseling;

(2) access to licensed mental health professionals for peer service coordinators and peers;

(3) training approved by the department for peer service coordinators, licensed mental health professionals, and peers;

(4) technical assistance for peer service coordinators, licensed mental health professionals, and peers;

(5) identification, retention, and screening of community-based licensed mental health professionals;

(6) suicide prevention training for peer service coordinators and peers;

(7) veteran jail diversion services, including veterans treatment courts; and

(8) coordination of mental health first aid for veterans training to veterans and immediate family members of veterans.

(a-1) As part of the mental health intervention program for veterans, the department shall develop a women veterans mental health initiative.

(a-2) As part of the mental health intervention program for veterans, the department shall develop a rural veterans mental health initiative.

(b) The department shall solicit and ensure that specialized training is provided to persons who are peers and who want to provide peer-to-peer counseling or other peer-to-peer services under the program.

(c) The executive commissioner may adopt rules necessary to implement this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.1636, eff. April 2, 2015.
Redesignated from Health and Safety Code Section 1001.202 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(35), eff. September 1, 2015.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1237 (S.B. 1304), Sec. 1, eff. June 19, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1238 (S.B. 1305), Sec. 1, eff. June 19, 2015.
Acts 2017, 85th Leg., R.S., Ch. 512 (S.B. 27), Sec. 6, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1327 (H.B. 4429), Sec. 3, eff. September 1, 2019.

Sec. 1001.224. ANNUAL REPORT. Not later than December 1 of each year, the department shall submit a report to the governor and the legislature that includes:

(1) the number of veterans who received services through the mental health program for veterans;

(2) the number of peers and peer service coordinators trained;

(3) an evaluation of the services provided under this subchapter; and

(4) recommendations for program improvements.

Added by Acts 2013, 83rd Leg., R.S., Ch. 352 (H.B. 2392), Sec. 2, eff. September 1, 2013.
Redesignated from Health and Safety Code, Section 1001.204 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(35), eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 512 (S.B. 27), Sec. 7, eff. September 1, 2017.

Sec. 1001.225. LIMITATION ON GRANTS. The department may not award a grant to an entity for the provision of mental health services to veterans or veterans' families unless the entity demonstrates the entity:

(1) has previously received and successfully executed a grant from the department; or

(2) provides training on military informed care or military cultural competency to entity personnel who provide mental health services to veterans or veterans' families or requires those personnel to complete military competency training provided by any of the following:

(A) the Texas Veterans Commission;

(B) the commission;

(C) the Military Veteran Peer Network;

(D) the Substance Abuse and Mental Health Services Administration within the United States Department of Health and Human Services;

(E) the United States Department of Defense;

(F) the United States Department of Veterans Affairs; or

(G) a nonprofit organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code, with experience in providing training or technical assistance to entities that provide mental health services to veterans or veterans' families.

Added by Acts 2023, 88th Leg., R.S., Ch. 407 (H.B. 1457), Sec. 3, eff. September 1, 2023.

SUBCHAPTER J. MATERNAL MORTALITY REPORTING AND INVESTIGATION INFORMATION

Sec. 1001.241. MATERNAL MORTALITY REPORTING AND INVESTIGATION INFORMATION. (a) The department shall post on the department's Internet website information regarding the systematic protocol for pregnancy-related death investigations and the best practices for reporting pregnancy-related deaths to the medical examiner or justice

of the peace of each county, as applicable.

(b) The information provided under Subsection (a) must include guidelines for:

(1) determining when a comprehensive toxicology screening should be performed on a person whose death was related to pregnancy;

(2) determining when a death should be reported to or investigated by a medical examiner or justice of the peace under Chapter 49, Code of Criminal Procedure; and

(3) correctly completing the death certificate of a person whose death was related to pregnancy.

(c) The executive commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 927 (S.B. 1599), Sec. 1, eff. September 1, 2017.

SUBCHAPTER L. DATA COLLECTION AND ANALYSIS REGARDING OPIOID OVERDOSE DEATHS AND CO-OCCURRING SUBSTANCE USE DISORDERS

Sec. 1001.281. DATA COLLECTION AND ANALYSIS REGARDING OPIOID OVERDOSE DEATHS AND CO-OCCURRING SUBSTANCE USE DISORDERS. (a) The executive commissioner shall ensure that data is collected by the department regarding opioid overdose deaths and the co-occurrence of substance use disorders and mental illness. The department may use data collected by the vital statistics unit and any other source available to the department.

(b) In analyzing data collected under this section, the department shall evaluate the capacity in this state for the treatment of co-occurring substance use disorders and mental illness.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 8, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(57), eff. September 1, 2021.

CHAPTER 1003. ADULT STEM CELLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1003.001. ESTABLISHMENT OF ADULT STEM CELL BANK. (a) If the executive commissioner of the Health and Human Services Commission determines that it will be cost-effective and increase the

efficiency or quality of health care, health and human services, and health benefits programs in this state, the executive commissioner by rule shall establish eligibility criteria for the creation and operation of an autologous adult stem cell bank.

(b) In adopting the rules under Subsection (a), the executive commissioner shall consider:

(1) the ability of the applicant to establish, operate, and maintain an autologous adult stem cell bank and to provide related services; and

(2) the demonstrated experience of the applicant in operating similar facilities in this state.

(c) This section does not affect the application of or apply to Chapter 162.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 14.01, eff. September 28, 2011.

Sec. 1003.002. GENERAL REQUIREMENTS FOR ADULT STEM CELL USE IN HEALTH CARE. A person using adult stem cells in the provision of health care:

(1) must use adult stem cells that are properly manufactured and stored; and

(2) may only use adult stem cells in a clinical trial approved by the United States Food and Drug Administration.

Added by Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 5, eff. September 1, 2015.

Sec. 1003.003. ADDITIONAL REQUIREMENTS FOR ADULT STEM CELL USE IN HOSPITALS. A hospital may use adult stem cells in a procedure if:

(1) a physician providing services at the hospital determines that the use of adult stem cells in the procedure is appropriate;

(2) the patient consents in writing to the use;

(3) the requirements for stem cell use under Section 1003.002 are met;

(4) the manufacturing processes for the adult stem cells satisfy current good manufacturing practices adopted by the United States Food and Drug Administration; and

(5) appropriate state and federal guidelines on the use of adult stem cells are followed.

Added by Acts 2015, 84th Leg., R.S., Ch. 992 (H.B. 177), Sec. 5, eff. September 1, 2015.

SUBCHAPTER B. PROVISION OF INVESTIGATIONAL STEM CELL TREATMENTS TO PATIENTS WITH CERTAIN SEVERE CHRONIC DISEASES OR TERMINAL ILLNESSES

Sec. 1003.051. DEFINITIONS. In this subchapter:

(1) "Investigational stem cell treatment" means an adult stem cell treatment that:

(A) is under investigation in a clinical trial and being administered to human participants in that trial; and

(B) has not yet been approved for general use by the United States Food and Drug Administration.

(2) "Severe chronic disease" means a condition, injury, or illness that:

(A) may be treated;

(B) is never cured or eliminated; and

(C) entails significant functional impairment or severe pain.

(3) "Terminal illness" means an advanced stage of a disease with an unfavorable prognosis that, without life-sustaining procedures, will soon result in death or a state of permanent unconsciousness from which recovery is unlikely.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.052. RULES. The executive commissioner shall adopt rules designating the medical conditions that constitute a severe chronic disease or terminal illness for purposes of this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.0525. ADMINISTRATION OF SUBCHAPTER. The department shall administer this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 1, eff. September 1, 2019.

Sec. 1003.0526. INVESTIGATIONAL STEM CELL REGISTRY. The department shall establish and maintain an investigational stem cell registry that lists each physician who administers an investigational stem cell treatment under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 1, eff. September 1, 2019.

Sec. 1003.053. PATIENT ELIGIBILITY. A patient is eligible to access and use an investigational stem cell treatment under this subchapter if:

(1) the patient has a severe chronic disease or terminal illness listed in the rules adopted under Section 1003.052 and attested to by the patient's treating physician; and

(2) the patient's physician:

(A) in consultation with the patient, has considered all other treatment options currently approved by the United States Food and Drug Administration and determined that those treatment options are unavailable or unlikely to alleviate the significant impairment or severe pain associated with the severe chronic disease or terminal illness; and

(B) has recommended or prescribed in writing that the patient use a specific class of investigational stem cell treatment.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.054. INFORMED CONSENT. (a) Before receiving an investigational stem cell treatment, an eligible patient must sign a written informed consent.

(b) If the patient is a minor or lacks the mental capacity to provide informed consent, a parent, guardian, or conservator may provide informed consent on the patient's behalf.

(c) The executive commissioner by rule shall adopt a form for the informed consent under this section. The form must provide notice

that the department administers this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 2, eff. September 1, 2019.

Sec. 1003.055. TREATMENT REQUIREMENTS; TEXAS MEDICAL BOARD RULES. (a) Treatment provided under this subchapter must be:

(1) administered directly by a physician certified under Subsection (c);

(2) overseen by an institutional review board described by Subsection (d); and

(3) provided at:

(A) a hospital licensed under Chapter 241;

(B) an ambulatory surgical center licensed under Chapter 243; or

(C) a medical school, as defined by Section 61.501, Education Code.

(b) A physician administering an investigational stem cell treatment under this subchapter shall comply with all applicable Texas Medical Board rules.

(c) An institutional review board described by Subsection (d) may certify a physician to provide an investigational stem cell treatment under this subchapter.

(d) An institutional review board that oversees investigational stem cell treatments administered under this subchapter must meet one of the following conditions:

(1) be affiliated with a medical school, as defined by Section 61.501, Education Code;

(2) be affiliated with a hospital licensed under Chapter 241 that has at least 150 beds;

(3) be accredited by the Association for the Accreditation of Human Research Protection Programs;

(4) be registered by the United States Department of Health and Human Services, Office for Human Research Protections, in accordance with 21 C.F.R. Part 56; or

(5) be accredited by a national accreditation organization

acceptable to the Texas Medical Board.

(e) The Texas Medical Board may adopt rules regarding institutional review boards as necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 3, eff. September 1, 2019.

Sec. 1003.056. EFFECT ON OTHER LAW. (a) This subchapter does not affect the coverage of enrollees in clinical trials under Chapter 1379, Insurance Code.

(b) This subchapter does not affect or authorize a person to violate any law regulating the possession, use, or transfer of fetal tissue, fetal stem cells, adult stem cells, or human organs, including Sections 48.02 and 48.04, Penal Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(13), eff. September 1, 2019.

Sec. 1003.057. ACTION AGAINST PHYSICIAN'S LICENSE PROHIBITED. Notwithstanding any other law, the Texas Medical Board may not revoke, fail to renew, suspend, or take any action against a physician's license under Subchapter B, Chapter 164, Occupations Code, based solely on the physician's recommendations to an eligible patient regarding access to or use of an investigational stem cell treatment, provided that the care provided or recommendations made to the patient meet the standard of care and the requirements of this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.058. GOVERNMENTAL INTERFERENCE PROHIBITED. (a) In

this section, "governmental entity" means this state or an agency or political subdivision of this state.

(b) A governmental entity or an officer, employee, or agent of a governmental entity may not interfere with an eligible patient's access to or use of an investigational stem cell treatment authorized under this subchapter unless the treatment uses an adult stem cell product that is considered an adulterated or misbranded drug under Chapter 431. For purposes of this subsection, a governmental entity may not consider the adult stem cell product to be an adulterated or misbranded drug solely on the basis that the United States Food and Drug Administration has not approved the adult stem cell product.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 4, eff. September 1, 2019.

Sec. 1003.059. INSTITUTIONAL REVIEW BOARD DOCUMENTATION; REPORT. (a) An institutional review board overseeing an investigational stem cell treatment under this subchapter shall keep a record on each person to whom a physician administers the treatment and document in the record the provision of each treatment and the effects of the treatment on the person throughout the period the treatment is administered to the person.

(b) Each institutional review board overseeing an investigational stem cell treatment under this subchapter shall submit an annual report to the Texas Medical Board on the review board's findings based on records kept under Subsection (a). The report may not include any patient identifying information and must be made available to the public in both written and electronic form.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 3, eff. September 1, 2017.

Sec. 1003.060. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to:

(1) prohibit a physician from using adult stem cells for their intended homologous use if the stem cells are:

(A) produced by a manufacturer registered by the United States Food and Drug Administration; and

(B) commercially available; or

(2) require an institutional review board to oversee treatment using adult stem cells registered by the United States Food and Drug Administration for their intended homologous use.

Added by Acts 2019, 86th Leg., R.S., Ch. 1158 (H.B. 3148), Sec. 5, eff. September 1, 2019.

TITLE 13. ENVIRONMENTAL, HEALTH, AND SAFETY AUDIT PRIVILEGE ACT

CHAPTER 1101. ENVIRONMENTAL, HEALTH, AND SAFETY AUDIT PRIVILEGE ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1101.001. SHORT TITLE. This chapter may be cited as the Texas Environmental, Health, and Safety Audit Privilege Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.002. PURPOSE; CIRCUMVENTION BY RULE PROHIBITED. (a) The purpose of this chapter is to encourage voluntary compliance with environmental and occupational health and safety laws.

(b) A regulatory agency may not adopt a rule or impose a condition that circumvents the purpose of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.003. DEFINITIONS. (a) In this chapter:

(1) "Acquisition closing date" means the date on which ownership of, or a direct or indirect majority interest in the ownership of, a regulated facility or operation is acquired in an asset purchase, equity purchase, merger, or similar transaction.

(2) "Audit report" means an audit report described by Section 1101.051.

(3) "Environmental or health and safety audit" or "audit" means a systematic voluntary evaluation, review, or assessment of compliance with environmental or health and safety laws or with any

permit issued under an environmental or health and safety law conducted by an owner or operator, an employee of an owner or operator, a person, including an employee or independent contractor of the person, that is considering the acquisition of a regulated facility or operation, or an independent contractor of:

(A) a regulated facility or operation; or

(B) an activity at a regulated facility or operation.

(4) "Environmental or health and safety law" means:

(A) a federal or state environmental or occupational health and safety law; or

(B) a rule, regulation, or regional or local law adopted in conjunction with a law described by Paragraph (A).

(5) "Owner or operator" means a person who owns or operates a regulated facility or operation.

(6) "Penalty" means an administrative, civil, or criminal sanction imposed by the state to punish a person for a violation of a statute or rule. The term does not include a technical or remedial provision ordered by a regulatory authority.

(7) "Regulated facility or operation" means a facility or operation that is regulated under an environmental or health and safety law.

(b) A person acts intentionally for purposes of this chapter if the person acts intentionally within the meaning of Section 6.03, Penal Code.

(c) For purposes of this chapter, a person acts knowingly, or with knowledge, with respect to the nature of the person's conduct when the person is aware of the person's physical acts. A person acts knowingly, or with knowledge, with respect to the result of the person's conduct when the person is aware that the conduct will cause the result.

(d) A person acts recklessly or is reckless for purposes of this chapter if the person acts recklessly or is reckless within the meaning of Section 6.03, Penal Code.

(e) To fully implement the privilege established by this chapter, the term "environmental or health and safety law" shall be construed broadly.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.004. APPLICABILITY. The privilege established by this chapter applies to environmental or health and safety audits that are conducted on or after May 23, 1995.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.005. RELATIONSHIP TO OTHER RECOGNIZED PRIVILEGES. This chapter does not limit, waive, or abrogate the scope or nature of any statutory or common law privilege, including the work product doctrine and the attorney-client privilege.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

SUBCHAPTER B. GENERAL AUDIT PROVISIONS

Sec. 1101.051. AUDIT REPORT. (a) An audit report is a report that includes each document and communication, other than those described by Section 1101.102, produced from an environmental or health and safety audit.

(b) General components that may be contained in a completed audit report include:

(1) a report prepared by an auditor, monitor, or similar person, which may include:

(A) a description of the scope of the audit;

(B) the information gained in the audit and findings, conclusions, and recommendations; and

(C) exhibits and appendices;

(2) memoranda and documents analyzing all or a portion of the materials described by Subdivision (1) or discussing implementation issues; and

(3) an implementation plan or tracking system to correct past noncompliance, improve current compliance, or prevent future noncompliance.

(c) The types of exhibits and appendices that may be contained in an audit report include supporting information that is collected or developed for the primary purpose of and in the course of an environmental or health and safety audit, including:

(1) interviews with current or former employees;

(2) field notes and records of observations;

(3) findings, opinions, suggestions, conclusions, guidance, notes, drafts, and memoranda;

(4) legal analyses;

(5) drawings;

(6) photographs;

(7) laboratory analyses and other analytical data;

(8) computer-generated or electronically recorded information;

(9) maps, charts, graphs, and surveys; and

(10) other communications associated with an environmental or health and safety audit.

(d) To facilitate identification, each document in an audit report should be labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT" or labeled with words of similar import. Failure to label a document under this section does not constitute a waiver of the privilege established by this chapter or create a presumption that the privilege does or does not apply.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.052. PERIOD FOR COMPLETION OF AUDIT. (a) Unless an extension is approved by the governmental entity with regulatory authority over the regulated facility or operation based on reasonable grounds, an environmental or health and safety audit must be completed within a reasonable time not to exceed six months after:

(1) the date the audit is initiated; or

(2) the acquisition closing date, if the person continues the audit under Section 1101.053.

(b) Subsection (a)(1) does not apply to an environmental or health and safety audit conducted before the acquisition closing date by a person that is considering the acquisition of the regulated facility or operation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.053. CONTINUATION OF AUDIT BEGUN BEFORE ACQUISITION

CLOSING DATE. A person that begins an environmental or health and safety audit before becoming the owner of a regulated facility or operation may continue the audit after the acquisition closing date if the person gives notice under Section 1101.155.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

SUBCHAPTER C. PRIVILEGE

Sec. 1101.101. SCOPE OF PRIVILEGE. (a) An audit report is privileged as provided by this section.

(b) Except as provided by Sections 1101.102, 1101.103, and 1101.104, any part of an audit report is privileged and is not admissible as evidence or subject to discovery in:

(1) a civil action, whether legal or equitable; or

(2) an administrative proceeding.

(c) A person, when called or subpoenaed as a witness, may not be compelled to testify or produce a document related to an environmental or health and safety audit if:

(1) the testimony or document discloses any item listed in Section 1101.051 that was made as part of the preparation of an audit report and that is addressed in a privileged part of an audit report; and

(2) the person is:

(A) a person who conducted any portion of the audit but did not personally observe the physical events;

(B) a person to whom the audit results are disclosed under Section 1101.103(b); or

(C) a custodian of the audit results.

(d) A person who conducts or participates in the preparation of an environmental or health and safety audit and who has actually observed physical events of violation may testify about those events but may not be compelled to testify about or produce documents related to the preparation of or any privileged part of an environmental or health and safety audit or any item listed in Section 1101.051.

(e) An employee of a state agency may not request, review, or otherwise use an audit report during an agency inspection of a regulated facility or operation or an activity of a regulated

facility or operation.

(f) A party asserting the privilege created by this section has the burden of establishing the applicability of the privilege.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.102. NONPRIVILEGED MATERIALS. (a) The privilege established by Section 1101.101 does not apply to:

(1) a document, communication, datum, or report or other information required by a regulatory agency to be collected, developed, maintained, or reported under a federal or state environmental or health and safety law;

(2) information obtained by observation, sampling, or monitoring by a regulatory agency; or

(3) information obtained from a source not involved in the preparation of the audit report.

(b) This section does not limit the right of a person to agree to conduct and disclose an audit report.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.103. EXCEPTION: WAIVER. (a) The privilege established by Section 1101.101 does not apply to the extent the privilege is expressly waived by the owner or operator who prepared the audit report or caused the report to be prepared.

(b) Disclosure of an audit report or any information generated by an environmental or health and safety audit does not waive the privilege established by Section 1101.101 if the disclosure:

(1) is made to address or correct a matter raised by the audit and is made only to:

(A) a person employed by the owner or operator, including a temporary or contract employee;

(B) a legal representative of the owner or operator;

(C) an officer or director of the regulated facility or operation or a partner of the owner or operator;

(D) an independent contractor of the owner or operator;

(E) a person considering the acquisition of the

regulated facility or operation that is the subject of the audit; or

(F) an employee, temporary employee, contract employee, legal representative, officer, director, partner, or independent contractor of a person described by Paragraph (E);

(2) is made under the terms of a confidentiality agreement between the person for whom the audit report was prepared or the owner or operator of the audited facility or operation and:

(A) a partner or potential partner of the owner or operator of the facility or operation;

(B) a transferee or potential transferee of the facility or operation;

(C) a lender or potential lender for the facility or operation;

(D) a governmental official of a state; or

(E) a person engaged in the business of insuring, underwriting, or indemnifying the facility or operation; or

(3) is made under a claim of confidentiality to a governmental official or agency by the person for whom the audit report was prepared or by the owner or operator.

(c) A party to a confidentiality agreement described by Subsection (b)(2) who violates that agreement is liable for damages caused by the disclosure and for any other penalties stipulated in the confidentiality agreement.

(d) Information that is disclosed under Subsection (b)(3) is confidential and is not subject to disclosure under Chapter 552, Government Code. A public entity, public employee, or public official who discloses information in violation of this subsection is subject to any penalty provided by Chapter 552, Government Code. It is an affirmative defense to the clerical dissemination of a privileged audit report that the report was not clearly labeled "COMPLIANCE REPORT: PRIVILEGED DOCUMENT" or labeled with words of similar import. The lack of labeling may not be raised as a defense if the entity, employee, or official knew or had reason to know that the document was a privileged audit report.

(e) This section may not be construed to circumvent the protections provided by federal or state law for individuals who disclose information to law enforcement authorities.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.104. EXCEPTION: DISCLOSURE REQUIRED BY COURT OR ADMINISTRATIVE HEARINGS OFFICIAL. (a) A court or administrative hearings official with competent jurisdiction may require disclosure of a portion of an audit report in a civil or administrative proceeding if the court or administrative hearings official determines, after an in camera review consistent with the appropriate rules of procedure, that:

(1) the privilege is asserted for a fraudulent purpose;

(2) the portion of the audit report is not subject to the privilege by application of Section 1101.102; or

(3) the portion of the audit report shows evidence of noncompliance with an environmental or health and safety law and appropriate efforts to achieve compliance with the law were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance.

(b) A party seeking disclosure under this section has the burden of proving that Subsection (a)(1), (2), or (3) applies.

(c) Notwithstanding Chapter 2001, Government Code, a decision of an administrative hearings official under Subsection (a)(1), (2), or (3) of this section is directly appealable to a court of competent jurisdiction without disclosure of the audit report to any person unless so ordered by the court.

(d) A person claiming the privilege is subject to sanctions as provided by Rule 215 of the Texas Rules of Civil Procedure or to a fine not to exceed $10,000 if the court finds, consistent with fundamental due process, that the person intentionally or knowingly claimed the privilege for information that, by application of Section 1101.102, is not subject to the privilege.

(e) A determination of a court under this section is subject to interlocutory appeal to an appropriate appellate court.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.105. REVIEW OF PRIVILEGED DOCUMENTS BY GOVERNMENTAL AUTHORITY. (a) If an audit report is obtained, reviewed, or used in a criminal proceeding, the administrative or civil evidentiary

privilege established by Section 1101.101 is not waived or eliminated for any other purpose.

(b) Notwithstanding the privilege established by Section 1101.101, a regulatory agency may review information that is required to be available under a specific state or federal law, but that review does not waive or eliminate the administrative or civil evidentiary privilege if applicable.

(c) If information is required to be available to the public by operation of a specific state or federal law, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure before obtaining the information under Subsection (a) or (b).

(d) If privileged information is disclosed under Subsection (b) or (c), on the motion of a party, a court or the appropriate administrative official shall suppress evidence offered in any civil or administrative proceeding that arises or is derived from review, disclosure, or use of information obtained under this section unless the review, disclosure, or use is authorized under Section 1101.102. A party having received information under Subsection (b) or (c) has the burden of proving that the evidence offered did not arise and was not derived from the review of privileged information.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

SUBCHAPTER D. VOLUNTARY DISCLOSURE; IMMUNITY

Sec. 1101.151. IMMUNITY FOR VIOLATION VOLUNTARILY DISCLOSED. Except as otherwise provided by this subchapter, a person who makes a voluntary disclosure of a violation of an environmental or health and safety law is immune from an administrative or civil penalty for the violation disclosed.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.152. NATURE OF VOLUNTARY DISCLOSURE. (a) A disclosure is voluntary for purposes of this subchapter only if:

(1) the disclosure was made:

(A) promptly after knowledge of the information

disclosed is obtained by the person making the disclosure; or

(B) not later than the 45th day after the acquisition closing date, if the violation was discovered during an audit conducted before the acquisition closing date by a person considering the acquisition of the regulated facility or operation;

(2) the disclosure was made in writing by certified mail to an agency that has regulatory authority with regard to the violation disclosed;

(3) an investigation of the violation was not initiated or the violation was not independently detected by an agency with enforcement jurisdiction before the disclosure was made using certified mail;

(4) the disclosure arises out of a voluntary environmental or health and safety audit;

(5) the person making the disclosure initiates an appropriate effort to achieve compliance, pursues that effort with due diligence, and corrects the noncompliance within a reasonable time;

(6) the person making the disclosure cooperates with the appropriate agency in connection with an investigation of the issues identified in the disclosure; and

(7) the violation did not result in:

(A) injury or imminent and substantial risk of serious injury to one or more persons at the site; or

(B) off-site substantial actual harm or imminent and substantial risk of harm to persons, property, or the environment.

(b) For a disclosure described by Subsection (a)(1)(B), the person making the disclosure must certify in the disclosure that before the acquisition closing date:

(1) the person was not responsible for the environmental, health, or safety compliance at the regulated facility or operation that is subject to the disclosure;

(2) the person did not have the largest ownership share of the seller;

(3) the seller did not have the largest ownership share of the person; and

(4) the person and the seller did not have a common corporate parent or a common majority interest owner.

(c) A disclosure is not voluntary for purposes of this subchapter if the disclosure is a report to a regulatory agency

required solely by a specific condition of an enforcement order or decree.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.153. BURDEN OF PROOF WITH RESPECT TO VOLUNTARY DISCLOSURE. (a) In a civil or administrative enforcement action brought against a person for a violation for which the person claims to have made a voluntary disclosure, the person claiming the immunity created by this subchapter has the burden of establishing a prima facie case that the disclosure was voluntary.

(b) After the person claiming the immunity establishes a prima facie case of voluntary disclosure, other than a case in which immunity does not apply under Section 1101.157, the enforcement authority has the burden of rebutting the presumption by a preponderance of the evidence.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.154. NOTICE REQUIREMENT. (a) This section does not apply to an environmental or health and safety audit conducted before the acquisition closing date by a person considering the acquisition of the regulated facility or operation that is the subject of the audit.

(b) To receive immunity under this subchapter, a facility conducting an environmental or health and safety audit under this chapter must provide notice to an appropriate regulatory agency of the fact that it is planning to begin the audit.

(c) The notice must specify:

(1) the facility or portion of the facility to be audited;

(2) the anticipated time the audit will begin; and

(3) the general scope of the audit.

(d) The notice may provide notification of more than one scheduled environmental or health and safety audit at a time.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.155. NOTICE REQUIREMENT FOR CERTAIN AUDITS BEGUN BEFORE ACQUISITION CLOSING DATE. (a) A person that begins an environmental or health and safety audit before becoming the owner of the regulated facility or operation that is the subject of the audit may continue the audit after the acquisition closing date if, not later than the 45th day after the acquisition closing date, the person provides notice to an appropriate regulatory agency of the fact that the person intends to continue an ongoing audit.

(b) The notice must specify:

(1) the facility or portion of the facility being audited;

(2) the date the audit began; and

(3) the general scope of the audit.

(c) The person must certify in the notice that before the acquisition closing date:

(1) the person was not responsible for the scope of the environmental, health, or safety compliance being audited at the regulated facility or operation;

(2) the person did not have the largest ownership share of the seller;

(3) the seller did not have the largest ownership share of the person; and

(4) the person and the seller did not have a common corporate parent or a common majority interest owner.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.156. IDENTIFICATION OF VIOLATION IN COMPLIANCE HISTORY REPORT. A violation that has been voluntarily disclosed and to which immunity applies under this subchapter must be identified in a compliance history report as being voluntarily disclosed.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.157. EXCEPTION TO IMMUNITY: CERTAIN VIOLATIONS AND OFFENSES; IMPOSITION OF PENALTY; MITIGATING FACTORS. (a) The

immunity established by this subchapter does not apply and an administrative or civil penalty may be imposed under applicable law if:

(1) the person who made the disclosure intentionally or knowingly committed or was responsible within the meaning of Section 7.02, Penal Code, for the commission of the disclosed violation;

(2) the person who made the disclosure recklessly committed or was responsible within the meaning of Section 7.02, Penal Code, for the commission of the disclosed violation and the violation resulted in substantial injury to one or more persons at the site or off-site harm to persons, property, or the environment;

(3) the offense was committed intentionally or knowingly by a member of the person's management or an agent of the person and the person's policies or lack of prevention systems contributed materially to the occurrence of the violation;

(4) the offense was committed recklessly by a member of the person's management or an agent of the person, the person's policies or lack of prevention systems contributed materially to the occurrence of the violation, and the violation resulted in substantial injury to one or more persons at the site or off-site harm to persons, property, or the environment; or

(5) the violation has resulted in a substantial economic benefit that gives the violator a clear advantage over its business competitors.

(b) A penalty that is imposed under Subsection (a) should, to the extent appropriate, be mitigated by factors such as:

(1) the voluntariness of the disclosure;

(2) efforts by the disclosing party to conduct environmental or health and safety audits;

(3) remediation;

(4) cooperation with government officials investigating the disclosed violation;

(5) the period of ownership of the regulated facility or operation; or

(6) other relevant considerations.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

Sec. 1101.158. EXCEPTION TO IMMUNITY: VIOLATIONS THAT CONSTITUTE PATTERN OF DISREGARD OF ENVIRONMENTAL OR HEALTH AND SAFETY LAWS. (a) The immunity established by this subchapter does not apply if a court or administrative law judge finds that the person claiming the immunity has, after May 23, 1995, repeatedly or continuously committed significant violations and not attempted to bring the facility or operation into compliance, so as to constitute a pattern of disregard of environmental or health and safety laws.

(b) For violations committed by a person to be considered a "pattern" under Subsection (a), the person must have committed a series of violations that were due to separate and distinct events occurring within a three-year period at the same facility or operation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.002(a), eff. September 1, 2017.

HUMAN RESOURCES CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent human resources law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1979, 66th Leg., p. 2334, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision of this code, except as otherwise expressly provided by this code.

Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 75, eff. Sept. 1, 1985.

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection,

subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 2, eff. Sept. 1, 1989.

TITLE 2. HUMAN SERVICES AND PROTECTIVE SERVICES IN GENERAL
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 11. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this title:

(1) "Assistance" means all forms of assistance and services for needy persons authorized by Subtitle C.

(2) "Commission" means the Health and Human Services Commission.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Financial assistance" means money payments for needy persons authorized by Chapter 31.

(5) "Medical assistance" means assistance for needy persons authorized by Chapter 32.

Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 5, eff. Aug. 26, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 8.012, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 920, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 980, Sec. 50, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1505, Sec. 2.01, eff. Sept. 1, 2005.
Amended by Acts 2001, 77th Leg., ch. 592, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 1.28(3), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.002, eff. April 2, 2015.

Sec. 11.002. PURPOSE OF TITLE; CONSTRUCTION. (a) The purpose of this title is to establish a program of social security to provide necessary and prompt assistance to the citizens of this state who are entitled to avail themselves of its provisions.

(b) This title shall be liberally construed in order that its purposes may be accomplished as equitably, economically, and

expeditiously as possible.

Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.002, eff. April 2, 2015.

Sec. 11.003. RESPONSIBILITY OF COUNTIES AND MUNICIPALITIES NOT AFFECTED. No provision of this title is intended to release the counties and municipalities in this state from the specific responsibilities they have with regard to the support of public welfare, child welfare, and relief services. Funds which the counties and municipalities may appropriate for the support of those programs may be administered through the local or regional offices of the commission or Department of Aging and Disability Services, and if administered in that manner must be devoted exclusively to the programs in the county or municipality making the appropriation.

Acts 1979, 66th Leg., p. 2335, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.002, eff. April 2, 2015.

Text of section effective on April 1, 2025

Sec. 11.004. POWERS AND FUNCTIONS NOT AFFECTED. The provisions of this title are not intended to interfere with the powers and functions of the commission, the health and human services agencies, as defined by Section 521.0001, Government Code, or county juvenile boards.

Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 793, Sec. 19, eff. Sept. 1, 1985.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.002, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.72, eff.

April 1, 2025.

Text of section effective until April 1, 2025

Sec. 11.004. POWERS AND FUNCTIONS NOT AFFECTED. The provisions of this title are not intended to interfere with the powers and functions of the commission, the health and human services agencies, as defined by Section 531.001, Government Code, or county juvenile boards.

Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 793, Sec. 19, eff. Sept. 1, 1985.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.002, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.72, eff. April 1, 2025.

CHAPTER 12. PENAL PROVISIONS

Sec. 12.001. PROHIBITED ACTIVITIES. (a) A person who is not licensed to practice law in Texas commits an offense if the person charges a fee for representing or aiding an applicant or recipient in procuring assistance from the state agency administering the assistance.

(b) A person commits an offense if the person advertises, holds himself or herself out for, or solicits the procurement of assistance from the state agency administering the assistance.

(c) An offense under this section is a Class A misdemeanor.

Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.003, eff. April 2, 2015.

Sec. 12.002. UNLAWFUL USE OF FUNDS. (a) A person charged with the duty or responsibility of administering, disbursing, auditing, or

otherwise handling the grants, funds, or money provided for in this title commits an offense if the person misappropriates the grants, funds, or money or by deception or fraud wrongfully distributes the grants, funds, or money to any person.

(b) An offense under this section is a felony punishable by confinement in the Texas Department of Criminal Justice for a term of not less than two or more than seven years.

Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.113, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.003, eff. April 2, 2015.

Sec. 12.003. DISCLOSURE OF INFORMATION PROHIBITED. (a) Except for purposes directly connected with the administration of the assistance programs of the commission or Department of Aging and Disability Services, as applicable, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, or any information concerning, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the commission or department or acquired by employees of the commission or department in the performance of their official duties.

(b) An offense under this section is a Class A misdemeanor.

Acts 1979, 66th Leg., p. 2336, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.003, eff. April 2, 2015.

SUBTITLE B. ADMINISTRATIVE PROVISIONS AND GENERAL FUNCTIONS RELATING TO HUMAN SERVICES

CHAPTER 21. ADMINISTRATIVE PROVISIONS RELATING TO AGENCIES ADMINISTERING ASSISTANCE PROGRAMS

Sec. 21.011. ANNUAL REPORT ON DEPARTMENT OF AGING AND DISABILITY SERVICES. On or before December 31 of each year the Department of Aging and Disability Services shall prepare and submit to the commission a full report on the operation and administration of the department under this title together with the department's recommendations for changes. The commission shall submit the report to the governor and the legislature.

Acts 1979, 66th Leg., p. 2339, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 18, Sec. 1, eff. April 3, 1985; Acts 1987, 70th Leg., ch. 1052, Sec. 1.05, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 693, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1169, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(101), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.007, eff. April 2, 2015.

Sec. 21.012. CONFIDENTIALITY OF INFORMATION. (a) The executive commissioner shall establish reasonable rules governing the custody, use, and preservation of the records, papers, files, and communications of the commission and the Department of Aging and Disability Services under this title. The commission and the department shall:

(1) enforce the agency's rules; and

(2) provide safeguards which restrict the use or disclosure of information concerning applicants for or recipients of the commission's and the department's assistance programs to purposes directly connected with the administration of the programs.

(b) If under a provision of law lists of the names and addresses of recipients of the commission's or the department's assistance programs are furnished to or held by a governmental agency other than the commission or the department, that agency or the person with responsibility for adopting rules for that agency shall adopt rules necessary to prevent the publication of the lists or the use of the lists for purposes not directly connected with the administration of the assistance programs.

Acts 1979, 66th Leg., p. 2339, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.007, eff. April 2, 2015.

Sec. 21.013. OATHS AND ACKNOWLEDGMENTS. A local representative of the commission or the Department of Aging and Disability Services who is responsible for investigating and determining the eligibility of an applicant for assistance authorized in this title may administer oaths and take acknowledgments concerning all matters relating to the administration of this title. The representative shall sign the oaths or acknowledgments and indicate the representative's position and title but need not seal the instruments. The representative has the same authority as a notary public coextensive with the limits of the state for the purpose of administering the provisions of this title.

Acts 1979, 66th Leg., p. 2339, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.007, eff. April 2, 2015.

CHAPTER 22. GENERAL FUNCTIONS RELATING TO HUMAN SERVICES

Text of section effective until April 1, 2025

Sec. 22.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner of aging and disability services by this title or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.03, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.009, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.73, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 22.0001. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner of aging and disability services by this title or another law conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524, Government Code;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b), Government Code;

(4) Section 524.0202, Government Code; and

(5) Section 525.0254, Government Code.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.009, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.73, eff. April 1, 2025.

Sec. 22.001. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The executive commissioner is responsible for supervising the administration of the welfare functions authorized in this title.

(b) The commission shall administer medical assistance to needy persons and financial and medical assistance to families with dependent children.

(b-1) The executive commissioner shall supervise general relief services.

(c) The commission shall assist other governmental agencies in performing services in conformity with the purposes of this title when so requested and shall cooperate with the agencies when expedient.

(d) The commission shall conduct research and compile statistics on public welfare programs in the state. The research must include all phases of dependency and delinquency and related problems. The commission shall cooperate with other public and private agencies in developing plans for the prevention and treatment

of conditions giving rise to public welfare problems.

Acts 1979, 66th Leg., p. 2340, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 1.07, 1.08, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 747, Sec. 61(3), eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.013, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 162, Sec. 1, eff. May 27, 2003; Acts 2003, 78th Leg., ch. 198, Sec. 2.129, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.06, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.04, eff. June 14, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(54), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 320 (H.B. 1760), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.010, eff. April 2, 2015.

Sec. 22.0011. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Long-term care services" means the provision of personal care and assistance related to health and social services given episodically or over a sustained period to assist individuals of all ages and their families to achieve the highest level of functioning possible, regardless of the setting in which the assistance is given.

Added by Acts 1999, 76th Leg., ch. 1505, Sec. 1.02, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.011, eff. April 2, 2015.

Sec. 22.0015. EVALUATION AND IMPROVEMENT OF PROGRAMS. The

commission and the department shall conduct research, analysis, and reporting of the programs administered by each agency under this title to evaluate and improve the programs. The commission and the department may contract with one or more independent entities to assist the commission or the department, as applicable, with the research, analysis, and reporting required by this section.

Added by Acts 1997, 75th Leg., ch. 323, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.011, eff. April 2, 2015.

Sec. 22.002. ADMINISTRATION OF FEDERAL WELFARE PROGRAMS. (a) The commission is the state agency designated to cooperate with the federal government in the administration of Titles IV, XIX, and XX of the federal Social Security Act. The commission shall administer other titles added to the act after January 1, 1979, unless another state agency is designated by law to perform the additional functions. The commission shall cooperate with federal, state, and local governmental agencies in the enforcement and administration of the federal act, and the executive commissioner shall promulgate rules to effect that cooperation.

(b) The commission shall cooperate with the United States Department of Health and Human Services and other federal agencies in a reasonable manner and in conformity with the provisions of this title to the extent necessary to qualify for federal assistance for persons entitled to benefits under the federal Social Security Act. The commission shall make reports periodically in compliance with federal regulations.

(c) The commission may establish and maintain programs of assistance and services authorized by federal law and designed to help needy families and individuals attain and retain the capability of independence and self-care. Notwithstanding any other provision of law, the commission may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the commission determines that the extension of scope is feasible and within the limits of appropriated funds.

(d) If the commission determines that a provision of state welfare law conflicts with a provision of federal law, the executive

commissioner may promulgate policies and rules necessary to allow the state to receive and expend federal matching funds to the fullest extent possible in accordance with the federal statutes and the provisions of this title and the state constitution and within the limits of appropriated funds.

(e) The commission may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal law. The commission may accept, expend, and transfer funds received from a county, municipality, or public or private agency or from any other source, and the funds shall be deposited in the state treasury subject to withdrawal on order of the executive commissioner in accordance with the commission's rules.

(f) The commission may enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized in Subsection (c). The agreements or contracts between the commission and other state agencies are not subject to Chapter 771, Government Code.

(g) In administering social service programs authorized by the Social Security Act, the commission may prepay an agency or facility for expenses incurred under a contract with the commission to provide a social service.

(h) The executive commissioner by rule may set and the commission may charge reasonable fees for services provided in administering social service programs authorized by the Social Security Act. The executive commissioner shall set the amount of each fee according to the cost of the service provided and the ability of the recipient to pay.

(i) The commission may not deny services administered under this section to any person because of that person's inability to pay for services.

Acts 1979, 66th Leg., p. 2340, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2232, ch. 530, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 3872, ch. 616, Sec. 1, eff. Sept. 1, 1983.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.012, eff. April 2, 2015.

Sec. 22.003. RESEARCH AND DEMONSTRATION PROJECTS. (a) The commission and the department may conduct research and demonstration projects that in the judgment of the executive commissioner will assist in promoting the purposes of the commission's and the department's assistance programs. The commission and the department may conduct the projects independently or in cooperation with a public or private agency.

(b) The executive commissioner may authorize the use of state or federal funds available for commission or department assistance programs or for research and demonstration projects to support the projects. The projects must be consistent with the state and federal laws making the funds available.

Acts 1979, 66th Leg., p. 2341, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.012, eff. April 2, 2015.

Sec. 22.0031. PROJECTS FOR HIGH-RISK PREGNANT WOMEN AND HIGH-RISK CHILDREN. (a) The commission shall establish programs of case management for high-risk pregnant women and high-risk children to age one as provided under Section 1915(g) of the federal Social Security Act (42 U.S.C. Section 1396n).

(b) Case management programs may be developed using contracts with public health entities, hospitals, community health clinics, physicians, or other appropriate entities which have the capacity to carry out the full scope of case management activities. The case manager shall assess the needs of the pregnant woman and the child and serve as a broker to assure that all needs as defined in this subsection are met to the greatest extent possible given existing services available in the project area. These activities shall include:

(1) assuring that the pregnant woman seeks and receives early and appropriate prenatal care that conforms to prescribed medical regimes;

(2) assisting the pregnant woman and child in gaining access to appropriate social, educational, nutritional, and other ancillary services as needed in accordance with federal Medicaid law;

and

(3) assuring appropriate coordination within the medical community.

(c) The provisions of Subsection (b) of this section shall not be construed to allow a case manager to interfere with the physician-patient relationship and shall not be construed as conferring any authority to practice medicine.

(d) The commission shall use existing funds of the commission or any other lawful source to fund and support the projects for high-risk pregnant women and high-risk children.

Added by Acts 1989, 71st Leg., ch. 1215, Sec. 2, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.013, eff. April 2, 2015.

Sec. 22.0033. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of the department terminates service or employment with the department, the individual may not, directly or indirectly, attempt or aid in the attempt to procure a contract with the department that relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including a state employee who is exempt from the state's position classification plan; or

(2) a former officer or employee who is employed by another state agency or a community center.

(c) A former officer or employee of the department commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 76, Sec. 3, eff. Sept. 1, 1991.

Sec. 22.004. PROVISION OF LEGAL SERVICES. (a) On request, the

commission may provide legal services to an applicant for or recipient of assistance at a hearing before the commission.

(b) The services must be provided by an attorney licensed to practice law in Texas or by a law student acting under the supervision of a law teacher or a legal services organization, and the attorney or law student must be approved by the commission.

(c) The executive commissioner shall adopt a reasonable fee schedule for the legal services. The fees may not exceed those customarily charged by an attorney for similar services for a private client. The fees may be paid only from funds appropriated to the commission for the purpose of providing these legal services.

Acts 1979, 66th Leg., p. 2341, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.014, eff. April 2, 2015.

Sec. 22.005. CUSTODIAN OF ASSISTANCE FUNDS. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(21), eff. April 2, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(21), eff. April 2, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(21), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(b), eff. April 2, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(21), eff. April 2, 2015.

(f) The comptroller is the designated custodian of all funds administered by the commission and the department and received by the state from the federal government or any other source for the purpose of implementing the provisions of the Social Security Act. The comptroller may receive the funds, pay them into the proper fund or account of the general fund of the state treasury, provide for the proper custody of the funds, and make disbursements of the funds on the order of the commission or the department and on warrant of the comptroller.

Acts 1979, 66th Leg., p. 2341, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 10, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 1052, Sec. 1.09, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 599, Sec. 14, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.137, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 9.01, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 16, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.015, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.016, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(21), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(b), eff. April 2, 2015.

Sec. 22.007. PUBLIC INFORMATION CONTRACT REQUIREMENT. (a) Each contract between the commission or the department and a provider of services under this title must contain a provision that authorizes the commission or the department to display at the service provider's place of business public awareness information on services provided by the commission or the department.

(b) Notwithstanding Subsection (a), the commission or department may not require a physician to display in the physician's private offices public awareness information on services provided by the commission or department.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.017, eff. April 2, 2015.

Sec. 22.008. ENFORCEMENT AND ALTERATION OF SERVICE DELIVERY STANDARDS. (a) The executive commissioner shall adopt rules for the

department's community care program that relate to the service delivery standards required of persons who contract with the department to carry out its community care program. The department shall apply the rules consistently across the state.

(b) At the same time the department sends written notice to a regional department office of a change or interpretation of a service delivery standard relating to the community care program, the department shall send a copy of the notice to each community care program contractor affected by the change or interpretation.

(c) Each decision on whether to enter into a contract in the community care program that results from a department request for bids or proposals must be made by one or more persons employed at the department's state headquarters.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.018, eff. April 2, 2015.

Sec. 22.009. ADVISORY COMMITTEES. (a) The executive commissioner shall appoint advisory committees to assist the executive commissioner, commission, and department in performing their duties.

(b) The executive commissioner shall appoint each advisory committee to provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work.

(c) The executive commissioner shall specify each advisory committee's purpose, powers, and duties and shall require each committee to report to the executive commissioner in a manner specified by the executive commissioner concerning the committee's activities and the results of its work.

(d) The executive commissioner shall establish procedures for receiving reports concerning activities and accomplishments of advisory committees established to advise the executive commissioner, commission, or department. The executive commissioner may appoint additional members to those committees and establish additional

duties of those committees as the executive commissioner determines to be necessary.

(e) The executive commissioner shall adopt rules to implement this section. Those rules must provide that during the development of rules relating to an area in which an advisory committee exists the committee must be allowed to assist in the development of and to comment on the rules before the rules are finally adopted.

(f) A member of an advisory committee receives no compensation but is entitled to reimbursement for transportation expenses and the per diem allowance for state employees in accordance with the General Appropriations Act.

(g) Subsections (c) through (f) apply to each advisory committee created under this section.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.019, eff. April 2, 2015.

Sec. 22.011. MEMORANDUM OF UNDERSTANDING ON SERVICES TO PERSONS WITH DISABILITIES. (a) The commission, the department, the Department of State Health Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the Texas Education Agency shall enter into a joint memorandum of understanding to facilitate the coordination of services to persons with disabilities. The memorandum shall:

(1) clarify the financial and service responsibilities of each agency in relation to persons with disabilities; and

(2) address how the agency will share data relating to services delivered to persons with disabilities by each agency.

(b) These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(c) Not later than the last month of each state fiscal year, the agencies shall review and update the memorandum.

(d) The executive commissioner and the commissioner of education by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 353, Sec. 7, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 835, Sec. 19, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.52, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.020, eff. April 2, 2015.

Sec. 22.013. MEMORANDUM OF UNDERSTANDING ON PUBLIC AWARENESS INFORMATION. (a) The commission, the department, the Department of State Health Services, and the Department of Assistive and Rehabilitative Services shall enter into a joint memorandum of understanding that authorizes and requires the exchange and distribution among the agencies of public awareness information relating to services provided by or through the agencies.

(b) Not later than the last month of each state fiscal year, the agencies shall review and update the memorandum.

(c) The executive commissioner by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.020, eff. April 2, 2015.

Sec. 22.014. MEMORANDUM OF UNDERSTANDING ON HOSPITAL AND LONG-TERM CARE SERVICES. (a) The commission, the department, and the Department of State Health Services shall enter into a memorandum of understanding that:

(1) clearly defines the responsibilities of each agency in providing, regulating, and funding hospital or long-term care services; and

(2) defines the procedures and standards that each agency will use to provide, regulate, and fund hospital or long-term care services.

(b) The memorandum must provide that no new rules or regulations that would increase the costs of providing the required

services or would increase the number of personnel in hospital or long-term care facilities may be promulgated by the executive commissioner unless the executive commissioner certifies that the new rules or regulations are urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(c) The memorandum must provide that any rules or regulations proposed by the commission, the department, or the Department of State Health Services which would increase the costs of providing the required services or which would increase the number of personnel in hospital or long-term care facilities must be accompanied by a fiscal note prepared by the agency proposing said rules and submitted to the executive commissioner. The fiscal note should set forth the expected impact which the proposed rule or regulation will have on the cost of providing the required service and the anticipated impact of the proposed rule or regulation on the number of personnel in hospital or long-term care facilities. The memorandum must provide that in order for a rule to be finally adopted the commission must provide written verification that funds are available to adequately reimburse hospital or long-term care service providers for any increased costs resulting from the rule or regulation. The commission is not required to provide written verification if the executive commissioner certifies that a new rule or regulation is urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(d) The memorandum must provide that upon final adoption of any rule increasing the cost of providing the required services, the executive commissioner must establish reimbursement rates sufficient to cover the increased costs related to the rule. The executive commissioner is not required to establish reimbursement rates sufficient to cover the increased cost related to a rule or regulation if the executive commissioner certifies that the rule or regulation is urgent as well as necessary to protect the health or safety of recipients of hospital or long-term care services.

(e) The memorandum must provide that Subsections (b) through (d) do not apply if the rules are required by state or federal law or federal regulations.

(f) These agencies in the formulation of this memorandum of understanding shall consult with and solicit input from advocacy and consumer groups.

(g) Not later than the last month of each state fiscal year, the agencies shall review and update the memorandum.

(h) The executive commissioner by rule shall adopt the memorandum of understanding and all revisions to the memorandum.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.020, eff. April 2, 2015.

Sec. 22.016. SPECIAL PURCHASING PROCEDURES. The department shall coordinate with the commission in complying with any special purchasing procedures requiring competitive review under Subtitle D, Title 10, Government Code, for purchasing under this title.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.19(4), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.020, eff. April 2, 2015.

Sec. 22.017. PROGRAM ACCESSIBILITY. The commission shall prepare and maintain a written plan that describes how persons who do not speak English or who have physical, mental, or developmental disabilities can be provided reasonable access to the commission's and the department's programs under this title. The commission may solicit the assistance of a health and human services agency in the preparation or maintenance of the plan.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.020, eff. April 2, 2015.

Sec. 22.018. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE

HEARINGS. (a) The department and the chief administrative law judge of the State Office of Administrative Hearings shall enter into a memorandum of understanding under which the State Office of Administrative Hearings, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted under this title by the department under the administrative procedure law, Chapter 2001, Government Code.

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the executive commissioner to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to perform any administrative act, including giving of notice, that is required to be performed by the department or commissioner of aging and disability services.

(c) The memorandum of understanding shall address whether the administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the department shall:

(1) enter the final decision in the case after completion of the hearing; or

(2) propose a decision to the department or the commissioner of aging and disability services for final consideration.

(d) The department by interagency contract shall reimburse the State Office of Administrative Hearings for the costs incurred in conducting contested case hearings for the department. The department may pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and the State Office of Administrative Hearings to coincide with the department's legislative appropriations request.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(23), eff. April 2, 2015.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.11(a), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1505, Sec. 1.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.021, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(23), eff. April 2, 2015.

Sec. 22.019. DUE PROCESS PROCEDURES. (a) The commission and the department may not retroactively apply a rule, standard, guideline, or policy interpretation under this title.

(b) Any changes in agency policy shall be adopted in accordance with the rulemaking provisions of Chapter 2001, Government Code. Periodic bulletins and indexes shall be used to notify contractors of changes in policy and to explain the changes. A change in agency policy may not be adopted if it takes effect before the date on which contractors are notified as prescribed by this subsection.

(c) The executive commissioner shall adopt a rule requiring the commission or the department, as applicable, to respond in writing to each written inquiry from a contractor under this title not later than the 14th day after the date on which the commission or the department receives the inquiry.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.12(a), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.022, eff. April 2, 2015.

Sec. 22.020. AUDIT PROCEDURE. At any time during an audit, the commission or the department, as applicable, shall permit a contractor under this title to submit additional or alternative documentation to prove that services were delivered to an eligible client. Any recovery of costs by the commission or the department from the contractor for using additional or alternative documentation may not exceed the amount the contractor would otherwise be entitled to receive under the contract as administrative costs.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.12(a), eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.023, eff. April 2, 2015.

Sec. 22.021. DISTRIBUTION OF FUNDS. (a) Funds appropriated to the commission or the department for the general support or development of a service under this title that is needed throughout the state shall be allocated equitably across the state.

(b) This section does not apply to funds appropriated for a research or demonstration program or for the purchase of direct services.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.12(a), eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.024, eff. April 2, 2015.

Sec. 22.022. RESIDENCY REQUIREMENTS. To the extent permitted by law the commission and the department shall only provide services under this title to legal residents of the United States or the State of Texas.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.12(a), eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.025, eff. April 2, 2015.

Sec. 22.023. PAYMENT FOR CERTAIN INSURANCE COVERAGE. (a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

(b) Subject to the limitations in Subsection (c), the commission may purchase and pay the premiums for a conversion policy or other health insurance coverage for a person who is diagnosed as having AIDS, HIV, or other terminal or chronic illness and whose income level is less than 200 percent of the federal poverty level, based on the federal Office of Management and Budget poverty index in effect at the time coverage is provided, even though a person may be eligible for benefits under Chapter 32. Health insurance coverage for which premiums may be paid under this section includes coverage

purchased from an insurance company authorized to do business in this state, a group hospital service corporation operating under Chapter 842, Insurance Code, a health maintenance organization operating under Chapter 843, Insurance Code, or an insurance pool created by the federal or state government or a political subdivision of the state.

(c) If a person is eligible for benefits under Chapter 32, the commission may not purchase or pay premiums for a health insurance policy under this section if the premiums to be charged for the health insurance coverage are greater than premiums paid for benefits under Chapter 32. The commission may not purchase or pay premiums for health insurance coverage under this section for a person at the same time that that person is covered by benefits under Chapter 32.

(d) The commission shall pay for that coverage with money made available to the commission for that purpose.

(e) The executive commissioner by rule may adopt necessary rules, criteria, and plans and may enter into necessary contracts to carry out this section.

Added by Acts 1989, 71st Leg., ch. 1041, Sec. 5, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(10), eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.534, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.026, eff. April 2, 2015.

Sec. 22.024. DEVELOPMENT OF SERVICE PLAN FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES. If the commission, the department, the Department of State Health Services, the Department of Assistive and Rehabilitative Services, or another agency funded in the General Appropriations Act under appropriations for health, welfare, and rehabilitation agencies receives funds to provide case management services to elderly persons or persons with disabilities, the agency shall provide information to its staff concerning the services other agencies provide to those populations. The agency's staff shall use that information to develop a comprehensive service plan for its clients.

Added by Acts 1989, 71st Leg., ch. 1085, Sec. 1, eff. Sept. 1, 1989.

Renumbered from Sec. 22.023 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(10), eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 353, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 835, Sec. 20, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.027, eff. April 2, 2015.

Sec. 22.025. ERROR-RATE REDUCTION. (a) The commission shall:
(1) set progressive goals for improving the commission's error rates in the financial assistance program under Chapter 31 and supplemental nutrition assistance program; and
(2) develop a specific schedule to meet those goals.
(c) As appropriate, the commission shall include in its employee evaluation process a rating system that emphasizes error-rate reduction and workload.
(d) The commission shall take appropriate action if a region has a higher than average error rate and that rate is not reduced in a reasonable period.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 8.08(a), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 23(1), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(102), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.027, eff. April 2, 2015.

Sec. 22.0251. TIMELY DETERMINATION OF OVERPAYMENTS. (a) Subject to the approval of the executive commissioner, the commission shall:
(1) determine and record the time taken by the commission to establish an overpayment claim in the supplemental nutrition assistance program or the program of financial assistance under Chapter 31;
(2) set progressive goals for reducing the time described

by Subdivision (1); and

(3) adopt a schedule to meet the goals set under Subdivision (2).

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 837 , Sec. 2.08(b)(4), eff. September 1, 2015.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 69, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.028, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 2.08(b)(4), eff. September 1, 2015.

Sec. 22.0252. TELEPHONE COLLECTION PROGRAM. (a) The commission shall use the telephone to attempt to collect reimbursement from a person who receives a benefit granted in error under the supplemental nutrition assistance program or the program of financial assistance under Chapter 31.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(4), eff. September 1, 2019.

(c) The commission shall ensure that the telephone collection program attempts to collect reimbursement for all identified delinquent payments for which 15 days or more have elapsed since the initial notice of delinquency was sent to the recipient.

(d) The commission shall use an automated collections system to monitor the results of the telephone collection program. The system must:

(1) accept data from the accounts receivable tracking system used by the commission;

(2) automate recording tasks performed by a collector, including providing access to commission records regarding the recipient and recording notes and actions resulting from a call placed to the recipient;

(3) automatically generate a letter to a recipient following a telephone contact that confirms the action to be taken regarding the delinquency;

(4) monitor the receipt of scheduled payments from a recipient for repayment of a delinquency; and

(5) generate reports regarding the effectiveness of individual collectors and of the telephone collection program.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.01(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 206, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 70, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.028, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(4), eff. September 1, 2019.

Sec. 22.0253. PARTICIPATION IN FEDERAL TAX REFUND OFFSET PROGRAM. The commission shall participate in the Federal Tax Refund Offset Program (FTROP) to attempt to recover benefits granted by the commission in error under the supplemental nutrition assistance program. The commission shall submit as many claims that meet program criteria as possible for offset against income tax returns.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.028, eff. April 2, 2015.

Sec. 22.0254. PROSECUTION OF FRAUDULENT CLAIMS. (a) The commission shall keep a record of the dispositions of referrals made by the commission to a district attorney concerning fraudulent claims for benefits under the supplemental nutrition assistance program or the program of financial assistance under Chapter 31.

(b) The commission may:

(1) request status information biweekly from the appropriate district attorney on each major fraudulent claim referred by the commission;

(2) request a written explanation from the appropriate

district attorney for each case referred in which the district attorney declines to prosecute; and

(3) encourage the creation of a special welfare fraud unit in each district attorney's office that serves a municipality with a population of more than 250,000, to be financed by amounts provided by the commission.

(c) The executive commissioner by rule may define what constitutes a major fraudulent claim under Subsection (b)(1).

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.028, eff. April 2, 2015.

Sec. 22.0255. ELECTRONIC BENEFITS TRANSFER CARD; RETURNED-MAIL REDUCTION. (a) The commission shall develop and implement policies and procedures designed to improve the commission's electronic benefits transfer cards used for federal and state entitlement programs administered by the commission.

(b) The commission shall set an annual goal of reducing the amount of returned mail it receives under the programs described by Subsection (a) so that the percentage rate of returned mail is within one percent of the percentage rate of returned mail reported annually for the credit card and debit card industries.

Added by Acts 1997, 75th Leg., ch. 322, Sec. 1, eff. May 26, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 23(2), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(103), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.028, eff. April 2, 2015.

Sec. 22.026. REDUCTION OF CLIENT FRAUD. The commission and the department shall:

(1) ensure that errors attributed to client fraud are appropriate; and

(2) take immediate and appropriate action to limit any client fraud that occurs.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 8.08(a), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.029, eff. April 2, 2015.

Sec. 22.027. FRAUD PREVENTION. (e) The commission, the department, and the comptroller shall coordinate their efforts to cross-train agency staff whose duties include fraud prevention and detection to enable the staff to identify and report possible fraudulent activity in programs, taxes, or funds administered by each of those other agencies.

(f) A local law enforcement agency that seizes an electronic benefits transfer (EBT) card issued by the commission to a recipient of an entitlement program administered by the commission shall immediately notify the commission of the seizure and return the card to the commission. The commission shall send letters to local law enforcement agencies or post materials in the buildings in which those agencies are located to ensure that local law enforcement officials are aware of this requirement.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 8.04(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 322, Sec. 2, eff. May 26, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.029, eff. April 2, 2015.

Sec. 22.028. ELECTRONIC BENEFITS TRANSFER: MONITORING. (a) The private electronic benefits transfer (EBT) operator with which the commission contracts to administer the EBT system shall establish procedures to maintain records that monitor all debit transactions relating to EBT client accounts under this section. The EBT operator shall deliver copies of the records to the commission and the comptroller not later than the first day of each month. The commission shall immediately review the records and assess the

propriety of the debit transactions.

(b) After reviewing the records under Subsection (a), the commission shall take necessary or advisable action to ensure compliance with EBT rules by the EBT operator, retailers, and clients.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(4), eff. September 1, 2019.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 8.04(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1153, Sec. 1.06(b), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.029, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.02(b), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 3.01(4), eff. September 1, 2019.

Sec. 22.029. PROJECT FOR FRAUD DETECTION AND PREVENTION THROUGH DATA MATCHING. (a) In order to enhance the state's ability to detect and prevent fraud in the payment of claims under federal and state entitlement programs, the commission shall implement a data matching project as described by Subsection (b). The costs of developing and administering the data matching project shall be paid entirely from amounts recovered by participating agencies as a result of potential fraudulent occurrences or administrative errors identified by the project.

(b) The project shall involve the matching of database information among all agencies using electronic funds transfer and other participating agencies. The commission shall contract through a memorandum of understanding with each agency participating in the project. After the data has been matched, the commission shall furnish each participating agency with a list of potential fraudulent occurrences or administrative errors.

(c) Each agency participating in a matching cycle shall document actions taken to investigate and resolve fraudulent issues noted on the list provided by the commission. The commission shall compile the documentation furnished by participating agencies for

each matching cycle.

(d) Agencies participating under Subsection (b) shall cooperate fully with the commission in the prompt provision of data in the requested format, for the identification of suspected fraudulent occurrences, or administrative errors as the commission may otherwise reasonably request in order to carry out the intent of this section.

(e) The commission and participating agencies providing source data for the project shall take all necessary steps to protect the confidentiality of information provided as part of this project, in compliance with all existing state and federal privacy guidelines.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 8.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 827, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.030, eff. April 2, 2015.

Sec. 22.0292. INFORMATION MATCHING SYSTEM RELATING TO IMMIGRANTS AND FOREIGN VISITORS. (a) The commission shall, through the use of a computerized matching system, compare commission information relating to applicants for and recipients of supplemental nutrition assistance program benefits and financial assistance under Chapter 31 with information obtained from the United States Department of State and the United States Department of Justice relating to immigrants and visitors to the United States for the purpose of preventing individuals from unlawfully receiving public assistance benefits administered by the commission.

(b) The commission may enter into an agreement with the United States Department of State and the United States Department of Justice as necessary to implement this section.

(c) The commission and federal agencies sharing information under this section shall protect the confidentiality of the shared information in compliance with all existing state and federal privacy guidelines.

(d) Not later than October 1 of each year, the commission shall submit to the governor and the Legislative Budget Board an annual report on the operation and success of the information matching system required by this section. The report may be consolidated with

any other report relating to the same subject matter the commission is required to submit under other law.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.01(b), eff. Sept. 1, 1997. Renumbered from Sec. 22.0291 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(69), eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 71, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.031, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 18, eff. September 1, 2021.

Sec. 22.030. AGREEMENTS FOR PURCHASE OF SERVICES FOR CHILDREN. (a) To ensure the maximum use of available federal matching funds for child care services and other support services under Section 31.010, the commission and any other agency providing the services shall enter into agreements with the appropriate local community organizations to receive donations to be used for the purchase of services for which matching federal funds are available.
(b) An agency described under Subsection (a) shall cooperate with each local community organization to develop guidelines for the use of that community's donation to provide the services described in Subsection (a).

Added by Acts 1995, 74th Leg., ch. 655, Sec. 6.05, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.032, eff. April 2, 2015.

Sec. 22.031. UNANNOUNCED INSPECTIONS. The commission and the department may make any inspection of a facility or program under the agency's jurisdiction under this title without announcing the inspection.

Added by Acts 1995, 74th Leg., ch. 531, Sec. 3, eff. Aug. 28, 1995. Renumbered from Human Resources Code Sec. 22.025 by Acts 1997, 75th

Leg., ch. 165, Sec. 31.01(60), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.032, eff. April 2, 2015.

Sec. 22.032. USE OF EARNED FEDERAL FUNDS. Subject to the General Appropriations Act, the commission may use earned federal funds derived from recovery of amounts paid or benefits granted by the commission as a result of fraud to pay the costs of the commission's activities relating to preventing fraud.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.02, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.032, eff. April 2, 2015.

Sec. 22.036. PROGRAMS FOR INDIVIDUALS WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES AND THEIR PARENTS. (a) The department shall establish programs to serve individuals who are deaf-blind with multiple disabilities by helping them attain self-sufficiency and independent living.

(b) The department shall establish a program of parental counseling for the parents of individuals who are deaf-blind with multiple disabilities. The counseling program may be provided on an individual or group basis and must include programs, activities, and services necessary to foster greater understanding and to improve relationships among professionals, parents, and individuals who are deaf-blind with multiple disabilities.

(c) The department shall establish a summer outdoor training program for individuals who are deaf-blind with multiple disabilities. The outdoor training program must be designed to help meet the unique needs of individuals who are deaf-blind with multiple disabilities for the purpose of broadening their educational experiences and improving their ability to function more independently.

(d) The executive commissioner shall establish regulations for implementing and administering the programs.

(e) The department may contract for services or goods with private or public entities for purposes of this section.

(f) From information collected from the programs, the department shall determine the need for related future services and the most efficient and effective method of delivering the future services.

Added by Acts 1985, 69th Leg., ch. 619, Sec. 14, eff. Sept. 1, 1985.
Amended by Acts 1999, 76th Leg., ch. 1505, Sec. 1.05, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.034, eff. April 2, 2015.

Sec. 22.039. TRAINING AND CONTINUING EDUCATION RELATED TO CERTAIN LONG-TERM CARE FACILITIES. (a) In this section:

(1) "Long-term care facility" means a nursing institution, an assisted living facility, or an intermediate care facility licensed under Chapter 242, 247, or 252, Health and Safety Code.

(2) "Provider" means an employee or agent of a long-term care facility.

(3) "Surveyor" means an employee or agent of the department or another state agency responsible for licensing, inspecting, surveying, or investigating a long-term care facility in relation to:

(A) licensing under Chapter 242, 247, or 252, Health and Safety Code; or

(B) certification for participation in the medical assistance program in accordance with Chapter 32.

(b) The department shall require a surveyor to complete a basic training program before the surveyor inspects, surveys, or investigates a long-term care facility.

(b-1) The training required under Subsection (b) must include observation of the operations of a long-term care facility unrelated to the survey, inspection, or investigation process for a minimum of 10 working days within a 14-day period.

(b-2) The department may waive the requirement imposed under Subsection (b-1) for a surveyor who has completed in the two years preceding the inspection, survey, or investigation one year of full-time employment in a nursing facility in this state as a:

(1) nursing facility administrator;
(2) licensed vocational nurse;
(3) registered nurse; or
(4) social worker.

(c) The department shall semiannually provide training for surveyors and providers on subjects that address the 10 most common violations by long-term care facilities of federal or state law. The department may charge providers a fee not to exceed $50 per person for the training.

(d) Except as provided by Subsection (e), a surveyor who is a health care professional licensed under the laws of this state must receive a minimum of 50 percent of the professional's required continuing education credits, if any, in gerontology or care for individuals with cognitive or physical disabilities, as appropriate.

(e) A surveyor who is a pharmacist must receive a minimum of 30 percent of the pharmacist's required continuing education credits in gerontology or care for individuals with cognitive or physical disabilities, as appropriate.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 7.01, eff. June 15, 2001. Renumbered from Human Resources Code, Sec. 22.037, by Acts 2003, 78th Leg., ch. 1275, Sec. 2(96), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 5.01, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 27, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.035, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.036, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1102 (H.B. 3934), Sec. 1, eff. September 1, 2017.

Sec. 22.040. DETERMINATION OF ELIGIBILITY FOR COMMUNITY CARE SERVICES FOR ELDERLY PERSONS OR PERSONS WITH DISABILITIES. The executive commissioner by rule shall develop and the department shall implement a plan to assist elderly persons or persons with disabilities requesting community care services in receiving those

services as quickly as possible when those services become available. The plan must require the department to:

(1) forecast participant openings that will become available in a community care program serving the elderly person or person with a disability during the next fiscal quarter because of program expansion or case closures;

(2) contact an individual on an interest list and begin the program eligibility determination process at least 30 days before an opening is forecasted to become available in the program; and

(3) ensure that an individual determined to be eligible for services does not begin receiving services until after the opening actually becomes available.

Acts 2003, 78th Leg., ch. 1169, Sec. 11, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.037, eff. April 2, 2015.

Sec. 22.041. THIRD-PARTY INFORMATION. Notwithstanding any other provision of this code, the commission may use information obtained from a third party to verify the assets and resources of a person for purposes of determining the person's eligibility and need for medical assistance, financial assistance, or nutritional assistance. Third-party information includes information obtained from:

(1) a consumer reporting agency, as defined by Section 20.01, Business & Commerce Code;

(2) an appraisal district; or

(3) the Texas Department of Motor Vehicles vehicle registration record database.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.85, eff. Sept. 1, 2003.
Renumbered from Human Resources Code, Section 22.040 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(55), eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3G.01, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.037, eff.

April 2, 2015.

CHAPTER 23. SUSPENSION OF DRIVER'S OR RECREATIONAL LICENSE FOR FAILURE TO REIMBURSE COMMISSION

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and

(C) a person must obtain to:

(i) operate a motor vehicle; or

(ii) engage in a recreational activity, including hunting and fishing, for which a license or permit is required.

(2) "Order suspending a license" means an order issued by the commission directing a licensing authority to suspend a license.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. In this chapter, "licensing authority" means:

(1) the Parks and Wildlife Department; and

(2) the Department of Public Safety of the State of Texas.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.003. SUSPENSION OF LICENSE. The commission may issue an order suspending a license as provided by this chapter of a person who, after notice:

(1) has failed to reimburse the commission for an amount in excess of $250 granted in error to the person under the supplemental nutrition assistance program or the program of financial assistance under Chapter 31;

(2) has been provided an opportunity to make payments toward the amount owed under a repayment schedule; and

(3) has failed to comply with the repayment schedule.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.004. INITIATION OF PROCEEDING. (a) The commission may initiate a proceeding to suspend a person's license by filing a petition with the commission's appeals division.

(b) The proceeding shall be conducted by the commission's appeals division. The proceeding is a contested case under Chapter 2001, Government Code, except that Section 2001.054 does not apply.

(c) The executive commissioner or the executive commissioner's designated representative shall render a final decision or order in the proceeding. A reference to the commission in this chapter with respect to a final decision or order in the proceeding means the executive commissioner or the executive commissioner's designated representative.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.005. CONTENTS OF PETITION. A petition under this chapter must state that license suspension is authorized under Section 23.003 and allege:

(1) the name and, if known, social security number of the person;

(2) the type of license the person is believed to hold and

the name of the licensing authority; and

(3) the amount owed to the commission.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.006. NOTICE. (a) On initiating a proceeding under Section 23.004, the commission shall give the person named in the petition:

(1) notice of the person's right to a hearing before the commission's appeals division;

(2) notice of the deadline for requesting a hearing; and

(3) a form requesting a hearing.

(b) Notice under this section may be served as in civil cases generally.

(c) The notice must state that an order suspending a license shall be rendered on the 60th day after the date of service of the notice unless by that date:

(1) the person pays the amount owed to the commission;

(2) the person presents evidence of a payment history satisfactory to the commission in compliance with a reasonable repayment schedule; or

(3) the person appears at a hearing before the commission's appeals division and shows that the request for suspension should be denied or stayed.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.007. HEARING ON PETITION TO SUSPEND LICENSE. (a) A request for a hearing and motion to stay suspension must be filed with the commission not later than the 20th day after the date of service of the notice under Section 23.006.

(b) If a request for a hearing is filed, the commission's appeals division shall:

(1) promptly schedule a hearing;

(2) notify the person and an appropriate representative of the commission of the date, time, and location of the hearing; and

(3) stay suspension pending the hearing.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.008. ORDER SUSPENDING LICENSE. (a) On making the findings required by Section 23.003, the commission shall render an order suspending a license.

(b) The commission may stay an order suspending a license conditioned on the person's compliance with a reasonable repayment schedule that is incorporated in the order. An order suspending a license with a stay of the suspension may not be served on the licensing authority unless the stay is revoked as provided by this chapter.

(c) A final order suspending a license rendered by the commission shall be forwarded to the appropriate licensing authority.

(d) If the commission renders an order suspending a license, the person may also be ordered not to engage in the licensed activity.

(e) If the commission's appeals division finds that the petition for suspension should be denied, the petition shall be dismissed without prejudice, and an order suspending a license may not be rendered.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.009. DEFAULT ORDER. The commission shall consider the

allegations of the petition for suspension to be admitted and shall render an order suspending a license if the person fails to:

(1) respond to a notice issued under Section 23.006;

(2) request a hearing; or

(3) appear at a hearing.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.010. REVIEW OF FINAL ADMINISTRATIVE ORDER. An order issued by the commission under this chapter is a final agency decision and is subject to review as provided by Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.011. ACTION BY LICENSING AUTHORITY. (a) On receipt of a final order suspending a license, the licensing authority shall immediately determine if the authority has issued a license to the person named on the order and, if a license has been issued:

(1) record the suspension of the license in the licensing authority's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) A licensing authority shall implement the terms of a final order suspending a license without additional review or hearing. The authority may provide notice as appropriate to the license holder or to others concerned with the license.

(c) A licensing authority may not modify, remand, reverse, vacate, or stay an order suspending a license issued under this chapter and may not review, vacate, or reconsider the terms of a

final order suspending a license.

(d) A person who is the subject of a final order suspending a license is not entitled to a refund for any fee or deposit paid to the licensing authority.

(e) A person who continues to engage in the licensed activity after the implementation of the order suspending a license by the licensing authority is liable for the same civil and criminal penalties provided for engaging in the licensed activity without a license or while a license is suspended that apply to any other license holder of that licensing authority.

(f) A licensing authority is exempt from liability to a license holder for any act authorized under this chapter performed by the authority.

(g) Except as provided by this chapter, an order suspending a license or dismissing a petition for the suspension of a license does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license.

(h) The denial or suspension of a driver's license under this chapter is governed by this chapter and not by Subtitle B, Title 7, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.012. MOTION TO REVOKE STAY. (a) The commission may file a motion with the commission's appeals division to revoke the stay of an order suspending a license if the person does not comply with the terms of a reasonable repayment plan entered into by the person.

(b) Notice to the person of a motion to revoke stay under this section may be given by personal service or by mail to the address provided by the person, if any, in the order suspending a license. The notice must include a notice of hearing before the appeals division. The notice must be provided to the person not less than 10 days before the date of the hearing.

(c) A motion to revoke stay must allege the manner in which the

person failed to comply with the repayment plan.

(d) If the commission finds that the person is not in compliance with the terms of the repayment plan, the commission shall revoke the stay of the order suspending a license and render a final order suspending a license.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.013. VACATING OR STAYING ORDER SUSPENDING LICENSE. (a) The commission may render an order vacating or staying an order suspending a license if the person has paid all amounts owed to the commission or has established a satisfactory payment record.

(b) The commission shall promptly deliver an order vacating or staying an order suspending a license to the appropriate licensing authority.

(c) On receipt of an order vacating or staying an order suspending a license, the licensing authority shall promptly reinstate and return the affected license to the person if the person is otherwise qualified for the license.

(d) An order rendered under this section does not affect the right of the commission to any other remedy provided by law, including the right to seek relief under this chapter. An order rendered under this section does not affect the power of a licensing authority to grant, deny, suspend, revoke, terminate, or renew a license as otherwise provided by law.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.014. FEE BY LICENSING AUTHORITY. A licensing authority may charge a fee to a person who is the subject of an order suspending a license in an amount sufficient to recover the

administrative costs incurred by the authority under this chapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.015. COOPERATION BETWEEN LICENSING AUTHORITIES AND COMMISSION. (a) The commission may request from each licensing authority the name, address, social security number, license renewal date, and other identifying information for each individual who holds, applies for, or renews a license issued by the authority.

(b) A licensing authority shall provide the requested information in the manner agreed to by the commission and the licensing authority.

(c) The commission may enter into a cooperative agreement with a licensing authority to administer this chapter in a cost-effective manner.

(d) The commission may adopt a reasonable implementation schedule for the requirements of this section.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

Sec. 23.016. RULES, FORMS, AND PROCEDURES. The executive commissioner by rule shall prescribe forms and procedures for the implementation of this chapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 5.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.038, eff. April 2, 2015.

SUBTITLE C. ASSISTANCE PROGRAMS
CHAPTER 31. FINANCIAL ASSISTANCE AND SERVICE PROGRAMS
SUBCHAPTER A. ELIGIBILITY FOR FINANCIAL ASSISTANCE AND SERVICES

Sec. 31.001. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES. The commission shall provide financial assistance and services to families with dependent children in accordance with the provisions of this chapter. The commission shall give first priority in administering this chapter to assisting an adult recipient of or unemployed applicant for the financial assistance and services in finding and retaining a job.

Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 655, Sec. 1.01, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.039, eff. April 2, 2015.

Sec. 31.002. DEFINITION OF DEPENDENT CHILD. (a) In this chapter, the term "dependent child" applies to a child:

(1) who is a resident of this state;

(2) who is under 18 years of age or is under 19 years of age and is a full-time student in a secondary school or at the equivalent level of vocational or technical training if, before the child's 19th birthday, the child may reasonably be expected to complete the secondary school or training program;

(3) who has been deprived of parental support or care because of the death, continued absence from home, or physical or mental incapacity of a parent;

(4) who has insufficient income or other resources to provide a reasonable subsistence compatible with health and decency; and

(5) who is living in the home residence of his or her father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(b) In this chapter, the term "dependent child" also applies to a child:

(1) who meets the specifications set forth in Subsections

(a)(1)-(4);

(2) who has been removed from the home of a relative specified in Subsection (a)(5) as a result of a judicial determination that the child's residence there is contrary to his or her welfare;

(3) whose placement and care are the responsibility of the Department of Family and Protective Services or an agency with which the Department of Family and Protective Services has entered into an agreement for the care and supervision of the child;

(4) who has been placed in a residential child-care facility by the Department of Family and Protective Services; and

(5) for whom the state may receive federal funds for the purpose of providing foster care in accordance with rules promulgated by the executive commissioner.

Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 395, Sec. 1, eff. June 2, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.014, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.040, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 42, eff. September 1, 2017.

Sec. 31.0021. DEFINITION OF NONRECIPIENT PARENT. (a) Except as provided by Subsection (b), in this chapter, "nonrecipient parent" means an adult or minor parent who is not a recipient of financial assistance but who is living with the person's child who is a recipient of financial assistance.

(b) "Nonrecipient parent" does not include:

(1) a minor parent who is not the head of household;

(2) a person who is ineligible for financial assistance because of the person's immigration status; or

(3) a parent who cares for a family member with a disability living in the home if the family member does not attend school full-time and the need for the care is supported by medical documentation.

Added by Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 1, eff. June 15, 2007.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.041, eff. April 2, 2015.

Sec. 31.003. AMOUNT OF FINANCIAL ASSISTANCE. (a) The executive commissioner shall adopt rules governing the determination of the amount of financial assistance to be granted for the support of a dependent child. The amount granted, when combined with the income and other resources available for the child's support, must be sufficient to provide the child with a subsistence compatible with decency and health.

(b) In considering the amount of income or other resources available to a child or a relative claiming financial assistance on the child's behalf, the commission shall also consider reasonable expenses attributable to earning the income. The commission may permit all or part of the earned or other income to be set aside for the future identifiable needs of the child, subject to limitations prescribed by the executive commissioner.

(c) The commission's agents employed in the region or county in which the dependent child resides shall determine the amount to be paid in accordance with the rules promulgated by the executive commissioner.

Acts 1979, 66th Leg., p. 2343, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.042, eff. April 2, 2015.

Sec. 31.0031. RESPONSIBILITY AGREEMENT. (a) The commission shall require each adult recipient to sign a bill of responsibilities that defines the responsibilities of the state and of the recipient and encourages personal responsibility. The commission shall explain to the applicant the work requirements and time-limited benefits in addition to the other provisions of the agreement before the applicant signs the agreement. The commission shall provide each applicant with a copy of the signed agreement. The agreement shall include pertinent case information, including the case number and a

listing of the state's benefits.

(b) The responsibilities of the state shall include administering programs, within available resources, that:

(1) promote clear and tangible goals for recipients;

(2) enable parents to provide for their children's basic necessities in a time-limited benefits program;

(3) promote education, job training, and workforce development;

(4) support the family structure through life and parenting skills training;

(5) are efficient, fraud-free, and easily accessible by recipients;

(6) gather accurate client information; and

(7) give communities the opportunity to develop alternative programs that meet the unique needs of local recipients.

(c) The executive commissioner shall adopt rules governing sanctions and penalties under this section to or for:

(1) a person who fails to cooperate with each applicable requirement of the responsibility agreement prescribed by this section; and

(2) the family of a person who fails to cooperate with each applicable requirement of the responsibility agreement.

(d) The responsibility agreement shall require that:

(1) the parent of a dependent child cooperate with the commission and the Title IV-D agency if necessary to establish the paternity of the dependent child and to establish or enforce child support;

(2) if adequate and accessible providers of the services are available in the geographic area and subject to the availability of funds, each dependent child, as appropriate, complete early and periodic screening, diagnosis, and treatment checkups on schedule and receive the immunization series prescribed by Section 161.004, Health and Safety Code, unless the child is exempt under that section;

(3) each adult recipient, or teen parent recipient who has completed the requirements regarding school attendance in Subdivision (6), not voluntarily terminate paid employment of at least 30 hours each week without good cause in accordance with rules adopted by the executive commissioner;

(4) each adult recipient for whom a needs assessment is conducted participate in an activity to enable that person to become

self-sufficient by:

(A) continuing the person's education or becoming literate;

(B) entering a job placement or employment skills training program;

(C) serving as a volunteer in the person's community; or

(D) serving in a community work program or other work program approved by the commission;

(5) each caretaker relative or parent receiving assistance not use, sell, or possess marihuana or a controlled substance in violation of Chapter 481, Health and Safety Code, or abuse alcohol;

(6) each dependent child younger than 18 years of age or teen parent younger than 19 years of age attend school regularly, unless the child has a high school diploma or high school equivalency certificate or is specifically exempted from school attendance under Section 25.086, Education Code;

(7) each recipient comply with commission rules regarding proof of school attendance; and

(8) each recipient attend appropriate parenting skills training classes, as determined by the needs assessment.

(e) In conjunction with the Texas Education Agency, the executive commissioner by rule shall ensure compliance with the school attendance requirements of Subsection (d)(6) by establishing criteria for:

(1) determining whether a child is regularly attending school;

(2) exempting a child from school attendance in accordance with Subchapter C, Chapter 25, Education Code; and

(3) determining when an absence is excused.

(f) The executive commissioner by rule may provide for exemptions from Subsection (d)(4) or for a teen parent under Subsection (d)(6). The commission may not require participation in an activity under Subsection (d)(4) or for a teen parent under Subsection (d)(6) if funding for support services is unavailable.

(g) In this section:

(1) "Caretaker relative" means a person who is listed under Section 31.002(a)(5) in whose home residence a dependent child lives.

(2) "Payee" means a person who resides in a household with a dependent child and who is within the degree of relationship with

the child that is required of a caretaker relative but whose needs are not included in determining the amount of financial assistance provided for the person's household.

(h) The commission shall require each payee to sign a bill of responsibilities that defines the responsibilities of the state and of the payee. The responsibility agreement must require that a payee comply with the requirements of Subsections (d)(1), (2), (5), (6), and (7).

Added by Acts 1995, 74th Leg., ch. 655, Sec. 2.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.53, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 682, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.86(a), 2.87, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.043, eff. April 2, 2015.

Sec. 31.0032. PAYMENT OF ASSISTANCE FOR PERFORMANCE. (a) Except as provided by Section 231.115, Family Code, if after an investigation the commission or the Title IV-D agency determines that a person is not cooperating with a requirement of the responsibility agreement required under Section 31.0031, the commission shall immediately apply a sanction terminating the total amount of financial assistance provided under this chapter to or for the person and the person's family.

(a-1) The commission shall apply a sanction or penalty imposed under Subsection (a) for a period ending when the person demonstrates cooperation with the requirement of the responsibility agreement for which the sanction was imposed or for a one-month period, whichever is longer.

(b) The commission shall immediately notify the caretaker relative, second parent, or payee receiving the financial assistance if the commission will not make the financial assistance payment for the period prescribed by Subsection (a-1) because of a person's failure to cooperate with the requirements of the responsibility agreement during a month.

(c) To the extent allowed by federal law, the commission may deny medical assistance for a person who is eligible for financial

assistance but to whom that assistance is not paid because of the person's failure to cooperate. Medical assistance to the person's family may not be denied for the person's failure to cooperate. Medical assistance may not be denied to a person receiving assistance under this chapter who is under the age of 19, a pregnant adult, or any other person who may not be denied medical assistance under federal law.

Text of subsection effective until April 1, 2025

(d) This section does not prohibit the Texas Workforce Commission, the commission, or any health and human services agency, as defined by Section 531.001, Government Code, from providing child care or any other related social or support services for an individual who is eligible for financial assistance but to whom that assistance is not paid because of the individual's failure to cooperate.

Text of subsection effective on April 1, 2025

(d) This section does not prohibit the Texas Workforce Commission, the commission, or any health and human services agency, as defined by Section 521.0001, Government Code, from providing child care or any other related social or support services for an individual who is eligible for financial assistance but to whom that assistance is not paid because of the individual's failure to cooperate.

(e) The executive commissioner by rule shall establish procedures to determine whether a person has cooperated with the requirements of the responsibility agreement.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 2.02(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 74, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.88(a), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.044, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.74, eff. April 1, 2025.

Sec. 31.0033. GOOD CAUSE HEARING FOR FAILURE TO COOPERATE. (a) If the commission or Title IV-D agency determines that a person has

failed to cooperate with the requirements of the responsibility agreement under Section 31.0031, the person determined to have failed to cooperate or, if different, the person receiving the financial assistance may request a hearing to show good cause for failure to cooperate not later than the 13th day after the date the notice is sent under Section 31.0032. If the person determined to have failed to cooperate or, if different, the person receiving the financial assistance requests a hearing to show good cause not later than the 13th day after the date on which the notice is sent under Section 31.0032, the commission may not withhold or reduce the payment of financial assistance until the commission determines whether the person had good cause for the person's failure to cooperate. On a showing of good cause for failure to cooperate, the person may receive a financial assistance payment for the period in which the person failed to cooperate, but had good cause for that failure to cooperate.

(b) The commission shall promptly conduct a hearing if a timely request is made under Subsection (a).

(c) If the commission finds that good cause for the person's failure to cooperate was not shown at a hearing, the commission may not make a financial assistance payment in any amount to the person for the person or the person's family for the period prescribed by Section 31.0032(a-1).

(d) The executive commissioner by rule shall establish criteria for good cause failure to cooperate and guidelines for what constitutes a good faith effort on behalf of a recipient under this section.

(e) Except as provided by a waiver or modification granted under Section 31.0322, a person has good cause for failing or refusing to cooperate with the requirement of the responsibility agreement under Section 31.0031(d)(1) only if:

(1) the person's cooperation would be harmful to the physical, mental, or emotional health of the person or the person's dependent child; or

(2) the person's noncooperation resulted from other circumstances the person could not control.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 2.02(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 556, Sec. 75, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.88(a), eff. Sept. 1,

2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.045, eff. April 2, 2015.

Sec. 31.00331. ADDITIONAL PENALTY FOR CONTINUOUS FAILURE TO COOPERATE. A person who fails to cooperate with the responsibility agreement for two consecutive months becomes ineligible for financial assistance for the person or the person's family. The person may reapply for financial assistance but must cooperate with the requirements of the responsibility agreement for a one-month period before receiving an assistance payment for that month.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.88(b), eff. Sept. 1, 2003.

Sec. 31.0035. TRANSITIONAL CHILD-CARE SERVICES. (a) The Texas Workforce Commission shall provide necessary transitional child-care services, in accordance with Texas Workforce Commission rules and federal law, to a person who was receiving financial assistance under this chapter but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or

(2) the person has exhausted the person's benefits under Section 31.0065.

(b) Except as provided by Section 31.012(c), the Texas Workforce Commission may provide the child-care services only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

(c) The Texas Workforce Commission by rule shall adopt a system of copayments in order to have a person who receives child-care services under this section contribute an amount toward the cost of the services according to the person's ability to pay.

(d) The Texas Workforce Commission by rule shall provide for

sanctions for a person who is financially able to contribute the amount required by Subsection (c) but fails to pay.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 3.02, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.046, eff. April 2, 2015.

Sec. 31.0036. DEPENDENT CHILD'S INCOME. The commission may not consider any income earned by a dependent child who is attending school and whose income is derived from the child's part-time employment for purposes of determining:

(1) the amount of financial assistance granted to an individual under this chapter for the support of dependent children; or

(2) whether the family meets household income and resource requirements for eligibility for financial assistance under this chapter.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 1.02(a), eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 31.0031 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(61), eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.046, eff. April 2, 2015.

Sec. 31.0038. TEMPORARY EXCLUSION OF NEW SPOUSE'S INCOME. (a) Subject to the limitations prescribed by Subsection (b), income earned by an individual who marries an individual receiving financial assistance at the time of the marriage may not be considered by the commission during the six-month period following the date of the marriage for purposes of determining:

(1) the amount of financial assistance granted to an individual under this chapter for the support of dependent children; or

(2) whether the family meets household income and resource requirements for financial assistance under this chapter.

(b) To be eligible for the income disregard provided by

Subsection (a), the combined income of the individual receiving financial assistance and the new spouse cannot exceed 200 percent of the federal poverty level for their family size.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.89, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.047, eff. April 2, 2015.

Sec. 31.0039. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) For purposes of determining the amount of financial assistance granted to an individual under this chapter for the support of dependent children or determining whether the family meets household income and resource requirements for financial assistance under this chapter, the commission may not consider the right to assets held in or the right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account;

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986; or

(3) any school-based account or bond described by Section 28.0024(b)(2), Education Code.

(b) The amount of exclusion under Subsection (a)(3) of assets held in or the right to receive payments or benefits under a school-based account or bond described by Section 28.0024(b)(2)(C), (D), or (E), Education Code, is limited to the amount of the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year, as determined by the Texas Higher Education Coordinating Board under Section 54.753, Education Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1186 (H.B. 3708), Sec. 8, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.048, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1265 (H.B. 3987), Sec. 3, eff. June 20, 2015.

Sec. 31.004. FOSTER CARE. The Department of Family and Protective Services may accept and spend funds available from any source to provide foster care in facilities approved by the Department of Family and Protective Services for dependent children who meet the specifications set out in Section 31.002(b).

Acts 1979, 66th Leg., p. 2344, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.015, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.048, eff. April 2, 2015.

Sec. 31.0041. SUPPLEMENTAL FINANCIAL ASSISTANCE FOR CERTAIN PERSONS. (a) To the extent funds are appropriated for this purpose, the commission may provide supplemental financial assistance in addition to the amount of financial assistance granted for the support of a dependent child under Section 31.003 to a person who:

(1) is 25 years of age or older;

(2) is the grandparent, aunt, uncle, sister, or brother of the dependent child, as defined by Section 31.002, who lives at the person's residence;

(3) is the primary caretaker of the dependent child;

(4) has a family income that is at or below 200 percent of the federal poverty level; and

(5) does not have resources that exceed the amount allowed for financial assistance under this chapter.

(b) Supplemental financial assistance provided to a person under this section may include one or more cash payments, not to exceed a total of $1,000, after determination of eligibility for supplemental financial assistance under this section.

(c) The commission shall inform an applicant for financial assistance under this chapter who meets the eligibility requirements under Subsection (a) of the availability of supplemental financial

assistance.

(d) The commission shall maintain complete records and compile statistics regarding the number of households that receive supplemental financial assistance under this section.

(e) After a person receives supplemental financial assistance under Subsection (b) on behalf of a dependent child, no other person is eligible under Subsection (a) to receive supplemental financial assistance on behalf of that child.

Added by Acts 1999, 76th Leg., ch. 471, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 346, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.049, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 362 (S.B. 263), Sec. 1, eff. September 1, 2021.

Sec. 31.005. DEPENDENT CHILD RESIDING WITH RELATIVES. (a) If after an investigation the commission determines that a family with a dependent child is needy and that the child resides with the family, the commission shall provide financial assistance and services for the support of the family.

(b) The commission shall formulate policies for studying and improving the child's home conditions and shall plan services for the protection of the child and for the child's health and educational needs.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(29), eff. April 2, 2015.

(d) The commission shall develop a plan for the coordination of the services provided for dependent children under this chapter and other child welfare services provided by the state.

Acts 1979, 66th Leg., p. 2344, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.050, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(29), eff. April 2, 2015.

Sec. 31.0051. MINOR PARENT RESIDING WITH RELATIVES. If the commission determines based on documentation provided that a minor caretaker who is receiving financial assistance and services under this chapter on behalf of a dependent child benefits from residing with an adult family member who is also receiving assistance under this chapter, the commission shall provide assistance and services to both persons as if they were living separately.

Added by Acts 1993, 73rd Leg., ch. 841, Sec. 3, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.051, eff. April 2, 2015.

Sec. 31.006. WELFARE AND RELATED SERVICES. (a) The commission shall develop and implement a program of welfare and related services for each dependent child which, in light of the particular home conditions and other needs of the child, will best promote the welfare of the child and his or her family and will help to maintain and strengthen family life by assisting the child's parents or relatives to attain and retain their capabilities for maximum self-support and personal independence consistent with the maintenance of continued parental care and protection.

(b) The commission shall coordinate the services provided under the program with other services provided by the commission and by other public and private welfare agencies, including other state agencies, for the care and protection of children.

(c) The executive commissioner and the Texas Workforce Commission may promulgate rules which will enable the Health and Human Services Commission and the Texas Workforce Commission to fully participate in work and training programs authorized by federal law, to provide for all services required or deemed advisable under the provisions of the program, and to accept, transfer, and expend funds made available from public or private sources for the purpose of carrying out the provisions of this section.

Acts 1979, 66th Leg., p. 2344, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.051, eff. April 2, 2015.

Sec. 31.0065. TIME-LIMITED BENEFITS. (a) The commission may provide financial assistance under this chapter only in accordance with the time limits specified by this section. The executive commissioner by rule may provide for exceptions to these time limits if severe personal hardship or community economic factors prevent the recipient from obtaining employment or if the state is unable to provide support services.

(b) The commission shall limit financial assistance and transitional benefits in accordance with the following schedule:

(1) financial assistance is limited to a cumulative total of 12 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) a high school diploma, a high school equivalency certificate, or a certificate or degree from a two-year or four-year institution of higher education or technical or vocational school; or

(B) recent work experience of 18 months or more;

(2) financial assistance is limited to a cumulative total of 24 months and transitional benefits are limited to 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed three years of high school; or

(B) recent work experience of not less than six or more than 18 months; and

(3) financial assistance is limited to a cumulative total of 36 months and transitional benefits of 12 months if the person receiving financial assistance on behalf of a dependent child has:

(A) completed less than three years of high school; and

(B) less than six months of work experience.

(c) If the recipient has completed less than three years of high school and has less than six months work experience, the commission shall perform an in-depth assessment of the needs of that person and that person's family. If the recipient cooperates with the commission's assessment, the time period prescribed by Subsection (b)(3) begins on the first anniversary of the date on which the commission completes the assessment, as determined by the commission.

(d) The computation of time limits under Subsection (b) begins when the adult or teen parent recipient receives notification in

accordance with the procedures under Section 31.012(b) of the availability of an opening in and eligibility for a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.).

(e) In implementing the time-limited benefits program, the commission:

(1) shall provide that a participant in the program may reapply with the commission for financial assistance on or after the fifth anniversary of the date on which the participant is totally disqualified from receiving assistance because of the application of Subsection (b); and

(2) shall establish the criteria for determining what constitutes severe personal hardship under Subsection (a).

(f) If the commission is imposing time-limited benefits on an individual, the commission shall consider:

(1) the assessment of the individual's need that was conducted by the commission, provided that if the needs assessment indicates discrepancies between a client's self-reported educational level and the client's functional abilities, the time limits shall be based upon the functional educational level; and

(2) the prevailing economic and employment conditions in the area of the state where the individual resides.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 3.01(a), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.051, eff. April 2, 2015.

Sec. 31.0066. HARDSHIP EXEMPTIONS FROM FEDERAL TIME LIMITS. (a) The executive commissioner and the Texas Workforce Commission shall jointly adopt rules prescribing circumstances that constitute a hardship for purposes of exempting a recipient of financial assistance from the application of time limits imposed by federal law on the receipt of benefits.

(b) The rules must include a broad range of circumstances that reasonably prevent recipients of financial assistance from becoming self-supporting before expiration of the period specified by federal

law.

Added by Acts 2001, 77th Leg., ch. 1217, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.052, eff. April 2, 2015.

Sec. 31.007. FINANCIAL ASSISTANCE TO INDIVIDUALS IN INSTITUTIONS. A person who is in an institution is eligible to receive financial assistance under this chapter if the person would be eligible to receive the financial assistance if the person were not in an institution and if the payments are made in accordance with the commission's rules promulgated in conformity with federal law and rules.

Acts 1979, 66th Leg., p. 2344, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.053, eff. April 2, 2015.

Sec. 31.008. COUNSELING AND GUIDANCE SERVICES. (a) If the commission believes that financial assistance to a family with a dependent child is not being, or may not be, used in the best interest of the child, the commission may provide counseling and guidance services to the relative receiving financial assistance with respect to the use of the funds and the management of other funds in the child's best interest.

(b) The commission may advise the relative that continued failure to use the funds in the child's best interest will result in the funds being paid to a substitute payee. If the commission determines that protective payments are required to safeguard the best interest of the child, the commission may pay the funds to a substitute payee on a temporary basis in accordance with the commission's rules.

(c) If the situation in the home which made the protective payments necessary does not improve, and if the commission determines that the relative with whom the child is living is unable or does not have the capacity to use the funds for the best interest of the

child, then the commission, with the assistance of other appropriate state agencies, may make arrangements with the family for other plans for the care of the child. The other plans may include:

(1) removing the child to the home of another relative;

(2) appointment of a guardian or legal representative for the relative with whom the child is living;

(3) imposition of criminal or civil penalties if a court determines that the relative is not using, or has not used, the payments for the benefit of the child; or

(4) referral of the case to a court for the removal of the child and the placement of the child in a foster home.

(d) The commission may make payments on behalf of a dependent child residing in a residential child-care facility in accordance with the provisions of this chapter and commission rules.

Acts 1979, 66th Leg., p. 2345, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.053, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 43, eff. September 1, 2017.

Sec. 31.0095. NEEDS ASSESSMENT. The commission shall assist a recipient or a nonrecipient parent in assessing the particular needs of that person and the person's family upon notification of entry into a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.). The Texas Workforce Commission and the recipient or the nonrecipient parent shall develop an employability plan to help the recipient or nonrecipient parent achieve independence from public assistance granted to the recipient and the recipient's family, or to the child of the nonrecipient parent, as applicable.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 1.03, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 2, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.053, eff. April 2, 2015.

Sec. 31.010. SUPPORT SERVICES. (a) Subject to the availability of funds, the Texas Workforce Commission shall provide a recipient or a nonrecipient parent with support services designed to assist the recipient or nonrecipient parent and the person's family to attain and retain the capability of independence and self-care.

(b) The Texas Workforce Commission shall consider the needs assessment and employability plan developed under Section 31.0095 in determining the support services needed.

(c) Support services include:

(1) education, using public or private schools as necessary;

(2) child care;

(3) transportation assistance;

(4) work skills and job readiness training;

(5) instruction in job search techniques;

(6) job placement; and

(7) job retention assistance.

(d) The Texas Workforce Commission by rule shall provide for implementation of the support services.

(e) The Texas Workforce Commission may contract with other state agencies, community colleges, technical schools, residence training facilities, or public or private entities to provide support services under this section.

(f) In providing work skills and job readiness training, the Texas Workforce Commission shall:

(1) emphasize training for sustainable wage jobs;

(2) promote understanding of nontraditional work opportunities for recipients and nonrecipient parents; and

(3) offer micro-enterprise development and self-employment assistance in rural areas and other areas in which jobs are scarce.

Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 655, Sec. 1.04, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 828, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 3, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.054, eff. April 2, 2015.

Sec. 31.012. MANDATORY WORK OR PARTICIPATION IN EMPLOYMENT ACTIVITIES THROUGH TEMPORARY ASSISTANCE FOR NEEDY FAMILIES EMPLOYMENT PROGRAM. (a) The Health and Human Services Commission shall require that, during any one-month period in which an adult is receiving financial assistance under this chapter, the adult shall during that period:

(1) work not less than 30 hours a week; or

(2) participate for not less than 20 hours a week in an activity established under a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.).

(b) The Texas Workforce Commission by rule shall establish criteria for good cause failure to cooperate and for notification procedures regarding participation in work or employment activities under this section.

(c) A person who is the caretaker of a child with a physical disability or mental, intellectual, or developmental disability who requires the caretaker's presence is not required to participate in a program under this section. A single person who is the caretaker of a child is exempt until the caretaker's youngest child at the time the caretaker first became eligible for assistance reaches the age of one. Notwithstanding Sections 31.0035(b) and 32.0255(b), the Health and Human Services Commission shall provide to a person who is exempt under this subsection and who voluntarily participates in a program under Subsection (a)(2) six months of transitional benefits in addition to the applicable limit prescribed by Section 31.0065.

(d) A state program operated under this section shall be administered by the division of workforce development of the Texas Workforce Commission.

(e) The Texas Workforce Commission shall allow a person who is participating in work or employment activities under this section to complete those activities if the person becomes ineligible to receive financial assistance under this chapter because the person receives child support in an amount that makes the person ineligible for that

assistance. The Texas Workforce Commission shall provide to the person necessary child care services until the date on which the person completes work or employment activities under this section.

(f) In this section, "caretaker of a child" means the parent or relative of a dependent child with whom the child primarily resides, including a parent or relative who has been appointed under a court order as sole managing conservator or joint managing conservator of the child.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.23, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 655, Sec. 4.01(a), 11.63, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 602, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 681, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1224, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.90, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.055, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.056, eff. April 2, 2015.

Sec. 31.0121. SKILLS ASSESSMENT AND DEVELOPMENT FOR CERTAIN RECIPIENTS AND CERTAIN NONRECIPIENT PARENTS. (a) The Texas Workforce Commission shall ensure that each local workforce development board assesses the skills development needs of recipients and of nonrecipient parents referred to the CHOICES program administered by the board.

(b) If, after assessing the skills development needs of a recipient or a nonrecipient parent, a local workforce development board determines that the recipient or the nonrecipient parent requires job-specific training for placement in a job paying wages that equal or exceed the self-sufficiency wage developed for the board under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.), as amended, the board shall:

(1) to the extent allowed by federal law, place the recipient or the nonrecipient parent in training activities designed to improve employment and wage outcomes and job retention rates; and

(2) ensure that the training activities under Subdivision

(1) target occupations that are in demand by local employers.

(c) A local workforce development board may use a single list of targeted occupations that is developed for other training programs for purposes of meeting the requirements of Subsection (b)(2).

(d) A recipient or a nonrecipient parent participating in the CHOICES program who is placed in training activities under Subsection (b) may concurrently engage in those training activities and in work activities.

(e) To meet the requirements of this section, the Texas Workforce Commission shall use CHOICES program funds and, to the extent possible, existing funds from other training programs for which a recipient or a nonrecipient parent participating in the CHOICES program may qualify, including funds from:

(1) other training programs provided under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.), as amended, or their successor programs;

(2) the skills development fund created under Chapter 303, Labor Code; or

(3) the self-sufficiency fund created under Section 309.002, Labor Code.

Acts 2003, 78th Leg., ch. 817, Sec. 4.04, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 5, eff. June 15, 2007.

Sec. 31.0124. REFERRAL TO EDUCATIONAL PROGRAMS. The Texas Workforce Commission shall determine whether a person who registers to participate in a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.) needs and is eligible for adult education and literacy programs provided under Chapter 315, Labor Code. If the person is eligible for the adult education and literacy programs, the Texas Workforce Commission shall determine the person's needs and goals and refer the person to the appropriate adult education and literacy program provided under Chapter 315, Labor Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 7.02, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.057, eff. April 2, 2015.

Sec. 31.0126. EMPLOYMENT PROGRAMS. (a) The Texas Workforce Commission by rule shall develop the following programs to assist recipients of financial assistance and services under this chapter and nonrecipient parents in finding and retaining employment:

(1) a work first program that provides a participant job readiness training and employment information and services that will motivate the participant to find and apply for a job through job clubs, job readiness activities, and job search activities;

(2) a business internship program that provides a participant the opportunity to obtain marketable job skills through an internship in a participating business;

(3) a Texas works program that:

(A) is operated by a nonprofit group or local governmental entity;

(B) provides to a participant motivational and job readiness training by placing the participant in a job for a period of several months;

(C) ensures that the participant is visited at work and receives counseling and help in resolving any work-related or personal problems; and

(D) receives funding on the basis of participants who are successfully hired for employment;

(4) a community work experience program that provides a participant job training and work experience through a temporary job in the public sector;

(5) a subsidized employment program that provides to a participant job training and work experience through a job in the private sector that pays the participant a subsidized salary; and

(6) a self-employment assistance program that provides to a participant entrepreneurial training, business counseling, and technical and financial assistance so that the participant can establish a business and become self-employed.

(b) The Texas Workforce Commission shall develop the programs

prescribed by this section in accordance with federal law as a part of a Temporary Assistance for Needy Families employment program established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.).

(c) In adopting rules governing a program prescribed by this section, the executive commissioner shall:

(1) establish the criteria for determining which recipients and nonrecipient parents who are eligible to participate in the Temporary Assistance for Needy Families employment programs established under Part A, Subchapter IV, Social Security Act (42 U.S.C. Section 601 et seq.), may be required to participate in a particular program; and

(2) ensure that a recipient or a nonrecipient parent who is incapable of participating in a particular program is not required to participate in that program.

(d) A local workforce development board may implement in a workforce development area one or more programs prescribed by this section.

(e) The Texas Workforce Commission shall submit a waiver application or a renewal waiver application that a federal agency may require before a local workforce development board can implement one or more of the programs prescribed by this section in a workforce development area.

(f) In this section, a "local workforce development board" means a local workforce development board created under Chapter 2308, Government Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 4.03, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 6.08, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 6, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.058, eff. April 2, 2015.

Sec. 31.01261. PROVISION OF EMPLOYMENT SERVICES TO CERTAIN NONRECIPIENT PARENTS. The Texas Workforce Commission shall provide employment services, including needs assessment, job training,

postemployment, and related support services, to nonrecipient parents to the same extent the services are provided to recipients under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 7, eff. June 15, 2007.

Sec. 31.0127. COORDINATION OF SERVICES TO CERTAIN CLIENTS. (a) The Health and Human Services Commission shall coordinate with the Texas Workforce Commission for the provision of child care services, Temporary Assistance for Needy Families employment programs, and supplemental nutrition assistance program employment and training services to an individual or family who has been referred for programs and services by the Health and Human Services Commission. The purpose of this section is to accomplish the following:

(1) increase the self-sufficiency of recipients of Temporary Assistance for Needy Families and improve the delivery of services to those recipients; and

(2) improve the effectiveness of job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) or a successor program in obtaining employment for individuals receiving Temporary Assistance for Needy Families cash assistance.

Text of subsection effective until April 1, 2025

(b) The Health and Human Services Commission shall require the Texas Workforce Commission to comply with Chapter 531, Government Code, solely for:

(1) the promulgation of rules relating to the programs described by Subsection (a);

(2) the expenditure of funds relating to the programs described by Subsection (a), within the limitations established by and subject to the General Appropriations Act and federal and other law applicable to the use of the funds;

(3) data collection and reporting relating to the programs described by Subsection (a); and

(4) evaluation of services relating to the programs described by Subsection (a).

Text of subsection effective on April 1, 2025

(b) The Health and Human Services Commission shall require the

Texas Workforce Commission to comply with the revised provisions derived from Chapter 531, Government Code, as that chapter existed on March 31, 2025, solely for:

(1) the promulgation of rules relating to the programs described by Subsection (a);

(2) the expenditure of funds relating to the programs described by Subsection (a), within the limitations established by and subject to the General Appropriations Act and federal and other law applicable to the use of the funds;

(3) data collection and reporting relating to the programs described by Subsection (a); and

(4) evaluation of services relating to the programs described by Subsection (a).

(c) The Health and Human Services Commission and the Texas Workforce Commission shall jointly develop and adopt a memorandum of understanding. The memorandum of understanding must:

(1) outline measures to be taken to increase the number of individuals receiving Temporary Assistance for Needy Families cash assistance who are using job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.), or a successor program; and

(2) identify specific measures to improve the delivery of services to clients served by programs described by Subsection (a).

(d) Not later than January 15 of each odd-numbered year, the Health and Human Services Commission shall provide a report to the governor, the lieutenant governor, and the speaker of the house of representatives that:

(1) evaluates the efficiency and effectiveness of client services in the Temporary Assistance for Needy Families program;

(2) evaluates the status of the coordination among agencies and compliance with this section;

(3) recommends measures to increase self-sufficiency of recipients of Temporary Assistance for Needy Families cash assistance and to improve the delivery of services to these recipients; and

(4) evaluates the effectiveness of job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) or a successor program in obtaining employment outcomes for recipients of Temporary Assistance for Needy Families cash assistance.

Text of subsection effective until April 1, 2025

(e) Subsection (b) does not authorize the Health and Human Services Commission to require a state agency, other than a health and human services agency, to comply with Chapter 531, Government Code, except as specifically provided by Subsection (b). The authority granted under Subsection (b) does not affect Section 301.041, Labor Code.

Text of subsection effective on April 1, 2025

(e) Subsection (b) does not authorize the Health and Human Services Commission to require a state agency, other than a health and human services agency, to comply with revised provisions derived from Chapter 531, Government Code, as that chapter existed on March 31, 2025, except as specifically provided by Subsection (b). The authority granted under Subsection (b) does not affect Section 301.041, Labor Code.

(f) If the change in law made by this section with regard to any program or service conflicts with federal law or would have the effect of invalidating a waiver granted under federal law, the state agency is not required to comply with this section with regard to that program or service.

(g) This section does not authorize the Health and Human Services Commission to change the allocation or disbursement of funds allocated to the state under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) in a manner that would result in the loss of exemption status.

(h) This section does not authorize the Health and Human Services Commission to transfer programs to or from the commission and another agency serving clients of the Temporary Assistance for Needy Families program or the federal supplemental nutrition assistance program administered under Chapter 33 without explicit legislative authorization.

(i) The executive commissioner may not promulgate rules relating to eligibility for the program services described by Subsection (a) and the Texas Workforce Commission may not promulgate rules in accordance with Subsection (b)(1) without holding a public hearing.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 10.01, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.059, eff.

April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.75, eff. April 1, 2025.

Sec. 31.0128. COORDINATED INTERAGENCY PLAN. (a) The commission and the Texas Workforce Commission shall jointly develop a memorandum of understanding establishing guidelines for a coordinated interagency case management plan to:

(1) identify each recipient of financial assistance who has, in comparison to other recipients, higher levels of barriers to employment; and

(2) provide coordinated services that address those barriers to assist the recipient in finding and retaining employment.

(b) The commission and the Texas Workforce Commission shall:

(1) jointly develop a memorandum of understanding that establishes a coordinated interagency case management plan consistent with the guidelines established under Subsection (a); and

(2) using existing resources, implement in accordance with agency rules the plan to the maximum extent possible through local offices of the agency in local workforce development areas in which a local workforce development board is not established.

(c) The executive commissioner and the Texas Workforce Commission by rule shall adopt the memoranda of understanding required by this section and all revisions to the memoranda.

(d) In a local workforce development area in which a local workforce development board is established, the Texas Workforce Commission shall require in the contract between the Texas Workforce Commission and the board that the board, in cooperation with local Health and Human Services Commission offices, develop and implement a coordinated interagency case management plan consistent with the guidelines established under Subsection (a).

(e) On the formulation of recommendations and strategies by the Health and Human Services Commission under Section 31.0129(b), the commission and the Texas Workforce Commission shall, as necessary, revise and update a memorandum of understanding and coordinated interagency case management plan under this section to include the recommendations and strategies.

Added by Acts 2001, 77th Leg., ch. 84, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 1169, Sec. 12, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.060, eff. April 2, 2015.

Sec. 31.0129. COORDINATED PLAN TO IMPROVE INTERAGENCY TRANSITIONS. (a) The Health and Human Services Commission, the Texas Workforce Commission, and representatives of local workforce development boards shall conduct a survey of best practices used to transition clients between local Health and Human Services Commission offices and workforce centers.

(b) The Health and Human Services Commission shall:

(1) analyze information collected by a survey under Subsection (a); and

(2) formulate recommendations and strategies to improve practices used to transition clients between local commission offices and workforce centers.

(c) Using existing resources, the Health and Human Services Commission and local workforce development boards shall adopt policies to implement the recommendations and strategies contained in the revised and updated memorandum of understanding under Section 31.0128.

Added by Acts 2003, 78th Leg., ch. 1169, Sec. 13, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.060, eff. April 2, 2015.

Sec. 31.0135. PARENTING SKILLS TRAINING. (a) The commission, in cooperation with the Texas Education Agency, the Department of Family and Protective Services, the Texas A&M AgriLife Extension Service, or any other public or private entity, shall develop a parenting skills training program to assist a recipient of assistance under this chapter, including a child who receives assistance on behalf of a dependent child. The program shall include nutrition education, budgeting and survival skills, and instruction on the necessity of physical and emotional safety for children.

(b) The commission shall require that a caretaker relative or parent who is receiving assistance under this chapter on behalf of a dependent child receive appropriate parenting skills training as needed. The training must include one or more components of the parenting skills training program that the commission determines will be useful to the caretaker relative or parent.

(c) In this section, "caretaker relative" means a person who is listed under Section 31.002(a)(5) in whose home residence a dependent child lives.

Added by Acts 1993, 73rd Leg., ch. 841, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 655, Sec. 1.05, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.54, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 682, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.060, eff. April 2, 2015.

Sec. 31.015. HEALTHY MARRIAGE DEVELOPMENT PROGRAM. (a) Subject to available federal funding, the commission shall develop and implement a healthy marriage development program for recipients of financial assistance under this chapter.

(b) The healthy marriage development program shall promote and provide three instructional courses on the following topics:

(1) premarital counseling for engaged couples and marriage counseling for married couples that includes skill development for:

(A) anger resolution;

(B) family violence prevention;

(C) communication;

(D) honoring your spouse; and

(E) managing a budget;

(2) physical fitness and active lifestyles and nutrition and cooking, including:

(A) abstinence for all unmarried persons, including abstinence for persons who have previously been married; and

(B) nutrition on a budget; and

(3) parenting skills, including parenting skills for character development, academic success, and stepchildren.

(c) The commission shall provide to a recipient of financial

assistance under this chapter additional financial assistance of not more than $20 for the recipient's participation in a course offered through the healthy marriage development program up to a maximum payment of $60 a month.

(d) The commission may provide the courses or may contract with any person, including a community or faith-based organization, for the provision of the courses. The commission must provide all participants with an option of attending courses in a non-faith-based organization.

(e) The executive commissioner shall develop rules as necessary for the administration of the healthy marriage development program.

(f) The commission must ensure that the courses provided by the commission and courses provided through contracts with other organizations will be sensitive to the needs of individuals from different religions, races, and genders.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.91, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.061, eff. April 2, 2015.

Sec. 31.016. SERVICE REFERRALS FOR CERTAIN RECIPIENTS. To the extent practicable using existing revenue, the executive commissioner, by rule, shall develop and the commission shall implement a plan to:

(1) identify recipients of financial assistance that are at risk of exhausting their benefits under Section 31.0065; and

(2) provide referrals for the recipient and the recipient's family to appropriate preventive and support services, including faith-based services.

Acts 2003, 78th Leg., ch. 1169, Sec. 14, eff. Sept. 1, 2003.
Renumbered from Human Resources Code, Section 31.015 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(56), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.062, eff. April 2, 2015.

Sec. 31.017. HEALTHY MARRIAGES AND STRONG FAMILIES GRANT PROGRAM. (a) The commission may administer a grant program to provide grants in amounts not to exceed $50,000 to programs that provide marriage education services and support the development of healthy marriages or strengthening of families. Grant recipients may use grant money to provide direct services to participants, develop a program, enlarge program capacity, or pay other program expenses, including provider training and technical assistance expenses.

(b) In selecting grant recipients, the commission shall give preference to applicants:

(1) whose programs will contribute to the geographic diversity of program locations; or

(2) who operate small programs, but who seek to maximize service delivery and build capacity.

(c) The commission shall require that each grant recipient provide program services at no cost to participants.

(d) The commission may contract with private entities to provide marriage education training and curriculum, technical assistance, and other support to grant recipients. In selecting entities to provide these services, the commission shall consider whether a prospective provider has knowledge and understanding of the needs of grant recipients operating programs in different areas of this state.

(e) The executive commissioner may adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1249 (H.B. 2683), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.062, eff. April 2, 2015.

Sec. 31.018. MARRIAGE AND FAMILY PROGRAM FUNDING. (a) To the extent authorized by federal law, the commission shall spend a minimum of one percent of money received under the federal Temporary Assistance for Needy Families block grant during each state fiscal year to fund programs that support the development of healthy marriages or the strengthening of families, including the healthy marriage development program under Section 31.015 and the healthy

marriages and strong families grant program under Section 31.017.

(b) Using not more than 10 percent of the money required to be spent as provided by Subsection (a), the commission, through a contract or agreement with a public senior college or university, as defined by Section 61.003, Education Code, shall establish a process for evaluating the best practices and outcomes of programs funded under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 1249 (H.B. 2683), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.062, eff. April 2, 2015.

SUBCHAPTER B. ADMINISTRATION OF FINANCIAL ASSISTANCE AND SERVICES

Sec. 31.031. APPLICATION FOR ASSISTANCE. (a) The executive commissioner by rule shall prescribe the form for applications for assistance authorized by this chapter and the manner of their submission.

(b) The commission may require the applicant to state the amount of property in which he or she has an interest, the amount of income which he or she has at the time the application is filed, and other information.

(c) The commission shall require the applicant to provide proof to the commission that each person who will receive assistance under this chapter is:

(1) a United States citizen or has a satisfactory immigration status under Title IV, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. Sections 1601-1646); and

(2) a resident of this state.

(d) The commission shall require the applicant to provide proof to the commission that each child five years of age or younger, or a child who is not enrolled in public school, for whom the applicant will receive assistance:

(1) has been immunized in accordance with Section 161.004, Health and Safety Code;

(2) is currently receiving an immunization series in accordance with Section 161.004, Health and Safety Code, if the child

is of sufficient age; or

(3) is exempted under Section 161.004(d), Health and Safety Code.

(e) An applicant who cannot provide the proof required by Subsection (d) at the time of application shall provide the proof not later than the 180th day after the date the commission determines the applicant is eligible for financial assistance.

(f) The commission shall provide the applicant with information regarding immunization services available in the applicant's residential area. If the applicant does not read or comprehend English, the commission shall provide the information in a language that the applicant reads or comprehends.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(33), eff. April 2, 2015.

Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 655, Sec. 2.01(a), 2.04, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.063, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(33), eff. April 2, 2015.

Sec. 31.0315. DETERMINATION OF PARENTAGE. (a) A parent applying for assistance on behalf of a child shall identify the parent's spouse or, if unmarried, shall provide the name and last known address of the mother or alleged father of the child, as applicable.

(b) If the applying parent is under 18 years of age and resides with relatives, the applicant's relatives shall cooperate in identifying the other parent.

(c) A person who is not a parent and who is applying for assistance on behalf of a child shall provide the name and last known address of the mother and alleged father of the child.

(d) The commission may waive the requirements of this section if it determines that there exists a reasonable explanation why it is impossible to provide the information required under Subsection (a), (b), or (c) or if it would not be in the best interests of the child

to provide the information. In determining whether the best interests of the child warrant waiving the information requirements of this section, the commission shall consider all relevant provisions of federal law and regulations.

(e) The commission shall forward to the attorney general's office information received under this section.

(f) If the parent of a dependent child is under 17 years of age and the Title IV-D agency determines that the child's birth may be the result of sexual conduct that constitutes a criminal offense under the Penal Code, that agency shall refer the case to the appropriate law enforcement agency for further investigation.

Added by Acts 1993, 73rd Leg., ch. 721, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 655, Sec. 1.06, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.064, eff. April 2, 2015.

Sec. 31.032. INVESTIGATION AND DETERMINATION OF ELIGIBILITY. (a) On receipt of an application for assistance authorized by this chapter, the commission shall investigate and record the applicant's circumstances in order to ascertain the facts supporting the application and to obtain other information it may require.

(b) After completing its investigation, the commission shall determine whether the applicant is eligible for the assistance, the type and amount of assistance, the date on which the assistance shall begin, and the manner in which payments shall be made.

(c) The commission shall promptly notify the applicant of its final action.

(d) In determining whether an applicant is eligible for assistance, the commission shall exclude from the applicant's available resources:

(1) $1,000 for the applicant's household, including a household in which there is a person with a disability or a person who is at least 60 years of age; and

(2) the fair market value of the applicant's ownership interest in a motor vehicle, but not more than $5,000 plus or minus an amount to be determined annually beginning on October 1, 1997, to

reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics.

(e) If federal regulations governing the maximum allowable resources under the supplemental nutrition assistance program, 7 C.F.R. Part 273, are revised, the executive commissioner shall adjust the standards that determine available resources under Subsection (d) to reflect those revisions.

Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 655, Sec. 1.07, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 198, Sec. 2.201(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 5(a), eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.065, eff. April 2, 2015.

Sec. 31.0322. VICTIMS OF FAMILY VIOLENCE. (a) The executive commissioner, the Texas Workforce Commission, and the Title IV-D agency by rule shall adopt procedures under which requirements relating to financial assistance and related services, including time limits, child support enforcement, paternity establishment, work activity, and residency, may be waived or modified for an individual who is a victim of family violence if application of the requirements would:

(1) adversely affect the individual's ability to attain financial independence;

(2) make it more difficult for the individual to escape family violence; or

(3) place the individual at greater risk for additional family violence.

(b) The procedures must provide that:

(1) a requirement may be waived or modified only after a case-by-case determination and documentation of good cause and only to the extent necessary considering an individual's circumstances;

(2) a requirement may not be waived or modified for an individual for a period longer than one year;

(3) the appropriate agency shall refer an individual to a family violence program if necessary for assistance in developing a

safety plan to protect the individual from further family violence; and

(4) confidentiality of information about the identification and location of victims of family violence and their children is maintained when necessary to prevent additional family violence.

(c) The commission, the Texas Workforce Commission, and the Title IV-D agency may not deny an individual access to education, training, employment, or other services because the individual is a victim of family violence.

(d) The commission shall coordinate the development and implementation of procedures under this section in collaboration with the Texas Workforce Commission, the Title IV-D agency, and at least one statewide advocacy group for victims of family violence.

(e) The commission, the Texas Workforce Commission, the Title IV-D agency, and each local workforce development board, using existing resources, shall provide not less than four hours of training regarding family violence to each employee or other person who on behalf of the commission, Texas Workforce Commission, agency, or board:

(1) provides information relating to requirements described by Subsection (a) and the availability of waivers or modifications of those requirements to an individual seeking or receiving financial assistance;

(2) recommends or grants waivers or modifications authorized by this section of requirements described by Subsection (a);

(3) recommends or imposes sanctions for noncooperation or noncompliance with requirements described by Subsection (a); or

(4) assesses employment readiness or provides employment planning or employment retention services to an individual receiving financial assistance.

(f) The training required by Subsection (e) must:

(1) be developed in collaboration with at least one organization with expertise in family violence issues; and

(2) include information relating to:

(A) the potential impact of family violence on:

(i) the safety of an individual seeking or receiving financial assistance; and

(ii) the ability of that individual to make a successful transition into the workforce;

(B) state laws and agency rules regarding options available to an individual receiving financial assistance for whom family violence poses a danger or impediment to attaining financial independence; and

(C) statewide and local resources available from state and local governmental agencies and other entities that could assist a victim of family violence in safely and successfully entering the workforce.

(g) Before the application of a sanction or penalty based on an individual's failure to cooperate with the commission or Title IV-D agency, as required by Section 31.0031(d)(1), or failure to comply with the work or participation requirements imposed by Section 31.012, the agency recommending or applying the sanction or penalty must make reasonable attempts to contact the individual to determine the cause of the failure to cooperate or comply. If the agency determines that family violence contributed to the failure, the agency shall ensure that a person trained in family violence issues in accordance with Subsection (e) interviews the individual to identify the types of services necessary to assist the individual in safely and successfully entering the workforce.

(h) In this section:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

Added by Acts 1997, 75th Leg., ch. 1442, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 31.0321 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(71), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 197, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.066, eff. April 2, 2015.

Sec. 31.0324. ASSIGNMENT OF PROTECTIVE PAYEE. (a) In this section, "protective payee" means a person who:

(1) is interested in or concerned with the welfare of a child or relative of a child receiving financial assistance; and

(2) acts for the recipient of financial assistance in

receiving or managing the financial assistance payment.

(b) The executive commissioner by rule shall develop and the commission shall implement a process that provides for the grandparent, aunt, uncle, sister, or brother of a child receiving financial assistance under this chapter to serve as a protective payee to:

(1) receive and use the assistance on behalf of the child; and

(2) apply for financial assistance and be interviewed instead of the child's parent at any subsequent review of eligibility required by the commission.

(c) The commission shall limit the use of the process established by Subsection (b) to situations in which the commission determines the parent is not using the assistance for the child's needs as required by Section 31.0355(a), and the executive commissioner shall establish by rule the circumstances under which the grandparent, aunt, uncle, sister, or brother may be removed as a protective payee.

(d) To serve as a protective payee of a child receiving financial assistance under this chapter, a person described by Subsection (b) must be at least 25 years of age.

Added by Acts 2001, 77th Leg., ch. 1316, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.067, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 362 (S.B. 263), Sec. 2, eff. September 1, 2021.

Sec. 31.0326. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION. The commission shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the financial assistance program; and

(2) prevent duplicate participation in the program by a person.

Added by Acts 2011, 82nd Leg., R.S., Ch. 944 (H.B. 710), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.068, eff. April 2, 2015.

Sec. 31.033. REINVESTIGATION AND REDETERMINATION OF ELIGIBILITY. (a) The commission may require periodic reconsideration of continued eligibility for assistance.

(b) After reconsideration of continuing eligibility, the commission may change the amount of assistance or withdraw it if the commission finds that the recipient's circumstances have altered sufficiently to warrant that action.

(c) The commission may cancel or suspend assistance for a period of time if the commission finds that the recipient is currently ineligible to receive it.

(d) The commission shall notify the recipient immediately of its decision to change or withdraw assistance.

(e) A recipient of assistance must notify the commission immediately if he or she comes into possession of income or resources in excess of the amount previously reported.

Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.068, eff. April 2, 2015.

Sec. 31.034. APPEAL FROM LOCAL ELIGIBILITY OFFICES. (a) An applicant for or recipient of financial assistance authorized by this chapter may appeal to the commission an action or failure to act by a local eligibility office relating to the financial assistance. The commission shall grant the applicant or recipient an opportunity for a hearing after reasonable notice.

(b) An applicant or recipient, or his or her authorized agent, may submit a written request for the information contained in the records of the local eligibility office on which the action being appealed is based, and the local eligibility office shall advise the person making the request of the information within a reasonable time prior to the hearing. Information not provided to the requesting party may not be considered by the commission at the hearing as a

basis for decision.

Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.068, eff. April 2, 2015.

Sec. 31.035. METHOD OF PAYMENT. (a) The commission shall periodically furnish the comptroller with a list of persons eligible for financial assistance under this chapter and the amount to which each person is entitled.

(b) The comptroller shall draw payments for the specified amounts on the proper accounts and shall transmit the payments to the commission. The commission shall supervise the delivery of the payments to the persons entitled to them.

Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 11, eff. Aug. 26, 1985.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.068, eff. April 2, 2015.

Sec. 31.0355. USE OF FINANCIAL ASSISTANCE. (a) Financial assistance granted to a person under this chapter may be used only to purchase goods and services that are considered essential and necessary for the welfare of the family, including food, clothing, housing, utilities, child care, and incidentals such as transportation and medicine or medical supplies or equipment not covered by Medicaid. The executive commissioner by rule shall define what constitutes essential and necessary goods and services for purposes of this subsection.

(b) If a recipient of financial assistance who receives the assistance by electronic benefits transfer to an account is authorized to make a cash withdrawal from the account through a provider of the goods or services described by Subsection (a), the recipient may make the cash withdrawal only at the customer service department of the provider and not at the provider's point-of-sale

terminal.

(c) The commission shall encourage housing authorities, utility companies, public transportation companies, and other nonfood retailers to accept payment for goods and services described by Subsection (a) through the state's electronic benefits transfer (EBT) system.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(34), eff. April 2, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(34), eff. April 2, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(34), eff. April 2, 2015.

Added by Acts 1997, 75th Leg., ch. 637, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.069, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(34), eff. April 2, 2015.

Sec. 31.036. ELIGIBILITY OF PERSON LEAVING THE STATE. A recipient of assistance who moves out of the state is no longer eligible for the assistance. However, a recipient's temporary absence from the state for reasons and for periods of time approved by the commission does not terminate the recipient's eligibility for assistance.

Acts 1979, 66th Leg., p. 2346, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.070, eff. April 2, 2015.

Sec. 31.037. PAYMENT OF FINANCIAL ASSISTANCE FUNDS ON DEATH OF RECIPIENT. (a) If a person dies during a month for which the person is eligible for financial assistance and has not spent all of that month's financial assistance payment, the commission may pay financial assistance to the person who was responsible for caring for the recipient at the time of his or her death and who is responsible

for paying the obligations incurred by the recipient.

(b) The executive commissioner shall adopt rules prescribing the method of determining the person entitled to receive the deceased recipient's financial assistance, the manner of payment of the funds, and limitations on the payments.

(c) Payments to persons responsible for deceased recipients under this section may be made only in the manner and to the extent permissible under the laws and regulations governing the disbursement of funds received through the United States Department of Health and Human Services.

Acts 1979, 66th Leg., p. 2347, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.070, eff. April 2, 2015.

Sec. 31.038. CANCELLATION OF UNUSED BENEFITS. The commission may cancel financial assistance benefits that have not been spent within a reasonable period of time after issuance. The cancellation must be performed in the manner required by rules of the comptroller.

Acts 1979, 66th Leg., p. 2347, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1999, 76th Leg., ch. 1467, Sec. 1.33, eff. June 19, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.070, eff. April 2, 2015.

Sec. 31.039. ISSUANCE OF REPLACEMENT FINANCIAL ASSISTANCE WARRANTS AND ELECTRONIC BENEFITS TRANSFER CARDS. (a) The comptroller may issue a replacement financial assistance warrant to a recipient who has failed to receive or has lost the original warrant in accordance with Section 403.054, Government Code.

(b) The commission may issue a replacement electronic benefits transfer card to a recipient who failed to receive or lost the original card.

Acts 1979, 66th Leg., p. 2347, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979. Amended by Acts 1985, 69th Leg., ch. 794, Sec. 12, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 449, Sec. 35, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.070, eff. April 2, 2015.

Sec. 31.040. NONTRANSFERABILITY OF ASSISTANCE FUNDS. The right to financial assistance granted to recipients under this chapter may not be transferred or assigned at law or in equity, and the funds are not subject to execution, levy, attachment, garnishment, or other legal process or to the operation of an insolvency law.

Acts 1979, 66th Leg., p. 2347, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 31.041. RIGHT TO ASSISTANCE NOT VESTED. (a) The provisions of this chapter providing assistance shall not be construed as vesting a right in the recipient to the assistance.
(b) Assistance granted under this chapter is subject to modification or repeal by the legislature, and a recipient has no claim for compensation or otherwise because the law authorizing the assistance is amended or repealed.

Acts 1979, 66th Leg., p. 2347, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 31.042. PRORATION OF FINANCIAL ASSISTANCE. If at any time state funds are not available to pay in full all financial assistance authorized in this chapter, the executive commissioner may direct the proration of the financial assistance.

Acts 1979, 66th Leg., p. 2348, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.070, eff. April 2, 2015.

Sec. 31.043. FILL-THE-GAP BUDGETING. (a) To extend the period of supported employment for families who receive financial assistance under this chapter, the commission may use a form of fill-the-gap budgeting or another method under which the commission disregards earnings of family members who obtain employment while receiving the assistance.

(b) The commission may limit the percentage of earnings disregarded, impose a time limit on how long the earnings are disregarded, or gradually reduce the percentage of earnings disregarded in order to remain within available funding.

(c) Funding for earnings disregards may also come from savings associated with sanctions related to noncompliance with the personal responsibility agreement and work requirements in this chapter, from savings resulting from caseload declines below projections specified in the appropriations bill, and from Temporary Assistance for Needy Families (TANF) block grant funds.

(d) In this section, "fill-the-gap budgeting" means a system of budgeting in which benefits are gradually lowered using a percentage of the difference between the standard of need and the countable income to calculate the grant benefit.

Added by Acts 1997, 75th Leg., ch. 878, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.071, eff. April 2, 2015.

Sec. 31.044. INACTIVE ELECTRONIC BENEFITS TRANSFER ACCOUNT. (a) This section applies only to an account to which financial assistance provided under this chapter has been transferred under the electronic benefits transfer system for access and use by a recipient of that assistance.

(b) The commission shall close an account that has not been used by the account holder during the preceding 12 months.

(c) The comptroller shall withdraw any unused benefits remaining in the account and disburse the benefits as authorized by federal and state law.

Added by Acts 1997, 75th Leg., ch. 322, Sec. 4, eff. May 26, 1997; Acts 1997, 75th Leg., ch. 458, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 31.043 by Acts 1999, 76th Leg., ch. 62, Sec.

19.01(72), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.072, eff. April 2, 2015.

Text of section effective until January 1, 2025

Sec. 31.045. PEACE OFFICERS. The commission's office of inspector general may employ and commission peace officers for the purpose of assisting the office in the investigation of fraud, waste, or abuse in the financial assistance program. A peace officer employed and commissioned by the office is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 856 (H.B. 2523), Sec. 2, eff. June 15, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.127, eff. January 1, 2025.

Text of section effective on January 1, 2025

Sec. 31.045. PEACE OFFICERS. The commission's office of inspector general may employ and commission peace officers for the purpose of assisting the office in the investigation of fraud, waste, or abuse in the financial assistance program. A peace officer employed and commissioned by the office is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 856 (H.B. 2523), Sec. 2, eff. June 15, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.127, eff. January 1, 2025.

SUBCHAPTER C. LIMITATION ON AMOUNT OF FINANCIAL ASSISTANCE

Sec. 31.051. DEFINITION. In this subchapter, "state budget" shall equal the amount appropriated by the legislature for the biennium from funds subject to the limitations set forth in the Texas

Constitution, including any appropriated federal funds in the amounts estimated in the Act making such appropriations.

Added by Acts 1983, 68th Leg., p. 1667, ch. 312, Sec. 1, eff. Aug. 29, 1983.

Sec. 31.052. LIMITATION ON AMOUNT OF FINANCIAL ASSISTANCE. For each fiscal biennium, the maximum amount that may be paid out of state funds for assistance grants to or on behalf of needy dependent children and their caretakers may not exceed one percent of the state budget.

Added by Acts 1983, 68th Leg., p. 1667, ch. 312, Sec. 1, eff. Aug. 29, 1983.

Sec. 31.053. DETERMINATION BY LEGISLATIVE BUDGET BOARD. (a) With regard to the general appropriations bill introduced in each house in each regular session, it shall be the duty of the legislative budget director, not later than the seventh day of the session, to inform in writing the lieutenant governor and the speaker of the house of representatives of three items of information:

(1) the biennial amount of the "state budget," as defined for the purposes of this subchapter, based on the general appropriations bills as introduced;

(2) the maximum biennial amount of one percent of the state budget; and

(3) the biennial amount which would be appropriated by the general appropriations bills for assistance to or on behalf of needy dependent children and the caretakers of such children and which is subject to the limitation.

(b) At the request of the lieutenant governor or speaker the legislative budget director shall update this information and shall provide a statement of other legislation affecting appropriations.

(c) The Legislative Budget Board may adopt rules necessary to perform its duties under this subchapter.

Added by Acts 1983, 68th Leg., p. 1667, ch. 312, Sec. 1, eff. Aug. 29, 1983.

CHAPTER 32. MEDICAL ASSISTANCE PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. PURPOSE OF CHAPTER. The purpose of this chapter is to enable the state to provide medical assistance on behalf of needy individuals and to enable the state to obtain all benefits for those persons authorized under the Social Security Act or any other federal act.

Acts 1979, 66th Leg., p. 2348, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 32.002. CONSTRUCTION OF CHAPTER. (a) This chapter shall be liberally construed and applied in relation to applicable federal laws and regulations so that adequate and high quality health care may be made available to all children and adults who need the care and are not financially able to pay for it.

(b) If a provision of this chapter conflicts with a provision of the Social Security Act or any other federal act and renders the state program out of conformity with federal law to the extent that federal matching money is not available to the state, the conflicting provision of state law shall be inoperative to the extent of the conflict but shall not affect the remainder of this chapter.

Acts 1979, 66th Leg., p. 2348, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 32.003. DEFINITIONS. In this chapter:

Text of subdivision effective until April 1, 2025

(1) "Health and human services agencies" has the meaning assigned by Section 531.001, Government Code.

Text of subdivision effective on April 1, 2025

(1) "Health and human services agencies" has the meaning assigned by Section 521.0001, Government Code.

(2) "Local health department" means a local health department established under Subchapter D, Chapter 121, Health and Safety Code.

(3) "Local health unit" means a local health unit described by Section 121.004, Health and Safety Code.

(3-a) "Local public health entity" means:

(A) a local health unit;

(B) a local health department; and

(C) a public health district.

(4) "Medical assistance" and "Medicaid" include all of the health care and related services and benefits authorized or provided under federal law for needy individuals of this state.

(5) "Public health district" means a public health district established under Subchapter E, Chapter 121, Health and Safety Code.

Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 6, Sec. 2, eff. March 23, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.073, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(35), eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 535 (S.B. 73), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.76, eff. April 1, 2025.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 32.021. ADMINISTRATION OF THE PROGRAM. (a) The commission is the single state agency designated to administer the medical assistance program provided in this chapter in accordance with 42 U.S.C. Section 1396a(a)(5). Subject to applicable federal law, the commission may delegate the operation of a part of the medical assistance program to another state agency. Notwithstanding any delegation, the commission retains ultimate authority over the medical assistance program.

(a-1) To the extent the commission delegates the operation of a part of the medical assistance program to another state agency, or to the extent that state law assigns a function of the medical assistance program to another health and human services agency operating under the commission's oversight, a reference in this chapter to the commission with respect to that part of the medical assistance program means the state agency to which the operation of

that part is delegated or assigned.

(b) The commission shall enter into agreements with any federal agency designated by federal law to administer medical assistance when the commission determines the agreements to be compatible with the state's participation in the medical assistance program and within the limits of appropriated funds. The commission shall cooperate with federal agencies designated by federal law to administer medical assistance in any reasonable manner necessary to qualify for federal funds.

(c) The executive commissioner shall establish methods of administration and adopt necessary rules for the proper and efficient operation of the medical assistance program.

Text of subsection effective until April 1, 2025

(d) The commission shall include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act (OBRA), Pub. L. No. 100-203, Nursing Home Reform Amendments of 1987, provided that the executive commissioner shall:

(1) provide for an informal dispute resolution process in the commission as provided by Section 531.058, Government Code; and

(2) develop rules to adjudicate claims in contested cases, including claims unresolved by the informal dispute resolution process of the commission.

Text of subsection effective on April 1, 2025

(d) The commission shall include in its contracts for the delivery of medical assistance by nursing facilities provisions for monetary penalties to be assessed for violations as required by 42 U.S.C. Section 1396r, including without limitation the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100-203, Nursing Home Reform Amendments of 1987, provided that the executive commissioner shall:

(1) provide for an informal dispute resolution process in the commission as provided by Section 526.0202, Government Code; and

(2) develop rules to adjudicate claims in contested cases, including claims unresolved by the informal dispute resolution process of the commission.

(e) Rules governing the application of penalties shall include the following:

(1) specific and objective criteria which describe the scope and severity of a contract violation which results in a recommendation for each specific penalty. Penalties must be appropriate to the violation, and the most severe financial penalties must be reserved for situations which create an immediate and serious threat to the health and safety of residents; "immediate and serious threat" means a situation in which there is a high probability that serious harm or injury to residents could occur at any time or already has occurred and may well occur again if residents are not protected effectively from the harm or if the threat is not removed;

(2) a system to ensure standard and consistent application of penalties among surveyors and different areas of the state;

(3) due process for nursing facilities providers, including an appeals procedure consistent with Chapter 2001, Government Code; and

(4) per diem and/or minimum penalties. The executive commissioner may by rule prescribe a minimum penalty period; however, once a facility gives the Department of Aging and Disability Services notice that deficiencies have been corrected, if surveyors are unable to revisit the facility within five days and the deficiencies are later shown to be corrected, the per diem penalties cease as of the day the facility gave notice to the Department of Aging and Disability Services or on the last day of the minimum penalty period established by the executive commissioner, whichever is later.

(f) To encourage facilities to provide the best possible care, the commission shall develop an incentive program to recognize facilities providing the highest quality care to Medicaid residents.

(g) Funds collected as a result of the imposition of penalties shall be applied to the protection of the health or property of residents of nursing facilities, including the cost of relocation of residents to other facilities and maintenance or operation of a facility pending correction of deficiencies or closure, or to incentive programs which recognize the highest quality care to residents who are entitled to Medicaid.

(h) Medicaid nursing facilities shall also comply with state licensure rules, which may be more stringent than the requirements for certification. The Department of Aging and Disability Services shall use appropriate civil, administrative, or criminal remedies authorized by state or federal law with respect to a facility that is

in violation of a certification or licensing requirement.

(i) Repealed by Acts 2003, 78th Leg., ch. 204, Sec. 16.03(1).

(j) Repealed by Acts 2001, 77th Leg., ch. 1284, Sec. 3.04, eff. June 15, 2001.

(k) Repealed by Acts 2003, 78th Leg., ch. 204, Sec. 16.03(1).

(l) The commission may not include as a reimbursable item to a nursing facility an administrative or civil penalty assessed against the facility under this chapter or under Chapter 242, Health and Safety Code.

(m) Notwithstanding any provision of law to the contrary, the commission shall terminate a nursing facility's provider agreement if the Department of Aging and Disability Services has imposed required Category 2 or Category 3 remedies on the facility three times within a 24-month period. The executive commissioner by rule shall establish criteria under which the requirement to terminate the provider agreement may be waived. In this subsection, "Category 2 remedies" and "Category 3 remedies" have the meanings assigned by 42 C.F.R. Section 488.408.

(n) An assessment of monetary penalties under this section is subject to arbitration under Subchapter H-2, Chapter 242, Health and Safety Code.

(o) In any circumstance in which a nursing facility would otherwise be required to admit a resident transferred from another facility, because of an emergency or otherwise, the nursing facility may not admit a resident whose needs cannot be met through service from the facility's staff or in cooperation with community resources or other providers under contract. If a nursing facility refuses to admit a resident under this subsection, the nursing facility shall provide a written statement of the reasons for the refusal to the Department of Aging and Disability Services within a period specified by rule. A nursing facility that fails to provide the written statement, or that includes false or misleading information in the statement, is subject to monetary penalties assessed in accordance with this chapter.

(p) In order to increase the personal needs allowance under Section 32.024(w), the commission shall develop an early warning system to detect fraud in the handling of the personal needs allowance and other funds of residents of long-term care facilities.

(q) The commission shall include in its contracts for the delivery of medical assistance by nursing facilities clearly defined

minimum standards that relate directly to the quality of care for residents of those facilities. The commission shall include in each contract:

(1) specific performance measures by which the commission may evaluate the extent to which the nursing facility is meeting the standards; and

(2) provisions that allow the commission to terminate the contract if the nursing facility is not meeting the standards.

(r) The commission may not award a contract for the delivery of medical assistance to a nursing facility that does not meet the minimum standards that would be included in the contract as required by Subsection (q). The commission shall terminate a contract for the delivery of medical assistance by a nursing facility that does not meet or maintain the minimum standards included in the contract in a manner consistent with the terms of the contract.

(s) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(106), eff. June 17, 2011.

Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.22, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1049, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 2.01, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 974, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1284, Sec. 3.01, 3.04, 7.04, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.92(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 204, Sec. 16.03(1), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(11), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 23(5), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(106), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.074, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.77, eff.

April 1, 2025.

Sec. 32.0211. RESTRICTIONS ON EXECUTIVE COMMISSIONERS, FORMER MEMBERS OF A BOARD, COMMISSIONERS, AND THEIR BUSINESS PARTNERS. (a) After service in the commission or a health and human services agency, including an agency that formerly operated part of the medical assistance program but that has been abolished, ends, a former executive commissioner, member of the board, or commissioner of the applicable agency may not knowingly represent a person before an agency or court:

(1) in a matter related to the medical assistance program in which the agency the person served or the federal government has a direct interest and in which the executive commissioner, board member, or commissioner participated personally while employed with the agency; or

(2) for two years after the date on which service ends in a matter related to the medical assistance program if the commission, the health and human services agency, or the federal government has a direct interest in the matter, the matter was pending during the executive commissioner's or commissioner's last year of service to the applicable agency, and the matter was one for which the executive commissioner or commissioner had responsibility.

(b) Subsection (a) does not apply to a former executive commissioner, board member, or commissioner who holds one of the following positions and is acting in the scope of that position:

(1) employee or officer of federal, state, or local government;

(2) employee of a nonprofit hospital or medical research organization; or

(3) employee of an accredited degree-granting college or university.

(c) The current executive commissioner or a current commissioner of a health and human services agency may not knowingly participate in the course of the executive commissioner's or commissioner's service in a matter related to the medical assistance program in which the agency the person serves or the federal government has a direct interest and in which the executive commissioner or commissioner, or the executive commissioner's or commissioner's spouse, minor child, or business partner, has a

substantial financial interest.

(d) A business partner of a current executive commissioner or a current commissioner of a health and human services agency may not knowingly represent a person before an agency or court in a matter related to the medical assistance program:

(1) in which the executive commissioner or commissioner participates or has participated personally and substantially; or

(2) that is under the official responsibility of the executive commissioner or commissioner.

(e) A past or present executive commissioner, a past board member of a health and human services agency, including an abolished agency, or a past or present commissioner of a health and human services agency is subject to a civil penalty of $5,000 for each violation of this section. A partner of a current executive commissioner or commissioner is subject to a civil penalty of $2,500 for each violation of this section. Each appearance before an agency or court constitutes a separate offense.

(f) If it appears that this section has been violated, the commission may request the attorney general to conduct a suit in the name of the State of Texas to enjoin the prohibited activity and to recover the penalty provided for in this section.

Added by Acts 1981, 67th Leg., p. 755, ch. 287, Sec. 1, eff. Aug. 31, 1981.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.075, eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE. Notwithstanding any other law and subject to Section 533.0025, Government Code, the commission shall provide medical assistance for acute care services through the Medicaid managed care system implemented under Chapter 533, Government Code, or another Medicaid capitated managed care program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.95, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 2.10, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.075, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.78, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 32.0212. DELIVERY OF MEDICAL ASSISTANCE. Notwithstanding any other law and subject to Sections 540.0502, 540.0701, and 540.0753, Government Code, the commission shall provide medical assistance for acute care services through the Medicaid managed care system implemented under Chapters 540 and 540A, Government Code, or another Medicaid capitated managed care program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.95, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 2.10, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.075, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.78, eff. April 1, 2025.

Sec. 32.0213. NURSING FACILITY BED CERTIFICATION AND DECERTIFICATION. (a) The executive commissioner by rule shall establish procedures for:

(1) controlling the number of Medicaid beds in nursing facilities;

(2) decertification of unused Medicaid beds in nursing facilities; and

(3) reallocation of nursing facility beds decertified under Subdivision (2) to other nursing facilities.

(b) The procedures established under this section must take into account the occupancy rate of the nursing facility.

(c) The executive commissioner may exempt a nursing facility from the procedures established under this section if the facility:

(1) is affiliated with a state-supported medical school;

(2) is located on land owned or controlled by the state-supported medical school; and

(3) serves as a teaching facility for physicians and related health care professionals.

(d) The executive commissioner by rule may require an applicant for Medicaid beds in a nursing facility under a Medicaid bed waiver application to provide a performance bond in the amount of $500,000 or other financial security as determined by the Department of Aging and Disability Services to ensure that the applicant provides the Medicaid beds granted to the applicant under the waiver within the time frame required by the Department of Aging and Disability Services. A performance bond provided under this subsection must:

(1) be executed by a corporate surety in accordance with Subchapter A, Chapter 3503, Insurance Code;

(2) be in a form approved by the Department of Aging and Disability Services; and

(3) clearly and prominently display on the face of the bond or on an attachment to the bond:

(A) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(e) The executive commissioner may not require an applicant for Medicaid beds in a nursing facility to obtain a performance bond from a specific insurance or surety agency, agent, or broker.

(f) The executive commissioner by rule shall adopt criteria to exempt certain applicants for Medicaid beds from the requirements of Subsection (d), including applicants that are licensed facilities with existing Medicaid bed allocations, criminal justice facilities, teaching facilities, and state veterans homes, and any other applicants that the executive commissioner finds good cause to exempt. The executive commissioner may modify the criteria for granting exemptions under this subsection as necessary to meet the objectives of Subsection (d).

Added by Acts 1997, 75th Leg., ch. 1159, Sec. 2.02, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1487, Sec. 1, eff. June 19, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1063 (H.B. 3196), Sec. 3, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.076, eff. April 2, 2015.

Sec. 32.0214. DESIGNATIONS OF PRIMARY CARE PROVIDER BY CERTAIN RECIPIENTS. (a) If the commission determines that it is cost-effective and feasible and subject to Subsection (b), the commission shall require each recipient of medical assistance to designate a primary care provider with whom the recipient will have a continuous, ongoing professional relationship and who will provide and coordinate the recipient's initial and primary care, maintain the continuity of care provided to the recipient, and initiate any referrals to other health care providers.

Text of subsection effective until April 1, 2025

(b) A recipient who receives medical assistance through a Medicaid managed care model or arrangement under Chapter 533, Government Code, that requires the designation of a primary care provider shall designate the recipient's primary care provider as required by that model or arrangement.

Text of subsection effective on April 1, 2025

(b) A recipient who receives medical assistance through a Medicaid managed care model or arrangement under Chapter 540 or 540A, Government Code, as applicable, that requires the designation of a primary care provider shall designate the recipient's primary care provider as required by that model or arrangement.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 15, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.077, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.79, eff. April 1, 2025.

Sec. 32.0215. HOME OR COMMUNITY CARE PROVIDERS: CIVIL MONETARY PENALTIES. (a) The commission may include in a contract for the delivery of medical assistance by a home or community care provider a provision for monetary penalties to be assessed for a contract violation or any violation of home or community care requirements, as required by 42 U.S.C. Section 1396t(j).

(b) The executive commissioner shall adopt rules governing the application of civil money penalties, including rules prescribing:

(1) criteria that describe when and how a civil money penalty may be assessed and the amount of the penalty;

(2) a system to ensure standard and consistent application of the penalties throughout the state; and

(3) an administrative appeals process to adjudicate claims in contested cases in accordance with Chapter 2001, Government Code.

(c) Rules adopted under this section must be designed to minimize the time between the identification of a violation and the final imposition of a penalty. Rules adopted under this section may authorize the imposition of a penalty that assesses and collects a monetary penalty, with interest, for a minimum penalty period and on a subsequent per diem basis.

(d) A penalty must be appropriate to the violation. The commission may assess incrementally more severe penalties for repeated or uncorrected violations.

(e) The commission shall review a penalized provider within 10 working days after the provider notifies the Department of Aging and Disability Services that the deficiency that caused the imposition of the penalty has been corrected. If the commission is unable to review the provider within that 10-working-day period, the penalty ceases on the earlier of the last day of the minimum penalty period or the date the provider gives notice to the Department of Aging and Disability Services.

(f) Money collected as a result of the imposition of penalties may be used for the protection of the health or property of an individual whose personal property was lost due to a failure of a home or community care provider to meet the requirements for participation as a provider of home or community care.

Added by Acts 1993, 73rd Leg., ch. 132, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.078, eff. April 2, 2015.

Sec. 32.022. MEDICAL AND HOSPITAL CARE ADVISORY COMMITTEES. (a) The executive commissioner shall appoint a medical care advisory committee to advise the executive commissioner and the commission in developing and maintaining the medical assistance program and in making immediate and long-range plans for reaching the program's goal of providing access to high quality, comprehensive medical and health care services to medically indigent persons in the state. To ensure that qualified applicants receive services, the committee shall consider changes in the process the commission uses to determine eligibility.

(b) The executive commissioner shall appoint the committee in compliance with the requirements of the federal agency administering medical assistance. The appointments shall:

(1) provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the committee's field of work; and

(2) include one member who is the representative of a managed care organization.

(c) The executive commissioner shall adopt rules for membership on the committee to provide for efficiency of operation, rotation, stability, and continuity.

(d) The executive commissioner may appoint regional and local medical care advisory committees and other advisory committees as considered necessary.

Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 2.01, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1027, Sec. 10, eff. Sept. 1, 1989.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.079, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.36(a), eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(c), eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.33(a), eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.37(d), eff. January 1, 2016.

Sec. 32.023. COOPERATION WITH OTHER STATE AGENCIES. (a) The commission's plan for administering medical assistance must include procedures for using health services administered by other state agencies pursuant to cooperative arrangements.

(b) The commission may enter into agreements with appropriate state agencies that will enable the commission to implement Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.) to provide medical assistance for individuals in institutions or in alternate care arrangements. The agreements must comply with federal law and rules. The commission may make medical assistance payments in accordance with the agreements. The agreements are not subject to Chapter 771, Government Code.

(c) State agencies responsible for the administration or supervision of facilities to which medical assistance payments may be made under federal law shall enter into the agreements with the commission and maintain compliance with the agreements so that the commission may receive federal matching funds to support the medical assistance program.

(d) The commission may pay medical assistance to other facilities as required under federal law and rules.

Acts 1979, 66th Leg., p. 2349, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.079, eff. April 2, 2015.

Sec. 32.0231. ANNOUNCEMENT OF FUNDING OR PROGRAM CHANGE. (a) The executive commissioner shall publish notice in the Texas Register of:

(1) any attempt to obtain a waiver of federal regulations

in the medical assistance program;

(2) any attempt to obtain or the receipt of funding under Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.) for a pilot program; and

(3) any amendment to the state medical assistance plan.

(b) The notice must include the name and telephone number of a commission employee who can provide information relating to the matter for which notice was published under this section.

(c) The commission shall provide to any requestor information relating to a matter for which notice was published, including the effect and cost of the change, any possible cost savings, the criteria for receiving services, and the number of people to be served.

Added by Acts 1989, 71st Leg., ch. 1085, Sec. 2, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.079, eff. April 2, 2015.

See note following this section.

Sec. 32.024. AUTHORITY AND SCOPE OF PROGRAM; ELIGIBILITY. (a) The commission shall provide medical assistance to all persons who receive financial assistance from the state under Chapter 31 and to other related groups of persons if the provision of medical assistance to those persons is required by federal law and rules as a condition for obtaining federal matching funds for the support of the medical assistance program.

(b) The commission may provide medical assistance to other persons who are financially unable to meet the cost of medical services if federal matching funds are available for that purpose. The executive commissioner shall adopt rules governing the eligibility of those persons for the services.

(c) The executive commissioner shall establish standards governing the amount, duration, and scope of services provided under the medical assistance program. The standards may not be lower than the minimum standards required by federal law and rule as a condition for obtaining federal matching funds for support of the program.

(c-1) The commission shall ensure that money spent for purposes of the demonstration project for women's health care services under

former Section 32.0248 or a similar successor program is not used to perform or promote elective abortions, or to contract with entities that perform or promote elective abortions or affiliate with entities that perform or promote elective abortions.

(d) The executive commissioner may establish standards that increase the amount, duration, and scope of the services provided only if federal matching funds are available for the optional services and payments and if the executive commissioner determines that the increase is feasible and within the limits of appropriated funds. The executive commissioner may establish and maintain priorities for the provision of the optional medical services.

(e) The commission may not authorize the provision of any service to any person under the program unless federal matching funds are available to pay the cost of the service.

(f) The executive commissioner shall set the income eligibility cap for persons qualifying for nursing facility care at an amount that is not less than $1,104 and that does not exceed the highest income for which federal matching funds are payable. The executive commissioner shall set the cap at a higher amount than the minimum provided by this subsection if appropriations made by the legislature for a fiscal year will finance benefits at the higher cap for at least the same number of recipients of the benefits during that year as were served during the preceding fiscal year, as estimated by the commission. In setting an income eligibility cap under this subsection, the executive commissioner shall consider the cost of the adjustment required by Subsection (g).

(g) During a fiscal year for which the cap described by Subsection (f) has been set, the executive commissioner shall adjust the cap in accordance with any percentage change in the amount of benefits being paid to social security recipients during the year.

(h) Subject to the amount of the cap set as provided by Subsections (f) and (g), and to the extent permitted by federal law, the income eligibility cap for the community care for aged and disabled persons program shall be the same as the income eligibility cap for nursing facility care. The executive commissioner shall ensure that the eligibility requirements for persons receiving other services under the medical assistance program are not affected.

(i) The executive commissioner in adopting rules may establish a medically needy program that serves pregnant women, children, and caretakers who have high medical expenses, subject to the

availability of appropriated funds.

(j) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(36), eff. April 2, 2015.

(k) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(36), eff. April 2, 2015.

(l) The executive commissioner shall set the income eligibility cap for medical assistance for pregnant women and infants up to age one at not less than 130 percent of the federal poverty guidelines.

(l-1) The commission shall continue to provide medical assistance to a woman who is eligible for medical assistance for pregnant women for a period of not less than:

(1) six months following the date the woman delivers or experiences an involuntary miscarriage; and

(2) 12 months that begins on the last day of the woman's pregnancy and ends on the last day of the month in which the 12-month period ends in accordance with Section 1902(e)(16), Social Security Act (42 U.S.C. Section 1396a(e)(16)).

(m) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(36), eff. April 2, 2015.

(n) The executive commissioner, in the adoption of rules and standards governing the scope of hospital and long-term services, shall authorize the providing of respite care by hospitals.

(o) The executive commissioner, in the rules and standards governing the scope of hospital and long-term services, shall establish a swing bed program in accordance with federal regulations to provide reimbursement for skilled nursing patients who are served in hospital settings provided that the length of stay is limited to 30 days per year and the hospital is located in a county with a population of 100,000 or less. If the swing beds are used for more than one 30-day length of stay per year, per patient, the hospital must comply with the minimum licensing standards as mandated by Chapter 242, Health and Safety Code, and the Medicaid standards for nursing facility certification, as promulgated by the executive commissioner.

(p) The commission shall provide home respiratory therapy services for ventilator-dependent persons to the extent permitted by federal law.

(q) The commission shall provide physical therapy services.

(r) The commission, from funds otherwise appropriated to the commission for the early and periodic screening, diagnosis, and

treatment program, shall provide to a child who is 14 years of age or younger, permanent molar sealants as dental service under that program as follows:

(1) sealant shall be applied only to the occlusal buccal and lingual pits and fissures of a permanent molar within four years of its eruption;

(2) teeth to be sealed must be free of proximal caries and free of previous restorations on the surface to be sealed;

(3) if a second molar is the prime tooth to be sealed, a non-restored first molar may be sealed at the same sitting, if the fee for the first molar sealing is no more than half the usual sealant fee;

(4) the sealing of premolars and primary molars will not be reimbursed; and

(5) replacement sealants will not be reimbursed.

(s) The executive commissioner, in the rules governing the early and periodic screening, diagnosis, and treatment program, shall:

(1) revise the periodicity schedule to allow for periodic visits at least as often as the frequency recommended by the American Academy of Pediatrics and allow for interperiodic screens without prior approval when there are indications that it is medically necessary; and

(2) require, as a condition for eligibility for reimbursement under the program for the cost of services provided at a visit or screening, that a child younger than 15 years of age be accompanied at the visit or screening by:

(A) the child's parent or guardian; or

(B) another adult, including an adult related to the child, authorized by the child's parent or guardian to accompany the child.

(s-1) Subsection (s)(2) does not apply to services provided by a school health clinic, Head Start program, or child-care facility, as defined by Section 42.002, if the clinic, program, or facility:

(1) obtains written consent to the services from the child's parent or guardian within the one-year period preceding the date on which the services are provided, and that consent has not been revoked; and

(2) encourages parental involvement in and management of the health care of children receiving services from the clinic,

program, or facility.

(t) The executive commissioner by rule shall require a physician, nursing facility, health care provider, or other responsible party to obtain authorization from the commission or a person authorized to act on behalf of the commission on the same day or the next business day following the day of transport when an ambulance is used to transport a recipient of medical assistance under this chapter in circumstances not involving an emergency and the request is for the authorization of the provision of transportation for only one day. If the request is for authorization of the provision of transportation on more than one day, the executive commissioner by rule shall require a physician, nursing facility, health care provider, or other responsible party to obtain a single authorization before an ambulance is used to transport a recipient of medical assistance under this chapter in circumstances not involving an emergency. The rules must provide that:

(1) except as provided by Subdivision (3), a request for authorization must be evaluated based on the recipient's medical needs and may be granted for a length of time appropriate to the recipient's medical condition;

(2) except as provided by Subdivision (3), a response to a request for authorization must be made not later than 48 hours after receipt of the request;

(3) a request for authorization must be immediately granted and must be effective for a period of not more than 180 days from the date of issuance if the request includes a written statement from a physician that:

(A) states that alternative means of transporting the recipient are contraindicated; and

(B) is dated not earlier than the 60th day before the date on which the request for authorization is made;

(4) a person denied payment for ambulance services rendered is entitled to payment from the nursing facility, health care provider, or other responsible party that requested the services if:

(A) payment under the medical assistance program is denied because of lack of prior authorization; and

(B) the person provides the nursing facility, health care provider, or other responsible party with a copy of the bill for which payment was denied;

(5) a person denied payment for services rendered because

of failure to obtain prior authorization or because a request for prior authorization was denied is entitled to appeal the denial of payment to the commission; and

(6) the commission or a person authorized to act on behalf of the commission must be available to evaluate requests for authorization under this subsection not less than 12 hours each day, excluding weekends and state holidays.

(t-1) The executive commissioner, in the rules governing the medical transportation program, may not prohibit a recipient of medical assistance from receiving transportation services through the program to obtain renal dialysis treatment on the basis that the recipient resides in a nursing facility.

(u) The executive commissioner by rule shall require a health care provider who arranges for durable medical equipment for a child who receives medical assistance under this chapter to:

(1) ensure that the child receives the equipment prescribed, the equipment fits properly, if applicable, and the child or the child's parent or guardian, as appropriate considering the age of the child, receives instruction regarding the equipment's use; and

(2) maintain a record of compliance with the requirements of Subdivision (1) in an appropriate location.

(v) The executive commissioner by rule shall provide a screening test for hearing loss in accordance with Chapter 47, Health and Safety Code, and any necessary diagnostic follow-up care related to the screening test to a child younger than 30 days old who receives medical assistance.

(w) The executive commissioner shall set a personal needs allowance of not less than $75 a month for a resident of a convalescent or nursing facility or related institution licensed under Chapter 242, Health and Safety Code, assisted living facility, ICF-IID facility, or other similar long-term care facility who receives medical assistance. The commission may send the personal needs allowance directly to a resident who receives Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.). This subsection does not apply to a resident who is participating in a medical assistance waiver program administered by the commission.

(x) The commission shall provide dental services annually to a resident of a nursing facility who is a recipient of medical assistance under this chapter. The dental services must include:

(1) a dental examination by a licensed dentist;

(2) a prophylaxis by a licensed dentist or licensed dental hygienist, if practical considering the health of the resident; and

(3) diagnostic dental x-rays, if possible.

(y) The commission shall provide medical assistance to a person in need of treatment for breast or cervical cancer who is eligible for that assistance under the Breast and Cervical Cancer Prevention and Treatment Act of 2000 (Pub. L. No. 106-354) for a continuous period during which the person requires that treatment. The executive commissioner shall simplify the provider enrollment process for a provider of that medical assistance and shall adopt rules to provide for certification of presumptive eligibility of a person for that assistance. In determining a person's eligibility for medical assistance under this subsection, the executive commissioner, to the extent allowed by federal law, may not require a personal interview.

(y-1) A woman who receives a breast or cervical cancer screening service under Title XV of the Public Health Service Act (42 U.S.C. Section 300k et seq.) and who otherwise meets the eligibility requirements for medical assistance for treatment of breast or cervical cancer as provided by Subsection (y) is eligible for medical assistance under that subsection, regardless of whether federal Medicaid matching funds are available for that medical assistance. A screening service of a type that is within the scope of screening services under that title is considered to be provided under that title regardless of whether the service was provided by a provider who receives or uses funds under that title.

(z) In the executive commissioner's rules and standards governing the vendor drug program, the executive commissioner, to the extent allowed by federal law and if the executive commissioner determines the policy to be cost-effective, may ensure that a recipient of prescription drug benefits under the medical assistance program does not, unless authorized by the commission in consultation with the recipient's attending physician or advanced practice nurse, receive under the medical assistance program:

(1) more than four different outpatient brand-name prescription drugs during a month; or

(2) more than a 34-day supply of a brand-name prescription drug at any one time.

(z-1) Subsection (z) does not affect any other limit on prescription medications otherwise prescribed by commission rule.

(z-2) The limits on prescription drugs and medications under

the medical assistance program provided by Subsections (z) and (z-1) do not apply to a prescription for an opioid for the treatment of acute pain under Section 481.07636, Health and Safety Code.

(aa) The commission shall incorporate physician-oriented instruction on the appropriate procedures for authorizing ambulance service into current medical education courses.

(bb) The commission may not provide an erectile dysfunction medication under the Medicaid vendor drug program to a person required to register as a sex offender under Chapter 62, Code of Criminal Procedure, to the maximum extent federal law allows the commission to deny that medication.

(cc) In this subsection, "deaf" and "hard of hearing" have the meanings assigned by Section 81.001. Subject to the availability of funds, the commission shall provide interpreter services as requested during the receipt of medical assistance under this chapter to:

(1) a person receiving that assistance who is deaf or hard of hearing; or

(2) a parent or guardian of a person receiving that assistance if the parent or guardian is deaf or hard of hearing.

(dd) Nothwithstanding any other law, an inmate released on medically recommended intensive supervision under Section 508.146, Government Code, who otherwise meets the eligibility requirements for the medical assistance program is not ineligible for the program solely on the basis of the conviction or adjudication for which the inmate was sentenced to confinement.

(ff) The executive commissioner shall establish a separate provider type for prosthetic and orthotic providers for purposes of enrollment as a provider of and reimbursement under the medical assistance program. The executive commissioner may not classify prosthetic and orthotic providers under the durable medical equipment provider type.

(gg) Notwithstanding any other law, including Sections 843.312 and 1301.052, Insurance Code, the commission shall ensure that advanced practice registered nurses and physician assistants may be selected by and assigned to recipients of medical assistance as the primary care providers of those recipients regardless of whether the physician supervising the advanced practice registered nurse is included in any directory of providers of medical assistance maintained by the commission. This subsection may not be construed as authorizing the commission to supervise or control the practice of

medicine as prohibited by Subtitle B, Title 3, Occupations Code. The commission must require that advanced practice registered nurses and physician assistants be treated in the same manner as primary care physicians with regard to:

(1) selection and assignment as primary care providers; and

(2) inclusion as primary care providers in any directory of providers of medical assistance maintained by the commission.

(ii) The commission shall provide medical assistance reimbursement to a pharmacist who is licensed to practice pharmacy in this state, is authorized to administer immunizations in accordance with rules adopted by the Texas State Board of Pharmacy, and administers an immunization to a recipient of medical assistance to the same extent the commission provides reimbursement to a physician or other health care provider participating in the medical assistance program for the administration of that immunization.

(jj) The executive commissioner shall establish a separate provider type for prescribed pediatric extended care centers licensed under Chapter 248A, Health and Safety Code, for purposes of enrollment as a provider for and reimbursement under the medical assistance program.

(kk) The commission in its rules and standards governing the scope of services provided under the medical assistance program shall include peer services provided by certified peer specialists to the extent permitted by federal law.

(ll) The executive commissioner shall establish a separate provider type for a local public health entity for purposes of enrollment as a provider for and reimbursement under the medical assistance program.

(mm) The commission shall provide medical assistance reimbursement to an authorized wound care education and training services provider and establish outcome measures for evaluating the physical health care outcomes of recipients who receive wound care education and training services from an authorized wound care education and training services provider.

(oo) The commission shall provide medical assistance reimbursement to a treating health care provider who participates in Medicaid for the provision to a child or adult medical assistance recipient of behavioral health services that are classified by a Current Procedural Terminology code as collaborative care management services.

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 316 (H.B. 1575), Sec. 4

(pp) For purposes of enrollment as a provider and reimbursement under the medical assistance program, the commission shall establish a separate provider type for a community health worker who provides case management services under the case management for children and pregnant women program under Section 531.653(4), Government Code.

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 3

(pp) The medical assistance program may not provide coverage for services prohibited by Section 161.702, Health and Safety Code, that are intended to transition a child's biological sex as determined by the child's sex organs, chromosomes, and endogenous profiles.

(qq) For purposes of enrollment as a provider and reimbursement under the medical assistance program, the commission shall establish a separate provider type for a doula who:

(1) is certified by a recognized national doula certification program approved by the commission; and

(2) provides case management services under the case management for children and pregnant women program under Section 531.653(5), Government Code.

Text of Subsection (kk) effective on June 15, 2017, but only if a specific appropriation is provided as described by Acts 2017, 85th Leg., R.S., Ch. 1015 (H.B. 1486), Sec. 5(b), which states: This Act takes effect only if the 85th Legislature appropriates money specifically for the purpose of implementing this Act. If the legislature does not appropriate money specifically for that purpose, this Act does not take effect.

Acts 1979, 66th Leg., p. 2350, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1989, 71st Leg., ch. 1027, Sec. 11, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1085, Sec. 3, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1107, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1219, Sec. 1, eff. Sept. 1, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(11) to (13), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 690, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 6, Sec. 3, eff. March 23, 1995; Acts 1997, 75th Leg., ch. 1153, Sec. 2.01(a), 2.02(a), eff. June 20, 1997; Acts 1999, 76th Leg., ch. 766, Sec. 1, eff. Sept. 1, 1999; Acts 1999,

76th Leg., ch. 1333, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1347, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1505, Sec. 1.06, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 220, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 348, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 974, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(81), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.96, 2.97(a), 2.207(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 215, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 6, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(97), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 22, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(57), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1314 (H.B. 3235), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 442 (H.B. 52), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(50), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 45, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 745 (S.B. 531), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 858 (S.B. 2424), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 35 (S.B. 874), Sec. 1, eff. May 9, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.19(b), eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 25, eff. November 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 6, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.080, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.081, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(36), eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 302 (S.B. 654), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1015 (H.B. 1486), Sec. 2, eff. June 15, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 12, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 370 (S.B. 672), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 535 (S.B. 73), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 629 (H.B. 133), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 966 (S.B. 1921), Sec. 2, eff. September 1, 2022.

Acts 2023, 88th Leg., R.S., Ch. 316 (H.B. 1575), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 658 (H.B. 54), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(25), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 996 (H.B. 12), Sec. 2, eff. June 18, 2023.

Sec. 32.0241. REVIEW OF WAIVER REQUEST. The commission shall, at least biennially, review the feasibility of requesting a waiver for the elderly under Section 1915(c), federal Social Security Act (42 U.S.C. Section 1396n), if the reimbursement rates for nursing facilities under the medical assistance program have increased since the preceding review.

Added by Acts 1989, 71st Leg., ch. 1085, Sec. 2, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.082, eff.

April 2, 2015.

Sec. 32.0242. VERIFICATION OF CERTAIN INFORMATION. To the extent possible, the commission shall verify an applicant's residential address at the time the application for medical assistance is filed.

Added by Acts 1999, 76th Leg., ch. 1289, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.082, eff. April 2, 2015.

Sec. 32.0243. PERIODIC REVIEW OF ELIGIBILITY FOR CERTAIN RECIPIENTS. (a) The commission, in cooperation with the United States Social Security Administration, shall periodically review the eligibility of a recipient of medical assistance who is eligible on the basis of the recipient's eligibility for Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., as amended.

(b) In reviewing the eligibility of a recipient as required by Subsection (a), the commission shall ensure that only recipients who reside in this state and who continue to be eligible for Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq., as amended, remain eligible for medical assistance.

Added by Acts 1999, 76th Leg., ch. 1289, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.082, eff. April 2, 2015.

Sec. 32.0244. NURSING FACILITY BEDS IN CERTAIN COUNTIES. (a) At the request of the commissioners court of a county in which not more than two nursing facilities are certified to participate in the state Medicaid program, and subject to Subsection (d), the commission may contract for additional nursing facility beds under the state Medicaid program in the county without regard to the occupancy rate of available Medicaid beds.

(b) A commissioners court that intends to make a request under

Subsection (a) shall publish notice of its intent in the Texas Register and in a newspaper of general circulation in the county. The notice must request:

(1) comments on whether the request should be made; and

(2) proposals from persons interested in providing additional Medicaid beds in the county, including persons providing Medicaid beds in a nursing facility with a high occupancy rate.

(c) A commissioners court shall determine whether to proceed with a request after considering all comments and proposals received in response to the notices provided under Subsection (b). If the commissioners court proceeds with the request, the court may recommend that the commission contract with a specific nursing facility that submitted a proposal. In determining whether to proceed with the request and whether to recommend a specific nursing facility, the commissioners court shall consider:

(1) the demographic and economic needs of the county;

(2) the quality of existing nursing facility services under the state Medicaid program in the county;

(3) the quality of the proposals submitted; and

(4) the degree of community support for additional nursing facility services.

(d) The commission may not contract under this section for more than 120 additional nursing facility beds per county per year and may not exceed 500 additional nursing facility beds statewide in a calendar year.

Added by Acts 1997, 75th Leg., ch. 555, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 32.0246 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(73), eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.083, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.084, eff. April 2, 2015.

Sec. 32.0245. NURSING FACILITY BEDS FOR CERTAIN FACILITIES TREATING ALZHEIMER'S DISEASE. The commission shall waive for a nursing facility a restriction imposed by state law on the authority to contract under the state Medicaid program for nursing facility

beds based on the percentage of beds that are occupied in a geographical area if the facility:

(1) is affiliated with a medical school operated by the state;

(2) is participating in a research program for the care and treatment of persons with Alzheimer's disease; and

(3) is designed to separate and treat Alzheimer's disease by stage or functional level.

Added by Acts 1995, 74th Leg., ch. 841, Sec. 1, eff. Aug. 28, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.085, eff. April 2, 2015.

Sec. 32.02451. ADDITIONAL PERSONAL NEEDS ALLOWANCE FOR GUARDIANSHIP EXPENSES OF CERTAIN RECIPIENTS. (a) In this section, "applied income" has the meaning assigned by Section 1155.201, Estates Code.

(b) To the extent allowed by federal law, the commission, in computing the applied income of a recipient of medical assistance, shall deduct in the manner provided by this section an additional personal needs allowance from the earned and unearned income of the recipient or, if applicable, the recipient and the recipient's spouse, for compensation and costs ordered to be deducted under Section 1155.202, Estates Code. Subject to Subsection (f), a deduction ordered by the court under Section 1155.202, Estates Code, is effective beginning on the later of:

(1) the month in which the order is signed; or

(2) the first month of medical assistance eligibility for which the recipient is subject to a copayment.

(c) The commission shall compute the applied income of a recipient of medical assistance as follows:

(1) the commission shall deduct from the earned and unearned income the personal needs allowance authorized by Section 32.024(w) before making any other deduction;

(2) if after the deduction under Subdivision (1) the recipient has remaining income, the commission shall deduct the lesser of the following:

(A) the amount of the remaining income; or

(B) the amount of the additional personal needs allowance for compensation and costs ordered to be deducted under Section 1155.202, Estates Code; and

(3) if after the deductions under Subdivisions (1) and (2) the recipient has remaining income, the commission shall deduct any other authorized allowances.

(d) The amount of income remaining, if any, after the commission makes the deductions as provided by Subsection (c) is the amount of the applied income of the recipient of medical assistance.

(e) The executive commissioner shall adopt rules providing a procedure by which a recipient of medical assistance for whom amounts are ordered deducted under Section 1155.202, Estates Code, may submit to the commission a copy of the court order issued under that section to receive a deduction of those amounts from the recipient's income as provided by this section.

(f) The commission may not allow a deduction for the additional personal needs allowance for compensation and costs ordered to be deducted under Section 1155.202, Estates Code, if the order is issued after the recipient of medical assistance dies.

Added by Acts 2009, 81st Leg., R.S., Ch. 859 (S.B. 2435), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 599 (S.B. 220), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.086, eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 32.0246. MEDICAL ASSISTANCE REIMBURSEMENT FOR CERTAIN BEHAVIORAL HEALTH AND PHYSICAL HEALTH SERVICES. (a) In this section, "behavioral health services" has the meaning assigned by Section 533.00255(a), Government Code, and includes targeted case management and psychiatric rehabilitation services.

(b) The commission shall provide to a public or private provider of behavioral health services medical assistance reimbursement through a fee-for-service delivery model for behavioral health or physical health services provided to a recipient before that recipient's enrollment with and receipt of medical assistance

services through a managed care organization under Chapter 533, Government Code.

(c) The commission shall ensure that a public or private provider of behavioral health services who is reimbursed under Subsection (b) through a fee-for-service delivery model is provided medical assistance reimbursement through a managed care model for behavioral health or physical health services provided to a recipient after that recipient's enrollment with and receipt of medical assistance services through a managed care organization under Chapter 533, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 966 (S.B. 1921), Sec. 1, eff. September 1, 2022.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.80, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 32.0246. MEDICAL ASSISTANCE REIMBURSEMENT FOR CERTAIN BEHAVIORAL HEALTH AND PHYSICAL HEALTH SERVICES. (a) In this section, "behavioral health services" has the meaning assigned by Section 540.0703(a), Government Code, and includes targeted case management and psychiatric rehabilitation services.

(b) The commission shall provide to a public or private provider of behavioral health services medical assistance reimbursement through a fee-for-service delivery model for behavioral health or physical health services provided to a recipient before that recipient's enrollment with and receipt of medical assistance services through a managed care organization under Chapter 540 or 540A, Government Code, as applicable.

(c) The commission shall ensure that a public or private provider of behavioral health services who is reimbursed under Subsection (b) through a fee-for-service delivery model is provided medical assistance reimbursement through a managed care model for behavioral health or physical health services provided to a recipient after that recipient's enrollment with and receipt of medical assistance services through a managed care organization under Chapter 540 or 540A, Government Code, as applicable.

Added by Acts 2021, 87th Leg., R.S., Ch. 966 (S.B. 1921), Sec. 1, eff. September 1, 2022.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.80, eff. April 1, 2025.

Sec. 32.0247. MEDICAL ASSISTANCE FOR CERTAIN PERSONS MAKING TRANSITION FROM FOSTER CARE TO INDEPENDENT LIVING. (a) In this section, "independent foster care adolescent" has the meaning assigned by 42 U.S.C. Section 1396d(w)(1), as amended.

(b) The commission shall provide medical assistance, in accordance with commission rules, to an independent foster care adolescent who:

(1) is not otherwise eligible for medical assistance; and

(2) is not covered by a health benefits plan offering adequate benefits, as determined by the commission.

(c) To the extent allowed by federal law, the executive commissioner shall by rule establish a specific set of income, assets, or resources allowable for recipients under this section. The income level shall not be less than 200 percent or more than 400 percent of the federal poverty level. Allowable asset or resource levels shall not be less than:

(1) the levels allowed for individuals who are in foster care; and

(2) the levels allowed for a person under 19 years of age who is eligible for the medical assistance program.

(d) In setting allowable income, asset, or resource levels, the executive commissioner shall, to the extent allowed by federal law, exclude:

(1) any financial benefit used for the purpose of educational or vocational training, such as scholarships, student loans, or grants;

(2) any financial benefit used for the purpose of housing; and

(3) any grants or subsidies obtained as a result of the Foster Care Independence Act of 1999 (Pub. L. No. 106-169).

(e) The Department of Family and Protective Services shall certify the income, assets, or resources of each individual on the date the individual exits substitute care. An individual qualifying

for medical assistance as established by this section shall remain eligible for the maximum period permitted under federal law before any recertification is required.

(f) If recertification is required, the recertification process for individuals who are eligible for medical assistance under this section must:

(1) comply with Section 32.024715; and

(2) include the option of recertifying online or by mail or phone.

Added by Acts 2001, 77th Leg., ch. 1218, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.087, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 432 (S.B. 1059), Sec. 1, eff. September 1, 2021.

Sec. 32.02471. MEDICAL ASSISTANCE FOR CERTAIN FORMER FOSTER CARE ADOLESCENTS ENROLLED IN HIGHER EDUCATION. (a) In this section, "independent foster care adolescent" has the meaning assigned by Section 32.0247.

(b) The commission shall provide medical assistance to a person who:

(1) is 21 years of age or older but younger than 23 years of age;

(2) would be eligible to receive assistance as an independent foster care adolescent under Section 32.0247 if the person were younger than 21 years of age; and

(3) is enrolled in an institution of higher education, as defined by Section 61.003(8), Education Code, or a private or independent institution of higher education, as defined by Section 61.003(15), Education Code, that is located in this state and is making satisfactory academic progress as determined by the institution.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 17, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.088, eff. April 2, 2015.

Sec. 32.024715. STREAMLINED ELIGIBILITY DETERMINATION PROCESS FOR CERTAIN FORMER FOSTER CARE YOUTH. (a) This section applies to a former foster care youth who is eligible for Medicaid under Section 1902(a)(10)(A)(i)(IX), Social Security Act (42 U.S.C. Section 1396a(a)(10)(A)(i)(IX)), or any other law.

(b) The commission, in consultation with the Department of Family and Protective Services, shall design and implement a streamlined process for determining a former foster care youth's eligibility for Medicaid. The streamlined process must:

(1) provide for the automatic enrollment and recertification of a former foster care youth in the STAR Health program, the STAR Medicaid managed care program, or another Medicaid program, as appropriate;

(2) be designed to prevent any unnecessary interruption of the youth's Medicaid benefits, including any interruption related to having to recertify the youth for benefits; and

(3) if recertification is required under federal law, use a simple application and recertification process that:

(A) to the extent permitted by federal law, does not require that a youth verify that the youth is a resident of this state unless the commission determines that the youth is receiving Medicaid benefits outside of this state; or

(B) if federal law requires that a youth verify that the youth is a resident of this state, allows the youth to attest to that fact without providing additional documentation or evidence that proves the youth is a resident of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 432 (S.B. 1059), Sec. 2, eff. September 1, 2021.

Sec. 32.0249. MENTAL HEALTH SCREENINGS IN TEXAS HEALTH STEPS PROGRAM. The executive commissioner, in the rules governing the Texas Health Steps program, shall allow a provider to:

(1) conduct a mental health screening using one or more validated, standardized mental health screening tools during each annual medical exam of a recipient who is at least 12 years of age but younger than 19 years of age; and

(2) be reimbursed for conducting one mental health screening using one or more validated, standardized mental health screening tools during each annual medical exam of a recipient described by Subdivision (1).

Added by Acts 2017, 85th Leg., R.S., Ch. 1028 (H.B. 1600), Sec. 1, eff. September 1, 2017.

Sec. 32.025. APPLICATION FOR MEDICAL ASSISTANCE. (a) A recipient of benefits under Chapter 31 or supplemental security income from the federal government is automatically eligible for medical assistance, and an application for benefits under these programs constitutes an application for medical assistance.

(b) The executive commissioner shall prescribe application forms for persons who are not recipients of benefits under Chapter 31 or supplemental security income from the federal government and shall adopt rules for processing the applications.

(c) The commission shall inform applicants for nursing facility care of any community services which might be available under the community care for the aged and disabled program.

(d) The executive commissioner shall adopt an application form and procedures for a request for medical assistance provided to a child under 19 years of age. To the extent allowed by federal law and except as otherwise provided by this section, the application form and procedures must be the same as the form and procedures adopted under Section 62.103, Health and Safety Code. The executive commissioner shall coordinate the form and procedures adopted under this subsection with the form and procedures adopted under Section 62.103, Health and Safety Code, to ensure that there is a single consolidated application for a child under 19 years of age to seek medical assistance or to request coverage under the state child health plan under Chapter 62, Health and Safety Code.

(e) The executive commissioner shall permit an application requesting medical assistance for a child under 19 years of age to be conducted by mail instead of through a personal appearance at an office, unless the executive commissioner determines that the information needed to verify eligibility cannot be obtained in that manner. The executive commissioner by rule may develop procedures requiring an application for a child described by this subsection to

be conducted through a personal interview with a commission representative only if the executive commissioner determines that information needed to verify eligibility cannot be obtained in any other manner.

(f) The executive commissioner by rule may develop procedures by which:

(1) any office of a health and human services agency may accept an application requesting medical assistance for a child under 19 years of age; and

(2) the commission may contract with hospital districts, hospitals, including state-owned teaching hospitals, federally qualified health centers, and county health departments to accept applications requesting medical assistance for a child under 19 years of age.

(g) The application form, including a renewal form, adopted under this section must include:

(1) for an applicant who is pregnant, a question regarding whether the pregnancy is the woman's first gestational pregnancy;

(2) for all applicants, a question regarding the applicant's preferences for being contacted by a managed care organization or health plan provider by telephone, text message, or e-mail about eligibility, enrollment, and other health care matters, including reminders for appointments and information about immunizations or well check visits; and

(3) language that:

(A) notifies the applicant that, if determined eligible for benefits, all preferred contact methods listed on the application and renewal forms will be shared with the applicant's managed care organization or health plan provider;

(B) notifies the applicant that the applicant may opt out of being contacted by telephone, text message, or e-mail by notifying the applicant's managed care organization or health plan provider; and

(C) explains the security risks of electronic communication.

(h) For purposes of Subsections (g)(2) and (3), the commission shall implement a process to:

(1) transmit the applicant's preferred contact methods and consent to the managed care organization or health plan provider;

(2) allow an applicant to change the applicant's

preferences in the future, including providing for an option to opt out of electronic communication; and

(3) communicate updated information to the managed care organization or health plan provider.

Acts 1979, 66th Leg., p. 2350, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1989, 71st Leg., ch. 1085, Sec. 5, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 584, Sec. 2; Acts 2003, 78th Leg., ch. 376, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 7, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.089, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 852 (H.B. 2466), Sec. 2(a), eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 622 (S.B. 1911), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 624 (H.B. 4), Sec. 10, eff. June 15, 2021.

Acts 2023, 88th Leg., R.S., Ch. 582 (H.B. 2802), Sec. 2, eff. September 1, 2023.

Sec. 32.0251. ELIGIBILITY NOTIFICATION AND REVIEW FOR CERTAIN CHILDREN. (a) The executive commissioner shall establish and the commission shall implement procedures under which the commission automatically reviews a child's eligibility for medical assistance if:

(1) the child originally establishes eligibility for medical assistance on the basis of receipt of financial assistance under Chapter 31, as provided by Section 32.025(a); and

(2) that receipt of financial assistance under Chapter 31 ceases.

(b) If the review required by this section indicates that the child may be eligible for medical assistance on a basis other than receipt of financial assistance under Chapter 31, the commission may provide for provisional eligibility for medical assistance for the child pending a recertification review. The provisional eligibility period authorized by this subsection may not exceed one month.

(c) In addition to the review required by this section, the

commission shall also promote continued medical assistance for a child described by Subsection (a) through:

(1) revising client education and notification policies relating to a child's eligibility for medical assistance; and

(2) providing specific notification of a child's potential eligibility for medical assistance to the child's parent or other caretaker at the time the parent or caretaker is notified of:

(A) a scheduled eligibility recertification review; or

(B) the termination of financial assistance.

Added by Acts 1999, 76th Leg., ch. 704, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.090, eff. April 2, 2015.

Sec. 32.0255. TRANSITIONAL MEDICAL ASSISTANCE. (a) The commission shall provide transitional medical assistance, in accordance with state rules and federal law, to a person who was receiving financial assistance under Chapter 31 but is no longer eligible to receive the assistance because:

(1) the person's household income has increased; or

(2) the person has exhausted the person's benefits under Section 31.0065.

(b) Except as provided by Section 31.012(c), the commission may provide the medical assistance only until the earlier of:

(1) the end of the applicable period prescribed by Section 31.0065 for the provision of transitional benefits; or

(2) the first anniversary of the date on which the person becomes ineligible for financial assistance because of increased household income.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 3.03, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.090, eff. April 2, 2015.

Sec. 32.0256. CONTINUATION OF MEDICAL ASSISTANCE FOR CERTAIN INDIVIDUALS. (a) A recipient described by Section 32.025(a) who

experiences a temporary increase in income of a duration of one month or less that would result in the recipient being ineligible for medical assistance continues to be eligible for that assistance if the individual:

(1) either:

(A) receives services through a program for individuals with an intellectual or developmental disability authorized under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)); or

(B) resides in an ICF-IID facility; and

(2) continues to meet the functional and diagnostic criteria for the receipt of services under a program described by Subdivision (1)(A) or for residency in an ICF-IID facility.

(b) To continue to be eligible for medical assistance, a recipient described by Subsection (a) must submit an application for medical assistance in accordance with Section 32.025(b) not later than the 90th day after the date on which the recipient is determined ineligible.

Added by Acts 2017, 85th Leg., R.S., Ch. 1072 (H.B. 3292), Sec. 1, eff. September 1, 2017.

Sec. 32.026. CERTIFICATION OF ELIGIBILITY AND NEED FOR MEDICAL ASSISTANCE. (a) The executive commissioner shall promulgate rules for determining and certifying a person's eligibility and need for medical assistance.

(b) The executive commissioner shall promulgate rules to provide for determination and certification of presumptive eligibility for any pregnant woman who applies for Medicaid and who meets the basic eligibility requirements under Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.).

(c) Medical assistance payments may not be made on a person's behalf until the person's eligibility and need for medical assistance have been certified in accordance with commission rules.

(d) In adopting rules under this section, the executive commissioner shall ensure, to the extent allowed by federal law, that documentation and verification procedures used in determining and certifying the eligibility and need for medical assistance of a child under 19 years of age, including the documentation and verification procedures used to evaluate the assets and resources of the child,

the child's parents, or the child's other caretaker for that purpose, if applicable, are the same as the documentation and verification procedures used to determine and certify a child's eligibility for coverage under Chapter 62, Health and Safety Code, except that the documentation and verification procedures adopted in accordance with this subsection may not be more stringent than the documentation and verification procedures existing on January 1, 2001, for determination and certification of a child's eligibility for coverage under Chapter 62, Health and Safety Code.

(d-1) In adopting rules under this section, the executive commissioner shall, to the extent allowed by federal law, develop and implement an expedited process for determining eligibility for and enrollment in the medical assistance program for an active duty member of the United States armed forces, reserves, or National Guard or of the state military forces, or the spouse or dependent of that person.

(e) The executive commissioner shall permit a recertification review of the eligibility and need for medical assistance of a child under 19 years of age to be conducted by telephone or mail instead of through a personal appearance at an office, unless the commission determines that the information needed to verify eligibility cannot be obtained in that manner. The executive commissioner by rule may develop procedures to determine whether there is a need for a recertification review of a child described by this subsection to be conducted through a personal interview with a commission representative. Procedures developed under this subsection shall be based on objective, risk-based factors and conditions and shall focus on a targeted group of recertification reviews for which there is a high probability that eligibility will not be recertified.

(f) In adopting rules under this section, the executive commissioner shall ensure, to the extent allowed by federal law, that forms and procedures used in conducting a recertification review of the eligibility and need for medical assistance of a child under 19 years of age, including documentation and verification procedures, are the same as the forms and procedures used to determine and certify a child's renewal of coverage under Chapter 62, Health and Safety Code.

(g) Notwithstanding any other provision of this code, the commission may use information obtained from a third party to verify the assets and resources of a person for purposes of determining the

person's eligibility and need for medical assistance to the extent that verification is applicable under federal law. Third-party information includes information obtained from:

(1) a consumer reporting agency, as defined by Section 20.01, Business & Commerce Code;

(2) an appraisal district; or

(3) the Texas Department of Motor Vehicles vehicle registration record database.

Acts 1979, 66th Leg., p. 2350, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1989, 71st Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 584, Sec. 3; Acts 2003, 78th Leg., ch. 198, Sec. 2.99(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 376, Sec. 3, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1028 (H.B. 1633), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3G.02, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.090, eff. April 2, 2015.

Sec. 32.0261. CONTINUOUS ELIGIBILITY. (a) This section applies only to a child younger than 19 years of age who is determined eligible for medical assistance under this chapter.

(b) The executive commissioner shall adopt rules in accordance with 42 U.S.C. Section 1396a(e)(12), as amended, to provide for two consecutive periods of eligibility for a child between each certification and recertification of the child's eligibility, subject to Subsections (f) and (h).

(c) The first of the two consecutive periods of eligibility described by Subsection (b) must be continuous in accordance with Subsection (d). The second of the two consecutive periods of eligibility is not continuous and may be affected by changes in a child's household income, regardless of whether those changes occurred or whether the commission became aware of the changes during the first or second of the two consecutive periods of eligibility.

(d) A child remains eligible for medical assistance during the

first of the two consecutive periods of eligibility, without additional review by the commission and regardless of changes in the child's household income, until the end of the six-month period following the date on which the child's eligibility was determined, except as provided by Subsections (f)(1) and (h).

(e) During the sixth month following the date on which a child's eligibility for medical assistance is certified or recertified, the commission shall, in a manner that complies with federal law, including verification plan requirements under 42 C.F.R. Section 435.945(j), review the child's household income using electronic income data available to the commission. The commission may conduct this review only once during the child's two consecutive periods of eligibility. Based on the review:

(1) the commission shall, if the review indicates that the child's household income does not exceed the maximum income for eligibility for the medical assistance program, provide for a second consecutive period of eligibility for the child until the child's required annual recertification, except as provided by Subsection (h) and subject to Subsection (c); or

(2) the commission may, if the review indicates that the child's household income exceeds the maximum income for eligibility for the medical assistance program, request additional documentation to verify the child's household income in a manner that complies with federal law.

(f) If, after reviewing a child's household income under Subsection (e), the commission determines that the household income exceeds the maximum income for eligibility for the medical assistance program, the commission shall continue to provide medical assistance to the child until:

(1) the commission provides the child's parent or guardian with a period of not less than 30 days to provide documentation demonstrating that the child's household income does not exceed the maximum income for eligibility; and

(2) the child's parent or guardian fails to provide the documentation during the period described by Subdivision (1).

(g) If a child's parent or guardian provides to the commission within the period described by Subsection (f) documentation demonstrating that the child's household income does not exceed the maximum income for eligibility for the medical assistance program, the commission shall provide for a second consecutive period of

eligibility for the child until the child's required annual recertification, except as provided by Subsection (h) and subject to Subsection (c).

(h) Notwithstanding any other period prescribed by this section, a child's eligibility for medical assistance ends on the child's 19th birthday.

(i) The commission may not recertify a child's eligibility for medical assistance more frequently than every 12 months as required by federal law.

(j) If a child's parent or guardian fails to provide to the commission within the period described by Subsection (f) documentation demonstrating that the child's household income does not exceed the maximum income for eligibility for the medical assistance program, the commission shall provide the child's parent or guardian with written notice of termination following that period. The notice must include a statement that the child may be eligible for enrollment in the child health plan under Chapter 62, Health and Safety Code.

(k) In developing the notice, the commission shall consult with health care providers, children's health care advocates, family members of children enrolled in the medical assistance program, and other stakeholders to determine the most user-friendly method to provide the notice to a child's parent or guardian.

(l) The executive commissioner may adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 584, Sec. 4, eff. Sept. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 23, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 3.02, eff. August 29, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.090, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 820 (H.B. 2658), Sec. 8, eff. September 1, 2021.

Sec. 32.026101. DETERMINATION OF ELIGIBILITY BY HEALTH CARE EXCHANGES PROHIBITED. (a) The commission may not accept Medicaid

eligibility determinations from an exchange established under 42 U.S.C. Section 18041(c).

(b) The commission may accept eligibility assessments from an exchange, but the commission must determine the eligibility of an individual for Medicaid.

Added by Acts 2021, 87th Leg., R.S., Ch. 879 (S.B. 1341), Sec. 3, eff. September 1, 2021.

Sec. 32.02611. EXCLUSION OF ASSETS IN PREPAID TUITION PROGRAMS AND HIGHER EDUCATION SAVINGS PLANS. (a) Except as provided by Subsection (b), in determining eligibility and need for medical assistance, the commission may not consider as assets or resources, to the extent applicable under federal law, a right to assets held in or a right to receive payments or benefits under:

(1) any fund or plan established under Subchapter G, H, or I, Chapter 54, Education Code, including an interest in a savings trust account, prepaid tuition contract, or related matching account;

(2) any qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986; or

(3) any school-based account or bond described by Section 28.0024(b)(2), Education Code.

(a-1) The amount of exclusion under Subsection (a)(3) of assets held in or the right to receive payments or benefits under a school-based account or bond described by Section 28.0024(b)(2)(C), (D), or (E), Education Code, is limited to the amount of the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year, as determined by the Texas Higher Education Coordinating Board under Section 54.753, Education Code.

(b) In determining eligibility and need for medical assistance for an applicant who may be eligible on the basis of the applicant's eligibility for medical assistance for the aged, blind, or disabled under 42 U.S.C. Section 1396a(a)(10), the commission may consider as assets or resources, to the extent applicable under federal law, a right to assets held in or a right to receive payments or benefits under any fund, account, bond, plan, or tuition program described by

Subsection (a).

(c) Notwithstanding Subsection (b), the commission shall seek a federal waiver authorizing the commission to exclude, for purposes of determining the eligibility of an applicant described by that subsection and to the extent included under federal law, the right to assets held in or a right to receive payments or benefits under any fund, account, bond, plan, or tuition program described by Subsection (a) if the fund, account, bond, plan, or tuition program was established before the 21st birthday of the beneficiary of the fund, account, bond, plan, or tuition program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1186 (H.B. 3708), Sec. 9, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.090, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1265 (H.B. 3987), Sec. 4, eff. June 20, 2015.

Sec. 32.02613. LIFE INSURANCE ASSETS; LIFE INSURANCE POLICY CONVERSION. (a) For purposes of this section, "long-term care services and support" includes home health care, assisted living, and nursing facility services.

(b) The owner of a life insurance policy with a face amount of more than $10,000 may enter into a life settlement contract under Chapter 1111A, Insurance Code, for the benefit of a recipient of long-term care services and support in exchange for direct payments to:

(1) a health care provider for the provision of those services to that recipient; or

(2) the state to offset the costs of providing those services to that recipient under the medical assistance program.

(c) The proceeds of a life settlement contract entered into under this section must be used for the payment of long-term care services and support, except for the amount specified in Subsection (d)(1). To the extent feasible and allowed under federal law, the medical assistance program may act only as the secondary payor for long-term care services and support provided to a person who is eligible for medical assistance and for whose benefit an owner of a

life insurance policy has entered into a life settlement contract under this section.

(d) In addition to the requirements under Chapter 1111A, Insurance Code, a life settlement contract entered into under this section must:

(1) provide that the lesser of five percent of the face amount of the life insurance policy or $5,000 is reserved and is payable to the owner's estate or a named beneficiary for funeral expenses;

(2) provide that the balance of proceeds under the life settlement contract that are unpaid on the death of the owner must be paid to the owner's estate or a named beneficiary; and

(3) specify the total amount payable for the benefit of the recipient of long-term care services and support under the life settlement contract.

(e) All proceeds of a life settlement contract entered into under this section must be held in an irrevocable state or federally insured account for the benefit of the recipient of long-term care services and support or for payment as otherwise required by this section.

(f) Only a recipient of long-term care services and support for whose benefit an owner enters into a life settlement contract under this section may choose the provider and type of services provided to the recipient and paid for out of an account described by Subsection (e). Any attempt by a person to require the recipient to choose a specific provider is strictly prohibited and constitutes an unfair method of competition or an unfair or deceptive act or practice under the Insurance Code.

(g) A person who enters into a life settlement contract with an owner of a life insurance policy under this section must maintain:

(1) a surety bond executed and issued by an insurer authorized to issue surety bonds in this state;

(2) a policy of errors and omissions insurance; or

(3) a deposit in the amount of $500,000 in any combination of cash, certificates of deposit, or securities.

(h) In accordance with the requirements of Chapter 1111A, Insurance Code, a life settlement contract provider who enters into life settlement contracts with owners of life insurance policies under this section must file with the Texas Department of Insurance:

(1) all life settlement contract forms used by the

provider; and

(2) all advertising and marketing materials used by the provider.

(i) Section 1111A.022(a)(2)(A), Insurance Code, does not apply to a life insurance policy that is the subject of a life settlement contract entered into under this section if the contract has been in force at least five years.

(j) A claim against a life settlement contract provider with whom an owner of a life insurance policy enters into a life settlement contract under this section by the owner, the owner's estate, a named beneficiary, or any other person with respect to the contract may not exceed the face amount of the policy, less the proceeds paid under the contract, plus the total amount of premiums paid by the owner since entering into the contract. A life settlement contract provider must pay a claim under this subsection from the funds in an account described by Subsection (e).

(k) In accordance with Chapter 1111A, Insurance Code, the Texas Department of Insurance may conduct periodic market examinations of each life settlement contract provider who enters into a life settlement contract with an owner of a life insurance policy under this section.

(l) The commission shall educate applicants for long-term care services and support under the medical assistance program about options for life insurance policies, including options that do not allow a life insurance policy to be considered as an asset or resource in determining eligibility for medical assistance.

(m) The executive commissioner, in consultation with the commissioner of insurance, shall adopt rules necessary to implement this section. The rules must ensure that:

(1) proceeds from a life settlement contract are used to reimburse a provider of long-term care services and support or the state to offset the cost of medical assistance long-term care services and support;

(2) eligibility and need for medical assistance are determined without considering the balance of proceeds from a life settlement contract as provided in this section; and

(3) payments to a provider of long-term care services and support and applied income payments are made in accordance with this chapter.

(n) The entry into a life settlement contract by an owner of a

life insurance policy under this section is not the only method by which the owner may avoid having the policy considered as an asset or resource in determining the eligibility of the owner for medical assistance.

(o) Notwithstanding the provisions of this section, the commission may not implement a provision of this section if the commission determines that implementation of the provision is not cost-effective or feasible.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1001 (H.B. 2383), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.091, eff. April 2, 2015.

Sec. 32.0262. ELIGIBILITY TRANSITION. (a) The executive commissioner shall develop procedures to ensure that all necessary information regarding a child who will be denied continued medical assistance under this chapter because of an increase in income, assets, or resources but who is eligible for enrollment in the child health plan under Chapter 62, Health and Safety Code, is promptly transmitted to the child health plan in accordance with the standards established under Section 62.104(d), Health and Safety Code.

(b) The executive commissioner shall develop procedures to ensure that the parent or caretaker of a child who will be denied continued medical assistance under this chapter because of a failure to keep an appointment, including an appointment for recertification of eligibility, a failure to provide information, or for another procedural reason, is promptly contacted and informed of:

(1) the need to recertify eligibility for continued medical assistance under this chapter; and

(2) the availability of medical coverage under the child health plan under Chapter 62, Health and Safety Code.

(c) The commission shall develop materials under this section in consultation with the appropriate agencies administering all or part of the child health plan under Chapter 62, Health and Safety Code.

(d) The executive commissioner by rule shall adopt procedures to assist a family whose child loses eligibility for medical

assistance under this chapter in making a transition to the child health plan under Chapter 62, Health and Safety Code, with no interruption in coverage.

Added by Acts 2001, 77th Leg., ch. 584, Sec. 4.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.092, eff. April 2, 2015.

Sec. 32.0263. HEALTH CARE ORIENTATION. (a) The commission shall require that the parent or guardian of a child under 19 years of age who originally establishes eligibility for medical assistance must:

(1) attend an in-person counseling session with a commission representative not later than the 31st day after the date the child originally establishes eligibility; or

(2) accompany the child to an appointment with a health care provider for a comprehensive health care orientation not later than the 61st day after the date the child originally establishes eligibility.

(b) The executive commissioner by rule shall develop procedures to verify that:

(1) the parent or guardian of the child who originally establishes eligibility complies with the requirement of Subsection (a)(2), if applicable; and

(2) the child is provided a comprehensive health care orientation at the appointment with the health care provider.

Added by Acts 2001, 77th Leg., ch. 584, Sec. 4.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.092, eff. April 2, 2015.

Sec. 32.0264. SUSPENSION AND REINSTATEMENT OF ELIGIBILITY FOR CHILDREN IN JUVENILE FACILITIES. (a) In this section, "juvenile facility" means a facility for the placement, detention, or commitment of a child under Title 3, Family Code.

(b) To the extent allowed under federal law, if a child is placed in a juvenile facility, the commission shall suspend the

child's eligibility for medical assistance during the period the child is placed in the facility.

(b-1) Notwithstanding Subsection (b), if, during the period a child is placed in a juvenile facility, the child is hospitalized or becomes an inpatient in another type of medical facility, the commission shall reinstate the child's eligibility for medical assistance during the period of the child's inpatient stay. The executive commissioner shall adopt rules necessary to implement this subsection, including rules governing the procedure for reinstating a child's eligibility for medical assistance under this subsection.

(c) Not later than 48 hours after the commission is notified of the release from a juvenile facility of a child whose eligibility for medical assistance has been suspended under this section, the commission shall reinstate the child's eligibility. Following the reinstatement, the child remains eligible until the expiration of the period for which the child was certified as eligible, excluding the period during which the child's eligibility was suspended.

Added by Acts 2015, 84th Leg., R.S., Ch. 862 (H.B. 839), Sec. 2, eff. June 18, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 667 (H.B. 1664), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 667 (H.B. 1664), Sec. 2, eff. September 1, 2021.

Sec. 32.0265. NOTICE OF CERTAIN PLACEMENTS IN JUVENILE FACILITIES. (a) In this section:

(1) "Custodian" and "guardian" have the meanings assigned by Section 51.02, Family Code.

(2) "Juvenile facility" has the meaning assigned by Section 32.0264.

(b) A juvenile facility may notify the commission on the placement in the facility of a child who is receiving medical assistance benefits.

(c) If a juvenile facility chooses to provide the notice described by Subsection (b), the facility shall provide the notice electronically or by other appropriate means as soon as possible, but not later than the 30th day, after the date of the child's placement.

(d) A juvenile facility may notify the commission of the release of a child who, immediately before the child's placement in the facility, was receiving medical assistance benefits.

(e) If a juvenile facility chooses to provide the notice described by Subsection (d), the facility shall provide the notice electronically or by other appropriate means not later than 48 hours after the child's release from the facility.

(f) If a juvenile facility chooses to provide the notice described by Subsection (d), at the time of the child's release, the facility shall provide the child's guardian or custodian, as appropriate, with a written copy of the notice and a telephone number at which the commission may be contacted regarding confirmation of or assistance relating to reinstatement of the child's eligibility for medical assistance benefits.

(g) The commission shall establish a means by which a juvenile facility, or an employee of the facility, may determine whether a child placed in the facility is or was, as appropriate, receiving medical assistance benefits for purposes of this section.

(h) A juvenile facility, or an employee of the facility, is not liable in a civil action for damages resulting from a failure to comply with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 862 (H.B. 839), Sec. 2, eff. June 18, 2015.

Sec. 32.0266. SUSPENSION, TERMINATION, AND AUTOMATIC REINSTATEMENT OF ELIGIBILITY FOR INDIVIDUALS CONFINED IN COUNTY JAILS. (a) In this section, "county jail" means a facility operated by or for a county for the confinement of persons accused or convicted of an offense.

(b) To the extent allowed by federal law, if an individual is confined in a county jail and the sheriff of the county has notified the commission of the confinement under Section 351.046, Local Government Code, the commission shall suspend or terminate, as appropriate, the individual's eligibility for medical assistance during the period the individual is confined in the county jail.

(c) Not later than 48 hours after the commission is notified under Section 351.046, Local Government Code, of the release from a county jail of an individual whose eligibility for medical assistance

has been suspended under this section, the commission shall reinstate the individual's eligibility, provided the individual's eligibility certification period has not elapsed. To the extent allowed by federal law, following the reinstatement, the individual remains eligible until the expiration of the period for which the individual was certified as eligible.

Added by Acts 2017, 85th Leg., R.S., Ch. 778 (H.B. 337), Sec. 1, eff. September 1, 2017.

Sec. 32.027. SELECTION OF PROVIDER OF MEDICAL ASSISTANCE. (a) Except as provided by Subsections (f) and (g), a recipient of medical assistance authorized in this chapter may select any provider authorized by the commission to provide medical assistance.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(38), eff. April 2, 2015.

(c) Repealed by Acts 2003, 78th Leg., ch. 1167, Sec. 4.

(d) The commission shall permit a recipient of medical assistance under this chapter to receive services relating to physical therapy from any person authorized to practice physical therapy under Chapter 453, Occupations Code.

(e) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(2).

(e) Repealed by Acts 2005, 79th Leg., Ch. 349, Sec. 7(b), eff. September 1, 2005.

(f) The executive commissioner by rule may develop a system of selective contracting with health care providers for the provision of nonemergency inpatient hospital services to a recipient of medical assistance under this chapter. In implementing this subsection, the executive commissioner shall:

(1) seek input from consumer representatives and from representatives of hospitals licensed under Chapter 241, Health and Safety Code, and from organizations representing those hospitals; and

(2) ensure that providers selected under the system meet the needs of a recipient of medical assistance under this chapter.

(g) The process to select a hospital must afford each disproportionate share hospital an opportunity to negotiate for a contract. The process will take into account the special circumstances of disproportionate share hospitals when evaluating

proposals.

(h) A proposal or bid submitted by a hospital and any work papers, cost reports, or other financial data used to prepare the proposal or bid shall be confidential and not subject to required disclosure by the commission or the hospital under any other statute until the executed contracts have been awarded.

(i) In its establishment of provider criteria for hospitals, home health providers, or hospice providers, the commission shall accept licensure by the Department of Aging and Disability Services or the Department of State Health Services, as appropriate, or certification by the Medicare program, Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(j) The commission shall assure that a recipient of medical assistance under this chapter may select a nurse first assistant, as defined by Section 301.354, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if:

(1) the selected nurse first assistant is authorized by law to perform the service or procedure; and

(2) the physician requests that the service or procedure be performed by the nurse first assistant.

(k) The commission shall assure that a recipient of medical assistance under this chapter may select a surgical assistant licensed under Chapter 206, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if:

(1) the selected surgical assistant is authorized by law to perform the service or procedure; and

(2) the physician requests that the service or procedure be performed by the surgical assistant.

(l) Subject to appropriations, the commission shall assure that a recipient of medical assistance under this chapter may select a licensed psychologist, a licensed marriage and family therapist, as defined by Section 502.002, Occupations Code, a licensed professional counselor, as defined by Section 503.002, Occupations Code, or a licensed master social worker, as defined by Section 505.002, Occupations Code, to perform any health care service or procedure covered under the medical assistance program if the selected person is authorized by law to perform the service or procedure. This subsection shall be liberally construed.

Acts 1979, 66th Leg., p. 2351, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1989, 71st Leg., ch. 1085, Sec. 4, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1173, Sec. 1, eff. Aug. 28, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(14), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 390, Sec. 1, 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 965, Sec. 57, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 930, Sec. 1, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 812, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1014, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.813, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.156(a)(2), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1167, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1251, Sec. 9, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 7(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 7(b), eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.093, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.094, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.095, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(38), eff. April 2, 2015.

Sec. 32.0275. MILITARY MEDICAL TREATMENT FACILITIES AND AFFILIATED HEALTH CARE PROVIDERS; REIMBURSEMENT. (a) In this section, "military medical treatment facility" means a military medical treatment facility described by 10 U.S.C. Section 1073d(b), (c), or (d).

(b) This section applies only to a military medical treatment facility located in this state that has been verified as a Level 1 trauma center by the American College of Surgeons or an equivalent organization.

(c) A military medical treatment facility or a health care provider providing services at a military medical treatment facility is considered a provider under Medicaid for purposes of providing and

receiving reimbursement for:

(1) inpatient emergency services; and

(2) related outpatient services to the extent those services are not available from an enrolled Medicaid provider at the time the services are needed.

Added by Acts 2021, 87th Leg., R.S., Ch. 696 (H.B. 2365), Sec. 1, eff. September 1, 2021.

Sec. 32.028. FEES, CHARGES, AND RATES. (a) The executive commissioner shall adopt reasonable rules and standards governing the determination of fees, charges, and rates for medical assistance payments.

(b) The fee, charge, or rate for a professional service is the usual and customary fee, charge, or rate that prevails in the community.

(c) The fee, charge, or rate for other medical assistance is the usual and customary fee, charge, or rate that prevails in the community unless the payment is limited by state or federal law.

(d) The executive commissioner in the adoption of reasonable rules and standards governing the determination of rates paid for inpatient hospital services on a prospective payment basis shall:

(1) assure that the payment rates are reasonable and adequate to meet the costs incurred by the hospital in rendering services to Medicaid recipients;

(2) assure that the prospective payment methodology for hospital services sets the hospital-specific standardized amount at a minimum level of $1,600; and

(3) assure that the adjustment in payment rates for hospital services furnished by disproportionate share hospitals takes into account the essential role of rural hospitals in providing access to hospital services to medically indigent persons in rural areas of the state.

(e) The executive commissioner in the adoption of reasonable rules and standards governing the determination of rates paid for services provided by a federally qualified health center, as defined by 42 U.S.C. Section 1396d(l)(2)(B), shall assure that a center is reimbursed for 100 percent of reasonable costs incurred by the center in rendering services to Medicaid recipients.

(f) The executive commissioner in the adoption of reasonable rules and standards governing the determination of rates paid for services provided by a rural health clinic, as defined by 42 U.S.C. Section 1396d(l)(1), shall assure that a clinic is reimbursed for 100 percent of reasonable costs incurred by the clinic in rendering services to Medicaid recipients.

(g) Subject to Subsection (i), the executive commissioner shall ensure that the rules governing the determination of rates paid for nursing facility services improve the quality of care by:

(1) providing a program offering incentives for increasing direct care staff and direct care wages and benefits, but only to the extent that appropriated funds are available after money is allocated to base rate reimbursements as determined by the commission's nursing facility rate setting methodologies; and

(2) if appropriated funds are available after money is allocated for payment of incentive-based rates under Subdivision (1), providing incentives that incorporate the use of a quality of care index, a customer satisfaction index, and a resolved complaints index developed by the commission.

(h) The executive commissioner shall ensure that the rules governing the determination of rates paid for nursing facility services provide for the rate component derived from reported liability insurance costs to be paid only to those facilities that purchase liability insurance acceptable to the commission.

(i) The executive commissioner shall ensure that rules governing the incentives program described by Subsection (g)(1):

(1) provide that participation in the program by a nursing facility is voluntary;

(2) do not impose on a nursing facility not participating in the program a minimum spending requirement for direct care staff wages and benefits;

(3) do not set a base rate for a nursing facility participating in the program that is more than the base rate for a nursing facility not participating in the program; and

(4) establish a funding process to provide incentives for increasing direct care staff and direct care wages and benefits in accordance with appropriations provided.

(j) The executive commissioner shall adopt rules governing the determination of the amount of reimbursement or credit for restocking drugs under Section 562.1085, Occupations Code, that recognize the

costs of processing the drugs, including the cost of:

(1) reporting the drug's prescription number and date of original issue;

(2) verifying whether the drug's expiration date or the drug's recommended shelf life exceeds 120 days;

(3) determining the source of payment; and

(4) preparing credit records.

(k) The commission shall provide an electronic system for the issuance of credit for returned drugs that complies with the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended. To ensure a cost-effective system, only drugs for which the credit exceeds the cost of the restocking fee by at least 100 percent are eligible for credit.

(l) The executive commissioner shall establish a task force to develop the rules necessary to implement Subsections (j) and (k). The task force must include representatives of nursing facilities and pharmacists.

(m) The commission may not fund an incentive program under Subsection (g)(1) using money appropriated for base rate reimbursements for nursing facilities.

(n) The executive commissioner shall ensure that rules governing the determination of rates paid for nursing facility services provide for the reporting of all revenue and costs, without regard to whether a cost is an allowable cost for reimbursement under the medical assistance program, except:

(1) as provided by Subsection (h); and

(2) a penalty imposed under this chapter or Chapter 242, Health and Safety Code.

Acts 1979, 66th Leg., p. 2351, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1989, 71st Leg., ch. 1219, Sec. 2, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1411, Sec. 1.16, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 974, Sec. 31, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1284, Sec. 10.01, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.102(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 3, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 667 (S.B. 48), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.096, eff.

April 2, 2015.

Sec. 32.0281. RULES AND NOTICE RELATING TO PAYMENT RATES. (a) The executive commissioner shall by rule describe the process used to determine payment rates for medical assistance and shall notify providers, consumers, the Legislative Budget Board, and the Governor's Office of Budget, Planning, and Policy of that process.

(b) The executive commissioner shall adopt rules relating to payment rates that include:

(1) a description of the process used to determine payment rates;

(2) a description of each cost of living index used in calculating inflation rates and the procedure for determining the level of inflation used in the executive commissioner's calculations;

(3) the criteria for desk audits;

(4) the procedure for notifying providers of exclusions and adjustments to reported expenses, if notification is requested; and

(5) a method of adjusting rates if new legislation, regulations, or economic factors affect costs.

(c) The commission shall include in the Title XIX State Medicaid Plan submitted to the federal government for approval the procedures for making available to the public the data and methodology used in establishing payment rates.

(d) The procedures for adopting rules under this section shall be governed by Chapter 2001, Government Code.

(e) An interested party may appeal an action taken by the commission under this section, and an appeal of such action shall be governed by the procedures for a contested case hearing under Chapter 2001, Government Code. The filing of an appeal under this section shall not stay the implementation of payment rates adopted by the executive commissioner in accordance with commission rules.

Added by Acts 1989, 71st Leg., ch. 1085, Sec. 2, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.097, eff. April 2, 2015.

Sec. 32.0282. PUBLIC HEARING ON RATES. (a) The commission shall hold a public hearing to allow interested persons to present comments relating to proposed payment rates for medical assistance.

(b) The commission shall provide notice of each hearing to the public.

Added by Acts 1989, 71st Leg., ch. 1085, Sec. 2, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.098, eff. April 2, 2015.

Sec. 32.0284. CALCULATION OF PAYMENTS UNDER CERTAIN SUPPLEMENTAL HOSPITAL PAYMENT PROGRAMS. (a) In this section, "supplemental hospital payment program" means:

(1) the disproportionate share hospitals supplemental payment program administered according to 42 U.S.C. Section 1396r-4; and

(2) the uncompensated care payment program established under the Texas Health Care Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315).

(b) For purposes of calculating the hospital-specific limit used to determine a hospital's uncompensated care payment under a supplemental hospital payment program, the commission shall ensure that to the extent a third-party commercial payment exceeds the Medicaid allowable cost for a service provided to a recipient and for which reimbursement was not paid under the medical assistance program, the payment is not considered a medical assistance payment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 6.07, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.099, eff. April 2, 2015.

Sec. 32.0285. CALCULATION OF MEDICAL EDUCATION ADD-ON FOR REIMBURSEMENT OF TEACHING HOSPITALS THAT PROVIDE BEHAVIORAL HEALTH AND PHYSICAL HEALTH SERVICES. The commission shall, on request from a teaching hospital that provides behavioral health and physical

health services, update on a biannual basis the education adjustment factor used to calculate the medical education add-on using the most current Medicare education adjustment factor data available under 42 C.F.R. Section 412.105 at the time the commission makes the update.

Added by Acts 2021, 87th Leg., R.S., Ch. 966 (S.B. 1921), Sec. 3, eff. September 1, 2022.

Sec. 32.0287. PRESCRIBED PEDIATRIC EXTENDED CARE CENTER REIMBURSEMENT. (a) In this section, "center" means a prescribed pediatric extended care center licensed under Chapter 248A, Health and Safety Code.

(b) In adopting rules governing the reimbursement of a center for services provided under the medical assistance program, the executive commissioner shall clearly identify the documentation a center must obtain and maintain to be eligible for reimbursement. The rules may not:

(1) authorize a center to combine documentation for transportation with documentation for other services provided by the center; or

(2) condition reimbursement of non-transportation services on:

(A) a recipient's decision to use transportation services on a specific date or on an ongoing basis; or

(B) a center's obtaining and maintaining transportation documentation.

Added by Acts 2023, 88th Leg., R.S., Ch. 862 (H.B. 3550), Sec. 5, eff. September 1, 2023.

Sec. 32.029. METHODS OF PAYMENT. (a) The commission may prescribe a method of payment for medical assistance claims by establishing a direct vendor payment program that is administered by the commission, or by an insurance plan, a hospital or medical service plan, or any other health service plan authorized to do business in the state, or by a combination of those plans.

(b) The commission may use any fiscal intermediary, method of payment, or combination of methods it finds most satisfactory and economical. The commission may make whatever changes it finds

necessary from time to time to administer the program in an economical and equitable manner consistent with simplicity of administration and the best interest of the recipients of medical assistance.

(c) If the commission elects to make direct vendor payments, the payments shall be made by vouchers and warrants drawn by the comptroller on the proper account. The commission shall furnish the comptroller with a list of those vendors entitled to payments and the amounts to which each is entitled. When the warrants are drawn, they must be delivered to the commission, which shall supervise the delivery to vendors.

(d) If at any time state funds are not available to fully pay all claims for medical assistance, the executive commissioner shall prorate the claims.

(e) The commission or its designee must notify providers of health care services in clear and concise language of the status of their claims on any claim not paid or denied within 30 days of receipt by the payor.

Acts 1979, 66th Leg., p. 2351, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 12, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 390, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 6, Sec. 4, eff. March 23, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.100, eff. April 2, 2015.

Sec. 32.0291. PREPAYMENT REVIEWS AND PAYMENT HOLDS. (a) Notwithstanding any other law, the commission may:

(1) perform a prepayment review of a claim for reimbursement under the medical assistance program to determine whether the claim involves fraud or abuse; and

(2) as necessary to perform that review, withhold payment of the claim for not more than five working days without notice to the person submitting the claim.

Text of subsection effective until April 1, 2025

(b) Subject to Section 531.102, Government Code, and notwithstanding any other law, the commission may impose a payment hold on future claims submitted by a provider.

Text of subsection effective on April 1, 2025

(b) Subject to Sections 544.0104 and 544.0105 and Subchapter G, Chapter 544, Government Code, and notwithstanding any other law, the commission may impose a payment hold on future claims submitted by a provider.

Text of subsection effective until April 1, 2025

(c) A payment hold authorized by this section is governed by the requirements and procedures specified for a payment hold under Section 531.102, Government Code, including the notice requirements under Subsection (g) of that section.

Text of subsection effective on April 1, 2025

(c) A payment hold authorized by this section is governed by the requirements and procedures specified for a payment hold under Sections 544.0104 and 544.0105 and Subchapter G, Chapter 544, Government Code, including the notice requirements under Section 544.0302.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 622, Sec. 6, eff. September 1, 2013.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.103, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 622 (S.B. 1803), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 622 (S.B. 1803), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 622 (S.B. 1803), Sec. 6, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.101, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.81, eff. April 1, 2025.

Sec. 32.031. RECEIPT AND EXPENDITURE OF FUNDS. (a) The commission may accept federal funds for the support of the medical assistance program and may expend the funds in the manner prescribed by this chapter or other laws. The expenditures must be made in accordance with appropriate agreements between the state and the federal government.

(b) The commission may administer and expend state funds appropriated for the program in accordance with commission rules and the provisions of this chapter.

(c) The amount of state funds spent for medical assistance on behalf of a qualified individual may not exceed the amount that is matchable with federal funds, and the total amount of state funds spent for all medical assistance on behalf of all qualified individuals may not exceed the amount that is matchable with federal funds.

(d) The executive commissioner is empowered and authorized to pursue the use of local funds as part of the state share under the Medicaid program as provided by federal law and regulation.

(e) Public hospitals, including hospitals owned, operated, or leased by a governmental entity, including a municipality, county, hospital district, or this state, and specifically including a state teaching hospital, may transfer funds to the commission for use as the state share under the Medicaid disproportionate share program.

Acts 1979, 66th Leg., p. 2352, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1989, 71st Leg., ch. 1215, Sec. 4, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 6, Sec. 6, eff. March 23, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.102, eff. April 2, 2015.

Sec. 32.0311. DRUG REIMBURSEMENT UNDER CERTAIN PROGRAMS. The commission shall require a recipient of medical assistance to exhaust drug benefits available under the medical assistance program before reimbursing the recipient, pharmacist, or other health care provider for drugs purchased by or on behalf of the recipient under the Kidney Health Care Program or the Children with Special Health Care Needs Services Program.

Added by Acts 1999, 76th Leg., ch. 669, Sec. 1, eff. June 18, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.103, eff. April 2, 2015.

Sec. 32.03115. REIMBURSEMENT FOR MEDICATION-ASSISTED TREATMENT

FOR OPIOID OR SUBSTANCE USE DISORDER. (a) In this section, "medication-assisted opioid or substance use disorder treatment" means the use of methadone, buprenorphine, oral buprenorphine/naloxone, or naltrexone to treat opioid or substance use disorder.

Text of subsection as added by Acts 2019, 86th Leg., R.S., Ch. 640 (S.B. 1564), Sec. 2, and Ch. 1167 (H.B. 3285), Sec. 9

Text of subsection effective until April 1, 2025

(b) Notwithstanding Sections 531.072 and 531.073, Government Code, or any other law and subject to Subsections (c) and (d), the commission shall provide medical assistance reimbursement for medication-assisted opioid or substance use disorder treatment without requiring a recipient of medical assistance or health care provider to obtain prior authorization or precertification for the treatment.

Text of subsection as added by Acts 2019, 86th Leg., R.S., Ch. 640 (S.B. 1564), Sec. 2, and Ch. 1167 (H.B. 3285), Sec. 9

Text of subsection effective on April 1, 2025

(b) Notwithstanding Subchapters E and F, Chapter 549, Government Code, or any other law and subject to Subsections (c) and (d), the commission shall provide medical assistance reimbursement for medication-assisted opioid or substance use disorder treatment without requiring a recipient of medical assistance or health care provider to obtain prior authorization or precertification for the treatment.

Text of subsection as added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 13

(b) Notwithstanding Sections 531.072 and 531.073, Government Code, or any other law and subject to Subsections (c) and (d), the commission shall provide medical assistance reimbursement for medication-assisted opioid or substance use disorder treatment without requiring a recipient of medical assistance or health care provider to obtain prior authorization or precertification for the treatment, except as needed to minimize the opportunity for fraud, waste, or abuse.

(c) The duty to provide medical assistance reimbursement for medication-assisted opioid or substance use disorder treatment under Subsection (b) does not apply with respect to:

(1) a prescription for methadone;

(2) a recipient for whom medication-assisted opioid or substance use disorder treatment is determined to be medically contraindicated by the recipient's physician; or

(3) a recipient who is subject to an age-related restriction applicable to medication-assisted opioid or substance use disorder treatment.

(d) The commission may provide medical assistance reimbursement for medication-assisted opioid or substance use disorder treatment only if the treatment is prescribed to a recipient of medical assistance by a licensed health care provider who is authorized to prescribe methadone, buprenorphine, oral buprenorphine/naloxone, or naltrexone.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 816 (H.B. 1357), Sec. 1, eff. June 13, 2023.

Added by Acts 2019, 86th Leg., R.S., Ch. 640 (S.B. 1564), Sec. 2, eff. June 10, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 13, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 9, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.82, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 816 (H.B. 1357), Sec. 1, eff. June 13, 2023.

Sec. 32.03117. REIMBURSEMENT FOR NON-OPIOID TREATMENTS. (a) In this section, "non-opioid treatment" means a drug or biological product that is indicated to produce analgesia without acting on the body's opioid receptors.

(b) The commission shall ensure that medical assistance reimbursement is provided to a provider who provides a non-opioid treatment to a recipient under the medical assistance program.

(c) The executive commissioner by rule shall ensure that, to the extent permitted by federal law, a hospital provider that provides outpatient department services to a medical assistance recipient is reimbursed separately under the medical assistance

program for any non-opioid treatment provided as a part of those services.

Added by Acts 2023, 88th Leg., R.S., Ch. 890 (H.B. 4888), Sec. 1, eff. September 1, 2023.

Sec. 32.0312. REIMBURSEMENT FOR SERVICES ASSOCIATED WITH PREVENTABLE ADVERSE EVENTS. The executive commissioner shall adopt rules regarding the denial or reduction of reimbursement under the medical assistance program for preventable adverse events that occur in a hospital setting. In adopting the rules, the executive commissioner:

(1) shall ensure that the commission imposes the same reimbursement denials or reductions for preventable adverse events as the Medicare program imposes for the same types of health care-associated adverse conditions and the same types of health care providers and facilities under a policy adopted by the federal Centers for Medicare and Medicaid Services;

(2) shall consult an advisory committee on health care quality, if established by the executive commissioner, to obtain the advice of that committee regarding denial or reduction of reimbursement claims for any other preventable adverse events that cause patient death or serious disability in health care settings, including events on the list of adverse events identified by the National Quality Forum; and

(3) may allow the commission to impose reimbursement denials or reductions for preventable adverse events described by Subdivision (2).

Added by Acts 2009, 81st Leg., R.S., Ch. 724 (S.B. 203), Sec. 3(a), eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.104, eff. April 2, 2015.

Sec. 32.0313. INDUCED DELIVERIES OR CESAREAN SECTIONS BEFORE 39TH WEEK. (a) The commission shall achieve cost savings with improved outcomes by adopting and implementing quality initiatives that are evidence-based, tested, and fully consistent with

established standards of clinical care and that are designed to reduce the number of elective or nonmedically indicated induced deliveries or cesarean sections performed at a hospital on a medical assistance recipient before the 39th week of gestation.

(b) The commission shall coordinate with physicians, hospitals, managed care organizations, and the commission's billing contractor for the medical assistance program to develop a process for collecting information regarding the number of induced deliveries and cesarean sections described by Subsection (a) that occur during prescribed periods.

Added by Acts 2011, 82nd Leg., R.S., Ch. 299 (H.B. 1983), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.105, eff. April 2, 2015.

Sec. 32.0314. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND SUPPLIES. The executive commissioner shall adopt rules requiring the electronic submission of any claim for reimbursement for durable medical equipment and supplies under the medical assistance program.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.18, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.105, eff. April 2, 2015.

Sec. 32.03141. AUTHORITY OF ADVANCED PRACTICE REGISTERED NURSES AND PHYSICIAN ASSISTANTS REGARDING DURABLE MEDICAL EQUIPMENT AND SUPPLIES. To the extent allowed by federal law, an advanced practice registered nurse or physician assistant acting under adequate physician supervision and to whom a physician has delegated the authority to prescribe and order drugs and devices under Chapter 157, Occupations Code, may order and prescribe durable medical equipment and supplies under the medical assistance program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 26, eff. November 1, 2013.

Sec. 32.0315. FUNDS FOR GRADUATE MEDICAL EDUCATION. (a) Subject to appropriated state funds, the executive commissioner shall establish procedures and formulas for the allocation of federal medical assistance funds that are directed to be used to support graduate medical education in connection with the medical assistance program.

(b) The executive commissioner shall allocate the funds in the manner the executive commissioner determines most effectively and equitably achieves the purposes for which those federal funds are received, consistent with the needs of this state for graduate medical education and the training of resident physicians in accredited residency programs in appropriate fields and specialties, taking into account other money available to support graduate medical education. In determining the needs of this state for graduate medical education, the executive commissioner shall give primary emphasis to graduate medical education in primary care specialties and shall also recognize the growth in residency training slots since 1997 in the Lower Rio Grande Valley and other health care shortage areas of this state.

(c) The executive commissioner shall consult with the Texas Higher Education Coordinating Board before adopting or revising a formula under this section. At the request of the executive commissioner, the coordinating board shall provide the executive commissioner with any information the board possesses to assist the executive commissioner in administering this section.

Added by Acts 1997, 75th Leg., ch. 252, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.100(a), (b), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 733 (H.B. 2420), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.106, eff. April 2, 2015.

Sec. 32.0316. ELECTRONIC TRANSACTIONS; MEDICAID. The executive commissioner shall adopt and the commission shall implement policies

that encourage the use of electronic transactions in Medicaid. The policies shall require payment to Medicaid providers by electronic funds transfer, including electronic remittance and status reports. The policies shall also include the establishment of incentives to submit claims electronically and of disincentives to submit claims on paper that are reasonably based on the higher administrative costs to process claims submitted on paper.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10, eff. Sept. 1, 1999.
Transferred, redesignated and amended from Health and Safety Code, Section 12.0124 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0017, eff. April 2, 2015.

Sec. 32.0317. REIMBURSEMENT FOR SERVICES PROVIDED UNDER SCHOOL HEALTH AND RELATED SERVICES PROGRAM. The executive commissioner shall adopt rules requiring parental consent for services provided under the school health and related services program in order for a school district to receive reimbursement for the services. The rules must allow a school district to seek a waiver to receive reimbursement for services provided to a student who does not have a parent or legal guardian who can provide consent.

Added by Acts 2021, 87th Leg., R.S., Ch. 820 (H.B. 2658), Sec. 7, eff. September 1, 2021.

Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE. The executive commissioner shall adopt reasonable rules for minimizing the opportunity for fraud and abuse, for establishing and maintaining methods for detecting and identifying situations in which a question of fraud or abuse in the program may exist, and for referring cases where fraud or abuse appears to exist to the appropriate law enforcement agencies for prosecution.

Acts 1979, 66th Leg., p. 2352, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.104, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.106, eff. April 2, 2015.

Sec. 32.0321. SURETY BOND. (a) The executive commissioner by rule may require each provider of medical assistance in a provider type that has demonstrated significant potential for fraud or abuse to file with the commission a surety bond in a reasonable amount. The executive commissioner by rule shall require a provider of medical assistance to file with the commission a surety bond in a reasonable amount if the commission identifies a pattern of suspected fraud or abuse involving criminal conduct relating to the provider's services under the medical assistance program that indicates the need for protection against potential future acts of fraud or abuse.

(b) The bond under Subsection (a) must be payable to the commission to compensate the commission for damages resulting from or penalties or fines imposed in connection with an act of fraud or abuse committed by the provider under the medical assistance program.

(c) Subject to Subsection (d) or (e), the executive commissioner by rule may require each provider of medical assistance that establishes a resident's trust fund account to post a surety bond to secure the account. The bond must be payable to the commission to compensate residents of the bonded provider for trust funds that are lost, stolen, or otherwise unaccounted for if the provider does not repay any deficiency in a resident's trust fund account to the person legally entitled to receive the funds.

(d) The executive commissioner may not require the amount of a surety bond posted for a single facility provider under Subsection (c) to exceed the average of the total average monthly balance of all the provider's resident trust fund accounts for the 12-month period preceding the bond issuance or renewal date.

(e) If an employee of a provider of medical assistance is responsible for the loss of funds in a resident's trust fund account, the resident, the resident's family, and the resident's legal representative are not obligated to make any payments to the provider that would have been made out of the trust fund had the loss not occurred.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 2.03, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.105, eff.

Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.107, eff. April 2, 2015.

Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION; ENROLLMENT OF PROVIDERS.

Text of subsection effective until April 1, 2025

(a) The commission or the office of inspector general established under Chapter 531, Government Code, may obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

Text of subsection effective on April 1, 2025

(a) The commission or the office of inspector general established under Subchapter C, Chapter 544, Government Code, may obtain from any law enforcement or criminal justice agency the criminal history record information that relates to a provider under the medical assistance program or a person applying to enroll as a provider under the medical assistance program.

(a-1) The criminal history record information the commission and the office of inspector general are authorized to obtain under Subsection (a) includes criminal history record information relating to:

(1) a person with a direct or indirect ownership or control interest, as defined by 42 C.F.R. Section 455.101, in a provider of five percent or more; and

(2) a person whose information is required to be disclosed in accordance with 42 C.F.R. Part 1001.

(b) Subject to Subsections (b-1) and (e), the executive commissioner by rule shall establish criteria for the commission or the commission's office of inspector general to suspend a provider's billing privileges under the medical assistance program, revoke a provider's enrollment under the program, or deny a person's application to enroll as a provider under the program based on:

(1) the results of a criminal history check;

(2) any exclusion or debarment of the provider from participation in a state or federally funded health care program;

(3) the provider's failure to bill for medical assistance or refer clients for medical assistance within a 12-month period; or

(4) any of the provider screening or enrollment provisions contained in 42 C.F.R. Part 455, Subpart E.

(b-1) In adopting rules under this section, the executive commissioner shall require revocation of a provider's enrollment or denial of a person's application for enrollment as a provider under the medical assistance program if the person has been excluded or debarred from participation in a state or federally funded health care program as a result of:

(1) a criminal conviction or finding of civil or administrative liability for committing a fraudulent act, theft, embezzlement, or other financial misconduct under a state or federally funded health care program; or

(2) a criminal conviction for committing an act under a state or federally funded health care program that caused bodily injury to:

(A) a person who is 65 years of age or older;

(B) a person with a disability; or

(C) a person under 18 years of age.

(c) As a condition of eligibility to participate as a provider in the medical assistance program, the executive commissioner by rule shall:

(1) require a provider or a person applying to enroll as a provider to disclose:

(A) all persons described by Subsection (a-1)(1);

(B) any managing employees of the provider; and

(C) an agent or subcontractor of the provider if:

(i) the provider or a person described by Subsection (a-1)(1) has a direct or indirect ownership interest of at least five percent in the agent or subcontractor; or

(ii) the provider engages in a business transaction with the agent or subcontractor that meets the criteria specified by 42 C.F.R. Section 455.105; and

(2) require disclosure by persons applying for enrollment as providers and provide for screening of applicants for enrollment in conformity and compliance with the requirements of 42 C.F.R. Part

455, Subparts B and E.

(d) In adopting rules under this section, the executive commissioner shall adopt rules as authorized by and in conformity with 42 C.F.R. Section 455.470 for the imposition of a temporary moratorium on enrollment of new providers, or to impose numerical caps or other limits on the enrollment of providers, that the commission or the commission's office of inspector general determines have a significant potential for fraud, waste, or abuse.

(e) The commission may reinstate a provider's enrollment under the medical assistance program or grant a person's previously denied application to enroll as a provider, including a person described by Subsection (b-1), if the commission finds:

(1) good cause to determine that it is in the best interest of the medical assistance program; and

(2) the person has not committed an act that would require revocation of a provider's enrollment or denial of a person's application to enroll since the person's enrollment was revoked or application was denied, as appropriate.

(f) The commission must support a determination made under Subsection (e) with written findings of good cause for the determination.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 2.04(a), eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 28, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 10, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.108, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.83, eff. April 1, 2025.

Sec. 32.033. SUBROGATION. (a) The filing of an application for or receipt of medical assistance constitutes an assignment of the applicant's or recipient's right of recovery from:

(1) personal insurance;

(2) other sources; or

(3) another person for personal injury caused by the other person's negligence or wrong.

(b) A person who applies for or receives medical assistance shall inform the commission, at the time of application or at any time during eligibility and receipt of services, of any unsettled tort claim which may affect medical needs and of any private accident or sickness insurance coverage that is or may become available. A recipient shall inform the commission of any injury requiring medical attention that is caused by the act or failure to act of some other person. An applicant or a recipient shall inform the commission as required by this subsection within 60 days of the date the person learns of his or her insurance coverage, tort claim, or potential cause of action. An applicant or recipient who knowingly and intentionally fails to disclose the information required by this subsection commits a Class C misdemeanor.

(c) A claim for damages for personal injury does not constitute grounds for denying or discontinuing assistance under this chapter.

(d) A separate and distinct cause of action in favor of the state is hereby created, and the commission may, without written consent, take direct civil action in any court of competent jurisdiction. A suit brought under this section need not be ancillary to or dependent upon any other action.

(e) The commission's right of recovery is limited to the amount of the cost of medical care services paid by the commission. Other subrogation rights granted under this section are limited to the cost of the services provided.

(f) The executive commissioner may waive the commission's right of recovery in whole or in part when the executive commissioner finds that enforcement would tend to defeat the purpose of public assistance.

(g) The commission may designate an agent to collect funds the commission has a right to recover from third parties under this section. The commission shall use any funds collected to pay costs of administering the medical assistance program.

(h) The executive commissioner may adopt rules for the enforcement of the commission's right of recovery.

Acts 1979, 66th Leg., p. 2352, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979. Amended by Acts 1979, 66th Leg., p. 2436, ch. 842, art. 2, Sec. 10, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.109, eff. April 2, 2015.

Sec. 32.034. CONTRACT CANCELLATION; NOTICE AND HEARING. (a) The commission has authority to adjudicate claims of contested cases in accordance with Chapter 2001, Government Code. When the commission intends to cancel its contract or impose monetary penalties under a contract with a person providing medical assistance, the commission shall give reasonable notice and an opportunity for hearing if one is requested. The executive commissioner shall adopt rules consistent with Chapter 2001, Government Code, to implement this section, and hearings under this section are contested cases under that act.

(b) The commission may not terminate a contract during the pendency of a hearing under this section. The commission may withhold payments during the pendency of a hearing, but the commission shall pay the withheld payments and resume contract payments if the final determination is favorable to the contractor. The commission's authority to withhold payments shall be established by contract.

(c) The section does not apply if federal matching funds are not available to pay the facility whose contract is being cancelled. If federal matching funds cannot be used, no state funds may be used to pay the facility.

Acts 1979, 66th Leg., p. 2352, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 2.02, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.22, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1159, Sec. 2.03, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.110, eff. April 2, 2015.

Sec. 32.035. APPEALS. The provisions of Section 31.034 governing the right of appeal of an applicant for or recipient of financial assistance authorized under Chapter 31 also apply to applicants for medical assistance authorized in this chapter.

Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.111, eff. April 2, 2015.

Sec. 32.036. PROGRAM PAYMENTS NONASSIGNABLE AND EXEMPT FROM LEGAL PROCESS. (a) Neither medical assistance nor payments to providers of medical assistance under this chapter are transferable or assignable at law or in equity.

(b) No money paid or payable under the provisions of this chapter is subject to execution, levy, attachment, garnishment, or any other legal process, or the operation of any insolvency law.

(c) This section does not apply to the extent that it conflicts with the Social Security Act (42 U.S.C. Section 1396a(a)(32)).

Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 216, Sec. 1, eff. May 23, 1997.

Sec. 32.038. COLLECTION OF INSURANCE PAYMENTS. (a) The commission may receive directly from an insurance company any payments to which the commission is entitled under Section 1204.153, Insurance Code.

(b) The executive commissioner shall adopt rules to implement this section, including rules establishing procedures relating to:

(1) notification to the commission that a child receiving benefits under Chapter 31 or this chapter is covered by an insurance policy under which the commission is eligible to receive direct payments;

(2) claims made by the commission to receive payments under Subsection (a);

(3) notification to the commission of any change in the status of the child or the parent; and

(4) notification to the insurance company that the commission is to receive payments under Subsection (a).

(c) Commission rules relating to the notice prescribed by Subsection (b)(4) must require the notice to be attached to the claim for insurance benefits when the claim is first submitted to the insurance company.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 2.03, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.128, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.112, eff. April 2, 2015.

Sec. 32.0381. ICF-IID PAYMENT RATES. (a) The executive commissioner shall set the payment rates for ICF-IID facilities at least annually.

(b) The executive commissioner shall adopt by rule the methodology used by the executive commissioner in setting payment rates for ICF-IID facilities. The methodology shall clearly define the procedures and methods used in projecting the costs of economic and efficient facilities and the procedures and methods used in setting payment rates that reasonably reimburse facilities at each level of care and in each class of providers, including size categories.

(c) The executive commissioner shall ensure that the methodology used in projecting costs and setting payment rates and its implementation is the same for state-operated ICF-IID facilities and for private ICF-IID facilities. Methods used to project costs, including those involving the handling of gifts, grants, and donations, upper limits on facility and administrative costs, occupancy adjustments, and in assessing the cost impact of new or revised requirements, must be the same for state-operated and private facilities.

(d) To the extent allowed by federal law, any differences in methodology or its implementation between state-operated facilities and private facilities must be stated explicitly in the rule, must be related to actual differences in the nature of the expenses incurred

by the class of providers, including size categories, and must not favor state-operated facilities in setting payment rates. When the proposed rule or amendments to the rule are published for public comment, the executive commissioner must certify that any differences in methodology between classes of providers, including size categories, are necessitated by cost structure and will not favor state-operated facilities in the setting of payment rates.

Added by Acts 1989, 71st Leg., ch. 1141, Sec. 11(a), eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.112, eff. April 2, 2015.

Sec. 32.039. DAMAGES AND PENALTIES. (a) In this section:

(1) "Claim" means an application for payment of health care services under Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.) that is submitted by a person who is under a contract or provider agreement with the commission.

(1-a) "Inducement" includes a service, cash in any amount, entertainment, or any item of value.

(2) "Managed care organization" means any entity or person that is authorized or otherwise permitted by law to arrange for or provide a managed care plan.

(3) "Managed care plan" means a plan under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include a plan that indemnifies a person for the cost of health care services through insurance.

(4) A person "should know" or "should have known" information to be false if the person acts in deliberate ignorance of the truth or falsity of the information or in reckless disregard of the truth or falsity of the information, and proof of the person's specific intent to defraud is not required.

(b) A person commits a violation if the person:

(1) presents or causes to be presented to the commission a

claim that contains a statement or representation the person knows or should know to be false;

(1-a) engages in conduct that violates Section 102.001, Occupations Code;

(1-b) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-c) solicits or receives, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-d) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the medical assistance program, provided that this subdivision does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(1-e) offers or pays, directly or indirectly, overtly or covertly any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the medical assistance program;

(1-f) provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by this section or Section 102.001, Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being

influenced in a decision regarding:

(A) selection of a provider or receipt of a good or service under the medical assistance program;

(B) the use of goods or services provided under the medical assistance program; or

(C) the inclusion or exclusion of goods or services available under the medical assistance program;

(2) is a managed care organization that contracts with the commission to provide or arrange to provide health care benefits or services to individuals eligible for medical assistance and:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract with the commission;

(B) fails to provide to the commission information required to be provided by law, commission rule, or contractual provision;

(C) engages in a fraudulent activity in connection with the enrollment in the organization's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance; or

(D) engages in actions that indicate a pattern of:

(i) wrongful denial of payment for a health care benefit or service that the organization is required to provide under the contract with the commission; or

(ii) wrongful delay of at least 45 days or a longer period specified in the contract with the commission, not to exceed 60 days, in making payment for a health care benefit or service that the organization is required to provide under the contract with the commission; or

(3) fails to maintain documentation to support a claim for payment in accordance with the requirements specified by commission rule or medical assistance program policy or engages in any other conduct that a commission rule has defined as a violation of the medical assistance program.

(b-1) A person who commits a violation described by Subsection (b)(3) is liable to the commission for either the amount paid in response to the claim for payment or the payment of an administrative penalty in an amount not to exceed $500 for each violation, as determined by the commission.

(c) A person who commits a violation under Subsection (b) is liable to the commission for:

(1) the amount paid, if any, as a result of the violation and interest on that amount determined at the rate provided by law for legal judgments and accruing from the date on which the payment was made; and

(2) payment of an administrative penalty of an amount not to exceed twice the amount paid, if any, as a result of the violation, plus an amount:

(A) not less than $5,000 or more than $15,000 for each violation that results in injury to an elderly person, as defined by Section 48.002(a)(1), a person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or

(B) not more than $10,000 for each violation that does not result in injury to a person described by Paragraph (A).

(d) Unless the provider submitted information to the commission for use in preparing a voucher that the provider knew or should have known was false or failed to correct information that the provider knew or should have known was false when provided an opportunity to do so, this section does not apply to a claim based on the voucher if the commission calculated and printed the amount of the claim on the voucher and then submitted the voucher to the provider for the provider's signature. In addition, the provider's signature on the voucher does not constitute fraud. The executive commissioner shall adopt rules that establish a grace period during which errors contained in a voucher prepared by the commission may be corrected without penalty to the provider.

(e) In determining the amount of the penalty to be assessed under Subsection (c)(2), the commission shall consider:

(1) the seriousness of the violation;

(2) whether the person had previously committed a violation; and

(3) the amount necessary to deter the person from committing future violations.

(f) If after an examination of the facts the commission concludes that the person committed a violation, the commission may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed and recommending the amount of the proposed penalty.

(g) The commission shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the alleged violation, the amount of the penalty, or both the alleged violation and the amount of the penalty.

(h) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice, the person may either give the commission written consent to the report, including the recommended penalty, or make a written request for an informal review by the commission.

(i) If the person charged with committing the violation consents to the penalty recommended by the commission or fails to timely request an informal review, the commission shall assess the penalty. The commission shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) If the person charged with committing the violation requests an informal review as provided by Subsection (h), the commission shall conduct the review. The commission shall give the person written notice of the results of the review.

(k) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (j), the person may make to the commission a written request for a hearing. The hearing must be conducted in accordance with Chapter 2001, Government Code.

(l) If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the commission shall assess the penalty. The commission shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(m) Within 30 days after the date on which the commission's order issued after a hearing under Subsection (k) becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(n) A person who acts under Subsection (m)(3) within the 30-day period may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive commissioner by certified mail.

(o) If the executive commissioner receives a copy of an affidavit under Subsection (n)(2), the executive commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(p) If the person charged does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may forward the matter to the attorney general for enforcement of the penalty and interest as provided by law for legal judgments. An action to enforce a penalty order under this section must be initiated in a court of competent jurisdiction in Travis County or in the county in which the violation was committed.

(q) Judicial review of a commission order or review under this section assessing a penalty is under the substantial evidence rule. A suit may be initiated by filing a petition with a district court in

Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(r) If a penalty is reduced or not assessed, the commission shall remit to the person the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commission under this subsection shall be paid at a rate equal to the rate provided by law for legal judgments and shall be paid for the period beginning on the date the penalty is paid to the commission under this section and ending on the date the penalty is remitted.

(s) A damage, cost, or penalty collected under this section is not an allowable expense in a claim or cost report that is or could be used to determine a rate or payment under the medical assistance program.

(t) All funds collected under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

(u) Except as provided by Subsection (w), a person found liable for a violation under Subsection (c) that resulted in injury to an elderly person, as defined by Section 48.002(a)(1), a person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of 10 years. The executive commissioner by rule may provide for a period of ineligibility longer than 10 years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final.

(v) Except as provided by Subsection (w), a person found liable for a violation under Subsection (c) that did not result in injury to an elderly person, as defined by Section 48.002(a)(1), a person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age may not provide or arrange to provide health care services under the medical assistance program for a period of three years. The executive commissioner by rule may provide for a period of ineligibility longer than three years. The period of ineligibility begins on the date on which the determination that the person is liable becomes final.

(w) The executive commissioner by rule may prescribe criteria under which a person described by Subsection (u) or (v) is not prohibited from providing or arranging to provide health care

services under the medical assistance program. The criteria may include consideration of:

(1) the person's knowledge of the violation;

(2) the likelihood that education provided to the person would be sufficient to prevent future violations;

(3) the potential impact on availability of services in the community served by the person; and

(4) any other reasonable factor identified by the executive commissioner.

(x) Subsections (b)(1-b) through (1-f) do not prohibit a person from engaging in:

(1) generally accepted business practices, as determined by commission rule, including:

(A) conducting a marketing campaign;

(B) providing token items of minimal value that advertise the person's trade name; and

(C) providing complimentary refreshments at an informational meeting promoting the person's goods or services;

(2) the provision of a value-added service if the person is a managed care organization; or

(3) other conduct specifically authorized by law, including conduct authorized by federal safe harbor regulations (42 C.F.R. Section 1001.952).

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 2.04, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1153, Sec. 3.01(a), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 12, Sec. 1, 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 257, Sec. 4, 5, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. 1694), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.16, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 29, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.113, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.114, eff.

April 2, 2015.

Sec. 32.0391. CRIMINAL OFFENSE. (a) A person commits an offense if the person intentionally or knowingly commits a violation under Section 32.039(b)(1-b), (1-c), (1-d), (1-e), or (1-f).

(b) An offense under this section is a state jail felony.

(c) If conduct constituting an offense under this section also constitutes an offense under another provision of law, including a provision in the Penal Code, the person may be prosecuted under either this section or the other provision.

(d) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

Added by Acts 2003, 78th Leg., ch. 257, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. 1694), Sec. 3, eff. September 1, 2007.

Sec. 32.040. IDENTIFICATION OF HUSBAND OR ALLEGED FATHER. (a) A woman receiving medical assistance in the form of prenatal care, child delivery care, and obstetrical care related to prenatal care and child delivery care shall identify her husband, or, if unmarried, shall provide the name and last known address of the alleged father of the unborn child.

(b) If the woman receiving medical assistance is under 18 years of age and resides with one or both parents, the parents shall cooperate in identifying the husband or the alleged father.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 37, eff. Jan. 1, 1990.

Sec. 32.0421. ADMINISTRATIVE PENALTY FOR FAILURE TO PROVIDE INFORMATION. (a) The commission may impose an administrative penalty on a person who does not comply with a request for information made under Section 32.0424(a).

(b) The amount of the penalty may not exceed $10,000 for each

day of noncompliance that occurs after the 180th day after the date of the request. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commission to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

(e) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 88, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.116, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1098 (S.B. 1342), Sec. 2, eff. September 1, 2023.

Sec. 32.0422. HEALTH INSURANCE PREMIUM PAYMENT REIMBURSEMENT PROGRAM FOR MEDICAL ASSISTANCE RECIPIENTS. (a) In this section, "group health benefit plan" means a plan described by Section 1207.001, Insurance Code.

(b) The commission shall identify individuals, otherwise entitled to medical assistance, who are eligible to enroll in a group health benefit plan. The commission must include individuals eligible for or receiving health care services under a Medicaid managed care delivery system.

(b-1) To assist the commission in identifying individuals

described by Subsection (b):

(1) the commission shall include on an application for medical assistance and on a form for recertification of a recipient's eligibility for medical assistance:

(A) an inquiry regarding whether the applicant or recipient, as applicable, is eligible to enroll in a group health benefit plan; and

(B) a statement informing the applicant or recipient, as applicable, that reimbursements for required premiums and cost-sharing obligations under the group health benefit plan may be available to the applicant or recipient; and

(2) not later than the 15th day of each month, the office of the attorney general shall provide to the commission the name, address, and social security number of each newly hired employee reported to the state directory of new hires operated under Chapter 234, Family Code, during the previous calendar month.

(c) The commission shall require an individual requesting medical assistance or a recipient, during the recipient's eligibility recertification review, to provide information as necessary relating to any group health benefit plan that is available to the individual or recipient through an employer of the individual or recipient or an employer of the individual's or recipient's spouse or parent to assist the commission in making the determination required by Subsection (d).

(d) For an individual identified under Subsection (b), the commission shall determine whether it is cost-effective to enroll the individual in the group health benefit plan under this section.

(e) If the commission determines that it is cost-effective to enroll the individual in the group health benefit plan, the commission shall:

(1) require the individual to apply to enroll in the group health benefit plan as a condition for eligibility under the medical assistance program; and

(2) provide written notice to the issuer of the group health benefit plan in accordance with Chapter 1207, Insurance Code.

(e-1) This subsection applies only to an individual who is identified under Subsection (b) as being eligible to enroll in a group health benefit plan offered by an employer. If the commission determines under Subsection (d) that enrolling the individual in the group health benefit plan is not cost-effective, but the individual

prefers to enroll in that plan instead of receiving benefits and services under the medical assistance program, the commission, if authorized by a waiver obtained under federal law, shall:

(1) allow the individual to voluntarily opt out of receiving services through the medical assistance program and enroll in the group health benefit plan;

(2) consider that individual to be a recipient of medical assistance; and

(3) provide written notice to the issuer of the group health benefit plan in accordance with Chapter 1207, Insurance Code.

(f) Except as provided by Subsection (f-1), the commission shall provide for payment of:

(1) the employee's share of required premiums for coverage of an individual enrolled in the group health benefit plan; and

(2) any deductible, copayment, coinsurance, or other cost-sharing obligation imposed on the enrolled individual for an item or service otherwise covered under the medical assistance program.

(f-1) For an individual described by Subsection (e-1) who enrolls in a group health benefit plan, the commission shall provide for payment of the employee's share of the required premiums, except that if the employee's share of the required premiums exceeds the total estimated Medicaid costs for the individual, as determined by the executive commissioner, the individual shall pay the difference between the required premiums and those estimated costs. The individual shall also pay all deductibles, copayments, coinsurance, and other cost-sharing obligations imposed on the individual under the group health benefit plan.

(g) A payment made by the commission under Subsection (f) or (f-1) is considered to be a payment for medical assistance.

(h) A payment of a premium for an individual who is a member of the family of an individual enrolled in a group health benefit plan under Subsection (e) and who is not eligible for medical assistance is considered to be a payment for medical assistance for an eligible individual if:

(1) enrollment of the family members who are eligible for medical assistance is not possible under the plan without also enrolling members who are not eligible; and

(2) the commission determines it to be cost-effective.

(i) A payment of any deductible, copayment, coinsurance, or other cost-sharing obligation of a family member who is enrolled in a

group health benefit plan in accordance with Subsection (h) and who is not eligible for medical assistance:

(1) may not be paid under this chapter; and

(2) is not considered to be a payment for medical assistance for an eligible individual.

(i-1) The commission shall make every effort to expedite payments made under this section, including by ensuring that those payments are made through electronic transfers of money to the recipient's account at a financial institution, if possible. In lieu of reimbursing the individual enrolled in the group health benefit plan for required premium or cost-sharing payments made by the individual, the commission may, if feasible:

(1) make payments under this section for required premiums directly to the employer providing the group health benefit plan in which an individual is enrolled; or

(2) make payments under this section for required premiums and cost-sharing obligations directly to the group health benefit plan issuer.

(j) The commission shall treat coverage under the group health benefit plan as a third party liability to the program. Subject to Subsection (j-1), enrollment of an individual in a group health benefit plan under this section does not affect the individual's eligibility for medical assistance benefits, except that the state is entitled to payment under Sections 32.033 and 32.038.

(j-1) An individual described by Subsection (e-1) who enrolls in a group health benefit plan is not ineligible for home and community-based services provided under a Section 1915(c) waiver program or another federal home and community-based services waiver program solely based on the individual's enrollment in the group health benefit plan, and the individual may receive those services if the individual is otherwise eligible for the program. The individual is otherwise limited to the health benefits coverage provided under the health benefit plan in which the individual is enrolled, and the individual may not receive any benefits or services under the medical assistance program other than the premium payment as provided by Subsection (f-1) and, if applicable, waiver program services described by this subsection.

(k) Repealed by Acts 2015, 84th Leg., R.S., Ch. 945 , Sec. 13(2), eff. September 1, 2015.

(l) The commission, in consultation with the Texas Department

of Insurance, shall provide training to agents who hold a general life, accident, and health license under Chapter 4054, Insurance Code, regarding the health insurance premium payment reimbursement program and the eligibility requirements for participation in the program. Participation in a training program established under this subsection is voluntary, and a general life, accident, and health agent who successfully completes the training is entitled to receive continuing education credit under Subchapter B, Chapter 4004, Insurance Code, in accordance with rules adopted by the commissioner of insurance.

(m) The commission may pay a referral fee, in an amount determined by the commission, to each general life, accident, and health agent who, after completion of the training program established under Subsection (l), successfully refers an eligible individual to the commission for enrollment in a group health benefit plan under this section.

(n) The commission shall develop procedures by which an individual described by Subsection (e-1) who enrolls in a group health benefit plan may, at the individual's option, resume receiving benefits and services under the medical assistance program instead of the group health benefit plan.

(o) The commission shall develop procedures which ensure that, prior to allowing an individual described by Subsection (e-1) to enroll in a group health benefit plan or allowing the parent or caretaker of an individual described by Subsection (e-1) under the age of 21 to enroll that child in a group health benefit plan:

(1) the individual must receive counseling informing them that for the period in which the individual is enrolled in the group health benefit plan:

(A) the individual shall be limited to the health benefits coverage provided under the health benefit plan in which the individual is enrolled;

(B) the individual may not receive any benefits or services under the medical assistance program other than the premium payment as provided by Subsection (f-1);

(C) the individual shall pay the difference between the required premiums and the premium payment as provided by Subsection (f-1) and shall also pay all deductibles, copayments, coinsurance, and other cost-sharing obligations imposed on the individual under the group health benefit plan; and

(D) the individual may, at the individual's option through procedures developed by the commission, resume receiving benefits and services under the medical assistance program instead of the group health benefit plan; and

(2) the individual must sign and the commission shall retain a copy of a waiver indicating the individual has provided informed consent.

(p) The executive commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1165, Sec. 2, eff. Aug. 31, 2001.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.07(b), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.129, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.130, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 18, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.117, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 945 (S.B. 207), Sec. 13(2), eff. September 1, 2015.

Sec. 32.0423. RECOVERY OF REIMBURSEMENTS FROM HEALTH COVERAGE PROVIDERS. To the extent allowed by federal law, a health care service provider must seek reimbursement from available third-party health coverage or insurance that the provider knows about or should know about before billing the medical assistance program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.106(a), eff. Sept. 1, 2003.

Sec. 32.0424. REQUIREMENTS OF THIRD-PARTY HEALTH INSURERS. (a) A third-party health insurer shall provide to the commission or the commission's designee, on the commission's or the commission's designee's request, information in a form prescribed by the executive commissioner necessary to determine:

(1) the period during which an individual entitled to medical assistance, the individual's spouse, or the individual's dependents may be, or may have been, covered by coverage issued by the health insurer;

(2) the nature of the coverage; and

(3) the name, address, and identifying number of the health plan under which the person may be, or may have been, covered.

(b) A third-party health insurer shall accept the state's right of recovery and the assignment under Section 32.033 to the state of any right of an individual or other entity to payment from the third-party health insurer for an item or service for which payment was made under the medical assistance program, including a waiver program established under the medical assistance program.

(b-1) Except as provided by Subsection (b-2), for an item or service provided to an individual entitled to medical assistance that was previously paid for by the commission or the commission's designee and for which a third-party health insurer is responsible for payment, the third-party health insurer shall accept authorization provided by the commission or the commission's designee that the item or service is covered under the medical assistance program as if that authorization is a prior authorization made by the third-party health insurer for the item or service.

(b-2) Subsection (b-1) does not apply to a third-party health insurer with respect to providing:

(1) hospital insurance benefits or supplementary insurance benefits under Part A or B of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq. or 1395j et seq.);

(2) a health care prepayment plan under Section 1833(a)(1)(A), Social Security Act (42 U.S.C. Section 1395l(a)(1)(A));

(3) a Medicare Advantage plan under Part C of Title XVIII of the Social Security Act (42 U.S.C. Section 1395w-21 et seq.);

(4) a prescription drug plan as a prescription drug plan sponsor under Part D of Title XVIII of the Social Security Act (42 U.S.C. Section 1395w-101 et seq.); or

(5) a reasonable cost reimbursement plan under Section 1876, Social Security Act (42 U.S.C. Section 1395mm).

(c) Not later than the 60th day after the date a third-party health insurer receives an inquiry from the commission or the commission's designee regarding a claim for payment for any health

care item or service submitted to the insurer not later than the third year after the date the health care item or service was provided, the insurer shall respond to the inquiry.

(d) A third-party health insurer may not deny a claim submitted by the commission or the commission's designee for which payment was made under the medical assistance program solely on the basis of the date of submission of the claim, the type or format of the claim form, a failure to present proper documentation at the point of service that is the basis of the claim, or, for a responsible third-party health insurer, other than an insurer described by Subsection (b-2), a failure to obtain prior authorization for the item or service for which the claim is being submitted, if:

(1) the claim is submitted by the commission or the commission's designee not later than the third anniversary of the date the item or service was provided; and

(2) any action by the commission or the commission's designee to enforce the state's rights with respect to the claim is commenced not later than the sixth anniversary of the date the commission or the commission's designee submits the claim.

(e) In this section, "third-party health insurer" means a health insurer or other person or arrangement that is legally responsible by state or federal law or private agreement to pay some or all claims for health care items or services provided to an individual. The term includes:

(1) a self-insured plan;

(2) a group health plan as defined by Section 607 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1167);

(3) a service benefit plan;

(4) a managed care organization; and

(5) a pharmacy benefit manager.

Added by Acts 2009, 81st Leg., R.S., Ch. 745 (S.B. 531), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.118, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1098 (S.B. 1342), Sec. 3, eff. September 1, 2023.

Sec. 32.04242. PAYOR OF LAST RESORT. The executive commissioner shall adopt rules to ensure, to the extent allowed by federal law, that the Medicaid program:

(1) is the payor of last resort; and

(2) provides reimbursement for services, including long-term care services, only if, and to the extent, other adequate public or private sources of payment are not available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 821 (H.B. 2722), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.119, eff. April 2, 2015.

Sec. 32.0425. REIMBURSEMENT FOR WHEELED MOBILITY SYSTEMS. (a) In this section:

(1) "Qualified rehabilitation professional" means a person who:

(A) holds a certification as an assistive technology professional or a rehabilitation engineering technologist issued by, and is in good standing with, the Rehabilitation Engineering and Assistive Technology Society of North America, provided that the requirements for that certification are at least as stringent as the requirements in effect on January 1, 2009; or

(B) is otherwise qualified to conduct the professional activities of a person who holds a certification described by Paragraph (A), as determined by rules adopted by the executive commissioner.

(2) "Wheeled mobility system" means an item of durable medical equipment that is a customized powered or manual mobility device or a feature or component of the device, including the following features and components:

(A) seated positioning components;

(B) powered or manual seating options;

(C) specialty driving controls;

(D) multiple adjustment frame;

(E) nonstandard performance options; and

(F) other complex or specialized components.

(b) The commission may provide medical assistance reimbursement

for the provision of, or the performance of a major modification to, a wheeled mobility system only if:

(1) the system is delivered to a recipient by a medical assistance provider that is, or directly employs or contracts with, a qualified rehabilitation professional and that professional was present and involved in any clinical assessment of the recipient that is required for obtaining the system; and

(2) at the time the wheeled mobility system is delivered to the recipient, the qualified rehabilitation professional:

(A) is present for and directs a fitting to ensure that the system is appropriate for the recipient; and

(B) verifies that the system functions relative to the recipient.

(c) The executive commissioner shall adopt rules specifying:

(1) the scope, including any required components, of the fitting and verification of functionality required by Subsection (b);

(2) documentation of the fitting and verification of functionality that must be submitted as part of a claim for reimbursement for the provision or modification of a wheeled mobility system; and

(3) the appropriate reimbursement methodology for compensating the evaluation and final fitting services provided by qualified rehabilitation professionals involved in the provision or modification of wheeled mobility systems.

Added by Acts 2009, 81st Leg., R.S., Ch. 832 (S.B. 1804), Sec. 1, eff. September 1, 2009.
Redesignated from Human Resources Code, Section 32.0424 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(32), eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.120, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.121, eff. April 2, 2015.

Sec. 32.043. PROCUREMENT RULES FOR PUBLIC DISPROPORTIONATE SHARE HOSPITALS. (a) A public hospital that is designated as a disproportionate share hospital during a fiscal year may acquire

goods and services in accordance with this section during the succeeding fiscal year. A procurement of goods or services made in accordance with this section is considered to satisfy any state law requiring purchases by competitive bidding or competitive proposals.

(b) The public hospital shall acquire goods or services by any procurement method approved by the commission that provides the best value to the public hospital. The public hospital shall document that it considered all relevant factors under Subsection (c) in making the acquisition.

(c) The public hospital may consider all relevant factors in determining the best value, including:

(1) any installation costs;

(2) the delivery terms;

(3) the quality and reliability of the vendor's goods or services;

(4) the extent to which the goods or services meet the public hospital's needs;

(5) indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience and responsibility, and the vendor's ability to provide reliable maintenance agreements;

(6) the impact on the ability of the public hospital to comply with laws and rules relating to historically underutilized businesses or relating to the procurement of goods and services from persons with disabilities;

(7) the total long-term cost to the public hospital of acquiring the vendor's goods or services;

(8) the cost of any employee training associated with the acquisition;

(9) the effect of an acquisition on the public hospital's productivity;

(10) the acquisition price; and

(11) any other factor relevant to determining the best value for the public hospital in the context of a particular acquisition.

(d) The state auditor or the commission may audit the public hospital's acquisitions of goods and services to the extent that state money or federal money appropriated by the state is used to acquire the goods and services.

(e) The public hospital may adopt rules and procedures for the acquisition of goods and services under this section.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.122, eff. April 2, 2015.

Sec. 32.044. GROUP PURCHASING FOR DISPROPORTIONATE SHARE HOSPITALS. (a) A public or private hospital that is designated as a disproportionate share hospital during a fiscal year may purchase goods and services in accordance with this section during the succeeding fiscal year. A purchase of goods or services made in accordance with this section is considered to satisfy any state law requiring purchases by competitive bidding or competitive proposals.

(b) A state or local governmental entity may allow the public or private hospital to purchase goods or services by participating in one or more of the entity's contracts for the purchase of goods or services.

(c) The public or private hospital may purchase goods or services in accordance with this section through a group purchasing program that offers discount prices to hospitals or other providers of health care services.

(d) The executive commissioner with the assistance of the comptroller shall adopt rules under this section that allow the public or private hospital to make purchases through group purchasing programs except when the commission has reason to believe that a better value is available through another procurement method.

(e) This section applies to private hospitals only to the extent it authorizes private hospitals to participate in purchasing contracts with governmental entities or to satisfy any state law that may require goods and services the hospital purchases to be competitively procured. This section does not impose new purchasing requirements on a private hospital, except to the extent that the private hospital agrees to be bound by the terms of a contract that is authorized by this section and that it chooses to enter. This section does not affect any explicit or implicit authority that a private hospital has under other law to participate in a group purchasing program or to participate in a purchasing contract with a

public entity.

Added by Acts 1997, 75th Leg., ch. 1045, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.95, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.123, eff. April 2, 2015.

Sec. 32.045. ENHANCED REIMBURSEMENT. The commission shall develop a procedure for:

(1) identifying each service provided under the medical assistance program for which the state is eligible to receive enhanced reimbursement of costs from the federal government; and

(2) ensuring that the state seeks the highest level of federal reimbursement available for each service provided.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.04(a), eff. June 20, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Sec. 32.046. SANCTIONS AND PENALTIES RELATED TO THE PROVISION OF PHARMACY PRODUCTS.

Text of subsection effective until April 1, 2025

(a) The executive commissioner shall adopt rules governing sanctions and penalties that apply to a provider who participates in the vendor drug program or is enrolled as a network pharmacy provider of a managed care organization contracting with the commission under Chapter 533, Government Code, or its subcontractor and who submits an improper claim for reimbursement under the program.

Text of subsection effective on April 1, 2025

(a) The executive commissioner shall adopt rules governing sanctions and penalties that apply to a provider who participates in the vendor drug program or is enrolled as a network pharmacy provider of a managed care organization contracting with the commission under

Chapter 540, Government Code, or its subcontractor and who submits an improper claim for reimbursement under the program.

(b) The commission shall notify each provider in the vendor drug program that the provider is subject to sanctions and penalties for submitting an improper claim.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 3.02, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.02(k), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.84, eff. April 1, 2025.

Sec. 32.0461. VENDOR DRUG PROGRAM; COMPETITIVE BIDDING. (a) The commission shall seek competitive bids for the claims processing function of the vendor drug program.

(b) The commission shall require any person seeking to contract for services under this section to comply with competitive bidding procedures adopted by the executive commissioner.

(c) The commission may award a contract under this section to another person only if the commission determines that the provision of services under that contract would be more cost-effective and the time to process claims under the contract would be the same as or faster than having employees of the commission continue to process claims.

(d) The commission may consult with the comptroller in administering this section.

Added by Acts 1999, 76th Leg., ch. 103, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 24 (S.B. 706), Sec. 4, eff. September 1, 2017.

Sec. 32.0462. VENDOR DRUG PROGRAM; PRICING STANDARD. (a)

Notwithstanding any other provision of state law, the commission shall:

(1) consider a nationally recognized, unbiased pricing standard for prescription drugs in determining reimbursement amounts under the vendor drug program; and

(2) update reimbursement amounts under the vendor drug program at least weekly.

(b) The executive commissioner shall adopt rules implementing this section. In adopting rules, the executive commissioner shall ensure that implementation of this section does not adversely affect the amount of federal funds available to the state for providing benefits under the vendor drug program.

Added by Acts 2003, 78th Leg., ch. 1251, Sec. 10, eff. June 20, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Sec. 32.0463. MEDICATIONS AND MEDICAL SUPPLIES. The executive commissioner may adopt rules establishing procedures for the purchase and distribution of medically necessary, over-the-counter medications and medical supplies under the medical assistance program that were previously being provided by prescription if the executive commissioner determines it is more cost-effective than obtaining those medications and medical supplies through a prescription.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.107(a), eff. Sept. 1, 2003.
Renumbered from Human Resources Code, Section 32.0462 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(58), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Sec. 32.047. PROHIBITION OF CERTAIN HEALTH CARE SERVICE PROVIDERS. (a) A person is permanently prohibited from providing or arranging to provide health care services under the medical assistance program if:

(1) the person is convicted of an offense arising from a fraudulent act under the program; and

(2) the person's fraudulent act results in injury to an elderly person, as defined by Section 48.002(a)(1), a person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age.

(b) The executive commissioner shall adopt rules for prohibiting a person from participating in the medical assistance program as a health care provider for a reasonable period, as determined by the executive commissioner, if the person:

(1) fails to repay overpayments under the program; or

(2) owns, controls, manages, or is otherwise affiliated with and has financial, managerial, or administrative influence over a provider who has been suspended or prohibited from participating in the program.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 3.03, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 30, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Sec. 32.048. MANAGED CARE INFORMATION AND TRAINING PLAN. (a) Subject to the availability of funds, the commission shall develop a comprehensive plan to provide information and training about the requirements of a managed care plan to recipients of medical assistance, providers of medical assistance, local health and human services agencies, and other interested parties in each service area in which the commission provides medical assistance through a managed care plan.

(b) The commission shall include in the comprehensive plan:

(1) information and training at regular intervals determined by the commission; and

(2) performance measures to evaluate the effectiveness of the information and training.

(c) In developing the comprehensive plan, the commission shall consult with the Medicaid medical care advisory committee.

Added by Acts 1997, 75th Leg., ch. 618, Sec. 1, eff. June 11, 1997. Renumbered from Sec. 32.043 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(74), eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 23(6), eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(108), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Sec. 32.049. MANAGED CARE CONTRACT COMPLIANCE. (a) The commission shall review each managed care organization that has contracted with the commission to provide medical assistance to medical assistance recipients through a managed care plan issued by the organization to determine whether the organization is prepared to meet its contractual obligations.

(b)(1) The commission shall require each managed care organization that has contracted with the commission to submit an implementation plan not later than the 90th day before the date on which the managed care organization plans to begin to provide medical assistance through a managed care plan in a service area. The implementation plan must include:

(A) specific staffing patterns by function for all operations, including enrollment, information systems, member services, quality improvement, claims management, case management, and provider and enrollee training; and

(B) specific time frames for demonstrating preparedness for implementation before the date on which the managed care organization plans to begin to provide medical assistance through a managed care plan in a service area.

(2) The commission shall respond within 10 working days if the implementation plan does not adequately meet preparedness guidelines.

(3) The commission shall require each managed care organization that has contracted with the commission to submit status reports on the implementation plan not later than the 60th day and the 30th day before the date on which the managed care organization plans to begin to provide medical assistance through a managed care

plan in a service area and every 30th day after the managed care organization begins to provide medical assistance through a managed care plan in a service area until the 180th day of operations.

(c) The commission shall conduct a compliance and readiness review of each managed care organization that contracts with the state not later than the 15th day before the date on which the process of enrolling recipients in a managed care plan issued by the managed care organization is to begin in a service area and again not later than the 15th day before the date on which the managed care organization plans to begin to provide medical assistance through a managed care plan in that service area. The review shall include an on-site inspection and tests of service authorization and claims payment systems, complaint processing systems, and any other process or system required by the contract.

(d) The commission may delay enrollment of medical assistance recipients in a managed care plan if the review reveals that the managed care organization is not prepared to meet its contractual obligations.

Added by Acts 1997, 75th Leg., ch. 692, Sec. 1, eff. June 17, 1997.
Renumbered from Sec. 32.043 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(75), eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.124, eff. April 2, 2015.

Sec. 32.050. DUAL MEDICAID AND MEDICARE COVERAGE. (a) At least annually the commission shall identify each individual receiving medical assistance under the medical assistance program who is eligible to receive similar assistance under the Medicare program.

(b) The commission shall analyze claims submitted for payment for a service provided under the medical assistance program to an individual identified under Subsection (a) to ensure that payment is sought first under the Medicare program to the extent allowed by law.

(c) For an ambulance service provided to an individual who is eligible under the medical assistance program and Medicare, the medical assistance program shall pay the Medicare deductibles and coinsurance.

(d) Except as provided by Subsection (e), a nursing facility, a

home health services provider, or any other similar long-term care services provider that is Medicare-certified and provides care to individuals who are eligible for Medicare must:

(1) seek reimbursement from Medicare before billing the medical assistance program for services provided to an individual identified under Subsection (a); and

(2) as directed by the commission, appeal Medicare claim denials for payment services provided to an individual identified under Subsection (a).

(e) A home health services provider is not required to seek reimbursement from Medicare before billing the medical assistance program for services provided to a person who is eligible for Medicare and who:

(1) has been determined as not being homebound; or

(2) meets other criteria determined by the executive commissioner.

(f) Repealed by Acts 2005, 79th Leg., Ch. 1067, Sec. 1, eff. June 18, 2005.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.03(a), eff. June 20, 1997. Amended by Acts 1999, 76th Leg., ch. 710, Sec. 1. Renumbered from Sec. 32.043 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(76), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.108, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1067 (H.B. 1502), Sec. 1, eff. June 18, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.125, eff. April 2, 2015.

Sec. 32.051. MISDIRECTED BILLING. To the extent authorized by federal law, the commission shall develop a procedure for the state to:

(1) match claims for payment for medical assistance provided under the medical assistance program against data available from other entities, including the United States Department of Veterans Affairs and nursing facilities, to determine alternative responsibility for payment of the claims; and

(2) ensure that the appropriate entity bears the cost of a

claim.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 1.03(a), eff. June 20, 1997. Renumbered from Sec. 32.044 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(77), eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.126, eff. April 2, 2015.

Sec. 32.052. WAIVER PROGRAMS FOR CHILDREN WITH DISABILITIES OR SPECIAL HEALTH CARE NEEDS. (a) This section applies to services under the medical assistance program provided to children younger than 23 years of age with disabilities or special health care needs under a waiver granted under Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n(c)).

(b) In this section, "permanency planning" means a philosophy and planning process designed to achieve family support through the facilitation of a permanent living arrangement that has as its primary feature an enduring and nurturing parental relationship.

(c) In developing and providing services subject to this section, the commission shall:

(1) fully assess a child at the time the child applies for assistance to determine all appropriate services for the child under the medical assistance program, including both waiver and nonwaiver services;

(2) ensure that permanency planning is implemented to identify and establish the family support necessary to maintain a child's permanent living arrangement with a family;

(3) implement a transition and referral process to prevent breaks in services when a child is leaving a medical assistance waiver program or moving between service delivery systems due to a change in the child's disability status or needs, aging out of the current delivery system, or moving between geographic areas within the state;

(4) identify and provide core services addressing a child's developmental needs and the needs of the child's family to strengthen and maintain the child's family;

(5) provide for comprehensive coordination and use of available services and resources in a manner that ensures support for

families in keeping their children at home;

(6) ensure that eligibility requirements, assessments for service needs, and other components of service delivery are designed to be fair and equitable for all families, including families with parents who work outside the home; and

(7) provide for a broad array of service options and a reasonable choice of service providers.

(d) To ensure that services subject to this section are cost neutral and not duplicative of other services provided under the medical assistance program, the commission shall coordinate the provision of services subject to this section with services provided under the Texas Health Steps Comprehensive Care Program.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(41), eff. April 2, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(41), eff. April 2, 2015.

Added by Acts 1999, 76th Leg., ch. 1012, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.127, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(41), eff. April 2, 2015.

Sec. 32.053. PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE). (a) The commission, as an integral part of the medical assistance program, shall develop and implement a program of all-inclusive care for the elderly (PACE) in accordance with Section 4802 of the Balanced Budget Act of 1997 (Pub. L. No. 105-33), as amended. The commission shall provide medical assistance to a participant in the PACE program in the manner and to the extent authorized by federal law.

Text of subsection effective until April 1, 2025

(b) The executive commissioner shall adopt rules as necessary to implement this section. In adopting rules, the executive commissioner shall:

(1) use the Bienvivir Senior Health Services of El Paso initiative as a model for the program;

(2) ensure that a person is not required to hold a

certificate of authority as a health maintenance organization under Chapter 843, Insurance Code, to provide services under the PACE program;

(3) ensure that participation in the PACE program is available as an alternative to enrollment in a Medicaid managed care plan under Chapter 533, Government Code, for eligible recipients, including recipients eligible for assistance under both the medical assistance and Medicare programs;

(4) ensure that managed care organizations that contract under Chapter 533, Government Code, consider the availability of the PACE program when considering whether to refer a recipient to a nursing facility or other long-term care facility; and

(5) establish protocols for the referral of eligible persons to the PACE program.

Text of subsection effective on April 1, 2025

(b) The executive commissioner shall adopt rules as necessary to implement this section. In adopting rules, the executive commissioner shall:

(1) use the Bienvivir Senior Health Services of El Paso initiative as a model for the program;

(2) ensure that a person is not required to hold a certificate of authority as a health maintenance organization under Chapter 843, Insurance Code, to provide services under the PACE program;

(3) ensure that participation in the PACE program is available as an alternative to enrollment in a Medicaid managed care plan under Chapter 540, Government Code, for eligible recipients, including recipients eligible for assistance under both the medical assistance and Medicare programs;

(4) ensure that managed care organizations that contract under Chapter 540, Government Code, consider the availability of the PACE program when considering whether to refer a recipient to a nursing facility or other long-term care facility; and

(5) establish protocols for the referral of eligible persons to the PACE program.

(c) The commission may not contract with a person to provide services under the PACE program unless the person:

(1) purchases reinsurance in an amount determined by the commission that is sufficient to ensure the person's continued solvency; or

(2) has the financial resources sufficient to cover expenses in the event of the person's insolvency.

(d) To demonstrate sufficiency of financial resources for purposes of Subsection (c)(2), a person may use cash reserves, a letter of credit, a guarantee of a company affiliated with the person, or a combination of those arrangements. The amount of a person's financial arrangement must be at least equal to the sum of:

(1) the total capitation revenue for one month; and

(2) the average monthly payment of operating expenses.

(e) The Department of Aging and Disability Services and area agencies on aging shall develop and implement a coordinated plan to promote PACE program sites operating under this section. The executive commissioner shall adopt policies and procedures, including operating guidelines, to ensure that caseworkers and any other appropriate department staff discuss the benefits of participating in the PACE program with long-term care clients.

(f) The commission shall consider the PACE program as a community-based service option under any "Money Follows the Person" demonstration project or other initiative that is designed to eliminate barriers or mechanisms that prevent or restrict the flexible use of funds under the medical assistance program to enable a recipient to receive long-term services or supports in a setting of the recipient's choice.

(g) A PACE program site may coordinate with entities that are eligible to obtain discount prescription drug prices under Section 340B, Public Health Service Act (42 U.S.C. Section 256b), as necessary to enable the PACE program site to obtain those discounts.

(h) The executive commissioner shall adopt a standard reimbursement methodology for the payment of all PACE organizations for purposes of encouraging a natural increase in the number of PACE program sites throughout the state.

(i) To the extent allowed by the General Appropriations Act, the commission may transfer general revenue funds appropriated to the commission for the medical assistance program to the Department of Aging and Disability Services to provide PACE services in PACE program service areas to eligible recipients whose medical assistance benefits would otherwise be delivered as home and community-based services through the STAR + PLUS Medicaid managed care program and whose personal incomes are at or below the level of income required to receive Supplemental Security Income (SSI) benefits under 42

U.S.C. Section 1381 et seq.

Added by Acts 2001, 77th Leg., ch. 170, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1168 (H.B. 2903), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1310 (S.B. 7), Sec. 6.08, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.128, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.85, eff. April 1, 2025.

Sec. 32.0531. PACE PROGRAM TEAM. (a) The Department of Aging and Disability Services shall establish a PACE program team composed of experienced personnel. The team is responsible for:

(1) increasing public attention and awareness of the availability of PACE program sites;

(2) increasing the number of PACE program sites operating in this state; and

(3) serving as a liaison with the state and federal agencies responsible for administering the PACE program, participants in the program, and PACE program sites.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1168 (H.B. 2903), Sec. 2, eff. September 1, 2011.

Sec. 32.0532. PACE PROGRAM REIMBURSEMENT METHODOLOGY. (a) In this section and Sections 32.0533 and 32.0534, "PACE program" means the program of all-inclusive care for the elderly (PACE) established under Section 32.053.

(b) In setting the reimbursement rates under the PACE program, the executive commissioner shall ensure that:

(1) reimbursement rates for providers under the program are adequate to sustain the program; and

(2) the program is cost-neutral or costs less when compared to the cost to serve a population in the STAR + PLUS Medicaid managed care program that is comparable in:

(A) age;

(B) eligibility factors, including:
(i) income level;
(ii) health status; and
(iii) impairment level;
(C) geographic location;
(D) living environment; and
(E) other factors determined to be necessary.

(c) For purposes of Subsection (b)(2), the commission shall consider data on the cost of services provided to comparable recipients enrolled in the STAR + PLUS Medicaid managed care program to calculate the upper payment limit component of the PACE program reimbursement rates. The cost of those services includes the Medicaid capitation payment per recipient and Medicaid payments made on a fee-for-service basis for services not covered by the capitation payment.

Added by Acts 2015, 84th Leg., R.S., Ch. 823 (H.B. 3823), Sec. 1, eff. June 17, 2015.

Sec. 32.0533. DATA COLLECTION: PACE AND STAR + PLUS MEDICAID MANAGED CARE PROGRAMS. The commission, in collaboration with the Department of Aging and Disability Services and appropriate stakeholder groups, shall modify the methods by which the commission and the department collect data for evaluation of the PACE and STAR + PLUS Medicaid managed care programs to allow comparison of recipient outcomes between the programs. The modification to data collection methods must include changes to:

(1) survey instruments that measure recipient experience;

(2) compilation of the same or similar complaint, disenrollment, and appeals data; and

(3) compilation of the same or similar hospital admissions and readmissions data.

Added by Acts 2015, 84th Leg., R.S., Ch. 823 (H.B. 3823), Sec. 1, eff. June 17, 2015.

Sec. 32.054. DENTAL SERVICES. (a) For purposes of this section, the "dental necessity" for a dental service or product is based on whether a prudent dentist, acting in accordance with

generally accepted practices of the professional dental community and within the American Dental Association's Parameters of Care for Dentistry and within the quality assurance criteria of the American Academy of Pediatric Dentistry, as applicable, would provide the service or product to a patient to diagnose, prevent, or treat orofacial pain, infection, disease, dysfunction, or disfiguration.

(b) A dental service or product may not be provided under the medical assistance program unless there is a dental necessity for the service or product.

(c) In providing dental services under the medical assistance program, the commission shall:

(1) ensure that a stainless steel crown is not used as a preventive measure;

(2) require a dentist participating in the medical assistance program to document, through x-rays or other methods established by commission rule, the dental necessity for a stainless steel crown before the crown is applied;

(3) require a dentist participating in the medical assistance program to comply with a minimum standard of documentation and recordkeeping for each of the dentist's patients, regardless of whether the patient's costs are paid privately or through the medical assistance program;

(4) replace the 15-point system used for determining the dental necessity for hospitalization and general anesthesia with a more objective and comprehensive system developed by the commission; and

(5) take all necessary action to eliminate unlawful acts described by Section 36.002 in the provision of dental services under the medical assistance program, including:

(A) aggressively investigating and prosecuting any dentist who abuses the system for reimbursement under the medical assistance program; and

(B) conducting targeted audits of dentists whose billing activities under the medical assistance program are excessive or otherwise inconsistent with the billing activities of other similarly situated dentists.

(d) In setting reimbursement rates for dental services under the medical assistance program, the executive commissioner shall:

(1) provide for reimbursement of a behavior management fee only if:

(A) the patient receiving dental treatment has been previously diagnosed with an intellectual or developmental disability or a mental disability or disorder, and extraordinary behavior management techniques are necessary for therapeutic dental treatment because of the patient's uncooperative behavior; and

(B) the dentist includes in the patient's records and on the claim form for reimbursement a narrative description of:

(i) the specific behavior problem demonstrated by the patient that required the use of behavior management techniques;

(ii) the dentist's initial efforts to manage the patient's behavior through routine behavior management techniques; and

(iii) the dentist's extraordinary behavior management techniques subsequently required to manage the patient's behavior; and

(2) redistribute amounts made available through limitation of the behavior management fee under Subdivision (1) to other commonly billed dental services for which adequate accountability measures exist.

(e) The commission shall develop the minimum standard described by Subsection (c)(3) in cooperation with the State Board of Dental Examiners.

(f) To prevent serious medical conditions and reduce emergency room visits necessitated by complications resulting from a lack of access to dental care, the commission shall provide medical assistance reimbursement for preventive dental services, including reimbursement for one preventive dental care visit per year, for an adult recipient with a disability who is enrolled in the STAR+PLUS Medicaid managed care program. This subsection does not apply to an adult recipient who is enrolled in the STAR+PLUS home and community-based services (HCBS) waiver program. This subsection may not be construed to reduce dental services available to persons with disabilities that are otherwise reimbursable under the medical assistance program.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 1.01, eff. Sept. 1, 2001. Renumbered from Human Resources Code Sec. 32.053 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(98), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.129, eff.

April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 820 (H.B. 2658), Sec. 6, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 954 (S.B. 1648), Sec. 6, eff. September 1, 2021.

Sec. 32.055. CATASTROPHIC CASE MANAGEMENT. (a) The commission shall develop and implement a catastrophic case management system to be used in providing medical assistance to persons with catastrophic health problems.

(b) The system must provide for the assignment of a case manager to a recipient of medical assistance with catastrophic health problems that are likely to:

(1) require the services of multiple, specialized health care providers; and

(2) result in major medical costs.

(c) The commission shall identify the services to be provided by a case manager assigned under the system. The services must include assessment of the recipient's needs and coordination of all available medical services and payment options. The services may include other support services such as:

(1) assistance with making arrangements to receive care from medical facilities;

(2) assistance with travel and lodging in connection with receipt of medical care;

(3) education of the recipient and the recipient's family members regarding the nature of the recipient's health problems;

(4) referral to appropriate support groups; and

(5) any other service likely to result in better care provided in a cost-effective manner.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(109), eff. June 17, 2011.

Added by Acts 2001, 77th Leg., ch. 408, Sec. 1, eff. Sept. 1, 2001.
Renumbered from Human Resources Code Sec. 32.053 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(99), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 23(7), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(109), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.130, eff. April 2, 2015.

Sec. 32.0551. OPTIMIZATION OF CASE MANAGEMENT SYSTEMS. The commission shall:

(1) create and coordinate staffing and other administrative efficiencies for case management initiatives across the commission and health and human services agencies; and

(2) optimize federal funding revenue sources and maximize the use of state funding resources for case management initiatives across the commission and health and human services agencies.

Added by Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 8(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.131, eff. April 2, 2015.

Sec. 32.056. COMPLIANCE WITH TEXAS HEALTH STEPS COMPREHENSIVE CARE PROGRAM. The executive commissioner by rule shall develop procedures to ensure that recipients of medical assistance who are eligible for Texas Health Steps Comprehensive Care Program comply with the regimen of care prescribed by the program.

Added by Acts 2001, 77th Leg., ch. 584, Sec. 5, eff. Jan. 1, 2002.
Renumbered from Human Resources Code Sec. 32.053 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(100), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.131, eff. April 2, 2015.

Sec. 32.0561. MATERNAL DEPRESSION SCREENING. (a) In this section, "maternal depression" means depression of any severity with postpartum onset.

(b) The commission shall provide medical assistance reimbursement for a maternal depression screening for a recipient's

mother, regardless of whether the mother is also a recipient, that is performed during a covered examination for the recipient under the Texas Health Steps Comprehensive Care Program that occurs before the recipient's first birthday.

(c) The executive commissioner shall adopt rules necessary to implement this section. The rules must be based on:

(1) clinical and empirical evidence concerning maternal depression; and

(2) information provided by relevant physicians and behavioral health organizations.

(d) The commission shall seek, accept, and spend any federal funds that are available for the purposes of this section, including priority funding authorized by Section 317L-1 of the Public Health Service Act (42 U.S.C. Section 201 et seq.), as added by the 21st Century Cures Act (Pub. L. No. 114-255).

Added by Acts 2017, 85th Leg., R.S., Ch. 852 (H.B. 2466), Sec. 3, eff. September 1, 2017.

Sec. 32.057. CONTRACTS FOR DISEASE MANAGEMENT PROGRAMS. (a) The commission shall request contract proposals from providers of disease management programs to provide program services to recipients of medical assistance who:

(1) have a disease or other chronic health condition, such as heart disease, hemophilia, chronic kidney disease and its medical complications, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, that the commission determines is a disease or condition that needs disease management; and

(2) are not eligible to receive those services under a Medicaid managed care plan.

(b) The commission may contract with a public or private entity to:

(1) write the requests for proposals;

(2) determine how savings will be measured;

(3) identify populations that need disease management;

(4) develop appropriate contracts; and

(5) assist the commission in:

(A) developing the content of disease management programs; and

(B) obtaining funding for those programs.

(c) The executive commissioner by rule shall prescribe the minimum requirements a provider of a disease management program must meet to be eligible to receive a contract under this section. The provider must, at a minimum, be required to:

(1) use disease management approaches that are based on evidence-supported models, standards of care in the medical community, and clinical outcomes; and

(2) ensure that a recipient's primary care physician and other appropriate specialty physicians, or registered nurses, advanced practice nurses, or physician assistants specified and directed or supervised in accordance with applicable law by the recipient's primary care physician or other appropriate specialty physicians, become directly involved in the disease management program through which the recipient receives services.

Text of subsection effective until April 1, 2025

(c-1) A managed care health plan that develops and implements a disease management program under Section 533.009, Government Code, and a provider of a disease management program under this section shall coordinate during a transition period beneficiary care for patients that move from one disease management program to another program.

Text of subsection effective on April 1, 2025

(c-1) A managed care health plan that develops and implements a disease management program under Section 540.0708, Government Code, and a provider of a disease management program under this section shall coordinate during a transition period beneficiary care for patients that move from one disease management program to another program.

(d) The commission may not award a contract for a disease management program under this section unless the contract includes a written guarantee of state savings on expenditures for the group of medical assistance recipients covered by the program.

(e) The commission may enter into a contract under this section with a comprehensive hemophilia diagnostic treatment center that receives funding through a maternal and child health services block grant under Section 501(a)(2), Social Security Act (42 U.S.C. Section 701(a)(2)), and the center shall be considered a disease management provider.

(f) Directly or through a provider of a disease management program that enters into a contract with the commission under this section, the commission shall, as appropriate and to the extent possible without cost to the state:

(1) identify recipients of medical assistance under this chapter or, at the discretion of the commission, enrollees in the child health plan under Chapter 62, Health and Safety Code, who are eligible to participate in federally funded disease management research programs operated by research-based disease management providers; and

(2) assist and refer eligible persons identified by the commission under Subdivision (1) to participate in the research programs described by Subdivision (1).

Added by Acts 2003, 78th Leg., ch. 208, Sec. 1, eff. June 16, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 19(b), eff. September 1, 2005.

Renumbered from Human Resources Code, Section 32.059 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(59), eff. September 1, 2005.

Amended by:

Acts 2005, 79th Leg., Ch. 1047 (H.B. 1252), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.132, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.86, eff. April 1, 2025.

Sec. 32.058. LIMITATION ON MEDICAL ASSISTANCE IN CERTAIN ALTERNATIVE COMMUNITY-BASED CARE SETTINGS. (a) In this section:

(1) "Department" means the Department of Aging and Disability Services.

(2) "Medical assistance waiver program" means a program operated by the Department of Aging and Disability Services, other than the Texas home living waiver program, that provides services under a waiver granted in accordance with 42 U.S.C. Section 1396n(c).

(b) Except as provided by Subsection (c), (d), (e), or (f), the department may not provide services under a medical assistance waiver

program to a person if the projected cost of providing those services over a 12-month period exceeds the individual cost limit specified in the medical assistance waiver program.

(c) The department shall continue to provide services under a medical assistance waiver program to a person who was receiving those services on September 1, 2005, at a cost that exceeded the individual cost limit specified in the medical assistance waiver program, if continuation of those services:

(1) is necessary for the person to live in the most integrated setting appropriate to the needs of the person; and

(2) does not affect the department's compliance with the federal average per capita expenditure requirement of the medical assistance waiver program under 42 U.S.C. Section 1396n(c)(2)(D).

(d) The department may continue to provide services under a medical assistance waiver program, other than the home and community-based services program, to a person who is ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if:

(1) the projected cost of providing those services to the person under the medical assistance waiver program over a 12-month period does not exceed 133.3 percent of the individual cost limit specified in the medical assistance waiver program; and

(2) continuation of those services does not affect the department's compliance with the federal average per capita expenditure requirement of the medical assistance waiver program under 42 U.S.C. Section 1396n(c)(2)(D).

(e) The department may exempt a person from the cost limit established under Subsection (d)(1) for a medical assistance waiver program if the department determines that:

(1) the person's health and safety cannot be protected by the services provided within the cost limit established for the program under that subdivision; and

(2) there is no available living arrangement, other than one provided through the program or another medical assistance waiver program, in which the person's health and safety can be protected, as evidenced by:

(A) an assessment conducted by clinical staff of the department; and

(B) supporting documentation, including the person's medical and service records.

(f) The department may continue to provide services under the home and community-based services program to a person who is ineligible to receive those services under Subsection (b) and to whom Subsection (c) does not apply if the department makes, with regard to the person's receipt of services under the home and community-based services program, the same determinations required by Subsections (e)(1) and (2) in the same manner provided by Subsection (e) and determines that continuation of those services does not affect:

(1) the department's compliance with the federal average per capita expenditure requirement of the home and community-based services program under 42 U.S.C. Section 1396n(c)(2)(D); and

(2) any cost-effectiveness requirements provided by the General Appropriations Act that limit expenditures for the home and community-based services program.

(g) The executive commissioner may adopt rules to implement Subsections (d), (e), and (f).

(h) If a federal agency determines that compliance with any provision in this section would make this state ineligible to receive federal funds to administer a program to which this section applies, a state agency may, but is not required to, implement that provision.

Added by Acts 2005, 79th Leg., Ch. 317 (S.B. 626), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 19(a), eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.133, eff. April 2, 2015.

Sec. 32.059. USE OF RESPIRATORY THERAPISTS FOR RESPIRATORY THERAPY SERVICES. The executive commissioner by rule shall require that respiratory therapy services for ventilator-dependent persons furnished as part of a plan of care under this chapter be provided by a respiratory care practitioner authorized to practice respiratory care under Chapter 604, Occupations Code, when:

(1) respiratory therapy is determined by the recipient's treating physician to be the most effective method of treatment; and

(2) the use of a respiratory care practitioner is practicable and cost-neutral or cost-effective.

Acts 2003, 78th Leg., ch. 1167, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.134, eff. April 2, 2015.

Sec. 32.061. COMMUNITY ATTENDANT SERVICES PROGRAM. (a) Any home and community-based services that the commission provides under Section 1929, Social Security Act (42 U.S.C. Section 1396t) and its subsequent amendments to functionally disabled individuals who have income that exceeds the limit established by federal law for Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.) and its subsequent amendments shall be provided through the community attendant services program.

(b) In determining an applicant's eligibility for home and community-based services described by Subsection (a), the commission shall exclude $20 of unearned or earned income from the applicant's monthly income.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.110, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 1(a), eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.135, eff. April 2, 2015.

Sec. 32.062. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NURSING INSTITUTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the Department of Aging and Disability Services that an institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; or

(2) the fact of the assessment of a monetary penalty against an institution under Section 32.021 or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is

a party.

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident and the particular individual whose personal injury is the basis of the claim being brought in the civil action; or

(B) a finding by the Department of Aging and Disability Services that directly involves substantially similar conduct that occurred at the institution within a period of one year before the particular incident that is the basis of the claim being brought in the civil action;

(2) the evidence of a material violation has been affirmed by the entry of a final adjudicated and unappealable order of the Department of Aging and Disability Services after formal appeal; and

(3) the record is otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2003, 78th Leg., ch. 204, Sec. 16.01, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1120 (H.B. 1218), Sec. 3, eff. September 1, 2009.
Redesignated from Human Resources Code, Section 32.060 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(33), eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.136, eff. April 2, 2015.

Sec. 32.063. THIRD-PARTY BILLING VENDORS. (a) A third-party billing vendor may not submit a claim with the commission for reimbursement on behalf of a provider of medical services under the medical assistance program unless the vendor has entered into a contract with the commission authorizing that activity.

(b) To the extent practical, the contract shall contain

provisions comparable to the provisions contained in contracts between the commission and providers of medical services, with an emphasis on provisions designed to prevent fraud or abuse under the medical assistance program. At a minimum, the contract must require the third-party billing vendor to:

(1) provide documentation of the vendor's authority to bill on behalf of each provider for whom the vendor submits claims;

(2) submit a claim in a manner that permits the commission to identify and verify the vendor, any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim; and

(3) subject to any confidentiality requirements imposed by federal law, provide the commission, the office of the attorney general, or authorized representatives with:

(A) access to any records maintained by the vendor, including original records and records maintained by the vendor on behalf of a provider, relevant to an audit or investigation of the vendor's services or another function of the commission or office of the attorney general relating to the vendor; and

(B) if requested, copies of any records described by Paragraph (A) at no charge to the commission, the office of the attorney general, or authorized representatives.

(c) On receipt of a claim submitted by a third-party billing vendor, the commission shall send a remittance notice directly to the provider referenced in the claim. The notice must:

(1) include detailed information regarding the claim submitted on behalf of the provider; and

(2) require the provider to review the claim for accuracy and notify the commission promptly regarding any errors.

(d) The commission shall take all action necessary, including any modifications of the commission's claims processing system, to enable the commission to identify and verify a third-party billing vendor submitting a claim for reimbursement under the medical assistance program, including identification and verification of any computer or telephone line used in submitting the claim, any relevant user password used in submitting the claim, and any provider number referenced in the claim.

(e) The commission shall audit each third-party billing vendor subject to this section at least annually to prevent fraud and abuse

under the medical assistance program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.111(a), eff. Jan. 1, 2004.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.137, eff. April 2, 2015.

Sec. 32.064. COST SHARING.

Text of subsection effective until April 1, 2025

(a) To the extent permitted under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, and any other applicable law or regulations, the executive commissioner shall adopt provisions requiring recipients of medical assistance to share the cost of medical assistance, including provisions requiring recipients to pay:

(1) an enrollment fee;

(2) a deductible; or

(3) coinsurance or a portion of the plan premium, if the recipients receive medical assistance under the Medicaid managed care program under Chapter 533, Government Code.

Text of subsection effective on April 1, 2025

(a) To the extent permitted under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, and any other applicable law or regulations, the executive commissioner shall adopt provisions requiring recipients of medical assistance to share the cost of medical assistance, including provisions requiring recipients to pay:

(1) an enrollment fee;

(2) a deductible; or

(3) coinsurance or a portion of the plan premium, if the recipients receive medical assistance under the Medicaid managed care program under Chapter 540 or 540A, Government Code, as applicable.

(b) Subject to Subsection (d), cost-sharing provisions adopted under this section shall ensure that families with higher levels of income are required to pay progressively higher percentages of the cost of the medical assistance.

(c) If cost-sharing provisions imposed under Subsection (a)

include requirements that recipients pay a portion of the plan premium, the commission shall specify the manner in which the premium is paid. The commission may require that the premium be paid to the commission, an agency operating part of the medical assistance program, or the Medicaid managed care plan.

(d) Cost-sharing provisions adopted under this section may be determined based on the maximum level authorized under federal law and applied to income levels in a manner that minimizes administrative costs.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.112(a), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.138, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.87, eff. April 1, 2025.

Sec. 32.0641. RECIPIENT ACCOUNTABILITY PROVISIONS; COST-SHARING REQUIREMENT TO IMPROVE APPROPRIATE UTILIZATION OF SERVICES. (a) To the extent permitted under and in a manner that is consistent with Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.) and any other applicable law or regulation or under a federal waiver or other authorization, the executive commissioner shall adopt cost-sharing provisions that encourage personal accountability and appropriate utilization of health care services, including a cost-sharing provision applicable to a recipient who chooses to receive a nonemergency medical service through a hospital emergency room.

(b) The commission may not seek a federal waiver or other authorization under this section that would:

(1) prevent a Medicaid recipient who has a condition requiring emergency medical services from receiving care through a hospital emergency room; or

(2) waive any provision under Section 1867, Social Security Act (42 U.S.C. Section 1395dd).

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 20, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.09(b),

eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.139, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.37, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.34, eff. January 1, 2016.

Sec. 32.067. DELIVERY OF COMPREHENSIVE CARE SERVICES TO CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) In this section, "certified agency" and "home health service" have the meanings assigned by Section 142.001, Health and Safety Code.

(b) The commission shall assure that any agency licensed to provide home health services under Chapter 142, Health and Safety Code, and not only a certified agency licensed under that chapter, may provide home health services to individuals enrolled in the Texas Health Steps Comprehensive Care Program.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.204, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.140, eff. April 2, 2015.

Sec. 32.068. IN-PERSON EVALUATION REQUIRED FOR CERTAIN SERVICES. (a) A medical assistance provider may order or otherwise authorize the provision of home health services for a recipient only if the provider has conducted an in-person evaluation of the recipient within the 12-month period preceding the date the order or other authorization was issued.

(b) A physician, physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse-midwife that orders or otherwise authorizes the provision of durable medical equipment for a recipient in accordance with Chapter 157, Occupations Code, and other applicable law, including rules, must certify on the order or other authorization that the person conducted an in-person evaluation of the recipient within the 12-month period preceding the date the order or other authorization was issued.

(c) The executive commissioner shall adopt rules necessary to implement this section. The executive commissioner may by rule adopt limited exceptions to the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 31, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.141, eff. April 2, 2015.

Sec. 32.069. CHRONIC KIDNEY DISEASE MANAGEMENT INITIATIVE. A provider of disease management programs under Section 32.057 shall develop a program to provide screening for and diagnosis and treatment of chronic kidney disease and its medical complications under the medical assistance program. The program must use generally recognized clinical practice guidelines and laboratory assessments that identify chronic kidney disease on the basis of impaired kidney function or the presence of kidney damage.

Added by Acts 2005, 79th Leg., Ch. 1047 (H.B. 1252), Sec. 3, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.142, eff. April 2, 2015.

Sec. 32.070. AUDITS OF PROVIDERS. (a) In this section, "provider" means an individual, firm, partnership, corporation, agency, association, institution, or other entity that is or was approved by the commission to provide medical assistance under contract or provider agreement with the commission.

(b) The executive commissioner shall adopt rules governing the audit of providers in the medical assistance program.

(c) The rules must:

(1) provide that the agency conducting the audit must notify the provider, and the provider's corporate headquarters, if the provider is a pharmacy that is incorporated, of the impending audit not later than the seventh day before the date the field audit portion of the audit begins;

(2) limit the period covered by an audit to three years;

(3) provide that the agency conducting the audit must accommodate the provider's schedule to the greatest extent possible when scheduling the field audit portion of the audit;

(4) require the agency conducting the audit to conduct an entrance interview before beginning the field audit portion of the audit;

(5) provide that each provider must be audited under the same standards and parameters as other providers of the same type;

(6) provide that the audit must be conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States or other appropriate standards;

(7) require the agency conducting the audit to conduct an exit interview at the close of the field audit portion of the audit with the provider to review the agency's initial findings;

(8) provide that, at the exit interview, the agency conducting the audit shall:

(A) allow the provider to:

(i) respond to questions by the agency;

(ii) comment, if the provider desires, on the initial findings of the agency; and

(iii) correct a questioned cost by providing additional supporting documentation that meets the auditing standards required by Subdivision (6) if there is no indication that the error or omission that resulted in the questioned cost demonstrates intent to commit fraud; and

(B) provide to the provider a preliminary audit report and a copy of any document used to support a proposed adjustment to the provider's cost report;

(9) permit the provider to produce documentation to address any exception found during an audit not later than the 10th day after the date the field audit portion of the audit is completed;

(10) provide that the agency conducting the audit shall deliver a draft audit report to the provider not later than the 60th day after the date the field audit portion of the audit is completed;

(11) permit the provider to submit to the agency conducting the audit a written management response to the draft audit report or to appeal the findings in the draft audit report not later than the 30th day after the date the draft audit report is delivered to the provider;

(12) provide that the agency conducting the audit shall deliver the final audit report to the provider not later than the 180th day after the date the field audit portion of the audit is completed or the date on which a final decision is issued on an appeal made under Subdivision (13), whichever is later; and

(13) establish an ad hoc review panel, composed of providers practicing or doing business in this state appointed by the executive commissioner, to administer an informal process through which:

(A) a provider may obtain an early review of an audit report or an unfavorable audit finding without the need to obtain legal counsel; and

(B) a recommendation to revise or dismiss an unfavorable audit finding that is found to be unsubstantiated may be made by the review panel to the agency, provided that the recommendation is not binding on the agency.

(d) This section does not apply to a computerized audit conducted using the Medicaid Fraud Detection System or an audit or investigation of fraud and abuse conducted by the Medicaid fraud control unit of the office of the attorney general, the office of the state auditor, the office of the inspector general, or the Office of Inspector General in the United States Department of Health and Human Services.

Added by Acts 2005, 79th Leg., Ch. 811 (S.B. 630), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.143, eff. April 2, 2015.

Sec. 32.0705. EXTERNAL AUDITS OF CERTAIN MEDICAID CONTRACTORS BASED ON RISK.

Text of subsection effective until April 1, 2025

(a) In this section, "Medicaid contractor" means an entity that:

(1) is not a health and human services agency as defined by Section 531.001, Government Code; and

(2) under a contract with the commission or otherwise on

behalf of the commission, performs one or more administrative services in relation to the commission's operation of Medicaid, such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims.

Text of subsection effective on April 1, 2025

(a) In this section, "Medicaid contractor" means an entity that:

(1) is not a health and human services agency as defined by Section 521.0001, Government Code; and

(2) under a contract with the commission or otherwise on behalf of the commission, performs one or more administrative services in relation to the commission's operation of Medicaid, such as claims processing, utilization review, client enrollment, provider enrollment, quality monitoring, or payment of claims.

(b) The commission shall contract with an independent auditor to perform annual independent external financial and performance audits of any Medicaid contractor used in the commission's operation of Medicaid. The commission regularly shall review the Medicaid contracts and ensure that:

(1) the frequency and extent of audits of a Medicaid contractor under this section are based on the amount of risk to the state involved in the administrative services being performed by the contractor;

(2) audit procedures related to financial audits and performance audits are used consistently in audits under this section; and

(3) to the extent possible, audits under this section are completed in a timely manner.

(c) If another state agency succeeds to the commission's operation of a part of Medicaid for which the commission used a Medicaid contractor, the successor agency shall comply with this section with regard to the Medicaid contractor, including the requirement to contract with an independent auditor to perform the external financial and performance audits required by this section.

(d) An audit required by this section must be completed before the end of the fiscal year immediately following the fiscal year for which the audit is performed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 1.10, eff. Sept. 1, 1999.

Transferred, redesignated and amended from Health and Safety Code, Section 12.0123 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0016, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.88, eff. April 1, 2025.

Sec. 32.071. RECIPIENT AND PROVIDER EDUCATION. (a) The commission shall develop and implement a comprehensive medical assistance education campaign for recipients and providers to ensure that care is provided in such a way as to improve patient outcomes and maximize cost-effectiveness. The commission shall ensure that educational information developed under this section is demographically relevant and appropriate for each recipient or provider to whom the information is provided.

(b) The comprehensive medical assistance education campaign must include elements designed to encourage recipients to obtain, maintain, and use a medical home and to reduce their use of high-cost emergency department services for conditions that can be treated through primary care or nonemergency physicians or other providers. The campaign must include the dissemination of educational information through newsletters and emergency department staff members and at local health fairs, unless the department determines that these methods of dissemination are not effective in increasing recipients' appropriate use of the health care system.

(c) The commission shall evaluate whether certain risk groups may disproportionately increase their appropriate use of the health care system as a result of targeted elements of an education campaign. If the commission determines that certain risk groups will respond with more appropriate use of the system, the commission shall develop and implement the appropriate targeted educational elements.

(d) The commission shall develop a system for reviewing recipient prescription drug use and educating providers with respect to that drug use in a manner that emphasizes reducing inappropriate prescription drug use and the possibility of adverse drug interactions.

(e) The commission shall coordinate the medical assistance education campaign with area health education centers, federally qualified health centers, as defined by 42 U.S.C. Section

1396d(l)(2)(B), and other stakeholders who use public funds to educate recipients and providers about the health care system in this state. The commission shall make every effort to maximize state funds by working through these partners to maximize receipt of additional federal funding for administrative and other costs.

(f) The commission shall coordinate with other state and local agencies to ensure that community-based health workers, health educators, state eligibility determination employees who work in hospitals and other provider locations, and promoters are used in the medical assistance education campaign, as appropriate.

(g) The commission shall ensure that all state agencies that work with recipients, all administrative persons who provide eligibility determination and enrollment services, and all service providers use the same curriculum for recipient and provider education, as appropriate.

Added by Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 9(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.144, eff. April 2, 2015.

Sec. 32.072. DIRECT ACCESS TO EYE HEALTH CARE SERVICES. (a) Notwithstanding any other law, a recipient of medical assistance is entitled to:

(1) select an ophthalmologist or therapeutic optometrist who is a medical assistance provider to provide eye health care services, other than surgery, that are within the scope of:

(A) services provided under the medical assistance program; and

(B) the professional specialty practice for which the ophthalmologist or therapeutic optometrist is licensed; and

(2) have direct access to the selected ophthalmologist or therapeutic optometrist for the provision of the nonsurgical services without any requirement that the patient or ophthalmologist or therapeutic optometrist obtain:

(A) a referral from a primary care physician or other gatekeeper or health care coordinator; or

(B) any other prior authorization or precertification.

(b) The commission may require an ophthalmologist or therapeutic optometrist selected as provided by this section by a recipient of medical assistance who is otherwise required to have a primary care physician or other gatekeeper or health care coordinator to forward to the recipient's physician, gatekeeper, or health care coordinator information concerning the eye health care services provided to the recipient.

(c) This section may not be construed to expand the scope of eye health care services provided under the medical assistance program.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 21(a), eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.145, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 901 (H.B. 3675), Sec. 1, eff. September 1, 2017.

Sec. 32.073. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a) In this section, "health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, an electronic medical record, a computerized health care provider order entry, electronic prescribing, and clinical decision support technology.

(b) The commission shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the medical assistance program conforms to standards required under federal law.

(c) Not later than the second anniversary of the date national standards for electronic prior authorization of benefits are adopted, the commission shall require a health benefit plan issuer participating in the medical assistance program or the agent of the health benefit plan issuer that manages or administers prescription drug benefits to exchange prior authorization requests electronically with a prescribing provider participating in the medical assistance program who has electronic prescribing capability and who initiates a request electronically.

Added by Acts 2009, 81st Leg., R.S., Ch. 1120 (H.B. 1218), Sec. 4, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 11, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.146, eff. April 2, 2015.

Sec. 32.074. ACCESS TO PERSONAL EMERGENCY RESPONSE SYSTEM. (a) In this section, "personal emergency response system" has the meaning assigned by Section 1702.331, Occupations Code.

(b) The commission shall ensure that each Medicaid recipient enrolled in a home and community-based services waiver program that includes a personal emergency response system as a service has access to a personal emergency response system, if necessary, without regard to the recipient's access to a landline telephone.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.20, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.147, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.021, eff. September 1, 2015.

Sec. 32.075. EMPLOYMENT ASSISTANCE AND SUPPORTED EMPLOYMENT. (a) In this section:

(1) "Employment assistance" means assistance provided to an individual to help the individual locate paid employment in the community. Employment assistance includes:

(A) identifying an individual's employment preferences, job skills, and requirements for a work setting and work conditions;

(B) locating prospective employers offering employment compatible with an individual's identified preferences, skills, and requirements; and

(C) contacting a prospective employer on behalf of an individual and negotiating the individual's employment.

(2) "Supported employment" means assistance provided, in

order to sustain paid employment, to an individual who, because of a disability, requires intensive, ongoing support to be self-employed, work from home, or perform in a work setting at which individuals without disabilities are employed. Supported employment includes adaptations, supervision, and training related to an individual's diagnosis.

(b) This section applies only to the following medical assistance waiver programs:

(1) the community based alternatives program;

(2) the community living assistance and support services program;

(3) the deaf-blind with multiple disabilities program;

(4) the home and community-based services program;

(5) the medically dependent children program;

(6) the STAR + PLUS Medicaid managed care program;

(7) the Texas home living program; and

(8) the youth empowerment services program.

(c) The commission shall provide employment assistance and supported employment to participants in the waiver programs identified in Subsection (b).

Added by Acts 2013, 83rd Leg., R.S., Ch. 506 (S.B. 45), Sec. 1, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.148, eff. April 2, 2015.

Sec. 32.0755. PREVOCATIONAL SERVICES UNDER CERTAIN WAIVER PROGRAMS. (a) In this section, "prevocational services" means services that are designed to prepare an individual for paid or unpaid work and achieve a generalized result rather than being job-task oriented.

(b) Prevocational services provided under the community living assistance and support services (CLASS) waiver program or another medical assistance waiver program providing long-term services or supports to a medical assistance recipient should be designed to assist the recipient in achieving competitive integrated employment in the community receiving compensation at or above the minimum wage in the recipient's community and in accordance with state and federal

law.

(c) The commission shall seek a waiver or other necessary authorization from the appropriate federal agency to include prevocational services as part of the individualized skills and socialization services delivered under a medical assistance waiver program providing long-term services and supports.

(d) If the commission's request for a waiver or other authorization under Subsection (c) is not granted, the commission shall collaborate with relevant stakeholders and applicable federal agencies to establish a service similar to prevocational services in a manner that is authorized by federal law.

(e) If the commission is granted a waiver or other authorization under Subsection (d):

(1) the reimbursement rate for the service the commission establishes under that subsection may not exceed the reimbursement rate for individualized skills and socialization services; and

(2) if the service is combined with individualized skills and socialization services, the commission shall ensure the service may not exceed the total allowable hours or the total costs for individualized skills and socialization services provided under a service plan.

(f) The executive commissioner by rule shall establish clearly stated, service-related performance standards applicable to providers providing prevocational or similar services to recipients under a medical assistance waiver program in accordance with this section. The commission shall monitor the performance of each provider of prevocational or similar services under a medical assistance waiver program to ensure compliance with those standards.

Added by Acts 2023, 88th Leg., R.S., Ch. 872 (H.B. 4169), Sec. 1, eff. June 13, 2023.

Sec. 32.076. SUBSTITUTE DENTISTS. To the extent allowed by federal law, the executive commissioner of the Health and Human Services Commission shall adopt rules ensuring that the same standards applying to a physician who bills the medical assistance program for services provided by a substitute physician apply also to a dentist who bills the medical assistance program for services provided by a substitute dentist.

Added by Acts 2015, 84th Leg., R.S., Ch. 739 (H.B. 1661), Sec. 1, eff. June 17, 2015.

SUBCHAPTER C. MEDICAL ASSISTANCE PROGRAM PROVIDER DATABASE

Sec. 32.101. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1 , Sec. 4.465(a)(43), eff. April 2, 2015.

(2) "Health care provider" means a person, other than a physician, who:

(A) is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a pharmacist, dentist, optometrist, mental health counselor, social worker, advanced practice nurse, physician assistant, or durable medical equipment supplier;

(ii) a pharmacy, hospital, or other institution or organization; or

(iii) a local public health entity;

(B) is wholly owned or controlled by:

(i) a health care provider or a group of health care providers described by Paragraph (A); or

(ii) one or more hospitals and physicians, including a physician-hospital organization;

(C) is a professional association of physicians organized under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code;

(D) is an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(E) is a medical and dental unit, as defined by Section 61.003, Education Code, a medical school, as defined by Section 61.501, Education Code, or a health science center described by Subchapter K, Chapter 74, Education Code, that employs or contracts with physicians to teach or provide medical services, or employs physicians and contracts with physicians in a practice plan; or

(F) is another person wholly owned by physicians.

Text of subdivision effective until April 1, 2025

(3) "Managed care organization" has the meaning assigned by Section 533.001, Government Code.

Text of subdivision effective on April 1, 2025

(3) "Managed care organization" has the meaning assigned by Section 540.0001, Government Code.

Text of subdivision effective until April 1, 2025

(4) "Managed care plan" has the meaning assigned by Section 533.001, Government Code.

Text of subdivision effective on April 1, 2025

(4) "Managed care plan" has the meaning assigned by Section 540.0001, Government Code.

(5) "Participating provider" means a physician or health care provider who is a provider of medical assistance, including a physician or health care provider who contracts or otherwise agrees with a managed care organization to provide medical assistance under this chapter.

(6) "Physician" means an individual licensed to practice medicine in this state.

(7) "Recipient" means a recipient of medical assistance.

Added by Acts 2007, 80th Leg., R.S., Ch. 883 (H.B. 2042), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(43), eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 535 (S.B. 73), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.89, eff. April 1, 2025.

Sec. 32.102. DATABASE OF MEDICAL ASSISTANCE PROGRAM PROVIDERS. (a) The executive commissioner shall establish and administer an electronic, searchable, Internet-based database of all participating providers in the medical assistance program.

(b) The database must include, as applicable, at least the following information regarding each participating provider:

(1) the provider's:

(A) name;

(B) specialty;

(C) location;

(D) office hours, including any office hours outside of regular business hours; and

(E) telephone number;

(2) whether the provider:

(A) is accepting new recipients, and if the provider is accepting new recipients and if applicable, the managed care organization or managed care plan under which new recipients are being accepted;

(B) has any practice limitations, including specific age range limitations; and

(C) speaks any languages other than English;

(3) a list of the medical assistance program services offered by the provider; and

(4) any waiver program or other program within the medical assistance program in which the provider is a participant, including the Texas Health Steps program.

(c) In establishing the database, the executive commissioner shall ensure that the database:

(1) allows a person to search a managed care organization by name and by participating provider within each of the managed care plans offered by that managed care organization;

(2) allows a participating provider to electronically access and change or update the information required by Subsection (b)(1), (2), or (3); and

(3) is available and accessible to each participating provider and each recipient.

(d) The executive commissioner shall ensure that the database is updated continually and at least once a month.

Added by Acts 2007, 80th Leg., R.S., Ch. 883 (H.B. 2042), Sec. 1, eff. June 15, 2007.

Sec. 32.103. CERTAIN FEES PROHIBITED. A person, including the executive commissioner, a person acting under a contract under Section 32.104, or a managed care organization, may not charge a participating provider or a recipient a fee, directly or indirectly, for making information available or for accessing information in the database established under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 883 (H.B. 2042), Sec. 1, eff. June 15, 2007.

Sec. 32.104. AUTHORITY TO CONTRACT. (a) The executive commissioner may contract with a state agency or a private entity for the creation, operation, and maintenance of the database required by this subchapter.

(b) A contract entered into under this section must allow the executive commissioner to oversee and supervise the contractor and the database.

Added by Acts 2007, 80th Leg., R.S., Ch. 883 (H.B. 2042), Sec. 1, eff. June 15, 2007.

Sec. 32.105. RULES. The executive commissioner shall adopt rules to implement and administer this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 883 (H.B. 2042), Sec. 1, eff. June 15, 2007.

SUBCHAPTER E. ELECTRONIC COMMUNICATIONS

Sec. 32.201. DEFINITIONS. In this subchapter:

(1) "Electronic health record" means electronically originated and maintained health and claims information regarding the health status of an individual that may be derived from multiple sources and includes the following core functionalities:

(A) a patient health and claims information or data entry function to aid with medical diagnosis, nursing assessment, medication lists, allergy recognition, demographics, clinical narratives, and test results;

(B) a results management function that may include computerized laboratory test results, diagnostic imaging reports, interventional radiology reports, and automated displays of past and present medical or laboratory test results;

(C) a computerized physician order entry of medication, care orders, and ancillary services;

(D) clinical decision support that may include electronic reminders and prompts to improve prevention, diagnosis, and management; and

(E) electronic communication and connectivity that allows online communication:

(i) among physicians and health care providers; and

(ii) among the commission, the operating agencies, and participating providers.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(44), eff. April 2, 2015.

(3) "Health care provider" means a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state.

(4) "Health information technology" means information technology used to improve the quality, safety, or efficiency of clinical practice, including the core functionalities of an electronic health record, electronic medical record, computerized physician or health care provider order entry, electronic prescribing, and clinical decision support technology.

(5) "Operating agency" means a health and human services agency operating part of the medical assistance program.

(6) "Participating provider" means a physician or health care provider who is a provider of medical assistance, including a physician or health care provider who contracts or otherwise agrees with a managed care organization to provide medical assistance under this chapter.

(7) "Physician" means an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code, or a person that is:

(A) a professional association of physicians formed under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code;

(B) an approved nonprofit health corporation certified under Chapter 162, Occupations Code, that employs or contracts with physicians to provide medical services;

(C) a medical and dental unit, as defined by Section 61.003, Education Code, a medical school, as defined by Section 61.501, Education Code, or a health science center described by Subchapter K, Chapter 74, Education Code, that employs or contracts with physicians to teach or provide medical services, or employs physicians and contracts with physicians in a practice plan; or

(D) a person wholly owned by a person described by Paragraph (A), (B), or (C).

(8) "Recipient" means a recipient of medical assistance.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 22, eff.

September 1, 2007.
Renumbered from Human Resources Code, Section 32.101 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(57), eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.149, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(44), eff. April 2, 2015.

Sec. 32.202. ELECTRONIC COMMUNICATIONS. (a) To the extent allowed by federal law, the executive commissioner may adopt rules allowing the commission to permit, facilitate, and implement the use of health information technology for the medical assistance program to allow for electronic communication among the commission, the operating agencies, and participating providers for:

(1) eligibility, enrollment, verification procedures, and prior authorization for health care services or procedures covered by the medical assistance program, as determined by the executive commissioner, including diagnostic imaging;

(2) the update of practice information by participating providers;

(3) the exchange of recipient health care information, including electronic prescribing and electronic health records;

(4) any document or information requested or required under the medical assistance program by the commission, the operating agencies, or participating providers; and

(5) the enhancement of clinical and drug information available through the vendor drug program to ensure a comprehensive electronic health record for recipients.

(b) If the executive commissioner determines that a need exists for the use of health information technology in the medical assistance program and that the technology is cost-effective, the commission may, for the purposes prescribed by Subsection (a):

(1) acquire and implement the technology; or

(2) evaluate the feasibility of developing and, if feasible, develop the technology through the use or expansion of other systems or technologies the commission uses for other purposes, including the health passport developed under Section 266.006,

Family Code.

(c) The commission:

(1) must ensure that health information technology used under this section complies with the applicable requirements of the Health Insurance Portability and Accountability Act;

(2) may require the health information technology used under this section to include technology to extract and process claims and other information collected, stored, or accessed by the medical assistance program, program contractors, participating providers, and state agencies operating any part of the medical assistance program for the purpose of providing patient information at the location where the patient is receiving care;

(3) must ensure that a paper record or document is not required to be filed if the record or document is permitted or required to be filed or transmitted electronically by rule of the executive commissioner;

(4) may provide for incentives to participating providers to encourage their use of health information technology under this subchapter;

(5) may provide recipients with a method to access their own health information; and

(6) may present recipients with an option to decline having their health information maintained in an electronic format under this subchapter.

(d) The executive commissioner shall consult with participating providers and other interested stakeholders in developing any proposed rules under this section. The executive commissioner shall request advice and information from those stakeholders concerning the proposed rules, including advice regarding the impact of and need for a proposed rule.

Added by Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 22, eff. September 1, 2007.
Renumbered from Human Resources Code, Section 32.102 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(57), eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.150, eff. April 2, 2015.

SUBCHAPTER F. PARTNERSHIP FOR LONG-TERM CARE PROGRAM

Sec. 32.251. DEFINITIONS. In this subchapter:

(1) "Approved plan" means a long-term care benefit plan that is approved by the Texas Department of Insurance under Subchapter C, Chapter 1651, Insurance Code.

(2) "Asset disregard" means the total equity value of assets and resources not exempt under rules governing the medical assistance program that are disregarded in determining eligibility for the medical assistance program and in determining estate recovery obligations.

(3) "Asset protection" means the right extended to a plan holder of an approved plan to dollar-for-dollar asset disregard under the medical assistance program.

(4) "Dollar-for-dollar asset disregard" means an asset disregard in which the amount of the disregard is equal to the sum of qualifying benefit payments made on behalf of the qualified plan holder.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(45), eff. April 2, 2015.

(6) "Partnership for long-term care program" means the program established under this subchapter and Subchapter C, Chapter 1651, Insurance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 2, eff. March 1, 2008.
Renumbered from Human Resources Code, Section 32.101 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(58), eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(45), eff. April 2, 2015.

Sec. 32.252. PARTNERSHIP FOR LONG-TERM CARE PROGRAM. The partnership for long-term care program is administered as part of the medical assistance program by the commission with the assistance of the Texas Department of Insurance. The program must be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 2, eff. March 1, 2008.
Renumbered from Human Resources Code, Section 32.102 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(58), eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.151, eff. April 2, 2015.

Sec. 32.253. ASSET DISREGARD. (a) To the extent allowed by the federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171) and other federal law, the executive commissioner, in adopting rules and standards governing the medical assistance program, shall allow for dollar-for-dollar asset disregard in determining eligibility for medical assistance for an individual receiving long-term care services if the individual is or was covered by a long-term care benefit plan providing coverage for long-term care that meets the applicable minimum benefit standards of the commissioner of the Texas Department of Insurance under Subchapter C, Chapter 1651, Insurance Code, and other requirements for approval under the partnership for long-term care program.

(b) The commission may not consider the resources of an individual who has used all or part of the individual's benefits under an approved plan to the extent those resources are the subject of a dollar-for-dollar asset disregard in determining:

(1) eligibility for medical assistance under the medical assistance program;

(2) the amount of medical assistance provided; or

(3) any subsequent recovery by this state from the individual's estate for medical assistance provided to the individual.

(c) The commission may not provide to an individual eligible for medical assistance under this section those medical assistance services covered under the medical assistance program that are also covered by the individual's benefits under the approved plan until the individual has fully exhausted the individual's benefits under the plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 2, eff.

March 1, 2008.
Renumbered from Human Resources Code, Section 32.103 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(58), eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.152, eff. April 2, 2015.

Sec. 32.254. RECIPROCAL AGREEMENTS. The commission may enter into reciprocal agreements with other states to extend asset protection to a resident of this state who purchased a long-term care benefit plan in another state that has a substantially similar asset disregard program.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 2, eff. March 1, 2008.
Renumbered from Human Resources Code, Section 32.104 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(58), eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.153, eff. April 2, 2015.

Sec. 32.255. TRAINING; INFORMATION AND TECHNICAL ASSISTANCE. The commission shall provide information and technical assistance to the Texas Department of Insurance regarding that department's role in ensuring that each individual who sells a long-term care benefit plan under the partnership for long-term care program receives training and demonstrates evidence of an understanding of these plans as required by Section 1651.105, Insurance Code. The training must satisfy the training requirements imposed under the provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 2, eff. March 1, 2008.
Renumbered from Human Resources Code, Section 32.105 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(58), eff. September

1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.153, eff. April 2, 2015.

Sec. 32.256. RULES. (a) The executive commissioner shall adopt rules as necessary to administer the partnership for long-term care program and to implement this subchapter.

(b) In adopting rules under this section, the executive commissioner shall:

(1) provide for dollar-for-dollar asset disregard and asset protection for purchasers of an approved plan; and

(2) count benefits paid under the approved plan toward the dollar-for-dollar asset disregard to the extent the benefits are provided for covered services under the approved plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 2, eff. March 1, 2008.
Renumbered from Human Resources Code, Section 32.106 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(58), eff. September 1, 2009.

CHAPTER 33. NUTRITIONAL ASSISTANCE PROGRAMS

SUBCHAPTER A. NUTRITIONAL ASSISTANCE PROGRAMS IN GENERAL

Sec. 33.0005. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of agriculture.

(1-a) "Department" means the Department of Agriculture.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Supplemental nutrition assistance program" and "SNAP" mean the program operated pursuant to 7 U.S.C. Section 2011 et seq.

Added by Acts 2007, 80th Leg., R.S., Ch. 963 (H.B. 4062), Sec. 5, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.154, eff. April 2, 2015.

Sec. 33.0006. OPERATION OF SNAP. The commission operates the supplemental nutrition assistance program.

Added by Acts 2007, 80th Leg., R.S., Ch. 963 (H.B. 4062), Sec. 5, eff. June 15, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.154, eff. April 2, 2015.

Sec. 33.001. DISTRIBUTION OF SURPLUS COMMODITIES. (a) The department is the state agency designated to cooperate with the federal government in administering the distribution of federal surplus commodities and other resources.

(b) The department may cooperate with a city or county in any manner necessary for the proper operation of this program.

Acts 1979, 66th Leg., p. 2353, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 33.002. DISTRIBUTION OF COMMODITIES AND SNAP BENEFITS. (a) The department is responsible for the distribution of commodities and the commission is responsible for the distribution of supplemental nutrition assistance program benefits allocated respectively to the department and the commission by the federal government.

(b) The department and commission may enter into agreements with federal agencies that are required as a prerequisite to the allocation of the commodities or supplemental nutrition assistance program benefits. The department and commission may enter into agreements with eleemosynary institutions, schools, and other eligible agencies and recipients of the commodities and supplemental nutrition assistance program benefits. The department may cooperate with a municipality or county as necessary to properly administer the distribution of federal surplus commodities and other resources for which the department is responsible.

(c) The department and the executive commissioner, as applicable, shall establish policies and rules that will ensure the widest and most efficient distribution of the commodities and supplemental nutrition assistance program benefits to those eligible

to receive them.

(c-1) The executive commissioner by rule shall establish a schedule for the distribution of supplemental nutrition assistance program benefits that ensures the even distribution of the benefits each month over a 28-day period.

(d) The commission shall continually monitor the expedited issuance of supplemental nutrition assistance program benefits to ensure that each region in the state complies with federal regulations and that those households eligible for expedited issuance are identified, processed, and certified within the timeframes prescribed within the federal regulations.

(e) The commission shall screen all applicants for expedited issuance of supplemental nutrition assistance program benefits on a priority basis within one working day. Applicants who meet the federal criteria for expedited issuance and have an immediate need for food assistance shall receive those benefits within one working day.

(f) The commission shall conspicuously post in each local supplemental nutrition assistance program benefits office a notice of the availability of and procedure for applying for expedited issuance.

(g) The commission may, within federal limits, modify the one-day screening and service delivery requirements prescribed by Subsection (e) if the commission determines that the modification is necessary to reduce fraud in the supplemental nutrition assistance program.

Acts 1979, 66th Leg., p. 2354, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 150, Sec. 4, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 1052, Sec. 7.01, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 655, Sec. 8.09, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 693, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 963 (H.B. 4062), Sec. 6, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 17, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.155, eff.

April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 173 (H.B. 1218), Sec. 1, eff. May 24, 2019.

Sec. 33.0021. APPLICATION INFORMATION. (a) The commission shall develop general informational materials that contain eligibility guidelines for supplemental nutrition assistance program benefits under this chapter and that clearly and simply explain the process for applying for benefits, as well as indicate the availability of expedited benefits, the existence of toll-free telephone hotlines, and the existence of a procedure in each region to handle complaints. These informational materials shall be nonpromotional in nature.

(b) The materials must contain a list of the specific items necessary to verify an application.

(c) The commission shall distribute the materials to community action agencies, legal services offices, and emergency food programs and other programs likely to have contact with potential applicants.

Added by Acts 1985, 69th Leg., ch. 150, Sec. 5, eff. Aug. 26, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.156, eff. April 2, 2015.

Sec. 33.0023. SNAP INFORMATION MATCHING SYSTEM. (a) To detect and prevent fraud in the supplemental nutrition assistance program, the commission, through the use of a computerized matching system, shall compare at least semiannually commission information relating to supplemental nutrition assistance program benefits transactions and redemptions by benefits recipients and retailers with information obtained from the comptroller and other appropriate state agencies relating to those recipients and retailers.

(b) The commission, the comptroller, and the appropriate agencies shall take all necessary measures to protect the confidentiality of information provided under this section, in compliance with all existing state and federal privacy guidelines.

(c) In this section, "retailer" means a business approved for participation in the supplemental nutrition assistance program.

Added by Acts 1997, 75th Leg., ch. 322, Sec. 3, eff. May 26, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.157, eff. April 2, 2015.

Sec. 33.0024. DISASTER SNAP. (a) In this section, "program" means the program to provide supplemental nutrition assistance benefits to victims of a disaster as authorized by 7 U.S.C. Section 2014.

(b) The commission shall:

(1) in collaboration with local government officials:

(A) create a directory of local points of contact for the operation of the program;

(B) determine the best method for communication between the commission and local government officials regarding the program; and

(C) evaluate, develop, and maintain a list of potential sites for in-person application for program benefits that meet federal requirements;

(2) enter into memorandums of understanding with local government agencies documenting the roles and responsibilities of the commission and each local government agency regarding the determination of the need for and the location of sites for in-person application for program benefits; and

(3) provide information regarding the program and strategies for effective collaboration between local governments and the commission to local government officials in coastal counties by hosting webinars, conducting conference calls, or holding in-person meetings.

Added by Acts 2019, 86th Leg., R.S., Ch. 1117 (H.B. 2335), Sec. 1, eff. June 14, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 1341 (S.B. 981), Sec. 1, eff. June 14, 2019.

Sec. 33.003. DISTRIBUTION DISTRICTS; AGENTS. (a) The department may establish distribution districts and employ distributing agents or may make other arrangements necessary to

provide for the efficient distribution of commodities.

(b) A distributing agent must be bonded. The department shall audit a distributing agent's records at least once annually and at any other time considered expedient by the department.

Acts 1979, 66th Leg., p. 2354, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.158, eff. April 2, 2015.

Sec. 33.004. COMMODITY DISTRIBUTION PROGRAM ADVISORY BOARDS. (a) The department may establish state or district-level advisory boards to facilitate the operations of the commodity distribution program.

(b) The advisory boards shall be of the size, membership, and experience that the commissioner determines to be essential for the accomplishment of the purposes of this chapter and not in conflict with or duplicative of other laws on this subject.

Acts 1979, 66th Leg., p. 2354, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 963 (H.B. 4062), Sec. 7, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.159, eff. April 2, 2015.

Sec. 33.005. PROCESSING PERISHABLE COMMODITIES. (a) The department may enter into nonprofit contracts with state institutions or state or private agencies for the processing of perishable commodities to preserve them for subsequent distribution to eligible recipients.

(b) The cost of processing shall be borne by each recipient on a pro rata basis in relation to the amount of the processed commodities received by each distribution district.

Acts 1979, 66th Leg., p. 2354, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 33.006. HANDLING CHARGES. (a) The department may assess reasonable handling charges against the recipients of commodities to cover the cost of distribution. The total operation must be conducted on a nonprofit basis.

(b) The department shall make the assessments at the times and in the amounts that it considers necessary for the proper administration of the commodity distribution program. However, the assessments must be uniform in each distribution district and may not exceed $1 per recipient per year.

Acts 1979, 66th Leg., p. 2354, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 399, ch. 81, Sec. 18(a), eff. Sept. 1, 1983.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.160, eff. April 2, 2015.

Sec. 33.008. SALE OF USED COMMODITY CONTAINERS. The department may sell used commodity containers. Proceeds from the sales in each distribution district shall be deposited in the general revenue fund.

Acts 1979, 66th Leg., p. 2355, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.161, eff. April 2, 2015.

Sec. 33.011. PROHIBITED ACTIVITIES; PENALTIES. (a) A person commits an offense if the person knowingly uses, alters, or transfers a supplemental nutrition assistance program electronic benefit transfer card in any manner not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the supplemental nutrition assistance program electronic benefit transfer card is less than $200 and a felony of the third degree if the value is $200 or more.

(b) A person commits an offense if the person knowingly possesses a supplemental nutrition assistance program electronic

benefit transfer card when not authorized by law to possess the card, knowingly redeems supplemental nutrition assistance program benefits when not authorized by law to redeem them, or knowingly redeems supplemental nutrition assistance program benefits for purposes not authorized by law. An offense under this subsection is a Class A misdemeanor if the value of the supplemental nutrition assistance program electronic benefit transfer card possessed, or the program benefits redeemed, is less than $200 and a felony of the third degree if the value of the supplemental nutrition assistance program electronic benefit transfer card possessed, or the program benefits redeemed, is $200 or more.

(d) When cash, exchange value, or supplemental nutrition assistance program electronic benefit transfer cards of various values are obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

(e) The commission may contract with county commissioners courts to provide funds to pay for professional and support services necessary for the enforcement of any criminal offense that involves illegally obtaining, possessing, or misusing supplemental nutrition assistance program benefits.

(f) For the purposes of Subsections (a) and (b), the value of a supplemental nutrition assistance program electronic benefit transfer card is the cash or exchange value obtained in violation of this section.

(g) In this section, "supplemental nutrition assistance program benefits" includes electronic benefit transfer (EBT) cards.

Acts 1979, 66th Leg., p. 2355, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2435, ch. 842, art. 2, Sec. 6, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 249, Secs. 1, 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 788, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.162, eff. April 2, 2015.

Sec. 33.012. CHEMICAL DEPENDENCY TREATMENT PROGRAM AS

REPRESENTATIVE. The commission shall provide an individual's supplemental nutrition assistance program allotment to the residential chemical dependency treatment program in which the person resides to the extent allowed under Section 8(f), Food Stamp Act of 1977 (7 U.S.C. Section 2017(e)), if the individual designates the program as the individual's authorized representative.

Added by Acts 1997, 75th Leg., ch. 663, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.163, eff. April 2, 2015.

Sec. 33.013. INFORMATION AND REFERRAL SERVICES. (a) Each local supplemental nutrition assistance program benefits office shall compile and maintain a current list of emergency food providers in the area served by the local supplemental nutrition assistance program benefits office and refer individuals who need food to local programs that may be able to provide assistance.

(b) The commission shall establish regional or statewide toll-free telephone hotlines to provide emergency food information and to refer needy individuals to local programs that may be able to provide assistance. The commission shall publish the telephone number for referrals in the emergency telephone numbers section of local telephone books. The commission shall display this telephone number in all of its offices.

(c) Where emergency food programs do not exist, the commission shall assist community groups in establishing emergency food assistance programs.

(d) The commission may establish other local, regional, or statewide programs to provide emergency food information and referral services where needed and where none presently exist.

Added by Acts 1985, 69th Leg., ch. 150, Sec. 2, eff. Aug. 26, 1985.
Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 7.02, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 963 (H.B. 4062), Sec. 8, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.163, eff. April 2, 2015.

Sec. 33.015. INITIAL ESTABLISHMENT AND RECERTIFICATION OF ELIGIBILITY FOR CERTAIN PERSONS. (a) In administering the supplemental nutrition assistance program, the commission shall, except as provided by Subsection (c) and Section 33.019, allow a person to comply with initial eligibility requirements, including any initial interview, and with subsequent periodic eligibility recertification requirements by telephone instead of through a personal appearance at commission offices if:

(1) the person and each member of the person's household:

(A) have no earned income; and

(B) are elderly or persons with disabilities; or

(2) the person is subject to a hardship, as determined by commission rule.

(b) For purposes of rules under Subsection (a)(2), a hardship includes a situation in which a person is prevented from personally appearing at commission offices because the person is:

(1) subject to a work or training schedule;

(2) subject to transportation difficulties;

(3) subject to other difficulties arising from the person's residency in a rural area;

(4) subject to prolonged severe weather;

(5) ill; or

(6) needed to care for a member of the person's household.

(c) The commission may require a person described by Subsection (a) to personally appear at commission offices to establish initial eligibility or to comply with periodic eligibility recertification requirements if the commission considers a personal appearance necessary to:

(1) protect the integrity of the supplemental nutrition assistance program; or

(2) prevent an adverse determination regarding the person's eligibility that would be less likely to occur if the person made a personal appearance.

(d) A person described by Subsection (a) may elect to personally appear at commission offices to establish initial eligibility or to comply with periodic eligibility recertification requirements.

(e) The commission shall require a person exempted under this

section from making a personal appearance at commission offices to provide verification of the person's entitlement to the exemption on initial eligibility certification and on each subsequent periodic eligibility recertification. If the person does not provide verification and the commission considers the verification necessary to protect the integrity of the supplemental nutrition assistance program, the commission shall initiate a fraud referral to the commission's office of inspector general.

Added by Acts 2001, 77th Leg., ch. 93, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.163, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 839 (S.B. 224), Sec. 1, eff. September 1, 2021.

Sec. 33.018. SNAP ELIGIBILITY FOLLOWING CERTAIN CRIMINAL CONVICTIONS. (a) As authorized by 21 U.S.C. Section 862a(d)(1) and except as provided by this section, 21 U.S.C. Section 862a(a)(2) does not apply in determining the eligibility of any person for the supplemental nutrition assistance program.

(b) 21 U.S.C. Section 862a(a)(2) applies in determining the eligibility for the supplemental nutrition assistance program of a person who has been convicted of, and released on parole or placed on community supervision for, any felony offense that has as an element the possession, use, or distribution of a controlled substance, as defined in 21 U.S.C. Section 802, if the person violates any condition of that parole or community supervision. A person described by this subsection is ineligible for the supplemental nutrition assistance program only for a two-year period beginning on the date the person is found to have violated the condition of parole or community supervision, as authorized by 21 U.S.C. Section 862a(d)(1)(B).

(c) A person convicted of an offense described by Subsection (b) who is receiving supplemental nutrition assistance program benefits and who is convicted of a subsequent felony offense, regardless of the elements of the offense, is ineligible for the supplemental nutrition assistance program.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 2.29,

eff. September 1, 2015.

Sec. 33.0181. MEMORANDUM OF UNDERSTANDING REGARDING ELIGIBILITY DETERMINATIONS FOR CERTAIN INMATES. (a) In this section, "inmate" means an individual confined in a facility operated by or under contract with the Texas Department of Criminal Justice.

(b) The commission and the Texas Department of Criminal Justice shall enter into a memorandum of understanding for the purpose of ensuring that an inmate who is likely to be eligible for supplemental nutrition assistance benefits on discharge or release on parole, mandatory supervision, or conditional pardon is assessed by the commission for eligibility for those benefits before the inmate's discharge or release.

(c) The memorandum of understanding required by this section must:

(1) establish a procedure through which the commission shall accept and process supplemental nutrition assistance program applications from inmates; and

(2) define the roles and responsibilities of each agency under the memorandum.

(d) The memorandum of understanding required by Subsection (b) must be tailored to achieve the goal of ensuring that an inmate described by Subsection (b) who is determined eligible by the commission for supplemental nutrition assistance program benefits may begin receiving services under the program at the time of the inmate's discharge or release on parole, mandatory supervision, or conditional pardon.

(e) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 700 (H.B. 1743), Sec. 1, eff. June 12, 2023.

Sec. 33.019. SIMPLIFIED CERTIFICATION AND RECERTIFICATION REQUIREMENTS FOR CERTAIN SNAP APPLICANTS AND RECIPIENTS. (a) The commission shall develop and implement simplified certification and recertification requirements for supplemental nutrition assistance program benefits for an individual who:

(1) is 60 years of age or older or is a person with a disability, as determined by commission rule;

(2) has no earned income; and

(3) resides in a household in which every individual residing in the household is 60 years of age or older or is a person with a disability, as determined by commission rule.

(b) The simplified requirements must:

(1) allow an individual described by this section to waive recertification interview requirements;

(2) simplify and reduce the number of verification requirements for certifying and recertifying eligibility to receive benefits, which must include the use of a shortened application form; and

(3) allow the individual to remain eligible for benefits for 36 months after certification and after each recertification.

(c) An individual described by this section is required to:

(1) submit to the commission a change reporting form every 12 months during the 36-month eligibility period; and

(2) report to the commission, in accordance with federal law, when the individual receives an increase in income.

(d) The commission shall, in a manner that complies with federal law, use data matching to inform eligible individuals described by this section who are receiving Medicaid benefits of their eligibility for supplemental nutrition assistance program benefits.

Added by Acts 2021, 87th Leg., R.S., Ch. 839 (S.B. 224), Sec. 2, eff. September 1, 2021.

Sec. 33.021. EXCLUSION OF CERTAIN RESOURCES IN DETERMINING SNAP ELIGIBILITY. In determining the eligibility of an applicant for or recertifying the eligibility of a recipient of supplemental nutrition assistance program benefits, the commission may not consider as resources the value of a motor vehicle in which the applicant or recipient or a member of the applicant's or recipient's household has an ownership interest up to:

(1) $22,500 for the first vehicle; and

(2) $8,700 for each additional vehicle.

Added by Acts 2023, 88th Leg., R.S., Ch. 682 (H.B. 1287), Sec. 1, eff.

September 1, 2023.

Sec. 33.022. APPLICATION ASSISTANCE. (a) On request of an applicant for supplemental nutrition assistance program benefits, the commission shall assist the applicant in filling out forms and completing the application process.

(b) The commission shall inform each applicant of the availability of assistance.

Added by Acts 1985, 69th Leg., ch. 150, Sec. 6, eff. Aug. 26, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.163, eff. April 2, 2015.

Sec. 33.023. INFORMATION VERIFICATION. (a) The commission shall develop and implement for expedited issuance a uniform procedure for verifying information required of an applicant for supplemental nutrition assistance program benefits.

(b) In developing the uniform procedure, the commission shall attempt to minimize the cost and complexity of the procedure to the applicant.

(c) The commission shall not require an applicant for expedited service to verify more eligibility items than the minimum necessary to conform to the federal regulations and shall assist the applicant in obtaining materials needed to verify an application. The commission shall not deny or delay determination of eligibility due to lack of verification of items that may be postponed if they cannot be verified within the timeframes prescribed by the federal regulations.

(d) The commission shall post a notice in each of its offices indicating to whom an applicant for or client of the supplemental nutrition assistance program can talk to resolve problems or complaints. This notice should indicate persons available to handle problems in local, regional, and state offices. Notification of the existence of each office and complaint procedures shall be posted in each supplemental nutrition assistance program benefits office and in materials made available to applicants regarding the application process.

Added by Acts 1985, 69th Leg., ch. 150, Sec. 7, eff. Aug. 26, 1985.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.163, eff. April 2, 2015.

Sec. 33.0231. VERIFICATION OF IDENTITY AND PREVENTION OF DUPLICATE PARTICIPATION IN SNAP. The commission shall use appropriate technology to:

(1) confirm the identity of applicants for benefits under the supplemental nutrition assistance program; and

(2) prevent duplicate participation in the program by a person.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.04(b), eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.163, eff. April 2, 2015.

Sec. 33.025. NUTRITION EDUCATION AND OUTREACH FOR THOSE ELIGIBLE FOR SNAP BENEFITS. (a) The commission shall develop and implement a plan of operation to provide nutrition education and outreach to persons eligible for supplemental nutrition assistance program benefits.

(b) The plan of operation for education and outreach shall:

(1) ensure that low-income consumers are provided with informational materials that include but are not limited to information on:

(A) food budgeting for low-income consumers;

(B) purchasing and preparing low-cost nutritional meals;

(C) basic nutrition and healthy foods;

(D) the availability of supplemental nutrition assistance program benefits;

(E) the eligibility requirements for supplemental nutrition assistance program benefits; and

(F) the application procedures for receiving supplemental nutrition assistance program benefits;

(2) identify a target population for the informational activities, which may include:

(A) recipients of the Special Supplemental Nutrition Program for Women, Infants and Children;

(B) families which have children who are eligible for the free or reduced-priced meals programs;

(C) recipients of commodity surplus foods;

(D) senior citizens attending nutrition sites and participating in nutritional activities;

(E) clients of emergency food pantries;

(F) farm workers or migrants; and

(G) others who may benefit from the information including but not limited to senior citizens, persons with disabilities, and working poor families;

(3) identify geographical areas, if any, which specifically will be targeted; and

(4) ensure that all informational activities are multilingual and available in accessible alternative formats.

(c) The commission shall submit the plan of operation to the Food and Nutrition Service of the United States Department of Agriculture for approval, making the commission eligible for reimbursement for 50 percent of the cost of the informational activities.

(d) The commission shall cooperate with other state agencies that currently operate nutrition education programs.

(e) The commission shall enlist the assistance of pro bono public relations firms where available.

Added by Acts 1993, 73rd Leg., ch. 328, Sec. 3, eff. Aug. 30, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.163, eff. April 2, 2015.

Sec. 33.026. CHILD AND ADULT CARE FOOD PROGRAM: REQUIRED NOTICES AND ADVISORY COMMITTEE AUTHORITY. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(48), eff. April 2, 2015.

(b) The department shall provide written notice to each sponsoring organization of any modification or clarification of department rules or policies relating to the federal Child and Adult

Care Food Program. Notice provided through electronic mail is considered to be written notice for purposes of this subsection.

(c) The department may, with respect to the federal Child and Adult Care Food Program:

(1) conduct public hearings in accordance with department procedures;

(2) refer issues relating to the program to the commissioner for discussion; and

(3) recommend modifications to the department's training programs for sponsoring organizations and other persons participating in the program.

(d) For purposes of this section and Sections 33.027 and 33.0271, "sponsoring organization" has the meaning assigned by 7 C.F.R. Section 226.2.

Added by Acts 1999, 76th Leg., ch. 719, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 870 (S.B. 77), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.164, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(48), eff. April 2, 2015.

Sec. 33.027. CHILD AND ADULT CARE FOOD PROGRAM: ELECTRONIC FILING. (a) In administering the federal Child and Adult Care Food Program, the department shall, unless prohibited by federal law, permit a sponsoring organization or other person participating in the program to submit applications and other required information to the department in an electronic format or through the use of electronically produced forms.

(b) The department may implement Subsection (a) by developing necessary computer systems or by using computer systems developed or made available for that purpose by a sponsoring organization or other appropriate person.

Added by Acts 1999, 76th Leg., ch. 719, Sec. 3, eff. Jan. 1, 2001.

Sec. 33.0271. CHILD AND ADULT CARE FOOD PROGRAM: PROGRAM

PARTICIPANT REQUIREMENTS. (a) In this section, "institution" and "principal" have the meanings assigned by 7 C.F.R. Section 226.2.

(b) To the extent permitted under federal law, a sponsoring organization shall maintain a performance bond in an amount specified by department rule from a company holding a certificate of authority as an acceptable surety on federal bonds from the United States secretary of the treasury. To determine whether a company holds a certificate of authority as an acceptable surety on federal bonds, the department and a sponsoring organization may rely on the list published by the United States Department of the Treasury in accordance with 31 C.F.R. Section 223.16.

(c) To the extent permitted under federal law, on application for or renewal of participation in the Child and Adult Care Food Program, a nongovernmental entity applying to participate or to renew participation in the program as a sponsoring organization or other institution must submit to the department the following with respect to each of the entity's principals for use in conducting a background and criminal history check:

(1) a copy of a government-issued form of identification of the principal, which may include a copy of:

(A) a driver's license issued by this state or another state;

(B) an identification card issued by this state, another state, or the federal government;

(C) a passport; or

(D) another form of identification approved by the department; and

(2) proof of the principal's residential mailing address, which may include:

(A) official mail sent to the principal's address from a utility provider, governmental agency, or financial institution;

(B) a residential lease executed by the principal; or

(C) any other form of proof approved by the department.

(d) If there is a change in a principal or the residential mailing address of a principal of a nongovernmental entity participating in the Child and Adult Care Food Program as a sponsoring organization or other institution, the entity must submit to the department the same information required under Subsection (c) with respect to the principal for use in conducting a background and criminal history check.

(e) The department may conduct a background and criminal history check on each principal of an entity subject to this section using:

(1) the information provided under Subsection (c) or (d), as applicable; and

(2) the information made available by the Department of Public Safety under Section 411.1146, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code.

(f) If the background and criminal history check authorized under Subsection (e) using information provided under Subsection (c) reveals that an entity knowingly falsified statements contained in the application, the department may refer that matter to an appropriate prosecuting attorney for criminal prosecution.

(g) If a background and criminal history check authorized under Subsection (e) reveals that the principal of an entity that is an applicant for or participant in the Child and Adult Care Food Program has been convicted of fraud, violating an antitrust law, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstructing justice, or any other criminal offense that indicates a lack of business integrity as determined by the department, the department:

(1) shall deny the entity's application for participation in the program; or

(2) may, at the department's discretion, revoke the entity's authority to participate in the program.

(h) The department by rule may establish procedures that would allow an entity that had the entity's application to participate in the Child and Adult Care Food Program denied or authority to participate in the program revoked under Subsection (g) to appeal the department's determination under that subsection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 870 (S.B. 77), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.165, eff. April 2, 2015.

Sec. 33.028. GRANT PROGRAMS FOR NUTRITION EDUCATION. (a) The department shall develop a program under which the department awards grants to:

(1) participants in the Child and Adult Care Food Program, the Head Start program, or other early childhood education programs to operate nutrition education programs for children who are at least three years of age but younger than five years of age; and

(2) community and faith-based initiatives that provide recreational, social, volunteer, leadership, mentoring, or developmental programs to incorporate nutrition education into programs provided for children younger than 19 years of age.

(b) The department may solicit and accept gifts, grants, and donations from any public or private source for the purposes of this section.

(c) The department may adopt rules as necessary to administer the grant programs established under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 728 (S.B. 282), Sec. 3, eff. June 19, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.166, eff. April 2, 2015.

Sec. 33.029. CERTAIN ELIGIBILITY RESTRICTIONS. Notwithstanding any other provision of this chapter, an applicant for or recipient of benefits under the supplemental nutrition assistance program is not entitled to and may not receive or continue to receive any benefit under the program if the applicant or recipient is not legally present in the United States.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.21, eff. September 28, 2011.

Sec. 33.0291. EXCLUSION OF SCHOOL-BASED ACCOUNTS AND CERTAIN BONDS. (a) For purposes of determining whether a person meets family income and resource requirements for eligibility for the supplemental nutrition assistance program, the commission may not consider as income or resources a right to assets held in or a right to receive payments or benefits under a school-based account or bond

described by Section 28.0024(b)(2), Education Code.

(b) The amount of exclusion under Subsection (a) of assets held in or the right to receive payments or benefits under a school-based account or bond described by Section 28.0024(b)(2)(C), (D), or (E), Education Code, is limited to the amount of the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year, as determined by the Texas Higher Education Coordinating Board under Section 54.753, Education Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1265 (H.B. 3987), Sec. 5, eff. June 20, 2015.

Text of section effective until January 1, 2025

Sec. 33.032. PEACE OFFICERS. The commission's office of inspector general may employ and commission peace officers for the purpose of assisting the office in the investigation of fraud, waste, or abuse in the supplemental nutrition assistance program. A peace officer employed and commissioned by the office is a peace officer for purposes of Article 2.12, Code of Criminal Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 856 (H.B. 2523), Sec. 3, eff. June 15, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.128, eff. January 1, 2025.

Text of section effective on January 1, 2025

Sec. 33.032. PEACE OFFICERS. The commission's office of inspector general may employ and commission peace officers for the purpose of assisting the office in the investigation of fraud, waste, or abuse in the supplemental nutrition assistance program. A peace officer employed and commissioned by the office is a peace officer for purposes of Article 2A.001, Code of Criminal Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 856 (H.B. 2523), Sec. 3, eff. June 15, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.128, eff. January 1, 2025.

Sec. 33.035. PILOT PROGRAM TO INCENTIVIZE PURCHASE OF TEXAS-GROWN FRUITS OR VEGETABLES UNDER SNAP. (a) In this section:

(1) "Eligible fruits or vegetables" means any variety of fresh, canned, dried, or frozen whole or cut fruits or vegetables:

(A) with no added sugars, fats, oils, or salt; and

(B) that are produced or harvested in this state.

(2) "Incentive" means a financial benefit provided to a recipient of supplemental nutrition assistance program benefits that encourages the recipient to purchase eligible fruits or vegetables.

(3) "Pilot program" means the pilot program described by Subsection (b).

(4) "Retailer" has the meaning assigned by Section 33.0023.

(b) The commission, in consultation with the work group established under Subsection (c), may establish a pilot program in one or more geographic areas of this state through which:

(1) a recipient of supplemental nutrition assistance program benefits is able to receive an incentive when purchasing eligible fruits or vegetables from a retailer that may be used toward a subsequent purchase of eligible fruits or vegetables; and

(2) a retailer is authorized to publicize the incentive to recipients of supplemental nutrition assistance program benefits.

(c) The commission shall establish a work group to assist the commission with the study described by Section 33.036 and, as applicable, provide input for the establishment of the pilot program. The work group must be composed of relevant stakeholders from rural and urban areas throughout this state who have expertise in providing incentives under the supplemental nutrition assistance program. At least one member of the work group must have direct marketing representative experience in operating a comparable program.

(d) The executive commissioner shall appoint one member of the work group to serve as presiding officer.

(e) The work group is not subject to Chapter 2110, Government Code.

(f) A member of the work group may not receive compensation for serving on the work group and may not be reimbursed for travel or

other expenses incurred while conducting the business of the work group.

(g) If the commission establishes the pilot program under this section, the commission may contract with an entity that has appropriate experience and expertise in administering comparable programs to administer the pilot program.

(h) The commission may solicit and accept gifts, grants, and donations from any source to establish and administer the pilot program or to perform any other duty under this section.

(i) If the commission establishes the pilot program under this section, the commission, with assistance from the work group, shall:

(1) develop and the executive commissioner shall submit any necessary applications to obtain a federal waiver to operate the pilot program; and

(2) apply for any available federal money to operate the program, including federal nutrition incentives available under Section 4205, Agriculture Improvement Act of 2018 (7 U.S.C. Section 7517).

(j) The commission may delay the operation of the pilot program, as applicable, until the commission receives federal money to operate the program or until money is appropriated or donated to the commission to operate the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 655 (S.B. 1834), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: ELIGIBILITY DETERMINATION PROCESS EFFICIENCY

Sec. 33.052. APPLICATION ASSISTANCE. (a) The commission shall develop procedures to ensure that:

(1) clear guidance on program eligibility requirements is provided to supplemental nutrition assistance applicants and prospective applicants and mechanisms are established, including Internet and e-mail mechanisms, as appropriate, by which applicants can obtain answers to basic program-related questions; and

(2) information is provided to each applicant in person, by e-mail, by telephone, or through the mail, as appropriate, about information the applicant is required to submit for purposes of the eligibility determination process.

(b) The commission shall consider the feasibility and cost-effectiveness of using office personnel or an automated system or systems to support the eligibility determination process by contacting an applicant in advance of an applicant's scheduled interview to remind the applicant of the interview and the documentation that must be presented at the interview.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1165 (H.B. 2819), Sec. 2, eff. September 1, 2011.

Sec. 33.053. USE OF TECHNOLOGY TO PROMOTE EFFICIENCY AND FRAUD DETECTION. (a) The commission shall consider the feasibility and cost-effectiveness of using readily available document scanning technology to reduce storage and maintenance costs and potential loss of data by creating electronic case files for supplemental nutrition assistance cases instead of maintaining physical files for those cases. The commission shall use that technology if determined feasible and cost-effective.

(b) The commission shall implement, if feasible and cost-effective, a risk scoring program for supplemental nutrition assistance applications to streamline the eligibility determination process, reduce errors, and strengthen fraud detection. A risk scoring program implemented by the commission must be capable of ranking applications based on complexity so that:

(1) more experienced eligibility determination staff members can be used to process more difficult cases and cases with fraud characteristics; and

(2) applications ranked as low-risk on fraud characteristics can be processed more expeditiously.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1165 (H.B. 2819), Sec. 2, eff. September 1, 2011.

Sec. 33.054. WORKFORCE MANAGEMENT. The commission shall improve its management of supplemental nutrition assistance eligibility determination staff by:

(1) establishing clear performance expectations that can serve as the basis for performance assessments;

(2) planning for anticipated staffing needs;

(3) revising policies regarding overtime and accrual of compensatory time to ensure that eligibility determination staff members have access to supervisors as necessary;

(4) assessing the effectiveness of training provided to new eligibility determination staff members; and

(5) evaluating the compensation of eligibility determination staff members to determine if the compensation is sufficient to recruit qualified staff members and retain experienced staff members.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1165 (H.B. 2819), Sec. 2, eff. September 1, 2011.

Sec. 33.055. PROGRAM MANAGEMENT INFORMATION. (a) The commission, in conjunction with state, regional, and local eligibility determination offices, shall identify eligibility determination program performance indicators with respect to which data should periodically be collected. The commission shall implement a process for collecting data on the identified performance indicators.

(b) The commission shall provide periodic management reports generated by the automated eligibility system to eligibility determination offices. The reports must include information regarding the number of pending supplemental nutrition assistance applications and the number of those applications that have not been processed within applicable timeliness standards.

(c) The commission shall use data collected under Subsection (a) and the reports described by Subsection (b) to develop and assess strategies for:

(1) streamlining the supplemental nutrition assistance eligibility determination process;

(2) improving timeliness of eligibility determinations; and

(3) accommodating increases in applications received.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1165 (H.B. 2819), Sec. 2, eff. September 1, 2011.

CHAPTER 34. STATE TEMPORARY ASSISTANCE AND SUPPORT SERVICES PROGRAM

Sec. 34.001. DEFINITIONS. In this chapter:

(1) "Related support services" means services considered under federal law to be a component of money payments for purposes of the financial assistance program authorized by Chapter 31.

(2) "Temporary assistance" means money payments for needy persons authorized by this chapter.

Added by Acts 2001, 77th Leg., ch. 1440, Sec. 1, eff. Sept. 1, 2001.

Sec. 34.002. DEVELOPMENT AND IMPLEMENTATION OF STATE PROGRAM; FUNDING. (a) The Health and Human Services Commission and the Texas Workforce Commission, with the participation of local workforce development boards, shall jointly develop and implement a state program of temporary assistance and related support services that is distinct from the financial assistance program authorized by Chapter 31.

(b) Temporary assistance and related support services may be provided under the state program only to:

(1) two-parent families; or

(2) persons residing in minimum service counties, as defined by the Texas Workforce Commission.

(c) Temporary assistance and related support services provided under the state program may not be funded with federal money provided to the state for the financial assistance program authorized by Chapter 31.

(d) If federal law is enacted that imposes work participation rate requirements on two-parent families for purposes of the financial assistance program under Chapter 31 that are substantively identical to those that federal law imposes on one-parent families for purposes of that program, the Health and Human Services Commission may, on the effective date of the federal law relating to the work participation rate requirements for two-parent families, provide for establishment of that recipient's eligibility for financial assistance under Chapter 31 instead of under this chapter in a manner that avoids disruption of benefits for which the recipient is eligible.

Added by Acts 2001, 77th Leg., ch. 1440, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1134, Sec. 1, eff. June 20, 2003.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.167, eff. April 2, 2015.

Sec. 34.003. RULES. (a) The executive commissioner and the Texas Workforce Commission shall adopt all rules necessary for implementation of the state program, including rules regarding eligibility, work requirements, work exemptions, time limits, and related support services.

(b) The rules must be designed to result in a state program that is substantively identical to the financial assistance program authorized by Chapter 31, except to the extent that programmatic differences are appropriate because of the populations served by those programs and the sources of funding for those programs.

(c) The Health and Human Services Commission and the Texas Workforce Commission shall form an interagency work group to develop the rules required under this section. The interagency work group shall provide for participation in development of the rules by representatives of local workforce development boards.

Added by Acts 2001, 77th Leg., ch. 1440, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.168, eff. April 2, 2015.

Sec. 34.004. PROCEDURES APPLICABLE TO PERSONS RESIDING IN MINIMUM SERVICE COUNTIES. The Health and Human Services Commission and the Texas Workforce Commission shall develop and implement procedures to:

(1) determine the date on which a person's eligibility for temporary assistance and related support services based on residency in a minimum service county, as defined by the Texas Workforce Commission, will cease as a result of the county's reclassification; and

(2) provide for establishment of that person's eligibility for financial assistance and related support services under Chapter 31 in a manner that avoids disruption of benefits for which the person is eligible.

Added by Acts 2001, 77th Leg., ch. 1440, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.169, eff. April 2, 2015.

Sec. 34.005. ELIGIBILITY FOR MEDICAL ASSISTANCE. A recipient of temporary assistance and related support services under the state program is eligible for medical assistance under Chapter 32 in the same manner as a person receiving financial assistance under Chapter 31.

Added by Acts 2001, 77th Leg., ch. 1440, Sec. 1, eff. Sept. 1, 2001.

Sec. 34.006. STUDY. The Texas Workforce Commission, in collaboration with local workforce development boards and the appropriate standing committees of the senate and house of representatives, shall:

(1) study methods to improve the delivery of workforce services to persons residing in minimum service counties, as defined by the Texas Workforce Commission; and

(2) develop recommendations to improve the delivery of services described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1440, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 16, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 18, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.170, eff. April 2, 2015.

CHAPTER 35. SUPPORT SERVICES FOR PERSONS WITH DISABILITIES

Sec. 35.001. DEFINITIONS. In this chapter:

(1) "Assistance" or "support services" means a subsidy granted by the department to provide support to a client.

(2) "Client" means a person with a disability who lives independently or a family who receives assistance under this chapter.

(3) "Department" means the Department of Aging and Disability Services.

(4) "Family" means a group that consists of a person with a disability and that person's parent, legal guardian, spouse, or sibling and may include others.

(5) "Legal guardian" means a person appointed by a court of competent jurisdiction to exercise powers over a person with a disability.

(6) "Other support programs" means:

(A) all forms of local, state, or federal support services other than those established by this chapter;

(B) contract programs; or

(C) support provided by public or private funds for persons with disabilities or their families.

(7) "Parent" includes only a natural, foster, surrogate, or adoptive parent.

(8) "Person with a disability" includes a person who has a physical or mental impairment that substantially limits one or more major life activities or has a record of such an impairment. This term does not include an individual whose impairment is a communicable disease.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.171, eff. April 2, 2015.

Sec. 35.002. ADOPTION OF RULES AND IMPLEMENTATION OF PROGRAM. The executive commissioner shall adopt rules to implement and administer this chapter, including:

(1) procedures and guidelines for determining eligibility standards relating to financial qualifications and the need for services and for determining eligibility criteria for selecting clients to receive assistance;

(2) standards and procedures for approving qualified programs and support services;

(3) procedures for conducting a periodic review of clients;

(4) procedures and guidelines for determining when assistance duplicates other support programs or results in excessive

support to a client;

(5) reasonable payment rates for qualified programs and support services under this chapter; and

(6) a copayment system in accordance with Section 35.007.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.172, eff. April 2, 2015.

Sec. 35.003. ELIGIBILITY. (a) The department's rules must provide that an applicant for assistance is eligible to receive assistance if the applicant resides in this state and meets the department's eligibility criteria for income and need. A family or a person with a disability living independently may apply for assistance.

(b) The department shall determine in accordance with department rules eligibility for support services from the results of current evaluations, program plans, and medical reports. Those documents shall be provided to the department on request. The department, if it considers necessary, shall provide any additional evaluations.

(c) The department shall determine the applicant's needs and the support services for which the applicant is eligible in accordance with department rules and after consulting with the applicant.

(d) In determining eligibility for support services under this chapter, the department shall determine if the applicant is eligible to receive the services from other support programs. If the department determines that the applicant may receive the services from another support program and those services are available to the applicant, the department may deny the application. If the department denies the application, the department shall provide to the applicant information on and referral to the appropriate support program.

(e) A local or state agency may not consider assistance received under this chapter in determining eligibility for another support program unless that consideration is required by federal regulations.

(f) If requested by the applicant, the commission's appeals division shall hold a hearing on the denial of an application.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 76, Sec. 17, eff. Sept. 1, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.173, eff. April 2, 2015.

Sec. 35.004. PROVISION OF ASSISTANCE AND SUPPORT SERVICES. (a) The department shall provide assistance to compensate a client for present and future expenses, including:

(1) the purchase or lease of special equipment or architectural modifications of a home to improve or facilitate the care, treatment, therapy, general living conditions, or access of a person with a disability;

(2) medical, surgical, therapeutic, diagnostic, and other health services related to a person's disability or disabilities;

(3) counseling or training programs that assist a family in providing proper care for a family member with a disability or assist a person with a disability in an independent living situation and that provide for the special needs of the family or person with a disability;

(4) attendant care, home health aide services, homemaker services, and chore services that provide support with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(5) respite support for a family, if the family is the client;

(6) transportation services for the person with a disability; and

(7) transportation, room, and board costs incurred by a family or a person with a disability during evaluation or treatment of a person with a disability that have been preapproved by the department.

(b) The executive commissioner by rule may add services and programs for which the department may provide assistance.

(c) The department's duty to provide assistance under this chapter is determined and limited by the funds specifically

appropriated to administer this chapter.

(d) The department may seek, accept, and expend funds from other sources to provide assistance under this chapter.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.174, eff. April 2, 2015.

Sec. 35.005. PAYMENT OF ASSISTANCE. (a) The department may grant assistance of not more than $3,600 a year to a client and make periodic distributions or a lump-sum distribution according to the client's needs. The commissioner of aging and disability services or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

(b) In addition to the assistance authorized by Subsection (a), the department may award to a client a one-time grant of assistance of not more than $3,600 for architectural renovation or other capital expenditure to improve or facilitate the care, treatment, therapy, general living conditions, or access of a person with a disability. The commissioner of aging and disability services or the commissioner's designee may grant additional amounts on consideration of an individual client's needs.

(c) The department shall consult with the client to determine the manner of distribution of the assistance. On agreement of the person with a disability or the head of the family, as appropriate, the department may distribute the assistance directly to the client or to a qualified program or provider of services serving the client.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.175, eff. April 2, 2015.

Sec. 35.006. SELECTION OF PROGRAMS OR PROVIDERS. (a) Each client may select the client's program or provider of services, except that the client may select only a program or provider that complies with department standards.

(b) The department shall require each program or provider to

comply with department standards relating to the provision of support services and may disapprove payments for a program or provider that does not comply with the rules.

(c) The department shall assist each client in locating and selecting qualified programs and services.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.

Sec. 35.007. COPAYMENT SYSTEM. In accordance with department rules, the department shall establish a copayment system with each client using a scale for payments determined according to the client's need for financial assistance to acquire the necessary support services and the client's ability to pay for those services.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.176, eff. April 2, 2015.

Sec. 35.008. PAYMENT RATE. (a) The executive commissioner by rule shall establish a reasonable charge for each authorized support service.

(b) The department's liability for the cost of a support service is limited to the amount of the charge for the service less the amount of any copayment required from the client.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.177, eff. April 2, 2015.

Sec. 35.009. CLIENT RESPONSIBILITY FOR PAYMENT. Each client shall pay:

(1) the client's copayment;

(2) the amount of charges in excess of the amount determined by the executive commissioner to be reasonable; and

(3) the amount of charges incurred in excess of the maximum amount of assistance authorized by this chapter to be provided by the

department.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.178, eff. April 2, 2015.

Sec. 35.010. REVIEW OF CLIENT'S NEEDS. (a) The department shall regularly review each client's needs as established by the department.

(b) The department shall review each client's needs when there is a change in the circumstances that were considered in determining eligibility or the amount of the required copayment.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.

Sec. 35.011. NOTIFICATION OF CHANGE IN CIRCUMSTANCES. The department shall require each client to notify the department of a change in circumstances that were considered in determining eligibility or the amount of the required copayment.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.

Sec. 35.012. CRIMINAL PENALTY. (a) A person commits an offense if the person, in obtaining or attempting to obtain assistance under this chapter for himself or another person:

(1) makes or causes to be made a statement or representation the person knows to be false; or

(2) solicits or accepts any assistance for which the person knows that the person for whom the solicitation is made is not eligible.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1989, 71st Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 36. HEALTH CARE PROGRAM FRAUD PREVENTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. DEFINITIONS. In this chapter:

(1) "Child health plan program" means the child health plan program established under Chapters 62 and 63, Health and Safety Code.

(1-a) "Claim" means a written or electronically submitted request or demand that:

(A) is signed by a provider or a fiscal agent and that identifies a product or service provided or purported to have been provided to a health care recipient as reimbursable under a health care program, without regard to whether the money that is requested or demanded is paid; or

(B) states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under a health care program.

(2) "Documentary material" means a record, document, or other tangible item of any form, including:

(A) a medical document or X ray prepared by a person in relation to the provision or purported provision of a product or service to a health care recipient;

(B) a medical, professional, or business record relating to:

(i) the provision of a product or service to a health care recipient; or

(ii) a rate or amount paid or claimed for a product or service, including a record relating to a product or service provided to a person other than a health care recipient as needed to verify the rate or amount;

(C) a record required to be kept by an agency that regulates health care providers; or

(D) a record necessary to disclose the extent of services a provider furnishes to health care recipients.

(3) "Fiscal agent" means:

(A) a person who, through a contractual relationship with a state agency, receives, processes, and pays a claim under a health care program; or

(B) the designated agent of a person described by Paragraph (A).

(4) "Health care practitioner" means a dentist, podiatrist, psychologist, physical therapist, chiropractor, registered nurse, or other provider licensed to provide health care services in this

state.

(4-a) "Health care program" means:

(A) the Medicaid program;

(B) the child health plan program; and

(C) the Healthy Texas Women program.

(4-b) "Health care recipient" means an individual on whose behalf a person claims or receives a payment from a health care program or a fiscal agent, without regard to whether the individual was eligible for benefits under the health care program.

(4-c) "Healthy Texas Women program" means a program operated by the commission that is substantially similar to the demonstration project operated under former Section 32.0248 and that is intended to expand access to preventive health and family planning services for women in this state.

(5) "Managed care organization" means a person who is authorized or otherwise permitted by law to arrange for or provide a managed care plan.

(5-a) "Material" means having a natural tendency to influence or to be capable of influencing.

(6) Repealed by Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 12, eff. September 1, 2023.

(7) Repealed by Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 12, eff. September 1, 2023.

(7-a) "Obligation" means a duty, whether or not fixed, that arises from:

(A) an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

(B) a fee-based or similar relationship;

(C) a statute or regulation; or

(D) the retention of any overpayment.

(8) "Physician" means a physician licensed to practice medicine in this state.

(9) "Provider" means a person who participates in or who has applied to participate in a health care program as a supplier of a product or service and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;

(C) an employee of a provider;

(D) a managed care organization; and

(E) a manufacturer or distributor of a product for which a health care program provides reimbursement.

(10) "Service" includes care or treatment of a health care recipient.

(11) "Signed" means to have affixed a signature directly or indirectly by means of handwriting, typewriting, signature stamp, computer impulse, or other means recognized by law.

(12) "Unlawful act" means an act declared to be unlawful under Section 36.002.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1153, Sec. 4.02, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.179, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 12, eff. September 1, 2023.

Sec. 36.0011. CULPABLE MENTAL STATE. (a) For purposes of this chapter, a person acts "knowingly" with respect to information if the person:

(1) has knowledge of the information;

(2) acts with conscious indifference to the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information.

(b) Proof of the person's specific intent to commit an unlawful act under Section 36.002 is not required in a civil or administrative proceeding to show that a person acted "knowingly" with respect to information under this chapter.

Added by Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 2, eff.

September 1, 2005.

Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful act if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under a health care program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification required by a health care program, including certification or recertification as:

(i) a hospital;

(ii) a nursing facility or skilled nursing facility;

(iii) a hospice;

(iv) an ICF-IID;

(v) an assisted living facility; or

(vi) a home health agency; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to a health care program;

(5) except as authorized under a health care program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the

cost of the service or product is paid for, in whole or in part, under the program;

(6) knowingly presents or causes to be presented a claim for payment under a health care program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under a health care program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under a health care program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;

(9) conspires to commit a violation of Subdivision (1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13);

(10) is a managed care organization that contracts with the commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under a health care program and knowingly:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under the program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under the program;

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section;

(12) knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under a health care program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to this state under a health care program; or

(13) knowingly engages in conduct that constitutes a violation under Section 32.039(b).

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1153, Sec. 4.03, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 78 (H.B. 889), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 572 (S.B. 746), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.180, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 4, eff. September 1, 2023.

Sec. 36.003. DOCUMENTARY MATERIAL IN POSSESSION OF STATE AGENCY. (a) A state agency, including the commission, the Department of State Health Services, the Department of Aging and Disability Services, and the Department of Family and Protective Services, shall provide the attorney general access to all documentary materials of persons and health care recipients under a health care program to which that agency has access. Documentary material provided under this subsection is provided to permit investigation of an alleged unlawful act or for use or potential use in an administrative or judicial proceeding.

(b) Except as ordered by a court for good cause shown, the office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material

obtained under this section to a person other than:

(1) an employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general;

(5) a state or federal grand jury;

(6) a political subdivision of this state; or

(7) a person authorized by the attorney general to receive the information.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.007 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.181, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 5, eff. September 1, 2023.

Sec. 36.004. IMMUNITY. Notwithstanding any other law, a person is not civilly or criminally liable for providing access to documentary material under this chapter to:

(1) an employee of the attorney general;

(2) an agency of this state, the United States, or another state;

(3) a criminal district attorney, district attorney, or county attorney of this state;

(4) the United States attorney general;

(5) a state or federal grand jury;

(6) a political subdivision of this state; or

(7) a person authorized by the attorney general to receive the information.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.008 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(a), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 5, eff. September 1, 2005.

Sec. 36.005. SUSPENSION OR REVOCATION OF AGREEMENT; PROFESSIONAL DISCIPLINE.

Text of subsection effective until April 1, 2025

(a) A health and human services agency, as defined by Section 531.001, Government Code:

(1) shall suspend or revoke:

(A) a provider agreement between the agency and a person, other than a person who operates a nursing facility or an ICF-IID, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the agency to a person, other than a person who operates a nursing facility or an ICF-IID, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) a provider agreement between the agency and a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the agency to a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052.

Text of subsection effective on April 1, 2025

(a) A health and human services agency, as defined by Section 521.0001, Government Code:

(1) shall suspend or revoke:

(A) a provider agreement between the agency and a person, other than a person who operates a nursing facility or an ICF-IID, found liable under Section 36.052; and

(B) a permit, license, or certification granted by the agency to a person, other than a person who operates a nursing facility or an ICF-IID, found liable under Section 36.052; and

(2) may suspend or revoke:

(A) a provider agreement between the agency and a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052; or

(B) a permit, license, or certification granted by the agency to a person who operates a nursing facility or an ICF-IID and who is found liable under Section 36.052.

(b) A provider found liable under Section 36.052 for an unlawful act may not, for a period of 10 years, provide or arrange to provide health care services under a health care program or supply or sell, directly or indirectly, a product to or under a health care program. The executive commissioner may by rule:

(1) provide for a period of ineligibility longer than 10 years; or

(2) grant a provider a full or partial exemption from the period of ineligibility required by this subsection if the executive commissioner finds that enforcement of the full period of ineligibility is harmful to the program or a beneficiary of the program.

(b-1) The period of ineligibility begins on the date on which the judgment finding the provider liable under Section 36.052 is entered by the trial court.

(b-2) Subsections (b) and (b-1) do not apply to a provider who operates a nursing facility or an ICF-IID.

(c) A person licensed by a state regulatory agency who commits an unlawful act is subject to professional discipline under the applicable licensing law or rules adopted under that law.

(d) For purposes of this section, a person is considered to have been found liable under Section 36.052 if the person is found liable in an action brought under Subchapter C.

(e) Notwithstanding Subsection (b-1), the period of ineligibility for an individual licensed by a health care regulatory agency or a physician begins on the date on which the determination that the individual or physician is liable becomes final.

(f) For purposes of Subsection (e), a "physician" includes a physician, a professional association composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code, or a partnership composed solely of physicians.

(g) For purposes of Subsection (e), "health care regulatory agency" has the meaning assigned by Section 774.001, Government Code.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995.

Renumbered from Human Resources Code Sec. 36.009 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(a), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, Sec. 4.06, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 6, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1311 (S.B. 8), Sec. 12, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.182, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 6, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.90, eff. April 1, 2025.

Sec. 36.006. APPLICATION OF OTHER LAW. The application of a civil remedy under this chapter does not preclude the application of another common law, statutory, or regulatory remedy, except that a person may not be liable for a civil remedy under this chapter and civil damages or a penalty under Section 32.039 if the civil remedy and civil damages or penalty are assessed for the same act.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.010 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(a), eff. Sept. 1, 1997.

Sec. 36.007. RECOVERY OF COSTS, FEES, AND EXPENSES. The attorney general may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations under this chapter, including court costs, reasonable attorney's fees, witness fees, and deposition fees.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.011 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(a), eff. Sept. 1, 1997.

Sec. 36.008. USE OF MONEY RECOVERED. The legislature, in appropriating money recovered under this chapter, shall consider the

requirements of the attorney general and other affected state agencies in investigating health care program fraud and enforcing this chapter.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.012 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 7, eff. September 1, 2023.

SUBCHAPTER B. ACTION BY ATTORNEY GENERAL

Sec. 36.051. INJUNCTIVE RELIEF. (a) If the attorney general has reason to believe that a person is committing, has committed, or is about to commit an unlawful act, the attorney general may institute an action for an appropriate order to restrain the person from committing or continuing to commit the act.

(b) An action under this section shall be brought in a district court of Travis County or of a county in which any part of the unlawful act occurred, is occurring, or is about to occur.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.003 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(b), eff. Sept. 1, 1997.

Sec. 36.052. CIVIL REMEDIES. (a) Except as provided by Subsection (c), a person who commits an unlawful act is liable to the state for:

(1) the amount of any payment or the value of any monetary or in-kind benefit provided under a health care program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party;

(2) interest on the amount of the payment or the value of the benefit described by Subdivision (1) at the prejudgment interest rate in effect on the day the payment or benefit was received or paid, for the period from the date the benefit was received or paid to the date that the state recovers the amount of the payment or value of the benefit;

(3) a civil penalty of:

(A) not less than $5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $5,500, and not more than $15,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $15,000, for each unlawful act committed by the person that results in injury to an elderly person, as defined by Section 48.002(a)(1), a person with a disability, as defined by Section 48.002(a)(8)(A), or a person younger than 18 years of age; or

(B) not less than $5,500 or the minimum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $5,500, and not more than $11,000 or the maximum amount imposed as provided by 31 U.S.C. Section 3729(a), if that amount exceeds $11,000, for each unlawful act committed by the person that does not result in injury to a person described by Paragraph (A); and

(4) two times the amount of the payment or the value of the benefit described by Subdivision (1).

(b) In determining the amount of the civil penalty described by Subsection (a)(3), the trier of fact shall consider:

(1) whether the person has previously violated the provisions of this chapter;

(2) the seriousness of the unlawful act committed by the person, including the nature, circumstances, extent, and gravity of the unlawful act;

(3) whether the health and safety of the public or an individual was threatened by the unlawful act;

(4) whether the person acted in bad faith when the person engaged in the conduct that formed the basis of the unlawful act; and

(5) the amount necessary to deter future unlawful acts.

(c) The trier of fact may assess a total of not more than two times the amount of a payment or the value of a benefit described by Subsection (a)(1) if the trier of fact finds that:

(1) the person furnished the attorney general with all information known to the person about the unlawful act not later than the 30th day after the date on which the person first obtained the information; and

(2) at the time the person furnished all the information to the attorney general, the attorney general had not yet begun an investigation under this chapter.

(d) An action under this section shall be brought in Travis

County or in a county in which any part of the unlawful act occurred.

(e) The attorney general may:

(1) bring an action for civil remedies under this section together with a suit for injunctive relief under Section 36.051; or

(2) institute an action for civil remedies independently of an action for injunctive relief.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.004 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(b), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, Sec. 4.04, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 7, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 29 (S.B. 362), Sec. 1, eff. May 4, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.183, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 8, eff. September 1, 2023.

Sec. 36.053. INVESTIGATION. (a) The attorney general may take action under Subsection (b) if the attorney general has reason to believe that:

(1) a person has information or custody or control of documentary material relevant to the subject matter of an investigation of an alleged unlawful act;

(2) a person is committing, has committed, or is about to commit an unlawful act; or

(3) it is in the public interest to conduct an investigation to ascertain whether a person is committing, has committed, or is about to commit an unlawful act.

(b) In investigating an unlawful act, the attorney general may:

(1) require the person to file on a prescribed form a statement in writing, under oath or affirmation, as to all the facts and circumstances concerning the alleged unlawful act and other information considered necessary by the attorney general;

(2) examine under oath a person in connection with the alleged unlawful act; and

(3) execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying of the material under Section 36.054.

(c) The office of the attorney general may not release or disclose information that is obtained under Subsection (b)(1) or (2) or any documentary material or other record derived from the information except:

(1) by court order for good cause shown;

(2) with the consent of the person who provided the information;

(3) to an employee of the attorney general;

(4) to an agency of this state, the United States, or another state;

(5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C;

(6) to a political subdivision of this state; or

(7) to a person authorized by the attorney general to receive the information.

(d) The attorney general may use documentary material derived from information obtained under Subsection (b)(1) or (2), or copies of that material, as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(e) If a person fails to file a statement as required by Subsection (b)(1) or fails to submit to an examination as required by Subsection (b)(2), the attorney general may file in a district court of Travis County a petition for an order to compel the person to file the statement or submit to the examination within a period stated by court order. Failure to comply with an order entered under this subsection is punishable as contempt.

(f) An order issued by a district court under this section is subject to appeal to the supreme court.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.005 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(b), eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1153, Sec. 4.05, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 8, eff. September 1, 2005.

Sec. 36.054. CIVIL INVESTIGATIVE DEMAND. (a) An investigative demand must:

(1) state the rule or statute under which the alleged unlawful act is being investigated and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.

(b) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Texas Rules of Civil Procedure.

(c) Service of an investigative demand may be made by:

(1) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering an executed copy of the demand to the principal place of business in this state of the person to be served; or

(3) mailing by registered or certified mail an executed copy of the demand addressed to the person to be served at the person's principal place of business in this state or, if the person has no place of business in this state, to a person's principal office or place of business.

(d) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the office of the attorney general or as agreed by the person served and the attorney general.

(e) The office of the attorney general may not produce for inspection or copying or otherwise disclose the contents of documentary material obtained under this section except:

(1) by court order for good cause shown;

(2) with the consent of the person who produced the information;

(3) to an employee of the attorney general;

(4) to an agency of this state, the United States, or another state;

(5) to any attorney representing the state under Section 36.055 or in a civil action brought under Subchapter C;

(6) to a political subdivision of this state; or

(7) to a person authorized by the attorney general to receive the information.

(e-1) The attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or by an authorized representative of that person. The attorney general may use the documentary material or copies of it as the attorney general determines necessary in the enforcement of this chapter, including presentation before a court.

(f) A person may file a petition, stating good cause, to extend the return date for the demand or to modify or set aside the demand. A petition under this section shall be filed in a district court of Travis County and must be filed before the earlier of:

(1) the return date specified in the demand; or

(2) the 20th day after the date the demand is served.

(g) Except as provided by court order, a person on whom a demand has been served under this section shall comply with the terms of an investigative demand.

(h) A person who has committed an unlawful act in relation to a health care program in this state has submitted to the jurisdiction of this state and personal service of an investigative demand under this section may be made on the person outside of this state.

(i) This section does not limit the authority of the attorney general to conduct investigations or to access a person's documentary materials or other information under another state or federal law, the Texas Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

(j) If a person fails to comply with an investigative demand, or if copying and reproduction of the documentary material demanded cannot be satisfactorily accomplished and the person refuses to surrender the documentary material, the attorney general may file in

a district court of Travis County a petition for an order to enforce the investigative demand.

(k) If a petition is filed under Subsection (j), the court may determine the matter presented and may enter an order to implement this section.

(l) Failure to comply with a final order entered under Subsection (k) is punishable by contempt.

(m) A final order issued by a district court under Subsection (k) is subject to appeal to the supreme court.

Added by Acts 1995, 74th Leg., ch. 824, Sec. 1, eff. Sept. 1, 1995. Renumbered from Human Resources Code Sec. 36.006 by Acts 1997, 75th Leg., ch. 1153, Sec. 4.01(b), eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 9, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 9, eff. September 1, 2023.

Sec. 36.055. ATTORNEY GENERAL AS RELATOR IN FEDERAL ACTION. To the extent permitted by 31 U.S.C. Sections 3729-3733, the attorney general may bring an action as relator under 31 U.S.C. Section 3730 with respect to an act in connection with a health care program for which a person may be held liable under 31 U.S.C. Section 3729. The attorney general may contract with a private attorney to represent the state under this section.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.07(a), eff. Sept. 1, 1997.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 10, eff. September 1, 2023.

SUBCHAPTER C. ACTION BY PRIVATE PERSONS

Sec. 36.101. ACTION BY PRIVATE PERSON AUTHORIZED. (a) A person may bring a civil action for a violation of Section 36.002 for the person and for the state. The action shall be brought in the name of the person and of the state.

(b) In an action brought under this subchapter, a person who

violates Section 36.002 is liable as provided by Section 36.052.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.102. INITIATION OF ACTION; CONSENT REQUIRED FOR DISMISSAL. (a) A person bringing an action under this subchapter shall serve a copy of the petition and a written disclosure of substantially all material evidence and information the person possesses on the attorney general in compliance with the Texas Rules of Civil Procedure.

(b) The petition shall be filed in camera and, except as provided by Subsection (c-1) or (d), shall remain under seal until at least the 180th day after the date the petition is filed or the date on which the state elects to intervene, whichever is earlier. The petition may not be served on the defendant until the court orders service on the defendant.

(c) The state may elect to intervene and proceed with the action not later than the 180th day after the date the attorney general receives the petition and the material evidence and information.

(c-1) At the time the state intervenes, the attorney general may file a motion with the court requesting that the petition remain under seal for an extended period.

(d) The state may, for good cause shown, move the court to extend the 180-day deadline under Subsection (b) or (c). A motion under this subsection may be supported by affidavits or other submissions in camera.

(e) An action under this subchapter may be dismissed only if the court and the attorney general consent in writing to the dismissal and state their reasons for consenting.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 10, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 97 (H.B. 2004), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 97 (H.B. 2004), Sec. 2, eff.

September 1, 2019.

Sec. 36.1021. STANDARD OF PROOF. In an action under this subchapter, the state or person bringing the action must establish each element of the action, including damages, by a preponderance of the evidence.

Added by Acts 2007, 80th Leg., R.S., Ch. 29 (S.B. 362), Sec. 2, eff. May 4, 2007.

Sec. 36.103. ANSWER BY DEFENDANT. A defendant is not required to file in accordance with the Texas Rules of Civil Procedure an answer to a petition filed under this subchapter until the petition is unsealed and served on the defendant.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 11, eff. September 1, 2005.

Sec. 36.104. STATE DECISION; CONTINUATION OF ACTION. (a) Not later than the last day of the period prescribed by Section 36.102(c) or an extension of that period as provided by Section 36.102(d), the state shall:

(1) proceed with the action; or

(2) notify the court that the state declines to take over the action.

(b) If the state declines to take over the action, the person bringing the action may proceed without the state's participation. A person proceeding under this subsection may recover for an unlawful act for a period of up to six years before the date the lawsuit was filed, or for a period beginning when the unlawful act occurred until up to three years from the date the state knows or reasonably should have known facts material to the unlawful act, whichever of these two periods is longer, regardless of whether the unlawful act occurred more than six years before the date the lawsuit was filed. Notwithstanding the preceding sentence, in no event shall a person

proceeding under this subsection recover for an unlawful act that occurred more than 10 years before the date the lawsuit was filed.

(b-1) On request by the state, the state is entitled to be served with copies of all pleadings filed in the action and be provided at the state's expense with copies of all deposition transcripts. If the person bringing the action proceeds without the state's participation, the court, without limiting the status and right of that person, may permit the state to intervene at a later date on a showing of good cause.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 29 (S.B. 362), Sec. 3, eff. May 4, 2007.

Acts 2007, 80th Leg., R.S., Ch. 29 (S.B. 362), Sec. 4, eff. May 4, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 572 (S.B. 746), Sec. 2, eff. September 1, 2013.

Sec. 36.105. REPRESENTATION OF STATE BY PRIVATE ATTORNEY. The attorney general may contract with a private attorney to represent the state in an action under this subchapter with which the state elects to proceed.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.106. INTERVENTION BY OTHER PARTIES PROHIBITED. A person other than the state may not intervene or bring a related action based on the facts underlying a pending action brought under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.107. RIGHTS OF PARTIES IF STATE CONTINUES ACTION. (a) If the state proceeds with the action, the state has the primary responsibility for prosecuting the action and is not bound by an act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations set forth by this section.

(b) The state may dismiss the action notwithstanding the objections of the person bringing the action if:

(1) the attorney general notifies the person that the state has filed a motion to dismiss; and

(2) the court provides the person with an opportunity for a hearing on the motion.

(c) The state may settle the action with the defendant notwithstanding the objections of the person bringing the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. On a showing of good cause, the hearing may be held in camera.

(d) On a showing by the state that unrestricted participation during the course of the litigation by the person bringing the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the person's participation, including:

(1) limiting the number of witnesses the person may call;

(2) limiting the length of the testimony of witnesses called by the person;

(3) limiting the person's cross-examination of witnesses; or

(4) otherwise limiting the participation by the person in the litigation.

(e) On a showing by the defendant that unrestricted participation during the course of the litigation by the person bringing the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.108. STAY OF CERTAIN DISCOVERY. (a) On a showing by the state that certain actions of discovery by the person bringing the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period not to exceed 60 days.

(b) The court shall hear a motion to stay discovery under this section in camera.

(c) The court may extend the period prescribed by Subsection (a) on a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.109. PURSUIT OF ALTERNATE REMEDY BY STATE. (a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other proceeding as the person would have had if the action had continued under this subchapter.

(b) A finding of fact or conclusion of law made in the other proceeding that has become final is conclusive on all parties to an action under this subchapter. For purposes of this subsection, a finding or conclusion is final if:

(1) the finding or conclusion has been finally determined on appeal to the appropriate court;

(2) no appeal has been filed with respect to the finding or conclusion and all time for filing an appeal has expired; or

(3) the finding or conclusion is not subject to judicial review.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.110. AWARD TO PRIVATE PLAINTIFF. (a) If the state proceeds with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 15 percent but not more than 25 percent of the proceeds of the action, depending on the extent to which the person substantially contributed to the prosecution of the action.

(a-1) If the state does not proceed with an action under this subchapter, the person bringing the action is entitled, except as provided by Subsection (b), to receive at least 25 percent but not more than 30 percent of the proceeds of the action. The entitlement of a person under this subsection is not affected by any subsequent intervention in the action by the state in accordance with Section 36.104(b-1).

(b) If the court finds that the action is based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a Texas or federal criminal or civil hearing, in a Texas or federal legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award the amount the court considers appropriate but not more than 10 percent of the proceeds of the action. The court shall consider the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(c) A payment to a person under this section shall be made from the proceeds of the action. A person receiving a payment under this section is also entitled to receive from the defendant an amount for reasonable expenses, reasonable attorney's fees, and costs that the court finds to have been necessarily incurred. The court's determination of expenses, fees, and costs to be awarded under this subsection shall be made only after the defendant has been found liable in the action or the claim is settled.

(d) In this section, "proceeds of the action" includes proceeds of a settlement of the action.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 29 (S.B. 362), Sec. 5, eff. May

4, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 572 (S.B. 746), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.184, eff. April 2, 2015.

Sec. 36.111. REDUCTION OF AWARD. (a) If the court finds that the action was brought by a person who planned and initiated the violation of Section 36.002 on which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action the person would otherwise receive under Section 36.110, taking into account the person's role in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(b) If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of Section 36.002, the court shall dismiss the person from the civil action and the person may not receive any share of the proceeds of the action. A dismissal under this subsection does not prejudice the right of the state to continue the action.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.112. AWARD TO DEFENDANT FOR FRIVOLOUS ACTION. Chapter 105, Civil Practice and Remedies Code, applies in an action under this subchapter with which the state proceeds.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.113. CERTAIN ACTIONS BARRED. (a) A person may not bring an action under this subchapter that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding in which the state is already a party.

(b) The court shall dismiss an action or claim under this subchapter, unless opposed by the attorney general, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a Texas or federal criminal or civil hearing in which the state or an agent of the state is a party, in a Texas legislative or administrative report, or other Texas hearing, audit, or investigation, or from the news media, unless the person bringing the action is an original source of the information. In this subsection, "original source" means an individual who:

(1) prior to a public disclosure under this subsection, has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based; or

(2) has knowledge that is independent of and materially adds to the publicly disclosed allegation or transactions and who has voluntarily provided the information to the state before filing an action under this subchapter.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 572, Sec. 6, eff. September 1, 2013.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 572 (S.B. 746), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 572 (S.B. 746), Sec. 6, eff. September 1, 2013.

Sec. 36.114. STATE NOT LIABLE FOR CERTAIN EXPENSES. The state is not liable for expenses that a person incurs in bringing an action under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.115. RETALIATION AGAINST PERSON PROHIBITED. (a) A person, including an employee, contractor, or agent, who is discharged, demoted, suspended, threatened, harassed, or in any other

manner discriminated against in the terms and conditions of employment because of a lawful act taken by the person or associated others in furtherance of an action under this subchapter, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this subchapter, or other efforts taken by the person to stop one or more violations of Section 36.002 is entitled to:

(1) reinstatement with the same seniority status the person would have had but for the discrimination; and

(2) not less than two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees.

(b) A person may bring an action in the appropriate district court for the relief provided in this section.

(c) A person must bring suit on an action under this section not later than the third anniversary of the date on which the cause of action accrues. For purposes of this section, the cause of action accrues on the date the retaliation occurs.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 572 (S.B. 746), Sec. 5, eff. September 1, 2013.

Sec. 36.116. SOVEREIGN IMMUNITY NOT WAIVED. Except as provided by Section 36.112, this subchapter does not waive sovereign immunity.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

Sec. 36.117. ATTORNEY GENERAL COMPENSATION. The office of the attorney general may retain a reasonable portion of recoveries under this subchapter, not to exceed amounts specified in the General

Appropriations Act, for the administration of this subchapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.08, eff. Sept. 1, 1997.

SUBCHAPTER D. REVOCATION OF CERTAIN OCCUPATIONAL LICENSES

Sec. 36.132. REVOCATION OF LICENSES. (a) In this section:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority;

(B) is subject before expiration to suspension, revocation, forfeiture, or termination by an issuing licensing authority; and

(C) must be obtained before a person may practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means:

(A) the Texas Medical Board;

(B) the State Board of Dental Examiners;

(C) the Texas Behavioral Health Executive Council;

(D) the Texas Board of Nursing;

(E) the Texas Board of Physical Therapy Examiners;

(F) the Texas Board of Occupational Therapy Examiners; or

(G) another state agency authorized to regulate a provider who receives or is eligible to receive payment for a health care service under a health care program.

(b) A licensing authority shall revoke a license issued by the authority to a person if the person is convicted of a felony under Section 35A.02, Penal Code. In revoking the license, the licensing authority shall comply with all procedures generally applicable to the licensing authority in revoking licenses.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 4.09, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.012, eff. Feb. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 70, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 3.005, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 273 (S.B. 745), Sec. 11, eff. September 1, 2023.

SUBTITLE D. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; CHILD WELFARE AND PROTECTIVE SERVICES

CHAPTER 40. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. DEFINITIONS. In this subtitle:

(1) Repealed by Acts 2005, 79th Leg., Ch. 268, Sec. 1.129(1), eff. September 1, 2005.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(50), eff. April 2, 2015.

(2-a) "Council" means the Family and Protective Services Council.

(3) "Department" means the Department of Family and Protective Services.

(4) "Commissioner" means the commissioner of the Department of Family and Protective Services.

(4-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(50), eff. April 2, 2015.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(42), eff. September 1, 2015.

(6) "State supported living center" has the meaning assigned by Section 531.002, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.10, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.75, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.129(1), eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 23, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(50), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(42), eff. September 1, 2015.

Sec. 40.002. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; GENERAL DUTIES OF DEPARTMENT. (a) The Department of Family and Protective Services is composed of the council, the commissioner, an administrative staff, and other employees necessary to efficiently carry out the purposes of this chapter.

(b) Except as provided by Section 40.0025, the department shall:

(1) provide protective services for children and elderly persons and persons with disabilities, including investigations of alleged abuse, neglect, or exploitation in facilities of the Department of State Health Services and the Department of Aging and Disability Services or the successor agency for either of those agencies;

(2) provide family support and family preservation services that respect the fundamental right of parents to control the education and upbringing of their children;

(3) license, register, and enforce regulations applicable to child-care facilities, child-care administrators, and child-placing agency administrators; and

(4) implement and manage programs intended to provide early intervention or prevent at-risk behaviors that lead to child abuse, delinquency, running away, truancy, and dropping out of school.

(c) The department is the state agency designated to cooperate with the federal government in the administration of programs under:

(1) Parts B and E, Title IV, federal Social Security Act (42 U.S.C. Sections 620 et seq. and 670 et seq.);

(2) the Child Abuse Prevention and Treatment Act (42 U.S.C. Section 5101 et seq.); and

(3) other federal law for which the department has administrative responsibility.

(d) The department shall cooperate with the United States Department of Health and Human Services and other federal and state agencies in a reasonable manner and in conformity with the provisions of federal law and this subtitle to the extent necessary to qualify for federal assistance in the delivery of services.

(e) If the department determines that a provision of state law

governing the department conflicts with a provision of federal law, the executive commissioner may adopt policies and rules necessary to allow the state to receive and spend federal matching funds to the fullest extent possible in accordance with the federal statutes, this subtitle, and the state constitution and within the limits of appropriated funds.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 268, Sec. 32(f), eff. September 1, 2008.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 489, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 1.11, 2.128, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.07, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.76, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.05, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.185, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.18, eff. September 1, 2017.

Sec. 40.0025. AGENCY FUNCTIONS.

Text of subsection effective until April 1, 2025

(a) In this section, "function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under Section 531.02012, Government Code.

Text of subsection effective on April 1, 2025

(a) In this section, "function" includes a power, duty, program, or activity and an administrative support services function associated with the power, duty, program, or activity, unless consolidated under former Section 531.02012, Government Code.

Text of subsection effective until April 1, 2025

(b) In accordance with Subchapter A-1, Chapter 531, Government Code, and notwithstanding any other law, the department performs only functions, including the statewide intake of reports and other information, related to the following services:

(1) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

(2) adult protective services, other than investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(A) in a facility operated, or in a facility or by a person licensed, certified, or registered, by a state agency; or

(B) by a provider that has contracted to provide home and community-based services; and

(3) family support services functions, including:

(A) family support services as defined under Section 137.002; and

(B) programs that:

(i) provide parent education;

(ii) promote healthier parent-child relationships; or

(iii) prevent family violence.

Text of subsection effective on April 1, 2025

(b) In accordance with former Subchapter A-1, Chapter 531, Government Code, and notwithstanding any other law, the department performs only functions, including the statewide intake of reports and other information, related to the following services:

(1) child protective services, including services that are required by federal law to be provided by this state's child welfare agency;

(2) adult protective services, other than investigations of the alleged abuse, neglect, or exploitation of an elderly person or person with a disability:

(A) in a facility operated, or in a facility or by a person licensed, certified, or registered, by a state agency; or

(B) by a provider that has contracted to provide home and community-based services; and

(3) family support services functions, including:

(A) family support services as defined under Section

137.002; and

(B) programs that:

(i) provide parent education;

(ii) promote healthier parent-child relationships; or

(iii) prevent family violence.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.19, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.91, eff. April 1, 2025.
Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 13, eff. September 1, 2023.

Sec. 40.0026. REFERENCES IN LAW MEANING DEPARTMENT. In this code or any other law, a reference to the department or the commission in relation to a function described by Section 40.0025(b) means the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.19, eff. September 1, 2017.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 28, eff. September 1, 2017.

Sec. 40.0027. REFERENCES IN LAW MEANING COMMISSIONER OR DESIGNEE. In this code or in any other law, a reference to the commissioner or the executive commissioner in relation to a function described by Section 40.0025(b) means the commissioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.19, eff. September 1, 2017.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 28, eff. September 1, 2017.

Sec. 40.003. SUNSET PROVISION. The Department of Family and

Protective Services is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this chapter expires September 1, 2027.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.77, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.04, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.10, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.13, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.04, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.09, eff. June 10, 2019.

Sec. 40.004. PUBLIC INTEREST INFORMATION AND PUBLIC ACCESS. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the department.

(b) The commissioner, with the advice of the council, shall prepare information of public interest describing the functions of the department. The commission shall make the information available to the public and appropriate state agencies.

(c) The commissioner shall grant an opportunity for a public hearing before the council makes recommendations to the commissioner regarding a substantive rule if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental entity; or

(3) an association with at least 25 members.

(d) The executive commissioner shall consider fully all written and oral submissions about a proposed rule.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003.

Sec. 40.0041. COMPLAINT PROCESS. (a) The executive commissioner by rule shall develop and implement a uniform process for receiving and resolving complaints against the department throughout the state. The process shall include:

(1) statewide procedures through which the public, consumers, and service recipients are informed:

(A) of the right to make a complaint against the department, including the mailing addresses and telephone numbers of appropriate department personnel responsible for receiving complaints and providing related assistance; and

(B) of the department's procedures for resolving a complaint, including the right to appeal a decision made at the local level;

(2) development and statewide distribution of a form or telephone system that may be used to make a complaint;

(3) a requirement that the department provide information by mail or telephone regarding the department's procedures for investigating and resolving a complaint to each person who makes a complaint; and

(4) a requirement that the department provide status information at least quarterly to a person with a pending complaint against the department, unless the information would jeopardize an undercover investigation.

(b) In addition to other appropriate methods, the department may provide the information specified by Subsection (a)(1):

(1) on each registration form, application, or written contract for services of a person regulated by the department;

(2) on a sign prominently displayed in the place of business of each person regulated by the department; or

(3) in a bill for service provided by a person regulated by the department.

(c) The department shall keep an information file about each complaint made against the department that the department has authority to resolve.

(d) The executive commissioner shall develop a consistent,

statewide process for addressing an appeal by a person dissatisfied with the resolution of a complaint at the regional level. The process shall include an opportunity for appeal of a complaint without the participation of the department's ombudsman office.

(e) The department shall develop and maintain a centralized tracking system to gather information concerning all complaints made against the department throughout the state. The department shall require its personnel to provide information regarding each complaint for inclusion in records maintained under the tracking system at the department's state headquarters, regardless of the location or level at which the complaint is initiated or resolved. The department shall require at least the following information to be maintained for each complaint:

(1) the date the complaint is received;

(2) the name of the person making the complaint;

(3) the subject matter of the complaint;

(4) a record of all persons contacted by the department in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for each complaint determined by the department to require no corrective action, an explanation of the reason that the complaint was closed without action.

(f) The department shall periodically prepare and deliver reports to the executive commissioner and the commissioner regarding the number, type, and resolution of complaints made in the state against the department.

(g) The department shall cooperate with the ombudsman for children and youth in foster care to create consequences, based on the circumstances of the complaint and the severity of the retaliation, for any person who is found to have retaliated against a child or youth in the conservatorship of the department because of a complaint made to the ombudsman.

(h) The executive commissioner shall adopt rules requiring all residential child-care facilities in which children and youth in the conservatorship of the department are placed to display information about the ombudsman for children and youth in foster care and the process for filing a complaint with the ombudsman in a location that is easily accessible and offers maximum privacy to the children and youth residing at the facility.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.186, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1168 (S.B. 830), Sec. 2, eff. September 1, 2015.

Sec. 40.005. CONFIDENTIALITY OF INFORMATION. (a) The executive commissioner shall establish and the department shall enforce rules governing the custody, use, and preservation of the department's records, papers, files, and communications.

(b) The executive commissioner shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department's programs and must comply with applicable state and federal law and department rules.

(c) Notwithstanding any other provision of law, the executive commissioner by rule may prescribe a process by which an administrative law judge may disclose requested confidential information that the department possesses. The rules must provide that the information may be disclosed by the administrative law judge only if the administrative law judge:

(1) provides notice to the department and any interested party; and

(2) determines after an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual.

(d) Except as otherwise provided, a person who is authorized to receive confidential information shall maintain its confidentiality and shall prevent disclosure of the information to a person who is not authorized to receive the information.

(e) A person commits an offense if the person discloses without authorization confidential information contained in the department's records, papers, files, or communications. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.187, eff. April 2, 2015.

Sec. 40.006. APPLICATION OF OTHER LAWS. (a) The department is subject to Chapters 551, 2001, and 2002, Government Code.
(b) The department is not required to comply with Chapter 53, Occupations Code, in issuing a license or conducting a background check under Chapter 42 or 43.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 1, eff. September 1, 2009.

Sec. 40.007. REPORTING REQUIREMENT; PROFESSIONAL FEES. (a) The department shall include in any report required by law concerning the department's expenditures information relating to fees for professional or consultative services provided for the general administration of the department.
(b) The report required under Subsection (a) may not include:
(1) professional fees paid for routine or special examinations to determine an individual's eligibility for a program administered by the department;
(2) professional fees for treatment, services, or care for individual recipients; or
(3) fees for providing for the special needs of individual recipients, including the provision of appliances.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.01(a), eff. Sept. 1, 1997.

Sec. 40.008. PROGRAM ACCESSIBILITY. The department shall comply with federal and state laws related to program and facility accessibility. The department shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 5, eff. Sept. 1, 1997.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 40.021. FAMILY AND PROTECTIVE SERVICES COUNCIL. (a) The Family and Protective Services Council is created to assist the commissioner in developing rules and policies for the department.

(b) The council is composed of nine members of the public appointed by the governor. In making appointments to the council, the governor shall consider persons who have a demonstrated knowledge of the department and the health and human services system in general, including former department employees, court-appointed special advocates, foster care providers, and employees of child advocacy centers.

Text of subsection effective until April 1, 2025

(c) The council shall study and make recommendations to the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department, the rights and duties of persons who are served or regulated by the department, and the consolidation of the provision of administrative support services as provided by Section 531.00553, Government Code. The council may not develop policies or rules relating to administrative support services provided by the commission for the department.

Text of subsection effective on April 1, 2025

(c) The council shall study and make recommendations to the commissioner regarding the management and operation of the department, including policies and rules governing the delivery of services to persons who are served by the department, the rights and duties of persons who are served or regulated by the department, and the consolidation of the provision of administrative support services as provided by Subchapter E, Chapter 524, Government Code. The council may not develop policies or rules relating to administrative support services provided by the commission for the department.

(d) Chapter 551, Government Code, applies to the council.

(e) Chapter 2110, Government Code, does not apply to the council.

(f) A majority of the members of the council constitute a quorum for the transaction of business.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.92, eff. April 1, 2025.

Sec. 40.022. APPOINTMENTS. (a) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Appointments to the council shall be made so that each geographic area of the state is represented on the council. Notwithstanding Subsection (a), appointments to the council must reflect the ethnic diversity of this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.023. TRAINING PROGRAM FOR COUNCIL MEMBERS. (a) A person who is appointed as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide information to the member regarding:

(1) the legislation that created the department and the council;

(2) the programs operated by the department;

(3) the role and functions of the department and the council, including detailed information regarding the advisory responsibilities of the council;

(4) the role of the commission and the responsibilities of the commission in relation to the department;

(5) the rules of the department, with an emphasis on rules that relate to disciplinary and investigatory authority;

(6) the current budget for the department;

(7) the results of the most recent formal audit of the department;

(8) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) public information law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(9) the requirements of the conflict-of-interest laws and other laws relating to public officials; and

(10) any applicable ethics policies adopted by the commissioner or the Texas Ethics Commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.024. TERMS; VACANCY. (a) Members of the council serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the council may not serve more than two consecutive full terms as a council member.

(c) A vacancy on the council shall be filled in the same manner as the original appointment.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.025. REIMBURSEMENT FOR EXPENSES. A council member may not receive compensation for service as a member of the council but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the council as provided by the General Appropriations Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.026. PRESIDING OFFICER; OTHER OFFICERS; MEETINGS. (a) The governor shall designate a member of the council as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The members of the council shall elect any other necessary officers.

(c) The council shall meet quarterly and at other times at the call of the presiding officer. The council may hold meetings in different areas of the state.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 29, eff. September 1, 2017.

Sec. 40.027. COMMISSIONER. (a) The governor, with the advice and consent of the senate, shall appoint a commissioner. The commissioner is to be selected according to education, training, experience, and demonstrated ability.

(b) The commissioner serves a term of two years.

(c) The commissioner shall:

(1) act as the department's chief administrative officer;

(2) oversee the development and implementation of policies and guidelines needed for the administration of the department's functions;

(3) oversee the development of rules relating to the matters within the department's jurisdiction, including the delivery of services to persons and the rights and duties of persons who are served or regulated by the department; and

(4) serve as a liaison between the department and commission.

(d) The commissioner shall administer this chapter and other laws relating to the department.

(e) Notwithstanding any other law, the commissioner shall adopt rules and policies for the operation of and the provision of services by the department.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1460, Sec. 2.04, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 1.12, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.188, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 30, eff. September 1, 2017.

Sec. 40.030. ADVISORY COMMITTEES. (a) The commissioner or the

commissioner's designee may appoint advisory committees in accordance with Chapter 2110, Government Code.

(b) The commissioner shall adopt rules, in compliance with Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by the department. The rules may include provisions governing:

(1) an advisory committee's size and quorum requirements;

(2) qualifications for membership of an advisory committee, including:

(A) requirements relating to experience and geographic representation; and

(B) requirements for the department to include as members of advisory committees youth who have aged out of foster care and parents who have successfully completed family service plans and whose children were returned to the parents, as applicable;

(3) appointment procedures for an advisory committee;

(4) terms for advisory committee members; and

(5) compliance with Chapter 551, Government Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.78, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 70, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.13, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 31, eff. September 1, 2017.

Sec. 40.0315. INVESTIGATION UNIT FOR ADULT PROTECTIVE SERVICES. (a) The adult protective services division of the department shall maintain an investigation unit to investigate allegations of abuse, neglect, and exploitation of elderly persons and persons with disabilities reported to the division.

(b) An investigator in the unit shall determine whether an elderly person or person with a disability who is the subject of a report made under Section 48.051(a) may have suffered from abuse, neglect, or exploitation as a result of the criminal conduct of

another person. If the investigator determines that criminal conduct may have occurred, the investigator shall immediately notify:

(1) the commission's office of inspector general if the person with a disability who is the subject of the report resides in a state supported living center or the ICF-IID component of the Rio Grande State Center; and

(2) the appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.01, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 24, eff. June 11, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.189, eff. April 2, 2015.

Sec. 40.032. PERSONNEL. (a) The department may employ personnel necessary to administer the department's duties.

(b) The department shall develop an intradepartmental career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program shall require the intradepartmental posting of all positions concurrently with any public posting.

(c) The department shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(d) The department shall provide to the department's employees, as often as is necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The department shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without

regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that comply with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's workforce that meets federal and state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the department's workforce of all persons for whom federal or state laws, rules, and regulations and instructions adopted under those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(f) The policy statement required under Subsection (e) shall:

(1) be filed with the governor's office;

(2) cover an annual period;

(3) be updated at least annually; and

(4) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (e)(1).

(g) The governor's office shall develop and deliver a biennial report to the legislature based on the information submitted under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 13, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.190, eff. April 2, 2015.

Sec. 40.0321. SALARY SUPPLEMENTATION BY COUNTY OR MUNICIPALITY. (a) A county or municipality may supplement, from its own funds, the salary of a department employee whose duties include providing services as part of, or relating to, the provision of child protective services and adult protective services by the department.

(b) A department employee who has worked in the same position

for the department in a different region is not eligible for a salary supplement under Subsection (a) for a minimum of six months after assuming the position in the new region.

(c) Section 659.020, Government Code, does not apply to the supplement authorized by this section.

(d) The department may not require a salary supplement as a condition for creating or maintaining a position in the region.

Added by Acts 2001, 77th Leg., ch. 606, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.191, eff. April 2, 2015.

Sec. 40.0322. QUALIFICATIONS FOR ADULT PROTECTIVE SERVICES PERSONNEL; RECRUITMENT. (a) In hiring department employees whose duties include providing services as part of, or relating to, the provision of adult protective services directly to an elderly person or person with a disability, the commissioner shall ensure that the department hires, as often as possible, persons with professional credentials related to adult protective services, including persons who are licensed master social workers, as defined by Section 505.002, Occupations Code, or licensed professional counselors.

(b) Subject to the availability of funds, the executive commissioner by rule shall develop and the department shall implement a recruiting program designed to attract and retain for employment in the adult protective services division persons with professional credentials described by Subsection (a).

(c) Subject to the availability of funds, the executive commissioner by rule shall develop and the department shall implement an incentive program to encourage each department employee whose duties include the duties described by Subsection (a) to obtain professional credentials described by that subsection if the employee does not have those credentials.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.02, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.192, eff. April 2, 2015.

Sec. 40.0323. COORDINATION REGARDING RECRUITMENT FOR AND CURRICULUM OF CERTAIN CERTIFICATE OR DEGREE PROGRAMS. Subject to the availability of funds, the department and the Texas Higher Education Coordinating Board jointly shall develop strategies to:

(1) promote certificate or degree programs in the fields of social work and psychology to individuals enrolled in or admitted to institutions of higher education in this state; and

(2) ensure that persons receiving a certificate or degree, including a graduate degree, in social work or psychology from an institution of higher education in this state have the knowledge and skills regarding protective services that are provided directly to elderly persons or persons with disabilities and necessary for successful employment by the adult protective services division of the department.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.02, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.193, eff. April 2, 2015.

Sec. 40.0325. STUDY OF CASEWORKER EDUCATION REIMBURSEMENT. (a) The department shall study the effect that providing reimbursement for certain educational expenses would have on recruiting and retaining qualified child protective services caseworkers. The study must include a comparative analysis of the cost of training new caseworkers and the benefits of having an experienced caseworker staff with the cost of providing reimbursement for educational expenses.

(b) In determining the cost of reimbursing caseworkers for educational expenses, the department shall consider reimbursing caseworkers for tuition, academic fees, and other academic expenses the caseworker paid to an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003, Education Code, while the caseworker was enrolled in a bachelor's degree or advanced degree program in an academic program that the department determines provides necessary training for child protective services caseworkers.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(113), eff. June 17, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 24, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(113), eff. June 17, 2011.

Sec. 40.0326. RECRUITMENT OF CASEWORKERS. When recruiting child protective services caseworkers, the department shall target its recruitment efforts toward individuals who hold a bachelor's degree or advanced degree in at least one of the following academic areas:

(1) social work;
(2) counseling;
(3) early childhood education;
(4) psychology;
(5) criminal justice;
(6) elementary or secondary education;
(7) sociology; or
(8) human services.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 24, eff. September 1, 2007.

Sec. 40.033. MERIT SYSTEM. (a) Subject to rules adopted by the executive commissioner, the department may establish a merit system for its employees.

(b) The merit system may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.194, eff. April 2, 2015.

Sec. 40.034. PROHIBITED ACTIVITIES BY FORMER OFFICERS OR EMPLOYEES. (a) For one year after the date on which a former officer or employee of the department terminates service or employment with the department, the individual may not, directly or indirectly, attempt or aid in the attempt to procure a contract with the department that relates to a program or service in which the individual was directly concerned or for which the individual had administrative responsibility.

(b) This section does not apply to:

(1) a former employee who is compensated on the last date of service or employment below the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including a state employee who is exempt from the state's position classification plan; or

(2) a former officer or employee who is employed by another state agency or a community center.

(c) A former officer or employee of the department commits an offense if the former officer or employee violates this section. An offense under this section is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.035. TRAINING PROGRAM FOR ADULT PROTECTIVE SERVICES; CONTINUING EDUCATION. (a) The department shall develop and implement a training program that, except as provided by Subsection (a-1), each newly hired or assigned department employee must successfully complete before:

(1) initiating an investigation of a report of alleged abuse, neglect, or exploitation of an elderly person or person with a disability under Chapter 48; or

(2) providing protective services to elderly persons or persons with disabilities under that chapter.

(a-1) A newly hired or assigned department employee may initiate an investigation of a report of alleged abuse, neglect, or exploitation of an elderly person or a person with a disability under Chapter 48 or provide protective services to an elderly person or a person with a disability under that chapter only if the employee:

(1) is in the process of receiving the training required by Subsection (a); and

(2) initiates the investigation or provides protective services under the direct supervision of the person who is providing the training to the employee.

(b) The training program must:

(1) provide the employee with appropriate comprehensive information regarding:

(A) the incidence and types of reports of abuse, neglect, and exploitation of elderly persons or persons with disabilities that are received by the department, including information concerning false reports; and

(B) the use and proper implementation of:

(i) the risk assessment criteria developed under Section 48.004;

(ii) the criteria used by caseworkers to determine whether elderly persons or persons with disabilities lack capacity to consent to receive protective services; and

(iii) the legal procedures available under Chapter 48 for the protection of elderly persons or persons with disabilities, including the procedures for obtaining a court order for emergency protective services under Section 48.208;

(2) include best practices for management of a case from the intake process to the provision of protective services, including criteria that specify the circumstances under which an employee should:

(A) consult a supervisor regarding a case; or

(B) refer an elderly person or person with a disability to an appropriate public agency or community service provider for guardianship or other long-term services after the delivery of protective services to that person has been completed;

(3) provide appropriate specialized training in any necessary topics, including:

(A) investigation of suspected identity theft and other forms of financial exploitation and suspected self-neglect; and

(B) establishment and maintenance of working relationships with community organizations and other local providers who provide services to elderly persons and persons with disabilities;

(4) include on-the-job training, which must require another department caseworker with more experience to accompany and train the caseworker in the field;

(5) provide for the development of individualized training plans;

(6) include training in working with law enforcement agencies and the court system when legal intervention is sought for investigations or emergency orders;

(7) to the maximum extent possible, include nationally recognized best practices in addition to the best practices required under Subdivision (2); and

(8) include testing, progress reports, or other evaluations to assess the performance of trainees.

(c) The department at least annually shall provide comprehensive case management training to supervisors of department employees who conduct investigations under Chapter 48. The training must be designed to enable the supervisors to provide guidance on investigations of reports of alleged abuse, neglect, or exploitation that are complex or present unique problems.

(d) The department shall develop and implement appropriate continuing education programs for employees of the adult protective services division who have completed initial training under this section. The continuing education programs must include nationally recognized best practices to the maximum extent possible and must be designed to provide an annual update regarding changes in:

(1) adult protective services division policies and procedures; and

(2) applicable law, including statutory changes affecting the adult protective services division or elderly persons or persons with disabilities served by the division.

(e) A department employee required to participate in a continuing education program under this section must complete the program at least once each calendar year.

(f) The department shall:

(1) make curriculum developed for a training or continuing education program under this section readily available to department employees in written form; and

(2) periodically revise a training and continuing education program established under this section as necessary to satisfy training needs identified by the department or department employees.

(g) The circumstances specified under Subsection (b)(2) under which an employee should consult a supervisor regarding a case must be consistent with the risk assessment criteria developed under

Section 48.004 that require consultation with a supervisor.

(h) The executive commissioner by rule shall provide policies and procedures by which the department incorporates examples of actual cases investigated by the department in the training programs under this section for use as training tools.

(i) In implementing the training program and continuing education programs under this section, the department, to the maximum extent possible, shall contract with persons who are not department employees to conduct the programs.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.03, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.195, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 264 (S.B. 2261), Sec. 1, eff. September 1, 2023.

Sec. 40.036. ALZHEIMER'S DISEASE AND DEMENTIA TRAINING. (a) In this section:

(1) "Adult protective services employee" means a division employee who performs a function described by Section 40.035(a).

(2) "Division" means the department's adult protective services division.

(b) Except as provided by Subsections (c) and (d), the department shall develop a training program for adult protective services employees on identifying and interacting with individuals who have Alzheimer's disease or dementia. The program must include an initial four-hour training requirement and an annual two-hour continuing education requirement. The requirements are in addition to the training required by Section 40.035, but may be provided in conjunction with that training. The training program must cover, at a minimum, information about:

(1) dementia, including behavioral and psychiatric symptoms;

(2) interaction with an individual who has impaired communication skills, including effective and respectful communication techniques;

(3) techniques for understanding and approaching an

individual's behavioral symptoms;

(4) specific aspects of safety, including wandering by an individual;

(5) abuse, neglect, and exploitation, as defined by Section 48.002, of an individual with Alzheimer's disease or dementia, including:

(A) identifying the most common types of abuse;

(B) recognizing signs of abuse, neglect, and exploitation; and

(C) identifying when it is necessary to contact a law enforcement agency about potential criminal behavior toward an individual with Alzheimer's disease or dementia that is committed by a family member or caretaker of the individual or that occurs in an institution;

(6) identification of self-neglect by an individual with Alzheimer's disease or dementia; and

(7) protocols for connecting an individual with Alzheimer's disease or dementia to local care resources or professionals who are skilled in dementia care to encourage cross-referring the individual for services and increase reporting of incidents of abuse, neglect, or exploitation.

(c) The division may use a training program developed or adopted by the Health and Human Services Commission or the Department of State Health Services if the program is equivalent to or more extensive than the program requirements under Subsection (b).

(d) If another state law or a federal law or regulation requires training on Alzheimer's disease or dementia that is more rigorous or extensive than the training required by Subsection (b), the division shall provide training to adult protective services employees that complies with that law or regulation.

(e) An area agency on aging must ensure that the agency's employees or volunteers who provide services directly to an elderly individual or the individual's family members or caregivers receive training on Alzheimer's disease and dementia. The training must:

(1) be evidence-based or evidence-informed; and

(2) focus on:

(A) recognizing the signs and symptoms of cognitive impairments caused by Alzheimer's disease or dementia; and

(B) understanding how the cognitive impairments may affect the screening of and service planning for an elderly

individual.

(f) An area agency on aging may provide the training described by Subsection (b) through:

(1) a course developed by the agency; or

(2) a course that is available from the department, the Health and Human Services Commission, the Department of State Health Services, or an entity that is involved in education or services relating to Alzheimer's disease or dementia, including the Alzheimer's Association and caregiver organizations.

Added by Acts 2019, 86th Leg., R.S., Ch. 1177 (H.B. 3428), Sec. 1, eff. September 1, 2019.

Sec. 40.037. TRAINING PROGRAM FOR CHILD PROTECTIVE SERVICES MANAGERS. (a) The department shall develop and implement a training program that each employee who is newly hired or promoted to a management position in the child protective services division must complete as soon as is practicable, but not later than the 60th day after the date the employee is hired or promoted to the management position.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(48), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(48), eff. September 1, 2015.

Added by Acts 2013, 83rd Leg., R.S., Ch. 445 (S.B. 771), Sec. 1, eff. January 1, 2014.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 71, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(48), eff. September 1, 2015.

Sec. 40.038. SECONDARY TRAUMA SUPPORT FOR CASEWORKERS. (a) In this section, "secondary trauma" means trauma incurred as a consequence of a person's exposure to acute or chronic trauma.

(b) The department shall develop and make available a program to provide ongoing support to caseworkers who experience secondary trauma resulting from exposure to trauma in the course of the

caseworker's employment. The program must include critical incident stress debriefing. The department may not require that a caseworker participate in the program.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 15, eff. September 1, 2017.

Sec. 40.039. REVIEW OF RECORDS RETENTION POLICY. The department shall periodically review the department's records retention policy with respect to case and intake records relating to department functions. The department shall make changes to the policy consistent with the records retention schedule submitted under Section 441.185, Government Code, that are necessary to improve case prioritization and the routing of cases to the appropriate division of the department. The department may adopt rules necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a), eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.

Sec. 40.040. CASE MANAGEMENT VENDOR QUALITY OVERSIGHT AND ASSURANCE DIVISION; MONITORING OF CONTRACT ADHERENCE. (a) In this section, "case management," "catchment area," and "community-based care" have the meanings assigned by Section 264.152, Family Code.

(b) The department shall create within the department the case management services vendor quality oversight and assurance division. The division shall:

(1) oversee quality and ensure accountability of any vendor that provides community-based care and full case management services for the department under community-based care;

(2) conduct assessments on the fiscal and qualitative performance of any vendor that provides foster care services for the department under community-based care;

(3) create and administer a dispute resolution process to resolve conflicts between vendors that contract with the department to provide foster care services under community-based care and any subcontractor of a vendor; and

(4) monitor the transfer from the department to a vendor of full case management services for children and families receiving services from the vendor, including any transfer occurring under a pilot program.

(c) The commission shall contract with an outside vendor with expertise in quality assurance to develop, in coordination with the department, a contract monitoring system and standards for the continuous monitoring of the adherence of a vendor providing foster care services under community-based care to the terms of the contract entered into by the vendor and the commission. The standards must include performance benchmarks relating to the provision of case management services in the catchment area where the vendor operates.

(d) The division shall collect and analyze data comparing outcomes on performance measures between catchment areas where community-based care has been implemented and regions where community-based care has not been implemented.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a), eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 10.001, eff. September 1, 2019.

Sec. 40.041. OFFICE OF DATA ANALYTICS. The department shall create an office of data analytics. The office shall report to the deputy commissioner and may perform any of the following functions, as determined by the department:

(1) monitor management trends;

(2) analyze employee exit surveys and interviews;

(3) evaluate the effectiveness of employee retention efforts, including merit pay;

(4) create and manage a system for handling employee complaints submitted by the employee outside of an employee's direct chain of command, including anonymous complaints;

(5) monitor and provide reports to department management personnel on:

(A) employee complaint data and trends in employee

complaints;

(B) compliance with annual department performance evaluation requirements; and

(C) the department's use of positive performance levels for employees;

(6) track employee tenure and internal employee transfers within both the child protective services division and the department;

(7) use data analytics to predict workforce shortages and identify areas of the department with high rates of employee turnover, and develop a process to inform the deputy commissioner and other appropriate staff regarding the office's findings;

(8) create and monitor reports on key metrics of agency performance;

(9) analyze available data, including data on employee training, for historical and predictive department trends; and

(10) conduct any other data analysis the department determines to be appropriate for improving performance, meeting the department's current business needs, or fulfilling the powers and duties of the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a), eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 552 (S.B. 497), Sec. 1, eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.

Sec. 40.042. INVESTIGATIONS OF CHILD ABUSE, NEGLECT, AND EXPLOITATION. (a) In this section, "child-care facility" includes a facility, licensed or unlicensed child-care facility, family home, residential child-care facility, employer-based day-care facility, or shelter day-care facility, as those terms are defined in Chapter 42.

(b) For all investigations of child abuse, neglect, or exploitation conducted by the child protective services division of the department, the department shall adopt the definitions of abuse, neglect, and exploitation provided in Section 261.001, Family Code.

(c) The department shall establish standardized policies to be used during investigations.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8

(d) The commissioner shall establish units within the child protective services division of the department to specialize in investigating allegations of child abuse, neglect, or exploitation occurring at a child-care facility.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26

(d) The commissioner shall establish units within the child protective services division of the department to specialize in investigating allegations of child abuse, neglect, and exploitation occurring at a child-care facility.

(e) The department may require that investigators who specialize in allegations of child abuse, neglect, and exploitation occurring at child-care facilities receive ongoing training on the minimum licensing standards for any facilities that are applicable to the investigator's specialization.

(f) After an investigation of abuse, neglect, or exploitation occurring at a child-care facility, the department shall provide the state agency responsible for regulating the facility with access to any information relating to the department's investigation. Providing access to confidential information under this subsection does not constitute a waiver of confidentiality.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8

(g) The executive commissioner or the commissioner of the department, as appropriate, may adopt rules to implement this section.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26

(g) The department may adopt rules to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 26(a), eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 8(a), eff. September 1, 2017.

Sec. 40.043. CHILD SAFETY AND RUNAWAY PREVENTION PROCEDURES.

The commissioner by rule shall establish the department's strategy to:

(1) develop trauma-informed protocols for reducing the number of incidents in which a child in the conservatorship of the department runs away from a residential treatment center; and

(2) balance measures aimed at protecting child safety with federal and state requirements related to normalcy and decision making under the reasonable and prudent parent standard prescribed by 42 U.S.C. Section 675 and Sections 264.001 and 264.125, Family Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 1, eff. September 1, 2019.

Sec. 40.045. EFFICIENCY AUDIT. (a) For purposes of this section, "efficiency audit" means an investigation of the operations of the department to examine fiscal management, efficiency, outcomes for children and families served by the department, and utilization of resources.

(b) During the state fiscal year ending August 31, 2022, and every fourth year after that date, the department shall conduct an efficiency audit.

(c) In a year in which an efficiency audit is completed as required by this section, the efficiency audit shall satisfy the department's annual internal audit requirements under Chapter 2102, Government Code.

(d) The department shall pay the costs associated with an efficiency audit required under this section using money appropriated for administrative and internal audit operations in the state fiscal year the audit is conducted.

(e) Not later than March 1 of the state fiscal year in which an efficiency audit is required under this section, the commissioner, in collaboration with the council, the department's chief financial officer, and the department's internal audit director, shall select an external auditor to conduct the efficiency audit.

(f) The external auditor shall be independent of the department's direction.

(g) The external auditor shall complete the audit not later than the 90th day after the date the auditor is selected.

(h) The Legislative Budget Board shall establish the scope of

the efficiency audit and determine the areas of investigation for the audit, including:

(1) reviewing the department's resources to determine whether they are being used effectively and efficiently to achieve desired outcomes for children and families served by the department, including the following outcomes:

(A) ensuring the safety of children in placements;

(B) preventing entry into foster care through the use of family preservation services;

(C) reducing the amount of time that a child is placed in substitute care and is in the conservatorship of the department;

(D) increasing the placement of children with relative or kinship caregivers when possible;

(E) ensuring sufficient state capacity for foster care and kinship placements;

(F) reducing the number of children who age out of care and enhancing supports for youth at risk of aging out of care; and

(G) increasing the reunification of children with the biological parents of the children when possible;

(2) identifying cost savings or reallocations of resources; and

(3) identifying opportunities for the department to partner with other state agencies and community organizations to improve services through consolidation of essential functions, outsourcing, and elimination of duplicative efforts.

(i) Not later than November 1 of the calendar year an efficiency audit is conducted, the auditor shall prepare and submit a report of the audit and recommendations for efficiency improvements to the governor, the Legislative Budget Board, the state auditor, the commissioner, the council, and the chairs of the House Human Services Committee and the Senate Health and Human Services Committee.

Added by Acts 2021, 87th Leg., R.S., Ch. 342 (H.B. 2374), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. GENERAL FUNCTIONS OF DEPARTMENT

Sec. 40.0505. DIVISIONS OF DEPARTMENT. (a) The commissioner shall establish the following divisions and offices within the department:

(1) an investigations division;
(2) a consolidated data division;
(3) a legal division that oversees the following:
(A) legal matters relating to human resources, as necessary to manage the department's workforce and establish the department's hiring and termination policies;
(B) open records;
(C) privacy and confidentiality;
(D) litigation; and
(E) contract compliance;
(4) an operations division that oversees department operations and human resources functions of the department; and
(5) a financial management and accounting services division.

(b) The commissioner may establish additional divisions within the department as the commissioner determines appropriate.

(c) The commissioner may assign department functions among the department's divisions.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.05, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.196, eff. April 2, 2015.
Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 32, eff. September 1, 2017.

Sec. 40.051. STRATEGIC PLAN FOR DEPARTMENT. The department shall develop a departmental strategic plan based on:
(1) furthering the policy of family preservation;
(2) the goal of ending the abuse and neglect of children in the conservatorship of the department; and
(3) the goal of increasing the capacity and availability of foster, relative, and kinship placements in this state.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 14, eff. Sept. 1, 1997.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 9, eff.

September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1147 (S.B. 956), Sec. 5, eff. September 1, 2023.

Sec. 40.0512. CONTINUITY OF SERVICES; INFORMATION SHARING. The department shall make a good faith effort to share relevant and appropriate information with health and human services agencies regarding persons receiving services from the department to ensure continuity of care and the best possible coordination of state-funded resources among health and human services agencies.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 33, eff. September 1, 2017.

Sec. 40.0515. QUALITY ASSURANCE PROGRAM FOR ADULT PROTECTIVE SERVICES; QUARTERLY REPORTS. (a) The department shall develop and implement a quality assurance program for adult protective services provided by or on behalf of the department.

(b) In developing the program, the department shall establish:

(1) client-centered outcome measures for each of the following functions of the adult protective services program:

(A) intake process;

(B) investigations;

(C) risk assessment determinations; and

(D) delivery of protective services;

(2) minimum job performance standards for personnel and each work department of the adult protective services division of the department; and

(3) procedures for conducting periodic performance reviews to monitor compliance with the standards established under Subdivision (2), which must include requirements that, for each caseworker in the adult protective services division of the department, a supervisor shall conduct:

(A) at least two performance reviews each year, if the employee has less than two years of adult protective services casework experience; and

(B) at least one performance review each year, if the employee has at least two years of adult protective services casework

experience.

(c) The department shall promptly address a person's or work department's failure to meet minimum job performance standards established under Subsection (b)(2):

(1) by issuing to the person or work department, as appropriate, a corrective action plan detailing the actions required to comply with the standards; or

(2) if necessary, through disciplinary action, including a person's demotion or discharge, for repeated failure to meet the standards.

Text of subsection effective until April 1, 2025

(d) A performance review conducted under Subsection (b)(3) is considered a performance evaluation for purposes of Section 40.032(c) of this code or Section 531.009(c), Government Code, as applicable. The department shall ensure that disciplinary or other corrective action is taken against a supervisor or other managerial employee who is required to conduct a performance evaluation for adult protective services personnel under Section 40.032(c) of this code or Section 531.009(c), Government Code, as applicable, or a performance review under Subsection (b)(3) and who fails to complete that evaluation or review in a timely manner.

Text of subsection effective on April 1, 2025

(d) A performance review conducted under Subsection (b)(3) is considered a performance evaluation for purposes of Section 40.032(c) of this code or Section 523.0055(b), Government Code, as applicable. The department shall ensure that disciplinary or other corrective action is taken against a supervisor or other managerial employee who is required to conduct a performance evaluation for adult protective services personnel under Section 40.032(c) of this code or Section 523.0055(b), Government Code, as applicable, or a performance review under Subsection (b)(3) and who fails to complete that evaluation or review in a timely manner.

Text of subsection effective until April 1, 2025

(e) The annual performance evaluation required under Section 40.032(c) of this code or Section 531.009(c), Government Code, as applicable, of the performance of a supervisor in the adult protective services division must:

(1) be performed by an appropriate program administrator; and

(2) include:

(A) an evaluation of the supervisor with respect to the job performance standards applicable to the supervisor's assigned duties; and

(B) an evaluation of the supervisor with respect to the compliance of employees supervised by the supervisor with the job performance standards applicable to those employees' assigned duties.

Text of subsection effective on April 1, 2025

(e) The annual performance evaluation required under Section 40.032(c) of this code or Section 523.0055(b), Government Code, as applicable, of the performance of a supervisor in the adult protective services division must:

(1) be performed by an appropriate program administrator; and

(2) include:

(A) an evaluation of the supervisor with respect to the job performance standards applicable to the supervisor's assigned duties; and

(B) an evaluation of the supervisor with respect to the compliance of employees supervised by the supervisor with the job performance standards applicable to those employees' assigned duties.

(f) A summary of the findings of outcome measures established and performance reviews conducted under this section must be reported to regional directors and other senior management employees of the adult protective services division.

(g) Each fiscal quarter the department shall file with the governor and the presiding officer of each house of the legislature a report that includes:

(1) a comprehensive review of the adult protective services division's overall performance during the preceding quarter; and

(2) a summary of the adult protective services division's performance during the preceding quarter on each of the outcome measures established under Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.04(a), eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.20, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.93, eff.

April 1, 2025.

Sec. 40.0516. COLLECTION OF DATA; ANNUAL REPORT. (a) The department shall collect and compile the following data on the state and county level:

(1) the following information for reports of abuse and neglect in residential child-care facilities, as defined by Section 42.002:

(A) the number of reports of abuse and neglect made to the department hotline;

(B) the types of abuse and neglect reported;

(C) the investigation priority level assigned to each report;

(D) the investigation response times, sorted by investigation priority;

(E) the disposition of each investigation;

(F) the number of reports of abuse and neglect to which the department assigned a disposition of call screened out or alternative or differential response provided; and

(G) the overall safety and risk finding for each investigation;

(2) the number of families referred to family preservation services, organized by the risk level assigned to each family through structured decision-making;

(3) the number of children removed from the child's home as the result of an investigation of a report of abuse or neglect and the primary circumstances that contributed to the removal;

(4) the number of children placed in substitute care, organized by type of placement;

(5) the number of children placed out of the child's home county or region;

(6) the number of children in the conservatorship of the department at each service level;

(7) the number of children in the conservatorship of the department who are pregnant or who are a parent;

(8) the number of children in the managing conservatorship of the department who are the parent of a child who is also in the managing conservatorship of the department;

(9) the recurrence of child abuse or neglect in a household

in which the department investigated a report of abuse or neglect within six months and one year of the date the case was closed separated by the following type of case:

(A) cases that were administratively closed without further action;

(B) cases in which the child was removed and placed in the managing conservatorship of the department; and

(C) cases in which the department provided family preservation services;

(10) the recurrence of child abuse and neglect in a household within five years of the date the case was closed for cases described by Subdivisions (9)(B) and (C); and

(11) workforce turnover data for child protective services employees, including the average tenure of caseworkers and supervisors and the average salary of caseworkers and supervisors.

(b) Not later than February 1 of each year, the department shall publish a report containing data collected under this section. The report must include the statewide data and the data reported by county.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 16, eff. September 1, 2017.

Sec. 40.0521. RULES REGARDING DOMESTIC VIOLENCE. (a) The executive commissioner shall adopt and the department shall implement rules that require an investigating employee to document indications of domestic violence, including elder, spousal, and child abuse. The department may develop forms to facilitate the documentation process.

(b) The executive commissioner by rule shall require that written information, printed in English and Spanish, concerning community services that are available to victims of domestic violence be distributed to those victims. The department may coordinate its efforts under this subsection with local law enforcement agencies already providing that information.

(c) The department shall include in its annual report statistical compilations of information regarding domestic abuse documented under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.02(a), eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.198, eff. April 2, 2015.

Sec. 40.0522. COMMUNITY EDUCATION AND TRAINING RELATING TO CHILD ABUSE OR NEGLECT. (a) The department shall assure the availability of community education programs designed to improve participation of the general public in preventing, identifying, and treating cases of child abuse or neglect, including parent education programs.

(b) The department shall assure that training concerning child abuse or neglect is available to professionals who are required by law to report, investigate, or litigate those cases.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 16, eff. Sept. 1, 1997.

Sec. 40.0524. MULTIDISCIPLINARY TEAMS. (a) In a jurisdiction for which a children's advocacy center has not been established under Section 264.402, Family Code, the department shall, to the extent possible, establish multidisciplinary teams to provide services relating to a report of child abuse or neglect. A multidisciplinary team shall include professionals in parent education and in each professional discipline necessary to provide comprehensive medical and psychological services to a child who is the subject of a report and to members of the child's household.

(b) Members of a multidisciplinary team may exchange information relating to a report of child abuse or neglect as necessary to facilitate a thorough investigation of the report. The executive commissioner may adopt rules governing the exchange of information between team members.

(c) A multidisciplinary team established under this section shall coordinate services provided by the department to a child and to members of the child's household with services available from other sources, including public and private agencies in the community. The goal of the multidisciplinary team is to provide the greatest range of services possible without duplication of effort.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(51), eff. September 1, 2015.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 16, eff. Sept. 1, 1997. Renumbered from Human Resources Code Sec. 40.0523 by Acts 2001, 77th Leg., ch. 157, Sec. 1.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.200, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 72, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(51), eff. September 1, 2015.

Sec. 40.0526. BUILDING COMMUNITY PARTNERSHIPS TO SUPPORT CHILDREN AND FAMILIES. (a) The department shall develop a statewide strategy to build alliances and networks at the local level that support the detection and treatment of child abuse and neglect and enhance the coordination and delivery of services to children and families.

(b) The strategy must include plans to:

(1) move staff from centralized office sites into community-based settings to the greatest extent feasible; and

(2) enter into agreements for the establishment or development of joint offices or workplaces with local officials and organizations, including:

(A) children's advocacy centers;

(B) law enforcement officials;

(C) prosecutors;

(D) health care providers; and

(E) domestic violence shelters.

(c) The department may employ specialized staff, to the extent that funds are appropriated for that purpose, to serve as:

(1) local legal liaisons who support the prosecution in each region of legal cases through the judicial system by improving coordination and cooperation in case consultation and preparation of cases for court; and

(2) local community initiative specialists in each region who focus on building community alliances and networks.

(d) An agreement made in accordance with this section for the joint location of department personnel with other local officials or organizations is not subject to Chapter 2167, Government Code.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.86, eff. September 1, 2005.

Sec. 40.0527. PUBLIC AWARENESS. (a) Subject to the availability of funds, the executive commissioner by rule shall develop and the department shall implement a statewide public awareness campaign designed to educate the public regarding the abuse, neglect, and exploitation of elderly persons and persons with disabilities.

(b) The department may use mass communications media, the Internet, publications, or other means of public education in conducting the campaign.

(c) A public awareness strategy implemented for the program must include:

(1) the provision of information on the incidence and types of reports of abuse, neglect, and exploitation of elderly persons or persons with disabilities; and

(2) practices that can reduce the incidences of abuse, neglect, and exploitation of elderly persons or persons with disabilities in this state.

(d) The department shall enlist the support and assistance of civic, philanthropic, and public service organizations in the performance of the duties imposed under this section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.05, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.201, eff. April 2, 2015.

Sec. 40.05275. BUSINESS PLAN FOR CHILD PROTECTIVE SERVICES. (a) The department shall develop and implement a business plan for the child protective services program to prioritize the department's activities and resources to improve the program.

(b) The department shall coordinate with the department's regional staff in developing the business plan under this section.

(c) The business plan developed under this section must include:

(1) long-term and short-term performance goals;

(2) identification of priority projects and ongoing initiatives that are clearly linked to established goals; and

(3) a statement of staff expectations that includes identification of:

(A) the person or team responsible for each project;

(B) the specific tasks and deliverables expected;

(C) the resources needed to accomplish each project;

(D) a time frame for the completion of each deliverable and project; and

(E) the expected outcome for each project and the method and procedure for measuring the outcome to ensure effective evaluation for each project.

(d) Not later than October 1 of each even-numbered year, the department shall submit the business plan developed under this section to the governor, lieutenant governor, speaker of the house of representatives, and chairs of the standing committees of the senate and house of representatives having primary jurisdiction over child protection issues.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 73, eff. September 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.36, eff. September 1, 2019.

Sec. 40.0528. GOALS FOR BUSINESS PLAN FOR CHILD PROTECTIVE SERVICES; REPORTING CASELOAD INFORMATION. (a) The department shall consider the following goals in developing the business plan required under Section 40.05275 for the child protective services program:

(1) reducing caseloads;

(2) enhancing accountability;

(3) improving the quality of investigations;

(4) eliminating delays; and

(5) ensuring the most efficient and effective use of child protective services staff and resources.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec. 86(53), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 944 , Sec.

86(53), eff. September 1, 2015.

(d) In reporting information relating to caseloads of child protective services caseworkers, in addition to reporting caseload by each individual affected by the case, the department shall report the number of cases for each caseworker on the basis of family unit.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.87, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 25, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 75, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 86(53), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.37, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.38, eff. September 1, 2019.

Sec. 40.0529. CASELOAD MANAGEMENT. (a) Subject to a specific appropriation for that purpose, the department shall develop and implement a caseload management system for child protective services caseworkers and managers that:

(1) ensures equity in the distribution of workload, based on the complexity of each case;

(2) calculates caseloads based on the number of individual caseworkers who are available to handle cases;

(3) includes geographic case assignment in areas with concentrated high risk populations, to ensure that an adequate number of caseworkers and managers with expertise and specialized training are available;

(4) includes a plan to deploy master investigators in anticipation of emergency shortages of personnel; and

(5) anticipates vacancies in caseworker positions in areas of the state with high caseworker turnover to ensure the timely hiring of new caseworkers in those areas.

(b) In calculating the caseworker caseload under Subsection (a)(2), the department shall consider at least the following:

(1) caseworkers who are on extended leave;

(2) caseworkers who worked hours beyond a normal work week; and

(3) caseworkers who are on a reduced workload.

Added by Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 17, eff. September 1, 2017.

For expiration of this section, see Subsection (c).

Sec. 40.05291. ELECTRONIC CASE MANAGEMENT SYSTEM. (a) The department shall develop a plan to eliminate the department's use of paper case files and fully transition to an electronic case management system.

(b) The department shall implement a fully electronic case management system not later than September 1, 2023.

(c) This section expires September 1, 2025.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 16, eff. June 14, 2021.

Sec. 40.053. DUTY TO PERFORM OTHER FUNCTIONS. The department shall perform other functions as required by law.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.054. ACCESS TO CRIMINAL HISTORY. Subject to the availability of funds appropriated by the legislature, the department is entitled to obtain any criminal history information from records maintained by:

(1) the Department of Public Safety, as prescribed by Section 411.114, Government Code;

(2) another law enforcement agency in this state, subject to the same procedures and limitations prescribed by Section 411.114, Government Code, as applicable; or

(3) federal agencies, as provided by federal law.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.055. LEGISLATIVE APPROPRIATION REQUEST. The department shall submit any legislative appropriation request to the commission for comment and for incorporation into the commission's consolidated health and human services budget recommendation. The legislative appropriation request must comply with state priorities and federal requirements.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.056. USE OF FUNDS. (a) Notwithstanding any other provision of law, the department may extend the scope of its programs to the extent necessary to ensure that federal matching funds are available, if the department determines that the extension of scope is feasible and within the limits of appropriated funds.

(b) The department may accept, spend, and transfer federal and state funds appropriated for programs authorized by federal law. The department may accept, spend, and transfer funds received from any source, including a county, municipality, or public or private agency.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.0564. DEPARTMENT FUNDS. All money paid to the department under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 18, eff. Sept. 1, 1997.

Sec. 40.057. GIFTS AND GRANTS. The department may accept a gift or grant from a public or private source to perform any of the department's powers or duties.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.058. CONTRACTS AND AGREEMENTS. (a) The department may enter into contracts or agreements with any person, including a federal, state, or other public or private agency, as necessary to

perform any of the department's powers or duties.

(b) A contract for the purchase of program-related client services must include:

(1) clearly defined goals and outcomes that can be measured to determine whether the objectives of the program are being achieved;

(2) clearly defined sanctions or penalties for noncompliance with contract terms; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(53), eff. April 2, 2015.

(c) The department shall monitor a contractor's performance under a contract for the purchase of program-related client services. In monitoring performance, the department shall:

(1) use a risk-assessment methodology to ensure compliance with financial and performance requirements under the contract; and

(2) obtain and evaluate program cost information to ensure that all costs, including administrative costs, are reasonable and necessary to achieve program objectives.

(d) An agreement made under this section is not subject to Chapter 771 or 791, Government Code.

(e) This section does not prohibit the department from entering into a contract or agreement subject to Chapter 771 or 791, Government Code, for a purpose authorized in the applicable chapter.

(f) A contract for residential child-care services provided by a general residential operation or by a child-placing agency must include provisions that:

(1) enable the department and commission to monitor the effectiveness of the services;

(2) specify performance outcomes, financial penalties for failing to meet any specified performance outcomes, and financial incentives for exceeding any specified performance outcomes;

(3) authorize the department or commission to terminate the contract or impose monetary sanctions for a violation of a provision of the contract that specifies performance criteria or for underperformance in meeting any specified performance outcomes;

(4) authorize the department or commission, an agent of the department or commission, and the state auditor to inspect all books, records, and files maintained by a contractor relating to the

contract; and

(5) are necessary, as determined by the department or commission, to ensure accountability for the delivery of services and for the expenditure of public funds.

(g) A contract with a private agency for the provision of substitute care or case management services for a child must include provisions that require the agency to provide access to the agency's information and records relating to the child to the child's attorney ad litem and guardian ad litem.

(h) In contracting with licensed child-placing agencies for residential child-care services, the department shall:

(1) determine and evaluate, using best practice standards, the home screening, assessment, and preservice training requirements used by substitute care providers before the verification and approval of caregivers, including:

(A) risk assessment evaluations used; and

(B) the curriculum and models used and topics covered in caregiver training; and

(2) publish on the department's Internet website the information collected by the department regarding the curriculum and training models used and topics covered during caregiver training by substitute care providers.

(i) The department and the commission shall enter into contracts for the provision of shared administrative services, including payroll, procurement, information resources, rate setting, purchasing, and contracting.

(j) The department shall collaborate with the commission to ensure the efficient provision of administrative support services by the commission.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 19, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.88, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(53), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1008 (H.B. 781), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 34, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 27(a), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 10(a), eff. September 1, 2017.

Sec. 40.0581. PERFORMANCE MEASURES FOR CERTAIN SERVICE PROVIDER CONTRACTS. (a) The commission, in collaboration with the department, shall contract with a vendor or enter into an agreement with an institution of higher education to develop, in coordination with the department, performance quality metrics for family-based safety services and post-adoption support services providers. The quality metrics must be included in each contract with those providers.

(b) Each provider whose contract with the commission to provide department services includes the quality metrics developed under Subsection (a) must prepare and submit to the department a report each calendar quarter regarding the provider's performance based on the quality metrics.

(c) The commissioner shall compile a summary of all reports prepared and submitted to the department by family-based safety services providers as required by Subsection (b) and distribute the summary to appropriate family-based safety services caseworkers and child protective services region management once each calendar quarter.

(d) The commissioner shall compile a summary of all reports prepared and submitted to the department by post-adoption support services providers as required by Subsection (b) and distribute the summary to appropriate conservatorship and adoption caseworkers and child protective services region management.

(e) The department shall make the summaries prepared under Subsections (c) and (d) available to families that are receiving family-based safety services and to adoptive families.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 26(3), eff. June 14, 2021.

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 28(a), eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 11(a), eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 10.002, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 26(3), eff. June 14, 2021.
Acts 2021, 87th Leg., R.S., Ch. 858 (S.B. 910), Sec. 2(2), eff. June 16, 2021.

Sec. 40.0582. QUALITY CONTRACTING FRAMEWORK. (a) The department shall monitor and coordinate with general residential operations providing treatment services to children or young adults with emotional disorders to maintain and improve the quality of residential child-care services purchased by the department.

(b) In implementing the requirements of Subsection (a), the department shall consider any information the department determines relevant to assess the ability of a contractor or potential contractor to provide quality residential child-care services, including:

(1) the strength of the operational plan and all required components of the operational plan described by Section 42.252;

(2) the regulatory history of the contractor; and

(3) the history of the contractor on satisfying the performance measures developed under Section 40.058.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 2, eff. September 1, 2019.

Sec. 40.0583. STATE AUDITOR REVIEW OF CONTRACTS. The state auditor shall annually review the department's performance-based contracts to determine whether the department is properly enforcing contract provisions with providers and to provide recommendations for improving department oversight and execution of contracts.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 17, eff. June 14, 2021.

Sec. 40.059. FEES. The executive commissioner by rule may set and the department may collect appropriate fees in the administration and delivery of services.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.202, eff. April 2, 2015.

Sec. 40.060. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who is or was involved in activities relating to the protection of children or elderly persons or persons with disabilities is criminally prosecuted for conduct involving the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of $10,000.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.203, eff. April 2, 2015.

Sec. 40.061. IMMUNITY. (a) A department employee, a member of a multidisciplinary team established under Section 40.0524, or an authorized department volunteer who performs a departmental duty or responsibility is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

(b) In this section, "volunteer" means a person who:

(1) renders services for or on behalf of the department under the supervision of a department employee; and

(2) does not receive compensation that exceeds the authorized expenses the person incurs in rendering those services.

(c) This section does not provide immunity to a department employee who, in a suit affecting the parent-child relationship in

which child abuse is alleged or that arises out of a child abuse investigation, in a criminal prosecution for an offense in which child abuse is an element, or in the preparation of the suit or prosecution:

(1) commits or attempts to commit perjury;

(2) fabricates or attempts to fabricate evidence;

(3) knowingly conceals or intentionally withholds information that would establish that a person alleged to have committed child abuse did not commit child abuse; or

(4) violates state or federal law in the investigation or prosecution of the suit.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 20, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 157, Sec. 2, eff. Sept. 1, 2001.

Sec. 40.062. EXEMPTION FROM CERTAIN COSTS AND FEES. The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including a:

(1) filing fee or fee for issuance or service of process imposed by Section 110.002, Family Code, or by Section 51.319, Government Code;

(2) transfer fee imposed by Section 110.002 or 110.005, Family Code;

(3) judge's fee imposed by Section 25.0008 or 25.0029, Government Code;

(4) cost or security fee imposed by Section 53.051, 53.052, 1053.051, or 1053.052, Estates Code; or

(5) fee imposed by a county officer under Section 118.011 or 118.052, Local Government Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 426, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 9.001(g), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 733, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.204, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.07, eff.

January 1, 2022.

Sec. 40.063. EXCEPTIONS FROM CERTAIN PROVISIONS OF ADMINISTRATIVE PROCEDURE ACT. Section 2001.038 and Subchapters C through H, Chapter 2001, Government Code, do not apply to the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under a service program of the department.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.064. INTERAGENCY COOPERATION AND EXCHANGE OF INFORMATION. (a) The department may execute a memorandum of understanding with another state agency to facilitate the implementation of a program or the delivery of a service that the department is required by law to implement or deliver.

(b) The department may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department or the agency or entity to properly execute its respective duties and responsibilities. An exchange of information does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.

Sec. 40.065. COMMUNICATIONS OFFICER; PLAN. (a) The department shall designate one or more department employees to be primarily responsible for communicating with the public regarding the department's powers and duties. Through the use of designated employees, the department shall ensure:

(1) effective communications between the department and persons seeking to report abuse or neglect or inquiring about the status of a case; and

(2) effective and timely response to questions from the public within the department's confidentiality guidelines.

(b) The department shall develop and implement a communication plan to ensure statewide public and government awareness of child abuse or neglect investigated by the department. The plan shall include information detailing the procedure followed by the

department during the investigation and the responsibilities of the department in child abuse cases. In implementing the plan, the department shall establish a process for expediting the reporting of child abuse or neglect to the department. The executive commissioner shall adopt rules to implement this subsection.

Added by Acts 1995, 74th Leg., ch. 920, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.205, eff. April 2, 2015.

Sec. 40.066. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Except as provided by Subsection (e), the department and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding under which the State Office of Administrative Hearings, on behalf of the department, conducts all contested case hearings authorized or required by law to be conducted by the department under the administrative procedure law, Chapter 2001, Government Code.

(b) The memorandum of understanding shall require the chief administrative law judge, the department, and the commissioner to cooperate in connection with a contested case hearing and may authorize the State Office of Administrative Hearings to perform any administrative act, including the giving of notice, that is required to be performed by the department or commissioner.

(c) The administrative law judge who conducts a contested case hearing for the State Office of Administrative Hearings on behalf of the department shall enter the final decision in the case after completion of the hearing.

(d) The department by interagency contract shall reimburse the State Office of Administrative Hearings for the costs incurred in conducting contested case hearings for the department. The department may pay an hourly fee for the costs of conducting those hearings or a fixed annual fee negotiated biennially by the department and the State Office of Administrative Hearings to coincide with the department's legislative appropriations request.

(e) This section does not apply to a personnel grievance hearing involving a department employee.

(f) Unless otherwise agreed by all parties to a contested case,

a hearing conducted by the State Office of Administrative Hearings on behalf of the department under this section must be held in the department's administrative region in which the conduct at issue in the case occurred.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1128, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.206, eff. April 2, 2015.

Sec. 40.067. DELIVERY OF SERVICES IN AREAS BORDERING UNITED MEXICAN STATES. The department shall:

(1) study issues related to providing child and adult protective services in areas bordering the United Mexican States;

(2) develop a plan for providing those services in the most efficient manner; and

(3) pursue and enter into agreements for coordinated services, to the extent permissible under federal law, with the United Mexican States or any of its political subdivisions.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.

Sec. 40.068. LOCAL ACCOUNTS. (a) The department may establish and maintain local bank or savings accounts for a client of the department as necessary to administer funds belonging to the client or received in trust for or on behalf of the client.

(b) Funds maintained in an account for the benefit of a child who is under the managing conservatorship of the department may be used by the department for the support of the child, including the payment of foster care expenses, or may be paid to a person providing care for the child.

(c) The department shall spend funds in a guardianship of a client's estate in compliance with Title 3, Estates Code.

(d) Except as provided by Subsection (c), funds maintained in an account for the benefit of a client of the department may be used to provide care, including medical care, for the client.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 22, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.207, eff. April 2, 2015.

Sec. 40.070. SUPPORT SERVICES FOR CERTAIN FAMILIES. (a) If the department places a child who is in the conservatorship of the state in the home of a grandparent of the child, the department shall:

(1) refer the grandparent to support services offered by the department; and

(2) inform the grandparent of the availability of financial assistance under Chapter 31, including supplemental financial assistance, if the eligibility requirements of that chapter are satisfied.

(b) The department shall maintain complete records and compile statistics regarding the number of children who are placed by the department in the home of a grandparent of the child.

Added by Acts 1999, 76th Leg., ch. 471, Sec. 2, eff. Sept. 1, 1999.

Sec. 40.071. DRUG-ENDANGERED CHILD INITIATIVE. The department shall establish a drug-endangered child initiative aimed at protecting children who are exposed to heroin, cocaine or any of its forms, or methamphetamine or to chemicals and other hazardous materials used in the illicit manufacture of methamphetamine.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.89, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 26, eff. September 1, 2007.

Sec. 40.072. DUTY TO REPORT; DEPARTMENT RECORDS. (a) To the extent that reporting does not interfere with an ongoing criminal investigation, the Department of Public Safety and each local law enforcement agency shall report to the department on discovering the presence of a child in a location where methamphetamine is

manufactured.

(b) The department shall maintain a record of reports received under this section and shall include in the record information regarding actions taken by the department to ensure the child's safety and well-being.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.89, eff. September 1, 2005.

Sec. 40.075. PROTECTIVE ORDERS. (a) The executive commissioner shall adopt rules to provide procedures for the filing of protective orders by the department for the protection of a member of a family or household as provided by Title 4, Family Code.

(b) The department shall provide prior notice to a nonabusive parent or adult member of a household of the department's intent to file an application for a protective order for a child or older person and shall request the assistance of the person receiving the notice in developing a safety plan for household members and the child or older person for whom the order is sought. The department shall exercise reasonable safety precautions to protect a nonabusive parent or other member of a household while providing notice and requesting assistance under this section.

Transferred, redesignated and amended from Human Resources Code, Chapter 54 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 76, eff. September 1, 2015.

Sec. 40.080. STRATEGIC PLAN TO IMPLEMENT FEDERAL LAW REGARDING SPECIFIED SETTINGS FOR PLACEMENT OF FOSTER CHILDREN. (a) The department shall develop a strategic plan regarding the placement of children in settings eligible for federal financial participation under the requirements of the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123).

(b) The strategic plan required under this section must:

(1) assess any available evidence regarding the impact of accreditation on qualitative performance of accredited providers;

(2) assess a potential structure and any funding requirements necessary to incentivize providers to become accredited;

(3) study any available evidence regarding the qualitative

outcomes in qualified residential treatment providers, as defined in the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123);

(4) assess the fiscal implications to this state of developing settings that meet the federal definition of qualified residential treatment providers and all associated requirements; and

(5) make any appropriate recommendations related to implementation of the requirements for qualified residential treatment providers.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 3, eff. September 1, 2019.

Sec. 40.081. IMPLEMENTATION OF FEDERAL LAW. (a) In furtherance of department duties under Section 40.002(d), the department shall to the greatest extent possible develop capacity for placement settings that are eligible for federal financial participation under 42 U.S.C. Section 672, including settings:

(1) specializing in providing prenatal, postpartum, or parenting support for youth;

(2) providing high-quality residential care and supportive services to children and youth who this state has reasonable cause to believe are, or who are at risk of being, sex trafficking victims in accordance with 42 U.S.C. Section 671(a)(9)(C);

(3) providing supervised independent living for young adults;

(4) offering residential family-based substance abuse treatment as described by 42 U.S.C. Section 672(j); and

(5) serving as a qualified residential treatment program.

(b) In developing capacity for settings described by Subsection (a)(2), the department shall:

(1) promote the use of nationally recognized tools such as the Commercial Sexual Exploitation-Identification Tool (CSE-IT) and any other indicated treatment models or best practices for the treatment and prevention of sex trafficking victimization; and

(2) use providers that:

(A) use a trauma-informed care model;

(B) have defined programming to address the specific needs of trafficking survivors and youth at risk of trafficking;

(C) have leadership and direct-care staff who have completed training regarding the specific needs of trafficking survivors and youth at risk of trafficking;

(D) have established policies and procedures to minimize risk to a child who is a victim of trafficking placed with the provider and other children placed with the provider, including risks related to running away from the placement or becoming a victim of trafficking; and

(E) provide case management services or contract with an entity in the geographic area of the provider to provide case management services to trafficking victims or potential victims.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 18, eff. June 14, 2021.

Sec. 40.082. REPORT OF CRIMINAL CONDUCT; PENALTY. (a) Each employee of the department or of a department contractor who becomes aware of conduct constituting a criminal offense engaged in by another employee of the department or by a department contractor against a person receiving services from the department or a department contractor shall report the conduct to a local law enforcement agency not later than the 48th hour after the hour the employee becomes aware of the conduct.

(b) A person commits an offense if the person is required to make a report under Subsection (a) and knowingly fails to make the report.

(c) An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to hinder an investigation of or conceal the criminal conduct described by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 1044 (S.B. 182), Sec. 1, eff. September 1, 2023.

Sec. 40.083. EMPLOYER RETALIATION PROHIBITED. (a) In this section, "adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would

dissuade a reasonable employee from submitting or supporting a report under Section 40.082.

(b) An employer may not suspend or terminate the employment of, discriminate against, or take any other adverse employment action against a person who in good faith:

(1) reports conduct constituting a criminal offense as required by Section 40.082; or

(2) initiates or cooperates with an investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 40.082.

(c) An employee may sue for injunctive relief, damages, or both if, in violation of this section, the employee:

(1) is suspended or terminated from the person's employment;

(2) is discriminated against; or

(3) suffers any other adverse employment action.

(d) A plaintiff who prevails in a suit under this section may recover:

(1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(2) exemplary damages under Chapter 41, Civil Practice and Remedies Code, if the employer is a private employer;

(3) court costs; and

(4) reasonable attorney's fees.

(e) In addition to amounts recovered under Subsection (d), a plaintiff who prevails in a suit under this section is entitled to:

(1) reinstatement to the person's former position or a comparable position in terms of compensation, benefits, and other conditions of employment;

(2) reinstatement of any fringe benefits and seniority rights lost because of the suspension, termination, or discrimination; and

(3) compensation for wages lost during the period of suspension or termination.

(f) A department employee who alleges a violation of this section may sue the department for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section.

(g) A plaintiff suing under this section has the burden of proof, except there is a rebuttable presumption that the plaintiff's

employment was suspended or terminated or that the plaintiff was otherwise discriminated against for reporting abuse or neglect if the suspension, termination, or discrimination occurs before the 61st day after the date on which the person submitted a report in good faith.

(h) A suit under this section may be brought in a district or statutory county court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(i) It is an affirmative defense to a suit under Subsection (c) that an employer would have taken against the employee the action that forms the basis of the suit based solely on information, observation, or evidence unrelated to the fact that the employee made a report under Section 40.082 or initiated or cooperated with an investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 40.082.

(j) A public employee who has a cause of action under Chapter 554, Government Code, based on conduct described by Subsection (b) may not bring an action based on that conduct under this section.

(k) This section does not apply to a person who reports the person's own criminal conduct or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of the person's own criminal conduct.

Added by Acts 2023, 88th Leg., R.S., Ch. 1044 (S.B. 182), Sec. 1, eff. September 1, 2023.

CHAPTER 42. REGULATION OF CERTAIN FACILITIES, HOMES, AND AGENCIES THAT PROVIDE CHILD-CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate. With respect to a school or child-care facility sponsored by a religious organization,

nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the:

(1) form, manner, or content of religious instruction, ministry, teaching, or the curriculum offered by the school or facility;

(2) ability of the school or facility to select and supervise qualified personnel, and otherwise control the terms of employment, including the right to employ individuals who share the religious views of the school or facility;

(3) internal self-governance and autonomy of the school or facility; or

(4) religious environment of the school or facility, such as symbols, art, icons, and scripture.

Acts 1979, 66th Leg., p. 2358, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 664, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 27, eff. September 1, 2007.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility licensed, certified, or registered by the department to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "General residential operation" means a child-care facility that provides care for seven or more children for 24 hours a day, including facilities known as residential treatment centers and emergency shelters.

(5) "Continuum-of-care residential operation" means a group of residential child-care facilities that operate under the same

license or certification to provide a continuum of services to children.

(6) "Cottage home operation" means cottage family homes that:

(A) are identified on the operation's license;

(B) share a child-care administrator who is responsible for oversight for all homes within the operation; and

(C) are all in or near the same location as defined by department rule.

(7) "Day-care center" means a child-care facility that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

(8) "Group day-care home" means a child-care facility that provides care at the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

(9) "Family home" means a home that provides regular care in the caretaker's own residence for not more than six children under 14 years of age, excluding children who are related to the caretaker, and that provides care after school hours for not more than six additional elementary school children, but the total number of children, including children who are related to the caretaker, does not exceed 12 at any given time. The term does not include a home that provides care exclusively for any number of children who are related to the caretaker.

(10) "Cottage family home" means a family residential setting with one or more homes operating under the license of a cottage home operation and in which:

(A) each home has at least one houseparent who lives at the home while children are in care; and

(B) based on the size of the home and the children's needs, each home cares for not more than six children.

(11) "Agency foster home" means a facility that provides care for not more than six children for 24 hours a day, is used only by a licensed child-placing agency or continuum-of-care residential operation, and meets department standards.

(12) "Child-placing agency" means a person, including an

organization, other than the natural parents or guardian of a child who plans for the placement of or places a child in a child-care facility, agency foster home, or adoptive home.

(13) "Facilities" includes child-care facilities, child-placing agencies, and continuum-of-care residential operations.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(15) "Religious organization" means a church, synagogue, or other religious institution whose purpose is to support and serve the propagation of truly held religious beliefs.

(16) "Children who are related to the caretaker" means children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caretaker, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(17) "Regular care" means care that is provided at least:

(A) four hours a day, three or more days a week, for three or more consecutive weeks; or

(B) four hours a day for 40 or more days in a period of 12 months.

(18) "Controlling person" means a person who, either alone or in connection with others, has the ability to directly or indirectly influence or direct the management, expenditures, or policies of a facility or family home.

(19) "Residential child-care facility" means a facility licensed or certified by the department that operates for all of the 24-hour day. The term includes general residential operations, child-placing agencies, specialized child-care homes, cottage home operations, continuum-of-care residential operations, and agency foster homes.

(20) "Before-school or after-school program" means a child-care facility that provides care before or after, or before and after, the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend prekindergarten through grade six.

(21) "School-age program" means a child-care facility that provides supervision, along with recreation or skills instruction or training, and may provide transportation, before or after the customary school day, for at least two hours a day, three days a week, to children attending prekindergarten through grade six. A

school-age program may also operate during school holidays, the summer period, or any other time when school is not in session.

(22) "Children's product" means a product that is designed or intended to be used by a child under 13 years of age or used by a caregiver during the care of a child under 13 years of age. The term does not include:

(A) an item that is not designed or intended to be used solely or primarily by a child under 13 years of age or in the care of a child under 13 years of age;

(B) a medication, a drug, food, or another item that is intended to be ingested; or

(C) clothing.

(23) "Other maltreatment" means:

(A) abuse, as defined by Section 261.001, Family Code; or

(B) neglect, as defined by Section 261.001, Family Code.

(24) "Specialized child-care home" means a child-care facility that:

(A) based on the size of the home and the children's needs, provides care for not more than six children for 24 hours a day; and

(B) has a director and has at least one houseparent who lives at the home while children are in care.

(25) "Grounds" means, with regard to property, the real property, whether fenced or unfenced, of the parcel of land on which is located any appurtenant building, structure, or other improvement, including a public or private driveway, street, sidewalk or walkway, parking lot, and parking garage on the property.

Acts 1979, 66th Leg., p. 2359, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2812, ch. 759, Sec. 1, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 1052, Sec. 4.01, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 984, Sec. 1, eff. June 15, 1989; Acts 1997, 75th Leg., ch. 1022, Sec. 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.90, eff. September

1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 46 (S.B. 95), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(34), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1323 (S.B. 471), Sec. 3, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 44, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 29, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 12, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 18, eff. September 1, 2021.

Sec. 42.003. REFERENCE TO CHILD-CARE INSTITUTION. A reference in law to a "child-care institution" means a general residential operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 3, eff. September 1, 2009.

Sec. 42.0031. REFERENCE TO PART OF CONTINUUM-OF-CARE OPERATION. With respect to a continuum-of-care operation, a reference in this code or in any other law to a type of residential child-care facility that is a part of a continuum-of-care operation shall be construed as a reference to that portion of the continuum-of-care operation, and the department may take all regulatory action with respect to the continuum-of-care operation that the department could take with respect to the type of residential child-care facility, as further specified in department rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 45, eff. September 1, 2017.

Sec. 42.004. CONFIDENTIALITY OF INVESTIGATION INFORMATION. A photograph, videotape, audiotape, or other audio or visual recording, depiction, or documentation of a child that is made by the department in the course of an inspection or investigation authorized by this chapter or Section 261.401, Family Code, is confidential, is not subject to release under Chapter 552, Government Code, and may be released only as required by state or federal law or rules adopted by the executive commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 313 (H.B. 1648), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 42.021. DIVISION DESIGNATED. (a) The department may designate a division within the department to carry out responsibilities the department may delegate or assign under this chapter. The department shall ensure the independence of the division from the child protective services division.

(b) The commissioner shall appoint as director of a division designated under Subsection (a) a person who meets the qualifications set by the executive commissioner. The commissioner shall ensure the director's independence from the child protective services division and may not terminate the director without the approval of the executive commissioner.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The commissioner may divide the state into regions for the purpose of administering this chapter.

Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.020, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1063, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.91, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 28, eff.

September 1, 2007.

Sec. 42.0211. SAFETY SPECIALISTS, RISK ANALYSTS, AND PERFORMANCE MANAGEMENT. (a) The division shall employ at least one specially trained investigation safety specialist, whose duties include the duty to:

(1) review and evaluate the intake of reports that include allegations associated with a higher risk of harm to the child; and

(2) consult with the assigned investigator to provide specialized guidance and resources to assist the investigation.

(b) The division shall employ at least one risk analyst, whose duties include the duty to:

(1) identify facilities, including child-placing agencies, whose compliance histories indicate the potential for a higher risk of harm to children in the care of the facility;

(2) review the monitoring and inspection reports for any facilities described by Subdivision (1) to assess the quality of the investigation or monitoring; and

(3) identify any additional monitoring or enforcement action that may be appropriate to ensure the safety of a child in the care of the facility.

(c) The division must include a performance management unit with duties that include:

(1) conducting quality assurance reviews of randomly selected monitoring and investigative reports to ensure compliance with all relevant laws, rules, and agency policies; and

(2) making recommendations to improve the quality and consistency of monitoring and investigations.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 29(a), eff. September 1, 2007.

Sec. 42.023. ANNUAL REPORT. (a) The department shall prepare an annual written report regarding the department's activities under this chapter.

(b) The annual report shall include:

(1) a report by regions of applications for licensure or certification, of initial licenses issued, denied, or revoked, of

licenses issued, denied, suspended or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies, if such agencies exist, with certification requirements;

(2) a summary of the training programs required by the department and their effectiveness;

(3) a summary of training and other professional development opportunities offered to facilities' staffs;

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year; and

(5) a report of trends in licensing violations on a statewide and regional basis and the department's plans to address those trends through the provision of technical assistance.

(c) Copies of the annual report shall be available to any state citizen on request.

Acts 1979, 66th Leg., p. 2360, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 18, Sec. 2, eff. April 3, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 8.022, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1063, Sec. 6, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.92, eff. September 1, 2005.

Sec. 42.024. ADMINISTRATIVE PROCEDURE. Chapter 2001, Government Code applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter.

Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 42.025. SEARCHABLE DATABASE. (a) The commission shall permanently maintain on the commission's Internet website a searchable database that lists each group day-care home and family home licensed, registered, or listed under this chapter:

(1) that previously had a license, registration, or listing under this chapter involuntarily suspended or revoked; or

(2) for which the commission refused to renew a license, registration, or listing.

(b) The database maintained under Subsection (a) must include for each group day-care home and licensed or registered family home:

(1) the name of the facility;

(2) the address of the facility, including the county in which the facility is located;

(3) any identification number associated with the facility;

(4) the name of the sole proprietor or each partner who owns the child-care operation or, if the owner is a business entity, the name of each officer responsible for the management of the child-care operation as determined by the commissioner; and

(5) the year in which:

(A) the involuntary suspension or revocation of the facility's license, registration, or listing took effect or was final under this chapter; or

(B) the commission refused to renew the facility's license, registration, or listing.

(c) The commission shall include the name of each individual described by Subsection (b)(4) who is associated with the license, registration, or listing in any database entry made under this section.

(d) The executive commissioner may adopt rules as necessary to implement this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 158 (H.B. 1180), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 2, eff. September 1, 2021.

Sec. 42.026. ACCESS TO DATABASE. (a) The commission shall make the child-care licensing division's searchable database accessible to commission and department investigators.

(b) The department shall make the department's searchable database accessible to commission and department investigators.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 19, eff. June 14, 2021.

For expiration of this section, see Subsection (g).

Sec. 42.027. INDEPENDENT ASSESSMENT. (a) Not later than March 31, 2024, the commission shall contract with an independent entity that has demonstrated expertise in evaluating state child welfare systems and conducting statistical and operational analysis to conduct an assessment of:

(1) the commission's and the department's rules, minimum standards, and contract requirements that apply to child-placing agencies, residential child-care facilities including foster homes, relative caregivers, and adoptive homes; and

(2) the standards or oversight requirements prescribed by law to determine:

(A) the relevance of the standard or oversight requirement;

(B) whether the standard or oversight requirement complies with federal laws, rules, or guidelines; and

(C) whether the standard or oversight requirement is the best practice.

(b) Not later than September 30, 2024, or the date of the next comprehensive review required under Section 42.042(b), whichever occurs first, the independent entity shall complete the assessment and submit to the commission and the department a report that includes the findings of the assessment and recommendations for:

(1) simplifying the commission's minimum standards for the purposes of:

(A) prioritizing the health, safety, and well-being of children residing in a residential child-care facility including a foster home or the home of a relative caregiver or an adoptive parent; and

(B) reducing any barriers to opening a child-placing agency or a residential child-care facility or becoming a relative caregiver, a foster parent, or an adoptive parent;

(2) adjusting the commission's system for assigning weights to minimum standards to ensure that the system is methodical, consistent, and reflective of a strategic model for increasing the focus on the health, safety, and well-being of children residing in a residential child-care facility including a foster home or the home of a relative caregiver or an adoptive parent, including an explanation of the recommended adjustments;

(3) taking into consideration the model licensing standards

recommended by the Administration for Children and Families of the United States Department of Health and Human Services, eliminating any minimum standards that are weighted as low, medium-low, or medium by the commission and are not directly related to child safety;

(4) addressing any licensing, training, or oversight requirements that are barriers to retaining high-quality residential child-care facilities including foster homes, relative caregivers, or adoptive parents;

(5) updating licensing standards for the purposes of:

(A) prioritizing the health, safety, and well-being of children residing in a residential child-care facility including a foster home or the home of a relative caregiver or an adoptive parent; and

(B) reducing any barriers to the hiring and retention of high-quality leadership, administrators, and staff at child-placing agencies and residential child-care facilities;

(6) providing maximum flexibility in applying standards to ensure that services are provided in response to the needs of each individual child residing in a residential child-care facility including a foster home or the home of a relative caregiver or an adoptive parent;

(7) defining the commission's and the department's role in licensing, investigating, contract oversight, and any other regulatory activity to eliminate duplicate functions among the commission and the department or divisions within the commission or department; and

(8) promoting transparency and clarity of the commission's and the department's expectations for child-placing agencies, residential child-care facilities including foster homes, relative caregivers, and adoptive parents.

(c) The independent entity conducting the assessment under this section shall make any recommendations for legislative action, including recommendations for retaining, repealing, or modifying existing state laws or rules or adopting new state laws or rules, necessary to implement the entity's recommendations described by Subsection (b).

(d) In conducting the assessment, the independent entity shall solicit and consider the input of relevant stakeholders, including those affected by the commission's or the department's rules, minimum standards, and contract requirements that apply to child-placing

agencies, residential child-care facilities including foster homes, relative caregivers, or adoptive parents.

(e) The commission shall publish the independent entity's report on the commission's Internet website and submit a copy of the report to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over the commission.

(f) Not later than the 90th day after the date the commission receives the independent entity's report, the commission, in collaboration with the department, shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committee of each house of the legislature with primary jurisdiction over the commission a report that includes a description of:

(1) the commission's and department's plan to implement the independent entity's assessment recommendations; and

(2) any recommendation the commission or department decides not to implement and a written justification for not implementing the recommendation.

(g) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 51 (S.B. 593), Sec. 1, eff. May 19, 2023.

SUBCHAPTER C. REGULATION OF CERTAIN FACILITIES, HOMES, AND AGENCIES

Sec. 42.041. REQUIRED LICENSE. (a) No person may operate a child-care facility or child-placing agency without a license issued by the department.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency foster home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities, including retreats or classes for religious instruction, on or near the premises, that does not advertise as a child-care facility or day-care center, and that informs parents that it is not licensed by the

state;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Department of State Health Services;

(6) a facility licensed, operated, certified, or registered by another state agency;

(7) an educational facility that is accredited by the Texas Education Agency, the Southern Association of Colleges and Schools, or an accreditation body that is a member of the Texas Private School Accreditation Commission and that operates primarily for educational purposes for prekindergarten and above, a before-school or after-school program operated directly by an accredited educational facility, or a before-school or after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency, the Southern Association of Colleges and Schools, or the other accreditation body, as applicable, has approved the curriculum content of the before-school or after-school program operated under the contract;

(8) an educational facility that operates solely for educational purposes for prekindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a family home, whether registered or listed;

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers an educational program in one or more of the following: prekindergarten through at least grade three, elementary grades, or secondary grades;

(12) an emergency shelter facility, other than a facility

that would otherwise require a license as a child-care facility under this section, that provides shelter or care to a minor and the minor's child or children, if any, under Section 32.201, Family Code, if the facility:

(A) is currently under a contract with a state or federal agency; or

(B) meets the requirements listed under Section 51.005(b)(3);

(13) a juvenile detention facility certified under Section 51.12, Family Code, a juvenile correctional facility certified under Section 51.125, Family Code, a juvenile facility providing services solely for the Texas Juvenile Justice Department, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility;

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless;

(16) a food distribution program that:

(A) serves an evening meal to children two years of age or older; and

(B) is operated by a nonprofit food bank in a nonprofit, religious, or educational facility for not more than two hours a day on regular business days;

(17) a child-care facility that operates for less than three consecutive weeks and less than 40 days in a period of 12 months;

(18) a program:

(A) in which a child receives direct instruction in a

single skill, talent, ability, expertise, or proficiency;

(B) that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;

(C) that does not advertise or otherwise represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) that informs the parent or guardian:

(i) that the program is not licensed by the state; and

(ii) about the physical risks a child may face while participating in the program; and

(E) that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(19) an elementary-age (ages 5-13) recreation program that:

(A) adopts standards of care, including standards relating to staff ratios, staff training, health, and safety;

(B) provides a mechanism for monitoring and enforcing the standards and receiving complaints from parents of enrolled children;

(C) does not advertise as or otherwise represent the program as a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services;

(D) informs parents that the program is not licensed by the state;

(E) is organized as a nonprofit organization or is located on the premises of a participant's residence;

(F) does not accept any remuneration other than a nominal annual membership fee;

(G) does not solicit donations as compensation or payment for any good or service provided as part of the program; and

(H) conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety;

(20) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the caretaker:

(A) had a prior relationship with the child or sibling group or other family members of the child or sibling group;

(B) does not care for more than one unrelated child or sibling group;

(C) does not receive compensation or solicit donations for the care of the child or sibling group; and

(D) has a written agreement with the parent to care for the child or sibling group;

(21) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which:

(A) the department is the managing conservator of the child or sibling group;

(B) the department placed the child or sibling group in the caretaker's home; and

(C) the caretaker had a long-standing and significant relationship with the child or sibling group, or the family of the child or sibling group, before the child or sibling group was placed with the caretaker;

(22) a living arrangement in a caretaker's home involving one or more children or a sibling group, excluding children who are related to the caretaker, in which the child is in the United States on a time-limited visa under the sponsorship of the caretaker or of a sponsoring organization;

(23) a facility operated by a nonprofit organization that:

(A) does not otherwise operate as a child-care facility that is required to be licensed under this section;

(B) provides emergency shelter and care for not more than 15 days to children 13 years of age or older but younger than 18 years of age who are victims of human trafficking alleged under Section 20A.02, Penal Code;

(C) is located in a municipality with a population of at least 600,000 that is in a county on an international border; and

(D) meets one of the following criteria:

(i) is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or

(ii) meets the eligibility requirements for a contract under Section 51.005(b)(3);

(24) a facility that provides respite care exclusively for

a local mental health authority under a contract with the local mental health authority; or

(25) a living arrangement in a caretaker's home involving one or more children or a sibling group in which the caretaker:

(A) has a written authorization agreement under Chapter 34, Family Code, with the parent of each child or sibling group to care for each child or sibling group;

(B) does not care for more than six children, excluding children who are related to the caretaker; and

(C) does not receive compensation for caring for any child or sibling group.

(b-1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(1), eff. September 1, 2009.

(c) A single license that lists addresses and the appropriate facilities may be issued to a general residential operation that operates noncontiguous facilities that are across the street from, in the same city block as, or on the same property as one another and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

(d) A facility exempt from the provisions of Subsection (a) that desires to receive or participate in federal or state funding shall be required to comply with all other provisions of this chapter and with all regulations promulgated under this chapter.

(e) The exemptions provided by Subsection (b) do not affect the authority of local, regional, or state health department officials, the state fire marshal, or local fire prevention officials to inspect child-care facilities.

(f) Notwithstanding the requirements of Subsection (b)(14), a municipality that operates an elementary-age (ages 5-13) recreation program may, in lieu of an annual public hearing, accept public comment through the municipality's Internet website for at least 30 days before the municipality adopts standards of care by ordinance if the municipality:

(1) has a population of 300,000 or more; and

(2) has held at least two annual public hearings on the standards of care and adopted standards of care by ordinance after those public hearings.

(g) A child-care facility that is exempt under Subsection (b)(3) from the licensing requirement of Subsection (a) may provide care for each child at the child-care facility for not more than 15

hours a week if the child-care facility:

(1) provides the child care so that a person may attend an educational class provided by a nonprofit entity; and

(2) is located in a county:

(A) in which a municipality with a population of 500,000 or more is located; and

(B) that is adjacent to an international border.

Acts 1979, 66th Leg., p. 2361, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2812, ch. 759, Sec. 2, 3, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 1052, Sec. 4.03, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 1115, Sec. 2, eff. June 19, 1987; Acts 1995, 74th Leg., ch. 262, Sec. 54, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 847, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.46, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 664, Sec. 3, 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.93(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 25, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1037 (H.B. 1786), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 19(1), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 343 (H.B. 3051), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(30), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 192 (S.B. 353), Sec. 1, eff. May 25, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.211, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 244 (H.B. 871), Sec. 12, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 46, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 10.003, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1294 (H.B. 3390), Sec. 13, eff. June 14, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 115, eff. September 1, 2023.

Sec. 42.0412. COLLECTION OF LICENSED DAY-CARE CENTER DATA. (a) In this section, "group of children" and "specified age" are determined by the formula provided in the commission's minimum standards for child-care centers.

(b) The commission, in collaboration with the department and using existing resources, shall collect, compile, and publish on the commission's Internet website the following data aggregated by child age on reported incidents in licensed day-care centers that threaten or impair the basic health, safety, or welfare of a child:

(1) the number of incidents investigated by the commission or department and assigned the commission's highest priority;

(2) the number of incidents investigated by the commission or department and assigned the commission's second-highest priority;

(3) the number of violations;

(4) the number of confirmed serious injuries to children; and

(5) the number of child fatalities.

(c) During each monitoring inspection of a licensed day-care center the commission conducts, the commission, using existing resources, shall collect the following data for each group of children four years of age and younger in the day-care center:

(1) the specified age of the children in the group;

(2) the number of children in the group; and

(3) the number of caregivers supervising the children in the group.

(c-1) The commission, using existing resources, shall collect and publish on the commission's Internet website data on the total number of employees who left employment with each licensed day-care center during the preceding calendar year.

(d) The commission shall make the data collected under this section available to persons researching the factors related to child injury, maltreatment, and death in licensed day-care centers on request.

(e) The commission, using existing resources, shall provide an annual report to the legislature that includes:

(1) the number of confirmed serious injuries and fatalities for children four years of age and younger, aggregated by the age of the injured or deceased child, including information collected by the department, that occurred:

(A) at each licensed day-care center; and

(B) at a location other than a licensed day-care center;

(2) the priority assigned to the investigation conducted by the commission or department in response to an incident that resulted in a serious injury or child fatality;

(3) the number of investigations conducted by the commission or department at each licensed day-care center involving a child four years of age or younger that were assigned the highest priority or second-highest priority, aggregated by the age of the youngest affected child;

(4) the number of violations the commission found at each licensed day-care center during investigations described by Subdivision (3); and

(5) a comparison on whether children under the supervision of a licensed day-care center are more likely than children outside the supervision of a licensed day-care center to suffer a serious injury or death.

(f) The commission, in collaboration with the department and using existing resources, shall research, collect, compile, and publish on the commission's Internet website, in a way that allows meaningful comparison on a pro-rata basis of the relative frequency of each event included in the information required under Subsection

(b)(4) and (5), the following data aggregated by child age regarding incidents at a location other than a licensed day-care center that threaten or impair the basic health, safety, or welfare of a child:

(1) the number of confirmed serious injuries to children; and

(2) the number of child fatalities.

(g) The commission may collaborate with one or more state agencies to perform a duty under Subsections (e) and (f).

Added by Acts 2019, 86th Leg., R.S., Ch. 969 (S.B. 708), Sec. 1, eff. June 14, 2019.

Sec. 42.042. RULES AND STANDARDS. (a) The executive commissioner shall adopt rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years. For purposes of this subsection, the six-year period begins on the latest of the date of:

(1) the conclusion of the review of the rules and standards;

(2) a decision by the department not to revise the rules and standards;

(3) a decision by the executive commissioner not to revise the rules and standards; or

(4) executive commissioner action adopting new standards.

(c) The department shall provide a standard procedure for receiving and recording complaints. The executive commissioner shall adopt rules regarding the receipt of anonymous complaints made regarding child-care facilities and family homes to limit the number of anonymous complaints investigated by the department.

(d) The department shall provide standard forms for applications and inspection reports.

(d-1) The executive commissioner by rule shall adopt minimum standards for listed family homes. The minimum standards must:

(1) promote the health, safety, and welfare of children attending a listed family home;

(2) promote safe, comfortable, and healthy listed family homes for children;

(3) ensure adequate supervision of children by capable,

qualified, and healthy personnel; and

(4) ensure medication is administered in accordance with Section 42.065.

(e) The executive commissioner shall promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will:

(1) promote the health, safety, and welfare of children attending a facility or registered family home;

(2) promote safe, comfortable, and healthy physical facilities and registered family homes for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities and registered family homes;

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs;

(7) prevent the breakdown of foster care and adoptive placement;

(8) ensure that a child-care facility or registered family home:

(A) follows the directions of a child's physician or other health care provider in providing specialized medical assistance required by the child; and

(B) maintains for a reasonable time a copy of any directions from the physician or provider that the parent provides to the facility or home; and

(9) ensure that a child's health, safety, and welfare are adequately protected on the grounds of a child-care facility or registered family home.

(e-1) The commission may not prohibit possession of lawfully permitted firearms and ammunition in an agency foster home. Minimum standards may be adopted under this section relating to safety and proper storage of firearms and ammunition. The minimum standards must allow firearms and ammunition to be stored together in the same locked location.

(e-2) The department may not prohibit the foster parent of a child who resides in the foster family's home from transporting the

child in a vehicle where a handgun is present if the handgun is in the possession and control of the foster parent and the foster parent is not otherwise prohibited by law from carrying a handgun.

(e-3) The minimum standards for a day-care center or registered family home adopted under Subsection (e) must be consistent with:

(1) American Academy of Pediatrics standards for physical activity and screen time as published in Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, 4th Edition; and

(2) the nutrition standards in the Child and Adult Care Food Program administered by the Department of Agriculture.

(e-4) A day-care center or registered family home is not required to participate in or comply with the reporting requirements of the Child and Adult Care Food Program administered by the Department of Agriculture.

(e-5) If the commission determines that the economic impact of requiring a day-care center or registered family home to comply with a minimum standard adopted under Subsection (e-3) is sufficiently great to make compliance impractical, the commission may require the day-care center or registered family home to meet the guidelines of the minimum standard through an alternative method.

(f) In promulgating minimum standards for the provision of child-care services, the executive commissioner shall recognize the various categories of services, including services for specialized care, the various categories of children and their particular needs, and the differences in the organization and operation of child-care facilities and general residential operations. Standards for general residential operations must require an intake study before a child is placed in an operation. The intake study may be conducted at a community mental health and intellectual disability center.

(g) In promulgating minimum standards the executive commissioner may recognize and treat differently the types of services provided by and the grounds appurtenant to the following:

(1) listed family homes;

(2) registered family homes;

(3) child-care facilities, including general residential operations, cottage home operations, specialized child-care homes, group day-care homes, and day-care centers;

(4) child-placing agencies;

(5) agency foster homes;

(6) continuum-of-care residential operations;

(7) before-school or after-school programs; and

(8) school-age programs.

(g-1) The executive commissioner in adopting and the department in enforcing minimum standards for a school-age program shall consider commonly accepted training methods for the development of a skill, talent, ability, expertise, or proficiency that are implemented with the consent of the parent or guardian of the participant and that are fundamental to the core purpose of the program.

(g-2) The executive commissioner by rule shall adopt minimum standards that apply to general residential operations that provide comprehensive residential and nonresidential services to persons who are victims of trafficking under Section 20A.02, Penal Code. In adopting the minimum standards under this subsection, the executive commissioner shall consider:

(1) the special circumstances, needs, and precautions required of victims of trafficking of persons;

(2) the role of the general residential operations in assisting, supporting, and protecting victims of trafficking of persons; and

(3) the vulnerability of victims of trafficking of persons on the grounds of a general residential operation operating as a residential treatment center.

(h) The executive commissioner shall promulgate minimum standards for child-placing agencies.

(h-1) The executive commissioner shall adopt rules governing:

(1) the placement and care of children by a child-placing agency, as necessary to ensure the health and safety of those children;

(2) the verification and monitoring of agency foster homes and adoptive homes by a child-placing agency; and

(3) if appropriate, child-placing agency staffing levels, office locations, and administration.

(i) Before the executive commissioner adopts minimum standards, the department shall:

(1) convene a temporary work group to advise the executive commissioner regarding the proposed standards, composed of at least six members who represent the diverse geographic regions of this state, including:

(A) a department official designated by the commissioner to facilitate the work group's activities;

(B) a person with demonstrated expertise or knowledge regarding the different types and classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards;

(C) a parent with experience related to one of the different types or classifications of child-care facilities, homes, agencies, or programs that will be covered by the proposed standards; and

(D) a representative of a nonprofit entity licensed under this chapter; and

(2) send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization.

(l) In promulgating minimum standards for the regulation of family homes that register with the department, the executive commissioner must address the minimum qualifications, education, and training required of a person who operates a family home registered with the department.

(m) In determining minimum standards relating to staff-to-child ratios, group sizes, or square footage requirements applicable to nonresidential child-care facilities that provide care for less than 24 hours a day, the department shall, within available appropriations, conduct a comprehensive cost-benefit analysis and economic impact study that includes families and licensed child-care providers.

(n) Not later than the 60th day before the date the executive commissioner adopts a revision to the minimum standards for child-care facilities, the executive commissioner shall present the revision to the appropriate legislative oversight committees that have jurisdiction over child-care facilities for review and comment.

(p) The executive commissioner by rule shall prescribe minimum

training standards for an employee of a regulated child-care facility, including the time required for completing the training. The executive commissioner may not require an employee to repeat required training if the employee has completed the training within the time prescribed by department rule. The department's local offices shall make available at the local office locations a copy of the rules regarding minimum training standards, information enabling the owner or operator of a regulated facility to apply for training funds from other agencies to lower facility costs, and any other materials the department may develop to assist the owner or operator or other entity in providing the training.

(q) Each residential child-care facility shall notify the department and the appropriate local law enforcement agency immediately on determining that a child is missing from the facility.

(r) A residential child-care facility that provides emergency services may temporarily exceed the facility's capacity for not more than 48 hours to provide temporary care for a child in an emergency. The facility shall notify the department within 24 hours of the placement that the facility temporarily exceeded the facility's capacity.

(s) A continuum-of-care residential operation shall ensure that each residential child-care facility operating under the operation's license complies with this chapter and any standards and rules adopted under this chapter that apply to the facility. The executive commissioner by rule may prescribe the actions a continuum-of-care residential operation must take to comply with the minimum standards for each facility type.

(t) The commission by rule shall grant to each child-placing agency and each single source continuum contractor the authority to waive certain minimum standards related to preservice training, annual training, or other requirements that are not directly related to caring for the child for:

(1) the child's foster or prospective adoptive parent; or

(2) foster homes that have no citations or violations reported to the commission.

Acts 1979, 66th Leg., p. 2362, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.04, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 920, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 24, eff. Sept. 1, 1997;

Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1121, Sec. 1, eff. June 19, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1129, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 218, Sec. 4, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.94(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 526 (H.B. 877), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 366 (S.B. 322), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 31, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 471 (H.B. 434), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 16(2), eff. September 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1300 (H.B. 2560), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 365 (H.B. 2725), Sec. 4, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.212, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 47, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 948 (S.B. 952), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 969 (S.B. 708), Sec. 2, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1120 (H.B. 2363), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1139 (H.B. 2764), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 246 (H.B. 1387), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 19, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 14, eff. September 1, 2021.

Sec. 42.04201. INTERIM DIRECTOR. (a) If a candidate to serve as the director of a day-care center operating under an initial license under Section 42.051 meets all the qualifications for a director prescribed by department rules except for the education requirements, the candidate may serve as interim director of the day-care center for not longer than 12 months while the candidate completes the requisite education or obtains a waiver to the education requirement authorized by commission rule.

(b) If the interim director completes the education requirements prescribed by the department or obtains a waiver to the education requirement before the end of the 12th month after the date the person began serving as interim director, the interim director may become the director of the day-care center.

(c) If the interim director fails to complete the education requirements prescribed by the department or obtain a waiver to the education requirement before the end of the 12th month after the date the person began serving as interim director, the day-care center shall employ a new director.

Added by Acts 2023, 88th Leg., R.S., Ch. 1097 (S.B. 1327), Sec. 1, eff. September 1, 2023.

Sec. 42.0421. MINIMUM TRAINING STANDARDS. (a) The minimum training standards prescribed by the executive commissioner under Section 42.042(p) for an employee, director, or operator of a day-care center, group day-care home, or registered family home must include:

(1) 24 hours of initial training that must be completed not later than the 90th day after the employee's first day of employment for an employee of a day-care center who has no previous training or less than two years of employment experience in a regulated child-care facility, eight hours of which must be completed before the employee is given responsibility for a group of children;

(2) 24 hours of annual training for each employee of a day-care center or group day-care home, excluding the director, which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction; and

(3) 30 hours of annual training for each director of a day-care center or group day-care home, or operator of a registered family home, which must include at least six hours of training in one or more of the following areas:

(A) child growth and development;

(B) guidance and discipline;

(C) age-appropriate curriculum; and

(D) teacher-child interaction.

(b) The minimum training standards prescribed by the executive commissioner under Section 42.042(p) must require an employee of a licensed day-care center or group day-care home who provides care for children younger than 24 months of age to receive special training regarding the care of those children. The special training must be included as a component of the initial training required by Subsection (a)(1) and as a one-hour component of the annual training required by Subsections (a)(2) and (a)(3). The special training must include information on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(c) The executive commissioner by rule shall require an operator of a registered family home who provides care for a child younger than 24 months of age to complete one hour of annual training on:

(1) recognizing and preventing shaken baby syndrome;

(2) preventing sudden infant death syndrome; and

(3) understanding early childhood brain development.

(d) Section 42.042(m) does not apply to the minimum training standards required by this section.

(e) In addition to other training required by this section, the executive commissioner by rule shall require an owner, operator, or employee of a day-care center, group day-care home, registered family

home, general residential operation, cottage home operation, or specialized child-care home who transports a child under the care of the facility whose chronological or developmental age is younger than nine years of age to complete at least two hours of annual training on transportation safety.

(f) The training required by this section must be appropriately targeted and relevant to the age of the children who will receive care from the individual receiving training and must be provided by a person who:

(1) is a training provider registered with the Texas Early Childhood Professional Development System's Texas Trainer Registry that is maintained by the Texas Head Start State Collaboration Office;

(2) is an instructor at a public or private secondary school, an institution of higher education, as defined by Section 61.003, Education Code, or a private college or university accredited by a recognized accrediting agency who teaches early childhood development or another relevant course, as determined by rules adopted by the commissioner of education and the commissioner of higher education;

(3) is an employee of a state agency with relevant expertise;

(4) is a physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) is a registered family home care provider or director of a day-care center or group day-care home in good standing with the department, if applicable, and who:

(A) has demonstrated core knowledge in child development and caregiving; and

(B) is only providing training at the home or center in which the provider or director and the person receiving training are employed; or

(7) has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) has been awarded a Child Development Associate

(CDA) credential; or

(B) holds at least an associate's degree in child development, early childhood education, or a related field.

(g) A person described by Subsection (f)(6) may provide training under this section only if the commission has not taken an action under Section 42.071, 42.072, or 42.078 against the license, listing, or registration of the person or the home or center for which the person is a provider or director during the two-year period preceding the date on which the person provides the training.

(g-1) Notwithstanding Subsection (g), a person who is the director of a day-care center may provide training under this section regardless of whether the commission imposed an administrative penalty under Section 42.078 against the day-care center if the person was not the director of the day-care center at the time the commission imposed the penalty.

(h) In adopting the minimum training standards under Section 42.042(p), the executive commissioner may not require more training hours than the number of hours prescribed by Subsection (a) for a day-care center, group day-care home, or registered family home.

(i) The executive commissioner by rule shall adopt minimum training standards for before-school or after-school and school-age programs as required by Section 42.042(p). In adopting minimum training standards for before-school or after-school and school-age programs under this subsection, the executive commissioner may not require more initial or annual training hours than the number of hours required by Subsection (a) immediately before September 1, 2011.

Added by Acts 1999, 76th Leg., ch. 1211, Sec. 1, eff. Jan. 1, 2000.
Amended by Acts 2001, 77th Leg., ch. 169, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 748 (S.B. 572), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 82 (S.B. 265), Sec. 1, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 882 (S.B. 260), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(31), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1155 (S.B. 215), Sec. 61, eff.

September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.213, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 48, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 4, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1091 (S.B. 1242), Sec. 1, eff. September 1, 2023.

Sec. 42.04215. SAFETY TRAINING ACCOUNT. (a) The safety training account is a dedicated account in the general revenue fund. The account is composed of:

(1) money deposited into the account under Section 42.078;

(2) gifts, grants, and donations contributed to the account; and

(3) interest earned on the investment of money in the account.

(b) Section 403.0956, Government Code, does not apply to the account.

(c) Money in the account may be appropriated only to the commission to provide safety training materials at no cost to a facility licensed under this chapter or a family home registered or listed under this chapter. The commission may contract with a third party to create the training materials.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 1, eff. September 1, 2019.

Sec. 42.0422. RESTRAINT AND SECLUSION. A person providing services to a resident of a general residential operation, including a state-operated facility that is a residential treatment center or a general residential operation serving children with intellectual disabilities, shall comply with Chapter 322, Health and Safety Code, and the rules adopted under that chapter.

Added by Acts 2005, 79th Leg., Ch. 698 (S.B. 325), Sec. 7, eff.

September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 7, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.214, eff. April 2, 2015.

Sec. 42.0423. CHILDREN'S PRODUCT SAFETY FOR CERTAIN NONRESIDENTIAL CHILD-CARE FACILITIES. (a) This section applies only to a licensed day-care center, licensed group day-care home, or registered family home.

(b) A children's product is presumed to be unsafe for purposes of this section if it has been recalled for any reason by the United States Consumer Product Safety Commission and the recall has not been rescinded.

(c) A children's product that has been recalled for any reason by the United States Consumer Product Safety Commission is not presumed to be unsafe if the product has been remanufactured or retrofitted so that the product is safe.

(d) The department shall include on its public Internet website a link to the United States Consumer Product Safety Commission's Internet website.

(e) A child-care facility subject to this section may not use an unsafe children's product or have an unsafe children's product on the premises of the child-care facility unless:

(1) the product is an antique or collectible children's product and is not used by, or accessible to, any child in the child-care facility; or

(2) the unsafe children's product is being retrofitted to make it safe and the product is not used by, or accessible to, any child in the child-care facility.

(f) The department shall notify a child-care facility subject to this section of the provisions of this section in plain, nontechnical language that will enable the child-care facility to effectively inspect the children's products at the facility and identify unsafe children's products. The department shall provide the notice required by this subsection:

(1) during the department's pre-application interview for a license, registration, or certification; and

(2) during an inspection.

(g) At least annually, each child-care facility subject to this section shall certify in writing that the facility has reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe products in the facility except products described by Subsection (e). The facility shall retain the certification form completed by each facility in the facility's licensing file.

(h) The executive commissioner shall adopt rules and forms necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 46 (S.B. 95), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.215, eff. April 2, 2015.

Sec. 42.0424. CHILD SAFETY ALARMS IN VEHICLES. (a) In this section, "electronic child safety alarm" means an alarm system that prompts the driver of a vehicle to inspect the vehicle to determine whether children are in the vehicle before the driver exits the vehicle.

(b) A licensed day-care center shall equip each vehicle owned or leased by the facility with an electronic child safety alarm if the vehicle is:

(1) designed to seat eight or more persons; and

(2) used to transport children under the care of the facility.

(c) The licensed day-care center shall ensure that the electronic child safety alarm is properly maintained and used when transporting children.

(d) The executive commissioner shall adopt rules to implement this section.

(e) This section applies only to a vehicle purchased or leased on or after December 31, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1132 (H.B. 1741), Sec. 1, eff. December 31, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.216, eff. April 2, 2015.

Sec. 42.0425. ASSESSMENT SERVICES. (a) The executive commissioner by rule shall regulate assessment services provided by child-care facilities or child-placing agencies. A child-care facility or child-placing agency may not provide assessment services unless specifically authorized by department rule.

(b) The executive commissioner by rule shall establish minimum standards for assessment services. The standards must provide that consideration is given to the individual needs of a child, the appropriate place for provision of services, and the factors listed in Section 42.042(e).

(c) In this section, "assessment services" means the determination of the placement needs of a child who requires substitute care.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 25, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.217, eff. April 2, 2015.

Sec. 42.0426. TRAINING OF PERSONNEL. (a) A licensed facility shall provide training for staff members in:

(1) the recognition of symptoms of child abuse, neglect, and sexual molestation and the responsibility and procedure of reporting suspected occurrences of child abuse, neglect, and sexual molestation to the department or other appropriate entity;

(2) the application of first aid; and

(3) the prevention and spread of communicable diseases.

(a-1) A licensed facility shall require each employee of the facility who attends a training program required by Subsection (a)(1) to sign a statement verifying the employee's attendance at the training program. The licensed facility shall maintain the statement in the employee's personnel records.

(b) A residential child-care facility shall implement a behavior intervention program approved by the department for the benefit of a child served by the facility who needs assistance in

managing the child's conduct. The program must include:

(1) behavior intervention instruction for staff members who work directly with children served by the facility; and

(2) training for all employees regarding the risks associated with the use of prone restraints.

(c) Not later than the seventh day after the date an employee begins employment at a day-care center, group day-care home, or registered family home, the employee must complete an orientation to the facility.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 25, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.95, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 882 (S.B. 260), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 592 (S.B. 939), Sec. 5, eff. September 1, 2013.

Sec. 42.04261. OTHER TRAINING OF PERSONNEL: CHILD-PLACING AGENCIES AND DAY-CARE CENTERS. (a) Notwithstanding Section 42.0426(a)(1), a child-placing agency or day-care center shall provide training for staff members in prevention techniques for and the recognition of symptoms of sexual abuse and other maltreatment of children and the responsibility and procedure of reporting suspected occurrences of sexual abuse and other maltreatment of children to the department or other appropriate entity.

(b) The type of training required under Subsection (a) shall be determined by department rule. The training must be provided for at least an hour annually and must include training concerning:

(1) factors indicating a child is at risk for sexual abuse or other maltreatment;

(2) likely warning signs indicating a child may be a victim of sexual abuse or other maltreatment;

(3) internal procedures for reporting sexual abuse or other maltreatment; and

(4) community organizations that have existing training programs that are able to provide training or other education for child-placing agency or day-care center staff members, children, and

parents.

(c) If a child-placing agency or day-care center determines that it does not have sufficient resources to provide the training required under this section, the agency or center may contact a department licensing employee to obtain information concerning community organizations that will provide such training at no cost to the agency or center.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1323 (S.B. 471), Sec. 4, eff. June 17, 2011.

Sec. 42.0427. PARENTAL VISITATION. All areas of a licensed facility must be accessible to a parent of a child who is receiving care at the facility if the parent visits the child during the facility's hours of operation.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 25, eff. Sept. 1, 1997.

Sec. 42.04271. RIGHTS OF PARENT OR GUARDIAN WITH CHILD IN CERTAIN CHILD-CARE FACILITIES. (a) This section applies only to a day-care center, group day-care home, before-school program, after-school program, school-age program, or registered family home.

(b) A parent or guardian of a child at a child-care facility has the right to:

(1) enter and examine the child-care facility during the facility's hours of operation without advance notice;

(2) file a complaint against the child-care facility;

(3) review the child-care facility's publicly accessible records;

(4) review the child-care facility's written records concerning the parent's or guardian's child;

(5) receive from the child-care facility the commission's inspection reports for the child-care facility and information about how to access the child-care facility's compliance history online;

(6) have the child-care facility comply with a court order preventing another parent or guardian from visiting or removing the parent's or guardian's child;

(7) be provided the contact information for the division responsible for regulating the child-care facility, including the

division's name, address, and phone number;

(8) inspect any video recordings of an alleged incident of abuse or neglect involving the parent's or guardian's child, provided that:

(A) video recordings of the alleged incident are available;

(B) the parent or guardian of the child is not allowed to retain any part of the video recording depicting a child who is not the parent's or guardian's child; and

(C) the parent or guardian of any other child captured in the video recording receives notice from the facility under Subsection (c);

(9) obtain a copy of the child-care facility's policies and procedures;

(10) review, on the request of the parent or guardian, the facility's:

(A) staff training records; and

(B) any in-house staff training curriculum used by the facility; and

(11) be free from any retaliatory action by the child-care facility for exercising any of the parent's or guardian's rights.

(c) Before allowing a parent or guardian to inspect a video recording under Subsection (b)(8), a child-care facility must provide written notice to the parent or guardian of any other child captured in the video recording.

(d) This section does not affect the ability of a law enforcement agency or the department to access a video recording as part of an investigation of an incident depicted in the video recording.

(e) A child-care facility shall provide the parent or guardian of the child with a written copy of the rights listed in Subsection (b) not later than the child's first day at the facility.

Added by Acts 2023, 88th Leg., R.S., Ch. 1158 (S.B. 1098), Sec. 2, eff. September 1, 2023.

Sec. 42.0428. POLICIES ADDRESSING SEXUAL ABUSE AND OTHER MALTREATMENT OF CHILDREN. (a) Each child-placing agency or day-care center shall adopt and implement a policy addressing sexual abuse and

other maltreatment of children.

(b) A policy required by this section must address:

(1) methods for increasing child-placing agency and day-care center staff and parent awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children, including knowledge of likely warning signs indicating that a child may be a victim of sexual abuse or other maltreatment; and

(2) actions that, after contacting an agency or center, the parent of a child who is a victim of sexual abuse or other maltreatment should take to obtain assistance and intervention.

(c) The methods under Subsection (b)(1) for increasing awareness of issues regarding and prevention techniques for sexual abuse and other maltreatment of children must include:

(1) the training required under Section 42.04261; and

(2) strategies for coordination between the child-placing agency or day-care center and appropriate community organizations.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1323 (S.B. 471), Sec. 5, eff. June 17, 2011.

Sec. 42.0429. SAFE SLEEPING STANDARDS. (a) The executive commissioner by rule shall establish safe sleeping standards for licensed facilities and registered family homes. Each licensed facility and registered family home shall comply with the safe sleeping standards.

(b) If the commission determines that a licensed facility or registered family home has violated a safe sleeping standard established as required by Subsection (a), the facility or home shall provide written notice in the form and manner required by the executive commissioner to the parent or legal guardian of each child attending the facility or home.

(c) The executive commissioner shall prescribe the form for the notice required by Subsection (b) and post the form on the commission's Internet website.

Added by Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 2, eff. September 1, 2019.

Sec. 42.04291. SUPERVISION STANDARDS FOR INFANT DURING TIME

SPENT ON STOMACH. The executive commissioner by rule shall establish standards for the visual and auditory supervision of an infant engaged in time on the infant's stomach while awake. Each group day-care home and listed and registered family home shall comply with the supervision standards.

Added by Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 3, eff. September 1, 2021.

Sec. 42.043. RULES FOR IMMUNIZATIONS. (a) The executive commissioner shall adopt rules for the immunization of children in facilities regulated under this chapter.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, mumps, rubella, rubeola, invasive pneumococcal disease, and hepatitis A and against any other communicable disease as recommended by the Department of State Health Services. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The executive commissioner shall adopt rules for the provisional admission of children to facilities regulated under this chapter and may modify or delete any of the immunizations listed in Subsection (b) or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility regulated under this chapter if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization poses a significant risk to the health and well-being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the applicant declines immunization for reasons of conscience, including a religious belief.

(d-1) An affidavit submitted under Section (d)(2) must be on a form described by Section 161.0041, Health and Safety Code, and must be submitted not later than the 90th day after the date the affidavit

is notarized.

(e) Each regulated facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the department at all reasonable times.

(f) The Department of State Health Services shall provide the immunizations required by this section to children in areas where there is no local provision of these services.

Acts 1979, 66th Leg., p. 2362, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 5, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.164, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 563 (H.B. 1316), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.218, eff. April 2, 2015.

Sec. 42.04305. VACCINE-PREVENTABLE DISEASE POLICY REQUIRED. (a) In this section:

(1) "Facility employee" means an employee of a child-care facility.

(2) "Vaccine-preventable diseases" means the diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(b) Each child-care facility, other than a facility that provides care in the home of the director, owner, operator, or caretaker of the facility, shall develop and implement a policy to protect the children in its care from vaccine-preventable diseases.

(c) The policy must:

(1) require each facility employee to receive vaccines for the vaccine-preventable diseases specified by the child-care facility based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) specify the vaccines a facility employee is required to receive based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(3) include procedures for verifying whether a facility

employee has complied with the policy;

(4) include procedures for a facility employee to be exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(5) for a facility employee who is exempt from the required vaccines, include procedures the employee must follow to protect children in the facility's care from exposure to disease, such as the use of protective medical equipment, including gloves and masks, based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) prohibit discrimination or retaliatory action against a facility employee who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this subdivision;

(7) require the child-care facility to maintain a written or electronic record of each facility employee's compliance with or exemption from the policy; and

(8) state the disciplinary actions the child-care facility is authorized to take against a facility employee who fails to comply with the policy.

(d) The policy shall include procedures for a facility employee to be exempt from the required vaccines based on reasons of conscience, including a religious belief.

(e) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1144 (S.B. 64), Sec. 1, eff. September 1, 2013.

Sec. 42.0431. ENFORCEMENT OF SCREENING REQUIREMENTS RELATING TO VISION, HEARING, AND OTHER SPECIAL SENSES AND COMMUNICATION DISORDERS. (a) The executive commissioner, after consultation with the Department of State Health Services, shall adopt rules necessary to ensure that children receiving care at a day-care center or group day-care home licensed under this chapter are screened for vision,

hearing, and any other special senses or communication disorders in compliance with rules adopted under Section 36.004, Health and Safety Code.

(b) Each day-care center or group day-care home licensed under this chapter shall maintain individual screening records for children attending the facility who are required to be screened, and the department may inspect those records at any reasonable time. The department shall coordinate the monitoring inspections in compliance with protocol agreements adopted between the department and the Department of State Health Services pursuant to Section 42.0442.

Added by Acts 1999, 76th Leg., ch. 712, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 19(2), eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.219, eff. April 2, 2015.

Sec. 42.0432. HEALTH SCREENING REQUIREMENTS FOR CHILD PLACED WITH CHILD-PLACING AGENCY. (a) A child-placing agency or general residential operation that contracts with the department to provide services must ensure that the children that are in the managing conservatorship of the department and are placed with the child-placing agency or general residential operation receive a complete early and periodic screening, diagnosis, and treatment checkup in accordance with the requirements specified in the contract between the child-placing agency or general residential operation and the department.

(b) The commission shall include a provision in a contract with a child-placing agency or general residential operation specifying progressive monetary penalties for the child-placing agency's or general residential operation's failure to comply with Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 30(a), eff. September 1, 2017.

Sec. 42.0433. SUICIDE PREVENTION, INTERVENTION, AND POSTVENTION PLAN. (a) In this section, "postvention" has the meaning assigned

by Section 38.351, Education Code.

(b) The executive commissioner by rule shall adopt a model suicide prevention, intervention, and postvention policy for use by a residential child-care facility. The model policy must:

(1) be based on current and best evidence-based practices;

(2) require all employees of the facility to receive annual suicide prevention training that includes understanding of safety planning and screening for risk;

(3) promote suicide prevention training for non-employee entities, as appropriate; and

(4) include procedures to support children who return to the facility following hospitalization for a mental health condition.

(c) Each residential child-care facility shall adopt a suicide prevention, intervention, and postvention policy. A residential child-care facility may adopt:

(1) the model policy adopted by the executive commissioner under Subsection (b); or

(2) another suicide prevention, intervention, and postvention policy approved by the executive commissioner.

(d) The suicide prevention, intervention, and postvention policy adopted under Subsection (c) may be part of a broader mental health crisis plan if the components of the plan include suicide prevention, intervention, and postvention.

(e) The commission shall provide to a residential child-care facility any technical assistance necessary to adopt or implement a suicide prevention, intervention, and postvention policy.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 20, eff. June 14, 2021.

Sec. 42.044. INSPECTIONS. (a) An authorized representative of the commission may visit a facility regulated under this chapter or a registered or listed family home during operating hours to investigate, inspect, and evaluate.

(b) Except as provided by Subsection (b-3), the department shall inspect all licensed or certified facilities at least once a year and may inspect other facilities or registered family homes as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(b-1) At least one of the unannounced, annual inspections of a residential child-care facility must be conducted by a team of at least two residential child-care monitoring staff, and, if feasible, members of the inspection team must be from different residential child-care monitoring units.

(b-2) Except as otherwise provided by this subsection, during an unannounced annual or biennial inspection of a day-care center, the department shall meet with the director designated by the day-care center as having daily, on-site responsibility for the operation of the day-care center to assess whether the director meets the qualifications of a director specified by this chapter and department rules. If the director is not present during the unannounced annual or biennial inspection, the department shall schedule a subsequent meeting with the director for that purpose and shall conduct that meeting at the day-care center.

(b-3) The department may, in accordance with rules adopted by the executive commissioner, designate a licensed day-care center or group day-care home for a biennial inspection if the department determines, based on previous inspections, that the facility has a history of substantial compliance with minimum licensing standards. The biennial inspection of a day-care center or group day-care home must be unannounced.

(c) The commission must investigate a facility regulated under this chapter or a registered or listed family home when a complaint is received by the commission. The representative of the commission must notify the operator of a registered or listed family home or the director or authorized representative of a regulated facility when a complaint is being investigated and report in writing the results of the investigation to the family home's operator or to the regulated facility's director or the director's authorized representative.

(c-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 11, eff. September 1, 2019.

(c-2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 11, eff. September 1, 2019.

(d) The department may call on political subdivisions and governmental agencies for assistance within their authorized fields.

(e) In addition to the department's responsibility to investigate an agency foster home under Subsection (c), the department shall:

(1) periodically conduct inspections of a random sample of

agency foster homes;

(2) investigate any report of a serious incident in an agency foster home that pertains to a child under the age of six;

(3) investigate any alleged violation of a minimum standard by an agency foster home that poses a high degree of risk to a child in the care of the home who is under the age of six; and

(4) conduct at least one annual enforcement team conference for each child-placing agency to thoroughly review the investigations or inspections of the child-placing agency and all of its agency foster homes to monitor and enforce compliance by a child-placing agency with rules and standards established under Section 42.042.

(f) The department shall use an inspection checklist that includes a list of all required items for inspection in conducting a monitoring inspection under this section.

Acts 1979, 66th Leg., p. 2363, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 27, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.96, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 32(a), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 2, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 49, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 31, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1136 (H.B. 249), Sec. 13, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 11, eff.

September 1, 2019.

Sec. 42.0441. INSPECTION RESULTS FOR CERTAIN NONRESIDENTIAL CHILD-CARE FACILITIES. Immediately after completing a monitoring inspection of a licensed day-care center, licensed group day-care home, or registered family home under Section 42.044, the authorized representative of the department shall review the results of the monitoring inspection with a representative of the facility and give the facility an opportunity to respond to the inspection results.

Added by Acts 1997, 75th Leg., ch. 253, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 28, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.97, eff. September 1, 2005.

Sec. 42.04411. INSPECTION RESULTS AND EXIT CONFERENCE FOR RESIDENTIAL CHILD-CARE FACILITIES. (a) On completion of an inspection of a residential child-care facility under Section 42.044, the inspector shall hold an exit conference with a representative of the inspected facility. The inspector shall provide to the representative a copy of the inspection checklist used by the inspector.

(b) The inspector shall provide the representative an opportunity to communicate regarding potential violations.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.98, eff. September 1, 2005.

Sec. 42.04412. INTERFERENCE WITH INSPECTION; COURT ORDER. (a) A person may not interfere with an investigation or inspection of a facility or family home conducted by the department under this chapter.

(b) During an investigation or inspection of a facility or family home under this chapter, the facility or family home shall cooperate with the department and allow the department to:

(1) access the records of the facility or family home;

(2) access any part of the premises of the facility or

family home; and

(3) interview any child, employee, or other person who is present at the facility or family home and who may have information relevant to the investigation or inspection.

(c) If access to the records or premises of the facility or family home cannot be obtained, a district court in Travis County or in the county in which the facility or family home is located, for good cause shown and without prior notice or a hearing, shall issue an order granting the department access to the records or premises in order to conduct the inspection, investigation, or interview.

(d) To assist the department in investigating whether a person is operating a facility or family home without a required license, certification, registration, or listing, a district court in Travis County or in the county in which the suspected facility or family home is located may, for good cause shown and without prior notice or a hearing, issue an order allowing the department to enter the suspected facility or family home at a time when the department's evidence shows that the suspected facility or family home may be providing child care subject to regulation under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 9, eff. September 1, 2009.

Sec. 42.0442. COORDINATION OF INSPECTIONS; ELIMINATION OF DUPLICATIVE INSPECTIONS. (a) The department shall coordinate monitoring inspections of licensed day-care centers, licensed group day-care homes, and registered family homes performed by another state agency to eliminate redundant inspections.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 946 , Sec. 1.04(c), eff. September 1, 2015.

(c) Each state agency that inspects a facility listed in Subsection (a) shall use an inspection checklist established by the department in performing an inspection. A state agency shall make a copy of the completed inspection checklist available to the facility at the facility's request to assist the facility in maintaining records.

(d) The department shall provide to facilities listed in Subsection (a) information regarding inspections, including who may inspect a facility and the purpose of each type of inspection.

Added by Acts 1997, 75th Leg., ch. 253, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 28, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 169, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.220, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.04(b), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.04(c), eff. September 1, 2015.

Sec. 42.04425. INSPECTION INFORMATION DATABASE. (a) If feasible using available information systems, the commission shall establish a computerized database containing relevant inspection information on all licensed facilities and registered family homes obtained from other state agencies and political subdivisions of the state.

(b) The commission shall make the data collected by the commission available to another state agency or political subdivision of the state for the purpose of administering programs or enforcing laws within the jurisdiction of that agency or subdivision. If feasible using available information systems, the commission shall make the data directly available to the Texas Workforce Commission through electronic information systems. The commission and the Texas Workforce Commission shall jointly plan the development of child-care inspection databases that, to the extent feasible, are similar in their design and architecture to promote the sharing of data.

(c) The commission shall provide at a minimum five years of inspection data for all facilities licensed or family homes registered under this chapter to enhance consumer choice with respect to those facilities and homes.

(d) The commission shall provide with the inspection data described by Subsection (c) a minimum of five years of investigative data for listed family homes regulated under this chapter to enhance consumer choice with respect to those homes.

Added by Acts 1997, 75th Leg., ch. 253, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 28, eff. Sept. 1, 1997. Redesignated from Human Resources Code, Section 42.0443 by Acts 2013,

83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(32), eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.221, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 3, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 3, eff. September 1, 2019.

Sec. 42.0443. COORDINATION OF FIRE SAFETY AND SANITATION INSPECTIONS. (a) The department may not inspect a licensed day-care center, licensed group day-care home, or registered family home for compliance with the department's fire safety or sanitation standards if the facility, at the time of the department's inspection, provides the department with documentation relating to a current fire safety or sanitation inspection, as applicable, performed by a political subdivision of this state that indicates that the facility is in compliance with the applicable standards of the political subdivision.

(b) If the documentation provided under Subsection (a) indicates that the facility was required to take corrective action or that the political subdivision imposed a restriction or condition on the facility, the department shall determine whether the facility took the required corrective action or complied with the restriction or condition.

(c) The department may inspect a facility subject to this section for compliance with the department's fire safety or sanitation standards if:

(1) the facility does not provide the documentation described by Subsection (a); or

(2) the department determines that the facility did not take a corrective action or comply with a restriction or condition described by Subsection (b).

(d) Notwithstanding any other provision of this section, the department shall report to the appropriate political subdivision any violation of fire safety or sanitation standards observed by the department at a facility subject to this section.

(e) The executive commissioner shall adopt rules necessary to

implement this section.

Added by Acts 2003, 78th Leg., ch. 709, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.222, eff. April 2, 2015.

Sec. 42.04431. ENFORCEMENT OF STATE LAW BY COUNTY OR MUNICIPALITY. (a) A municipality or a county may enforce state law and rules adopted under state law concerning fire safety standards at a licensed group day-care home or a registered family home.

(b) A municipality or county shall report to the department any violation of fire safety standards observed by the municipality or county at a licensed group day-care home or registered family home.

Added by Acts 2011, 82nd Leg., R.S., Ch. 354 (H.B. 3547), Sec. 1, eff. September 1, 2011.

Sec. 42.0445. REQUIRED BACKGROUND SEARCH OF CENTRAL REGISTRY OF REPORTED CASES OF CHILD ABUSE OR NEGLECT. (a) Before the department issues a license, listing, registration, or certification under this subchapter, the department shall search the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code, to determine whether the applicant or the owner or an employee of the facility or family home is listed in the registry as a person who abused or neglected a child.

(b) The executive commissioner may adopt rules to implement this section.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 29, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 33, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.223, eff. April 2, 2015.

Sec. 42.0446. REMOVAL OF CERTAIN INVESTIGATION INFORMATION FROM INTERNET WEBSITE. The executive commissioner shall adopt rules

providing a procedure by which the commission removes from the commission's Internet website information on a child-care facility or registered or listed family home that relates to an anonymous complaint alleging the facility or family home failed to comply with the commission's minimum standards if, at the conclusion of an investigation, the commission determines the complaint is false or lacks factual foundation.

Added by Acts 2005, 79th Leg., Ch. 526 (H.B. 877), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 4, eff. September 1, 2019.

Sec. 42.0447. FALSE REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally files a complaint alleging that a child-care facility or registered or listed family home failed to comply with the commission's minimum standards and the person knows the allegation is false or lacks factual foundation.

(b) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the person has previously been convicted under this section, in which case the offense is a state jail felony.

Added by Acts 2005, 79th Leg., Ch. 526 (H.B. 877), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 5, eff. September 1, 2019.

Sec. 42.0448. NOTIFICATION OF FAMILY VIOLENCE CALLS. The department shall notify a child-placing agency or a continuum-of-care residential operation that includes a child-placing agency of each family violence report the department receives under Article 5.05, Code of Criminal Procedure, that:

(1) occurred at an agency foster home; or

(2) involves a person who resides at an agency foster home.

Added by Acts 2007, 80th Leg., R.S., Ch. 524 (S.B. 723), Sec. 4, eff. June 16, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 50, eff. September 1, 2017.

Sec. 42.0449. REQUIRED ACTIONS AFTER NOTICE OF FAMILY VIOLENCE CALL. The executive commissioner shall adopt rules specifying the actions that the department, a child-placing agency, and a continuum-of-care residential operation that includes a child-placing agency shall take after receiving notice of a family violence report under Article 5.05, Code of Criminal Procedure, or Section 42.0448 to ensure the health, safety, and welfare of each child residing in the verified agency foster home.

Added by Acts 2007, 80th Leg., R.S., Ch. 524 (S.B. 723), Sec. 4, eff. June 16, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 51, eff. September 1, 2017.

Sec. 42.045. RECORDS. (a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who provides adoption services under a license to operate a child-placing agency shall furnish information required by the department to determine whether adoption related income and disbursements are reasonable, appropriate, and in compliance with the department's minimum standards.

(c) If a child-placing agency terminates operation as a child-placing agency, it shall, after giving notice to the department, transfer its files and records concerning adopted children, their biological families, and their adoptive families to the vital statistics unit of the Department of State Health Services or, after giving notice to the vital statistics unit, to a facility licensed by the department to place children for adoption.

(d) A child-placing agency shall notify the department of any

change of address for an agency foster home. The child-placing agency shall notify the department of the address change within the earlier of two business days or 72 hours of the date the agency foster home changes its address.

Acts 1979, 66th Leg., p. 2363, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 1782, ch. 342, Sec. 2, eff. Jan. 1, 1984; Acts 1989, 71st Leg., ch. 707, Sec. 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1129, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 524 (S.B. 723), Sec. 5, eff. June 16, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.224, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 52, eff. September 1, 2017.

Sec. 42.0451. DATABASE OF AGENCY FOSTER HOMES; INFORMATION PROVIDED TO DEPARTMENT OF PUBLIC SAFETY. (a) The department shall maintain a database of agency foster homes including the current address for each agency foster home as reported to the department. The database must be updated on a regular basis.

(b) The department shall make the database available to the Department of Public Safety for the purposes of Subsection (c).

(c) The Department of Public Safety shall include the information provided under Subsection (b) in the Texas Crime Information Center database and establish a procedure by which a peace officer or employee of a law enforcement agency who provides the department with a street address is automatically provided information as to whether the address is verified as an agency foster home under this chapter.

(d) Information provided to the Department of Public Safety under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 524 (S.B. 723), Sec. 6, eff. June 16, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 53, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 54, eff. September 1, 2017.

Sec. 42.0452. FOSTER PARENT RIGHTS AND RESPONSIBILITIES STATEMENT. (a) The department shall develop a statement that lists the rights and responsibilities of a foster parent in an agency foster home and a child-placing agency, as applicable.

(b) The department shall provide a written copy of the statement developed under Subsection (a) to each foster parent in an agency foster home and to each child-placing agency licensed by the department. A child-placing agency shall provide a written copy of the statement developed under Subsection (a) to each foster parent in an agency foster home verified by the child-placing agency.

Added by Acts 2009, 81st Leg., R.S., Ch. 939 (H.B. 3137), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 55, eff. September 1, 2017.

Sec. 42.046. APPLICATION FOR LICENSE, LISTING, OR REGISTRATION. (a) An applicant for a license to operate a child-care facility, child-placing agency, or continuum-of-care residential operation or for a listing or registration to operate a family home shall submit to the commission the appropriate fee prescribed by Section 42.054 and a completed application on a form provided by the commission.

(a-1) The commission shall require the applicant for a license, registration, or listing for a group day-care home or a family home to provide the applicant's name and the name of the sole proprietor or each partner who owns the child-care operation or, if the owner is a business entity, the name of each officer responsible for the management of the child-care operation as determined by the commissioner on the application form.

(b) The department shall supply the applicant the application form and a copy of the appropriate minimum standards, if applicable.

(c) After receiving an application, the department shall

investigate the applicant and the plan of care for children, if applicable.

(d) The department shall complete the investigation and decide on an application within two months after the date the department receives a completed application.

(e) The department may deny an application under this section if the applicant:

(1) has a residential child-care facility license revoked in another state; or

(2) is barred from operating a residential child-care facility in another state.

(f) An applicant for a listing to operate a family home shall submit with the application proof of the applicant's successful completion of safe sleep training in accordance with commission rules.

Acts 1979, 66th Leg., p. 2363, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 212, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 239, Sec. 4, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1022, Sec. 30, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.99, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 56, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 6, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 4, eff. September 1, 2021.

Sec. 42.0461. PUBLIC NOTICE AND HEARING: RESIDENTIAL CHILD CARE. (a) Before the department may issue a license or certificate for the operation or the expansion of the capacity of a general residential operation, a cottage home operation, or a continuum-of-care residential operation that is located in a county with a population of less than 300,000, the applicant for the license, certificate, or expansion shall, at the applicant's expense:

(1) conduct a public hearing on the application in accordance with department rules after notifying the department of the date, time, and location of the hearing; and

(2) publish notice of the application in a newspaper of general circulation in the community in which the child-care services are proposed to be provided.

(b) The notice required by Subsection (a)(2) must be published at least 10 days before the date of the public hearing required by Subsection (a)(1) and must include:

(1) the name and address of the applicant;

(2) the address at which the child-care services are proposed to be provided;

(3) the date, time, and location of the public hearing;

(4) the name, address, and telephone number of the department as the licensing authority; and

(5) a statement informing the public that a person may submit written comments to the department concerning the application instead of or in addition to appearing at the public hearing.

(c) The department shall require a representative of the department to attend the public hearing in an official capacity for the purpose of receiving public comments on the application.

(d) Before issuing a license or certificate described by Subsection (a), the department shall consider written information provided by an interested party directly to the department's representative at the public hearing concerning:

(1) the amount of local resources available to support children proposed to be served by the applicant;

(2) the impact of the proposed child-care services on the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the effect, if any, on the children proposed to be served by the applicant; and

(3) the impact of the proposed child-care services on the community and the effect on opportunities for social interaction for the children proposed to be served by the applicant.

(e) Based on the written information provided to the department's representative at the public hearing, the department may deny the application if the department determines that:

(1) the community has insufficient resources to support children proposed to be served by the applicant;

(2) granting the application would significantly increase the ratio in the local school district of students enrolled in a special education program to students enrolled in a regular education program and the increase would adversely affect the children proposed to be served by the applicant; or

(3) granting the application would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 71, eff. September 1, 2017.

(g) Repealed by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 71, eff. September 1, 2017.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 31, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.100, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 34, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 10, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 57, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 58, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 71, eff. September 1, 2017.

Sec. 42.0462. WAIVER OF NOTICE AND HEARING REQUIREMENTS. (a) Subject to Subsection (b), to protect the safety and well-being of residents and employees of a general residential operation that provides comprehensive residential services to children who are victims of trafficking, the commission shall waive the notice and hearing requirements imposed under Section 42.0461 for an applicant who submits to the commission an application to provide trafficking victim services at the applicant's general residential operation.

(b) This section does not apply to an applicant who submits an application for a license for a general residential operation that

provides services to children or young adults with emotional disorders.

Added by Acts 2015, 84th Leg., R.S., Ch. 1057 (H.B. 2070), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 5, eff. September 1, 2019.

Sec. 42.0463. EXPANSION OF CAPACITY. (a) Notwithstanding the limitations established by Section 42.002, the department may:

(1) develop, by rule, criteria to determine when it may be appropriate to exclude children who are related to a caretaker in determining a residential child-care facility's total capacity; and

(2) issue an exception in accordance with department rules allowing an agency foster home, cottage family home, or specialized child-care home to expand its capacity and care for not more than eight children.

(b) The department may include children who are related to a caretaker when determining under Subsection (a)(1) whether a residential child-care facility complies with the standards relating to total capacity or child-to-caregiver ratios for the facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 59, eff. September 1, 2017.

Sec. 42.047. CONSULTATIONS. (a) The department shall offer consultation to potential applicants, applicants, and license, listing, registration, and certification holders about meeting and maintaining standards for licensing, listing, registration, and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities or homes.

Acts 1979, 66th Leg., p. 2364, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 6, eff. Sept. 1, 1997.

Sec. 42.048. LICENSING. (a) The commission shall issue a license after determining that an applicant has satisfied all requirements.

(a-1) The commission shall associate a license issued under this chapter for a group day-care home with the applicant's name as stated in the applicant's license application.

(b) When issuing a license, the commission may impose restrictions on a facility, including the number of children to be served and the type of children to be served.

(c) The commission may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator stated in the license application. A change in ownership automatically revokes a license.

(e-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 9, eff. September 1, 2021.

(e-2) Repealed by Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 9, eff. September 1, 2021.

(e-3) A licensed child-care facility that changes location:

(1) must inform the commission regarding the new location before changing location; and

(2) may not operate at the new location unless the commission approves the new location after the licensed child-care facility meets all requirements related to the new location.

(e-4) To the extent necessary to comply with a state or local order during a declared state of disaster under Chapter 418, Government Code, the commission may authorize a residential child-care facility to temporarily:

(1) relocate to a new location that is not stated in the facility's license application; or

(2) provide care to one or more children at an additional location that is not stated in the facility's license application.

(f) A license must be issued if the commission determines that a facility meets all requirements. The evaluation shall be based on one or more visits to the facility and a review of required forms and records. A license is valid until the license expires, is revoked, or is surrendered.

Acts 1979, 66th Leg., p. 2364, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 1987. Renumbered from Human Resources Code Sec. 42.049 and amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 35, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.225, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 77, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 60, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1318 (H.B. 4090), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 37 (S.B. 863), Sec. 1, eff. May 15, 2021.

Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 5, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 9, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 12.001, eff. September 1, 2023.

Sec. 42.049. LIABILITY INSURANCE REQUIRED. (a) A license or registration holder under this chapter shall maintain liability insurance coverage in the amount of $300,000 for each occurrence of negligence. An insurance policy or contract required under this section must cover injury to a child that occurs while the child is on the premises of or in the care of the holder.

(b) A license or registration holder under this chapter shall annually file with the commission a certificate or other evidence from an insurance company showing that the holder has an unexpired and uncancelled insurance policy or contract that meets the requirements of this section.

(c) Should the license or registration holder for financial reasons or for lack of availability of an underwriter willing to issue a policy be unable to secure the insurance required under

Subsection (a) or should the policy limits be exhausted, the holder shall timely notify the parent or guardian of each child for whom the holder provides care a written notice that the liability coverage is not provided and there will not be a ground for an administrative penalty or suspension or revocation of the holder's license or registration under this chapter. The holder shall also notify the commission that the coverage is not provided and provide the reason for same. In no case shall the inability to secure coverage serve to indemnify the holder for damages due to negligence.

(c-1) The commission shall prescribe a form that a license or registration holder may use to notify a parent or guardian in accordance with Subsection (c) that liability coverage is not provided. The commission shall post the form on the commission's Internet website.

(d) The insurance policy or contract shall be maintained at all times in an amount as required by this section. Failure by a license or registration holder to renew the policy or contract or to maintain the policy or contract in the required amount is a ground for suspension or revocation of the holder's license or registration under this chapter.

Added by Acts 1993, 73rd Leg., ch. 1002, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1217, Sec. 7, eff. Sept. 1, 1997. Renumbered from Human Resources Code, Sec. 42.0491 and amended by Acts 1997 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 4, eff. September 1, 2019.

Sec. 42.0495. LIABILITY INSURANCE REQUIRED FOR LISTED FAMILY HOMES. (a) A listed family home shall maintain liability insurance coverage in the amount of $300,000 for each occurrence of negligence. An insurance policy or contract required under this section must cover injury to a child that occurs while the child is on the premises of or in the care of the listed family home.

(b) A listed family home shall annually file with the commission a certificate or other evidence of coverage from an insurance company demonstrating that the listed family home has an unexpired and uncanceled insurance policy or contract that meets the

requirements of this section.

(c) If a listed family home is unable to secure a policy or contract required under this section for financial reasons or for lack of availability of an underwriter willing to issue a policy or contract or the home's policy or contract limits are exhausted, the home shall timely provide written notice to the parent or guardian of each child attending the home that the liability coverage is not provided.

(d) A listed family home described by Subsection (c) shall timely provide written notice to the commission that the home is unable to secure liability insurance and the reason the insurance could not be secured.

(e) If a listed family home complies with the notice requirements under this section, the commission may not assess an administrative penalty or suspend or revoke the family home's listing for violating Subsection (a). This subsection may not be construed to indemnify a family home for damages due to negligence.

Added by Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 7, eff. September 1, 2019.

Sec. 42.050. LICENSE RENEWAL. (a) A license holder may apply for renewal of a license in compliance with the requirements of this chapter and commission rules.

(b) The application for renewal of a license must be completed and decided on by the commission before the expiration of the license under which a facility is operating.

(c) The commission shall evaluate the application for renewal of a license to determine if all licensing requirements are met and whether the facility has been cited for repeated violations or has established a pattern of violations during the preceding five years. The evaluation may include a specified number of visits to the facility and must include a review of all required forms and records. If the commission determines the facility has repeated violations or an established pattern of violations, before the commission renews the license the commission may place restrictions, conditions, or additional requirements on the license to ensure the violations cease.

(c-1) The commission may not renew the license of a facility

cited for a violation that is not corrected by the required compliance date unless the violation is pending an administrative review under commission rules or pending review as a contested case under Chapter 2001, Government Code.

(d) The executive commissioner shall adopt rules governing the license renewal process for all licenses issued under this chapter. The rules must include:

(1) renewal periods;

(2) a process for staggered renewals;

(3) a process for resolving a late application for renewal;

(4) expiration dates; and

(5) conditions for renewal.

Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.226, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 78, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 78, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 5, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 6, eff. September 1, 2021.

Sec. 42.051. INITIAL LICENSE. (a) The department shall issue an initial license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

(1) the facility is not currently operating;

(2) the facility has relocated and has made changes in the type of child-care service it provides; or

(3) there is a change in ownership of the facility resulting in changes in policy and procedure or in the staff who have direct contact with the children.

(b) An initial license is valid for six months from the date it is issued and may be renewed for an additional six months.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979. Amended by Acts 1989, 71st Leg., ch. 707, Sec. 2, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.101, eff. September 1, 2005.

Sec. 42.052. CERTIFICATION, LISTING, AND REGISTRATION. (a) A state-operated child-care facility or child-placing agency must receive certification of approval from the commission. The certification of approval remains valid until the certification expires, is revoked, or is surrendered.

(b) To be certified, a facility must comply with the commission's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A family home that provides care for compensation for three or fewer children, excluding children who are related to the caretaker, shall list with the commission if the home provides regular care in the caretaker's own residence. The home may register with the commission.

(d) A family home that provides care for four or more children, excluding children who are related to the caretaker, shall register with the commission. A family home that provides care exclusively for any number of children who are related to the caretaker is not required to be listed or registered with the commission.

(e) A registration remains valid until the registration expires, is revoked, or is surrendered. The operator of a registered home must display the registration in a prominent place at the home.

(e-1) A listing remains valid until the listing is revoked or surrendered.

(f) To remain listed or registered with the commission, a family home must comply with the commission's rules and standards and any provision of this chapter that applies to a listed or registered family home.

(f-1) The executive commissioner shall adopt rules governing the certification and registration renewal process for all certifications and registrations issued under this chapter. The rules must include:

(1) renewal periods;
(2) a process for staggered renewals;
(3) a process for resolving a late application for renewal;
(4) expiration dates; and
(5) conditions for renewal.

(f-2) The commission shall evaluate an application for renewal of a facility certification or family home registration to determine if all requirements are met and whether the applicant has been cited for repeated violations or has established a pattern of violations during the preceding five years. The evaluation may include a specified number of visits to the facility or family home subject to this section and must include a review of all required forms and records. If the commission determines the facility or family home has repeated violations or an established pattern of violations, before the commission renews the certification or registration the commission may place restrictions, conditions, or additional requirements on the certification or registration to ensure the violations cease.

(f-3) The commission may not renew the certification or registration of a facility or family home cited for a violation that is not corrected by the required compliance date unless the violation is pending an administrative review under commission rules or pending review as a contested case under Chapter 2001, Government Code.

(g) The certification requirements of this section do not apply to a Texas Juvenile Justice Department facility, or a facility providing services solely for the Texas Juvenile Justice Department.

(h) The certification requirements of this section do not apply to a juvenile detention facility certified under Section 51.12, Family Code, or a juvenile correctional facility certified under Section 51.125, Family Code.

(i) The commission shall provide to a listed family home a copy of the listing. A listing must contain a provision that states: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE HEALTH AND HUMAN SERVICES COMMISSION. A LISTED FAMILY HOME HAS LIMITED MINIMUM STANDARDS AND IS NOT INSPECTED UNLESS A COMPLAINT IS FILED WITH THE COMMISSION." The operator of a listed family home is not required to display the listing in a prominent place at the home but shall make the listing available for examination.

(j) The operator of a listed family home shall undergo initial and subsequent background and criminal history checks required under

Section 42.056. If the operator of a listed family home fails to submit the information required by Section 42.056 for a subsequent background and criminal history check, the commission shall automatically:

(1) suspend the home's listing until the required information is submitted; and

(2) revoke the home's listing if the required information is not submitted within six months after the date the automatic suspension begins.

(j-1) A suspension or revocation under Subsection (j) is not a suspension or revocation under Section 42.072.

(k) The commission shall issue a listing or registration to a family home, as appropriate, in both English and Spanish when the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which the family home is located is of Hispanic origin or Spanish-speaking.

(l) The commission shall associate a listing or registration of a family home issued under this chapter with the applicant's name as stated in the applicant's listing or registration application.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 2813, ch. 759, Sec. 4, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 212, Sec. 2, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 915, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 1052, Sec. 4.06, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 707, Sec. 3, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 8.023, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 262, Sec. 55, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1022, Sec. 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 6 to 8, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 26, eff. June 8, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.227, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 79, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 79, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 8, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 7, eff. September 1, 2021.

Sec. 42.0521. DEPOSIT OF FEES. The fees authorized by this chapter and received by the department shall be deposited in the general revenue fund.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 5, eff. Sept. 1, 1985.

Sec. 42.0522. PUBLIC ADVERTISING OF FAMILY HOMES. (a) A family home may not place a public advertisement that uses the title "registered family home" or any variation of that phrase unless the home is registered under this chapter. Any public advertisement for a registered family home that uses the title "registered family home" must contain a provision in bold type stating: "THIS HOME IS REGISTERED WITH THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES BUT IS NOT LICENSED OR REGULARLY INSPECTED."

(b) A family home may not place a public advertisement that uses the title "listed family home" or any variation of that phrase unless the home is listed as provided by this chapter. Any public advertisement for a listed family home that uses the title "listed family home" must contain a provision in bold type stating: "THIS HOME IS A LISTED FAMILY HOME. IT IS NOT LICENSED OR REGISTERED WITH THE HEALTH AND HUMAN SERVICES COMMISSION. A LISTED FAMILY HOME HAS LIMITED MINIMUM STANDARDS AND IS NOT INSPECTED UNLESS A COMPLAINT IS FILED WITH THE COMMISSION."

Added by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 9, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.228, eff.

April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 9, eff. September 1, 2019.

Sec. 42.0523. LISTING OF RELATIVE CHILD-CARE PROVIDERS. (a) A child-care provider who only provides child care under Chapter 313, Labor Code, to children related to the provider may list the provider's home as a family home.

(b) Before the department may list a child-care provider's home under this section, in addition to conducting the background or criminal history check required under Section 42.056, the department must search the central database of sex offender registration records maintained by the Department of Public Safety under Chapter 62, Code of Criminal Procedure, to determine whether the provider is listed in the registry as a sex offender.

(c) The address of a family home listed under this section is the address of the child-care provider's home, regardless of whether the child care is provided in the provider's home or in the child's home.

(d) A relative child-care provider's home listed as a family home under this section is exempt from the health and safety requirements of 45 C.F.R. Section 98.41(a).

(e) The following requirements do not apply to a family home listed under this section:

(1) the minimum standards adopted under Section 42.042; and

(2) the liability insurance requirement under Section 42.0495.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 857 (S.B. 1496), Sec. 1, eff. September 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 589 (S.B. 569), Sec. 10, eff. September 1, 2019.

Sec. 42.053. AGENCY FOSTER HOMES. (a) An agency foster home is considered part of the child-placing agency that operates the

agency foster home for purposes of licensing.

(b) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency foster home used by the agency.

(c) An agency foster home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(d) The department shall revoke or suspend the license of a child-placing agency if an agency foster home operated by the licensed agency fails to comply with Subsection (c).

(e) Before verifying an agency foster home, a child-placing agency may issue a provisional verification to the home. The executive commissioner by rule may establish the criteria for a child-placing agency to issue a provisional verification to a prospective agency foster home.

(f) If a child-placing agency under contract with the division to provide services as an integrated care coordinator places children with caregivers described by Subchapter I, Chapter 264, Family Code, those caregivers are not considered a part of the child-placing agency for purposes of licensing.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.07, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.229, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 61, eff. September 1, 2017.

Sec. 42.0531. SECURE AGENCY FOSTER HOMES. (a) The commissioners court of a county or governing body of a municipality may contract with a child-placing agency to verify a secure agency foster home to provide a safe and therapeutic environment tailored to the needs of children who are victims of trafficking.

(b) A child-placing agency may not verify a secure agency foster home to provide services under this section unless the child-

placing agency holds a license issued under this chapter that authorizes the agency to provide services to victims of trafficking in accordance with department standards adopted under this chapter for child-placing agencies.

(c) A secure agency foster home verified under this section must provide:

(1) mental health and other services specifically designed to assist children who are victims of trafficking under Section 20A.02 or 20A.03, Penal Code, including:

(A) victim and family counseling;

(B) behavioral health care;

(C) treatment and intervention for sexual assault;

(D) education tailored to the child's needs;

(E) life skills training;

(F) mentoring; and

(G) substance abuse screening and treatment as needed;

(2) individualized services based on the trauma endured by a child, as determined through comprehensive assessments of the service needs of the child;

(3) 24-hour services; and

(4) appropriate security through facility design, hardware, technology, and staffing.

Added by Acts 2015, 84th Leg., R.S., Ch. 338 (H.B. 418), Sec. 5, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 62, eff. September 1, 2017.

Sec. 42.0535. REQUIRED INFORMATION FOR VERIFICATION. (a) A child-placing agency that seeks to verify an agency foster home shall request background information about the agency foster home from a child-placing agency that has previously verified the home as an agency foster home or agency foster group home.

(b) Notwithstanding Section 261.201, Family Code, a child-placing agency that has verified an agency foster home or an agency foster group home is required to release to another child-placing agency background information requested under Subsection (a).

(c) A child-placing agency that releases background information

under this section is immune from civil and criminal liability for the release of the information.

(d) For purposes of this section, background information means the home study under which the agency foster home or agency foster group home was verified by the previous child-placing agency and any record of noncompliance with state minimum standards received and the resolution of any such noncompliance by the previous child-placing agency.

(e) The executive commissioner by rule shall develop a process by which a child-placing agency shall report to the department:

(1) the name of any agency foster home that has been closed for any reason, including a voluntary closure;

(2) information regarding the reasons for the closure of the agency foster home; and

(3) the name and other contact information of a person who may be contacted by another child-placing agency to obtain the records relating to the closed agency foster home that are required to be maintained and made available under this section.

(f) Information gathered under Subsection (e) must be made available to child-placing agencies through a searchable database maintained by the department.

Added by Acts 1997, 75th Leg., ch. 575, Sec. 36(a), eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 36, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.230, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 63, eff. September 1, 2017.

Sec. 42.0536. TRANSFER OF AGENCY FOSTER HOME. (a) An agency foster home that is verified by a child-placing agency may transfer to another child-placing agency only if, before the date of the transfer, the agency foster home notifies the child-placing agency to which the agency foster home is transferring of each licensing violation for which the agency foster home has been cited by the department during the preceding three years.

(b) The child-placing agency to which the agency foster home is transferring shall submit a written request for transfer to the child-placing agency that verified the agency foster home.

(c) Not later than the 10th day after the date the child-placing agency receives a request for transfer under Subsection (b), the child-placing agency shall provide the child-placing agency that submitted the request a copy of any of the following documents regarding the agency foster home:

(1) a corrective action plan;

(2) an annual development plan; or

(3) a description of any imposed or potential service limitation.

(d) The department caseworker for each child placed in the agency foster home may conduct a review meeting to determine whether the transfer of the agency foster home is in the best interest of each child in the home on the request of:

(1) the child-placing agency to which the agency foster home is transferring;

(2) the child-placing agency that verified the agency foster home;

(3) the agency foster home; or

(4) the caseworker.

(e) After a review meeting, the caseworker shall determine whether each child placed in the agency foster home shall:

(1) stay in the agency foster home after the agency foster home is transferred to the new child-placing agency; or

(2) be removed from the agency foster home before the agency foster home is transferred to the new child-placing agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 37, eff. September 1, 2007.

Sec. 42.0537. CAREGIVER TRAINING REQUIREMENT. (a) The department and each single source continuum contractor shall include a provision in each contract with a child-placing agency with whom children in the managing conservatorship of the department are placed that requires the child-placing agency to provide competency-based, preservice training to a potential caregiver before the child-placing agency verifies or approves the caregiver as a foster or adoptive

home. Except as provided by Subsection (d), the amount of training required by this subsection may not exceed 35 hours.

(b) The department shall adopt policies to ensure that each potential caregiver receives competency-based, preservice training before the department verifies or approves the caregiver as a foster or adoptive home. Except as provided by Subsection (d), the amount of training required by this subsection may not exceed 35 hours.

(c) The training required by this section does not apply to an individual who has been designated as a kinship caregiver and who is pursuing verification or licensure as a foster parent or approval as an adoptive parent.

(d) The department and each single source continuum contractor providing foster care placement or case management services may include in each contract with a child-placing agency with whom children in the managing conservatorship of the department are placed provisions that:

(1) require the child-placing agency to, before verifying or approving a prospective caregiver as a foster or adoptive home, provide to the prospective caregiver competency-based, preservice training in addition to other training required under this section, based on the needs of the child being placed, including training regarding:

(A) the treatment of:

(i) children with complex medical needs;

(ii) children with emotional disorders;

(iii) children with intellectual or developmental disabilities; and

(iv) victims of human trafficking; and

(B) any other situation the department determines would require additional training; and

(2) allow the child-placing agency to provide training, in addition to other training required under this section for a prospective caregiver, that:

(A) meets the eligibility standards for federal financial participation under the requirements of the federal Family First Prevention Services Act (Title VII, Div. E, Pub. L. No. 115-123);

(B) meets the standards set by a nationally recognized accrediting organization; or

(C) meets the standards described by Paragraphs (A) and

(B).

(e) The department may require training in addition to other training required under this section described by Subsection (d)(2), as appropriate, for certified child-placing agencies operated by the department.

(f) A child-placing agency may issue a provisional verification as provided by Section 42.053(e) to a prospective foster caregiver while the caregiver completes the training required under Subsection (d).

Added by Acts 2015, 84th Leg., R.S., Ch. 1008 (H.B. 781), Sec. 2, eff. September 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1139 (H.B. 2764), Sec. 2, eff. September 1, 2019.

Sec. 42.0538. PROVISIONAL LICENSE FOR KINSHIP PROVIDER. (a) The executive commissioner by rule shall allow a child-placing agency to issue a provisional license for a kinship provider, as defined by Section 264.851, Family Code, who meets the basic safety requirements provided by commission rule. A kinship provider issued a provisional license under this section shall complete all licensing requirements within the time provided by rule.

(b) The executive commissioner shall ensure that the implementation of this section does not reduce the amount of federal money available to this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 21, eff. June 14, 2021.

Sec. 42.054. FEES. (a) The department shall charge an applicant a nonrefundable application fee for an initial license to operate a child-care facility, a child-placing agency, or a continuum-of-care residential operation.

(b) The department shall charge each child-care facility a fee for an initial license. The department shall charge each child-placing agency and continuum-of-care residential operation a fee for an initial license.

(c) The department shall charge each licensed child-care

facility an annual license fee. The fee is due on the date on which the department issues the child-care facility's initial license and on the anniversary of that date.

(d) The department shall charge each licensed child-placing agency and continuum-of-care residential operation an annual license fee. The fee is due on the date on which the department issues the initial license to the child-placing agency or continuum-of-care residential operation and on the anniversary of that date.

(e) The department shall charge each family home that is listed or registered with the department an annual fee. The fee is due on the date on which the department initially lists or registers the home and on the anniversary of that date.

(f) If a facility, agency, or home fails to pay the annual fee when due, the license, listing, or registration, as appropriate, is automatically suspended until the fee is paid. The license, listing, or registration shall be revoked if the fee is not paid within six months after the date the automatic suspension begins. A suspension or revocation under this subsection is not a suspension or revocation under Section 42.072.

(g) The provisions of Subsections (b) through (f) do not apply to:

(1) nonprofit facilities regulated under this chapter that provided 24-hour care for children in the managing conservatorship of the department during the 12-month period immediately preceding the anniversary date of the facility's license;

(2) facilities operated by a nonprofit corporation or foundation that provides 24-hour residential care and does not charge for the care provided; or

(3) a family home listed under Section 42.0523 in which the relative child-care provider cares for the child in the child's own home.

(h) The executive commissioner by rule shall set fees under this section.

Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 10, 11, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.102, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.231, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 80, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1057 (H.B. 2070), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 64, eff. September 1, 2017.

Sec. 42.055. SIGN POSTING. (a) Each child-care facility shall post in a location that is conspicuous to all employees and customers a sign that includes:

(1) a description of the provisions of the Family Code relating to the duty to report child abuse or neglect;

(2) a description of the penalties for violating the reporting provisions of the Family Code; and

(3) a brief description of sudden infant death syndrome, shaken-baby syndrome, and childhood diabetes and methods for preventing those phenomena.

(a-1) A licensed day-care center, licensed group day-care home, or registered family home subject to Section 42.0423 shall include in the sign required under Subsection (a) a description of how to access a listing of unsafe children's products on the United States Consumer Product Safety Commission's Internet website or through the department's public Internet website.

(b) The executive commissioner by rule shall determine the design, size, and wording of the sign.

(c) The department shall provide the sign to each child-care facility without charge.

(d) A person who operates a child-care facility commits an offense if the department provides a sign to the facility as provided by this section and the person intentionally fails to display the sign in the facility as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 20, Sec. 1, eff. Nov. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.47, eff. Sept. 1, 1997. Renumbered from Human Resources Code Sec. 42.056 and amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 221, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 46 (S.B. 95), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.232, eff. April 2, 2015.

Sec. 42.0551. POSTING OF EMPLOYEE LIST. (a) Each day-care center, group day-care home, and family home shall post a list of all current employees at the center or home in accordance with rules adopted by the executive commissioner.

(b) The executive commissioner shall adopt rules regarding the size, wording, and placement of the list required under this section.

Added by Acts 2005, 79th Leg., Ch. 308 (S.B. 565), Sec. 1, eff. September 1, 2005.

Sec. 42.056. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS; CRIMINAL PENALTIES. (a) The director, owner, or operator of a facility or family home shall submit to the department the names of the following individuals, who must have background checks as described by this section and in accordance with rules adopted by the executive commissioner:

(1) the director, owner, and operator of the facility, agency, or home;

(2) each person employed at the facility, agency, or home;

(3) each prospective employee of the facility, agency, or home;

(4) each person who provides care or supervision to children in the care of the facility, agency, or home under a contract with the facility, agency, or home;

(5) each current or prospective foster parent providing foster care through a child-placing agency;

(6) each prospective adoptive parent seeking to adopt through a child-placing agency;

(7) each person at least 14 years of age, other than a client in care, who:

(A) is counted in child-to-caregiver ratios in accordance with the minimum standards of the department;

(B) will reside in a prospective adoptive home if the adoption is through a child-placing agency;

(C) has unsupervised access to children in care at the facility or family home; or

(D) resides in the facility or family home; or

(8) each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care.

(a-1) Notwithstanding Subsection (a), the director, owner, or operator of a residential child-care facility is not required to submit to the department the information required under that subsection for use in conducting a background and criminal history check on a parent or other relative of a child who is a client in care at the facility if:

(1) the department has on file for the parent or relative a background and criminal history check; and

(2) the background and criminal history check was conducted within the two-year period preceding the date the parent or relative visits the client at the facility.

(a-2) In accordance with rules adopted by the executive commissioner, a person shall submit a complete set of fingerprints if:

(1) the person is required to have a background check under Subsections (a)(1)-(7);

(2) the person resided in another state during the five years preceding the date the person's name was required to be submitted under Subsection (a); or

(3) the director, owner, or operator has reason to suspect that the person has a criminal history in another state.

(a-3) Subsection (a-2)(1) does not apply to a family home that is subject to regulation by the department under Section 42.0523.

(a-4) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1108 (H.B. 4094), Sec. 5(b), eff. January 1, 2018.

(a-5) The rules adopted by the executive commissioner under Subsection (a-2):

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow the department to waive the submission of fingerprints required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history record check on file with the department; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the department through the Department of Public Safety; and

(B) the department has an active subscription to the Federal Bureau of Investigation's national rap back service for the person for whom the submission is required.

(b) The department shall conduct background checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code;

(3) the department's records of reported abuse and neglect;

(4) any other registry, repository, or database required by federal law;

(5) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and

(6) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

(b-1) For each person whose fingerprints are submitted under Subsection (a-2), the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal

criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under Section 411.087, Government Code.

(b-2) For each person required to have a background check under Subsection (a), but who is not required to submit fingerprints for a Federal Bureau of Investigations criminal history check under Subsection (a-2):

(1) the person shall have a name-based check instead of a fingerprint check; and

(2) the director, owner, or operator of the child-care facility, child-placing agency, or family home shall submit the name of the person each 24 months after last submitting the person's name to the department for use in conducting a background check.

(c) The executive commissioner by rule shall require a child-care facility, child-placing agency, or listed or registered family home to pay to the department a fee in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(3), eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 720, Sec. 19(3), eff. September 1, 2009.

(f) As part of a background check under this section, the department shall provide any relevant information available in the department's records regarding a person's previous employment in a facility or family home to the person submitting the request.

(g) Except as otherwise provided by this subsection, a person whose name is submitted under Subsection (a) may not provide direct care or have direct access to a child in a facility or family home before the person's background check is completed. A person may be employed at a facility or family home and may provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if:

(1) the facility or family home is experiencing a staff shortage;

(2) the Federal Bureau of Investigations fingerprint check and the background check using the department's records of reported

abuse and neglect have been completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and

(3) the person does not have unsupervised access to any child in care.

(h) If the results of a criminal history check under Subsection (b-1) for a person employed by a facility or family home during a staffing shortage as authorized by Subsection (g) preclude the person from being present at the facility or family home, the director, owner, or operator of the facility or family home shall immediately terminate the person's employment.

(i) A director, owner, or operator of a facility or family home commits an offense if the director, owner, or operator knowingly:

(1) fails to submit to the department information about a person as required by this section and department rules for use in conducting background and criminal history checks with respect to the person; and

(2) employs the person at the facility or family home or otherwise allows the person to regularly or frequently stay or work at the facility or family home while children are being provided care.

(j) A director, owner, or operator of a facility or family home commits an offense if, after the date the director, owner, or operator receives notice from the department that, based on the results of a person's background or criminal history check, the person is precluded from being present at the facility or family home, the director, owner, or operator knowingly:

(1) employs the person at the facility or family home; or

(2) otherwise allows the person to regularly or frequently stay or work at the facility or family home while children are being provided care.

(k) An offense under Subsection (i) or (j) is a Class B misdemeanor.

(l) In accordance with rules adopted by the executive commissioner, a person that contracts to provide one or more substitute employees to a facility or family home must submit to the department for use in conducting background and criminal history checks the name of each substitute employee. Before a substitute employee may be present at a facility or family home, the employee must meet the same requirements under this section as an employee

present at the facility or family home who performs similar duties. The director, owner, or operator of a facility or family home must verify with the department that a substitute employee is eligible to be present at the facility or family home before allowing the employee to begin work.

Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.103(a), eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 38, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 39, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 11, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 19(3), eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 6, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 422 (S.B. 428), Sec. 1, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 3, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 10, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.233, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 857 (S.B. 1496), Sec. 2, eff. September 1, 2016.
Acts 2017, 85th Leg., R.S., Ch. 1108 (H.B. 4094), Sec. 4, eff. January 1, 2018.
Acts 2017, 85th Leg., R.S., Ch. 1108 (H.B. 4094), Sec. 5(b), eff. January 1, 2018.
Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 4, eff. September 1, 2023.

Sec. 42.0561. INFORMATION RELATING TO FAMILY VIOLENCE REPORTS.

Before a child-placing agency may issue a verification certificate for an agency foster home, the child-placing agency must obtain information relating to each family violence report at the applicant's residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 524 (S.B. 723), Sec. 7, eff. June 16, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 65, eff. September 1, 2017.

Sec. 42.0562. INFORMATION REGARDING CERTAIN GROUP DAY-CARE HOME AND FAMILY HOME EMPLOYEES. (a) The commission shall collect information regarding group day-care home and family home employees who have had a license, registration, or other occupational authorization revoked by a licensing authority.

(b) The commission shall collaborate with licensing authorities to determine the most efficient method for identifying group day-care home or family home employees who have had a license revoked by the licensing authority.

(c) In this section:

(1) "License" means a license, registration, certificate, permit, or other authorization issued by a licensing authority that a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state that issues a license.

Added by Acts 2021, 87th Leg., R.S., Ch. 547 (S.B. 225), Sec. 8, eff. September 1, 2021.

Sec. 42.0563. PRE-EMPLOYMENT AFFIDAVIT. (a) An applicant for a position with a child-care facility must submit, using a form adopted by the department, a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.

(b) An applicant who answers affirmatively concerning an inappropriate relationship with a minor must disclose in the affidavit all relevant facts pertaining to the charge, adjudication, or conviction, including, for a charge, whether the charge was determined to be true or false.

(c) An applicant is not precluded from being employed based on a disclosed charge if the employing entity determines based on the information disclosed in the affidavit that the charge was false.

(d) A determination that an employee failed to disclose information required to be disclosed by an applicant under this section is grounds for termination of employment.

Added by Acts 2023, 88th Leg., R.S., Ch. 58 (S.B. 1469), Sec. 1, eff. September 1, 2023.

Sec. 42.057. DRUG TESTING. (a) Each residential child-care facility shall establish a drug testing policy for employees. A residential child-care facility may adopt the model employee drug testing policy adopted by the executive commissioner under Subsection (b) or may use another employee drug testing policy approved by the executive commissioner.

(b) The executive commissioner by rule shall adopt a model employee drug testing policy for use by a residential child-care facility. The policy must be designed to ensure the safety of resident children through appropriate drug testing of employees while protecting the rights of employees. The model policy must require:

(1) preemployment drug testing;

(2) random, unannounced drug testing of each employee who has direct contact with a child in the care of the facility;

(3) drug testing of an employee against whom there is an allegation of drug abuse; and

(4) drug testing of an employee whom the department is investigating for the abuse or neglect of a child in the care of the facility, if the allegation of abuse or neglect includes information that provides good cause to suspect drug abuse.

(c) The department shall require a drug test of a person who directly cares for or has access to a child in a residential child-care facility within 24 hours after the department receives notice of an allegation that the person has abused drugs.

(d) An employee may not provide direct care or have direct access to a child in a residential child-care facility before completion of the employee's initial drug test.

(e) A residential child-care facility shall pay any fee or cost associated with performing the drug test for an employee.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.104(a), eff. September 1, 2005.

Sec. 42.058. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The executive commissioner may not adopt rules restricting competitive bidding or advertising by a license holder or registration holder except to prohibit false, misleading, or deceptive practices or to prevent a violation of this chapter.

(b) Rules to prohibit false, misleading, or deceptive practices may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's or registration holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder or registration holder; or

(4) restricts the license holder's or registration holder's advertisement under a trade name.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 33, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.234, eff. April 2, 2015.

Sec. 42.0583. IDENTIFYING AT-RISK PROVIDERS. (a) The department shall use data analytics collected regarding residential child-care providers, including general residential operations providing treatment services to young adults with emotional disorders, to develop an early warning system to identify at-risk providers most in need of technical support and to promote corrective actions and minimize standard violations.

(b) The system developed under Subsection (a) must distinguish between different levels of risk using a multi-point severity scale. The department shall make information regarding the severity scale

available to:

(1) the standing committees of the senate and the house of representatives with oversight of child-care facilities; and

(2) the public through the department's Internet website.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 21, eff. June 14, 2021.

Sec. 42.059. REQUIRED AFFIDAVIT FOR APPLICANTS FOR EMPLOYMENT WITH FACILITY OR REGISTERED FAMILY HOME. (a) An applicant for temporary or permanent employment with a licensed facility or registered family home whose employment or potential employment with the facility or home involves direct interactions with or the opportunity to interact and associate with children must execute and submit the following affidavit with the application for employment:

STATE OF _____

COUNTY OF _____

I swear or affirm under penalty of perjury that I do not now and I have not at any time, either as an adult or as a juvenile:

1. Been convicted of;

2. Pleaded guilty to (whether or not resulting in a conviction);

3. Pleaded nolo contendere or no contest to;

4. Admitted;

5. Had any judgment or order rendered against me (whether by default or otherwise);

6. Entered into any settlement of an action or claim of;

7. Had any license, certification, employment, or volunteer position suspended, revoked, terminated, or adversely affected because of;

8. Resigned under threat of termination of employment or volunteerism for;

9. Had a report of child abuse or neglect made and substantiated against me for; or

10. Have any pending criminal charges against me in this or any other jurisdiction for;

Any conduct, matter, or thing (irrespective of formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

1. Any felony;

2. Rape or other sexual assault;
3. Physical, sexual, emotional abuse and/or neglect of a minor;
4. Incest;
5. Exploitation, including sexual, of a minor;
6. Sexual misconduct with a minor;
7. Molestation of a child;
8. Lewdness or indecent exposure;
9. Lewd and lascivious behavior;
10. Obscene or pornographic literature, photographs, or videos;
11. Assault, battery, or any violent offense involving a minor;
12. Endangerment of a child;
13. Any misdemeanor or other offense classification involving a minor or to which a minor was a witness;
14. Unfitness as a parent or custodian;
15. Removing children from a state or concealing children in violation of a court order;
16. Restrictions or limitations on contact or visitation with children or minors resulting from a court order protecting a child or minor from abuse, neglect, or exploitation; or
17. Any type of child abduction.

Except the following (list all incidents, location, description, and date) (if none, write NONE)

Signed _____

Date _____.

Subscribed and sworn to (or affirmed) before me this _____ day of _____,_____.

Signature of notarial officer

_____.

(seal, if any, of notarial officer)

My commission expires: _____

(b) The failure or refusal of the applicant to sign or provide the affidavit constitutes good cause for refusal to hire the applicant.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 33, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1129, Sec. 3, eff. Sept. 1, 1999.

Sec. 42.060. CARBON MONOXIDE DETECTORS. (a) In this section,

"carbon monoxide detector" means a device that detects and sounds an alarm to indicate the presence of a harmful level of carbon monoxide gas.

(b) Except as provided by Subsection (d), each day-care center, group day-care home, and family home must be equipped with carbon monoxide detectors in accordance with department rules.

(c) The executive commissioner by rule shall prescribe requirements regarding the placement, installation, and number of carbon monoxide detectors and maintenance procedures for those detectors.

(d) A day-care center is exempt from the carbon monoxide detector requirements prescribed by this section if the day-care center is located in a school facility that is subject to the school facility standards adopted by the commissioner of education under Section 46.008, Education Code, or similar safety standards adopted by the board of a local school district.

Added by Acts 2003, 78th Leg., ch. 127, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.235, eff. April 2, 2015.

Sec. 42.062. CERTAIN EMPLOYMENT AND SERVICE PROHIBITED. A person may not be employed as a controlling person or serve in that capacity in a facility or family home if the person is not eligible to receive a license or certification for the operation of a facility or family home under Section 42.072(g) or has been denied a license under Section 42.046 for a substantive reason.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.105, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 7, eff. September 1, 2011.

Sec. 42.063. REPORTING OF INCIDENTS AND VIOLATIONS. (a) In this section, "serious incident" means a suspected or actual incident that threatens or impairs the basic health, safety, or well-being of a child. The term includes:

(1) the arrest, abuse, neglect, exploitation, running away, attempted suicide, or death of a child;

(2) a critical injury of a child; and

(3) an illness of a child that requires hospitalization.

(b) A person licensed under this chapter shall report to the commission each serious incident involving a child who receives services from the person, regardless of whether the department is the managing conservator of the child.

(b-1) A person licensed or registered under this chapter shall notify in accordance with commission rule a parent or guardian of a child in the care of the person of an incident of abuse, neglect, or exploitation of the child, injury of the child that requires treatment by a medical professional or hospitalization, or illness of the child that requires hospitalization.

(b-2) A person licensed or registered under this chapter shall notify in accordance with commission rule a parent or guardian of each child in the care of the person of a violation that constitutes abuse, neglect, or exploitation of a child.

(c) An employee of a person described by Subsection (b) shall report suspected abuse or neglect directly to the statewide intake system.

(d) An employee or volunteer of a general residential operation, child-placing agency, continuum-of-care residential operation, cottage home operation, or specialized child-care home shall report any serious incident directly to the commission if the incident involves a child under the care of the operation, agency, or home.

(e) A foster parent shall report any serious incident directly to the department if the incident involves a child under the care of the parent.

(f) The executive commissioner by rule shall prescribe:

(1) procedures governing reporting required under this section; and

(2) the manner in which a report under this section must be provided.

(g) The commission shall implement this section using existing appropriations.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.106, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 12, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 66, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 7, eff. September 1, 2019.

Sec. 42.064. INFORMATION REGARDING GANG-FREE ZONES. Each day-care center shall, in accordance with rules adopted by the executive commissioner, distribute to parents and guardians of children who attend the center information on gang-free zones and the consequences of engaging in organized criminal activity within those zones.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 6, eff. June 19, 2009.

Sec. 42.065. ADMINISTERING MEDICATION. (a) In this section, "medication" means a drug that may be obtained with or without a prescription, excluding a topical ointment obtained without a prescription.

(b) This section applies only to a day-care center, group day-care home, before-school or after-school program, school-age program, or family home regardless of whether the facility or program is licensed, registered, or listed.

(c) A director, owner, operator, caretaker, employee, or volunteer of a child-care facility subject to this section may not administer a medication to a child unless:

(1) the child's parent or guardian has submitted to the child-care facility a signed and dated document that authorizes the facility to administer the medication for not longer than one year; and

(2) the authorized medication:

(A) is administered as stated on the label directions or as amended in writing by a practitioner, as defined by Section 551.003, Occupations Code; and

(B) is not expired.

(d) Notwithstanding Subsection (c)(1), a director, owner,

operator, caretaker, employee, or volunteer of a child-care facility subject to this section may administer medication to a child under this section without a signed authorization if the child's parent or guardian:

(1) submits to the child-care facility an authorization in an electronic format that is capable of being viewed and saved; or

(2) authorizes the child-care facility by telephone to administer a single dose of a medication.

(e) An authorization under Subsection (d)(1) expires on the first anniversary of the date the authorization is provided to the child-care facility.

(f) This section does not apply to a person that administers a medication to a child in a medical emergency to prevent the death or serious bodily injury of the child if the medication is administered as prescribed, directed, or intended.

(g) A person commits an offense if the person administers a medication to a child in violation of this section. If conduct constituting an offense under this section also constitutes an offense under a section of the Penal Code, the actor may be prosecuted under either section or both sections.

(h) An offense under this section is a Class A misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 762 (H.B. 1615), Sec. 2, eff. September 1, 2011.

Sec. 42.066. REQUIRED SUBMISSION OF INFORMATION REQUESTED BY COURT. A general residential operation that provides mental health treatment or services to a child in the managing conservatorship of the department shall timely submit to the court in a suit affecting the parent-child relationship under Subtitle E, Title 5, Family Code, all information requested by that court.

Added by Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 67, eff. September 1, 2017.

Sec. 42.067. EPINEPHRINE AUTO-INJECTORS; IMMUNITY FROM LIABILITY. (a) In this section:

(1) "Anaphylaxis" means a sudden, severe, and potentially life-threatening allergic reaction that occurs when a person is

exposed to an allergen.

(2) "Epinephrine auto-injector" means a disposable medical drug delivery device that contains a premeasured single dose of epinephrine intended for use to treat anaphylaxis.

(3) "Physician" means a person who holds a license to practice medicine in this state.

(b) A physician, or a person who has been delegated prescriptive authority under Chapter 157, Occupations Code, may prescribe epinephrine auto-injectors in the name of a day-care center.

(c) A physician or other person who prescribes epinephrine auto-injectors under Subsection (b) shall provide the day-care center with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

(d) A standing order under Subsection (c) is not required to be patient-specific. An epinephrine auto-injector may be administered under this section to a person without a previously established physician-patient relationship.

(e) Notwithstanding any other law, supervision or delegation by a physician is considered adequate if the physician:

(1) periodically reviews the order; and

(2) is available through direct telecommunication as needed for consultation, assistance, and direction.

(f) An order issued under this section must contain:

(1) the name and signature of the prescribing physician or other person;

(2) the name of the day-care center to which the order is issued;

(3) the quantity of epinephrine auto-injectors to be obtained and maintained under the order; and

(4) the date the order was issued.

(g) A pharmacist may dispense an epinephrine auto-injector to a day-care center without requiring the name of or any other identifying information relating to the user.

(h) A day-care center shall store an epinephrine auto-injector in a secure location that is easily accessible to employees or volunteers of the day-care center authorized and trained to administer an epinephrine auto-injector.

(i) Each day-care center is responsible for training employees

in the administration of an epinephrine auto-injector. The training must:

(1) include information on:

(A) recognizing the signs and symptoms of anaphylaxis;

(B) administering an epinephrine auto-injector;

(C) the recommended dosages for adults and children by age and weight, if applicable, and the dosages available at the center;

(D) implementing emergency procedures, if necessary, after administering an epinephrine auto-injector; and

(E) the proper disposal of used or expired epinephrine auto-injectors; and

(2) be completed annually in a formal training session or through online education.

(j) Each day-care center shall maintain records on the training required under this section.

(k) Not later than the 10th business day after the date a day-care center employee administers an epinephrine auto-injector in accordance with this section, the day-care center shall report the following information to the persons listed in Subsection (l):

(1) the age of the person who received the administration of the epinephrine auto-injector;

(2) whether the person who received the administration of the epinephrine auto-injector was:

(A) a child enrolled in the day-care center;

(B) a day-care center employee or volunteer; or

(C) a visitor to the day-care center;

(3) the physical location where the epinephrine auto-injector was administered;

(4) the number of doses of epinephrine auto-injector administered;

(5) the title of the employee who administered the epinephrine auto-injector; and

(6) any other information required by the executive commissioner.

(l) The information required by Subsection (k) shall be reported to:

(1) the owner of the day-care center;

(2) the physician or other person who prescribed the epinephrine auto-injector;

(3) the commission; and

(4) the Department of State Health Services.

(m) The executive commissioner, in consultation with the Department of State Health Services, shall adopt rules necessary to implement this section.

(n) A person who in good faith takes, or fails to take, action relating to the prescription of an epinephrine auto-injector to a day-care center or the administration of an epinephrine auto-injector in a day-care center is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

(1) issuing an order for epinephrine auto-injectors;

(2) supervising or delegating the administration of an epinephrine auto-injector;

(3) possessing, maintaining, storing, or disposing of an epinephrine auto-injector;

(4) prescribing an epinephrine auto-injector;

(5) dispensing an epinephrine auto-injector;

(6) administering, or assisting in administering, an epinephrine auto-injector;

(7) providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or

(8) undertaking any other act permitted or required under this section.

(o) The immunities and protections provided by this section are in addition to other immunities or limitations of liability provided by law.

(p) Notwithstanding any other law, this section does not create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under this section.

(q) If a day-care center obtains epinephrine auto-injectors for use as authorized by this section, the day-care center shall notify each parent of a child enrolled in the center of the center's policy and procedures relating to the administration of the epinephrine auto-injectors.

(r) An act or omission described by this section does not create a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 1082 (H.B. 1849), Sec. 1, eff. June 14, 2019.

Sec. 42.068. REQUIRED POSTING OF NO TRESPASSING NOTICE; CRIMINAL PENALTY. (a) Each general residential operation operating as a residential treatment center shall post "No Trespassing" notices on the grounds of the general residential operation in the following locations:

(1) parallel to and along the exterior boundaries of the general residential operation's grounds;

(2) at each roadway or other way of access to the grounds;

(3) for grounds not fenced, at least every five hundred feet along the exterior boundaries of the grounds;

(4) at each entrance to the grounds; and

(5) at conspicuous places reasonably likely to be viewed by intruders.

(b) Each "No Trespassing" notice posted on the grounds of a general residential operation operating as a residential treatment center must:

(1) state that entry to the property is forbidden;

(2) include a description of the provisions of Section 30.05, Penal Code, including the penalties for violating Section 30.05, Penal Code;

(3) include the name and address of the person under whose authority the notice is posted;

(4) be written in English and Spanish; and

(5) be at least 8-1/2 by 11 inches in size.

(c) The executive commissioner by rule shall determine and prescribe the requirements regarding the placement, installation, design, size, wording, and maintenance procedures for the "No Trespassing" notices.

(d) The commission shall provide without charge to each general residential operation operating as a residential treatment center the number of "No Trespassing" notices required to comply with this section and rules adopted under this section.

(e) A person who operates a general residential operation operating as a residential treatment center commits an offense if the commission provides "No Trespassing" notices to the facility and the person fails to display the "No Trespassing" notices on the

operation's grounds as required by this section before the end of the 30th business day after the date the operation receives the notices. An offense under this subsection is a Class C misdemeanor.

Added by Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 20, eff. September 1, 2021.

SUBCHAPTER D. REMEDIES

Sec. 42.0704. ENFORCEMENT POLICY. (a) The executive commissioner by rule shall adopt a general enforcement policy that describes the commission's approach to enforcement of this chapter.

(b) The enforcement policy must:

(1) summarize the commission's general expectations in enforcing this chapter;

(2) include the methodology required by Subsection (c); and

(3) describe the commission's plan for strengthening its enforcement efforts and for making objective regulatory decisions.

(c) As part of the enforcement policy, the commission shall develop and implement a methodology for determining the appropriate disciplinary action to take against a person who violates this chapter or a commission rule. The methodology must:

(1) provide guidance on when to use each of the available tools of enforcement, including technical assistance, voluntary plans of action, probation, suspension or revocation of a license or registration, denial of a license or registration, administrative penalties, and emergency suspension; and

(2) allow the commission to consider the circumstances of a particular case, including:

(A) the nature and seriousness of the violation, including whether the violation involved the abuse or neglect of a child or resulted in the death or near fatal injury of a child;

(B) any history of previous violations, including a repetition or pattern of violations; and

(C) any aggravating and mitigating factors.

(d) The commission shall make the methodology described by Subsection (c) available to the public, including by posting the methodology on the commission's Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 81, eff. September 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 1057 (H.B. 2070), Sec. 3, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 6, eff. September 1, 2019.

Sec. 42.0705. RANGE OF PENALTIES. The department shall revoke or suspend a license or registration, place on probation a person whose license or registration has been suspended, or reprimand a license holder or registration holder for a violation of this chapter or a department rule. If a license or registration suspension is probated, the department may require the license holder or registration holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit services to the areas prescribed by the department;

(3) continue or review professional education until the license holder or registration holder attains a degree of skill satisfactory to the department in those areas that are the basis of the probation; or

(4) take corrective action relating to the violation on which the probation is based.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 34, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 40, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.236, eff. April 2, 2015.

Sec. 42.071. SUSPENSION OR PROBATION OF LICENSE OR REGISTRATION. (a) The commission may suspend the license of a facility or the registration of a family home that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license or registration.

(b) The commission may suspend a facility's license or a family home's registration for a definite period rather than deny or revoke

the license or registration if the commission finds repeated noncompliance with standards that do not endanger the health and safety of children. To qualify for license or registration suspension under this subsection, a facility or family home must suspend its operations and show that standards can be met within the suspension period.

(c) If the commission finds a facility or family home is in repeated noncompliance with standards that do not endanger the health and safety of children, the commission may place the facility or family home on probation rather than suspend or revoke the facility's license or the family home's registration. The commission shall provide notice to the facility or family home of the probation and of the items of noncompliance not later than the 10th day before the probation period begins. During the probation period, the facility or family home must correct the items that were in noncompliance and report the corrections to the commission for approval.

(d) The commission shall revoke the license of a facility or the registration of a family home that does not comply with standards at the end of a license or registration suspension.

(e) The commission may suspend or revoke the license of a facility or the registration of a family home that does not correct items that were in noncompliance or that does not comply with required standards within the applicable probation period.

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 111, ch. 23, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 1081, Sec. 2, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1022, Sec. 35, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 7, eff. September 1, 2019.

Sec. 42.0715. COSTS CHARGED TO FACILITY OR FAMILY HOME. The department may charge a facility or family home for reimbursement of the reasonable cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan for the facility or family home.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 36, eff. Sept. 1, 1997.

Sec. 42.072. LICENSE, LISTING, OR REGISTRATION DENIAL, SUSPENSION, OR REVOCATION. (a) The commission may suspend, deny, revoke, or refuse to renew the license, listing, registration, or certification of approval of a facility or family home that does not comply with the requirements of this chapter, commission standards and rules, or the specific terms of the license, listing, registration, or certification. The commission may revoke the probation of a person whose license, listing, or registration is suspended if the person violates a term of the conditions of probation.

(b) If the commission proposes to take an action under Subsection (a), the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. An action under this section, including a revocation of a person's license, is a contested case as defined by Chapter 2001, Government Code, and is subject to judicial review under the substantial evidence rule in accordance with that chapter. Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

(c) The commission may not issue a license, listing, registration, or certification to a person whose license, listing, registration, or certification is revoked or not renewed, whose application for a license, listing, registration, or certification is denied for a substantive reason under this chapter, or who in lieu of disciplinary action voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification before the fifth anniversary of the date on which:

(1) the revocation or nonrenewal takes effect by commission or court order;

(2) the decision to deny the application is final;

(3) the facility or family home is closed; or

(4) the license, listing, registration, or certification is relinquished.

(c-1) A person described by Subsection (c) may not be a controlling person in any facility or family home during the five-

year period in which the person is ineligible to receive a license, listing, registration, or certification.

(d) The executive commissioner by rule may provide for denial of an application or renewal for a licensed facility or for listing or registering a family home or may revoke a facility's license or a family home's listing or registration based on findings of background or criminal history as a result of a background or criminal history check.

(d-1) A person may not operate a facility or family home during an appeal of a suspension or denial of a license, certification, registration, or listing.

(e) A person may continue to operate a facility or family home during an appeal of a revocation or refusal to renew a license, certification, or registration unless the operation of the facility or family home poses a risk to the health or safety of children. The executive commissioner shall by rule establish the criteria for determining whether the operation of a facility or family home poses a risk to the health or safety of children. The commission shall notify the facility or family home of the criteria the commission used to determine that the operation of the facility or family home poses a risk to health or safety and that the facility or family home may not operate. A person who has been notified by the commission that the facility or home may not operate under this section may seek injunctive relief from a district court in Travis County or in the county in which the facility or home is located to allow operation during the pendency of an appeal. The court may grant injunctive relief against the commission's action only if the court finds that the child-care operation does not pose a health or safety risk to children. A court granting injunctive relief under this subsection shall have no other jurisdiction over an appeal of final commission action unless conferred by Chapter 2001, Government Code.

(f) The commission shall deny an application or renewal for listing or registering a family home or shall revoke a family home's listing or registration if the results of a background or criminal history check conducted by the commission under Section 42.056 show that a person has been convicted of an offense under Title 5 or 6, Penal Code, or Chapter 43, Penal Code.

(g) Notwithstanding Subsection (c), the commission may refuse to issue a license, listing, registration, or certification to:

(1) a person whose license, listing, registration, or

certification for a facility or family home was revoked by the commission or by court order;

(2) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the revocation of the license, listing, registration, or certification of the facility or family home;

(3) a person who voluntarily closed a facility or family home or relinquished the person's license, listing, registration, or certification after:

(A) the commission took an action under Subsection (a) in relation to the facility, family home, or person; or

(B) the person received notice that the commission intended to take an action under Subsection (a) in relation to the facility, family home, or person; or

(4) a person who was a controlling person of a facility or family home at the time conduct occurred that resulted in the closure of the facility or family home or relinquishment of the license, listing, registration, or certification in the manner described by Subdivision (3).

Acts 1979, 66th Leg., p. 2365, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 111, ch. 23, Sec. 2, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 977, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 37, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 13, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 218, Sec. 11, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.107, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 526 (H.B. 877), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 13, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 8, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.237, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 8, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 8, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 372 (S.B. 764), Sec. 1, eff. September 1, 2021.

Sec. 42.073. EMERGENCY SUSPENSION AND CLOSURE OF A FACILITY OR FAMILY HOME. (a) The department shall suspend a facility's license or a family home's listing or registration and order the immediate closing of the facility or family home if:

(1) the department finds the facility or family home is operating in violation of the applicable standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of the children attending or residing in the facility or family home.

(b) An order suspending a license, listing, or registration and an order closing a facility or family home under this section is immediately effective on the date on which the holder of the license, listing, or registration receives written notice or on a later date specified in the order.

(c) An order is valid for 30 days after the effective date of the order.

Acts 1979, 66th Leg., p. 2366, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 977, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 38, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.108, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 14, eff. September 1, 2009.

Sec. 42.074. INJUNCTIVE RELIEF. (a) The department may file suit in a district court in Travis County or in the county in which a

facility or family home is located for assessment and recovery of a civil penalty under Section 42.075, for injunctive relief, including a temporary restraining order, or for both a civil penalty and injunctive relief when it appears that a person:

(1) has violated, is violating, or is threatening to violate the licensing, certification, listing, or registration requirements of this chapter or the department's licensing, certification, listing, or registration rules and standards; or

(2) knowingly fails to meet or maintain an exemption authorized under Section 42.041 and engages in activities that require a license or registration.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the department's request, the attorney general or the county or district attorney of the county in which the facility or family home is located shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a).

(d) Injunctive relief provided by this section is in addition to any other action, proceeding, or remedy authorized by law. It is not necessary to allege or prove in an action filed under this section that an adequate remedy at law does not exist or that substantial or irreparable harm would result from the continued violation.

(e) The department is not required to give an appeal bond in an action arising under this section.

Acts 1979, 66th Leg., p. 2367, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.09, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1022, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 15, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 15, eff. September 1, 2009.

Sec. 42.075. CIVIL PENALTY. (a) A person is subject to a civil penalty of not less than $50 nor more than $100 for each day of

violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility or family home by violating a provision of this chapter or a department rule or standard;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period;

(3) places a public advertisement for an unlicensed facility or an unlisted or unregistered family home;

(4) knowingly fails to meet or maintain any criterion of an exemption authorized under Section 42.041 and engages in activities that require a license or registration; or

(5) fails to inform the department of a change in status and the person knows the change in status requires the person to be licensed or registered under this chapter.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter.

Acts 1979, 66th Leg., p. 2367, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 16, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 16, eff. September 1, 2009.

Sec. 42.076. CRIMINAL PENALTIES. (a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who operates a family home without a required listing or registration commits a Class B misdemeanor.

(c) A person who places a public advertisement for an unlicensed facility or an unlisted or unregistered family home commits a Class C misdemeanor.

(d) It is not an offense under this section if a professional provides legal or medical services to:

(1) a parent who identifies the prospective adoptive parent and places the child for adoption without the assistance of the professional; or

(2) a prospective adoptive parent who identifies a parent and receives placement of a child for adoption without assistance of the professional.

Acts 1979, 66th Leg., p. 2367, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 915, Sec. 2, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 411, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 664, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, Sec. 41, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1217, Sec. 17, eff. Sept. 1, 1997.

Sec. 42.0761. CRIMINAL PENALTY FOR OPERATING DAY-CARE CENTER WITHOUT QUALIFIED DIRECTOR. (a) An owner or operator of a day-care center commits an offense if the owner or operator knowingly operates the day-care center:

(1) without a director who meets the qualifications of a director prescribed by department rules or an interim director under Section 42.04201; or

(2) without the routine presence during the day-care center's hours of operation of a director or an interim director described by Subdivision (1).

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 41, eff. September 1, 2007.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1097 (S.B. 1327), Sec. 2, eff. September 1, 2023.

Sec. 42.077. NOTICE OF ACTION AGAINST FACILITY OR FAMILY HOME. (a) If the department revokes or suspends a facility's license or a family home's listing or registration, the department shall publish notice of this action:

(1) in a newspaper of general circulation in the county in which the facility or family home is located; or

(2) on the department's Internet website along with other information regarding child-care services.

(a-1) If notice is published in a newspaper under Subsection

(a), the newspaper shall place the notice in the section in which advertisements for day-care services are normally published.

(b) If a person who operates a facility or family home that has had its license, listing, or registration revoked or suspended later applies for a new license, listing, or registration to operate the same facility or family home, the department shall charge the person an application fee set by the executive commissioner by rule in an amount necessary to reimburse the department for the cost of the notice relating to that facility or family home.

(c) The department shall pay for publication of the notice from funds appropriated to the department for licensing and regulating child-care facilities and for listing, registering, and regulating family homes and from appeal and application fees collected under Subsection (b) and appropriated to the department.

(d) A facility or family home that has its license, listing, or registration revoked or suspended shall mail notification of this action by certified mail to the parents or guardian of the child served by the facility or family home. The facility or family home shall mail the notification within five days of the effective date of the revocation or suspension of the license, listing, or registration.

(d-1) If the department determines that the license of a residential child-care facility should be revoked or suspended, the facility shall mail notification of the action or proposed action by certified mail to a parent of each child served by the facility, if the person's parental rights have not been terminated, and to the child's managing conservator, as appropriate. The residential child-care facility shall mail the notification not later than the fifth day after the date the facility is notified of the department's determination that revocation or suspension of the license is appropriate.

(e) When the most recent federal census shows that more than one-half of the population in a municipality or in a commissioners precinct in a county in which a family home whose listing or registration has been revoked or suspended is located is of Hispanic origin or Spanish-speaking, the department shall publish the notice under Subsection (a) in both English and Spanish.

Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 42, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1063, Sec. 7, eff. Sept. 1, 1997;

Acts 1997, 75th Leg., ch. 1217, Sec. 18, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.109, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 720 (S.B. 68), Sec. 17, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.238, eff. April 2, 2015.

Sec. 42.078. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative sanction or an administrative penalty against a facility or family home licensed, registered, or listed under this chapter that violates this chapter or a rule or order adopted under this chapter. In addition, the commission may impose an administrative penalty against a facility or family home or a controlling person of a facility or family home if the facility, family home, or controlling person:

(1) violates a term of a license or registration issued under this chapter;

(2) makes a statement about a material fact that the facility or person knows or should know is false:

(A) on an application for the issuance of a license or registration or an attachment to the application; or

(B) in response to a matter under investigation;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by the facility; or

(B) any part of the premises of the facility;

(4) purposefully interferes with the work of a representative of the commission or the enforcement of this chapter; or

(5) fails to pay a penalty assessed under this chapter on or before the date the penalty is due, as determined under this section.

(a-1) Except as provided by Subsection (a-2), nonmonetary administrative sanctions, including corrective action plans and probation periods, shall be imposed when appropriate before administrative penalties.

(a-2) The commission may impose an administrative penalty without first imposing a nonmonetary administrative sanction for violating a minimum standard applicable to a facility or family home under this chapter that is determined by the commission to be a high-risk standard, including standards for a violation constituting abuse, neglect, or exploitation of a child, background check standards, safety hazard standards, standards establishing times for reporting information to a parent or guardian or the commission, and supervision standards.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation may be in an amount not to exceed the following limits, based on the maximum number of children for whom the facility or family home was authorized to provide care or the number of children under the care of the child-placing agency when the violation occurred:

(1) for violations that occur in a facility other than a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	$50
21-40	$60
41-60	$70
61-80	$80
81-100	$100
More than 100	$150

(2) for violations that occur in a residential child-care facility:

Number of children	Maximum amount of penalty
20 or less	$100
21-40	$150
41-60	$200
61-80	$250
81-100	$375
More than 100	$500

(c) In addition to the number of children, the amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic

welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) Monetary penalties may not be assessed for violations that are the result of clerical errors.

(e) If the commission determines that a violation has occurred, the commission may issue a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e-1) Notwithstanding the amounts required by Subsections (b) and (c) and except as provided by Subsection (e-3), the commission shall recommend the penalty for the following violations by a facility or family home to be assessed in the following amounts:

(1) $1,000 for a violation that constitutes abuse, neglect, or exploitation of a child;

(2) $500 for failure to report to a parent or guardian of a child or the commission within the time required by commission standards an injury of a child in the care of the facility or home that requires treatment by a medical professional or hospitalization or an illness of a child that requires hospitalization;

(3) $50 for failure to report to a parent or guardian of each child in the care of the facility or home within the time required by commission standards that the commission cited the facility or home for a violation:

(A) that constitutes abuse, neglect, or exploitation of a child; or

(B) of a safe sleeping standard; and

(4) $50 for failure to report to a parent or guardian of each child in the care of the facility or home within the time required by commission standards that the facility or home does not maintain liability insurance coverage.

(e-2) For purposes of Subsections (e-1)(3) and (4), the commission shall recommend a penalty of $50 for the initial violation and an additional penalty of $50 for each day the violation continues or occurs.

(e-3) Subsection (e-1)(1) does not apply to a residential child-care facility.

(f) Within 14 days after the date the recommendation is issued, the commission shall give written notice of the recommendation to the person owning or operating the facility or family home or to the controlling person, if applicable. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the commission or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(h) If the person accepts the determination and recommended penalty of the commission or fails to respond to the notice in a timely manner, the commission shall issue an order and impose the recommended penalty.

(i) If the person requests a hearing, the commission shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and issue a final decision finding that a violation has occurred and imposing a penalty or finding that no violation occurred.

(j) The notice of the administrative law judge's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(k) Within 30 days after the date the administrative law judge's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the

violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(l) Within the 30-day period, a person who acts under Subsection (k)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(m) On receipt of a copy of an affidavit under Subsection (l)(2), the commission may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(n) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(o) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(p) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(q) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(r) A penalty collected under this section shall be sent to the comptroller for deposit in the safety training account established under Section 42.04215.

(s) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 43, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1129, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.110(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1406 (S.B. 758), Sec. 42, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 9, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.239, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 82, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1057 (H.B. 2070), Sec. 4, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 9, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 588 (S.B. 568), Sec. 9, eff.

September 1, 2019.

Sec. 42.079. CEASE AND DESIST ORDER. (a) If it appears to the department that a person who is not licensed, certified, registered, or listed under this chapter is operating a child-care facility or family home, the department, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from operating the facility or home.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 42.078.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 83, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 1057 (H.B. 2070), Sec. 5, eff. September 1, 2015.

Sec. 42.080. DISCIPLINARY ACTION PROHIBITED. The commission may not issue a citation to or take any other disciplinary action against a general residential operation or a child-placing agency for failing to employ a licensed child-care administrator or licensed child-placing administrator, as appropriate, if the operation or agency has:

(1) been without an administrator for less than 60 days; and

(2) made substantial efforts to hire a qualified administrator.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 22, eff. June 14, 2021.

SUBCHAPTER F. REGULATION OF EMPLOYER-BASED DAY-CARE FACILITIES

Sec. 42.151. DEFINITIONS. In this subchapter:

(1) "Employer-based day-care facility" means a day-care facility that is:

(A) operated by a small employer to provide care to not more than 12 children of the employer's employees; and

(B) located on the employer's premises.

(2) "Small employer" means a corporation, partnership, sole

proprietorship, or other legal entity that employs fewer than 100 full-time employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 89 (H.B. 415), Sec. 1, eff. September 1, 2009.

Sec. 42.152. PERMIT REQUIRED. (a) Except as provided by Subsection (b), a small employer may not operate an employer-based day-care facility unless the employer holds a permit issued by the department under this subchapter.

(b) A small employer is not required to obtain a permit to operate an employer-based day-care facility under this subchapter if the employer holds a license to operate a child-care facility that is issued by the department under Subchapter C. An employer that holds that license must comply with the applicable provisions of Subchapter C, the applicable department rules, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a small employer that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate an employer-based day-care facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.240, eff. April 2, 2015.

Sec. 42.153. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall develop and implement a streamlined procedure by which a small employer may apply for and be issued a permit to operate an employer-based day-care facility. The employer must submit an application for the permit to the department on a form prescribed by the department.

(b) Except as provided by Section 42.154, on receipt of a small employer's application for a permit, the department shall:

(1) conduct an initial inspection of the employer-based day-care facility to ensure that the employer is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each prospective caregiver whose name is submitted as required by Section 42.159(a).

(c) The department may charge an applicant an administrative fee set by the executive commissioner by rule in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.241, eff. April 2, 2015.

Sec. 42.154. CONVERSION OF LICENSE. (a) The department shall develop and implement a procedure by which a small employer that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2007, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the employer in applying for the permit.

(b) The department may waive the requirements under Section 42.153(b) for an initial inspection or background and criminal history checks with respect to a facility operated by a small employer seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Sec. 42.155. PARENT OR GUARDIAN WITHIN IMMEDIATE VICINITY. An employer-based day-care facility operating under this subchapter may provide care only for a child whose parent or guardian:

(1) is an employee of the small employer to which the permit to operate the facility was issued;

(2) works within the same building in which the facility is located; and

(3) is away from that building only for limited periods, as defined by department rules, during the hours the child is receiving care.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Sec. 42.156. CAREGIVER-TO-CHILD RATIO. An employer-based day-care facility operating under this subchapter shall maintain a caregiver-to-child ratio of at least one caregiver to every four children receiving care.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Sec. 42.157. MINIMUM STANDARDS. The department shall encourage an employer-based day-care facility operating under this subchapter to comply with the minimum standards applicable to a child-care facility licensed under Subchapter C.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Sec. 42.158. CAREGIVER QUALIFICATIONS. A caregiver employed by an employer-based day-care facility operating under this subchapter must:

(1) be at least 18 years of age;

(2) have received a high school diploma or its equivalent, as determined by the department;

(3) receive at least the minimum training required for an employee of a licensed day-care center as prescribed by department

rules in accordance with Sections 42.042(p) and 42.0421;

(4) have a Child Development Associate or Certified Child-Care Professional credential or an equivalent credential, as determined by the department; and

(5) not have been precluded from providing direct care or having direct access to a child by the department based on the results of a background and criminal history check conducted under Section 42.159.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Sec. 42.159. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED. (a) In accordance with rules adopted by the executive commissioner, a small employer shall, when applying for a permit under this subchapter and at least once during each 24 months after receiving that permit, submit to the department for use in conducting background and criminal history checks:

(1) the name of any director of the employer-based day-care facility and the name of each caregiver employed at the facility to provide care to children; and

(2) the name of each person 14 years of age or older who will regularly or frequently be staying or working at the facility while children are being provided care.

(b) The small employer shall also submit to the department for use in conducting background and criminal history checks the name of each prospective caregiver who will provide care to children at the facility or other prospective employee who will have direct access to those children.

(b-1) A person subject to the background and criminal history check required by Subsection (a) or (b) shall submit to the commission a complete set of fingerprints.

(b-2) The executive commissioner shall adopt rules to implement this section. The rules adopted under this section:

(1) must require that the fingerprints submitted be in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for the purpose of conducting a criminal history check;

(2) may require that the fingerprints be submitted

electronically through an applicant fingerprinting service center; and

(3) may allow the commission to waive a fingerprint submission required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history check on file with the commission obtained under Section 411.114, Government Code; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the commission through the Department of Public Safety and obtained under Section 411.114, Government Code; and

(B) the commission has an active subscription to the Federal Bureau of Investigation's National Record of Arrest and Prosecution Back Service for the person for whom the fingerprint submission is required.

(c) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code;

(3) the department's records of reported abuse and neglect;

(4) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and

(5) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

(c-1) For each person whose fingerprints are submitted under Subsection (b-1), the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under

Section 411.087, Government Code.

(d) For purposes of Sections 411.114 and 411.087, Government Code:

(1) a small employer that applies for a permit is considered an applicant for a license under this chapter; and

(2) an employer-based day-care facility operating under a permit issued under this subchapter is considered a child-care facility licensed under this chapter.

(e) The department shall require the small employer to pay to the department a fee set by the executive commissioner by rule in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.242, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 597 (S.B. 1061), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 5, eff. September 1, 2023.

Sec. 42.160. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this subchapter, an employer-based day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to an employer-based day-care facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Sec. 42.161. REPORTING OF INCIDENTS AND VIOLATIONS. An employer-based day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are

subject to that section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

Sec. 42.162. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a) The department may inspect an employer-based day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the facility.

(b) If the department inspects an employer-based day-care facility as authorized by this section, the department may require the small employer operating the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a small employer issued a permit under this subchapter a reasonable fee set by the executive commissioner by rule for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.243, eff. April 2, 2015.

Sec. 42.163. SUSPENSION, DENIAL, OR REVOCATION. (a) The department may suspend, deny, or revoke a permit issued to a small employer under this subchapter if the employer does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a small employer that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or

safety as determined by the department.

(c) An employer-based day-care facility is subject to the emergency suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1414 (H.B. 1385), Sec. 2, eff. September 1, 2007.

SUBCHAPTER G. REGULATION OF TEMPORARY SHELTER DAY-CARE FACILITIES

Sec. 42.201. DEFINITIONS. In this subchapter:

(1) "Shelter" means a supervised publicly or privately operated shelter or other facility that is designed to provide temporary living accommodations to individuals and families, including a family violence shelter, a homeless shelter, and an emergency shelter. The term does not include a temporary facility established in response to a natural or other disaster.

(2) "Shelter care" means child care that is provided:

(A) to seven or more children under 14 years of age who temporarily reside at a shelter each with an adult who is related to the child by blood or who is the child's managing conservator;

(B) by a person who is not a temporary resident of a shelter; and

(C) while the adult described by Paragraph (A) is away from the shelter.

(3) "Shelter day-care facility" means a shelter that provides shelter care for not more than 24 hours a day, but at least four hours a day, three or more days a week.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.

Sec. 42.202. PERMIT REQUIRED. (a) Except as provided by Subsections (b) and (e), a shelter may not provide shelter care unless the shelter holds a permit issued by the department under this subchapter.

(b) A shelter is not required to obtain a permit to provide shelter care under this subchapter if the shelter holds a license to operate a child-care facility that is issued by the department under

Subchapter C. A shelter that holds that license must comply with the applicable provisions of Subchapter C, the applicable department rules, and any specific terms of the license.

(c) Notwithstanding any other law, including Section 42.041, a shelter that holds a permit issued under this subchapter is not required to hold a license under Subchapter C to operate a shelter day-care facility.

(d) The department may not issue a permit under this subchapter to a shelter that provides child care to a child who is not a resident of the shelter. A shelter that provides child care described by this subsection must hold a license to operate a child-care facility issued under Subchapter C.

(e) A shelter is not required to obtain a permit under this subchapter or a license under Subchapter C if the shelter provides shelter care for:

(1) less than four hours a day or for less than three days a week; or

(2) six or fewer children.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.244, eff. April 2, 2015.

Sec. 42.203. APPLICATION; INITIAL INSPECTION AND BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) The department shall develop and implement a streamlined procedure by which a shelter may apply for and be issued a permit to operate a shelter day-care facility. The shelter must submit an application for the permit to the department on a form prescribed by the department.

(b) Except as provided by Section 42.204, on receipt of a shelter's application for a permit, the department shall:

(1) conduct an initial inspection of the shelter day-care facility to ensure that the shelter is able to comply with the provisions of this subchapter and that the facility complies with the fire safety and sanitation standards of the political subdivision in which the facility is located; and

(2) conduct a background and criminal history check on each

prospective caregiver whose name is submitted as required by Section 42.206(a).

(c) The department may charge an applicant an administrative fee set by the executive commissioner by rule in a reasonable amount that is sufficient to cover the costs of the department in processing the application.

(d) The department shall process an application not later than the 30th day after the date the department receives all of the required information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.245, eff. April 2, 2015.

Sec. 42.204. CONVERSION OF LICENSE. (a) The department shall develop and implement a procedure by which a shelter that holds a license to operate a child-care facility that is issued under Subchapter C before September 1, 2012, may convert the license to a permit under this subchapter. The procedure must include an abbreviated application form for use by the shelter in applying for the permit.

(b) The department may waive the requirements under Section 42.203(b) for an initial inspection or background and criminal history checks with respect to a licensed child-care facility seeking to convert a license to a permit under this section if the department determines that previously conducted inspections or background and criminal history checks, as applicable, are sufficient to ensure the safety of children receiving care at the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.

Sec. 42.205. CAREGIVER QUALIFICATIONS AND TRAINING; CHILD-TO-CAREGIVER RATIOS. (a) The executive commissioner shall adopt rules that specify the minimum:

(1) qualifications and training required for a person providing child care in a shelter day-care facility; and

(2) child-to-caregiver ratios in a shelter day-care facility.

(b) In adopting rules under this section, the executive commissioner shall consider:

(1) the special circumstances and needs of families that seek temporary shelter; and

(2) the role of a shelter in assisting and supporting families in crisis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.

Sec. 42.206. BACKGROUND AND CRIMINAL HISTORY CHECKS REQUIRED. (a) In accordance with rules adopted by the executive commissioner, a shelter shall, when applying for a permit under this subchapter and at least once during each 24-month period after receiving that permit, submit to the department for use in conducting background and criminal history checks:

(1) the name of any director or prospective director of the shelter day-care facility and the name of each caregiver or prospective caregiver employed at the facility to provide care to children;

(2) the name of each person counted in child-to-caregiver ratios at the shelter day-care facility; and

(3) the name of each person 14 years of age or older who will have unsupervised access to one or more children while in the care of the shelter day-care facility.

(b) In addition to the requirements of Subsection (a), a shelter shall submit a complete set of fingerprints of each person required to undergo a criminal history check under Subsection (a).

(b-1) The executive commissioner shall adopt rules to implement this section. The rules adopted under this section:

(1) must require that the fingerprints submitted be in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for purposes of conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow the commission to waive a fingerprint submission required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history check on file with the commission obtained under Section 411.114, Government Code; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the commission through the Department of Public Safety and obtained under Section 411.114, Government Code; and

(B) the commission has an active subscription to the Federal Bureau of Investigation's National Record of Arrest and Prosecution Back Service for the person for whom the fingerprint submission is required.

(c) The department shall conduct background and criminal history checks using:

(1) the information provided under Subsection (a) or (b), as applicable;

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code;

(3) the department's records of reported abuse and neglect;

(4) any information provided by the Texas Juvenile Justice Department under a memorandum of understanding; and

(5) the interagency reportable conduct search engine established under Chapter 810, Health and Safety Code.

(c-1) For each person whose fingerprints are submitted under Subsection (b), the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under Section 411.087, Government Code.

(d) For purposes of Sections 411.114 and 411.087, Government

Code:

(1) a shelter that applies for a permit is considered to be an applicant for a license under this chapter; and

(2) a shelter day-care facility operating under a permit issued under this subchapter is considered to be a child-care facility licensed under this chapter.

(e) The department shall require the shelter to pay to the department a fee set by the executive commissioner by rule in an amount not to exceed the administrative costs the department incurs in conducting a background and criminal history check under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.246, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 597 (S.B. 1061), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 6, eff. September 1, 2023.

Sec. 42.207. APPLICABILITY OF OTHER LAW. Except as otherwise provided by this subchapter, a shelter day-care facility operating under this subchapter is not a child-care facility, as defined by Section 42.002, and the provisions of this chapter and the department's rules that apply to a child-care facility licensed under Subchapter C do not apply to a shelter day-care facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.

Sec. 42.208. REPORTING OF INCIDENTS AND VIOLATIONS. A shelter day-care facility operating under this subchapter and each employee of that facility are subject to the reporting requirements of Section 42.063 to the same extent a licensed child-care facility and employees of licensed child-care facilities are subject to that section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.

Sec. 42.209. AUTHORITY TO CONDUCT LIMITED INSPECTIONS. (a) The department may inspect a shelter day-care facility operating under this subchapter if the department receives a complaint or report of child abuse or neglect alleged to have occurred at the shelter day-care facility.

(b) If the department inspects a shelter day-care facility as authorized by this section, the department may require the facility to take appropriate corrective action the department determines necessary to comply with the requirements of this subchapter and to ensure the health and safety of children receiving care at the facility. The department may continue to inspect the facility until corrective action is taken and for a reasonable time after that action is taken to ensure continued compliance.

(c) The department may charge a shelter issued a permit under this subchapter a reasonable fee set by the executive commissioner by rule for the cost of services provided by the department in formulating, monitoring, and implementing a corrective action plan under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.247, eff. April 2, 2015.

Sec. 42.210. SUSPENSION, DENIAL, OR REVOCATION. (a) The department may suspend, deny, or revoke a permit issued to a shelter under this subchapter if the shelter does not comply with the provisions of this subchapter or any applicable department rules.

(b) The department may refuse to issue a permit under this subchapter to a shelter that had its authorization to operate a child-care facility issued under another subchapter revoked, suspended, or not renewed for a reason relating to child health or safety as determined by the department.

(c) A shelter day-care facility is subject to the emergency

suspension of its permit to operate and to closure under Section 42.073 to the same extent and in the same manner as a licensed child-care facility is subject to that section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 10, eff. September 1, 2012.

SUBCHAPTER H. REGULATION OF CERTAIN GENERAL RESIDENTIAL OPERATIONS

Sec. 42.251. APPLICABILITY. This subchapter applies only to a general residential operation that:

(1) provides care for seven or more children or young adults; and

(2) provides treatment services for children or young adults with emotional disorders.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 10, eff. September 1, 2019.

Sec. 42.252. PROPOSED OPERATIONAL PLAN; LICENSING PROCEDURES. (a) In addition to the applicable requirements to obtain a license under Subchapter C, a person applying for a license to operate a general residential operation shall submit to the commission a proposed operational plan.

(b) The executive commissioner shall adopt rules regarding:

(1) the information that must be included in the operational plan;

(2) the commission's review of the operational plan; and

(3) the basis of the commission's determination on whether:

(A) the plan is complete or incomplete; and

(B) to deny or approve the plan.

(c) The operational plan must include:

(1) a community engagement plan to develop and, if necessary, improve relations between the general residential operation and the community in which the operation is located that includes:

(A) a summary of any discussions the operation had with:

(i) local law enforcement; and

(ii) local health, therapeutic, and recreational

resources available to support children at the operation; and

(B) a summary of the opportunities the children at the operation will have for social interaction in the community;

(2) an educational plan describing the applicant's plan to provide for the educational needs of the children at the general residential operation that:

(A) identifies whether the proposed operation will provide for the public or private education of school-age children at the operation;

(B) identifies whether the proposed operation will provide for the education of school-age children through a local school, off-site charter school, or on-site charter school;

(C) includes any discussions, plans, and agreements with the local school district, private school, or local charter school that will be providing education to the school-age children at the operation; and

(D) if the children are to be enrolled in a public school, includes either:

(i) a statement from the local independent school district on the impact of the proposed child-care services on the local school district; or

(ii) an explanation of the reasons the operation was unable to obtain a statement described by Subparagraph (i) and a discussion of other alternative educational services that the operation could offer;

(3) a trauma-informed plan to address unauthorized absences of children from the general residential operation;

(4) a suicide prevention, intervention, and postvention plan that meets the requirements of Section 42.0433; and

(5) the qualifications, background, and history, including any compliance history, of each individual who is proposed to be involved in:

(A) the management of the operation; and

(B) the educational leadership of the operation if the operation will be using an on-site charter school.

(d) A person applying for a license to operate a general residential operation shall state in the application if the proposed operation will provide services to children who are victims of human trafficking but is not required to include this information in the operational plan.

(e) The commission must approve the proposed general residential operation's operational plan before:

(1) holding a hearing under Section 42.0461, if applicable; or

(2) granting a license to operate a general residential operation.

(f) In evaluating an application for a license to operate a general residential operation, the commission may consider:

(1) evidence gathered through the application review process;

(2) all parts of the operational plan described by Subsection (c);

(3) evidence of community support for or opposition to the proposed general residential operation, including any public comment the executive commissioner receives relating to the licensing of the proposed operation; and

(4) the impact statement from the school district likely to be affected by the proposed general residential operation, including information relating to any financial impact on the district that may result from an increase in enrollment.

(g) The commission may deny an application for a license to operate a general residential operation if the commission determines that:

(1) the community has insufficient resources to support children proposed to be served by the applicant;

(2) granting the license would significantly impact the local school district and would adversely affect the children proposed to be served by the applicant; or

(3) granting the license would have a significant adverse impact on the community and would limit opportunities for social interaction for the children proposed to be served by the applicant.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 10, eff. September 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 23, eff. June 14, 2021.

Sec. 42.253. CONFIDENTIALITY OF INFORMATION RELATING TO

SERVICES FOR HUMAN TRAFFICKING VICTIMS. (a) If an applicant for a license to operate a general residential operation will provide services to victims of human trafficking, any information relating to the provision of services for victims of human trafficking is confidential and the commission may not disclose that information.

(b) If a hearing is required under Section 42.0461 for an application for a license to operate a general residential operation and the proposed operation will provide services to victims of human trafficking, the applicant is not required to disclose any information relating to the provision of services for victims of human trafficking.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 10, eff. September 1, 2019.

Sec. 42.254. DUTIES RELATING TO EDUCATION OF CHILDREN IN GENERAL RESIDENTIAL OPERATION. (a) The commission shall collaborate with the Texas Education Agency to determine best practices for educational services in a general residential operation, including the most effective educational plans and best practices for implementing those plans.

(b) The department shall make available on the department's Internet website information and training regarding trauma-informed practices to assist school districts with training district employees by increasing staff awareness of trauma-informed care.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 10, eff. September 1, 2019.

Sec. 42.2541. IMPROVING EDUCATION SERVICES FOR CHILDREN. (a) The department shall develop a strategic plan for improving the provision of educational services to children placed in a general residential operation.

(b) The department shall report to the Texas Education Agency the educational outcomes for children placed in a general residential operation.

(c) The department and the Texas Education Agency shall annually evaluate the educational outcomes for children placed in a general residential operation and adopt strategies and policies to

improve the outcomes and standards.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 24, eff. June 14, 2021.

Sec. 42.255. HEARING BEFORE RENEWAL OF LICENSE. (a) On request of the commissioners court of a county where a general residential operation is located, the commission shall hold a public hearing to obtain public comments regarding the renewal of the operation's license.

(b) The commission shall adopt procedures that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue related to renewal of the general residential operation's license, including procedures relating to the conduct of the hearing, the order of witnesses, and the conduct of participants at the hearing.

Added by Acts 2019, 86th Leg., R.S., Ch. 394 (S.B. 781), Sec. 10, eff. September 1, 2019.

Sec. 42.256. TREATMENT MODEL. (a) Each general residential operation providing treatment services shall, on issuance of an initial or renewal license under this chapter, submit to the commission information on the operation's treatment model. A general residential operation that contracts with the department to provide residential care for children in foster care shall submit information on the operation's treatment model to the department on execution and renewal of a contract.

(b) The operation shall annually assess the overall effectiveness of the model adopted under this section.

(c) The treatment model must address all aspects related to children's care, including children's therapeutic needs. The model shall include:

(1) the manner in which treatment goals will be individualized and identified for each child;

(2) the method the operation will use to measure the effectiveness of each treatment goal for the child;

(3) the actions the operation will take if the treatment goals are not met; and

(4) the method the operation will use to monitor and evaluate the effectiveness of the treatment model.

(d) A general residential operation may change a treatment model adopted under this section after notifying the commission of the change and submitting the new treatment model to the commission.

(e) The executive commissioner may adopt rules to implement this section.

(f) The general residential operation shall adopt policies and procedures to implement the treatment model.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 24, eff. June 14, 2021.

Sec. 42.257. EVALUATION OF PLACEMENTS. (a) A general residential operation that considers accepting a child's placement with the operation shall evaluate the proposed placement on the following criteria:

(1) whether the child meets the operation's admission criteria;

(2) whether the child would benefit from the treatment model implemented at the operation; and

(3) whether the operation has the staff and resources to meet the child's needs considering the other children at the operation and the other children's needs.

(b) A general residential operation shall ensure that the evaluation under Subsection (a) does not delay the timely placement of a child.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 24, eff. June 14, 2021.

Sec. 42.258. LIMIT ON PLACEMENTS FOR NEW FACILITY. If the department or a single source continuum contractor contracts with a general residential operation providing treatment services to place children with the operation before the operation is licensed, the contract must limit the number of children that may be placed at the operation each month and limit the number of children with a service level of specialized, intense, or intense plus until the operation exhibits sustained compliance with the licensing standards.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 24, eff. June 14, 2021.

Sec. 42.259. TRANSITION PLANS. A general residential operation shall develop a transition plan for each child who has been placed at the operation for longer than six months.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 24, eff. June 14, 2021.

Sec. 42.260. TELEHEALTH PILOT PROGRAM. The commission in coordination with the department and single source continuum contractors shall establish guidelines in the STAR Health program to improve the use of telehealth services to provide and enhance mental health and behavioral health care for children placed in the managing conservatorship of the state.

Added by Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 24, eff. June 14, 2021.

CHAPTER 43. REGULATION OF CHILD-CARE AND CHILD-PLACING AGENCY ADMINISTRATORS

Sec. 43.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 746, Sec. 10, eff. September 1, 2013.

(2) "Child-care administrator" means a person who supervises and exercises direct administrative control over a child-care institution and who is responsible for its program and personnel, whether or not the person has an ownership interest in the institution or shares duties with other persons.

(3) "Child-placing agency" has the meaning assigned in Section 42.002.

(4) "Child-placing agency administrator" means a person who supervises and exercises direct control over a child-placing agency and who is responsible for the child-placing agency's program and personnel, regardless of whether the person has an ownership interest in the child-placing agency or shares duties with other persons.

(5) "Controlling person" has the meaning assigned by

Section 42.002.

(6) "General residential operation" has the meaning assigned by Section 42.002.

(7) "Permit" means a license, listing, registration, or certification issued to a facility or family home under Chapter 42.

Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.112, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 10, eff. September 1, 2013.

Sec. 43.003. LICENSE REQUIRED. (a) Except as provided by Subsection (b) of this section, a person may not serve as a child-care administrator of a general residential operation without a license issued by the department under this chapter.

(b) A person who is not licensed under this chapter may serve as the child-care administrator of an emergency shelter located in a county with a population of less than 40,000 if the governing body of the shelter by resolution adopted by a majority vote of the membership of the governing body certifies that the shelter has made a reasonable effort to hire a licensed child-care administrator but is unable to hire a licensed child-care administrator.

(c) A person may not serve as a child-placing agency administrator without a license issued by the department under this chapter.

Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.10, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 664, Sec. 6, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.113(a), eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 6, eff. September 1, 2013.

Sec. 43.004. QUALIFICATIONS FOR LICENSE. (a) To be eligible for a child-care administrator's license a person must:

(1) provide information for the department's use in conducting a criminal history and background check under Subsection (c), including a complete set of the person's fingerprints;

(2) satisfy the minimum requirements under department rules relating to criminal history and background checks;

(3) pass an examination developed and administered by the department that demonstrates competence in the field of child-care administration;

(4) have one year of full-time experience in management or supervision of child-care personnel and programs; and

(5) have one of the following educational and experience qualifications:

(A) a master's or doctoral degree in social work or other area of study; or

(B) a bachelor's degree and two years' full-time experience in child care or a closely related field.

(b) To be eligible for a child-placing agency administrator's license a person must:

(1) provide information for the department's use in conducting a criminal history and background check under Subsection (c), including a complete set of the person's fingerprints;

(2) satisfy the minimum requirements under department rules relating to criminal history and background checks;

(3) pass an examination developed and administered by the department that demonstrates competence in the field of placing children in residential settings or adoptive homes;

(4) have one year of full-time experience in management or supervision of child-placing personnel and programs; and

(5) have one of the following educational and experience qualifications:

(A) a master's or doctoral degree in social work or other area of study; or

(B) a bachelor's degree and two years' full-time experience in the field of placing children in residential settings or adoptive homes or a closely related field.

(c) Before the department issues a license under this chapter,

the department must conduct a criminal history and background check of the applicant using:

(1) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; and

(2) the information in the central registry of reported cases of child abuse or neglect established under Section 261.002, Family Code.

(d) The executive commissioner shall adopt rules consistent with Section 42.056 relating to requiring a criminal history and background check before issuing or renewing a license under this chapter.

Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.114(a), eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 7, eff. September 1, 2013.

Sec. 43.0041. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which a licensing examination is administered under this chapter, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the date on which the department receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before that 90th day.

(b) If requested in writing by a person who fails a licensing examination administered under this chapter, the department shall furnish the person with an analysis of the person's performance on the examination.

(c) A person who fails an examination three times may not

submit a new application for a license until after the first anniversary of the date the person last failed the examination.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 4.11, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.115(a), eff. September 1, 2005.

Sec. 43.0042. RECOGNITION OF LICENSE ISSUED BY ANOTHER STATE. (a) The department may waive any prerequisite to obtaining a license for an applicant:

(1) after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state; or

(2) after determining the applicant has a valid license from another state with which this state has a reciprocity agreement.

(b) The department may enter into an agreement with another state to permit licensing by reciprocity.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 44, eff. Sept. 1, 1997.

Sec. 43.005. RULES. The executive commissioner may adopt rules to administer the provisions of this chapter.

Acts 1979, 66th Leg., p. 2368, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.248, eff. April 2, 2015.

Sec. 43.0055. COMPETITIVE BIDDING OR ADVERTISING RULES. (a) The executive commissioner may not adopt rules restricting competitive bidding or advertising by a license holder except to prohibit false, misleading, or deceptive practices.

(b) Rules to prohibit false, misleading, or deceptive practices may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 45, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.249, eff. April 2, 2015.

Sec. 43.006. FEES. The executive commissioner by rule may set and the department may collect fees for administering an examination and issuing an initial license, renewal license, or provisional license in amounts necessary to cover the costs of administering this chapter.

Acts 1979, 66th Leg., p. 2369, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 386, ch. 81, Sec. 13(a), eff. Sept. 1, 1983; Acts 1997, 75th Leg., ch. 1022, Sec. 46, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.250, eff. April 2, 2015.

Sec. 43.007. LICENSE APPLICATION. (a) A person who has the education and experience required by Section 43.004 of this code may apply to the department for a license.

(b) The applicant shall send the appropriate license fee with the application.

Acts 1979, 66th Leg., p. 2369, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 386, ch. 81, Sec. 13(b), eff. Sept. 1, 1983.

Sec. 43.008. LICENSING. (a) The department shall issue a

license to a person who has satisfied all the licensing requirements.

(b) The license is valid for a period of two years from the date issued.

Acts 1979, 66th Leg., p. 2369, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 43.0081. PROVISIONAL LICENSE. (a) The commission may issue a provisional child-care administrator's license to:

(1) an applicant licensed in another state who applies for a license in this state if the applicant:

(A) is licensed in good standing as a child-care administrator for at least two years in another state, the District of Columbia, a foreign country, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(B) has passed a national or other examination recognized by the commission that demonstrates competence in the field of child-care administration; and

(C) is sponsored by a person licensed by the commission under this chapter with whom the provisional license holder may practice under this section; and

(2) an applicant who:

(A) otherwise qualifies for a license but does not meet the experience requirement in Section 43.004(a)(4); and

(B) complies with any additional requirement established by rule under Subsection (e).

(b) The commission may waive the requirement of Subsection (a)(1)(C) for an applicant if the commission determines that compliance with that paragraph constitutes a hardship to the applicant.

(c) A provisional license under Subsection (a)(1) is valid until the date the commission approves or denies the provisional license holder's application for a license. The commission shall issue a license under this chapter to the provisional license holder described by Subsection (a)(1) if:

(1) the provisional license holder passes the examination required by Section 43.004;

(2) the commission verifies that the provisional license

holder has the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

(d) For a provisional license holder described by Subsection (a)(1), the commission shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The commission may extend the 180-day limit if the results of the license holder's examination have not been received by the commission.

(e) The executive commissioner by rule may establish additional requirements for the issuance of a provisional child-care administrator's license under Subsection (a)(2)(A) as the executive commissioner determines appropriate.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 47, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.116, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 621 (S.B. 1896), Sec. 25, eff. June 14, 2021.

Sec. 43.009. LICENSE RENEWAL. (a) To be eligible for license renewal, a license holder shall:

(1) present evidence to the department of participation in a program of continuing education for 15 hours of formal study each year during the two-year period before the renewal; and

(2) provide information for the department's use in conducting a criminal history and background check under Section 43.004(c) and applicable department rules, including a complete set of the person's fingerprints.

(b) The department shall recognize, prepare, or administer continuing education programs for license holders. The continuing education requirement may be fulfilled by studies in the areas of legal aspects of child care, concepts related to the field of social work, or other subjects approved by the department.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying to the department before the expiration date of the license the required renewal fee. A person

whose license has expired may not engage in the activities that require a license until the license has been renewed under the provisions of this section.

(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the department one and one-half times the required renewal fee.

(e) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the department two times the required renewal fee.

(f) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. If the person was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application, the person may renew an expired license without reexamination. The person must pay to the department a fee that is equal to two times the required renewal fee for the license.

(g) At least 30 days before the expiration of a person's license, the department shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the department.

Acts 1979, 66th Leg., p. 2369, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 386, ch. 81, Sec. 13(c), eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 4.12, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1022, Sec. 48, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.117(a), eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 8, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.251, eff. April 2, 2015.

Sec. 43.010. LICENSE DENIAL, REVOCATION, SUSPENSION, OR REFUSAL TO RENEW; REPRIMAND OR PROBATION. (a) The commission may deny,

revoke, suspend, or refuse to renew a license, or place on probation or reprimand a license holder for:

(1) violating this chapter or a rule adopted under this chapter;

(2) circumventing or attempting to circumvent the requirements of this chapter or a rule adopted under this chapter;

(3) engaging in fraud or deceit related to the requirements of this chapter or a rule adopted under this chapter;

(4) providing false or misleading information to the commission during the license application or renewal process for any person's license;

(5) making a statement about a material fact during the license application or renewal process that the person knows or should know is false;

(6) having:

(A) a criminal history or central registry record that would prohibit a person from working in a child-care facility, as defined by Section 42.002, under rules applicable to that type of facility; or

(B) a criminal history relevant to the duties of a licensed child-care or child-placing administrator, as those duties are specified in rules adopted by the executive commissioner;

(7) using drugs or alcohol in a manner that jeopardizes the person's ability to function as an administrator;

(8) performing duties as a child-care administrator in a negligent manner; or

(9) engaging in conduct that makes the license holder ineligible for:

(A) a license, listing, registration, or certification of approval under Section 42.072; or

(B) employment as a controlling person or service in that capacity in a facility or family home under Section 42.062.

(b) A person whose license is revoked or refused renewal by the commission under Subsection (a) is not eligible to apply for another license under this chapter for a period of five years after the date the commission revoked the license or refused to renew the license.

(c) Repealed by Acts 2005, 79th Leg., Ch. 268, Sec. 1.129(5), eff. September 1, 2005.

(d) If a license holder is placed on probation, the commission may require the license holder:

(1) to report regularly to the commission on the conditions of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or renew professional education until the practitioner attains a degree of skill satisfactory to the commission in those areas in which improvement is a condition of the probation.

Acts 1979, 66th Leg., p. 2369, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 4.13, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1022, Sec. 49, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.118, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.119(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.129(5), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1082 (S.B. 1178), Sec. 11, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 746 (S.B. 427), Sec. 9, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 549 (H.B. 4170), Sec. 1, eff. September 1, 2023.

Sec. 43.0105. REVOCATION OF PROBATION. The department may revoke the probation of a license holder if the license holder violates a term of the conditions of probation.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 50, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.120, eff. September 1, 2005.

Sec. 43.0106. ADMINISTRATIVE HEARING. (a) If the department denies a license or proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings. Proceedings for a

disciplinary action are governed by the administrative procedure law, Chapter 2001, Government Code. Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

(b) A person may not continue to operate as a licensed child-care administrator or child-placing agency administrator during the appeal process if the department determines that the person is an immediate threat to the health or safety of a child.

(c) The department must notify the person, and if applicable, the governing body of the facility that employs the person, of the department's determination under Subsection (b).

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 50, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.121, eff. September 1, 2005.

Sec. 43.012. PENALTY. A person who serves as a child-care or child-placing agency administrator without the license required by this chapter commits a Class C misdemeanor.

Acts 1979, 66th Leg., p. 2369, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 8, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.122, eff. September 1, 2005.

CHAPTER 44. ADMINISTRATION OF FEDERAL AND STATE DAY-CARE PROGRAMS

SUBCHAPTER A. FEDERALLY ESTABLISHED DAY-CARE PROGRAMS

Sec. 44.001. DESIGNATED AGENCY. The Texas Workforce Commission is the state agency designated to administer a day-care program established by federal law and financed partially or totally by federal funds.

Acts 1979, 66th Leg., p. 2370, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept.

1, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 8.024, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.64, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

Sec. 44.002. ADMINISTRATIVE RULES. (a) The Texas Workforce Commission shall promulgate rules to carry out the administrative provisions of the program consistent with federal law and regulations.

(b) The rules must include procedures to allow operators of day-care centers to review and comment on proposed rules and policies.

Acts 1979, 66th Leg., p. 2370, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th leg., ch. 717, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 8.025, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.65, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 228 (H.B. 2961), Sec. 1, eff. May 27, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

Sec. 44.003. ADMINISTRATION OF FEDERAL-LOCAL PROGRAM. (a) If the program is to be funded through political subdivisions of the state or local agencies approved by the Texas Workforce Commission matching federal grants, the Texas Workforce Commission shall promulgate procedures for effective delivery of services consistent with this section and with federal law and regulations.

(b) If the services are provided through contracting with operators of day-care programs on request from political subdivisions or local agencies, the Texas Workforce Commission may not promulgate standards for selection of the type of programs more restrictive than required by federal law or regulations.

(c) The executive director of the Texas Workforce Commission shall establish an accounting system consistent with federal law and regulations which will provide that an operator of a day-care program

contracting with the Texas Workforce Commission:

(1) shall receive prepayment in accordance with policies and procedures mutually agreed on by the comptroller and the Texas Workforce Commission; and

(2) shall be paid on the basis of legitimate and reasonable expenses, insofar as possible, given federal regulations and department policy, instead of being paid on the basis of the number of children attending or the number of children enrolled in the program, provided that on being monitored by the Texas Workforce Commission, the contracting operator can substantiate that there were sufficient preparations in the development of the services offered.

(d) The executive director of the Texas Workforce Commission shall establish procedures for hearing complaints by operators of day-care programs contracting with the Texas Workforce Commission relating to the failure of the Texas Workforce Commission to comply with Subsection (c).

Acts 1979, 66th Leg., p. 2370, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 8.026, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.66, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

SUBCHAPTER B. DAY-CARE CENTERS

Sec. 44.031. ESTABLISHMENT. (a) The Texas Workforce Commission may establish day-care centers for all children who qualify for services under Section 44.032. Where in the opinion of the executive director of the Texas Workforce Commission it appears feasible for the furtherance of the objectives of this legislation, the Texas Workforce Commission may establish cooperative agreements with other state agencies.

(b) The Texas Workforce Commission is not required to establish a day-care center or to provide services under this subchapter unless funds are appropriated for that purpose.

Added by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.027, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.67, eff. Sept. 1, 1995.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

Sec. 44.032. ELIGIBILITY. (a) Except as provided by Subsection (b), to be eligible for admission to a day-care center authorized under this subchapter, a child must be at least six weeks of age and:

(1) the child must be eligible for state assistance under the aid to families with dependent children program and the child's caretaker must be employed, enrolled in a job training program authorized by the Texas Workforce Commission, registered to work by the Texas Workforce Commission, or permanently and totally disabled; or

(2) the child must be from a family eligible under federal law or regulations to participate in a partially or totally federally funded welfare or social services program.

(b) Additional children of the same age group may also be admitted to a center under additional standards established by the Texas Workforce Commission.

(c) To reduce rapid turnover of children in care and to ensure maximum stability for the child to the extent possible within federal guidelines, once a child meets the initial eligibility standards and is enrolled in a child-care program, the child remains eligible for not less than one year after the date of enrollment.

Added by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.028, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.68, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

Sec. 44.033. FEES. (a) A fee for services rendered by the day-care center may not be charged for a child who is eligible for state assistance under the aid to families with dependent children program.

(b) A fee that is scaled to family income for services rendered

by the day-care program may be charged for a child who is not eligible for state assistance under the aid to families with dependent children program.

Added by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

Sec. 44.034. STANDARDS; RECOMMENDATIONS. (a) If the Texas Workforce Commission establishes day-care centers under this subchapter, the department shall prescribe standards of operation and performance for the centers that will ensure proper nutrition, social adjustment, health services, and appropriate growth and development for children admitted.

(b) The executive director of the Texas Workforce Commission shall prescribe procedures for receiving recommendations relating to the operation of the centers from parents, guardians, or custodians of children admitted to the centers, operators of the centers, and other interested persons.

Added by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.029, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.69, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

Sec. 44.035. CONTRACTS. (a) The executive director of the Texas Workforce Commission may contract for services authorized under this subchapter with an individual, organization, association, or corporation meeting the standards established under Section 44.034 and the standards for child-care facilities licensed by the department.

(b) The fees paid to the center under the contract may not exceed the amount it would cost the state to provide the same services.

(c) The executive director of the Texas Workforce Commission shall terminate a contract with a day-care center that fails to

maintain the department's standards.

(d) When the executive director of the Texas Workforce Commission intends to cancel a contract with a day-care center, the executive director shall give the center reasonable notice and an opportunity for a hearing if one is requested. The Texas Workforce Commission shall adopt rules consistent with Chapter 2001, Government Code, to implement this section. Hearings under this section are contested cases under that chapter.

Added by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 8.030, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.70, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

Sec. 44.036. ANNUAL EVALUATION OF DAY-CARE CENTERS. If the Texas Workforce Commission establishes day-care centers or provides services under this subchapter, the Texas Workforce Commission, with the assistance of the department, shall evaluate the performance of the centers each state fiscal year. This evaluation shall be sent to the governor and to the Legislative Budget Board not later than the 100th day after the last day of the state fiscal year covered by the evaluation.

Added by Acts 1987, 70th Leg., ch. 717, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.031, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 11.71, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.252, eff. April 2, 2015.

CHAPTER 45. PROTECTION OF RIGHTS OF CONSCIENCE FOR CHILD WELFARE SERVICES PROVIDERS

Sec. 45.001. LEGISLATIVE INTENT. It is the intent of the legislature to maintain a diverse network of service providers that offer a range of foster capacity options and that accommodate children from various cultural backgrounds. To that end, the

legislature expects reasonable accommodations to be made by the state to allow people of diverse backgrounds and beliefs to be a part of meeting the needs of children in the child welfare system. Decisions regarding the placement of children shall continue to be made in the best interest of the child, including which person is best able to provide for the child's physical, psychological, and emotional needs and development.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.002. DEFINITIONS. In this chapter:

(1) "Adverse action" means any action that directly or indirectly adversely affects the person against whom the adverse action is taken, places the person in a worse position than the person was in before the adverse action was taken, or is likely to deter a reasonable person from acting or refusing to act. An adverse action includes:

(A) denying an application for, refusing to renew, or canceling funding;

(B) declining to enter into, refusing to renew, or canceling a contract;

(C) declining to issue, refusing to renew, or canceling a license;

(D) terminating, suspending, demoting, or reassigning a person; and

(E) limiting the ability of a person to engage in child welfare services.

(2) "Catchment area" means a geographic service area for providing child protective services or child welfare services.

(3) "Child welfare services" means social services provided to or on behalf of children, including:

(A) assisting abused or neglected children;

(B) counseling children or parents;

(C) promoting foster parenting;

(D) providing foster homes, general residential operations, residential care, adoptive homes, group homes, or temporary group shelters for children;

(E) recruiting foster parents;

(F) placing children in foster homes;
(G) licensing foster homes;
(H) promoting adoption or recruiting adoptive parents;
(I) assisting adoptions or supporting adoptive families;
(J) performing or assisting home studies;
(K) assisting kinship guardianships or kinship caregivers;
(L) providing family preservation services;
(M) providing family support services;
(N) providing temporary family reunification services;
(O) placing children in adoptive homes; and
(P) serving as a foster parent.

(4) "Child welfare services provider" means a person, other than a governmental entity, that provides, seeks to provide, or applies for or receives a contract, subcontract, grant, subgrant, or cooperative agreement to provide child welfare services. The person is not required to be engaged exclusively in child welfare services to be a child welfare services provider.

(5) "Governmental entity" means:

(A) this state or a municipality or other political subdivision of this state;

(B) any agency of this state or of a municipality or other political subdivision of this state, including a department, bureau, board, commission, office, agency, council, and public institution of higher education; or

(C) a single source continuum contractor in this state providing services identified under Section 264.153, Family Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 11.001, eff. September 1, 2021.

Sec. 45.003. APPLICABILITY. (a) This chapter applies to any ordinance, rule, order, decision, practice, or other exercise of governmental authority.

(b) This chapter applies to an act of a governmental entity, in

the exercise of governmental authority, granting or refusing to grant a government benefit to a child welfare services provider.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.004. CHILD WELFARE SERVICES PROVIDERS PROTECTED. A governmental entity or any person that contracts with this state or operates under governmental authority to refer or place children for child welfare services may not discriminate or take any adverse action against a child welfare services provider on the basis, wholly or partly, that the provider:

(1) has declined or will decline to provide, facilitate, or refer a person for child welfare services that conflict with, or under circumstances that conflict with, the provider's sincerely held religious beliefs;

(2) provides or intends to provide children under the control, care, guardianship, or direction of the provider with a religious education, including through placing the children in a private or parochial school or otherwise providing a religious education in accordance with the laws of this state;

(3) has declined or will decline to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that are potentially abortion-inducing; or

(4) refuses to enter into a contract that is inconsistent with or would in any way interfere with or force a provider to surrender the rights created by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.005. SECONDARY SERVICES PROVIDERS AND REFERRALS. (a) A child welfare services provider may not be required to provide any service that conflicts with the provider's sincerely held religious beliefs.

(b) A governmental entity or any person that operates under governmental authority to refer or place children for child welfare services shall:

(1) ensure that a secondary child welfare services provider

is available in that catchment area to provide a service described by Subsection (a) to a child; or

(2) if there is an insufficient number of secondary services providers willing or available in that catchment area to provide that service, provide for one or more secondary services providers in a nearby catchment area.

(c) A child welfare services provider who declines to provide a child welfare service as authorized by this section shall:

(1) provide to the person seeking the service written information directing the person to:

(A) the web page on the department's Internet website that includes a list of other licensed child welfare services providers; or

(B) other information sources that identify other licensed child welfare services providers who provide the service being denied;

(2) refer the applicant to another licensed child welfare services provider who provides the service being denied; or

(3) refer the applicant to the department or to a single source continuum contractor to identify and locate a licensed child welfare services provider who provides the service being denied.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.006. PRIVATE RIGHT OF ACTION. A child welfare services provider may assert an actual or threatened violation of this chapter as a claim or defense in a judicial or administrative proceeding and obtain the relief specified in Section 45.007.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.007. REMEDIES. (a) A child welfare services provider who successfully asserts a claim or defense under this chapter is entitled to recover:

(1) declaratory relief under Chapter 37, Civil Practice and Remedies Code; or

(2) injunctive relief to prevent the threatened or

continued adverse action.

(b) A person may not bring an action for declaratory or injunctive relief against an individual, other than an action brought against an individual acting in the individual's official capacity.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.008. IMMUNITY WAIVED. (a) Sovereign and governmental immunity to suit are waived.

(b) Notwithstanding Subsection (a), this chapter does not waive or abolish sovereign immunity to suit under the Eleventh Amendment to the United States Constitution.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.009. EFFECT ON RIGHTS; CONSTRUCTION OF LAW. (a) This chapter may not be construed to authorize a governmental entity to burden a person's free exercise of religion.

(b) The protections of religious freedom afforded by this chapter are in addition to the protections provided under federal or state law and the constitutions of this state and the United States.

(c) This chapter may not be construed to supersede any law of this state that is equally as protective of religious beliefs as, or more protective of religious beliefs than, this chapter.

(d) This chapter may not be considered to narrow the meaning or application of any other law protecting religious beliefs.

(e) This chapter may not be construed to prevent law enforcement officers from exercising duties imposed on the officers under the Family Code and the Penal Code.

(f) This chapter may not be construed to allow a child welfare services provider to decline to provide, facilitate, or refer a person for child welfare services on the basis of that person's race, ethnicity, or national origin.

(g) This chapter may not be construed to allow a child welfare services provider to deprive a minor of the rights, including the right to medical care, provided by Chapters 32, 263, and 266, Family Code.

(h) This chapter may not be construed to prohibit the department from:

(1) exercising its duty as the child's managing conservator to make decisions in the child's best interest; or

(2) obtaining necessary child welfare services from an alternate child welfare services provider.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

Sec. 45.010. INTERPRETATION. This chapter shall be liberally construed to effectuate its remedial and deterrent purposes.

Added by Acts 2017, 85th Leg., R.S., Ch. 1152 (H.B. 3859), Sec. 1, eff. September 1, 2017.

CHAPTER 48. INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 48.001. PURPOSE. The purpose of this chapter is to provide for the authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.254, eff. April 2, 2015.

Sec. 48.002. DEFINITIONS. (a) Except as otherwise provided under Section 48.251, in this chapter:

(1) "Elderly person" means a person 65 years of age or older.

(2) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly person or person with a disability by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) sexual abuse of an elderly person or person with a disability, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code (assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(3) "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly person or person with a disability that involves using, or attempting to use, the resources of the elderly person or person with a disability, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the person.

(4) "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

(5) "Protective services" means the services furnished by the department or by another protective services agency to an elderly person or person with a disability who has been determined to be in a state of abuse, neglect, or exploitation or to a relative or caretaker of an elderly person or person with a disability if the department determines the services are necessary to prevent the elderly person or person with a disability from returning to a state of abuse, neglect, or exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with this chapter. The term does not include the services of the department or another protective services agency in conducting an investigation regarding alleged abuse, neglect, or exploitation of an elderly person or person with a disability.

(6) "Protective services agency" means a public or private agency, corporation, board, or organization that provides protective

services to elderly persons or persons with disabilities in the state of abuse, neglect, or exploitation.

(7) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(55), eff. April 2, 2015.

(8) "Person with a disability" means a person with a mental, physical, or intellectual or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is:

(A) 18 years of age or older; or

(B) under 18 years of age and who has had the disabilities of minority removed.

(9) "Legal holiday" means a state holiday listed in Subchapter B, Chapter 662, Government Code, or an officially declared county holiday.

(10) "Volunteer" means a person who:

(A) performs services for or on behalf of the department under the supervision of a department employee; and

(B) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

(11) "Home and community-based services" has the meaning assigned by Section 48.251.

(b) The definitions of "abuse," "neglect," "exploitation," and "an individual receiving services" adopted by the executive commissioner as prescribed by Section 48.251(b) apply to an investigation of abuse, neglect, or exploitation conducted under Subchapter F.

(c) Except as provided by Subsection (b), the executive commissioner by rule may adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the definitions of those terms under Subsection (a), for purposes of conducting an investigation under this chapter or Chapter 142, Health and Safety Code.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 274, ch. 51, Sec. 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 264, Sec. 16, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 568, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 213, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), 8.041, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 303, Sec. 3, eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 1022, Sec. 51, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 907, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 5, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 6, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.255, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.256, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(55), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 2, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 9, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 10, eff. September 1, 2015.

Sec. 48.0021. REFERENCE TO COMMISSION OR EXECUTIVE COMMISSIONER. Unless otherwise provided by a provision of this chapter, in this chapter:

(1) a reference to the Health and Human Services Commission means the Department of Family and Protective Services; and

(2) a reference to the executive commissioner means the commissioner of the Department of Family and Protective Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 35, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 13, eff. September 1, 2023.

Sec. 48.003. INVESTIGATIONS IN NURSING FACILITIES, ASSISTED LIVING FACILITIES, AND SIMILAR FACILITIES. (a) Except as provided

by Subsection (c), this chapter does not apply if the alleged or suspected abuse, neglect, or exploitation occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code.

(b) Alleged or suspected abuse, neglect, or exploitation that occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code, is governed by Chapter 260A, Health and Safety Code, except as otherwise provided by Subsection (c).

(c) Subchapter F applies to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider of home and community-based services is or may be alleged to have committed the abuse, neglect, or exploitation, regardless of whether the facility in which those services were provided is licensed under Chapter 242 or 247, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Renumbered from Sec. 48.085 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(l), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 11, eff. September 1, 2015.

Sec. 48.004. RISK ASSESSMENT. The executive commissioner by rule shall develop and maintain risk assessment criteria for use by department personnel in determining whether an elderly person or person with a disability is in imminent risk of abuse, neglect, or exploitation or in a state of abuse, neglect, or exploitation and needs protective services. The criteria must:

(1) provide for a comprehensive assessment of the person's:

(A) environmental, physical, medical, mental health, and financial condition;

(B) social interaction and support; and

(C) need for legal intervention; and

(2) specify the circumstances under which a caseworker must consult with a supervisor regarding a case.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.06, eff.

September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.257, eff. April 2, 2015.

Sec. 48.005. MAINTENANCE OF RECORDS. Notwithstanding Chapter 441, Government Code, or any other law, and subject to the availability of funds, the department shall maintain in an electronic format a summary of all records related to investigations of reports made under Section 48.051 that includes only critical information with respect to those investigations that will enable the department to research the history of a person's involvement in the investigated cases.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.07, eff. September 1, 2005.

Sec. 48.006. COMMUNITY SATISFACTION SURVEY. (a) Subject to the availability of funds, the department shall develop a community satisfaction survey that solicits information regarding the department's performance with respect to providing investigative and adult protective services. In each region, the department shall send the survey at least biennially to:

(1) stakeholders in the adult protective services system, including local law enforcement agencies and prosecutors' offices;

(2) protective services agencies, including nonprofit agencies; and

(3) courts with jurisdiction over probate matters.

(b) The department shall send the results of each region's survey to:

(1) the region for evaluation by regional and program administrators and implementation of changes necessary to address community concerns;

(2) the presiding judge of the statutory probate courts in that region; and

(3) courts with jurisdiction over probate matters in that region.

(c) The department may not include any confidential information

in the results of the survey provided under Subsection (b)(2) or (3) unless ordered by a court.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.07, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 7, eff. September 1, 2011.

Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The commission, the department, the Department of Aging and Disability Services, the office of independent ombudsman for state supported living centers, and the commission's office of inspector general shall enter into a memorandum of understanding regarding investigations of alleged abuse, neglect, or exploitation of residents or clients of state supported living centers or the ICF-IID component of the Rio Grande State Center that delineates the responsibilities of each agency and office under this chapter, Chapter 261, Family Code, and Chapter 555, Health and Safety Code, and amend the memorandum of understanding as necessary to reflect changes in those responsibilities. During the negotiation of the memorandum of understanding, the agencies and offices shall jointly determine whether the forensic training received by relevant staff of the Department of Family and Protective Services is adequate. Specifically, the agencies and offices shall assess and, if necessary, develop a plan to enhance the ability of department staff to identify and report incidences that constitute a potential criminal offense. The commission is the final arbiter of any dispute regarding the memorandum of understanding under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 25, eff. June 11, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.258, eff. April 2, 2015.

SUBCHAPTER B. REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION: IMMUNITIES

Sec. 48.051. REPORT. (a) Except as prescribed by Subsection

(b), a person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider as described by Subchapter F is in the state of abuse, neglect, or exploitation shall report the information required by Subsection (d) immediately to the department.

(b) If a person has cause to believe that an elderly person or a person with a disability, other than an individual receiving services from a provider as described by Subchapter F, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

(b-1) This subsection applies only to a provider under the home and community-based services (HCS) waiver program or the Texas home living (TxHmL) waiver program, an intermediate care facility licensed under Chapter 252, Health and Safety Code, a state supported living center as defined by Section 531.002, Health and Safety Code, or a home and community support services agency licensed under Chapter 142, Health and Safety Code. Except as provided by Subsections (a) and (b), a person, including an officer, employee, agent, contractor, or subcontractor of a facility or provider subject to this subsection, having cause to believe that an individual receiving services from the facility or provider is in the state of abuse, neglect, or exploitation shall immediately report to the commission the information required by Subsection (d). Notwithstanding Section 48.0021, in this subsection "commission" means the Health and Human Services Commission.

(c) The duty imposed by Subsections (a), (b), and (b-1) applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, employee or member of a board that licenses or certifies a professional, and mental health professional.

(d) The report may be made orally or in writing. It shall include:

(1) the name, age, and address of the elderly person or person with a disability;

(2) the name and address of any person responsible for the

care of the elderly person or person with a disability;

(3) the nature and extent of the condition of the elderly person or person with a disability;

(4) the basis of the reporter's knowledge; and

(5) any other relevant information.

(e) If a person who makes a report under this section chooses to give self-identifying information, the caseworker who investigates the report shall contact the person if necessary to obtain any additional information required to assist the person who is the subject of the report.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 5.02, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 247, Sec. 16, eff. June 14, 1989. Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 5.02, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 247, Sec. 16, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(22), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.043, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 303, Sec. 6, 15(1), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 54, eff. Sept. 1, 1997. Renumbered from Sec. 48.036 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 205, Sec. 1, eff. May 21, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.08, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 26, eff. June 11, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 6, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.259, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 12, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 14, eff.

September 1, 2023.

Sec. 48.052. FAILURE TO REPORT; PENALTY. (a) A person commits an offense if the person has cause to believe that an elderly person or person with a disability has been abused, neglected, or exploited or is in the state of abuse, neglect, or exploitation and knowingly fails to report in accordance with this chapter. An offense under this subsection is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the abused, neglected, or exploited person is a person with an intellectual disability who resided in a state supported living center, the ICF-IID component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the person had suffered serious bodily injury as a result of the abuse, neglect, or exploitation.

(b) This section does not apply if the alleged abuse, neglect, or exploitation occurred in a facility licensed under Chapter 242, Health and Safety Code. Failure to report abuse, neglect, or exploitation that occurs in a facility licensed under that chapter is governed by that chapter.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 5.03, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(21), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 303, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1278, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 48.0361 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 6, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 27, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.260, eff. April 2, 2015.

Sec. 48.053. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly or intentionally reports information as provided in this chapter that the person knows is false or lacks factual foundation.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 55, eff. Sept. 1, 1997. Renumbered from Sec. 48.0362 by Acts 1999, 76th Leg., ch. 907, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 8, eff. September 1, 2011.

Sec. 48.054. IMMUNITY. (a) A person filing a report under this chapter or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

(b) A person, including an authorized department volunteer, medical personnel, or law enforcement officer, who at the request of the department participates in an investigation required by this chapter or in an action that results from that investigation is immune from civil or criminal liability for any act or omission relating to that participation if the person acted in good faith and, if applicable, in the course and scope of the person's assigned responsibilities or duties.

(c) A person who reports the person's own abuse, neglect, or exploitation of another person or who acts in bad faith or with malicious purpose in reporting alleged abuse, neglect, or exploitation is not immune from civil or criminal liability.

(d) An employer whose employee acts under Subsection (a) or (b) is immune from civil or criminal liability on account of an employee's report, testimony, or participation in any judicial proceedings arising from a petition, report, or investigation. This subsection does not apply to an employer who is the subject of an investigation.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 205, Sec. 2, eff. May 21, 2001.

SUBCHAPTER C. CONFIDENTIALITY

Sec. 48.101. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION; AGENCY EXCHANGE OF INFORMATION. (a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

(c) A court may order disclosure of confidential information only if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of that hearing is served on the department or investigating state agency and each interested party; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is the subject of a report of abuse, neglect, or exploitation;

(B) makes a report of abuse, neglect, or exploitation; or

(C) participates in an investigation of reported abuse, neglect, or exploitation.

(d) The executive commissioner shall adopt rules providing for the release, on request, to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

(d-1) Subject to Subsection (e-1), the executive commissioner shall adopt rules providing for the release, on request, by the department or investigating state agency of otherwise confidential information relating to a person who is the subject of a report or investigation of abuse, neglect, or exploitation or to whom the department has provided protective services, to:

(1) a court that has a matter pending before it that involves the person;

(2) the attorney ad litem or any other legal representative, other than a guardian, appointed for the person; and

(3) the person's legal guardian.

(e) The executive commissioner may adopt rules relating to the release of information by the department or investigating state agency that is contained in the record of a deceased individual who was the subject of an investigation conducted by the department or investigating state agency or to whom the department has provided protective services. The rules must be consistent with the purposes of this chapter and any applicable state or federal law. The executive commissioner shall adopt rules, subject to Subsection (e-1), that provide for the release, on request, of otherwise confidential information in the deceased person's record to the personal representative appointed for the person's estate.

(e-1) Information released by the department or an investigating state agency under Subsection (d-1) or to a personal representative under Subsection (e) may not include the identity of the person who made the report of abuse, neglect, or exploitation.

(f) The department or investigating state agency may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department, state agency, or entity to properly execute its respective duties and responsibilities to provide services to elderly persons or persons with disabilities under this chapter or other law. An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

(g) The department may establish procedures to exchange with a community service provider or local governmental entity confidential information relating to a report made under Section 48.051(a) that is necessary for the department, provider, or entity to provide protective services, health care services, housing services, or

social services to the person who is the subject of the report. An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

(g-1) The executive commissioner by rule shall provide policies and procedures that are designed to guard against the unauthorized release or dissemination of confidential information that is exchanged under Subsection (g).

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 58, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 907, Sec. 10, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.09, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.261, eff. April 2, 2015.

Sec. 48.102. REPORTS OF INVESTIGATIONS IN SCHOOLS. (a) The department shall send a written report of the department's investigation of alleged abuse, neglect, or exploitation of an adult with a disability at a school, as appropriate, to the Texas Education Agency, the agency responsible for teacher certification, the local school board or the school's governing body, and the school principal or director, unless the principal or director is alleged to have committed the abuse, neglect, or exploitation. The entity to which the report is sent shall take appropriate action.

(b) On request, the department shall provide a copy of the report of the investigation to the person who is alleged to have suffered the abuse, neglect, or exploitation, to the legal guardian of that person, and to the person alleged to have committed the abuse, neglect, or exploitation.

(c) The report of the investigation shall be edited to protect the identity of the person who made the report under Section 48.051.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 12, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.262, eff.

April 2, 2015.

Sec. 48.103. NOTIFICATION OF LICENSING OR CONTRACTING AGENCY.

Text of subsection effective until April 1, 2025

(a) Except as otherwise provided by Subsection (c), on determining after an investigation that an elderly person or a person with a disability has been abused, exploited, or neglected by an employee of a home and community support services agency licensed under Chapter 142, Health and Safety Code, the department shall:

(1) notify the state agency responsible for licensing the home and community support services agency of the department's determination;

(2) notify any health and human services agency, as defined by Section 531.001, Government Code, that contracts with the home and community support services agency for the delivery of health care services of the department's determination; and

(3) provide to the licensing state agency and any contracting health and human services agency access to the department's records or documents relating to the department's investigation.

Text of subsection effective on April 1, 2025

(a) Except as otherwise provided by Subsection (c), on determining after an investigation that an elderly person or a person with a disability has been abused, exploited, or neglected by an employee of a home and community support services agency licensed under Chapter 142, Health and Safety Code, the department shall:

(1) notify the state agency responsible for licensing the home and community support services agency of the department's determination;

(2) notify any health and human services agency, as defined by Section 521.0001, Government Code, that contracts with the home and community support services agency for the delivery of health care services of the department's determination; and

(3) provide to the licensing state agency and any contracting health and human services agency access to the department's records or documents relating to the department's investigation.

(b) Providing access to a confidential record or document under

this section does not constitute a waiver of confidentiality.

(c) This section does not apply to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider, as defined by Section 48.251, is or may be alleged to have committed the abuse, neglect, or exploitation. An investigation described by this subsection is governed by Subchapter F.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 13, eff. Sept. 1, 1999.
Renumbered from Sec. 48.0381 by Acts 2001, 77th Leg., ch. 75, Sec. 1, eff. May 14, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.263, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 13, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.94, eff. April 1, 2025.

SUBCHAPTER D. INVESTIGATIONS BY ALL AGENCIES

Sec. 48.151. ACTION ON REPORT. (a) Not later than 24 hours after the department receives a report of an allegation of abuse, neglect, or exploitation under Section 48.051, the department shall initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for protective services, unless the department determines that the report:

(1) is frivolous or patently without a factual basis; or

(2) does not concern abuse, neglect, or exploitation, as those terms are defined by rules adopted by the executive commissioner under Section 48.002(c), except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a) shall be used.

(b) The executive commissioner shall adopt rules for conducting investigations under this chapter.

(c) The executive commissioner by rule may assign priorities and prescribe investigative procedures for conducting investigations according to the degree of severity and immediacy of the alleged harm

to the individual. Notwithstanding Subsection (a), the priorities and procedures may provide that an investigation is not required to be initiated within 24 hours in all cases.

(d) The department shall prepare and keep on file a report of each investigation conducted by the department.

(e) This section does not apply to investigations conducted under Subchapter F.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 5.04, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 303, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 56, eff. Sept. 1, 1997. Renumbered from Sec. 48.037 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 14, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.264, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 14, eff. September 1, 2015.

Sec. 48.152. INVESTIGATION. (a) An investigation by the department or a state agency shall include an interview with the elderly person or person with a disability, if appropriate, and with persons thought to have knowledge of the circumstances. If the elderly person or person with a disability refuses to be interviewed or cannot be interviewed because of a physical or mental impairment, the department shall continue the investigation by interviewing other persons thought to have knowledge relevant to the investigation.

(b) The investigation may include an interview with an alleged juvenile perpetrator of the alleged abuse, neglect, or exploitation.

(c) The department or state agency may conduct an interview under this section in private or may include any person the department or agency determines is necessary.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 15, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.265, eff. April 2, 2015.

Sec. 48.1521. INVESTIGATION OF COMPLEX CASES. (a) The department shall develop and implement a system to ensure that, to the greatest extent possible, investigations conducted by the department that involve especially complex issues of abuse, neglect, or exploitation, such as issues associated with identity theft and other forms of financial exploitation, are:

(1) assigned to personnel who have experience and training in those issues; and

(2) monitored by a special task unit for complex cases.

(b) Each county with a population of 250,000 or more shall appoint persons to serve as standing members of a special task unit to monitor cases that arise in the county and require monitoring as provided by Subsection (a). The standing members of each special task unit must include:

(1) a provider of mental health services or aging services or a representative of a nonprofit entity serving persons with disabilities;

(2) a representative of a law enforcement agency; and

(3) a legal expert.

(c) In addition to the standing members specified by Subsection (b), the special task unit:

(1) must include, for purposes of monitoring a particular case, the caseworker on the case and the caseworker's supervisor; and

(2) may include a financial forensics expert and any other person with expertise that would be useful in monitoring a particular case.

(d) The department shall develop and make available to each county described by Subsection (b) a manual to assist the county in establishing and operating the special task unit required by this section. The manual must describe:

(1) the purpose and potential benefits of the unit;

(2) a description of the monitoring process the unit is expected to follow and potential problems the unit may encounter;

(3) the composition and administration of the unit; and

(4) the department's criteria for selecting cases to be monitored by the unit.

(e) Before the special task unit makes a recommendation that a guardian be appointed for a person in a case being monitored by the unit, the unit shall thoroughly consider all less-restrictive alternatives for legal intervention in the case.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.10(a), eff. September 1, 2005.

Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if during the course of the department's or another state agency's investigation of reported abuse, neglect, or exploitation, including an investigation of reported abuse, neglect, or exploitation under Subchapter F, a caseworker of the department or other state agency, as applicable, or the caseworker's supervisor has cause to believe that the elderly person or person with a disability has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Sections 22.04 and 32.55, Penal Code, the caseworker or supervisor shall:

(1) immediately notify an appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department; and

(2) provide the law enforcement agency with a copy of the investigation report of the department or other state agency, as applicable, in a timely manner.

(b) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a person with a disability who is a resident or client of a state supported living center or the ICF-IID component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, in addition to the report to the appropriate law enforcement agency required by Subsection (a), the caseworker shall immediately notify the commission's office of inspector general and promptly provide the commission's office of

inspector general with a copy of the department's investigation report.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.11, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 28, eff. June 11, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 11, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.266, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 1076 (S.B. 576), Sec. 1, eff. September 1, 2023.

Sec. 48.1523. MANAGEMENT REVIEW FOLLOWING CERTAIN INVESTIGATIONS. If the department receives and investigates a report made under Section 48.051, the subject of which is a person with respect to whom the department received and investigated two previous reports under that section and closed those investigations, an adult protective services supervisor shall:

(1) classify the case as a recidivist case;

(2) review the reports and investigation files concerning that person; and

(3) assist the caseworker and supervisor investigating the third report in developing a long-term plan for resolving the issues involved in the case.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.12, eff. September 1, 2005.

Sec. 48.153. ACCESS TO INVESTIGATION. (a) To implement an investigation of reported abuse, neglect, or exploitation, the probate court, or the county court when no probate court exists, may authorize entry of the place of residence of the elderly person or person with a disability.

(b) A peace officer shall accompany and assist the person making a court-ordered entry under this section, if in the opinion of the court such action is necessary.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.267, eff. April 2, 2015.

Sec. 48.154. ACCESS TO RECORDS OR DOCUMENTS. (a) The department or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the department's or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly person or person with a disability. A person, agency, or institution that has a record or document that the department or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the department or state agency that requested the record or document.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial record from a person, agency, or institution or a medical record, including a mental health record, from a hospital or health care provider if the request for a record is made in the course of an investigation by the department.

(c) If the department or another state agency cannot obtain access to a record or document that is necessary to properly conduct an investigation or to perform another duty under this chapter, the department or state agency may petition the probate court or the statutory or constitutional county court having probate jurisdiction for access to the record or document.

(d) On good cause shown, the court shall order the person, agency, or institution who has a requested record or document to allow the department or state agency to have access to that record or document under the terms and conditions prescribed by the court.

(e) A person, agency, or institution who has a requested record or document is entitled to notice and a hearing on a petition filed under this section.

(f) Access to a confidential record under this section does not constitute a waiver of confidentiality.

Added by Acts 1993, 73rd Leg., ch. 651, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 303, Sec. 10, eff. Sept. 1, 1995. Renumbered from Sec. 48.0385 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 16, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 12, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.268, eff. April 2, 2015.

Sec. 48.155. INTERFERENCE WITH INVESTIGATION OR SERVICES PROHIBITED. (a) A person, including a guardian and notwithstanding Section 1151.001, Estates Code, may not interfere with:

(1) an investigation by the department or by another protective services agency of alleged abuse, neglect, or exploitation of an elderly person or person with a disability; or

(2) the provision of protective services to an elderly person or person with a disability.

(b) The department or another protective services agency may petition the appropriate court to enjoin any interference with:

(1) an investigation of alleged abuse, neglect, or exploitation; or

(2) the provision of protective services such as removal of the elderly person or person with a disability to safer surroundings or safeguarding the person's resources from exploitation.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 59, eff. Sept. 1, 1997. Renumbered from Sec. 48.103 by Acts 1999, 76th Leg., ch. 907, Sec. 17, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.269, eff. April 2, 2015.

Sec. 48.156. AGENCY REPORTS. A protective services agency shall make reports relating to its provision of protective services as the department or a court may require.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept.

1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Renumbered from Sec. 48.057 by Acts 1999, 76th Leg., ch. 907, Sec. 18, eff. Sept. 1, 1999.

Sec. 48.159. INTERNAL REVIEW OF DEPARTMENT INVESTIGATION. The department shall establish procedures for conducting an internal review of completed investigations conducted by the department under this chapter to:

(1) determine whether information obtained during the intake process was sufficient and accurate;

(2) assess whether telephone calls were appropriately routed;

(3) assess whether investigations were appropriately classified and prioritized;

(4) evaluate the case reports for any special issues or requirements;

(5) assess whether appropriate law enforcement agencies were notified of any suspected criminal conduct; and

(6) identify other relevant information to enable the department to take any corrective action necessary to improve the process of conducting investigations under this chapter.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.13, eff. September 1, 2005.

SUBCHAPTER E. PROVISION OF SERVICES; EMERGENCY PROTECTION

Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as otherwise provided, this subchapter does not apply to an investigation conducted under Subchapter F.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 21, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.270, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 15, eff. September 1, 2015.

Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY. (a) In an investigation the department or state agency, as appropriate, shall determine:

(1) whether the person needs protective services from the department;

(2) what services are needed;

(3) whether services are available from the department, from the state agency, or in the community and how they can be provided;

(4) whether the person, acting alone, would be capable of obtaining needed services and could bear the cost or would be eligible for services from the department or state agency;

(5) whether a caretaker would be willing to provide services or would agree to their provision;

(6) whether the elderly person or person with a disability desires the services;

(7) whether the person needs legal intervention to resolve the person's abuse, neglect, or exploitation and, if so, what type of intervention is needed; and

(8) other pertinent data.

(b) If the department or state agency, as appropriate, determines under Subsection (a)(1) that a person needs protective services, the department or agency shall, in determining how those services can be provided as required by Subsection (a)(3), determine whether the person may be eligible for community-based long-term services and supports and whether those services and supports are available. If the person is eligible for those services and supports, but the services and supports are not immediately available, the department or state agency shall ensure that the person is placed on an appropriate waiting list for the services and supports and that the person's abuse, neglect, or exploitation is resolved before the department closes the case.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 21, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.14, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.271, eff. April 2, 2015.

Sec. 48.203. VOLUNTARY PROTECTIVE SERVICES. (a) An elderly person or person with a disability may receive voluntary protective services if the person requests or consents to receive those services.

(b) The elderly person or person with a disability who receives protective services shall participate in all decisions regarding the person's welfare, if able to do so.

(c) The least restrictive alternatives should be made available to the elderly person or person with a disability who receives protective services.

(d) Except as provided by Section 48.208, if an elderly person or person with a disability withdraws from or refuses consent to voluntary protective services, the services may not be provided.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Renumbered from Sec. 48.059 by Acts 1999, 76th Leg., ch. 907, Sec. 22, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.272, eff. April 2, 2015.

Sec. 48.204. AGENCY POWERS. A protective services agency may furnish protective services to an elderly person or person with a disability with the person's consent or to a relative or caretaker of the person on behalf of the person with the relative's or caregiver's consent or, if the elderly person or person with a disability lacks the capacity to consent, without that person's consent as provided by this chapter.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 12, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 23, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.273, eff. April 2, 2015.

Sec. 48.205. PROVISION OF SERVICES. (a) Subject to the availability of funds, the department shall provide direct protective services or contract with protective services agencies for the provision of those services.

(b) The department shall use existing resources and services of public and private agencies in providing protective services. If the department does not have existing resources to provide direct protective services to elderly persons or persons with disabilities, the department, subject to the availability of funds, shall contract with protective services agencies for the provision of those services, especially to persons residing in rural or remote areas of this state or not previously served by the department.

(c) The department and law enforcement officials, courts, and agencies shall cooperate when providing protective services.

(d) The responsibilities prescribed by this chapter are exclusive of those designated to other state or federal agencies authorized or required by law to provide protective services to elderly persons or persons with disabilities determined to be in the state of abuse, neglect, or exploitation.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 905, Sec. 5, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 303, Sec. 4, eff. Sept. 1, 1995. Renumbered from Sec. 48.021 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 24, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.15, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.274, eff. April 2, 2015.

Sec. 48.206. COST OF SERVICES. If the elderly person or person

with a disability receiving the protective services is determined to be financially able to contribute to the payments for those services, the provider shall receive a reasonable reimbursement from the person's assets.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Renumbered from Sec. 48.058 by Acts 1999, 76th Leg., ch. 907, Sec. 25, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.275, eff. April 2, 2015.

Sec. 48.207. OBJECTION TO MEDICAL TREATMENT. This chapter does not authorize or require any medical treatment of a person who objects on the grounds that he is an adherent or member of a recognized church or religious denomination the tenets and practice of which may include reliance solely upon spiritual means through prayer for healing.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Renumbered from Sec. 48.102 by Acts 1999, 76th Leg., ch. 907, Sec. 11, eff. Sept. 1, 1999.

Sec. 48.208. EMERGENCY ORDER FOR PROTECTIVE SERVICES. (a) For purposes of this section, a person lacks the capacity to consent to receive protective services if, because of mental or physical impairment, the person is incapable of understanding the nature of the services offered and agreeing to receive or rejecting protective services.

(b) If the department determines that an elderly person or person with a disability is suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety, that the person lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the probate or statutory or constitutional county court that has probate jurisdiction in the county in which the person resides for an emergency order authorizing protective services.

(c) The petition shall be verified and shall include:

(1) the name, age, and address of the elderly person or person with a disability who needs protective services;

(2) the nature of the abuse, neglect, or exploitation;

(3) the services needed; and

(4) a medical report signed by a physician stating that the person is suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety and stating that the person is physically or mentally incapable of consenting to services unless the court finds that an immediate danger to the person's health or safety exists and there is not sufficient time to obtain the medical report.

(c-1) Notwithstanding Subsection (c)(4), in lieu of a medical report described by Subsection (c)(4), the petition may include an assessment of the health status of the elderly person or person with a disability as described by Subsection (c-2) or psychological status as described by Subsection (c-3), or a medical opinion of the person's health status as described by Subsection (c-4), if the department determines, after making a good faith effort, that a physician from whom the department may obtain the medical report is unavailable. The department shall ensure that the person who performs an assessment of the health or psychological status of the elderly person or person with a disability has training and experience in performing the applicable assessment.

(c-2) Except as provided by Subsection (c-4), an assessment of the health status of the elderly person or person with a disability must be performed by a physician assistant or advanced practice nurse. The person performing the assessment shall sign a report stating:

(1) that the elderly person or person with a disability is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety;

(2) whether the elderly person or person with a disability has provided the person's medical history to the physician assistant or advanced practice nurse, as applicable; and

(3) that in the professional opinion of the physician assistant or advanced practice nurse, as applicable, the issuance of an emergency order authorizing protective services without the consent of the elderly person or person with a disability is necessary under the circumstances.

(c-3) An assessment of the psychological status of the elderly person or person with a disability must be performed by a licensed

professional counselor, licensed psychologist, or master social worker who has training and expertise in issues related to abuse, neglect, and exploitation. The person performing the assessment shall sign a report stating:

(1) that the elderly person or person with a disability is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety; and

(2) that in the professional opinion of the licensed professional counselor, licensed psychologist, or master social worker, as applicable, the issuance of an emergency order authorizing protective services without the consent of the elderly person or person with a disability is necessary under the circumstances.

(c-4) A registered nurse may perform a nursing assessment of the health status of the elderly person or person with a disability. If the registered nurse, based on the registered nurse's professional nursing judgment, determines that the person is likely to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety, the registered nurse shall report that assessment to a physician. After the registered nurse reports the assessment, the physician shall sign a written opinion stating whether:

(1) the elderly person or person with a disability is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety; and

(2) the issuance of an emergency order authorizing protective services without the consent of the elderly person or person with a disability is necessary under the circumstances.

(c-5) The physician may use the registered nurse's assessment of the health status of the elderly person or person with a disability as the basis of the physician's professional opinion under Subsection (c-4).

(d) On finding that there is reasonable cause to believe that abuse, neglect, or exploitation presents a threat to life or physical safety for the elderly person or person with a disability and that the person lacks capacity to consent to services, the court may:

(1) order removal of the person to safer surroundings;

(2) order medical services; and

(3) order other available services necessary to remove conditions creating the threat to life or physical safety, including the services of law enforcement officers or emergency medical

services personnel.

(d-1) If the court renders an order that is based on a petition including an assessment under Subsection (c-2) or (c-3) or a medical opinion under Subsection (c-4), the court shall order that the elderly person or person with a disability be examined by a physician not later than 72 hours after the time the provision of protective services begins. After performing the examination, the physician shall sign and submit to the court a medical report stating the physician's opinion whether the person is:

(1) suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety; and

(2) physically or mentally incapable of consenting to services.

(e) The emergency order expires on the earlier of the end of the 10th day after the date the order is rendered or the end of the 10th day after the date the person was removed to safer surroundings if the emergency order was rendered subsequent to the removal of the person to safer surroundings in accordance with Subsection (h), unless:

(1) the emergency order terminates as provided by Subsection (e-1);

(2) the 10-day period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to 4 p.m. on the first succeeding business day; or

(3) the court extends the order as provided by Subsection (e-2).

(e-1) An emergency order that was rendered based on a petition that included an assessment under Subsection (c-2) or (c-3) or a medical opinion under Subsection (c-4) immediately terminates if the medical report issued under Subsection (d-1) states the physician's opinion that the elderly person or person with a disability:

(1) is not suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety; or

(2) is physically or mentally capable of consenting to services.

(e-2) The court, after notice and a hearing, may extend an emergency order issued under this section, other than an emergency order that terminated as provided under Subsection (e-1), for a period of not more than 30 days after the date the original emergency order for protective services would have expired under Subsection

(e). The court, after notice and a hearing and for good cause shown, may grant a second extension of an emergency order of not more than an additional 30 days. The court may not grant more than two extensions of the original emergency order. An extension order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on petition of the department, the incapacitated person, or any person interested in the person's welfare.

(f) Any medical facility, emergency medical services provider, or physician who provides treatment to or who transports an elderly person or person with a disability pursuant to an emergency order under Subsection (d) or an emergency authorization under Subsection (h) is not liable for any damages arising from the treatment or transportation, except those damages resulting from the negligence of the facility, provider, or physician.

(g) The court shall appoint an attorney ad litem to represent the elderly person or person with a disability in any proceeding brought by the department under this section. A reasonable fee, as determined by the court, shall be paid to the attorney ad litem from the general fund of the county.

(h) If the department cannot obtain an emergency order under this section because the court is closed on a Saturday, Sunday, or legal holiday or after 5 p.m., the department may remove or authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly person or person with a disability to safer surroundings, authorize medical treatment, or authorize or provide other available services necessary to remove conditions creating the threat to life or physical safety. The department must obtain an emergency order under this section not later than 4 p.m. on the first succeeding business day after the date on which protective services are provided. If the department does not obtain an emergency order, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's place of residence in the state, or to another suitable place.

(i) If the department's removal of a person from the person's place of residence under this section results in that residence being vacant, the department shall notify the appropriate law enforcement

agency of the vacancy to facilitate the law enforcement agency's monitoring of the residence.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 568, Sec. 4, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 569, Sec. 1, eff. June 18, 1987; Acts 1991, 72nd Leg., ch. 213, Sec. 2 to 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 303, Sec. 13, eff. Sept. 1, 1995. Renumbered from Sec. 48.061 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 75, Sec. 2, eff. May 14, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.16, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 15, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 116 (S.B. 1236), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 887 (H.B. 908), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.276, eff. April 2, 2015.

Sec. 48.209. REFERRAL FOR GUARDIANSHIP SERVICES. (a) The department shall refer an individual to the Department of Aging and Disability Services for guardianship services under Subchapter E, Chapter 161, if the individual is:

(1) a minor in the conservatorship of the department who:

(A) is 16 years of age or older; and

(B) the department has reason to believe will, because of a physical or mental condition, be substantially unable to provide for the individual's own food, clothing, or shelter, to care for the individual's own physical health, or to manage the individual's own financial affairs when the individual becomes an adult; or

(2) an elderly person or person with a disability who:

(A) has been found by the department to be in a state of abuse, neglect, or exploitation; and

(B) the department has reason to believe is an

incapacitated person as defined by Section 1002.017(2), Estates Code.

(b) Notwithstanding Subsection (a), if a less restrictive alternative to guardianship is appropriate and available for the individual, the department shall pursue that alternative instead of making a referral to the Department of Aging and Disability Services for guardianship services.

(c) The department and the Department of Aging and Disability Services shall enter into a memorandum of understanding that sets forth in detail the roles and duties of each agency regarding the referral for guardianship services under Subsection (a) and the provision of guardianship services to individuals under Subchapter E, Chapter 161.

(d) Nothing in this section shall prohibit the department from also making a referral of an individual to a court having probate jurisdiction in the county where the individual is domiciled or found, if the court has requested the department to notify the court of any individuals who may be appropriate for a court-initiated guardianship proceeding under Chapter 1102, Estates Code. In making a referral under this subsection and if requested by the court, the department shall, to the extent allowed by law, provide the court with all relevant information in the department's records relating to the individual. The court, as part of this process, may not require the department to:

(1) perform the duties of a guardian ad litem or court investigator as prescribed by Chapter 1102, Estates Code; or

(2) gather additional information not contained in the department's records.

(e) The department may not be appointed to serve as temporary or permanent guardian for any individual.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.042, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1039, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 52, 53, eff. Sept. 1, 1997. Renumbered from Sec. 48.0215 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 27, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.02, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.277, eff.

April 2, 2015.

Sec. 48.210. REPRESENTATION. (a) Except as provided by Subsection (b), the prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding under this chapter unless the representation would be a conflict of interest.

(b) In a county having a population of more than 2.8 million, the prosecuting attorney representing the state in civil cases in the county court shall represent the department in any proceeding under this chapter unless the representation would be a conflict of interest.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 568, Sec. 3, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 303, Sec. 11, eff. Sept. 1, 1995. Renumbered from Sec. 48.040 by Acts 1999, 76th Leg., ch. 907, Sec. 28, eff. Sept. 1, 1999.

Sec. 48.211. REPORT TO GUARDIANSHIP COURT. If the elderly person or person with a disability has a guardian, a written notification of the findings of the investigation shall be sent to the court to which the guardian is accountable.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 29, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.278, eff. April 2, 2015.

SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

Sec. 48.251. DEFINITIONS. (a) In this subchapter:

(1) "Behavioral health services" means:

(A) mental health services, as defined by Section 531.002, Health and Safety Code; and

(B) interventions provided to treat chemical dependency, as defined by Section 461A.002, Health and Safety Code.

(1-a) "Commission" means the Health and Human Services Commission, notwithstanding Section 48.0021.

(2) "Community center" has the meaning assigned by Section 531.002, Health and Safety Code.

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission, notwithstanding Section 48.0021.

(3) "Facility" means:

(A) a facility listed in Section 532.001(b) or 532A.001(b), Health and Safety Code, as described by those sections, or a person contracting with a health and human services agency to provide inpatient mental health services;

(B) a facility licensed under Chapter 252, Health and Safety Code;

(C) a residential child-care facility as defined by Section 42.002 at which an elderly person or an adult with a disability resides or is in the facility's care; and

(D) a home and community support services agency licensed under Chapter 142, Health and Safety Code.

Text of subdivision effective until April 1, 2025

(4) "Health and human services agency" has the meaning assigned by Section 531.001, Government Code.

Text of subdivision effective on April 1, 2025

(4) "Health and human services agency" has the meaning assigned by Section 521.0001, Government Code.

(5) "Home and community-based services" means services provided in the home or community in accordance with 42 U.S.C. Section 1315, 42 U.S.C. Section 1315a, 42 U.S.C. Section 1396a, or 42 U.S.C. Section 1396n, and as otherwise provided by department rule.

(6) "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(7) "Local mental health authority" has the meaning assigned by Section 531.002, Health and Safety Code.

Text of subdivision effective until April 1, 2025

(8) "Managed care organization" has the meaning assigned by Section 533.001, Government Code.

Text of subdivision effective on April 1, 2025

(8) "Managed care organization" has the meaning assigned by

Section 540.0001, Government Code.

Text of subdivision effective until April 1, 2025

(9) "Provider" means:

(A) a facility;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in Paragraphs (A)-(E); and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

Text of subdivision effective on April 1, 2025

(9) "Provider" means:

(A) a facility;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in Paragraphs (A)-(E); and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Section 546.0101, Government Code.

(b) The executive commissioner by rule shall adopt definitions of "abuse," "neglect," "exploitation," and "an individual receiving services" for purposes of this subchapter and investigations conducted under this subchapter.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 31, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.280, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.95, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 15, eff. September 1, 2023.

Sec. 48.252. INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION BY PROVIDER. (a) Repealed by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(3), eff. September 1, 2023.

(b) The department may not investigate under this subchapter reports of abuse, neglect, or exploitation alleged or suspected to have been committed by a provider that is operated, licensed, certified, or registered by a state agency that has authority under this chapter or other law to investigate reports of abuse, neglect, or exploitation of an individual by the provider. The department shall forward any report of abuse, neglect, or exploitation alleged or suspected to have been committed by a provider described by this subsection to the commission for investigation.

Text of subsection effective until April 1, 2025

(c) The commission shall receive and investigate under this subchapter reports of abuse, neglect, or exploitation of:

(1) an individual who lives in a residence that is owned, operated, or controlled by a provider who provides home and community-based services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, regardless of whether the individual is receiving services under that waiver program from the provider; and

(2) an elderly person or an adult with a disability who lives in or is in the care of a residential child-care facility as defined by Section 42.002.

Text of subsection effective on April 1, 2025

(c) The commission shall receive and investigate under this subchapter reports of abuse, neglect, or exploitation of:

(1) an individual who lives in a residence that is owned, operated, or controlled by a provider who provides home and community-based services under the home and community-based services waiver program described by Section 542.0001(11)(B), Government Code, regardless of whether the individual is receiving services under that waiver program from the provider; and

(2) an elderly person or an adult with a disability who lives in or is in the care of a residential child-care facility as defined by Section 42.002.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1281, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 48.081 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 32, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 30, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.281, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.96, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 16, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(3), eff. September 1, 2023.

Sec. 48.253. ACTION ON REPORT. (a) On receipt by the commission of a report of alleged abuse, neglect, or exploitation under this subchapter, the commission shall initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for emergency protective services, unless the commission, in accordance with rules adopted under this

subchapter, determines that the report:

(1) is frivolous or patently without a factual basis; or

(2) does not concern abuse, neglect, or exploitation.

(b) After receiving a report that alleges that a provider is or may be the person who committed the alleged abuse, neglect, or exploitation, the commission shall notify the provider in accordance with rules adopted by the executive commissioner.

(c) The provider identified under Subsection (b) shall:

(1) cooperate completely with an investigation conducted under this subchapter; and

(2) provide the commission complete access during an investigation to:

(A) all sites owned, operated, or controlled by the provider; and

(B) clients and client records.

(d) The executive commissioner shall adopt rules governing investigations conducted under this subchapter.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 17, eff. September 1, 2023.

Sec. 48.2535. FORWARDING CERTAIN REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT. On receipt by the department of a report of alleged abuse or exploitation under this subchapter that the department believes constitutes an offense under Section 32.55, Penal Code, the department shall immediately notify an appropriate law enforcement agency, regardless of whether the report alleges conduct that constitutes abuse or exploitation for purposes of this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1076 (S.B. 576), Sec. 2, eff. September 1, 2023.

Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) The executive

commissioner by rule shall establish procedures for the commission to use to forward a copy of the initial intake report and a copy of the completed provider investigation report relating to alleged or suspected abuse, neglect, or exploitation to the appropriate provider.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(4), eff. September 1, 2023.

(c) A provider that receives the findings of an investigation from the commission report under Subsection (a) shall forward the findings to the managed care organization with which the provider contracts for services for the alleged victim.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 31, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.282, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 18, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(4), eff. September 1, 2023.

Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS SUBCHAPTER. (a) The executive commissioner shall adopt rules to:

(1) prioritize investigations conducted under this subchapter with the primary criterion being whether there is a risk that a delay in the investigation will impede the collection of evidence in that investigation; and

(2) provide for an appeals process by the commission for the alleged victim of abuse, neglect, or exploitation.

(b) A confirmed investigation finding by the commission may not be changed by the administrator of a facility, a community center, a local mental health authority, or a local intellectual and developmental disability authority.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 32, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.283, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 19, eff. September 1, 2023.

Sec. 48.256. SHARING PROVIDER INFORMATION. (a) The executive commissioner shall adopt rules that prescribe the appropriate manner in which managed care organizations provide the commission with information necessary to facilitate the:

(1) identification of individuals receiving services from providers; and

(2) notification of providers by the commission.

(b) The executive commissioner shall adopt rules requiring a provider to provide information necessary to facilitate the:

(1) identification by the commission of individuals receiving services from providers; and

(2) notification of providers by the commission.

Text of subsection effective until April 1, 2025

(c) A provider of home and community-based services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, shall post in a conspicuous location inside any residence owned, operated, or controlled by the provider in which home and community-based waiver services are provided, a sign that states:

(1) the name, address, and telephone number of the provider;

(2) the effective date of the provider's contract with the commission to provide home and community-based services; and

(3) the name of the legal entity that contracted with the commission to provide those services.

Text of subsection effective on April 1, 2025

(c) A provider of home and community-based services under the home and community-based services waiver program described by Section 542.0001(11)(B), Government Code, shall post in a conspicuous location inside any residence owned, operated, or controlled by the provider in which home and community-based waiver services are provided, a sign that states:

(1) the name, address, and telephone number of the provider;

(2) the effective date of the provider's contract with the commission to provide home and community-based services; and

(3) the name of the legal entity that contracted with the commission to provide those services.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 33, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.284, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.97, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 20, eff. September 1, 2023.

Sec. 48.257. RETALIATION PROHIBITED. (a) A provider of home and community-based services may not retaliate against a person for filing a report or providing information in good faith relating to the possible abuse, neglect, or exploitation of an individual receiving services.

(b) This section does not prohibit a provider of home and community-based services from terminating an employee for a reason other than retaliation.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff.

September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Sec. 48.258. TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) The commission shall develop and implement a system to track reports and investigations under this subchapter.

(b) To facilitate implementation of the system, the commission shall use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 21, eff. September 1, 2023.

SUBCHAPTER G. INVESTIGATIONS IN CERTAIN FACILITIES

Sec. 48.301. INVESTIGATION OF REPORTS IN OTHER STATE FACILITIES. (a) If the department receives a report of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability receiving services in a facility operated, licensed, certified, or registered by a state agency, the department shall refer the report to that agency.

(a-1) This subchapter does not apply to a report of suspected abuse, neglect, or exploitation of an individual receiving services from a provider as described by Subchapter F.

(b) A state agency that receives a report under this section shall make a thorough investigation promptly after receiving a report that an elderly person or person with a disability has been or may be abused, neglected, or exploited in a facility operated, licensed, certified, or registered by the agency. The primary purpose of the investigation is the protection of the elderly person or person with a disability.

(c) Each state agency that may receive reports under this section, or the person responsible for adopting rules for that state

agency, shall adopt rules relating to the investigation and resolution of reports received under this section.

(d) The state agency shall prepare and keep on file a complete written report of each investigation conducted by the state agency under this section.

(e) A state agency that receives a complaint relating to an investigation conducted under this section shall refer the complaint to its governing board, if applicable, or other person or entity designated to receive such complaints for review and appropriate action.

(f) The executive commissioner by rule shall adopt minimum standards for the investigation of suspected abuse, neglect, or exploitation of an elderly person or person with a disability under this section.

(g) A rule or policy adopted by or for a state agency under Subsection (c) must be consistent with the minimum standards adopted by the executive commissioner.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 34, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 355, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 34, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.285, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 9, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 17, eff. September 1, 2015.

Sec. 48.302. APPROVAL OF RULES. The executive commissioner shall review and approve the rules required by Section 48.301(c) to ensure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 34, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.286, eff. April 2, 2015.

Sec. 48.303. MEMORANDUM OF UNDERSTANDING. (a) The department shall enter into a memorandum of understanding with each state agency that operates, licenses, certifies, or registers a facility in which elderly persons or persons with disabilities are located that clarifies each agency's responsibility under this chapter.

(b) Not later than the last month of each state fiscal year, the department and the other agencies shall review and update the memorandum.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 5.01(a), eff. Sept. 1, 1987. Renumbered from Sec. 48.022 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 35, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.287, eff. April 2, 2015.

Sec. 48.304. STATISTICS. (a) A state agency that operates, licenses, certifies, or registers a facility in which elderly persons or persons with disabilities are located shall compile and maintain statistics on the incidence of abuse, neglect, or exploitation of elderly persons or persons with disabilities that occurs in the facilities. A state agency is not required to compile and maintain statistics on the incidence of abuse, neglect, or exploitation of an individual with a disability described under Section 48.252.

(b) The agency shall make the statistics available to the commission on request.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 36, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.288, eff. April 2, 2015.

SUBCHAPTER I. EMPLOYEE MISCONDUCT REGISTRY

Sec. 48.401. DEFINITIONS. In this subchapter:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code;

(B) a person exempt from licensing under Section 142.003(a)(19) or (20), Health and Safety Code;

(C) a facility licensed under Chapter 252, Health and Safety Code; or

(D) a provider investigated by the department under Subchapter F or under Section 261.404, Family Code.

(2) "Commissioner" means the commissioner of the Department of Family and Protective Services.

Text of subdivision effective until April 1, 2025

(3) "Employee" means a person who:

(A) works for:

(i) an agency; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code;

(B) provides personal care services, active treatment, or any other services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Section 261.404, Family Code, or an individual receiving services through the consumer-directed service option, as defined by Section 531.051, Government Code; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

Text of subdivision effective on April 1, 2025

(3) "Employee" means a person who:

(A) works for:

(i) an agency; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Section 546.0101, Government Code;

(B) provides personal care services, active treatment, or any other services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized

under Section 261.404, Family Code, or an individual receiving services through the consumer-directed service option, as defined by Section 546.0101, Government Code; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Section 546.0101, Government Code.

(4) "Employee misconduct registry" means the employee misconduct registry established under Chapter 253, Health and Safety Code.

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to an individual receiving agency services;

(B) sexual abuse of an individual receiving agency services;

(C) financial exploitation of an individual receiving agency services in an amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual receiving agency services.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 13.001, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 10, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 10, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 18, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 4, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.98, eff. April 1, 2025.

Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. The executive commissioner may adopt rules to further define reportable conduct.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.289, eff. April 2, 2015.

Sec. 48.403. FINDING. After an investigation and following the procedures of this subchapter, if the department confirms or validates the occurrence of reportable conduct by an employee, the department shall immediately forward the finding to the Department of Aging and Disability Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 16, eff. June 19, 2009.

Sec. 48.404. NOTICE OF FINDING. (a) The department shall give written notice of the department's findings under Section 48.403 to the employee. The notice must include:

(1) a brief summary of the department's findings;

(2) a statement of the employee's right to a hearing on the department's findings; and

(3) a statement notifying the employee that if the employee fails to timely respond to the notice, the finding that the employee committed the reportable conduct will be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

(b) Not later than the 30th day after the date the notice is received, the employee notified may accept the finding of the department made under Section 48.403 or may make a written request for a hearing on that finding.

(c) If the employee notified of the violation accepts the finding of the department or fails to timely respond to the notice, the commissioner or the commissioner's designee shall issue an order approving the finding and ordering that the department's findings be forwarded to the Department of Aging and Disability Services to be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 17, eff. June 19, 2009.

Sec. 48.405. HEARING; ORDER. (a) If the employee requests a hearing, the department or its designee shall:
(1) set a hearing;
(2) give written notice of the hearing to the employee; and
(3) designate an administrative law judge to conduct the hearing.
(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue an order regarding the occurrence of the reportable conduct.
(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1056, Sec. 17, eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 18, eff. June 19, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 16, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 17, eff. September 1, 2011.

Sec. 48.406. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 48.405 to the employee alleged to have committed the reportable conduct. The notice must include:
(1) separate statements of the findings of fact and conclusions of law;
(2) a statement of the right of the employee to judicial review of the order; and
(3) a statement that the reportable conduct will be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code, if:
(A) the employee does not request judicial review of the finding; or

(B) the finding is sustained by the court.

(b) Not later than the 30th day after the date the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the finding, the department shall send a record of the department's findings to the Department of Aging and Disability Services to record in the employee misconduct registry under Section 253.007, Health and Safety Code.

(c) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall forward the finding of reportable conduct to the Department of Aging and Disability Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 19, eff. June 19, 2009.

Sec. 48.407. INFORMAL PROCEEDINGS. The executive commissioner by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 20, eff. June 19, 2009.

Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT REGISTRY. (a) When the department forwards a finding of reportable conduct to the Department of Aging and Disability Services for recording in the employee misconduct registry, the department shall provide the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of

the agency, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If a governmental agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may send to the Department of Aging and Disability Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date of the act, and a description of the act.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 21, eff. June 19, 2009.

SUBTITLE E. SERVICES FOR FAMILIES
CHAPTER 51. FAMILY VIOLENCE CENTERS

Sec. 51.001. PURPOSE. The purpose of this chapter is to promote development of and access to locally based and supported nonprofit services for victims of family violence throughout the state.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 636, Sec. 1, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 6, Sec. 2, eff. Sept. 1, 2001.

Sec. 51.002. DEFINITIONS. In this chapter:

Text of subdivision effective until September 1, 2024

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

Text of subdivision effective on September 1, 2024

(1) "Dating relationship" has the meaning assigned by Section 71.0021(b), Family Code.

Text of subdivision effective on September 1, 2024

(1-a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an individual against

another individual with whom the actor has or has had a dating relationship and that is:

(A) intended to result in physical harm, bodily injury, assault, or sexual assault;

(B) a threat that reasonably places an individual in fear of imminent physical harm, bodily injury, assault, or sexual assault; or

(C) intended to inflict emotional harm, including an act of emotional abuse.

Text of subdivision effective on September 1, 2024

(1-b) "Family" has the meaning assigned by Section 71.003, Family Code.

Text of subdivision effective until September 1, 2024

(2) "Family violence" means an act by a member of a family or household against another member of the family or household that:

(A) is intended to result in physical harm, bodily injury, or assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, or assault, but does not include defensive measures to protect oneself; or

(B) is intended to inflict emotional harm, including an act of emotional abuse.

Text of subdivision effective on September 1, 2024

(2) "Family violence" means:

(A) an act by a member of a family or household against another member of the family or household that:

(i) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; or

(ii) is intended to inflict emotional harm, including an act of emotional abuse; or

(B) dating violence.

(3) "Family violence center" includes a family violence shelter center and a family violence nonresidential center.

(4) "Family violence nonresidential center" means a program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive nonresidential services to victims of family violence.

(5) "Family violence shelter center" means a program that:

(A) is operated by a public or private nonprofit organization; and

(B) provides comprehensive residential and nonresidential services to victims of family violence.

(6) "Family violence special project" means a project that:

(A) is operated by a public or private nonprofit organization; and

(B) provides at least one specialized family violence service.

(7) "Household" has the meaning assigned by Section 71.005, Family Code.

(8) "Member of a household" has the meaning assigned by Section 71.006, Family Code.

Text of subdivision effective on September 1, 2024

(8-a) "Trauma-informed" in regard to a service or service model means that the service or service model is provided in a manner that recognizes and responds to the signs and symptoms of trauma in, and the risks of trauma to, a victim of family violence to better support the victim and promote the victim's choice, trust, dignity, connection, and healing.

Text of subdivision effective until September 1, 2024

(9) "Victim of family violence" means:

(A) an adult member of a family or household who is subjected to an act of family violence; or

(B) a member of the household of the adult described by Paragraph (A), other than the member of the household who commits the act of family violence, including an act of emotional abuse.

Text of subdivision effective on September 1, 2024

(9) "Victim of family violence" means:

(A) an adult member of a family or household who is subjected to an act of family violence;

(B) a member of the household of the adult described by Paragraph (A), other than the member of the household who commits the act of family violence, including an act of emotional abuse; or

(C) an individual who is subjected to an act of dating violence.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 636, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 561, Sec. 36, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 6, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 164 (S.B. 1841), Sec. 1, eff. September 1, 2024.

Sec. 51.0021. FAMILY VIOLENCE SERVICES PLAN. (a) The commission shall develop and maintain a plan for delivering family violence services in this state.

(b) In developing the plan under this section, the commission shall consider the geographic distribution of services and the need for services, including the need for increasing services for underserved populations.

Added by Acts 2001, 77th Leg., ch. 6, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.290, eff. April 2, 2015.

Sec. 51.003. CONTRACTS. (a) The commission shall contract for services with family violence centers with consideration given to the plan for family violence services under Section 51.0021. These contracts are to expand existing family violence center services and may not result in reducing financial support a family violence center receives from another source. The contracts shall not provide for more than 75 percent of the cost of the family violence center program. The commission shall develop a declining scale of state financial support for family violence centers, declining over a six-year period from the initiation of each individual contract, with no more than 50 percent of a family violence center program's funding to be provided by the state after the sixth year. The balance each year shall be provided from other sources. The executive commissioner may adopt rules which will allow exceptions to the above scale in individual instances when a family violence center shall demonstrate that exigent circumstances require such a waiver.

(b) The commission may contract with family violence special projects for services. The commission shall consider the plan for family violence services under Section 51.0021 in contracting with family violence special projects.

(c) The commission shall contract statewide for activities that support and advance the work of family violence centers. Activities contracted for under this subsection must include the provision of technical assistance and training for family violence centers. The commission may contract for the provision of public education, consultation to the commission, research, evaluation, and liaison and training for other professionals who work with victims of family violence, including professionals in the criminal justice, medical, and social services fields, and for community or civic groups.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1131 , Sec. 3, eff. June 19, 2015.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 19, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 636, Sec. 3, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 6, Sec. 5, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.291, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1131 (S.B. 59), Sec. 3, eff. June 19, 2015.

Sec. 51.004. CONTRACT ELIGIBILITY; PROCUREMENT; APPLICATION PROCESS.

Text of subsection effective until September 1, 2024

(a) To be eligible for a contract under Section 51.003(a), a family violence shelter center must:

(1) provide temporary lodging and direct delivery of services for adults and their dependents;

(2) have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least one year before the date on which the contract is awarded;

(3) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the

plan for family violence services under Section 51.0021; and

(4) submit a contract application on forms prescribed by the commission.

Text of subsection effective on September 1, 2024

(a) To be eligible for a contract under Section 51.003(a), a family violence shelter center must:

(1) provide temporary lodging and direct delivery of services for adults and their dependents;

(2) have been in actual operation offering shelter services 24 hours a day with a capacity for not less than five persons for at least one year before the date on which the contract is awarded;

(3) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021;

(4) demonstrate that the center is using a voluntary and trauma-informed advocacy service model that respects an individual's needs; and

(5) submit a contract application on forms prescribed by the commission.

Text of subsection effective until September 1, 2024

(b) To be eligible for a contract under Section 51.003(a), a family violence nonresidential center must:

(1) provide, as its primary purpose, direct delivery of services to adult victims of family violence;

(2) demonstrate a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging;

(3) have been operating and providing comprehensive services, including the services described by Section 51.005(b)(3), to victims of family violence for at least one year before the date on which the contract is awarded;

(4) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021; and

(5) submit a contract application on forms prescribed by the commission.

Text of subsection effective on September 1, 2024

(b) To be eligible for a contract under Section 51.003(a), a family violence nonresidential center must:

(1) provide, as its primary purpose, direct delivery of services to adult victims of family violence;

(2) demonstrate a system of referring victims of family violence to at least one family violence shelter center or other safe temporary lodging;

(3) have been operating and providing comprehensive services, including the services described by Section 51.005(b)(3), to victims of family violence for at least one year before the date on which the contract is awarded;

(4) demonstrate that the center, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021;

(5) demonstrate that the center is using a voluntary and trauma-informed advocacy service model that respects an individual's needs; and

(6) submit a contract application on forms prescribed by the commission.

(c) The commission shall consider the following factors in awarding contracts under Section 51.003(a):

(1) the family violence center's eligibility for and use of funds from the federal government, philanthropic organizations, and voluntary sources;

(2) community support for the family violence center, as evidenced by financial contributions from civic organizations, local governments, and individuals;

(3) evidence that the family violence center provides services that encourage self-sufficiency and effectively uses community resources;

(4) evidence of involvement with local law enforcement officials; and

(5) support for the family violence center through volunteer work, especially volunteer effort by persons who have been victims of family violence.

(d) To be eligible for a contract under Section 51.003(b), a family violence special project must:

(1) provide:

(A) community education relating to family violence; or

(B) direct delivery of services for adult victims of family violence or their children;

(2) demonstrate a system of referring victims of family

violence to at least one family violence shelter center or other safe temporary lodging;

(3) demonstrate that the project, through the services it provides, is addressing a need in the community consistent with the plan for family violence services under Section 51.0021;

(4) demonstrate that the underserved or special population to be served by the project is involved in the project's design and implementation, if applicable; and

(5) submit a contract application on forms prescribed by the commission.

(e) The commission shall use a noncompetitive procurement procedure to award a contract under Section 51.003(a) or (b) if the commission determines that there is no competition between eligible family violence centers for services or a service area. If the commission determines that there is competition between eligible family violence centers for services or a service area, the commission shall award a contract under Section 51.003(a) or (b) through an application process that considers the eligibility requirements and other factors provided in this section and allocates the money in accordance with this chapter and with consideration of the family violence services plan under Section 51.0021.

(f) The commission shall consult with a statewide family violence organization to develop the application process described in Subsection (e) but may not involve the organization in the contract selection or award process.

(g) To the extent of any conflict between this section and any other law, including Chapter 2155, Government Code, this section controls.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 636, Sec. 4, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 6, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.292, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1131 (S.B. 59), Sec. 1, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1131 (S.B. 59), Sec. 2, eff. June 19, 2015.

Acts 2023, 88th Leg., R.S., Ch. 164 (S.B. 1841), Sec. 2, eff. September 1, 2024.

Sec. 51.005. CONTRACT SPECIFICATIONS. (a) The commission shall contract only with public or private nonprofit organizations that fulfill the requirements of this chapter.

Text of subsection effective until September 1, 2024

(b) The contracts shall require the persons operating a family violence center to:

(1) make a quarterly and an annual financial report on a form prescribed by the commission;

(2) cooperate with inspections the commission makes to ensure services standards and fiscal responsibility; and

(3) provide, as its primary purpose, services to victims of family violence that include:

(A) 24-hour-a-day shelter, except that a family violence nonresidential center may provide access to a 24-hour-a-day shelter;

(B) a 24-hour-a-day crisis hotline, except that a family violence nonresidential center may provide access to a 24-hour-a-day crisis hotline operated by another organization located in the nonresidential center's service area;

(C) access to emergency medical care;

(D) intervention services, including safety planning, understanding and support, information, education, referrals, and other resource assistance;

(E) access to emergency transportation;

(F) legal assistance in the civil and criminal justice systems, including:

(i) identifying individual needs, legal rights, and legal options; and

(ii) providing support and accompaniment in pursuing those options;

(G) information about educational arrangements for children;

(H) information about training for and seeking employment;

(I) cooperation with criminal justice officials;

(J) community education;

(K) a referral system to existing community services; and

(L) a volunteer recruitment and training program.

Text of subsection effective on September 1, 2024

(b) The contracts shall require the persons operating a family violence center to:

(1) make a quarterly and an annual financial report on a form prescribed by the commission;

(2) cooperate with inspections the commission makes to ensure services standards and fiscal responsibility; and

(3) provide, as its primary purpose, voluntary and trauma-informed services to victims of family violence that include:

(A) 24-hour-a-day shelter, except that a family violence nonresidential center may provide access to a 24-hour-a-day shelter;

(B) a 24-hour-a-day crisis hotline, except that a family violence nonresidential center may provide access to a 24-hour-a-day crisis hotline operated by another organization located in the nonresidential center's service area;

(C) access to emergency medical care;

(D) crisis and intervention services, including understanding and support, information, education, referrals, and other resource assistance;

(E) access to emergency transportation;

(F) advocacy focused on:

(i) economic and housing stability;

(ii) physical, behavioral, and mental health;

(iii) the needs of children who are victims and the children of victims; and

(iv) the civil and criminal legal systems, including:

(a) identifying individual needs, legal rights, and legal options; and

(b) providing support and accompaniment in pursuing those options;

(G) ongoing safety planning services in collaboration with the self-stated priorities and needs of the victim of family violence;

(H) community education regarding family violence and family violence prevention efforts;

(I) counseling services; and

(J) peer support services led by victims of family violence, including activities and other efforts that facilitate connections and the creation of community among victims of family violence.

Text of subsection effective on September 1, 2024

(b-1) The contracts shall:

(1) specify that participation in services by a victim of family violence is voluntary; and

(2) prohibit the persons operating a family violence center from requiring a victim of family violence to participate in other services as a condition of receiving shelter.

(c) The contracts may require the persons operating a family violence center to use intake and case study forms. Forms required shall be developed by the commission with consultation as outlined in Section 51.008.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 636, Sec. 5, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 6, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.293, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 164 (S.B. 1841), Sec. 3, eff. September 1, 2024.

Sec. 51.0051. MAXIMIZING FEDERAL FUNDING FOR PROGRAMS TO BENEFIT VICTIMS OF FAMILY VIOLENCE. To maximize the state's receipt of federal matching funds for emergency assistance under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.):

(1) the commission shall:

(A) ensure that a contract made under Section 51.003 includes provisions necessary to maximize federal funding for services for victims of family violence; and

(B) file amendments to the state's plan for aid and services to needy families with children under Part A, Title IV, Social Security Act (42 U.S.C. Section 601 et seq.), that are necessary to maximize federal funding; and

(2) the executive commissioner shall establish by rule any reporting procedures that federal law requires as a condition of receiving federal matching funds.

Added by Acts 1995, 74th Leg., ch. 609, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 655, Sec. 6.11, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.294, eff. April 2, 2015.

Sec. 51.006. REPORT. (a) Not later than November 1 of each even-numbered year, the commission shall publish a report that summarizes reports from family violence centers under contract with the commission and that analyzes the effectiveness of the contracts authorized by this chapter. The reports must include information on the expenditure of funds authorized under this chapter, the services provided, the number of persons for whom a service was provided, and any other information relating to the provision of family violence services. Copies of the report shall be submitted to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the standing committees of the senate and house of representatives having primary jurisdiction over the commission.

(b) The report required under Subsection (a) may be published electronically on the commission's Internet website. The commission shall notify each agency entitled to receive a copy of the report that the report is available on the commission's Internet website on or before the date the report is due.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 636, Sec. 5, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 693, Sec. 6, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 6, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 72, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.295, eff. April 2, 2015.

Sec. 51.007. CONFIDENTIALITY. The commission may not disclose any information that would identify:

(1) a particular family violence center location;

(2) a board member of a family violence center or family violence special project; or

(3) a person working at or receiving services through a family violence center or family violence special project.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 636, Sec. 5, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 6, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 161, Sec. 1, eff. May 27, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.296, eff. April 2, 2015.

Sec. 51.008. CONSULTATIONS. In implementing this chapter, the commission shall consult with individuals and groups having knowledge of and experience in the problems of family violence.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.297, eff. April 2, 2015.

Sec. 51.009. GRANTS AND FUNDS. The commission may seek other funds that may be available for the contracts authorized by this chapter.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.298, eff. April 2, 2015.

Sec. 51.010. RULES. The executive commissioner may adopt rules necessary to implement this chapter.

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.299, eff. April 2, 2015.

Sec. 51.011. FUNDING. (a) In order to finance the program created by this chapter, the commission is authorized to solicit and receive grants of money from either private or public sources, including appropriation by the legislature from the general revenue fund of the State of Texas, and in that regard it is hereby declared that the need for and importance of this program require priority and preferential consideration in appropriation.

(b) The commission may use not more than six percent of the annual legislative appropriation to the family violence program for administration of this chapter and not more than six percent annually for the contracts described in Section 51.003(c).

Added by Acts 1981, 67th Leg., p. 3313, ch. 867, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 2001, 77th Leg., ch. 6, Sec. 10, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.300, eff. April 2, 2015.

Sec. 51.012. COORDINATION OF SERVICES. The commission and the Department of Family and Protective Services shall coordinate the provision of violence prevention services for children.

Added by Acts 2001, 77th Leg., ch. 6, Sec. 11, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.301, eff. April 2, 2015.

CHAPTER 51A. NOTICE TO VICTIMS OF FAMILY VIOLENCE, STALKING, HARASSMENT, OR TERRORISTIC THREAT

Sec. 51A.001. DEFINITIONS. In this chapter:

(1) "Family" has the meaning assigned by Section 71.003,

Family Code.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Harassment" means any conduct that constitutes an offense under Section 42.07, Penal Code.

(4) "Household" has the meaning assigned by Section 71.005, Family Code.

(5) "Member of a household" has the meaning assigned by Section 71.006, Family Code.

(6) "Stalking" means any conduct that constitutes an offense under Section 42.072, Penal Code.

(7) "Terroristic threat" means any conduct that constitutes an offense under Section 22.07, Penal Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 24 (S.B. 1325), Sec. 2, eff. May 13, 2023.

Sec. 51A.002. APPLICABILITY TO VICTIMS OF CERTAIN OFFENSES. This chapter applies to a victim of family violence, stalking, harassment, or terroristic threat, including:

(1) an adult member of a family or household who is subjected to an act of family violence;

(2) a member of the household of the adult described by Subdivision (1), other than the member of the household who commits the act of family violence; and

(3) a person who is subjected to conduct constituting stalking, harassment, or terroristic threat.

Added by Acts 2023, 88th Leg., R.S., Ch. 24 (S.B. 1325), Sec. 2, eff. May 13, 2023.

Sec. 51A.003. NOTICE TO VICTIMS. (a) The commission by rule shall adopt a written notice to be provided to victims of family violence, stalking, harassment, or terroristic threat to assist those victims in obtaining services. The commission shall use best practices in creating the written notice.

(b) The notice adopted under this section must include the following in both English and Spanish:

(1) a statement that it is a criminal offense for any

person, including a member of the family or former member of the family, to cause physical injury or harm to a victim or to engage in conduct constituting stalking, harassment, or terroristic threat toward a victim;

(2) a list of agencies and social organizations that the victim may contact for assistance with safety planning, shelter, or protection;

(3) contact information for:

(A) the National Domestic Violence Hotline;

(B) victim support services at the Department of Public Safety; and

(C) the commission's family violence program; and

(4) information regarding the legal rights of a victim, including information regarding:

(A) the filing of criminal charges and obtaining a protective order or a magistrate's order for emergency protection; and

(B) the ability of a tenant who is a victim of family violence to vacate a dwelling and terminate a residential lease.

(c) The notice adopted under this section may include any other information the commission considers useful to a victim of family violence, stalking, harassment, or terroristic threat.

(d) The commission shall periodically update the notice required under this section.

(e) The commission shall make the notice adopted under this section available on the commission's Internet website in both English and Spanish.

Added by Acts 2023, 88th Leg., R.S., Ch. 24 (S.B. 1325), Sec. 2, eff. May 13, 2023.

CHAPTER 52. INFORMATION RELATING TO SCHOOL AGE PREGNANCY

Sec. 52.001. SCHOOL AGE PREGNANCY PREVENTION. (a) The department is designated as the state agency to collect statistical information on school age pregnancy and disburse such statistics to the proper state agencies.

(b) The department shall:

(1) set guidelines for keeping statistical information on school age pregnancy and parenthood by agencies, organizations, and

individuals so that the information may be evaluated and compared;

(2) collect information relating to school age pregnancy as considered necessary by the department, including information on educational programs provided in the public school system relating to family life education, abstinence from sex, and sexually transmitted diseases;

(3) serve as a statewide clearinghouse on information relating to school age pregnancy and education on abstinence from sex and make it available to the legislature, other state agencies, and private entities that are involved in preventing school age pregnancy, addressing the problems caused by school age pregnancy, or encouraging abstinence from sex;

(4) analyze and evaluate the data collected on and studies relating to school age pregnancy and make the analysis and information readily available to the legislature, relevant agencies, and the public; and

(5) make recommendations to the relevant state agencies or the legislature to prevent duplication of services.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(115), eff. June 17, 2011.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 1.19, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 17, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1050 (S.B. 71), Sec. 23(11), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 19, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(115), eff. June 17, 2011.

TITLE 3. FACILITIES AND SERVICES FOR CHILDREN
SUBTITLE A. FACILITIES FOR CHILDREN
CHAPTER 62. DETENTION HOMES AND PARENTAL SCHOOLS

Sec. 62.001. DETENTION HOMES AND PARENTAL SCHOOLS. (a) Any county may establish detention homes and parental schools for juveniles. The commissioners court may appropriate necessary funds

from the general fund of the county to establish, equip, and maintain detention homes and parental schools for the juveniles of the county.

(b) Any county in which no detention home or parental school exists may appropriate funds necessary to pay for the proper care and training of its juveniles in the detention home or parental school of any county that agrees to receive the juveniles. The cost of the care shall be agreed on by the commissioners courts of the counties concerned.

(c) If, in the opinion of the commissioners court, it is necessary to levy a special tax to establish and maintain a detention home or parental school or to pay for the care and training of juveniles as provided by Subsection (b) of this section, the commissioners court may hold a special election on the question of levying the tax. If a petition signed by 10 percent of the qualified voters of the county is submitted requesting a special election, the commissioners court shall hold the special election.

(d) All elections held under Subsection (c) of this section shall be governed by the general laws relating to elections for the levy of special school taxes.

Acts 1979, 66th Leg., p. 2391, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Sec. 62.002. MULTICOUNTY FACILITIES. (a) The purpose of this section is to enable counties jointly to provide better probation services and detention and diagnostic facilities for juveniles than the counties, acting singly, would be able to provide.

(b) The commissioners courts of two or more counties may enter into cooperative agreements to acquire, maintain, and operate detention and diagnostic facilities for juveniles. The counties may maintain, improve, and operate the property so acquired and all improvements thereon, and may sell or lease all or any part of the property and improvements in accordance with the terms of the cooperative agreement. The counties may accept any donation or gift made for the purpose of acquiring, maintaining, or operating the juvenile facilities.

(c) In accordance with the terms of the cooperative agreement, each county which is a party to the agreement may issue the bonds of the county as provided by Chapter 1301, Government Code, for the

purpose of acquiring, maintaining, and operating the facilities for juveniles.

(d) The commissioners courts of two or more counties may enter into cooperative agreements to provide probation services for juveniles. The cooperative agreement shall set forth in detail how the probation services are to be provided and financed.

Acts 1979, 66th Leg., p. 2388, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.281, eff. Sept. 1, 2001.

CHAPTER 63. RESIDENTIAL FACILITIES FOR CERTAIN DELINQUENT CHILDREN

Sec. 63.001. DEFINITIONS. In this chapter:

(1) "Juvenile" means a person from the age of 10 to 18 years who has been found to have engaged in delinquent conduct by a court of competent jurisdiction.

(2) "Facility" means a residential facility for the placement of juveniles for periods up to one year in length.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.003, eff. September 1, 2009.

Sec. 63.002. AUTHORITY TO OPERATE FACILITY. A county or a combination of counties may, and they are hereby authorized to, elect to own, establish, operate, and staff a long-term residential facility for the detention of juvenile offenders.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.004, eff. September 1, 2009.

Sec. 63.003. GOVERNMENTAL NATURE OF FACILITY. The facility is an agency of the state, a governmental unit, and a unit of local government as defined and specified by Chapters 101 and 102, Civil Practice and Remedies Code, and a local government as defined by

Section 791.003, Government Code.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.005, eff. September 1, 2009.

Sec. 63.004. BOARD OF TRUSTEES: SINGLE COUNTY FACILITY. The facility shall be governed by a board of trustees. The board of trustees for a facility created by a single county may be the commissioners court of the forming county, or the commissioners court may appoint from the qualified voters of the region to be served a board of trustees consisting of no less than five nor more than nine persons. If the board of trustees is appointed from the qualified voters of the region to be served, the terms of the members thereof shall be staggered by appointing not less than one-third nor more than one-half of the members for one year, or until their successors are appointed, and by appointing the remaining members for two years, or until their successors are appointed. Thereafter, all appointments shall be made for a two-year period, or until their successors are appointed. Appointments made to fill unexpired terms shall be for the period of the unexpired term, or until a successor is appointed.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.006, eff. September 1, 2009.

Sec. 63.005. BOARD OF TRUSTEES: COMBINATION OF COUNTIES FACILITY. A facility created by a combination of counties shall be governed by a board of trustees. Such board of trustees shall consist of not less than five nor more than nine members selected from the commissioners court of such counties, or such commissioners court may jointly appoint a board of trustees from among the qualified voters of the region to be served in the manner described above.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.007, eff. September 1, 2009.

Sec. 63.006. BOARD MEETINGS. The board of trustees shall make rules to govern the holding of regular and special meetings. All meetings of the board of trustees shall be open to the public to the extent required by and in accordance with the general law of this state requiring meetings of governmental bodies to be open to the public. Should the board of trustees discuss any juvenile either in residence in the facility, being transferred to the facility, or who has formerly been a resident of the facility, such discussion shall be conducted in closed session, and such discussion, or any record thereof, shall not be open to the public.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.008, eff. September 1, 2009.

Sec. 63.007. QUORUM. A majority of the membership of the board of trustees shall constitute a quorum for the transaction of business.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.009, eff. September 1, 2009.

Sec. 63.008. FACILITY ADMINISTRATION. The board of trustees is responsible for the administration of the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.010, eff. September 1, 2009.

Sec. 63.009. BOARD POLICIES. The board of trustees shall develop policies consistent with the rules, regulations, and standards of the Texas Juvenile Justice Department.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.011, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 119, eff. September 1, 2015.

Sec. 63.010. STANDARDIZED PERSONNEL QUALIFICATIONS. The board of trustees shall standardize qualifications for personnel positions in the community center consistent with those established by the Texas Juvenile Justice Department.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.012, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 120, eff. September 1, 2015.

Sec. 63.011. ADVISORY COMMITTEES. The board of trustees may appoint advisory committees to advise the board on matters relating to the administration of the facility. No such committee shall consist of less than five members, and the appointment of such committees shall not relieve the board of trustees of final responsibility and accountability as provided in this chapter.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.013, eff. September 1, 2009.

Sec. 63.012. FACILITY EXECUTIVE DIRECTOR: APPOINTMENT. The board of trustees shall appoint an executive director for the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.014, eff. September 1, 2009.

Sec. 63.013. FACILITY EXECUTIVE DIRECTOR: DELEGATED POWERS. The executive director shall have the powers delegated by and be subject to the policy direction of the board of trustees.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.015, eff. September 1, 2009.

Sec. 63.014. FACILITY PERSONNEL. The board of trustees or the director may employ and train personnel for the administration of the various programs and services of the facility. The employee shall be provided the appropriate rights, privileges, and benefits available to the employees of the governing bodies that establish the facility. The board of trustees is authorized to provide workers' compensation benefits in the manner provided by Chapter 504, Labor Code.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.64, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.016, eff. September 1, 2009.

Sec. 63.015. COUNTY CONTRIBUTIONS. Each county participating in the creation of the facility may contribute lands, buildings, personnel, and funds for the administration of the various programs and services of the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.017, eff. September 1, 2009.

Sec. 63.016. GIFTS, GRANTS, AND DONATIONS. The board of trustees of the facility may accept gifts, grants, and donations of money, personal property, and real property for use in the administration of its programs and services.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.018, eff. September 1, 2009.

Sec. 63.017. SINGLE COUNTY FACILITY: ACQUISITION OF REAL PROPERTY; RULES FOR ADMISSION; RATES CHARGED. (a) In the instance of a facility formed by a single county, the commissioners court of the creating county may acquire, through gift, purchase, condemnation, or any other method, real property for the purpose of locating a facility on such property. Such property may be acquired outside of the boundaries of the creating county if, in the opinion of the commissioners court of the forming county, there will exist a demand for the services to be provided by the facility in the county in which the facility is to be located in addition to any need which may already exist within the boundaries of the creating county.

(b) The board of trustees for a facility created by a single county shall establish rules and regulations for the admission of juveniles into the facility from other than the forming county. Such rules may allow that the forming county shall have priority in the placement of its juveniles into the facility. The board may establish a rate of charges to be paid by the county of origin of the juvenile being placed into the facility, and such rates may be reduced for those juveniles being admitted from the county which created the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.019, eff. September 1, 2009.

Sec. 63.018. COMBINATION OF COUNTIES FACILITY: ACQUISITION OF

REAL PROPERTY; RULES FOR ADMISSION; RATES CHARGED. (a) In the instance of a facility being created by two or more counties, the commissioners courts of the forming counties may acquire, by gift, purchase, condemnation, or other means, real property for the purpose of locating the facility on such property. The method of acquisition and the amount of cost sharing between those counties shall be negotiated among the forming counties and reduced to contract. Such property to be acquired shall be situated within the boundaries of any one of the creating counties.

(b) The board of trustees for a facility created by an organizational component of two or more counties shall establish rules and regulations for the admission of juveniles who are residents of other than the creating counties. The board may establish a rate of charges to be paid by the county of origin of the juvenile being placed into the facility, and those rates may be reduced for juveniles being admitted from a county that was part of the organizational component that created the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.020, eff. September 1, 2009.

Sec. 63.019. RULES REGULATING ADMINISTRATION OF SERVICES. The board of trustees may make rules consistent with those promulgated by the Texas Juvenile Justice Department and the policies, principles, and standards provided in this Act to regulate the administration of services by the facility to the juveniles placed into the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.021, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 121, eff. September 1, 2015.

Sec. 63.020. MINIMUM SERVICES TO BE PROVIDED. The board of trustees will provide at least the following services to a juvenile who is placed into the facility:

(1) Education. Upon admission into the facility, the juvenile will be tested to determine his educational level, and a program of instruction consistent with the juvenile's educational level shall be developed to educate the juvenile. Education shall be given to each juvenile admitted in the facility consistent with the standards set forth by the Texas Juvenile Justice Department.

(2) Counseling. Upon admission into the facility, the juvenile shall be examined by a trained psychologist or psychiatrist to determine if the juvenile would benefit from a program of counseling. At the completion of such examination, the findings of the psychologist or psychiatrist shall be forwarded to the director in the form of a recommendation that counseling be given to the juvenile, along with a program of counseling to be adhered to by the staff of the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.022, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 122, eff. September 1, 2015.

Sec. 63.021. LIST OF SERVICES. The board of trustees of the facility shall devise a list of services that it will offer to each juvenile who is placed into the facility for the use by the court in making its determination as to whether the juvenile would benefit by admission into the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.023, eff. September 1, 2009.

Sec. 63.022. FACILITY RESEARCH AND RECRUITMENT AND TRAINING OF PERSONNEL; CONTRACTS AUTHORIZED. The facility may engage in research and in recruitment and training of personnel in support of its programs and services and may make contracts for those purposes.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.024, eff. September 1, 2009.

Sec. 63.023. FEES FOR SERVICES. The board of trustees for the facility may charge reasonable fees to cover costs for services provided, except where prohibited by other service contracts or by law.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.025, eff. September 1, 2009.

Sec. 63.024. PAYMENT OF FEES BY COUNTY. In collecting fees for the treatment rendered juveniles, the director will bill directly that county in which the juvenile resided prior to his admission to the facility. The county that receives such a bill from the director must pay that bill within 45 days of its receipt.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.026, eff. September 1, 2009.

Sec. 63.025. ADMISSION OF AND PAYMENT FOR SERVICES PROVIDED TO JUVENILES RESIDING IN ANOTHER COUNTY. The board of trustees may provide that juveniles who reside outside the boundaries of a county that participated in the formation of the facility may be admitted to the facility. However, the charges to the county of residence of the juvenile may be billed at a rate higher than that charged to a county that participated in the formation of the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.027, eff. September 1, 2009.

Sec. 63.026. COURT-ORDERED ADMISSION. A juvenile may be admitted upon the order of a court of competent jurisdiction that finds that the juvenile has engaged in delinquent conduct and is in need of supervision or is experiencing a dysfunctional home environment and will benefit from placement in the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.028, eff. September 1, 2009.

Sec. 63.027. LIMITATION ON PERIOD FOR JUVENILE'S RESIDENCE. The court will include in its order the length of time that the juvenile will reside in the facility, which will not exceed a period of one year. At the conclusion of the one-year period, the court will make a determination as to whether the juvenile will benefit from further residence within the facility. The court may then order the juvenile to be placed into the facility for additional time not to exceed one year.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.029, eff. September 1, 2009.

Sec. 63.028. MODIFICATION OF COURT ORDER. The court may modify any order by which a juvenile is placed in the facility upon recommendation of the director of the facility.

Added by Acts 1989, 71st Leg., ch. 564, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.030, eff. September 1, 2009.

SUBTITLE B. SERVICES FOR CHILDREN

CHAPTER 72. HEAD START PROGRAMS

Sec. 72.001. DEFINITION. In this chapter, "Head Start program" means the federal program established under the Head Start Act (42

U.S.C. Section 9831 et seq.) and its subsequent amendments.

Added by Acts 1999, 76th Leg., ch. 402, Sec. 2, eff. Aug. 30, 1999.

Sec. 72.002. EDUCATIONAL SERVICES. To promote the comprehensive health, safety, and well-being of children receiving child care through Head Start programs, a program provider shall provide educational services to children participating in the program so that each child is prepared to enter school and is ready to learn after completing the program. The educational services provided must include components designed to enable a child to:

(1) develop phonemic, print, and numeracy awareness, including the ability to:

(A) recognize that letters of the alphabet are a special category of visual graphics that can be individually named;

(B) recognize a word as a unit of print;

(C) identify at least 10 letters of the alphabet; and

(D) associate sounds with written words;

(2) understand and use language to communicate for various purposes;

(3) understand and use an increasingly complex and varied vocabulary;

(4) develop and demonstrate an appreciation of books; and

(5) progress toward mastery of the English language, if the child's primary language is a language other than English.

Added by Acts 1999, 76th Leg., ch. 402, Sec. 2, eff. Aug. 30, 1999.

Sec. 72.003. COORDINATION OF SERVICES. (a) In a manner consistent with federal law and regulations, each Head Start and Early Head Start program provider shall coordinate with the Texas Workforce Commission and local workforce development boards regarding subsidized child-care services.

(b) The coordination required by this section must include coordinating to ensure, to the extent practicable, that full-day, full-year child-care services are available to meet the needs of low-income parents who are working or participating in workforce training or workforce education. The coordination may also include:

(1) cooperating with the Texas Workforce Commission

regarding studies conducted by the commission;

(2) collecting data necessary to determine a child's eligibility for subsidized child-care services or a Head Start or Early Head Start program, when permissible;

(3) cooperating to provide for staff training and professional development activities;

(4) identifying and developing methods for the collaborative provision of subsidized child-care services and Head Start or Early Head Start program services, including:

(A) sharing facilities or staff; and

(B) increasing the enrollment capacity of those programs;

(5) identifying child-care facilities located in close proximity to Head Start or Early Head Start programs; and

(6) coordinating transportation between child-care facilities identified under Subdivision (5) and a Head Start or Early Head Start program.

Added by Acts 2001, 77th Leg., ch. 616, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 73. EARLY CHILDHOOD INTERVENTION SERVICES

Sec. 73.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Department" means the Department of Assistive and Rehabilitative Services.

(3) "Developmental delay" means a significant variation in normal development as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

(A) cognitive development;

(B) physical development;

(C) communication development;

(D) social or emotional development; or

(E) adaptive development.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 1983, 68th Leg., p.1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 923, Sec.

1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.304, eff. April 2, 2015.

Sec. 73.003. STRATEGIC PLAN. The department shall develop and implement a strategic plan for a statewide system of early childhood intervention services, as required by Part C, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.), and its subsequent amendments, to ensure that the provisions of this chapter are properly implemented by the agencies affected.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.305, eff. April 2, 2015.

Sec. 73.004. ADVISORY COMMITTEE. (a) The governor shall appoint an advisory committee to assist the department in the performance of its duties under this chapter. The executive commissioner shall establish the size and composition of the committee by rule, consistent with federal regulations and state rules. The commissioner of assistive and rehabilitative services may also appoint ex officio members to serve for specific purposes to assist the department in the performance of its duties under this chapter.

(b) The committee shall meet and serve in accordance with department rules, but the committee shall elect its own presiding officer. The committee may be divided into regional committees to assist the department in community-level program planning and implementation under this chapter.

(c) The advisory committee is not subject to Chapter 2110, Government Code.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art.

12, Sec. 1, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 5.18, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 923, Sec. 6, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.306, eff. April 2, 2015.

Sec. 73.0041. ADVISORY COMMITTEE DUTIES. The advisory committee established under Section 73.004 shall perform the duties and responsibilities required of an advisory committee under 20 U.S.C. Section 1441 and its subsequent amendments.

Added by Acts 1997, 75th Leg., ch. 923, Sec. 7, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.307, eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 73.0045. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner of assistive and rehabilitative services by this chapter or another law conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.06, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.308, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.99, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 73.0045. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner of assistive and rehabilitative services by this chapter or another law conflicts with any of the following provisions of the

Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;
(2) Section 524.0101;
(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.06, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.308, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.99, eff. April 1, 2025.

Sec. 73.005. ISSUES RELATED TO INTERVENTION SERVICES; LEGISLATIVE PROPOSALS. (a) The executive commissioner with the advice of the advisory committee shall address contemporary issues affecting intervention services in the state including:

(1) successful intervention strategies;
(2) personnel preparation and continuing education;
(3) screening services;
(4) day or respite care services;
(5) public awareness; and
(6) contemporary research.

(b) The executive commissioner with the advice of the advisory committee shall advise the legislature on legislation that is needed to maintain a statewide system of quality intervention services for children with developmental delay who are under three years of age and the families of those children. The department may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 923, Sec. 8, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.309, eff. April 2, 2015.

Sec. 73.0051. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT UNDER CHAPTER. (a) The department is the lead agency designated by the governor under Part C, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.), and its subsequent amendments, for the administration, supervision, and monitoring of a statewide comprehensive system of early intervention services that will ensure that all infants and toddlers in this state who are below the age of three and have developmental needs or are at risk of developmental delay receive services that are provided in partnership with their families and in the context of their local community.

(b) The executive commissioner by rule shall:

(1) provide for compliance with the terms and provisions of applicable federal and state laws in the administration of programs and the delivery of services under this chapter;

(2) establish a program to monitor fiscal and program implementation under this chapter; and

(3) establish appropriate sanctions for providers who fail to comply with statutory and regulatory fiscal and program requirements under this chapter.

(c) The department may enter into, administer, and monitor contracts with providers for programs and projects authorized under this chapter.

(d) The department shall periodically monitor program activities and fiscal performance of the entities funded under this chapter to:

(1) determine compliance with federal and state requirements;

(2) assess the performance of the entities in identifying children under three years of age with developmental delay in populations at risk of developmental delay; and

(3) issue reports regarding program monitoring.

(e) The department may apply for and accept gifts, grants, and donations from public and private sources for use in programs authorized under this chapter. The department shall deposit money received under this section into the state treasury.

(f) The department shall:

(1) cooperate with the commission and other local, state,

and federal agencies in the strategic planning, funding, delivery, and monitoring of services authorized under this chapter; and

(2) jointly with the Department of Family and Protective Services develop and implement policies applicable to providers of services authorized under this chapter in situations involving service recipients who are vulnerable to abuse or neglect.

(g) The department shall make periodic reports relating to the department's functions under this chapter as required by law to other agencies, the legislature, appropriate committees, the governor, and the United States secretary of education.

(h) The department shall ensure that all programs and department functions under this chapter are conducted in a nondiscriminatory manner.

(i) The department shall include parents when deciding the appropriate treatment for the needs of their child or children under this chapter. After establishing an initial and ongoing treatment plan for a child, the department shall ensure that the child's parents continue to be included in all decisions relating to the services provided to the child, including the determination of the most appropriate setting for the child to receive services. The department shall ensure that a child's parents receive written notification of the progress toward meeting the child's treatment plan. The notification must include details to assist parents in meeting the child's treatment goals.

(j) The department shall provide services under this chapter in the child's natural environments but must make alternatives available when early intervention cannot be achieved satisfactorily in a natural environment.

(k) The department shall cooperate with the commission to select an appropriate automated system or systems currently used by a state agency to plan, manage, and maintain records of client services under this chapter. If cost-effective, the department may use the automated system or systems to carry out other appropriate department administrative functions under this chapter.

(l) The executive commissioner by rule may establish a system of payments by families of children receiving services under this chapter, including a schedule of sliding fees, in a manner consistent with 34 C.F.R. Sections 303.13(a)(3), 303.520, and 303.521.

Added by Acts 1997, 75th Leg., ch. 923, Sec. 9, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 33, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.114, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.310, eff. April 2, 2015.

Sec. 73.006. REIMBURSEMENT FOR EXPENSES. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(63), eff. April 2, 2015.

(b) The members of the advisory committee are entitled to reimbursement for reasonable and necessary expenses incurred in the performance of advisory committee duties, including reimbursement for child care.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(63), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(63), eff. April 2, 2015.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 747, Sec. 31, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 8.142, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 923, Sec. 11, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.311, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(63), eff. April 2, 2015.

Sec. 73.007. PUBLIC AWARENESS AND TRAINING. The department shall develop and implement:

(1) a general public awareness strategy focusing on the importance of prenatal care and early identification of infants and toddlers with developmental delay and the availability of resources to meet their needs; and

(2) a statewide plan for conducting training and technical assistance for service providers, primary referral sources, and families with children under three years of age with developmental

delay.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 22, eff. Aug. 26, 1985; Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 923, Sec. 12, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.312, eff. April 2, 2015.

Sec. 73.008. EARLY IDENTIFICATION STRATEGY. (a) The department shall develop and implement a statewide strategy for:

(1) the early identification of children under three years of age with developmental delay;

(2) improving the early identification of children under three years of age with developmental delay in populations at risk of developmental delay, through measures such as:

(A) targeting at-risk populations and appropriate geographical regions; and

(B) monitoring the performance of providers of services authorized under this chapter in identifying those children; and

(3) the coordination of programs with other agencies serving children with developmental delay, including the coordination of policy issues that affect children with developmental delay who are three years of age or older.

(b) The strategy must include plans to:

(1) incorporate, strengthen, and expand similar existing local efforts;

(2) incorporate and coordinate screening services currently provided through a public agency;

(3) establish a liaison with primary referral sources, including hospitals, physicians, public health facilities, and day-care facilities, to encourage referrals of children with developmental delay; and

(4) provide active leadership in addressing issues affecting the effectiveness of services for children with developmental delay, including issues such as the provision of respite care and development of incentives to encourage provision of

respite care by providers of services authorized under this chapter.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 923, Sec. 13, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 33, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.313, eff. April 2, 2015.

Sec. 73.009. REFERRAL FOR SERVICES. (a) The department shall develop and the executive commissioner shall establish policies concerning services described by this section. A child under three years of age and the child's family may be referred for services described by this section if the child is:

(1) identified as having a developmental delay;

(2) suspected of having a developmental delay; or

(3) considered at risk of developmental delay.

(b) For each child referred, the department shall ensure the performance of appropriate medical or developmental screening or evaluation, and if such screening services or evaluation services are not available, the department shall ensure that the child is referred to a public or private program that can meet the child's needs.

(c) Services under this section shall be provided in a manner that minimizes intrusion into family privacy.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 747, Sec. 32, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 923, Sec. 14, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.314, eff. April 2, 2015.

Sec. 73.010. ELIGIBILITY FOR SERVICES. A child is eligible for services under this chapter if the child:

(1) is under three years of age; and

(2) is documented as having developmental delay or has a medically diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

Added by Acts 1983, 68th Leg., p. 1012, ch. 235, art. 4, Sec. 4(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 931, art. 12, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 747, Sec. 33, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 6.57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 923, Sec. 15, eff. Sept. 1, 1997.

Sec. 73.011. PROVIDER SELECTION. (a) The department shall select providers of services authorized under this chapter on a best value basis in a manner that:

(1) maximizes federal, private, and local sources of funding; and

(2) promotes competition when possible.

(b) The department shall determine best value as required by Subsection (a) when the department initially awards a contract to a provider and when the department considers renewal of a provider's contract.

(c) In determining whether a provider will provide best value to the department, the department shall consider:

(1) the past performance of the provider;

(2) the quality of the provider's services;

(3) the cost of the provider's services;

(4) the ability of the provider to maximize federal, private, and local sources of funding;

(5) the ability of the provider to comply with state and federal program requirements;

(6) the availability of the provider to deliver required services; and

(7) any other relevant factor.

Added by Acts 1999, 76th Leg., ch. 33, Sec. 8, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.315, eff. April 2, 2015.

Sec. 73.022. FINANCES. (a) The executive commissioner shall:

(1) ensure compliance with requirements necessary to obtain federal funds in the maximum amount and the most advantageous proportions possible for programs funded under this chapter; and

(2) seek funding in a manner that maximizes the total amount of money available from federal, private, and local sources for programs funded under this chapter.

(a-1) The department shall:

(1) apply for, receive, administer, and spend federal and state funds for Part C, Individuals with Disabilities Education Act (IDEA) (20 U.S.C. Section 1431 et seq.), and its subsequent amendments, dealing with infants and toddlers from birth to age three with developmental delay and their families; and

(2) authorize and account for the classification and spending of maintenance of effort and carryover funds from all sources in carrying out the programs funded under this chapter.

(b) All money paid to the department under this chapter shall be deposited in the state treasury and may be used only for the administration of this chapter.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(64), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(64), eff. April 2, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(64), eff. April 2, 2015.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(117), eff. June 17, 2011.

Added by Acts 1989, 71st Leg., ch. 813, Sec. 6.09, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.58, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 923, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 33, Sec. 9, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(117), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.316, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(64), eff. April 2, 2015.

Sec. 73.024. APPLICATION OF OPEN MEETINGS LAW, OPEN RECORDS LAW, AND ADMINISTRATIVE PROCEDURE LAW TO ADVISORY COMMITTEE. The advisory committee is subject to the requirements of the open meetings law, Chapter 551, Government Code, the open records law, Chapter 552, Government Code, and Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 923, Sec. 18, eff. Sept. 1, 1997. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.317, eff. April 2, 2015.

SUBTITLE D. MISCELLANEOUS PROVISIONS

CHAPTER 80. MISCELLANEOUS PROVISIONS

Sec. 80.001. FINGERPRINTING FOR IDENTIFICATION. (a) A state law enforcement agency or the law enforcement agency of any political subdivision of the state shall comply with the request of a person to have a record of his fingerprints made or a record of the fingerprints of a child or ward of the person made.

(b) A law enforcement agency may charge a fee not to exceed $10 for the service provided under this section and may retain records of fingerprints made under this section.

Added by Acts 1985, 69th Leg., ch. 117, Sec. 6(a), eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 695, Sec. 1, eff. Sept. 1, 1995.

Sec. 80.003. CHILDREN BORN TO IMPRISONED WOMEN. (a) The department shall provide medical care for a child born to a woman who, at the time of giving birth, is imprisoned in the Texas Department of Criminal Justice if there is no other source of payment for the medical care.

(b) In this section, "medical care" means the care relating to childbirth and the period of the child's hospitalization immediately following the birth or rehospitalization in the first 28 days of life.

Added by Acts 1989, 71st Leg., ch. 1117, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 80.002 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(15), eff. Sept. 6, 1990.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.116, eff. September 1, 2009.

TITLE 4. SERVICES FOR PERSONS WHO ARE DEAF OR HARD OF HEARING

CHAPTER 81. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES RELATING TO PERSONS WHO ARE DEAF OR HARD OF HEARING

Sec. 81.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(67), eff. April 2, 2015.

(2) "Deaf" means a hearing impairment of such severity that an individual must depend on visual methods to communicate.

(2-a) "Department" means the Department of Assistive and Rehabilitative Services.

(3) "Hard of hearing" means a hearing impairment that results in a loss of hearing function to an individual and in which the individual:

(A) relies on residual hearing; and

(B) may depend on visual methods to communicate.

(4) "Deaf-blind" means:

(A) being legally blind and possessing a hearing impairment of such severity that a person cannot understand most speech even with the use of optimum amplification; or

(B) having a medical diagnosis of deteriorating hearing and vision expected to lead to the condition described by Paragraph (A).

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, Sec. 3, eff. Sept. 1, 1979; Acts 1987, 70th Leg., ch. 343, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 183, Sec. 1, eff. May 26, 1989; Acts 1991, 72nd Leg., ch. 353, Sec. 9, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 835, Sec. 2, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 118, Sec. 1, eff. May 23, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.320, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(67), eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 81.0055. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner of assistive and rehabilitative services by this chapter, or another law relating to services for persons who are deaf or hard of hearing, conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.08, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.321, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.100, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 81.0055. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner of assistive and rehabilitative services by this chapter, or another law relating to services for persons who are deaf or hard of hearing, conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;
(2) Section 524.0101;
(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.08, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.321, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.100, eff.

April 1, 2025.

Sec. 81.006. DUTIES AND POWERS OF DEPARTMENT AND EXECUTIVE COMMISSIONER UNDER CHAPTER. (a) The department shall:

(1) develop and implement a statewide program of advocacy and education to ensure continuity of services to persons who are deaf, deaf-blind, or hard of hearing;

(2) provide direct services to persons who are deaf or hard of hearing, including communication access, information and referral services, advocacy services, services to elderly persons who are deaf or hard of hearing, and training in accessing basic life skills;

(3) work to ensure more effective coordination and cooperation among public and nonprofit organizations providing social and educational services to individuals who are deaf or hard of hearing;

(4) maintain a registry of available qualified interpreters for persons who are deaf or hard of hearing by updating the registry at least quarterly and making the registry available to interested persons at cost;

(5) establish a system to approve and provide courses and workshops for the instruction and continuing education of interpreters for persons who are deaf or hard of hearing;

(6) assist institutions of higher education that have or are initiating training programs for interpreters for persons who are deaf or hard of hearing;

(6-a) develop guidelines for the curricula for the programs described by Subdivision (6) to promote uniformity of the skills taught within those programs;

(7) with the assistance of the Texas Higher Education Coordinating Board, develop standards for evaluation of the programs described by Subdivision (6); and

(8) develop guidelines to clarify the circumstances under which interpreters certified by the department are qualified to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(b) The department may:

(1) appoint one or more advisory committees to consult with and advise the department under this chapter;

(2) collect training fees and accept gifts, grants, and

donations of money, personal property, or real property for use in expanding and improving services to persons of this state who are deaf or hard of hearing;

(3) contract with or provide grants to agencies, organizations, or individuals as necessary to implement this chapter;

(4) collect a reasonable fee from interpreters for training to defray the cost of conducting the training;

(5) develop guidelines for trilingual interpreter services; and

(6) provide training programs for persons who provide trilingual interpreter services.

(c) The executive commissioner shall establish the fees described by Subsections (b)(2) and (4).

(d) The executive commissioner may adopt rules necessary to implement this chapter, including rules adopting standards and guidelines under this section.

(f) The executive commissioner shall establish and the department shall collect reasonable fees for some or all department publications to cover the department's publication costs. However, the department shall waive the fee if a person who is deaf or hard of hearing is financially unable to pay for the publication, and may waive the fees for publications provided to certain entities. The executive commissioner shall adopt rules to implement this subsection. The rules must specify the standards used for determining ability to pay for a publication and must specify the types of entities for which the fees will be waived.

Acts 1979, 66th Leg., p. 2394, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Renumbered from Sec. 81.008 and amended by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, Sec. 3, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 351, ch. 140, Sec. 1, eff. May 14, 1981; Acts 1983, 68th Leg., p. 2176, ch. 403, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 619, Sec. 6, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 343, Sec. 4, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 508, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 835, Sec. 6, 28(1), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.62, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 122, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 118, Sec. 2, 14, eff. May 23, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(118), eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.322, eff. April 2, 2015.

Sec. 81.007. BOARD FOR EVALUATION OF INTERPRETERS. (a) The department may establish a program in accordance with this section for the certification of interpreters who have reached varying levels of proficiency in communication skills necessary to facilitate communication between persons who are deaf or hard of hearing and persons who are not deaf or hard of hearing.

(b) The department shall appoint an advisory board of seven persons to assist in administering the interpreter certification program. A board member may not receive compensation, but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the board, as provided in the General Appropriations Act.

(c) The board shall develop, subject to the department's approval, and the executive commissioner shall adopt qualifications for each of several levels of certification based on proficiency. The board shall evaluate and certify interpreters using these qualifications.

(d) A qualified board member may serve as an evaluator under Subsection (c), and the department shall compensate the board member for services performed as an evaluator.

(e) The executive commissioner by rule shall set and the department shall collect fees for written and performance examinations, for annual certificate renewal, and for recertification. The fees must be in an amount sufficient to recover the costs of the certification program.

(f) The department may waive any prerequisite to obtaining a certificate for an applicant after reviewing the applicant's credentials and determining that the applicant holds a certificate issued by another jurisdiction that has certification requirements substantially equivalent to those of this state.

(g) The executive commissioner by rule may adopt a system under which certificates are valid for a five-year period, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year period, an interpreter must be

recertified by the department. The department may recertify an interpreter who:

(1) receives specified continuing education credits; or

(2) achieves an adequate score on a specified examination.

(h) The executive commissioner shall adopt rules specifying the grounds for denying, suspending, or revoking an interpreter's certificate.

(i) The department shall determine the frequency for conducting the interpreter examinations. The department shall conduct the interpreter examinations:

(1) in a space that can be obtained free of charge; or

(2) at a facility selected in compliance with Section 2113.106, Government Code.

(k) The department shall compensate an evaluator based on a fee schedule as determined by department rule.

(l) The department shall recognize, prepare, or administer continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by the department to keep the person's certificate.

Added by Acts 1979, 66th Leg., p. 2431, ch. 842, art. 2, Sec. 3, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 352, ch. 140, Sec. 3, eff. May 14, 1981; Acts 1983, 68th Leg., p. 2177, ch. 403, Sec. 2, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 619, Sec. 7, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 343, Sec. 6, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 687, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 722, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 835, Sec. 7, 28(3), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 122, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 118, Sec. 3, eff. May 23, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 857 (S.B. 2420), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.323, eff. April 2, 2015.

Sec. 81.0071. EXAMINATION RESULTS. (a) Not later than the 60th day after the date on which a certification examination is administered under this chapter, the department shall notify each

examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the date on which the department receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

Added by Acts 1985, 69th Leg., ch. 619, Sec. 8, eff. Sept. 1, 1985.
Amended by Acts 1999, 76th Leg., ch. 122, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 118, Sec. 14, eff. May 23, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.324, eff. April 2, 2015.

Sec. 81.0072. REVOCATION OR SUSPENSION OF CERTIFICATE. (a) The department, based on the recommendation of the Board for Evaluation of Interpreters, may revoke or suspend a certificate or place a certificate holder on probation for a violation of a statute, rule, or policy of the department. If a certificate holder is placed on probation, the department may require the practitioner:

(1) to report regularly to the department on matters that are the basis of the probation;

(2) to limit practice to those areas prescribed by the department; or

(3) to continue or renew professional education until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

(b) If the department proposes to suspend or revoke a certificate or place a certificate holder on probation, the certificate holder is entitled to a hearing before the department or a hearings officer appointed by the department. All final decisions to suspend or revoke a certificate or place a certificate holder on probation shall be made by the department.

Added by Acts 1985, 69th Leg., ch. 619, Sec. 9, eff. Sept. 1, 1985.
Amended by Acts 1995, 74th Leg., ch. 835, Sec. 8, eff. Sept. 1, 1995;

Acts 2003, 78th Leg., ch. 118, Sec. 4, eff. May 23, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.325, eff. April 2, 2015.

Sec. 81.0073. CERTIFICATE RENEWAL. (a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

(e) A person who was certified in this state, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the certificate.

(f) Not later than the 30th day before the date a person's certificate is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 1999, 76th Leg., ch. 122, Sec. 9, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.326, eff. April 2, 2015.

Sec. 81.0074. PROVISIONAL CERTIFICATE. (a) The department may issue a provisional certificate to an applicant currently certified in another jurisdiction who seeks a certificate in this state and who:

(1) has been certified in good standing as an interpreter for at least two years in another jurisdiction, including a foreign country, that has certification requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the department relating to the practice of interpretation for people who are deaf or hard of hearing; and

(3) is sponsored by a person certified by the department under this chapter with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(b) The department may waive the requirement of Subsection (a)(3) for an applicant if the department determines that compliance with that subdivision would be a hardship to the applicant.

(c) A provisional certificate is valid until the date the department approves or denies the provisional certificate holder's application for a certificate. The department shall issue a certificate under this chapter to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under Section 81.007(f); or

(2) the provisional certificate holder passes the part of the examination under this chapter that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of interpretation for people who are deaf or hard of hearing in this state, and:

(A) the department verifies that the provisional certificate holder meets the academic and experience requirements for a certificate under this chapter; and

(B) the provisional certificate holder satisfies any other certification requirements under this chapter.

(d) The department must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(e) The executive commissioner by rule may establish a fee for provisional certificates in an amount reasonable and necessary to cover the cost of issuing the certificate.

Added by Acts 1999, 76th Leg., ch. 122, Sec. 10, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.327, eff. April 2, 2015.

Sec. 81.013. PRIVATE OUTDOOR TRAINING PROGRAMS FOR CHILDREN WHO ARE DEAF OR HARD OF HEARING. (a) The department may contract with private entities to provide for the participation of children who are deaf or hard of hearing at outdoor recreational programs operated for the purpose of providing skill training and recreational experiences for children who are deaf or hard of hearing. Outdoor training programs under this section may also provide for participation by the parents of children who are deaf or hard of hearing.

(b) In selecting children to attend programs under this section, the department shall select qualified children from across the state that will benefit from the program.

(c) The department may request criminal history record information on any person who applies for a staff position in an outdoor training program from the Department of Public Safety in accordance with Section 411.1131, Government Code.

Added by Acts 1981, 67th Leg., p. 288, ch. 113, Sec. 1, eff. May 13, 1981. Amended by Acts 1995, 74th Leg., ch. 835, Sec. 9, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 118, Sec. 5, eff. May 23, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.328, eff. April 2, 2015.

Sec. 81.015. ADVERTISEMENT. (a) The executive commissioner may not adopt rules restricting competitive bidding or advertising by a person regulated by the department under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The executive commissioner may not include in department rules to prohibit false, misleading, or deceptive practices by a person regulated by the department under this chapter a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

(c) The department may advertise to promote awareness and use of the programs, services, and activities conducted by the department under this chapter. The department may not use money derived from state tax revenue to pay for advertisements under this subsection.

Added by Acts 1985, 69th Leg., ch. 619, Sec. 16, eff. Sept. 1, 1985.
Amended by Acts 2003, 78th Leg., ch. 118, Sec. 7, eff. May 23, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.329, eff. April 2, 2015.

Sec. 81.016. CONTRACTS FOR SERVICES. (a) Before the department contracts with or provides grant funding to an agency, organization, or individual to provide direct services to persons who are deaf or hard of hearing, the department shall make reasonable efforts to notify all potential service providers of the availability and purpose of the contract or grant.

(b) The notice shall include a request that all interested service providers submit within a specified period a contract or grant proposal for the department's consideration. The notice must also clearly state the criteria that the department will consider in determining which applicant will be awarded the contract or grant.

(c) The department shall review all proposals submitted under this section and shall award the contract or grant to the applicant that the department determines is best able to provide the needed services. The department may not award contracts or grants to a former employee of the department's Office for Deaf and Hard of Hearing Services within two years after the person's employment with that office ceased.

(d) To ensure an equitable distribution of contract or grant funds, the department shall develop a formula, based on population

and region, to allocate those funds among the agencies, organizations, or individuals that are awarded the contracts or grants.

(e) The executive commissioner shall adopt rules to implement this section.

Added by Acts 1985, 69th Leg., ch. 619, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 343, Sec. 8, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 835, Sec. 10, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 118, Sec. 8, eff. May 23, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.330, eff. April 2, 2015.

Sec. 81.017. MEMORANDUM OF UNDERSTANDING. (a) The department and each of the following agencies shall adopt a memorandum of understanding to coordinate the delivery of services to persons who are deaf or hard of hearing and to reduce duplication of services:

(1) the Department of Aging and Disability Services;

(2) the Department of State Health Services;

(3) the Texas Workforce Commission;

(4) the Health and Human Services Commission;

(5) the Texas Higher Education Coordinating Board;

(6) the Texas Education Agency;

(7) the Texas School for the Deaf;

(8) the Texas Department of Criminal Justice; and

(9) any other state agency that provides or is required by law to provide services to persons who are deaf or hard of hearing.

(b) If gaps in the delivery of services are identified while developing a memorandum, the involved agencies shall formulate in the memorandum methods to reduce or eliminate those gaps.

(c) Not later than the last month of each state fiscal year, the department and the other agencies shall review their respective memorandums.

Added by Acts 1987, 70th Leg., ch. 343, Sec. 9, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 835, Sec. 11, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.63, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 122, Sec. 13, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 118, Sec. 9, eff. May 23, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.117, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.331, eff. April 2, 2015.

Sec. 81.019. SYMBOLS OR OTHER FORMS OF IDENTIFICATION FOR PERSONS WITH HEARING IMPAIRMENTS. (a) The department shall design and provide for the issuance of a symbol or other form of identification that may be attached to a motor vehicle regularly operated by a person who is deaf or hard of hearing.

(b) A person who is deaf or hard of hearing may apply to the department for the symbol or other form of identification. The department may require acceptable medical proof that a person is deaf or hard of hearing and may collect a fee for each symbol or other form of identification to defray the costs of administering this section. The executive commissioner shall establish the fee.

(c) The department may contract with a state or local agency for the distribution of the symbol or other form of identification.

Added by Acts 1987, 70th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 81.017 by Acts 1989, 71st Leg., ch. 2, Sec. 16.01(27), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 835, Sec. 12, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 122, Sec. 14, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 118, Sec. 10, eff. May 23, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.332, eff. April 2, 2015.

Sec. 81.020. ASSISTANCE REGARDING TELECOMMUNICATIONS DEVICES. The department may not advertise, distribute, or publish the name or address or other related information received by the department about an individual who applies for assistance regarding telecommunications devices.

Added by Acts 1999, 76th Leg., ch. 122, Sec. 15, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.333, eff.

April 2, 2015.

Sec. 81.021. SPECIALIZED LICENSE PLATE PROGRAM. The department shall develop and the executive commissioner shall adopt rules and guidelines for the use of funds collected from the sale of specialized license plates under Section 504.619, Transportation Code, that are deposited in accordance with Section 504.6012, Transportation Code, and appropriated to the department for direct services programs, training, and education.

Added by Acts 2003, 77th Leg., ch. 118, Sec. 11, eff. May 23, 2003; Acts 2003, 78th Leg., ch. 118, Sec. 12, eff. May 23, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.334, eff. April 2, 2015.

CHAPTER 82. CONFIDENTIALITY OF INTERPRETED, TRANSLITERATED, OR RELAYED CONVERSATIONS

Sec. 82.001. DEFINITIONS. In this chapter:

(1) "Qualified interpreter" means a person employed as an interpreter who holds a current certification issued by the Board for Evaluation of Interpreters, or another current certificate that the Department of Assistive and Rehabilitative Services determines is comparable or appropriate and approves.

(2) "Relay agent" means a person employed to relay conversations for a person who is hearing impaired or speech impaired over a dual-party telephone system.

Added by Acts 1991, 72nd Leg., ch. 333, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 835, Sec. 21, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.335, eff. April 2, 2015.

Sec. 82.002. CONFIDENTIALITY OF CONVERSATIONS. A qualified interpreter or relay agent who is employed to interpret, transliterate, or relay a conversation between a person who can hear

and a person who is hearing impaired or speech impaired is a conduit for the conversation and may not disclose or be compelled to disclose, through reporting or testimony or by subpoena, the contents of the conversation.

Added by Acts 1991, 72nd Leg., ch. 333, Sec. 1, eff. Sept. 1, 1991.

Sec. 82.003. CRIMINAL PENALTY. (a) A qualified interpreter or relay agent who is employed to interpret, transliterate, or relay a conversation between a person who can hear and a person who is hearing impaired or speech impaired commits an offense if the qualified interpreter or relay agent discloses the contents of the conversation, unless the qualified interpreter or relay agent obtains the consent of each party to the conversation.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 333, Sec. 1, eff. Sept. 1, 1991.

TITLE 5. SERVICES FOR THE BLIND AND PERSONS WITH VISUAL DISABILITIES
CHAPTER 91. FUNCTIONS OF DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES RELATING TO THE BLIND AND PERSONS WITH VISUAL DISABILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(79), eff. April 2, 2015.

(2) "Blind" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(3) "Child with visual impairments" means a child who is blind or visually impaired or who has a visual condition that requires treatment, psychological assistance counseling, or other assistance that the department can provide.

(3-a) "Commissioner" means the commissioner of assistive and rehabilitative services.

(3-b) "Department" means the Department of Assistive and Rehabilitative Services.

(3-c) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(4) "Visual disability" includes blindness, an eye condition for which there is a medical prognosis indicating that the condition is of a progressive nature and may deteriorate either to blindness or to a substantial loss of vision, and physical or psychological disabilities that accompany or complement a disorder or imperfection of the eye.

(5) "Visually impaired" means a visual acuity of not more than 20/70 in the better eye with correcting lenses, or visual acuity greater than 20/70 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 30 degrees.

Acts 1979, 66th Leg., p. 2396, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 793, Sec. 2, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 213, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.338, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(79), eff. April 2, 2015.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 91.012. AUTHORITY OF COMMISSIONER. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(81), eff. April 2, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(81), eff. April 2, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(81), eff. April 2, 2015.

(d) The commissioner may:

(1) delegate to an employee a power of the commissioner under this chapter or Subchapter E, Chapter 117, except the power to appoint personnel;

(2) accept and use gifts and grants to the department to carry out the purposes of this title or Subchapter E, Chapter 117, if the commissioner determines that the conditions of the gift or grant are consistent with this title or Subchapter E, Chapter 117; and

(3) take other actions that the commissioner considers necessary or appropriate to carry out the department's purposes under

this chapter or Subchapter E, Chapter 117.

Acts 1979, 66th Leg., p. 2396, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 793, Sec. 4, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 8.144, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 693, Sec. 7, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 213, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1460, Sec. 2.10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.339, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.340, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(81), eff. April 2, 2015.

Sec. 91.014. FUNDS. (a) All sums of money paid to the department under this title or Subchapter E, Chapter 117, shall be deposited in the state treasury.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(83), eff. April 2, 2015.

Added by Acts 1983, 68th Leg., p. 3821, ch. 594, Sec. 1, eff. June 19, 1983. Amended by Acts 1985, 69th Leg., ch. 793, Sec. 6, eff. Sept. 1, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.341, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(83), eff. April 2, 2015.

Sec. 91.016. COMPENSATION OF CERTAIN EMPLOYEES. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(85), eff. April 2, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(85), eff. April 2, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(85), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec.

4.465(a)(85), eff. April 2, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1138 , Sec. 30(2), eff. September 1, 2015.

Added by Acts 1985, 69th Leg., ch. 793, Sec. 8, eff. Sept. 1, 1985.
Amended by Acts 1999, 76th Leg., ch. 213, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.342, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.343, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(85), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 30(2), eff. September 1, 2015.

Sec. 91.018. COMPLAINTS. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(87), eff. April 2, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(87), eff. April 2, 2015.

(c) Except as required by federal regulations for resolving complaints received from people who are receiving service from the department, under this chapter or Subchapter E, Chapter 117, the department shall maintain a file in the manner prescribed by Section 117.072(a) on each written complaint filed with the department.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(87), eff. April 2, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(87), eff. April 2, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(87), eff. April 2, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(87), eff. April 2, 2015.

Added by Acts 1985, 69th Leg., ch. 793, Sec. 10, eff. Sept. 1, 1985.
Amended by Acts 1999, 76th Leg., ch. 213, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.344, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.345, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(87), eff. April 2, 2015.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Text of section effective until April 1, 2025

Sec. 91.0205. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this chapter, or another law relating to services for the blind or persons with visual disabilities, conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.11, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.347, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.101, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 91.0205. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this chapter, or another law relating to services for the blind or persons with visual disabilities, conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;

(2) Section 524.0101;

(3) Sections 524.0151(a)(2) and (b);

(4) Section 524.0202; and

(5) Section 525.0254.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.11, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.347, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.101, eff. April 1, 2025.

Sec. 91.021. RESPONSIBILITY FOR PERSONS WITH VISUAL DISABILITIES. (a) The department has primary responsibility for providing all services to persons with visual disabilities except welfare services and services for children provided by regularly established educational agencies and state authorities.

(b) The department shall negotiate interagency agreements with other state agencies to provide services for individuals who have both a visual disability and another disability so that those individuals with multiple disabilities may be provided the most beneficial services with the greatest possible economy.

(c) The department and other concerned state agencies may not refuse to enter into an interagency agreement developed to advance the state's policies regarding the rehabilitation or education of the blind and persons with visual disabilities. In negotiating the agreements the agencies shall seek to extend and improve the regular services provided by the agencies and to effectively use all specialty and fiscal resources that are available. The agencies shall give careful consideration to avoiding unnecessary duplication or overlap of their respective efforts.

(d) The department shall enter into agreements with the federal government to implement federal legislation authorizing the provision of services to persons with visual disabilities. The department shall use methods of administration required by the federal government for the proper and efficient implementation of the agreements, and shall comply with other federal requirements necessary to secure the full benefits of the federal legislation.

(e) The department and other concerned state agencies may not refuse to enter into interagency agreements designed to secure the full benefits of federal legislation authorizing services for persons with visual disabilities.

(f) The department shall:

(1) serve as an information center and referral resource for persons with visual disabilities; and

(2) develop mechanisms and procedures that tend to assist individuals with visual disabilities in bridging gaps between educational, institutional, rehabilitative, vocational, and related

types of services operated by public and private nonprofit organizations throughout the state.

Acts 1979, 66th Leg., p. 2397, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1979, 66th Leg., p. 2437, ch. 842, art. 2, Sec. 12, eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch. 793, Sec. 12, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 198, Sec. 2.130, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.08, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.06, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.348, eff. April 2, 2015.

Sec. 91.0211. SERVICE DELIVERY BY TEXAS WORKFORCE COMMISSION. The Texas Workforce Commission has primary responsibility for providing vocational rehabilitation services and other services and programs under Subtitle C, Title 4, Labor Code, notwithstanding Section 91.021(a) and subject to receipt of any required federal approval to administer those services and programs. A power or duty under this chapter, including rulemaking authority, of the department, the commissioner, or the executive commissioner that is applicable to those services or programs is a power or duty of the Texas Workforce Commission with respect to those services or programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 6, eff. September 1, 2016.

Sec. 91.023. ASSISTANCE WITH REHABILITATION SERVICES. The department may furnish materials, tools, books, and other necessary apparatus and assistance for use in rehabilitating the blind and persons with visual disabilities.

Acts 1979, 66th Leg., p. 2398, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.350, eff. April 2, 2015.

Sec. 91.027. BLINDNESS EDUCATION, SCREENING, AND TREATMENT PROGRAM. (a) To the extent that funds are available under Sections 521.008 and 522.0295, Transportation Code, the department shall operate a Blindness Education, Screening, and Treatment Program to provide:

(1) blindness prevention education and screening and treatment to prevent blindness for residents who are not covered under an adequate health benefit plan; and

(2) transition services to individuals with visual disabilities eligible for vocational rehabilitation services.

(b) The program shall include:

(1) public education about blindness and other eye conditions;

(2) screenings and eye examinations to identify conditions that may cause blindness;

(3) treatment procedures necessary to prevent blindness; and

(4) transition services.

(c) The executive commissioner by rule shall prescribe eligibility requirements for the program.

Acts 1979, 66th Leg., p. 2398, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 510, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.115(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1140, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(11), eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.351, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 614 (H.B. 3798), Sec. 7, eff. September 1, 2023.

Sec. 91.028. SERVICES FOR CHILDREN WITH VISUAL IMPAIRMENTS.

(a) The department may provide services to children with visual impairments to supplement the services provided by other state agencies if the department determines that the provision of the services is appropriate and that the services will assist the children in achieving financial self-sufficiency and a fuller and richer life. It is the intention of the legislature that all state agencies concerned with children with visual impairments cooperate fully to achieve this purpose.

(b) The executive commissioner shall establish, by rule, the income level at which the Medicaid eligibility of a client applying for services under Subsection (a) shall be verified.

(c) The department shall verify the Medicaid eligibility of a client applying for services under Subsection (a) whose income level is equal to or less than the income level established by the executive commissioner under Subsection (b).

(d) The department shall verify the Medicaid eligibility of a client who is required by the department to apply for Medicaid not later than the 90th day after the date the application for services from the department under Subsection (a) is made.

(e) In verifying Medicaid eligibility, an employee of the department shall:

(1) examine appropriate state or private Medicaid eligibility databases; and

(2) record on each client's case records whether Medicaid eligibility was verified, the source of the verification, and the date of the verification.

(f) Except as provided by Subsection (g), a person may not solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of children's program services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of the officer's or employee's official duties.

(g) A person may use the information provided under Subsection (f) in accordance with department rules only for purposes directly connected with the administration of the children's program and for the investigation of a complaint filed against an agency, employee, or contracted provider of services.

Acts 1979, 66th Leg., p. 2398, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979. Amended by Acts 1999, 76th Leg., ch. 213, Sec. 8, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.352, eff. April 2, 2015.

Sec. 91.0301. LOANS FOR VISUAL AIDS. (a) The department may establish a program to make loans to finance the purchase of technological aids for persons with visual disabilities. Interest on the loans may not exceed 10 percent a year.

(b) The executive commissioner may promulgate rules to administer the loan program.

Added by Acts 1981, 67th Leg., p. 317, ch. 126, Sec. 2, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 793, Sec. 13, eff. Sept. 1, 1985.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.353, eff. April 2, 2015.

Sec. 91.031. CONTRACTS FOR SERVICE. (a) The department shall include in its contracts with service providers under this chapter or Subchapter E, Chapter 117, provisions relating to:

(1) clearly defined and measurable program performance standards that directly relate to the service provided;

(2) clearly defined penalties for nonperformance of a contract term; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) The department shall monitor a service provider's performance under a contract for service under this chapter or Subchapter E, Chapter 117. In monitoring performance, the department shall:

(1) use a risk-assessment methodology to institute statewide monitoring of contract compliance of service providers; and

(2) evaluate service providers based on clearly defined and measurable program performance objectives.

Added by Acts 1999, 76th Leg., ch. 213, Sec. 8, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.354, eff. April 2, 2015.

Sec. 91.032. CONTRACTS FOR ASSISTIVE TECHNOLOGY. The department shall include in a contract under this chapter or Subchapter E, Chapter 117, with a supplier of assistive technology equipment provisions that require the supplier to provide training for clients receiving the assistive technology equipment.

Added by Acts 1999, 76th Leg., ch. 213, Sec. 8, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.355, eff. April 2, 2015.

SUBCHAPTER E. CENTRAL MEDIA DEPOSITORY

Sec. 91.081. PURPOSE. (a) The purpose of this subchapter is to establish a comprehensive central state depository for braille, large print, slow speed records and machines, tape recordings and tape players, and related forms of media that will enable the Texas State Library and Archives Commission, the Texas Education Agency, the department, volunteer organizations involved in the production of braille or recorded materials for the blind, the Library of Congress, and related types of organizations to work together more closely and effectively.

(b) It is the intent of this subchapter to allow various agencies and organizations interested in or responsible for such services to work together cooperatively in one facility without requiring one central management.

Renumbered from Sec. 92.051 by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, Sec. 15, eff. Sept. 1, 1979; Amended by Acts 1985, 69th Leg., ch. 793, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.64, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.357, eff. April 2, 2015.

Sec. 91.082. ESTABLISHMENT OF CENTRAL MEDIA DEPOSITORY. (a) The Texas State Library and Archives Commission shall generally supervise the establishment and operation of a central media depository in Austin to house materials and devices required by the blind and individuals with visual disabilities or by other individuals who are unable to use ordinary printed materials.

(b) With the approval of the Texas State Library and Archives Commission, the agencies and organizations maintaining and operating the central media depository shall develop and periodically evaluate and modify specific arrangements for administrative support, sharing of staff and equipment, and related matters involved in the operation of the program.

Renumbered from Sec. 92.052 and amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, Sec. 15, eff. Sept. 1, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.358, eff. April 2, 2015.

Sec. 91.083. ANCILLARY SERVICES. The Texas State Library and Archives Commission shall allow the central media depository to be used for the repair of special media and equipment required by individuals who are unable to use ordinary print and for research and demonstration, training, and the production of materials in special media by volunteer organizations.

Renumbered from Sec. 92.053 and amended by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, Sec. 15, eff. Sept. 1, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.359, eff. April 2, 2015.

Sec. 91.084. FUNDING. The cost of establishing and operating the central media depository shall be paid with:

(1) funds appropriated by the legislature for that purpose;

(2) gifts, grants, bequests, and donations received by cooperating agencies for the establishment and support of the depository;

(3) reasonable fees customarily charged for services by the

agencies and organizations using or occupying the facility; and

(4) funds budgeted by the cooperating agencies and organizations for that purpose pursuant to interagency contracts and agreements.

Renumbered from Sec. 92.054 by Acts 1979, 66th Leg., p. 2438, ch. 842, art. 2, Sec. 15, eff. Sept. 1, 1979.

TITLE 6. SERVICES FOR THE ELDERLY
CHAPTER 101A. STATE SERVICES FOR THE AGING
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101A.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of aging and disability services.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 101A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this chapter or another law relating to state services for the aging conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.102, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 101A.002. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF

CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this chapter or another law relating to state services for the aging conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;
(2) Section 524.0101;
(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.102, eff. April 1, 2025.

Sec. 101A.003. COOPERATION WITH FEDERAL AND STATE AGENCIES. (a) The department is the state agency designated to handle federal programs relating to the aging that require action within the state and that are not the specific responsibility of another state agency under federal or state law.

(b) The department is not intended to supplant or to take over from the counties and municipalities of this state or from other state agencies or facilities any of the specific responsibilities relating to services for the aging that they hold. The department shall cooperate with federal and state agencies, counties, and municipalities and private agencies or facilities in the state in accomplishing the purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE COMMISSIONER

Sec. 101A.051. RULES. The executive commissioner shall adopt rules governing the functions of the department under this chapter, including rules that prescribe the policies and procedures followed by the department in the administration of any local services programs, employment programs for the aged, volunteer programs for

the aged, or other programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.052. GENERAL FUNCTIONS OF DEPARTMENT RELATED TO AGING SERVICES. (a) The department shall provide expertise and advice to state agencies and the legislature and other elected officials on aging issues, including recommendations to meet the needs of this state's elderly population.

(b) The department shall develop and strengthen the services available for the aged in the state by coordinating services provided by governmental and private agencies and facilities.

(c) The department shall extend and expand services for the aged by coordinating the interest and efforts of local communities in studying the problems of the aged citizens of this state.

(d) The department shall encourage, promote, and aid in the establishment of area agencies on aging for the development of programs and services on a local level that improve the living conditions of the aged by enabling them to more fully enjoy and participate in family and community life.

(e) The department shall sponsor voluntary community rehabilitation and recreational facilities to improve the general welfare of the aged.

(f) The department shall cooperate with state and federal agencies and other organizations in conducting studies and surveys on the special problems of the aged in matters such as mental and physical health, housing, family relationships, employment, income, vocational rehabilitation, recreation, transportation, insurance, legal rights, and education. The department shall make appropriate reports and recommendations to the governor and to state and federal agencies.

(g) The department shall conduct research and long-range planning regarding long-term care, community care, and other issues that affect elderly individuals.

(h) The department shall make recommendations to the governor, the legislature, and state agencies regarding:

(1) opportunities to coordinate programs for elderly individuals;

(2) unnecessary duplication in providing services to elderly individuals; and

(3) gaps in services to elderly individuals.

(i) The department shall:

(1) cooperate with the Texas Department of Housing and Community Affairs to provide affordable housing for elderly individuals and for families in which an elderly individual is head of the household;

(2) assess the need for housing for elderly individuals and for families in which an elderly individual is head of the household in different localities;

(3) set standards relating to the design and construction of housing for elderly individuals;

(4) provide planning assistance to builders; and

(5) publicize the availability of the housing program to potential developers and residents.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.053. OLDER AMERICANS ACT; STATE PLAN. (a) The department shall develop this state's plan on aging, as required by the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

(b) The department shall conduct a statewide needs assessment for long-term care and other services for older individuals and their caregivers. The assessment shall include input from:

(1) area agencies on aging;

(2) regional and local state agency staff; and

(3) community-based organizations.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

SUBCHAPTER C. PROGRAMS AND SERVICES

Sec. 101A.101. COMMUNITY SENIOR CITIZENS EMPLOYMENT PROGRAMS. (a) In this section, "suitable employment" means employment that is commensurate with the individual's skills and ability and for which compensation is paid equal to the federal minimum wage rate.

(b) The Texas Workforce Commission may administer a community

program for persons 55 years of age or older who lack suitable employment and have family incomes under federal poverty guidelines.

(c) The Texas Workforce Commission may contract with a public agency or a private, nonprofit organization with experience in managing similar programs to employ persons under this program in providing recreation, beautification, conservation, or restoration services, or public service employment positions for state, county, city, or regional governments or school districts. The Texas Workforce Commission may not contract with an organization that is not a subscriber under the state workers' compensation law or that does not pay the federal minimum wage rate or the prevailing wage rate for the particular job, whichever is greater.

(d) The state shall finance 80 percent of the cost of the program, and the governments receiving the services shall finance 20 percent of the cost.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.102. VOLUNTARY COMMUNITY SERVICES PROGRAMS. (a) The department shall ensure that state funds appropriated to the department for programs to recruit elderly persons to perform voluntary community services or for programs under Senior Corps are disbursed to local public agencies or private, nonprofit corporations that operate those programs.

(b) A public agency or private, nonprofit corporation may not receive state money under this section if it is not able to qualify for federal matching money for the same purpose.

(c) The executive commissioner by rule shall establish guidelines or formulas to determine the proportion of state money distributed to each public agency or private, nonprofit corporation under this section. The executive commissioner by rule may establish additional qualifications to receive the state money.

(d) State funds disbursed under this section may not be used to pay compensation to volunteer workers, except for participants in the Foster Grandparent and Senior Companion Programs of Senior Corps, or for purposes other than financing the operation or administration of the volunteer programs, but it may be used to defray expenses incurred by volunteers in the performance of volunteer work. The

executive commissioner by rule may further limit the purposes for which the state money may be spent.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.103. TEXAS CARES PROGRAM. (a) The executive commissioner by rule may establish and the department may operate a Texas Cares program to provide persons eligible for discount drug price programs offered by pharmaceutical companies with:

(1) information regarding the availability of those programs; and

(2) in appropriate circumstances, assistance in enrolling in those programs.

(b) The department may solicit and accept gifts, grants, and donations from any source to use in funding the Texas Cares program.

(c) The executive commissioner shall design the Texas Cares program to meet the primary goal of increasing awareness in appropriate populations of the availability of discount drug price programs offered by pharmaceutical companies. To the extent that adequate resources are available, the department shall:

(1) make information regarding discount drug price programs readily available on the department's Internet site;

(2) maintain a toll-free telephone number through which a person may obtain information regarding discount drug price programs; and

(3) make brochures or other written informational materials regarding discount drug price programs available on request by a pharmacist, physician, representative of an organization serving senior citizens, or other interested person.

(d) The department may:

(1) conduct community outreach and education activities to increase awareness of the availability of discount drug price programs offered by pharmaceutical companies;

(2) solicit and train volunteers to perform functions associated with the Texas Cares program, including:

(A) providing assistance to eligible persons in enrolling in discount drug price programs offered by pharmaceutical companies; and

(B) conducting community outreach and education activities; and

(3) coordinate operation of the Texas Cares program with the activities of area agencies on aging.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.104. PUBLIC INFORMATION ON COST OF LONG-TERM CARE. The department shall develop programs to provide information to the public relating to:

(1) the cost of long-term care;

(2) the limits on Medicaid eligibility;

(3) the adequacy or inadequacy of other financing options, including Medicare; and

(4) possible methods of financing long-term care, including group insurance policies and other methods designed to assist individuals.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.105. SERVICES OF OTHER AGENCIES. The department may accept services performed by other agencies to accomplish the purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.106. REVIEW OF ADMINISTRATIVE COSTS AND PROGRAMS. (a) The executive commissioner by rule shall define "administrative costs" as used in this section. However, if a standard definition of administrative costs is required by law to be used by state agencies, the executive commissioner shall use that definition.

(b) To determine the administrative costs incurred by an entity, including an area agency on aging and including an entity that spends money distributed by the department under Section 101A.101 or 101A.102 in engaging in a program that is funded in any

part by money derived from the department under this chapter, the department shall request appropriate information from the entity.

(c) The executive commissioner shall establish the maximum amount of administrative costs that may be incurred by the entity in engaging in the program.

(d) The department periodically shall review the actions of entities receiving funds from the department under this chapter and shall document its review. The review of an entity that spends money distributed under Section 101A.102 must include on-site evaluations of the entity and must include the review of documentation, which shall be required by the department, of the services performed by the aged in programs under Section 101A.102.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.107. REPORT ON UNIT COSTS. The department shall file with the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy a report that clearly identifies in a state fiscal year the unit cost of each service, other than services related to community service volunteering and subsidized employment services, provided by an area agency on aging. The report must be filed annually on or before the date specified by the Legislative Budget Board. The report must be in the form required by the Legislative Budget Board.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 19, eff. September 1, 2021.

SUBCHAPTER D. OPTIONS FOR INDEPENDENT LIVING PROGRAM

Sec. 101A.151. DEFINITIONS. In this subchapter:

(1) "Case management" means the process of assessing service needs, developing a plan of care, and arranging for and monitoring delivery of care to an elderly person under this subchapter.

(2) "Case management unit" is an entity that coordinates

and administers case management.

(3) "Elderly person" means a person who is 60 years of age or older.

(4) "Service area" means a geographical area of the state designated for purposes of planning, development, and overall administration of services provided under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.152. OPTIONS FOR INDEPENDENT LIVING PROGRAM. (a) The department shall establish a statewide Options for Independent Living program to help elderly persons remain at home despite limited self-care capacities and to prevent institutionalization.

(b) The Options for Independent Living program shall provide short-term support services to elderly persons for the purposes of:

(1) restoring functional capacities after illness or hospitalization; and

(2) educating and preparing elderly persons and their caregivers to provide self-care.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.153. PERSONS TO BE SERVED. (a) The Options for Independent Living program shall give priority to an elderly person who:

(1) has recently suffered a major illness or health care crisis or has recently been hospitalized;

(2) lives in a rural area;

(3) has insufficient caregiver support;

(4) has a mild to moderate impairment or a temporary severe impairment; and

(5) is in great economic or social need, with particular attention to low-income minority older persons.

(b) In awarding funding under this subchapter, the department shall serve priority populations consistent with the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.154. PROVISION OF SERVICES. (a) Support services shall include:

(1) case management;

(2) homemaking assistance, including personal care;

(3) residential repair and modification;

(4) benefits counseling;

(5) respite care;

(6) emergency response;

(7) education and training for caregivers;

(8) home-delivered meals;

(9) transportation; and

(10) other appropriate services identified by the case manager and client through the assessment and care planning process.

(b) A case manager shall conduct an individual assessment of an elderly person's needs and shall, in consultation with the elderly person and the elderly person's family, create a plan of care that specifies the type, amount, frequency, and duration of support services the elderly person needs.

(c) A plan of care must coordinate the available public and private services and resources that are most appropriate to meet the elderly person's needs.

(d) An area agency on aging may not directly provide homemaker, home health, residential repair, respite, meal delivery, or transportation service unless the area agency:

(1) receives no response to a request for proposals that meets department standards; and

(2) has exhausted all other procurement options available under department rules.

(e) An area agency on aging that wants to provide directly a service not available through a local public or private entity must obtain approval from the department in accordance with department rules governing the granting of such approval.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.155. CASE MANAGEMENT UNITS. (a) The department shall designate one or more case management units for each service area to provide case management services according to department rules and standards.

(b) The department shall designate an area agency on aging as a case management unit for a service area. The area agency on aging may act as the case management unit, after obtaining approval from the department in accordance with department rules governing the granting of such approval, or the area agency on aging may subcontract with a local service agency or hospital to act as the case management unit.

(c) A case manager must be an employee of a case management unit.

(d) The department shall periodically review a case management unit.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.156. ADMINISTRATION OF PROGRAM. (a) The department shall administer the Options for Independent Living program through grants to area agencies on aging.

(b) Area agencies on aging shall maintain their service provision levels in effect on September 1, 1989, independent of the Options for Independent Living program. Funds made available under this program may not be used to supplant service funds for services provided on September 1, 1989.

(c) An area agency on aging that receives funds under this section shall ensure the availability of the services for which the funds were granted.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.157. FEES. (a) The executive commissioner by rule shall establish a copayment system using a sliding scale that is based on an elderly person's income.

(b) An elderly person whose income exceeds the basic income and resources requirements for eligibility for the community care for

aged and disabled program of the department, but whose income is less than 200 percent of that level, shall pay a portion of the cost of support services provided to the person by a case management unit according to the fee scale.

(c) An elderly person whose income exceeds 200 percent of the level established by the department for the community care for aged and disabled program shall pay the full cost of support services provided by a case management unit.

(d) A local case management unit shall collect and account for all fees imposed for services provided by the case management unit and shall submit reports to the department as prescribed by department rules.

(e) Fees collected shall be used to defray program costs and to expand the Options for Independent Living program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

SUBCHAPTER E. FUNDING

Sec. 101A.201. AUTHORITY TO ACCEPT, EXPEND, AND TRANSFER FUNDS. The department may accept, expend, and transfer federal and state funds appropriated for programs authorized by federal and state law and administered by the department under this chapter. The department may accept, expend, and transfer funds received in relation to this chapter from any source, including a county, municipality, or public or private agency. The funds shall be deposited in the state treasury and may be used for the purposes of this chapter, subject to any conditions attached to the funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.202. CONTRIBUTIONS TO LOCAL ORGANIZATIONS: CERTAIN COUNTIES. (a) This section applies only to counties having a population of not less than 20,600 and not more than 20,800 and to cities and towns within those counties.

(b) Each county and each city or town to which this section applies may cooperate with the department in carrying out the department's purposes under this chapter on a local level by

contributing funds to any local organization the functions of which are to cooperate with the department in carrying out those purposes. The organization must operate with the approval and sanction of the department.

(c) The operation of buildings, facilities, services, and programs by an organization for other community services or benefits does not prohibit the contribution of the funds under this section for the part of the organization's program for the aging if that part of the program is approved by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 116, eff. September 1, 2023.

Sec. 101A.203. FUNDING TO AREA AGENCIES ON AGING. (a) The executive commissioner by rule shall adopt a formula that meets the intent of the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) for allocating among area agencies on aging funds that the department receives under the Act.

(b) The formula must provide for the allocation of the funds among the area agencies on aging according to the most recent population estimates available from the Health and Human Services Commission.

(c) The executive commissioner shall update the formula biennially and the department shall include the formula and population estimates in each state plan on aging.

(d) Unless otherwise provided for by department rules regarding the carryover of unexpended funds allocated under this section, at the end of a fiscal year excess unexpended funds of an area agency on aging's allocations for that fiscal year shall be deducted from the allocation for the new fiscal year and that same amount of new fiscal year funds shall be reallocated. The executive commissioner by rule shall adopt a reallocation formula that includes performance as a criterion, in addition to other criteria adopted by the executive commissioner.

(e) The funds that the department receives under the Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) shall be

allocated and reallocated to area agencies on aging under the formulas adopted under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

Sec. 101A.204. TRUSTS FOR CERTAIN RECIPIENTS OF MEDICAL ASSISTANCE. (a) An area agency on aging may contract with one or more private attorneys to establish trusts described by 42 U.S.C. Section 1396p(d)(4)(B) for the benefit of recipients of medical assistance under Chapter 32 who, without the establishment of these trusts, would become ineligible for medical assistance.

(b) The department shall allocate available state funds to the area agencies on aging for use in contracting for the establishment of trusts under Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.

SUBCHAPTER F. OFFICE OF STATE LONG-TERM CARE OMBUDSMAN

Sec. 101A.251. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Local ombudsman entity" means a distinct unit or entity, consisting of representatives, designated by the state long-term care ombudsman to carry out the ombudsman program in a service area of the state.

(2) "Long-term care facility" means a facility that is licensed or regulated or that is required to be licensed or regulated by the commission under Chapter 242 or 247, Health and Safety Code.

(3) "Office" means the office of the state long-term care ombudsman, consisting of the state long-term care ombudsman and representatives who are employed by the commission.

(3-a) "Ombudsman program" means the program through which the functions and duties of the office are carried out, consisting of the office and all representatives.

(4) "Representative" means an employee or volunteer specifically designated by the office as a representative of the office.

(4-a) "Resident" means a resident of a long-term care facility.

(5) "State long-term care ombudsman" means the chief administrator of the office.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.252. OPERATION OF OFFICE. (a) The office shall operate and is subject to the commission's oversight in accordance with federal and state statute.

(b) The commission may operate the office directly or by contract or memorandum of agreement with a public agency or other appropriate private nonprofit organization. The commission, agency, or organization may not implement a policy that prohibits the office from performing its duties under this subchapter. The commission may not use an agency or organization that:

(1) is responsible for licensing or certifying long-term care services;

(2) is an association of long-term care facilities or of any other residential facility that serves persons with disabilities or who are 60 years of age or older, or that is an affiliate of such an association; or

(3) has an ownership, operational, or investment interest in a long-term care facility.

(c) The commission shall consider the views of residents, provider organizations, advocacy groups, and area agencies on aging in planning and operating the office.

(d) The commission shall ensure that a person involved in designating the state long-term care ombudsman or in designating a representative does not have a conflict of interest.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.253. ROLE OF OFFICE. The office and the ombudsman program shall operate in cooperation with any regulatory agency funded and mandated by federal and state statute.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.254. POWERS AND DUTIES OF STATE LONG-TERM CARE OMBUDSMAN AND OFFICE. (a) The office has the powers and duties authorized and required by state and federal law.

(b) The office may use appropriate administrative, legal, and other remedies to assist residents as provided by commission rules.

(c) The office acts independently of the commission in the performance of its powers and duties under this subchapter.

(d) The state long-term care ombudsman has the authority to designate a local ombudsman entity or representative and to suspend or revoke that designation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.255. OMBUDSMEN. (a) The office shall recruit volunteers and citizen organizations to participate in the ombudsman program. A paid staff member of an area agency on aging network or a nonprofit social service agency may be an ombudsman. An ombudsman is a representative.

(b) The office shall provide training to ombudsmen as required by this subchapter and federal law.

(c) The office shall coordinate ombudsman services with the protection and advocacy systems that exist for persons with developmental disabilities or mental illness.

(d) The office shall coordinate ombudsman services with state and local law enforcement agencies and courts of competent jurisdiction. The office is not authorized to compel those law enforcement agencies or courts to coordinate ombudsman services or other activities with the office.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.256. LEGAL COUNSEL. The commission shall ensure that the office receives adequate legal advice and representation without conflict of interest as defined by the Texas Disciplinary Rules of Professional Conduct. The attorney general shall represent the state long-term care ombudsman and a representative if a suit or other legal action is brought or threatened to be brought against that person in connection with the person's performance of the official duties of the ombudsman program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.257. INVESTIGATIONS. (a) The office shall have access to residents and shall, in accordance with commission rules, investigate and resolve complaints made by or on behalf of residents.

(b) The state long-term care ombudsman shall ensure that each ombudsman designated under Section 101A.255 who investigates complaints has received proper training and has been approved by the office as qualified to investigate complaints.

(c) The office shall investigate a grievance made against a representative in accordance with commission rules and inform the person who made the grievance of the outcome of the investigation when the investigation is concluded.

(d) A long-term care facility shall cooperate with an

investigation conducted by the state long-term care ombudsman or a representative, including an ombudsman designated under Section 101A.255.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.258. ACCESS TO RECORDS AND CONFIDENTIALITY. (a) The state long-term care ombudsman and representatives shall have access to patient care records of residents as provided by commission rules. Except as provided by Subsection (b), all records and information created or obtained by the state long-term care ombudsman or a representative remain confidential.

(a-1) The state long-term care ombudsman and representatives shall have access to patient care records of a resident if:

(1) the resident or the resident's legal representative consents to the access;

(2) the resident is unable to consent to the access and the resident has no legal representative; or

(3) access to the records is necessary to investigate a complaint and:

(A) a legal representative of the resident refuses to consent to the access;

(B) the state long-term care ombudsman or representative has reasonable cause to believe that the legal representative of the resident is not acting in the best interests of the resident; and

(C) the state long-term care ombudsman approves the access.

(b) The office shall ensure that the identity of a complainant or any resident may be disclosed only with the consent of the person or the person's legal representative or on court order.

(c) Files, records, and other information maintained as part of the ombudsman program may be disclosed only at the discretion of the state long-term care ombudsman.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361,

eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.259. REPORTING SYSTEM. The office shall maintain a statewide ombudsman uniform reporting system to collect and analyze information relating to complaints and conditions in long-term care facilities as long as such system does not duplicate other state reporting systems. The office shall provide the information to the commission in accordance with federal law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.260. ANALYSIS OF LAWS. (a) The office shall analyze and monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies relating to long-term care facilities and services and shall recommend any changes the office considers necessary.

(b) To the extent necessary to perform any duties under this subchapter, Section 556.006(a), Government Code, and Section 391.0116, Local Government Code, do not apply to the state long-term care ombudsman or a representative.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.261. PUBLIC INFORMATION. The office shall provide information and make recommendations to public agencies, legislators, and other persons about the problems and concerns of residents.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.262. REPORT. (a) The office shall prepare a report that contains:

(1) information and findings relating to the problems and concerns of residents; and

(2) policy, regulatory, and legislative recommendations to solve the problems, resolve the concerns, and improve the quality of the residents' care and lives.

(b) The report must be submitted to the governor and the presiding officer of each house of the legislature not later than November 1 of each even-numbered year.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.263. LIMITATION OF LIABILITY. The state long-term care ombudsman or a representative is not liable for civil damages or subject to criminal prosecution for performing official duties unless the state long-term care ombudsman or representative acts in bad faith or with a malicious purpose.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

Sec. 101A.264. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) by act or omission, wilfully interferes or attempts to

interfere with the state long-term care ombudsman or a representative attempting to perform official duties; or

(2) commits or attempts to commit an act of retaliation or reprisal against any resident or employee of a long-term care facility for filing a complaint or providing information to the state long-term care ombudsman or a representative.

(b) An offense under this section is a Class B misdemeanor.

(c) The commission shall ensure that criminal sanctions will be initiated only after all administrative procedures are exhausted.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.361, eff. April 2, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 900 (H.B. 3564), Sec. 1, eff. September 1, 2017.

CHAPTER 102. RIGHTS OF THE ELDERLY

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Convalescent and nursing home" means an institution licensed by the Department of Aging and Disability Services under Chapter 242, Health and Safety Code.

(2) "Home health services" means the provision of health service for pay or other consideration in a patient's residence regulated under Chapter 142, Health and Safety Code.

(3) "Alternate care" means services provided within an elderly individual's own home, neighborhood, or community, including:

(A) day care;

(B) foster care;

(C) alternative living plans, including personal care services; and

(D) supportive living services, including attendant care, residential repair, or emergency response services.

(4) "Person providing services" means an individual, corporation, association, partnership, or other private or public entity providing convalescent and nursing home services, home health services, or alternate care services.

(5) "Elderly individual" means an individual 60 years of age or older.

Added by Acts 1983, 68th Leg., p. 5159, ch. 936, Sec. 1, eff. Sept.

1, 1983. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 25, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 14, Sec. 284(20), (30), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.101, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.362, eff. April 2, 2015.

Sec. 102.002. PROHIBITION. (a) A person providing services to the elderly may not deny an elderly individual a right guaranteed by this chapter.

(b) Each agency that licenses, registers, or certifies a person providing services shall require the person to implement and enforce this chapter. A violation of this chapter is grounds for suspension or revocation of the license, registration, or certification of a person providing services.

Added by Acts 1983, 68th Leg., p. 5159, ch. 936, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 26, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1997.

Sec. 102.003. RIGHTS OF THE ELDERLY. (a) An elderly individual has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The elderly individual has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(b) An elderly individual has the right to be treated with dignity and respect for the personal integrity of the individual, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the elderly individual:

(1) has the right to make the individual's own choices regarding the individual's personal affairs, care, benefits, and services;

(2) has the right to be free from abuse, neglect, and

exploitation; and

(3) if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of the individual's affairs.

(c) An elderly individual has the right to be free from physical and mental abuse, including corporal punishment or physical or chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the individual's medical symptoms. A person providing services may use physical or chemical restraints only if the use is authorized in writing by a physician or the use is necessary in an emergency to protect the elderly individual or others from injury. A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used. Except in an emergency, restraints may only be administered by qualified medical personnel.

(d) An elderly individual with an intellectual disability who has a court-appointed guardian of the person may participate in a behavior modification program involving use of restraints or adverse stimuli only with the informed consent of the guardian.

(e) An elderly individual may not be prohibited from communicating in the individual's native language with other individuals or employees for the purpose of acquiring or providing any type of treatment, care, or services.

(f) An elderly individual may complain about the individual's care or treatment. The complaint may be made anonymously or communicated by a person designated by the elderly individual. The person providing service shall promptly respond to resolve the complaint. The person providing services may not discriminate or take other punitive action against an elderly individual who makes a complaint.

(g) An elderly individual is entitled to privacy while attending to personal needs and a private place for receiving visitors or associating with other individuals unless providing privacy would infringe on the rights of other individuals. This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils. An elderly person may send and receive unopened mail, and the person providing services shall ensure that the individual's mail is sent and delivered promptly. If an elderly individual is married and the

spouse is receiving similar services, the couple may share a room.

(h) An elderly individual may participate in activities of social, religious, or community groups unless the participation interferes with the rights of other persons.

(i) An elderly individual may manage the individual's personal financial affairs. The elderly individual may authorize in writing another person to manage the individual's financial affairs. The elderly individual may choose the manner of financial management, which may include management through or under a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the individual may choose the least restrictive of these methods. A person designated to manage an elderly individual's financial affairs shall do so in accordance with each applicable program policy, law, or rule. On request of the elderly individual or the individual's representative, the person designated to manage the elderly individual's financial affairs shall make available the related financial records and provide an accounting relating to the financial management. An elderly individual's designation of another person to manage the individual's financial affairs does not affect the individual's ability to exercise another right described by this chapter. If an elderly individual is unable to designate another person to manage the individual's financial affairs and a guardian is designated by a court, the guardian shall manage the individual's financial affairs in accordance with the Estates Code and other applicable laws.

(j) An elderly individual is entitled to access to the individual's personal and clinical records. These records are confidential and may not be released without the elderly individual's consent, except the records may be released:

(1) to another person providing services at the time the elderly individual is transferred; or

(2) if the release is required by another law.

(k) A person providing services shall fully inform an elderly individual, in language that the individual can understand, of the individual's total medical condition and shall notify the individual whenever there is a significant change in the person's medical condition.

(l) An elderly individual may choose and retain a personal physician and is entitled to be fully informed in advance about treatment or care that may affect the individual's well-being.

(m) An elderly individual may participate in an individual plan of care that describes the individual's medical, nursing, and psychological needs and how the needs will be met.

(n) An elderly individual may refuse medical treatment after the elderly individual:

(1) is advised by the person providing services of the possible consequences of refusing treatment; and

(2) acknowledges that the individual clearly understands the consequences of refusing treatment.

(o) An elderly individual may retain and use personal possessions, including clothing and furnishings, as space permits. The number of personal possessions may be limited for the health and safety of other individuals.

(p) An elderly individual may refuse to perform services for the person providing services.

(q) Not later than the 30th day after the date the elderly individual is admitted for service, a person providing services shall inform the individual:

(1) whether the individual is entitled to benefits under Medicare or Medicaid; and

(2) which items and services are covered by these benefits, including items or services for which the elderly individual may not be charged.

(r) A person providing services may not transfer or discharge an elderly individual unless:

(1) the transfer is for the elderly individual's welfare, and the individual's needs cannot be met by the person providing services;

(2) the elderly individual's health is improved sufficiently so that services are no longer needed;

(3) the elderly individual's health and safety or the health and safety of another individual would be endangered if the transfer or discharge was not made;

(4) the person providing services ceases to operate or to participate in the program that reimburses the person providing services for the elderly individual's treatment or care; or

(5) the elderly individual fails, after reasonable and appropriate notices, to pay for services.

(s) Except in an emergency, a person providing services may not transfer or discharge an elderly individual from a residential

facility until the 30th day after the date the person providing services provides written notice to the elderly individual, the individual's legal representative, or a member of the individual's family stating:

(1) that the person providing services intends to transfer or to discharge the elderly individual;

(2) the reason for the transfer or discharge listed in Subsection (r);

(3) the effective date of the transfer or discharge;

(4) if the individual is to be transferred, the location to which the individual will be transferred; and

(5) the individual's right to appeal the action and the person to whom the appeal should be directed.

(t) An elderly individual may:

(1) make a living will by executing a directive under Subchapter B, Chapter 166, Health and Safety Code;

(2) execute a medical power of attorney under Subchapter D, Chapter 166, Health and Safety Code; or

(3) designate a guardian in advance of need to make decisions regarding the individual's health care should the individual become incapacitated.

Added by Acts 1983, 68th Leg., p. 5159, ch. 936, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1997, 75th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.363, eff. April 2, 2015.

Sec. 102.004. LIST OF RIGHTS. (a) A person providing services shall provide each elderly individual with a written list of the individual's rights and responsibilities, including each provision of Section 102.003, before providing services or as soon after providing services as possible, and shall post the list in a conspicuous location.

(b) A person providing services must inform an elderly individual of changes or revisions in the list.

Added by Acts 1983, 68th Leg., p. 5159, ch. 936, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1997, 75th Leg., ch. 475, Sec. 1, eff.

Sept. 1, 1997.

Sec. 102.005. RIGHTS CUMULATIVE. The rights described in this chapter are cumulative of other rights or remedies to which an elderly individual may be entitled under law.

Added by Acts 1997, 75th Leg., ch. 475, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 103. DAY ACTIVITY AND HEALTH SERVICES

Sec. 103.001. PURPOSE. It is the purpose of this chapter to establish programs of quality day activity and health services that will enable persons with disabilities who have medical or functional impairments and elderly persons to maintain maximum independence and to prevent premature or inappropriate institutionalization. It is the purpose of this chapter to provide adequately regulated supervision for elderly persons and persons with disabilities while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities. The legislature intends to provide for the development of policies and programs that will:

(1) provide alternatives to institutionalization;

(2) establish facilities for day activity and health services throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.364, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 6, eff. June 19, 2015.

Sec. 103.002. SHORT TITLE. This chapter may be cited as the Day Activity and Health Services Act.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a),

eff. Sept. 1, 1983.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 6, eff. June 19, 2015.

Sec. 103.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Day activity and health services facility" means a facility that provides services under a day activity and health services program on a daily or regular basis but not overnight to four or more elderly persons or persons with disabilities who are not related by blood, marriage, or adoption to the owner of the facility.

(2) "Day activity and health services program" means a structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.

(3) "Department" means the Department of Aging and Disability Services.

(4) "Elderly person" means a person 65 years of age or older.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4-b) "Facility" means a day activity and health services facility.

(5) "Person with a disability" means a person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(6) "Person" means an individual, corporation, or association.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 27, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 434, Sec. 2, eff. Jan. 1, 1994.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.365, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 7, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 17, eff. September 1, 2017.

Sec. 103.004. DEPARTMENT AND EXECUTIVE COMMISSIONER DUTIES. (a) The executive commissioner shall adopt rules for implementing this chapter.

(b) The executive commissioner shall set standards for:

(1) the health and welfare of persons attending a facility;

(2) the eligibility of persons to attend a facility;

(3) the scope of services provided by a facility;

(4) adequate supervision for persons attending a facility;

(5) the professional staff and other personnel at a facility;

(6) adequate and healthful food service, where it may be offered;

(7) procedures for consultation with family members, case workers, or other persons responsible for the welfare of a person attending a facility; and

(8) prohibiting racial discrimination.

(c) The department may contract with a political subdivision or a person for transporting persons to a facility.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.366, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.367, eff. April 2, 2015.

Sec. 103.0041. LICENSE REQUIRED. (a) A person may not operate a day activity and health services facility without a license issued under this chapter.

(b) A person commits an offense if the person violates Subsection (a) of this section. An offense under this subsection is

a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 434, Sec. 1, eff. Jan. 1, 1994.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 8, eff. June 19, 2015.

Sec. 103.005. LICENSING DUTIES. The executive commissioner shall:

(1) adopt rules for the licensing procedures for a licensed facility; and

(2) set standards for the safety and sanitation requirements for a licensed facility.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.102, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.368, eff. April 2, 2015.

Sec. 103.006. LICENSE. (a) The commission shall issue a license to operate a day activity and health services facility to a person who has met the application requirements and received approval after an on-site inspection.

(b) The license expires three years from the date of its issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during the three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(c) An applicant for a license under this chapter who has a health care provider license is entitled to have inspections and license renewal procedures coordinated so that one inspection may fulfill various licensing requirements.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 434, Sec. 3, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.103, eff.

Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 3, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.369, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 9, eff. June 19, 2015.
Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 18, eff. September 1, 2017.

Sec. 103.007. LICENSE APPLICATION. (a) An applicant for a license to operate a day activity and health services facility must file an application on a form prescribed by the commission together with a license fee of $75.

(b) The applicant must provide evidence of:

(1) the ability to comply with the requirements of the commission;

(2) responsible management; and

(3) qualified professional staff and personnel.

(c) A person who operates a facility that is licensed under this chapter must file an application for a renewal license not later than the 45th day before the expiration date of the current license on a form prescribed by the commission together with a renewal fee of $50.

(d) An applicant for a license renewal who submits an application later than the 45th day before the expiration date of the license is subject to a late fee in accordance with commission rules.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 434, Sec. 4, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.104, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. 1318), Sec. 4, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 10, eff. June 19, 2015.
Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 19, eff.

September 1, 2017.

Sec. 103.0075. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify a day activity and health services facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

(1) the change is required by federal law; or

(2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee adopted by the executive commissioner by rule for conducting a review under this section.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(90), eff. April 2, 2015.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.370, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(90), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 11, eff. June 19, 2015.

Sec. 103.008. INSPECTIONS. (a) In addition to the inspection required under Section 103.006(a), the commission:

(1) shall inspect each facility every two years following the initial inspection required under Section 103.006(a); and

(2) may inspect a facility at other reasonable times as necessary to ensure compliance with this chapter.

(b) Any person may request an inspection of a facility by notifying the commission in writing of an alleged violation of a licensing requirement. The complaint shall be as detailed as possible and signed by the complainant. The commission shall:

(1) if the complaint alleges abuse, neglect, or exploitation, perform an inspection as soon as feasible but not later than the 14th day after the date the commission receives the complaint, unless after an investigation the complaint is found to be frivolous;

(2) if the complaint does not allege abuse, neglect, or exploitation, investigate the complaint not later than the 45th day after the date the commission receives the complaint;

(3) respond to a complainant in writing; and

(4) receive and investigate anonymous complaints.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.105, eff. Sept. 1, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 20, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 22, eff. September 1, 2023.

Sec. 103.009. LICENSE DENIAL, SUSPENSION, OR REVOCATION. (a) The department may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this chapter or has committed an act described by Sections 103.012(a)(2)-(7).

(b) The denial, suspension, or revocation of a license and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a),

eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 434, Sec. 5, eff. Jan. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 8.106, eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 3.17, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 32, eff. September 1, 2011.

Sec. 103.0091. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the day activity and health services facility residents.
(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:
(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
(2) restrain or prevent the establishment or operation of a facility without a license issued under this chapter; or
(3) grant any other injunctive relief warranted by the facts.
(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.
(d) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

Added by Acts 1993, 73rd Leg., ch. 434, Sec. 1, eff. Jan. 1, 1994.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.107, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 12, eff. June 19, 2015.

Sec. 103.0092. EMERGENCY SUSPENSION AND CLOSING ORDER. (a) If

the department finds a day activity and health services facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department shall suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is immediately effective on written notice to the license holder or on the date specified on the order.

(c) The order suspending the license and ordering closure of all or part of a facility is valid for 10 days after the effective date.

Added by Acts 1993, 73rd Leg., ch. 434, Sec. 1, eff. Jan. 1, 1994.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.108, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 13, eff. June 19, 2015.

Sec. 103.010. DISPOSITION OF FUNDS. (a) All fees collected under this chapter shall be deposited to the credit of the General Revenue Fund.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(91), eff. April 2, 2015.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(91), eff. April 2, 2015.

Sec. 103.011. RIGHTS OF THE ELDERLY. (a) In addition to other rights an individual attending a day activity and health services facility has as a citizen, an individual who is 55 years of age or older has the rights prescribed by Chapter 102 of this code.

(b) The department shall require each day activity and health services facility to implement and enforce the applicable provisions of Chapter 102 of this code.

Added by Acts 1985, 69th Leg., ch. 117, Sec. 1(a), eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 7.06, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 434, Sec. 6, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.109, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 14, eff. June 19, 2015.

Sec. 103.012. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:

(1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the person knows or should know is false:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the commission;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by a day activity and health services facility; or

(B) any portion of the premises of a day activity and health services facility;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the commission of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section 103.013(c), the penalty may not exceed $500 for each violation.

(c) Each day of a continuing violation constitutes a separate

violation.

(d) The executive commissioner shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the commission shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) the deterrence of future violations; and

(5) the efforts to correct the violation.

(f) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(g) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 33, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.371, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 15, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 21, eff.

September 1, 2017.

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The commission may not collect an administrative penalty from a day activity and health services facility under Section 103.012 if, not later than the 45th day after the date the facility receives notice under Section 103.014(c), the facility corrects the violation.

(b) Subsection (a) does not apply to:

(1) a violation that the commission determines:

(A) represents a pattern of violation that results in actual harm;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to:

(i) staffing, including staff training, ratio, and health;

(ii) administration of medication; or

(iii) emergency preparedness and response;

(D) constitutes an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility; or

(E) substantially limits the facility's capacity to provide care;

(2) a violation described by Sections 103.012(a)(2)-(7);

(3) a violation of Section 103.011; or

(4) a second or subsequent violation of Section 326.002, Health and Safety Code, that occurs before the second anniversary of the date of the first violation.

(c) A day activity and health services facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, the commission may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The commission is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

(d) In this section:

(1) "Actual harm" means a negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.

(2) "Immediate threat to the health or safety of an elderly person or a person with a disability" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of an elderly person or a person with a disability receiving services at a facility.

(3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the elderly persons or persons with disabilities receiving services at the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 33, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 16, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 22, eff. September 1, 2017.

Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY; NOTICE. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this

chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 103.012 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section 103.013 and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the day activity and health services facility must file a plan of correction with the department that the department shall review and may approve, if satisfactory; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 103.013, the day activity and health services facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 103.013 and the person reports to the department that the violation has been corrected, the department shall inspect the correction or

take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged with the violation may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing as provided under department rules.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department shall assess the recommended penalty.

(i) If the department assesses the recommended penalty, the department shall give written notice of the decision to the person charged with the violation and the person shall pay the penalty.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 33, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.372, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 17, eff. June 19, 2015.

Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person assessed a penalty under Section 103.013(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact

and conclusions of law regarding the occurrence of a violation of this chapter, a rule or order adopted under this chapter, or a term of a license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, and the recommendation of the administrative law judge, the department by order shall find:

(1) a violation has occurred and assess an administrative penalty; or

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 33, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.373, eff. April 2, 2015.

Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department shall give notice of the findings made under Section 103.015(d) to the person charged with a violation. If the department finds that a violation has occurred, the department shall give to the person charged written notice of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue; and

(4) the person's right to judicial review of the department's order.

(b) Not later than the 30th day after the date on which the department's order is final, the person assessed the penalty shall:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

(1) the penalty is subject to interest; and

(2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the department shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on the amount remitted by the department under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged with the violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 33, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.374, eff. April 2, 2015.

CHAPTER 105. RESIDENTIAL FACILITIES FOR PERSONS WITH DISABILITIES OR WHO ARE ELDERLY

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Establishment" means a facility providing sleeping accommodations to two or more qualifying adult residents, at least 80

percent of whom are 65 years of age or older or are persons with disabilities, and offering, for a fee, one or more supportive services through contract with an agency licensed under Chapter 142, Health and Safety Code, or with another entity.

(2) "Qualifying adult resident" means an adult resident of a facility who is not related within the second degree by consanguinity or affinity to:

(A) a person who has an ownership interest in the facility; or

(B) at least one other resident of the facility.

(3) "Supportive services" means medical services, health-related services, or personal care services as defined by Section 247.002, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 5, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.376, eff. April 2, 2015.

Sec. 105.002. EXEMPT FACILITIES. The following facilities are exempt from the application of this chapter:

(1) housing in which all supportive services are arranged directly by the residents themselves and are provided by outside entities;

(2) nursing facilities licensed under Chapter 242, Health and Safety Code; and

(3) continuing care facilities regulated by the Texas Department of Insurance under Chapter 246, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 5, eff. Sept. 1, 1999.

Sec. 105.003. DISCLOSURE REQUIRED IN CONTRACT. An establishment that is not required to be licensed as an assisted living facility under Chapter 247, Health and Safety Code, shall execute a contract with each of its residents that contains, in addition to other required information, the following elements:

(1) the name, street address, and mailing address of the establishment;

(2) the name and mailing address of at least one person

authorized to act on behalf of the owner or owners or management agent of the establishment;

(3) a statement describing the licensure status of the establishment;

(4) the name, mailing address, and telephone number of any provider, including any individual or entity, regardless of whether licensed, providing supportive services under a contract with the establishment;

(5) the term of the contract;

(6) a description of the services to be provided that are included in the base monthly rate to be paid by the resident;

(7) a description of any additional services available for an additional fee from a provider through a contract with the establishment;

(8) a provision requiring the establishment to provide written notice of any change in fee schedules that outline the cost of additional services not later than the 31st day before the effective date of the change;

(9) a description of the process by which the contract may be modified, amended, or terminated;

(10) a description of the complaint resolution process available to residents;

(11) the name, street address, mailing address, and telephone number of the resident's designated representative, if any;

(12) a description of the billing and payment procedures and requirements;

(13) a statement ensuring the ability and right of residents to receive services from providers with whom the establishment does not have a contract; and

(14) a statement identifying the life safety and fire codes met by the building and a statement indicating whether those codes are comparable to the codes with which an assisted living facility licensed under Chapter 247, Health and Safety Code, must comply.

Added by Acts 1999, 76th Leg., ch. 233, Sec. 5, eff. Sept. 1, 1999.

TITLE 7. REHABILITATION OF INDIVIDUALS WITH DISABILITIES
CHAPTER 111. REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 111.001. PURPOSE. It is the policy of the State of Texas to provide rehabilitation and related services to eligible individuals with disabilities so that they may prepare for and engage in a gainful occupation or achieve maximum personal independence.

Acts 1979, 66th Leg., p. 2419, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 142, Sec. 2, eff. May 17, 1993.

Sec. 111.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(92), eff. April 2, 2015.

(2) "Commissioner" means the commissioner of assistive and rehabilitative services.

(2-a) "Department" means the Department of Assistive and Rehabilitative Services.

(2-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Individual with a disability" means any individual, except one whose disability is of a visual nature, who has a physical or mental impairment which constitutes a substantial impediment to employment, or to achieving maximum personal independence, but which is of a nature that rehabilitation services may be expected to enable the individual to engage in a gainful occupation or enable the individual to achieve a greater level of self-care and independent living.

(4) "Substantial impediment to employment" means a physical or mental impairment in light of attendant medical, psychological, vocational, educational, or other related factors that impedes an individual's occupational performance by preventing the individual from obtaining, retaining, or preparing for a gainful occupation consistent with the individual's capacities and abilities.

(5) "Rehabilitation services" means any equipment, supplies, goods, or services necessary to enable an individual with a disability to engage in a gainful occupation or to achieve maximum personal independence. To enable an individual with a disability to engage in a gainful occupation or achieve maximum personal independence, the department may engage in or contract for

activities, including but not limited to:

(A) evaluation of rehabilitation potential, including diagnostic and related services incidental to the determination of eligibility for services and the nature and scope of services to be provided;

(B) counseling and guidance;

(C) physical and mental restoration services necessary to correct or substantially modify a physical or mental condition that is stable or slowly progressive;

(D) training;

(E) maintenance for additional costs incurred while participating in rehabilitation services;

(F) transportation;

(G) placement in suitable employment;

(H) postemployment services necessary to maintain suitable employment;

(I) obtaining occupational licenses, including any license, permit, or other written authority required by a state, city, or other governmental unit to be obtained in order to enter an occupation or small business, and providing tools, equipment, initial stocks, goods, and supplies; and

(J) providing other equipment, supplies, services, or goods that can reasonably be expected to benefit an individual with a disability in terms of employment in a gainful occupation or achievement of maximum personal independence.

(6) "Vocational rehabilitation program" means a program that provides rehabilitation services required to enable an individual with a disability to engage in a gainful occupation.

(7) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.116(b); Acts 2003, 78th Leg., ch. 210, Sec. 2.

(8) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(92), eff. April 2, 2015.

Acts 1979, 66th Leg., p. 2419, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 338, ch. 77, Sec. 1, eff. Jan. 1, 1984; Acts 1985, 69th Leg., ch. 603, Sec. 23, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 1052, Sec. 2.09, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 142, Sec. 3, eff. May 17, 1993; Acts 1999, 76th Leg., ch. 393, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.116(b), eff. Sept. 1, 2003; Acts 2003, 78th

Leg., ch. 210, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.378, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(92), eff. April 2, 2015.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 111.0161. ADVICE OF ADVISORY COMMITTEES. (a) Each advisory committee established by law or rule to advise the department under this chapter or Subchapter F, Chapter 117, shall report to and advise the commissioner and executive commissioner on the committee's activities and the results of the committee's work. For the purpose of performing its advisory functions, each committee shall work with the commissioner, the department's staff, and the executive commissioner.

(b) The executive commissioner shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 393, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.380, eff. April 2, 2015.

Sec. 111.018. GENERAL DUTIES OF EXECUTIVE COMMISSIONER AND COMMISSIONER RELATING TO REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES. (a) The executive commissioner shall:

(1) adopt policies and rules to effectively carry out the purposes of this chapter and Subchapter F, Chapter 117; and

(2) supervise the commissioner's administration of this chapter and Subchapter F, Chapter 117.

(b) In carrying out his or her duties under this chapter and Subchapter F, Chapter 117, the commissioner shall, with the approval of the executive commissioner, implement policies addressing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other

services, procedures for hearings, and other regulations relating to this chapter or Subchapter F, Chapter 117, as necessary to carry out the purposes of this chapter and Subchapter F, Chapter 117.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(95), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(95), eff. April 2, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(95), eff. April 2, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(95), eff. April 2, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(95), eff. April 2, 2015.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(95), eff. April 2, 2015.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 6, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 393, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.381, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.382, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(95), eff. April 2, 2015.

Sec. 111.019. PLANNING. The commissioner shall make long-range and intermediate plans for the scope and development of the program and make decisions regarding the allocation of resources in carrying out the plans.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1999, 76th Leg., ch. 393, Sec. 10, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.383, eff. April 2, 2015.

Sec. 111.0205. WORK INCENTIVES AND SUPPLEMENTAL SECURITY INCOME (SSI). The department shall employ staff at the department's central office to:

(1) train counselors to understand and use work incentives in relation to services under this chapter or Subchapter F, Chapter 117; and

(2) review cases to ensure that department clients receiving services under this chapter or Subchapter F, Chapter 117, are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

Added by Acts 1995, 74th Leg., ch. 655, Sec. 6.03, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.384, eff. April 2, 2015.

Sec. 111.021. REPORTS. (a) The commissioner shall prepare and submit to the executive commissioner annual reports of activities and expenditures under this chapter and Subchapter F, Chapter 117, and, prior to each regular session of the legislature, estimates of funds required for carrying out the purposes of this chapter and Subchapter F, Chapter 117.

(c) The department shall post on the Internet in an accessible format the reports required under this section and any other agency performance data relating to this chapter or Subchapter F, Chapter 117, required to be reported to this state or the federal government. If a report or performance data contains confidential information, the department shall remove the confidential information before posting the report or performance data.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 7, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 393, Sec. 11, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(122), eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.385, eff. April 2, 2015.

Sec. 111.022. DISBURSEMENT OF FUNDS. The department shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this chapter or Subchapter F, Chapter 117.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1999, 76th Leg., ch. 393, Sec. 12, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.386, eff. April 2, 2015.

Sec. 111.023. OTHER DUTIES. The executive commissioner shall take other action as necessary or appropriate to carry out the purposes of this chapter or Subchapter F, Chapter 117.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1999, 76th Leg., ch. 393, Sec. 13, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.387, eff. April 2, 2015.

SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT

Text of section effective until April 1, 2025

Sec. 111.0505. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this chapter, or another law relating to rehabilitation services for individuals with disabilities, conflicts with Section 531.0055, Government Code, Section 531.0055 controls.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.15, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.389, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.103, eff.

April 1, 2025.

Text of section effective on April 1, 2025

Sec. 111.0505. COMMISSIONER'S POWERS AND DUTIES; EFFECT OF CONFLICT WITH OTHER LAW. To the extent a power or duty given to the commissioner by this chapter, or another law relating to rehabilitation services for individuals with disabilities, conflicts with any of the following provisions of the Government Code, the Government Code provision controls:

(1) Subchapter A, Chapter 524;
(2) Section 524.0101;
(3) Sections 524.0151(a)(2) and (b);
(4) Section 524.0202; and
(5) Section 525.0254.

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 2.15, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.389, eff. April 2, 2015.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.103, eff. April 1, 2025.

Sec. 111.051. DEPARTMENT AS PRINCIPAL AUTHORITY. The department is the principal authority in the state on rehabilitation of individuals with disabilities. All other state agencies engaged in rehabilitation activities and related services to individuals with disabilities shall coordinate those activities and services with the department.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 142, Sec. 6, eff. May 17, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.390, eff. April 2, 2015.

Sec. 111.0511. SERVICE DELIVERY BY TEXAS WORKFORCE COMMISSION. The Texas Workforce Commission has primary responsibility for providing vocational rehabilitation services and other services and programs under Subtitle C, Title 4, Labor Code, notwithstanding Section 111.051 and subject to receipt of any required federal approval to administer those services and programs. A power or duty under this chapter, including rulemaking authority, of the department, the commissioner, or the executive commissioner that is applicable to those services or programs is a power or duty of the Texas Workforce Commission with respect to those services or programs. All other state agencies engaged in vocational rehabilitation services or related services or programs shall coordinate those activities with the Texas Workforce Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 7, eff. September 1, 2016.

Sec. 111.052. GENERAL FUNCTIONS OF DEPARTMENT RELATING TO REHABILITATION SERVICES FOR CERTAIN INDIVIDUALS WITH DISABILITIES. (a) The department shall, to the extent of resources available and priorities established by the executive commissioner, provide rehabilitation services directly or through public or private resources to individuals determined by the department to be eligible for the services under a vocational rehabilitation program or other program established to provide rehabilitation services.

(b) In carrying out the purposes of this chapter and Subchapter F, Chapter 117, the department may:

(1) cooperate with other departments, agencies, political subdivisions, and institutions, both public and private, in providing the services authorized by this chapter and Subchapter F, Chapter 117, to eligible individuals, in studying the problems involved, and in planning, establishing, developing, and providing necessary or desirable programs, facilities, and services, including those jointly administered with state agencies;

(2) enter into reciprocal agreements with other states;

(3) establish or construct rehabilitation facilities and workshops, contract with or provide grants to agencies, organizations, or individuals as necessary to implement this chapter and Subchapter F, Chapter 117, make contracts or other arrangements

with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities, and operate facilities for carrying out the purposes of this chapter and Subchapter F, Chapter 117;

(4) conduct research and compile statistics relating to the provision of services to or the need for services by individuals with disabilities;

(5) provide for the establishment, supervision, management, and control of small business enterprises to be operated by individuals with significant disabilities where their operation will be improved through the management and supervision of the department;

(6) contract with schools, hospitals, private industrial firms, and other agencies and with doctors, nurses, technicians, and other persons for training, physical restoration, transportation, and other rehabilitation services; and

(7) assess the statewide need for services necessary to prepare students with disabilities for a successful transition to employment, establish collaborative relationships with each school district with education service centers to the maximum extent possible within available resources, and develop strategies to assist vocational rehabilitation counselors in identifying and reaching students in need of transition planning.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 342, ch. 77, Sec. 2, eff. Jan. 1, 1984; Acts 1993, 73rd Leg., ch. 142, Sec. 7, eff. May 17, 1993; Acts 1999, 76th Leg., ch. 393, Sec. 17, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.116(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 210, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.391, eff. April 2, 2015.

Sec. 111.0525. COORDINATION WITH STATE AGENCIES. (a) Repealed by Acts 2003, 78th Leg., ch. 198, Sec. 2.116(b); Acts 2003, 78th Leg., ch. 210, Sec. 2.

(b) The department shall enter into an agreement with the Department of Aging and Disability Services and the Department of State Health Services to reduce duplication and fragmentation of

employment services by defining each agency's role and responsibilities for shared client populations.

(c) The department shall establish a formal referral process with the Texas Workforce Commission to ensure that appropriate vocational rehabilitation clients are referred to and receive services provided by the Texas Workforce Commission or local workforce development boards.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 268, Sec. 32(f), eff. September 1, 2008.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.116(b), 2.132, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 210, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1325, Sec. 13.10, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.08, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 32(f), eff. September 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.392, eff. April 2, 2015.

Sec. 111.053. COOPERATION WITH THE FEDERAL GOVERNMENT. (a) The department shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter and Subchapter F, Chapter 117, or of any federal statutes pertaining to rehabilitation, and to this end may adopt methods of administration that are found by the federal government to be necessary, and that are not contrary to existing state laws, for the proper and efficient operation of the agreements, arrangements, or plans for rehabilitation.

(b) To the extent resources are made available by the federal government, the department may make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of any federal statute pertaining to the disability determination function under the Social Security Act and to this end shall adopt methods of administration that are found by the federal government to be necessary to the disability determination function and that are not contrary to existing state laws.

Acts 1979, 66th Leg., p. 2422, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 343, ch. 77, Sec. 3, eff. Jan. 1, 1984.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.393, eff. April 2, 2015.

Sec. 111.054. OBTAINING FEDERAL FUNDS. The department may comply with any requirements necessary to obtain federal funds relating to this chapter or Subchapter F, Chapter 117, in the maximum amount and most advantageous proportion possible.

Acts 1979, 66th Leg., p. 2423, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.394, eff. April 2, 2015.

Sec. 111.055. FINANCES. (a) All money paid to the department under this chapter or Subchapter F, Chapter 117, shall be deposited in the state treasury.
(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(100), eff. April 2, 2015.

Acts 1979, 66th Leg., p. 2423, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 10, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 584, Sec. 17, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.395, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(100), eff. April 2, 2015.

Sec. 111.0553. PROCUREMENT METHODS. (a) The executive commissioner shall adopt and the department shall implement in relation to this chapter and Subchapter F, Chapter 117, agency-wide procurement procedures to:
(1) ensure compliance with the best-value purchasing

requirements of Section 2155.144(c), Government Code;

(2) document that a best-value review of vendors has occurred;

(3) document the reasons for selecting a vendor;

(4) negotiate price discounts with high-volume vendors;

(5) consolidate purchases with other agencies, including the Department of State Health Services and the comptroller, to achieve best value; and

(6) provide effective public notification to potential vendors of planned department purchases.

(b) Nothing in this section shall be construed to limit the department's ability to procure goods and services from persons with disabilities.

Added by Acts 1999, 76th Leg., ch. 393, Sec. 21, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.96, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.396, eff. April 2, 2015.

Sec. 111.056. GIFTS AND DONATIONS. The department may receive and use gifts and donations for carrying out the purposes of this chapter and Subchapter F, Chapter 117. No person may receive payment for solicitation of any funds.

Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.397, eff. April 2, 2015.

Sec. 111.057. UNLAWFUL USE OF LISTS OF NAMES. (a) Except for purposes directly connected with the administration of health and human service programs and in accordance with regulations, it is unlawful for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of any list of, names of, or any information directly or indirectly derived from records concerning persons applying for or

receiving health and human services.

(b) The department is authorized to provide client and other information to and receive client and other information from any state agency for the purpose of increasing and enhancing services to clients and improving agency operations under this chapter and Subchapter F, Chapter 117, except where federal law or regulations preclude such sharing.

(c) The executive commissioner shall adopt rules to carry out the purposes of this section.

Acts 1979, 66th Leg., p. 2424, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 142, Sec. 9, eff. May 17, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.398, eff. April 2, 2015.

Sec. 111.059. SUBROGATION. (a) In furnishing a person rehabilitation services, including medical care services, under this chapter or Subchapter F, Chapter 117, the department is subrogated to the person's right of recovery from:

(1) personal insurance;

(2) another person for personal injury caused by the other person's negligence or wrongdoing; or

(3) any other source.

(b) The department's right of subrogation is limited to the cost of the services provided.

(c) The commissioner may totally or partially waive the department's right of subrogation when the commissioner finds that enforcement would tend to defeat the purpose of rehabilitation.

(d) The executive commissioner may adopt rules for the enforcement of the department's right of subrogation.

Added by Acts 1983, 68th Leg., p. 344, ch. 77, Sec. 4, eff. Jan. 1, 1984.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.399, eff. April 2, 2015.

Sec. 111.060. COMPREHENSIVE REHABILITATION ACCOUNT. (a) The comprehensive rehabilitation account is an account in the general revenue fund. Money in the account is derived from court costs collected under Section 133.102, Local Government Code. Money in the account may be appropriated only to the department for the purposes provided by Section 111.052.

(b) The comptroller, on requisition by the department, shall draw a warrant on the account for the amount specified in that requisition for a use authorized in Section 111.052, except that the total of warrants issued during a state fiscal year may not exceed the amount appropriated for that fiscal year. At the end of each state fiscal year, the comptroller shall transfer to the general revenue fund any unexpended balance in the comprehensive rehabilitation account that exceeds $1.5 million.

(c) The court costs remitted to the comptroller and deposited in the general revenue fund pursuant to this section are dedicated to the department.

Added by Acts 1991, 72nd Leg., ch. 101, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 142, Sec. 11, eff. May 17, 1993; Acts 2003, 78th Leg., ch. 198, Sec. 2.117, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 25 (S.B. 187), Sec. 1, eff. May 9, 2006.

Acts 2005, 79th Leg., Ch. 25 (S.B. 187), Sec. 2, eff. May 9, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.400, eff. April 2, 2015.

CHAPTER 112. DEVELOPMENTAL DISABILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. DEFINITIONS. In this chapter:

(1) "Council" means the Texas Council for Developmental Disabilities.

(2) "Designated state agency" means the executive agency designated by the governor to provide administrative support and fiscal management services to the council in accordance with this chapter and federal law.

(3) "Developmental disability" means a severe, chronic

disability as defined by applicable federal developmental disability laws.

(4) "Applicable federal developmental disability laws" refers to the various Acts of Congress providing for assistance and services to persons with developmental disabilities and codified as 42 U.S.C. Section 15001 et seq.

(5) "Protection and advocacy system" means the system established in this state under the applicable federal developmental disabilities laws for the purpose of advocating for and protecting the rights of persons with developmental disabilities.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 11, 12, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 79, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.403, eff. April 2, 2015.

Sec. 112.002. PURPOSE AND LEGISLATIVE FINDINGS. (a) The purpose of this chapter is to establish a developmental disabilities program that assures compliance with applicable federal developmental disability laws.

(b) The legislature finds that persons with developmental disabilities have a right to appropriate treatment, services, and habilitation for their disabilities within the funds available for those purposes and that the treatment, services, and habilitation for a person with developmental disabilities must be designed to maximize the developmental potential of the person and must be provided in the setting that is least restrictive of the person's personal liberty.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 13, eff. Sept. 1, 1985.

SUBCHAPTER B. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

Sec. 112.011. ESTABLISHMENT. The Texas Council for Developmental Disabilities is established.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.0111. DEFINITION. In this subchapter, "executive director" means the executive director of the council.

Added by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.012. MEMBERS. The members of the council shall be appointed by the governor in accordance with applicable federal developmental disability laws. The governor may appoint as many members to the council as is determined appropriate for the council to accomplish its purposes but must appoint, in total membership, an odd number of members to the council. Appointments to the council shall be made without regard to:

(1) the race, color, sex, religion, age, or national origin of the appointees; or

(2) the disability of the appointees, except as required by applicable federal developmental disability laws.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 28, eff. Aug. 26, 1985; Acts 1985, 69th Leg., ch. 603, Sec. 14, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 793, Sec. 22, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1170, Sec. 9.01, eff. Sept. 1, 2003.

Sec. 112.013. TERMS. (a) Members of the council appointed by the governor serve for staggered terms of six years with the term of one-third or approximately one-third of the members expiring on February 1 of each odd-numbered year.

(b) A person may not serve on the council more than two consecutive six-year terms.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 9.02, eff. Sept. 1, 2003.

Sec. 112.014. VACANCIES. (a) A position on the council becomes vacant if:

(1) a member resigns from the council by providing written notice to the chair; or

(2) a member ceases to be a resident of this state.

(b) If a position on the council becomes vacant, the chair shall provide written notice to the governor requesting a new appointment to fill the remainder of the member's term.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1999, 76th Leg., ch. 79, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.404, eff. April 2, 2015.

Sec. 112.015. EXPENSES. (a) Council members appointed under Section 112.012 serve without salary but are entitled to reimbursement for actual expenses incurred in performing their duties, including travel, meals, lodging, and telephone long-distance charges.

(b) Members of the council who have a disability and who, because of the disability, require special aids or travel companions are entitled to reimbursement for those costs.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.016. OFFICERS. (a) The governor shall designate a member of the council to be the presiding officer.

(b) The presiding officer serves in that capacity at the will of the governor.

(c) A representative of a state agency may not serve as chair or vice-chair.

(d) The council shall meet quarterly in regular session and on call by the chair when necessary for the transaction of council

business.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 15, eff. Sept. 1, 1985.

Sec. 112.0161. CONFLICTS OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the council and may not be a council employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of developmental disabilities; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of developmental disabilities.

(c) Unless otherwise required by applicable federal developmental disability laws, a person may not be a member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.0162. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of taking office the qualifications required by applicable federal developmental disability laws;

(2) is ineligible for membership under Section 112.0161;

(3) fails to discharge the member's duties for a substantial part of the member's term; or

(4) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(b) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a council member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the council, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.0163. COUNCIL MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the designated state agency and council under this chapter and applicable federal developmental disability laws;

(4) the rules of the council, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.017. BYLAWS. The council may adopt bylaws and policies consistent with this chapter and applicable state or federal law.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 16, eff. Sept. 1, 1985.

Sec. 112.018. DESIGNATED STATE AGENCY. (a) The governor shall designate, by executive order, a state agency to provide administrative support to the council and receive federal and state funds appropriated for the council. In accordance with federal law, the governor may select one of the following to serve as the designated state agency:

(1) the council;

(2) a state agency that does not provide or pay for services made available to persons with developmental disabilities;

(3) a state agency that provides or pays for services made available to persons with developmental disabilities if the state agency was designated by the governor under this section before June 30, 1994, and the governor has not changed the designation;

(4) a state office, including the office of the governor; or

(5) a state planning office.

(b) The designated state agency shall receive, deposit, and disburse funds for the council in accordance with this chapter, applicable federal developmental disability laws, and the purposes and priorities established by the council in the state plan developed under Section 112.019.

(c) The designated state agency, in accordance with state law and procedures, shall provide for fiscal control and fund-accounting procedures necessary to assure the proper disbursement of and accounting for funds available to the council.

(d) Unless the council is serving as the designated state agency, the council shall enter into a memorandum of understanding with the designated state agency that delineates the roles and responsibilities of the designated state agency under this chapter.

(e) The designated state agency may adopt rules as necessary to implement the agency's duties under this chapter and applicable federal developmental disability laws.

(f) A designated state agency may not assign duties to staff of the council unless the council is serving as the designated state agency.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 17, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.019. STATE PLAN FOR DEVELOPMENTAL DISABILITIES. (a) The council shall develop and submit the state plan for persons with developmental disabilities. The plan must conform to applicable federal developmental disability laws.

(b) Unless the council is serving as the designated state agency, the council shall consult with the designated state agency before submitting the state plan required by this section solely to:

(1) obtain appropriate assurances with respect to the plan as required by federal law; and

(2) ensure that the plan is consistent with state law.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug.

29, 1983. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 18, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.020. ADDITIONAL COUNCIL POWERS AND DUTIES. (a) In addition to powers and duties derived by the council from applicable federal developmental disability laws or other provisions of this chapter, the council shall:

(1) undertake at the request of the governor and the legislature activities appropriate to the achievement of legislative and executive functions relating to persons with developmental disabilities or other disabling conditions;

(2) submit to the governor, legislature, and other appropriate state and federal authorities periodic reports on the council's responsibilities and performance;

(3) develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the executive director and the staff of the council; and

(4) develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the jurisdiction of the council.

(b) The council may:

(1) adopt rules as necessary to implement the council's duties and responsibilities under this chapter and applicable federal developmental disability laws;

(2) approve and execute an annual budget for council activities under this chapter that is consistent with applicable federal developmental disability laws; and

(3) contract with or provide grants to agencies, organizations, or individuals as necessary to implement council activities under this chapter.

Added by Acts 1983, 68th Leg., p. 5272, ch. 970, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 603, Sec. 19, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.0201. COMPLAINTS. (a) The council shall maintain a file on each written complaint filed with the council. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the council;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the council closed the file without taking action other than to investigate the complaint.

(b) The council shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) The council, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.

Sec. 112.021. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS. The protection and advocacy system shall have access to records as required by the provisions of the applicable federal disability laws.

Added by Acts 1985, 69th Leg., ch. 603, Sec. 20, eff. Sept. 1, 1985.

Sec. 112.022. EXECUTIVE DIRECTOR. (a) The council shall hire an executive director in accordance with 42 U.S.C. Section 15025 and its subsequent amendments to carry out the policies and activities established by the council.

(b) The executive director shall hire and supervise necessary staff who will be responsible solely for carrying out activities designated by the council and consistent with:

(1) applicable federal developmental disability laws; and

(2) this chapter.

(c) The executive director or the executive director's designee shall provide to members of the council and to council employees, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.405, eff. April 2, 2015.

Sec. 112.0221. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the council to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the council's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.406, eff. April 2, 2015.

Sec. 112.023. SUNSET PROVISION. The Texas Council for Developmental Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2027.

Added by Acts 1985, 69th Leg., ch. 729, Sec. 36, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.20(34), eff. Sept. 1, 1987. Renumbered from Sec. 112.021 by Acts 1987, 70th Leg., ch. 167, 5.01(a)(28), eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.10, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 79, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 2.03, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.05, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.11, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.17, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 99 (H.B. 1679), Sec. 1, eff. May 23, 2015.

SUBCHAPTER C. PREVENTION OF DEVELOPMENTAL DISABILITIES

For expiration of Subsection (a), see Section 112.0421(c), Human Resources Code.

Sec. 112.041. PURPOSE AND POLICY. (a) The purpose of this Act is to minimize the economic and human losses in Texas caused by preventable disabilities through the establishment of a joint private-public initiative called the Office for the Prevention of Developmental Disabilities.

(b) The legislature finds there is a strong need for a unified, comprehensive prevention effort in the State of Texas. Many state agencies, as well as private organizations and local public agencies, are involved in prevention activities that can reduce the incidence and severity of developmental disabilities. However, a coordinated statewide plan that identifies and consolidates research findings and prevention activities has yet to be developed.

(c) The legislature further finds that by establishing a mechanism by which prevention activities can be better coordinated and needed prevention programs can be initiated, the State of Texas will be making an important investment in Texas's future.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.

Sec. 112.042. DEFINITIONS. In this subchapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Developmental disability" means a severe, chronic disability that:

(A) is attributable to a mental or physical impairment or to a combination of a mental and physical impairment;

(B) is manifested before a person reaches the age of 22;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more major life activities, including:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic sufficiency; and

(E) reflects the person's needs for a combination and sequence of special interdisciplinary or generic care, treatment, or other lifelong or extended services that are individually planned and coordinated.

(1-b) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(2) "Executive committee" means the executive committee of the Office for the Prevention of Developmental Disabilities.

(3) "Office" means the Office for the Prevention of Developmental Disabilities.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(b),

eff. September 1, 2015.

For expiration of this section, see Subsection (c).

Sec. 112.0421. APPLICABILITY AND EXPIRATION OF CERTAIN PROVISIONS. (a) Sections 112.041(a), 112.043, 112.045, 112.0451, 112.0452, 112.0453, 112.0454, 112.046, 112.047, 112.0471, and 112.0472 apply only until the date the executive commissioner begins to administer this subchapter and the commission assumes the duties and functions of the Office for the Prevention of Developmental Disabilities in accordance with Section 112.0431.

(b) On the date the provisions listed in Subsection (a) cease to apply, the executive committee under Section 112.045 and the board of advisors under Section 112.046 are abolished.

(c) This section and Sections 112.041(a), 112.043, 112.045, 112.0451, 112.0452, 112.0453, 112.0454, 112.046, 112.047, 112.0471, and 112.0472 expire on the last day of the period prescribed by Section 531.02001(2), Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(c), eff. September 1, 2015.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.043. OFFICE FOR THE PREVENTION OF DEVELOPMENTAL DISABILITIES; ADMINISTRATIVE ATTACHMENT. (a) The Office for the Prevention of Developmental Disabilities is administratively attached to the Health and Human Services Commission.

(b) The Health and Human Services Commission shall:

(1) provide administrative assistance, services, and materials to the office;

(2) accept, deposit, and disburse money made available to the office;

(3) accept gifts and grants on behalf of the office from any public or private entity;

(4) pay the salaries and benefits of the executive director and staff of the office;

(5) reimburse the travel expenses and other actual and necessary expenses of the executive committee, executive director,

and staff of the office incurred in the performance of a function of the office, as provided by the General Appropriations Act;

(6) apply for and receive on behalf of the office any appropriations, gifts, or other money from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation;

(7) provide the office with adequate computer equipment and support; and

(8) provide the office with adequate office space and permit the executive committee to meet in facilities of the commission.

(c) The executive director and staff of the office are employees of the office and not employees of the Health and Human Services Commission.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 751, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.407, eff. April 2, 2015.

Sec. 112.0431. ADMINISTRATION OF SUBCHAPTER; CERTAIN REFERENCES. (a) Notwithstanding any other provision in this subchapter, the executive commissioner shall administer this subchapter beginning on the date specified in the transition plan under Section 531.0204, Government Code, and the commission shall perform the duties and functions of the Office for the Prevention of Developmental Disabilities in the organizational form the executive commissioner determines appropriate.

(b) Following the assumption of the administration of this subchapter by the executive commissioner and the duties and functions by the commission in accordance with Subsection (a):

(1) a reference in this subchapter to the office, the Office for the Prevention of Developmental Disabilities, or the executive committee of that office means the commission, the division or other organizational unit within the commission designated by the executive commissioner, or the executive commissioner, as appropriate; and

(2) a reference in any other law to the Office for the

Prevention of Developmental Disabilities has the meaning assigned by Subdivision (1).

Added by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(c), eff. September 1, 2015.

Sec. 112.044. DUTIES. The office shall:

(1) educate the public and attempt to promote sound public policy regarding the prevention of developmental disabilities;

(2) identify, collect, and disseminate information and data concerning the causes, frequency of occurrence, and preventability of developmental disabilities;

(3) work with appropriate divisions within the commission, state agencies, and other entities to develop a coordinated long-range plan to effectively monitor and reduce the incidence or severity of developmental disabilities;

(4) promote and facilitate the identification, development, coordination, and delivery of needed prevention services;

(5) solicit, receive, and spend grants and donations from public, private, state, and federal sources;

(6) identify and encourage establishment of needed reporting systems to track the causes and frequencies of occurrence of developmental disabilities;

(7) develop, operate, and monitor programs created under Section 112.048 addressing the prevention of specific targeted developmental disabilities;

(8) monitor and assess the effectiveness of divisions within the commission and of state agencies in preventing developmental disabilities;

(9) recommend the role each division within the commission and each state agency should have with regard to prevention of developmental disabilities;

(10) facilitate coordination of state agency prevention services and activities within the commission and among appropriate state agencies; and

(11) encourage cooperative, comprehensive, and complementary planning among public, private, and volunteer individuals and organizations engaged in prevention activities, providing prevention services, or conducting related research.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(d), eff. September 1, 2015.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.045. EXECUTIVE COMMITTEE. (a) The executive committee is the governing body of the office.

(b) The executive committee is composed of nine members who have expertise in the field of developmental disabilities, of which three are appointed by the governor, three are appointed by the lieutenant governor, and three are appointed by the speaker of the house of representatives. Appointments to the executive committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(c) The members serve for staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year. Executive committee members receive no compensation but are entitled to reimbursement of actual and necessary expenses incurred in the performance of their duties.

(d) The governor shall designate a member of the executive committee as the presiding officer of the executive committee to serve in that capacity at the will of the governor.

(e) The executive committee shall meet at least quarterly and shall adopt bylaws for the conduct of the meetings.

(f) Any actions taken by the executive committee must be approved by a majority vote of the members present.

(g) The executive committee shall establish policies and procedures to implement this subchapter.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 557, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 751, Sec. 2, eff. Sept. 1, 1999.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.0451. CONFLICT OF INTEREST. A person may not be a

member of the executive committee or act as the general counsel to the executive committee or the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

Added by Acts 1999, 76th Leg., ch. 751, Sec. 3, eff. Sept. 1, 1999.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.0452. REMOVAL OF EXECUTIVE COMMITTEE MEMBER. (a) It is a ground for removal from the executive committee that a member:

(1) does not have at the time of taking office the qualifications required by Section 112.045;

(2) does not maintain during service on the executive committee the qualifications required by Section 112.045;

(3) is ineligible for membership under Section 112.045 or 112.0451;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled executive committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the executive committee.

(b) The validity of an action of the executive committee is not affected by the fact that it is taken when a ground for removal of an executive committee member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the executive committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the executive committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 751, Sec. 3, eff. Sept. 1, 1999.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.0453. EXECUTIVE COMMITTEE MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the executive committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the executive committee until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the office and the executive committee;

(2) the programs operated by the office;

(3) the role and functions of the office;

(4) the rules of the office with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the office;

(6) the results of the most recent formal audit of the office;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the office or the Texas Ethics Commission.

(c) A person appointed to the executive committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 751, Sec. 3, eff. Sept. 1, 1999.

For expiration of this section, see Section 112.0421(c), Human

Resources Code.

Sec. 112.0454. PUBLIC ACCESS. The executive committee shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive committee and to speak on any issue under the jurisdiction of the office.

Added by Acts 1999, 76th Leg., ch. 751, Sec. 3, eff. Sept. 1, 1999.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.046. BOARD OF ADVISORS. (a) The executive committee may appoint a board of advisors composed of the following persons:

(1) representatives of government agencies that are responsible for prevention services for specified targeted disabilities and that contract with the office to provide those services;

(2) representatives of consumer groups, foundations, or corporations that contract for or donate to the office for prevention services for specific targeted disabilities;

(3) private citizens who volunteer services or donate to the office for prevention services for specific targeted disabilities; and

(4) other persons whose assistance the executive committee considers necessary to implement the purposes of this subchapter.

(b) The board of advisors may serve on task forces, solicit donations and grants, and perform any other duties assigned by the executive committee.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.047. EXECUTIVE DIRECTOR. (a) The executive committee may hire an executive director to serve as the chief executive officer of the office and to perform the administrative duties of the office.

(b) The executive director serves at the will of the executive committee.

(c) The executive director may hire staff within guidelines established by the executive committee.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.0471. QUALIFICATIONS AND STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the executive committee and to employees of the office, as often as necessary, information regarding the requirements for office or employment under this subchapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1999, 76th Leg., ch. 751, Sec. 3, eff. Sept. 1, 1999.

For expiration of this section, see Section 112.0421(c), Human Resources Code.

Sec. 112.0472. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive director shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 1999, 76th Leg., ch. 751, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.408, eff. April 2, 2015.

Sec. 112.048. PREVENTION PROGRAMS FOR TARGETED DEVELOPMENTAL DISABILITIES. (a) The executive committee shall establish guidelines for:

(1) selecting targeted disabilities;

(2) assessing prevention services needs; and

(3) reviewing plans, budgets, and operations for programs under this section.

(b) The executive committee shall plan and implement prevention programs for specifically targeted developmental disabilities.

(c) A program under this section:

(1) must include a plan designed to reduce the incidence of a specifically targeted disability;

(2) must include a budget for implementing a plan;

(3) must be funded through:

(A) contracts for services from participating agencies;

(B) grants and gifts from private persons and consumer and advocacy organizations; and

(C) foundation support; and

(4) must be approved by the executive committee.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(e), eff. September 1, 2015.

Sec. 112.049. EVALUATION. (a) The office shall identify or encourage the establishment of needed statistical bases for each targeted group against which the office can measure how effectively a program under Section 112.048 is reducing the frequency or severity of a targeted developmental disability.

(b) The executive committee shall regularly monitor and evaluate the results of programs under Section 112.048.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(e), eff. September 1, 2015.

Sec. 112.050. GRANTS AND OTHER FUNDING. (a) The executive committee may apply for and distribute private, state, and federal funds to implement prevention policies set by the executive committee.

(b) The executive committee shall establish criteria for application and review of funding requests and accountability standards for recipients. The executive committee may adjust its criteria as necessary to meet requirements for federal funding.

(c) The executive committee may not submit a legislative appropriation request for general revenue funds for purposes of this subchapter.

(d) In addition to funding under Subsection (a), the office may accept and solicit gifts, donations, and grants of money from public and private sources, including the federal government, local governments, and private entities, to assist in financing the duties and functions of the office. The commission shall support office fund-raising efforts authorized by this subsection. Funds raised under this subsection may only be spent in furtherance of a duty or function of the office or in accordance with rules applicable to the office.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(f), eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(g), eff. September 1, 2015.

Sec. 112.051. REPORTS TO LEGISLATURE. The office shall submit by February 1 of each odd-numbered year biennial reports to the legislature detailing findings of the office and the results of programs under Section 112.048 and recommending improvements in the delivery of developmental disability prevention services.

Added by Acts 1989, 71st Leg., ch. 1209, Sec. 1, eff. Sept. 1, 1989.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.21(h), eff. September 1, 2015.

CHAPTER 114. AUTISM AND PERVASIVE DEVELOPMENTAL DISORDERS

Sec. 114.002. DEFINITIONS. In this chapter:

(1) "Autism and other pervasive developmental disorders" means a subclass of mental disorders characterized by distortions in the development of multiple basic psychological functions that are involved in the development of social skills and language, as defined by the Diagnostic and Statistical Manual (DSM-5), 5th Edition.

(1-a) "Commission" means the Health and Human Services Commission.

(2) "Council" means the Texas Council on Autism and Pervasive Developmental Disorders.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 838 (S.B. 882), Sec. 3, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 536 (S.B. 519), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.22(b), eff. September 1, 2015.

For expiration of this section, see Section 114.0021, Human Resources Code.

Sec. 114.003. COUNCIL. (a) The Texas Council on Autism and Pervasive Developmental Disorders is established.

(b) The council is composed of:

(1) seven public members, the majority of whom are family members of a person with autism or a pervasive developmental disorder, appointed by the governor with the advice and consent of the senate; and

(2) one representative from each of the following state

agencies, to serve as ex officio members:

(A) Department of Aging and Disability Services;

(B) Department of State Health Services;

(C) Health and Human Services Commission;

(D) Texas Education Agency;

(E) Department of Assistive and Rehabilitative Services; and

(F) Department of Family and Protective Services.

(c) The commissioner or executive head of each state agency shall appoint as that agency's representative the person in the agency who is most familiar with and best informed about autism and other pervasive developmental disorders. An ex officio member serves in an advisory capacity only and may not:

(1) serve as chairperson; or

(2) vote.

(d) The public members appointed by the governor serve staggered two-year terms with the terms of three or four members expiring on February 1 of each year. The public members may be reappointed. A representative of a state agency serves at the pleasure of the commissioner or executive head of that agency. A public member is entitled to reimbursement of the travel expenses incurred by the public member while conducting the business of the council, as provided in the General Appropriations Act.

(e) The governor shall designate a public member of the council as the chairman of the council to serve in that capacity at the pleasure of the governor.

(f) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(g) Any actions taken by the council must be approved by a majority vote of the public members present.

(h) The council shall establish policies and adopt rules to carry out its duties under this chapter.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.65, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 78, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 838 (S.B. 882), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 838 (S.B. 882), Sec. 5, eff. September 1, 2005.

Sec. 114.006. STATE PLAN. (a) The council shall develop a state plan to provide services to persons with autism or other pervasive developmental disorders to ensure that:

(1) the needs of those persons and their families are addressed statewide and that all available resources are coordinated to meet those needs;

(2) within existing resources, the full range of services that are available through existing state agencies is offered to those persons throughout their lives to the maximum extent possible;

(3) personnel training needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered to private sources to encourage the sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for reviewing individual complaints about services provided under this chapter is implemented.

(b) The council shall make written recommendations on the implementation of this chapter. If the council considers a recommendation that will affect another state agency, the council shall seek the advice and assistance of the agency before taking action on the recommendation. On approval of the governing body of the agency, each agency affected by a council recommendation shall implement the recommendation. If an agency does not have sufficient funds to implement a recommendation, the agency shall request funds for that purpose in its next budget proposal.

(c) Repealed by Acts 2001, 77th Leg., ch. 78, Sec. 3, eff. Sept. 1, 2001.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 78, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.22(d), eff. September 1, 2015.

For expiration of Subsection (a), see Section 114.0021, Human Resources Code.

Sec. 114.007. DUTIES. (a) The council shall provide recommendations to the Health and Human Services Commission and other appropriate state agencies responsible for implementing this chapter, including recommendations relating to the use of funds appropriated to the commission or another health and human services agency to provide services to persons with autism or other pervasive developmental disorders.

(b) The council with input from people with autism and other pervasive developmental disorders, their families, and related advocacy organizations shall address contemporary issues affecting services available to persons with autism or other pervasive developmental disorders in this state, including:

(1) successful intervention and treatment strategies, including transitioning;

(2) personnel preparation and continuing education;

(3) referral, screening, and evaluation services;

(4) day care, respite care, or residential care services;

(5) vocational and adult training programs;

(6) public awareness strategies;

(7) contemporary research;

(8) early identification strategies;

(9) family counseling and case management; and

(10) recommendations for monitoring autism service programs.

(c) The council with input from people with autism and other pervasive developmental disorders, their families, and related advocacy organizations shall advise the legislature on legislation that is needed to develop further and to maintain a statewide system of quality intervention and treatment services for all persons with autism or other pervasive developmental disorders. The council may develop and recommend legislation to the legislature or comment on pending legislation that affects those persons.

(d) The council shall identify and monitor apparent gaps in services currently available from various state agencies for persons with autism or other pervasive developmental disorders and shall advocate improvements on behalf of those persons.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1,

1987.
Amended by:
Acts 2005, 79th Leg., Ch. 838 (S.B. 882), Sec. 8, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.22(e), eff. September 1, 2015.

Sec. 114.008. REPORT. (a) Not later than November 1 of each even-numbered year, the council shall:

(1) prepare a report summarizing requirements the council identifies and recommendations for providing additional or improved services to persons with autism or other pervasive developmental disorders; and

(2) deliver the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

(b) The council shall develop a strategy for establishing new programs to meet the requirements identified through the council's review and assessment and from input from people with autism and related pervasive developmental disorders, their families, and related advocacy organizations.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 838 (S.B. 882), Sec. 9, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 73, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.22(f), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.39, eff. September 1, 2019.

Sec. 114.009. PROGRAM GUIDELINES. The council shall develop specific program guidelines for:

(1) instructional or treatment options;

(2) frequency and duration of services;

(3) ratio of staff to affected persons;

(4) staff composition and qualifications;

(5) eligibility determination; and

(6) other program features designed to ensure the provision of quality services.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987.

For expiration of Subsection (d), see Section 114.0021, Human Resources Code.

Sec. 114.010. FUNDING REQUESTS FOR PROGRAMS. (a) A public or private service provider may apply for available funds to provide a program of intervention services for eligible persons with autism or other pervasive developmental disorders in areas of identified needs.

(b) To apply for funds, a person must submit a grant request to the council.

(c) The council shall adopt rules governing the submission and processing of funding requests.

(d) Funds may be appropriated from available resources to allow the council to provide recommendations to the Health and Human Services Commission and other appropriate state agencies responsible for implementing this chapter, including recommendations relating to the use of funds appropriated to the commission or another health and human services agency to provide services to persons with autism or other pervasive developmental disorders.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987.

Amended by:

Acts 2005, 79th Leg., Ch. 838 (S.B. 882), Sec. 10, eff. September 1, 2005.

Sec. 114.011. APPROVAL CRITERIA. (a) The council shall review each request for program funding on a competitive basis and shall consider:

(1) the extent to which the program would meet identified needs;

(2) the cost of initiating the program, if applicable;

(3) whether other funding sources are available;

(4) the proposed cost of the services to the client or the client's family; and

(5) the assurance of quality services.

(b) The council may not approve a funding request for a new program unless the service provider agrees to:

(1) operate and maintain the program within the guidelines established by the council;

(2) develop for each person with autism or other pervasive developmental disorders an individualized developmental plan that:

(A) includes family participation and periodic review and reevaluation; and

(B) is based on a comprehensive developmental evaluation conducted by an interdisciplinary team;

(3) provide services to meet the unique needs of each person with autism or other pervasive developmental disorders as indicated by the person's individualized developmental plan; and

(4) develop a method in accordance with rules adopted by the council and approved by the council to respond to individual complaints relating to services provided by the program.

(c) The council shall develop with the Health and Human Services Commission and any agency designated by the commission procedures for allocating available funds to programs approved under this section.

(d) This chapter does not affect the existing authority of a state agency to provide services to a person with autism or other pervasive developmental disorders if the person meets the eligibility criteria established by this chapter. The council may modify the program standards if the council considers the modifications necessary for a particular program.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987.

Amended by:

Acts 2005, 79th Leg., Ch. 838 (S.B. 882), Sec. 11, eff. September 1, 2005.

Sec. 114.012. FEES FOR SERVICES. (a) A service provider may charge a fee for services that is based on the client's or family's

ability to pay. The fee must be used to offset the cost of providing or securing the services. If a service provider charges a fee, the provider must charge a separate fee for each type of service. In determining a client's or family's ability to pay for services, the provider must consider the availability of financial assistance or other benefits for which the client or family may be eligible.

(b) A state agency may charge a fee for services provided by the agency under this chapter that is based on the client's or family's ability to pay.

Added by Acts 1987, 70th Leg., ch. 956, Sec. 9.01, eff. Sept. 1, 1987.

Sec. 114.013. COORDINATION OF RESOURCES FOR INDIVIDUALS WITH AUTISM SPECTRUM DISORDERS. (a) The commission shall coordinate resources for individuals with autism and other pervasive developmental disorders and their families. In coordinating those resources, the commission shall consult with appropriate state agencies.

(b) As part of coordinating resources under Subsection (a), the commission shall:

(1) collect and distribute information and research regarding autism and other pervasive developmental disorders;

(2) conduct training and development activities for persons who may interact with an individual with autism or another pervasive developmental disorder in the course of their employment, including school, medical, and law enforcement personnel, and personnel of the Department of Family and Protective Services;

(3) coordinate with local entities that provide services to an individual with autism or another pervasive developmental disorder; and

(4) provide support for families affected by autism and other pervasive developmental disorders.

(c) The commission shall ensure that training and development activities under this section are:

(1) evidenced-based;

(2) applicable to the professional role of each type of personnel to be trained under Subsection (b)(2); and

(3) instructive regarding means of effectively

communicating and engaging with individuals with limited social or verbal abilities.

(d) At least once every five years, in consultation with an institution of higher education, the commission shall revise the materials and methods for the training and development activities to be provided under Subsection (b)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 177 (H.B. 1574), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.22(g), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 368 (H.B. 1386), Sec. 1, eff. September 1, 2019.

CHAPTER 115. GOVERNOR'S COMMITTEE ON PEOPLE WITH DISABILITIES

Sec. 115.001. COMMITTEE; MISSION. (a) The Governor's Committee on People with Disabilities is within the office of the governor.

(b) The committee's mission is to further opportunities for persons with disabilities to enjoy full and equal access to lives of independence, productivity, and self-determination.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 37, Sec. 1, eff. Sept. 1, 1999.

Sec. 115.002. COMPOSITION. (a) The committee is composed of 12 members appointed by the governor and of nonvoting ex officio members.

(b) The appointed members are appointed for staggered terms of two years, with half the members' terms expiring February 1 of each odd-numbered year and half the members' terms expiring February 1 of each even-numbered year. At least seven of the appointed members must be persons with disabilities.

(c) The ex officio members are:

(1) the executive director of the Texas Workforce Commission;

(2) the commissioner of assistive and rehabilitative services; and

(3) other officials designated by the governor who serve with other state agencies that provide services to persons with disabilities.

(d) Except as provided by Subsection (b), appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 835, Sec. 22, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 37, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 817, Sec. 10.10, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.409, eff. April 2, 2015.

Sec. 115.0021. CONFLICT OF INTEREST. A person may not be a member of the committee or act as the general counsel to the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee.

Added by Acts 1999, 76th Leg., ch. 37, Sec. 5, eff. Sept. 1, 1999.

Sec. 115.0022. TRAINING FOR COMMITTEE MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the committee may not vote, deliberate, or be counted as a member in attendance at a meeting of the committee until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the committee;

(2) the programs operated by the committee;

(3) the role and functions of the committee;

(4) any relevant rules of the committee;

(5) the current budget for the committee;

(6) the results of the most recent formal audit of the committee;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the committee or the Texas Ethics Commission.

(c) A person appointed to the committee is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1999, 76th Leg., ch. 37, Sec. 5, eff. Sept. 1, 1999.

Sec. 115.0023. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the committee that a member:

(1) is ineligible for membership under Section 115.0021;

(2) cannot discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(b) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the committee of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the committee, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1999, 76th Leg., ch. 37, Sec. 5, eff. Sept. 1, 1999.

Sec. 115.003. REIMBURSEMENT. Appointed members may not receive compensation for service on the committee but are entitled to actual and necessary expenses incurred in the performance of committee business, including attendance at committee meetings, telephone calls to conduct committee business, and attendance at functions to represent the committee officially. The payment of expenses is limited to available funds.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.

Sec. 115.004. OFFICERS; MEETINGS; QUORUM. (a) The governor shall designate one member of the committee as the presiding officer of the committee to serve in that capacity at the pleasure of the governor. The committee may elect other officers from its members as the committee considers necessary.

(b) The committee shall meet quarterly as provided by committee rule and may meet at other times at the call of the presiding officer.

(c) The committee is considered to be a governmental body subject to Chapter 551, Government Code.

(d) A majority of the appointed members of the committee constitutes a quorum.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 37, Sec. 3, eff. Sept. 1, 1999.

Sec. 115.0041. DIVISION OF RESPONSIBILITY. The committee shall develop and implement policies that clearly separate the policymaking responsibilities of the committee and the management responsibilities of the executive director and staff of the committee.

Added by Acts 1999, 76th Leg., ch. 37, Sec. 5, eff. Sept. 1, 1999.

Sec. 115.0042. PUBLIC HEARINGS. The committee shall develop

and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue under the jurisdiction of the committee.

Added by Acts 1999, 76th Leg., ch. 37, Sec. 5, eff. Sept. 1, 1999.

Sec. 115.005. SUNSET PROVISION. The Governor's Committee on People with Disabilities is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the committee is abolished and this chapter expires September 1, 2027.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 4.08, eff. Nov. 12, 1991; Acts 1999, 76th Leg., ch. 37, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 2.04, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.06, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.12, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.18, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 98 (H.B. 1678), Sec. 1, eff. September 1, 2015.

Sec. 115.006. STAFF; FUNDING. (a) The governor's office shall employ, subject to the approval of the committee, an executive director for the committee at a salary as determined by legislative appropriation.

(b) The governor's office shall provide other administrative support to the committee. The executive director of the committee shall coordinate the provision of the administrative support and shall supervise the staff.

(c) The committee shall be funded through the governor's office.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.

Sec. 115.0061. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the committee and to committee employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1999, 76th Leg., ch. 37, Sec. 5, eff. Sept. 1, 1999.

Sec. 115.007. RULES AND SUBCOMMITTEES. (a) The committee shall adopt rules and designate subcommittees and task forces as it considers advisable for the conduct of the committee's functions.

(b) The committee may appoint persons other than committee members to serve on its subcommittees and task forces as appropriate to obtain needed expertise and broaden representation from its constituencies. Those persons may not receive compensation for their services but may be reimbursed for travel and lodging expenses.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.

Sec. 115.008. GIFTS, GRANTS, AND DONATIONS. The committee may solicit and accept gifts, grants, and donations to support the committee or carry out the committee's functions.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.

Sec. 115.009. FUNCTIONS. The committee shall:

(1) serve as a central source of information and education on the abilities, rights, problems, and needs of persons with disabilities and, as necessary, issue reports;

(2) provide information to and advise the governor and the governor's staff on matters relating to the full participation of persons with disabilities in all aspects of life;

(3) before the end of each even-numbered year, submit to

the governor and to the legislature a report that includes any recommended changes in state laws relating to persons with disabilities;

(4) serve as the state's liaison agency in working with the Office of Disability Employment Policy and other entities involved in activities or concerns affecting persons with disabilities;

(5) develop and work with a statewide network of volunteer community-level committees to promote dissemination of information about and implementation of federal and state laws addressing rights and opportunities for persons with disabilities;

(6) provide information and technical assistance to public and private agencies and businesses to promote and facilitate implementation of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and other federal and state statutes relating to rights and opportunities of persons with disabilities;

(7) work with legislative committees and with state agencies on the development of laws and policies that affect persons with disabilities;

(8) promote the compilation and publication of state laws relating to persons with disabilities;

(9) issue awards and other forms of recognition to persons and organizations making outstanding contributions to the employment of persons with disabilities and to public awareness of issues impacting persons with disabilities;

(10) identify each current long-range plan relating to persons with disabilities in this state created by a state agency, a committee of a state agency, or a nonprofit organization required by federal law to produce such a plan, and publish the link to the Internet website address for each long-range plan, if available, on the Internet website of the Governor's Committee on People with Disabilities; and

(11) review and analyze the long-range plans described by Subdivision (10) to identify gaps in state laws and services for persons with disabilities and make biennial recommendations in the committee's report required under Subdivision (3) to address identified gaps.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 37, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.410, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 98 (H.B. 1678), Sec. 2, eff. September 1, 2015.

Sec. 115.010. GOVERNMENTAL COOPERATION. The agencies of state and local government shall cooperate with and assist the committee in the performance of its functions.

Added by Acts 1991, 72nd Leg., ch. 577, Sec. 1, eff. Sept. 1, 1991.

Sec. 115.011. COMPLAINTS. (a) The committee shall maintain a file on each written complaint filed with the committee. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the committee;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review of the complaint; and

(6) an explanation of the reason the file was closed, if the committee closed the file without taking action other than to review the complaint.

(b) The committee, until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the review of the complaint.

Added by Acts 1999, 76th Leg., ch. 37, Sec. 5, eff. Sept. 1, 1999.

CHAPTER 117. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) "Caseworker" means a department employee who manages a client's case under a direct services program and provides direct services to the client under the program.

(1-a) "Center for independent living" has the meaning

assigned by Section 702 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 796a).

(1-b) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of assistive and rehabilitative services.

(3) "Council" means the Assistive and Rehabilitative Services Council.

(4) "Department" means the Department of Assistive and Rehabilitative Services.

(4-a) "Direct services" means services provided to a client by a department employee, including counseling, facilitating the purchase of services from a source other than the department, and purchasing equipment and other items and providing other services necessary for the client to successfully complete a department program.

(4-b) "Direct services program" means a program operated by the department through which direct services are provided.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13, eff. Dec. 29, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 775 (H.B. 2463), Sec. 1, eff. September 1, 2015.

Text of section effective until April 1, 2025

Sec. 117.003. SUNSET PROVISION. Unless the commission is continued in existence as provided by Chapter 325, Government Code, after the review required by Section 531.004, Government Code, this chapter expires on the date the commission is abolished under that section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13, eff. Dec. 29, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.07, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.13, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.19, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.05, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.104, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 117.003. SUNSET PROVISION. Unless the commission is continued in existence as provided by Chapter 325, Government Code, after the review required by Section 523.0003, Government Code, this chapter expires on the date the commission is abolished under that section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13, eff. Dec. 29, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.07, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.13, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.19, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.05, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.104, eff. April 1, 2025.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 117.033. CRIMINAL HISTORY RECORD INFORMATION. (a) The department may obtain criminal history record information from the Texas Department of Criminal Justice and from the Texas Department of Public Safety if the criminal history records relate to:

(1) an applicant selected for employment with the department;

(2) an applicant for services of the department; or

(3) a client of the department.

(b) The Texas Department of Criminal Justice and the Texas Department of Public Safety upon request shall supply to the department criminal history record information relating to applicants selected for employment with the department, applicants for services of the department, or clients of the department. The department shall treat all criminal history record information as privileged and confidential and for department use only.

Added by Acts 1979, 66th Leg., p. 2435, ch. 842, art. 2, Sec. 7, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 142, Sec. 10, eff. May 17, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.118, eff. September 1, 2009.
Transferred, redesignated and amended from Human Resources Code, Section 111.058 by Acts 2013, 83rd Leg., R.S., Ch. 391 (S.B. 128), Sec. 2, eff. June 14, 2013.

Sec. 117.034. CRIMINAL HISTORY RECORD INFORMATION: APPLICANTS FOR EMPLOYMENT. The executive commissioner by rule shall establish criteria for denying a person's application for employment based on criminal history record information obtained pursuant to Section 411.117, Government Code.

Added by Acts 1999, 76th Leg., ch. 393, Sec. 22, eff. Sept. 1, 1999.
Transferred, redesignated and amended from Human Resources Code, Section 111.0581 by Acts 2013, 83rd Leg., R.S., Ch. 391 (S.B. 128), Sec. 2, eff. June 14, 2013.

SUBCHAPTER C. PERSONNEL

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 117.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department is responsible for administering human services programs to provide early childhood intervention services and rehabilitation and related services to persons who are blind, deaf, or hard of hearing. The department is also responsible for providing and coordinating programs for the rehabilitation of persons with disabilities so that those persons may prepare for and engage in a

gainful occupation or achieve maximum personal independence.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13, eff. Dec. 29, 2003.

Sec. 117.0713. SERVICE DELIVERY BY TEXAS WORKFORCE COMMISSION. The Texas Workforce Commission has primary responsibility for providing vocational rehabilitation services and other services and programs under Subtitle C, Title 4, Labor Code, notwithstanding Section 117.071 and subject to receipt of any required federal approval to administer those services and programs. A power or duty under this chapter, including rulemaking authority, of the department, the commissioner, or the executive commissioner that is applicable to those services or programs is a power or duty of the Texas Workforce Commission with respect to those services or programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 8, eff. September 1, 2016.

Text of section effective until April 1, 2025

Sec. 117.073. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13, eff. Dec. 29, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.105, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 117.073. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under

Section 524.0101(a), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13, eff. Dec. 29, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.105, eff. April 1, 2025.

Sec. 117.074. RATES FOR MEDICAL SERVICES. (a) The executive commissioner by rule shall adopt standards governing the determination of rates paid for medical services provided under this chapter. The rules must provide for an annual reevaluation of the rates.

(b) The executive commissioner shall establish a schedule of rates based on the standards adopted under Subsection (a). In adopting the rate schedule, the executive commissioner shall:

(1) compare the proposed rate schedule to other cost-based and resource-based rates for medical services, including rates paid under the Medicaid and Medicare programs; and

(2) for any rate adopted that exceeds the Medicaid or Medicare rate for the same or a similar service, document the reasons why the adopted rate reflects consideration of the best value, provider availability, and consumer choice.

(c) The executive commissioner shall provide notice to interested persons and allow those persons to present comments before adopting the standards and schedule of rates under Subsections (a) and (b).

Added by Acts 2005, 79th Leg., Ch. 211 (H.B. 1912), Sec. 1, eff. September 1, 2005.

Sec. 117.076. INFORMATION REGARDING VELOCARDIOFACIAL SYNDROME. (a) The commission shall ensure that each health and human services agency that provides intervention services to young children is provided with information developed by the commission regarding velocardiofacial syndrome.

(b) Each health and human services agency described by Subsection (a) shall provide the information regarding

velocardiofacial syndrome to appropriate health care coordinators and therapists and to parents of a child who is known by the agency to have at least two of the following conditions:

(1) hypotonicity;

(2) communication delay;

(3) articulation disorder;

(4) resonance disorder;

(5) nasal regurgitation during feeding as an infant with no history of a cleft palate;

(6) recurrent ear infections as well as diagnosis of cardiac anomaly, feeding disorder, cleft palate, or submucosal cleft palate; or

(7) fine motor or gross motor skills delay.

(c) The commission shall develop the information required under Subsection (a) using medically accurate, peer-reviewed literature. The information must include:

(1) an explanation of velocardiofacial syndrome symptoms, diagnosis, and treatment options;

(2) information on relevant state agency and nonprofit resources, parent support groups, and available Medicaid waiver programs; and

(3) a recommendation for follow-up with a health care provider for evaluation of the underlying etiology and an explanation that the existence of any of the conditions listed in Subsection (b) will not necessarily result in a diagnosis of velocardiofacial syndrome.

(d) The executive commissioner may adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 818 (S.B. 1612), Sec. 1, eff. September 1, 2009.

Sec. 117.077. DATA ANALYSIS IN FAMILY COST SHARE PROVISIONS IN EARLY CHILDHOOD INTERVENTION PROGRAM. (a) In this section, "cost-effective" means the family cost share revenue generated is greater than total administrative costs.

(b) The department shall collect data, including data on administrative costs and adjusted family income, sufficient to evaluate:

(1) the cost-effectiveness of the family cost share provisions of the early childhood intervention program; and

(2) changes necessary to improve the cost-effectiveness of the program.

(c) The department shall:

(1) as necessary, modify the Texas Kids Intervention Data System to accept adjusted family income data submitted by early childhood intervention program providers; and

(2) require all providers to enter adjusted family income data into the system.

(d) The department shall use the data collected under this section to evaluate the cost-effectiveness of existing family cost share provisions in the early childhood intervention program and consider changes that may improve the cost-effectiveness of the program, including the adoption of a family cost share provision described by Section 117.078(a).

(e) The department shall implement any changes considered under Subsection (d) that the department determines will make the family cost share provisions of the early childhood intervention program more cost-effective, if the changes will not make access to early childhood intervention services cost prohibitive for families. If none of the considered changes is determined to make the program more cost-effective, or if the department determines that the changes will make access to early childhood intervention services cost prohibitive for families, the department may decline to implement the changes.

(f) The department shall evaluate existing family cost share provisions and consider and implement changes, if appropriate, to the early childhood intervention program as required by this section:

(1) on a periodic basis established by the department; and

(2) at other times at the request of the Legislative Budget Board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 468 (S.B. 1060), Sec. 1, eff. September 1, 2013.

Sec. 117.078. FAMILY COST SHARE PROVISION IN EARLY CHILDHOOD INTERVENTION PROGRAM. (a) The department shall consider implementing a family cost share provision under which the amount a family pays to participate in the early childhood intervention

program is based on the amount of service the family receives under the program.

(b) A family cost share provision implemented by the department under Subsection (a) must establish a maximum amount to be paid by a family participating in the early childhood intervention program that is based on the family's size and adjusted gross income, with families in higher income brackets required to pay more under the provision than those families paid before the provision's implementation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 468 (S.B. 1060), Sec. 1, eff. September 1, 2013.

Sec. 117.080. PROVISION OF INDEPENDENT LIVING SERVICES. (a) The department shall ensure that all services provided under the independent living services program that the department operates under Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 796 et seq.) are directly provided by centers for independent living, except as provided by Subsection (b), and are not directly provided by the department.

(b) If an area of the state does not have a center for independent living, or no center for independent living in that area is able to provide certain necessary services under the independent living services program, the department shall seek to identify a center for independent living that is willing and able to contract with a nonprofit organization or other person to provide the independent living services in the area under the program. If no center for independent living is willing and able to contract with another organization or other person, the department may directly contract with an organization or other person who is not a center for independent living to provide the independent living services in the area under the program.

(c) The department shall evaluate the independent living services provided by a center for independent living and shall provide necessary training or technical assistance to help the center for independent living expand its capacity to provide a full range of independent living services.

(d) The department shall monitor the performance of each center for independent living in providing independent living services,

including how the center for independent living monitors the performance of the organizations and other persons with whom it contracts to provide independent living services.

(e) The executive commissioner shall adopt rules to implement this section that include:

(1) an equitable and transparent methodology for allocating funds to centers for independent living under the independent living services program;

(2) requirements applicable to the department in contracting with centers for independent living to provide independent living services under the program;

(3) requirements applicable to centers for independent living in contracting with organizations and other persons to provide independent living services under the program;

(4) requirements applicable to the department in contracting with organizations or other persons who are not centers for independent living to provide independent living services under the program;

(5) a process for the department to monitor independent living services contracts;

(6) guidelines on the department's role in providing technical assistance and training to centers for independent living as necessary; and

(7) expectations for department employees to refer persons who contact the department seeking independent living services to centers for independent living.

Added by Acts 2015, 84th Leg., R.S., Ch. 775 (H.B. 2463), Sec. 2, eff. September 1, 2015.

Sec. 117.081. COMPREHENSIVE REHABILITATION SERVICES PROGRAM. The department shall operate a comprehensive rehabilitation services program to provide comprehensive rehabilitation services to persons with traumatic brain or spinal cord injuries. The executive commissioner shall adopt rules for the program that include:

(1) a system of organization for the delivery of the comprehensive rehabilitation services;

(2) eligibility requirements for the comprehensive rehabilitation services;

(3) the types of services that may be provided to a client under the program; and

(4) requirements for client participation in the costs of the comprehensive rehabilitation services.

Added by Acts 2015, 84th Leg., R.S., Ch. 775 (H.B. 2463), Sec. 2, eff. September 1, 2015.

Sec. 117.082. CHILDREN'S AUTISM PROGRAM. The department shall operate a children's autism program to provide services to children with autism spectrum disorders. The executive commissioner shall adopt rules for the program that include:

(1) a system of organization for the delivery of the autism services;

(2) eligibility requirements for the autism services;

(3) the types of services that may be provided to a client under the program; and

(4) requirements for participation by the client's family in the costs of the autism services.

Added by Acts 2015, 84th Leg., R.S., Ch. 775 (H.B. 2463), Sec. 2, eff. September 1, 2015.

SUBCHAPTER D-1. ADMINISTRATION OF DIRECT SERVICES PROGRAMS IN GENERAL

Sec. 117.091. DIRECT SERVICES PROGRAM CASEWORKER GUIDELINES. (a) The department shall use program data and best practices to establish and maintain guidelines that provide direction for caseworkers' decisions in all of the department's direct services programs. The guidelines:

(1) must categorize direct services program cases based on the types of services provided and, for each category, include provisions addressing:

(A) the recommended length of time a case in that category should last; and

(B) the recommended total expenditures for a case in that category;

(2) must include provisions for creating intermediate goals for a client receiving services through a direct services program

that will allow:

(A) the caseworker to monitor the client's progress; and

(B) the caseworker's supervisor to evaluate how the client's case is advancing;

(3) must include criteria for caseworkers to use in evaluating progress on the intermediate goals described in Subdivision (2); and

(4) may include other provisions designed to assist caseworkers and their supervisors to achieve successful outcomes for clients.

(b) A caseworker may exceed the recommended guidelines described in Subsection (a)(1) in a direct services program case but must obtain the approval of the caseworker's supervisor after documenting the need to exceed the guidelines.

(c) The guidelines established under this section are not intended to limit the provision of appropriate or necessary services to a client.

(d) The department shall provide the guidelines established under this section to caseworkers in a format that allows caseworkers to easily access the information.

Added by Acts 2015, 84th Leg., R.S., Ch. 775 (H.B. 2463), Sec. 3, eff. September 1, 2015.

Sec. 117.092. DIRECT SERVICES PROGRAM CASE REVIEW SYSTEM. (a) The department shall establish and maintain a single, uniform case review system for all direct services programs.

(b) The case review system must:

(1) include risk assessment tools that account for the different risks involved in each direct services program;

(2) require that case reviews:

(A) be used to consistently evaluate each direct services program across all regions, with the goal of evaluating at least 10 percent of all cases in each program and region annually;

(B) focus on areas of highest risk and prioritize the review of the following cases:

(i) except as provided by Subparagraph (ii), cases in which direct services have been provided for more than two years;

(ii) cases in the Blind Children's Vocational Discovery and Development Program in which direct services have been provided for more than five years; and

(iii) cases that are significantly outside the expenditure guidelines for that type of case;

(C) be used to evaluate a caseworker's eligibility determinations and decisions to close a case before a service plan is developed or without the client reaching the client's goal; and

(D) focus on the quality of a caseworker's decision-making and compliance with program requirements; and

(3) require a caseworker's supervisor to use the reviews of a caseworker's cases in conducting the caseworker's performance evaluation and in providing informal guidance to the caseworker to improve the caseworker's performance.

Added by Acts 2015, 84th Leg., R.S., Ch. 775 (H.B. 2463), Sec. 3, eff. September 1, 2015.

Sec. 117.093. DIRECT SERVICES PROGRAM MONITORING. (a) Department personnel not employed to perform functions directly under a direct services program must be designated to monitor those programs from a statewide perspective. The designated personnel shall collect, monitor, and analyze data relating to direct services programs and report outcomes and trends to program managers and, as necessary, the commissioner or other appropriate executive management.

(b) The monitoring function under Subsection (a) must include monitoring of:

(1) performance data from all regions and all direct services programs to identify trends; and

(2) case review data to ensure compliance with the case review system under Section 117.092.

(c) Personnel designated to perform the monitoring function required by this section shall work with direct services program staff to develop objective and detailed outcome measures for the programs.

(d) The department may conduct internal peer reviews of the department's field offices at regular intervals to assess the field offices' compliance with federal regulations and department policies

and to compare each field office's compliance with the compliance of the other field offices. The department may use personnel designated to perform the monitoring function required by this section to facilitate the internal peer reviews.

Added by Acts 2015, 84th Leg., R.S., Ch. 775 (H.B. 2463), Sec. 3, eff. September 1, 2015.

TITLE 8. RIGHTS AND RESPONSIBILITIES OF PERSONS WITH DISABILITIES

CHAPTER 121. PARTICIPATION IN SOCIAL AND ECONOMIC ACTIVITIES

Sec. 121.001. STATE POLICY. The policy of the state is to encourage and enable persons with disabilities to participate fully in the social and economic life of the state, to achieve maximum personal independence, to become gainfully employed, and to otherwise fully enjoy and use all public facilities available within the state.

Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 649, Sec. 2, eff. Sept. 1, 1997.

Sec. 121.0014. VISION STATEMENT. (a) The Health and Human Services Commission, each health and human services agency, and each state agency that administers a workforce development program shall adopt the following statement of vision:

> The State of Texas shall ensure that all Texans with disabilities have the opportunity and support necessary to work in individualized, competitive employment in the community and to have choices about their work and careers.

Text of subsection effective until April 1, 2025

(b) In this section, "health and human services agency" means an agency listed by Section 531.001(4), Government Code.

Text of subsection effective on April 1, 2025

(b) In this section, "health and human services agency" means an agency listed by Section 521.0001(5), Government Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 6.02(a), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.415, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.106, eff. April 1, 2025.

Sec. 121.002. DEFINITIONS. In this chapter:

(1) "Assistance animal" and "service animal" mean a canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability.

(2) "Harass" means any conduct that:

(A) is directed at an assistance animal that impedes or interferes with, or is intended to impede or interfere with, the animal's performance of its duties; or

(B) places a person with a disability who is using an assistance animal, or a trainer who is training an assistance animal, in danger of injury.

(3) "Housing accommodations" means all or part of real property that is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings, except a single-family residence whose occupants rent, lease, or furnish for compensation only one room.

(4) "Person with a disability" means a person who has:

(A) a mental or physical disability;

(B) an intellectual or developmental disability;

(C) a hearing impairment;

(D) deafness;

(E) a speech impairment;

(F) a visual impairment;

(G) post-traumatic stress disorder; or

(H) any health impairment that requires special ambulatory devices or services.

(5) "Public facility" includes a street, highway, sidewalk, walkway, common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or any other public conveyance or mode of transportation; a hotel, motel, or other place of lodging; a public building maintained by any unit or subdivision of government; a retail business, commercial establishment, or office building to which the general public is invited; a college dormitory or other

educational facility; a restaurant or other place where food is offered for sale to the public; and any other place of public accommodation, amusement, convenience, or resort to which the general public or any classification of persons from the general public is regularly, normally, or customarily invited.

(6) "White cane" means a cane or walking stick that is metallic or white in color, or white tipped with a contrasting color, and that is carried by a blind person to assist the blind person in traveling from place to place.

Acts 1979, 66th Leg., p. 2425, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 3310, ch. 865, Sec. 1, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 278, Sec. 1, eff. June 5, 1985; Acts 1995, 74th Leg., ch. 890, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 649, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 2, eff. January 1, 2014.

Sec. 121.003. DISCRIMINATION PROHIBITED. (a) Persons with disabilities have the same right as persons without disabilities to the full use and enjoyment of any public facility in the state.

(b) No common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state may refuse to accept as a passenger a person with a disability because of the person's disability, nor may a person with a disability be required to pay an additional fare because of his or her use of a service animal, wheelchair, crutches, or other device used to assist a person with a disability in travel.

(c) No person with a disability may be denied admittance to any public facility in the state because of the person's disability. No person with a disability may be denied the use of a white cane, assistance animal, wheelchair, crutches, or other device of assistance.

(d) The discrimination prohibited by this section includes a refusal to allow a person with a disability to use or be admitted to any public facility, a ruse or subterfuge calculated to prevent or discourage a person with a disability from using or being admitted to a public facility, and a failure to:

(1) comply with Chapter 469, Government Code;

(2) make reasonable accommodations in policies, practices, and procedures; or

(3) provide auxiliary aids and services necessary to allow the full use and enjoyment of the public facility.

(e) Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by persons with disabilities who, except for their disabilities or use of assistance animals or other devices for assistance in travel, would fall within the designated class.

(f) It is the policy of the state that persons with disabilities be employed by the state, by political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as persons without disabilities, unless it is shown that there is no reasonable accommodation that would enable a person with a disability to perform the essential elements of a job.

(g) Persons with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(h) A person with a total or partial disability who has or obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and may not be required to pay extra compensation or make a deposit for the animal but is liable for damages done to the premises by the animal except for reasonable wear and tear.

(i) A service animal in training shall not be denied admittance to any public facility when accompanied by an approved trainer.

(j) A person may not assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal.

(k) Except as provided by Subsection (l), a person is not entitled to make demands or inquiries relating to the qualifications or certifications of a service animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the service animal to a person with a disability.

(l) If a person's disability is not readily apparent, for purposes of admittance to a public facility with a service animal, a staff member or manager of the facility may inquire about:

(1) whether the service animal is required because the person has a disability; and

(2) what type of work or task the service animal is trained to perform.

Acts 1979, 66th Leg., p. 2426, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 3310, ch. 865, Sec. 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., 1st C.S., p. 57, ch. 7, Sec. 10.03(c), eff. Sept. 23, 1983; Acts 1985, 69th Leg., ch. 278, Sec. 2, eff. June 5, 1985; Acts 1989, 71st Leg., ch. 249, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 890, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 649, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 261, Sec. 1, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 710, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 3, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.416, eff. April 2, 2015.

Sec. 121.004. PENALTIES FOR AND DAMAGES RESULTING FROM DISCRIMINATION. (a) A person, including a firm, association, corporation, or other public or private organization, or the agent of the person, who violates a provision of Section 121.003 commits an offense. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not more than $300; and

(2) 30 hours of community service to be performed for a governmental entity or nonprofit organization that primarily serves persons with visual impairments or other disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than one year.

(b) In addition to the penalty provided in Subsection (a), a person, including a firm, association, corporation, or other public or private organization, or the agent of the person, who violates the provisions of Section 121.003 is deemed to have deprived a person

with a disability of his or her civil liberties. Subject to Section 121.0041, if applicable, the person with a disability deprived of his or her civil liberties may maintain an action for damages in a court of competent jurisdiction, and there is a conclusive presumption of damages in the amount of at least $300 to the person with a disability.

Acts 1979, 66th Leg., p. 2427, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1995, 74th Leg., ch. 890, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 649, Sec. 5, eff. Sept. 1, 1997. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 4, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 342 (H.B. 1463), Sec. 1, eff. September 1, 2017.

Sec. 121.0041. PROCEDURES FOR CERTAIN ACTIONS; OPPORTUNITY TO CURE. (a) In this section:

(1) "Claimant" means a person filing or intending to file an action under Section 121.004(b).

(2) "Respondent" means the person against whom a claimant files or intends to file an action under Section 121.004(b).

(b) This section applies only to an action under Section 121.004(b) alleging a failure to comply with applicable design, construction, technical, or similar standards required under Chapter 469, Government Code, or other applicable state or federal laws that require compliance with specified design, construction, technical, or similar standards, including Internet website accessibility guidelines, to accommodate persons with disabilities.

(c) Not later than the 60th day before the date an action to which this section applies is filed, the claimant must give written notice of the claim to the respondent. The notice may be given in a manner prescribed for service of process in a civil action. The written notice:

(1) must state:

(A) the name of the individual alleging a failure to comply with applicable design, construction, technical, or similar standards;

(B) in reasonable detail, each alleged violation; and

(C) the date, place, and manner in which the claimant discovered the alleged violation; and

(2) may not demand a sum of damages, request settlement, or offer to settle the claim without a determination of whether a condition stated in the notice is excused by law or may be remedied.

(d) A respondent who has received a written notice under Subsection (c) may correct the alleged violation before the earliest date on which the claimant may file the action.

(e) A respondent who has corrected an alleged violation shall provide a notice of the correction to the claimant that describes each correction and the manner in which the correction addresses the alleged violation. If the respondent concludes that an alleged violation has not occurred and that a correction is not necessary, the respondent shall provide the claimant an explanation of the respondent's conclusion. The notice of correction or explanation may be given in a manner prescribed for service of process in a civil action.

(f) If a claimant files an action to which this section applies, the claimant must establish by a preponderance of the evidence that the respondent has not corrected one or more of the alleged violations stated in the written notice provided under Subsection (c).

(g) If an action is filed, the respondent may file a plea in abatement and request an evidentiary hearing on the plea. The court shall abate the action for a period not to exceed 60 days after the date of the hearing if the court finds by a preponderance of the evidence that:

(1) the respondent initiated action to correct the alleged violation during the time allowed under Subsection (d);

(2) the respondent could not complete the corrections within that time; and

(3) the corrections will be completed by the end of the period of abatement.

(h) If a respondent has provided the notice of correction or has completed corrections during a period of abatement under Subsection (g):

(1) the claimant may file a motion to dismiss the action without prejudice; or

(2) the respondent may file a motion for summary judgment in accordance with the Texas Rules of Civil Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 342 (H.B. 1463), Sec. 2, eff. September 1, 2017.

Sec. 121.005. RESPONSIBILITIES OF PERSONS WITH DISABILITIES. (a) A person with a disability who uses an assistance animal for assistance in travel is liable for any damages done to the premises or facilities by the animal.

(b) A person with a disability who uses an assistance animal for assistance in travel or auditory awareness shall keep the animal properly harnessed or leashed, and a person who is injured by the animal because of the failure of a person with a disability to properly harness or leash the animal is entitled to maintain a cause of action for damages in a court of competent jurisdiction under the same law applicable to other causes brought for the redress of injuries caused by animals.

Acts 1979, 66th Leg., p. 2427, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 3310, ch. 865, Sec. 3, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 278, Sec. 3, eff. June 5, 1985; Acts 1997, 75th Leg., ch. 649, Sec. 6, eff. Sept. 1, 1997.

Sec. 121.006. IMPROPER USE OF ASSISTANCE AND SERVICE ANIMALS; OFFENSE. (a) A person commits an offense if the person intentionally or knowingly represents that an animal is an assistance animal or a service animal when the animal is not specially trained or equipped to help a person with a disability. An offense under this subsection is a misdemeanor punishable by:

(1) a fine of not more than $1,000; and

(2) 30 hours of community service to be performed for a governmental entity or nonprofit organization that primarily serves persons with visual impairments or other disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than one year.

(b) A person who habitually abuses or neglects to feed or otherwise neglects to properly care for the person's assistance animal or service animal is subject to seizure of the animal under Subchapter B, Chapter 821, Health and Safety Code.

Acts 1979, 66th Leg., p. 2427, ch. 842, art. 1, Sec. 1, eff. Sept. 1,

1979. Amended by Acts 1981, 67th Leg., p. 3311, ch. 865, Sec. 4, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 278, Sec. 4, eff. June 5, 1985; Acts 1997, 75th Leg., ch. 649, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 5, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 757 (H.B. 4164), Sec. 1, eff. September 1, 2023.

Sec. 121.008. DISSEMINATION OF INFORMATION RELATING TO PERSONS WITH DISABILITIES. (a) To ensure maximum public awareness of the policies set forth in this chapter, the governor shall issue a proclamation each year taking suitable public notice of October 15 as White Cane Safety and Service Animal Recognition Day. The proclamation must contain appropriate comment about the significance of various devices and animals used by persons with disabilities to assist them in traveling, and must call to the attention of the public the provisions of this chapter and of other laws relating to the safety and well-being of this state's citizens with disabilities.

(b) The comptroller, the secretary of state, and other state agencies that regularly mail forms or information to significant numbers of public facilities and businesses operating within the state shall cooperate with state agencies responsible for the rehabilitation of persons with disabilities by sending information about this chapter to those to whom regular mailings are sent. The information, which must be sent at the request of state agencies responsible for the rehabilitation of persons with disabilities and at least once each year, may be included in regular mailings or sent separately. If sent separately, the cost of mailing is borne by the state rehabilitation agency or agencies requesting the mailing and, regardless of whether sent separately or as part of a regular mailing, the cost of preparing information about this chapter is borne by the state rehabilitation agency or agencies requesting distribution of this information.

Acts 1979, 66th Leg., p. 2428, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 649, Sec. 9, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 6, eff. January 1, 2014.

Sec. 121.009. CONSTRUCTION OF CHAPTER. The provisions of this chapter must be construed in a manner compatible with other state laws relating to persons with disabilities.

Acts 1979, 66th Leg., p. 2428, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1997, 75th Leg., ch. 649, Sec. 10, eff. Sept. 1, 1997.

Sec. 121.010. TESTING ADULTS WITH DISABILITIES. (a) A test that evaluates an adult with a disability for a job position in business, government, or industry, or a test to determine that person's educational level, must measure individual abilities and not specific disabilities.

(b) If an examiner knows that an adult examinee has a disability, the examiner may use an alternate form of testing. The alternate form of testing may assess the aptitude of the examinee by using that person's primary learning mode.

(c) The examiner may use as an alternate form of testing any procedure or adaption that will help ensure the best performance possible by an adult with a disability, including oral or visual administration of the test, oral or manual response to the test, the use of readers, tape recorders, interpreters, large print, or braille text, the removal of time constraints, and multiple testing sessions.

(d) An examiner shall select and administer a test to an examinee who has a disability that impairs sensory, manual, or speaking skills so that the test accurately reflects the factor the test is intended to measure and does not reflect the examinee's impaired sensory, manual, or speaking skills.

(e) An examiner may not use a test that has a disproportionate, adverse effect on an adult with a disability or a class of adults with disabilities unless:

(1) the test has been validated as a predictor of success in the program or activity for which the adult with a disability is applying; and

(2) alternate tests or alternative forms of testing that

have a less disproportionate, adverse effect do not exist or are not available.

Added by Acts 1981, 67th Leg., p. 2482, ch. 645, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1997, 75th Leg., ch. 649, Sec. 11, eff. Sept. 1, 1997.

Sec. 121.011. ACCESSIBILITY OF EXAMINATION OR COURSE OFFERED BY PRIVATE ENTITY. (a) A private entity that offers an examination or a course related to applications, certification, credentialing, or licensing for secondary or postsecondary education, a profession, or a trade shall:

(1) offer the examination or course in a place and manner that is accessible to persons with disabilities or make alternative accessible arrangements for persons with disabilities;

(2) offer the examination or course to persons with disabilities:

(A) as often as the entity offers the examination or course to persons without disabilities;

(B) at a location that is as convenient as the location at which the entity offers the examination or course to persons without disabilities; and

(C) at a time that is as appropriate as the time when the entity offers the examination or course to persons without disabilities; and

(3) make auxiliary test guides and other resources available in alternative formats.

(b) A private entity that offers an examination or a course described by Subsection (a) may require persons with disabilities to provide reasonable documentation of their disabilities and reasonable advance notice of any necessary modifications or aids. The deadline for advance notice may not be earlier than the application deadline for the examination or course. The entity may not refuse a request for modifications or aids from a person with a disability on the grounds that the person, because of the person's disability, would not meet other requirements of the profession or occupation for which the course or examination is given.

Added by Acts 1997, 75th Leg., ch. 649, Sec. 12, eff. Sept. 1, 1997.

CHAPTER 122. PURCHASING FROM PEOPLE WITH DISABILITIES

Sec. 122.001. PURPOSE. The purpose of this chapter is to further the state's policy of encouraging and assisting persons with disabilities to achieve maximum personal independence by engaging in useful and productive employment activities and, in addition, to provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to persons with disabilities.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.

Sec. 122.0012. SUNSET PROVISION. (a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 6.03, eff. June 10, 2019.

(b) The Texas Workforce Commission's authority to administer and oversee the program administered under this chapter is subject to Chapter 325, Government Code (Texas Sunset Act). Notwithstanding any other law, that authority expires September 1, 2027, unless continued in existence as provided by Chapter 325, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 48 (H.B. 2472), Sec. 21, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 4.10, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 6.03, eff. June 10, 2019.

Sec. 122.002. DEFINITIONS. In this chapter:

(1) "Central nonprofit agency" means an agency designated as a central nonprofit agency under contract under Section 122.019.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(103), eff. April 2, 2015.

(3) "Community rehabilitation program" means a government or nonprofit private program operated under criteria established by the council and under which persons with severe disabilities produce products or perform services for compensation.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 672 , Sec. 27(1), eff. September 1, 2015.

(5) "Disability" means a mental or physical impairment, including blindness, that impedes a person who is seeking, entering, or maintaining gainful employment.

(6) "Workforce commission" means the Texas Workforce Commission.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 132, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(103), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 27(1), eff. September 1, 2015.

Sec. 122.0057. ADVISORY COMMITTEE. (a) The workforce commission shall establish an advisory committee to assist the workforce commission in establishing:

(1) performance goals for the program administered under this chapter; and

(2) criteria for certifying a community rehabilitation program for participation in the program administered under this chapter.

(b) The advisory committee consists of 13 members appointed by the workforce commission as follows:

(1) four representatives from community rehabilitation programs that participate in the program administered under this chapter;

(2) four representatives from organizations that advocate for persons with disabilities;

(3) the executive commissioner of the health and human services commission or designee; and

(4) four persons with disabilities, of whom two are employed by a community rehabilitation program that participates in the program administered under this chapter.

(c) Members of the advisory committee serve at the will of the

workforce commission.

(d) The workforce commission shall appoint a presiding officer from among the advisory committee members.

(e) The members of the advisory committee serve staggered four-year terms, with the terms of either six or seven members expiring February 1 of each odd-numbered year. A member may not serve more than two terms.

(f) A vacancy on the committee shall be filled in the same manner as the original appointment for that position.

(g) The advisory committee shall meet semiannually.

(h) The advisory committee shall:

(1) establish specific objectives for the program administered under this chapter that are appropriate given the program's status as one of several employment-related services this state offers to persons with disabilities;

(2) develop performance measures that may be used by the workforce commission to evaluate whether the program is meeting the objectives established under Subdivision (1); and

(3) recommend criteria for certifying community rehabilitation programs for participation in the program.

(i) In developing the performance measures under Subsection (h), the advisory committee must consider the following factors as applicable to the program administered under this chapter:

(1) the percentage of total sales revenue attributable to the program:

(A) paid in wages to persons with disabilities; and

(B) spent on direct training and professional development services for persons with disabilities;

(2) the average hourly wage earned by a person participating in the program;

(3) the average annual salary earned by a person participating in the program;

(4) the number of persons with disabilities participating in the program paid less than minimum wage;

(5) the average number of hours worked each week by a person with a disability who participates in the program;

(6) the percentage of persons with disabilities who participate in the program and who are placed into competitive positions, including competitive management or administrative positions within community rehabilitation programs; and

(7) the percentage of work performed by persons with disabilities who participate in the program that is purely repackaging labor.

(j) The advisory committee shall meet at the call of the presiding officer at least once each fiscal year to review and, if necessary, recommend changes to program objectives, performance measures, and criteria established under Subsection (h).

Text of subsection effective until April 1, 2025

(k) The advisory committee shall provide input to the workforce commission in adopting rules applicable to the program administered under this chapter relating to the employment-first policies described by Sections 531.02447 and 531.02448, Government Code.

Text of subsection effective on April 1, 2025

(k) The advisory committee shall provide input to the workforce commission in adopting rules applicable to the program administered under this chapter relating to the employment-first policies described by Sections 546.0003 and 546.0451, Government Code.

(l) The workforce commission shall provide administrative support to the advisory committee.

(m) The advisory committee is not subject to Chapter 2110, Government Code.

Added by Acts 2001, 77th Leg., ch. 1304, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.418, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 5, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.107, eff. April 1, 2025.

Sec. 122.0058. APPLICATION OF OPEN MEETINGS LAW, OPEN RECORDS LAW, AND ADMINISTRATIVE PROCEDURE LAW TO ADVISORY COMMITTEE. The advisory committee established under Section 122.0057 is subject to the requirements of the open meetings law, Chapter 551, Government Code, the open records law, Chapter 552, Government Code, and Chapter 2001, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 6, eff.

September 1, 2015.

Sec. 122.007. FAIR MARKET PRICE; PURCHASING PROCEDURES. (a) The workforce commission shall determine the fair market price of all products and services manufactured or provided by persons with disabilities and offered for sale to the various agencies and departments of the state and its political subdivisions by a community rehabilitation program participating in the program administered under this chapter. The workforce commission shall ensure that the products and services offered for sale offer the best value for the state or a political subdivision. The comptroller shall provide the workforce commission with the information and resources necessary for the workforce commission to comply with this subsection.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 672 , Sec. 27(7), eff. September 1, 2015.

(c) The workforce commission shall revise the prices periodically to reflect changing market conditions.

(d) Before offering for sale products and services manufactured or provided by persons with disabilities to state agencies and political subdivisions, the workforce commission shall test the goods and services in accordance with Section 2155.069, Government Code, to the extent necessary to ensure quality. The workforce commission may enter into a contract with a private or public entity to assist with testing. The comptroller shall make awards under this section based on proposed goods and services meeting formal state specifications developed by the comptroller or meeting commercial specifications approved by the comptroller.

(e) Requisitions for products and services required by state agencies are processed by the comptroller according to rules established by the comptroller.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1206, Sec. 25, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.419, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 27(7), eff. September 1, 2015.

Sec. 122.0076. WAGE REQUIREMENTS. (a) A community rehabilitation program may not participate in the program administered under this chapter unless each worker with a disability employed by the program is paid at least the federal minimum wage under Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206), for any work relating to any products or services purchased from the community rehabilitation program through the program administered under this chapter.

(b) The workforce commission may exempt the community rehabilitation program from the requirements of this section with respect to a worker with a disability if the workforce commission determines, based on the worker's circumstances, that requiring the program to pay the worker at the federal minimum wage would result in the program not being able to retain the worker with a disability, the worker would not have success obtaining work with a different employer, and the worker, based on the worker's circumstances, would not be able to obtain employment at a higher wage than the program would be able to pay the worker notwithstanding the requirements of this section.

(c) To the extent of a conflict between this section and Chapter 62, Labor Code, this section controls.

Added by Acts 2019, 86th Leg., R.S., Ch. 35 (S.B. 753), Sec. 1, eff. September 1, 2019.

Sec. 122.008. PROCUREMENT AT DETERMINED PRICE. A suitable product or service that meets applicable specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a community rehabilitation program at the price determined by the workforce commission to be the fair market price under Section 122.007.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 8, eff. September 1, 2015.

Sec. 122.009. RECORDS. The records of the workforce commission and of a central nonprofit agency shall, to the extent that the records pertain specifically to state purchases of the products and services of persons with disabilities, be made available upon request to the inspection of representatives of the state auditor, the governor's budget office, or the Legislative Budget Board. The inspection of the records shall be conducted with due regard to the privacy rights of persons with disabilities. A document that is available for inspection under this subsection is an open record for purposes of Chapter 552, Government Code.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.420, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 9, eff. September 1, 2015.

Sec. 122.0095. AGENCY COMPLIANCE; NONPROGRAM PURCHASING REPORT. (a) Each state agency that purchases products or services through a program under this chapter shall:

(1) designate an agency employee to ensure that the agency complies with this chapter; and

(2) report to the comptroller and the workforce commission the purchase of products or services available from a central nonprofit agency or community rehabilitation program under this chapter, but purchased from another business that is not a central nonprofit agency or community rehabilitation program under this chapter.

(b) A report under this section may be based on a sampling of purchases by the agency in an audit conducted after the purchases.

(c) Information in the report under this section shall be included with the exception reports provided under Section 122.016.

(d) The comptroller shall post the reports required by Subsection (a)(2) on the comptroller's website.

(e) The workforce commission shall review and analyze the information contained in the reports under this section and Sections

122.012 and 122.016. The comptroller shall assist the workforce commission in reviewing and analyzing the reports in order to improve state agency compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1304, Sec. 4, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 132, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.421, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 10, eff. September 1, 2015.

Sec. 122.010. COOPERATION WITH DEPARTMENT OF CRIMINAL JUSTICE. The workforce commission may cooperate with the Texas Department of Criminal Justice to accomplish the purposes of this chapter and to contribute to the economy of state government. The workforce commission and the department may enter into contractual agreements, cooperative working relationships, or other arrangements necessary for effective coordination and the realization of the objectives of both entities.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.119, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 11, eff. September 1, 2015.

Sec. 122.011. CORRELATION WITH RELATED FEDERAL PROGRAMS. The workforce commission may adopt procedures, practices, and standards used for federal programs similar to the state program established in this chapter.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 12, eff. September 1, 2015.

Sec. 122.012. DUTIES OF COMPTROLLER; INTERAGENCY COOPERATION. (a) The comptroller shall cooperate with, and provide any necessary support to, the workforce commission in accordance with legislative appropriation.

(b) State agencies responsible for the provision of rehabilitation and related services to persons with disabilities shall cooperate with the workforce commission in the operation of the program. The Department of Assistive and Rehabilitative Services and other state human services agencies responsible for assisting persons with disabilities may, through written agreements or interagency contracts, provide space, storage, logistical support, consultation, expert services, communications services, or financial assistance with respect to the program administered under this chapter.

(c) The comptroller or a state agency may not assume the marketing or fiscal responsibility for the expense of marketing the products and services of persons with disabilities under the program.

(d) The comptroller shall include the programs administered under this chapter in the comptroller's procurement policy manuals.

(e) After any audit or review the comptroller conducts with regard to state agency compliance with purchasing laws and procedures, the comptroller shall report to the workforce commission a state agency that is not complying with this chapter.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1304, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 132, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.422, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 13, eff. September 1, 2015.

Sec. 122.013. RULES. (a) The workforce commission shall adopt rules for the implementation, extension, administration, or improvement of the program authorized by this chapter in accordance with Chapter 2001, Government Code.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 672 , Sec. 27(8), eff. September 1, 2015.

(c) The workforce commission shall adopt rules to:

(1) address possible conflicts of interest for central nonprofit agencies and community rehabilitation programs;

(2) establish a process for the certification of community rehabilitation programs;

(3) establish a minimum percentage of disabled labor an organization must employ to be considered a community rehabilitation program under this chapter; and

(4) define the terms "value-added" and "direct labor" for products manufactured and services provided that are offered for sale under this chapter.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1304, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.423, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 27(8), eff. September 1, 2015.

Sec. 122.014. PRODUCT SPECIFICATIONS. Except as otherwise provided by this section, a product manufactured for sale through the comptroller to any office, department, institution, or agency of the state under this chapter shall be manufactured or produced according to specifications developed by the comptroller. If the comptroller has not adopted specifications for a particular product, the production shall be based on commercial or federal specifications in current use by industry for the manufacture of the product for sale to the state.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.424, eff. April 2, 2015.

Sec. 122.015. DETERMINATIONS OF FAIR MARKET VALUE. (a) In determining the fair market value of products or services offered for sale under this chapter, the workforce commission shall give due

consideration to the following type of factors:

(1) to the extent applicable, the amounts being paid for similar articles in similar quantities by federal agencies purchasing the products or services under the authorized federal program of like effect to the state program authorized by this chapter;

(2) the amounts which private business would pay for similar products or services in similar quantities if purchasing from a reputable corporation engaged in the business of selling similar products or services;

(3) to the extent applicable, the amount paid by the state in any recent purchases of similar products or services in similar quantities, making due allowance for general inflationary or deflationary trends;

(4) the actual cost of manufacturing the product or performing a service at a community rehabilitation program offering employment services on or off premises to persons with disabilities, with adequate weight to be given to legal and moral imperatives to pay workers with disabilities equitable wages; and

(5) the usual, customary, and reasonable costs of manufacturing, marketing, and distribution.

(b) The actual cost of manufacturing a product or performing a service consists of costs directly associated with a contract and includes costs for labor, raw materials used in the production of the product, storage, and delivery. Actual costs do not include a cost associated with an individual's preparation to perform the work activity.

(c) The fair market value of a product or service, determined after consideration of relevant factors of the foregoing type, may not be excessive or unreasonable.

(d) The comptroller shall provide the workforce commission with the information and resources necessary for the workforce commission to comply with this section.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 15, eff. September 1, 2015.

Sec. 122.016. EXCEPTIONS. (a) Exceptions from the operation

of the mandatory provisions of Section 122.014 may be made in any case where:

(1) under the rules of the comptroller, the product or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) the requisitions made cannot be reasonably complied with through provision of products or services produced by persons with disabilities.

(b) Each month, the comptroller shall provide the workforce commission with a list of all items purchased under the exception provided by Subsection (a). The workforce commission shall adopt the form in which the list is to be provided and may require the list to include the date of requisition, the type of product or service requested, the reason for purchase under the exception, and any other information that the workforce commission considers relevant to a determination of why the product or service was not purchased in accordance with Section 122.014.

(c) No office, department, institution, or agency may evade the intent of this section by slight variations from standards adopted by the comptroller, when the products or services produced or provided by persons with disabilities, in accordance with established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.425, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 16, eff. September 1, 2015.

Sec. 122.017. PROCUREMENT FOR POLITICAL SUBDIVISIONS. A product manufactured for sale to a political subdivision of this state or an office or department thereof shall be manufactured or produced according to specifications developed by the purchaser. A political subdivision of this state may purchase products or services for its use from private businesses through its authorized purchasing procedures, but may substitute equivalent products or services produced by persons with disabilities under the provisions of this

chapter. Nothing in this chapter shall be construed to require a nonprofit agency for persons with disabilities to engage in competitive bidding.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.

Sec. 122.018. POLITICAL SUBDIVISIONS EXCLUDED. There are excluded from the mandatory application of this chapter the political subdivisions of the state that are not covered by Title V of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. Sections 791 through 794f). This chapter does not prohibit a political subdivision from acting as a willing buyer outside a bid system.

Added by Acts 1983, 68th Leg., p. 2953, ch. 504, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.426, eff. April 2, 2015.

Sec. 122.019. CENTRAL NONPROFIT AGENCY. (a) The workforce commission may select and contract with one or more central nonprofit agencies through a request for proposals for a period not to exceed five years. Once the selection process is completed, the workforce commission may contract with a central nonprofit agency to:

(1) recruit and assist community rehabilitation programs in developing and submitting applications for the selection of suitable products and services;

(2) facilitate the distribution of orders among community rehabilitation programs;

(3) manage and coordinate the day-to-day operation of the program, including the general administration of contracts with community rehabilitation programs;

(4) promote increased supported employment opportunities for persons with disabilities; and

(5) recruit and assist qualified nonprofit organizations that are managed by members of racial minorities, women, or persons with disabilities and that are in the process of qualifying as community rehabilitation programs.

(b) The services of a central nonprofit agency may include marketing and marketing support services, such as:

(1) assistance to community rehabilitation programs regarding solicitation and negotiation of contracts;

(2) direct marketing of products and services to consumers;

(3) research and development of products and services;

(4) public relations activities to promote the program;

(5) customer relations;

(6) education and training;

(7) accounting services related to purchase orders, invoices, and payments to community rehabilitation programs; and

(8) other duties designated by the workforce commission.

(c) Each year, the workforce commission shall review services provided by a central nonprofit agency and the revenues required to accomplish the program to determine whether each agency's performance complies with contractual specifications. Not later than the 60th day before the review, the workforce commission shall publish in the Texas Register a request for comment on the services of a central nonprofit agency that participates in community rehabilitation programs.

(d) At least once during each five-year period, the workforce commission may review and renegotiate the contract with a central nonprofit agency. Not later than the 60th day before the date the workforce commission adopts or renews a contract, the workforce commission shall publish notice of the proposed contract in the Texas Register.

(e) The workforce commission shall determine the best method to structure the maximum management fee rate charged by a central nonprofit agency for its services. The management fee rate must be reviewed on an annual basis.

(f) A percentage of the management fee described by Subsection (e) shall be paid to the workforce commission and is subject to Section 122.023. The percentage shall be set by the workforce commission in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the comptroller and the workforce commission in administering the comptroller's and workforce commission's duties under this chapter, including any costs associated with providing support to the advisory committee.

(g) The workforce commission may terminate a contract with a central nonprofit agency if:

(1) the workforce commission finds substantial evidence of the central nonprofit agency's noncompliance with contractual obligations; and

(2) the workforce commission has provided at least 30 days' notice to the central nonprofit agency of the termination of the contract.

(h) The workforce commission may request an audit by the state auditor of:

(1) the management fee set by a central nonprofit agency; or

(2) the financial condition of a central nonprofit agency.

(i) A person may not operate a community rehabilitation program and at the same time contract with the workforce commission as a central nonprofit agency.

Amended by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1304, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.427, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 17, eff. September 1, 2015.

Sec. 122.020. CONSUMER INFORMATION; COMPLAINTS. (a) The workforce commission shall prepare information of consumer interest describing the activities of the workforce commission under this chapter and describing the workforce commission's procedures by which consumer complaints are filed with and resolved by the workforce commission under this chapter. The workforce commission shall make the information available to the general public and appropriate state agencies.

(b) The workforce commission shall keep an information file about each complaint filed with the workforce commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the workforce commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the

complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the workforce commission closed the file without taking action other than to investigate the complaint.

(c) If a written complaint is filed with the workforce commission, the workforce commission, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The workforce commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the workforce commission's policies and procedures relating to complaint investigation and resolution.

Added by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 132, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 18, eff. September 1, 2015.

Sec. 122.0205. ALTERNATIVE DISPUTE RESOLUTION. (a) A dispute between the workforce commission and a central nonprofit agency or a community rehabilitation program shall first be submitted to alternative dispute resolution.

(b) This section does not constitute authorization to sue and does not modify the remedies available under other law.

(c) This section does not limit the workforce commission's ability to request opinions from the attorney general.

Added by Acts 2001, 77th Leg., ch. 1304, Sec. 8, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 19, eff. September 1, 2015.

Sec. 122.0215. ACCESS TO INFORMATION AND RECORDS; INSPECTION. (a) The workforce commission may access financial or other information and records from a central nonprofit agency or a

community rehabilitation program if the workforce commission determines the information and records are necessary for the effective administration of this chapter and rules adopted under this chapter.

(b) Information and records must be obtained under Subsection (a) in recognition of the privacy interest of persons employed by central nonprofit agencies or community rehabilitation programs. The information and records may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) regarding a compensation package of any central nonprofit agency employee or subcontractor if determined by the workforce commission to be relevant to the administration of this chapter.

(c) The workforce commission shall adopt rules establishing procedures to ensure that the information and records maintained by the workforce commission under this chapter are kept confidential and protected from release to unauthorized persons.

(d) The workforce commission or a central nonprofit agency at the workforce commission's direction may inspect a community rehabilitation program for compliance with certification criteria established under Section 122.013(c).

Added by Acts 2001, 77th Leg., ch. 1304, Sec. 9, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 132, Sec. 11, 12, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 20, eff. September 1, 2015.

Sec. 122.022. REPORTS. (a) The workforce commission shall include in the commission's supplemental annual report to the governor and the legislature under Section 301.065(c), Labor Code, a financial report in the form prescribed by Section 2101.011, Government Code, relating to the workforce commission's activities under this chapter.

(b) As part of the report filed under Subsection (a), the workforce commission shall provide:

(1) the number of persons with disabilities, according to their type of disability, who are employed in community rehabilitation programs participating in the programs established by this chapter or who are employed by businesses or workshops that receive supportive employment from community rehabilitation programs;

(2) the amount of annual wages paid to a person participating in the program;

(3) a summary of the sale of products offered by a community rehabilitation program;

(4) a list of products and services offered by a community rehabilitation program;

(5) the geographic distribution of the community rehabilitation programs;

(6) the number of workers without disabilities who are employed in community rehabilitation programs under this chapter; and

(7) the average and range of weekly earnings for workers with disabilities and workers without disabilities who are employed in community rehabilitation programs under this chapter.

Added by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 693, Sec. 14, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1304, Sec. 10, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 74, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.428, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 21, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 266 (S.B. 1413), Sec. 1, eff. September 1, 2019.

Sec. 122.023. FUNDS. All money paid to the workforce commission under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 22, eff. September 1, 2015.

Sec. 122.024. STRATEGIC PLAN; FINAL OPERATING PLAN. The workforce commission shall prepare a strategic plan and a final operating plan relating to the workforce commission's activities under this chapter as required by Subchapter E, Chapter 2054, Government Code.

Added by Acts 1995, 74th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 23, eff. September 1, 2015.

Sec. 122.026. APPLICATION OF OTHER LAW. Chapters 252, 262, and 271, Local Government Code, do not supersede this chapter.

Added by Acts 1995, 74th Leg., ch. 746, Sec. 10, eff. Aug. 28, 1995.
Renumbered from Human Resources Code Sec. 122.020 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(62), eff. Sept. 1, 1997.

Sec. 122.028. PROGRAM PROMOTION. The workforce commission shall establish procedures for the promotion of the program administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 132, Sec. 14, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 24, eff. September 1, 2015.

Sec. 122.029. DUTIES OF STATE AUDITOR. (a) As part of an audit of a state agency authorized under Section 2161.123, Government Code, the state auditor shall:

(1) conduct an audit of a state agency for compliance with this chapter; and

(2) report to the workforce commission a state agency that is not complying with this chapter.

(b) If the state auditor reports to the workforce commission that a state agency is not complying with this chapter, the workforce commission shall assist the agency in complying.

Added by Acts 2003, 78th Leg., ch. 132, Sec. 15, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 25, eff. September 1, 2015.

Sec. 122.030. MANAGEMENT FEE RATE; REVIEW PROCESS. (a) The workforce commission shall develop a formal review process for the annual review conducted under Section 122.019(e). The review process must include:

(1) notice to affected parties, including community rehabilitation programs;

(2) solicitation of public comment; and

(3) documentation provided by a central nonprofit agency in support of a proposed management fee rate change.

(b) Before making a decision relating to the management fee rate, the workforce commission shall consider:

(1) any public comment received;

(2) documentation provided by a central nonprofit agency; and

(3) any documentation provided by a community rehabilitation program or the public.

(c) The workforce commission shall adopt rules to implement this section.

Added by Acts 2003, 78th Leg., ch. 132, Sec. 16, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 672 (S.B. 212), Sec. 26, eff. September 1, 2015.

CHAPTER 123. COMMUNITY HOMES FOR PERSONS WITH DISABILITIES

Sec. 123.001. SHORT TITLE. This chapter may be cited as the Community Homes for Persons With Disabilities Act.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.430, eff. April 2, 2015.

Sec. 123.002. DEFINITION. In this chapter, "person with a disability" means a person whose ability to care for himself or herself, perform manual tasks, learn, work, walk, see, hear, speak, or breathe is substantially limited because the person has:

(1) an orthopedic, visual, speech, or hearing impairment;
(2) Alzheimer's disease;
(3) pre-senile dementia;
(4) cerebral palsy;
(5) epilepsy;
(6) muscular dystrophy;
(7) multiple sclerosis;
(8) cancer;
(9) heart disease;
(10) diabetes;
(11) an intellectual disability;
(12) autism; or
(13) mental illness.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.431, eff. April 2, 2015.

Sec. 123.003. ZONING AND RESTRICTION DISCRIMINATION AGAINST COMMUNITY HOMES PROHIBITED. (a) The use and operation of a community home that meets the qualifications imposed under this chapter is a use by right that is authorized in any district zoned as residential.

(b) A restriction, reservation, exception, or other provision in an instrument created or amended on or after September 1, 1985, that relates to the transfer, sale, lease, or use of property may not prohibit the use of the property as a community home.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26,

1991.

Sec. 123.004. QUALIFICATION AS COMMUNITY HOME. To qualify as a community home, an entity must comply with Sections 123.005 through 123.008 and be:

(1) a community-based residential home operated by:

(A) the Department of Aging and Disability Services;

(B) a community center organized under Subchapter A, Chapter 534, Health and Safety Code, that provides services to persons with disabilities;

(C) an entity subject to the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code; or

(D) an entity certified by the Department of Aging and Disability Services as a provider under the ICF-IID medical assistance program; or

(2) an assisted living facility licensed under Chapter 247, Health and Safety Code, provided that the exterior structure retains compatibility with the surrounding residential dwellings.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991. Amended by Acts 1997, 75th Leg., ch. 491, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 233, Sec. 6, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.432, eff. April 2, 2015.

Sec. 123.005. REQUIRED SERVICES. A community home shall provide the following services to persons with disabilities who reside in the home:

(1) food and shelter;

(2) personal guidance;

(3) care;

(4) habilitation services; and

(5) supervision.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991.

Sec. 123.006. LIMITATION ON NUMBER OF RESIDENTS. (a) Not more than six persons with disabilities and two supervisors may reside in a community home at the same time.

(b) The limitation on the number of persons with disabilities applies regardless of the legal relationship of those persons to one another.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991.

Sec. 123.007. LICENSING REQUIREMENTS. A community home must meet all applicable licensing requirements.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991.

Sec. 123.008. LOCATION REQUIREMENT. A community home may not be established within one-half mile of an existing community home.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991.

Sec. 123.009. LIMITATION ON NUMBER OF MOTOR VEHICLES. Except as otherwise provided by municipal ordinance, the residents of a community home may not keep for the use of the residents of the home, either on the premises of the home or on a public right-of-way adjacent to the home, motor vehicles in numbers that exceed the number of bedrooms in the home.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 12.01(a), eff. Aug. 26, 1991.

Sec. 123.010. ENSURING SAFETY OF RESIDENTS. The Department of Aging and Disability Services shall make every reasonable effort to ensure the safety of residents of a community home operated by or under the regulatory jurisdiction of the department and the residents of a neighborhood that is affected by the location of the community

home.

Added by Acts 1993, 73rd Leg., ch. 646, Sec. 14, eff. Aug. 30, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.433, eff. April 2, 2015.

TITLE 9. HEALTH AND HUMAN SERVICES

CHAPTER 132. FACILITATION OF DELIVERY OF HEALTH AND HUMAN SERVICES

Sec. 132.001. GOVERNOR'S AGENDA. (a) The governor shall establish an agenda that addresses needed adjustments in federal legislation, agency rules and regulations, programs, and policies that affect:

(1) health and human services delivery;

(2) client and provider eligibility;

(3) administration; and

(4) funding.

(b) The governor shall develop and amend the agenda in conjunction and cooperation with federal and state elected officials, state agency staff, the executive commissioner of the Health and Human Services Commission, and the executive director of the Texas Workforce Commission.

(c) The agenda must include:

(1) a list of specific issues of federal law or policy identified and ranked by health and human services agencies;

(2) impact statements concerning the needed adjustments to federal law or policy;

(3) a discussion of fiscal matters concerning each ranked issue; and

(4) specific recommendations for changes in federal law or policy.

(d) The governor shall submit the agenda to the Texas congressional delegation and to the Office of State-Federal Relations and shall annually amend the agenda and rank agenda items. The agenda must identify issues of federal law, rules and regulations, or programs of common concern to different state agencies and programs.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 8.114(a), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.434, eff. April 2, 2015.

Sec. 132.002. EXPANSION OF CLIENT ELIGIBILITY SCREENING AND DETERMINATION. (a) Based on a cost-benefit analysis, the Health and Human Services Commission, where feasible, shall relocate an employee with the ability to certify eligibility for financial and medical programs to an office or facility that would enhance client access.

(b) Based on a cost-benefit analysis, the Health and Human Services Commission shall coordinate the expansion and use of integrated eligibility screening instruments and the relocation of state employees on a timetable determined by the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 8.114(a), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.434, eff. April 2, 2015.

Sec. 132.003. LOCATION OF OFFICES AND FACILITIES. (a) As leases on office space expire, the Health and Human Services Commission shall determine the needs for space and the location of offices of the health and human services agencies to enable the commission to achieve a cost-effective, one-stop or service center method of service delivery.

(b) In this section, "health and human services agencies" includes the:

(1) Department of Aging and Disability Services;

(2) Department of State Health Services;

(3) Department of Family and Protective Services;

(4) Department of Assistive and Rehabilitative Services; and

(5) Health and Human Services Commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 8.114(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 21.06, 21.07(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 53, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.434, eff. April 2, 2015.

CHAPTER 136. TEXAS COMMUNITY HEALTH CENTER REVOLVING LOAN PROGRAM

Sec. 136.001. PURPOSE. The legislature finds that:

(1) community health centers play a significant role in the delivery of medical care and related services to the residents of this state who cannot afford health insurance;

(2) community health centers are a cost-effective way to provide primary and preventive health care to populations lacking quality health care by reducing hospitalizations and the inappropriate use of emergency rooms;

(3) the financing sources available for the capital needs of community health centers, such as buildings and equipment, are inadequate; and

(4) increasing community health centers' access to capital would benefit residents of this state in poor and underserved communities and foreign-born residents who are uninsured, by providing greater access to primary care and preventive health services and by targeting the common health problems of these residents.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.

Sec. 136.002. DEFINITIONS. In this chapter:

(1) "Community health center" means a nonprofit corporation in this state that:

(A) provides required primary health services, including:

(i) basic health services;

(ii) referrals to providers of medical services;

(iii) patient case management services;

(iv) outreach; and

(v) patient education; and

(B) has a governing board that:

(i) is composed of individuals, a majority of whom are being served by the community health centers; and

(ii) represents the individuals being served by the community health center.

(2) "Commission" means the Health and Human Services Commission.

(3) "Development corporation" means a nonprofit corporation that:

(A) provides revolving loan funds to community health centers;

(B) accepts gifts and grants;

(C) seeks funding from various government and private sources; and

(D) associates with a broad-based organization serving community health centers.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(105), eff. April 2, 2015.

(5) "Program" means the loan program authorized by this chapter.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.436, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(105), eff. April 2, 2015.

Sec. 136.003. GIFTS AND GRANTS. The commission may accept gifts and grants for the use and benefit of the program.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.437, eff. April 2, 2015.

Sec. 136.004. DEVELOPMENT CORPORATION. The commission shall contract with and award money to a development corporation to carry out the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.

Sec. 136.005. INVESTMENT COMMITTEE. (a) Before contracting with a development corporation, the commission shall require the development corporation to establish an investment committee to approve loan requests of community health centers.

(b) The investment committee must consist of seven members as follows:

(1) at least two members with lending experience;

(2) at least two members who receive health care services from a community health center; and

(3) at least one member who represents the Texas Association of Community Health Centers, Inc.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.

Sec. 136.006. LOANS TO COMMUNITY HEALTH CENTERS. (a) The development corporation may make a loan to a community health center only with the approval of the investment committee.

(b) The development corporation shall use at least 60 percent of the money received under the program for loans to community health centers in existence for at least one year before the loan date.

(c) A loan made by the development corporation may be subordinated debt.

(d) The development corporation may make a loan under the program through a partnership or joint investment with one or more financial institutions or federal or state programs.

(e) Payments on community health center loans shall be made to the development corporation. The development corporation shall use the loan payment money received from community health centers to make new loans as provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.

Sec. 136.007. SELF-FUNDING. The commission shall develop the program as a revolving loan program that will become self-funding over the life of the program.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.438, eff. April 2, 2015.

Sec. 136.008. INCOME FROM LOAN. All income received on a loan made with money received under the program is the property of the development corporation. Income received on a loan includes the payment of interest by a borrower and the administrative fees assessed by the development corporation.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.

Sec. 136.009. RULES. (a) The executive commissioner shall adopt rules to administer this chapter, including rules that require:

(1) the commission to review the lending and servicing practices of a development corporation to ensure the practices conform to generally accepted accounting principles;

(2) an eligible community health center to enter into an agreement with the development corporation that states the terms of the loan made to the center;

(3) the development corporation to provide to the commission semiannual reports giving details of the status of each loan made under the program;

(4) the development corporation to require annual audits of community health centers receiving loans under the program; and

(5) the commission to provide oversight of the development corporation as necessary to qualify the development corporation for loan guarantees from federal and state programs.

(b) Under rules adopted by the executive commissioner, the development corporation may:

(1) make grants to eligible community health centers from money other than money that was derived from a legislative appropriation; or

(2) seek money from state or federal agencies or private sources to supplement and complement the money received under the program.

(c) The executive commissioner may adopt other rules as

necessary to accomplish the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.439, eff. April 2, 2015.

CHAPTER 137. FAMILY SUPPORT SERVICES

SUBCHAPTER A. FAMILY SUPPORT SERVICES

Sec. 137.001. APPLICABILITY OF DEFINITIONS. The definitions in Chapter 101, Family Code, apply to terms used in this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.002. DEFINITIONS. In this chapter:

(1) "At-risk family" means a family with at least one child or a pregnant woman and at least one of the following:

(A) a child in the family has been the subject of an investigation of abuse, neglect, or exploitation by the Department of Family and Protective Services;

(B) the family or a pregnant woman in the family is experiencing conditions that increase the likelihood of involvement with the child welfare system, the criminal justice system, or the juvenile justice system; or

(C) the family or a pregnant woman in the family is experiencing other conditions that threaten the self-sufficiency or stability of the family or the birth or health of a baby.

(2) "Commission" means the Health and Human Services Commission.

(3) "Executive commissioner" means the executive commissioner of the commission.

(4) "Family support services" means programs intended to provide intervention and promote safety and stability for children and at-risk families.

Added by Acts 1999, 76th Leg., ch. 489, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 632 (H.B. 662), Sec. 1, eff. June

15, 2007.
Transferred, redesignated and amended from Family Code, Subchapter A, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.003. FAMILY SUPPORT SERVICES. (a) The commission shall:

(1) administer grants and contracts to provide family support services to children and at-risk families;

(2) plan, develop, and administer an integrated continuum of care system of programs providing family support services to at-risk families;

(3) administer the referral, coordination, and collaboration of family support services under this chapter with similar, existing programs the commission operates;

(4) improve the responsiveness of family support services provided to children and at-risk families by facilitating greater coordination and flexibility in the use of funds by state and local service providers;

(5) provide greater accountability for family support services in order to demonstrate the impact or public benefit of a program by adopting outcome measures; and

(6) assist local communities in the coordination and development of family support services in order to maximize federal, state, and local resources.

(b) Family support services under this chapter are intended to:

(1) promote healthy outcomes and strengthen support systems for children and at-risk families;

(2) assist at-risk families in achieving self-sufficiency and stability;

(3) promote workforce participation; and

(4) prevent or reduce at-risk behaviors in children and at-risk families, including behaviors that may lead to:

(A) child abuse or neglect;

(B) delinquency, running away, truancy, dropping out of school, or substance use; or

(C) involvement with the child welfare system, the juvenile justice system, or the criminal justice system.

Added by Acts 1999, 76th Leg., ch. 489, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.13, eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter A, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.004. COORDINATION OF PROGRAMS. In order to implement the duties provided in Section 137.003, the commission shall identify and coordinate with other programs the commission operates with the goal of providing family support services.

Added by Acts 1999, 76th Leg., ch. 489, Sec. 2, eff. Sept. 1, 1999.
Transferred, redesignated and amended from Family Code, Subchapter A, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.005. STRATEGIC PLAN. (a) The commission shall develop and implement a five-year strategic plan for family support services. Not later than September 1 of the last fiscal year in each five-year period, the commission shall issue a new strategic plan for the next five fiscal years beginning with the following fiscal year.

(b) A strategic plan required under this section must:

(1) identify methods to leverage other sources of funding or provide support for existing community-based efforts to provide family support services;

(2) include a needs assessment that identifies programs to best target family support services to the needs of underserved populations and geographic areas;

(3) identify priorities and specific commission actions to coordinate and provide family support services to children and at-risk families;

(4) identify and report on specific outcome measurements by obtaining and reporting de-identified aggregate data, as permitted by other law, on the number of program participants who are:

(A) involved in the child welfare system, the juvenile justice system, or the criminal justice system;

(B) recipients of other services the commission offers; or

(C) listed in the central registry of the names of individuals found to have abused or neglected a child maintained under Section 261.002, Family Code;

(5) identify additional methods of measuring program effectiveness and results or outcomes;

(6) identify methods to collaborate with other state agencies on efforts to provide family support services;

(7) identify specific strategies to implement the plan and to develop measures for reporting on the overall progress toward the plan's goals;

(8) identify specific strategies to increase local capacity for the delivery of family support services through collaboration with communities and stakeholders;

(9) address methods for coordinating with other commission programs under Section 137.004; and

(10) identify strategies to minimize the disruption of the provision of family support services to children and families.

(c) The commission shall coordinate with interested parties and communities in developing the strategic plan under this section.

(d) The commission shall annually review and appropriately update the strategic plan developed under this section.

(e) The commission shall post the strategic plan developed under this section and any update to the plan on its Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 62, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 4, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 319 (S.B. 11), Sec. 21, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 822 (H.B. 1549), Sec. 13, eff. September 1, 2017.

Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 7.007, eff. September 1, 2019.
Transferred, redesignated and amended from Family Code, Subchapter A, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec.

2, eff. September 1, 2023.

SUBCHAPTER B. FAMILY SUPPORT SERVICES PROGRAMS FOR CHILD ABUSE AND NEGLECT PREVENTION

Sec. 137.051. DEFINITIONS. In this subchapter:

(1) "Child abuse and neglect prevention" means family support services designed to prevent child abuse and neglect before the abuse or neglect occurs. The term includes child fatality prevention education programs and other activities directed at the general public to stop child abuse and neglect.

(2) "Children's trust fund" means a child abuse and neglect prevention program.

(3) "Operating fund" means the commission's child abuse and neglect prevention operating fund account.

(4) "State agency" means a board, commission, department, office, or other state agency that:

(A) is in the executive branch of the state government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction.

(5) "Trust fund" means the commission's child abuse and neglect prevention trust fund account.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.208, eff. April 2, 2015.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Transferred, redesignated and amended from Family Code, Subchapter B, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.052. CHILD ABUSE AND NEGLECT PREVENTION PROGRAMS. (a)

The commission shall operate the children's trust fund to:

(1) set policy, offer resources for community prevention programs, and provide information and education on family support services and prevention of child abuse and neglect;

(2) develop a state plan for expending funds for child abuse and neglect prevention programs that includes an annual schedule of transfers of trust fund money to the operating fund;

(3) develop eligibility criteria for applicants requesting funding for child abuse and neglect prevention programs; and

(4) establish funding priorities for child abuse and neglect prevention programs.

(b) The children's trust fund shall accommodate the commission's existing rules and policies in procuring, awarding, and monitoring contracts and grants.

(c) The commission may:

(1) apply for and receive funds made available by the federal government or another public or private source for administering programs under this subchapter and for funding for child abuse and neglect prevention programs; and

(2) solicit donations for child abuse and neglect prevention programs.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.
Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015.
Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter B, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.053. ADMINISTRATIVE AND OTHER COSTS. (a) Administrative costs under this subchapter during any fiscal year may not exceed an amount equal to 50 percent of the interest credited to the trust fund during the preceding fiscal year.

(b) Funds expended under a special project grant from a governmental source or a nongovernmental source for public education

or public awareness may not be counted as administrative costs for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.
Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015.
Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter B, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.054. CHILD ABUSE AND NEGLECT PREVENTION TRUST FUND ACCOUNT. (a) The child abuse and neglect prevention trust fund account is an account in the general revenue fund. Money in the trust fund is dedicated to child abuse and neglect prevention programs and family support services programs.

(b) The commission may transfer money contained in the trust fund to the operating fund at any time. However, during a fiscal year the commission may not transfer more than the amount appropriated for the operating fund for that fiscal year. Money transferred to the operating fund that was originally deposited to the credit of the trust fund under Section 118.022, Local Government Code, may be used only for child abuse and neglect prevention programs.

(c) Interest earned on the trust fund shall be credited to the trust fund.

(d) The trust fund is exempt from the application of Section 403.095, Government Code.

(e) All marriage license fees and other fees collected for and deposited in the trust fund and interest earned on the trust fund balance shall be appropriated each biennium only to the operating fund for child abuse and neglect prevention programs and family support services programs.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 632 (H.B. 662), Sec. 4, eff. June

15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 632 (H.B. 662), Sec. 4, eff. September 1, 2010.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.209, eff. April 2, 2015.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Transferred, redesignated and amended from Family Code, Subchapter B, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.055. COMMISSION OPERATING FUND ACCOUNT. (a) The operating fund is an account in the general revenue fund.

(b) Administrative and other costs allowed in Section 137.053 shall be taken from the operating fund. The commission may transfer funds contained in the operating fund to the trust fund at any time.

(c) The legislature may appropriate the money in the operating fund to carry out the provisions of this subchapter.

(d) The operating fund is exempt from the application of Section 403.095, Government Code.

Added by Acts 2001, 77th Leg., ch. 957, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.210, eff. April 2, 2015.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 63, eff. September 1, 2015.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 40 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 5, eff. September 1, 2015.

Transferred, redesignated and amended from Family Code, Subchapter B, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.056. COMMUNITY YOUTH DEVELOPMENT GRANTS. (a) Subject to available funding, the commission shall award community youth development grants to communities identified by incidence of crime. The commission shall give priority in awarding grants under this section to areas of the state in which there is a high incidence of juvenile crime.

(b) The purpose of a grant under this section is to assist a community in alleviating conditions in the family and community that lead to juvenile crime.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 21.03(a), eff. Sept. 1, 1997.
Transferred and redesignated from Human Resources Code, Section 40.0561 by Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 64, eff. September 1, 2015.
Transferred and redesignated from Human Resources Code, Section 40.0561 by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 6, eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter B, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.057. OUTCOMES OF FAMILY SUPPORT SERVICES PROGRAMS AND PRACTICES. The commission shall ensure that a family support services program or practice provided under this subchapter achieves favorable behavioral outcomes in at least two of the following areas:

(1) improved cognitive development of children;

(2) increased readiness for and participation and performance in school;

(3) reduced child abuse, neglect, and injury;

(4) improved child safety;

(5) improved social-emotional development of children and youth;

(6) increased protective factors, including nurturing, bonding, and other parenting skills;

(7) improved family economic self-sufficiency;

(8) reduced parental or youth involvement with the criminal justice system; and

(9) increased paternal involvement and support.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015.
Redesignated from Family Code, Section 265.102 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 515 (S.B. 452), Sec. 6, eff. September 1, 2021.
Transferred, redesignated and amended from Family Code, Section 265.152 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 3, eff. September 1, 2023.

Sec. 137.058. EVALUATION OF FAMILY SUPPORT SERVICES PROGRAMS AND PRACTICES. (a) The commission shall adopt outcome indicators to measure the effectiveness of family support services programs and practices provided under this subchapter in achieving desired outcomes.

(b) The commission may work directly with the model developer of a family support services program or practice to identify appropriate outcome indicators for the program or practice and to ensure that the program or practice substantially complies with the model.

(c) The commission shall develop internal processes to share information with family support services providers to assist the commission in analyzing the performance of the programs or practices.

(d) The commission shall use information obtained under this section to:

(1) monitor family support services programs and practices;

(2) continually improve the quality of the programs and practices; and

(3) evaluate the effectiveness of the programs and practices.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015.
Redesignated from Family Code, Section 265.103 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 515 (S.B. 452), Sec. 7, eff. September 1, 2021.
Transferred, redesignated and amended from Family Code, Section 265.153 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 3, eff. September 1, 2023.

Sec. 137.059. REPORTS TO LEGISLATURE. (a) Not later than December 1 of each even-numbered year, the commission shall prepare and submit a report on state-funded prevention and early intervention programs and practices to the standing committees of the senate and house of representatives with jurisdiction over child protective services.

(b) A report submitted under this section must meet any requirements set by the commission under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015.
Redesignated from Family Code, Section 265.104 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 515 (S.B. 452), Sec. 8, eff. September 1, 2021.
Transferred, redesignated and amended from Family Code, Section 265.154 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 3, eff. September 1, 2023.

Sec. 137.060. RULES. The executive commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1257 (H.B. 2630), Sec. 7, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 14, eff. September 1, 2017.
Redesignated from Family Code, Section 265.105 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(9), eff. September 1, 2017.
Transferred, redesignated and amended from Family Code, Section

265.155 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 3, eff. September 1, 2023.

SUBCHAPTER C. NURSE-FAMILY PARTNERSHIP COMPETITIVE GRANT PROGRAM

Sec. 137.101. DEFINITIONS. In this subchapter:

(1) "Competitive grant program" means the nurse-family partnership competitive grant program established under this subchapter.

(2) "Partnership program" means a nurse-family partnership program.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.
Renumbered from Government Code, Section 531.451 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1, 2009.
Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.102. OPERATION OF NURSE-FAMILY PARTNERSHIP COMPETITIVE GRANT PROGRAM. (a) The commission shall operate a nurse-family partnership competitive grant program for the commission to award grants for the implementation of nurse-family partnership programs, or the expansion of existing programs, and for the operation of those programs for a period of not less than two years.

(b) The commission shall award grants under the program to applicants, including applicants operating existing programs, in a manner that ensures that the partnership programs collectively operate in multiple communities that are geographically distributed throughout this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.
Renumbered from Government Code, Section 531.452 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1,

2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 2.188, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 2.189, eff. April 2, 2015.
Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.103. PARTNERSHIP PROGRAM REQUIREMENTS. A partnership program funded through a grant awarded under this subchapter must:

(1) strictly adhere to the program model developed by the Nurse-Family Partnership National Service Office, including any clinical, programmatic, and data collection requirements of that model;

(2) require that registered nurses regularly visit the homes of low-income, first-time mothers participating in the program to provide services designed to:

(A) improve pregnancy outcomes;

(B) improve child health and development;

(C) improve family economic self-sufficiency and stability;

(D) reduce the incidence of child abuse and neglect; and

(E) increase workforce participation;

(3) require that nurses who provide services through the program:

(A) receive training from the office of the attorney general at least once each year on procedures by which a person may voluntarily acknowledge the paternity of a child and on the availability of child support services from the office;

(B) provide a mother with information about the rights, responsibilities, and benefits of establishing the paternity of her child, if appropriate;

(C) provide assistance to a mother and the alleged

father of her child if the mother and alleged father seek to voluntarily acknowledge paternity of the child, if appropriate; and

(D) provide information to a mother about the availability of child support services from the office of the attorney general; and

(4) require that the regular nurse visits described by Subdivision (2) begin not later than a mother's 28th week of gestation and end when her child reaches two years of age.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.
Renumbered from Government Code, Section 531.453 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1, 2009.
Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.104. APPLICATION. (a) A public or private entity, including a county, municipality, or other political subdivision of this state, may apply for a grant under this subchapter.

(b) To apply for a grant, an applicant must submit a written application to the commission on a form prescribed by the commission in consultation with the Nurse-Family Partnership National Service Office.

(c) The application must:

(1) require the applicant to provide data on the number of low-income, first-time mothers residing in the community in which the applicant proposes to operate or expand a partnership program and provide a description of existing services available to those mothers;

(2) describe the ongoing monitoring and evaluation process to which a grant recipient is subject under Section 137.107, including the recipient's obligation to collect and provide information requested by the commission under Section 137.107(c); and

(3) require the applicant to provide other relevant

information as determined by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.
Renumbered from Government Code, Section 531.454 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(7), eff. September 1, 2009.
Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.105. PARTNERSHIP PROGRAM STANDARDS. The executive commissioner shall adopt standards for the partnership programs funded under this subchapter. The standards must be consistent with the Nurse-Family Partnership National Service Office program model standards and guidelines that were developed in multiple, randomized clinical trials and have been tested and replicated in multiple communities.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.
Renumbered from Government Code, Section 531.456 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1, 2009.
Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 15, eff. September 1, 2017.
Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.106. USE OF AWARDED GRANT FUNDS. The grant funds awarded under this subchapter may be used only to cover costs related to implementing or expanding and operating a partnership program, including costs related to:

(1) administering the program;

(2) training and managing registered nurses who participate in the program;

(3) paying the salaries and expenses of registered nurses who participate in the program;

(4) paying for facilities and equipment for the program; and

(5) paying for services provided by the Nurse-Family Partnership National Service Office to ensure a grant recipient adheres to the organization's program model.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.
Renumbered from Government Code, Section 531.457 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1, 2009.
Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.
Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.107. PROGRAM MONITORING AND EVALUATION; ANNUAL COMMITTEE REPORTS. (a) The commission shall:

(1) adopt performance indicators that are designed to measure a grant recipient's performance with respect to the partnership program standards adopted by the executive commissioner under Section 137.105;

(2) use the performance indicators to continuously monitor and formally evaluate on an annual basis the performance of each grant recipient; and

(3) prepare and submit an annual report, not later than December 1 of each year, to the Senate Health and Human Services Committee, or its successor, and the House Human Services Committee,

or its successor, regarding the performance of each grant recipient during the preceding state fiscal year with respect to providing partnership program services.

(b) The report required under Subsection (a)(3) must include:

(1) the number of:

(A) low-income, first-time mothers to whom each grant recipient provided partnership program services and, of that number, the number of mothers who established the paternity of an alleged father as a result of services provided under the program;

(B) mothers who married the father or reside in the same household with the father;

(C) mothers who have previous involvement with the child welfare system, the criminal justice system, or the juvenile justice system; and

(D) mothers who receive other services from the commission;

(2) the extent to which each grant recipient made regular visits to mothers during the period described by Section 137.103(4); and

(3) the extent to which each grant recipient adhered to the Nurse-Family Partnership National Service Office's program model, including the extent to which registered nurses:

(A) conducted home visitations comparable in frequency, duration, and content to those delivered in Nurse-Family Partnership National Service Office clinical trials; and

(B) assessed the health and well-being of mothers and children participating in the partnership programs in accordance with indicators of maternal, child, and family health defined by the Nurse-Family Partnership National Service Office and required by the commission.

(c) On request, each grant recipient shall timely collect and provide data and any other information required by the commission to monitor and evaluate the recipient or to prepare the report required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.
Renumbered from Government Code, Section 531.459 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(9), eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 2.190, eff. April 2, 2015.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 16, eff. September 1, 2017.

Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

Sec. 137.108. COMPETITIVE GRANT PROGRAM FUNDING. (a) The commission shall actively seek and apply for any available federal funds, including federal Medicaid and Temporary Assistance for Needy Families (TANF) funds, to assist in financing the competitive grant program established under this subchapter.

(b) The commission may use appropriated funds from the state government and may accept gifts, donations, and grants of money from the federal government, local governments, private corporations, or other persons to assist in financing the competitive grant program.

Added by Acts 2007, 80th Leg., R.S., Ch. 348 (S.B. 156), Sec. 1, eff. September 1, 2007.

Renumbered from Government Code, Section 531.460 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(37), eff. September 1, 2009.

Transferred, redesignated and amended from Government Code, Subchapter Q, Chapter 531 by Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 1.15(a), eff. September 1, 2015.

Transferred, redesignated and amended from Family Code, Subchapter C, Chapter 265 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 2, eff. September 1, 2023.

SUBCHAPTER D. SERVICES FOR AT-RISK YOUTH

Sec. 137.151. SERVICES FOR AT-RISK YOUTH. (a) The commission shall operate a program to provide family support services for children in at-risk situations and for the families of those children.

(b) The services under this section may include:

(1) crisis family intervention;

(2) emergency short-term residential care;

(3) family counseling;

(4) parenting skills training;

(5) youth coping skills training;

(6) mentoring; and

(7) advocacy training.

Added by Acts 1995, 74th Leg., ch. 20 (H.B. 655), Sec. 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., Ch. 262 (H.B. 327), Sec. 58, eff. Jan. 1, 1996.
Transferred, redesignated and amended from Family Code, Subchapter D, Chapter 264 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 4, eff. September 1, 2023.

Sec. 137.152. EARLY YOUTH INTERVENTION SERVICES. (a) This section applies to a child who:

(1) is seven years of age or older and under 17 years of age; and

(2) has not had the disabilities of minority for general purposes removed under Chapter 31, Family Code.

(b) The commission shall operate a program under this section to provide family support services for children in at-risk situations and for the families of those children.

(c) The commission may not provide services under this section to a child who has:

(1) at any time been referred to juvenile court for engaging in conduct that violates a penal law of this state of the grade of felony other than a state jail felony; or

(2) been found to have engaged in delinquent conduct under Title 3, Family Code.

(d) The commission may provide services under this section to a child who engages in conduct for which the child may be found by a court to be an at-risk child, without regard to whether the conduct

violates a penal law of this state of the grade of felony other than a state jail felony, if the child was younger than 10 years of age at the time the child engaged in the conduct.

Text of subsection effective until January 1, 2025

(e) The commission shall provide services for a child and the child's family if a contract to provide services under this section is available in the county and the child is referred to the commission as an at-risk child by:

(1) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59, Family Code;

(2) a law enforcement officer or agency under Section 52.03, Family Code; or

(3) a justice or municipal court under Article 45.057, 45.309, or 45.310, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(e) The commission shall provide services for a child and the child's family if a contract to provide services under this section is available in the county and the child is referred to the commission as an at-risk child by:

(1) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59, Family Code;

(2) a juvenile court or probation department as part of a progressive sanctions program under Chapter 59, Family Code;

(3) a justice or municipal court under Article 45A.457, 45.309, or 45.310, Code of Criminal Procedure.

(f) The services under this section may include:

(1) crisis family intervention;

(2) emergency short-term residential care for children 10 years of age or older;

(3) family counseling;

(4) parenting skills training;

(5) youth coping skills training;

(6) advocacy training; and

(7) mentoring.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 58, eff. Jan. 1, 1996. Amended by Acts 1997, 75th Leg., ch. 1086, Sec. 30, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 575, Sec. 31, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1514, Sec. 16, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 60, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. 3186), Sec. 12, eff. January 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.053, eff. January 1, 2025.

Transferred, redesignated and amended from Family Code, Subchapter D, Chapter 264 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 4, eff. September 1, 2023.

SUBCHAPTER E. PREVENTIVE SERVICES FOR VETERANS AND MILITARY FAMILIES

Sec. 137.201. DEFINITIONS. In this subchapter, "veteran" means a person who has served in:

(1) the army, navy, air force, coast guard, or marine corps of the United States;

(2) the state military forces as defined by Section 431.001, Government Code; or

(3) an auxiliary service of one of those branches of the armed forces.

Added by Acts 2015, 84th Leg., R.S., Ch. 324 (H.B. 19), Sec. 1, eff. June 4, 2015.

Transferred, redesignated and amended from Human Resources Code, Chapter 53 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 5, eff. September 1, 2023.

Sec. 137.202. VETERANS AND MILITARY FAMILIES PREVENTIVE SERVICES PROGRAM. (a) The commission shall develop and implement a preventive services program to serve veterans and military families who have committed or experienced or who are at a high risk of:

(1) family violence; or

(2) abuse or neglect.

(b) The program must:

(1) be designed to coordinate with community-based organizations to provide prevention services;

(2) include a prevention component and an early intervention component;

(3) include collaboration with services for child welfare,

services for early childhood education, and other child and family services programs; and

(4) coordinate with the community collaboration initiative developed under Subchapter I, Chapter 434, Government Code, and committees formed by local communities as part of that initiative.

Added by Acts 2015, 84th Leg., R.S., Ch. 324 (H.B. 19), Sec. 1, eff. June 4, 2015.
Transferred, redesignated and amended from Human Resources Code, Chapter 53 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 5, eff. September 1, 2023.

Without reference to the transfer and redesignation of this subchapter, this subchapter was repealed by Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 3.01, eff. April 1, 2025.

SUBCHAPTER F. TEXAS HOME VISITING PROGRAM

Sec. 137.251. DEFINITIONS. In this subchapter:

(1) "Home visiting program" means a voluntary-enrollment program in which early childhood and health professionals such as nurses, social workers, or trained and supervised paraprofessionals repeatedly visit over a period of at least six months the homes of pregnant women or families with children under the age of six who are born with or exposed to one or more risk factors.

(2) "Risk factors" means factors that make a child more likely to experience adverse experiences leading to negative consequences, including preterm birth, poverty, low parental education, having a teenaged mother or father, poor maternal health, and parental underemployment or unemployment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

Sec. 137.252. IMPLEMENTATION OF TEXAS HOME VISITING PROGRAM. (a) The commission shall maintain a strategic plan to serve at-risk pregnant women and families with children under the age of six

through home visiting programs that improve outcomes for parents and families.

(b) A pregnant woman or family is considered at-risk for purposes of this section and may be eligible for voluntary enrollment in a home visiting program if the woman or family is exposed to one or more risk factors.

(c) The commission may determine if a risk factor or combination of risk factors experienced by an at-risk pregnant woman or family qualifies the woman or family for enrollment in a home visiting program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 2.205, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 2.206, eff. April 2, 2015.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

Sec. 137.253. TYPES OF HOME VISITING PROGRAMS. (a) A home visiting program is classified as either an evidence-based program or a promising practice program.

(b) An evidence-based program is a home visiting program that:

(1) is research-based and grounded in relevant, empirically based knowledge and program-determined outcomes;

(2) is associated with a national organization, institution of higher education, or national or state public health institute;

(3) has comprehensive standards that ensure high-quality service delivery and continuously improving quality;

(4) has demonstrated significant positive short-term and long-term outcomes;

(5) has been evaluated by at least one rigorous randomized controlled research trial across heterogeneous populations or communities, the results of at least one of which has been published in a peer-reviewed journal;

(6) follows with fidelity a program manual or design that

specifies the purpose, outcomes, duration, and frequency of the services that constitute the program;

(7) employs well-trained and competent staff and provides continual relevant professional development opportunities;

(8) demonstrates strong links to other community-based services; and

(9) ensures compliance with home visiting standards.

(c) A promising practice program is a home visiting program that:

(1) has an active impact evaluation program or can demonstrate a timeline for implementing an active impact evaluation program;

(2) has been evaluated by at least one outcome-based study demonstrating effectiveness or a randomized controlled trial in a homogeneous sample;

(3) follows with fidelity a program manual or design that specifies the purpose, outcomes, duration, and frequency of the services that constitute the program;

(4) employs well-trained and competent staff and provides continual relevant professional development opportunities;

(5) demonstrates strong links to other community-based services; and

(6) ensures compliance with home visiting standards.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

Sec. 137.254. FUNDING. (a) The commission shall ensure that at least 75 percent of funds appropriated for home visiting programs are used in evidence-based programs, with any remaining funds dedicated to promising practice programs.

(b) The commission shall actively seek and apply for any available federal funds to support home visiting programs, including federal funds from the Temporary Assistance for Needy Families program.

(c) The commission may accept gifts, donations, and grants to

support home visiting programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

Sec. 137.255. OUTCOMES. The commission shall ensure that a home visiting program achieves favorable outcomes in at least two of the following areas:

(1) improved maternal or child health outcomes;
(2) improved cognitive development of children;
(3) increased school readiness of children;
(4) reduced child abuse, neglect, and injury;
(5) improved child safety;
(6) improved social-emotional development of children;
(7) improved parenting skills, including nurturing and bonding;
(8) improved family economic self-sufficiency;
(9) reduced parental involvement with the criminal justice system; and
(10) increased father involvement and support.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

Sec. 137.256. EVALUATION OF HOME VISITING PROGRAM. (a) The commission shall adopt outcome indicators to measure the effectiveness of a home visiting program in achieving desired outcomes.

(b) The commission may work directly with the model developer of a home visiting program to identify appropriate outcome indicators for the program and to ensure that the program demonstrates fidelity to its research model.

(c) The commission shall develop internal processes to work

with home visiting programs to share data and information to aid in making relevant analysis of the performance of a home visiting program.

(d) The commission shall use data gathered under this section to monitor, conduct ongoing quality improvement on, and evaluate the effectiveness of home visiting programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

Sec. 137.257. REPORTS TO LEGISLATURE. (a) Not later than December 1 of each even-numbered year, the commission shall prepare and submit a report on state-funded home visiting programs to the Senate Committee on Health and Human Services and the House Human Services Committee or their successors.

(b) A report submitted under this section must include:

(1) a description of home visiting programs being implemented and the associated models;

(2) data on the number of families being served and their demographic information;

(3) the goals and achieved outcomes of home visiting programs;

(4) data on cost per family served, including third-party return-on-investment analysis, if available; and

(5) data explaining what percentage of funding has been used on evidence-based programs and what percentage of funding has been used on promising practice programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

Sec. 137.258. RULES. The executive commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 421 (S.B. 426), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 2.207, eff. April 2, 2015.
Transferred and redesignated from Government Code, Subchapter X, Chapter 531 by Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 6, eff. September 1, 2023.

TITLE 10. JUVENILE BOARDS, JUVENILE PROBATION DEPARTMENTS, AND FAMILY SERVICES OFFICES

SUBTITLE A. JUVENILE PROBATION SERVICES

CHAPTER 142. JUVENILE PROBATION DEPARTMENTS AND PERSONNEL

Sec. 142.001. DEFINITION. In this chapter, "juvenile probation services" means:

(1) services provided by or under the direction of a juvenile probation officer in response to an order issued by a juvenile court and under the court's direction, including:

(A) protective services;

(B) prevention of delinquent conduct and conduct indicating a need for supervision;

(C) diversion;

(D) deferred prosecution;

(E) foster care;

(F) counseling;

(G) supervision; and

(H) diagnostic, correctional, and educational services; and

(2) services provided by a juvenile probation department that are related to the operation of a preadjudication or post-adjudication juvenile facility.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 1394, Sec. 7, eff. Sept. 1, 1997.

Sec. 142.002. APPOINTMENT OF PERSONNEL AND SALARY. (a) A juvenile board may, with the advice and consent of the commissioners

court, employ probation officers and administrative, supervisory, stenographic, and other clerical personnel necessary to provide juvenile probation services according to the standards established by the Texas Juvenile Justice Department and the local need as determined by the juvenile board.

(b) The juvenile board may, with the advice and consent of the commissioners court, designate the titles of the employees and set their salaries.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 123, eff. September 1, 2015.

Sec. 142.003. AUTHORITY TO CONTRACT FOR JUVENILE PROBATION SERVICES. (a) In a county that does not have a sufficient number of juvenile probation cases to justify a juvenile probation department, the juvenile board or juvenile judge may contract with:

(1) the county adult probation department to provide juvenile probation services; or

(2) surrounding counties to form a multicounty juvenile probation department.

(b) A juvenile board may contract with the Texas Juvenile Justice Department for juvenile probation services.

(c) A juvenile board may contract with another political subdivision of the state or a private vendor for juvenile probation services.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 1394, Sec. 8, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 124, eff. September 1, 2015.

Sec. 142.004. JUVENILE PROBATION PERSONNEL. (a) A juvenile probation officer or an employee of a juvenile probation community service restitution program is not liable for damages arising from an act or failure to act in connection with manual labor performed by a

child who has been placed on informal adjustment or who has been adjudicated a delinquent child or a child in need of supervision and the labor was performed as a condition to probation ordered under Section 54.04(d)(1), Family Code, and the act or failure to act was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

(b) Juvenile probation personnel employed by a political subdivision of the state are state employees for the purposes of Chapter 104, Civil Practice and Remedies Code.

(c) A juvenile probation officer or an employee of a juvenile probation community service restitution program is not liable for damages arising from an act or failure to act by a juvenile probation officer or an employee of a juvenile probation community service restitution program in connection with manual labor performed as a condition of probation ordered under Section 54.04(d)(1), Family Code, if the act or failure to act:

(1) was performed in an official capacity; and

(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.

Added by Acts 1989, 71st Leg., ch. 1100, Sec. 6.02(a), eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 900, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 201, Sec. 6, eff. Aug. 30, 1993.

Sec. 142.005. ADMINISTRATION OF MEDICATION; IMMUNITY FROM LIABILITY. (a) On the adoption of policies concerning the administration of medication to juveniles by authorized employees, the juvenile board and any authorized employee of a program or facility operated by the juvenile board are not liable for damages arising from the administration of medication to a juvenile if:

(1) the program or facility administrator has received a written request to administer the medication from the parent, legal guardian, or other person having legal control over the juvenile; and

(2) when administering prescription medication, the medication appears to be in the original container and to be properly labeled.

(b) This section does not apply to:

(1) damages arising from the administration of medication that is not in accordance with the prescription issued by a medical practitioner; or

(2) an act or omission of a person administering medication if the act or omission is:

(A) reckless or intentional;

(B) done wilfully, wantonly, or with gross negligence; or

(C) done with conscious indifference or reckless disregard for the safety of others.

Added by Acts 2001, 77th Leg., ch. 1297, Sec. 63, eff. Sept. 1, 2001.

Sec. 142.006. AUTHORIZATION TO CARRY FIREARM. (a) A juvenile probation officer may carry a firearm in the course of the officer's official duties if:

(1) the juvenile probation officer possesses a certificate of firearms proficiency issued by the Texas Commission on Law Enforcement under Section 1701.259, Occupations Code;

(2) the chief juvenile probation officer of the juvenile probation department that employs the juvenile probation officer authorizes the juvenile probation officer to carry a firearm in the course of the officer's official duties; and

(3) the juvenile probation officer has been employed for at least one year by the juvenile probation department described by Subdivision (2).

(b) A juvenile probation officer is disqualified from being authorized to carry a firearm under this section if the officer has been designated a perpetrator in a Texas Juvenile Justice Department abuse, neglect, or exploitation investigation.

(c) This section does not affect the sovereign immunity of the state, an agency of the state, or a political subdivision of the state.

Added by Acts 2009, 81st Leg., R.S., Ch. 794 (S.B. 1237), Sec. 3, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(12), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.41, eff. May 18, 2013.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 125, eff. September 1, 2015.

Sec. 142.007. POST-DISCHARGE SERVICES. (a) For purposes of this section, "post-discharge services" means community-based services offered after a child is discharged from probation to support the child's vocational, educational, behavioral, or other goals and to provide continuity for the child as the child transitions out of juvenile probation services. The term includes:

(1) behavioral health services;

(2) mental health services;

(3) substance abuse services;

(4) mentoring;

(5) job training; and

(6) educational services.

(b) Provided that existing resources are available, a juvenile board or juvenile probation department may provide post-discharge services to a child for not more than six months after the date the child is discharged from probation, regardless of the age of the child on that date.

(c) A juvenile board or juvenile probation department may not require a child to participate in post-discharge services.

Added by Acts 2017, 85th Leg., R.S., Ch. 435 (S.B. 1548), Sec. 1, eff. September 1, 2017.

SUBTITLE B. JUVENILE BOARDS AND FAMILY SERVICES OFFICES

CHAPTER 150. MISCELLANEOUS LOCAL GOVERNMENTAL AUTHORITY REGARDING HEALTH AND HUMAN SERVICES

Sec. 150.001. AUTHORITY OF HOME-RULE MUNICIPALITY TO PROVIDE FACILITIES FOR ORGANIZATIONS SERVING THE INDIGENT. (a) In this section, "human services" includes the provision of housing, food, clothing, and day care services.

(b) A home-rule municipality may provide publicly owned facilities for use by organizations that provide human services to the indigent.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 86(a), eff. Aug. 28, 1989. Renumbered from Sec. 151.001 by Acts 1989, 71st Leg., ch. 352, Sec. 4, eff. Sept. 1, 1989.

Sec. 150.002. AUTHORITY OF HOME-RULE MUNICIPALITY TO PROVIDE SERVICES TO THE INDIGENT. A home-rule municipality may provide human services to the indigent. If the services are provided by contract, the amount of the contract may not exceed 50 percent of the annual budget of the organization that provides the services under the contract.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 86(a), eff. Aug. 28, 1989. Renumbered from Sec. 151.002 by Acts 1989, 71st Leg., ch. 352, Sec. 4, eff. Sept. 1, 1989.

CHAPTER 152. JUVENILE BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.0001. APPLICATION OF SUBCHAPTER. (a) This subchapter applies to each juvenile board created under this chapter. If a provision of this subchapter conflicts with a specific provision for a particular juvenile board, the specific provision controls.

(b) A statement in this chapter that a general provision of this subchapter does not apply to a specific juvenile board does not affect the application of other laws on the same subject that may affect the board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.00011. DEFINITION. In this chapter, "post-adjudication secure correctional facility" means a facility operated by or under contract with a juvenile board or local juvenile probation department under Section 152.0016.

Added by Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 8, eff. September 1, 2015.

Sec. 152.0002. BOARD MEETINGS. The juvenile board shall hold

regular quarterly meetings on dates set by the board and special meetings at the call of the chairman.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0003. COMPENSATION. The compensation authorized under this chapter for a judge serving on a juvenile board is in addition to all other compensation provided or allowed by law for a judge. Notwithstanding any other law, the combined salary from all state and local sources of a district judge serving on a juvenile board may not exceed an amount that is $5,000 less than the salary provided by the state for a justice of a court of appeals other than the chief justice.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., 2nd C.S., Ch. 3 (H.B. 11), Sec. 7, eff. December 1, 2005.

Sec. 152.0004. GENERAL EXPENSES. The commissioners court shall pay the salaries of juvenile probation personnel and other expenses certified as necessary by the juvenile board chairman from the general funds of the county.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0005. EXPENSES OF BOARD MEMBERS AND JUVENILE COURT.
(a) The commissioners court shall reimburse a juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.
(b) The commissioners court shall reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.
(c) All expenses are paid from the general fund or any other fund of the county.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0006. FISCAL OFFICER. The juvenile board shall designate a person as the board's fiscal officer.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0007. DUTIES. (a) The juvenile board shall:

(1) establish a juvenile probation department and employ a chief probation officer who meets the standards set by the Texas Juvenile Justice Department; and

(2) adopt a budget and establish policies, including financial policies, for juvenile services within the jurisdiction of the board.

(b) The board may establish guidelines for the initial assessment of a child by the juvenile probation department. The guidelines shall provide a means for assessing a child's mental health status, family background, and level of education. The guidelines shall assist the probation department in determining whether a comprehensive psychological evaluation of the child should be conducted. The board shall require that probation department personnel use assessment information compiled by the child's school, if the information is available, before conducting a comprehensive psychological evaluation of the child. The board may adopt all or part of the Texas Juvenile Justice Department's minimum standards for assessment under Section 221.002 in complying with this subsection.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 262, Sec. 73, eff. Jan. 1, 1996; Acts 2001, 77th Leg., ch. 1297, Sec. 64, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.016, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 126, eff. September 1, 2015.

Sec. 152.0008. PERSONNEL. (a) The chief juvenile probation officer may, within the budget adopted by the board, employ:

(1) assistant officers who meet the standards set by the Texas Juvenile Justice Department; and

(2) other necessary personnel.

(b) Juvenile probation officers serve at the pleasure of the appointing authority.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 1297, Sec. 65, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 127, eff. September 1, 2015.

Sec. 152.0009. TRANSPORTATION. (a) This section applies only in a county with a population of 190,000 or less.

(b) The commissioners court may provide each juvenile probation officer with an automobile for use on official business and provide an allowance for operating the automobile.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0010. ADVISORY COUNCIL. (a) A juvenile board may appoint an advisory council consisting of the number of citizen members determined appropriate by the board. To the extent available in the county, the advisory council may include:

(1) a prosecuting attorney as defined by Section 51.02, Family Code;

(2) a mental health professional;

(3) a medical health professional; and

(4) a representative of the education community.

(b) Council members serve terms as specified by the board.

(c) The juvenile board shall fill any vacancies on the advisory council.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 262, Sec. 74, eff. Jan. 1, 1996; Acts 2001, 77th Leg., ch. 1297, Sec. 66, eff. Sept. 1, 2001.

Sec. 152.0011. LOCAL YOUTH BOOT CAMPS; CONTRACTS WITH PRIVATE VENDORS. (a) The juvenile board or local juvenile probation department may establish a youth boot camp and employ necessary personnel to operate the camp.

(b) The juvenile board or local juvenile probation department may contract with a private vendor for the financing, construction, operation, maintenance, or management of a youth boot camp.

(c) If a juvenile board or its designee determines that a child is not complying with the rules of conduct promulgated by the board or is medically or psychologically unsuitable for the program, the board shall terminate the child's participation in the program and request the sentencing court to reassume custody of the child.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 75, eff. Jan. 1, 1996.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.017, eff. September 1, 2011.

Sec. 152.0012. BUDGET. The juvenile board shall prepare a budget for the juvenile probation department and the other facilities and programs under the jurisdiction of the juvenile board. The commissioners court shall review and consider only the amount of county funds derived from county taxes, fees, and other county sources in the budget. The commissioners court may not review any part of the budget derived from state funds.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 76, eff. Jan. 1, 1996.

Sec. 152.0013. IMMUNITY FROM LIABILITY. (a) A member of a juvenile board is not liable for damages arising from an act or omission committed while performing duties as a board member.

(b) This section does not apply if the act or omission is:

(1) reckless or intentional;

(2) done wilfully, wantonly, or with gross negligence; or

(3) done with conscious indifference or reckless disregard for the safety of others.

Added by Acts 2001, 77th Leg., ch. 1297, Sec. 67, eff. Sept. 1, 2001.

Sec. 152.0014. INDEMNIFICATION BY STATE. The state shall indemnify a juvenile board member in the same manner and under the same conditions that it indemnifies an officer of a state agency under Chapter 104, Civil Practice and Remedies Code.

Added by Acts 2001, 77th Leg., ch. 709, Sec. 1, eff. Sept. 1, 2001. Renumbered from Human Resources Code Sec. 152.013 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(101), eff. Sept. 1, 2003.

Sec. 152.00145. DIVERSION AND DETENTION POLICY FOR CERTAIN JUVENILES. A juvenile board shall establish policies that prioritize:

(1) the diversion of children younger than 12 years of age from referral to a prosecuting attorney under Chapter 53, Family Code; and

(2) the limitation of detention of children younger than 12 years of age to circumstances of last resort.

Added by Acts 2017, 85th Leg., R.S., Ch. 698 (H.B. 1204), Sec. 3, eff. September 1, 2017.

Sec. 152.0015. PRETRIAL DETENTION POLICY FOR CERTAIN JUVENILES. A juvenile board shall establish a policy that specifies whether a person who has been transferred for criminal prosecution under Section 54.02, Family Code, and is younger than 17 years of age may be detained in a juvenile facility pending trial as provided by Section 51.12, Family Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1087 (S.B. 1209), Sec. 3, eff. September 1, 2011.

Sec. 152.00161. TERMINATION OF CONTROL. (a) Except as provided by Subsections (b) and (c), if a person is committed to a post-adjudication secure correctional facility under a determinate sentence under Section 54.04011(c)(2), Family Code, the juvenile board or local juvenile probation department may not discharge the person from custody.

(b) The juvenile board or local juvenile probation department

shall discharge without a court hearing a person committed to the department for a determinate sentence under Section 54.04011(c)(2), Family Code, who has not been transferred to the Texas Department of Criminal Justice under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent in the custody of the juvenile board or local juvenile probation department under the order of commitment equals the period of the sentence.

(c) The juvenile board or local juvenile probation department shall transfer to the Texas Department of Criminal Justice a person who is the subject of an order under Section 152.0016(j) transferring the person to the custody of the Texas Department of Criminal Justice for the completion of the person's sentence.

(d) Except as provided by Subsection (e), the juvenile board or local juvenile probation department shall discharge from its custody a person not already discharged on the person's 19th birthday.

(e) The juvenile board or local juvenile probation department shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04011(c)(2), Family Code, or who has been returned to the juvenile board or local juvenile probation department under Section 54.11(i)(1), Family Code, to the custody of the Texas Department of Criminal Justice on the person's 19th birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 10, eff. September 1, 2015.

Sec. 152.00162. DETERMINATE SENTENCE PAROLE. (a) Not later than the 90th day before the date the juvenile board or local juvenile probation department transfers a person to the custody of the Texas Department of Criminal Justice for release on parole supervision under Section 152.0016(g) or 152.00161(e), the juvenile board or local juvenile probation department shall submit to the Texas Department of Criminal Justice all pertinent information relating to the person, including:

(1) the juvenile court judgment;

(2) the circumstances of the person's offense;

(3) the person's previous social history and juvenile court records;

(4) the person's physical and mental health record;

(5) a record of the person's conduct, employment history, and attitude while committed to the department;

(6) a record of the sentence time served by the person at the juvenile board or local juvenile probation department as a result of a commitment under Section 54.04011(c)(2), Family Code, and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the juvenile board or local juvenile probation department, local officials, family members of the person, victims of the offense, or the general public.

(b) The juvenile board or local juvenile probation department shall provide instruction for parole officers of the Texas Department of Criminal Justice relating to juvenile programs provided by the juvenile board or local juvenile probation department. The juvenile boards and local juvenile probation departments and the Texas Department of Criminal Justice shall enter into a memorandum of understanding relating to the administration of this subsection.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person in the custody of a juvenile board or local juvenile probation department and in a juvenile detention facility, as recorded by the board or department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the Texas Department of Criminal Justice.

Added by Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 10, eff. September 1, 2015.

Sec. 152.00163. CHILD WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITY. (a) A juvenile board or local juvenile probation department shall accept a child with a mental illness or an intellectual disability who is committed to the custody of the board or department.

(b) Unless a child is committed to the custody of a juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code, the juvenile

board or local juvenile probation department shall discharge a child with a mental illness or an intellectual disability from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the juvenile board or local juvenile probation department determines that the child is unable to progress in the rehabilitation programs provided by the juvenile board or local juvenile probation department because of the child's mental illness or intellectual disability.

(c) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for mental health services filed under Section 152.00164(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge is effective immediately. If the child is receiving mental health services outside the child's home county, the juvenile board or local juvenile probation department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the 30th day after the date that the referral is made under Section 152.00164(c).

(f) If a child who is discharged from the custody of a juvenile board or local juvenile probation department under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge is effective immediately.

(g) If a child with a mental illness or an intellectual disability is discharged from the custody of a juvenile board or

local juvenile probation department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 10, eff. September 1, 2015.

Sec. 152.00164. EXAMINATION BEFORE DISCHARGE. (a) A juvenile board or local juvenile probation department shall establish a system that identifies children with mental illnesses or intellectual disabilities who are in the custody of the juvenile board or local juvenile probation department.

(b) Before a child who is identified as having a mental illness is discharged from the custody of the juvenile board or local juvenile probation department under Section 152.00163(b), the juvenile board or local juvenile probation department shall arrange for a psychiatrist to examine the child. The juvenile board or local juvenile probation department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the juvenile board or local juvenile probation department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child has a mental illness and the child meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) Before a child who is identified as having an intellectual disability under Chapter 593, Health and Safety Code, is discharged from the custody of a juvenile board or local juvenile probation department under Section 152.00163(b), the department shall refer the child for intellectual disability services if the child is not receiving intellectual disability services.

Added by Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 10, eff. September 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 24, eff. September 1, 2019.

Sec. 152.00165. TRANSFER OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES FOR MENTAL HEALTH SERVICES. (a) A juvenile board or local juvenile probation department may petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the custody of the juvenile board or local juvenile probation department under a determinate sentence under Section 54.04011(c)(2), Family Code.

(b) A petition made by a juvenile board or local juvenile probation department shall be treated as a motion under Section 55.11, Family Code, and the juvenile court shall proceed in accordance with Subchapter B, Chapter 55, Family Code.

(c) A juvenile board or local juvenile probation department shall cooperate with the juvenile court in any proceeding under this section.

(d) The juvenile court shall credit to the term of the child's commitment to a juvenile board or local juvenile probation department any time the child is committed to an inpatient mental health facility.

(e) A child committed to an inpatient mental health facility as a result of a petition filed under this section may not be released from the facility on a pass or furlough.

(f) If the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, the inpatient mental health facility shall notify the juvenile court that entered the order of commitment committing the child to a juvenile board or local juvenile probation department. The juvenile court may transfer the child to the custody of the juvenile board or local juvenile probation department, transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

Added by Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 10, eff. September 1, 2015.

Sec. 152.0017. TRAFFICKED PERSONS PROGRAM. (a) A juvenile board may establish a trafficked persons program under this section for the assistance, treatment, and rehabilitation of children who:

(1) are alleged to have engaged in or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision;

(2) may be victims of an offense of trafficking of persons as defined by Article 56B.003, Code of Criminal Procedure; and

(3) have been referred to the program by the Child Sex Trafficking Prevention Unit established under Section 772.0062, Government Code, or the governor's program for victims of child sex trafficking established under Section 772.0063, Government Code.

(b) A program established under this section must:

(1) if applicable, allow for the integration of services available to a child pursuant to proceedings under Title 3, Family Code, and Subtitle E, Title 5, Family Code;

(2) if applicable, allow for the referral to a facility that can address issues associated with human trafficking; and

(3) require a child participating in the program to periodically appear in court for monitoring and compliance purposes.

(c) A facility qualified to provide one or more services under this section may apply for a grant under Section 50.0155, Health and Safety Code, only for the purposes of providing constitutionally secure shelter and research-based treatment services to human trafficking victims.

Added by Acts 2013, 83rd Leg., R.S., Ch. 186 (S.B. 92), Sec. 7, eff. September 1, 2013.
Redesignated from Human Resources Code, Section 152.0016 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(36), eff. September 1, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 704 (H.B. 2633), Sec. 7, eff. September 1, 2021.

SUBCHAPTER B. CREATION OF JUVENILE BOARD IN CERTAIN COUNTIES

Sec. 152.0031. APPLICATION OF SUBCHAPTER. Except as otherwise

provided by this chapter, this subchapter does not apply to a county that is served by a juvenile board created under Subchapter C or D.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 198 (S.B. 1886), Sec. 1, eff. May 28, 2011.

Sec. 152.0032. COMPOSITION OF JUVENILE BOARD. (a) The juvenile board is composed of the county judge, the district judges in the county, and the judges of any statutory courts designated as a juvenile court in the county.

(b) Notwithstanding Subsection (a), the juvenile board of Jim Wells County is composed of the judges of the county and district courts in the county. The board must have not fewer than three nor more than five members. The judges of the county and district courts in the county may appoint an appropriate number of public members to serve on the board if necessary to satisfy this requirement. Notwithstanding Section 152.0034(b), a public member serves without compensation. The chairman of the board shall determine the number of public members to be appointed to the board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1236 (H.B. 2502), Sec. 1, eff. June 15, 2007.

Sec. 152.0033. CHAIRMAN. The juvenile board shall select one of its members to act as chairman.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0034. COMPENSATION OF BOARD MEMBERS. (a) Service on a juvenile board by a judge is an additional duty of office.

(b) The commissioners court may reasonably compensate each member of the juvenile board for the member's additional duties.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0035. EXPENSES OF BOARD MEMBERS. The county shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing official duties on the board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0036. JOINT OPERATION. (a) The juvenile boards of two or more counties that are adjacent to or in close proximity to each other may agree to operate together.

(b) Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0037. FUNDS. (a) The board may accept state aid and grants or gifts from other political subdivisions of the state or associations for the sole purpose of financing adequate and effective probation programs.

(b) A municipality may grant and allocate money to the county government or to the juvenile board to support and maintain juvenile programs if the municipality's governing body approves the expenditure.

(c) Funds received under this section shall be administered and kept separately from other county funds.

(d) This subchapter does not prohibit a program of local enrichment of juvenile services funded by any source.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0038. SALARIES AND EXPENSES. (a) The juvenile board shall pay the salaries of juvenile probation department personnel and other expenses required to provide adequate services to children from the juvenile board fund to the extent of the state aid received in the fund.

(b) The county shall pay other salaries and expenses essential

to provide adequate services to children in an amount set by the juvenile board with the advice and consent of the county commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0039. TRANSPORTATION. The juvenile board shall provide the juvenile probation officers with transportation or an automobile allowance for use of a personal automobile on official business.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0040. APPLICATION OF GENERAL JUVENILE BOARD PROVISIONS. Sections 152.0002, 152.0004, 152.0005, and 152.0009 do not apply to a juvenile board operating under this subchapter.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. COUNTY JUVENILE BOARD IN COUNTIES WITH A FAMILY DISTRICT COURT

Sec. 152.0051. COMPOSITION OF JUVENILE BOARD. The juvenile board of a county that has a family district court is composed of:

(1) the county judge;

(2) the judge of each family district court;

(3) the judge of each other district court in the county; and

(4) the judge of each other court in the county that has jurisdiction over juvenile matters.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0052. CHAIRMAN. The members of the juvenile board shall select a family district court judge to serve as chairman of the board unless the county has only one family district court judge.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0053. COMPENSATION. The commissioners court may compensate each juvenile board member for the member's duties performed on the juvenile board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0054. PROVISION OF PHYSICAL FACILITIES. The commissioners court shall provide the physical facilities necessary to operate the juvenile board on the board's recommendation.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0055. EFFECT ON CERTAIN JUVENILE BOARDS. This subchapter does not affect the composition or organization of a juvenile board existing on September 1, 1977.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. PROVISIONS APPLICABLE TO SPECIFIC COUNTIES

Sec. 152.0071. ANDERSON COUNTY. (a) The juvenile board of Anderson County is composed of the county judge, the district judges in Anderson County, and the criminal district attorney of Anderson County. The commissioners court by order may add to the board the judge of the county court at law in Anderson County.

(b) The judge of the juvenile court is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional compensation set by the commissioners court at not less than $50 nor more than $250 a month for the added duties imposed on the members.

(d) The commissioners court shall pay the additional compensation and expenses of the juvenile probation officer from the general fund or any other available fund of the county.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Anderson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0081. ANDREWS COUNTY. (a) The Andrews County Juvenile Board is composed of the county judge, the district judges in Andrews County, and the county attorney of Andrews County.

(b) The judge of the juvenile court is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board chairman additional compensation of $1,200 for the added duties imposed on the chairman. The commissioners court may pay the other members of the board additional compensation of not more than $1,200. The additional compensation shall be paid in equal monthly installments from the general fund or any other fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Andrews County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0091. ANGELINA COUNTY. (a) The Angelina County Juvenile Board is composed of the county judge, the judges of the statutory county courts, and the district judges in Angelina County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation in an amount determined by the commissioners court for the added duties imposed on the members. The combined yearly salary from state and county sources received by each judge may not exceed an amount equal to $1,000 less than the combined yearly salary from state and county sources received by each justice of the court of appeals of the court of appeals district in which Angelina County is located. The additional compensation is paid in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Angelina County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0101. ARANSAS COUNTY. (a) The juvenile board of Aransas County is composed of the county judge, the district judges in Aransas County, and the judge of the county court at law.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners court for the added duties imposed on the members. The additional compensation may not be lower than the amount paid to the judges on September 1, 1981.

(c) The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Aransas County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2003, 78th Leg., ch. 998, Sec. 2, eff. Sept. 1, 2003.

Sec. 152.0131. ATASCOSA COUNTY. (a) The juvenile board of Atascosa County is composed of the county judge, the district judges in Atascosa County, and the judge of the County Court at Law of Atascosa County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $4,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Atascosa County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1182 (S.B. 1139), Sec. 6.03, eff. September 1, 2015.

Sec. 152.0141. AUSTIN COUNTY. (a) The juvenile board of Austin County is composed of the county judge, the judges of the statutory county courts, and a judge of a district court in Austin County as determined by the commissioners court.

(b) The commissioners court may pay the juvenile board members

additional annual compensation of not more than $1,200 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Austin County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0151. BAILEY COUNTY. (a) The juvenile board of Bailey and Parmer counties is composed of the county judge, the district judges in the counties, and the judge of each statutory court designated as a juvenile court in the counties.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners courts of the counties shall pay the members of the juvenile board an annual salary set by the commissioners court at not more than $1,800, payable in equal monthly installments from the general fund of the counties. The counties shall apportion and pay the salary according to the ratio used to pay the expenses of the 287th Judicial District.

(d) The counties shall apportion and pay the juvenile board costs, other than the judges' salaries, according to the ratio used to pay the expenses of the 287th Judicial District, unless the counties agree to use a different method of allocating costs.

(e) The chief juvenile probation officer may set the salaries and allowances of juvenile probation personnel with the approval of the board.

(f) Section 152.0005(b) does not apply to the juvenile board in Bailey and Parmer counties.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0161. BANDERA COUNTY. (a) The juvenile board of Bandera County is composed of the county judge and the district judges in Bandera County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 nor more than $1,200, payable in equal monthly

installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Bandera County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0181. BAYLOR COUNTY. (a) Baylor County is included in the 50th Judicial District Juvenile Board. The juvenile board is composed of the judge of the 50th Judicial District and the county judge of each county in the judicial district. The juvenile court judge may designate two public members to serve on the board without compensation and for a period determined by the juvenile court judge.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each calendar year.

(c) The commissioners courts of the counties shall pay the judges who are members of the juvenile board additional annual compensation of not more than $6,000 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the counties.

(d) If approved by the juvenile board, the commissioners court shall reimburse the juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings related to juvenile problems. The counties shall prorate the expenses allowed for the members of the juvenile board and for the juvenile court judge.

(e) The commissioners courts shall provide the necessary funds to pay the salaries of the juvenile probation personnel in the amount set by the juvenile board.

(f) The commissioners court shall pay the expenses of the juvenile probation officers that are certified as necessary by the juvenile board chairman from the general fund and in the amount set by the juvenile board.

(g) Sections 152.0004 and 152.0005(b) do not apply to the 50th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0191. BEE COUNTY. (a) The juvenile board of Bee

County is composed of the county judge and the district judges in Bee County.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners court for the added duties imposed on the members. The additional compensation may not be lower than the amount paid to the judges on September 1, 1981.

(c) The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Bee County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0201. BELL COUNTY. (a) The Bell County Juvenile Board is composed of the county judge, the district judges in Bell County, and the judge of each county court at law in the county.

(b) The county judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary in an amount set by the commissioners court as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Bell County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1149, Sec. 1, eff. Aug. 30, 1999.

Sec. 152.0211. BEXAR COUNTY. (a) The juvenile board of Bexar County is composed of the county judge and the district judges in Bexar County.

(b) The commissioners court shall pay the county judge additional annual compensation of $4,500. The county commissioners court shall pay the district judges on the board an additional annual salary of $1,500. The additional compensation paid to the county and district judges shall be paid in equal monthly installments from the

general fund of the county.

(c) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(d) The board shall keep records as required by law and board rules.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The commissioners court shall provide the juvenile probation officers with:

(1) automobiles and their maintenance and operation expenses for use in official duties; or

(2) an automobile allowance for the use of a personal automobile on official business in the amount determined to be necessary by the commissioners court.

(g) The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation personnel.

(h) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Bexar County.

(i) The board may apply for, accept, hold in trust, spend, and otherwise use a gift, grant, or donation of land or money or other personal property from a governmental entity, corporation, individual, or other source for the benefit of the juvenile justice system.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1059 (H.B. 4700), Sec. 1, eff. June 19, 2009.

Sec. 152.0212. BEXAR COUNTY INSTITUTIONS. (a) The juvenile board of Bexar County shall appoint a person to supervise the county facilities under the jurisdiction of the juvenile board. The supervisor may be the county probation officer. The supervisor shall direct the policies and conduct of each institution.

(b) The juvenile board shall also appoint the head of each facility. The facility head may hire employees that the juvenile board determines are necessary.

(c) The facilities supervisor or employees under the

supervisor's control shall supervise each child committed to a county institution until the child becomes of age. The supervisor or employees shall submit periodic reports to the juvenile board as required for the board's approval or action.

(d) The commissioners court shall provide the necessary funds to operate each institution.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0213. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN BEXAR COUNTY. (a) The juvenile board of Bexar County may designate the district clerk or the juvenile probation officer to collect and disburse court-ordered child or spousal support payments that are required by court order to be made to the county. The person designated to receive the payments shall disburse the payments in the manner the court believes to be in the best interest of the spouse or child.

(b) If the juvenile board designates the juvenile probation officer to receive the payments, the officer shall work in the court as an officer of the court. The officer shall obtain a surety bond in an amount determined by the commissioners court from a solvent surety company authorized to make the bonds in this state and approved by the commissioners court. The bond shall be conditioned on the faithful performance of the officer's duties and on the proper accounting of the money entrusted to the officer. The county shall pay the premium for the bond from the general fund of the county.

(c) The juvenile officer shall keep an accurate and complete record of money received and disbursed under this section. The record is open for public inspection. The county auditor shall inspect and examine the records and audit the accounts quarterly. The auditor shall report the results of the audit to the juvenile board and include any recommendations the auditor may have.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0221. BLANCO COUNTY. (a) The Blanco County Juvenile Board is composed of the county judge and the district judges in Blanco County.

(b) The judge of the 33rd District Court is the chairman of the

board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not more than $1,200 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Blanco County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 18, eff. September 1, 2005.

Sec. 152.0231. BORDEN COUNTY. (a) Borden County is included in the 132nd Judicial District Juvenile Board. The juvenile board is composed of the county judge and the district judges in Borden and Scurry counties.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners courts of the counties shall pay the members of the juvenile board annual supplemental compensation of $2,400 from the general fund or any other available fund of the counties.

(d) The juvenile board shall hold regular meetings on dates set by the board and special meetings at the call of the chairman.

(e) The commissioners courts may reimburse a juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(f) The juvenile board shall pay the salaries of juvenile probation personnel and other expenses the chairman certifies as essential to provide services to children from the juvenile board fund to the extent of the state aid received in the fund.

(g) The juvenile board shall designate the treasurer or auditor of Borden County or Scurry County to serve as the board's fiscal officer.

(h) The juvenile board shall appoint an advisory council composed of one person from each county.

(i) Sections 152.0002, 152.0003, 152.0004, 152.0005(a) and (b), 152.0006, and 152.0008(a) do not apply to the 132nd Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0241. BOSQUE COUNTY. (a) Bosque County is included in the Bosque, Comanche, and Hamilton counties juvenile board. The juvenile board is composed of:

(1) the county judge in Bosque County;
(2) the county judge in Comanche County;
(3) the county judge in Hamilton County;
(4) the 220th Judicial District judge; and
(5) the judge of the County Court at Law of Bosque County.

(b) The 220th Judicial District judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court of Bosque County shall pay the county judge in Bosque County and the 220th Judicial District judge additional annual compensation set by the commissioners court at not less than the amount paid to a board member under this section on October 1, 1998. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Bosque County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 336, Sec. 1, eff. May 29, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 239 (S.B. 2229), Sec. 2, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1103 (H.B. 4833), Sec. 10(b), eff. October 1, 2009.

Sec. 152.0251. BOWIE COUNTY. (a) The Bowie County Juvenile Board is composed of the county judge, the district judges, and the judge of each statutory county court in Bowie County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The county commissioners court may pay the juvenile board

members additional annual compensation set by the commissioners court at not less than $1,200. The additional compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the funds necessary to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the Bowie County Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 152.0252 by Acts 1989, 71st Leg., ch. 592, Sec. 2(c), eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 429, Sec. 1, eff. Sept. 1, 2001.

Sec. 152.0261. BRAZORIA COUNTY. (a) The juvenile board of Brazoria County is composed of the county judge, the district judges in Brazoria County, and the judge of each county court at law.

(b) The commissioners court shall pay the board members annual additional compensation in an amount set by the commissioners court. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Brazoria County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0262. COMPENSATION OF JUVENILE JUDGE IN BRAZORIA COUNTY. (a) The Commissioners Court of Brazoria County may pay the juvenile judge additional annual compensation of not more than $1,500 for serving as the judge of the juvenile court.

(b) The compensation is in addition to all other compensation paid or authorized to be paid to the judge who serves as the juvenile judge.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0263. BRAZORIA COUNTY CHILD SUPPORT OFFICE. (a) The judges of the district courts in Brazoria County may establish a child support office in the county juvenile office to collect and disburse child support payments that are required by court order to be made to the office. The office shall disburse the payments in the manner the court believes to be in the best interest of the parties in the case.

(b) The judges of the district courts in a county served by an office may appoint an administrator and other assistants to serve two-year terms. The administrator shall obtain a surety bond in an amount determined by the county auditor from a solvent surety company authorized to make the bonds in this state and approved by the county auditor. The bond shall be conditioned on the faithful performance of the administrator's duties and on the proper accounting of the money entrusted to the administrator. The county shall pay the premium for the bond from the general fund of the county, the child support fund, or any other available fund.

(c) The judges shall determine the duties of the administrator and assistants and set their salaries. The salaries are payable in equal monthly installments from the general fund of the county, the child support fund, or any other available fund. The judges must approve a claim for expenses made by the administrator or an assistant or a claim for administrative expenses in operating the child support office, including a claim for payment of equipment and supplies.

(d) The office shall keep an accurate and complete record of money received and disbursed under this section. The record is open for public inspection. The county auditor or other authorized county officer or employee shall inspect and examine the records and audit the accounts quarterly. The auditor shall report the results of the audit to the judges and include any recommendations the auditor may have.

(e) The child support office may serve one or more of Fort Bend, Matagorda, and Wharton counties. If a child support office serves more than one county, the judges of the district courts in the counties shall determine the location of the office. The officers and employees of the county in which the office is located shall perform the duties prescribed by this section. The counties shall

pay the salaries, bond premium, and other expenses in accordance with the ratio that the population of each county bears to the total population of all of the counties served by the office.

(f) The commissioners courts shall pay the district court judges $75 a month for performing the duties prescribed by this section. The compensation shall be paid from the general fund of the county and is in addition to any other compensation the judges receive.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0264. BRAZORIA COUNTY CHILD SUPPORT SERVICE FEE. (a) The Brazoria County child support office shall assess a monthly fee of not more than $10 for collecting and disbursing child support payments that are required by court order to be made to the office. The fee is payable annually and in advance.

(b) The payor of the support shall pay the fee unless the payor is a member of the armed services and the monthly child support payments exceed the amount the court orders the person to pay, in which case the payee shall pay the service fee for as long as the payor is a member of the armed services and the support payments exceed the amount the court orders the person to pay.

(c) The first fee payment is due on the date that the payor is ordered to begin the child support payments. If the payee must pay the fee, the first fee payment is due on the date that the payee receives the original support payment. Subsequent annual fees are due on the anniversary of the date of the original fee payment.

(d) A person who refuses or fails to pay the fee on the date due or in the amount ordered is subject to an action for contempt of court.

(e) Fees collected under this section shall be paid to the county treasurer on the last day of each calendar month. The county treasurer shall deposit the fees to the credit of the child support fund. The judges of the district courts in a county served by the office shall administer the fund, with the approval of the commissioners court, to assist in paying the salaries and expenses of the child support office.

(f) An accurate and complete record of money received under this section shall be kept. The county auditor or other authorized

person shall audit the child support fund regularly. An annual report of the receipts and expenditures of the fund shall be made to the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.04(a), eff. Aug. 26, 1991.

Sec. 152.0271. BRAZOS COUNTY. (a) The Brazos County Juvenile Board is composed of the county judge, the district judges in Brazos County, the judge of each county court at law, and one public member appointed by the judges.

(b) The public member serves a two-year term.

(c) The county judge is the chairman of the board.

(d) The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not less than $600 nor more than $1,200. The commissioners court shall pay the public member of the board an annual salary set by the commissioners court at not more than $600. The salaries shall be paid in equal monthly installments from the general fund or any other fund of the county.

(e) The chief juvenile probation officer may set the salaries and allowances of juvenile probation personnel with the approval of the board.

(f) Section 152.0005(b) does not apply to the juvenile board of Brazos County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 514, Sec. 1, eff. June 15, 1991.

Sec. 152.0281. BREWSTER COUNTY. (a) The Brewster County Juvenile Board is composed of the county judge and the district judges in Brewster County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly

installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Brewster County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0291. BRISCOE COUNTY. (a) Briscoe County is included in the 110th Judicial District Juvenile Board. The juvenile board is composed of the county judges, the district judges in Briscoe, Dickens, Floyd, and Motley counties and the judge of any juvenile court in the counties.

(b) The juvenile board shall elect one of its members as chairman.

(c) The juvenile board shall hold regular meetings on dates set by the board and special meetings at the call of the chairman.

(d) The members of the juvenile board do not receive compensation for serving on the board. The commissioners courts may reimburse a juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(e) The juvenile board shall pay the salaries of juvenile probation personnel and other expenses the chairman certifies as essential to provide services to children from the juvenile board fund to the extent of the state aid received in the fund.

(f) The juvenile board shall designate the treasurer or auditor of Briscoe, Dickens, Floyd, or Motley County to serve as the board's fiscal officer.

(g) The juvenile board shall appoint an advisory council composed of one person from each county.

(h) Sections 152.0002, 152.0003, 152.0004, 152.0005(a), 152.0005(b), 152.0006, and 152.0008(a) do not apply to the 110th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0301. BROOKS COUNTY. (a) The juvenile board of Brooks County is composed of the judges of the county and district courts in the county. The board must have not fewer than three nor more than five members. The judges of the county and district courts

in the county may appoint an appropriate number of public members to serve on the board without compensation if necessary to satisfy this requirement. The chairman of the board shall determine the number of public members to be appointed to the board.

(b) The county judge is the chairman of the board.

(c) The board shall hold biannual meetings on dates set by the board and special meetings at the call of the chairman.

(d) Service on a juvenile board by a judge is an additional duty of office. The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $6,000, payable in equal monthly installments from the general fund or any other available fund of the county.

(e) The county shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing the member's duties.

(f) The juvenile board shall ensure that the chief juvenile officer and fiscal officer:

(1) keep the financial and statistical records and submit reports to the Texas Juvenile Justice Department as prescribed by Section 221.007; and

(2) submit periodic financial and statistical reports to the county commissioners court.

(g) The chief juvenile probation officer shall appoint an appropriate number of qualified juvenile probation officers, assistants, and support personnel with the approval of the board as necessary to perform his duties. The chief juvenile probation officer and the personnel appointed under this section may be removed at any time by the appointing authority or by the juvenile board. The chief juvenile probation officer shall recommend to the juvenile board the salaries of and allowances for juvenile probation officers, assistants, and support personnel. The juvenile board shall provide the chief juvenile probation officer and his assistants with transportation or an automobile allowance for use of a personal automobile on official business.

(h) A claim for expenses from a person in the juvenile probation department must be made to the board chairman. The chairman shall certify to the fiscal officer the expenses to be paid from state funds and shall certify to the commissioners court the expenses to be paid from county funds.

(i) The chairman of the board shall certify to the

commissioners court an annual request for the expenditure of county funds. The commissioners court shall act on the request in the same manner as it acts on a request from another county office.

(j) The board may accept state aid and grants and gifts from other political subdivisions of the state or associations for the purpose of financing adequate and effective juvenile programs. A municipality may grant and allocate money to the juvenile board to support and maintain effective juvenile services if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other public funds. This section does not affect a program of local enrichment of juvenile services funded by a service.

(k) The juvenile board shall appoint an advisory council of not more than five persons.

(l) Sections 152.0002, 152.0004, 152.0005, 152.0008, and 152.0009 do not apply to the juvenile board of Brooks County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.018, eff. September 1, 2011.

Sec. 152.0331. BURNET COUNTY. (a) The Burnet County Juvenile Board is composed of the county judge and the district judges in Burnet County.

(b) The judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not more than $1,200 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Burnet County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 19, eff. September 1, 2005.

Sec. 152.0341. CALDWELL COUNTY. (a) The juvenile board of Caldwell County is composed of the county judge, the judges of the statutory county courts, and the judge of a judicial district in Caldwell County as determined by the commissioners court.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners court for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Caldwell County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 72, Sec. 1, eff. May 9, 1991.

Sec. 152.0351. CALHOUN COUNTY. (a) The juvenile board of Calhoun County is composed of the county judge, the district judges in Calhoun County, and the judge of each county court at law.

(b) The commissioners court may pay the juvenile board members reasonable additional annual compensation in an amount set by the commissioners court as compensation for the added duties imposed on the members. The compensation may not be lower than the compensation paid to a member on August 29, 1977. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Calhoun County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0371. CAMERON COUNTY. (a) The juvenile board of Cameron County is composed of the county judge, the district judges in Cameron County, and the judge of each county court at law.

(b) The commissioners court shall pay the members of the juvenile board additional annual compensation of $4,500, payable in equal monthly installments from the general fund of the county. The commissioners court shall pay the members an additional $75 per month for performing the additional duties prescribed by Sections 152.0372 and 152.0373.

(c) The juvenile board shall hold meetings at least once every

three months in accordance with board rules.

(d) The board shall keep records as required by law and board rules.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The juvenile board may require a juvenile probation officer or facility superintendent to obtain a surety or personal bond in an amount determined by the board and conditioned on the faithful performance of the person's duties.

(g) The juvenile board may suspend or remove a juvenile probation officer at any time for good cause. The chief probation officer, with the approval of the board, may suspend or remove an assistant probation officer for good cause after the assistant is notified and afforded an opportunity to appear before the board.

(h) Sections 152.0002, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Cameron County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1108, Sec. 2, eff. Sept. 1, 1989.

Sec. 152.0372. CAMERON COUNTY INSTITUTIONS. (a) The juvenile board of Cameron County controls and supervises each county facility used for the detention of juveniles.

(b) The juvenile board by majority vote may adopt any order or regulation necessary to the welfare of juveniles in a county facility. The chief juvenile probation officer shall enter each order or regulation in a book kept for that purpose and shall certify the order or regulation and deliver a copy to each facility superintendent or person in charge of a facility. The superintendent or other person and each juvenile probation officer shall comply with the order or regulation.

(c) The juvenile board may require the superintendent or person in charge of a facility to submit to the board reports containing information required by the board.

(d) The district attorney of Cameron County shall assign an attorney in the district attorney's office to represent the juvenile board and probation officers in protecting the rights of children in

abandonment cases and proceedings.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0373. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN CAMERON COUNTY. (a) The juvenile board of Cameron County may require a juvenile probation officer to collect and disburse child support payments that are required by court order to be made to a court in the county.

(b) The juvenile probation officer shall keep a record of money received and disbursed in a well-bound book subject to public inspection in the probation office. The county auditor shall audit the records.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0381. CAMP COUNTY. (a) Camp County is included in the Camp, Marion, Morris, and Titus Counties Juvenile Board. The juvenile board is composed of the county judges, the district judges in Camp, Marion, Morris, and Titus counties, and the judge of each statutory court in those counties designated as a juvenile court.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The juvenile board shall hold regular bimonthly meetings on dates set by the board and special meetings at the call of the chairman.

(d) The commissioners courts of the counties shall pay the juvenile board members an annual salary set by the commissioners courts at not less than $1,800 for the added duties imposed on them. The salary shall be paid in equal monthly installments from the general fund or any other available fund of the counties. Each county shall pay an equal portion of the salaries.

(e) The juvenile board shall provide each juvenile probation officer with an automobile or an automobile allowance for use of a personal automobile on official business.

(f) The juvenile board shall pay the salaries of juvenile probation personnel and other expenses required to provide adequate services to children from the juvenile board fund to the extent of the state aid received in the fund. The counties shall pay equally

the other salaries and expenses essential to provide adequate services to children in an amount set by the juvenile board.

(g) The board may accept state aid and grants or gifts from other political subdivisions of the state or associations for the sole purpose of financing adequate and effective probation programs.

(h) Sections 152.0002, 152.0004, 152.0005, and 152.0009 do not apply to the Camp, Marion, Morris, and Titus Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0391. CARSON COUNTY. (a) The Carson County Juvenile Board is composed of the county judge and the district judges in Carson County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $50 nor more than $150 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Carson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0401. CASS COUNTY. (a) The Cass County Juvenile Board is composed of the county judge, the judge of the County Court at Law of Cass County, and the district judges in Cass County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 nor more than $1,800 for the added duties imposed on them. The compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The juvenile board shall provide each juvenile probation

officer with transportation or an automobile allowance for use of a personal automobile on official business.

(e) The juvenile board shall pay the salaries of juvenile probation personnel and other expenses required to provide adequate services to children from the juvenile board fund to the extent of the state aid received in the fund. The commissioners court shall pay the other salaries and expenses essential to provide adequate services to children in an amount set by the juvenile board.

(f) The commissioners court shall pay the expenses of the juvenile probation officers that are certified as necessary by the juvenile board chairman from the general fund and in the amount set by the juvenile board.

(g) The board may accept state aid and grants or gifts from other political subdivisions of the state or associations for the sole purpose of financing adequate and effective probation programs. A municipality may grant and allocate money to the county or to the juvenile board to support and maintain juvenile programs if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other county funds.

(h) This section does not prohibit a program of local enrichment of juvenile services funded by any source.

(i) Sections 152.0004 and 152.0009 do not apply to the juvenile board of Cass County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 868 (H.B. 1500), Sec. 1, eff. June 15, 2007.

Sec. 152.0411. CASTRO COUNTY. (a) The juvenile board of Castro and Swisher counties is composed of the county judges, the district judges in Castro and Swisher counties, and the judge of any statutory court designated as a juvenile court in the counties.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners courts of the counties shall pay the members of the juvenile board an annual salary set by the commissioners court at not less than $1,200, payable in equal monthly

installments from the general fund of the counties. The counties shall apportion and pay the salary according to the method determined by the counties.

(d) The counties shall apportion and pay the juvenile board costs, other than the judge's salaries, according to the method determined by the counties.

(e) The commissioners courts shall pay the salaries and expenses of juvenile probation personnel and other expenses the chairman certifies as essential to provide services to children from the general funds or any other available funds of the counties.

(f) A member of the juvenile board is not liable in civil damages or for criminal prosecution for an action taken by the juvenile board.

(g) The juvenile board shall appoint an advisory council composed of five citizens from different parts of Castro and Swisher counties.

(h) Sections 152.0004 and 152.0005(b) do not apply to the juvenile board in Castro and Swisher counties.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 454, Sec. 1, eff. Aug. 30, 1993.

Sec. 152.0421. CHAMBERS COUNTY. (a) The Chambers County Juvenile Board is composed of the county judge, the district judges in Chambers County, and the judge of any statutory county court designated as a juvenile court.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each calendar year.

(c) Service on the juvenile board is an additional duty of office. The commissioners court may pay the members of the juvenile board additional annual compensation in an amount set by the commissioners court for the added duties imposed on the members. The compensation is payable in equal monthly installments out of the general fund of the county.

(d) If approved by the juvenile board, the commissioners court shall reimburse the juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile problems.

(e) The commissioners court shall provide the funds for the

salaries of the juvenile probation officers in the amount set by the juvenile board.

(f) The commissioners court shall pay the expenses of the juvenile probation officers certified as necessary by the juvenile board chairman from the general fund of the county and in the amount set by the juvenile board.

(g) Sections 152.0004 and 152.0005(b) do not apply to the juvenile board of Chambers County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0431. CHEROKEE COUNTY. (a) The Cherokee County Juvenile Board is composed of the county judge and the district judges in Cherokee County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation in an amount determined by the commissioners court for the added duties imposed on the members. The combined yearly salary from state and county sources received by each judge may not exceed an amount equal to $1,000 less than the combined yearly salary from state and county sources received by each justice of the court of appeals of the court of appeals district in which Cherokee County is located. The additional compensation is payable in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Cherokee County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1077, Sec. 2, eff. Sept. 1, 1989.

Sec. 152.0441. CHILDRESS COUNTY. (a) The Childress County Juvenile Board is composed of the county judge and the district judges in Childress County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board

members additional monthly compensation set by the commissioners court at not less than $50 nor more than $150 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Childress County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0461. COCHRAN COUNTY. (a) The Cochran County Juvenile Board is composed of the county judge, the district judge in Cochran County, and the judge of any statutory court designated as a juvenile court in the county. The chairman shall appoint five public members to serve on the board for a period determined by the board.

(b) The county judge is the chairman of the juvenile board. The district judge is the vice-chairman and acts as chairman if:

(1) the chairman is absent or disabled; or

(2) the office of county judge is vacant.

(c) The juvenile board shall hold regular meetings at least annually on dates set by the board and shall hold special meetings at the call of the chairman.

(d) The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court, payable in equal monthly installments from the general fund or any other available fund of the county. Public members serve without compensation.

(e) The commissioners court may reimburse a juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(f) The juvenile board shall pay the salaries of juvenile probation personnel and other expenses the chairman certifies as essential to provide services to the children of Cochran County from the juvenile board fund to the extent of the state aid received in the fund. The salaries approved by the commissioners court may be paid from funds received for that purpose from the Texas Juvenile

Justice Department. The commissioners court shall pay the remaining approved salaries of juvenile probation personnel and other expenses certified as necessary by the juvenile board chairman from the general funds of the county.

(g) The chairman of the juvenile board shall certify to the commissioners court an annual request for the expenditure of county funds. The commissioners court shall act on the request in the same manner as it acts on a request from another county office.

(h) The county auditor shall serve as the board's fiscal officer.

(i) Sections 152.0002, 152.0004, 152.0005, 152.0006, and 152.0008 do not apply to the juvenile board of Cochran County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 476, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 128, eff. September 1, 2015.

Sec. 152.0471. COKE COUNTY. (a) The juvenile board of Coke County is composed of the county judge and the district judges in Coke County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $1,200 payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Coke County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0481. COLEMAN COUNTY. (a) The Coleman County Juvenile Board is composed of the county judge and the district judges having jurisdiction in Coleman County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board chairman additional annual compensation of not more than $1,800 for the added

duties imposed on the chairman. The commissioners court may pay each of the other members of the juvenile board additional annual compensation of not more than $300. The additional compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Coleman County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0491. COLLIN COUNTY. (a) The juvenile board of Collin County is composed of the county judge, the district judges in Collin County, and the judge of each county court at law.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation of not more than $6,000 as compensation for the added duties imposed on the members. The additional compensation is payable in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Collin County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0501. COLLINGSWORTH COUNTY. (a) The Collingsworth County Juvenile Board is composed of the county judge and the district judges in Collingsworth County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $50 nor more than $150 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Collingsworth County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0511. COLORADO COUNTY. (a) The Colorado County Juvenile Board is composed of the county judge and the district judges in Colorado County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $100 nor more than $400 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salary and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Colorado County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0521. COMAL COUNTY. (a) The Comal County Juvenile Board is composed of:

(1) the county judge;

(2) the judge of each county court at law in the county;

(3) the judge of the 22nd District Court;

(4) the judge of the 207th District Court;

(5) the judge of the 433rd District Court;

(6) the judge of the 274th District Court; and

(7) the criminal district attorney of Comal County.

(a-1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 152, Sec. 2, eff. May 23, 2009.

(b) The commissioners court may pay the juvenile board members an annual salary in an amount set by the commissioners court as

compensation for the additional duties imposed on the members. The compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Comal County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 285, Sec. 1, eff. June 5, 1995; Acts 2003, 78th Leg., ch. 4, Sec. 1, eff. April 10, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1325 (H.B. 3515), Sec. 1, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 20, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 152 (S.B. 2134), Sec. 1, eff. May 23, 2009.

Acts 2009, 81st Leg., R.S., Ch. 152 (S.B. 2134), Sec. 2, eff. May 23, 2009.

Acts 2017, 85th Leg., R.S., Ch. 218 (S.B. 2255), Sec. 1, eff. September 1, 2017.

Sec. 152.0531. COMANCHE COUNTY. (a) Comanche County is included in the Bosque, Comanche, and Hamilton counties juvenile board. The juvenile board is composed of:

(1) the county judge in Bosque County;

(2) the county judge in Comanche County;

(3) the county judge in Hamilton County; and

(4) the 220th Judicial District judge.

(b) The 220th Judicial District judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court of Comanche County shall pay the county judge in Comanche County and the 220th Judicial District judge additional annual compensation set by the commissioners court at not less than the amount paid to a board member under this section on October 1, 1998. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Comanche County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1999, 76th Leg., ch. 336, Sec. 2, eff. May 29, 1999.

Sec. 152.0541. CONCHO COUNTY. (a) The juvenile board of Concho County is composed of the county judge and the district judges in Concho County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the board chairman additional annual compensation of not more than $600 for the added duties imposed on the chairman. The commissioners court may pay the other board members additional annual compensation of not more than $300. The compensation shall be paid in equal monthly installments from the general fund or any other available fund.

(d) Sections 152.0002, 152.0004, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Concho County.

Added by Acts 1997, 75th Leg., ch. 1445, Sec. 1, eff. June 20, 1997.

Sec. 152.0551. COOKE COUNTY. (a) The Cooke County Juvenile Board is composed of the county judge, the district judges in Cooke County, and the judge of any statutory court designated as a juvenile court in the county.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $1,200, payable in equal monthly installments from the general fund or any other available fund of the county.

(d) Section 152.0005(b) does not apply to the juvenile board of Cooke County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0561. CORYELL COUNTY. (a) The juvenile board of Coryell County is composed of the county judge, the district judge or judges whose district includes Coryell County, and the judges of the county courts-at-law of Coryell County.

(b) The board shall select one of its members to serve as

chairman and chief administrative officer. The chairman serves a one- or two-year term as determined by the board.

(c) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than the amount paid to a board member under this section on October 1, 1994. Compensation under this section must be the same amount for each board member. The additional compensation is paid in equal monthly installments from the general fund of the county.

(d) The board may apply for, accept, hold in trust, spend, and use a gift, grant, or donation of land, money, or other personal property from a government, corporate, personal, or other source to finance adequate and effective probation programs and services.

(e) Sections 152.0002, 152.0004, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Coryell County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 467, Sec. 1, eff. Aug. 28, 1995.

Sec. 152.0571. COTTLE COUNTY. (a) Cottle County is included in the 50th Judicial District Juvenile Board.

(b) Section 152.0181 applies to the 50th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0581. CRANE COUNTY. (a) The Crane County Juvenile Board is composed of the county judge and the district judges in Crane County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board chairman additional annual compensation of not more than $1,200. The commissioners court may pay the other members of the juvenile board additional annual compensation of not more than $600. The additional compensation is for the added duties imposed on the chairman and members and shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) The commissioners court shall certify all claims for expenses of the juvenile probation officer as necessary in the

performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Crane County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0591. CROCKETT COUNTY. (a) The Crockett County Juvenile Board is composed of the county judge and the district judges in Crockett County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Crockett County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0601. CROSBY COUNTY. (a) The Crosby County Juvenile Board is composed of the county judge, the district judges in Crosby County, and one public member appointed by the judges.

(b) The public member serves a two-year term.

(c) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(d) The members of the juvenile board do not receive compensation for serving on the board.

(e) The chief probation officer may set the salaries and allowances of juvenile probation personnel with the approval of the board.

(f) Sections 152.0003 and 152.0005(b) do not apply to the juvenile board of Crosby County.

(g) The juvenile board of Crosby County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Crosby County may agree to operate together with respect to all

matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 82 (S.B. 511), Sec. 1, eff. May 24, 2021.

Sec. 152.0611. CULBERSON COUNTY. (a) The Culberson-Hudspeth Counties Juvenile Board is composed of the county judges and the district judges in Culberson and Hudspeth counties.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each calendar year.

(c) The commissioners courts shall pay the members of the juvenile board an annual salary set by the commissioners court at not less than $1,200, payable in equal monthly installments out of the general fund or any other available fund of the counties.

(d) If approved by the juvenile board, the commissioners courts shall reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.

(e) The chief juvenile officer may set the salaries and allowances of juvenile probation personnel with the approval of the board.

(f) Unless the counties agree on a different method of allocating costs, each county shall pay the costs of the juvenile board in accordance with the ratio that the population of the county bears to the total population of the two counties.

(g) Section 152.0005(b) does not apply to the Culberson-Hudspeth Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0621. DALLAM COUNTY. (a) The Dallam County Juvenile Board is composed of the county judge, the district judges in Dallam County, the judge of any statutory county court designated as a juvenile court, and one public member appointed by the commissioners court.

(b) The public member serves a two-year term.

(c) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(d) The board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman.

(e) The board may cooperate with other juvenile boards to provide adequate services.

(f) The commissioners court may pay the juvenile board members a salary in an amount set by the commissioners court.

(g) The chief juvenile probation officer may appoint necessary personnel with the approval of the board and with the advice and consent of the commissioners court.

(h) The juvenile board shall use the juvenile probation fund to pay as much of the salaries and allowances and other necessary expenses as possible. The commissioners court shall pay the other salaries, allowances, and necessary expenses from the general fund or any other available fund of the county.

(i) The board may accept aid, grants, and gifts from the state, other political subdivisions of the state, or associations for the sole purpose of financing adequate and effective probation programs. A municipality may grant and allocate money to the county government or to the juvenile board to support and maintain juvenile programs if the municipality's governing body approves the expenditure. The fiscal officer shall deposit funds received under this subsection in a special account.

(j) If approved by the commissioners court, the county shall reimburse each juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(k) Sections 152.0002, 152.0004, 152.0005(a) and (b), and 152.0008(a) do not apply to the juvenile board of Dallam County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0631. DALLAS COUNTY. (a) The juvenile board of Dallas County is composed of:

(1) the county judge;

(2) one county commissioner appointed by the commissioners court;

(3) each juvenile court judge;

(4) the local administrative judge;

(5) one judge of a district court in Dallas County that gives preference to family matters, appointed by the judges of those courts;

(6) one judge of a district court in Dallas County that gives preference to criminal matters, appointed by the judges of those courts;

(7) one judge of a district court in Dallas County that gives preference to civil matters, appointed by the judges of those courts; and

(8) the chairman of the youth services advisory board.

(b) The appointed members serve one-year terms.

(c) The board shall hold an annual meeting in January and at this meeting shall elect a chairman from among the members. The board shall hold other regular meetings as determined by the board at the January meeting and may meet at the call of the chairman or at the request to the chairman of at least two members. The board shall keep accurate and complete minutes of its meetings. The minutes are open to public inspection.

(d) All county facilities and programs for children, other than the facilities and programs operated by the Dallas County Mental Health and Mental Retardation or the Dallas County Hospital District, are under the board's jurisdiction.

(e) The juvenile board shall set policies for the juvenile probation department and other departments, facilities, and programs under the board's jurisdiction.

(f) The juvenile board may make an annual written report to the commissioners court that relates to the operations and efficiency of the juvenile probation department, the county and other institutions for the care of neglected, dependent, and delinquent children, and the other facilities and programs under the jurisdiction of the board and to the general adequacy of the juvenile services provided by the county. The board may include in the report any recommendations for improvements that the board considers necessary.

(g) The board may investigate the operations of the juvenile probation department, the county institutions for the care of neglected, dependent, or delinquent children, or any other facility or program under the board's jurisdiction, at the request of the judges of the district courts in Dallas County. The board shall make

a written report of the investigation to the commissioners court.

(h) The juvenile board may make any special studies or investigations it considers necessary to improve the operations of the juvenile probation departments and the county institutions under its jurisdiction.

(i) The juvenile board shall appoint a person to serve as the director of juvenile services and as chief juvenile probation officer.

(j) The board shall set the salary of the director of juvenile services. The director serves at the pleasure of the board.

(k) The board may apply for, accept, hold in trust, spend, and use a gift, grant, or donation of land, money, or other personal property from a governmental, corporate, personal, or other source to benefit the county facilities and programs under the jurisdiction of the board.

(l) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Dallas County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.05(a), eff. Aug. 26, 1991.

Sec. 152.0632. DALLAS COUNTY DIRECTOR OF JUVENILE SERVICES AND JUVENILE PROBATION DEPARTMENT. (a) The director of juvenile services in Dallas County is the chief administrative officer for the juvenile probation department and all facilities and programs under the jurisdiction of the juvenile board as authorized by the board.

(b) The director of juvenile services shall annually prepare under the juvenile board's direction a budget for the juvenile probation department, the county and other institutions for the care of neglected, dependent, and delinquent children, and the other facilities and programs under the jurisdiction of the juvenile board. The juvenile board shall approve the budget and submit the budget to the commissioners court for final approval in the same manner as prescribed by law for the other county agencies and departments.

(c) The director shall hire the employees of the juvenile probation department and of the county institutions and facilities and programs under the jurisdiction of the juvenile board. The

director may remove a juvenile probation department employee at any time.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.05(a), eff. Aug. 26, 1991.

Sec. 152.0633. DALLAS COUNTY DISTRICT AND COUNTY COURTS ADMINISTRATOR AND COURT SERVICES DEPARTMENT. (a) The district and county courts administrator is the chief administrative officer of the court services department of Dallas County.

(b) The local administrative district judge and the judges of the district courts in Dallas County that give preference to civil, criminal, family law, or juvenile matters shall, on a majority vote, appoint and set the salary of the district and county courts administrator. The administrator serves at the will of those judges.

(c) The commissioners court shall pay the salaries and expenses of the court services department employees as determined by the department budget submitted by the local administrative judge and approved by the commissioners court.

(d) A judge may not be subjected to a suit for, and is immune from liability for damages arising from, an act or omission committed while performing a duty under this section unless the act or omission is:

(1) committed intentionally, wilfully, or wantonly; or

(2) committed with:

(A) gross negligence; or

(B) conscious indifference or reckless disregard for the safety of others.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.05(a), eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 658, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1171 (H.B. 3531), Sec. 1, eff. October 1, 2005.

Sec. 152.06331. DALLAS COUNTY DOMESTIC RELATIONS OFFICE. (a) The domestic relations office of Dallas County is established.

Except to the extent of a conflict with this section, Chapter 203, Family Code, applies to the office, and the office has the powers and duties of a domestic relations office provided by that chapter.

(b) The judges of the district courts in Dallas County that give preference to family law matters shall, on a majority vote, appoint the director of the domestic relations office. The director serves at the will of those judges, except that those judges may delegate the decision to terminate the director's appointment to the presiding judge of those judges' courts.

(c) The judges of the district courts in Dallas County that give preference to family law matters shall, by majority vote, supervise the activities of the director and the domestic relations office, including the office's structure and budget, or those judges may delegate the supervisory duties to the presiding judge of those judges' courts.

(d) The domestic relations office shall report to the Dallas County district and county courts administrator, and the administrator shall report to the judges of the district courts in Dallas County that give preference to family law matters, regarding:

(1) the domestic relations office's performance of all matters relating to family court services or successor services and child support collection and administration; and

(2) all other functions performed by the office.

(e) The judges of the district courts in Dallas County that give preference to family law matters have final authority over decisions regarding the administration of the functions and duties of the domestic relations office and have the right to direct the district and county courts administrator to adopt and adhere to the policies adopted by the judges with regard to the domestic relations office.

(f) Fees for the preparation of a court-ordered child custody evaluation or adoption evaluation or any other services provided by the domestic relations office, other than services related to the collection of child support, must be reasonable and imposed on a sliding scale according to the financial resources of the parties using the services.

(g) A judge may not be subjected to a suit for, and is immune from liability for damages arising from, an act or omission committed while performing a duty under this section unless the act or omission is:

(1) committed intentionally, wilfully, or wantonly; or
(2) committed with:
(A) gross negligence; or
(B) conscious indifference or reckless disregard for the safety of others.

Added by Acts 2005, 79th Leg., Ch. 1171 (H.B. 3531), Sec. 2, eff. October 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1252 (H.B. 1449), Sec. 3.08, eff. September 1, 2015.

Sec. 152.06332. DALLAS COUNTY CRIMINAL DISTRICT COURTS ADMINISTRATOR. (a) The criminal district courts administrator is the chief administrative officer of the criminal district courts in Dallas County.

(b) The judges of the district courts in Dallas County that give preference to criminal law matters shall, on a majority vote, appoint the criminal district courts administrator. The administrator serves at the will of a majority of those judges, except that those judges may delegate the decision to terminate the administrator's appointment to the presiding judge of those judges' courts.

(c) The judges of the district courts in Dallas County that give preference to criminal law matters shall, by majority vote, supervise the activities of the criminal district courts administrator, including the structure of the administrator's office and budget for that office, or those judges may delegate the supervisory duties to the presiding judge of those courts.

(d) The criminal district courts administrator shall report to the Dallas County district and county courts administrator, and the district and county courts administrator shall report to the judges of the criminal district courts in Dallas County, regarding all issues related to the criminal district courts.

(e) The judges of the district courts that give preference to criminal law matters in Dallas County have the final authority over decisions regarding the administration of the areas related to the criminal district courts in Dallas County and have the right to direct the district and county courts administrator to adopt and

adhere to the policies adopted by the judges with regard to the criminal district courts in Dallas County.

(f) A judge may not be subjected to a suit for, and is immune from liability for damages arising from, an act or omission committed while performing a duty under this section unless the act or omission is:

(1) committed intentionally, wilfully, or wantonly; or

(2) committed with:

(A) gross negligence; or

(B) conscious indifference or reckless disregard for the safety of others.

Added by Acts 2005, 79th Leg., Ch. 1171 (H.B. 3531), Sec. 2, eff. October 1, 2005.

Sec. 152.0636. CERTIFICATE OF INDEBTEDNESS FOR FACILITIES. (a) Certificates of indebtedness issued and sold by the Commissioners Court of Dallas County to acquire property and to construct, enlarge, furnish, equip, and repair buildings used as homes and schools for delinquent children that have been submitted to the attorney general, approved by the attorney general, and registered by the comptroller are incontestable.

(b) The certificates are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies.

(c) The certificates are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The certificates are lawful and sufficient security for deposits to the extent of their market or face value, whichever is less, if accompanied by all

unmatured coupons.

(d) The commissioners court shall continue to levy a tax that is sufficient to pay the principal of and interest on the certificates so long as certificates are outstanding.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0641. DAWSON COUNTY. (a) The juvenile board of Dawson County is composed of:

(1) the county judge and the district judges in Dawson County;

(2) the superintendent of the Lamesa Independent School District or the superintendent's designee;

(3) one citizen of Dawson County appointed by the county commissioners court; and

(4) one citizen of Dawson County appointed by the Lamesa City Council.

(b) Citizen members serve two-year terms.

(c) The county judge is the chairman of the juvenile board and its chief administrative officer.

(d) The county commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $1,200, payable in equal monthly installments from the general fund of the county.

(e) Section 152.0005(b) does not apply to the juvenile board of Dawson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0651. DEAF SMITH COUNTY. (a) The Deaf Smith County Juvenile Board is composed of:

(1) the county judge;

(2) two persons appointed by the Hereford City Commission;

(3) two persons appointed by the commissioners court; and

(4) two persons appointed by the board of trustees of the Hereford Independent School District.

(b) The appointed members serve staggered two-year terms with the terms of one person appointed by the city, one person appointed by the county, and one person appointed by the school district

expiring on December 31 of each year.

(c) The board shall elect one of its members as chairman.

(d) Board members serve without compensation.

(e) The commissioners court, Hereford City Commission, and the board of trustees of the Hereford Independent School District may agree to pay equally the costs of the salaries and expenses of the juvenile department. The commissioners court, city commission, and board of trustees shall determine the length of the agreement. The city of Hereford and the Hereford Independent School District may appropriate and spend money to implement this subsection.

(f) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Deaf Smith County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0671. DENTON COUNTY. (a) The Denton County Juvenile Board is composed of the county judge, the district judges in Denton County, and the judge of any county court at law in the county.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court shall pay the juvenile board members an annual salary set by the commissioners court at not less than $1,500, payable in equal monthly installments from the general fund of the county.

(d) If approved by the juvenile board, the commissioners court shall reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings related to juvenile matters.

(e) Section 152.0005(b) does not apply to the juvenile board of Denton County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 861 (H.B. 3474), Sec. 14.001, eff. September 1, 2023.

Sec. 152.0681. DE WITT COUNTY. (a) The juvenile board of De Witt County is composed of the county judge and the district judges

in De Witt County.

(b) The commissioners court may pay the juvenile board members reasonable additional annual compensation in an amount set by the commissioners court as compensation for the added duties imposed on the members. The compensation may not be lower than the compensation paid to a member on August 29, 1977. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of De Witt County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0691. DICKENS COUNTY. (a) Dickens County is included in the 110th Judicial District Juvenile Board.

(b) Section 152.0291 applies to the 110th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0711. DONLEY COUNTY. (a) The Donley County Juvenile Board is composed of the county judges and the district judges in Donley County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $50 nor more than $150 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Donley County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0721. DUVAL COUNTY. (a) The Duval County Juvenile

Board is composed of the county judge, the district judge in Duval County, and a citizen of Duval County appointed by the county judge and the district judge in Duval County. The citizen member of the board serves the same term of office as the district judge in Duval County.

(b) The district judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 or more than $10,000 for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) The juvenile board shall appoint not more than five persons to serve on an advisory council.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Duval County.

(f) The Duval County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Duval County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1999, 76th Leg., ch. 1143, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 34, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1342 (S.B. 1951), Sec. 21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 702 (H.B. 2804), Sec. 1, eff. September 1, 2009.

Sec. 152.0731. EASTLAND COUNTY. (a) The Eastland County Juvenile Board is composed of the county judge, the judge of the 91st Judicial District, the criminal district attorney, and the county sheriff.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members

additional compensation for the added duties imposed on the members. The compensation is in addition to any other salary a county attorney or sheriff receives and is paid from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Eastland County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0741. ECTOR COUNTY. (a) The Ector County Juvenile Board is composed of the county judge, the district judges in Ector County, and the judge of each county court at law.

(b) The juvenile court judge is the chairman of the board.

(c) The county commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $4,800 nor more than $6,000. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Each juvenile probation officer shall take the oath of office and the oath and the fact of the officer's appointment shall be filed with the county clerk. The juvenile board may require an officer to obtain a bond conditioned on the faithful performance of the officer's duties and payable to the county treasurer in an amount determined by the board.

(e) The commissioners court shall approve the salaries of the juvenile probation officers and other personnel and provide the necessary funds to pay their salaries and expenses. The county shall pay the salaries in equal monthly installments.

(f) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Ector County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1989, 71st Leg., ch. 596, Sec. 2, eff. Sept. 1, 1989.

Sec. 152.0742. COMPENSATION OF JUVENILE COURT JUDGE. (a) If designated as the juvenile court judge, the judge of the County Court at Law of Ector County may be paid additional annual compensation of not more than $3,000 for serving as juvenile court judge.

(b) The compensation shall be paid in equal monthly

installments from the general fund of the county.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0751. EDWARDS COUNTY. (a) The juvenile board of Edwards County is composed of the county judge and the district judges in Edwards County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $3,600, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Edwards County.

(d) The juvenile board of Edwards County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Edwards County may agree to operate together. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 818 (S.B. 1832), Sec. 1, eff. June 14, 2013.

Sec. 152.0761. ELLIS COUNTY. (a) The Ellis County Juvenile Board is composed of the county judge, the district judges in Ellis County, and the judge of each statutory court in the county.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners court shall pay the juvenile board members an annual salary of not less than $3,600, payable in equal monthly installments from the general fund or any other available fund of the county.

(d) The commissioners court shall pay the salaries of juvenile probation personnel and other expenses the chairman certifies as essential to provide services to children from the general fund of the county.

(e) Juvenile probation officers serve at the pleasure of the

juvenile board.

(f) Sections 152.0004, 152.0005(b), and 152.0008 do not apply to the juvenile board of Ellis County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0771. EL PASO COUNTY. (a) The juvenile board of El Paso County is composed of:

(1) the county judge or:

(A) a member of the commissioners court designated by the county judge; or

(B) an individual who is not a member of the commissioners court and who is designated by the county judge and approved by the commissioners court by majority vote;

(2) each family district court judge;

(3) each juvenile court judge;

(4) up to five judges on the "El Paso Council of Judges" to be elected by majority vote of that council;

(5) a municipal judge from El Paso County selected by the chairman of the juvenile board of El Paso County; and

(6) a justice of the peace in El Paso County selected by the chairman of the juvenile board of El Paso County.

(b) Repealed by Acts 1993, 73rd Leg., ch. 317, Sec. 2, eff. Sept. 1, 1993.

(c) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(d) The board shall keep records as required by law and board rules.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The commissioners court shall provide the juvenile probation officers with:

(1) automobiles and their maintenance and operation expenses for use in official duties; or

(2) an automobile allowance for the use of a personal automobile on official business in the amount determined to be necessary by the commissioners court.

(g), (h) Repealed by Acts 1993, 73rd Leg., ch. 317, Sec. 2, eff.

Sept. 1, 1993.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 317, Sec. 1, 2, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 371, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 300 (H.B. 1334), Sec. 1, eff. June 14, 2013.

Sec. 152.0772. EL PASO COUNTY INSTITUTIONS. (a) The juvenile board of El Paso County shall appoint a person to supervise the county facilities under the jurisdiction of the juvenile board. The supervisor may be the county probation officer. The supervisor shall direct the policies and conduct of each institution.

(b) The juvenile board shall also appoint the head of each facility. The facility head may hire employees that the juvenile board determines are necessary.

(c) The facilities supervisor or employees under the supervisor's control shall supervise each child committed to a county institution until the child becomes of age. The supervisor or employees shall submit periodic reports to the juvenile board as required for the board's approval or action.

(d) The commissioners court shall provide the necessary funds to operate each institution.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0773. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN EL PASO COUNTY. (a) The juvenile board of El Paso County may designate the district clerk or the juvenile probation officer to collect and disburse court-ordered child or spousal support payments that are required by court order to be made to the county. The person designated to receive the payments shall disburse the payments in the manner the court believes to be in the best interest of the spouse or child.

(b) If the juvenile board designates the juvenile probation officer to receive the payments, the officer shall work in the court as an officer of the court. The officer shall obtain a surety bond in an amount determined by the county auditor from a solvent surety

company authorized to make the bonds in this state and approved by the county auditor. The bond shall be conditioned on the faithful performance of the officer's duties and on the proper accounting of the money entrusted to the officer.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0791. FALLS COUNTY. (a) Falls County is part of the Milam, Robertson, Falls Counties Juvenile Board. The juvenile board is composed of the county judges, the district judges in the counties, and the judges of any statutory court in the counties designated as a juvenile court. The board by unanimous vote may appoint five public members to serve on the board.

(b) The public members serve staggered terms of not more than two years as determined by the board.

(c) The board shall appoint one of its members as chairman at the beginning of each calendar year.

(d) The board shall hold biannual meetings on dates set by the board and special meetings at the call of the chairman.

(e) Service on a juvenile board by a judge is an additional duty of office. The commissioners courts may pay the judges on the juvenile board an amount that will reasonably compensate them for their added duties. Public members serve without compensation.

(f) The counties shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing the member's duties.

(g) The juvenile board shall ensure that the chief juvenile officer and fiscal officer:

(1) keep the financial and statistical records and submit reports to the Texas Juvenile Justice Department as prescribed by Section 221.007; and

(2) submit periodic financial and statistical reports to the commissioners courts.

(h) The chief juvenile probation officer shall appoint an appropriate number of qualified juvenile probation officers, assistants, and support personnel with the approval of the board as necessary to perform the chief juvenile probation officer's duties. The chief juvenile probation officer and the personnel appointed under this section may be removed at any time by the appointing

authority or by the juvenile board. The chief juvenile probation officer shall recommend to the juvenile board the salaries of and allowances for juvenile probation officers, assistants, and support personnel. The juvenile board shall provide the chief juvenile probation officer and the officer's assistants with transportation or an automobile allowance for use of a personal automobile on official business.

(i) A claim for expenses from a person in the juvenile probation department must be made to the board chairman. The chairman shall certify to the fiscal officer the expenses to be paid from state funds and shall certify to the commissioners courts the expenses to be paid from county funds.

(j) The chairman of the board shall certify to the commissioners courts an annual request for the expenditure of county funds. The commissioners courts shall act on the request in the same manner as they act on a request from another county office.

(k) The board may accept state aid and grants or gifts from other political subdivisions of the state or associations to finance adequate and effective juvenile programs. A municipality may grant and allocate money to the juvenile board to support and maintain effective juvenile services if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other public funds. This section does not affect a program of local enrichment of juvenile services funded by a service.

(l) Sections 152.0002, 152.0004, 152.0005, 152.0008, and 152.0009 do not apply to the Milam, Robertson, Falls Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.019, eff. September 1, 2011.

Sec. 152.0801. FANNIN COUNTY. The Fannin County Juvenile Board is governed by Subchapter B.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 198 (S.B. 1886), Sec. 2, eff. May

28, 2011.

Sec. 152.0811. FAYETTE COUNTY. (a) The juvenile board of Fayette County is composed of:

(1) the county judge;

(2) the judge of each district court in Fayette County;

(3) the judge of each statutory county court in Fayette County; and

(4) a public member only if the total number of board members described by Subdivisions (1)-(3) is fewer than three or is an even number.

(a-1) A public member who serves on the board must be appointed by a majority of the other members of the board. The public member serves a two-year term.

(b) The commissioners court may pay the juvenile board members compensation of $1,200 annually for the duties imposed on the members. The compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Fayette County.

(d) The board member who has the greatest number of years of judicial service and is willing to serve is the chair of the board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 8.01, eff. September 1, 2019.

Sec. 152.0821. FISHER COUNTY. (a) Fisher County is included in the 32nd Judicial District Juvenile Board.

(b) Section 152.1831 applies to the 32nd Judicial District Juvenile Board.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(1), eff. October 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(1), eff. October 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280

), Sec. 4(1), eff. October 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(1), eff. October 1, 2017.

(g) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(1), eff. October 1, 2017.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 246, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 1, eff. October 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(1), eff. October 1, 2017.

Sec. 152.0831. FLOYD COUNTY. (a) Floyd County is included in the 110th Judicial District Juvenile Board.

(b) Section 152.0291 applies to the 110th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0841. FOARD COUNTY. (a) Foard County is included in the 46th Judicial District Juvenile Board. The juvenile board is composed of:

(1) the county judges of Foard, Hardeman, and Wilbarger counties;

(2) the judge of the 46th Judicial District; and

(3) two public members appointed by the judges.

(b) The public members serve one-year terms.

(c) The district judge is the chairman of the board.

(d) Service on a juvenile board by a judge is an additional duty of office. The commissioners courts shall pay the judges on the juvenile board additional annual compensation of not more than $1,200 for the added duties imposed on them. The additional compensation shall be paid in equal monthly installments from the general funds of the counties.

(e) If approved by the juvenile board, each county shall reimburse the juvenile court judge in the county for the judge's actual and necessary expenses incurred in attending seminars and

other educational or instructional meetings relating to juvenile problems.

(f) The commissioners courts shall provide the funds for the salaries of the juvenile probation officers in the amount set by the juvenile board.

(g) The commissioners courts shall pay the expenses of the juvenile probation officers that are certified as necessary by the juvenile board chairman from the general fund and in the amount set by the juvenile board.

(h) Sections 152.0004 and 152.0005(b) do not apply to the 46th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0851. FORT BEND COUNTY. (a) The juvenile board of Fort Bend County is composed of the county judge, the district judges in Fort Bend County, and the judge of each county court at law.

(b) The commissioners court shall pay the board members annual additional compensation in an amount set by the commissioners court. The additional compensation shall be paid in equal monthly installments from the general fund of the county. The judge of a county court at law is entitled to receive the same amount of additional compensation as the county judge receives.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Fort Bend County.

(d) The board by majority vote shall annually elect one of its members as chairman.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 55, Sec. 1, eff. Sept. 1, 1997.

Sec. 152.0852. FORT BEND COUNTY CHILD SUPPORT OFFICE. (a) The judges of the district courts in Fort Bend County may establish a child support office in the county juvenile office to collect and disburse child support payments that are required by court order to be made to the office. The office shall disburse the payments in the manner the court believes to be in the best interest of the parties in the case.

(b) The judges of the district courts in a county served by an office may appoint an administrator and other assistants to serve two-year terms. The administrator shall obtain a surety bond in an amount determined by the county auditor from a solvent surety company authorized to make the bonds in this state and approved by the county auditor. The bond shall be conditioned on the faithful performance of the administrator's duties and on the proper accounting of the money entrusted to the administrator. The county shall pay the premium for the bond from the general fund of the county, the child support fund, or any other available fund.

(c) The judges shall determine the duties of the administrator and assistants and set their salaries. The salaries are payable in equal monthly installments from the general fund of the county, the child support fund, or any other available fund. The judges must approve a claim for expenses made by the administrator or an assistant or a claim for administrative expenses in operating the child support office, including a claim for payment of equipment and supplies.

(d) The office shall keep an accurate and complete record of money received and disbursed under this section. The record is open for public inspection. The county auditor or other authorized county officer or employee shall inspect and examine the records and audit the accounts quarterly. The auditor shall report the results of the audit to the judges and include any recommendations the auditor may have.

(e) The child support office may serve one or more of Brazoria, Matagorda, or Wharton counties. If a child support office serves more than one county, the judges of the district courts in the counties shall determine the location of the office. The officers and employees of the county in which the office is located shall perform the duties prescribed by this section. The counties shall pay the salaries, bond premium, and other expenses in accordance with the ratio that the population of each county bears to the total population of all of the counties served by the office.

(f) The commissioners courts shall pay the district court judges $75 a month for performing the duties prescribed by this section. The compensation shall be paid from the general fund of the county and is in addition to any other compensation the judges receive.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0853. FORT BEND COUNTY CHILD SUPPORT SERVICE FEE. (a) The Fort Bend County child support office shall assess a monthly fee of not more than $10 for collecting and disbursing child support payments that are required by court order to be made to the office. The fee is payable annually and in advance.

(b) The payor of the support shall pay the fee unless the payor is a member of the armed services and the monthly child support payments exceed the amount the court orders the person to pay, in which case the payee shall pay the service fee for as long as the payor is a member of the armed services and the support payments exceed the amount the court orders the person to pay.

(c) The first fee payment is due on the date that the payor is ordered to begin the child support payments. If the payee must pay the fee, the first fee payment is due on the date that the payee receives the original support payment. Subsequent annual fees are due on the anniversary of the date of the original fee payment.

(d) A person who refuses or fails to pay the fee on the date due or in the amount ordered is subject to an action for contempt of court.

(e) Fees collected under this section shall be paid to the county treasurer on the last day of each calendar month. The county treasurer shall deposit the fees to the credit of the child support fund. The judges of the district courts in a county served by the office shall administer the fund, with the approval of the commissioners court, to assist in paying the salaries and expenses of the child support office.

(f) An accurate and complete record of money received under this section shall be kept. The county auditor or other authorized person shall audit the child support fund regularly. An annual report of the receipts and expenditures of the fund shall be made to the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.04(a), eff. Aug. 26, 1991.

Sec. 152.0881. FRIO COUNTY. (a) The juvenile board of Frio County is composed of the county judge and the district judges in Frio County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $4,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Frio County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0901. GALVESTON COUNTY. (a) The Galveston County Juvenile Board is composed of:

(1) the county judge;

(2) the district judges in Galveston County;

(3) the judge of each statutory county court;

(4) a municipal judge in Galveston County, selected by majority vote of all the municipal judges in the county; and

(5) a justice of the peace in Galveston County, selected by majority vote of all the justices of the peace in the county.

(b) The juvenile board annually shall elect its chairman and other officers.

(c) The juvenile board members do not receive compensation for serving on the juvenile board. The county commissioners court shall pay the members $75 per month for performing the additional duties prescribed by Sections 152.0902 and 152.0903.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 895 (H.B. 5309), Sec. 2, eff. September 1, 2023.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The juvenile board may require a juvenile probation officer or facility superintendent to obtain a surety or personal bond in an amount determined by the board and conditioned on the faithful performance of the person's duties.

(g) The board chairman shall certify a claim for expenses as

being necessary for the performance of the officer's duties. The county commissioners court shall provide the necessary funds to pay the salaries and expenses.

(h) The commissioners court shall appoint a citizens' advisory committee composed of not more than 15 persons. The committee shall consult with the juvenile board and the commissioners court on matters relating to juveniles. The committee annually shall elect a chairman and other officers and may meet at its own discretion.

(i) Sections 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Galveston County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 1140, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 895 (H.B. 5309), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 895 (H.B. 5309), Sec. 2, eff. September 1, 2023.

Sec. 152.0902. GALVESTON COUNTY INSTITUTIONS. (a) The juvenile board of Galveston County controls and supervises each county facility used for the detention of juveniles.

(b) The juvenile board by majority vote may adopt any order or regulation necessary to the welfare of juveniles in a county facility. The chief juvenile probation officer shall enter each order or regulation in a book kept for that purpose and shall certify the order or regulation and deliver a copy to each facility superintendent or person in charge of a facility. The superintendent or other person and each juvenile probation officer shall comply with the order or regulation.

(c) The juvenile board may require the superintendent or person in charge of a facility to submit to the board reports containing information required by the board.

(d) The criminal district attorney of Galveston County shall assign an attorney in the district attorney's office to represent the juvenile board and probation officers in protecting the rights of children in abandonment cases and proceedings.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0903. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN GALVESTON COUNTY. (a) The juvenile board of Galveston County may require a juvenile probation officer to collect and disburse child support payments that are required by court order to be made to a court in the county.

(b) The juvenile probation officer shall keep a record of money received and disbursed in a well-bound book subject to public inspection in the probation office. The county auditor shall audit the records.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0911. GARZA COUNTY. (a) The Garza County Juvenile Board is composed of the county judge, the district judges in Garza County, and the judge of any statutory court in the county designated as a juvenile court. The juvenile court judge may appoint five citizen members to serve on the board for a term set by the judge.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $120, payable in equal monthly installments from the general fund or any other available fund of the county. The citizen members serve without compensation.

(d) The chief juvenile probation officer may set the salaries and allowances of juvenile probation personnel with the approval of the board.

(e) Section 152.0005(b) does not apply to the juvenile board of Garza County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0921. GILLESPIE COUNTY. (a) The juvenile board of Gillespie County is composed of the county judge and the district judges in Gillespie County.

(b) The commissioners court shall pay the juvenile board

members additional annual compensation set by the commissioners court at not less than $600 nor more than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Gillespie County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0931. GLASSCOCK COUNTY. (a) Glasscock County is included in the 118th Judicial District Juvenile Board. The juvenile board is composed of the county judges and the district judges in Glasscock, Howard, and Martin counties.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each calendar year.

(c) The juvenile board shall hold regular quarterly meetings at the call of the chairman.

(d) The chief juvenile probation officer may set the salaries and allowances of juvenile probation personnel with the approval of the board.

(e) Each county shall pay the expenses of the juvenile board in accordance with the ratio that the population of the county bears to the total population of the three counties.

(f) Each county judge who is a member of the board shall appoint two citizens to serve on an advisory council. A vacancy on the juvenile board is filled by the county judge who appointed the original member.

(g) Sections 152.0002, 152.0003, and 152.0005(b) do not apply to the 118th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0941. GOLIAD COUNTY. (a) The juvenile board of Goliad County is composed of the county judge and the district judges in Goliad County.

(b) The commissioners court may pay the juvenile board members reasonable additional annual compensation in an amount set by the commissioners court as compensation for the added duties imposed on the members. The compensation may not be lower than the compensation

paid to a member on August 29, 1977. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0004, and 152.0005 do not apply to the juvenile board of Goliad County.

(d) The juvenile board of Goliad County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Goliad County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 8.02, eff. September 1, 2019.

Sec. 152.0951. GONZALES COUNTY. (a) The Gonzales County Juvenile Board is composed of the county judge and the district judges in Gonzales County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $100 nor more than $400 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Gonzales County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0961. GRAY COUNTY. (a) The Gray County Juvenile Board is composed of the county judge and the district judges in Gray County.

(b) The county judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount that will reasonably compensate them for their added duties. The commissioners court shall also reimburse the members for the members' actual and necessary expenses incurred in performing their duties. The commissioners court may not reduce the members' compensation or expenses below the amount paid to the members as compensation and expenses on June 6, 1979. Each member shall receive equal compensation.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Gray County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0971. GRAYSON COUNTY. (a) The juvenile board of Grayson County is composed of the county judge and the district judges in Grayson County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount set by the commissioners court. The additional compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Grayson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.0981. GREGG COUNTY. (a) The Gregg County Juvenile Board is composed of the county judge, the district judges in Gregg County, and the judge of each county court at law.

(b) The county judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary in an amount set by the commissioners court. The salary is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund of the county.

(d) Repealed by Acts 1989, 71st Leg., 1st C.S., ch. 17, Sec. 2, eff. Sept. 1, 1989.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., 1st C.S., ch. 17, Sec. 1, 2, eff. Sept. 1, 1989.

Sec. 152.0991. GRIMES COUNTY. (a) The juvenile board of Grimes County is composed of the county judge, the district judges in Grimes County, and the judge of each county court at law in the county.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 annually, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Grimes County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by:

Acts 2005, 79th Leg., Ch. 1152 (H.B. 3045), Sec. 1, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 8.03, eff. September 1, 2019.

Sec. 152.1001. GUADALUPE COUNTY. (a) The Guadalupe County Juvenile Board is composed of the county judge and the district judges in Guadalupe County. The county judge may add the judge of the county court at law to the board or may, from time to time, designate the judge of the county court at law to serve on the board in the county judge's place.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $100 nor more than $400 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salary and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Guadalupe County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1011. HALE COUNTY. (a) The juvenile board of Hale County is composed of the county judge, the district judges in Hale County, and the judge of any statutory court designated as a juvenile court in the county.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners court shall pay the members of the juvenile board an annual salary set by the commissioners court at not less than $1,200, payable in equal monthly installments from the general fund of the county.

(d) The commissioners court shall pay the salaries and expenses of juvenile probation personnel and other expenses the chairman certifies as essential to provide services to children from the general funds or any other available funds of the county.

(e) A member of the juvenile board is not liable in civil damages or for criminal prosecution for an action taken by the juvenile board.

(f) The juvenile board shall appoint an advisory council composed of five citizens from different parts of Hale County.

(g) Sections 152.0004 and 152.0005(b) do not apply to the juvenile board in Hale County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 454, Sec. 2, eff. Aug. 30, 1993.

Sec. 152.1021. HALL COUNTY. (a) The Hall County Juvenile Board is composed of the county judges and the district judges in Hall County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $50 nor more than $150 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Hall County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1031. HAMILTON COUNTY. (a) Hamilton County is included in the Bosque, Comanche, and Hamilton counties juvenile board. The juvenile board is composed of:

(1) the county judge in Bosque County;

(2) the county judge in Comanche County;

(3) the county judge in Hamilton County; and

(4) the 220th Judicial District judge.

(b) The 220th Judicial District judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court of Hamilton County shall pay the county judge in Hamilton County and the 220th Judicial Disrict judge additional annual compensation set by the commissioners court at not less than the amount paid to a board member under this section on October 1, 1998. The compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Hamilton County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 336, Sec. 3, eff. May 29, 1999.

Sec. 152.1041. HANSFORD COUNTY. (a) The Hansford County Juvenile Board is composed of the county judge, the district judges in Hansford County, and the judge of any statutory county court designated as a juvenile court.

(b) The board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman.

(c) The board may cooperate with other juvenile boards to provide adequate services.

(d) The commissioners court may pay the juvenile board members a salary in an amount set by the commissioners court.

(e) The county auditor shall serve as the board's fiscal officer.

(f) The chief juvenile probation officer may appoint necessary personnel with the approval of the board and with the advice and consent of the commissioners court.

(g) The juvenile board shall use the juvenile probation fund to pay as much of the salaries and allowances, and other necessary expenses as possible. The commissioners court shall pay the other salaries, allowances, and necessary expenses from the general fund or any other available fund of the county.

(h) The board may accept aid, grants, or gifts from the state, other political subdivisions of the state, or associations for the sole purpose of financing adequate and effective probation programs. A municipality may grant and allocate money to the county government or to the juvenile board to support and maintain juvenile programs if the municipality's governing body approves the expenditure. The fiscal officer shall deposit funds received under this subsection in a special account.

(i) If approved by the commissioners court, the county shall reimburse each juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(j) Sections 152.0002, 152.0004, 152.0005(a) and (b), 152.0006, and 152.0008(a) do not apply to the juvenile board of Hansford County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1051. HARDEMAN COUNTY. (a) Hardeman County is

included in the 46th Judicial District Juvenile Board.

(b) Section 152.0841 applies to the 46th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1061. HARDIN COUNTY. (a) The Hardin County Juvenile Board is composed of the county judge and the district judges in Hardin County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $5,000 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Hardin County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1071. HARRIS COUNTY. (a) The juvenile board of Harris County is composed of:

(1) the county judge;

(2) the juvenile court judges;

(3) one judge of a district court that primarily hears family law matters, selected by those judges;

(4) one judge of a district court that primarily hears criminal law cases, selected by those judges;

(5) one judge of a district court that primarily hears civil cases, selected by those judges; and

(6) a justice of the peace in Harris County, selected by majority vote of all of the justices of the peace in the county.

(b) At the first meeting in January each year the board shall

elect a chairman from among the members. The board shall hold regular monthly meetings and may meet at the call of the chairman or at the written request to the chairman of at least two members. The board shall keep accurate and complete minutes of its meetings. The minutes are open to public inspection.

(c) Subject to the approval of the commissioners court, the juvenile board shall establish a general personnel policy for the employees of the probation department and the county institutions under the jurisdiction of the board. The board shall establish and maintain an employee classification system that includes:

(1) an accurate statement of the duties of each employee position;

(2) the qualifications for each position; and

(3) a compensation plan that ensures equal pay for equal work.

(d) The juvenile board shall make an annual written report to the commissioners court that relates to the operations and efficiency of the juvenile probation department and the county institutions under the jurisdiction of the board and to the general adequacy of the juvenile services provided by the county. The board may include in the report any recommendations for improvements that the board considers necessary.

(e) The board shall investigate the operations of the juvenile probation department and the county institutions under the jurisdiction of the board at the request of the juvenile court judge. The board shall make a written report of the investigation to the commissioners court.

(f) The juvenile board may make any special studies or investigations it considers necessary to improve the operations of the juvenile probation departments and the county institutions under its jurisdiction.

(g) Subject to the approval of the commissioners court, the board may accept and hold in trust a grant or donation of land, money, or other personal property to benefit the county facilities under the jurisdiction of the board.

(h) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Harris County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1999, 76th Leg., ch. 741, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.1072. HARRIS COUNTY JUVENILE PROBATION DEPARTMENT. (a) The Harris County chief probation officer is the chief administrative officer of the juvenile probation department and the director of the county institutions under the jurisdiction of the juvenile board.

(b) The chief probation officer shall annually prepare under the juvenile board's direction a budget for the juvenile probation department and the county institutions under the jurisdiction of the juvenile board. The juvenile board shall approve the budget and submit the budget to the commissioners court for final approval in the same manner prescribed by law for the other county agencies and departments.

(c) The chief probation officer shall hire the employees of the juvenile probation department and of the county institutions under the jurisdiction of the juvenile board. The chief probation officer may remove an employee at any time. The appointment and removal of supervisors of the probation department and of superintendents of county institutions are subject to approval by the juvenile board. The commissioners court shall pay the salaries and expenses of the employees as determined by the budget submitted by the juvenile board and approved by the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1073. HARRIS COUNTY BOARD OF RESOURCES FOR CHILDREN AND ADULTS. (a) In this section:

(1) "Board" means the Harris County Board of Resources for Children and Adults.

(2) "Director" means the highest administrative officer who is responsible to the board.

(3) "Institution" means an institution for the care and protection of children who have been abandoned or abused, or are for any other reason in need of protective services. The term does not include a detention facility for delinquent children or children in need of supervision or a facility primarily for children with severe psychological or other medical conditions.

(b) The board has the powers and duties of a child welfare board created under Section 264.005, Family Code.

(c) The board may, with the approval of the commissioners court, assume jurisdiction, management, and control over a county owned institution. If the board assumes control and management of an institution, the board shall perform the functions in relation to the institutions that the juvenile board and chief probation officer of Harris County formerly performed.

(d) The board may designate the director or a specially designated assistant as the director of one or more institutions.

(e) The board may hire and remove institution employees. The board shall establish a general personnel policy for institution employees and shall pay the salaries and expenses of the employees from funds supplied by the commissioners court under the annual budget or supplemental budget approved by the commissioners court or from funds supplied by the state or other sources.

(f) The board shall prepare an annual budget for the institutions and submit the budget to the commissioners court for final approval as prescribed by law for other county agencies and departments. The board shall also make an annual report to the commissioners court on the operations and efficiency of the institutions.

(g) In addition to the authority granted to the board by the commissioners court, the Health and Human Services Commission, and the Department of Family and Protective Services, the board may:

(1) disburse funds from sources other than the commissioners court, the commission, and the department to benefit children, eligible adults with disabilities, and eligible elderly persons under this section and to provide care, protection, evaluation, training, treatment, education, and recreation to those persons;

(2) refuse to accept any funds the board considers to be inappropriate, incompatible, or burdensome to board policies or the provision of services;

(3) accept a gift or grant of real or personal property or accept support under or an interest in a trust to benefit persons described by Subdivision (1) and hold the gift or grant directly or in trust;

(4) use a gift or grant to benefit persons described by Subdivision (1) and to provide care, protection, education, or

training to those persons;

(5) accept and disburse as provided by Subdivision (1) fees and contributions from parents, guardians, and relatives of persons described by that subdivision who are:

(A) in county supported substitute care or custody, in the county guardianship program, in the county representative payee program, or receiving services from the county Senior Justice Assessment Center; or

(B) being assisted by casework, day care, or homemaker services, by medical, psychological, dental, or other remedial help, or by teaching, training, or other services;

(6) account for and spend funds the board receives as fees, contributions, payments made by guardians, or payments made to benefit a person described by Subdivision (1) who is in the board's or the county's legal custody;

(7) receive and disburse funds available to support or benefit a person described by Subdivision (1) who is in the board's or the county's legal custody, including social security benefits, life insurance proceeds, survivors' pension or annuity benefits, or a beneficial interest in property; and

(8) receive and use funds, grants, and assistance available to the board or the county from a federal or state department or agency to carry out the functions and programs of the department or agency that is designed to aid or extend programs and operations approved by the board.

(h) The board shall designate the director or an assistant to apply for letters of guardianship if necessary to receive funds under Subsection (g)(7). The director or an assistant may:

(1) apply for and disburse the funds to provide special items of support for children, eligible adults with disabilities, and eligible elderly persons under this section or to pay general administrative expenses relating to services under this section;

(2) hold the funds in trust; or

(3) apply the funds for a particular or more restricted purpose as required by law or the source of the funds.

(h-1) The board may collaborate with state agencies to provide services for eligible adults with disabilities and eligible elderly persons who:

(1) are residents of the county;

(2) have been exploited, abused, or neglected; or

(3) may be in need of a guardianship or assistance from a representative payee.

(i) The board may delegate to the director or an assistant any function or duty authorized or prescribed by this section. If the board delegates the duty to prepare the annual budget and report, the board must approve the budget and report before they are submitted to the commissioners court. The board may periodically review any delegation.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.50, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 60 (H.B. 1763), Sec. 2, eff. May 11, 2007.

Acts 2021, 87th Leg., R.S., Ch. 334 (H.B. 2091), Sec. 1, eff. June 7, 2021.

Acts 2021, 87th Leg., R.S., Ch. 334 (H.B. 2091), Sec. 2, eff. June 7, 2021.

Acts 2021, 87th Leg., R.S., Ch. 334 (H.B. 2091), Sec. 3, eff. June 7, 2021.

Sec. 152.1074. HARRIS COUNTY CHILD SUPPORT DEPARTMENT. (a) The Harris County Commissioners Court may create a child support department to receive, disburse, and record payments of restitution and child and spousal support made to the department under a court order or may designate by order a county officer to create a child support office within the officer's department to receive, disburse, and record payments of restitution and child and spousal support made to the office under a court order. The commissioners court may rescind the order designating the officer at any time.

(b) The commissioners court may appoint an advisory board to advise the court on matters relating to the policies and procedures of the child support department. The advisory board consists of seven judges of district courts in Harris County whose courts specialize in family or juvenile cases.

(c) If the commissioners court creates a child support department, the commissioners court shall appoint a director to serve at the pleasure of the commissioners court. The director may hire

additional employees subject to the approval of the commissioners court. The director must execute a bond with a solvent surety company authorized to execute bonds of this type in the state. The bond shall be payable to the county judge and conditioned on the director's faithful performance of his duties and on the director properly accounting for any funds entrusted to him. The commissioners court shall set the amount of the bond and shall pay the premium for the bond out of the general funds of the county.

(d) The director or the director's agent or the county officer designated to create an office of child support within the county officer's department or the county officer's agent shall receive the payments made under this section. The director or the director's agent or the county officer designated to create an office of child support within the county officer's department or the county officer's agent shall disburse the funds in the manner the district court determines to be in the best interests of the parties involved in the case and in accordance with departmental policies as approved by the commissioners court.

(e) The director or the county officer designated to create an office of child support within the county officer's department or the county officer's agent shall keep an accurate and complete record of all receipts and disbursements of funds under this section. The county auditor shall inspect the record, audit the accounts annually, and make a report of the auditor's findings and recommendations to the commissioners court.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(2), eff. January 1, 2022.

(g) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(2), eff. January 1, 2022.

(h) Each year the commissioners court may set aside an amount equal to not more than four percent of the amount of fees collected under this section during the previous year to provide self-insurance for errors and omissions.

(i) The commissioners court may contract with a private entity to provide any part of the services this section authorizes the department to provide or, in lieu of establishing the child support department, may contract with a private entity to provide all of the services this section authorizes the department to provide.

(j) If the commissioners court contracts with a private entity to collect or disburse support payments or the fee prescribed by this

section, the commissioners court shall require the entity to keep accurate and complete records of all receipts and disbursements. The entity shall permit the county auditor to inspect the entity's records and audit the accounts annually. The commissioners court shall also require the entity to execute a surety bond. The bond must be similar to the bond required by Subsection (c), but the commissioners court may not pay the premium for the bond.

(k) If the commissioners court designates a county officer to create an office of child support within the county officer's department, the county officer shall serve as the director of the child support department. The county officer may hire additional employees subject to the approval of the commissioners court. The county officer must execute a bond with a solvent surety company authorized to execute bonds of this type in this state. The bond shall be payable to the county judge and conditioned on the county officer's faithful performance of the duties entrusted to him under this section and on the county officer's properly accounting for any funds entrusted to him. The commissioners court shall set the amount of the bond and shall pay the premium for the bond out of the general funds of the county.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.06(a), eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 364, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 7.51, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(2), eff. January 1, 2022.

Sec. 152.1076. CERTIFICATE OF INDEBTEDNESS FOR FACILITIES. (a) Certificates of indebtedness issued and sold by the commissioners court of Harris County to acquire property and to construct, enlarge, furnish, equip, and repair buildings used as homes and schools for delinquent children that have been submitted to the attorney general, approved by the attorney general, and registered by the comptroller are incontestable.

(b) The certificates are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies.

(c) The certificates are eligible to secure deposits of public funds of the state and of municipalities, counties, school districts, and other political subdivisions of the state. The certificates are lawful and sufficient security for deposits to the extent of their market or face value, whichever is less, if accompanied by all unmatured coupons.

(d) The commissioners court shall continue to levy a tax that is sufficient to pay the principal of and interest on the certificates so long as certificates are outstanding.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1081. HARRISON COUNTY. (a) The Harrison County Juvenile Board is composed of the county judge, the district judges in Harrison County, and the judge of each county court at law.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount set by the commissioners court. The additional compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Harrison County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1091. HARTLEY COUNTY. (a) The Hartley County Juvenile Board is composed of the county judge, the district judges in Hartley County, and the judge of any statutory court designated as a juvenile court.

(b) The board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman.

(c) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(d) The board may cooperate with other juvenile boards to provide adequate services.

(e) The commissioners court may pay the juvenile board members a salary in an amount set by the commissioners court.

(f) The chief juvenile probation officer may appoint necessary personnel with the approval of the board and with the advice and consent of the commissioners court.

(g) The juvenile board shall use the juvenile probation fund to pay as much of the salaries and allowances and other necessary expenses as possible. The commissioners court shall pay the other salaries, allowances, and necessary expenses from the general fund or any other available fund of the county.

(h) The board may accept aid, grants, or gifts from the state, other political subdivisions of the state, or associations for the sole purpose of financing adequate and effective probation programs. A municipality may grant and allocate money to the county government or to the juvenile board to support and maintain juvenile programs if the municipality's governing body approves the expenditure. The fiscal officer shall deposit funds received under this subsection in a special account.

(i) If approved by the commissioners court, the county shall reimburse each juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(j) Sections 152.0002, 152.0004, 152.0005(a) and (b), and 152.0008(a) do not apply to the Hartley County Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1101. HASKELL COUNTY. (a) Haskell County is included in the 39th Judicial District Juvenile Board. The juvenile board is composed of:

(1) the county judge of Haskell County;
(2) the county judge of Kent County;
(3) the county judge of Stonewall County;
(4) the county judge of Throckmorton County; and
(5) the 39th Judicial District judge.

(b) The juvenile court judge may appoint two public members to serve on the board for a term set by the judge.

(c) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(d) The commissioners court of each county shall pay the county judge of that county and the 39th Judicial District judge additional annual compensation of not more than $6,000, payable in equal monthly installments from the general fund or any other available fund of the county, for the added duties imposed on the judges under this section. The public members serve without compensation.

(e) If approved by the juvenile board, the commissioners court shall reimburse the juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings related to juvenile problems. The counties shall prorate the expenses allowed for the members of the juvenile board and for the juvenile court judge.

(f) The commissioners court of each county shall jointly provide the necessary funds to pay the salaries of the juvenile probation personnel in the amount set by the juvenile board.

(g) The commissioners court of each county shall jointly pay the expenses of the juvenile probation officers that are certified as necessary by the juvenile board chairman from the general fund and in the amount set by the juvenile board.

(h) Sections 152.0004 and 152.0005(b) do not apply to the juvenile board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 65 (S.B. 1811), Sec. 1, eff. September 1, 2009.

Sec. 152.1111. HAYS COUNTY. (a) The juvenile board of Hays County is composed of the county judge, the district judge of the 22nd judicial district, the judges of the county court at law, the county sheriff, and the criminal district attorney.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount determined by the commissioners court. The additional compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Hays County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 709, Sec. 1, eff. Sept. 1, 1997.

Sec. 152.1121. HEMPHILL COUNTY. (a) The Hemphill County Juvenile Board is composed of the county judge and the district judges in Hemphill County.

(b) The juvenile board shall select one of its members to act as chairman.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount that will reasonably compensate them for their added duties. The board members shall receive the same compensation.

(d) The commissioners court shall reimburse the juvenile board members for the members' actual and necessary expenses incurred in performing their duties.

(e) The juvenile board shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Hemphill County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1131. HENDERSON COUNTY. (a) The juvenile board of Henderson County is composed of:

(1) the county judge;

(2) the judges of the 3rd, 173rd, and 392nd judicial

districts;

(3) the judges of the county courts at law; and

(4) the county attorney.

(b) The juvenile board shall elect one of its members as chairman at its first regular meeting of each fiscal year.

(c) The commissioners court shall pay the 173rd and 392nd district judges and the county court at law judges an amount set by the commissioners court at not less than $750 a month and shall pay the 3rd district judge an amount set by the commissioners court at not less than one-third of the amount paid to the 173rd or 392nd district judge or the county court at law judges. The commissioners court shall pay the other juvenile board members an amount set by the commissioners court at not less than $250 a month. The compensation is in addition to other compensation provided or allowed by law.

(d) The county attorney shall file, prosecute, and try on behalf of the state all juvenile cases in the juvenile court. A district attorney with jurisdiction in Henderson County shall act for the county attorney at the request of the juvenile court judge if the county attorney is ill or unable to perform his duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Henderson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 332, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 377, Sec. 3(b), eff. Sept. 1, 2003.

Sec. 152.1141. HIDALGO COUNTY. (a) The Hidalgo County Juvenile Board is composed of the county judge and the district judges in Hidalgo County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $8,000 for the added duties imposed on the members. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) The commissioners court may reimburse the juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters. The annual amount for which the judge

may be reimbursed may not exceed $600.

(d) The juvenile board may require a board employee to enter into a bond payable to the board, conditioned on the faithful performance of the person's duties. The board shall pay the premium of the bond. The board may suspend or remove an employee for good cause.

(e) The commissioners court shall provide the juvenile probation officers with:

(1) automobiles and their maintenance and operation for use in official duties; or

(2) an automobile allowance in the amount the commissioners court determines to be necessary for use of a personal automobile on official business.

(f) The board shall control and supervise each county facility used to train, educate, detain, support, or correct juveniles. The board shall appoint the superintendent of each institution.

(g) The board may accept gifts or grants of real or personal property subject to the terms and conditions of the gift or grant to use for the benefit of the juvenile justice system.

(h) The board shall submit an annual budget to the county commissioners court. The commissioners court may appropriate and the juvenile board shall use money from the county general fund to administer this section.

(i) The board may authorize the use of foster homes for the temporary care of a child alleged to be a child in need of supervision or a delinquent child or a child that is dependent or neglected.

(j) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(b) do not apply to the juvenile board of Hidalgo County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1142. HIDALGO COUNTY COURT CONFERENCE COMMITTEE. (a) A law enforcement officer in Hidalgo County may refer to the court conference committee a child who:

(1) has been charged with a Class C misdemeanor (first offense only);

(2) is a status offender; or

(3) is a truant or runaway.

(b) This section does not affect:

(1) the authority of a law enforcement officer under Title 3, Family Code; or

(2) the duty of a law enforcement officer to report a case to a state or local child protective services agency.

(c) In this section:

(1) "Child" has the meaning assigned by Section 51.02, Family Code.

(2) "Court conference committee" means the county juvenile probation program's court conference committee.

Added by Acts 1993, 73rd Leg., ch. 527, Sec. 1, eff. Aug. 30, 1993.

Sec. 152.1151. HILL COUNTY. (a) The juvenile board of Hill County is composed of the county judge, the statutory county court judges, and the district judges in Hill County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not more than $2,400 as compensation for the added duties imposed on the members. The compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Hill County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 959 (H.B. 1622), Sec. 4, eff. September 1, 2005.

Sec. 152.1161. HOCKLEY COUNTY. (a) The Hockley County Juvenile Board is composed of the county judge, the district judge in Hockley County, the judge of any statutory court designated as a juvenile court in the county, and the juvenile court referee, if any. Subject to approval by the commissioners court, the chairman shall appoint five public members to serve on the board for a period of two

years. A public member may be reappointed to the board.

(b) The county judge is the chairman of the juvenile board. The district judge is the vice-chairman and acts as chairman if:

(1) the chairman is absent or disabled; or

(2) the office of county judge is vacant.

(c) The board shall hold regular meetings at least annually on dates set by the board and shall hold special meetings at the call of the chairman. All meetings shall be held at a site in Hockley County.

(d) The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $600, payable in equal monthly installments from the general fund or any other available fund of the county. Public members serve without compensation.

(e) The commissioners court may reimburse a juvenile board member for the member's reasonable and necessary job-related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(f) The juvenile board shall pay the salaries of juvenile probation personnel and other expenses the chairman certifies as essential to provide services to the children of Hockley County from the juvenile board fund to the extent of the state aid received in the fund. The salaries approved by the commissioners court may be paid from funds received for that purpose from the Texas Juvenile Justice Department. The commissioners court shall pay the remaining approved salaries of juvenile probation personnel and other expenses certified as necessary by the juvenile board chairman from the general funds of the county.

(g) The chairman of the juvenile board shall certify to the commissioners court an annual request for the expenditure of county funds. The commissioners court shall act on the request in the same manner as it acts on a request from another county office.

(h) The county auditor shall serve as the board's fiscal officer.

(i) Sections 152.0002, 152.0004, 152.0005, 152.0006, and 152.0008 do not apply to the juvenile board of Hockley County.

Added by Acts 1989, 71st Leg., ch. 513, Sec. 10, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 476, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 129, eff. September 1, 2015.

Sec. 152.1182. COMPENSATION OF JUVENILE COURT JUDGE. (a) The commissioners court shall pay the juvenile court judge of Hopkins County an annual salary set by the commissioners court at not less than $2,400 nor more than $3,600 for serving as juvenile court judge.

(b) The compensation is in addition to any other compensation the judge receives and is payable in equal monthly installments from the general fund, salary fund, or any other available fund of the county.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1191. HOUSTON COUNTY. (a) The juvenile board of Houston County is composed of the county judge, the district judges in Houston County, the county attorney, and each county court at law judge.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional compensation set by the commissioners court at not less than $50 nor more than $250 a month as compensation for the added duties imposed on the members.

(d) The county attorney shall file, prosecute, and try on behalf of the state all juvenile cases in the juvenile court. The district attorney shall act for the county attorney if the county attorney is ill, absent, or otherwise unable to perform his duties.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Houston County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 536, Sec. 1, eff. Aug. 26, 1991.

Sec. 152.1201. HOWARD COUNTY. (a) Howard County is included in the 118th Judicial District Juvenile Board.

(b) Section 152.0931 applies to the 118th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1211. HUDSPETH COUNTY. (a) The Culberson-Hudspeth Counties Juvenile Board is composed of the county judges and the district judges in Culberson and Hudspeth counties.

(b) Section 152.0611 applies to the Culberson-Hudspeth Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1221. HUNT COUNTY. (a) The Hunt County Juvenile Board is composed of the county judge, the district judges in Hunt County, and the judges of the county courts at law.

(b) The board shall designate a juvenile court judge as the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the members of the juvenile board additional annual compensation set by the commissioners court at not more than $3,600 for the added duties imposed on the members. The commissioners court may pay the juvenile court clerk additional annual compensation set by the commissioners court at not more than $800. The additional compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county. The compensation is in addition to all other compensation provided or allowed by law for the clerk of the juvenile court.

(d) Each judge on the board may appoint one citizen to serve on the advisory council. Members of the advisory council serve without compensation.

(e) A member of the advisory council is not liable in civil damages or for criminal prosecution for an action taken by the juvenile board.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Hunt County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1103 (H.B. 4833), Sec. 13(b), eff. September 1, 2009.

Sec. 152.1231. HUTCHINSON COUNTY. (a) The Hutchinson County Juvenile Board is composed of:

(1) the county judge and the district judges in Hutchinson County;

(2) one member appointed by the Hutchinson County Commissioners Court; and

(3) one member appointed by the Borger Bar Association.

(b) The appointed members serve one-year terms.

(c) The judge of the 316th Judicial District is the chairman of the board and its chief administrative officer.

(d) The members of the juvenile board serve without compensation.

(e) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(f) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Hutchinson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1241. IRION COUNTY. (a) The juvenile board of Irion County is composed of the county judge and the district judges in Irion County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Irion County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1251. JACK COUNTY. (a) The juvenile board in Jack and Wise counties is composed of the county judges, the district judges in Jack and Wise counties, and the judge of each statutory

county court in the counties that is designated as a juvenile court.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners courts shall pay the members of the juvenile board an annual salary in an amount set by the commissioners courts, payable in equal monthly installments out of the general funds or any other available funds of the counties.

(d) Unless the counties agree on a different method of allocating costs, each county shall pay the costs of the juvenile board in accordance with the ratio that the population of the county bears to the total population of the two counties.

(e) Section 152.0005(b) does not apply to the juvenile board in Jack and Wise counties.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1261. JACKSON COUNTY. (a) The juvenile board of Jackson County is composed of the county judge and the district judges in Jackson County.

(b) The commissioners court may pay the juvenile board members reasonable additional annual compensation in an amount set by the commissioners court as compensation for the added duties imposed on the members. The compensation may not be lower than the compensation paid to a member on August 29, 1977. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Jackson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1271. JASPER COUNTY. (a) Jasper County is included in the East Texas Juvenile Board. The juvenile board is composed of the county judge and the district judges in Jasper, Newton, Sabine, or San Augustine County.

(b) The judge of the 1st Judicial District is the chairman of the board and its chief administrative officer. The juvenile board shall elect a county judge on the board to serve as vice-chairman.

(c) The Commissioners Court of Jasper County may pay the county judge of Jasper County additional annual compensation in an amount

set by the commissioners court.

(d) The commissioners courts of the counties included on the board may pay the district judges on the board additional annual compensation in an amount set by a majority of the county commissioners of the four counties. The commissioners court of each county shall pay the compensation to the district judges in accordance with the ratio that the population of the county bears to the total population of the four counties.

(e) The compensation paid to the county and district judges is for the added duties imposed on the judges and shall be paid in equal monthly installments from the general fund or any other available fund of the counties.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the East Texas Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1281. JEFF DAVIS COUNTY. (a) The Jeff Davis County Juvenile Board is composed of the county judge and the district judges in Jeff Davis County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Jeff Davis County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1291. JEFFERSON COUNTY. (a) The juvenile board of Jefferson County is composed of the county judge and the district and criminal district judges in Jefferson County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the county judge on the juvenile board additional annual compensation set by the

commissioners court at not more than $5,000 as compensation for the administrative and judicial services performed by the judge. The compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The juvenile board may require a juvenile probation officer or facility superintendent to obtain a surety or personal bond in an amount determined by the board, conditioned on the faithful performance of the person's duties, and approved by the board.

(e) The juvenile board may suspend or remove a juvenile probation officer at any time for good cause. The chief probation officer, with the approval of the board, may suspend or remove an assistant probation officer for good cause after the assistant is notified and afforded an opportunity to appear before the board.

(f) Sections 152.0002, 152.0003, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Jefferson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1292. JEFFERSON COUNTY INSTITUTIONS. (a) The juvenile board of Jefferson County controls and supervises each county facility used for the detention of juveniles.

(b) The juvenile board by majority vote may adopt any order or regulation necessary to the welfare of juveniles in a county facility. The chief juvenile probation officer shall enter each order or regulation in a book kept for that purpose and shall certify the order or regulation and deliver a copy to each facility superintendent or person in charge of a facility. The superintendent or other person and each juvenile probation officer shall comply with the order or regulation.

(c) The juvenile board may require the superintendent or person in charge of a facility to submit to the board reports containing information required by the board.

(d) The district attorney of Jefferson County shall assign an attorney in the district attorney's office to represent the juvenile board and probation officers in protecting the rights of children in abandonment cases and proceedings.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1293. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN JEFFERSON COUNTY. (a) The juvenile board of Jefferson County may require a juvenile probation officer to collect and disburse child support payments that are required by court order to be made to a court in the county.

(b) The juvenile probation officer shall keep a record of money received and disbursed in a well-bound book in the probation office. The payment book is open to public inspection. The county auditor shall audit the records.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1301. JIM HOGG COUNTY. (a) The Jim Hogg County Juvenile Board is composed of the county judge, the district judge in Jim Hogg County, and a citizen of Jim Hogg County appointed by the county judge and the district judge. The citizen member of the board serves the same term of office as the district judge in Jim Hogg County.

(b) The district judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 or more than $3,600 for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) The juvenile board shall appoint not more than five persons to serve on an advisory council.

(e) The Jim Hogg County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Jim Hogg County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board.

Added by Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 35, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1342 (S.B. 1951), Sec. 22(a), eff. September 1, 2007.

Sec. 152.1321. JOHNSON COUNTY. (a) The juvenile board of Johnson County is composed of the county judge, the district judges in Johnson County, and the judge of each county court at law.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional compensation in an amount set by the commissioners court. The additional compensation is for the added duties imposed on the members and is payable in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Johnson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1076, Sec. 3, eff. Sept. 1, 1989.

Sec. 152.1331. JONES COUNTY. (a) The Jones County Juvenile Board is composed of the county judge, the district judges in Jones County, and the judge of each statutory court designated as a juvenile court. The juvenile court judge may appoint one public member to serve on the board for a term set by the judge.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court shall pay the judges on the board an annual salary set by the commissioners court at not more than $5,000, payable in equal monthly installments from the general fund or any other available fund of the county. The public member serves without compensation.

(d) The chief juvenile probation officer may set the salaries and allowances of juvenile probation personnel with the approval of the board.

(e) Section 152.0005(b) does not apply to the juvenile board of Jones County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1341. KARNES COUNTY. (a) The juvenile board of Karnes County is composed of the county judge and the district judges in Karnes County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $4,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Karnes County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1351. KAUFMAN COUNTY. (a) The Kaufman County Juvenile Board is composed of the county judge, the judges of the county courts at law of Kaufman County, the district judges in Kaufman County, and the criminal district attorney.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation of not more than $600 for the added duties imposed on the members. The compensation is in addition to all other compensation paid to a board member by the state or county and shall be paid in equal monthly installments from the general fund of the county.

(d) The juvenile probation officer's expenses are payable on a voucher signed by the board chairman. The commissioners court shall pay the officer's salary and expenses from the general fund of the county.

(e) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Kaufman County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 222, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 776 (H.B. 3547), Sec. 3, eff. September 1, 2005.

Sec. 152.1361. KENDALL COUNTY. (a) The juvenile board of Kendall County is composed of the county judge, the judge of the county court at law, and the district judges in Kendall County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 nor more than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Kendall County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 138, Sec. 1, eff. Sept. 1, 2001.

Sec. 152.1371. KENEDY COUNTY. (a) The juvenile board of Kenedy County is composed of the judges of the county and district courts in the county. The board must have not fewer than three nor more than five members. The judges of the county and district courts in the county may appoint an appropriate number of public members to serve on the board without compensation if necessary to satisfy this requirement. The chairman of the board shall determine the number of public members to be appointed to the board.

(b) The county judge is the chairman of the board.

(c) The board shall hold biannual meetings on dates set by the board and special meetings at the call of the chairman.

(d) Service on a juvenile board by a judge is an additional duty of office. The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $6,000, payable in equal monthly installments from the general fund or any other available fund of the county.

(e) The county shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing the member's duties.

(f) The juvenile board shall ensure that the chief juvenile officer and fiscal officer:

(1) keep the financial and statistical records and submit reports to the Texas Juvenile Justice Department as prescribed by Section 221.007; and

(2) submit periodic financial and statistical reports to

the county commissioners court.

(g) The chief juvenile probation officer shall appoint an appropriate number of qualified juvenile probation officers, assistants, and support personnel with the approval of the board as necessary to perform his duties. The chief juvenile probation officer and the personnel appointed under this section may be removed at any time by the appointing authority or by the juvenile board. The chief juvenile probation officer shall recommend to the juvenile board the salaries of and allowances for juvenile probation officers, assistants, and support personnel. The juvenile board shall provide the chief juvenile probation officer and his assistants with transportation or an automobile allowance for use of a personal automobile on official business.

(h) A claim for expenses from a person in the juvenile probation department must be made to the board chairman. The chairman shall certify to the fiscal officer the expenses to be paid from state funds and shall certify to the commissioners court the expenses to be paid from county funds.

(i) The chairman of the board shall certify to the commissioners court an annual request for the expenditure of county funds. The commissioners court shall act on the request in the same manner as it acts on a request from another county office.

(j) The board may accept state aid and grants and gifts from other political subdivisions of the state or associations for the purpose of financing adequate and effective juvenile programs. A municipality may grant and allocate money to the juvenile board to support and maintain effective juvenile services if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other public funds. This section does not affect a program of local enrichment of juvenile services funded by a service.

(k) The juvenile board shall appoint an advisory council of not more than five persons.

(l) Sections 152.0002, 152.0004, 152.0005, 152.0008, and 152.0009 do not apply to the juvenile board of Kenedy County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.020, eff. September 1, 2011.

Sec. 152.1381. KENT COUNTY. (a) Kent County is included in the 39th Judicial District Juvenile Board.

(b) Section 152.1101 applies to the 39th Judicial District Juvenile Board.

Added by Acts 2009, 81st Leg., R.S., Ch. 65 (S.B. 1811), Sec. 2, eff. September 1, 2009.

Sec. 152.1391. KERR COUNTY. (a) The juvenile board of Kerr County is composed of the county judge and the district judges in Kerr County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 nor more than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Kerr County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1401. KIMBLE COUNTY. (a) The Kimble County Juvenile Board is composed of the county judge and the district judges in Kimble County.

(b) The juvenile board shall elect one of its members as chairman.

(c) The juvenile board shall hold regular annual meetings on dates set by the board and special meetings at the call of the chairman.

(d) The commissioners court shall pay the juvenile board members an annual salary of not less than $600, payable in equal monthly installments from the general fund or any other available fund of the county. The commissioners court may increase the compensation at any time.

(e) Sections 152.0002, 152.0004, 152.0005(b), and 152.0006 do not apply to the juvenile board of Kimble County.

(f) The Kimble County Juvenile Board and the juvenile boards of

one or more counties that are adjacent to or in close proximity to Kimble County may agree to operate together. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 913 (S.B. 1322), Sec. 1, eff. June 17, 2011.

Sec. 152.1411. KING COUNTY. (a) King County is included in the 50th Judicial District Juvenile Board.
(b) Section 152.0181 applies to the 50th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1421. KINNEY COUNTY. (a) The juvenile board of Kinney County is composed of the county judge and district judges in Kinney County.
(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $3,600, payable in equal monthly installments from the general fund of the county.
(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Kinney County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1431. KLEBERG COUNTY. (a) The juvenile board of Kleberg County is composed of the judges of the county and district courts in the county. The board must have not fewer than three nor more than five members. The judges of the county and district courts in the county may appoint an appropriate number of public members to serve on the board without compensation if necessary to satisfy this requirement. The chairman of the board shall determine the number of public members to be appointed to the board.

(b) The county judge is the chairman of the board.

(c) The board shall hold biannual meetings on dates set by the board and special meetings at the call of the chairman.

(d) Service on a juvenile board by a judge is an additional duty of office. The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $6,000, payable in equal monthly installments from the general fund or any other available fund of the county.

(e) The county shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing the member's duties.

(f) The juvenile board shall ensure that the chief juvenile officer and fiscal officer:

(1) keep the financial and statistical records and submit reports to the Texas Juvenile Justice Department as prescribed by Section 221.007; and

(2) submit periodic financial and statistical reports to the county commissioners court.

(g) The chief juvenile probation officer shall appoint an appropriate number of qualified juvenile probation officers, assistants, and support personnel with the approval of the board as necessary to perform his duties. The chief juvenile probation officer and the personnel appointed under this section may be removed at any time by the appointing authority or by the juvenile board. The chief juvenile probation officer shall recommend to the juvenile board the salaries of and allowances for juvenile probation officers, assistants, and support personnel. The juvenile board shall provide the chief juvenile probation officer and his assistants with transportation or an automobile allowance for use of a personal automobile on official business.

(h) A claim for expenses from a person in the juvenile probation department must be made to the board chairman. The chairman shall certify to the fiscal officer the expenses to be paid from state funds and shall certify to the commissioners court the expenses to be paid from county funds.

(i) The chairman of the board shall certify to the commissioners court an annual request for the expenditure of county funds. The commissioners court shall act on the request in the same manner as it acts on a request from another county office.

(j) The board may accept state aid and grants and gifts from

other political subdivisions of the state or associations for the purpose of financing adequate and effective juvenile programs. A municipality may grant and allocate money to the juvenile board to support and maintain effective juvenile services if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other public funds. This section does not affect a program of local enrichment of juvenile services funded by a service.

(k) The juvenile board shall appoint an advisory council of not more than five persons.

(l) Sections 152.0002, 152.0004, 152.0005, 152.0008, and 152.0009 do not apply to the juvenile board of Kleberg County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.021, eff. September 1, 2011.

Sec. 152.1441. KNOX COUNTY. (a) Knox County is included in the 50th Judicial District Juvenile Board.

(b) Section 152.0181 applies to the 50th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1451. LAMAR COUNTY. (a) The Lamar County Juvenile Board is composed of:

(1) the county judge;

(2) the statutory county court at law judge;

(3) the district judges in Lamar County; and

(4) one member of the commissioners court selected by and from among the members of the commissioners court.

(b) The juvenile board shall elect one of its members as chairman at its first regular meeting of each fiscal year. The board shall hold regular meetings each year on dates set by the board and special meetings at the call of the chairman.

(c) Service on a juvenile board by a judge is an additional duty of office. The commissioners court may pay the board chairman and other board members additional annual compensation for the

additional duties imposed on the chairman and the other board members. The compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) The juvenile board shall recommend to the commissioners court proposed salaries for juvenile probation officers and other juvenile probation employees. The commissioners court shall set the salaries of juvenile probation officers and other juvenile probation employees after considering the recommendation of the juvenile board and any other relevant factors, including the source of funds, the duties and workload of the employees, and the effect on other county employees. The commissioners court shall comply with all applicable laws when setting the salaries of juvenile probation officers and other juvenile probation employees.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Lamar County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1392, Sec. 1, eff. Sept. 1, 1997.

Sec. 152.1461. LAMB COUNTY. (a) The Lamb County Juvenile Board is composed of the county judge, the district judges in Lamb County, and the judge of any statutory court designated as a juvenile court. The juvenile court judge may appoint three public members to serve on the board for a term set by the judge.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court may pay the judges on the board an annual salary in an amount set by the commissioners court, payable in equal monthly installments from the general fund or any other available fund of the county. The public members serve without compensation.

(d) Section 152.0005(b) does not apply to the juvenile board of Lamb County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1471. LAMPASAS COUNTY. (a) The Lampasas County Juvenile Board is composed of the county judge and the district

judges in Lampasas County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary of not more than $600 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Lampasas County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1481. LA SALLE COUNTY. (a) The juvenile board of La Salle County is composed of the county judge and the district judges in La Salle County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $4,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of La Salle County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1491. LAVACA COUNTY. (a) The Lavaca County Juvenile Board is composed of the county judge and the district judges in Lavaca County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court shall pay the juvenile board members additional monthly compensation set by the commissioners court at not less than $100 nor more than $400 for the added duties imposed on the members. The additional compensation shall be paid from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the

necessary funds to pay the salary and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Lavaca County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1511. LEON COUNTY. (a) The juvenile board of Leon County is composed of the county judge and the district judges in Leon County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 annually, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Leon County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 531 (H.B. 956), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1152 (H.B. 3045), Sec. 2, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 26, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1059 (H.B. 3153), Sec. 1.01(d), eff. September 1, 2013.

Sec. 152.1521. LIBERTY COUNTY. (a) The Liberty County Juvenile Board is composed of the county judge and at least two citizens of Liberty County appointed by the county judge with the approval of the commissioners court. The juvenile probation officer may be appointed as a public member. The public members serve two-year terms.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners court. The additional compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from

the general fund or any other appropriate fund of the county. The compensation paid to the public members is in addition to any other salary received by a public member. If the juvenile probation officer serves as a public member, the officer may not receive additional compensation for serving on the board.

(c) The commissioners court shall certify all claims for expenses of the juvenile probation officer and the officer's assistants as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer and the officer's assistants.

(d) The county judge shall serve as the judge of the juvenile court.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Liberty County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1541. LIPSCOMB COUNTY. (a) The Lipscomb County Juvenile Board is composed of the county judge and the district judges in Lipscomb County.

(b) The juvenile board shall select one of its members to act as chairman.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount that will reasonably compensate them for their added duties. The board members shall receive the same compensation.

(d) The commissioners court shall reimburse the juvenile board members for the members' actual and necessary expenses incurred in performing their duties.

(e) The juvenile board shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Lipscomb County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1551. LIVE OAK COUNTY. (a) The juvenile board of

Live Oak County is composed of the county judge and the district judges in Live Oak County.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners court for the added duties imposed on the members. The additional compensation may not be lower than the amount paid to the judges on September 1, 1981.

(c) The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Live Oak County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1561. LLANO COUNTY. (a) The Llano County Juvenile Board is composed of the county judge and the district judges in Llano County.

(b) The judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not more than $1,200 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Llano County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 21, eff. September 1, 2005.

Sec. 152.1581. LUBBOCK COUNTY. (a) The juvenile board of Lubbock County is composed of the county judge and the district judges in Lubbock County.

(b) The commissioners court may pay the county judge additional annual compensation of $1,500, payable in equal monthly installments from the general fund of the county. The commissioners court may pay each district judge an annual salary of not less than $6,500, payable

in equal monthly installments from the general fund or any other available fund of the county. The commissioners court shall pay the members an additional $75 per month for performing the additional duties prescribed by Sections 152.1582 and 152.1583.

(c) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(d) The board shall keep records as required by law and board rules.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The juvenile board may require a juvenile probation officer or facility superintendent to obtain a surety or personal bond in an amount determined by the board and conditioned on the faithful performance of the person's duties.

(g) The juvenile board may suspend or remove a juvenile probation officer at any time for good cause. The chief probation officer, with the approval of the board, may suspend or remove an assistant probation officer for good cause after the assistant is notified and afforded an opportunity to appear before the board.

(h) Sections 152.0002, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Lubbock County.

(i) The juvenile board of Lubbock County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Lubbock County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 82 (S.B. 511), Sec. 2, eff. May 24, 2021.

Sec. 152.1582. LUBBOCK COUNTY INSTITUTIONS. (a) The juvenile board of Lubbock County controls and supervises each county facility used for the detention of juveniles.

(b) The juvenile board by majority vote may adopt any order or

regulation necessary to the welfare of juveniles in a county facility. The chief juvenile probation officer shall enter each order or regulation in a book kept for that purpose and shall certify the order or regulation and deliver a copy to each facility superintendent or person in charge of a facility. The superintendent or other person and each juvenile probation officer shall comply with the order or regulation.

(c) The juvenile board may require the superintendent or person in charge of a facility to submit to the board reports containing information required by the board.

(d) The district attorney of Lubbock County shall assign an attorney in the district attorney's office to represent the juvenile board and probation officers in protecting the rights of children in abandonment cases and proceedings.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1583. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN LUBBOCK COUNTY. (a) The juvenile board of Lubbock County may require a juvenile probation officer to collect and disburse child support payments that are required by court order to be made to a court in the county.

(b) The juvenile probation officer shall keep a record of money received and disbursed in a well-bound book subject to public inspection in the probation office. The county auditor shall audit the records.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1591. LYNN COUNTY. (a) The Lynn County Juvenile Board is composed of the county judge, the district judges in Lynn County, and the judge of each statutory court designated as a juvenile court. The juvenile court judge may appoint three public members to serve on the board for a term set by the judge.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The juvenile board shall hold regular annual meetings each year on dates set by the board and special meetings at the call of the chairman.

(d) The commissioners court shall pay the judges on the board an annual salary set by the commissioners court at not more than $1,200, payable in equal monthly installments from the general fund of the county. The public members serve without compensation.

(e) The commissioners court shall pay the salaries and allowances of juvenile probation personnel and other expenses certified as necessary by the board chairman and approved by the commissioners court from the general funds of the county.

(f) Sections 152.0002, 152.0004, and 152.0005(b) do not apply to the juvenile board of Lynn County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1601. MCCULLOCH COUNTY. (a) The McCulloch County Juvenile Board is composed of the county judge and the district judges in McCulloch County.

(b) The juvenile board shall elect one of its members as chairman.

(c) The juvenile board shall hold regular annual meetings on dates set by the board and special meetings at the call of the chairman.

(d) The commissioners court shall pay the juvenile board members an annual salary of not less than $600, payable in equal monthly installments from the general fund or any other available fund of the county. The county commissioners court may increase the compensation at any time.

(e) Sections 152.0002, 152.0004, 152.0005(b), and 152.0006 do not apply to the juvenile board of McCulloch County.

(f) The McCulloch County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to McCulloch County may agree to operate together. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 913 (S.B. 1322), Sec. 2, eff. June 17, 2011.

Sec. 152.1611. MCLENNAN COUNTY. (a) The McLennan County Juvenile Board is composed of the county judge, the county court at law judges, and the district judges in McLennan County.

(b) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(c) The board shall keep records as required by law and board rules.

(d) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(e) The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation personnel.

(f) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of McLennan County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 583 (S.B. 1976), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 956 (H.B. 4040), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 13.031, eff. September 1, 2009.

Sec. 152.1612. COMPENSATION OF COUNTY, DISTRICT, AND COUNTY COURT AT LAW JUDGES. (a) The Commissioners Court of McLennan County shall annually supplement the salaries of the judges of the county and county court at law in an amount of not less than $1,500 nor more than $5,000 for services rendered to the juvenile board of McLennan County. The supplement is in addition to all other salary paid or authorized to be paid by the state to the judges of the county and county court at law.

(b) The commissioners court shall pay the district judges in the county an annual salary of not less than $1,500 for services rendered to the juvenile board. The salary is in addition to the supplemental salary paid to the judges under Section 32.155(a), Government Code.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1613. MCLENNAN COUNTY JUVENILE BOARD LOCAL ENRICHMENT PROGRAM. The McLennan County Juvenile Board may establish and administer a local enrichment of juvenile services program consistent with policies adopted by the juvenile board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1193 (H.B. 3829), Sec. 1, eff. June 17, 2011.

Sec. 152.1614. GIFT, GRANT, OR DONATION TO MCLENNAN COUNTY JUVENILE BOARD. (a) The McLennan County Juvenile Board may accept a gift, grant, or donation from a public or private source for any lawful purpose, including support of a local enrichment of juvenile services program.

(b) The juvenile board shall place a donation of money under Subsection (a) in a special fund that is:

(1) subject to all reporting or procedural requirements of the county auditor; and

(2) audited annually by the county auditor.

(c) Notwithstanding Subsection (b), the juvenile board is not required to establish or adopt a budget for expenditures under the special fund described by this section.

(d) The special fund described by Subsection (b) may be used only to pay expenses of and related to programs, services, and items approved by the juvenile board.

(e) An expenditure from the special fund described by Subsection (b) must comply with the requirements of Chapter 262, Local Government Code, that apply to the juvenile board's other expenditures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1193 (H.B. 3829), Sec. 1, eff. June 17, 2011.

Sec. 152.1621. MCMULLEN COUNTY. (a) The juvenile board of McMullen County is composed of the county judge and the district judges in McMullen County.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners

court for the added duties imposed on the members. The additional compensation may not be lower than the amount paid to the judges on September 1, 1981.

(c) The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of McMullen County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1631. MADISON COUNTY. (a) The juvenile board of Madison County is composed of the county judge and the district judges in Madison County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 annually, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Madison County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1152 (H.B. 3045), Sec. 3, eff. June 18, 2005.

Sec. 152.1641. MARION COUNTY. (a) Marion County is included in the Camp, Marion, Morris, and Titus Counties Juvenile Board.

(b) Section 152.0381 applies to the Camp, Marion, Morris, and Titus Counties Juvenile Board.

(c) Section 152.1612 is suspended while Marion County is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1642. MARION COUNTY. (a) The Marion County Juvenile Board is composed of the county judges and the district judges in

Marion County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 nor more than $1,200 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Marion County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1651. MARTIN COUNTY. (a) Martin County is included in the 118th Judicial District Juvenile Board.

(b) Section 152.0931 applies to the 118th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1661. MASON COUNTY. (a) The Mason County Juvenile Board is composed of the county judge and the district judges in Mason County.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners court shall pay the juvenile board members an annual salary of not less than $600, payable in equal monthly installments from the general fund or any other available fund of the county. The commissioners court may increase the compensation at any time.

(d) Sections 152.0002, 152.0004, 152.0005(b), and 152.0006 do not apply to the juvenile board of Mason County.

(e) The juvenile board shall hold regular annual meetings on dates set by the board and special meetings at the call of the

chairman.

(f) The Mason County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Mason County may agree to operate together. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 913 (S.B. 1322), Sec. 3, eff. June 17, 2011.

Sec. 152.1671. MATAGORDA COUNTY. (a) The juvenile board of Matagorda County is composed of the county judge and the district judges in Matagorda County.

(b) The commissioners court shall pay the board members annual additional compensation in an amount set by the commissioners court. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Matagorda County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2003, 78th Leg., ch. 771, Sec. 1, eff. June 20, 2003.

Sec. 152.1672. COMPENSATION OF JUVENILE JUDGE IN MATAGORDA COUNTY. (a) The Commissioners Court of Matagorda County may pay the juvenile judge additional annual compensation of not more than $1,500 for serving as the judge of the juvenile court.

(b) The compensation is in addition to all other compensation paid or authorized to be paid to the judge who serves as the juvenile judge.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1673. MATAGORDA COUNTY CHILD SUPPORT OFFICE. (a) The judges of the district courts in Matagorda County may establish a

child support office in the county juvenile office to collect and disburse child support payments that are required by court order to be made to the office. The office shall disburse the payments in the manner the court believes to be in the best interest of the parties in the case.

(b) The judges of the district courts in a county served by an office may appoint an administrator and other assistants to serve two-year terms. The administrator shall obtain a surety bond in an amount determined by the county auditor from a solvent surety company authorized to make the bonds in this state and approved by the county auditor. The bond shall be conditioned on the faithful performance of the administrator's duties and on the proper accounting of the money entrusted to the administrator. The county shall pay the premium for the bond from the general fund of the county, the child support fund, or any other available fund.

(c) The judges shall determine the duties of the administrator and assistants and set their salaries. The salaries are payable in equal monthly installments from the general fund of the county, the child support fund, or any other available fund. The judges must approve a claim for expenses made by the administrator or an assistant or a claim for administrative expenses in operating the child support office, including a claim for payment of equipment and supplies.

(d) The office shall keep an accurate and complete record of money received and disbursed under this section. The record is open for public inspection. The county auditor or other authorized county officer or employee shall inspect and examine the records and audit the accounts quarterly. The auditor shall report the results of the audit to the judges and include any recommendations the auditor may have.

(e) The child support office may serve one or more of Brazoria, Fort Bend, and Wharton counties. If a child support office serves more than one county, the judges of the district courts in the counties shall determine the location of the office. The officers and employees of the county in which the office is located shall perform the duties prescribed by this section. The counties shall pay the salaries, bond premium, and other expenses in accordance with the ratio that the population of each county bears to the total population of all of the counties served by the office.

(f) The commissioners courts shall pay the district court

judges $75 a month for performing the duties prescribed by this section. The compensation shall be paid from the general fund of the county and is in addition to any other compensation the judges receive.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1674. MATAGORDA COUNTY CHILD SUPPORT SERVICE FEE. (a) The Matagorda County child support office shall assess a monthly fee of not more than $10 for collecting and disbursing child support payments that are required by court order to be made to the office. The fee is payable annually and in advance.

(b) The payor of the support shall pay the fee unless the payor is a member of the armed services and the monthly child support payments exceed the amount the court orders the person to pay, in which case the payee shall pay the service fee for as long as the payor is a member of the armed services and the support payments exceed the amount the court orders the person to pay.

(c) The first fee payment is due on the date that the payor is ordered to begin the child support payments. If the payee must pay the fee, the first fee payment is due on the date that the payee receives the original support payment. Subsequent annual fees are due on the anniversary of the date of the original fee payment.

(d) A person who refuses or fails to pay the fee on the date due or in the amount ordered is subject to an action for contempt of court.

(e) Fees collected under this section shall be paid to the county treasurer on the last day of each calendar month. The county treasurer shall deposit the fees to the credit of the child support fund. The judges of the district courts in a county served by the office shall administer the fund, with the approval of the commissioners court, to assist in paying the salaries and expenses of the child support office.

(f) An accurate and complete record of money received under this section shall be kept. The county auditor or other authorized person shall audit the child support fund regularly. An annual report of the receipts and expenditures of the fund shall be made to the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.04(a), eff. Aug. 26, 1991.

Sec. 152.1691. MEDINA COUNTY. (a) The juvenile board of Medina County is composed of the county judge, the district judges in Medina County, and the judge of each county court at law.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $3,600, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Medina County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 549, Sec. 1, eff. Aug. 26, 1991.

Sec. 152.1701. MENARD COUNTY. (a) The Menard County Juvenile Board is composed of the county judge and the district judges in Menard County.

(b) The juvenile board shall elect one of its members as chairman.

(c) The juvenile board shall hold regular annual meetings on dates set by the board and special meetings at the call of the chairman.

(d) The commissioners court shall pay the juvenile board members an annual salary of not less than $600, payable in equal monthly installments from the general fund or any other available fund of the county. The commissioners court may increase the compensation at any time.

(e) Sections 152.0002, 152.0004, 152.0005(b), and 152.0006 do not apply to the juvenile board of Menard County.

(f) The Menard County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Menard County may agree to operate together. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 913 (S.B. 1322), Sec. 4, eff. June 17, 2011.

Sec. 152.1711. MIDLAND COUNTY. (a) The Midland County Juvenile Board is composed of the county judge, the district judges in Midland County, and the judge of each county court at law.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(d) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Midland County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1721. MILAM COUNTY. (a) Milam County is part of the Milam, Robertson, Falls Counties Juvenile Board.

(b) Section 152.0791 applies to the Milam, Robertson, Falls Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1741. MITCHELL COUNTY. (a) Mitchell County is included in the 32nd Judicial District Juvenile Board.

(b) Section 152.1831 applies to the 32nd Judicial District Juvenile Board.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(2), eff. October 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(2), eff. October 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(2), eff. October 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280

), Sec. 4(2), eff. October 1, 2017.

(g) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(2), eff. October 1, 2017.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 97, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 2, eff. October 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(2), eff. October 1, 2017.

Sec. 152.1752. MONTAGUE COUNTY CHILD SUPPORT DIVISION. (a) The child support division in the Montague County Probation Department shall provide assistance to the district clerk in collecting child or spousal support payments. The division shall also assist in the enforcement of orders relating to the possession of or access to a child and may initiate contempt proceedings to enforce an order relating to the support and conservator orders.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(4), eff. January 1, 2022.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(4), eff. January 1, 2022.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(4), eff. January 1, 2022.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(4), eff. January 1, 2022.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(f)(4), eff. January 1, 2022.

Sec. 152.1753. MONTAGUE COUNTY PROBATION DEPARTMENT LEGAL OFFICER. The county attorney of Montague County is the legal officer for the Montague County Probation Department. If the county attorney fails, refuses, or declines to perform the duties, the probation board may appoint another suitable attorney as the legal officer.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1761. MONTGOMERY COUNTY. (a) The juvenile board of Montgomery County is composed of the county judge, the district judges in Montgomery County, and the judge of each county court at law.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $3,000, payable in equal monthly installments from the general fund of the county.

(c) Section 152.0003 does not apply to the juvenile board of Montgomery County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 340, Sec. 1, eff. May 29, 1999.

Sec. 152.1771. MOORE COUNTY. (a) The Moore County Juvenile Board is composed of:

(1) the county judge; and

(2) six persons appointed by the Moore County Commissioners Court.

(b) The appointed members serve staggered two-year terms with the terms of three members expiring on December 31 of each even-numbered year, and the terms of three members expiring on December 31 of each odd-numbered year.

(c) The board shall select one of its members as chairman.

(d) The members serve without compensation.

(f) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Moore County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2003, 78th Leg., ch. 767, Sec. 1, eff. Sept. 1, 2003.

Sec. 152.1781. MORRIS COUNTY. (a) Morris County is included in the Camp, Marion, Morris, and Titus Counties Juvenile Board.

(b) Section 152.0381 applies to the Camp, Marion, Morris, and Titus Counties Juvenile Board.

(c) Section 152.1782 is suspended while Morris County is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1782. MORRIS COUNTY. (a) The Morris County Juvenile Board is composed of the county judge and the district judges in Morris County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the Morris County Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1791. MOTLEY COUNTY. (a) Motley County is included in the 110th Judicial District Juvenile Board.

(b) Section 152.0291 applies to the 110th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1801. NACOGDOCHES COUNTY. (a) The Nacogdoches County Juvenile Board is composed of the county judge, the district judges in Nacogdoches County, and the judge of each county court at law.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation in an amount determined by the commissioners court for the added duties imposed on the members. The combined yearly salary from state and county sources received by each judge may not exceed an amount equal to $1,000 less than the combined yearly salary from state and county sources received by each justice of the court of appeals of the court of appeals district in which Nacogdoches County is located. The additional compensation is payable in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Nacogdoches County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1077, Sec. 3, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 1208, Sec. 1, eff. Sept. 1, 2001.

Sec. 152.1811. NAVARRO COUNTY. (a) The juvenile board of Navarro County is composed of the county judge, the district judges in Navarro County, the judges of the county courts at law in the county, and the criminal district attorney. The juvenile board may appoint five public members to serve on the board without salary for a term determined by the board.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court shall pay the juvenile board members an annual salary set by the commissioners court at not more than $4,800, payable in equal monthly installments from the general fund of the county.

(d) If approved by the juvenile board, the commissioners court may reimburse each juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.

(e) Section 152.0005(b) does not apply to the juvenile board of Navarro County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 770 (H.B. 5370), Sec. 1, eff.

September 1, 2023.

Sec. 152.1812. ADDITIONAL COMPENSATION OF JUVENILE COURT JUDGE. (a) The Commissioners Court of Navarro County shall pay the district judge of the 13th Judicial District an annual salary of $4,000 for serving as the juvenile court judge.

(b) The salary is in addition to other compensation provided by law and paid by the state.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1821. NEWTON COUNTY. (a) Newton County is included in the East Texas Juvenile Board.

(b) Sections 152.1271(a), (b), (d), (e), and (f) apply to the juvenile board in Jasper, Newton, Sabine, and San Augustine counties.

(c) The Commissioners Court of Newton County may pay the county judge of Newton County additional annual compensation in an amount set by the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1831. NOLAN COUNTY. (a) Nolan County is included in the 32nd Judicial District Juvenile Board. The juvenile board is composed of the county judges, statutory county judges, and district judges in Fisher, Mitchell, and Nolan Counties.

(b) The juvenile board shall elect one of the members as chairman.

(c) The commissioners courts of the counties may pay the members of the juvenile board an annual supplemental compensation from the general fund or any other available fund of the counties.

(d) The juvenile board shall hold regular meetings on dates set by the board and special meetings at the call of the chairman.

(e) Sections 152.0002, 152.0003, 152.0004, and 152.0005 do not apply to the juvenile board in Fisher, Mitchell, and Nolan counties.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(3), eff. October 1, 2017.

(g) The juvenile board shall designate the treasurer or auditor of Fisher County, Mitchell County, or Nolan County to serve as the

board's fiscal officer.

(h) The juvenile board shall appoint an advisory council composed of one person from each county.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 246, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 3, eff. October 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1113 (H.B. 4280), Sec. 4(3), eff. October 1, 2017.

Sec. 152.1841. NUECES COUNTY. (a) The juvenile board of Nueces County is composed of the county judge, the district judges in Nueces County, and the judge of the County Court at Law No. 5 of Nueces County.

(b) The commissioners court shall pay the board members annual additional compensation set by the commissioners court at not less than $4,200 or more than $12,000 for the added duties imposed on the members. The additional compensation is in lieu of any other compensation provided by law for service on the juvenile board.

(c) The commissioners court shall provide the juvenile probation officers with:

(1) automobiles and their maintenance and operating expenses for use in official duties; or

(2) an automobile allowance for the use of a personal automobile on official business in the amount determined to be necessary by the commissioners court.

(d) The juvenile board may require a juvenile probation officer or institution superintendent to obtain a surety or personal bond conditioned on faithful performance of duty in an amount determined by the board.

(e) The juvenile board may suspend or remove a juvenile probation officer or an institution superintendent at any time for good cause. The chief probation officer, with the approval of the board, may suspend or remove an assistant probation officer for good cause after the assistant is notified and afforded an opportunity to appear before the board.

(f) The commissioners court shall provide necessary funds to

maintain and operate the juvenile probation department.

(g) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Nueces County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1134, Sec. 3, eff. Sept. 1, 1999.

Sec. 152.1842. NUECES COUNTY INSTITUTIONS. (a) The juvenile board of Nueces County controls and supervises each county facility used for the detention of juveniles.

(b) The juvenile board may adopt any order or regulation necessary to the welfare of juveniles in a county facility. The chief juvenile probation officer shall enter each order or regulation in a book kept for that purpose and shall certify the order or regulation and deliver a copy to each institution superintendent or person in charge of a facility. The superintendent or other person and each juvenile probation officer shall comply with the order or regulation.

(c) The juvenile board may require the superintendent or person in charge of a facility to submit to the board reports containing information required by the board.

(d) The district attorney of Nueces County shall assign an attorney in the district attorney's office to represent the juvenile board and probation officers in protecting the rights of children in abandonment cases and proceedings.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1843. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN NUECES COUNTY. (a) The juvenile board of Nueces County may require a juvenile probation officer to collect and disburse child support payments that are required by court order to be made to a court in the county.

(b) The juvenile probation officer shall keep a record of money received and disbursed in a well-bound book subject to public inspection in the probation office. The county auditor shall audit the records.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1871. ORANGE COUNTY. (a) The Orange County Juvenile Board is composed of the county judge, the district judges in Orange County, and the judge of any statutory county court.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners court. The compensation paid to the judge of the county court at law may not exceed the compensation paid to the other members.

(c) The commissioners court may reimburse the juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters.

(d) The juvenile board may require a board employee to enter into a bond payable to the board, conditioned on the faithful performance of the person's duties. The board shall pay the premium of the bond. The board may suspend or remove an employee for good cause.

(e) The board shall control and supervise each county institution used to detain juveniles. The board shall appoint the superintendent of each institution.

(f) The board shall set the fees and costs that relate to the programs or services the board administers.

(g) The board may accept gifts or grants of real or personal property subject to the terms and conditions of the gift or grant.

(h) The board shall submit an annual budget to the commissioners court. The commissioners court may appropriate and the juvenile board shall use money from the county general fund to administer this section.

(i) The board may authorize the use of foster homes for the temporary care of a child alleged to be a child in need of supervision or a delinquent child.

(j) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(b) do not apply to the Orange County Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1881. PALO PINTO COUNTY. (a) The Palo Pinto County Juvenile Board is composed of the county judge and the district judges in Palo Pinto County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary in an amount set by the commissioners court for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund or any other fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Palo Pinto County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1891. PANOLA COUNTY. (a) The Panola County Juvenile Board is composed of the county judge and the district judges in Panola County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $1,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The commissioners court shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Panola County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1901. PARKER COUNTY. (a) The juvenile board of Parker County is composed of the county judge, the statutory county court judges, and the district judges in Parker County.

(b) The judge of the 43rd Judicial District is the chairman of the board.

(c) The commissioners court shall pay the juvenile board members an annual salary of not less than $6,000, payable in equal monthly installments from the general fund or any other available fund of the county.

(d) The juvenile board shall appoint not more than four volunteers to serve on a citizen's advisory council. The advisory council shall meet with the juvenile board at the board's regular quarterly meetings and shall keep the board informed of current community issues relating to juveniles.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2003, 78th Leg., ch. 1306, Sec. 3(d), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 785 (H.B. 3993), Sec. 1, eff. October 1, 2007.

Sec. 152.1911. PARMER COUNTY. (a) The juvenile board of Bailey and Parmer counties is composed of the county judge, the district judges in the counties, and the judge of each statutory court designated as a juvenile court in the counties.

(b) Section 152.0151 applies to the juvenile board of Bailey and Parmer counties.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1921. PECOS COUNTY. (a) The Pecos County Juvenile Board is composed of the county judge and the district judges in Pecos County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007,

and 152.0008 do not apply to the juvenile board of Pecos County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1931. POLK COUNTY. (a) The juvenile board of Polk County is composed of the county judge, the district judges in Polk County, and the judge of each county court at law.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $3,000 nor more than $10,000, payable in equal monthly installments from the general fund of the county. The additional compensation paid to the judge of the county court at law may not exceed the amount paid to the other members of the board.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 of the general provisions subchapter do not apply to the juvenile board of Polk County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1941. POTTER COUNTY. (a) The juvenile board of Potter County is composed of the county judge, the district and family district judges in Potter County, and the judge of each county court at law.

(b) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(c) The juvenile board members receive additional compensation as prescribed by Section 152.0053.

(d) The board shall keep records as required by law and board rules.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation personnel.

(g) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Potter County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1989, 71st Leg., ch. 595, Sec. 2, eff. Sept. 1, 1989.

Sec. 152.1951. PRESIDIO COUNTY. (a) The Presidio County Juvenile Board is composed of the county judge and the district judges in Presidio County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Presidio County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1971. RANDALL COUNTY. (a) The Randall County Juvenile Board is composed of the county judge, the county court at law judges, and the district judges in Randall County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 for the added duties imposed on the members. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0004 and 152.0005 do not apply to the juvenile board of Randall County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 322 (S.B. 672), Sec. 1, eff. September 1, 2005.

Sec. 152.1981. REAGAN COUNTY. (a) The Reagan County Juvenile Board is composed of the county judge and the district judges in Reagan County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Reagan County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.1991. REAL COUNTY. (a) The juvenile board of Real County is composed of the county judge and the district judges in Real County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $3,600, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Real County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2001. RED RIVER COUNTY. (a) The Red River County Juvenile Board is composed of the county judge and the district judges in the county.

(b) The commissioners court may pay the members of the juvenile board additional annual compensation set by the commissioners court at not less than $1,200 for the added duties imposed on the members. The compensation is payable in equal monthly installments out of the general funds of the county.

(c) The commissioners court may reimburse the juvenile court judge in the county for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile problems. Annual reimbursement provided to a judge under this subsection may not exceed $600.

(d) The commissioners court shall provide the funds for the salaries and reasonable expenses of the juvenile probation officers.

(e) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006,

152.0007, and 152.0008(a) do not apply to the juvenile board of Red River County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 592, Sec. 2(a), eff. Sept. 1, 1989.

Sec. 152.2021. REFUGIO COUNTY. (a) The juvenile board of Refugio County is composed of the county judge and the district judges in Refugio County.

(b) The commissioners court may pay the juvenile board members reasonable additional annual compensation in an amount set by the commissioners court as compensation for the added duties imposed on the members. The compensation may not be lower than the compensation paid to a member on August 29, 1977. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Refugio County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2031. ROBERTS COUNTY. (a) The Roberts County Juvenile Board is composed of the county judge and the district judges in Roberts County.

(b) The juvenile board shall select one of its members to act as chairman.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount that will reasonably compensate them for their added duties. The board members shall receive the same compensation.

(d) The commissioners court shall reimburse the juvenile board members for the members' actual and necessary expenses incurred in performing their duties.

(e) The juvenile board shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Roberts County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2041. ROBERTSON COUNTY. (a) Robertson County is part of the Milam, Robertson, Falls Counties Juvenile Board.

(b) Section 152.0791 applies to the Milam, Robertson, Falls Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2051. ROCKWALL COUNTY. (a) The Rockwall County Juvenile Board is composed of:

(1) the judges of the county courts at law in Rockwall County;

(2) the district judges in Rockwall County;

(3) one county commissioner appointed by the commissioners court;

(4) one member of the board of trustees of the Rockwall Independent School District selected by the board of trustees of the Rockwall Independent School District; and

(5) one member of the board of trustees of the Royse City Independent School District selected by the board of trustees of the Royse City Independent School District.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount set by the commissioners court. The compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Rockwall County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 953, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 652 (H.B. 3098), Sec. 1, eff. June 17, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 15.01, eff.

January 1, 2012.

Acts 2021, 87th Leg., R.S., Ch. 503 (H.B. 4568), Sec. 1, eff. June 14, 2021.

Sec. 152.2061. RUNNELS COUNTY. (a) The Runnels County Juvenile Board is composed of the county judge, the judge of the 119th Judicial District, and the district attorney.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the board chairman additional annual compensation of not more than $600 for the added duties imposed on the chairman. The commissioners court may pay the other board members additional annual compensation of not more than $300. The compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county. The compensation is in addition to all other compensation provided or allowed for a district attorney.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Runnels County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2071. RUSK COUNTY. (a) The Rusk County Juvenile Board is composed of the county judge, the district judges in Rusk County, and the judge of each county court at law.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional compensation in an amount set by the commissioners court. The additional compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund of the county.

(d) The commissioners court may accept gifts, grants, or donations from other political subdivisions of the state, an organization, or other person for use in paying the salaries and expenses of the juvenile probation officer. Funds received under this subsection shall be placed in a special fund.

(e) The chairman shall certify all claims for expenses of the

juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer from the special fund or from the general fund.

(f) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Rusk County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2081. SABINE COUNTY. (a) Sabine County is included in the East Texas Juvenile Board.

(b) Sections 152.1271(a), (b), (d), (e), and (f) apply to the juvenile board in Jasper, Newton, Sabine, and San Augustine counties.

(c) The Commissioners Court of Sabine County may pay the county judge of Sabine County additional annual compensation in an amount set by the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2091. SAN AUGUSTINE COUNTY. (a) San Augustine County is included in the East Texas Juvenile Board.

(b) Sections 152.1271(a), (b), (d), (e), and (f) apply to the juvenile board in Jasper, Newton, Sabine, and San Augustine counties.

(c) The Commissioners Court of San Augustine County may pay the county judge of San Augustine County additional annual compensation in an amount set by the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2101. SAN JACINTO COUNTY. (a) The juvenile board of San Jacinto County is composed of the county judge, the district judges in San Jacinto County, and the judge of each county court at law.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $3,000 nor more than $10,000, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006,

152.0007, and 152.0008 do not apply to the juvenile board of San Jacinto County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2111. SAN PATRICIO COUNTY. (a) The juvenile board of San Patricio County is composed of the county judge, the district judges in San Patricio County, and the judge of each county court at law.

(b) The commissioners court may pay the juvenile board members additional annual compensation in an amount set by the commissioners court for the added duties imposed on the members. The additional compensation may not be lower than the amount paid to the judges on September 1, 1981.

(c) The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of San Patricio County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1989, 71st Leg., ch. 659, Sec. 3, eff. Sept. 1, 1989.

Sec. 152.2121. SAN SABA COUNTY. (a) The San Saba County Juvenile Board is composed of the county judge and the district judges in San Saba County.

(b) The judge of the 33rd District Court is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not more than $1,200 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of San Saba County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 22, eff.

September 1, 2005.

Sec. 152.2131. SCHLEICHER COUNTY. (a) The juvenile board of Schleicher County is composed of the county judge and the district judges in Schleicher County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Schleicher County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2141. SCURRY COUNTY. (a) Scurry County is included in the 132nd Judicial District Juvenile Board.

(b) Section 152.0231 applies to the 132nd Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2151. SHACKELFORD COUNTY. (a) The Shackelford County Juvenile Board is composed of the county judge, the district judges in Shackelford County, and the judge of any statutory court designated as the juvenile court. The juvenile court judge may appoint one public member for a term determined by the juvenile court judge.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $2,500, payable in equal monthly installments from the general fund of the county. The public member serves without compensation.

(d) Section 152.0005(b) does not apply to the juvenile board of Shackelford County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2171. SHERMAN COUNTY. (a) The Sherman County Juvenile Board is composed of the county judge, the district judges in Sherman County, and the judge of any statutory court designated as a juvenile court.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The board may cooperate with other juvenile boards to provide adequate services.

(d) The juvenile board members receive no compensation for serving on the board.

(e) Sections 152.0003 and 152.0005(b) do not apply to the juvenile board of Sherman County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2181. SMITH COUNTY. (a) The Smith County Juvenile Board is composed of the county judge, the district judges in Smith County, and the judge of each county court at law.

(b) The county judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the board members annual additional compensation in an amount set by the commissioners court. The additional compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Smith County.

(e) The board may accept gifts and grants from any private or public source to use in maintaining and improving the county's juvenile probation services.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 376, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1005, Sec. 1, eff. Sept. 1, 1997.

Sec. 152.2182. SMITH COUNTY CHILD SUPPORT OFFICE. (a) The

Smith County Juvenile Board may establish a child support office in the district clerk's office to collect and disburse child support payments that are required by court order to be made to the county. The office shall receive and disburse the payments in the manner the court believes to be in the best interest of the parties in the case.

(b) The juvenile board may appoint an administrator and other necessary assistants to serve two-year terms. The administrator shall obtain a surety bond in an amount determined by the county auditor from a solvent surety company authorized to make the bonds in this state and approved by the county auditor. The bond shall be conditioned on the faithful performance of the administrator's duties and on the proper accounting of the money entrusted to the administrator. The county shall pay the premium for the bond from the general fund of the county, the child support fund, or any other available fund.

(c) The board shall determine the duties of the administrator and assistants and set their salaries. The salaries are payable in equal monthly installments from the general fund of the county, the child support fund, or any other available fund. The board must approve a claim for expenses made by the administrator or an assistant or a claim for administrative expenses in operating the child support office, including a claim for payment of equipment and supplies.

(d) The office shall keep an accurate and complete record of money received and disbursed under this section. The county auditor or other authorized county officer or employee shall inspect and examine the records and audit the accounts quarterly. The record is open to the inspection by the public. The auditor shall report the results of the audit to the judges and include any recommendations the auditor may have.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2191. SOMERVELL COUNTY. (a) The juvenile board of Somervell County is composed of the county judge and the district judges in Somervell County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members

an annual salary in an amount set by the commissioners court for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund or any other fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Somervell County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2201. STARR COUNTY. (a) The Starr County Juvenile Board is composed of the county judge, the judge of the county court at law in Starr County, and the district judges in Starr County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 or more than $10,000 for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) The juvenile board shall appoint not more than five persons to serve on an advisory council.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Starr County.

(f) The Starr County Juvenile Board and the juvenile boards of one or more counties that are adjacent to or in close proximity to Starr County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 36, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1342 (S.B. 1951), Sec. 23, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 705 (H.B. 2813), Sec. 1, eff. September 1, 2009.

Sec. 152.2221. STERLING COUNTY. (a) The juvenile board of Sterling County is composed of the county judge and the district judges in Sterling County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Sterling County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2231. STONEWALL COUNTY. (a) Stonewall County is included in the 39th Judicial District Juvenile Board.

(b) Section 152.1101 applies to the 39th Judicial District Juvenile Board.

Added by Acts 2009, 81st Leg., R.S., Ch. 65 (S.B. 1811), Sec. 3, eff. September 1, 2009.

Sec. 152.2241. SUTTON COUNTY. (a) The Sutton County Juvenile Board is composed of the county judge and the district judges in Sutton County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Sutton County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2251. SWISHER COUNTY. (a) The juvenile board of Castro and Swisher counties is composed of the county judges, the

district judges in Castro and Swisher counties, and the judge of any statutory court designated as a juvenile court in the counties.

(b) Section 152.0411 applies to the juvenile board of Castro and Swisher counties.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 454, Sec. 3, eff. Aug. 30, 1993.

Sec. 152.2261. TARRANT COUNTY. (a) The juvenile board of Tarrant County is composed of the county judge and the district judges in Tarrant County.

(b) If the chief juvenile probation officer serves as secretary to the juvenile board, the officer may receive additional annual compensation of $1,000.

(c) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(d) The board shall keep records as required by law and board rules.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The commissioners court shall provide the juvenile probation officers with:

(1) automobiles and their maintenance and operation expenses for use in official duties; or

(2) an automobile allowance for the use of a personal automobile on official business in the amount determined to be necessary by the juvenile board.

(g) The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation personnel and the additional compensation prescribed for the county judge.

(h) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Tarrant County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 23, eff. September 1, 2005.

Sec. 152.2262. TARRANT COUNTY INSTITUTIONS. (a) The juvenile board of Tarrant County shall appoint a person to supervise the county facilities under the jurisdiction of the juvenile board. The supervisor may be the county probation officer. The supervisor shall direct the policies and conduct of each institution.

(b) The juvenile board shall also appoint the head of each facility. The facility head may hire employees that the juvenile board determines are necessary.

(c) The facilities supervisor or employees under the supervisor's control shall supervise each child committed to a county institution until the child becomes of age. The supervisor or employees shall submit periodic reports to the juvenile board as required for the board's approval or action.

(d) The commissioners court shall provide the necessary funds to operate each institution.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2263. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN TARRANT COUNTY. (a) The juvenile board of Tarrant County may designate the district clerk or the juvenile probation officer to collect and disburse court-ordered child or spousal support payments that are required by court order to be made to the county. The person designated to receive the payments shall disburse the payments in the manner the court believes to be in the best interest of the spouse or child.

(b) If the juvenile board designates the juvenile probation officer to receive the payments, the officer shall work in the court as an officer of the court. The officer shall obtain a surety bond in an amount determined by the commissioners court from a solvent surety company authorized to make the bonds in this state and approved by the commissioners court. The bond shall be conditioned on the faithful performance of the officer's duties and on the proper accounting of the money entrusted to the officer. The county shall pay the premium for the bond from the general fund of the county.

(c) The juvenile probation officer shall keep an accurate and complete record of money received and disbursed under this section. The record is open for public inspection. The county auditor shall inspect and examine the records and audit the accounts quarterly.

The auditor shall report the results of the audit to the juvenile board and include any recommendations the auditor may have.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2264. TARRANT COUNTY CRIMINAL COURT ADMINISTRATOR. (a) Subject to the approval of the commissioners court, the judges of the district courts that give preference to criminal cases, the judges of the criminal district courts, and the judges of the county criminal courts of Tarrant County may use the services of a criminal courts administrator.

(b) A judge may not be subjected to a suit for, and is immune from liability for damages arising from, an act or omission committed while performing a duty under this section unless the act or omission is:

(1) committed intentionally, wilfully, or wantonly; or

(2) committed with:

(A) gross negligence;

(B) conscious indifference for the safety of others; or

(C) reckless disregard for the safety of others.

Added by Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 24, eff. September 1, 2005.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 861 (H.B. 3474), Sec. 14.002, eff. September 1, 2023.

Sec. 152.2271. TAYLOR COUNTY. (a) The juvenile board of Taylor County is composed of the county judge, the district judges in Taylor County, and the judge of each statutory county court exercising juvenile jurisdiction.

(b) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(c) The board shall keep records as required by law and board rules.

(d) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(e) The commissioners court shall provide the necessary funds

to pay the salaries and expenses of the juvenile probation personnel.

(f) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Taylor County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1989, 71st Leg., ch. 551, Sec. 2, eff. Sept. 1, 1989.

Sec. 152.2281. TERRELL COUNTY. (a) The juvenile board of Terrell County is composed of the county judge and the district judges in Terrell County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $3,600, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Terrell County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2291. TERRY COUNTY. (a) The Terry County Juvenile Board is composed of the:

(1) county judge;

(2) district judges in Terry County;

(3) juvenile court judge;

(4) Brownfield city manager;

(5) superintendent of the Brownfield Independent School District; and

(6) one public member from Terry County appointed by the board chairman.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners court shall pay the judges on the juvenile board an annual salary of not more than $1,200 for the added duties imposed on them. The salary shall be paid in equal monthly installments out of the general fund of the county.

(d) If approved by the juvenile board, the commissioners court shall reimburse the juvenile board members and all probation officers

and staff for reasonable and necessary job related expenses. Reimbursable expenses include travel, lodging, training, and educational activities.

(e) The commissioners court shall provide the funds for the salaries and allowances of the juvenile probation officers in the amount set by the juvenile board.

(f) Sections 152.0005(a) and (b) do not apply to the juvenile board of Terry County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2301. THROCKMORTON COUNTY. (a) Throckmorton County is included in the 39th Judicial District Juvenile Board.

(b) Section 152.1101 applies to the 39th Judicial District Juvenile Board.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 65, Sec. 5, eff. September 1, 2009.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 65, Sec. 5, eff. September 1, 2009.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 65, Sec. 5, eff. September 1, 2009.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 65 (S.B. 1811), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 65 (S.B. 1811), Sec. 5, eff. September 1, 2009.

Sec. 152.2311. TITUS COUNTY. (a) Titus County is included in the Camp, Marion, Morris, and Titus Counties Juvenile Board.

(b) Section 152.0381 applies to the Camp, Marion, Morris, and Titus Counties Juvenile Board.

(c) Section 152.2312 is suspended while Titus County is a member of the Camp, Marion, Morris, and Titus Counties Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2312. TITUS COUNTY. (a) The Titus County Juvenile Board is composed of the county judge and the district judges in Titus County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 nor more than $1,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the Titus County Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2321. TOM GREEN COUNTY. (a) The juvenile board of Tom Green County is composed of the county judge and the district judges in Tom Green County.

(b) The juvenile board shall hold meetings at least once every three months in accordance with board rules.

(c) The county commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $600 or more than $1,200, payable in equal monthly installments from the general fund of the county.

(d) The board shall keep records as required by law and board rules.

(e) A juvenile probation officer shall take the oath of office when appointed and the oath and the fact of the appointment shall be filed with the county clerk.

(f) The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation personnel.

(g) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(a) do not apply to the juvenile board of Tom Green County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2331. TRAVIS COUNTY. (a) The Travis County Juvenile Board is composed of the county judge and the district judges in Travis County.

(b) The commissioners court shall pay the juvenile board members an annual salary of $4,800 for the judicial and administrative duties imposed on the judges. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) The commissioners court shall provide the funds for the salaries of the juvenile probation officers in the amount set by the juvenile board.

(d) The commissioners court shall pay the expenses of the juvenile probation officers that are certified as necessary by the juvenile board chairman from the general fund and in the amount set by the juvenile board.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, and 152.0007 do not apply to the juvenile board of Travis County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2332. COLLECTION AND DISBURSEMENT OF SUPPORT PAYMENTS IN TRAVIS COUNTY. (a) The juvenile board of Travis County may designate the chief probation officer to collect and disburse child and spousal support payments that are required by court order to be made to the county or that are voluntarily made to the county. The chief probation officer shall disburse the payments in the manner the court by order states is in the best interest of the spouse or child.

(b) The officer shall obtain a surety bond in an amount determined by the juvenile board from a corporate surety authorized to make the bonds in this state and approved by the commissioners court. The bond shall be payable to the district judges in the county and conditioned on the faithful performance of the officer's duties and on the proper accounting of the money entrusted to the officer. The county shall pay the premium for the bond from the general fund of the county.

(c) The officer shall keep an accurate and complete record of

money received and disbursed under this section. The records are court records and may be inspected at reasonable times by the parties, their representatives, and attorneys. The records may be introduced into evidence as prescribed by the Texas Rules of Evidence. The county auditor shall inspect and examine the records and audit the accounts quarterly. The auditor shall report the results of the audit to the juvenile board and include any recommendations the auditor may have.

(d) The chief juvenile probation officer may appoint necessary personnel with the approval of the juvenile board to administer this section. The personnel serve at the pleasure of the chief juvenile probation officer.

(e) The commissioners court shall provide from the general fund the money necessary to administer this section in the amount recommended by the juvenile board and approved by the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2341. TRINITY COUNTY. (a) The juvenile board of Trinity County is composed of the county judge, the district judges in Trinity County, and the judge of each county court at law.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $3,000 nor more than $10,000, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Trinity County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2351. TYLER COUNTY. (a) The Tyler County Juvenile Board is composed of the county judge and the district judges in Tyler County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not

more than $5,000 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(d) The chairman shall certify all claims for expenses of the juvenile probation officer as necessary in the performance of the officer's duties. The commissioners court shall provide the necessary funds to pay the salaries and expenses of the juvenile probation officer.

(e) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Tyler County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2361. UPSHUR COUNTY. (a) The Upshur County Juvenile Board is composed of the county judge and the district judge in Upshur County.

(b) The county judge of Upshur County is the chairman of the board and its chief administrative officer.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(d) Service on a juvenile board by a judge is an additional duty of office. The commissioners court shall pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200, payable in equal monthly installments from any funds available to the county or to the juvenile board.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(g) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(h) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(j) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(k) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

(l) The board may accept state aid and grants or gifts from other political subdivisions of the state, private citizens, or associations for the purpose of financing adequate and effective juvenile programs.

(m) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 707, Sec. 2, eff. June 14, 2013.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 707 (H.B. 3161), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 707 (H.B. 3161), Sec. 2, eff. June 14, 2013.

Sec. 152.2371. UPTON COUNTY. (a) The Upton County Juvenile Board is composed of the county judge and the district judges in Upton County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 nor more than $3,600 as compensation for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Upton County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2381. UVALDE COUNTY. (a) The juvenile board of Uvalde County is composed of the county judge and the district judges in Uvalde County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $3,600, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Uvalde County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2391. VAL VERDE COUNTY. (a) The juvenile board of Val Verde County is composed of the county judge, the district judges in Val Verde County, and the judge of the County Court at Law of Val Verde County.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $3,600, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Val Verde County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1125 (H.B. 3952), Sec. 1, eff. September 1, 2013.

Sec. 152.2401. VAN ZANDT COUNTY. (a) The Van Zandt County Juvenile Board is composed of the county judge, the criminal district attorney of Van Zandt County, the judge of the 294th Judicial District, and the judge of the county court at law.

(b) The juvenile board shall elect one of its members as chairman at its first regular meeting of each calendar year.

(c) The board shall hold meetings each year on dates set by the board and special meetings at the call of the chairman.

(d) The board may agree to join with the juvenile board of one or more counties to provide services and facilities and to receive and disburse funds under this section.

(e) Service on a juvenile board by a judge or the district attorney is an additional duty of office. The commissioners courts shall pay the juvenile board members an annual salary set by the commissioners courts at not less than $600 for the added duties imposed on the members. The salary shall be paid in equal monthly or bimonthly installments from any funds available to the county or to the juvenile board. The salary is in addition to all other compensation provided or allowed by law for criminal district

attorneys.

(f) The juvenile board shall make the financial and statistical records and reports the board is required to make to the Texas Juvenile Justice Department available to the commissioners court.

(g) The board, in a timely manner, shall prepare and submit to the commissioners court for approval an annual request for funding for the board and the juvenile probation department. Each request must include the total of anticipated expenses of the board or for providing juvenile services for the next fiscal year. The request for funding for the juvenile probation department must also be accompanied by an accounting of all available funds from other funding sources.

(h) The board may accept aid, grants, and gifts from the state or federal government, other political subdivisions of the state, and associations to finance adequate and effective juvenile probation programs. The fiscal officer shall deposit funds received under this subsection in a special account.

(i) Sections 152.0002, 152.0004, 152.0005, and 152.0008(a) do not apply to the juvenile board of Van Zandt County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1103 (H.B. 4833), Sec. 15(b), eff. January 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 130, eff. September 1, 2015.

Sec. 152.2411. VICTORIA COUNTY. (a) The juvenile board of Victoria County is composed of the county judge, the district judges in Victoria County, and the judge of each county court at law.

(b) The juvenile board shall elect one of its members as chairman of the board.

(c) The commissioners court shall pay the juvenile board members additional compensation in an amount set by the commissioners court. The additional compensation is for the added duties imposed on the members and shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) The commissioners court may pay the county clerk additional compensation for serving as the clerk of the juvenile court.

(e) The commissioners court shall provide the funds necessary to pay the salaries and expenses essential to the proper operation of the probation department.

(f) Sections 152.0002, 152.0004, and 152.0005 do not apply to the juvenile board of Victoria County.

(g) The juvenile board of Victoria County and the juvenile boards of one or more counties that are adjacent to or in close proximity to Victoria County may agree to operate together with respect to all matters, or with respect to certain matters specified by the juvenile boards. Juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 8.04, eff. September 1, 2019.

Sec. 152.2421. WALKER COUNTY. (a) The juvenile board of Walker County is composed of the county judge, the district judges in Walker County, and the judge of each county court at law.

(b) The commissioners court shall pay the juvenile board members additional annual compensation of not less than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Walker County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1152 (H.B. 3045), Sec. 4, eff. June 18, 2005.

Sec. 152.2431. WALLER COUNTY. (a) The juvenile board of Waller County is composed of the county judge, the district judges in Waller County, and the judge of each county court at law.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court

at not more than $1,200, payable in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Waller County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1989, 71st Leg., ch. 652, Sec. 2, eff. Sept. 1, 1989.

Sec. 152.2441. WARD COUNTY. (a) The Ward County Juvenile Board is composed of the county judge, the district judges in Ward County, and the judge of any statutory court in the county.

(b) The juvenile board shall elect one of its members as chairman.

(c) The commissioners court shall pay the juvenile board members an annual salary set by the commissioners court at not less than $1,200 or more than $3,600 for the added duties imposed on the members. The salary shall be paid in equal monthly installments from the general fund or any other fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Ward County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2451. WASHINGTON COUNTY. (a) The juvenile board of Washington County is composed of the county judge, the district judges in Washington County, and the judge of each county court at law.

(b) The board shall select one member to act as chairman.

(c) The commissioners court may reasonably compensate each member of the juvenile board for the member's additional duties.

(d) The juvenile board shall pay from the juvenile board fund to the extent of the state aid received in the fund the salaries of juvenile probation department personnel and other expenses required to provide adequate services to children.

(e) The county shall pay salaries and expenses other than those paid under Subsection (d) that are essential to provide adequate services to children in an amount set by the juvenile board with the advice and consent of the commissioners court.

(f) The juvenile board may accept state aid and grants or gifts from other political subdivisions of the state or associations for the sole purpose of financing adequate and effective probation programs. A municipality may grant money to the county government or to the juvenile board to support and maintain juvenile programs if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other county funds.

(g) The chief juvenile probation officer may appoint necessary personnel with the approval of the juvenile board. Juvenile probation officers serve at the pleasure of the juvenile board.

(h) The juvenile board shall provide the juvenile probation officers with transportation or an automobile allowance for use of a personal automobile on official business.

(i) The juvenile board may agree to operate together with one or more counties that are adjacent to or in close proximity to Washington County. The juvenile boards operating together may appoint one fiscal officer to receive and disburse funds for the boards.

(j) The juvenile board may operate foster homes for the temporary care of children served by the board.

(k) Sections 152.0002, 152.0004, and 152.0008 do not apply to the juvenile board of Washington County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 239, Sec. 1, eff. May 22, 1993.

Sec. 152.2461. WEBB COUNTY. (a) The Webb County Juvenile Board is composed of the county judge, the district judges in the county, and the judge of each county court at law. The county judge may designate any member of the commissioners court to represent the judge on the board. A reference in this section to a juvenile court judge of a juvenile board member includes a person designated by the county judge under this subsection.

(b) The commissioners court may pay the juvenile board members additional annual compensation set by the commissioners court at not more than $4,800 for the added duties imposed on the members. The compensation shall be paid in equal monthly installments from the general fund of the county.

(c) The commissioners court may reimburse the juvenile court judge for the judge's actual and necessary expenses incurred in attending seminars and other educational or instructional meetings relating to juvenile matters. The annual amount for which the judge may be reimbursed may not exceed $600.

(d) The juvenile board may require a board employee to enter into a bond payable to the board, conditioned on the faithful performance of the person's duties. The board shall pay the premium of the bond. The board may suspend or remove an employee for good cause. The board may permit the chief juvenile probation officer to suspend or remove employees whom the chief juvenile probation officer may supervise.

(e) The board shall control and supervise each county institution used to detain juveniles. The board shall appoint the superintendent of each institution.

(f) The board may accept gifts or grants of real or personal property subject to the terms and conditions of the gift or grant to use for the benefit of the juvenile justice system.

(g) The board shall submit an annual budget to the commissioners court. The commissioners court may appropriate and the juvenile board shall use money from the county general fund to administer this section.

(h) The board may authorize the use of foster homes for the temporary care of a child alleged to be a child in need of supervision or a delinquent child.

(i) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008(b) do not apply to the juvenile board of Webb County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 23, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 105, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1352 (S.B. 1189), Sec. 25, eff. September 1, 2005.

Sec. 152.2471. WHARTON COUNTY. (a) The juvenile board of Wharton County is composed of the county judge, the district judges in Wharton County, and the judge of each county court at law.

(b) The commissioners court shall pay the board members annual

additional compensation in an amount set by the commissioners court. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Wharton County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2472. COMPENSATION OF JUVENILE JUDGE IN WHARTON COUNTY. (a) The Commissioners Court of Wharton County may pay the juvenile judge additional annual compensation of not more than $1,500 for serving as the judge of the juvenile court.

(b) The compensation is in addition to all other compensation paid or authorized to be paid to the judge who serves as the juvenile judge.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2473. WHARTON COUNTY CHILD SUPPORT OFFICE. (a) The judges of the district courts in Wharton County may establish a child support office in the county juvenile office to collect and disburse child support payments that are required by court order to be made to the office. The office shall disburse the payments in the manner the court believes to be in the best interest of the parties in the case.

(b) The judges of the district courts in a county served by an office may appoint an administrator and other assistants to serve two-year terms. The administrator shall obtain a surety bond in an amount determined by the county auditor from a solvent surety company authorized to make the bonds in this state and approved by the county auditor. The bond shall be conditioned on the faithful performance of the administrator's duties and on the proper accounting of the money entrusted to the administrator. The county shall pay the premium for the bond from the general fund of the county, the child support fund, or any other available fund.

(c) The judges shall determine the duties of the administrator and assistants and set their salaries. The salaries are payable in equal monthly installments from the general fund of the county, the child support fund, or any other available fund. The judges must

approve a claim for expenses made by the administrator or an assistant or a claim for administrative expenses in operating the child support office, including a claim for payment of equipment and supplies.

(d) The office shall keep an accurate and complete record of money received and disbursed under this section. The record is open for public inspection. The county auditor or other authorized county officer or employee shall inspect and examine the records and audit the accounts quarterly. The auditor shall report the results of the audit to the judges and include any recommendations the auditor may have.

(e) The child support office may serve one or more of Brazoria, Fort Bend, and Matagorda counties. If a child support office serves more than one county, the judges of the district courts in the counties shall determine the location of the office. The officers and employees of the county in which the office is located shall perform the duties prescribed by this section. The counties shall pay the salaries, bond premium, and other expenses in accordance with the ratio that the population of each county bears to the total population of all of the counties served by the office.

(f) The commissioners courts shall pay the district court judges $75 a month for performing the duties prescribed by this section. The compensation shall be paid from the general fund of the county and is in addition to any other compensation the judges receive.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2474. WHARTON COUNTY CHILD SUPPORT SERVICE FEE. (a) The Wharton County child support office shall assess a monthly fee of not more than $10 for collecting and disbursing child support payments that are required by court order to be made to the office. The fee is payable annually and in advance.

(b) The payor of the support shall pay the fee unless the payor is a member of the armed services and the monthly child support payments exceed the amount the court orders the person to pay, in which case the payee shall pay the service fee for as long as the payor is a member of the armed services and the support payments exceed the amount the court orders the person to pay.

(c) The first fee payment is due on the date that the payor is ordered to begin the child support payments. If the payee must pay the fee, the first fee payment is due on the date that the payee receives the original support payment. Subsequent annual fees are due on the anniversary of the date of the original fee payment.

(d) A person who refuses or fails to pay the fee on the date due or in the amount ordered is subject to an action for contempt of court.

(e) Fees collected under this section shall be paid to the county treasurer on the last day of each calendar month. The county treasurer shall deposit the fees to the credit of the child support fund. The judges of the district courts in a county served by the office shall administer the fund, with the approval of the commissioners court, to assist in paying the salaries and expenses of the child support office.

(f) An accurate and complete record of money received under this section shall be kept. The county auditor or other authorized person shall audit the child support fund regularly. An annual report of the receipts and expenditures of the fund shall be made to the commissioners court.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 12.04(a), eff. Aug. 26, 1991.

Sec. 152.2491. WICHITA COUNTY. (a) The Wichita County Juvenile Board is composed of the county judge, the district judges in Wichita County, and the judge of each statutory county court.

(b) The commissioners court may pay the board members additional annual compensation in an amount determined by the commissioners court, payable in equal monthly installments from the general fund of the county.

(c) The juvenile board may authorize the use of foster homes for the temporary care of children subject to Title 3 or 5, Family Code. The rate of pay for foster care shall be determined by the juvenile board and those payments are necessary operating expenses of the Wichita County Family Court Services Department.

(d) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Wichita

County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.52, eff. Sept. 1, 1997.

Sec. 152.2492. WICHITA COUNTY INSTITUTIONS. (a) The juvenile board of Wichita County controls and supervises each county facility used for the detention of juveniles.

(b) The chief juvenile probation officer shall appoint the superintendent of each facility. The juvenile board must confirm the appointment. A superintendent or an assistant may be suspended or removed at any time by the appointing authority.

(c) The juvenile board shall set the salaries of the superintendents and assistants.

(d) This section does not apply to a person or facility that provides services to juveniles under a contract with the commissioners court or juvenile board and that is licensed or registered by a state or federal agency or an agency of another state.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 288 (H.B. 953), Sec. 1, eff. June 15, 2007.

Sec. 152.2501. WILBARGER COUNTY. (a) Wilbarger County is included in the 46th Judicial District Juvenile Board.

(b) Section 152.0841 applies to the 46th Judicial District Juvenile Board.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2511. WILLACY COUNTY. (a) The juvenile board of Willacy County is composed of the judges of the county and district courts in the county. The board must have not fewer than three nor more than five members. The judges of the county and district courts in the county may appoint an appropriate number of public members to

serve on the board without compensation if necessary to satisfy this requirement. The chairman of the board shall determine the number of public members to be appointed to the board.

(b) The county judge is the chairman of the board.

(c) The board shall hold biannual meetings on dates set by the board and special meetings at the call of the chairman.

(d) Service on a juvenile board by a judge is an additional duty of office. The commissioners court shall pay the judges on the juvenile board an annual salary set by the commissioners court at not more than $6,000, payable in equal monthly installments from the general fund or any other available fund of the county.

(e) The county shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing the member's duties.

(f) The juvenile board shall ensure that the chief juvenile officer and fiscal officer:

(1) keep the financial and statistical records and submit reports to the Texas Juvenile Justice Department as prescribed by Section 221.007; and

(2) submit periodic financial and statistical reports to the county commissioners court.

(g) The chief juvenile probation officer shall appoint an appropriate number of qualified juvenile probation officers, assistants, and support personnel with the approval of the board as necessary to perform his duties. The chief juvenile probation officer and the personnel appointed under this section may be removed at any time by the appointing authority or by the juvenile board. The chief juvenile probation officer shall recommend to the juvenile board the salaries of and allowances for juvenile probation officers, assistants, and support personnel. The juvenile board shall provide the chief juvenile probation officer and his assistants with transportation or an automobile allowance for use of a personal automobile on official business.

(h) A claim for expenses from a person in the juvenile probation department must be made to the board chairman. The chairman shall certify to the fiscal officer the expenses to be paid from state funds and shall certify to the commissioners court the expenses to be paid from county funds.

(i) The chairman of the board shall certify to the commissioners court an annual request for the expenditure of county

funds. The commissioners court shall act on the request in the same manner as it acts on a request from another county office.

(j) The board may accept state aid and grants and gifts from other political subdivisions of the state or associations for the purpose of financing adequate and effective juvenile programs. A municipality may grant and allocate money to the juvenile board to support and maintain effective juvenile services if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other public funds. This section does not affect a program of local enrichment of juvenile services funded by a service.

(k) The juvenile board shall appoint an advisory council of not more than five persons.

(l) Sections 152.0002, 152.0004, 152.0005, 152.0008, and 152.0009 do not apply to the juvenile board of Willacy County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.022, eff. September 1, 2011.

Sec. 152.2521. WILLIAMSON COUNTY. (a) The juvenile board of Williamson County is composed of the county judge and the district judges in the county, and the judges of any statutory court in the county designated as a juvenile court. The judge of a district court may designate a person to represent the judge on the board.

(b) The juvenile board shall elect one of its members to act as chairman.

(c) The board may cooperate with other juvenile boards to provide adequate services.

(d) The board's fiscal officer shall receive and disburse for juvenile probation the funds of the board.

(e) Service on a juvenile board by a judge is an additional duty of office. The commissioners court may pay the juvenile board members a salary in an amount that will reasonably compensate them for their added duties. The commissioners court shall pay to a person designated to serve on the board by a district judge the judge's salary as authorized by this subsection. The salary to the person designated is in addition to all other compensation provided

or allowed by law.

(f) The county shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing his duties.

(g) The juvenile board shall provide each juvenile probation officer with an automobile or an automobile allowance for use of a personal automobile on official business.

(h) The juvenile board shall pay the salaries of juvenile probation personnel and other expenses required to provide adequate services to children from the juvenile board fund to the extent of the state aid received in the fund. The county shall pay the other salaries and expenses essential to provide adequate services in an amount set by the juvenile board with the advice and consent of the commissioners court.

(i) The board may accept state aid and grants or gifts from other political subdivisions of the state or associations for the sole purpose of financing adequate and effective juvenile programs. A municipality may grant and allocate money to the appropriate county government or to the juvenile board to support and maintain effective juvenile services if the municipality's governing body approves the expenditure. Funds received under this subsection shall be administered and kept separately from other public funds. This section does not affect a program of local enrichment of juvenile services funded by any source.

(j) Sections 152.0002, 152.0004, 152.0005, 152.0008, and 152.0009 do not apply to the juvenile board of Williamson County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2531. WILSON COUNTY. (a) The juvenile board of Wilson County is composed of the county judge and the district judges in Wilson County.

(b) The commissioners court shall pay the juvenile board members additional annual compensation set by the commissioners court at not less than $1,200 nor more than $4,800 for the added duties imposed on the members. The additional compensation shall be paid in equal monthly installments from the general fund of the county.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Wilson

County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2541. WINKLER COUNTY. (a) The Winkler County Juvenile Board is composed of the county judge and the district judges in Winkler County.

(b) The juvenile court judge is the chairman of the board and its chief administrative officer.

(c) The commissioners court may pay the board chairman additional annual compensation of $1,200 for the added duties imposed on the chairman. The commissioners court may pay the other members of the board additional annual compensation of not more than $1,200. The additional compensation shall be paid in equal monthly installments from the general fund or any other available fund of the county.

(d) Sections 152.0002, 152.0004, 152.0005, 152.0006, 152.0007, and 152.0008 do not apply to the juvenile board of Winkler County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2551. WISE COUNTY. (a) Wise County is included in the juvenile board in Jack and Wise counties.

(b) Section 152.1251 applies to the juvenile board in Jack and Wise counties.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

Sec. 152.2561. WOOD COUNTY. (a) The juvenile board of Wood County is composed of the county judge, the district judges in the county, and the judge of any statutory court in the county designated as a juvenile court.

(b) The juvenile board shall elect one of its members as chairman at its first regular meeting of each calendar year.

(c) The board may agree to operate with the juvenile board of another county to provide services and to receive and disburse funds.

(d) The board shall hold regular meetings each year on dates set by the board, and special meetings at the call of the chairman.

(e) Service on a juvenile board by a judge is an additional duty of office. The commissioners court shall pay each juvenile board member an annual salary of not less than $4,800, payable in equal monthly installments from any funds available to the county or to the juvenile board.

(f) The commissioners court shall reimburse a juvenile board member for the member's actual and necessary expenses incurred in performing the member's duties. The commissioners court shall set the rate of reimbursement and shall pay the expenses from funds allocated or received from any source.

(g) The juvenile board shall appoint necessary juvenile probation department personnel. The juvenile board may discharge the employees of the juvenile probation department.

(h) The juvenile board shall provide each juvenile probation officer or juvenile probation department employee with an automobile or an automobile allowance for use of a personal automobile on official business.

(i) The juvenile board shall pay the salaries, allowances, and other necessary expenses from the juvenile probation budget to the extent of the state aid received. The commissioners court shall pay the remaining salaries, allowances, and other necessary expenses from the general fund or other available funds of the county.

(j) The juvenile board shall set the annual rate of increase in the salaries of juvenile probation department personnel. If any portion of an employee's salary is to be paid from the general fund, the commissioners court shall approve the salary as presented to the commissioners court by the chairman of the juvenile board. For purposes of this subsection, "salary" means only the fixed compensation paid to an employee and does not include health insurance, allowances, or any other benefit.

(k) The board may accept state aid and grants or gifts from other political subdivisions of the state or associations for the sole purpose of financing adequate and effective juvenile programs. The fiscal officer shall deposit funds received under this subsection in a special account.

(l) The board shall make available to the commissioners court the financial and statistical reports required by the Texas Juvenile Justice Department.

(m) Sections 152.0002, 152.0004, 152.0005, 152.0008, and 152.0009 do not apply to the juvenile board of Wood County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1236 (H.B. 2502), Sec. 2, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 131, eff. September 1, 2015.

Sec. 152.2571. YOAKUM COUNTY. (a) The Yoakum County Juvenile Board is composed of the county judge, the district judges in Yoakum County, and the judge of any statutory court in the county designated as a juvenile court.

(b) The juvenile board shall elect one of its members as chairman at the beginning of each year.

(c) The commissioners court shall pay the juvenile board members an annual salary set by the commissioners court at not more than $1,200, payable in equal monthly installments from the general fund or any other available fund of the county.

(d) Section 152.0005(b) does not apply to the juvenile board of Yoakum County.

Added by Acts 1989, 71st Leg., ch. 352, Sec. 1, eff. Sept. 1, 1989.

TITLE 11. AGING, COMMUNITY-BASED, AND LONG-TERM CARE SERVICES
CHAPTER 161. DEPARTMENT OF AGING AND DISABILITY SERVICES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Commissioner" means the commissioner of aging and disability services.

(3) "Council" means the Aging and Disability Services Council.

(4) "Department" means the Department of Aging and Disability Services.

(5) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.

Text of section effective until April 1, 2025

Sec. 161.003. SUNSET PROVISION. Unless the commission is continued in existence as provided by Chapter 325, Government Code, after the review required by Section 531.004, Government Code, this chapter expires on the date the commission is abolished under that section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.08, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.15, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.21, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.440, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.06, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.108, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 161.003. SUNSET PROVISION. Unless the commission is continued in existence as provided by Chapter 325, Government Code, after the review required by Section 523.0003, Government Code, this chapter expires on the date the commission is abolished under that section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.08, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 2.15, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.21, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.440, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 4.06, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.108, eff. April 1, 2025.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

SUBCHAPTER C. PERSONNEL

Sec. 161.0515. ASSISTANT COMMISSIONER FOR STATE SUPPORTED LIVING CENTERS. (a) The commissioner shall employ an assistant commissioner for state supported living centers. The assistant commissioner must be selected based on education, training, experience, and demonstrated ability.

(b) The assistant commissioner reports directly to the commissioner.

(c) The assistant commissioner shall supervise the operation of the state supported living centers. As part of that duty, the assistant commissioner shall:

(1) verify that quality health and medical services are being provided in state supported living centers;

(2) verify and certify employee qualifications for employees of a state supported living center; and

(3) work with the commissioner to create administrative guidelines for proper implementation of federal and state statutory law and judicial decisions.

(d) The assistant commissioner shall coordinate with the appropriate staff of the Department of State Health Services to ensure that the ICF-IID component of the Rio Grande State Center implements and enforces state law and rules that apply to the operation of state supported living centers.

(e) The assistant commissioner shall consult with the appropriate staff at the Department of State Health Services to ensure that an individual with a dual diagnosis of mental illness and an intellectual disability who is a resident of a state supported living center or the ICF-IID component of the Rio Grande State Center is provided with appropriate care and treatment.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 36, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.444, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.445, eff. April 2, 2015.

Sec. 161.0541. MAINTENANCE OF MERIT SYSTEM. The merit system established as provided by Section 161.054 may be maintained in conjunction with other state agencies that are required by federal law to operate under a merit system.

Acts 1979, 66th Leg., p. 2338, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979.
Transferred, redesignated and amended from Human Resources Code, Section 21.007 by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.006, eff. April 2, 2015.

Sec. 161.057. CRIMINAL BACKGROUND CHECKS. (a) In this section, "eligible person" means a person whose criminal history record information the department is entitled to obtain from the Department of Public Safety under Section 411.13861, Government Code.

(b) The department may obtain criminal history record information regarding an eligible person as provided by Section 411.13861, Government Code. Criminal history record information obtained under Section 411.13861 is subject to the restrictions and requirements of that section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1209 (S.B. 1540), Sec. 4, eff. June 19, 2015.

SUBCHAPTER D. POWERS AND DUTIES OF DEPARTMENT

Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department is responsible for administering human services programs for the aging and persons with disabilities, including:

(1) administering and coordinating programs to provide community-based care and support services to promote independent living for populations that would otherwise be institutionalized;

(2) providing institutional care services, including services through convalescent and nursing homes and related

institutions under Chapter 242, Health and Safety Code;

(3) providing and coordinating programs and services for persons with disabilities, including programs for the treatment, rehabilitation, or benefit of persons with developmental disabilities or an intellectual disability;

(4) operating state facilities for the housing, treatment, rehabilitation, or benefit of persons with disabilities, including state supported living centers for persons with an intellectual disability;

(5) serving as the state unit on aging required by the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including performing the general functions under Section 101A.052 to ensure:

(A) implementation of the federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its subsequent amendments, including implementation of services and volunteer opportunities under that Act for older residents of this state through area agencies on aging;

(B) advocacy for residents of nursing facilities through the office of the state long-term care ombudsman;

(C) fostering of the state and community infrastructure and capacity to serve older residents of this state; and

(D) availability of a comprehensive resource for state government and the public on trends related to and services and programs for an aging population;

(6) performing all licensing and enforcement activities and functions related to long-term care facilities, including licensing and enforcement activities related to convalescent and nursing homes and related institutions under Chapter 242, Health and Safety Code;

(7) performing all licensing and enforcement activities related to assisted living facilities under Chapter 247, Health and Safety Code;

(8) performing all licensing and enforcement activities related to intermediate care facilities for persons with an intellectual disability under Chapter 252, Health and Safety Code;

(9) performing all licensing and enforcement activities and functions related to home and community support services agencies under Chapter 142, Health and Safety Code; and

(10) serving as guardian of the person or estate, or both, for an incapacitated individual as provided by Subchapter E of this

chapter and Title 3, Estates Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.
Amended by:
Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.03, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.447, eff. April 2, 2015.

Text of section effective until April 1, 2025

Sec. 161.073. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 531.0055(k), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.109, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 161.073. RULES. The executive commissioner may adopt rules reasonably necessary for the department to administer this chapter, consistent with the memorandum of understanding under Section 524.0101(a), Government Code, between the commissioner and the executive commissioner, as adopted by rule.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 1.13A.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.109, eff. April 1, 2025.

Sec. 161.074. COMPETITIVE GRANT PROGRAM. (a) The department shall establish a competitive grant program that promotes innovation in the delivery of aging and disability services and improves the quality of life for individuals receiving those services.

(b) A grant awarded by the department under the program shall be used to:

(1) test innovative practices in the provision of aging and disability services; or

(2) disseminate information regarding innovative practices being used to provide aging and disability services.

(c) The department shall request proposals for the award of a grant under the program. The department shall evaluate the proposals and award a grant based on a proposal's academic soundness, quantifiable effectiveness, and potentially positive impact on the delivery of aging and disability services.

(d) A grant awarded under Subsection (b)(1) must be made to an institution of higher education working in cooperation with a private entity that has committed resources to the project described in the proposal.

(e) A grant recipient may use grant money received under this section only to pay for activities directly related to the purpose of the grant program as described by Subsection (b) and may not use grant money for fees or advertising.

(f) The department shall establish procedures to administer the grant program, including a procedure for the submission of a proposal and a procedure to be used by the department to evaluate a proposal.

(g) The department shall enter into a contract that includes performance requirements with each grant recipient. The department shall monitor and enforce the terms of the contract. The contract must authorize the department to recoup grant money from a grant recipient for failure of the grant recipient to comply with the terms of the contract.

(h) The department shall post on its website a summary of each grant awarded under this section.

(i) The legislature may appropriate money described by Sections 142.0174, 242.0695, 247.0458, and 252.069, Health and Safety Code, including unexpended and unobligated amounts collected during a previous state fiscal biennium, to fund the grant program authorized by this section.

Added by Acts 2005, 79th Leg., Ch. 786 (S.B. 52), Sec. 5, eff. September 1, 2005.

Sec. 161.075. IMMUNITY FOR AREA AGENCIES ON AGING AND AGENCY EMPLOYEES AND VOLUNTEERS. (a) In this section:

(1) "Area agency on aging" means an agency described by 42 U.S.C. Section 3002(6) and through which the department ensures the implementation of services and volunteer opportunities for older persons in this state as provided by Section 161.071(5)(A).

(2) "Texas nonprofit organization" means a nonprofit corporation:

(A) that is organized under the Texas Nonprofit Corporation Law as described by Section 1.008(d), Business Organizations Code; and

(B) the funding of which is managed by an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(3) "Volunteer" means a person who:

(A) renders services for or on behalf of an area agency on aging under the supervision of an area agency on aging employee; and

(B) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

(b) An area agency on aging that conducts an election on behalf of a Texas nonprofit organization is not civilly or criminally liable for any act or omission, including an act or omission relating to verifying the qualifications of candidates and determining and reporting election results, that relates to a duty or responsibility with respect to conducting the election if the agency acted in good faith and within the scope of the agency's authority.

(c) An area agency on aging employee or volunteer who performs an act related to the conduct of an election described by Subsection (b) is not civilly or criminally liable for the act or any omission that relates to a duty or responsibility with respect to conducting the election if the person acted in good faith and within the scope of the person's authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 594 (H.B. 41), Sec. 12, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.449, eff. April 2, 2015.

Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. At least every 12 months, the department shall conduct an unannounced on-site survey in each group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 37, eff. June 11, 2009.

Sec. 161.077. INVESTIGATION DATABASE. (a) The department, in consultation with the Department of Family and Protective Services, shall develop and maintain an electronic database to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with an intellectual disability who reside in a publicly or privately operated intermediate care facility for persons with an intellectual disability or in a group home, other than a foster home, at which a Home and Community-based Services (HCS) provider provides services and the results of regulatory investigations or surveys performed by the department regarding those facilities or providers.

(b) The information collected in the database regarding investigations must be detailed, be easily retrievable, and include information relating to abuse, neglect, and exploitation investigations performed by either department and regulatory investigations performed by the department that are capable of being sorted by home, provider, and facility.

(c) The database must facilitate the entry of required information and the sharing of information between the department and the Department of Family and Protective Services. At a minimum, the database must include the following information regarding investigations of abuse, neglect, or exploitation:

(1) the number of allegations of abuse, neglect, or exploitation received relating to a facility or group home, other than a foster home; and

(2) the number of allegations relating to a facility or group home, other than a foster home, substantiated through an investigation.

(d) Each allegation involving a unique individual in a facility

or group home, other than a foster home, is considered a separate allegation for purposes of Subsection (c).

(e) The department shall ensure that information related to findings concerning failure to comply with regulatory standards directly related to the prevention of abuse, neglect, or exploitation in a facility or group home, other than a foster home, is collected and stored in the database and may be disaggregated by home, provider, and facility.

(f) The department and the Department of Family and Protective Services may not release or distribute information in the database in a form that contains personally identifiable information related to an individual in a facility or group home or to a victim of abuse, neglect, or exploitation.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 37, eff. June 11, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.450, eff. April 2, 2015.

Sec. 161.078. ELIGIBILITY FOR DEAF-BLIND WITH MULTIPLE DISABILITIES WAIVER PROGRAM. (a) Subject to the availability of funds appropriated for that purpose, the department shall provide home-based and community-based services under the deaf-blind with multiple disabilities waiver program without regard to a person's age if the person applies for and is otherwise eligible to receive services under the waiver program.

(b) Subsection (a) does not prevent the department from establishing an age requirement with respect to other programs or services offered to persons who are deaf-blind with multiple disabilities, including the summer outdoor training program for individuals who are deaf-blind with multiple disabilities established under Section 22.036(c).

Added by Acts 2009, 81st Leg., R.S., Ch. 269 (S.B. 37), Sec. 1, eff. May 30, 2009.
Redesignated from Human Resources Code, Section 161.076 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(35), eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.451, eff. April 2, 2015.

Sec. 161.079. INFORMAL CAREGIVER SERVICES. (a) In this section:

(1) "Area agency on aging" has the meaning assigned by Section 161.075.

(2) "Local entity" means an area agency on aging or other entity that provides services and support for older persons or persons with disabilities and their caregivers.

(b) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to coordinate public awareness outreach efforts regarding the role of informal caregivers in long-term care situations, including efforts to raise awareness of support services available in this state for informal caregivers.

(c) The department shall perform the following duties to assist a local entity with outreach efforts under this section:

(1) expand an existing department website to provide a link through which a local entity may post and access best practices information regarding informal caregiver support; and

(2) create a document template that a local entity may adapt as necessary to reflect resources available to informal caregivers in the area supported by the entity.

(d) The department shall create or modify a form to be included in the functional eligibility determination process for long-term care benefits for older persons under the Medicaid program and, to the extent considered feasible by the department, may include a form in systems for other long-term care support services. The department shall use the form to identify informal caregivers for the purpose of enabling the department to refer the caregivers to available support services. The form may be based on an existing form, may include optional questions for an informal caregiver, or may include questions from similar forms used in other states.

(e) The department shall coordinate with area agencies on aging and, to the extent considered feasible by the department, may coordinate with other local entities to develop and implement a protocol to evaluate the needs of certain informal caregivers. The protocol must:

(1) provide guidance on the type of caregivers who should receive an assessment; and

(2) include the use of a standardized assessment tool that may be based on similar tools used in other states, including the Tailored Caregiver Assessment and Referral process.

(f) The department shall require area agencies on aging and, to the extent considered feasible by the department, other local entities to use the protocol and assessment tool under Subsection (e) and report the data gathered from the assessment tool to the department.

(g) The department shall analyze the data reported under Subsection (f) and collected from the form under Subsection (d).

(h) The department shall use the data analyzed under Subsection (g) to:

(1) evaluate the needs of assessed informal caregivers;

(2) measure the effectiveness of certain informal caregiver support interventions;

(3) improve existing programs;

(4) develop new services as necessary to sustain informal caregivers; and

(5) determine the effect of informal caregiving on employment and employers.

Added by Acts 2009, 81st Leg., R.S., Ch. 726 (S.B. 271), Sec. 1, eff. June 19, 2009.
Redesignated from Human Resources Code, Section 161.076 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(36), eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.452, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 20, eff. September 1, 2021.

Sec. 161.080. CONTRACTS FOR SERVICES FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. (a) A person that provides services to individuals with developmental disabilities may contract with a state supported living center for the center to provide services and resources to support those individuals.

(b) Notwithstanding any other law, a state supported living center may provide nonresidential services to support an individual if the provision of services to the individual does not interfere with the provision of services to a resident of the state supported living center.

(c) The executive commissioner by rule shall establish:

(1) a list of services a state supported living center may provide under a contract described by Subsection (a); and

(2) procedures for the commission to create, maintain, and amend as needed a schedule of fees that a state supported living center may charge for a service included in the list described by Subdivision (1).

(d) In creating a schedule of fees, the commission shall:

(1) use the reimbursement rate for the applicable service under the Medicaid program; or

(2) modify that rate with a written justification for the modification and after holding a public hearing on the issue of the modification.

Text of subsection effective on April 1, 2025

(e) Notwithstanding Subsection (c), a state supported living center, based on negotiations between the center and a managed care organization, as defined by Section 540.0001, Government Code, may charge a fee for a service other than the fee provided by the schedule of fees created by the commission under this section.

Text of subsection effective until April 1, 2025

(e) Notwithstanding Subsection (c), a state supported living center, based on negotiations between the center and a managed care organization, as defined by Section 533.001, Government Code, may charge a fee for a service other than the fee provided by the schedule of fees created by the commission under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 904 (H.B. 748), Sec. 1, eff. June 19, 2009.
Redesignated from Human Resources Code, Section 161.077 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(37), eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 320 (H.B. 1760), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.453, eff.

April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 300 (S.B. 547), Sec. 1, eff. May 29, 2017.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.110, eff. April 1, 2025.

Sec. 161.081. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: STREAMLINING AND UNIFORMITY.

Text of subsection effective until April 1, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 521.0001, Government Code.

(b) The department, in consultation with the commission, shall streamline the administration of and delivery of services through Section 1915(c) waiver programs. In implementing this subsection, the department, subject to Subsection (c), may consider implementing the following streamlining initiatives:

(1) reducing the number of forms used in administering the programs;

(2) revising program provider manuals and training curricula;

(3) consolidating service authorization systems;

(4) eliminating any physician signature requirements the department considers unnecessary;

(5) standardizing individual service plan processes across the programs;

(6) if feasible:

(A) concurrently conducting program certification and billing audit and review processes and other related audit and review processes;

(B) streamlining other billing and auditing requirements;

(C) eliminating duplicative responsibilities with respect to the coordination and oversight of individual care plans for persons receiving waiver services; and

(D) streamlining cost reports and other cost reporting processes; and

(7) any other initiatives that will increase efficiencies in the programs.

Text of subsection effective until April 1, 2025

(c) The department shall ensure that actions taken under Subsection (b) do not conflict with any requirements of the commission under Section 531.0218, Government Code.

Text of subsection effective on April 1, 2025

(c) The department shall ensure that actions taken under Subsection (b) do not conflict with any requirements of the commission under Sections 546.0402(a), (b), and (c), Government Code.

Text of subsection effective until April 1, 2025

(d) The department and the commission shall jointly explore the development of uniform licensing and contracting standards that would:

(1) apply to all contracts for the delivery of Section 1915(c) waiver program services;

(2) promote competition among providers of those program services; and

(3) integrate with other department and commission efforts to streamline and unify the administration and delivery of the program services, including those required by this section or Section 531.0218, Government Code.

Text of subsection effective on April 1, 2025

(d) The department and the commission shall jointly explore the development of uniform licensing and contracting standards that would:

(1) apply to all contracts for the delivery of Section 1915(c) waiver program services;

(2) promote competition among providers of those program services; and

(3) integrate with other department and commission efforts to streamline and unify the administration and delivery of the program services, including those required by this section or Sections 546.0402(a), (b), and (c), Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 759 (S.B. 705), Sec. 1, eff. June 19, 2009.

Redesignated from Human Resources Code, Section 161.077 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(38), eff. September 1, 2011.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.06(a), eff. September 28, 2011.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.111, eff. April 1, 2025.

Sec. 161.082. LONG-TERM CARE MEDICAID WAIVER PROGRAMS: UTILIZATION REVIEW.

Text of subsection effective until April 1, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 521.0001, Government Code.

(b) The department shall perform a utilization review of services in all Section 1915(c) waiver programs. The utilization review must include, at a minimum, reviewing program recipients' levels of care and any plans of care for those recipients that exceed service level thresholds established in the applicable waiver program guidelines.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.06(b), eff. September 28, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.112, eff. April 1, 2025.

Sec. 161.083. CORRECTIONS MEDICATION AIDES. (a) The executive commissioner shall establish:

(1) minimum standards and procedures for the approval of corrections medication aide training programs, including curricula, developed under Section 501.1485, Government Code;

(2) minimum requirements for the issuance, denial, renewal, suspension, and revocation of a permit to a corrections medication

aide, including the payment of an application or renewal fee in an amount necessary to cover the costs incurred by the department in administering this section; and

(3) the acts and practices that are within and outside the scope of a permit issued under this section.

(b) Not later than the 90th day after receipt of an application for approval of a corrections medication aide training program developed under Section 501.1485, Government Code, the department shall:

(1) approve the program, if the program meets the minimum standards and procedures established under Subsection (a)(1); or

(2) provide notice to the Texas Department of Criminal Justice that the program is not approved and include in the notice a description of the actions that are required for the program to be approved.

(c) The department shall issue a permit to or renew the permit of an applicant who meets the minimum requirements established under Subsection (a)(2). The department shall coordinate with the Texas Department of Criminal Justice in the performance of the department's duties and functions under this subsection.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 65.06, eff. September 28, 2011.

Sec. 161.084. MEDICAID SERVICE OPTIONS PUBLIC EDUCATION INITIATIVE.

Text of subsection effective until April 1, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 531.001, Government Code.

Text of subsection effective on April 1, 2025

(a) In this section, "Section 1915(c) waiver program" has the meaning assigned by Section 521.0001, Government Code.

Text of subsection effective until April 1, 2025

(b) The department, in cooperation with the commission, shall educate the public on:

(1) the availability of home and community-based services under a Medicaid state plan program, including the primary home care

and community attendant services programs, and under a Section 1915(c) waiver program; and

(2) the various service delivery options available under the Medicaid program, including the consumer direction models available to recipients under Section 531.051, Government Code.

Text of subsection effective on April 1, 2025

(b) The department, in cooperation with the commission, shall educate the public on:

(1) the availability of home and community-based services under a Medicaid state plan program, including the primary home care and community attendant services programs, and under a Section 1915(c) waiver program; and

(2) the various service delivery options available under the Medicaid program, including the consumer direction models available to recipients under Subchapter C, Chapter 546, Government Code.

(c) The department may coordinate the activities under this section with any other related activity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1057 (S.B. 222), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.113, eff. April 1, 2025.

Sec. 161.085. INTEREST LIST REPORTING. The department shall post on the department's Internet website historical data, categorized by state fiscal year, on the percentages of individuals who elect to receive services under a program for which the department maintains an interest list once their names reach the top of the list.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1057 (S.B. 222), Sec. 3, eff. September 1, 2011.

Sec. 161.086. ELECTRONIC VISIT VERIFICATION SYSTEM. If it is cost-effective, the department shall implement an electronic visit verification system under appropriate programs administered by the

department under the Medicaid program that allows providers to electronically verify and document basic information relating to the delivery of services, including:

(1) the provider's name;

(2) the recipient's name;

(3) the date and time the provider begins and ends the delivery of services; and

(4) the location of service delivery.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.07, eff. September 28, 2011.

Sec. 161.087. GIFTS AND GRANTS. (a) The department may accept gifts and grants of money, personal property, and real property from public or private sources to expand and improve the human services programs for the aging and persons with disabilities available in this state.

(b) The department shall use a gift or grant of money, personal property, or real property made for a specific purpose in accordance with the purpose expressly prescribed by the donor. The department may decline the gift or grant if the department determines that it cannot be economically used for that purpose.

(c) The department shall keep a record of each gift or grant in the department's central office in the city of Austin.

Added by Acts 2013, 83rd Leg., R.S., Ch. 320 (H.B. 1760), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.454, eff. April 2, 2015.

Sec. 161.088. TRAUMA-INFORMED CARE TRAINING. (a) The department shall develop or adopt trauma-informed care training for employees who work directly with individuals with intellectual and developmental disabilities in state supported living centers and intermediate care facilities. The executive commissioner by rule shall require new employees to complete the training before working with individuals with intellectual and developmental disabilities.

(b) The training required under this section may be provided

through an Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 796 (H.B. 2789), Sec. 1, eff. September 1, 2015.

Sec. 161.089. ADMINISTRATIVE PENALTIES. (a) This section applies to the following waiver programs established under Section 1915(c), Social Security Act (42 U.S.C. Section 1396n(c)), and administered by the commission to serve persons with an intellectual or developmental disability:

(1) the home and community-based services (HCS) waiver program; and

(2) the Texas home living (TxHmL) waiver program.

(b) The commission may assess and collect an administrative penalty against a provider who participates in a program to which this section applies for a violation of a law or rule relating to the program. If the commission assesses an administrative penalty against a provider for a violation of a law or rule, the commission may not impose a payment hold against or otherwise withhold contract payments from the provider for the same violation of a law or rule.

(c) After consulting with appropriate stakeholders, the executive commissioner shall develop and adopt rules regarding the imposition of administrative penalties under this section. The rules must:

(1) specify the types of violations that warrant imposition of an administrative penalty;

(2) establish a schedule of progressive administrative penalties in accordance with the relative type, frequency, and seriousness of a violation;

(3) prescribe reasonable amounts to be imposed for each violation giving rise to an administrative penalty, subject to Subdivision (4);

(4) authorize the imposition of an administrative penalty in an amount not to exceed $5,000 for each violation;

(5) provide that a provider commits a separate violation each day the provider continues to violate the law or rule;

(6) ensure standard and consistent application of administrative penalties throughout the state;

(7) provide for an administrative appeals process to

adjudicate claims and appeals relating to the imposition of an administrative penalty under this section that is in accordance with Chapter 2001, Government Code; and

(8) ensure standard and consistent interpretation of service delivery rules and consistent application of administrative penalties throughout this state.

(c-1) On adoption of the rules under Subsection (c), the executive commissioner shall develop interpretative guidelines for regulatory staff and providers regarding the imposition of administrative penalties under this section.

(d) In determining the types of violations that warrant imposition of an administrative penalty and in establishing the schedule of progressive administrative penalties and penalty amounts under Subsection (c), the executive commissioner must consider:

(1) the seriousness of a violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard to the health or safety of recipients resulting from the violation;

(2) the provider's history of previous violations;

(3) whether the provider:

(A) had prior knowledge of the violation, including whether the provider identified the violation through the provider's internal quality assurance process; and

(B) made any efforts to mitigate or correct the identified violation;

(4) the penalty amount necessary to deter future violations; and

(5) any other matter justice may require.

(e) Except as provided by Subsection (f), the executive commissioner by rule shall provide to a provider who has implemented a plan of correction a reasonable period of time following the date the commission sends notice to the provider of the violation to correct the violation before the commission may assess an administrative penalty. The period may not be less than 45 days.

(f) The commission may assess an administrative penalty without providing a reasonable period of time to a provider to correct the violation if the violation:

(1) represents a pattern of violation that results in actual harm;

(2) is widespread in scope and results in actual harm;

(3) is widespread in scope and constitutes a potential for actual harm;

(4) constitutes an immediate threat to the health or safety of a recipient;

(5) substantially limits the provider's ability to provide care; or

(6) is a violation in which a provider:

(A) wilfully interferes with the work of a representative of the commission or the enforcement of a law relating to a program to which this section applies;

(B) fails to pay a penalty assessed by the commission under this section not later than the 10th day after the date the assessment of the penalty becomes final, subject to Section 161.0891; or

(C) fails to submit a plan of correction not later than the 10th day after the date the provider receives a statement of the violation.

(g) Notwithstanding any other provision of this section, an administrative penalty ceases to be incurred on the date a violation is corrected.

(h) In this section:

(1) "Actual harm" means a negative outcome that compromises a recipient's physical, mental, or emotional well-being.

(2) "Immediate threat to the health or safety of a recipient" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a recipient.

(3) "Pattern of violation" means repeated, but not pervasive, failures of a provider to comply with a law relating to a program to which this section applies that:

(A) result in a violation; and

(B) are found throughout the services provided by the provider or that affect or involve the same recipients or provider employees or volunteers.

(4) "Recipient" means a person served by a program to which this section applies.

(5) "Widespread in scope" means a violation of a law relating to a program to which this section applies that:

(A) is pervasive throughout the services provided by the provider; or

(B) represents a systemic failure by the provider that affects or has the potential to affect a large portion of or all of the recipients.

Added by Acts 2015, 84th Leg., R.S., Ch. 826 (H.B. 4001), Sec. 15, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 1200 (S.B. 1385), Sec. 1, eff. September 1, 2015.
Redesignated from Human Resources Code, Section 161.088 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(29), eff. September 1, 2017.
Redesignated and amended from Human Resources Code, Section 161.088 by Acts 2017, 85th Leg., R.S., Ch. 487 (H.B. 2590), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 906 (H.B. 3720), Sec. 4, eff. September 1, 2021.

Sec. 161.0892. INFORMAL DISPUTE RESOLUTION. (a) The executive commissioner by rule shall establish an informal dispute resolution process in accordance with this section. The process must provide for adjudication by an appropriate disinterested person of disputes relating to a proposed enforcement action or related proceeding of the commission against a provider participating in a waiver program described by Section 161.089. The informal dispute resolution process must require:

(1) a provider participating in a waiver program described by Section 161.089 to request informal dispute resolution not later than the 10th calendar day after the date of notification by the commission of the violation of a law or rule relating to the program; and

(2) the commission to complete the process not later than the 30th calendar day after the date of receipt of a request from a provider for informal dispute resolution.

(b) As part of the informal dispute resolution process established under this section, the commission shall contract with an appropriate disinterested person to adjudicate disputes between a provider participating in a waiver program described by Section 161.089 and the commission concerning a statement of violations

prepared by the commission. Section 2009.053, Government Code, does not apply to the selection of an appropriate disinterested person under this subsection. The person with whom the commission contracts shall adjudicate all disputes described by this subsection.

(c) The executive commissioner shall adopt rules to adjudicate claims in contested cases.

(d) The commission may not delegate its responsibility to administer the informal dispute resolution process established by this section to another state agency.

Added by Acts 2017, 85th Leg., R.S., Ch. 487 (H.B. 2590), Sec. 2, eff. September 1, 2017.

SUBCHAPTER D-1. ADMINISTRATION OF MEDICATION FOR CLIENTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

Sec. 161.091. DEFINITIONS. In this subchapter:

(1) "Administration of medication" means:

(A) removing a unit or dose of medication from a previously dispensed, properly labeled container;

(B) verifying the medication with the medication order;

(C) giving the proper medication in the proper dosage to the proper client at the proper time by the proper administration route; and

(D) recording the time of administration and dosage administered.

(2) "Client" means a person with an intellectual and developmental disability who is receiving services from a facility or program listed in Section 161.092.

(3) "Unlicensed person" means an individual not licensed as a health care provider who provides services at or for a facility or program listed in Section 161.092, including:

(A) a nurse aide, orderly, assistant, attendant, technician, home health aide, medication aide with a permit issued by a state agency, or other individual who provides personal health care-related services;

(B) a person who is monetarily compensated to perform certain health-related tasks and functions in a complementary or assistive role to a licensed nurse who provides direct client care or performs common nursing functions;

(C) a person who performs those tasks and functions as a volunteer but does not qualify as a friend providing gratuitous nursing care of the sick under Section 301.004, Occupations Code; or

(D) a person who is a professional nursing student who provides care for monetary compensation and not as part of a formal educational program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.092. APPLICABILITY. This subchapter applies only to administration of medication provided to certain persons with intellectual and developmental disabilities who are served:

(1) in a small facility with not less than one and not more than eight beds that is licensed or certified under Chapter 252, Health and Safety Code;

(2) in a medium facility with not less than 9 and not more than 13 beds that is licensed or certified under Chapter 252, Health and Safety Code; or

(3) by one of the following Section 1915(c) waiver programs administered by the department to serve persons with intellectual and developmental disabilities:

(A) the Home and Community-Based Services waiver program; or

(B) the Texas Home Living waiver program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.455, eff. April 2, 2015.

Sec. 161.093. ADMINISTRATION OF MEDICATION. (a) Notwithstanding other law, an unlicensed person may provide administration of medication to a client without the requirement that a registered nurse delegate or oversee each administration if:

(1) the medication is:

(A) an oral medication;

(B) a topical medication; or

(C) a metered dose inhaler;

(2) the medication is administered to the client for a stable or predictable condition;

(3) the client has been personally assessed by a registered nurse initially and in response to significant changes in the client's health status, and the registered nurse has determined that the client's health status permits the administration of medication by an unlicensed person; and

(4) the unlicensed person has been:

(A) trained by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication; or

(B) determined to be competent by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed person.

(b) The administration of medication other than the medications described by Subsection (a)(1) is subject to the rules of the Texas Board of Nursing regarding the delegation of nursing tasks to unlicensed persons in independent living environments such as the facilities and programs listed in Section 161.092.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.094. DEPARTMENT DUTIES. (a) The department shall ensure that:

(1) administration of medication by an unlicensed person under this subchapter is reviewed at least annually and after any significant change in a client's condition by a registered nurse or a licensed vocational nurse under the supervision of a registered nurse; and

(2) a facility or program listed in Section 161.092 has policies to ensure that the determination of whether an unlicensed person may provide administration of medication to a client under Section 161.093 may be made only by a registered nurse.

(b) The department shall verify that:

(1) each client is assessed to identify the client's needs and abilities regarding the client's medications;

(2) the administration of medication by an unlicensed person to a client is performed only by an unlicensed person who is authorized to perform that administration under Section 161.093; and

(3) the administration of medication to each client is performed in such a manner as to ensure the greatest degree of independence, including the use of an adaptive or assistive aid, device, or strategy as allowed under program rules.

(c) The department shall enforce this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.095. LIABILITY. (a) A registered nurse performing a client assessment required under Section 161.093, or a registered nurse or licensed vocational nurse training an unlicensed person or determining whether an unlicensed person is competent to perform administration of medication under Section 161.093, may be held accountable or civilly liable only in relation to whether the nurse properly:

(1) performed the assessment;

(2) conducted the training; and

(3) determined whether the unlicensed person is competent to provide administration of medication to clients.

(b) The Texas Board of Nursing may take disciplinary action against a registered nurse or licensed vocational nurse under this subchapter only in relation to whether:

(1) the registered nurse properly performed the client assessment required by Section 161.093;

(2) the registered nurse or licensed vocational nurse properly trained the unlicensed person in the administration of medication; and

(3) the registered nurse or licensed vocational nurse properly determined whether an unlicensed person is competent to provide administration of medication to clients.

(c) A registered nurse or licensed vocational nurse may not be held accountable or civilly liable for the acts or omissions of an unlicensed person performing administration of medication.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

Sec. 161.096. CONFLICT WITH OTHER LAW. This subchapter controls to the extent of a conflict with other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 677 (S.B. 1857), Sec. 1, eff. June 17, 2011.

SUBCHAPTER E. GUARDIANSHIP SERVICES

Sec. 161.101. GUARDIANSHIP SERVICES. (a) The department shall file an application under Section 1101.001 or 1251.003, Estates Code, to be appointed guardian of the person or estate, or both, of a minor referred to the department under Section 48.209(a)(1) for guardianship services if the department determines:

(1) that the minor, because of a mental or physical condition, will be substantially unable to provide for the minor's own food, clothing, or shelter, to care for the minor's own physical health, or to manage the individual's own financial affairs when the minor becomes an adult; and

(2) that a less restrictive alternative to guardianship is not available for the minor.

(b) The department shall conduct a thorough assessment of the conditions and circumstances of an elderly person or person with a disability referred to the department under Section 48.209(a)(2) for guardianship services to determine whether a guardianship is appropriate for the individual or whether a less restrictive alternative is available for the individual. In determining whether a guardianship is appropriate, the department may consider the resources and funds available to meet the needs of the elderly person or person with a disability. The executive commissioner shall adopt rules for the administration of this subsection.

(c) Subject to Subsection (c-1), if after conducting an assessment of an elderly person or person with a disability under Subsection (b) the department determines that:

(1) guardianship is appropriate for the elderly person or person with a disability, the department shall:

(A) file an application under Section 1101.001 or 1251.003, Estates Code, to be appointed guardian of the person or estate, or both, of the individual; or

(B) if the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, refer the individual to that person or program as provided by that section; or

(2) a less restrictive alternative to guardianship is available for the elderly person or person with a disability, the department shall pursue the less restrictive alternative instead of taking an action described by Subdivision (1).

(c-1) Not later than the 70th day after the date the department receives a referral under Section 48.209(a)(2) for guardianship services, the department shall make the determination required by Subsection (c) and, if the department determines that guardianship is appropriate and that the department should serve as guardian, file the application to be appointed guardian under Section 1101.001 or 1251.003, Estates Code. If the department determines that an alternative person or program described by Section 161.102 is available to serve as guardian, the department shall refer the elderly person or person with a disability to that alternative person or program in a manner that would allow the alternative person or program sufficient time to file, not later than the 70th day after the date the department received the referral, an application to be appointed guardian.

(c-2) With the approval of the Department of Family and Protective Services, the department may extend, by not more than 30 days, a period prescribed by Subsection (c-1) if the extension is:

(1) made in good faith, including any extension for a person or program described by Section 161.102 that intends to file an application to be appointed guardian; and

(2) in the best interest of the elderly person or person with a disability.

(d) The department may not be required by a court to file an application for guardianship, and except as provided by Subsection (f) and Section 1203.108(b), Estates Code, the department may not be appointed as permanent guardian for any individual unless the department files an application to serve or otherwise agrees to serve as the individual's guardian of the person or estate, or both.

(e) A guardianship created for an individual as a result of an application for guardianship filed under Subsection (a) may not take effect before the individual's 18th birthday.

(f) On appointment by a probate court under Section

1203.108(b), Estates Code, the department shall serve as the successor guardian of the person or estate, or both, of a ward described by that section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 726 (S.B. 271), Sec. 2, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 935 (H.B. 3112), Sec. 1, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.456, eff. April 2, 2015.

Sec. 161.102. REFERRAL TO GUARDIANSHIP PROGRAM, COURT, OR OTHER PERSON. (a) If the department becomes aware of a guardianship program, private professional guardian, or other person willing and able to provide the guardianship services that would otherwise be provided by the department to an individual referred to the department by the Department of Family and Protective Services under Section 48.209, the department shall refer the individual to that person or program for guardianship services.

(b) If requested by a court, the department shall notify the court of any referral made to the department by the Department of Family and Protective Services relating to any individual who is domiciled or found in a county where the requesting court has probate jurisdiction and who may be appropriate for a court-initiated guardianship proceeding under Chapter 1102, Estates Code. In making a referral under this subsection and if requested by the court, the department shall, to the extent allowed by law, provide the court with all relevant information in the department's records relating to the individual. The court, as part of this process, may not require the department to:

(1) perform the duties of a guardian ad litem or court investigator as prescribed by Chapter 1102, Estates Code; or

(2) gather additional information not contained in the department's records.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.457, eff. April 2, 2015.

Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. If appropriate, the department may contract with a political subdivision of this state, a guardianship program as defined by Section 1002.016, Estates Code, a private agency, or another state agency for the provision of guardianship services under this section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.458, eff. April 2, 2015.

Sec. 161.104. QUALITY ASSURANCE PROGRAM. The department shall develop and implement a quality assurance program for guardianship services provided by or on behalf of the department. If the department enters into a contract with a political subdivision, guardianship program, private agency, or other state agency under Section 161.103, the department shall establish a monitoring system as part of the quality assurance program to ensure the quality of guardianship services for which the department contracts under that section.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Sec. 161.105. OATH. A representative of the department shall take the oath required by the Estates Code on behalf of the department if the department is appointed guardian of the person or estate, or both, of a ward under Title 3 of that code.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.459, eff.

April 2, 2015.

Sec. 161.106. GUARDIANSHIP POWERS AND DUTIES. In serving as guardian of the person or estate, or both, for an incapacitated individual, the department has all the powers granted and duties prescribed to a guardian under Title 3, Estates Code, or any other applicable law.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.460, eff. April 2, 2015.

Sec. 161.107. EXEMPTION FROM GUARDIANSHIP BONDS, CERTAIN COSTS, FEES, AND EXPENSES. (a) The department or a political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to post a bond or pay any cost or fee associated with a bond otherwise required by the Estates Code in guardianship matters.

(b) The department is not required to pay any cost or fee otherwise imposed for court proceedings or other services, including:

(1) a filing fee or fee for issuance of service of process imposed by Section 51.319, Government Code;

(2) a judge's fee imposed by Section 25.0008 or 25.0029, Government Code;

(3) a cost or security fee imposed by Section 53.051, 53.052, 1053.051, or 1053.052, Estates Code; or

(4) a fee imposed by a county officer under Section 118.011 or 118.052, Local Government Code.

(c) The department may not be required to pay fees associated with the appointment of a guardian ad litem or attorney ad litem.

(d) A political subdivision of this state or state agency with which the department contracts under Section 161.103 is not required to pay any cost or fee otherwise required by the Estates Code.

(e) If the department is appointed guardian, the department is not liable for funding services provided to the department's ward, including long-term care or burial expenses.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.461, eff. April 2, 2015.
Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.08, eff. January 1, 2022.

Sec. 161.108. SUCCESSOR GUARDIAN. The department shall review each of the department's pending guardianship cases at least annually to determine whether a more suitable person, including a guardianship program or private professional guardian, is willing and able to serve as successor guardian for a ward of the department. If the department becomes aware of any person's willingness and ability to serve as successor guardian, the department shall notify the court in which the guardianship is pending as required by Section 1203.151, Estates Code.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.462, eff. April 2, 2015.

Sec. 161.109. ACCESS TO RECORDS OR DOCUMENTS. (a) The department shall have access to all of the records and documents concerning an individual who is referred for guardianship services or to whom guardianship services are provided under this subchapter that are necessary to the performance of the department's duties under this subchapter, including:

(1) client-identifying information; and

(2) medical, psychological, educational, financial, and residential information.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial or medical record, including a mental health record, from any source if the request for a record is related to an assessment for guardianship services conducted by the department or the provision of guardianship

services by the department.

(c) If the department cannot obtain access to a record or document that is necessary to properly perform a duty under this subchapter, the department may petition the probate court or the statutory or constitutional court having probate jurisdiction for access to the record or document.

(d) The court with probate jurisdiction shall, on good cause shown, order the person or entity who denied access to a record or document to allow the department to have access to the record or document under the terms and conditions prescribed by the court.

(e) A person or entity is entitled to notice of and a hearing on the department's petition for access as described by this section.

(f) Access to, or disclosure of, a confidential record or other confidential information under this section does not constitute a waiver of confidentiality for other purposes or as to other persons.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 599 (S.B. 220), Sec. 3, eff. September 1, 2011.

Sec. 161.110. LEGAL REPRESENTATION OF DEPARTMENT. (a) Except as provided by Subsection (b), (c), or (f), the prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding under this subchapter unless the representation would be a conflict of interest.

(b) If the attorney representing the state in criminal cases in the county court is unable to represent the department in an action under this subchapter because of a conflict of interest, the attorney general shall represent the department in the action.

(c) If the attorney general is unable to represent the department in an action under this subchapter, the attorney general shall deputize an attorney who has contracted with the department under Subsection (d) or an attorney employed by the department under Subsection (e) to represent the department in the action.

(d) Subject to the approval of the attorney general, the department may contract with a private attorney to represent the department in an action under this subchapter.

(e) The department may employ attorneys to represent the department in an action under this subchapter.

(f) In a county having a population of more than 2.8 million, the prosecuting attorney representing the state in civil cases in the county court shall represent the department in any proceeding under this subchapter unless the representation would be a conflict of interest. If such attorney is unable to represent the department in an action under this subchapter because of a conflict of interest, the attorney general shall represent the department in the action.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Sec. 161.111. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (a) All files, reports, records, communications, or working papers used or developed by the department in the performance of duties relating to the assessment for or the provision of guardianship services to an individual referred for guardianship services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code.

(b) Confidential information may be disclosed only for a purpose consistent with this subchapter, as required by other state or federal law, or as necessary to enable the department to exercise its powers and duties as guardian of the person or estate, or both, of an individual.

(c) A court may order disclosure of confidential information only if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of the hearing is served on the department and each interested party; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is being assessed by the department for guardianship services under this subchapter;

(B) is a ward of the department; or

(C) provides services to a ward of the department.

(d) The executive commissioner shall establish a policy and procedures for the exchange of information with another state agency or governmental entity, including a court, with a local guardianship program to which an individual is referred for services, or with any other entity who provides services to a ward of the department, as necessary for the department, state agency, governmental entity, or other entity to properly execute its respective duties and responsibilities to provide guardianship services or other needed services to meet the needs of the ward under this subchapter or other law. An exchange of information under this subsection does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

(e) To the extent consistent with department policies and procedures, the department on request may release confidential information in the record of an individual who is assessed by the department or is a former ward of the department to:

(1) the individual;

(2) the individual's guardian; or

(3) an executor or administrator of the individual's estate.

(f) Before releasing confidential information under Subsection (e), the department shall edit the information to protect the identity of the reporter to the Department of Family and Protective Services and to protect any other individual whose life or safety may be endangered by the release. A release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 599 (S.B. 220), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.463, eff. April 2, 2015.

Sec. 161.112. INDEMNIFICATION FOR LEGAL EXPENSES. If a present or former employee of the department who was involved in activities related to the provision of guardianship services under this

subchapter is criminally prosecuted for conduct related to the person's misfeasance or nonfeasance in the course and scope of the person's employment and is found not guilty after a trial or appeal or if the complaint or indictment is dismissed without a plea of guilty or nolo contendere being entered, the department may indemnify the person or the person's estate for the reasonable attorney's fees incurred in defense of the prosecution up to a maximum of $10,000.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Sec. 161.113. IMMUNITY. (a) In this section, "volunteer" means a person who:

(1) renders services for or on behalf of the department under the supervision of a department employee; and

(2) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

(b) A department employee or an authorized volunteer who performs a department duty or responsibility under this subchapter is immune from civil or criminal liability for any act or omission that relates to the duty or responsibility if the person acted in good faith and within the scope of the person's authority.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.04, eff. September 1, 2005.

Sec. 161.114. USE OF VOLUNTEERS. (a) In this section, "volunteer" has the meaning assigned by Section 161.113.

(b) The department shall encourage the involvement of volunteers in guardianships in which the department serves as guardian of the person or estate, or both. To encourage that involvement, the department shall identify issues and tasks with which a volunteer could assist the department in a guardianship, subject to Subsection (c).

(c) A volunteer may provide life enrichment activities, companionship, transportation services, and other services to or for the ward in a guardianship, except the volunteer may not provide services that would require the volunteer to be certified under Section 155.102, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 599 (S.B. 220), Sec. 5, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 42 (S.B. 966), Sec. 2.27, eff. September 1, 2014.

SUBCHAPTER F. LIFESPAN RESPITE SERVICES PROGRAM

Sec. 161.151. DEFINITIONS. In this subchapter:

(1) "Chronic serious health condition" means a health condition that:

(A) requires periodic treatment by a health care provider, including a nurse as authorized by Chapter 301, Occupations Code, or a physician assistant as authorized by Chapter 204, Occupations Code; and

(B) continues over an extended period, including recurring episodes of a single underlying health condition such as asthma, diabetes, epilepsy, or multiple sclerosis.

(2) "Respite services" means support services, including in-home services or day activity and health services, that are provided for the purpose of temporarily giving relief to a primary caregiver who provides care to an individual with a chronic serious health condition or disability.

(3) "Respite services coordinator" means a community-based organization or local governmental entity with which the department enters into a contract to facilitate access to respite services under Section 161.154.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 18, eff. June 19, 2015.

Sec. 161.152. LIFESPAN RESPITE SERVICES PROGRAM. The department shall implement the lifespan respite services program to promote the provision of respite services through contracts with eligible community-based organizations or local governmental entities.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.153. ELIGIBILITY. (a) A person is eligible to participate in the program if the person:

(1) is the primary caregiver for a person who:

(A) is related to the caregiver within the second degree of consanguinity or affinity;

(B) has a chronic serious health condition or disability;

(C) requires assistance with one or more activities of daily living; and

(D) is not eligible for or not able to participate in any other existing program that provides respite services; and

(2) meets criteria specified in rules adopted by the executive commissioner.

(b) The executive commissioner may not specify criteria that limit a person's eligibility based on the type of chronic serious health condition or disability of the person receiving care.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.154. RESPITE SERVICES CONTRACTS. (a) The department shall contract with at least three eligible community-based organizations or local governmental entities selected by the department to:

(1) provide respite services; and

(2) facilitate access to respite services.

(b) The department may award a contract under this section only after issuing a request for proposals for the contract.

(c) A community-based organization or local governmental entity is eligible to contract under this section only if the organization or entity has experience in and an existing procedure for:

(1) coordinating support services for multiple groups of persons who need support services, including persons with a physical or intellectual disability and elderly persons;

(2) connecting caregivers with respite services providers;

(3) maintaining and providing information regarding available respite services; and

(4) conducting public awareness activities regarding available respite services.

(d) The department shall include in each contract with a respite services coordinator provisions requiring the coordinator to:

(1) subject to the availability of money, provide vouchers for respite services to caregivers participating in the program who are not eligible for respite services provided through other programs; and

(2) connect caregivers participating in the program with available respite services.

(e) The department shall provide each community-based organization or local governmental entity with which the department contracts under this subchapter with:

(1) technical assistance; and

(2) policy and program development support.

(f) The department shall monitor a contractor's performance under a contract entered into under this subchapter using clearly defined and measurable performance objectives.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.155. RESPITE SERVICES COORDINATOR FUNCTIONS. A respite services coordinator under contract with the department shall:

(1) maintain information regarding respite services providers;

(2) build partnerships with respite services providers; and

(3) implement public awareness activities regarding respite services.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

Sec. 161.156. RULES. The executive commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 330 (H.B. 802), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. LEGISLATIVE COMMITTEE ON AGING

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Committee" means the Legislative Committee on Aging.

Text of subdivision effective until April 1, 2025

(2) "Health and human services agency" has the meaning assigned by Section 531.001, Government Code.

Text of subdivision effective on April 1, 2025

(2) "Health and human services agency" has the meaning assigned by Section 521.0001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.114, eff. April 1, 2025.

Sec. 161.252. LEGISLATIVE COMMITTEE ON AGING ESTABLISHED. The Legislative Committee on Aging is established to:

(1) study issues relating to the aging population of Texas, including issues related to the health care, income, transportation, housing, education, and employment needs of that population; and

(2) make recommendations to address those issues.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.253. COMPOSITION OF COMMITTEE; PRESIDING OFFICER. (a) The committee is composed of:

(1) two members of the senate appointed by the lieutenant governor;

(2) two members of the house of representatives appointed by the speaker of the house of representatives; and

(3) two public members appointed by the governor.

(b) A member of the committee serves at the pleasure of the

appointing official.

(c) The lieutenant governor and the speaker of the house of representatives shall appoint the presiding officer of the committee on an alternating basis. The presiding officer shall serve a two-year term expiring February 1 of each odd-numbered year.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.254. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

(1) meet at least biannually at the call of the presiding officer;

(2) conduct a continuing study of issues relating to the aging population, including issues that are affected by the demographic and geographic diversity of the aging population in this state;

(3) analyze the availability of, and unmet needs for, state and local services for the aging population; and

(4) request reports and other information relating to the aging population as necessary from the executive commissioner, the department, other health and human services agencies, the attorney general, and any other state agency.

(b) The executive commissioner, the department, other health and human services agencies, the attorney general, and any other applicable state agency shall fully cooperate with the committee in performing the committee's duties under this subchapter.

(c) The committee may issue process, in accordance with Section 301.024, Government Code, to compel attendance of witnesses and the production of books, records, documents, and instruments required by the committee.

(d) The committee shall use the existing staff resources of the senate and the house of representatives to assist the committee in performing its duties under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.255. REPORT. (a) The committee shall report to the

standing committees of the senate and the house of representatives having jurisdiction of issues related to the needs of the aging population not later than November 15 of each even-numbered year.

(b) The report must include:

(1) a summary of the hearings and studies conducted by the committee during the preceding year;

(2) a statement of findings based on the hearings and studies conducted by the committee; and

(3) recommendations, if any, for legislation.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

SUBCHAPTER H. CERTAIN INITIATIVES RELATING TO AGING

Sec. 161.301. DEFINITION. In this subchapter, "fund" means the Chris Kyker Endowment for Seniors Fund established under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.302. CONTRACT TO PROVIDE OUTREACH AND INPUT RELATING TO AGING POPULATION. (a) The executive commissioner may contract with an entity to:

(1) conduct local forums throughout this state to solicit input on and discuss policies regarding aging-related issues, including issues that are affected by the demographic and geographic diversity of the aging population in this state;

(2) provide analysis, education, and research services with respect to aging-related issues; and

(3) identify problems encountered by the aging population in this state and develop and recommend to the executive commissioner and the legislature solutions to those problems.

(b) If a contract entered into under this section includes a provision that allows a person performing duties under the contract on behalf of the entity to receive a per diem for days spent performing those duties and to be reimbursed for travel expenses incurred in performing those duties, the per diem and reimbursement for travel expenses incurred must be paid at the same rate set in the

General Appropriations Act for state employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.303. ESTABLISHMENT AND ADMINISTRATION OF FUND. (a) The Chris Kyker Endowment for Seniors Fund is a special fund outside the state treasury held by the comptroller.

(b) The comptroller shall deposit in the fund:

(1) money appropriated to the fund;

(2) grants, gifts, and donations from any other public or private source; and

(3) income and interest, including depository interest, as provided by Subsection (f).

(c) The comptroller shall administer and manage the assets of the fund in accordance with this section and the rules adopted by the executive commissioner under Section 161.304(c). In managing the assets of the fund, the comptroller may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions the comptroller considers appropriate, any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(d) The expenses of managing fund investments shall be paid from the fund.

(e) On request, the comptroller shall fully disclose all details concerning the investments of the fund.

(f) Interest earned on the fund shall be credited to the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

Sec. 161.304. USE OF FUND. (a) The following may be used only to fund a contract entered into under Section 161.302:

(1) contributions to the fund described by Section 161.303(b)(2); and

(2) income and interest earned on money in the fund

described by Section 161.303(b)(3).

(b) Except as provided by Subsection (a), money in the fund may not be used for any purpose.

(c) The executive commissioner may adopt rules regarding distribution of money in the fund in accordance with this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 318 (H.B. 610), Sec. 1, eff. September 1, 2009.

SUBCHAPTER I. FALL PREVENTION AWARENESS

Sec. 161.351. LEGISLATIVE FINDINGS. The legislature finds that:

(1) in 2008, 1.14 million older Texans were expected to sustain falls;

(2) the risk factors associated with falling increase with age;

(3) approximately 20 to 30 percent of older adults who fall suffer moderate to severe injuries, resulting in almost 80,000 hospitalizations annually and constituting 40 percent of all nursing facility placements;

(4) according to the Centers for Disease Control and Prevention of the United States Public Health Service, the total direct cost of all fall-related injuries in 2000 for people 65 years of age and older exceeded $19 billion nationwide; and

(5) research shows that a well-designed fall prevention program that includes risk factor assessments, a focused physical activity program, and improvement of the home environment can reduce the incidence of falls by 30 to 50 percent.

Added by Acts 2009, 81st Leg., R.S., Ch. 95 (H.B. 703), Sec. 1, eff. May 23, 2009.
Redesignated from Human Resources Code, Section 161.151 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(39), eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.464, eff. April 2, 2015.

Sec. 161.352. FALL PREVENTION AWARENESS WEEK. The week that

begins on the first Sunday of each year that falls after the date of the autumnal equinox is declared "Fall Prevention Awareness Week."

Added by Acts 2009, 81st Leg., R.S., Ch. 95 (H.B. 703), Sec. 1, eff. May 23, 2009.
Redesignated from Human Resources Code, Section 161.152 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(39), eff. September 1, 2011.

Sec. 161.353. FALL PREVENTION POLICY. The department may develop recommendations to:

(1) raise public awareness about fall prevention;

(2) educate older adults and individuals who provide care to older adults about best practices to reduce the incidence and risk of falls among older adults;

(3) encourage state and local governments and the private sector to promote policies and programs that help reduce the incidence and risk of falls among older adults;

(4) encourage area agencies on aging to include fall prevention education in their services;

(5) develop a system for reporting falls to improve available information on falls; and

(6) incorporate fall prevention guidelines into state and local planning documents that affect housing, transportation, parks, recreational facilities, and other public facilities.

Added by Acts 2009, 81st Leg., R.S., Ch. 95 (H.B. 703), Sec. 1, eff. May 23, 2009.
Redesignated from Human Resources Code, Section 161.153 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(39), eff. September 1, 2011.

TITLE 12. JUVENILE JUSTICE SERVICES AND FACILITIES

SUBTITLE A. TEXAS JUVENILE JUSTICE BOARD AND TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 201. GENERAL PROVISIONS

Sec. 201.001. DEFINITIONS. (a) In this title:

(1) "Board" means the Texas Juvenile Justice Board.

(2) "Child" means an individual:

(A) 10 years of age or older and younger than 18 years of age who is under the jurisdiction of a juvenile court; or

(B) 10 years of age or older and younger than 19 years of age who is committed to the department under Title 3, Family Code.

(3) "Court" means a juvenile court.

(4) "Department" means the Texas Juvenile Justice Department.

(5) "Executive director" means the executive director of the department.

(6) "Juvenile board" means a body established by law to provide juvenile probation services to a county.

(7) "State aid" means funds allocated by the department to a juvenile board to financially assist the juvenile board in achieving the purposes of this title and in conforming to the department's standards and policies.

(b) Effective December 1, 2011, a reference in other law to:

(1) the Texas Juvenile Probation Commission means the department; or

(2) the Texas Youth Commission means the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 201.002. PURPOSES AND INTERPRETATION. This title shall be construed to have the following public purposes:

(1) creating a unified state juvenile justice agency that works in partnership with local county governments, the courts, and communities to promote public safety by providing a full continuum of effective supports and services to youth from initial contact through termination of supervision; and

(2) creating a juvenile justice system that produces positive outcomes for youth, families, and communities by:

(A) assuring accountability, quality, consistency, and transparency through effective monitoring and the use of systemwide performance measures;

(B) promoting the use of program and service designs and interventions proven to be most effective in rehabilitating youth;

(C) prioritizing the use of community-based or family-

based programs and services for youth over the placement or commitment of youth to a secure facility;

(D) operating the state facilities to effectively house and rehabilitate the youthful offenders that cannot be safely served in another setting; and

(E) protecting and enhancing the cooperative agreements between state and local county governments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 201.003. GOALS. The goals of the department and all programs, facilities, and services that are operated, regulated, or funded by the department are to:

(1) support the development of a consistent county-based continuum of effective interventions, supports, and services for youth and families that reduce the need for out-of-home placement;

(2) increase reliance on alternatives to placement and commitment to secure state facilities, consistent with adequately addressing a youthful offender's treatment needs and protection of the public;

(3) locate the facilities as geographically close as possible to necessary workforce and other services while supporting the youths' connection to their families;

(4) encourage regional cooperation that enhances county collaboration;

(5) enhance the continuity of care throughout the juvenile justice system; and

(6) use secure facilities of a size that supports effective youth rehabilitation and public safety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 201.004. INTERAGENCY AND INTERGOVERNMENTAL COOPERATION. (a) To improve services to youth, the department may cooperate and contract with:

(1) the federal government;

(2) governmental agencies in this state and other states;

(3) political subdivisions of the state; and

(4) private agencies and foundations.

(b) The executive director, the commissioner of education, the commissioner of family and protective services, the commissioner of state health services, the executive commissioner of health and human services, and the chair of the workforce commission, or their designees, shall meet at least annually to:

(1) discuss mutual issues relating to at-risk youth and youthful offenders, and community support systems for families and youth;

(2) resolve conflicts in providing services to youth; and

(3) make recommendations to the governor and legislature.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

CHAPTER 202. ADMINISTRATIVE PROVISIONS

Sec. 202.001. COMPOSITION OF BOARD; PRESIDING OFFICER. (a) The board is composed of the following nine members appointed by the governor with the advice and consent of the senate:

(1) one member who is a district court judge of a court designated as a juvenile court;

(2) one member who is a member of a county commissioners court with juvenile justice experience;

(3) one prosecutor in juvenile court;

(4) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes fewer than 7,500 persons younger than 18 years of age;

(5) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes at least 7,500 but fewer than 80,000 persons younger than 18 years of age;

(6) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes 80,000 or more persons younger than 18 years of age;

(7) one adolescent mental health treatment professional licensed under Subtitle B or I, Title 3, Occupations Code, or a representative from a local mental health authority designated under Chapter 533, Health and Safety Code, who has experience working with

children;

(8) one member who is:

(A) an educator, as that term is defined by Section 5.001, Education Code, with juvenile justice experience; or

(B) a juvenile justice professional with experience managing a secure juvenile justice facility operated by the department or a county; and

(9) one member of the general public.

(b) Members serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(c) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(d) The governor shall make appointments to the board without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(e) A member appointed under Subsections (a)(1)-(6) may not hold office in the same county or judicial district as another member appointed under those subsections.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 14, eff. September 1, 2023.

Sec. 202.002. RESTRICTIONS ON BOARD MEMBERSHIP AND DEPARTMENT EMPLOYMENT. (a) A person may not be a public member of the board if the person or the person's spouse:

(1) is employed in the field of criminal or juvenile justice;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the department, other than

compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) A person may not be a board member and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of criminal or juvenile justice; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice.

(c) A person may not be a board member or act as the general counsel to the board or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(d) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 202.003. PROVISIONS APPLICABLE TO JUDICIAL MEMBERS. (a) A judge's place on the board becomes vacant when the judge ceases to hold a judicial office.

(b) A judge's service on the board is an additional duty of office.

(c) At the time of appointment to the board, a judge must be a judge of:

(1) a court designated as a juvenile court; or

(2) a court that is one of several courts that rotate being the juvenile court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 202.004. REMOVAL OF BOARD MEMBERS. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of taking office the qualifications required by Sections 202.001 and 202.003;

(2) does not maintain during service on the board the qualifications required by Sections 202.001 and 202.003;

(3) is ineligible for membership under Section 202.002;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 202.005. BOARD MEMBER RECUSAL. (a) A chief juvenile probation officer who is a board member shall avoid the appearance of a conflict of interest by not voting or participating in any decision by the board that solely benefits or penalizes or otherwise solely impacts the juvenile probation department over which the chief juvenile probation officer has authority. The chief juvenile

probation officer may not vote or render any decisions regarding matters of officer discipline presented to the board regarding the chief juvenile probation officer's department.

(a-1) If a juvenile justice professional is appointed as a board member under Section 202.001(a)(8), the member shall avoid the appearance of a conflict of interest by not voting or participating in any decision by the board that solely benefits or penalizes or otherwise solely impacts any juvenile probation department or facility the professional is employed by or works for under a contract. The professional may not vote or render any decisions regarding matters of officer discipline presented to the board regarding any juvenile probation department or facility the professional is employed by or works for under a contract.

(b) The board may adopt recusal requirements in addition to those described by Subsections (a) and (a-1), including requirements that are more restrictive than those described by those subsections.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 15, eff. September 1, 2023.

Sec. 202.006. TRAINING FOR BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing department operations;

(2) the programs, functions, rules, and budget of the department;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the results of the most recent formal audit of the department;

(5) the requirements of:

(A) laws relating to open meetings, public information,

administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(6) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 16, eff. September 1, 2023.

Sec. 202.007. REIMBURSEMENT. A board member is not entitled to compensation for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in performing official duties as a board member.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 202.008. MEETINGS; PUBLIC PARTICIPATION. (a) The board shall hold regular quarterly meetings on dates set by the board and special meetings at the call of the presiding officer.

(b) The board shall adopt rules regulating the board's proceedings.

(c) The board shall keep a public record of the board's decisions at the board's general office.

(d) The board shall develop and implement policies that provide

the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 202.009. AUDIT; AUTHORITY OF STATE AUDITOR. (a) The department is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) The state auditor, on request of the office of inspector general, may provide information or other assistance to the office of inspector general that the state auditor determines is appropriate. The office of inspector general may coordinate with the state auditor to review or schedule a plan for an investigation under Subchapter C, Chapter 242, or share other information.

(c) The state auditor may access all information maintained by the office of inspector general, such as vouchers, electronic data, and internal records, including information that is otherwise confidential under law. Information obtained by the state auditor under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code.

(d) Any provision of this title relating to the operations of the office of inspector general does not:

(1) supersede the authority of the state auditor to conduct an audit under Chapter 321, Government Code; or

(2) prohibit the state auditor from:

(A) conducting an audit, investigation, or other review; or

(B) having full and complete access to all records and other information concerning the department, including any witness statement or electronic data, that the state auditor considers necessary for the audit, investigation, or review.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 202.010. SUNSET PROVISION. The Texas Juvenile Justice Board and the Texas Juvenile Justice Department are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in

existence as provided by that chapter, the board and the department are abolished September 1, 2027.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 938 (H.B. 3123), Sec. 1.02, eff. June 18, 2015.
Acts 2015, 84th Leg., R.S., Ch. 962 (S.B. 1630), Sec. 3, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 2.04, eff. June 10, 2019.
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 17, eff. September 1, 2023.

CHAPTER 203. GENERAL POWERS AND DUTIES OF BOARD AND DEPARTMENT

Sec. 203.001. CONTROL OVER DEPARTMENT; DEPARTMENT MISSION. (a) The board is the governing body of the department and is responsible for the operations of the department.

(b) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the department.

(b-1) The board may delegate to the executive director the board's responsibilities as the board determines appropriate.

(b-2) In making a delegation under Subsection (b-1), the board shall provide, as appropriate:

(1) to the executive director with respect to each delegation:

(A) clear direction;

(B) performance measures; and

(C) reporting requirements; and

(2) to the department, sufficient oversight to ensure that delegated responsibilities are performed according to the mission and funding priorities described by Subsection (c).

(b-3) The executive director is a full-time employee of the board and shall:

(1) perform the regular administrative functions of the board and any other duty as the board directs; and

(2) under the direction of the board, perform the duties required by this subtitle or designated by the board.

(b-4) The executive director may not perform a discretionary or decision-making function for which the board is solely responsible.

(c) The board shall establish the mission of the department with the goal of establishing a cost-effective continuum of youth services that emphasizes keeping youth in their home communities while balancing the interests of rehabilitative needs with public safety. The board shall establish funding priorities for services that support this mission and that do not provide incentives to incarcerate youth.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 18, eff. September 1, 2023.

Sec. 203.002. EXECUTIVE DIRECTOR. (a) The board shall:

(1) employ an executive director to administer the department; and

(2) supervise the director's administration of the department.

(b) The executive director must possess the following minimum qualifications:

(1) five years of experience in the field of juvenile corrections or congregate care in an administrative capacity;

(2) three years of experience in the field of juvenile corrections or congregate care in an administrative capacity and a graduate degree from an institution of higher education in a relevant field, including penology, adolescent development, behavior management, or rehabilitative services; or

(3) seven years of experience in management and administration of a government agency, institution of higher education, or business enterprise of a size comparable to the department.

(c) The department shall track the frequency with which the executive director takes the following actions as defined by department rule:

(1) selects a child for a conditional placement;

(2) selects a child for a home placement;

(3) waives the requirement for a child with a determinate sentence to spend the child's entire minimum period of confinement in a high-restriction facility;

(4) waives the requirement for a child to be on intensive supervision when initially released on parole;

(5) authorizes early discharges for a child on parole; or

(6) finalizes an appeal brought by an advocacy group or social service provider who was denied certain access to department facilities.

(d) The executive director shall provide the board and the Sunset Advisory Commission at the beginning of each calendar quarter aggregated data on the number of times each action described by Subsection (c) was taken during the previous calendar quarter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 19, eff. September 1, 2023.

Sec. 203.003. ACCESSIBILITY TO PROGRAMS AND FACILITIES. (a) The department shall comply with federal and state laws related to program and facility accessibility.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.004. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of

internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The department shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.005. GIFTS AND GRANTS. (a) The department may apply for and accept gifts and grants from any public or private source.

(b) The department shall deposit money received under this section in the state treasury. The department may use the money for the purpose of funding any activity under this title.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.006. MEDICAID BENEFITS. The department shall:

(1) identify areas in which federal Medicaid program benefits could be used in a manner that is cost-effective for juveniles in the juvenile justice system;

(2) develop a program to encourage application for and receipt of Medicaid benefits;

(3) provide technical assistance to counties relating to eligibility for Medicaid benefits; and

(4) monitor the extent to which counties make use of Medicaid benefits.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.0065. PREVENTION AND INTERVENTION SERVICES. (a) In this section, "prevention and intervention services" means programs and services intended to prevent or intervene in at-risk behaviors that lead to delinquency, truancy, dropping out of school, or referral to the juvenile justice system.

(b) The department shall provide prevention and intervention services for:

(1) at-risk youth who are six years of age or older and younger than 18 years of age and who are:

(A) subject to compulsory school attendance under the Education Code; or

(B) under the jurisdiction of the juvenile court; and

(2) the family of an at-risk youth described by Subdivision (1).

(c) The prevention and intervention services provided under Subsection (b) must:

(1) consolidate prevention and intervention services within the department to avoid fragmentation and duplication of programs and services; and

(2) increase accountability for the delivery and administration of the programs and services.

(d) The department shall, to the extent funds are available:

(1) plan, develop, and administer a comprehensive and unified statewide delivery system of the prevention and intervention services to at-risk youth and their families;

(2) improve the efficiency and responsiveness of prevention and intervention services by facilitating greater coordination and flexibility in the use of funds by state and local service providers;

(3) ensure program effectiveness by funding evidence-based or research-based programs;

(4) provide accountability for the provision of services in order to demonstrate the impact or public benefit of a program by adopting outcomes measures;

(5) assist local communities in the coordination and development of prevention and intervention services in order to maximize access to federal, state, and local resources; and

(6) provide funding for prevention and intervention services through a competitive process to entities, including private service providers, local juvenile boards, municipal and justice courts, schools, and non-profit organizations.

(e) The department may seek, through a competitive process, an independent services provider with demonstrated experience in administration of similar statewide projects in Texas to effectively and efficiently provide prevention and intervention services and implement the duties under Subsection (d).

(f) The department shall periodically evaluate the continued effectiveness of prevention and intervention services provided under this section.

(g) The records related to a youth who was provided prevention and intervention services under this section are confidential and may only be inspected or copied by an individual or entity to whom the youth is referred for treatment or services.

(h) An individual or entity that receives information under this section may not disclose the information unless otherwise authorized by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 131 (H.B. 1760), Sec. 11, eff. September 1, 2019.

Sec. 203.007. STUDIES; STATISTICAL RECORDS. (a) The department may conduct or participate in studies relating to corrections methods and systems and to treatment and therapy programs at the governor's request or on the department's own initiative.

(b) The department shall continuously study the problem of juvenile delinquency in this state and the effectiveness of services provided or regulated by the department under Subtitle B or C and shall report the department's findings to the governor and the legislature before each regular legislative session.

(c) The department shall keep records relating to juveniles within the juvenile justice system that participate in research programs or studies.

(d) The records must show, for each calendar quarter and for each calendar year:

(1) the number of juveniles participating in research programs or studies for the appropriate reporting period;

(2) the type of research program or study in which each

juvenile is participating;

(3) the name of the principal investigator conducting the research program or study; and

(4) the entity sponsoring the research program or study.

(e) The department shall submit a report that contains the information in the records kept under Subsection (d) on or before the 15th day after the last day of the appropriate reporting period to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives; and

(4) members of the senate and house of representatives.

(f) A report submitted under this section is public information under Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.008. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH, RECEIVE EVIDENCE, AND GATHER INFORMATION. (a) In this section, "evidence" means any record, book, paper, document, data, or other evidence maintained by electronic or other means.

(b) The department may issue a subpoena requiring the attendance of a witness or the production of evidence that the department considers necessary for the investigation of:

(1) abuse, neglect, or exploitation allegations;

(2) complaints;

(3) financial and programmatic audits of juvenile probation programs, services, and facilities, including juvenile justice alternative education programs; or

(4) any other matter under the authority of the department, including a determination of treatment under Section 244.005.

(c) The department may issue a subpoena under Subsection (b) only if the subpoena is signed by:

(1) the presiding officer of the board or, if the presiding officer is unavailable, the presiding officer's designee; and

(2) at least two other members of the board, including a board member who is a judge.

(d) A hearings examiner appointed by the department may issue a

subpoena requiring the attendance of a witness or the production of any record, book, paper, or document the hearings examiner considers necessary for a determination of treatment under Section 244.005. The hearings examiner may sign a subpoena.

(e) Any peace officer, department investigator, other department official, or person authorized under Article 24.01, Code of Criminal Procedure, may serve the subpoena in the same manner that similar process in a court of record having original jurisdiction of criminal actions is served.

(f) A subpoena under this section shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which the witness is called, unless the proceeding for which the service or payment is made is under Chapter 2001, Government Code, in which case the service or payment shall be made as provided in that chapter. Witnesses subpoenaed at the instance of the department shall be paid their fees and mileage by the department out of funds appropriated for that purpose.

(g) On application of the department, a court of record having original jurisdiction of criminal actions may compel the attendance of a witness, the production of material, or the giving of testimony before the department, by an attachment for contempt or in the same manner as the court may otherwise compel the production of evidence.

(h) The presiding officer or a member of the board may administer an oath to a witness in attendance before the department or before an authorized representative of the department.

(i) If a witness in attendance before the department or before an authorized representative refuses without reasonable cause to be examined or answer a legal or pertinent question, or to produce evidence when ordered by the department, the department may apply to the district court for a rule or order returnable in not less than two or in more than five days, directing the witness to show cause before the judge why the witness should not be punished for contempt. The department may apply to the district court of any county where the witness is in attendance, on proof by affidavit of the fact, unless the order of contempt is sought under Chapter 2001, Government Code, in which case the department shall apply to a district court of Travis County, as provided by that chapter. On return of the order, the judge hearing the matter shall examine the witness under oath and the witness shall be given an opportunity to be heard. If the judge determines that the witness has refused, without reasonable cause or

legal excuse, to be examined or answer a legal or pertinent question, or to produce evidence that the witness was ordered to bring or produce, the judge may immediately find the witness in contempt of court.

(j) The department shall be granted access at any reasonable time to any evidence that is related to any matter the department or executive director considers necessary to administer the department's functions, powers, and duties.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.0081. ADVISORY COUNCIL ON JUVENILE SERVICES. (a) The advisory council on juvenile services consists of:

(1) the executive director of the department or the executive director's designee;

(2) the director of probation services of the department or the director's designee;

(3) the director of state programs and facilities of the department or the director's designee;

(4) the executive commissioner of the Health and Human Services Commission or the commissioner's designee;

(5) one representative of the county commissioners courts appointed by the board;

(6) two juvenile court judges appointed by the board;

(7) seven chief juvenile probation officers appointed by the board as provided by Subsection (b); and

(8) the commissioner of the Department of Family and Protective Services or the commissioner's designee.

(b) The board shall appoint to the advisory council one chief juvenile probation officer from each regional chiefs association in this state from a list of nominees submitted to the board by each regional chiefs association. To the greatest extent practicable, a regional chiefs association shall include in its list of nominees:

(1) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes fewer than 7,500 persons younger than 18 years of age;

(2) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes

at least 7,500 but fewer than 80,000 persons younger than 18 years of age; and

(3) one chief juvenile probation officer of a juvenile probation department serving a county with a population that includes 80,000 or more persons younger than 18 years of age.

(c) Advisory council members, other than ex officio members, serve staggered two-year terms, with the terms of one-half of the members, as nearly as practicable, expiring on February 1 of each year.

(c-1) The board shall adopt rules regarding:

(1) the purpose, role, responsibility, goals, and duration of the advisory council;

(2) the quorum requirement for the advisory council;

(3) training requirements for advisory council members;

(4) policies to avoid conflicts of interest by advisory council members;

(5) a periodic review process to evaluate the continuing need for the advisory council;

(6) policies to ensure the advisory council does not violate any provision of Chapter 551, Government Code, applicable to the board or the advisory council;

(7) the appropriate level of participation from ex officio advisory council members designated under Subsections (a)(1)-(4) and (8); and

(8) reporting requirements and other communication procedures between the board and the advisory council.

(d) The advisory council shall report to the board any determinations made under Subsection (e).

(e) The advisory council shall assist the department in:

(1) determining the needs and problems of county juvenile boards and probation departments;

(2) conducting long-range strategic planning;

(3) reviewing and proposing revisions to existing or newly proposed standards affecting juvenile probation programs, services, or facilities;

(4) analyzing the potential cost impact on juvenile probation departments of new standards proposed by the board;

(5) assessing and developing recommendations to improve the sharing of information between agencies that serve children, including agencies serving children in both the juvenile justice and

child welfare systems; and

(6) advising the board on any other matter on the request of the board.

(f) The advisory council is not subject to Chapter 2110, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. 2733), Sec. 5, eff. September 1, 2013.
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 20, eff. September 1, 2023.

Sec. 203.0082. FEES. If the General Appropriations Act does not specify the amount of the fee, the board by rule may establish fees that:

(1) are reasonable and necessary;

(2) produce revenue sufficient for the administration of this chapter; and

(3) do not produce unnecessary revenue.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.0083. AUTHORITY TO ESTABLISH ADVISORY COMMITTEES. (a) The board by rule may establish advisory committees to make recommendations to the board on programs, rules, and policies administered by the board.

(b) In establishing an advisory committee under this section, the board shall adopt rules, including rules regarding:

(1) the purpose, role, responsibility, goals, and duration of the committee;

(2) the size of and quorum requirement for the committee;

(3) qualifications for committee membership;

(4) appointment procedures for members;

(5) terms of service for members;

(6) training requirements for members;

(7) policies to avoid conflicts of interest by members;

(8) a periodic review process to evaluate the continuing need for the committee; and

(9) policies to ensure the committee does not violate any provision of Chapter 551, Government Code, applicable to the board or the committee.

(c) The board shall establish a youth career and technical education advisory committee and adopt rules required by Subsection (b) for the committee. The advisory committee shall assist the department with overseeing and coordinating vocational training for youth in the custody of the department, including training provided by community colleges and other local entities with which the department may partner.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 21, eff. September 1, 2023.

Sec. 203.0084. RISK FACTORS AND RISK ASSESSMENT TOOLS. (a) The department shall develop a comprehensive set of risk factors to use in assessing the overall risk level of the facilities and entities inspected by the department under:

(1) Chapter 51, Family Code;

(2) Section 221.008 of this code; and

(3) Subtitle C, Title 12, of this code.

(b) The risk factors described by Subsection (a) may include:

(1) the entity type;

(2) available programming;

(3) past and repeat standards violations;

(4) the volume and types of complaints received by the department;

(5) recent leadership changes;

(6) high staff turnover;

(7) relevant findings from the office of independent ombudsman and the office of inspector general;

(8) negative media attention; and

(9) the number of months since the date of the department's last inspection of the entity.

(c) The department shall use the risk factors developed under this section to guide the inspections process for facilities and entities described by Subsection (a) by developing risk assessment

tools with clear, objective standards to use in assessing the overall risk level of each entity.

(d) The department may develop distinct assessment tools under Subsection (c) for different entity types, as appropriate.

(e) The department shall periodically review the assessment tools developed under this section to ensure that the tools remain up to date and meaningful, as determined by the department.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 21, eff. September 1, 2023.

Sec. 203.0085. RISK-BASED INSPECTIONS. (a) The department shall adopt a policy prioritizing inspections conducted by the department under:

(1) Chapter 51, Family Code;

(2) Section 221.008 of this code; and

(3) Subtitle C, Title 12, of this code.

(b) The policy under Subsection (a) must require the department to:

(1) prioritize the inspection of entities based on the relative risk level of each entity; and

(2) use the risk assessment tools established under Section 203.0084 to determine how frequently and intensively the department conducts risk-based inspections.

(c) The policy under Subsection (a) may provide for the department to use alternative inspection methods for entities determined to be low risk, including the following methods:

(1) desk audits of key documentation;

(2) abbreviated inspection procedures;

(3) videoconference technology; and

(4) other methods that are an alternative to conducting an in-person inspection.

(d) On request by the department, a juvenile probation department or a private facility under the department's jurisdiction shall provide information on a routine basis, as determined by the department, to assist the department in implementing a risk-based inspection schedule.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 21, eff. September 1, 2023.

Sec. 203.009. PUBLIC INTEREST INFORMATION. The department shall prepare information of public interest describing the functions of the department and describing the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.010. COMPLAINTS. (a) The department shall maintain a system to promptly and efficiently act on complaints received by the department by or on behalf of a juvenile relating to the programs, services, or facilities of the department or a local juvenile probation department.

(b) The department shall make information available describing its procedures for complaint investigation and resolution.

(c) Criminal complaints initially referred to the office of inspector general relating to juvenile probation programs, services, or facilities shall be sent to the appropriate local law enforcement agency. The office of inspector general has concurrent jurisdiction on agreement with the local law enforcement agency to conduct a criminal investigation under Section 242.102. Any other complaint shall be referred to the appropriate division of the department. The board by rule shall establish policies for the referral of noncriminal complaints.

(d) The department shall provide immediate notice to a local juvenile probation department of a complaint received by the department relating to the programs, services, or facilities of the local juvenile probation department.

(e) The department shall periodically notify the complaint parties of the status of the complaint until final disposition, unless the notice would jeopardize an undercover investigation. If the complaint relates to a claim of abuse, neglect, or exploitation involving a local juvenile probation department, the department shall provide monthly updates on the status of the complaint and immediate updates regarding department decisions to the local juvenile

probation department.

(f) The department shall keep information about each written complaint filed with the department. The information must include:

(1) the subject matter of the complaint;

(2) the parties to the complaint;

(3) a summary of the results of the review or investigation of the complaint;

(4) the period of time between the date the complaint is received and the date the complaint is closed; and

(5) the disposition of the complaint.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 22, eff. September 1, 2023.

Sec. 203.0101. STATISTICAL ANALYSIS OF COMPLAINTS. (a) The department shall make available on the department's Internet website a statistical analysis of the complaints received against certified officers by the department.

(b) The complaint analysis under this section must include aggregate information on the number, source, type, and disposition of complaints received against certified officers during the preceding fiscal year and include the following information:

(1) the number of certified officers by certification type;

(2) the number of complaints against certified officers by certification type;

(3) the number of complaints resolved and the manner of resolution, including:

(A) the total number of agreed, default, and board orders entered;

(B) the total number of cases referred for contested case hearings by the State Office of Administrative Hearings;

(C) the total number of contested cases heard by the State Office of Administrative Hearings; and

(D) the total number of contested cases that were appealed to a district court;

(4) the average number of days required to resolve a

complaint;

(5) a detailed analysis of the resolution for each closed complaint, by the nature of the alleged violation; and

(6) a detailed analysis of each closed complaint, by source.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 23, eff. September 1, 2023.

Sec. 203.0105. DATA. Any data compiled by a local juvenile probation department related to abuse, neglect, or exploitation of youth, or to complaints regarding juvenile probation programs, that is required by this chapter or by any rule to be reported to the department or local juvenile probation board shall be provided to the office of the independent ombudsman.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.011. APPEALS FROM DECISION OF EXECUTIVE DIRECTOR. A juvenile probation department that is aggrieved by a decision of the executive director, including a decision relating to standards affecting juvenile probation programs, services, or facilities, may appeal the executive director's decision to the board. The decision of the board is final and cannot be appealed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.012. ANNUAL FINANCIAL REPORT. The department shall prepare annually a complete and detailed written report accounting for all funds received and disbursed by the department during the preceding fiscal year. The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Sec. 203.013. INTERNAL AUDIT; REPORT. (a) The department shall regularly conduct internal audits of the department, including audits of:

(1) facilities operated by and under contract with the department; and

(2) medical services provided to children in the custody of the department.

(b) The department shall on a quarterly basis report the results of the audits to:

(1) the committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities; and

(2) the state auditor.

(c) The executive director shall acknowledge receipt of and discuss the results of internal audits with the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 24, eff. September 1, 2023.

Sec. 203.014. TOLL-FREE NUMBER. (a) The department shall establish a permanent, toll-free number for the purpose of receiving any information concerning the abuse, neglect, or exploitation of children in the custody of the department or housed in a local probation facility.

(b) The department shall ensure that:

(1) the toll-free number is prominently displayed in each department facility and each local probation facility;

(2) children in the custody of the department or housed in a local probation facility and employees of the department and the facility have confidential access to telephones for the purpose of calling the toll-free number; and

(3) the toll-free number is in operation and answered by staff 24 hours a day, every day of the year.

(c) The office of inspector general shall operate the toll-free

number required by Subsection (a) and the 24-hour incident reporting center and shall share the complaints received with the appropriate department entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 25, eff. September 1, 2023.

Sec. 203.015. PROGRAMS AND SERVICES EVALUATION SYSTEM. The department shall establish and implement a system to evaluate the effectiveness of county and state programs and services for youth.

Added by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.002, eff. September 1, 2011.

Text of section as added by Acts 2013, 83rd Leg., R.S., Ch. 1299 (H.B. 2862), and Ch. 1184 (S.B. 1003). Under Acts 2013, 83rd Leg., R.S., Ch. 1184 (S.B. 1003), Sec. 7, this section expires February 1, 2015; Acts 2013, 83rd Leg., R.S., Ch. 1299 (H.B. 2862), does not provide for expiration of this section.

Sec. 203.016. DATA REGARDING PLACEMENT IN DISCIPLINARY SECLUSION. (a) In this section:

(1) "Disciplinary seclusion" means the separation of a resident from other residents for disciplinary reasons and the placement of the resident alone in an area from which egress is prevented for more than 90 minutes.

(2) "Juvenile facility" means a facility that serves juveniles under juvenile court jurisdiction and that is operated as a pre-adjudication secure detention facility, a short-term detention facility, or a post-adjudication secure correctional facility.

(b) The department shall collect the following data during the annual registration of juvenile facilities and make the data publicly available:

(1) the number of placements in disciplinary seclusion lasting at least 90 minutes but less than 24 hours;

(2) the number of placements in disciplinary seclusion

lasting 24 hours or more but less than 48 hours; and

(3) the number of placements in disciplinary seclusion lasting 48 hours or more.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1184 (S.B. 1003), Sec. 1, eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1299 (H.B. 2862), Sec. 35, eff. September 1, 2013.

Sec. 203.017. REGIONALIZATION PLAN. (a) The department shall develop and the board shall adopt a regionalization plan for keeping children closer to home in lieu of commitment to the secure facilities operated by the department under Subtitle C.

(a-1) The department shall update and submit the regionalization plan developed under Subsection (a) to the Sunset Advisory Commission and standing legislative committees with primary jurisdiction over juvenile justice matters by December 1 of each even-numbered year. Before submitting the plan, the department must present an updated draft of the regionalization plan to the board for public comment and board approval.

(a-2) The department may incorporate relevant suggestions, needs, or recommendations from the regionalization plan into subsequent strategic plans, legislative appropriation requests, and any other necessary document to support the plan's implementation.

(b) The department shall consult with juvenile probation departments in developing a regionalization plan, including the identification of:

(1) post-adjudication facility capacity that may be dedicated to support the plan; and

(2) resources needed to implement the plan.

(b-1) In addition to the requirements of Subsection (b), in developing the regionalization plan, the department shall consult with:

(1) the advisory council on juvenile services;

(2) juvenile probation departments;

(3) regional juvenile probation associations;

(4) advocacy groups;

(5) parents and guardians of children under the jurisdiction of the department;

(6) individuals formerly involved in the juvenile justice system; and

(7) any other stakeholder the department determines may be helpful.

(c) The regionalization plan must define regions of the state to be served by facilities operated by juvenile probation departments, counties, halfway houses, or private operators, based on the post-adjudication facilities identified as being available for the purpose of the plan.

(d) The department shall ensure that each region has defined, appropriate, research-based programs for the target populations under the regionalization plan.

(e) The regionalization plan must, as applicable:

(1) include a budget review, redirection of staff, and funding mechanisms necessary to support the plan;

(2) create a new division of the department responsible for administering the regionalization plan and monitoring program quality and accountability;

(3) for the state fiscal year beginning September 1, 2017, and each subsequent state fiscal year, include any savings that are generated by the decreases in the population of the secure facilities operated by the department under Subtitle C that exceed the cost of implementing the plan;

(4) include:

(A) information on the department's compliance with statutory regionalization requirements;

(B) information on internal goals for diverting children from commitment to the department; and

(C) an analysis of rates of commitment to the custody of the department, broken down by region and county, and any relevant recommendations regarding trends in these rates; and

(5) include specific, actionable steps regarding how the department will enhance regional capacity, coordination, and collaboration among juvenile probation departments to keep children closer to home as an alternative to commitment to the department's facilities while ensuring access to programs and the supervision necessary to maintain public safety.

(e-1) In developing the steps under Subsection (e)(5), the department shall consider:

(1) options to target or expand funding for juvenile

probation departments to enhance community-based programs and maximize the use of existing juvenile justice beds;

(2) opportunities to use financial and other incentives to encourage diversion, facilitate cooperation within and across the regions established under Subsection (c), and emphasize the benefits of sharing available resources among counties;

(3) plans for creating additional capacity to minimize gaps in juvenile justice beds and services at the local level, including the expansion or development of beds and facilities designated specifically for regional use; and

(4) processes for downsizing, closing, or repurposing large state secure facilities to shift toward a more regionally based juvenile justice system.

(f) The division created under Subsection (e)(2) shall:

(1) approve plans and related protocols to administer the developed regional model;

(2) provide training on best practices for all local probation departments affected by the regionalization plan;

(3) assist in research-based program development;

(4) monitor contract and program measures for the regionalization plan;

(5) analyze department data to provide clear guidance to local probation departments on outcome measures; and

(6) report on performance of specific programs and placements to assist in implementing best practices and maximize the impact of state funds.

(g) A region is eligible for funding to support evidence-based, intensive in-home services only if the region meets the performance standards established by the department and adopted in contracts for placement and services.

(h) The department shall adopt rules to allow the local probation departments implementing the regionalization plan to access the data submitted by those departments in the state juvenile case management system for planning and research purposes.

Added by Acts 2015, 84th Leg., R.S., Ch. 962 (S.B. 1630), Sec. 4, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 26, eff. September 1, 2023.

Sec. 203.018. SPECIALIZED PROGRAMS AND SPECIAL PROJECTS. (a) The department shall develop specialized programs for children with a determinate sentence and children committed under Section 54.04013, Family Code. The programs must ensure safety and security for committed children and provide developmentally appropriate program strategies.

(b) The department shall establish performance-based goals related to improved outcomes that:

(1) must include measures to reduce recidivism; and

(2) shall include other well-being outcome measures.

(c) The department shall use case review strategies to identify children in department facilities who can safely and appropriately be transferred to alternative local placements or halfway houses, placed on parole, or discharged from the department.

(d) The department shall study and report to the board on the potential for repurposing existing secure facilities for the confinement of children with a determinate sentence or children committed under Section 54.04013, Family Code, or for other purposes.

(e) The department or any local probation department may use or contract with a facility that was constructed or previously used for the confinement of adult offenders if the department determines that the facility is appropriately retrofitted to accommodate youth-specific requirements and needs.

Added by Acts 2015, 84th Leg., R.S., Ch. 962 (S.B. 1630), Sec. 4, eff. September 1, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 27, eff. September 1, 2023.

Sec. 203.0185. RESOURCE MAPPING. (a) The department shall partner with one or more public or private institutions of higher education to inventory and map resources available for children in the juvenile justice system. To determine the types of information the department requires to timely identify and address resource, program, and service gaps in probation regions that result in commitments to department secure facilities, the department shall

consult with:

(1) institutions of higher education;

(2) the advisory council on juvenile services; and

(3) other relevant stakeholders.

(b) The board shall adopt rules requiring juvenile probation departments, at useful and reasonable intervals, to report to the department relevant information on resource, program, and service gaps identified under Subsection (a), including information on:

(1) the needs of children committed to the department that are not being met with community resources; and

(2) the types of resources, programs, and services that, if available in the community, may allow juvenile probation departments to keep children closer to home as an alternative to commitment to the department.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 28, eff. September 1, 2023.

Sec. 203.019. REPORT TO LEGISLATURE. Not later than August 15 of each year, the Texas Juvenile Justice Department shall submit to the lieutenant governor, the speaker of the house of representatives, and the governor a report that contains the following statistical information relating to children referred to a juvenile court during the preceding year:

(1) the ages, races, and counties of residence of the children transferred to a district court or criminal district court for criminal proceedings; and

(2) the ages, races, and counties of residence of the children committed to the Texas Juvenile Justice Department, placed on probation, or discharged without any disposition.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 53, eff. Jan. 1, 1996.
Amended by Acts 2001, 77th Leg., ch. 1297, Sec. 40, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 66, eff. September 1, 2015.
Transferred and redesignated from Family Code, Section 58.112 by Acts 2017, 85th Leg., R.S., Ch. 746 (S.B. 1304), Sec. 19, eff. September 1, 2017.

Sec. 203.020. REPORT OF CRIMINAL CONDUCT; PENALTY. (a) Each employee of the department or of a department contractor who becomes aware of conduct constituting a criminal offense engaged in by another employee of the department or by a department contractor against a person receiving services from the department or a department contractor shall report the conduct to a local law enforcement agency not later than the 48th hour after the hour the employee becomes aware of the conduct.

(b) A person commits an offense if the person is required to make a report under Subsection (a) and knowingly fails to make the report.

(c) An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to hinder an investigation of or conceal the criminal conduct described by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 1044 (S.B. 182), Sec. 2, eff. September 1, 2023.

Sec. 203.021. EMPLOYER RETALIATION PROHIBITED. (a) In this section, "adverse employment action" means an action that affects an employee's compensation, promotion, transfer, work assignment, or performance evaluation, or any other employment action that would dissuade a reasonable employee from submitting or supporting a report under Section 203.020.

(b) An employer may not suspend or terminate the employment of, discriminate against, or take any other adverse employment action against a person who in good faith:

(1) reports conduct constituting a criminal offense as required by Section 203.020; or

(2) initiates or cooperates with an investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 203.020.

(c) An employee may sue for injunctive relief, damages, or both if, in violation of this section, the employee:

(1) is suspended or terminated from the person's

employment;

(2) is discriminated against; or

(3) suffers any other adverse employment action.

(d) A plaintiff who prevails in a suit under this section may recover:

(1) actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown;

(2) exemplary damages under Chapter 41, Civil Practice and Remedies Code, if the employer is a private employer;

(3) court costs; and

(4) reasonable attorney's fees.

(e) In addition to amounts recovered under Subsection (d), a plaintiff who prevails in a suit under this section is entitled to:

(1) reinstatement to the person's former position or a comparable position in terms of compensation, benefits, and other conditions of employment;

(2) reinstatement of any fringe benefits and seniority rights lost because of the suspension, termination, or discrimination; and

(3) compensation for wages lost during the period of suspension or termination.

(f) A department employee who alleges a violation of this section may sue the department for the relief provided for by this section. Sovereign immunity is waived and abolished to the extent of liability created by this section.

(g) A plaintiff suing under this section has the burden of proof, except there is a rebuttable presumption that the plaintiff's employment was suspended or terminated or that the plaintiff was otherwise discriminated against for reporting abuse or neglect if the suspension, termination, or discrimination occurs before the 61st day after the date on which the person submitted a report in good faith.

(h) A suit under this section may be brought in a district or statutory county court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(i) It is an affirmative defense to a suit under Subsection (c) that an employer would have taken against the employee the action that forms the basis of the suit based solely on information, observation, or evidence unrelated to the fact that the employee made a report under Section 203.020 or initiated or cooperated with an

investigation or proceeding relating to the conduct constituting a criminal offense reported under Section 203.020.

(j) A public employee who has a cause of action under Chapter 554, Government Code, based on conduct described by Subsection (b) may not bring an action based on that conduct under this section.

(k) This section does not apply to a person who reports the person's own criminal conduct or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of the person's own criminal conduct.

Added by Acts 2023, 88th Leg., R.S., Ch. 1044 (S.B. 182), Sec. 2, eff. September 1, 2023.

SUBTITLE B. PROBATION SERVICES; PROBATION FACILITIES

CHAPTER 221. ASSISTANCE TO COUNTIES AND REGULATION OF JUVENILE BOARDS AND JUVENILE PROBATION DEPARTMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. PROVISION OF PROBATION AND DETENTION SERVICES. (a) The department shall assist counties in providing probation and juvenile detention services by encouraging the continued operation of county and multi-county juvenile boards or probation offices.

(b) If a county discontinues the provision of juvenile probation services, the department may directly provide probation or detention services in the county.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.002. GENERAL RULES GOVERNING JUVENILE BOARDS, PROBATION DEPARTMENTS, PROBATION OFFICERS, PROGRAMS, AND FACILITIES. (a) The board shall adopt reasonable rules that provide:

(1) minimum standards for personnel, staffing, case loads, programs, facilities, record keeping, equipment, and other aspects of the operation of a juvenile board that are necessary to provide adequate and effective probation services;

(2) a code of ethics for probation and detention officers and for the enforcement of that code;

(3) appropriate educational, preservice and in-service

training, and certification standards for probation and detention officers or court-supervised community-based program personnel;

(4) subject to Subsection (d), minimum standards for public and private juvenile pre-adjudication secure detention facilities, public juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board or governmental unit, private juvenile post-adjudication secure correctional facilities operated under a contract with a governmental unit, except those facilities exempt from certification by Section 42.052(g), and nonsecure correctional facilities operated by or under contract with a governmental unit;

(5) minimum standards for juvenile justice alternative education programs created under Section 37.011, Education Code, in collaboration and conjunction with the Texas Education Agency, or its designee; and

(6) minimum standards for the operation of substance abuse facilities or programs that are juvenile justice facilities or juvenile justice programs, as defined by Section 261.405, Family Code.

(b) In adopting the rules, the board shall consider local information and evidence gathered through public review and comment.

(c) The department shall operate a statewide registry for all public and private juvenile pre-adjudication secure detention facilities and all public and private juvenile post-adjudication secure correctional facilities.

(c-1) In adopting rules under Subsection (a)(3), the board shall require probation officers, juvenile supervision officers, and court-supervised community-based program personnel to receive trauma-informed care training. The training must provide knowledge, in line with best practices, of how to interact with juveniles who have experienced traumatic events.

(d) In adopting rules under Subsection (a)(4), the board shall ensure that the minimum standards for facilities described by Subsection (a)(4) are designed to ensure that juveniles confined in those facilities are provided the rights, benefits, responsibilities, and privileges to which a juvenile is entitled under the United States Constitution, federal law, and the constitution and laws of this state. The minimum standards must include a humane physical and psychological environment, safe conditions of confinement, protection from harm, adequate rehabilitation and education, adequate medical

and mental health treatment, and due process of law.

(d-1) In adopting rules under Subsection (a)(4), the board shall authorize a juvenile probation department to house a child committed to the department in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility as the child awaits transfer to the department.

(e) A juvenile board that does not accept state aid funding from the department under Section 223.001 shall report to the department each month on a form provided by the department the same data as that required of counties accepting state aid funding regarding juvenile justice activities under the jurisdiction of the juvenile board. If the department makes available free software to a juvenile board for the automation and tracking of juveniles under the jurisdiction of the juvenile board, the department may require the monthly report to be provided in an electronic format adopted by rule by the board.

(f) A substance abuse facility or program operating under the standards adopted under this section is not required to be licensed or otherwise approved by any other state or local agency.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1351 (S.B. 1356), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 747 (S.B. 1314), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 29, eff. September 1, 2023.

Sec. 221.003. RULES CONCERNING MENTAL HEALTH SCREENING INSTRUMENT AND RISK AND NEEDS ASSESSMENT INSTRUMENT; ADMISSIBILITY OF STATEMENTS. (a) The board by rule shall require juvenile probation departments to use the mental health screening instrument selected by the department for the initial screening of children under the jurisdiction of probation departments who have been formally referred to a juvenile probation department. The department shall give priority to training in the use of this instrument in any preservice

or in-service training that the department provides for probation officers. The rules adopted by the board under this section must allow a clinical assessment by a licensed mental health professional to be substituted for the mental health screening instrument selected by the department if the clinical assessment is performed in the time prescribed by the department.

(b) A juvenile probation department must, before the disposition of a child's case and using a validated risk and needs assessment instrument or process provided or approved by the department, complete a risk and needs assessment for each child under the jurisdiction of the juvenile probation department.

(b-1) Any risk and needs assessment instrument or process that is provided or approved by the department for a juvenile probation department to use under Subsection (b) must be a validated instrument or process.

(c) Any statement made by a child and any mental health data obtained from the child during the administration of the mental health screening instrument or the initial risk and needs assessment instruments under this section is not admissible against the child at any adjudication hearing. The person administering the mental health screening instrument or initial risk and needs assessment instruments shall inform the child that any statement made by the child and any mental health data obtained from the child during the administration of the instrument is not admissible against the child at any adjudication hearing.

(d) A juvenile probation department shall report data from the use of the screening instrument or clinical assessment under Subsection (a) and the risk and needs assessment under Subsection (b) to the department in the format and at the time prescribed by the department.

(e) The board shall adopt rules to ensure that youth in the juvenile justice system are assessed using the screening instrument or clinical assessment under Subsection (a) and the risk and needs assessment under Subsection (b).

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1299 (H.B. 2862), Sec. 36, eff.

September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 962 (S.B. 1630), Sec. 5, eff. September 1, 2015.

Sec. 221.0035. BEST PRACTICES TO IDENTIFY AND ASSESS VICTIMS OF SEX TRAFFICKING. (a) In this section, "sex trafficking" means an offense under Section 20A.02(a)(7), Penal Code.

(b) The department shall evaluate the practices and screening procedures used by juvenile probation departments for the early identification of juveniles who are victims of sex trafficking for the purpose of developing a recommended set of best practices that may be used by a juvenile probation department to improve the juvenile probation department's ability to identify a juvenile who is a victim of sex trafficking.

(c) Best practices may include:

(1) examining a juvenile's referral history, including whether the juvenile has a history of running away from home or has been adjudicated for previous offenses;

(2) making inquiries into a juvenile's history of sexual abuse;

(3) assessing a juvenile's need for services, including counseling through a rape crisis center or other counseling; and

(4) asking the juvenile a series of questions designed to determine whether the juvenile is at high risk of being a victim of sex trafficking.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1351 (S.B. 1356), Sec. 2, eff. September 1, 2013.

Sec. 221.004. STANDARDS RELATING TO LOCAL PROBATION DEPARTMENTS. (a) The board shall adopt rules that provide:

(1) standards for the collection and reporting of information about juvenile offenders by local probation departments;

(2) performance measures to determine the effectiveness of probation services provided by local probation departments; and

(3) case management standards for all probation services provided by local probation departments.

(b) The department shall monitor local probation departments

for compliance with the standards and measures that the board adopts.

(c) The department shall provide technical assistance to local probation departments to aid compliance with the standards and measures that the board adopts.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.005. TRAINING AND ASSISTANCE TO LOCAL AUTHORITIES. (a) The department shall provide educational training and technical assistance to counties, juvenile boards, and probation offices to:

(1) promote compliance with the standards required under this chapter; and

(2) assist the local authorities in improving the operation of probation, parole, and detention services.

(b) The department shall encourage compliance with educational service standards and rights prescribed by state or federal law by:

(1) facilitating interagency coordination and collaboration among juvenile probation departments, school districts, and the Texas Education Agency; and

(2) developing and supporting a plan to ensure continuity of educational services to juvenile offenders, including special educational services for juveniles with disabilities.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.006. VIOLENCE PREVENTION AND CONFLICT RESOLUTION TRAINING. The department shall:

(1) provide training on request to juvenile probation departments and juvenile boards in violence prevention and conflict resolution programs that include discussion of domestic violence and child abuse issues; and

(2) encourage the inclusion of a violence prevention and conflict resolution program as a condition of probation.

Redesignated and amended from Human Resources Code, Subchapter C,

Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.0061. TRAUMA-INFORMED CARE TRAINING. The department shall provide trauma-informed care training during the preservice training the department provides for juvenile probation officers, juvenile supervision officers, juvenile correctional officers, and juvenile parole officers. The training must provide knowledge, in line with best practices, of how to interact with juveniles who have experienced traumatic events.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1351 (S.B. 1356), Sec. 3, eff. September 1, 2013.

Sec. 221.007. JUVENILE BOARD RECORDS AND REPORTS. Each juvenile board in the state shall:

(1) keep the financial, programmatic, and statistical records the department considers necessary; and

(2) submit periodic financial, programmatic, and statistical reports to the department as required by the department and in the format specified by the department, including electronic submission.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.0071. CHARTER SCHOOL. (a) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the commissioner of education may grant a charter on the application of a detention, correctional, or residential facility established only for juvenile offenders under Section 51.12, 51.125, or 51.126, Family Code, or an eligible entity that has entered into a contract with a facility described by this subsection.

(b) If a local detention, correctional, or residential facility described by Subsection (a) or an eligible entity that has entered into a contract with a facility described by Subsection (a) applies

for a charter, the facility or the eligible entity must provide all educational opportunities and services, including special education instruction and related services, that a school district is required under state or federal law to provide for students residing in the district through a charter school operated in accordance with and subject to Subchapter D, Chapter 12, Education Code.

(c) The commissioner of education shall adopt a form and procedure to allow a detention, correctional, or residential facility described by Subsection (a) or an eligible entity that has entered into a contract with a facility described by Subsection (a) to apply for a charter. The application form and procedure must be comparable to the applicable requirements of Section 12.110, Education Code, and must include any requirements provided under Subchapter D, Chapter 12, Education Code.

(d) A charter school operating under a charter granted under this section is entitled to receive open-enrollment charter school funding under Chapter 48, Education Code, in the same manner as an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.

(e) The commissioner of education shall adopt rules necessary to implement this section, including rules that modify the requirements for charter schools provided under Chapter 12, Education Code, as necessary to allow a charter school to operate in a detention, correctional, or residential facility described by Subsection (a).

(f) In this section, "eligible entity" has the meaning assigned by Section 12.101(a), Education Code.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1140 (S.B. 2), Sec. 44, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 418 (S.B. 1177), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.084, eff. September 1, 2019.

Sec. 221.008. INSPECTIONS AND AUDITS. (a) The department may inspect and evaluate a juvenile board and probation department and audit the juvenile board's financial, programmatic, and statistical records at reasonable times to determine compliance with the board's rules.

(b) The department may inspect any program or facility operated on behalf of and under the authority of the juvenile board by the probation department, a governmental entity, or private vendor.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.009. STRATEGIC PLAN; ADOPTION OF PLAN. (a) The board shall develop a strategic plan. The plan must:

(1) identify short-term and long-term policy goals;

(2) identify time frames and strategies for meeting the goals identified under Subdivision (1);

(3) estimate population projections, including projections of population characteristics;

(4) estimate short-term and long-term capacity, programmatic, and funding needs;

(5) describe intensive service and surveillance parole pilot programs to be developed;

(6) include an evaluation of aftercare services emphasizing concrete outcome measures, including recidivism and educational progress;

(7) identify objective criteria for the various decision points throughout the continuum of juvenile justice services and sanctions to guard against disparate treatment of minority youth;

(8) identify outcome measures by which to evaluate the effectiveness of services provided to youth in the juvenile justice system;

(9) include a plan of implementation for the development of common data sources and data sharing among the department, juvenile probation departments, the Department of Family and Protective Services, the Department of State Health Services, the Health and Human Services Commission, the Texas Education Agency, and other state agencies that serve youth in the juvenile justice system;

(10) include the development of new, or the improvement of existing, validated risk assessment instruments;

(11) include strategies to determine which programs are most effective in rehabilitating youth in the juvenile justice system;

(12) include planning for effective aftercare programs and services, including ensuring that youth in the juvenile justice system have personal identification and appropriate referrals to service providers; and

(13) track performance measures to illustrate the costs of different levels of treatment and to identify the most cost-effective programs in each component of the juvenile justice system in this state.

(b) The board shall make its best effort to develop regularly updated performance measures of the effectiveness of programs and services on outcomes for youths, public safety, and victims, make those measures publicly available online, and use those measures in determining funding levels for programs and services.

(c) The board shall review and adopt the strategic plan as provided by Section 2056.002, Government Code.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.010. COMPLAINTS RELATING TO JUVENILE BOARDS. (a) The department shall maintain a system to promptly and efficiently act on a complaint filed with the department relating to a juvenile board funded by the department. The department shall maintain information about parties to the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The department shall make information available describing the department's procedures for the investigation and resolution of a complaint filed with the department relating to a juvenile board funded by the department.

(c) The department shall investigate the allegations in the complaint and make a determination of whether there has been a violation of the department's rules relating to juvenile probation

programs, services, or facilities.

(d) If a written complaint is filed with the department relating to a juvenile board funded by the department, the department shall periodically notify the complainant and the juvenile board of the status of the complaint until final disposition, unless notice would jeopardize an undercover investigation.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.012. ANNUAL REPORTS. (a) The department shall report annually to the governor and the legislature on the department's operations and the condition of probation services in the state during the previous year. The report:

(1) may include recommendations; and

(2) must include:

(A) an evaluation of the effectiveness of the community-based programs operated under Section 54.0401, Family Code; and

(B) information comparing the cost of a child participating in a program described by Paragraph (A) with the cost of committing the child to the department.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1312, Sec. 99(26), eff. September 1, 2013.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(26), eff. September 1, 2013.

SUBCHAPTER B. CONTRACT STANDARDS AND MONITORING

Sec. 221.051. CONTRACT STANDARDS. (a) In each contract with counties for local probation services, the department shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to

comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) The department shall require each local juvenile probation department:

(1) to include the provisions of Subsection (a) in its contracts with private service providers that involve the use of state funds; and

(2) to use data relating to the performance of private service providers in prior contracts as a factor in selecting providers to receive contracts.

(c) The department shall consider the past performance of a juvenile board when contracting with the juvenile board for local probation services other than basic probation services. In addition to the contract standards described by Subsection (a), a contract with a juvenile board for probation services other than basic probation services must:

(1) include specific performance targets for the juvenile board based on the juvenile board's historic performance of the services; and

(2) require a juvenile board to report on the juvenile board's success in meeting the performance targets described by Subdivision (1).

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.052. CONTRACT MONITORING. The department shall establish a formal program to monitor contracts under Section 221.051 made by the department. The department must:

(1) monitor compliance with financial and performance requirements using a risk assessment methodology; and

(2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.053. CONTRACTS FOR OUT-OF-STATE JUVENILE INMATES. (a) The only entities other than the state authorized to operate a correctional facility to house in this state juvenile inmates convicted of offenses committed against the laws of another state of the United States are:

(1) a county or municipality; and

(2) a private vendor operating a correctional facility under a contract with a county or municipality.

(b) The board shall develop rules, procedures, and minimum standards applicable to county or private correctional facilities housing out-of-state juvenile inmates. A contract made under Subsection (a) shall require the county, municipality, or private vendor to operate the facility in compliance with minimum standards adopted by the board.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.054. DATA COLLECTION. (a) The department shall collect comprehensive data concerning the outcomes of local probation programs throughout the state.

(b) Data collected under Subsection (a) must include:

(1) a description of the types of programs and services offered by a juvenile probation department, including a description of the components of each program or service offered; and

(2) to the extent possible, the rate at which juveniles who enter or complete juvenile probation are later committed to the custody of the state.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 221.056. RESIDENTIAL TREATMENT FACILITY. (a) The department may contract with a local mental health authority and local intellectual and developmental disability authority for the

establishment of a residential treatment facility for juveniles with mental illness or emotional injury who, as a condition of juvenile probation, are ordered by a court to reside at the facility and receive education services at the facility. The department may work in cooperation with the local mental health authority and local intellectual and developmental disability authority to provide mental health residential treatment services for juveniles residing at a facility established under this section.

(b) A residential treatment facility established under this section must provide juveniles receiving treatment at the facility:

(1) a short-term program of mental health stabilization that does not exceed 150 days in duration; and

(2) all educational opportunities and services, including special education instruction and related services, that a school district is required under state or federal law to provide for students residing in the district through a charter school operated in accordance with and subject to Subchapter D, Chapter 12, Education Code.

(c) If a residential treatment facility established under this section is unable to provide adequate and sufficient educational opportunities and services to juveniles residing at the facility, the facility may not continue to operate beyond the end of the school year in which the opportunities or services provided by the facility are determined to be inadequate or insufficient.

(d) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the commissioner of education shall grant a charter on the application of a residential treatment facility established under this section for a school chartered for the purposes of this section.

Redesignated and amended from Human Resources Code, Subchapter C, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1140 (S.B. 2), Sec. 45, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 7.01, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 30, eff. September 1, 2023.

CHAPTER 222. STANDARDS FOR AND REGULATION OF CERTAIN OFFICERS AND EMPLOYEES

SUBCHAPTER A. STANDARDS FOR AND GENERAL REGULATION OF OFFICERS

Sec. 222.001. MINIMUM STANDARDS FOR PROBATION OFFICERS. (a) To be eligible for appointment as a probation officer, a person who was not employed as a probation officer before September 1, 1981, must:

(1) have satisfactorily completed the course of preservice training or instruction and any continuing education required by the department;

(2) have passed the tests or examinations required by the department; and

(3) possess the level of certification required by the department.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 56(4), eff. September 1, 2023.

(b-1) The department by rule shall establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification. Rules adopted by the department under this subsection must be the least restrictive rules possible to ensure certified juvenile probation officers are qualified to protect children and public safety without creating barriers to entry into the profession.

(c) The board by rule may authorize the temporary employment of a person who has not completed a course of preservice training, passed the examination, or attained the required level of certification, contingent on the person meeting those requirements within the time specified by the board.

(d) A person must possess the level of training, experience, and certification required by the department to be eligible for employment in a probation office in a position supervising other probation officers. The department may require several levels of certification to reflect increasing levels of responsibility. A department rule relating to levels of certification does not affect the continued employment of a probation officer in a supervisory position if the person holds that position on the date on which the rule takes effect.

(e) The department may waive any certification requirement, except a fee requirement, for an applicant who has a valid certification from another state that has certification requirements that are substantially equivalent to the requirements in this state.

(f) Repealed by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 56(4), eff. September 1, 2023.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 31, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 56(4), eff. September 1, 2023.

Sec. 222.002. MINIMUM STANDARDS FOR DETENTION OFFICERS. To be eligible for appointment as a detention officer, a person who was not employed as a detention officer before September 1, 2005, must:

(1) be at least 21 years of age;

(2) have acquired a high school diploma or its equivalent;

(3) have satisfactorily completed the course of preservice training or instruction required by the department;

(4) have passed the tests or examinations required by the department; and

(5) possess the level of certification required by the department.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 32, eff. September 1, 2023.

Sec. 222.003. MINIMUM STANDARDS FOR CERTAIN EMPLOYEES OF NONSECURE CORRECTIONAL FACILITIES. (a) The board by rule shall adopt certification standards for persons who are employed in nonsecure correctional facilities that accept juveniles and that are

operated by or under contract with a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code.

(b) The certification standards adopted under Subsection (a) must be substantially similar to the certification requirements for detention officers under Section 222.002.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1299 (H.B. 2862), Sec. 37, eff. September 1, 2013.

Sec. 222.004. PERSONS WHO MAY NOT ACT AS CHIEF ADMINISTRATIVE, JUVENILE PROBATION, OR DETENTION OFFICERS. (a) A peace officer, prosecuting attorney, or other person who is employed by or who reports directly to a law enforcement or prosecution official may not act as a chief administrative, juvenile probation, or detention officer or be made responsible for supervising a juvenile on probation.

(b) For purposes of this section, a chief administrative officer, regardless of title, is the person who is:

(1) hired or appointed by or under contract with the juvenile board; and

(2) responsible for the oversight of the operations of the juvenile probation department or any juvenile justice program operated by or under the authority of the juvenile board.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 222.005. CARRYING OF FIREARM BY CERTAIN OFFICERS PROHIBITED. (a) A juvenile probation, detention, or corrections officer may not carry a firearm in the course of the person's official duties.

(b) This section does not apply to:

(1) an employee of the department; or

(2) a juvenile probation officer authorized to carry a

firearm under Section 142.006.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 222.006. PROBATION OFFICER: COUNTY EMPLOYEE. A juvenile probation officer whose jurisdiction covers only one county is considered to be an employee of that county.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

SUBCHAPTER B. CERTIFICATION AND EXAMINATION

Sec. 222.051. NOTICE OF CERTIFICATION EXAMINATION RESULTS. (a) Except as provided by Subsection (b), the department shall notify each person taking a certification examination of the results of the examination not later than the 30th day after the date on which the examination is administered.

(b) The department shall notify a person taking an examination graded or reviewed by a national testing service of the results not later than the 14th day after the date on which the department receives the results from the testing service.

(c) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before that 90th day.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 222.052. ANALYSIS OF EXAMINATION PERFORMANCE. The department shall furnish a person who fails a certification test administered under this chapter with an analysis of the person's performance on the examination if the person requests the analysis in writing.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 222.0521. APPLICATION OF CERTAIN LAW. Chapter 53, Occupations Code, applies to the issuance of a certification issued by the department.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 33, eff. September 1, 2023.

Sec. 222.0522. PROVISIONAL CERTIFICATION. (a) The department may issue a provisional certification to an employee of a juvenile probation department or a private facility that houses youth on probation until the employee is certified under Section 222.001, 222.002, or 222.003, as applicable.

(b) The department shall adopt rules to implement Subsection (a), including rules regarding eligibility for provisional certification and application procedures.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 33, eff. September 1, 2023.

Sec. 222.053. REVOCATION OR SUSPENSION OF CERTIFICATION OR PROVISIONAL CERTIFICATION. (a) The department may revoke or suspend a certification, or reprimand a certified officer:

(1) for a violation of this chapter or a department rule; or

(2) if, under Subsection (c), a panel determines that continued certification of the person threatens juveniles in the juvenile justice system.

(b) The department may place on probation a person whose certification is suspended. If the suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation; and

(2) continue or review professional education until the person attains a degree of skill satisfactory to the department in

those areas that are the basis of the probation.

(c) The executive director may convene, in person or telephonically, a panel of three board members to determine if a person's continued certification threatens juveniles in the juvenile justice system. If the panel determines that the person's continued certification threatens juveniles in the juvenile justice system, the person's license is temporarily suspended until an administrative hearing is held as soon as possible under Subsection (d). The executive director may convene a panel under this subsection only if the danger posed by the person's continued certification is imminent. The panel may hold a telephonic meeting only if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

(d) A person is entitled to a hearing before the State Office of Administrative Hearings if the department proposes to suspend or revoke the person's certification.

(e) A person may appeal a ruling or order issued under this section to a district court in the county in which the person resides or in Travis County. The standard of review is under the substantial evidence rule.

(f) In this section, "certification" includes a provisional certification.

Redesignated and amended from Human Resources Code, Subchapter D, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 7, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 8, eff. September 1, 2023.

Sec. 222.054. CERTIFICATION OR PROVISIONAL CERTIFICATION INELIGIBILITY. (a) In this section, "certification" includes a provisional certification.

(b) The department may designate as permanently ineligible for certification under this chapter an individual who has been terminated from employment with the department for engaging in conduct that demonstrates the individual is not suitable for

certification under this chapter.

(c) The executive director may convene, in person or telephonically, a panel of three board members to determine if a former department employee's continued eligibility to obtain a certification under this chapter threatens juveniles in the juvenile justice system. If the panel determines an individual's eligibility for certification threatens juveniles in the juvenile justice system, the department shall temporarily designate the individual as ineligible for certification until an administrative hearing is held under Subsection (d). The hearing must be held as soon as possible following the temporary designation. The executive director may convene a panel under this subsection only if the danger posed by the person's continued eligibility for certification is imminent. The panel may hold a telephonic meeting only if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

(d) A person is entitled to a hearing before the State Office of Administrative Hearings if the department proposes to designate a person as permanently ineligible for certification.

(e) A person may appeal a ruling or order issued under this section to a district court in the county in which the person resides or in Travis County. The standard of review is under the substantial evidence rule.

Added by Acts 2023, 88th Leg., R.S., Ch. 954 (S.B. 1849), Sec. 9, eff. September 1, 2023.

CHAPTER 223. STATE AID

Sec. 223.001. DETERMINATION OF AMOUNT OF STATE AID. (a) The department shall annually allocate funds for financial assistance to juvenile boards to provide juvenile services according to current estimates of the number of juveniles in each county, a basic probation funding formula for departments that clearly defines what basic probation entails and which services are provided, and other factors the department determines are appropriate.

(a-1) The department may incorporate as factors in the basic probation funding formula under Subsection (a) measures that create incentives for diverting children from the juvenile justice system. The department may prioritize factors for which the department

collects relevant information. The board may adopt rules establishing and defining the factors under this subsection.

(a-2) When revising the basic probation funding formula under Subsection (a), the department shall consult and coordinate with relevant stakeholders, including:

(1) the advisory council on juvenile services; and

(2) the Legislative Budget Board.

(b) The legislature may appropriate the amount of state aid necessary to supplement local funds to maintain and improve statewide juvenile services that comply with department standards and to initiate and support the regionalization plan under Section 203.017 so that savings are generated by decreases in the population of department facilities operated under Subtitle C.

(c) The department shall set aside a portion of the funds appropriated to the department for discretionary state aid to fund programs designed to address special needs or projects of local juvenile boards, including projects dedicated to specific target populations based on risk and needs, and with established recidivism reduction goals. The department shall develop discretionary grant funding protocols based on documented, data-driven, and research-based practices. The department may incorporate incentives into the discretionary grant funding protocols that encourage collaboration between juvenile probation departments.

(d) The department shall reimburse counties for the placement of children in the regional specialized program at a rate that offers a savings to the state in relation to the average cost per day for confining a child in a department facility operated under Subtitle C.

(d-1) The board, in consultation with the advisory council on juvenile services, shall adopt rules requiring a juvenile probation department to apply for the placement of a child in a regional specialized program before a juvenile court commits the child to the department's custody under Chapter 54, Family Code. The board by rule may establish exceptions to this requirement for offenses or circumstances the department considers inappropriate for diversion from commitment to state custody.

(e) The department may not adversely impact the state aid for a juvenile board or a juvenile probation department that does not enter into a contract to serve youth from other counties, or does not act as a regional facility.

(f) A juvenile board or juvenile probation department may not

be required to accept a child for placement in a post-adjudication correctional facility, unless the child is subject to an order issued by a juvenile court served by that board or department.

Redesignated and amended from Human Resources Code, Subchapter E, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 962 (S.B. 1630), Sec. 6, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 34, eff. September 1, 2023.

Sec. 223.002. MAINTENANCE OF LOCAL FINANCIAL SUPPORT. (a) To receive the full amount of state aid funds for which a juvenile board may be eligible, a juvenile board must demonstrate to the department's satisfaction that the amount of local or county funds budgeted for juvenile services is at least equal to the amount spent, excluding construction and capital outlay expenses, for those services in the 1994 county fiscal year. The department may waive this requirement only if the juvenile board demonstrates to the department that unusual, catastrophic, or exceptional circumstances existed during the relevant year to affect adversely the level of county funding. If the required amount of local funding is not budgeted and the department does not grant a waiver, the department shall reduce the allocation of state aid funds to the juvenile board by the amount equal to the amount that the county funding is below the required funding.

(b) For purposes of Subsection (a), the amount spent on juvenile detention and correctional facilities is included in determining the amount of local or county funds. The amount spent for construction or renovation is not included.

(c) The department must be satisfied at the end of each county fiscal year that the juvenile board actually spent local or county funds for juvenile services in the amount demonstrated to the department at the beginning of the fiscal year.

(d) The department may require a rebate of state aid, or withhold state aid to which the juvenile board would otherwise be entitled, as necessary to satisfy the requirement that a juvenile

board spend funds as demonstrated.

Redesignated and amended from Human Resources Code, Subchapter E, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 223.003. SPECIAL RULES FOR MULTI-COUNTY JURISDICTIONS. If necessary, the board by rule may provide for:

(1) the payment of compensation, insurance, retirement, fringe benefits, and related matters to a juvenile probation officer whose jurisdiction covers more than one county;

(2) the centralization of administrative responsibility associated with the state aid program in a county included in a multi-county jurisdiction; and

(3) the application of Section 223.001 to a multi-county jurisdiction.

Redesignated and amended from Human Resources Code, Subchapter E, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 223.004. PAYMENT OF STATE AID. (a) When the department determines that a juvenile board complies with the department's standards, the department shall submit to the comptroller a voucher for payment to a juvenile board of the amount of state aid to which the board is entitled.

(b) The juvenile board's fiscal officer shall deposit all state aid received under this chapter in a special fund. The juvenile board may use the funds solely to provide juvenile probation services.

(c) A juvenile board receiving state aid under this chapter is subject to audit by:

(1) the Legislative Budget Board;

(2) the governor's budget, policy, and planning office;

(3) the state auditor; and

(4) the comptroller.

(d) A juvenile board receiving state aid under this chapter shall submit reports as required by the department.

Redesignated and amended from Human Resources Code, Subchapter E, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 223.005. REFUSAL, REDUCTION, OR SUSPENSION OF STATE AID. (a) The department may refuse, reduce, or suspend payment of state aid to:

(1) a juvenile board that fails to comply with the department's rules or fails to maintain local financial support; or

(2) a county that fails to comply with the minimum standards provided under Section 221.002(a)(4).

(b) The department shall provide for notice and a hearing in a case in which the department refuses, reduces, or suspends state aid.

Redesignated and amended from Human Resources Code, Subchapter E, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

Sec. 223.006. FUNDING AND CONSTRUCTION OF POST-ADJUDICATION FACILITIES. (a) The department may provide state aid to a county to acquire, construct, and equip post-adjudication residential or day-treatment centers from money appropriated for those purposes. The facilities may be used for children who are placed on probation by a juvenile court under Section 54.04, Family Code, as an alternative to commitment to the facilities of the department.

(b) State funds provided to counties under Subsection (a) must be matched by local funds equal to at least one-fourth of the state funds.

(c) From money appropriated for construction of the facilities described by Subsection (a), the department shall contract with the Texas Department of Criminal Justice for construction management services, including:

(1) evaluation of project plans and specifications; and

(2) review and comment on the selection of architects and engineers, change orders, and sufficiency of project inspection.

(d) On completion of the review of project plans and specifications under Subsection (c), the Texas Department of Criminal Justice shall issue a comprehensive report that states in detail the

proposed cost of the project. The department shall use the report in making a comparative evaluation of proposed projects and shall give priority to the projects the department finds are the most effective and economical.

(e) The department may not award money for a capital construction project for a facility under this section unless the department receives from the commissioners court of the county intending to use the facility a written commitment that the commissioners court has reviewed and accepted the conditions of the award. If more than one county intends to use the facility, the department must receive from each county a written commitment that the county will agree with the other counties to an interlocal contract to operate the facility in accordance with the conditions of the award.

(f) A county receiving state aid under this section shall adhere to department standards for the construction and operation of a post-adjudication secure residential facility.

(g) For a facility constructed under this section, not more than 25 percent of the operating costs of the facility may be reimbursed by the department.

(h) It is the intent of the legislature to appropriate the full amount of money authorized under Subsection (g).

(i) In this section, "operating costs" means the operating costs of a facility at an 80-percent occupancy rate.

Redesignated and amended from Human Resources Code, Subchapter E, Chapter 141 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.004, eff. September 1, 2011.

SUBTITLE C. SECURE FACILITIES

CHAPTER 241. GENERAL PROVISIONS

Sec. 241.001. COOPERATION OF OTHER AGENCIES. To effectuate the purpose of this subtitle and to make maximum use of existing facilities and personnel, all departments and agencies of the state and all officers and employees of the state, when requested by the department, shall cooperate with the department in all activities consistent with their proper functions.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B.

653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.0015. STRATEGIC PLAN. The department shall biennially develop a strategic plan in the manner described by Section 221.009.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.002. NO FORFEITURE OF CERTAIN CIVIL RIGHTS. Commitment of a child to the custody of the department does not disqualify the child in any future examination, appointment, or application for public service under the government of the state or of any political subdivision of the state.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.003. YOUTH DEVELOPMENT COUNCIL FUND. The youth development council fund exists in the treasury as a special fund for the purposes provided by law.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.004. REQUEST FOR CERTAIN RECORDS. For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the department. If the department has a record to which the prosecuting attorney is entitled under this section, the department shall furnish a copy of the record to the prosecuting attorney. Otherwise, the department shall notify the prosecuting attorney that the department does not have a record to which the

attorney is entitled under this section.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.005. LIABILITY OF VOLUNTEERS. (a) Except as provided by Subsection (b), a volunteer is not liable for damages arising from an act or omission that results in personal injury, death, or property damage if the act or omission is:

(1) in the course and scope of the volunteer's duties as a volunteer; and

(2) not intentional or grossly negligent.

(b) A volunteer is liable for personal injury, death, or property damage proximately caused by an act or omission related to the operation or use of any motor-driven equipment to the extent of the greater of:

(1) the amount of financial responsibility required for the motor-driven equipment, if any, under Chapter 601, Transportation Code; or

(2) the amount of any liability insurance coverage that applies to the act or omission.

(c) In this section, "volunteer" means an individual rendering services for or on behalf of the department who does not receive compensation in excess of reimbursement for expenses incurred.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.006. APPLICATION OF LAW RELATING TO FREE EXERCISE OF RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a juvenile detention facility or other correctional facility operated by or under a contract with the department, a county, or a juvenile probation department is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.007. CERTAIN CRIMES CONCERNING THE DEPARTMENT. (a) In this section, "special prosecution unit" means the special prosecution unit established under Subchapter E, Chapter 41, Government Code.

(b) As appropriate, the district attorney, criminal district attorney, or county attorney representing the state in criminal matters before the district or inferior courts of the county who would otherwise represent the state in the prosecution of an offense or delinquent conduct concerning the department and described by Article 104.003(a), Code of Criminal Procedure, may request that the special prosecution unit prosecute, or assist in the prosecution of, the offense or delinquent conduct.

(c) The office of inspector general operated under Subchapter C, Chapter 242, shall on a quarterly basis prepare and deliver to the board of directors of the special prosecution unit a report concerning:

(1) any alleged criminal offense or delinquent conduct concerning the department and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter; and

(2) the disposition of any case involving a criminal offense or delinquent conduct concerning the department and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter.

(d) Notwithstanding Subsection (c), the office of inspector general shall immediately provide the special prosecution unit with a report concerning an alleged criminal offense or delinquent conduct concerning the department and described by Article 104.003(a), Code of Criminal Procedure, if the chief inspector general reasonably believes the offense or conduct is particularly serious and egregious.

(e) The chief inspector general of the office of inspector general, at the direction of the board of directors of the special prosecution unit, shall notify the foreperson of the appropriate grand jury, in the manner provided by Article 20A.051, Code of

Criminal Procedure, if:

(1) the chief inspector general receives credible evidence of illegal or improper conduct by department officers, employees, or contractors that the inspector general reasonably believes jeopardizes the health, safety, and welfare of children in the custody of the department;

(2) the chief inspector general reasonably believes the conduct:

(A) could constitute an offense under Article 104.003(a), Code of Criminal Procedure; and

(B) involves the alleged physical or sexual abuse of a child in the custody of a department facility or an investigation related to the alleged abuse; and

(3) the chief inspector general has reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.56, eff. January 1, 2021.

Sec. 241.008. DUTY TO FILE COMPLAINT WITH LAW ENFORCEMENT AGENCY. If the executive director has reasonable cause to believe that a child in the custody of the department is the victim of a crime committed at a department facility operated under this subtitle, the executive director shall immediately file a complaint with the appropriate law enforcement agency.

Transferred, redesignated and amended from Human Resources Code, Subchapter G, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.006, eff. September 1, 2011.

Sec. 241.009. COMMITMENT INFORMATION. (a) Not later than October 1 of each year, the department shall publish on the department's Internet website aggregated information on the number of children committed to the department during the previous fiscal year,

categorized by:

(1) committing offense level;

(2) sentence type;

(3) age; and

(4) sex.

(b) The department shall publish quarterly on the department's Internet website end-of-month data described by Subsection (a), aggregated for all children committed to the department and for children placed in each secure facility and halfway house.

(c) The department shall ensure that information regarding an individual child cannot be identified in any of the aggregated information published under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 35, eff. September 1, 2023.

CHAPTER 242. OPERATION OF SECURE FACILITIES

SUBCHAPTER A. GENERAL AND ADMINISTRATIVE PROVISIONS

Sec. 242.001. STUDY OF TREATMENT METHODS; STATISTICAL RECORDS. (a) The department shall conduct continuing inquiry into the effectiveness of the treatment methods the department employs in the reformation of children. To this end, the department shall maintain a record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction of the department and shall tabulate, analyze, and publish biennially the data for use in evaluating the relative merits of treatment methods.

(b) The department shall cooperate with courts and private and public agencies in the collection of statistics and information regarding juvenile delinquency, arrests made, complaints, informations, and petitions filed, and the dispositions made of them, and other information useful in determining the amount and causes of juvenile delinquency in this state.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.002. TREATMENT PROGRAMS; AVAILABILITY. (a) Repealed by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 56(5), eff.

September 1, 2023.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 56(5), eff. September 1, 2023.

(c) The department shall offer or make available programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for females and for sex offenders, capital offenders, children who are chemically dependent, and children with mental illness, in an adequate manner so that a child in the custody of the department receives appropriate rehabilitation services recommended for the child by the court committing the child to the department.

(d) If the department is unable to offer or make available programs described by Subsection (c), the department shall, not later than December 31 of each even-numbered year, provide the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report explaining:

(1) which programs are not offered or are unavailable; and

(2) the reason the programs are not offered or are unavailable.

(e) The department shall periodically review, document, and compare the accessibility and funding of treatment programs provided to female children committed to the department to the accessibility and funding of treatment provided to male children committed to the department.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. 2733), Sec. 6, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 36, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 37, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 56(5), eff. September 1, 2023.

Sec. 242.003. POLICIES AND RULES. (a) The board is responsible for the review and approval of all policies and shall make rules appropriate to the proper accomplishment of the department's functions. The board may delegate to the executive director the board's responsibility for the adoption of certain policies as appropriate for the proper accomplishment of the department's functions relating to state-operated facilities and the department's personnel.

(b) The board shall adopt rules for the government of the schools, facilities, and programs under the department's authority under this subtitle and shall see that the schools, facilities, and programs are conducted according to law and to the board's rules.

(c) The purpose of the rules and of all education, work, training, discipline, and recreation adopted under this section and of all other activities in the schools, facilities, and programs is to restore and increase the self-respect and self-reliance of the children under the authority of the department and to qualify those children for good citizenship and honorable employment.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.004. EMPLOYEES. (a) Within the limits specified by legislative appropriation, the department may employ and compensate personnel necessary to carry out the department's duties.

(b) Except as otherwise provided by this subchapter, an employee of the department is employed on an at-will basis.

(c) The department shall establish procedures and practices governing:

(1) employment-related grievances submitted by department employees; and

(2) disciplinary actions within the department, including a procedure allowing a department employee to elect to participate in an independent dismissal mediation if the employee is recommended for dismissal.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.005. PROFESSIONAL INFORMATION FOR ADVISORY BOARD MEMBERS AND EMPLOYEES. The executive director shall provide to members of any applicable advisory board and to department employees, as often as is necessary, information regarding qualifications for office or employment under this chapter and responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.006. INTRA-AGENCY CAREER LADDER PROGRAM. The program shall require intra-agency posting of all positions concurrently with any public postings.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.007. JOB PERFORMANCE EVALUATIONS. The executive director shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for department employees must be based on the system established under this section.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.008. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The executive director shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement shall include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's work force that meets federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the department's work force of all persons of whom federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must cover an annual period, be updated annually, be reviewed by the Texas Workforce Commission for compliance with Subsection (a)(1), and be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.009. JUVENILE CORRECTIONAL OFFICERS; STAFFING. (a) In this section, "juvenile correctional officer" means a department employee whose primary duties include the custodial supervision of children in the custody of the department.

(b) The department shall provide competency-based training to each juvenile correctional officer employed by the department, which must include on-the-job training. Each officer must complete at least 300 hours of training in the officer's first year of employment, with at least 240 hours of training before the officer independently commences the officer's duties at the facility. The officer must demonstrate competency in the trained subjects as required by the

department. The training must provide the officer with information and instruction related to the officer's duties, including information and instruction concerning:

(1) the juvenile justice system of this state, including the juvenile correctional facility system;

(2) security procedures;

(3) the supervision of children committed to the department;

(4) signs of suicide risks and suicide precautions;

(5) signs and symptoms of the abuse, assault, neglect, and exploitation of a child, including sexual abuse, sexual assault, and human trafficking, and the manner in which to report the abuse, assault, neglect, or exploitation of a child;

(6) the neurological, physical, and psychological development of adolescents;

(7) department rules and regulations, including rules, regulations, and tactics concerning the use of force;

(8) appropriate restraint techniques;

(9) the Prison Rape Elimination Act of 2003 (42 U.S.C. Section 15601, et seq.);

(10) the rights and responsibilities of children in the custody of the department;

(11) interpersonal relationship skills;

(12) the social and cultural lifestyles of children in the custody of the department;

(13) first aid and cardiopulmonary resuscitation;

(14) counseling techniques;

(15) conflict resolution and dispute mediation, including de-escalation techniques;

(16) behavior management;

(17) mental health issues;

(18) employee rights, employment discrimination, and sexual harassment; and

(19) trauma-informed care.

(c) The department may employ part-time juvenile correctional officers. A part-time juvenile correctional officer is subject to the training requirements of this section.

(d) In each correctional facility operated by the department that has a dormitory, including an open-bay dormitory, the department must maintain a ratio of not less than one juvenile correctional

officer performing direct supervisory duties for every 12 persons committed to the facility.

(e) The department shall consider the age of a juvenile correctional officer or other department employee who performs direct supervisory duties when determining the placement of the officer or employee in a department facility so that, to the extent practicable, an officer or employee is not supervising a child who is not more than three years younger than the officer or employee or is otherwise a similar age to the officer or employee.

(f) The department shall rotate the assignment of each juvenile correctional officer at an interval determined by the department so that a juvenile correctional officer is not assigned to the same station for an extended period of time.

(g) The department shall ensure that at least one juvenile correctional officer is assigned to supervise in or near a classroom or other location in which children receive education services or training at the time the children are receiving the education services or training.

(h) The board shall adopt rules necessary to administer this section.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1351 (S.B. 1356), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 773 (H.B. 2372), Sec. 1, eff. September 1, 2015.

Sec. 242.010. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) In this section, "national criminal history record information" means criminal history record information obtained from the Department of Public Safety under Subchapter F, Chapter 411, Government Code, and from the Federal Bureau of Investigation under Section 411.087, Government Code.

(b) The department shall review the national criminal history record information, state criminal history record information maintained by the Department of Public Safety, and previous and

current employment references of each person who:

(1) is an employee, volunteer, ombudsman, or advocate working for the department or working in a department facility or a facility under contract with the department;

(2) is a contractor or an employee or subcontractor of a contractor who has direct access to children in department facilities;

(3) provides direct delivery of services to children in the custody of the department; or

(4) has access to records in department facilities or offices.

(b-1) The department may review criminal history record information of:

(1) a person requesting visitation access to a department facility; or

(2) any person, as necessary to conduct an evaluation of the home under Section 245.051(a).

(b-2) The department may not deny visitation access to an immediate family member of a child committed to the department based solely on a review of criminal history record information under Subsection (b-1)(1).

(b-3) If visitation access is denied or limited based in part on a review of criminal history record information under Subsection (b-1)(1), the department shall retain the criminal history record information of the person for whom access is denied or limited until the child the person requested visitation access to is released from the department.

(c) To enable the department to conduct the review, the board shall adopt rules requiring a person described by Subsection (b) to electronically provide the Department of Public Safety with a complete set of the person's fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation.

(d) For each person described by Subsection (b), the department shall review on an annual basis the person's national criminal history record information.

(e) The department shall ensure that the system used to check state criminal history record information maintained by the Department of Public Safety is capable of providing real time arrest information.

(f) The board by rule may require a person described by Subsection (b) to pay a fee related to the first national criminal history record information review conducted under this section. The amount of the fee may not exceed the administrative costs incurred by the department in conducting the initial review, including the costs of obtaining the person's fingerprints.

(g) The board shall adopt rules necessary to administer this section.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. 2733), Sec. 7, eff. September 1, 2013.

Sec. 242.011. BIENNIAL BUDGET. The executive director shall prepare a biennial budget of all funds necessary to be appropriated by the legislature to the department to carry out the purposes of this subtitle. The budget shall be submitted and filed by the executive director in the form and manner and within the time prescribed by law.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

SUBCHAPTER B. SECURE FACILITIES; SERVICES

Sec. 242.051. ADMINISTRATION OF INSTITUTIONS; CHARGE OF CHILDREN. (a) The department shall:

(1) administer the training, diagnostic treatment, and supervisory facilities and services of the state for children committed to the department; and

(2) manage and direct all institutions and training school facilities under the authority of the department.

(b) The department shall have general charge of and be responsible for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the department. The department shall seek to establish relationships and

to organize a way of life that will meet the spiritual, moral, physical, emotional, intellectual, and social needs of the children under the department's care as those needs would be met in an adequate home.

(c) The department shall see that the buildings and premises are kept in good sanitary condition.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.052. BUILDINGS AND IMPROVEMENTS. (a) The department may design, construct, equip, furnish, and maintain buildings and improvements at facilities under the department's jurisdiction.

(b) The department may employ architects or engineers, or both, to prepare plans and specifications and to supervise the construction and improvements described by Subsection (a).

(c) The board shall promulgate rules relating to the award of contracts for the construction of buildings and improvements. The rules shall provide for the award of contracts for the construction of buildings and improvements to the qualified bidder making the lowest and best bid. A construction contract may not be awarded for a sum in excess of the amount of funds available for the project. The department may reject any and all bids submitted.

(d) If a project is financed wholly or partly by federal funds, any standards required by the enabling federal statute or required by the rules of the administering federal agency control over this section.

(e) The department may employ professional, technical, and clerical personnel to carry out the design and construction functions required by this section.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.053. USE OF EXISTING INSTITUTIONS AND AGENCIES. (a) In carrying out the department's duties, the department may make use of law-enforcement, detention, supervisory, medical, educational,

correctional, and other facilities, institutions, and agencies in the state. This section does not authorize the department to assume control of any other agency, institution, or facility in the state, or to require any agency, institution, or facility to serve the department in a manner inconsistent with the authority or function of the agency, institution, or facility or with any law or regulation governing the activity of the agency, institution, or facility.

(b) When funds are available for the purpose, the department may enter into agreements with appropriate public or private agencies for the separate care and treatment of persons subject to the control of the department. The department may not make use of any private institution or agency without its consent. The department shall make reasonable efforts to ensure that the expenditure of appropriations for the purchase of contract residential care for children, not including the purchase of care in foster family homes, be allocated to providers on a fixed monthly basis if that allocation is cost-effective and the number, type, needs, and conditions of the children to be served is reasonably constant.

(c) The department shall periodically inspect all public and private institutions and agencies whose facilities the department is using. Every public and private institution and agency shall allow the department reasonable opportunity to examine and consult with children who have been committed to the department and who are in the custody of the institution or agency.

(d) Placement of a child in, or the release of a child by, any institution not operated by the department does not terminate the authority of the department over the child. No child placed in an institution or under an agency by the department may be released by the institution or agency without the approval of the department.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.054. HALFWAY HOUSE PROGRAM. (a) The department may not develop a halfway house to be operated by the department if an appropriate private halfway house program is contractually available and the costs under the contract are less than the costs would be if the department provided the services.

(b) Before the department contracts for the development of a halfway house program, the department shall send prospective service providers a request for a proposal that identifies the program services desired, the population to be served, and potential locations for the program. The department shall select the service provider that submits the proposal that best meets the department's needs according to standards established by the department. If the department does not receive a proposal that meets its needs, the department may request funds from the legislature for the development of a halfway house to be operated by the department.

(c) This section does not apply to halfway houses operated by the department on September 1, 1987.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.055. CRISIS INTERVENTION AND ASSESSMENT CENTERS. The department may establish a children's crisis intervention and assessment center at a facility owned or operated by the department. The department may contract with another entity for the provision or use of services at the center.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.056. ADVOCACY AND SUPPORT GROUPS. (a) The department shall allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, persons with mental illness, or victims of sexual assault to provide on-site information, support, and other services for children confined in department facilities.

(b) The department shall adopt security and privacy procedures for advocacy and support groups that provide on-site information, support, and other services under this section. The security and privacy procedures may not be designed to deny an advocacy or support group access to children confined in department facilities.

(c) The department shall adopt standards consistent with

standards adopted by the Texas Department of Criminal Justice regarding the confidential correspondence of children confined in department facilities with external entities, including advocacy and support groups.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 38, eff. September 1, 2023.

Sec. 242.057. DEPARTMENT PROGRAMS. (a) The department shall develop and use standards based on performance to evaluate and compare programs operated by the department.

(b) When practicable and feasible, the department shall provide specific performance standards for a program serving 10 or more children through an agreement entered into under Section 242.053. In the performance standards, the department shall include outcome measures for evaluating the quality of services provided under the agreement.

(c) For the purposes of comparison, the department shall use performance standards that are as consistent as practicable with those used to evaluate and compare programs operated by the department, that measure the benefits and cost-effectiveness of the respective programs, and that measure the average length of stay and rate of recidivism of the children in the program.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.058. SERVICES FOR CHILDREN NOT COMMITTED TO THE DEPARTMENT. The department may provide services to a child not committed to the department if the department contracts with a local juvenile probation department, the Health and Human Services Commission, or the Department of Family and Protective Services to provide services to the child.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.059. ADDITIONAL FACILITIES; PAROLE SUPERVISION. When funds are available, the department may:

(1) establish and operate places for detention and diagnosis of children committed to it;

(2) establish and operate additional treatment and training facilities, including forestry or parks-maintenance camps and ranches, necessary to classify and treat children committed to the department according to their needs;

(3) establish active parole supervision to aid children given conditional release to find homes and employment and to become reestablished in the community; and

(4) assist in establishing training facilities and programs owned and operated by private individuals or organizations which agree to provide services to children committed to the department, including programs for children needing long-term residential care.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.060. COMPUTATION OF DAILY COSTS OF FACILITY. In computing the daily costs of a residential facility operated by the department, the department shall use a standard method that is:

(1) consistent with methods used by other state agencies; and

(2) designed to reflect the actual cost to the state of operating the facility.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.061. REFERRALS FROM FEDERAL COURT. The department may enter into agreements with the federal government to accept children

from the federal court for an agreed compensation.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.062. SPECIAL ACCOUNTS. (a) Proceeds from the operation of canteens and vending machines at facilities under the jurisdiction of the department shall be deposited to the credit of a special account in the General Revenue Fund called the canteen revolving fund. The proceeds shall be used to pay the actual expenses of maintaining and operating the canteens and vending machines.

(b) Proceeds in excess of the amount required for the expenses described by Subsection (a), donations for student activities, and proceeds from children's fundraising projects shall be deposited to the credit of a special account in the General Revenue Fund called the student benefit fund and may be used only to:

(1) provide education, recreation, and entertainment to children committed to the department; or

(2) reimburse children committed to the department for personal property lost or damaged as a result of negligence by the staff of the department.

(c) Proceeds from shop projects at the facilities under the department's jurisdiction shall be deposited to the credit of a special account in the General Revenue Fund called the vocational shop fund and may be used only to:

(1) purchase and maintain parts, tools, and other supplies necessary for the shop projects; and

(2) compensate the students who participate in the projects.

(d) Registration fees from seminars and conferences conducted by the department shall be deposited to the credit of a special account in the General Revenue Fund called the conference account and may be used only to pay the costs of conducting seminars and conferences.

(e) Money in the special accounts described by this section is appropriated for the purposes indicated in this section and shall be expended on warrants drawn by the comptroller on the order of the

department.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.063. STUDENT TRUST FUND; CONTRABAND MONEY. (a) Except as provided by Subsection (b), money belonging to a child committed to the department in excess of the amount the department allows in a child's possession shall be deposited in a trust fund established by the facility operated by the department to which the child is assigned. The board shall adopt rules governing the administration of the trust fund.

(b) Money possessed by a child committed to the department that is determined to be contraband money as defined by department rule shall be deposited in the student benefit fund described by Section 242.062(b). The department shall notify each child committed to the department that the possession of contraband money is subject to confiscation by the department under this subsection.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.064. DEBIT CARD SUSPENSE ACCOUNTS. (a) The department may establish debit card suspense accounts necessary to operate magnetic debit card systems at facilities under the jurisdiction of the department to enable the students, employees, and visitors to make purchases of:

(1) merchandise from vending machines or canteens within the facilities;

(2) meals from cafeterias within the facilities; and

(3) services that the facilities are authorized to provide.

(b) Cash received from cash-to-card machines and amounts electronically transferred for card use from the students' trust fund accounts shall be deposited to debit card suspense accounts in local depositories and held pending card purchases.

(c) Transfers of cash based on card use for purchases of merchandise or services shall be made from the debit card suspense

accounts to the appropriate vendors and to accounts in the state treasury in accordance with laws governing receipt of state revenues.

(d) Unused debit card balances shall be refunded to the card holders from the debit card suspense accounts.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.065. RELIGIOUS TRAINING. The department shall provide for the religious and spiritual training of children in its custody according to the children's individual choices.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.066. EMPLOYMENT OR DESIGNATION OF CHAPLAIN AT CERTAIN DEPARTMENT FACILITIES. The department shall ensure that a chaplain is employed or formally designated for each department correctional facility that is an institution.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.067. VIOLENCE PREVENTION AND CONFLICT RESOLUTION EDUCATION. The department shall provide education in violence prevention and conflict resolution that includes discussion of domestic violence and child abuse issues to all children in its custody.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.068. FIRE PROTECTION ACTIVITIES. (a) The department

may perform fire protection, fire prevention, and fire suppression activities at department facilities.

(b) The department may prescribe circumstances under which, for the benefit of the public safety and welfare, department employees using department equipment may assist municipal or volunteer fire departments in the performance of fire protection, fire prevention, or fire suppression activities near department facilities.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.069. CLIENT SERVICE CONTRACT STANDARDS. In each contract for the purchase of residential program-related client services, the department shall include:

(1) clearly defined contract goals, outputs, and measurable outcomes that relate directly to program objectives;

(2) clearly defined sanctions or penalties for failure to comply with or perform contract terms or conditions; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.070. CONTRACT MONITORING. The department shall establish a formal program to monitor residential program-related client services contracts made by the department. The department must:

(1) monitor compliance with financial and performance requirements using a risk assessment methodology; and

(2) obtain and evaluate program cost information to ensure that each cost, including an administrative cost, is reasonable and necessary to achieve program objectives.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.071. SALE OR LICENSE OF TREATMENT PROGRAMS. (a) The department may sell or license to an individual or a private or public entity the right to use a treatment program developed by the department.

(b) Proceeds from the sale or license of a treatment program shall be deposited to the credit of the fund that provided the money to finance the development of the treatment program.

(c) At the end of each fiscal year, any unexpended proceeds from the sale or license of a treatment program shall be carried over to the next fiscal year to the credit of the fund that provided the money to finance the development of the treatment program.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

SUBCHAPTER C. ABUSE OR CRIMES COMMITTED AT DEPARTMENT FACILITIES OR BY DEPARTMENT EMPLOYEES

Sec. 242.101. ZERO-TOLERANCE POLICY. (a) The department shall adopt and enforce a zero-tolerance policy concerning the detection, prevention, and punishment of the sexual abuse, including consensual sexual contact, of children in the custody of the department.

(b) The department shall establish standards for reporting and collecting data on the sexual abuse of children in the custody of the department.

(c) The department shall establish a procedure for children in the custody of the department and department employees to report incidents of sexual abuse involving a child in the custody of the department. The procedure must designate a person employed at the department facility in which the abuse is alleged to have occurred as well as a person who is employed at the department's headquarters to whom a person may report an incident of sexual abuse.

(d) The department shall prominently display the following notice in the office of the chief administrator of each department facility, the employees' break room of each department facility, the cafeteria of each department facility, and at least six additional locations in each department facility:

THE TEXAS LEGISLATURE HAS ADOPTED A ZERO-TOLERANCE POLICY REGARDING THE SEXUAL ABUSE, INCLUDING CONSENSUAL SEXUAL CONTACT, OF A CHILD IN THE CUSTODY OF THE DEPARTMENT. ANY SUCH VIOLATION MUST BE REPORTED TO _____.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 242.102. OFFICE OF INSPECTOR GENERAL. (a) The office of inspector general is established at the department under the direction of the board as a law enforcement agency for the purpose of:

(1) preventing, detecting, and investigating:

(A) crimes committed by department employees, including parole officers employed by or under a contract with the department; and

(B) crimes and delinquent conduct committed at a facility operated by the department, a residential facility operated by another entity under a contract with the department, or any facility in which a child committed to the custody of the department is housed or receives medical or mental health treatment, including:

(i) unauthorized or illegal entry into a department facility;

(ii) the introduction of contraband into a department facility;

(iii) escape from a secure facility; and

(iv) organized criminal activity;

(2) investigating complaints received under Section 203.010 involving allegations of abuse, neglect, or exploitation of children in juvenile justice programs or facilities under Section 261.405, Family Code;

(3) investigating complaints of abuse, neglect, or exploitation of:

(A) juveniles housed in a pre-adjudication or post-adjudication public or private secure or nonsecure facility regardless of licensing entity; and

(B) juveniles committed to the department;

(4) apprehending juveniles after escape or violation of

release conditions as described by Section 243.051;

(5) investigating gang-related activity within the juvenile justice system; and

(6) performing entry security and exterior perimeter security searches for a department-operated secure correctional facility, as defined by Section 51.02, Family Code.

(a-1) The office of inspector general has concurrent jurisdiction on agreement with the local law enforcement agency to conduct a criminal investigation under Subsection (a)(3).

(a-2) The office of inspector general shall operate the incident reporting center for the department under Section 203.014.

(b) The office of inspector general shall prepare an investigative report concerning the results of investigations conducted under this section and may deliver the report to any of the following:

(1) the department;

(2) the appropriate district or county attorney;

(3) any applicable advisory board;

(4) the governor;

(5) the lieutenant governor;

(6) the speaker of the house of representatives;

(7) the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities;

(8) the special prosecution unit;

(9) the state auditor; or

(10) any other appropriate state agency responsible for licensing or certifying department employees or facilities.

(b-1) An individual or entity that receives a report under Subsection (b) may not disclose the information unless otherwise authorized by law.

(c) The report prepared under Subsection (b) must include a summary of the actions performed by the office of inspector general in conducting the investigation, a statement of whether the investigation resulted in a determination that abuse, neglect, or exploitation, a criminal offense, or delinquent conduct occurred, and a description of the determination. The report is public information under Chapter 552, Government Code, only to the extent authorized under that chapter and other law.

(c-1) The board by rule shall require any findings related to

an administrative investigation under Subsection (a)(2) to be reviewed for legal sufficiency before being made public.

Text of subsection effective until January 1, 2025

(d) The office of inspector general may employ investigators and security officers and employ and appoint inspectors general as peace officers for the purpose of carrying out the duties described by this section. An inspector general shall have all of the powers and duties given to peace officers under Article 2.13, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(d) The office of inspector general may employ investigators and security officers and employ and appoint inspectors general as peace officers for the purpose of carrying out the duties described by this section. An inspector general shall have all of the powers and duties given to peace officers under Articles 2A.051 and 2A.059, Code of Criminal Procedure.

(e) Peace officers employed and appointed under Subsection (d) must:

(1) be certified by the Texas Commission on Law Enforcement under Chapter 1701, Occupations Code; and

(2) complete advanced courses relating to the duties of peace officers employed and appointed under Subsection (d) as part of any continuing education requirements for the peace officers.

(f) The board shall select a commissioned peace officer as chief inspector general. The chief inspector general:

(1) operates directly under the authority of the board;

(2) is subject to the requirements of this section; and

(3) may only be discharged by the board for cause.

(g) The chief inspector general shall on a quarterly basis prepare and deliver a report concerning the operations of the office of inspector general to:

(1) the board;

(2) the executive director;

(3) any applicable advisory board;

(4) the governor;

(5) the lieutenant governor;

(6) the speaker of the house of representatives;

(7) the standing committees of the senate and house of representatives with primary jurisdiction over correctional

facilities;

(8) the state auditor;

(9) the comptroller; and

(10) the special prosecution unit.

(h) A report prepared under Subsection (g) is public information under Chapter 552, Government Code, to the extent authorized under that chapter and other law, and the department shall publish the report on the department's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the types of investigations conducted by the office of inspector general, such as whether an investigation concerned narcotics or an alleged incident of sexual abuse;

(2) the relationship of a victim to a perpetrator, if applicable;

(3) the number of investigations conducted concerning suicides, deaths, and hospitalizations of children in the custody of the department at secure facilities, on parole, or at other placement locations; and

(4) the final disposition of any complaint received under Section 203.010 related to juvenile probation departments and Section 261.405, Family Code, that concerns the abuse, neglect, or exploitation of a juvenile.

(i) The office of inspector general shall immediately report to the board, the governor's general counsel, and the state auditor:

(1) any particularly serious or flagrant problem concerning the administration of a department program or operation; or

(2) any interference by the executive director, an employee of the department, a facility described by Subsection (a)(2), or an officer or employee of a facility described by Subsection (a)(2) with an investigation conducted by the office.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.43, eff. May 18, 2013.

Acts 2019, 86th Leg., R.S., Ch. 907 (H.B. 3689), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.129, eff. January 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 39, eff. September 1, 2023.

Sec. 242.103. DETECTION AND MONITORING OF CELLULAR TELEPHONES. (a) The department may own and the office of the inspector general may possess, install, operate, or monitor an interception device, as defined by Article 18A.001, Code of Criminal Procedure.

(b) The inspector general shall designate in writing the commissioned officers of the office of inspector general who are authorized to possess, install, operate, and monitor interception devices for the department.

(c) An investigative or law enforcement officer or other person, on request of the office of inspector general, may assist the office in the operation and monitoring of an interception of wire, oral, or electronic communications if the investigative or law enforcement officer or other person:

(1) is designated by the executive director for that purpose; and

(2) acts in the presence and under the direction of a commissioned officer of the inspector general.

Transferred, redesignated and amended from Human Resources Code, Subchapter C, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.16, eff. January 1, 2019.

CHAPTER 243. ADMISSION AND COMMITMENT; ESCAPE

SUBCHAPTER A. ADMISSION AND COMMITMENT

Sec. 243.001. PLACEMENT IN DEPARTMENT FACILITIES. (a) The department may not assign a child younger than 15 years of age to the same correctional facility dormitory as a person who is at least 17 years of age unless the department determines that the placement is necessary to ensure the safety of children in the custody of the department. This subsection does not apply to a dormitory that is

used exclusively for short-term assessment and orientation purposes.

(b) The board by rule shall adopt scheduling, housing, and placement procedures for the purpose of protecting vulnerable children in the custody of the department. The procedures must address the age, physical condition, and treatment needs of a child as well as any other relevant factor.

(c) The department shall consider the proximity of the residence of a child's family in determining the appropriate department facility in which to place a child.

(d) The department shall place a child in the most restrictive setting appropriate as the child awaits an adjudication or prosecution for conduct constituting a felony of the first or second degree while in the department's custody. The board by rule shall establish placement procedures that guide the department in determining the most appropriate setting for the child based on rehabilitative needs while preserving due process rights.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 40, eff. September 1, 2023.

Sec. 243.002. ESTABLISHMENT OF MINIMUM LENGTH OF STAY. (a) The department shall establish a minimum length of stay for each child committed to the department without a determinate sentence.

(b) In establishing a minimum length of stay for a child, the department shall consider:

(1) the nature of and seriousness of the conduct engaged in by the child; and

(2) the danger the child poses to the community.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 243.003. CONVEYANCE OF CHILD TO DEPARTMENT. (a) When a child is to be conveyed to a facility designated by the department,

the juvenile court shall assign an officer or other suitable person to accompany the child. The person assigned to accompany a female must be a woman.

(b) The cost of conveying the child shall be paid by the county from which the child is committed, except that no compensation shall be allowed other than for the actual and necessary expenses of the child and the person accompanying the child.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 243.004. NOTIFICATION AND DUTY TO FURNISH INFORMATION. (a) When a juvenile court commits a child to the department, the court shall forward to the department a certified copy of the order of commitment.

(b) The court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the department all pertinent information in their possession regarding the case.

(c) If requested by the department, the reports required by this section shall be made on forms furnished by the department or according to an outline furnished by the department.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 243.005. INFORMATION PROVIDED BY COMMITTING COURT. In addition to the information provided under Section 243.004, a court that commits a child to the department shall provide the department with a copy of the following documents:

(1) the petition and the adjudication and disposition orders for the child, including the child's thumbprint;

(2) if the commitment is a result of revocation of probation, a copy of the conditions of probation and the revocation order;

(3) the social history report for the child;

(4) any psychological or psychiatric reports concerning the

child;

(5) the contact information sheet for the child's parents or guardian;

(6) any law enforcement incident reports concerning the offense for which the child is committed;

(7) any sex offender registration information concerning the child;

(8) any juvenile probation department progress reports concerning the child;

(9) any assessment documents concerning the child;

(10) the computerized referral and case history for the child, including case disposition;

(11) the child's birth certificate;

(12) the child's social security number or social security card, if available;

(13) the name, address, and telephone number of the court administrator in the committing county;

(14) Title IV-E eligibility screening information for the child, if available;

(15) the address in the committing county for forwarding funds collected to which the committing county is entitled;

(16) any of the child's school or immunization records that the committing county possesses;

(17) any victim information concerning the case for which the child is committed;

(18) any of the child's pertinent medical records that the committing court possesses;

(19) the Texas Juvenile Justice Department standard assessment tool results for the child;

(20) the Department of Public Safety CR-43J form or tracking incident number concerning the child; and

(21) documentation that the committing court has required the child to provide a DNA sample to the Department of Public Safety.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1299 (H.B. 2862), Sec. 38, eff. September 1, 2013.

Sec. 243.006. COMMITMENT RECORDS. A commitment to the department may not be received in evidence or used in any way in any proceedings in any court except in:

(1) subsequent proceedings under Title 3 of the Family Code against the same child;

(2) imposing sentence in any criminal proceedings against the same person; or

(3) subsequent civil commitment proceedings under Chapter 841, Health and Safety Code, regarding the same person.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 243.007. INFORMATION PROVIDED TO COMMITTING COURT. (a) If a court that commits a child to the department requests, in the commitment order, that the department keep the court informed of the progress the child is making while committed to the department, the department shall provide the court with periodic updates on the child's progress.

(b) A report provided under Subsection (a) may include any information the department determines to be relevant in evaluating the child's progress, including, as applicable, information concerning the child's treatment, education, and health.

(c) A report provided under this section may not include information that is protected from disclosure under state or federal law.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 243.008. INFORMATION CONCERNING FOSTER CARE HISTORY. (a) In this section, "foster care" means the placement of a child in the conservatorship of a state agency responsible for providing child protective services.

(b) The department, during the admission process, shall

determine whether a child committed to the department has at any time been in foster care. The department shall record the following on the child's intake form:

(1) whether the child is currently in foster care; and

(2) if applicable, the number of times the child has previously been placed in foster care.

(c) The Department of Family and Protective Services shall, not later than the 14th day after receiving a request from a local juvenile probation department, provide the following information regarding a child in the custody of the probation department:

(1) whether the child is currently or has been in foster care; and

(2) if applicable, the number of times the child has previously been placed in foster care.

(e) Not later than January 31 of each even-numbered year, the department shall submit a report to the governor, the lieutenant governor, and each member of the legislature. The department shall also make the report available to the public on the department's Internet website. The report must summarize statistical information concerning the total number and percentage of children in the custody of the department during the preceding two years who have at any time been in foster care. Data in the report must be disaggregated by:

(1) age;

(2) sex;

(3) race or ethnicity;

(4) the conduct for which children were committed to the department; and

(5) children entering the juvenile justice system for the first time.

Added by Acts 2017, 85th Leg., R.S., Ch. 246 (H.B. 932), Sec. 1, eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 806 (H.B. 2229), Sec. 1, eff. June 10, 2019.

SUBCHAPTER B. ESCAPE AND VIOLATION OF RELEASE CONDITIONS

Sec. 243.051. APPREHENSION AFTER ESCAPE OR VIOLATION OF RELEASE CONDITIONS. (a) If a child who has been committed to the department

and placed by the department in any institution or facility has escaped or has been released under supervision and broken the conditions of release:

(1) a sheriff, deputy sheriff, constable, special investigator, or peace officer may, without a warrant, arrest the child; or

(2) a department employee designated by the executive director may, without a warrant or other order, take the child into the custody of the department.

(b) A child who is arrested or taken into custody under Subsection (a) may be detained in any suitable place, including an adult jail facility if the person is 17 years of age or older, until the child is returned to the custody of the department or transported to a department facility.

(c) Notwithstanding Section 58.005, Family Code, the department may disseminate to the public the following information relating to a child who has escaped from custody:

(1) the child's name, including other names by which the child is known;

(2) the child's physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos;

(3) a photograph of the child; and

(4) if necessary to protect the welfare of the community, any other information that reveals dangerous propensities of the child or expedites the apprehension of the child.

Transferred, redesignated and amended from Human Resources Code, Subchapter D, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 906 (H.B. 3688), Sec. 1, eff. September 1, 2019.

CHAPTER 244. CARE AND TREATMENT OF CHILDREN

SUBCHAPTER A. GENERAL CARE AND TREATMENT OF CHILDREN

Sec. 244.001. INITIAL EXAMINATION. (a) The department shall examine and make a study of each child committed to it within three business days after commitment. The study shall be made according to

rules established by the board and shall include:

(1) long-term and specialized treatment planning for the child; and

(2) consideration of the child's:

(A) medical history;

(B) substance abuse;

(C) treatment history;

(D) psychiatric history;

(E) sex offender history; and

(F) violent offense history.

(a-1) As soon as possible, the department shall develop a written treatment plan for the child which outlines the specialized treatment needs identified by the study described by Subsection (a), makes recommendations for meeting the child's specialized treatment needs, and makes an individually tailored statement of treatment goals, objectives, and timelines.

(b) For a child for whom a minimum length of stay is established under Section 243.002 of one year or longer, the initial examination must include a comprehensive psychiatric evaluation unless the department had received the results of a comprehensive evaluation of the child conducted not more than 90 days before the date of the initial examination.

(c) The department shall administer comprehensive psychological assessments to a child as part of the child's initial examination, including assessments designed to identify whether a child is in need of a psychiatric evaluation. If the results of a child's psychological assessments indicate that the child is in need of a psychiatric evaluation, the department shall as soon as practicable conduct a psychiatric evaluation of the child.

(d) The board shall establish rules for the periodic review and reevaluation of the written treatment plan as described by Subsection (a-1).

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.002. REEXAMINATION. (a) The department shall periodically reexamine each child under its control, except those on

release under supervision or in foster homes, for the purpose of determining whether a rehabilitation plan made by the department concerning the child should be modified or continued.

(b) The reexamination must include a study of all current circumstances of a child's personal and family situation and an evaluation of the progress made by the child since the child's last examination.

(c) The reexamination of a child may be made as frequently as the department considers necessary, but shall be made at intervals not exceeding six months.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.003. RECORDS OF EXAMINATIONS AND TREATMENT. (a) The department shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control.

(b) Except as provided by Section 243.051(c), these records and all other information concerning a child, including personally identifiable information, are not public and are available only according to the provisions of Section 58.005, Family Code, Section 244.051 of this code, and Chapter 67, Code of Criminal Procedure.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 4.14, eff. January 1, 2019.

Sec. 244.004. FAILURE TO EXAMINE OR REEXAMINE. (a) Failure of the department to examine or reexamine a child as required by this subchapter does not entitle the child to be discharged from the control of the department, but the child may petition the committing court for discharge.

(b) After due notice to the department, the committing court shall discharge the child from the control of the department unless

the department satisfies the court that further control is necessary.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.005. DETERMINATION OF TREATMENT. When a child has been committed to the department, the department may:

(1) permit the child liberty under supervision and on conditions the department believes conducive to acceptable behavior;

(2) order the child's confinement under conditions the department believes best designed for the child's welfare and the interests of the public;

(3) order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) revoke or modify any order of the department affecting a child, except an order of final discharge, as often as conditions indicate; or

(5) discharge the child from control when the department is satisfied that discharge will best serve the child's welfare and the protection of the public.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.006. TYPE OF TREATMENT PERMITTED. (a) As a means of correcting the socially harmful tendencies of a child committed to the department, the department may:

(1) require the child to participate in moral, academic, vocational, physical, and correctional training and activities;

(2) require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public;

(3) provide any medical or psychiatric treatment that is necessary; and

(4) place physically fit children in parks-maintenance camps, forestry camps, or ranches owned by the state or the United States and require the performance of suitable conservation and

maintenance work.

(b) The dominant purpose of placing children in camps is to benefit and rehabilitate the children rather than to make the camps self-sustaining. Children placed in camps may not be exploited.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.007. FAMILY PROGRAMS. The department shall develop programs that encourage family involvement in the rehabilitation of the child.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.0075. RESTRAINT OF PREGNANT JUVENILE. (a) The department may not use restraints to control the movement of a pregnant child who is committed to the department at any time during which the child is in labor or delivery or recovering from delivery, unless the executive director or executive director's designee determines that the use of restraints is necessary to:

(1) ensure the safety and security of the child or her infant, department or medical personnel, or any member of the public; or

(2) prevent a substantial risk that the child will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.008. INFANT CARE AND PARENTING PROGRAM. (a) In this

section, "child" means the child of a person who is committed to the department.

(b) The department may establish child care and parenting programs for persons committed to the department who are parents.

(c) The department may permit a mother to have possession of her child in a residential program that has an infant care and parenting program or to have possession of her child in a department-funded independent living residence for up to six months if:

(1) the child's father or another relative or guardian of the child agrees in advance of the child's placement with the child's mother to assume possession of the child immediately upon notice by the department to do so;

(2) the child's parents and any other person having a duty of support acknowledge that by permitting the mother to have possession of the child while the mother is confined in a residential facility or placed in an independent living residence, the department assumes no responsibility for the child's care beyond the responsibility of care that is ordinarily due the child's mother and the reasonable accommodations that are necessary for the mother's care of her child;

(3) the child's parents and any other person having a duty of support agree to indemnify and hold the department harmless from any claims that may be made against the department for the child's support, including medical support; and

(4) the department determines that the placement is in the best interest of both the mother and her child.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.009. HEALTH CARE DELIVERY SYSTEM. (a) In providing medical care, behavioral health care, or rehabilitation services, the department shall integrate the provision of those services in an integrated comprehensive delivery system.

(b) The delivery system may be used to deliver any medical, behavioral health, or rehabilitation services provided to a child in the custody of the department, including:

(1) health care;

(2) dental care;
(3) behavioral health care;
(4) substance abuse treatment;
(5) nutrition;
(6) programming;
(7) case management; and
(8) general rehabilitation services, including educational, spiritual, daily living, recreational, and security services.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.010. DEPARTMENT CASEWORKERS. (a) The department shall assign a caseworker to a child committed to the department. A department caseworker shall:
(1) explore family issues and needs with the parent or guardian of a child committed to the department;
(2) as needed, provide the parent or guardian of a child committed to the department with information concerning programs and services provided by the department or another resource; and
(3) perform other duties required by the department.
(b) A department caseworker shall:
(1) at least once a month, attempt to contact the child's parent or guardian by phone, in person while the parent or guardian is visiting the facility, or, if necessary, by mail;
(2) if unsuccessful in contacting the child's parent or guardian under Subdivision (1), attempt at least one additional time each month to contact the child's parent or guardian; and
(3) document successful as well as unsuccessful attempts to contact the child's parent or guardian.
(c) To the extent practicable, a caseworker or another facility administrator shall attempt to communicate with a parent or guardian who does not speak English in the language of choice of the parent or guardian.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.0105. REPORT CONCERNING FOSTER CHILDREN COMMITTED TO DEPARTMENT. (a) Not later than the 10th day before the date of a permanency hearing under Subchapter D, Chapter 263, Family Code, or Subchapter F, Chapter 263, Family Code, regarding a child for whom the Department of Family and Protective Services has been appointed managing conservator, a department caseworker shall submit a written report regarding the child's commitment to the department to:

(1) the court;

(2) the Department of Family and Protective Services;

(3) any attorney ad litem or guardian ad litem appointed for the child; and

(4) any volunteer advocate appointed for the child.

(b) The report required by Subsection (a) must include:

(1) the results of any assessments of the child during the child's commitment to the department, including assessments of the child's emotional, mental, educational, psychological, psychiatric, medical, or physical needs;

(2) information regarding the child's placement in particular programs administered by the department; and

(3) a description of the child's progress in programs administered by the department.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 84, eff. September 1, 2015.

Sec. 244.0106. RULES REGARDING SERVICES FOR FOSTER CHILDREN. (a) The board and the executive commissioner of the Health and Human Services Commission shall jointly adopt rules to ensure that a child for whom the Department of Family and Protective Services has been appointed managing conservator receives appropriate services while the child is committed to the department or released under supervision by the department.

(b) The rules adopted under this section must require the department and the Department of Family and Protective Services to cooperate in providing appropriate services to a child for whom the

Department of Family and Protective Services has been appointed managing conservator while the child is committed to the department or released under supervision by the department, including:

(1) medical care, as defined by Section 266.001, Family Code;

(2) mental health treatment and counseling;

(3) education, including special education;

(4) case management;

(5) drug and alcohol abuse assessment or treatment;

(6) sex offender treatment; and

(7) trauma informed care.

(c) The rules adopted under this section must require:

(1) the Department of Family and Protective Services to:

(A) provide the department with access to relevant health and education information regarding a child; and

(B) require a child's caseworker to visit the child in person at least once each month while the child is committed to the department;

(2) the department to:

(A) provide the Department of Family and Protective Services with relevant health and education information regarding a child;

(B) permit communication, including in person, by telephone, and by mail, between a child committed to the department and:

(i) the Department of Family and Protective Services; and

(ii) the attorney ad litem, the guardian ad litem, and the volunteer advocate for the child; and

(C) provide the Department of Family and Protective Services and any attorney ad litem or guardian ad litem for the child with timely notice of the following events relating to the child:

(i) a meeting designed to develop or revise the individual case plan for the child;

(ii) in accordance with any participation protocols to which the Department of Family and Protective Services and the department agree, a medical appointment at which a person authorized to consent to medical care must participate as required by Section 266.004(i), Family Code;

(iii) an education meeting, including admission,

review, or dismissal meetings for a child receiving special education;

(iv) a grievance or disciplinary hearing for the child;

(v) a report of abuse or neglect of the child; and

(vi) a significant change in medical condition of the child, as defined by Section 264.018, Family Code; and

(3) the Department of Family and Protective Services and the department to participate in transition planning for the child through release from detention, release under supervision, and discharge.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 722 (H.B. 1309), Sec. 4, eff. June 17, 2015.

Acts 2015, 84th Leg., R.S., Ch. 944 (S.B. 206), Sec. 85, eff. September 1, 2015.

Sec. 244.011. CHILDREN WITH MENTAL ILLNESS OR INTELLECTUAL DISABILITIES. (a) The department shall accept a child with mental illness or intellectual disabilities who is committed to the department.

(b) Unless the child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, the department shall discharge a child with mental illness or intellectual disabilities from its custody if:

(1) the child has completed the minimum length of stay for the child's committing offense; and

(2) the department determines that the child is unable to progress in the department's rehabilitation programs because of the child's mental illness or intellectual disabilities.

(c) If a child who is discharged from the department under Subsection (b) as a result of mental illness is not receiving court-ordered mental health services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an

application for mental health services filed under Section 244.012(b); or

(2) the 30th day after the date the application is filed.

(d) If a child who is discharged from the department under Subsection (b) as a result of mental illness is receiving court-ordered mental health services, the child's discharge from the department is effective immediately. If the child is receiving mental health services outside the child's home county, the department shall notify the mental health authority located in that county of the discharge not later than the 30th day after the date that the child's discharge is effective.

(e) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability is not receiving intellectual disability services, the child's discharge is effective on the earlier of:

(1) the date the court enters an order regarding an application for intellectual disability services filed under Section 244.012(b); or

(2) the 30th day after the date that the application is filed.

(f) If a child who is discharged from the department under Subsection (b) as a result of an intellectual disability is receiving intellectual disability services, the child's discharge from the department is effective immediately.

(g) If a child with mental illness or intellectual disabilities is discharged from the department under Subsection (b), the child is eligible to receive continuity of care services from the Texas Correctional Office on Offenders with Medical or Mental Impairments under Chapter 614, Health and Safety Code.

Acts 1979, 66th Leg., p. 2389, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 177, ch. 44, art. 2, Sec. 41, eff. April 26, 1983; Acts 1987, 70th Leg., ch. 1099, Sec. 36, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 262, Sec. 60, eff. May 31, 1995; Acts 1997, 75th Leg., ch. 1086, Sec. 33, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 1477, Sec. 32, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1038 (H.B. 4451), Sec. 1, eff. June 19, 2009.

Transferred, redesignated and amended from Human Resources Code,

Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 7.02, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 7.03, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 41, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 42, eff. September 1, 2023.

Sec. 244.012. EXAMINATION BEFORE DISCHARGE. (a) The department shall establish a system that identifies children with mental illness or intellectual disabilities in the department's custody.

(b) Before a child with mental illness is discharged from the department's custody under Section 244.011(b), a department psychiatrist shall examine the child. The department shall refer a child requiring outpatient psychiatric treatment to the appropriate mental health authority. For a child requiring inpatient psychiatric treatment, the department shall file a sworn application for court-ordered mental health services, as provided in Subchapter C, Chapter 574, Health and Safety Code, if:

(1) the child is not receiving court-ordered mental health services; and

(2) the psychiatrist who examined the child determines that the child is a child with mental illness and the child meets at least one of the criteria listed in Section 574.034 or 574.0345, Health and Safety Code.

(c) Before a child who is identified as having an intellectual disability under Chapter 593, Health and Safety Code, is discharged from the department's custody under Section 244.011(b), the department shall refer the child for intellectual disability services if the child is not receiving intellectual disability services.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 25, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 7.04, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 43, eff. September 1, 2023.

Sec. 244.0125. TRANSFER OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES FOR MENTAL HEALTH SERVICES. (a) The department may petition the juvenile court that entered the order of commitment for a child for the initiation of mental health commitment proceedings if the child is committed to the department under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code.

(b) A petition made by the department shall be treated as a motion under Section 55.11, Family Code, and the juvenile court shall proceed in accordance with Subchapter B, Chapter 55, Family Code.

(c) The department shall cooperate with the juvenile court in any proceeding under this section.

(d) The juvenile court shall credit to the term of the child's commitment to the department any time the child is committed to an inpatient mental health facility.

(e) A child committed to an inpatient mental health facility as a result of a petition filed under this section may not be released from the facility on a pass or furlough.

(f) If the term of an order committing a child to an inpatient mental health facility is scheduled to expire before the end of the child's sentence and another order committing the child to an inpatient mental health facility is not scheduled to be entered, the inpatient mental health facility shall notify the juvenile court that entered the order of commitment committing the child to the department. The juvenile court may transfer the child to the custody of the department, transfer the child to the Texas Department of Criminal Justice, or release the child under supervision, as appropriate.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.013. NOTICE OF PENDING DISCHARGE. As soon as practicable after the department makes a decision to discharge a child or authorize the child's absence from the department's custody, the department shall give notice of the department's decision to the juvenile court and the office of the prosecuting attorney of the county in which the adjudication that the child engaged in delinquent conduct was made.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.014. REFERRAL OF DETERMINATE SENTENCE OFFENDERS FOR TRANSFER. (a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the department may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if:

(1) the child has not completed the sentence; and

(2) the child's conduct, regardless of whether the child was released under supervision under Section 245.051, indicates that the welfare of the community requires the transfer.

(a-1) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 years of age, the department shall refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the Texas Department of Criminal Justice for confinement if:

(1) the child has not completed the sentence;

(2) while the child was committed to the custody of the department, the child was subsequently adjudicated or convicted for conduct constituting a felony of the first or second degree or an offense punishable under Section 22.01(b)(1), Penal Code; and

(3) the child was at least 16 years of age at the time the conduct occurred.

(b) The department shall cooperate with the court on any

proceeding on the transfer of the child.

(c) If a child is released under supervision, a juvenile court adjudication that the child engaged in delinquent conduct constituting a felony offense, a criminal court conviction of the child for a felony offense, or a determination under Section 244.005(4) revoking the child's release under supervision is required before referral of the child to the juvenile court under Subsection (a).

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1299 (H.B. 2862), Sec. 39, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 44, eff. September 1, 2023.

Sec. 244.015. EVALUATION OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES. (a) When a child who is sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 18 years of age, the department shall evaluate whether the child is in need of additional services that can be completed in the six-month period after the child's 18th birthday to prepare the child for release from the custody of the department or transfer to the Texas Department of Criminal Justice.

(b) This section does not apply to a child who is released from the custody of the department or who is transferred to the Texas Department of Criminal Justice before the child's 18th birthday.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

SUBCHAPTER B. PROVISION OF CERTAIN INFORMATION; RIGHTS OF PARENTS

Sec. 244.051. INFORMATION AVAILABLE TO CHILDREN, PARENTS, AND OTHERS. (a) In the interest of achieving the purpose of the department and protecting the public, the department may disclose records and other information concerning a child to the child and the

child's parent or guardian only if disclosure would not materially harm the treatment and rehabilitation of the child and would not substantially decrease the likelihood of the department receiving information from the same or similar sources in the future. Information concerning a person who is age 18 or older may not be disclosed to the person's parent or guardian without the person's consent.

(b) The department may disclose information regarding a child's location and committing court to a person having a legitimate need for the information.

(c) The department may disclose to a peace officer or law enforcement agency images of children recorded by an electronic recording device and incident reporting and investigation documents containing the names of children if the information is relevant to the investigation of a criminal offense alleged to have occurred in a facility operated by or under contract with the department.

(d) Notwithstanding Subsection (a), if the Department of Family and Protective Services has been appointed managing conservator for a child, the department shall disclose records and other information concerning the child to the Department of Family and Protective Services as provided by the rules of the Department of Family and Protective Services.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 244.052. RIGHTS OF PARENTS. (a) The department, in consultation with advocacy and support groups such as those described in Section 242.056(a), shall develop a parent's bill of rights for distribution to the parent or guardian of a child who is under 18 years of age and committed to the department. The parent's bill of rights must include:

(1) a description of the department's grievance policies and procedures, including contact information for the office of inspector general and the office of the independent ombudsman established under Chapter 261;

(2) a list of possible incidents that require parental notification;

(3) policies concerning visits and telephone conversations with a child committed to the department;

(4) a description of department caseworker responsibilities;

(5) a statement that the department caseworker assigned to a child may assist the child's parent or guardian in obtaining information and services from the department and other resources concerning:

(A) counseling, including substance abuse and mental health counseling;

(B) assistance programs, including financial and travel assistance programs for visiting a child committed to the department;

(C) workforce preparedness programs;

(D) parenting programs; and

(E) department seminars; and

(6) information concerning the indeterminate sentencing structure at the department, an explanation of reasons that a child's commitment at the department could be extended, and an explanation of the review process under Sections 245.101 and 245.104 for a child committed to the department without a determinate sentence.

(b) Not later than 48 hours after the time a child is admitted to a department facility, the department shall mail to the child's parent or guardian at the last known address of the parent or guardian:

(1) the parent's bill of rights; and

(2) the contact information of the department caseworker assigned to the child.

(c) The department shall on a quarterly basis provide to the parent, guardian, or designated advocate of a child who is in the custody of the department a report concerning the progress of the child at the department, including:

(1) the academic and behavioral progress of the child; and

(2) the results of any reexamination of the child conducted under Section 244.002.

(d) The department shall ensure that written information provided to a parent or guardian regarding the rights of a child in the custody of the department or the rights of a child's parent or guardian, including the parent's bill of rights, is clear and easy to understand.

(e) The department shall ensure that if the Department of

Family and Protective Services has been appointed managing conservator of a child, the Department of Family and Protective Services is given the same rights as the child's parent under the parent's bill of rights developed under this section.

Transferred, redesignated and amended from Human Resources Code, Subchapter E, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

CHAPTER 245. RELEASE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 245.001. PAROLE OFFICERS; PAROLE MANAGEMENT. (a) The department may employ parole officers to investigate, place, supervise, and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with the rules adopted by the board.

(b) Parole officers may work with local organizations, clubs, and agencies to formulate plans and procedures for the prevention of juvenile delinquency.

(c) The department shall develop a management system for parole services that objectively measures and provides for:

(1) the systematic examination of children's needs and the development of treatment plans to address those needs;

(2) the evaluation of homes, foster homes, and public and private institutions as constructive parole placements;

(3) the classification of children based on the level of children's needs and the degree of risk presented to the public;

(4) the objective measurement of parole officer workloads; and

(5) the gathering and analysis of information related to the effectiveness of parole services and to future parole requirements.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.002. CONTRACTS WITH COUNTIES. (a) The department may make a contract with a county to use the services of the county's

juvenile probation department for the supervision of children within the county who are on furlough from a department facility or who are released under supervision from a department facility.

(b) Payments under a contract described by Subsection (a) shall be made to the county treasurer on a quarterly schedule.

(c) The department may not pay a county for supervision of a child for any time after the child:

(1) is discharged from the department's custody;

(2) is returned to a department facility; or

(3) transfers the child's residence to another county or state.

(d) A county that has a contract with the department must report to the department on the status and progress of each child for whom the county is receiving payments. The reports shall be made at the time and in the manner specified by the contract.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

SUBCHAPTER B. AUTHORITY TO RELEASE; RESUMPTION OF CARE

Sec. 245.051. RELEASE UNDER SUPERVISION. (a) The department may release under supervision any child in the department's custody and place the child in the child's home or in any situation or family approved by the department. Prior to placing a child in the child's home, the department shall evaluate the home setting to determine the level of supervision and quality of care that is available in the home.

(b) Not later than 10 days before the day the department releases a child under this section, the department shall give notice of the release to the juvenile court and the office of the prosecuting attorney of the county in which the adjudication that the child engaged in delinquent conduct was made.

(c) If a child is committed to the department under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the department may not release the child under supervision without approval of the juvenile court that entered the order of commitment unless the child has served at least:

(1) 10 years, if the child was sentenced to commitment for

conduct constituting capital murder;

(2) 3 years, if the child was sentenced to commitment for conduct constituting an aggravated controlled substance felony or a felony of the first degree;

(3) 2 years, if the child was sentenced to commitment for conduct constituting a felony of the second degree; or

(4) 1 year, if the child was sentenced to commitment for conduct constituting a felony of the third degree.

(d) The department may request the approval of the court under this section at any time.

(e) The department may resume the care and custody of any child released under supervision at any time before the final discharge of the child.

(f) If the department finds that a child has violated an order under which the child is released under supervision, on notice by any reasonable method to all persons affected, the department may order the child:

(1) to return to an institution;

(2) if the violation resulted in property damage or personal injury:

(A) to make full or partial restitution to the victim of the offense; or

(B) if the child is financially unable to make full or partial restitution, to perform services for a charitable or educational institution; or

(3) to comply with any other conditions the department considers appropriate.

(g) Notwithstanding Subsection (c), if a child is committed to the department under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the department may release the child under supervision without approval of the juvenile court that entered the order of commitment if not more than nine months remain before the child's discharge under Section 245.151(b).

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.052. SUBSTANCE ABUSE TREATMENT. Subject to an express appropriation to fund the treatment programs required by this section, the department may not release a child under supervision or parole a child if:

(1) the child has a substance abuse problem, including the use of a controlled substance, hazardous inhalable substances, or alcohol habitually; and

(2) the child has not completed a treatment program for the problem.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.053. SEX OFFENDER COUNSELING AND TREATMENT. (a) Before releasing a child described by Subsection (b) under supervision, the department:

(1) may require as a condition of release that the child:

(A) attend psychological counseling sessions for sex offenders as provided by Subsection (e); and

(B) submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the child's treatment progress; and

(2) shall require as a condition of release that the child:

(A) register under Chapter 62, Code of Criminal Procedure; and

(B) submit a blood sample or other specimen to the Department of Public Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required specimen under other state law.

(b) This section applies to a child adjudicated for engaging in delinquent conduct constituting an offense for which the child is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(c) Psychological counseling required as a condition of release under Subsection (a) must be with an individual or organization that:

(1) provides sex offender treatment or counseling;

(2) is specified by the department; and

(3) meets minimum standards of counseling established by the department.

(d) A polygraph examination required as a condition of release under Subsection (a) must be administered by an individual who is specified by the department.

(e) In addition to specifying a sex offender treatment provider to provide counseling to a child described by Subsection (b), the department shall:

(1) establish with the cooperation of the treatment provider the date, time, and place of the first counseling session between the child and the treatment provider;

(2) notify the child and the treatment provider before the release of the child of the date, time, and place of the first counseling session between the child and the treatment provider; and

(3) require the treatment provider to notify the department immediately if the child fails to attend any scheduled counseling session.

(f) If the department specifies a polygraph examiner under Subsection (d) to administer a polygraph examination to a child, the department shall arrange for a polygraph examination to be administered to the child:

(1) not later than the 60th day after the date the child attends the first counseling session established under Subsection (e); and

(2) after the initial polygraph examination, as required by Subdivision (1), on the request of the treatment provider specified under Subsection (c).

(g) If the department requires as a condition of release that a child attend psychological counseling under Subsection (a), the department shall notify the court that committed the child to the department. After receiving notification from the department under this subsection, the court may order the parent or guardian of the child to:

(1) attend four sessions of instruction with an individual or organization specified by the department relating to:

(A) sexual offenses;

(B) family communication skills;

(C) sex offender treatment;

(D) victims' rights;

(E) parental supervision; and

(F) appropriate sexual behavior; and

(2) during the time the child attends psychological counseling, participate in monthly treatment groups conducted by the child's treatment provider relating to the child's psychological counseling.

(h) A court that orders a parent or guardian of a child to attend instructional sessions and participate in treatment groups under Subsection (g) shall require:

(1) the individual or organization specified by the department under Subsection (g) to notify the court immediately if the parent or guardian fails to attend any scheduled instructional session; and

(2) the child's treatment provider specified under Subsection (c) to notify the court immediately if the parent or guardian fails to attend a session in which the parent or guardian is required to participate in a scheduled treatment group.

(i) If the department requires as a condition of release that a child attend psychological counseling under Subsection (a), the department may, before the date the period of release ends, petition the appropriate court to request the court to extend the period of release for an additional period necessary to complete the required counseling as determined by the treatment provider, except that the release period may not be extended to a date after the date of the child's 18th birthday.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 2.04, eff. September 1, 2021.

Sec. 245.0535. COMPREHENSIVE REENTRY AND REINTEGRATION PLAN FOR CHILDREN; STUDY AND REPORT. (a) The department shall develop a comprehensive plan for each child committed to the custody of the department to reduce recidivism and ensure the successful reentry and reintegration of the child into the community following the child's release under supervision or final discharge, as applicable, from the department. The plan for a child must be designed to ensure that the

child receives an extensive continuity of care in services from the time the child is committed to the department to the time of the child's final discharge from the department. The plan for a child must include, as applicable:

(1) housing assistance;

(2) a step-down program, such as placement in a halfway house;

(3) family counseling;

(4) academic and vocational mentoring;

(5) trauma counseling for a child who is a victim of abuse while in the custody of the department; and

(6) other specialized treatment services appropriate for the child.

(b) The comprehensive reentry and reintegration plan developed under this section must provide for:

(1) an assessment of each child committed to the department to determine which skills the child needs to develop to be successful in the community following release under supervision or final discharge;

(2) programs that address the assessed needs of each child;

(3) a comprehensive network of transition programs to address the needs of children released under supervision or finally discharged from the department;

(4) the identification of providers of existing local programs and transitional services with whom the department may contract under this section to implement the reentry and reintegration plan; and

(5) subject to Subsection (c), the sharing of information between local coordinators, persons with whom the department contracts under this section, and other providers of services as necessary to adequately assess and address the needs of each child.

(c) A child's personal health information may be disclosed under Subsection (b)(5) only in the manner authorized by Section 244.051 or other state or federal law, provided that the disclosure does not violate the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

(d) The programs provided under Subsections (b)(2) and (3) must:

(1) be implemented by highly skilled staff who are experienced in working with reentry and reintegration programs for

children;

(2) provide children with:

(A) individualized case management and a full continuum of care;

(B) life-skills training, including information about budgeting, money management, nutrition, and exercise;

(C) education and, if a child has a learning disability, special education;

(D) employment training;

(E) appropriate treatment programs, including substance abuse and mental health treatment programs; and

(F) parenting and relationship-building classes; and

(3) be designed to build for children post-release and post-discharge support from the community into which the child is released under supervision or finally discharged, including support from agencies and organizations within that community.

(e) The department may contract and coordinate with private vendors, units of local government, or other entities to implement the comprehensive reentry and reintegration plan developed under this section, including contracting to:

(1) coordinate the supervision and services provided to children during the time children are in the custody of the department with any supervision or services provided children who have been released under supervision or finally discharged from the department;

(2) provide children awaiting release under supervision or final discharge with documents that are necessary after release or discharge, including identification papers that include, if available, personal identification certificates obtained under Section 245.0536, medical prescriptions, job training certificates, and referrals to services; and

(3) provide housing and structured programs, including programs for recovering substance abusers, through which children are provided services immediately following release under supervision or final discharge.

(f) To ensure accountability, any contract entered into under this section must contain specific performance measures that the department shall use to evaluate compliance with the terms of the contract.

(h) The department shall conduct and coordinate research:

(1) to determine whether the comprehensive reentry and reintegration plan developed under this section reduces recidivism rates; and

(2) to review the effectiveness of the department's programs for the rehabilitation and reestablishment in society of children committed to the department, including programs for females and for sex offenders, capital offenders, children who are chemically dependent, and children with mental illness.

(i) Not later than December 31 of each even-numbered year, the department shall deliver a report of the results of research conducted or coordinated under Subsection (h) to the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the standing committees of each house of the legislature with primary jurisdiction over juvenile justice and corrections.

(j) If a program or service in the child's comprehensive reentry and reintegration plan is not available at the time the child is to be released, the department shall find a suitable alternative program or service so that the child's release is not postponed.

(k) The department shall:

(1) clearly explain the comprehensive reentry and reintegration plan and any conditions of supervision to a child who will be released on supervision; and

(2) require each child committed to the department that is to be released on supervision to acknowledge and sign a document containing any conditions of supervision.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. 2733), Sec. 8, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 909 (H.B. 4544), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 45, eff. September 1, 2023.

Sec. 245.0536. PROVIDING RELEASED OR DISCHARGED CHILD WITH

STATE-ISSUED IDENTIFICATION. (a) Before releasing a child under supervision or finally discharging a child, the department shall:

(1) determine whether the child has:

(A) a valid license issued under Chapter 521, Transportation Code; or

(B) a valid personal identification certificate issued under Chapter 521, Transportation Code; and

(2) if the child does not have a valid license or certificate described by Subdivision (1), submit to the Department of Public Safety on behalf of the child a request for the issuance of a personal identification certificate under Chapter 521, Transportation Code.

(b) The department shall submit a request under Subsection (a)(2) as soon as is practicable to enable the department to receive the personal identification certificate before the department releases or discharges the child and to provide the child with the personal identification certificate when the department releases or discharges the child.

(c) The department, the Department of Public Safety, and the vital statistics unit of the Department of State Health Services shall adopt a memorandum of understanding that establishes their respective responsibilities with respect to the issuance of a personal identification certificate to a child, including responsibilities related to verification of the child's identity. The memorandum of understanding must require the Department of State Health Services to electronically verify the birth record of a child whose name and any other personal information is provided by the department and to electronically report the recorded filing information to the Department of Public Safety to validate the identity of a child under this section.

(d) The department shall reimburse the Department of Public Safety or the Department of State Health Services for the actual costs incurred by those agencies in performing responsibilities established under this section. The department may charge the child's parent or guardian for the actual costs incurred under this section or the fees required by Section 521.421, Transportation Code.

(e) This section does not apply to a child who:

(1) is not legally present in the United States; or

(2) was not a resident of this state before the child was placed in the custody of the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 909 (H.B. 4544), Sec. 2, eff. September 1, 2021.

Sec. 245.0537. PROVIDING RELEASED OR DISCHARGED CHILD WITH BIRTH CERTIFICATE AND SOCIAL SECURITY CARD. (a) In addition to complying with the requirements of Section 245.0536, before releasing a child under supervision or finally discharging a child, the department must:

(1) determine whether the child has a:

(A) certified copy of the child's birth certificate; and

(B) copy of the child's social security card; and

(2) if the child does not have a document described by Subdivision (1), submit to the appropriate entity on behalf of the child a request for the issuance of the applicable document.

(b) The department shall submit a request under Subsection (a)(2) as soon as is practicable to enable the department to receive the applicable document before the department releases or discharges the child and to provide the child with the applicable document when the department releases or discharges the child.

(c) This section does not apply to a child who:

(1) is not legally present in the United States; or

(2) was not a resident of this state before the child was placed in the custody of the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 909 (H.B. 4544), Sec. 2, eff. September 1, 2021.

Sec. 245.054. INFORMATION PROVIDED TO COURT BEFORE RELEASE. (a) In addition to providing the court with notice of release of a child under Section 245.051(b), as soon as possible but not later than the 30th day before the date the department releases the child, the department shall provide the court that committed the child to the department:

(1) a copy of the child's reentry and reintegration plan developed under Section 245.0535; and

(2) a report concerning the progress the child has made while committed to the department.

(b) If, on release, the department places a child in a county other than the county served by the court that committed the child to the department, the department shall provide the information described by Subsection (a) to both the committing court and the juvenile court in the county where the child is placed after release.

(c) If, on release, a child's residence is located in another state, the department shall provide the information described by Subsection (a) to both the committing court and a juvenile court of the other state that has jurisdiction over the area in which the child's residence is located.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

SUBCHAPTER C. MINIMUM LENGTH OF STAY; EXTENSION ORDERS

Sec. 245.101. COMPLETION OF MINIMUM LENGTH OF STAY; PANEL. (a) After a child who is committed to the department without a determinate sentence completes the minimum length of stay established by the department for the child under Section 243.002, the department shall, in the manner provided by this section and Section 245.102:

(1) discharge the child from the custody of the department;

(2) release the child under supervision under Section 245.051; or

(3) extend the length of the child's stay in the custody of the department.

(b) The board by rule shall establish a panel whose function is to review and determine whether a child who has completed the child's minimum length of stay should be discharged from the custody of the department as provided by Subsection (a)(1), be released under supervision under Section 245.051 as provided by Subsection (a)(2), or remain in the custody of the department for an additional period of time as provided by Subsection (a)(3).

(c) The executive director shall determine the size of the panel described by Subsection (b) and the length of the members' terms of service on the panel. The panel must consist of an odd number of members and the terms of the panel's members must last for at least two years. The executive director shall adopt policies that ensure the transparency, consistency, and objectivity of the panel's

composition, procedures, and decisions. The executive director shall appoint persons to serve as members of the panel. A person appointed to the panel must be a department employee who works at the department's central office. A member of the panel may not be involved in any supervisory decisions concerning children in the custody of the department.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.102. EXTENSION ORDER. (a) A panel may extend the length of the child's stay as provided by Section 245.101(a)(3) only if the panel determines by majority vote and on the basis of clear and convincing evidence that:

(1) the child is in need of additional rehabilitation from the department; and

(2) the department will provide the most suitable environment for that rehabilitation.

(b) In extending the length of a child's stay, the panel must specify the additional period of time that the child is to remain in the custody of the department and must conduct an additional review and determination as provided by Section 245.101 on the child's completion of the additional term of stay.

(c) If the panel determines that the child's length of stay should not be extended, the department must discharge the child from the custody of the department as provided by Section 245.101(a)(1) or release the child under supervision under Section 245.051 as provided by Section 245.101(a)(2).

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.103. STATISTICS AND REPORTS CONCERNING EXTENSION ORDERS. (a) The department shall maintain statistics of the number of extensions granted by a panel under Section 245.102. The statistics must include aggregated information concerning:

(1) the race, age, sex, specialized treatment needs, and

county of origin for each child for whom an extension order is requested;

(2) the facility in which the child is confined; and

(3) if applicable, any allegations concerning the abuse, mistreatment, or neglect of the child, aggregated by the type of misconduct to which the child was subjected.

(b) To the extent authorized under law, the statistics maintained under Subsection (a) are public information under Chapter 552, Government Code, and the department shall post the statistics on the department's Internet website.

(c) The department shall prepare and deliver to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities a report concerning the statistics maintained under Subsection (a).

(d) The department shall provide a report to the parent, guardian, or designated advocate of a child whose length of stay is extended under Section 245.102 explaining the panel's reason for the extension.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.104. REQUEST FOR RECONSIDERATION OF EXTENSION ORDER. (a) The board by rule shall establish a process to request the reconsideration of an extension order issued by a panel under Section 245.102.

(b) The process to request reconsideration must provide that:

(1) a child, a parent, guardian, or designated advocate of a child, an employee of the department, or a person who provides volunteer services at a department facility may submit a request for reconsideration of an extension order;

(2) the person submitting the request for reconsideration of an extension order must state in the request the reason for the request;

(3) after receiving a request for reconsideration of an extension order, the panel shall reconsider an extension order that:

(A) extends the child's stay in the custody of the department by six months or more; or

(B) combined with previous extension orders will result in an extension of the child's stay in the custody of the department by six months or more;

(4) the panel's reconsideration of an extension order includes consideration of the information submitted in the request; and

(5) the panel shall send a written reply to the child, the parent, guardian, or designated advocate of the child, and the person who made the request for reconsideration of an extension order that includes an explanation of the panel's decision after reconsidering the extension order, including an indication that the panel has considered the information submitted in the request.

(c) The department shall create a form for a request for reconsideration of an extension order that is clear and easy to understand. The department shall ensure that a child may request assistance in completing a request for reconsideration of an extension order.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.105. STATISTICS AND REPORTS CONCERNING RECONSIDERATIONS OF EXTENSION ORDERS. (a) The department shall maintain statistics of the number of requests for reconsideration of an extension order that are submitted under Section 245.104 and the action taken on reconsideration of the extension order. The statistics must include aggregated information concerning:

(1) the race, age, sex, specialized treatment needs, and county of origin for each child for whom a request for reconsideration of an extension order is submitted;

(2) whether a request for reconsideration of an extension order results in:

(A) a discharge or release under supervision; or

(B) the original extension order being upheld;

(3) the facility in which the child is confined; and

(4) if applicable, any allegations concerning the abuse, mistreatment, or neglect of the child, aggregated by the type of misconduct to which the child was subjected.

(b) To the extent authorized under law, the statistics maintained under Subsection (a) are public information under Chapter 552, Government Code, and the department shall post the statistics on the department's Internet website.

(c) The department shall prepare and deliver to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities a report concerning the statistics maintained under Subsection (a).

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.106. TRANSPORTATION, CLOTHING, MONEY. The department shall ensure that each child it releases under supervision has:

(1) suitable clothing;

(2) transportation to his or her home or to the county in which a suitable home or employment has been found; and

(3) money in an amount authorized by the rules of the department.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

SUBCHAPTER D. TERMINATION OF CONTROL

Sec. 245.151. TERMINATION OF CONTROL. (a) Except as provided by Subsections (b) and (c), if a person is committed to the department under a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, the department may not discharge the person from its custody.

(b) The department shall discharge without a court hearing a person committed to the department for a determinate sentence under Section 54.04(d)(3), Section 54.04(m), or Section 54.05(f), Family Code, who has not been transferred to the Texas Department of Criminal Justice under a court order on the date that the time spent by the person in detention in connection with the committing case plus the time spent at the department under the order of commitment equals the period of the sentence.

(c) The department shall transfer to the Texas Department of Criminal Justice a person who is the subject of an order under Section 54.11(i)(2), Family Code, transferring the person to the custody of the Texas Department of Criminal Justice for the completion of the person's sentence.

(d) Except as provided by Subsection (e), the department shall discharge from its custody a person not already discharged on the person's 19th birthday.

(e) The department shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the department under Section 54.11(i)(1), Family Code, to the custody of the Texas Department of Criminal Justice on the person's 19th birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

Sec. 245.152. DETERMINATE SENTENCE PAROLE. (a) Not later than the 90th day before the date the department transfers a person to the custody of the Texas Department of Criminal Justice for release on parole under Section 245.051(c) or 245.151(e), the department shall submit to the Texas Department of Criminal Justice all pertinent information relating to the person, including:

(1) the juvenile court judgment;

(2) the circumstances of the person's offense;

(3) the person's previous social history and juvenile court records;

(4) the person's physical and mental health record;

(5) a record of the person's conduct, employment history, and attitude while committed to the department;

(6) a record of the sentence time served by the person at the department and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the department, local officials, family members of the person, victims of

the offense, or the general public.

(b) The department shall provide instruction for parole officers of the Texas Department of Criminal Justice relating to juvenile programs at the department. The department and the Texas Department of Criminal Justice shall enter into a memorandum of understanding relating to the administration of this subsection.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person at the department and in a juvenile detention facility, as recorded by the department under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the Texas Department of Criminal Justice.

Transferred, redesignated and amended from Human Resources Code, Subchapter F, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.007, eff. September 1, 2011.

CHAPTER 246. INDUSTRIES PROGRAM

Sec. 246.001. PURPOSE; IMPLEMENTATION. The purposes of the department industries program are:

(1) to provide adequate employment and vocational training for children; and

(2) to develop and expand public and private department industries.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

Sec. 246.003. PAY AND DISTRIBUTION OF PAY. The department shall apportion wages earned by a child working under the industries program in amounts determined at the discretion of the department, in the following priority:

(1) a person to whom the child has been ordered by a court or to whom the child has agreed to pay restitution;

(2) a person to whom the child has been ordered by a court to pay child support;

(3) the compensation to victims of crime fund or the compensation to victims of crime auxiliary fund; and

(4) the child's student account.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

Sec. 246.004. INDUSTRIES FUND. (a) A Texas Juvenile Justice Department industries program fund is created in the state treasury.

(b) Proceeds from the operation of the industries program shall be deposited in the fund.

(c) Money from the fund may be appropriated only for use by the department for the administration of this chapter.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

Sec. 246.005. CONTRACTS. To encourage the development and expansion of the industries program, the department may enter into necessary contracts related to the program.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

Sec. 246.006. DONATIONS. The industries program may be financed through contributions donated for this purpose by private businesses contracting with the department.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

Sec. 246.007. GRANTS. (a) The department may accept a grant for the vocational rehabilitation of children.

(b) The department shall maintain a record of the receipt and disbursement of a grant and shall annually report to the lieutenant governor and the speaker of the house of representatives on the administration of grant funds.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

Sec. 246.008. LEASE OF LAND. (a) The department may lease land owned by the department to a private business to expand and develop the industries program.

(b) The term of the lease may not exceed 20 years.

(c) The business must lease the land at fair market value.

(d) The business may construct a new facility on the land or convert an existing facility.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

Sec. 246.009. OPTIONAL AD VALOREM TAX ABATEMENT. (a) A business contracting with the department may enter into an ad valorem tax abatement agreement under Subchapters B and C, Chapter 312, Tax Code, with the governing body of the municipality and county in which the business is located.

(b) If an area in which businesses contracting with the department under this subchapter is designated as a reinvestment zone under Chapter 312, Tax Code, the area satisfies Section 312.202(a)(6), Tax Code, in that the area would be reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the entity designating the area as a reinvestment zone.

Transferred, redesignated and amended from Human Resources Code, Subchapter I, Chapter 61 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.008, eff. September 1, 2011.

SUBTITLE D. INDEPENDENT OMBUDSMAN
CHAPTER 261. INDEPENDENT OMBUDSMAN
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 261.001. DEFINITIONS. In this chapter:

(1) "Independent ombudsman" means the individual who has been appointed under this chapter to the office of independent ombudsman.

(2) "Office" means the office of independent ombudsman created under this chapter.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.002. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of children:

(1) committed to the department, including a child released under supervision before final discharge; and

(2) adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 46, eff. September 1, 2023.

Sec. 261.003. INDEPENDENCE. (a) The independent ombudsman in the performance of its duties and powers under this chapter acts independently of the department.

(b) Funding for the independent ombudsman is appropriated separately from funding for the department.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Sec. 261.051. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The governor shall appoint the independent ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of odd-numbered years.

(b) A person appointed as independent ombudsman is eligible for reappointment.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1033 (H.B. 2733), Sec. 9, eff. September 1, 2013.

Sec. 261.052. ASSISTANTS. The independent ombudsman may hire assistants to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.053. CONFLICT OF INTEREST. (a) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the department;

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the department; or

(3) uses or receives any amount of tangible goods, services, or funds from the department.

(b) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(c) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse is an officer, employee, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.054. SUNSET PROVISION. The office is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which the Texas Juvenile Justice Department or its successor agency is reviewed.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.055. REPORT. (a) The independent ombudsman shall submit on a quarterly basis to the board, the governor, the lieutenant governor, the state auditor, and each member of the legislature a report that is both aggregated and disaggregated by individual facility and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including reviews or investigation of services contracted by the department; and

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman.

(b) The independent ombudsman shall immediately report to the board, the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the office of the

inspector general of the department any particularly serious or flagrant:

(1) case of abuse or injury of a child committed to the department;

(2) problem concerning the administration of a department program or operation;

(3) problem concerning the delivery of services in a facility operated by or under contract with the department; or

(4) interference by the department with an investigation conducted by the office.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.056. COMMUNICATION AND CONFIDENTIALITY. (a) The department shall allow any child committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board to communicate with the independent ombudsman or an assistant to the ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the office of inspector general of the department a communication with a child that may involve the abuse or neglect of the child; and

(2) disclose its nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation public after the investigation is complete but only if the names of all children, parents, and employees are redacted from the report and remain confidential.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman

are confidential and not subject to disclosure under Chapter 552, Government Code, except that the information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, may be disclosed to the appropriate person if the office determines that disclosure is:

(1) in the general public interest;

(2) necessary to enable the office to perform the responsibilities provided under this section; or

(3) necessary to identify, prevent, or treat the abuse or neglect of a child.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 47, eff. September 1, 2023.

Sec. 261.057. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public and the children committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board of:

(1) how the office may be contacted;

(2) the purpose of the office; and

(3) the services the office provides.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 48, eff. September 1, 2023.

Sec. 261.058. RULEMAKING AUTHORITY. (a) The office by rule shall establish policies and procedures for the operations of the office of independent ombudsman.

(b) The office and the board shall adopt rules necessary to implement Section 261.060, including rules that establish procedures

for the department to review and comment on reports of the office and for the department to expedite or eliminate review of and comment on a report due to an emergency or a serious or flagrant circumstance described by Section 261.055(b).

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.059. AUTHORITY OF STATE AUDITOR. The office is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.060. REVIEW AND FORMAT OF REPORTS. (a) The office shall accept, both before and after publication, comments from the board concerning the following types of reports published by the office under this chapter:

(1) the office's quarterly report under Section 261.055(a);

(2) reports concerning serious or flagrant circumstances under Section 261.055(b); and

(3) any other formal reports containing findings and making recommendations concerning systemic issues that affect the department.

(b) The board may not submit comments under Subsection (a) after the 30th day after the date the report on which the board is commenting is published.

(c) The office shall ensure that reports described by Subsection (a) are in a format to which the board can easily respond.

(d) After receipt of comments under this section, the office is not obligated to change any report or change the manner in which the office performs the duties of the office.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.061. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office that relate to the operations or staff of the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 49, eff. September 1, 2023.

SUBCHAPTER C. DUTIES AND POWERS

Sec. 261.101. DUTIES AND POWERS. (a) The independent ombudsman shall:

(1) review the procedures established by the board and evaluate the delivery of services to children to ensure that the rights of children are fully observed;

(2) review complaints filed with the independent ombudsman concerning the actions of the department, juvenile probation departments, or other entities operating facilities in which children adjudicated for conduct that constitutes an offense are placed and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman;

(3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the office determines that:

(A) a child committed to the department, a child adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation

department or juvenile board, or the child's family may be in need of assistance from the office; or

(B) a systemic issue raised in a complaint about the provision of services to children by the department, juvenile probation departments, or other entities operating facilities in which children adjudicated for conduct that constitutes an offense are placed;

(4) review or inspect periodically the facilities and procedures of any institution or residence in which a child adjudicated for conduct that constitutes an offense has been placed by the department or a juvenile probation department, whether public or private, to ensure that the rights of children are fully observed;

(5) provide assistance to a child or family who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the child;

(6) review court orders as necessary to fulfill its duties;

(7) recommend changes in any procedure relating to the treatment of children committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board;

(8) make appropriate referrals under any of the duties and powers listed in this subsection;

(9) supervise assistants who are serving as advocates in internal administrative and disciplinary hearings by representing children committed to the department or adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board;

(10) review reports received by the department relating to complaints regarding juvenile probation programs, services, or facilities and analyze the data contained in the reports to identify trends in complaints;

(11) report a possible standards violation by a juvenile probation department to the appropriate division of the department; and

(12) immediately report the findings of any investigation related to the operation of a post-adjudication correctional facility in a county to the chief juvenile probation officer and the juvenile board of the county.

(b) The independent ombudsman may apprise persons who are interested in a child's welfare of the rights of the child.

(c) To assess if a child's rights have been violated, the independent ombudsman may, in any matter that does not involve alleged criminal behavior, contact or consult with an administrator, employee, child, parent, expert, or any other individual in the course of its investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate alleged criminal behavior.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 646 (S.B. 1702), Sec. 2, eff. September 1, 2019.

(f) Notwithstanding any other provision of this chapter, the powers of the office include:

(1) the inspection of:

(A) a facility operated by the department under Subtitle C;

(B) a post-adjudication secure correctional facility under Section 51.125, Family Code;

(C) a nonsecure correctional facility under Section 51.126, Family Code; and

(D) any other residential facility in which a child adjudicated as having engaged in conduct indicating a need for supervision or delinquent conduct is placed by court order; and

(2) the investigation of complaints alleging a violation of the rights of the children committed to or placed in a facility described by this subsection.

(g) The department and juvenile probation departments shall notify the office regarding any private facility described by Subsection (f)(1) with which the department or the juvenile probation department contracts to place children adjudicated as having engaged in conduct indicating a need for supervision or delinquent conduct. The report under this subsection must be made annually and updated at the time a new contract is entered into with a facility described by this subsection. The office shall adopt rules to implement the reporting requirements under this subsection, including the specific times the report must be made.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 11(a), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 854 (S.B. 1149), Sec. 11(b), eff. January 1, 2019.

Acts 2015, 84th Leg., R.S., Ch. 962 (S.B. 1630), Sec. 7, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 646 (S.B. 1702), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 646 (S.B. 1702), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 50, eff. September 1, 2023.

Sec. 261.102. TREATMENT OF EMPLOYEES WHO COOPERATE WITH INDEPENDENT OMBUDSMAN. The department, a juvenile probation department, or another entity operating a facility in which children adjudicated for conduct that constitutes an offense are placed may not discharge or in any manner discriminate or retaliate against an employee who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 51, eff. September 1, 2023.

Sec. 261.103. TRAINING. The independent ombudsman shall attend annual sessions, including the training curriculum for juvenile correctional officers required under Section 242.009, and may participate in other appropriate professional training.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.104. MEMORANDUM OF UNDERSTANDING. (a) The office and the department shall enter into a memorandum of understanding concerning:

(1) the most efficient manner in which to share information with one another; and

(2) the procedures for handling overlapping monitoring duties and activities performed by the office and the department.

(b) The memorandum of understanding entered into under Subsection (a), at a minimum, must:

(1) address the interaction of the office with that portion of the department that conducts an internal audit under Section 203.013;

(2) address communication between the office and the department concerning individual situations involving children committed to the department and how those situations will be documented and handled;

(3) contain guidelines on the office's role in relevant working groups and policy development decisions at the department;

(4) ensure opportunities for sharing information between the office and the department for the purposes of assuring quality and improving programming within the department; and

(5) preserve the independence of the office by authorizing the office to withhold information concerning matters under active investigation by the office from the department and department staff and to report the information to the board and the governor.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Sec. 261.105. RISK FACTORS AND RISK ASSESSMENT TOOLS. (a) The office shall develop a comprehensive set of risk factors to use in assessing the overall risk level of facilities and entities described by Section 261.101(f) and of department parole offices. The risk factors may include:

(1) the entity type;

(2) past and repeat children's rights violations;

(3) the volume and types of complaints received by the office;

(4) recent changes in a facility or parole office leadership;

(5) high staff turnover;

(6) relevant investigations by the office of the inspector general of the department;

(7) negative media attention; and

(8) the number of months since the date of the office's last inspection of the entity.

(b) The office shall use the risk factors developed under this section to guide the inspections of facilities and entities described by Section 261.101(f), and of department parole offices, by developing risk assessment tools with clear, objective standards to use in assessing the overall risk level of each facility, entity, or parole office.

(c) The office may develop distinct assessment tools under Subsection (b) for different entity types, as appropriate.

(d) The office shall periodically review the assessment tools developed under this section to ensure that the tools remain up to date and meaningful, as determined by the office.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 52, eff. September 1, 2023.

Sec. 261.106. RISK-BASED INSPECTIONS. (a) The office shall adopt a policy prioritizing the inspection of facilities conducted under Section 261.101(f) and of department parole offices based on the relative risk level of each entity.

(b) The policy under Subsection (a) must require the office to use the risk assessment tools established under Section 261.105 to determine how frequently and intensively the office conducts risk-based inspections.

(c) The policy under Subsection (a) may provide for the office to use alternative inspection methods for entities determined to be low risk, including the following methods:

(1) desk audits of key documentation;

(2) abbreviated inspection procedures;

(3) videoconference technology; and

(4) other methods that are an alternative to conducting an in-person inspection.

(d) On request by the office, the department, a juvenile probation department, or a private facility under the office's jurisdiction shall provide information on a routine basis, as determined by the office, to assist the office in implementing a risk-based inspection schedule.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 52, eff. September 1, 2023.

SUBCHAPTER D. ACCESS TO INFORMATION

Sec. 261.151. ACCESS TO INFORMATION OF GOVERNMENTAL ENTITIES. (a) The independent ombudsman has access to the department's records relating to the children committed to the department.

(b) The Department of Public Safety shall allow the independent ombudsman access to the juvenile justice information system established under Subchapter B, Chapter 58, Family Code.

(c) A local law enforcement agency shall allow the independent ombudsman access to its records relating to any child in the care or custody of the department or any child adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 53, eff. September 1, 2023.

Sec. 261.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES. The independent ombudsman shall have access to the records of a private entity that relate to a child committed to the department or a child adjudicated for conduct that constitutes an offense and placed in a private facility contracted with a juvenile probation department or juvenile board.

Transferred, redesignated and amended from Human Resources Code, Chapter 64 by Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 1.010, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 54, eff. September 1, 2023.

Sec. 261.153. ACCESS TO INFORMATION OF JUVENILE PROBATION DEPARTMENTS. The independent ombudsman shall have access to the records of a juvenile probation department that relate to a child adjudicated for conduct that constitutes an offense and placed in a facility operated by or contracted with a juvenile probation department or juvenile board.

Added by Acts 2023, 88th Leg., R.S., Ch. 950 (S.B. 1727), Sec. 55, eff. September 1, 2023.

INSURANCE CODE
TITLE 2. TEXAS DEPARTMENT OF INSURANCE
SUBTITLE A. ADMINISTRATION OF THE TEXAS DEPARTMENT OF INSURANCE
CHAPTER 30. GENERAL PROVISIONS

Sec. 30.001. PURPOSE OF TITLES 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, AND 20. (a) This title and Titles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 20 are enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this title and Titles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 20 is to make the law encompassed by the titles more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 17, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.001, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1274, Sec. 9, eff. April 1, 2005. Amended by:

Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 10, eff. April 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1A.001, eff. April 1, 2009.

Sec. 30.002. CONSTRUCTION. Except as provided by Section 30.003 and as otherwise expressly provided in this code, Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this title and in Titles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 20.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 17, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.001, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1274, Sec. 9, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 10, eff. April 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1A.001, eff. April 1, 2009.

Sec. 30.003. DEFINITION OF PERSON. The definition of "person" assigned by Section 311.005, Government Code, does not apply to any provision in this title or in Title 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, or 20.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Acts 2001, 77th Leg., ch. 1419, Sec. 17, eff. June 1, 2003. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 11.001, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1274, Sec. 9, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 10, eff. April 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1A.001, eff. April 1, 2009.

Sec. 30.004. REFERENCE IN LAW TO STATUTE REVISED BY TITLE 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, OR 20. A reference in a law to a statute or a part of a statute revised by this title or by Title 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, or 20 is considered to be a reference to the part of this code that revises that statute or part of that statute.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Acts 2001, 77th Leg., ch. 1419, Sec. 17, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.001, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1274, Sec. 9, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 10, eff. April 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1A.001, eff. April 1, 2009.

Sec. 30.005. PREEMPTION. Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code.

Added by Acts 2023, 88th Leg., R.S., Ch. 899 (H.B. 2127), Sec. 9, eff. September 1, 2023.

CHAPTER 31. ORGANIZATION OF DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. DEFINITIONS. In this code and other insurance laws:

(1) "Commissioner" means the commissioner of insurance.

(2) "Department" means the Texas Department of Insurance.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.002. DUTIES OF DEPARTMENT. In addition to the other duties required of the Texas Department of Insurance, the department shall:

(1) regulate the business of insurance in this state;

(2) administer the workers' compensation system of this state as provided by Title 5, Labor Code;

(3) ensure that this code and other laws regarding insurance and insurance companies are executed;

(4) protect and ensure the fair treatment of consumers; and

(5) ensure fair competition in the insurance industry in order to foster a competitive market.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.051, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 1.001, eff. September 1, 2011.

Sec. 31.003. COMPOSITION OF DEPARTMENT. The department is composed of the commissioner and other officers and employees required to efficiently implement:

(1) this code;

(2) other insurance laws of this state; and

(3) other laws granting jurisdiction or applicable to the department or the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.004. SUNSET PROVISION. (a) The Texas Department of Insurance is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2029.

(b) Unless continued as provided by Chapter 325, Government Code, the duties of the division of workers' compensation of the Texas Department of Insurance under Title 5, Labor Code, expire September 1, 2029, or another date designated by the legislature.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 2.02, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.052, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 2.05, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.09, eff. June 15, 2007.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.06, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 1.002, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 4.02, eff.

June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 2.05, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 2.01, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 1.13, eff. June 18, 2023.

Sec. 31.005. DEFENSE BY ATTORNEY GENERAL. The attorney general shall defend an action brought against the commissioner or an employee or officer of the department as a result of that person's official act or omission, whether or not at the time of the institution of the action that person has terminated service with the department.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.006. TEXAS WORKERS' COMPENSATION COMMISSION NOT AFFECTED. This code does not affect the duties imposed by law on the Texas Workers' Compensation Commission.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.007. REFERENCES TO BOARD. A reference in this code or other law to the State Board of Insurance, the Board of Insurance Commissioners, or an individual commissioner means the commissioner or the department as consistent with the respective duties of the commissioner and the department under this code and other insurance laws.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. COMMISSIONER OF INSURANCE

Sec. 31.021. CHIEF EXECUTIVE. (a) The commissioner is the department's chief executive and administrative officer. The commissioner shall administer and enforce this code, other insurance laws of this state, and other laws granting jurisdiction or

applicable to the department or the commissioner.

(b) The commissioner has the powers and duties vested in the department by:

(1) this code and other insurance laws of this state; and

(2) Title 5, Labor Code, and other workers' compensation insurance laws of this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.053, eff. September 1, 2005.

Sec. 31.022. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the commissioner. The commissioner serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the commissioner without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.023. QUALIFICATIONS. The commissioner must:

(1) be a competent and experienced administrator;

(2) be well informed and qualified in the field of insurance and insurance regulation; and

(3) have at least five years of experience in the administration of business or government or as a practicing attorney or certified public accountant.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 10.01, eff. Jan. 11, 2004.

Sec. 31.024. INELIGIBILITY FOR PUBLIC OFFICE. The commissioner is ineligible to be a candidate for a public elective office in this state, unless the commissioner has resigned and the governor has accepted the resignation.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.026. COMPENSATION. The commissioner is entitled to compensation as provided by the General Appropriations Act.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.027. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office if the commissioner:

(1) does not have at the time of appointment the qualifications required by Section 31.023;

(2) does not maintain during service as commissioner the qualifications required by Section 31.023;

(3) violates a prohibition established by Section 33.001, 33.003, 33.004, or 33.005; or

(4) cannot, because of illness or disability, discharge the commissioner's duties for a substantial part of the commissioner's term.

(b) The validity of an action of the commissioner or the department is not affected by the fact that it is taken when a ground for removal of the commissioner exists.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.028. TRAINING PROGRAM FOR COMMISSIONER. (a) Not later than the 90th day after the date on which the commissioner takes office, the commissioner shall complete a training program that complies with this section.

(b) The training program must provide the commissioner with information regarding:

(1) the legislation that created the department;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the department, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the department;

(6) the results of the most recent formal audit of the department;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict of interest laws; and

(8) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 10.04, eff. Jan. 11, 2004.

SUBCHAPTER C. PERSONNEL

Sec. 31.041. DEPARTMENT PERSONNEL. (a) Subject to the General Appropriations Act or other law, the commissioner shall appoint deputies, assistants, and other personnel as necessary to carry out the powers and duties of the commissioner and the department under this code, other insurance laws of this state, and other laws granting jurisdiction or applicable to the department or the commissioner.

(b) A person appointed under this section must have the professional, administrative, and insurance experience necessary to qualify the person for the position to which the person is appointed.

(c) A person appointed as an associate or deputy commissioner or to hold an equivalent position must have at least five years of the experience required for appointment as commissioner under Section 31.023. At least two years of that experience must be in work related to the position to be held.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.042. DIVISION OF RESPONSIBILITIES. The commissioner shall develop and implement policies that clearly define the respective responsibilities of the commissioner and the staff of the department.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.043. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the department workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the department workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under this section must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.044. QUALIFICATIONS AND STANDARDS OF CONDUCT. The commissioner shall provide to department employees, as often as necessary, information regarding their:

(1) qualification for office or employment under this code;

and

(2) responsibilities under applicable laws relating to standards of conduct for state employees.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.045. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for department employees must be based on the system established under this subsection.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 32. ADMINISTRATIVE POWERS AND DUTIES

SUBCHAPTER A. RECORDS

Sec. 32.001. GIVING CERTIFIED COPIES AND CERTIFICATES. (a) On request and on payment of the required fee, the department shall:

(1) certify a copy of a paper or a record in a department office and give the certified copy to any person when the commissioner determines that providing the copy is not prejudicial to the public interest; and

(2) give a certificate as provided by other law.

(b) A fee collected by the department under this section shall be deposited in the general revenue fund to the credit of the Texas Department of Insurance operating account.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 32.0015. FILING ARTICLES OF INCORPORATION AND OTHER PAPERS; CERTIFIED COPIES. (a) The department shall file and maintain in a department office:

(1) all insurance companies' acts or articles of incorporation; and

(2) any other paper required by law to be filed with the department.

(b) The department shall provide a certified copy of a document described by Subsection (a)(1) or (2) to a party interested in the document who:

(1) submits an application; and

(2) pays the fee prescribed by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1A.002, eff. April 1, 2009.

Sec. 32.002. RECORD OF DEPARTMENT PROCEEDINGS. The department shall maintain a complete record of the department's proceedings.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 32.003. STATEMENTS REGARDING CONDITION OF EXAMINED COMPANIES. The department shall maintain a concise statement of the condition of each company or agency visited or examined.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 32.004. PUBLICATION OF RESULTS OF EXAMINATION. The department shall publish the results of an examination of a company's affairs if the commissioner determines that publication is in the public interest.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1A.002, eff. April 1, 2009.

SUBCHAPTER B. REPORTS

Sec. 32.021. ANNUAL REPORTS. (a) The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report that includes:

(1) a description of the commissioner's official acts;

(2) a description of the condition of companies doing business in this state; and

(3) other information that exhibits the affairs of the department.

(b) The annual report required by Subsection (a) must be in the form and reported in the time provided by the General Appropriations Act.

(c) The department shall:

(1) send a copy of the annual report required by Subsection (a) to the insurance commissioner or other similar officer of every state; and

(2) on request, send a copy to any company doing business in this state.

(d) The department shall print a separate premium and loss report that contains and arranges in tabular form the premium and loss information contained in the annual statements for companies doing business in this state.

(e) The department shall file the report required by Subsection (d) with the Legislative Reference Library and the Texas State Library with the annual report required by Subsection (a).

(f) The department shall notify the legislature of the availability of the reports required by this section.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 76, eff. September 1, 2013.

Sec. 32.022. BIENNIAL REPORT TO LEGISLATURE. (a) On or before December 31 of each even-numbered year, the department shall submit to the appropriate committees of each house of the legislature a written report that indicates any needed changes in the laws relating to regulation of the insurance industry or any other industry or occupation under the jurisdiction of the department and that states the reasons for the needed changes.

(b) If the commissioner determines that any capital or surplus requirements established by this code for any insurance companies are inadequate, the department shall:

(1) include in the biennial report specific recommendations relating to the amounts at which the capital or surplus requirements should be set and the findings and evidence on which those

recommendations are based; and

(2) submit the biennial report to the governor.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 32.023. REPORTS TO OTHER STATES. On request, the department shall provide to the insurance commissioner or other similar officer of another state information relating to a company of this state that does business in the other state if:

(1) the other state has enacted the substantial provisions of the insurance laws of this state; and

(2) the commissioner or other similar officer has a legal duty to obtain the information.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. FORMS

Sec. 32.041. FORMS. The department shall furnish to the companies required to report to the department the necessary forms for the required statements.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. INTERNET ACCESS TO CERTAIN INFORMATION

Sec. 32.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies to insurers who comprise the top 25 insurance groups in the national market and who issue residential property insurance or personal automobile insurance policies in this state, including a Lloyd's plan, a reciprocal or interinsurance exchange, a county mutual insurance company, a farm mutual insurance company, the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association.

Added by Acts 2007, 80th Leg., R.S., Ch. 151 (S.B. 611), Sec. 1, eff. May 21, 2007.

Sec. 32.102. INTERNET WEBSITE. (a) The department, in

conjunction with the office of public insurance counsel, shall establish and maintain a single Internet website that provides information to enable consumers to make informed decisions relating to the purchase of residential property insurance and personal automobile insurance. The website must include:

(1) a description of each type of residential property insurance policy and personal automobile insurance policy issued in this state, including a comparison of the coverage, exclusions, and restrictions of each policy that allows a side-by-side comparison of the features of the policy forms;

(2) a listing of each insurer writing residential property insurance or personal automobile insurance in this state, indexed by each county or zip code in which the insurer is actively writing that insurance, and a profile of the insurer that includes:

(A) contact information for the insurer, including the insurer's full name, address, and telephone number and the insurer's fax number and e-mail address, if available;

(B) information on rates charged by the insurer, including:

(i) sample rates for different policyholder profiles in each county or zip code; and

(ii) the percentage by which the sample rate has fallen or risen due to filings in the previous 12, 24, and 36 months;

(C) a list of policy forms, exclusions, endorsements, and discounts offered by the insurer;

(D) an indication of whether the insurer uses credit scoring in underwriting, rating, or tiering, and a link to the insurer's credit model or a link explaining how to request the insurer's credit model;

(E) the insurer's financial rating determined by A. M. Best or similar rating organization and an explanation of the meaning and importance of the rating;

(F) a complaint ratio or similar complaint rating system for the insurer for each of the previous three years and an explanation of the meaning of the rating system; and

(G) information, other than information made confidential by law, on the insurer's regulatory and administrative experience with the department, the office of public insurance counsel, and insurance regulatory authorities in other states; and

(3) if feasible, as determined by the commissioner and the

public insurance counsel:

(A) a side-by-side comparison of credit scoring models, including factors, key variables, and weights, of residential property insurers in this state; and

(B) a side-by-side comparison of credit scoring models, including factors, key variables, and weights, of private passenger automobile insurers in this state.

(b) The Internet website required by this section may link to and be linked from the department's and the office of public insurance counsel's main websites, but must have its own Internet address distinct from the address of those main sites.

(c) The department and the office of public insurance counsel may include on the Internet website or by link to another site any other information the department and the office of public insurance counsel determine is helpful to consumers of residential property insurance or personal automobile insurance or that the department or the office of public insurance counsel is authorized or required to publish under this code that relates to residential property insurance or personal automobile insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 151 (S.B. 611), Sec. 1, eff. May 21, 2007.

Sec. 32.103. PUBLIC INFORMATION CONCERNING INTERNET WEBSITE. The department shall publicize the existence of the Internet website required by this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 151 (S.B. 611), Sec. 1, eff. May 21, 2007.

Sec. 32.104. DUTIES OF INSURER. (a) On the request of the department, an insurer shall provide to the department any information the department and the office of public insurance counsel determine is reasonable or necessary to fulfill the department's and the office of the public insurance counsel's duties under this subchapter.

(b) An insurer shall provide in a conspicuous manner with each residential property insurance or personal automobile insurance policy issued in this state notice of the Internet website required

by this subchapter. The commissioner shall determine the form and content of the notice.

Added by Acts 2007, 80th Leg., R.S., Ch. 151 (S.B. 611), Sec. 1, eff. May 21, 2007.

SUBCHAPTER E. RULES REGARDING USE OF ADVISORY COMMITTEES

Sec. 32.151. RULEMAKING AUTHORITY. (a) The commissioner shall adopt rules, in compliance with Section 39.003 of this code and Chapter 2110, Government Code, regarding the purpose, structure, and use of advisory committees by the commissioner, the state fire marshal, or department staff, including rules governing an advisory committee's:

(1) purpose, role, responsibility, and goals;

(2) size and quorum requirements;

(3) qualifications for membership, including experience requirements and geographic representation;

(4) appointment procedures;

(5) terms of service;

(6) training requirements; and

(7) duration.

(b) An advisory committee must be structured and used to advise the commissioner, the state fire marshal, or department staff. An advisory committee may not be responsible for rulemaking or policymaking.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.001, eff. September 1, 2011.

Sec. 32.152. PERIODIC EVALUATION. The commissioner shall by rule establish a process by which the department shall periodically evaluate an advisory committee to ensure its continued necessity. The department may retain or develop committees as appropriate to meet changing needs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.001, eff. September 1, 2011.

Sec. 32.153. COMPLIANCE WITH OPEN MEETINGS ACT. A department advisory committee must comply with Chapter 551, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.001, eff. September 1, 2011.

CHAPTER 33. STANDARDS OF CONDUCT

Sec. 33.001. APPLICATION OF LAW RELATING TO ETHICAL CONDUCT. The commissioner and each employee or agent of the department is subject to the code of ethics and the standard of conduct imposed by Chapter 572, Government Code, and any other law regulating the ethical conduct of state officers and employees.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.002. INSURANCE BUSINESS INTEREST; SERVICE AS COMMISSIONER. (a) A person is not eligible for appointment as commissioner if the person, the person's spouse, or any other person who resides in the same household as the person:

(1) is registered, certified, or licensed by the department;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law.

(b) A person is not eligible for appointment as commissioner if the person:

(1) is a stockholder, director, officer, attorney, agent, or employee of an insurance company, insurance agent, insurance broker, or insurance adjuster; or

(2) is directly or indirectly interested in a business described by Subdivision (1).

(c) Subsection (b) does not apply to:

(1) a person solely because the person is insured by an

insurer or is the beneficiary of insurance; or

(2) a person who:

(A) is appointed as a receiver, liquidator, supervisor, or conservator of an insurer; or

(B) is an employee of a receiver, liquidator, supervisor, or conservator of an insurer with respect to duties under that employment.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.003. INSURANCE BUSINESS INTEREST; EMPLOYEE. (a) A person who is a director, officer, attorney, agent, or employee of an insurance company, insurance agent, insurance broker, or insurance adjuster may not be employed by the department.

(b) A person who resides in the same household as a person who is an officer, managerial employee, or paid consultant in the insurance industry may not be employed in an exempt salary position as defined by the General Appropriations Act.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.004. TRADE ASSOCIATIONS. (a) A person who is an officer, employee, or paid consultant of a trade association in the field of insurance may not be:

(1) the commissioner; or

(2) an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a trade association in the field of insurance may not be:

(1) the commissioner; or

(2) an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or

professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.005. LOBBYING ACTIVITIES. A person may not serve as the commissioner or act as the general counsel to the commissioner if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.006. FORMER SERVICE. A person may not serve as the commissioner if the person served as a member of the State Board of Insurance.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 33.007. PROHIBITED REPRESENTATION. (a) A person who served as the commissioner, the general counsel to the commissioner, or the public insurance counsel, or as an employee of the State Office of Administrative Hearings who was involved in hearing cases under this code, another insurance law of this state, or Title 5, Labor Code, commits an offense if the person represents another person in a matter before the department or receives compensation for services performed on behalf of another person regarding a matter pending before the department during the one-year period after the date the person ceased to be the commissioner, the general counsel to the commissioner, the public insurance counsel, or an employee of the State Office of Administrative Hearings.

(b) A person who served as a member of the State Board of Insurance or as a staff employee of a member of the State Board of Insurance, or who served as the commissioner, the general counsel to the commissioner, or the public insurance counsel or as an employee of the department or the State Office of Administrative Hearings, commits an offense if, after the person ceased to serve, the person

represents another person or receives compensation for services performed on behalf of another person regarding a matter with which the person was directly concerned during the person's service. For purposes of this subsection, a person was directly concerned with a matter if the person had personal involvement with the matter or if the matter was within the scope of the person's official responsibility.

(c) An offense under this section is a Class A misdemeanor.

(d) This section does not apply to a department employee whose position is eliminated as a direct result of a reduction in the department's workforce.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.054, eff. September 1, 2005.

CHAPTER 34. IMMUNITY FROM LIABILITY

Sec. 34.001. PERSONAL IMMUNITY. A person who is the commissioner or an employee of the department is not personally liable in a civil action for:

(1) an act performed in good faith within the scope of that person's authority; or

(2) damages caused by an official act or omission of that person unless the act or omission is corrupt or malicious.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 34.002. IMMUNITY FOR FURNISHING INFORMATION RELATING TO FRAUD. (a) A person is not liable in a civil action, including an action for libel or slander, and a civil action may not be brought against the person, for furnishing information relating to suspected, anticipated, or completed fraudulent insurance acts if the information is provided to or received from:

(1) the commissioner or an employee of the department;

(2) a law enforcement agency of this state, of another state, or of the United States or an employee of the agency;

(3) the National Association of Insurance Commissioners or an employee of the association; or

(4) a state or federal governmental agency established to detect and prevent fraudulent insurance acts or to regulate the business of insurance or an employee of the agency.

(b) A person may furnish information as described in Subsection (a) orally or in writing, including through publishing, disseminating, or filing bulletins or reports.

(c) Subsection (a) does not apply to a person who acts with malice, fraudulent intent, or bad faith.

(d) A person to whom Subsection (a) applies who prevails in a civil action arising from the furnishing of information as described in Subsection (a) is entitled to attorney's fees and costs if the action was not substantially justified. In this subsection, "substantially justified" means there was a reasonable basis in law or fact to bring the action at the time the action was initiated.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 34.003. IMMUNITY FOR INVESTIGATIONS AND RELATED REPORTS. (a) A person who is the commissioner or an employee, agent, or designee of the department is not liable in a civil action, including an action for libel or slander, because of:

(1) an investigation of a violation of this code or an alleged fraudulent insurance act; or

(2) the publication or dissemination of an official report related to the investigation.

(b) Subsection (a) does not apply to a person who acts with malice.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 34.004. IMMUNITY FOR USE OF ANNUAL STATEMENT INFORMATION. (a) A person is not liable in a civil action, including an action for libel or slander, for collecting, reviewing, analyzing, disseminating, or reporting information collected from annual statements filed under Chapter 802 if the person is:

(1) the department, the commissioner, or an employee of the department;

(2) a member or employee of or delegate to the National Association of Insurance Commissioners or an authorized committee,

subcommittee, or task force of that association; or

(3) another person who is responsible for collecting, reviewing, analyzing, and disseminating information from filed annual statement convention blanks.

(b) Subsection (a) does not apply to a person who acts with malice.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.001, eff. April 1, 2009.

Sec. 34.005. EFFECT OF CHAPTER ON OTHER IMMUNITY. This chapter does not affect or modify any common law or statutory privilege or immunity.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 35. ELECTRONIC TRANSACTIONS

Sec. 35.001. DEFINITIONS. In this chapter:

(1) "Conduct business" includes engaging in or transacting any business in which a regulated entity is authorized to engage or is authorized to transact under the law of this state.

(2) "Regulated entity" means each insurer, organization, person, or program regulated by the department, including:

(A) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(B) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(C) a Mexican casualty company;

(D) a domestic or foreign Lloyd's plan;

(E) a domestic or foreign reciprocal or interinsurance exchange;

(F) a domestic or foreign fraternal benefit society;

(G) a domestic or foreign title insurance company;

(H) a stipulated premium company;

(I) a nonprofit legal service corporation;

(J) a health maintenance organization;

(K) a statewide mutual assessment company;

(L) a local mutual aid association;

(M) a local mutual burial association;

(N) an association exempt under Section 887.102;

(O) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842;

(P) a county mutual insurance company;

(Q) a farm mutual insurance company; and

(R) an agency or agent of an insurer, organization, person, or program described by this subdivision.

(3) "Deliver by electronic means" means:

(A) deliver to an e-mail address at which a party has consented to receive notices, documents, or information; or

(B) post on an electronic network or Internet website accessible by an electronic device, including a computer, mobile device, or tablet, and deliver notice of the posting to an e-mail address at which the party has consented to receive notices.

(4) "Party" means a recipient, including an applicant, insured, policyholder, enrollee, or annuity contract holder, of a notice or document or of information required as part of an insurance transaction.

(4-a) "Plan sponsor" means a person, other than a regulated entity, who establishes, adopts, or maintains a health benefit plan, including a vision or dental benefit plan, that covers residents of this state, including a plan established, adopted, or maintained by an employer or jointly by an employer and one or more employee organizations, an association, a committee, a joint board of trustees, or any similar group of representatives who establish, adopt, or maintain a plan.

(5) "Written communication" means a notice or document or other information provided in writing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 6.001, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. 1074), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.001, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 976 (S.B. 2124), Sec. 1, eff. September 1, 2021.

Sec. 35.002. CONSTRUCTION WITH OTHER LAW. (a) Notwithstanding any other provision of this code, a regulated entity may conduct business electronically in accordance with this chapter and the rules adopted under Section 35.004.

(b) To the extent of any conflict between another provision of this code and a provision of this chapter, the provision of this chapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 6.001, eff. September 1, 2011.

Sec. 35.003. ELECTRONIC TRANSACTIONS AUTHORIZED. (a) Subject to Section 35.004, a regulated entity may conduct business electronically to the same extent that the entity is authorized to conduct business otherwise if before the conduct of business:

(1) each party to the business agrees to conduct the business electronically; or

(2) each other party to the business has been given notice by the entity that the business will be conducted electronically and has not requested that the business be conducted in nonelectronic form.

(b) If a regulated entity provides notice under Subsection (a)(2) and the other party does not opt out of conducting business electronically, the other party is considered to have agreed to conduct business electronically for the purposes of Chapter 322, Business & Commerce Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 6.001, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 309 (H.B. 1040), Sec. 1, eff. September 1, 2023.

Sec. 35.004. MINIMUM STANDARDS FOR REGULATED ENTITIES ELECTRONICALLY CONDUCTING BUSINESS WITH CONSUMERS. (a) Subject to Subsection (c), a notice to a party or other written communication with a party required in an insurance transaction or that is to serve

as evidence of insurance coverage may be delivered, stored, and presented by electronic means only if the delivery, storage, or presentment complies with Chapter 322, Business & Commerce Code.

(b) Delivery of a written communication in compliance with this section is equivalent to any delivery method required by law, including delivery by first class mail, first class mail, postage prepaid, or certified mail.

(c) A written communication may be delivered by electronic means to a party by a regulated entity under this section if:

(1) the party:

(A) affirmatively consented to delivery by electronic means and has not withdrawn the consent; or

(B) if affirmative consent is not sought, has not requested that written communication be delivered to the party in paper or another nonelectronic form instead of by electronic means;

(2) the party, before giving consent or receiving written communication by electronic means, is provided with a clear and conspicuous statement informing the party of:

(A) any right or option the party may have for the written communication to be provided or made available in paper or another nonelectronic form;

(B) the right of the party to withdraw consent under this section or to request written communication be delivered to the party in nonelectronic form, if the party's affirmative consent is not sought, and any conditions or consequences imposed if consent is withdrawn or delivery in nonelectronic form is requested;

(C) whether the party's consent to delivery by electronic means or the party's request or the absence of the party's request for delivery in nonelectronic form applies:

(i) only to a specific transaction for which the written communication must be given; or

(ii) to identified categories of written communications that may be delivered during the course of the relationship between the party and the regulated entity;

(D) the means by which a party may obtain a paper copy of a written communication delivered by electronic means; and

(E) the procedure a party must follow to:

(i) withdraw consent under this section or to otherwise request delivery of written communication in nonelectronic form, as applicable; and

(ii) update information needed for the regulated entity to contact the party electronically; and

(3) the party:

(A) before giving consent or receiving written communication by electronic means, is provided with a statement identifying the hardware and software requirements for the party's access to and retention of a written communication delivered by electronic means; and

(B) if affirmative consent is sought, consents electronically or confirms consent electronically in a manner that reasonably demonstrates that the party can access a written communication in the electronic form used to deliver the communication.

(d) After consent of the party is given or the opportunity to request delivery of written communication in nonelectronic form is given, as applicable, in the event a change in the hardware or software requirements to access or retain a written communication delivered by electronic means creates a material risk that the party may not be able to access or retain a subsequent written communication to which the consent applies, the regulated entity shall:

(1) provide the party with a statement:

(A) identifying the revised hardware and software requirements for access to and retention of a written communication delivered by electronic means; and

(B) disclosing the right of the party to withdraw consent or to otherwise request delivery in nonelectronic form, as applicable, without the imposition of any condition or consequence that was not disclosed under Subsection (c)(2)(B); and

(2) comply with Subsection (c)(3).

(e) This section does not affect requirements for content or timing of any required written communication.

(f) If a written communication provided to a party expressly requires verification or acknowledgment of receipt, the written communication may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt.

(g) The legal effectiveness, validity, or enforceability of any contract or policy of insurance executed by a party may not be denied solely due to the failure to obtain electronic consent or confirmation of consent of the party in accordance with Subsection

(c)(3)(B).

(h) A withdrawal of consent by a party does not affect the legal effectiveness, validity, or enforceability of a written communication delivered by electronic means to the party before the withdrawal of consent is effective. A withdrawal of consent is effective within a reasonable period of time after the date of the receipt by the regulated entity of the withdrawal. Failure by a regulated entity to comply with Subsection (d) may be treated by the party as a withdrawal of consent.

(i) If the consent of a party to receive a written communication by electronic means is on file with a regulated entity before September 1, 2013, and if the entity intends to deliver to the party written communications under this section, then before the entity may deliver by electronic means additional written communications, the entity must notify the party of:

(1) the written communications that may be delivered by electronic means that were not previously delivered by electronic means; and

(2) the party's right to withdraw consent to have written communications delivered by electronic means.

(j) Except as otherwise provided by law, an oral communication or a recording of an oral communication may not qualify as a written communication delivered by electronic means for purposes of this chapter.

(k) If a signature on a written communication is required by law to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the notary public or other authorized person and the other required information are attached to or logically associated with the signature or written communication.

(l) A notice of the cancellation or termination of a policy to which this section applies must be:

(1) a written communication; and

(2) delivered to a party:

(A) by electronic means; and

(B) in paper or another nonelectronic form.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 6.001, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. 1074), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 309 (H.B. 1040), Sec. 2, eff. September 1, 2023.

Sec. 35.0041. CONSENT TO ELECTRONIC DELIVERY BY PLAN SPONSOR. (a) The plan sponsor of a health benefit plan, including a vision or dental benefit plan, may, on behalf of a party enrolled in the plan, give consent under Section 35.004(c)(1)(A).

(b) Before consenting on behalf of a party, a plan sponsor must:

(1) provide the party with the statements required by Sections 35.004(c)(2) and (c)(3)(A);

(2) confirm that the party routinely uses electronic communications during the normal course of employment; and

(3) provide the party an opportunity to opt out of delivery by electronic means.

Added by Acts 2021, 87th Leg., R.S., Ch. 976 (S.B. 2124), Sec. 2, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 309 (H.B. 1040), Sec. 3, eff. September 1, 2023.

Sec. 35.0045. RULES. The commissioner shall adopt rules necessary to implement and enforce this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. 1074), Sec. 2, eff. September 1, 2013.

Sec. 35.005. EXEMPTION FROM CERTAIN FEDERAL LAWS. This chapter modifies, limits, or supersedes the provisions of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002).

Added by Acts 2013, 83rd Leg., R.S., Ch. 602 (S.B. 1074), Sec. 3, eff. September 1, 2013.

CHAPTER 36. DEPARTMENT RULES AND PROCEDURES

SUBCHAPTER A. RULES

Sec. 36.001. GENERAL RULEMAKING AUTHORITY. (a) The commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under this code and other laws of this state.

(b) Rules adopted under this section must have general and uniform application.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 15.01, eff. June 11, 2003.

Sec. 36.002. ADDITIONAL RULEMAKING AUTHORITY. The commissioner may adopt reasonable rules that are:

(1) necessary to effect the purposes of a provision of:

(A) Subchapter B, Chapter 5;

(B) Subchapter C, Chapter 1806;

(C) Subchapter A, Chapter 2301;

(D) Chapter 251, as that chapter relates to casualty insurance and fidelity, guaranty, and surety bond insurance;

(E) Chapter 253;

(F) Chapter 2008, 2251, or 2252; or

(G) Subtitle B, Title 10; or

(2) appropriate to accomplish the purposes of a provision of:

(A) Section 37.051(a), 403.002, 501.159, 941.003(b)(1) or (c), or 942.003(b)(1) or (c);

(B) Subchapter H, Chapter 544;

(C) Chapter 251, as that chapter relates to:

(i) automobile insurance;

(ii) casualty insurance and fidelity, guaranty, and surety bond insurance;

(iii) fire insurance and allied lines;

(iv) workers' compensation insurance; or

(v) aircraft insurance;

(D) Chapter 5, 252, 253, 254, 255, 256, 426, 493, 494,

1804, 1805, 1806, 2171, 6001, 6002, or 6003;

(E) Subtitle B, C, D, E, F, H, or I, Title 10;

(F) Section 417.008, Government Code; or

(G) Chapter 2154, Occupations Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 11, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.002, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(d), eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.01, eff. September 1, 2017.

Sec. 36.003. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. The commissioner may not adopt rules restricting advertising or competitive bidding by a person regulated by the department except to prohibit false, misleading, or deceptive practices by the person.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.004. COMPLIANCE WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS REQUIREMENTS; RULES. (a) Except as provided by Subsection (c) and Section 36.005, the department may not require an insurer to comply with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners, including a rule, regulation, directive, or standard relating to policy reserves, unless application of the rule, regulation, directive, or standard is expressly authorized by statute.

(b) For purposes of Subsection (a), a version of a rule, regulation, directive, or standard is expressly authorized by statute if:

(1) the statute explicitly authorizes the commissioner to adopt rules consistent with the rule, regulation, directive, or standard; or

(2) that version is the latest version of the rule, regulation, directive, or standard on the date that the statute was enacted.

(c) The commissioner may adopt a rule to require compliance with a rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners if:

(1) the commissioner finds the rule is technical or nonsubstantive in nature or necessary to preserve the department's accreditation; and

(2) before the adoption of the rule, the commissioner provides the standing committees of the senate and house of representatives with primary jurisdiction over the department with written notice of the commissioner's intent to adopt the rule.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 15.02, eff. June 11, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 752 (S.B. 1450), Sec. 1, eff. September 1, 2017.

Sec. 36.005. INTERIM RULES TO COMPLY WITH FEDERAL REQUIREMENTS. (a) The commissioner may adopt rules to implement state responsibility in compliance with a federal law or regulation or action of a federal court relating to a person or activity under the jurisdiction of the department if:

(1) federal law or regulation, or an action of a federal court, requires:

(A) a state to adopt the rules; or

(B) action by a state to ensure protection of the citizens of the state;

(2) the rules will avoid federal preemption of state insurance regulation; or

(3) the rules will prevent the loss of federal funds to this state.

(b) The commissioner may adopt a rule under this section only if the federal action requiring the adoption of a rule occurs or takes effect between sessions of the legislature or at such time during a session of the legislature that sufficient time does not

remain to permit the preparation of a recommendation for legislative action or permit the legislature to act. A rule adopted under this section shall remain in effect only until 30 days following the end of the next session of the legislature unless a law is enacted that authorizes the subject matter of the rule. If a law is enacted that authorizes the subject matter of the rule, the rule will continue in effect.

Added by Acts 2003, 78th Leg., ch. 206, Sec. 15.03, eff. June 11, 2003.

Sec. 36.007. RULES RELATING TO AGREEMENTS LIMITING STATE AUTHORITY TO REGULATE INSURANCE PROHIBITED; EFFECT OF AGREEMENT. (a) The commissioner may not adopt or enforce a rule that implements an interstate, national, or international agreement that:

(1) infringes on the authority of this state to regulate the business of insurance in this state; and

(2) was not approved by the legislature.

(b) An agreement described by Subsection (a) has no effect on the authority of this state to regulate the business of insurance in this state unless the agreement is approved by the legislature.

Added by Acts 2017, 85th Leg., R.S., Ch. 752 (S.B. 1450), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B. DEPARTMENT PROCEDURES

Sec. 36.101. APPLICABILITY OF CERTAIN LAWS. Except as specifically provided by law, the department is subject to Chapters 2001 and 2002, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.102. SUMMARY PROCEDURES FOR ROUTINE MATTERS. (a) The commissioner by rule may:

(1) create a summary procedure for routine matters; and

(2) designate department activities that otherwise would be subject to Chapter 2001, Government Code, as routine matters to be handled under the summary procedure.

(b) An activity may be designated as a routine matter only if the activity is:

(1) voluminous;

(2) repetitive;

(3) believed to be noncontroversial; and

(4) of limited interest to anyone other than persons immediately involved in or affected by the proposed department action.

(c) The rules may establish procedures different from those contained in Chapter 2001, Government Code. The procedures must require, for each party directly involved, notice of a proposed negative action not later than the fifth day before the date the action is proposed to be taken.

(d) The rules may provide for the delegation of authority to take action on a routine matter to a salaried employee of the department designated by the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.103. REVIEW OF ACTION ON ROUTINE MATTER. (a) A person directly or indirectly affected by an action of the commissioner or the department on a routine matter taken under the summary procedure adopted under Section 36.102 is entitled to a review of the action under Chapter 2001, Government Code.

(b) The person must apply to the commissioner not later than the 60th day after the date of the action to be entitled to the review.

(c) The timely filing of the application for review immediately stays the action pending a hearing on the merits.

(d) The commissioner may adopt rules relating to an application for review under this section and consideration of the application.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.104. INFORMAL DISPOSITION OF CERTAIN CONTESTED CASES. (a) The commissioner may, on written agreement or stipulation of each party and any intervenor, informally dispose of a contested case in accordance with Section 2001.056, Government Code, notwithstanding any provision of this code that requires a hearing before the

commissioner.

(b) This section does not apply to a contested case under Title 5, Labor Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.055, eff. September 1, 2005.

Sec. 36.105. NEWSPAPER PUBLICATION. Except as otherwise provided by law, a notice or other matter that this code requires to be published must be published for three successive weeks in two newspapers that:

(1) are printed in this state; and

(2) have a general circulation in this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.106. WAIVER OF CERTAIN NOTICE REQUIREMENTS. The commissioner may, on written agreement or stipulation of each party and any intervenor, waive or modify the notice publication requirement of Section 822.059, 822.157, 841.060, or 884.058.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.003, eff. April 1, 2009.

Sec. 36.107. ACCEPTANCE OF ACTUARIAL OPINION. An opinion of an actuary requested by the commissioner under this code, another insurance law of this state, or a rule of the commissioner is presumed to be accurate and valid, and the department shall accept the opinion unless controverted. The department may employ, at the department's expense, another actuary to provide an alternative opinion.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.108. FILING DATE OF REPORT, FINANCIAL STATEMENT, OR PAYMENT DELIVERED BY POSTAL SERVICE. Except as otherwise specifically provided, for a report, financial statement, or payment that is required to be filed or made in the offices of the commissioner and that is delivered by the United States Postal Service to the offices of the commissioner after the date on which the report, financial statement, or payment is required to be filed or made, the date of filing or payment is the date of:

(1) the postal service postmark stamped on the cover in which the report, financial statement, or payment is mailed; or

(2) any other evidence of mailing authorized by the postal service reflected on the cover in which the report, financial statement, or payment is mailed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 10, eff. April 1, 2005.

Sec. 36.109. RENEWAL EXTENSION FOR CERTAIN PERSONS PERFORMING MILITARY SERVICE. (a) The department may extend the renewal period for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the department to engage in an activity regulated under this code or other insurance laws of this state for a person who is unable in a timely manner to comply with renewal requirements, including any applicable continuing education requirements, because the person was on active duty in a combat theater of operations in the United States armed forces.

(b) A person must submit a written application for an extension under this section to the department.

(c) The department shall exempt a person who receives an extension under this section from any increased fee or other penalty otherwise imposed for failure to renew in a timely manner.

(d) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 11, eff. April 1, 2005.

Sec. 36.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commissioner shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008,

Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commissioner shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 1.003, eff. September 1, 2011.

SUBCHAPTER C. GENERAL SUBPOENA POWERS; WITNESSES AND PRODUCTION OF RECORDS

Sec. 36.151. DEFINITION. In this subchapter, "records" includes books, accounts, documents, papers, correspondence, and other material.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.152. SUBPOENA AUTHORITY. (a) With respect to a matter that the commissioner has authority to consider or investigate, the commissioner may issue a subpoena applicable throughout the state that requires:

(1) the attendance and testimony of a witness; and

(2) the production of records.

(b) In connection with a subpoena, the commissioner may require attendance and production of records before the commissioner or the commissioner's designee:

(1) at the department's offices in Austin; or

(2) at another place designated by the commissioner.

(c) In connection with a subpoena, the commissioner or the

commissioner's designee may administer an oath, examine a witness, or receive evidence.

(d) The commissioner must personally sign and issue the subpoena.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.001, eff. Sept. 1, 2003.

Sec. 36.153. SERVICE OF SUBPOENA. (a) A subpoena issued by the commissioner may be served, at the discretion of the commissioner, by the commissioner, an authorized agent of the commissioner, a sheriff, or a constable.

(b) The sheriff's or constable's fee for serving the subpoena is the same as the fee paid to the sheriff or constable for similar services.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.154. ENFORCEMENT OF SUBPOENA. (a) On application of the commissioner in the case of disobedience of a subpoena or the contumacy of a person, a district court may issue an order requiring a person subpoenaed to obey the subpoena, to give evidence, or to produce records if the person has refused to do so.

(b) A court may punish as contempt the failure to obey a court order under Subsection (a).

(c) If the court orders compliance with the subpoena or finds the person in contempt for failure to obey the order, the commissioner, or the attorney general when representing the department, may recover reasonable costs and fees, including attorney's fees and investigative costs incurred in the proceedings.

(d) An application under Subsection (a) must be made in a district court in Travis County or in the county in which the subpoena is served.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.155. COMPENSATION FOR ATTENDANCE. A person required by

subpoena to attend a proceeding before the commissioner or the commissioner's designee is entitled to:

(1) reimbursement for mileage in the same amount for each mile as the mileage travel allowance for a state employee for traveling to or from the place where the person's attendance is required, if the place is more than 25 miles from the person's place of residence; and

(2) a fee for each day or part of a day the person is required to be present as a witness that is equal to the greater of:

(A) $10; or

(B) a state employee's per diem travel allowance.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.156. OUT-OF-STATE MATERIALS. (a) A person with materials located outside this state that are requested by the commissioner may make the materials available for examination at the place where the materials are located.

(b) The commissioner may designate a representative, including an official of the state in which the materials are located, to examine the materials.

(c) The commissioner may respond to a similar request from an official of another state or of the United States.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.157. USE AS EVIDENCE IN CERTAIN CASES. (a) This section applies to testimony or records resulting in a case involving an allegation of engaging in the business of insurance without a license.

(b) On certification by the commissioner under official seal, testimony taken or records produced under this subchapter or acquired in response to a request for information under Section 101.104 and held by the department are admissible in evidence in a case without:

(1) prior proof of correctness; and

(2) proof, other than the certificate of the commissioner, that the testimony or records were received from the person testifying or producing the records.

(c) The certified records, or certified copies of the records,

are prima facie evidence of the facts disclosed by the records.

(d) This section does not limit any other provision of this subchapter or any law that makes provision for the admission or evidentiary value of certain evidence.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 1, eff. September 1, 2021.

Sec. 36.158. ACCESS TO INFORMATION. (a) A record or other evidence acquired under a subpoena under this subchapter or in response to a request for information under Section 101.104 is not a public record for the period the commissioner considers reasonably necessary to:

(1) complete the investigation;

(2) protect the person being investigated from unwarranted injury; or

(3) serve the public interest.

(b) The record or other evidence is not subject to a subpoena, other than a grand jury subpoena, until:

(1) the record or other evidence is released for public inspection by the commissioner; or

(2) after notice and a hearing, a district court determines that obeying the subpoena would not jeopardize the public interest and any investigation by the commissioner.

(c) Except for good cause, a district court order under Subsection (b) may not apply to:

(1) a record or communication received from another law enforcement or regulatory agency; or

(2) the internal notes, memoranda, reports, or communications made in connection with a matter that the commissioner has the authority to consider or investigate.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 2, eff. September 1, 2021.

Sec. 36.159. PRIVILEGED AND CONFIDENTIAL RECORDS AND INFORMATION; PROTECTIVE ORDERS. (a) A record subpoenaed and produced under this subchapter that is otherwise privileged or confidential by law remains privileged or confidential until admitted into evidence in an administrative hearing or a court.

(b) The commissioner may issue a protective order relating to the confidentiality or privilege of a record described by Subsection (a) to restrict the use or distribution of the record:

(1) by a person; or

(2) in a proceeding other than a proceeding before the commissioner.

(c) Specific information relating to a particular policy or claim is privileged and confidential while in the possession of an insurance company, organization, association, or other entity holding a certificate of authority from the department and may not be disclosed by the entity to another person, except as specifically provided by law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.160. COOPERATION WITH LAW ENFORCEMENT. On request, the commissioner may furnish records or other evidence obtained by subpoena to:

(1) a law enforcement agency of this state, another state, or the United States; or

(2) a prosecuting attorney of a municipality, county, or judicial district of this state, another state, or the United States.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.161. CERTAIN SUBPOENAS ISSUED TO FINANCIAL INSTITUTIONS. A subpoena issued to a bank or other financial institution as part of a criminal investigation is not subject to Section 30.007, Civil Practice and Remedies Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.162. EFFECT ON CONTESTED CASE. Sections 36.152,

36.156, 36.158, 36.160, and 36.161 do not affect the conduct of a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. JUDICIAL REVIEW

Sec. 36.201. ACTION SUBJECT TO JUDICIAL REVIEW. An action of the commissioner subject to judicial review under this subchapter includes a decision, order, rate, rule, form, or administrative or other ruling of the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.2015. ACTIONS UNDER TITLE 5, LABOR CODE. Notwithstanding Section 36.201, a decision, order, form, or administrative or other rule of the commissioner of workers' compensation under Title 5, Labor Code, or a rule adopted by the commissioner of insurance under Title 5, Labor Code, is subject to judicial review as provided by Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.056, eff. September 1, 2005.

Sec. 36.202. PETITION FOR JUDICIAL REVIEW. (a) After failing to get relief from the commissioner, any insurance company or other party at interest who is dissatisfied with an action of the commissioner may file a petition for judicial review against the commissioner as defendant.

(b) The petition must state the particular objection to the action and may be filed only in a district court in Travis County.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.203. JUDICIAL REVIEW. Judicial review of the action is under the substantial evidence rule and shall be conducted under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.204. ACTION NOT VACATED. (a) The filing of a petition for judicial review of an action under this subchapter does not vacate the action.

(b) After notice and hearing, the court may vacate the action if the court finds it would serve the interest of justice to do so.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 36.205. APPEAL. (a) A party to the action under Section 36.202 may appeal to an appellate court that has jurisdiction, and the appeal is at once returnable to that court.

(b) An appeal under this section has precedence in the appellate court over any cause of a different character pending in the court.

(c) The commissioner is not required to give an appeal bond in an appeal arising under this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. INVESTIGATION FILES

Sec. 36.251. DEFINITION. In this subchapter, "investigation file" means any information collected, assembled, or maintained by or on behalf of the department with respect to an investigation conducted under this code or other law. The term does not include information or material acquired by the department that is:

(1) relevant to an investigation by the insurance fraud unit; and

(2) subject to Section 701.151.

Added by Acts 2009, 81st Leg., R.S., Ch. 1039 (H.B. 4461), Sec. 1, eff. June 19, 2009.

Sec. 36.252. INVESTIGATION FILES CONFIDENTIAL. (a) Information or material acquired by the department that is relevant to an investigation is not a public record for the period that the

department determines is relevant to further or complete an investigation.

(b) Investigation files are not open records for purposes of Chapter 552, Government Code, except as specified herein.

Added by Acts 2009, 81st Leg., R.S., Ch. 1039 (H.B. 4461), Sec. 1, eff. June 19, 2009.

Sec. 36.253. DISCLOSURE OF CERTAIN INFORMATION NOT REQUIRED. The department is not required to disclose under this subchapter:

(1) information that is:

(A) an attorney-client communication; or

(B) an attorney work product; or

(2) other information protected by a recognized privilege, a statute, an administrative rule, the Texas Rules of Civil Procedure, or the Texas Rules of Evidence.

Added by Acts 2009, 81st Leg., R.S., Ch. 1039 (H.B. 4461), Sec. 1, eff. June 19, 2009.

CHAPTER 37. RATEMAKING AND POLICY FORM PROCEEDINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 37.001. CERTAIN PROCEEDINGS RELATING TO RATEMAKING AND POLICY FORMS; RULES. (a) The commissioner shall adopt rules governing proceedings necessary to approve or promulgate rates, policy forms, or policy form endorsements under this code or another insurance law of this state.

(b) The commissioner shall conduct the proceedings in accordance with the rules adopted under this section.

(c) Rules adopted under this section must comply with this code and any other insurance law of this state and must be adopted in accordance with Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. CERTAIN PROCEEDINGS RELATING TO RATES

Sec. 37.051. STREAMLINED PROCEDURES. (a) The department shall study and the commissioner may adopt and implement procedures for

streamlining insurance rate proceedings under this code or another insurance law of this state. The procedures must ensure due process to each affected party.

(b) The commissioner shall consider this section in adopting rules under Section 37.001.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 37.052. ROLE OF DEPARTMENT. (a) The application of this section is subject to Chapter 40.

(b) The commissioner may designate the general counsel or an assistant general counsel to serve as a hearings officer in a proceeding in which insurance rates are set or in a prehearing proceeding. The commissioner must make the final decision relating to the rates to be set.

(c) The department shall provide evidence in proceedings before the commissioner or the designated hearings officer that promotes the adoption of fair and reasonable rates for underserved areas to promote access to full insurance coverage for those areas.

(d) The department may appear as a matter of right as a party, present evidence, or question a witness in a proceeding before the commissioner or the designated hearings officer in which insurance rates are set under this code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1071, Sec. 6, eff. Sept. 1, 2001.

Sec. 37.053. EFFECTIVENESS OF RATE DURING APPEAL. (a) An order of the commissioner that determines, approves, or sets a rate under this code and that is appealed remains in effect during the pendency of the appeal. An insurer shall use the rate provided in the order while the appeal is pending.

(b) The rate is lawful and valid during the appeal, and an insurer may not be required to make any refund from that rate after a decision on the appeal is rendered.

(c) If the order is vacated on appeal, the rate established by the commissioner before the vacated order was rendered remains in effect from the date of remand until the commissioner makes a further

determination. The commissioner shall consider the court's order in setting a future rate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 12, eff. April 1, 2005.

CHAPTER 38. DATA COLLECTION AND REPORTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 38.001. INQUIRIES. (a) In this section, "authorization" means a permit, certificate of registration, or other authorization issued or existing under this code.

(b) The department may address a reasonable inquiry to any insurance company, including a Lloyd's plan or reciprocal or interinsurance exchange, or an agent or other holder of an authorization relating to:

(1) the person's business condition; or

(2) any matter connected with the person's transactions that the department considers necessary for the public good or for the proper discharge of the department's duties.

(c) A person receiving an inquiry under Subsection (b) shall respond to the inquiry in writing not later than the 15th day after the date the inquiry is received. If the department receives written notice from the person that additional time is required to respond to the inquiry, the department shall grant a 10-day extension of the time to respond to the inquiry.

(d) A response made under this section that is otherwise privileged or confidential by law remains privileged or confidential until introduced into evidence at an administrative hearing or in a court.

(e) The department shall maintain a record of all inquiries made by the department under this section.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1295 (H.B. 2614), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 398 (S.B. 183), Sec. 1, eff. September 1, 2013.

Sec. 38.002. UNDERWRITING GUIDELINES FOR PERSONAL AUTOMOBILE

AND RESIDENTIAL PROPERTY INSURANCE; FILING; CONFIDENTIALITY. (a) In this section:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity engaged in the business of personal automobile insurance or residential property insurance in this state. The term includes:

(A) an affiliate as described by Section 823.003(a) if that affiliate is authorized to write and is writing personal automobile insurance or residential property insurance in this state;

(B) the Texas Windstorm Insurance Association created and operated under Chapter 2210;

(C) the FAIR Plan Association under Chapter 2211; and

(D) the Texas Automobile Insurance Plan Association under Chapter 2151.

(2) "Personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, mobile home, trailer, or recreational vehicle, that is:

(A) owned or leased by an individual or individuals; and

(B) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(3) "Residential property insurance" means insurance coverage against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, which includes a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(4) "Underwriting guideline" means a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or its agent to decide whether to accept or reject an application for coverage under a personal automobile insurance policy or residential property insurance policy or to determine how to classify those risks that are accepted for the purpose of determining a rate.

(b) Each insurer shall file with the department a copy of the insurer's underwriting guidelines. The insurer shall update its filing each time the underwriting guidelines are changed. If a group

of insurers files one set of underwriting guidelines for the group, they shall identify which underwriting guidelines apply to each company in the group.

(c) The office of public insurance counsel may obtain a copy of each insurer's underwriting guidelines.

(d) The department or the office of public insurance counsel may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.

(e) Underwriting guidelines must be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk. Underwriting guidelines may not be unfairly discriminatory.

(f) The underwriting guidelines are subject to Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 206, Sec. 8.01, eff. June 11, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.004, eff. April 1, 2009.

Sec. 38.003. UNDERWRITING GUIDELINES FOR OTHER LINES; CONFIDENTIALITY. (a) This section applies to all underwriting guidelines that are not subject to Section 38.002.

(b) For purposes of this section, "insurer" means a reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, life, accident, or health or casualty insurance company, health maintenance organization, mutual life insurance company, mutual insurance company other than life, mutual, or natural premium life insurance company, general casualty company, fraternal benefit society, group hospital service company, or other legal entity engaged in the business of insurance in this state. The term includes an affiliate as described by Section 823.003(a) if that affiliate is authorized to write and is writing insurance in this state.

(c) The department or the office of public insurance counsel may obtain a copy of an insurer's underwriting guidelines.

(d) Underwriting guidelines are confidential, and the

department or the office of public insurance counsel may not make the guidelines available to the public.

(e) The department or the office of public insurance counsel may disclose to the public a summary of an insurer's underwriting guidelines in a manner that does not directly or indirectly identify the insurer.

(f) When underwriting guidelines are furnished to the department or the office of public insurance counsel, only a person within the department or the office of public insurance counsel with a need to know may have access to the guidelines. The department and the office of public insurance counsel shall establish internal control systems to limit access to the guidelines and shall keep records of the access provided.

(g) This section does not preclude the use of underwriting guidelines as evidence in prosecuting a violation of this code. Each copy of an insurer's underwriting guidelines that is used in prosecuting a violation is presumed to be confidential and is subject to a protective order until all appeals of the case have been exhausted. If an insurer is found, after the exhaustion of all appeals, to have violated this code, a copy of the underwriting guidelines used as evidence of the violation is no longer presumed to be confidential.

(h) A violation of this section is a violation of Chapter 552, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999. Renumbered from Insurance Code Sec. 38.002 and amended by Acts 2003, 78th Leg., ch. 206, Sec. 8.01, eff. June 11, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.005, eff. April 1, 2009.

Sec. 38.004. BALANCE BILLING PROHIBITION REPORT. (a) The department shall, each biennium, conduct a study on the impacts of S.B. No. 1264, Acts of the 86th Legislature, Regular Session, 2019, on Texas consumers and health coverage in this state, including:

(1) trends in billed amounts for health care or medical services or supplies, especially emergency services, laboratory services, diagnostic imaging services, and facility-based services;

(2) comparison of the total amount spent on out-of-network emergency services, laboratory services, diagnostic imaging services, and facility-based services by calendar year and provider type or physician specialty;

(3) trends and changes in network participation by providers of emergency services, laboratory services, diagnostic imaging services, and facility-based services by provider type or physician specialty, including whether any terminations were initiated by a health benefit plan issuer, administrator, or provider;

(4) trends and changes in the amounts paid to participating providers;

(5) the number of complaints, completed investigations, and disciplinary sanctions for billing by providers of emergency services, laboratory services, diagnostic imaging services, or facility-based services of enrollees for amounts greater than the enrollee's responsibility under an applicable health benefit plan, including applicable copayments, coinsurance, and deductibles;

(6) trends in amounts paid to out-of-network providers;

(7) trends in the usual and customary rate for health care or medical services or supplies, especially emergency services, laboratory services, diagnostic imaging services, and facility-based services; and

(8) the effectiveness of the claim dispute resolution process under Chapter 1467.

(b) In conducting the study described by Subsection (a), the department shall collect settlement data and verdicts or arbitration awards, as applicable, from parties to mediation or arbitration under Chapter 1467.

(c) The department may not publish a particular rate paid to a participating provider in the study described by Subsection (a), identifying information of a physician or health care provider, or non-aggregated study results. Information described by this subsection is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The department:

(1) shall collect data quarterly from a health benefit plan issuer or administrator subject to Chapter 1467 to conduct the study required by this section; and

(2) may utilize any reliable external resource or entity to

acquire information reasonably necessary to prepare the report required by Subsection (e).

(e) Not later than December 1 of each even-numbered year, the department shall prepare and submit a written report on the results of the study under this section, including the department's findings, to the legislature.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 4.01, eff. September 1, 2019.

For expiration of this section, see Subsection (c).

Sec. 38.005. COMMERCIAL AUTOMOBILE INSURANCE REPORT. (a) The department shall conduct a study each biennium on the effect, for each year of the biennium, on premiums, deductibles, coverage, and availability of coverage for commercial automobile insurance of H.B. 19, 87th Legislature, Regular Session, 2021.

(b) Not later than December 1 of each even-numbered year, the department shall submit a written report of the results of the study conducted under Subsection (a) for the preceding biennium to the legislature.

(c) This section expires December 31, 2026.

Added by Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. 19), Sec. 5, eff. September 1, 2021.

For expiration of this section, see Subsection (b).

Sec. 38.006. EMERGENCY MEDICAL SERVICES PROVIDER BALANCE BILLING RATE DATABASE. (a) A political subdivision may submit to the department, in the form and manner prescribed by the commissioner, a rate set, controlled, or regulated by the political subdivision for purposes of Section 1271.159, 1275.054, 1301.166, 1551.231, 1575.174, or 1579.112. The department shall establish and maintain on the department's Internet website a publicly accessible database for the rates.

(b) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. HEALTH BENEFIT PLAN PROVIDER REPORTING

Sec. 38.051. DEFINITION. In this subchapter, "health benefit plan provider" means an insurance company, group hospital service corporation, or health maintenance organization that issues:

(1) an individual, group, blanket, or franchise insurance policy, an insurance agreement, a group hospital service contract, or an evidence of coverage, that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness; or

(2) a long-term care benefit plan, as defined by Section 1651.003.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.006, eff. April 1, 2009.

Sec. 38.052. REQUIRED INFORMATION; RULES. (a) A health benefit plan provider shall submit information required by the department relating to the health benefit plan provider's:

(1) loss experience;

(2) overhead; and

(3) operating expenses.

(b) The department may also request information about characteristics of persons covered by a health benefit plan provider, including information relating to:

(1) age;

(2) gender;

(3) health status;

(4) job classification; and

(5) geographic distribution.

(c) A health benefit plan provider may not be required to submit information under this section more frequently than annually.

(d) The commissioner shall adopt rules governing the submission of information under this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. STATISTICAL DATA COLLECTION

Sec. 38.201. DEFINITION. In this subchapter, "designated statistical agent" means an organization designated or contracted with by the commissioner under Section 38.202.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 38.202. STATISTICAL AGENT. The commissioner may, for a line or subline of insurance, designate or contract with a qualified organization to serve as the statistical agent for the commissioner to gather data relevant for regulatory purposes or as otherwise provided by this code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 38.203. QUALIFICATIONS OF STATISTICAL AGENT. To qualify as a statistical agent, an organization must demonstrate at least two years of experience in data collection, data maintenance, data quality control, accounting, and related areas.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 708 (H.B. 2188), Sec. 1, eff. September 1, 2023.

Sec. 38.204. POWERS AND DUTIES OF STATISTICAL AGENT. (a) A designated statistical agent shall collect data from reporting insurers under a statistical plan adopted by the commissioner.

(b) The statistical agent may provide aggregate historical premium and loss data to its subscribers.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 38.205. DUTY OF INSURER. An insurer shall provide all premium and loss cost data to the commissioner or the designated statistical agent as the commissioner or agent requires.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 38.206. FEES. (a) A designated statistical agent may collect from a reporting insurer any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurer.

(b) A reporting insurer shall pay the fee to the statistical agent for the data collection services provided by the statistical agent.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 38.207. RULES. The commissioner may adopt rules necessary to accomplish the purposes of this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. DATA COLLECTING AND REPORTING RELATING TO MANDATED HEALTH BENEFITS AND MANDATED OFFERS OF COVERAGE

Sec. 38.251. APPLICABILITY. This subchapter applies to any issuer of a health benefit plan that is subject to this code that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document.

Added by Acts 2001, 77th Leg., ch. 852, Sec. 1, eff. Sept. 1, 2001.

Sec. 38.252. COLLECTION OF INFORMATION; REPORT. (a) The commissioner shall require a health benefit plan issuer to collect and report cost and utilization data for each mandated health benefit and mandated offer designated by the commissioner.

(b) The commissioner shall designate by rule:

(1) the issuers of health benefit plans that must collect and report data based on the annual dollar amounts of Texas premium

collected by the health benefit plan issuer;

(2) the specific mandated health benefits and mandated offers of coverage for which data must be collected;

(3) a description of the data that must be collected;

(4) the beginning and ending dates of the reporting periods, which shall be no less than every two years;

(5) the date following the end of the reporting period by which the report shall be submitted to the commissioner;

(6) the detail and form in which the report shall be submitted; and

(7) any other reasonable requirements that the commissioner determines are necessary to determine the impact of mandated benefits and mandated offers of coverage for which data collection and reporting is required.

(c) The commissioner shall not require reporting of data:

(1) that could reasonably be used to identify a specific enrollee in a health benefit plan;

(2) in any way that violates confidentiality requirements of state or federal law applicable to an enrollee in a health benefit plan; or

(3) in which the health maintenance organization operating under Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843, Chapter 1271, and Chapter 1272 does not directly process the claim or does not receive complete and accurate encounter data.

Added by Acts 2001, 77th Leg., ch. 852, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.009, eff. April 1, 2009.

Sec. 38.253. MAINTENANCE OF INFORMATION. Each health benefit plan issuer shall maintain at its principal place of business all data collected pursuant to this subchapter, including information and supporting documentation that demonstrates that the report submitted to the commissioner is complete and accurate. Each health benefit plan issuer shall make this information and any supporting documentation available to the commissioner upon request.

Added by Acts 2001, 77th Leg., ch. 852, Sec. 1, eff. Sept. 1, 2001.

Sec. 38.254. UTILIZATION AND COST DATA TO COMMISSIONER.

Text of subsection effective until April 1, 2025

(a) Upon request from the commissioner, the Texas Health and Human Services Commission shall provide to the commissioner data, including utilization and cost data, which is related to the mandate being assessed to the population covered by the Medicaid program, including a program administered under Chapter 32, Human Resources Code, and a program administered under Chapter 533, Government Code, even if the program is not necessarily subject to the mandate.

Text of subsection effective on April 1, 2025

(a) Upon request from the commissioner, the Texas Health and Human Services Commission shall provide to the commissioner data, including utilization and cost data, which is related to the mandate being assessed to the population covered by the Medicaid program, including a program administered under Chapter 32, Human Resources Code, and a program administered under Chapter 540 or 540A, Government Code, as applicable, even if the program is not necessarily subject to the mandate.

(b) The commissioner may utilize data as defined in Subsection (a) to determine the impact of mandated benefits and mandated offers of coverage for which data collection and reporting is requested.

Added by Acts 2001, 77th Leg., ch. 852, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.002, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.115, eff. April 1, 2025.

SUBCHAPTER G. DATA REPORTING BY CERTAIN LIABILITY INSURERS

Sec. 38.301. INSURER DATA REPORTING. (a) Each insurer that writes professional liability insurance policies for nursing institutions licensed under Chapter 242, Health and Safety Code, including an insurer whose rates are not regulated, shall, as a condition of writing those policies in this state, comply with a

request for information from the commissioner under this section.

(b) The commissioner may require information in rate filings, special data calls, or informational hearings or by any other means consistent with this code applicable to the affected insurer that the commissioner believes will allow the commissioner to:

(1) determine whether insurers writing insurance coverage described by Subsection (a) are passing to insured nursing institutions on a prospective basis the savings that accrue as a result of the reduction in risk to insurers writing that coverage that will result from legislation enacted by the 77th Legislature, Regular Session, including legislation that:

(A) amended Article 5.15-1 to limit the exposure of an insurer to exemplary damages for certain claims against a nursing institution; and

(B) amended Sections 32.021(i) and (k), Human Resources Code, added Section 242.050, Health and Safety Code, and repealed Section 32.021(j), Human Resources Code, to clarify the admissibility of certain documents in a civil action against a nursing institution; or

(2) prepare the report required of the commissioner under Section 38.252 or any other report the commissioner is required to submit to the legislature in connection with the legislation described by Subdivision (1).

(c) Information provided under this section is privileged and confidential to the same extent as the information is privileged and confidential under this code or any other law governing an insurer described by Subsection (a). The information remains privileged and confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 4.01, eff. June 15, 2001. Renumbered from Insurance Code Sec. 38.251 by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.501, eff. Sept. 1, 2003.

Sec. 38.302. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of the legislation described by Section 38.251 and shall report the commissioner's findings and recommendations to the

legislature.

Added by Acts 2001, 77th Leg., ch. 1284, Sec. 4.01, eff. June 15, 2001. Renumbered from Insurance Code Sec. 38.252 by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.501, eff. Sept. 1, 2003.

SUBCHAPTER H. HEALTH CARE REIMBURSEMENT RATE INFORMATION

Sec. 38.351. PURPOSE OF SUBCHAPTER. The purpose of this subchapter is to authorize the department to:

(1) collect data concerning health benefit plan reimbursement rates in a uniform format; and

(2) disseminate, on an aggregate basis for geographical regions in this state, information concerning health care reimbursement rates derived from the data.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.

Sec. 38.352. DEFINITION. In this subchapter, "group health benefit plan" means a preferred provider benefit plan as defined by Section 1301.001 or an evidence of coverage for a health care plan that provides basic health care services as defined by Section 843.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.

Sec. 38.353. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to the issuer of a group health benefit plan, including:

(1) an insurance company;

(2) a group hospital service corporation;

(3) a fraternal benefit society;

(4) a stipulated premium company;

(5) a reciprocal or interinsurance exchange; or

(6) a health maintenance organization.

(b) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, and except as provided by Subsection (e), this subchapter applies to:

(1) a basic coverage plan under Chapter 1551;
(2) a basic plan under Chapter 1575;
(3) a primary care coverage plan under Chapter 1579; and
(4) basic coverage under Chapter 1601.

(c) Except as provided by Subsection (d), this subchapter applies to a small employer health benefit plan provided under Chapter 1501.

Text of subsection effective until April 1, 2025

(d) This subchapter does not apply to:
(1) standard health benefit plans provided under Chapter 1507;
(2) children's health benefit plans provided under Chapter 1502;
(3) health care benefits provided under a workers' compensation insurance policy;
(4) Medicaid managed care programs operated under Chapter 533, Government Code;
(5) Medicaid programs operated under Chapter 32, Human Resources Code; or
(6) the state child health plan operated under Chapter 62 or 63, Health and Safety Code.

Text of subsection effective on April 1, 2025

(d) This subchapter does not apply to:
(1) standard health benefit plans provided under Chapter 1507;
(2) children's health benefit plans provided under Chapter 1502;
(3) health care benefits provided under a workers' compensation insurance policy;
(4) Medicaid managed care programs operated under Chapter 540 or 540A, Government Code, as applicable;
(5) Medicaid programs operated under Chapter 32, Human Resources Code; or
(6) the state child health plan operated under Chapter 62 or 63, Health and Safety Code.

(e) The commissioner by rule may exclude a type of health benefit plan from the requirements of this subchapter if the commissioner finds that data collected in relation to the health benefit plan would not be relevant to accomplishing the purposes of

this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.116, eff. April 1, 2025.

Sec. 38.354. RULES. The commissioner may adopt rules as provided by Subchapter A, Chapter 36, to implement this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.

Sec. 38.355. DATA CALL; STANDARDIZED FORMAT. (a) Each health benefit plan issuer shall submit to the department, at the time and in the form and manner required by the department, aggregate reimbursement rates by region paid by the health benefit plan issuer for health care services identified by the department.

(b) The department shall require that data submitted under this section be submitted in a standardized format, established by rule, to permit comparison of health care reimbursement rates. To the extent feasible, the department shall develop the data submission requirements in a manner that allows collection of reimbursement rates as a dollar amount and not by comparison to other standard reimbursement rates, such as Medicare reimbursement rates.

(c) The department shall specify the period for which reimbursement rates must be filed under this section.

(d) The department may contract with a private third party to obtain the data under this subchapter. If the department contracts with a third party, the department may determine the aggregate data to be collected and published under Section 38.357 if consistent with the purposes of this subchapter described in Section 38.351. The department shall prohibit the third party contractor from selling, leasing, or publishing the data obtained by the contractor under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.

Sec. 38.356. CONFIDENTIALITY OF DATA. Except as provided by Section 38.357, data collected under this subchapter is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.

Sec. 38.357. PUBLICATION OF AGGREGATE HEALTH CARE REIMBURSEMENT RATE INFORMATION. The department shall provide to the Department of State Health Services for publication, for identified regions of this state, aggregate health care reimbursement rate information derived from the data collected under this subchapter. The published information may not reveal the name of any health care provider or health benefit plan issuer. The department may make the aggregate health care reimbursement rate information available through the department's Internet website.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.

Sec. 38.358. PENALTIES. A health benefit plan issuer that fails to submit data as required in accordance with this subchapter is subject to an administrative penalty under Chapter 84. For purposes of penalty assessment, each day the health benefit plan issuer fails to submit the data as required is a separate violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 8, eff. September 1, 2007.

SUBCHAPTER I. TEXAS ALL PAYOR CLAIMS DATABASE

Sec. 38.401. PURPOSE OF SUBCHAPTER. The purpose of this subchapter is to authorize the department to establish an all payor claims database in this state to increase public transparency of health care information and improve the quality of health care in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.

Sec. 38.402. DEFINITIONS. In this subchapter:

(1) "Allowed amount" means the amount of a billed charge that a health benefit plan issuer determines to be covered for services provided by a non-network provider. The allowed amount includes both the insurer's payment and any applicable deductible, copayment, or coinsurance amounts for which the insured is responsible.

(2) "Center" means the Center for Healthcare Data at The University of Texas Health Science Center at Houston.

(3) "Contracted rate" means the fee or reimbursement amount for a network provider's services, treatments, or supplies as established by agreement between the provider and health benefit plan issuer.

(4) "Data" means the specific claims and encounters, enrollment, and benefit information submitted to the center under this subchapter.

(5) "Database" means the Texas All Payor Claims Database established under this subchapter.

(6) "Geozip" means an area that includes all zip codes with identical first three digits.

Text of subdivision effective until April 1, 2025

(7) "Payor" means any of the following entities that pay, reimburse, or otherwise contract with a health care provider for the provision of health care services, supplies, or devices to a patient:

(A) an insurance company providing health or dental insurance;

(B) the sponsor or administrator of a health or dental plan;

(C) a health maintenance organization operating under Chapter 843;

(D) the state Medicaid program, including the Medicaid managed care program operating under Chapter 533, Government Code;

(E) a health benefit plan offered or administered by or on behalf of this state or a political subdivision of this state or an agency or instrumentality of the state or a political subdivision of this state, including:

(i) a basic coverage plan under Chapter 1551;

(ii) a basic plan under Chapter 1575;

(iii) a primary care coverage plan under Chapter 1579; and

(iv) a plan providing basic coverage under Chapter 1601; or

(F) any other entity providing a health insurance or health benefit plan subject to regulation by the department.

Text of subdivision effective on April 1, 2025

(7) "Payor" means any of the following entities that pay, reimburse, or otherwise contract with a health care provider for the provision of health care services, supplies, or devices to a patient:

(A) an insurance company providing health or dental insurance;

(B) the sponsor or administrator of a health or dental plan;

(C) a health maintenance organization operating under Chapter 843;

(D) the state Medicaid program, including the Medicaid managed care program operating under Chapters 540 and 540A, Government Code;

(E) a health benefit plan offered or administered by or on behalf of this state or a political subdivision of this state or an agency or instrumentality of the state or a political subdivision of this state, including:

(i) a basic coverage plan under Chapter 1551;

(ii) a basic plan under Chapter 1575;

(iii) a primary care coverage plan under Chapter 1579; and

(iv) a plan providing basic coverage under Chapter 1601; or

(F) any other entity providing a health insurance or health benefit plan subject to regulation by the department.

(8) "Protected health information" has the meaning assigned by 45 C.F.R. Section 160.103.

(9) "Qualified research entity" means:

(A) an organization engaging in public interest research for the purpose of analyzing the delivery of health care in this state that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt

organization in Section 501(c)(3) of that code;

(B) an institution of higher education engaged in public interest research related to the delivery of health care in this state; or

(C) a health care provider in this state engaging in efforts to improve the quality and cost of health care.

(10) "Stakeholder advisory group" means the stakeholder advisory group established under Section 38.403.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 603 (H.B. 3414), Sec. 1, eff. June 11, 2023.
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.117, eff. April 1, 2025.

Sec. 38.403. STAKEHOLDER ADVISORY GROUP. (a) The center shall establish a stakeholder advisory group to assist the center as provided by this subchapter, including assistance in:

(1) establishing and updating the standards, requirements, policies, and procedures relating to the collection and use of data contained in the database required by Sections 38.404(e) and (f);

(2) evaluating and prioritizing the types of reports the center should publish under Section 38.404(e);

(3) evaluating data requests from qualified research entities under Section 38.404(e)(2); and

(4) assisting the center in developing the center's recommendations under Section 38.408(3).

(b) The advisory group created under this section must be composed of:

(1) the state Medicaid director or the director's designee;

(2) a member designated by the Teacher Retirement System of Texas;

(3) a member designated by the Employees Retirement System of Texas; and

(4) 13 members designated by the center, including:

(A) two members representing the business community, with at least one of those members representing small businesses that

purchase health benefits but are not involved in the provision of health care services, supplies, or devices or health benefit plans;

(B) two members who represent consumers and who are not professionally involved in the purchase, provision, administration, or review of health care services, supplies, or devices or health benefit plans, with at least one member representing the behavioral health community;

(C) two members representing hospitals that are licensed in this state;

(D) two members representing health benefit plan issuers that are regulated by the department;

(E) two members who are physicians licensed to practice medicine in this state, one of whom is a primary care physician;

(F) two members who are not professionally involved in the purchase, provision, administration, or review of health care services, supplies, or devices or health benefit plans and who have expertise in:

(i) health planning;

(ii) health economics;

(iii) provider quality assurance;

(iv) statistics or health data management; or

(v) medical privacy laws; and

(G) one member representing an institution of higher education.

(c) A person serving on the stakeholder advisory group must disclose any conflict of interest.

(d) Except as provided by Subsection (e), members of the stakeholder advisory group serve fixed terms as prescribed by commissioner rules adopted under this subchapter.

(e) A member representing an institution of higher education under Subsection (b)(4)(G) serves a term of one year.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 603 (H.B. 3414), Sec. 2, eff. June 11, 2023.

Sec. 38.404. ESTABLISHMENT AND ADMINISTRATION OF DATABASE. (a)

The department shall collaborate with the center under this subchapter to aid in the center's establishment of the database. The center shall leverage the existing resources and infrastructure of the center to establish the database to collect, process, analyze, and store data relating to medical, dental, pharmaceutical, and other relevant health care claims and encounters, enrollment, and benefit information for the purposes of increasing transparency of health care costs, utilization, and access and improving the affordability, availability, and quality of health care in this state, including by improving population health in this state.

(b) The center shall serve as the administrator of the database, design, build, and secure the database infrastructure, and determine the accuracy of the data submitted for inclusion in the database.

(c) In determining the information a payor is required to submit to the center under this subchapter, the center must consider requiring inclusion of information useful to health policy makers, employers, and consumers for purposes of improving health care quality and outcomes, improving population health, and controlling health care costs. The required information at a minimum must include the following information as it relates to all health care services, supplies, and devices paid or otherwise adjudicated by the payor:

(1) the name and National Provider Identifier, as described in 45 C.F.R. Section 162.410, of each health care provider paid by the payor;

(2) the claim line detail that documents the health care services, supplies, or devices provided by the health care provider;

(3) the amount of charges billed by the health care provider and the payor's:

(A) allowed amount or contracted rate for the health care services, supplies, or devices; and

(B) adjudicated claim amount for the health care services, supplies, or devices;

(4) the name of the payor, the name of the health benefit plan, and the type of health benefit plan, including whether health care services, supplies, or devices were provided to an individual through:

(A) a Medicaid or Medicare program;

(B) workers' compensation insurance;

(C) a health maintenance organization operating under Chapter 843;

(D) a preferred provider benefit plan offered by an insurer under Chapter 1301;

(E) a basic coverage plan under Chapter 1551;

(F) a basic plan under Chapter 1575;

(G) a primary care coverage plan under Chapter 1579; or

(H) a health benefit plan that is subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); and

(5) claim level information that allows the center to identify the geozip where the health care services, supplies, or devices were provided.

(c-1) Notwithstanding Subsection (c), the center may not require a payor to collect or otherwise obtain from individuals covered by the payor data that is not included in a standard claim form, though the center may require submission of such data if it is otherwise collected by the payor, including provider and eligibility files.

(d) Each payor shall submit the required data under Subsection (c) at a schedule and frequency determined by the center and adopted by the commissioner by rule.

(e) In the manner and subject to the standards, requirements, policies, and procedures relating to the use of data contained in the database established by the center in consultation with the stakeholder advisory group, the center may use the data contained in the database for a noncommercial purpose:

(1) to produce statewide, regional, and geozip consumer reports available through the public access portal described in Section 38.405 that address:

(A) health care costs, quality, utilization, outcomes, and disparities;

(B) population health; or

(C) the availability of health care services; and

(2) for research and other analysis conducted by the center or a qualified research entity to the extent that such use is consistent with all applicable federal and state law, including the data privacy and security requirements of Section 38.406 and the purposes of this subchapter.

(f) The center shall establish data collection procedures and

evaluate and update data collection procedures established under this section. The center shall test the quality of data collected by and reported to the center under this section to ensure that the data is accurate, reliable, and complete.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 603 (H.B. 3414), Sec. 3, eff. June 11, 2023.

Sec. 38.405. PUBLIC ACCESS PORTAL. (a) Except as provided by this section and Sections 38.404 and 38.406 and in a manner consistent with all applicable federal and state law, the center shall collect, compile, and analyze data submitted to or stored in the database and disseminate the information described in Section 38.404(e)(1) in a format that allows the public to easily access and navigate the information. The information must be accessible through an open access Internet portal that may be accessed by the public through an Internet website.

(b) The portal created under this section must allow the public to easily search and retrieve the information disseminated under Subsection (a), subject to data privacy and security restrictions described in this subchapter and consistent with all applicable federal and state law.

(c) Any information or data that is accessible through the portal created under this section:

(1) must be segmented by type of insurance or health benefit plan in a manner that does not combine payment rates relating to different types of insurance or health benefit plans;

(2) must be aggregated by like Current Procedural Terminology codes and health care services in a statewide, regional, metropolitan statistical, zip-code, or geozip area; and

(3) may not identify a specific patient, health care provider, health benefit plan, health benefit plan issuer, or other payor.

(d) Before making information or data accessible through the portal, the center shall remove any data or information that may identify a specific patient in accordance with the de-identification

standards described in 45 C.F.R. Section 164.514.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 603 (H.B. 3414), Sec. 4, eff. June 11, 2023.

Sec. 38.4055. APPLICATION FOR ACCESS TO CERTAIN DATA OR INFORMATION IN DATABASE. (a) An entity seeking to access data or information that is contained in the database but not accessible through the portal described by Section 38.405 must submit an application to the center for access to that data or information. The application must include:

(1) the sources and identity of all funding and funders of the research the entity will perform;

(2) the names of all individuals who may have access to the data or information that is contained in the database but not accessible through the portal described by Section 38.405, and any affiliations those individuals have with entities other than the entity submitting the application;

(3) the proposed study, research, or project that the entity plans to undertake and the purpose of the study, research, or project, including any anticipated final product from the study, research, or project;

(4) how the proposed research will further the purposes of this subchapter, improve the quality of care, or reduce the cost of care;

(5) a description of the proposed methodology;

(6) a description of the publication method of the manuscripts, reports, or other forms of output from the research; and

(7) for access to data that would require such an approval, an institutional review board determination letter that is an approval or an approval with modifications.

(b) The center shall review and make a determination on all applications in a timely manner.

(c) If the center denies an application, the center must identify with particularity the deficiencies in the application.

Added by Acts 2023, 88th Leg., R.S., Ch. 603 (H.B. 3414), Sec. 5, eff.

June 11, 2023.

Sec. 38.406. DATA PRIVACY AND SECURITY. (a) Information that may identify a patient is confidential and subject to applicable state and federal law relating to records privacy and protected health information, including Chapter 181, Health and Safety Code, and is not subject to disclosure under Chapter 552, Government Code. Except as provided by Subsection (b), any information that may identify a health care provider, health benefit plan, health benefit plan issuer, or other payor is confidential and subject to applicable state and federal law relating to records privacy and protected health information, including Chapter 181, Health and Safety Code, and is not subject to disclosure under Chapter 552, Government Code.

(b) A qualified research entity with access to data or information that is contained in the database but not accessible through the portal described in Section 38.405:

(1) may use the data or information contained in the database only for purposes consistent with the purposes of this subchapter and must use the data or information in accordance with standards, requirements, policies, and procedures established by the center in consultation with the stakeholder advisory group;

(2) may not sell or share any data or information contained in the database; and

(3) may report or publish data or information that identifies one or more health care providers, health benefit plans, health benefit plan issuers, or other mandatory payors only if the report or publication is made available to the public at no cost.

(c) A qualified research entity with access to information that is contained in the database but not accessible through the portal must execute an agreement with the center relating to the qualified research entity's compliance with the requirements of Subsections (a) and (b), including the confidentiality of information contained in the database but not accessible through the portal.

(d) Notwithstanding any provision of this subchapter, the department and the center may not disclose an individual's protected health information in violation of any state or federal law.

(e) The center shall include in the database only the minimum amount of protected health information identifiers necessary to link public and private data sources and the geographic and services data

to undertake studies.

(f) The center shall maintain protected health information identifiers collected under this subchapter but excluded from the database under Subsection (e) in a separate database. The separate database may not be aggregated with any other information and must use a proxy or encrypted record identifier for analysis.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 603 (H.B. 3414), Sec. 6, eff. June 11, 2023.

Sec. 38.407. CERTAIN ENTITIES NOT REQUIRED TO SUBMIT DATA. Any sponsor or administrator of a health benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) may elect or decline to participate in or submit data to the center for inclusion in the database as consistent with federal law.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.

Sec. 38.408. REPORT TO LEGISLATURE. Not later than September 1 of each even-numbered year, the center shall submit to the legislature a written report containing:

(1) an analysis of the data submitted to the center for use in the database;

(2) information regarding the submission of data to the center for use in the database and the maintenance, analysis, and use of the data;

(3) recommendations from the center, in consultation with the stakeholder advisory group, to further improve the transparency, cost-effectiveness, accessibility, and quality of health care in this state;

(4) an analysis of the trends of health care affordability, availability, quality, and utilization;

(5) a list of approved applications;

(6) a list of disapproved applications with the

justification required by Section 38.4055(c); and

(7) a list of all applications that were neither approved nor disapproved by the 91st day after the application was submitted, including the particular reasons why each application was not approved or disapproved within that timeframe.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 603 (H.B. 3414), Sec. 7, eff. June 11, 2023.

Sec. 38.409. RULES. (a) The commissioner, in consultation with the center, shall adopt rules:

(1) specifying the types of data a payor is required to provide to the center under Section 38.404 to determine health benefits costs and other reporting metrics, including, if necessary, types of data not expressly identified in that section;

(2) specifying the schedule, frequency, and manner in which a payor must provide data to the center under Section 38.404, which must:

(A) require the payor to provide data to the center not less frequently than quarterly; and

(B) include provisions relating to data layout, data governance, historical data, data submission, use and sharing, information security, and privacy protection in data submissions; and

(3) establishing oversight and enforcement mechanisms to ensure that payors submit data to the database in accordance with this subchapter.

(b) In adopting rules governing methods for data submission, the commissioner shall to the maximum extent practicable use methods that are reasonable and cost-effective for payors.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 1, eff. September 1, 2021.

CHAPTER 39. PUBLIC ACCESS

Sec. 39.001. ACCESS TO PROGRAMS AND FACILITIES. (a) The commissioner shall prepare and maintain a written plan that describes

how a person who does not speak English may be provided reasonable access to the department's programs.

(b) The department shall comply with federal and state laws for program and facility accessibility.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 39.002. PUBLIC COMMENT. The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commissioner and to speak on any issue under the jurisdiction of the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 39.003. PUBLIC REPRESENTATION ON ADVISORY BODY. (a) At least one-half of the membership of each advisory body appointed by the commissioner, other than an advisory body whose membership is determined by this code or by another law relating to the business of insurance in this state, must represent the general public.

(b) A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the department;

(2) a person required to register with the Texas Ethics Commission under Chapter 305, Government Code; or

(3) a person related within the second degree by affinity or consanguinity to a person described by Subdivision (1) or (2).

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 40. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS AND COMMISSIONER IN CERTAIN PROCEEDINGS; RATE SETTING PROCEEDINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. DEFINITION. In this chapter, "office" means the State Office of Administrative Hearings.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.002. DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS. The office shall conduct an administrative hearing required to be held or that may be held under this code or another insurance law of this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.003. APPLICATION OF CHAPTER; EXCEPTIONS. (a) This chapter applies only to a hearing required to be held before a decision may be rendered or action taken by the commissioner or the department.

(b) If a provision of this code or another insurance law of this state requires that the commissioner take an action at a hearing subject to this chapter, the commissioner shall take the action after receipt of a proposal for decision from the office regarding the hearing conducted by the office.

(c) This chapter does not apply to a proceeding conducted under Chapter 201 or to a proceeding relating to:

(1) approving or reviewing rates or rating manuals filed by an individual company, unless the rates or manuals are contested;

(2) adopting a rule;

(3) adopting or approving a policy form or policy form endorsement;

(4) adopting or approving a plan of operation for an organization subject to the jurisdiction of the department;

(5) adopting a presumptive rate under Chapter 1153; or

(6) a workers' compensation claim brought under Title 5, Labor Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1318, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.057, eff. September 1, 2005.

Sec. 40.004. MEMORANDUM OF UNDERSTANDING. (a) The commissioner and the chief administrative law judge of the office by rule shall adopt a memorandum of understanding governing hearings

conducted by the office under this code or another insurance law of this state.

(b) The memorandum of understanding must require the chief administrative law judge and the commissioner to cooperate in conducting hearings under this chapter and may authorize the office to perform any procedural act, including giving notice, that is required to be performed by the commissioner under this code or another insurance law of this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.005. CONFLICT WITH OTHER LAW. This chapter prevails over another provision of this code or another insurance law of this state unless the provision or other law states that this chapter does not apply.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PROCEEDINGS RELATING TO PROMULGATION OF RATES

Sec. 40.051. APPLICATION OF SUBCHAPTER. Subject to Section 40.003, a proceeding to promulgate rates is governed by this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.052. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. A proceeding to promulgate rates is a contested case under Chapter 2001, Government Code, and to the extent not inconsistent with this subchapter, that chapter and the Texas Rules of Civil Procedure apply.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.053. PRESENTATION OF EVIDENCE. The administrative law judge shall provide each interested party an opportunity to respond to and present evidence and argument concerning all issues in the proceeding.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.054. WITNESSES AND CROSS-EXAMINATION. (a) The testimony of a witness, other than an expert witness, may be presented either orally by the witness at the hearing or by affidavit.

(b) Each party is entitled to cross-examine each witness called to testify by another party to the proceeding. The attendance of a witness providing testimony by affidavit is required if a party files a written request that the witness appear for cross-examination.

(c) If a witness providing testimony by affidavit fails to appear for cross-examination after the filing of a written request that the witness appear, the administrative law judge shall exclude the affidavit from evidence and may not consider the affidavit for any purpose.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.055. TESTIMONY OF EXPERT WITNESS; PREFILING REQUIRED. The direct testimony of each expert witness to be called must be prefiled in accordance with a schedule established by the administrative law judge.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.056. DEADLINES. The administrative law judge shall establish reasonable deadlines for the filing of affidavits, the designation of witnesses, and other matters as are necessary or appropriate.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.057. INFLUENCE OF COMMISSIONER PROHIBITED. The commissioner may not attempt to influence the administrative law judge's findings of fact, conclusions of law, or application of the law to the facts.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.058. PROPOSAL FOR DECISION. The administrative law judge shall:

(1) prepare a proposal for decision that includes proposed findings of fact and conclusions of law; and

(2) serve the proposal for decision by registered mail on each party to the proceeding.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.059. CONSIDERATION OF PROPOSAL FOR DECISION. (a) The commissioner shall provide to each party an opportunity to file exceptions to the proposal for decision and briefs related to the issues addressed in the proposal.

(b) After the opportunity to file exceptions and briefs under Subsection (a), the commissioner shall, in open meeting, consider:

(1) the proposal for decision; and

(2) the exceptions, briefs, and arguments of the parties.

(c) The commissioner may amend the proposal for decision, including any finding of fact. The commissioner shall accompany any amendment with an explanation of the basis of the amendment. The commissioner shall base any amendment and the order adopting the rate solely on the record made before the administrative law judge.

(d) The commissioner may refer the matter back to the administrative law judge to:

(1) reconsider findings and conclusions in the proposal for decision;

(2) take additional evidence; or

(3) make additional findings of fact or conclusions of law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 40.060. COMMISSIONER'S ORDER. The commissioner shall serve on each party a copy of the commissioner's order, including the commissioner's findings of fact and conclusions of law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBTITLE B. DISCIPLINE AND ENFORCEMENT

CHAPTER 81. GENERAL PROVISIONS REGARDING DISCIPLINE AND ENFORCEMENT

Sec. 81.001. LIMITATIONS PERIOD FOR CERTAIN DISCIPLINARY ACTIONS. (a) Except as provided by Subsection (b), the department or commissioner may not begin an action to impose a sanction, penalty, or fine, including an administrative penalty, against an insurer, agent, or other license holder who is subject to the jurisdiction of the department for conduct that is a violation of this code or another insurance law of this state after the earlier of:

(1) the fifth anniversary of the date on which the conduct that is a violation occurred; or

(2) the second anniversary of the earlier of:

(A) the date on which the conduct that is a violation is first discovered by the department; or

(B) the date on which the conduct that is a violation is made known to the department.

(b) The department or commissioner may not begin an action to impose a sanction, penalty, or fine, including an administrative penalty, against an insurer, agent, or other license holder who is subject to the jurisdiction of the department for conduct that is a violation of this code or another insurance law of this state and that involves fraud by the insurer, agent, or license holder after the fifth anniversary of the earlier of:

(1) the date on which the conduct that is a violation is first discovered by the department; or

(2) the date on which the conduct that is a violation is made known to the department.

(c) This section does not apply to conduct that is:

(1) a violation that is ongoing at the time the department seeks to impose the sanction, penalty, or fine;

(2) a violation of Subchapter A, Chapter 544, or Section 541.057, as those provisions relate to discrimination on the basis of race or color, regardless of the time the conduct occurs; or

(3) a violation of Title 5, Labor Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 887, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.058, eff. September 1, 2005.

Sec. 81.002. NOTICE OF CERTAIN ORDERS AND DECISIONS. Notwithstanding Section 2001.142, Government Code, in a contested case before the department or the commissioner the department shall mail to each party and the party's attorney of record, by certified mail, return receipt requested, a copy of the department's or commissioner's written decision or order in that case.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 81.003. NOTIFICATION OF CERTAIN DISCIPLINARY ACTIONS OCCURRING IN OTHER STATES; CIVIL PENALTY. (a) In this section, "insurer" means any organization, corporation, or other person that transacts insurance business, other than an organization, corporation, or other person that is specifically made exempt from this section by a reference to this section, without regard to whether the organization, corporation, or other person is listed in this subsection. The term includes:

(1) a capital stock company;

(2) a title insurance company;

(3) a reciprocal or interinsurance exchange;

(4) a Lloyd's plan insurer;

(5) a fraternal benefit society;

(6) a mutual company, including a mutual assessment company;

(7) a statewide mutual assessment company;

(8) a local mutual aid association;

(9) a burial association;

(10) a county mutual insurance company;

(11) a farm mutual insurance company; and

(12) a fidelity, guaranty, or surety company.

(b) An insurer shall notify the commissioner and shall deliver a copy of any applicable order or judgment to the commissioner not later than the 30th day after the date of the:

(1) suspension or revocation of the insurer's right to

transact business in another state; or

(2) receipt of an order to show cause why the insurer's license in another state should not be suspended or revoked.

(c) An insurer who violates Subsection (b) is liable for a civil penalty, recoverable by a civil action, in an amount not to exceed $500 for each violation. In addition to the civil penalty, the commissioner may suspend or revoke the license of an insurer or agent for a wilful violation of Subsection (b).

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 43 (S.B. 1012), Sec. 1, eff. September 1, 2017.

Sec. 81.004. REPORT TO ATTORNEY GENERAL. The department shall report to the attorney general, promptly and in detail, any violation of law relating to insurance companies or the business of insurance.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 82. SANCTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 82.001. DEFINITION. In this chapter, "authorization" means a permit, license, certificate of authority, certificate of registration, or other authorization issued or existing under the commissioner's authority or this code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 82.002. APPLICATION OF CHAPTER. (a) This chapter applies to each company regulated by the commissioner, including:

(1) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(2) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(3) a Mexican casualty company;

(4) a domestic or foreign Lloyd's plan insurer;

(5) a domestic or foreign reciprocal or interinsurance

exchange;

(6) a domestic or foreign fraternal benefit society;

(7) a domestic or foreign title insurance company;

(8) a stipulated premium insurance company;

(9) a nonprofit legal service corporation;

(10) a health maintenance organization;

(11) a statewide mutual assessment company;

(12) a local mutual aid association;

(13) a local mutual burial association;

(14) an association exempt under Section 887.102;

(15) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842;

(16) a county mutual insurance company; and

(17) a farm mutual insurance company.

(b) This chapter also applies to:

(1) an agent of an entity described by Subsection (a); and

(2) an individual or a corporation, association, partnership, or other artificial person who:

(A) is engaged in the business of insurance;

(B) holds an authorization; or

(C) is regulated by the commissioner.

(c) The commissioner's authority under this chapter applies to each form of authorization and each person or entity holding an authorization.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 18, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.002, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.010, eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.002, eff. September 1, 2017.

Sec. 82.003. PROCEEDINGS UNDER OTHER LAW. The commissioner's authority under this chapter is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. IMPOSITION OF SANCTIONS

Sec. 82.051. CANCELLATION OR REVOCATION OF AUTHORIZATION. After notice and opportunity for a hearing, the commissioner may cancel or revoke an authorization if the holder of the authorization is found to be in violation of, or to have failed to comply with, this code or a rule of the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 82.052. OTHER SANCTIONS. In addition to the cancellation or revocation of an authorization under Section 82.051, the commissioner may:

(1) suspend the authorization for a specified time not to exceed one year;

(2) order the holder of the authorization to cease and desist from:

(A) the activity determined to be in violation of this code or a rule of the commissioner; or

(B) the failure to comply with this code or a rule of the commissioner;

(3) direct the holder of the authorization to pay an administrative penalty under Chapter 84;

(4) direct the holder of the authorization to make restitution under Section 82.053; or

(5) take any combination of those actions.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 82.053. RESTITUTION. (a) The commissioner may direct the holder of an authorization to make complete restitution to each Texas resident, each Texas insured, and each entity operating in this state that is harmed by a violation of, or failure to comply with, this code or a rule of the commissioner.

(b) The holder of the authorization shall make the restitution in the form and amount and within the period determined by the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 82.054. CANCELLATION ON FAILURE TO COMPLY. If it is found after hearing that a holder of an authorization has failed to comply with an order issued under Section 82.052, the commissioner shall cancel each authorization held by the holder.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 82.055. INFORMAL DISPOSITION. (a) The commissioner may informally dispose of a matter under this subchapter by consent order, agreed settlement, stipulation, or default.

(b) An informal disposition may include a provision under which the holder of the authorization agrees to a sanction under this subchapter with the express reservation that:

(1) the holder does not admit a violation of this code or of a rule; and

(2) the existence of a violation is in dispute.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 82.056. NOTICE TO OTHER STATES. The commissioner shall give notice of an action taken under this subchapter to the insurance commissioner or other similar officer of each state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 83. EMERGENCY CEASE AND DESIST ORDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 83.001. DEFINITIONS. In this chapter:

(1) "Authorized person" means an individual or entity described by Section 83.002.

(2) "Emergency" means a sudden, urgent occurrence that requires immediate action.

(3) "Unauthorized person" means an individual or a corporation, association, partnership, or other artificial person who directly or indirectly does an act of insurance business that is:

(A) described by Section 101.051 or 101.052; and

(B) not done in accordance with specific authorization of law.

(4) "Unfair act" means an unfair method of competition, an unfair or deceptive act or practice, or an unfair claim settlement practice as defined under Chapter 541 or 542 or a rule adopted under either chapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 19, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.003, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.011, eff. April 1, 2009.

Sec. 83.002. APPLICATION OF CHAPTER. (a) This chapter applies to each company regulated by the commissioner, including:

(1) a domestic or foreign, stock or mutual, life, health, or accident insurance company;

(2) a domestic or foreign, stock or mutual, fire or casualty insurance company;

(3) a Mexican casualty company;

(4) a domestic or foreign Lloyd's plan insurer;

(5) a domestic or foreign reciprocal or interinsurance exchange;

(6) a domestic or foreign fraternal benefit society;

(7) a domestic or foreign title insurance company;

(8) a stipulated premium insurance company;

(9) a nonprofit legal service corporation;

(10) a statewide mutual assessment company;

(11) a local mutual aid association;

(12) a local mutual burial association;

(13) an association exempt under Section 887.102;

(14) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842;

(15) a county mutual insurance company; and

(16) a farm mutual insurance company.

(b) This chapter also applies to:

(1) an agent of an entity described by Subsection (a); and

(2) an individual or a corporation, association, partnership, or other artificial person who:

(A) is engaged in the business of insurance;

(B) holds a permit, certificate, registration, license, or other authority under this code; or

(C) is regulated by the commissioner.

(c) This chapter also applies to:

(1) a person appointed as a qualified inspector under Section 2210.254; and

(2) a person acting as a qualified inspector under Section 2210.254 without being appointed as a qualified inspector under either of those sections.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 20, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.004, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.012, eff. April 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 1, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 8, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.003, eff. September 1, 2017.

Sec. 83.003. RULES. The commissioner may adopt reasonable rules to implement this chapter, including rules that provide, to the extent possible, uniformity of procedures between this state and other states, the United States, or the National Association of Insurance Commissioners.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.004. PROCEEDINGS UNDER OTHER LAW. The commissioner may proceed solely under this chapter or under this chapter in conjunction with other applicable law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. ISSUANCE OF ORDERS

Sec. 83.051. AUTHORITY OF COMMISSIONER TO ISSUE ORDER. (a) The commissioner ex parte may issue an emergency cease and desist order if:

(1) the commissioner believes that:

(A) an authorized person engaging in the business of insurance is:

(i) committing an unfair act; or

(ii) in a hazardous condition or a hazardous financial condition under Section 843.406 or Subchapter A, Chapter 404, as determined by the commissioner; or

(B) an unauthorized person:

(i) is engaging in the business of insurance in violation of Chapter 101 or in violation of a rule adopted under that chapter; and

(ii) does not meet a statutory exception or exemption; and

(2) with respect to conduct described by Subdivision (1)(A), it appears to the commissioner that the alleged conduct:

(A) is fraudulent;

(B) is hazardous or creates an immediate danger to the public safety; or

(C) is causing or can be reasonably expected to cause public injury that:

(i) is likely to occur at any moment;

(ii) is incapable of being repaired or rectified; and

(iii) has or is likely to have influence or effect.

(b) An order is final on the 61st day after the date it is served, unless the affected person requests a hearing under Section 83.053.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.013, eff. April 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 3, eff.

September 1, 2021.

Sec. 83.052. NOTICE. (a) On issuance of an order under Section 83.051, the commissioner shall serve on the affected person an order that:

(1) contains a statement of the charges; and

(2) requires the person immediately to cease and desist from the acts, methods, or practices stated in the order.

(b) The commissioner shall serve the order by registered or certified mail, return receipt requested, to the affected person's last known address.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.053. REQUEST FOR HEARING. (a) A person affected by an order is entitled to request a hearing to contest the order.

(b) The affected person must request the hearing not later than the 60th day after the date on which the person is served with an order required by Section 83.052.

(c) A request to contest an order must:

(1) be in writing;

(2) be directed to the commissioner; and

(3) state the grounds for the request to set aside or modify the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 4, eff. September 1, 2021.

Sec. 83.054. HEARING. (a) On receiving a timely request for a hearing under Section 83.053, the department shall docket the case at the State Office of Administrative Hearings not later than the 30th day after the date the department receives the request.

(b) The hearing is subject to the procedures for contested cases under Chapter 2001, Government Code.

(c) At the hearing, the person requesting the hearing must show why the order should not be affirmed.

(d) Following receipt of the proposal for decision from the State Office of Administrative Hearings regarding the hearing, the commissioner shall affirm, modify, or set aside in whole or in part the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 5, eff. September 1, 2021.

Sec. 83.055. EFFECT OF ORDER PENDING HEARING. Pending a hearing under this subchapter, an order continues in effect unless the order is stayed by the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. ENFORCEMENT

Sec. 83.101. AUTHORITY OF COMMISSIONER. If the commissioner reasonably believes that a person has violated an order issued under this chapter, the commissioner may:

(1) initiate proceedings under this subchapter to impose an administrative penalty or direct restitution;

(2) refer the matter to the attorney general for enforcement;

(3) initiate a proceeding to revoke the person's certificate of authority; or

(4) pursue another action the commissioner considers appropriate under applicable law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.102. DETERMINATION OF VIOLATION. In determining whether an order has been violated, the commissioner shall consider the maintenance of procedures reasonably adopted to ensure compliance with the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.103. HEARING ON ADMINISTRATIVE PENALTY. (a) If the commissioner pursues action to impose an administrative penalty under Section 83.101(1), the commissioner shall serve on the person notice of the time and place of a hearing to be held not earlier than the 21st day after the date the notice is received.

(b) The notice must contain a statement of the facts or conduct alleged to violate the order.

(c) The commissioner shall serve the notice by registered or certified mail, return receipt requested, to the person's last known address.

(d) The hearing is subject to the procedures for contested cases under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.104. IMPOSITION OF ADMINISTRATIVE PENALTY; RESTITUTION. (a) After a hearing, if the commissioner determines that an order has been violated, the commissioner may:

(1) impose an administrative penalty of $25,000 for each act of violation;

(2) direct the person against whom the order was issued to make complete restitution to each Texas resident, Texas insured, and entity operating in this state that is harmed by the violation; or

(3) impose the penalty and direct restitution.

(b) A person directed to make restitution shall make the restitution in the form and amount and within the period determined by the commissioner.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.105. FAILURE TO PAY PENALTY. If a person fails to pay a penalty assessed under this subchapter, the commissioner may:

(1) refer the matter to the attorney general for enforcement; or

(2) cancel or revoke any permit, license, certificate of authority, certificate of registration, or other authorization issued under this code as provided by Chapter 82.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. JUDICIAL REVIEW; JUDICIAL ACTION

Sec. 83.151. APPEAL. A person affected by an order of the commissioner under Section 83.051 or 83.104 may appeal the order by filing suit in a district court in Travis County not later than the 20th day after the date of the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.152. EFFECT OF PETITION ON ORDER OR RELATED DECISION. A petition for appeal filed under Section 83.151 does not stay or vacate an order or a decision made under Subchapter B unless the court, after hearing, issues an order that specifically stays or vacates the order or decision.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 83.153. JUDICIAL ACTION FOR ENFORCEMENT OF ORDER; ATTORNEY'S FEES. The department may recover reasonable attorney's fees if judicial action is necessary to enforce an order issued under Section 83.051 or 83.104.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 84. ADMINISTRATIVE PENALTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 84.001. DEFINITION. In this chapter, "person" means an individual, corporation, trust, partnership, association, or any other legal entity.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.002. APPLICATION OF CHAPTER TO ADMINISTRATIVE PENALTY. (a) This chapter applies to each monetary penalty the department or commissioner imposes under this code or another insurance law of this state.

(b) For purposes of this chapter, each of the monetary penalties is an administrative penalty.

(c) This chapter applies to a monetary penalty the department or the commissioner of workers' compensation imposes under Title 5, Labor Code, only as provided by that title.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.059, eff. September 1, 2005.

Sec. 84.003. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. A proceeding under this chapter is subject to Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.004. RULEMAKING AUTHORITY. (a) The commissioner may adopt and enforce reasonable rules that the commissioner determines necessary to accomplish the purposes of this chapter.

(b) The commissioner may establish by rule the amount of an administrative penalty to be imposed under Section 84.022 for a specific violation.

(c) The existence or absence of a rule adopted under this chapter does not limit the commissioner's authority to take any action authorized by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1029 (H.B. 4358), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. IMPOSITION OF ADMINISTRATIVE PENALTY

Sec. 84.021. IMPOSITION OF PENALTY. The commissioner may impose an administrative penalty on a person licensed or regulated under this code or another insurance law of this state, including an unauthorized person as defined by Section 83.001, who violates:

(1) this code;

(2) another insurance law of this state; or

(3) a rule or order adopted under this code or another

insurance law of this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 6, eff. September 1, 2021.

Sec. 84.022. PENALTY AMOUNT. (a) The penalty for a violation may not exceed $25,000, unless a greater or lesser penalty is specified by this code or another insurance law of this state.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to the public interest or public confidence caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PROCEDURAL REQUIREMENTS

Sec. 84.041. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the department determines that a violation has occurred, the department may issue to the commissioner a report that states the facts on which the determination is based and the department's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the department shall give written notice of the report to the affected person. The notice may be given by certified mail. The notice must:

(1) include:

(A) a brief summary of the alleged violation; and

(B) a statement of the amount of the recommended penalty; and

(2) inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.042. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person, in writing, may:

(1) accept the department's determination and recommended administrative penalty; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) If the person accepts the department's determination and recommended penalty, the commissioner by order shall approve the determination and require the person to pay the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.043. HEARING AND DECISION. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the department shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.044. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the

commissioner by order may:

(1) find that a violation occurred and impose an administrative penalty; or

(2) find that a violation did not occur.

(b) The notice of the commissioner's order must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.045. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the commissioner's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation or the amount of the penalty, or both, and either pay or not pay the penalty.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.046. STAY OF ENFORCEMENT OF PENALTY. (a) A person who files a petition for judicial review without paying the administrative penalty may, within the 30-day period prescribed by Section 84.045:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner by certified mail.

(b) If the commissioner receives a copy of an affidavit under

Subsection (a)(2), the commissioner may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.047. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the commissioner may refer the matter to the attorney general for collection of the penalty.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.048. STANDARD OF JUDICIAL REVIEW. The order of the commissioner is subject to judicial review under the substantial evidence rule.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.049. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.050. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the judgment becomes final, that the

appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 84.051. RELEASE OF BOND. (a) If the person gave a supersedeas bond and if the administrative penalty is not upheld by the court, the court shall order, when the judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 85. GENERAL CRIMINAL ENFORCEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. VIOLATION OF CERTAIN LAWS FOR WHICH PUNISHMENT IS NOT PROVIDED; OFFENSE. (a) A person commits an offense if the person violates a law of this state regulating the business of life, fire, or marine insurance.

(b) Unless another penalty is provided by law, an offense under this section is a misdemeanor punishable by a fine of not less than $500 or more than $1,000.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PROSECUTION OF OFFENSES

Sec. 85.051. VENUE FOR PROSECUTION. (a) A person who violates the Penal Code or a penal provision of this code while engaged in the business of insurance may be prosecuted in:

(1) Travis County; or

(2) a county in which prosecution is authorized under the Code of Criminal Procedure.

(b) A law limiting regulation by the department under this code or another insurance law of this state does not restrict the application of this section.

(c) This section controls if there is a conflict or ambiguity between this section and another provision of this code or another insurance law of this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 85.052. ELECTION OF PROSECUTION. A person who commits an offense under this code may be prosecuted under this code or any other law of this state under which the person may be prosecuted.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 86. REVOCATION OR MODIFICATION OF CERTIFICATE OF AUTHORITY; AUTHORITY TO BRING CERTAIN ACTIONS

SUBCHAPTER A. REVOCATION OR MODIFICATION OF CERTIFICATE OF AUTHORITY

Sec. 86.001. AUTHORITY TO REVOKE OR MODIFY CERTIFICATE OF AUTHORITY. The commissioner may revoke or modify a certificate of authority if a condition or requirement prescribed by law for granting the certificate is no longer satisfied.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 12, eff. April 1, 2007.

Sec. 86.002. NOTICE OF INTENT TO REVOKE OR MODIFY CERTIFICATE OF AUTHORITY. (a) The commissioner must notify an insurance carrier in writing of the commissioner's intent to revoke or modify the carrier's certificate of authority.

(b) The commissioner must provide the notice not later than the 10th day before the date the revocation or modification is to occur.

(c) The commissioner must specifically state in the notice the reason for the action.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 12, eff. April 1, 2007.

SUBCHAPTER B. AUTHORITY TO BRING CERTAIN ACTIONS

Sec. 86.051. AUTHORITY TO BRING ACTION FOR OR PROSECUTE VIOLATION OF LAW. The department, through the attorney general or an attorney designated by the attorney general, may institute an action relating to or initiate a prosecution for a violation of a law of this state relating to insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 12, eff. April 1, 2007.

Sec. 86.052. AUTHORITY TO BRING ACTION TO CLOSE AFFAIRS OR RESTRAIN BUSINESS OF DOMESTIC INSURANCE COMPANY. Only the department may bring an action to:

(1) close the affairs of an insurance company organized under the laws of this state; or

(2) enjoin, restrain, or interfere with the prosecution of the business of an insurance company organized under the laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 12, eff. April 1, 2007.

CHAPTER 101. UNAUTHORIZED INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. STATE POLICY AND PURPOSE. (a) It is a state concern that many residents of this state hold insurance policies issued by persons or insurers who are not authorized to do insurance business in this state and who are not qualified as eligible surplus lines insurers under Chapter 981. These residents face often insurmountable obstacles in asserting legal rights under the policies in foreign forums under unfamiliar laws and rules of practice.

(b) It is the policy of this state to protect residents against acts by a person or insurer who is not authorized to do insurance business in this state by:

(1) maintaining fair and honest insurance markets;

(2) protecting the premium tax revenues of this state;

(3) protecting authorized persons and insurers, who are

subject to strict regulation, from unfair competition by unauthorized persons and insurers; and

(4) protecting against evasion of the insurance regulatory laws of this state.

(c) The purpose of this chapter is to subject certain insurers and persons to the jurisdiction of:

(1) the commissioner and proceedings before the commissioner; and

(2) the courts of this state in suits by or on behalf of the state or an insured or beneficiary under an insurance contract.

(d) It is also a concern that this state not become a safe harbor for persons or insurers engaged in the unauthorized business of insurance in this state, regardless of whether the insureds or other persons affected by the unauthorized business of insurance are residents of this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 671, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1419, Sec. 21, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.005, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.014, eff. April 1, 2009.

Sec. 101.002. DEFINITIONS. In this chapter:

(1) "Insurer" includes:

(A) a corporation, association, partnership, or individual engaged as a principal in the business of insurance;

(B) an interinsurance exchange or mutual benefit society; or

(C) an insurance exchange or syndicate.

(2) "Unfair act" means an unfair method of competition or an unfair or deceptive act or practice as defined under Chapter 541 or a rule adopted under that chapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.015, eff. April 1, 2009.

Sec. 101.003. INSURANCE EXCHANGES AND SYNDICATES; RULES. The commissioner shall adopt rules defining insurance exchanges and syndicates that are insurers for purposes of Section 101.002.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.004. UNCONSTITUTIONAL APPLICATION PROHIBITED; NOTICE TO COMMISSIONER. (a) Subject to Subsection (b), this chapter does not apply to an insurer or other person to whom, under the constitution or statutes of the United States or the constitution of this state, it may not apply.

(b) Before commencing operations, an insurer or other person claiming an exemption described by Subsection (a) must file with the commissioner:

(1) notice of the claim; and

(2) documents supporting the claim.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. BUSINESS OF INSURANCE; EXCEPTIONS

Sec. 101.051. CONDUCT THAT CONSTITUTES THE BUSINESS OF INSURANCE. (a) In this section, "medical expense" includes surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses.

(b) The following acts in this state constitute the business of insurance in this state:

(1) making or proposing to make, as an insurer, an insurance contract;

(2) making or proposing to make, as guarantor or surety, a guaranty or suretyship contract as a vocation and not merely incidental to another legitimate business or activity of the guarantor or surety;

(3) taking or receiving an insurance application;

(4) receiving or collecting any consideration for insurance, including:

(A) a premium;

(B) a commission;

(C) a membership fee;

(D) an assessment; or

(E) dues;

(5) issuing or delivering an insurance contract to:

(A) a resident of this state; or

(B) a person authorized to do business in this state;

(6) directly or indirectly acting as an agent for or otherwise representing or assisting an insurer or person in:

(A) soliciting, negotiating, procuring, or effectuating insurance or a renewal of insurance;

(B) disseminating information relating to coverage or rates;

(C) forwarding an insurance application;

(D) delivering an insurance policy or contract;

(E) inspecting a risk;

(F) setting a rate;

(G) investigating or adjusting a claim or loss;

(H) transacting a matter after the effectuation of the contract that arises out of the contract; or

(I) representing or assisting an insurer or person in any other manner in the transaction of insurance with respect to a subject of insurance that is resident, located, or to be performed in this state;

(7) contracting to provide in this state indemnification or expense reimbursement for a medical expense by direct payment, reimbursement, or otherwise to a person domiciled in this state or for a risk located in this state, whether as an insurer, agent, administrator, trust, or funding mechanism or by another method;

(8) doing any kind of insurance business specifically recognized as constituting insurance business within the meaning of statutes relating to insurance;

(9) doing or proposing to do any insurance business that is in substance equivalent to conduct described by Subdivisions (1)-(8) in a manner designed to evade statutes relating to insurance or a claimed exception or exemption to insurance regulation; or

(10) any other transaction of business in this state by an insurer.

(c) An act described by Subsection (b) by an unlicensed or unauthorized person or insurer that occurs in this state and that affects a person in another state or jurisdiction constitutes the business of insurance in this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 671, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1419, Sec. 22, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.006, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 7, eff. September 1, 2021.

Sec. 101.052. ADVERTISING RELATING TO MEDICARE SUPPLEMENT BENEFIT PLANS. With respect to a Medicare supplement benefit plan authorized under Chapter 1652, the business of insurance in this state includes using, creating, publishing, mailing, or disseminating in this state an advertisement relating to an act that constitutes the business of insurance under Section 101.051 unless the advertisement is used, created, published, mailed, or disseminated on behalf of an insurer or person who:

(1) is authorized under this code to engage in the business of insurance in this state;

(2) has actual knowledge of the content of the advertisement;

(3) has authorized the advertisement to be used, created, published, mailed, or disseminated on that insurer's or person's behalf; and

(4) is clearly identified by name in the advertisement as the sponsor of the advertisement.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 23, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.007, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.016, eff. April 1, 2009.

Sec. 101.053. APPLICATION OF SUBCHAPTER. (a) Sections 101.051 and 101.052 apply to an act whether performed by mail or otherwise. Venue for an act performed by mail is at the place where the matter transmitted by mail is delivered and takes effect.

(b) Sections 101.051 and 101.052 do not apply to:

(1) the lawful transaction of surplus lines insurance under Chapter 981;

(2) the lawful transaction of reinsurance by insurers;

(3) a transaction in this state that:

(A) involves a policy that:

(i) is lawfully solicited, written, and delivered outside this state; and

(ii) covers, at the time the policy is issued, only subjects of insurance that are not resident, located, or expressly to be performed in this state; and

(B) takes place after the policy is issued;

(4) a transaction:

(A) that involves an insurance contract independently procured by the insured from an insurance company not authorized to do insurance business in this state through negotiations occurring entirely outside this state;

(B) that is reported; and

(C) on which premium tax, if applicable, is paid in accordance with Chapter 226;

(5) a transaction in this state that:

(A) involves group life, health, or accident insurance, other than credit insurance, and group annuities in which the master policy for the group was lawfully issued and delivered in a state in which the insurer or person was authorized to do insurance business; and

(B) is authorized by a statute of this state;

(6) an activity in this state by or on the sole behalf of a nonadmitted captive insurance company that insures solely:

(A) directors' and officers' liability insurance for the directors and officers of the company's parent and affiliated companies;

(B) the risks of the company's parent and affiliated companies; or

(C) both the individuals and entities described by Paragraphs (A) and (B);

(7) the issuance of a qualified charitable gift annuity under Chapter 102; or

(8) a lawful transaction by a servicing company of the Texas workers' compensation employers' rejected risk fund under

Section 4.08, Article 5.76-2, as that article existed before its repeal.

(c) Subsection (b)(6) does not exempt an insured or insurer from the payment of an applicable tax on premium or from another applicable provision of this code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 411, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1419, Sec. 24,, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.008, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 9, eff. Oct. 1, 2003; Acts 2003, 78th Leg., ch. 1274, Sec. 13, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.01, eff. September 28, 2011.

Sec. 101.054. EXCEPTION; FULL-TIME SALARIED EMPLOYEE. Section 101.051(b)(6) does not prohibit a full-time salaried employee of a corporate insured from acting as an insurance manager or buyer in placing insurance on behalf of:

(1) the employee's employer; or

(2) a parent or affiliated company of the employer.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.055. EXCEPTION; CERTAIN ENTITIES THAT REIMBURSE MEDICAL EXPENSES. (a) Section 101.051(b)(7) does not apply to:

(1) a program otherwise authorized by law that is established:

(A) by a political subdivision of this state;

(B) by a state agency; or

(C) under Chapter 791, Government Code; or

(2) a multiple employer welfare arrangement that is fully insured as defined by 29 U.S.C. Section 1144(b)(6).

(b) Notwithstanding Subsection (a)(2), the commissioner may apply a law regulating the business of insurance to a multiple employer welfare arrangement described by that subdivision to the extent that the law provides:

(1) standards requiring the maintenance of specified levels

of contributions that the plan, or a trust established under the plan, must meet to be considered able to pay benefits in full when due; and

(2) provisions to enforce the standards described by Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PROHIBITION; ENFORCEMENT

Sec. 101.101. DEFINITION. In this subchapter, "person" means an individual or entity that is a person for purposes of Section 541.002.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.017, eff. April 1, 2009.

Sec. 101.102. UNAUTHORIZED INSURANCE PROHIBITED. (a) A person, including an insurer, may not directly or indirectly do an act that constitutes the business of insurance under this chapter except as authorized by statute.

(b) With respect to insurance of a subject that is resident, located, or to be performed in this state, this section does not prohibit an act performed outside this state, including the collection of premiums, by a person, including an insurer, authorized to do business in this state if the transaction and insurance contract otherwise comply with statute.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.103. POWERS OF COMMISSIONER; REMEDIES FOR CERTAIN CONDUCT. (a) If the commissioner has reason to believe a person, including an insurer, has violated or is threatening to violate this chapter or Chapter 226 or a rule adopted under this chapter or Chapter 226, or that a person, including an insurer, violating this chapter or Chapter 226 has engaged in or is threatening to engage in an unfair act, the commissioner may:

(1) issue a cease and desist order;
(2) impose an administrative penalty under Chapter 84;
(3) direct the person to make restitution;
(4) request the attorney general to recover a civil penalty, seek restitution, or seek injunctive relief, or any combination of those remedies, under this chapter or another law of this state; or
(5) take any combination of those actions.

(b) This section does not limit the department to the remedies specified in this section. The department and this state may choose at any time, without regard to prior proceedings under this section, any available remedy or action to immediately stop or enjoin a person from engaging in the business of insurance without statutory authorization.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1274, Sec. 14, eff. April 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 8, eff. September 1, 2021.

Sec. 101.104. REQUEST FOR INFORMATION. (a) If the commissioner or department has reason to believe that a person, including an insurer, is performing an act described by Section 101.051 or 101.052, the commissioner or department may send the person or insurer a written request for information relating to that act.

(b) A person receiving an inquiry under Subsection (a) must respond to the inquiry in writing not later than the 15th day after the day the person receives the inquiry. If the department or commissioner receives written notice from the person that additional time is required to respond to the inquiry, the department or commissioner shall grant a 10-day extension of the time to respond to the inquiry.

(c) Failure of a person or insurer to provide the information requested constitutes a violation under this chapter and may be used as evidence to support the issuance of a cease and desist order under Chapter 83. The commissioner may adopt as findings of fact allegations made by the department in a hearing under Chapter 83 if

the department sought information on the allegations from the person or insurer who is the respondent in the proceeding in a request for information and the person or insurer failed, wholly or partly, to respond to the request.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 9, eff. September 1, 2021.

Sec. 101.105. CIVIL PENALTY; RESTITUTION AND INJUNCTIVE RELIEF. (a) A person or entity, including an insurer, that violates this chapter or Chapter 226 is subject to a civil penalty of not more than $25,000 for each act of violation and for each day of violation.

(b) The commissioner may request that the attorney general institute a civil suit in a district court in Travis County for injunctive relief to restrain a person or entity, including an insurer, from continuing a violation or threat of violation described by Section 101.103(a). On application for injunctive relief and a finding that a person or entity, including an insurer, is violating or threatening to violate this chapter or Chapter 226, the district court shall grant the injunctive relief and issue an injunction without bond.

(c) On request by the commissioner, the attorney general shall institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, for restitution, or for any combination of those remedies, as authorized under this subchapter or another law of this state.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1274, Sec. 15, eff. April 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 10, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 11, eff. September 1, 2021.

Sec. 101.106. CRIMINAL PENALTY. (a) A person, including an

insurer, who intentionally, knowingly, or recklessly violates Section 101.102 commits an offense.

(b) An offense under this section is a felony of the third degree.

(c) It is a defense to prosecution under this section that Section 101.051 or 101.052, as applicable, by its terms does not apply to the person charged.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 819 (S.B. 781), Sec. 1, eff. June 17, 2005.

SUBCHAPTER D. CONTESTED CASES; PRIOR PROCEEDINGS; RULES

Sec. 101.151. POWERS OF COMMISSIONER; NOTICE OF HEARING. (a) The commissioner may set a hearing on whether to seek administrative relief under this chapter if the commissioner has reason to believe that:

(1) an insurer or person has violated or is threatening to violate this chapter or a rule adopted under this chapter; or

(2) an insurer or person acting in violation of this chapter has engaged in or is threatening to engage in an unfair act.

(b) A proceeding under this chapter is a contested case for purposes of Chapter 2001, Government Code, and applicable rules.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 25, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.009, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 13, eff. September 1, 2021.

Sec. 101.154. ENFORCEMENT; REFERRAL TO ATTORNEY GENERAL. The commissioner may refer the matter to the attorney general for enforcement if the commissioner has reason to believe that an insurer or person has:

(1) violated an order issued under this chapter; or

(2) failed to pay an assessed penalty or restitution.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 27, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.011, eff. Sept. 1, 2001.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 14, eff. September 1, 2021.

Sec. 101.155. EFFECT OF PRIOR PROCEEDINGS. The commissioner and department may proceed under this chapter or any other applicable law without regard to prior proceedings.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.156. RULES. The commissioner may adopt reasonable rules necessary to implement this chapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 15, eff. September 1, 2021.

SUBCHAPTER E. INSURANCE CONTRACTS WITH UNAUTHORIZED INSURERS

Sec. 101.201. VALIDITY OF INSURANCE CONTRACTS. (a) An insurance contract, agreement, or arrangement prohibited by Section 101.102, purported to be effective in this state and entered into by an unauthorized insurer or person, is unenforceable by the unauthorized insurer or person. A person who in any manner assisted directly or indirectly in the procurement, processing, administration, claims handling, adjusting, or claims payment of the contract, agreement, or arrangement is liable to the insured for the full amount of a claim or loss under the terms of the contract, agreement, or arrangement if the unauthorized insurer or person fails to pay the claim or loss.

(b) This section does not apply to insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer, as defined by Chapter 981, and independently procured contracts of insurance, as described in Section 101.053(b)(4), that are reported

and on which premium tax is paid in accordance with Chapter 225 or 226 or to another arrangement expressly authorized by law.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 11.012, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1274, Sec. 16, eff. April 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 16, eff. September 1, 2021.

Sec. 101.202. ATTORNEY'S FEES. (a) In an action against an unauthorized insurer or unauthorized person on a contract, agreement, or arrangement of insurance issued or delivered in this state to a resident of this state or to a corporation authorized to do business in this state, the court may award to the plaintiff a reasonable attorney's fee if:

(1) the insurer or person failed, for at least 30 days after a demand made before the commencement of the action, to make payment under the terms of the contract, agreement, or arrangement; and

(2) the failure to make the payment was vexatious and without reasonable cause.

(b) An unauthorized insurer's or person's failure to defend an action described by Subsection (a) is prima facie evidence that the failure to make payment was vexatious and without reasonable cause.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1419, Sec. 28, eff. June 1, 2003; Acts 2001, 77th Leg., ch. 1420, Sec. 11.013, eff. Sept. 1, 2001.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 17, eff. September 1, 2021.

Sec. 101.203. INVESTIGATION AND DISCLOSURE. (a) If the commissioner has reason to believe that insurance has been effectuated by or for a person in this state with an unauthorized person or insurer, the commissioner shall in writing order the person to:

(1) produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized persons or insurers; and

(2) disclose to the commissioner:

(A) the amount of insurance;

(B) the name and address of each insurer;

(C) the gross amount of premiums paid or to be paid; and

(D) the name and address of each person assisting in the solicitation, negotiation, or effectuation of the insurance.

(b) A person who fails to comply with a written order under Subsection (a) before the 31st day after the date of the order or who wilfully makes a disclosure that is untrue, deceptive, or misleading shall forfeit:

(1) $1,000; and

(2) an additional $1,000 for each day the person continues to fail to comply after expiration of the 30-day period.

(c) This section does not apply to:

(1) a transaction in this state that:

(A) involves a policy that:

(i) is lawfully solicited, negotiated, written, and delivered outside this state; and

(ii) covers, at the time the policy is issued, only subjects of insurance that are not resident, located, or expressly to be performed in this state; and

(B) takes place after the policy is issued; or

(2) surplus lines insurance procured through eligible surplus lines insurers as defined by Section 981.002.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.018, eff. April 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 60 (S.B. 1809), Sec. 18, eff. September 1, 2021.

SUBCHAPTER G. REPORTING OF UNAUTHORIZED INSURANCE

Sec. 101.301. REPORTING REQUIRED. (a) A person investigating or adjusting a loss or claim on a subject of insurance in this state

shall immediately report to the department an insurance policy or contract that has been entered into by an insurer that is not authorized to transact the insurance in this state.

(b) This section does not apply to:

(1) a transaction described by Section 101.053(b)(4); or

(2) surplus lines insurance procured through eligible surplus lines insurers as defined by Section 981.002.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2B.019, eff. April 1, 2009.

SUBCHAPTER H. CERTAIN PROCEEDINGS; BOND REQUIREMENTS

Sec. 101.351. DEFINITIONS. (a) In this subchapter, "court proceeding" includes an action or suit.

(b) The definition of "state" assigned by Section 311. 005, Government Code, does not apply in this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 29, eff. June 1, 2003.

Sec. 101.352. APPLICABILITY. This subchapter applies only to a court or administrative proceeding against an unauthorized person or insurer in which the person or insurer was served under Section 804.107.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 29, eff. June 1, 2003.

Sec. 101.353. BOND REQUIREMENT FOR COURT PROCEEDING. (a) Except as provided by Subsection (c), before an unauthorized person or insurer may file a pleading in a court proceeding to which this subchapter applies, the person or insurer must deposit cash or securities or file a bond with good and sufficient sureties approved by the court in an amount determined by the court as sufficient to pay any final judgment that may be rendered in the proceeding.

(b) An unauthorized person or insurer must file the deposit required by this section with the clerk of the court in which the proceeding is pending.

(c) The court may issue an order waiving the deposit or bond required by this section if the unauthorized person or insurer demonstrates to the court's satisfaction that the person or insurer maintains sufficient available funds or securities in a state in the United States, in trust or otherwise, to satisfy any final judgment that may be rendered in the proceeding.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 29, eff. June 1, 2003.

Sec. 101.354. BOND REQUIREMENT FOR ADMINISTRATIVE PROCEEDING. (a) Except as provided by Subsection (c), before an unauthorized person or insurer may file a pleading in an administrative proceeding of the department to which this subchapter applies, the person or insurer must, if required by statute, deposit cash or securities or file a bond with good and sufficient sureties approved by the commissioner in an amount determined by the commissioner as sufficient to pay any final order that may be entered in the proceeding.

(b) An unauthorized person or insurer must file the deposit required by this section with the chief clerk of the department.

(c) The commissioner may issue an order waiving the deposit or bond required by this section if the unauthorized person or insurer demonstrates to the commissioner's satisfaction that the person or insurer maintains sufficient available funds or securities in a state in the United States, in trust or otherwise, to satisfy any final order that may be entered in the proceeding.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 29, eff. June 1, 2003.

Sec. 101.355. POSTPONEMENT. A court or the commissioner may order any postponement necessary to afford an unauthorized person or insurer a reasonable opportunity to:

(1) comply with Section 101.353 or 101.354, as appropriate; and

(2) defend that court or administrative proceeding.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 29, eff. June 1, 2003.

Sec. 101.356. MOTION TO QUASH. Sections 101.353 and 101.354 do not prevent an unauthorized person or insurer from filing a motion to quash a writ or to set aside service made under Section 804.107 on the ground that the person or insurer has not engaged in the business of insurance as described by Section 101.051.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 29, eff. June 1, 2003.

CHAPTER 102. CHARITABLE GIFT ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. DEFINITIONS. In this chapter:

(1) "Charitable gift annuity" means an annuity:

(A) that is payable over the lives of one or two individuals;

(B) that is made in return for the transfer of cash or other property to a charitable organization; and

(C) the actuarial value of which is less than the value of the cash or other property transferred, with the difference in those values being a charitable deduction for federal tax purposes.

(2) "Charitable organization" means an entity described by:

(A) Section 501(c)(3), Internal Revenue Code of 1986; or

(B) Section 170(c), Internal Revenue Code of 1986.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.002. QUALIFIED CHARITABLE GIFT ANNUITY. A charitable gift annuity is a qualified charitable gift annuity for purposes of this chapter if it was issued before September 1, 1995, or if it is:

(1) described by Section 501(m)(5), Internal Revenue Code of 1986; and

(2) issued by a charitable organization that on the date of the annuity agreement:

(A) has, exclusive of the assets funding the annuity agreement, a minimum of $100,000 in unrestricted cash, cash equivalents, or publicly traded securities; and

(B) has been in continuous operation for at least three years or is a successor or affiliate of a charitable organization that has been in continuous operation for at least three years.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. ISSUANCE OF CHARITABLE GIFT ANNUITY

Sec. 102.051. NOT INSURANCE; EFFECT OF CERTAIN LAWS. The issuance of a qualified charitable gift annuity:

(1) does not constitute engaging in the business of insurance in this state;

(2) does not violate Section 15.05 or 17.46, Business & Commerce Code; and

(3) is not an unconscionable action or course of action for purposes of Section 17.50(a)(3), Business & Commerce Code.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. NOTICE

Sec. 102.101. NOTICE TO DONOR. (a) A charitable organization that issues a qualified charitable gift annuity shall give to the donor, at the time an agreement for a qualified charitable gift annuity is entered into, written notice that the annuity is not:

(1) insurance under the laws of this state;

(2) subject to regulation by the department; and

(3) protected by a guaranty association affiliated with the department.

(b) The notice must be in a separate paragraph of the annuity agreement in a print size at least as large as the print size generally used in the agreement.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.102. NOTICE TO DEPARTMENT. (a) A charitable organization that issues qualified charitable gift annuities shall notify the department's annuities division in writing not later than the date on which the organization enters into the organization's first qualified charitable gift annuity agreement.

(b) The notice required by this section must:

(1) be signed by an officer or director of the organization;

(2) identify the organization; and

(3) certify that:

(A) the organization is a charitable organization; and

(B) the annuities issued by the organization are qualified charitable gift annuities.

(c) The charitable organization may not be required to submit additional information except to determine appropriate penalties under Section 102.104.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.103. EFFECT ON ANNUITY OF FAILURE TO PROVIDE NOTICE. A charitable gift annuity that otherwise meets the requirements of Section 102.002 is a qualified charitable gift annuity without regard to whether the charitable organization that issues the annuity complies with the notice requirements of this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.104. ENFORCEMENT OF NOTICE REQUIREMENTS. (a) The commissioner may enforce the notice requirements of this subchapter by sending by certified mail, return receipt requested, a letter demanding that the charitable organization comply with the notice requirements.

(b) The department may fine the charitable organization in an amount not to exceed $1,000 for each qualified charitable gift annuity agreement issued by the organization until the time the organization complies with this subchapter.

Added by Acts 1999, 76th Leg., ch. 101, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. EFFECT OF CHARITABLE GIFT ANNUITY IN LITIGATION AND CERTAIN OTHER PROCEEDINGS

Sec. 102.151. IMMUNITY. Any person or entity involved in the issuance of a qualified charitable gift annuity shall have immunity from suit, including both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial, as to any claim brought by or on behalf of the donor or the donor's heirs or distributees alleging that the issuance of a charitable gift annuity

constitutes engaging in the business of insurance in this state. An interlocutory appeal may be taken if a court denies or otherwise fails to grant a motion for summary judgment that is based on an assertion of the immunity provided in this section.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 11.015(a), eff. Sept. 1, 2001.

Sec. 102.152. TREATMENT OF ANNUITY AS CHARITABLE GIFT ANNUITY; ESTOPPEL. In any litigation or other proceeding brought by or on behalf of a donor or the donor's heirs or distributees, an annuity that the donor has treated as a charitable gift annuity in a filing with the United States Internal Revenue Service shall be considered to be a charitable gift annuity issued by a charitable organization, as described by Subchapters A and B and Section 101.053(b).

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 11.015(a), eff. Sept. 1, 2001.

SUBTITLE C. PROGRAMS AFFECTING MULTIPLE LINES OF INSURANCE

CHAPTER 151. CONSOLIDATED INSURANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. DEFINITIONS. In this chapter:

(1) "Consolidated insurance program" means a program under which a principal provides general liability insurance coverage, workers' compensation insurance coverage, or both that are incorporated into an insurance program for a single construction project or multiple construction projects.

(2) "Construction project" means construction, remodeling, maintenance, or repair of improvements to real property. The term includes the immediate construction location and areas incidental and necessary to the work as defined in the construction contract documents. A construction project under this chapter does not include a single family house, townhouse, duplex, or land development directly related thereto.

(3) "Contractor" means any person who has entered into a construction contract or a professional services contract and is enrolled in the consolidated insurance program.

(4) "Claim" includes a loss or liability for a claim,

damage, expense, or governmentally imposed fine, penalty, administrative action, or other action.

(5) "Construction contract" means a contract, subcontract, or agreement, or a performance bond assuring the performance of any of the foregoing, entered into or made by an owner, architect, engineer, contractor, construction manager, subcontractor, supplier, or material or equipment lessor for the design, construction, alteration, renovation, remodeling, repair, or maintenance of, or for the furnishing of material or equipment for, a building, structure, appurtenance, or other improvement to or on public or private real property, including moving, demolition, and excavation connected with the real property. The term includes an agreement to which an architect, engineer, or contractor and an owner's lender are parties regarding an assignment of the construction contract or other modifications thereto.

(6) "Indemnitor" means a party to a construction contract that is required to provide indemnification or additional insured status to another party to the construction contract or to a third party.

(7) "Insurer" has the meaning assigned by Section 560.001.

(8) "Principal" means the person who procures the insurance policy under a consolidated insurance program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.

Sec. 151.002. RULES. The commissioner shall adopt rules as necessary to implement and enforce this subchapter and Subchapter B.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 1, eff. January 1, 2016.

Sec. 151.003. INFORMATION REQUIRED TO BE PROVIDED BY PRINCIPAL BEFORE ENTERING CONSTRUCTION CONTRACT. If a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date a principal enters into the

contract with the person, the principal shall provide the following information about the consolidated insurance program to the person:

(1) contact information, including phone number and e-mail address, for:

(A) the program administrator;

(B) the principal's risk manager; and

(C) the insurer's contact person for filing a claim for each type of insurance coverage provided in the program;

(2) the criteria for eligibility of enrollment into the program;

(3) a description of the project site covered by the program coverages;

(4) a summary of insurance coverages to be provided to the contractor under the program, including:

(A) the policy form number and issuing organization if the policy is a standardized insurance policy or, if the policy is not standardized, a sample policy form;

(B) per occurrence and aggregate limits of insurance coverages and any sublimits that may apply;

(C) term of coverages for each limit and sublimit, if any; and

(D) any material endorsements to the policy described under Paragraph (A);

(5) a summary of insurance coverages to be provided by the contractor;

(6) instructions on how to include or exclude costs of insurance provided by the program in the person's proposal for work on the construction project;

(7) a description of the audit or claims procedures related to the program that may result in additional cost to a contractor, including the method of calculation for any assessment charged to a contractor related to the principal's payment of a policy deductible and any other specific cost amounts; and

(8) a description of a contractor's duties related to reporting:

(A) payroll and retention of documentation; and

(B) claims and participation in safety inspections and incident reporting.

Added by Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 2, eff.

January 1, 2016.

Sec. 151.004. INFORMATION REQUIRED TO BE PROVIDED BY CONTRACTOR BEFORE ENTERING CONSTRUCTION CONTRACT. If a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date a contractor enters into the contract with the person, the contractor must provide to the person, in an accurate form, the information listed in Section 151.003 that the contractor received under that section.

Added by Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 2, eff. January 1, 2016.

Sec. 151.005. RELIANCE ON INFORMATION PROVIDED. The information required under Section 151.003 must be accurate, and a person who receives the information under Section 151.003 or 151.004 may justifiably rely on the information to decide whether to enter into the construction contract.

Added by Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 2, eff. January 1, 2016.

Sec. 151.006. FAILURE TO FURNISH. (a) A person may not be required to enter into a construction contract that requires enrollment in a consolidated insurance program unless the person is provided the information in compliance with Section 151.003 or 151.004, as applicable. If the information required under Section 151.003 is not provided to a person within the 10-day period under Section 151.003 or 151.004, as applicable, the person may elect not to enroll in the consolidated insurance program.

(b) If a person elects not to enroll in the consolidated insurance program under Subsection (a), a principal or contractor may provide the person with the information required under Section 151.003 after the 10-day period under Section 151.003 or 151.004, as applicable. The person must elect whether to enroll in the consolidated insurance program not later than the 10th day after the date that the information is provided under this subsection.

(c) If a person elects not to enroll in the consolidated

insurance program under Subsection (a) or (b) and enters into a construction contract for the construction project, the person must obtain insurance coverage for the person's work on the project that substantially complies with the coverage terms and liability limits imposed for other persons who work on the construction project but who are not insured under the consolidated insurance program.

(d) The principal or contractor, as applicable, shall compensate a person with whom the principal or contractor contracts and who obtains insurance coverage under Subsection (c) for the actual cost of that insurance coverage.

Added by Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 2, eff. January 1, 2016.

Sec. 151.007. REQUEST FOR INSURANCE POLICY; DEADLINE TO PROVIDE. (a) A contractor may request in writing from the principal, or from the party with which the contractor has a direct contractual relationship, a complete copy of the insurance policy that provides coverage for the contractor under the consolidated insurance program.

(b) The copy described by Subsection (a) must be provided to the requesting contractor not later than the later of:

(1) the 30th day after the date the request was sent; or

(2) the 60th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

Added by Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 2, eff. January 1, 2016.

Sec. 151.008. FAILURE TO PROVIDE INSURANCE POLICY. It is a material breach of a contractor's construction contract if a complete copy of the insurance policy requested by the contractor under Section 151.007 is not provided before the later of:

(1) the 75th day after the date the request was sent; or

(2) the 90th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

Added by Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 2, eff. January 1, 2016.

Sec. 151.009. ELECTRONIC DELIVERY. (a) On a person's express request, a principal or contractor shall provide information under this subchapter in hard copy written form.

(b) If a person does not expressly request information be provided in hard copy written form, the principal or contractor may comply with the requirements of this chapter by:

(1) transmitting the information by facsimile or e-mail; or

(2) allowing access to the information on the principal's, or the principal's agent's, Internet website.

Added by Acts 2015, 84th Leg., R.S., Ch. 427 (S.B. 1081), Sec. 2, eff. January 1, 2016.

SUBCHAPTER B. GENERAL REQUIREMENTS

Sec. 151.051. DURATION OF GENERAL LIABILITY COVERAGE. A consolidated insurance program that provides general liability insurance coverage must provide completed operations insurance coverage for a policy period of not less than three years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.

SUBCHAPTER C. REQUIREMENTS RELATED TO INDEMNIFICATION

Sec. 151.101. APPLICABILITY. (a) This subchapter applies to a construction contract for a construction project for which an indemnitor is provided or procures insurance subject to:

(1) this chapter; or

(2) Title 10.

(b) Subsection (a) applies regardless of whether the insurance is provided or procured before or after execution of the contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.

Sec. 151.102. AGREEMENT VOID AND UNENFORCEABLE. Except as provided by Section 151.103, a provision in a construction contract, or in an agreement collateral to or affecting a construction contract, is void and unenforceable as against public policy to the extent that it requires an indemnitor to indemnify, hold harmless, or defend a party, including a third party, against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnitee, its agent or employee, or any third party under the control or supervision of the indemnitee, other than the indemnitor or its agent, employee, or subcontractor of any tier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.

Sec. 151.103. EXCEPTION FOR EMPLOYEE CLAIM. Section 151.102 does not apply to a provision in a construction contract that requires a person to indemnify, hold harmless, or defend another party to the construction contract or a third party against a claim for the bodily injury or death of an employee of the indemnitor, its agent, or its subcontractor of any tier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.

Sec. 151.104. UNENFORCEABLE ADDITIONAL INSURANCE PROVISION. (a) Except as provided by Subsection (b), a provision in a construction contract that requires the purchase of additional insured coverage, or any coverage endorsement, or provision within an insurance policy providing additional insured coverage, is void and unenforceable to the extent that it requires or provides coverage the scope of which is prohibited under this subchapter for an agreement to indemnify, hold harmless, or defend.

(b) This section does not apply to a provision in an insurance policy, or an endorsement to an insurance policy, issued under a consolidated insurance program to the extent that the provision or endorsement lists, adds, or deletes named insureds to the policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1,

eff. January 1, 2012.

Sec. 151.105. EXCLUSIONS. This subchapter does not affect:

(1) an insurance policy, including a policy issued under an owner-controlled or owner-sponsored consolidated insurance program or a contractor-controlled or contractor-sponsored consolidated insurance program, except as provided by Section 151.104;

(2) a cause of action for breach of contract or warranty that exists independently of an indemnity obligation, including an indemnity obligation in a construction contract under a construction project for which insurance is provided under a consolidated insurance program;

(3) indemnity provisions contained in loan and financing documents, other than construction contracts to which the contractor and owner's lender are parties as provided under Section 151.001(5);

(4) general agreements of indemnity required by sureties as a condition of execution of bonds for construction contracts;

(5) the benefits and protections under the workers' compensation laws of this state;

(6) the benefits or protections under the governmental immunity laws of this state;

(7) agreements subject to Chapter 127, Civil Practice and Remedies Code;

(8) a license agreement between a railroad company and a person that permits the person to enter the railroad company's property as an accommodation to the person for work under a construction contract that does not primarily benefit the railroad company;

(9) an indemnity provision pertaining to a claim based upon copyright infringement;

(10) an indemnity provision in a construction contract, or in an agreement collateral to or affecting a construction contract, pertaining to:

(A) a single family house, townhouse, duplex, or land development directly related thereto; or

(B) a public works project of a municipality; or

(11) a joint defense agreement entered into after a claim is made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.

SUBCHAPTER D. NONWAIVER

Sec. 151.151. NONWAIVER. A provision of this chapter may not be waived by contract or otherwise.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1292 (H.B. 2093), Sec. 1, eff. January 1, 2012.

TITLE 3. DEPARTMENT FUNDS, FEES, AND TAXES

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 201. COLLECTION OF REVENUE AND ADMINISTRATION OF FUNDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. TEXAS DEPARTMENT OF INSURANCE OPERATING ACCOUNT. (a) The Texas Department of Insurance operating account is an account in the general revenue fund. The account includes the following:

(1) taxes and fees received by the commissioner or comptroller that are required by this code to be deposited to the credit of the account; and

(2) money or credits received by the department or commissioner from sales, reimbursements, and fees authorized by law other than this code, including money or credits received from:

(A) charges for providing copies of public information under Chapter 552, Government Code;

(B) the disposition of surplus or salvage property under Subchapters C and D, Chapter 2175, Government Code;

(C) the sale of publications and other printed material under Section 2052.301, Government Code;

(D) miscellaneous transactions and sources under Section 403.011 or 403.012, Government Code;

(E) charges for postage spent to serve legal process under Section 17.025, Civil Practice and Remedies Code;

(F) the comptroller involving warrants for which payment is barred under Chapter 404, Government Code;

(G) sales or reimbursements authorized by the General Appropriations Act; and

(H) the sale of property purchased with money from the account or a predecessor fund or account.

(b) The commissioner shall administer money in the account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act.

(c) Money deposited to the credit of the account may be used for any purpose for which money in the account is authorized to be used by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.002. ACCOUNTING PROCEDURE. The commissioner shall maintain a procedure to account for the receipt, disbursement, and allocation of money deposited in the Texas Department of Insurance operating account, including recordkeeping procedures adequate for:

(1) the commissioner or comptroller, as applicable, to adjust the tax assessments and fee schedules as authorized by this code; and

(2) the state auditor to determine the source of all receipts and expenditures.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.003. REFUNDS. If the department determines that a person, firm, or corporation through mistake of law or fact erroneously paid or overpaid a fee or other amount of money, including any interest or penalty, administered or collected by the department, the department may refund the erroneous payment or overpayment by warrant on the state treasury from any funds appropriated for that purpose.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.004. ELECTRONIC TRANSFERS. (a) The commissioner shall adopt rules for the electronic transfer of any fee, guarantee fund, or other money owed to or held for the benefit of this state that the department has the responsibility to administer under this code or another insurance law of this state.

(b) The commissioner shall require the electronic transfer of any amount held or owed that exceeds $500,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.005. TRANSFER OF SECURITIES. (a) A transfer by the department of any security that is held in any way by the department is not valid unless the transfer is countersigned by the comptroller.

(b) The comptroller shall:

(1) countersign any security transfer presented by the department;

(2) keep a record of all transfers that includes:

(A) the name of the transferee, unless the security is transferred in blank; and

(B) a description of the security;

(3) when countersigning a security transfer, advise the company concerned by mail of the details of the transaction; and

(4) state, in the comptroller's annual report to the legislature, the countersigned transfers and the amount of the transfers.

(c) To verify the correctness of records:

(1) the department is entitled to free access to the comptroller's records kept under Subsection (b); and

(2) the comptroller is entitled to free access to the books and other department documents relating to securities held by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

SUBCHAPTER B. ADMINISTRATION

Sec. 201.051. POWERS AND DUTIES OF COMPTROLLER. (a) Except as otherwise provided by this code or another insurance law of this state, the comptroller shall administer and enforce the provisions of this code and other insurance laws of this state that relate to the administration, collection, and reporting of taxes and certain fees and assessments imposed under this code or another insurance law of this state, as specifically provided by this code.

(b) The comptroller may:

(1) adopt rules to implement the administration,

collection, reporting, and enforcement responsibilities assigned to the comptroller under this code or another insurance law of this state; and

(2) prescribe appropriate report forms, establish or alter tax report due dates not otherwise specifically prescribed by this code or another insurance law of this state, and otherwise adapt the functions transferred to the comptroller under Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, to increase efficiency and cost-effectiveness.

(c) A rule adopted by the comptroller that relates to the administration, collection, reporting, or enforcement of taxes imposed under this code prevails over a conflicting rule, policy, or procedure established by the department, the commissioner, or otherwise.

(d) Subtitles A and B, Title 2, Tax Code, apply to the administration, collection, and enforcement by the comptroller of taxes and certain fees and assessments under this code or another insurance law of this state. Except as otherwise provided by this code, the powers granted to the comptroller under those provisions of the Tax Code do not limit and are exclusive of the powers granted to the department or the commissioner in relation to other fees and assessments under this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.052. REIMBURSEMENT. (a) The department shall reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under this code or another insurance law of this state.

(b) The comptroller shall certify to the commissioner the total amount of expenses estimated to be required to perform the comptroller's duties under this code or another insurance law of this state for each fiscal biennium. The comptroller shall provide copies of the certification to the budget division of the governor's office and to the Legislative Budget Board.

(c) The amount certified by the comptroller shall be transferred from the Texas Department of Insurance operating account to the appropriate portion of the general revenue fund. It is the legislature's intent that money in the Texas Department of Insurance

operating account to be transferred under this subsection should reflect the revenues from maintenance taxes paid by insurers under this code or another insurance law of this state.

(d) In setting maintenance taxes for each fiscal year, the commissioner shall ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under this code or another insurance law of this state.

(e) If the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller, other money in the Texas Department of Insurance operating account shall be used to reimburse the appropriate portion of the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.053. COOPERATION BETWEEN DEPARTMENT AND COMPTROLLER. The commissioner and the comptroller shall cooperate fully in performing their respective duties under this code or another insurance law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.054. INFORMATION SHARING; FEDERAL IDENTIFICATION NUMBERS. (a) The department shall comply with each reasonable request from the comptroller relating to the sharing of information gathered or compiled in connection with functions the comptroller performs under this code or another insurance law of this state.

(b) The department shall maintain a record of the federal identification number of each entity subject to regulation under this code or another insurance law of this state and shall include the appropriate number in any communication to or information shared with the comptroller relating to that entity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 201.055. FILING DATE OF REPORT OR PAYMENT DELIVERED BY POSTAL SERVICE. Except as otherwise specifically provided, for a report, including a tax report, or payment that is required to be filed or made in the offices of the comptroller and that is delivered by the United States Postal Service to the offices of the comptroller after the date on which the report or payment is required to be filed or made, the date of filing or payment is the date of:

(1) the postal service postmark stamped on the cover in which the report or payment is mailed; or

(2) any other evidence of mailing authorized by the postal service reflected on the cover in which the report or payment is mailed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 202. FEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 202.001. APPLICABILITY OF CHAPTER. Except as provided by Section 202.052, the insurers that are subject to a fee imposed under this chapter include:

(1) stock insurance companies;

(2) mutual insurance companies;

(3) local mutual aid associations;

(4) statewide mutual assessment companies;

(5) group hospital service corporations; and

(6) stipulated premium companies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 202.002. DETERMINATION OF FEES. The department shall, subject to the limits established by this chapter, set the amount of the fees imposed under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 202.003. FEES FOR COPIES. (a) The department shall set and collect a fee for copying any paper of record with the department. The fee shall be set in an amount sufficient to

reimburse the state for the actual expense.

(b) The department may make and distribute copies of a paper containing rating information without charge or for a fee that the commissioner considers appropriate for administering the premium rating laws by properly distributing rating information.

(c) This section does not affect Article 5.29.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 202.004. REDUCED FEES FOR CERTAIN INSURERS. An insurer to which this chapter applies that had gross premium receipts of less than $450,000, according to the insurer's annual statement for the preceding year ending December 31, is required to pay only one-half the amount of a fee otherwise required to be paid under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

SUBCHAPTER B. SPECIFIC MAXIMUM FEES

Sec. 202.051. GENERAL FEES IMPOSED ON INSURERS. The department shall impose and receive fees for the use of the state from each authorized insurer writing insurance in this state. The amount of the fees may not exceed:

(1) for filing an amendment to a certificate of authority if the charter is not amended $100;

(2) for affixing the official seal and certifying to the seal $20;

(3) for reservation of name $200;

(4) for renewal of reservation of name $50;

(5) for filing an application for admission of a foreign or alien insurer $4,000;

(6) for filing an original charter of an insurer, including issuance of a certificate of authority $3,000;

(7) for filing an amendment to a charter if a hearing is held $500;

(8) for filing an amendment to a charter if a hearing is not held $250;

(9) for filing a designation of an attorney for service of process or an amendment of a designation $50;

(10) for filing a copy of a total reinsurance agreement

$1,500;

(11) for filing a copy of a partial reinsurance agreement $300;

(12) for accepting a security deposit $200;

(13) for substitution or amendment of a security deposit $100;

(14) for certification of a statutory deposit $20;

(15) for filing a notice of intent to locate books and records outside this state under Chapter 803 $300;

(16) for filing a statement under Subchapters D and E, Chapter 823, for the first $9.9 million of the consideration $1,000;

(17) for filing a statement under Subchapters D and E, Chapter 823, if the amount of the consideration exceeds $9.9 million . . . an additional $500 for each additional $10 million of the consideration that exceeds $9.9 million, but not more than a total amount of $10,000 under this subdivision and Subdivision (16);

(18) for filing a registration statement under Subchapter B, Chapter 823 $300;

(19) for filing for review under Subchapter C, Chapter 823, or Subchapter L, Chapter 884 $500;

(20) for filing a direct reinsurance agreement under Subchapter K, Chapter 884 $300;

(21) for filing for approval of a merger under Chapter 824 $1,500;

(22) for filing for approval of reinsurance under Chapter 828 $1,500;

(23) for filing restated articles of incorporation for a domestic, foreign, or alien insurer $500;

(24) for filing a joint control agreement $100;

(25) for filing a substitution or amendment to a joint control agreement $40; and

(26) for filing a change of attorney in fact $500.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 202.052. FEES IMPOSED ON CERTAIN INSURERS. (a) The department shall impose and the comptroller shall collect a fee for the use of the state from each authorized insurer writing a class of

insurance that may be written by an insurer operating under Chapter 841 for filing of the insurer's annual statement. The amount of the fee may not exceed $500.

(b) Subtitles A and B, Title 2, Tax Code, apply to a fee collected under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1039 (H.B. 1849), Sec. 1, eff. September 1, 2007.

SUBCHAPTER C. DEPOSIT AND USE OF FEES

Sec. 202.101. DEPOSIT AND USE OF FEES GENERALLY. Amounts collected under Section 202.051:

(1) shall be deposited to the credit of the Texas Department of Insurance operating account; and

(2) may be appropriated only for the use and benefit of the department as provided by the General Appropriations Act to pay salaries and other expenses arising from and in connection with investigations of violations of the insurance laws of this state and the examination or licensing of insurers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 202.102. DEPOSIT AND USE OF CERTAIN OTHER FEES. Amounts collected by the comptroller under Section 202.052:

(1) shall be deposited to the credit of the general revenue fund; and

(2) are available for appropriation to the department as provided by the General Appropriations Act to pay salaries and other expenses arising from investigations of violations of the insurance laws of this state and the examination or licensing of insurers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 203. GENERAL PROVISIONS RELATING TO TAXES

Sec. 203.001. LIMITATION ON CERTAIN ADDITIONAL TAXES. (a) This section applies to:

(1) an insurer authorized to engage in the business of insurance in this state other than an eligible surplus lines insurer; and

(2) a health maintenance organization authorized to engage in the business of a health maintenance organization in this state.

(b) Except as otherwise provided by this code or the Labor Code, an insurer or health maintenance organization subject to a tax imposed by Chapter 4, 221, 222, 223A, 224, or 257 may not be required to pay any additional tax imposed by this state or a county or municipality in proportion to the insurer's or health maintenance organization's gross premium receipts.

(c) Subsection (b) does not:

(1) limit the applicability of other taxes, fees, and assessments imposed by this code; or

(2) prohibit the imposition and collection of state, county, and municipal taxes on the property of insurers or health maintenance organizations or state, county, and municipal taxes imposed by other laws of this state, unless a specific exemption for insurers or health maintenance organizations is provided in those laws.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 3, eff. June 14, 2013.

Sec. 203.002. TAX PAYMENT REQUIRED FOR CERTAIN CERTIFICATES; UNREPORTED GROSS PREMIUM RECEIPTS. (a) A Life Insurance Company May not receive a certificate of authority to engage in the business of insurance in this state until all taxes imposed under this code or another insurance law of this state are paid.

(b) If the commissioner determines by examining a company or by other means that the company's gross premium receipts in a year exceed the amount reported by the company for that year, the commissioner shall report that determination to the comptroller. The comptroller shall institute a collection action as the comptroller considers appropriate to collect taxes due on unreported gross premium receipts.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

SUBTITLE B. INSURANCE PREMIUM TAXES

CHAPTER 221. PROPERTY AND CASUALTY INSURANCE PREMIUM TAX

Sec. 221.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to an insurer, organization, or concern that receives gross premiums subject to taxation under Section 221.002, including a reciprocal or interinsurance exchange that elects to be subject to taxation under this chapter in accordance with Section 224.003 and a Lloyd's plan.

(b) This chapter does not apply to:

(1) a fraternal benefit society, including a fraternal benefit society operating under Chapter 885;

(2) a group hospital service corporation operating under Chapter 842;

(3) a stipulated premium company operating under Chapter 884;

(4) a mutual assessment association, company, or corporation regulated under Chapter 887;

(5) a purely cooperative or mutual fire insurance company carried on by its members solely for the protection of their own property and not for profit, except as provided by Section 221.002(b)(13); or

(6) a farm mutual insurance company operating under Chapter 911, unless the company is acting as a fronting insurer.

(c) In this section, "fronting insurer" means a farm mutual insurance company:

(1) issuing an insurance policy that is the result of:

(A) marketing by an insurer not affiliated with the farm mutual insurance company;

(B) an application submitted by a consumer to an insurer not affiliated with the farm mutual insurance company; or

(C) an agreement with an insurer that is not a farm mutual insurance company solely for the purpose of being regulated under Chapter 911; or

(2) that cedes 85 percent or more of the farm mutual insurance company's direct written premium to one or more nonaffiliated reinsurers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1083 (H.B. 3496), Sec. 1, eff. September 1, 2017.

Sec. 221.002. TAX IMPOSED; RATE. (a) An annual tax is imposed on each insurer that receives gross premiums subject to taxation under this section. The rate of the tax is 1.6 percent of the insurer's taxable premium receipts for a calendar year.

(b) Except as provided by Subsection (c), in determining an insurer's taxable premium receipts, the insurer shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and any other considerations for insurance written by the insurer in a calendar year from any kind of insurance written by the insurer on each kind of property or risk located in this state, including:

(1) fire insurance;

(2) ocean marine insurance;

(3) inland marine insurance;

(4) accident insurance;

(5) credit insurance;

(6) livestock insurance;

(7) fidelity insurance;

(8) guaranty insurance;

(9) surety insurance;

(10) casualty insurance;

(11) workers' compensation insurance;

(12) employers' liability insurance;

(13) crop insurance written by a farm mutual insurance company;

(14) home warranty insurance; and

(15) travel insurance.

(c) The following premium receipts are not included in determining an insurer's taxable premium receipts:

(1) premium receipts received from the business of title insurance;

(2) premium receipts received from the business of life insurance, personal accident insurance, life and accident insurance, or health and accident insurance for profit, written by a life insurance company, life and accident insurance company, health and

accident insurance company, or for mutual benefit or protection in this state;

(3) premium receipts received from another authorized insurer for reinsurance;

(4) returned premiums and dividends paid to policyholders;

(5) premiums excluded by another law of this state; and

(6) premiums or service fees retained by a bail bond surety licensed under Chapter 1704, Occupations Code, or by a property and casualty agent in connection with the execution or delivery of a bail bond as defined by Section 1704.001, Occupations Code.

(d) In determining an insurer's taxable premium receipts, an insurer is not entitled to a deduction for premiums paid for reinsurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 1, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 896 (H.B. 1047), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 6, eff. September 1, 2019.

Sec. 221.003. TAX DUE DATES. (a) The total tax imposed by this chapter is due and payable not later than March 1 after the end of the calendar year for which the tax is due.

(b) An insurer that had a net tax liability for the previous calendar year of more than $1,000 shall make semiannual prepayments of tax on March 1 and August 1. The tax paid on each date must be equal to 50 percent of the total amount of tax the insurer paid under this chapter for the previous calendar year. If the insurer did not pay a tax under this chapter during the previous calendar year, the tax paid on each date must be equal to the tax that would be owed on the aggregate of the gross premiums for the two previous calendar quarters.

(c) The comptroller may refund any overpayment of taxes that results from the semiannual prepayment system prescribed by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 221.004. TAX REPORT. (a) An insurer liable for the tax imposed by this chapter must file annually with the comptroller a tax report on a form prescribed by the comptroller.

(b) The tax report is due on the date the tax is due under Section 221.003(a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 221.005. CHANGE IN DUE DATES. (a) The comptroller by rule may change the dates for reporting and paying taxes under this chapter to improve operating efficiencies within the agency.

(b) A change by the comptroller in a reporting or payment date must retain the system of semiannual prepayments prescribed by Section 221.003.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 221.006. CREDIT FOR FEES PAID. (a) An insurer is entitled to a credit on the amount of tax due under this chapter for all examination and evaluation fees paid to this state during the calendar year for which the tax is due. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a foreign insurance company.

(b) The credit provided by this section is in addition to any other credit authorized by statute.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.001(a), eff. September 1, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 2.01, eff. September 28, 2011.

Sec. 221.007. FAILURE TO PAY TAXES. An insurer that fails to pay all taxes imposed by this chapter is subject to Section 203.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 222. LIFE, HEALTH, AND ACCIDENT INSURANCE PREMIUM TAX

Sec. 222.001. APPLICABILITY OF CHAPTER.

Text of subsection effective until April 1, 2025

(a) This chapter applies to any insurer, including a group hospital service corporation, any health maintenance organization, and any managed care organization that receives gross premiums or revenues subject to taxation under Section 222.002, including companies operating under Chapter 841, 842, 843, 861, 881, 882, 883, 884, 941, 942, 982, or 984, Insurance Code, Chapter 533, Government Code, or Title XIX of the federal Social Security Act.

Text of subsection effective on April 1, 2025

(a) This chapter applies to any insurer, including a group hospital service corporation, any health maintenance organization, and any managed care organization that receives gross premiums or revenues subject to taxation under Section 222.002, including companies operating under Chapter 841, 842, 843, 861, 881, 882, 883, 884, 941, 942, 982, or 984, Insurance Code, Chapter 540 or 540A, Government Code, as applicable, or Title XIX of the federal Social Security Act.

(b) This chapter does not apply to:

(1) a fraternal benefit society, including a fraternal benefit society operating under Chapter 885;

(2) a local mutual aid association operating under Chapter 886; or

(3) a society that limits its membership to one occupation.

(c) For purposes of computing the tax imposed by this chapter, a managed care organization is treated in the same manner as a health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.002(a), eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.118, eff. April 1, 2025.

Sec. 222.002. TAX IMPOSED. (a) An annual tax is imposed on:

(1) each insurer that receives gross premiums subject to taxation under this section; and

(2) each health maintenance organization that receives gross revenues from the sale of health maintenance certificates or contracts.

(b) Except as otherwise provided by this section, in determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues, the insurer or health maintenance organization shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations received by the insurer or health maintenance organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups located in this state and arising from the business of a health maintenance organization or the business of life insurance, accident insurance, health insurance, life and accident insurance, life and health insurance, health and accident insurance, life, health, and accident insurance, including variable life insurance, credit life insurance, and credit accident and health insurance for profit or otherwise or for mutual benefit or protection.

(c) The following are not included in determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues:

(1) returned premiums or revenues;

(2) dividends applied to purchase paid-up additions to insurance or to shorten the endowment or premium payment period;

(3) premiums received from an insurer for reinsurance;

(4) premiums or revenues received from the treasury of the United States for insurance or benefits contracted for by the federal government in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments;

(5) premiums or revenues paid on group health, accident, and life policies or contracts in which the group covered by the policy or contract consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or

(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality; or

(6) premiums or revenues excluded by another law of this state.

(d) For purposes of Subsection (c)(3), a stop-loss or excess loss insurance policy issued to a health maintenance organization is considered reinsurance. In determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues, an insurer or health maintenance organization is not entitled to a deduction for premiums paid for reinsurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.002(b), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 2, eff. June 15, 2007.

Sec. 222.003. TAX RATES. (a) Except as provided by Subsection (b), the rate of the tax imposed by this chapter on an insurer is 1.75 percent of the insurer's taxable gross premiums received during a calendar year.

(b) The rate of the tax imposed by this chapter on an insurer that receives taxable gross premiums from the business of life insurance is:

(1) 0.875 percent of the first $450,000 of taxable gross premiums received during a calendar year from the business of life insurance; and

(2) 1.75 percent of the remaining taxable gross premiums received during that calendar year from the business of life insurance.

(c) The rate of the tax imposed by this chapter on a health maintenance organization is:

(1) 0.875 percent of the first $450,000 of taxable gross revenues received during a calendar year for the issuance of health maintenance certificates or contracts; and

(2) 1.75 percent of the remaining taxable gross revenues

received during that calendar year for the issuance of health maintenance certificates or contracts.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 222.004. TAX DUE DATES. (a) The total tax imposed by this chapter is due and payable not later than:

(1) March 1 after the end of the calendar year for which the tax is due;

(2) the date the annual statement for the insurer or health maintenance organization is required to be filed with the commissioner after the end of the calendar year for which the tax is due; or

(3) another date prescribed by the comptroller.

(b) An insurer or health maintenance organization that had a net tax liability for the previous calendar year of more than $1,000 shall make semiannual prepayments of tax on March 1 and August 1. The tax paid on each date must be equal to 50 percent of the total amount of tax the insurer or health maintenance organization paid under this chapter for the previous calendar year. If the insurer or health maintenance organization did not pay a tax under this chapter during the previous calendar year, the tax paid on each date must be equal to the tax that would be owed on the aggregate of the taxable gross premiums or taxable gross revenues for the two previous calendar quarters.

(c) The comptroller may refund any overpayment of taxes that results from the semiannual prepayment system prescribed by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 222.005. TAX REPORT. (a) An insurer or health maintenance organization liable for the tax imposed by this chapter must file annually with the comptroller a tax report on a form prescribed by the comptroller.

(b) The tax report is due on the date the tax is due under Section 222.004(a).

(c) The comptroller may require the insurer or health maintenance organization to file any additional relevant information

that is reasonably necessary to verify the amount of tax due.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 222.006. CHANGE IN DUE DATES. (a) The comptroller by rule may change the dates for reporting and paying taxes under this chapter to improve operating efficiencies within the agency.

(b) A change by the comptroller in a reporting or payment date must retain the system of semiannual prepayments prescribed by Section 222.004.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 222.007. CREDIT FOR FEES PAID. (a) Except as otherwise provided by this subsection, an insurer or health maintenance organization is entitled to a credit on the amount of tax due under this chapter for all examination and evaluation fees paid to this state during the calendar year for which the tax is due. An insurer is not entitled to a credit on the amount of tax due under this chapter for fees paid for valuing life insurance policies. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a foreign insurance company.

(b) The credit provided by this section is in addition to any other credit authorized by statute.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.003(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1039 (H.B. 1849), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 2.02, eff. September 28, 2011.

Sec. 222.008. FAILURE TO PAY TAXES. An insurer or health maintenance organization that fails to pay all taxes imposed by this chapter is subject to Section 203.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 223. TITLE INSURANCE PREMIUM TAX

Sec. 223.001. APPLICABILITY OF CERTAIN DEFINITIONS. In this chapter, a term defined by Chapter 2501 has the meaning assigned by that chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.002. APPLICABILITY OF CHAPTER. This chapter applies to a title insurance company that receives premiums subject to taxation under Section 223.003.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.003. TAX IMPOSED. (a) An annual tax is imposed on all premiums from the business of title insurance. The rate of the tax is 1.35 percent of title insurance taxable premiums for a calendar year, including any premiums retained by a title insurance agent as provided by Section 223.005. For purposes of this chapter, a person engages in the business of title insurance if the person engages in an activity described by Section 2501.005.

(b) Except as provided by Subsection (c), in determining a title insurance company's taxable premiums, the company shall include the total amounts of premiums received in a calendar year from title insurance written on property located in this state.

(c) The following premiums are not included in determining a title insurance company's taxable premiums:

(1) premiums received from other title insurance companies for reinsurance; and

(2) returned premiums and dividends paid to policyholders.

(d) In determining a title insurance company's taxable premiums, a title insurance company is not entitled to a deduction for premiums paid for reinsurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 3, eff.

June 15, 2007.

Sec. 223.004. LIMITATION ON CERTAIN ADDITIONAL TAXES. (a) Except as otherwise provided by this code or the Labor Code, a title insurance company or title insurance agent subject to the tax imposed by this chapter may not be required to pay any additional tax imposed by this state or a county or municipality in proportion to the company's or agent's gross premium receipts.

(b) This section does not:

(1) limit the applicability of other taxes, fees, and assessments imposed by this code; or

(2) prohibit the imposition and collection of state, county, and municipal taxes on the property of title insurance companies or title insurance agents or state, county, and municipal taxes imposed by other laws of this state, unless a specific exemption for title insurance companies or title insurance agents is provided in those laws.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.005. PREMIUMS PAID TO TITLE INSURANCE AGENT. (a) Premiums received from the business of title insurance are subject to the tax under this chapter regardless of whether paid to a title insurance company or retained by a title insurance agent, with the tax being in lieu of the tax on the premiums retained by a title insurance agent.

(b) The state facilitates the collection of the premium tax on the premiums retained by a title insurance agent by establishing the division of the premiums between the title insurance company and title insurance agent so that the company receives the premium tax due on the agent's portion of the premiums and remits it to the state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.006. TAX DUE DATES. (a) The total tax imposed by this chapter is due and payable not later than:

(1) March 1 after the end of the calendar year for which

the tax is due; or

(2) another date prescribed by the comptroller.

(b) A title insurance company that had a net tax liability for the previous calendar year of more than $1,000 shall make semiannual prepayments of tax on March 1 and August 1. The tax paid on each date must be equal to 50 percent of the total amount of tax the company paid under this chapter for the previous calendar year. If the company did not pay a tax under this chapter during the previous calendar year, the tax paid on each date must be equal to the tax that would be owed on the aggregate of the gross premiums for the two previous calendar quarters.

(c) The comptroller may refund any overpayment of taxes that results from the semiannual prepayment system prescribed by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.007. TAX REPORTS. (a) A title insurance company liable for the tax imposed by this chapter must file annually with the comptroller a tax report on a form prescribed by the comptroller.

(b) The tax report is due on the date the tax is due under Section 223.006(a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.008. RULES. (a) The commissioner or the comptroller, as appropriate, may adopt fair and reasonable rules, minimum standards, and limitations as appropriate to augment and implement this chapter.

(b) This section does not affect the comptroller's general authority to adopt rules to promote the efficient administration, collection, enforcement, and reporting of taxes under this code or another insurance law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.009. CREDIT FOR FEES PAID. (a) A title insurance company is entitled to a credit on the amount of tax due under this

chapter for all examination and evaluation fees paid to the state during the calendar year for which the tax is due. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a foreign insurance company.

(b) The credit provided by this section is in addition to any other credit authorized by statute.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.004(a), eff. September 1, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 2.03, eff. September 28, 2011.

Sec. 223.010. FAILURE TO PAY TAXES. A title insurance company that fails to pay all taxes imposed by this chapter is subject to Section 203.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 223.011. DISPOSITION OF REVENUE. Chapter 227 applies to the disposition of the revenue from the tax imposed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 223A. CAPTIVE INSURANCE PREMIUM TAX

Sec. 223A.001. DEFINITION. In this chapter, "captive insurance company" means a captive insurance company holding a certificate of authority under Chapter 964.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

Sec. 223A.002. APPLICABILITY OF CHAPTER. This chapter applies to a captive insurance company holding a certificate of authority under Chapter 964.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

Sec. 223A.003. TAX IMPOSED; RATE. (a) An annual tax is imposed on each captive insurance company that receives gross premiums subject to taxation under this chapter. The rate of the tax is one-half percent of the company's taxable premium receipts for a calendar year.

(b) Except as provided by Subsection (c), in determining a captive insurance company's taxable premium receipts, the captive insurance company shall include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations for insurance written by the captive insurance company in a calendar year from any kind of insurance written by the company on each kind of property or risk without regard to the location of the property or risk.

(c) The following premium receipts are not included in determining a captive insurance company's taxable premium receipts:

(1) premium receipts received from another authorized insurer for reinsurance;

(2) returned premiums and dividends paid to policyholders; and

(3) premiums excluded by another law of this state.

(d) In determining a captive insurance company's taxable premium receipts, a company is not entitled to a deduction for premiums paid for reinsurance.

(e) The annual minimum aggregate tax to be paid by a captive insurance company under this chapter is $7,500 and the annual maximum aggregate tax to be paid by a company under this chapter is $200,000. Gross premiums subject to taxation under this chapter are not subject to taxes, surcharges, or other regulatory assessments or fees under this code other than insurance maintenance taxes as provided by Section 964.068.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

Sec. 223A.004. TAX DUE DATES. (a) The total tax imposed by

this chapter is due and payable not later than March 1 after the end of the calendar year for which the tax is due.

(b) A captive insurance company that had a net tax liability for the previous calendar year of more than $1,000 shall make semiannual prepayments of tax on March 1 and August 1. The tax paid on each date must be equal to 50 percent of the total amount of tax the company paid under this chapter for the previous calendar year. If the company did not pay a tax under this chapter during the previous calendar year, the tax paid on each date must be equal to the tax that would be owed on the aggregate of the gross premiums for the two previous calendar quarters.

(c) The comptroller may refund any overpayment of taxes that results from the semiannual prepayment system prescribed by this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

Sec. 223A.005. TAX REPORT. (a) A captive insurance company liable for the tax imposed by this chapter must file annually with the comptroller a tax report on a form prescribed by the comptroller.

(b) The tax report is due on the date the tax is due under Section 223A.004(a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

Sec. 223A.006. CHANGE IN DUE DATES. (a) The comptroller by rule may change the dates for reporting and paying taxes under this chapter to improve operating efficiencies within the agency.

(b) A change by the comptroller in a reporting or payment date must retain the system of semiannual prepayments prescribed by Section 223A.004.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

Sec. 223A.007. CREDIT FOR FEES PAID. (a) A captive insurance

company is entitled to a credit on the amount of tax due under this chapter for all examination and evaluation fees paid to this state during the calendar year for which the tax is due. The limitations provided by Sections 803.007(1) and (2)(B) for a domestic insurance company apply to a captive insurance company.

(b) The credit provided by this section is in addition to any other credit authorized by statute.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

Sec. 223A.008. FAILURE TO PAY TAXES. A captive insurance company that fails to pay all taxes imposed by this chapter is subject to Section 203.002 of this code and Subtitles A and B, Title 2, Tax Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 1, eff. June 14, 2013.

CHAPTER 224. RECIPROCAL AND INTERINSURANCE EXCHANGE PREMIUM TAX

Sec. 224.001. APPLICABILITY OF CHAPTER. This chapter applies to a reciprocal or interinsurance exchange that has a certificate of authority to engage in business in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 224.002. TAX IMPOSED; RATE. (a) An annual tax is imposed on each reciprocal or interinsurance exchange that:

(1) does not file an election to be subject to the tax imposed by Chapter 221 in accordance with Section 224.003; or

(2) withdraws that election.

(b) The rate of the tax is 1.7 percent of the reciprocal or interinsurance exchange's gross premium receipts.

(c) A reciprocal or interinsurance exchange that is subject to the tax imposed by this chapter is not subject to the tax imposed by Chapter 221.

(d) Except as provided by Subsection (b), Chapter 221 applies to the imposition, computation, and administration of the tax imposed

by this chapter in the same manner that Chapter 221 applies to the tax imposed by that chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 224.003. TAXATION ELECTION. (a) A reciprocal or interinsurance exchange may elect to be subject to the tax imposed by Chapter 221.

(b) A reciprocal or interinsurance exchange that elects to be subject to the tax imposed by Chapter 221 must file with the comptroller on a form prescribed by the comptroller a written statement that the exchange has elected to be subject to that tax. The exchange must file the form not later than the 31st day before the date on which the tax year for which the election is to be effective begins.

(c) A reciprocal or interinsurance exchange that elects to be subject to the tax imposed by Chapter 221 continues to be subject to that tax for each tax year until the exchange withdraws the election under Subsection (d).

(d) A reciprocal or interinsurance exchange may withdraw an election made under Subsection (b) by filing with the comptroller written notice of the withdrawal. The exchange must file the notice not later than the 31st day before the date on which the tax year for which the withdrawal is to be effective begins.

(e) A reciprocal or interinsurance exchange that elects to be subject to the tax imposed by Chapter 221 is not subject to the tax imposed by Section 224.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 225. SURPLUS LINES INSURANCE PREMIUM TAX

Sec. 225.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means, with respect to an insured, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose members are all affiliated.

(3) "Control" means, with respect to determining the home state of an affiliated entity:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the affiliated entity; or

(B) to control in any manner the election of the majority of directors or trustees of the affiliated entity.

(4) "Home state" means:

(A) for an insured that is not an affiliated group described by Paragraph (B):

(i) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(ii) the state in which an insured that is not an individual maintains its principal place of business; or

(iii) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or maintains the insured's principal place of business, as applicable, the state to which the largest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(B) for an affiliated group with respect to which more than one member is a named insured on a single insurance contract subject to this chapter, the home state of the member, as determined under Paragraph (A), that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Premium" means any payment made in consideration for insurance and includes:

(A) a premium;

(B) premium deposits;

(C) a membership fee;

(D) a registration fee;

(E) an assessment;

(F) dues; and

(G) any other compensation given in consideration for surplus lines insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.02, eff. September 28, 2011.

Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter applies to a surplus lines agent who collects gross premiums for surplus lines insurance for any risk in which this state is the home state of the insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.03, eff. September 28, 2011.

Sec. 225.003. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 981, including provisions relating to the applicability and enforcement of that chapter, rulemaking authority under that chapter, and definitions of terms applicable in that chapter, apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.004. TAX IMPOSED; RATE. (a) A tax is imposed on gross premiums for surplus lines insurance. The rate of the tax is 4.85 percent of the gross premiums.

(a-1) Consistent with 15 U.S.C. Section 8201 et seq., this state may not impose a premium tax on nonadmitted insurance premiums other than premiums paid for insurance in which this state is the home state of the insured.

(b) Taxable gross premiums under this section are based on gross premiums written or received for surplus lines insurance placed through an eligible surplus lines insurer during a calendar year. Notwithstanding the tax basis described by this subsection, the comptroller by rule may establish an alternate basis for taxation for multistate and single-state policies for the purpose of achieving uniformity.

(c) If a surplus lines insurance policy covers risks or exposures only partially located in this state, and this state has not entered into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of surplus lines tax as authorized by Chapter 229, the tax is computed on the entire policy premium for any policy in which this state is the home state of the insured.

(d) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 18.11(1), eff. September 28, 2011.

(d-1) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 18.11(1), eff. September 28, 2011.

(e) Premiums on risks or exposures that are properly allocated to federal or international waters or are under the jurisdiction of a foreign government are not taxable in this state.

(f) If this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, taxes due on multistate policies shall be allocated and reported in accordance with the agreement or compact.

(g) Premiums on risks or exposures under ocean marine insurance coverage of stored or in-transit baled cotton for export are not subject to the tax imposed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 4, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.04, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.11(1), eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1043 (H.B. 2972), Sec. 1, eff. January 1, 2014.

Sec. 225.005. TAX EXCLUSIVE. The tax imposed by this chapter is a transaction tax collected by the surplus lines agent of record and is in lieu of any other transaction taxes on these premiums.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.05, eff. September 28, 2011.

Sec. 225.006. COLLECTION OF TAX BY AGENT. (a) Except as otherwise provided by this section, the surplus lines agent shall collect from the insured the tax imposed by this chapter at the time

of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance and the full amount of the gross premium charged by the eligible surplus lines insurer for the insurance.

(b) Subject to Subsection (c) and notwithstanding any other law, if a surplus lines agent places an insurance policy with a managing underwriter, as defined by Section 981.002, the managing underwriter shall collect, report, and pay the tax imposed by this chapter.

(c) A surplus lines agent and a managing underwriter may enter into an agreement to provide that the surplus lines agent is responsible for filing, reporting, collection, payment, and all other requirements imposed by this chapter and Chapter 981, including the requirement to pay the tax and file the tax report imposed by this chapter. An agreement under this subsection must be in writing and must be entered into at or before the time coverage is bound under the policy. The agreement may apply to multiple policies or all policies between a surplus lines agent and a managing underwriter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 837 (H.B. 3410), Sec. 1, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 920 (H.B. 1405), Sec. 1, eff. January 1, 2014.

Sec. 225.007. COLLECTED TAXES HELD IN TRUST. A surplus lines agent holds taxes collected under this chapter in trust.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.008. TAX PAYMENT, REPORT, AND DUE DATE. (a) The tax imposed by this chapter is due and payable on or before March 1. A surplus lines agent shall file a tax report with the tax payment.

(b) A surplus lines agent shall pay the tax imposed by this chapter and file the report using forms prescribed by the comptroller.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.009. PREPAYMENT OF TAX. (a) A surplus lines agent shall prepay the tax imposed by this chapter when the amount of the accrued taxes due is equal to at least $70,000.

(b) A surplus lines agent shall prepay the taxes using a form prescribed by the comptroller. The prepayment is due on or before the 15th day of the month following the month in which the amount of taxes described by this section accrues.

(c) The comptroller by rule may change the accrued tax amount for which prepayment is required under Subsection (a) and the prepayment deadline under Subsection (b).

(d) Notwithstanding Subsections (a), (b), and (c), if this state enters a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of surplus lines tax as authorized by Chapter 229, the tax shall be allocated and reported in accordance with the terms of the agreement or compact.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 5, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.06, eff. September 28, 2011.

Sec. 225.010. TAX ABSORPTION AND REBATES PROHIBITED. (a) A surplus lines agent may not absorb the tax imposed by this chapter.

(b) A surplus lines agent may not rebate all or part of the tax or the agent's commission as an inducement for insurance or for any other reason.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.011. CANCELED OR REWRITTEN INSURANCE CONTRACT. If a surplus lines insurance contract is canceled and rewritten, the additional premium for purposes of the tax imposed by this chapter is the premium amount that exceeds the unearned premium of the canceled contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.012. STATE AS PREFERRED CREDITOR. If the property of a surplus lines agent is seized as the result of an intermediate or final decision of a court in this state, or if the business of a surplus lines agent is suspended by the action of a creditor or turned over to an assignee, receiver, or trustee, the tax imposed by this chapter and penalties due the state from the agent are preferred claims and the state is a preferred creditor and must be paid in full.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.013. FAILURE TO PAY TAXES; CRIMINAL PENALTY. (a) A surplus lines agent who does not pay the tax imposed by this chapter on or before the due date required by this chapter or who fraudulently withholds, appropriates, or otherwise uses any portion of the tax commits the offense of theft, regardless of whether the surplus lines agent has or claims an interest in the tax.

(b) An offense under this section is punishable as provided by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 225.014. LIMITATION ON RULEMAKING. In adopting rules under this chapter, the comptroller may not adopt a rule that exceeds the requirements of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 6, eff. June 15, 2007.

CHAPTER 226. UNAUTHORIZED AND INDEPENDENTLY PROCURED INSURANCE PREMIUM TAX

SUBCHAPTER A. UNAUTHORIZED INSURANCE PREMIUM TAX

Sec. 226.001. DEFINITIONS. In this subchapter:

(1) "Insurer" has the meaning assigned by Section 101.002 and includes:

(A) an insurer that does not hold a certificate of authority in this state;

(B) an eligible surplus lines insurer; and

(C) an insurer that holds a certificate of authority in this state.

(2) "Premium" includes any consideration for insurance, including:

(A) a premium;

(B) a membership fee;

(C) an assessment; or

(D) dues.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.005(a), eff. September 1, 2005.

Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insurer who charges gross premiums for insurance on a subject resident, located, or to be performed in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.005(b), eff. September 1, 2005.

Sec. 226.003. TAX IMPOSED; RATE. (a) A tax is imposed on each insurer that charges gross premiums subject to taxation under this section. The rate of the tax is 4.85 percent of the gross premiums charged by the insurer.

(b) Except as otherwise provided by this section, in determining an insurer's taxable gross premiums, the insurer shall include any premium for insurance on a subject resident, located, or to be performed in this state.

(c) If a policy covers risks or exposures only partially located in this state, the tax is computed on the portion of the premium that is properly allocated to a risk or exposure located in this state.

(d) In determining the amount of taxable premiums under

Subsection (c), a premium, other than a premium properly allocated or apportioned and reported as a taxable premium of another state, is considered to be written on property or risks located or resident in this state if the premium:

(1) is written, procured, or received in this state; or

(2) is for a policy negotiated in this state.

(d-1) Notwithstanding Subsections (b) through (d), the comptroller by rule may establish that all premiums are considered to be on risks located in this state:

(1) if the insured's home office or state of domicile or residence is located in this state; or

(2) to accommodate changes in federal statutes or regulations that would otherwise limit the comptroller's ability to directly collect the taxes due under this section.

(e) Insurance on a subject resident, located, or to be performed in this state is considered to be insurance procured, continued, or renewed in this state regardless of the location from which:

(1) the application is made;

(2) the negotiations are conducted; or

(3) the premiums are remitted.

(f) Premiums on risks or exposures that are properly allocated to federal waters or international waters or are under the jurisdiction of a foreign government are not taxable by this state.

(g) The following premiums are not subject to the tax imposed by this subchapter:

(1) premiums on insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Chapter 981 on which premium tax is paid in accordance with Chapter 225;

(2) premiums on an independently procured contract of insurance on which premium tax is paid in accordance with Subchapter B; and

(3) premiums on a contract of insurance written by an insurer that holds a certificate of authority in this state and that is authorized to write the contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.005(c), eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 7, eff. June 15, 2007.

Sec. 226.004. TAX EXCLUSIVE. The tax imposed by this subchapter is in lieu of all other insurance taxes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 226.005. TAX PAYMENT; DUE DATE. (a) The tax imposed by this subchapter is due and payable not later than:

(1) March 1 after the end of the calendar year in which the insurance was effectuated, continued, or renewed; or

(2) another date prescribed by the comptroller.

(b) An insurer shall pay the tax imposed by this subchapter using a form prescribed by the comptroller.

(c) The tax imposed by this subchapter, if not paid when due, is a liability of the insurer, the insurer agent, and the insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.005(d), eff. September 1, 2005.

Sec. 226.006. LIMITATION ON RULEMAKING. In adopting rules under this subchapter, the comptroller may not adopt a rule that exceeds the requirements of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 8, eff. June 15, 2007.

SUBCHAPTER B. INDEPENDENTLY PROCURED INSURANCE PREMIUM TAX

Sec. 226.051. DEFINITIONS. In this subchapter:

(1) "Affiliate" means, with respect to an insured, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose

members are all affiliated.

(3) "Control" means, with respect to determining the home state of an affiliated entity:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the affiliated entity; or

(B) to control in any manner the election of the majority of directors or trustees of the affiliated entity.

(4) "Home state" means:

(A) for an insured that is not an affiliated group described by Paragraph (B):

(i) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(ii) the state in which an insured that is not an individual maintains its principal place of business; or

(iii) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or maintains the insured's principal place of business, as applicable, the state to which the largest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(B) for an affiliated group with respect to which more than one member is a named insured on a single insurance contract subject to this chapter, the home state of the member, as determined under Paragraph (A), that has the largest percentage of premium attributed to it under the insurance contract.

(5) "Independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(6) "Premium" means any payment made in consideration for insurance and includes:

(A) a premium;

(B) premium deposits;

(C) a membership fee;

(D) a registration fee;

(E) an assessment;

(F) dues; and

(G) any other compensation given in consideration for insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.07, eff. September 28, 2011.

Sec. 226.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insured who procures an independently procured insurance contract for any risk in which this state is the home state of the insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.08, eff. September 28, 2011.

Sec. 226.053. TAX IMPOSED; RATE. (a) A tax is imposed on each insured at the rate of 4.85 percent of the premium paid for the insurance contract procured in accordance with Section 226.052.

(b) If an independently procured insurance policy covers risks or exposures only partially located in this state and this state has not joined a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of nonadmitted insurance taxes as authorized by Chapter 229, the tax is computed on the entire policy premium for any policy in which this state is the home state of the insured.

(b-1) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 4, Sec. 18.11(2), eff. September 28, 2011.

(c) Premiums for individual life or individual disability insurance are not included in determining an insured's taxable premiums.

(d) If this state enters into a cooperative agreement, reciprocal agreement, or compact with another state for the allocation of nonadmitted insurance taxes as authorized by Chapter 229, the tax due on multistate policies shall be allocated and reported in accordance with the agreement or compact.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 9, eff. June 15, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.09, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.11(2), eff. September 28, 2011.

Sec. 226.054. TAX PAYMENT BY CERTAIN INSUREDS. (a) Except as provided by Section 226.055, the tax imposed by this subchapter is due and payable not later than:

(1) May 15 after the end of the calendar year in which the insurance was procured, continued, or renewed; or

(2) another date prescribed by the comptroller.

(b) An insured who fails to withhold from the premium the amount of tax imposed by this subchapter is liable for the amount of the tax and shall pay the tax due.

(c) The insured shall file a tax report and pay the tax.

(d) The insured may designate another person to file the report and pay the tax.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 226.055. TAX PAYMENT BY CERTAIN CORPORATIONS. The amount of tax due and payable under this subchapter by a corporation that files a franchise tax report shall be reported directly to the comptroller and is due:

(1) at the time the franchise tax report is due; or

(2) on another date prescribed by the comptroller.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 226.056. EFFECT ON OTHER LAW. Sections 226.051-226.054 do not abrogate or modify any other provision of this chapter or Chapter 101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 226.057. LIMITATION ON RULEMAKING. In adopting rules under this subchapter, the comptroller may not adopt a rule that

exceeds the requirements of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 10, eff. June 15, 2007.

CHAPTER 227. DISPOSITION OF PROCEEDS OF CERTAIN PREMIUM TAXES

Sec. 227.001. DISPOSITION OF TAX PROCEEDS. (a) The proceeds of the taxes imposed under Chapter 221, 222, 224, or 226 shall be deposited to the credit of the general revenue fund.

(b) An amount equal to one-fourth of the proceeds deposited under Subsection (a) shall be transferred to the credit of the foundation school fund.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 228. PREMIUM TAX CREDIT FOR CERTAIN INVESTMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 228.001. GENERAL DEFINITIONS. In this chapter:

(1) "Allocation date" means the date on which certified investors are allocated premium tax credits.

(2) "Certified capital" means cash invested by a certified investor that fully funds the purchase price of an equity interest in a certified capital company or a qualified debt instrument issued by the company.

(3) "Certified capital company" means a partnership, corporation, or trust or limited liability company, whether organized on a profit or nonprofit basis, that:

(A) has as the company's primary business activity the investment of cash in qualified businesses; and

(B) is certified as meeting the criteria of this chapter.

(4) "Certified investor" means an insurer or other person that has state premium tax liability and that contributes certified capital pursuant to a premium tax credit allocation under this chapter.

(5) "Early stage business" means a business described by Section 228.152(a).

(5-a) "Low-income community" has the meaning assigned by Section 45D(e), Internal Revenue Code of 1986.

(6) "Person" means an individual or entity, including a corporation, general or limited partnership, or trust or limited liability company.

(7) "Premium tax credit allocation claim" means a claim for allocation of premium tax credits.

(7-a) "Program One" means the program for allocation and investment of certified capital under this chapter before January 1, 2007.

(7-b) "Program Two" means the program for allocation and investment of certified capital under this chapter on or after January 1, 2007.

(8) "Qualified business" means a business described by Section 228.201.

(9) "Qualified debt instrument" means a debt instrument issued by a certified capital company, at par value or a premium, that:

(A) has an original maturity date that is a date on or after the fifth anniversary of the date of issuance;

(B) has a repayment schedule that is not faster than a level principal amortization over five years; and

(C) does not have interest, distribution, or payment features that are related to:

(i) the profitability of the company; or

(ii) the performance of the company's investment portfolio.

(10) "Qualified investment" means the investment of cash by a certified capital company in a qualified business for the purchase of any debt, debt participation, equity, or hybrid security of any nature or description, including a debt instrument or security that has the characteristics of debt but that provides for conversion into equity or equity participation instruments such as options or warrants.

(11) "State premium tax liability" means:

(A) any liability incurred by any person under Chapter 221, 222, 223, 223A, or 224; or

(B) if the tax liability imposed under Chapter 221, 222, 223, or 224 is eliminated or reduced, any tax liability imposed on an insurer or other person that had premium tax liability under Subchapter A, Chapter 4, or Article 9.59 as those laws existed on January 1, 2003.

(12) "Strategic investment business" means a business described by Section 228.153(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.001(a), eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 4, eff. June 14, 2013.

Sec. 228.002. DEFINITION OF AFFILIATE. In this chapter, "affiliate" of another person means:

(1) a person that is an affiliate for purposes of Section 823.003;

(2) a person that directly or indirectly:

(A) beneficially owns 10 percent or more of the outstanding voting securities or other voting or management interests of the other person, whether through rights, options, convertible interests, or otherwise; or

(B) controls or holds power to vote 10 percent or more of the outstanding voting securities or other voting or management interests of the other person;

(3) a person 10 percent or more of the outstanding voting securities or other voting or management interests of which are directly or indirectly:

(A) beneficially owned by the other person, whether through rights, options, convertible interests, or otherwise; or

(B) controlled or held with power to vote by the other person;

(4) a partnership in which the other person is a general partner;

(5) an officer, director, employee, or agent of the other person; or

(6) an immediate family member of an officer, director, employee, or agent described by Subdivision (5).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

SUBCHAPTER B. ADMINISTRATION AND PROMOTION

Sec. 228.051. ADMINISTRATION BY COMPTROLLER. The comptroller shall administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.052. RULES; FORMS. The comptroller shall adopt rules and forms as necessary to implement this chapter, including rules that:

(1) establish the application procedures for certified capital companies; and

(2) facilitate the transfer or assignment of premium tax credits by certified investors.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.053. REPORT TO LEGISLATURE. (a) The comptroller shall prepare a biennial report concerning the results of the implementation of this chapter. The report must include:

(1) the number of certified capital companies holding certified capital;

(2) the amount of certified capital invested in each certified capital company;

(3) the amount of certified capital the certified capital company invested in qualified businesses as of January 1, 2006, and the cumulative total for each subsequent year;

(4) the total amount of tax credits granted under this chapter for each year that credits have been granted;

(5) the performance of each certified capital company with respect to renewal and reporting requirements imposed under this chapter;

(6) with respect to the qualified businesses in which certified capital companies have invested:

(A) the classification of the qualified businesses according to the industrial sector and size of the business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs; and

(7) the certified capital companies that have been decertified or that have failed to renew the certification and the reason for any decertification.

(b) The comptroller shall file the report with the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 15 of each even-numbered year.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.054. PROMOTION OF PROGRAM. The Texas Economic Development and Tourism Office shall promote the program established under this chapter in the Texas Business and Community Economic Development Clearinghouse.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

SUBCHAPTER C. APPLICATION FOR AND GENERAL OPERATION OF CERTIFIED CAPITAL COMPANIES

Sec. 228.101. APPLICATION FOR CERTIFICATION. (a) An applicant for certification must file the application in the form prescribed by the comptroller. The application must be accompanied by a nonrefundable application fee of $7,500.

(b) The application must include an audited balance sheet of the applicant, with an unqualified opinion from an independent certified public accountant, as of a date not more than 35 days before the date of the application.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.102. QUALIFICATION. To qualify as a certified capital company:

(1) the applicant must have, at the time of application for

certification, an equity capitalization of at least $500,000 in unencumbered cash or cash equivalents;

(2) at least two principals or persons employed to manage the funds of the applicant must have at least four years of experience in the venture capital industry; and

(3) the applicant must satisfy any additional requirement imposed by the comptroller by rule.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.103. MANAGEMENT BY AND CERTAIN OWNERSHIP INTERESTS OF INSURANCE ENTITIES PROHIBITED. (a) An insurer, group of insurers, or other persons who may have state premium tax liability or the insurer's or person's affiliates may not directly or indirectly:

(1) manage a certified capital company;

(2) beneficially own, whether through rights, options, convertible interests, or otherwise, more than 10 percent of the outstanding voting securities of a certified capital company; or

(3) control the direction of investments for a certified capital company.

(b) Subsection (a) applies without regard to whether the insurer or other person or the affiliate of the insurer or other person is authorized by or engages in business in this state.

(c) Subsections (a) and (b) do not preclude an insurer, certified investor, or any other party from exercising its legal rights and remedies, including interim management of a certified capital company, if authorized by law, with respect to a certified capital company that is in default of the company's statutory or contractual obligations to the insurer, certified investor, or other party.

(d) This chapter does not limit an insurer's ownership of nonvoting equity interests in a certified capital company.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.104. ACTION ON APPLICATION. (a) The comptroller shall:

(1) review the application, organizational documents, and business history of each applicant; and

(2) ensure that the applicant satisfies the requirements of this chapter.

(b) Not later than the 30th day after the date an application is filed, the comptroller shall:

(1) issue the certification; or

(2) refuse to issue the certification and communicate in detail to the applicant the grounds for the refusal, including suggestions for the removal of those grounds.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.105. CONTINUATION OF CERTIFICATION. To continue to be certified, a certified capital company must make qualified investments according to the schedule established by Section 228.151.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.106. REPORTS TO COMPTROLLER; AUDITED FINANCIAL STATEMENT. (a) Each certified capital company shall report to the comptroller as soon as practicable after the receipt of certified capital:

(1) the name of each certified investor from whom the certified capital was received, including the certified investor's insurance premium tax identification number;

(2) the amount of each certified investor's investment of certified capital and premium tax credits; and

(3) the date on which the certified capital was received.

(b) Not later than January 31 of each year, each certified capital company shall report to the comptroller:

(1) the amount of the company's certified capital at the end of the preceding year;

(2) whether or not the company has invested more than 15 percent of the company's total certified capital in a single business;

(3) each qualified investment that the company made during

the preceding year and, with respect to each qualified investment, the number of employees of the qualified business at the time the qualified investment was made; and

(4) any other information required by the comptroller, including any information required by the comptroller to comply with Section 228.053.

(c) Not later than April 1 of each year, each certified capital company shall provide to the comptroller an annual audited financial statement that includes the opinion of an independent certified public accountant. The audit must address the methods of operation and conduct of the business of the company to determine whether:

(1) the company is complying with this chapter and the rules adopted under this chapter;

(2) the funds received by the company have been invested as required within the time provided by Section 228.151; and

(3) the company has invested the funds in qualified businesses.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.107. RENEWAL FEE; LATE FEE; EXCEPTION. (a) Not later than January 31 of each year, each certified capital company shall pay a nonrefundable renewal fee of $5,000 to the comptroller.

(b) If a certified capital company fails to pay the renewal fee on or before the date specified by Subsection (a), the company must pay, in addition to the renewal fee, a late fee of $5,000 to continue the company's certification.

(c) Notwithstanding Subsection (a), a renewal fee is not required within six months of the date on which a certified capital company's initial certification is issued under Section 228.104(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.108. OFFERING MATERIAL USED BY CERTIFIED CAPITAL COMPANY. Any offering material involving the sale of securities of the certified capital company must include the following statement:

By authorizing the formation of a certified

capital company, the State of Texas does not endorse the quality of management or the potential for earnings of the company and is not liable for damages or losses to a certified investor in the company. Use of the word "certified" in an offering does not constitute a recommendation or endorsement of the investment by the comptroller of public accounts. If applicable provisions of law are violated, the State of Texas may require forfeiture of unused premium tax credits and repayments of used premium tax credits.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

SUBCHAPTER D. INVESTMENT BY CERTIFIED CAPITAL COMPANIES

Sec. 228.151. REQUIRED SCHEDULE OF INVESTMENT. (a) Before the third anniversary of a certified capital company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 30 percent of the company's certified capital, subject to Section 228.153(b).

(b) Before the fifth anniversary of a certified capital company's allocation date, the company must make qualified investments in an amount cumulatively equal to at least 50 percent of the company's certified capital, subject to Sections 228.152(b) and 228.153(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.152. INVESTMENT IN EARLY STAGE BUSINESS REQUIRED. (a) In this section, "early stage business" means a qualified business that:

(1) is involved, at the time of a certified capital company's first investment, in activities related to the development of initial product or service offerings, such as prototype development or establishment of initial production or service processes;

(2) was initially organized less than two years before the

date of the certified capital company's first investment; or

(3) during the fiscal year immediately preceding the year of the certified capital company's first investment had, on a consolidated basis with the business's affiliates, gross revenues of not more than $2 million as determined in accordance with generally accepted accounting principles.

(b) A certified capital company must place at least 50 percent of the amount of qualified investments required by Section 228.151(b) in early stage businesses.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.153. INVESTMENT IN STRATEGIC INVESTMENT BUSINESS REQUIRED. (a) In this section:

(1) "Strategic investment area" means an area of this state that qualifies as a strategic investment area under Subchapter O, Chapter 171, Tax Code, or, after the date that subchapter expires, an area that qualified as a strategic investment area under that subchapter immediately before that date.

(2) "Strategic investment business" means a qualified business that:

(A) has the business's principal business operations located in one or more strategic investment areas; and

(B) intends to maintain business operations in the strategic investment areas after receipt of the investment by the certified capital company.

(b) A certified capital company must place at least 30 percent of the amount of qualified investments required by Sections 228.151(a) and (b) in a strategic investment business.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.154. CERTIFIED CAPITAL NOT INVESTED IN QUALIFIED INVESTMENTS. A certified capital company shall invest any certified capital not invested in qualified investments only in:

(1) cash deposited with a federally insured financial institution;

(2) certificates of deposit in a federally insured financial institution;

(3) investment securities that are:

(A) obligations of the United States or agencies or instrumentalities of the United States; or

(B) obligations that are guaranteed fully as to principal and interest by the United States;

(4) debt instruments rated at least "A" or the equivalent by a nationally recognized credit rating organization, or issued by, or guaranteed with respect to payment by, an entity whose unsecured indebtedness is rated at least "A" or the equivalent by a nationally recognized credit rating organization, and which indebtedness is not subordinated to other unsecured indebtedness of the issuer or the guarantor;

(5) obligations of this state or a municipality or political subdivision of this state; or

(6) any other investment approved in advance in writing by the comptroller.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.155. COMPUTATION OF AMOUNT OF INVESTMENTS. (a) The aggregate cumulative amount of all qualified investments made by a certified capital company after the company's allocation date shall be considered in the computation of the percentage requirements under this subchapter.

(b) A certified capital company may invest proceeds received from a qualified investment in another qualified investment, and that investment counts toward any requirement of this chapter with respect to investments of certified capital.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.156. LIMIT ON QUALIFIED INVESTMENT. A certified capital company may not make a qualified investment at a cost to the company that is greater than 15 percent of the company's total certified capital at the time of investment.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.157. DISTRIBUTIONS BY CERTIFIED CAPITAL COMPANY. (a) In this section, "qualified distribution" means any distribution or payment from certified capital by a certified capital company in connection with:

(1) the reasonable costs and expenses of forming, syndicating, managing, and operating the company, provided that the distribution or payment is not made directly or indirectly to a certified investor, including:

(A) reasonable and necessary fees paid for professional services, including legal and accounting services, related to the company's formation and operation; and

(B) an annual management fee in an amount that does not exceed 2.5 percent of the company's certified capital; and

(2) a projected increase in federal or state taxes, including penalties and interest related to state and federal income taxes, of the company's equity owners resulting from the earnings or other tax liability of the company to the extent that the increase is related to the ownership, management, or operation of the company.

(b) A certified capital company may make a qualified distribution at any time. To make a distribution or payment other than a qualified distribution, a company must have made qualified investments in an amount cumulatively equal to 100 percent of the company's certified capital.

(c) If a business in which a qualified investment is made relocates the business's principal business operations to another state during the term of the certified capital company's investment in the business, the cumulative amount of qualified investments made by the certified capital company for purposes of satisfying the requirements of Subsection (b) only is reduced by the amount of the certified capital company's qualified investments in the business that has relocated.

(d) Subsection (c) does not apply if the business demonstrates that the business has returned the business's principal business operations to this state not later than the 90th day after the date of the relocation.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.158. REPAYMENT OF DEBT. Notwithstanding Section 228.157(b), a certified capital company may make repayments of principal and interest on the company's indebtedness without any restriction, including repaying the company's indebtedness on which certified investors earned premium tax credits.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

SUBCHAPTER E. QUALIFIED BUSINESS

Sec. 228.201. DEFINITION OF QUALIFIED BUSINESS. (a) In this chapter, "qualified business" means a business that complies with this section at the time of a certified capital company's first investment in the business.

(b) A qualified business must:

(1) be headquartered in this state and intend to remain in this state after receipt of the certified capital company's investment; and

(2) have the business's principal business operations located in this state and intend to maintain business operations in this state after receipt of the certified capital company's investment.

(c) A qualified business must agree to use the qualified investment primarily to:

(1) support business operations in this state, other than advertising, promotion, and sales operations which may be conducted outside of this state; or

(2) in the case of a start-up company, establish and support business operations in this state, other than advertising, promotion, and sales operations which may be conducted outside of this state.

(d) A qualified business may not have more than 100 employees and must:

(1) employ at least 80 percent of the business's employees in this state; or

(2) pay 80 percent of the business's payroll to employees in this state.

(e) A qualified business must be primarily engaged in:

(1) manufacturing, processing, or assembling products;

(2) conducting research and development; or

(3) providing services.

(f) A qualified business may not be primarily engaged in:

(1) retail sales;

(2) real estate development;

(3) the business of insurance, banking, or lending; or

(4) the provision of professional services provided by accountants, attorneys, or physicians.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.202. RELOCATION OF PRINCIPAL BUSINESS OPERATIONS. If, before the 90th day after the date a certified capital company makes an investment in a qualified business, the qualified business moves the business's principal business operations from this state, the investment may not be considered a qualified investment for purposes of the percentage requirements under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.203. EVALUATION OF BUSINESS BY COMPTROLLER. (a) A certified capital company may, before making an investment in a business, request a written opinion from the comptroller as to whether the business in which the company proposes to invest is a qualified business, an early stage business, or a strategic investment or low-income community business.

(b) Not later than the 15th business day after the date of the receipt of a request under Subsection (a), the comptroller shall:

(1) determine whether the business meets the definition of a qualified business, an early stage business, or a strategic investment or low-income community business, as applicable, and notify the certified capital company of the determination and provide an explanation of the determination; or

(2) notify the company that an additional 15 days will be needed to review the request and make the determination.

(c) If the comptroller fails to notify the certified capital company with respect to the proposed investment within the period specified by Subsection (b), the business in which the company proposes to invest is considered to be a qualified business, an early stage business, or a strategic investment or low-income community business, as appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.003(a), eff. September 1, 2009.

Sec. 228.204. CONTINUATION OF CLASSIFICATION AS QUALIFIED BUSINESS; FOLLOW-ON INVESTMENTS AUTHORIZED. (a) A business that is classified as a qualified business at the time of the first investment in the business by a certified capital company:

(1) remains classified as a qualified business; and

(2) may receive follow-on investments from any certified capital company.

(b) Except as provided by Subsection (c), a follow-on investment made under Subsection (a) is a qualified investment even though the business may not meet the definition of a qualified business at the time of the follow-on investment.

(c) A follow-on investment does not qualify as a qualified investment if, at the time of the follow-on investment, the qualified business no longer has the business's principal business operations in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

SUBCHAPTER F. PREMIUM TAX CREDIT

Sec. 228.251. PREMIUM TAX CREDIT. (a) A certified investor who makes an investment of certified capital shall earn in the year of investment a vested credit against state premium tax liability equal to 100 percent of the certified investor's investment of

certified capital, subject to the limits imposed by this chapter.

(b) With respect to credits earned as a result of investments made under Program One, beginning with the tax report due March 1, 2009, for the 2008 tax year, a certified investor may take up to 25 percent of the vested premium tax credit in any taxable year of the certified investor. The credit may not be applied to estimated payments due in 2008.

(c) With respect to credits earned as a result of investments made under Program Two, beginning with the tax report due March 1, 2013, for the 2012 tax year, a certified investor may take up to 25 percent of the vested premium tax credit in any taxable year of the certified investor. The credit may not be applied to estimated payments due in 2012.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.004(a), eff. September 1, 2009.

Sec. 228.252. LIMIT ON PREMIUM TAX CREDIT. (a) The credit to be applied against state premium tax liability of a certified investor in any one year may not exceed the state premium tax liability of the investor for the taxable year.

(b) A certified investor may carry forward any unused credit against state premium tax liability indefinitely until the premium tax credits are used.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.253. PREMIUM TAX CREDIT ALLOCATION CLAIM REQUIRED. (a) A certified investor must prepare and execute a premium tax credit allocation claim on a form provided by the comptroller.

(b) The certified capital company must have filed the claim with the comptroller on the date on which the comptroller accepted premium tax credit allocation claims on behalf of certified investors with respect to Program One or Program Two, as applicable, under the comptroller's rules.

(c) The premium tax credit allocation claim form must include an affidavit of the certified investor under which the certified investor becomes legally bound and irrevocably committed to make an investment of certified capital in a certified capital company in the amount allocated even if the amount allocated is less than the amount of the claim, subject only to the receipt of an allocation under Section 228.255.

(d) A certified investor may not claim a premium tax credit under Section 228.251 for an investment that has not been funded, without regard to whether the certified investor has committed to fund the investment.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.005(a), eff. September 1, 2009.

Sec. 228.254. TOTAL LIMIT ON PREMIUM TAX CREDITS. (a) The total amount of certified capital for which premium tax credits may be allowed under this chapter for all years in which premium tax credits are allowed is:

(1) $200 million for Program One; and

(2) $200 million for Program Two.

(b) The total amount of certified capital for which premium tax credits may be allowed for all certified investors under this chapter may not exceed the amount that would entitle all certified investors in certified capital companies to take total credits of $50 million in a year with respect to Program One and $50 million in a year with respect to Program Two.

(c) A certified capital company and the company's affiliates may not file premium tax credit allocation claims with respect to Program One or Program Two, as applicable, in excess of the maximum amount of certified capital for which premium tax credits may be allowed for that program as provided by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.006(a),

eff. September 1, 2009.

Sec. 228.255. ALLOCATION OF PREMIUM TAX CREDIT. (a) If the total premium tax credits claimed by all certified investors with respect to Program One or Program Two, as applicable, exceeds the total limits on premium tax credits established for that program by Section 228.254(a), the comptroller shall allocate the total amount of premium tax credits allowed under this chapter to certified investors in certified capital companies on a pro rata basis in accordance with this section.

(b) The pro rata allocation for each certified investor shall be the product of:

(1) a fraction, the numerator of which is the amount of the premium tax credit allocation claim filed on behalf of the investor with respect to Program One or Program Two, as applicable, and the denominator of which is the total amount of all premium tax credit allocation claims filed on behalf of all certified investors with respect to that program; and

(2) the total amount of certified capital for which premium tax credits may be allowed with respect to that program under this chapter.

(c) The maximum amount of certified capital for which premium tax credit allocation may be allowed on behalf of a single certified investor and the investor's affiliates with respect to Program One or Program Two, as applicable, whether by one or more certified capital companies, may not exceed the greater of:

(1) $10 million; or

(2) 15 percent of the maximum aggregate amount available with respect to that program under Section 228.254(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.007(a), eff. September 1, 2009.

Sec. 228.256. TREATMENT OF CREDITS AND CAPITAL. In any case under this code or another insurance law of this state in which the

assets of a certified investor are examined or considered, the certified capital may be treated as an admitted asset, subject to the applicable statutory valuation procedures.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.257. TRANSFERABILITY OF CREDIT. (a) A certified investor may transfer or assign premium tax credits only in compliance with the rules adopted under Section 228.052.

(b) The transfer or assignment of a premium tax credit does not affect the schedule for taking the premium tax credit under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.258. IMPACT OF PREMIUM TAX CREDIT ON INSURANCE RATEMAKING. A certified investor is not required to reduce the amount of premium tax included by the investor in connection with ratemaking for an insurance contract written in this state because of a reduction in the investor's Texas premium tax derived from premium tax credits granted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.259. RETALIATORY TAX. A certified investor claiming a credit against state premium tax liability earned through an investment in a company is not required to pay any additional retaliatory tax levied under Chapter 281 as a result of claiming that credit.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

SUBCHAPTER G. ENFORCEMENT

Sec. 228.301. ANNUAL REVIEW BY COMPTROLLER. (a) The comptroller shall conduct an annual review of each certified capital company to:

(1) ensure that the company:

(A) continues to satisfy the requirements of this chapter; and

(B) has not made any investment in violation of this chapter; and

(2) determine the eligibility status of the company's qualified investments.

(b) Each certified capital company shall pay the cost of the annual review according to a reasonable fee schedule adopted by the comptroller.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.302. DECERTIFICATION OF CERTIFIED CAPITAL COMPANY. (a) A material violation of Section 228.105, 228.106, 228.107, 228.151, 228.152, 228.153, 228.154, 228.155, 228.156, 228.202, or 228.204 is grounds for decertification of a certified capital company.

(b) If the comptroller determines that a certified capital company is not in compliance with a law listed in Subsection (a), the comptroller shall notify the company's officers in writing that the company may be subject to decertification after the 120th day after the date the notice is mailed unless the company:

(1) corrects the deficiencies; and

(2) returns to compliance with the law.

(c) The comptroller may decertify a certified capital company, after opportunity for hearing, if the comptroller finds that the company is not in compliance with a law listed in Subsection (a) at the end of the period established by Subsection (b).

(c-1) Notwithstanding any other provision of this section, the comptroller may decertify a certified capital company if the comptroller receives a request in writing from the certified capital company stating that the certified capital company has made qualified investments in an amount cumulatively equal to 100 percent of the company's certified capital.

(d) Decertification under this section is effective on receipt of notice of decertification by the certified capital company.

(e) The comptroller shall notify any appropriate state agency of a decertification of a certified capital company.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 53 (H.B. 3031), Sec. 1, eff. May 21, 2015.

Sec. 228.303. ADMINISTRATIVE PENALTY. (a) The comptroller may impose an administrative penalty on a certified capital company that violates this chapter.

(b) The amount of the penalty may not exceed $25,000. Each day a violation continues or occurs is a separate violation for the purpose of imposing the penalty. The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) A certified capital company assessed a penalty under this chapter may request a redetermination as provided by Chapter 111, Tax Code.

(d) The attorney general may sue to collect the penalty.

(e) A proceeding to impose the penalty is a contested case under Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

SUBCHAPTER H. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDITS

Sec. 228.351. RECAPTURE AND FORFEITURE OF PREMIUM TAX CREDIT FOLLOWING DECERTIFICATION. (a) Decertification of a certified capital company may, in accordance with this section, cause:

(1) the recapture of premium tax credits previously claimed by the company's certified investors; and

(2) the forfeiture of future premium tax credits to be claimed by the investors.

(b) Decertification of a certified capital company on or before the third anniversary of the company's allocation date causes the recapture of any premium tax credits previously claimed and the forfeiture of any future premium tax credits to be claimed by a certified investor with respect to the company.

(c) For a certified capital company that meets the requirements for continued certification under Section 228.151(a) and subsequently fails to meet the requirements for continued certification under Subsection (b) of that section:

(1) any premium tax credit that has been or will be taken by a certified investor on or before the third anniversary of the allocation date is not subject to recapture or forfeiture; and

(2) any premium tax credit that has been or will be taken by a certified investor after the third anniversary of the company's allocation date is subject to recapture or forfeiture.

(d) For a certified capital company that has met the requirements for continued certification under Section 228.151 and is subsequently decertified:

(1) any premium tax credit that has been or will be taken by a certified investor on or before the fifth anniversary of the allocation date is not subject to recapture or forfeiture; and

(2) any premium tax credit to be taken after the fifth anniversary of the allocation date is subject to forfeiture only if the company is decertified on or before the fifth anniversary of the company's allocation date.

(e) For a certified capital company that has invested an amount cumulatively equal to 100 percent of the company's certified capital in qualified investments, any premium tax credit claimed or to be claimed by a certified investor is not subject to recapture or forfeiture under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.352. NOTICE OF RECAPTURE AND FORFEITURE OF PREMIUM TAX

CREDIT. The comptroller shall send written notice to the address of each certified investor whose premium tax credit is subject to recapture or forfeiture, using the address shown on the investor's last premium tax filing.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

Sec. 228.353. INDEMNITY AGREEMENTS AND INSURANCE AUTHORIZED. (a) A certified capital company may agree to indemnify, or purchase insurance for the benefit of, a certified investor for losses resulting from the recapture or forfeiture of premium tax credits under Section 228.351.

(b) Any guaranty, indemnity, bond, insurance policy, or other payment undertaking made under this section may not be provided by more than one certified investor of the certified capital company or affiliate of the certified investor.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1B.001, eff. April 1, 2009.

CHAPTER 229. COOPERATIVE AGREEMENTS WITH OTHER STATES

Sec. 229.001. DEFINITIONS. In this chapter:

(1) "Agent" includes:

(A) a surplus lines agent, as defined by Section 981.002;

(B) a person licensed as a surplus lines agent by another state; and

(C) any other person who performs the acts of an agent, whether through an oral, written, electronic, or other form of communication, by soliciting, negotiating, procuring, or collecting a premium on an insurance contract.

(2) "Insurer" has the meaning assigned by Section 101.002 and includes:

(A) an insurer that does not hold a certificate of authority in this state;

(B) an eligible surplus lines insurer; and

(C) an insurer that holds a certificate of authority in this state but performs acts outside the scope of its authority under

the certificate.

(3) "Premium" includes:

(A) any consideration for insurance, including:

(i) a premium;

(ii) a membership fee;

(iii) an assessment; and

(iv) dues; or

(B) any other meaning of the term adopted in a cooperative agreement.

(4) "Processing entity" means a processing center or clearinghouse established under a cooperative agreement.

(5) "Stamping office" means the Surplus Lines Stamping Office of Texas or similar stamping offices in other states.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 11, eff. June 15, 2007.
Renumbered from Insurance Code, Section 228.001 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(60), eff. September 1, 2009.

Sec. 229.002. COOPERATIVE AGREEMENTS WITH OTHER STATES. (a) The comptroller may enter into a cooperative agreement, reciprocal agreement, or compact with another state for the collection of insurance premium taxes imposed by Chapters 225 and 226 on a multistate basis. An agreement or amendment of an agreement takes effect according to its terms, except that an agreement or amendment may not take effect until the proposed agreement or amendment is published in the Texas Register.

(b) An agreement may provide for:

(1) determining a base state and multistate allocation of insurance premiums;

(2) tax reporting requirements;

(3) audit and refund claim procedures;

(4) exchange of information;

(5) requirements for reporting on a multistate basis;

(6) insurance and tax related terms and definitions;

(7) penalties, fees, administrative costs, and interest rates;

(8) audit assessment and refund claim limitation periods;

(9) procedures for collecting amounts due from agents, insurers, or other persons and for collecting and forwarding the amounts due to the jurisdiction to which the amount is owed;

(10) procedures for verifying refund claims by agents, insurers, or other persons and for collecting those amounts from the jurisdiction owing the refund amount;

(11) the temporary remittal of funds equal to the amounts due to another jurisdiction, subject to appropriation of funds for that purpose; and

(12) other provisions to facilitate the administration of the agreement.

(c) The comptroller may, as required by the terms of an agreement, provide to an officer of another state any information that relates to the solicitation, negotiation, procurement, placement, issuance, receipt, or collection of premiums by an agent, insurer, or other person for an insurance contract or policy that may be subject to the premium taxes imposed by Chapter 225 or 226.

(d) An agreement may provide for each state to audit the records of an agent, insurer, or other person based in this state to determine if insurance premium taxes due each state that is a party to the agreement are properly reported and paid. An agreement may provide for each state to forward the findings of an audit performed on an agent, insurer, or other person based in this state to each other state in which the person has an allocation of taxable premiums.

(e) For an agent, insurer, or other person who has an allocation of taxable premiums in this state, the comptroller may use an audit performed by another state that is a party to an agreement with this state to make an assessment of insurance premium taxes against the agent, insurer, or other person. An assessment made by the comptroller under this subsection is prima facie evidence that the amount shown as due is correct.

(f) An agreement entered into under this section does not affect the comptroller's authority to audit any person under any other law.

(g) An agreement entered into under this section prevails over an inconsistent rule of the comptroller. Except as otherwise provided by this section, a statute of this state prevails over an inconsistent provision of an agreement entered into under this section.

(h) The comptroller may segregate in a separate fund or account the amount estimated to be due to other jurisdictions, amounts subject to refund during the fiscal year, fees, and other costs collected under the agreement. On a determination of an amount held that is due to be remitted to another jurisdiction, the comptroller may issue a warrant or make an electronic transfer of the amount as necessary to carry out the purposes of the agreement. An auditing cost, membership fee, or other cost associated with the agreement may be paid from interest earned on funds segregated under this subsection. Any interest earnings in excess of the costs associated with the agreement shall be credited to general revenue.

(i) The legislature finds that it is in the public interest to enter into insurance tax and regulatory agreements with other jurisdictions that may provide for the temporary remittal of amounts due other jurisdictions that exceed the amounts collected and for cooperation with other jurisdictions for the collection of taxes imposed by this state under Chapters 225 and 226 and similar taxes imposed under statutes of other jurisdictions on insurance premiums. The comptroller shall ensure that reasonable measures are developed to recover insurance taxes and other amounts due this state during each biennium.

(j) The comptroller may enter into a cooperative agreement, reciprocal agreement, or compact with another state to provide for the collection of taxes imposed by this state and the other states on insurances taxes that may be due the states and this state based on a standardized premium allocation adopted by the states under the agreement. The comptroller may also enter into other cooperative agreements with surplus lines stamping offices located in this state and other states in the reporting and capturing of related tax information. In addition, the comptroller may enter into cooperative agreements with processing entities located in this state or other states related to the capturing and processing of insurance premium and tax data.

(k) The comptroller may adopt rules as necessary to implement this chapter. In adopting rules under this chapter, the comptroller may not adopt a rule that does not specifically implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 11, eff. June 15, 2007.

Renumbered from Insurance Code, Section 228.002 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(60), eff. September 1, 2009.

CHAPTER 233. CREDIT AGAINST CERTAIN TAXES FOR CERTAIN HOUSING DEVELOPMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 233.0001. DEFINITIONS. In this chapter:

(1) "Allocation certificate," "credit," and "qualified development" have the meanings assigned by Section 171.551, Tax Code.

(2) "State premium tax liability" means any tax liability incurred by an entity under Chapter 221, 222, 223, or 224.

Added by Acts 2023, 88th Leg., R.S., Ch. 811 (H.B. 1058), Sec. 2, eff. January 1, 2024.

SUBCHAPTER B. CREDIT

Sec. 233.0051. CREDIT. (a) An entity is eligible for a credit against the entity's state premium tax liability in the amount and under the limitations provided by this chapter if the entity owns a direct or indirect interest in a qualified development.

(b) An entity that claims a credit under this chapter is not required to pay any additional retaliatory tax under Chapter 281 as a result of claiming the credit.

Added by Acts 2023, 88th Leg., R.S., Ch. 811 (H.B. 1058), Sec. 2, eff. January 1, 2024.

Sec. 233.0052. LENGTH OF CREDIT; LIMITATIONS. (a) The entity shall claim the credit in the manner provided by Section 171.556, Tax Code.

(b) The total credit claimed under this chapter for a report, including any carry forward or backward described by Subsection (c), may not exceed the amount of the entity's state premium tax liability due for the report after any other applicable credit.

(c) The entity may carry a surplus credit forward or backward as provided by Section 171.557, Tax Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 811 (H.B. 1058), Sec. 2, eff. January 1, 2024.

Sec. 233.0053. APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this chapter on or with the tax report for the tax year for which the credit is claimed and submit with the application a copy of the allocation certificate issued in connection with the qualified development and any other information required by Subchapter K, Chapter 171, Tax Code.

(b) The comptroller shall adopt a form for the application for the credit. An entity must use this form in applying for the credit.

Added by Acts 2023, 88th Leg., R.S., Ch. 811 (H.B. 1058), Sec. 2, eff. January 1, 2024.

Sec. 233.0054. RULES; PROCEDURES. The comptroller and the Texas Department of Housing and Community Affairs, in consultation with each other, shall adopt rules and procedures to implement, administer, and enforce this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 811 (H.B. 1058), Sec. 2, eff. January 1, 2024.

Sec. 233.0055. APPLICABLE PROVISIONS. The provisions of Subchapter K, Chapter 171, Tax Code, relating to recapture, allocation of credit, apportionment of credit, length of credit, filing requirements after allocation, and compliance monitoring apply to the credit authorized by this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 811 (H.B. 1058), Sec. 2, eff. January 1, 2024.

SUBCHAPTER C. EXPIRATION OF AUTHORITY TO ALLOCATE CREDITS

Sec. 233.0101. EXPIRATION OF ALLOCATION AUTHORITY; USE OF ALLOCATED CREDITS. (a) The authority of the Texas Department of Housing and Community Affairs to reserve credit amounts and issue allocation certificates for purposes of Subchapter K, Chapter 171,

Tax Code, and this chapter expires as provided by Section 171.565(a), Tax Code.

(b) An entity may claim a credit under this chapter on a tax report as provided by Section 171.565(b), Tax Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 811 (H.B. 1058), Sec. 2, eff. January 1, 2024.

SUBTITLE C. INSURANCE MAINTENANCE TAXES

CHAPTER 251. GENERAL PROVISIONS

Sec. 251.001. DETERMINING RATE OF ASSESSMENT. (a) The commissioner shall annually determine the rate of assessment of each maintenance tax imposed under this subtitle.

(b) In determining the rate of assessment, the commissioner shall consider the requirement to reimburse the appropriate portion of the general revenue fund under Section 201.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 251.002. DUTY TO ADVISE COMPTROLLER OF RATE. The commissioner shall advise the comptroller of the applicable rate of assessment of a maintenance tax not later than the 45th day before the due date of the tax report for the period for which that tax is due.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 251.003. EFFECT OF LATE ADVISEMENT OF RATE. (a) Except as provided by Subsection (b), if the commissioner does not advise the comptroller of the applicable rate of assessment of a maintenance tax by the date required by Section 251.002, the rate of assessment is the rate applied in the previous tax period.

(b) If the commissioner advises the comptroller of the applicable rate of assessment of a maintenance tax after the tax has been assessed, the comptroller shall:

(1) advise each taxpayer in writing of the amount of any additional taxes due; or

(2) refund any excess taxes paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 251.004. DEPOSIT OF MAINTENANCE TAXES. (a) Except as provided by Subsection (b), maintenance taxes collected under this subtitle shall be deposited in the general revenue fund and reallocated to the Texas Department of Insurance operating account.

(b) Each state fiscal year, the comptroller shall reallocate to the floodplain management account established under Section 16.453, Water Code, the first $3.05 million of the maintenance taxes collected under Chapter 252 and deposited in the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1323 (S.B. 1436), Sec. 1, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 947 (S.B. 7), Sec. 3.02, eff. June 13, 2019.

CHAPTER 252. FIRE AND ALLIED LINES INSURANCE

Sec. 252.001. MAINTENANCE TAX IMPOSED. A maintenance tax is imposed on each authorized insurer with gross premiums subject to taxation under Section 252.003. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 252.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Section 252.003.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under:

(1) Chapters 1807, 2001-2006, 2171, 6001, 6002, and 6003;

(2) Subchapter C, Chapter 5;
(3) Subchapter H, Chapter 544;
(4) Subchapter D, Chapter 1806;
(5) Section 403.002;
(6) Sections 417.007, 417.008, and 417.009, Government Code; and
(7) Chapter 2154, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.001, eff. April 1, 2009.

Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported gross premiums from writing insurance in this state against loss or damage by:
(1) bombardment;
(2) civil war or commotion;
(3) cyclone;
(4) earthquake;
(5) excess or deficiency of moisture;
(6) explosion as defined by Section 2002.006(b);
(7) fire;
(8) flood;
(9) frost and freeze;
(10) hail, including loss by hail on farm crops;
(11) insurrection;
(12) invasion;
(13) lightning;
(14) military or usurped power;
(15) an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe;
(16) rain;
(17) riot;
(18) the rising of the waters of the ocean or its tributaries;
(19) smoke or smudge;
(20) strike or lockout;

(21) tornado;

(22) vandalism or malicious mischief;

(23) volcanic eruption;

(24) water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers;

(25) weather or climatic conditions;

(26) windstorm;

(27) an event covered under a home warranty insurance policy; or

(28) an event covered under an inland marine insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.002, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 12, eff. June 15, 2007.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.009, eff. September 1, 2009.

Sec. 252.004. MAINTENANCE TAX DUE DATES. (a) The insurer shall pay the maintenance tax annually or semiannually, as determined by the comptroller.

(b) The comptroller may require semiannual or other periodic payment only from an insurer whose maintenance tax liability under this chapter for the previous tax year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 252.005. EXCEPTION. This chapter does not apply to:

(1) a farm mutual insurance company operating under Chapter 911, unless the company is acting as a fronting insurer as defined by Section 221.001(c); or

(2) a mutual insurance company engaged in business under Chapter 12, Title 78, Revised Statutes, before that chapter's repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called

Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 13, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1083 (H.B. 3496), Sec. 2, eff. September 1, 2017.

CHAPTER 253. CASUALTY INSURANCE AND FIDELITY, GUARANTY, AND SURETY BOND INSURANCE

Sec. 253.001. MAINTENANCE TAX IMPOSED. A maintenance tax is imposed on each authorized insurer with gross premiums subject to taxation under Section 253.003. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 253.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Section 253.003.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Section 253.003.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.003, eff. April 1, 2009.

Sec. 253.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported

gross premiums from writing a class of insurance specified under:

(1) Chapters 2008, 2251, and 2252;

(2) Subchapter B, Chapter 5;

(3) Subchapter C, Chapter 1806;

(4) Subchapter A, Chapter 2301; and

(5) Subtitle B, Title 10.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.004, eff. April 1, 2009.

Sec. 253.004. MAINTENANCE TAX DUE DATES. (a) The insurer shall pay the maintenance tax annually or semiannually, as determined by the comptroller.

(b) The comptroller may require semiannual payment only from an insurer whose maintenance tax liability under this chapter for the previous tax year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 254. MOTOR VEHICLE INSURANCE

Sec. 254.001. MAINTENANCE TAX IMPOSED. A maintenance tax is imposed on each authorized insurer with gross premiums subject to taxation under Section 254.003. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 254.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under Section 254.003.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 254.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported gross premiums from writing motor vehicle insurance in this state, including personal and commercial automobile insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 13, eff. June 15, 2007.

Sec. 254.004. MAINTENANCE TAX DUE DATES. (a) The insurer shall pay the maintenance tax annually or semiannually, as determined by the comptroller.

(b) The comptroller may require semiannual or other periodic payment only from an insurer whose maintenance tax liability under this chapter for the previous tax year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 255. WORKERS' COMPENSATION INSURANCE

Sec. 255.001. MAINTENANCE TAX IMPOSED. (a) A maintenance tax is imposed on each authorized insurer with gross premiums subject to taxation under Section 255.003, including a:

(1) stock insurance company;
(2) mutual insurance company;
(3) reciprocal or interinsurance exchange; and
(4) Lloyd's plan.

(b) The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 255.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Section 255.003.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 255.003. PREMIUMS SUBJECT TO TAXATION. (a) An insurer shall pay maintenance taxes under this chapter on the correctly reported gross workers' compensation insurance premiums from writing workers' compensation insurance in this state, including the modified annual premium of a policyholder that purchases an optional deductible plan under Subchapter E, Chapter 2053.

(b) The rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.005, eff. April 1, 2009.

Sec. 255.004. MAINTENANCE TAX DUE DATES. (a) The insurer shall pay the maintenance tax annually or semiannually.

(b) The comptroller may require semiannual payment only from an insurer whose maintenance tax liability under this chapter for the previous tax year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 256. AIRCRAFT INSURANCE

Sec. 256.001. MAINTENANCE TAX IMPOSED. A maintenance tax is imposed on each authorized insurer with gross premiums subject to taxation under Section 256.003. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 256.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Section 256.003.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Chapter 2101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.006, eff. April 1, 2009.

Sec. 256.003. PREMIUMS SUBJECT TO TAXATION. An insurer shall pay maintenance taxes under this chapter on the correctly reported gross premiums from writing a class of insurance specified under Chapter 2101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.007, eff. April 1, 2009.

Sec. 256.004. MAINTENANCE TAX DUE DATES. (a) The insurer shall pay the maintenance tax annually or semiannually, as determined by the comptroller.

(b) The comptroller may require semiannual payment only from an insurer whose maintenance tax liability under this chapter for the previous tax year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 257. LIFE, HEALTH, AND ACCIDENT INSURANCE

Sec. 257.001. MAINTENANCE TAX IMPOSED. (a) A maintenance tax is imposed on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Section 257.003. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

(b) In this section, "managed care organization" means an organization authorized under this code to engage in the business of issuing health benefit plans that is not authorized as a health maintenance organization, preferred provider organization, or insurance company and the taxation of which is not preempted by federal law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 14, eff. June 15, 2007.

Sec. 257.002. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed 0.04 percent of the gross premiums and gross considerations subject to taxation under Section 257.003.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 257.003. PREMIUMS AND CONSIDERATIONS SUBJECT TO TAXATION; LIMIT. (a) An insurer shall pay maintenance taxes under this chapter on the correctly reported:

(1) gross premiums collected from writing life, health, and accident insurance in this state, except as provided in Subsection

(b); and

(2) gross considerations collected from writing annuity or endowment contracts in this state.

(b) The gross premiums on which an assessment is based under this chapter may not include:

(1) premiums received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments; or

(2) premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or

(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.006(a), eff. September 1, 2005.

Sec. 257.004. MAINTENANCE TAX DUE DATES. (a) The insurer shall pay the maintenance tax annually, semiannually, or on another periodic basis, as determined by the comptroller.

(b) The comptroller may require semiannual or other periodic payment only from an insurer whose maintenance tax liability under this chapter for the previous year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 258. HEALTH MAINTENANCE ORGANIZATIONS

Sec. 258.001. APPLICABILITY OF CERTAIN DEFINITIONS. In this chapter, a term defined by Section 843.002 has the meaning assigned by that section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 258.002. MAINTENANCE TAX IMPOSED. A per capita maintenance tax is imposed on each authorized health maintenance organization with gross revenues subject to taxation under Section 258.004. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 258.003. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed $2 per enrollee.

(b) The commissioner shall annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating health maintenance organizations.

(c) The rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 258.004. REVENUES SUBJECT TO TAXATION; LIMIT. (a) A health maintenance organization shall pay per capita maintenance taxes under this chapter on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in this state.

(b) The amount of maintenance tax assessed may not be computed based on:

(1) enrollees who as individual certificate holders or their dependents are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accordance with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.) and its subsequent amendments; or

(2) revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of:

(A) a municipality, county, or hospital district in this state; or

(B) a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.007(a), eff. September 1, 2005.

Sec. 258.005. MAINTENANCE TAX DUE DATES. (a) The health maintenance organization shall pay the maintenance tax annually or semiannually.

(b) The comptroller may require semiannual or other periodic payment only from a health maintenance organization whose maintenance tax liability under this chapter for the previous year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 259. THIRD-PARTY ADMINISTRATORS

Sec. 259.001. DEFINITIONS. In this chapter:

(1) "Administrative or service fees" means all consideration, fees, assessments, payments, reimbursements, dues, and other compensation received for services as an administrator during a calendar year. The term does not include sales commissions.

(2) "Administrator" has the meaning assigned by Section 4151.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 259.002. MAINTENANCE TAX IMPOSED. A maintenance tax is

imposed on each authorized administrator with administrative or service fees subject to taxation under Section 259.004. The tax required by this chapter is in addition to other taxes imposed that are not in conflict with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 259.003. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed one percent of the administrative or service fees subject to taxation under Section 259.004.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses of regulating administrators.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 259.004. ADMINISTRATIVE AND SERVICE FEES SUBJECT TO TAXATION. An administrator shall pay maintenance taxes under this chapter on the administrator's correctly reported administrative or service fees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 259.005. MAINTENANCE TAX DUE DATES. The administrator shall pay the maintenance tax annually, semiannually, or on another periodic basis, as determined by the comptroller.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

CHAPTER 261. TEXAS INSURANCE EXCHANGE

Sec. 261.001. DEFINITION. In this chapter, "exchange" means the Texas Insurance Exchange.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 261.002. MAINTENANCE TAX IMPOSED. A maintenance tax is imposed on the gross premiums paid through the exchange and subject to taxation under Section 261.004.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 261.003. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed one percent of the gross premiums subject to taxation under Section 261.004.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Chapter 2204.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.008, eff. April 1, 2009.

Sec. 261.004. PREMIUMS SUBJECT TO TAXATION. The exchange shall pay maintenance taxes under this chapter on the correctly reported gross premiums paid through the exchange on all classes of insurance specified under Chapter 2204.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2C.009, eff. April 1, 2009.

Sec. 261.005. MAINTENANCE TAX DUE DATES. The exchange shall pay the maintenance tax annually, semiannually, or on another periodic basis, as determined by the comptroller.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

SUBTITLE D. TITLE INSURANCE MAINTENANCE FEES

CHAPTER 271. TITLE INSURANCE MAINTENANCE FEES

Sec. 271.001. APPLICABILITY OF CERTAIN DEFINITIONS. In this chapter, a term defined by Chapter 2501 has the meaning assigned by that chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.002. MAINTENANCE FEE IMPOSED. (a) A maintenance fee is imposed on all premiums subject to assessment under Section 271.006.

(b) The maintenance fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 15, eff. June 15, 2007.

Sec. 271.003. DUPLICATION OF ASSESSMENT PROHIBITED WITH RESPECT TO TITLE INSURANCE AGENTS. The maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.004. DETERMINING RATE OF ASSESSMENT. (a) The commissioner shall annually determine the rate of assessment of the maintenance fee.

(b) In determining the rate of assessment, the commissioner shall consider the requirement to reimburse the appropriate portion of the general revenue fund under Section 201.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.005. MAXIMUM RATE; ANNUAL ADJUSTMENT. (a) The rate of assessment set by the commissioner may not exceed one percent of the gross premiums subject to assessment under Section 271.006.

(b) The commissioner shall annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.006. PREMIUMS SUBJECT TO ASSESSMENT. An insurer shall pay maintenance fees under this chapter on the correctly reported gross premiums from writing title insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.007. COLLECTION OF MAINTENANCE FEE. The comptroller shall collect the maintenance fee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.008. DUTY TO ADVISE COMPTROLLER OF RATE. The commissioner shall advise the comptroller of the applicable rate of assessment of the maintenance fee not later than the 45th day before the due date of the maintenance fee return for the period for which that fee is due.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.009. EFFECT OF LATE ADVISEMENT OF RATE. (a) Except as provided by Subsection (b), if the commissioner does not advise the comptroller of the applicable rate of assessment of the maintenance fee by the date required by Section 271.008, the rate of assessment is the rate imposed in the preceding period.

(b) If the commissioner advises the comptroller of the applicable rate of assessment after the fee has been assessed, the

comptroller shall:

(1) advise each insurer in writing of the amount of any additional fees due; or

(2) refund any excess fees paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.010. DEPOSIT OF MAINTENANCE FEES. (a) The comptroller shall deposit maintenance fees collected under this chapter in the general revenue fund to be reallocated to the Texas Department of Insurance operating account.

(b) Amounts in the Texas Department of Insurance operating account may be transferred to the appropriate portion of the general revenue fund in accordance with Section 201.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.011. MAINTENANCE FEE DUE DATES. (a) The insurer shall pay the maintenance fee on an annual, semiannual, or other periodic basis, as determined by the comptroller.

(b) The comptroller may require semiannual or other periodic payment only from an insurer whose maintenance fee liability under this chapter for the preceding year was at least $2,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 271.012. RULES. The commissioner may adopt reasonable rules to implement payments under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

SUBTITLE E. OTHER TAXES

CHAPTER 281. RETALIATORY PROVISIONS

SUBCHAPTER A. RETALIATORY TAXES AND OTHER CHARGES

Sec. 281.001. DEFINITIONS. In this subchapter:

(1) "Domestic insurer" means an insurer organized in this state.

(2) "Foreign insurer" means an insurer organized in another state.

(3) "Tax or other charge" includes:

(A) a tax, including an income, corporate franchise, or maintenance tax;

(B) a fee, including a regulatory fee similar to a maintenance tax;

(C) a license;

(D) a fine;

(E) a penalty;

(F) a deposit requirement; and

(G) any other obligation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.002. TREATMENT OF ALIEN INSURER AS FOREIGN INSURER. For purposes of this subchapter, an alien insurer is considered to be organized in the state designated by the insurer in which the insurer:

(1) has established its principal office or agency in the United States;

(2) maintains the greatest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States; or

(3) was admitted to engage in business in the United States.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.003. EXCEPTION. This subchapter does not apply to a person, company, firm, association, group, corporation, or insurance organization of any kind from another state that engages in business in this state if:

(1) at least 15 percent of the voting stock of the person, company, firm, association, group, corporation, or insurance organization is owned by a corporation organized under the laws of and domiciled in this state; and

(2) the person, company, firm, association, group, corporation, or insurance organization met the requirements of

Subdivision (1) before January 30, 1957.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.004. RETALIATORY TAXES OR OTHER CHARGES, PROHIBITIONS, AND RESTRICTIONS. (a) The comptroller shall impose and collect a tax or other charge or a prohibition or restriction on a foreign insurer authorized to engage in business in this state if:

(1) the foreign insurer's state of organization by law imposes a tax or other charge or a prohibition or restriction on a similar domestic insurer that is or may be authorized to engage in business in that other state; and

(2) the sum of the taxes or other charges, prohibitions, and restrictions imposed by that other state is more than the sum of the taxes or other charges, prohibitions, and restrictions that this state directly imposes on the foreign insurer.

(b) The comptroller shall impose and collect the tax or other charge, prohibition, or restriction under Subsection (a) in the same manner and for the same purpose as the foreign insurer's state of organization.

(c) The sum of the taxes or other charges that this state imposes on a foreign insurer under this subchapter may not exceed the sum of the taxes or other charges imposed by the foreign insurer's state of organization on a similar domestic insurer that is or may be authorized to engage in business in that other state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.005. EXCLUSION OF CERTAIN TAXES OR CHARGES. In determining an insurer's taxes or other charges under this subchapter, the comptroller may not consider:

(1) an ad valorem tax on property;

(2) a personal income tax;

(3) a sales tax;

(4) a surcharge that an insurer may recover directly from policyholders; or

(5) an assessment for a special purpose, such as an assessment for a guaranty association, high risk health pool, joint underwriting association, or windstorm association, under the law of

this or another state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.006. TREATMENT OF CERTAIN TAX REDUCTIONS AND CREDITS. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch. 932, Sec. 22(b), eff. June 15, 2007.

(b) For purposes of this subchapter, a tax offset or credit related to an assessment described by Section 281.005 is considered a tax paid in this or another state, as appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 22(b), eff. June 15, 2007.

Sec. 281.007. TAX REPORT; ADMINISTRATION AND COLLECTION OF TAX. The comptroller shall prescribe a due date for filing a report and paying a tax imposed under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.008. RECIPROCITY AGREEMENTS. The comptroller by rule may enter into a reciprocity agreement with another state under which the parties agree to mutually set aside retaliatory provisions in situations in which this state and the other state determine that retaliation is not the preferred approach to protect their domestic insurers from excessive taxation or other financial obligations. In adopting rules under this section, the comptroller may not adopt a rule that does not specifically implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 16, eff. June 15, 2007.

SUBCHAPTER B. RETALIATORY PENALTIES OR OTHER OBLIGATIONS

Sec. 281.051. DEFINITIONS. In this subchapter:

(1) "Domestic insurer" and "foreign insurer" have the

meanings assigned by Section 281.001.

(2) "Penalty or other obligation" includes a sanction, fine, financial, deposit, or regulatory requirement, and any other obligation, prohibition, or restriction.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

Sec. 281.052. IMPOSITION OF PENALTY OR OTHER OBLIGATION. (a) The Texas Department of Insurance shall impose a penalty or other obligation on a foreign insurer authorized to engage in the business of insurance in this state if:

(1) the insurance department or an insurance regulatory official of the foreign insurer's state of organization imposes a penalty or other obligation on any domestic insurer authorized to engage in the business of insurance in that state; and

(2) the penalty or other obligation is imposed because the Texas Department of Insurance did not:

(A) obtain or maintain accreditation certification or a similar form of approval, compliance, or acceptance from or as a member of the National Association of Insurance Commissioners or a committee, task force, working group, or advisory committee of the association; or

(B) comply with a model act, regulation, report, or requirement of the National Association of Insurance Commissioners or a committee, task force, working group, or advisory committee of the association, including a market conduct, financial examination, or annual financial statement.

(b) A penalty or other obligation imposed by the Texas Department of Insurance on a foreign insurer under this section must be the same as the penalty or other obligation imposed on the domestic insurer by the insurance department or regulatory official of the foreign insurer's state of organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 1, eff. April 1, 2005.

TITLE 4. REGULATION OF SOLVENCY
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 401. AUDITS AND EXAMINATIONS
SUBCHAPTER A. INDEPENDENT AUDIT OF FINANCIAL STATEMENTS

Sec. 401.001. DEFINITIONS. In this subchapter:

(1) "Accountant" means an independent certified public accountant or accounting firm that meets the requirements of Section 401.011.

(2) "Affiliate" has the meaning assigned by Section 823.003.

(3) "Health maintenance organization" means a health maintenance organization authorized to engage in business in this state.

(4) "Insurer" means an insurer authorized to engage in business in this state, including:

(A) a life, health, or accident insurance company;

(B) a fire and marine insurance company;

(C) a general casualty company;

(D) a title insurance company;

(E) a fraternal benefit society;

(F) a mutual life insurance company;

(G) a local mutual aid association;

(H) a statewide mutual assessment company;

(I) a mutual insurance company other than a mutual life insurance company;

(J) a farm mutual insurance company;

(K) a county mutual insurance company;

(L) a Lloyd's plan;

(M) a reciprocal or interinsurance exchange;

(N) a group hospital service corporation;

(O) a stipulated premium company; and

(P) a nonprofit legal services corporation.

(5) "Subsidiary" has the meaning assigned by Section 823.003.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.002. PURPOSE OF SUBCHAPTER. The purpose of this subchapter is to require an annual audit by an independent certified public accountant of the financial statements reporting the financial condition and the results of operations of each insurer or health maintenance organization.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.003. EFFECT OF SUBCHAPTER ON AUTHORITY TO EXAMINE. This subchapter does not limit the commissioner's authority to order or the department's authority to conduct an examination of an insurer or health maintenance organization under this code or the commissioner's rules.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.004. FILING AND EXTENSIONS FOR FILING OF AUDITED FINANCIAL REPORT. (a) Unless exempt under Section 401.006, 401.007, or 401.008 and except as otherwise provided by Sections 401.005 and 401.016, an insurer or health maintenance organization shall:

(1) have an annual audit performed by an accountant; and

(2) file with the commissioner on or before June 30 an audited financial report for the preceding calendar year.

(b) The commissioner may require an insurer or health maintenance organization to file an audited financial report on a date that precedes June 30. The commissioner must notify the insurer or health maintenance organization of the filing date not later than the 90th day before that date.

(c) An insurer or health maintenance organization may request an extension of the filing date by submitting the request in writing before the 10th day preceding the filing date. The request must include sufficient detail for the commissioner to make an informed decision on the requested extension. The commissioner may extend the filing date for one or more 30-day periods if the commissioner determines that there is good cause for the extension based on a showing by the insurer or health maintenance organization and the insurer's or health maintenance organization's accountant of the reasons for requesting the extension.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.005. ALTERNATIVE FILING FOR CANADIAN OR BRITISH INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS. (a) Instead of the audited financial report required by Section 401.004, an insurer or health maintenance organization domiciled in Canada or the United Kingdom may file the insurer's or health maintenance organization's annual statement of total business on the form filed by the insurer or health maintenance organization with the appropriate regulatory authority in the country of domicile. The statement must be audited by an independent accountant chartered in the country of domicile.

(b) The chartered accountant must be registered with the commissioner under Section 401.014(a). The registration must be accompanied by a statement, signed by the accountant, indicating that the accountant is aware of the requirements of this subchapter and affirming that the accountant will express the accountant's opinion in conformity with those requirements.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.006. EXEMPTION FOR CERTAIN SMALL INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS. (a) An insurer or health maintenance organization that has less than $1 million in direct premiums written in this state during a calendar year is exempt from the requirement to file an audited financial report if the insurer or health maintenance organization submits an affidavit, made under oath by one of the insurer's or health maintenance organization's officers, that specifies the amount of direct premiums written in this state during that period.

(b) Notwithstanding Subsection (a), the commissioner may require an insurer or health maintenance organization, other than a fraternal benefit society that does not have any direct premiums written in this state for accident and health insurance during a calendar year, to comply with this subchapter if the commissioner finds that the insurer's or health maintenance organization's compliance is necessary for the commissioner to fulfill the commissioner's statutory responsibilities.

(c) An insurer or health maintenance organization that has assumed premiums of at least $1 million under reinsurance agreements is not exempt under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.007. EXEMPTION FOR CERTAIN FOREIGN OR ALIEN INSURERS OR HEALTH MAINTENANCE ORGANIZATIONS. (a) A foreign or alien insurer or health maintenance organization that files an audited financial report in another state in accordance with that state's requirements for audited financial reports may be exempt from filing a report under this subchapter if the commissioner finds that the other state's requirements are substantially similar to the requirements prescribed by this subchapter.

(b) An insurer or health maintenance organization exempt under this section shall file with the commissioner a copy of:

(1) the audited financial report, the report on significant deficiencies in internal controls, and the accountant's letter of qualifications filed with the other state; and

(2) any notification of adverse financial conditions report filed with the other state.

(c) The reports and letter required by Subsection (b)(1) must be filed in accordance with the filing dates prescribed by Sections 401.004 and 401.019. The report required by Subsection (b)(2) must be filed in accordance with the filing date prescribed by Section 401.017.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.008. HARDSHIP EXEMPTION. (a) An insurer or health maintenance organization that is not eligible for an exemption under Section 401.006 or 401.007 may apply to the commissioner for a hardship exemption.

(b) Subject to Subsection (c), the commissioner may grant an exemption under this section if the commissioner finds, after reviewing the application, that compliance with this subchapter would constitute a severe financial or organizational hardship for the insurer or health maintenance organization. The commissioner may grant the exemption at any time for one or more specified periods.

(c) The commissioner may not grant an exemption under this

section if:

(1) the exemption would diminish the department's ability to monitor the financial condition of the insurer or health maintenance organization; or

(2) the insurer or health maintenance organization:

(A) during the five-year period preceding the date the application for the exemption is made:

(i) has been placed under supervision, conservatorship, or receivership;

(ii) has undergone a change in control, as described by Section 823.005; or

(iii) has been subject to a significant number of complaints, as determined by the commissioner;

(B) has been identified by the department as troubled;

(C) has been or is the subject of a disciplinary action by the department; or

(D) is not complying with the law or with a rule adopted by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.009. CONTENTS OF AUDITED FINANCIAL REPORT. (a) An audited financial report required under Section 401.004 must:

(1) describe the financial condition of the insurer or health maintenance organization as of the end of the most recent calendar year and the results of the insurer's or health maintenance organization's operations, changes in financial position, and changes in capital and surplus for that year;

(2) conform to the statutory accounting practices prescribed or otherwise permitted by the insurance regulator in the insurer's or health maintenance organization's state of domicile; and

(3) include:

(A) the report of an accountant;

(B) a balance sheet that reports admitted assets, liabilities, capital, and surplus;

(C) a statement of gain or loss from operations;

(D) a statement of cash flows;

(E) a statement of changes in capital and surplus;

(F) any notes to financial statements;

(G) supplementary data and information, including any additional data or information required by the commissioner; and

(H) information required by the department to conduct the insurer's or health maintenance organization's examination under Subchapter B.

(b) The notes to financial statements required by Subsection (a)(3)(F) must include:

(1) a reconciliation of any differences between the audited statutory financial statements and the annual statements filed under this code, with a written description of the nature of those differences;

(2) any notes required by the appropriate National Association of Insurance Commissioners annual statement instructions or by generally accepted accounting principles; and

(3) a summary of the ownership of the insurer or health maintenance organization and that entity's relationship to any affiliated company.

(c) An insurer or health maintenance organization required under Section 401.004 to file an audited financial report that does not retain an independent certified public accountant to perform an annual audit for the previous year may not be required to include in the report audited statements of operations, cash flows, or changes in capital and surplus for the first year. The insurer or health maintenance organization must include those statements in the first-year report and label the statements as unaudited. The insurer or health maintenance organization must include in the first-year report all other reports described by Section 401.004.

(d) The commissioner shall adopt rules governing the information to be included in the audited financial report under Subsection (a)(3)(H).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.010. REQUIREMENTS FOR FINANCIAL STATEMENTS IN AUDITED FINANCIAL REPORT. (a) An accountant must audit the financial reports provided by an insurer or health maintenance organization for purposes of an audit under this subchapter. The accountant who

audits the reports must conduct the audit in accordance with generally accepted auditing standards or with standards adopted by the Public Company Accounting Oversight Board, as applicable, and must consider the standards specified in the Financial Condition Examiner's Handbook adopted by the National Association of Insurance Commissioners or other analogous nationally recognized standards adopted by commissioner rule.

(b) The financial statements included in the audited financial report must be prepared in a form and using language and groupings substantially the same as those of the relevant sections of the insurer's or health maintenance organization's annual statement filed with the commissioner. Beginning in the second year in which an insurer or health maintenance organization is required to file an audited financial report, the financial statements must also be comparative, presenting the amounts as of December 31 of the reported year and the amounts as of December 31 of the preceding year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.001(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.001(a), eff. September 1, 2007.

Sec. 401.011. QUALIFICATIONS OF ACCOUNTANT; ACCEPTANCE OF AUDITED FINANCIAL REPORT. (a) Except as provided by Subsections (c) and (d), the commissioner shall accept an audited financial report from an independent certified public accountant or accounting firm that:

(1) is a member in good standing of the American Institute of Certified Public Accountants and is in good standing with all states in which the accountant or firm is licensed to practice, as applicable; and

(2) conforms to the American Institute of Certified Public Accountants Code of Professional Conduct and to the rules of professional conduct and other rules of the Texas State Board of Public Accountancy or a similar code.

(b) If the insurer or health maintenance organization is

domiciled in Canada, the commissioner shall accept an audited financial report from an accountant chartered in Canada. If the insurer or health maintenance organization is domiciled in Great Britain, the commissioner shall accept an audited financial report from an accountant chartered in Great Britain.

(c) A partner or other person responsible for rendering a report for an insurer or health maintenance organization for seven consecutive years may not, during the two-year period after that seventh year, render a report for the insurer or health maintenance organization or for a subsidiary or affiliate of the insurer or health maintenance organization that is engaged in the business of insurance. The commissioner may determine that the limitation provided by this subsection does not apply to an accountant for a particular insurer or health maintenance organization if the insurer or health maintenance organization demonstrates to the satisfaction of the commissioner that the limitation's application to the insurer or health maintenance organization would be unfair because of unusual circumstances. In making the determination, the commissioner may consider:

(1) the number of partners or individuals the accountant employs, the expertise of the partners or individuals the accountant employs, or the number of the accountant's insurance clients;

(2) the premium volume of the insurer or health maintenance organization; and

(3) the number of jurisdictions in which the insurer or health maintenance organization engages in business.

(d) The commissioner may not accept an audited financial report prepared wholly or partly by an individual or firm who the commissioner finds:

(1) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. Section 1961 et seq.), or a state or federal criminal offense involving dishonest conduct;

(2) has violated the insurance laws of this state with respect to a report filed under this subchapter;

(3) has demonstrated a pattern or practice of failing to detect or disclose material information in reports filed under this subchapter; or

(4) has directly or indirectly entered into an agreement of indemnity or release of liability regarding an audit of an

insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.002(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.002(a), eff. September 1, 2007.

Sec. 401.012. HEARING ON ACCOUNTANT QUALIFICATIONS; REPLACEMENT OF ACCOUNTANT. The commissioner may hold a hearing to determine if an accountant is qualified and independent. If, after considering the evidence presented, the commissioner determines that an accountant is not qualified and independent for purposes of expressing an opinion on the financial statements in an audited financial report filed under this subchapter, the commissioner shall issue an order directing the insurer or health maintenance organization to replace the accountant with a qualified and independent accountant.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.013. ACCOUNTANT'S LETTER OF QUALIFICATIONS. (a) The audited financial report required under Section 401.004 must be accompanied by a letter provided by the accountant who performed the audit stating:

(1) the accountant's general background and experience;

(2) the experience of each individual assigned to prepare the audit in auditing insurers or health maintenance organizations and whether the individual is an independent certified public accountant; and

(3) that the accountant:

(A) is properly licensed by an appropriate state licensing authority, is a member in good standing of the American Institute of Certified Public Accountants, and is otherwise qualified under Section 401.011;

(B) is independent from the insurer or health

maintenance organization and conforms to the standards of the profession contained in the American Institute of Certified Public Accountants Code of Professional Conduct, the statements of that institute, and the rules of professional conduct adopted by the Texas State Board of Public Accountancy, or a similar code;

(C) understands that:

(i) the audited financial report and the accountant's opinion on the report will be filed in compliance with this subchapter; and

(ii) the commissioner will rely on the report and opinion in monitoring and regulating the insurer's or health maintenance organization's financial position; and

(D) consents to the requirements of Section 401.020 and agrees to make the accountant's work papers available for review by the department or the department's designee.

(b) Subsection (a)(2) does not prohibit an accountant from using any staff the accountant considers appropriate if use of that staff is consistent with generally accepted auditing standards.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.014. REGISTRATION OF ACCOUNTANT. (a) Not later than December 31 of the calendar year to be covered by an audited financial report required by this subchapter, an insurer or health maintenance organization must register in writing with the commissioner the name and address of the accountant retained to prepare the report.

(b) The insurer or health maintenance organization must include with the registration a statement signed by the accountant:

(1) indicating that the accountant is aware of the requirements of this subchapter and of the rules of the insurance department of the insurer's or health maintenance organization's state of domicile that relate to accounting and financial matters; and

(2) affirming that the accountant will express the accountant's opinion on the financial statements in terms of the statements' conformity to the statutory accounting practices prescribed or otherwise permitted by the insurance department

described by Subdivision (1) and specifying any exceptions the accountant believes are appropriate.

(c) The commissioner may not accept an audited financial report prepared by an accountant who is not registered under this section.

(d) The commissioner may not accept the registration of a person who does not qualify under Section 401.011 or does not comply with the other requirements of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.015. RESIGNATION OR DISMISSAL OF ACCOUNTANT; STATEMENT CONCERNING DISAGREEMENTS. (a) If an accountant who signed an audited financial report for an insurer or health maintenance organization resigns as accountant for the insurer or health maintenance organization or is dismissed by the insurer or health maintenance organization after the report is filed, the insurer or health maintenance organization shall notify the department not later than the fifth business day after the date of the resignation or dismissal.

(b) Not later than the 10th business day after the date the insurer or health maintenance organization notifies the department under Subsection (a), the insurer or health maintenance organization shall file a written statement with the commissioner advising the commissioner of any disagreements between the accountant and the insurer's or health maintenance organization's personnel responsible for presenting the insurer's or health maintenance organization's financial statements that:

(1) relate to accounting principles or practices, financial statement disclosure, or auditing scope or procedures;

(2) occurred during the 24 months preceding the date of the resignation or dismissal; and

(3) would have caused the accountant to note the disagreement in connection with the audited financial report if the disagreement were not resolved to the satisfaction of the accountant.

(c) The statement required by Subsection (b) must include a description of disagreements that were resolved to the accountant's satisfaction and those that were not resolved to the accountant's satisfaction.

(d) The insurer or health maintenance organization shall file with the statement required by Subsection (b) a letter signed by the accountant stating whether the accountant agrees with the insurer's or health maintenance organization's statement and, if not, the reasons why the accountant does not agree. If the accountant fails to provide the letter, the insurer or health maintenance organization shall file with the commissioner a copy of a written request to the accountant for the letter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.016. AUDITED COMBINED OR CONSOLIDATED FINANCIAL STATEMENTS. (a) An insurer or health maintenance organization described by Section 401.001(3) or (4) that is required to file an audited financial report under this subchapter may apply in writing to the commissioner for approval to file audited combined or consolidated financial statements instead of separate audited financial reports if the insurer or health maintenance organization:

(1) is part of a group of insurers or health maintenance organizations that uses a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's or health maintenance organization's reserves; and

(2) cedes all of the insurer's or health maintenance organization's direct and assumed business to the pool.

(b) An insurer or health maintenance organization must file an application under Subsection (a) not later than December 31 of the calendar year for which the audited combined or consolidated financial statements are to be filed.

(c) An insurer or health maintenance organization that receives approval from the commissioner under this section shall file a columnar combining or consolidating worksheet for the audited combined or consolidated financial statements that includes:

(1) the amounts shown on the audited combined or consolidated financial statements;

(2) the amounts for each insurer or health maintenance organization stated separately;

(3) the noninsurance operations shown on a combined or individual basis;

(4) explanations of consolidating and eliminating entries; and

(5) a reconciliation of any differences between the amounts shown in the individual insurer or health maintenance organization columns of the worksheet and comparable amounts shown on the insurer's or health maintenance organization's annual statements.

(d) An insurer or health maintenance organization that does not receive approval from the commissioner to file audited combined or consolidated financial statements for the insurer or health maintenance organization and any of the insurer's or health maintenance organization's subsidiaries or affiliates shall file a separate audited financial report.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.017. NOTICE OF ADVERSE FINANCIAL CONDITION OR MISSTATEMENT OF FINANCIAL CONDITION. (a) An insurer or health maintenance organization required to file an audited financial report under this subchapter shall require the insurer's or health maintenance organization's accountant to immediately notify the board of directors of the insurer or health maintenance organization or the insurer's or health maintenance organization's audit committee in writing of any determination by that accountant that:

(1) the insurer or health maintenance organization has materially misstated the insurer's or health maintenance organization's financial condition as reported to the commissioner as of the balance sheet date being audited; or

(2) the insurer or health maintenance organization does not meet the minimum capital and surplus requirements prescribed by this code for the insurer or health maintenance organization as of that date.

(b) An insurer or health maintenance organization that receives a notice described by Subsection (a) shall:

(1) provide to the commissioner a copy of the notice not later than the fifth business day after the date the insurer or health maintenance organization receives the notice; and

(2) provide to the accountant evidence that the notice was provided to the commissioner.

(c) If the accountant does not receive the evidence required by Subsection (b)(2) on or before the fifth business day after the date the accountant notified the insurer or health maintenance organization under Subsection (a), the accountant shall file with the commissioner a copy of the accountant's written notice not later than the 10th business day after the date the accountant notified the insurer or health maintenance organization.

(d) An accountant is not liable to an insurer or health maintenance organization or the insurer's or health maintenance organization's policyholders, shareholders, officers, employees, directors, creditors, or affiliates for a statement made under this section if the statement was made in good faith to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.018. INFORMATION DISCOVERED AFTER DATE OF AUDITED FINANCIAL REPORT. If, after the date of an audited financial report filed under this subchapter, the accountant becomes aware of facts that might have affected the report, the accountant must take action as prescribed in Volume 1, AU Section 561, Professional Standards of the American Institute of Certified Public Accountants.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.019. REPORT ON SIGNIFICANT DEFICIENCIES IN INTERNAL CONTROL. (a) In addition to the audited financial report required by this subchapter, each insurer or health maintenance organization shall provide to the commissioner a written report of significant deficiencies required and prepared by an accountant in accordance with the Professional Standards of the American Institute of Certified Public Accountants.

(b) The insurer or health maintenance organization shall annually file with the commissioner the report required by this section not later than the 60th day after the date the audited financial report is filed. The insurer or health maintenance organization shall also provide a description of remedial actions

taken or proposed to be taken to correct significant deficiencies, if the actions are not described in the accountant's report.

(c) The report must follow generally the form for communication of internal control structure matters noted in an audit described in Statement on Auditing Standard (SAS) No. 60, AU Section 325, Professional Standards of the American Institute of Certified Public Accountants.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.020. ACCOUNTANT WORK PAPERS. (a) In this section, "work papers" means the records kept by an accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached that are pertinent to the accountant's audit of an insurer's or health maintenance organization's financial statements. The term includes work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, and commentaries prepared or obtained by the accountant in the course of auditing the financial statements that support the accountant's opinion.

(b) An insurer or health maintenance organization required to file an audited financial report under this subchapter shall require the insurer's or health maintenance organization's accountant to make available for review by the department's examiners the work papers and any record of communications between the accountant and the insurer or health maintenance organization relating to the accountant's audit that were prepared in conducting the audit. The insurer or health maintenance organization shall require that the accountant retain the work papers and records of communications until the earlier of:

(1) the date the department files a report on the examination covering the audit period; or

(2) the seventh anniversary of the date of the last day of the audit period.

(c) The department may copy and retain the copies of pertinent work papers when the department's examiners conduct a review under Subsection (b). The review is considered an investigation, and work papers obtained during that investigation may be made confidential by

the commissioner, unless the work papers are admitted as evidence in a hearing before a governmental agency or in a court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.021. PENALTY FOR FAILURE TO COMPLY. (a) If an insurer or health maintenance organization fails to comply with this subchapter, the commissioner shall order that the insurer's or health maintenance organization's annual audit be performed by a qualified independent certified public accountant.

(b) The commissioner shall assess against the insurer or health maintenance organization the cost of auditing the insurer's or health maintenance organization's financial statement under this section.

(c) The insurer or health maintenance organization shall pay to the commissioner the amount of the assessment not later than the 30th day after the date the commissioner issues the notice of assessment to the insurer or health maintenance organization.

(d) Money collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account for use by the commissioner and the department to pay the expenses incurred under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. EXAMINATION OF CARRIERS

Sec. 401.051. DUTY TO EXAMINE CARRIERS. (a) The department or an examiner appointed by the department shall visit at the carrier's principal office:

(1) each carrier that is organized under the laws of this state; and

(2) each other carrier that is authorized to engage in business in this state.

(b) The department or an examiner appointed by the department may visit the carrier for the purpose of investigating the carrier's affairs and condition. The department or an examiner appointed by the department shall examine the carrier's financial condition and ability to meet the carrier's liabilities and compliance with the

laws of this state that affect the conduct of the carrier's business.

(c) The department or an examiner appointed by the department may conduct the visit and examination of a carrier described by Subsection (a)(2) alone or with representatives of the insurance supervising departments of other states.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.052. FREQUENCY OF EXAMINATION. (a) Subject to Subsection (b) and except as provided by the rules adopted under that subsection, the department shall visit and examine a carrier as frequently as the department considers necessary. At a minimum, the department shall examine a carrier not less frequently than once every five years.

(b) The commissioner shall adopt rules governing the frequency of examinations of carriers that have been organized or incorporated for less than five years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 188 (S.B. 1253), Sec. 1, eff. September 1, 2007.

Sec. 401.053. EXAMINATION PERIOD. Unless the department requests that an examination cover a longer period, the examination must cover the period beginning on the last day covered by the most recent examination and ending on December 31 of the year preceding the year in which the examination is being conducted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.054. POWERS RELATED TO EXAMINATION. The department or the examiner appointed by the department:

(1) has free access, and may require the carrier or the carrier's agent to provide free access, to all books and papers of

the carrier or the carrier's agent that relate to the carrier's business and affairs; and

(2) has the authority to summon and examine under oath, if necessary, an officer, agent, or employee of the carrier or any other person in relation to the carrier's affairs and condition.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.055. EFFECT OF SUBCHAPTER ON AUTHORITY TO USE INFORMATION. This subchapter does not limit the commissioner's authority to use a final or preliminary examination report, an examiner's or company's work papers or other documents, or any other information discovered or developed during an examination in connection with a legal or regulatory action that the commissioner, in the commissioner's sole discretion, considers appropriate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.056. RULES RELATED TO REPORTS AND HEARINGS. The commissioner by rule shall adopt:

(1) procedures governing the filing and adoption of an examination report;

(2) procedures governing a hearing to be held under this subchapter; and

(3) guidelines governing an order issued under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.057. USE OF AUDIT AND WORK PAPERS. (a) In this section, "work papers" has the meaning assigned by Section 401.020(a).

(b) In conducting an examination under this subchapter, the department shall use audits and work papers that the carrier makes available to the department and that are prepared by an accountant or

accounting firm meeting the qualifications of Section 401.011. The department may conduct a separate audit of the carrier if necessary. Work papers developed in the audit shall be maintained in the manner provided by Sections 401.020(b) and (c).

(c) The carrier shall provide the department with:

(1) the work papers of an accountant or accounting firm or the carrier; and

(2) a record of any communications between the accountant or accounting firm and the carrier that relate to an audit.

(d) The accountant or accounting firm shall deliver the information described by Subsection (c) to the examiner. The examiner shall retain the information during the department's examination of the carrier.

(e) Information obtained under this section is confidential and may not be disclosed to the public except when introduced as evidence in a hearing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.058. CONFIDENTIALITY OF REPORTS AND RELATED INFORMATION. (a) A final or preliminary examination report and any information obtained during an examination are confidential and privileged for all purposes. This information is not subject to:

(1) disclosure under Chapter 552, Government Code;

(2) a subpoena, other than a grand jury subpoena; or

(3) discovery or admissibility in evidence in a civil action.

(b) Subsection (a) applies if the examined carrier is under supervision or conservatorship. Subsection (a) does not apply to an examination conducted in connection with a liquidation or receivership under this code or another insurance law of this state.

(c) Subsection (a) does not limit the commissioner's authority to use a final or preliminary examination report and any information obtained during an examination in the furtherance of any legal or regulatory action relating to the administration of this code that the commissioner, in the commissioner's sole discretion, considers appropriate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 164 (H.B. 2437), Sec. 1, eff. May 26, 2017.

Sec. 401.059. DETERMINATION OF VALUE. In determining the value or market value of an investment in or on real estate or an improvement to real estate by a carrier authorized to engage in business in this state, the department, in administering this code, may consider any factor or matter that the department considers proper and material, including:

(1) an appraisal by a real estate board or other qualified person;

(2) an affidavit by another person familiar with those values;

(3) a tax valuation;

(4) the cost of acquisition after deducting for depreciation and obsolescence;

(5) the cost of replacement;

(6) sales of other comparable property;

(7) enhancement in value from any cause;

(8) income received or to be received; and

(9) any improvements made.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.060. RIGHT TO INFORMATION RELATING TO DETERMINATION OF VALUE OR MARKET VALUE. (a) If the department determines the value or market value of an insurer's investment in or on real estate or an improvement to real estate, the insurer is entitled to make a written request for a written finding by the commissioner in relation to that determination.

(b) Not later than the 10th day after the date the commissioner receives a request under Subsection (a), the commissioner shall enter a written order or finding that:

(1) states separately the department's findings on each factor or matter on which the department relied in making the

determination; and

(2) includes the name and address of each person who provided evidence relating to a factor or matter on which the department relied in making the determination.

(c) The commissioner shall provide to the insurer that requested a written finding under this section a copy of the finding or order.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.061. DISCIPLINARY ACTION FOR FAILURE TO COMPLY WITH SUBCHAPTER. A carrier is subject to disciplinary action under Chapter 82 if the carrier or the carrier's agent fails or refuses to comply with:

(1) this subchapter or a rule adopted under this subchapter; or

(2) a request by the department or an appointed examiner to be examined or to provide information requested as part of an examination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.062. STAY OF RULE, ORDER, DECISION, OR FINDING. The filing of a petition under Subchapter D, Chapter 36, for judicial review of a rule, order, decision, or finding of the commissioner or department under this subchapter operates as a stay of the rule, order, decision, or finding until the court directs otherwise.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. EXAMINERS AND ACTUARIES

Sec. 401.101. USE OF DEPARTMENT EXAMINER OR OTHER QUALIFIED PERSON OR FIRM. The department may use a salaried department examiner or may appoint a qualified person or firm to perform an examination of an insurance organization as provided by law or to

assist in the performance of an examination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.102. LEGISLATIVE INTENT AS TO APPOINTMENT OR EMPLOYMENT OF EXAMINERS AND ACTUARIES. (a) The legislature recognizes that experienced, highly qualified examiners and actuaries are necessary for the department to effectively monitor and regulate the solvency of insurers in this state. It is the intent of the legislature that the department, in appointing or employing an examiner or actuary, select a person who:

(1) has substantial experience in financial matters relating to insurance or other areas of financial activity that are compatible with the business of insurance; and

(2) is recognized for the outstanding quality of the person's work in relation to areas of responsibility typically assigned to an examiner or actuary in the insurance field.

(b) The legislature pledges to provide to the department the necessary funding to implement this section and to support the department in the department's efforts to attract the highly qualified persons necessary to fulfill regulatory responsibilities relating to insurer solvency assigned to those persons under the insurance laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.103. APPOINTMENT OF EXAMINERS AND ACTUARIES. (a) The department shall appoint:

(1) a chief examiner and the number of assistant examiners the department considers necessary to conduct examinations of insurance companies, corporations, and associations at the expense of the insurance company, corporation, or association as provided by law; and

(2) the number of actuaries the department considers necessary to:

(A) advise the department in connection with the performance of the department's duties; and

(B) otherwise aid and counsel the department in connection with the examinations.

(b) The department may increase or decrease the number of examiners or actuaries as needed for examination duties.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.104. APPOINTMENT OF EXAMINERS, ACTUARIES, AND OTHER PERSONS FOR CERTAIN EXAMINATIONS. (a) The department may commission a department actuary, the chief examiner, another department examiner or employee, or any other person to conduct or assist in the examination of a company that is not organized under the laws of this state.

(b) The department may compensate a person described by Subsection (a). If the department compensates the person, the person may not receive any other compensation while the person is assigned to the examination.

(c) Except as provided by this section and Section 401.152, a department actuary or examiner may not continue to serve in that capacity if the person directly or indirectly accepts employment or compensation for a service rendered or to be rendered from any insurance company for any reason.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.105. OATH OF EXAMINERS AND ASSISTANTS. Before entering into the duties of appointment as an examiner or assistant examiner, an individual must take and file in the office of the secretary of state an oath to:

(1) support the constitution of this state;

(2) faithfully conduct the individual's duties of office;

(3) make fair and impartial examinations;

(4) not accept, directly or indirectly, as a gift or emolument any pay for the discharge of the individual's duty, other than the compensation to which the individual is entitled by law; and

(5) not reveal the condition of a corporation, firm, or person or any information secured while examining a corporation,

firm, or person to anyone other than:

(A) the department or an authorized representative of the department; or

(B) as required when testifying in an administrative hearing under this code or another insurance law of this state or in court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.106. RIGHT OF ACTION ON BOND. If an examiner or assistant examiner knowingly makes a false report or gives any information in violation of law that relates to an examination of a corporation, firm, or person, the corporation, firm, or person has a right of action on a bond authorized under Chapter 653, Government Code, for the entity's injuries in a suit brought in the name of the state at the relation of the entity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.107. REGISTRATION OF CONTRACT EXAMINERS. (a) A person with whom another state contracts to perform any examination initiated by the other state of an insurer domiciled in this state shall register with and provide the following information to the department's chief examiner:

(1) the person's name;

(2) if the person is not an individual, the identity of each examiner or other person who will perform any part of the examination;

(3) the name of the state that contracted with the person;

(4) the identity of the insurer to be examined;

(5) a description of each issue that the person has been contracted to examine;

(6) an estimate of the examination costs to be charged to the insurer to be examined;

(7) a copy of any contract between the person and the state regulatory body that initiated the examination and a letter authorizing the examination; and

(8) a list of the previous examinations conducted on the same insurer on behalf of any state within the last three years.

(a-1) On accepting a person's registration under Subsection (a), the department shall send written confirmation of the acceptance to:

(1) the person;

(2) the insurer to be examined; and

(3) the state regulatory body that initiated the examination.

(b) It is a violation of this code for a person to accept compensation from multiple states for the same examination, if doing so results in duplicative costs to the insurer being examined. It is not a violation of this code for:

(1) an examiner to conduct an examination of an insurer for the benefit of multiple states in a coordinated examination; and

(2) the examiner to accept compensation from the states participating in the coordinated examination to reduce the examination costs to the insurer being examined.

Added by Acts 2009, 81st Leg., R.S., Ch. 1030 (H.B. 4359), Sec. 2, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 185 (S.B. 1229), Sec. 1, eff. May 28, 2011.

SUBCHAPTER D. EXAMINATION EXPENSES

Sec. 401.151. EXPENSES OF EXAMINATION OF DOMESTIC INSURER. (a) A domestic insurer examined on behalf of this state by the department or under the department's authority shall pay the expenses of the examination in an amount the commissioner certifies as just and reasonable.

(b) The department shall collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including:

(1) the salaries and expenses of department employees; and

(2) expenses described by Section 803.007.

(c) The department shall also impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of this state

relating to the examination of insurers.

(d) In determining the amount of the assessment under Subsection (c), the department:

(1) shall consider:

(A) the insurer's total annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by Section 818(a), Internal Revenue Code of 1986; or

(B) the total amount of the insurer's insurance in force; and

(2) may not consider insurance premiums for insurance contracted for by a state or federal governmental entity to provide welfare benefits to designated welfare recipients or contracted for in accordance with or in furtherance of Title 2, Human Resources Code, or the federal Social Security Act (42 U.S.C. Section 301 et seq.).

(e) The amount of all examination and evaluation fees paid to the state by an insurer in each taxable year shall be allowed as a credit on the amount of premium taxes due.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 17, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 2.04, eff. September 28, 2011.

Sec. 401.152. EXPENSES OF EXAMINATION OF OTHER INSURERS. (a) An insurer not organized under the laws of this state shall reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination.

(a-1) The department shall also impose an annual assessment on insurers not organized under the laws of this state subject to examination as described by this section in an amount sufficient to

meet all other expenses and disbursements necessary to comply with the laws of this state relating to the examination of insurers. The amount imposed under this subsection must be computed in the same manner as the amount imposed under Section 401.151(c) for domestic insurers.

(b) An insurer shall pay the expenses under this section regardless of whether the examination is made only by the department or jointly with the insurance supervisory authority of another state.

(c) The insurer shall pay the expenses directly to the department on presentation of an itemized written statement from the commissioner.

(d) The commissioner shall determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

(e) The limitations provided by Sections 803.007(1) and (2)(B) for a domestic company apply to a foreign insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1286 (H.B. 2163), Sec. 1, eff. September 1, 2013.

Sec. 401.153. REIMBURSEMENT OF EXPENSES OF CERTAIN PERSONS OR FIRMS. (a) A person or firm appointed by the department to examine an insurer or to assist in the insurer's examination shall be paid for those services at the usual and customary rates charged for those services. The insurer being examined shall pay the fee for those services.

(b) The commissioner may disapprove the payment of a fee under Subsection (a) if the fee is excessive in relation to the services actually performed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.154. TAX CREDIT AUTHORIZED. (a) An insurer is

entitled to a credit on the amount of premium taxes to be paid by the insurer for all examination fees paid under Section 401.153. The insurer may take the credit for the taxable year during which the examination fees are paid and may take the credit to the same extent the insurer may take a credit for examination fees paid when a salaried department examiner conducts the examination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 18, eff. June 15, 2007.
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 2.05, eff. September 28, 2011.

Sec. 401.155. ADDITIONAL ASSESSMENTS. (a) The department shall impose additional assessments against insurers on a pro rata basis as necessary to:

(1) cover all expenses and disbursements required by law; and

(2) comply with this subchapter and Sections 401.103, 401.104, 401.105, and 401.106.

(b) The department shall use any surplus resulting from an assessment under this section to reduce the amount of subsequent assessments.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 401.156. DEPOSIT AND USE OF ASSESSMENT AND FEE. (a) The department shall deposit any assessments or fees collected under this subchapter relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Section 401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination costs, as defined by Section 401.251, to reimburse administrative support costs for the Texas Department of Insurance operating account, and to reimburse premium tax credits for examination costs and examination overhead

assessments.

(b) Money deposited under Subsection (a) accumulates and may be disbursed to the department in a manner consistent with that subsection and Subchapter F.

(c) Revenue that is not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division shall be deposited to the credit of the Texas Department of Insurance operating account.

(d) To the extent that another provision of law conflicts with this section or a provision of this section, this section or the provision of this section controls.

(e) The department may transfer funds between the account described by Subsection (a) and the Texas Department of Insurance operating account as necessary to ensure that funds are deposited to the correct account and used for the correct purposes. This subsection does not authorize a disbursement or transfer of funds in a manner that is inconsistent with the purposes of Subchapter F and this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 489 (S.B. 1665), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1286 (H.B. 2163), Sec. 2, eff. September 1, 2013.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 11.001, eff. September 1, 2015.

SUBCHAPTER E. CONFIDENTIALITY OF CERTAIN INFORMATION

Sec. 401.201. CONFIDENTIALITY OF EARLY WARNING SYSTEM INFORMATION. Information relating to the financial solvency of an organization regulated by the department under this code or another insurance law of this state that is obtained by the department's early warning system is confidential and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

SUBCHAPTER F. SELF-DIRECTED BUDGET FOR CERTAIN DIVISIONS

Sec. 401.251. DEFINITIONS. In this subchapter:

(1) "Actuarial division" means the division within the financial program that conducts actuarial examinations of insurers and other entities regulated by the department and administers state laws relating to the level of reserves required of an insurer.

(2) "Examination cost" means a cost associated with salary, travel, or other personnel expenses associated with the examination of insurers and other entities regulated by the department by the financial examinations division or actuarial division.

(3) "Financial examinations division" means the division within the financial program that conducts financial and market conduct examinations of insurers and other entities regulated by the department.

(4) "Financial program" means the program within the department through which the department regulates the financial and operating conditions of, and issues licenses to, domestic and foreign insurers and other entities regulated by the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 1, eff. September 1, 2011.

Sec. 401.252. SELF-DIRECTED BUDGET. (a) The senior associate commissioner of the financial program shall submit to the commissioner an annual budget of examination costs using generally accepted accounting principles. Notwithstanding any other provision of law, the budget may be adopted and approved only by the commissioner. The commissioner shall approve a budget under this subsection not later than August 31 of the year in which the associate commissioner submits the budget to the commissioner.

(b) The financial program may not directly or indirectly cause the Texas Department of Insurance operating account to incur any examination cost.

(c) Subject to any limitations in this code or another insurance law of this state, the department may set the amounts of fees required or permitted by statute or rule as necessary to:

(1) carry out the functions of the financial examinations and actuarial divisions relating to the examination of insurers and other regulated entities; and

(2) fund the budget adopted and approved under this section.

(d) Notwithstanding this section, the financial program may receive funds appropriated from the state to fund costs other than examination costs.

(e) An assessment, fee, charge, or other source of revenue collected by the financial program relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division shall be deposited to the credit of the account described by Section 401.156(a) for the purposes described by that section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 1, eff. September 1, 2011.

Sec. 401.253. AUDITS. This subchapter does not affect the duty of the state auditor to audit the financial program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 1, eff. September 1, 2011.

Sec. 401.254. RECORDS; REPORTING REQUIREMENTS. (a) The financial program shall keep financial and statistical information as necessary to disclose completely and accurately the financial program's receipts and examination costs.

(b) The financial program shall submit to the commissioner and the Legislative Budget Board an annual report that states:

(1) the revenue received by the financial program from assessments and fees collected by the department relating to the examination of insurers and other regulated entities;

(2) the total salary for each financial program employee who performs examinations of insurers and other regulated entities;

(3) the portion of the salary paid to each employee from the self-directed budget approved under Section 401.252;

(4) the portion of the salary paid to each employee from funds appropriated to the financial program by the state;

(5) the total travel expenses incurred by each employee who performs examinations of insurers and other regulated entities;

(6) the portion of travel expenses paid for each employee from the self-directed budget approved under Section 401.252;

(7) the portion of travel expenses paid for each employee from funds appropriated to the financial program by the state; and

(8) all other examination costs of the financial program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 1, eff. September 1, 2011.

Sec. 401.255. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the actuarial division and financial examinations division are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the transition to a self-directed budget as provided by this subchapter has no effect on their membership or any benefits under that system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 1, eff. September 1, 2011.

CHAPTER 402. DISCLOSURE OF MATERIAL TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to:

(1) each of the following domestic or commercially domiciled insurers:

(A) a capital stock insurance company;

(B) a mutual insurance company;

(C) a title insurance company;

(D) a fraternal benefit society;

(E) a Lloyd's plan;

(F) a reciprocal or interinsurance exchange;

(G) a group hospital service corporation or a nonprofit hospital, medical, or dental service corporation;

(H) a risk retention group; and

(I) a nonprofit legal services corporation; and

(2) a domestic or commercially domiciled health maintenance organization.

(b) This chapter does not apply to a domestic insurer that engages in the business of insurance only in this state or to a domestic health maintenance organization that engages in the business of a health maintenance organization only in this state until the insurer or health maintenance organization is authorized to engage in the business of insurance or the business of a health maintenance organization, as applicable, in another state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.002. GENERAL REPORTING REQUIREMENTS. (a) An insurer or health maintenance organization shall file with the department a report, including any necessary exhibit or other attachment, that discloses:

(1) the material acquisition or disposition of assets; or

(2) the material nonrenewal, cancellation, or revision of a ceded reinsurance agreement.

(b) The insurer or health maintenance organization shall file the report required under Subsection (a) not later than the 15th day after the last day of the calendar month in which any transaction for which a report is required occurs.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.003. EXCEPTIONS TO REPORTING REQUIREMENTS. An insurer or health maintenance organization is not required to file a report under Section 402.002 if:

(1) the acquisition or disposition of assets or the nonrenewal, cancellation, or revision of a ceded reinsurance agreement is not material; or

(2) the insurer's or health maintenance organization's material acquisition or disposition of assets or material nonrenewal, cancellation, or revision of a ceded reinsurance agreement has been submitted to the commissioner for review, approval, or information under another provision of this code or another law, regulation, or requirement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.004. REPORT MADE ON NONCONSOLIDATED BASIS. (a) An insurer or health maintenance organization shall report each material acquisition or disposition and each material nonrenewal, cancellation, or revision of a ceded reinsurance agreement on a nonconsolidated basis unless the insurer or health maintenance organization:

(1) is part of a consolidated group of insurers or health maintenance organizations that uses a pooling arrangement or a 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's or health maintenance organization's reserves; and

(2) has ceded substantially all of the insurer's or health maintenance organization's direct and assumed business to the pooling arrangement.

(b) For purposes of Subsection (a), an insurer or health maintenance organization is considered to have ceded substantially all of the insurer's or health maintenance organization's direct and assumed business to a pooling arrangement if:

(1) the insurer or health maintenance organization has, during a calendar year, less than $1 million total direct and assumed written premiums that are not subject to a pooling arrangement; and

(2) the net income of the business that is not subject to the pooling arrangement represents less than five percent of the insurer's or health maintenance organization's capital and surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.005. CONFIDENTIALITY OF REPORT. (a) A report obtained by or disclosed to the commissioner under this chapter is confidential and is not subject to a subpoena, other than a grand jury subpoena.

(b) The report may not be disclosed by the commissioner, the National Association of Insurance Commissioners, or any other person without the prior written consent of the affected insurer or health maintenance organization unless the commissioner, after providing

notice and an opportunity for a hearing to the affected insurer or health maintenance organization, determines that the interest of shareholders, holders of policies or evidences of coverage, or the public will be served by publishing the report. If the commissioner makes that determination, the department may:

(1) disclose the report to the public; and

(2) publish any part of the report in a manner the commissioner considers appropriate.

(c) The report may be disclosed to the insurance department of another state or another authorized governmental agency without complying with Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. ACQUISITION AND DISPOSITION OF ASSETS

Sec. 402.051. ACQUISITIONS AND DISPOSITIONS CONSIDERED MATERIAL. For purposes of this chapter, an acquisition, or the aggregate of a series of related acquisitions during a 30-day period, or a disposition, or the aggregate of a series of related dispositions during a 30-day period, is material if it:

(1) is not recurring;

(2) is not in the ordinary course of business; and

(3) involves more than five percent of the reporting insurer's or health maintenance organization's total admitted assets as reported in the insurer's or health maintenance organization's most recent statutory statement filed with the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.052. ACQUISITIONS AND DISPOSITIONS SUBJECT TO CHAPTER. (a) An asset acquisition subject to this chapter includes a purchase, lease, exchange, merger, consolidation, succession, or other acquisition of assets, except the construction or development of real property by or for the reporting insurer or health maintenance organization or the acquisition of materials for that purpose.

(b) An asset disposition subject to this chapter includes a

sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment, whether for the benefit of a creditor or otherwise, abandonment, destruction, or other disposition of assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.053. CONTENT OF REPORT CONCERNING MATERIAL ACQUISITIONS AND DISPOSITIONS. In a report of a material acquisition or disposition of assets under Section 402.002, an insurer or health maintenance organization shall disclose:

(1) the date of the transaction;

(2) the manner of acquisition or disposition;

(3) a description of the assets involved;

(4) the nature and amount of the consideration given or received;

(5) the purpose of the transaction;

(6) the manner by which the amount of consideration was determined;

(7) the gain or loss recognized or realized as a result of the transaction; and

(8) the name of each person from whom the assets were acquired or to whom they were disposed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. NONRENEWAL, CANCELLATION, AND REVISION OF CEDED REINSURANCE AGREEMENTS

Sec. 402.101. NONRENEWALS, CANCELLATIONS, AND REVISIONS CONSIDERED MATERIAL. For purposes of this chapter, a nonrenewal, cancellation, or revision of a ceded reinsurance agreement is material if, on an annual basis, as reported in an insurer's or health maintenance organization's most recent statutory statement filed with the department, the nonrenewal, cancellation, or revision affects:

(1) for property and casualty business, including accident and health business when written as property and casualty business, more than 50 percent of the insurer's or health maintenance

organization's ceded written premium; or

(2) for life, annuity, and accident and health business, more than 50 percent of the total reserve credit taken for business ceded by the insurer or health maintenance organization.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.102. CONDITIONS UNDER WHICH REPORT CONCERNING NONRENEWAL, CANCELLATION, OR REVISION REQUIRED. Except as provided by Section 402.103, an insurer or health maintenance organization shall file a report of a material nonrenewal, cancellation, or revision of ceded reinsurance under Section 402.002, without regard to which party initiated the nonrenewal, cancellation, or revision, if:

(1) the entire cession has been canceled, nonrenewed, or revised, and ceded indemnity and loss adjustment expense reserves after the nonrenewal, cancellation, or revision represent less than 50 percent of the comparable reserves that would have been ceded had the nonrenewal, cancellation, or revision not occurred;

(2) an authorized or accredited reinsurer has been replaced by an unauthorized reinsurer on an existing cession, and the result of the revision affects more than 10 percent of the cession; or

(3) a collateral requirement previously established for an unauthorized reinsurer has been reduced, in that the requirement to collateralize incurred but unreported claim reserves has been waived for at least one unauthorized reinsurer newly participating in an existing cession, and the result of the revision affects more than 10 percent of the cession.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.103. CONDITIONS UNDER WHICH REPORT CONCERNING NONRENEWAL, CANCELLATION, OR REVISION NOT REQUIRED. An insurer or health maintenance organization is not required to file a report under Section 402.002 if the insurer's or health maintenance organization's ceded written premium of the total reserve credit taken for business ceded is, on an annual basis, less than an amount

equal to:

(1) 10 percent of direct and assumed written premiums; or

(2) 10 percent of the statutory reserve requirement before a cession.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 402.104. CONTENT OF REPORT CONCERNING MATERIAL NONRENEWALS, CANCELLATIONS, AND REVISIONS. In a report of a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement under Section 402.002, an insurer or health maintenance organization shall disclose:

(1) the effective date of the nonrenewal, cancellation, or revision;

(2) a description of the transaction that identifies the initiator of the transaction;

(3) the purpose of the transaction; and

(4) if applicable, the identity of each replacement reinsurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 403. DIVIDENDS

SUBCHAPTER A. PAYMENT OF DIVIDENDS

Sec. 403.001. LIMITATION ON DIVIDENDS. An insurer organized under the laws of this state, including a life, health, fire, marine, or inland marine insurance company, may not pay a shareholder dividend except from surplus profits arising from the insurer's business.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 1, eff. June 14, 2013.

Sec. 403.002. DIVIDENDS TO POLICYHOLDERS IN COMMERCIAL LINES. (a) An insurer may pay to a commercial policyholder or group of commercial policyholders a dividend that covers more than one class or line of commercial business only:

(1) after the insurer establishes on an aggregate basis adequate loss reserves for the classes or lines of commercial insurance included within the dividend; and

(2) if the insurer has sufficient surplus from which to pay the dividend.

(b) Not later than the 15th day before an insurer pays a dividend described by Subsection (a), the insurer shall file with the department notice of the insurer's intent to pay the dividend.

(c) The classes or lines of commercial business for which dividends are authorized under this section include any commercial class or line of commercial business regulated by Title 10 or Chapter 5.

(d) An insurer's limitation of a dividend on one or more classes or lines of commercial business to a group of commercial policyholders is not unfair discrimination if the group:

(1) has clearly identifiable underwriting characteristics; or

(2) is an association or group of business entities engaged in similar undertakings.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. ESTIMATE OF PROFITS

Sec. 403.051. ESTIMATE OF PROFITS. An insurer organized under the laws of this state may not include the following in the estimate of the insurer's profits for the purpose of paying dividends under Section 403.001:

(1) the reserve on all unexpired risks computed in the manner provided by this code;

(2) the amount of all unpaid losses, whether adjusted or unadjusted; and

(3) all other debts due and payable, or to become due and payable, by the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 403.052. ESTIMATE OF PROFITS OF CERTAIN INSURERS. A life, health, fire, marine, or inland marine insurance company organized under the laws of this state may not include the following in the estimate of the company's profits for the purpose of paying dividends under Section 403.001:

(1) the reserve on all unexpired risks computed in the manner provided by this code;

(2) the amount of all unpaid losses, whether adjusted or unadjusted;

(3) each amount due the company on bonds, mortgages, stocks, or book-accounts on which no part of the principal or interest has been paid during the year preceding the estimate of profits and for which:

(A) a suit for foreclosure or collection has not been commenced; or

(B) a judgment obtained in a suit for foreclosure or collection has remained unsatisfied for a period of more than two years and no interest has been paid on the judgment; and

(4) if no interest has been paid on a judgment described by Subdivision (3)(B), any interest that is due or accrued on the judgment and remains unpaid.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 403.053. ACQUIRED EARNED SURPLUS. (a) This section applies only to:

(1) a stock domestic insurance company authorized to engage in the business of life, accident, or health insurance in this state;

(2) a stock foreign or alien life, health, or accident insurance company;

(3) a stock insurance company authorized to engage in the business of property, casualty, or fire insurance; and

(4) a domestic Lloyd's plan, reciprocal or interinsurance exchange, or title insurance company.

(b) In determining the amount of "surplus profits arising from

the insurer's business" or "earned surplus" for the purpose of paying dividends to shareholders, the insurer may include the acquired earned surplus of an insurance subsidiary acquired by the insurer to the extent that:

(1) the inclusion is permitted by an order of the commissioner made in accordance with commissioner rules; and

(2) the earned surplus of the acquired subsidiary on the date of acquisition that exists on the date of the commissioner's order is not otherwise reflected in the insurer's earned surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. PENALTIES

Sec. 403.101. PENALTIES. (a) The department may revoke the charter of an insurer organized under the laws of this state that pays a dividend in violation of Sections 403.001 and 403.051. If the department revokes an insurer's charter under this subsection, the department shall immediately revoke the insurer's certificate of authority.

(b) Not later than the 10th day before the date on which the department intends to revoke an insurer's certificate of authority under this section, the department shall give the insurer written notice of the department's intent. The notice must include the specific reasons for the revocation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 403.102. PENALTIES FOR CERTAIN INSURERS. The department may revoke the charter of a life, health, fire, marine, or inland marine insurance company organized under the laws of this state that pays a dividend in violation of Sections 403.001 and 403.052. If the department revokes a company's charter under this section, the department shall immediately revoke the company's certificate of authority.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 404. FINANCIAL CONDITION

SUBCHAPTER A. HAZARDOUS FINANCIAL CONDITION

Sec. 404.001. DEFINITION. In this subchapter, "insurer" includes:

(1) a capital stock insurance company;

(2) a reciprocal or interinsurance exchange;

(3) a Lloyd's plan;

(4) a fraternal benefit society;

(5) a mutual company, including a mutual assessment company;

(6) a statewide mutual assessment company;

(7) a local mutual aid association;

(8) a burial association;

(9) a county mutual insurance company;

(10) a farm mutual insurance company;

(11) a fidelity, guaranty, or surety company;

(12) a title insurance company;

(13) a stipulated premium company;

(14) a group hospital service corporation;

(15) a health maintenance organization;

(16) a risk retention group; and

(17) any other organization or person engaged in the business of insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person or organization engaged in the business of insurance without regard to whether the person or organization is listed in Section 404.001, unless another statute specifically cites this subchapter and exempts the person or organization from this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.003. ORDER TO REMEDY CONDITION. (a) If the financial condition of an insurer, when reviewed as provided by Subsection (b), indicates a condition that might make the insurer's continued operation hazardous to the insurer's policyholders or creditors or to the public, the commissioner may, after notice and hearing, order the insurer to take action reasonably necessary to remedy the condition.

(b) The insurer's financial condition must be reviewed under Subsection (a) in conjunction with one or more of the following:

(1) the kinds and nature of risks insured;

(2) the loss experience and ownership of the insurer;

(3) the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases;

(4) the insurer's method of operation, affiliations, or investments;

(5) any contracts that lead or may lead to contingent liability; or

(6) agreements in respect to guaranty and surety.

(c) In an order issued under Subsection (a), the commissioner may take any action the commissioner considers reasonably necessary to remedy the condition described by Subsection (a), including:

(1) requiring an insurer to:

(A) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(B) reduce the volume of new business accepted;

(C) suspend or limit writing new business for a period;

(D) reduce general insurance and commission expenses by specified methods; or

(E) increase the insurer's capital and surplus by contribution; or

(2) suspending or canceling the insurer's certificate of authority.

(d) The commissioner may use the remedies available under Subsection (c) in conjunction with the provisions of Chapter 83 if the commissioner determines that the financial condition of the insurer is hazardous and can be reasonably expected to cause significant and imminent harm to the insurer's policyholders or the public.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 404.004. CONSTRUCTION WITH LAW RELATING TO CAPITAL AND SURPLUS. The commissioner's authority under Section 404.003 to require an increase in an insurer's capital and surplus by contribution, and any capital and surplus requirements imposed by the commissioner under that section, prevail over:

(1) the capital and surplus requirements of:

(A) Sections 822.054, 822.201-822.203, 822.205, 822.210-822.212, 841.054, 841.201, 841.204, 841.205, 841.207, 884.206, 884.308, and 884.309; and

(B) Subchapter G, Chapter 841;

(2) any other provision of this code or other law establishing capital and surplus requirements for insurers; and

(3) any rule adopted under a law described by Subdivision (1) or (2).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.005. STANDARDS AND CRITERIA FOR EARLY WARNING. (a) The commissioner by rule may:

(1) establish uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to the insurer's policyholders or creditors or to the public; and

(2) establish standards for evaluating the financial condition of an insurer.

(b) Standards established by the commissioner under this section must be consistent with the purposes of Section 404.003.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.006. AGREEMENT WITH ANOTHER JURISDICTION. The commissioner may enter into an agreement with the insurance regulatory authority of another jurisdiction concerning the management, volume of business, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of

operations of, and type of risks to be insured by, an insurer that is:

(1) licensed in the other jurisdiction; and

(2) considered to be in a hazardous financial condition or in need of a specific remedy that may be imposed by the commissioner and the insurance regulatory authority of the other jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. IMPAIRMENT OF STOCK OR SURPLUS

Sec. 404.051. IMPAIRMENT PROHIBITED. (a) The impairment of the capital stock of a stock insurance company is prohibited.

(b) Impairment of the following surpluses in excess of that provided by Section 404.053 is prohibited:

(1) the surplus of a stock insurance company; or

(2) the minimum required aggregate surplus of a:

(A) mutual company;

(B) Lloyd's plan; or

(C) reciprocal or interinsurance exchange.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.052. DETERMINATION OF IMPAIRMENT. (a) When determining under this subchapter whether the surplus or the minimum required aggregate surplus of an insurer is impaired, the commissioner shall charge against the insurer:

(1) the reinsurance reserve required by the laws of this state; and

(2) all other debts and claims against the insurer.

(b) This section does not apply to a life insurance company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 404.053. REMEDY FOR IMPAIRMENT. (a) The commissioner shall order an insurer to remedy an impairment of the insurer's

surplus, aggregate surplus, or aggregate of guaranty fund and surplus, as applicable, by bringing the surplus to an acceptable level specified by the commissioner, or to cease engaging in business in this state, if the commissioner determines that:

(1) the surplus required by Section 822.054, 822.202, 822.203, 822.205, 822.210, 822.211, or 822.212 of a stock insurance company engaged in the kind of insurance business described by the company's certificate of authority:

(A) is impaired by more than 50 percent; or

(B) is less than the minimum level of surplus required by risk-based capital and surplus rules adopted by the commissioner; or

(2) the required aggregate of guaranty fund and surplus of a Lloyd's plan, or the required aggregate surplus of a reciprocal or interinsurance exchange or of a mutual company, other than a life insurance company, engaged in the kind of insurance business described by the insurer's certificate of authority:

(A) is impaired by more than 25 percent; or

(B) is less than the minimum level of surplus required by risk-based capital and surplus rules adopted by the commissioner.

(b) After issuing an order described by Subsection (a), the commissioner shall immediately institute any proceeding necessary to determine what further actions the commissioner will take in relation to the matter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 406. SPECIAL DEPOSITS REQUIRED UNDER POTENTIALLY HAZARDOUS CONDITIONS

Sec. 406.001. DEFINITION. In this chapter, "insurer" includes:

(1) a capital stock insurance company;

(2) a reciprocal or interinsurance exchange;

(3) a Lloyd's plan;

(4) a fraternal benefit society;

(5) a mutual company, including a mutual assessment company;

(6) a statewide mutual assessment company;

(7) a local mutual aid association;

(8) a burial association;
(9) a county mutual insurance company;
(10) a farm mutual insurance company;
(11) a fidelity, guaranty, or surety company;
(12) a title insurance company;
(13) a stipulated premium company;
(14) a group hospital service corporation;
(15) a health maintenance organization;
(16) a risk retention group; and
(17) any other organization or person engaged in the business of insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001, eff. April 1, 2009.

Sec. 406.002. APPLICABILITY OF CHAPTER. This chapter applies to a person or organization engaged in the business of insurance without regard to whether the person or organization is listed in Section 406.001, unless another statute specifically cites this chapter and exempts the person or organization from this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001, eff. April 1, 2009.

Sec. 406.003. REQUIRED DEPOSIT: STANDARDS AND CRITERIA. The commissioner, in the commissioner's sole discretion, may require an insurer to make a deposit under this chapter if the commissioner determines that one of the following conditions, if not rectified, may potentially be hazardous to the insurer's policyholders, enrollees, or creditors, or to the public:
(1) the insurer's financial or operating condition, reviewed in conjunction with the kinds and nature of risks insured;
(2) the insurer's method of operation;
(3) the insurer's relationship with affiliates;
(4) the nature and amount of the insurer's investments;
(5) the insurer's contracts that may lead to a contingent liability; or
(6) the insurer's agreements with respect to guaranty and surety.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001, eff. April 1, 2009.

Sec. 406.004. REQUIRED DEPOSIT: FORM OF SECURITY. A deposit required under Section 406.003 must be made with the comptroller and approved by the commissioner. The deposit must be made in:

(1) cash;

(2) securities authorized under this code to be a legal investment for the insurer that:

(A) are readily marketable over a national exchange with a maturity date of not more than one year, are listed by the Securities Valuation Office of the National Association of Insurance Commissioners, and qualify as admitted assets; or

(B) are clean, irrevocable, and unconditional letters of credit issued or confirmed by a financial institution organized and licensed under the laws of the United States or a state of the United States; or

(3) another form of security acceptable to the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001, eff. April 1, 2009.

Sec. 406.005. DURATION OF DEPOSIT. Subject to Section 406.006, the comptroller shall hold a deposit required under this chapter until the commissioner issues a written order finding that the condition for which the deposit was required no longer exists.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001, eff. April 1, 2009.

Sec. 406.006. SUBSTITUTION OR WITHDRAWAL OF DEPOSIT. (a) An insurer may file a written application with the commissioner requesting:

(1) withdrawal of all or part of the deposit held by the comptroller under this chapter; or

(2) substitution of all or part of the deposited securities held by the comptroller under this chapter.

(b) The application must state the basis for the request to withdraw the deposit or to substitute the deposited security.

(c) An insurer's application for the substitution of a deposited security must provide specific information regarding the security to be deposited as a substitute for the security held by the comptroller.

(d) The commissioner shall issue a letter approving or an order denying an application under this section not later than the 30th day after the date the department receives the application. If the commissioner does not approve or deny the application within that period, the application is denied.

(e) The commissioner may, in the commissioner's sole discretion, approve an application to withdraw a deposit or substitute a deposited security if the commissioner determines that the withdrawal or substitution will not be hazardous to the insurer's policyholders, enrollees, or creditors, or to the public.

(f) The comptroller may not release a deposit made under this chapter, or any part of the deposit, and may not accept a substitute for a deposited security unless the commissioner issues a letter approving the withdrawal or substitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001, eff. April 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 553 (S.B. 631), Sec. 1, eff. June 14, 2013.

Sec. 406.007. APPEAL. An insurer may appeal an action of the commissioner under this chapter in accordance with Subchapter D, Chapter 36.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001, eff. April 1, 2009.

Sec. 406.008. CUMULATIVE OF OTHER DEPOSITS. A deposit required to be made under this chapter is in addition to any other deposit that the insurer is required or authorized to make under this code.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1C.001,

eff. April 1, 2009.

SUBTITLE B. RESERVES AND INVESTMENTS

CHAPTER 421. RESERVES IN GENERAL

Sec. 421.001. RESERVES REQUIRED. (a) An insurer shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims for which the insurer may be liable and that are:

(1) incurred on or before the date of statement, whether reported or unreported; and

(2) unpaid as of the date of statement.

(b) In addition to the reserves required by Subsection (a), an insurer shall maintain reserves in an amount estimated to provide for the expenses of adjustment or settlement of the losses or claims described by that subsection.

(c) The commissioner shall adopt each current formula recommended by the National Association of Insurance Commissioners for establishing reserves for each line of insurance. Each insurer writing a line of insurance to which a formula adopted under this subsection applies shall establish reserves in compliance with that formula.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 421.002. CERTIFICATES FROM OTHER STATES. In computing the reserve liability of an insurer, the commissioner may accept the certificate of the officer of another state charged with the duty of supervising the insurer if:

(1) the insurer is organized under the laws of the other state; and

(2) the certificate shows that the reserve liability has been computed in accordance with Section 421.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 422. ASSET PROTECTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 422.001. SHORT TITLE. This chapter may be cited as the Asset Protection Act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.002. PURPOSES. (a) The purposes of this chapter are to:

(1) require an insurer to maintain unencumbered assets in an amount equal to the insurer's policy reserve liabilities;

(2) provide preferential claims against assets in favor of an owner, beneficiary, assignee, certificate holder, or third-party beneficiary of an insurance policy; and

(3) prevent the pledge or encumbrance of assets in excess of certain amounts without a prior written order of the commissioner.

(b) This chapter and the powers granted and functions authorized by this chapter shall be exercised to accomplish the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 1, eff. September 1, 2021.

Sec. 422.003. DEFINITIONS. In this chapter:

(1) "Asset" means any property in which an insurer owns a legal or equitable interest that is reported as an asset in the domestic insurer's statutory financial statements most recently filed with the department.

(2) "Claimant" means an owner, beneficiary, assignee, certificate holder, or third-party beneficiary of an insurance benefit or right arising from the coverage of an insurance policy to which this chapter applies.

(3) "Reserve assets" means the assets of an insurer that are authorized investments for policy reserves under this code.

(4) "Policy reserve liabilities" means the liabilities that an insurer is required under this code to establish for all of the

insurer's outstanding insurance policies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 2, eff. September 1, 2021.

Sec. 422.004. APPLICABILITY OF CHAPTER. This chapter applies to:

(1) the following domestic insurers:

(A) a stock life, health, or accident insurance company;

(B) a mutual life, health, or accident insurance company;

(C) a stock fire or casualty insurance company;

(D) a mutual fire or casualty insurance company;

(E) a title insurance company;

(F) a mutual assessment company;

(G) a local mutual aid association;

(H) a local mutual burial association;

(I) a statewide mutual assessment company;

(J) a stipulated premium company;

(K) a fraternal benefit society;

(L) a group hospital service corporation;

(M) a county mutual insurance company;

(N) a Lloyd's plan;

(O) a reciprocal or interinsurance exchange;

(P) a farm mutual insurance company; and

(Q) a mortgage guaranty insurer; and

(2) all kinds of insurance written by an insurer to which this chapter applies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.005. EXEMPTIONS. (a) This chapter does not apply to:

(1) variable contracts for which separate accounts are required to be maintained;

(2) a reinsurance agreement and any trust account related to the reinsurance agreement if the reinsurance agreement and related trust account meet the requirements of Chapter 493;

(3) an assessment-as-needed company or insurance coverage written by an assessment-as-needed company;

(4) an insurer while:

(A) the insurer is subject to a conservatorship order issued by the commissioner; or

(B) a court-appointed receiver is in charge of the insurer's affairs;

(5) an insurer's reserve assets that are held, deposited, pledged, or otherwise encumbered to secure, offset, protect, or meet the insurer's policy reserve liabilities established in a reinsurance agreement under which the insurer reinsures the insurance policy liabilities of a ceding insurer if:

(A) the ceding insurer and the reinsurer are authorized to engage in business in this state; and

(B) in accordance with a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the policy reserve liabilities the reinsurer must establish on the reinsured business are:

(i) deposited by or withheld from the reinsurer and held in the custody of the ceding insurer, or deposited and held in a trust account with a state or national bank domiciled in this state, as security for the payment of the reinsurer's obligations under the reinsurance agreement;

(ii) held subject to withdrawal by the ceding insurer; and

(iii) held under the separate or joint control of the ceding insurer; or

(6) any pledge, encumbrance, or lien contemplated by or customarily included in the documentation for:

(A) an investment or transaction authorized by:

(i) Section 424.068, Subchapter D, Chapter 424, or Section 425.121 or 425.151; or

(ii) Section 424.068, Subchapter E, Chapter 424, or Section 425.124, 425.125, 425.126, 425.127, 425.128, 425.129, 425.130, 425.131, or 425.132; and

(B) a custodial or trust agreement for an insurer's securities authorized by Section 423.103 that provides for a limited

grant or lien or security interest for payment of fees and expenses due to a service provider or intermediary under the custodial or trust agreement.

(b) Notwithstanding this section, the commissioner may examine any asset, reinsurance agreement, or deposit arrangement described by Subsection (a)(5) at any time, in accordance with the commissioner's authority under this code to examine an insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.02, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 3, eff. September 1, 2021.

Sec. 422.006. CONFLICT WITH OTHER LAW. If this chapter conflicts with another law relating to the subject matter or application of this chapter, this chapter controls.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 422.007. RULES. The commissioner may adopt rules regarding the provisions of this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 4, eff. September 1, 2021.

SUBCHAPTER B. ENCUMBRANCE OF ASSETS

Sec. 422.051. RESTRICTIONS ON ENCUMBRANCE OF ASSETS. (a) An insurer shall at all times maintain unencumbered assets in an amount equal to the insurer's policy reserve liabilities.

(b) An insurer may not pledge or otherwise encumber:

(1) the insurer's assets in an amount that exceeds the amount of the insurer's capital and surplus; or

(2) more than 10 percent of the insurer's reserve assets.

(b-1) The calculation of the quantitative limits in Subsections

(a) and (b) must be based on the statutory financial statements for the insurer most recently filed with the department as of the date compliance is determined. The date that a pledge or encumbrance is made is the date used to determine compliance with the limits in Subsection (b).

(b-2) Compliance with the quantitative limits in Subsection (b) is achieved when, on the date of determination of compliance, the sum of the value of a proposed pledge or encumbrance, when added to the values of the sum of all previous and still outstanding pledges and encumbrances, does not exceed any quantitative limit in Subsection (b).

(c) Notwithstanding any other provision of this section, on application made to the commissioner, the commissioner may issue a written order approving the pledge or encumbrance of an insurer's asset in any amount if the commissioner determines that the pledge or encumbrance will not adversely affect the insurer's solvency.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 5, eff. September 1, 2021.

Sec. 422.052. REPORT TO COMMISSIONER. (a) Not later than the 10th day after the date an insurer pledges or otherwise encumbers an asset, the insurer shall report in writing to the commissioner:

(1) the amount and identity of the pledged or encumbered asset; and

(2) the terms of the transaction.

(b) Annually, or more often as required by the commissioner, the insurer shall file with the commissioner a statement sworn to by the insurer's chief executive officer that:

(1) title to assets that equal the amount of the insurer's policy reserve liabilities and that are not pledged or otherwise encumbered is vested in the insurer;

(2) the only assets of the insurer that are pledged or otherwise encumbered are those identified and reported in the sworn statement, and no other assets of the insurer are pledged or otherwise encumbered; and

(3) the terms of the transaction pledging or otherwise encumbering the assets are those reported in the sworn statement.

(c) The insurer is not required to file the report described by Subsection (a) for a pledge or encumbrance permitted in a transaction approved by the commissioner under Section 1152.055.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 6, eff. September 1, 2021.

Sec. 422.053. CLAIMANT LIEN ON CERTAIN ASSETS. (a) A person, corporation, association, governmental entity, or any other legal entity that accepts as security for an insurer's debt or other obligation a pledge or encumbrance of an asset of the insurer that is not made in accordance with this chapter is considered to have accepted the asset subject to a superior, preferential, and automatically perfected lien in favor of a claimant of the insurer.

(b) Subsection (a) does not apply to:

(1) an asset of an insurer in conservatorship or receivership if the commissioner in the conservatorship proceeding, or the court in which the receivership is pending, approves the pledge or encumbrance of the asset; or

(2) a pledge or encumbrance of an asset permitted in a transaction approved by the commissioner under Section 1152.055.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 7, eff. September 1, 2021.

Sec. 422.054. PREFERENTIAL CLAIMS ON LIQUIDATION. If an insurer is involuntarily or voluntarily liquidated, a claimant of the insurer has a prior and preferential claim against all assets of the insurer other than the assets that have been pledged or encumbered in accordance with this chapter or the assets that are subject to a pledge or encumbrance of an asset described by Section 422.053(b)(2).

All claimants have equal status, and their prior and preferential claim is superior to any claim or cause of action against the insurer by any other person, corporation, association, or legal entity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 61 (S.B. 1954), Sec. 8, eff. September 1, 2021.

CHAPTER 423. TRANSACTIONS WITH MONEY AND OTHER ASSETS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 423.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to a domestic insurer regulated under this code, including:

(1) a stock company;
(2) a reciprocal or interinsurance exchange;
(3) a Lloyd's plan;
(4) a fraternal benefit society;
(5) a stipulated premium company;
(6) a mutual insurance company of any kind, including:
(A) a statewide mutual assessment company;
(B) a local mutual aid association;
(C) a burial association;
(D) a county mutual insurance company; and
(E) a farm mutual insurance company; and
(7) any other organization or person engaged in the business of insurance.

(b) A provision of this code limiting the regulation of an insurer under this code does not limit the application of this chapter, except that this chapter does not apply to an insurer that is exempted from its application by another statute that cites this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.002. AMBIGUITIES AND CONFLICTS WITH OTHER LAW. This chapter controls to the extent of an ambiguity or a conflict between this chapter and another provision of this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.003. RULES. The commissioner may adopt rules necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.004. STATUTORY DEPOSITS WITH DEPARTMENT. (a) Except as provided by Subsection (c), notwithstanding any requirement under this code that an insurer deposit with the comptroller money or other assets for the security of an insurer's policyholders or creditors, including a deposit required by another state, an insurer may deposit the required money or other assets with the department in accordance with this section.

(b) A deposit authorized by Subsection (a):

(1) must be approved by the commissioner;

(2) is subject to any requirements applicable to the type of deposit;

(3) must be held under the commissioner's control; and

(4) may not be substituted or withdrawn by the insurer without the commissioner's approval.

(c) This section does not apply to any deposit made under Chapter 406 or a deposit of fees or taxes under this code.

Added by Acts 2015, 84th Leg., R.S., Ch. 263 (S.B. 1427), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. TRANSACTIONS WITH MONEY

Sec. 423.051. DEPOSIT AND INVESTMENT OF MONEY. A director, member of a committee, officer, or clerk of a domestic insurer who has the duty to handle or invest the insurer's money may not:

(1) invest the money other than in the corporate name of the insurer, except as provided by Section 423.102;

(2) deposit the money unless the deposit is:

(A) in the corporate name of the insurer;

(B) in a pooling account with one or more affiliates,

as described by Section 823.003; or

(C) in accordance with a reinsurance agreement;

(3) borrow the insurer's money;

(4) have any interest in a loan, pledge, security, or property of the insurer, except as a stockholder; or

(5) take or receive for the individual's use a fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.052. MONEY HELD IN POOLING ACCOUNT. (a) Only a domestic insurer and an affiliate, as described by Section 823.003, may hold money in a pooling account.

(b) The accounting and operating records and books of the insurer and affiliate must be adequately detailed to identify specific insurance policies and policyholders with the money from premiums received by the insurer that issues the policies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.053. AUTHORITY TO DEPOSIT MONEY IN ACCOUNT OF REINSURER. A reinsurance agreement between a domestic insurer and an affiliate, as described by Section 823.003, must specifically authorize the deposit of money from premiums to the account of the affiliate that assumes the reinsurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. TRANSACTIONS WITH OTHER ASSETS

Sec. 423.101. DEFINITION. In this subchapter, "clearing corporation" means:

(1) a clearing corporation as defined by Section 8.102(a), Business & Commerce Code; or

(2) a clearance system that:

(A) is organized or operating under the laws of at least one foreign country;

(B) provides for book-entry settlement and custody of internationally traded securities; and

(C) has been organized and in operation for not less than 15 consecutive years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.102. DEPOSIT AND HOLDING OF SECURITIES. (a) A domestic insurer that has securities held in or purchased for the insurer's general account or separate accounts may deposit the securities or arrange through an agent, broker, or dealer for deposit of the securities with a clearing corporation or in the Federal Reserve book-entry system.

(b) If securities are deposited directly with a clearing corporation or deposited indirectly through a participating custodian bank, certificates representing securities of the same class of the same issuer may be merged and held in bulk, in the name of a nominee of the clearing corporation, with any other securities deposited with the clearing corporation by any person, regardless of the ownership of the securities.

(c) Certificates under Subsection (b) that represent securities of small denominations may be merged into one or more certificates of larger denominations.

(d) The records of an agent, broker, dealer, or member bank through which an insurer holds securities in the Federal Reserve book-entry system and the records of a custodian bank through which an insurer holds securities with a clearing corporation must show that the securities are held for the insurer and show the accounts for which the securities are held.

(e) A bank must enter into a custodial agreement with an insurer to be eligible to act as a participating custodian bank for the insurer under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.103. SECURITIES HELD UNDER CUSTODIAL OR TRUST AGREEMENT. A domestic insurer's securities that are held under a custodial agreement or trust agreement with a bank, Federal Home Loan Bank, or trust company may be issued in the name of a nominee of the bank, Federal Home Loan Bank, or trust company only if the bank, Federal Home Loan Bank, or trust company:

(1) has corporate trust powers;

(2) is authorized to act as a custodian or trustee;

(3) is organized under the laws of the United States or any state of the United States; and

(4) meets one of the following requirements:

(A) is a member of the Federal Reserve System;

(B) is a member of or is eligible to receive deposits that are insured by the Federal Deposit Insurance Corporation;

(C) maintains an account with a Federal Reserve Bank and is subject to supervision and examination by the Board of Governors of the Federal Reserve System; or

(D) is subject to supervision and examination by the Federal Housing Finance Board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.104. PROOF OF OWNERSHIP OF SECURITIES. (a) A domestic insurer may demonstrate ownership of a security through a definitive certificate or in accordance with rules adopted under this section.

(b) The commissioner shall adopt rules under which a domestic insurer may demonstrate ownership of an uncertificated security, as defined by Section 8.102(a), Business & Commerce Code, consistent with common practices of securities exchanges and markets. The rules must establish:

(1) standards for the types of uncertificated securities the insurer may hold;

(2) the manner in which the insurer may demonstrate ownership of the security; and

(3) adequate financial safeguards relating to the ownership of uncertificated securities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 423.105. MANDATORY DEPOSIT OF SECURITIES; COMMISSIONER CONTROL. (a) An insurer that is required to deposit securities as a condition of engaging in the business of insurance in this state may deposit the securities with a clearing corporation or in the Federal Reserve book-entry system.

(b) Securities under Subsection (a) are under the commissioner's control and may not be withdrawn by the insurer without the commissioner's approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.106. REQUIRED EVIDENCE FOR SECURITIES. (a) An insurer that deposits securities under Section 423.105 shall provide evidence to the commissioner to establish that:

(1) the securities are recorded in an account in the name of:

(A) the participating custodian bank or member bank through which the insurer deposits the securities with a clearing corporation or in the Federal Reserve book-entry system; or

(B) the insurer, if the insurer makes the deposit directly with the clearing corporation as a direct participant; and

(2) the records of the participating custodian bank, direct participant, or member bank and of the clearing corporation show that the securities are under the commissioner's control.

(b) Evidence under Subsection (a)(1) must be issued, as applicable, by:

(1) the participating custodian bank;

(2) the member bank; or

(3) the insurer, when the insurer makes the deposit directly with the clearing corporation as a direct participant.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.107. ASSETS DEPOSITED WITH CLEARING CORPORATION. A

domestic insurer may deposit assets with a clearing corporation only if:

(1) the insurer is a member of an insurance holding company system that has assets of at least $5 billion, as shown by annual statements of member insurers for the preceding year;

(2) the insurer uses the clearing corporation only as a depository for investments in internationally traded securities;

(3) the insurer's total investment in internationally traded securities under Subdivision (2) does not exceed the insurer's policyholders' surplus; and

(4) the insurer does not use securities deposited with the clearing corporation as security for reinsurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 423.108. LIMITATION ON ASSETS DEPOSITED WITH CLEARING CORPORATION. The commissioner by rule may adopt a reasonable limit on the percentage of a domestic insurer's assets that may be deposited with a clearing corporation. The limit may not exceed five percent of the insurer's total assets, as shown by the insurer's annual statement filed with the department for the year preceding the year for which the limit is adopted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 424. INVESTMENTS FOR CERTAIN INSURERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 424.001. DEFINITIONS. In this chapter:

(1) "Insurer" means any insurer organized under the laws of this state other than an insurer writing life, health, and accident insurance.

(2) "Minimum capital and surplus" means the minimum amount of capital stock and minimum amount of surplus required of an insurer under Section 822.054 or 822.210.

(3) "Securities valuation office" means the Securities Valuation Office of the National Association of Insurance Commissioners.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.002. INAPPLICABILITY OF CERTAIN LAW. The definition of "state" assigned by Section 311.005, Government Code, does not apply to this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. INVESTMENT OF FUNDS IN EXCESS OF MINIMUM CAPITAL AND SURPLUS

Sec. 424.051. GENERAL INVESTMENT AUTHORITY SPECIFIED BY LAW. An insurer may not invest the insurer's funds in excess of minimum capital and surplus, except that an insurer may invest as otherwise authorized by this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.052. ADDITIONAL GENERAL INVESTMENT AUTHORITY. An insurer may make investments that are not otherwise authorized by this chapter or otherwise authorized by this code for the insurer if:

(1) the investment is not specifically prohibited by law and does not exceed the limits prescribed by this code;

(2) the amount of a single investment under this section does not exceed five percent of the insurer's capital and surplus in excess of the insurer's minimum capital and surplus; and

(3) the aggregate amount of all investments made by the insurer under this section does not exceed five percent of the insurer's assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.053. LIMITATION AS TO SINGLE ISSUER OR BORROWER. (a) Notwithstanding Sections 424.051, 424.056-424.071, and 424.074, the

aggregate amount of an insurer's investments in all or any type of securities, loans, obligations, or evidences of indebtedness of a single issuer or borrower, other than investments described by Subsection (c), may not exceed five percent of the insurer's total assets.

(b) For purposes of this section, a single issuer or borrower includes:

(1) the issuer's or borrower's majority-owned subsidiaries;

(2) the issuer's or borrower's parent; or

(3) the majority-owned subsidiaries of the issuer's or borrower's parent.

(c) This section does not apply to:

(1) an authorized investment that:

(A) is a direct obligation of or guaranteed by the full faith and credit of the United States, this state, or a political subdivision of this state; or

(B) is insured by an agency of the United States or this state; or

(2) an investment described by Section 424.061 or 424.063.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.054. APPLICABILITY OF PERCENTAGE AUTHORIZATIONS AND LIMITATIONS. (a) The percentage authorizations and limitations established by Sections 424.051, 424.053-424.071, and 424.074 apply only at the time an investment is originally acquired or a transaction is entered into and do not apply to the insurer or the investment or transaction after that time.

(b) An investment, once qualified under a law described by Subsection (a), remains qualified notwithstanding any refinancing, restructuring, or modification of the investment, except that an insurer may not refinance, restructure, or modify an investment solely to circumvent the requirements or limitations of a law described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.055. WAIVER BY COMMISSIONER OF QUANTITATIVE LIMITATIONS. (a) Notwithstanding Sections 424.051, 424.056-424.071, and 424.074, the commissioner may waive a quantitative limitation on any investment authorized by those laws if:

(1) the insurer seeks the waiver before making the investment;

(2) a hearing is held to determine whether the waiver should be granted;

(3) the applicant seeking the waiver establishes that unreasonable or unnecessary loss or harm will result to the insurer if the commissioner denies the waiver;

(4) the excess investment will not have a material adverse effect on the insurer; and

(5) the size of the investment is reasonable in relation to the insurer's assets, capital, surplus, and liabilities.

(b) The commissioner's waiver must be in writing and may treat the resulting excess investment as a nonadmitted asset.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.056. WRITTEN INVESTMENT PLAN. (a) Each insurer's board of directors, or, if the insurer does not have a board of directors, the corresponding authority designated by the insurer's charter, bylaws, or plan of operation, shall adopt a written investment plan consistent with the requirements of:

(1) this chapter;

(2) Sections 822.204, 822.209, 861.258, and 862.002; and

(3) other statutes governing investments by the insurer.

(b) The investment plan must:

(1) specify the diversification of the insurer's investments designed to reduce the risk of large losses, by:

(A) broad categories, such as bonds and real property loans;

(B) kinds, such as government obligations, obligations of business entities, mortgage-backed securities, and real property loans on office, retail, industrial, or residential properties;

(C) quality;

(D) maturity;

(E) type of industry; and

(F) geographical areas, as to both domestic and foreign investments;

(2) balance safety of principal with yield and growth;

(3) seek a reasonable relationship of assets and liabilities as to term and nature; and

(4) be appropriate considering the capital and surplus and the business conducted by the insurer.

(c) At least annually, the board of directors or corresponding authority shall review the adequacy of the investment plan and the implementation of the plan.

(d) An insurer shall maintain the insurer's investment plan in the insurer's principal office and provide the plan to the commissioner or the commissioner's designee on request. The commissioner or the commissioner's designee shall maintain the plan as a privileged and confidential document. The plan is not subject to public disclosure.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.057. INVESTMENT RECORDS. An insurer shall maintain investment records covering each transaction. The insurer must be able to demonstrate at all times to the department that the insurer's investments are within the limitations imposed by the statutes listed in Section 424.056(a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.058. AUTHORIZED INVESTMENTS: FORM OF MINIMUM CAPITAL AND SURPLUS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in any manner authorized by Section 822.204 for investment of the insurer's minimum capital and surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.059. AUTHORIZED INVESTMENTS: GOVERNMENT OBLIGATIONS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in a bond or other evidence of indebtedness of any state or of Canada or a province of Canada that:

(1) is issued by the authority of law; and

(2) at the time of purchase:

(A) bears interest; and

(B) is not in default as to principal or interest.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.060. AUTHORIZED INVESTMENTS: STOCK OF NATIONAL OR STATE BANK. (a) An insurer may invest the insurer's funds in excess of minimum capital and surplus in the stock of:

(1) a national bank; or

(2) a state bank of this state whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) Notwithstanding Subsection (a)(2):

(1) not more than 35 percent of the total outstanding stock of a single state bank may be purchased by a single insurer; and

(2) if an insurer has invested the insurer's funds in 35 percent of a state bank's stock under this section, no other insurer may invest funds in the bank's remaining stock.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.061. AUTHORIZED INVESTMENTS: DEPOSITS IN CERTAIN FINANCIAL INSTITUTIONS. (a) Subject to this section, an insurer may invest in any type of savings deposit, time deposit, certificate of deposit, NOW account, or money market account in a solvent bank, savings and loan association, or credit union that is organized under the laws of the United States or a state, or in a branch of one of those financial institutions.

(b) An investment under this section must be made in accordance with the laws or regulations applicable to the bank, savings and loan association, or credit union.

(c) The amount of an insurer's deposits in a single bank,

savings and loan association, or credit union may not exceed the greater of:

(1) 20 percent of the insurer's capital and surplus;

(2) the amount of federal or state deposit insurance coverage that applies to the deposits; or

(3) 10 percent of the amount of capital, surplus, and undivided profits of the financial institution receiving the deposits.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.062. AUTHORIZED INVESTMENTS: CERTAIN OBLIGATIONS OF PARTNERSHIP OR CORPORATION. (a) Except as provided by this section, an insurer may invest the insurer's funds in excess of minimum capital and surplus in a stock, bond, debenture, bill of exchange, evidence of indebtedness, other commercial note or bill, or security of any partnership or dividend-paying corporation that:

(1) is incorporated under the laws of the United States, this state, another state, Canada, or a province of Canada;

(2) is solvent at the time of the investment; and

(3) has not defaulted in the payment of any of the partnership's or corporation's obligations during the five years preceding the date of the investment.

(b) Except as provided by Subsection (d), an insurer may invest the insurer's funds in excess of minimum capital and surplus, and all reserves required by law, in a stock, bond, or debenture of any solvent corporation that is incorporated under the laws of the United States, this state, another state, Canada, or a province of Canada.

(c) Funds invested under Subsection (a) may not be invested in the stock of an oil, manufacturing, or mercantile corporation unless the corporation has, at the time of the investment:

(1) a net worth of at least $250,000, if the corporation is organized under the laws of this state; or

(2) a combined capital, surplus, and undivided profits of at least $2.5 million, if the corporation is not organized under the laws of this state.

(d) An insurer may not invest the insurer's funds in:

(1) the insurer's own stock or in any stock on account of

which the holders or owners of the stock may be liable for an assessment other than taxes; or

(2) any stock, bond, or other security issued by a corporation with respect to which a majority of the stock having voting powers is directly or indirectly owned by or for the benefit of an officer or director of the insurer, unless the insurer has been in continuous operation for at least five years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.063. AUTHORIZED INVESTMENTS: MUTUAL FUNDS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in shares of a mutual fund engaged in business under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, if:

(1) the mutual fund is solvent and has at least $1 million of net assets as of the date of the mutual fund's latest annual or more recent certified audited financial statement; and

(2) the amount of the insurer's investment in a single mutual fund does not exceed 15 percent of the insurer's capital and surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.064. AUTHORIZED INVESTMENTS: REAL PROPERTY. (a) Subject to this section, an insurer may invest the insurer's funds in excess of minimum capital and surplus in real property to the extent authorized by other provisions of this code.

(b) An insurer with admitted assets of more than $500 million may own investment real property other than real property authorized by another provision of this code, or participations in that other investment real property, if the property is materially enhanced in value by:

(1) the construction of durable, permanent-type buildings and other improvements that cost an amount at least equal to the cost of the real property, excluding buildings and improvements at the time the property is acquired; or

(2) the construction, commenced before the second anniversary of the date the real property is acquired, of buildings and improvements described by Subdivision (1).

(c) The amount invested by an insurer in a single investment real property and improvements, or in any interest in real property and improvements, may not exceed five percent of the insurer's admitted assets in excess of $500 million. The total amount invested by an insurer in investment real property and improvements may not exceed 15 percent of the insurer's admitted assets in excess of $500 million.

(d) Except as provided by Section 862.002, an insurer may not own, develop, or hold an equity interest in any residential property or subdivision, single or multiunit family dwelling property, or undeveloped real property to subdivide for or develop residential, single or multiunit family dwellings. This subsection does not apply to an insurer with admitted assets of $10 billion or more.

(e) The investment authority granted by this section is in addition to and separate from the investment authority granted by Section 862.002, except that an insurer may not invest in any real property that, when added to properties acquired by the insurer under Section 862.002, would exceed the limitations prescribed by that section.

(f) An insurer's admitted assets are determined from the insurer's annual statements that are made as of the December 31 that precedes the date of the determination and are filed with the department as required by law. The value of any investment made under this section is subject to the appraisal requirement of Section 862.002.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1175 (S.B. 841), Sec. 1, eff. September 1, 2013.

Sec. 424.065. ACTING AS REAL ESTATE BROKER OR SALESPERSON PROHIBITED. An insurer defined in Section 822.001 or 822.201 or another insurer specifically made subject to Sections 424.051, 424.053-424.071, and 424.074 may not engage in the business of a

broker or salesperson as defined by Chapter 1101, Occupations Code, except that the insurer may hold, improve, maintain, manage, rent, lease, sell, exchange, or convey any of the real property interests legally owned as investments under this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.066. AUTHORIZED INVESTMENTS: OBLIGATIONS SECURED BY REAL PROPERTY LOANS. (a) Subject to this section, an insurer may invest the insurer's funds in excess of minimum capital and surplus in a bond, note, or evidence of indebtedness, or a participation in a bond, note, or evidence of indebtedness, that is secured by a valid first lien on real property or a leasehold estate in real property located in the United States or in any state, commonwealth, territory, or possession of the United States.

(b) The amount of an obligation secured by a first lien on real property or a leasehold estate in real property may exceed 90 percent of the value of the real property or leasehold estate only if:

(1) the amount does not exceed 100 percent of the value of the real property or leasehold estate and the insurer or one or more wholly owned subsidiaries of the insurer owns, in the aggregate, a 10 percent or greater equity interest in the real property or leasehold estate;

(2) the amount does not exceed 95 percent of the value of the real property and:

(A) the property contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes; and

(B) the portion of the unpaid balance of the obligation that exceeds 90 percent of the value of the real property is guaranteed or insured by a mortgage guaranty insurer authorized to engage in business in this state; or

(3) the amount exceeds 90 percent of the value of the real property only to the extent the obligation is insured or guaranteed by:

(A) this state;

(B) the United States;

(C) the Federal Housing Administration under the

National Housing Act (12 U.S.C. Section 1701 et seq.), as amended; or

(D) any other agency or instrumentality of the United States.

(c) The term of an obligation secured by a first lien on a leasehold estate in real property and improvements located on the property may not exceed a period equal to four-fifths of the unexpired term of the leasehold estate, and the obligation must fully amortize during that period. The term of the leasehold estate may not expire sooner than the 10th anniversary of the expiration date of the term of the obligation.

(d) An obligation secured by a first lien on a leasehold estate in real property and improvements located on the property must be payable in equal monthly, quarterly, semiannual, or annual payments of principal plus accrued interest to the date of the principal payment.

(e) An insurer's investment in a single obligation under this section may not exceed 10 percent of the insurer's capital and surplus. An insurer's aggregate investments under this section may not exceed 30 percent of the insurer's assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.067. AUTHORIZED INVESTMENTS: TRANSPORTATION EQUIPMENT. An insurer may invest the insurer's funds in excess of minimum capital and surplus in:

(1) an adequately secured equipment trust obligation, certificate, or other instrument evidencing an interest in transportation equipment wholly or partly located in the United States; and

(2) a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the equipment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.068. AUTHORIZED INVESTMENTS: INVESTMENT IN FOREIGN JURISDICTION. (a) In addition to the investments in Canada

authorized by Sections 424.051, 424.058-424.071, and 424.074 and subject to this section, an insurer may invest the insurer's funds in excess of minimum capital and surplus in a foreign commonwealth, territory, or possession of the United States or a foreign country other than Canada, or invest in debt obligations and investments within a foreign commonwealth, territory, or possession of the United States or within a foreign country other than Canada if:

(1) the investment is similar to investments the insurer is authorized by Sections 424.051, 424.058-424.071, and 424.074 to make within the United States or Canada; and

(2) the debt obligation or investment is rated one or two by the securities valuation office.

(b) The aggregate amount of an insurer's investments in a single foreign jurisdiction under Sections 424.051, 424.058-424.071, and 424.074 or of an insurer's debt obligations or investments within a single foreign jurisdiction may not exceed:

(1) as to a foreign jurisdiction that is given a sovereign debt rating of one by the securities valuation office, 10 percent of the insurer's admitted assets;

(2) as to a debt obligation or investment within a foreign jurisdiction that is rated one or two by the securities valuation office, 10 percent of the insurer's admitted assets; or

(3) as to any foreign investment other than an investment described by Subdivision (1) or (2), five percent of the insurer's admitted assets.

(c) The amount of investments made under this section may not exceed the sum of:

(1) the amounts authorized by Section 424.073; and

(2) 20 percent of the insurer's assets.

(d) The combined total of the amount of investments made under this section, the amount of similar investments made within the United States and Canada, and any amounts of investments authorized by Section 424.073 may not exceed any limitation prescribed by Sections 424.051, 424.058-424.071, and 424.074.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1175 (S.B. 841), Sec. 2, eff. September 1, 2013.

Sec. 424.069. AUTHORIZED INVESTMENTS: CERTAIN LOANS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in a loan on the pledge of any mortgage, stock, bond, or other evidence of indebtedness acceptable as an investment under Sections 424.051, 424.053-424.071, and 424.074, if the current value of the mortgage, stock, bond, or other evidence of indebtedness is at least 25 percent more than the amount of the loan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.070. AUTHORIZED INVESTMENTS: OBLIGATIONS OF LOCAL GOVERNMENTAL ENTITIES. (a) Subject to this section, an insurer may invest the insurer's funds in excess of minimum capital and surplus in a bond or other interest-bearing evidence of indebtedness of a:

(1) county or subdivision of a county;

(2) municipality;

(3) road district;

(4) turnpike district or authority;

(5) water district;

(6) school district;

(7) sanitary or navigation district; or

(8) municipally owned revenue water system, sewer system, or electric utility company with respect to which the municipality has appropriated, pledged, or otherwise provided for special revenues to meet the principal and interest payments of the bond or other evidence of indebtedness.

(b) A bond or other evidence of indebtedness of a navigation district is an authorized investment under this section only if:

(1) the navigation district is located wholly or partly in a county that has a population of at least 100,000; and

(2) the interest due on the bond or other evidence of indebtedness has never been in default.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.071. AUTHORIZED INVESTMENTS: THE UNIVERSITY OF TEXAS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in an interest-bearing note or bond of The University of Texas issued under the laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.072. AUTHORIZED INVESTMENTS: BONDS ISSUED, ASSUMED, OR GUARANTEED IN INTERNATIONAL MARKET. An insurer may invest the insurer's funds in excess of minimum capital and surplus in bonds issued, assumed, or guaranteed by any of the following international financial institutions in which the United States is a member:

(1) the Inter-American Development Bank;

(2) the International Bank for Reconstruction and Development (the World Bank);

(3) the African Development Bank;

(4) the Asian Development Bank; or

(5) the International Finance Corporation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.073. AUTHORIZED INVESTMENTS: INSURER ENGAGED IN BUSINESS IN FOREIGN COUNTRY. (a) Subject to this section, an insurer authorized by the law of a foreign country to engage in a line of insurance in which the insurer is authorized to engage in this state may invest in foreign securities originating in the foreign country of the same kind as the domestic securities originating in the United States in which the insurer is authorized to invest under Sections 424.051, 424.053-424.071, and 424.074.

(b) The aggregate amount of an insurer's investments made under this section in a single country may not exceed by more than 10 percent at any time the lesser of:

(1) the amount of funds required by the law of the foreign country to be maintained in securities originating in that country; or

(2) the amount of total unearned premium reserves, reinsurance reserves, loss reserves, and any other liabilities

required by the law of this state to be carried by the insurer that are directly attributable to the particular insurance policies or contracts on residents or property located in the foreign country.

(c) This section does not authorize an insurer to invest in a foreign security originating in a foreign country with respect to which the president of the United States or other federal authority has refused to exercise the authority to issue guarantees on projects in the country to citizens or corporations of the United States against loss by reason of inconvertibility of currency, expropriation, confiscation, war, revolution, or insurrection because the foreign country has failed to enter into arrangements for the security of American property as required by the president or other federal authority for the issuance of those guarantees.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.074. OTHER SPECIFICALLY AUTHORIZED INVESTMENTS. An insurer may invest the insurer's funds in excess of minimum capital and surplus in:

(1) a savings account as authorized by Chapter 65, Finance Code;

(2) a bond or other indebtedness as authorized by Sections 435.045 and 435.046, Government Code;

(3) a bond issued under Subchapter B, Chapter 1505, Government Code;

(4) a bond as authorized by Subchapter B, Chapter 284, Transportation Code;

(5) a municipal bond issued under Sections 51.038 and 51.039, Water Code;

(6) an insured account or evidence of indebtedness as authorized by Section 1, Chapter 160, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 842a, Vernon's Texas Civil Statutes);

(7) an insured or guaranteed obligation as authorized by Chapter 230, Acts of the 49th Legislature, Regular Session, 1945 (Article 842a-1, Vernon's Texas Civil Statutes);

(8) a bond issued under Section 1, Chapter 1, page 427, General Laws, Acts of the 46th Legislature, Regular Session, 1939

(Article 1269k-1, Vernon's Texas Civil Statutes);

(9) a bond as authorized by Section 24, Chapter 110, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-133, Vernon's Texas Civil Statutes);

(10) a bond as authorized by Section 19, Chapter 340, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-137, Vernon's Texas Civil Statutes);

(11) a bond as authorized by Section 10, Chapter 398, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-138, Vernon's Texas Civil Statutes);

(12) a bond as authorized by Section 18, Chapter 465, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-139, Vernon's Texas Civil Statutes); or

(13) another investment specifically authorized by law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.075. AUTHORIZED INVESTMENTS: BOND EXCHANGE-TRADED FUNDS. (a) An insurer may invest the insurer's funds in excess of minimum capital and surplus in shares of a bond exchange-traded fund registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, if:

(1) the exchange-traded fund is solvent and reported at least $100 million of net assets in the exchange-traded fund's latest annual or more recent certified audited financial statement;

(2) the securities valuation office has designated the exchange-traded fund as meeting the criteria to be placed on the list promulgated by the securities valuation office of exchange-traded funds eligible for reporting as a long-term bond in the Purposes and Procedures Manual of the securities valuation office or a successor publication; and

(3) the amount of the insurer's investment in the exchange-traded fund does not exceed 15 percent of the insurer's capital and surplus.

(b) This section does not authorize an insurer to invest in a bond exchange-traded fund that has:

(1) embedded structural features designed to deliver performance that does not track the full unlevered and positive

return of the underlying index or exposure, including a leveraged or inverse exchange-traded fund; or

(2) an expense ratio in excess of 100 basis points.

(c) An insurer may deposit with the department shares of a bond exchange-traded fund described by Subsection (a) as a statutory deposit if state law requires a statutory deposit from the insurer.

Added by Acts 2019, 86th Leg., R.S., Ch. 1132 (H.B. 2694), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. INVESTMENT POOLS

Sec. 424.101. DEFINITIONS. In this subchapter:

(1) "Business entity" means an association, corporation, joint stock company, joint venture, limited liability company, mutual fund trust, partnership, or other similar form of business organization, regardless of whether organized for profit.

(2) "Obligation" means:

(A) a bond, note, debenture, trust certificate, including an equipment certificate, or production payment;

(B) a negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, or other loan secured by financing net leases; or

(C) any other evidence of indebtedness for the payment of money or participation certificates or other evidences of an interest in an obligation otherwise described by this subdivision, whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.

(3) "Qualified bank" means a national bank, state bank, or trust company that:

(A) is at all times adequately capitalized as determined by the standards adopted by the United States banking regulators; and

(B) is either a member of the Federal Reserve System or regulated by state banking laws.

(4) "Repurchase transaction," "reverse repurchase transaction," and "securities lending transaction" have the meanings assigned by Section 424.151.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 424.102. AUTHORITY TO INVEST IN POOL. An insurer may acquire investments and participate in an investment pool that is qualified under Section 424.103(b) and the investments of which are limited to investments authorized for:

(1) a short-term investment pool under Section 424.104; or

(2) an authorized investment pool under Section 424.107.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.103. INVESTMENT POOL REQUIREMENTS AND QUALIFICATIONS. (a) An investment pool must be a business entity.

(b) To be qualified, an investment pool must:

(1) have a written pooling agreement and a pool manager that comply with the requirements of this subchapter; and

(2) comply with Subsection (c).

(c) The investment pool may not:

(1) acquire securities issued, assumed, guaranteed, or insured by the investing insurer or an affiliate of the investing insurer;

(2) borrow or incur indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of this subchapter; or

(3) permit the aggregate value of securities loaned or sold to, purchased from, or invested in a single business entity at the time of the loan, sale, purchase, or investment to exceed 10 percent of the pool's total assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.104. AUTHORIZED INVESTMENTS FOR SHORT-TERM INVESTMENT POOL. A short-term investment pool may contain only:

(1) obligations described by Section 424.105;

(2) money market funds described by Section 424.106; or

(3) repurchase, reverse repurchase, and securities lending

transactions that meet the requirements of Subchapter D.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.105. SHORT-TERM INVESTMENT POOL: CERTAIN SHORT-TERM OBLIGATIONS. (a) Obligations contained in a short-term investment pool must meet the requirements of this section.

(b) The obligations must:

(1) have a rating by the securities valuation office of one or two, or an equivalent rating issued by a nationally recognized statistical rating organization recognized by the securities valuation office; or

(2) be issued by an issuer with outstanding obligations that have a rating described by Subdivision (1).

(c) The obligations must have:

(1) a remaining maturity of 397 days or less or a put that:

(A) entitles the holder to receive the principal amount of the obligation; and

(B) may be exercised through maturity at specified intervals not exceeding 397 days; or

(2) a remaining maturity of three years or less and a floating interest rate that resets at least quarterly on the basis of a current short-term index and is not subject to a maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes.

(d) For purposes of this section, a current short-term index is:

(1) a federal funds rate;

(2) the prime rate;

(3) the rate for treasury bills;

(4) the London InterBank Offered Rate; or

(5) the rate for commercial paper.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.106. SHORT-TERM INVESTMENT POOL: CERTAIN MONEY MARKET FUNDS. A short-term investment pool may contain a money market fund

as described by 17 C.F.R. Section 270.2a-7 under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, that is:

(1) a government money market fund that at all times:

(A) invests only in obligations issued, guaranteed, or insured by the United States or collateralized repurchase agreements composed of those obligations; and

(B) qualifies for investment without a reserve under the Purposes and Procedures Manual of the securities valuation office or a successor publication; or

(2) a class one money market fund that at all times qualifies for investment using the bond class one reserve factor described by the Purposes and Procedures Manual of the securities valuation office.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.107. AUTHORIZED INVESTMENTS FOR AUTHORIZED INVESTMENT POOL; LIMITATION. (a) An authorized investment pool may contain only investments that a participating insurer is authorized to acquire by provisions of this code other than this subchapter.

(b) The insurer's total of proportionate ownership interests in a single authorized investment held by an authorized investment pool and the insurer's direct investments in that authorized investment may not exceed the limit prescribed by the applicable authorizing provision.

(c) In addition to the limitation described by Subsection (b), an insurer is subject to the limitations described by Section 424.108.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.108. GENERAL INSURER INVESTMENT LIMITATIONS. An insurer may not acquire an investment in an investment pool if, as a result of and after making the investment, the aggregate amount of investments held by the insurer under this subchapter at the time of the investment:

(1) in a single investment pool would exceed 10 percent of the insurer's admitted assets;

(2) in all investment pools investing in investments authorized under Section 424.107 would exceed 25 percent of the insurer's admitted assets; or

(3) in all investment pools would exceed 35 percent of the insurer's admitted assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.109. DESIGNATION OF POOL MANAGER; QUALIFICATIONS. (a) The pooling agreement for an investment pool must designate a pool manager.

(b) The pool manager must be organized under the laws of the United States or a state and must be:

(1) the investing insurer, an affiliated insurer, or a business entity affiliated with the insurer;

(2) a qualified bank;

(3) a business entity registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), as amended;

(4) the attorney-in-fact of a reciprocal or interinsurance exchange; or

(5) the United States manager or an affiliate or subsidiary of the United States manager of a United States branch of an alien insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.110. POOL MANAGER TO MAINTAIN ASSETS; CUSTODY AGREEMENT. (a) The pool manager shall maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the pool, under a custody agreement with a qualified bank.

(b) The custody agreement must:

(1) state and recognize the claims and rights of each participant;

(2) acknowledge that the investment pool's underlying assets are held solely for the benefit of each participant in

proportion to the aggregate amount of the participant's investments in the pool; and

(3) contain an agreement that the pool's underlying assets may not be commingled with the general assets of the custodian qualified bank or any other person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.111. POOLING AGREEMENT PROVISIONS. The pooling agreement for an investment pool must provide that:

(1) 100 percent of the ownership interests in the pool must at all times be held by:

(A) an insurer and the insurer's affiliated insurers;

(B) for a pool investing solely in investments authorized under Section 424.104, the insurer and the insurer's subsidiaries and affiliates or any pension or profit-sharing plan of the insurer and the insurer's subsidiaries and affiliates; or

(C) for a United States branch of an alien insurer, subsidiaries or affiliates of the insurer's United States manager;

(2) the pool's underlying assets are held solely for the benefit of each participant and may not be commingled with the general assets of the pool manager or any other person;

(3) each participant owns an undivided interest in the pool's underlying assets in proportion to the aggregate amount of the participant's interest in the pool; and

(4) a pool participant or, if a pool participant is insolvent, bankrupt, or in receivership, the participant's trustee, receiver, conservator, or other successor-in-interest may withdraw all or any portion of the participant's investment from the pool under the terms of the pooling agreement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.112. WITHDRAWALS AND DISTRIBUTIONS. (a) A pool participant must be able to make withdrawals on demand without penalty or other assessment on any business day, and settlement of funds must occur within a reasonable and customary period that does

not exceed five business days after a withdrawal.

(b) The pooling agreement must provide that the pool manager shall make a distribution to a pool participant, at the manager's discretion:

(1) in cash in an amount equal to the fair market value at the time of the distribution of the participant's pro rata share of each of the pool's underlying assets;

(2) in kind in an amount equal to a pro rata share of each underlying asset; or

(3) in a combination of cash and in-kind distributions in an amount equal to a pro rata share of each underlying asset.

(c) A distribution under Subsection (b) must be computed after subtracting all the investment pool's applicable fees and expenses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.113. INVESTMENT POOL RECORDS. The pool manager shall compile and maintain:

(1) detailed accounting records that show:

(A) the cash receipts and disbursements reflecting each pool participant's proportionate investment in the investment pool; and

(B) a complete description of all the pool's underlying assets, including the amount, interest rate, and maturity date, if any, of each of those assets and other appropriate designations; and

(2) other records that, on a daily basis, allow third parties to verify each participant's investment in the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.114. INSPECTION OF RECORDS. The pool manager shall make records of the investment pool available for inspection by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.115. REPORTS OF TRANSACTIONS BETWEEN POOL AND PARTICIPANT. (a) A transaction between an investment pool and a pool participant is not subject to Subchapter C, Chapter 823, except that before entering into a pool, an insurer subject to Chapter 823 shall give the commissioner the written notice required under Section 823.103.

(b) The investment pool's investment activities and the transactions between the pool and a pool participant must be reported in the registration statement required by Subchapter B, Chapter 823.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER D. DOLLAR ROLL, REPURCHASE, REVERSE REPURCHASE, AND SECURITIES LENDING TRANSACTIONS

Sec. 424.151. DEFINITIONS. In this subchapter:

(1) "Dollar roll transaction" means two simultaneous transactions with settlement dates not more than 96 days apart, in one of which an insurer sells to a business entity, and in the other of which the insurer is obligated to purchase from the same business entity, substantially similar securities that are:

(A) mortgage-backed securities issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a successor to one of those organizations; or

(B) other mortgage-backed securities referred to in 15 U.S.C. Section 77r-1 et seq., as amended.

(2) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period or on demand.

(3) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period or on demand.

(4) "Securities lending transaction" means a transaction in which an insurer lends securities to a business entity that is

obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period or on demand.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.152. TRANSACTIONS AUTHORIZED. An insurer may engage in dollar roll, repurchase, reverse repurchase, and securities lending transactions as provided by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.153. PERIOD OF TRANSACTION. An insurer must enter into a written agreement for each transaction under this subchapter, other than a dollar roll transaction. The agreement must require that the transaction terminate on or before the first anniversary of the transaction's inception.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.154. CASH REQUIREMENTS. With respect to cash received in a transaction under this subchapter, an insurer shall:

(1) invest the cash in accordance with this subchapter and in a manner that recognizes the liquidity needs of the transaction; or

(2) use the cash for the insurer's general corporate purposes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.155. COLLATERAL REQUIREMENTS. (a) While a transaction under this subchapter is outstanding, the insurer or the insurer's agent or custodian shall maintain, as to acceptable collateral received in the transaction, either physically or through

the book-entry system of the Federal Reserve, Depository Trust Company, Participants Trust Company, or another securities depository approved by the commissioner:

(1) possession of the collateral;

(2) a perfected security interest in the collateral; or

(3) in the case of a jurisdiction outside of the United States, title to, or the rights of a secured creditor to, the collateral.

(b) The amount of collateral required for repurchase, reverse repurchase, and securities lending transactions is the amount required under the Purposes and Procedures Manual of the securities valuation office or a successor publication.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.156. PERCENTAGE LIMITATIONS. (a) An insurer may not enter into a transaction under this subchapter if, as a result of and after making the transaction, the aggregate amount of securities loaned or sold to or purchased from:

(1) a single business entity counterparty under this subchapter would exceed five percent of the insurer's assets; or

(2) all business entities under this subchapter would exceed 40 percent of the insurer's assets.

(b) In computing the amount sold to or purchased from a business entity counterparty under a repurchase or reverse repurchase transaction, effect may be given to netting provisions under a master written agreement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.157. RULES. The commissioner may adopt reasonable rules and issue reasonable orders as necessary to implement this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER E. RISK CONTROL TRANSACTIONS

Sec. 424.201. DEFINITIONS. In this subchapter:

(1) "Acceptable collateral" means:

(A) cash;

(B) cash equivalents;

(C) letters of credit and direct obligations; or

(D) securities that are fully guaranteed as to principal and interest by the United States.

(2) "Business entity" includes an association, bank, corporation, joint stock company, joint tenancy, joint venture, limited liability company, mutual fund, partnership, sole proprietorship, trust, or other similar form of business organization, regardless of whether organized for profit.

(3) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number that is sometimes called the strike rate or strike price.

(4) "Cash equivalent" means an investment or security that is short-term, highly rated, highly liquid, and readily marketable. The term includes a money market fund described by Section 424.106. For purposes of this subdivision, an investment or security is:

(A) short-term if it has a remaining term to maturity of one year or less; and

(B) highly rated if it has:

(i) a rating of "P-1" by Moody's Investors Service, Inc.;

(ii) a rating of "A-1" by the Standard and Poor's Division of the McGraw Hill Companies, Inc.; or

(iii) an equivalent rating by a nationally recognized statistical rating organization recognized by the securities valuation office.

(5) "Collar" means an agreement to receive payments as the buyer of a cap, floor, or option and to make payments as the seller of a different cap, floor, or option.

(6)(A) "Counterparty exposure amount" means:

(i) for an over-the-counter derivative instrument not entered into under a written master agreement that provides for netting of payments owed by the respective parties, the market value of the over-the-counter derivative instrument, if the liquidation of

the derivative instrument would result in a final cash payment to the insurer, or zero, if the liquidation of the derivative instrument would not result in a final cash payment to the insurer; or

(ii) for an over-the-counter derivative instrument entered into under a written master agreement that provides for netting of payments owed by the respective parties and for which the counterparty's domiciliary jurisdiction is within the United States or a foreign jurisdiction listed in the Purposes and Procedures Manual of the securities valuation office as eligible for netting, the greater of zero or the net sum payable to the insurer in connection with all derivative instruments subject to the written master agreement on the liquidation of the instruments in the event of the counterparty's default under the master agreement, if there is no condition precedent to the counterparty's obligation to make the payment and if there is no setoff of amounts payable under another instrument or agreement.

(B) For purposes of this subdivision, market value or the net sum payable, as applicable, must be determined at the end of the most recent quarter of the insurer's fiscal year and must be reduced by the market value of acceptable collateral held by the insurer or a custodian on the insurer's behalf.

(7) "Derivative instrument":

(A) means an agreement, option, or instrument, or a series or combination of agreements, options, or instruments:

(i) to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement instead of making or taking delivery of, or assuming or relinquishing, a specified amount of an underlying interest; or

(ii) that has a price, performance, value, or cash flow based primarily on the actual or expected price, yield, level, performance, value, or cash flow of one or more underlying interests;

(B) includes an option, a warrant not otherwise permitted to be held by the insurer under this subchapter, a cap, a floor, a collar, a swap, a swaption, a forward, a future, any other substantially similar agreement, option, or instrument, and a series or combination of those agreements, options, or instruments; and

(C) does not include a collateralized mortgage obligation, another asset-backed security, a principal-protected structured security, a floating rate security, an instrument that an

insurer would otherwise be authorized to invest in or receive under a provision of this subchapter other than this subdivision, or a debt obligation of the insurer.

(8) "Derivative transaction" means a transaction involving the use of one or more derivative instruments. The term does not include a dollar roll transaction, repurchase transaction, reverse repurchase transaction, or securities lending transaction.

(9) "Floor" means an agreement obligating the seller to make payments to the buyer, each of which is based on the amount by which a predetermined number that is sometimes called the floor price or floor rate exceeds a reference level, performance, price, or value of one or more underlying interests.

(10) "Forward" means an agreement to make or take delivery in the future of one or more underlying interests, or to effect a cash settlement, based on the actual or expected level, performance, price, or value of those interests. The term does not include a future or a spot transaction effected within a customary settlement period, a when-issued purchase, or another similar cash market transaction.

(11) "Future" means an agreement traded on a futures exchange to make or take delivery of one or more underlying interests, or to effect a cash settlement, based on the actual or expected level, performance, price, or value of those interests.

(12) "Futures exchange" means a foreign or domestic exchange, contract market, or board of trade on which trading in futures is conducted and that, in the United States, is authorized to conduct that trading by the Commodity Futures Trading Commission or a successor to that agency.

(13) "Hedging transaction" means a derivative transaction entered into and maintained to manage, with respect to an asset, liability, or portfolio of assets or liabilities, that an insurer has acquired or incurred or anticipates acquiring or incurring:

(A) the risk of a change in value, yield, price, cash flow, or quantity; or

(B) the currency exchange rate risk.

(14) "Income generation transaction" means a derivative transaction entered into to generate income. The term does not include a hedging transaction or a replication transaction.

(15) "Market value" means the price for a security or derivative instrument obtained from a generally recognized source,

the most recent quotation from a generally recognized source, or if a generally recognized source does not exist, the price determined under the terms of the instrument or in good faith by the insurer, as can be reasonably demonstrated to the commissioner on request, plus the amount of accrued but unpaid income on the security or instrument to the extent that amount is not included in the price as of the date the security or instrument is valued.

(16) "Option" means an agreement giving the buyer the right to buy or receive, referred to as a "call option," to sell or deliver, referred to as a "put option," to enter into, extend, or terminate, or to effect a cash settlement based on the actual or expected level, performance, price, spread, or value of, one or more underlying interests.

(17) "Over-the-counter derivative instrument" means a derivative instrument entered into with a business entity in a manner other than through a securities exchange or futures exchange or cleared through a qualified clearinghouse.

(18) "Potential exposure" means:

(A) as to a futures position, the amount of initial margin required for that position; or

(B) as to a swap, collar, or forward, one-half of one percent multiplied by the notional amount multiplied by the square root of the remaining years to maturity.

(19) "Qualified clearinghouse" means a clearinghouse that:

(A) is subject to the rules of a securities exchange or a futures exchange; and

(B) provides clearing services, including acting as a counterparty to each of the parties to a transaction in a manner that eliminates the parties' credit risk to each other.

(20) "Replication transaction" means a derivative transaction or a combination of derivative transactions effected separately or in conjunction with cash market investments included in the insurer's investment portfolio to replicate the risks and returns of another authorized transaction, investment, or instrument or to operate as a substitute for cash market transactions. The term does not include a hedging transaction.

(21) "Securities exchange" means:

(A) an exchange registered as a national securities exchange or a securities market registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(B) the Private Offerings, Resales and Trading through Automated Linkages system; or

(C) a designated offshore securities market as defined by 17 C.F.R. Section 230.902, as amended.

(22) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, yield, level, performance, or value of one or more underlying interests.

(23) "Swaption" means an option to purchase or sell a swap at a given price and time or at a series of prices and times. The term does not include a swap with an embedded option.

(24) "Underlying interest" means an asset, liability, or other interest underlying a derivative instrument or a combination of those assets, liabilities, or interests. The term includes a security, currency, rate, index, commodity, or derivative instrument.

(25) "Warrant" means an instrument under which the holder has the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times stated in the warrant.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.202. RISK CONTROL TRANSACTIONS AUTHORIZED. (a) Except as provided by Subsection (b), an insurer may engage in a risk control transaction authorized by this subchapter to:

(1) protect the insurer's assets against the risk of changing asset values or interest rates;

(2) reduce risk; and

(3) generate income.

(b) An insurer with a statutory net capital and surplus as determined by the insurer's most recent financial statement required to be filed with the department that is less than the minimum amount of capital and surplus required for a new charter and certificate of authority for the same type of insurer may not engage in a transaction authorized under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.203. NOTICE OF INTENT TO ENGAGE IN RISK CONTROL TRANSACTIONS REQUIRED. (a) Before an insurer with a statutory net capital and surplus of less than $10 million engages in a transaction authorized under this subchapter, the insurer shall file a written notice with the commissioner describing:

(1) the need to engage in the transaction;

(2) the lack of acceptable alternatives; and

(3) the insurer's plan to engage in the transaction.

(b) If the commissioner does not issue an order prohibiting an insurer who files a notice under Subsection (a) from engaging in the transaction on or before the 90th day after the date the commissioner receives the notice, the insurer may engage in the transaction described in the notice.

(c) For purposes of this section, an insurer's net capital and surplus are determined by the insurer's most recent financial statement required to be filed with the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.204. TRADING REQUIREMENTS FOR DERIVATIVE INSTRUMENTS. Each derivative instrument must be:

(1) traded on a securities exchange;

(2) entered into with, or guaranteed by, a business entity;

(3) issued or written by, or entered into with, the issuer of the underlying interest on which the derivative instrument is based; or

(4) in the case of futures, traded through a broker who is:

(A) registered as a futures commission merchant under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), as amended; or

(B) exempt from that registration under 17 C.F.R. Section 30.10, adopted under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), as amended.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.205. DERIVATIVE USE PLAN. (a) Before an insurer

enters into a derivative transaction, the insurer's board of directors must approve a derivative use plan as part of the insurer's investment plan otherwise required by law.

(b) The derivative use plan must:

(1) describe investment objectives and risk constraints, such as counterparty exposure amounts;

(2) define permissible transactions, identifying the risks to be hedged and the assets or liabilities being replicated; and

(3) require compliance with the insurer's internal control procedures established under Section 424.206.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.206. INTERNAL CONTROL PROCEDURES. An insurer that enters into a derivative transaction shall establish written internal control procedures that require:

(1) a quarterly report to the board of directors that reviews:

(A) each derivative transaction entered into, outstanding, or closed out;

(B) the results and effectiveness of the derivatives program; and

(C) the credit risk exposure to each counterparty for over-the-counter derivative transactions based on the counterparty exposure amount;

(2) a system for determining whether hedging or replication strategies used by the insurer have been effective;

(3) a system of reports, at least as frequent as monthly, to the insurer's management, that include:

(A) a description of each derivative transaction entered into, outstanding, or closed out during the period since the last report;

(B) the purpose of each outstanding derivative transaction;

(C) a performance review of the derivative instrument program; and

(D) the counterparty exposure amount for each over-the-counter derivative transaction;

(4) a written authorization that identifies the responsibilities and limitations of authority of each person authorized to effect and maintain derivative transactions; and

(5) appropriate documentation for each transaction, including:

(A) the purpose of the transaction;

(B) the assets or liabilities to which the transaction relates;

(C) the specific derivative instrument used in the transaction;

(D) for an over-the-counter derivative transaction, the name of the counterparty and the counterparty exposure amount; and

(E) for an exchange-traded derivative instrument, the name of the exchange and the name of the firm that handled the transaction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.207. ABILITY TO DEMONSTRATE HEDGING CHARACTERISTICS AND EFFECTIVENESS. An insurer must be able to demonstrate to the commissioner on request the intended hedging characteristics and continuing effectiveness of a derivative transaction or combination of transactions through:

(1) cash flow testing;

(2) duration analysis; or

(3) other appropriate analysis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.208. OFFSETTING TRANSACTIONS. (a) Subject to this section, an insurer may purchase or sell one or more derivative instruments to wholly or partly offset a derivative instrument previously purchased or sold, without regard to the quantitative limitations of this subchapter.

(b) An offsetting transaction under this section must use the same type of derivative instrument as the derivative instrument being offset.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.209. INCLUSION OF COUNTERPARTY EXPOSURE AMOUNTS. The insurer shall include all counterparty exposure amounts in determining compliance with the limitations of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.210. OVERSIGHT BY COMMISSIONER. (a) Not later than the 10th day before the date an insurer is scheduled to enter into an initial hedging transaction, the insurer shall notify the commissioner in writing that:

(1) the insurer's board of directors has adopted an investment plan that authorizes hedging transactions; and

(2) each hedging transaction will comply with this subchapter.

(b) If a hedging transaction does not comply with this subchapter or if continuing the transaction may create a hazardous financial condition for the insurer that affects the insurer's policyholders or creditors or the public, the commissioner may, after notice and an opportunity for a hearing, order the insurer to take action that the commissioner determines is reasonably necessary to:

(1) remedy a hazardous financial condition; or

(2) prevent an impending hazardous financial condition from occurring.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.211. AUTHORITY TO ENTER INTO HEDGING TRANSACTION. After providing notice under Section 424.210, an insurer may enter into a hedging transaction under this subchapter if as a result of and after making the transaction:

(1) the aggregate statement value of all outstanding caps, floors, options, swaptions, and warrants not attached to another financial instrument purchased by the insurer under this subchapter,

other than a collar, does not exceed 7.5 percent of the insurer's assets;

(2) the aggregate statement value of all outstanding caps, floors, options, swaptions, and warrants written by the insurer under this subchapter, other than a collar, does not exceed three percent of the insurer's assets; and

(3) the aggregate potential exposure of all outstanding collars, forwards, futures, and swaps entered into or acquired by the insurer under this subchapter does not exceed 6.5 percent of the insurer's assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.212. AUTHORITY TO ENTER INTO INCOME GENERATION TRANSACTION. An insurer may enter into an income generation transaction only if:

(1) as a result of and after making the transaction, the sum of the following amounts does not exceed 10 percent of the insurer's assets:

(A) the aggregate statement value of admitted assets that at the time of the transaction are subject to call or that generate the cash flows for payments the insurer is required to make under caps and floors sold by the insurer and that at the time of the transaction are outstanding under this subchapter;

(B) the statement value of admitted assets underlying derivative instruments that at the time of the transaction are subject to calls sold by the insurer and outstanding under this subchapter; and

(C) the purchase price of assets subject to puts that at the time of the transaction are outstanding under this subchapter; and

(2) the transaction is a sale of:

(A) a call option on assets that meets the requirements of Section 424.213;

(B) a put option on assets that meets the requirements of Section 424.214;

(C) a call option on a derivative instrument, including a swaption, that meets the requirements of Section 424.215; or

(D) a cap or floor that meets the requirements of Section 424.216.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.213. LIMITATION ON SALE OF CALL OPTION ON ASSETS. If an income generation transaction is a sale of a call option on assets, the insurer must, during the entire period the option is outstanding, hold, or have a currently exercisable right to acquire, the underlying assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.214. LIMITATION ON SALE OF PUT OPTION ON ASSETS. (a) If an income generation transaction is a sale of a put option on assets, the insurer must:

(1) during the entire period the option is outstanding, hold sufficient cash, cash equivalents, or interests in a short-term investment pool to purchase the underlying assets on exercise of the option; and

(2) have the ability to hold the underlying assets in the insurer's portfolio.

(b) If during the entire period the put option is outstanding the total market value of all put options sold by the insurer exceeds two percent of the insurer's assets, the insurer shall set aside, under a custodial or escrow agreement, cash or cash equivalents that have a market value equal to the amount of the insurer's put option obligations in excess of two percent of the insurer's assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.215. LIMITATION ON SALE OF CALL OPTION ON DERIVATIVE INSTRUMENT. If an income generation transaction is a sale of a call option on a derivative instrument, including a swaption, the insurer must:

(1) during the entire period the call option is outstanding, hold, or have a currently exercisable right to acquire, assets generating the cash flow necessary to make any payment for which the insurer is liable under the underlying derivative instrument; and

(2) have the ability to enter into the underlying derivative transaction for the insurer's portfolio.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.216. LIMITATION ON SALE OF CAP OR FLOOR. If an income generation transaction is a sale of a cap or a floor, the insurer must, during the entire period the cap or floor is outstanding, hold, or have a currently exercisable right to acquire, assets generating the cash flow necessary to make any payment for which the insurer is liable under the cap or floor.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.217. AUTHORITY TO ENTER REPLICATION TRANSACTION. (a) An insurer may enter into a replication transaction only with the prior written approval of the commissioner.

(b) To be eligible for approval by the commissioner:

(1) the insurer must be otherwise authorized to invest the insurer's funds under this chapter in the asset being replicated; and

(2) the asset being replicated must be subject to all the provisions of this subchapter relating to the making of the transaction by the insurer with respect to that kind of asset as if the transaction constituted a direct investment by the insurer in the replicated asset.

(c) The commissioner may adopt rules regarding replication transactions as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 424.218. RULES. The commissioner may adopt rules consistent with this subchapter that prescribe reasonable limits, standards, and guidelines for:

(1) the risk control transactions authorized under this subchapter; and

(2) plans related to those transactions.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 425. RESERVES AND INVESTMENTS FOR LIFE INSURANCE COMPANIES AND RELATED ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 425.001. SECURITIES IN AMOUNT OF RESERVES REQUIRED. The commissioner, after determining the amount of the reserves required on all of a life insurance company's policies in force, shall ensure that the company has at least that amount in securities of the class and character required by the law of this state, after all debts and claims against the company and the minimum capital required by Chapter 841 or 982, as applicable, have been provided for.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.002. CERTAIN INSURERS: DEPOSIT OF SECURITIES, MONEY, OR PROPERTY IN AMOUNT OF LEGAL RESERVES. (a) Except as provided by Subsection (b), a life insurance company incorporated under the laws of this state may deposit with the department, for the common benefit of all the holders of the company's policies and annuity contracts and in an amount equal to the legal reserve on all the company's outstanding policies and contracts in force, securities of the character in which the law of this state permits the company to invest, or against which the law of this state permits the company to loan, the company's capital, surplus, or reserves.

(b) A life insurance company may not make a new deposit of securities after August 28, 1961, except to the extent expressly required by Section 425.003.

(c) For purposes of this section, securities may be physically delivered to the department without being accompanied by a written

transfer of a lien securing the securities. A life insurance company may deposit registered or unregistered United States government securities under this section.

(d) A life insurance company may deposit lawful money of the United States instead of all or part of the securities described by Subsection (a). A company may, for the purposes of the deposit described by Subsection (a), convey to the department in trust the real property in which any part of the company's reserve is lawfully invested. If the company conveys the property, the department shall hold the title to the property in trust until the company deposits with the department securities to take the place of the property, at which time the department shall reconvey the property to the company.

(e) The department may have any securities or real property appraised and valued before the securities or real property may be deposited with or conveyed to the department under this section. The life insurance company shall pay the reasonable expense of the appraisal or valuation.

(f) For purposes of state, county, and municipal taxation, the situs of the deposited securities is the municipality and county in which the life insurance company's charter requires the principal business office of the company making the deposit to be located.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.003. CERTAIN INSURERS: REQUIRED DEPOSITS OF SECURITIES; ADDITIONAL DEPOSITS AND WITHDRAWALS. (a) A life insurance company that, before August 28, 1961, issued or assumed the obligations of policies or annuity contracts that were registered as provided by Article 3.18, as that article existed before August 28, 1961, shall have on deposit with the department securities of the character described by Section 425.002 in an amount equal to or greater than the aggregate net value of the company's outstanding registered policies and annuity contracts in force.

(b) To comply with Subsection (a), a life insurance company shall periodically make additional deposits of securities in amounts of not less than $5,000. A company whose deposits exceed the aggregate net value of the company's outstanding registered policies and annuity contracts in force may periodically withdraw the excess

in amounts of not less than $5,000. A company may at any time withdraw any of the company's deposited securities by depositing in their place securities of equal value to the securities replaced and of a character authorized by this chapter.

(c) A life insurance company may at any time collect the interest, rents, and other income from the company's securities on deposit.

(d) The net value of each policy or annuity contract subject to this section is the policy's or contract's value according to the standard prescribed by state law when the first premium on the policy or contract is paid, minus the amount of any liens the life insurance company has against the policy or contract not to exceed the policy's or contract's value.

(e) The department shall hold a life insurance company's securities on deposit with the department under this section in trust for the benefit of all holders of the company's outstanding policies and annuity contracts that were registered as provided by Article 3.18, as that article existed before August 28, 1961.

(f) A life insurance company that has outstanding registered policies or annuity contracts in force may not reinsure all or any part of that outstanding business, other than in a company authorized to engage in business in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.004. RECORDS OF SECURITIES DEPOSITED WITH DEPARTMENT; REPORT OF VALUE. Each life insurance company that is required by Section 425.003 to have securities on deposit with the department shall:

(1) keep records of:

(A) all of the company's outstanding registered policies and annuity contracts in force; and

(B) the net value of those policies and contracts; and

(2) not later than the 15th day after the last day of each calendar month, file with the department a report stating whether the value of the company's securities on deposit is equal to or greater than the aggregate net value of the company's registered policies and annuity contracts outstanding and in force at the end of the

preceding calendar month.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.005. DEPARTMENT DUTIES REGARDING DEPOSITED SECURITIES; INSURANCE COMPANY ACCESS. (a) The department shall keep securities deposited by a life insurance company under Sections 425.002 and 425.003 in a secure safe-deposit, fireproof box or vault in the municipality of, or a municipality near the location of, the company's home office.

(b) The life insurance company's officers may, in accordance with reasonable rules adopted by the commissioner, have access to the securities to detach interest coupons, credit payment, and exchange securities as provided by Section 425.003.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.006. ADDITIONAL RESERVES REQUIRED: SUBSTANDARD OR EXTRA HAZARDOUS POLICIES. (a) If a life insurance company engaged in business under the laws of this state has written or assumed risks that are substandard or extra hazardous and has charged more for the policies under which those risks are written or assumed than the company's published premium rates, the commissioner shall, in valuing those policies, compute and charge extra reserves on the policies as necessary because of the extra hazard assumed and the extra premium charged.

(b) If the commissioner determines, after notice and hearing, that a particular risk or class of risks is substandard or extra hazardous, a life insurance company may not, after the determination is made, write or assume the particular risk or class of risks unless the company charges an extra premium as necessary because of the extra hazard assumed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.007. SUBSCRIPTION TO OR UNDERWRITING PURCHASE OR SALE OF SECURITIES OR PROPERTY PROHIBITED; CONTROL OF DISPOSITION OF PROPERTY. (a) A life insurance company organized under the laws of this state may not:

(1) subscribe to, or participate in, any underwriting of the purchase or sale of securities or property;

(2) enter into a transaction described by Subdivision (1) for a purpose described by Subdivision (1);

(3) sell on account of the company jointly with any other person, firm, or corporation; or

(4) enter into any agreement to withhold from sale any of the company's property.

(b) The disposition of the life insurance company's property must be at all times within the control of the company's board of directors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.008. AUTHORIZED INVESTMENTS FOR FOREIGN COMPANIES. A foreign company shall invest the company's assets in:

(1) securities or property of the same classes in which the law of this state permits a domestic insurance company to invest; or

(2) securities permitted by other law of this state and approved by the commissioner as being of substantially the same grade as securities or property in which a domestic insurance company is permitted to invest.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.009. STUDENT LOANS. A foreign or domestic life insurance company may make loans to a student enrolled in an institution of higher education if the principal amount of the loan is insured by:

(1) the federal government under the Higher Education Act of 1965 (Pub. L. No. 89-329), as amended; or

(2) the Texas Guaranteed Student Loan Corporation under Chapter 57, Education Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. STANDARD VALUATION LAW

Sec. 425.051. SHORT TITLE. This subchapter may be cited as the Standard Valuation Law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.052. DEFINITIONS. (a) In this subchapter:

(1) "Accident and health insurance" means contracts that incorporate morbidity risk and provide protection against economic loss resulting from accident, sickness, or medical conditions and as may be specified in the valuation manual.

(2) "Appointed actuary" means a qualified actuary who is appointed in accordance with the valuation manual to prepare the actuarial opinion required by Section 425.0545.

(3) "Company" means an entity that:

(A) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and has at least one such policy in force or on claim; or

(B) has written, issued, or reinsured life insurance contracts, accident and health insurance contracts, or deposit-type contracts in any state and is required to hold a certificate of authority to write life insurance, accident and health insurance, or deposit-type contracts in this state.

(4) "Deposit-type contract" means a contract that does not incorporate mortality or morbidity risk and as may be specified in the valuation manual.

(5) "Life insurance" means contracts that incorporate mortality risk, including annuity and pure endowment contracts, and as may be specified in the valuation manual.

(6) "Policyholder behavior" means any action a policyholder, a contract holder, or any other person with the right to elect options, such as a certificate holder, may take under a policy or contract subject to this subchapter, including lapse,

withdrawal, transfer, deposit, premium payment, loan, annuitization, or benefit elections prescribed by the policy or contract but excluding events of mortality or morbidity that result in benefits prescribed in their essential aspects by the terms of the policy or contract.

(7) "Principle-based valuation" means the valuation described by Section 425.074.

(8) "Qualified actuary" means an individual who is qualified to sign the applicable statement of actuarial opinion in accordance with the American Academy of Actuaries' qualification standards for actuaries signing such statements and who meets the requirements specified in the valuation manual.

(9) "Reserves" means reserve liabilities.

(10) "Tail risk" means a risk that occurs either where the frequency of low probability events is higher than expected under a normal probability distribution or where there are observed events of very significant size or magnitude.

(11) "Valuation manual" means the manual of valuation instructions adopted by the commissioner by rule.

(b) As used in this subchapter:

(1) an "issue year basis" of valuation means a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract; and

(2) a "change in fund basis" of valuation means a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(c) The definitions under Subsection (a) of "accident and health insurance," "appointed actuary," "company," "deposit-type contract," "life insurance," "policyholder behavior," "principle-based valuation," "qualified actuary," and "tail risk" apply only on and after the operative date of the valuation manual.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 1, eff. September 1, 2015.

Sec. 425.053. ANNUAL VALUATION OF RESERVES FOR POLICIES AND CONTRACTS ISSUED BEFORE OPERATIVE DATE OF VALUATION MANUAL. (a) The department shall annually value or cause to be valued the reserves for all outstanding life insurance policies and annuity and pure endowment contracts of each life insurance company engaged in business in this state issued before the operative date of the valuation manual.

(b) In computing reserves under Subsection (a), the department may use group methods and approximate averages for fractions of a year or otherwise.

(c) Instead of valuing the reserves as required by Subsection (a) for a foreign or alien company, the department may accept any valuation made by or for the insurance supervisory official of another state or jurisdiction if the valuation complies with the minimum standard provided by this subchapter.

(d) Except as otherwise provided by this subchapter, policies and contracts issued on or after the operative date of the valuation manual are governed by Section 425.0535.

(e) The minimum standards for the valuation of policies and contracts issued before the operative date of the valuation manual are as provided by Sections 425.058 through 425.071 and Section 425.072(b), as applicable. Sections 425.072(a), 425.073, and 425.074 do not apply to a policy or contract described by this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 3, eff. September 1, 2015.

Sec. 425.0535. ANNUAL VALUATION OF RESERVES FOR POLICIES AND CONTRACTS ISSUED ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL. (a) The commissioner shall annually value, or cause to be valued, the

reserves for all outstanding life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts of each company issued on or after the operative date of the valuation manual.

(b) In lieu of the valuation of the reserves required of a foreign or alien company, the commissioner may accept a valuation made, or caused to be made, by the insurance supervisory official of another state if the valuation complies with the minimum standard provided by this subchapter.

(c) Sections 425.072(a), 425.073, and 425.074 apply to all policies and contracts issued on or after the operative date of the valuation manual.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 4, eff. September 1, 2015.

Sec. 425.054. ACTUARIAL OPINION OF RESERVES ISSUED BEFORE OPERATIVE DATE OF VALUATION MANUAL. (a) This section applies only to an actuarial opinion of reserves issued before the operative date of the valuation manual.

(a-1) For purposes of this section, "qualified actuary" means:

(1) a qualified actuary, as that term is defined by Section 802.002; or

(2) a person who, before September 1, 1993, satisfied the requirements of the former State Board of Insurance to submit an opinion under former Section 2A(a)(1), Article 3.28.

(b) In conjunction with the annual statement and in addition to other information required by this subchapter, each life insurance company engaged in business in this state shall annually submit to the department the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by commissioner rule:

(1) are computed appropriately;

(2) are based on assumptions that satisfy contractual provisions;

(3) are consistent with prior reported amounts; and

(4) comply with applicable laws of this state.

(c) The commissioner by rule shall specify the requirements of an actuarial opinion under Subsection (b), including any matters

considered necessary to the opinion's scope.

(d) The opinion required by this section must:

(1) apply to all of the life insurance company's business in force, including individual and group health insurance plans; and

(2) be in the form and contain the substance specified by commissioner rule and be acceptable to the commissioner.

(e) The commissioner may accept as an opinion required to be submitted under Subsection (b) by a foreign or alien company the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion filed in the other state reasonably meets the requirements applicable to a company domiciled in this state.

(f) Except as exempted by or as otherwise provided by commissioner rule, a life insurance company shall include in the opinion required by Subsection (b) an opinion that states whether the reserves and related actuarial items held in support of the policies and contracts specified by commissioner rule adequately provide for the company's obligations under the policies and contracts, including the benefits under and expenses associated with the policies and contracts.

(g) In making the opinion under Subsection (f), the reserves and related actuarial items are considered in light of the assets held by the life insurance company with respect to the reserves and related actuarial items, including:

(1) the investment earnings on the assets; and

(2) the considerations anticipated to be received and retained under the policies and contracts.

(h) The person who certifies the opinion required by Subsection (b) must make the opinion required by Subsection (f).

(i) Rules adopted under this section may exempt life insurance companies that would be exempt from the requirements of this section under the most recently adopted regulation by the National Association of Insurance Commissioners entitled "Model Actuarial Opinion and Memorandum Regulation," or a successor to that regulation, if the commissioner considers the exemption appropriate.

(j) Except as provided by Subsections (n), (o), and (p), any document or other information in the possession or control of the department that is a memorandum in support of the opinion or other material provided by the company to the commissioner in connection with a memorandum is confidential and privileged and not subject to:

(1) disclosure under Chapter 552, Government Code;

(2) subpoena;

(3) discovery; or

(4) admissibility as evidence in a private civil action.

(k) The commissioner or any person who receives a document or other information described by Subsection (j) while acting under the authority of the commissioner may not testify and may not be compelled to testify in a private civil action concerning the document or other information.

(l) The commissioner may:

(1) share documents or other information, including the confidential and privileged documents or information described by Subsection (j), with another state, federal, or international regulatory agency, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality of the document or information; and

(2) receive documents or other information, including confidential and privileged documents or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, provided that the commissioner shall maintain as confidential or privileged any document or information received with notice or understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document or information.

(m) Disclosing information or providing a document to the commissioner under this section, or sharing information as authorized under this section, does not result in a waiver of any applicable privilege or claim of confidentiality that may apply to the document or information.

(n) A memorandum in support of the opinion, and any other material provided by the company to the commissioner in connection with the memorandum, may be subject to subpoena for the purpose of defending an action seeking damages from the actuary submitting the memorandum by reason of an action required by this section or rules adopted under this section.

(o) The memorandum or other material provided by the company to the commissioner in connection with the memorandum may otherwise be

released by the commissioner with the written consent of the company, or to the Actuarial Board for Counseling and Discipline or its successor on receipt of a request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality and privileged status of the memorandum or other material.

(p) The memorandum ceases to be confidential and privileged if:

(1) any portion of the memorandum is cited by the company in its marketing;

(2) the memorandum is cited by the company before a government agency other than a state insurance department; or

(3) the memorandum is released by the company to the news media.

(q) This section does not prohibit the commissioner from using information acquired under this section in the furtherance of a legal or regulatory action relating to the administration of this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 6, eff. September 1, 2015.

Sec. 425.0545. ACTUARIAL OPINION OF RESERVES AFTER OPERATIVE DATE OF VALUATION MANUAL. (a) A company that has outstanding life insurance contracts, accident and health insurance contracts, or deposit-type contracts in this state and is subject to regulation by the department shall annually submit the opinion of the appointed actuary as to whether the reserves and related actuarial items held in support of the policies and contracts are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and are in compliance with applicable laws of this state. An opinion under this section must comply with provisions of the valuation manual, including in regard to any items necessary to its scope.

(b) Unless exempted by the valuation manual, a company

described by Subsection (a) shall include with the opinion required by that subsection an opinion of the same appointed actuary concerning whether the reserves and related actuarial items held in support of the policies and contracts specified in the valuation manual, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including investment earnings on the assets and considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including benefits under and expenses associated with the policies and contracts.

(c) Each opinion required by this section must:

(1) be in the form and contain the substance that is specified by the valuation manual and is acceptable to the commissioner;

(2) be submitted with the annual statement reflecting the valuation of reserves for each year ending on or after the operative date of the valuation manual;

(3) apply to all policies and contracts subject to this section, plus other actuarial liabilities specified by the valuation manual; and

(4) be based on standards adopted from time to time by the Actuarial Standards Board or its successor, and on any additional standards prescribed by the valuation manual.

(d) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by the company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 7, eff. September 1, 2015.

Sec. 425.055. SUPPORTING MEMORANDUM FOR ACTUARIAL OPINION. (a) A memorandum shall be prepared to support each actuarial opinion required by Section 425.054 or 425.0545. The form and substance of each supporting memorandum must comply with the commissioner's rules for memorandums subject to Section 425.054, or the valuation manual

for memorandums subject to Section 425.0545.

(b) The commissioner may engage an actuary or other financial specialist as defined by commissioner rule if:

(1) a life insurance company does not provide a supporting memorandum at the request of the commissioner in the time specified by rule; or

(2) the company provides a supporting memorandum, but the commissioner determines that the supporting memorandum does not meet the standards prescribed by rule or is otherwise unacceptable to the commissioner.

(c) The actuary or other financial specialist under Subsection (b) shall:

(1) review the actuarial opinion and the basis for the opinion; and

(2) prepare the supporting memorandum.

(d) A life insurance company is responsible for the expense of the actuary or other financial specialist under Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 8, eff. September 1, 2015.

Sec. 425.056. LIMITATION ON LIABILITY FOR ACTUARIAL OPINION. (a) Except in cases of fraud or wilful misconduct or as provided by Subsection (b), a person who certifies an opinion under Section 425.054 or 425.0545 is not liable for damages to a person, other than the life insurance company covered by the opinion, for an act, error, omission, decision, or other conduct with respect to the person's opinion.

(b) Subsection (a) does not apply to an administrative penalty imposed under Chapter 84.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 9, eff. September 1, 2015.

Sec. 425.057. DISCIPLINARY ACTION: COMPANY OR PERSON CERTIFYING OPINION. A company or person that certifies an opinion under Section 425.054 or 425.0545 and that violates Section 425.054, 425.0545, or 425.055 or rules adopted under those sections is subject to disciplinary action under Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 10, eff. September 1, 2015.

Sec. 425.058. COMPUTATION OF MINIMUM STANDARD: GENERAL RULE. (a) Except as otherwise provided by Section 425.059, 425.060, 425.061, 425.062, or 425.063, the minimum standard for the valuation of an outstanding life insurance policy or annuity or pure endowment contract issued by a life insurance company on or after the date on which Chapter 1105 applies to policies issued by the company, as determined under Section 1105.002(a) or (b), is the commissioners reserve valuation method described by Sections 425.064, 425.065, and 425.068, computed using the table prescribed by this section and with interest at 3-1/2 percent or at the following rate, if applicable:

(1) in the case of a policy or contract issued on or after June 14, 1973, and before August 29, 1977, other than an annuity or pure endowment contract, four percent;

(2) in the case of a single premium life insurance policy issued on or after August 29, 1977, 5-1/2 percent; or

(3) in the case of a life insurance policy issued on or after August 29, 1977, other than a single premium life insurance policy, 4-1/2 percent.

(b) Except as provided by Subsection (c), for an ordinary life insurance policy issued on the standard basis, excluding any disability or accidental death benefits in the policy, the applicable table is the Commissioners 1941 Standard Ordinary Mortality Table, if the policy was issued before the date on which Section 1105.152 would apply to the policy, as determined under Section 1105.152(a) or (b), or the Commissioners 1958 Standard Ordinary Mortality Table, if Section 1105.152 applies to the policy. For a policy that is issued to insure a female risk:

(1) a modified net premium or present value for a policy issued before August 29, 1977, may be computed according to an age not more than three years younger than the insured's actual age; and

(2) a modified net premium or present value for a policy issued on or after August 29, 1977, may be computed according to an age not more than six years younger than the insured's actual age.

(c) For an ordinary life insurance policy issued on the standard basis, excluding any disability or accidental death benefits in the policy, and to which Subchapter B, Chapter 1105, applies, the applicable table is:

(1) the Commissioners 1980 Standard Ordinary Mortality Table;

(2) at the insurer's option for one or more specified life insurance plans, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or

(3) any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard valuation for a policy to which this subdivision applies.

(d) For an industrial life insurance policy issued on the standard basis, excluding any disability or accidental death benefits in the policy, the applicable table is:

(1) the 1941 Standard Industrial Mortality Table, if the policy was issued before the date on which Section 1105.153 would apply to the policy as determined under Section 1105.153(a) or (b); or

(2) if Section 1105.153 applies to the policy:

(A) the Commissioners 1961 Standard Industrial Mortality Table; or

(B) any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard of valuation for a policy to which this subdivision applies.

(e) For an individual annuity or pure endowment contract, excluding any disability or accidental death benefits in the policy, the applicable table is the 1937 Standard Annuity Mortality Table, or at the insurer's option, the Annuity Mortality Table for 1949, Ultimate, or a modification of either table that is approved by the commissioner.

(f) For a group annuity or pure endowment contract, excluding

any disability or accidental death benefits in the policy, the applicable table is:

(1) the Group Annuity Mortality Table for 1951;

(2) a modification of that table approved by the commissioner; or

(3) at the insurance company's option, a table or a modification of a table prescribed for an individual annuity or pure endowment contract by Subsection (e).

(g) For total and permanent disability benefits in or supplementary to an ordinary policy or contract, the applicable tables are:

(1) for a policy or contract issued on or after January 1, 1966:

(A) the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; or

(B) any table of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners that are approved by commissioner rule for use in determining the minimum standard of valuation for a policy to which this subdivision applies;

(2) for a policy or contract issued on or after January 1, 1961, and before January 1, 1966:

(A) a table described by Subdivision (1); or

(B) at the insurance company's option, the Class (3) Disability Table (1926); or

(3) for a policy issued before January 1, 1961, the Class (3) Disability Table (1926).

(h) A table described by Subsection (g) must, for an active life, be combined with a mortality table permitted for computing the reserves for a life insurance policy.

(i) For accidental death benefits in or supplementary to a policy, the applicable table is:

(1) for a policy issued on or after January 1, 1966:

(A) the 1959 Accidental Death Benefits Table; or

(B) any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners that is approved by commissioner rule for use in determining the minimum standard of valuation for a policy to which this subdivision applies;

(2) for a policy issued on or after January 1, 1961, and

before January 1, 1966:

(A) a table described by Subdivision (1); or

(B) at the insurance company's option, the Inter-Company Double Indemnity Mortality Table; or

(3) for a policy issued before January 1, 1961, the Inter-Company Double Indemnity Mortality Table.

(j) A table described by Subsection (i) must be combined with a mortality table permitted for computing the reserves for a life insurance policy.

(k) For group life insurance, life insurance issued on the substandard basis and other special benefits, the applicable table is a table approved by the commissioner.

(l)(1) Notwithstanding any other law, the minimum reserve requirements applicable to a credit life policy issued under Chapter 1153 before January 1, 2009, are met if, in the aggregate, the reserves are maintained at 100 percent of the 1980 Commissioner's Standard Ordinary Mortality Table, with interest that does not exceed 5.5 percent.

(2) For credit life policy reserves on contracts issued to be effective on or after January 1, 2009, the reserve requirements shall be based on minimum reserve standards established by the commissioner by rule. The commissioner shall adopt the rules based on either:

(A) the 2001 CSO Male Composite Ultimate Mortality Table for male and female insureds; or

(B) another CSO Mortality Table approved by the National Association of Insurance Commissioners on or after January 1, 2009, for use on credit life policy reserves.

(3) For a single premium credit accident and health contract issued on or after January 1, 2009, the reserve requirements shall be based on minimum reserve standards established by the commissioner by rule. The commissioner shall adopt the rules based on either:

(A) the 1985 Commissioners Individual Disability Table A (85CIDA); or

(B) another Commissioner's Disability Table approved by the National Association of Insurance Commissioners on or after January 1, 2009, for use on credit accident and health policy reserves.

(4) For all credit insurance contracts, if the net premium

refund liability exceeds the aggregate recorded contract reserve, the insurer shall establish an additional reserve liability that is equal to the excess of the net refund liability over the contract reserve recorded. The net refund liability may include consideration of commission, premium tax, and other expenses recoverable.

(5) In addition to the rules required to be adopted under this subsection, the commissioner may adopt other rules to implement this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 399 (H.B. 1761), Sec. 1, eff. June 19, 2009.
Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 11, eff. September 1, 2015.

Sec. 425.059. COMPUTATION OF MINIMUM STANDARD FOR CERTAIN ANNUITIES AND PURE ENDOWMENT CONTRACTS. (a) This section applies to an individual annuity or pure endowment contract issued on or after January 1, 1979, and an annuity or pure endowment purchased on or after January 1, 1979, under a group annuity or pure endowment contract. This section also applies to an annuity or pure endowment contract issued by an insurer after the date specified in a written notice:

(1) that was filed with the State Board of Insurance after June 14, 1973, but before January 1, 1979; and

(2) under which the insurance company filing the notice elected to comply before January 1, 1979, with former Section 4, Article 3.28, with respect to individual or group annuities and pure endowment contracts as specified by the company in the notice.

(b) Except as provided by Section 425.060, 425.061, 425.062, or 425.063, the minimum standard for the valuation of an individual or group annuity or pure endowment contract, excluding any disability or accidental death benefits in the contract, is the commissioners reserve valuation method described by Sections 425.064 and 425.065, computed using the table prescribed by this section and with interest at the following interest rate, as applicable:

(1) for an individual annuity or pure endowment contract

issued before August 29, 1977, other than an individual single premium immediate annuity contract, four percent;

(2) for an individual single premium immediate annuity contract issued before August 29, 1977, six percent;

(3) for an individual annuity or pure endowment contract issued on or after August 29, 1977, other than an individual single premium immediate annuity contract or an individual single premium deferred annuity or pure endowment contract, 4-1/2 percent;

(4) for an individual single premium immediate annuity contract issued on or after August 29, 1977, 7-1/2 percent;

(5) for an individual single premium deferred annuity or pure endowment contract issued on or after August 29, 1977, 5-1/2 percent;

(6) for an annuity or pure endowment purchased before August 29, 1977, under a group annuity or pure endowment contract, six percent; or

(7) for an annuity or pure endowment purchased on or after August 29, 1977, under a group annuity or pure endowment contract, 7-1/2 percent.

(c) For an individual annuity or pure endowment contract issued before August 29, 1977, the applicable table is:

(1) the 1971 Individual Annuity Mortality Table; or

(2) a modification of that table approved by the commissioner.

(d) For an individual annuity or pure endowment contract issued on or after August 29, 1977, including an individual single premium immediate annuity contract, the applicable table is:

(1) the 1971 Individual Annuity Mortality Table;

(2) an individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for a specified type of contract to which this subsection applies; or

(3) a modification of one of those tables approved by the commissioner.

(e) For an annuity or pure endowment purchased before August 29, 1977, under a group annuity or pure endowment contract, the applicable table is:

(1) the 1971 Group Annuity Mortality Table; or

(2) a modification of that table approved by the

commissioner.

(f) For an annuity or pure endowment purchased on or after August 29, 1977, under a group annuity or pure endowment contract, the applicable table is:

(1) the 1971 Group Annuity Mortality Table;

(2) a group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by the commissioner by rule for use in determining the minimum standard of valuation for an annuity or pure endowment to which this subsection applies; or

(3) a modification of one of those tables approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 12, eff. September 1, 2015.

Sec. 425.060. APPLICABILITY OF CALENDAR YEAR STATUTORY VALUATION INTEREST RATES. The calendar year statutory valuation interest rates as defined by Sections 425.061, 425.062, and 425.063 are the interest rates used in determining the minimum standard for the valuation of:

(1) a life insurance policy to which Subchapter B, Chapter 1105, applies;

(2) an individual annuity or pure endowment contract issued on or after January 1, 1982;

(3) an annuity or pure endowment purchased on or after January 1, 1982, under a group annuity or pure endowment contract; or

(4) the net increase, if any, in a calendar year after January 1, 1982, in amounts held under a guaranteed interest contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.061. COMPUTATION OF CALENDAR YEAR STATUTORY VALUATION INTEREST RATE: GENERAL RULE. (a) For purposes of Subsection (b):

(1) R1 is the lesser of R or.09;

(2) R2 is the greater of R or.09;

(3) R is the reference interest rate determined under Section 425.063; and

(4) W is the weighting factor determined under Section 425.062.

(b) The calendar year statutory valuation interest rate ("I") is determined as provided by this section, with the results rounded to the nearest one-quarter of one percent:

(1) for life insurance:

$$I = .03 + W(R1 - .03) + (W/2)(R2 - .09); \text{ and}$$

(2) for a single premium immediate annuity or annuity benefits involving life contingencies arising from another annuity with a cash settlement option or from a guaranteed interest contract with a cash settlement option, or for an annuity or guaranteed interest contract without a cash settlement option, or for an annuity or guaranteed interest contract with a cash settlement option that is valued on a change in fund basis:

$$I = .03 + W(R - .03).$$

(c) For an annuity or guaranteed interest contract with a cash settlement option that is valued on an issue year basis, other than an annuity or contract described by Subsection (b)(2):

(1) the formula prescribed by Subsection (b)(1) applies to an annuity or guaranteed interest contract with a guarantee duration determined under Section 425.062(f) greater than 10 years; and

(2) the formula prescribed by Subsection (b)(2) applies to an annuity or guaranteed interest contract with a guarantee duration determined under Section 425.062(f) of 10 years or less.

(d) Notwithstanding Subsections (b) and (c), if the calendar year statutory valuation interest rate for a life insurance policy issued in a calendar year as determined under Subsection (b) or (c), as applicable, would differ from the corresponding actual rate for similar policies issued in the preceding calendar year by less than one-half of one percent, the calendar year statutory valuation interest rate for the policy is the corresponding actual rate for the preceding calendar year. For purposes of this subsection, the calendar year statutory valuation interest rate for a life insurance policy issued in a calendar year is determined for 1980 using the reference interest rate defined for 1979, and is determined for each subsequent calendar year regardless of whether Subchapter B, Chapter

1105, applies to the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.062. WEIGHTING FACTORS. (a) This section prescribes the weighting factors referred to in the formulas prescribed by Section 425.061.

(b) The weighting factor for a life insurance policy is determined by the following table:

Guarantee Duration (Years)	Weighting Factor
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

(c) For purposes of Subsection (b), the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to life insurance plans with premium rates or nonforfeiture values, or both, that are guaranteed in the original policy.

(d) The weighting factor for a single premium immediate annuity or for annuity benefits involving life contingencies arising from another annuity with a cash settlement option or from a guaranteed interest contract with a cash settlement option is.80.

(e) The weighting factor for an annuity or a guaranteed interest contract, other than an annuity or contract to which Subsection (d) applies, is determined by the following tables:

(1) For an annuity or guaranteed interest contract that is valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(2) For an annuity or guaranteed interest contract that is valued on a change in fund basis, the factors prescribed by Subdivision (1) increased by:

Plan Type		
A	B	C
.15	.25	.05

(3) For an annuity or guaranteed interest contract that is valued on an issue year basis that does not guarantee interest on considerations received more than one year after issue or purchase, other than an annuity or contract that does not have a cash settlement option, or an annuity or guaranteed interest contract that is valued on a change in fund basis that does not guarantee interest rates on considerations received more than 12 months after the valuation date, the factors prescribed by Subdivision (1) or determined under Subdivision (2), as appropriate, increased by:

Plan Type		
A	B	C
.05	.05	.05

(f) For purposes of Subsection (e):

(1) for an annuity or guaranteed interest contract with a cash settlement option, the guarantee duration is the number of years for which the contract guarantees interest rates greater than the calendar year statutory valuation interest rate for life insurance policies with guarantee duration greater than 20 years; and

(2) for an annuity or guaranteed interest contract without a cash settlement option, the guarantee duration is the number of years from the issue or purchase date to the date annuity benefits are scheduled to begin.

(g) For purposes of Subsection (e):

(1) a policy is a "Plan Type A" policy if:

(A) the policyholder may withdraw funds at any time, but only:

(i) with an adjustment to reflect changes in interest rates or asset values after the insurance company receives the funds;

(ii) without an adjustment described by Subparagraph (i), provided that the withdrawal is in installments over five years or more; or

(iii) as an immediate life annuity; or

(B) the policyholder is not permitted to withdraw funds

at any time;

(2) a policy is a "Plan Type B" policy if:

(A) before the expiration of the interest rate guarantee:

(i) the policyholder may withdraw funds, but only:

(a) with an adjustment to reflect changes in interest rates or asset values after the insurance company receives the funds; or

(b) without an adjustment described by Subsubparagraph (a), provided that the withdrawal is in installments over five years or more; or

(ii) the policyholder is not permitted to withdraw funds; and

(B) on the expiration of the interest rate guarantee, the policyholder may withdraw funds in a single sum or in installments over less than five years, without an adjustment described by Paragraph (A)(i); and

(3) a policy is a "Plan Type C" policy if the policyholder may withdraw funds before the expiration of the interest rate guarantee in a single sum or in installments over less than five years:

(A) without an adjustment to reflect changes in interest rates or asset values after the insurance company receives the funds; or

(B) subject only to a fixed surrender charge that is a percentage of the fund stipulated in the contract.

(h) An insurance company may elect to value an annuity or guaranteed interest contract with a cash settlement option on an issue year basis or on a change in fund basis. A company must value an annuity or guaranteed interest contract without a cash settlement option on an issue year basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.063. REFERENCE INTEREST RATE. (a) In this section, "Moody's Corporate Bond Yield Average" means the Moody's Corporate Bond Yield Average--Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(b) Except as provided by Subsection (g), the reference interest rate for purposes of Section 425.061 is determined as provided by Subsections (c)-(f).

(c) The reference interest rate for a life insurance policy is the lesser of the average over a period of 36 months or the average over a period of 12 months, ending on June 30 of the calendar year preceding the year of issue, of the Moody's Corporate Bond Yield Average.

(d) The reference interest rate is the average over a period of 12 months, ending on June 30 of the calendar year of issue or year of purchase, of the Moody's Corporate Bond Yield Average for:

(1) a single premium immediate annuity or annuity benefits involving life contingencies arising from another annuity with a cash settlement option or from a guaranteed interest contract with a cash settlement option;

(2) an annuity or guaranteed interest contract with a cash settlement option, other than an annuity or contract described by Subdivision (1), that is valued on an issue year basis and has a guarantee duration as determined under Section 425.062(f) of 10 years or less; or

(3) an annuity or guaranteed interest contract without a cash settlement option.

(e) The reference interest rate is the lesser of the average over a period of 36 months or the average over a period of 12 months, ending on June 30 of the calendar year of issue or purchase, of the Moody's Corporate Bond Yield Average for an annuity or guaranteed interest contract with a cash settlement option, other than an annuity or contract described by Subsection (d)(1), that is valued on an issue year basis and has a guarantee duration as determined under Section 425.062(f) greater than 10 years.

(f) The reference interest rate is the average over a period of 12 months, ending on June 30 of the calendar year of the change in the fund, of the Moody's Corporate Bond Yield Average, for an annuity or guaranteed interest contract with a cash settlement option, other than an annuity or contract described by Subsection (d)(1), that is valued on a change in fund basis.

(g) At least annually, the commissioner shall:

(1) determine whether the reference interest rates prescribed by Subsections (c), (d), (e), and (f) continue to be a reasonably accurate approximation of the average yield achieved from

purchases in the United States in publicly quoted markets of investment grade fixed term and fixed interest corporate obligations for the periods referenced in Subsection (c), (d), (e), or (f), as applicable; and

(2) if the commissioner determines that a reference interest rate prescribed by Subsection (c), (d), (e), or (f) is not a reasonably accurate approximation of the average yield described by Subdivision (1), adopt rules in the manner prescribed by Chapters 2001 and 2002, Government Code, to prescribe an alternative method of determining a reference interest rate, as appropriate, that is a reasonably accurate approximation of that average yield.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.064. COMMISSIONERS RESERVE VALUATION METHOD FOR LIFE INSURANCE AND ENDOWMENT BENEFITS. (a) Except as otherwise provided by Sections 425.065 and 425.068 and subject to Subsection (b), for the life insurance and endowment benefits of a policy that provides for a uniform amount of insurance and that requires the payment of uniform premiums, the reserve according to the commissioners reserve valuation method is the difference, if greater than zero, of the present value on the date of valuation of those future guaranteed benefits, minus the present value on that date of any future modified net premiums for a policy described by this subsection. The modified net premiums for a policy described by this subsection are a uniform percentage of the respective contract premiums for those benefits, so that the present value on the policy's issue date of all the modified net premiums is equal to the sum of:

(1) the present value on that date of those benefits; and

(2) the difference, if greater than zero, between:

(A) a net level annual premium equal to the present value on the policy's issue date of the benefits provided for after the first policy year, divided by the present value on the policy's issue date of an annuity of one per year, payable on the first policy anniversary and on each subsequent policy anniversary on which a premium becomes due; and

(B) a net one-year term premium for the benefits provided for in the first policy year.

(b) A net level annual premium under Subsection (a)(2)(A) may not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age that is one year older than the age on the policy's issue date.

(c) This subsection applies only to a life insurance policy issued on or after January 1, 1985, for which the contract premium for the first policy year exceeds the contract premium for the second year, for which a comparable additional benefit is not provided in the first year for the excess premium, and that provides an endowment benefit, a cash surrender value, or a combination of an endowment benefit and cash surrender value, in an amount greater than the excess premium. For purposes of this subsection, the "assumed ending date" is the first policy anniversary on which the sum of any endowment benefit and any cash surrender value available on that date is greater than the excess premium. The reserve according to the commissioners reserve valuation method for a policy to which this subsection applies as of any policy anniversary occurring on or before the assumed ending date is, except as otherwise provided by Section 425.068, the greater of:

(1) the reserve as of the policy anniversary computed as prescribed by Subsection (a); or

(2) the reserve as of the policy anniversary computed as prescribed by Subsection (a) but with:

(A) the value prescribed by Subsection (a)(2)(A) reduced by 15 percent of the amount of the excess first-year premium;

(B) each present value of a benefit or premium determined without reference to a premium or benefit provided under the policy after the assumed ending date;

(C) the policy assumed to mature on the assumed ending date as an endowment; and

(D) the cash surrender value provided on the assumed ending date considered to be an endowment benefit.

(d) In making the comparison required by Subsection (c), the mortality tables and interest bases described by Sections 425.058, 425.061, 425.062, and 425.063 must be used.

(e) Reserves according to the commissioners reserve valuation method for the following policies, contracts, and benefits must be computed by a method consistent with the principles of this section:

(1) a life insurance policy that provides for a varying amount of insurance or that requires the payment of varying premiums;

(2) a group annuity or pure endowment contract purchased under a retirement or deferred compensation plan established or maintained by an employer, including a partnership or sole proprietorship, by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408, Internal Revenue Code of 1986, and that section's subsequent amendments;

(3) disability or accidental death benefits in a policy or contract; and

(4) all other benefits, other than life insurance and endowment benefits in a life insurance policy or benefits provided by any other annuity or pure endowment contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 13, eff. September 1, 2015.

Sec. 425.065. COMMISSIONERS ANNUITY RESERVE VALUATION METHOD FOR ANNUITY AND PURE ENDOWMENT BENEFITS. (a) This section applies to an annuity or pure endowment contract other than a group annuity or pure endowment contract purchased under a retirement or deferred compensation plan established or maintained by an employer, including a partnership or sole proprietorship, by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408, Internal Revenue Code of 1986, and that section's subsequent amendments.

(b) Reserves according to the commissioners annuity reserve method for benefits under an annuity or pure endowment contract, excluding any disability or accidental death benefits in the contract, are the greatest of the respective excesses of the present values on the valuation date of the future guaranteed benefits under the contract at the end of each respective contract year, including guaranteed nonforfeiture benefits, minus the present value on the valuation date of any future valuation considerations derived from future gross considerations that are required by the contract terms and that become payable before the end of the respective contract year. The future guaranteed benefits must be determined by using the

mortality table, if any, and the interest rate or rates specified in the contract for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the contract terms to determine nonforfeiture values.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 14, eff. September 1, 2015.

Sec. 425.066. MINIMUM AGGREGATE RESERVES. (a) An insurance company's aggregate reserves for all life insurance policies, excluding disability or accidental death benefits, issued by the company on or after the date on which Chapter 1105 applies to policies issued by the company, as determined under Section 1105.002(a) or (b), may not be less than the aggregate reserves computed in accordance with the methods prescribed by Sections 425.064, 425.065, 425.068, and 425.069 and the mortality table or tables and interest rate or rates used in computing nonforfeiture benefits for those policies.

(b) The aggregate reserves of an insurance company to which this section applies for all policies, contracts, and benefits may not be less than the aggregate reserves determined to be necessary to issue a favorable opinion under Section 425.054.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.067. OPTIONAL RESERVE COMPUTATIONS. (a) Reserves for a policy or contract issued by a life insurance company before the date on which Chapter 1105 would apply to the policy or contract, as determined under Section 1105.002(a) or (b), may be computed, at the company's option, according to any standard that produces greater aggregate reserves for all those policies and contracts than the minimum reserves required by the laws applicable to those policies and contracts immediately before that date.

(b) Reserves for any category, as established by the

commissioner, of policies, contracts, or benefits issued by a life insurance company on or after the date on which Chapter 1105 applies to policies, contracts, or benefits issued by the company, as determined under Section 1105.002(a) or (b), may be computed, at the company's option, according to any standard that produces greater aggregate reserves for the category than the minimum aggregate reserves computed according to the standard provided by this subchapter, but the interest rate or rates used for those policies and contracts, other than annuity and pure endowment contracts, may not be higher than the corresponding interest rate or rates used in computing any nonforfeiture benefits provided in those policies or contracts.

(c) An insurance company that has adopted a standard of valuation that produces greater minimum aggregate reserves than the aggregate reserves computed according to the standard provided by this subchapter may, with the commissioner's approval, adopt any lower standard of valuation that produces aggregate reserves at least equal to the minimum aggregate reserves computed according to the standard provided by this subchapter.

(d) For purposes of this section, the holding of additional reserves previously determined to be necessary to issue a favorable opinion under Section 425.054 may not be considered to be the adoption of a higher standard of valuation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.068. RESERVE COMPUTATION: GROSS PREMIUM CHARGED LESS THAN VALUATION NET PREMIUM. (a) If in a contract year the gross premium charged by a life insurance company on a policy or contract is less than the valuation net premium for the policy or contract computed by the method used in computing the reserve on the policy or contract but using the minimum valuation mortality standards and interest rate, the minimum reserve required for the policy or contract is the greater of:

(1) the reserve computed according to the mortality table, interest rate, and method actually used for the policy or contract; or

(2) the reserve computed by the method actually used for

the policy or contract but using the minimum valuation mortality standards and interest rate and replacing the valuation net premium with the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

(b) The minimum valuation mortality standards and interest rate under Subsection (a) are the standards and rate provided by Sections 425.058, 425.061, 425.062, and 425.063.

(c) This subsection applies only to a life insurance policy issued on or after January 1, 1985, for which the gross premium for the first policy year exceeds the gross premium for the second policy year, for which a comparable additional benefit is not provided in the first year for the excess premium, and that provides an endowment benefit, a cash surrender value, or a combination of an endowment benefit and cash surrender value, in an amount greater than the excess premium. For a policy to which this subsection applies, Subsections (a) and (b) shall be applied as if the method actually used in computing the reserve for the policy were the method described in Section 425.064, ignoring Section 425.064(c). The minimum reserve at each policy anniversary is the greater of:

(1) the minimum reserve computed in accordance with Section 425.064, including Section 425.064(c); or

(2) the minimum reserve computed in accordance with this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.069. RESERVE COMPUTATION: INDETERMINATE PREMIUM PLANS AND CERTAIN OTHER PLANS. (a) For a life insurance plan that provides for future premium determination, the amounts of which are to be determined by the insurance company based on estimates of future experience, or a life insurance plan or annuity for which the minimum reserves cannot be determined by the methods described by Sections 425.064, 425.065, and 425.068, the reserves held must:

(1) be appropriate in relation to the benefits and the pattern of premiums for the plan; and

(2) be computed by a method that is consistent with the principles of this subchapter, as determined by commissioner rule.

(b) Notwithstanding any other provision of state law, the

commissioner must affirmatively approve a policy, contract, or certificate that provides life insurance under a plan described by Subsection (a) before the policy, contract, or certificate may be marketed, issued, delivered, or used in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.070. COMPUTATION OF RESERVE FOR CERTAIN POLICIES BY CALENDAR YEAR OF ISSUE. (a) The reserve for a policy or contract issued by a life insurance company before the date on which Chapter 1105 would apply to the policy or contract, as determined under Section 1105.002(a) or (b), must be computed in accordance with the terms of the policy or contract and this section.

(b) For a policy issued before January 1, 1910, the computation must be based on the American Experience Table of Mortality and 4-1/2 percent annual interest.

(c) For a policy issued on or after January 1, 1910, and before January 1, 1948, the computation must be based on:

(1) the Actuaries or Combined Experience Table of Mortality and four percent annual interest, if the interest rate guaranteed in the policy is four percent annually or higher; or

(2) the American Experience Table of Mortality and the lower rate specified in the policy, if the policy was issued on a reserve basis of an interest rate lower than four percent annually.

(d) For a policy issued on or after January 1, 1948, the computation must be based on the mortality table and interest rate specified in the policy, provided that:

(1) the specified interest rate may not exceed 3-1/2 percent annually;

(2) the specified table for a policy, other than an industrial life insurance policy, is the American Experience Table of Mortality, the American Men Ultimate Table of Mortality, the Commissioners 1941 Standard Ordinary Mortality Table, or, for a policy issued after December 31, 1959, the Commissioners 1958 Standard Ordinary Mortality Table; and

(3) the specified table for an industrial life insurance policy is the American Experience Table of Mortality, the Standard Industrial Mortality Table, the Sub-Standard Industrial Mortality

Table, the 1941 Standard Industrial Mortality Table, or the 1941 Sub-Standard Industrial Mortality Table, or, for a policy issued after December 31, 1963, the Commissioners 1961 Standard Industrial Mortality Table.

(e) For a policy, other than an industrial life insurance policy, issued after December 31, 1959, to insure a female risk, the computation must be based on any mortality table and interest rate permitted under Subsection (d) and specified in the policy but may, at the insurance company's option, be based on an age not more than three years younger than the insured's actual age.

(f) Except as otherwise provided by Section 425.059 for coverage purchased under a group annuity or pure endowment contract to which that section applies, for a policy issued on a substandard risk, an annuity contract, or a contract or policy for disability benefits or accidental death benefits, the computation must be based on the standards and methods adopted by the insurance company and approved by the commissioner.

(g) For a group insurance policy issued before May 15, 1947, the computation must be based on the American Men Ultimate Table of Mortality with interest at the rate of three percent or 3-1/2 percent annually as provided by the policy. The reserve value of a group insurance policy issued on or after May 15, 1947, and before January 1, 1961, must be computed on the basis of either the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table with interest at a rate not to exceed 3-1/2 percent annually as provided by the policy. For a group insurance policy issued on or after January 1, 1961, the computation must be based on an interest rate not to exceed 3-1/2 percent annually and the mortality table adopted by the insurance company with the commissioner's approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.071. LAPSE RATES IN MINIMUM STANDARD OF VALUATION. (a) The minimum standard of valuation under this subchapter may include lapse rates in the calculation of reserves for a secondary guarantee in universal life contracts issued after December 31, 2006.

(b) For purposes of this section, a secondary guarantee refers

to specified conditions in a universal life contract that, if satisfied, provide for death benefits to remain in effect regardless of the accumulation value in the contract.

(c) Lapse rates authorized by this section may not exceed two percent per year.

(d) The commissioner is authorized to adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 681 (H.B. 1590), Sec. 1, eff. June 15, 2007.

Sec. 425.072. MINIMUM STANDARD FOR ACCIDENT AND HEALTH INSURANCE CONTRACTS. (a) The standard prescribed by the valuation manual for accident and health insurance contracts issued on or after the operative date of the valuation manual is the minimum standard of valuation required under Section 425.0535.

(b) For disability, accident and sickness, and accident and health insurance contracts issued before the operative date of the valuation manual, the minimum standard of valuation is the standard in existence before the operative date of the valuation manual in addition to any requirements established by the commissioner and adopted by rule.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 15, eff. September 1, 2015.

Sec. 425.073. VALUATION MANUAL FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL. (a) Except as otherwise provided by this section, for policies issued on or after the operative date of the valuation manual, the standard prescribed by the valuation manual is the minimum standard of valuation required under Section 425.0535.

(b) The commissioner by rule shall adopt a valuation manual and determine the operative date of the valuation manual. A valuation manual adopted by the commissioner under this section must be substantially similar to the valuation manual approved by the National Association of Insurance Commissioners. The operative date must be January 1 of the first calendar year immediately following a year in which, on or before July 1, the commissioner determines that:

(1) the valuation manual has been adopted by the National Association of Insurance Commissioners by an affirmative vote of at least 42 members, or three-fourths of the members voting, whichever is greater;

(2) the National Association of Insurance Commissioners Standard Model Valuation Law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by states representing greater than 75 percent of the direct premiums written as reported in the following annual statements submitted for 2008:

(A) life insurance and accident and health annual statements;

(B) health annual statements; or

(C) fraternal annual statements; and

(3) the National Association of Insurance Commissioners Standard Model Valuation Law, as amended by the National Association of Insurance Commissioners in 2009, or legislation including substantially similar terms and provisions, has been enacted by at least 42 of the following 55 jurisdictions:

(A) the 50 United States;

(B) American Samoa;

(C) the United States Virgin Islands;

(D) the District of Columbia;

(E) Guam; and

(F) Puerto Rico.

(c) After a valuation manual has been adopted by the commissioner by rule, any changes to the valuation manual must be adopted by rule and must be substantially similar to changes adopted by the National Association of Insurance Commissioners. Unless a change in the valuation specifies a later effective date, the effective date for changes to the valuation manual may not be earlier than January 1 of the year immediately following the date on which the commissioner determines that the changes to the valuation manual have been adopted by the National Association of Insurance Commissioners by an affirmative vote representing:

(1) at least three-fourths of the members of the National Association of Insurance Commissioners voting, but not less than a majority of the total membership; and

(2) members of the National Association of Insurance

Commissioners representing jurisdictions totaling greater than 75 percent of the direct premiums written as reported in the most recently available annual statements as provided by Subsections (b)(2)(A)-(C).

(d) The valuation manual must specify:

(1) the minimum valuation standards for and definitions of the policies or contracts subject to Section 425.0535, including:

(A) the commissioner's reserve valuation method for life insurance contracts subject to Section 425.0535;

(B) the commissioner's annuity reserve valuation method for annuity contracts subject to Section 425.0535; and

(C) the minimum reserves for all other policies or contracts subject to Section 425.0535;

(2) the policies or contracts that are subject to the requirements of a principle-based valuation under Section 425.074 and the minimum valuation standards consistent with those requirements, including:

(A) the requirements for the format of reports to the commissioner under Section 425.074(b)(3), which must include the information necessary to determine if a valuation is appropriate and in compliance with this subchapter;

(B) the assumptions prescribed for risks over which the company does not have significant control or influence; and

(C) the procedures for corporate governance and oversight of the actuarial function, and a process for appropriate waiver or modification of the procedures;

(3) the policies that are not subject to a principle-based valuation under Section 425.074;

(4) the data and form of data required under Section 425.075, to whom the data must be submitted, and other desired requirements, including requirements concerning data analyses and reporting of analyses;

(5) other requirements, including requirements relating to reserve methods, models for measuring risk, generation of economic scenarios, assumptions, margins, use of company experience, disclosure, certification, reports, actuarial opinions and memorandums, transition rules, and internal controls; and

(6) an exemption that allows certain companies to value reserves based on an exception from certain requirements of this section and Section 425.074.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 611 (H.B. 3673), Sec. 2, eff. September 1, 2023.

(f) With respect to policies that are not subject to a principle-based valuation under Section 425.074 as described by Subsection (d)(3), the minimum valuation standard specified in the valuation manual must:

(1) be consistent with the minimum valuation standard before the operative date of the valuation manual; or

(2) develop reserves that quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring.

(g) In the absence of a specific valuation requirement or if a specific valuation requirement in the valuation manual does not in the commissioner's opinion comply with this subchapter, the company shall, with respect to the requirement, comply with minimum valuation standards prescribed by the commissioner by rule.

(h) The commissioner may employ or contract with a qualified actuary, at the expense of the company, to perform an actuarial examination of the company and provide an opinion concerning the appropriateness of any reserve assumption or method used by the company, or to review and provide an opinion on a company's compliance with any requirement of this subchapter. The commissioner may rely on the opinion, regarding provisions contained within this subchapter, of a qualified actuary engaged by the insurance supervisory official of another state.

(i) The commissioner may require a company to change an assumption or method as necessary in the commissioner's opinion to comply with a requirement of the valuation manual or this subchapter.

(j) The commissioner may take other disciplinary action as permitted under Chapter 82.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 15, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 611 (H.B. 3673), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 611 (H.B. 3673), Sec. 2, eff. September 1, 2023.

Sec. 425.074. REQUIREMENTS OF A PRINCIPLE-BASED VALUATION. (a) A company shall establish reserves using a principle-based valuation that meets the conditions for policies or contracts provided by the valuation manual. At a minimum, the valuation shall:

(1) quantify the benefits and guarantees, and the funding, associated with the contracts and their risks at a level of conservatism that reflects conditions that include unfavorable events that have a reasonable probability of occurring during the terms of the contracts;

(2) with respect to policies and contracts with significant tail risk, reflect conditions appropriately adverse to quantify the tail risk;

(3) incorporate assumptions, risk analysis methods, and financial models and management techniques that are consistent with those used in the company's overall risk assessment process, while recognizing potential differences in financial reporting structures and any prescribed assumptions or methods;

(4) incorporate assumptions:

(A) prescribed by the valuation manual; or

(B) established:

(i) using the company's available experience, to the extent that data is relevant and statistically credible; or

(ii) to the extent that the company data is not available, relevant, or statistically credible, using other relevant, statistically credible experience; and

(5) provide margins for uncertainty, including adverse deviation and estimation error, such that the greater the uncertainty the larger the margin and resulting reserve.

(b) A company using a principle-based valuation for one or more policies or contracts subject to this section and as specified by the valuation manual shall:

(1) establish procedures for corporate governance and oversight of the actuarial valuation function consistent with procedures specified by the valuation manual;

(2) provide to the commissioner and the company's board of directors an annual certification of the effectiveness of the internal controls with respect to the principle-based valuation; and

(3) develop, and file with the commissioner on request, a

principle-based valuation report that complies with standards prescribed in the valuation manual.

(c) A company's internal controls with respect to the principle-based valuation must be designed to ensure that all material risks inherent in the liabilities and associated assets subject to the valuation are included in the valuation, and that valuations are made in accordance with the valuation manual. The certification described by Subsection (b)(2) must be based on the controls in place as of the end of the preceding calendar year.

(d) A principle-based valuation may include a prescribed formulaic reserve component.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 15, eff. September 1, 2015.

Sec. 425.075. EXPERIENCE REPORTING FOR POLICIES IN FORCE ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL. A company shall submit mortality, morbidity, policyholder behavior, or expense experience and other data as prescribed in the valuation manual.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 15, eff. September 1, 2015.

Sec. 425.076. CONFIDENTIALITY. (a) In this section, "confidential information" means:

(1) a memorandum in support of an opinion submitted under Section 425.0545 and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such memorandum;

(2) all documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in the course of an examination made under Section 425.073(h); provided, however, that if an examination report or other material prepared in connection with an examination made under Subchapter B, Chapter 401, is not held as private and confidential information under Subchapter B, Chapter 401, an examination report or other material prepared in connection with an

examination made under Section 425.073(h) shall not be "confidential information" to the same extent as if such examination report or other material had been prepared under Subchapter B, Chapter 401;

(3) any reports, documents, materials, and other information developed by a company in support of, or in connection with, an annual certification by the company under Section 425.074(b)(2) evaluating the effectiveness of the company's internal controls with respect to a principle-based valuation and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such reports, documents, materials, and other information;

(4) any principle-based valuation report developed under Section 425.074(b)(3) and any other documents, materials, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such report; and

(5) any documents, materials, data, and other information submitted by a company under Section 425.075 (collectively, "experience data") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created or produced in connection with such experience data, in each case that include any potentially company-identifying or personally identifiable information, that is provided to or obtained by the commissioner (together with any "experience data," the "experience materials") and any other documents, materials, data, and other information, including, but not limited to, all working papers, and copies thereof, created, produced, or obtained by or disclosed to the commissioner or any other person in connection with such experience materials.

(b) Except as provided in this section, a company's confidential information is confidential by law and privileged, and shall not be subject to Chapter 552, Government Code, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action; provided, however, that the commissioner is authorized to use the confidential information in the furtherance of any regulatory or legal action brought against the company as a part of the commissioner's official duties.

(c) Neither the commissioner nor any person who received confidential information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential information.

(d) In order to assist in the performance of the commissioner's duties, the commissioner may share confidential information (1) with other state, federal, and international regulatory agencies and with the National Association of Insurance Commissioners and its affiliates and subsidiaries and (2) in the case of confidential information specified in Subsections (a)(1) and (a)(4) only, with the Actuarial Board for Counseling and Discipline or its successor upon request stating that the confidential information is required for the purpose of professional disciplinary proceedings and with state, federal, and international law enforcement officials; in the case of (1) and (2), provided that such recipient agrees, and has the legal authority to agree, to maintain the confidentiality and privileged status of such documents, materials, data, and other information in the same manner and to the same extent as required for the commissioner.

(e) The commissioner may receive documents, materials, data, and other information, including otherwise confidential or privileged documents, materials, data, or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, from regulatory or law enforcement officials of other foreign or domestic jurisdictions and from the Actuarial Board for Counseling and Discipline or its successor and shall maintain as confidential or privileged any document, material, data, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, data, or other information.

(f) The commissioner may enter into agreements governing sharing and use of information consistent with Subsections (b) through (k).

(g) No waiver of any applicable privilege or claim of confidentiality in the confidential information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection (d).

(h) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under Subsections (b) through (k) shall be available and

enforced in any proceeding in, and in any court of, this state.

(i) In this section, a reference to a regulatory agency, law enforcement agency, or the National Association of Insurance Commissioners includes an employee, agent, consultant, or contractor of the agency or association, as applicable.

(j) Notwithstanding this section, any confidential information specified in Subsections (a)(1) and (a)(4) may be:

(1) subject to subpoena for the purpose of defending an action seeking damages from the appointed actuary submitting the related memorandum in support of an opinion submitted under Section 425.0545 or a principle-based valuation report developed under Section 425.074(b)(3) by reason of an action required by this subchapter or by rules adopted under this subchapter; and

(2) released by the commissioner with the written consent of the company.

(k) Once any portion of a memorandum in support of an opinion submitted under Section 425.0545 or a principle-based valuation report developed under Section 425.074(b)(3) is cited by the company in its marketing or is publicly volunteered to or before a governmental agency other than a state insurance department or is released by the company to the news media, all portions of such memorandum or report shall no longer be confidential and privileged.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 15, eff. September 1, 2015.

Sec. 425.077. SINGLE STATE EXEMPTION. The commissioner may exempt specific product forms or product lines of a domestic company that is licensed and doing business only in this state from the requirements of Section 425.073 if:

(1) the commissioner has issued an exemption in writing to the company and has not subsequently revoked the exemption in writing; and

(2) the company computes reserves using assumptions and methods used before the operative date of the valuation manual in addition to any requirements established by the commissioner and adopted by rule.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 15, eff. September 1, 2015.

SUBCHAPTER C. AUTHORIZED INVESTMENTS AND TRANSACTIONS FOR CAPITAL STOCK LIFE, HEALTH, AND ACCIDENT INSURERS

Sec. 425.101. DEFINITIONS. In this subchapter:

(1) "Assets" means the statutory accounting admitted assets of an insurance company. The term includes lawful money of the United States, whether in the form of cash or demand deposits in solvent banks, savings and loan associations, credit unions, and branches of those entities, organized under the laws of the United States or a state of the United States, if held in accordance with the laws or regulations applicable to those entities. The term does not include the company's separate accounts that are subject to Chapter 1152.

(2) "Securities valuation office" means the Securities Valuation Office of the National Association of Insurance Commissioners.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.102. INAPPLICABILITY OF CERTAIN LAW. The definition of "state" assigned by Section 311.005, Government Code, does not apply to this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.103. APPLICABILITY OF SUBCHAPTER. (a) This subchapter and rules adopted to interpret and implement this subchapter apply to all domestic insurance companies as defined in Section 841.001 and to other insurance companies specifically made subject to this subchapter, including a stipulated premium company that elects under Section 884.311 to be governed by this subchapter.

(b) Subchapter D does not apply to an insurance company to which this subchapter applies.

(c) This subchapter does not limit or restrict investments in or transactions with or within subsidiaries and affiliates made under Chapter 823.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.104. PURPOSE. The purpose of this subchapter is to protect and further the interests of insureds, insurance companies, creditors, and the public by providing standards for development and administration of plans for investment of insurance companies' assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.105. WRITTEN INVESTMENT PLAN. (a) Each insurance company's board of directors or, if the company does not have a board of directors, the corresponding authority designated by the company's charter, bylaws, or plan of operation, shall adopt a written investment plan consistent with this subchapter.

(b) The investment plan must:

(1) specify the diversification of the insurance company's investments, so as to reduce the risk of large losses, by:

(A) broad categories, such as bonds and real property loans;

(B) kinds, such as government obligations, obligations of business entities, mortgage-backed securities, and real property loans on office, retail, industrial, or residential properties;

(C) quality;

(D) maturity;

(E) industry; and

(F) geographical areas, as to both domestic and foreign investments;

(2) balance safety of principal with yield and growth;

(3) seek a reasonable relationship of assets and liabilities as to term and nature; and

(4) be appropriate considering the capital and surplus and the business conducted by the company.

(c) At least annually, the board of directors or corresponding authority shall review the adequacy of the investment plan and the implementation of the plan.

(d) An insurance company shall maintain the company's investment plan in the company's principal office and provide the plan to the commissioner or the commissioner's designee on request. The commissioner or the commissioner's designee shall maintain the plan as a privileged and confidential document. The plan is not subject to public disclosure.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.106. INVESTMENT RECORDS; DEMONSTRATION OF COMPLIANCE. An insurance company shall maintain investment records covering each transaction. The company must be able to demonstrate at all times that the company's investments are within the limitations imposed by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.108. AUTHORIZED INVESTMENTS AND TRANSACTIONS IN GENERAL. (a) Subject to the limitations and restrictions imposed by this subchapter, and, unless otherwise specified, based on the insurance company's capital, surplus, and admitted assets as reported in the company's most recently filed statutory financial statement, the investments and transactions described by this subchapter and Subchapter F, Chapter 823, are authorized investments and transactions for a company subject to this subchapter.

(b) An insurance company may not make an investment or enter into a transaction that is not authorized by this subchapter or Subchapter F, Chapter 823.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.109. AUTHORIZED INVESTMENTS: GOVERNMENT OBLIGATIONS. (a) An insurance company may invest in:

(1) a bond, evidence of indebtedness, or other obligation of the United States;

(2) a bond, evidence of indebtedness, or other obligation guaranteed as to principal and interest by the full faith and credit of the United States;

(3) a bond, evidence of indebtedness, or other obligation of an agency or instrumentality of the United States government; and

(4) subject to Subsections (b) and (c), a bond, evidence of indebtedness, or other obligation of a governmental unit in the United States, Canada, or any province or municipality of Canada, or of an instrumentality of one of those governmental units.

(b) An insurance company may not invest in a bond, evidence of indebtedness, or other obligation under Subsection (a)(4) if the governmental unit or instrumentality is in default in the payment of principal of or interest on any of the governmental unit's or instrumentality's obligations.

(c) An insurance company's investments in the obligations of a single governmental unit or instrumentality under Subsection (a)(4) may not exceed 20 percent of the company's capital and surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.110. AUTHORIZED INVESTMENTS: OBLIGATIONS OF AND OTHER INVESTMENTS IN BUSINESS ENTITIES. (a) In this section:

(1) "Business entity" includes a sole proprietorship, corporation, association, general or limited partnership, limited liability company, joint-stock company, joint venture, trust, or other form of business organization, regardless of whether organized for profit, that is organized under the laws of the United States, another state, Canada, or any district, province, or territory of Canada.

(2) "Counterparty exposure amount" has the meaning assigned by Section 425.125.

(b) Subject to this section, an insurance company may invest in an obligation, including a bond or evidence of indebtedness, a participation in a bond or evidence of indebtedness, or an asset-backed security, that is issued, assumed, guaranteed, or insured by a business entity.

(c) An insurance company's investments in the obligations or counterparty exposure amounts of a single business entity rated by

the securities valuation office may not exceed 20 percent of the company's statutory capital and surplus.

(d) An insurance company may not invest in an obligation, counterparty exposure amount, or preferred stock of a business entity if, after making the investment:

(1) the aggregate amount of those investments then held by the company that are rated 3, 4, 5, or 6 by the securities valuation office would exceed 20 percent of the company's assets;

(2) the aggregate amount of those investments then held by the company that are rated 4, 5, or 6 by the securities valuation office would exceed 10 percent of the company's assets;

(3) the aggregate amount of those investments then held by the company that are rated 5 or 6 by the securities valuation office would exceed three percent of the company's assets; or

(4) the aggregate amount of those investments then held by the company that are rated 6 by the securities valuation office would exceed one percent of the company's assets.

(e) If an insurance company attains or exceeds the limit of a rating category referred to in Subsection (d), the company is not precluded from acquiring investments in other rating categories subject to the specific and multiple category limits applicable to those investments.

(f) Notwithstanding Subsections (c)-(e), an insurance company may invest in an additional obligation of a business entity in which the company holds one or more obligations if the investment is made to protect an investment previously made in that business entity. Obligations invested in under this subsection may not exceed one-half percent of the company's assets.

(g) This section does not prohibit an insurance company from investing in an obligation as a result of a restructuring of an already held obligation or preferred stock that is rated 3, 4, 5, or 6 by the securities valuation office.

(h) An insurance company shall include all counterparty exposure amounts in determining compliance with the limitations of this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.111. AUTHORIZED INVESTMENTS: BONDS ISSUED, ASSUMED, OR GUARANTEED IN INTERNATIONAL MARKET. (a) Subject to this section, an insurance company may invest in bonds issued, assumed, or guaranteed by:

(1) the Inter-American Development Bank;

(2) the International Bank for Reconstruction and Development (the World Bank);

(3) the Asian Development Bank;

(4) the State of Israel;

(5) the African Development Bank; and

(6) the International Finance Corporation.

(b) An insurance company's investments in the bonds of a single entity under this section may not exceed 20 percent of the company's capital and surplus.

(c) The aggregate of all investments made by an insurance company under this section may not exceed 20 percent of the company's assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.112. AUTHORIZED INVESTMENTS: POLICY LOANS. An insurance company may invest in loans on the security of the company's own policies in an amount that does not exceed the amount of the reserve values of those policies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.113. AUTHORIZED INVESTMENTS: DEPOSITS IN CERTAIN FINANCIAL INSTITUTIONS. (a) Subject to this section, an insurance company may invest in any type of savings deposit, time deposit, certificate of deposit, NOW account, or money market account in a solvent bank, savings and loan association, or credit union that is organized under the laws of the United States or a state, or in a branch of one of those financial institutions.

(b) An investment under this section must be made in accordance with the laws or regulations applicable to the bank, savings and loan association, or credit union.

(c) The amount of an insurance company's deposits in a single bank, savings and loan association, or credit union may not exceed the greater of:

(1) 20 percent of the company's capital and surplus;

(2) the amount of federal or state deposit insurance coverage that applies to the deposits; or

(3) 10 percent of the amount of capital, surplus, and undivided profits of the financial institution receiving the deposits.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.114. AUTHORIZED INVESTMENTS: INSURANCE COMPANY INVESTMENT POOLS. (a) In this section, "affiliate" means, with respect to a person, another person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person.

(b) Subject to Subsections (c)-(g), an insurance company may acquire investments in an investment pool that invests only in:

(1) obligations that have a rating by the securities valuation office of one or two, or an equivalent rating issued by a nationally recognized statistical rating organization recognized by the securities valuation office, or that are issued by an issuer with outstanding obligations that have a securities valuation office one or two rating or an equivalent rating described by this subdivision, and that:

(A) have a remaining maturity of 397 days or less or a put that:

(i) entitles the holder to receive the principal amount of the obligation; and

(ii) may be exercised through maturity at specified intervals not exceeding 397 days; or

(B) have a remaining maturity of three years or less and a floating interest rate that resets at least quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate, or commercial paper) and is not subject to a maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate

changes;

(2) securities lending, repurchase, and reverse repurchase transactions that meet the requirements of Section 425.121 and any applicable department rules;

(3) money market funds as authorized by Section 425.123, except that a short-term investment pool may not acquire investments in a single business entity that exceed 10 percent of the total assets of the pool; or

(4) investments that an insurance company may make under this subchapter, if:

(A) the company's proportionate interest in the amount invested in those investments does not exceed the limits of this subchapter; and

(B) the aggregate amount of the company's investments in all investment pools under this subdivision does not exceed 25 percent of the company's assets.

(c) An insurance company may not acquire an investment in an investment pool under Subsection (b) if, after making the investment, the aggregate amount of the company's investments in all investment pools would exceed 35 percent of the company's assets.

(d) For an investment in an investment pool to be qualified under this section, the pool may not:

(1) acquire securities issued, assumed, guaranteed, or insured by an investing insurer or an affiliate of the investing insurance company; or

(2) borrow or incur an indebtedness for borrowed money, except for securities lending and reverse repurchase transactions.

(e) For an investment pool to be qualified under this section:

(1) the pool manager must:

(A) be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement; or

(B) be:

(i) the investing insurance company, an affiliated insurance company, a business entity affiliated with the investing company, a custodian bank, a business entity registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.), as amended;

(ii) in the case of a reciprocal or interinsurance exchange, the exchange's attorney-in-fact; or

(iii) in the case of a United States branch of an

alien insurance company, the United States manager or an affiliate or subsidiary of the United States manager;

(2) the pool manager or an entity designated by the pool manager of the type described by Subdivision (1)(B) must maintain:

(A) detailed accounting records showing:

(i) the cash receipts and disbursements reflecting each participant's proportionate investment in the pool; and

(ii) a complete description of all the pool's underlying assets, including the amount, interest rate, maturity date, if any, and other appropriate designations; and

(B) other records that, on a daily basis, allow a third party to verify each participant's investments in the pool; and

(3) the assets of the pool must be held in one or more accounts, in the name or on behalf of the pool, at the principal office of the pool manager or under a custody agreement or trust agreement with a custodian bank, provided that the agreement:

(A) states and recognizes the claims and rights of each participant;

(B) acknowledges that the pool's underlying assets are held solely for the benefit of each participant in proportion to the aggregate amount of the participant's investments in the pool; and

(C) contains an agreement that the pool's underlying assets may not be commingled with the general assets of the custodian bank or any other person.

(f) The pooling agreement for each investment pool must be in writing and must provide that:

(1) 100 percent of the interests in the pool must be held at all times by the insurance company, the company's subsidiaries or affiliates, or, in the case of a United States branch of an alien insurance company, the affiliates or subsidiaries of the United States manager, and any unaffiliated insurance company;

(2) the pool's underlying assets may not be commingled with the general assets of the pool manager or any other person;

(3) in proportion to the aggregate amount of each pool participant's interest in the pool:

(A) each participant owns an undivided interest in the pool's underlying assets; and

(B) the pool's underlying assets are held solely for the benefit of each participant;

(4) a participant, or, in the event of the participant's

insolvency, bankruptcy, or receivership, the participant's trustee, receiver, conservator, or other successor in interest, may withdraw all or part of the participant's investment from the pool under the terms of the pooling agreement;

(5) a withdrawal may be made on demand without penalty or other assessment on any business day, and settlement of funds must occur within a reasonable and customary period after the withdrawal, except that:

(A) in the case of publicly traded securities, the settlement period may not exceed five business days; and

(B) in the case of securities and investments other than publicly traded securities, the settlement period may not exceed 10 business days;

(6) the amount of a distribution under Subdivision (5) must be computed after subtracting all the pool's applicable fees and expenses;

(7) the pool manager shall distribute to a participant, at the manager's discretion:

(A) in cash, an amount that represents the fair market value of the participant's pro rata share of each of the pool's underlying assets;

(B) in kind, an amount that represents a pro rata share of each underlying asset; or

(C) in a combination of cash and in-kind distributions, an amount that represents a pro rata share in each underlying asset; and

(8) the pool manager shall make the records of the pool available for inspection by the commissioner.

(g) An investment in an investment pool is not considered to be an affiliate transaction under Subchapter C, Chapter 823, but each pooling agreement is subject to the standards of Section 823.101 and the reporting requirements of Section 823.052.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.115. AUTHORIZED INVESTMENTS: EQUITY INTERESTS. (a) In this section, "business entity" means a real estate investment trust, corporation, limited liability company, association, limited

partnership, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, regardless of whether organized for profit.

(b) Subject to this section, an insurance company may invest in an equity interest, including common stock, an equity investment in an investment company other than a money market fund described by Section 425.123, a real estate investment trust, a limited partnership interest, a warrant, another right to acquire an equity interest that is created by the person that owns or would issue the equity in which the interest is acquired, and an equity interest in a business entity that is organized under the laws of the United States, a state of the United States, Canada, or a province or territory of Canada.

(c) If a market value from a generally recognized source is not available for an equity interest, the business entity or other investment in which the interest is acquired must be subject to:

(1) an annual audit by an independent certified public accountant; or

(2) another method of valuation acceptable to the commissioner.

(d) An insurance company may not invest in a partnership as a general partner except through an investment subsidiary.

(e) An insurance company's investments under this section in a single business entity, other than a money market fund described by Section 425.123, may not exceed 15 percent of the company's capital and surplus.

(f) The aggregate amount of an insurance company's investments under this section may not exceed 25 percent of the company's assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.116. AUTHORIZED INVESTMENTS: PREFERRED STOCK. (a) Subject to this section, an insurance company may invest in preferred stock of a business entity, as defined by Section 425.110.

(b) An insurance company may invest in preferred stock only if:

(1) the stock is rated by the securities valuation office; and

(2) the sum of the company's aggregate investment in

preferred stock rated 3, 4, 5, or 6 and the company's investments under Section 425.110(d) does not exceed the limitations specified by Section 425.110(d).

(c) An insurance company's investments in the preferred stock of a single business entity may not exceed 20 percent of the company's capital and surplus.

(d) The aggregate amount of an insurance company's investments in preferred stock as to which there is not a sinking fund for the redemption and retirement of the stock that meets the standards established by the National Association of Insurance Commissioners may not exceed 10 percent of the company's assets.

(e) The aggregate amount of an insurance company's investments under this section may not exceed 40 percent of the company's assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.117. AUTHORIZED INVESTMENTS: COLLATERAL LOANS. (a) Subject to this section, an insurance company may invest in a collateral loan secured by:

(1) a first lien on an asset; or

(2) a valid and perfected first security interest in an asset.

(b) The amount of a loan invested in under this section may not exceed 80 percent of the value of the collateral asset at any time during the duration of the loan.

(c) The asset used as collateral for a loan under this section must be an asset, other than real property described by Section 425.119, in which the insurance company is authorized by this subchapter to directly invest.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.118. AUTHORIZED INVESTMENTS: OBLIGATIONS SECURED BY REAL PROPERTY LOANS. (a) Subject to this section, an insurance company may invest in a note, an evidence of indebtedness, or a participation in a note or evidence of indebtedness that is secured by a valid first lien on real property or a leasehold estate in real

property located in the United States.

(b) The amount of an obligation secured by a first lien on real property or a leasehold estate in real property may exceed 90 percent of the value of the real property or leasehold estate only if:

(1) the amount does not exceed 100 percent of the value of the real property or leasehold estate and the insurance company or one or more wholly owned subsidiaries of the company owns, in the aggregate, a 10 percent or greater equity interest in the real property or leasehold estate;

(2) the amount does not exceed 95 percent of the value of the real property or leasehold estate and:

(A) the property contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes; and

(B) the portion of the unpaid balance of the obligation that exceeds 90 percent of the value of the property or leasehold estate is guaranteed or insured by a mortgage guaranty insurer authorized to engage in business in this state; or

(3) the amount exceeds 90 percent of the value of the real property or leasehold estate only to the extent the obligation is insured or guaranteed by:

(A) the United States;

(B) the Federal Housing Administration under the National Housing Act (12 U.S.C. Section 1701 et seq.), as amended; or

(C) this state.

(c) The term of an obligation secured by a first lien on a leasehold estate in real property may not, as of the date the obligation is acquired, exceed a period equal to four-fifths of the unexpired term of the leasehold estate, including any renewal options exercisable by the lessee, and the obligation must fully amortize during that period. The term of the leasehold estate, including any renewal options exercisable by the lessee, may not expire sooner than the 10th anniversary of the expiration date of the term of the obligation.

(d) An obligation secured by a first lien on a leasehold estate in real property must be payable in one or more installments of an amount or amounts sufficient to ensure that, at any time during the original term of the obligation, the principal balance on the obligation is not greater than the principal balance would have been if the obligation had been amortized over the original term of the

obligation in equal monthly, quarterly, semiannual, or annual payments of principal and interest with payments of interest only for the first five years of the original term of the obligation.

(d-1) Subsection (d) does not apply to an obligation secured by a first lien on a leasehold estate in real property if:

(1) the amount of the obligation does not, as of the date the obligation is acquired, exceed 75 percent of the value of the leasehold estate;

(2) the lease agreement provides that the fee simple estate in the real property transfers automatically to the lessee on or before the expiration of the term of the leasehold estate, including any renewal options exercisable by the lessee; or

(3) the lease agreement provides that the lessee has an option to purchase the fee simple estate in the real property on or before the expiration of the term of the leasehold estate, including any renewal options exercisable by the lessee, for an amount that is less than 10 percent of the appraised value of the real property, and the insurance company has a contractual right if the lessee does not exercise that option to acquire the fee simple estate in the real property for that same amount, by assignment from the lessee or otherwise.

(e) Except as provided by Subsection (e-1), if any part of the value of buildings is to be included in the value of real property or a leasehold estate in real property to secure an obligation under this section:

(1) the buildings must be covered by adequate property insurance, including fire and extended coverage insurance, issued by:

(A) an insurer authorized to engage in business in this state; or

(B) an insurer recognized as acceptable to issue that coverage by the insurance regulatory official of the state in which the real property is located;

(2) the amount of insurance provided by one or more policies may not be less than the lesser of:

(A) the unpaid balance of the obligation; or

(B) the insurable value of the buildings; and

(3) the loss clause under each policy must be payable to the insurance company as the company's interest may appear.

(e-1) The property insurance otherwise required under Subsection (e) is not required if the borrower maintains a net worth

as indicated in the borrower's audited financial statements for the most recent fiscal year of at least the greater of five times the amount of the indebtedness or $100 million and:

(1) the insurance company has recourse against the borrower or the borrower's guarantor; or

(2) for an obligation secured by a leasehold estate:

(A) the tenant assigned the lease to the insurance company; and

(B) the lease agreement is in writing and provides that if a building on the property is damaged or destroyed, the tenant or the tenant's guarantor is obligated to rebuild or restore the damaged or destroyed building to the building's condition immediately before the damage or destruction occurred or compensate the owner for the loss arising from the damage or destruction.

(f) To the extent that a note, evidence of indebtedness, or participation in a note or evidence of indebtedness under this section represents an equity interest in the underlying real property:

(1) the value of that equity interest must be determined at the time the note, evidence of indebtedness, or participation is executed; and

(2) the portion of the obligation that represents an equity interest in the property must be designated as an investment subject to Section 425.119(c).

(g) An insurance company's investment in a single obligation under this section may not exceed 25 percent of the company's capital and surplus.

(h) An insurance company may purchase a first lien on real property after the origination of the lien if:

(1) the first lien is insured by a mortgagee's title policy issued to the original mortgagee that contains a provision that inures the policy to the use and benefit of the owners of the evidence of indebtedness indicated in the policy and to any subsequent owners of that evidence of indebtedness; and

(2) the company maintains evidence of an assignment or other transfer of the first lien on real property to the company.

(i) For purposes of Subsection (h)(2), an assignment or other transfer to the insurance company that is duly recorded in the county in which the real property is located is presumed to create legal ownership of the first lien by the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1100 (H.B. 3803), Sec. 1, eff. September 1, 2017.

Sec. 425.1185. AUTHORIZED INVESTMENTS: MEZZANINE REAL ESTATE LOANS. (a) In this section, "mezzanine real estate loan" means a loan that is secured by a pledge of direct or indirect equity interests in an entity that owns real estate.

(b) Subject to Subsections (c) and (d), an insurance company with more than $10 billion in admitted assets may invest in a mezzanine real estate loan if the loan documents:

(1) require that each pledgor abstain from granting an additional security interest in the equity interest pledged;

(2) employ techniques to minimize the likelihood or impact of a bankruptcy filing by the real estate owner or the mezzanine real estate loan borrower; and

(3) require the real estate owner or the mezzanine real estate loan borrower to:

(A) hold no assets other than, in the case of the owner, the real estate, and in the case of the borrower, the equity interests in the entity;

(B) not engage in any business other than, in the case of the owner, the ownership and operation of the real estate, and in the case of the borrower, holding an ownership interest in the owner; and

(C) not incur additional debt, other than limited trade payables, a first mortgage loan, or the mezzanine real estate loan.

(c) Before making an initial investment in a mezzanine real estate loan, an insurance company shall corroborate that the sum of the first mortgage on the real estate and the mezzanine real estate loan does not exceed 100 percent of the value of the current appraised value of the real estate.

(d) An insurance company's cumulative investment under this section may not exceed three percent of the insurance company's admitted assets.

Added by Acts 2015, 84th Leg., R.S., Ch. 310 (S.B. 1008), Sec. 1, eff.

September 1, 2015.

Sec. 425.119. AUTHORIZED INVESTMENTS: REAL PROPERTY. (a) Subject to this section, an insurance company may invest in a real property fee simple or leasehold estate located in the United States.

(b) An insurance company may invest in home and branch office real property or a participation in home or branch office real property. At least 30 percent of the available space in a building used as a home or branch office must be occupied for the business purposes of the company and the company's affiliates. A company's aggregate investment in home and branch office real property may not exceed 20 percent of the company's assets.

(c) An insurance company may invest in real property other than home and branch office real property or participations in home and branch office real property. A company's investment under this subsection in a single piece of property or in an interest in a single piece of property, including improvements, fixtures, and equipment relating to the property, may not exceed five percent of the company's assets.

(d) Investment real property held under Subsection (b) or (c) must be materially enhanced in value by:

(1) the construction of durable, permanent-type buildings and other improvements that cost an amount at least equal to the cost of the real property, excluding buildings and improvements at the time the real property is acquired; or

(2) the construction, commenced before the second anniversary of the date the real property is acquired, of buildings and improvements described by Subdivision (1).

(e) The admissible asset value of each investment in real property under Subsection (b) or (c) is subject to review and approval by the commissioner. The commissioner may, at the time the investment is made or any time the insurance company is being examined, have the investment appraised by an appraiser appointed by the commissioner. The company shall pay the reasonable expense of the appraisal. The expense of the appraisal is considered to be a part of the expense of examination of the company unless the company applies for the appraisal to be made. A company may not increase the valuation of real property described by Subsection (b) or (c) unless:

(1) the company applies for the increase in valuation; and

(2) the commissioner approves the increase.

(f) Except as provided by Subsection (g), an insurance company may not own, develop, or hold an equity interest in any residential property or subdivision, single or multiunit family dwelling property, or undeveloped real property to subdivide for or develop residential or single or multiunit family dwellings. This subsection does not apply to an insurer with admitted assets of $10 billion or more, as determined from the insurer's annual statements that are made as of the December 31 that precedes the date of the determination and are filed with the department as required by law.

(g) An insurance company may invest in other real property acquired:

(1) in good faith to secure a loan previously contracted for, or for money due;

(2) in satisfaction of a debt previously contracted for in the course of the company's dealings; or

(3) by purchase at a sale under a judgment or decree of a court or under a mortgage or other lien held by the company.

(h) Regardless of the manner in which an insurance company acquires real property under this section, on the sale of the property, the company may retain indefinitely the fee title to the mineral estate or any portion of the mineral estate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1175 (S.B. 841), Sec. 3, eff. September 1, 2013.

Sec. 425.120. AUTHORIZED INVESTMENTS: OIL, GAS, AND MINERALS. (a) In this section:

(1) "Producing" means producing oil, gas, or other minerals in paying quantities. A well that has been shut in is considered to be producing oil, gas, or other minerals in paying quantities if shut-in royalties are being paid.

(2) "Production payment" means a right to oil, gas, or other minerals in place or as produced that entitles the owner of the right to a specified fraction of production until the owner receives a specified amount of money, or a specified number of units of oil,

gas, or other minerals.

(3) "Royalty" or "overriding royalty" means a right to oil, gas, and other minerals in place or as produced that entitles the owner of the right to a specified fraction of production without limitation to a specified amount of money or a specified number of units of oil, gas, or other minerals.

(b) Subject to this section, in addition to and without limitation on the purposes for which real property may be acquired, secured, held, or retained under other provisions of this subchapter, an insurance company may secure, hold, retain, and convey production payments, producing royalties, and producing overriding royalties, or participations in production payments, producing royalties, or producing overriding royalties as an investment for the production of income.

(c) An insurance company may not carry an asset described by Subsection (b) in an amount that exceeds 90 percent of the appraised value of the asset.

(d) A single investment under this section may not exceed 10 percent of the amount of the insurance company's capital and surplus that exceeds the statutory minimum capital and surplus applicable to the company.

(e) The aggregate amount of an insurance company's investments under this section may not exceed 10 percent of the company's assets as of December 31 preceding the date of the investment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.121. AUTHORIZED INVESTMENTS: SECURITIES LENDING, REPURCHASE, REVERSE REPURCHASE, AND DOLLAR ROLL TRANSACTIONS. (a) In this section:

(1) "Dollar roll transaction" means two simultaneous transactions with settlement dates not more than 96 days apart, in one of which an insurance company sells to a business entity, and in the other of which the company is obligated to purchase from the same business entity, substantially similar securities that are:

(A) mortgage-backed securities issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage

Corporation, or a successor to one of those organizations; or

(B) other mortgage-backed securities referred to in 15 U.S.C. Section 77r-1, as amended.

(2) "Repurchase transaction" means a transaction in which an insurance company purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the company at a specified price, either within a specified period or on demand.

(3) "Reverse repurchase transaction" means a transaction in which an insurance company sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period or on demand.

(4) "Securities lending transaction" means a transaction in which an insurance company lends securities to a business entity that is obligated to return the loaned securities or equivalent securities to the company, either within a specified period or on demand.

(b) Subject to this section, an insurance company may engage in securities lending, repurchase, reverse repurchase, and dollar roll transactions.

(c) An insurance company must enter into a written agreement for each transaction under this section, other than a dollar roll transaction. The agreement must require that the transaction terminate on or before the first anniversary of the transaction's inception.

(d) With respect to cash received in a transaction under this section, an insurance company shall:

(1) invest the cash in accordance with this subchapter and in a manner that recognizes the liquidity needs of the transaction; or

(2) use the cash for the company's general corporate purposes.

(e) While a transaction under this section is outstanding, the insurance company or the company's agent or custodian shall maintain, as to acceptable collateral received in the transaction, either physically or through the book-entry system of the Federal Reserve, Depository Trust Company, Participants Trust Company, or another securities depository approved by the commissioner:

(1) possession of the collateral;

(2) a perfected security interest in the collateral; or

(3) in the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the collateral.

(f) The limitations of Sections 425.110 and 425.157(b) do not apply to the business entity counterparty exposure created by a transaction under this section. An insurance company may not enter into a transaction under this section if, as a result of and after making the transaction:

(1) the aggregate amount of securities loaned or sold to or purchased from any one business entity counterparty under this section would exceed five percent of the company's assets; or

(2) the aggregate amount of all securities loaned or sold to or purchased from all business entities under this section would exceed 40 percent of the company's assets.

(g) For purposes of Subsection (f)(1), in computing the amount sold to or purchased from a business entity counterparty under a repurchase or reverse repurchase transaction, effect may be given to netting provisions under a master written agreement.

(h) The amount of collateral required for securities lending, repurchase, and reverse repurchase transactions is the amount required under the Purposes and Procedures Manual of the securities valuation office or a successor publication.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.122. AUTHORIZED INVESTMENTS: PREMIUM LOANS. (a) Subject to Subsection (b), an insurance company may make loans to finance the payment of premiums for the company's own insurance policies or annuity contracts.

(b) The amount of a loan under this section may not exceed the sum of:

(1) the available cash value of the insurance policy or annuity contract for which the premium loan is made; and

(2) the amount of any escrowed commissions payable relating to the insurance policy or annuity contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.123. AUTHORIZED INVESTMENTS: MONEY MARKET FUNDS. (a) An insurance company may invest in a money market fund as described by 17 C.F.R. Section 270.2a-7 under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), that is:

(1) a government money market fund that:

(A) invests only in obligations issued, guaranteed, or insured by the United States government or collateralized repurchase agreements composed of these obligations; and

(B) qualifies for investment without a reserve under the Purposes and Procedures Manual of the securities valuation office or a successor publication; or

(2) a class one money market fund that qualifies for investment using the bond class one reserve factor described by the Purposes and Procedures Manual of the securities valuation office or a successor publication.

(b) For purposes of complying with Section 425.115, a money market fund that qualifies for listing in the categories prescribed by Subsection (a) must conform to the Purposes and Procedures Manual of the securities valuation office or a successor publication.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.1231. AUTHORIZED INVESTMENTS: BOND EXCHANGE-TRADED FUNDS. (a) An insurance company may invest the insurer's funds in excess of minimum capital and surplus in shares of a bond exchange-traded fund registered under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, if:

(1) the exchange-traded fund is solvent and reported at least $100 million of net assets in the exchange-traded fund's latest annual or more recent certified audited financial statement;

(2) the securities valuation office has designated the exchange-traded fund as meeting the criteria to be placed on the list promulgated by the securities valuation office of exchange-traded funds eligible for reporting as a long-term bond in the Purposes and Procedures Manual of the securities valuation office or a successor publication; and

(3) the amount of the insurance company's investment in the exchange-traded fund does not exceed 15 percent of the insurance

company's capital and surplus.

(b) This section does not authorize an insurance company to invest in a bond exchange-traded fund that has:

(1) embedded structural features designed to deliver performance that does not track the full unlevered and positive return of the underlying index or exposure, including a leveraged or inverse exchange-traded fund; or

(2) an expense ratio in excess of 100 basis points.

(c) A bond exchange-traded fund described by Subsection (a) shall be considered a business entity for purposes of Section 425.110.

(d) An insurance company may deposit with the department shares of a bond exchange-traded fund described by Subsection (a) as a statutory deposit if state law requires a statutory deposit from the insurance company.

Added by Acts 2019, 86th Leg., R.S., Ch. 1132 (H.B. 2694), Sec. 2, eff. September 1, 2019.

Sec. 425.124. AUTHORIZED INVESTMENTS: RISK CONTROL TRANSACTIONS. Subject to Sections 425.126-425.132, an insurance company may use derivative instruments, as defined by Section 425.125, to engage in hedging transactions, replication transactions, and income generation transactions, as those terms are defined by Section 425.125.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.125. RISK CONTROL TRANSACTIONS: DEFINITIONS. In Sections 425.124-425.132:

(1) "Acceptable collateral" means cash, cash equivalents, letters of credit, and direct obligations, or securities that are fully guaranteed as to principal and interest by the United States government.

(2) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, bank, trust, joint tenancy, or other similar form of business organization, regardless

of whether organized for profit.

(3) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number that is sometimes called the strike rate or strike price.

(4) "Cash equivalent" means an investment or security that is short-term, highly rated, highly liquid, and readily marketable. The term includes a money market fund described by Section 425.123. For purposes of this subdivision, an investment or security is:

(A) short-term if it has a remaining term to maturity of one year or less; and

(B) highly rated if it has:

(i) a rating of "P-1" by Moody's Investors Service, Inc.;

(ii) a rating of "A-1" by the Standard and Poor's Division of the McGraw Hill Companies, Inc.; or

(iii) an equivalent rating by a nationally recognized statistical rating organization recognized by the securities valuation office.

(5) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

(6)(A) "Counterparty exposure amount" means:

(i) for an over-the-counter derivative instrument not entered into under a written master agreement that provides for netting of payments owed by the respective parties, the market value of the over-the-counter derivative instrument, if the liquidation of the derivative instrument would result in a final cash payment to the insurer, or zero, if the liquidation of the derivative instrument would not result in a final cash payment to the insurance company; or

(ii) for an over-the-counter derivative instrument entered into under a written master agreement that provides for netting of payments owed by the respective parties, and for which the counterparty's domiciliary jurisdiction is within the United States or a jurisdiction outside the United States that is listed in the Purposes and Procedures Manual of the securities valuation office as eligible for netting, the greater of zero or the net sum payable to the company in connection with all derivative instruments subject to the written master agreement on the liquidation of the instruments in

the event of the counterparty's default under the master agreement, if there is no condition precedent to the counterparty's obligation to make the payment and if there is no setoff of amounts payable under another instrument or agreement.

(B) For purposes of this subdivision, market value or the net sum payable, as applicable, must be determined at the end of the most recent quarter of the insurance company's fiscal year and must be reduced by the market value of acceptable collateral held by the company or a custodian on the company's behalf.

(7) "Derivative instrument":

(A) means an agreement, option, or instrument, or a series or combinations of agreements, options, or instruments:

(i) to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement instead of making or taking delivery of, or assuming or relinquishing, a specified amount of an underlying instrument; or

(ii) that has a price, performance, value, or cash flow based primarily on the actual or expected price, yield, level, performance, value, or cash flow of one or more underlying interests;

(B) includes an option, a warrant not otherwise permitted to be held by the insurance company under this subchapter, a cap, a floor, a collar, a swap, a swaption, a forward, a future, any other substantially similar agreement, option, or instrument, and a series or combination of those agreements, options, or instruments; and

(C) does not include a collateralized mortgage obligation, another asset-backed security, a principal-protected structured security, a floating rate security, an instrument that a company would otherwise be authorized to invest in or receive under a provision of this subchapter other than Sections 425.124-425.132, or a debt obligation of the company.

(8) "Derivative transaction" means a transaction involving the use of one or more derivative instruments. The term does not include a dollar roll transaction, repurchase transaction, reverse repurchase transaction, or securities lending transaction.

(9) "Floor" means an agreement obligating the seller to make payments to the buyer, each of which is based on the amount by which a predetermined number that is sometimes called the floor rate or floor price exceeds a reference price, level, performance, or

value of one or more underlying interests.

(10) "Forward" means an agreement to make or take delivery in the future of one or more underlying interests, or to effect a cash settlement, based on the actual or expected price, level, performance, or value of those interests. The term does not include a future, a spot transaction effected within a customary settlement period, a when-issued purchase, or another similar cash market transaction.

(11) "Future" means an agreement traded on a futures exchange to make or take delivery of one or more underlying interests, or to effect a cash settlement based on the actual or expected price, level, performance, or value of those interests.

(12) "Futures exchange" means a foreign or domestic exchange, contract market, or board of trade on which trading in futures is conducted and that, in the United States, is authorized to conduct that trading by the Commodity Futures Trading Commission or a successor to that agency.

(13) "Hedging transaction" means a derivative transaction entered into and maintained to manage, with respect to an asset, liability, or portfolio of assets or liabilities, that an insurance company has acquired or incurred or anticipates acquiring or incurring:

(A) the risk of a change in value, yield, price, cash flow, or quantity; or

(B) the currency exchange rate risk.

(14) "Income generation transaction" means a derivative transaction entered into to generate income. The term does not include a hedging transaction or a replication transaction.

(15) "Market value" means the price for a security or derivative instrument obtained from a generally recognized source, the most recent quotation from a generally recognized source, or if a generally recognized source does not exist, the price determined under the terms of the instrument or in good faith by the insurance company, as can be reasonably demonstrated to the commissioner on request, plus the amount of accrued but unpaid income on the security or instrument to the extent that amount is not included in the price as of the date the security or instrument is valued.

(16) "Option" means an agreement giving the buyer the right to buy or receive, referred to as a "call option," to sell or deliver, referred to as a "put option," to enter into, extend, or

terminate, or to effect a cash settlement based on the actual or expected price, spread, level, performance, or value of, one or more underlying interests.

(17) "Over-the-counter derivative instrument" means a derivative instrument entered into with a business entity in a manner other than through a securities exchange or futures exchange or cleared through a qualified clearinghouse.

(18) "Potential exposure" means:

(A) as to a futures position, the amount of initial margin required for that position; or

(B) as to a swap, collar, or forward, one-half of one percent multiplied by the notional amount multiplied by the square root of the remaining years to maturity.

(19) "Qualified clearinghouse" means a clearinghouse that:

(A) is subject to the rules of a securities exchange or a futures exchange; and

(B) provides clearing services, including acting as a counterparty to each of the parties to a transaction in a manner that eliminates the parties' credit risk to each other.

(20) "Replication transaction" means a derivative transaction or a combination of derivative transactions effected separately or in conjunction with cash market investments included in the insurance company's investment portfolio to replicate the risks and returns of another authorized transaction, investment, or instrument, or to operate as a substitute for cash market transactions. The term does not include a hedging transaction.

(21) "Securities exchange" means:

(A) an exchange registered as a national securities exchange or a securities market registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.), as amended;

(B) the Private Offerings, Resales and Trading through Automated Linkages system; or

(C) a designated offshore securities market as defined by 17 C.F.R. Section 230.902, as amended.

(22) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, yield, level, performance, or value of one or more underlying interests.

(23) "Swaption" means an option to purchase or sell a swap at a given price and time or at a series of prices and times. The

term does not include a swap with an embedded option.

(24) "Underlying interest" means an asset, liability, or other interest underlying a derivative instrument or a combination of those assets, liabilities, or other interests. The term includes a security, currency, rate, index, commodity, or derivative instrument.

(25) "Warrant" means an instrument that gives the holder the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times outlined in the warrant agreement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.126. RISK CONTROL TRANSACTIONS: DERIVATIVE USE PLAN. (a) Before an insurance company enters into a derivative transaction, the company's board of directors must approve a derivative use plan as part of the investment plan required by Section 425.105.

(b) The derivative use plan must:

(1) describe investment objectives and risk constraints, such as counterparty exposure amounts;

(2) define permissible transactions identifying the risks to be hedged or the assets or liabilities being replicated; and

(3) require compliance with internal control procedures.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.127. RISK CONTROL TRANSACTIONS: INTERNAL CONTROL PROCEDURES. An insurance company that enters into a derivative transaction shall establish written internal control procedures that provide for:

(1) a quarterly report to the board of directors that reviews:

(A) each derivative transaction entered into, outstanding, or closed out;

(B) the results and effectiveness of the derivatives program; and

(C) the credit risk exposure to each counterparty for

over-the-counter derivative transactions based on the counterparty exposure amount;

(2) a system for determining whether hedging or replication strategies used have been effective;

(3) a system of regular reports, at least monthly, to management that include:

(A) a description of each derivative transaction entered into, outstanding, or closed out during the period since the last report;

(B) the purpose of each outstanding derivative transaction;

(C) a performance review of the derivative instrument program; and

(D) the counterparty exposure amount for each over-the-counter derivative transaction;

(4) a written authorization that identifies the responsibilities and limitations of authority of each person authorized to effect and maintain derivative transactions; and

(5) appropriate documentation for each transaction, including:

(A) the purpose of the transaction;

(B) the assets or liabilities to which the transaction relates;

(C) the specific derivative instrument used in the transaction;

(D) for an over-the-counter derivative transaction, the name of the counterparty and the counterparty exposure amount; and

(E) for an exchange-traded derivative instrument, the name of the exchange and the name of the firm that handled the transaction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.128. RISK CONTROL TRANSACTIONS: OVERSIGHT BY COMMISSIONER. (a) An insurance company must be able to demonstrate to the commissioner on request the intended hedging characteristics and continuing effectiveness of a derivative transaction or combination of transactions through:

(1) cash flow testing;

(2) duration analysis; or

(3) other appropriate analysis.

(b) Ten days before entering into an initial hedging transaction, an insurance company shall notify the commissioner in writing that:

(1) the company's board of directors has adopted an investment plan that authorizes hedging transactions; and

(2) each hedging transaction will comply with Sections 425.124-425.132.

(c) After providing the notice under Subsection (b), the insurance company may enter into a hedging transaction under Section 425.124 if as a result of and after making the transaction:

(1) the aggregate statement value of all outstanding options other than collars, and of all caps, floors, swaptions, and warrants under Sections 425.124-425.132 not attached to another financial instrument purchased by the company does not exceed 7.5 percent of the company's assets;

(2) the aggregate statement value of all outstanding options other than collars, and of all caps, floors, swaptions, and warrants written by the company under Sections 425.124-425.132 does not exceed three percent of the company's assets; and

(3) the aggregate potential exposure of all outstanding collars, swaps, forwards, and futures entered into or acquired by the company under Sections 425.124-425.132 does not exceed 6.5 percent of the company's assets.

(d) If the hedging transaction does not comply with Sections 425.124-425.132, or if continuing the transaction may create a hazardous financial condition for the insurance company that affects the company's policyholders or creditors or the public, the commissioner may, after notice and an opportunity for a hearing, order the company to take action reasonably necessary to:

(1) remedy a hazardous financial condition; or

(2) prevent an impending hazardous financial condition from occurring.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.129. RISK CONTROL TRANSACTIONS: LIMITATIONS ON INCOME GENERATION TRANSACTIONS. An insurance company may enter into an income generation transaction only if:

(1) as a result of and after making the transaction, the sum of the following amounts does not exceed 10 percent of the company's assets:

(A) the aggregate statement value of admitted assets that at the time of the transaction are subject to call or that generate the cash flows for payments the company is required to make under caps and floors sold by the company and that at the time of the transaction are outstanding under Sections 425.124-425.132;

(B) the statement value of admitted assets underlying derivative instruments that at the time of the transaction are subject to calls sold by the company and outstanding under those sections; and

(C) the purchase price of assets subject to puts that at the time of the transaction are outstanding under those sections; and

(2) the transaction is one of the following types, is covered in the manner specified by this subdivision, and meets the other requirements of this subdivision:

(A) a sale of a call option on assets, if during the entire period the option is outstanding, the company holds, or has a currently exercisable right to acquire, the underlying assets;

(B) a sale of a put option on assets, if:

(i) during the entire period the option is outstanding, the company holds sufficient cash, cash equivalents, or interests in a short-term investment pool to purchase the underlying assets on exercise of the option;

(ii) the company has the ability to hold the underlying assets in the company's portfolio; and

(iii) during the entire period the option is outstanding, when the total market value of all put options sold by the company exceeds two percent of the company's assets, the company sets aside, under a custodial or escrow agreement, cash or cash equivalents that have a market value equal to the amount of the company's put option obligations in excess of two percent of the company's assets;

(C) a sale of a call option on a derivative instrument, including a swaption, if:

(i) during the entire period the call option is outstanding, the company holds, or has a currently exercisable right to acquire, assets generating the cash flow to make any payment for which the company is liable under the underlying derivative instrument; and

(ii) the company has the ability to enter into the underlying derivative transaction for the company's portfolio; and

(D) a sale of a cap or floor, if during the entire period the cap or floor is outstanding, the company holds, or has a currently exercisable right to acquire, assets generating the cash flow to make any payment for which the company is liable under the cap or floor.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.130. RISK CONTROL TRANSACTIONS: LIMITATIONS ON REPLICATION TRANSACTIONS. (a) An insurance company may enter into a replication transaction only with the prior written approval of the commissioner, and only if:

(1) the company would otherwise be authorized to invest the company's funds under this subchapter in the asset being replicated; and

(2) the asset being replicated is subject to all the provisions of this subchapter relating to the making of investments by the company in that type of asset as if the transaction constituted a direct investment by the company in the replicated asset.

(b) The commissioner may adopt fair and reasonable rules regarding replication transactions to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.131. RISK CONTROL TRANSACTIONS: TRADING REQUIREMENTS. For purposes of Sections 425.124-425.132, each derivative instrument must be:

(1) traded on a securities exchange;

(2) entered into with, or guaranteed by, a business entity;

(3) issued or written by, or entered into with, the issuer of the underlying interest on which the derivative instrument is based; or

(4) in the case of futures, traded through a broker that is:

(A) registered as a futures commission merchant under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.); or

(B) exempt from that registration under 17 C.F.R. Section 30.10, adopted under the Commodity Exchange Act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.132. RISK CONTROL TRANSACTIONS: OFFSETTING TRANSACTIONS. (a) Subject to this section, an insurance company may purchase or sell one or more derivative instruments to wholly or partly offset a derivative instrument previously purchased or sold, without regard to the quantitative limitations of Sections 425.124-425.131.

(b) An offsetting transaction under this section must use the same type of derivative instrument as the derivative instrument being offset.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.151. AUTHORIZED INVESTMENTS: FOREIGN COUNTRIES AND UNITED STATES TERRITORIES. (a) In addition to the investments within Canada authorized by this subchapter and subject to this section, an insurance company may make investments within another foreign country or a commonwealth, territory, or possession of the United States.

(b) An investment made under this section must be substantially the same type as an investment authorized to be made within the United States or Canada by this subchapter.

(c) The sum of the amount of investments made under this section and the amount of similar investments made within the United States and Canada may not exceed any limitation imposed by Sections 425.109-425.121, 425.124-425.132, and 425.152.

(d) The aggregate amount of an insurance company's investments under this section may not exceed the sum of:

(1) the amount of the company's reserves attributable to insurance business in force in foreign countries, if any, and any additional investments required by a foreign country as a condition of engaging in business in that country; and

(2) 20 percent of the company's assets.

(e) An insurance company may not invest more than 10 percent of the company's assets in investments denominated in foreign currency that are not hedged under Sections 425.124-425.132.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.152. AUTHORIZED INVESTMENTS: INVESTMENTS NOT OTHERWISE SPECIFIED OR PROHIBITED; INVESTMENTS AUTHORIZED BY OTHER LAW. (a) Subject to this section, an insurance company may make an investment that is not otherwise authorized by this subchapter and that is not specifically prohibited by statute, including any portion of an investment that exceeds the limits imposed by Sections 425.109-425.121, 425.124-425.132, and 425.151.

(b) If any aggregate or individual investment limitation imposed by Sections 425.109-425.121, 425.124-425.132, and 425.151 is exceeded, the excess portion of the investment is considered to be an investment under Subsection (a).

(c) The insurance company has the burden of establishing the value of an investment made under Subsection (a).

(d) The amount of a single investment made by an insurance company under Subsection (a) may not exceed 10 percent of the company's capital and surplus in excess of the statutory minimum capital and surplus applicable to that company.

(e) The aggregate amount of an insurance company's investments under Subsection (a) may not exceed the lesser of:

(1) five percent of the company's assets; or

(2) the amount of the company's capital and surplus that exceeds the amount of statutory minimum capital and surplus applicable to that company.

(f) An insurance company may invest in any investment authorized for an insurance company that is subject to this

subchapter by a provision of this code other than this subchapter or by another law of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.153. AUTHORIZED INVESTMENTS: CERTAIN PREVIOUSLY AUTHORIZED INVESTMENTS. (a) An insurance company may continue to hold an investment held by the company on January 1, 1986, that does not conform to the requirements of the investments authorized by Sections 425.109-425.120, 425.151, and 425.152 if the investment was legally authorized at the time the investment was made or acquired or that the company was authorized to hold immediately before January 1, 1986.

(b) An investment described by Subsection (a) is considered an authorized investment of the insurance company. A company shall dispose of the investment at the investment's maturity date, if any, or within the time prescribed by the law under which the investment was acquired, if any.

(c) This section does not alter the legal or accounting status of an investment described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.154. APPLICABILITY OF PERCENTAGE AUTHORIZATIONS AND LIMITATIONS. The percentage authorizations and limitations established by this subchapter apply only at the time an investment is originally acquired or a transaction is entered into and do not apply to the insurance company or the investment or transaction after that time, except as provided by Section 425.155.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.155. QUALIFICATION OF INVESTMENTS. (a) The qualification or disqualification of an investment under one section of this subchapter does not prevent the investment from qualifying,

wholly or partly, under another section of this subchapter. An investment authorized by more than one section may be held under the authorizing section elected by the insurance company.

(b) An investment or transaction qualified under any section of this subchapter at the time the insurance company acquired the investment or entered into the transaction continues to be qualified under that section.

(c) An insurance company may elect to transfer at any time the qualification of an investment, wholly or partly, to the authority of any section of this subchapter under which the investment qualifies at the time of the transfer, regardless of whether the investment originally qualified under that section.

(d) An investment, once qualified under this subchapter, remains qualified notwithstanding any refinancing, restructuring, or modification of the investment, except that an insurance company may not refinance, restructure, or modify an investment to circumvent the requirements of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.156. DISTRIBUTIONS, REINSURANCE, AND MERGER. (a) This subchapter does not prohibit an insurance company from acquiring additional obligations, securities, or other assets received as a dividend or as a distribution of assets.

(b) This subchapter does not apply to securities, obligations, or other assets accepted incident to the workout, adjustment, restructuring, or similar realization of any kind of previously authorized investment or transaction if the insurance company's board of directors or a committee appointed by the board of directors determines that acceptance of the securities, obligations, or other assets is in the company's best interests.

(c) This subchapter does not apply to assets acquired under a lawful agreement of bulk reinsurance, merger, or consolidation if the assets were legal and authorized investments for the ceding, merged, or consolidated insurance company.

(d) An obligation, security, or other asset acquired as permitted by this section is not required to be qualified under any other section of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.157. AGGREGATE DIVERSIFICATION REQUIREMENTS. (a) This section takes precedence over Sections 425.109-425.120, 425.122-425.153, and 425.155(a), (b), and (c).

(b) An insurance company's investments in all or any types of securities, loans, obligations, or evidences of indebtedness of a single issuer or borrower, including the issuer's or borrower's majority-owned subsidiaries or parent and the majority-owned subsidiaries of the issuer's or borrower's parent, may not, in the aggregate, exceed five percent of the company's assets. This subsection does not apply to:

(1) authorized investments that:

(A) are direct obligations of, or are guaranteed by the full faith and credit of, the United States, this state, or a political subdivision of this state; or

(B) are insured by an agency of the United States or this state; or

(2) an investment provided for by Section 425.112 or 425.113.

(c) Except as otherwise provided by this subsection, an insurance company's aggregate investment in real property under Sections 425.119, 425.120, 425.152, and 425.153 may not exceed 33-1/3 percent of the company's assets. If a company acquires real property under Section 425.119(g) and that acquisition causes the company's aggregate real estate investment to exceed the limitation imposed by this subsection, the company shall, on or before the 10th anniversary of the date the real property is acquired, dispose of a sufficient amount of real property to comply with the applicable limitation. A company that does not dispose of excess real property as required by this subsection may not admit as an asset the value of the real property that exceeds the applicable limitation.

(d) If an insurance company's real property acquisitions exceed the limitation imposed by Subsection (c), the company may not acquire additional real property under Section 425.119(b) or (c) or 425.120, 425.152, or 425.153 until the company disposes of the excess real property as specified by Subsection (c).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.158. WAIVER BY COMMISSIONER OF QUANTITATIVE LIMITATIONS. (a) The commissioner may waive a quantitative limitation on any investment authorized by Sections 425.109-425.132 and 425.151-425.156 if:

(1) the insurer seeks the waiver before making the investment;

(2) a hearing is held to determine whether the waiver should be granted;

(3) the applicant seeking the waiver establishes that unreasonable or unnecessary loss or harm will result to the company if the commissioner denies the waiver;

(4) the excess investment will not have a material adverse effect on the company; and

(5) the size of the investment is reasonable in relation to the company's assets, capital, surplus, and liabilities.

(b) The commissioner's waiver must be in writing and may treat the resulting excess investment as a nonadmitted asset.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.159. ACCOUNTING PROVISIONS. (a) Each insurance company shall maintain reasonable, adequate, and accurate evidence of the company's ownership of the company's assets and investments.

(b) An insurance company shall evidence the company's ownership of governmental or corporate securities as provided by Sections 423.101, 423.102, 423.104(a), 423.105, 423.106, 423.107, and 423.108.

(c) An insurance company shall hold investments, other than investments made as a participation in a partnership or joint venture, only in the company's own name or as otherwise provided by Chapter 423.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.160. INVESTMENTS OF CEDING INSURERS. (a) Subject to this section, if a domestic insurance company assumes and reinsures the business of and takes over the assets of another domestic insurance company or a foreign company, all assets or investments of the ceding company that were authorized as proper assets or investments for the funds of that company and taken over by the assuming company are considered valid assets or investments of the assuming company under the laws of this state.

(b) The commissioner must approve assets or investments described by Subsection (a) and the terms on which those assets or investments are taken over. The commissioner may require the assuming insurance company to reasonably dispose of any of those assets or investments that do not otherwise meet the requirements of this subchapter within a period that will minimize any financial loss or other hardship caused by disposing of the asset or investment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.161. ACTING AS REAL ESTATE BROKER OR SALESPERSON PROHIBITED. A domestic insurance company or another insurance company specifically made subject to this subchapter may not engage in the business of a broker or salesperson as defined by Chapter 1101, Occupations Code, except that the company may hold, improve, maintain, manage, rent, lease, sell, exchange, or convey any of the real property interests owned as investments under Sections 425.109-425.132 and 425.151-425.153.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.162. RULES. The commissioner may adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER D. AUTHORIZED INVESTMENTS AND TRANSACTIONS FOR OTHER LIFE, HEALTH, AND ACCIDENT INSURERS

Sec. 425.201. DEFINITION. In this subchapter, "contingency funds" means an insurer's contingency funds over and above the amount of the insurer's policy reserves.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.202. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to an insurer organized under Chapter 881, 884, 885, 886, 887, or 2551, except as specifically provided by those chapters.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.203. LIMITATION ON FUNDS AND OTHER ASSETS. (a) An insurer may not use the insurer's funds to make an investment or loan that is not authorized by this subchapter.

(b) An insurer may not secure, hold, or convey real property except as authorized by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.204. APPROVAL OF INVESTMENTS AND LOANS REQUIRED. (a) An insurer may not make an investment unless the investment has been authorized by the insurer's board of directors or by a committee responsible for supervising investments.

(b) An insurer may not make a loan other than a policy loan unless the loan has been authorized by the insurer's board of directors or by a committee responsible for supervising loans.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.205. AUTHORIZED INVESTMENTS FOR ALL FUNDS: GOVERNMENT

BONDS. (a) Subject to this section, an insurer may invest any of the insurer's funds and accumulations in:

(1) a bond, treasury bill, note, or certificate of indebtedness of the United States or any other obligation or security fully guaranteed as to principal and interest by the full faith and credit of the United States;

(2) a bond of Canada or a province or municipality of Canada;

(3) a bond of a state, county, or municipality of the United States;

(4) a bond or interest-bearing warrant issued by a county, municipality, school district, or other subdivision that is:

(A) organized under the laws of a state of the United States; and

(B) authorized to issue the bond or warrant under the constitution and laws of that state;

(5) a bond or interest-bearing warrant issued by an educational institution that is:

(A) organized under the laws of a state of the United States; and

(B) authorized to issue the bond or warrant under the constitution and laws of that state;

(6) a bond or warrant, including a revenue or special obligation, of an educational institution located in a state of the United States;

(7) a bond or warrant payable from designated revenues of a municipality, county, drainage district, road district, or other civil administration, agency, authority, instrumentality, or subdivision that is:

(A) organized under the laws of a state of the United States; and

(B) authorized to issue the bond or warrant under the constitution and laws of that state;

(8) a paving certificate or other certificate or evidence of indebtedness issued by a municipality in a state of the United States and secured by a first lien on real estate; and

(9) a bond issued under the Farm Credit Act of 1971 (12 U.S.C. Section 2001 et seq.) that is issued against and secured by promissory notes or obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien on unencumbered real

property located in this state.

(b) An insurer may invest in a bond or warrant described by Subsection (a)(4) or (5) only if the issuer of the bond or warrant has made legal provision to impose a tax to meet the obligation.

(c) An insurer may invest in a bond or warrant described by Subsection (a)(6) only if the special revenue or income to meet the principal and interest payments as they accrue on the obligation has been appropriated, pledged, or otherwise provided by the educational institution.

(d) An insurer may invest in a bond or warrant described by Subsection (a)(7) only if special revenue or income to meet the principal and interest payments as they accrue on the obligation has been appropriated, pledged, or otherwise provided by the municipality or other entity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.206. AUTHORIZED INVESTMENTS FOR ALL FUNDS: CORPORATE BONDS, NOTES, AND DEBENTURES. (a) Subject to Subsection (e), an insurer may invest any of the insurer's funds and accumulations in a first mortgage bond or first lien note on real or personal property of:

(1) a solvent corporation that has not defaulted in the payment of any debt during the five years preceding the investment;

(2) a solvent corporation that has not been in existence for five consecutive years but whose first mortgage bonds or first lien notes on real or personal property are fully guaranteed by a solvent corporation that has not defaulted in the payment of any debt during the five years preceding the investment;

(3) a solvent corporation that has not been in existence for five consecutive years but whose first mortgage bonds or first lien notes on real or personal property are secured by leases or other contracts executed by a solvent corporation that has not defaulted in the payment of any debt during the five years preceding the investment, if the required rentals or other required payments under the leases or other contracts are sufficient in all circumstances to pay interest and principal when due on the bonds or notes; or

(4) a solvent corporation that has not been in existence for five consecutive years preceding the investment, if:

(A) the corporation has succeeded to the business and assets and has assumed the liabilities of another corporation; and

(B) neither the successor corporation or the corporation succeeded has defaulted in the payment of any debt during the five years preceding the investment.

(b) Subject to Subsection (e), an insurer may invest any of the insurer's funds and accumulations in a note or debenture of a corporation with a net worth of at least $5 million if:

(1) a prior lien in excess of 10 percent of the net worth of the corporation does not exist against the real or personal property of the corporation at the time the note or debenture is issued; and

(2) under the provisions of the indenture providing for the issuance of the note or debenture, a prior lien that exceeds 10 percent of the net worth of the corporation cannot be created against the real or personal property of the corporation at the time the note or debenture is issued.

(c) Subject to Subsection (e), an insurer may invest any of the insurer's funds and accumulations in a note or debenture of a solvent corporation that has not been in existence for five consecutive years if:

(1) a prior lien does not exist against the real or personal property of the corporation at the time the note or debenture is issued;

(2) under the provisions of the indenture providing for the issuance of the note or debenture, a prior lien cannot be created against the real or personal property of the corporation at the time the note or debenture is issued; and

(3) the note or debenture is:

(A) secured by a lease or other contract executed by a solvent corporation that has a net worth of at least $5 million and has not defaulted in the payment of any debt during the five years preceding the investment, if the required rentals or other required payments under the lease or other contract are sufficient in all circumstances to pay interest and principal when due on the bond or note; or

(B) fully guaranteed by a corporation described by Paragraph (A).

(d) Subject to Subsection (e), an insurer may invest any of the insurer's funds and accumulations in a bond, bill of exchange, or other commercial note or bill of:

(1) a solvent corporation that has not defaulted in the payment of any debt during the five years preceding the investment; or

(2) a solvent corporation that has not been in existence for the five years preceding the investment, if:

(A) the corporation has succeeded to the business and assets and has assumed the liabilities of another corporation;

(B) neither the successor corporation or the corporation succeeded has defaulted in the payment of any debt during the five years preceding the investment;

(C) the corporation has a net worth of at least $50 million; and

(D) the corporation does not have long-term indebtedness that exceeds the corporation's net worth, as evidenced by the corporation's latest published financial statements or other financial data available to the public.

(e) The amount of an insurer's investments in the bonds, notes, debentures, or other obligations of any one corporation may not exceed five percent of the insurer's admitted assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.2061. AUTHORIZED INVESTMENTS FOR ALL FUNDS: BOND EXCHANGE-TRADED FUNDS. Subject to Section 425.157(b), an insurer may invest any of the insurer's funds and accumulations in a bond exchange-traded fund described by Section 425.1231(a).

Added by Acts 2019, 86th Leg., R.S., Ch. 1132 (H.B. 2694), Sec. 3, eff. September 1, 2019.

Sec. 425.207. AUTHORIZED INVESTMENTS FOR ALL FUNDS: SHARES OF SAVINGS AND LOAN ASSOCIATIONS. (a) Subject to this section, an insurer may invest any of the insurer's funds and accumulations in a share, stock, share or savings account, or investment certificate of a savings and loan association engaged in business in this state that

is qualified to participate in insurance issued by the Federal Deposit Insurance Corporation.

(b) An insurer's investment in a savings and loan association may not exceed 20 percent of the savings and loan association's total assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.208. AUTHORIZED INVESTMENTS FOR ALL FUNDS: BANK AND BANK HOLDING COMPANY STOCKS. (a) Subject to this section, an insurer may invest any of the insurer's funds and accumulations in:

(1) the stock of a state or national bank that is a member of the Federal Deposit Insurance Corporation; and

(2) the stock of a bank holding company as defined by the Bank Holding Company Act of 1956 (12 U.S.C. Section 1841 et seq.), as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C. Section 1841 et seq. and Section 1971 et seq.).

(b) An insurer's investment in the stock of a bank or bank holding company may not exceed:

(1) 20 percent of the total outstanding shares of the stock of the bank or bank holding company; or

(2) 10 percent of the insurer's admitted assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.209. AUTHORIZED INVESTMENTS FOR ALL FUNDS: DEBENTURES OF PUBLIC UTILITY CORPORATIONS. (a) Subject to this section, an insurer may invest any of the insurer's funds and accumulations in:

(1) a debenture of a solvent public utility corporation that:

(A) has not defaulted in the payment of any debt during the five years preceding the investment; and

(B) has not failed in any one of the five years preceding the investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation, and obsolescence, an amount applicable to interest on the corporation's outstanding indebtedness equal to at least two

times the amount of interest due for that year, or, in the case of issuance of new debentures, the earnings applicable to interest are equal to at least two times the amount of annual interest on the corporation's obligations after giving effect to the new financing; or

(2) a debenture of a solvent public utility corporation that has not been in existence for the five years preceding the investment, if:

(A) the corporation has succeeded to the business and assets and has assumed the liabilities of another public utility corporation;

(B) neither the successor corporation or the corporation succeeded has defaulted in the payment of any debt during the five years preceding the investment; and

(C) neither the successor corporation or the corporation succeeded have failed in any one of the five years preceding the investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation, and obsolescence, an amount applicable to interest on the corporation's outstanding indebtedness equal to at least two times the amount of interest due for that year, or in the case of issuance of new debentures, the earnings applicable to interest are equal to at least two times the amount of annual interest on the corporation's obligations after giving effect to the new financing.

(b) The amount of an insurer's investment in debentures under this section may not exceed five percent of the insurer's admitted assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.210. AUTHORIZED INVESTMENTS FOR ALL FUNDS: PREFERRED STOCK OF PUBLIC UTILITY CORPORATIONS. (a) Subject to this section, an insurer may invest any of the insurer's funds and accumulations in:

(1) preferred stock of a solvent public utility corporation, the bonds and debentures of which are authorized investments for the insurer, and that:

(A) has not defaulted in the payment of any debt during

the five years preceding the investment; and

(B) has not failed in any one of the five years preceding the investment to have earned an amount applicable to the dividends on the preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock, the earnings applicable to dividends are equal to at least three times the amount of the annual dividend requirements after giving effect to the new financing; or

(2) a solvent public utility corporation, the bonds and debentures of which are authorized investments for the insurer, and that has not been in existence for the five years preceding the investment, if:

(A) the corporation has succeeded to the business and assets and has assumed the liabilities of another public utility corporation;

(B) neither the successor corporation or the corporation succeeded has defaulted in the payment of any debt during the five years preceding the investment; and

(C) neither the successor corporation or the corporation succeeded have failed in any one of the five years preceding the investment to have earned an amount applicable to the dividends on the preferred stock equal to at least three times the amount of dividends due in that year, or, in the case of issuance of new preferred stock, the earnings applicable to dividends are equal to at least three times the amount of the annual dividend requirements after giving effect to the new financing.

(b) Preferred stock purchased under this section must be of an issue entitled to first claim on the net earnings of the public utility corporation, after deducting the amount necessary to service any outstanding bonds and debentures.

(c) The amount of an insurer's investment in preferred stock under this section may not exceed 2-1/2 percent of the insurer's admitted assets.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.211. AUTHORIZED INVESTMENTS FOR ALL FUNDS: BONDS ISSUED, ASSUMED, OR GUARANTEED IN INTERNATIONAL MARKET. An insurer

may invest any of the insurer's funds and accumulations in bonds issued, assumed, or guaranteed by:

(1) the Inter-American Development Bank;

(2) the International Bank for Reconstruction and Development (the World Bank);

(3) the African Development Bank;

(4) the Asian Development Bank;

(5) the International Finance Corporation; and

(6) the State of Israel.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.212. AUTHORIZED INVESTMENTS FOR ALL FUNDS: SECURITIES OR INVESTMENTS AUTHORIZED OR DESCRIBED BY SPECIFIC STATUTORY PROVISION. An insurer may invest any of the insurer's funds and accumulations in a security or investment authorized or described by:

(1) Section 65.013, Finance Code;

(2) Sections 435.041-435.047, Government Code;

(3) Subchapter B, Chapter 1505, Government Code;

(4) Chapter 284, Transportation Code;

(5) Section 51.039 or 60.104, Water Code;

(6) Chapter 160, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 842a, Vernon's Texas Civil Statutes);

(7) Chapter 230, Acts of the 49th Legislature, Regular Session, 1945 (Article 842a-1, Vernon's Texas Civil Statutes);

(8) Chapter 110, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-133, Vernon's Texas Civil Statutes);

(9) Chapter 340, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-137, Vernon's Texas Civil Statutes);

(10) Chapter 398, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-138, Vernon's Texas Civil Statutes); or

(11) Chapter 465, Acts of the 51st Legislature, Regular Session, 1949 (Article 8280-139, Vernon's Texas Civil Statutes).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.213. AUTHORIZED INVESTMENTS FOR ALL FUNDS: OTHER SECURITIES SPECIFICALLY AUTHORIZED BY LAW. An insurer may invest any of the insurer's funds and accumulations in:

(1) an adequately secured equipment trust obligation or certificate or another adequately secured instrument evidencing:

(A) an interest in transportation equipment that is located wholly or partly within the United States; and

(B) a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of the transportation equipment; and

(2) any other security as specifically authorized by law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.214. AUTHORIZED INVESTMENTS FOR ALL FUNDS: LOANS SECURED BY REAL PROPERTY. (a) Subject to this section, an insurer may loan any of the insurer's funds and accumulations and take as collateral a first lien on real property to which the title is valid.

(b) The amount of a loan secured by a first lien on real property may exceed 75 percent of the property value only if:

(1) the amount does not exceed 90 percent of the property value and the property contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes; or

(2) the amount does not exceed 95 percent of the property value and:

(A) the property contains only a dwelling designed exclusively for occupancy by not more than four families for residential purposes; and

(B) the portion of the unpaid balance of the loan that exceeds 80 percent of the property value is guaranteed or insured by a mortgage guaranty insurer authorized to engage in business in this state.

(c) An insurer may not originate a loan that exceeds 75 percent of the value of the real property securing the loan.

(d) The aggregate amount of an insurer's loans secured by first liens on real property to any one corporation, company, partnership, individual, or any affiliated person or group may not exceed 10

percent of the insurer's admitted assets. The amount of any single loan secured by a first lien on real property may not exceed five percent of the insurer's admitted assets.

(e) The limitations imposed by Subsections (b)-(d) do not apply to a first lien on real property if the commissioner finds that:

(1) the making or acquiring of the lien is beneficial to and protects the interest of the insurer; and

(2) no substantial damage to the insurer's policyholders and creditors appears probable from the taking or acquiring of the lien.

(f) Subject to Subsections (g)-(j), an insurer may loan any of the insurer's funds and accumulations and take as collateral a first lien on a leasehold estate in:

(1) real property to which the title is valid; and

(2) improvements located on the property to which the title is valid.

(g) The term of a loan secured by first lien on a leasehold estate in real property may not, as of the date the loan is made, exceed a period equal to four-fifths of the unexpired term of the leasehold estate. The term of the leasehold estate may not expire sooner than the 10th anniversary of the expiration of the term of the loan.

(h) A loan secured by a first lien on a leasehold estate in real property must be payable in equal monthly, quarterly, semiannual, or annual installments on principal and interest during a period not to exceed four-fifths of the unexpired term, as of the date the loan is made, of the leasehold estate.

(i) The restrictions imposed by this section on the value of the real property securing a loan compared to the amount of the loan, and on the duration of a loan secured by a leasehold estate in real property, do not apply to a loan if:

(1) the entire amount of the indebtedness is insured or guaranteed in any manner by:

(A) the United States;

(B) the Federal Housing Administration under the National Housing Act (12 U.S.C. Section 1701 et seq.), as amended; or

(C) this state; or

(2) the difference between the entire amount of the indebtedness and the portion of the loan insured or guaranteed by an entity described by Subdivision (1) does not exceed the amount of a

loan permitted by the applicable restriction.

(j) If any part of the value of buildings is to be included in the value of real property or leasehold estate in real property to attain the minimum authorized value of the security for a loan under this section:

(1) the buildings must be insured against loss by fire by:

(A) an insurer authorized to engage in business in the state in which the real property is located; or

(B) a company recognized as acceptable for that purpose by the insurance regulatory official of the state in which the real property is located;

(2) the amount of insurance coverage may not be less than 50 percent of the value of the buildings, except that the insurance coverage is not required to exceed the outstanding balance owed to the insurer if the outstanding balance of the loan is less than 50 percent of the value of the buildings; and

(3) the loss clause under the insurance must be payable to the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.215. AUTHORIZED INVESTMENTS FOR ALL FUNDS: LOANS SECURED BY CERTAIN COLLATERAL SECURED BY REAL PROPERTY. An insurer may loan any of the insurer's funds and accumulations and take as collateral an obligation secured by a first lien on real property or a leasehold estate that is eligible to secure a loan under Section 425.214.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.216. AUTHORIZED INVESTMENTS FOR ALL FUNDS: POLICY LOANS. (a) Subject to Subsection (b), an insurer may loan any of the insurer's funds and accumulations and take as collateral an insurance policy issued by the insurer.

(b) A loan on a policy under this section may not exceed the reserve value of the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.217. AUTHORIZED INVESTMENTS FOR ALL FUNDS: LOANS SECURED BY CERTAIN SECURITIES. An insurer may loan any of the insurer's funds and accumulations and take as collateral for the loan any security described by Sections 425.205-425.213 and 425.218 in which the insurer may invest any of the insurer's funds and accumulations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.218. AUTHORIZED INVESTMENTS FOR ALL FUNDS: SECURITIES NOT OTHERWISE SPECIFIED. (a) Notwithstanding any express or implied prohibitions, and subject to this section, an insurer may invest any of the insurer's funds and accumulations in an investment that does not otherwise qualify under any other provision of this chapter.

(b) The amount of any one investment by an insurer under this section may not exceed one percent of the insurer's admitted assets.

(c) The aggregate amount of investments by an insurer under this section may not exceed the lesser of:

(1) five percent of the insurer's admitted assets; or

(2) the amount of the insurer's capital and surplus in excess of $200,000 as shown on the last annual statement filed by the insurer with the department before the date the investment is acquired.

(d) Except as provided by another law of this state, this section does not authorize an insurer to invest any of the insurer's funds or accumulations in real property.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.219. AUTHORIZED INVESTMENTS FOR POLICY RESERVES AND SURPLUS: BONDS OF CERTAIN WATER CONTROL AND IMPROVEMENT DISTRICTS. An insurer may invest the insurer's policy reserves and surplus over and above the insurer's capital in municipal bonds issued under

Section 51.039, Water Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.220. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS, AND CONTINGENCY FUNDS: CAPITAL STOCK, BONDS, AND OTHER CORPORATE OBLIGATIONS. (a) Subject to this section and Section 425.226, an insurer may invest the insurer's capital, surplus, and contingency funds in the capital stock, bonds, bills of exchange, or other commercial notes or bills and securities of:

(1) a solvent corporation that has not defaulted in the payment of any debt during the five years preceding the investment; or

(2) a solvent corporation that has not been in existence for the five years preceding the investment, if:

(A) the corporation has succeeded to the business and assets and has assumed the liabilities of another corporation; and

(B) neither the successor corporation nor the corporation succeeded has defaulted in the payment of any debt during the five years preceding the investment.

(b) An insurer may not invest in the stock of:

(1) a manufacturing corporation with a net worth of less than $25,000; or

(2) an oil corporation with a net worth of less than $500,000.

(c) Except as provided by Subsection (d), an insurer's investment in the insurer's own capital stock or in the stock of a single corporation may not be in an amount exceeding 10 percent of the amount of the insurer's capital, surplus, and contingency funds.

(d) An insurer may own, and the insurer may invest not more than 25 percent of the insurer's capital, surplus, and contingency funds in, the capital stock of a single fire and casualty insurance company if that investment gives the insurer a majority of the outstanding stock of the fire and casualty insurance company.

(e) In addition to the investments authorized by this section and subject to Section 425.226, an insurer may invest in the capital stock, bonds, and other obligations of one or more solvent corporations that portion of the insurer's surplus funds that exceeds

the greater of:

(1) 10 percent of the insurer's admitted assets, as determined from the insurer's latest annual statement on file with the department; or

(2) the minimum capital and surplus requirements for incorporating a life insurance company under Chapter 841.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.221. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS, AND CONTINGENCY FUNDS: BONDS OR NOTES OF EDUCATIONAL OR RELIGIOUS CORPORATIONS. Subject to Section 425.226, an insurer may invest the insurer's capital, surplus, and contingency funds in a bond or note of an educational or religious corporation that has provided for the payment of a sufficient amount of the first weekly or monthly revenues of the corporation to an interest and sinking fund account in a bank or trust company as an independent paying agent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.222. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS, AND CONTINGENCY FUNDS: LIFE INCOME INTERESTS IN QUALIFIED TRUSTS. (a) Subject to this section, an insurer may invest the insurer's capital, surplus, and contingency funds in a life income interest in a qualified irrevocable express testamentary trust.

(b) For purposes of this section, a trust is a qualified trust if:

(1) each fee simple recipient of any part of the corpus of the trust:

(A) is a public charity, church, educational institution, or scientific institution;

(B) is located in this state; and

(C) is recognized by the United States Internal Revenue Service as exempt from payment of income taxes;

(2) the corpus of the trust is wholly or partly composed of interests in real estate, stocks, bonds, debentures, and other securities of an aggregate total value of at least $5 million; and

(3) the corpus of the trust produces annual income of at least $100,000.

(c) An insurer's life income interest in a qualified trust may not exceed 10 percent of the insurer's admitted assets.

(d) Before an insurer may acquire a life income interest in a qualified trust, the insurer must present evidence satisfactory to the commissioner that shows:

(1) the interest is subject to transfer and is recognized as transferable;

(2) the interest is capable of reasonable valuation;

(3) a market for the sale of the interest exists; and

(4) the interest is supported by life insurance in:

(A) an amount not less than the admitted value of the interest; and

(B) a form approved by the commissioner.

(e) In valuing a life income interest in a qualified trust on the insurer's books, the insurer may value the interest only on the basis of the lesser of:

(1) the recognized market established in accordance with Subsection (d)(3); or

(2) the ratio that the fractional life income interest in the income of the trust bears to the total market value of the properties held by the trust that are of a type of property an insurer may lawfully acquire under the investment statutes of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.223. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS, AND CONTINGENCY FUNDS: CAPITAL STOCK OF REINSURER. (a) Subject to Subsection (b), an insurer may invest the insurer's capital, surplus, and contingency funds in not more than 20 percent of the capital stock of any other insurance company organized under Chapter 841 whose principal business is the reinsurance, either wholly or partly, of risks ceded to that insurer by other life insurance companies.

(b) The aggregate amount of an insurer's investments under this section may not exceed 10 percent of the insurer's capital, surplus, and contingency funds.

(c) The investment authorized by this section may be made by purchase of stock issued and outstanding or by subscription to and payment for the increase in the capital stock of the reinsurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.224. AUTHORIZED INVESTMENTS FOR CAPITAL, SURPLUS, AND CONTINGENCY FUNDS: LOANS SECURED BY CORPORATE STOCK. (a) Subject to this section, an insurer may loan the insurer's capital, surplus, and contingency funds and take as collateral the capital stock, bonds, bills of exchange, or other commercial notes or bills or the securities of:

(1) a solvent corporation that has not defaulted in the payment of any debt during the five years preceding the investment; or

(2) a solvent corporation that has not been in existence for the five years preceding the investment, if:

(A) the corporation has succeeded to the business and assets and has assumed the liabilities of another corporation; and

(B) neither the successor corporation nor the corporation succeeded has defaulted in the payment of any debt during the five years preceding the investment.

(b) Subject to this section, an insurer may loan the insurer's capital, surplus, and contingency funds and take as collateral the bonds or notes of an educational or religious corporation that has provided for the payment of a sufficient amount of the first weekly or monthly revenues of the corporation to an interest and sinking fund account in a bank or trust company as an independent paying agent.

(c) The market value of the stock, bills of exchange, other commercial notes or bills, or securities must be at all times during the continuance of the loan at least 50 percent more than the amount loaned on the securities or obligations.

(d) An insurer may not take as collateral for any loan:

(1) the insurer's capital stock;

(2) the stock of a single corporation in an amount that exceeds 10 percent of the amount of the insurer's own capital, surplus, and contingency funds;

(3) the stock of a manufacturing corporation with a net worth of less than $25,000;

(4) the stock of an oil corporation with a net worth of less than $500,000; or

(5) any stock, the holder or owner of which is or may become liable for any assessment other than taxes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.225. INVESTMENT IN FOREIGN SECURITIES. (a) An insurer authorized to engage in business in a foreign country may invest in securities of that country that are the same kind of securities as those in the United States in which an insurer is authorized by this subchapter to invest.

(b) The aggregate amount of an insurer's investments under this section may not exceed the amount of the insurer's reserves on the business in force in the foreign country.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.226. INVESTMENT IN STOCK SUBJECT TO ASSESSMENT PROHIBITED. An insurer may not invest any of the insurer's funds in a stock, the holder or owner of which is or may become liable for any assessment other than taxes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.227. CERTAIN INVESTMENT POWERS NOT A RESTRICTION. The investment powers granted by Sections 425.207 and 425.208 may not be construed as restricting the powers granted by Sections 425.220 and 425.221.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.228. INVESTMENTS OF CEDING INSURER. (a) Subject to this section, if a domestic insurer assumes the business and takes over the assets of another domestic or a foreign insurer, all investments of the ceding insurer that were authorized, when made, by the laws of the state in which the ceding insurer was organized as proper securities for investment of the funds of an insurer and that are taken over by the assuming insurer are considered to be valid securities of the assuming insurer under the laws of this state.

(b) The commissioner must approve investments described by Subsection (a) and the terms on which those investments are taken over. The commissioner may require the assuming insurer to dispose of any of the investments on notice the commissioner considers reasonable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.229. AUTHORIZED INVESTMENTS: REAL ESTATE FOR INSURER'S OFFICES. (a) Subject to this section, an insurer may secure, hold, and convey the following real property:

(1) one building site and office building for the insurer's accommodation in the transaction of the insurer's business and for lease;

(2) branch office buildings in this state and elsewhere within the United States in which the insurer is authorized to engage in business as necessary for the insurer's convenient accommodation in the transaction of the insurer's business and for lease; and

(3) parking facilities adjacent to or in the vicinity of each office building owned by the insurer as reasonably necessary for the insurer and the building tenants.

(b) An office building described by Subsection (a)(1) may be on ground on which the insurer owns a lease the term of which expires not sooner than the 50th anniversary of the date the insurer acquires the lease. The insurer must own, or be entitled to the use of, all the improvements on the leased ground. The value of the improvements must be at least equal to the value of the ground and at least 20 times the annual average ground rentals payable under the lease. The office building must have an annual average net rental of at least twice the annual ground rental. The insurer must be liable for and

shall pay all state and local taxes imposed against the ground and improvements. For purposes of taxation, the ground and improvements are considered to be real property owned by the insurer. The commissioner must approve the acquisition of an office building on leased ground before the insurer makes the investment.

(c) The insurer must use at least 50 percent of the space in each branch office building under Subsection (a)(2) that is available for occupancy for business purposes for the transaction of the insurer's business and not for lease to others.

(d) An insurer may make an investment under Subsection (a)(2) or (3) only in a municipality that has a population of 15,000 or more.

(e) An insurer may not make an investment under this section if, after making the investment, the insurer's aggregate investments under this section would exceed 33-1/3 percent of the insurer's admitted assets as of December 31 preceding the date of the investment, except that an insurer's aggregate investments under this section may be increased to an amount not to exceed 50 percent of the insurer's admitted assets if the commissioner approves the investment in advance, and the investment may be further increased if the additional increase is paid for only from surplus funds and is not included as an admitted asset of the insurer.

(f) The value of each investment under this section is subject to the approval of the commissioner. The commissioner may, at the time the investment is made or any time when an examination of the insurer is being made, have an investment under this section appraised by an appraiser appointed or approved by the commissioner. The insurer shall pay the reasonable expense of the appraisal. The expense of the appraisal is considered to be an expense of the examination of the insurer. An insurer may not make any increase in the valuation of real property described by Subsection (a) unless the increase in valuation is approved by the commissioner, subject to the conditions imposed by Subsection (e).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.230. AUTHORIZED INVESTMENTS: OIL, GAS, AND MINERALS. (a) In this section and Section 425.231:

(1) "Producing" means producing oil, gas, or other minerals in paying quantities. A well that has been shut in is considered to be producing oil, gas, or other minerals in paying quantities if shut-in royalties are being paid.

(2) "Production payment" means a right to oil, gas, or other minerals in place or as produced that entitles the owner of the right to a specified fraction of production until the owner receives a specified amount of money, or a specified number of units of oil, gas, or other minerals.

(3) "Royalty" or "overriding royalty" means a right to oil, gas, and other minerals in place or as produced that entitles the owner of the right to a specified fraction of production without limitation to a specified amount of money or a specified number of units of oil, gas, or other minerals.

(b) Subject to this section, in addition to and without limitation on the purposes for which real property may be acquired, secured, held, or retained under Section 425.229 or 425.231, an insurer may secure, hold, retain, and convey production payments, producing royalties, and producing overriding royalties as an investment for the production of income.

(c) The aggregate amount of an insurer's investments under this section, plus the aggregate amount of the insurer's investments in home office and branch office properties under Section 425.229, may not exceed the total amount permitted by and is subject to all of the limitations imposed by Sections 425.229(e) and (f). For purposes of this subsection, an investment in production payments, producing royalties, or producing overriding royalties is considered to be an investment in property described by Section 425.229.

(d) For the purposes of Section 425.229(f), the commissioner may establish a value of a production payment, producing royalty, or producing overriding royalty as the maximum amount that the insurer purchasing the production payment, producing royalty, or producing overriding royalty could loan against a first lien on the production payment, producing royalty, or producing overriding royalty under Sections 425.214(f)-(h).

(e) An insurer may not make an investment in production payments, producing royalties, or producing overriding royalties solely for the production of income if, after making the investment, the insurer's total investment at cost in the production payments, producing royalties, or producing overriding royalties would exceed

10 percent of the insurer's admitted assets as of December 31 preceding the date of the investment.

(f) If production in paying quantities from a royalty interest or overriding royalty interest held by an insurer ends, the insurer shall sell and dispose of the royalty or overriding royalty not later than the second anniversary of the date the production ends, unless:

(1) production in paying quantities has resumed; or

(2) the insurer obtains from the commissioner a certificate stating that the insurer's interests will suffer materially by the forced sale of the interest.

(g) The commissioner shall state in a certificate under Subsection (f)(2) the amount of time by which the period for sale is extended under that subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.231. AUTHORIZED INVESTMENTS: REAL PROPERTY ACQUIRED UNDER CERTAIN CIRCUMSTANCES. (a) Subject to this section, an insurer may secure, hold, and convey the following real property:

(1) real property acquired in good faith as security for a loan previously contracted or for money due;

(2) real property conveyed to the insurer to satisfy a debt previously contracted in the course of the insurer's dealings; and

(3) real property purchased at a sale under a judgment, court decree, or mortgage or other lien held by the insurer.

(b) An insurer shall sell and dispose of all property described by Subsection (a) that is not necessary for the insurer's accommodation in the convenient transaction of the insurer's business, other than an interest in minerals or royalties reserved on the sale of land acquired under Subsection (a) or an interest in producing royalties or producing overriding royalties otherwise acquired, not later than the fifth anniversary of:

(1) the date the insurer acquires title to the property; or

(2) the date the property ceases to be necessary for the accommodation of the insurer's business.

(c) An insurer may hold property acquired under Subsection (a) for a period longer than that specified by Subsection (b) if the insurer obtains a certificate from the commissioner stating that the

insurer's interests will suffer materially by the forced sale of the property. The commissioner shall state in the certificate the amount of time by which the period for sale is extended under this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 425.232. AUTHORIZED INVESTMENTS: IMPROVED INCOME-PRODUCING REAL PROPERTY. (a) In this section, "improved income-producing real property" includes all commercial and industrial real property, a substantial portion of which has been materially enhanced in value by the construction of durable, permanent-type buildings and other improvements costing an amount at least equal to the value of the real property, excluding the buildings and improvements, that is held or acquired by purchase, lease, or otherwise for the production of income. The term does not include agricultural, horticultural, farm and ranch, or residential property, or single or multiunit family dwelling property.

(b) Notwithstanding Sections 425.229, 425.230, and 425.231, subject to this section, a domestic insurer may:

(1) invest any of the insurer's funds and accumulations in improved income-producing real property or any interest in improved income-producing real property; and

(2) hold, improve, maintain, manage, lease, sell, or convey improved income-producing real property or an interest in improved income-producing real property.

(c) The aggregate amount of an insurer's investments in all income-producing real property, including improvements, may not exceed 15 percent of the insurer's admitted assets. The amount of an insurer's investment in a single piece of improved income-producing real property, including improvements, may not exceed five percent of the insurer's admitted assets. For purposes of this subsection, an insurer's admitted assets are determined from the insurer's annual statement as of the preceding December 31 and filed with the department as required by law. Section 425.229(f) applies to the value of any investment made under this section.

(d) The investment authority granted by this section is in addition to that granted by Sections 425.229, 425.230, and 425.231,

except that an insurer may not make an investment in improved income-producing real property that, when added to the insurer's investments under Section 425.229, would exceed the limitations imposed by Section 425.229(e).

(e) This section does not permit an insurer to purchase undeveloped real property for the purpose of development or subdivision.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 426. RESERVES FOR WORKERS' COMPENSATION INSURANCE COMPANIES

Sec. 426.001. RESERVES REQUIRED. A workers' compensation insurance company engaged in business in this state shall maintain reserves in an amount estimated in the aggregate to provide for the payment of all losses and claims incurred, whether reported or unreported. The company may not maintain reserves in an amount that is greater than reasonably necessary for that purpose.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 426.002. COMPUTATION OF RESERVES. Reserves required by Section 426.001 must be computed in accordance with any rules adopted by the commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 426.003. MAINTENANCE OF RESERVES; NOTICE OF NONCOMPLIANCE. (a) If a workers' compensation insurance company's reserves are determined under this chapter to be:

(1) inadequate, the commissioner shall notify the company and require the company to establish and maintain reasonable additional reserves; or

(2) unreasonably large, the commissioner shall notify the

company and require the company to reduce the amount of reserves to a reasonable amount.

(b) Not later than the 60th day after the date of notification of noncompliance under Subsection (a), the company shall:

(1) restore compliance as required by Subsection (a); and

(2) file a statement of restored compliance, accompanied by any documentation required by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 427. SUBORDINATED INDEBTEDNESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 427.001. APPLICABILITY OF CHAPTER. This chapter applies to an insurer or health maintenance organization as defined by Section 401.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.002. RULES. The commissioner shall adopt rules necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. LOAN, ADVANCE, AND OTHER INDEBTEDNESS

Sec. 427.051. LOAN OR ADVANCE PERMITTED. An insurer or health maintenance organization may obtain a loan or an advance, repayable with interest, of:

(1) cash;

(2) cash equivalents; or

(3) other assets that have a readily determinable value and are satisfactory to the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.052. SUBORDINATED LIABILITY PERMITTED. (a) An insurer or health maintenance organization may assume a subordinated liability for repayment of a loan or advance described by Section 427.051 and payment of interest on the loan or advance if the insurer or health maintenance organization and the creditor execute a written agreement stating that the creditor may be paid only out of that portion of the insurer's or health maintenance organization's surplus that exceeds the greater of:

(1) a minimum surplus amount set in the agreement; or

(2) a minimum surplus amount of $500,000.

(b) The department or commissioner may not require the agreement to provide a minimum surplus amount that is different from the amount described by this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.053. APPROVAL OF AGREEMENT REQUIRED. (a) An insurer or health maintenance organization must submit the written agreement under Section 427.052 to the commissioner for approval of the form and content of the agreement.

(b) The commissioner must approve or disapprove the agreement not later than the 30th day after the date the insurer or health maintenance organization submits the agreement. If the commissioner fails to act as required by this subsection, the agreement is considered approved.

(c) An insurer or health maintenance organization may assume a subordinated liability only after the commissioner has approved the agreement under this chapter or Subchapter C, Chapter 823.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.054. LIABILITY. (a) A loan or advance made under this chapter, including any interest accruing on the loan or advance, is a legal liability of the insurer or health maintenance organization, and a liability with respect to the insurer's or health maintenance organization's financial statement, only to the extent provided by the terms of the loan or advance agreement.

(b) Notwithstanding Subsection (a), if the loan or advance agreement provides for a sinking fund out of which the loan or advance is to be repaid, the loan or advance is a legal liability of the insurer or health maintenance organization, and a liability with respect to the insurer's or health maintenance organization's financial statement, only to the extent of the amounts accumulated and held in the sinking fund. By agreement of the parties, any portion of the amounts accumulated in the sinking fund may be returned to the surplus of the insurer or health maintenance organization at any time and any amount returned may not be a legal liability of the insurer or health maintenance organization or a liability with respect to the insurer's or health maintenance organization's financial statement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 427.055. PAYMENT OF PRINCIPAL OR INTEREST ON CERTAIN LIABILITIES. (a) An insurer or health maintenance organization may not pay principal or interest on a subordinated liability assumed under Section 427.052 or Subchapter C, Chapter 823, on or after September 1, 1995, unless:

(1) the payment complies with a schedule of payments contained in the agreement approved by the commissioner in accordance with Section 427.052 or Subchapter C, Chapter 823; or

(2) if the payment does not comply with the schedule of payments contained in the agreement or the agreement does not contain a payment schedule, the insurer or health maintenance organization provides written notice to the commissioner not later than the 15th day before the scheduled payment date.

(b) A loan, debenture, revenue bond, or advance agreement issued to an insurer or health maintenance organization before September 1, 1995, and any subsequent payment of principal or interest on the indebtedness are governed by the law in effect on the date of issuance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBTITLE C. DELINQUENT INSURERS
CHAPTER 441. SUPERVISION AND CONSERVATORSHIP
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 441.001. FINDINGS AND PURPOSE. (a) An insurer delinquency, or the state's inability to properly proceed in a threatened delinquency, directly or indirectly affects other insurers by creating a lack of public confidence in insurance and insurers. Insurer delinquencies destroy public confidence in the state's ability to regulate insurers. The harmful results of insurer delinquencies, including those described by this subsection, are properly minimized by laws designed to protect and assist insureds, creditors, and owners.

(b) Placing an insurer in receivership often destroys or diminishes, or is likely to destroy or diminish, the value of the insurer's assets, including:

(1) the insurer's insurance account or in-force business;

(2) the insurer as a going concern; and

(3) the insurer's agency force.

(c) The value of the assets described by Subsection (b) should be preserved if the circumstances of the insurer's financial condition warrant an attempt to rehabilitate or conserve the insurer and the rehabilitation or conservation is otherwise feasible.

(d) It is a proper concern of this state and proper policy to attempt to correct or remedy insurer misconduct, ineptness, or misfortune.

(e) The purpose of this chapter is to:

(1) provide for the rehabilitation and conservation of insurers by authorizing and requiring supervision and conservatorship by the commissioner;

(2) authorize action to determine whether an attempt should be made to rehabilitate and conserve an insurer;

(3) avoid, if possible and feasible, the necessity of placing an insurer under temporary or permanent receivership;

(4) provide for the protection of an insurer's assets pending determination of whether the insurer may be successfully rehabilitated; and

(5) alleviate concerns regarding insurance and insurers.

(f) Rehabilitation of an insurer might not be accomplished in every case, but this chapter facilitates and directs an attempt to rehabilitate an insurer without immediate resort to the harsher

remedy of receivership. If receivership becomes necessary, the preliminary supervision and conservatorship may prevent a dissipation of assets, which will benefit policyholders, creditors, and owners.

(g) For the reasons stated by this section, the substance and procedures of this chapter are the public policy of this state and are necessary to the public welfare. That policy and welfare require the availability of this chapter and the application of this chapter if circumstances warrant.

(h) This chapter provides, in conjunction with other law, a generally ordered sequence, and provides for review at each step, of supervision, concurrent conservatorship and rehabilitation, including reinsurance, and cessation of the conservatorship by rehabilitation or by receivership and liquidation if at any time that cessation is indicated or determined to be appropriate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.002. DEFINITION. In this chapter, unless the purposes of this chapter clearly require or the context clearly indicates another meaning, "insurer" means a person, organization, or company, regardless of whether the person or entity is authorized or admitted, that engages in the business of insurance or that acts as a principal or agent of a person, organization, or company engaged in the business of insurance. The term includes a stock insurance company, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, stipulated premium company, title insurance company, and mutual insurance company of any kind, including a statewide mutual assessment company, local mutual aid association, burial association, county mutual insurance company, and farm mutual insurance company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.003. APPLICABILITY OF AND COMPLIANCE WITH CHAPTER. Compliance with this chapter is a condition of engaging in the business of insurance in this state. This chapter applies to, and is a consequence of, any other transaction with respect to an insurer or

insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.004. ACTIONS OF COMMISSIONER. (a) In the event of an insurer's delinquency or suspected delinquency, the commissioner, in the commissioner's administrative discretion, may act under this chapter, another applicable law, or a combination of this chapter and another applicable law.

(b) If the commissioner determines to act under this chapter or is directed by a court to act under this chapter, the commissioner shall comply with the requirements of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.005. RULES; AUTHORITY FOR ADMINISTRATIVE ACTION. (a) The commissioner may:

(1) adopt reasonable rules as necessary to implement and supplement this chapter and the purposes of this chapter; and

(2) take any administrative action required by the findings of Section 441.001.

(b) The authority granted by this section may be inferred from the context of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.006. RULES AND PROCEDURES FOR MERGER OF INSURERS. (a) The commissioner shall adopt rules that encourage the merger of insurers in weak financial condition with insurers in strong financial condition in cases in which rehabilitation or conservation of an insurer would be inefficient or impracticable.

(b) The rules and procedures for conservatorship may not be used unless the rules and procedures adopted to promote the merger of insurers in weak financial condition are followed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.007. CONFLICT WITH OTHER LAWS. If this chapter conflicts with any other law, this chapter prevails.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.008. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROCEDURE PROVISIONS. Section 2001.062, Government Code, does not apply to a hearing conducted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. DETERMINATION AND NOTICE

Sec. 441.051. CIRCUMSTANCES CONSTITUTING INSOLVENCY OR DELINQUENCY. For the purposes of this chapter, the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency include circumstances in which the insurer:

(1) has required surplus, capital, or capital stock that is impaired to an extent prohibited by law;

(2) continues to write new business when the insurer does not have the surplus, capital, or capital stock that is required by law to write new business;

(3) conducts the insurer's business fraudulently; or

(4) attempts to dissolve or liquidate without first having made provisions satisfactory to the commissioner for liabilities arising from insurance policies issued by the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.052. CIRCUMSTANCES CONSTITUTING INSURER EXCEEDING POWERS. For the purposes of this chapter, the circumstances in which an insurer is considered to have exceeded the insurer's powers

include circumstances in which the insurer:

(1) refuses to permit the commissioner, the commissioner's deputy, or an examiner appointed by the department to examine the insurer's books, papers, accounts, records, or affairs;

(2) is organized in this state and removes from the state books, papers, accounts, or records that are necessary to examine the insurer;

(3) fails to promptly answer inquiries authorized by Section 38.001;

(4) fails to comply with an order of the commissioner to remedy, within the time prescribed by law, a prohibited deficiency in the insurer's capital, capital stock, or surplus;

(5) without obtaining the commissioner's prior written approval:

(A) totally reinsures the insurer's entire outstanding business; or

(B) merges or consolidates substantially all of the insurer's property or business with another insurer;

(6) continues to write business after the insurer's certificate of authority has been revoked or suspended; or

(7) is in a condition that makes the insurer's continuation in business hazardous to the public or to the insurer's policyholders or certificate holders.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.053. NOTICE TO INSURER. (a) If at any time the commissioner determines that an insurer is insolvent, has exceeded the insurer's powers, or has otherwise failed to comply with the law, the commissioner shall:

(1) notify the insurer of that determination;

(2) provide to the insurer a written list of the commissioner's requirements to abate the conditions on which that determination was based; and

(3) if the commissioner determines that the insurer requires supervision, notify the insurer that the insurer is under the commissioner's supervision and that the commissioner is invoking this chapter.

(b) The commissioner may provide the notice and information to an insurer that agrees to supervision.

(c) The insurer shall comply with the commissioner's requirements.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. SUPERVISION

Sec. 441.101. APPOINTMENT OF SUPERVISOR. The commissioner may appoint a supervisor to supervise an insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.102. TIME FOR COMPLIANCE WITH REQUIREMENTS OF SUPERVISION. An insurer under supervision must comply with the commissioner's requirements under Section 441.053 not later than the 180th day after the date of the commissioner's notice of supervision.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.103. PAYMENT OF CLAIMS. An insurer under supervision shall continue to pay claims under an insurance policy according to the terms of the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.104. PROHIBITED ACTS DURING SUPERVISION. During supervision, the commissioner may prohibit the insurer from taking any of the following actions without the prior approval of the commissioner or supervisor:

(1) disposing of, conveying, or encumbering any of the insurer's assets or business in force;

(2) withdrawing money from the insurer's bank accounts;

(3) lending or investing the insurer's money;
(4) transferring the insurer's property;
(5) incurring a debt, obligation, or liability;
(6) merging or consolidating with another company;
(7) entering into a new reinsurance contract or treaty;
(8) terminating, surrendering, forfeiting, converting, or lapsing an insurance policy, except for nonpayment of premiums due; or
(9) releasing, paying, or refunding premium deposits, accrued cash or loan values, unearned premiums, or other reserves on an insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.105. HEARING ON SUPERVISION; TERMINATION BY CONSERVATION OR RELEASE. (a) On the commissioner's own motion or the motion of a party of record, a hearing may be scheduled relating to an insurer under supervision after at least 10 days' written notice to each party of record. Notice may be waived by the parties of record.

(b) The commissioner shall place the insurer in conservatorship if, after the hearing, it is determined that the insurer:
(1) failed to comply with the commissioner's requirements;
(2) has not been rehabilitated;
(3) is insolvent; or
(4) appears to have exceeded the insurer's powers.

(c) The commissioner may release the insurer from supervision if, after the hearing, it is determined that the insurer:
(1) has been rehabilitated; or
(2) is no longer in a condition that makes the insurer's continuation in business hazardous to the public or to the insurer's policyholders or certificate holders.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER D. CONSERVATORSHIP

Sec. 441.151. APPOINTMENT OF CONSERVATOR. (a) The

commissioner may appoint a conservator for an insurer:

(1) if:

(A) after notice and opportunity for hearing, it is determined that the insurer:

(i) is insolvent;

(ii) appears to have exceeded the insurer's powers; or

(iii) has failed to comply with any requirement of the commissioner; or

(B) the insurer agrees to the appointment of a conservator; and

(2) if it is determined that supervision is inadequate to rehabilitate the insurer.

(b) The commissioner may appoint a conservator.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.152. NOTICE OF CONSERVATORSHIP. (a) Not later than the seventh day after the date the commissioner enters an order appointing a conservator for an insurer as provided by Section 441.151 or Subchapter F, the commissioner shall publish notice of the conservatorship in at least one newspaper of general circulation in each county with a population of at least 100,000.

(b) The notice must include:

(1) the name of the insurer placed in conservatorship;

(2) the date the insurer was placed in conservatorship in this state;

(3) the reasons for placing the insurer in conservatorship;

(4) any action with respect to the insurer that is available to a policyholder; and

(5) any requirement with which a policyholder must comply.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.153. POWERS AND DUTIES OF CONSERVATOR. (a) The conservator appointed for an insurer under Section 441.151 shall immediately take charge of the insurer and all of the insurer's

property, books, records, and effects, conduct the insurer's business, and act to remove the causes and conditions that made the conservatorship order necessary, as directed by the commissioner.

(b) During the conservatorship, the conservator shall provide reports to the commissioner as required by the commissioner and may:

(1) take all necessary measures in the conservator's own name as conservator to preserve, protect, or recover any asset or property of the insurer, including a claim or cause of action that the insurer may assert; and

(2) file a suit, or prosecute and defend a suit filed by or against the insurer, as the conservator considers necessary to protect all of the interested parties or any property affected by the suit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.154. PAYMENT OF CLAIMS. An insurer under conservatorship shall continue to pay claims under an insurance policy according to the terms of the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.155. REINSURANCE DURING CONSERVATORSHIP. (a) If during a conservatorship it appears that the interest of the insurer's policyholders or certificate holders is best protected by reinsuring the policies or certificates, the conservator may, with the approval of or at the direction of the commissioner:

(1) reinsure all or part of the insurer's policies or certificates with a solvent insurer authorized to engage in business in this state; and

(2) to the extent that the insurer has reserves attributable to the reinsured policies or certificates, transfer to the reinsurer reserves in an amount sufficient to reinsure the policies or certificates.

(b) A transfer of reserves under this section may not be considered a preference of a creditor.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.156. HEARINGS DURING CONSERVATORSHIP. (a) On the commissioner's own motion or the motion of a party of record, a hearing relating to an insurer in conservatorship may be scheduled after at least 10 days' written notice to each party of record.

(b) The notice required by this section may be waived by the parties of record.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.157. IMMUNITY. A conservator and the conservator's agents and employees are not liable, and a cause of action does not arise against the conservator or an agent or employee, for an action taken or not taken by the conservator, agent, or employee in connection with the adjustment, negotiation, or settlement of a claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.158. VENUE. (a) A suit against an insurer in conservatorship or against the conservator may be filed only in Travis County unless the cause of action is based on the terms of an insurance policy issued by the insurer.

(b) A conservator appointed under this chapter may file suit in Travis County against any person to preserve, protect, or recover any asset or property of the insurer, including a claim or cause of action that may be asserted by the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.159. DURATION OF CONSERVATORSHIP. (a) Except as provided by Subsection (b), a conservator appointed under this

chapter shall complete the conservator's duties as required by this chapter not later than the 90th day after the date of appointment.

(b) If the commissioner issues written findings that there is a substantial likelihood of rehabilitation of the insurer in conservatorship, the commissioner may extend the conservatorship for additional successive 30-day periods. The total period of extensions may not exceed 180 consecutive days. A hearing is not required before the commissioner issues the findings.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.160. RETURN TO MANAGEMENT. An insurer that is rehabilitated shall be returned to management or placed under new management under reasonable conditions that best tend to prevent defeat of the purposes of the conservatorship.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER E. PROVISIONS APPLYING TO SUPERVISION AND CONSERVATORSHIP

Sec. 441.201. CONFIDENTIALITY. (a) Hearings and orders, notices, correspondence, reports, records, and other information in the department's possession relating to the supervision or conservatorship of an insurer are confidential during the supervision or conservatorship. On termination of the supervision or conservatorship, the information in the department's custody that relates to the supervision or conservatorship is public information.

(b) This section does not prohibit access by the department to hearings or orders, notices, correspondence, reports, records, or other information.

(c) The provisions of Chapter 2001, Government Code, relating to discovery apply to the parties of record in a proceeding under this chapter.

(d) The commissioner may open a proceeding under this chapter or disclose information that is confidential under this section to a department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines that opening the proceeding or disclosing the information is necessary or proper to

enforce the laws of this state, another state, or the United States.

(e) An officer or employee of the department is not liable for a release of information that is confidential under this section unless it is shown that the release was accomplished with actual malice.

(f) This section does not apply to information:

(1) if the insurer's insureds are not protected by Chapter 462, 463, or 2602, or substantially similar statutes; or

(2) on the appointment by a court of a receiver for the insurer.

(g) Notwithstanding Subsection (a), if the commissioner places a title insurance agent licensed under Title 11 or an insurance agent licensed under Title 13 under supervision or in conservatorship, the commissioner shall provide written notice of the order of supervision or conservatorship to each insurer for which the agent holds an appointment under Subchapter A, Chapter 2651, or Subchapter E, Chapter 4001, or other applicable law, on the date the supervisor or conservator is appointed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 482 (H.B. 2542), Sec. 1, eff. September 1, 2017.

Sec. 441.202. COSTS OF SUPERVISION AND CONSERVATORSHIP. The commissioner shall determine the costs related to services provided by a supervisor or conservator under this chapter. Subject to Section 442.551, the costs shall be charged against the insurer's assets and paid as determined by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.203. COLLECTION OF FEES FROM REHABILITATED INSURER. (a) The commissioner may collect fees from an insurer described by Section 82.002 that is successfully rehabilitated by the commissioner. The fees must be in amounts sufficient to cover the cost of rehabilitating the insurer, but may not exceed that cost.

(b) The department may use fees collected under this section only for the rehabilitation of the insurer from which the fees are collected.

(c) Fees collected under this section shall be deposited in and expended through the Texas Department of Insurance operating account.

(d) The commissioner may determine the terms of the collection or repayment of the fees.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.204. REVIEW AND STAY OF CERTAIN ACTS OF SUPERVISOR OR CONSERVATOR. (a) An insurer under supervision or conservatorship may request the commissioner or, in the commissioner's absence, the commissioner's appointed deputy to review an action taken or proposed to be taken by the supervisor or conservator.

(b) A request for review under this section must specify the manner in which the action is believed to not be in the insurer's best interests.

(c) A request for review under this section stays the specified action pending review by the commissioner or the commissioner's deputy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.205. APPEAL OF CERTAIN ORDERS. The following orders of the commissioner may be appealed under Subchapter D, Chapter 36:

(1) an order appointing a supervisor and providing that the insurer may not engage in certain acts as provided by Section 441.104;

(2) an order appointing a conservator; and

(3) an order following the review under Section 441.204 of an action of a supervisor or conservator.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.206. EX PARTE MEETING WITH COMMISSIONER. Notwithstanding any other law, the commissioner may, at the time of any proceeding or while a proceeding is pending under this chapter, meet with a supervisor or conservator appointed under this chapter and with the attorney or other representative of the supervisor or conservator, without another person present, to implement the commissioner's duties under this chapter or for the supervisor or conservator to implement that person's duties under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.207. INSURER EMPLOYEES DURING SUPERVISION OR CONSERVATORSHIP. (a) Notwithstanding any other provision of this chapter, an insurer may employ an attorney, actuary, and accountant of the insurer's choice to assist the insurer during supervision. The supervisor shall authorize payment from the insurer for the reasonable fees and expenses of the attorney, actuary, or accountant.

(b) The supervisor, conservator, or commissioner shall, to the maximum extent possible, use the insurer's employees instead of outside consultants, actuaries, attorneys, accountants, and other personnel or department employees to minimize the expense of rehabilitation or the necessity of fees to cover the cost of rehabilitation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER F. OUT-OF-STATE INSURERS

Sec. 441.251. APPLICABILITY. This chapter applies to an insurer engaged in the business of insurance in this state but not domiciled in this state, regardless of whether the insurer is authorized to engage in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.252. APPOINTMENT OF ANCILLARY SUPERVISOR OR

CONSERVATOR. (a) The commissioner may appoint an ancillary supervisor or ancillary conservator for the assets located in this state of an insurer described by Section 441.251 in the same manner as the commissioner appoints a supervisor or conservator for an insurer domiciled in this state as provided by this chapter if:

(1) the commissioner makes a determination described by Section 441.053 with regard to the insurer;

(2) the commissioner determines that the insurer does not have the minimum surplus, capital, or capital stock required by this code for similar domestic insurers; or

(3) the insurer agrees to the appointment.

(b) Subject to Section 441.205, the commissioner may immediately, without prior notice and hearing, appoint an ancillary conservator for the assets, property, books, and records located in this state of an insurer described by Section 441.251 if a conservator, rehabilitator, receiver, liquidator, or equivalent official is appointed in the state in which the insurer is domiciled.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.253. POWERS AND DUTIES OF ANCILLARY SUPERVISOR OR CONSERVATOR. (a) An ancillary supervisor or ancillary conservator appointed under this subchapter has all the powers provided by Sections 441.153 and 441.155 with respect to the insurer's assets, property, books, and records located in this state.

(b) An ancillary conservator appointed under this subchapter may:

(1) reinsure all or part of the insurer's policies or certificates in this state with a solvent insurer authorized to engage in business in this state; and

(2) transfer to the reinsurer as reserves any assets in the ancillary conservator's possession in an amount sufficient to reinsure the policies or certificates.

(c) A transfer of assets under this section is not considered a preference of a creditor.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.254. FAILURE TO COMPLY WITH REQUIREMENTS OF SUPERVISION. The failure of an insurer described by Section 441.251 to comply during supervision with the requirements of Section 441.104 with respect to any asset or policy located in this state is grounds for the immediate revocation of the insurer's certificate of authority to engage in business in this state and for the immediate appointment of an ancillary conservator to take charge of the insurer's assets located in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.255. REFERRAL FOR REMEDIAL ACTION. The commissioner may refer an insurer described by Section 441.251 to the attorney general for remedial action, including application for appointment of a receiver under Chapter 442, on any grounds on which an insurer domiciled in this state may be referred to the attorney general for remedial action. The commissioner may refer the insurer at any time, and action against the insurer in the insurer's state of domicile is not a prerequisite.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER G. POWERS AND DUTIES OF ATTORNEY GENERAL

Sec. 441.301. REMEDIAL ACTION BY ATTORNEY GENERAL. (a) The commissioner may, at any time and regardless of whether an insurer is under supervision or conservatorship, determine that the insurer is not in a condition to continue business in the interest of the insurer's policyholders or certificate holders. The commissioner shall give notice of that determination to the attorney general.

(b) On receipt of notice under Subsection (a), the attorney general shall file suit in the nature of quo warranto in a court in Travis County to:

(1) forfeit the insurer's charter; or

(2) require the insurer to comply with the law or prove to the commissioner that the insurer is solvent, and satisfy the requirement that the insurer's condition does not make the continuation of the insurer's business hazardous to the public or to

the insurer's policyholders or certificate holders.

(c) The commissioner may at any time refer an insurer to the attorney general for the purpose of taking any remedial action, including applying for the appointment of a receiver under Chapter 442.

(d) Supervision or conservatorship of the insurer is not required before the attorney general may take remedial action under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 441.302. FORFEITURE AND CANCELLATION OF CHARTER ON CONCLUSION OF BUSINESS. (a) Once all an insurer's policies are reinsured or terminated and the insurer's affairs are concluded as provided by this chapter, the commissioner shall report that fact to the attorney general. On receipt of the report, the attorney general shall take action necessary to forfeit or cancel the insurer's charter.

(b) The commissioner shall report to the attorney general the commissioner's approval of the merger or consolidation of an insurer with another insurer or the reinsurance of the insurer's policies. On receipt of the report, the attorney general shall take action to forfeit or cancel the insurer's charter in the manner provided for the forfeiture or cancellation of the charter of an insurer that is totally reinsured or liquidated.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER H. AGENTS OF RECORD FOR CERTAIN INSUREDS

Sec. 441.351. AGENTS OF RECORD. (a) Unless otherwise prohibited, the supervisor, conservator, or receiver of an insurer shall provide to the insured's agent of record a copy of each communication provided to an insured if, in the judgment of the supervisor, conservator, or receiver, providing the copy will serve to materially protect the interests of policyholders. The supervisor, conservator, or receiver may also request the assistance of any statewide association of insurance agents in providing to the

association's members information that, in the judgment of the supervisor, conservator, or receiver, may serve to materially protect policyholders' interests.

(b) If the supervisor, conservator, or receiver sells a delinquent insurer's policies to another insurer, the purchaser shall:

(1) recognize the pecuniary interest of the agent of record in the policies being sold, regardless of whether the purchaser customarily conducts the purchaser's business through insurance agents;

(2) conduct the purchaser's business with the insured through the agent of record; and

(3) provide to the agent of record a written limited agency contract providing the terms that apply to the conduct of their business together.

(c) A limited agency contract provided under Subsection (b) must provide a level of commission that is reasonable, adequate, and nonconfiscatory.

(d) This subchapter does not prohibit the agent of record from renewing with another insurer an insurance policy purchased by an insurer from a delinquent insurer.

(e) This section does not apply to:

(1) a life, accident, or health insurance policy or contract delivered or issued for delivery by an insurer that is subject to any provision of a law specified in Section 841.002 or any provision of Chapter 882, 884, 887, 888, or 982;

(2) a contract or certificate delivered or issued for delivery by a group hospital service corporation organized under Chapter 842; or

(3) a contract or evidence of coverage delivered or issued for delivery by a health maintenance organization operating under a certificate of authority issued under Chapter 843.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 443. INSURER RECEIVERSHIP ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 443.001. CONSTRUCTION AND PURPOSE. (a) This chapter may

be cited as the Insurer Receivership Act.

(b) This chapter may not be interpreted to limit the powers granted the commissioner under other provisions of law.

(c) This chapter shall be liberally construed to support the purpose stated in Subsection (e).

(d) All powers and authority of a receiver under this chapter are cumulative and are in addition to all powers and authority that are available to a receiver under law other than this chapter.

(e) The purpose of this chapter is to protect the interests of insureds, claimants, creditors, and the public generally, through:

(1) early detection of any potentially hazardous condition in an insurer and prompt application of appropriate corrective measures;

(2) improved methods for conserving and rehabilitating insurers;

(3) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;

(4) apportionment of any unavoidable loss in accordance with the statutory priorities set out in this chapter;

(5) lessening the problems of interstate receivership by:

(A) facilitating cooperation between states in delinquency proceedings; and

(B) extending the scope of personal jurisdiction over debtors of the insurer located outside this state;

(6) regulation of the business of insurance by the impact of the law relating to delinquency procedures and related substantive rules; and

(7) providing for a comprehensive scheme for the receivership of insurers and those subject to this chapter as part of the regulation of the business of insurance in this state because proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.001 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.001 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.002. CONFLICTS OF LAW. This chapter and the state law governing insurance guaranty associations constitute this state's insurer receivership laws and shall be construed together in a manner that is consistent. In the event of a conflict between the insurer receivership laws and the provisions of any other law, the insurer receivership laws prevail.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.002 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.002 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.003. COVERED PERSONS. The provisions of this chapter apply to all:

(1) insurers who are doing or have done an insurance business in this state and against whom claims arising from that business may exist now or in the future and to all persons subject to examination by the commissioner;

(2) insurers who purport to do an insurance business in this state;

(3) insurers who have insureds resident in this state;

(4) other persons organized or doing insurance business, or in the process of organizing with the intent to do insurance business in this state;

(5) nonprofit health corporations and all fraternal benefit societies subject to Chapters 844 and 885, respectively;

(6) title insurance companies subject to Title 11;

(7) health maintenance organizations subject to Chapter 843; and

(8) surety and trust companies subject to Chapter 7,

general casualty companies subject to Chapter 861, statewide mutual assessment companies subject to Chapter 881, mutual insurance companies subject to Chapter 882 or 883, local mutual aid associations subject to Chapter 886, burial associations subject to Chapter 888, farm mutual insurance companies subject to Chapter 911, county mutual insurance companies subject to Chapter 912, Lloyd's plans subject to Chapter 941, reciprocal or interinsurance exchanges subject to Chapter 942, and fidelity, guaranty, and surety companies.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.003 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.003 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.004. DEFINITIONS. (a) For the purposes of this chapter:

(1) "Affiliate," "control," and "subsidiary" have the meanings assigned by Chapter 823.

(2) "Alien insurer" means an insurer incorporated or organized under the laws of a jurisdiction that is not a state.

(3) "Creditor" or "claimant" means a person having any claim against an insurer, whether the claim is matured or not, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(4) "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, or conserving the insurer, and any proceeding under Section 443.051.

(5) "Doing business," including "doing insurance business" and the "business of insurance," includes any of the following acts, whether effected by mail, electronic means, or otherwise:

(A) the issuance or delivery of contracts of insurance, either to persons resident or covering a risk located in this state;

(B) the solicitation of applications for contracts described by Paragraph (A) or other negotiations preliminary to the

execution of the contracts;

(C) the collection of premiums, membership fees, assessments, or other consideration for contracts described by Paragraph (A);

(D) the transaction of matters subsequent to the execution of contracts described by Paragraph (A) and arising out of those contracts; or

(E) operating as an insurer under a certificate of authority issued by the department.

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

(7) "Foreign insurer" means an insurer domiciled in another state.

(8) "Formal delinquency proceeding" means any rehabilitation or liquidation proceeding.

(9) "General assets" includes:

(A) all property of the estate that is not:

(i) subject to a secured claim or a valid and existing express trust for the security or benefit of specified persons or classes of persons; or

(ii) required by the insurance laws of this state or any other state to be held for the benefit of specified persons or classes of persons; and

(B) all property of the estate and the proceeds of that property in excess of the amount necessary to discharge any secured claims described by Paragraph (A).

(10) "Good faith" means honesty in fact and intention, and for the purposes of Subchapter F also requires the absence of:

(A) information that would lead a reasonable person in the same position to know that the insurer is financially impaired or insolvent; and

(B) knowledge regarding the imminence or pendency of any delinquency proceeding against the insurer.

(11) "Guaranty association" means any mechanism mandated by Chapter 462, 463, or 2602 or other laws of this state or a similar mechanism in another state that is created for the payment of claims or continuation of policy obligations of financially impaired or insolvent insurers.

(12) "Impaired" means that an insurer does not have

admitted assets at least equal to all its liabilities together with the minimum surplus required to be maintained under this code.

(13) "Insolvency" or "insolvent" means an insurer:

(A) is unable to pay its obligations when they are due;

(B) does not have admitted assets at least equal to all its liabilities; or

(C) has a total adjusted capital that is less than that required under:

(i) Chapter 822, 841, or 843, as applicable; or

(ii) applicable rules or guidelines adopted by the commissioner under Section 822.210, 841.205, or 843.404.

(14) "Insurer" means any person that has done, purports to do, is doing, or is authorized to do the business of insurance in this state, and is or has been subject to the authority of or to liquidation, rehabilitation, reorganization, supervision, or conservation by any insurance commissioner. For purposes of this chapter, any other persons included under Section 443.003 are insurers.

(15) "Netting agreement" means a contract or agreement, including terms and conditions incorporated by reference in a contract or agreement, and a master agreement (which master agreement, together with all schedules, confirmations, definitions, and addenda to the agreement and transactions under the agreement, schedules, confirmations, definitions, or addenda, are to be treated as one netting agreement) that documents one or more transactions between the parties to the contract or agreement for or involving one or more qualified financial contracts and that, among the parties to the netting agreement, provides for the netting or liquidation of qualified financial contracts, present or future payment obligations, or payment entitlements under the contract or agreement, including liquidation or close-out values relating to the obligations or entitlements.

(16) "New value" means money, money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the insurer or the receiver under any applicable law, including proceeds of the property. The term does not include an obligation substituted for an existing obligation.

(17) "Party in interest" means the commissioner, a 10 percent or greater equity security holder in the insolvent insurer,

any affected guaranty association, any nondomiciliary commissioner for a jurisdiction in which the insurer has outstanding claims liabilities, and any of the following parties that have filed a request for inclusion on the service list under Section 443.007:

(A) an insurer that ceded to or assumed business from the insolvent insurer; and

(B) an equity shareholder, policyholder, third-party claimant, creditor, and any other person, including any indenture trustee, with a financial or regulatory interest in the receivership proceeding.

(18) "Person" means individual, aggregation of individuals, partnership, corporation, or other entity.

(19) "Policy" means a written contract of insurance, written agreement for or effecting insurance, or the certificate for or effecting insurance, by whatever name. The term includes all clauses, riders, endorsements, and papers that are a part of the contract, agreement, or certificate. The term does not include a contract of reinsurance.

(20) "Property of the insurer" or "property of the estate" includes:

(A) all right, title, and interest of the insurer in property, whether legal or equitable, tangible or intangible, choate or inchoate, and includes choses in action, contract rights, and any other interest recognized under the laws of this state;

(B) entitlements that:

(i) existed prior to the entry of an order of rehabilitation or liquidation; and

(ii) may arise by operation of the provisions of this chapter or other provisions of law allowing the receiver to avoid prior transfers or assert other rights; and

(C) all records and data that are otherwise the property of the insurer, in whatever form maintained, within the possession, custody, or control of a managing general agent, third-party administrator, management company, data processing company, accountant, attorney, affiliate, or other person, including:

(i) claims and claim files;

(ii) policyholder lists;

(iii) application files;

(iv) litigation files;

(v) premium records;

(vi) rate books and underwriting manuals;

(vii) personnel records; and

(viii) financial records or similar records.

(21) "Qualified financial contract" means a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the commissioner determines by rule to be a qualified financial contract for the purposes of this chapter.

(22) "Receiver" means liquidator, rehabilitator, or ancillary conservator, as the context requires.

(23) "Receivership" means any liquidation, rehabilitation, or ancillary conservation, as the context requires.

(24) "Receivership court" refers to the court in which a delinquency proceeding is pending, unless the context requires otherwise.

(25) "Reinsurance" means transactions or contracts by which an assuming insurer agrees to indemnify a ceding insurer against all, or a part, of any loss that the ceding insurer might sustain under the policy or policies that it has issued or will issue.

(26) "Secured claim" means any claim secured by an asset that is not a general asset. The term includes the right to set off as provided in Section 443.209. The term does not include a claim arising from a constructive or resulting trust, a special deposit claim, or a claim based on mere possession.

(27) "Special deposit" means a deposit established pursuant to statute for the security or benefit of a limited class or limited classes of persons.

(28) "Special deposit claim" means any claim secured by a special deposit. The term does not include any claim secured by the general assets of the insurer.

(29) "State" means any state, district, or territory of the United States.

(30) "Transfer" includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest in property, including a setoff, or with the possession of property or of fixing a lien upon property or upon an interest in property, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title in property delivered to an insurer is deemed a transfer suffered by the insurer.

(31) "Unauthorized insurer" means an insurer doing the business of insurance in this state that has not received from this state a certificate of authority or some other type of authority that allows for doing the business of insurance in this state.

(b) For purposes of this chapter, "admitted assets" and "liabilities" have the meanings assigned by the department in rules relating to risk-based capital.

(c) For purposes of Subsection (a)(21):

(1) "Commodity contract" means:

(A) a contract for the purchase or sale of a commodity for future delivery on or subject to the rules of a board of trade designated as a contract market by the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.) or a board of trade outside the United States;

(B) an agreement that is subject to regulation under Section 19, Commodity Exchange Act (7 U.S.C. Section 23), and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract; or

(C) an agreement or transaction that is subject to regulation under Section 4c(b), Commodity Exchange Act (7 U.S.C. Section 6c(b)), and that is commonly known to the commodities trade as a commodity option.

(2) "Forward contract" means a contract, other than a commodity contract, with a maturity date more than two days after the date the contract is entered into, that is for the purchase, sale, or transfer of a commodity, as defined by Section 1a, Commodity Exchange Act (7 U.S.C. Section 1a), or any similar good, article, service, right, or interest that is presently or in the future becomes the subject of dealing in the forward contract trade or product or byproduct of the contract. The term includes a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or a combination of these or option on any of them.

(3) "Repurchase agreement" includes a reverse repurchase agreement and means an agreement, including related terms, that provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of or that are fully guaranteed as to principal and interest by the United States against the transfer of funds by the transferee of the

certificates of deposit, eligible bankers' acceptances, or securities with a simultaneous agreement by the transferee to transfer to the transferor certificates of deposit, eligible bankers' acceptances, or securities as described in this subdivision, on demand or at a date certain not later than one year after the transfers, against the transfer of funds. For the purposes of this subdivision, the items that may be subject to a repurchase agreement:

(A) include mortgage-related securities and a mortgage loan and an interest in a mortgage loan; and

(B) do not include any participation in a commercial mortgage loan unless the commissioner determines by rule to include the participation within the meaning of the term.

(4) "Securities contract" means a contract for the purchase, sale, or loan of a security, including an option for the repurchase or sale of a security, certificate of deposit, or group or index of securities or an interest in the group or index or based on the value of the group or index, an option entered into on a national securities exchange relating to foreign currencies, or the guarantee of a settlement of cash or securities by or to a securities clearing agency. For the purposes of this subdivision, the term "security" includes a mortgage loan, a mortgage-related security, and an interest in any mortgage loan or mortgage-related security.

(5) "Swap agreement" means an agreement, including the terms and conditions incorporated by reference in an agreement, that is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option or any other similar agreement. The term includes any combination agreements described by this subdivision and an option to enter into any agreement described by this subdivision.

(d) The definitions under this section apply only to this chapter unless the context of another law requires otherwise.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.004 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(b), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.004 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(b), eff. September 1, 2007.

Sec. 443.005. JURISDICTION AND VENUE. (a) Except as authorized by Section 203(e)(3), Pub. L. No. 111-203, a delinquency proceeding may not be commenced under this chapter by a person other than the commissioner, and a court does not have jurisdiction to entertain, hear, or determine any delinquency proceeding commenced by any other person.

(b) A court of this state does not have jurisdiction, other than in accordance with this chapter, to entertain, hear, or determine any complaint praying for:

(1) the liquidation, rehabilitation, seizure, sequestration, conservation, or receivership of any insurer; or

(2) a stay, injunction, restraining order, or other relief preliminary, incidental, or relating to proceedings described by Subdivision (1).

(c) The receivership court, as of the commencement of a delinquency proceeding under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of the state. The receivership court has original but not exclusive jurisdiction of all civil proceedings arising:

(1) under this chapter; or

(2) in or related to delinquency proceedings under this chapter.

(d) In addition to other grounds for jurisdiction provided by the law of this state, a court having jurisdiction of the subject matter has jurisdiction over a person served pursuant to Rules 21 and 21a, Texas Rules of Civil Procedure, or other applicable provisions of law in an action brought by the receiver if the person served:

(1) is or has been an agent, or other person who, at any

time, has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(2) is or has been an insurer or reinsurer who, at any time, has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or who is an agent of or for the reinsurer, in any action on or incident to the reinsurance contract;

(3) is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;

(4) at the time of the institution of the delinquency proceeding against the insurer, is or was holding assets in which the receiver claims an interest on behalf of the insurer in any action concerning the assets; or

(5) is obligated to the insurer in any way, in any action on or incident to the obligation.

(e) If, on motion of any party, the receivership court finds that any action, as a matter of substantial justice, should be tried in a forum outside this state, the receivership court may enter an appropriate order to stay further proceedings on the action in this state. Except as to claims against the estate, nothing in this chapter deprives a party of any contractual right to pursue arbitration. A party in arbitration may bring a claim or counterclaim against the estate, but the claim or counterclaim is subject to this chapter.

(f) Service must be made upon the person named in the petition in accordance with Rules 21 and 21a, Texas Rules of Civil Procedure. In lieu of such service, upon application to the receivership court, service may be made in any manner the receivership court directs if it is satisfactorily shown by affidavit:

(1) in the case of a corporation, that the officers of the corporation cannot be served because they have departed from the state or otherwise concealed themselves with intent to avoid service;

(2) in the case of a Lloyd's plan or reciprocal or interinsurance exchange, that the individual attorney in fact or the officers of the corporate attorney in fact cannot be served because

of departure or concealment; or

(3) in the case of an individual, that the person cannot be served because of the individual's departure or concealment.

(g) An action authorized by this section must be brought in a district court in Travis County.

(h) At any time after an order is entered pursuant to Section 443.051, 443.101, or 443.151, the commissioner or receiver may transfer the case to the county of the principal office of the person proceeded against. In the event of transfer, the court in which the proceeding was commenced, upon application of the commissioner or receiver, shall direct its clerk to transmit the court's file to the clerk of the court to which the case is to be transferred. The proceeding, after transfer, shall be conducted in the same manner as if it had been commenced in the court to which the matter is transferred.

(i) A person may not intervene in any delinquency proceeding in this state for the purpose of seeking or obtaining payment of any judgment, lien, or other claim of any kind. The claims procedure set forth in this chapter constitutes the exclusive means for obtaining payment of claims from the receivership estate. This provision is not intended to affect the rights conferred on the guaranty associations by Section 443.008(l).

(j) The foregoing provisions of this section notwithstanding, the provisions of this chapter do not confer jurisdiction on the receivership court to resolve coverage disputes between guaranty associations and those asserting claims against them resulting from the initiation of a delinquency proceeding under this chapter. The determination of any dispute with respect to the statutory coverage obligations of any guaranty association by a court or administrative agency or body with jurisdiction in the guaranty association's state of domicile is binding and conclusive as to the parties in a delinquency proceeding initiated in the receivership court, including the policyholders of the insurer. With respect to a guaranty association's obligations under a rehabilitation plan, the receivership court has jurisdiction only if the guaranty association expressly consents to the jurisdiction of the court.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.005 by

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(c), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.005 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(c), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 1, eff. September 1, 2011.

Sec. 443.006. EXEMPTION FROM FEES. The receiver may not be required to pay any filing, recording, transcript, or authenticating fee to any public officer in this state.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.006 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.006 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.007. NOTICE, HEARING, AND APPEAL ON MATTERS SUBMITTED BY RECEIVER FOR RECEIVERSHIP COURT APPROVAL. (a) Upon written request to the receiver, a person must be placed on the service list to receive notice of matters filed by the receiver. It is the responsibility of the person requesting notice to inform the receiver in writing of any changes in the person's address or to request that the person's name be deleted from the service list. The receiver may require that the persons on the service list provide confirmation that they wish to remain on the service list. Any person who fails to confirm the person's intent to remain on the service list may be purged from the service list. Inclusion on the service list does not

confer standing in the delinquency proceeding to raise, appear, or be heard on any issue.

(b) Except as otherwise provided by this chapter, notice and hearing of any matter submitted by the receiver to the receivership court for approval under this chapter must be conducted in accordance with Subsections (c)-(g).

(c) The receiver shall file an application explaining the proposed action and the basis of the proposed action. The receiver may include any evidence in support of the application. If the receiver determines that any documents supporting the application are confidential, the receiver may submit them to the receivership court under seal for in camera inspection.

(d) The receiver shall provide notice of the application to all persons on the service list and any other parties as determined by the receiver. Notice may be provided by first class mail postage paid, electronic mail, or facsimile transmission, at the receiver's discretion. For purposes of this section, notice is deemed to be given on the date that it is deposited with the U.S. Postmaster or transmitted, as applicable, to the last known address as shown on the service list.

(e) Any party in interest objecting to the application must file an objection specifying the grounds for the objection not later than the 20th day after the date of the notice of the filing of the application or within another period as the receivership court may set, and must serve copies on the receiver and any other persons served with the application within the same period. An objecting party has the burden of showing why the receivership court should not authorize the proposed action.

(f) If no objection to the application is timely filed, the receivership court may enter an order approving the application without a hearing, or hold a hearing to determine if the receiver's application should be approved. The receiver may request that the receivership court enter an order or hold a hearing on an expedited basis.

(g) If an objection is timely filed, the receivership court may hold a hearing. If the receivership court approves the application and, upon a motion by the receiver, determines that the objection was frivolous or filed merely for delay or for another improper purpose, the receivership court shall order the objecting party to pay the receiver's reasonable costs and fees of defending the action.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.007 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.007 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.008. INJUNCTIONS AND ORDERS. (a) The receivership court may issue any order, process, or judgment, including stays, injunctions, or other orders, as necessary or appropriate to carry out the provisions of this chapter or an approved rehabilitation plan.

(b) This chapter may not be construed to limit the ability of the receiver to apply to a court other than the receivership court in any jurisdiction to carry out any provision of this chapter or for the purpose of pursuing claims against any person.

(c) Except as provided by Subsection (e) or as otherwise provided by this chapter and subject to Subsection (g), the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the insurer, including an arbitration proceeding, that was or could have been commenced before the commencement of the delinquency proceeding under this chapter, or to recover a claim against the insurer that arose before the commencement of the delinquency proceeding under this chapter;

(2) the enforcement against the insurer or against property of the insurer of a judgment obtained before the commencement of the delinquency proceeding under this chapter;

(3) any act to obtain or retain possession of property of the insurer or of property from the insurer or to exercise control over property or records of the insurer;

(4) any act to create, perfect, or enforce any lien against property of the insurer;

(5) any act to collect, assess, or recover a claim against the insurer that arose before the commencement of a delinquency

proceeding under this chapter;

(6) the commencement or continuation of an action or proceeding against a reinsurer of the insurer, by the holder of a claim against the insurer, seeking reinsurance recoveries that are contractually due to the insurer; and

(7) except as provided by Subsection (e)(1), the commencement or continuation of an action or proceeding by a governmental unit to terminate or revoke an insurance license.

(d) Except as provided in Subsection (e) or as otherwise provided by this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of any judicial, administrative, or other action or proceeding, including the enforcement of any judgment, against any insured that was or could have been commenced before the commencement of the delinquency proceeding under this chapter, or to recover a claim against the insured that arose before or after the commencement of the delinquency proceeding under this chapter and for which the insurer is or may be liable under a policy of insurance or is obligated to defend a party. The stay provided by this subsection terminates 90 days after the date of appointment of the receiver, unless, for good cause shown, the stay is extended by order of the receivership court after notice to any affected parties and any hearing the receivership court determines is appropriate.

(e) Notwithstanding Subsection (c), the commencement of a delinquency proceeding under this chapter does not operate as a stay of:

(1) regulatory actions not described by Subsection (c)(7) that are taken by the commissioners of nondomiciliary states, including the suspension of licenses;

(2) criminal proceedings;

(3) any act to perfect or to maintain or continue the perfection of an interest in property to the extent that the act is accomplished within any relation back period under applicable law;

(4) set off as permitted by Section 443.209;

(5) pursuit and enforcement of nonmonetary governmental claims, judgments, and proceedings;

(6) presentment of a negotiable instrument and the giving of notice and protesting dishonor of the instrument;

(7) enforcement of rights against single beneficiary trusts established pursuant to and in compliance with laws relating to

credit for reinsurance;

(8) termination, liquidation, and netting of obligations under qualified financial contracts as provided for in Section 443.261;

(9) discharge by a guaranty association of statutory responsibilities under any law governing guaranty associations; or

(10) any of the following actions:

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the insurer by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of the assessment.

(f) Except as provided by Subsection (h):

(1) the stay of an act against property of the insurer under Subsection (c) continues until the property is no longer property of the receivership estate; and

(2) the stay of any other act under Subsection (c) continues until the earlier of the time the delinquency proceeding is closed or dismissed.

(g) Notwithstanding the provisions of Subsection (c), claims against the insurer that arose before the commencement of the delinquency proceeding under this chapter may be asserted as a counterclaim in any judicial, administrative, or other action or proceeding initiated by or on behalf of the receiver against the holder of the claims.

(h) On request of a party in interest and after notice and any hearing the receivership court determines is appropriate, the receivership court may grant relief from the stay of Subsection (c) or (d), such as by terminating, annulling, modifying, or conditioning the stay:

(1) for cause as described by Subsection (i); or

(2) with respect to a stay of an act against property under Subsection (c) if:

(A) the insurer does not have equity in the property; and

(B) the property is not necessary to an effective rehabilitation plan.

(i) For purposes of Subsection (h), "cause" includes the

receiver canceling a policy, surety bond, or surety undertaking if the creditor is entitled, by contract or by law, to require the insured or the principal to have a policy, surety bond, or surety undertaking and the insured or the principal fails to obtain a replacement policy, surety bond, or surety undertaking not later than the later of:

(1) the 30th day after the date the receiver cancels the policy, surety bond, or surety undertaking; or

(2) the time permitted by contract or law.

(j) In any hearing under Subsection (h), the party seeking relief from the stay has the burden of proof on each issue, which must be established by clear and convincing evidence.

(k) The estate of an insurer that is injured by any wilful violation of a stay provided by this section is entitled to actual damages, including costs and attorney's fees. In appropriate circumstances, the receivership court may impose additional sanctions.

(l) Any guaranty association or its designated representative may intervene as a party as a matter of right or otherwise appear and participate in any court proceeding concerning a delinquency proceeding if the association is or may become liable to act as a result of the rehabilitation or liquidation of the insurer. Exercise by any guaranty association or its designated representative of the right to intervene conferred under this subsection does not constitute grounds to establish general personal jurisdiction by the courts of this state. The intervening guaranty association or its designated representative are subject to the receivership court's jurisdiction for the limited purpose for which it intervenes.

(m) Notwithstanding any other provision of law, bond may not be required of the commissioner or receiver in relation to any stay or injunction under this section.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.008 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(d), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.008 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(d), eff. September 1, 2007.

Sec. 443.009. STATUTES OF LIMITATIONS. (a) If applicable law, an order, or an agreement fixes a period within which the insurer may commence an action, and this period has not expired before the date of the filing of the initial petition in a delinquency proceeding, the receiver may commence an action only before the later of:

(1) the end of the period, including any suspension of the period occurring on or after the filing of the initial petition in a delinquency proceeding; or

(2) four years after the later of the date of entry of an order for either rehabilitation or liquidation.

(b) Except as provided by Subsection (a), if applicable law, an order, or an agreement fixes a period within which the insurer may file any pleading, demand, notice, or proof of claim or loss, cure a default in a case or proceeding, or perform any other similar act, and the period has not expired before the date of the filing of the petition initiating formal delinquency proceedings, the receiver may file, cure, or perform, as the case may be, only before the later of:

(1) the end of the period, including any suspension of the period occurring on or after the filing of the initial petition in the delinquency proceeding; or

(2) 60 days after the later of the date of entry of an order for either rehabilitation or liquidation.

(c) If applicable law, an order, or an agreement fixes a period for commencing or continuing a civil action in a court other than the receivership court on a claim against the insurer, and the period has not expired before the date of the initial filing of the petition in a delinquency proceeding, then the period does not expire until the later of:

(1) the end of the period, including any suspension of the period occurring on or after the filing of the initial petition in the delinquency proceeding; or

(2) 30 days after termination or expiration of the stay

under Section 443.008 with respect to the claim.

(d) If the otherwise applicable limitations period has not expired prior to the initial filing of the petition commencing a delinquency proceeding, any other action or proceeding filed by a receiver may be commenced at any time within four years after the date upon which the cause of action accrues or four years after the date on which the receiver is appointed, whichever is later.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.009 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(e), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.009 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(e), eff. September 1, 2007.

Sec. 443.010. COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES. (a) Any present or former officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner or receiver in any proceeding under this chapter or any investigation preliminary to the proceeding. For purposes of this section:

(1) "person" includes any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer; and

(2) "cooperate" includes:

(A) replying promptly in writing to any inquiry from the commissioner or receiver requesting the reply; and

(B) promptly making available to the commissioner or receiver any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in the

person's possession, custody, or control.

(b) A person may not obstruct or interfere with the commissioner or receiver in the conduct of any delinquency proceeding or any preliminary or incidental investigation.

(c) This section may not be construed to abridge otherwise existing legal rights, including the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

(d) Any person described by Subsection (a) who fails to cooperate with the commissioner or receiver, or any person who obstructs or interferes with the commissioner or receiver in the conduct of any delinquency proceeding or any preliminary or incidental investigation, or who violates any order validly issued under this chapter:

(1) commits an offense; and

(2) is subject to the imposition by the commissioner of an administrative penalty not to exceed $10,000 and subject to the revocation or suspension of any licenses issued by the commissioner in accordance with Chapters 82 and 84.

(e) An offense under Subsection (d) is punishable by a fine not exceeding $10,000 or imprisonment for not more than one year, or both fine and imprisonment.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.010 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.010 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.011. ACTIONS BY AND AGAINST RECEIVER. (a) An allegation by the receiver of improper or fraudulent conduct against any person may not be the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third party, unless the conduct is found to have been materially and substantially related to the contractual obligation for which enforcement is sought.

(b) A prior wrongful or negligent action of any present or

former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver under a theory of estoppel, comparative fault, intervening cause, proximate cause, reliance, mitigation of damages, or otherwise, except that the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract, and a principal under a surety bond or a surety undertaking is entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that the receiver has possession or control of the property or that the insurer or its agents commingled or otherwise misappropriated the property. Evidence of fraud in the inducement is admissible only if the evidence is contained in the records of the insurer.

(c) An action or inaction by the department or the insurance regulatory authorities in any state may not be asserted as a defense to a claim by the receiver.

(d) Except as provided by Subsection (e), a judgment or order entered against an insured or the insurer in contravention of any stay or injunction under this chapter, or at any time by default or collusion, may not be considered as evidence of liability or of the amount of damages in adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.

(e) Subsection (d) does not apply to guaranty associations' claims for amounts paid on settlements and judgments in pursuit of their statutory obligations.

(f) The receiver may not be deemed a governmental entity for the purposes of any state law awarding fees to a litigant who prevails against a governmental entity.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.011 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.011 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.012. UNRECORDED OBLIGATIONS AND DEFENSES OF AFFILIATES. (a) In any proceeding or claim by the receiver, an affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any defense, unless evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving rise to the defense occurred and, if required by statutory accounting practices and procedures, was timely reported on the insurer's official financial statements filed with the department.

(b) An affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any claim, unless the obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred and, if required by statutory accounting practices and procedures, were timely reported on the insurer's official financial statements filed with the department.

(c) Claims by the receiver against any affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer based on unrecorded or unreported transactions are not barred by this section.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.012 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.012 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.013. EXECUTORY CONTRACTS AND UNEXPIRED LEASES. (a) The receiver may assume or reject any executory contract or unexpired lease of the insurer.

(b) Neither the filing of a petition commencing delinquency proceedings under this chapter nor the entry of an order for a delinquency proceeding constitutes a breach or anticipatory breach of any contract or lease of the insurer.

(c) If there has been a default in an executory contract or

unexpired lease of the insurer, the receiver may not assume the contract or lease unless, at the time of the assumption of the contract or lease, the receiver:

(1) cures or provides adequate assurance that the receiver will promptly cure the default; and

(2) provides adequate assurance of future performance under the contract or lease.

(d) Subsection (c) does not apply to a default that is a breach of a provision relating to:

(1) the insolvency or financial condition of the insurer at any time before the closing of the delinquency proceeding;

(2) the appointment of or taking possession by a receiver in a case under this chapter or a custodian before the commencement of the delinquency proceeding; or

(3) the satisfaction of any penalty rate or provision relating to a default arising from any failure of the insurer to perform nonmonetary obligations under the executory contract or unexpired lease.

(e) A claim arising from the rejection, under this section or a plan of rehabilitation, of an executory contract or unexpired lease of the insurer that has not been assumed shall be determined, treated, and classified as if the claim had arisen before the date of the filing of a successful petition commencing the delinquency proceeding.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.013 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.013 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.0135. CONTRACTS FOR SPECIAL DEPUTIES. (a) Except as provided by Subsection (c), the receiver shall use a competitive bidding process in the selection of any special deputies appointed under Section 443.102 or 443.154. The process must include procedures to promote the participation of historically underutilized

businesses that have been certified by the comptroller under Section 2161.061, Government Code.

(b) A proposal submitted in connection with a bid solicitation under Subsection (a) must describe the efforts that have been made to include historically underutilized businesses as subcontractors and the plan for using the historically underutilized businesses in the administration of the receivership estate. A special deputy appointed under Section 443.102 or 443.154 shall make a good faith effort to implement the plan and shall report to the receiver the special deputy's efforts to identify and subcontract with historically underutilized businesses.

(c) In the event of an emergency, the receiver may appoint a special deputy without soliciting competitive bids. For the purposes of this subsection, an emergency exists if:

(1) a court has made a determination described by Section 202(a)(1)(A)(iv)(I), Pub. L. No. 111-203; or

(2) the receiver concludes that the competitive bidding process would delay the appointment of a special deputy and that the delay could be hazardous to the insurer's policyholders or creditors or the general public.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(f), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.0135 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(f), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.98, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 2, eff. September 1, 2011.

Sec. 443.014. IMMUNITY AND INDEMNIFICATION OF RECEIVER AND ASSISTANTS. (a) For the purposes of this section, the persons

entitled to immunity and indemnification and those entitled to immunity only, as applicable, are:

(1) all present and former receivers responsible for the conduct of a delinquency proceeding under this chapter;

(2) all of the receiver's present and former assistants, including:

(A) all present and former special deputies and assistant special deputies engaged by contract or otherwise;

(B) all persons whom the receiver, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under this chapter; and

(C) any state employees acting with respect to a delinquency proceeding under this chapter; and

(3) all of the receiver's present and former contractors, including all persons with whom the receiver, special deputies, or assistant special deputies have contracted to assist in a delinquency proceeding under this chapter, including attorneys, accountants, auditors, actuaries, investment bankers, financial advisors, and any other professionals or firms who are retained or contracted with by the receiver as independent contractors and all employees of the contractors.

(b) The receiver, the receiver's assistants, and the receiver's contractors have immunity under this chapter, as described by Subsections (c) and (d).

(c) The receiver, the receiver's assistants, and the receiver's contractors are immune from suit and liability, both personally and in their representative capacities, for any claim for damage to or loss of property or personal injury or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any assistant or contractor that arises out of or by reason of their duties or employment or is taken at the direction of the receivership court, providing that the alleged act, error, or omission is performed in good faith.

(d) Any immunity granted by this section is in addition to any immunity granted by other law.

(e) The receiver and the receiver's assistants are entitled to indemnification under this chapter, as described by Subsections (f)-(l).

(f) If any legal action is commenced against the receiver or any assistant, whether against the receiver or assistant personally

or in their official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or any assistant arising out of or by reason of their duties or employment, the receiver and any assistant are indemnified from the assets of the insurer for all expenses, attorney's fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action, unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or assistant giving rise to the claim:

(1) did not arise out of or by reason of their duties or employment; or

(2) was caused by intentional or wilful and wanton misconduct.

(g) Attorney's fees and any and all related expenses incurred in defending a legal action for which immunity or indemnity is available under this section must be paid from the assets of the insurer, as the fees and expenses are incurred, and in advance of the final disposition of the legal action upon receipt of an agreement by or on behalf of the receiver or assistant to repay the attorney's fees and expenses, if it is ultimately determined upon a final adjudication on the merits that the receiver or assistant is not entitled to immunity or indemnity under this section.

(h) Any indemnification for expense payments, judgments, settlements, decrees, attorney's fees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets pursuant to this section are an administrative expense of the insurer.

(i) In the event of any actual or threatened litigation against a receiver or any assistant for whom immunity or indemnity may be available under this section, a reasonable amount of funds, which in the judgment of the receiver may be needed to provide immunity or indemnity, must be segregated and reserved from the assets of the insurer as security for the payment of indemnity until:

(1) all applicable statutes of limitation have run;

(2) all actual or threatened actions against the receiver or any assistant have been completely and finally resolved; and

(3) all obligations under this section have been satisfied.

(j) Instead of segregating and reserving funds under Subsection (i), the receiver may, in the receiver's discretion, obtain a surety

bond or make other arrangements that will enable the receiver to secure fully the payment of all obligations under this section.

(k) If any legal action against an assistant for whom indemnity may be available under this section is settled prior to final adjudication on the merits, the receiver must pay the settlement amount on behalf of the assistant, or indemnify the assistant for the settlement amount, unless the receiver determines that the claim:

(1) did not arise out of or by reason of the assistant's duties or employment; or

(2) was caused by the intentional or wilful and wanton misconduct of the assistant.

(l) In any legal action in which a claim is asserted against the receiver, that portion of any settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the receivership court. The receivership court may not approve that portion of the settlement if it determines that the claim:

(1) did not arise out of or by reason of the receiver's duties or employment; or

(2) was caused by the intentional or wilful and wanton misconduct of the receiver.

(m) Nothing contained or implied in this section may operate or be construed or applied to deprive the receiver, the receiver's assistants, or receiver's contractors of any immunity, indemnity, benefits of law, rights, or defense otherwise available.

(n) The immunity and indemnification provided to the receiver's assistants and the immunity provided to the receiver's contractors under this section do not apply to any action by the receiver against that person.

(o) Subsection (b) applies to any suit based in whole or in part on any alleged act, error, or omission that takes place on or after September 1, 2005.

(p) Subsections (e)-(l) apply to any suit that is pending on or filed after September 1, 2005, without regard to when the alleged act, error, or omission took place.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.014 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.014 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.015. APPROVAL AND PAYMENT OF EXPENSES. (a) The receiver may pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the insurer prior to receivership, as the receiver deems necessary for the purposes of this chapter. The receiver is not required to pay any expenses that the receiver determines are not necessary, and may reject any contract pursuant to Section 443.013.

(b) Receivership expenses other than those described in Subsection (a) must be paid in accordance with Subsections (c)-(f).

(c) The receiver shall submit to the receivership court an application pursuant to Section 443.007 to approve:

(1) the terms of compensation of each special deputy or contractor with respect to which the total amount of the compensation is reasonably expected by the receiver for the duration of the delinquency proceeding to exceed $250,000, or another amount established by the receivership court; and

(2) any other anticipated expense in excess of $25,000, or another amount established by the receivership court.

(d) The receiver may, as the receiver deems appropriate, submit an application to approve any compensation, anticipated expenses, or incurred expenses not described by Subsection (c)(1).

(e) The receiver may pay any expenses not requiring receivership court approval and any expenses approved by the rehabilitation or liquidation order as the expenses are incurred.

(f) The approval of expenses by the receivership court does not prejudice the right of the receiver to seek any recovery, recoupment, disgorgement, or reimbursement of fees based on contract or causes of action recognized in law or in equity.

(g) On a quarterly basis, or as otherwise provided by the receivership court, the receiver shall submit to the receivership court a report summarizing the expenses incurred during the period.

(h) Receivership court approval may not be required to pay expenses incurred by the receiver in connection with the appeal of an order of the receivership court.

(i) All expenses of receivership shall be paid from the assets

of the insurer, except as provided by this subsection. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the expenses incurred, the commissioner may advance funds from the account established under Section 443.304(c). Any amounts advanced shall be repaid to the account out of the first available money of the insurer.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.015 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(g), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.015 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(g), eff. September 1, 2007.

Sec. 443.016. FINANCIAL REPORTING. (a) Not later than the 120th day after the date of entry of an order of receivership by the receivership court, and at least quarterly after that date, the receiver shall file a financial report with the receivership court. A financial report filed under this subsection at a minimum, must include:

(1) a statement of the assets and liabilities of the insurer;

(2) the changes in those assets and liabilities; and

(3) all funds received or disbursed by the receiver during the period covered by the report.

(b) The receivership court shall require a financial report filed under Subsection (a) to comply with all receivership financial reporting requirements specified by the National Association of Insurance Commissioners and adopted in this state by rule by the commissioner.

(c) Not later than the 120th day after the date of entry of an

order of liquidation by the receivership court, and at least quarterly after that date, or at other intervals as may be agreed to between the liquidator and the guaranty associations, but in no event less than annually, each affected guaranty association shall file reports with the liquidator. The reports must be in a format compatible with that specified by the National Association of Insurance Commissioners. Reports under this subsection shall be filed with the receivership court.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.016 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.016 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.017. RECORDS. (a) Upon entry of an order of rehabilitation or liquidation, the receiver is vested with title to all of the books, documents, papers, policy information, and claim files, and all other records of the insurer, of whatever nature, in whatever medium, and wherever located, regardless of whether the records are in the custody and control of a third-party administrator, managing general agent, attorney, or other representative of the insurer. The receiver may immediately take possession and control of all of the records of the insurer, and of the premises where the records are located. A third-party administrator, managing general agent, attorney, or other representative of the insurer shall release all records described by this subsection to the receiver, or the receiver's designee, at the request of the receiver. A guaranty association that has or may have obligations under a policy issued by the insurer has the right, with the receiver's approval, to take actions as are necessary to obtain directly from any third-party administrator, managing general agent, attorney, or other representative of the insurer all records described by this section that pertain to the insurer's business and that are appropriate or necessary for the guaranty association to fulfill the association's statutory obligations.

(b) The receiver has the authority to certify the records of a delinquent insurer described by Subsection (a) and the records of the receiver's office created and maintained in connection with a delinquent insurer, as follows:

(1) records of a delinquent insurer may be certified by the receiver in an affidavit stating that the records:

(A) are true and correct copies of records of the insurer; and

(B) were received from the custody of the insurer or found among its effects; and

(2) records created by or filed with the receiver's office in connection with a delinquent insurer may be certified by the receiver's affidavit stating that the records are true and correct copies of records maintained by the receiver's office.

(c) Original books, documents, papers, and other records, or copies of original records certified under Subsection (b), when admitted in evidence, are prima facie evidence of the facts disclosed.

(d) The records of a delinquent insurer held by the receiver may not be considered records of the department for any purposes, and Chapter 552, Government Code, does not apply to those records.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.017 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.017 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

SUBCHAPTER B. PROCEEDINGS

Sec. 443.051. RECEIVERSHIP COURT'S SEIZURE ORDER. (a) The commissioner may file in a district court of Travis County a petition with respect to an insurer domiciled in this state, an unauthorized insurer, or, pursuant to Section 443.401, a foreign insurer:

(1) alleging that grounds exist that would justify a court order for a formal delinquency proceeding against the insurer under this chapter;

(2) alleging that the interests of policyholders, creditors, or the public will be endangered by delay; and

(3) setting forth the contents of a seizure order deemed to be necessary by the commissioner.

(b) Upon a filing under Subsection (a), the receivership court may issue, ex parte and without notice or hearing, the requested seizure order directing the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business, and until further order of the receivership court, enjoining the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner. Any person having possession or control of and refusing to deliver any of the books, records, or assets of a person against whom a seizure order has been issued commits an offense. An offense under this subsection is punishable in the manner described by Section 443.010(e).

(c) A petition that prays for injunctive relief must be verified by the commissioner or the commissioner's designee, but need not plead or prove irreparable harm or inadequate remedy at law. The commissioner shall provide only the notice as the receivership court may require.

(d) The receivership court shall specify in the seizure order the duration of the seizure order, which shall be a period the receivership court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of the commissioner or the insurer, or the court's own motion, the receivership court may, from time to time, hold hearings as it deems desirable after notice as it deems appropriate, and may extend, shorten, or modify the terms of the seizure order. The receivership court shall vacate the seizure order if the commissioner fails to commence a formal delinquency proceeding under this chapter after having had a reasonable opportunity to do so. An order of the receivership court pursuant to a formal proceeding under this chapter vacates the seizure order.

(e) Entry of a seizure order under this section does not constitute a breach or an anticipatory breach of any contract of the insurer.

(f) An insurer subject to an ex parte seizure order under this section may petition the receivership court at any time after the

issuance of a seizure order for a hearing and review of the seizure order. The receivership court shall hold the hearing and conduct the review not later than the 15th day after the date of the request. A hearing under this subsection may be held privately in chambers, and a hearing shall be held privately in chambers if the insurer proceeded against so requests.

(g) If, at any time after the issuance of a seizure order, it appears to the receivership court that any person whose interest is or will be substantially affected by the seizure order did not appear at the hearing and has not been served, the receivership court may order that notice be given to the person. An order that notice be given does not stay the effect of any seizure order previously issued by the receivership court.

(h) Whenever the commissioner makes any seizure as provided by Subsection (b), on the demand of the commissioner, the sheriff of any county and the police department of any municipality shall furnish the commissioner with the deputies, patrolmen, or officers as may be necessary to assist the commissioner in making and enforcing the seizure order.

(i) In all proceedings and judicial reviews under this section, all records of the insurer, department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, are confidential, and all papers filed with the clerk of the court shall be held by the clerk in a confidential file as permitted by law, except to the extent necessary to obtain compliance with any order entered in connection with the proceedings, unless and until:

(1) the court, after hearing argument in chambers, orders otherwise;

(2) the insurer requests that the matter be made public; or

(3) the commissioner applies for an order under Section 443.057.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.051 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(h),

eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.051 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(h), eff. September 1, 2007.

Sec. 443.052. COMMENCEMENT OF FORMAL DELINQUENCY PROCEEDING. (a) Except as authorized by Section 203(e)(3), Pub. L. No. 111-203, any formal delinquency proceeding against a person shall be commenced by filing a petition in the name of the commissioner or department.

(b) The petition must state the grounds upon which the proceeding is based and the relief requested and may include a prayer for restraining orders and injunctive relief as described in Section 443.008. On the filing of the petition or order, a copy shall be forwarded by first class mail or electronic communication as permitted by the receivership court to the insurance regulatory officials and guaranty associations in states in which the insurer did business.

(c) Any petition that prays for injunctive relief must be verified by the commissioner or the commissioner's designee, but need not plead or prove irreparable harm or inadequate remedy at law. The commissioner shall provide only the notice as the receivership court may require.

(d) If any temporary restraining order is prayed for:

(1) the receivership court may issue an initial order containing the relief requested;

(2) the receivership court shall set a time and date for the return of summons, not later than 10 days after the time and date of the issuance of the initial order, at which time the person proceeded against may appear before the receivership court for a summary hearing;

(3) the order must state the time and date of its issuance; and

(4) the order may not continue in effect beyond the time and date set for the return of summons, unless the receivership court expressly enters one or more orders extending the restraining order.

(e) If a temporary restraining order is not requested, the

receivership court shall cause summons to be issued. The summons must specify a return date not later than the 30th day after the date of issuance and that an answer must be filed at or before the return date.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.052 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(i), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.052 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(i), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 3, eff. September 1, 2011.

Sec. 443.053. RETURN OF SUMMONS AND SUMMARY HEARING. (a) The receivership court shall hold a summary hearing at the time and date for the return of summons on a petition to commence a formal delinquency proceeding.

(b) If a person is not served with summons on a petition to commence a formal delinquency proceeding and fails to appear for the summary hearing, the receivership court shall:

(1) continue the summary hearing not more than 10 days;

(2) provide for alternative service of summons upon the person; and

(3) extend any restraining order.

(c) Upon a showing of good faith efforts to effect personal service upon a person who has failed to appear for a continued summary hearing, the receivership court shall order notice of the petition to commence a formal delinquency proceeding to be published. The order and notice shall specify a return date not less than 10 or later than 20 days after the date of publication and that the

restraining order has been extended to the continued hearing date.

(d) If a person fails to appear for a summary hearing on a petition to commence a formal delinquency proceeding after service of summons, the receivership court shall enter judgment in favor of the commissioner against that person.

(e) A person who appears for the summary hearing on a petition to commence a formal delinquency proceeding shall file the person's answer at the hearing, and the receivership court shall:

(1) determine whether to extend any temporary restraining orders pending final judgment; and

(2) set the case for trial on a date not later than 10 days after the date of the summary hearing.

(f) The receivership court may not grant a continuance for filing an answer.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.053 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.053 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.054. PROCEEDINGS FOR EXPEDITED TRIAL: CONTINUANCES, DISCOVERY, EVIDENCE. (a) The receivership court shall proceed to hear the case on the petition to commence a formal delinquency proceeding at the time and date set forth for trial. To the extent practicable, the receivership court shall give precedence to the matter over all other matters. To the extent authorized by law, the receivership court may assign the matter to other judges if necessary to comply with the need for expedited proceedings under this chapter.

(b) Continuances for trial may be granted only in extreme circumstances.

(c) The receivership court shall admit into evidence, as self-authenticated, certified copies of any of the following when offered by the commissioner:

(1) the financial statements made by the insurer or an affiliate;

(2) examination reports of the insurer or an affiliate made by or on behalf of the commissioner; and

(3) any other document filed with any insurance department by the insurer or an affiliate.

(d) The facts contained in any examination report of the insurer or an affiliate made by or on behalf of the commissioner are presumed to be true as of the date of the hearing if the examination was made as of a date not more than 270 days before the date the petition was filed. The presumption is rebuttable, and shifts the burden of production and persuasion to the insurer.

(e) Discovery is limited to grounds alleged in the petition and shall be concluded on an expedited basis.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.054 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.054 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.055. DECISION AND APPEALS. (a) The receivership court shall enter judgment on the petition to commence formal delinquency proceedings not later than the 15th day after the date of conclusion of the evidence.

(b) The judgment is final when entered. Any appeal must be prosecuted on an expedited basis and must be taken not later than the fifth day after the date of entry of the judgment. A request for reconsideration, review, or appeal, or posting of a bond does not dissolve or stay the judgment.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.055 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.055 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.056. CONFIDENTIALITY. (a) The commissioner, rehabilitator, or liquidator may share documents, materials, or other information in the possession, custody, or control of the department without regard to the confidentiality of those documents, materials, or information, pertaining to an insurer that is the subject of a proceeding under this chapter with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, with state, federal, and international law enforcement authorities, with an auditor appointed by the receivership court in accordance with Section 443.355, and, pursuant to Section 443.105, with representatives of guaranty associations that may have statutory obligations as a result of the insolvency of the insurer, provided that the recipient agrees to maintain the confidentiality, if any, of the documents, material, or other information. Nothing in this section limits the power of the commissioner to disclose information under other applicable law.

(b) A domiciliary receiver shall permit a commissioner of another state or a guaranty association to obtain a listing of policyholders and certificate holders residing in the requestor's state, including current addresses and summary policy information, provided that the commissioner of the other state or the guaranty association agrees to maintain the confidentiality of the records and agrees that the records will be used only for regulatory or guaranty association purposes. Access to records may be limited to normal business hours. In the event that the domiciliary receiver believes that certain information is sensitive and that disclosure may cause a diminution in recovery, the receiver may apply for a protective order imposing additional restrictions on access.

(c) The Texas Workers' Compensation Commission shall report to the department any information that a workers' compensation insurer has committed acts that indicate that the insurer is impaired or insolvent. A report made under this subsection is confidential under this section.

(d) The confidentiality obligations imposed by this section end upon the entry of an order of liquidation against the insurer, unless otherwise agreed to by the parties or pursuant to an order of the receivership court.

(e) A waiver of any applicable privilege or claim of confidentiality does not occur as a result of any disclosure, or any sharing of documents, materials, or other information, made pursuant to this section.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.056 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(j), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.056 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(j), eff. September 1, 2007.

Sec. 443.057. GROUNDS FOR CONSERVATION, REHABILITATION, OR LIQUIDATION. A petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation may be filed on any one or more of the following grounds:

(1) the insurer is impaired;

(2) the insurer is insolvent;

(3) the insurer is about to become insolvent, with "about to become insolvent" being defined as reasonably anticipated that the insurer will not have liquid assets to meet its next 90 days' current obligations;

(4) the insurer has neglected or refused to comply with an order of the commissioner to make good within the time prescribed by law any deficiency, whenever its capital and minimum required surplus, if a stock company, or its surplus, if a company other than stock, has become impaired;

(5) the insurer, its parent company, its subsidiaries, or its affiliates have converted, wasted, or concealed property of the insurer or have otherwise improperly disposed of, dissipated, used, released, transferred, sold, assigned, hypothecated, or removed the

property of the insurer;

(6) the insurer is in a condition such that it could not meet the requirements for organization and authorization as required by law, except as to the amount of the original surplus required of a stock company under Title 6, and except as to the amount of the surplus required of a company other than a stock company in excess of the minimum surplus required to be maintained;

(7) the insurer, its parent company, its subsidiaries, or its affiliates have concealed, removed, altered, destroyed, or failed to establish and maintain books, records, documents, accounts, vouchers, and other pertinent material adequate for the determination of the financial condition of the insurer by examination under Chapter 401 or has failed to properly administer claims or maintain claims records that are adequate for the determination of its outstanding claims liability;

(8) at any time after the issuance of an order under Section 404.003 or Chapter 441, or at the time of instituting any proceeding under this chapter, it appears to the commissioner that, upon good cause shown, it would not be in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer;

(9) the insurer is in a condition such that the further transaction of business would be hazardous financially, according to Subchapter A, Chapter 404, or otherwise, to its policyholders, creditors, or the public;

(10) there is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's property, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer;

(11) control of the insurer is in a person who is:

(A) dishonest or untrustworthy; or

(B) so lacking in insurance company managerial experience or capability as to be hazardous to policyholders, creditors, or the public;

(12) any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, shareholder, or other person, has refused to be examined under oath by the commissioner concerning the insurer's

affairs, whether in this state or elsewhere or if examined under oath, refuses to divulge pertinent information reasonably known to the person; and after reasonable notice of the fact, the insurer has failed promptly and effectively to terminate the employment and status of the person and all the person's influence on management;

(13) after demand by the commissioner under Chapter 401 or under this chapter, the insurer has failed promptly to make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer or of any person having executive authority in the insurer, so far as they pertain to the insurer;

(14) without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to Chapter 823 or any law relating to bulk reinsurance, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(15) the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state;

(16) within the previous five years, the insurer has wilfully and continuously violated its charter, articles of incorporation or bylaws, any insurance law of this state, or any valid order of the commissioner;

(17) the insurer has failed to pay within 60 days after the due date any obligation to any state or political subdivision of a state or any judgment entered in any state, if the court in which the judgment was entered had jurisdiction over the subject matter, except that nonpayment is not a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts;

(18) the insurer has systematically engaged in the practice of reaching settlements with and obtaining releases from claimants, and then unreasonably delayed payment, failed to pay the agreed-upon settlements, or systematically attempted to compromise with claimants or other creditors on the ground that it is financially unable to pay its claims or obligations in full;

(19) the insurer has failed to file its annual report or other financial report required by statute within the time allowed by law;

(20) the board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified by Section 443.003, request or consent to rehabilitation or liquidation under this chapter;

(21) the insurer does not comply with its domiciliary state's requirements for issuance to it of a certificate of authority, or its certificate of authority has been revoked by its state of domicile;

(22) when authorized by department rules; or

(23) a court has made a determination described by Section 202(a)(1)(A)(iv)(I), Pub. L. No. 111-203.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(k), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.057 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(k), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 4, eff. September 1, 2011.

Sec. 443.058. ENTRY OF ORDER. If any of the grounds provided in Section 443.057 are established, the receivership court shall grant the petition and issue the order of rehabilitation or liquidation requested in the petition.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(l), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.058 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(l), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 5, eff. September 1, 2011.

Sec. 443.059. EFFECT OF PETITION OR ORDER ON CONTRACT OR LEASE. Neither the filing of a petition under this chapter nor the entry of any order of seizure, rehabilitation, or liquidation constitutes a breach or an anticipatory breach of any contract or lease of the insurer.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.059 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.059 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

SUBCHAPTER C. REHABILITATION

Sec. 443.101. REHABILITATION ORDERS. (a) An order to rehabilitate the business of an insurer must appoint the commissioner and the commissioner's successors in office as the rehabilitator and must direct the rehabilitator to take possession of the property of the insurer wherever located and to administer it subject to this chapter. The rehabilitator is entitled to request the receivership court to appoint a single judge to supervise the rehabilitation and hear any cases or controversies arising out of or related to the rehabilitation. Rehabilitation proceedings are exempt from any dormancy or similar program maintained by the receivership court for the early closure of civil actions. The filing or recording of the order with the clerk of the court or recorder of deeds of the county in which the principal business of the company is conducted, or, in the case of real estate, the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded with the recorder of deeds would impart. The order to rehabilitate the

insurer must, by operation of law, vest title to all property of the insurer in the rehabilitator.

(b) Any order issued under this section must require accountings to the receivership court by the rehabilitator. Accountings must be at the intervals specified by the receivership court in its order, but not less frequently than semi-annually. Each accounting must include a report concerning the rehabilitator's opinion as to the likelihood that a plan under Section 443.103 will be prepared by the rehabilitator and the timetable for doing so.

(c) In recognition of the need for a prompt and final resolution for all persons affected by a plan of rehabilitation, any appeal from an order of rehabilitation or an order approving a plan of rehabilitation must be heard on an expedited basis. A stay of an order of rehabilitation or an order approving a plan of rehabilitation may not be granted unless the appellant demonstrates that extraordinary circumstances warrant delaying the recovery under the plan of rehabilitation of all other persons, including policyholders. If the plan provides an appropriate mechanism for adjustment in the event of any adverse ruling from an appeal, a stay may not be granted.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.101 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(m), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.101 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(m), eff. September 1, 2007.

Sec. 443.102. POWERS AND DUTIES OF REHABILITATOR. (a) The rehabilitator may appoint one or more special deputies. A special deputy serves at the pleasure of the rehabilitator and has all the

powers and responsibilities of the rehabilitator granted under this section, unless specifically limited by the rehabilitator. The rehabilitator may employ or contract with legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants, and other personnel as may be deemed necessary. Any special deputy or any other person with whom the rehabilitator contracts under this subsection may act on behalf of the commissioner only in the commissioner's capacity as rehabilitator. Any person with whom the rehabilitator contracts under this subsection is not considered an agent of the state, and any contract entered into under this subsection does not constitute a contract with the state. The provisions of any law governing the procurement of goods and services by the state does not apply to any contract entered into by the commissioner as rehabilitator. The compensation of any special deputies, employees, and contractors and all expenses of taking possession of the insurer and of conducting the rehabilitation shall be fixed by the rehabilitator, with the approval of the receivership court in accordance with Section 443.015, and shall be paid out of the property of the insurer. The persons appointed under this subsection serve at the pleasure of the rehabilitator. If the rehabilitator deems it necessary to the proper performance of the rehabilitator's duties under this chapter, the rehabilitator may appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations. The advisory committee serves at the pleasure of the rehabilitator and without compensation or reimbursement for expenses. The rehabilitator or the receivership court in rehabilitation proceedings conducted under this chapter may not appoint another committee of any nature.

(b) The rehabilitator may take action as the rehabilitator deems necessary or appropriate to reform and revitalize the insurer, including canceling policies, insurance and reinsurance contracts other than life or health insurance or annuities, or surety bonds or surety undertakings or transferring policies, insurance and reinsurance contracts, or surety bonds or surety undertakings to a solvent assuming insurer, with court approval. The rehabilitator has all the powers of the directors, officers, and managers of the insurer, whose authority is suspended, except as redelegated by the rehabilitator. The rehabilitator has full power to direct and manage, hire and discharge employees, and deal with the property and business of the insurer.

(c) If it appears to the rehabilitator that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee, affiliate or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

(d) The rehabilitator may assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition under this chapter has been filed does not bind the rehabilitator.

(e) The enumeration, in this section, of the powers and authority of the rehabilitator may not be construed as a limitation upon the rehabilitator, nor shall it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of rehabilitation.

(f) The rehabilitator may exercise all powers:

(1) possessed on August 31, 2005, by a receiver appointed for the purpose of rehabilitating an insurer; or

(2) conferred on a rehabilitator after that date by the laws of this state that are not inconsistent with this chapter.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.102 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(n), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.102 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(n), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 6, eff. September 1, 2011.

Sec. 443.103. REHABILITATION PLANS. (a) The rehabilitator shall prepare and file a plan to effect rehabilitation with the receivership court not later than the first anniversary of the entry of the rehabilitation order or another further time as the receivership court may allow. Upon application of the rehabilitator for approval of the plan, and after the notice and hearings the receivership court may prescribe, the receivership court may approve or disapprove the proposed plan or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the receivership court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. A plan for a life insurer may propose imposition of a moratorium upon loan and cash surrender rights under policies, for a period not to exceed one year from the entry of the rehabilitation order approving the rehabilitation plan, unless the receivership court, for good cause shown, extends the moratorium.

(b) Once a plan has been filed, any party in interest may object to the plan.

(c) A plan must:

(1) except as provided by Subsection (e), provide no less favorable treatment of a claim or class of claims than would occur in liquidation, unless the holder of a particular claim or interest agrees to a less favorable treatment of that particular claim or interest;

(2) provide adequate means for the plan's implementation;

(3) contain information concerning the financial condition of the insurer and the operation and effect of the plan, as far as is reasonably practicable in light of the nature and history of the insurer, the condition of the insurer's books and records, and the nature of the plan; and

(4) provide for the disposition of the books, records, documents, and other information relevant to the duties and obligations covered by the plan.

(d) A plan may include any other provision not inconsistent with the provisions of this chapter, including:

(1) payment of distributions;

(2) assumption or reinsurance of all or a portion of the insurer's remaining liabilities by, and transfer of assets and related books and records to, an authorized insurer or other entity;

(3) to the extent appropriate, application of insurance

company regulatory market conduct standards to any entity administering claims on behalf of the receiver or assuming direct liabilities of the insurer;

(4) contracting with a state guaranty association or any other qualified entity to perform the administration of claims;

(5) annual independent financial and performance audits of any entity administering claims on behalf of the receiver that is not otherwise subject to examination pursuant to state insurance law; and

(6) termination of the insurer's liabilities other than those under policies of insurance as of a date certain.

(e) A plan may designate and separately treat one or more separate subclasses of claims consisting only of claims within the subclasses that are for or reduced to de minimis amounts. For purposes of this subsection, a "de minimis amount" means any amount equal to or less than a maximum de minimis amount approved by the receivership court as being reasonable and necessary for administrative convenience.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.103 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.103 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.104. TERMINATION OF REHABILITATION. (a) When the rehabilitator believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public or would be futile, the rehabilitator may move for an order of liquidation. In accordance with Section 443.105, the rehabilitator or the rehabilitator's designated representative shall coordinate with the guaranty associations that may become liable as a result of the liquidation and any national association of guaranty associations to plan for transition to liquidation.

(b) Because the protection of the interests of insureds, claimants, and the public requires the timely performance of all

insurance policy obligations, if the payment of policy obligations is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under Section 443.103, the rehabilitator shall petition the receivership court for an order of liquidation.

(c) The rehabilitator or the directors of the insurer may at any time petition the receivership court for, or the receivership court on its own motion may enter, an order terminating rehabilitation of an insurer. Subject to the provisions of Section 443.351, if the receivership court finds that rehabilitation has been accomplished and that grounds for rehabilitation under Section 443.057 no longer exist, it shall order that the insurer be restored to title and possession of its property and the control of the business.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(o), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.104 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(o), eff. September 1, 2007.

Sec. 443.105. COORDINATION WITH GUARANTY ASSOCIATIONS. (a) The receiver shall notify any potentially obligated guaranty association or the guaranty association's representative concerning the entry of a rehabilitation order and shall update the guaranty association or its representative regarding significant developments that impact efforts to rehabilitate the insurer. On a determination by the rehabilitator that rehabilitation efforts may not be successful, the rehabilitator shall participate in cooperative efforts with the potentially obligated guaranty associations. To facilitate an orderly transition to liquidation, the rehabilitator shall make available to the guaranty associations the information necessary to discharge their responsibilities upon becoming statutorily obligated. To the extent that information is available,

or as it becomes available, the rehabilitator shall provide appropriate information to guaranty associations in the states in which the insurer transacted business.

(b) For the purposes of Subsection (a), "appropriate information" may include the following for lines of business written by the insurer, whether covered or not covered by guaranty associations:

(1) a general description of the different types of business written or assumed by the insurer;

(2) claim counts and policy counts by state and by line of business;

(3) claim and policy reserves;

(4) account values and cash surrender values;

(5) policy loans;

(6) interest crediting history;

(7) premiums and mode of payment;

(8) unpaid claims and amounts;

(9) sample policies and endorsements;

(10) a listing of different locations of claim files;

(11) if third-party administrators were used, copies of executed contracts and a description of the contractual arrangements; and

(12) information concerning claims in litigation or dispute, including a listing of claims with assigned defense counsel for those claims going to trial in the near future after a possible liquidation date.

(c) For the purposes of Subsection (a), "appropriate information" also includes information concerning states in which the insurer is or was licensed and periods for which the insurer is or was licensed and other information reasonably requested by a guaranty association necessary for the guaranty association to fulfill its statutory duties.

(d) In the case of a property and casualty insurer, the rehabilitator, in cooperation with the guaranty associations, shall make all reasonable efforts to prepare the insurer's electronic policy and claims data so that, upon the entry of an order of liquidation, the data will be ready for transmission using the Uniform Data Standards as promulgated by the National Association of Insurance Commissioners.

(e) The list of what appropriate information includes under

Subsections (b) and (c) is not necessarily an exclusive list. Other information may be necessary to ensure that an orderly transition to liquidation occurs, and that information may be appropriately provided by the receiver.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.105 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.105 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

SUBCHAPTER D. LIQUIDATION

Sec. 443.151. LIQUIDATION ORDERS. (a) An order to liquidate the business of an insurer shall appoint the commissioner and any successor in office as the liquidator and shall direct the liquidator to take possession of the property of the insurer and to administer it subject to this chapter. The liquidator is entitled to request the receivership court to appoint a single judge to supervise the liquidation and to hear any cases or controversies arising out of or related to the liquidation. Liquidation proceedings are exempt from any dormancy or similar program maintained by the receivership court for the early closure of civil actions. As of the entry of the final order of liquidation, the liquidator is vested by operation of law with the title to all of the property, contracts, rights of action, and books and records of the insurer ordered liquidated, wherever located. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which the insurer's principal office or place of business is located or, in the case of real estate, the county where the property is located, imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded with that recorder of deeds would impart.

(b) Upon issuance of the order of liquidation, the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided by Sections 443.152 and 443.255, unless otherwise

fixed by the court.

(c) An order to liquidate the business of an alien insurer in this state must be in the same terms and has the same legal effect as an order to liquidate a domestic insurer.

(d) At the time of petitioning for an order of liquidation, or at any time after petitioning, the commissioner may petition the receivership court for a judicial declaration of insolvency. After providing the notice and hearing as it deems proper, the receivership court may make the declaration of insolvency.

(e) In the event an order of liquidation is set aside on appeal, the company may not be released from delinquency proceedings except in accordance with Section 443.351.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.151 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(p), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.151 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(p), eff. September 1, 2007.

Sec. 443.152. CONTINUANCE OF COVERAGE. (a) Notwithstanding any policy or contract language or any other statute, all reinsurance contracts by which the insurer has assumed the insurance obligations of another insurer are canceled upon entry of an order of liquidation.

(b) Notwithstanding any policy or contract language or any other statute, all policies, insurance contracts other than reinsurance by which the insurer has ceded insurance obligations to another person, and surety bonds or surety undertakings, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation, unless further extended by the

receiver with the approval of the receivership court, continue in force only until the earlier of:

(1) the 30th day after the date of entry of the liquidation order;

(2) the date of expiration of the policy coverage;

(3) the date the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy;

(4) the date the liquidator has effected a transfer of the policy obligation pursuant to Section 443.154(h); or

(5) the date proposed by the liquidator and approved by the receivership court to cancel coverage.

(c) An order of liquidation under Section 443.151 must terminate coverages at the time specified by Subsections (a) and (b) for purposes of any other statute.

(d) Policies of life or health insurance or annuities covered by a guaranty association and any portion of policies of life or health insurance or annuities covered by a guaranty association continue in force for the period and under the terms provided for by any applicable guaranty association law. Policies of life or health insurance or annuities not covered by a guaranty association and any portion of policies of life or health insurance or annuities not covered by a guaranty association terminate under Subsection (b), except to the extent the liquidator proposes and the receivership court approves the use of property of the estate, consistent with Section 443.301, for the purpose of continuing the contracts or coverage by transferring them to an assuming reinsurer.

(e) The cancellation of any bond or surety undertaking does not release any cosurety or guarantor.

(f) The obligations of the insolvent insurer's reinsurers are not released or discharged by a cancellation under this section.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.152 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(q), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.152 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(q), eff. September 1, 2007.

Sec. 443.153. SALE OR DISSOLUTION OF INSURER'S CORPORATE ENTITY. (a) Notwithstanding the entry of a liquidation order, the liquidator may apply for an order to sell or dissolve the corporate entity or charter of a domestic insurer or the United States branch of an alien insurer domiciled in this state at any time after an order of liquidation of the insurer has been granted, consistent with the provisions of this section.

(b) Upon an application to sell the corporate entity or charter, with notice as prescribed in this chapter, the receivership court may enter an order:

(1) separating the corporate entity or charter, together with any of its licenses to do business and the assets the liquidator deems appropriate to the transaction, from the remaining estate in liquidation and all of the remaining estate's assets and the claims or interests of all claimants, creditors, policyholders, and stockholders;

(2) canceling all outstanding stock and other securities of and other equity interests in the corporate entity or charter, provided that the cancellation may not affect any claim against the estate by a holder of an equity interest;

(3) authorizing the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the corporate entity or charter; and

(4) authorizing the sale of the corporate entity or charter, together with any of its authorizations or licenses to do business and the general assets of the estate the liquidator deems to be appropriate to the transaction, free and clear from the claims or interest of all claimants, creditors, policyholders, and stockholders.

(c) The sale of the corporate entity or charter may be made in the manner and on the terms and conditions applied for by the liquidator and ordered by the receivership court. Any sale is

subject to the domiciliary state's laws regarding acquisition of an insurer, Chapter 823, and any other law regarding the transfer of control of insurers. The proceeds from the sale of the corporate entity or charter become a part of the property of the estate in liquidation. The separate corporate entity or charter, together with any of its authorizations or licenses to do business and such assets as the liquidator deems appropriate to the transaction, are, following the sale of the corporate entity or charter, free and clear from the claims or interest of all claimants, creditors, policyholders, and stockholders of the corporation in liquidation.

(d) This section shall be liberally construed to accomplish its purposes to:

(1) provide an expeditious and effective procedure to realize the maximum proceeds possible from the sale of a corporate entity or charter separated from an estate in liquidation; and

(2) ensure that the purchasers receive clear and marketable titles.

(e) If permission to sell the corporate entity or charter is not granted prior to discharge of the liquidator, in accordance with this section or otherwise with receivership court approval:

(1) the receivership court may order dissolution of the corporate entity or charter;

(2) dissolution shall be deemed complete by operation of law upon the discharge of the liquidator if the insurer is insolvent; or

(3) dissolution may be ordered by the receivership court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.153 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.153 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.154. POWERS OF LIQUIDATOR. (a) The liquidator may

appoint a special deputy or deputies to act for the liquidator under this chapter and employ or contract with legal counsel, actuaries, accountants, appraisers, consultants, clerks, assistants, and other personnel the liquidator may deem necessary to assist in the liquidation. A special deputy has all powers of the liquidator granted by this section, unless specifically limited by the liquidator, and serves at the pleasure of the liquidator. A special deputy or any other person with whom the liquidator contracts under this subsection may act on behalf of the commissioner only in the commissioner's capacity as liquidator. Any person with whom the liquidator contracts is not considered to be an agent of the state and any contract under this subsection is not a contract with the state. The provisions of any law governing the procurement of goods and services by the state do not apply to any contract entered into by the commissioner as liquidator. This subsection does not waive any immunity granted by Section 443.014 or create any cause of action against the state.

(b) The liquidator may determine the reasonable compensation for any special deputies, employees, or contractors retained by the liquidator as provided in Subsection (a) and pay compensation in accordance with Section 443.015.

(c) The liquidator may appoint, with the approval of the receivership court, an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, if the committee be deemed necessary. The advisory committee serves at the pleasure of the liquidator, and the decision to appoint an advisory committee is at the sole discretion of the liquidator. The advisory committee serves without compensation or reimbursement for expenses. The liquidator or the receivership court in liquidation proceedings conducted under this chapter may not appoint another committee of any nature.

(d) The liquidator may hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, compel any persons to subscribe to their testimony after it has been correctly reduced to writing, and, in connection with a power under this subsection, require the production of any books, papers, records, or other documents that the liquidator deems relevant to the inquiry.

(e) The liquidator may audit the books and records of all agents of the insurer to the extent that those books and records

relate to the business activities of the insurer.

(f) The liquidator may collect all debts and moneys due and claims belonging to the insurer, wherever located, and may:

(1) institute action in other jurisdictions, in order to forestall garnishment and attachment proceedings against the debts;

(2) do other acts as necessary or expedient to collect, conserve, or protect the insurer's property, including the power to sell, compromise, or assign debts for purposes of collection upon such terms and conditions as the liquidator deems consistent with this chapter; and

(3) pursue any creditor's remedies available to enforce the insurer's claims.

(g) The liquidator may conduct public and private sales of the property of the insurer.

(h) The liquidator may use property of the estate of an insurer under a liquidation order to transfer to a solvent assuming insurer policy obligations or the insurer's obligations under surety bonds and surety undertakings as well as collateral held by the insurer with respect to the reimbursement obligations of the principals under those surety bonds and surety undertakings, if the transfer can be arranged without prejudice to applicable priorities under Section 443.301. If all insureds, principals, third-party claimants, and obligees under the policies, surety bonds, and surety undertakings consent or if the receivership court so orders, the estate has no further liability under the transferred policies, surety bonds, or surety undertakings after the transfer is made.

(i) The liquidator may, subject to Subsection (y), acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the estate at its market value or upon terms and conditions that are fair and reasonable. The liquidator also has the power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.

(j) The liquidator may borrow money on the security of the property of the estate or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any funds borrowed under this subsection may be repaid as an administrative expense and have priority over any other claims in Class 1 under the priority of

distribution.

(k) The liquidator may enter into contracts as necessary to carry out the order to liquidate and, subject to the provisions of Section 443.013, may assume or reject any executory contract or unexpired lease to which the insurer is a party.

(l) The liquidator may continue to prosecute and institute in the name of the insurer or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under Section 443.153, the liquidator has the power to apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as a party.

(m) The liquidator may prosecute any action that may exist on behalf of the creditors, members, policyholders, shareholders of the insurer, or the public against any person, except to the extent that a claim is personal to a specific creditor, member, policyholder, or shareholder and recovery on such claim would not inure to the benefit of the estate. This subsection does not infringe or impair any of the rights provided to a guaranty association pursuant to its enabling statute or otherwise.

(n) The liquidator may take possession of the records and property of the insurer as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations must be allowed reasonable access to the records of the insurer as is necessary for the guaranty associations to carry out their statutory obligations.

(o) The liquidator may deposit in one or more banks in this state the amounts that are required for meeting current administration expenses and dividend distributions.

(p) The liquidator may invest all amounts not currently needed, unless the receivership court orders otherwise.

(q) The liquidator may file any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located.

(r) The liquidator may assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition is filed under this chapter does not bind the liquidator. When a guaranty association has an

obligation to defend any suit, the liquidator shall defer to the association's obligation.

(s) The liquidator may exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be avoidable under this chapter or otherwise.

(t) The liquidator may intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee and act as the receiver or trustee whenever the appointment is offered.

(u) The liquidator may enter into agreements with any receivers or commissioners of any other states.

(v) The liquidator may exercise all powers held by receivers on August 31, 2005, or conferred on receivers after that date by the laws of this state not inconsistent with this chapter.

(w) The liquidator is vested with all the rights of the entity or entities in receivership.

(x) The enumeration, in this section, of the powers and authority of the liquidator may not be construed as a limitation upon the liquidator, nor may it exclude in any manner the right to do other acts not specifically enumerated or otherwise provided for, to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(y) The liquidator may hypothecate, encumber, lease, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer, settle or resolve any claim brought by the liquidator on behalf of the insurer, or commute or settle any claim of reinsurance under any contract of reinsurance, as follows:

(1) if the property or claim has a market or settlement value that does not exceed the lesser of $1 million or 10 percent of the general assets of the estate as shown on the receivership's financial statements, the liquidator may take action at the liquidator's discretion, provided that the receivership court may, upon petition of the liquidator, increase the threshold upon a showing that compliance with this requirement is burdensome to the liquidator in administering the estate and is unnecessary to protect the material interests of creditors;

(2) in all instances other than those described in Subdivision (1), the liquidator may take the action only after obtaining approval of the receivership court as provided by Section

443.007;

(3) the liquidator may, at the liquidator's discretion, request the receivership court to approve a proposed action as provided by Section 443.007 if the value of the property or claim appears to be less than the threshold provided by Subdivision (1) but cannot be ascertained with certainty, or for any other reason as determined by the liquidator; and

(4) after obtaining approval of the receivership court as provided in Section 443.007, the liquidator may, subject to Subsection (z), transfer rights to payment under ceding reinsurance agreements covering policies to a third-party transferee.

(z) The transferee of a right to payment under Subsection (y)(4) has the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver, without diminution because of the insolvency or because the receiver has failed to pay all or a portion of the claim, based on the amounts paid or allowed pursuant to Section 443.211. The transfer of the rights does not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether an agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement. Except as provided in this subsection, any transfer of rights pursuant to Subsection (y)(4) does not impair any rights or defenses of the reinsurer that existed prior to the transfer or that would have existed in the absence of the transfer. Except as otherwise provided in this subsection, any transfer of rights pursuant to Subsection (y)(4) does not relieve the transferee or the liquidator from obligations owed to the reinsurer pursuant to the reinsurance or other agreement.

(aa) The liquidator is not obligated to defend any action against the insurer or insured. Any insureds not defended by a guaranty association may provide their own defense, and include the cost of the defense as part of their claims, if the defense was an obligation of the insurer. The right of the liquidator to contest coverage on a particular claim is preserved without the necessity for an express reservation of rights.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.154 by

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(r), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.154 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(r), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 7, eff. September 1, 2011.

Sec. 443.155. NOTICE TO CREDITORS AND OTHERS. (a) Unless the receivership court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(1) by first class mail or electronic communication as permitted by the receivership court to:

(A) any guaranty association that is or may become obligated as a result of the liquidation and any national association of guaranty associations;

(B) all the insurer's agents, brokers, or producers of record with current appointments or current licenses to represent the insurer and all other agents, brokers, or producers as the liquidator deems appropriate at their last known address; and

(C) all persons or entities known or reasonably expected to have claims against the insurer, at their last known address as indicated by the records of the insurer, and all state and federal agencies with an interest in the proceeding; and

(2) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in any other locations as the liquidator deems appropriate.

(b) The notice of the entry of an order of liquidation must contain or provide directions for obtaining the following information:

(1) a statement that the insurer has been placed in liquidation;

(2) a statement that certain acts are stayed under Section 443.008 and describe any additional injunctive relief ordered by the receivership court;

(3) a statement whether, and to what extent, the insurer's policies continue in effect;

(4) to the extent applicable, a statement that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws;

(5) a statement of the deadline for filing claims, if established, and the requirements for filing a proof of claim pursuant to Section 443.251 on or before that date;

(6) a statement of the date, time, and location of any initial status hearing scheduled at the time the notice is sent;

(7) a description of the process for obtaining notice of matters before the receivership court; and

(8) any other information the liquidator or the receivership court deems appropriate.

(c) If notice is given in accordance with this section, the distribution of property of the insurer under this chapter is conclusive with respect to all claimants, whether or not they received notice.

(d) Notwithstanding the other provisions of this section, the liquidator has no duty to locate any persons or entities if no address is found in the records of the insurer or if mailings are returned to the liquidator because of inability to deliver at the address shown in the insurer's books and records. In these circumstances the notice by publication as required by this chapter or actual notice received is sufficient notice. Written certification by the liquidator or other knowledgeable person acting for the liquidator that the notices were deposited in the United States mail, postage prepaid, or that the notices have been electronically transmitted is prima facie evidence of mailing and receipt. All claimants shall keep the liquidator informed of any changes of address.

(e) Notwithstanding Subsection (a)(1)(C), upon application of the liquidator, the receivership court may:

(1) find that notice by publication as required in this section is sufficient notice to those persons holding an occurrence policy that expired more than four years prior to the entry of the order of liquidation and under which there are no pending claims; or

(2) order other notice to persons described by Subdivision (1) as it deems appropriate.

(f) The liquidator shall notify the Texas Workers' Compensation Commission upon the entry of the liquidation order if the insurer has issued workers' compensation coverage in effect in this state. Upon request of the liquidator, the Texas Workers' Compensation Commission shall submit a list of active cases pending before the commission that relate to workers' compensation coverage issued by the insurer.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.155 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(s), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.155 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(s), eff. September 1, 2007.

Sec. 443.156. DUTIES OF AGENTS. (a) Every person who represented the insurer as an agent and receives notice in the form prescribed in Section 443.155 that the insurer is the subject of a liquidation order, not later than the 30th day after the date of the notice, shall provide to the liquidator, in addition to the information the agent may be required to provide pursuant to Section 443.010, the information in the agent's records related to any policy issued by the insurer through the agent and any policy issued by the insurer through an agent under contract to the agent. For purposes of this subsection, a policy is issued through an agent if the agent has a property interest in the expiration of the policy or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, except where the ownership of the expiration of the policy has been transferred to another.

(b) Any agent failing to provide information to the liquidator as required in Subsection (a) may be subject to payment of an administrative penalty under Chapter 84 of not more than $1,000. In addition, the agent's license may be suspended under Chapter 4005.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.156 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(t), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.156 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(t), eff. September 1, 2007.
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 1, eff. September 1, 2021.

SUBCHAPTER E. ASSET RECOVERY

Sec. 443.201. TURNOVER OF ASSETS. (a) If the receiver determines that funds or property in the possession of another person are rightfully the property of the estate, the receiver shall deliver to the person a written demand for immediate delivery of the funds or property, referencing this section by number and the court and docket number of the receivership action, and notifying the person that any claim of right to the funds or property by the person must be presented to the receivership court not later than the 20th day after the date of the written demand. Any person who holds funds or other property belonging to an entity subject to an order of receivership under this chapter shall deliver the funds or other property to the receiver on demand. Should the person allege any right to retain the funds or other property, the person, not later than the 20th day after the date of receipt of the demand that the funds or property be delivered to the receiver, shall file with the receivership court a pleading setting out that right. The person shall serve a copy of

the pleading on the receiver. The pleading must inform the receivership court as to the nature of the claim to the funds or property, the alleged value of the property or amount of funds held, and what action, pending determination of the dispute, has been taken by the person to preserve and protect the property or to preserve any funds. The relinquishment of possession of funds or property by any person who has received a demand pursuant to this section does not constitute a waiver of a right to make a claim in the receivership.

(b) If requested by the receiver, the receivership court shall hold a hearing to determine where and under what conditions the person shall hold the property or funds pending determination of the dispute. The receivership court may impose conditions as it may deem necessary or appropriate for the preservation of the property or funds until the receivership court can determine the validity of the person's claim to the property or funds. If any property or funds are allowed to remain in the possession of the person after demand made by the receiver, that person is strictly liable to the estate for any waste, loss, or damage to or diminution of value of the property or funds retained.

(c) If a person has filed a pleading alleging any right to retain funds or property as provided by Subsection (a), the receivership court shall hold a subsequent hearing to determine the entitlement of the person to the funds or property claimed by the receiver.

(d) If a person fails to deliver the funds or property or to file the pleading described by Subsection (a) within the period described by Subsection (a), the receivership court may, upon petition of the receiver and upon a copy of the petition being served by the receiver to that person, issue its summary order directing the immediate delivery of the funds or property to the receiver and finding that the person has waived all claims of right to the funds or property.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.201 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.201 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1),

eff. September 1, 2007.

Sec. 443.202. RECOVERY FROM AFFILIATES. (a) The receiver has a right to recover from any affiliate of the insurer any property of the insurer transferred to or for the benefit of the affiliate, or the property's value, if the transfer was made within the two years preceding the initial petition for receivership.

(b) A transfer is not recoverable under Subsection (a) if the affiliate shows that, when the transfer was made:

(1) the insurer was solvent;

(2) the transfer was lawful; and

(3) neither the insurer nor the affiliate knew or reasonably should have known that the transfer, under then-applicable statutory accounting standards, would:

(A) place the insurer:

(i) in violation of applicable capital or surplus requirements;

(ii) below the applicable minimum risk-based capital level; or

(iii) in violation of writing ratios under Article 1.32 or analogous requirements under Section 843.406; or

(B) cause the insurer's filed financial statements not to present fairly the capital and surplus of the insurer.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.202 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.202 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.203. UNAUTHORIZED POST-PETITION TRANSFERS. (a) Except as provided by this section, the receiver may avoid any transfer of an interest of the insurer in property or any obligation incurred by the insurer that:

(1) was made or occurred after the petition for

receivership was filed; and

(2) is not authorized by the receiver and approved by the receivership court or otherwise authorized in accordance with this chapter.

(b) Except to the extent that a transfer or obligation avoidable under Subsection (a) is otherwise voidable under this chapter, a transferee or obligee of a transfer or obligation avoided under Subsection (a) that takes for value and in good faith, at the option of the receivership court, has a lien or may retain any interest transferred or enforce any obligation incurred, as applicable, to the extent that the transferee or obligee gave value to the insurer in exchange for the transfer or obligation.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.203 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.203 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.204. VOIDABLE PREFERENCES AND LIENS. (a) A "preference" is a transfer of any interest in property of an insurer that:

(1) is made to or for the benefit of a creditor and for or on account of an antecedent debt and is made or suffered by the insurer within two years preceding the filing of a successful petition commencing delinquency proceedings; and

(2) enables the creditor to receive more than the creditor would receive if the insurer were liquidated under this chapter, the transfer had not been made, and the creditor was entitled to receive payment of the debt to the extent provided by this chapter.

(b) Any preference may be avoided by the receiver if:

(1) the insurer was insolvent at the time of the transfer;

(2) the transfer was made within 120 days before the date of filing of the petition commencing delinquency proceedings;

(3) the creditor receiving the transfer or to be benefited by the transfer, or the creditor's agent acting with reference to the

transfer, had, at the time the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(4) the creditor receiving the transfer was:

(A) an officer or director of the insurer;

(B) an employee, attorney, or other person who was in fact in a position to effect a level of control or influence over the actions of the insurer comparable to that of an officer or director, without regard to whether the person held that position; or

(C) an affiliate.

(c) The receiver may not avoid a transfer under this section:

(1) to the extent that the transfer was:

(A) intended by the insurer and the creditor to or for whose benefit the transfer was made to be a contemporaneous exchange for new value given to the insurer and in fact was a substantially contemporaneous exchange; or

(B) made in the ordinary course of business or financial affairs between the insurer and the transferee and made according to ordinary business terms in payment of a debt incurred by the insurer in the ordinary course of business or financial affairs of the insurer and the transferee; or

(2) to or for the benefit of a creditor, to the extent that, after the transfer, the creditor gave new value to or for the benefit of the insurer that was:

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the insurer did not make an otherwise unavoidable transfer to or for the benefit of the creditor.

(d) For purposes of this section:

(1) a transfer of property other than real property is deemed to be made or suffered at the time the transfer becomes so far perfected that any subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee;

(2) a transfer of real property is deemed to be made or suffered when the transfer is so far perfected that a subsequent bona fide purchaser from the insurer could not obtain rights superior to the rights of the transferee;

(3) a transfer that creates an equitable lien is not deemed

to be perfected if there are available means by which a legal lien could be created; and

(4) a transfer not perfected prior to the filing of a petition for receivership is deemed to be made immediately before the filing commencing delinquency proceedings.

(e) The provisions of this section apply without regard to whether there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(f) Within the meaning of Subsection (d), "a lien obtainable by legal or equitable proceedings on a simple contract" is a lien arising in the ordinary course of proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or similar process, whether before, upon, or after judgment or decree and whether before or upon levy. The term does not include liens that under applicable law are given a special priority over other liens that are prior in time.

(g) Within the meaning of Subsection (d), a lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee if the consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. A lien could not, however, become superior and a purchase could not create superior rights for the purpose of Subsection (d) through any acts subsequent to the obtaining of the lien or subsequent to the purchase that require the agreement or concurrence of any third party or that require any further judicial action or ruling.

(h) A transfer of property for or on account of a new and contemporaneous consideration that is deemed under Subsection (d) to be made or suffered after the transfer because of delay in perfecting the transfer does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed to perfect the transfer against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if the loan is actually made, or a transfer that becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous

consideration.

(i)(1) If any lien deemed voidable under Subsection (b) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition commencing delinquency proceedings under this chapter, the indemnifying transfer or lien is also deemed voidable.

(2) The property affected by any lien deemed voidable under Subsection (b) and Subdivision (1) is discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety passes to the receiver, except that the receivership court may on due notice order any lien deemed voidable under this section to be preserved for the benefit of the estate and may direct that a conveyance be executed as may be proper or adequate to evidence the title of the receiver.

(3) Reasonable notice of any hearing in the proceeding shall be given to all parties as required by law, including the obligee of a releasing bond or other like obligation. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the receivership court may in the same proceeding ascertain the value of the property or lien. If the value of the property or lien is less than the amount for which the property is indemnified or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment to the receiver of its value, as determined by the receivership court, within a reasonable time determined by the receivership court.

(4) The liability of the surety under a releasing bond or other similar obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the receiver, or if the property is retained under Subdivision (3) to the extent of the amount paid to the receiver.

(j) This section may not be construed to prejudice any other claim by the receiver against any person.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.204 by

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.204 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.205. FRAUDULENT TRANSFERS AND OBLIGATIONS. (a) The receiver may avoid any transfer of an interest of the insurer in property, any reinsurance transaction, or any obligation incurred by an insurer that was made or incurred on or within two years before the date of the initial filing of a petition commencing delinquency proceedings under this chapter, if the insurer voluntarily or involuntarily:

(1) made the transfer or incurred the obligation with actual intent to hinder, delay, or defraud any person to which it was or became indebted on or after the date that the transfer was made or the obligation was incurred; or

(2) received less than a reasonably equivalent value in exchange for the transfer or obligation.

(b) Except to the extent that a transfer or obligation voidable under this section is voidable under other provisions of this chapter, a transferee or obligee that takes for value and in good faith a voidable transfer or obligation has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that the transferee or obligee gave value to the insurer in exchange for the transfer or obligation.

(c) For purposes of this section, a transfer is made when the transfer is so perfected that a subsequent bona fide purchaser from the insurer cannot acquire an interest in the property transferred that is superior to the interest in the property of the transferee, but if the transfer is not so perfected before the commencement of the delinquency proceeding, the transfer is deemed to have been made immediately before the date of the initial filing of the petition commencing delinquency proceedings.

(d) For purposes of this section, "value" means property or satisfaction or securing of a present or antecedent debt of the insurer.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff.

September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.205 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.205 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.206. RECEIVER AS LIEN CREDITOR. (a) The receiver may avoid any transfer of or lien upon the property of, or obligation incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of the insurer may have avoided without regard to any knowledge of the receiver, the commissioner, the insurer, or any policyholder, creditor, member, or stockholder of the insurer regardless of whether such a policyholder, creditor, member, or stockholder exists.

(b) The receiver is deemed a creditor without knowledge for purposes of pursuing claims under the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, or similar provisions of state or federal law.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.206 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.206 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.207. LIABILITY OF TRANSFEREE. (a) Except as otherwise provided in this section, to the extent that the receiver obtains an order under Section 443.201 or avoids a transfer under Section 443.202, 443.203, 443.204, 443.205, or 443.206, the receiver may recover the property transferred, or the value of the property, from:

(1) the initial transferee of the transfer or the entity for whose benefit the transfer was made; or

(2) any immediate or mediate transferee of the initial transferee.

(b) The receiver may not recover under Subsection (a)(2) from:

(1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(2) any immediate or mediate good faith transferee of the transferee.

(c) Any transfer avoided in accordance with this chapter is preserved for the benefit of the receivership estate, but only with respect to property of the insurer.

(d) In addition to the remedies specifically provided under Sections 443.201-443.206 and Subsection (a), if the receiver is successful in establishing a claim to the property or any part of the property, the receiver is entitled to recover judgment for:

(1) rental for the use of the tangible property from the later of the entry of the receivership order or the date of the transfer;

(2) in the case of funds or intangible property, the greater of:

(A) the actual interest or income earned by the property; or

(B) interest at the statutory rate for judgments from the later of the date of the entry of the receivership order or the date of the transfer; and

(3) except as to recoveries from guaranty associations, all costs, including investigative costs and other expenses necessary to the recovery of the property or funds, and reasonable attorney's fees.

(e) In any action under this section, the receivership court may allow the receiver to seek recovery of the property involved or the property's value.

(f) In any action under Sections 443.201-443.206, the receiver has the burden of proving the avoidability of a transfer, and the person against whom recovery or avoidance is sought has the burden of proving the nature and extent of any affirmative defense.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.207 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(u), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.207 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(u), eff. September 1, 2007.

Sec. 443.208. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS. (a) A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter may not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the receiver not later than the 30th day after the date of the entering of the final judgment, except that the receivership court may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under Subsection (a) by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused late filing under Section 443.251(b) if filed not later than the 30th day after the date of the avoidance, or within the further time allowed by the receivership court under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.208 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(v), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.208 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(v), eff. September 1, 2007.

Sec. 443.209. SETOFFS. (a) All mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this chapter, must be set off and only the balance shall be allowed or paid, except as provided by Subsection (b).

(b) A setoff may not be allowed in favor of any person if:

(1) the obligation of the insurer to the person:

(A) would not, at the date of the commencement of the delinquency proceeding, entitle the person to share as a claimant in the assets of the insurer; or

(B) was purchased by or transferred to the person:

(i) after the commencement of the delinquency proceeding; or

(ii) for the purpose of increasing setoff rights;

(2) the obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;

(3) the obligation of the person:

(A) is as a trustee or fiduciary; or

(B) is to pay:

(i) an assessment levied against the members of a mutual insurer, reciprocal or interinsurance exchange, or Lloyd's plan; or

(ii) a balance upon a subscription to the capital stock of a capital stock insurance company; or

(4) the obligations between the person and the insurer arise from reinsurance transactions in which either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations.

(c) The receiver shall provide an interested person with accounting statements identifying all debts that are due and payable.

If a person owes the insurer amounts that are due and payable against which the person asserts a setoff of mutual credits that, in the future, may become due and payable from the insurer, the person shall promptly pay the amounts due and payable to the receiver. Notwithstanding any other provision of this chapter, the receiver shall promptly and fully refund, to the extent of a person's prior payments under this section, any mutual credits that become due and payable to the person by the insurer.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.209 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.209 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.210. ASSESSMENTS. (a) As soon as practicable, but not later than the fourth anniversary of the date of an order of receivership of an insurer issuing assessable policies, the receiver shall make a report to the receivership court setting forth:

(1) the reasonable value of the assets of the insurer;

(2) the insurer's probable total liabilities;

(3) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and

(4) a recommendation as to whether an assessment should be made and in what amount.

(b) Upon the basis of the report provided in Subsection (a), including any supplements and amendments to the report, the receivership court may approve, solely on application by the receiver, one or more assessments against all members of the insurer who are subject to assessment. The order approving the assessment shall provide instructions regarding notice of the assessment, deadlines for payment, and other instructions to the receiver regarding collection of the assessment.

(c) Subject to any applicable legal limits on ability to

assess, the aggregate assessment must be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.

(d) After levy of assessment under Subsection (b), the receiver shall petition the receivership court for an order directing each member who has not paid the assessment pursuant to the levy to show cause why a judgment for the assessment should not be entered.

(e) At least 20 days before the return day of the order to show cause, the receiver shall give notice of the order to show cause to each member liable on the assessment. Notice must be given by first class mail mailed to the member's last known address as it appears on the insurer's records, by publication, or by another method of notification as directed by the receivership court. Failure of the member or subscriber to receive the notice of the assessment or of the order, within the time specified in the assessment or order or at all, is not a defense in a proceeding to collect the assessment.

(f) If a member does not appear and serve verified objections upon the receiver on or before the return day of the order to show cause under Subsection (d), the receivership court shall make an order adjudging the member liable for the amount of the assessment against the member under Subsection (d) together with costs, and the receiver shall have a judgment against the member for the amount of the assessment and costs in the order.

(g) If on or before the return day of the order to show cause, the member appears and serves verified objections upon the receiver, the receivership court may hear and determine the matter or may appoint a referee to hear it and make an order as the facts warrant. In the event that the receiver determines that the objections do not warrant relief from assessment, the member may request the receivership court to review the matter and vacate the order to show cause.

(h) The receiver may enforce any order or collect any judgment under Subsection (f) by any lawful means.

(i) Any assessment of a subscriber or member of an insurer made by the receiver pursuant to the order of receivership court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the receiver under this section is prima facie correct.

(j) Any claim filed by an assessee who fails to pay an assessment, after the conclusion of any legal action by the assessee objecting to the assessment, is deemed a late filed claim under Section 443.251.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.210 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(w), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.210 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(w), eff. September 1, 2007.

Sec. 443.211. REINSURER'S LIABILITY. (a) If the receiver has claims under policies covered by reinsurance, the liability of the reinsurer to the receiver under the policies reinsured may not be diminished because of the insolvency of the insurer, regardless of any provisions in the reinsurance contract to the contrary, except under the following circumstances:

(1) a contract or other written agreement entered into before the delinquency proceeding that is otherwise permitted by law specifically provides another payee of the reinsurance in the event of the insolvency of the ceding insurer;

(2) the assuming insurer, under an assumption reinsurance agreement and with the consent of the direct insured, has assumed, as direct obligations of the assuming insurer, the policy obligations of the ceding insurer to the payees under policies and in substitution for the obligations of the ceding insurer to those payees; or

(3) a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under a contract of reinsurance in accordance with the life and health guaranty association laws of this state or its

domiciliary state or another applicable law, rule, order, or assignment contract, in which case payments shall be made directly to or at the direction of the guaranty association.

(b) Except as provided by Subsection (a), any reinsurance shall be payable to the receiver under a policy reinsured by the assuming insurer on the basis of claims:

(1) allowed under Section 443.253; or

(2) paid under:

(A) Chapter 462, 463, or 2602; or

(B) the guaranty associations of other states.

(c) The liquidator or receiver, as applicable, shall give written notice to affected reinsurers of the pendency of a claim against the receiver under a reinsured policy within a reasonable time after the claim is filed in the delinquency proceeding. During the pendency of the claim any affected reinsurer may:

(1) investigate the claim; and

(2) intervene, at the reinsurer's own expense, in any proceeding where the claim is to be adjusted and assert any defense or defenses which it may deem available to the delinquent company, the liquidator, or the receiver.

(d) Subject to court approval, an expense incurred under Subsection (c)(1) or (2) shall be chargeable against the delinquent company as part of the expense of liquidation, to the extent of a proportionate share of the benefit which may accrue to the delinquent company solely as a result of the defense undertaken by the assuming insurer.

(e) If two or more assuming insurers are involved in the same claim and a majority in interest elect to intervene and assert a defense to a claim described by Subsection (c), an expense incurred under Subsection (c)(1) or (2) shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

(f) Nothing in this chapter shall be construed as authorizing the receiver, or other entity, to compel payment from a non-life reinsurer on the basis of estimated incurred but not reported losses or outstanding reserves, except outstanding reserves with respect to claims made pursuant to Section 443.255 and approved workers compensation claims filed under Section 443.252(d).

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff.

September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.211 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(x), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.211 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(x), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 8, eff. September 1, 2011.

Sec. 443.212. RECOVERY OF PREMIUMS OWED. (a) An insured shall pay, either directly to the receiver or to any agent that has paid or is obligated to pay the receiver on behalf of the insured, any unpaid earned premium or retrospectively rated premium due the insurer based on the termination of coverage under Section 443.152. Premium on surety business is deemed earned at inception if a policy term cannot be determined. All other premium is deemed earned and is prorated equally over the determined policy term, regardless of any provision in the bond, guaranty, contract or other agreement.

(b) Any person, other than the insured, shall turn over to the receiver any unpaid premium due and owing as shown on the records of the insurer, including any amount representing commissions, for the full policy term due the insurer at the time of the entry of the receivership order, whether earned or unearned, based on the termination of coverage under Section 443.152. The unpaid premium due the receiver from any person other than the insured excludes any premium not collected from the insured and not earned based on the termination of coverage under Section 443.152.

(c) Any person, other than the insured, responsible for the remittance of a premium, shall turn over to the receiver any unearned commission of the person based on the termination of coverage under Section 443.152. Credits, setoffs, or both may not be allowed to an agent, broker, premium finance company, or any other person for any

amounts advanced to the insurer by the person on behalf of, but in the absence of a payment by, the insured, or for any other amount paid by the person to any other person after the entry of the order of receivership.

(d) Persons that collect premium or finance premium under a premium finance contract that is due the insurer in receivership are deemed to hold that premium in trust as fiduciaries for the benefit of the insurer and to have availed themselves of the laws of this state, regardless of any provision to the contrary in any agency contract or other agreement.

(e) Any premium finance company is obligated to pay any amounts due the insurer from premium finance contracts, whether the premium is earned or unearned. The receiver has the right to collect any unpaid financed premium directly from the premium finance company or directly from the insured that is a party to the premium finance contract.

(f) Upon satisfactory evidence of a violation of this section by a person other than an insured, the commissioner may pursue one or more of the following courses of action:

(1) suspend, revoke, or refuse to renew the licenses of the offending party or parties; and

(2) impose:

(A) an administrative penalty under Chapter 84 of not more than $1,000 for each act in violation of this section by the party or parties; and

(B) any other sanction or penalty authorized by Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.212 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(y), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.212 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(y), eff. September 1, 2007.

Sec. 443.213. ADMINISTRATION OF DEDUCTIBLE AGREEMENTS AND POLICYHOLDER COLLATERAL. (a) Any collateral held to secure the obligations of a policyholder under a deductible agreement with an insurer subject to a delinquency proceeding under this chapter must be maintained and administered as provided in this section. For purposes of this section, a "deductible agreement" is any combination of one or more policies, endorsements, contracts, or security agreements that:

(1) provide for the policyholder to bear the risk of loss within a specified amount per claim or occurrence covered under a policy of insurance; and

(2) may be subject to an aggregate limit of policyholder reimbursement obligations.

(b) This section applies to any collateral described by Subsection (a), regardless of whether the collateral is held by, for the benefit of, or assigned to the insurer under a deductible agreement. The collateral shall be used to secure the policyholder's obligation to fund or reimburse claims payments within the agreed deductible amount, subject to this section.

(c) If the contract between the policyholder and the insurer allows the policyholder to fund claims within the deductible amount through a third-party administrator or otherwise, the receiver shall allow that funding arrangement to continue, except as prohibited by Title 5, Labor Code. If a policyholder funds claims within the deductible amount, the receiver or any guaranty association has no obligation to pay claims for the amount funded by the policyholder, and the policyholder or its third-party administrator is not obligated to reimburse a guaranty association for any amount funded. A charge of any kind may not be made against a guaranty association based on the funding of claims payments by a policyholder under this subsection.

(d) If the receiver is holding collateral provided by a policyholder to secure both a deductible agreement and other obligations of the policyholder, the receiver shall:

(1) allocate the collateral among these obligations in accordance with the deductible agreement; or

(2) in the absence of an allocation provision in the deductible agreement and with the approval of the receivership court, allocate the collateral equitably among these obligations.

(e) If, under Subsection (d), the collateral secures reimbursement obligations under more than one line of insurance, the receiver shall equitably allocate the collateral among the various lines based on the estimated ultimate exposure within the deductible amount for each line.

(f) If a guaranty association is obligated to pay claims under a policy under Subsection (d), the receiver shall give notice to the guaranty associations of any allocation under this section.

(g) Once all claims covered by the collateral have been paid and the receiver is satisfied that no new claims may be presented, the receiver shall release any remaining collateral to the policyholder in accordance with the provisions of the contract and of this chapter.

(h) To the extent a guaranty association is required by applicable law to pay any claims for which the insurer would have been entitled to reimbursement from the policyholder, the following provisions apply:

(1) The receiver shall promptly invoice the policyholder for the reimbursement due under the agreement, and the policyholder is obligated to pay the amount invoiced to the receiver for the benefit of the guaranty associations that paid the claims. Neither the insolvency of the insurer nor the insurer's inability to perform any obligations under the deductible agreement is a defense to the policyholder's reimbursement obligation under the deductible agreement. At the time the policyholder reimbursements are collected, the receiver shall promptly forward those amounts to the guaranty association, based on the claims paid by the guaranty association that were subject to the deductible.

(2) If the collateral is insufficient to reimburse the guaranty association for claims paid within the deductible, the receiver shall use any existing collateral to make a partial reimbursement to the guaranty association, subject to any allocation under Subsection (d), (e), or (f). If more than one guaranty association has a claim against the same collateral, the receiver shall prorate payments to each guaranty association based on the amount of the claims each guaranty association has paid.

(3) The receiver is entitled to deduct from reimbursements

owed to a guaranty association or collateral to be returned to a policyholder reasonable actual expenses incurred in fulfilling the receiver's responsibilities under this section. Expenses incurred to collect reimbursements for the benefit of a guaranty association are subject to the approval of the guaranty association. Any remaining expenses that are not deducted from the reimbursements are payable subject to Section 443.015.

(4) The receiver shall provide any affected guaranty associations with a complete accounting of the receiver's deductible billing and collection activities on a quarterly basis, or at other intervals as may be agreed to between the receiver and the guaranty associations. Accountings under this subdivision must include copies of the policyholder billings, the reimbursements collected, the available amounts and use of collateral for each account, and any prorating of payments.

(5) If the receiver fails to make a good faith effort to collect reimbursements due from a policyholder under a deductible agreement within 120 days of receipt of claims payment reports from a guaranty association, the guaranty association may, after notice to the receiver, collect the reimbursements that are due, and, in so doing, the guaranty association shall have the same rights and remedies as the receiver. A guaranty association shall report any amounts collected under this subdivision and expenses incurred in collecting those amounts to the receiver.

(6) The receiver shall periodically adjust the collateral held as the claims subject to the deductible agreement are paid, provided that adequate collateral is maintained. The receiver is not required to adjust the collateral more than once a year. The receiver shall inform the guaranty associations of all collateral reviews, including the basis for the adjustment.

(7) Reimbursements received or collected by a guaranty association under this section may not be considered a distribution of the insurer's assets. A guaranty association shall provide the receiver with an accounting of any amounts it has received or collected under this section and any expenses incurred in connection with that receipt or collection. The amounts received, net of any expenses incurred in connection with collection of the amounts, must be set off against the guaranty association's claim filed under Section 443.251 for the payments that were reimbursed.

(8) To the extent that a guaranty association pays a claim

within the deductible amount that is not reimbursed by either the receiver or by policyholder payments, the guaranty association has a claim for those amounts in the delinquency proceeding in accordance with Section 443.251.

(9) Nothing in this section limits any rights of a guaranty association under applicable law to obtain reimbursement for claims payments made by the guaranty association under policies of the insurer or for the association's related expenses.

(i) If a claim that is subject to a deductible agreement and secured by collateral is not covered by any guaranty association, the following provisions apply:

(1) The receiver is entitled to retain as an asset of the estate any collateral or deductible reimbursements obtained by the receiver.

(2) If a policyholder fails to assume an obligation under a deductible agreement to pay a claim, the receiver shall use the collateral to adjust and pay the claim to the extent that the available collateral, after any allocation under Subsection (d), (e), or (f), is sufficient to pay all outstanding and anticipated claims within the deductible. If the collateral is exhausted and all reasonable means of collection against the insured have been exhausted, the remaining claims shall be subject to the provisions of Sections 443.251 and 443.301.

(3) The receiver is entitled to deduct from collateral reasonable actual expenses incurred in fulfilling the receiver's responsibilities under this section. Any remaining expenses that are not deducted from the reimbursements are payable subject to Section 443.015.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.213 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(z), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.213 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(z), eff. September 1, 2007.

SUBCHAPTER F. CLAIMS

Sec. 443.251. FILING OF CLAIMS. (a) Except as provided by this subsection, proof of all claims must be filed with the liquidator in the form required by Section 443.252 on or before the last day for filing specified in the notice required under Section 443.155, which date may not be later than 18 months after entry of the order of liquidation, unless the receivership court, for good cause shown, extends the time, except that proofs of claims for cash surrender values or other investment values in life insurance and annuities and for any other policies insuring the lives of persons need not be filed unless the liquidator expressly so requires. The receivership court, only upon application of the liquidator, may allow alternative procedures and requirements for the filing of proofs of claim or for allowing or proving claims. Upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person or a class or group of persons, a proof of claim for the person, class, or group is deemed to have been filed for all purposes, except that the receivership court's waiver of proof of claim requirements does not impact guaranty association proof of claim filing requirements or coverage determinations to the extent the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(b) The liquidator shall permit a claimant that makes a late filing to share ratably in distributions, whether past or future, as if the claim were not filed late, to the extent that the payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(1) the eligibility to file a proof of claim was not known to the claimant, and the claimant filed a proof of claim not later than the 90th day after the date of first learning of the eligibility;

(2) a transfer to a creditor was avoided under Section 443.202, 443.203, 443.204, or 443.206, or was voluntarily surrendered under Section 443.208, and the filing satisfies the conditions of Section 443.208; or

(3) the valuation under Section 443.260, of security held by a secured creditor shows a deficiency, and the claim for the deficiency is filed not later than the 30th day after the valuation.

(c) The liquidator may petition the receivership court to set a date before which all late claims under Subsection (b) must be filed.

(d) The liquidator shall permit guaranty associations to file claims late and to receive a ratable share of distributions, whether past or future, as if the claims were not late.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.251 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(aa), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.251 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(aa), eff. September 1, 2007.

Sec. 443.252. PROOF OF CLAIM. (a) Proof of claim consists of a statement signed by the claimant or on behalf of the claimant that includes all of the following, as applicable:

(1) the particulars of the claim, including the consideration given for it;

(2) the identity and amount of the security on the claim;

(3) the payments, if any, made on the debt;

(4) that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;

(5) any right of priority of payment or other specific right asserted by the claimant;

(6) the name and address of the claimant and the attorney, if any, who represents the claimant; and

(7) the claimant's social security or federal employer identification number.

(b) The liquidator may require that:

(1) a prescribed form be used; and

(2) other information and documents be included.

(c) At any time the liquidator may:

(1) require the claimant to present information or evidence supplementary to that required under Subsection (a); and

(2) take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(d) Any guaranty association must be permitted to file a single omnibus proof of claim for all claims of the association in connection with payment of claims of the insurer. The omnibus proof of claim may be periodically updated by the association, and the association may be required to submit a reasonable amount of documentation in support of the claim. A guaranty association's claim under this subsection may include amounts for anticipated payments after the closing of the receivership including incurred but not reported claims.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.252 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.252 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.253. ALLOWANCE OF CLAIMS. (a) Except as provided in Subsections (i) and (l), the liquidator shall review all claims duly filed in the liquidation proceeding and shall further investigate as the liquidator considers necessary. Consistent with the provisions of this chapter, the liquidator may allow, disallow, or compromise the amount for which claims will be recommended to the receivership court, unless the liquidator is required by law to accept claims as settled by a person or organization, including a guaranty association, subject to any statutory or contractual rights of the affected reinsurers to participate in the claims allowance process. No claim under a policy of insurance may be allowed for an amount in

excess of the applicable policy limits.

(b) Pursuant to the review, the liquidator shall provide written notice of the claim determination by any means authorized by Section 443.007 to the claimant or the claimant's attorney and may provide notice to any reinsurer that is or may be liable in respect of the claim. The notice must set forth the amount of the claim allowed by the liquidator, if any, and the priority class of the claim as established in Section 443.301.

(c) Not later than the 45th day after the mailing of the notice as set forth in Subsection (b), those noticed may submit written objections to the liquidator. Any submitted objections must clearly set out all facts and the legal basis, if any, for the objections and the reasons why the claim should be allowed at a different amount or in a different priority class. If no timely objection is filed, the determination is final.

(d) A claim that has not become mature as of the coverage termination date established under Section 443.201 because payment on the claim is not yet due may be allowed as if it were mature. A claim that is allowed under this subsection may be discounted to present value based upon a reasonable estimated date of the payment, if the liquidator determines that the present value of the payment is materially less than the amount of the payment.

(e) A judgment or order against an insured or the insurer entered after the date of the initial filing of a successful petition for receivership, or within 120 days before the initial filing of the petition, or a judgment or order against an insured or the insurer entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages.

(f) Claims under employment contracts by directors, officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to any order of receivership, unless explicitly approved in writing by:

(1) the commissioner prior to an order of receivership;

(2) the rehabilitator before the entry of an order of liquidation; or

(3) the liquidator after the entry of an order of liquidation.

(g) The total liability of the insurer to all claimants arising out of the same act or policy may not be greater than the insurer's total liability would have been were the insurer not in liquidation.

(h) The liquidator shall disallow claims for de minimis amounts as determined by the receivership court as being reasonable and necessary for administrative convenience.

(i) A claim that does not contain all the applicable information required by Section 443.252 need not be further reviewed or adjudicated, and may be denied or disallowed by the liquidator subject to the notice and objection procedures in this section.

(j) The liquidator may reconsider a claim on the basis of additional information and amend the recommendation to the receivership court. The claimant must be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The receivership court may amend its allowance or disallowance as appropriate.

(k) The liquidator is not required to process claims for any class until it appears reasonably likely that property will be available for a distribution to that class. If there are insufficient assets to justify processing all claims for any class listed in Section 443.301, the liquidator shall report the facts to the receivership court and make such recommendations as may be appropriate for handling the remainder of the claims.

(l) Any claim by a lessor for damages resulting from the termination of a lease of real property shall be disallowed to the extent that the claim exceeds:

(1) the rent reserved by the lease, without acceleration, for the longer of one year or 15 percent of the remaining term of the lease, not to exceed three years, following the earlier of:

(A) the date of the filing of the petition; or

(B) the date on which the lessor repossessed or the lessee surrendered the leased property; and

(2) any unpaid rent due under the lease, without acceleration, on the earlier of the dates described by Subdivision (1).

(m) If a claim is fully covered by a guaranty association, the liquidator has no obligation to process the claim in accordance with this section and may refuse to process the claim in accordance with this section.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.253 by

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(bb), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.253 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(bb), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 9, eff. September 1, 2011.

Sec. 443.254. CLAIMS UNDER OCCURRENCE POLICIES, SURETY BONDS, AND SURETY UNDERTAKINGS. (a) Subject to the provisions of Section 443.253, any insured has the right to file a claim for the protection afforded under the insured's policy, regardless of whether a claim is known at the time of filing, if the policy is an occurrence policy.

(b) Subject to the provisions of Section 443.253, an obligee under a surety bond or surety undertaking has the right to file a claim for the protection afforded under the surety bond or surety undertaking issued by the insurer under which the obligee is the beneficiary, regardless of whether a claim is known at the time of filing.

(c) After a claim is filed under Subsection (a) or (b), at the time that a specific claim is made by or against the insured or by the obligee, the insured or the obligee shall supplement the claim, and the receiver shall treat the claim as a contingent or unliquidated claim under Section 443.255.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(cc), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.254 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(cc),

eff. September 1, 2007.

Sec. 443.255. ALLOWANCE OF CONTINGENT AND UNLIQUIDATED CLAIMS. (a) A claim of an insured or third party may be allowed under Section 443.253, regardless of the fact that the claim was contingent or unliquidated, if any contingency is removed in accordance with Subsection (b) and the value of the claim is determined. For purposes of this section, a claim is contingent if:

(1) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or bonded or reinsured against occurred on or before the date fixed under Section 443.151; and

(2) the act or event triggering the insurer's obligation to pay has not occurred as of the date fixed under Section 443.151.

(b) Unless the receivership court directs otherwise, a contingent claim may be allowed if the claimant has presented proof reasonably satisfactory to the liquidator of the insurer's obligation to pay or the claim was based on a cause of action against an insured of the insurer and:

(1) it may be reasonably inferred from proof presented upon the claim that the claimant would be able to obtain a judgment; and

(2) the person has furnished suitable proof, unless the receivership court for good cause shown otherwise directs, that no further valid claims can be made against the insurer arising out of the cause of action other than those already presented.

(c) The liquidator may petition the receivership court to set a date before which all claims under this section are final. In addition to the notice requirements of Section 443.007, the liquidator shall give notice of the filing of the petition to all claimants with claims that remain contingent or unliquidated under this section.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.255 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(dd), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.255 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(dd), eff. September 1, 2007.

Sec. 443.256. SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS. (a) When any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator on or before the last day for filing claims.

(b) Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation.

(c) The liquidator may make recommendations to the receivership court for the allowance of an insured's claim after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the receivership court, the liquidator shall withhold any distribution payable on the claim, pending the outcome of litigation and negotiation between the insured and the third party. The liquidator may reconsider the claim as provided in Section 443.253(j). As claims against the insured are settled or barred, the insured or third party, as appropriate, shall be paid from the amount withheld the same percentage distribution as was paid on other claims of like priority, based on the lesser of the amount actually due from the insured by action or paid by agreement plus the reasonable costs and expense of defense, or the amount allowed on the claims by the receivership court. After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed property of the insurer.

(d) If several claims founded upon one policy are timely filed under this section, whether by third parties or as claims by the insured, and the aggregate amount of the timely filed allowed claims exceeds the aggregate policy limits, the liquidator may:

(1) apportion the policy limits ratably among the timely filed allowed claims; or

(2) give notice to the insured, known third parties, and affected guaranty associations that the aggregate policy limits have

been exceeded. On and after the 30th day after the date of the liquidator's notice, further amounts may not be allowed, the policy limits shall be apportioned ratably among the timely filed allowed claims, and any additional claims shall be rejected.

(e) Claims by the insured under Subsection (d) must be evaluated as described by Subsection (c). If any insured's claim is subsequently reduced under Subsection (c), the amount freed by the reduction must be apportioned ratably among the claims which have been reduced under Subsection (d).

(f) A claim may not be allowed under this section to the extent the claim is covered by any guaranty association.

(g) A claimant may withdraw a proof of claim with the liquidator's approval. The liquidator may approve the withdrawal only upon a showing of good cause and after giving notice of the withdrawal to the insured.

(h) The filing of a proof of claim in connection with a claim against an insured has the following effect on the rights of the claimant and the insured:

(1) By filing a proof of claim, a claimant waives any right to pursue the personal assets of the insured with respect to the claim, to the extent of the coverage or policy limits provided by the insurer, and agrees that to the extent of the coverage or policy limits provided by the insurer, the claimant will seek satisfaction of the claim against the insured solely from distributions paid by the liquidator on the claim and from any payments that a guaranty association may pay on account of the claim, except as provided in this section.

(2) The waiver provided under this section is conditioned upon the cooperation of the insured with the liquidator and any applicable guaranty association in the defense of the claim. The waiver provided under this section does not operate to:

(A) discharge the guaranty association from any of the association's responsibilities and duties;

(B) release the insured with respect to any claim in excess of the coverage or policy limits provided by the insurer or any other responsible party; or

(C) release the insured with respect to any claim by a guaranty association for reimbursement under the law applicable to the guaranty association.

(3) The waiver provided under this section is void if:

(A) a claimant withdraws the claimant's proof of claim under Subsection (g); or

(B) the liquidator avoids insurance coverage in connection with a proof of the claim.

(4) The liquidator shall provide, where applicable, notice of the election of remedies provision in this section on any proof of claim form the liquidator distributes. The notice must be inserted above the claimant's signature line in typeface not smaller than the typeface of the rest of the notice and, in any event not smaller than a 14-point font, and must include a statement substantially similar to the following: "I understand by filing this claim in the estate of the insurer I am waiving any right to pursue the personal assets of the insured to the extent that there are policy limits or coverage provided by the now insolvent insurer."

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.256 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(ee), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.256 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(ee), eff. September 1, 2007.

Sec. 443.257. DISPUTED CLAIMS. (a) When objections to the liquidator's proposed treatment of a claim are filed and the liquidator does not alter the determination of the claim as a result of the objections, the liquidator shall ask the receivership court for a hearing pursuant to Section 443.007.

(b) The provisions of this section are not applicable to disputes with respect to coverage determinations by a guaranty association as part of the association's statutory obligations.

(c) The final disposition by the receivership court of a

disputed claim is deemed a final judgment for purposes of appeal.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.257 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(ff), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.257 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(ff), eff. September 1, 2007.

Sec. 443.258. LIQUIDATOR'S RECOMMENDATIONS TO RECEIVERSHIP COURT. The liquidator shall present to the receivership court, for approval, reports of claims settled or determined by the liquidator under Section 443.253. The reports must be presented from time to time as determined by the liquidator and must include information identifying the claim and the amount and priority class of the claim.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(gg), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(gg), eff. September 1, 2007.

Sec. 443.259. CLAIMS OF CODEBTORS. If a creditor does not timely file a proof of the creditor's claim, an entity that is liable to the creditor together with the insurer, or that has secured the creditor, may file a proof of the claim.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.259 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1),

eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.259 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.260. SECURED CREDITORS' CLAIMS. (a) The value of any security held by a secured creditor must be determined in one of the following ways:

(1) by converting the same into money according to the terms of the agreement pursuant to which the security was delivered to the creditor; or

(2) by agreement or litigation between the creditor and the liquidator.

(b) If a surety has paid any losses or loss adjustment expenses under its own surety instrument before any petition initiating a delinquency proceeding is filed and the principal to the instrument has posted collateral that remains available to reimburse the losses or loss adjustment expenses at the time the petition is filed and that collateral has not been credited against the payments made, then the receiver has the first priority to use the collateral to reimburse the surety for any pre-petition losses and expenses.

(c) If the principal under a surety bond or surety undertaking has pledged any collateral, including a guaranty or letter of credit, to secure the principal's reimbursement obligation to the insurer issuing the bond or undertaking, the claim of any obligee, or subject to the discretion of the receiver, of any completion contractor under the surety bond or surety undertaking must be satisfied first out of the collateral or its proceeds.

(d) In making any distribution to an obligee or completion contractor under Subsection (c), the receiver shall retain a sufficient reserve for any other potential claim against that collateral.

(e) If collateral is insufficient to satisfy in full all potential claims against it under Subsections (c) and (g), the claims against the collateral must be paid on a pro rata basis, and an obligee or completion contractor under Subsection (c) has a claim, subject to allowance under Section 443.253, for any deficiency.

(f) If the time to assert claims against a surety bond or a surety undertaking has expired, and all claims described by this

section have been satisfied in full, any remaining collateral pledged under the surety bond or surety undertaking must be returned to the principal under the bond or undertaking.

(g) To the extent that a guaranty association has made a payment relating to a claim against a surety bond, the guaranty association shall first be reimbursed for that payment and related expenses out of the available collateral or proceeds related to the surety bond. To the extent that the collateral is sufficient, the guaranty association shall be reimbursed 100 percent of its payment. If the collateral is insufficient to satisfy in full all potential claims against the collateral under Subsection (c) and this subsection, a guaranty association that has paid claims on the surety bond is entitled to a pro rata share of the available collateral in accordance with Subsection (e), and the guaranty association has claims against the general assets of the estate in accordance with Section 443.253 for any deficiency. Any payment made to a guaranty association under this subsection from collateral may not be deemed early access or otherwise deemed a distribution out of the general assets or property of the estate, and the guaranty association receiving payment shall subtract any payment from the collateral from the association's final claims against the estate.

(h) An amount determined under Subsection (a) shall be credited upon the secured claim, and the claimant may file a proof of claim, subject to all other provisions of this chapter for any deficiency, which must be treated as an unsecured claim. If the claimant surrenders the claimant's security to the liquidator, the entire claim is treated as if unsecured.

(i) The liquidator may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of the property to the extent of any benefit to the holder of such claim.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.260 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(hh), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.260 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(hh), eff. September 1, 2007.

Sec. 443.261. QUALIFIED FINANCIAL CONTRACTS. (a) Notwithstanding any other provision of this chapter, including any other provision of this chapter permitting the modification of contracts, or other law of this state, a person may not be stayed or prohibited from exercising:

(1) a contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of:

(A) the insolvency, financial condition, or default of the insurer at any time, provided that the right is enforceable under applicable law other than this chapter; or

(B) the commencement of a formal delinquency proceeding under this chapter;

(2) any right under a pledge, security, collateral, or guarantee agreement, or any other similar security arrangement or credit support document, relating to a netting agreement or qualified financial contract; or

(3) subject to any provision of Section 443.209(b), any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a netting agreement or qualified financial contract where the counterparty or its guarantor is organized under the laws of the United States or a state or foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting.

(b) Upon termination of a netting agreement, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition has been filed under this chapter shall be transferred to, or on the order of the receiver for, the insurer, even if the insurer is the defaulting party and notwithstanding any provision in the netting agreement that may provide that the nondefaulting party is not required to pay any net

or settlement amount due to the defaulting party upon termination. Any limited two-way payment provision in a netting agreement with an insurer that has defaulted is deemed to be a full two-way payment provision as against the defaulting insurer. Any such property or amount is, except to the extent it is subject to one or more secondary liens or encumbrances, a general asset of the insurer.

(c) In making any transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall either:

(1) transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or any affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

(A) all rights and obligations of each party under each netting agreement and qualified financial contract; and

(B) all property, including any guarantees or credit support documents, securing any claims of each party under each netting agreement and qualified financial contract; or

(2) transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in Subdivision (1), with respect to the counterparty and any affiliate of the counterparty.

(d) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer not later than noon, the receiver's local time, on the business day following the transfer. For purposes of this subsection, "business day" means a day other than a Saturday, a Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(e) Notwithstanding any other provision of this chapter, a receiver may not avoid a transfer of money or other property arising under or in connection with a netting agreement or qualified financial contract, or any pledge, security, or collateral or guarantee agreement or any other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract, that is made before the commencement of a formal delinquency proceeding under this chapter. However, a transfer may

be avoided under Section 443.205(a) if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

(f) In exercising any of the receiver's powers under this chapter to disaffirm or repudiate a netting agreement or qualified financial contract, the receiver shall take action with respect to each netting agreement or qualified financial contract and all transactions entered into in connection with the agreement or contract in its entirety. Notwithstanding any other provision of this chapter, any claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation case must be determined and must be allowed or disallowed as if the claim had arisen before the date of the filing of the petition for liquidation or, if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the date of the filing of the petition for rehabilitation. The amount of the claim must be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract. For purposes of this subsection, the term "actual direct compensatory damages" does not include punitive or exemplary damages, damages for lost profit or lost opportunity, or damages for pain and suffering but does include normal and reasonable costs of cover or other reasonable measures of damages utilized in the derivatives market for the contract and agreement claims.

(g) For purposes of this section, the term "contractual right" includes any right, whether or not evidenced in writing, arising under:

(1) statutory or common law;

(2) a rule or bylaw of a national securities exchange, national securities clearing organization, or securities clearing agency;

(3) a rule, bylaw, or resolution of the governing body of a contract market or its clearing organization; or

(4) law merchant.

(h) The provisions of this section do not apply to persons who are affiliates of the insurer that is the subject of the proceeding.

(i) All rights of counterparties under this chapter apply to netting agreements and qualified financial contracts entered into on

behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.261 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(ii), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.261 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(ii), eff. September 1, 2007.

SUBCHAPTER G. DISTRIBUTIONS

Sec. 443.301. PRIORITY OF DISTRIBUTION. The priority of payment of distributions on unsecured claims must be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full, or adequate funds retained for their payment, before the members of the next class receive payment, and all claims within a class must be paid substantially the same percentage of the amount of the claim. Except as provided by Subsections (a)(2), (a)(3), (i), and (k), subclasses may not be established within a class. No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies. The order of distribution of claims shall be:

(a) Class 1. (1) The costs and expenses of administration expressly approved or ratified by the liquidator, including the following:

(A) the actual and necessary costs of preserving or recovering the property of the insurer;

(B) reasonable compensation for all services rendered

on behalf of the administrative supervisor or receiver;

(C) any necessary filing fees;

(D) the fees and mileage payable to witnesses;

(E) unsecured loans obtained by the receiver; and

(F) expenses, if any, approved by the rehabilitator of the insurer and incurred in the course of the rehabilitation that are unpaid at the time of the entry of the order of liquidation.

(2) The reasonable expenses of a guaranty association, including overhead, salaries and other general administrative expenses allocable to the receivership to include administrative and claims handling expenses and expenses in connection with arrangements for ongoing coverage, other than expenses incurred in the performance of duties under Section 462.002(3), 463.108, 463.111, 463.113, 463.353, or 2602.113 or similar duties under the statute governing a similar organization in another state. In the case of the Texas Property and Casualty Insurance Guaranty Association and other property and casualty guaranty associations, the expenses shall include loss adjustment expenses, including adjusting and other expenses and defense and cost containment expenses. In the event that there are insufficient assets to pay all of the costs and expenses of administration under Subsection (a)(1) and the expenses of a guaranty association, the costs and expenses under Subsection (a)(1) shall have priority over the expenses of a guaranty association. In this event, the expenses of a guaranty association shall be paid on a pro rata basis after the payment of costs and expenses under Subsection (a)(1) in full.

(3) For purposes of Subsection (a)(1)(E), any unsecured loan obtained by the receiver, unless by its terms it otherwise provides, has priority over all other costs of administration. Absent agreement to the contrary, all claims in this subclass share pro rata.

(4) Except as expressly approved by the receiver, any expenses arising from a duty to indemnify the directors, officers, or employees of the insurer are excluded from this class and, if allowed, are Class 5 claims.

(b) Class 2. (1) All claims under policies of insurance, including third-party claims; claims under annuity contracts, including funding agreements, guaranteed investment contracts, and synthetic guaranteed investment contracts; claims under nonassessable policies for unearned premium; claims of obligees and, subject to the

discretion of the receiver, completion contractors, under surety bonds and surety undertakings other than bail bonds, mortgage or financial guaranties, or other forms of insurance offering protection against investment risk; claims by principals under surety bonds and surety undertakings for wrongful dissipation of collateral by the insurer or its agents; and claims incurred during the extension of coverage provided for in Section 443.152. For purposes of this subdivision, "annuity contract," "funding agreement," "guaranteed investment contract," and "synthetic guaranteed investment contract" have the meanings assigned by Section 1154.003.

(2) All other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 1, including indemnity payments on covered claims and, in the case of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association or another life and health guaranty association, all claims as a creditor of the impaired or insolvent insurer for all payments of and liabilities incurred on behalf of covered claims or covered obligations of the insurer and for the funds needed to reinsure those obligations with a solvent insurer.

(3) Claims for benefits under a health care plan issued by a health maintenance organization.

(4) Claims under insurance policies or contracts for benefits issued by an unauthorized insurer.

(5) Notwithstanding any provision of this chapter, the following claims are excluded from Class 2 priority:

(A) obligations of the insolvent insurer arising out of reinsurance contracts;

(B) obligations, excluding unearned premium claims on policies other than reinsurance agreements, incurred after:

(i) the expiration date of the insurance policy;

(ii) the policy has been replaced by the insured or canceled at the insured's request; or

(iii) the policy has been canceled as provided by this chapter;

(C) obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity, or subrogation, equitable or otherwise;

(D) any claim that is in excess of any applicable limits provided in the insurance policy issued by the insurer;

(E) any amount accrued as punitive or exemplary damages

unless expressly covered under the terms of the policy;

(F) tort claims of any kind against the insurer and claims against the insurer for bad faith or wrongful settlement practices; and

(G) claims of the guaranty associations for assessments not paid by the insurer, which must be paid as claims in Class 5.

(c) Class 3. Claims of the federal government not included in Class 2.

(d) Class 4. Debts due employees for services or benefits to the extent that the debts do not exceed $5,000 or two months salary, whichever is the lesser, and represent payment for services performed within one year before the entry of the initial order of receivership. This priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees.

(e) Class 5. Claims of other unsecured creditors not included in Classes 1 through 4, including claims under reinsurance contracts, claims of guaranty associations for assessments not paid by the insurer, and other claims excluded from Class 2.

(f) Class 6. Claims of any state or local governments, except those specifically classified elsewhere in this section. Claims of attorneys for fees and expenses owed them by an insurer for services rendered in opposing a formal delinquency proceeding. In order to prove the claim, the claimant must show that the insurer that is the subject of the delinquency proceeding incurred the fees and expenses based on its best knowledge, information, and belief, formed after reasonable inquiry, indicating opposition was in the best interests of the insurer, was well grounded in fact, and was warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that opposition was not pursued for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the litigation.

(g) Class 7. Claims of any state or local government for a penalty or forfeiture, but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The balance of the claims must be treated as Class 9 claims under Subsection (i).

(h) Class 8. Except as provided in Sections 443.251(b) and (d), late filed claims that would otherwise be classified in Classes

2 through 7.

(i) Class 9. Surplus notes, capital notes or contribution notes or similar obligations, premium refunds on assessable policies, and any other claims specifically assigned to this class. Claims in this class are subject to any subordination agreements related to other claims in this class that existed before the entry of the liquidation order.

(j) Class 10. Interest on allowed claims of Classes 1 through 9, according to the terms of a plan proposed by the liquidator and approved by the receivership court.

(k) Class 11. Claims of shareholders or other owners arising out of their capacity as shareholders or other owners, or any other capacity, except as they may be qualified in Class 2, 5, or 10. Claims in this class are subject to any subordination agreements related to other claims in this class that existed before the entry of the liquidation order.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(jj), eff. September 1, 2007.

Redesignated from Insurance Code - Not Codified, Art/Sec 21A.301 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(jj), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 1, eff. September 1, 2015.

Sec. 443.302. PARTIAL AND FINAL DISTRIBUTIONS OF ASSETS. (a) With the approval of the receivership court, the liquidator may declare and pay one or more distributions to claimants whose claims have been allowed. Distributions paid under this subsection must be paid at substantially the same percentage of the amount of the claim.

(b) In determining the percentage of distributions to be paid on these claims, the liquidator may consider the estimated value of the insurer's property, including estimated reinsurance recoverables

in connection with the insurer's estimated liabilities for unpaid losses and loss expenses and for incurred but not reported losses and loss expenses, and the estimated value of the insurer's liabilities, including estimated liabilities for unpaid losses and loss expenses and for incurred but not reported losses and loss expenses.

(c) Distribution of property in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the receivership court.

(d) Notwithstanding the provisions of Subsection (a) and Subchapter D, the liquidator is authorized to pay benefits under a workers' compensation policy after the entry of the liquidation order if:

(1) the insurer has accepted liability and no bona fide dispute exists;

(2) payments under the policy commenced before the entry of the liquidation order; and

(3) future or past indemnity or medical payments are due under the policy.

(e) Claim payments made under Subsection (d) may continue until the date that a guaranty association assumes responsibility for claim payments under the policy.

(f) Any claim payments made under Subsection (d) and any related expenses must be treated as early access payments under Section 443.303 to the guaranty association responsible for the claims.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.302 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(kk), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.302 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(kk), eff. September 1, 2007.

Sec. 443.303. EARLY ACCESS PAYMENTS. (a) For purposes of this section, "distributable assets" means all general assets of the liquidation estate less:

(1) amounts reserved, to the extent necessary and appropriate, for the entire Section 443.301(a) expenses of the liquidation through and after its closure; and

(2) to the extent necessary and appropriate, reserves for distributions on claims other than those of the guaranty associations falling within the priority classes of claims established in Section 443.301(b).

(b) Early access payments to guaranty associations must be made as soon as possible after the entry of a liquidation order and as frequently as possible after the entry of the order, but at least annually if distributable assets are available to be distributed to the guaranty associations, and must be in amounts consistent with this section. Amounts advanced to an affected guaranty association pursuant to this section shall be accounted for as advances against distributions to be made under Section 443.302. Where sufficient distributable assets are available, amounts advanced are not limited to the claims and expenses paid to date by the guaranty associations; however, the liquidator may not distribute distributable assets to the guaranty associations in excess of the anticipated entire claims of the guaranty associations falling within the priority classes of claims established in Sections 443.301(a) and (b).

(c) Within 120 days after the entry of an order of liquidation by the receivership court, and at least annually after the entry of the order, the liquidator shall apply to the receivership court for approval to make early access payments out of the general assets of the insurer to any guaranty associations having obligations arising in connection with the liquidation or shall report that there are no distributable assets at that time based on financial reporting as required in Section 443.016. The liquidator may apply to the receivership court for approval to make early access payments more frequently than annually based on additional information or the recovery of material assets.

(d) Within 60 days after approval by the receivership court of the applications in Subsection (c), the liquidator shall make any early access payments to the affected guaranty associations as

indicated in the approved application.

(e) Notice of each application for early access payments, or of any report required pursuant to this section, must be given in accordance with Section 443.007 to the guaranty associations that may have obligations arising from the liquidation. Notwithstanding the provisions of Section 443.007, the liquidator shall provide these guaranty associations with at least 30 days' actual notice of the filing of the application and with a complete copy of the application prior to any action by the receivership court. Any guaranty association that may have obligations arising in connection with the liquidation has:

(1) the right to request additional information from the liquidator, who may not unreasonably deny such request; and

(2) the right to object as provided by Section 443.007 to any part of each application or to any report filed by the liquidator pursuant to this section.

(f) In each application regarding early access payments, the liquidator shall, based on the best information available to the liquidator at the time, provide, at a minimum, the following:

(1) to the extent necessary and appropriate, the amount reserved for the entire expenses of the liquidation through and after its closure and for distributions on claims falling within the priority classes of claims established in Sections 443.301(b) and (c);

(2) the computation of distributable assets and the amount and method of equitable allocation of early access payments to each of the guaranty associations; and

(3) the most recent financial information filed with the National Association of Insurance Commissioners by the liquidator.

(g) Each guaranty association that receives any payments pursuant to this section agrees, upon depositing the payment in any account to its benefit, to return to the liquidator any amount of these payments that may be required to pay claims of secured creditors and claims falling within the priority classes of claims established in Section 443.301(a), (b), or (c). No bond may be required of any guaranty association.

(h) Nothing in this section affects the method by which a guaranty association determines the association's statutory coverage obligations.

(i) Without the consent of the affected guaranty associations

or an order of the receivership court, the liquidator may not offset the amount to be dispersed to any guaranty association by the amount of any specific deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the association has actually received the deposit.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.303 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(ll), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.303 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(ll), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 193 (S.B. 1433), Sec. 11, eff. September 1, 2011.

Sec. 443.304. UNCLAIMED AND WITHHELD FUNDS. (a) If any funds of the receivership estate remain unclaimed after the final distribution under Section 443.302, the funds must be placed in a segregated unclaimed funds account held by the commissioner. If the owner of any of the unclaimed funds presents proof of ownership satisfactory to the commissioner before the second anniversary of the date of the termination of the delinquency proceeding, the commissioner shall remit the funds to the owner. The interest earned on funds held in the unclaimed funds account may be used to pay any administrative costs related to the handling or return of unclaimed funds.

(b) If any amounts held in the unclaimed funds account remain unclaimed on or after the second anniversary of the date of the termination of the delinquency proceeding, the commissioner may file a motion for an order directing the disposition of the funds in the court in which the delinquency proceeding was pending. Any costs

incurred in connection with the motion may be paid from the unclaimed funds account. The motion shall identify the name of the insurer, the names and last known addresses of the persons entitled to the unclaimed funds, if known, and the amount of the funds. Notice of the motion shall be given as directed by the court. Upon a finding by the court that the funds have not been claimed before the second anniversary of the date of the termination of the delinquency proceeding, the court shall order that any claims for unclaimed funds and any interest earned on the unclaimed funds that has not been expended under Subsection (a) are abandoned and that the funds must be disbursed under one of the following methods:

(1) the amounts may be deposited in the general receivership expense account under Subsection (c);

(2) the amounts may be transferred to the comptroller, and deposited into the general revenue fund; or

(3) the amounts may be used to reopen the receivership in accordance with Section 443.353 and be distributed to the known claimants with approved claims.

(c) The commissioner may establish an account for the following purposes:

(1) to pay general expenses related to the administration of receiverships; and

(2) to advance funds to any receivership that does not have sufficient cash to pay its operating expenses.

(d) Any advance to a receivership under Subsection (c)(2) may be treated as a claim under Section 443.301 as agreed at the time the advance is made or, in the absence of an agreement, in the priority determined to be appropriate by the court.

(e) If the commissioner determines at any time that the funds in the account exceed the amount required, the commissioner may transfer the funds or any part of the funds to the comptroller, and the transferred funds must be deposited into the general revenue fund.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.304 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(mm), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.304 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(mm), eff. September 1, 2007.

SUBCHAPTER H. DISCHARGE

Sec. 443.351. CONDITION ON RELEASE FROM DELINQUENCY PROCEEDINGS. Until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of the obligations and interest on all the payments and expenses, are repaid to the guaranty associations, unless otherwise provided in a plan approved by the guaranty association, an insurer that is subject to any formal delinquency proceedings may not:

(1) solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(2) be returned to the control of its shareholders or private management; or

(3) have any of its assets returned to the control of its shareholders or private management.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.351 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.351 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.352. TERMINATION OF LIQUIDATION PROCEEDINGS. When all property justifying the expense of collection and distribution has been collected and distributed under this chapter, the liquidator shall apply to the receivership court for an order discharging the

liquidator and terminating the proceeding. The receivership court may grant the application and make any other orders, including orders to transfer any remaining funds that are uneconomic to distribute, or pursuant to Section 443.302(c), assign any assets that remain unliquidated, including claims and causes of action, as may be deemed appropriate.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(nn), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.352 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(nn), eff. September 1, 2007.

Sec. 443.353. REOPENING RECEIVERSHIP. After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the court to reopen the delinquency proceeding for good cause, including the discovery of additional property. If the court is satisfied that there is justification for reopening, it shall so order.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.353 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.353 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

Sec. 443.354. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF RECEIVERSHIP. (a) When it appears to the receiver that the records of the insurer in receivership are no longer useful, the receiver may recommend to the receivership court and the receivership court shall direct what records should be destroyed.
(b) If the receiver determines that any records should be

maintained after the closing of the delinquency proceeding, the receiver may reserve property from the receivership estate for the maintenance of the records, and any amounts so retained are administrative expenses of the estate under Section 443.301(a). Any records retained pursuant to this subsection must be transferred to the custody of the commissioner, and the commissioner may retain or dispose of the records as appropriate, at the commissioner's discretion. Any records of a delinquent insurer that are transferred to the commissioner may not be considered records of the department for any purposes, and Chapter 552, Government Code, does not apply to those records.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.354 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(oo), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.354 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(oo), eff. September 1, 2007.

Sec. 443.355. EXTERNAL AUDIT OF THE RECEIVER'S BOOKS. (a) The receivership court may, as it deems desirable, order audits to be made of the books of the receiver relating to any receivership established under this chapter. A report of each audit shall be filed with the commissioner and with the receivership court.

(b) The books, records, and other documents of the receivership must be made available to the auditor at any time without notice.

(c) The expense of each audit shall be considered a cost of administration of the receivership.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.355 by

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.355 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.

SUBCHAPTER I. INTERSTATE RELATIONS

Sec. 443.401. ANCILLARY CONSERVATION OF FOREIGN INSURERS. (a) The commissioner may initiate an action against a foreign insurer pursuant to Section 443.051 on any of the grounds stated in that section or on the basis that:

(1) any of the foreign insurer's property has been sequestered, garnished, or seized by official action in its domiciliary state or in any other state;

(2) the foreign insurer's certificate of authority to do business in this state has been revoked or was never issued and there are residents of this state with unpaid claims or in-force policies; or

(3) initiation of the action is necessary to enforce a stay under Section 462.309, 463.404, or 2602.259.

(b) If a domiciliary receiver has been appointed, the commissioner may initiate an action against a foreign insurer under Subsection (a)(1) or (a)(2) only with the consent of the domiciliary receiver.

(c) An order entered pursuant to this section must appoint the commissioner as conservator. The conservator's title to assets must be limited to the insurer's property and records located in this state.

(d) Notwithstanding Section 443.201(c), the conservator shall hold and conserve the assets located in this state until the commissioner in the insurer's domiciliary state is appointed its receiver or until an order terminating conservation is entered under Subsection (g). Once a domiciliary receiver is appointed, the conservator shall turn over to the domiciliary receiver all property subject to an order under this section.

(e) The conservator may liquidate property of the insurer as necessary to cover the costs incurred in the initiation or administration of a proceeding under this section.

(f) The court in which an action under this section is pending

may issue a finding of insolvency or an ancillary liquidation order. The court may enter an ancillary liquidation order only for the limited purposes of:

(1) liquidating assets in this state to pay costs under Subsection (e); or

(2) activating relevant laws applicable to guaranty associations to pay valid claims that are not being paid by the insurer.

(g) The conservator may at any time petition the receivership court for an order terminating an order entered under this section.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.401 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(pp), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.401 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(pp), eff. September 1, 2007.

Sec. 443.402. DOMICILIARY RECEIVERS APPOINTED IN OTHER STATES. (a) A domiciliary receiver appointed in another state is vested by operation of law with title to, and may summarily take possession of, all property and records of the insurer in this state. Notwithstanding any other provision of law regarding special deposits, special deposits held in this state shall be, upon the entry of an order of liquidation with a finding of insolvency, distributed to the guaranty associations in this state as early access payments subject to Section 443.303, in relation to the lines of business for which the special deposits were made. The holder of any special deposit shall account to the domiciliary receiver for all distributions from the special deposit at the time of the distribution. The statutory provisions of another state and all

orders entered by courts of competent jurisdiction in relation to the appointment of a domiciliary receiver of an insurer and any related proceedings in another state must be given full faith and credit in this state. For purposes of this section, "another state" means any state other than this state. This state shall treat any other state than this state as a reciprocal state.

(b) Upon appointment of a domiciliary receiver in another state, the commissioner shall, unless otherwise agreed by the receiver, immediately transfer title to and possession of all property of the insurer under the commissioner's control, including all statutory general or special deposits, to the receiver.

(c) Except as provided in Subsection (a), the domiciliary receiver shall handle special deposits and special deposit claims in accordance with federal law and the statutes pursuant to which the special deposits are required. All amounts in excess of the estimated amount necessary to administer the special deposit and pay the unpaid special deposit claims are deemed general assets of the estate. If there is a deficiency in any special deposit so that the claims secured by the special deposit are not fully discharged from the deposit, the claimants may share in the general assets of the insurer to the extent of the deficiency at the same priority as other claimants in their class of priority under Section 443.301, but the sharing must be deferred until the other claimants of their class have been paid percentages of their claims equal to the percentage paid from the special deposit. The intent of this provision is to equalize to this extent the advantage gained by the security provided by the special deposits.

Added by Acts 2005, 79th Leg., Ch. 995 (H.B. 2157), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.402 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(qq), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21A.402 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(1), eff. September 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(qq), eff. September 1, 2007.

CHAPTER 444. AGENCY CONTRACTS WITH CERTAIN INSURERS

Sec. 444.001. REQUIRED CONTRACT PROVISION. An agency contract entered into on or after August 27, 1973, by an insurer writing fire and casualty insurance in this state must contain, or shall be construed to contain, the following provision:

Notwithstanding any other provision of this contract, the obligation of the agent to remit written premiums to the insurer shall be changed on the commencement of a delinquency proceeding as defined by Chapter 443, Insurance Code, as amended. After the commencement of the delinquency proceeding, the obligation of the agent to remit premiums is limited to premiums earned before the cancellation date of insurance policies stated in the order of a court of competent jurisdiction under Chapter 443, Insurance Code, canceling the policies. The agent does not owe and may not be required to remit to the insurer or to the receiver any premiums that are unearned as of the cancellation date stated in the order.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(rr), eff. September 1, 2007.

Redesignated from Insurance Code, Section 442.801 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(2), eff. September 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(rr), eff. September 1, 2007.

Sec. 444.002. DISPOSITION OF PREMIUMS. (a) On or after the cancellation date of insurance policies as stated in the court's order canceling the policies, the agent shall promptly account to the receiver for:

(1) all unearned premiums to be returned to the insured or the replacement coverage to be obtained for the insured; and

(2) the earned premiums to be paid to the receiver.

(b) The agent shall:

(1) promptly return to an insured who paid the premiums any unearned premiums in the possession of the agent on the cancellation date of the policy; or

(2) with the approval of the insured, use the unearned premiums to purchase new coverage for the insured with a different insurer.

(c) The agent shall promptly remit to the receiver any earned premiums in the possession of the agent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Redesignated from Insurance Code, Section 442.802 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(a)(2), eff. September 1, 2007.
Redesignated from Insurance Code, Section 442.802 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(2), eff. September 1, 2007.

Sec. 444.003. EFFECT OF CHAPTER ON ACTION BY RECEIVER AGAINST AGENT. This chapter does not prejudice a cause of action by the receiver against an agent to recover:

(1) unearned premiums that were not returned to policyholders; or

(2) earned premiums that were not promptly remitted to the receiver.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(ss), eff. September 1, 2007.
Redesignated from Insurance Code, Section 442.803 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(2), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(ss), eff. September 1, 2007.

Sec. 444.004. AGENT NOT RECEIVER'S AGENT. This chapter does not render the agent an agent of the receiver for earned or unearned premiums.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.004(tt), eff. September 1, 2007.
Redesignated from Insurance Code, Section 442.804 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(a)(2), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.004(tt), eff. September 1, 2007.

SUBTITLE D. GUARANTY ASSOCIATIONS

CHAPTER 461. GENERAL PROVISIONS

Sec. 461.001. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to an insurance policy, contract, certificate, evidence of coverage, or application delivered or issued for delivery in this state that is not covered by an insurance guaranty fund or other solvency protection arrangement authorized by this code.

(b) This chapter does not apply to:

(1) a fidelity, surety, or guaranty bond; or

(2) marine insurance as defined by Section 1807.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 461.002. DISCLOSURE OF GUARANTY FUND NONPARTICIPATION. (a) Each insurance policy, contract, certificate, evidence of coverage, or application subject to this chapter must include a statement that, if the insurer is unable to fulfill the insurer's contractual obligation under the policy, contract, certificate, or evidence of coverage, the insurer is not covered by an insurance guaranty fund or other solvency protection arrangement.

(b) The statement must be in 10-point type and affixed to the first page of the insurance policy, contract, certificate, evidence of coverage, or application.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 461.003. FORM OF STATEMENT; PROHIBITION. (a) The commissioner by rule shall promulgate the statement that an insurer must use to comply with this chapter.

(b) An insurer may not include in an insurance policy, contract, certificate, evidence of coverage, or application a statement that does not conform to the appropriate statement prescribed by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 462. TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 462.001. SHORT TITLE. This chapter may be cited as the Texas Property and Casualty Insurance Guaranty Act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.002. PURPOSES. The purposes of this chapter are to:

(1) provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment;

(2) avoid financial loss to claimants or policyholders because of an insurer's impairment;

(3) assist in the detection and prevention of insurer insolvencies; and

(4) provide an association to assess the cost of that protection among insurers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.003. CONSTRUCTION. This chapter shall be liberally construed to implement the purposes of this chapter described by Section 462.002, which shall be used to aid and guide interpretation of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.004. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an impaired insurer on December 31 of the year preceding the date the insurer becomes an impaired insurer.

(2) "Association" means the Texas Property and Casualty Insurance Guaranty Association.

(3) "Board" means the board of directors of the association.

(4) "Claimant" means an insured making a first-party claim or a person instituting a liability claim.

(5) "Impaired insurer" means a member insurer that is subject to a final, nonappealable order of liquidation that includes a finding of insolvency issued by a court of competent jurisdiction in this state or in the insurer's state of domicile.

(6) "Member insurer" means an insurer, including a stock insurance company, a mutual insurance company, a Lloyd's plan, a reciprocal or interinsurance exchange, and a county mutual insurance company, that:

(A) writes any kind of insurance to which this chapter applies under Sections 462.007 and 462.008, including reciprocal or interinsurance exchange contracts; and

(B) holds a certificate of authority to engage in the business of insurance in this state.

(7) "Person" means an individual, corporation, partnership, association, or voluntary organization.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 1, eff. September 1, 2019.

Sec. 462.005. DESCRIPTION OF CONTROL. (a) For purposes of this chapter, control is the power to direct, or cause the direction

of, the management and policies of a person, other than power that results from an official position with the person or a corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(b) A person is presumed to control another person if the person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of the other person. This presumption may be rebutted by a showing that the person does not in fact control the other person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.006. NET DIRECT WRITTEN PREMIUMS. (a) Except as provided by Subsection (b) and subject to Subsection (c), in this chapter, "net direct written premiums" means direct premiums written in this state on insurance policies to which this chapter applies, less return premiums on those policies and dividends paid or credited to policyholders on that direct business.

(b) Subject to Subsection (c), for assessing the workers' compensation line of business, the term "net direct written premiums" includes the modified annual premium before the application of a deductible premium credit, less return premiums on those policies and dividends paid or credited to policyholders on that direct business.

(c) The term "net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.007. APPLICABILITY IN GENERAL; EXCEPTIONS. (a) Except as provided by Subsection (b), this chapter applies to each kind of direct insurance.

(b) Except as provided by Subchapter F, this chapter does not apply to:

(1) life, annuity, health, or disability insurance;

(2) mortgage guaranty, financial guaranty, or other kinds

of insurance offering protection against investment risks;

(3) a fidelity or surety bond, or any other bonding obligation;

(4) credit insurance, vendors' single-interest insurance, collateral protection insurance, or similar insurance protecting a creditor's interest arising out of a creditor-debtor transaction;

(5) insurance of warranties or service contracts;

(6) title insurance;

(7) ocean marine insurance;

(8) a transaction or combination of transactions between a person, including an affiliate of the person, and an insurer, including an affiliate of the insurer, that involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk, including transactions, except for workers' compensation insurance, involving captive insurers, policies in which deductible or self-insured retention is substantially equal in amount to the limit of the liability under the policy, and transactions in which the insured retains a substantial portion of the risk; or

(9) insurance provided by or guaranteed by government.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.005(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.005(a), eff. September 1, 2007.

Sec. 462.008. APPLICABILITY TO TEXAS MUTUAL INSURANCE COMPANY. (a) This chapter applies to insurance written through the Texas Mutual Insurance Company only as provided by this section.

(b) This chapter applies to the Texas Mutual Insurance Company on a prospective basis on and after January 1, 2000. The Texas Mutual Insurance Company is only liable for assessments for a claim with a date of injury that occurs on or after January 1, 2000. The association, with respect to an insolvency of the Texas Mutual Insurance Company, is only liable for a claim with a date of injury that occurs on or after January 1, 2000.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 462.009. APPLICABILITY TO FORMER TEXAS WORKERS' COMPENSATION INSURANCE FACILITY AND SUCCESSOR. (a) Notwithstanding any other provision of this chapter, this chapter applies to each insurance policy issued under Article 5.76 or 5.76-2, as those articles existed before their repeal.

(b) Notwithstanding any other provision of this chapter, the stock insurance company that resulted from the transfer of the former Texas workers' compensation insurance facility is considered an impaired insurer for purposes of this chapter if any action described by Section 462.004(5) is taken with respect to the company.

(c) A claim under an insurance policy described by Subsection (a) is a covered claim for purposes of this chapter if the claim is a covered claim for purposes of Sections 462.201-462.203, 462.205-462.210, 462.213, 462.214, and 462.305 without regard to whether the stock insurance company described by Subsection (b):

(1) issued or assumed the policy; or

(2) was authorized to engage in business in this state at the time:

(A) the policy was written; or

(B) the company became an impaired insurer.

(d) If a conflict exists between this section and any other statute relating to the former Texas workers' compensation insurance facility or the association, this section controls.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.010. CONFLICT WITH OTHER LAWS. (a) Except as provided by Subsection (b), if this chapter conflicts with another statute relating to the association, this chapter controls.

(b) This section does not apply to a conflict between this chapter and:

(1) Subtitle A, Title 5, Labor Code, except as described by Subsection (c); or

(2) Subtitle E, Title 10.

(c) This chapter controls with respect to subrogation rights of

an insurance carrier under Chapter 417, Labor Code, against an impaired insurer's insured or the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.011. IMMUNITY IN GENERAL. (a) Liability does not exist and a cause of action does not arise against any of the following persons for any good faith act or omission in performing the person's powers and duties under this chapter:

(1) the commissioner or the commissioner's representative;

(2) the association or the association's agent or employee;

(3) a member insurer;

(4) the board;

(5) the receiver; or

(6) a special deputy receiver or the special deputy receiver's agent or employee.

(b) The attorney general shall defend any action to which this section applies that is brought against the commissioner or the commissioner's representative, the association or the association's agent or employee, a member insurer or the insurer's agent or employee, a board member, or a special deputy receiver or the special deputy receiver's agent or employee, including an action instituted after the defendant's service with the association, commissioner, or department has terminated. This subsection does not require the attorney general to defend a person with respect to an issue other than the applicability or effect of the immunity created by Subsection (a). The attorney general is not required to defend the association or the association's agent or employee, a member insurer or the member insurer's agent or employee, a board member, or a special deputy receiver or the special deputy receiver's agent or employee against an action regarding the disposition of a claim filed with the association under this chapter or any issue other than the applicability or effect of the immunity created by Subsection (a). The association may contract with the attorney general under Chapter 771, Government Code, for legal services not covered by this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.012. IMMUNITY IN RELATION TO CERTAIN REPORTS AND RECOMMENDATIONS. Liability does not exist and a cause of action does not arise against any of the following persons for a statement made in good faith by the person in a report or recommendation made under Section 462.111 or 462.113:

(1) the commissioner or the commissioner's representative;
(2) the association or the association's agent or employee;
(3) a member insurer; or
(4) the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.013. IMMUNITY IN RELATION TO CERTAIN NEGOTIATIONS. (a) Liability does not exist and a cause of action does not arise against any of the following persons for an act or omission in the performance of an activity related to the negotiations relating to the privatization of the former Texas workers' compensation facility:

(1) the commissioner or the commissioner's representative;
(2) the association or the association's agent or employee;
(3) a member insurer; or
(4) a board member.

(b) This section applies to each activity undertaken by a person described by Subsection (a), regardless of the date of the act or omission.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.014. RULES. The commissioner shall adopt reasonable rules as necessary to implement and supplement this chapter and this chapter's purposes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.015. INFORMATION PROVIDED BY OR TO COMMISSIONER. (a) The commissioner shall notify the association of the existence of an impaired insurer not later than the third day after the date the commissioner gives notice of the designation of impairment. The association is entitled to a copy of any complaint seeking an order of receivership with a finding of insolvency against a member insurer at the time the complaint is filed with a court.

(b) On the board's request, the commissioner shall provide the association with a statement of the net direct written premiums of each member insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.016. PENALTY FOR FAILURE TO PAY ASSESSMENTS OR COMPLY WITH PLAN OF OPERATION. (a) The commissioner shall suspend or revoke, after notice and hearing, the certificate of authority to engage in the business of insurance in this state of a member insurer that:

(1) fails to pay an assessment at the time the assessment is due; or

(2) otherwise fails to comply with the plan of operation.

(b) As an alternative to action under Subsection (a), the commissioner may assess a fine on a member insurer that fails to pay an assessment at the time the assessment is due. The fine may not exceed the lesser of:

(1) five percent of the unpaid assessment per month; or

(2) $100 per month.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.017. APPEALS AND OTHER ACTIONS. (a) A final action or order of the commissioner under this chapter is subject to judicial review by a court.

(b) Venue in a suit by or against the commissioner or association relating to an action or ruling of the commissioner or association under this chapter is in Travis County. The commissioner or association is not required to give an appeal bond in an appeal of

a cause of action arising under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.008(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.008(a), eff. September 1, 2007.

SUBCHAPTER B. GOVERNANCE OF ASSOCIATION

Sec. 462.051. ASSOCIATION AS LEGAL ENTITY; MEMBERSHIP. (a) The Texas Property and Casualty Insurance Guaranty Association is a nonprofit unincorporated legal entity.

(b) The association is composed of all member insurers. A member insurer must remain a member of the association as a condition of engaging in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.052. BOARD OF DIRECTORS. (a) The association's powers are exercised through a board of directors consisting of nine individuals.

(b) Member insurers shall select five insurance industry board members, subject to the approval of the commissioner. In approving selections to the board, the commissioner shall consider whether all member insurers are fairly represented.

(c) Four board members must be public representatives appointed by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.053. ELIGIBILITY TO SERVE AS PUBLIC REPRESENTATIVE. A board member who is a public representative may not be:

(1) an officer, director, or employee of an insurer, insurance agency, agent, broker, adjuster, or any other business

entity regulated by the department;

(2) a person required to register with the Texas Ethics Commission under Chapter 305, Government Code, in connection with the person's representation of clients in the field of insurance; or

(3) related to a person described by Subdivision (1) or (2) within the second degree of affinity or consanguinity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.054. ELIGIBILITY TO SERVE AS INDUSTRY REPRESENTATIVE. To be eligible to serve as an insurance industry board member, an individual must be a full-time employee of a member insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.055. TERM; VACANCY. (a) A board member serves a term established by the plan of operation.

(b) The remaining board members, by majority vote, shall fill a vacancy on the board for the unexpired term of a director who serves as an insurance industry board member, subject to the commissioner's approval. The commissioner shall appoint a director to fill a vacancy on the board for the unexpired term of a director who serves as a public representative.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 2, eff. September 1, 2019.

Sec. 462.056. REIMBURSEMENT OF BOARD MEMBERS. A board member may be reimbursed from the assets of the association for expenses the board member incurs as a board member.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.057. FINANCIAL STATEMENT OF BOARD MEMBER. Each board member shall file with the Texas Ethics Commission a financial statement as provided by Subchapter B, Chapter 572, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.058. CONFLICT OF INTEREST. (a) A director of the association or a member insurer or other entity represented by the director may not receive money or another valuable thing directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit for negotiating, procuring, participating in, recommending, or aiding in a reinsurance agreement, merger, or other transaction, including the purchase, sale, or exchange of assets, insurance policies, or property made by the association or the supervisor, conservator, or receiver on behalf of an impaired insurer.

(b) The director, member insurer, or entity may not be pecuniarily or contractually interested, as principal, coprincipal, agent, or beneficiary, directly, indirectly, or through any substantial interest in any other corporation, firm, or business unit, in the reinsurance agreement, merger, purchase, sale, exchange, or other transaction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.059. MEETING BY CONFERENCE CALL. (a) Notwithstanding Chapter 551, Government Code, the board may hold an open meeting by telephone conference call. A meeting held by telephone conference call:

(1) must be audible to the public at the location specified in the notice described by Subsection (c); and

(2) must allow two-way audio communication during the entire meeting between the members of the board attending a meeting authorized by this section.

(a-1) If the two-way audio communication required under

Subsection (a) is disrupted during a meeting so that a quorum of the board is no longer able to participate, the meeting may not continue until the two-way audio communication is reestablished.

(b) The meeting is subject to the notice requirements that apply to other meetings of the board of directors.

(c) The notice of the meeting must specify the location of the meeting, and each part of the meeting that is required to be open to the public must be audible to the public at that location. The association must make an audio recording of the meeting. The recording of the open portion of the meeting must be posted publicly to the association's Internet website.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 3, eff. September 1, 2019.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

Sec. 462.101. GENERAL POWERS AND DUTIES. (a) The association may:

(1) employ or retain persons as necessary to handle claims and perform other duties of the association;

(2) borrow money necessary to implement this chapter in accordance with the plan of operation;

(3) sue or be sued;

(4) negotiate and enter into a contract as necessary to implement this chapter; and

(5) perform other acts as necessary or proper to implement this chapter.

(b) A contract authorized by Subsection (a)(4) includes a lump-sum or structured compromise and settlement agreement with a claimant who has a claim for medical or indemnity benefits for a period of three years or more, other than a settlement or lump-sum payment in violation of Subtitle A, Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.102. ASSOCIATION NOT IN PLACE OF IMPAIRED INSURER. In performing the association's statutory obligations under this chapter, the association is not considered:

(1) to be engaged in the business of insurance;

(2) to have assumed or succeeded to a liability of the impaired insurer; or

(3) to otherwise stand in the place of the impaired insurer for any purpose, including for the purpose of determining whether the association is subject to personal jurisdiction of the courts of another state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.103. PLAN OF OPERATION. (a) The association shall perform the association's functions under a plan of operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation must:

(1) be submitted to and approved in writing by the commissioner;

(2) establish:

(A) procedures under which the powers and duties of the association are performed;

(B) procedures for handling assets of the association;

(C) the amount and method of reimbursing board members;

(D) acceptable forms of proof of covered claims;

(E) regular places and times for board meetings;

(F) procedures for records to be kept of each financial transaction of the association, the association's agents, and the board; and

(G) procedures under which selections for the board are submitted to the commissioner;

(3) provide:

(A) for the establishment of a claims filing procedure that includes:

(i) notice by the association to claimants;

(ii) procedures for filing claims seeking recovery from the association; and

(iii) a procedure for appealing the denial of

claims by the association; and

(B) that a member insurer aggrieved by a final action or decision of the association may appeal to the commissioner not later than the 30th day after the date of the action or decision; and

(4) contain additional provisions necessary or proper for the execution of the association's powers and duties.

(b) The association shall submit to the commissioner any amendment to the plan of operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The amendment takes effect on the commissioner's written approval.

(c) If the association does not submit a suitable amendment to the plan of operation, the commissioner after notice and hearing shall adopt reasonable rules as necessary or advisable to implement this chapter. A rule continues in effect until modified by the commissioner or superseded by an amendment submitted by the association and approved by the commissioner.

(d) Each member insurer shall comply with the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.104. NOTICE TO INSUREDS. (a) The commissioner may require that the association notify an impaired insurer's insureds and any other interested parties of:

(1) the designation of impairment; and

(2) the insureds' and other parties' rights under this chapter.

(b) The association shall give notice as the commissioner directs under this section. The association shall mail the notice to the last known address, if available. If sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient notice.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.105. ACCOUNTS. For purposes of administration and

assessment, the association is divided into:

(1) the workers' compensation insurance account;

(2) the automobile insurance account; and

(3) the account for all other lines of insurance to which this chapter applies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.106. ADMINISTRATIVE EXPENSES. (a) The association may use money in the administrative account to pay administrative costs and other general expenses of the association.

(b) The association may transfer income from investment of the association's money to the administrative account.

(c) On notification by the association of the amount of any additional money needed for the administrative account, the association shall assess member insurers in the manner provided by Sections 462.159-462.168 for that money. The commissioner shall consider the net direct written premiums collected in this state for all lines of business covered by this chapter. An assessment for administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a court-appointed receiver for a nonmember of the association or unauthorized insurer operating in this state may not exceed $1 million each calendar year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.107. EXAMINATION OF ASSOCIATION. Not later than April 30 of each year, the association shall submit an audited financial statement for the preceding calendar year to the state auditor in a form approved by the state auditor's office.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.108. DEPOSIT OF MONEY. The board may deposit the money the association collects into the Texas Treasury Safekeeping

Trust Company in accordance with procedures established by the comptroller. The comptroller shall account to the association for the deposited money separately from all other money.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.109. DELEGATION OF POWERS AND DUTIES. (a) Except as provided by Subsection (b), the plan of operation may provide that, on approval of the board and the commissioner, the association may delegate by contract any or all powers or duties of the association to a corporation or other organization that:

(1) performs or will perform in two or more states functions similar to those of the association or the association's equivalent; and

(2) provides protection not substantially less favorable and effective than that provided by this chapter.

(b) The association may not delegate a power or duty under Section 462.101(a)(2), 462.151, 462.154, 462.155, or 462.302(d) under this section.

(c) The association shall:

(1) reimburse the corporation or other organization as a servicing facility would be reimbursed; and

(2) pay the corporation or other organization for the performance of any other functions of the association.

(d) A contract entered into under this section is subject to the performance standards imposed under Section 442.112.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.110. EXEMPTION FROM CERTAIN FEES AND TAXES. The association is exempt from payment of all fees and of all taxes levied by this state or a subdivision of this state, except taxes levied on real or personal property.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.111. ACCESS TO RECORDS OF MEMBER INSURER IN RECEIVERSHIP; ACTUARIAL AND OPERATIONAL ANALYSIS. (a) The association shall have access to the books and records of a member insurer in receivership to determine the extent of the impact on the association if the member becomes impaired.

(b) The association may:

(1) perform or cause to be performed an actuarial and operational analysis of the member insurer; and

(2) prepare a report on matters relating to the impact or potential impact on the association in the event of impairment.

(c) A report prepared under Subsection (b) is not a public document.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.112. BOARD ACCESS TO RECORDS OF IMPAIRED INSURER. The receiver or statutory successor of an impaired insurer covered by this chapter shall give the board or the board's representative:

(1) access to the insurer's records as necessary for the board to perform the board's functions under this chapter relating to covered claims; and

(2) copies of those records on the board's request and at the board's expense.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.1121. ACTION TO OBTAIN INFORMATION CONCERNING INSURER IN RECEIVERSHIP AUTHORIZED. (a) The association may bring an action against any third-party administrator, agent, attorney, or other representative of an insurer for which a receiver has been appointed to obtain custody and control of all information, including files, records, and electronic data, related to the insurer that is appropriate or necessary for the association, or a similar association in other states, to carry out its duties under this chapter or a similar law of another state. The association has the absolute right to obtain information under this section through emergency equitable relief, regardless of where the information is

physically located.

(b) In bringing an action under this section, the association is not subject to any defense, possessory lien or other type of lien, or other legal or equitable ground for refusal to surrender the information that may be asserted against the receiver of the insurer.

(c) The association is entitled to an award of reasonable attorney's fees and costs incurred by the association in any action to obtain information under this section.

(d) The rights granted to the association under this section do not affect the receiver's title to information, and information obtained under this section remains the property of the receiver while in the custody of the association.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.007(b), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.007(b), eff. September 1, 2007.

Sec. 462.113. BOARD REPORT ON CONCLUSION OF INSOLVENCY. On the conclusion of the insolvency of a domestic insurer with respect to which the association was obligated to pay covered claims, the board may:

(1) prepare a report on the history and causes of the insolvency, based on information available to the association; and

(2) submit the report to the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.114. DUTY OF RECEIVER. The receiver shall periodically submit a list of claims to the association or similar organization in another state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER D. ASSESSMENTS IN GENERAL

Sec. 462.151. MAKING OF ASSESSMENT; AMOUNT. (a) The

association shall assess member insurers the amount necessary to pay:

(1) the association's obligations under Section 462.302 and the expenses of handling covered claims subsequent to an insolvency; and

(2) other expenses authorized by this chapter.

(b) The assessment of each member insurer must be in the proportion that the net direct written premiums of the insurer for the calendar year preceding the assessment bear to the net direct written premiums of all member insurers for that year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.152. MAXIMUM TOTAL ASSESSMENT. (a) The total assessment of a member insurer in a year may not exceed an amount equal to two percent of the insurer's net direct written premiums for the calendar year preceding the assessment.

(b) If the maximum assessment and the association's other assets are insufficient in a year to make all necessary payments, the money available shall be prorated and the association shall pay the unpaid portion as soon as money becomes available.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.153. REFUND OF CONTRIBUTION. The association may refund to the member insurers in proportion to the contribution of each member insurer to the association the amount by which the association's assets exceed the association's liabilities, if at the end of a calendar year the board finds that the assets of the association exceed the liabilities of the association as estimated by the board for the next year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.154. NOTICE OF ASSESSMENT. The association shall notify a member insurer of an assessment not later than the 30th day

before the date the assessment is due.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.155. DEFERMENT. (a) The association may defer wholly or partly an assessment of a member insurer that would cause the insurer's financial statement to show amounts of capital or surplus less than the minimum amounts required for a certificate of authority in any jurisdiction in which the insurer is authorized to engage in the business of insurance.

(b) The member insurer shall pay the deferred assessment at the time payment will not reduce capital or surplus below required minimums. The payment shall be refunded to or credited against future assessments of any member insurer receiving a larger assessment because of the deferment, as elected by that insurer.

(c) During a period of deferment, the member insurer may not pay a dividend to shareholders or policyholders.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.156. USE OF ASSESSMENTS. (a) The amounts provided under assessments made under this chapter supplement the marshalling of assets by the receiver under Chapter 442 to make payments on the impaired insurer's behalf.

(b) This section does not require the receiver to exhaust the assets of the impaired insurer before an assessment is made or before money derived from an assessment may be used to pay covered claims.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.157. TAX CREDIT. (a) An insurer is entitled to a credit against the insurer's premium tax under Chapter 221 for the total amount of an assessment paid by the insurer under this chapter.

(b) The tax credit may be taken at a rate of 10 percent each year for 10 successive years after the date of assessment. At the

option of the insurer, the tax credit may be taken over an additional number of years.

(c) The balance of a tax credit not claimed in a particular year may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in an annual statement under Section 862.001.

(d) Available credit against premium tax allowed under this section may be transferred or assigned among insurers if:

(1) a merger, acquisition, or total assumption of reinsurance among the insurers occurs; or

(2) the commissioner by order approves the transfer or assignment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.158. ADVANCE AS LOAN. Money advanced by the association under this chapter is considered a special fund loan to the impaired insurer for payment of covered claims and does not become an asset of the impaired insurer. The loan is repayable to the extent money from the impaired insurer is available.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.159. ESTIMATE OF ADDITIONAL MONEY NEEDED ON IMPAIRMENT OF INSURER. (a) If the commissioner determines that an insurer has become an impaired insurer, the association shall promptly estimate the amount of additional money, by lines of business, needed to supplement the immediately available assets of the impaired insurer to pay covered claims.

(b) The board shall make additional money available as the actual need arises for each impaired insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.160. ASSESSMENT FOR ADDITIONAL MONEY FOR ACCOUNTS. If

the board determines that additional money is needed in any of the three accounts described by Section 462.105, the board shall make assessments as needed to produce the necessary money.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.161. AMOUNT OF ASSESSMENT; PRORATION OF PAYMENT. (a) The association, in determining the proportionate amount to be paid by individual insurers under an assessment under Section 462.160, shall consider the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premiums collected in this state by the insurer for those lines of business bears to the total net direct written premiums collected by all insurers, other than impaired insurers, in this state for those lines of business.

(b) The association shall determine the total net direct written premiums of an individual insurer and of all insurers in the state from the insurers' annual statements for the year preceding assessment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.162. MAXIMUM ASSESSMENT OF INSURER; ADDITIONAL ASSESSMENT AUTHORITY UNDER CERTAIN CIRCUMSTANCES. (a) Except as otherwise provided by this section, assessments under Section 462.160 during a calendar year may not exceed two percent of each insurer's net direct written premiums for the preceding calendar year in the lines of business for which the assessments are made.

(b) In the event of a natural disaster or other catastrophe, the association may apply to the governor, in the manner prescribed by the plan of operation, for authority to assess each member insurer that writes insurance coverage, other than automobile insurance coverage or workers' compensation insurance coverage, an additional amount not to exceed two percent of the insurer's net direct written premiums for the preceding calendar year.

(c) If the maximum assessment in a calendar year does not provide an amount sufficient for payment of covered claims of

impaired insurers, the association may make assessments in successive calendar years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.163. PAYMENT OF ASSESSMENT. An insurer shall pay the amount of an assessment under Section 462.160 or 462.162(b) to the association not later than the 30th day after the date the association gives notice of the assessment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.164. PARTICIPATION RECEIPTS. (a) On receipt from a member insurer of payment of an assessment or partial assessment under Section 462.160 or 462.162(b), the association shall provide the insurer with a participation receipt. A participation receipt creates liability against the account described by Section 462.105 for the line or lines of business for which the assessment was made.

(b) The account from which an advance is made to an impaired insurer for the payment of covered claims is a general creditor of the impaired insurer for the money advanced. With reference to the remaining balance of an advance not used to pay covered claims, the claim of the account has preference over other general creditors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.165. ACCOUNTING; REPORTS; REFUND. (a) The association, with respect to an impaired insurer, shall adopt accounting procedures that reflect the use of all money and shall make a final report of the use of the money to the commissioner. The final report must state any remaining balance from the money advanced to an impaired insurer for the payment of covered claims.

(b) The association shall make interim accounting reports as required by the commissioner or requested by the conservator.

(c) As soon as practicable after completion of the final

report, the association shall refund by line of business the remaining balance of those advances to the association's accounts.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.166. USE OF EXCESS MONEY IN ACCOUNT. (a) If the association determines that money in the account described by Section 462.164(b) for a line of business exceeds the amount reasonably necessary for efficient future operation under this chapter, the association shall, after deducting any premium tax credit taken under Section 462.157, return the excess money pro rata to the holders of participation receipts:

(1) on which an outstanding balance exists; and

(2) that were issued for an assessment on the same line of business as the line for which the excess money is found to exist.

(b) The association shall transfer an excess amount that exists in the account described by Section 462.164(b) to the comptroller to be deposited to the credit of the general revenue fund if:

(1) after a distribution under this section the association finds that an excess amount still exists; or

(2) participation receipts on which there is an outstanding balance do not exist.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.167. COLLECTION OF ASSESSMENTS. (a) The commissioner may collect an assessment on behalf of the association through a suit brought for that purpose.

(b) Venue for a suit under this section is in Travis County.

(c) Either party to the suit may appeal to an appellate court. The appeal is at once returnable to the appellate court. The appeal has precedence in the appellate court over all causes of a different character pending before the court.

(d) The commissioner is not required to give an appeal bond in any cause of action arising under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 462.168. EXEMPTION FOR IMPAIRED INSURER. An impaired insurer is exempt from assessment from the date the insurer is designated an impaired insurer until the date the commissioner determines that the insurer is no longer an impaired insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER E. COVERED CLAIMS; CLAIMANTS

Sec. 462.201. COVERED CLAIMS IN GENERAL. A claim is a covered claim if:

(1) the claim is an unpaid claim;

(2) the claim is made under an insurance policy to which this chapter applies that is:

(A) issued by an insurer authorized to engage in business in this state; or

(B) assumed by an insurer authorized to engage in business in this state that issues an assumption certificate to the insured;

(3) the claim arises out of the policy and is within the coverage and applicable limits of the policy;

(4) the insurer that issued the policy or assumed the policy under an assumption certificate issued to the insured is an impaired insurer; and

(5) the claim:

(A) is made by a liability claimant or insured who is a resident of this state at the time of the insured event; or

(B) is a first-party claim for damage to property that is permanently located in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.202. CLAIM FOR UNEARNED PREMIUMS. (a) A claim for unearned premiums is a covered claim. A covered claim for unearned premiums may not exceed $25,000.

(b) With respect to a covered claim for unearned premiums, a person has a covered claim under this chapter if the person is a resident of this state at the time:

(1) the policy is issued; or

(2) the insurer is determined to be an impaired insurer.

(c) A person has a covered claim under this chapter if the person holds a valid assignment of a covered claim for unearned premiums under Subsections (a) and (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1188 (S.B. 1227), Sec. 1, eff. June 19, 2015.

Sec. 462.203. CERTAIN EXPENSES OF RECEIVERSHIP OR CONSERVATORSHIP ESTATE COVERED. An administration expense incurred in processing or paying a claim against a receivership or conservatorship estate is a covered claim if the impaired insurer has insufficient assets to pay the expenses of administering the estate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.204. AFFILIATE MAY NOT BE CLAIMANT. A person who is an affiliate of an impaired insurer may not be a claimant of the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.205. DETERMINATION OF RESIDENCE OF ENTITIES. A corporation or other entity that is not an individual is considered to be a resident of the state in which the entity's principal place of business is located.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.206. CLAIMS NOT COVERED: PREMIUM UNDER RETROSPECTIVE RATING PLAN. An amount sought as a return of premium under a retrospective rating plan is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.207. CLAIMS NOT COVERED: AMOUNTS DUE CERTAIN ENTITIES. (a) Any amount directly or indirectly due any reinsurer, insurer, self-insurer, insurance pool, or underwriting association, as a subrogation recovery, reinsurance recovery, contribution, or indemnification, or otherwise, is not a covered claim.

(b) An impaired insurer's insured is not liable, and the reinsurer, insurer, self-insurer, insurance pool, or underwriting association is not entitled to sue or continue a suit against the insured, for a subrogation recovery, reinsurance recovery, contribution, indemnification, or any other claim asserted directly or indirectly by a reinsurer, insurer, self-insurer, insurance pool, or underwriting association to the extent of the applicable liability limits of the insurance policy written and issued to the insured by the insolvent insurer.

(c) The association is entitled to recover the association's costs, expenses, and reasonable attorney's fees incurred in defending the association or an impaired insurer's insured against a claim brought in violation of this subsection by a reinsurer, insurer, self-insurer, insurance pool, or underwriting association, on that entity's own behalf or on behalf of the entity's insured, after the date on which the entity is provided notice by the association or otherwise of the provisions of this section applicable to the entity's suit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.006(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.006(a), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 4, eff. September 1, 2019.

Sec. 462.208. CLAIMS NOT COVERED: SUPPLEMENTARY PAYMENT OBLIGATIONS. A supplementary payment obligation, including an adjustment fee or expense, attorney's fee or expense, court cost, interest or penalty, or interest or bond premium, incurred before an insurer is determined to be an impaired insurer is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.209. CLAIMS NOT COVERED: PREJUDGMENT OR POSTJUDGMENT INTEREST. Prejudgment or postjudgment interest that accrues after an insurer is determined to be an impaired insurer is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.210. CLAIMS NOT COVERED: CERTAIN DAMAGES. A claim against the insured, insurer, guaranty association, receiver, special deputy receiver, or commissioner for recovery of punitive, exemplary, extracontractual, or bad-faith damages awarded in a court judgment against an insured or insurer is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.211. CLAIMS NOT COVERED: LATE FILED CLAIMS. (a) Notwithstanding any other provision of this chapter or any other law to the contrary, and subject to Subsection (b), a claim that is filed with the association on a date that is later than 18 months after the date of the order of liquidation or that is unknown and unreported as of the date is not a covered claim.

(b) This section does not apply to a claim for workers'

compensation benefits governed by Title 5, Labor Code, and the applicable rules of the commissioner of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.007(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.007(a), eff. September 1, 2007.

Sec. 462.212. NET WORTH EXCLUSION. (a) Except for a workers' compensation claim governed by Title 5, Labor Code, a covered claim does not include, and the association is not liable for, any claim arising from an insurance policy of any insured whose net worth on December 31 of the year preceding the date the insurer becomes an impaired insurer exceeds $50 million.

(b) For purposes of this section, an insured's net worth includes the aggregate net worth of the insured and of the insured's parent, subsidiary, and affiliated companies computed on a consolidated basis.

(c) This section does not apply:

(1) to third-party claims against an insured that has:

(A) applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of the insurer's assets;

(B) filed a voluntary petition in bankruptcy; or

(C) filed a petition or an answer seeking a reorganization or arrangement with creditors or to take advantage of any insolvency law; or

(2) if an order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating the insured bankrupt or insolvent or approving a petition seeking reorganization of the insured or of all or a substantial part of its assets.

(d) In an instance described by Subsection (c), the association is entitled to assert a claim in the bankruptcy or receivership proceeding to recover the amount of any covered claim and costs of defense paid on behalf of the insured. A court shall award the

association the association's costs, expenses, and reasonable attorney's fees incurred in seeking recovery under this section.

(e) The association may establish procedures for requesting financial information from an insured on a confidential basis for the purpose of applying sections concerning the net worth of insureds, subject to any information requested under this subsection being shared with any other association similar to the association and with the liquidator for the impaired insurer on the same confidential basis. If the insured refuses to provide the requested financial information, the association may deem the net worth of the insured to be in excess of $50 million at the relevant time.

(f) In any lawsuit contesting the applicability of Section 462.308 or this section when the insured has declined to provide financial information requested by the association, the insured bears the burden of proof concerning its net worth at the relevant time and shall pay the association the association's costs, expenses, and reasonable attorney's fees incurred in attempting to obtain the insured's financial information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.010(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.010(a), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 5, eff. September 1, 2019.

Sec. 462.213. AMOUNT OF INDIVIDUAL COVERED CLAIM; LIMIT. (a) Except as provided by Subsection (b) and Section 462.252, an individual covered claim may not exceed $300,000.

(b) The association shall pay the full amount of a covered claim arising out of a workers' compensation claim made under a workers' compensation insurance policy.

(c) For purposes of this section, an individual covered claim includes any derivative claims by more than one person that arise from the same occurrence. The claims shall be considered collectively as a single claim under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.214. CERTAIN SHAREHOLDERS' CLAIMS: LIMIT. Notwithstanding any other provision of this chapter, the association's liability for shareholder derivative actions or other claims for economic loss incurred by a claimant in the claimant's capacity as a shareholder under an insurance policy placed in force on or after January 1, 1992, is limited to $300,000 for each policy, including defense costs, regardless of the number of claimants under each policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER F. NONDUPLICATION OF RECOVERY

Sec. 462.251. EXHAUSTION OF RIGHTS UNDER OTHER POLICY REQUIRED. (a) Any person who has a claim under an insurance policy, other than an impaired insurer's policy, and whose claim arises from the same facts, injury, or loss giving rise to a claim against an impaired insurer or the insurer's insured, must first exhaust the person's rights under the insurance policy, including:

(1) a claim for benefits under a workers' compensation insurance policy or a claim for indemnity or medical benefits under a health, disability, uninsured motorist, personal injury protection, medical payment, liability, or other insurance policy; and

(2) the right to defense under the insurance policy.

(b) Subsection (a) applies without regard to whether the insurance policy is issued by a member insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.252. REDUCTION IN AMOUNT OF COVERED CLAIM FOR OTHER POLICY. (a) Except as provided by Subsection (b), an amount payable as a covered claim under this chapter is reduced by the full applicable limits of another insurance policy described by Section 462.251, and the association shall receive a full credit in the

amount of the full applicable limits of the other policy.

(b) A covered claim for workers' compensation benefits is subject to reduction only by a third-party liability recovery under Section 417.002, Labor Code.

(c) Subject to Section 462.255, the maximum amount payable by the association is the damages incurred by the claimant, less the association's credit or offset under this section, except that the association's liability may not exceed the lesser of:

(1) $300,000; or

(2) the limits of the insurance policy under which the claim is made.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.253. EFFECT ON INSURED OF REDUCTION IN AMOUNT OF COVERED CLAIM. To the extent that the association's obligation is reduced by the application of Sections 462.251 and 462.252, the liability of the person insured by the impaired insurer's policy for the claim is reduced in the same amount.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.254. RECOVERY FROM MORE THAN ONE GUARANTY ASSOCIATION. (a) Except as provided by Subsections (b) and (c), a person who has a claim that may be recovered from more than one insurance guaranty association or the equivalent shall seek recovery first from the association of the insured's residence.

(b) A claimant shall seek recovery of a first-party claim for damage to property with a permanent location first from the association of the location of the property.

(c) A claimant shall seek recovery of a workers' compensation claim first from the association of the claimant's residence.

(d) The association has a credit or offset against the benefits under this chapter in the amount of the claimant's recovery under this section.

(e) Subject to Section 462.255, the maximum amount payable by the association is the amount of damages incurred by the claimant,

less the credit or offset, except that the association's liability may not exceed $300,000.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.255. CERTAIN CLAIMS SUBJECT TO LIEN OR SUBROGATION; LIMIT ON TOTAL RECOVERY. (a) Notwithstanding Sections 462.252(c) and 462.254(e), if a claimant is seeking recovery of insurance policy benefits that, had the impaired insurer not been insolvent, would be subject to lien or subrogation by any other insurer, including a workers' compensation insurer or health insurer, regardless of whether the other insurer is impaired, the association's credit or offset is deducted from the lesser of the damages incurred by the claimant or the limits of the policy under which the claim is made.

(b) A claimant's recovery under this chapter may not result in a total recovery to the claimant that is greater than the recovery that would have resulted had the impaired insurer not been insolvent.

(c) Subject to Sections 462.201-462.203, 462.205-462.210, 462.213, 462.214, and 462.305 of this code and Title 5, Labor Code, a claim for workers' compensation benefits under this chapter may not result in a recovery to the claimant that is less than the recovery that would have resulted had the impaired insurer not been insolvent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER G. ASSOCIATION POWERS AND DUTIES RELATING TO COVERED CLAIMS

Sec. 462.301. GENERAL POWERS AND DUTIES OF ASSOCIATION IN CONNECTION WITH PAYMENT OF COVERED CLAIMS. (a) The association shall investigate and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims.

(b) The association may review a settlement, release, or judgment to which an impaired insurer or the impaired insurer's insured was a party to determine the extent to which the settlement, release, or judgment may be properly contested.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.302. PAYMENT OF COVERED CLAIMS. (a) The association shall pay covered claims that exist before the designation of impairment or that arise:

(1) not later than the 30th day after the date of the designation of impairment;

(2) before the insurance policy expiration date, if that date is not later than the 30th day after the date of the designation of impairment; or

(3) before the insured replaces the insurance policy or causes the policy's cancellation, if the insured does so not later than the 30th day after the date of the designation of impairment.

(b) The association satisfies the obligation to pay a covered claim by paying the claimant the full amount of a covered claim for benefits.

(c) The association's liability is limited to the payment of covered claims. The association is not liable for any other claim or damages against the insured, an impaired insurer, the association, the receiver, the special deputy receiver, the commissioner, or the liquidator, including a claim for:

(1) recovery of attorney's fees, prejudgment or postjudgment interest, or penalties;

(2) extracontractual damages, multiple damages, or exemplary damages; or

(3) any other amount sought in connection with the assertion or prosecution of a claim, without regard to whether the claim is a covered claim, by or on behalf of:

(A) an insured or claimant; or

(B) a provider of goods or services retained by an insured or claimant.

(d) The association shall pay claims in the order the association considers reasonable, including paying as claims are received from the claimants or in groups or categories of claims.

(e) This section does not exclude the payment of workers' compensation benefits or other liabilities or penalties authorized by Title 5, Labor Code, arising from the association's processing and paying workers' compensation benefits after the designation of

impairment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.303. CERTAIN DETERMINATIONS NOT BINDING. (a) The association is not bound by:

(1) a judgment taken before the designation of impairment in which an insured under a liability insurance policy or the insurer failed to exhaust all appeals;

(2) a judgment taken by default or consent against an insured or the impaired insurer; or

(3) a judgment, settlement, or release entered into by the insured or the impaired insurer.

(b) A judgment, settlement, or release described by Subsection (a) is not evidence of liability or of damages in connection with a claim brought against the association, an impaired insurer's insured, or another party under this chapter.

(c) The association is entitled to recover the association's costs, expenses, and reasonable attorney's fees incurred in contesting a claim based on a judgment, settlement, or release described by Subsection (a) on the association's behalf or on behalf of an impaired insurer's insured after the date on which the party asserting the claim is provided notice by the association or otherwise of the provisions of this section applicable to the judgment, settlement, or release.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 6, eff. September 1, 2019.

Sec. 462.304. SERVICING FACILITY. (a) The association shall handle claims through:

(1) the association's employees or contract claims adjusters; or

(2) subject to the approval of the commissioner, one or more insurers designated as a servicing facility under a servicing

agreement or loss portfolio transfer agreement.

(b) A member insurer may decline designation as a servicing facility.

(c) The association shall reimburse a servicing facility for obligations of the association paid by the facility and expenses incurred by the facility in handling claims for the association. The association shall reimburse a servicing facility under this subsection in a manner that is consistent with the applicable servicing agreement or loss portfolio agreement.

(d) The commissioner may revoke the designation of a servicing facility if the commissioner finds that servicing facility is handling claims unsatisfactorily.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 7, eff. September 1, 2019.

Sec. 462.305. LIMITATION OF ASSOCIATION'S LIABILITY. The association is not liable to an insured or liability claimant for the association's failure to settle a liability claim within the limits of a covered claim under this chapter. A claim described by this section for failure to settle a liability claim is not a covered claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.306. DISCHARGE OF POLICY OBLIGATION. (a) The association shall discharge an impaired insurer's policy obligations, including the duty to defend insureds under a liability insurance policy, to the extent that the policy obligation is a covered claim under this chapter.

(b) In performing the association's statutory obligations, the association may also enforce a duty imposed on the insured or beneficiary under the terms of an insurance policy within the scope of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.307. ASSIGNMENT OF RIGHTS. (a) A person recovering under this chapter assigns to the association the person's rights:

(1) under the insurance policy; and

(2) to recover for the occurrence that is the basis of the claim under this chapter under an insurance policy issued by an unimpaired insurer to the extent of the person's recovery from the association.

(b) The association may pursue a claim to which the association is subrogated under Subsection (a) in the association's own name or in the name of the person recovering under this chapter.

(c) An insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as that person would have been required to cooperate with the impaired insurer.

(d) Except as provided by Section 462.308 or 462.212, the association does not have a cause of action against the impaired insurer's insured for money the association has paid, other than a cause of action that the impaired insurer would have had if the money had been paid by the impaired insurer.

(e) In the case of an impaired insurer operating on a plan with assessment liability, the payment of a claim of the association does not reduce the liability of the insured to the receiver or statutory successor for an unpaid assessment.

(f) To the extent the association has a right to recover proceeds from the sale of salvage property related to a covered claim, the association's right to recover the proceeds may not be reduced in the amount of any pre-impairment costs, fees, or expenses related to the salvage property that are not part of a covered claim under Subchapter E. A person or entity in possession of salvage property subject to the association's right of recovery may not seek recovery from the association for any pre-impairment costs, fees, or expenses related to the salvage property that are not a covered claim under Subchapter E.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:
Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 8, eff. September 1, 2019.

Sec. 462.308. RECOVERY FROM CERTAIN PERSONS. (a) The association is entitled to recover:

(1) the amount of a covered claim and the cost of defense paid on behalf of a person:

(A) who is an affiliate of the impaired insurer; and

(B) whose liability obligations to other persons are satisfied wholly or partly by payment made under this chapter; and

(2) the amount of a covered claim for workers' compensation insurance benefits and the costs of administration and defense of the claim paid under this chapter from an insured employer or any successor entity to the insured employer under state, federal, or international law whose net worth on December 31 of the year preceding the date the insurer becomes an impaired insurer exceeds $50 million.

(b) The association is not entitled to recover under Subsection (a)(2) against an insured who is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being described by Section 501(c)(3) of that code.

(c) For purposes of Subsection (a)(2), an insured's net worth is deemed to include the aggregate net worth of the insured and of the insured's parent, subsidiary, and affiliated companies computed on a consolidated basis.

(d) A court shall award the association the association's costs, expenses, and reasonable attorney's fees incurred in seeking recovery under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.009(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.009(a), eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 343 (S.B. 1063), Sec. 9, eff. September 1, 2019.

Sec. 462.309. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT BINDING. (a) To permit the association to properly defend a pending cause of action, a proceeding in which an impaired insurer is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership or instituted by the receiver, is stayed for:

(1) a six-month period beginning on the later of the date of the designation of impairment or the date an ancillary proceeding is brought in this state; and

(2) a subsequent period as determined by the court, if any.

(b) The stay applies to each party to the proceeding and the proceeding is stayed for all purposes.

(c) A deadline imposed under the Texas Rules of Civil Procedure or the Texas Rules of Appellate Procedure is tolled during the stay. Statutes of limitation or repose are not tolled during the stay, and any action filed during the stay is stayed upon the filing of the action.

(d) The court in which the delinquency proceeding is pending has exclusive jurisdiction regarding the application, enforcement, and extension of the stay and may issue an injunction or another similar order to enforce the stay.

(e) The commissioner may bring an ancillary conservation proceeding under Section 443.401 for the purpose of determining the application, enforcement, and extension of the stay to an impaired insurer that is not domiciled in this state.

(f) With respect to a covered claim arising from a judgment, order, decision, verdict, or finding based on the default of an impaired insurer or an impaired insurer's failure to defend the insured, the association, on the association's own behalf or on behalf of an insured and on application, shall be entitled to:

(1) have the court or administrator that made the judgment, order, decision, verdict, or finding set aside the judgment, order, decision, verdict, or finding; and

(2) defend the claim on the merits.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.011(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.011(a), eff. September 1, 2007.

Sec. 462.310. SETTLEMENT BY ASSOCIATION BINDING; PRIORITY OF CLAIM AND EXPENSES. (a) The settlement of a covered claim by the association or a similar organization in another state binds the receiver or statutory successor of an impaired insurer.

(b) The court having jurisdiction shall give the covered claim the same priority against assets of the impaired insurer that the claim would have had in the absence of this chapter.

(c) The expenses of the association or a similar organization in another state in handling claims have the same priority as the receiver's expenses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 462.311. REPORT TO RECEIVER. The association shall periodically file with the receiver of an impaired insurer a statement of covered claims paid by the association and an estimate of claims anticipated against the association. The statement preserves the rights of the association against the assets of the impaired insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER H. RELEASE FROM RECEIVERSHIP

Sec. 462.351. ISSUANCE OF POLICIES AFTER RELEASE FROM RECEIVERSHIP. (a) Except as provided by Subsection (b), an impaired insurer placed in receivership for which money has been advanced under this chapter may not be authorized, on release from receivership, to issue new or renewal insurance policies until the insurer repays the advances to the association.

(b) On application of the association and after hearing, the commissioner may permit the insurer to issue new insurance policies

in accordance with the insurer's plan of operation for repayment of advances.

(c) The commissioner, in approving the plan of operation, may place restrictions on the issuance of new or renewal insurance policies as the commissioner considers necessary to implement the plan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 463. TEXAS LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 463.001. SHORT TITLE. This chapter may be cited as the Texas Life and Health Insurance Guaranty Association Act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.012(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.012(b), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 2, eff. September 1, 2011.

Sec. 463.002. PURPOSE. The purpose of this chapter is to protect, subject to certain limitations, a person specified by Section 463.201 against failure in the performance of a contractual obligation under a life, accident, health, or annuity policy, plan, or contract with respect to which this chapter provides coverage as determined under Subchapter E, because of the impairment or insolvency of the member insurer that issued the policy, plan, or contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 1, eff. September 1, 2019.

Sec. 463.003. GENERAL DEFINITIONS. In this chapter:

(1) "Association" means the Texas Life and Health Insurance Guaranty Association.

(1-a) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

(2) "Board" means the board of directors of the association.

(3) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or part of a policy or contract or certificate, for which coverage is provided under Subchapter E.

(4) "Covered policy" or "covered contract" means a policy or contract, or portion of a policy or contract, including a health maintenance organization contract, with respect to which this chapter provides coverage as determined under Subchapter E.

(4-a) "Enrollee" means an individual who is enrolled in a health maintenance organization contract with respect to which this chapter provides coverage as determined under Subchapter E. For purposes of this chapter, an enrollee is considered to be an insured.

(4-b) "Health benefit plan" means a hospital and medical expense incurred policy or certificate, health maintenance organization enrollee contract, or any other similar health contract. The term does not include:

(A) accident-only insurance;

(B) credit insurance;

(C) dental-only insurance;

(D) vision-only insurance;

(E) Medicare supplement insurance;

(F) long-term care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(G) disability income insurance;

(H) coverage for on-site medical clinics; or

(I) specified disease, hospital confinement indemnity, or limited benefit health insurance coverage if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.

(5) "Impaired insurer" means a member insurer that is

designated an "impaired insurer" by the commissioner and is:

(A) placed by a court in this state or another state under an order of supervision, liquidation, rehabilitation, or conservation;

(B) placed under an order of liquidation or rehabilitation under Chapter 443; or

(C) placed under an order of supervision or conservation by the commissioner under Chapter 441.

(5-a) "Insurance" includes health benefit plan coverage.

(6) "Insolvent insurer" means a member insurer that has been placed under an order of liquidation with a finding of insolvency by a court in this state or another state.

(6-a) "Insurer" includes a health maintenance organization.

(7) "Member insurer" means an insurer that is required to participate in the association under Section 463.052.

(7-a) "Owner" means the owner of a policy or contract and "policyholder," "policy owner," and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and is properly recorded as the owner on the books of the member insurer. The terms "owner," "contract owner," "policyholder," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

(8) "Person" means an individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

(8-a) "Plan sponsor" means:

(A) the employer in the case of a benefit plan established or maintained by a single employer;

(B) the employee organization in the case of a benefit plan established or maintained by an employee organization; or

(C) in a case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(9) "Premium" means an amount received on a covered policy, less any premium, consideration, or deposit returned on the policy,

and any dividend or experience credit on the policy. The term does not include:

(A) an amount received for a policy or contract or part of a policy or contract for which coverage is not provided under Section 463.202, except that assessable premiums may not be reduced because of:

(i) an interest limitation provided by Section 463.203(b)(3); or

(ii) a limitation provided by Section 463.204 with respect to a single individual, participant, annuitant, or policy or contract owner;

(B) premiums in excess of $5 million on an unallocated annuity contract not issued under a governmental benefit plan established under Section 401, 403(b), or 457, Internal Revenue Code of 1986;

(C) premiums received from the state treasury or the United States treasury for insurance for which this state or the United States contracts to:

(i) provide welfare benefits to designated welfare recipients; or

(ii) implement:

(a) Title 2, Health and Safety Code;

(b) Title 2, Human Resources Code; or

(c) the Social Security Act (42 U.S.C. Section 301 et seq.); or

(D) premiums in excess of $5 million with respect to multiple nongroup policies of life insurance owned by one owner, regardless of whether the policy owner is an individual, firm, corporation, or other person and regardless of whether the persons insured are officers, managers, employees, or other persons, regardless of the number of policies or contracts held by the owner.

(10) "Resident" means a person who resides in this state on the earlier of the date a member insurer becomes an impaired insurer or the date of entry of a court order that determines a member insurer to be an impaired insurer or the date of entry of a court order that determines a member insurer to be an insolvent insurer and to whom the member insurer owes a contractual obligation. For the purposes of this subdivision:

(A) a person is considered to be a resident of only one state;

(B) a person other than an individual is considered to be a resident of the state in which the person's principal place of business is located; and

(C) a United States citizen who is either a resident of a foreign country or a resident of a United States possession, territory, or protectorate that does not have an association similar to the association created by this chapter is considered a resident of the state of domicile of the insurer that issued the policy or contract.

(10-a) "Structured settlement annuity" means an annuity purchased to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

(11) "Supplemental contract" means a written agreement for the distribution of policy or contract proceeds.

(12) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.013(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.013(a), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 3, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 2, eff. September 1, 2019.

Sec. 463.0031. DEFINITION OF PRINCIPAL PLACE OF BUSINESS OF PLAN SPONSOR OR OTHER PERSON. (a) Except as otherwise provided by this section, in this chapter, the "principal place of business" of a plan sponsor or a person other than an individual means the single state in which the individuals who establish policy for the direction, control, and coordination of the operations of the plan

sponsor or person as a whole primarily exercise that function, as determined by the association in its reasonable judgment by considering the following factors:

(1) the state in which the primary executive and administrative headquarters of the plan sponsor or person is located;

(2) the state in which the principal office of the chief executive officer of the plan sponsor or person is located;

(3) the state in which the board of directors, or similar governing person or persons, of the plan sponsor or person conduct the majority of their meetings;

(4) the state in which the executive or management committee of the board of directors, or similar governing person or persons, of the plan sponsor or person conduct the majority of their meetings;

(5) the state from which the management of the overall operations of the plan sponsor or person is directed; and

(6) in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors described by Subdivisions (1)-(5).

(b) In the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state is the principal place of business of the plan sponsor.

(c) The principal place of business of a plan sponsor of a benefit plan described in Section 463.003(8-a)(C) is the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in that benefit plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.013(b), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.013(b), eff. September 1, 2007.

Sec. 463.0032. USE OF TERMS POLICY AND CONTRACT. For purposes of this chapter, "policy" and "contract" have the same meaning.

Added by Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 3, eff. September 1, 2019.

Sec. 463.004. CONSTRUCTION. This chapter shall be liberally construed to implement the purpose of this chapter described by Section 463.002. Section 463.002 shall be used to aid and guide interpretation of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.005. IMMUNITY. (a) The following persons are not liable, and a cause of action does not arise against any of the following persons, for a good faith act or omission in exercising powers and performing duties under this chapter:

(1) the commissioner or the commissioner's representative;

(2) the association or the association's agent or employee;

(3) a member insurer or the insurer's agent or employee;

(4) a board member;

(5) the receiver; and

(6) a special deputy receiver or the special deputy receiver's agent or employee.

(b) Immunity under Subsection (a) extends to participation in an organization of one or more state associations that have similar purposes and to a similar organization and the organization's agent or employee.

(c) The attorney general shall defend any action to which this section applies that is brought against the commissioner or the commissioner's representative, the association or the association's agent or employee, a member insurer or the insurer's agent or employee, a board member, or a special deputy receiver or the special deputy receiver's agent or employee, including an action brought after the defendant's service with the association, commissioner, or department has terminated. This subsection does not require the attorney general to defend a person with respect to an issue other than the applicability or effect of the immunity created by this

section. The attorney general is not required to defend the association or the association's agent or employee, a member insurer or the insurer's agent or employee, a board member, or a special deputy receiver or the special deputy receiver's agent or employee against an action regarding the disposition of a claim filed with the association under this chapter or any issue other than the applicability or effect of the immunity created by this section. The association may contract with the attorney general under Chapter 771, Government Code, for legal services not covered by this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.006. RULES. The commissioner shall adopt reasonable rules as necessary to carry out and supplement this chapter and the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.007. CONSTRUCTION OF LONG-TERM CARE RIDER. For purposes of this chapter, benefits provided by a long-term care rider to a life insurance policy or annuity contract are considered to be the same type of benefits as the base life insurance policy or annuity contract.

Added by Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 3, eff. September 1, 2019.

SUBCHAPTER B. GOVERNANCE OF AND PARTICIPATION IN ASSOCIATION

Sec. 463.051. PURPOSE AND REGULATION OF ASSOCIATION. (a) The Texas Life and Health Insurance Guaranty Association is a nonprofit legal entity existing to pay benefits and continue coverage as provided by this chapter.

(b) The association is subject to the applicable provisions of this code and other insurance laws of this state and the immediate supervision of the commissioner. The commissioner may examine and regulate the association in the same manner as an insurer under this

code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.014(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.014(a), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 4, eff. September 1, 2011.

Sec. 463.052. REQUIRED PARTICIPATION IN ASSOCIATION. (a) As a condition of engaging in the business of insurance in this state, an insurer, including a mutual assessment company, a local mutual aid association, a statewide mutual assessment company, a stipulated premium company, and a health maintenance organization authorized to engage in business in this state, shall participate as a member of the association if the insurer holds a certificate of authority to engage in a kind of insurance business in this state with respect to which this chapter provides coverage as determined under Subchapter E. The requirement to participate applies regardless of whether the insurer's certificate of authority in this state is suspended, revoked, not renewed, or voluntarily withdrawn.

(b) The following do not participate as member insurers:

(1) a fraternal benefit society;

(2) a mandatory state pooling plan;

(3) a reciprocal or interinsurance exchange;

(4) an organization which has a certificate of authority or license limited to the issuance of charitable gift annuities, as defined by this code or rules adopted by the commissioner; and

(5) an entity similar to an entity described by Subdivision (1), (2), (3), or (4).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.013(c), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.013(c),

eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 4, eff. September 1, 2019.

Sec. 463.053. BOARD OF DIRECTORS. (a) The association's powers are exercised through a board of directors consisting of nine individuals appointed by the commissioner as provided by this section.

(b) The commissioner shall appoint three board members from officers or employees of the 50 member insurers having the largest total direct premium income according to the most recent financial statement on file on the date of appointment.

(c) To give fair representation to member insurers, the commissioner shall appoint two board members from member insurers other than insurers described by Subsection (b), considering the varying categories of premium income and geographical location.

(c-1) The commissioner shall consider, among other things, whether the directors appointed under Subsections (b) and (c) fairly represent the member insurers that are health maintenance organizations and life, health, and annuity insurers.

(d) The commissioner shall appoint four board members who are public representatives.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 5, eff. September 1, 2019.

Sec. 463.054. ELIGIBILITY TO SERVE AS PUBLIC REPRESENTATIVE. To be eligible to serve as a public representative, an individual may not:

(1) be an officer, director, or employee of an insurer, insurance agency, agent, broker, solicitor, adjuster, or other business entity regulated by the department;

(2) be a person required to register under Chapter 305, Government Code; or

(3) be related within the second degree by affinity or

consanguinity to a person described by Subdivision (1) or (2).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.055. TERM; VACANCY. (a) Board members serve staggered six-year terms, with the terms of three members expiring each odd-numbered year. A member may be reappointed.

(b) A board member shall serve until a successor is appointed.

(c) If a board member who is an officer or employee of a member insurer ceases to be an officer or employee of the insurer, the member's office becomes vacant.

(d) The commissioner shall appoint an individual to fill a vacancy on the board for the unexpired term.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.056. COMPENSATION OF BOARD MEMBERS. A board member may not receive compensation from the association for the member's services but may be reimbursed from the association's assets for expenses incurred as a board member.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.057. FINANCIAL STATEMENT OF BOARD MEMBER. Each board member shall file with the Texas Ethics Commission a financial statement as provided by Subchapter B, Chapter 572, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.058. CONFLICT OF INTEREST. (a) In this section, "transaction on behalf of an impaired insurer" includes a reinsurance agreement, transaction, merger, purchase, sale, contribution, or exchange of assets, insurance policies, or property made by the

association or a supervisor, conservator, or receiver on behalf of an impaired insurer.

(b) A board member may not:

(1) receive money or another thing of value for negotiating, procuring, participating in, recommending, or aiding a transaction on behalf of an impaired insurer; or

(2) as a principal, coprincipal, agent, or beneficiary, have a pecuniary interest in a transaction on behalf of an impaired insurer.

(c) For the purposes of this section, a board member is considered to receive a thing of value or have a pecuniary interest in a transaction on behalf of an impaired insurer regardless of whether the receipt or interest is direct, indirect, or through a substantial interest in a corporation, firm, or other business unit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.059. MEETINGS BY TELEPHONE AND VIDEOCONFERENCE. (a) Notwithstanding Chapter 551, Government Code, or any other law, the board or a committee of the board may meet by telephone conference call, videoconference, or other similar telecommunication method. The board may use telephone conference call, videoconference, or other similar telecommunication method for establishing a quorum, voting, or any other meeting purpose in accordance with this section regardless of the subject matter discussed or considered by the board at the meeting.

(b) A meeting authorized by this section is subject to the notice requirements that apply to other meetings.

(c) The notice of a meeting authorized by this section must specify the location of the meeting.

(d) Each part of a meeting authorized by this section that must be open to the public must be audible to the public at the location specified by Subsection (c).

(e) Two-way audio communication must be available during the entire meeting between all members of the board or committee attending a meeting authorized by this section, and if the two-way audio communication is disrupted so that a quorum of the board or committee is no longer participating in the meeting, the meeting may

not continue until the two-way audio communication is reestablished.

(f) An audio or digital recording of a meeting authorized by this section must be made in accordance with the association's bylaws. The recording of the open portion of the meeting must be posted on the association's Internet website.

(g) A vote during a meeting authorized by this section must be taken in such a manner that the vote of each member is audible and may be verified as the vote of the member.

Added by Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 5, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 6, eff. September 1, 2019.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

Sec. 463.101. GENERAL POWERS AND DUTIES. (a) The association may:

(1) enter into contracts as necessary or proper to carry out this chapter and the purposes of this chapter;

(2) sue or be sued, including taking:

(A) necessary or proper legal action to:

(i) recover an unpaid assessment under Subchapter D; or

(ii) settle a claim or potential claim against the association; or

(B) necessary legal action to avoid payment of an improper claim;

(3) borrow money to effect the purposes of this chapter;

(4) exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life, accident, or health insurance company, a health maintenance organization, or a group hospital service corporation, except that the association may not issue an insurance policy or annuity contract other than to perform the association's obligations under this chapter;

(5) unless prohibited by other law, implement or file for an actuarially justified rate or premium increase in accordance with the terms and conditions of a covered policy or contract;

(6) to further the association's purposes, exercise the association's powers, and perform the association's duties, join an organization of one or more state associations that have similar purposes;

(7) request information from a person seeking coverage from the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; and

(8) take any other necessary or appropriate action to discharge the association's duties and obligations under this chapter or to exercise the association's powers under this chapter.

(b) If not in default, a note or other evidence of indebtedness of the association is a legal investment for a domestic insurer and may be carried as an admitted asset.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.015(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.015(a), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 7, eff. September 1, 2019.

Sec. 463.102. PLAN OF OPERATION; AMENDMENTS. (a) The association shall perform the association's functions under a plan of operation approved by the commissioner. The plan of operation must:

(1) establish:

(A) procedures for handling the assets of the association;

(B) the amount and method of reimbursing board members under Section 463.056;

(C) regular places and times for board meetings, including telephone conference calls;

(D) procedures for maintaining records of all financial transactions of the association, the association's agents, and the board; and

(E) additional procedures for assessments under

Subchapter D; and

(2) contain additional provisions necessary or proper for the execution of the association's powers and duties.

(b) The association may amend the plan of operation. An amendment must be approved by the commissioner and takes effect on:

(1) the date the commissioner approves the amendment; or

(2) the 60th day after the date the amendment is submitted to the commissioner for approval, if the commissioner does not approve or disapprove the amendment before the 60th day.

(c) Each member insurer shall comply with the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 8, eff. September 1, 2019.

Sec. 463.103. PERSONNEL. The association may employ or retain employees or contractors to handle the association's financial transactions and to perform other functions under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.104. ASSOCIATION RECORDS. (a) The association shall maintain a record of each negotiation or meeting in which the association or the association's representative discusses the association's activities in carrying out the powers and duties under Section 463.101, 463.103, 463.109, or 463.111(c) or Subchapter F.

(b) A record under Subsection (a) may be made public only on:

(1) termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer;

(2) termination of the impairment or insolvency of the insurer; or

(3) order of a court.

(c) This section does not limit the association's duty to report on the association's activities as required by Section 463.110.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.105. ACCOUNTS. For the purposes of administration and assessment, the association shall maintain:

(1) an accident, health, and hospital services insurance account;

(2) a life insurance account;

(3) an annuity account; and

(4) an administrative account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.106. DELEGATION OF POWERS AND DUTIES. (a) The plan of operation may provide that, on approval of the board and the commissioner, a power or duty of the association is delegated to a corporation or other organization that:

(1) performs in two or more states functions similar to those of the association or the association's equivalent; and

(2) provides protection not substantially less favorable and effective than that provided by this chapter.

(b) A power or duty under Section 463.261(c) or Subchapter D, other than a duty under Section 463.161(c), may not be delegated under this section.

(c) The corporation or other organization to which a power or duty is delegated shall be:

(1) reimbursed for a payment made on behalf of the association; and

(2) paid for performing any other function of the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.107. EXEMPTION FROM TAXATION. The association is exempt from payment of all fees and all taxes levied by this state or a subdivision of this state, except taxes levied on property.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.108. DETECTION AND PREVENTION OF IMPAIRMENT AND INSOLVENCY. On a majority vote, the board:

(1) may make recommendations to the commissioner for detecting and preventing insurer insolvencies; and

(2) shall notify the commissioner of information indicating that a member insurer may be impaired or insolvent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.109. ASSOCIATION APPEARANCE BEFORE COURT; INTERVENTION. (a) The association may appear before a court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. The association's right to appear applies to:

(1) a proposal for reinsuring, reissuing, modifying, or guaranteeing the insurer's policies or contracts;

(2) the determination of the insurer's policies or contracts and contractual obligations; and

(3) any other matter germane to the association's powers and duties.

(b) The association may appear or intervene before a court in another state with jurisdiction over:

(1) an impaired or insolvent insurer concerning which the association is or may become obligated; or

(2) a third party against whom the association may have rights through subrogation of the insurer's policyholders or enrollees.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 9, eff. September 1, 2019.

Sec. 463.110. ANNUAL REPORT. Not later than the 120th day after the last day of each association fiscal year, the board shall submit to the commissioner:

(1) a financial report in a form approved by the commissioner; and

(2) a report of the association's activities during the preceding fiscal year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.111. BOARD AND ASSOCIATION ADVICE AND ASSISTANCE. (a) On a majority vote, the board may report and make recommendations to the commissioner on any matter germane to:

(1) the solvency, liquidation, rehabilitation, or conservation of a member insurer; or

(2) the solvency of an insurer seeking to engage in the business of insurance in this state.

(b) A report or recommendation under Subsection (a) is not a public document, and Chapter 552, Government Code, does not apply to the report or recommendation until the insurer that is the subject of the report or recommendation is designated as impaired.

(c) On the commissioner's request, the association may assist and advise the commissioner concerning rehabilitation, payment of claims, continuation of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.112. BOARD ACCESS TO RECORDS. The receiver or statutory successor of an impaired insurer shall give the board or a representative of the board:

(1) access to the insurer's records as necessary for the board to carry out the board's functions under this chapter relating to covered claims; and

(2) copies of those records on the board's request and at the board's expense.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.113. BOARD REPORT AT CONCLUSION OF INSOLVENCY. (a) At the conclusion of an insurer insolvency in which the association was obligated to pay a covered claim, the board shall prepare and submit to the commissioner a report containing any information the board possesses concerning the history and causes of the insolvency.

(b) The board:

(1) shall cooperate with the boards of directors of guaranty associations in other states to prepare a report on the history and causes of the insolvency of a particular insurer; and

(2) may adopt by reference a report prepared by any of those associations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.114. SUMMARY DOCUMENT; DISCLAIMER. (a) The association shall prepare a summary document describing the general purposes and limitations of this chapter and amend the document as necessary to comply with this chapter. The document must clearly and conspicuously contain on the document's face a disclaimer that:

(1) states the name and address of the association and department;

(2) warns the policy or contract holder that:

(A) the association may not cover the policy; or

(B) coverage, if available, is subject to substantial limitations and exclusions and requires continuous residence in this state;

(3) states that an insurer and the insurer's agent are prohibited by law from using the association's existence to sell, solicit, or induce the purchase of any kind of insurance;

(4) warns the policy or contract holder not to rely on association coverage in selecting an insurer; and

(5) provides other information the commissioner prescribes.

(b) The association shall submit the document to the commissioner for approval.

(c) At the expiration of the 60th day after approval of the document, a member insurer may not deliver a policy or contract with respect to which this chapter provides coverage as determined under Subchapter E to a policy, contract, or certificate holder or enrollee before a copy of the summary document is delivered to the policy, contract, or certificate holder or enrollee. The document must also be available on request of a policy, contract, or certificate holder or enrollee.

(d) The distribution, delivery, content, or interpretation of a summary document does not guarantee that a policy or contract or a policy, contract, or certificate holder or enrollee is provided coverage by this chapter if a member insurer becomes impaired or insolvent. Failure to receive the document does not give an insured or policy, contract, or certificate holder or enrollee any rights greater than those provided by this chapter.

(e) An insurer or agent may not deliver a policy or contract described by Section 463.202 that is excluded from the coverage provided by this chapter by Section 463.203 unless the insurer or agent, either before or in conjunction with delivery, gives the policy, contract, or certificate holder or enrollee a separate written notice clearly and conspicuously disclosing that the policy or contract is not covered by the association.

(f) The commissioner shall specify by rule the form and content of the disclaimer required by Subsection (a) and the notice required by Subsection (e).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 10, eff. September 1, 2019.

SUBCHAPTER D. ASSESSMENTS

Sec. 463.151. MAKING AND PAYMENT OF ASSESSMENT. (a) The association shall assess member insurers, separately for each account under Section 463.105, in the amounts and at the times the board determines necessary to provide money for the association to exercise the association's powers, perform the association's duties, and carry out the purposes of this chapter. The association may not authorize

and call an assessment to meet the requirements of the association with respect to an impaired or insolvent insurer until the assessment is necessary to carry out the purposes of this chapter. The board shall classify assessments under Section 463.152 and determine the amount of assessments with reasonable accuracy, recognizing that exact determinations may not always be possible.

(a-1) The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called not later than the 180th day after the date the assessment is authorized.

(b) An assessment is due on the date the association specifies, which may not be earlier than the 30th day after the date the association gives written notice of the assessment to member insurers. Interest accrues on an unpaid amount at a rate of 10 percent beginning on the due date.

(c) An insurer whose certificate of authority to engage in business in this state is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.016(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.016(a), eff. September 1, 2007.

Sec. 463.152. CLASSES OF ASSESSMENTS. (a) Assessments are classified as Class A or Class B assessments.

(b) Class A assessments are authorized and called to pay:

(1) the association's administrative costs;

(2) administrative expenses that:

(A) are properly incurred under this chapter; and

(B) relate to an unauthorized insurer or to an entity that is not a member insurer; and

(3) other general expenses not related to a particular impaired or insolvent insurer.

(c) Class B assessments are authorized and called to the extent

necessary for the association to carry out the association's powers and duties under Sections 463.101, 463.103, 463.109, and 463.111(c) and Subchapter F with regard to an impaired or insolvent insurer.

(d) For purposes of this section, an assessment is authorized at the time a resolution by the board is passed under which an assessment will be called immediately or in the future from member insurers for a specified amount and an assessment is called at the time a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within a period stated in the notice. An authorized assessment becomes a called assessment at the time notice is mailed by the association to member insurers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.016(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.016(b), eff. September 1, 2007.

Sec. 463.153. AMOUNT OF ASSESSMENTS. (a) The board shall determine the amount of a Class A assessment for each account under Section 463.105, considering with respect to member insurers one or more of the following as shown by annual statements for the year preceding the date of the assessment:

(1) annual premium receipts;

(2) admitted assets; or

(3) insurance in force.

(b) Class B assessments on a member insurer for each account under Section 463.105 shall be authorized and called in the proportion that the premiums received on business in this state by the member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the impaired or insolvent member insurer became impaired or insolvent bear to premiums received on business in this state for those calendar years by all assessed member insurers. Except for assessments related to long-term care insurance as described by Subsection (b-1), the amount of a Class B

assessment shall be allocated among the separate accounts in accordance with an allocation formula that may be based on:

(1) the premiums or reserves of the impaired or insolvent insurer; or

(2) any other standard deemed by the board in the board's sole discretion as being fair and reasonable under the circumstances.

(b-1) The amount of a Class B assessment for long-term care insurance written by an impaired or insolvent member insurer shall be allocated according to a methodology included in the plan of operation and approved by the commissioner. The methodology must provide for 50 percent of the assessment to be allocated to accident and health member insurers and 50 percent to be allocated to life and annuity member insurers. This subsection does not apply to a rider to a member insurer's life insurance policy or annuity contract that provides long-term care benefits.

(c) The total amount of assessments on a member insurer for each account under Section 463.105 may not in one calendar year exceed two percent of the insurer's average annual premiums on the policies covered by the account during the three calendar years preceding the year in which the impaired or insolvent member insurer became an impaired or insolvent insurer. If two or more assessments are authorized in a calendar year with respect to member insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation described by this subsection shall be equal to the higher of the three-year average annual premiums for the applicable subaccount or account as computed in accordance with this section. If the maximum assessment and the other assets of the association do not provide in a year an amount sufficient to carry out the association's responsibilities, the association shall make necessary additional assessments as soon as this chapter permits.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.016(c), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.016(c), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 6, eff.

September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 11, eff. September 1, 2019.

Sec. 463.154. DEFERMENT. The association may wholly or partly defer an assessment on a member insurer if the association believes payment of the assessment would endanger the ability of the insurer to fulfill the insurer's contractual obligations. The amount of the assessment that is deferred may be assessed against the other member insurers in a manner consistent with this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 12, eff. September 1, 2019.

Sec. 463.155. DEPOSIT OF ASSESSMENTS. The association may deposit assessments into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller. The comptroller shall account to the association for the deposited money separately from all other money.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.156. CERTIFICATE OF CONTRIBUTION. The association shall issue to each member insurer that pays a Class B assessment a certificate of contribution, in a form the commissioner prescribes, for the amount paid. All outstanding certificates are of equal priority regardless of the amount of the assessment paid or the date the certificate is issued.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.157. REFUNDS. (a) The board may refund to member

insurers the amount by which the association's assets, including any net realized gains and income from investments, exceed the amount the board determines is necessary to carry out the association's obligations regarding that amount during the next year.

(b) A refund must be made:

(1) by an equitable method established in the plan of operation; and

(2) in proportion to the contribution of each member insurer.

(c) The board may retain a reasonable amount to provide for the association's continuing expenses and for future losses if refunds are impractical.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.158. USE OF ASSESSMENTS. Money from assessments supplements the marshalling of an impaired insurer's assets to make payments on the insurer's behalf.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.159. FAILURE TO PAY; COLLECTION BY COMMISSIONER. On failure of a member insurer to pay an assessment when due, the commissioner may either:

(1) suspend or revoke, after notice and hearing, the insurer's certificate of authority to engage in the business of insurance in this state; or

(2) levy a forfeiture in an amount not less than $100 each month or more than five percent of the unpaid assessment each month.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.160. PREMIUM TAX CREDIT FOR CLASS A ASSESSMENT. The amount of a Class A assessment paid by a member insurer in each taxable year shall be allowed as a credit on the amount of premium

taxes due.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 2.06, eff. September 28, 2011.

Sec. 463.161. PREMIUM TAX CREDIT FOR CLASS B ASSESSMENT. (a) A member insurer is entitled to show as an admitted asset a certificate of contribution in the form the commissioner approves under Section 463.156. Unless the commissioner requires a longer period, the certificate may be shown at:

(1) for the calendar year of issuance, an amount equal to the certificate's original face value approved by the commissioner; and

(2) beginning with the year following the calendar year of issuance, an amount equal to the certificate's original face value, reduced by 20 percent a year for each year after the year of issuance, for a period of five years.

(b) An amount written off during a calendar year under Subsection (a) shall be allowed as a credit against the member insurer's premium tax owed for business engaged in during that year. The insurer is not required to write off in a single year an amount that exceeds the amount of premium tax owed for the business described by this subsection.

(c) The association shall pay to the commissioner, and the commissioner shall deliver to the comptroller for deposit to the credit of the general revenue fund, any amount owed as a refund from the association under Section 463.157 that was written off and used for a tax credit under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.017(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.017(a), eff. September 1, 2007.

Sec. 463.162. ASSIGNMENT OR TRANSFER OF CREDIT. (a) A member insurer may assign or transfer a credit against premium tax to another member insurer if:

(1) an acquisition, merger, or total assumption of reinsurance occurs between the insurers; or

(2) the commissioner by order approves the assignment or transfer.

(b) Not later than the later of November 1 or the 60th day after the date of the assignment or transfer, each member insurer shall:

(1) report the assignment or transfer to the comptroller on a form the comptroller prescribes; and

(2) include with the report any documents from the commissioner that show approval of the assignment or transfer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.163. INSURED'S LIABILITY UNDER ASSESSMENT PLAN. This chapter does not reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER E. COVERAGE PROVIDED BY ASSOCIATION

Sec. 463.201. PERSONS COVERED. (a) Subject to Subsections (b) and (c), this chapter provides coverage for a policy or contract described by Section 463.202 to a person who is:

(1) a person, other than a certificate holder under a group policy or contract who is not a resident, who is a beneficiary, assignee, or payee, including a health care provider who renders services covered under a health insurance policy or certificate, of a person described by Subdivision (2);

(2) a person who is an owner of or certificate holder or enrollee under a policy or contract specified by Section 463.202, other than an unallocated annuity contract or structured settlement annuity, and who is:

(A) a resident; or

(B) not a resident, but only under all of the following conditions:

(i) the member insurers that issued the policies or contracts are domiciled in this state;

(ii) the state in which the person resides has an association similar to the association; and

(iii) the person is not eligible for coverage by an association in any other state because the insurer or health maintenance organization was not licensed in the state at the time specified in that state's guaranty association law;

(3) a person who is the owner of an unallocated annuity contract issued to or in connection with:

(A) a benefit plan whose plan sponsor has the sponsor's principal place of business in this state; or

(B) a government lottery, if the owner is a resident; or

(4) a person who is the payee under a structured settlement annuity, or beneficiary of the payee if the payee is deceased, if:

(A) the payee is a resident, regardless of where the contract owner resides;

(B) the payee is not a resident, the contract owner of the structured settlement annuity is a resident, and the payee is not eligible for coverage by the association in the state in which the payee resides; or

(C) the payee and the contract owner are not residents, the insurer that issued the structured settlement annuity is domiciled in this state, the state in which the contract owner resides has an association similar to the association, and neither the payee or, if applicable, the payee's beneficiary, nor the contract owner is eligible for coverage by the association in the state in which the payee or contract owner resides.

(b) This chapter does not provide coverage to:

(1) a person who is a payee or the beneficiary of a payee with respect to a contract the owner of which is a resident of this state, if the payee or the payee's beneficiary is afforded any coverage by the association of another state;

(2) a person otherwise described by Subsection (a)(3), if any coverage is provided by the association of another state to that person; or

(3) a person who acquires rights to receive payments through a structured settlement factoring transaction as defined by Section 5891(c)(3)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 5891(c)(3)(A)), regardless of whether the transaction occurred before, on, or after the date that section became effective.

(c) This chapter is intended to provide coverage to persons who are residents of this state, and in those limited circumstances as described in this chapter, to nonresidents. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, the person may not be provided coverage under this chapter. In determining the application of the provisions of this subsection in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.018(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.018(a), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 12, eff. September 1, 2019.

Sec. 463.202. POLICIES AND CONTRACTS COVERED. (a) Except as limited by this chapter, the coverage provided by this chapter to a person specified by Section 463.201, subject to Sections 463.201(b) and (c), applies with respect to the following policies and contracts issued by a member insurer:

(1) a direct, nongroup life, health, accident, annuity, or supplemental policy or contract, including a health maintenance organization contract or certificate;

(2) a certificate under a direct group policy or contract;

(3) a group hospital service contract; and

(4) an unallocated annuity contract.

(b) The coverage provided by this chapter also applies with respect to all other insurance coverage written by the following entities authorized to engage in business in this state:

(1) a mutual assessment company;

(2) a local mutual aid association;

(3) a statewide mutual assessment company; and

(4) a stipulated premium company.

(c) For the purposes of this section, an annuity contract or a certificate under a group annuity contract includes:

(1) a guaranteed investment contract;

(2) a deposit administration contract;

(3) an allocated or unallocated funding agreement;

(4) a structured settlement annuity;

(5) an annuity issued to or in connection with a government lottery; and

(6) an immediate or deferred annuity contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.018(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.018(b), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 13, eff. September 1, 2019.

Sec. 463.203. POLICIES AND CONTRACTS EXCLUDED. (a) In this section, "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor to that entity.

(b) This chapter does not provide coverage for:

(1) any part of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract owner;

(2) a policy or contract of reinsurance, unless an assumption certificate has been issued;

(3) any part of a policy or contract to the extent that the rate of interest on which that part is based:

(A) as averaged over the period of four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for a lesser period if the policy or contract was issued less than four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier; and

(B) on and after the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a portion of a policy or contract issued to a plan or program of an employer, association, similar entity, or other person to provide life, health, or annuity benefits to the entity's employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(5) any part of a policy or contract to the extent that the part provides dividends, experience rating credits, or voting rights, or provides that fees or allowances be paid to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(6) a policy or contract issued in this state by a member insurer at a time the insurer was not authorized to issue the policy or contract in this state;

(7) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the Pension Benefit Guaranty Corporation has not yet become liable to make any payments with respect to the benefit plan;

(8) any part of an unallocated annuity contract that is not issued to or in connection with a specific employee, a benefit plan

for a union or association of individuals, or a governmental lottery;

(9) any part of a financial guarantee, funding agreement, or guaranteed investment contract that:

(A) does not contain a mortality guarantee; and

(B) is not issued to or in connection with a specific employee, a benefit plan, or a governmental lottery;

(10) a part of a policy or contract to the extent that the assessments required by Subchapter D with respect to the policy or contract are preempted by federal or state law;

(11) a contractual agreement that established the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or the plan's trustee in a case in which neither the benefit plan sponsor nor its trustee is an affiliate of the member insurer;

(12) a part of a policy or contract to the extent the policy or contract provides for interest or other changes in value that are to be determined by the use of an index or external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever date is earlier, subject to Subsection (c);

(13) a policy or contract providing a hospital, medical, prescription drug, or other health care benefit under 42 U.S.C. Sections 1395w-21 et seq. and 1395w-101 et seq. (Medicare Parts C and D), 42 U.S.C. Sections 1396-1396w-5 (Medicaid), or 42 U.S.C. Sections 1397aa-1397mm (State Children's Health Insurance Program) or a regulation adopted under those federal statutes; or

(14) structured settlement annuity benefits to which a payee or beneficiary has transferred the payee's or beneficiary's rights in a structured settlement factoring transaction as defined by Section 5891(c)(3)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 5891(c)(3)(A)), regardless of whether the factoring transaction occurred before, on, or after the date that section became effective.

(b-1) The exclusion from coverage described by Subsection (b)(3) does not apply to any portion of a policy or contract, including a rider, that provides long-term care benefits or any other health insurance benefit.

(c) For purposes of determining the values that have been credited and are not subject to forfeiture as described by Subsection (b)(12), if a policy's or contract's interest or changes in value are credited less frequently than annually, the interest or change in value determined by using the procedures defined in the policy or contract is credited as if the contractual date of crediting interest or changing values is the earlier of the date of impairment or the date of insolvency, and is not subject to forfeiture.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.018(c), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.018(c), eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 7, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 14, eff. September 1, 2019.

Sec. 463.204. OBLIGATIONS EXCLUDED. A contractual obligation does not include:

(1) death benefits in an amount in excess of $300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of $100,000 under one or more life insurance policies on a single life;

(2) an amount in excess of:

(A) $250,000 in the present value under one or more annuity contracts issued with respect to a single life under individual annuity policies or group annuity policies; or

(B) $5 million in unallocated annuity contract benefits with respect to a single contract owner regardless of the number of those contracts;

(3) an amount in excess of the following amounts, including any net cash surrender or cash withdrawal values, under one or more accident, health, accident and health, or long-term care insurance policies on a single life:

(A) $500,000 for health benefit plans;

(B) $300,000 for disability income and long-term care insurance, as those terms are defined by this code or rules adopted by the commissioner; or

(C) $200,000 for coverages that are not defined as health benefit plans, disability income, or long-term care insurance;

(4) an amount in excess of $250,000 in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each individual participating in a governmental retirement benefit plan established under Section 401, 403(b), or 457, Internal Revenue Code of 1986 (26 U.S.C. Sections 401, 403(b), and 457), covered by an unallocated annuity contract or the beneficiary or beneficiaries of the individual if the individual is deceased;

(5) an amount in excess of $250,000 in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each payee of a structured settlement annuity or the beneficiary or beneficiaries of the payee if the payee is deceased;

(6) aggregate benefits in an amount in excess of $300,000 with respect to a single life, except with respect to:

(A) benefits paid under health benefit plans, described by Subdivision (3)(A), in which case the aggregate benefits are $500,000; and

(B) benefits paid to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, in which case the maximum benefits are $5 million regardless of the number of policies and contracts held by the owner;

(7) an amount in excess of $5 million in benefits, with respect to either one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in Subdivision (4) irrespective of the number of contracts with respect to the contract owner or plan sponsor or one contract owner provided coverage under Section 463.201(a)(3)(B), except that, if one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place

of business is in this state, and in no event shall the association be obligated to cover more than $5 million in benefits with respect to all these unallocated contracts;

(8) any contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic value of economic benefits of the covered policy or contract; or

(9) punitive, exemplary, extracontractual, or bad faith damages, regardless of whether the damages are:

(A) agreed to or assumed by an insurer, insured, or covered person; or

(B) imposed by a court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.013(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.013(d), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 8, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 15, eff. September 1, 2019.

Sec. 463.205. PROTECTION PROVIDED BY OTHER JURISDICTION. This chapter does not provide coverage for a resident with respect to an impaired or insolvent insurer domiciled in another jurisdiction if guaranty protection is provided to the resident by the law of that jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.206. ASSOCIATION DISCRETION IN MANNER OF PROVIDING BENEFITS. (a) The board shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.

(b) If the association arranges or offers to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.015(b), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.015(b), eff. September 1, 2007.

SUBCHAPTER F. POWERS AND DUTIES OF ASSOCIATION RELATING TO IMPAIRED OR INSOLVENT INSURER

Sec. 463.251. IMPAIRED DOMESTIC INSURER. (a) This section applies only to a member insurer that is an impaired domestic insurer.

(b) With the commissioner's approval, the association may:

(1) guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, one or more of the insurer's policies or contracts;

(2) provide money, pledges, notes, guarantees, or other means proper to:

(A) implement Subdivision (1); and

(B) ensure payment of the insurer's contractual obligations until action is taken under Subdivision (1); or

(3) loan money to the insurer.

(c) In taking action under Subsection (b), the association may impose any condition that:

(1) does not impair the insurer's contractual obligations; and

(2) is approved by:

(A) the commissioner; and

(B) the insurer, except in a conservation or rehabilitation ordered by a court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 16, eff.

September 1, 2019.

Sec. 463.252. IMPAIRED DOMESTIC, FOREIGN, OR ALIEN INSURER NOT PAYING CLAIMS. (a) This section applies only to a member insurer that:

(1) is an impaired domestic, foreign, or alien insurer; and

(2) is not timely paying claims.

(b) Subject to Subsection (d), the association shall:

(1) with respect to the insurer, take one or more actions that the association is authorized to take under Section 463.251 with respect to an impaired domestic insurer, subject to the conditions of that section; or

(2) provide substitute benefits instead of the insurer's contractual obligations as provided by Subsection (c).

(c) A policy or contract owner, certificate holder, or enrollee who claims emergency or hardship may petition for substitute benefits under standards the association proposes and the commissioner approves. Substitute benefits are available only for a health claim, periodic annuity benefit payment, death benefit, supplemental benefit, or cash withdrawal.

(d) The association is required to take action under this section only if:

(1) the laws of the insurer's state of domicile provide that, until all payments of or on account of the insurer's contractual obligations are made by all guaranty associations and all expenses of the associations and interest on those payments and expenses have been repaid to the associations or a plan of repayment by the insurer has been approved by the associations:

(A) the delinquency proceeding may not be dismissed;

(B) the insurer and the insurer's assets may not be returned to the control of the insurer's shareholders or private management; and

(C) the insurer may not solicit or accept new business or have any suspended or revoked certificate of authority restored;

(2) the insurer is a domestic insurer that has been placed under an order of rehabilitation by a court in this state; or

(3) the insurer is a foreign or alien insurer and:

(A) the insurer has been prohibited from soliciting or accepting new business in this state;

(B) the insurer's certificate of authority has been suspended or revoked in this state; and

(C) a petition for rehabilitation or liquidation has been filed in a court in the insurer's state of domicile by the insurance official of that state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 17, eff. September 1, 2019.

Sec. 463.253. INSOLVENT INSURER. (a) This section applies only to a member insurer that is an insolvent insurer.

(b) The association shall provide money, pledges, guarantees, or other means reasonably necessary to discharge the insurer's duties and to:

(1) guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the insurer's policies or contracts; or

(2) ensure payment of the insurer's contractual obligations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 18, eff. September 1, 2019.

Sec. 463.254. LIFE OR HEALTH INSURANCE POLICIES OR CONTRACTS. (a) This section applies only when the association is taking an action under Section 463.252(b)(2) or 463.253 with respect to a life or health insurance policy or contract.

(b) The association, in accordance with Subsections (c) and (d), as applicable, shall ensure payment of benefits identical to the benefits that would have been payable under the policy or contract of the insurer.

(c) For a group policy or contract, the association shall ensure payment of benefits under Subsection (b) for claims incurred

before the later of:

(1) the earlier of the next renewal date under the policy or contract or the 45th day after the date the association becomes obligated with respect to the policy or contract; or

(2) the 30th day after the date the association becomes obligated with respect to the policy or contract.

(d) For an individual policy, the association shall ensure payment of benefits under Subsection (b) for claims incurred before the later of:

(1) the earlier of the next renewal date under the policy, if any, or the first anniversary of the date the association becomes obligated with respect to the policy; or

(2) the 30th day after the date the association becomes obligated with respect to the policy.

(e) The association shall diligently attempt to provide each known insured, enrollee, or group policy or contract holder with notice before the 30th day before the date the benefits are terminated.

(f) As provided by Subsections (g)-(i), the association shall make substitute coverage available on an individual basis to:

(1) each known insured or enrollee under an individual policy, or the owner if other than the insured or enrollee; and

(2) each individual who:

(A) was formerly insured or enrolled under a group policy or contract; and

(B) is not eligible for replacement group coverage.

(g) Substitute coverage is available for an individual policy under Subsection (f) only if the insured, enrollee, or owner was entitled under law or the terminated policy to continue an individual policy in force until a specified age or for a specified period during which the insurer:

(1) was not entitled to unilaterally change a provision of the policy; or

(2) was entitled only to change a premium by class.

(h) Substitute coverage is available for a group policy or contract under Subsection (f) only if the formerly insured or enrolled individual was entitled under law or the terminated policy or contract to convert group coverage to individual coverage.

(i) To provide substitute coverage under Subsection (f), the association may offer to reissue the terminated coverage or issue an

alternative policy. The association shall offer the reissued or alternative policy without requiring evidence of insurability, at actuarially justified rates. The reissued or alternative policy may not provide for a waiting period or exclusion that would not have applied under the terminated policy. The association may reinsure a reissued or alternative policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 19, eff. September 1, 2019.

Sec. 463.255. POLICY OR CONTRACT WITH GUARANTEED INTEREST RATE. In taking an action under Section 463.252(b)(2) or 463.253 with respect to a policy or contract with a guaranteed minimum interest rate, the association shall ensure the payment or crediting of a rate of interest consistent with Section 463.203(b)(3).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.256. ALTERNATIVE POLICY. (a) An alternative policy issued by the association must:

(1) be approved by the commissioner;

(2) provide coverage of a kind that the association determines is similar to the coverage of the policy issued by the impaired or insolvent insurer;

(3) contain at least the minimum provisions required by the statutes of this state; and

(4) provide benefits that are not unreasonable in relation to the premium charged.

(b) The association shall set the premium according to a table of rates the association adopts. The premium:

(1) must reflect:

(A) the amount of insurance provided; and

(B) each insured's or enrollee's age and class of risk; and

(2) may not reflect any change in an insured's or

enrollee's health occurring after the original policy was most recently underwritten.

(c) The association may adopt various kinds of alternative policies to issue at a later date without regard to any particular impairment or insolvency.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 20, eff. September 1, 2019.

Sec. 463.257. IMPOSITION OF LIEN OR MORATORIUM. To carry out the association's duties under this chapter and with the court's approval, the association may:

(1) impose a permanent policy or contract lien in connection with any guarantee, assumption, or reinsurance agreement if the association determines that:

(A) the amounts that may be assessed under this chapter are insufficient to ensure full and prompt performance of the association's duties under this chapter; or

(B) adverse economic or financial conditions affecting member insurers make imposition of the lien in the public interest; or

(2) in addition to any contractual provision for deferral of cash or policy loan value, impose a temporary moratorium or lien on payment of cash values and policy loans or the exercise of any other right to withdraw money held in connection with a policy or contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.258. PREMIUM FOR REISSUANCE OF TERMINATED COVERAGE. If the association reissues terminated coverage at a premium different from the terminated policy's premium, the premium must:

(1) reflect the amount of insurance provided and the insured's or enrollee's age and class of risk; and

(2) be approved by the commissioner or a court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 21, eff. September 1, 2019.

Sec. 463.259. PREMIUM DUE DURING RECEIVERSHIP. After a court enters an order of receivership with respect to an impaired or insolvent insurer, a premium due for coverage issued by the insurer is owned by and is payable at the direction of the association. The association is liable for an unearned premium owed to a policy or contract owner that arises after the court enters the order.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.015(c), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.015(c), eff. September 1, 2007.

Sec. 463.260. LIMITS ON AND TERMINATION OF ASSOCIATION OBLIGATION. (a) The association is not liable for benefits that exceed the contractual obligations for which the insurer is liable or would have been liable if not impaired or insolvent. The association has no obligation to provide benefits outside the express written terms of the policy or contract, including:

(1) claims based on marketing materials;

(2) claims based on side letters, riders, or other documents that were issued without meeting applicable policy form filing or approval requirements;

(3) claims based on misrepresentation of or regarding policy benefits;

(4) extracontractual claims; or

(5) claims for penalties or consequential or incidental damages.

(b) The association's obligations with respect to coverage under a policy of an impaired or insolvent insurer or under a

reissued or alternative policy terminate on the date the coverage or policy is replaced by another similar policy by the policyholder, the contract owner, the insured, the enrollee, or the association.

(c) If a premium is not paid before the 32nd day after the date the premium is due under a guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage, the association's obligations under the policy, contract, or coverage terminate, except with respect to a claim incurred or any net cash surrender value due as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.018(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.018(d), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 22, eff. September 1, 2019.

Sec. 463.261. ASSIGNMENT OF RIGHTS. (a) A person receiving a benefit under this chapter, including a payment of or on account of a contractual obligation, continuation of coverage, or provision of substitute or alternative coverage, is considered to have assigned to the association the rights under, and any cause of action relating to, the covered policy to the extent of the benefit received. The association may require a payee, policy or contract owner, beneficiary, insured, enrollee, or annuitant to assign the person's rights and cause of action to the association as a condition of receiving a right or benefit under this chapter.

(b) The association's subrogation rights under Subsection (a) have the same priority against the assets of the impaired or insolvent insurer as that held by the person entitled to receive a benefit under this chapter.

(c) The association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or holder, beneficiary, enrollee, or payee of a policy or contract with respect to the policy or contract.

(d) The rights of the association under Subsection (c) include, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this chapter, against any person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for the annuity, other than a person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Section 130, Internal Revenue Code of 1986 (26 U.S.C. Section 130).

(e) If a provision of this section is invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations is reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion of the policies, covered by the association. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights described in this section, the person shall pay to the association the portion of the recovery attributable to the policies, or portion of the policies, covered by the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.015(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.015(d), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 23, eff. September 1, 2019.

Sec. 463.262. EFFECT OF SUBROGATION AND ASSIGNMENT OF RIGHTS AND AVAILABLE ASSETS ON ASSOCIATION OBLIGATION. (a) The limitations set forth in this chapter are limitations on the benefits for which the association is obligated before taking into account either the association's subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies.

(b) The costs of the association's obligations under this

chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to the association's subrogation and assignment rights.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.018(e), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.018(e), eff. September 1, 2007.

Sec. 463.263. DEPOSIT TO BE PAID TO ASSOCIATION. (a) A deposit in this state, held under law or required by the commissioner for the benefit of creditors, including policy owners, that is not turned over to the domiciliary receiver on the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or a reciprocal state in accordance with Section 443.402 shall be promptly paid to the association.

(b) The association is entitled to retain a portion of any amount paid to the association under this section equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount paid to the association less the amount retained under this section.

(c) The amount paid to the association under this section, less the amount retained by the association under this section, is treated as a distribution of estate assets under Section 443.303 or the similar law of the state of domicile of the impaired or insolvent insurer.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.015(e), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.015(e), eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 9, eff. September 1, 2011.

Sec. 463.264. REINSURANCE. (a) The association may elect to

succeed to the rights of an insolvent insurer under a contract of reinsurance to which the insolvent insurer is a party to the extent:

(1) of the contractual obligations of the covered policies for which the association may become obligated; and

(2) that the reinsurance contract provides coverage for losses occurring after the association is obligated to provide coverage.

(b) As a condition to making an election under Subsection (a), the association shall pay all unpaid premiums due under the reinsurance contract to which Subsection (a) refers for coverage relating to a period before and after the date the association is obligated to provide coverage.

Added by Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. 567), Sec. 10, eff. September 1, 2011.

SUBCHAPTER G. OPERATION OF IMPAIRED OR INSOLVENT INSURER

Sec. 463.301. ISSUANCE OR RENEWAL OF POLICIES FOLLOWING CONSERVATORSHIP OR RECEIVERSHIP. (a) If an assessment has been made under this chapter for the insurer or guaranty fees have been provided for the insurer, an impaired insurer placed in conservatorship or receivership may not issue a new or renewal insurance policy on release from the conservatorship or receivership until the insurer has repaid in full the amount of guaranty fees provided by the association.

(b) Notwithstanding Subsection (a), on application of the association and after hearing, the commissioner may permit the insurer to issue new policies as provided by a plan of operation by the insurer for repayment. In approving the plan, the commissioner may restrict the issuance of new or renewal policies as necessary to implement the plan.

(c) The commissioner shall give 10 days' notice of the hearing to the association. The association and the member insurers that paid assessments in relation to the impaired insurer are entitled to appear at and participate in the hearing.

(d) Money recovered against an impaired insurer under this section shall be repaid to the member insurers that paid assessments in relation to the impaired insurer on return of the member insurers' certificates of contribution.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.302. DISTRIBUTIONS TO SHAREHOLDERS AND AFFILIATES. (a) An impaired or insolvent insurer may not make a distribution to shareholders until the association has recovered the total amount of valid claims for money spent in carrying out the association's powers and performing the association's duties under Section 463.101, 463.103, 463.109, or 463.111(c) or Subchapter F with respect to that insurer, plus interest on that amount.

(b) Except as otherwise provided by this section, a receiver appointed under an order of receivership for an insurer domiciled in this state may recover on behalf of the insurer from an affiliate that controlled the insurer the amount of any distribution, other than a stock dividend the insurer paid on the insurer's capital stock, made during the five years preceding the date of the petition for liquidation or rehabilitation.

(c) A person who was an affiliate that controlled the insurer when a distribution described by Subsection (b) was paid is liable for the amount of the distribution received. A person who was an affiliate that controlled the insurer when the distribution was declared is liable for the amount of the distribution the affiliate would have received if the distribution had been paid immediately. Two or more persons liable for the same distribution are jointly and severally liable. If a person liable under this subsection is insolvent, all of the affiliates that controlled the insolvent person when the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent person.

(d) The maximum amount recoverable under Subsections (b) and (c) is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the insurer's contractual obligations.

(e) The receiver may not recover a distribution to shareholders under Subsection (b) if the insurer shows that, at the time the distribution was paid, the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill the insurer's contractual obligations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.019(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.019(a), eff. September 1, 2007.

Sec. 463.303. ASSETS ATTRIBUTABLE TO COVERED POLICIES. (a) For the purposes of this section, assets attributable to covered policies are the proportion of the assets that the reserves that should have been established for the covered policies bear to the reserves that should have been established for all insurance policies written by the impaired or insolvent insurer.

(b) To carry out the association's obligations under this chapter, the association is considered a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies, less any amount to which the association is entitled as subrogee under Section 463.261.

(c) Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.304. DISTRIBUTION OF OWNERSHIP RIGHTS OF IMPAIRED OR INSOLVENT INSURER. In making an equitable distribution of the ownership rights of an impaired or insolvent insurer before the termination of a receivership, the court:

(1) shall consider the welfare of the policyholders, contract owners, certificate holders, and enrollees of the continuing or successor insurer; and

(2) may consider the contributions of the respective parties, including the association, the shareholders, policyholders, contract owners, certificate holders, and enrollees of the impaired or insolvent insurer, and any other party with a bona fide interest.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.019(b), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.019(b), eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 24, eff. September 1, 2019.

SUBCHAPTER H. POWERS AND DUTIES OF COMMISSIONER AND DEPARTMENT

Sec. 463.351. NOTICE OF COMMISSIONER ACTIONS. (a) The commissioner shall:

(1) notify the insurance officials of all the other states, territories of the United States, and the District of Columbia by mail not later than the 30th day after the date the commissioner:

(A) revokes or suspends a member insurer's certificate of authority; or

(B) issues a formal order requiring a member insurer to:

(i) restrict the insurer's premium writing;

(ii) withdraw from this state;

(iii) reinsure all or part of the insurer's business;

(iv) obtain additional contributions to surplus; or

(v) increase capital, surplus, or another account for the security of policyholders, contract owners, or creditors;

(2) report to the board when the commissioner:

(A) takes an action described by Subdivision (1) or receives from another insurance official a report indicating that a similar action has been taken in another state; or

(B) has reasonable cause to believe from a completed or continuing examination that a member insurer may be impaired or insolvent; and

(3) provide to the board the National Association of Insurance Commissioners Insurance Regulatory Information System ratios and listings of insurers not included in those ratios.

(b) A report under Subsection (a)(2)(A) must contain all significant details of the action taken or report received.

(c) The board may use information described by this section to carry out the board's duties under this chapter. The board shall keep a report made under this section and the contents of the report confidential until the commissioner or other lawful authority makes the report and the contents public.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 432 (S.B. 1153), Sec. 25, eff. September 1, 2019.

Sec. 463.352. ADVICE FROM BOARD. The commissioner may seek the board's advice and recommendations on a matter affecting the commissioner's duties regarding the financial condition of:

(1) a member insurer; or

(2) an insurer applying for a certificate of authority to engage in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.353. EXAMINATION. (a) The board by majority vote may request the commissioner to order an examination of a member insurer that the board in good faith believes may be impaired or insolvent. The commissioner shall keep the request on file. The request is open for public inspection before release of the examination report to the public.

(b) Not later than the 30th day after the date the commissioner receives the request, the commissioner shall begin the examination. The examination may be conducted:

(1) as a National Association of Insurance Commissioners examination; or

(2) by a person the commissioner designates.

(c) The association shall pay the cost of the examination.

(d) The commissioner shall notify the board when the examination is completed. The examination report shall be treated in the same manner as other examination reports. The report may not be released to the board before the report is released to the public,

except that the commissioner may comply with Section 463.351.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.354. DEMAND TO CURE IMPAIRMENT. (a) When an impairment is declared and the amount of the impairment is determined, the commissioner shall serve a demand on the impaired insurer to cure the impairment within a reasonable time.

(b) Notice of the demand under Subsection (a) to the impaired insurer constitutes notice to any shareholders of the insurer.

(c) Failure of the impaired insurer to comply promptly with the demand does not excuse the association from exercising the association's powers and performing the association's duties under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.355. FAILURE TO COMPLY WITH PLAN OF OPERATION. On failure of a member insurer to comply with the plan of operation, the commissioner may suspend or revoke, after notice and hearing, the insurer's certificate of authority to engage in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.356. ASSUMPTION OF POWERS AND DUTIES OF ASSOCIATION. The commissioner may assume the powers and duties of the association under this chapter with respect to impaired or insolvent insurers if the association does not within a reasonable period act as provided by:

(1) Section 463.252(b)(2);

(2) Section 463.253; and

(3) Section 463.254.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 463.357. NOTIFICATION OF EFFECT OF CHAPTER. The commissioner, as receiver of an impaired insurer, may notify all interested persons of the effect of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.358. STATEMENT OF PREMIUMS. On request, the commissioner shall provide the association with a statement of the premiums in this state and any other appropriate state for each member insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER I. APPEALS AND OTHER ACTIONS

Sec. 463.401. APPEAL TO COMMISSIONER. (a) Not later than the 60th day after the date of a final action of the association or the board, a member insurer may appeal the action to the commissioner.

(b) A member insurer appealing an assessment shall pay the assessment to the association. The association may use the money to meet the association's obligations while the appeal is pending. If the appeal on the assessment is upheld, the association shall return to the insurer the amount paid in error or in excess of the amount the commissioner determines the insurer was obligated to pay.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.402. VENUE. Venue for an action against the association under this chapter is in Travis County.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.403. APPEAL BOND. The association is not required to give an appeal bond in an appeal of a cause of action under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 463.404. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT BINDING. (a) To permit the receiver or association to properly defend a pending cause of action, a proceeding in which an impaired insurer is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership or brought by the receiver, is stayed for:

(1) a six-month period beginning on the later of the date the insurer is designated as impaired or the date an ancillary proceeding is brought in this state; and

(2) any subsequent period as determined by the court.

(b) If a covered claim arises from a judgment, order, verdict, finding, or other decision based on the default of an impaired insurer or the insurer's failure to defend an insured, the association on the association's behalf or on behalf of the insured may apply to the court or administrator that made the decision to have the decision set aside and is entitled to defend the claim on the merits.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER J. PROHIBITED PRACTICES

Sec. 463.451. PROHIBITED USE OF PROTECTION PROVIDED BY CHAPTER. (a) A person may not make, publish, disseminate, circulate, or place before the public, or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public, a written or oral advertisement, announcement, or statement that uses the existence of the association to sell, solicit, or induce the purchase of a kind of insurance with respect to which this chapter provides coverage.

(b) This section applies to an advertisement, announcement, or statement made, published, disseminated, circulated, or placed before

the public:

(1) in a newspaper, magazine, or other publication;

(2) in a notice, circular, pamphlet, letter, or poster;

(3) over a radio or television station; or

(4) in any other manner.

(c) Except as provided by Section 463.114, the use by a person of the protection provided by this chapter in the sale of insurance is unfair competition and an unfair practice under Chapter 541.

(d) This section does not apply to the association or any other entity that does not sell or solicit insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 464. UNAUTHORIZED INSURANCE GUARANTY FUND ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 464.001. SHORT TITLE. This chapter may be cited as the Unauthorized Insurance Guaranty Fund Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.002. CONSTRUCTION AND PURPOSE. (a) The purpose of this chapter is to alleviate the financial hardship imposed on persons who are harmed by the sale of unauthorized insurance in this state. Persons who suffer damages as a result of unpaid claims on policies issued by unauthorized insurers in this state are not covered under guaranty acts, which provide protection to persons with claims against authorized insurers. The legislature finds that it is appropriate to provide additional remedies to these persons.

(b) The commissioner's powers under this Act shall be liberally construed to support the purpose stated in Subsection (a).

(c) This chapter does not limit the powers granted the commissioner under other provisions of law. The powers and authority of the commissioner under this chapter are cumulative and are in addition to all other powers and authority that are available to the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1,

eff. June 19, 2009.

Sec. 464.003. DEFINITIONS.In this chapter:

(1) "Delinquency proceeding" has the meaning assigned by Section 443.004.

(2) "Fund" means the unauthorized insurance guaranty fund.

(3) "Fund account" means the account established for the deposit of money held by the fund.

(4) "Policy claim" means an obligation incurred under a contract or policy of insurance issued by an unauthorized insurer as described by Chapter 101. The term does not include claims under reinsurance contracts or claims of other creditors.

(5) "Receiver" means the receiver of an unauthorized insurer in a delinquency proceeding, including the commissioner when acting in that capacity, or a special deputy receiver.

(6) "Unauthorized insurer" has the meaning assigned by Section 443.004.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.004. APPLICABILITY. This chapter applies to a delinquency proceeding under Chapter 443 of an unauthorized insurer.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.005. IMMUNITY. Liability does not exist and a cause of action does not arise against the commissioner or an agent, employee, or representative of the commissioner for any good faith act or omission in performing the commissioner's, or the agent's, employee's, or representative's powers and duties under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.006. EXEMPTION FROM CERTAIN FEES AND TAXES. The fund

is exempt from payment of all fees and taxes levied by this state or a political subdivision of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.007. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. FUND

Sec. 464.051. CREATION OF UNAUTHORIZED INSURANCE GUARANTY FUND. The unauthorized insurance guaranty fund is established.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.052. DEPOSIT OF FUNDS. (a) The fund account shall be established with the Texas Treasury Safekeeping Trust Company in accordance with procedures adopted by the comptroller. The comptroller shall account for the deposited money separately from all other money.

(b) The commissioner may identify collected penalties to be deposited into the fund account from:

(1) administrative penalties assessed by the commissioner for violations of Chapter 101 or penalties under Section 861.702, including amounts collected through state warrant holds;

(2) civil penalties assessed under Chapter 101 when the commissioner is the party requesting penalties;

(3) administrative penalties assessed by the commissioner against a person holding a certificate of authority, license, registration, or other authorization to engage in the business of insurance that is issued or recognized by the commissioner for engaging in conduct outside the scope of the person's certificate, license, registration, or authorization;

(4) administrative penalties assessed by the commissioner

against a person holding a certificate of authority, license, registration, or authorization issued or recognized by the commissioner for using unapproved forms, rates, or advertisements if the forms, rates, or advertisements are required to be approved by the commissioner before being used in this state; and

(5) forfeitures of bonds issued under Section 101.353 or 101.354.

(c) In determining the amounts to be deposited into the fund account, the commissioner shall consider:

(1) the amount existing in the fund account;

(2) the anticipated penalties described by Subsection (b) that have been or may be collected;

(3) the estimated assets, administrative expenses, and claims of any unauthorized insurers subject to a delinquency proceeding; and

(4) any anticipated delinquency proceedings of unauthorized insurers.

(d) If the commissioner determines that the amounts on deposit in the fund account exceed the amount required to pay administrative expenses and claims of existing and anticipated delinquency proceedings of unauthorized insurers, the commissioner may transfer the excess amount from the fund to the comptroller for deposit into the general revenue fund.

(e) The commissioner shall notify the comptroller of the existence of money under Subsection (c) to be credited to the fund account. The commissioner must enter an order to transfer amounts from the fund account.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.053. ADVANCE OF FUNDS. (a) In the event of a delinquency proceeding of an unauthorized insurer, the commissioner may advance funds from the fund account if the assets of the unauthorized insurer are insufficient to pay administrative expenses or policy claims. The commissioner shall hold the funds in a separate account. Funds advanced under this section are available to supplement the assets of the unauthorized insurer, and do not become property of the unauthorized insurer or the receivership estate.

(b) In determining an amount to be advanced, the commissioner shall consider:

(1) the amount existing in the fund, and any estimated future amounts to be deposited in the fund;

(2) the assets of the unauthorized insurer that are anticipated to be available to pay administrative expenses and claims;

(3) the projected administrative expenses and claims in the delinquency proceeding; and

(4) the projected administrative expenses and claims in other existing and anticipated delinquency proceedings of unauthorized insurers.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

Sec. 464.054. USE OF FUNDS. (a) An amount advanced under Section 464.053 may be used to supplement the assets of an unauthorized insurer to pay administrative expenses and policy claims that are approved by:

(1) the commissioner in a proceeding under Section 443.051; or

(2) the receiver in a proceeding under Section 443.052.

(b) For the purposes of Section 443.301(b), approved policy claims under this chapter shall be classified as Class 2 claims.

(c) The commissioner or receiver, as applicable, is not required to make distributions from the assets of the unauthorized insurer before using amounts advanced under Section 464.053. Any payment of a policy claim made under Subsection (a) shall be treated as a distribution under Section 443.302. If approved policy claims cannot be paid in full from the funds advanced under Section 464.053 and the assets of the unauthorized insurer available for distribution, the claims shall be paid on a pro rata basis in the manner described in Section 443.301.

(d) Amounts advanced that are not needed to pay administrative expenses or policy claims shall be returned to the fund account. On a final distribution under Section 443.302 or the termination of a delinquency proceeding, any funds of the unauthorized insurer remaining after the payment in full of administrative expenses and

policy claims shall be used to repay the advance, up to the amount of the advance.

(e) A person who has a policy claim may receive funds deposited or advanced under this chapter only in accordance with this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1026 (H.B. 4339), Sec. 1, eff. June 19, 2009.

SUBTITLE E. REQUIREMENTS OF OTHER JURISDICTIONS

CHAPTER 481. VOLUNTARY DEPOSITS

Sec. 481.001. DEPOSIT WITH COMPTROLLER. (a) An insurer organized and engaged in business under this code that is required by another state, country, or province as a condition of engaging in an insurance business in that state, country, or province to make or maintain a deposit with an officer of any state, country, or province may, at the insurer's discretion, voluntarily deposit with the comptroller cash or securities in an amount that is sufficient to satisfy the conditions of the other state, country, or province.

(b) Any securities deposited must be approved by the commissioner as being of a type and character in which the insurer is authorized by law to invest.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.002. APPLICABILITY OF CHAPTER TO CERTAIN DEPOSITS. A voluntary deposit held by the comptroller or the department that was made by an insurer in this state before May 8, 1959, to gain admission to another state may, at the insurer's option, be considered to be held under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.003. DUTIES OF COMPTROLLER. The comptroller shall receive a deposit made by an insurer as described by this chapter and hold it exclusively for the protection of all policyholders or creditors of the insurer, wherever they are located, or for the

protection of the insurer's policyholders or creditors in a particular state, country, or province, as designated by the insurer at the time the insurer makes the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.004. ACCESS TO DEPOSIT. In accordance with reasonable rules adopted by the comptroller and the commissioner, the proper officer of an insurer making a deposit as described by this chapter may at a reasonable time:

(1) examine the deposit;

(2) detach coupons from the securities; and

(3) collect interest on the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.005. SITUS OF DEPOSIT FOR TAX PURPOSES. For purposes of state, county, or municipal taxation, the situs of deposited securities is the municipality and county in which the principal business office of the insurer making the deposit is fixed by the insurer's charter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.006. WITHDRAWAL OF DEPOSIT. (a) An insurer that makes a deposit as described by this chapter may, at the insurer's option, withdraw all or part of the deposit if:

(1) the insurer first deposits with the comptroller other securities of like class as, and of an amount and value equal to, the securities proposed to be withdrawn; and

(2) the withdrawal and substitution are approved by the commissioner.

(b) An insurer, without making a substitute deposit under Subsection (a), may not withdraw all or part of a deposit made as described by this chapter for the protection of the insurer's

policyholders or creditors in a particular state, country, or province that requires the deposit unless:

(1) the insurer files with the commissioner evidence that satisfies the commissioner that the insurer has withdrawn from business and does not have any unsecured liabilities outstanding or potential policyholder liabilities or obligations in the other state, country, or province; and

(2) the commissioner approves the withdrawal.

(c) An insurer, without making a substitute deposit under Subsection (a), may not withdraw all or part of a deposit made as described by this chapter for the protection of all of the insurer's policyholders or creditors, wherever they are located, unless:

(1) the insurer files with the commissioner evidence that satisfies the commissioner that the insurer does not have any unsecured liabilities outstanding or potential policy liabilities or obligations anywhere; and

(2) the commissioner approves the withdrawal.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.007. WITHDRAWAL OF DEPOSIT AFTER MERGER, CONSOLIDATION, OR TOTAL REINSURANCE. When two or more insurers that have two or more deposits made for identical purposes as described by this chapter or former Article 4739, Revised Statutes, merge, consolidate, or enter into a total reinsurance contract by which the ceding insurer is dissolved and the ceding insurer's assets and liabilities are acquired or assumed by the surviving insurer, the new, surviving, or reinsuring insurer may withdraw all of the deposits, except for the deposit of the greatest amount and value. The new, surviving, or reinsuring insurer must demonstrate that the deposits are duplicated and that the insurer is the owner of the deposits.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.008. RETURN OF DEPOSIT. An insurer that has made a deposit as described by this chapter or former Article 4739, Revised

Statutes, is entitled to a return of the deposit if the insurer applies for the return of the deposit and demonstrates to the commissioner that the deposit is no longer required under the laws of any state, country, or province in which the insurer sought or gained admission to engage in business based on a certificate of the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 481.009. DELIVERY OF DEPOSIT BY COMPTROLLER. On being provided a certified copy of the commissioner's order issued under Section 481.007 or 481.008, the comptroller shall release, transfer, and deliver the deposit to the owner of the deposit in accordance with the order.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBTITLE F. REINSURANCE

CHAPTER 491. GENERAL REINSURANCE REQUIREMENTS

SUBCHAPTER A. REINSURANCE

Sec. 491.001. INAPPLICABILITY OF SUBCHAPTER. This subchapter does not apply to:

(1) life insurance;

(2) health insurance;

(3) annuity contracts;

(4) title insurance;

(5) workers' compensation insurance;

(6) employers' liability insurance coverage; or

(7) any policy or kind of coverage for which the maximum possible loss to the insurer is not readily ascertainable on the policy's issuance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 491.002. REINSURANCE PERMITTED. An insurer or reinsurer

authorized to engage in the business of insurance or reinsurance in this state may reinsure all or part of a single risk in another solvent insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 491.003. RISK LIMITATION FOR DOMESTIC OR FOREIGN INSURER. An insurer incorporated under the laws of this state, another state, or the United States and authorized to engage in business in this state may not expose itself to a loss or hazard on a single risk in an amount that exceeds 10 percent of the insurer's surplus for policyholders unless the insurer reinsures the excess in another solvent insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 491.004. RISK LIMITATION FOR ALIEN INSURER. An insurer incorporated under the laws of a jurisdiction other than this state, another state, or the United States and authorized to engage in business in this state may not, unless the insurer reinsures the excess in another solvent insurer, expose itself to a loss or hazard on a single risk in an amount that exceeds the sum of:

(1) 10 percent of the insurer's deposit with the statutory officer in the state through which the insurer is authorized to engage in business in the United States; and

(2) 10 percent of the other surplus for policyholders of the insurer's United States branch.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 491.005. COMPLIANCE WITH OTHER LAW. Reinsurance that is required or permitted by this subchapter must comply with Chapter 493.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

SUBCHAPTER B. COMPUTATION OF REINSURANCE RESERVE

Sec. 491.051. COMPUTATION OF RESERVE FOR INSURER WITH NO BASIS PRESCRIBED BY LAW. For an insurer engaged in the business of a kind of insurance in this state, for which no basis is prescribed by law, the department shall compute the reinsurance reserve on the basis prescribed by Section 862.102 for an insurer writing fire insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 491.052. COMPUTATION OF REINSURANCE RESERVES FOR CERTAIN INSURERS. (a) On December 31 of each year, or as soon as practicable after that date, the department shall, in accordance with Section 491.051, compute the reinsurance reserve for all unexpired risks of each insurer organized under the laws of this state or engaged in the business of insurance in this state.

(b) This section does not apply to:

(1) life insurance;

(2) fire insurance;

(3) marine insurance;

(4) inland marine insurance;

(5) lightning insurance; or

(6) tornado insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 493. AUTHORIZED REINSURANCE; CREDIT AND ACCOUNTING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 493.001. DEFINITIONS. In this chapter:

(1) "Assuming insurer" means an insurer that, under a reinsurance contract, incurs an obligation to a ceding insurer, the performance of which is contingent on the ceding insurer incurring liability or loss under the ceding insurer's insurance contract with a third person.

(2) "Qualified United States financial institution" means

an institution that:

(A) is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state of the United States; and

(B) is regulated, supervised, and examined by a federal or state authority that has regulatory authority over banks and trust companies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (a-1), this chapter applies to all insurers, including:

(1) a stock or mutual property and casualty insurance company;

(2) a Mexican casualty insurance company;

(3) a Lloyd's plan;

(4) a reciprocal or interinsurance exchange;

(5) a nonprofit legal service corporation;

(6) a county mutual insurance company;

(7) a farm mutual insurance company;

(8) a risk retention group;

(9) any insurer writing a line of insurance regulated by Title 10;

(10) all life, health, and accident insurance companies regulated by the department, including:

(A) a stock or mutual life, health, or accident insurance company;

(B) a fraternal benefit society; and

(C) a nonprofit hospital, medical, or dental service corporation, including a group hospital service corporation operating under Chapter 842; and

(11) a health maintenance organization operating under Chapter 843.

(a-1) A county mutual insurance company operating under Section 912.056(d) that does not directly or indirectly write or assume insurance in any manner in another state may not be allowed credit

under Section 493.1033 for reinsurance ceded to a reinsurer qualifying under Sections 493.1033 and 493.1034 and is not subject to Section 493.1039. This subsection does not prohibit a county mutual insurance company described by this subsection from ceding reinsurance to reinsurers qualifying under Sections 493.1033 and 493.1034 under other provisions of this chapter.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.12(2), eff. September 1, 2017.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.02, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.12(2), eff. September 1, 2017.

Sec. 493.003. RULES. The commissioner may adopt necessary and reasonable rules under this chapter to protect the public interest.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER B. REINSURANCE

Sec. 493.051. REINSURANCE AUTHORIZED. (a) An insurer authorized to engage in the business of insurance in this state may reinsure, in any solvent assuming insurer, any risk or part of a risk that both insurers are authorized by law to assume.

(b) An insurer authorized to engage in business in this state may provide reinsurance under this chapter on any line of insurance in which the insurer is authorized to engage in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.03, eff. September 1, 2017.

Sec. 493.052. LIMITATION ON REINSURANCE OF ENTIRE OUTSTANDING BUSINESS. (a) An insurer may not reinsure the insurer's entire outstanding business in an assuming insurer unless the assuming insurer is authorized to engage in the business of insurance in this state.

(b) Before the date of reinsurance:

(1) the reinsurance contract must be submitted to the commissioner; and

(2) the commissioner must approve the contract as fully protecting the interests of all policyholders.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.053. FILING OF REINSURANCE SCHEDULES. The commissioner shall require each insurer to file reinsurance schedules:

(1) when the insurer makes the insurer's annual report; and

(2) at other times as the commissioner directs.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.054. ACCOUNTING FOR REINSURANCE CONTRACTS. (a) An insurer shall account for reinsurance contracts and shall record the contracts in the insurer's financial statements in a manner that accurately reflects the effect of the contracts on the insurer's financial condition.

(b) A reinsurance contract may contain a provision allowing the offset of mutual debts and credits between the ceding insurer and the assuming insurer, whether arising out of one or more reinsurance contracts.

(c) The commissioner may adopt reasonable rules relating to:

(1) the accounting and financial statement requirements of this section and the treatment of reinsurance contracts between insurers, including minimum risk transfer standards, asset debits or credits, reinsurance debits or credits, and reserve debits or credits relating to the transfer of all or any part of an insurer's risks or liabilities by reinsurance contracts; and

(2) any contingencies arising from reinsurance contracts.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.055. LIMITATION ON RIGHTS AGAINST REINSURER. A person does not have a right against a reinsurer that is not specifically stated in:

(1) the reinsurance contract; or

(2) a specific agreement between the reinsurer and the person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

SUBCHAPTER C. CREDIT FOR REINSURANCE

Sec. 493.101. EXCLUSIVE PROCEDURE FOR TAKING CREDIT FOR REINSURANCE. A ceding insurer may take a credit for reinsurance, as an asset or as a deduction from liability, only as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.102. CREDIT FOR REINSURANCE GENERALLY. (a) A ceding insurer may be allowed credit for reinsurance ceded, as an asset or as a deduction from liability, only if the reinsurance is ceded to an assuming insurer that:

(1) is authorized to engage in the business of insurance or reinsurance in this state;

(2) is accredited as a reinsurer in this state, as provided by Section 493.103;

(3) subject to Subchapter D, maintains, in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers, a trust fund to pay valid claims of:

(A) the assuming insurer's United States policyholders and ceding insurers; and

(B) the policyholders' and ceding insurers' assigns and successors in interest;

(4) is certified as a reinsurer in this state under Section 493.1033 and maintains adequate collateral as determined by the commissioner; or

(5) is an eligible assuming insurer under Section 493.108.

(b) Notwithstanding Subsection (a), a ceding insurer may be allowed credit for reinsurance ceded to an assuming insurer that does not meet the requirements of that subsection, but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by the jurisdiction's law, including regulations, to be ceded to an assuming insurer that does not meet the requirements of that subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.04, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 22 (H.B. 1689), Sec. 1, eff. January 1, 2022.

Sec. 493.103. ACCREDITED REINSURER. For purposes of Section 493.102(a)(2), an insurer is accredited as a reinsurer in this state if the insurer:

(1) submits to this state's jurisdiction;

(2) submits to this state's authority to examine the insurer's books and records;

(3) is domiciled and authorized to engage in the business of insurance or reinsurance in at least one state or, if the insurer is a United States branch of an alien assuming insurer, is entered through and authorized to engage in the business of insurance or reinsurance in at least one state;

(4) annually files with the department a copy of the annual statement the insurer files with the insurance department of the insurer's state of domicile; and

(5) maintains a surplus as regards policyholders in an amount of at least $20 million.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April

1, 2007.

Sec. 493.1033. CREDIT ALLOWED FOR CERTAIN CERTIFIED REINSURERS. (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that:

(1) is certified by the commissioner as a reinsurer in this state; and

(2) secures its obligations in accordance with the requirements of this section and Sections 493.1034-493.1038.

(b) To be eligible for certification, the assuming insurer must:

(1) be domiciled and licensed to transact insurance or reinsurance in a jurisdiction listed as qualified on the list published by the commissioner under Section 493.1035;

(2) maintain minimum capital and surplus in an amount required by the commissioner by rule;

(3) maintain a financial strength rating from not fewer than two rating agencies determined to be acceptable in accordance with rules adopted by the commissioner;

(4) agree to submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(5) appoint the commissioner as its agent for service of process in this state;

(6) provide security for 100 percent of the assuming insurer's liabilities for reinsurance ceded by United States ceding insurers if the assuming insurer resists enforcement of a final judgment of a court of the United States;

(7) meet application information filing requirements, as established by the commissioner by rule, for the initial application for certification and on an ongoing basis; and

(8) satisfy any other requirements for certification required by the commissioner by rule.

(c) In determining eligibility for certification under Subsection (b), the commissioner may defer to the certification granted and financial strength rating assigned by a National Association of Insurance Commissioners accredited jurisdiction.

(d) Credit for reinsurance under this section applies only to a reinsurance contract entered into or renewed on or after the effective date of the certification of the assuming insurer.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1034. CERTAIN ASSOCIATIONS MAY BE CERTIFIED REINSURERS. (a) An association that includes incorporated and individual unincorporated underwriters may be a certified reinsurer under Section 493.1033. To be eligible for certification the association must satisfy the requirements of Section 493.1033 and this section.

(b) The association must satisfy minimum capital and surplus requirements through the capital and surplus equivalents, net of liabilities, of the association and its members that must include a joint central fund in an amount determined by the commissioner to provide adequate protection that may be applied to any unsatisfied obligation of the association or any of its members.

(c) The incorporated members of the association may not be engaged in any business other than underwriting and are subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members.

(d) Not later than the 90th day after the date the association's financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner:

(1) an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or

(2) if a certification described by Subdivision (1) is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1035. QUALIFIED JURISDICTIONS. (a) The commissioner shall develop and publish a list of qualified jurisdictions in one of which an assuming insurer must be licensed and domiciled in order to be considered for certification by the commissioner under Section 493.1033 as a certified reinsurer. In developing the list, the

commissioner shall consider the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process.

(b) In order to determine whether a jurisdiction of an assuming insurer located outside of the United States is eligible to be recognized as a qualified jurisdiction under Subsection (a), the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and extent of reciprocal recognition afforded by the jurisdiction to reinsurers licensed and domiciled in the United States.

(c) In order to be qualified a jurisdiction must agree in writing to share information and cooperate with the commissioner with respect to all certified reinsurers doing business in the jurisdiction.

(d) A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(e) If the commissioner approves under this section a jurisdiction as qualified that does not appear on the list of qualified jurisdictions published through the National Association of Insurance Commissioners committee process, the commissioner shall provide documentation in accordance with rules adopted by the commissioner. The rules must include a requirement for a thoroughly documented justification of the approval.

(f) The commissioner shall include as a qualified jurisdiction under this section a United States jurisdiction that meets the requirements for accreditation under the National Association of Insurance Commissioners financial regulation standards and accreditation program.

(g) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, instead of revoking the certification.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1036. REQUIREMENTS FOR CERTIFIED REINSURER. (a) The commissioner shall assign a rating to each certified reinsurer after giving due consideration to the financial strength ratings assigned by rating agencies recognized by the commissioner by rule.

(b) The commissioner shall publish a list of the ratings assigned under this section for all certified reinsurers.

(c) A certified reinsurer shall secure obligations assumed from ceding insurers domiciled in the United States in accordance with the rating assigned by the commissioner under Subsection (a) and with the amount of security required by the commissioner by rule.

(d) For a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security:

(1) in a form acceptable to the commissioner and consistent with the insurance laws of this state; or

(2) in a multibeneficiary trust in accordance with Subchapter D, except as otherwise provided.

(e) If a certified reinsurer maintains a trust under Subchapter D to secure its obligations, and chooses to secure its obligations incurred as a certified reinsurer with a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for the obligations incurred under reinsurance agreements the certified reinsurer issued or renewed with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations subject to Subchapter D. It is a condition to the grant of certification under Section 493.1033 that the certified reinsurer has bound itself, by the language of the trust agreement and agreement with the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over each trust account, to fund, on termination of the trust account, out of the remaining surplus of the trust any deficiency of any other trust account described by this subsection.

(f) The minimum trusteed surplus requirements provided in Subchapter D do not apply to a multibeneficiary trust described by this section, except that the trust shall maintain a minimum trusteed surplus of $10 million.

(g) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner:

(1) shall reduce the allowable credit by an amount

proportionate to the deficiency; and

(2) may impose further reductions in allowable credit on finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(h) For purposes of this section, a reinsurer whose certification has been revoked, suspended, or voluntarily surrendered or whose certification status has become inactive for any reason shall be treated as a reinsurer required to secure 100 percent of its obligations, except that if the commissioner continues to assign to the reinsurer a higher financial strength rating as permitted by this section, the security requirement does not apply to a reinsurer whose certification has been suspended or whose certification status has become inactive.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1037. CERTIFICATION BY NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. If an applicant for certification has been certified as a reinsurer in a National Association of Insurance Commissioners accredited jurisdiction:

(1) the commissioner may make a determination to defer to the accredited jurisdiction's certification and the financial strength rating assigned by that jurisdiction; and

(2) if the commissioner makes the determination authorized by Subdivision (1), the applicant shall be considered to be a certified reinsurer in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1038. SUSPENSION OR REVOCATION OF ACCREDITATION OR CERTIFICATION; INACTIVE STATUS. (a) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status to continue to qualify for a reduction in security for in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this section, and the commissioner shall assign a financial strength rating that takes into account, if relevant, the reasons the

reinsurer is not assuming new business.

(b) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may, after notice and opportunity for hearing, suspend or revoke the reinsurer's accreditation or certification. A suspension or revocation may not take effect until after the date of the commissioner's order on the hearing, unless:

(1) the reinsurer waives its right to hearing;

(2) the commissioner's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under this section; or

(3) the commissioner finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the commissioner's action.

(c) While a reinsurer's accreditation or certification is suspended, a reinsurance contract issued or renewed after the effective date of the suspension does not qualify for credit except to the extent that the reinsurer's obligations under the contract are secured in accordance with Subchapter D.

(d) If a reinsurer's accreditation or certification is revoked, credit for reinsurance may not be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with Section 493.1036 or Subchapter D.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.05, eff. September 1, 2017.

Sec. 493.1039. CONCENTRATION RISK. (a) A ceding insurer shall manage its reinsurance recoverable proportionate to its book of business. A domestic ceding insurer shall notify the commissioner not later than the 30th day after the date reinsurance recoverable from any single assuming insurer, or group of affiliated assuming insurers, exceeds or is likely to exceed 50 percent of the domestic ceding insurer's last reported surplus to policyholders. The notification shall demonstrate that the exposure is safely managed by

the domestic ceding insurer.

(b) A ceding insurer shall diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner not later than the 30th day after the date the insurer cedes to any single assuming insurer, or group of affiliated assuming insurers, an amount that exceeds or is likely to exceed 20 percent of the ceding insurer's gross written premium in the prior calendar year. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.05, eff. September 1, 2017.

Sec. 493.104. CREDIT FOR FUNDS SECURING REINSURANCE OBLIGATIONS. (a) Subject to Subsection (b), any asset or deduction from liability for reinsurance ceded to an assuming insurer that does not meet the requirements of Section 493.102 shall be allowed in an amount that does not exceed the liabilities carried by the ceding insurer and in the amount of funds held by or on behalf of the ceding insurer under a reinsurance contract with the assuming insurer, including funds held in trust for the ceding insurer, as security for the payment of obligations under the contract.

(b) The funds held as security:

(1) must be held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer or, in the case of a trust, held in a qualified United States financial institution that has been granted the authority to operate with fiduciary powers; and

(2) may be in the form of:

(A) cash;

(B) securities that are listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualify as admitted assets;

(C) subject to Section 493.105, a clean, irrevocable, unconditional letter of credit, issued or confirmed by a qualified United States financial institution that has been determined by the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet the standards of financial condition and standing that are considered necessary and

appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner; or

(D) another form of security acceptable to the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 79 (S.B. 1093), Sec. 2, eff. September 1, 2015.

Sec. 493.105. ACCEPTABILITY OF CERTAIN LETTERS OF CREDIT. A letter of credit issued or confirmed by an institution that meets the standards prescribed by Section 493.104(b)(2)(C) as of the date the letter is issued or confirmed, but later fails to meet those standards, continues to be acceptable as security under Section 493.104 until the earliest of:

(1) the letter's expiration;

(2) the letter's extension, renewal, modification, or amendment after the date the institution fails to meet those standards; or

(3) the expiration of the three-month period after the date the institution fails to meet those standards.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.106. CREDIT FOR REINSURANCE: DIRECT PAYMENT ON LIABILITY REQUIRED. (a) A ceding insurer may not be given credit for reinsurance ceded, as an asset or as a deduction from liability, in an accounting or financial statement unless the reinsurance is payable by the assuming insurer:

(1) on the liability of the ceding insurer under the contracts reinsured, without diminution because of the ceding insurer's insolvency; and

(2) directly to the ceding insurer or to the ceding insurer's domiciliary liquidator or receiver.

(b) Subsection (a)(2) does not apply if:

(1) the reinsurance contract specifically provides that, if

the ceding insurer is insolvent, the reinsurance is payable to a payee other than one described by Subsection (a)(2); or

(2) the assuming insurer, with the direct insured's consent, has assumed the ceding insurer's policy obligations to the payee as the assuming insurer's direct obligations to the payee under the policy as a substitute for the ceding insurer's obligations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.107. REQUEST FOR INFORMATION FROM ASSUMING INSURER. (a) The commissioner may request that an assuming insurer not meeting the requirements of Section 493.102 file:

(1) financial statements certified and audited by an independent certified public accountant;

(2) a certified copy of the certificate or letter of authority from the domiciliary jurisdiction; and

(3) information on the principals and management of the assuming insurer.

(b) If an assuming insurer does not comply with a request under this section, the commissioner may issue a directive prohibiting all authorized insurers from taking credit for business ceded to the assuming insurer after the effective date of the directive.

(c) An unauthorized insurer that is included in the most recent quarterly listing published by the International Insurers Department of the National Association of Insurance Commissioners is considered to have complied with a request under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.108. CREDIT ALLOWED FOR CERTAIN ELIGIBLE ASSUMING INSURERS. (a) Credit must be allowed when reinsurance is ceded to an assuming insurer that meets the conditions as required by this section.

(b) The assuming insurer must have its principal office or be domiciled in and be licensed in a reciprocal jurisdiction described by Subsection (c).

(c) In this section:

(1) "Reciprocal jurisdiction" means a jurisdiction that is:

(A) a jurisdiction located outside of the United States or, in the case of a covered agreement between the United States and European Union, a member state of the European Union, that is subject to an in-force covered agreement described by Subdivision (2) with the United States, each within its legal authority;

(B) a jurisdiction located in the United States that meets the requirements for accreditation under the National Association of Insurance Commissioners financial regulation standards and accreditation program; or

(C) a qualified jurisdiction, as determined by the commissioner under Section 493.1035, that is not otherwise described in Paragraph (A) or (B) and meets certain additional requirements, consistent with the in-force covered agreements as specified by the commissioner by rule.

(2) "Covered agreement" means an agreement that:

(A) is entered into under the Dodd-Frank Wall Street Reform and Consumer Protection Act (31 U.S.C. Sections 313-314);

(B) is in effect or in a period of provisional application; and

(C) addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into a reinsurance agreement with a ceding insurer domiciled in this state or allowing the ceding insurer to recognize credit for reinsurance.

(d) The assuming insurer must have and maintain, on an ongoing basis, minimum capital and surplus, or its equivalent, calculated according to the methodology of the assuming insurer's domiciliary jurisdiction, in an amount required by the commissioner by rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, the assuming insurer must have and maintain, on an ongoing basis:

(1) minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology of the assuming insurer's domiciliary jurisdiction; and

(2) a central fund containing a balance in an amount required by the commissioner by rule.

(e) The assuming insurer must have and maintain, on an ongoing basis, a minimum solvency or capital ratio, as applicable, required by the commissioner by rule. If the assuming insurer is an

association, including incorporated and individual unincorporated underwriters, the association must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its principal office or is domiciled and is licensed.

(f) The assuming insurer must agree and provide adequate assurance to the commissioner in a form as required by the commissioner by rule, as follows:

(1) The assuming insurer must provide prompt written notice and explanation to the commissioner if:

(A) the assuming insurer no longer meets the minimum requirements under Subsection (d) or (e); or

(B) any regulatory action is taken against the assuming insurer for serious noncompliance with applicable law;

(2) The assuming insurer must consent in writing to the jurisdiction of this state's courts and to the appointment of the commissioner as agent for service of process. The commissioner may require that an assuming insurer also include the consent for service of process in each reinsurance agreement to which the assuming insurer is a party. Nothing in this section limits or in any way alters the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms except to the extent the agreement is unenforceable under applicable insolvency or delinquency laws;

(3) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(4) Each reinsurance agreement must require the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded under the reinsurance agreement if the assuming insurer resists enforcement of:

(A) a final judgment that is enforceable under the law of the jurisdiction in which the judgment was obtained; or

(B) a properly enforceable arbitration award, whether obtained by the ceding insurer or its legal successor on behalf of the ceding insurer's receivership estate; and

(5) The assuming insurer must:

(A) confirm that the assuming insurer is not presently

participating in any solvent scheme of arrangement that involves this state's ceding insurers; and

(B) if the assuming insurer enters into a solvent scheme of arrangement, agree to notify the ceding insurer and the commissioner that the assuming insurer entered into the scheme of arrangement and provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer. The security required by this paragraph must be in a form consistent with the provisions of this subchapter and required by the commissioner by rule.

(g) On request of the commissioner, the assuming insurer or its legal successor, on behalf of the assuming insurer and any legal predecessor of the assuming insurer, must provide to the commissioner documentation required by the commissioner by rule.

(h) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements in accordance with criteria established by the commissioner by rule.

(i) The assuming insurer's supervisory authority must annually confirm to the commissioner, as of the preceding December 31 or the annual date otherwise statutorily reported to the assuming insurer's reciprocal jurisdiction, that the assuming insurer complies with the requirements of Subsections (d) and (e).

(j) Nothing in this section prohibits an assuming insurer from voluntarily providing to the commissioner information related to this section.

(k) The commissioner shall timely develop and publish a list of reciprocal jurisdictions.

(l) The commissioner's list of reciprocal jurisdictions published under Subsection (k) must include any reciprocal jurisdiction described by Subsection (c)(1)(A) or (B). The commissioner shall consider any other reciprocal jurisdiction on the list of reciprocal jurisdictions published through the National Association of Insurance Commissioners committee process. The commissioner may, in accordance with criteria established by the commissioner by rule, approve a jurisdiction that does not appear on the list of reciprocal jurisdictions published through the National Association of Insurance Commissioners committee process to be placed on the list of reciprocal jurisdictions published under Subsection (k).

(m) The commissioner may remove a jurisdiction from the list of

reciprocal jurisdictions published under Subsection (k) if, in accordance with a process established by the commissioner by rule, the commissioner finds that the jurisdiction ceases to meet the requirements of a reciprocal jurisdiction under this section. Notwithstanding the authority to remove a jurisdiction, the commissioner may not remove from the list a reciprocal jurisdiction described by Subsection (c)(1)(A) or (B). If the commissioner removes a reciprocal jurisdiction from the list published under Subsection (k), credit for reinsurance ceded to an assuming insurer that has its principal office or is domiciled in the removed jurisdiction must be allowed if otherwise allowed under this subchapter.

(n) The commissioner shall timely develop and publish a list of assuming insurers that satisfy the conditions imposed by this section and to which cessions must be granted credit under Subsection (a). The commissioner may add an assuming insurer to the list developed and published under this subsection if a National Association of Insurance Commissioners' accredited jurisdiction has added the assuming insurer to the accredited jurisdiction's list of eligible assuming insurers or if, on initial eligibility, the assuming insurer submits to the commissioner the information required by Subsection (f) and complies with any additional requirements imposed by the commissioner by rule except to the extent that the additional requirements conflict with the applicable covered agreement.

(o) If the commissioner finds that an assuming insurer ceases to meet one or more of the requirements under this section, the commissioner may revoke or suspend the assuming insurer's eligibility under this section in accordance with procedures established by the commissioner by rule.

(p) If an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit during the period of suspension except to the extent that the assuming insurer's obligations under the agreement are secured in accordance with Section 493.104.

(q) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into before the date of revocation except to the extent that the assuming insurer's obligations under the contract are secured in a form

acceptable to the commissioner and consistent with the provisions of Section 493.104.

(r) If a ceding insurer is subject to rehabilitation, liquidation, or conservation, the ceding insurer or its representative may seek and, if found appropriate by the court in which the rehabilitation, liquidation, or conservation proceedings are pending, obtain an order requiring the assuming insurer to post security for all outstanding ceded liabilities.

(s) Nothing in this section limits or in any way alters the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by law.

(t) This section does not alter or impair a ceding insurer's right to take credit for reinsurance to the extent that credit is not available under this section if the reinsurance otherwise qualifies for credit under this subchapter.

(u) Nothing in this section authorizes an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the agreement.

(v) Nothing in this section limits or in any way alters the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(w) This section applies only to:

(1) credit under a reinsurance agreement that is delivered, issued for delivery, or renewed on or after January 1, 2022; and

(2) losses incurred and reserves reported on or after the later of:

(A) the date on which the assuming insurer has met all eligibility requirements under this section; and

(B) the effective date of the applicable reinsurance agreement, amendment, or renewal.

Added by Acts 2021, 87th Leg., R.S., Ch. 22 (H.B. 1689), Sec. 2, eff. January 1, 2022.

SUBCHAPTER D. REQUIREMENTS FOR TRUST CREDIT ALLOWANCE

Sec. 493.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies to:

(1) a trust that is used to qualify for a reinsurance

credit under Section 493.102(a)(3) and as described by Sections 493.1036(e) and (f); and

(2) the assuming insurer that maintains the trust fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.06, eff. September 1, 2017.

Sec. 493.152. COMPOSITION OF TRUST. (a) If the assuming insurer is a single insurer, the trust must:

(1) consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States; and

(2) include a trusteed surplus of at least $20 million, except after the assuming insurer has permanently discontinued underwriting new business secured by the trust for not less than three calendar years, the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development.

(a-1) The risk assessment described by Subsection (a)(2) may involve an actuarial review, including an independent analysis of reserves and cash flows, and must consider all material risk factors, including when applicable, the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers.

(b) If the assuming insurer is a group of insurers that includes an unincorporated individual insurer:

(1) the trust must:

(A) consist of a trusteed account representing the

group's liabilities attributable to business written in the United States; and

(B) include a trusteed surplus of at least $100 million; and

(2) the group shall make available to the department an annual certification by the group's domiciliary regulator and its independent public accountants of each underwriter's solvency.

(c) If the assuming insurer is a group of incorporated insurers under common administration that has continuously engaged in the business of insurance for at least three years, is under the supervision of the Department of Trade and Industry of the United Kingdom, and has an aggregate policyholders' surplus of $10 billion:

(1) the trust must:

(A) consist of a trusteed account representing the group's several liabilities attributable to business written in the United States under reinsurance contracts issued in the name of the group; and

(B) include a trusteed surplus of not less than $100 million held jointly for the benefit of United States insurers that have ceded business to any member of the group; and

(2) each member of the group shall make available to the department an annual certification by the member's domiciliary regulator and its independent public accountants of each member's solvency.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.07, eff. September 1, 2017.

Sec. 493.153. FORM OF TRUST. (a) The trust must be established in a form approved by the commissioner or an insurance commissioner or other chief insurance regulatory official of another state who, under the trust instrument, has principal regulatory oversight over the trust.

(b) A copy of the trust instrument and any amendment to the trust instrument must be filed with the insurance commissioner or other chief insurance regulatory official of each state in which the

ceding insurer beneficiaries of the trust are domiciled.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.08, eff. September 1, 2017.

Sec. 493.154. TERMS OF TRUST. (a) The trust instrument must provide that contested claims are valid and enforceable on the final order of any court in the United States.

(b) The trust must vest legal title to the trust's assets in the trustees of the trust for:

(1) the trust's United States policyholders and ceding insurers; and

(2) the policyholders' and ceding insurers' assigns and successors in interest.

(c) The trust must remain in effect as long as the assuming insurer has outstanding obligations under a reinsurance contract subject to the trust.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 493.155. REPORTS AND CERTIFICATION. (a) Not later than February 28 of each year, the trustees of the trust shall:

(1) report to the department in writing, showing the balance of the trust and listing the trust's investments at the end of the preceding year; and

(2) certify the date of termination of the trust, if termination is planned, or certify that the trust will not expire before December 31 of the year of the report.

(b) To enable the commissioner to determine the sufficiency of the trust fund under Section 493.102(a)(3) and for purposes of Sections 493.1036(e) and (f), the assuming insurer shall report to the department not later than March 1 of each year information substantially the same as the information required to be reported by an authorized insurer on the National Association of Insurance Commissioners' Annual Statement form.

(c) Not later than February 28 of each year, if requested by a beneficiary of the trust fund, an assuming insurer that maintains a trust fund shall provide or make available to the assuming insurer's United States ceding insurers or those ceding insurers' assigns and successors in interest the following information:

(1) a copy of the trust instrument and any amendments to the trust instrument relating to the trust fund;

(2) a copy of the assuming insurer's annual and quarterly financial information, and the insurer's most recent audited financial statement provided to the commissioner, including any exhibits and schedules;

(3) any financial information provided to the department or commissioner by the assuming insurer, including any exhibits and schedules;

(4) a copy of any annual and quarterly financial information provided to the department or commissioner by the trustee of the trust fund maintained by the assuming insurer, including any exhibits and schedules; and

(5) a copy of the information required to be reported by the trustee under Subsection (a).

(d) If requested by a ceding insurer, the assuming insurer shall provide, in addition to the information under Subsection (c), a certification that:

(1) discloses the financial information provided to the commissioner relating to reinsurance liabilities attributable to the ceding insurer; and

(2) certifies that the amount of security held in trust on behalf of the ceding insurer is at least equal to those amounts as reflected in the report to the department under Subsection (a).

(e) The assuming insurer shall also provide, if requested by the ceding insurer, a certification that the trust, in aggregate:

(1) consists of sufficient assets to support the assuming insurer's trust obligations under applicable state laws and regulations; and

(2) includes a trusteed surplus of at least $20 million.

(f) An assuming insurer may decline to release trade secrets or commercially sensitive information to a ceding insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.09, eff. September 1, 2017.

Sec. 493.156. CERTAIN TRUSTEED ASSUMING INSURERS: REQUIREMENTS FOR REINSURANCE CONTRACT. (a) A ceding insurer may not be allowed credit under Section 493.102(a)(3) for reinsurance ceded to an assuming insurer that is not authorized, accredited, or certified to engage in the business of insurance or reinsurance in this state unless the assuming insurer agrees in the reinsurance contract:

(1) that, if the assuming insurer fails to perform the assuming insurer's obligations under the reinsurance contract, the assuming insurer, at the request of the ceding insurer, will:

(A) submit to the jurisdiction of a court in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of that court or, if the court's decision is appealed, of the appellate court; and

(2) to designate the commissioner or an attorney as an agent for service of process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(b) This section is not intended to conflict with or override a provision in a reinsurance contract that requires the parties to arbitrate the parties' disputes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.10, eff. September 1, 2017.

Sec. 493.1561. CERTAIN TRUSTEED ASSUMING REINSURERS; REQUIREMENTS FOR TRUST AGREEMENT. (a) In this section, "commissioner" means the insurance commissioner or other chief insurance regulatory official with principal regulatory oversight over the trust.

(b) If the assuming insurer does not meet the requirements of

Section 493.102(a)(1) or (2), the credit permitted by Section 493.102(a)(3) or (4) may not be allowed unless the assuming insurer agrees in the trust agreement that:

(1) notwithstanding any other provisions in the trust agreement, the trustee shall comply with an order of the commissioner or a court ordering the trustee to transfer to the commissioner all assets of the trust fund if:

(A) the trust fund is inadequate because the trust fund contains an amount that is less than the amount required by this subchapter; or

(B) the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, or liquidation or a similar proceeding under the laws of the grantor's domiciliary state or country;

(2) claims in a proceeding described by Subdivision (1)(B) must be filed with the commissioner;

(3) the commissioner shall value the claims described by Subdivision (2) and distribute the assets of the trust under the laws of the trust's domiciliary state applicable to the liquidation of a domestic insurance company;

(4) if the commissioner determines that all or part of the trust assets are unnecessary to satisfy the claims of the grantor's ceding insurers domiciled in the United States, the commissioner shall return those unnecessary assets to the trustee for distribution in accordance with the trust agreement; and

(5) the grantor waives any right available under federal or state law that is inconsistent with this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 2.11, eff. September 1, 2017.

Sec. 493.157. EXAMINATION OF TRUST AND ASSUMING INSURER. The trust and the assuming insurer are subject to examination as determined by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

CHAPTER 494. REINSURANCE OF AIRCRAFT AND SPACE EQUIPMENT RISKS

Sec. 494.001. DEFINITIONS. In this chapter:

(1) "Aircraft" means an object that is capable of:

(A) moving through the atmosphere, regardless of whether the object is powered or tethered; and

(B) lifting the weight of the object and an additional payload.

(2) "Space equipment" means a spacecraft, satellite, rocket, or other manmade object that may be:

(A) launched from earth into orbit around a celestial body or for space travel; or

(B) placed into orbit around a celestial body.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 494.002. AUTHORITY TO REINSURE. (a) A domestic insurance company as defined by Section 841.001, alone or together with another insurer, may reinsure any liability, property, casualty, collision, personal injury, death, or other risk relating to, arising from, or incident to the manufacture, ownership, custody, or operation of an aircraft or any space equipment, subject to any just and reasonable limitation imposed by the commissioner.

(b) A limitation imposed by the commissioner must be consistent with the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

Sec. 494.003. REQUIREMENT FOR CEDING INSURER. To enter into a reinsurance agreement under this chapter, the ceding insurer must be authorized to engage in business in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 1, eff. April 1, 2007.

TITLE 5. PROTECTION OF CONSUMER INTERESTS
SUBTITLE A. PUBLIC INSURANCE COUNSEL
CHAPTER 501. OFFICE OF PUBLIC INSURANCE COUNSEL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITION. In this chapter, "office" means the office of public insurance counsel.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.002. OFFICE OF PUBLIC INSURANCE COUNSEL. The independent office of public insurance counsel represents the interests of insurance consumers in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.003. SUNSET PROVISION. The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2029.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 2.06, eff. September 1, 2005.

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.07, eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1231 (S.B. 647), Sec. 1, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 2.02, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 1.14, eff. June 18, 2023.

Sec. 501.004. PUBLIC INTEREST INFORMATION. (a) The office shall prepare information of public interest describing the functions of the office.

(b) The office shall make the information available to the public and appropriate state agencies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The office shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office's programs.

(b) The office shall comply with federal and state laws for program and facility accessibility.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. PUBLIC COUNSEL

Sec. 501.051. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint a public counsel to serve as the executive director of the office. The public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the public counsel without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.052. QUALIFICATIONS. To be eligible to serve as public counsel, a person must:

(1) be licensed to practice law in this state;

(2) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the public; and

(3) possess the knowledge and experience necessary to practice effectively in insurance proceedings.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. A person is not eligible for appointment as public counsel if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;

(2) owns or controls, directly or indirectly, more than a

10 percent interest in a business entity or other organization regulated by or receiving funds from the department or the office; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department or the office, other than compensation or reimbursement authorized by law for department or office membership, attendance, or expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.054. LOBBYING ACTIVITIES. A person may not serve as public counsel or act as general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the office.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office if the public counsel:

(1) does not have at the time of appointment or maintain during service as public counsel the qualifications required by Section 501.052;

(2) violates a prohibition established by Section 501.053, 501.054, 501.056, or 501.102; or

(3) cannot, because of illness or disability, discharge the public counsel's duties for a substantial part of the public counsel's term.

(b) The validity of an action of the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. A former public counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a case pending before the commissioner or department before the

second anniversary of the date the person ceases to serve as public counsel.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. PERSONNEL

Sec. 501.101. OFFICE PERSONNEL. (a) The public counsel shall employ professional, technical, and other employees necessary to implement this chapter.

(b) Compensation for an employee shall be set under the General Appropriations Act as provided by the legislature.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.102. TRADE ASSOCIATIONS. (a) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as public counsel or be an employee of the office who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule if the person is:

(1) an officer, employee, or paid consultant of a trade association in the field of insurance; or

(2) the spouse of an officer, manager, or paid consultant of a trade association in the field of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The public counsel or the public counsel's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The public counsel or the public counsel's designee shall

develop a system of annual performance evaluations. All merit pay for office employees must be based on the system established under this subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The public counsel or the public counsel's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the office workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made about areas of significant underuse in the office workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated at least annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports to the legislature.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.105. QUALIFICATIONS AND STANDARDS OF CONDUCT. The

office shall provide to the public counsel and office employees, as often as necessary, information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 501.151. POWERS AND DUTIES OF OFFICE. The office:

(1) may assess the impact of insurance rates, rules, and forms on insurance consumers in this state; and

(2) shall advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of insurance consumers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.152. ADMINISTRATION OF OFFICE. The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.153. AUTHORITY TO APPEAR, INTERVENE, OR INITIATE. The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner or department on behalf of insurance consumers, as a class, in matters involving:

(A) rates, rules, and forms affecting:

(i) property and casualty insurance;

(ii) title insurance;

(iii) credit life insurance;

(iv) credit accident and health insurance; or

(v) any other line of insurance for which the

commissioner or department promulgates, sets, adopts, or approves rates, rules, or forms;

(B) rules affecting life, health, or accident insurance; or

(C) withdrawal of approval of policy forms:

(i) in proceedings initiated by the department under Sections 1701.055 and 1701.057; or

(ii) if the public counsel presents persuasive evidence to the department that the forms do not comply with this code, a rule adopted under this code, or any other law;

(2) may initiate or intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of insurance consumers as a class in any proceeding in which the public counsel determines that insurance consumers are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; and

(4) may appear or intervene before the commissioner or department as a party or otherwise on behalf of small commercial insurance consumers, as a class, in a matter involving rates, rules, or forms affecting commercial insurance consumers, as a class, in any proceeding in which the public counsel determines that small commercial consumers are in need of representation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.154. ACCESS TO INFORMATION. The public counsel:

(1) is entitled to the same access as a party, other than department staff, to department records available in a proceeding before the commissioner or department under the authority granted to the public counsel by this chapter; and

(2) is entitled to obtain discovery under Chapter 2001, Government Code, of any nonprivileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner or department as authorized by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.155. RECOMMENDATION OF LEGISLATION. The public counsel may recommend legislation to the legislature that the public counsel determines would positively affect the interests of insurance consumers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.156. CONSUMER BILL OF RIGHTS. The public counsel shall submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed on issuance of a policy by an insurer to each policyholder under department rules.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.157. PROHIBITED INTERVENTIONS OR APPEARANCES. The public counsel may not intervene or appear in:

(1) any proceeding or hearing before the commissioner or department, or any other proceeding, that relates to approval or consideration of an individual charter, license, certificate of authority, acquisition, merger, or examination; or

(2) any proceeding concerning the solvency of an individual insurer, a financial issue, a policy form, advertising, or another regulatory issue affecting an individual insurer or agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.158. CONFIDENTIALITY REQUIREMENTS. Confidentiality requirements applicable to examination reports under Sections 401.105 and 401.106 and to the commissioner under Section 441.201 apply to the public counsel.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.001,

eff. April 1, 2009.

Sec. 501.159. COMMENTS ON CERTAIN INSURER FILINGS. (a) Notwithstanding this chapter, the office may submit written comments to the commissioner and otherwise participate regarding individual insurer filings made under Chapters 2251 and 2301 relating to insurance described by Subchapter B, Chapter 2301.

(b) The commissioner may adopt reasonable and necessary rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 14, eff. April 1, 2007.

Sec. 501.160. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The office shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution procedures by state agencies.

(c) The office shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1231 (S.B. 647), Sec. 2, eff. September 1, 2011.

SUBCHAPTER E. ASSESSMENTS

Sec. 501.201. OFFICE EXPENSES. Expenses of the office shall be paid from the assessments collected under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.202. ASSESSMENT. To defray the costs of operating the office, the comptroller shall collect assessments under this subchapter annually in connection with the collection of other taxes imposed on an insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.203. ASSESSMENT ON PROPERTY AND CASUALTY INSURERS. Each property and casualty insurer authorized to engage in business in this state shall pay an annual assessment of 5.7 cents for each property and casualty insurance policy in force in this state at the end of the year.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.204. ASSESSMENT ON LIFE, HEALTH, AND ACCIDENT INSURERS AND RELATED ENTITIES. (a) This section applies to each insurer authorized to engage in business in this state under:

(1) Chapter 841;

(2) Chapter 842;

(3) Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843, Chapter 1271, or Chapter 1272;

(4) Chapter 882;

(5) Chapter 884;

(6) Chapter 885;

(7) Chapter 887;

(8) Chapter 888;

(9) Chapter 962;

(10) Chapter 982;

(11) Subchapter B, Chapter 1103;

(12) Subchapter A, Chapter 1104;

(13) Chapter 1201, or a provision listed in Section 1201.005;

(14) Chapter 1551;

(15) Chapter 1578; or

(16) Chapter 1601.

(b) Each insurer subject to this section shall pay an annual assessment of 5.7 cents for each individual policy, and for each certificate of insurance evidencing coverage under a group policy, of life, health, or accident insurance that is written for delivery and placed in force in this state during each calendar year and for which the initial premium is paid in full.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.002, eff. April 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 1, eff. September 1, 2019.

Sec. 501.205. ASSESSMENT ON TITLE INSURANCE COMPANIES. Each title insurance company authorized to engage in business in this state shall pay an annual assessment of 5.7 cents for each owner and mortgage policy that is written for delivery in this state during each calendar year and for which the full basic premium is charged.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER F. DUTIES RELATING TO HEALTH MAINTENANCE ORGANIZATIONS

Sec. 501.251. COMPARISON OF HEALTH MAINTENANCE ORGANIZATIONS. (a) The office shall develop and implement a system to compare and evaluate, on an objective basis, the quality of care provided by and the performance of health maintenance organizations established under Chapter 843.

(b) In developing the system, the office may use information or data from a person, agency, organization, or governmental unit that the office considers reliable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.252. ANNUAL CONSUMER REPORT CARDS. (a) The office shall develop and issue annual consumer report cards that identify and compare, on an objective basis, health maintenance organizations

in this state. The consumer report cards may be based on information or data from any person, agency, organization, or governmental unit that the office considers reliable.

(b) The office may not endorse or recommend a specific health maintenance organization or plan, or subjectively rate or rank health maintenance organizations or plans, other than through comparison and evaluation of objective criteria.

(c) The office shall provide a copy of any consumer report card on request on payment of a reasonable fee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.253. ACCESS TO INFORMATION. (a) The office is entitled to information that is confidential under a law of this state, including Section 843.006 of this code, Chapter 108, Health and Safety Code, and Chapter 552, Government Code.

(b) The department and the Texas Health Care Information Council shall provide any information or data as requested by the office in furtherance of the duties under this subchapter.

(c) The office shall use information collected or received under this subchapter for the benefit of the public.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 501.254. CONFIDENTIALITY AND USE OF INFORMATION. (a) Except as provided by this section, information collected under this subchapter is subject to Chapter 552, Government Code, and the office shall make determinations on requests for information in favor of access.

(b) The office may not make public any confidential information provided to the office under this subchapter but may disclose a summary of the information that does not directly or indirectly identify the health maintenance organization that is the subject of the information. The office may not release, and a person or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a patient or physician;

(2) reveals the zip code of a patient's primary residence;

(3) discloses a provider discount or a differential between

a payment and a billed charge; or

(4) relates to an actual payment made by a payer to an identified provider.

(c) Information collected or used by the office under this subchapter is subject to the confidentiality provisions and criminal penalties of:

(1) Section 81.103, Health and Safety Code;

(2) Section 311.037, Health and Safety Code; and

(3) Chapter 159, Occupations Code.

(d) Information on patients and physicians that is in the possession of the office and any compilation, report, or analysis produced from the information that identifies patients and physicians is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

(e) Notwithstanding Subsection (b)(2), the office may use zip code information to analyze information on a geographical basis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBTITLE B. CONSUMER SERVICE PROVISIONS

CHAPTER 521. CONSUMER INFORMATION AND COMPLAINTS

SUBCHAPTER A. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 521.001. PUBLIC INTEREST INFORMATION. (a) The department shall prepare information of public interest describing the department's functions and the procedures by which complaints are filed with and resolved by the department.

(b) The department shall make the information available to the public and appropriate state agencies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.002. COMPLAINT RESOLUTION PROGRAM. The department shall establish a program to facilitate resolution of policyholder complaints.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.003. NOTIFICATION OF COMPLAINT STATUS. If a written complaint is filed with the department, the department, at least quarterly and until final disposition of the complaint, shall notify each party to the complaint of the complaint's status unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.004. RECORDS OF COMPLAINTS. The department shall keep an information file about each complaint filed with the department that concerns an activity regulated by the department or the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.005. NOTICE TO ACCOMPANY POLICY. (a) Each insurance policy delivered or issued for delivery in this state shall include with the policy a brief written notice that includes:

(1) a suggested procedure to be followed by a policyholder with a dispute concerning the policyholder's claim or premium;

(2) the department's name and address; and

(3) the department's toll-free telephone number maintained under Subchapter B.

(b) The commissioner shall adopt appropriate wording for the notice.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. DEPARTMENT TOLL-FREE NUMBER FOR INFORMATION AND COMPLAINTS

Sec. 521.051. DEPARTMENT TOLL-FREE NUMBER FOR INFORMATION AND COMPLAINTS. The department shall maintain a toll-free telephone number to:

(1) provide the information described by Section 521.052; and

(2) receive and aid in resolving complaints against

insurers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.052. INFORMATION PROVIDED. The department shall provide to the public through the department's toll-free telephone number only the following information:

(1) information collected or maintained by the department relating to the number and disposition of complaints received against an insurer that are justified, verified as accurate, and documented as valid, expressed as a percentage of the total number of insurance policies written by the insurer and in force on December 31 of the preceding year;

(2) the rating of an insurer, if any, as published by a nationally recognized rating organization;

(3) the kinds of coverage available to a consumer through any insurer writing insurance in this state;

(4) an insurer's admitted assets-to-liabilities ratio; and

(5) other appropriate information collected and maintained by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.053. PUBLICITY REQUIREMENTS. The department shall publicize the department's toll-free telephone number in public service announcements and publish that number in telephone books throughout the state, as the department finds appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.054. RECORD OF INQUIRY OR COMPLAINT REQUIRED. The department shall maintain a written record of each inquiry and complaint received through the department's toll-free telephone number.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.055. COMPLAINT NOTIFICATION SYSTEM. The department shall establish a system to notify insurers by electronic transmission to a facsimile machine or other appropriate system of complaints received by the department through the department's toll-free telephone number.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.056. INFORMATION BULLETIN TO ACCOMPANY POLICY. Each insurer that delivers, issues for delivery, or renews an insurance policy in this state shall include with the policy an information bulletin that includes:

(1) the department's toll-free telephone number; and

(2) a description of the services available through the department's toll-free telephone number.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. HEALTH MAINTENANCE ORGANIZATION OR INSURER TOLL-FREE NUMBER FOR INFORMATION AND COMPLAINTS

Sec. 521.101. APPLICABILITY OF SUBCHAPTER. (a) Except as provided by Subsection (b), this subchapter applies to a health maintenance organization authorized to engage in the business of a health maintenance organization in this state or an insurer authorized to engage in the business of insurance in this state, including:

(1) a capital stock insurance company;

(2) a mutual insurance company;

(3) a title insurance company;

(4) a fraternal benefit society;

(5) a local mutual aid association;

(6) a statewide mutual assessment company;

(7) a county mutual insurance company;

(8) a Lloyd's plan;

(9) a reciprocal or interinsurance exchange;

(10) a stipulated premium company;

(11) a group hospital service corporation; and

(12) a risk retention group.

(b) This subchapter does not apply to a health maintenance

organization or insurer:

(1) that has gross initial premium receipts collected in this state of less than $2 million each year; or

(2) with regard to fidelity, surety, or guaranty bonds.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.102. HEALTH MAINTENANCE ORGANIZATION OR INSURER TOLL-FREE NUMBER FOR INFORMATION AND COMPLAINTS. A health maintenance organization or insurer shall maintain a toll-free telephone number to:

(1) provide information concerning evidences of coverage or policies issued by the health maintenance organization or insurer; and

(2) receive complaints from enrollees or policyholders.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 521.103. INFORMATION INCLUDED IN EVIDENCE OF COVERAGE OR POLICY. (a) Each health maintenance organization or insurer that delivers, issues for delivery, or renews an evidence of coverage or insurance policy in this state shall print on the evidence of coverage or policy the health maintenance organization's or insurer's toll-free telephone number.

(b) The commissioner may adopt rules governing the manner in which the toll-free telephone number appears on the evidence of coverage or insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER D. RACE-BASED INSURANCE REGISTRY

Sec. 521.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any legal entity engaged in the business of insurance in this state, including:

(1) a capital stock insurance company;

(2) a mutual insurance company;

(3) a title insurance company;

(4) a fraternal benefit society;

(5) a local mutual aid association;
(6) a statewide mutual assessment company;
(7) a county mutual insurance company;
(8) a Lloyd's plan;
(9) a reciprocal or interinsurance exchange;
(10) a stipulated premium company;
(11) a group hospital service corporation;
(12) a farm mutual insurance company;
(13) a risk retention group;
(14) an eligible surplus lines insurer; and
(15) an agent, broker, or adjuster.

Added by Acts 2009, 81st Leg., R.S., Ch. 756 (S.B. 698), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 2, eff. September 1, 2021.

Sec. 521.152. REGISTRY; INTERNET POSTING. (a) The commissioner shall establish a registry of each legal entity engaged in the business of insurance in this state that, formally or informally, has entered into an agreement with the department:
(1) that disposes of allegations of race-based pricing; and
(2) under which all or part of the relief agreed on to make insureds whole includes a claims-made offer that remains in place and has not otherwise expired under the terms of the agreement.
(b) The registry must be prominently published on the department's Internet website, and must:
(1) identify:
(A) each insurance company that has entered into an agreement described by Subsection (a); and
(B) the eligibility and terms of the insurance company's claims-made offer; and
(2) include:
(A) a claim form; and
(B) links to the Internet website of the insurance company that is administrating the claims-made offer.

Added by Acts 2009, 81st Leg., R.S., Ch. 756 (S.B. 698), Sec. 1, eff. September 1, 2009.

Sec. 521.153. PRESERVATION OF CERTAIN RECORDS REGARDING RACE-BASED PRICING. (a) Notwithstanding Chapter 441, Government Code, the department shall preserve all examinations, exhibits to examinations, and other relevant documents regarding race-based pricing that the department has gathered or created with respect to a race-based pricing investigation that is completed or ongoing on September 1, 2009, other than those for which an attorney-client or attorney work product privilege can be claimed, until the time that those documents are eligible for delivery under Subsection (b).

(b) On the completion of the department's race-based pricing investigation, but not later than January 15, 2011, the department shall deliver the records identified under Subsection (a) or copies of those records to the state archivist.

(c) The state archives shall:

(1) using best efforts, preserve and catalogue the records identified under Subsection (a); and

(2) make the records available to the public as soon as appropriate, but not later than January 15, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 756 (S.B. 698), Sec. 1, eff. September 1, 2009.

CHAPTER 522. CONSUMER INFORMATION IN SPANISH

Sec. 522.001. INFORMATIONAL SHEET FOR TEXAS PERSONAL AUTOMOBILE POLICIES. (a) The commissioner shall develop or adopt an informational sheet in the Spanish language to provide a general explanation of the terms most commonly used in the Texas personal automobile insurance policy. The department shall make the informational sheet available to the public.

(b) The informational sheet is intended to provide only a general explanation of insurance terms used in the Texas personal automobile insurance policy and is not intended to alter any rights, obligations, or responsibilities of the contracting parties. All other applicable laws, including provisions of this code, apply regardless of whether an informational sheet is used.

(c) The informational sheet must include a disclaimer in the Spanish language, prominently printed in 10-point boldfaced type at

the top of the informational sheet, that contains the following:

"This document is for informational purposes only and is not intended to alter or replace the insurance policy. Additionally, this informational sheet is not intended to fully set out your rights and obligations or the rights and obligations of the insurer. If you have questions about your insurance, you should consult your insurance agent, the insurer, or the language of the insurance policy."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

This Chapter 524, HEALTH COVERAGE AWARENESS AND EDUCATION PROGRAM, was effective until September 1, 2009, if a specific appropriation was provided as described by Acts 2009, 81st Leg., R.S., Ch. 721, Sec. 2.04.

CHAPTER 524. HEALTH COVERAGE AWARENESS AND EDUCATION PROGRAM

Sec. 524.001. PROGRAM ESTABLISHED. (a) The department shall develop and implement a health coverage public awareness and education program that complies with this chapter. The program must:

(1) increase public awareness of health coverage options available in this state;

(2) educate the public on the value of health coverage; and

(3) provide information on health coverage options, including health savings accounts and compatible high deductible health benefit plans.

(b) The department may include information about specific health coverage issuers but may not favor or endorse one particular issuer over another.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.

Sec. 524.002. PUBLIC SERVICE ANNOUNCEMENTS. The department shall develop and make public service announcements to educate consumers and employers about the availability of health coverage in this state.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.

Sec. 524.003. INTERNET WEBSITE; PUBLIC EDUCATION. (a) The department shall develop an Internet website designed to educate the public about the availability of health coverage in this state, including information about health savings accounts and compatible high deductible health benefit plans.

(b) The department shall provide other appropriate education to the public regarding the value of health coverage.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.

Sec. 524.004. TASK FORCE. (a) The commissioner shall appoint a task force to make recommendations regarding the health coverage public awareness and education program. The task force is composed of:

(1) one representative from each of the following groups or entities:

(A) health benefit coverage consumers;

(B) small employers;

(C) employers generally;

(D) insurance agents;

(E) the office of public insurance counsel;

(F) the Texas Health Insurance Risk Pool;

(G) physicians;

(H) advanced practice nurses;

(I) hospital trade associations; and

(J) medical units of institutions of higher education;

(2) a representative of the Health and Human Services Commission responsible for programs under Medicaid and the children's health insurance program; and

(3) one or more representatives of health benefit plan issuers.

(b) The department shall consult the task force regarding the content for the public service announcements, Internet website, and educational materials required by this chapter. The commissioner has authority to make final decisions as to what the program's materials will contain.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.

Sec. 524.005. FUNDING. The department may accept gifts and grants from any party, including a health benefit plan issuer or a foundation associated with a health benefit plan issuer, to assist with funding the program. The department shall adopt rules governing acceptance of donations that are consistent with Chapter 575, Government Code. Before adopting rules under this subsection, the department shall:

(1) submit the proposed rules to the Texas Ethics Commission for review; and

(2) consider the commission's recommendations regarding the regulations.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.

This Chapter 524, TEXLINK TO HEALTH COVERAGE, was effective on September 1, 2009, if a specific appropriation was provided as described by Acts 2009, 81st Leg., R.S., Ch. 721, Sec. 2.04.

CHAPTER 524. TEXLINK TO HEALTH COVERAGE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 524.001. DEFINITIONS. In this chapter:

(1) "Division" means the division of the department that administers the TexLink to Health Coverage Program.

(2) "Program" means the TexLink to Health Coverage Program established in accordance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.002. DIVISION RESPONSIBILITIES. Under the direction

of the commissioner, the division implements this chapter.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.003. TEXLINK TO HEALTH COVERAGE PROGRAM ESTABLISHED. (a) The department shall develop and implement a health coverage program that complies with this chapter. The program must:

(1) educate the public about the importance and value of health coverage;

(2) promote personal responsibility for health care through the purchase of health coverage;

(3) assist small employers, individuals, and others seeking to purchase health coverage with technical information necessary to understand available health insurance coverage;

(4) promote and facilitate the development and availability of new health coverage options;

(5) increase public awareness of health coverage options available in this state; and

(6) provide information on health coverage options, including health savings accounts and compatible high deductible health benefit plans.

(b) The program must include a public awareness and education component.

Added by Acts 2005, 79th Leg., Ch. 688 (S.B. 261), Sec. 1, eff. June 17, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

SUBCHAPTER B. PUBLIC AWARENESS AND EDUCATION

Sec. 524.051. INFORMATION ABOUT SPECIFIC HEALTH BENEFIT PLAN ISSUERS. In materials produced for the program, the division may include information about specific health benefit plan issuers but may not favor or endorse one particular issuer over another.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.052. PUBLIC SERVICE ANNOUNCEMENTS. The division shall develop and make public service announcements to educate consumers and employers about the availability of health coverage in this state.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.053. INTERNET WEBSITE; PRINTED MATERIALS; NEWSLETTER. (a) The division shall develop an Internet website and printed materials designed to educate small employers, individuals, and others seeking to purchase health coverage about health coverage in accordance with Section 524.003(a), including information about health savings accounts and compatible high deductible health benefit plans.

(b) The division shall make the printed materials produced under the program available to small employers, individuals, and others seeking to purchase health coverage. The division may:

(1) distribute the printed materials through facilities such as libraries, health care facilities, and schools as well as other venues the division selects; and

(2) use other distribution methods the division selects.

(c) The division may produce a newsletter to provide updated information about health coverage to subscribers who elect to receive the newsletter. The division may:

(1) produce a newsletter under this subsection for small employers, for individuals, or for other purchasers of health coverage;

(2) distribute the newsletter on a monthly, quarterly, or other basis; and

(3) distribute the newsletter as a printed document or electronically.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.054. TOLL-FREE TELEPHONE HOTLINE; ACCESS TO INFORMATION. (a) The division may operate a toll-free telephone hotline to respond to inquiries and provide information and technical assistance concerning health insurance coverage.

(b) The Health and Human Services Commission, through its 2-1-1 telephone number for access to human services, may disseminate information regarding health insurance coverage provided to the commission by the department and may refer inquiries regarding health insurance coverage to the toll-free telephone hotline. The department may provide information to the Health and Human Services Commission as necessary to implement this subsection.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.055. EDUCATION FOR HIGH SCHOOL STUDENTS. (a) The division may develop educational materials and a curriculum to be used in high school classes that educate students about:

(1) the importance and value of health coverage;

(2) comparing health benefit plans; and

(3) understanding basic provisions contained in health benefit plans.

(b) The division may consult with the Texas Education Agency in developing educational materials and a curriculum under this section.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.056. HEALTH COVERAGE FAIRS. (a) The division may conduct health coverage fairs to provide small employers, individuals, and others seeking to purchase health coverage the opportunity to obtain information about health coverage from division employees and from health benefit plan issuers and agents that elect

to participate.

(b) The division shall seek to obtain funding for health coverage fairs conducted under this section through gifts and grants obtained in accordance with Subchapter C.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.057. COMMUNITY EVENTS. The division may participate in events held in this state to promote awareness of the importance and value of health coverage and to educate small employers, individuals, and others seeking to purchase health coverage about health coverage in accordance with Section 524.003(a).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.058. HEALTH COVERAGE PROVIDED THROUGH COLLEGES AND UNIVERSITIES. The division may cooperate with a public or private college or university to promote enrollment in health coverage programs sponsored by or through the college or university.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.059. SUPPORT FOR COMMUNITY-BASED PROJECTS. The division may provide support and assistance to individuals and organizations seeking to develop community-based health coverage plans for uninsured individuals.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.060. OTHER EDUCATION. The division may provide other appropriate education to the public regarding health coverage and the importance and value of health coverage in accordance with Section 524.003(a).

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.062. FEDERAL TAX "TOOL KIT" FOR CERTAIN BUSINESSES. The department may:

(1) produce materials that:

(A) provide step-by-step instructions for a small employer or single-employee business that is obtaining health coverage for the benefit of the employer or business and the employees of the business; and

(B) are designed to allow the employer or business to obtain the coverage in a manner that qualifies for favorable treatment under federal tax laws; and

(2) make department staff available to assist small employers and single-employee businesses that are obtaining health coverage as described by Subdivision (1).

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

Sec. 524.063. ASSISTANCE FOR SMALL EMPLOYERS AND SINGLE-EMPLOYEE BUSINESSES. The department may train staff concerning available health coverage options for small employers and single-employee businesses to:

(1) respond to telephone inquiries from small employers and single-employee businesses; and

(2) speak at events to provide information about health coverage options for small employers and single-employee businesses and about the importance and value of health coverage.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff.

September 1, 2009.

Sec. 524.064. ACCOUNTANT. The department may employ an accountant with experience in federal tax law and the purchase of group health coverage as necessary to implement this chapter.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

SUBCHAPTER C. FUNDING

Sec. 524.101. FUNDING. The department may accept gifts and grants from any party, including a health benefit plan issuer or a foundation associated with a health benefit plan issuer, to assist with funding the program. The department shall adopt rules governing acceptance of donations that are consistent with Chapter 575, Government Code. Before adopting rules under this section, the department shall:

(1) submit the proposed rules to the Texas Ethics Commission for review; and

(2) consider the commission's recommendations regarding the regulations.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 1.01, eff. September 1, 2009.

CHAPTER 525. DELIVERY OF INSURANCE POLICIES

Sec. 525.001. APPLICABILITY OF CHAPTER. This chapter applies to:

(1) an insurer, as defined by Section 2301.051, writing personal automobile insurance or residential property insurance, as defined by Section 2301.051, in this state;

(2) the Texas Windstorm Insurance Association;

(3) the FAIR Plan Association; and

(4) the Texas Automobile Insurance Plan Association.

Added by Acts 2015, 84th Leg., R.S., Ch. 254 (S.B. 956), Sec. 1, eff.

September 1, 2015.

Sec. 525.002. DELIVERY OF INSURANCE POLICIES. (a) Except as provided by Subsection (b), an insurer to whom this chapter applies shall deliver a policy issued by the insurer to the policyholder, or to the insurer's agent for delivery to the policyholder:

(1) not later than:

(A) the 30th day after the effective date of the policy if the policy term is more than 30 days; or

(B) the 10th day after the effective date of the policy if the policy term is more than 10 days and less than 31 days; or

(2) within the policy period for a policy with a term of 10 days or less.

(b) An insurer to whom this chapter applies shall deliver a policy renewed or amended by the insurer to the policyholder, or to the insurer's agent for delivery to the policyholder, not later than the 15th day after the date the insurer or insurer's agent receives a written request from the policyholder that the policy be delivered to the policyholder.

Added by Acts 2015, 84th Leg., R.S., Ch. 254 (S.B. 956), Sec. 1, eff. September 1, 2015.

Sec. 525.003. RULEMAKING AUTHORITY. The commissioner may adopt rules to implement this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 254 (S.B. 956), Sec. 1, eff. September 1, 2015.

SUBTITLE C. DECEPTIVE, UNFAIR, AND PROHIBITED PRACTICES

CHAPTER 541. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 541.001. PURPOSE. The purpose of this chapter is to regulate trade practices in the business of insurance by:

(1) defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices; and

(2) prohibiting those trade practices.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.002. DEFINITIONS. In this chapter:

(1) "Knowingly" means actual awareness of the falsity, unfairness, or deceptiveness of the act or practice on which a claim for damages under Subchapter D is based. Actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(2) "Person" means an individual, corporation, association, partnership, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, or adjuster.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 3, eff. September 1, 2021.

Sec. 541.003. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES PROHIBITED. A person may not engage in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.004. VENUE FOR ACTIONS INVOLVING DEPARTMENT OR COMMISSIONER. An action under this chapter in which the department or commissioner is a party must be brought in a district court in Travis County.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.005. APPLICABILITY TO RISK RETENTION OR PURCHASING

GROUP. (a) A risk retention group or purchasing group described by Subchapter B, Chapter 2201, or Section 2201.251 that is not chartered in this state may not engage in a trade practice in this state that is defined as unlawful under this chapter.

(b) A risk retention group or purchasing group is subject to this chapter and rules adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.005, eff. April 1, 2009.

Sec. 541.006. PROHIBITED CONTENT OF CERTAIN INSURANCE POLICIES. Notwithstanding any other provision of this code, it is unlawful for an insurer engaged in the business of life, accident, or health insurance to issue or deliver in this state a policy containing the words "Approved by the Texas Department of Insurance" or words of a similar meaning.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.007. IMMUNITY FROM PROSECUTION. (a) This section applies to a person who requests to be excused from attending and testifying at a hearing or from producing books, papers, records, correspondence, or other documents at the hearing on the ground that the testimony or evidence may:

(1) tend to incriminate the person; or

(2) subject the person to a penalty or forfeiture.

(b) A person who, notwithstanding a request described by Subsection (a), is directed to provide the testimony or produce the documents shall comply with that direction. Except as provided by Subsection (c), the person may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing about which the person testifies or produces documents, and the testimony or documents produced may not be received against the person in a criminal action, investigation, or proceeding.

(c) A person who complies with a direction to testify or produce documents is not exempt from prosecution or punishment for perjury committed while testifying and the testimony or evidence

given or produced is admissible against the person in a criminal action, investigation, or proceeding concerning the perjury, and the person is not exempt from the denial, revocation, or suspension of any license, permission, or authority conferred or to be conferred under this code.

(d) A person may waive the immunity or privilege granted by this section by executing, acknowledging, and filing with the department a statement expressly waiving the immunity or privilege for a specified transaction, matter, or thing. On filing the statement:

(1) the testimony or documents produced by the person in relation to the transaction, matter, or thing may be received by or produced before a judge or justice or a court, grand jury, or other tribunal; and

(2) the person is not entitled to immunity or privilege for the testimony or documents received or produced under Subdivision (1).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.008. LIBERAL CONSTRUCTION. This chapter shall be liberally construed and applied to promote the underlying purposes as provided by Section 541.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

Sec. 541.051. MISREPRESENTATION REGARDING POLICY OR INSURER. It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to:

(1) make, issue, or circulate or cause to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued:

(A) the terms of the policy;

(B) the benefits or advantages promised by the policy; or

(C) the dividends or share of surplus to be received on the policy;

(2) make a false or misleading statement regarding the dividends or share of surplus previously paid on a similar policy;

(3) make a misleading representation or misrepresentation regarding:

(A) the financial condition of an insurer; or

(B) the legal reserve system on which a life insurer operates;

(4) use a name or title of a policy or class of policies that misrepresents the true nature of the policy or class of policies; or

(5) make a misrepresentation to a policyholder insured by any insurer for the purpose of inducing or that tends to induce the policyholder to allow an existing policy to lapse or to forfeit or surrender the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.052. FALSE INFORMATION AND ADVERTISING. (a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, announcement, or statement containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the business of insurance or a person in the conduct of the person's insurance business.

(b) This section applies to an advertisement, announcement, or statement made, published, disseminated, circulated, or placed before the public:

(1) in a newspaper, magazine, or other publication;

(2) in a notice, circular, pamphlet, letter, or poster;

(3) over a radio or television station;

(4) through the Internet; or

(5) in any other manner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 2, eff. September 1, 2007.

Sec. 541.053. DEFAMATION OF INSURER. (a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to directly or indirectly make, publish, disseminate, or circulate or to aid, abet, or encourage the making, publication, dissemination, or circulation of a statement that:

(1) is false, maliciously critical of, or derogatory to the financial condition of an insurer; and

(2) is calculated to injure a person engaged in the business of insurance.

(b) This section applies to any oral or written statement, including a statement in any pamphlet, circular, article, or literature.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.054. BOYCOTT, COERCION, OR INTIMIDATION. It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to commit through concerted action or to enter into an agreement to commit an act of boycott, coercion, or intimidation that results in or tends to result in the unreasonable restraint of or a monopoly in the business of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.055. FALSE FINANCIAL STATEMENT. (a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to, with intent to deceive:

(1) file with a supervisory or other public official a false statement of financial condition of an insurer; or

(2) make, publish, disseminate, circulate, deliver to any person, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, delivered to any person, or placed before the public a false statement of financial condition of an insurer.

(b) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make a false entry in an insurer's book, report, or statement or wilfully omit to make a true entry of a material fact relating to the insurer's business in the insurer's book, report, or statement with

intent to deceive:

(1) an agent or examiner lawfully appointed to examine the insurer's condition or affairs; or

(2) a public official to whom the insurer is required by law to report or who has authority by law to examine the insurer's condition or affairs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.056. PROHIBITED REBATES AND INDUCEMENTS. (a) Subject to Section 541.058 and except as otherwise expressly provided by law, it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to knowingly permit the making of, offer to make, or make a life insurance contract, life annuity contract, or accident and health insurance contract or an agreement regarding the contract, other than as plainly expressed in the issued contract, or directly or indirectly pay, give, or allow or offer to pay, give, or allow as inducement to enter into a life insurance contract, life annuity contract, or accident and health insurance contract a rebate of premiums payable on the contract, a special favor or advantage in the dividends or other benefits of the contract, or a valuable consideration or inducement not specified in the contract, or give, sell, or purchase or offer to give, sell, or purchase in connection with a life insurance, life annuity, or accident and health insurance contract or as inducement to enter into the contract stocks, bonds, or other securities of an insurer or other corporation, association, or partnership, dividends or profits accrued from the stocks, bonds, or securities, or anything of value not specified in the contract.

(b) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to issue or deliver or to permit an agent, officer, or employee to issue or deliver as an inducement to insurance:

(1) company stock or other capital stock;

(2) a benefit certificate or share in a corporation;

(3) securities; or

(4) a special or advisory board contract or any other contract promising returns or profits.

(c) Subsection (b) does not prohibit issuing or delivering a

participating insurance policy otherwise authorized by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.057. UNFAIR DISCRIMINATION IN LIFE INSURANCE AND ANNUITY CONTRACTS. Subject to Section 541.058, it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make or permit with respect to a life insurance or life annuity contract an unfair discrimination between individuals of the same class and equal life expectancy regarding:

(1) the rates charged;

(2) the dividends or other benefits payable; or

(3) any of the other terms and conditions of the contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.058. CERTAIN PRACTICES NOT CONSIDERED DISCRIMINATION OR INDUCEMENT. (a) In this section:

(1) "Health-related services" means services that are available in connection with an accident and health insurance policy or certificate or an evidence of coverage and that are directed to an individual's health improvement or maintenance.

(2) "Health-related information" means that information that is directed to an individual's health improvement or maintenance or to costs associated with particular options available in connection with an accident and health insurance policy or certificate or an evidence of coverage.

(b) It is not a rebate or discrimination prohibited by Section 541.056(a) or 541.057:

(1) for a life insurance or life annuity contract, to pay a bonus to a policyholder or otherwise abate the policyholder's premiums in whole or in part out of surplus accumulated from nonparticipating insurance policies if the bonus or abatement:

(A) is fair and equitable to policyholders; and

(B) is in the best interests of the insurer and its policyholders;

(2) for a life insurance policy issued on the industrial debit plan, to make to a policyholder who has continuously for a specified period made premium payments directly to the insurer's

office an allowance in an amount that fairly represents the saving in collection expenses;

(3) for a group insurance policy, to readjust the rate of premium based on the loss or expense experience under the policy at the end of a policy year if the adjustment is retroactive for only that policy year;

(4) for a life annuity contract, to waive surrender charges under the contract when the contract holder exchanges that contract for another annuity contract issued by the same insurer or an affiliate of the same insurer that is part of the same holding company group if:

(A) the waiver and the exchange are fully, fairly, and accurately explained to the contract holder in a manner that is not deceptive or misleading; and

(B) the contract holder is given credit for the time that the previous contract was held when determining any surrender charges under the new contract;

(5) in connection with an accident and health insurance policy, to provide to policy or certificate holders, in addition to benefits under the terms of the insurance contract, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective policy or certificate holders;

(6) in connection with a health maintenance organization evidence of coverage, to provide to enrollees, in addition to benefits under the evidence of coverage, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective enrollees or contract holders; or

(7) in connection with an offer or sale of a life insurance policy or contract, accident and health insurance policy or contract, or annuity contract, to give, provide, or allow or offer to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at $25 or less.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 112 (H.B. 2252), Sec. 1, eff. May 17, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 1, eff. September 1, 2013.

Sec. 541.059. DECEPTIVE NAME, WORD, SYMBOL, DEVICE, OR SLOGAN. (a) Except as provided by Subsection (b), it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to use, display, publish, circulate, distribute, or cause to be used, displayed, published, circulated, or distributed in a letter, pamphlet, circular, contract, policy, evidence of coverage, article, poster, or other document, literature, or public media:

(1) a name as the corporate or business name of a person or entity engaged in the business of insurance or in an insurance-related business in this state that is the same as or deceptively similar to the name adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation authorized to engage in business under the laws of this state; or

(2) a word, symbol, device, or slogan, either alone or in combination and regardless of whether registered, and including the titles, designations, character names, and distinctive features of broadcast or other advertising, that is the same as or deceptively similar to a word, symbol, device, or slogan adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation to distinguish the entity or the entity's products or services from another entity.

(b) If more than one person or entity uses names, words, symbols, devices, or slogans, either alone or in combination, that are the same or deceptively similar and are likely to cause confusion or mistake, the person or entity that demonstrates the first continuous actual use of the name, word, symbol, device, slogan, or combination has not engaged in an unfair method of competition or deceptive act or practice under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.060. UNFAIR SETTLEMENT PRACTICES. (a) It is an

unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

(2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:

(A) a claim with respect to which the insurer's liability has become reasonably clear; or

(B) a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion;

(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(4) failing within a reasonable time to:

(A) affirm or deny coverage of a claim to a policyholder; or

(B) submit a reservation of rights to a policyholder;

(5) refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy;

(6) undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise settlement of a doubtful or disputed claim;

(7) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

(8) with respect to a Texas personal automobile insurance policy, delaying or refusing settlement of a claim solely because there is other insurance of a different kind available to satisfy all or part of the loss forming the basis of that claim; or

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination

or investigation by the person unless:

(A) a court orders the claimant to produce those tax returns;

(B) the claim involves a fire loss; or

(C) the claim involves lost profits or income.

(b) Subsection (a) does not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.061. MISREPRESENTATION OF INSURANCE POLICY. It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to misrepresent an insurance policy by:

(1) making an untrue statement of material fact;

(2) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made;

(3) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;

(4) making a material misstatement of law; or

(5) failing to disclose a matter required by law to be disclosed, including failing to make a disclosure in accordance with another provision of this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B-1. ADVERTISING REQUIREMENTS

Sec. 541.082. ADVERTISING AND INTERNET WEBSITES. (a) In this section, "insurer" includes:

(1) a life insurance company;

(2) a health insurance company;

(3) an accident insurance company;

(4) a general casualty company;

(5) a mutual life insurance company or other mutual insurance company;

(6) a mutual or natural premium life insurance company;

(7) a Lloyd's plan;

(8) a county mutual insurance company;

(9) a farm mutual insurance company;

(10) a reciprocal or interinsurance exchange;

(11) a fraternal benefit society;

(12) a local mutual aid association;

(13) a health maintenance organization;

(14) a group hospital service corporation; or

(15) a multiple employer welfare arrangement that holds a certificate of coverage under Chapter 846.

(b) A web page of an insurer's Internet website must include all appropriate disclosures and information required by applicable rules adopted by the commissioner relating to advertising only if the web page:

(1) describes specific policies or coverage available in this state; or

(2) includes an opportunity for an individual to apply for coverage or obtain a quote from an insurer for an insurance policy or certificate or an evidence of coverage.

(c) As may be permitted by commissioner rule, an insurer may comply with Subsection (b) by including a link to a web page that includes the information necessary to comply with the applicable rules relating to advertising. The link must be prominently placed on the insurer's web page.

(d) Web pages of an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or request a quote from an insurer are considered to be institutional advertisements subject to rules adopted by the commissioner relating to advertising.

(e) Web pages or navigation aids within an insurer's Internet website that provide a link to a web page described by Subsection (b) but that do not otherwise contain content described in Subsection (b) are considered to be institutional advertisements subject to rules adopted by the commissioner relating to advertising.

Added by Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 1, eff. September 1, 2007.

Sec. 541.083. ADVERTISEMENTS TO CERTAIN ASSOCIATIONS. An

insurer may advertise to the general public policies or coverage available only to members of an association described by Section 1251.052.

Added by Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 1, eff. September 1, 2007.

Sec. 541.084. ADVERTISEMENTS RELATING TO MEDICARE PROGRAM. A person may not use an advertisement for an insurance product relating to Medicare coverage unless the advertisement includes in a prominent place the following language or similar language: "Not connected with or endorsed by the United States government or the federal Medicare program."

Added by Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 1, eff. September 1, 2007.

Sec. 541.085. ADVERTISEMENTS RELATING TO PREFERRED PROVIDER BENEFIT PLANS. It is sufficient for an insurer to use the term "PPO plan" in advertisements when referring to a preferred provider benefit plan offered under Chapter 1301.

Added by Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 1, eff. September 1, 2007.

Sec. 541.086. ADVERTISING REGARDING GUARANTEED RENEWABLE COVERAGE. (a) An advertisement for a guaranteed renewable accident and health insurance policy must include, in a prominent place, a statement indicating that rates for the policy may change if the advertisement suggests or implies that rates for the product will not change.

(b) If an advertisement is required to include the statement described by Subsection (a), the statement must generally identify the manner in which rates may change, such as by age, by health status, by class, or through application of other general criteria.

Added by Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 1, eff. September 1, 2007.

Sec. 541.087. ADVERTISEMENTS EXEMPT FROM FILING REQUIREMENTS.An advertisement subject to requirements regarding filing of the advertisement with the department for department review under this code or commissioner rule and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department is not required to be filed for department review.

Added by Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 1, eff. September 1, 2007.

SUBCHAPTER C. DETERMINATION OF UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES; SANCTIONS AND PENALTIES

Sec. 541.101. EXAMINATION AND INVESTIGATION. The department may examine and investigate the affairs of a person engaged in the business of insurance in this state to determine whether the person has or is engaged in an unfair method of competition or unfair or deceptive act or practice prohibited by Section 541.003.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.102. STATEMENT OF CHARGES; NOTICE OF HEARING. (a) When the department has reason to believe that a person engaged in the business of insurance in this state has engaged or is engaging in this state in an unfair method of competition or unfair or deceptive act or practice defined by Subchapter B and that a proceeding by the department regarding the charges is in the interest of the public, the department shall issue and serve on the person:

(1) a statement of the charges; and

(2) a notice of the hearing on the charges, including the time and place for the hearing.

(b) The department may not hold the hearing before the sixth day after the date the notice is served.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.103. HEARING. A person against whom charges are made

under Section 541.102 is entitled at the hearing on the charges to have an opportunity to be heard and show cause why the department should not issue an order requiring the person to cease and desist from the unfair method of competition or unfair or deceptive act or practice described in the charges.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.104. HEARING PROCEDURES. (a) Nothing in this chapter requires the observance of formal rules of pleading or evidence at a hearing under this subchapter.

(b) At a hearing under this subchapter, the department, on a showing of good cause, shall permit any person to intervene, appear, and be heard by counsel or in person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.105. RECORD OF HEARING. (a) At a hearing under this subchapter, the department may, and at the request of a party to the hearing shall, make a stenographic record of the proceedings and the evidence presented at the hearing.

(b) If the department does not make a stenographic record and a person seeks judicial review of the decision made at the hearing, the department shall prepare a statement of the evidence and proceeding for use on review.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.106. COMPLIANCE WITH SUBPOENA. (a) If a person refuses to comply with a subpoena issued in connection with a hearing under this subchapter or refuses to testify with respect to a matter about which the person may be lawfully interrogated, on application of the department, a district court in Travis County or in the county in which the person resides may order the person to comply with the subpoena or testify.

(b) A court may punish as contempt a person's failure to obey an order under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.107. DETERMINATION OF VIOLATION. After a hearing under this subchapter, the department shall determine whether:

(1) the method of competition or the act or practice considered in the hearing is defined as:

(A) an unfair method of competition or deceptive act or practice under Subchapter B or a rule adopted under this chapter; or

(B) a false, misleading, or deceptive act or practice under Section 17.46, Business & Commerce Code; and

(2) the person against whom the charges were made engaged in the method of competition or act or practice in violation of:

(A) this chapter or a rule adopted under this chapter; or

(B) Subchapter E, Chapter 17, Business & Commerce Code, as specified in Section 17.46, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.108. CEASE AND DESIST ORDER. On determining that a person committed a violation described by Section 541.107, the department shall:

(1) make written findings; and

(2) issue and serve on the person an order requiring the person to cease and desist from engaging in the method of competition or act or practice determined to be a violation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.109. MODIFICATION OR SETTING ASIDE OF ORDER. On the notice and in the manner the department determines proper, the department may modify or set aside in whole or in part a cease and desist order issued under Section 541.108 at any time before a petition appealing the order is filed in accordance with Subchapter D, Chapter 36.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.110. ADMINISTRATIVE PENALTY. (a) A person who violates a cease and desist order issued under Section 541.108 is subject to an administrative penalty under Chapter 84.

(b) In determining whether a person has violated a cease and desist order, the department shall consider the maintenance of procedures reasonably adapted to ensure compliance with the order.

(c) An administrative penalty imposed under this section may not exceed:

(1) $1,000 for each violation; or

(2) $5,000 for all violations.

(d) An order of the department imposing an administrative penalty under this section applies only to a violation of the cease and desist order committed before the date the order imposing the penalty is issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.111. CIVIL PENALTY FOR VIOLATION OF CEASE AND DESIST ORDER. (a) A person who is found by a court to have violated a cease and desist order issued under Section 541.108 is liable to the state for a penalty. The state may recover the penalty in a civil action.

(b) The penalty may not exceed $50 unless the court finds the violation to be wilful, in which case the penalty may not exceed $500.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER D. PRIVATE ACTION FOR DAMAGES

Sec. 541.151. PRIVATE ACTION FOR DAMAGES AUTHORIZED. A person who sustains actual damages may bring an action against another person for those damages caused by the other person engaging in an act or practice:

(1) defined by Subchapter B to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance; or

(2) specifically enumerated in Section 17.46(b), Business & Commerce Code, as an unlawful deceptive trade practice if the person bringing the action shows that the person relied on the act or

practice to the person's detriment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.152. DAMAGES, ATTORNEY'S FEES, AND OTHER RELIEF. (a) A plaintiff who prevails in an action under this subchapter may obtain:

(1) the amount of actual damages, plus court costs and reasonable and necessary attorney's fees;

(2) an order enjoining the act or failure to act complained of; or

(3) any other relief the court determines is proper.

(b) Except as provided by Subsection (c), on a finding by the trier of fact that the defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.

(c) Subsection (b) does not apply to an action under this subchapter brought against the Texas Windstorm Insurance Association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 2, eff. September 28, 2011.

Sec. 541.153. FRIVOLOUS ACTION. A court shall award to the defendant court costs and reasonable and necessary attorney's fees if the court finds that an action under this subchapter is groundless and brought in bad faith or brought for the purpose of harassment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.154. PRIOR NOTICE OF ACTION. (a) A person seeking damages in an action against another person under this subchapter must provide written notice to the other person not later than the 61st day before the date the action is filed.

(b) The notice must advise the other person of:

(1) the specific complaint; and

(2) the amount of actual damages and expenses, including

attorney's fees reasonably incurred in asserting the claim against the other person.

(c) The notice is not required if giving notice is impracticable because the action:

(1) must be filed to prevent the statute of limitations from expiring; or

(2) is asserted as a counterclaim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.155. ABATEMENT. (a) A person against whom an action under this subchapter is pending who does not receive the notice as required by Section 541.154 may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the action is pending.

(b) The court shall abate the action if, after a hearing, the court finds that the person is entitled to an abatement because the claimant did not provide the notice as required by Section 541.154.

(c) An action is automatically abated without a court order beginning on the 11th day after the date a plea in abatement is filed if the plea:

(1) is verified and alleges that the person against whom the action is pending did not receive the notice as required by Section 541.154; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date the plea in abatement is filed.

(d) An abatement under this section continues until the 60th day after the date notice is provided in compliance with Section 541.154.

(e) This section does not apply if Section 541.154(c) applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.156. SETTLEMENT OFFER. (a) A person who receives notice provided under Section 541.154 or 542A.003 may make a settlement offer during a period beginning on the date notice under Section 541.154 or 542A.003 is received and ending on the 60th day after that date.

(b) In addition to the period described by Subsection (a), the person may make a settlement offer during a period:

(1) if mediation is not conducted under Section 541.161, beginning on the date an original answer is filed in the action and ending on the 90th day after that date; or

(2) if mediation is conducted under Section 541.161, beginning on the day after the date the mediation ends and ending on the 20th day after that date.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 1, eff. September 1, 2017.

Sec. 541.157. CONTENTS OF SETTLEMENT OFFER. A settlement offer made by a person against whom a claim under this subchapter is pending must include an offer to pay the following amounts, separately stated:

(1) an amount of money or other consideration, reduced to its cash value, as settlement of the claim for damages; and

(2) an amount of money to compensate the claimant for the claimant's reasonable and necessary attorney's fees incurred as of the date of the offer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.158. REJECTION OF SETTLEMENT OFFER. (a) A settlement offer is rejected unless both parts of the offer required under Section 541.157 are accepted by the claimant not later than the 30th day after the date the offer is made.

(b) A settlement offer made by a person against whom a claim under this subchapter is pending that complies with this subchapter and is rejected by the claimant may be filed with the court accompanied by an affidavit certifying the offer's rejection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.159. LIMIT ON RECOVERY AFTER SETTLEMENT OFFER. (a)

If the court finds that the amount stated in the settlement offer for damages under Section 541.157(1) is the same as, substantially the same as, or more than the amount of damages found by the trier of fact, the claimant may not recover as damages any amount in excess of the lesser of:

(1) the amount of damages stated in the offer; or

(2) the amount of damages found by the trier of fact.

(b) If the court makes the finding described by Subsection (a), the court shall determine reasonable and necessary attorney's fees to compensate the claimant for attorney's fees incurred before the date and time the rejected settlement offer was made. If the court finds that the amount stated in the offer for attorney's fees under Section 541.157(2) is the same as, substantially the same as, or more than the amount of reasonable and necessary attorney's fees incurred by the claimant as of the date of the offer, the claimant may not recover any amount of attorney's fees in excess of the amount of fees stated in the offer.

(c) This section does not apply if the court finds that the offering party:

(1) could not perform the offer at the time the offer was made; or

(2) substantially misrepresented the cash value of the offer.

(d) The court shall award:

(1) damages as required by Section 541.152 if Subsection (a) does not apply; and

(2) attorney's fees as required by Section 541.152 if Subsection (b) does not apply.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.160. EFFECT OF SETTLEMENT OFFER. A settlement offer is not an admission of engaging in an act or practice defined by Subchapter B to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.161. MEDIATION. (a) A party may, not later than the

90th day after the date a pleading seeking relief under this subchapter is served, file a motion to compel mediation of the dispute in the manner provided by this section.

(b) The court shall, not later than the 30th day after the date a motion under this section is filed, sign an order setting the time and place of the mediation.

(c) The court shall appoint a mediator if the parties do not agree on a mediator.

(d) The mediation must be held not later than the 30th day after the date the order is signed, unless:

(1) the parties agree otherwise; or

(2) the court determines that additional time not to exceed 30 days is warranted.

(e) Each party who has appeared in the action, except as agreed to by all parties who have appeared, shall:

(1) participate in the mediation; and

(2) except as provided by Subsection (f), share the mediation fee.

(f) A party may not compel mediation under this section if the amount of actual damages claimed is less than $15,000 unless the party seeking to compel mediation agrees to pay the costs of the mediation.

(g) Except as provided by this section, the following apply to the appointment of a mediator and the mediation process provided by this section:

(1) Section 154.023, Civil Practice and Remedies Code; and

(2) Subchapters C and D, Chapter 154, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.162. LIMITATIONS PERIOD. (a) A person must bring an action under this chapter before the second anniversary of the following:

(1) the date the unfair method of competition or unfair or deceptive act or practice occurred; or

(2) the date the person discovered or, by the exercise of reasonable diligence, should have discovered that the unfair method of competition or unfair or deceptive act or practice occurred.

(b) The limitations period provided by Subsection (a) may be extended for 180 days if the person bringing the action proves that the person's failure to bring the action within that period was caused by the defendant's engaging in conduct solely calculated to induce the person to refrain from or postpone bringing the action.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER E. ENFORCEMENT BY ATTORNEY GENERAL

Sec. 541.201. INJUNCTIVE RELIEF. (a) The attorney general may bring an action under this section if the attorney general has reason to believe that:

(1) a person engaged in the business of insurance in this state is engaging in, has engaged in, or is about to engage in an act or practice defined as unlawful under:

(A) this chapter or a rule adopted under this chapter; or

(B) Section 17.46, Business & Commerce Code; and

(2) the action is in the public interest.

(b) The attorney general may bring the action in the name of the state to restrain by temporary or permanent injunction the person's use of the method, act, or practice.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.202. VENUE FOR INJUNCTIVE ACTION. An action for an injunction under this subchapter may be commenced in a district court in:

(1) the county in which the person against whom the action is brought:

(A) resides;

(B) has the person's principal place of business; or

(C) is engaging in business;

(2) the county in which the transaction or a substantial portion of the transaction occurred; or

(3) Travis County.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.203. ISSUANCE OF INJUNCTION. (a) The court may issue an appropriate temporary or permanent injunction.

(b) The court shall issue the injunction without bond.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.204. CIVIL PENALTY. In addition to requesting a temporary or permanent injunction under Section 541.201, the attorney general may request a civil penalty of not more than $10,000 for each violation on a finding by the court that the defendant has engaged in or is engaging in an act or practice defined as unlawful under:

(1) this chapter or a rule adopted under this chapter; or

(2) Section 17.46, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.205. COMPENSATION OR RESTORATION. The court may make an additional order or judgment as necessary to compensate an identifiable person for actual damages or for restoration of money or property that may have been acquired by means of an enjoined act or practice.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.206. CIVIL PENALTY FOR VIOLATION OF INJUNCTION. (a) A person who violates an injunction issued under this subchapter is liable for and shall pay to the state a civil penalty of not more than $10,000 for each violation.

(b) The attorney general may, in the name of the state, petition the court for recovery of the civil penalty against the person who violates the injunction.

(c) The court shall consider the maintenance of procedures reasonably adapted to ensure compliance with the injunction in determining whether a person has violated an injunction.

(d) The court issuing the injunction retains jurisdiction and the cause is continued for the purpose of assessing a civil penalty under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.207. REMEDIES NOT EXCLUSIVE. The remedies provided by this subchapter are:

(1) not exclusive; and

(2) in addition to any other remedy or procedure provided by another law or at common law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER F. CLASS ACTIONS BY ATTORNEY GENERAL OR PRIVATE INDIVIDUAL

Sec. 541.251. CLASS ACTION AUTHORIZED. (a) If a member of the insurance buying public has been damaged by an unlawful method, act, or practice defined in Subchapter B as an unlawful deceptive trade practice, the department may request the attorney general to bring a class action or the individual damaged may bring an action on the individual's own behalf and on behalf of others similarly situated to recover damages and obtain relief as provided by this subchapter.

(b) A class action may not be maintained under this subchapter if the department and attorney general have initiated an action under Subchapter G or an action under that subchapter has resulted in a final determination regarding the same act or practice and the same defendant in the action under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.252. RECOVERY. A plaintiff who prevails in a class action under this subchapter may recover:

(1) court costs and attorney's fees reasonable in relation to the amount of work expended in addition to actual damages;

(2) an order enjoining the act or failure to act; and

(3) any other relief the court determines is proper.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.253. FRIVOLOUS ACTION. The court may award to the defendant court costs and reasonable attorney's fees in relation to

the work expended on a finding by the court that a class action under this subchapter was brought by an individual plaintiff in bad faith or for the purpose of harassment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.254. STATUTE OF LIMITATIONS TOLLED. The filing of a class action under this subchapter tolls the statute of limitations for bringing an action by an individual under Section 541.162.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.255. PRIOR NOTICE. (a) Not later than the 31st day before the date a class action for damages is commenced under this subchapter, the prospective plaintiff must:

(1) notify the intended defendant of the complaint; and

(2) demand that the defendant provide relief to the prospective plaintiff and others similarly situated.

(b) The notice must be in writing and be sent by certified or registered mail, return receipt requested, to:

(1) the place where the transaction occurred;

(2) the intended defendant's principal place of business in this state; or

(3) if notice to the place described by Subdivision (1) or (2) does not effect notice, the office of the secretary of state.

(c) A copy of the notice must also be sent to the commissioner.

(d) A class action for injunctive relief may be commenced under this subchapter without complying with Subsection (a).

(e) A plaintiff in a class action for injunctive relief under this subchapter may, on or after the 31st day after the date the action is commenced and after complying with Subsection (a), amend the complaint without leave of court to include a request for damages.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.256. PREREQUISITES TO CLASS ACTION. The court shall permit one or more members of a class to sue or be sued as

representative parties on behalf of the class only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.257. CLASS ACTIONS MAINTAINABLE. (a) An action may be maintained as a class action under this subchapter if the prerequisites of Section 541.256 are satisfied and, in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudication with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(b) Matters pertinent to a finding under Subsection (a)(3) include:

(1) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(4) the difficulties likely to be encountered in the management of a class action.

(c) In construing this section, the courts of this state shall be guided by the decisions of the federal courts interpreting Rule 23, Federal Rules of Civil Procedure, as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.258. CLASS ACTIONS: ISSUES AND SUBCLASSES AUTHORIZED. When appropriate, an action may be brought or maintained as a class action under this subchapter with respect to particular issues or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this subchapter shall be construed and applied accordingly.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.259. DETERMINATION REGARDING WHETHER CLASS ACTION MAY BE MAINTAINED. (a) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained as a class action under this subchapter.

(b) An order under this section may be altered or amended before a decision on the merits.

(c) An order determining whether the action may be maintained as a class action under this subchapter is an interlocutory order that is appealable. The procedures applicable to accelerated appeals in the Texas Rules of Appellate Procedure apply to the appeal.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.260. EFFECT OF DENIAL OF CLASS ACTION. A court order denying that an action under this subchapter may be brought as a class action does not affect whether an individual may bring the same or a similar action under Subchapter D.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.261. NOTICE OF CLASS ACTION. (a) If an action is permitted as a class action under this subchapter, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(b) The notice must contain a statement that:

(1) the court will exclude from the class a notified member if the member requests exclusion by a specified date;

(2) the judgment, whether favorable or not, includes all members who do not request exclusion; and

(3) a member who does not request exclusion may enter an appearance through counsel.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.262. PROCEDURES IN CLASS ACTION. In a class action under this subchapter, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in a manner the court directs to some or all of the members or the attorney general of:

(A) any step in the action;

(B) the proposed extent of the judgment; or

(C) the opportunity for members to:

(i) signify whether the members consider the representation to be fair and adequate;

(ii) intervene and present claims or defenses; or

(iii) otherwise come into the action;

(3) imposing conditions on the representative parties or intervenors;

(4) requiring that the pleadings be amended to eliminate allegations relating to representation of absent persons, and that the action proceed accordingly; or

(5) dealing with similar procedural matters.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.263. EFFECT OF SETTLEMENT OFFER. (a) Damages may not be awarded to a class under this subchapter if, not later than the 30th day after the date the intended defendant receives notice under Section 541.255, the intended defendant provides to the plaintiff by certified or registered mail, return receipt requested, a written settlement offer.

(b) The settlement offer must include:

(1) a statement that all persons similarly situated have been adequately identified or a reasonable effort to identify those persons has been made;

(2) a description of the class identified and the method used to identify that class;

(3) a statement that all persons identified have been notified that, on request, the intended defendant will provide relief to those persons and all others similarly situated;

(4) a complete explanation of the relief being afforded;

(5) a copy of the notice or communication the intended defendant is providing to the members of the class;

(6) a statement that the relief being afforded the consumer has been or, if the offer is accepted by the consumer, will be given within a stated reasonable time; and

(7) a statement that the practice complained of has ceased.

(c) Except as provided by Subsection (d), an attempt to comply with this section by a person receiving a demand is:

(1) an offer to compromise;

(2) not admissible as evidence; and

(3) not an admission of engaging in an unlawful act or practice.

(d) A defendant may introduce evidence of compliance or an attempt to comply with this section for the purpose of:

(1) establishing good faith; or

(2) showing compliance with this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.264. DEFENSES. Damages may not be awarded in a class action under this subchapter if the defendant:

(1) proves that the action complained of resulted from a bona fide error, notwithstanding the use of reasonable procedures adopted to avoid an error; and

(2) made restitution of any consideration received from any member of the class.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.265. LIMITATIONS PERIOD FOR DAMAGES. In a class action under this subchapter, damages may not include any damages incurred more than two years before the date the action is commenced.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.266. DISPOSITION. (a) A class action under this subchapter may not be dismissed, settled, or compromised without the approval of the court.

(b) Notice of the proposed dismissal, settlement, or compromise shall be given to all members of the class in the manner the court directs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.267. CONTENTS OF JUDGMENT; NOTICE. (a) The judgment in a class action under this subchapter must describe those to whom the notice under Section 541.261 was directed and who have not requested exclusion and those the court finds to be members of the class.

(b) The court shall direct to the members of the class the best notice of the judgment practicable under the circumstances, including individual notice to each member who can be identified through reasonable effort.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER G. DEPARTMENT ACTION FOR REFUND OF PREMIUMS

Sec. 541.301. REFUND OF PREMIUMS. (a) After notice and hearing as provided in Subchapter C, the department may require a person to make an accounting under Subsection (b):

(1) in connection with a method of competition or act or practice that is the basis of a cease and desist order issued under Section 541.108; or

(2) on application of an aggrieved person, in connection with a determination by the department that the aggrieved person and other persons similarly situated were induced to purchase an insurance policy as a result of the person engaging in a method of competition or act or practice in violation of:

(A) this chapter or a rule adopted under this chapter; or

(B) Section 17.46, Business & Commerce Code.

(b) A person required to make an accounting under this section must account for all premiums collected for policies issued by the person during the preceding two years in connection with the acts in violation of this chapter described by Subsection (a)(1) or (2).

(c) The department may require the person described by Subsection (a) to:

(1) give notice to all persons from whom the premiums were collected; and

(2) refund the total of all premiums collected from each person who elects to accept a premium refund in exchange for cancellation of the insurance policy issued.

(d) A person who refunds premiums under this section shall deduct from the amount of premiums refunded the amount of benefits actually paid by the person while the insurance policy was in force.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.302. TIME TO MAKE REFUNDS. The department shall specify a reasonable time within which a person required to make premium refunds under Section 541.301 must make the refunds.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.303. SANCTION. (a) The department may report to the

attorney general a person's failure to comply with the department's requirement to refund premiums within the time specified under Section 541.302. The department may request that the attorney general file an action to enforce the department's requirement to refund premiums.

(b) Venue for the action is in a district court in Travis County.

(c) The court shall enter an appropriate order to enforce the department's requirement to refund premiums if the court finds that:

(1) the requirement was lawfully entered; and

(2) the person failed to comply with the requirement.

(d) The court may enforce its order through contempt proceedings.

(e) The sanction provided by this section is in addition to any other sanctions provided in this code or other applicable laws.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.304. EVIDENTIARY USE OF COMPLIANCE OR ATTEMPT TO COMPLY. (a) Compliance or an attempt to comply with the department's requirement to refund premiums is:

(1) an offer to compromise;

(2) not admissible as evidence; and

(3) not an admission of engaging in an unlawful act or practice.

(b) A defendant may introduce evidence of compliance or an attempt to comply with the department's requirement for the purpose of:

(1) establishing good faith; or

(2) showing compliance with the department's requirement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER H. ASSURANCE OF VOLUNTARY COMPLIANCE

Sec. 541.351. ACCEPTANCE OF ASSURANCE. (a) In administering this chapter, the department may accept assurance of voluntary compliance from a person who is engaging in, has engaged in, or is about to engage in an act or practice in violation of:

(1) this chapter or a rule adopted under this chapter; or

(2) Section 17.46, Business & Commerce Code.

(b) The assurance must be in writing and be filed with the department.

(c) The department may condition acceptance of an assurance of voluntary compliance on the stipulation that the person offering the assurance restore to a person in interest money that may have been acquired by the act or practice described in Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.352. EFFECT OF ASSURANCE. (a) An assurance of voluntary compliance is not an admission of a prior violation of:

(1) this chapter or a rule adopted under this chapter; or

(2) Section 17.46, Business & Commerce Code.

(b) Unless an assurance of voluntary compliance is rescinded by agreement, a subsequent failure to comply with the assurance is prima facie evidence of a violation of:

(1) this chapter or a rule adopted under this chapter; or

(2) Section 17.46, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.353. REOPENING. A matter closed by the filing of an assurance of voluntary compliance may be reopened at any time.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.354. RIGHT TO BRING ACTION NOT AFFECTED. An assurance of voluntary compliance does not affect the right of an individual to bring an action under this chapter, except that the right of an individual in relation to money received according to a stipulation under Section 541.351(c) is governed by the terms of the assurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER I. RULEMAKING

Sec. 541.401. RULEMAKING AUTHORITY. (a) The commissioner may

adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purposes of this chapter.

(b) Notwithstanding a previous definition or interpretation of a term used in this chapter contained in or derived from the common law or other statutory law of this state, the commissioner may adopt an express provision necessary to accomplish the purposes of this chapter, including a provision the commissioner considers necessary to:

(1) achieve necessary uniformity with the laws of other states or the United States; or

(2) conform to the adopted procedures of the National Association of Insurance Commissioners.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.402. PETITION. (a) A petition may be submitted to the commissioner to adopt, amend, or repeal a rule. The petition must be:

(1) signed by 100 interested persons; and

(2) supported by evidence that:

(A) a particular act or practice has been or could be false, misleading, or deceptive to the insurance buying public; or

(B) an act or practice defined by department rule to be false, misleading, or deceptive is not false, misleading, or deceptive.

(b) Not later than the 30th day after the date the department receives the petition, the department shall:

(1) deny the petition as provided by Section 541.403; or

(2) initiate hearing proceedings under Section 541.404.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.403. DENIAL OF PETITION. (a) The department must state in writing the reason for denying a petition to adopt, amend, or repeal a rule.

(b) The department is expressly authorized to deny the petition if the action sought would:

(1) destroy uniformity with the laws of other states or the United States; or

(2) not conform to the adopted procedures of the National Association of Insurance Commissioners.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.404. HEARING ON PETITION. (a) A hearing held by the department in response to a petition to adopt, amend, or repeal a rule must be open to the public.

(b) At the hearing, any person may present to the department in writing or orally testimony, data, or other information regarding the act or practice under consideration.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.405. JUDICIAL REVIEW OF DEPARTMENT ACTION. (a) A person aggrieved by the denial of a petition under Section 541.402 or the adoption, amendment, or repeal of or failure to adopt a rule under this subchapter may file a petition in a district court in Travis County for:

(1) a declaratory judgment on the validity or applicability of an adopted, amended, or repealed rule; or

(2) review of the denial of a petition under Section 541.402.

(b) The commissioner must be made a party to the action.

(c) An action of the commissioner under this subchapter in adopting, amending, repealing, or failing to adopt a rule or denying a petition may be invalidated only if the court finds that the action:

(1) violates a constitutional or state statutory provision;

(2) exceeds the commissioner's statutory authority;

(3) is arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion;

(4) is so vague that it does not establish sufficiently definite standards to which conduct can be conformed;

(5) is made following unlawful procedure; or

(6) is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record as submitted.

(d) The court may issue an injunction in an action under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER J. CONSTRUCTION OF CHAPTER WITH OTHER LAWS

Sec. 541.451. LIABILITY UNDER OTHER LAW. An order of the department under this chapter or an order by a court to enforce that order does not relieve or absolve a person affected by either order from liability under another law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.452. POWERS IN ADDITION TO OTHER POWERS AUTHORIZED BY LAW. The powers vested in the department and the commissioner by this chapter are in addition to any other powers to enforce a penalty, fine, or forfeiture authorized by law with respect to a method of competition or act or practice defined as unfair or deceptive.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.453. DOUBLE RECOVERY PROHIBITED. A person may not recover damages and penalties for the same act or practice under both this chapter and another law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 541.454. PENALTIES AND RELATED PAYMENTS BY INSURER. (a) Civil penalties, premium refunds, judgments, compensatory judgments, individual recoveries, orders, class action awards, costs, damages, or attorney's fees assessed or awarded under this chapter:

(1) may be paid only from the capital or surplus funds of the offending insurer; and

(2) may not take precedence over, be in priority to, or in any other manner apply to:

(A) Chapter 462 or 463 or any other insurance guaranty act; or

(B) Chapter 422.

(b) The statutes described by Subsection (a)(2) and the

priorities of funds created by those statutes are exempt from the provisions of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.006, eff. April 1, 2009.

CHAPTER 542. PROCESSING AND SETTLEMENT OF CLAIMS

SUBCHAPTER A. UNFAIR CLAIM SETTLEMENT PRACTICES

Sec. 542.001. SHORT TITLE. This subchapter may be cited as the Unfair Claim Settlement Practices Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies to the following insurers whether organized as a proprietorship, partnership, stock or mutual corporation, or unincorporated association:

(1) a life, health, or accident insurance company;
(2) a fire or casualty insurance company;
(3) a hail or storm insurance company;
(4) a title insurance company;
(5) a mortgage guarantee company;
(6) a mutual assessment company;
(7) a local mutual aid association;
(8) a local mutual burial association;
(9) a statewide mutual assessment company;
(10) a stipulated premium company;
(11) a fraternal benefit society;
(12) a group hospital service corporation;
(13) a county mutual insurance company;
(14) a Lloyd's plan;
(15) a reciprocal or interinsurance exchange; and
(16) a farm mutual insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.003. UNFAIR CLAIM SETTLEMENT PRACTICES PROHIBITED. (a) An insurer engaging in business in this state may not engage in an unfair claim settlement practice.

(b) Any of the following acts by an insurer constitutes unfair claim settlement practices:

(1) knowingly misrepresenting to a claimant pertinent facts or policy provisions relating to coverage at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies;

(4) not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear;

(5) compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder;

(6) failing to maintain the information required by Section 542.005; or

(7) committing another act the commissioner determines by rule constitutes an unfair claim settlement practice.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.004. EXAMINATION OF TAX RETURNS PROHIBITED. (a) An insurer regulated under this code may not require a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless:

(1) the claimant is ordered to produce the tax returns by a court; or

(2) the claim involves:

(A) a fire loss; or

(B) a loss of profits or income.

(b) An insurer that violates this section commits:

(1) a prohibited practice under this subchapter; and

(2) a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(c) A claimant affected by a violation of this section is entitled to remedies under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.005. RECORD OF COMPLAINTS. (a) In this section, "complaint" means any written communication primarily expressing a grievance.

(b) An insurer shall maintain a complete record of all complaints received by the insurer during the preceding three years or since the date of the insurer's last examination by the department, whichever period is shorter. The record must indicate:

(1) the total number of complaints;

(2) the classification of complaints by line of insurance;

(3) the nature of each complaint;

(4) the disposition of the complaints; and

(5) the time spent processing each complaint.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.006. PERIODIC REPORTING REQUIREMENT. (a) In this section, "claim" means a written claim filed by a resident of this state with an insurer engaging in business in this state.

(b) If, based on complaints of unfair claim settlement practices under this subchapter, the department finds that an insurer should be subjected to closer supervision with respect to the insurer's claim settlement practices, the department may require the insurer to file periodic reports at intervals the department determines necessary.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 42 , Sec. 3.01(4), eff. September 1, 2015.

(d) If at any time the department determines that the requirement to file a periodic report is no longer necessary to accomplish the objectives of this subchapter, the department may rescind the reporting requirement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 3.01(4), eff. September 1, 2015.

Sec. 542.007. COMPARISON OF CERTAIN INSURERS TO MINIMUM STANDARD OF PERFORMANCE; INVESTIGATION. (a) The department shall compile the information received from an insurer under Section 542.006 in a manner that enables the department to compare the insurer's performance to a minimum standard of performance adopted by the commissioner.

(b) If the department determines that the insurer does not meet the minimum standard of performance, the department shall investigate the insurer to determine the reason, if any, that the insurer does not meet the minimum standard.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.008. COMPLAINTS AGAINST INSURERS; INVESTIGATION. (a) The department shall establish a system for receiving and processing individual complaints alleging a violation of this subchapter by an insurer regardless of whether the insurer is required to file a periodic report under Section 542.006.

(b) The department shall investigate an insurer if the department determines that:

(1) based on the number and type of complaints against an insurer, the insurer does not meet the minimum standard of performance adopted under Section 542.007; or

(2) the number and type of complaints against the insurer are not proportionate to the number and type of complaints against other insurers writing similar lines of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.009. REVIEW OF INVESTIGATION RESULTS; HEARING. (a) On receiving the results of an investigation instituted under Section 542.007 or 542.008, the department shall review those results considering the standards of this subchapter to determine whether

further action is necessary.

(b) If the department determines that further action is necessary, the department shall:

(1) set a date for a hearing to review the alleged violations of this subchapter; and

(2) notify the insurer of:

(A) the date of the hearing; and

(B) the nature of the charges.

(c) The department shall provide the notice required by Subsection (b)(2) not later than the 30th day before the date of the hearing.

(d) At a hearing under this section, the insurer may present the insurer's case with the assistance of counsel.

(e) Evidence relating to the number and type of complaints or claims prepared by the department from information received or compiled under Section 542.006, 542.007, or 542.008 is admissible in evidence at:

(1) the hearing; and

(2) any related judicial proceeding.

(f) The hearing shall be conducted in accordance with this code and rules adopted by the commissioner.

(g) An insurer may not be found to be in violation of this subchapter solely because of the number and type of complaints or claims against the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.010. CEASE AND DESIST ORDER; ENFORCEMENT. (a) If the department determines that an insurer has violated this subchapter, the department shall issue a cease and desist order to the insurer directing the insurer to stop the unlawful practice.

(b) If the insurer fails to comply with the cease and desist order, the department may:

(1) revoke or suspend the insurer's certificate of authority; or

(2) limit, regulate, and control:

(A) the insurer's line of business;

(B) the insurer's writing of policy forms or other particular forms; and

(C) the volume of the insurer's:

(i) line of business; or

(ii) writing of policy forms or other particular forms.

(c) The department shall exercise authority under this section to the extent that the department determines is necessary to obtain the insurer's compliance with the cease and desist order.

(d) At the request of the department, the attorney general shall assist the department in enforcing the cease and desist order.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.011. TIME LIMIT TO APPEAL. An insurer affected by a ruling or order of the department under this subchapter may appeal the ruling or order, in accordance with Subchapter D, Chapter 36, by filing a petition for judicial review not later than the 20th day after the date of the ruling or order.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.012. ATTORNEY'S FEES. The department is entitled to reasonable attorney's fees if judicial action is necessary to enforce an order of the department under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.013. PERSONNEL. The department may hire employees and examiners as needed to enforce this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.014. RULES. The commissioner shall adopt reasonable rules as necessary to implement and augment the purposes and provisions of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. PROMPT PAYMENT OF CLAIMS

Sec. 542.051. DEFINITIONS. In this subchapter:

(1) "Business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(2) "Claim" means a first-party claim that:

(A) is made by an insured or policyholder under an insurance policy or contract or by a beneficiary named in the policy or contract; and

(B) must be paid by the insurer directly to the insured or beneficiary.

(3) "Claimant" means a person making a claim.

(4) "Notice of claim" means any written notification provided by a claimant to an insurer that reasonably apprises the insurer of the facts relating to the claim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any insurer authorized to engage in business as an insurance company or to provide insurance in this state, including:

(1) a stock life, health, or accident insurance company;

(2) a mutual life, health, or accident insurance company;

(3) a stock fire or casualty insurance company;

(4) a mutual fire or casualty insurance company;

(5) a Mexican casualty insurance company;

(6) a Lloyd's plan;

(7) a reciprocal or interinsurance exchange;

(8) a fraternal benefit society;

(9) a stipulated premium company;

(10) a nonprofit legal services corporation;

(11) a statewide mutual assessment company;

(12) a local mutual aid association;

(13) a local mutual burial association;

(14) an association exempt under Section 887.102;

(15) a nonprofit hospital, medical, or dental service corporation, including a corporation subject to Chapter 842;

(16) a county mutual insurance company;

(17) a farm mutual insurance company;

(18) a risk retention group;

(19) a purchasing group;

(20) an eligible surplus lines insurer; and

(21) except as provided by Section 542.053(b), a guaranty association operating under Chapter 462 or 463.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.007, eff. April 1, 2009.

Sec. 542.053. EXCEPTION. (a) This subchapter does not apply to:

(1) workers' compensation insurance;

(2) mortgage guaranty insurance;

(3) title insurance;

(4) fidelity, surety, or guaranty bonds;

(5) marine insurance as defined by Section 1807.001; or

(6) a guaranty association created and operating under Chapter 2602.

(b) A guaranty association operating under Chapter 462 or 463 is not subject to the damage provisions of Section 542.060.

(c) This subchapter does not apply to a health maintenance organization except as provided by Section 1271.005(c).

(d) This subchapter does not apply to a claim governed by Subchapter C, Chapter 1301.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.009(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.008, eff. April 1, 2009.

Sec. 542.054. LIBERAL CONSTRUCTION. This subchapter shall be liberally construed to promote the prompt payment of insurance claims.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.055. RECEIPT OF NOTICE OF CLAIM. (a) Not later than the 15th day or, if the insurer is an eligible surplus lines insurer, the 30th business day after the date an insurer receives notice of a claim, the insurer shall:

(1) acknowledge receipt of the claim;

(2) commence any investigation of the claim; and

(3) request from the claimant all items, statements, and forms that the insurer reasonably believes, at that time, will be required from the claimant.

(b) An insurer may make additional requests for information if during the investigation of the claim the additional requests are necessary.

(c) If the acknowledgment of receipt of a claim is not made in writing, the insurer shall make a record of the date, manner, and content of the acknowledgment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.056. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM. (a) Except as provided by Subsection (b) or (d), an insurer shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 15th business day after the date the insurer receives all items, statements, and forms required by the insurer to secure final proof of loss.

(b) If an insurer has a reasonable basis to believe that a loss resulted from arson, the insurer shall notify the claimant in writing of the acceptance or rejection of the claim not later than the 30th day after the date the insurer receives all items, statements, and forms required by the insurer.

(c) If the insurer rejects the claim, the notice required by Subsection (a) or (b) must state the reasons for the rejection.

(d) If the insurer is unable to accept or reject the claim within the period specified by Subsection (a) or (b), the insurer, within that same period, shall notify the claimant of the reasons that the insurer needs additional time. The insurer shall accept or reject the claim not later than the 45th day after the date the insurer notifies a claimant under this subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.057. PAYMENT OF CLAIM. (a) Except as otherwise provided by this section, if an insurer notifies a claimant under Section 542.056 that the insurer will pay a claim or part of a claim, the insurer shall pay the claim not later than the fifth business day after the date notice is made.

(b) If payment of the claim or part of the claim is conditioned on the performance of an act by the claimant, the insurer shall pay the claim not later than the fifth business day after the date the act is performed.

(c) If the insurer is an eligible surplus lines insurer, the insurer shall pay the claim not later than the 20th business day after the notice or the date the act is performed, as applicable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.058. DELAY IN PAYMENT OF CLAIM. (a) Except as otherwise provided, if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 542.055, delays payment of the claim for a period exceeding the period specified by other applicable statutes or, if other statutes do not specify a period, for more than 60 days, the insurer shall pay damages and other items as provided by Section 542.060.

(b) Subsection (a) does not apply in a case in which it is found as a result of arbitration or litigation that a claim received by an insurer is invalid and should not be paid by the insurer.

(c) A life insurer that receives notice of an adverse, bona fide claim to all or part of the proceeds of the policy before the applicable payment deadline under Subsection (a) shall pay the claim or properly file an interpleader action and tender the benefits into the registry of the court not later than the 90th day after the date the insurer receives all items, statements, and forms reasonably requested and required under Section 542.055. A life insurer that delays payment of the claim or the filing of an interpleader and tender of policy proceeds for more than 90 days shall pay damages and other items as provided by Section 542.060 until the claim is paid or an interpleader is properly filed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 833 (S.B. 1812), Sec. 1, eff.

June 19, 2009.

Sec. 542.059. EXTENSION OF DEADLINES. (a) A court may grant a request by a guaranty association for an extension of the periods under this subchapter on a showing of good cause and after reasonable notice to policyholders.

(b) In the event of a weather-related catastrophe or major natural disaster, as defined by the commissioner, the claim-handling deadlines imposed under this subchapter are extended for an additional 15 days.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.060. LIABILITY FOR VIOLATION OF SUBCHAPTER. (a) Except as provided by Subsection (c), if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy or the beneficiary making the claim under the policy, in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law.

(b) If a suit is filed, the attorney's fees shall be taxed as part of the costs in the case.

(c) In an action to which Chapter 542A applies, if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under Section 304.003, Finance Code, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law. Interest awarded under this subsection as damages accrues beginning on the date the claim was required to be paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 2, eff. September 1, 2017.

Sec. 542.061. REMEDIES NOT EXCLUSIVE. The remedies provided by this subchapter are in addition to any other remedy or procedure provided by law or at common law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. PROVIDING CERTAIN CLAIMS INFORMATION ON REQUEST

Sec. 542.101. REQUEST BY NAMED INSURED UNDER LIABILITY INSURANCE POLICY. (a) In this section, "liability insurance" means:

(1) general liability insurance;

(2) professional liability insurance, including medical professional liability insurance;

(3) commercial automobile liability insurance; and

(4) the liability portion of commercial multiperil insurance.

(b) On written request of a named insured under a liability insurance policy, the insurer that wrote the policy shall provide to the insured information relating to the disposition of a claim filed under the policy. The information must include:

(1) the name of each claimant;

(2) details relating to:

(A) the amount paid on the claim;

(B) settlement of the claim; or

(C) judgment on the claim;

(3) details as to how the claim, settlement, or judgment is to be paid; and

(4) any other information required by rule of the commissioner that the commissioner considers necessary to adequately inform an insured with regard to any claim under a liability insurance policy.

(c) A request for information under this section must be transmitted to the insurer not later than six months after the date of disposition of the claim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.102. REQUEST BY POLICYHOLDER UNDER PROPERTY AND CASUALTY INSURANCE POLICY. (a) On written request of a policyholder, an insurer that writes property and casualty insurance in this state shall provide the policyholder with a list of claims charged against the policy and payments made on each claim.

(b) This section does not apply to a workers' compensation insurance policy subject to Section 2051.151.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.009, eff. April 1, 2009.

Sec. 542.103. DEADLINE FOR PROVIDING REQUESTED INFORMATION. (a) An insurer shall provide the information requested under this subchapter in writing not later than the 30th day after the date the insurer receives the request for the information.

(b) For purposes of this section, information is considered to be provided on the date the information is deposited with the United States Postal Service or is personally delivered.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.104. RULES. The commissioner may by rule prescribe forms for requesting information and for providing requested information under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C-1. REQUEST FOR CLAIMS INFORMATION BY CERTAIN OFFICIALS

Sec. 542.131. REQUEST BY CERTAIN OFFICIALS ENGAGED IN CRIMINAL INVESTIGATION. (a) This section applies only to a claim for a burglary or robbery loss or a death claim seeking life insurance proceeds that is filed with an insurance company on or after September 1, 2001.

(b) In the course of a criminal investigation and subject to

Subsection (c), the state fire marshal, the fire marshal of a political subdivision of this state, the chief of a fire department in this state, a chief of police of a municipality in this state, or a sheriff in this state may request in writing that an insurance company investigating a claimed burglary or robbery loss or a death claim seeking life insurance proceeds release information in the company's possession that relates to that claimed loss. The company shall release the information to any official authorized to request the information under this subsection if the company has reason to believe that the insurance claim is false or fraudulent.

(c) An official who requests information under this section may not request anything other than:

(1) an insurance policy relevant to an insurance claim under investigation and the application for that policy;

(2) policy premium payment records;

(3) the history of the insured's previous claims; and

(4) material relating to the investigation of the insurance claim, including:

(A) statements of any person;

(B) proof of loss; or

(C) other relevant evidence.

(d) This section does not authorize a public official or agency to adopt or require any form of periodic report by an insurance company.

(e) In the absence of fraud or malice, an insurance company or a person who releases information on behalf of an insurance company is not liable for damages in a civil action or subject to criminal prosecution for an oral or written statement made, or any other action taken, that relates to the information required to be released under this section.

(f) An official or department employee receiving information under this section shall maintain the confidentiality of the information until the information is required to be released during a criminal or civil proceeding.

(g) An insurance company or the company's representative may not intentionally refuse to release to an official described by Subsection (b) the information required to be released to that official under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1D.001,

eff. April 1, 2009.

SUBCHAPTER D. NOTICE OF SETTLEMENT OF CLAIM UNDER CASUALTY INSURANCE POLICY

Sec. 542.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the settlement of a claim under a casualty insurance policy that is delivered, issued for delivery, or renewed in this state, including a policy written by:

(1) a county mutual insurance company;

(2) a Lloyd's plan;

(3) an eligible surplus lines insurer; or

(4) a reciprocal or interinsurance exchange.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.152. EXCEPTION. This subchapter does not apply to:

(1) a casualty insurance policy that requires the insured's consent to settle a claim against the insured;

(2) fidelity, surety, or guaranty bonds; or

(3) marine insurance as defined by Section 1807.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.010(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.010, eff. April 1, 2009.

Sec. 542.153. NOTICE REQUIRED. (a) Not later than the 10th day after the date an initial offer to settle a claim against a named insured under a casualty insurance policy issued to the insured is made, the insurer shall notify the insured in writing of the offer.

(b) Not later than the 30th day after the date a claim against a named insured under a casualty insurance policy issued to the insured is settled, the insurer shall notify the insured in writing of the settlement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.154. RULES. The commissioner may adopt rules to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER E. RECOVERY OF DEDUCTIBLE FROM THIRD PARTIES UNDER CERTAIN AUTOMOBILE INSURANCE POLICIES

Sec. 542.201. PURPOSE. This subchapter is intended to encourage insurers to take appropriate and necessary steps to collect from third parties or the insurers of the third parties.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.202. DEFINITION. In this subchapter, "action" includes taking various actions such as reasonable and diligent collection efforts, mediation, arbitration, and litigation against a responsible third party or the third party's insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.203. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any insurer that delivers, issues for delivery, or renews in this state a private passenger automobile insurance policy, including a reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.204. ACTION TO RECOVER DEDUCTIBLE. (a) Notwithstanding any other provision of this code and except as provided by Subsection (b), if an insurer is liable to an insured for a claim that is subject to a deductible payable by the insured and a third party may be liable to the insurer or the insured for the amount of the deductible, the insurer shall:

(1) take action to recover the deductible against the third

party not later than the first anniversary of the date the insured's claim is paid; or

(2) pay the amount of the deductible to the insured.

(b) An insurer is not required to take action or pay the amount of the deductible as required by Subsection (a) if, not later than the earlier of the first anniversary of the date the insured's claim is paid or the 90th day before the date the statute of limitations for a negligence action expires, the insurer:

(1) notifies the insured in writing that the insurer does not intend to take further collection actions against the third party; and

(2) authorizes the insured to take further collection actions.

(c) This section applies regardless of whether the third party who may be liable for the amount of the deductible is insured or uninsured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 542.205. ENFORCEMENT; RULES. The commissioner may enforce this subchapter and adopt and enforce reasonable rules necessary to accomplish the purposes of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER F. WATER DAMAGE CLAIMS

Sec. 542.251. PURPOSES. The purposes of this subchapter are to:

(1) provide for the prompt, efficient, and effective handling and processing of water damage claims filed under residential property insurance policies, including claims involving losses due to mold;

(2) reduce the confusion and inconvenience policyholders experience in filing and resolving water damage claims filed under residential property insurance policies, including claims involving losses due to mold; and

(3) reduce claim costs and premiums for residential property insurance issued in this state.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.011(a), eff. September 1, 2005.

Sec. 542.252. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any insurer that handles or processes water damage claims filed under residential property insurance policies.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.011(a), eff. September 1, 2005.

Sec. 542.253. RULES. (a) The commissioner may adopt rules that identify the types of water damage claims that require more prompt, efficient, and effective processing and handling than the processing and handling required under Subchapter B.

(b) The commissioner by rule may regulate the following aspects of water damage claims:

(1) required notice;

(2) acceptance and rejection of a claim;

(3) claim handling and processing procedures and time frames;

(4) claim investigation requirements, procedures, and time frames;

(5) settlement of claims; and

(6) any other area of claim processing, handling, and response determined to be relevant and necessary by the commissioner.

(c) A rule adopted under this section supersedes the minimum standards described by Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.011(a), eff. September 1, 2005.

SUBCHAPTER G. INSURER'S RECOVERY FROM UNINSURED THIRD PARTY

Sec. 542.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any insurer that delivers, issues for delivery, or renews a private passenger automobile insurance policy in this state, including a county mutual, a reciprocal or interinsurance exchange, or a Lloyd's plan.

Added by Acts 2005, 79th Leg., Ch. 1074 (H.B. 1572), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21.79H and amended by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.020(a), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21.79H and amended by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.020(a), eff. September 1, 2007.

Sec. 542.302. RECOVERY IN SUIT OR OTHER ACTION. An insurer that brings suit or takes other action described by Section 542.202 against a responsible third party relating to a loss that is covered under a private passenger automobile insurance policy issued by the insurer and for which the responsible third party is uninsured is entitled to recover, in addition to payments made by the insurer or insured, the costs of bringing the suit or taking the action, including reasonable attorney's fees and court costs.

Added by Acts 2005, 79th Leg., Ch. 1074 (H.B. 1572), Sec. 1, eff. September 1, 2005.
Redesignated from Insurance Code - Not Codified, Art/Sec 21.79H and amended by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.020(a), eff. September 1, 2007.
Redesignated from Insurance Code - Not Codified, Art/Sec 21.79H and amended by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.020(a), eff. September 1, 2007.

CHAPTER 542A. CERTAIN CONSUMER ACTIONS RELATED TO CLAIMS FOR PROPERTY DAMAGE

Sec. 542A.001. DEFINITIONS. In this chapter:

(1) "Agent" means an employee, agent, representative, or adjuster who performs any act on behalf of an insurer.

(2) "Claim" means a first-party claim that:

(A) is made by an insured under an insurance policy providing coverage for real property or improvements to real property;

(B) must be paid by the insurer directly to the insured; and

(C) arises from damage to or loss of covered property caused, wholly or partly, by forces of nature, including an earthquake or earth tremor, a wildfire, a flood, a tornado, lightning, a hurricane, hail, wind, a snowstorm, or a rainstorm.

(3) "Claimant" means a person making a claim.

(4) "Insurer" means a corporation, association, partnership, or individual, other than the Texas Windstorm Insurance Association, engaged as a principal in the business of insurance and authorized or eligible to write property insurance in this state, including:

(A) an insurance company;

(B) a reciprocal or interinsurance exchange;

(C) a mutual insurance company;

(D) a capital stock insurance company;

(E) a county mutual insurance company;

(F) a farm mutual insurance company;

(G) a Lloyd's plan;

(H) an eligible surplus lines insurer; or

(I) the FAIR Plan Association, unless a claim-related dispute resolution procedure is available to policyholders under Chapter 2211.

(5) "Person" means a corporation, association, partnership, or other legal entity or individual.

Added by Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 3, eff. September 1, 2017.

Sec. 542A.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to an action on a claim against an insurer or agent, including:

(1) an action alleging a breach of contract;

(2) an action alleging negligence, misrepresentation, fraud, or breach of a common law duty; or

(3) an action brought under:

(A) Subchapter D, Chapter 541;

(B) Subchapter B, Chapter 542; or

(C) Subchapter E, Chapter 17, Business & Commerce Code.

(b) This chapter does not apply to an action against the Texas Windstorm Insurance Association or to an action relating to or

arising from a policy ceded to an insurer by the Texas Windstorm Insurance Association under Subchapter O, Chapter 2210. This chapter applies to an action that relates to or arises from a policy renewed under Section 2210.703.

Added by Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 3, eff. September 1, 2017.

Sec. 542A.003. NOTICE REQUIRED. (a) In addition to any other notice required by law or the applicable insurance policy, not later than the 61st day before the date a claimant files an action to which this chapter applies in which the claimant seeks damages from any person, the claimant must give written notice to the person in accordance with this section as a prerequisite to filing the action.

(b) The notice required under this section must provide:

(1) a statement of the acts or omissions giving rise to the claim;

(2) the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property; and

(3) the amount of reasonable and necessary attorney's fees incurred by the claimant, calculated by multiplying the number of hours actually worked by the claimant's attorney, as of the date the notice is given and as reflected in contemporaneously kept time records, by an hourly rate that is customary for similar legal services.

(c) If an attorney or other representative gives the notice required under this section on behalf of a claimant, the attorney or representative shall:

(1) provide a copy of the notice to the claimant; and

(2) include in the notice a statement that a copy of the notice was provided to the claimant.

(d) A presuit notice under Subsection (a) is not required if giving notice is impracticable because:

(1) the claimant has a reasonable basis for believing there is insufficient time to give the presuit notice before the limitations period will expire; or

(2) the action is asserted as a counterclaim.

(e) To ensure that a claimant is not prejudiced by having given the presuit notice required by this chapter, a court shall dismiss

without prejudice an action relating to the claim for which notice is given by the claimant and commenced:

(1) before the 61st day after the date the claimant provides presuit notice under Subsection (a);

(2) by a person to whom presuit notice is given under Subsection (a); and

(3) against the claimant giving the notice.

(f) A claimant who gives notice in accordance with this chapter is not relieved of the obligation to give notice under any other applicable law. Notice given under this chapter may be combined with notice given under any other law.

(g) Notice given under this chapter is admissible in evidence in a civil action or alternative dispute resolution proceeding relating to the claim for which the notice is given.

(h) The giving of a notice under this chapter does not provide a basis for limiting the evidence of attorney's fees, damage, or loss a claimant may offer at trial.

Added by Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 3, eff. September 1, 2017.

Sec. 542A.004. INSPECTION. Not later than the 30th day after receiving a presuit notice given under Section 542A.003(a), a person to whom notice is given may send a written request to the claimant to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim. If reasonably possible, the inspection, photography, and evaluation must be completed not later than the 60th day after the date the person receives the presuit notice.

Added by Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 3, eff. September 1, 2017.

Sec. 542A.005. ABATEMENT. (a) In addition to taking any other act allowed by contract or by any other law, a person against whom an action to which this chapter applies is pending may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the action is pending if the person:

(1) did not receive a presuit notice complying with Section 542A.003; or

(2) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(b) The court shall abate the action if the court finds that the person filing the plea in abatement:

(1) did not, for any reason, receive a presuit notice complying with Section 542A.003; or

(2) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(c) An action is automatically abated without a court order beginning on the 11th day after the date a plea in abatement is filed if the plea:

(1) is verified and alleges that the person against whom the action is pending:

(A) did not receive a presuit notice complying with Section 542A.003; or

(B) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date the plea in abatement is filed.

(d) An affidavit described by Subsection (c)(2) controverting whether the person against whom the action is pending received a presuit notice complying with Section 542A.003 must:

(1) include as an attachment a copy of the document the claimant sent to give notice of the claimant's action; and

(2) state the date on which the notice was given.

(e) An abatement under this section continues until the later of:

(1) the 60th day after the date a notice complying with Section 542A.003 is given; or

(2) the 15th day after the date of the requested inspection, photographing, or evaluating of the property is completed.

(f) If an action is abated under this section, a court may not compel participation in an alternative dispute resolution proceeding

until after the abatement period provided by Subsection (e) has expired.

Added by Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 3, eff. September 1, 2017.

Sec. 542A.006. ACTION AGAINST AGENT; INSURER ELECTION OF LEGAL RESPONSIBILITY. (a) Except as provided by Subsection (h), in an action to which this chapter applies, an insurer that is a party to the action may elect to accept whatever liability an agent might have to the claimant for the agent's acts or omissions related to the claim by providing written notice to the claimant.

(b) If an insurer makes an election under Subsection (a) before a claimant files an action to which this chapter applies, no cause of action exists against the agent related to the claimant's claim, and, if the claimant files an action against the agent, the court shall dismiss that action with prejudice.

(c) If a claimant files an action to which this chapter applies against an agent and the insurer thereafter makes an election under Subsection (a) with respect to the agent, the court shall dismiss the action against the agent with prejudice.

(d) If an insurer makes an election under Subsection (a) but, after having been served with a notice of intent to take a deposition of the agent who is the subject of the election, fails to make that agent available at a reasonable time and place to give deposition testimony, Sections 542A.007(a), (b), and (c) do not apply to the action with respect to which the insurer made the election unless the court finds that:

(1) it is impracticable for the insurer to make the agent available due to a change in circumstances arising after the insurer made the election under Subsection (a);

(2) the agent whose liability was assumed would not have been a proper party to the action; or

(3) obtaining the agent's deposition testimony is not warranted under the law.

(e) An insurer's election under Subsection (a) is ineffective to obtain the dismissal of an action against an agent if the insurer's election is conditioned in a way that will result in the insurer avoiding liability for any claim-related damage caused to the

claimant by the agent's acts or omissions.

(f) An insurer may not revoke, and a court may not nullify, an insurer's election under Subsection (a).

(g) If an insurer makes an election under Subsection (a) and the agent is not a party to the action, evidence of the agent's acts or omissions may be offered at trial and, if supported by sufficient evidence, the trier of fact may be asked to resolve fact issues as if the agent were a defendant, and a judgment against the insurer must include any liability that would have been assessed against the agent. To the extent there is a conflict between this subsection and Chapter 33, Civil Practice and Remedies Code, this subsection prevails.

(h) If an insurer is in receivership at the time the claimant commences an action against the insurer, the insurer may not make an election under Subsection (a), and the court shall disregard any prior election made by the insurer relating to the claimant's claim.

(i) In an action tried by a jury, an insurer's election under Subsection (a) may not be made known to the jury.

Added by Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 3, eff. September 1, 2017.

Sec. 542A.007. AWARD OF ATTORNEY'S FEES. (a) Except as otherwise provided by this section, the amount of attorney's fees that may be awarded to a claimant in an action to which this chapter applies is the lesser of:

(1) the amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action;

(2) the amount of attorney's fees that may be awarded to the claimant under other applicable law; or

(3) the amount calculated by:

(A) dividing the amount to be awarded in the judgment to the claimant for the claimant's claim under the insurance policy for damage to or loss of covered property by the amount alleged to be owed on the claim for that damage or loss in a notice given under this chapter; and

(B) multiplying the amount calculated under Paragraph (A) by the total amount of reasonable and necessary attorney's fees

supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action.

(b) Except as provided by Subsection (d), the court shall award to the claimant the full amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action if the amount calculated under Subsection (a)(3)(A) is:

(1) greater than or equal to 0.8;

(2) not limited by this section or another law; and

(3) otherwise recoverable under law.

(c) The court may not award attorney's fees to the claimant if the amount calculated under Subsection (a)(3)(A) is less than 0.2.

(d) If a defendant in an action to which this chapter applies pleads and proves that the defendant was entitled to but was not given a presuit notice stating the specific amount alleged to be owed by the insurer under Section 542A.003(b)(2) at least 61 days before the date the action was filed by the claimant, the court may not award to the claimant any attorney's fees incurred after the date the defendant files the pleading with the court. A pleading under this subsection must be filed not later than the 30th day after the date the defendant files an original answer in the court in which the action is pending.

Added by Acts 2017, 85th Leg., R.S., Ch. 151 (H.B. 1774), Sec. 3, eff. September 1, 2017.

CHAPTER 543. PROHIBITED PRACTICES RELATED TO POLICY OR CERTIFICATE OF MEMBERSHIP

SUBCHAPTER A. PROHIBITIONS

Sec. 543.001. MISREPRESENTATION PROHIBITED. (a) In this section, "life, health, or casualty insurer" includes a corporation operating on a cooperative or assessment plan, a mutual insurance company, a fraternal benefit society, and any other society or association authorized to issue an insurance policy in this state.

(b) A life, health, or casualty insurer, an officer, director, agent, or representative of that insurer, or any other person, corporation, or copartnership may not:

(1) issue, circulate, or cause or permit to be issued or

circulated any statement, including an illustration or estimate, that misrepresents:

(A) the terms of a policy or certificate of membership issued by a life, health, or casualty insurer;

(B) other benefits or advantages provided by the policy or certificate; or

(C) the dividends or share of surplus to be received on the policy or certificate;

(2) use a name or title of a policy, policy class, certificate of membership, or certificate class that misrepresents the policy, certificate, or class; or

(3) make a misleading representation or incomplete comparison of a policy or certificate of membership to an insured or member for the purpose of inducing or tending to induce the insured or member to forfeit, surrender, or allow the lapse of the insurance or membership.

(c) The commissioner may adopt and enforce reasonable rules as provided by Subchapter I, Chapter 541, to accomplish the purposes of Subsection (b)(1) as those purposes relate to life insurance companies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 543.002. CONTRACT EXPRESSED IN POLICY ONLY. An insurer or an agent of an insurer may not make an insurance contract or an agreement relating to an insurance contract other than as expressed in the policy issued in connection with the contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 543.003. THING OF VALUE NOT SPECIFIED IN POLICY. An insurer or an officer, agent, or representative of an insurer may not:

(1) directly or indirectly pay, allow, or give or offer to pay, allow, or give as an inducement to insurance a thing of value or other inducement that is not specified in the policy, including:

(A) a rebate of premium payable on the policy;

(B) a special favor or advantage in the dividends or other benefits to accrue on the policy; or

(C) paid employment or a contract for service; or

(2) give, sell, or purchase or offer to give, sell, or purchase as an inducement to insurance or in connection with insurance a thing of value that is not specified in the policy, including:

(A) stocks, bonds, or other securities of an insurer or other corporation, association, or partnership; or

(B) dividends or profits to accrue on the stocks, bonds, or other securities of an insurer or other corporation, association, or partnership.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 543.004. SHARING OF OR PARTICIPATION IN SPECIAL FUND PROHIBITED. An insurer or an officer, agent, or representative of an insurer may not issue a policy that contains a special or board contract or similar provision by the terms of which the policy will share or participate in a special fund derived from a tax or a charge against any portion of the premium on another policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. ENFORCEMENT; PENALTY

Sec. 543.051. SUSPENSION OR REVOCATION OF CERTIFICATE, CHARTER, PERMIT, OR LICENSE. (a) On a hearing, the commissioner may suspend or revoke the certificate, charter, permit, or license to engage in the business of insurance of A society, association, corporation, or person that violates Subchapter A.

(b) The commissioner must give 10 days' notice of the hearing by certified mail to the society, association, corporation, or person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 543.052. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Subchapter A.

(b) An offense under this section is a Class A misdemeanor.

(c) The penalty provided by this section is in addition to any

other penalty specifically provided by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 544. PROHIBITED DISCRIMINATION

SUBCHAPTER A. GENERAL PROHIBITIONS AGAINST DISCRIMINATION BY AN INSURER OR HEALTH MAINTENANCE ORGANIZATION

Sec. 544.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies to:

(1) any legal entity engaged in the business of insurance in this state, including:

(A) a capital stock insurance company;

(B) a mutual insurance company;

(C) a title insurance company;

(D) a fraternal benefit society;

(E) a local mutual aid association;

(F) a statewide mutual assessment company;

(G) a county mutual insurance company;

(H) a Lloyd's plan;

(I) a reciprocal or interinsurance exchange;

(J) a stipulated premium company;

(K) a group hospital service corporation;

(L) a farm mutual insurance company;

(M) a risk retention group;

(N) an eligible surplus lines insurer; and

(O) an agent, broker, or adjuster; and

(2) a health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 4, eff. September 1, 2021.

Sec. 544.002. UNFAIR DISCRIMINATION. (a) A person may not refuse to insure or provide coverage to an individual, refuse to continue to insure or provide coverage to an individual, limit the amount, extent, or kind of coverage available for an individual, or charge an individual a rate that is different from the rate charged to other individuals for the same coverage because of the

individual's:

(1) race, color, religion, or national origin;

(2) age, gender, marital status, or geographic location; or

(3) disability or partial disability.

(b) Subsection (a)(2) does not prohibit an insurer or health maintenance organization from considering marital status in defining persons eligible for dependent benefits.

(c) Subsection (a) does not prevent requirements to provide title insurance coverage relating to possible community, homestead, or other marital rights in land.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.003. EXCEPTIONS. (a) A person does not violate Section 544.002 by providing coverage only to persons who are required to obtain or maintain membership or qualification for membership in a club, group, or organization to be eligible for coverage if:

(1) the requirements are uniform requirements of the insurer or health maintenance organization as a condition of providing coverage and are applied uniformly throughout this state; and

(2) the person does not engage in an act prohibited under Section 544.002 against a qualified member, except as provided by this section.

(b) A person does not violate Section 544.002(a)(2) or (3) if the refusal, limitation, or charge is based on sound underwriting or actuarial principles reasonably related to actual or anticipated loss experience. For the purposes of this subsection, a refusal, limitation, or charge relating to title insurance is based on sound actuarial principles if the action is based on an examination of title or on closing the transaction.

(c) A person does not violate Section 544.002 if the refusal, limitation, or charge is required or authorized by law or a regulatory mandate.

(d) A person does not violate Section 544.002 if policyholders or enrollees with similar expense factors but different loss exposures are charged different premiums or rates under a mass

marketing plan. The commissioner by rule shall define selected groups eligible for issuance of policies or evidences of coverage under a mass marketing plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.004. ENFORCEMENT ACTIONS. (a) A health maintenance organization or legal entity engaged in the business of insurance that is found to be in violation of or to have failed to comply with this subchapter is subject to the sanctions provided by Chapter 82 or administrative penalties authorized under Chapter 84.

(b) In addition to the procedures provided by Subsection (a), the commissioner may use the cease and desist procedures authorized by Chapter 83.

(c) It is not a defense to an action of the commissioner under this section that the contract giving rise to the alleged violation was entered into before August 28, 1995.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.012(a), eff. September 1, 2005.

SUBCHAPTER B. OTHER GENERAL PROHIBITIONS AGAINST DISCRIMINATION BY INSURERS

Sec. 544.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any individual, corporation, association, partnership, or other legal entity engaged in the business of insurance, including:

(1) a fraternal benefit society;
(2) a county mutual insurance company;
(3) a Lloyd's plan;
(4) a reciprocal or interinsurance exchange;
(5) a farm mutual insurance company; and
(6) an agent, broker, or adjuster.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 5, eff. September 1, 2021.

Sec. 544.052. UNFAIR DISCRIMINATION. A person may not in any manner engage in unfair discrimination or permit unfair discrimination between individuals of the same class and of essentially the same hazard, including unfair discrimination in:

(1) the amount of premium, policy fees, or rates charged for a policy or contract of insurance;

(2) the benefits payable under a policy or contract of insurance; or

(3) any of the terms or conditions of a policy or contract of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.053. EXCEPTIONS. (a) A person does not violate Section 544.052 if the refusal to insure or to continue to insure, the limiting of the amount, extent, or kind of coverage, or the charging of an individual a rate that is different from the rate charged another individual for the same coverage is based on sound actuarial principles.

(b) A person does not violate Section 544.052 by providing insurance coverage only to persons who are required to obtain or maintain membership or qualification for membership in a club, group, or organization to be eligible for coverage if:

(1) the requirements are uniform requirements of the insurer as a condition of providing insurance and are applied uniformly throughout this state; and

(2) the person does not engage in an act prohibited under Section 544.052 against a qualified member, except as provided by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.054. JUDICIAL ACTION; AWARD BY COURT. (a) A person who has sustained economic damages as the result of a violation of Section 544.052 may maintain only in a Travis County district court an action against the person who violated that section.

(b) An action under this section must be commenced on or before

the second anniversary of:

(1) the date on which the plaintiff was denied insurance or the unfair act occurred; or

(2) the date the plaintiff, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair act.

(c) A plaintiff who prevails in an action under this section may obtain:

(1) the amount of economic damages, court costs, and attorney's fees; and

(2) an order enjoining the violation.

(d) Court costs under Subsection (c) may include any reasonable and necessary expert witness fees.

(e) If the trier of fact finds that the defendant knowingly committed an act prohibited by Section 544.052, the court may award a civil penalty in an amount of not more than $25,000 for each claimant.

(f) The court shall award the defendant reasonable and necessary attorney's fees if the court finds that an action under this section was:

(1) groundless; and

(2) brought in bad faith or for the purpose of harassment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.013(a), eff. September 1, 2005.

SUBCHAPTER C. ENGLISH FLUENCY

Sec. 544.101. DEFINITIONS. In this subchapter:

(1) "Health benefit plan issuer" means an insurance company, association, organization, group hospital service corporation, or health maintenance organization that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides health insurance or health care benefits. The term includes:

(A) a life, health, and accident insurance company operating under Chapter 841 or 982;

(B) a general casualty insurance company operating

under Chapter 861;

(C) a fraternal benefit society operating under Chapter 885;

(D) a mutual life insurance company operating under Chapter 882;

(E) a local mutual aid association operating under Chapter 886;

(F) a statewide mutual assessment company operating under Chapter 881;

(G) a mutual assessment company or mutual assessment life, health, and accident association operating under Chapter 887;

(H) a mutual insurance company operating under Chapter 883 that writes coverage other than life insurance;

(I) a Lloyd's plan operating under Chapter 941;

(J) a reciprocal exchange operating under Chapter 942; and

(K) a stipulated premium company operating under Chapter 884.

(2) "Underwriting guideline" means a written, electronic, or oral rule, standard, marketing decision, or practice that is used by a health benefit plan issuer or an agent of a health benefit plan issuer to examine, bind, accept, reject, renew or refuse to renew, cancel, or limit coverages available to classes of consumers or charge a different rate for the same coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any health insurance policy, agreement, contract, or evidence of coverage delivered or issued for delivery by a health benefit plan issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.103. PROHIBITION ON USE OF CERTAIN GUIDELINES. (a) A health benefit plan issuer may not use an underwriting guideline that is based on:

(1) the ability of an insured or enrollee or an applicant for insurance coverage or health care benefits to speak English

fluently; or

(2) the literacy in English of the insured, enrollee, or applicant.

(b) An applicant has the burden of proof to establish a violation of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER D. FAMILY VIOLENCE

Sec. 544.151. DEFINITION. In this subchapter, "family violence" means an act between individuals who reside together or resided together in which one individual:

(1) wilfully attempts to cause bodily injury, or wilfully or wantonly causes bodily injury, to another;

(2) wilfully by physical threat places another in fear of imminent bodily injury;

(3) engages in the act of sexual intercourse with a minor under 16 years of age who is not the spouse of the individual; or

(4) engages, with the intent to arouse or to satisfy the sexual desires of the individual, a minor under 16 years of age who is not the spouse of the individual, or both the individual and the minor, in any lewd fondling or touching of the individual or the minor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.152. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to:

(1) a life insurer that delivers, issues for delivery, or renews a life insurance contract or policy in this state, including a group contract, policy, or certificate of life insurance; and

(2) a health benefit plan issuer that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a health benefit plan issuer under Chapter 1501;

(F) a health maintenance organization operating under Chapter 843;

(G) an employer under a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002), or an analogous benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(H) an issuer of a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss); and

(I) an approved nonprofit health corporation that holds a certificate of authority issued under Chapter 844.

(b) This subchapter does not apply to the issuer of:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to liability insurance;

(E) only for limited benefits; or

(F) only for dental or vision care;

(2) hospital confinement indemnity coverage;

(3) a credit insurance policy;

(4) workers' compensation insurance coverage;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Subsection (a)(2).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.153. PROHIBITIONS. (a) A health benefit plan issuer

or life insurer may not, because of an individual's status as a victim of family violence:

(1) deny coverage to the individual;

(2) refuse to renew the individual's coverage;

(3) cancel the individual's coverage;

(4) limit the amount, extent, or kind of coverage available to the individual; or

(5) charge the individual or a group to which the individual belongs a rate that is different from the rate charged to other individuals or groups, respectively, for the same coverage.

(b) A health benefit plan issuer or life insurer may not, as a part of an application for coverage, require an applicant to reveal whether the applicant has been or may become a victim of family violence.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.154. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) Except as provided by Subsection (b), a health benefit plan issuer, life insurer, or person employed by or under contract with a health benefit plan issuer or life insurer may not release information relating to the status as a victim of family violence of an individual who is clearly a victim of family violence, including:

(1) information about specific acts of family violence directed at the individual;

(2) the individual's address or telephone number at home or at work; and

(3) information about the individual's employment, associations, family membership, or relationships.

(b) A health benefit plan issuer or life insurer may release information to which Subsection (a) applies only:

(1) to the individual;

(2) to another individual designated in writing by the individual;

(3) to a licensed physician designated by the individual;

(4) to a physician or other health care provider for the provision of health care services;

(5) to an attorney who needs the information to effectively represent the issuer or insurer, if the issuer or insurer notifies

the attorney of the requirements of this subchapter and requests that the attorney exercise due diligence to protect the information consistent with the attorney's obligation to represent the issuer or insurer;

(6) to an individual covered under, or the owner of, the health benefit plan or life insurance contract or policy that contains information about status as a victim of family violence;

(7) to an individual or entity to whom the commissioner considers the release appropriate;

(8) as required by other law or an order of the commissioner or a court; or

(9) as necessary for a valid business purpose if:

(A) the information cannot be segregated from other information about the individual without undue hardship to the issuer or insurer;

(B) the recipient of the information is:

(i) a reinsurer that seeks to indemnify or indemnifies all or part of a health benefit plan or life insurance contract or policy covering the individual if the reinsurer cannot underwrite or satisfy obligations under the reinsurance agreement without the release of the information;

(ii) a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the issuer or insurer;

(iii) medical or claims personnel under contract with the issuer or insurer, including a parent or affiliate company under a service agreement with the issuer or insurer, if the release of the information is necessary to process an application, to perform duties under the health benefit plan or life insurance contract or policy, or to protect the safety or privacy of a victim of family violence; or

(iv) an entity with which the issuer transacts business if the information is only the address or telephone number of the individual and the entity cannot transact the business without the address or telephone number; and

(C) the recipient of the information agrees in writing to be subject to the requirements of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.155. UNDERWRITING CRITERIA. Notwithstanding any other provision of this subchapter, a health benefit plan issuer or life insurer may underwrite a risk on the basis of an individual's physical or mental condition regardless of the underlying cause of the condition or on the basis of any underwriting criteria not prohibited by this code or another insurance law of this state or a rule adopted under this code or another insurance law of this state if the issuer or insurer consistently applies the criteria and does not merely use the criteria as a pretext to evade the application of Section 544.153.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.156. HEALTH BENEFIT PLAN ISSUER OR LIFE INSURER NOT LIABLE FOR DEATH OR BODILY INJURY. A health benefit plan issuer or life insurer that delivers, issues for delivery, or renews a health benefit plan or a life insurance policy or contract for an individual who has been or may become a victim of family violence may not be held civilly or criminally liable for the death of or bodily injuries incurred by that individual as a result of family violence.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.157. RIGHT TO CONTINUED COVERAGE UNAFFECTED. This subchapter does not affect the right of an individual to continued coverage under Subchapter G, Chapter 1251.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.158. UNFAIR OR DECEPTIVE ACT OR PRACTICE. A violation of this subchapter is an unfair or deceptive act or practice under Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER E. FIBROCYSTIC BREAST CONDITION

Sec. 544.201. DEFINITION. In this subchapter, "health benefit

plan issuer" means an insurer, a group hospital service corporation operating under Chapter 842, or a health maintenance organization operating under Chapter 843 that delivers or issues for delivery or renews any health insurance policy or contract in this state, including a group policy, contract, or certificate of health insurance or evidence of coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.202. PROHIBITION. A health benefit plan issuer may not, solely or in part because an individual has been diagnosed with or has a history of a fibrocystic breast condition:

(1) deny coverage to the individual;

(2) refuse to renew the individual's coverage;

(3) cancel the individual's coverage;

(4) limit the amount, extent, or kind of coverage available to the individual for any other breast condition; or

(5) charge the individual or a group to which the individual belongs a rate that is different from the rate charged to other individuals or groups, respectively, for the same coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.203. UNFAIR OR DECEPTIVE ACT OR PRACTICE. A violation of this subchapter is an unfair or deceptive act or practice under Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.204. PAYMENT FOR DISEASE NOT REQUIRED. This subchapter does not require a health benefit plan issuer to pay benefits for fibrocystic breast disease.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER F. CHURCH PROPERTY

Sec. 544.251. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and is used primarily for religious services.

(2) "Religious organization" means a church, synagogue, or other organization or association organized primarily for religious purposes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.252. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insurer that is admitted to engage in the business of insurance and authorized to write an insurance policy providing coverage for losses resulting from fire in this state, including a county mutual insurance company, a Lloyd's plan, a reciprocal or interinsurance exchange, or a farm mutual insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.253. PROHIBITION. An insurer writing insurance for a church may not cancel or decline to renew an insurance policy solely because of:

(1) an occurrence of arson against the church, if the religious organization that owns the church cooperated with police, fire, and other authorities in the investigation of the arson and in the prosecution of those responsible for the arson; or

(2) a verbal or written threat of arson against the church that was directed to the religious organization or an official of the religious organization and that the organization or official reported to the appropriate law enforcement agency within a reasonable amount of time.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 544.254. UNFAIR OR DECEPTIVE ACT OR PRACTICE. A violation of this subchapter is an unfair or deceptive act or practice in the business of insurance under Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER G. MOLD CLAIM OR DAMAGE

Sec. 544.301. DEFINITIONS. In this subchapter:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, farm mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include:

(A) an eligible surplus lines insurer regulated under Chapter 981;

(B) the Texas Windstorm Insurance Association under Chapter 2210; or

(C) the FAIR Plan Association under Chapter 2211.

(2) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(3) "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

(4) "Residential property insurance" means insurance against damage to or loss of real or tangible personal property at a fixed location provided in a homeowners insurance policy or residential fire and allied lines insurance policy.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.014(a), eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.011, eff. April 1, 2009.

Sec. 544.302. APPLICABILITY OF SUBCHAPTER. This subchapter applies to each insurer that writes residential property insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.014(a), eff. September 1, 2005.

Sec. 544.303. PROHIBITION OF CERTAIN UNDERWRITING DECISIONS BASED ON PREVIOUS MOLD CLAIM OR DAMAGE. An insurer may not make an underwriting decision regarding a residential property insurance policy based on previous mold damage or a claim for mold damage if:

(1) the applicant for insurance coverage has property eligible for coverage under a residential property policy;

(2) the property has had mold damage;

(3) mold remediation has been performed on the property; and

(4) the property was:

(A) remediated, as evidenced by a certificate of mold remediation issued to the property owner under Section 1958.154, Occupations Code, that establishes with reasonable certainty that the underlying cause of the mold at the property has been remediated; or

(B) inspected by an independent assessor or adjustor who determined, based on the inspection, that the property does not contain evidence of mold damage.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.014(a), eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.021(a), eff. September 1, 2007.

Sec. 544.304. RULES. The commissioner shall adopt rules as necessary to implement this subchapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.014(a), eff. September 1, 2005.

Sec. 544.305. PENALTY. An insurer that violates this subchapter is subject, after notice and opportunity for hearing, to sanctions as provided by Chapters 82, 83, and 84.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.014(a), eff. September 1, 2005.

SUBCHAPTER H. WATER DAMAGE CLAIMS

Sec. 544.351. PURPOSE. The purpose of this subchapter is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by the filing of a water damage claim or claims under a residential property insurance policy.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.015(a), eff. September 1, 2005.

Sec. 544.352. DEFINITIONS. In this subchapter:

(1) "Appliance" means a household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.

(2) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan, or other entity writing residential property insurance in this state. The term includes an affiliate, as described by Section 823.003(a), if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include:

(A) the Texas Windstorm Insurance Association created and operated under Chapter 2210; or

(B) the FAIR Plan created and operated under Chapter 2211.

(3) "Residential property insurance" means insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, which includes a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(4) "Underwriting guideline" means a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurer or an agent of an insurer to:

(A) decide whether to accept or reject an application for a residential property insurance policy; or

(B) determine how to classify the risks that are accepted for the purpose of determining a rate.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.015(a),

eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.022(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.022(a), eff. September 1, 2007.

Sec. 544.353. RESTRICTIONS ON USE OF CLAIMS HISTORY FOR WATER DAMAGE. (a) Underwriting guidelines relating to a water damage claim or claims used by an insurer shall be governed by rules adopted by the commissioner in accordance with the purpose of this subchapter. An insurer may not use an underwriting guideline relating to a water damage claim or claims that is not in accordance with the rules adopted by the commissioner under this subchapter.

(b) An insurer shall file with the department its underwriting guidelines relating to a water damage claim or claims in accordance with the rules adopted by the commissioner.

(c) Except as provided by Subsection (e), an insurer may not use a prior appliance-related claim filed by a person as a basis for determining the rate to be paid by the person for insurance coverage or for determining whether to issue, renew, or cancel an insurance policy to or for the person if the person:

(1) properly remediated the prior appliance-related claim; and

(2) had the remediation inspected and certified by a person or entity knowledgeable and experienced in the remediation of water damage.

(d) Except as provided by Subsection (e), an insurer may not use a prior appliance-related claim filed regarding specific property as a basis for determining the rate to be paid by a person for insurance coverage for that property or for determining whether to issue, renew, or cancel an insurance policy to or for a person seeking insurance coverage for that property if the prior appliance-related claim was properly remediated and was inspected and certified by a person knowledgeable and experienced in remediation of water damage.

(e) Subsections (c) and (d) do not apply to:

(1) a person who has made and has received payment for three or more appliance-related claims within a three-year period; or

(2) specific property that has been the subject of three or more appliance-related claims within a three-year period.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.015(a), eff. September 1, 2005.

Sec. 544.354. RULES. The commissioner shall adopt rules to accomplish the purposes of this subchapter, including rules with regard to the definition of a water damage claim.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.015(a), eff. September 1, 2005.

SUBCHAPTER I. CRIMINAL OFFENSES

Sec. 544.401. OFFENSE: CERTAIN DISCRIMINATION. (a) In this section, "person" means a legal entity listed below and engaged in the business of life insurance or an officer or director of one of those entities:

(1) a capital stock insurance company;

(2) a mutual insurance company;

(3) a local mutual aid association;

(4) a statewide mutual assessment company; or

(5) a stipulated premium company.

(b) A person commits an offense if the person recklessly:

(1) offers insurance coverage at a premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin; or

(2) collects an insurance premium based on a rate that is, because of race, color, religion, ethnicity, or national origin, different from another premium rate offered or used by the person for the same coverage, other than for classifications applicable alike to persons of every race, color, religion, ethnicity, or national origin.

(c) An offense under this section is a state jail felony.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.016(a),

eff. September 1, 2005.

SUBCHAPTER J. PROHIBITED PRACTICES RELATING TO EXPOSURE TO ASBESTOS OR SILICA

Sec. 544.451. DEFINITION. In this subchapter, "health benefit plan" means a plan that provides benefits for medical, surgical, or other treatment expenses incurred as a result of a health condition, a mental health condition, an accident, sickness, or substance abuse, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document. The term includes:

(1) a small employer health benefit plan or a health benefit plan written to provide coverage with a cooperative under Chapter 1501;

(2) a standard health benefit plan offered under Subchapter A or Subchapter B, Chapter 1507; and

(3) a health benefit plan offered under Chapter 1551, 1575, 1579, or 1601.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.023(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.023(a), eff. September 1, 2007.

Sec. 544.452. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any entity that offers a health benefit plan or an annuity or life insurance policy or contract in this state, including:

(1) a stock or mutual life, health, or accident insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium insurance company operating under Chapter 884;

(5) a Lloyd's plan operating under Chapter 941;

(6) an exchange operating under Chapter 942;

(7) a health maintenance organization operating under Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(10) a statewide mutual assessment company operating under Chapter 881;

(11) a local mutual aid association operating under Chapter 886; and

(12) a local mutual burial association operating under Chapter 888.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.023(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.023(a), eff. September 1, 2007.

Sec. 544.453. PROHIBITION. An entity that offers a health benefit plan or an annuity or life insurance policy or contract may not use the fact that a person has been exposed to asbestos fibers or silica or has filed a claim governed by Chapter 90, Civil Practice and Remedies Code, to reject, deny, limit, cancel, refuse to renew, increase the premiums for, or otherwise adversely affect the person's eligibility for or coverage under the policy or contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.023(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.023(a), eff. September 1, 2007.

SUBCHAPTER K. PREVIOUS DENIAL OF HEALTH BENEFIT PLAN COVERAGE

Sec. 544.501. DEFINITION. In this subchapter, "individual health benefit plan" means:

(1) an individual accident and health insurance policy to which Chapter 1201 applies; or

(2) individual health maintenance organization coverage.

Added by Acts 2005, 79th Leg., Ch. 748 (H.B. 2810), Sec. 1, eff.

September 1, 2005.
Renumbered from Insurance Code, Section 544.301 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(61), eff. September 1, 2009.

Sec. 544.502. LIMITATION ON CERTAIN INQUIRIES. A health benefit plan issuer may ask an individual who is an applicant for an individual health benefit plan or any other person or entity whether the applicant has previously been denied health benefit plan coverage only for the purpose of determining whether to ask for other information relating to a factor used by the insurer in underwriting the coverage. The insurer may not consider a determination that the applicant has or has not previously been denied health benefit plan coverage in underwriting the coverage for which the applicant has applied.

Added by Acts 2005, 79th Leg., Ch. 748 (H.B. 2810), Sec. 1, eff. September 1, 2005.
Renumbered from Insurance Code, Section 544.302 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(61), eff. September 1, 2009.

Sec. 544.503. VIOLATION OF SUBCHAPTER; UNFAIR DISCRIMINATION. A health benefit plan issuer who violates this subchapter engages in unfair discrimination under Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 748 (H.B. 2810), Sec. 1, eff. September 1, 2005.
Renumbered from Insurance Code, Section 544.303 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(61), eff. September 1, 2009.

SUBCHAPTER L. CONSUMER INQUIRY

Sec. 544.551. DEFINITION. In this subchapter, "consumer inquiry" has the meaning assigned by Section 551.113 for "customer inquiry."

Added by Acts 2013, 83rd Leg., R.S., Ch. 570 (S.B. 736), Sec. 1, eff.

September 1, 2013.

Sec. 544.552. APPLICABILITY. This subchapter applies only to:

(1) a standard fire, homeowners, or farm and ranch owners insurance policy, including such policies written by:

(A) a farm mutual insurance company;

(B) a county mutual insurance company;

(C) a Lloyd's plan; and

(D) a reciprocal or interinsurance exchange; or

(2) a personal automobile insurance policy, including a policy written by a county mutual insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 570 (S.B. 736), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 592 (S.B. 188), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1137 (S.B. 189), Sec. 1, eff. September 1, 2015.
Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 10.001, eff. September 1, 2017.

Sec. 544.553. PROHIBITION OF UNDERWRITING AND RATING DECISIONS BASED ON CONSUMER INQUIRY. An insurer may not:

(1) use an underwriting guideline based solely on whether a consumer inquiry has been made by or on behalf of the applicant or insured; or

(2) charge a rate that is different from the rate charged to other individuals for the same coverage or increase a rate charged to an insured based solely on whether a consumer inquiry has been made by or on behalf of the applicant or insured.

Added by Acts 2013, 83rd Leg., R.S., Ch. 570 (S.B. 736), Sec. 1, eff. September 1, 2013.

SUBCHAPTER M. POLITICAL AFFILIATION AND EXPRESSION

Sec. 544.601. APPLICABILITY OF SUBCHAPTER. This subchapter applies to:

(1) any legal entity engaged in the business of insurance in this state, including:

(A) a capital stock insurance company;

(B) a mutual insurance company;

(C) a title insurance company;

(D) a fraternal benefit society;

(E) a local mutual aid association;

(F) a statewide mutual assessment company;

(G) a county mutual insurance company;

(H) a Lloyd's plan;

(I) a reciprocal or interinsurance exchange;

(J) a stipulated premium company;

(K) a group hospital service corporation;

(L) a farm mutual insurance company;

(M) a risk retention group;

(N) an eligible surplus lines insurer; and

(O) an agent, broker, adjuster, or life and health insurance counselor; and

(2) a health maintenance organization.

Added by Acts 2021, 87th Leg., R.S., Ch. 926 (H.B. 3433), Sec. 1, eff. September 1, 2021.

Sec. 544.602. PROHIBITION. Except as provided by Section 544.603, a person may not refuse to insure or provide coverage to an individual, refuse to continue to insure or provide coverage to an individual, limit the amount, extent, or kind of coverage available for an individual, or charge an individual a rate that is different from the rate charged to other individuals for the same coverage because of the individual's political affiliation or expression.

Added by Acts 2021, 87th Leg., R.S., Ch. 926 (H.B. 3433), Sec. 1, eff. September 1, 2021.

Sec. 544.603. EXCEPTIONS. A person does not violate Section 544.602 if the refusal, limitation, or charge is:

(1) based on sound underwriting or actuarial principles reasonably related to actual or anticipated loss experience; or

(2) required or authorized by law or a regulatory mandate.

Added by Acts 2021, 87th Leg., R.S., Ch. 926 (H.B. 3433), Sec. 1, eff. September 1, 2021.

Sec. 544.604. ENFORCEMENT ACTIONS. (a) A health maintenance organization or legal entity engaged in the business of insurance that is found to be in violation of or to have failed to comply with this subchapter is subject to the sanctions provided by Chapter 82 or administrative penalties authorized under Chapter 84.

(b) In addition to the procedures provided by Subsection (a), the commissioner may use the cease and desist procedures authorized by Chapter 83.

Added by Acts 2021, 87th Leg., R.S., Ch. 926 (H.B. 3433), Sec. 1, eff. September 1, 2021.

SUBCHAPTER N. LIVING ORGAN DONORS

Sec. 544.651. DEFINITION. In this subchapter, "living organ donor" means a living individual who donates an organ to another individual.

Added by Acts 2021, 87th Leg., R.S., Ch. 71 (H.B. 317), Sec. 2, eff. September 1, 2021.
Redesignated by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(26), eff. September 1, 2023.

Sec. 544.652. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy or contract, disability insurance policy, or long-term care insurance policy.

Added by Acts 2021, 87th Leg., R.S., Ch. 71 (H.B. 317), Sec. 2, eff. September 1, 2021.
Redesignated by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(26), eff. September 1, 2023.

Sec. 544.653. PROHIBITIONS. (a) An insurer may not, based solely on the status of an individual as a living organ donor:

(1) deny coverage to the individual;

(2) refuse to renew the individual's coverage;

(3) cancel the individual's coverage;

(4) limit the amount, extent, or kind of coverage available to the individual; or

(5) charge the individual or a group to which the individual belongs a rate that is different than the rate charged to other individuals or groups, as applicable, for the same coverage unless the rate differential is based on sound actuarial principles or sound underwriting related to actual or anticipated loss experience for a particular risk.

(b) An insurer may not prevent an insured from donating all or part of an organ as a condition of continuing coverage.

Added by Acts 2021, 87th Leg., R.S., Ch. 71 (H.B. 317), Sec. 2, eff. September 1, 2021.
Redesignated by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(26), eff. September 1, 2023.

CHAPTER 545. HIV TESTING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 545.001. DEFINITIONS. In this chapter:

(1) "AIDS" has the meaning assigned by Section 81.101, Health and Safety Code.

(2) "Applicant" means an individual who applies to an issuer for coverage.

(3) "HIV" has the meaning assigned by Section 81.101, Health and Safety Code.

(4) "Issuer" means a person who delivers, issues for delivery, or renews coverage in this state, including a group policy, contract, or certificate of health insurance or evidence of coverage delivered, issued for delivery, or renewed in this state by an insurer, including a group hospital service corporation operating under Chapter 842, or by a health maintenance organization operating under Chapter 843.

(5) "Test result" means a statement:

(A) that an identifiable individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody; or

(B) that indicates that an identifiable individual has

or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.002. EXCLUSIVE APPLICABILITY. This chapter and rules adopted under this chapter exclusively govern the practices of an issuer in testing applicants to determine or help determine if an applicant has:

(1) AIDS or HIV infection;

(2) antibodies to HIV; or

(3) an infection with any other probable causative agent of AIDS.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.003. RULES. The commissioner may adopt:

(1) reasonable rules and forms necessary to implement this chapter; and

(2) rules to be followed for an HIV-related test requested or required by an issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. ISSUER POWERS AND DUTIES

Sec. 545.051. HIV-RELATED TESTING AUTHORIZED. An issuer may request or require an applicant to take an HIV-related test in connection with the application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.052. NONDISCRIMINATORY BASIS REQUIRED. (a) An issuer that requests or requires applicants to take an HIV-related test must request or require the test on a nondiscriminatory basis.

(b) An issuer may require an applicant to take an HIV-related test only if:

(1) the test is based on the applicant's current medical

condition or medical history; or

(2) underwriting guidelines for the coverage amounts require all applicants in the risk class to be tested.

(c) In determining who will be requested or required to take an HIV-related test, an issuer may not use the marital status, occupation, sex, beneficiary designation, or territorial classification, including zip code, of an applicant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.053. EXPLANATION AND AUTHORIZATION REQUIRED. (a) An issuer that requests or requires an applicant to take an HIV-related test in connection with an application must:

(1) provide an explanation to the applicant, or another person legally authorized to consent to the test, of how the test will be used; and

(2) obtain a written authorization from the person to whom the explanation is provided.

(b) The authorization must:

(1) be on a form adopted by the commissioner; and

(2) be separate from any other document presented to the applicant or other person legally authorized to consent to the test.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.054. INQUIRIES REGARDING PREVIOUS TESTS. (a) An issuer may inquire whether an applicant has:

(1) tested positive on an HIV-related test; or

(2) been diagnosed with HIV or AIDS.

(b) An issuer may not inquire whether an applicant has been tested for or has received a negative result from a specific test for:

(1) exposure to HIV; or

(2) a sickness or a medical condition derived from infection with HIV.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.055. NOTICE OF POSITIVE TEST RESULT; FEE. (a) An applicant must be given written notice of a positive HIV-related test result by:

(1) a physician designated by the applicant; or

(2) the Texas Department of Health, if the applicant has not designated a physician.

(b) The Texas Department of Health by rule may set a fee, not to exceed $25, to cover the cost of giving written notice under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.056. ADVERSE UNDERWRITING DECISION; TEST PROTOCOL RULES. An issuer may not make an adverse underwriting decision based on a positive HIV-related test unless a test protocol established by commissioner rule is followed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.057. CONFIDENTIALITY OF TEST RESULT REQUIRED. (a) An HIV-related test result is confidential.

(b) An issuer may not release or disclose the test result or otherwise allow the test result to become known except as:

(1) required by law; or

(2) requested or authorized in writing by the applicant or a person legally authorized to consent to the test on the applicant's behalf.

(c) A test result released under Subsection (b)(2) may be released only to:

(1) the applicant;

(2) a person legally authorized to consent to the test;

(3) a licensed physician, medical practitioner, or other person designated by the applicant;

(4) an insurance medical information exchange under procedures designed to ensure confidentiality, including the use of general codes that cover results of tests for other diseases or conditions not related to AIDS, or for the preparation of statistical reports that do not disclose the identity of any particular applicant;

(5) a reinsurer, if the reinsurer is involved in the underwriting process, under procedures designed to ensure confidentiality;

(6) persons within the issuer's organization who have the responsibility to make underwriting decisions for the issuer; or

(7) outside legal counsel that needs the information to effectively represent the issuer regarding the applicant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER O. SANCTIONS; PENALTIES; INJUNCTIONS

Sec. 545.701. SANCTIONS. The commissioner may impose sanctions under Chapter 82 on an issuer that violates this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.702. CIVIL ACTION; PENALTY. (a) A person who is injured by a violation of Section 545.057 may bring a civil action for damages.

(b) A person may bring an action to restrain a violation or threatened violation of Section 545.057.

(c) If it is found in a civil action that a person or entity has released or disclosed a test result or allowed a test result to become known in violation of Section 545.057, the person or entity is liable for:

(1) actual damages;

(2) a civil penalty of:

(A) not more than $1,000 if the release or disclosure was negligent; or

(B) not less than $1,000 or more than $5,000 if the release or disclosure was wilful; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(d) A defendant in a civil action brought under this section is not entitled to claim a privilege as a defense to the action.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 545.703. CRIMINAL PENALTY. (a) A person or entity commits an offense if the person or entity, with criminal negligence, violates Section 545.057 by:

(1) releasing or disclosing a test result or other information; or

(2) allowing a test result or other information to become known.

(b) An offense under this section is a Class A misdemeanor.

(c) Each release or disclosure made or allowance of a test result to become known in violation of this chapter constitutes a separate offense.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 546. USE OF GENETIC TESTING INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 546.001. DEFINITIONS. In this chapter:

(1) "DNA" means deoxyribonucleic acid.

(2) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that predisposes an individual to a disease, disorder, or syndrome.

(3) "Genetic information" means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on an individual.

(4) "Genetic test" means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition, or alteration that is associated with the individual's having a predisposition for:

(i) developing a clinically recognized disease, disorder, or syndrome; or

(ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual; a routine physical examination or a routine test performed as part of a physical examination; a test to determine drug use; or a test to determine the presence of the human immunodeficiency virus.

(5) "RNA" means ribonucleic acid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 546.002. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act;

(ii) another entity not authorized under this code or another insurance law of this state that directly contracts for health care services on a risk-sharing basis, including a capitation basis; or

(iii) another analogous benefit arrangement; or

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 1, eff. September 1, 2005.

Sec. 546.003. EXCEPTIONS. This chapter does not apply to:
(1) a plan that provides coverage:
(A) only for a specified disease;
(B) only for accidental death or dismemberment;
(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or
(D) as a supplement to liability insurance;
(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);
(3) workers' compensation insurance coverage;
(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or
(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 546.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 2, eff. September 1, 2005.

SUBCHAPTER B. GENETIC TESTING AND USE OF TEST RESULTS

Sec. 546.051. CERTAIN TESTING PERMITTED; INDUCEMENT PROHIBITED. (a) A health benefit plan issuer that requests an applicant for coverage under the plan to submit to a genetic test in connection with the application for coverage for a purpose not prohibited under Section 546.052 must:
(1) notify the applicant that the test is required;
(2) disclose to the applicant the proposed use of the test

results; and

(3) obtain the applicant's written informed consent before the test is administered.

(b) The applicant shall state in the consent form whether the applicant elects to be informed of the test results. If the applicant elects to be informed, the person or entity that performs the test shall disclose the test results to the applicant and the health benefit plan issuer. The issuer shall ensure that:

(1) the applicant receives an interpretation of the test results made by a qualified health care practitioner; and

(2) a physician or other health care practitioner designated by the applicant receives a copy of the test results.

(c) A health benefit plan issuer may not use the results of a genetic test conducted in accordance with Subsection (a) to induce the purchase of coverage under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 3, eff. September 1, 2005.

Sec. 546.052. IMPROPER USE OF TEST RESULTS; REFUSAL TO SUBMIT TO TESTING. A health benefit plan issuer may not use genetic information or the refusal of an applicant to submit to a genetic test to reject, deny, limit, cancel, refuse to renew, increase the premiums for, or otherwise adversely affect eligibility for or coverage under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 4, eff. September 1, 2005.

Sec. 546.053. TESTING RELATED TO PREGNANCY. (a) In this section, "coerce" means to restrain or dominate a woman's free will by actual or implied:

(1) force; or

(2) threat of rejecting, denying, limiting, canceling, refusing to renew, or otherwise adversely affecting eligibility for

coverage under a health benefit plan.

(b) A health benefit plan issuer may not:

(1) require as a condition of coverage genetic testing of a child in utero without the pregnant woman's consent; or

(2) use genetic information to coerce or compel a pregnant woman to have an induced abortion.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 5, eff. September 1, 2005.

Sec. 546.054. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

(1) the sample is retained under a court order;

(2) the individual authorizes retention of the sample for medical treatment or scientific research;

(3) the sample was obtained for research that is cleared by an institutional review board and retention of the sample is:

(A) under a requirement the institutional review board imposes on a specific research project; or

(B) authorized by the research participant with institutional review board approval under federal law; or

(4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or a laboratory approved by that department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. DISCLOSURE OF GENETIC INFORMATION; CONFIDENTIALITY; EXCEPTIONS

Sec. 546.101. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED. (a) An individual who submits to a genetic test has the right to know the results of the test. On the written request by the individual, the health benefit plan issuer or other entity that performed the test shall disclose the test results to:

(1) the individual; or

(2) a physician designated by the individual.

(b) The right to receive information under this section is in addition to any right or requirement established under Sections 546.051 and 546.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 6, eff. September 1, 2005.

Sec. 546.102. CONFIDENTIALITY OF GENETIC INFORMATION. (a) Except as provided by Sections 546.103(a) and (b), genetic information is confidential and privileged regardless of the source of the information.

(b) A person or entity that holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized by the individual as provided by Section 546.104.

(c) This section applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient. Except as provided by Section 546.103(b), a health benefit plan issuer may not redisclose genetic information unless the redisclosure is consistent with the disclosures authorized by the tested individual under an authorization executed under Section 546.104.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 7, eff. September 1, 2005.

Sec. 546.103. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization under Section 546.104 if the disclosure is:

(1) authorized under a state or federal criminal law relating to:

(A) the identification of individuals; or

(B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;

(2) required under a specific order of a state or federal court;

(3) for the purpose of establishing paternity as authorized under a state or federal law;

(4) made to provide genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or

(5) made to identify a decedent.

(b) A health benefit plan issuer may redisclose genetic information without an authorization under Section 546.104:

(1) for actuarial or research studies if:

(A) a tested individual could not be identified in any actuarial or research report; and

(B) any materials that identify a tested individual are returned or destroyed as soon as reasonably practicable;

(2) to the department for the purpose of enforcing this chapter; or

(3) for a purpose directly related to enabling a business decision to be made about:

(A) purchasing, transferring, merging, or selling all or part of an insurance business; or

(B) obtaining reinsurance affecting that insurance business.

(c) A redisclosure authorized under Subsection (b) may contain only information reasonably necessary to accomplish the purpose for which the information is disclosed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 8, eff. September 1, 2005.

Sec. 546.104. AUTHORIZED DISCLOSURE. An individual or an individual's legal representative may authorize disclosure of genetic information relating to the individual by an authorization that:

(1) is written in plain language;

(2) is dated;

(3) contains a specific description of the information to be disclosed;

(4) identifies or describes each person authorized to disclose the genetic information to a health benefit plan issuer;

(5) identifies or describes the individuals or entities to whom the disclosure or subsequent redisclosure of the genetic information may be made;

(6) describes the specific purpose of the disclosure;

(7) is signed by the individual or legal representative and, if the disclosure is made to claim proceeds of an affected life insurance policy, the claimant; and

(8) advises the individual or legal representative that the individual's authorized representative is entitled to receive a copy of the authorization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 9, eff. September 1, 2005.

SUBCHAPTER D. ENFORCEMENT

Sec. 546.151. CEASE AND DESIST ORDER. (a) On a finding by the commissioner that a health benefit plan issuer is in violation of this chapter, the commissioner may issue a cease and desist order in the manner provided by Chapter 83.

(b) If a health benefit plan issuer refuses or fails to comply with a cease and desist order issued under this section, the commissioner may, in the manner provided by this code and other insurance laws of this state, revoke or suspend the issuer's certificate of authority or other authorization to operate a health benefit plan in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 10, eff. September 1, 2005.

Sec. 546.152. ADMINISTRATIVE PENALTY. A health benefit plan issuer that operates a plan in violation of this chapter is subject

to an administrative penalty as provided by Chapter 84.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 670 (S.B. 53), Sec. 11, eff. September 1, 2005.

CHAPTER 547. FALSE ADVERTISING BY UNAUTHORIZED INSURERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 547.001. DEFINITIONS. In this chapter:

(1) "Alien or foreign insurer" means an insurance company organized under the laws of:

(A) a country other than the United States; or

(B) a state of the United States other than this state.

(2) "Resident" includes a domestic, alien, or foreign:

(A) corporation;

(B) partnership; or

(C) person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 547.002. CONSTRUCTION OF CHAPTER. This chapter shall be construed liberally.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. PROHIBITION; ENFORCEMENT

Sec. 547.051. ACTS PROHIBITED. (a) This section applies only to an insurer's misrepresentation of:

(1) the insurer's financial condition;

(2) the terms of an existing or future contract;

(3) the benefits or advantages promised by an existing or future contract; or

(4) the dividends or share of surplus to be received on an existing or future contract.

(b) An unauthorized alien or foreign insurer may not:

(1) make, issue, circulate, or cause to be made, issued, or circulated to a resident of this state a misrepresentation in an

advertisement, estimate, illustration, circular, pamphlet, or letter that violates Chapter 541; or

(2) cause to be made to a resident of this state in a newspaper, magazine, or other publication, or over a radio or television station, a misrepresentation in an announcement or statement that violates Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 547.052. NOTICE OF VIOLATION TO INSURER'S DOMICILIARY STATE. (a) In this section, the domiciliary state of an alien insurer is the state of entry or the state of the insurer's principal office in the United States.

(b) If the department has reason to believe that an insurer has engaged in an act prohibited by Section 547.051, the department shall notify, by registered mail, the insurer and the insurance supervisory official of the insurer's domiciliary state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 547.053. ENFORCEMENT ACTION. The department shall take action under Chapter 541 against an insurer notified under Section 547.052 if:

(1) after the 30th day following the date of notice, the insurer has not stopped making, issuing, or circulating or causing to be made, issued, or circulated in this state the false misrepresentations; and

(2) the department has reason to believe that:

(A) the insurer is issuing or delivering insurance contracts to residents of this state or is collecting premiums on those contracts; and

(B) a department proceeding regarding the misrepresentations is in the public interest.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 548. INSURER INSIDER TRADING AND PROXY REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 548.001. PURPOSE. (a) The purpose of this chapter is to provide for protection of the public interest, investors, and shareholders of domestic stock insurers by:

(1) regulating proxy solicitation by domestic stock insurers;

(2) regulating transactions by officers, directors, and principal equity security holders of domestic stock insurers; and

(3) requiring appropriate reporting of those solicitations and transactions.

(b) To that end the misuse of information by certain insiders of domestic stock insurers shall be prevented and a full and fair disclosure of all material matters relevant to the exercise of the corporate franchise of a shareholder of such an insurer will be promoted and the free exercise of that franchise will be assured.

(c) In exercising the authority granted by this chapter to adopt rules, the commissioner shall promote the purposes of this chapter to prevent misuse of information and to encourage good faith dealing and full and fair disclosure.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.002. DEFINITIONS. In this chapter:

(1) "Domestic stock insurer" includes a domestic title insurance company regulated by Title 11 and a stipulated premium company regulated by Chapter 884.

(2) "Equity security" means:

(A) a stock or similar security;

(B) a security that:

(i) is convertible, with or without consideration, into an equity security; or

(ii) carries a warrant or right to subscribe to or purchase an equity security;

(C) a warrant or right to subscribe to or purchase an equity security; or

(D) any other security defined as an equity security in accordance with Section 548.004(a)(1).

(3) "Federal Securities Exchange Act" means the Securities Exchange Act of 1934 (15 U.S.C. Section 77b et seq.), as amended.

(4) "Officer" means:

(A) a president, vice president, treasurer, actuary, secretary, or controller of a domestic stock insurer; or

(B) any other person who performs for a domestic stock insurer the functions of an officer described by Paragraph (A).

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, business trust, or unincorporated organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.003. RULEMAKING AUTHORITY. The commissioner may:

(1) adopt rules necessary for the execution of the powers and duties of the department or commissioner under this subchapter and Subchapter B; and

(2) for that purpose classify domestic stock insurers, securities, and other persons or matters under the jurisdiction of the department or commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.004. RULES RELATING TO EQUITY SECURITIES AND EXEMPT SECURITIES. (a) If the commissioner considers it necessary or appropriate in the public interest or for the protection of investors, the commissioner by rule may define:

(1) "equity security" to include a security that is similar in nature to an equity security; and

(2) "exempt security" for purposes of this chapter.

(b) In adopting a rule under Subsection (a)(2), the commissioner may define the term conditionally, on specified terms, or for a stated period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. REQUIRED ACTS; PROHIBITIONS

Sec. 548.101. DEFINITION. In this subchapter, "insider" means a person who:

(1) is directly or indirectly the beneficial owner of more than 10 percent of any class of an equity security of a domestic

stock insurer, other than an exempt security; or

(2) is a director or officer of a domestic stock insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.102. STATEMENT OF BENEFICIAL OWNERSHIP OF EQUITY SECURITIES. (a) Not later than the 10th day after the date a person becomes an insider, the insider shall file with the department a statement of the amount of all equity securities of the insurer of which the insider is a beneficial owner.

(b) If in any month a change occurs in the amount of the equity securities of which the insider is a beneficial owner, the insider shall file with the department not later than the 10th day of the following month a statement that indicates:

(1) the amount of all equity securities of which the insider is a beneficial owner as of the end of that month; and

(2) the changes in the insider's ownership that occurred in that month.

(c) A statement under this section must be in the form prescribed by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.103. RECOVERY OF CERTAIN PROFITS. (a) The purpose of this section is to prevent the unfair use of information that may be obtained by an insider because of the insider's relationship with the domestic stock insurer.

(b) Any profit realized by the insider from the purchase and sale or from the sale and purchase of an equity security of the domestic stock insurer within a period of less than six months inures to and is recoverable by the insurer.

(c) A suit to recover the profit must be brought not later than the second anniversary of the date the profit is realized. The suit may be instituted at law or in equity by:

(1) the domestic stock insurer; or

(2) the owner of any security of the domestic stock insurer, in the name of and in behalf of the insurer, if the insurer does not:

(A) bring suit not later than the 60th day after the

date a request is made; or

(B) diligently prosecute a suit that is timely brought by the insurer.

(d) Subsection (b) applies regardless of whether:

(1) the insider intended to hold the equity security purchased for longer than six months; or

(2) the insider did not intend to repurchase the sold equity security during the six-month period following the date the insider sold the equity security.

(e) Subsection (b) does not apply to:

(1) a transaction in which an equity security was acquired in good faith in connection with a previously contracted debt;

(2) a transaction in which the beneficial owner of an equity security was not the beneficial owner at both the time of the purchase and the time of the sale, or the sale and purchase, of the security involved;

(3) a transaction involving an exempt security;

(4) a transaction that the commissioner by rule exempts from this section because it is beyond the scope of the purpose of this section; or

(5) a transaction involving an equity security of a domestic stock insurer that is not held by a dealer in an investment account if the transaction:

(A) is in the ordinary course of the dealer's business; and

(B) is incident to the establishment or maintenance by the dealer of a primary or secondary market, other than on an exchange, as defined by the federal Securities Exchange Act, for the security.

(f) The commissioner may adopt rules the commissioner considers necessary or appropriate in the public interest to define and prescribe terms and conditions with respect to a security held in an investment account and a transaction made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.104. SALE OR NONDELIVERY OF CERTAIN EQUITY SECURITIES

PROHIBITED. (a) An insider may not directly or indirectly sell an equity security of the domestic stock insurer if the insider selling the security or the insider's principal:

(1) does not own the security; or

(2) owns the security, but does not:

(A) deliver the security before the 21st day after the date of the sale; or

(B) deposit the security in the mail or another usual channel of transportation before the sixth day after the date of the sale.

(b) An insider is not considered to have violated Subsection (a)(2) if the insider proves that:

(1) notwithstanding the exercise of good faith, the insider was unable to make a timely delivery or deposit; or

(2) to make a timely delivery or deposit would cause undue inconvenience or expense.

(c) Subsection (a) does not apply to the sale of:

(1) an exempt security; or

(2) an equity security of a domestic stock insurer that is not held by a dealer in an investment account if the sale:

(A) is in the ordinary course of the dealer's business; and

(B) is incident to the establishment or maintenance by the dealer of a primary or secondary market, other than on an exchange, as defined by the federal Securities Exchange Act, for the security.

(d) The commissioner may adopt rules implementing Subsection (c) in the manner prescribed by Section 548.103(f).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.105. CERTAIN SOLICITATIONS PROHIBITED; DISCLOSURE BY INSURER. (a) A person, in violation of any rule adopted by the commissioner under this section, may not solicit or permit the use of the person's name to solicit a proxy, consent, or authorization with respect to an equity security, other than an exempt security, of a domestic stock insurer that is not listed on a national securities exchange registered as such under the federal Securities Exchange Act.

(b) Unless before an annual or other meeting a proxy, consent, or authorization with respect to a security of a domestic stock insurer covered by Subsection (a) is solicited by or on behalf of the management of the insurer from a holder of record of the security in compliance with rules adopted by the commissioner under this section, the insurer shall, in accordance with rules adopted by the commissioner, file with the department information substantially equivalent to the information that would be required to be sent if a solicitation were made. The insurer shall send the information to each holder of record of the security.

(c) The commissioner may adopt rules to implement this section that the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.106. NONAPPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to an equity security of a domestic stock insurer if:

(1) the security is or is required to be registered under Section 12 of the federal Securities Exchange Act; or

(2) the insurer does not have any class of its equity securities held of record by 100 or more persons on the last business day of the year preceding the year in which the equity security would otherwise be subject to this subchapter.

(b) Sections 548.101-548.104 do not apply to a foreign or domestic arbitrage transaction unless the transaction is made in violation of a rule adopted by the commissioner to accomplish the purposes of this chapter.

(c) A provision of this subchapter that imposes liability does not apply to an act or omission made in good faith in conformity with a rule adopted by the commissioner. This subsection applies regardless of whether the rule is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. ENFORCEMENT

Sec. 548.201. OFFENSES; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

(1) violates this chapter or a rule adopted under this chapter; or

(2) makes or causes to be made a statement that is false or misleading with respect to a material fact in a document required to be filed by this chapter or a rule adopted under this chapter.

(b) Except as provided by Subsection (c), an offense under this section is punishable by:

(1) a fine not to exceed $10,000;

(2) imprisonment for not more than two years; or

(3) both the fine and imprisonment.

(c) A person may not be punished by imprisonment for violating a rule as prescribed by this section if the person proves that the person had no knowledge of the rule.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.202. CIVIL PENALTY. (a) A person who wilfully violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than $100 or more than $1,000 for:

(1) each act of violation; and

(2) each day of violation.

(b) The attorney general, at the request of the commissioner, shall bring a suit in the name of the state to recover the civil penalty. The suit must be brought:

(1) in Travis County or the county in which the person resides;

(2) if more than one person commits the violation, in the county in which any of the persons resides; or

(3) in the county in which the violation allegedly occurred.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 548.203. INJUNCTIVE ACTION. A suit to enjoin a violation or a threatened violation of this chapter may be brought in any district court in which an action for a civil penalty under Section 548.202 may be brought.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 549. PROHIBITED PRACTICES RELATING TO PROPERTY INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 549.001. DEFINITIONS. In this chapter:

(1) "Borrower" means an individual, partnership, corporation, association, or other entity who has or acquires a legal or equitable interest in real or personal property that is or becomes subject to a mortgage, lien, security agreement, deed of trust, or other security instrument.

(2) "Insurance binder" means a contract that provides insurance coverage pending the issuance of an original insurance policy that will be issued on or before the 30th day after the date the insurance binder is issued.

(3) "Lender" means an individual, partnership, corporation, association, or other entity, agent, loan agent, servicing agent, or loan or mortgage broker who lends money and receives or otherwise acquires a mortgage, a lien, a deed of trust, or any other security interest in or on any real or personal property as security for the loan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 549.002. INAPPLICABILITY OF CHAPTER TO TITLE INSURANCE. This chapter does not apply to title insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 549.003. CANCELLATION OF POLICY AFTER FORECLOSURE AUTHORIZED. In the event of a foreclosure under a deed of trust, the lender may cancel an insurance policy covering the foreclosed property and is entitled to any unearned premiums from the policy if the lender:

(1) credits the amount of the unearned premiums against any deficiency owed by the borrower; and

(2) delivers to the borrower any excess unearned premiums not credited against a deficiency under Subdivision (1).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. PROHIBITED PRACTICES

Sec. 549.051. FEES FOR SUBSTITUTION OR REPLACEMENT OF POLICY. (a) A lender may not require a fee in an amount greater than $10 for the substitution by the borrower of a new insurance policy for another insurance policy in effect, or require a fee for the furnishing by the borrower of a new insurance policy to replace an existing insurance policy on termination of the existing policy, if the new insurance policy is provided through an insurer authorized to engage in business in this state.

(b) On the sale or transfer of the lender's ownership interest in real or personal property, the lender is subject to the payment of a substitution fee as described by Subsection (a) and may not, directly or indirectly, charge the borrower for the substitution fee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 549.052. REQUIRING POLICY FROM PARTICULAR SOURCE. A lender may not directly or indirectly require as a condition of the financing or lending of money or the renewal or extension of financing or lending of money that the purchaser or borrower or the successors of the purchaser or borrower obtain an insurance policy or the renewal or extension of an insurance policy covering the property involved in the transaction from or through:

(1) a particular agent, insurer, or other person; or

(2) a particular type or class of agent, insurer, or other person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 549.053. USE OF POLICY INFORMATION. (a) Except as otherwise provided by this section, a lender may not:

(1) use or permit the use of any information taken from an insurance policy insuring the borrower's property for the purpose of soliciting insurance business from the borrower; or

(2) make information taken from an insurance policy insuring the borrower's property available to any other person for

any purpose.

(b) Subsection (a) does not:

(1) apply if the borrower provides the lender with specific written authority permitting or directing the particular use or disclosure of information before the use or disclosure occurs; or

(2) prevent a lender who is a licensed general property and casualty agent or a personal lines property and casualty agent from selling insurance to a borrower.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.02, eff. September 1, 2007.

Sec. 549.054. REQUIRING EVIDENCE OF INSURANCE BEFORE TERMINATION OF POLICY. A lender may not require a borrower to provide evidence of insurance earlier than the 15th day before the termination date of an existing insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 549.055. INSURANCE BINDER AS EVIDENCE OF INSURANCE. (a) A lender that requires a borrower to secure insurance coverage before the lender will provide a residential mortgage or commercial real estate loan must accept an insurance binder as evidence of the required insurance and may not require the borrower to provide an original insurance policy instead of a binder if:

(1) the binder is issued by a licensed general property and casualty agent or a personal lines property and casualty agent who is appointed to represent the insurer whose name appears on the binder and who is authorized to issue binders;

(2) the binder is accompanied by evidence of payment of the required premium; and

(3) the binder will be replaced by an original insurance policy for the required coverage on or before the 30th day after the date the binder is issued.

(b) A property and casualty agent who issues an insurance binder under Subsection (a) must, on request, provide the lender with appropriate evidence for purposes of Subsection (a)(1).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.03, eff. September 1, 2007.

Sec. 549.0551. REQUIRING CERTAIN AMOUNTS OF COVERAGE. (a) A lender may not require as a condition of financing a residential mortgage or providing other financing arrangements for residential property, including a mobile or manufactured home, that a borrower purchase homeowners insurance coverage, mobile or manufactured home insurance coverage, or other residential property insurance coverage in an amount that exceeds the replacement value of the dwelling and its contents, regardless of the amount of the mortgage or other financing arrangement entered into by the borrower.

(b) For purposes of this section, a lender may not include the fair market value of the land on which a dwelling is located in the replacement value of the dwelling and its contents.

Added by Acts 2005, 79th Leg., Ch. 69 (H.B. 2761), Sec. 1(a), eff. May 17, 2005; Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.017(a), eff. September 1, 2005.

Sec. 549.056. CERTAIN ACTIONS BY LENDER NOT PROHIBITED. (a) This subchapter does not prevent a lender from requiring evidence to be produced before the commencement or renewal of a risk that insurance has been obtained that:

(1) has a fixed termination date;

(2) except as provided by Section 549.0551, provides adequate coverage in an amount sufficient to cover the debt or loan; and

(3) will not be canceled without reasonable notice to the lender.

(b) This subchapter does not prevent a lender from requiring insurance from an insurer that is authorized to engage in business in this state and that has a licensed resident agent in this state.

(c) This subchapter does not prevent a lender from refusing to accept or approve insurance from a particular insurer on reasonable and nondiscriminatory grounds relating to the financial soundness of

the insurer or the insurer's ability to service the policy.

(d) Except as provided by Section 549.0551, this subchapter does not prevent a lender from providing, in accordance with the terms of the mortgage, security agreement, deed of trust, or other security instrument, insurance coverage adequate to protect the lender's security interest in property in the event the borrower fails to provide on or before the 15th day before the termination date of an existing insurance policy an insurance policy meeting the requirements established by the lender as authorized by this chapter. A lender that provides insurance coverage under this subsection may use information contained in the existing policy for the purpose of determining that the insurance coverage provided is adequate.

(e) Except as provided by this subsection, this subchapter does not prevent a lender from requiring, at or before the time of delivery to the lender of an insurance policy by a general property and casualty agent or a personal lines property and casualty agent or by the insurer, a written statement from the borrower designating the agent or insurer as the borrower's agent for the delivery of the policy. A lender may not require a statement described by this subsection when an agent or insurer is providing a renewal of an existing expiring insurance policy provided by the agent or insurer.

(f) This subchapter does not prevent a lender from providing to a person, firm, or corporation that is or becomes the owner or holder of a note or obligation secured by a mortgage, security agreement, deed of trust, or other security instrument an insurance policy or any information contained in an insurance policy that covers property that is security for the loan.

(g) This subchapter does not prevent a lender from processing a claim under the terms of an insurance policy that covers property that is security for a loan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 69 (H.B. 2761), Sec. 2, eff. May 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.04, eff. September 1, 2007.

SUBCHAPTER C. ENFORCEMENT AND CIVIL REMEDIES

Sec. 549.101. ENFORCEMENT ACTION. The attorney general, commissioner, or department may institute a proceeding to enforce this chapter and to enjoin any individual, partnership, corporation, association, or other entity from engaging or attempting to engage in any activity in violation of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 549.102. CIVIL DAMAGES. (a) A borrower may recover from a lender who violates this chapter civil damages in an amount equal to three times the annual premium for the insurance policy in force on the property that is security for the loan.

(b) If the insurance policy is for a period of more than one year, the annual premium is computed by dividing the total premium specified in the policy for the entire period of the policy by the number of years of the duration of the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 550. PROHIBITED PRACTICES RELATING TO PAYMENTS

Sec. 550.001. SOLICITATION OR COLLECTION OF CERTAIN PAYMENTS. (a) An insurer or an insurer's agent or sponsoring organization may not solicit or collect, in connection with an application for insurance or the issuance of a policy, a payment other than:

(1) a premium;

(2) a tax;

(3) a finance charge;

(4) a policy fee;

(5) an agent fee;

(6) a service fee, including a charge for costs described by Section 4005.003;

(7) an inspection fee; or

(8) membership dues in a sponsoring organization.

(b) The commissioner by rule shall permit a sponsoring organization to solicit a voluntary contribution with a membership renewal solicitation if the membership renewal solicitation is separate from an insurance billing.

(c) Except as otherwise provided by statute, an insurer may require that membership dues in its sponsoring organization be paid

as a condition for issuance or renewal of an insurance policy.

(d) Criminal penalties for a violation of this section are the same as criminal penalties provided for a violation under Subchapter K, Chapter 823.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 550.002. INCREASE IN CERTAIN PREMIUM PAYMENTS. (a) In this section:

(1) "Account" means a person's account in a financial institution.

(2) "Financial institution" means a state or national bank, a state or federal savings and loan association or corporation, or a state or federal credit union.

(3) "Insurer" means a person or entity engaged in the business of insurance in this state as described by Chapter 101. The term includes a person or entity engaged in the business of surplus lines insurance in this state.

(4) "Person" means an insured, a policy or certificate holder, or an owner of an insurance policy or certificate.

(b) An insurer receiving automatic premium payments through withdrawal of funds from a person's account, including an escrow account, as authorized by that person to pay premiums on insurance coverage provided through that insurer, may not increase the amount of funds to be withdrawn from the account to pay premiums on that coverage unless the insurer, not later than the 30th day before the effective date of the increase in the premium payment amount, notifies the person of the increase by mailing a notice through the United States Postal Service.

(b-1) The notice must include the insurer's toll-free telephone number, mailing address, and electronic mail address, if applicable, through which the person may object to the increase described by Subsection (b). An objection made by the policyholder through a telephone call, mail, or electronic mail constitutes a valid objection for purposes of this section.

(b-2) The insurer may increase the amount of funds to be withdrawn from the account only if the insurer does not receive a valid objection to the increase on or before the fifth day before the date on which the increase is scheduled to take effect.

(c) This section does not require an insurer to notify a person of an increase in a premium payment amount if:

(1) the insurance contract or certificate:

(A) when issued contains a schedule of increasing premiums;

(B) expressly specifies the exact amount of each premium; and

(C) specifies the period for which each premium is payable; or

(2) the increase is the result of a change ordered by the insured.

(d) This section does not apply to an increase in a premium payment that is less than $10 or 10 percent of the previous amount per month.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1167 (H.B. 3221), Sec. 1, eff. June 19, 2009.

CHAPTER 551. PRACTICES RELATING TO DECLINATION, CANCELLATION, AND NONRENEWAL OF INSURANCE POLICIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. RULES. (a) The commissioner may, as necessary, adopt and enforce reasonable rules, including notice requirements, relating to the cancellation and nonrenewal of any insurance policy regulated by the department under:

(1) Chapter 5;

(2) Chapter 1804, 1805, 2171, or 2301; or

(3) Subtitle C, D, E, or F, Title 10.

(a-1) Notwithstanding Subsection (a), Subsection (a) does not apply to:

(1) an insurance policy subject to Subchapter B or C of this chapter; or

(2) a marine insurance policy other than inland marine.

(b) In adopting rules under this section, the commissioner shall consider the reasonable needs of the public and the operations of the insurers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.012, eff. April 1, 2009.

Sec. 551.002. WRITTEN STATEMENT OF REASONS FOR DECLINATION, CANCELLATION, OR NONRENEWAL. (a) The commissioner shall require an insurer, on request by an applicant for insurance or a policyholder, to provide to the applicant or policyholder a written statement of the reasons for the declination, cancellation, or nonrenewal of an insurance policy to which Section 551.001 applies.

(b) An insurer's written statement giving the reasons for the declination, cancellation, or nonrenewal of an insurance policy must fully explain a decision that adversely affects an applicant for insurance or a policyholder by denying the applicant or policyholder insurance coverage or continued coverage.

(c) The statement must:

(1) state the precise incident, circumstance, or risk factors applicable to the applicant for insurance or the policyholder that violates any applicable guidelines;

(2) state the source of information on which the insurer relied regarding the incident, circumstance, or risk factors; and

(3) specify any other information considered relevant by the commissioner.

(d) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.003. IMMUNITY FROM LIABILITY. An insurer or agent or an employee of an insurer or agent is not liable, and a cause of action does not arise against that individual or entity, for a statement, disclosure, or communication made in good faith under this subchapter. Immunity under this section does not apply to:

(1) disclosure of information known to be false; or

(2) a disclosure made with malice or the wilful intent to injure any person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.004. TRANSFER NOT CONSIDERED A REFUSAL TO RENEW. For purposes of this chapter and Subchapters C and D, Chapter 1952, the transfer of a policyholder between admitted companies within the same insurance group is not considered a refusal to renew.

Added by Acts 2005, 79th Leg., Ch. 1295 (H.B. 2614), Sec. 4, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.024, eff. September 1, 2007.

Sec. 551.005. MEMBERSHIP DUES. (a) In this section, "insurer" includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(b) Except as otherwise provided by law, an insurer may require that membership dues in its sponsoring organization be paid as a condition for issuance or renewal of a policy.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0245, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0245(a), eff. September 1, 2007.

SUBCHAPTER B. CANCELLATION AND NONRENEWAL OF CERTAIN LIABILITY AND COMMERCIAL PROPERTY INSURANCE POLICIES

Sec. 551.051. DEFINITIONS. In this subchapter:

(1) "Commercial property insurance" has the meaning assigned by Section 2251.002.

(1-a) "Insurer" means an insurance company or other entity admitted to engage in business and authorized to write liability insurance or commercial property insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange. The term does not include a county mutual fire insurance company that writes exclusively industrial fire insurance as described by Section 912.310 or a farm mutual insurance company.

(2) "Liability insurance" means:

(A) general liability insurance;

(B) professional liability insurance other than medical

professional liability insurance;

(C) commercial automobile liability insurance;

(D) commercial multiperil insurance; and

(E) any other type or line of liability insurance designated by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 72 (S.B. 590), Sec. 2, eff. September 1, 2019.

Sec. 551.052. CANCELLATION PROHIBITED; EXCEPTIONS. (a) An insurer may not cancel a liability insurance or commercial property insurance policy that is a renewal or continuation policy.

(b) An insurer may not cancel a liability insurance or commercial property insurance policy during the initial policy term after the 60th day following the date on which the policy was issued.

(c) Notwithstanding Subsections (a) and (b), an insurer may cancel a liability insurance or commercial property insurance policy at any time during the term of the policy for:

(1) fraud in obtaining coverage;

(2) failure to pay premiums when due;

(3) an increase in hazard within the control of the insured that would produce a rate increase; or

(4) loss of the insurer's reinsurance covering all or part of the risk covered by the policy.

(d) Notwithstanding Subsections (a) and (b), an insurer may cancel a liability insurance or commercial property insurance policy at any time during the term of the policy if the insurer is placed in supervision, conservatorship, or receivership and the cancellation or nonrenewal is approved or directed by the supervisor, conservator, or receiver.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 72 (S.B. 590), Sec. 3, eff. September 1, 2019.

Sec. 551.053. WRITTEN NOTICE OF CANCELLATION REQUIRED. Not

later than the 10th day before the date on which the cancellation of a liability insurance or commercial property insurance policy takes effect, an insurer must deliver or mail written notice of the cancellation to the first-named insured under the policy at the address shown on the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 72 (S.B. 590), Sec. 3, eff. September 1, 2019.

Sec. 551.054. WRITTEN NOTICE OF NONRENEWAL REQUIRED. (a) An insurer may refuse to renew a liability insurance or commercial property insurance policy if the insurer delivers or mails written notice of the nonrenewal to the first-named insured under the policy at the address shown on the policy.

(b) The notice must be delivered or mailed not later than the 60th day before the date on which the policy expires. If the notice is delivered or mailed later than the 60th day before the date on which the policy expires, the coverage remains in effect until the 61st day after the date on which the notice is delivered or mailed.

(c) Earned premium for any period of coverage that extends beyond the expiration date of the policy shall be computed pro rata based on the previous year's rate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 72 (S.B. 590), Sec. 4, eff. September 1, 2019.

Sec. 551.055. REASON FOR CANCELLATION OR NONRENEWAL REQUIRED. In a notice to an insured relating to cancellation or refusal to renew, an insurer must state the reason for the cancellation or nonrenewal. The statement must comply with:

(1) Sections 551.002(b) and (c); and

(2) rules adopted under Section 551.002(d).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.056. CHANGES TO POLICY ON RENEWAL. (a) In this section, "material change" means a change to a policy that, with respect to a previous or existing policy:

(1) reduces coverage;

(2) changes conditions of coverage; or

(3) changes the duties of the insured.

(b) A change to a liability insurance or commercial property insurance policy provision on renewal is not a nonrenewal or cancellation under this subchapter if the insurer provides the insured with written notice in accordance with this section of any material change in each form of the policy offered to the insured on renewal from the form of the policy held immediately before renewal.

(c) Notice provided under Subsection (b) must:

(1) appear in a conspicuous place in the notice of renewal;

(2) clearly indicate each material change to the policy being made on renewal;

(3) be written in plain language; and

(4) be provided to the insured not later than the 30th day before the renewal date.

(d) In addition to the notice to the insured provided under Subsection (b), if an insurer elects to make a material change to a policy form on renewal, not later than the 30th day before the earliest renewal date on which the new policy form is used, the insurer shall provide written notice to each agent of the insurer that clearly indicates each material change being made to the policy form. An insurer may provide the notice to the agents in a single notice given to each agent of the insurer that summarizes substantially similar material changes to more than one policy form.

(e) This section does not apply if:

(1) the policy form meets at least one of the conditions in Section 2301.004 both before and after renewal of the policy; or

(2) before the renewal date:

(A) the insured requests the change; or

(B) the insured and the insurer agree to the change.

Added by Acts 2019, 86th Leg., R.S., Ch. 72 (S.B. 590), Sec. 5, eff. September 1, 2019.

SUBCHAPTER C. DECLINATION, CANCELLATION, AND NONRENEWAL OF CERTAIN PROPERTY AND CASUALTY POLICIES

Sec. 551.101. DEFINITION. In this subchapter, "insurer" means any authorized insurer writing property and casualty insurance in this state, including:

(1) a county mutual insurance company;

(2) a Lloyd's plan;

(3) a reciprocal or interinsurance exchange; and

(4) a farm mutual insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

(1) a personal automobile insurance policy, other than a policy written through the Texas Automobile Insurance Plan Association;

(2) a homeowners or farm or ranch owners insurance policy;

(3) a standard fire insurance policy insuring:

(A) a one-family dwelling or a duplex; or

(B) the contents of a one-family dwelling, a duplex, or an apartment; or

(4) an insurance policy providing property and casualty coverage, other than a fidelity, surety, or guaranty bond, to:

(A) this state;

(B) an agency of this state;

(C) a political subdivision of this state, including:

(i) a municipality or county;

(ii) a school district or junior college district;

(iii) a levee improvement district, drainage district, or irrigation district;

(iv) a water improvement district, water control and improvement district, or water control and preservation district;

(v) a freshwater supply district;

(vi) a navigation district;

(vii) a conservation and reclamation district;

(viii) a soil conservation district;

(ix) a communication district; and

(x) a river authority; or

(D) any other governmental agency whose authority is derived from the laws or constitution of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.103. CANCELLATION. For the purposes of this subchapter, an insurer has canceled an insurance policy if the insurer, without the consent of the insured:

(1) terminates coverage provided under the policy;

(2) refuses to provide additional coverage to which the insured is entitled under the policy; or

(3) except as provided by Section 551.1055, reduces or restricts coverage under the policy by endorsement or other means.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 60 (S.B. 417), Sec. 1, eff. September 1, 2017.

Sec. 551.104. AUTHORIZED CANCELLATION OF POLICIES. (a) An insurer may cancel an insurance policy only as provided by this section.

(b) An insurer may cancel any policy if:

(1) the named insured does not pay any portion of the premium when due;

(2) the insured submits a fraudulent claim; or

(3) the department determines that continuation of the policy would result in a violation of this code or any other law governing the business of insurance in this state.

(c) An insurer may cancel a policy, other than a personal automobile insurance policy, if there is an increase in the hazard covered by the policy that is within the control of the insured and that would produce an increase in the premium rate of the policy.

(d) An insurer may cancel a personal automobile insurance policy if the driver's license or motor vehicle registration of the named insured or any other motor vehicle operator who resides in the same household as the named insured or who customarily operates an automobile covered by the policy is suspended or revoked. An insurer may not cancel a policy under this subsection if the named insured consents to an endorsement terminating coverage under the policy for the person whose license is suspended or revoked.

(e) Cancellation of a policy under Subsection (b), (c), or (d) does not take effect until the 10th day after the date the insurer mails notice of the cancellation to the insured.

(f) An insurer may cancel a personal automobile insurance policy effective on any 12-month anniversary of the original effective date of the policy if the insurer mails to the named insured written notice of the cancellation not later than the 60th day before the effective date of the cancellation.

(g) An insurer may cancel any insurance policy other than a personal automobile or homeowners insurance policy if the policy has been in effect less than 90 days. An insurer may cancel a personal automobile insurance policy if the policy has been in effect less than 60 days. An insurer may cancel a homeowners insurance policy if the policy has been in effect less than 60 days and:

(1) the insurer identifies a condition that:

(A) creates an increased risk of hazard;

(B) was not disclosed in the application for insurance coverage; and

(C) is not the subject of a prior claim; or

(2) before the effective date of the policy, the insurer does not accept a copy of a required inspection report that:

(A) was completed by an inspector who is licensed by the Texas Real Estate Commission or who is otherwise authorized to perform inspections; and

(B) is dated not earlier than the 90th day before the effective date of the policy.

(h) For purposes of Subsection (g), an inspection report is considered accepted if an insurer does not reject the inspection report given to the insurer under Subsection (g)(2) before the 11th day after the date the inspection report is received by the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.019(a), eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 428 (H.B. 1900), Sec. 1, eff. September 1, 2023.

Sec. 551.1041. RULEMAKING AUTHORITY RELATING TO NOTICE OF

CANCELLATION OF CERTAIN PERSONAL AUTOMOBILE INSURANCE COVERAGES. The commissioner shall exercise the commissioner's rulemaking authority to adopt rules under which an insurer that cancels a personal automobile insurance policy that provides comprehensive or collision physical damage coverage for an automobile that is subject to a purchase money lien is required to notify the lienholder, if known, that the coverage will be canceled.

Added by Acts 2017, 85th Leg., R.S., Ch. 752 (S.B. 1450), Sec. 3, eff. September 1, 2017.

Sec. 551.105. NONRENEWAL OF POLICIES; NOTICE REQUIRED. Unless the insurer has mailed written notice of nonrenewal or renewal with written notice of change in coverage as provided by Section 2002.001 to the insured not later than the 60th day before the date on which the insurance policy expires, an insurer must renew an insurance policy, at the request of the insured, on the expiration of the policy. Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any replacement or succeeding insurance policy with another carrier with respect to the insured (a) personal automobile, (b) home, farm, ranch, dwelling, duplex, or apartment, or (c) other real or personal property.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 527 (H.B. 2382), Sec. 1, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1018 (H.B. 2655), Sec. 2, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 428 (H.B. 1900), Sec. 2, eff. September 1, 2023.

Sec. 551.1053. MANDATORY NONRENEWAL OF PRIVATE PASSENGER AUTOMOBILE INSURANCE POLICIES. (a) If an insured under a private passenger automobile insurance policy fails or refuses to cooperate with an insurer in the investigation, settlement, or defense of a third-party liability claim or action or the insurer is unable to contact the insured using reasonable efforts for those purposes, the

insurer shall provide written notice to the named insured that states:

(1) how the insured failed or refused to cooperate, including failure as a result of the insurer's inability to contact the insured;

(2) the claim or action for which the insurer is requesting cooperation; and

(3) the insurer will not renew the policy if the insured continues to fail or refuse to cooperate.

(b) Notwithstanding Sections 551.105 and 551.106, an insurer may not renew a private passenger automobile insurance policy if the insured fails or refuses to cooperate with the insurer in the investigation, settlement, or defense of the third-party liability claim or action described by the notice provided under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 886 (S.B. 1602), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 496 (H.B. 2065), Sec. 1, eff. September 1, 2023.

Sec. 551.1055. CHANGES TO POLICY ON RENEWAL. (a) In this section, "material change" means a change to a policy that, with respect to a prior or existing policy:

(1) reduces coverage;

(2) changes conditions of coverage; or

(3) changes the duties of the insured.

(b) Notwithstanding Section 551.103, a change to a policy provision on renewal is not a nonrenewal or cancellation under this subchapter if the insurer provides the insured with written notice in accordance with this section of any material change in each form of the policy offered to the insured on renewal from the form of the policy held immediately before renewal.

(c) Notice provided under Subsection (b) must:

(1) appear in a conspicuous place in the notice of renewal;

(2) clearly indicate each material change to the policy being made on renewal;

(3) be written in plain language; and

(4) be provided to the insured not later than the 30th day before the renewal date.

(d) In addition to the notice to the insured provided under Subsection (b), if an insurer elects to make a material change to a policy form on renewal, not later than the 30th day before the earliest renewal date on which the new policy form is used, the insurer shall provide written notice to each agent of the insurer that clearly indicates each material change being made to the policy form. An insurer may provide the notice to the agents in a single notice given to each agent of the insurer that summarizes substantially similar material changes to more than one policy form.

(e) Notwithstanding this section, for a personal automobile insurance policy, an insurer must comply with Sections 551.105 and 551.106(b).

Added by Acts 2017, 85th Leg., R.S., Ch. 60 (S.B. 417), Sec. 2, eff. September 1, 2017.

Sec. 551.106. RENEWAL AND REINSTATEMENT OF PERSONAL AUTOMOBILE INSURANCE POLICIES. (a) An insurer may not refuse to renew a personal automobile insurance policy solely because of the age of the person covered by the policy.

(b) An insurer shall renew a personal automobile insurance policy that was written for a term of less than one year, except that the insurer may refuse to renew the policy on any 12-month anniversary of the original effective date of the policy.

(c) An insurer may reinstate a personal automobile insurance policy canceled for nonpayment of premium if the premium owed is paid not later than the 60th day after date of cancellation. Coverage under the policy lapses on the date of cancellation and is not again effective until the date the payment is received by the insurer. Premium is not owed for any period in which the policy is not in effect.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 1159 (H.B. 3300), Sec. 1, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1159 (H.B. 3300), Sec. 2, eff. June 18, 2005.

Sec. 551.107. RENEWAL OF CERTAIN POLICIES; PREMIUM SURCHARGE AUTHORIZED; NOTICE. (a) This section applies only to a standard fire, homeowners, or farm or ranch owners insurance policy.

(b) A claim under this section does not include a claim:

(1) resulting from a loss caused by natural causes;

(2) that is filed but is not paid or payable under the policy; or

(3) that an insurer is prohibited from using under Section 544.353.

(c) An insurer may assess a premium surcharge at the time an insurance policy is renewed if the insured has filed two or more claims in the preceding three policy years. The amount of the surcharge must be based on sound actuarial principles.

(d) Subject to Subsection (e), an insurer may refuse to renew an insurance policy if the insured has filed three or more claims under the policy in any three-year period.

(e) An insurer may notify an insured who has filed two claims in a period of less than three years that the insurer may refuse to renew the policy if the insured files a third claim during the three-year period. If the insurer does not notify the insured in accordance with this subsection, the insurer may not refuse to renew the policy because of claims. The notice form must:

(1) list the policyholder's claims; and

(2) contain the sentence: "The filing by you of another claim, except for a claim resulting from a loss caused by natural causes, a claim filed but not paid or payable under the policy under which it was filed, or an appliance-related claim that we are prohibited from using under Section 544.353, Texas Insurance Code, could cause us to refuse to renew your policy."

(f) In this section, "premium surcharge" means an additional amount that is added to the base rate. The term does not include a reduction or elimination of a discount previously received by an insured, reassignment of an insured from one rating tier to another, re-rating an insured, or re-underwriting an insured by using multiple affiliates.

(g) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 5, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 252 (S.B. 978), Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.013, eff. April 1, 2009.

Sec. 551.108. INSURER RECORDS. (a) An insurer shall maintain information regarding cancellation or nonrenewal of insurance policies in accordance with the insurer's ordinary practices for maintaining records of expired policies.
(b) The insurer shall make the information available to the department on request.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.109. INSURER STATEMENT. An insurer shall, at the request of an applicant for insurance or an insured, provide a written statement of the reason for a declination, cancellation, or nonrenewal of an insurance policy. The statement must comply with:
(1) Sections 551.002(b) and (c); and
(2) rules adopted under Section 551.002(d).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.110. LIABILITY FOR DISCLOSURE. An insurer or agent or an employee of an insurer or agent is not liable for a notice, statement, or disclosure made in good faith under this subchapter unless the notice, statement, or disclosure was:
(1) known to be false; or
(2) made with malice or wilful intent to injure any person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 60 (S.B. 417), Sec. 3, eff. September 1, 2017.

Sec. 551.111. EFFECT OF NONCOMPLIANCE. A cancellation of an insurance policy made in violation of this subchapter has no effect.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.112. RULES. The commissioner may adopt rules relating to the cancellation and nonrenewal of insurance policies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.113. DECLINATION, NONRENEWAL, OR CANCELLATION PROHIBITED; CONSIDERATION OF CONSUMER INQUIRY. (a) This section applies only to:

(1) a standard fire, homeowners, or farm and ranch owners insurance policy; or

(2) a personal automobile insurance policy.

(b) When deciding to issue or to decline to issue an insurance policy to an applicant for insurance, an insurer may not consider a customer inquiry as a basis for declination.

(b-1) An insurer may not consider a customer inquiry as a basis for nonrenewal or cancellation of an insurance policy.

(c) For purposes of this section, "customer inquiry" means a telephone call or other communication made to an insurer that does not result in an investigation or claim and that is in regard to the general terms or conditions of or coverage offered under an insurance policy. The term includes a question concerning the process for filing a claim, and whether a policy will cover a loss, unless the question concerns specific damage that has occurred and that results in an investigation or claim.

Added by Acts 2005, 79th Leg., Ch. 922 (H.B. 363), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 570 (S.B. 736), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 570 (S.B. 736), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1137 (S.B. 189), Sec. 2, eff. September 1, 2015.

SUBCHAPTER D. CANCELLATION OR NONRENEWAL OF CERTAIN POLICIES ISSUED TO ELECTED OFFICIALS

Sec. 551.151. DEFINITION. In this subchapter, "insurer" has the meaning assigned by Section 551.101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 551.152. ELECTED OFFICIALS. An insurer may not cancel or refuse to renew an insurance policy based solely on the fact that the policyholder is an elected official.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER E. PORTABLE ELECTRONICS INSURANCE

Sec. 551.201. DEFINITIONS. In this subchapter, "customer," "portable electronic devices," and "vendor" have the meanings assigned by Section 4055.251.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 1, eff. September 1, 2013.

Sec. 551.202. REQUIRED NOTICE OF TERMINATION OR CHANGE TO POLICY. (a) Except as otherwise provided by this subchapter, an insurer may terminate or change the terms and conditions of a policy of portable electronics insurance only after notice to the master or group policyholder and each enrolled customer. Notice under this section must be provided not later than the 30th day before the date of the termination or change.

(b) If the insurer changes the terms and conditions of the policy, the insurer shall:

(1) provide to the master or group policyholder a revised policy or endorsement; and

(2) provide to each enrolled customer:

(A) a revised certificate, revised endorsement, updated

brochure, or other document indicating that a change in the terms and conditions has occurred;

(B) a summary of the material changes; and

(C) a disclosure, in a font that is capitalized, boldfaced, italicized, or underlined or is larger than or set off from the remainder of the document, that enrollment in coverage is optional and that provides information on how to discontinue enrollment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 1, eff. September 1, 2013.

Sec. 551.203. TERMINATION FOR FRAUD OR MISREPRESENTATION. (a) An insurer may terminate the coverage of an enrolled customer under a portable electronics insurance policy for fraud or material misrepresentation in obtaining coverage or in the presentation of a claim under the coverage.

(b) Termination of coverage under this section may not be effective before the 15th day after the date the insurer provides the customer notice of the termination.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 1, eff. September 1, 2013.

Sec. 551.204. TERMINATION WITHOUT NOTICE. (a) An insurer may terminate the coverage of an enrolled customer under a portable electronics insurance policy without notice:

(1) for nonpayment of premium;

(2) if the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(3) if the enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy.

(b) If a portable electronics insurance policy is terminated under Subsection (a)(3), the insurer must send notice of termination to the enrolled customer not later than the 30th day after the date of exhaustion of the limit. If the notice is not timely sent, the insurer shall continue the customer's coverage, and the aggregate limit of liability is waived, until the insurer sends the notice of

termination to the enrolled customer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 1, eff. September 1, 2013.

Sec. 551.205. TERMINATION BY POLICYHOLDER. A master or group policyholder who terminates a portable electronics insurance policy shall provide notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The notice must be provided to the enrolled customer not later than the 30th day before the date the termination becomes effective.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 1, eff. September 1, 2013.

Sec. 551.206. FORM OF NOTICE OR CORRESPONDENCE. (a) A notice required by this subchapter, or another notice or correspondence with respect to a portable electronics insurance policy that is required by law, must be:

(1) in writing; and

(2) sent within the notice period, if any, specified by the statute or rule requiring the notice or correspondence.

(b) Notwithstanding any other law, the notice or correspondence may be sent by mail or by electronic means.

(c) If the notice or correspondence is mailed:

(1) it must be sent to the master or group policyholder at the policyholder's mailing address specified for this purpose and to each affected enrolled customer's last known mailing address on file with the insurer; and

(2) the insurer or master or group policyholder shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service.

(d) If the notice or correspondence is sent by electronic means:

(1) it must be sent to the master or group policyholder at the policyholder's e-mail address specified for this purpose and to each affected enrolled customer's last known e-mail address as

provided by the customer to the insurer or master or group policyholder; and

(2) the insurer or master or group policyholder shall maintain proof that the notice or correspondence was sent.

(e) For purposes of Subsection (d), an enrolled customer's provision of an e-mail address to the insurer or master or group policyholder is considered consent to receive notices and correspondence by electronic means.

(f) A notice or correspondence described by this section may be sent on behalf of an insurer or master or group policyholder by a licensed agent or agency appointed by the insurer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 1, eff. September 1, 2013.

CHAPTER 552. ILLEGAL PRICING PRACTICES

Sec. 552.001. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to the provision of a health care service to a:

(1) Medicaid or Medicare patient or a patient who is covered by a federal, state, or local government-sponsored indigent health care program;

(2) financially or medically indigent person who qualifies for indigent health care services based on:

(A) a sliding fee scale; or

(B) a written charity care policy established by a health care provider; or

(3) person who is not covered by a health insurance policy or other health benefit plan that provides benefits for the services and qualifies for services for the uninsured based on a written policy established by a health care provider.

(b) This chapter does not permit the establishment of health care provider policies or contracts that violate any other state or federal law.

(c) This chapter does not prohibit a health care provider from entering into a contract to provide services covered by a health insurance policy or other health benefit plan with:

(1) the issuer of the health insurance policy or other health benefit plan; or

(2) a preferred provider organization that contracts with

the issuer of the health insurance policy or other health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 724 (S.B. 500), Sec. 1, eff. June 17, 2005.

Sec. 552.002. FRAUDULENT INSURANCE ACT. An offense under Section 552.003 is a fraudulent insurance act under Chapter 701.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 552.003. CHARGING DIFFERENT PRICES; OFFENSE. (a) A person commits an offense if:

(1) the person knowingly or intentionally charges two different prices for providing the same product or service; and

(2) the higher price charged is based on the fact that an insurer will pay all or part of the price of the product or service.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 553. ENFORCEMENT OF INSURANCE POLICIES REGARDING HOLOCAUST VICTIMS

Sec. 553.001. DEFINITIONS. In this chapter:

(1) "Holocaust victim" means a person who was killed or injured, or who lost financial assets or other property, as the result of discriminatory laws, policies, or actions directed against any discrete group of which the person was a member, during the period of 1920 to 1945, inclusive, in Germany, areas occupied by Germany, or countries allied with Germany.

(2) "Insurance policy" includes:

(A) a life insurance policy, an annuity, a property insurance policy, a casualty insurance policy, and a liability insurance policy; and

(B) reinsurance on a risk covered under a policy described by Paragraph (A).

(3) "Insurer" means an insurance company or other entity engaged in the business of insurance or reinsurance in this state. The term includes:

(A) a capital stock company, a mutual company, or a Lloyd's plan; and

(B) any parent, subsidiary, or affiliated company, at least 50 percent of the stock of which is in common ownership with an insurer engaged in the business of insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 553.002. SUSPENSION OF LIMITATIONS PERIOD. (a) Notwithstanding any other law, a Holocaust victim, or the heir, assignee, beneficiary, or successor of a Holocaust victim, who resides in this state and has a claim arising out of an insurance policy purchased or in effect in Europe before 1946 that was delivered, issued for delivery, or renewed by an insurer may bring an action in this state against an insurer to recover on that claim.

(b) An action brought under this section before December 31, 2012, may not be dismissed for failure to comply with any applicable limitations period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 553.003. VIOLATION BY INSURER. An insurer violates this chapter if the insurer fails to comply with a claim brought under this chapter by:

(1) denying the claim on the grounds that the claim is not timely; or

(2) asserting a statute of limitations defense in an action brought under Section 553.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 553.004. EXAMINATION; ENFORCEMENT. (a) If the commissioner considers it necessary, the commissioner may initiate an examination of an insurer under Sections 401.051, 401.052, and 401.054-401.062.

(b) If the commissioner believes that an insurer is violating or has violated this chapter, the commissioner may:

(1) impose a sanction under Chapter 82;

(2) issue a cease and desist order under Chapter 83;

(3) assess an administrative penalty under Chapter 84; or

(4) refer the matter to the attorney general for appropriate enforcement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.014, eff. April 1, 2009.

CHAPTER 554. BURDEN OF PROOF AND PLEADING

Sec. 554.001. APPLICABILITY OF CHAPTER. This chapter applies to each insurer or health maintenance organization engaged in the business of insurance or the business of a health maintenance organization in this state, regardless of form and however organized, including:

(1) a stock life, health, or accident insurance company;

(2) a mutual life, health, or accident insurance company;

(3) a stock fire or casualty insurance company;

(4) a mutual fire or casualty insurance company;

(5) a Mexican casualty insurance company;

(6) a Lloyd's plan;

(7) a reciprocal or interinsurance exchange;

(8) a fraternal benefit society;

(9) a title insurance company;

(10) a stipulated premium company;

(11) a nonprofit legal services corporation;

(12) a statewide mutual assessment company;

(13) a local mutual aid association;

(14) a local mutual burial association;

(15) an association exempt under Section 887.102;

(16) a nonprofit hospital, medical, or dental service corporation, including a corporation subject to Chapter 842;

(17) a county mutual insurance company;

(18) a farm mutual insurance company; and

(19) an insurer or health maintenance organization engaged

in the business of insurance or the business of a health maintenance organization in this state that does not hold a certificate of authority issued by the department or is not otherwise authorized to engage in business in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.004, eff. September 1, 2017.

Sec. 554.002. BURDEN OF PROOF AND PLEADING. In a suit to recover under an insurance or health maintenance organization contract, the insurer or health maintenance organization has the burden of proof as to any avoidance or affirmative defense that the Texas Rules of Civil Procedure require to be affirmatively pleaded. Language of exclusion in the contract or an exception to coverage claimed by the insurer or health maintenance organization constitutes an avoidance or an affirmative defense.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 555. FAILURE TO SATISFY JUDGMENT

Sec. 555.001. APPLICABILITY OF CHAPTER. This chapter does not apply to an insurer subject to Chapter 841.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 555.002. REVOCATION OF CERTIFICATE OF AUTHORITY. If an execution issued on a final judgment rendered against an insurer is not satisfied and discharged before the 31st day after the date of notice of the execution's issuance, the insurer's certificate of authority shall be revoked, and the insurer may not engage in the business of insurance in this state until the execution is satisfied.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 556. UNFAIR METHODS OF COMPETITION AND UNFAIR PRACTICES BY

FINANCIAL INSTITUTIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 556.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly or through one or more intermediaries, controls or is controlled by another person or is under common control with another person.

(2) "Depository institution" has the meaning assigned by Section 4001.003.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.002. RULES. The commissioner may adopt reasonable rules to comply with federal law applicable to the sale of insurance and for the implementation and administration of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. UNFAIR METHODS OR PRACTICES

Sec. 556.051. UNFAIR METHOD OF COMPETITION OR UNFAIR PRACTICE: TYING. (a) A depository institution engages in an unfair method of competition or an unfair practice in the sale of insurance by the depository institution if the depository institution:

(1) is an agent and, as a condition of extending or renewing credit, leasing or selling property, or furnishing services, requires the purchase of insurance from the depository institution or a subsidiary or affiliate of the depository institution, or from or through a particular agent, insurer, or any other person or entity;

(2) conditions the terms of credit or the sale or lease of property on acquisition of insurance from or through the depository institution, a subsidiary or affiliate of the depository institution, or any other particular person or entity;

(3) rejects a required policy solely because the policy has been issued or underwritten by a person or entity that is not associated with the depository institution; or

(4) imposes a requirement on an agent or broker who is not associated with the depository institution that is not imposed on an agent or broker who is associated with the depository institution or a subsidiary or affiliate of the depository institution.

(b) This section does not prevent a person who lends money or

extends credit from placing insurance on property if the mortgagor, borrower, or purchaser fails to provide required insurance in accordance with the terms of the loan or credit document.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.052. UNFAIR METHOD OF COMPETITION OR UNFAIR PRACTICE: FAILURE TO DISCLOSE. A depository institution engages in an unfair method of competition or an unfair practice in the sale of insurance by the depository institution if, on the premises of the depository institution or in connection with a product offering of the depository institution, the depository institution sells or solicits the purchase of insurance or a person sells or solicits the purchase of insurance recommended or sponsored by the depository institution and the depository institution or person fails to clearly disclose in all promotional materials relating to an insurance product distributed to customers and potential customers that:

(1) an insurance product sold through or in the depository institution or a subsidiary or affiliate of the depository institution is not insured by the Federal Deposit Insurance Corporation;

(2) the insurance product is not issued, guaranteed, or underwritten by the depository institution or the Federal Deposit Insurance Corporation; and

(3) the insurance product involves investment risk, if appropriate, including potential loss of principal.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. REGULATION OF PRACTICES

Sec. 556.101. PROHIBITION ON CERTAIN REFERRALS OR SOLICITATIONS TO PURCHASE INSURANCE. (a) An individual who is an employee or agent of a depository institution or a subsidiary or affiliate of a depository institution may not directly or indirectly make a referral related to insurance to, or solicit the purchase of any insurance by, a customer knowing that the customer has applied for a loan or other extension of credit from a financial institution, before:

(1) the customer receives a written commitment relating to that loan or extension of credit; or

(2) if a written commitment has not been or will not be issued in connection with the loan or extension of credit, the customer receives notification of approval of that loan or extension of credit by the financial institution and the financial institution creates a written record of the approval.

(b) This section does not prohibit a depository institution from:

(1) informing a customer that insurance is required in connection with a loan;

(2) contacting a person in the course of a direct or mass mailing to a group of persons in a manner that is not related to the person's loan application or credit decision; or

(3) selling credit life, credit disability, credit property, or involuntary unemployment insurance that is:

(A) specifically authorized by this code;

(B) approved for sale in this state; and

(C) sold in connection with a credit transaction.

(c) This section does not apply to an insurance policy described by Section 556.151.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.102. INSURANCE SALE WITH LOAN TRANSACTION. (a) If insurance is offered or sold to a depository institution's customer in connection with a loan transaction by the depository institution, the insurance salesperson involved in that insurance transaction may not be involved in that loan transaction and may not be the person making that loan.

(b) This section does not apply to:

(1) a depository institution that has $40 million or less in total assets, as reported in the most recent Consolidated Report of Condition and Income by the Federal Financial Institutions Examination Council or any successor report required by federal or state law; or

(2) a credit life, credit disability, credit property, or involuntary unemployment insurance product that is:

(A) specifically authorized by this code;

(B) approved for sale in this state; and

(C) sold in connection with a credit transaction.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.103. DESIGNATION OF PLACE OF INSURANCE ACTIVITIES. (a) The place where a depository institution sells or solicits the purchase of insurance or the place on the premises of a depository institution where insurance is sold or solicited for purchase shall be clearly and conspicuously indicated by signs so that the public can readily distinguish the sale or solicitation as separate from the lending and deposit-taking activities of the depository institution.

(b) The commissioner may grant a waiver from the requirements of this section to a person who files a written request that:

(1) demonstrates that, due to the size of the physical premises of the person, compliance with the requirements is not possible; and

(2) identifies other steps that will be taken to minimize customer confusion.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.104. USE OF CUSTOMER INFORMATION. (a) In this section:

(1) "Customer" means a person with an investment, security, deposit, trust, or credit relationship with a financial institution.

(2) "Nonpublic customer information" means information relating to an individual that is derived from a bank record, including information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims, and insurance history of the individual. The term does not include a customer's name, address, or telephone number.

(b) A person may not use nonpublic customer information for the purpose of selling or soliciting the purchase of insurance, or provide nonpublic customer information to a third party for the purpose of another's selling or soliciting the purchase of insurance, unless:

(1) it is clearly and conspicuously disclosed that the nonpublic customer information may be used for that purpose; and

(2) the customer has been provided an opportunity to object before the time the information is used.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER D. DISCLOSURES

Sec. 556.151. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a credit life, credit accident and health, credit property, or credit involuntary unemployment insurance policy that is:

(1) specifically authorized by this code;

(2) approved for sale in this state; and

(3) sold in connection with a credit transaction.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.152. PROMOTIONAL MATERIALS DISCLOSURE. (a) This section applies to each agent that is a depository institution or that, on the premises of a depository institution or in connection with a product offering of a depository institution, sells or solicits the purchase of insurance recommended or sponsored by the depository institution.

(b) Promotional materials relating to an insurance product distributed to a customer or potential customer must clearly disclose that an insurance product sold through an agent affiliated with a depository institution:

(1) is not insured by the Federal Deposit Insurance Corporation;

(2) is not issued, guaranteed, or underwritten by the depository institution or the Federal Deposit Insurance Corporation; and

(3) involves investment risk, if appropriate, including potential loss of principal.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.153. DISCLOSURE AT TIME OF LOAN APPLICATION. (a) At the time a loan application is made, a depository institution shall provide to the customer a written disclosure as required by this section and Section 556.154.

(b) The disclosure must be separate from any loan application

or loan document.

(c) The depository institution employee who presents the disclosure and the customer shall sign and date the disclosure.

(d) The depository institution shall maintain one copy of the disclosure in the loan file and shall provide one copy to the customer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 556.154. FORM OF DISCLOSURE. (a) The disclosure required by Section 556.153 must be in substantially the following form:

"CUSTOMER DISCLOSURE

"You have applied for a loan with the depository institution. As permitted by Title 4, Finance Code, the depository institution is requiring that collateral used to secure the loan be insured to cover the amount of the loan to the extent insurance is available on the property to be insured, against the usual and customary casualty losses.

"You have the right to provide this insurance either through existing policies already owned or controlled by you or by obtaining the insurance through any insurance agent or insurer authorized to engage in business in Texas.

"The depository institution, through its own insurance agency, can also make this insurance available to you. However, federal and state laws provide that the depository institution cannot require you to obtain insurance through the depository institution, its subsidiary, an affiliate, or any particular unaffiliated third party, either as a condition to obtaining this credit or to obtain special terms or consideration.

"Insurance products sold through or in the depository institution or its affiliate or subsidiary are not insured by the Federal Deposit Insurance Corporation and are not issued, guaranteed, or underwritten by the depository institution or the Federal Deposit Insurance Corporation.

"You are not required or obligated to purchase insurance from the depository institution or any subsidiary, affiliate, or particular unaffiliated third party as a condition to obtaining your loan, and your decision as to insurance agents will not affect your credit terms in any way.

Customer Date

_____

Employee of Depository
Institution"

(b) The commissioner may amend the disclosure form as necessary to comply with federal or state law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 557. INSURED PROPERTY SUBJECT TO SECURITY INTEREST

SUBCHAPTER A. INSURANCE PROCEEDS HELD BY LENDER PENDING REPAIR OF RESIDENTIAL REAL PROPERTY

Sec. 557.001. DEFINITIONS. In this subchapter:

(1) "Lender" means a person holding a mortgage, lien, deed of trust, or other security interest in property.

(2) "Residential real property" means:

(A) a single-family house;

(B) a duplex, triplex, or quadraplex; or

(C) a unit in a multi-unit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 557.002. NOTIFICATION BY LENDER TO INSURED CONCERNING INSURANCE PROCEEDS. (a) If a claim under an insurance policy for damage to residential real property is paid to the insured and a lender, and the lender holds all or part of the proceeds from the insurance claim payment pending completion of all or part of the repairs to the property, the lender shall notify the insured of each requirement with which the insured must comply for the lender to release the insurance proceeds.

(b) The notice required under this section must be provided not later than the 10th day after the date the lender receives payment of the insurance proceeds.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 557.003. LENDER'S RELEASE OR REFUSAL TO RELEASE INSURANCE PROCEEDS. Not later than the 10th day after the date a lender receives from the insured a request for release of all or part of the insurance proceeds held by the lender, the lender shall:

(1) if the lender has received sufficient evidence of the insured's compliance with the requirements specified by the lender under Section 557.002 for release of the proceeds, release to the insured, as requested, all or part of the proceeds; or

(2) provide notice to the insured that explains specifically:

(A) the reason for the lender's refusal to release the proceeds to the insured; and

(B) each requirement with which the insured must comply for the lender to release the proceeds.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 557.004. PAYMENT OF INTEREST; RATE. A lender who fails to provide notice as required by Section 557.002 or 557.003 or to release insurance proceeds as required by Section 557.003 shall pay to the insured interest at the rate of 10 percent a year on the proceeds held by the lender.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 557.005. ACCRUAL OF INTEREST. (a) If a lender fails to provide notice as required by Section 557.002 or 557.003, interest begins to accrue on the date the lender received the insurance proceeds.

(b) If a lender fails to release insurance proceeds as required by Section 557.003, interest begins to accrue on the date the lender receives sufficient evidence of the insured's compliance with the requirements specified by the lender under Section 557.002 or 557.003 for release of the proceeds.

(c) Interest stops accruing on the date the lender complies with Section 557.002 or 557.003, as applicable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 557.006. INTEREST NOT REQUIRED ON INSURANCE PROCEEDS APPLIED TO REDUCE NOTE. A lender is not required to pay interest on insurance proceeds applied, in accordance with the terms and conditions of a deed of trust or other security agreement, to reduce a note.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. LIENHOLDER APPROVAL OF INSURANCE CLAIM PAYMENT RELATING TO PERSONAL PROPERTY

Sec. 557.051. LIENHOLDER APPROVAL OF PAYMENT. If payment of an insurance claim relating to personal property requires the endorsement of a check or draft by a holder of a lien on the property or otherwise requires approval of the lienholder, not later than the 14th business day after the date the lienholder receives a request for the endorsement or other approval, the lienholder shall provide:

(1) the endorsement or approval; or

(2) a written statement of the reason for denial of the endorsement or approval to the person who requested the endorsement or approval.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 557.052. CIVIL PENALTY. (a) A lienholder who violates Section 557.051 is liable for a civil penalty not to exceed $500 for each violation.

(b) The attorney general may bring an action to collect a civil penalty under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 558. REFUND OF UNEARNED PREMIUM

Sec. 558.001. DEFINITION. In this chapter, "insurer" means an insurance company or other entity authorized to engage in the business of insurance in this state. The term includes:

(1) a stock life, health, or accident insurance company;

(2) a mutual life, health, or accident insurance company;

(3) a stock fire or casualty insurance company;

(4) a mutual fire or casualty insurance company;
(5) a Mexican casualty insurance company;
(6) a farm mutual insurance company;
(7) a county mutual insurance company;
(8) a Lloyd's plan;
(9) a reciprocal or insurance exchange;
(10) a fraternal benefit society;
(11) a stipulated premium company;
(12) a nonprofit legal services corporation;
(13) a statewide mutual assessment company;
(14) a local mutual aid association;
(15) a local mutual burial association;
(16) an association exempt under Section 887.102;
(17) a nonprofit hospital, medical, or dental service corporation, including a corporation subject to Chapter 842;
(18) a risk retention group;
(19) a purchasing group;
(20) an eligible surplus lines insurer; and
(21) a guaranty association operating under Chapter 462 or 463.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.015, eff. April 1, 2009.

Sec. 558.002. APPLICABILITY OF CHAPTER; REFUND OF UNEARNED PREMIUM. (a) This chapter applies to an insurer that issues an insurance policy that requires the insurer to maintain an unearned premium reserve for the portion of the written policy premium applicable to the unexpired or unused part of the policy period for which the premium has been paid.

(b) An insurer shall promptly refund the appropriate portion of any unearned premium to the policyholder if the policy:
(1) has a remaining unearned premium reserve; and
(2) is canceled or terminated by the insured or the insurer before the end of its term.

(c) A guaranty association shall promptly refund any unearned premium as described by Subchapter E, Chapter 462, or Sections

463.003(9) and 463.259.

(d) An insurer shall refund the appropriate portion of any unearned premium to the policyholder not later than the 15th business day after the effective date of cancellation or termination of a policy of personal automobile or residential property insurance, as those terms are defined by Section 2301.051.

(e) Notwithstanding Subsection (d), a guaranty association shall refund any unearned premium as described by Subchapter E, Chapter 462, not later than the 30th business day after the date the guaranty association receives any necessary and accurate financial information, including supporting accounting information, required to determine unearned premium under a policy of personal automobile or residential property insurance, as those terms are defined by Section 2301.051.

(f) For purposes of this section, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.016, eff. April 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 94 (S.B. 698), Sec. 1, eff. May 18, 2013.

Sec. 558.003. RULES AND GUIDELINES. The commissioner shall:

(1) adopt rules necessary to implement this chapter; and

(2) establish appropriate guidelines to determine the portion of an unearned premium that must be refunded to a policyholder under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 558.004. EFFECT ON INSURANCE PREMIUM FINANCE COMPANY. This chapter does not affect the obligation of an insurer to pay an unearned premium to an insurance premium finance company in accordance with Section 651.162.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 559. CREDIT SCORING AND CREDIT INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 559.001. DEFINITIONS. In this chapter:

(1) "Adverse effect" means an action taken by an insurer in connection with the underwriting of insurance for a consumer that results in the denial of coverage, the cancellation or nonrenewal of coverage, or the offer to and acceptance by a consumer of a policy form, premium rate, or deductible other than the policy form, premium rate, or deductible for which the consumer specifically applied.

(2) "Agent" means a person licensed or required to be licensed as a general property and casualty insurance agent or a personal lines property and casualty agent under Chapter 4051.

(3) "Applicant for insurance coverage" means an individual who has applied to an insurer for coverage under a personal insurance policy.

(4) "Consumer" means an individual whose credit information is used or whose credit score is computed in the underwriting or rating of a personal insurance policy. The term includes an applicant for insurance coverage.

(5) "Consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found in a credit report itself, or provided in an application for personal insurance. The term does not include information that is not credit-related, regardless of whether that information is contained in a credit report or in an application for insurance coverage or is used to compute a credit score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency that:

(A) bears on a consumer's creditworthiness, credit standing, or credit capacity; and

(B) is used or expected to be used or collected in whole or in part to serve as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Credit score" or "insurance score" means a number or rating derived from an algorithm, computer application, model, or

other process that is:

(A) based on credit information; and

(B) used to predict the future insurance loss exposure of a consumer.

(9) "Insured" means a consumer who has purchased an insurance policy from an insurer.

(10) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, association, Lloyd's plan, or other entity writing personal insurance in this state. The term includes an affiliate, as described by this code, if that affiliate is authorized to write personal insurance in this state. The term does not include a farm mutual insurance company or an eligible surplus lines insurer under this code.

(11) "Personal insurance" means:

(A) a personal automobile insurance policy;

(B) a residential property insurance policy;

(C) a residential fire and allied lines insurance policy; or

(D) a noncommercial insurance policy covering a boat, personal watercraft, snowmobile, or recreational vehicle.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.05, eff. September 1, 2007.

Sec. 559.002. APPLICABILITY OF CHAPTER. This chapter applies to an insurer that writes personal insurance coverage and uses credit information or credit reports for the underwriting or rating of that coverage.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.003. INFORMATION PROVIDED TO PUBLIC. The department shall:

(1) update insurer profiles maintained on the department's Internet website to provide information to consumers stating whether or not an insurer uses credit scoring; and

(2) post the report required under former Section 15, Article 21.49-2U, on the department's Internet website.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.004. RULES. (a) The commissioner may adopt rules necessary to implement this chapter.

(b) The commissioner shall adopt rules that prescribe the allowable differences in rates charged by insurers due solely to the difference in credit scores.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

SUBCHAPTER B. USE OF CREDIT SCORING AND CREDIT INFORMATION

Sec. 559.051. PERMISSIBLE USE OF CREDIT SCORING. An insurer may use credit scoring, except for factors that constitute unfair discrimination, to develop rates, rating classifications, or underwriting criteria regarding lines of insurance subject to this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.052. PROHIBITED USE OF CREDIT INFORMATION. (a) An insurer may not:

(1) use a credit score that is computed using factors that constitute unfair discrimination;

(2) deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information without considering any other applicable underwriting factor independent of credit information; or

(3) take an action that results in an adverse effect against a consumer because the consumer does not have a credit card

account without considering any other applicable factor independent of credit information.

(b) An insurer may not consider an absence of credit information or an inability to determine credit information for an applicant for insurance coverage or for an insured as a factor in underwriting or rating an insurance policy unless the insurer:

(1) has statistical, actuarial, or reasonable underwriting information that:

(A) is reasonably related to actual or anticipated loss experience; and

(B) shows that the absence of credit information could result in actual or anticipated loss differences;

(2) treats the consumer as if the applicant for insurance coverage or insured had neutral credit information, as defined by the insurer; or

(3) excludes the use of credit information as a factor in underwriting and uses only other underwriting criteria.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.053. DISCLOSURE TO CONSUMER REGARDING USE OF CREDIT SCORING. (a) An insurer that uses credit scoring in the underwriting or rating of insurance subject to this chapter shall disclose to each applicant for insurance coverage that the applicant's credit report may be used in the underwriting or rating of the applicant's policy. The disclosure must be provided at the time of application by the insurer or agent and may be given orally, in writing, or electronically.

(b) If a policy is issued to the applicant for insurance coverage, an insurer or agent is not required to make the disclosure required under Subsection (a) on any subsequent renewal of the coverage.

(c) An insurer or its agent shall disclose to its customers, on a form adopted by the commissioner, whether credit information will be obtained on an applicant for insurance coverage or insured or on any other member or members of the applicant's or insured's household and used as part of the insurance credit scoring process.

(d) If credit information is obtained or used on an applicant

for insurance coverage or insured, or on any member of the applicant's or insured's household, the insurer shall disclose to the applicant or insured the name of each person on whom credit information was obtained or used and how each person's credit information was used to underwrite or rate the policy.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.054. NOTICE OF ACTION RESULTING IN ADVERSE EFFECT. (a) If, based in whole or in part on information contained in a credit report, an insurer takes an action resulting in an adverse effect with respect to an applicant for insurance coverage or insured, the insurer shall provide to the applicant or insured within 30 days:

(1) written or electronic notice of the action resulting in an adverse effect and the reasons for that action;

(2) the name, address, and telephone number of the consumer reporting agency, including a toll-free number established by the agency and the agency's Internet website, if applicable;

(3) written or electronic notice that the consumer reporting agency did not make the decision to take the action resulting in an adverse effect and will be unable to provide the applicant or insured the specific reasons why the action was taken; and

(4) written or electronic notice of the applicant's or insured's right to:

(A) obtain a free copy of the consumer's credit report from the consumer reporting agency during the 60-day period after the date of the notice; and

(B) dispute with the consumer reporting agency the accuracy or completeness of any information in the consumer's credit report furnished by the agency.

(b) In the notice described by Subsection (a)(1), an insurer shall include a description of not more than four factors that were the primary influences of the action resulting in the adverse effect.

(c) The use by an insurer of a generalized term such as "poor credit history," "poor credit rating," or "poor credit score" does not constitute sufficient notice under this section of the action

resulting in the adverse effect.

(d) Standardized credit explanations provided by a consumer reporting agency or other third-party vendor are also sufficient to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.055. DISPUTE RESOLUTION; ERROR CORRECTION. (a) If it is determined through the dispute resolution process established under Section 611(a)(5), Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended, that the credit information of a current insured was inaccurate or incomplete or could not be verified and the insurer receives notice of that determination from the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured not later than the 30th day after the date the insurer receives the notice.

(b) After re-underwriting or re-rating an insured under Subsection (a), an insurer shall make any adjustments necessary within 30 days, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall credit the insured the amount of overpayment. The insurer shall compute the overpayment back to the shorter of:

(1) the last 12 months of coverage; or

(2) the actual policy period.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.056. INDEMNIFICATION OF AGENT. (a) An insurer shall indemnify, defend, and hold its agent harmless from and against all liability, fees, and costs that arise out of or relate to the actions, errors, or omissions of an agent who obtains or uses credit information or credit scores for the insurer if the agent:

(1) follows the instructions of or procedures established by the insurer; and

(2) complies with any applicable law or rule.

(b) This section may not be construed to establish a cause of

action that does not exist in the absence of this section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.057. SALE OF POLICY TERM INFORMATION BY CONSUMER REPORTING AGENCY PROHIBITED. (a) A consumer reporting agency may not provide or sell data or lists that include any information that, in whole or in part, was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or credit score, including:

(1) the expiration dates of an insurance policy or any other information that may identify periods during which a consumer's insurance may expire; and

(2) the terms and conditions of the consumer's insurance coverage.

(b) The restriction under Subsection (a) does not apply to data or lists that the consumer reporting agency provides to:

(1) the agent from whom information was received;

(2) the insurer on whose behalf the agent acted; or

(3) that insurer's affiliates.

(c) This section may not be construed to restrict the ability of an insurer to obtain a claims history report or a report regarding a motor vehicle.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

SUBCHAPTER C. COMPUTING CREDIT SCORE; EVALUATING CREDIT INFORMATION

Sec. 559.101. NEGATIVE FACTORS. An insurer may not use any of the following as a negative factor in any credit scoring methodology or in reviewing credit information to underwrite or rate a policy of personal insurance:

(1) a credit inquiry that is not initiated by the consumer;

(2) an inquiry relating to insurance coverage, if so identified on a consumer's credit report; or

(3) a collection account with a medical industry code, if so identified on the consumer's credit report.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.102. MULTIPLE LENDER INQUIRIES. (a) An insurer shall consider multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the home mortgage industry, as only one inquiry.

(b) An insurer shall consider multiple lender inquiries made within 30 days of a prior inquiry, if coded by the consumer reporting agency on the consumer's credit report as from the motor vehicle lending industry, as only one inquiry.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.103. EXTRAORDINARY EVENTS. (a) Notwithstanding any other law, an insurer shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, or underwriting rules for a consumer whose credit information has been directly influenced by:

(1) a catastrophic illness or injury;

(2) the death of a spouse, child, or parent;

(3) temporary loss of employment;

(4) divorce; or

(5) identity theft.

(b) In a situation described by Subsection (a), an insurer:

(1) may consider only credit information not affected by the event; or

(2) shall assign a neutral credit score.

(c) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the person's credit before granting an exception. An insurer is not required to consider repeated events or events the insurer reconsidered previously as an extraordinary event.

(d) An insurer may also consider granting an exception to an applicant for insurance coverage or an insured for an extraordinary

event not listed in Subsection (a).

(e) An insurer is not out of compliance with any law or rule relating to underwriting, rating, or rate filing as a result of granting an exception under this section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

SUBCHAPTER D. FILING OF CREDIT SCORING MODELS

Sec. 559.151. FILING REQUIRED. (a) An insurer that uses credit scores to underwrite and rate risks shall file the insurer's credit scoring models or other credit scoring processes with the department.

(b) Another entity may file credit scoring models on behalf of an insurer.

(c) A filing that includes credit scoring may include loss experience justifying the use of credit information.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

Sec. 559.152. PUBLIC INFORMATION. A credit scoring model filed to comply with this chapter, as of the date the filing is received by the department:

(1) is public information;

(2) is not subject to any exceptions to disclosure under Chapter 552, Government Code; and

(3) cannot be withheld from disclosure under any other law.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

SUBCHAPTER E. ENFORCEMENT

Sec. 559.201. VIOLATION. An insurer that violates this chapter or a rule adopted under this chapter commits an unfair practice in violation of Chapter 541 and is subject to sanctions under Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.020(a), eff. September 1, 2005.

CHAPTER 560. PROHIBITED RATES

Sec. 560.001. DEFINITION OF INSURER. In this chapter, "insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, farm mutual insurance company, capital stock insurance company, county mutual insurance company, Lloyd's plan, surplus lines insurer, or other legal entity engaged in the business of insurance in this state. The term includes:

(1) an affiliate described by Section 823.003(a);

(2) the Texas Windstorm Insurance Association established under Chapter 2210;

(3) the FAIR Plan Association established under Chapter 2211; and

(4) the Texas Automobile Insurance Plan Association established under Chapter 2151.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1D.002, eff. April 1, 2009.

Sec. 560.002. USE OF CERTAIN RATES PROHIBITED; RATE REQUIREMENTS. (a) An insurer may not use a rate that violates this chapter.

(b) A rate used under this code:

(1) must be just, fair, reasonable, and adequate; and

(2) may not be:

(A) confiscatory;

(B) excessive for the risks to which the rate applies; or

(C) unfairly discriminatory.

(c) For purposes of this section, a rate is:

(1) inadequate if the rate is insufficient to sustain projected losses and expenses to which the rate applies, and continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening

competition or creating a monopoly in any market;

(2) excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided; or

(3) unfairly discriminatory if the rate:

(A) is not based on sound actuarial principles;

(B) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(C) is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1D.002, eff. April 1, 2009.

CHAPTER 562. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES REGARDING DISCOUNT HEALTH CARE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 562.001. PURPOSE. The purpose of this chapter is to regulate trade practices in the business of discount health care programs by:

(1) defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices; and

(2) prohibiting those unfair or deceptive trade practices.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.002. DEFINITIONS. In this chapter:

(1) "Advertisement, solicitation, or marketing material" means material that is made, published, disseminated, circulated, or placed before the public:

(A) in a newspaper, magazine, or other publication;

(B) in a notice, circular, pamphlet, letter, or poster;

(C) over a radio or television station;

(D) through the Internet;

(E) in a telephone sales script; or

(F) in any other manner.

(2) "Discount health care program" means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product otherwise regulated by the department or a self-funded or self-insured employee benefit plan.

(3) "Discount health care program operator" means a person who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charge to members.

(4) "Health care services" includes physician care, inpatient care, hospital surgical services, emergency services, ambulance services, laboratory services, audiology services, dental services, vision services, mental health services, substance abuse services, chiropractic services, and podiatry services, and the provision of medical equipment and supplies, including prescription drugs.

(5) "Marketer" means a person who sells or distributes, or offers to sell or distribute, a discount health care program, including a private label entity that places its name on and markets or distributes a discount health care program, but does not operate a discount health care program.

(6) "Member" means a person who pays fees, dues, charges, or other consideration for the right to participate in a discount health care program.

(7) "Person" means an individual, corporation, association, partnership, or other legal entity.

(8) "Program operator" means a discount health plan program operator.

(9) "Provider" means a person who is licensed or otherwise authorized to provide health care services in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.003. VENUE FOR ACTIONS INVOLVING DEPARTMENT OR COMMISSIONER. An action under this chapter in which the department or commissioner is a party must be brought in a district court in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.004. APPLICABILITY. Except as otherwise provided by this chapter, a program operator, including the operator of a freestanding discount health care program or a discount health care program marketed by an insurer or a health maintenance organization, shall comply with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.0041. EXEMPTION. This chapter does not apply to a health care sharing ministry operated under Chapter 1681.

Added by Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 2, eff. June 14, 2013.

Sec. 562.005. LIBERAL CONSTRUCTION. This chapter shall be liberally construed and applied to promote the underlying purposes as provided by Section 562.001.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED

Sec. 562.051. MISREPRESENTATION REGARDING DISCOUNT HEALTH CARE PROGRAM. It is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to:

(1) misrepresent the price range of discounts offered by

the discount health care program;

(2) misrepresent the size or location of the program's network of providers;

(3) misrepresent the participation of a provider in the program's network;

(4) suggest that a discount card offered through the program is a federally approved Medicare prescription discount card;

(5) use the term "insurance," except as:

(A) a disclaimer of any relationship between the discount health care program and insurance; or

(B) a description of an insurance product connected with a discount health care program; or

(6) use the term "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," or "preferred provider organization," or another similar term, in a manner that could reasonably mislead an individual into believing that the discount health care program is health insurance or provides coverage similar to health insurance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.052. FALSE INFORMATION AND ADVERTISING. It is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, solicitation, or marketing material containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the discount health care program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.053. FAILURE TO REGISTER OR RENEW REGISTRATION; FALSE REGISTRATION OR RENEWAL STATEMENT. (a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to:

(1) fail to register or renew registration as required under Chapter 7001; or

(2) with intent to deceive:

(A) file with the department a false statement in connection with an application for registration as a program operator under Chapter 7001; or

(B) file with the department a false statement in connection with an application for renewal of a registration as a program operator under Chapter 7001.

(b) The commissioner may impose on a person operating a discount health care program for the person's failure to register or renew registration as required under Chapter 7001 any remedy that the commissioner is authorized to impose under Chapter 101 for the unauthorized business of insurance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.054. MISREPRESENTATION OF DISCOUNT HEALTH CARE PROGRAMS. It is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs to misrepresent a discount health care program by:

(1) making an untrue statement of material fact;

(2) failing to state a material fact necessary to make other statements made not misleading, considering the circumstances under which the statements were made;

(3) making a statement in a manner that would mislead a reasonably prudent person to a false conclusion of a material fact;

(4) making a material misstatement of law; or

(5) failing to disclose a matter required by law to be disclosed, including failing to make an applicable disclosure required by this code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.055. NETWORK PARTICIPATION REQUIREMENTS. (a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs for a

discount health care program operator or an affiliate or agent of a discount health care program operator to require a pharmacy or pharmacist to:

(1) participate in a specified provider network as a condition of processing a claim for prescription drugs under the discount health care program; or

(2) participate in, or process claims under, a discount health care program as a condition of participation in a provider network.

(b) A discount health care program operator is not legally liable for any act or omission of an agent of the operator in violation of Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 573 (H.B. 3028), Sec. 1, eff. September 1, 2015.

Sec. 562.056. CERTAIN METHODS OF PROMOTIONS. (a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs for a discount health care program operator to pay any consideration to a health care services provider or employee of a health care services provider:

(1) to encourage an individual to claim a discount for prescription drugs under a discount health care program; or

(2) to include discount health care program information on a prescription for a drug or in materials accompanying the prescription.

(b) It is an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs for a discount health care program operator to provide a person with written prescription forms that could reasonably mislead an individual to believe that the discount health care program is health insurance or provides coverage similar to health insurance.

Added by Acts 2015, 84th Leg., R.S., Ch. 573 (H.B. 3028), Sec. 1, eff. September 1, 2015.

SUBCHAPTER C. REGULATION OF PRACTICES

Sec. 562.101. UNFAIR METHODS OF COMPETITION AND UNFAIR OR

DECEPTIVE ACTS OR PRACTICES PROHIBITED. A person may not engage in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of discount health care programs.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.102. PROHIBITED CONTENT OF CERTAIN DISCOUNT HEALTH CARE PROGRAM ADVERTISING, SOLICITATION, OR MARKETING. Notwithstanding any other provision of this code, it is unlawful for a program operator or marketer to advertise, solicit, or market a discount health care program containing the words "approved by the Texas Department of Insurance" or words with a similar meaning.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.103. PROGRAM OPERATOR DUTIES. (a) A program operator shall:

(1) provide a toll-free telephone number and Internet website for members to obtain information about the discount health care program and confirm or find providers currently participating in the program; and

(2) remove a provider from the discount health care program not later than the 30th day after the date the program operator learns that the provider is no longer participating in the program or has lost the authority to provide services or products.

(b) A program operator shall issue at least one membership card to serve as proof of membership in the discount health care program that must:

(1) contain a clear and conspicuous statement that the discount health care program is not insurance; and

(2) if the discount health care program includes discount prescription drug benefits, include:

(A) the name or logo of the entity administering the prescription drug benefits;

(B) the international identification number assigned by

the American National Standards Institute for the entity administering the prescription drug benefits;

(C) the group number applicable to the member; and

(D) a telephone number to be used to contact an appropriate person to obtain information relating to the prescription drug benefits provided under the program.

(c) Not later than the 15th day after the date of enrollment, a program operator shall issue at least one set of disclosure materials describing the terms and conditions of the discount health care program to each household in which a person is a member, including a statement that:

(1) the discount health care program is not insurance, with the word "not" capitalized;

(2) the member is required to pay the entire amount of the discounted rate;

(3) the discount health care program does not guarantee the quality of the services or products offered by individual providers; and

(4) if the member remains dissatisfied after completing the discount health care program's complaint system, the member may contact the member's state insurance department.

(d) A program operator shall ensure that an application form or other membership agreement:

(1) clearly and conspicuously discloses the duration of membership and the amount of payments the member is obligated to make for the membership; and

(2) contains a clear and conspicuous statement that the discount health care program is not insurance.

(e) A program operator shall allow any member who cancels a membership in the discount health care program not later than the 30th day after the date the person becomes a member to receive a refund, not later than the 30th day after the date the program operator receives a valid cancellation notice and returned membership card, of all periodic membership charges paid by that member to the program operator and the amount of any one-time enrollment fee that exceeds $50.

(f) A program operator shall:

(1) maintain a surety bond, payable to the department for the use and benefit of members in a manner prescribed by the department, in the principal amount of $50,000, except that a program

operator that is an insurer that holds a certificate of authority under Title 6 is not required to maintain the surety bond;

(2) maintain an agent for service of process in this state; and

(3) establish and operate a fair and efficient procedure for resolution of complaints regarding the availability of contracted discounts or services or other matters relating to the contractual obligations of the discount health care program to its members.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.104. MARKETING OF PROGRAM. (a) A program operator may market directly or contract with marketers for the distribution of the program operator's discount health care programs.

(b) A program operator shall enter into a written contract with a marketer before the marketer begins marketing, promoting, selling, or distributing the program operator's discount health care program. The contract must prohibit the marketer from using an advertisement, solicitation, or other marketing material or a discount card that has not been approved in advance and in writing by the program operator.

(c) A program operator must approve in writing before their use all advertisements, solicitations, or other marketing materials and all discount cards used by marketers to market, promote, sell, or distribute the discount health care program.

(d) Each advertisement, solicitation, or marketing material of a discount health care program must clearly and conspicuously state that the discount health care program is not insurance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.105. CONTRACT REQUIREMENTS. (a) A program operator shall contract, directly or indirectly, with a provider offering discounted health care services or products under the discount health care program. The written contract must contain all of the following provisions:

(1) a description of the discounts to be provided to a member;

(2) a provision prohibiting the provider from charging a member more than the discounted rate agreed to in the written agreement with the provider; and

(3) a provision requiring the provider to promptly notify the program operator if the provider no longer participates in the program or loses the authority to provide services or products.

(b) The program operator may not charge or receive from a provider any fee or other compensation for entering into the agreement.

(c) If the program operator contracts with a network of providers, the program operator shall obtain written assurance from the network that:

(1) the network has a written agreement with each network provider that includes a discounted rate that is applicable to a program operator's discount health care program and contains all of the terms described in Subsection (a); and

(2) the network is authorized to obligate the network providers to provide services to members of the discount health care program.

(d) The program operator shall require the network to:

(1) maintain and provide the program operator on a monthly basis an up-to-date list of providers in the network; and

(2) promptly remove a provider from its network if the provider no longer participates or loses the authority to provide services or products.

(e) The program operator shall maintain a copy of each written agreement the program operator has with a provider or a network for at least two years following termination of the agreement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.106. SUBMISSION OF MATERIALS. If the commissioner reasonably believes that a program operator or a marketer may not be operating in compliance with this chapter, the commissioner by order may require the program operator or the marketer to submit to the commissioner any advertisement, solicitation, or marketing material, disclosure material, discount card, agreement, or other document requested by the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.
Redesignated from Insurance Code, Section 561.106 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(40), eff. September 1, 2011.

SUBCHAPTER D. DETERMINATION OF UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES; ENFORCEMENT; SANCTIONS AND PENALTIES

Sec. 562.151. EXAMINATION AND INVESTIGATION. The department may examine and investigate the affairs of a person engaged in the business of discount health care programs in this state to determine whether the person:

(1) has or is engaged in an unfair method of competition or unfair or deceptive act or practice prohibited by this chapter; or

(2) has violated Subchapter B or C.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.152. STATEMENT OF CHARGES; NOTICE OF HEARING. (a) When the department has reason to believe that a person engaged in the business of discount health care programs in this state has engaged or is engaging in this state in an unfair method of competition or unfair or deceptive act or practice defined by Subchapter B or has violated Subchapter B or C and that a proceeding by the department regarding the charges is in the interest of the public, the department shall issue and serve on the person:

(1) a statement of the charges; and

(2) a notice of the hearing on the charges, including the time and place for the hearing.

(b) The department may not hold the hearing before the sixth day after the date the notice required by Subsection (a)(2) is served.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.153. HEARING. A person against whom charges are made under Section 562.152 is entitled at the hearing on the charges to have an opportunity to be heard and show cause why the department should not issue an order requiring the person to cease and desist from:

(1) performing the unfair method of competition or unfair or deceptive act or practice described in the charges; or

(2) violating Subchapter B or C.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.154. HEARING PROCEDURES. (a) Nothing in this chapter requires the observance of formal rules of pleading or evidence at a hearing under this subchapter.

(b) At a hearing under this subchapter, the department, on a showing of good cause, shall permit any person to intervene, appear, and be heard by counsel or in person.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.155. RECORD OF HEARING. (a) At a hearing under this subchapter, the department may, and at the request of a party to the hearing shall, make a record of the proceedings and the evidence presented at the hearing.

(b) If the department does not make a record and a person seeks judicial review of the decision made at the hearing, the department shall prepare a statement of the evidence and proceeding for use on review.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.156. COMPLIANCE WITH SUBPOENA. (a) If a person refuses to comply with a subpoena issued in connection with a hearing under this subchapter or refuses to testify with respect to a matter about which the person may be lawfully interrogated, on application

of the department, a district court in Travis County or in the county in which the person resides may order the person to comply with the subpoena or testify.

(b) A court may punish as contempt a person's failure to obey an order under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.157. DETERMINATION OF VIOLATION. After a hearing under this subchapter to determine whether a person has engaged in an unfair method of competition or unfair or deceptive act or practice prohibited by this chapter, the department shall determine whether:

(1) the method of competition or the act or practice considered in the hearing is defined as:

(A) an unfair method of competition or deceptive act or practice under Subchapter B; or

(B) a false, misleading, or deceptive act or practice under Section 17.46, Business & Commerce Code; and

(2) the person against whom the charges were made engaged in the method of competition or act or practice in violation of:

(A) this chapter; or

(B) Subchapter E, Chapter 17, Business & Commerce Code, as specified in Section 17.46, Business & Commerce Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.158. CEASE AND DESIST ORDER. On determining that a person committed a violation described by Section 562.157 or committed a violation of Subchapter B or C, the department shall:

(1) make written findings; and

(2) issue and serve on the person an order requiring the person to cease and desist from engaging in the method of competition or act or practice determined to be a violation or the violation of Subchapter B or C, as applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.159. MODIFICATION OR SETTING ASIDE OF ORDER. On the notice and in the manner the department determines proper, the department may modify or set aside wholly or partly a cease and desist order issued under Section 562.158 at any time before a petition appealing the order is filed in accordance with Subchapter D, Chapter 36.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.160. ADMINISTRATIVE PENALTY FOR VIOLATION OF CEASE AND DESIST ORDER. (a) A person who violates a cease and desist order issued under Section 562.158 is subject to an administrative penalty under Chapter 84.

(b) In determining whether a person has violated a cease and desist order, the department shall consider the maintenance of procedures reasonably adapted to ensure compliance with the order.

(c) An administrative penalty imposed under this section may not exceed:

(1) $1,000 for each violation; or

(2) $5,000 for all violations.

(d) An order of the department imposing an administrative penalty under this section applies only to a violation of the cease and desist order committed before the date the order imposing the penalty is issued.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.161. CIVIL PENALTY FOR VIOLATION OF CEASE AND DESIST ORDER. (a) A person who is found by a court to have violated a cease and desist order issued under Section 562.158 is liable to the state for a penalty. The state may recover the penalty in a civil action.

(b) The penalty may not exceed $50 unless the court finds the violation to be wilful, in which case the penalty may not exceed $500.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

SUBCHAPTER E. ENFORCEMENT BY ATTORNEY GENERAL

Sec. 562.201. INJUNCTIVE RELIEF. (a) The attorney general may bring an action under this section if the attorney general has reason to believe that:

(1) a person engaged in the business of discount health care programs in this state is engaging in, has engaged in, or is about to engage in an act or practice defined as unlawful under:

(A) this chapter; or

(B) Section 17.46, Business & Commerce Code; and

(2) the action is in the public interest.

(b) The attorney general may bring the action in the name of the state to restrain by temporary or permanent injunction the person's use of the method, act, or practice.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. April 1, 2010.

Sec. 562.202. VENUE FOR INJUNCTIVE ACTION. An action for an injunction under this subchapter may be commenced in a district court in:

(1) the county in which the person against whom the action is brought:

(A) resides;

(B) has the person's principal place of business; or

(C) is engaging in business;

(2) the county in which the transaction or a substantial portion of the transaction occurred; or

(3) Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. April 1, 2010.

Sec. 562.203. ISSUANCE OF INJUNCTION. (a) The court may issue an appropriate temporary or permanent injunction.

(b) The court shall issue the injunction without bond.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. April 1, 2010.

Sec. 562.204. CIVIL PENALTY. In addition to requesting a temporary or permanent injunction under Section 562.201, the attorney general may request a civil penalty of not more than $20,000 for each violation on a finding by the court that the defendant has engaged in or is engaging in an act or practice defined as unlawful under this chapter or Section 17.46, Business & Commerce Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. April 1, 2010.

Sec. 562.205. COMPENSATION OR RESTORATION. The court may make an additional order or judgment as necessary to compensate an identifiable person for actual damages or for restoration of money or property that may have been acquired by means of an enjoined act or practice.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. April 1, 2010.

Sec. 562.206. CIVIL PENALTY FOR VIOLATION OF INJUNCTION. (a) A person who violates an injunction issued under this subchapter is liable for and shall pay to the state a civil penalty of not more than $10,000 for each violation.

(b) The attorney general may, in the name of the state, petition the court for recovery of the civil penalty against the person who violates the injunction.

(c) The court shall consider the maintenance of procedures reasonably adapted to ensure compliance with the injunction in determining whether a person has violated an injunction.

(d) The court issuing the injunction retains jurisdiction and the cause is continued for the purpose of assessing a civil penalty under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. April 1, 2010.

Sec. 562.207. REMEDIES NOT EXCLUSIVE. The remedies provided by this subchapter:

(1) are not exclusive; and

(2) are in addition to any other remedy or procedure provided by another law or at common law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. April 1, 2010.

SUBCHAPTER F. ASSURANCE OF VOLUNTARY COMPLIANCE

Sec. 562.251. ACCEPTANCE OF ASSURANCE. (a) In administering this chapter, the department may accept assurance of voluntary compliance from a person who is engaging in, has engaged in, or is about to engage in an act or practice in violation of this chapter or Section 17.46, Business & Commerce Code.

(b) The assurance must be in writing and be filed with the department.

(c) The department may condition acceptance of an assurance of voluntary compliance on the stipulation that the person offering the assurance restore to a person in interest money that may have been acquired by the act or practice described in Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.252. EFFECT OF ASSURANCE. (a) An assurance of voluntary compliance is not an admission of a prior violation of this chapter or Section 17.46, Business & Commerce Code.

(b) Unless an assurance of voluntary compliance is rescinded by agreement, a subsequent failure to comply with the assurance is prima facie evidence of a violation of this chapter or Section 17.46, Business & Commerce Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.253. REOPENING. A matter closed by the filing of an assurance of voluntary compliance may be reopened at any time.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. CONSTRUCTION OF CHAPTER WITH OTHER LAWS

Sec. 562.301. LIABILITY UNDER OTHER LAW. An order of the department under this chapter, or an order by a court to enforce that order, does not relieve or absolve a person affected by either order from liability under another law of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.302. POWERS IN ADDITION TO OTHER POWERS AUTHORIZED BY LAW. The powers vested in the department and the commissioner by this chapter are in addition to any other powers to enforce a penalty, fine, or forfeiture authorized by law with respect to a method of competition or act or practice defined as unfair or deceptive.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

Sec. 562.303. DOUBLE RECOVERY PROHIBITED. A person may not recover damages and penalties for the same act or practice under both this chapter and another law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 1, eff. September 1, 2009.

CHAPTER 563. PRACTICES RELATING TO CLAIMS REPORTING

Sec. 563.001. DEFINITIONS. In this chapter:

(1) "Claims database" means a database used by insurers to share, among insurers, insureds' claims histories or damage reports concerning covered properties.

(2) "Insurer," "personal automobile insurance," and "residential property insurance" have the meanings assigned by Section 2254.001.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 13.001, eff. September 1, 2011.

Sec. 563.002. REPORTING TO CLAIMS DATABASE. An insurer or an insurer's agent may not report to a claims database information regarding an inquiry by an insured regarding coverage provided under a personal automobile insurance policy or a residential property insurance policy unless and until the insured files a claim under the policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 13.001, eff. September 1, 2011.

CHAPTER 564. DISCLOSURES FOR THE SALE OF CERTAIN OCCUPATIONAL INSURANCE POLICIES

Sec. 564.001. SCOPE OF CHAPTER; PURPOSE. (a) This chapter is intended to require disclosures on policy forms for certain occupational insurance policies designed or marketed to provide coverage to an employer that elects not to maintain workers' compensation insurance coverage under Chapter 406, Labor Code.

(b) Nothing in this chapter prohibits an employer that is not required to maintain workers' compensation insurance coverage and has elected not to obtain workers' compensation insurance coverage from obtaining occupational accident, disease, or death insurance coverage for the employer or the employer's employees.

Added by Acts 2021, 87th Leg., R.S., Ch. 281 (H.B. 3769), Sec. 1, eff. September 1, 2021.

Sec. 564.002. APPLICABILITY OF CHAPTER. This chapter applies to an insurance company authorized to write accident and health insurance or liability insurance, including:

(1) a surplus lines insurer;

(2) a Lloyd's plan; and

(3) a reciprocal or interinsurance exchange.

Added by Acts 2021, 87th Leg., R.S., Ch. 281 (H.B. 3769), Sec. 1, eff. September 1, 2021.

Sec. 564.003. EXCEPTIONS. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or another limited benefit;

(B) only for dental or vision care; or

(C) only for hospital indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) long-term care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(4) an individual or group life insurance policy; or

(5) individual or group credit life, accident, or disability insurance.

Added by Acts 2021, 87th Leg., R.S., Ch. 281 (H.B. 3769), Sec. 1, eff. September 1, 2021.

Sec. 564.004. OCCUPATIONAL POLICY DEFINED. In this chapter, "occupational policy" means:

(1) an individual or group accident or health insurance policy that explicitly provides coverage or benefits for an employer or the employer's employees for an employee's occupational bodily injury, disease, or death;

(2) an employer's insurance policy that explicitly provides liability coverage to an employer that elects not to maintain workers' compensation insurance coverage under Chapter 406, Labor Code, for an employee's occupational bodily injury, disease, or death in:

(A) a general liability insurance policy;

(B) a commercial multiple peril insurance policy; or

(C) any other type of insurance policy designated by the department as intended to provide liability coverage to an

employer that elects not to maintain workers' compensation insurance coverage under Chapter 406, Labor Code, for an employee's occupational bodily injury, disease, or death;

(3) an accident, health, or liability insurance policy that does not expressly include coverage for occupational injuries, disease, or death, but is marketed or sold to or through an employer as an alternative to coverage for benefits or liability provided by a workers' compensation insurance policy; or

(4) a policy that includes occupational accident and health and liability coverage in the same policy.

Added by Acts 2021, 87th Leg., R.S., Ch. 281 (H.B. 3769), Sec. 1, eff. September 1, 2021.

Sec. 564.005. REQUIRED DISCLOSURES FOR OCCUPATIONAL POLICIES. An occupational policy shall include the following disclosure statement in 10-point boldface type on the first page of the policy and on the first page of all materials used in advertising or marketing the occupational policy to an employer that elects not to maintain workers' compensation insurance coverage under Chapter 406, Labor Code:

"THIS IS NOT A WORKERS' COMPENSATION INSURANCE POLICY. THE EMPLOYER DOES NOT OBTAIN WORKERS' COMPENSATION INSURANCE COVERAGE BY PURCHASING THIS POLICY, AND IF THE EMPLOYER HAS NOT ELECTED TO OBTAIN WORKERS' COMPENSATION INSURANCE COVERAGE, THE EMPLOYER DOES NOT OBTAIN THOSE BENEFITS THAT WOULD OTHERWISE ACCRUE UNDER THE WORKERS' COMPENSATION LAWS IN THIS STATE. THE EMPLOYER MUST COMPLY WITH THE WORKERS' COMPENSATION LAWS IN THIS STATE AS THEY PERTAIN TO EMPLOYERS THAT ELECT NOT TO MAINTAIN WORKERS' COMPENSATION INSURANCE COVERAGE AND THE REQUIRED NOTIFICATIONS THAT MUST BE FILED AND POSTED."

Added by Acts 2021, 87th Leg., R.S., Ch. 281 (H.B. 3769), Sec. 1, eff. September 1, 2021.

Sec. 564.006. RULES. The commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 281 (H.B. 3769), Sec. 1, eff. September 1, 2021.

CHAPTER 565. PROHIBITED RATING CRITERIA

Sec. 565.001. PURPOSE. (a) The purpose of this chapter is to regulate the use of environmental, social, or governance models, scores, factors, or standards to define acts or practices that may be unfair discrimination in the business of insurance in this state.

(b) The legislature finds that there are numerous entities that have developed different environmental, social, or governance models, scores, factors, or standards that are used to:

(1) evaluate financial risks for investments in certain businesses or industries; or

(2) encourage or discourage business dealings or investments with certain types of businesses or industries.

(c) To the extent that the use of such models, scores, factors, or standards are not based on sound actuarial principles, or do not bear a reasonable relationship to the expected loss and expense experience related to insurance risks, the rating of certain businesses or risks in this state without an ordinary insurance business purpose may adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of this state or a portion of this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 1144 (S.B. 833), Sec. 1, eff. September 1, 2023.

Sec. 565.002. DEFINITION. In this chapter, "insurer" means an insurance company or other entity authorized to engage in the business of insurance in this state. The term includes:

(1) a stock or mutual property and casualty insurance company;

(2) a Lloyd's plan;

(3) a reciprocal or interinsurance exchange;

(4) a county mutual insurance company;

(5) a farm mutual insurance company;

(6) any insurer writing a line of insurance regulated by Title 10;

(7) all life, health, and accident insurance companies regulated by the department, including:

(A) a stock or mutual life, health, or accident insurance company;

(B) a fraternal benefit society;

(C) a nonprofit hospital, medical, or dental service corporation, including a group hospital service corporation operating under Chapter 842; and

(D) a stipulated premium company; and

(8) a health maintenance organization operating under Chapter 843.

Added by Acts 2023, 88th Leg., R.S., Ch. 1144 (S.B. 833), Sec. 1, eff. September 1, 2023.

Sec. 565.003. APPLICABILITY OF CHAPTER. (a) Except as provided by this section, this chapter applies only to insurance policies issued and delivered by an insurer in this state.

(b) This chapter does not require the filing of rates for any line, type of insurer, or type of insurance business that is not specifically required by statute to file rates with the department.

(c) This chapter does not apply to:

(1) fidelity, guaranty, and surety bonds; or

(2) crop insurance.

Added by Acts 2023, 88th Leg., R.S., Ch. 1144 (S.B. 833), Sec. 1, eff. September 1, 2023.

Sec. 565.004. CONSTRUCTION OF CHAPTER. (a) This chapter shall be construed and applied to promote the underlying purposes as provided by Section 565.001.

(b) This chapter may not be construed or applied to require:

(1) an insurer to write any line or type of business that the insurer does not write; or

(2) a material change in the insurer's current business plans.

(c) Nothing in this chapter is intended to create any type of private cause of action or independent basis in a civil or criminal proceeding.

(d) Nothing in this chapter is intended to prohibit the use of information that is relevant and related to the risk being insured

even if that information may also be used or considered in developing an environmental, social, or governance model, score, factor, or standard.

Added by Acts 2023, 88th Leg., R.S., Ch. 1144 (S.B. 833), Sec. 1, eff. September 1, 2023.

Sec. 565.005. PROHIBITED CRITERIA. Except as provided by Section 565.006, an insurer may not use an environmental, social, or governance model, score, factor, or standard to charge a rate different than the rate charged to another business or risk in the same class for essentially the same hazard.

Added by Acts 2023, 88th Leg., R.S., Ch. 1144 (S.B. 833), Sec. 1, eff. September 1, 2023.

Sec. 565.006. EXCEPTION. An insurer does not violate Section 565.005 if the insurer's actions are based on an ordinary insurance business purpose, including the use of sound actuarial principles, or financial solvency considerations reasonably related to loss experience for the different types of risks and coverages made available by a particular insurer.

Added by Acts 2023, 88th Leg., R.S., Ch. 1144 (S.B. 833), Sec. 1, eff. September 1, 2023.

Sec. 565.007. REGULATORY ACTION. Nothing in this chapter is intended to authorize the department to adopt any rule, model, or standard requiring an insurer to use any environmental, social, or governance model law, regulation, or other standard that has not been specifically authorized by statute, including:

(1) a rule, model, or standard required under any federal law that does not preempt state law under the McCarran-Ferguson Act (15 U.S.C. Section 1012(b)); or

(2) a rule, model, or standard required by any national organization, including the National Association of Insurance Commissioners, that has not been specifically authorized by statute.

Added by Acts 2023, 88th Leg., R.S., Ch. 1144 (S.B. 833), Sec. 1, eff. September 1, 2023.

SUBTITLE D. PRIVACY
CHAPTER 601. PRIVACY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 601.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a company that controls, is controlled by, or is under common control with another company. For the purposes of this subdivision, "control" has the meaning described by Sections 823.005 and 823.151.

(2) "Authorization" has the meaning assigned by Section 82.001.

(3) "Covered entity" means an individual or entity that receives an authorization from the department. The term includes an individual or entity described by Section 82.002.

(4) "Nonaffiliated third party" means an entity that is not an affiliate of, or related to by common ownership or affiliated by corporate control with, the covered entity. The term does not include a joint employee of the entity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 601.002. COMPLIANCE WITH FEDERAL LAW REQUIRED. (a) A covered entity shall comply with 15 U.S.C. Sections 6802 and 6803, as amended, in the same manner as a financial institution is required to comply under those sections.

(b) An entity that is a nonaffiliated third party in relation to a covered entity shall comply with 15 U.S.C. Section 6802(c), as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 601.003. EXEMPTION. Section 601.002(a) does not apply to a covered entity to the extent that the entity is acting solely as an insurance agent, employee, or other authorized representative for another covered entity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 601.004. TREATMENT OF CERTAIN HEALTH INFORMATION; STRICTER RULES NOT PRECLUDED. This chapter does not affect the authority of the department or another state agency to adopt stricter rules governing the treatment of health information by a covered entity if another law gives the department or agency that authority, including a law or rule of this state related to the privacy of individually identifiable health information under Subtitle F, Title II, Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

Sec. 601.051. RULES. (a) The commissioner shall adopt:

(1) rules to implement this chapter; and

(2) any other rules necessary to carry out Subtitle A, Title V, Gramm-Leach-Bliley Act (15 U.S.C. Section 6801 et seq.), as amended, to make this state eligible to override federal regulations as described by 15 U.S.C. Section 6805(c), as amended.

(b) In adopting rules under this chapter, the commissioner shall attempt to keep state privacy requirements consistent with federal regulations adopted under Subtitle A, Title V, Gramm-Leach-Bliley Act (15 U.S.C. Section 6801 et seq.), as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 601.052. IMPLEMENTATION OF CERTAIN STANDARDS. The department shall implement standards as required by 15 U.S.C. Section 6805(b), as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. ENFORCEMENT

Sec. 601.101. ENFORCEMENT BY DEPARTMENT. The department shall enforce 15 U.S.C. Sections 6801-6805, as amended, to the extent

required by 15 U.S.C. Section 6805, as amended, and this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 601.102. INJUNCTIVE OR DECLARATORY RELIEF; CIVIL PENALTY. (a) The attorney general, after conferring with the commissioner, may institute an action for injunctive or declaratory relief to restrain a violation of this chapter.

(b) In addition to instituting an action for injunctive relief under Subsection (a), the attorney general, after conferring with the commissioner, may institute an action for civil penalties against a covered entity or nonaffiliated third party for a violation of this chapter. A civil penalty assessed under this section may not exceed $3,000 for each violation.

(c) If the court in which an action under Subsection (b) is pending finds that violations of this chapter have occurred with a frequency that constitutes a pattern or practice, the court may assess a civil penalty not to exceed $250,000.

(d) If the attorney general substantially prevails in an action for injunctive relief or a civil penalty under this section, the attorney general may recover reasonable attorney's fees, costs, and expenses incurred obtaining the relief or penalty, including court costs and witness fees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 602. PRIVACY OF HEALTH INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 602.001. DEFINITIONS. In this chapter:

(1) "Covered entity" means a person who holds or is required to hold a license, registration, certificate of authority, or other authorization under this code or another insurance law of this state. The term includes:

(A) an insurance company, including:

(i) a county mutual insurance company;

(ii) a farm mutual insurance company;

(iii) a fraternal benefit society;

(iv) a group hospital service corporation;

(v) a Lloyd's plan;

(vi) a local mutual aid association;
(vii) a mutual insurance company;
(viii) a reciprocal or interinsurance exchange;
(ix) a statewide mutual assessment company; and
(x) a stipulated premium company;
(B) a health maintenance organization; and
(C) an insurance agent.
(2) "Health information" means information regarding an individual, other than the individual's age or gender, whether provided orally or recorded in any medium or form, that is created by or derived from the individual or a health care provider and that relates to:
(A) the past, present, or future physical, mental, or behavioral health or condition of the individual;
(B) the provision of health care to the individual; or
(C) payment for the provision of health care to the individual.
(3) "Nonpublic personal health information" means health information:
(A) that identifies an individual who is the subject of the information; or
(B) with respect to which there is a reasonable basis to believe that the information could be used to identify an individual.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.002. APPLICABILITY OF CHAPTER TO COVERED ENTITY REQUIRED TO COMPLY WITH CERTAIN FEDERAL STANDARDS. This chapter does not apply to a covered entity that is required to comply with the standards governing the privacy of individually identifiable health information adopted by the United States secretary of health and human services under Section 262(a), Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.003. CONSTRUCTION OF CHAPTER. (a) This chapter does not preempt or supersede state law in effect on July 1, 2002, that

relates to the privacy of medical records, health information, or insurance information.

(b) This chapter may not be construed to modify, limit, or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.).

(c) This chapter may not be used as a basis for drawing an inference that information is or is not transaction or experience information under Section 603 of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.004. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. AUTHORIZED DISCLOSURE OF CERTAIN HEALTH INFORMATION

Sec. 602.051. AUTHORIZATION FOR DISCLOSURE OF CERTAIN HEALTH INFORMATION. (a) Except as provided by Section 602.053, a covered entity must obtain authorization to disclose nonpublic personal health information before disclosing the information.

(b) A request for authorization to disclose nonpublic personal health information may be in written or electronic form and must:

(1) state the identity of the consumer or customer who is the subject of the information;

(2) describe:

(A) each type of information to be disclosed;

(B) each party to whom the covered entity intends to disclose the information;

(C) the purpose of the disclosure;

(D) how the information will be used; and

(E) the procedure for revoking the authorization;

(3) include the signature of:

(A) the consumer or customer who is the subject of the information; or

(B) the individual who is legally empowered to grant authorization;

(4) state the date the authorization is signed; and

(5) provide notice of:

(A) the period for which the authorization is valid; and

(B) the consumer's or customer's right to revoke the authorization at any time.

(c) The period for which the authorization is valid may not exceed 24 months.

(d) The right of a consumer or customer to revoke an authorization at any time is subject to the rights of an individual who, before receiving notice of a revocation, acted in reliance on the authorization.

(e) The covered entity shall retain the original or a copy of the authorization in the records of the individual who is the subject of the nonpublic personal health information.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.052. DELIVERY OF AUTHORIZATION FORM AND REQUEST FOR AUTHORIZATION. (a) A covered entity may deliver to a consumer or customer a request for authorization and an authorization form only if the request and form are clear and conspicuous.

(b) A covered entity is required to include delivery of the authorization form in a notice to a consumer or customer only if the covered entity intends to disclose health information protected under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.053. EXCEPTIONS. A covered entity may disclose nonpublic personal health information to the extent that the disclosure is necessary to perform the following insurance or health maintenance organization functions on behalf of the covered entity:

(1) the investigation or reporting of actual or potential fraud, misrepresentation, or criminal activity;

(2) underwriting;

(3) the placement or issuance of an insurance policy or evidence of coverage;

(4) loss control services;

(5) ratemaking or guaranty fund functions;

(6) reinsurance or excess loss insurance;
(7) risk management;
(8) case management;
(9) disease management;
(10) quality assurance;
(11) quality improvement;
(12) performance evaluation;
(13) health care provider credentialing verification;
(14) utilization review;
(15) peer review activities;
(16) actuarial, scientific, medical, or public policy research;
(17) grievance procedures;
(18) the internal administration of compliance, managerial, and information systems;
(19) policyholder or enrollee services;
(20) auditing;
(21) reporting;
(22) database security;
(23) the administration of consumer disputes and inquiries;
(24) external accreditation standards;
(25) the replacement of a group benefit plan or workers' compensation policy or program;
(26) activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit;
(27) any activity that permits disclosure without authorization under the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), as amended;
(28) disclosure that is required, or that is a lawful or appropriate method to enforce the covered entity's rights or the rights of other persons engaged, in carrying out a transaction or providing a product or service that the consumer requests or authorizes;
(29) claims administration, adjustment, and management;
(30) any activity that is:
(A) otherwise permitted by law;
(B) required by a governmental reporting authority; or
(C) required to comply with legal process; and
(31) any other insurance or health maintenance organization

functions the commissioner approves that are:

(A) necessary for appropriate performance of insurance or health maintenance organization functions; and

(B) fair and reasonable to the interests of consumers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.054. COMPLIANCE WITH OTHER LAW. A covered entity shall comply with:

(1) Subchapter D, Chapter 181, Health and Safety Code, except as otherwise provided by that subchapter; and

(2) the standards adopted under Section 182.108, Health and Safety Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 18, eff. September 1, 2012.

SUBCHAPTER C. PENALTIES AND ENFORCEMENT

Sec. 602.101. PROHIBITION. A covered entity may not knowingly or wilfully violate this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.102. INJUNCTION. The attorney general may bring an action for injunctive relief to restrain a violation of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.103. CIVIL PENALTY. (a) The attorney general may bring an action for a civil penalty against a covered entity or health care entity for a violation of this chapter.

(b) A civil penalty assessed under this section may not be less than $3,000 for each violation.

(c) If the court in which an action under this section is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice, the court may assess a civil penalty not to exceed $250,000.

(d) A civil penalty authorized by this section is in addition to any other civil, administrative, or criminal action provided by law, including an action for injunctive relief provided by Section 602.102.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.104. DISCIPLINARY ACTION. (a) In addition to a penalty prescribed by this subchapter, a covered entity that violates this chapter is subject to investigation, disciplinary proceedings, and probation or suspension of the covered entity's license or other form of authorization to engage in business.

(b) If there is evidence that a covered entity has engaged in a pattern or practice of violating this chapter, the covered entity's license or other form of authorization to engage in business may be revoked.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.105. EXCLUSION FROM STATE PROGRAMS. If there is evidence that a covered entity has engaged in a pattern or practice of violating this chapter, in addition to the other penalties prescribed by this subchapter, the covered entity shall be excluded from participating in any state-funded health care program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 602.106. REMEDIES AVAILABLE. This subchapter does not affect any right of a person under other law to bring a cause of action or otherwise seek relief with respect to conduct that violates this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBTITLE E. PREMIUM FINANCING
CHAPTER 651. FINANCING OF INSURANCE PREMIUMS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 651.001. DEFINITIONS. In this chapter:

(1) "Annual percentage rate" means the annual percentage rate of finance charge determined under the Consumer Credit Protection Act and Regulation Z.

(2) "Consumer Credit Protection Act" means the Consumer Credit Protection Act of 1970 (15 U.S.C. Section 1601 et seq.; 18 U.S.C. Section 891 et seq.).

(2-a) "Insurance agent" means a person licensed under Subchapter E, Chapter 981 or Chapter 4051, 4052, 4053, 4054, 4055, 4056, or 4153.

(3) "Insurance premium finance company" means:

(A) a person engaged in the business of making loans under this chapter by entering into premium finance agreements with insureds or prospective insureds;

(B) a person engaged in the business of acquiring premium finance agreements from insurance agents or brokers or from other insurance premium finance companies; or

(C) an insurance agent or broker making loans under this chapter who holds premium finance agreements made and delivered by insureds that are payable to the agent or broker or to the agent's or broker's order.

(4) "Insured" means a person who enters into a premium finance agreement with an insurance premium finance company.

(5) "Insurer" means an entity organized or authorized to engage in the business of insurance under this code as a capital stock insurance company, title insurance company, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, mutual or mutual assessment company of any kind, statewide mutual assessment company, local mutual aid association, burial association, county or farm mutual insurance company, fidelity, guaranty, or surety company, or trust company.

(6) "License holder" means an insurance premium finance company that holds a license issued under Subchapter B.

(7) "Person" means an individual, partnership, corporation, joint venture, trust, association, or other legal entity, regardless of organization.

(8) "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of

the premiums on an insurance contract.

(8-a) "Premium finance agreement servicer" means a person who provides a premium finance company with collection, billing, or other services related to the administration of premium finance agreements.

(9) "Regulation Z" means the federal regulations adopted under the Consumer Credit Protection Act as 12 C.F.R. Section 226.1 et seq.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 757 (H.B. 2965), Sec. 1, eff. June 17, 2005.

Sec. 651.002. CERTAIN CONDUCT NOT ENGAGING IN BUSINESS AS INSURANCE PREMIUM FINANCE COMPANY. (a) The preparation or delivery by an insurance agent of a premium finance agreement or disclosure statement required by Section 651.155 on behalf of the insured does not constitute engaging in business as an insurance premium finance company.

(b) Subsection (a) does not apply to a premium finance agreement held for the benefit of the insurance agent as provided by Section 651.001(3)(C).

(c) This chapter does not apply to a health care sharing ministry operated under Chapter 1681.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 3, eff. June 14, 2013.

Sec. 651.003. RULES. (a) The commissioner may adopt and enforce rules necessary to administer this chapter.

(b) The rules may contain classifications, differentiations, or other provisions and provide for adjustments or exceptions for any class of transactions necessary to:

(1) accomplish the purposes of this chapter;

(2) prevent circumvention or evasion of this chapter; or

(3) facilitate compliance with this chapter.

(c) A rule adopted by the commissioner may not contain any classification, differentiation, or other provision with respect to any class of transactions or provide for any adjustment or exception for any class of transactions that would result in a less stringent disclosure requirement than required for that class of transactions by the Consumer Credit Protection Act or Regulation Z.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.004. EMPLOYMENT OF EXAMINERS AND INVESTIGATORS; PAYMENT OF EXPENSES. The department may:

(1) employ persons as necessary to examine or investigate and make reports on alleged violations of this chapter and compliance with any other provision of this code by a license holder;

(2) pay the salaries and expenses of persons described by Subdivision (1) and of all office employees; and

(3) pay an expense necessary to enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.005. DEPOSIT AND USE OF FEES. (a) Except as provided by Subsection (b), each fee collected under this chapter:

(1) shall be deposited to the credit of the Texas Department of Insurance operating account; and

(2) may be used by the department to enforce this chapter.

(b) An assessment or fee associated with examination costs, as defined by Section 401.251, shall be deposited to the account described by Section 401.156(a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 4, eff. September 1, 2011.

Sec. 651.006. ASSESSMENTS. (a) A license holder shall pay to the department:

(1) an amount imposed by the department to cover the direct and indirect cost of examinations and investigations made under this

chapter; and

(2) a proportionate share of the general administrative expense attributable to the regulation of license holders.

(b) Each amount required by this section is in addition to any investigation or license fee imposed under Subchapter B.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.007. APPLICABILITY OF CONSUMER CREDIT PROTECTION ACT AND REGULATION Z. A transaction that is subject to this chapter is also subject to:

(1) the Consumer Credit Protection Act; and

(2) the applicable provisions of Regulation Z.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.008. AUTHORITY OF CERTAIN PROPERTY AND CASUALTY AGENTS TO CHARGE INTEREST TO CERTAIN PERSONS. (a) Notwithstanding any other law, a general property and casualty agent or a personal lines property and casualty agent who holds a license under Chapter 4051 may enter into a written agreement with a purchaser of insurance from the agent that provides for the payment of interest to the agent on any amount due to the agent for the insurance purchased. The interest is computed at a rate not to exceed the greater of:

(1) a rate allowed by Chapter 303, Finance Code; or

(2) the rate of one percent a month.

(b) A claim or defense of usury may not be raised in connection with a written agreement under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.06, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.07, eff. September 1, 2007.

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 651.051. LICENSE REQUIRED. (a) Unless the person is a

license holder, a person may not:

(1) negotiate, transact, or engage in the business of insurance premium financing in this state; or

(2) contract for, charge, or receive directly or indirectly on or in connection with an insurance premium financing any charge, regardless of whether the charge is for interest, compensation, consideration, expense, or otherwise, if in the aggregate the amount of the charge exceeds the amount the person would be permitted by law to charge if the person were not a license holder.

(b) This subchapter does not apply to a person who purchases or otherwise acquires a premium finance agreement from a license holder if the license holder:

(1) retains the right to service the agreement and to collect payments due under the agreement; and

(2) remains responsible for servicing the agreement in compliance with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 757 (H.B. 2965), Sec. 2, eff. June 17, 2005.

Sec. 651.052. LICENSE FEE. (a) The department shall establish the fee for a license under this subchapter in an amount not to exceed $200.

(b) The fee for a license issued after June 30 may not exceed $100.

(c) Section 201.001 applies to fees collected under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.053. ENTITLEMENT OF BANKS AND SAVINGS AND LOAN ASSOCIATIONS TO LICENSE. (a) A bank or a savings and loan association is entitled to receive a license under this subchapter if the bank or savings and loan association:

(1) is engaging in business under the laws of this state or the United States; and

(2) notifies the department of its intention to operate

under this chapter.

(b) On receipt of notice under Subsection (a)(2), the department shall immediately issue a license to the bank or savings and loan association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.054. APPLICATION FOR LICENSE; INVESTIGATION FEE; EXEMPTION. (a) An application for a license to engage in the business of insurance premium financing must:

(1) be in writing on a form prescribed by the commissioner; and

(2) be accompanied by a nonrefundable investigation fee in an amount not to exceed $400 as established by the department.

(b) A person who on January 1, 1980, held a license under Chapter 3, Title 79, Revised Statutes (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), is not required to pay an investigation fee.

(c) Section 201.001 applies to fees collected under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.055. REFUSAL TO ISSUE LICENSE. The department may refuse to issue a license to an applicant if the department determines that:

(1) the financial responsibility, experience, character, or general fitness of the applicant or any person associated with the applicant does not command the confidence of the community and does not warrant the belief that the applicant will engage in the business of insurance premium financing honestly, fairly, and efficiently; or

(2) the applicant does not have available for the operation of the business net assets of at least $25,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.056. NOTICE OF ACTION ON APPLICATION. Not later than the 90th day after the date the department receives an application

under Section 651.054, the department shall notify the applicant that:

(1) the application has been approved and the department will issue a license to the applicant on payment of the required license fee; or

(2) the application has been denied.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.057. ISSUANCE OF LICENSE. After approval of an application and on receipt of the required license fee, the department shall:

(1) issue a license authorizing the license holder to engage in business as an insurance premium finance company at the location specified in the license holder's application; and

(2) send the license to the applicant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.058. RECIPROCAL LICENSE. The department may waive any license requirement for an applicant who holds a valid license from another state that has license requirements substantially equivalent to the requirements prescribed by this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.059. ISSUANCE OF MULTIPLE LICENSES. The department may issue a person more than one license under this subchapter but may not issue one person more than 60 of those licenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.060. SINGLE BUSINESS LOCATION AUTHORIZED BY LICENSE. A license authorizes the license holder to maintain only one location where the business of insurance premium financing may be conducted.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.061. APPEARANCE OF LICENSE; POSTING. (a) A license must state the name and address of the license holder.

(b) The license must be conspicuously posted at the location where the license holder engages in the business of insurance premium financing.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.062. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. A license may not be transferred or assigned.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.063. TERM OF LICENSE. Unless a staggered renewal system is adopted under Section 651.065, a license is issued for the calendar year and remains valid until December 31 of that year, unless suspended, revoked, or surrendered in accordance with Section 651.204 or 651.206.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.064. PROCEDURE FOR LICENSE RENEWAL. (a) A license holder may renew an unexpired license by paying the required renewal fee to the department.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department:

(1) the required renewal fee; and

(2) an additional fee equal to one-half of the original license fee.

(c) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the department:

(1) all unpaid renewal fees; and

(2) an additional fee equal to the original license fee.

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license

by complying with the requirements and procedures for obtaining an original license.

(e) Not later than the 30th day before the date a person's license expires, the department shall send written notice of the impending license expiration to the person at the person's last known address.

(f) This section may not be construed to prevent the department from denying or refusing to renew a license under an applicable law or a rule adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.065. STAGGERED RENEWAL SYSTEM. (a) The commissioner by rule may adopt a system under which licenses expire on various dates during the year.

(b) For a year in which the license expiration date is less than one year from the date of license issuance or the anniversary of that date, the license fee shall be prorated so that each license holder pays only that portion of the license fee allocable to the number of months during which the license is valid. On each subsequent renewal of the license, a license holder must pay the total renewal fee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. REGULATION OF INSURANCE PREMIUM FINANCE COMPANIES AND OTHERS

Sec. 651.101. BOOKS, ACCOUNTS, AND RECORDS. (a) A license holder shall maintain books, accounts, and records in sufficient detail to enable a representative of the department to determine whether the license holder is in compliance with this chapter and rules adopted by the commissioner.

(b) A license holder shall maintain for inspection the license holder's books, accounts, and records, including any cards used in a card system, for at least four years after the date the final entry of any premium finance agreement is recorded in those books, accounts, and records.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.102. ANNUAL REPORT. On or before April 1 of each year, a license holder shall file with the department a report containing information required by the department concerning the business and operations of the license holder during the preceding calendar year at each licensed location where the license holder engages in the business of insurance premium financing in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.103. BUSINESS NAME. A license holder may not engage in the business of insurance premium financing under any name other than the name stated on the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.104. BUSINESS LOCATION. A license holder may not engage in the business of insurance premium financing at any location other than the address stated on the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.105. RELOCATION OF PLACE OF BUSINESS. (a) A license holder who proposes to relocate the place where the holder engages in the business of insurance premium financing shall give written notice of the proposed change to the department.

(b) If the department approves the proposed relocation, the department shall issue an endorsement to the license holder indicating the change and the date of the change.

(c) The endorsement authorizes the license holder to engage in the business of insurance premium financing at the new location. The license holder shall attach the endorsement to the license for that location.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.106. BUSINESS PREMISES. (a) Except as provided by Subsection (b), a license holder may engage in the business of insurance premium financing:

(1) in any office, suite, room, or place of business in which any other business is solicited or engaged in; or

(2) in association or in conjunction with any other business.

(b) Subsection (a) does not apply if the department:

(1) determines, after a hearing, that the conduct by the license holder of the other business at the location for which the license was issued has concealed evasions of this chapter; and

(2) orders the license holder in writing to stop engaging in the business of insurance premium financing at that location.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.107. ENGAGING IN BUSINESS BY MAIL OR OUTSIDE THE COMMUNITY. This chapter does not prohibit a license holder from engaging in the business of insurance premium financing:

(1) by mail; or

(2) with persons who do not reside in the same community as the licensed location.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.108. CERTAIN CHARGES PROHIBITED. In connection with a premium finance agreement entered into under this chapter, an insurance charge or any other charge or fee may not be imposed unless the charge or fee is authorized by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.109. LIMITATIONS ON RATES AND CHARGES. (a) An insurance premium finance company may not take or receive from an insured a greater rate or charge than is authorized by Chapter 342, Finance Code.

(b) For purposes of this section, a charge begins on the earlier of:

(1) the date from which the insurer requires payment of the premium and payment was made to the insurer for the financed policy; or

(2) the effective date of the policy.

(c) The finance charge is computed on the balance of the premiums due after subtracting any down payment made by the insured in accordance with the premium finance agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.110. LIMITATIONS ON CERTAIN INDUCEMENTS OR SHARING OF PROFITS AND FEES. (a) This section applies to:

(1) an insurance premium finance company;

(2) an insurance agent;

(3) a premium finance agreement servicer; or

(4) an affiliate, employee, agent, or other representative of an insurance premium finance company or a premium finance agreement servicer.

(a-1) A person, partnership, or other entity described by Subsection (a) and involved in transactions related to the financing of insurance premiums may not:

(1) directly or indirectly pay, allow, give, or offer to pay, allow, or give in any manner to an insurance agent or an employee of an insurance agent any consideration, compensation, or inducement for soliciting, accepting an application for, delivering, or administering premium finance agreements;

(2) pay, allow, or offer to pay or allow an insurance agent or an employee of an insurance agent to share the profits of any person, partnership, or other entity if any portion of the share of profits is determined, either in whole or in part, by the amount of premium dollars financed or premium finance agreements placed; or

(3) pay, allow, or offer to pay or allow an insurance agent or an employee of an insurance agent to share any portion of fees, including late fees, that are related to the premium finance agreement.

(b) Subsection (a-1) does not prohibit the giving or offering of an article of merchandise to an insurance agent or an employee of an insurance agent that has a value of $10 or less on which there is an advertisement of the insurance premium finance company.

(c) Subsection (a-1) does not prohibit a person, partnership, or other entity described by Subsection (a) from making a payment under a contractual agreement with a validly organized and operating association of insurance agents or a subsidiary of the association if no part of a payment received under the agreement:

(1) is distributed to an insurance agent or an employee of an insurance agent; or

(2) inures directly to the benefit of a member of the association or an employee of the member.

(d) A contractual agreement under Subsection (c):

(1) must be in writing; and

(2) is not valid until commissioner approval is received.

(e) Subsection (a-1) does not prohibit an insurance agent from being the sole owner or sole shareholder of an insurance premium finance company and receiving profits and fees of the insurance premium finance company if the insurance agent discloses in writing the agent's ownership interest in the insurance premium finance company to all insureds placed by the agent with the insurance premium finance company owned by the agent.

(f) Subsections (a-1) and (e) do not apply to a person, partnership, or other entity described by Subsection (a) and involved in transactions related to the financing of insurance premiums for commercial lines of insurance if, with respect to those transactions:

(1) the insurance agent discloses in writing the source of any compensation to be received by the agent as a result of the insured entering into a premium finance agreement;

(2) the agent provides in writing to the insured the amount of compensation, as a percentage of the premiums financed, if the amount of compensation received by the agent exceeds two percent of the premium amount financed; and

(3) the amount of compensation is based only on actual premiums financed and is not paid as:

(A) an advance on future premium finance agreements; or

(B) a form of bonus for the agent agreeing to place finance agreements with the premium finance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 757 (H.B. 2965), Sec. 4, eff. June 17, 2005.

Sec. 651.111. DECEPTIVE ADVERTISING PROHIBITED. (a) A license holder may not advertise or cause to be advertised in any manner any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of a premium finance agreement.

(b) If rates or charges are stated in advertising, the license holder must express the rates or charges in terms of a simple annual percentage rate as defined by federal law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER D. PREMIUM FINANCE AGREEMENTS

Sec. 651.151. REQUIRED FORM AND CONTENTS OF PREMIUM FINANCE AGREEMENT. (a) A premium finance agreement must be in writing on a form approved by the commissioner.

(b) A premium finance agreement must be dated and signed by the insured. An agreement may be signed on behalf of the insured by the insured's agent if:

(1) the agreement contains policies for other than personal, family, or household purposes; and

(2) the premiums for the policies exceed $1,000.

(c) A premium finance agreement must contain:

(1) the name and business address of the insurance agent or broker negotiating the related insurance contract;

(2) the name and residence or business address of the insured as specified by the insured;

(3) the name and business location of the insurance premium finance company to which payments are to be made;

(4) a description of each insurance contract involved;

(5) the amount of the premium for each insurance contract;

(6) the total amount of the premiums for all insurance contracts;

(7) the amount of any down payment;

(8) the principal balance, which is the difference between the amounts under Subdivisions (6) and (7);

(9) the total amount of the finance charge, which must describe each amount included and use the term "finance charge"; and

(10) the balance payable by the insured, which is the sum of the amounts under Subdivisions (8) and (9).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.152. OTHER REQUIRED CONTENTS. In addition to the items required by Section 651.151, a premium finance agreement must contain the following, as applicable:

(1) the finance charge expressed as an annual percentage rate, using the term "annual percentage rate";

(2) the number of installments required under the agreement;

(3) the amount of each installment expressed in dollars;

(4) the due date or period of each installment;

(5) the amount or method of computing the amount of any default or delinquency charge that is payable in the event of late payment; and

(6) the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.153. FORM OF DISCLOSURES. (a) The disclosures required by Sections 651.151 and 651.152 must be made clearly, conspicuously, and in meaningful sequence.

(b) If the term "finance charge" or "annual percentage rate" is required to be used, the term must be printed more conspicuously than other required terminology.

(c) Each numerical amount or percentage must be expressed as a figure and:

(1) legibly handwritten; or

(2) printed in not less than the equivalent of 10-point type, 75/1,000-inch computer type, or elite-size typewritten numerals.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.154. CONSOLIDATION OF INCREASE ATTRIBUTABLE TO

AMENDMENT OF RATE CLASSIFICATION. (a) If, in a premium finance agreement, a change in an insured's policy that is caused by an amendment of the rate classification by endorsement or otherwise results in an increased principal balance and the amount under the previous contract has not been fully paid, the subsequent increase, at the insured's option, may be consolidated with the previous contract if the agreement provides for consolidation.

(b) A consolidation under this section may be accomplished by a memorandum of agreement between the agent and the insured if, before the first scheduled payment date of the amended transaction, the insurance premium finance company provides to the insured the following information in writing:

(1) the amount of the premium increase;

(2) the down payment on the increase;

(3) the principal amount of the increase;

(4) the total amount of any finance charge on the increase;

(5) the total of the additional balance due;

(6) the outstanding balance due under the original agreement;

(7) the balance due under the consolidated agreement;

(8) the annual percentage rate of any finance charge on the additional balance due;

(9) the revised schedule of payments;

(10) the amount or method of computing the amount of any default, deferment, or similar charge authorized by Chapter 342, Finance Code, that is payable in the event of late payment; and

(11) the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.155. RESPONSIBILITIES OF INSURANCE AGENT. An insurance agent shall:

(1) prepare a premium finance agreement; and

(2) deliver to the insured each disclosure statement required by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.156. TAKING OF INCOMPLETE PREMIUM FINANCE AGREEMENT PROHIBITED. A license holder may not take a premium finance agreement that has not been fully completed and executed at the time the agreement is executed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.157. PERFECTION OF PREMIUM FINANCE AGREEMENT AS SECURED TRANSACTION: FILING NOT REQUIRED. Filing of a premium finance agreement or a financing statement is not necessary to perfect the agreement as a secured transaction against a creditor, subsequent purchaser, pledgee, encumbrancer, successor, or assign of the insured or any other party.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.158. PREPAYMENT AND REFUND. (a) Notwithstanding the provisions of any premium finance agreement to the contrary, an insured may pay the balance due under the agreement in full at any time before the maturity of the final installment of the balance.

(b) If an insured pays a premium finance agreement in full as authorized by this section and the agreement included an amount for a charge, the insured is entitled to receive for the prepayment by cash or renewal a refund credit in accordance with Subchapter H, Chapter 342, Finance Code, and rules adopted under that subchapter. If the amount of the credit for prepayment is less than $5, the insured is not entitled to a refund credit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 757 (H.B. 2965), Sec. 5, eff. June 17, 2005.

Sec. 651.159. DEFAULT CHARGE. A premium finance agreement may provide for the payment of a default charge by the insured as provided by Section 342.203, Finance Code, this code, or a rule adopted under those statutes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.160. POWER OF ATTORNEY. A premium finance agreement may contain a power of attorney that enables the insurance premium finance company to cancel any or all of the insurance contracts listed in the agreement as provided by Section 651.161.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.161. CANCELLATION OF INSURANCE CONTRACT. (a) An insurance premium finance company may not cancel an insurance contract listed in a premium finance agreement except as provided by this section for an insured's failure to make a payment at the time and in the amount provided in the agreement.

(b) The insurance premium finance company must mail to the insured a written notice that the company will cancel the insurance contract because of the insured's default in payment unless the default is cured at or before the time stated in the notice. The stated time may not be earlier than the 10th day after the date the notice is mailed.

(c) The insurance premium finance company must also mail a copy of the notice to the insurance agent or broker identified in the premium finance agreement.

(d) After the time stated in the notice required by Subsection (b), the insurance premium finance company may cancel each applicable insurance contract by mailing a notice of cancellation to the insurer. Each insurance contract shall be canceled as if the insured had canceled the contract, except that the return of a canceled contract is not required.

(e) The insurance premium finance company must also mail a notice of cancellation to:

(1) the insured at the insured's last known address; and

(2) the insurance agent or broker identified in the premium finance agreement.

(f) A statutory, regulatory, or contractual restriction that provides that an insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party applies to a cancellation under this section. The insurer shall:

(1) give the prescribed notice on behalf of the insurer or the insured to each governmental agency, mortgagee, or other third party on or before the second business day after the date the insurer receives the notice of cancellation from the insurance premium finance company; and

(2) determine the effective date of cancellation, taking into consideration the number of days' notice required to complete the cancellation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.162. RETURN OF UNEARNED PREMIUMS AND COMMISSIONS. (a) This section applies only to a premium finance agreement that contains an assignment or power of attorney for the benefit of the insurance premium finance company.

(b) If an insurance contract listed in a premium finance agreement is canceled, the insurer shall return all unearned premiums that are due under the contract directly to the insurance premium finance company before the 61st day after the cancellation date.

(c) The insurer may deduct from the unearned premiums returned to the insurance premium finance company the amount of any unearned commission due from the agent writing the insurance if the insurer notifies the agent to return the unearned commission to the insurance premium finance company. If the agent does not return the unearned commission to the insurance premium finance company before the 91st day after the cancellation date, the insurer shall remit the unearned commission to the insurance premium finance company before the 121st day after the cancellation date.

(d) Notwithstanding Subsections (a)-(c), an agent is liable for the return of unearned commissions on an insurance contract written through the Texas Windstorm Insurance Association, the Texas Automobile Insurance Plan Association, or the Texas Medical Liability Insurance Underwriting Association. An agent placing business through one of those plans shall return the unearned commissions to the insurance premium finance company before the 61st day after the date the agent is notified of the cancellation.

(e) An insurer, other than the Texas Windstorm Insurance Association, the Texas Automobile Insurance Plan Association, or the Texas Medical Liability Insurance Underwriting Association, may

return the unearned premiums to the producing agent. The insurer remains liable and shall remit the unearned premiums to the insurance premium finance company before the 121st day after the cancellation date if:

(1) the producing agent does not return the unearned premiums to the insurance premium finance company before the 91st day after the cancellation date; and

(2) the insurance premium finance company complied with Section 651.165.

(f) If the insurance premium finance company failed to comply with Section 651.165, the insurer, including the Texas Windstorm Insurance Association, the Texas Automobile Insurance Plan Association, and the Texas Medical Liability Insurance Underwriting Association, may comply with its legal duty to return the unearned premiums due under the insurance contract to the insurance premium finance company by returning those unearned premiums to the producing agent.

(g) If the crediting of return premiums to the account of an insured results in a surplus over the amount due from the insured, the insurance premium finance company shall refund the excess to the insured. If the amount of the excess is less than $5, the insured is not entitled to a refund.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 417 (H.B. 1975), Sec. 1, eff. June 19, 2009.

Sec. 651.163. ASSIGNMENT OF PREMIUM FINANCE AGREEMENT. Unless the insured has notice of an actual or intended assignment of a premium finance agreement, payment by an insured under the agreement to the last known holder of the agreement is binding on all subsequent holders or assignees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.164. RESTRICTIONS ON PREMIUM FINANCE AGREEMENTS. (a) A premium finance agreement may not contain any provision under which, absent default by the insured, the insurance premium finance

company holding the agreement may arbitrarily or without reasonable cause accelerate the maturity of all or any part of the amount owing under the agreement.

(b) For purposes of Subsection (a), reasonable cause includes a proceeding in bankruptcy, receivership, or insolvency instituted by or against the insured or the insolvency of or suspension of business or cessation of the right to engage in business by an insurer writing policies that are financed for the insured under the premium finance agreement.

(c) A license holder may not take:

(1) an instrument in which the insured waives any right accruing to the insured under this chapter;

(2) an instrument that has not been fully completed and executed by the insured;

(3) an assignment of wages as security for an insurance premium finance agreement entered into under this chapter;

(4) a lien on real property as security for a premium finance agreement entered into under this chapter, except any lien created by law on the recording of an abstract of judgment; or

(5) a confession of judgment or a power of attorney in favor of the license holder or a third person to confess judgment or to appear for an insured in a judicial proceeding.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.165. REQUIRED NOTICE OF CERTAIN PREMIUM FINANCE AGREEMENTS. (a) An insurance premium finance company that enters into a premium finance agreement that includes an assignment or power of attorney shall notify the insurer or the Texas Windstorm Insurance Association, the Texas Automobile Insurance Plan Association, or the Texas Medical Liability Insurance Underwriting Association whose premiums are being financed:

(1) of the existence of the agreement; and

(2) to whom the premium payment has been made.

(b) An insurance premium finance company shall notify and fund all premiums to a county mutual insurance company unless the insurance premium finance company is authorized in writing by the county mutual insurance company to notify or fund an agent or managing general agent.

(c) Notice required under this section must be made before the 31st day after the date the premium finance agreement is accepted by the insurance premium finance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.166. TAKING, RECEIVING, OR CHARGING UNAUTHORIZED AMOUNT. (a) Taking or receiving from an insured or the charging of an insured by an insurance premium finance company of a charge greater than authorized by this chapter does not invalidate:

(1) the premium finance agreement; or

(2) the principal balance payable under the agreement.

(b) An action described by Subsection (a) may be adjudged a forfeiture of all charges that:

(1) are authorized under the premium finance agreement; or

(2) the insured has agreed to pay.

(c) A person who pays an unauthorized charge or the person's legal representative may bring an action against the insurance premium finance company to recover twice the total amount of the charge paid. The action must be brought within two years after the date the unauthorized charge is paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.167. EFFECT OF LICENSE REVOCATION, SUSPENSION, OR SURRENDER ON PREMIUM FINANCE AGREEMENT. The revocation, suspension, or surrender of a license does not affect the obligation of an insured under a lawful premium finance agreement previously acquired or held by the person whose license was revoked, suspended, or surrendered.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER E. DISCIPLINARY PROCEDURES AND PENALTIES; OFFENSES

Sec. 651.201. EXAMINATIONS AND INVESTIGATIONS OF LICENSE HOLDERS. (a) The department may conduct an examination or investigation that is necessary to determine whether a license holder:

(1) is in compliance with this chapter; or

(2) has engaged in conduct that would warrant the revocation or suspension of the license holder's license.

(b) The department or an authorized representative of the department may:

(1) require the attendance of any person;

(2) examine the person under oath; and

(3) compel the production of any relevant book, record, account, or document.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.202. CONFIDENTIALITY OF REPORTS AND RELATED MATERIAL. (a) A report of an examination or investigation under Section 651.201 and any correspondence or memoranda concerning or arising from the examination or investigation:

(1) are confidential communications;

(2) are not subject to subpoena; and

(3) may not be made public, except in connection with a hearing under Section 651.204 or an appearance in connection with the hearing.

(b) Subsection (a) applies to an authenticated copy of a report described by Subsection (a) in the possession of the commissioner, the department, or a license holder.

(c) Information obtained in the course of an examination or investigation may be made available to another governmental agency if the information involves a matter within the scope or jurisdiction of the agency.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.203. HEARINGS AND INVESTIGATIONS; SUBPOENA POWER. In conducting a hearing or investigation under this chapter, the department or a person designated by the department may:

(1) administer oaths;

(2) subpoena witnesses;

(3) take depositions of witnesses who reside outside of this state in the manner provided for in a civil action in district court; and

(4) pay to those witnesses a fee and mileage for attendance as provided for a witness in a civil action in district court.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.204. REVOCATION OR SUSPENSION OF LICENSE. After notice and hearing, the department may revoke or suspend a license if:

(1) the department finds:

(A) that the license holder has violated this chapter or a rule adopted by the commissioner under this chapter; or

(B) the existence of a fact or condition that, if the fact or condition existed at the time of the original application for the license, clearly would have warranted the refusal of the license; or

(2) the department learns from any source that the license holder has failed to return all amounts due from an insurance premium finance company to the person whose insurance policy has been canceled as required by Section 651.162.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.205. ISSUANCE OF REVOCATION OR SUSPENSION ORDER. If the department revokes or suspends a license, the department shall:

(1) immediately issue in duplicate a written order of revocation or suspension;

(2) file one copy of the order in the office of the secretary of state; and

(3) mail one copy of the order to the license holder.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.206. SURRENDER OF LICENSE; EFFECT. (a) A license holder may surrender a license by delivering to the department written notice that the license holder surrenders the license.

(b) The surrender of a license does not affect any civil or criminal liability of the person for an act committed before the surrender.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.207. LICENSE REINSTATEMENT. The department may reinstate a suspended license or issue a new license to a person whose license has been revoked if no fact or condition exists that clearly would have warranted the refusal to issue the license originally.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.208. OFFENSE. (a) A person commits an offense if the person:

(1) intentionally, knowingly, recklessly, or negligently engages in the operation of an insurance premium finance company and does not hold a license issued under this chapter;

(2) intentionally, knowingly, recklessly, or negligently violates this chapter;

(3) intentionally or knowingly omits to state a material fact necessary to give the commissioner or the department information lawfully required of the person; or

(4) refuses to permit an investigation or examination authorized under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 651.209. SANCTIONS; CEASE AND DESIST ORDERS. In addition to each penalty provided by Sections 651.166 and 651.208, the commissioner or a person designated by the commissioner may:

(1) order a sanction under Subchapter B, Chapter 82; or

(2) issue a cease and desist order under Chapter 83.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBTITLE F. INSURANCE FRAUD AND IDENTITY THEFT
CHAPTER 701. INSURANCE FRAUD INVESTIGATIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 701.001. DEFINITIONS. In this chapter:

(1) "Authorized governmental agency" means:

(A) a municipal, county, or state law enforcement agency of this state or another state or a law enforcement agency of the United States; or

(B) the prosecuting attorney of a municipality, county, or judicial district of this state or another state or the prosecuting attorney of the United States.

(2) "Fraudulent insurance act" means an act that is a violation of a penal law and is:

(A) committed or attempted while engaging in the business of insurance;

(B) committed or attempted as part of or in support of an insurance transaction; or

(C) part of an attempt to defraud an insurer.

(3) "Insurer" means a person who is engaged in the business of insurance as a principal or agent. The term includes:

(A) an unauthorized insurer; and

(B) an entity that is self-insured and provides health care benefits to the entity's employees.

(4) "Person" means an individual, corporation, organization, governmental entity, business trust or another trust, estate, partnership, joint venture, association, or any other legal entity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.002. BUSINESS OF INSURANCE. A person is engaged in the business of insurance for purposes of this chapter if the person performs any act described by Subchapter B, Chapter 101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.003. EFFECT OF CHAPTER. This chapter does not:

(1) preempt the authority or relieve the duty of an authorized governmental agency to investigate and prosecute suspected criminal acts;

(2) prevent or prohibit a person from voluntarily disclosing information to an authorized governmental agency;

(3) limit powers or duties granted to the commissioner by any other law; or

(4) prohibit or limit the authority of an insurer to conduct an independent investigation of suspected insurance claim fraud.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.004. ANTIFRAUD EDUCATION. The commissioner, through the insurance fraud unit, shall develop fraud prevention educational programs and disseminate materials necessary to educate the public effectively regarding antifraud programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 245 (S.B. 783), Sec. 1, eff. September 1, 2015.

Sec. 701.005. GIFTS, GRANTS, AND DONATIONS. (a) The insurance fraud unit may accept gifts, grants, and donations to enable the fraud unit to perform its duties under this chapter.

(b) The insurance fraud unit may not accept gifts, grants, or donations from a regulated entity.

(c) All gifts, grants, or donations to the insurance fraud unit shall be:

(1) deposited to the credit of the department's operating account; and

(2) distributed to the insurance fraud unit to be used to perform its duties under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 245 (S.B. 783), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. REPORTING FRAUDULENT INSURANCE ACTS

Sec. 701.051. DUTY TO REPORT. (a) Not later than the 30th day after the date the person makes the determination or reasonably suspects that a fraudulent insurance act has been or is about to be committed in this state, the person:

(1) shall report the information in writing to the insurance fraud unit of the department, in the format prescribed by

the fraud unit or by the National Association of Insurance Commissioners; and

(2) may also report the information to another authorized governmental agency.

(b) A report made to the insurance fraud unit constitutes notice to each other authorized governmental agency.

(c) A person who is a member of an organization primarily dedicated to the detection, investigation, and prosecution of insurance fraud fully complies with the person's obligations under Subsection (a) by authorizing the organization to report on the person's behalf information required to be reported under Subsection (a). The person retains any liability resulting from the failure of the organization to report in a manner that complies with Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 1282 (H.B. 2388), Sec. 1, eff. September 1, 2005.

Sec. 701.052. IMMUNITY FOR FURNISHING INFORMATION RELATING TO A FRAUDULENT INSURANCE ACT. (a) A person is not liable in a civil action, including an action for libel or slander, and a civil action may not be brought against the person, for furnishing information relating to a suspected, anticipated, or completed fraudulent insurance act if the information is provided to:

(1) an authorized governmental agency or the department;

(2) a law enforcement officer or an agent or employee of the officer;

(3) the National Association of Insurance Commissioners or an employee of the association;

(4) a state or federal governmental agency established to detect and prevent fraudulent insurance acts or to regulate the business of insurance or an employee of the agency;

(5) a special investigative unit of an insurer, including a person who contracts to provide special investigative unit services to the insurer or an employee of the insurer who is responsible for the investigation of suspected fraudulent insurance acts; or

(6) an organization described by Section 701.051(c), if the

person is a member of the organization and:

(A) the person has reported the information as required by Section 701.051(a); or

(B) the organization has reported the information to the insurance fraud unit as required by Section 701.051(c) on behalf of the person and in a manner that fully complies with the person's obligations under Section 701.051(a).

(b) A person may furnish information as described in Subsection (a) orally or in writing, including through publishing, disseminating, or filing a bulletin or report.

(c) Subsection (a) does not apply to a person who acts with malice, fraudulent intent, or bad faith.

(d) A person to whom Subsection (a) applies who prevails in a civil action arising from furnishing information as described in Subsection (a) is entitled to attorney's fees and costs.

(e) This section does not affect any common law or statutory privilege or immunity.

(f) Repealed by Acts 2005, 79th Leg., Ch. 1282, Sec. 3, eff. September 1, 2005.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 1282 (H.B. 2388), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 88 (S.B. 918), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. INVESTIGATIONS

Sec. 701.101. INSURANCE FRAUD UNIT. (a) The purpose of the department's insurance fraud unit is to enforce laws relating to fraudulent insurance acts.

(b) The insurance fraud unit may receive, review, and investigate in a timely manner insurer antifraud reports submitted under Chapter 704.

(c) The insurance fraud unit shall report annually to the commissioner in writing regarding:

(1) the number of cases completed by the insurance fraud unit; and

(2) recommendations for regulatory and statutory responses

to the types of fraudulent activities encountered by the insurance fraud unit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.102. INVESTIGATION OF CERTAIN ACTS OF FRAUD. If the commissioner has reason to believe a person has engaged in, is engaging in, has committed, or is about to commit a fraudulent insurance act, the commissioner may conduct any investigation necessary inside or outside this state to:

(1) determine whether the act occurred; or

(2) aid in enforcing laws relating to fraudulent insurance acts, including by providing technical or litigation assistance to other governmental agencies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 244 (S.B. 782), Sec. 1, eff. September 1, 2015.

Sec. 701.103. DISCIPLINARY ACTION; REPORT TO OTHER AGENCIES. (a) The commissioner shall take appropriate disciplinary action as provided by this code if the commissioner believes a fraudulent insurance act has occurred. The commissioner shall report information concerning the commissioner's belief that a person has committed a fraudulent insurance act to an authorized governmental agency.

(b) The commissioner shall:

(1) provide all material, documents, reports, complaints, or other evidence to an authorized governmental agency on request; and

(2) assist the authorized governmental agency as requested.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.104. DEPARTMENT INVESTIGATORS. (a) The commissioner may:

(1) employ investigators as necessary to enforce this

chapter; and

(2) commission those investigators as peace officers.

(b) If the commissioner commissions investigators as peace officers, the commissioner shall appoint a chief investigator who:

(1) is commissioned as a peace officer; and

(2) is qualified by training and experience in law enforcement to supervise, direct, and administer the activities of the commissioned investigators.

(c) An investigator employed by the department as a peace officer must meet the requirements for a peace officer under Chapter 1701, Occupations Code.

(d) The commissioner shall ensure that a peace officer commissioned under Subsection (a) is compensated according to Schedule C of the position classification salary schedule prescribed by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1143 (H.B. 2816), Sec. 3, eff. September 1, 2019.

Sec. 701.105. ASSISTANCE FROM LAW ENFORCEMENT. An investigator employed by the department may request assistance from local law enforcement officers in conducting an investigation authorized by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.106. SUBPOENA AUTHORITY. (a) The commissioner may issue a subpoena to compel the attendance and testimony of a witness or, except as provided by Subsection (b), the production of materials relevant to an investigation under this chapter.

(b) A person is not required to produce an item subpoenaed under Subsection (a) if the item can only be identified by writing and executing a special computer program for that purpose.

(c) A person possessing materials located outside this state that are requested by the commissioner may make the materials available to the commissioner or a representative of the commissioner for examination at the place where the materials are located. The

commissioner may designate a representative, including an official of the state in which the materials are located, to examine the materials. The commissioner may respond to a similar request from an official of another state or the United States.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.107. CERTAIN AGENCIES' DUTY TO PROVIDE INFORMATION. (a) On the insurance fraud unit's request, an authorized governmental agency or a state licensing agency shall provide material, documents, reports, complaints, or other evidence to the insurance fraud unit.

(b) Compliance with Subsection (a) by an authorized governmental agency or a state licensing agency does not constitute waiver of any otherwise applicable privilege or confidentiality requirement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.108. INSURER'S DUTY TO PROVIDE INFORMATION. (a) On the written request of an authorized governmental agency, an insurer shall provide to the agency any relevant information or material relating to a matter under investigation.

(b) An insurer must respond to a request under Subsection (a) from the department not later than the 15th day after the date the request is received. On written request of the insurer, the department shall extend the period 10 days.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 82 (S.B. 411), Sec. 1, eff. September 1, 2013.

Sec. 701.109. REQUEST FOR INVESTIGATION BY INSURER. (a) An insurer who conducts an independent investigation of suspected insurance fraud is not required to complete that investigation before requesting that the commissioner conduct an investigation.

(b) When requesting the commissioner to conduct an

investigation, the insurer shall draft a report of the insurer's findings and submit the report and any related investigation file to the commissioner as soon as practicable on the conclusion of the insurer's independent investigation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 1282 (H.B. 2388), Sec. 2, eff. September 1, 2005.

SUBCHAPTER D. INSURANCE FRAUD INFORMATION; CONFIDENTIALITY

Sec. 701.151. CONFIDENTIALITY OF DEPARTMENT INFORMATION. (a) Information or material acquired by the department that is relevant to an investigation by the insurance fraud unit is not a public record for the period the commissioner considers reasonably necessary to:

(1) complete the investigation;

(2) protect the person under investigation from unwarranted injury; or

(3) serve the public interest.

(b) The information or material is not subject to a subpoena by another governmental entity, other than a grand jury subpoena, until:

(1) the information or material is released for public inspection by the commissioner; or

(2) after notice and a hearing a district court determines that obeying the subpoena would not jeopardize the public interest and any investigation by the commissioner.

(c) This section does not affect the conduct of a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.152. CONFIDENTIALITY OF AUTHORIZED GOVERNMENTAL AGENCY INFORMATION. Information or material acquired under this chapter by an authorized governmental agency is privileged and is not a public record. The information or material is not subject to a subpoena, other than a grand jury subpoena, unless, after reasonable notice to the insurer and agency and a hearing, a district court determines that obeying the subpoena would not jeopardize the public interest

and any investigation by the agency.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.153. DISCLOSURE OF INFORMATION TO CERTAIN AGENCIES. An authorized governmental agency may release to another authorized governmental agency or the department and the department may release to an authorized governmental agency information or material provided under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 701.154. DISCLOSURE OF INFORMATION TO PUBLIC. (a) Except as otherwise provided by law, an authorized governmental agency or an insurer that possesses or receives information or material under this chapter may not release that information or material to the public.

(b) Information provided under this chapter by an insurer to the insurance fraud unit or an authorized governmental agency is not subject to public disclosure. The information may be used by the insurance fraud unit or authorized governmental agency only in performing duties described by this chapter.

(c) Notwithstanding Section 701.151, the commissioner may not release evidence obtained under Section 701.107 for public inspection if releasing the evidence would violate a privilege held by or a confidentiality requirement imposed on the agency from which the evidence was obtained.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 703. COVERED ENTITY'S ANTIFRAUD ACTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 703.001. DEFINITION. In this chapter, "covered entity" means a health maintenance organization or insurer regulated by the department, including:

(1) a stock life, health, or accident insurance company;

(2) a mutual life, health, or accident insurance company;

(3) a stock fire or casualty insurance company;

(4) a mutual fire or casualty insurance company;

(5) a Mexican casualty insurance company;
(6) a Lloyd's plan;
(7) a reciprocal or interinsurance exchange;
(8) a fraternal benefit society;
(9) a title insurance company;
(10) a stipulated premium company;
(11) a nonprofit legal services corporation;
(12) a statewide mutual assessment company;
(13) a local mutual aid association;
(14) a local mutual burial association;
(15) an association exempt under Section 887.102;
(16) a nonprofit hospital, medical, or dental service corporation, including a corporation subject to Chapter 842;
(17) a county mutual insurance company; and
(18) a farm mutual insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.005, eff. September 1, 2017.

Sec. 703.002. RIGHT OF INTERVENTION. This chapter does not affect the right of any person, including a state agency, to intervene in an antifraud action brought under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. ANTIFRAUD ACTION; CERTIFICATION

Sec. 703.051. ANTIFRAUD ACTION AUTHORIZED. (a) A covered entity acting alone or through a person, corporation, or legal entity affiliated with the covered entity may bring an action in a court, including a counter-action or cross-action, to:
(1) prevent a person from fraudulently engaging in the business of insurance or the business of a health maintenance organization in this state; or
(2) redress the effects of a person who has fraudulently engaged in the business of insurance or the business of a health maintenance organization in this state.
(b) An action may be brought under this section if:

(1) the acts of the person may adversely affect or have adversely affected at least 10 residents of this state; and

(2) the department has not brought an antifraud action in a court against the person.

(c) An action may be brought under this section regardless of whether the covered entity is directly affected by the person's acts.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 703.052. REQUEST FOR CERTIFICATION. A covered entity may request the court to certify that the action is an antifraud action under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 703.053. NOTICE OF REQUEST FOR CERTIFICATION. (a) When a covered entity files a request for certification, the covered entity shall provide at least 10 days' notice of the request to the department and the attorney general by serving each with a copy of the request in the manner provided for service of notice under Rule 21a, Texas Rules of Civil Procedure.

(b) The covered entity shall provide the notice regardless of whether the department or the state is a party to the action.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 703.054. HEARING ON REQUEST FOR CERTIFICATION. As soon as practicable after a covered entity files a request for certification, the court shall hold a hearing to determine whether the action is an antifraud action under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 703.055. CERTIFICATION. The court shall certify that the action is an antifraud action if the court determines that:

(1) the requirements of Section 703.051 are met; and

(2) the pleadings and evidence demonstrate that the covered

entity has a probable right of recovery.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. EXPENSES OF ANTIFRAUD ACTION

Sec. 703.101. DETERMINATION OF EXPENSES. (a) The court that certifies an action as an antifraud action by order may determine the amount of reasonable and necessary expenses incurred in bringing the action, including court costs, reasonable attorney's fees, witness fees, fees of experts, and deposition expenses.

(b) In making the determination, the court may consider the contribution to the action of any person, including a state agency, that has intervened in the action.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 703.102. DEDUCTION OR OFFSET FOR EXPENSES; REIMBURSEMENT. (a) Subject to Subsection (b), a covered entity has a deduction or offset against any obligation, assessment, or debt owed by the covered entity to this state in the amount of the reasonable and necessary expenses determined by the court order.

(b) The covered entity shall reimburse the state the amount of any expenses actually recovered from the parties to the private antifraud action under a final judgment awarding, wholly or partly, expenses to or for the covered entity's benefit. The amount of reimbursement may not exceed the actual amount of deductions or offsets taken by the covered entity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 703.103. ASSIGNMENT OF DEDUCTION OR OFFSET. The covered entity may assign the covered entity's deduction or offset to any other covered entity or reinsurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 703.104. TREATMENT OF DEDUCTION OR OFFSET AS ADMITTED

ASSET. A covered entity or a covered entity's assignee entitled to an offset or deduction that has not been used may show, in the covered entity's or assignee's books and records, the balance of the deduction or offset as an admitted asset for any purpose.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 704. ANTIFRAUD PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 704.001. DEFINITION. In this chapter, "plan issuer" means:

(1) a health insurer, including a life, health, and accident insurer, a health and accident insurer, a health maintenance organization, and any other person operating under Chapter 841, 842, 843, 884, 885, 982, or 1501 who is authorized to issue, issue for delivery, or deliver insurance policies, certificates, contracts, or evidences of coverage in this state;

(2) an approved nonprofit health corporation that holds a certificate of authority issued under Chapter 844; or

(3) an insurer authorized by the department to write workers' compensation insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 704.002. NOTICE RELATING TO FALSE OR FRAUDULENT CLAIMS REQUIRED. (a) A plan issuer who provides a form for a person to make a claim against or to give notice of the person's intent to make a claim against a policy, certificate, contract, or evidence of coverage issued by the issuer must include on the form, in comparative prominence with the other content on the form, a statement that is substantially similar to the following: "Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison."

(b) This section does not apply to a form provided to make a claim against a policy issued by a reinsurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. ANTIFRAUD PLANS

Sec. 704.051. ANTIFRAUD PLAN REQUIRED FOR CERTAIN PLAN ISSUERS. A plan issuer who collects direct written premium shall adopt an antifraud plan under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 704.052. ANTIFRAUD PLAN REQUIREMENTS. An antifraud plan adopted by a plan issuer under this subchapter must include a description of the issuer's procedures for:

(1) detecting and investigating possible fraudulent insurance acts; and

(2) reporting possible fraudulent insurance acts to the insurance fraud unit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 704.053. FILING OF ANTIFRAUD PLAN. A plan issuer may annually file the issuer's antifraud plan adopted under this subchapter with the insurance fraud unit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 704.054. FRAUD AND ABUSE PLANS UNDER CERTAIN STATE PROGRAMS; ENFORCEMENT. (a) A fraud and abuse plan put in place by a plan issuer participating in the Medicaid STAR or STAR + Plus program or the child health plan program under Chapter 62, Health and Safety Code, and approved by a health and human services agency meets the requirements of this subchapter.

(b) If a plan issuer described by Subsection (a) is required by law to report possible fraudulent insurance acts to a health and human services agency or the office of the attorney general, the issuer is not required to report those acts to the insurance fraud unit.

(c) The insurance fraud unit, the office of the attorney general, and the health and human services agencies shall coordinate enforcement efforts with respect to fraudulent insurance acts covered by this chapter relating to the Medicaid program or the child health

plan program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 705. MISREPRESENTATIONS BY POLICYHOLDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 705.001. DEFINITION. In this subchapter, "insurance policy" means a contract or policy of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.002. APPLICABILITY OF SUBCHAPTER. Except as provided by Section 705.005, this subchapter applies to each insurance policy issued or contracted for in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.003. POLICY PROVISION: MISREPRESENTATION IN PROOF OF LOSS OR DEATH. (a) An insurance policy provision that states that a misrepresentation, including a false statement, made in a proof of loss or death makes the policy void or voidable:

(1) has no effect; and

(2) is not a defense in a suit brought on the policy.

(b) Subsection (a) does not apply if it is shown at trial that the misrepresentation:

(1) was fraudulently made;

(2) misrepresented a fact material to the question of the insurer's liability under the policy; and

(3) misled the insurer and caused the insurer to waive or lose a valid defense to the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.004. POLICY PROVISION: MISREPRESENTATION IN POLICY APPLICATION. (a) An insurance policy provision that states that false statements made in the application for the policy or in the policy make the policy void or voidable:

(1) has no effect; and

(2) is not a defense in a suit brought on the policy.

(b) Subsection (a) does not apply if it is shown at trial that the matter misrepresented:

(1) was material to the risk; or

(2) contributed to the contingency or event on which the policy became due and payable.

(c) It is a question of fact whether a misrepresentation made in the application for the policy or in the policy itself was material to the risk or contributed to the contingency or event on which the policy became due and payable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.005. NOTICE TO INSURED OF MISREPRESENTATIONS. (a) This section applies to any suit brought on an insurance policy issued or contracted for after June 29, 1903.

(b) A defendant may use as a defense a misrepresentation made in the application for or in obtaining an insurance policy only if the defendant shows at trial that before the 91st day after the date the defendant discovered the falsity of the representation, the defendant gave notice that the defendant refused to be bound by the policy:

(1) to the insured, if living; or

(2) to the owners or beneficiaries of the insurance policy, if the insured was deceased.

(c) This section does not:

(1) make available as a defense an immaterial misrepresentation; or

(2) affect the provisions of Section 705.004.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER B. SPECIAL PROVISIONS RELATED TO LIFE, ACCIDENT, AND HEALTH INSURANCE POLICIES

Sec. 705.051. IMMATERIAL MISREPRESENTATION IN LIFE, ACCIDENT, OR HEALTH INSURANCE APPLICATION. A misrepresentation in an application for a life, accident, or health insurance policy does not defeat recovery under the policy unless the misrepresentation:

(1) is of a material fact; and
(2) affects the risks assumed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

SUBCHAPTER C. SPECIAL PROVISIONS RELATED TO LIFE INSURANCE POLICIES

Sec. 705.101. DEFINITION. In this subchapter, "insurance policy" means a contract or policy of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any insurance policy issued or contracted for in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.103. DOCUMENTS TO ACCOMPANY POLICY. Except as otherwise provided by this code, a life insurance policy must be accompanied by a copy of:
(1) the policy application; and
(2) any questions and answers given in connection with the application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.104. MISREPRESENTATION IN APPLICATION FOR LIFE INSURANCE. A defense based on a misrepresentation in the application for, or in obtaining, a life insurance policy on the life of a person in or residing in this state is not valid or enforceable in a suit brought on the policy on or after the second anniversary of the date of issuance of the policy if premiums due on the policy during the two years have been paid to and received by the insurer, unless:
(1) the insurer has notified the insured of the insurer's intention to rescind the policy because of the misrepresentation; or
(2) it is shown at the trial that the misrepresentation was:

(A) material to the risk; and
(B) intentionally made.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

Sec. 705.105. APPLICABILITY OF OTHER LAW. Subchapter A does not apply to a life insurance policy:
(1) that contains a provision making the policy incontestable after two years or less; and
(2) on which premiums have been duly paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 2, eff. April 1, 2005.

CHAPTER 706. IDENTITY THEFT INSURANCE

Sec. 706.001. DEFINITIONS. (a) The definitions adopted under Sections 2251.002 and 2301.002 and the terms described by Sections 2251.003 and 2301.003 apply to this chapter.
(b) In this chapter, "identity theft" means a criminal offense described by Section 32.51, Penal Code, or a substantially similar federal law or law in another state.

Added by Acts 2005, 79th Leg., Ch. 102 (S.B. 99), Sec. 3, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.017, eff. April 1, 2009.

Sec. 706.002. COVERAGE AUTHORIZED. (a) An insurer authorized to write property and casualty insurance in this state may offer and issue insurance coverage for a loss suffered by a policyholder as a result of the policyholders' being a victim of identity theft or attempted identity theft.
(b) Coverage authorized by Subsection (a) may be:
(1) offered as a separate insurance policy or as a rider or endorsement to:
(A) a residential and commercial property insurance policy; or
(B) a personal or commercial casualty insurance policy;

and

(2) underwritten and issued as an individual or group insurance policy.

Added by Acts 2005, 79th Leg., Ch. 102 (S.B. 99), Sec. 3, eff. September 1, 2005.

Sec. 706.003. ELIGIBLE POLICYHOLDERS. (a) An insurer may issue coverage authorized under Section 706.002 to:

(1) an individual; or

(2) a group, business, employer, association, trustee, or other entity for the benefit of its members, customers, employees, members, or beneficiaries.

(b) An entity described by Subsection (a)(2) may be a group that:

(1) is formed solely for the purpose of obtaining insurance coverage under this chapter; or

(2) has already been formed for a purpose other than for obtaining insurance coverage under this chapter and that is described by Subsection (a)(2).

Added by Acts 2005, 79th Leg., Ch. 102 (S.B. 99), Sec. 3, eff. September 1, 2005.

Sec. 706.004. RATES AND FORMS. Notwithstanding any other law, rates and forms for insurance coverage issued under this chapter are governed by:

(1) Subchapters A-E, Chapter 2251;

(2) Subchapter A, Chapter 2301; and

(3) Article 5.13-2.

Added by Acts 2005, 79th Leg., Ch. 102 (S.B. 99), Sec. 3, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2D.018, eff. April 1, 2009.

Sec. 706.005. RULES. The commissioner may adopt rules as

necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 102 (S.B. 99), Sec. 3, eff. September 1, 2005.

CHAPTER 707. PAYMENT OF INSURANCE DEDUCTIBLE

Sec. 707.001. DEFINITIONS. In this chapter:

(1) "Person" means an individual, corporation, association, partnership, limited liability company, or other legal entity.

(2) "Property insurance policy" means an insurance policy issued by an insurer, including a county mutual insurance company, farm mutual insurance company, Lloyd's plan, or reciprocal or interinsurance exchange, that provides first-party coverage for loss of or damage to real property.

Added by Acts 2019, 86th Leg., R.S., Ch. 1099 (H.B. 2102), Sec. 1, eff. September 1, 2019.

Sec. 707.002. PAYMENT OF DEDUCTIBLE REQUIRED. A person insured under a property insurance policy shall pay any deductible applicable to a first-party claim made under the policy.

Added by Acts 2019, 86th Leg., R.S., Ch. 1099 (H.B. 2102), Sec. 1, eff. September 1, 2019.

Sec. 707.003. CONSUMER EDUCATION. The department, in coordination with other state agencies and stakeholders as necessary, shall develop and implement an education program related to the payment of property insurance policy deductibles. The program must:

(1) provide reasonable methods to educate insurance consumers and providers of goods or services that are regularly paid for from proceeds of property insurance claims; and

(2) include information regarding:

(A) the requirements of this chapter and Section 27.02, Business & Commerce Code; and

(B) the conduct prohibited by Section 27.02, Business & Commerce Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1099 (H.B. 2102), Sec. 1, eff. September 1, 2019.

Sec. 707.004. REASONABLE PROOF OF PAYMENT. An insurer that issues a property insurance policy with replacement cost coverage may refuse to pay a claim for withheld recoverable depreciation or a replacement cost holdback under the policy until the insurer receives reasonable proof of payment by the policyholder of any deductible applicable to the claim. Reasonable proof of payment includes a canceled check, money order receipt, credit card statement, or copy of an executed installment plan contract or other financing arrangement that requires full payment of the deductible over time.

Added by Acts 2019, 86th Leg., R.S., Ch. 1099 (H.B. 2102), Sec. 1, eff. September 1, 2019.

Sec. 707.005. RULEMAKING. The commissioner may adopt rules as necessary to implement this chapter. Section 2001.0045, Government Code, does not apply to rules adopted under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1099 (H.B. 2102), Sec. 1, eff. September 1, 2019.

SUBTITLE G. REGULATION OF INSURER MARKET CONDUCT

CHAPTER 751. MARKET CONDUCT SURVEILLANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. SHORT TITLE. This chapter may be cited as the Insurance Market Conduct Surveillance Act.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.002. PURPOSE AND SCOPE. (a) The purpose of this chapter is to establish a framework for department market conduct actions, including:

(1) processes and systems for identifying, assessing, and prioritizing market conduct problems that have a substantial adverse

impact on consumers, policyholders, and claimants;

(2) development of appropriate market conduct actions by the commissioner as required to:

(A) substantiate market conduct problems; and

(B) remedy significant market conduct problems; and

(3) procedures to communicate and coordinate market conduct actions with other states to foster the most efficient and effective use of resources.

(b) Notwithstanding any other law of this state, the department or commissioner, as applicable, may undertake market analysis or market conduct action only as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.003. DEFINITIONS. (a) In this chapter:

(1) "Complaint" means a written or documented oral communication, the primary intent of which is to express a grievance or an expression of dissatisfaction.

(2) "Desk examination" means a targeted examination conducted by an examiner at a location other than an insurer's premises. The term includes an examination performed at the department's offices during which the insurer provides requested documents for department review by hard copy or by microfiche, disk, or other electronic media.

(3) "Market analysis" means a process under which market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports, and other sources as necessary to:

(A) develop a baseline understanding of the marketplace; and

(B) identify insurer patterns or practices that:

(i) deviate significantly from the norm; or

(ii) pose a potential risk to the insurance consumer.

(4) "Market analysis handbook" means the outline of the elements and objectives of market analysis as developed and adopted by the National Association of Insurance Commissioners, and used to establish a uniform process by which states may establish and

implement market analysis programs.

(5) "Market conduct action" means any activity that the commissioner may initiate to assess and address insurer market practices before conducting a targeted examination. The term does not include a commissioner action taken to resolve:

(A) an individual consumer complaint; or

(B) another report relating to a specific instance of insurer misconduct.

(6) "Market conduct examination" means a review of one or more lines of business of an insurer domiciled in this state that is not conducted for cause. The term includes a review of rating, tier classification, underwriting, policyholder service, claims, marketing and sales, producer licensing, complaint handling practices, or compliance procedures and policies.

(7) "Market conduct examiners handbook" means the set of guidelines, developed and adopted by the National Association of Insurance Commissioners, that document established practices to be used by market conduct surveillance personnel in developing and executing an examination under this chapter.

(8) "Market conduct surveillance personnel" means those individuals employed by or under contract with the department who collect, analyze, review, or act on information regarding insurer patterns or practices.

(9) "Market conduct uniform examination procedures" means the set of guidelines developed and adopted by the National Association of Insurance Commissioners designed to be used by market conduct surveillance personnel in conducting an examination under this chapter.

(10) "On-site examination" means a targeted examination that is conducted at:

(A) the insurer's home office; or

(B) another location at which the records under review are stored.

(11) "Qualified contract examiner" means a person qualified by education, experience, and any applicable professional designations who is under contract with the commissioner to perform market conduct actions.

(12) "Standard data request" means the set of field names and descriptions developed and adopted by the National Association of Insurance Commissioners for use by market conduct surveillance

personnel in an examination.

(13) "Targeted examination" means a limited review and analysis, conducted through a desk examination or an on-site examination and in accordance with the market conduct uniform examination procedures, of specific insurer conduct, practices, or risks identified through market analysis that have not been remedied by the insurer, including:

(A) underwriting and rating;

(B) marketing and sales;

(C) complaint handling operations and management;

(D) advertising materials;

(E) licensing;

(F) policyholder services;

(G) claims handling;

(H) policy forms and filings; or

(I) tier classification.

(14) "Third-party model or product" means a model or product provided by an entity that is separate from and not under direct or indirect corporate control of the insurer using the model or product.

(b) In this chapter, "affiliate" and "subsidiary" have the meanings described by Section 823.003.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.004. IMMUNITY. (a) A cause of action does not arise, and liability may not be imposed, for any statements made or conduct performed in good faith while implementing this chapter, against:

(1) the commissioner;

(2) an authorized representative of the commissioner; or

(3) an examiner appointed by the commissioner.

(b) A cause of action does not arise, and liability may not be imposed, against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner under an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(c) A person identified in Subsection (a) is entitled to attorney's fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities conducted in implementing this chapter, and the party bringing the action was not substantially justified in doing so. For purposes of this subsection, an action is "substantially justified" if the action had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify any common law or statutory privilege or immunity.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF COMMISSIONER

Sec. 751.051. PARTICIPATION IN NATIONAL MARKET CONDUCT DATABASES. (a) The commissioner shall collect and report market data to the National Association of Insurance Commissioners' market information systems, including the complaint database system, the examination tracking system, the regulatory information retrieval system, or other successor systems of that association, as determined by the commissioner.

(b) Information collected and maintained by the department shall be compiled in a manner that meets the requirements of the National Association of Insurance Commissioners.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.052. COORDINATION WITH OTHER STATES; REGISTRATION OF CONTRACT EXAMINER. (a) The commissioner shall coordinate the department's market analysis and examination efforts with other states through the National Association of Insurance Commissioners.

(b) A person with whom another state contracts to perform any market analysis or examination initiated by the other state of an insurer domiciled in this state shall register with and provide the following information to the department's chief examiner:

(1) the person's name;

(2) if the person is not an individual, the identity of

each examiner or other person who will perform any part of the market analysis or examination;

(3) the name of the state that contracted with the person;

(4) the identity of the insurer to be examined;

(5) a description of each issue that the person has been contracted to examine;

(6) an estimate of the examination costs to be charged to the insurer to be examined;

(7) a copy of any contract between the person and the state regulatory body that initiated the examination and the letter authorizing the examination; and

(8) a list of the previous examinations conducted on the same insurer on behalf of any state within the last three years.

(b-1) On accepting a person's registration under Subsection (b), the department shall send written confirmation of the acceptance to:

(1) the person;

(2) the insurer to be examined; and

(3) the state regulatory body that initiated the examination.

(c) It is a violation of this code for a person to accept compensation from multiple states for the same examination, if doing so results in duplicative costs to the insurer being examined. It is not a violation of this code for:

(1) an examiner to conduct an examination of an insurer for the benefit of multiple states in a coordinated examination; and

(2) the examiner to accept compensation from the states participating in the coordinated examination to reduce the examination costs to the insurer being examined.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1030 (H.B. 4359), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 185 (S.B. 1229), Sec. 2, eff. May 28, 2011.

Sec. 751.053. INFORMATION FROM COMMISSIONER. (a) At least

once annually or more frequently if determined necessary by the commissioner, the commissioner shall provide in an appropriate manner to insurers and other entities subject to this code information regarding new laws and rules, enforcement actions, and other information the commissioner considers relevant to ensure compliance with market conduct requirements.

(b) The commissioner may provide the notice required under Subsection (a) in an electronic format that is designed to give insurers and other entities adequate notice.

(c) Failure by the commissioner to provide the information described by Subsection (a) does not constitute a defense for an insurer who fails to comply with an insurance law of this state.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.054. REPORT OF VIOLATIONS. (a) The commissioner shall designate an individual within the department whose responsibilities shall include the receipt of information from employees of insurers and other entities regulated by the department regarding violations of laws or rules by their employers. The commissioner's designee shall be properly trained in the handling of that information.

(b) Information received under this section is a confidential communication and is not public information.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.055. EXERCISE OF SUBPOENA AUTHORITY. The commissioner has the subpoena power authorized by Subchapter C, Chapter 36, for the production of documents under this chapter and enforcement of this subtitle.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

SUBCHAPTER C. RELATIONS WITH OTHER STATES

Sec. 751.101. COMMISSIONER AUTHORITY; INTERACTIONS WITH OTHER INSURANCE COMMISSIONERS OF OTHER STATES. (a) The commissioner has responsibility for conducting market conduct examinations on domestic insurers. The commissioner may delegate that responsibility to the insurance commissioner of another state, if that insurance commissioner agrees to accept the delegated responsibility. If the commissioner elects to delegate responsibility for examining an insurer, the commissioner shall accept a report of the examination prepared by the insurance commissioner to whom the responsibility has been delegated.

(b) If the insurer to be examined is part of an insurance holding company system, the commissioner may also seek to simultaneously examine any affiliate of the insurer that is authorized to write the same types of insurance in this state as the insurer if the insurance commissioner of the state in which the affiliate is organized consents and delegates responsibility for that examination.

(c) In lieu of conducting a targeted examination of an insurer that holds a certificate of authority in this state but is not a domestic insurer, the commissioner shall accept a report of a market conduct examination regarding that insurer prepared by the insurance commissioner of the state in which the insurer is organized or by another state if:

(1) the laws of the examining state that are applicable to the subject of the examination are substantially similar to those of this state; and

(2) the examining state has a market conduct surveillance system that the commissioner deems comparable to the market conduct surveillance system required under this chapter.

(d) The commissioner's determination under Subsection (c)(2) is discretionary with the commissioner and is not subject to appeal.

(e) Subject to a determination under Subsection (c), if a market conduct examination conducted by another state results in a finding that an insurer should modify a specific practice or procedure, the commissioner shall accept documentation that the insurer has made a similar modification in this state in lieu of initiating a market conduct action or examination related to that practice or procedure. The commissioner may require other or additional practice or procedure modifications.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

SUBCHAPTER D. MARKET ANALYSIS PROCEDURES

Sec. 751.151. COLLECTION OF INFORMATION; COMMISSIONER ANALYSIS. (a) Subject to Subsection (d), the commissioner shall gather insurance market information from:

(1) data available to the department, including survey results and information required to be reported to the department;

(2) information collected by the National Association of Insurance Commissioners and other public and private sources; and

(3) information from within and outside the insurance industry.

(b) The commissioner shall analyze the information compiled under Subsection (a) as necessary to:

(1) develop a baseline understanding of the insurance marketplace; and

(2) identify for further review insurers or insurance practices that deviate significantly from the norm or that pose a potential risk to the insurance consumer.

(c) The commissioner shall use the market analysis handbook as a resource in performing the analysis required under this section.

(d) Except as otherwise specifically provided, the department or the commissioner, as applicable, may not require an insurer to report information in a manner that is inconsistent with the records the insurer maintains in the ordinary course of business or can create at a reasonable expense or effort.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.152. ADDITIONAL ANALYSIS OF MARKET ACTIONS. (a) If, as a result of the market analysis, the commissioner determines that further inquiry into a particular insurer or insurance practice is needed, the commissioner shall consider taking one or more of the market conduct actions described by Subsection (b) before conducting a targeted examination. If a market conduct action selected by the commissioner requires the participation of or a response by the

affected insurer, the commissioner shall notify the insurer of the action selected in writing.

(b) Market conduct actions described by Subsection (a) may include:

(1) correspondence with the insurer;

(2) insurer interviews;

(3) information gathering;

(4) policy and procedure reviews;

(5) interrogatories; and

(6) review of insurer self-evaluation and compliance programs, including insurer membership in a best-practice organization.

(c) The commissioner shall select market conduct actions that are efficient and cost-effective for the department and the insurer while protecting the interests of the insurance consumer.

(d) The commissioner shall take steps reasonably necessary to:

(1) eliminate requests for information that duplicates or conflicts with information provided as part of an insurer's annual financial statement, the annual market conduct statement of the National Association of Insurance Commissioners, or other required schedules, surveys, or reports that are regularly submitted to the commissioner, or with data requests made by other states if that information is available to the commissioner, unless the information is state specific; and

(2) coordinate the market conduct actions and findings of this state with those of other states.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.153. PROTOCOLS FOR MARKET CONDUCT ACTIONS. (a) Each market conduct action taken as a result of a market analysis:

(1) must focus on the general business practices and compliance activities of insurers, rather than identifying infrequent or unintentional random errors that do not cause significant consumer harm; and

(2) may not result in a market conduct examination, unless the head of the insurance regulatory agency in the insurer's state of domicile determines that a market conduct examination is needed.

(b) The commissioner may determine the frequency and timing of the market conduct actions. The timing of an action depends on the specific market conduct action to be initiated unless extraordinary circumstances indicating a risk to consumers require immediate action.

(c) If the commissioner has information that more than one insurer is engaged in practices that may violate statutes or rules, the commissioner may schedule and coordinate multiple examinations simultaneously.

(d) The commissioner shall provide an insurer with an opportunity to resolve to the satisfaction of the commissioner any matter that arises as a result of a market analysis before any additional market conduct actions are taken against the insurer. If the insurer has modified a practice or procedure as a result of a market conduct action taken or examination conducted by the insurance commissioner of another state, and the commissioner deems that state's market conduct surveillance system comparable to the system required under this chapter, the commissioner may accept the modified practice or procedure and may require other or additional practice or procedure modifications.

(e) For an application by the department of a handbook, guideline, or other product referenced in this chapter that is the work product of the National Association of Insurance Commissioners that changes the way in which market conduct actions are conducted, the commissioner shall give notice and provide interested parties with an opportunity for a public hearing as provided by Chapter 2001, Government Code, if the change:

(1) necessitates a change in a statute or rule; or

(2) deviates from the applicable handbook, guideline, or other product most recently adopted by the National Association of Insurance Commissioners.

(f) Except as otherwise provided by law, each insurer or person from whom information is sought, and each officer, director, or agent of that insurer or person, shall provide the commissioner with convenient and free access to all books, records, accounts, papers, documents, and any computer or other recordings relating to the property, assets, business, and affairs of the insurer or person.

(g) Each officer, director, employee, insurance producer, and agent of an insurer or person described by Subsection (f) shall, to the extent of that individual's ability, facilitate and aid in a

department market conduct action.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

SUBCHAPTER E. EXAMINATIONS

Sec. 751.201. EXAMINATION. (a) If the commissioner determines that a market conduct action described by Section 751.152(b) is not appropriate, the commissioner may conduct a targeted examination in accordance with the market conduct uniform examination procedures and the market conduct examiners handbook.

(b) A targeted examination may be conducted through a desk examination or an on-site examination. To the extent feasible, the department shall conduct a market conduct examination through desk examinations and data requests before conducting an on-site examination.

(c) The department shall conduct an examination in accordance with the market conduct examiners handbook and the market conduct uniform examinations procedures.

(d) The department shall use the standard data request or a successor product that is substantially similar to the standard data request as adopted by the commissioner by rule.

(e) If the insurer to be examined is not a domestic insurer, the commissioner shall coordinate the examination with the insurance commissioner of the state in which the insurer is organized.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.202. WORK PLAN. Before beginning an examination, market conduct surveillance personnel shall prepare a work plan that includes:

(1) the name and address of the insurer to be examined;

(2) the name and contact information of the examiner-in-charge;

(3) a statement of the reasons for the examination;

(4) a description of the scope of the examination;

(5) the date the examination is scheduled to begin;

(6) notice to any non-insurance department personnel who

will assist in the examination;

(7) a time estimate for the examination; and

(8) if the cost of the examination is billed to the affected insurer:

(A) a budget for the examination; and

(B) an identification of factors that will be included in the billing.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.203. NOTICE OF EXAMINATION. (a) Unless the examination is conducted in response to extraordinary circumstances as described by Section 751.153(b), the department shall notify an affected insurer of an examination not later than the 60th day before the scheduled date of the beginning of the examination. The notice must include the examination work plan and a request that the insurer name an examination coordinator for the insurer.

(b) In addition to the notice required under Subsection (a), the commissioner shall post notice that a market conduct examination has been scheduled on the National Association of Insurance Commissioners examination tracking system.

(c) If a targeted examination is expanded beyond the reasons provided to the insurer in the notice of the examination required under Subsection (a), the commissioner shall provide written notice to the insurer, explaining the extent of the expansion and the reasons for the expansion. The department shall provide a revised work plan to the insurer before the beginning of any significantly expanded examination.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.204. PRE-EXAMINATION CONFERENCE. Not later than the 30th day before the scheduled date of the examination, the commissioner shall conduct a pre-examination conference with the insurer's examination coordinator and key personnel to clarify expectations.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.205. EXIT CONFERENCE. Before the conclusion of an examination, the member of the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.206. EXAMINATION REPORT. (a) Unless the commissioner and the insurer agree to a different schedule, the commissioner shall follow the time line established under this section.

(b) The commissioner shall deliver the draft examination report to the insurer not later than the 60th day after the date the examination is completed. For purposes of this section, the date the examination is completed is the date on which the exit conference is conducted.

(c) Not later than the 30th day after the date on which the insurer receives the draft examination report, the insurer shall provide any written comments regarding the report to the department.

(d) The department shall make a good faith effort to resolve issues with the insurer informally and shall prepare a final examination report not later than the 30th day after the date of receipt of the insurer's written comments on the draft report unless a mutual agreement is reached to extend the deadline.

(e) The department shall include the insurer's responses in the final examination report. The responses may be included as an appendix or in the text of the examination report. An insurer is not obligated to submit a response. An individual involved in the examination may not be named in either the report or the insurer response except to acknowledge the individual's involvement.

(f) The commissioner may make corrections and other changes to the final examination report as appropriate, and shall issue the report to the insurer. Not later than the 30th day after receipt of the final examination report under this subsection, the insurer shall accept the report, accept the findings of the report, or request a

hearing. The commissioner and the insurer by mutual agreement may extend the period for an additional 30 days. A request for a hearing must be made in writing and must follow the requirements of Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.207. CONFIDENTIALITY OF EXAMINATION REPORT INFORMATION. (a) A final or preliminary market conduct examination report, and any information obtained during the course of an examination, is confidential and is not subject to disclosure under Chapter 552, Government Code. This section may not be construed to limit the commissioner's authority to use any final or preliminary market conduct examination report, any examiner or company work papers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the commissioner, in the commissioner's sole discretion, may deem appropriate.

(b) This chapter does not prevent the commissioner from disclosing at any time the contents of a final market conduct examination report to the department, the insurance department of any other state, or an agency of the federal government, if the department or agency receiving the report agrees in writing to maintain the information as confidential and in a manner consistent with this chapter.

(c) The commissioner shall provide to an insurer subject to a final market conduct examination a written agreement described by Subsection (b) not later than the fifth day after the date the final market conduct examination is released under Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.208. ASSESSMENT OF COSTS OF EXAMINATION. (a) Subject to Subsection (d), if the reasonable and necessary cost of a market conduct examination is to be assessed against the affected insurer, fees for that cost must be consistent with those otherwise authorized by law. The fees must be itemized and bills for the fees must be

provided to the insurer on a monthly basis for review prior to submission for payment.

(b) The commissioner shall actively manage and oversee examination costs, including costs associated with the use of department examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the commissioner retains outside assistance, the commissioner shall adopt by rule written protocols that:

(1) clearly identify the types of functions to be subject to outsourcing;

(2) provide specific time lines for completion of the outsourced review;

(3) require disclosure of recommendations made by contract examiners;

(4) establish and use a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and

(5) require disclosure of the terms of contracts entered into with outside consultants, and specifically terms regarding the fees or hourly rates that may be charged by those consultants.

(c) The commissioner must review and affirmatively endorse detailed billings made by a qualified contract examiner before the detailed billings are sent to the insurer.

(d) An insurer may not be required to provide reimbursement for examiner fees under Subsection (a), whether those fees are incurred by market conduct surveillance personnel or qualified contract examiners, to the extent that those fees exceed the fees prescribed in the market conduct examiners handbook and any successor documents to that handbook, unless the commissioner demonstrates that the fees prescribed in the handbook are inadequate under the circumstances of the examination.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.209. LIMIT ON CERTAIN EXAMINATIONS. The commissioner may not conduct a market conduct examination more frequently than once every three years. The commissioner may defer conducting a market conduct examination for longer than once every three years.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

SUBCHAPTER F. CONFIDENTIALITY REQUIREMENTS

Sec. 751.251. NO WAIVER. (a) The disclosure to the commissioner under this subchapter of a document, material, or information does not constitute the waiver of any applicable privilege or claim of confidentiality regarding the document, material, or information.

(b) Notwithstanding Subsection (a), an insurer may not be compelled to disclose a self-audit document or waive any statutory or common law privilege. An insurer may, however, voluntarily disclose a document described by this subsection to the commissioner in response to any market conduct action or examination.

(c) For the purposes of Subsection (b), "self-audit document" means a document that is prepared as a result of or in connection with an insurance compliance audit.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.252. AUTHORITY OF COMMISSIONER. (a) The commissioner may share documents, materials, or other information obtained by or disclosed to the commissioner under this chapter with other state, federal, and international regulatory agencies and law enforcement authorities if the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, or other information.

(b) The commissioner may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners and that association's affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions. The commissioner shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that the document, material, or information is confidential or privileged under the laws of the jurisdiction that is the source of the

document, material, or information.

(c) Consistent with this section, the commissioner may enter into agreements governing the sharing and use of information.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

SUBCHAPTER G. MARKET CONDUCT SURVEILLANCE PERSONNEL

Sec. 751.301. PERSONNEL; QUALIFICATIONS. (a) To conduct market conduct surveillance under this chapter, the commissioner may designate department staff to perform duties under this chapter, and may supplement that staff with qualified outside professional assistance if the commissioner determines that that assistance is necessary.

(b) Market conduct surveillance personnel must be qualified by education and experience and, if applicable, must hold appropriate professional designations.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.302. CONFLICT OF INTEREST. (a) An individual who is a member of the market conduct surveillance personnel has a conflict of interest, either directly or indirectly, if the individual is affiliated with the management of, has been employed by, or owns a pecuniary interest in an insurer subject to an examination conducted under this chapter.

(b) This section may not be construed to automatically preclude the individual from being:

(1) a policyholder or claimant under an insurance policy;

(2) a grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary course of business;

(3) an investment owner in shares of regulated diversified investment companies; or

(4) a settlor or beneficiary of a blind trust into which any otherwise permissible holdings have been placed.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff.

September 1, 2005.

Sec. 751.303. ACCESS TO INFORMATION. (a) Except as otherwise provided by law, market conduct surveillance personnel shall, as practicable, have free and full access to all books and records, and all employees, officers, and directors, of the insurer during regular business hours.

(b) On the request of market conduct surveillance personnel, an insurer that uses a third-party model or product for any of the activities under examination shall make the details of those models or products available to that personnel.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

Sec. 751.304. AUTHORITY OF MARKET CONDUCT SURVEILLANCE PERSONNEL. Market conduct surveillance personnel may examine insurance company personnel under oath if that action is ordered by the commissioner under Subchapter C, Chapter 36.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

SUBCHAPTER H. SANCTIONS

Sec. 751.351. SANCTIONS. (a) The commissioner may impose sanctions under Chapter 82 against an insurer determined, as a result of a market conduct action or other action under this chapter, to have violated this code, a rule adopted under this code, or another insurance law of this state.

(b) In determining an appropriate sanction under Subsection (a) the commissioner shall consider:

(1) any actions taken by the insurer to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the insurance marketplace; and

(2) the extent to which the insurer maintains regulatory compliance programs to self-assess, self-report, and remediate problems detected by the insurer.

Added by Acts 2005, 79th Leg., Ch. 291 (S.B. 14), Sec. 3, eff. September 1, 2005.

CHAPTER 752. ENFORCEMENT OF BALANCE BILLING PROHIBITIONS

Sec. 752.0001. DEFINITION. In this chapter, "administrator" has the meaning assigned by Section 1467.001.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.01, eff. September 1, 2019.

Sec. 752.0002. INJUNCTION FOR BALANCE BILLING. (a) If the attorney general receives a referral from the appropriate regulatory agency indicating that an individual or entity, including a health benefit plan issuer or administrator, has exhibited a pattern of intentionally violating a law that prohibits the individual or entity from billing an insured, participant, or enrollee in an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition, the attorney general may bring a civil action in the name of the state to enjoin the individual or entity from the violation.

(b) If the attorney general prevails in an action brought under Subsection (a), the attorney general may recover reasonable attorney's fees, costs, and expenses, including court costs and witness fees, incurred in bringing the action.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.01, eff. September 1, 2019.

Sec. 752.0003. ENFORCEMENT BY REGULATORY AGENCY. (a) An appropriate regulatory agency that licenses, certifies, or otherwise authorizes a physician, health care practitioner, health care facility, or other health care provider to practice or operate in this state may take disciplinary action against the physician, practitioner, facility, or provider if the physician, practitioner, facility, or provider violates a law that prohibits the physician, practitioner, facility, or provider from billing an insured, participant, or enrollee in an amount greater than an applicable

copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(b) The department may take disciplinary action against a health benefit plan issuer or administrator if the issuer or administrator violates a law requiring the issuer or administrator to provide notice of a balance billing prohibition or make a related disclosure.

(c) A regulatory agency described by Subsection (a) or the commissioner may adopt rules as necessary to implement this section. Section 2001.0045, Government Code, does not apply to rules adopted under this subsection.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.01, eff. September 1, 2019.

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES
SUBTITLE A. GENERAL PROVISIONS APPLICABLE TO INSURERS AND RELATED ENTITIES
CHAPTER 801. CERTIFICATE OF AUTHORITY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 801.001. DEFINITIONS. In this chapter:

(1) "Control" has the meaning described by Section 823.005.

(2) "Insurer" means the issuer of an insurance policy that is issued to another in consideration of a premium and that insures against a loss that may be insured against under the law. The term includes a:

(A) fraternal benefit society;

(B) Lloyd's plan;

(C) mutual company of any kind, including a:

(i) statewide mutual assessment association;

(ii) local mutual aid association or burial association; and

(iii) county or farm mutual insurance company;

(D) reciprocal or interinsurance exchange;

(E) group hospital service corporation;

(F) health maintenance organization;

(G) nonprofit legal services corporation; and

(H) stock company.

(3) "Person" has the meaning assigned by Section 823.002.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 1, eff. June 19, 2009.

Sec. 801.002. EXEMPTION FOR CERTAIN FRATERNAL BENEFIT SOCIETIES. This chapter does not apply to a fraternal benefit society that:

(1) sells insurance policies only as an incidental benefit to its members; and

(2) on September 6, 1955, was:

(A) organized and licensed by the department as a fraternal benefit society; or

(B) exempt under former Article 10.12 or 10.38, revised as Section 885.004.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Sec. 801.051. APPROVAL, DENIAL, OR DISAPPROVAL OF APPLICATION FOR CERTIFICATE; ELIGIBILITY; HEARING. (a) The department shall approve, deny, or disapprove an application for a certificate of authority to act as an insurer.

(b) If the department determines that the applicant has complied with the law, the department shall approve the application and issue under the department's seal a certificate of authority to act as an insurer.

(c) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 2, eff. June 19, 2009.

Sec. 801.052. EFFECT AND CONTENTS OF CERTIFICATE. A certificate of authority issued to an insurer under this chapter authorizes the insurer to engage in the business of insurance. The certificate of authority must state the specific kinds of insurance authorized under the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.053. DURATION OF CERTIFICATE. A certificate of authority issued to an insurer under this chapter is effective until it is suspended or revoked.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.054. PREFERENCE FOR DOMESTIC COMPANY. In issuing a certificate of authority to an applicant under this chapter, the department shall give preference to an application submitted by a domestic company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.055. DEPOSIT OF FEES. A fee collected by the department under this chapter for a certificate of authority shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.056. FAILURE TO PROVIDE COMPLETE SET OF FINGERPRINTS: GROUND FOR DENIAL OF APPLICATION. (a) In this section, "authorization" means any authorization issued by the department to engage in an activity regulated under this code, including:

(1) a certificate of authority;

(2) a certificate of registration;

(3) a license; and

(4) a permit.

(b) The department may deny an application for an authorization if the applicant or a corporate officer of the applicant fails to provide a complete set of fingerprints on request by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.057. FAILURE TO FILE ANNUAL STATEMENT: GROUND FOR REVOCATION OR SUSPENSION. A certificate of authority of an insurer that fails to file an annual statement required by law is subject to being suspended or revoked by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. COMPETENCE, FITNESS, OR REPUTATION

Sec. 801.101. DEPARTMENT INQUIRY. The department may inquire into the competence, fitness, or reputation of:

(1) an officer or director of an insurer; or

(2) a person having control of an insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.102. DENIAL OF APPLICATION OR REVOCATION OF CERTIFICATE. (a) If after conducting an inquiry under Section 801.101 the department determines that the person who is the subject of the inquiry is not worthy of the public confidence, the department shall:

(1) deny the application for a certificate of authority; or

(2) revoke the insurer's certificate of authority.

(b) On the applicant's request, the commissioner shall hold a hearing on a denial or revocation. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 3, eff. June 19, 2009.

SUBCHAPTER D. FELONY CONVICTION

Sec. 801.151. ISSUANCE OF CERTIFICATE PROHIBITED. Except as provided by Sections 801.153 and 801.154, the department may not issue a certificate of authority to an applicant if a corporate officer or member of the board of directors of the applicant has been convicted of a felony involving:

(1) moral turpitude; or

(2) breach of a fiduciary duty.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.152. REVOCATION OF CERTIFICATE. After notice and hearing, the department may revoke the certificate of authority of an insurer if a corporate officer or member of the board of directors of the insurer is convicted of a felony involving:

(1) moral turpitude; or

(2) breach of a fiduciary duty.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.153. PETITION FOR ISSUANCE OR REINSTATEMENT OF CERTIFICATE. A company may petition the commissioner for issuance or reinstatement of a certificate of authority of the company that is denied or revoked under this subchapter:

(1) not earlier than the later of:

(A) the fifth anniversary of the date of the final conviction; or

(B) if the officer or director is sentenced to confinement or imprisonment or placed on community supervision, the fifth anniversary of the date the officer or director completes the sentence or period of community supervision; or

(2) after the officer or director ceases to be an officer or director of the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.154. GRANT OF PETITION. The commissioner shall grant a petition for issuance or reinstatement of a certificate of authority under this subchapter if the petitioner demonstrates that granting the petition would be in the public interest and that justice would best be served by granting the petition.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 801.155. RULES RELATING TO CONTENTS OF PETITION. The department may adopt rules under this subchapter prescribing the contents of a petition for issuance or reinstatement of a certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 802. ANNUAL STATEMENT

SUBCHAPTER A. ANNUAL STATEMENT OF INSURANCE COMPANIES

Sec. 802.001. FORM OF ANNUAL STATEMENT. (a) The commissioner, as necessary to obtain an accurate indication of the company's condition and method of transacting business, may change the form of any annual statement required to be filed by any kind of insurance company.

(b) The form may require only information that relates to the business of the insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 802.002. ACTUARIAL OPINION REQUIRED. (a) In this section, "qualified actuary" means:

(1) a member in good standing of the American Academy of Actuaries; or

(2) a person who has otherwise demonstrated actuarial competence to the satisfaction of the commissioner or an insurance regulatory official of another state in which the insurance company is domiciled.

(b) An insurance company's annual statement must include a statement of a qualified actuary entitled "Statement of Actuarial Opinion" that:

(1) is located on or is attached to the first page of the annual statement; and

(2) provides the opinion of the actuary relating to policy reserves and other actuarial items for life insurance, accident and health insurance, and annuities, or loss and loss adjustment expense reserves for property and casualty risks, as described in the annual statement instructions of the National Association of Insurance Commissioners as appropriate for the type of risks insured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 802.003. FILING DATE OF ANNUAL STATEMENT DELIVERED BY POSTAL SERVICE. Except as otherwise specifically provided, for an annual statement that is required to be filed in the offices of the commissioner and that is delivered by the United States Postal Service to the offices of the commissioner after the date on which the annual statement is required to be filed, the date of filing is the date of:

(1) the postal service postmark stamped on the cover in which the document is mailed; or

(2) any other evidence of mailing authorized by the postal service reflected on the cover in which the document is mailed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.201, eff. Sept. 1, 2003.

SUBCHAPTER B. FILING WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Sec. 802.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to each company regulated by the commissioner, including:

(1) a stock life, health, or accident insurance company;

(2) a mutual life, health, or accident insurance company;

(3) a stock fire or casualty insurance company;

(4) a mutual fire or casualty insurance company;

(5) a Mexican casualty company;

(6) a Lloyd's plan;

(7) a reciprocal or interinsurance exchange;

(8) a fraternal benefit society;

(9) a title insurance company;
(10) a stipulated premium insurance company;
(11) a nonprofit legal service corporation;
(12) a health maintenance organization;
(13) a statewide mutual assessment company;
(14) a local mutual aid association;
(15) a local mutual burial association;
(16) an association exempt under Section 887.102;
(17) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842;
(18) a county mutual insurance company; and
(19) a farm mutual insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.006, eff. September 1, 2017.

Sec. 802.052. CONCURRENT FILING WITH NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. (a) Each domestic, foreign, or alien insurance company authorized to engage in the business of insurance in this state shall file a copy of the company's annual statement with the National Association of Insurance Commissioners at the time the company files the statement with the commissioner.

(b) The statement required by Subsection (a) must:
(1) meet requirements adopted by the commissioner, including:
(A) a change in substance or form;
(B) an additional filing; and
(C) any requirement that the statement be in a computer compatible format; and
(2) include the signed jurat page and the actuarial opinion, as required by the jurisdiction in which the insurance company is domiciled.

(c) The insurance company shall also file with the National Association of Insurance Commissioners a copy of any amendment or addition to the annual statement that is subsequently filed with the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 802.053. EXEMPTION AUTHORITY. The commissioner may exempt any class of insurance companies from the requirements of this subchapter if the commissioner believes the information required under this subchapter will not be useful for regulatory purposes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 802.054. COMPLIANCE. The commissioner may consider a foreign insurance company to be in compliance with the requirements of Section 802.052 if the company is domiciled in a state with a law substantially similar to that section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 802.055. COSTS PAID BY INSURANCE COMPANY. An insurance company shall pay all costs of preparing and furnishing to the National Association of Insurance Commissioners the information required under Section 802.052, including any related filing fees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 17.01, eff. June 11, 2003; Acts 2003, 78th Leg., ch. 211, Sec. 2.04, eff. June 16, 2003; Acts 2003, 78th Leg., ch. 863, Sec. 1, eff. June 20, 2003.

Sec. 802.056. STATUS OF REPORTS AND OTHER INFORMATION. A report or any other information resulting from the collection, review, analysis, and distribution of information developed from the filing of annual statement convention blanks and provided to the department by the National Association of Insurance Commissioners is considered part of the process of examination of insurance companies under this code, including Chapters 86 and 401.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.001, eff. April 1, 2009.

CHAPTER 803. LOCATION OF BOOKS, RECORDS, ACCOUNTS, AND OFFICES OUTSIDE OF THIS STATE

Sec. 803.001. DEFINITIONS. In this chapter:

(1) "Domestic company" means any entity licensed, chartered, or organized under this code, including:

(A) a county mutual insurance company;

(B) a farm mutual insurance company;

(C) a fire and marine insurance company;

(D) a fraternal benefit society;

(E) a general casualty company;

(F) a group hospital service corporation;

(G) a health maintenance organization;

(H) a life, health, and accident insurance company;

(I) a Lloyd's plan;

(J) a local mutual aid association;

(K) a mutual life insurance company;

(L) a mutual insurance company other than a mutual life insurance company;

(M) a nonprofit legal services corporation;

(N) a reciprocal exchange;

(O) a statewide mutual assessment company;

(P) a stipulated premium insurance company;

(Q) a surety and trust company; and

(R) a title insurance company.

(2) "Insurance holding company system" has the meaning described by Section 823.006.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.002. APPLICABILITY OF CHAPTER. This chapter applies only to a domestic company that is:

(1) an affiliate of an insurance holding company system and in compliance with Chapter 823;

(2) a nonprofit legal services corporation the claims and daily affairs of which are handled under contract by a foreign insurer that holds a certificate of authority to engage in a similar business in this state; or

(3) a health maintenance organization that is affiliated with another health maintenance organization or a health care provider.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.003. AUTHORITY TO LOCATE OUT OF STATE. (a) A domestic company may locate and maintain its principal offices and all or any part of its books, records, and accounts outside this state at any other location in the United States if:

(1) the company has given written notice of this intention to the commissioner, except as provided by Subsection (b);

(2) the commissioner has not disapproved the notice before the 31st day after the date on which the company gives the notice; and

(3) the company meets the requirements of this chapter.

(b) A separate notice under this section is not required if:

(1) the domestic company has an agreement to maintain its books and records outside of the state with an affiliate; and

(2) the agreement:

(A) has been approved under Chapter 823; and

(B) contains substantially all the information required for notice under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.004. LOCATION AT BRANCH OR AGENCY OFFICE. This chapter does not apply to the location and maintenance of the normal books, records, and accounts of a domestic company, including policyholder and claim files, relating to the business produced by or through an agency of the company at a branch or agency office located in the United States, regardless of whether the agency is an affiliate of the company as provided in Chapter 823.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.005. CONTROL OF BOOKS, RECORDS, ACCOUNTS, AND OFFICES. (a) The books, records, accounts, or offices of a domestic company

must be under the company's direct supervision, management, and control.

(b) The ultimate controlling person of an insurance holding company system affiliated with a domestic company, or the immediate or intermediate controlling person of the domestic company, must be domiciled, licensed, or admitted to transact business in a jurisdiction in the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.006. AGENT FOR SERVICE OF PROCESS. A domestic company that under this chapter has moved its principal offices and any part of its books, records, and accounts outside this state and the controlling person of an affiliated insurance holding company system must comply with Section 804.102.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.007. EXAMINATION EXPENSES. A credit on or an offset against the amount of premium taxes to be paid by a domestic company to the state in a taxable year may not be allowed on:

(1) a fee or examination expense paid to another state; or

(2) an examination expense:

(A) incurred by a representative of the department that is directly attributable to an examination of the books, records, accounts, or principal offices of a domestic company located outside this state; or

(B) paid in a different taxable year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.008. RULES. The commissioner shall adopt rules to authorize a domestic company to maintain its books and records with a nonaffiliated entity other than an agency.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 803.009. CONFLICTING PROVISIONS. This chapter prevails over a conflicting provision of any other law of this state, including:

(1) Chapters 221, 222, and 223;

(2) Sections 401.151, 401.152, 401.155, and 401.156; and

(3) Section 171.0525, Tax Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.002, eff. April 1, 2009.

CHAPTER 804. SERVICE OF PROCESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 804.001. DEFINITION. In this chapter, "process" means legal process, including a demand or notice required or permitted by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.002. RULES. The commissioner may adopt rules essential for the effective implementation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.003. FEES. A fee collected under this chapter shall be deposited to the credit of the Texas Department of Insurance operating account for use by the department. The department shall use the money for payment of salaries and other expenses arising from the:

(1) examination of insurance companies;

(2) licensure of insurance companies; and

(3) investigation of violations of the insurance laws of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. PERSONS AUTHORIZED TO RECEIVE SERVICE OF PROCESS

Sec. 804.101. DOMESTIC COMPANY. (a) In this section:

(1) "Domestic company" means a company that is domiciled in and authorized to engage in the business of insurance in this state.

(2) "Company" means:

(A) an insurance company, including:

(i) a casualty insurance company;

(ii) a county mutual insurance company;

(iii) an exempt association under Section 887.102;

(iv) a farm mutual insurance company;

(v) a fire insurance company;

(vi) a fraternal benefit society;

(vii) a life insurance company;

(viii) a Lloyd's plan;

(ix) a mutual assessment company;

(x) a mutual insurance company other than a mutual life insurance company;

(xi) a reciprocal exchange;

(xii) a risk retention group;

(xiii) a stipulated premium insurance company;

(xiv) a title insurance company; and

(xv) a carrier providing job protection insurance;

(B) a group hospital service corporation;

(C) a health maintenance organization;

(D) a prepaid legal services corporation; or

(E) any other company engaged in the business of insurance as a principal.

(b) A domestic company may be served with process by:

(1) serving the president, an active vice president, secretary, or attorney in fact at the home office or principal place of business of the company; or

(2) leaving a copy of the process at the home office or principal business office of the company during regular business hours.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.102. DOMESTIC COMPANY THAT MAINTAINS PRINCIPAL OFFICES OR BOOKS, RECORDS, AND ACCOUNTS OUT OF STATE. (a) In this section,

"domestic company" has the meaning assigned by Section 803.001.

(b) As a condition of being authorized to engage in the business of insurance in this state, a domestic company that under Chapter 803 has moved its principal offices and any part of its books, records, and accounts outside this state and the controlling person of an affiliated insurance holding company system must appoint and maintain as agent for service of process a person in this state on whom a judicial or administrative process may be served.

(c) If a domestic company does not appoint or maintain a person in this state as agent for service of process or the agent cannot with reasonable diligence be found, the commissioner may accept service of process and notify the company in the manner provided by Subchapter C.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.103. AUTHORIZED ALIEN OR FOREIGN COMPANY. (a) In this section, "company" means:

(1) an insurance company, including a:

(A) fire, casualty, or fire and casualty insurance company;

(B) fraternal benefit society;

(C) life insurance company, including a mutual or nonprofit life insurance company;

(D) Lloyd's plan;

(E) Mexican casualty insurance company;

(F) mutual fire, mutual casualty, or mutual fire and casualty insurance company;

(G) reciprocal exchange;

(H) risk retention group; and

(I) title insurance company;

(2) a health maintenance organization; and

(3) any other insurance company, regardless of its type or category, authorized to engage in the business of insurance in this state.

(b) As a condition to being issued a certificate of authority to engage in the business of insurance in this state, an alien or foreign company must appoint a person in this state as agent for service of process on whom any process to be served on the company

may be served.

(c) The commissioner is an alien or foreign company's agent on whom process may be served as provided by Subchapter C if the:

(1) company fails to appoint or maintain an agent under Subsection (b);

(2) agent appointed under Subsection (b) cannot with reasonable diligence be found; or

(3) company's certificate of authority is revoked.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.104. RISK RETENTION GROUP NOT CHARTERED IN THIS STATE. A risk retention group that is not chartered but that is registered in this state under Section 2201.152, must designate the commissioner as its agent for service of process and receipt of legal documents.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.003, eff. April 1, 2009.

Sec. 804.105. PERSON IN RECEIVERSHIP. (a) Service of process with respect to an individual, insurer, or other entity for which a court has appointed the liquidator as receiver must be made only on the receiver.

(b) If Subsection (a) applies, service on the commissioner or the secretary of state has no effect.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.106. ELIGIBLE SURPLUS LINES INSURER; POLICY REQUIREMENT FOR INSURER AND AGENT. (a) Each surplus lines insurer that assumes a surplus lines risk under Chapter 981 is subject to this section.

(b) Any act of engaging in the business of insurance by an eligible surplus lines insurer:

(1) constitutes the irrevocable appointment of the secretary of state by that insurer as agent for service of process

arising from the insurer's engaging in the business of insurance in this state, other than service of process for an action or proceeding by the department or state; and

(2) signifies the insurer's agreement that service under this subsection has the same effect as personal service on the insurer or the insurer's successor in interest.

(c) An appointment under Subsection (b)(1) is binding on the eligible surplus lines insurer and the insurer's successor in interest.

(d) A policy issued by an eligible surplus lines insurer or a certificate of insurance issued by the surplus lines agent must contain a provision stating the substance of this section and designating the person to whom the commissioner is to mail process. The plaintiff shall supply this address in any citation served under this section.

(e) This section is in addition to any other method provided by law for service of process on a surplus lines insurer, including the method provided by Subchapter C.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.107. UNAUTHORIZED PERSON OR INSURER. (a) In this section, "personal representative" includes an executor or administrator.

(b) Any act of engaging in the business of insurance as provided by Subchapter B, Chapter 101, by an unauthorized person or insurer:

(1) constitutes the irrevocable appointment of the commissioner by that person or insurer as agent for service of process arising from the person's or insurer's engaging in the business of insurance in this state, other than service of process for an action or proceeding by the department or state;

(2) constitutes the irrevocable appointment of the secretary of state by that person or insurer as agent for service of process for an action or proceeding described by Subsection (c) and arising from the person's or insurer's engaging in the business of insurance in this state; and

(3) signifies the agreement of the person or insurer that process served under this subsection and Subsection (d) has the same

effect as personal service in this state on that person or insurer or the personal representative of that person or insurer or if a corporation, the corporation's successor in interest.

(c) The process may be served on the secretary of state only in an action or proceeding brought:

(1) in court by the department or the state against an unauthorized person or insurer; or

(2) before the department by a process against the unauthorized person or insurer.

(d) Service of process on an unauthorized person or insurer may be served on a person in this state that engages, on the behalf of the unauthorized person or insurer, in an act of engaging in the business of insurance in this state as provided by Subchapter B, Chapter 101.

(e) In an action or proceeding in which process is served under Subsection (b) or (d), a plaintiff or complainant is not entitled to a default judgment or determination before the 30th day after the date on which the copy of the process is mailed to the defendant.

(f) This section does not apply to an entity that was an eligible surplus lines insurer under Chapter 981 on the date on which the applicable coverage was issued.

(g) This section does not limit or diminish the right to serve process on a person or insurer in any other manner provided by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.108. INSURANCE HOLDING COMPANY SYSTEM LAW. A person, as that term is defined by Section 823.002, that violates Chapter 823 is considered to have appointed the commissioner as agent for service of process on the person for an action or proceeding arising from a violation of that chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. PROCEDURES RELATING TO SERVICE OF PROCESS ON COMMISSIONER

Sec. 804.201. PROCEDURE FOR SERVING COMMISSIONER. (a) Process served by serving the commissioner under this chapter must be directed to the defendant and include:

(1) for an unauthorized person or insurer, the name and address of the person or insurer to be served;

(2) for a risk retention group, the name and address of the group to be served;

(3) for a surplus lines insurer, the name and address of the insurer to be served;

(4) for an unincorporated association, trust, or other organization formed under Chapter 1505, the name and address of the association, trust, or organization; or

(5) for an authorized company, the name and address of the company as it appears in the department records.

(b) Process may be served on the commissioner:

(1) personally by a disinterested person who is at least 18 years of age leaving two copies of the process at the office of the department during regular business hours with:

(A) the commissioner; or

(B) an appointee of the commissioner authorized to receive process; or

(2) by certified or registered mail.

(c) A fee not to exceed $50, payable by check or money order to the department, must accompany each process served on the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.004, eff. April 1, 2009.

Sec. 804.202. EFFECT OF SERVICE ON COMMISSIONER. Service on the commissioner acting as agent for service of process is service on the principal.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.203. MAILING PROCESS; CERTIFICATE. (a) The commissioner shall immediately send by registered or certified mail, return receipt requested, one copy of process served on the commissioner under Section 804.201 to:

(1) the defendant at the address supplied in the process as

provided by Sections 804.201(a)(1) through (4); or

(2) if Section 804.201(a)(5) applies, the home office or principal business office of the authorized company, as indicated in the department records.

(b) The commissioner shall send by registered or certified mail, return receipt requested, copies of process served under Section 804.108 to the last known address of the person.

(c) On receiving the return receipt for certified or registered mail, the commissioner shall issue a certificate showing the service and proof of delivery by a return receipt to the plaintiff and clerk of the court or agency where the proceeding is pending.

(d) The commissioner shall provide on request the certificate described by Subsection (c). The commissioner may charge a fee not to exceed $10 for the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.204. RECORD. The commissioner shall keep a record of:

(1) each process served on the commissioner under this chapter; and

(2) the action taken by the commissioner regarding the process.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. PROCEDURES RELATING TO SERVICE OF PROCESS ON SECRETARY OF STATE

Sec. 804.301. PROCEDURE FOR SERVING SECRETARY OF STATE. Process served by serving the secretary of state under Section 804.107 must be served by leaving two copies of the process at the office of the secretary of state during regular business hours with:

(1) the secretary of state; or

(2) an appointee of the secretary of state authorized to receive service.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.302. MAILING PROCESS. The secretary of state shall

mail one copy of process in the proceeding served on the secretary of state under Section 804.301 to the defendant in a court proceeding or to whom the process in an administrative proceeding is addressed or directed, at the person's or entity's last known home office or principal place of business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 804.303. RECORD. The secretary of state shall keep a record of each process served on the secretary of state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 805. DIRECTORS, OFFICERS, AND OTHER INTERESTED PERSONS

SUBCHAPTER A. ACTIVITIES OF DIRECTORS, OFFICERS, AND SHAREHOLDERS

Sec. 805.001. DEFINITIONS. In this subchapter:

(1) "Major shareholder" means an individual, corporation, partnership, association, joint-stock company, business trust, or unincorporated organization that is directly or indirectly the beneficial owner of more than 10 percent of any class of an equity security of an insurer.

(2) "Subsidiary" means a corporation:

(A) of which at least 50 percent of any class of an equity security is owned by an insurer; or

(B) that is managed, directly or indirectly controlled, or subject to control by an insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 805.002. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to any insurer, including a:

(1) capital stock company;

(2) reciprocal or interinsurance exchange;

(3) Lloyd's plan;

(4) fraternal benefit society;

(5) mutual company, including a mutual assessment company;

(6) local mutual aid association;

(7) burial association;

(8) county mutual insurance company;
(9) farm mutual insurance company;
(10) fidelity, guaranty, or surety company;
(11) mutual life insurance company;
(12) mutual insurance company other than a mutual life insurance company;
(13) stipulated premium company;
(14) title insurance company; and
(15) any other insurance company engaged in the business of insurance in or organized under the laws of this state or otherwise regulated under this code.

(b) A provision of this code limiting regulation under this code does not limit the application of this subchapter.

(c) This subchapter controls if there is ambiguity or a conflict between this subchapter and another provision of this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 805.003. PROHIBITED ACTIVITIES. (a) A director, officer, or major shareholder of an insurer may not:

(1) except as provided by this subchapter, directly, indirectly, or through a substantial interest in another corporation, firm, or business unit receive money or another thing of value for negotiating, procuring, recommending, or aiding in a purchase, sale, or exchange of property or a loan from the insurer or its subsidiary;
(2) directly, indirectly, or through a substantial interest in another corporation, firm, or business unit have a pecuniary interest in a purchase, sale, exchange, or loan described by Subdivision (1) as a principal, co-principal, agent, or beneficiary; or
(3) directly or indirectly accept a loan or guarantee described by Subsection (b).

(b) An insurer may not directly, indirectly, or through its subsidiary make a loan to or guarantee the financial obligation of a director, officer, or major shareholder of an insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 805.004. ACTIVITIES NOT PROHIBITED. This subchapter does

not prohibit:

(1) a director, officer, or major shareholder of an insurer from:

(A) becoming a policyholder of the insurer and exercising the usual rights of a policyholder;

(B) participating as beneficiary in a pension plan, deferred compensation plan, profit-sharing or bonus plan, stock option plan, or similar plan adopted by the insurer and for which the director, officer, or major shareholder may be eligible under the terms of the plan;

(C) receiving a salary, bonus, or other remuneration for a service rendered to the insurer as an employee of the insurer and not in violation of another provision of this code; or

(D) entering into an arms-length transaction with the insurer if:

(i) the transaction is not prohibited by another statute; and

(ii) the commissioner approves the transaction before the transaction is made;

(2) a director of an insurer from:

(A) performing professional services not required of a director by law; or

(B) receiving director's fees or reimbursement for an expense incurred in the performance of a duty as a director;

(3) a transaction within an insurance holding company system by an insurer with its holding company, subsidiary, or affiliate that:

(A) is not prohibited by law;

(B) meets the test of being fair and proper; and

(C) is regulated by another statute;

(4) a transaction or arrangement that:

(A) is not prohibited by law; and

(B) meets the test of being fair and proper as prescribed by rules adopted by the commissioner; or

(5) the approval and payment of lawful dividends to policyholders and shareholders.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. CERTAIN PAYMENTS BY DIRECTORS, OFFICERS, AND TRUSTEES

Sec. 805.021. LIABILITY FOR FEE AND TAX PAYMENTS. (a) In this section, "fee or tax" includes a license, excise, privilege, premium, or occupation fee or tax.

(b) A director, officer, or trustee of an insurer is not personally liable, in complying with the law, for the payment of or for the determination not to contest the payment of a fee or tax to a state or a political subdivision of a state that the board of directors or trustees considers to be in the corporate interest of the insurer.

(c) Subsection (b) does not apply if, before the payment of the fee or tax, the state court of final appellate jurisdiction or the United States Supreme Court expressly holds that the law imposing the fee or tax is invalid.

(d) This section does not directly or indirectly limit, minimize, or interpret the rights and powers of an insurer or the directors, officers, or trustees of an insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBTITLE B. ORGANIZATION OF REGULATED ENTITIES

CHAPTER 821. GENERAL PROVISIONS

SUBCHAPTER A. MINIMUM INSURANCE TO BE MAINTAINED BY INSURER

Sec. 821.001. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to any insurer that is required by law to hold a certificate of authority issued by the department, including:

(1) a domestic insurance company;

(2) a mutual life insurance company;

(3) a statewide mutual assessment company;

(4) a mutual insurance company other than a life insurance company operating under Chapter 883;

(5) a Lloyd's plan;

(6) a reciprocal or interinsurance exchange; and

(7) a title insurance company.

(b) This subchapter does not apply to:

(1) an insurer before the second anniversary of the date the insurer's original certificate of authority is issued; or

(2) an insurer that was paid more than $50,000 in gross premium income by policyholders during the preceding accounting year

of the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 821.002. EXEMPTIONS. This subchapter does not apply to:

(1) a fraternal benefit society operating under Chapter 885;

(2) a local mutual aid association or local mutual burial association operating under Chapters 886, 887, and 888;

(3) a statewide mutual assessment company or association operating under Chapters 881, 887, or 888;

(4) another association operating under Subchapter C, Chapter 887;

(5) a farm mutual insurance company operating under Chapter 911; or

(6) a county mutual fire insurance company operating under Chapter 912.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 821.003. MINIMUM REQUIREMENTS. An insurer must maintain at all times not less than 100 policyholders or certificate holders nor less than $200,000 of insurance that the insurer has written or acquired through reinsurance contracts.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 821.004. REPORT TO ATTORNEY GENERAL; SUIT AGAINST INSURER. (a) The department shall report to the attorney general an insurer's failure to comply with this subchapter.

(b) On receiving a report under Subsection (a), the attorney general shall bring suit in a district court in Travis County against the insurer to cancel, forfeit, and revoke the insurer's:

(1) charter, articles of association, or articles of agreement; and

(2) certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. ASSOCIATION OF INSURANCE COMPANIES

Sec. 821.051. PAYMENT OF TAXES AND FEES; COMPLIANCE WITH LAW. (a) Life, health, fire, marine, or inland marine insurance companies that associate to issue or sell insurance policies may not engage in the business of insurance in this state until each company has:

(1) paid the company's taxes and fees that are due; and

(2) complied with all requirements of law.

(b) The commissioner may not authorize to engage in the business of insurance in this state an insurance company that does not comply with Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 822. GENERAL INCORPORATION AND REGULATORY REQUIREMENTS FOR INSURANCE COMPANIES OTHER THAN LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 822.001. APPLICABILITY OF CHAPTER. Except as otherwise provided by this code, this chapter applies to the formation of each company or organization that proposes to engage in any kind of insurance business other than a life, health, or accident insurance company organized or operating under Chapter 841, 881, 882, 884, 885, 886, 887, or 888.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.002. APPLICABILITY OF LAW GOVERNING CORPORATIONS. An insurance company incorporated in this state is subject to the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and any other law of this state that governs corporations in general to the extent those laws are not inconsistent with this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.003. EFFECT ON TRANSACTIONS BETWEEN INSURANCE

COMPANIES AND OTHERS. The following sections do not restrict or modify any provision of this code relating to a transaction between an insurance company and the insurance company's affiliates, or between an insurance company and certain shareholders, directors, or officers of the insurance company, as provided by Subchapter A, Chapter 805, and Chapter 823:

(1) Sections 822.055 and 822.056;
(2) Section 822.057(a)(4);
(3) Section 822.061;
(4) Section 822.156;
(5) Sections 822.158(d) and (e); and
(6) Sections 822.206 and 822.207.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION AND STRUCTURE OF COMPANY

Sec. 822.051. FORMATION OF COMPANY. (a) Any number of persons may form a company for the purpose of engaging in the business of insurance.

(b) To form a company, each incorporator must adopt and sign the articles of incorporation of the company as provided by this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.052. ARTICLES OF INCORPORATION. Articles of incorporation of a proposed insurance company must state:

(1) the name of the company;
(2) the location of the company's principal business office;
(3) the kind of insurance business in which the company proposes to engage;
(4) the amount of the company's capital stock; and
(5) the amount of the company's surplus.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.053. COMPANY'S NAME. An insurance company's name may

not be so similar to the name of another insurance company as to likely mislead the public.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.054. CAPITAL STOCK AND SURPLUS REQUIREMENTS. (a) An insurance company must have capital stock in an amount of at least $2.5 million and surplus in an amount of at least $2.5 million.

(b) At the time of incorporation, the required capital and surplus must be in cash.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1275 (H.B. 1476), Sec. 1, eff. September 1, 2009.

Sec. 822.055. SHARES OF STOCK WITH PAR VALUE. (a) An insurance company organized under the laws of this state may authorize the issuance of shares of stock with a par value of not less than $1 or more than $100. The company may increase from time to time the number of shares with a par value by an amendment to the company's charter.

(b) Each par value share of stock must be fully paid before issuance in an amount that is not less than the share's par value. Par value shares issued under this section are not subject to additional call or assessment, and the subscriber or holder of those shares is not required to make an additional payment with respect to those shares.

(c) When an application for charter or an amendment to the charter authorizing the issuance of shares of stock with a par value is filed, the insurance company shall file with the department a statement under oath stating:

(1) the total number of par value shares subscribed; and

(2) the actual total consideration the company received for those shares.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 3(1), eff. September 1, 2023.

(e) If all of the authorized par value shares of stock are not subscribed and paid for when the charter is granted or the amendment

is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the total number of shares issued and the total consideration received for those shares. The company shall file the certificate not later than the 90th day after the date of issuance of those remaining shares. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company.

(f) The consideration received by an insurance company for a par value share constitutes capital to the extent of its par value and the remainder, if any, constitutes surplus.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 3(1), eff. September 1, 2023.

Sec. 822.056. SHARES OF STOCK WITHOUT PAR VALUE. (a) An insurance company organized under the laws of this state, on incorporation or by an amendment to its charter, may authorize the issuance of shares of stock without par value.

(b) Each share of stock without par value must be equal in all respects.

(c) An insurance company may issue and dispose of authorized shares without par value for money or for notes, bonds, mortgages, and stock in the form authorized by law for capital stock of insurance companies. Each share of stock without par value must be fully paid before issuance. After the company receives payment for a share of stock issued under this section, the share is not subject to additional call or assessment and the subscriber or holder of the share is not required to make an additional payment with respect to the share.

(d) The shareholders of an insurance company authorizing shares of stock without par value must pay a total amount of at least $250,000 for the shares before the company is granted a charter or has its charter amended to authorize the issuance of shares without par value.

(e) If all of the authorized shares of stock without par value are not subscribed and paid for when the charter is granted or the

amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the number of shares without par value issued and the consideration received for those shares. An insurance company may issue and dispose of those remaining authorized shares for money or an instrument authorized for minimum capital under:

(1) a provision of Subchapter B, Chapter 424, other than Section 424.052, 424.072, or 424.073; and

(2) Section 822.204.

(f) The insurance company shall file the certificate required by Subsection (e) not later than the 90th day after the date of issuance of those remaining shares. The portion of the consideration received for shares without par value that is designated as capital by the company's directors, or by the company's shareholders if the charter or articles of incorporation reserve the right to make that determination to the shareholders, constitutes capital and the remainder, if any, constitutes surplus. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.005, eff. April 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 1, eff. September 1, 2023.

Sec. 822.057. APPLICATION FOR CHARTER. (a) To obtain a charter for an insurance company, the incorporators must pay to the department the fees prescribed by law and file with the department:

(1) an application for charter on the form and containing the information prescribed by the commissioner;

(2) the company's proposed articles of incorporation;

(3) an affidavit made by the incorporators or officers of the company that states that:

(A) the capital and surplus is the bona fide property of the company; and

(B) the information in the articles of incorporation is true and correct; and

(4) if the application provides for the issuance of shares of stock without par value, a certificate authenticated by the incorporators stating:

(A) the number of shares without par value that are subscribed; and

(B) the actual consideration received by the company for those shares.

(b) If the commissioner is not satisfied with the affidavit filed under Subsection (a)(3), the commissioner may require that the incorporators provide at their expense additional evidence of a matter required in the affidavit before the commissioner:

(1) receives the proposed articles of incorporation or the application for charter; or

(2) issues a certificate of authority to the company.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1022, Sec. 19(1), eff. June 19, 2009.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 4, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 19(1), eff. June 19, 2009.

Sec. 822.058. ACTION BY COMMISSIONER AFTER FILING OF APPLICATION FOR CHARTER. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1022, Sec. 19(2), eff. June 19, 2009.

(b) After the items required for a charter under Sections 822.057(a)(1) and (2) are filed with the department and the proposed insurance company has complied with all legal requirements, the commissioner shall conduct an examination of the company to determine whether:

(1) the minimum capital stock and surplus requirements of Section 822.054 are satisfied;

(2) the capital stock and surplus is the bona fide property of the company; and

(3) the insurance company has fully complied with insurance laws.

(c) The commissioner may appoint a competent and disinterested

person to conduct the examination required by this section. The examiner shall file an affidavit of the examiner's findings with the commissioner. The commissioner shall record the affidavit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 5, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 19(2), eff. June 19, 2009.

Sec. 822.060. ACTION ON APPLICATION. (a) In considering the application, the commissioner shall determine if:

(1) the proposed capital structure of the company meets the requirements of this code;

(2) the proposed officers, directors, attorney in fact, or managing head of the company have sufficient insurance experience, ability, standing, and good record to make success of the proposed company probable; and

(3) the applicants are acting in good faith.

(b) If the commissioner determines that the applicant has not met the standards set out by Subsection (a), the commissioner shall deny the application in writing, giving the reason for the denial.

(c) If the commissioner does not deny the application under Subsection (b), the commissioner shall approve the application. On approval of an application, the articles of incorporation of the company shall be filed with the department.

(d) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 6, eff. June 19, 2009.

Sec. 822.061. ISSUANCE OF CHARTER. (a) On receipt of a charter fee in the amount determined under Chapter 202, the

commissioner shall examine the articles of incorporation filed with the department under Section 822.060 and any certificate filed under Section 822.057(a)(4).

(b) If the commissioner approves the articles of incorporation and, if applicable, the certificate filed under Section 822.057(a)(4), the commissioner shall certify and file the approved documents with the department records and, on receipt of a fee in the amount determined under Chapter 202, the commissioner shall issue a certified copy of the charter to the incorporators.

(c) When the insurance company's charter is issued, the charter is effective and the incorporators may proceed with the organization of the company as provided by this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.006, eff. April 1, 2009.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Sec. 822.101. CERTIFICATE OF AUTHORITY. When the articles of incorporation of an insurance company have been filed with the department under Section 822.060 or the company has been authorized to engage in business as provided by law, the commissioner shall issue to the company a certificate of authority to commence business as proposed in the company's articles of incorporation or application for charter if the commissioner determines that the company has fully complied with the law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. MANAGEMENT OF COMPANY

Sec. 822.151. CONDUCTING SHAREHOLDERS MEETING. (a) Except as otherwise provided by this code, at a meeting of an insurance company's shareholders to elect the company's board of directors or to transact other company business, a quorum is any number of shareholders whose cumulative ownership in the company represents at least 51 percent of the company's stock.

(b) A shareholder may vote in person or by proxy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.152. BOARD OF DIRECTORS. (a) An insurance company organized under the laws of this state is managed by its board of directors.

(b) The board consists of not fewer than five directors. A director:

(1) is not required to be a shareholder unless such a qualification is required by the articles of incorporation or bylaws of the company; and

(2) serves until the director's successor is elected and accepts the position.

(c) The board of directors may adopt bylaws and regulations as necessary to conduct the company's business. A majority of the board is a quorum.

(d) The board of directors shall keep a full and correct record of the board's transactions. The shareholders or other interested persons may inspect those records during business hours.

(e) The directors shall fill a vacancy that occurs on the board or in any office of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 380 (S.B. 918), Sec. 1, eff. September 1, 2021.

Sec. 822.153. ELECTION OF DIRECTORS. (a) Not later than the 30th day after the date on which the company's subscription books are filed, the shareholders of an insurance company shall meet to elect the company's initial board of directors. At the meeting, each shareholder is entitled to one vote for each share of stock.

(b) The shareholders of an insurance company shall meet annually as provided by the company's bylaws to elect successor directors.

(c) If the shareholders do not elect directors at an annual meeting, the shareholders may elect the directors at a special shareholders meeting called for that purpose. Not later than the 30th day before the date of the special meeting, the shareholders

must publish notice of the meeting in a newspaper of general circulation in the county in which the principal office of the company is located.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 380 (S.B. 918), Sec. 2, eff. September 1, 2021.

Sec. 822.154. OFFICERS. (a) An insurance company's directors shall choose one of the directors to serve as the company's president.

(b) Other officers of the insurance company shall be chosen in accordance with the company's bylaws. An officer other than the president is not required to be a director or a shareholder unless such a qualification is required by the company's bylaws or articles of incorporation.

(c) An insurance company's officers shall perform duties, receive compensation, and provide security as stated in the company's bylaws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.155. APPLICATION FOR AMENDMENT OF CHARTER. A domestic insurance company may amend its charter by paying to the commissioner a fee in the amount determined under Chapter 202 and by filing with the department:

(1) an application for a charter amendment on the form and containing the information prescribed by the commissioner; and

(2) the company's proposed amendment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.007, eff. April 1, 2009.

Sec. 822.156. CERTIFICATE REQUIRED FOR AMENDMENT OF CHARTER TO AUTHORIZE SHARES WITHOUT PAR VALUE. (a) If a proposed amendment to

the charter of an insurance company authorizes the issuance of shares of stock without par value, the insurance company must file with the department, at the time the proposed amendment is filed, a certificate authenticated by a majority of the directors stating:

(1) the number of shares without par value that are subscribed; and

(2) the consideration the company received for those shares.

(b) On receipt of the certificate, the commissioner shall examine the certificate. The commissioner shall certify and file the certificate if the commissioner approves the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.157. ACTION BY COMMISSIONER AFTER FILING OF APPLICATION FOR CHARTER AMENDMENT. (a) The commissioner may hold a hearing on an application for a charter amendment. If the commissioner determines to hold a hearing on the application, the commissioner, after the items required for the charter amendment are filed with the commissioner, shall set a date for the hearing and publish notice of the hearing in one or more daily newspapers of this state.

(b) The commissioner may not require a hearing for an amendment relating to one or more of the following issues:

(1) a stock dividend resulting from a legal transfer of surplus to capital;

(2) a change in the name of the insurance company; or

(3) a change in the location of the insurance company's principal business office.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.158. DETERMINATION ON APPLICATION FOR CHARTER AMENDMENT. (a) Not later than the 60th day after the date the application under Section 822.155 is filed, the commissioner shall determine whether:

(1) the proposed capital structure of the insurance company meets the requirements of this code;

(2) the officers, directors, and managing head of the

insurance company have sufficient insurance experience, ability, standing, and good record to make success of the company probable;

(3) the applicants are acting in good faith;

(4) if the proposed amendment relates to a diminution of the insurance company's charter powers with respect to the kinds of insurance business in which the company may be engaged, all liabilities incidental to the exercise of the powers to be eliminated have been terminated or wholly reinsured; and

(5) the property involved in an increase of capital or surplus, or both, is:

(A) properly valued; and

(B) in the form authorized by the following provisions, to the extent those provisions apply:

(i) Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073; and

(ii) Section 822.204.

(b) If the commissioner determines that the applicant has not met the requirements set out by Subsection (a), the commissioner shall deny the application. On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

(c) If the commissioner does not deny the application under Subsection (b), the commissioner shall approve the application and the amendment shall be filed with the department.

(d) Except as provided by Subsection (e), when an amendment to an insurance company's charter is filed with the department, the amendment is effective.

(e) On approval of a certificate required under Section 822.156 and receipt of a fee in the amount determined under Chapter 202, the commissioner shall issue to the directors a certified copy of an amendment authorizing the issuance of shares of stock without par value that is filed under this section. The amendment is effective on issuance of the certified copy of the amendment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.008, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 7, eff.

June 19, 2009.

SUBCHAPTER E. CAPITAL, SURPLUS, AND GUARANTY FUND REQUIREMENTS

Sec. 822.201. APPLICABILITY OF CAPITAL AND SURPLUS REQUIREMENTS. The capital and surplus requirements of this chapter apply to each insurance company or other entity, other than a farm mutual insurance company, authorized to write property and casualty insurance in this state including:

(1) a county mutual insurance company;

(2) a mutual insurance company, other than a mutual life insurance company;

(3) a Lloyd's plan; and

(4) a reciprocal or interinsurance exchange.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.202. FULL COVERAGE AUTOMOBILE INSURANCE; DETERMINATION OF AMOUNTS. Full coverage automobile insurance is one line of casualty insurance for purposes of determining:

(1) the amount of capital and surplus of a capital stock company under this code;

(2) the amount of surplus of a mutual insurance company or reciprocal exchange under this code; or

(3) the amount of the guaranty fund and surplus of a Lloyd's plan under this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.203. CAPITAL REQUIRED GENERALLY. To engage in the kinds of insurance business for which an insurance company organized under this chapter holds a certificate of authority, the company must have at least the minimum amount of capital required for a newly incorporated company under Section 822.054.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.204. FORM OF CAPITAL AND SURPLUS. (a) After

incorporation and the issuance of a certificate of authority to an insurance company, the minimum capital stock and surplus of the company may consist only of:

(1) United States currency;

(2) bonds of this state;

(3) bonds or other evidences of indebtedness of the United States the principal and interest of which are guaranteed by the United States;

(4) bonds or other interest-bearing evidences of indebtedness of a county or municipality of this state; and

(5) notes secured by first mortgages:

(A) on otherwise unencumbered real property in this state the title to which is valid; and

(B) the payment of which is insured wholly or partly by the United States.

(b) Not more than 50 percent of the minimum capital stock and minimum surplus of an insurance company may be invested in an investment described by Subsection (a)(5).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.205. UNENCUMBERED SURPLUS OR GUARANTY FUND REQUIREMENTS FOR CERTAIN INSURANCE COMPANIES. (a) Except as provided by Section 912.308, this section applies only to an insurance company that:

(1) writes insurance only in this state; and

(2) is not required by law to have capital stock.

(b) Notwithstanding any other provision of this subchapter other than Sections 822.212(b) and (c), an insurance company must have a minimum amount of unencumbered surplus or a minimum amount of guaranty fund and unencumbered surplus equal to the greater of:

(1) the amount of unencumbered surplus or the amount of guaranty fund and surplus, as appropriate, the company was required to have on August 31, 1991; or

(2) one-third of the company's net written premium for the preceding 12 months after deducting:

(A) lawfully ceded reinsurance; and

(B) any policy fees not ceded to reinsurers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 677 (H.B. 2449), Sec. 1, eff. September 1, 2009.

Sec. 822.206. REPURCHASE OF CAPITAL STOCK BY TENDER OFFER OR PRIVATE TRANSACTION. (a) An insurance company may, on prior approval of the department, purchase outstanding shares of the company's capital stock in accordance with the Texas Business Corporation Act either by making a tender offer or by entering into a negotiated private transaction.

(b) The application for approval under Subsection (a) must:

(1) state the number of shares offered;

(2) describe the shares;

(3) contain any pertinent information regarding the value of the shares, including:

(A) the price offered by the company for the shares;

(B) the book value of the shares; and

(C) the market value of the shares if a market exists for those shares; and

(4) demonstrate that the shares will be purchased using uncommitted earned surplus.

(c) Before filing the application the insurance company must present a copy of the application to the seller of the shares.

(d) The commissioner shall approve the application promptly if:

(1) the price offered by the insurance company for the shares appears to be a reasonably fair price; and

(2) the application complies with the requirements of this section and the Texas Business Corporation Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.207. REPURCHASE OF CAPITAL STOCK ON OPEN MARKET. (a) On prior approval of the commissioner, an insurance company, the capital stock of which is listed on a national securities exchange, may purchase from time to time outstanding shares of the company's capital stock on the open market. The shares must be purchased:

(1) in the name of the company for its own account; and

(2) in accordance with the Texas Business Corporation Act.

(b) The application for approval under Subsection (a) must:

(1) state the maximum number of shares to be purchased;

(2) state the maximum period, not to exceed 180 days, during which the purchase will be made;

(3) describe the shares;

(4) contain a commitment that the company will not pay a price for the shares to be purchased that is greater than an amount equal to the average of the bid price and the asked price at the time of the purchase plus a standard broker's commission;

(5) contain any pertinent information relating to the value of the shares, including the book value of the shares; and

(6) demonstrate that the shares will be purchased using uncommitted earned surplus.

(c) The commissioner shall approve the application promptly if the application complies with the requirements of this section and the Texas Business Corporation Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.208. APPLICATION FOR REPURCHASE OF COMPANY'S SHARES SUBJECT TO OTHER LAW. An application filed by an insurance company under Section 822.206 or 822.207 is subject to the substantive requirements for the approval of payment of an extraordinary dividend under Chapter 823.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.209. REINVESTMENT OF CAPITAL STOCK. An insurance company may, as circumstances require, exchange and reinvest its capital stock in like securities.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.210. COMMISSIONER MAY REQUIRE LARGER CAPITAL AND SURPLUS AMOUNTS. (a) The commissioner by rule or guideline may require an insurance company organized under this chapter to maintain capital and surplus in amounts that exceed the minimum amounts required by this chapter because of:

(1) the nature and kind of risks the company underwrites or reinsures;

(2) the premium volume of risks the company underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of the company's investments;

(4) fluctuations in the market value of securities the company holds; or

(5) the adequacy of the company's reserves.

(b) A rule adopted under Subsection (a) must be designed to ensure the financial solvency of an insurance company for the protection of policyholders.

(c) An insurance company that, after notifying the commissioner, ceases to write or assume business continues to be subject to this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 822.211. ACTION OF COMMISSIONER WHEN CAPITAL OR SURPLUS REQUIREMENTS NOT SATISFIED. If an insurance company does not comply with the capital and surplus requirements of this chapter, the commissioner may enter an order prohibiting the company from writing new business and may:

(1) place the company under state supervision or conservatorship;

(2) declare the company to be in a hazardous condition as provided by Subchapter A, Chapter 404;

(3) declare the company to be impaired as provided by Subchapter B, Chapter 404; or

(4) apply to the company any other applicable sanction provided by this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.009, eff. April 1, 2009.

Sec. 822.212. INCREASE OF CAPITAL AND SURPLUS. (a) Notwithstanding Section 822.203, to engage in the kinds of insurance

business for which an insurance company organized under this chapter holds a certificate of authority in this state, an insurance company organized under this chapter that on September 1, 2009, had less than the minimum amount of capital and surplus required for a newly incorporated company under Section 822.054 must:

(1) not later than December 31, 2010, have increased the amount of its capital by at least 10 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(2) not later than December 31, 2011, have increased the amount of its capital by at least 20 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(3) not later than December 31, 2012, have increased the amount of its capital by at least 30 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(4) not later than December 31, 2013, have increased the amount of its capital by at least 40 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(5) not later than December 31, 2014, have increased the amount of its capital by at least 50 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(6) not later than December 31, 2015, have increased the amount of its capital by at least 60 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(7) not later than December 31, 2016, have increased the amount of its capital by at least 70 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(8) not later than December 31, 2017, have increased the amount of its capital by at least 80 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009;

(9) not later than December 31, 2018, have increased the amount of its capital by at least 90 percent of the difference between the amount of minimum capital required for a newly incorporated company under Section 822.054 and the amount of the company's capital on December 31, 2009; and

(10) not later than December 31, 2019, have at least the minimum amount of capital required under Section 822.054 for a newly incorporated company.

(b) An insurance company that on September 1, 2009, had less than the minimum amount of capital and surplus required for a newly incorporated company under Section 822.054 shall immediately increase the amount of its capital and surplus to an amount equal to the required amount of capital and surplus under Section 822.054 if there is:

(1) a change in the control of at least 50 percent of the voting securities of the insurance company;

(2) a change in the control of at least 50 percent of the voting securities of a holding company controlling the insurance company; or

(3) a change in control of at least 50 percent by any other method of control if the insurance company or holding company is not controlled by voting securities.

(c) For purposes of Subsection (b), a transfer of ownership that occurs because of death, regardless of whether the decedent dies testate or intestate, may not be considered a change in the control of an insurance company or holding company if ownership is transferred solely to one or more individuals each of whom would be an heir of the decedent if the decedent had died intestate.

(d) An insurance company that, after notifying the commissioner, ceases to write or assume business is not required to comply with this section. If the company resumes writing business at a later date, the company shall comply with this section on the date the company resumes business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1275 (H.B. 1476), Sec. 2, eff. September 1, 2009.

CHAPTER 823. INSURANCE HOLDING COMPANY SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 823.001. FINDINGS AND PURPOSE. (a) It is consistent with the public interest and the interest of policyholders to permit insurers to:

(1) engage in activities that would enable the insurers to make better use of management skills and facilities;

(2) have free access to capital markets that could provide funds for insurers to use in diversification programs;

(3) implement sound tax planning conclusions; and

(4) serve the changing needs of the public and adapt to changing conditions of the social, economic, and political environment, so that insurers are able to compete effectively and to meet the growing public demand for institutions capable of providing a comprehensive range of financial services.

(b) The public interest and the interests of policyholders are adversely affected if:

(1) control of an insurer is sought by persons who would use the control adversely to the interest of policyholders;

(2) acquisition of control of an insurer substantially lessens competition or creates a monopoly in the insurance business in this state;

(3) an insurer that is part of a holding company system is caused to enter into transactions or relationships with affiliated companies on terms that are not fair and reasonable; or

(4) an insurer pays dividends to shareholders that jeopardize the financial condition of the insurer.

(c) The purpose of this chapter is to promote the public interest by:

(1) facilitating the achievement of the objectives described by Subsection (a);

(2) requiring disclosure of pertinent information relating to and approval of changes in control of an insurer;

(3) requiring disclosure and approval of material transactions and relationships between the insurer and the insurer's

affiliates, including certain dividends to shareholders paid by the insurer; and

(4) providing standards governing material transactions between the insurer and the insurer's affiliates.

(d) It is desirable to prevent unnecessary multiple and conflicting regulation of insurers. In accordance with this purpose and except as provided by this chapter, this state shall exercise regulatory authority under this chapter only with respect to domestic insurers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.010, eff. April 1, 2009.

Sec. 823.002. DEFINITIONS. In this chapter:

(1) "Acquiring person" means the person who is acquiring control of a domestic insurer or on whose behalf control of a domestic insurer is being acquired.

(2) "Controlled insurer" means an insurer that is controlled directly or indirectly by a holding company.

(3) "Controlled person" means a person, other than a controlled insurer, who is controlled directly or indirectly by a holding company.

(3-a) "Divesting person" means a person who has control of a domestic insurer and who intends to divest control of the domestic insurer.

(3-b) "Divestiture" means an abandonment of control of a domestic insurer by a divesting person that does not result in the transfer of control to another person.

(4) "Domestic insurer" includes a commercially domiciled insurer described by Section 823.004.

(4-a) "Enterprise risk" means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything:

(A) that would cause the insurer's risk-based capital

to fall into company action level; or

(B) that would cause the insurer to be in hazardous financial condition.

(4-b) "Group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the commissioner under Section 823.0147 to have sufficient significant contacts with the internationally active insurance group.

(5) "Holding company" means a person who directly or indirectly controls an insurer. The term does not include the United States, a state or a political subdivision, agency, or other instrumentality of a state, or a corporation that is wholly owned directly or indirectly by the United States, a state, or an instrumentality of a state.

(6) "Insurer" means any insurance company organized under the laws of this state, a commercially domiciled insurer, or an insurer authorized to engage in the business of insurance in this state. The term includes a capital stock company, mutual company, farm mutual insurance company, title insurance company, fraternal benefit society, local mutual aid association, statewide mutual assessment company, county mutual insurance company, Lloyd's plan, reciprocal or interinsurance exchange, stipulated premium insurance company, and group hospital service corporation. The term does not include an agency, authority, or instrumentality of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(6-a) "Internationally active insurance group" means an insurance holding company system that:

(A) includes an insurer registered under Subchapter B; and

(B) meets the following criteria:

(i) has premiums written in at least three countries;

(ii) has a percentage of gross premiums written outside the United States of at least 10 percent of the insurance holding company system's total gross written premiums; and

(iii) based on a three-year rolling average, has total assets of at least $50 billion or total gross written premiums of at least $10 billion.

(7) "Person" means an individual, corporation, partnership, association, joint stock company, trust, or unincorporated organization, or a similar entity or a combination of the listed entities acting in concert. The term does not include a securities broker while performing no more than a function that is usual and customary for a securities broker.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 1, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. 3220), Sec. 1, eff. May 19, 2017.

Sec. 823.003. CLASSIFICATION AS AFFILIATE OR SUBSIDIARY. (a) A person is an affiliate of another if the person directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the other person.

(b) A person is a subsidiary of another if the person is an affiliate of and is controlled by the other person directly or indirectly through one or more intermediaries.

(c) A subsidiary or holding company of a person is an affiliate of that person.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.004. CLASSIFICATION AS COMMERCIALLY DOMICILED INSURER. (a) For purposes of this chapter, a foreign or alien insurer authorized to engage in the business of insurance in this state is a commercially domiciled insurer if during the period described by Subsection (b) the average of the gross premiums written by the insurer in this state is:

(1) more than the average of the gross premiums written by the insurer in its state of domicile; and

(2) 30 percent or more of the total gross premiums written by the insurer in the United States, as reported in its three most recent annual statements.

(b) The period applicable to Subsection (a) is:

(1) the three most recent fiscal years of the insurer that

precede the fiscal year in which the determination under this section is made; or

(2) if the insurer has been authorized to engage in the business of insurance in this state for less than the period described by Subdivision (1), the period for which the insurer has been authorized to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.005. DESCRIPTION OF CONTROL; DETERMINATION OF CONTROL. (a) For purposes of this chapter, control is the power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(b) For purposes of this chapter, a person controls another if the person possesses the power described by Subsection (a) with regard to the other person.

(c) After providing notice and opportunity for hearing to each person in interest, the commissioner may determine that, notwithstanding the absence of a presumption under Section 823.151, a person controls an authorized insurer if the person, directly or indirectly and alone or under an agreement with one or more other persons, exercises such a controlling influence over the management or policies of the insurer that it is necessary or appropriate in the public interest or for the protection of the insurer's policyholders that the person be considered to control the insurer. The commissioner shall make specific findings of fact to support a determination under this subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.006. DESCRIPTION OF INSURANCE HOLDING COMPANY SYSTEM. An insurance holding company system consists of two or more affiliates, at least one of which is an insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.007. DESCRIPTION OF VOTING SECURITY. For purposes of this chapter, a voting security is a security or an instrument that:

(1) has the power at a meeting of shareholders of a person to vote for or against the election of directors of the person or any other matter involving the direction of the management and policies of the person; or

(2) under rules adopted by the commissioner in the public interest, the commissioner considers to be of similar nature to that described by Subdivision (1) and considers necessary or appropriate to treat as a voting security.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.008. STANDARD FOR DETERMINING SURPLUS REASONABLENESS AND ADEQUACY. (a) In determining whether an insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs, the following factors, among others, shall be considered:

(1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the different lines of insurance;

(3) the number and size of risks insured in each line of insurance;

(4) the extent of the geographical dispersion of the insurer's insured risks;

(5) the nature and extent of the insurer's reinsurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's:

(A) policyholders' surplus; and

(B) investment portfolio;

(8) the policyholders' surplus maintained by comparable insurers;

(9) the adequacy of the insurer's reserves;

(10) the quality and liquidity of investments in subsidiaries made under Subchapter F; and

(11) the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.

(b) The commissioner may treat an investment described by Subsection (a)(10) as a nonadmitted or disallowed asset for purposes of Subsection (a) if in the commissioner's judgment the investment justifies that treatment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.009. SITUS OF SECURITIES OF DOMESTIC INSURER. For purposes of this chapter, the situs of the ownership of securities of a domestic insurer is considered to be in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.010. DISCLAIMER OF AFFILIATION. (a) A disclaimer of affiliation with an authorized insurer may be filed with the commissioner by any person, including the authorized insurer or a member of an insurance holding company system.

(b) The disclaimer must fully disclose:

(1) all material relationships and bases for affiliation between the person and the insurer; and

(2) the basis for disclaiming the affiliation.

(c) Except as provided by Subsection (d), the disclaimer shall be deemed to have been allowed unless, not later than 60 days after the receipt of a complete disclaimer, the commissioner notifies the filing party that the disclaimer is disallowed.

(d) Notwithstanding Subsection (c), if the commissioner at any time determines that the information disclosed in the disclaimer is incomplete or inaccurate or is no longer accurate, the commissioner may disallow the disclaimer.

(e) If the commissioner disallows a disclaimer, the party who filed the disclaimer may request an administrative hearing. The commissioner shall grant the request for the hearing.

(f) Except as provided by Subsection (h), if the commissioner allows a disclaimer:

(1) the insurer is not required to register or report under Subchapter B due to a duty arising from the insurer's relationship with the party who filed the disclaimer; and

(2) the party who filed the disclaimer is not required to comply with Section 823.154, 823.155, 823.159, or 823.160.

(g) If the commissioner allows a disclaimer, the commissioner at the same time may also waive another provision of this chapter with relation to the party who filed the disclaimer. The commissioner may require reasonable controls and safeguards that are consistent with the purposes of this chapter in granting a waiver under this subsection.

(h) If the commissioner disallows a disclaimer under Subsection (d):

(1) effective on the date of the disallowance, the insurer shall register and report as required by Subchapter B; and

(2) the party who filed the disclaimer shall comply with Sections 823.154, 823.155, 823.159, and 823.160.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 2, eff. September 1, 2011.

Sec. 823.011. CONFIDENTIALITY OF INFORMATION. (a) This section applies only to information, including documents and copies of documents, that is:

(1) reported or otherwise provided under Subchapter B or C or Section 823.201(d) or (e) or Section 823.0147;

(2) disclosed to the commissioner under Section 823.010; or

(3) obtained by or disclosed to the commissioner or another person in the course of an examination or investigation under Subchapter H or Chapter 401.

(b) The information shall be confidential and privileged for all purposes. Except as provided by Subsections (c) and (d), the information may not be disclosed without the prior written consent of the insurer to which it pertains.

(c) The commissioner may publish all or any part of the information in the manner that the commissioner considers appropriate if the commissioner, after giving the insurer and its affected

affiliates notice and an opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication of the information.

(d) Except as provided by Subsection (e), if the recipient of documents or other information described by Subsection (a) agrees in writing to maintain the confidential and privileged status of the documents or other information, and verifies in writing the legal authority to maintain the confidential and privileged status of the documents or information, the commissioner or another person may disclose the information to any of the following entities functioning in an official capacity:

(1) a commissioner of insurance or an insurance department of another state;

(2) an authorized law enforcement official;

(3) a district attorney of this state;

(4) the attorney general;

(5) a grand jury;

(6) members of a supervisory college described by Section 823.0145;

(7) the National Association of Insurance Commissioners and its affiliates and subsidiaries; or

(8) another state, federal, or international regulatory agency.

(d-1) The commissioner may receive documents or information, including otherwise confidential and privileged documents or information, from the entities listed in Subsection (d) and shall maintain as confidential or privileged any document or information received by the commissioner with notice or an understanding that the document or information is confidential or privileged under the laws of the jurisdiction of the entity that provides the document or information.

(e) Notwithstanding Subsection (d), the commissioner may share confidential and privileged information reported under Section 823.0595 only with the commissioner of insurance of a state that has a statute or rule substantially similar to Subsection (d) who agrees in writing not to disclose the information.

(f) Information described by Subsection (a), including information in the possession of the National Association of Insurance Commissioners under this section, is confidential and privileged for all purposes, including for purposes of:

(1) Chapter 552, Government Code;

(2) a response to a subpoena; or

(3) discovery or admissibility in evidence in a civil action.

(g) The commissioner shall enter into written agreements with the National Association of Insurance Commissioners that comply with the requirements of Subsection (d) regarding the sharing and use of information provided under this chapter. An agreement entered into under this subsection must:

(1) specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal, or international regulators;

(2) specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter remains with the commissioner, and that use of the information by the National Association of Insurance Commissioners is subject to the direction of the commissioner;

(3) require prompt notice to an insurer whose confidential information is in the possession of the National Association of Insurance Commissioners under this chapter that the information is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and

(4) require the National Association of Insurance Commissioners and its affiliates and subsidiaries to give consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries under this chapter.

(h) This section may not be construed to prevent the commissioner from using information described by Subsection (a) in the furtherance of a legal or regulatory action relating to the administration of this code.

(i) The commissioner remains solely responsible for the administration, execution, and enforcement of this chapter, and the

commissioner's sharing of information does not constitute a delegation of regulatory or rulemaking authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 3, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 1, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. 3220), Sec. 2, eff. May 19, 2017.

Sec. 823.012. RULES; PROCEDURES FOR CONSIDERING CERTAIN DISTRIBUTIONS. (a) The commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement this chapter, including the conducting of business and proceedings under this chapter.

(b) The commissioner by rule shall establish procedures to:

(1) promptly consider the prepayment notices reported under Section 823.053(b);

(2) annually review each reported ordinary dividend paid within the 12 months preceding the date of the report; and

(3) take appropriate actions authorized by this code.

(c) A procedure established under Subsection (b)(1) must include consideration of the factors provided by Section 823.008.

(d) A rule or order under this section must be consistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.013. MANDAMUS. A person aggrieved by the failure of the commissioner to act, including making a determination, as required by this chapter may petition a district court of Travis County for a writ in the nature of a mandamus or a peremptory mandamus directing the commissioner to immediately act or make the determination.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.014. APPLICABILITY OF CHAPTER TO FOREIGN OR ALIEN INSURER. (a) A foreign insurer that is authorized to engage in the business of insurance in this state and that is domiciled in a jurisdiction that has not adopted, by statute or regulation, controls considered by the commissioner to be substantially similar to those provided by this chapter:

(1) is subject to this chapter to the same extent as a domestic insurer; and

(2) on failure to comply with this chapter, is subject to all remedies, penalties, and sanctions authorized by this code in the same manner as a domestic insurer, including, after notice and hearing, the suspension or revocation of the insurer's certificate of authority to engage in the business of insurance in this state.

(b) If a jurisdiction adopts controls considered by the commissioner to be substantially similar to those provided by this chapter, the commissioner after that adoption may exempt an insurer domiciled in that jurisdiction from the application of this section.

(c) Notwithstanding Subsection (a), a foreign or alien insurer is not subject to this chapter if the commissioner has approved a withdrawal plan for the insurer under Chapter 827.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.0145. SUPERVISORY COLLEGES. (a) With respect to any insurer registered under Subchapter B, and in accordance with Subsection (c), the commissioner may participate in a supervisory college for a domestic insurer that is part of an insurance holding company system with international operations in order to determine the insurer's compliance with this chapter. The commissioner may:

(1) initiate the establishment of a supervisory college;

(2) clarify the membership and participation of other entities in the supervisory college;

(3) clarify the functions of the supervisory college and the role of other entities in the supervisory college;

(4) establish a group-wide supervisor;

(5) coordinate the ongoing activities of the supervisory college, including meetings, regulatory activities, and processes for information sharing; and

(6) establish a crisis management plan.

(b) In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers under Subchapter H, the commissioner may participate in a supervisory college with other entities that regulate the insurer or its affiliates, including other state, federal, and international regulatory entities. The commissioner may enter into agreements under Section 823.011 to cooperate with other regulatory entities. Nothing in this section shall be construed as delegating to the supervisory college the commissioner's authority to regulate the insurer or its affiliates.

(c) A registered insurer subject to this section shall pay the reasonable expenses, including reasonable travel expenses, of the commissioner's participation in a supervisory college under Subsection (b). For purposes of this section, a supervisory college may be convened as either a temporary or permanent forum for communication and cooperation between the entities that regulate the insurer or its affiliates, and the commissioner may establish a regular assessment to the insurer for the payment of expenses related to the regulation of the insurer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 4, eff. September 1, 2011.

Sec. 823.0147. GROUP-WIDE SUPERVISION OF INTERNATIONALLY ACTIVE INSURANCE GROUPS. (a) The commissioner is authorized to act as the group-wide supervisor for any internationally active insurance group under the provisions of this section.

(b) The commissioner may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group:

(1) does not have substantial insurance operations in the United States;

(2) has substantial insurance operations in the United States, but not in this state; or

(3) has substantial insurance operations in the United States and this state, but the commissioner has determined under the factors in Subsections (e) and (k) that the other regulatory official is the appropriate group-wide supervisor.

(c) An insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the commissioner make a determination or acknowledgment as to a group-wide supervisor under this section.

(d) In cooperation with other state, federal, and international regulatory agencies, the commissioner will identify a single group-wide supervisor for an internationally active insurance group. The commissioner may determine that the commissioner is the appropriate group-wide supervisor for an internationally active insurance group that conducts substantial insurance operations concentrated in this state. The commissioner may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group.

(e) The commissioner shall consider the following factors when making a determination or acknowledgment under Subsection (d):

(1) the place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums, assets, or liabilities;

(2) the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group;

(3) the location of the executive offices or largest operational offices of the internationally active insurance group;

(4) whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the commissioner determines to be:

(A) substantially similar to the system of regulation provided under the laws of this state; or

(B) otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) whether another regulatory official acting or seeking to act as the group-wide supervisor provides the commissioner with reasonably reciprocal recognition and cooperation.

(f) A commissioner identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in Subsection (e), and shall be made in cooperation with and subject to the acknowledgment of other

regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

(g) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the commissioner shall acknowledge that regulatory official as the group-wide supervisor.

(h) The commissioner shall make a determination or acknowledgment as to the appropriate group-wide supervisor for an internationally active insurance group under Subsection (d) or (f) in the event of a material change in the internationally active insurance group that results in:

(1) the internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or

(2) this state being the place of domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group.

(i) Under Subchapter H, the commissioner is authorized to collect from any insurer registered under Subchapter B all information necessary to determine whether the commissioner may act as the group-wide supervisor of an internationally active insurance group or if the commissioner may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the commissioner, the commissioner shall notify the insurer registered under Subchapter B and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than 30 days to provide the commissioner with additional information pertinent to the pending determination. The commissioner may publish on the department's website the identity of internationally active insurance groups that the commissioner has determined are subject to group-wide supervision by the commissioner.

(j) If the commissioner is the group-wide supervisor for an internationally active insurance group, the commissioner is authorized to engage in any of the following group-wide supervision activities:

(1) assess the enterprise risks within the internationally active insurance group to ensure that:

(A) the material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) reasonable and effective mitigation measures are in place;

(2) request, from any member of an internationally active insurance group subject to the commissioner's supervision, information necessary and appropriate to assess enterprise risk, including information about the members of the internationally active insurance group regarding:

(A) governance, risk assessment, and management;

(B) capital adequacy; and

(C) material intercompany transactions;

(3) coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance;

(4) communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information, subject to the confidentiality provisions of Section 823.011, through supervisory colleges in Section 823.0145 or otherwise;

(5) enter into agreements with or obtain documentation from any insurer registered under Subchapter B, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the commissioner's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials, provided that such agreements or documentation may not serve as evidence in any proceeding to show that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) other group-wide supervision activities, consistent

with the authorities and purposes enumerated above, as considered necessary by the commissioner.

(k) If the commissioner acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the commissioner is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) the commissioner's cooperation is in compliance with the laws of this state; and

(2) the regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the commissioner's activities as a group-wide supervisor for other internationally active insurance groups where applicable.

(l) Where recognition and cooperation are not reasonably reciprocal under Subsection (k)(2), the commissioner is authorized to refuse recognition and cooperation.

(m) The commissioner is authorized to enter into agreements with or obtain documentation from any insurer registered under Subchapter B, any affiliate of the insurer, and other state, federal, and international regulatory agencies for members of the internationally active insurance group that provides the basis for or otherwise clarifies a regulatory official's role as group-wide supervisor.

(n) The commissioner may adopt rules necessary for the administration of this section.

(o) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the commissioner's participation in the administration of this section, including the engagement of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

Added by Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. 3220), Sec. 3, eff. May 19, 2017.

Sec. 823.015. EXEMPTION FROM CHAPTER. The commissioner may exempt from the application of this chapter a commercially domiciled insurer that the commissioner determines has assets physically located in this state or an asset-to-liability ratio sufficient to

justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 884 (S.B. 1283), Sec. 1, eff. September 1, 2005.

SUBCHAPTER B. REGISTRATION

Sec. 823.051. REGISTRATION BY INSURER REQUIRED. (a) Each insurer authorized to engage in the business of insurance in this state that is a member of an insurance holding company system shall register with the commissioner. The insurer shall register not later than the 15th day after the date the insurer becomes subject to registration under this subchapter.

(b) The commissioner for good cause shown may extend the period for registration under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.052. REQUIRED INFORMATION; REGISTRATION STATEMENT. (a) To register as required by Section 823.051, an insurer must file a registration statement with the department.

(b) The registration statement must be in a format prescribed by the National Association of Insurance Commissioners or adopted by rule of the commissioner and contain current information about:

(1) the identity and relationship of each affiliate in the insurance holding company system of which the insurer is a part;

(2) the capital structure, general financial condition, and ownership and management of the insurer, the insurer's holding company, the insurer's subsidiaries, and, if the commissioner considers the information necessary, any of the insurer's other affiliates; and

(3) any pledge of stock of the insurer or a subsidiary or controlling affiliate of the insurer for a loan made to a member of the insurer's insurance holding company system.

(c) The registration statement must also contain information about:

(1) each outstanding loan the insurer makes to an affiliate of the insurer or an affiliate makes to the insurer;

(2) each purchase, sale, or exchange of securities or other investment between the insurer and an affiliate of the insurer;

(3) each purchase, sale, or exchange of assets between the insurer and an affiliate of the insurer;

(4) each management and service contract or cost-sharing arrangement between the insurer and an affiliate of the insurer;

(5) each reinsurance agreement between the insurer and an affiliate of the insurer that covers one or more lines of insurance of the ceding company;

(6) each agreement between the insurer and an affiliate of the insurer to consolidate federal income tax returns;

(7) each transaction between the insurer and an affiliated financial institution;

(8) each transaction between the insurer and an affiliate of the insurer that is not in the ordinary course of business;

(9) each guarantee or undertaking, other than an insurance contract entered into in the ordinary course of the insurer's business, for the benefit of an affiliate of the insurer that results in a contingent exposure of the insurer's assets to liability;

(10) each dividend or distribution to the insurer's shareholders;

(11) each transaction between the insurer and an affiliate of the insurer not specified by this subsection that is subject to Section 823.103 or 823.104;

(12) the corporate governance and internal control responsibilities of the insurer's board of directors, including a statement that:

(A) the insurer's senior management or officers have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures; and

(B) the insurer's board of directors oversees corporate governance and internal controls; and

(13) any other information that the commissioner requires by rule.

(c-1) On request of the commissioner, an insurer shall include with the statement a copy of all financial statements for the insurance holding company system and all affiliates of the holding company system, including annual audited financial statements filed

with the United States Securities and Exchange Commission pursuant to the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.). An insurer may not be required to submit financial statements for an affiliate that is privately owned by not more than five security holders, each of whom is an individual, unless the commissioner determines that the operations of the affiliate may materially affect the operations, management, or financial condition of an insurer in a holding company system. An affiliate may seek judicial review of a request for financial statements under this subsection.

(c-2) An insurer required by the commissioner to submit financial statements under this section, Section 823.201, or Section 823.351 may satisfy the requirement by submitting to the commissioner:

(1) the financial statements that the insurer's parent corporation most recently filed with the United States Securities and Exchange Commission; and

(2) if the insurer is required to submit financial statements for an affiliate, the financial statements that the affiliate most recently filed with an agency that regulates the affiliate.

(d) The information required by Subsection (c) applies only to agreements in force, relationships subsisting, and transactions outstanding.

(e) The commissioner shall adopt the format of the registration statement. In adopting or revising the format, the commissioner may require information on other matters concerning transactions between a registered insurer and an affiliate of the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 157 (S.B. 1542), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 2, eff. June 14, 2013.

Sec. 823.053. REPORTING MATERIAL CHANGES. (a) To keep the

information required to be disclosed in a registration statement filed under Section 823.052 current, a registered insurer shall report each material change to the information, including the addition of information, not later than the 15th day after the last day of the month in which the insurer learns of the change.

(b) Subject to Section 823.107, each registered insurer shall report each dividend or distribution made to the shareholders not later than the earlier of:

(1) the second business day after the date the dividend or distribution is declared; or

(2) the 11th day before the date of payment.

(c) For purposes of this section, reports are considered to be made when received by the department.

(d) Reports made under this section are for informational purposes only.

(e) An insurer is not required to report under this section a transaction that is approved under Section 823.103. That approval is considered to be an amendment of the registration statement filed under Section 823.052 without being reported under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 3, eff. June 14, 2013.

Sec. 823.054. MATERIAL INFORMATION. (a) Information about a transaction is not required to be disclosed on a registration statement filed under Section 823.052 or in a report under Section 823.053 unless the transaction is considered to be material under this section.

(b) If the amount of a single transaction or the total amount of all transactions involving sales, purchases, exchanges, loans or other extensions of credit, or investments is more than one-half of one percent of an insurer's admitted assets as of December 31 of the year preceding the date of the transaction or transactions, the transaction or transactions, respectively, are considered to be material for purposes of this section.

(c) Each dividend or distribution to shareholders is material for the purposes of this section.

(d) The commissioner, by rule or order, may provide a standard that is different from the standard provided by Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 38 (H.B. 3220), Sec. 4, eff. May 19, 2017.
Acts 2017, 85th Leg., R.S., Ch. 67 (S.B. 1073), Sec. 1, eff. May 22, 2017.

Sec. 823.055. ANNUAL REGISTRATION STATEMENT; SUMMARY OF MATERIAL CHANGES. (a) In this section, "ultimate controlling person" means the person in an insurance holding company system who is not controlled by another person.

(b) Not later than the 120th day after the last day of each fiscal year of the ultimate controlling person, each registered insurer in the ultimate controlling person's insurance holding company system shall file an annual registration statement.

(c) An insurer required to file an annual registration statement shall also furnish a summary of material changes from the prior year's annual registration statement as specified by the commissioner by rule.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 157 (S.B. 1542), Sec. 2, eff. September 1, 2007.

Sec. 823.056. TERMINATION OF REGISTRATION. The commissioner shall terminate the registration of an insurer that demonstrates that the insurer has ceased to be a member of an insurance holding company system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.057. CONSOLIDATED FILING. The commissioner may require or permit two or more insurers that are affiliates of each other and that are required to register under this chapter to file:

(1) a consolidated registration statement; or

(2) a consolidated report amending:

(A) the consolidated registration statement; or

(B) the individual registration statement of each insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.058. ALTERNATIVE REGISTRATION. The commissioner may permit an insurer authorized to engage in the business of insurance in this state that is a part of an insurance holding company system to:

(1) register on behalf of another insurer that is an affiliate of the insurer and that is required to register under Section 823.051; and

(2) file on behalf of the affiliate all information and material required to be filed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.059. EXEMPTIONS. (a) The registration requirement under Section 823.051 does not apply to a foreign or nondomestic insurer, other than a commercially domiciled insurer, that is subject to disclosure requirements adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to the disclosure requirements provided by this chapter.

(b) The commissioner may require an insurer that is exempt from registration under Subsection (a) to provide a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(c) The commissioner, by rule or order, may exempt an insurer, information, or a transaction from the application of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.0595. ENTERPRISE RISK REPORT. (a) Except as provided by Subsections (d) and (f), the ultimate controlling person, as

defined by Section 823.055, of each insurer required to file an annual registration shall file with the registration an annual enterprise risk report. The report must, to the best of the ultimate controlling person's knowledge, identify the material risks within the insurance holding company system that may pose enterprise risk to the insurer. The report must be filed with the lead state commissioner of the insurance holding company system, as determined by the commissioner. In determining the lead state commissioner, the commissioner shall consider the procedures adopted by the National Association of Insurance Commissioners.

(d) Except as provided by Subsection (e), the ultimate controlling person of a domestic insurer that is authorized, admitted, or eligible to engage in the business of insurance only in this state and has total direct or assumed annual premiums of less than $300 million is not required to submit an enterprise risk report under Subsection (a) unless the ultimate controlling person of the domestic insurer also controls other insurers that do not meet the requirements of this subsection. For the purposes of this subsection, an insurer is not considered to be authorized, admitted, or eligible to engage in the business of insurance only in this state if the insurer directly or indirectly writes or assumes insurance in any manner in another state.

(e) Regardless of total direct or assumed annual premium, the ultimate controlling person of an insurer that is not in compliance with applicable risk-based capital standards or that is otherwise in hazardous condition, as determined by the commissioner, shall file an enterprise risk report required by Subsection (a) as directed by the commissioner.

(f) An insurer that in the preceding calendar year had direct written and assumed premiums of more than $300 million but less than $500 million and otherwise meets the requirements of Subsection (d) may request an exemption from the reporting requirements of Subsection (a) by filing with the commissioner a written statement describing the undue financial or organizational hardship the insurer would suffer as a result of complying with Subsection (a). The commissioner may grant the exemption if the commissioner finds that compliance with Subsection (a) would impose an undue financial or organizational hardship on the insurer.

(g) The ultimate controlling person of an insurance holding company system is not required to submit an enterprise risk report

under Subsection (a) if:

(1) the ultimate controlling person:

(A) has owned a controlling interest in the voting securities of an insurer described by Subdivision (2) since September 1, 1991, or before;

(B) is a charitable foundation, trust, or both; and

(C) has not filed or received a disclaimer under Section 823.010; and

(2) the insurer in which the ultimate controlling person owns a controlling interest:

(A) was organized under the laws of this state before January 1, 1910;

(B) is registered under this subchapter;

(C) has issued equity shares of stock registered under Section 12, Securities Exchange Act of 1934 (15 U.S.C. Section 781);

(D) on September 1, 2011, owns or controls an insurance company subsidiary that is part of the same insurance holding company system as the insurer; and

(E) files with the commissioner all registration statements and information relating to material changes of the insurance holding company system required under this subchapter, including the financial statements of the ultimate controlling person described by Subdivision (1).

(h) An exemption under Subsection (g) applies only for the period during which the ultimate controlling person described by Subsection (g)(1) satisfies the requirements of Subsection (g) and expires on the date of a change in control of the insurer described by Subsection (g)(2) involving at least 50 percent of the voting securities of the insurer. An insurance holding company system may reapply for an exemption under Subsection (g) after the change in control if the system continues to meet the requirements of Subsection (g).

(i) An ultimate controlling person described by Subsection (g)(1) and an insurer described by Subsection (g)(2) shall respond to reasonable inquiries from the department related to the administration of Chapter 404.

Added by Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 6, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 67 (S.B. 1073), Sec. 2, eff. May 22, 2017.

Sec. 823.0596. LIQUIDITY STRESS TEST. (a) In this section:

(1) "Liquidity stress test framework" means an evidence-based analysis that aims to capture the impact on financial markets of aggregate asset sales of certain insurers under various liquidity stress scenarios.

(2) "Scope criteria" means the designated exposure bases, including minimum magnitudes of the bases for a specified data year, adopted by the commissioner by rule under Subsection (e) to establish a preliminary list of insurers included in the liquidity stress test framework for that data year.

(3) "Ultimate controlling person" has the meaning assigned by Section 823.055.

(b) The ultimate controlling person of an insurer shall file the insurer's results of a specific year's liquidity stress test performed using the liquidity stress test framework adopted by the commissioner by rule under Subsection (e) if:

(1) this state is the lead state of the insurer's group; and

(2) the insurer or the insurer's group meets the scope criteria.

(c) The filing must be made on the reporting template for the relevant year adopted by the commissioner by rule under Subsection (e).

(d) The commissioner may exempt from the filing requirement for a data year an insurer described by Subsection (b) after the commissioner consults with other state insurance commissioners regarding the impact that exempting the insurer may have on the aggregation of liquidity stress test results filed by other insurers with those states.

(e) The commissioner by rule shall adopt a liquidity stress test framework, including scope criteria and reporting templates, consistent with the framework published by the National Association of Insurance Commissioners to facilitate the aggregation of results from the liquidity stress test filed with this and other states.

(f) The commissioner shall collect the results filed under Subsection (b) and report them to the National Association of

Insurance Commissioners in a manner that facilitates the aggregation of other insurers' results filed with this and other states.

(g) In addition to the confidentiality protections under Section 823.011:

(1) a filing required by Subsection (b) in the possession or control of the department that is obtained by, created by, or disclosed to the commissioner or any other person, including the National Association of Insurance Commissioners, is recognized by this state as being proprietary and to contain trade secrets; and

(2) the commissioner and any other person, including the National Association of Insurance Commissioners, who receives a filing required by Subsection (b) may not testify or be required to testify in any private civil action concerning that filing.

Added by Acts 2023, 88th Leg., R.S., Ch. 843 (H.B. 2839), Sec. 1, eff. September 1, 2023.

Sec. 823.060. VIOLATION OF SUBCHAPTER. The failure to file a registration statement or an amendment to a registration statement, or an enterprise risk report, within the time specified for filing the statement, amendment, or report, as required by this subchapter, is a violation of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 7, eff. September 1, 2011.

SUBCHAPTER C. TRANSACTIONS OF REGISTERED INSURER

Sec. 823.101. STANDARDS FOR TRANSACTION WITHIN AN INSURANCE HOLDING COMPANY SYSTEM. (a) This section applies only to a material transaction within an insurance holding company system to which an insurer subject to a registration under Section 823.052 is a party.

(b) The terms of the transaction shall be fair and equitable.

(b-1) An agreement, including an agreement for cost-sharing, services, or management, must include all provisions required by rule of the commissioner.

(c) The charges or fees for services performed shall be reasonable.

(d) The books, accounts, and records of each party to the transaction shall be maintained so that the precise nature and details of the transaction are clearly and accurately disclosed.

(e) The expenses incurred and payments received relating to the transaction shall be allocated to the registered insurer on an equitable basis in conformity with customary insurance accounting principles consistently applied.

(f) After a registered insurer pays a dividend or makes a distribution to a holding company or shareholder affiliate of the insurer, the insurer's policyholders' surplus shall be reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 9, eff. September 1, 2011.

Sec. 823.103. NOTICE OF AND COMMISSIONER'S DECISION ON SPECIFIED TRANSACTIONS. (a) This section applies only to:

(1) a sale, purchase, exchange, loan or other extension of credit, or investment between a domestic insurer and any person in the insurer's insurance holding company system, including an amendment or modification of an affiliate agreement previously filed under this section, provided the transaction is not less than:

(A) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of the insurer's surplus as regards policyholders as of December 31 of the year preceding the year in which the transaction occurs; or

(B) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 of the year preceding the year in which the transaction occurs;

(2) a loan or other extension of credit to a person who is not an affiliate if the insurer makes a loan or extension of credit with the agreement or understanding that the proceeds of the transaction, wholly or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make

investment in, an affiliate of the insurer making the loan or extension of credit, provided the transaction is not less than:

(A) with respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of the insurer's surplus as regards policyholders as of December 31 of the year preceding the year in which the transaction occurs; or

(B) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 of the year preceding the year in which the transaction occurs;

(3) a reinsurance agreement, including a reinsurance treaty or pooling agreement, or an amendment or modification of an agreement previously filed under this section, between a domestic insurer and any person in the insurer's holding company system;

(4) a rendering of services between a domestic insurer and any person in the insurer's holding company system on a regular or systematic basis, including a tax-allocation agreement, or an amendment or modification of an agreement previously filed under this section; or

(5) any material transaction between a domestic insurer and any person in the insurer's holding company system that is specified by rule and that the commissioner determines may adversely affect the interests of the insurer's policyholders or of the public, including an amendment or modification of an agreement previously filed under this section.

(b) Subsection (a)(3) includes a reinsurance agreement that requires as consideration a transfer of assets from an insurer to a nonaffiliate and in relation to which the insurer and nonaffiliate agree that any part of the transferred assets are to be transferred to one or more affiliates of the insurer.

(c) A domestic insurer shall give to the commissioner written notice of the insurer's intent to enter into a transaction to which this section applies before the 30th day preceding the date of the proposed transaction. The commissioner may authorize a shorter period of notice under this subsection.

(d) A domestic insurer may not enter into a transaction for which the insurer gives notice under Subsection (c) if the commissioner disapproves the proposed transaction during the period for notice.

(e) The notice described by Subsection (c) must include:

(1) the reasons for entering into or changing the

transaction; and

(2) the financial impact of the transaction on the domestic insurer.

(f) Not later than the 30th day after the termination of a previously filed agreement, the domestic insurer shall give notice of the termination to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 11, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 4, eff. June 14, 2013.

Sec. 823.104. PROHIBITION OF ACTION TO AVOID APPLICATION OF SUBCHAPTER. (a) A domestic insurer may not enter into transactions with persons in the insurer's insurance holding company system if:

(1) the transactions are part of a plan or series of similar transactions; and

(2) the purpose of entering into the transactions is to avoid a threshold amount provided by Section 823.103.

(b) If the commissioner determines that over any 12-month period a domestic insurer enters into transactions that violate Subsection (a), the commissioner may:

(1) consider the cumulative effect of the transactions; and

(2) apply:

(A) Section 823.103; or

(B) sanctions under this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 5, eff. June 14, 2013.

Sec. 823.105. TYPE OF AUTHORITY PROVIDED. Nothing in Section 823.103 or 823.104 authorizes a transaction that would violate law that is applicable to an insurer that is not subject to this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1087 (H.B. 3460), Sec. 6, eff. June 14, 2013.

Sec. 823.106. STANDARDS OF REVIEW; REASONS FOR DISAPPROVAL. (a) In reviewing a transaction under this subchapter, the commissioner shall consider whether the transaction:

(1) complies with the standards provided by Section 823.101; and

(2) may adversely affect the interest of the insurer's policyholders.

(b) The commissioner shall set forth the specific reasons for the disapproval of a transaction reviewed under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.107. EXTRAORDINARY DIVIDENDS OR DISTRIBUTIONS. (a) Except as provided by Subsection (b), for purposes of this section, an extraordinary dividend or distribution includes the payment of a dividend or distribution of cash or other property, the fair market value of which combined with the fair market value of each other dividend or distribution made in the preceding 12 months exceeds the greater of:

(1) 10 percent, or 20 percent if the insurer is a title insurer, of the insurer's policyholders' surplus, as of December 31 of the year preceding the year in which the fair market value is being determined; or

(2) the net gain from operations of the insurer, if the insurer is a life or title insurer, or the net income, if the insurer is another type of insurer, for the calendar year preceding the year in which the fair market value is being determined.

(b) For purposes of this section, an extraordinary dividend or distribution does not include pro rata distributions of any class of securities of the insurer.

(c) An insurer that is required to register under Subchapter B shall give the commissioner notice of the insurer's intent to make an extraordinary dividend or distribution to shareholders, before the

30th day preceding the date of the proposed dividend or distribution. The commissioner may authorize a shorter period of notice under this subsection.

(d) An insurer may not make an extraordinary dividend or distribution for which the insurer gives notice if the commissioner disapproves the dividend or distribution during the period for the notice.

(e) A registered insurer may declare an extraordinary dividend or distribution that is conditional on its approval by the commissioner. The declaration does not confer any rights on shareholders before the dividend or distribution may be made under Subsection (d).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. CONTROL OF DOMESTIC INSURER; ACQUISITION OR MERGER

Sec. 823.151. PRESUMPTION OF CONTROL. (a) Control of an entity is presumed if:

(1) a person or a person and members of the person's immediate family, directly or indirectly, own, control, or hold with the power to vote 10 percent or more of the voting securities or authority of the entity; or

(2) a person who is not a corporate officer or director of the entity holds proxies representing 10 percent or more of the voting securities or authority of the entity.

(b) Control of a Lloyd's plan is presumed if a person is designated as an attorney-in-fact for the insurer under Chapter 941.

(c) Control of a reciprocal or interinsurance exchange is presumed if a person is designated as an attorney-in-fact for the exchange under Chapter 942.

(d) A presumption under this section may be rebutted by a showing made in the manner provided by Section 823.010 that control does not exist in fact and that the person rebutting the presumption is complying with Sections 823. 154, 823.155, 823.159, and 823.160.

(e) For purposes of this section, the members of a person's immediate family are:

(1) the person's spouse, father, mother, children, brothers, sisters, and grandchildren;

(2) the father, mother, brothers, and sisters of the

person's spouse; and

(3) the spouse of the person's child, brother, sister, mother, father, or grandparent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.152. EMPLOYMENT OF EXPERTS. (a) The commissioner may employ an attorney, actuary, accountant, or other expert who is not a member of the commissioner's staff and who is reasonably necessary to assist in analyzing a merger or acquisition of control proposed under Section 823.154.

(b) The acquiring person shall pay all reasonable expenses incurred in connection with the employment of a person under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.153. CONTROLLER OF DOMESTIC INSURER CONSIDERED DOMESTIC INSURER. For purposes of this subchapter, any person who controls a domestic insurer is considered to be a domestic insurer unless:

(1) the assets of all insurance subsidiaries of the person are equal to less than 20 percent of the person's consolidated assets;

(2) the gross revenues, including investment income, of all insurance subsidiaries of the person are equal to less than 20 percent of the person's consolidated gross revenues; and

(3) the shareholders' equity of all insurance subsidiaries of the person is equal to less than 20 percent of the person's consolidated shareholders' equity.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.154. REQUIREMENTS FOR ACQUISITION OR EXERCISE OF CONTROL OR DIVESTITURE OF DOMESTIC INSURER. (a) Before a person who directly or indirectly controls, or after the acquisition would directly or indirectly control, a domestic insurer may in any manner acquire a voting security of a domestic insurer or before a person

may otherwise acquire control of a domestic insurer or exercise any control over a domestic insurer, or before a person may initiate a divestiture of control of a domestic insurer:

(1) the acquiring person shall file with the commissioner a statement that satisfies the requirements of Subchapter E;

(2) the acquisition or divestiture of control must be approved by the commissioner in accordance with this subchapter; and

(3) if the person is initiating a divestiture of control, the divesting person shall file with the commissioner a notice of divestiture on a form adopted by the National Association of Insurance Commissioners or adopted by the commissioner by rule.

(b) The acquiring person or divesting person shall send a copy of the statement filed under this section to the domestic insurer.

(c) A statement or notice filed under this section must be filed not later than the 60th day before the proposed effective date of the acquisition or change of control or divestiture and is subject to public inspection at the office of the commissioner.

(d) Notwithstanding Subsection (a), a divesting person is not required to provide the commissioner with notice of divestiture required by Subsection (a)(3) if an acquiring person submits the statement required by Subsection (a)(1) and that acquisition is approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.202(a), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 12, eff. September 1, 2011.

Sec. 823.155. AMENDMENT OF STATEMENT. If a material change occurs in the facts contained in a statement filed under Section 823.154, the person required to file the statement shall, not later than the second business day after the date the person learns of the change, file with the commissioner and send to the domestic insurer an amendment stating the change and a copy of each document and other material relevant to the change.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.156. NOTICE EXPENSES. (a) A person who files a statement under Section 823.154 shall pay the expenses of mailing each related notice required by the commissioner.

(b) As security for the payment of the expenses, the person, at the request of the commissioner or the domestic insurer, shall file with the commissioner an acceptable bond or other deposit in an amount determined by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.157. APPROVAL OF ACQUISITION, CHANGE, OR DIVESTITURE OF CONTROL. (a) The commissioner shall approve or deny an acquisition, change, or divestiture of control for which a statement or notice is filed under Section 823.154 not later than the 60th day after the date the statement required by that section is filed. The 60-day period may be waived by the person filing the statement or notice required by Section 823.154 and the domestic insurer. On the request of either the person filing the statement or notice required by Section 823.154, or the domestic insurer, the commissioner shall hold a hearing on a denial.

(b) In considering whether to approve or deny, the commissioner shall consider whether:

(1) immediately on the acquisition, change, or divestiture of control the domestic insurer would not be able to satisfy the requirements for the issuance of a new certificate of authority to write the line or lines of insurance for which the insurer holds a certificate of authority;

(2) the effect of the acquisition, change, or divestiture of control would be substantially to lessen competition in a line or subclassification lines of insurance in this state or tend to create a monopoly in a line or subclassification lines of insurance in this state;

(3) the financial condition of the acquiring person may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders;

(4) the acquiring person has a plan or proposal to liquidate the domestic insurer or cause the insurer to declare dividends or make distributions, sell any of its assets, consolidate or merge with any person, make a material change in its business or

corporate structure or management, or enter into a material agreement, arrangement, or transaction of any kind with any person, and that the plan or proposal is unfair, prejudicial, hazardous, or unreasonable to the insurer's policyholders and not in the public interest;

(5) due to a lack of competence, trustworthiness, experience, and integrity of the persons who would control the operation of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer's policyholders and the public;

(5-a) the divestiture of control may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders and other claimants; or

(6) the acquisition, change, or divestiture of control would violate the law of this or another state or the United States.

(c) If a proposed acquisition, change, or divestiture of control will require the approval of more than one commissioner, the commissioner may participate in a public hearing referred to in this chapter held on a consolidated basis on request of the person filing the statement required by Section 823.154. The person filing the statement under Section 823.154 shall file the statement with the National Association of Insurance Commissioners within five days of making the request for a public hearing. A hearing conducted on a consolidated basis shall be public and shall be held within the United States before the commissioners of the states in which the insurers are domiciled. The commissioners shall hear and receive evidence at the hearing. The commissioner may attend the hearing in person or by telecommunication.

(d) This section does not require the commissioner to hold a hearing before approving or denying an acquisition, change, or divestiture of control.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.203(a), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 13, eff. September 1, 2011.

Sec. 823.159. HEARING; TIME OF DETERMINATION. (a) A hearing under Section 823.152, 823.157, or 823.160 shall be held not later than the 60th day after the date of the denial.

(b) Not later than the 21st day before the date of the hearing, the commissioner shall give notice of the hearing to the person who filed the statement and to the domestic insurer unless the person and the domestic insurer waive notice.

(c) The person who filed the statement and the domestic insurer shall provide notice of the hearing in the time and manner specified by the commissioner to each person designated by the commissioner.

(d) The acquiring person has the burden of providing sufficient competent evidence for the commissioner to make the findings required under Section 823.157.

(e) The commissioner shall make a determination on the acquisition of control not later than the 60th day after the date the record of the hearing is closed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.203(c), (d), eff. Sept. 1, 2003.

Sec. 823.160. DEADLINE FOR COMPLETION OF ACQUISITION. (a) An acquisition of control of a domestic insurer must be completed not later than the 90th day after the date of the commissioner's order approving the acquisition unless the commissioner on a showing of good cause for the delay grants an extension in writing.

(b) An increase in a company's capital and surplus required under this code because of the change of control of a domestic insurer must be completed not later than the 90th day after the date of the commissioner's order approving the change of control and before the insurance company writes any new insurance business.

(c) If a deadline under Subsection (a) or (b) is not met, the person seeking to acquire control of the domestic insurer shall resubmit the statement required by Section 823.154 and the commissioner may reconsider approval of acquisition of control under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.161. INSURER'S DUTY TO NOTIFY. (a) Not later than the 30th day after the date an event requiring notice under this subchapter occurs, an insurer authorized to engage in the business of insurance in this state shall notify the commissioner in writing of the identity of any person who the insurer knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

(b) This section does not apply to a foreign insurer that is subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of the insurer's domicile that are substantially similar to the requirements and standards provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.162. PROHIBITION ON CERTAIN ACTIONS RELATED TO ACQUISITION OF CONTROL OR MERGER. A person may not effect or attempt to effect an acquisition of control of or merger with a domestic insurer unless the commissioner has approved the acquisition or merger.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.163. RETENTION OF CONTROL. (a) This section applies only to a domestic insurer that is a controlled insurer, regardless of when that control was acquired.

(b) A person violates this section if:

(1) the person is a domestic insurer, a person who controls the domestic insurer, including the insurer's holding company, or an officer or director of the insurer or controlling person who violates this chapter or otherwise demonstrates untrustworthiness affecting the domestic insurer;

(2) the person is a domestic insurer that violates Chapter 15, Business & Commerce Code, or another antitrust law of this state; or

(3) the person is a domestic insurer's affiliate that violates Chapter 15, Business & Commerce Code, or another antitrust law of this state and whose violation affects the domestic insurer.

(c) If, after notice and an opportunity for a hearing, the

commissioner determines that a person violates this section, the commissioner shall issue written findings and an order based on those findings that directs the person to take appropriate action to cure the violation. The commissioner shall serve the order and findings on the person and the affected domestic insurer.

(d) In addition to this chapter, Subchapter C, Chapter 801, applies to a person who fails to comply with an order under this section.

(e) The commissioner may require the submission of any information the commissioner considers necessary to determine whether retention of control complies with this chapter and may require, as a condition of approval of the retention of control, that all or any part of that information be disclosed to the domestic insurer's shareholders.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.164. EXEMPTIONS FROM SUBCHAPTER. (a) This subchapter does not apply to a transaction that is subject to:

(1) Subchapter K or L , Chapter 882; or

(2) Section 887.065 or Subchapter J or K, Chapter 887.

(b) This subchapter does not apply to a transaction that is subject to and complies with:

(1) Chapter 828; or

(2) Subchapter L, Chapter 884.

(c) This subchapter does not apply to a transaction that is subject to and complies with Sections 824.101 and 824.102 and Subchapters A and B, Chapter 824, relating to the merger or consolidation of two or more insurers, until the plan of merger or consolidation is filed by the domestic insurer with the commissioner under that chapter. After the plan is filed, the transaction is subject to this subchapter. The commissioner may exempt the transaction from this subchapter, other than the approval provisions of Sections 823.157-823.160, if the commissioner finds that the materials provided to shareholders and security holders in connection with the merger or consolidation, including the notice and proxy statement, contained reasonable and adequate information, including factual and financial disclosures and material, relating to that transaction.

(d) This subchapter does not apply to a transaction that is subject to Subchapter K, Chapter 884, if the agreement to which the transaction relates is a total direct reinsurance agreement.

(e) This subchapter does not apply to an acquisition of any voting security that, immediately before consummation of the acquisition, is not issued and outstanding by a person who is a broker-dealer under state or federal securities law if:

(1) the acquisition is solely for resale under a plan approved by the commissioner;

(2) the resale will not reasonably result in an acquisition of control; and

(3) before the resale a positive act of control relating to those shares is not committed.

(f) This subchapter does not apply to an acquisition of a voting security of a domestic insurer by a person who:

(1) controls the insurer if, after the acquisition, the person directly or indirectly owns or controls less than 50 percent of the issued and outstanding voting securities of the insurer; or

(2) before the acquisition, directly or indirectly owns or controls more than 50 percent of the issued and outstanding voting securities of the insurer.

(g) This subchapter does not apply to an acquisition of a voting security of a domestic insurer by a person who, before the acquisition, directly or indirectly owns or controls at least 10 percent but less than 50 percent of the issued and outstanding voting securities of the insurer and who, after the acquisition, directly or indirectly owns or controls 50 percent or more of the issued and outstanding voting securities of the insurer if:

(1) the person has applied in writing for the exemption; and

(2) the commissioner by order has determined that the acquisition:

(A) will not jeopardize the financial stability of the insurer;

(B) will not prejudice the interests of the insurer's policyholders; and

(C) will not adversely affect the public interest.

(h) The commissioner by order may exempt from the application of this subchapter an offer, request, invitation, agreement, or acquisition that:

(1) is not made or entered into to change or influence the control of a domestic insurer and does not have the effect of changing or influencing that control; or

(2) is not comprehended as within the purposes of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.165. VIOLATION OF SUBCHAPTER. The failure to file a statement, amendment, or other material required to be filed under this subchapter is a violation of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. ACQUISITION STATEMENT

Sec. 823.201. ACQUIRING PERSON. (a) A statement required under Section 823.154 must contain the name and address of the acquiring person.

(b) If the acquiring person is an individual, the statement must contain:

(1) the acquiring person's principal occupation or employment;

(2) each material occupation, employment, office, or position held by the acquiring person during the preceding five-year period; and

(3) any criminal conviction of the acquiring person, other than a conviction of a minor traffic violation, during the preceding 10-year period.

(c) If the acquiring person is not an individual, the statement must contain:

(1) a report of the nature of the acquiring person's business operations during the preceding five-year period or, if the acquiring person and any predecessors of the acquiring person have been in existence for less than five years, during that shorter period;

(2) a description, complete in all material respects, of any business the acquiring person intends to begin; and

(3) a list that contains:

(A) the name of each director or executive officer of

the acquiring person, or individual who performs or who is to perform, functions appropriate to that position; and

(B) for each individual listed under Paragraph (A), the information required for an individual under Subsection (b).

(d) The acquiring person shall agree to provide the annual enterprise risk report required by Section 823.0595 for as long as the acquiring person maintains control of the insurer.

(e) The acquiring person and all subsidiaries within the acquiring person's control in the insurance holding company system shall provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 14, eff. September 1, 2011.

Sec. 823.202. CONSIDERATION FOR ACQUISITION. (a) A statement required under Section 823.154 must contain:

(1) the source, nature, and amount of consideration for the acquisition of control;

(2) a description of any transaction from which the consideration for the acquisition of control is obtained; and

(3) the identity of each person providing the consideration.

(b) On request of the person filing the statement, the identity of a commercial lender who in the ordinary course of business provides consideration for the acquisition is confidential.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.203. FINANCIAL INFORMATION ABOUT ACQUIRING PERSON. (a) A statement required under Section 823.154 must contain:

(1) fully audited financial information about the earnings and financial condition of the acquiring person for the preceding three fiscal years or, if the acquiring person and any predecessors of the acquiring person have been in existence for less than three fiscal years, for that shorter period; and

(2) similar unaudited financial information about the earnings and financial condition of the acquiring person as of a date not earlier than the 120th day preceding the date the statement is filed.

(b) The statement must be accompanied by an affidavit or certification of the chief financial officer of the acquiring person stating that:

(1) the unaudited financial information provided under Subsection (a) is true and correct, as of its date; and

(2) a material change in financial condition, as determined under Section 823.054, did not occur during the period beginning on the date of that information and ending on the date of the affidavit or certification.

(c) If an acquiring person is an individual, the acquiring person shall provide the personal unaudited financial information required by the commissioner.

(d) If an acquiring person is an insurer authorized to engage in the business of insurance in this state and actively engaging in the business of insurance, the acquiring person may provide financial statements that conform to the requirements of:

(1) the annual statements of the insurer filed with the insurance department of the insurer's state of domicile; and

(2) insurance or other accounting principles prescribed by or authorized under the law and regulations of the state of domicile.

(e) A statement required under Section 823.154 must contain additional financial information in the form or substance required by the commissioner that is material to a finding under Section 823.157(3).

(f) The commissioner may waive any financial information required under this section that the commissioner does not consider to be material.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.204. PLAN FOR FUTURE OF INSURER. A statement required under Section 823.154 must contain:

(1) any plan or proposal of the acquiring person to:

(A) cause the insurer to pay dividends or make distributions;

(B) liquidate the insurer;

(C) sell any of the insurer's assets;

(D) merge or consolidate the insurer with any person;

(E) make any other material change in the insurer's business or corporate structure or management; or

(F) cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any person; and

(2) any oral or written arrangement or agreement between the acquiring person or an affiliate of the acquiring person and the domestic insurer entered into during the 12 months preceding the date of the statement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.205. VOTING SECURITIES. (a) In this section, "voting security" means a voting security of a domestic insurer the acquisition of which requires the filing of a statement under Section 823.154 as a condition precedent.

(b) A statement required under Section 823.154 must contain:

(1) the number of shares of a voting security that the acquiring person or an affiliate of the acquiring person proposes to acquire and the terms of the acquisition;

(2) the amount of each class of a voting security that is beneficially owned by the acquiring person and by each affiliate of the acquiring person;

(3) the amount of each class of a voting security the beneficial ownership of which the acquiring person or an affiliate of the acquiring person has a right to acquire;

(4) a copy of any written or confirmed description of any oral agreement, arrangement, or understanding relating to a voting security and in which the acquiring person or an affiliate of the acquiring person is involved, including an agreement, arrangement, or understanding relating to the transfer of any of the voting securities, joint ventures, loan or option agreements, puts or calls, guarantees of loans, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies;

(5) a description of each purchase of a voting security,

including the date of purchase, name of the purchaser, and consideration for the purchase, made during the 12 calendar months preceding the date of the filing of the statement by:

(A) the acquiring person; or

(B) an affiliate, director, or executive officer of the acquiring person;

(6) a copy of any written, or a confirmed description of any oral, recommendation to purchase a voting security made during the 12 calendar months preceding the date of the filing of the statement by:

(A) the acquiring person;

(B) an affiliate of the acquiring person; or

(C) a person based on an interview with, or at the suggestion of, the acquiring person or an affiliate of the acquiring person;

(7) a copy of each tender offer for, request or invitation for tender of, exchange offer for, or agreement to acquire or exchange a voting security and any additional distributed soliciting material relating to that offer, request, invitation, or agreement;

(8) a copy of any written, or a confirmed description of any oral, agreement, arrangement, or understanding made with a broker-dealer relating to the solicitation of a voting security for tender, and the amount of any compensation, including fees and commissions, to be paid to a broker-dealer with regard to the solicitation; and

(9) any additional information the commissioner by rule prescribes as necessary or appropriate to protect:

(A) policyholders of the insurer whose voting securities are to be acquired; or

(B) the public.

(c) An insurer required to file information under Section 823.154 may satisfy the requirement of Section 823.052(c-1) by providing the commissioner with the most recently filed parent corporation reports that have been filed with the United States Securities and Exchange Commission, if required by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 15, eff. September 1, 2011.

Sec. 823.206. ADDITIONAL INFORMATION ABOUT ACQUIRING ORGANIZATION. (a) If the person required to file the statement under Section 823.154 is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information required for an individual under this subchapter be given with respect to:

(1) each person who is a partner of the partnership or limited partnership or a member of the syndicate or group; and

(2) each person who controls a person described by Subdivision (1).

(b) If the person required to file the statement under Section 823.154 or the person with respect to whom information is required under Subsection (a) is a corporation, the commissioner may require that:

(1) the information required under this subchapter be given with respect to that corporation; and

(2) the information required for an individual under this subchapter be given with respect to:

(A) each executive officer and director of that corporation; and

(B) each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of that corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.207. OATH OR AFFIRMATION REQUIRED. A statement required under Section 823.154 must be made under oath or affirmation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. INSURER'S LOANS TO OR INVESTMENT IN AFFILIATE

Sec. 823.251. DEFINITION. In this subchapter, "securities" includes common stock, preferred stock, and debt obligations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.252. GENERAL AUTHORITY RELATING TO AFFILIATES. A domestic insurer, by itself or in cooperation with one or more other persons, may organize, acquire, invest in, or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the provisions of this code governing investments.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.253. GENERAL STANDARD FOR INVESTMENT IN AFFILIATE. (a) A domestic insurer may invest in the securities of one or more of the insurer's affiliates organized for any lawful purpose if:

(1) the amounts invested under this subsection in the aggregate do not exceed the lesser of:

(A) 10 percent of the insurer's assets; or

(B) 50 percent of the insurer's policyholders' surplus; and

(2) after investment under this subsection, the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to the insurer's financial needs.

(b) For purposes of computing the amount of the investments under this section:

(1) investments in domestic or foreign insurance subsidiaries are excluded; and

(2) the following amounts are included:

(A) the total net amount spent and the amount of obligations assumed to acquire or form a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary regardless of whether represented by the purchase of capital stock or issuance of other securities; and

(B) all amounts spent to acquire additional securities and all contributions to the capital or surplus of a subsidiary made after the acquisition or formation of the subsidiary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.254. STANDARD FOR INVESTMENT IN AFFILIATE BY INSURER

WITH LOW TOTAL LIABILITIES. If a domestic insurer's total liabilities, as computed for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of the insurer's assets, the insurer may invest any amount in the securities of one or more affiliates organized for any lawful purpose if after the investment, treating the investment as if it were a nonadmitted asset, the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.255. AGREEMENT OF AFFILIATE TO LIMIT CERTAIN INVESTMENTS. (a) A domestic insurer may invest any amount in the securities of one or more affiliates organized for any lawful purpose if each affiliate agrees to limit its investments in any particular asset so that the investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in that asset.

(b) To compute the amount of the total investment of an insurer in an asset for purposes of Subsection (a), the following amounts are included:

(1) any direct investment by the insurer in that asset; and

(2) the insurer's proportionate share of investment in that asset by any affiliate of the insurer.

(c) To compute the insurer's proportionate share of investment under Subsection (b)(2), the amount of the affiliate's investment in the asset is multiplied by the percentage of the insurer's ownership of that affiliate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.256. COMMISSIONER'S APPROVAL OF INVESTMENT. With the prior approval of the commissioner, a domestic insurer may invest any amount in the securities of one or more affiliates if after the investment the insurer's policyholders' surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.257. DETERMINATION REQUIRED BEFORE INVESTMENT. (a) Whether an investment meets an applicable requirement of this subchapter shall be determined before the investment is made by applying that requirement as if the investment had been made.

(b) In making the determination under Subsection (a):

(1) the amount to be used for the total of previous investments in debt obligations is the principal balance outstanding on all of those obligations at the time of the determination;

(2) the amount to be used for previous investments in equity securities is the sum of values of each previous investment as of the day the previous investment was made; and

(3) any return of capital invested, not including dividends, shall be subtracted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.258. DISPOSITION OF INVESTMENT IN SUBSIDIARY AFTER CESSATION OF CONTROL. (a) An insurer that ceases to control a subsidiary shall dispose of any investment in the subsidiary made under this subchapter before the third anniversary of the date the insurer ceases to control the subsidiary, unless:

(1) at any time after the investment is made the investment qualifies for investment under another provision of this code; and

(2) the insurer notifies the commissioner of that qualification.

(b) The commissioner may extend the period under Subsection (a) during which disposition is required.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.259. EXEMPTION FROM CERTAIN LIMITATIONS; INVESTMENT AUTHORITY CUMULATIVE OF OTHER LAW. (a) An investment made under this subchapter is not subject to the restrictions and prohibitions relating to investments contained in this code other than those provided by Subchapter C.

(b) Investments authorized by this subchapter are in addition

to other investments permitted under this code for a domestic insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. VALUATION OF INVESTMENT FOR FINANCIAL STATEMENT

Sec. 823.301. SCOPE OF SUBCHAPTER. (a) This subchapter applies only to the determination of the valuation for a financial statement of an investment by an insurer in an affiliate that is not an insurer.

(b) This subchapter does not apply for determining the amount invested under Section 823.253.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.302. BASES FOR DETERMINING VALUATION. Subject to this subchapter, the valuation of an investment to which this subchapter applies is the greater of:

(1) the net shareholder equity value that the insurer owns in the affiliate adjusted, if the affiliate is a subsidiary, to include the value of only those assets of the subsidiary that would constitute lawful investments for the insurer if the assets were acquired or held directly by the insurer; or

(2) the amount determined using one of the following methods that is applicable for the affiliate in which the investment is made:

(A) the net worth of the affiliate determined at the end of the affiliate's most recent fiscal year in accordance with generally accepted accounting principles and reported in the financial statements of the affiliate for that fiscal year that were audited by an independent certified public accountant in accordance with generally accepted auditing standards;

(B) the value equal to the cost of the stock of the affiliate, determined and adjusted to reflect subsequent operating results in accordance with generally accepted accounting principles;

(C) the market value of the stock of the affiliate, if the stock is listed on a national securities exchange;

(D) the value, if any, placed on the stock of the affiliate by the National Association of Insurance Commissioners; or

(E) an amount that the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value of that investment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.303. ADJUSTMENT TO DETERMINATION. If an affiliate is valued using a method other than the method provided by Section 823.302(2)(C), the valuation of the investment is computed by subtracting from the determined value an amount equal to the value claimed for any of the affiliate's assets that would not be admitted assets for the insurer if held directly by the insurer and that:

(1) are held by the affiliate but are used, including use under a lease agreement, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or use of the insurer by the affiliate under specific circumstances that, in the commissioner's opinion, support a reasonable finding that the primary purpose of the acquisition or purchase was to evade or avoid application of this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.304. USE OF DIFFERENT BASES. An insurer is not required to value the stock of all of its affiliates on the same basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.305. VALUATING ACQUIRED AFFILIATE. (a) Not later than the 30th day after the date an insurer acquires an affiliate that is not an insurer, the insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of the affiliate and the basis of valuation under Section 823.302 used for that affiliate.

(b) After filing the information under Subsection (a), the insurer shall use the specified basis of valuation for that affiliate unless a change is substantiated as reasonable to and is approved in

writing by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.306. USE OF UNAUDITED INFORMATION. If an affiliate is valued using the basis provided by Section 823.302(2)(A) and the books of the affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer, as soon as possible after an audit of those books, shall report and explain any difference between the value of the affiliate reported in the insurer's annual statement and the value determined by the audit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.307. MODIFICATION BY COMMISSIONER. After notice and opportunity for a hearing, the commissioner may:

(1) determine that the basis used for valuation of the stock of an affiliate does not, under the specific circumstances, reflect the value of the affiliate; and

(2) order an adjustment in the valuation or the use of another basis of valuation provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER H. EXAMINATIONS

Sec. 823.351. EXAMINATION OF INSURER. (a) Subject to Section 823.352, the commissioner may order an insurer registered under Subchapter B to produce records, books, or other information papers in the possession of the insurer or an affiliate of the insurer that are necessary to ascertain the financial condition or legality of conduct of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(a-1) To determine compliance with this chapter, the commissioner may order any insurer registered under Subchapter B to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to contractual

relationships, statutory obligations, or other methods. In the event that the insurer is unable to obtain the information requested by the commissioner, the insurer shall provide the commissioner with a detailed explanation of the reason why the insurer is unable to obtain the information, and the identity of the holder of information. If it appears to the commissioner that the insurer's explanation is without merit, the commissioner may after notice and hearing:

(1) require the insurer to pay a penalty of not less than $100 for each day the insurer delays producing the information; or

(2) suspend or revoke the insurer's license.

(b) If an insurer fails to comply with an order under this section, the commissioner by order may require the examination of each holding company of the insurer and each controlled person or affiliate in the insurer's insurance holding company system if the commissioner has cause to believe that:

(1) the operations of that person may materially affect the operations, management, or financial condition of any controlled insurer in that system; and

(2) the commissioner is unable to obtain relevant information from the controlled insurer.

(b-1) The commissioner may issue subpoenas, administer oaths, and examine under oath any person for purposes of determining compliance with this section. On the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and on proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. A person shall attend as a witness at the place specified in the subpoena, when subpoenaed, at any location in this state. The person is entitled to the same fees and mileage, if claimed, as a witness in district court. Fees, mileage, and actual expenses necessarily incurred in securing the attendance of a witness shall be itemized and charged against, and be paid by, the insurer being examined.

(c) The commissioner shall specify in an order under Subsection (b) the grounds for the examination. An examination under Subsection (b) shall be confined to matters specified in the order.

(d) Only the person sought to be examined under Subsection (b) is entitled to seek judicial review of an order under that

subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 16, eff. September 1, 2011.

Sec. 823.352. LIMITATION ON POWER. The commissioner may exercise power under Section 823.351 only if:

(1) examination of the insurer under another provision of this code is inadequate; or

(2) the interests of the insurer's policyholders may be adversely affected.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.353. PAYMENT OF EXAMINATION COSTS. (a) Each registered insurer that complies with an order under Section 823.351(a) shall pay the expense of the examination in accordance with Sections 401.151, 401.152, 401.155, and 401.156.

(b) The commissioner shall assess the cost of an examination under Section 823.351(b) against the person examined. The controlled insurer may not directly or indirectly reimburse that person for any part of the cost.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.011, eff. April 1, 2009.

Sec. 823.354. USE OF ADVISORS. (a) The commissioner may employ at the registered insurer's expense attorneys, actuaries, accountants, and other experts that are not a part of the commissioner's staff and that are reasonably necessary to assist in the conduct of an examination under Section 823.351.

(b) A person employed under this section is under the direction and control of the commissioner and may act only as an advisor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.355. CUMULATIVE AUTHORITY. The authority provided by this subchapter is in addition to other powers relating to the examination of insurers given to the commissioner under this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER I. LIMITATIONS RELATING TO CONTROLLED INSURERS

Sec. 823.401. PROHIBITION OF INDIRECT ACTION FOR CONTROLLED INSURER. (a) A holding company or controlled person may not directly or indirectly do or cause to be done for or on behalf of a controlled insurer any act intended to affect, influence, change, or alter the insurance operations of the insurer that would violate this code if done by the insurer alone.

(b) This section does not limit or prohibit a holding company or a person in the insurance holding company system from conducting on behalf of the person any type of business that would be normal and natural to the person if the person were not in the holding company system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.402. PROHIBITION ON VOTING CERTAIN SECURITIES. (a) A security that is the subject of an agreement or arrangement regarding an acquisition or that is acquired or to be acquired in violation of this chapter or a rule or order under this chapter may not be voted at a shareholders' meeting or counted for quorum purposes. An action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the security was not outstanding.

(b) An action taken at a shareholders' meeting is not invalidated by the voting of a security to which Subsection (a) applies unless:

(1) the action would materially affect control of the insurer; or

(2) a court of this state invalidates the action.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.403. MANAGEMENT OF CONTROLLED INSURER. (a) The control of an authorized insurer by another person does not relieve an officer or director of the insurer of any obligation or liability to which the officer or director is subject by law. The insurer shall be managed to assure the insurer's separate operating identity consistent with this code.

(b) This section does not preclude an authorized insurer from having a common management or joint use of personnel, property, or services with one or more other persons under an arrangement that meets the standards of Section 823.101(e).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER J. CIVIL REMEDIES AND SANCTIONS

Sec. 823.451. RECEIVERSHIP. If it appears to the commissioner that a person's violation of this chapter so impairs the financial condition of a domestic insurer as to threaten the insurer's insolvency or make the further transaction of the insurer's business hazardous to the insurer's policyholders or creditors or the public, the commissioner may proceed under Chapters 441 and 443 to take possession of the insurer's property and conduct the business of the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.012, eff. April 1, 2009.

Sec. 823.452. REVOCATION, SUSPENSION, OR NONRENEWAL OF INSURER'S AUTHORITY. (a) If it appears to the commissioner that a person's violation of this chapter makes the continued operation of an insurer contrary to the interest of policyholders or the public, the commissioner, after notice and opportunity for a hearing, may suspend, revoke, or refuse to renew the insurer's certificate of authority to engage in the business of insurance in this state for the period the commissioner finds is required for the protection of policyholders or the public.

(a-1) If the commissioner determines that a person has committed a violation of Subchapter D that prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for issuing an order under Chapter 404 or Chapter 441.

(b) The commissioner shall provide specific findings of fact and conclusions of law to accompany a determination under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 922 (S.B. 1431), Sec. 17, eff. September 1, 2011.

Sec. 823.453. VOIDING UNAUTHORIZED ACTION. If it appears to the commissioner that a person has entered into a transaction or performed an act before complying with the applicable provisions of this chapter or has obtained the commissioner's approval of or acquiescence in a transaction or act that is subject to this chapter based on a material fraudulent misrepresentation, misstatement, or omission, the commissioner, after notice and opportunity for a hearing, by order may void the transaction or act and return the parties to the position they would have occupied if the transaction or act had not occurred.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.454. ADMINISTRATIVE PENALTY. (a) A director or officer of an insurer or insurance holding company system that is subject to this chapter is subject to an administrative penalty under Chapter 84 if the director or officer knowingly and wilfully:

(1) participates in or assents to a transaction or an investment that has not been properly reported or submitted under this chapter;

(2) permits an officer, agent, or employee of the insurer or holding company system, as appropriate, to engage in a transaction or make an investment that has not been properly reported or submitted under this chapter; or

(3) violates this chapter.

(b) The amount of an administrative penalty under this section may not exceed $10,000 for each violation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.455. EQUITABLE RELIEF. (a) If it appears to the commissioner that an insurer or a director, officer, employee, or agent of an insurer has committed or is about to commit a violation of this chapter or a rule or order under this chapter, the commissioner may apply to a district court of Travis County for an order enjoining the violation and for other equitable relief that the nature of the case and the interest of the insurer's policyholders or creditors or the public requires.

(b) If an insurer or the commissioner has reason to believe that a security of the insurer was or is about to be acquired in violation of this chapter or a rule or order under this chapter, the insurer or the commissioner may apply to a district court of Travis County or of the county in which the insurer has its principal place of business to:

(1) enjoin any offer, request, invitation, agreement, or acquisition made in violation of Subchapter D or a rule or order under that subchapter;

(2) enjoin the voting of a security acquired in violation of Subchapter D or a rule or order under that subchapter; or

(3) void a vote of the security that was cast at any shareholders' meeting.

(c) In a suit filed under Subsection (b), the insurer or the commissioner may also apply for other equitable relief that the nature of the case and the interests of the insurer's policyholders or creditors or the public requires.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.456. SEIZURE OR SEQUESTRATION OF VOTING SECURITIES. If a person acquires or is proposing to acquire a voting security in violation of this chapter or a rule or order under this chapter, a district court of Travis County or of the county in which the insurer has its principal place of business, on application of the insurer or

the commissioner and notice that the court considers appropriate, may seize or sequester any voting securities of the insurer that are owned directly or indirectly by that person and may issue an order relating to those securities that is appropriate to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.457. LONG ARM JURISDICTION; SERVICE OF PROCESS. (a) The courts of this state have jurisdiction over a person who is not a resident of, domiciled in, or authorized to engage in business in this state and files a statement with the commissioner under Subchapter D, and over the actions involving that person that arise out of a violation of this chapter.

(b) A person described by Subsection (a) is considered to have appointed the commissioner as the person's agent for service of process in any action, suit, or proceeding arising out of a violation of this chapter.

(c) The commissioner shall forward by registered or certified mail to the person's last known address copies of all processes that are served on the commissioner under Subsection (b).

(d) Additional procedures and fees for service of process are provided by Subchapter C, Chapter 804.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.458. SANCTIONS. An entity that holds a certificate of authority issued by the department and that violates this code is subject to sanctions under Chapter 82.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. CRIMINAL PENALTIES

Sec. 823.501. OFFENSE OF VIOLATING CHAPTER. (a) A person commits an offense if the person is an insurer or individual and wilfully violates this chapter.

(b) If the person is an insurer, an offense under Subsection (a) is a misdemeanor punishable by a fine not to exceed $50,000 for

each violation.

(c) If the person is an individual, an offense under Subsection (a) is a misdemeanor punishable by a fine not to exceed $10,000 for each violation except as provided by Subsection (d) and Section 823.502.

(d) An offense under Subsection (a) is a felony if the person is an individual and the violation involves the deliberate perpetration of a fraud on the department, an insurer, an insurer's subsidiary, or policyholders. The felony is punishable by:

(1) imprisonment for a term not to exceed five years;

(2) a fine not to exceed $10,000 for each violation; or

(3) both fine and imprisonment under this subsection.

(e) A fine under this section is in addition to any civil or administrative penalty.

(f) An individual on whom a fine is imposed under this section shall pay the fine in that person's individual capacity.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.502. OFFENSE OF SUBSCRIBING TO OR MAKING FALSE STATEMENT. (a) A person commits an offense if the person is an officer, director, or employee of a domestic insurer or the insurer's insurance holding company system and wilfully and knowingly subscribes to or makes or causes to be made a false statement on a written instrument required to be filed with the commissioner.

(b) An offense under Subsection (a) is a felony punishable by:

(1) imprisonment for a term of not less than two years;

(2) a fine not to exceed $10,000 for each violation; or

(3) both fine and imprisonment under this subsection.

(c) A person on whom a fine is imposed under this section shall pay the fine in that person's individual capacity.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 823.503. BEGINNING CRIMINAL PROCEEDINGS. If it appears to the commissioner that an insurer or a director, officer, employee, or agent of an insurer has wilfully violated this chapter, the commissioner may cause criminal proceedings to be instituted against that person by the district attorney for the county in which the

principal office of the insurer is located or, if the insurer does not have a principal office in this state, the district attorney of Travis County.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 824. MERGER AND CONSOLIDATION OF STOCK INSURANCE CORPORATIONS

SUBCHAPTER A. AUTHORITY AND PROCEDURES

Sec. 824.001. AUTHORITY TO MERGE OR CONSOLIDATE. Two or more insurance corporations that engage in a similar line of the business of insurance may merge or consolidate under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.002. PROCEDURES; APPLICABILITY OF TEXAS BUSINESS CORPORATION ACT. (a) To the extent that the provisions of the Texas Business Corporation Act are not inconsistent with the provisions of this code, the Texas Business Corporation Act governs:

(1) the procedures for a merger or consolidation under this chapter;

(2) the effect of a merger or consolidation under this chapter; and

(3) the rights and duties of creditors, shareholders, and the corporations that are involved in a merger or consolidation under this chapter.

(b) To the extent that the Texas Business Corporation Act applies under this chapter to insurance corporations, the commissioner shall perform each duty, exercise each power, and perform each act vested in, required of, or to be performed by the secretary of state under the Texas Business Corporation Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.003. PROPOSED PLAN OF MERGER OR CONSOLIDATION; APPROVAL OF DIRECTORS AND SHAREHOLDERS. (a) A proposed plan of merger or consolidation must be approved by the boards of directors of the corporations that are parties to the merger or consolidation.

(b) After approval by the boards of directors, the proposed

plan shall be submitted for approval to the shareholders of each corporation that is a party to the plan at a separate regular or special meeting of the shareholders called in the manner provided by the bylaws of the respective corporations.

(c) A plan is approved on the affirmative vote of the holders of two-thirds of the shares of the capital stock of each corporation that is a party to the plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.004. FILING OF PROPOSED PLAN WITH COMMISSIONER. After a proposed plan of merger or consolidation has been approved as provided by Section 824.003, the plan shall be filed with the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.005. COMMISSIONER ACTION ON PLAN. (a) The commissioner shall hold a hearing on a proposed plan of merger or consolidation not later than the 15th day after the date on which the plan is filed with the commissioner as required by Section 824.004.

(b) Not later than the 15th day after the hearing date, the commissioner shall:

(1) give written approval of the plan to each insurance corporation that is a party to the proposed merger or consolidation; or

(2) disapprove the plan if the commissioner determines that the plan:

(A) is contrary to law; or

(B) would not be in the best interests of the policyholders affected by the plan and would substantially reduce the security of and service to be rendered to policyholders of the insurance corporation in this state or elsewhere.

(c) The commissioner may extend the period during which the commissioner may affirmatively approve or disapprove the proposed plan if representatives of the applicants for the proposed merger or consolidation concur in that extension.

(d) If the commissioner disapproves a proposed plan, the commissioner shall specify in detail the reasons for that

disapproval.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. EFFECTIVE DATE OF MERGER OR CONSOLIDATION

Sec. 824.051. EFFECTIVE DATE OF MERGER. A merger takes effect on the date specified in the proposed plan of merger.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.052. EFFECTIVE DATE OF CONSOLIDATION. (a) A new insurance corporation resulting from a plan of consolidation shall be issued a charter and a certificate of authority on:

(1) submission of proper articles of incorporation to the commissioner;

(2) approval by the commissioner in accordance with the procedures required for the issuance of a new charter; and

(3) submission of proof that the new corporation has capital and surplus at least equal to that of the corporation that is a party to the consolidation and has the largest capital and surplus.

(b) A consolidation takes effect on the date of issuance of the charter and certificate of authority under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.053. APPROVAL OF MERGER OR CONSOLIDATION AFFECTING FOREIGN CORPORATION; EFFECTIVE DATE. Notwithstanding Section 824.051 or 824.052, a merger or consolidation involving a corporation organized under the laws of another state does not take effect until the merger or consolidation is approved by the proper official of the domiciliary state, if that approval is required.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. EFFECT OF MERGER OR CONSOLIDATION

Sec. 824.101. EFFECT OF MERGER OR CONSOLIDATION ON OUTSTANDING INSURANCE POLICIES. (a) A new or surviving corporation resulting

from a merger or consolidation shall assume each insurance policy outstanding against each insurance corporation that merges or consolidates on the same terms and under the same conditions as if the policy had continued in force through the original corporation.

(b) The new or surviving insurance corporation shall implement the terms of the policy.

(c) The new or surviving insurance corporation is entitled to:

(1) all rights and privileges under the policy; and

(2) all reserves that accumulated on the policy before the merger or consolidation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.102. EFFECT OF MERGER OR CONSOLIDATION ON CERTAIN INVESTMENTS. (a) This section applies to each investment of an affected corporation, including an investment in real property, that:

(1) was authorized as a proper asset, as of the date on which the investment was made and under the laws of the state in which the insurance corporation was organized, for investment of funds of an insurance corporation; and

(2) is taken over by the new or surviving corporation under the terms of the merger or consolidation.

(b) On the merger or consolidation of two or more insurance corporations under this chapter, an investment of the affected corporations described by Subsection (a) is a proper asset under the laws of this state of the new or surviving corporation if the investment is:

(1) approved by the commissioner; and

(2) taken over on terms satisfactory to the commissioner.

(c) A new or surviving corporation that acquires, under the terms of the merger or consolidation, real property that exceeds the amount of real property permitted by the applicable sections of this code relating to owning or holding real property must sell and dispose of the excess real property:

(1) within the period specified by those sections; or

(2) within a longer period if the corporation obtains a certificate from the commissioner:

(A) stating that the interests of the corporation will materially suffer by the forced sale of the affected real property;

and

(B) specifying the longer period for the sale of the excess real property.

(d) This section does not preclude the designation and use of the acquired excess real property as branch offices in accordance with this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.103. RETIREMENT AND CANCELLATION OF TREASURY SHARES. (a) After a merger or consolidation is completed, any shares of the new or surviving corporation acquired by that corporation as a result of distribution of shares to the shareholders of another corporation that is merged or consolidated or as a result of purchase of shares of dissenting shareholders, may be held as treasury shares until the first anniversary of the date on which the merger or consolidation takes effect.

(b) After the period during which shares described by Subsection (a) are held as treasury shares, the corporation shall retire and cancel those shares by proper amendments to its charter if the shares have not previously been reissued.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 824.104. EFFECT ON ANTITRUST LAWS. This chapter does not affect in any manner the antitrust laws of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. MERGER OR CONSOLIDATION OF LIFE INSURANCE CORPORATIONS

Sec. 824.151. PURCHASE OF OUTSTANDING SHARES BY LIFE INSURANCE CORPORATION. (a) A life insurance corporation may purchase or contract to purchase all or part of the outstanding shares of another life insurance corporation for purposes of merger or consolidation.

(b) Except as provided by Section 824.152, the provisions of Subchapter D, Chapter 425, that limit investments in the corporate stock of another corporation do not apply to a purchase made under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.013, eff. April 1, 2009.

Sec. 824.152. LIMITATIONS ON PURCHASE OF OUTSTANDING SHARES BY LIFE INSURANCE CORPORATION. (a) A purchase or contract to purchase under Section 824.151 is subject to this section.

(b) The intention to merge or consolidate must be evidenced by a resolution adopted by the board of directors of the purchasing corporation on or before the purchase of the shares or the execution of a contract to purchase the shares.

(c) The purchasing corporation shall obtain or seek to obtain at least the number of shares of the other insurance corporation necessary to vote an approval of the merger or consolidation under the laws of the state in which the other insurance corporation is organized, by one or more of the following means:

(1) initially purchasing or contracting to purchase the shares; or

(2) offering to purchase, making a tender offer for, requesting or inviting tenders of, or otherwise seeking to acquire the shares in the open market or otherwise.

(d) A purchase, offer to purchase, tender offer, request to purchase, or invitation to purchase shares in excess of the limits imposed under Subchapter D, Chapter 425, may not be made until it is filed with and approved by the commissioner in accordance with Chapter 823.

(e) Following the earlier of the date of the contract to purchase the shares or the date of the commissioner's approval of the purchase, offer to purchase, tender offer, or request or an invitation to purchase the shares, the corporation the shares of which are being purchased may not purchase or contract to purchase any of its own shares as treasury shares, issue or contract to issue any of its authorized but unissued shares, or make any investments in or loans to the purchasing corporation or any of its affiliates unless the investment or loan is otherwise authorized and approved in advance by the commissioner under Chapter 823.

(f) The merger or consolidation must take effect on or before December 31 of the second year after the earlier of the year in which

the initial purchase of the shares is made or the year in which the initial contract to purchase is executed unless the commissioner for good cause shown extends that period.

(g) If the merger or consolidation does not take effect within the period finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of the purchased shares that exceed the investment limitations imposed under Subchapter D, Chapter 425, within six months of the final effective date.

(h) Amounts actually paid by the purchasing corporation for the purchase of shares acquired or obtained under this subchapter may not include the minimum capital, minimum surplus, and policy reserves required by law for the purchasing corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.014, eff. April 1, 2009.

CHAPTER 825. CONVERSION OF STOCK INSURANCE COMPANY TO MUTUAL INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 825.001. DEFINITIONS. In this chapter:

(1) "Converting company" means a stock insurance company that converts to a mutual insurance company under this chapter.

(2) "Resulting company" means a mutual insurance company to which a stock insurance company converts under this chapter.

(3) "Stock acquisition plan" means a converting company's plan for the acquisition of shares of its capital stock.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.002. AUTHORITY TO CONVERT TO MUTUAL INSURANCE COMPANY. (a) A domestic stock insurance company, as defined by law, may convert to a mutual insurance company.

(b) To convert to a mutual insurance company, a stock insurance company must implement a plan for the acquisition of shares of its capital stock.

(c) In implementing a stock acquisition plan under this

chapter, a converting company may acquire shares of its stock by gift, bequest, or purchase.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. STOCK ACQUISITION PLAN

Sec. 825.051. CONTENTS OF STOCK ACQUISITION PLAN. (a) A stock acquisition plan must:

(1) be adopted by a vote of a majority of the directors of the corporation at a directors' meeting called for that purpose;

(2) be approved by a vote of shareholders representing a majority of the capital stock at a meeting of shareholders called for that purpose;

(3) enable each shareholder to dispose of the same proportion of the shareholder's holdings at the same price per share and on the same terms as any other shareholder;

(4) be approved by a vote of the majority of the policyholders eligible under Section 825.054 to participate at a meeting of the policyholders called for that purpose; and

(5) be submitted to the commissioner and approved by the commissioner in writing.

(b) If the purchase price for the company's acquisition of shares of its capital stock is not set by the stock acquisition plan, each payment for those shares is subject to the commissioner's approval.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.052. SUFFICIENT ASSETS REQUIRED. The commissioner may not approve a stock acquisition plan or a payment for stock under Section 825.051(b) unless, at the time of the approval, the company has assets equal to at least $500,000 more than the entire liability of the company, including the net values of its outstanding contracts computed as required by law, and all funds and contingent reserves, after deducting:

(1) the aggregate amount allocated by the plan for the acquisition of any part or all of its capital stock, to be paid in cash or other assets of the company; and

(2) the amount of any payment not set by the plan and

subject to separate approval by the commissioner after the approval of the plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.053. STOCK ACQUISITION PLAN APPROVAL. A policyholders' meeting for approval of a stock acquisition plan may not be called until Sections 825.051(a)(1) and (2) are satisfied.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.054. POLICYHOLDER ELIGIBILITY. To be eligible to participate in a policyholders' meeting held to approve a stock acquisition plan, a policyholder must have insurance coverage issued by the converting company that:

(1) is in the amount of at least $1,000;

(2) is in force on the date of the policyholders' meeting; and

(3) has been in force for at least one year before the date of the policyholders' meeting.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.055. POLICYHOLDERS' MEETING. (a) A converting company shall give notice of the policyholders' meeting to each eligible policyholder.

(b) The notice must be mailed from the home office of the converting company not later than the 31st day before the scheduled date of the meeting in a sealed envelope, postage prepaid, to the policyholder at the policyholder's last known mailing address.

(c) The policyholders' meeting shall be conducted in the manner provided by the stock acquisition plan.

(d) The commissioner shall supervise and direct the procedure of the policyholders' meeting. The converting company shall pay all necessary expenses incurred by the commissioner as certified by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.056. POLICYHOLDER VOTING. (a) A policyholder may vote in person, by proxy, or by mail. All votes must be cast by ballot.

(b) The commissioner shall appoint an adequate number of inspectors to conduct the voting at the policyholders' meeting.

(c) The inspectors determine all questions concerning the verification of the ballots, the validity of the ballots, the qualification of the voters, and the canvass of the vote and shall certify the results to the commissioner and the converting company.

(d) An inspector shall act under rules prescribed by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. ACQUISITION OF SHARES

Sec. 825.101. ISSUANCE OF ANNUITY BONDS IN PAYMENT OF STOCK. (a) A stock acquisition plan may provide that all or part of the purchase price of any part or all of the shares of stock of a converting company that are acquired by the company under the plan may be paid by the company through the issuance of annuity bonds payable in annual amounts and for the term provided by the plan.

(b) Each annuity bond issued under Subsection (a) must expressly provide, on the face of the bond, that the bond is payable only out of the surplus of the converting company remaining after all liabilities, including reserves, are provided for and is not otherwise a liability or claim against the converting company or any of its assets, as provided by Section 882.253.

(c) Not more than three-fourths of the net earnings of the converting company during any calendar year may be used or applied to the payment of the annuity bonds.

(d) On the approval of the commissioner, the company issuing the annuity bonds or any life insurance company may invest its funds in the annuity bonds. The investment in the annuity bonds may not at any time exceed 10 percent of the company's total admitted assets.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.102. ACQUISITION IN TRUST. (a) Until all of the shares of a converting company are acquired, any shares acquired under the stock acquisition plan shall be held in trust for the policyholders of the converting company by three trustees appointed as provided by the stock acquisition plan.

(b) Each appointee must file with the converting company a verified acceptance of the appointment and a declaration that the appointee will faithfully discharge the appointee's duties.

(c) The shares shall be assigned and transferred on the books of the converting company to the trustees. The trustees shall vote the shares at each meeting at which shareholders are entitled to vote, until all the capital stock of the converting company is canceled under Section 825.104.

(d) After paying the necessary expenses of executing the trust, the trustees shall immediately pay all dividends and other amounts received on the shares of stock acquired under Section 825.101 to the converting company for the benefit of those who are or become policyholders of the resulting company entitled to participate in the profits of the resulting company.

(e) All amounts received by the converting company under Subsection (d) shall be added to the surplus earned by the resulting company and accordingly are apportionable as a part of the surplus among the resulting company's policyholders.

(f) A vacancy among the trustees shall be filled as provided by the stock acquisition plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.103. DISTRIBUTION OF DIVIDENDS. After conversion, the converting company shall annually distribute among its policyholders, under terms approved by the commissioner, dividends or earnings accruing to the converting company as the result of the acquisition of shares of the converting company's stock under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 825.104. CONVERSION COMPLETE ON CANCELLATION OF STOCK; APPLICATION OF CERTAIN LAWS. (a) When the converting company acquires all of its capital stock and the purchase price for that

stock, including any annuity bond issued for the purchase of the stock, is paid in full, the stock shall be canceled.

(b) On cancellation of the stock, the converting company becomes a mutual insurance company without capital stock and is subject to the laws of this state governing mutual insurance companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 826. CONVERSION OF MUTUAL INSURANCE COMPANY TO STOCK INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 826.001. DEFINITIONS. In this chapter:

(1) "Conversion plan" means a plan adopted under this chapter to convert a mutual insurance company into a stock insurance company.

(2) "Converting company" means a domestic mutual insurance company that is converting under this chapter into a domestic stock insurance company.

(3) "Eligible member" means a member of a converting company whose policy is in force on the date that the company's board of directors adopts a conversion plan. The term does not include a person insured under a group policy.

(4) "Mutual insurance company" means a domestic mutual insurance company.

(5) "Participating policy" means a policy issued by a mutual insurance company that grants a holder the right to receive declared dividends.

(6) "Resulting company" means a domestic stock insurance company that has converted under this chapter from a domestic mutual insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.002. AUTHORITY TO CONVERT TO STOCK INSURANCE COMPANY. (a) A mutual insurance company may convert to a stock insurance company.

(b) A converting company may not engage in the business of insurance as a stock insurance company until it complies with the

requirements of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.003. RIGHTS AND PRIVILEGES OF RESULTING COMPANY; LAWS APPLICABLE. Except as provided by this chapter, a resulting company:

(1) may exercise only the rights and privileges of a stock insurance company; and

(2) is subject to:

(A) all of the requirements and rules imposed on stock insurance companies organized under this code; and

(B) the laws of this state relating to the regulation or supervision of insurance companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.004. CERTAIN CONVERSIONS PROHIBITED. A mutual insurance company may not convert to a stock insurance company under this chapter if, as a direct result of the conversion, any affiliate or other person acquires control of the resulting company, unless that affiliate or person complies with Section 823.154.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.005. CORPORATE EXISTENCE. (a) On the effective date of a conversion under this chapter:

(1) the corporate existence of the converting company continues in the resulting company;

(2) all assets, rights, franchises, and interests of the converting company in and to property and any accompanying thing in action are vested in the resulting company without a deed or transfer; and

(3) the resulting company assumes all the obligations and liabilities of the converting company.

(b) Except as otherwise specified by the conversion plan, the directors and officers of the converting company serving on the effective date of the conversion serve as directors and officers of the resulting company until new directors and officers are elected

under the articles of incorporation and bylaws of the resulting company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. CONVERSION PLAN ADOPTION AND REQUIREMENTS

Sec. 826.051. PLAN ADOPTION. (a) To convert to a stock insurance company a mutual insurance company must adopt, by the affirmative vote of at least two-thirds of the members of its board of directors, a conversion plan consistent with this chapter.

(b) For a conversion plan to take effect:

(1) the commissioner must approve the conversion plan; and

(2) the eligible members must approve the conversion plan and adopt the amended or restated articles of incorporation of the resulting company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.052. GENERAL REQUIREMENTS; EFFECT OF CONVERSION ON POLICIES. (a) Each conversion plan must include the provisions required by this chapter.

(b) Each policy in effect on the effective date of the conversion remains in effect under the terms of that policy, except that the following rights, to the extent they existed in the converting company, are extinguished on the effective date of the conversion:

(1) any voting rights of policyholders;

(2) except as provided by Subsection (c), a right to share in the surplus or profits of the converting company; and

(3) any assessment provisions.

(c) The holder of a participating policy in effect on the effective date of the conversion continues to have a right to receive dividends as provided by the participating policy.

(d) On the renewal date of a participating policy, the resulting company may issue to the insured a nonparticipating policy as a substitute for the participating policy, unless the participating policy is:

(1) a guaranteed renewable accident and health policy; or

(2) a guaranteed renewable, noncancellable accident and

health policy.

(e) All the costs and expenses connected with a conversion plan shall be paid or reimbursed by the converting company or the resulting company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.053. SALE OF CAPITAL STOCK. A conversion plan must provide that shares of capital stock of the resulting company shall be sold in a private placement, public offering, or an alternative method approved by the commissioner unless the shares are:

(1) sold or distributed to a holder of surplus notes of the converting company; or

(2) subscribed to by:

(A) a tax-qualified employee benefit plan under Section 826.059;

(B) a director or officer under Section 826.056(b); or

(C) an eligible member exercising subscription rights under Section 826.058.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.054. PURCHASE PRICE OF CAPITAL STOCK. (a) A conversion plan must set the total price of the capital stock in an amount equal to the estimated pro forma market value of the resulting company based on an independent valuation by a qualified expert, giving consideration to the amount of capital that the board of directors considers necessary to be raised by the company. The pro forma market value may be the value estimated to be necessary to attract full subscription for the shares, as indicated by the independent valuation, and may be stated as a range of values.

(b) The conversion plan may set the purchase price for a share of capital stock at any reasonable amount. The price per share is not required to be the same for each class of purchaser. However, eligible members purchasing stock under subscription rights received under Section 826.058 may purchase shares at the lowest available price under the plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.055. LIMITATION ON ACQUISITION OF CAPITAL STOCK. (a) The conversion plan must provide that a person or group of persons acting in concert may not acquire, in the public or private offering or through the exercise of subscription rights, more than 10 percent of the capital stock of the resulting company except with the approval of the commissioner.

(b) This section does not apply to an entity that purchases 100 percent of the capital stock of the resulting company as part of the conversion plan approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.056. DIRECTORS AND OFFICERS. (a) Except as otherwise provided by this section, the conversion plan must provide that a director or officer of the converting company, or a person acting in concert with a director or officer, may not acquire, without the permission of the commissioner, any capital stock of the resulting company or the stock of another corporation that is participating in the conversion plan before the third anniversary of the effective date of the conversion. This subsection does not prohibit a director or officer from:

(1) acquiring capital stock through a broker-dealer;

(2) making purchases through the exercise of subscription rights received under the conversion plan; or

(3) participating in a stock benefit plan permitted by Section 826.059 or approved by the eligible members under Section 826.107.

(b) A conversion plan may provide that the directors and officers of the converting company may receive, without payment, nontransferable subscription rights to purchase capital stock of the resulting company or the stock of another corporation that is participating in the conversion plan.

(c) The aggregate number of shares that may be purchased by directors and officers under Subsection (b) may not exceed:

(1) 35 percent of the total number of shares to be issued for the resulting company if the total assets of the converting company are less than $50 million; or

(2) 25 percent of the total number of shares to be issued for the resulting company if the total assets of the converting company are more than $500 million.

(d) For converting companies with total assets between $50 million and $500 million, inclusive, the maximum percentage of the total number of shares that may be purchased shall be interpolated from amounts provided under Subsection (c).

(e) A conversion plan must provide that a director or officer of the converting company may not sell stock purchased under the conversion plan before the first anniversary of the effective date of the conversion.

(f) Notwithstanding Subsection (e), a conversion plan may provide for the purchase or redemption of stock in the event that a director or officer is no longer associated with the resulting company during the period described by Subsection (e).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.057. RIGHTS OF HOLDER OF SURPLUS NOTES. A conversion plan must provide that any rights of a holder of a surplus note to participate in the conversion are governed by the terms of the surplus note.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.058. SUBSCRIPTION RIGHTS; GENERAL PROVISIONS. (a) Except for an alternate conversion plan adopted under Section 826.061, each conversion plan must specify the subscription rights of eligible members.

(b) The conversion plan must provide that:

(1) each eligible member is to receive, without payment by the member, nontransferable subscription rights to purchase a portion of the capital stock of the resulting company; and

(2) in the aggregate, all eligible members have the right, before the right of any other party, to purchase 100 percent of the capital stock of the resulting company after provision for:

(A) capital stock required to be sold or distributed to the holders of surplus notes, if any;

(B) capital stock purchased by a stock benefit plan as

permitted by Section 826.059; and

(C) capital stock acquired by the directors and officers, as permitted by Section 826.056(b).

(c) As an alternative to subscription rights in the resulting company, the conversion plan may provide that each eligible member is to receive, without payment by the member, nontransferable subscription rights to purchase a portion of the capital stock of:

(1) a corporation organized for the purpose of purchasing and holding all the stock of the resulting company;

(2) a stock insurance company owned by the converting company into which the converting company is to be merged; or

(3) an unaffiliated stock insurance company or other corporation that is to purchase all the stock of the resulting company.

(d) The conversion plan must provide that the subscription rights are allocated in whole shares among the eligible members using a fair and equitable formula. The formula may consider that the different classes of policies of the eligible members contributed to the surplus of the converting company or any other factors that may be fair or equitable as determined by the board of directors.

(e) The conversion plan must provide a fair and equitable method for allocating shares of capital stock in the event of an oversubscription to shares by eligible members exercising subscription rights under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.059. SUBSCRIPTION RIGHTS; TAX-QUALIFIED EMPLOYEE BENEFIT PLAN. The conversion plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase not more than 10 percent of the capital stock of the resulting company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.060. LIQUIDATION ACCOUNT. (a) The conversion plan may provide for the creation of a liquidation account for the benefit of members in the event of a voluntary liquidation after the conversion.

(b) The liquidation account must be in an amount equal to the surplus of the converting company, exclusive of the principal amount of any surplus note, on the last day of the quarter preceding the date the conversion plan is adopted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.061. ALTERNATE CONVERSION PLAN. (a) The board of directors may adopt a conversion plan that does not rely in whole or in part on the issuance of nontransferable subscription rights to members to purchase stock of the resulting company if the commissioner determines that the plan:

(1) complies with this chapter;

(2) is fair and equitable; and

(3) permits the resulting company to satisfy the requirements in effect on the date of the determination for a certificate of authority applicable to a domestic stock insurance company.

(b) The conversion plan may:

(1) include the merger of a domestic mutual insurance company with a domestic or foreign stock insurance company;

(2) provide for issuing stock, cash, or other consideration to members instead of subscription rights;

(3) provide for the formation of a mutual holding company under Subchapter E; or

(4) establish another plan containing other provisions approved by the commissioner.

(c) The commissioner may retain, at the converting company's expense, a qualified expert who is not a member of the commissioner's staff to assist in reviewing whether the conversion plan meets the requirements for approval by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. ADOPTION OF CONVERSION PLAN

Sec. 826.101. PLAN INFORMATION FILED WITH COMMISSIONER; COMMISSIONER POWERS AND DUTIES. Not later than the 90th day after the date on which a converting company's board of directors adopts a conversion plan, the company shall file with the commissioner:

(1) a copy of the documents relating to the conversion plan, including the valuation required by Section 826.054(a);

(2) the form of notice required by Section 826.104;

(3) the form of proxy to be solicited from eligible members under Section 826.107(a);

(4) the form of notice required by Section 826.151 to persons whose policies are issued after adoption of the conversion plan but before the effective date of the conversion plan;

(5) the proposed amended or restated articles of incorporation of the resulting company;

(6) a statement regarding acquisition of control, if applicable, as required by Chapter 823; and

(7) any other information requested by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.102. APPROVAL OF PLAN BY COMMISSIONER. (a) The commissioner shall approve a conversion plan if the commissioner determines that:

(1) the plan complies with this chapter;

(2) the plan's method of allocating subscription rights or other value is fair and equitable; and

(3) the resulting company would satisfy the requirements applicable to a domestic stock insurance company for a certificate of authority on the date of the determination.

(b) Except as otherwise provided by this section, the commissioner shall approve or disapprove a conversion plan not later than the 60th day after the first day on which all the documents required under Section 826.101 are filed with the commissioner.

(c) The commissioner may extend the time for decision by an additional 30 days on written notice to the converting company. Except as provided under Subsection (e), the commissioner may not extend the time for decision beyond that 30-day period.

(d) The commissioner shall immediately give written notice to the converting company of the commissioner's decision and, if the commissioner disapproves the plan, a detailed statement of the reasons for the disapproval.

(e) The commissioner may retain, at the mutual insurance company's expense, a qualified expert who is not a member of the

commissioner's staff to assist the commissioner in reviewing the conversion plan and the valuation required under Section 826.054(a). If the commissioner retains a qualified expert under this subsection, the commissioner may extend the period for decision by an additional 60 days beyond the initial 60-day period.

(f) After giving written notice to the converting company and other interested persons, the commissioner may hold a hearing on whether the conversion plan complies with this chapter. The company and any other interested person have the right to appear at the hearing. Notice to interested persons who have not filed an appearance in the matter may be made through publication in the Texas Register.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.103. AMENDMENTS; WITHDRAWAL OF PLAN. Before a conversion plan takes effect, a converting company may amend or withdraw the plan by the affirmative vote of at least two-thirds of the members of its board of directors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.104. NOTICE TO ELIGIBLE MEMBERS; COMMENTS. (a) Not later than the 10th business day after the date of filing with the commissioner the documents required under Section 826.101, the converting company shall send to each eligible member a notice advising the member of:

(1) the adoption and filing of the conversion plan; and

(2) the member's right to comment on the plan to the commissioner and the converting company.

(b) The notice must include a description of the procedure to be used in making comments. An eligible member who elects to make comments must make the comments in writing not later than the 30th day after the date on which the notice is sent.

(c) Not later than the 60th day after the date of the commissioner's approval of the plan, the converting company shall send to each eligible member notice of the members' meeting to vote on the conversion plan. The notice must be sent to the member's last known address, as shown on the converting company's records, before

the 30th day preceding the date set for the meeting. The notice must:

(1) briefly but fairly describe the proposed conversion plan; and

(2) inform the member of the member's right to vote on the conversion plan.

(d) If the meeting to vote on the conversion plan is held during the converting company's annual meeting of policyholders, a combined meeting notice satisfies the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.105. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS. If the converting company in good faith substantially complies with the notice requirements of this chapter, the company's failure to send a member the required notice does not impair the validity of an action taken under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.106. INSOLVENT CONVERTING COMPANY; NOTICE REQUIREMENTS. If a converting company is insolvent or, in the judgment of the commissioner, is in hazardous financial condition, its board of directors, by a majority vote, may request in its submission to the commissioner a waiver of the requirements for notice to and approval of the proposed conversion by eligible members. The request must specify:

(1) the method and basis for the issuance of the resulting company's shares of its capital stock to an independent party in connection with an investment by the independent party in an amount sufficient to restore the resulting company to a sound financial condition; and

(2) that the conversion is to be accomplished without payment of consideration to past, present, or future policyholders if the commissioner determines that the value of the converting company is insufficient to justify that payment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.107. ELECTION; APPROVAL OF PLAN; ADOPTION OF AMENDED OR RESTATED ARTICLES OF INCORPORATION. (a) At a meeting convened to consider the conversion plan, an eligible member entitled to vote on the proposed conversion plan may vote in person or by proxy. The number of votes each eligible member may cast is determined by the converting company's bylaws. If the bylaws do not contain an applicable provision, each member may cast one vote. Before the eligible members may vote on approval of a conversion plan, the converting company must comply with Sections 826.101 and 826.102.

(b) At the meeting held to vote on the conversion plan, the eligible members shall also consider the adoption of amended or restated articles of incorporation.

(c) Adoption of the conversion plan or adoption of amended articles of incorporation requires the affirmative vote of at least two-thirds of the votes cast by eligible members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.108. FILING OF MINUTES, ARTICLES OF INCORPORATION, AND BYLAWS; EFFECTIVE DATE OF CONVERSION. (a) Not later than the 30th day after the date on which the eligible members approve the conversion plan, the converting company shall file with the commissioner:

(1) the minutes of the meeting at which the plan was approved; and

(2) the amended or restated articles of incorporation and bylaws of the resulting company.

(b) A conversion plan takes effect on the date that the amended or restated articles of incorporation are filed with the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.109. CONFLICT OF INTEREST. (a) Except as provided by a conversion plan approved by the commissioner or this section, a director, officer, agent, or employee of a converting company may not receive a fee, commission, or other consideration, other than that person's usual salary or compensation, for aiding, promoting, or assisting in a conversion under this chapter.

(b) This section does not prohibit the payment of reasonable fees and compensation to an attorney, accountant, or actuary for professional services performed by that person, even if the person is also a director or officer of the converting company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.110. LIMITATION ON ACTIONS. An action challenging the validity of or arising out of acts taken or proposed to be taken regarding a conversion plan under this chapter must be commenced not later than the 30th day after the effective date of the conversion plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. RIGHTS OF MEMBERS ON CONVERSION

Sec. 826.151. RIGHTS OF MEMBERS WHOSE POLICIES ARE ISSUED AFTER ADOPTION OF CONVERSION PLAN BUT BEFORE EFFECTIVE DATE. (a) On issuance of a policy after a conversion plan has been adopted by the board of directors but before the effective date of the conversion plan, the converting company shall send to each member to whom a policy is issued a written notice regarding the conversion plan.

(b) Except as provided by Subsection (d), a member of an accident and health insurance company entitled to notice under Subsection (a) is entitled to rescind the member's policy and receive a full refund of any amount paid for the policy not later than the 10th day after the date on which the notice is received.

(c) Except as provided by Subsection (d), each member insured under a property or casualty insurance policy is entitled to notice under Subsection (a) and shall be advised of the member's right to:

(1) cancel the policy; and

(2) receive a pro rata refund of unearned premiums.

(d) A member who has made or filed a claim under the insurance policy is not entitled to a refund under Subsection (b) or (c). A member who has exercised a right provided by Subsection (b) or (c) may not make or file a claim under the insurance policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.152. AMENDMENT OF POLICIES. A converting company, by endorsement or rider approved by the commissioner and sent to the policyholder, may simultaneously with or at any time after the adoption of a conversion plan amend an insurance policy in effect to terminate a right of the holder of the policy to share in the surplus or profits of the converting company. The amendment is void if the conversion plan does not take effect.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. CONVERSION THROUGH MUTUAL HOLDING COMPANY

Sec. 826.201. CONVERSION THROUGH CREATION OF HOLDING COMPANY. (a) A converting company, on approval by the commissioner, may reorganize by forming a holding company based on a mutual plan and continuing the corporate existence of the converting company as a stock insurance company.

(b) A mutual holding company is considered an insurer subject to this chapter and Chapter 883. A mutual holding company is automatically a party to an administrative proceeding under this code involving an insurance company that, as a result of a reorganization under this subchapter, is a subsidiary of the mutual holding company. In any proceeding involving the resulting company, the assets of the mutual holding company are considered assets of the resulting company for purposes of satisfying the claims of the resulting company's policyholders.

(c) A mutual holding company may not dissolve or liquidate without the approval of the commissioner.

(d) A mutual holding company may convert to a stock holding company under this chapter as if the mutual holding company were a mutual insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.202. COMMISSIONER POWERS AND DUTIES; APPROVAL. (a) The commissioner shall review the proposed plan of reorganization as an alternate conversion plan under Section 826.061. The commissioner may require as a condition of approval modifications of the proposed plan of reorganization that the commissioner determines necessary to protect the members' interests.

(b) The commissioner may retain a qualified expert as provided by Section 826.102(e).

(c) The commissioner has jurisdiction over a mutual holding company organized under this subchapter to ensure that member interests are protected.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.203. APPLICABILITY OF CERTAIN LAWS; INCORPORATION. A mutual holding company that results from the reorganization of a domestic mutual insurance company organized under Chapter 883 must be organized under Sections 883.051, 883.052, 883.054, and 883.056. The articles of incorporation, and any amendments to those articles, of the mutual holding company are subject to approval of the commissioner in the same manner as those of a mutual insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.204. MEMBERSHIP INTERESTS. (a) The membership interests of the policyholders of the resulting company become membership interests in the mutual holding company. Eligible members of the converting company become members of the mutual holding company in accordance with the articles of incorporation and bylaws of the mutual holding company.

(b) A membership interest in a mutual holding company does not constitute a security as defined by Section 4001.068, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.30, eff. January 1, 2022.

Sec. 826.205. CAPITAL STOCK HELD BY MUTUAL HOLDING COMPANY. (a) In this section:

(1) "Intermediate holding company" means a holding company that:

(A) is a subsidiary of a mutual holding company formed to reorganize a mutual insurance company; and

(B) directly or through a subsidiary intermediate holding company, owns the resulting company.

(2) "Majority of the voting shares of the capital stock" means shares of the capital stock of a company that carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the company on all matters submitted to a vote of the shareholders of the company.

(b) All of the initial shares of the capital stock of the resulting company shall be issued to the mutual holding company.

(c) The mutual holding company shall at all times own a majority of the voting shares of the capital stock of the resulting company or of an intermediate holding company established to hold the voting shares of the resulting company. The requirements of this subsection may be satisfied by indirect ownership through one or more intermediate holding companies in a corporate structure approved by the commissioner.

(d) The mutual holding company or intermediate holding company may not convey, transfer, assign, pledge, subject to a security interest or lien, encumber, or otherwise hypothecate or alienate the majority of the voting shares of the capital stock that is required to be owned under Subsection (c).

(e) A violation of Subsection (d) is void in inverse chronological order from the date of the conveyance or activity as to the shares necessary to constitute a majority of the voting shares of the capital stock.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 826.206. CONVERSION OF FOREIGN MUTUAL INSURANCE COMPANY. (a) On the approval of the commissioner, a foreign mutual insurance company may reorganize in compliance with the requirements of any law or regulation applicable to the foreign mutual insurance company by:

(1) transferring its members' membership interests into a mutual holding company formed under a procedure analogous to that described by this subchapter; and

(2) continuing the corporate existence of the reorganizing foreign mutual insurance company as a foreign stock insurance company

subsidiary of the mutual holding company.

(b) The reorganizing foreign mutual insurance company may remain a foreign company and may be admitted to do business in this state. A foreign mutual insurance company may also redomesticate in this state by complying with the applicable requirements of Chapter 983.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 827. WITHDRAWAL AND RESTRICTION PLANS

Sec. 827.001. DEFINITIONS. In this chapter:

(1) "Insurer" means an insurance company or other legal entity authorized to engage in the business of insurance in this state, including a reciprocal or interinsurance exchange, a Lloyd's plan, and a county mutual insurance company. The term includes an affiliate. The term does not include a farm mutual insurance company or an eligible surplus lines insurer regulated under Chapter 981.

(2) "Rating territory" means a rating territory established by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 10.01(a), eff. June 11, 2003.

Sec. 827.002. EXEMPTION. This chapter does not apply to a transfer of business from an insurer to a company that:

(1) is within the same insurance group as the insurer;

(2) is authorized to engage in the business of insurance in this state; and

(3) is not a reciprocal or interinsurance exchange, a Lloyd's plan, a county mutual insurance company, or a farm mutual insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 10.02, eff. June 1, 2003.

Sec. 827.003. WITHDRAWAL PLAN REQUIRED. An insurer shall file

with the commissioner a plan for orderly withdrawal if the insurer proposes to:

(1) reduce the insurer's total annual premium volume by 50 percent or more;

(2) reduce the insurer's annual premium by 75 percent or more in a line of insurance in this state; or

(3) reduce in this state, or in any applicable rating territory, the insurer's total annual premium volume in a line of personal automobile or residential property insurance by 50 percent or more.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 10.03, eff. June 11, 2003.

Sec. 827.004. PROVISIONS OF WITHDRAWAL PLAN. A withdrawal plan filed under Section 827.003 must:

(1) be constructed to protect the interests of the people of this state;

(2) indicate the dates on which the insurer intends to begin and to complete the plan; and

(3) provide for:

(A) meeting the insurer's contractual obligations;

(B) providing service to the insurer's policyholders and claimants in this state; and

(C) meeting any applicable statutory obligations, such as payment of assessments to the guaranty fund and participation in an assigned risk plan or joint underwriting arrangement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 827.005. APPROVAL OF WITHDRAWAL PLAN. (a) Except as provided by Subsection (b), the commissioner shall approve a withdrawal plan that adequately provides for meeting the requirements prescribed by Section 827.004(3).

(b) The commissioner may modify, restrict, or limit a withdrawal plan under this section as necessary if the commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks in this

state or to adequately protect the residents of this state and policyholders in this state. The commissioner may by order set the date on which the insurer's withdrawal begins.

(c) A withdrawal plan is deemed approved if the commissioner:

(1) does not hold a hearing on the plan before the 61st day after the date the plan is filed with the commissioner; or

(2) does not deny approval before the 61st day after the date a hearing on the plan is held.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 10.04, eff. June 11, 2003.

Sec. 827.006. RESUMPTION OF WRITING INSURANCE AFTER COMPLETE WITHDRAWAL. An insurer that withdraws from writing all lines of insurance in this state may not, without the approval of the commissioner, resume writing insurance in this state before the fifth anniversary of the date of withdrawal.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 827.007. PENALTIES. The commissioner may impose the civil penalties under Chapter 82 on an insurer that fails to obtain the commissioner's approval before the insurer:

(1) withdraws from writing a line of insurance in this state; or

(2) reduces the insurer's total annual premium volume by 75 percent or more in any year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 827.008. RESTRICTION PLAN. (a) Before an insurer, in response to a catastrophic natural event that occurred during the preceding six months, may restrict writing new business in a rating territory in a line of personal automobile or residential property insurance, the insurer must file a proposed restriction plan with the commissioner for the commissioner's review and approval.

(b) The commissioner may modify, restrict, or limit a

restriction plan under this section as necessary if the commissioner finds that a line of insurance subject to the restriction plan is not offered in this state in a quantity or manner to adequately cover the risks in this state or to adequately protect the residents of this state and policyholders in this state in light of the impact of the catastrophic natural event. The commissioner may by order set the date on which the insurer's restriction begins.

(c) A withdrawal plan must be filed and approved under Sections 827.003 and 827.004 if an insurer's decision not to accept new business in a line of personal automobile or residential property insurance results in a reduction of the insurer's total annual premium volume by 50 percent or more.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 10.05, eff. June 11, 2003.

Sec. 827.009. DEPOSIT OF SECURITIES. Under this chapter, the commissioner may require the deposit of securities in this state in trust in the name of the commissioner if the commissioner determines, after notice and hearing, that there is reasonable cause to conclude that the interests of the people of this state are best served by the deposit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 827.010. MORATORIUM. (a) The commissioner may impose a moratorium of not longer than two years on:

(1) the approval of withdrawal plans; or

(2) the implementation of plans to restrict the writing of new business described by Section 827.008.

(b) A moratorium under this section may be imposed on plans implemented after the commissioner has published notice of intention to impose a moratorium on plans under Subsection (a)(2).

(c) The commissioner may annually renew a moratorium imposed under this section.

(d) To impose or renew a moratorium under this section, the commissioner must determine, after notice and hearing, that a catastrophic event has occurred and that as a result of that event a

particular line of insurance is not reasonably expected to be available to a substantial number of policyholders or potential policyholders in this state or, in the case of lines of personal automobile or residential property insurance, in a rating territory.

(e) The provisions of Chapter 2001, Government Code, relating to contested cases apply to the notice and hearing.

(f) The commissioner by rule shall establish reasonable criteria for applying the standards for determining whether to impose a moratorium under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 10.06(a), eff. June 11, 2003.

Sec. 827.011. RULES. The commissioner shall adopt rules as necessary to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 828. PURCHASE OF STOCK FOR TOTAL ASSUMPTION REINSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 828.001. AUTHORITY TO PURCHASE STOCK FOR TOTAL ASSUMPTION REINSURANCE. This code does not affect the right of a life insurance company organized or operating under Chapter 841, 882, or 982 to purchase or contract to purchase all or part of the outstanding shares of another domestic or foreign life insurance company that engages in a similar line of business in order to:

(1) reinsure all of the other company's business;

(2) assume all of the other company's liabilities; and

(3) take over all of the other company's assets.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 828.002. EFFECT ON ANTITRUST LAWS. This chapter does not affect in any manner the antitrust laws of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 828.003. INVESTMENTS OF REINSURED COMPANY. The investments of a company reinsured under this chapter are subject to Section 824.102 as if the company had been merged or consolidated.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. EXCEPTION TO INVESTMENT LIMITATION

Sec. 828.051. EXCEPTION TO LIMITATION ON PURCHASING SHARES OF OTHER COMPANY. Subchapters C and D, Chapter 425, do not apply to a purchase or contract described by Section 828.001 if all requirements of this subchapter are met.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.015, eff. April 1, 2009.

Sec. 828.052. RESOLUTION OF INTENTION TO REINSURE. The intention to reinsure must be evidenced by a resolution adopted by the board of directors of the purchasing company on or before the purchase of the shares or the execution of a contract to purchase the shares.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 828.053. MINIMUM STOCK ACQUISITION. The purchasing company shall obtain or seek to obtain at least the number of shares of the other insurance company necessary to vote an approval of the total assumption reinsurance agreement under the laws of the state in which the other insurance company is organized by one or more of the following means:

(1) initially purchasing or contracting to purchase the shares; or

(2) offering to purchase, making a tender offer for, requesting or inviting tenders of, or otherwise seeking to acquire the shares in the open market or otherwise.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 828.054. APPROVAL REQUIRED. A purchase, offer to purchase, tender offer, request to purchase, or invitation to purchase shares in excess of the limits imposed under Subchapter C or D, Chapter 425, may not be made until it is filed with and approved by the commissioner in accordance with Chapter 823.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.016, eff. April 1, 2009.

Sec. 828.055. RESTRICTIONS ON REINSURED COMPANY. Following the earlier of the date of the contract to purchase the shares or the date of the commissioner's approval of the purchase, offer to purchase, tender offer, request to purchase, or invitation to purchase the shares, the company the shares of which are being purchased may not purchase or contract to purchase any of its own shares as treasury shares, issue or contract to issue any of its authorized but unissued shares, or make any investments in or loans to the purchasing company or an affiliate of the purchasing company unless the investment or loan is otherwise authorized and approved in advance by the commissioner under Chapter 823.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 828.056. REQUIRED EFFECTIVE DATE OF REINSURANCE AGREEMENT; EFFECT OF FAILURE TO MEET REQUIRED EFFECTIVE DATE. (a) The reinsurance agreement must take effect on or before December 31 of the second year after the earlier of the year in which the initial purchase of shares is made or the year in which the initial contract to purchase is executed unless the commissioner for good cause shown extends that period.

(b) If the reinsurance agreement does not take effect within the period finally determined and extended by the commissioner, the purchasing company shall sell or otherwise dispose of the purchased shares that exceed the investment limitations imposed under Subchapter C or D, Chapter 425, within six months of the final

effective date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.017, eff. April 1, 2009.

Sec. 828.057. PROHIBITION ON USE OF PURCHASING COMPANY'S CAPITAL, SURPLUS, OR RESERVES. Amounts actually paid by the purchasing company for the purchase of shares acquired or obtained under this subchapter may not include the minimum capital, minimum surplus, and policy reserves required by law for the purchasing company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 829. CONVERSION OF RECIPROCAL OR INTERINSURANCE EXCHANGE TO STOCK COMPANY THROUGH CREATION OF A MUTUAL HOLDING COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 829.001. DEFINITIONS. In this chapter:

(1) "Attorney in fact" has the meaning assigned by Section 942.001.

(2) "Board of directors" means, as to an exchange, the board of directors, board of trustees, subscriber advisory committee, or other governing body appointed or elected by the subscribers of an exchange.

(3) "Conversion plan" means a plan adopted under this chapter to convert an exchange to a stock insurance company and form a mutual holding company to hold, directly or indirectly, shares of the resulting company.

(4) "Converting exchange" means an exchange that is converting to a stock insurance company under this chapter.

(5) "Eligible member" means a member of a converting exchange whose policy is in force on the date that the converting exchange's board of directors adopts a conversion plan.

(6) "Effective date" means the effective date of a conversion plan in accordance with Section 829.108.

(7) "Exchange" has the meaning assigned by Section 942.001.

(8) "Intermediate holding company" means a holding company

organized under the laws of this or another state that:

(A) is a subsidiary of a mutual holding company formed to reorganize an exchange; and

(B) directly or through a subsidiary intermediate holding company, owns at least a majority of the voting shares of the capital stock of the resulting company.

(9) "Member" means, as to an exchange, a subscriber of an exchange.

(10) "Mutual holding company" means a holding company based on a mutual plan and formed in connection with the conversion of an exchange to a stock insurance company under this chapter.

(11) "Participating policy" means a policy issued by an exchange that grants the policyholder the right to receive policy dividends if declared by the exchange.

(12) "Resulting company" means a stock insurance company resulting from the conversion of an exchange under this chapter.

(13) "Subscriber" has the meaning assigned by Section 942.001.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.002. AUTHORITY TO CONVERT THROUGH CREATION OF A MUTUAL HOLDING COMPANY. (a) An exchange may reorganize by converting to a stock insurance company and forming a mutual holding company to hold, directly or indirectly, shares of the resulting company or intermediate holding company in accordance with this chapter.

(b) A converting exchange may not engage in the business of insurance as a stock insurance company until it complies with the requirements of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.003. RIGHTS AND PRIVILEGES OF RESULTING COMPANY; LAWS APPLICABLE. Except as provided by this chapter, the resulting company:

(1) may exercise only the rights and privileges of a stock insurance company; and

(2) is subject to:

(A) all of the requirements and rules imposed on stock insurance companies organized under this code; and

(B) the laws of this state relating to the regulation or supervision of insurance companies.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.004. MUTUAL HOLDING COMPANY; LAWS APPLICABLE. (a) Except as provided by this chapter, a mutual holding company is considered an insurer subject to this chapter and Chapter 883.

(b) The commissioner has jurisdiction over a mutual holding company organized under this chapter to ensure that member interests are protected.

(c) The mutual holding company is automatically a party to a delinquency proceeding under Subtitle C, Title 4, involving an insurance company that, as a result of a reorganization under this chapter, is a direct or indirect subsidiary of the mutual holding company. In any proceeding described by this subsection involving the resulting company, the assets of the mutual holding company are considered assets of the resulting company for purposes of satisfying the claims of the resulting company's policyholders.

(d) A mutual holding company that results from a reorganization of an exchange must be organized under Sections 883.051, 883.052, 883.054, and 883.056. The articles of incorporation of the mutual holding company, and any amendments to those articles, are subject to approval of the commissioner in the same manner as those of a mutual insurance company.

(e) The mutual holding company may not dissolve or liquidate without the approval of the commissioner.

(f) A mutual holding company formed under a conversion plan is not subject to:

(1) Article 2.11B, Texas Non-Profit Corporation Act (Article 1396-2.11B, Vernon's Texas Civil Statutes);

(2) Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes);

(3) Section C, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, Vernon's Texas Civil Statutes); or

(4) Sections 22.158, 22.351, and 22.353(b), Business Organizations Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.005. CONFLICT OF INTEREST. (a) Except as provided by a conversion plan approved by the commissioner or by this section, the following individuals may not receive a fee, commission, stock distribution, stock subscription rights, or other consideration, other than that individual's usual salary or compensation for aiding, promoting, assisting, or participating in a conversion under this chapter:

(1) a director, officer, agent, or employee of a converting exchange or the exchange's attorney in fact; or

(2) the attorney in fact if the attorney in fact is an individual.

(b) Subsection (a) does not apply to consideration received in the individual's capacity as a member.

(c) This section does not prohibit the payment of reasonable fees and compensation to an attorney, accountant, or actuary for professional services performed by that person, without regard to whether the person is also a director or officer of the converting exchange or its attorney in fact.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.006. LIMITATION ON ACTIONS. (a) Except as provided by Subsection (b), an action challenging the validity of or arising out of acts taken or proposed to be taken regarding a conversion plan under this chapter must be commenced not later than the 30th day after the date the conversion plan is approved by the commissioner.

(b) An action challenging the validity of or arising out of acts taken or proposed to be taken regarding a conversion plan that contemplates a public offering of debt or equity registered under the federal Securities Act of 1933 (15 U.S.C. Section 77a et seq.), or a similar law of a foreign jurisdiction, must be commenced not later than the 60th day after the date the conversion plan is approved by

the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.007. SALE OF SECURITIES. (a) A sale, issuance, or offering of securities under this chapter is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code).

(b) An officer, director, or employee of an exchange, an intermediate holding company, a mutual holding company, or a resulting company who participates in a conversion under this chapter is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code). A person may not receive compensation, other than that person's usual salary or compensation, for services performed under the exemption provided by this subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.31, eff. January 1, 2022.

SUBCHAPTER B. MUTUAL HOLDING COMPANY STRUCTURE

Sec. 829.051. CAPITAL STOCK HELD BY MUTUAL HOLDING COMPANY. (a) In this section, "majority of the voting shares of the capital stock" means shares of the capital stock of a company that carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the company on all matters submitted to a vote of the shareholders of the company.

(b) All of the initial shares of the capital stock of the resulting company shall be issued to the mutual holding company or to an intermediate holding company.

(c) The mutual holding company shall at all times own a majority of the voting shares of the capital stock of the resulting company or of an intermediate holding company. The requirements of this subsection may be satisfied by indirect ownership through one or more intermediate holding companies in a corporate structure approved

by the commissioner.

(d) Except with the consent of the commissioner, the mutual holding company or intermediate holding company may not convey, transfer, assign, pledge, subject to a security interest or lien, encumber, or otherwise hypothecate or alienate the majority of the voting shares of the capital stock that is required to be owned under Subsection (c).

(e) An act of the mutual holding company or intermediate holding company that violates Subsection (d) is void in inverse chronological order from the date of the conveyance or activity as to the shares necessary to constitute a majority of the voting shares of the capital stock.

(f) The remaining minority portion of the voting shares of capital stock of the resulting company, or of an intermediate holding company, may not be assigned, transferred, or pledged to any officer, director or employee of the converting exchange, or persons acting in concert with such persons, without also offering a similar opportunity to participate to all eligible members as required by Section 829.053(g).

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.052. LIMITATION ON ACQUISITION OF CAPITAL STOCK. (a) The conversion plan must provide that a person or group of persons acting in concert, other than the mutual holding company or an intermediate holding company, may not acquire, in a public or private offering or through an exercise of stock subscription rights, more than 10 percent of the capital stock of the resulting company unless the acquisition of the stock or stock subscription rights is approved in advance by the commissioner.

(b) Subsection (a) does not apply to an entity that purchases and retains at all times a majority of the voting shares of the capital stock of the resulting company as part of the conversion plan approved by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.053. DIRECTORS AND OFFICERS. (a) Except as otherwise provided by this section, the conversion plan must provide that a director or officer of the converting exchange, or a person acting in concert with the director or officer, may not acquire, without the permission of the commissioner, any shares of the capital stock of the resulting company, or the shares of the capital stock of another corporation that is participating in the conversion plan, before the third anniversary of the effective date of the conversion. This subsection does not prohibit the director or officer from:

(1) acquiring capital stock through a broker-dealer;

(2) making purchases through the exercise of stock subscription rights received under the conversion plan; or

(3) participating in a stock benefit plan permitted by Section 829.054 or approved by the eligible members under Section 829.107.

(b) A conversion plan may provide that the directors and officers of the converting exchange may receive, without payment, nontransferable subscription rights to purchase shares of the capital stock of the resulting company or the shares of the capital stock of another corporation that is participating in the conversion plan.

(c) The aggregate number of shares that may be purchased by directors and officers under Subsection (b) may not exceed:

(1) 35 percent of the total number of shares to be issued for the resulting company if the total assets of the converting exchange are less than $50 million;

(2) 25 percent of the total number of shares to be issued for the resulting company if the total assets of the converting exchange are more than $500 million;

(3) five percent of the total number of shares to be issued for the resulting company if the total assets of the converting exchange are more than $1 billion; or

(4) one percent of the total number of shares to be issued for the resulting company if the total assets of the converting exchange are more than $10 billion.

(d) For a converting exchange with total assets between $50 million and $500 million, inclusive, the maximum percentage of the total number of shares that may be purchased shall be interpolated from amounts provided under Subsection (c).

(e) A conversion plan must provide that a director or officer of the converting exchange may not sell stock purchased under the

conversion plan before the first anniversary of the effective date of the conversion.

(f) Notwithstanding Subsection (e), a conversion plan may provide for the purchase or redemption of stock in the event that a director or officer no longer serves as a director or officer of, or no longer is associated with, the resulting company during the period described by Subsection (e).

(g) If, as part of the conversion, any director or officer of the converting exchange, the mutual holding company, or an intermediate holding company receives more than one percent of the shares of the capital stock of the resulting company, or other valuable consideration, which is paid from the surplus of the converting exchange, each eligible member also is entitled to receive an amount of the converting exchange's surplus on hand on the effective date of the conversion computed in the same manner as the amount received by the director or officer, or as otherwise provided in the conversion plan approved by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.054. SUBSCRIPTION RIGHTS; TAX-QUALIFIED EMPLOYEE BENEFIT PLAN. The conversion plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase not more than 10 percent of the capital stock of the resulting company.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

SUBCHAPTER C. PLAN ADOPTION AND APPROVAL

Sec. 829.101. PLAN ADOPTION. (a) To convert under this chapter an exchange must adopt a conversion plan consistent with this chapter by the affirmative vote of at least two-thirds of the members of its board of directors or, if the exchange does not have a board of directors, by approval of the attorney in fact. The proposed articles of incorporation of the resulting company and the mutual holding company must be exhibits to the conversion plan.

(b) For a conversion plan to take effect:

(1) the commissioner must approve the conversion plan; and

(2) the eligible members must approve the conversion plan and adopt the articles of incorporation of the resulting company and the mutual holding company.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.102. AMENDMENTS; WITHDRAWAL OF PLAN. Before a conversion plan takes effect, a converting exchange may amend or withdraw the plan by the affirmative vote of at least two-thirds of the members of its board of directors or, if the exchange does not have a board of directors, by approval of the attorney in fact. The written consent of the commissioner is required for any amendment to a conversion plan adopted after the commissioner has approved the plan under Section 829.106.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.103. FILING OF PLAN AND RELATED DOCUMENTS WITH COMMISSIONER; COMMISSIONER'S POWERS AND DUTIES. (a) Not later than the 90th day after the date on which a converting exchange's board of directors adopts a conversion plan, the converting exchange shall file with the commissioner:

(1) a copy of the conversion plan;

(2) the form of notices required by Section 829.104;

(3) the form of proxy to be solicited from eligible members under Section 829.107(a);

(4) the form of notice required by Section 829.153 to persons whose policies are issued after adoption of the conversion plan but before the effective date of the conversion plan; and

(5) the proposed articles of incorporation of the resulting company and the mutual holding company.

(b) The converting exchange shall promptly provide any other information requested by the commissioner that the commissioner considers necessary to consider the conversion plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff.

June 15, 2007.

Sec. 829.104. NOTICE TO ELIGIBLE MEMBERS; COMMENTS. (a) The converting exchange shall give eligible members at least 30 days' written notice of the members' meeting to vote on the conversion plan and advising of the members' right to comment on the plan to the commissioner and the converting exchange, including a description of the procedure to be used in making comments. Notice to the members of the proposed vote on the conversion plan must provide clear and conspicuous language apart from other meeting materials and provide a disclosure statement of the distribution of surplus or stock to directors and officers of the converting exchange, if any.

(b) If the commissioner determines to hold a hearing on the plan, the commissioner must approve the notice of hearing and notify the converting exchange not later than the 45th day following the first day on which all the documents required under Section 829.103 are filed with the commissioner. The converting exchange shall send to eligible members the commissioner's notice of the hearing at least 30 days before the date set for the hearing. The commissioner must approve the content and print layout of the hearing notice before the converting exchange sends notice of the hearing to eligible members. Notice of the hearing may be made through publication in the Texas Register.

(c) The notices required by Subsections (a) and (b) may be combined in a single mailing. The notice or notices must be sent to the member's last known address, as shown on the converting exchange's records. The notice of the members' meeting must:

(1) describe the proposed conversion plan; and

(2) inform the member of the member's right to vote on the conversion plan.

(d) If the notice of the meeting to vote on the conversion plan is combined with a notice of the converting exchange's annual meeting of members, the notice of the proposed vote on the conversion plan must be clear and conspicuous and set apart from other meeting materials. A notice that is approved in advance by the commissioner is deemed to be in full compliance with the requirements of this subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff.

June 15, 2007.

Sec. 829.105. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS. If the converting exchange in good faith substantially complies with the notice requirements of this chapter, the converting exchange's failure to send a member the required notice does not impair the validity of an action taken under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.106. APPROVAL OF PLAN BY COMMISSIONER. (a) The commissioner shall approve a conversion plan if the commissioner determines that:

(1) the plan complies with this chapter;

(2) the plan's method of allocating stock subscription rights, stock transfers, or other value, if any, is fair and equitable; and

(3) the resulting company would satisfy the requirements applicable to a domestic stock insurance company for a certificate of authority on the date of the determination.

(b) Except as otherwise provided by this section, the commissioner shall approve or disapprove a conversion plan not later than the 90th day after the first day on which all the documents required under Section 829.103 are filed with the commissioner.

(c) The commissioner may extend the time for decision by an additional 30 days on written notice to the converting exchange. Except as provided under Subsection (e) or (f), the commissioner may not extend the time for decision beyond that 30-day period.

(d) The commissioner shall immediately give written notice to the converting exchange of the commissioner's decision and, if the commissioner disapproves the plan, a detailed statement of the reasons for the disapproval.

(e) The commissioner may retain, at the converting exchange's expense, a qualified expert who is not a member of the commissioner's staff to assist the commissioner in reviewing whether the conversion plan meets the requirements for approval by the commissioner or the value of the distribution of surplus of the resulting company to the

officers and directors of the converting exchange, if any. If the commissioner retains a qualified expert under this subsection, the commissioner may extend the period for decision by an additional 90 days beyond the initial 90-day period specified in Subsection (b).

(f) If the conversion plan contemplates a public offering of debt or equity registered under the federal Securities Act of 1933 (15 U.S.C. Section 77a et seq.), or a similar law of a foreign jurisdiction, the commissioner may extend the period of time to approve the conversion plan by an additional 180 days beyond the initial 90-day period specified in Subsection (b).

(g) After giving written notice to the converting exchange, the commissioner may hold a hearing on whether the conversion plan complies with this chapter. The converting exchange has the right to appear at the hearing. Other interested persons have the right to attend the hearing and comment on the conversion plan. Notice of the hearing may be made through publication in the Texas Register in accordance with Section 829.104(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.107. APPROVAL OF PLAN BY ELIGIBLE MEMBERS. (a) After notice that complies with this chapter, the converting exchange may convene a meeting to consider the conversion plan, and any eligible member entitled to vote on the proposed conversion plan may vote in person or by proxy at the meeting. Except as otherwise provided in the bylaws of the converting exchange, each eligible member may cast one vote.

(b) Adoption of the conversion plan requires the affirmative vote of at least two-thirds of the votes cast by eligible members.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.108. FILING OF MINUTES, ARTICLES OF INCORPORATION, AND BYLAWS; EFFECTIVE DATE OF CONVERSION. (a) The converting exchange shall file with the commissioner:

(1) the minutes of the meeting at which the plan was approved; and

(2) the articles of incorporation and bylaws of the resulting company and the mutual holding company.

(b) The converting exchange shall make the filing required by Subsection (a) not later than the 30th day after the later of:

(1) the date on which the eligible members approve the conversion plan; or

(2) the date on which the commissioner approves the conversion plan.

(c) The conversion plan approved by the commissioner takes effect on the date specified in the articles of incorporation of the resulting company and the mutual holding company.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

SUBCHAPTER D. EFFECT OF PLAN; RIGHTS OF MEMBERS

Sec. 829.151. CORPORATE EXISTENCE. (a) On the effective date:

(1) the legal existence of the converting exchange continues in the resulting company;

(2) all assets, rights, franchises, and interests of the converting exchange in and to property and any accompanying thing in action are vested in the resulting company without a deed or transfer;

(3) the resulting company assumes all the obligations and liabilities of the converting exchange; and

(4) the power of attorney or other appropriate authorization granting the attorney in fact the authority to act for the subscribers of the converting exchange is terminated.

(b) Except as otherwise specified by the conversion plan:

(1) the directors and officers of the converting exchange serving on the effective date serve as directors and officers of the resulting company until new directors and officers are elected under the articles of incorporation and bylaws of the resulting company; and

(2) the directors of the converting exchange serving on the effective date serve as directors of the mutual holding company until new directors are elected under the articles of incorporation and bylaws of the mutual holding company.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff.

June 15, 2007.

Sec. 829.152. MEMBERSHIP INTERESTS. (a) The membership interests of the policyholders of the resulting company become membership interests in the mutual holding company. Members of the converting exchange become members of the mutual holding company in accordance with the articles of incorporation and bylaws of the mutual holding company.

(b) A membership interest in a mutual holding company does not constitute a security as defined by Section 4001.068, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.32, eff. January 1, 2022.

Sec. 829.153. RIGHTS OF MEMBERS WHOSE POLICIES ARE ISSUED AFTER ADOPTION OF CONVERSION PLAN BUT BEFORE EFFECTIVE DATE. (a) On issuance of a policy after a conversion plan has been adopted by the board of directors but before the effective date of the conversion plan, the converting exchange shall send to each member to whom a policy is issued a written notice regarding the conversion plan.

(b) Except as provided by Subsection (c), each member insured under a property or casualty insurance policy is entitled to notice under Subsection (a) and shall be advised in a clear and conspicuous manner of the member's right to:

(1) cancel the policy; and

(2) receive a pro rata refund of unearned premiums.

(c) A member who has made or filed a claim under the insurance policy is not entitled to a refund under Subsection (b). A member who has exercised a right provided by Subsection (b) may not make or file a claim under the insurance policy.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

Sec. 829.154. EFFECT OF CONVERSION ON POLICIES; SUBSCRIBER ACCOUNTS. (a) Each policy in effect on the effective date remains in effect under the terms of that policy, except that the following rights, to the extent they existed in the converting exchange in favor of policyholders or members, are extinguished on the effective date:

(1) any membership and voting rights;

(2) except as provided by Subsection (b) or in the conversion plan approved by the commissioner, a right to share in the surplus or profits of the converting exchange; and

(3) any assessment provisions.

(b) The holder of a participating policy in effect on the effective date of the conversion continues to have a right to receive dividends as provided by the participating policy.

(c) On the renewal date of a participating policy, the resulting company may issue to the insured a nonparticipating policy as a substitute for the participating policy.

(d) All the costs and expenses connected with a conversion plan shall be paid or reimbursed by the converting exchange or the resulting company.

(e) If a converting exchange maintains subscriber accounts as surplus, the subscriber accounts shall continue as surplus in the resulting company, unless otherwise provided in a conversion plan approved by the commissioner. Subject to Subsection (f), the balances of the subscriber accounts are payable to the members to the extent and in the manner as is provided in the conversion plan.

(f) The board of directors of the resulting company may reduce the balances of the subscriber accounts without payment to members of the mutual holding company who were members of the converting exchange if the board of directors of the resulting company determines in the board's discretion that the amounts are necessary to support the operations of the resulting company. The board of directors of the resulting company may not, without the approval of the commissioner, reduce the balance of a subscriber account under this subsection before the third anniversary of the effective date.

Added by Acts 2007, 80th Leg., R.S., Ch. 412 (S.B. 1056), Sec. 1, eff. June 15, 2007.

CHAPTER 830. OWN RISK AND SOLVENCY ASSESSMENT

Sec. 830.001. APPLICABILITY AND PURPOSE. (a) This chapter applies to each domestic insurer unless exempt under Section 830.006.

(b) The purpose of this chapter is to provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instructions for filing an own risk and solvency assessment summary report with the commissioner.

(c) The own risk and solvency assessment summary report will contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information will include proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. The summary report is a confidential document filed with the commissioner, and the commissioner may share the summary report only as stated in this chapter in order to assist the commissioner in the performance of the commissioner's duties. An own risk and solvency assessment summary report is not subject to public disclosure in any event.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.002. DEFINITIONS. In this chapter:

(1) "Guidance manual" means the version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners that is in effect at the time a summary report is provided. A change in the guidance manual becomes effective on the January 1 following the calendar year in which the changes are adopted by the National Association of Insurance Commissioners.

(2) "Insurance group" means the insurers and affiliates included within an insurance holding company system as described by Section 823.006.

(3) "Insurer" has the meaning assigned by Section 823.002(6).

(4) "Own risk and solvency assessment" means a confidential internal assessment, appropriate to the nature, scale, and complexity

of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks.

(5) "Summary report" means a confidential, high-level summary of an insurer's or insurance group's own risk and solvency assessment.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.003. RISK MANAGEMENT FRAMEWORK. An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on the insurer's material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member maintains a risk management framework applicable to the operations of the insurer.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.004. OWN RISK AND SOLVENCY ASSESSMENT REQUIREMENT. (a) Subject to Section 830.006, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct, consistent with a process comparable to the guidance manual, an own risk and solvency assessment, appropriate to the nature, scale, and complexity of the insurer or insurance group, of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks.

(b) The insurer, or the insurance group of which the insurer is a member, shall conduct the own risk and solvency assessment described by Subsection (a):

(1) annually; and

(2) at any other time there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff.

May 19, 2015.

Sec. 830.005. SUMMARY REPORT REQUIRED. (a) On the commissioner's request, an insurer shall submit to the commissioner a summary report or a combination of reports that together contain the information described in the guidance manual. The commissioner may not make a request under this subsection more than once each year.

(b) Without regard to whether the commissioner has made a request under Subsection (a), if the insurer is a member of an insurance group, the insurer shall submit to the commissioner the reports required by Subsection (a) if the commissioner is the lead state commissioner of the insurance group.

(c) In determining the lead state commissioner for purposes of this section, the commissioner shall consider the procedures adopted by the National Association of Insurance Commissioners.

(d) The reports must include a signature of the insurer's or insurance group's chief risk officer or other executive responsible for the oversight of the insurer's enterprise risk management process attesting to the best of the officer's or executive's belief and knowledge that:

(1) the insurer applies the enterprise risk management process described in the summary report; and

(2) a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board of directors.

(e) An insurer may comply with Subsection (a) or (b) by providing the most recent and substantially similar report that the insurer or another member of an insurance group of which the insurer is a member provided to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the guidance manual. A report in a language other than English must be accompanied by a translation of that report into the English language.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.006. EXEMPTION. (a) An insurer is exempt from the requirements of this chapter if:

(1) the insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $500 million; and

(2) the insurance group of which the insurer is a member has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1 billion.

(b) If an insurer qualifies for exemption under Subsection (a)(1), but the insurance group of which the insurer is a member does not qualify for exemption under Subsection (a)(2), then the summary report required under Section 830.005 must include every insurer within the insurance group.

(c) An insurer may satisfy the requirement under Subsection (b) by submitting more than one summary report for any combination of insurers if the combination of reports includes each insurer within the insurance group.

(d) If an insurer does not qualify for exemption under Subsection (a)(1), but the insurance group of which it is a member qualifies for exemption under Subsection (a)(2), then the insurer must submit a summary report under Section 830.005 that is applicable to that insurer.

(e) An insurer that does not qualify for exemption under Subsection (a) may apply to the commissioner for a waiver from the requirements of this chapter based on unique circumstances. In deciding whether to grant the insurer's request for waiver, the commissioner may consider the type and volume of business written, the ownership and organizational structure, and any other factor the commissioner considers relevant to the insurer or insurance group of which the insurer is a member. If the insurer is part of an insurance group with insurers domiciled in more than one state, the commissioner shall coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

(f) Notwithstanding the exemptions stated in this section, the commissioner may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment, and file a

summary report if:

(1) there are unique circumstances, including the type and volume of business written, the ownership and organizational structure, federal agency requests, and international supervisor requests;

(2) the insurer has risk-based capital for a company action level event as set forth in department rules;

(3) the insurer meets one or more of the standards of an insurer considered to be in hazardous financial condition under Chapter 404 or department rule; or

(4) the insurer otherwise exhibits qualities of a troubled insurer as determined by the commissioner.

(g) If an insurer that qualifies for an exemption under Subsection (a) subsequently ceases to qualify for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer must comply with the requirements of this chapter not later than December 31 of the calendar year following the calendar year the threshold is exceeded.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.007. CONTENTS OF SUMMARY REPORT. (a) An insurer shall prepare a summary report in accordance with the guidance manual and subject to the requirements of Subsection (b). An insurer shall maintain documentation and supporting information and shall make the documentation and supporting information available on examination or on request of the commissioner.

(b) When reviewing the summary report or making requests for additional information, the department shall use procedures similar to the procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.008. CONFIDENTIALITY. (a) Documents, materials, or

other information, including a summary report, in the possession or control of the department that is obtained by, created by, or disclosed to the commissioner or any other person under this chapter, including documents, materials, and other information shared or received under Subsection (e), and documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners or third-party consultant under this chapter, are confidential and privileged and not subject to:

(1) Chapter 552, Government Code;

(2) a response to subpoena; or

(3) discovery or admissibility in evidence in any civil action.

(b) Documents, materials, or other information, including a summary report prepared under this chapter and additional information submitted under Section 830.007, in the possession or control of the department that is obtained by, created by, or disclosed to the commissioner or any other person under this chapter is recognized by this state as being proprietary and to contain trade secrets.

(c) The commissioner may use the documents, materials, or other information described in this section to further any regulatory or legal action brought as part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer.

(d) The commissioner and any other person who receives own risk and solvency assessment-related information under this chapter, in an examination, or otherwise under any other law may not testify or be required to testify in any private civil action concerning any documents, materials, or information subject to Subsection (a) or (b).

(e) In order to assist in the performance of the commissioner's regulatory duties, the commissioner may, on request, share documents, materials, or other own risk and solvency assessment-related information, including confidential and privileged documents, materials, or information subject to Subsection (a) or (b) or confidential or privileged documents, materials, or information subject to Chapter 401, 404, or 823, as necessary, with:

(1) other state, federal, and international financial regulatory agencies or insurance supervisors;

(2) members of a supervisory college described in Section

823.0145;

(3) the National Association of Insurance Commissioners; or

(4) a third-party consultant designated by the commissioner.

(f) Before the commissioner may share information under this section, the recipient of the information shall:

(1) agree in writing to maintain the confidential and privileged status of the documents, materials, or other information shared under this section; and

(2) verify in writing the recipient's legal authority to maintain the confidential and privileged status of that information.

(g) The commissioner may receive documents, materials, or other own risk and solvency assessment-related information or any other relevant information, including otherwise confidential and privileged documents, materials, or information and proprietary and trade-secret information or documents, from:

(1) a regulatory official of a foreign or domestic jurisdiction, including a member of a supervisory college described in Section 823.0145; and

(2) the National Association of Insurance Commissioners.

(h) The commissioner shall maintain as confidential or privileged any documents, materials, or information received under Subsection (g) with notice and understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.009. AGREEMENT CONCERNING CONFIDENTIAL AND PRIVILEGED INFORMATION. (a) The commissioner shall enter into a written agreement with the National Association of Insurance Commissioners or a third-party consultant that governs the sharing and use of information provided under this chapter. The agreement must comply with and contain all the requirements listed in this section.

(b) The agreement must specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or third-party consultant under this chapter, including procedures and protocols for

sharing by the National Association of Insurance Commissioners with other state regulators from states in which the insurance group has domiciled insurers.

(c) The agreement must provide that the recipient:

(1) agrees in writing to maintain the confidential and privileged status of the own risk and solvency assessment-related documents, materials, or other information; and

(2) has verified in writing the legal authority to maintain the confidential and privileged status of the information.

(d) The agreement must specify that ownership of information shared with the National Association of Insurance Commissioners or third-party consultant under this chapter remains with the commissioner and that the National Association of Insurance Commissioners' or third-party consultant's use of the information is subject to the direction of the commissioner.

(e) The agreement must prohibit the National Association of Insurance Commissioners or third-party consultant from storing the information shared under this chapter in a permanent database after the underlying analysis is completed.

(f) The agreement must require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners or third-party consultant under this chapter is subject to a request or subpoena to the National Association of Insurance Commissioners or third-party consultant for disclosure or production.

(g) The agreement must require the National Association of Insurance Commissioners or third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or third-party consultant under this chapter.

(h) The agreement must provide for the insurer's written consent in the case of an agreement involving a third-party consultant.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.010. AUTHORITY OF COMMISSIONER NOT AFFECTED. The commissioner's sharing of information and documents under this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.011. PRIVILEGE AND CONFIDENTIALITY NOT WAIVED. A waiver of an applicable privilege or claim of confidentiality in a document, proprietary and trade-secret materials, or other own risk and solvency assessment-related information does not occur as a result of disclosure of the document, materials, or other information to the commissioner under this chapter or as a result of sharing as authorized by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

Sec. 830.012. ADMINISTRATIVE PENALTY. (a) An insurer that, without good cause, fails to timely file the summary report as required by this chapter commits a violation subject to an administrative penalty under Chapter 84.

(b) Each day the violation continues is a separate violation for purposes of this section.

(c) The commissioner may reduce the amount of the penalty assessed under this section if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Added by Acts 2015, 84th Leg., R.S., Ch. 39 (S.B. 655), Sec. 1, eff. May 19, 2015.

CHAPTER 831. CORPORATE GOVERNANCE ANNUAL DISCLOSURE

Sec. 831.0001. APPLICABILITY AND PURPOSE. (a) The purpose of this chapter is to promote the public interest by:

(1) requiring annual disclosure of an insurer or insurance group's corporate governance structure, policies, and practices to permit the commissioner to gain and maintain an understanding of the insurer's corporate governance framework; and

(2) providing for the confidential treatment of the corporate governance annual disclosure and related information as the disclosure and related information will contain confidential and sensitive information related to an insurer or insurance group's internal operations and proprietary and trade-secret information which, if made public, could potentially cause the insurer or insurance group competitive harm or disadvantage.

(b) This chapter may not be construed to prescribe or impose corporate governance standards and internal procedures beyond that which is required under applicable state corporate law.

(c) Notwithstanding Subsection (b), this chapter may not be construed to limit the commissioner's authority, or the rights or obligations of third parties, under Chapter 401.

(d) This chapter applies to each insurer domiciled in this state, except that this chapter does not apply to a domestic insurer that is authorized, admitted, or eligible to engage in the business of insurance only in this state. For the purposes of this chapter, an insurer is not considered to be authorized, admitted, or eligible to engage in the business of insurance only in this state if the insurer is a member of an insurance group that writes or assumes insurance in any manner in another state.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0002. DEFINITIONS. In this chapter:

(1) "Disclosure" means the confidential corporate governance annual disclosure filed by the insurer or insurance group in accordance with the requirements of this chapter.

(2) "Insurance group" means the insurers and affiliates included within an insurance holding company system as described by Section 823.006.

(3) "Insurer" has the meaning assigned by Section 823.002. The term includes a health maintenance organization authorized to engage in business under Chapter 843.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0003. DISCLOSURE REQUIRED. (a) Except as provided by Subsection (b), an insurer, or the insurance group of which the insurer is a member, shall, not later than June 1 of each calendar year, submit to the commissioner a corporate governance annual disclosure that contains the information described by Section 831.0008(c).

(b) Notwithstanding any request from the commissioner under Subsection (d), an insurer that is a member of an insurance group shall submit the report required by Subsection (a) to the commissioner of the lead state for the insurance group, in accordance with the laws of the lead state, as determined by the procedures adopted by the National Association of Insurance Commissioners.

(c) The disclosure must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the insurer has implemented the corporate governance practices described in the disclosure and that a copy of the disclosure has been provided to the insurer's board of directors or the appropriate committee of the insurer's board of directors.

(d) An insurer not otherwise required to submit a disclosure under this chapter shall submit a disclosure on the commissioner's request.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0004. LEVEL OF REPORTING. (a) For purposes of completing the disclosure under Section 831.0003, an insurer or insurance group may provide information regarding corporate governance at the ultimate controlling parent level, an intermediate holding company level, or the individual legal entity level, depending on how the insurer or insurance group has structured the insurer's or insurance group's system of corporate governance.

(b) An insurer or insurance group is encouraged to make the disclosure:

(1) at the level at which the insurer's or insurance group's risk appetite is determined;

(2) at the level at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or

(3) at the level at which legal liability for failure of general corporate governance duties would be placed.

(c) If an insurer or insurance group determines the level of reporting based on the criteria described by Subsection (b), the insurer or insurance group shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0005. REVIEW OF DISCLOSURE; REQUEST FOR ADDITIONAL INFORMATION. The review of the disclosure and any additional requests for information shall be made through the lead state as determined by the procedures adopted by the National Association of Insurance Commissioners described by Section 831.0003(b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0006. SUBSTANTIALLY SIMILAR INFORMATION. An insurer that provides information substantially similar to the information required by this chapter in other documents provided to the commissioner, including proxy statements filed in conjunction with Form B requirements or other state or federal filings provided to the department, is not required to duplicate that information in the disclosure but is required only to cross-reference the document in which the information is included.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0007. PART OF EXAMINATION PROCESS. The disclosure and any additional information requested by the commissioner and provided to the department as described by this chapter is considered part of the process of examination of insurers under this code, including Chapter 401.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0008. CONTENTS OF DISCLOSURE. (a) An insurer or insurance group has discretion over the responses to the disclosure inquiries, provided the disclosure must contain the material information necessary to permit the commissioner to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices.

(b) The commissioner may request additional information that the commissioner considers material and necessary to provide the commissioner with a clear understanding of:

(1) the corporate governance policies; and

(2) the reporting, information system, or controls implementing those policies.

(c) Notwithstanding Subsections (a) and (b), the disclosure shall be prepared consistent with rules adopted by the commissioner. Documentation and supporting information must be maintained and made available on examination or on request of the commissioner.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0009. CONFIDENTIALITY. (a) Documents, materials, or other information, including a disclosure, in the possession or control of the department that is obtained by, created by, or disclosed to the commissioner or any other person under this chapter is confidential and privileged and is:

(1) not subject to disclosure under Chapter 552, Government Code;

(2) not subject to subpoena; and

(3) not subject to discovery or admissible in evidence in any private civil action.

(b) Documents, materials, or other information, including a disclosure, in the possession or control of the department that is obtained by, created by, or disclosed to the commissioner or any other person under this chapter is recognized by this state as being proprietary and to contain trade secrets.

(c) The commissioner may use the documents, materials, or other information described in this section to further any regulatory or legal action brought as part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer. Nothing in this section may be construed to require written consent of the insurer before the commissioner may share or receive documents, materials, or other information under Subsection (e).

(d) The commissioner and any other person who receives documents, materials, or other information under this chapter, through examination, or otherwise under any other law, while acting under the authority of the commissioner, or with whom the documents, materials, or other information is shared under this chapter may not testify or be required to testify in any private civil action concerning any documents, materials, or other information subject to Subsection (a) or (b).

(e) In order to assist in the performance of the commissioner's regulatory duties, the commissioner may, on request, share documents, materials, or other information, including confidential and privileged documents, materials, or information subject to Subsection (a) or (b) and proprietary and trade-secret documents, materials, or information, with:

(1) other state, federal, and international financial regulatory agencies, including members of a supervisory college described by Section 823.0145;

(2) the National Association of Insurance Commissioners; and

(3) a third-party consultant under Section 831.0012.

(f) Before the commissioner may share information under this section, the recipient shall:

(1) agree in writing to maintain the confidential and privileged status of the documents, materials, or other information shared under this section; and

(2) verify in writing the recipient's legal authority to maintain the confidential and privileged status of that information.

(g) In order to assist in the performance of the commissioner's regulatory duties, the commissioner may receive documents, materials, or other governance-related information, including confidential and privileged documents, materials, or information and proprietary and trade-secret documents, materials, or information from:

(1) regulatory officials of other state, federal, and international financial regulatory agencies, including members of a supervisory college described by Section 823.0145; and

(2) the National Association of Insurance Commissioners.

(h) The commissioner shall maintain as confidential or privileged any documents, materials, or information received under Subsection (g) with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0010. AUTHORITY OF COMMISSIONER NOT AFFECTED. The sharing of documents, materials, or other information by the commissioner under this chapter does not constitute a delegation of regulatory authority or rulemaking, and the commissioner is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0011. PRIVILEGE AND CONFIDENTIALITY NOT WAIVED. A waiver of an applicable privilege or claim of confidentiality in documents, materials, or other information, including proprietary and trade-secret materials, does not occur as a result of disclosure of the document, materials, or information to the commissioner under this chapter or as a result of sharing as authorized by this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0012. NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND THIRD-PARTY CONSULTANTS. (a) The commissioner may retain, at the insurer's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the disclosure and related information or the insurer's compliance with this chapter.

(b) A person retained under Subsection (a) is under the direction and control of the commissioner and acts in a purely advisory capacity.

(c) The National Association of Insurance Commissioners and a third-party consultant are subject to the same confidentiality standards and requirements as the commissioner.

(d) As part of the retention process, a third-party consultant shall verify to the commissioner, with notice to the insurer, that the consultant:

(1) is free of a conflict of interest; and

(2) has internal procedures in place to:

(A) monitor compliance with a conflict; and

(B) comply with the confidentiality standards and requirements of this chapter.

(e) A written agreement with the National Association of Insurance Commissioners or a third-party consultant governing sharing and use of information provided under this chapter must expressly require the written consent of the insurer before information provided under this chapter is made public and contain:

(1) specific procedures and protocols for maintaining the confidentiality and security of disclosure-related information shared with the National Association of Insurance Commissioners or the third-party consultant under this chapter;

(2) procedures and protocols for the sharing by the National Association of Insurance Commissioners of disclosure-related documents, materials, or other information only with other state regulators from states in which an affected insurance group has domiciled insurers, including a requirement that the recipient agrees in writing to maintain the confidential and privileged status of the shared documents, materials, or other information and has verified in writing the recipient's legal authority to maintain the confidential and privileged status of that information;

(3) a provision specifying that ownership of disclosure-

related documents, materials, or other information shared with the National Association of Insurance Commissioners or a third-party consultant remains with the department and the use of the information by the National Association of Insurance Commissioners or third-party consultant is subject to the direction of the commissioner;

(4) a provision that prohibits the National Association of Insurance Commissioners or third-party consultant from storing disclosure-related documents, materials, or other information shared under this chapter in a permanent database after the underlying analysis is completed;

(5) a provision requiring the National Association of Insurance Commissioners or third-party consultant to provide prompt notice to the commissioner and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's disclosure-related documents, materials, or other information; and

(6) a requirement that the National Association of Insurance Commissioners or third-party consultant consents to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners or third-party consultant may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners or third-party consultant under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0013. ADMINISTRATIVE PENALTY. (a) An insurer that, without good cause, fails to timely file the disclosure as required by this chapter commits a violation subject to an administrative penalty under Chapter 84.

(b) Each day the violation continues is a separate violation for purposes of this section.

(c) The commissioner may reduce the amount of the penalty assessed under this section if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

Sec. 831.0014. RULES. (a) The commissioner shall adopt rules as necessary to enforce this chapter.

(b) A rule adopted under Subsection (a) is not subject to Section 2001.0045, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1170 (H.B. 3306), Sec. 1, eff. September 1, 2019.

SUBTITLE C. LIFE, HEALTH, AND ACCIDENT INSURERS AND RELATED ENTITIES
CHAPTER 841. LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 841.001. DEFINITIONS.

(1) "Accident insurance company" means a corporation authorized under a charter to engage in business involving the payment of money or another thing of value in the event of an injury to or the disablement or death of an individual as a result of travel or a general accident by land or water.

(2) "Alien company" means a life, accident, or health insurance company organized under the laws of a foreign country.

(3) "Beneficiary" is the person to whom an insurance policy is payable.

(4) "Domestic insurance company," in this chapter and another law described by Section 841.002, means an insurance company organized under the laws of this state as:

(A) a life insurance company;

(B) an accident insurance company;

(C) a life and accident insurance company;

(D) a health and accident insurance company; or

(E) a life, health, and accident insurance company.

(5) "Foreign company" means a life, accident, or health insurance company organized under the laws of another state.

(6) "Health insurance company" means a corporation authorized under a charter to engage in business involving the payment of money or another thing of value in the event of loss resulting from disability incurred as a result of sickness or ill health.

(7) "Home office," with respect to an insurance company,

means the principal office of the company in the state or country under whose laws the company is organized.

(8) "Insurance company" and "company" include all corporations engaged as a principal in the business of life, accident, or health insurance.

(9) "Life insurance company" means a corporation authorized under a charter to engage in business involving the payment of money or another thing of value conditioned on the continuance or cessation of human life or involving an insurance, guaranty, or contract for the payment of an endowment or annuity.

(10) "Policyholder" and "insured" mean the individual on whose life an insurance policy is effected.

(11) "Profits," with respect to an insurance company, means the portion of the company's funds that are not:

(A) required for the payment of losses and expenses; or

(B) set aside for any other purpose required by law.

(12) "United States branch" means:

(A) the business unit through which business is transacted within the United States by an alien company;

(B) the assets and liabilities of the company within the United States pertaining to the business;

(C) the management powers pertaining to the business and to the assets and liabilities; or

(D) any combination of the items described by Paragraphs (A)-(C).

(13) The definitions of "company" and "insurance company" apply to this chapter and another law described by Section 841.002 unless a different meaning is plainly required by the context in which the term appears.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.002. APPLICABILITY OF CHAPTER AND OTHER LAW. Except as otherwise expressly provided by this code, each insurance company incorporated or engaging in business in this state as a life insurance company, an accident insurance company, a life and accident insurance company, a health and accident insurance company, or a life, health, and accident insurance company is subject to:

(1) this chapter;
(2) Chapter 3;
(3) Chapters 425 and 493;
(4) Title 7;
(5) Sections 1202.051, 1204.151, 1204.153, and 1204.154;
(6) Subchapter A, Chapter 1202, Subchapters A and F, Chapter 1204, Subchapter A, Chapter 1273, Subchapters A, B, and D, Chapter 1355, and Subchapter A, Chapter 1366;
(7) Subchapter A, Chapter 1507;
(8) Chapters 1203, 1210, 1251-1254, 1301, 1351, 1354, 1359, 1364, 1368, 1505, 1651, 1652, and 1701; and
(9) Chapter 177, Local Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.018, eff. April 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.03, eff. September 1, 2017.

Sec. 841.003. APPLICABILITY OF LAW GOVERNING CORPORATIONS. An insurance company operating under this chapter is subject to the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and any other law of this state that governs corporations in general to the extent those laws are not inconsistent with this chapter or another law described by Section 841.002.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.004. NET ASSETS DEFINED; RULES. (a) A company's "net assets" consist of the company's funds that are available for the payment of a company's obligations in this state, including:
(1) uncollected premiums that are not more than three months past due and deferred premiums on policies actually in force, after the deduction of:
(A) all unpaid losses and claims;
(B) all claims for losses; and
(C) all other debts, exclusive of capital stock; and

(2) if the total value of the equipment exceeds $2,000, the value of all electronic machines that comprise a data processing system or systems and of all other office equipment, furniture, machines, and labor-saving devices purchased for and used in connection with the business of the insurance company to the extent that the total actual cash market value of those assets is less than 10 percent of the other admitted assets of the company.

(b) The commissioner may adopt rules defining electronic machines and systems, office equipment, furniture, machines, and labor-saving devices described by Subsection (a) and stating the maximum period for which each class of equipment may be amortized.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION AND STRUCTURE OF DOMESTIC COMPANIES

Sec. 841.051. FORMATION OF COMPANY. (a) Three or more residents of this state may form:

(1) a life insurance company;

(2) an accident insurance company;

(3) a life and accident insurance company;

(4) a health and accident insurance company; or

(5) a life, health, and accident insurance company.

(b) To form a domestic insurance company:

(1) each incorporator must sign and acknowledge the articles of incorporation of the company; and

(2) the incorporators must file the articles of incorporation with the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.052. ARTICLES OF INCORPORATION. (a) Articles of incorporation of a proposed domestic insurance company must state:

(1) the name of the company;

(2) the location of the company's home office;

(3) the kinds of insurance business in which the company proposes to engage;

(4) the name and place of residence of each incorporator;

(5) the amount of the company's capital stock;

(6) the number of shares of the company's capital stock;

(7) the amount of the company's surplus; and

(8) the period of the company's duration, which may be perpetual.

(b) The incorporators of a domestic insurance company may include in the articles of incorporation other provisions that are not inconsistent with law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.053. COMPANY NAME. (a) The name of a domestic insurance company must contain the words "Insurance Company."

(b) A domestic insurance company's name may not be so similar to the name of another domestic insurance company as to likely mislead the public.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.054. CAPITAL STOCK AND SURPLUS REQUIREMENTS. (a) A domestic insurance company must have capital stock in an amount of at least $700,000 and surplus in an amount of at least $700,000.

(b) All of the capital stock required by Subsection (a) must be fully subscribed and paid up and delivered to the incorporators before the articles of incorporation are filed.

(c) At the time of incorporation, the required capital and surplus shall consist only of:

(1) United States currency;

(2) bonds of the United States, this state, or a county or municipality of this state; or

(3) government insured mortgage loans that are authorized by this chapter or Chapter 425, with not more than 50 percent of the required capital invested in first mortgage real property loans.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.019, eff. April 1, 2009.

Sec. 841.055. SHARES OF STOCK. (a) The shares of stock of an

insurance company operating under this chapter may be divided or converted into shares of stock with a par value or shares of stock without par value or into a combination of shares with or without par value.

(b) Each issued share of stock must be fully paid for and nonassessable.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 3(2), eff. September 1, 2023.

(d) Authorized but unissued shares of stock of an insurance company are not considered capital, stock, or capital stock of the company.

(e) This section and Sections 841.056 and 841.057 do not impair the charter rights of an insurance company authorized to issue shares of stock with or without a par value before September 6, 1955.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 3(2), eff. September 1, 2023.

Sec. 841.056. REQUIREMENTS FOR SHARES OF STOCK WITH PAR VALUE. (a) The shares of stock of an insurance company operating under this chapter that are divided or converted into par value shares, if any, must have a par value of not less than $1 or more than $100.

(b) Each par value share of stock must be fully paid for before issuance in an amount that is not less than the share's par value.

(c) When an application for charter or an amendment to the charter authorizing the issuance of shares of stock with a par value is filed, the insurance company shall file with the department a statement under oath stating:

(1) the total number of par value shares subscribed; and

(2) the actual total consideration the company received for those shares.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 3(3), eff. September 1, 2023.

(e) If all of the authorized par value shares of stock are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors

stating the total number of par value shares issued and the actual total consideration received for those shares. The company shall file the certificate not later than the 90th day after the date of issuance of those remaining shares. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company.

(f) The actual consideration received by an insurance company for a par value share constitutes capital to the extent of its par value and the remainder, if any, constitutes surplus.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 3(3), eff. September 1, 2023.

Sec. 841.057. REQUIREMENTS FOR SHARES OF STOCK WITHOUT PAR VALUE. (a) The shares of stock of an insurance company operating under this chapter that are divided or converted into shares without par value, if any, must be equal in all respects.

(b) An insurance company may issue and dispose of authorized shares without par value for money or for notes, mortgages, and stocks in the form authorized by law for capital stock of insurance companies. Each share of stock without par value must be fully paid before issuance. After the company receives payment for a share of stock issued under this section, the share is not subject to additional call or assessment, and the subscriber or holder of the share is not required to make an additional payment with respect to the share.

(c) The shareholders of an insurance company authorizing shares of stock without par value must pay a total amount of at least $250,000 for the shares before the company is granted a charter or has its charter amended to authorize the issuance of shares without par value.

(d) When an application for charter or an amendment to the charter authorizing the issuance of shares without par value is filed, the insurance company shall file with the department a statement under oath stating:

(1) the number of shares without par value subscribed; and

(2) the actual consideration the company received for those

shares.

(e) If all of the authorized shares of stock without par value are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the insurance company shall file with the department a certificate authenticated by a majority of the directors stating the number of shares without par value issued and the consideration received for those shares.

(f) The insurance company shall file the certificate required by Subsection (e) not later than the 90th day after the date of issuance of those remaining shares. The portion of the consideration received for shares without par value that is designated as capital by the company's directors, or by the company's shareholders if the charter or articles of incorporation reserve the right to make that determination to the shareholders, constitutes capital and the remainder, if any, constitutes surplus. The company is not required to file an amendment to its charter or take further action to effect the increase in the capital and surplus of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 825 (H.B. 1903), Sec. 2, eff. September 1, 2023.

Sec. 841.058. APPLICATION FOR CHARTER. (a) To obtain a charter for a domestic insurance company, the incorporators must pay to the department the charter fee in an amount determined under Chapter 202 and file with the department:

(1) an application for charter on the form and containing the information prescribed by the commissioner;

(2) the company's articles of incorporation; and

(3) an affidavit made by two or more of the incorporators that states that:

(A) the minimum capital and surplus requirements of Section 841.054 are satisfied;

(B) the capital and surplus are the bona fide property of the company; and

(C) the information in the articles of incorporation is true and correct.

(b) The commissioner may require that the incorporators provide

at their expense additional evidence of a matter required in the affidavit before the commissioner takes further action on the application for charter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.020, eff. April 1, 2009.

Sec. 841.059. ACTION BY COMMISSIONER AND DEPARTMENT AFTER FILING. (a) After the charter fee is paid and all items required for a charter under Section 841.058 are filed with the department, the department shall make or cause to be made a full and thorough examination of the domestic insurance company.

(b) The domestic insurance company shall pay for the examination under Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 8, eff. June 19, 2009.

Sec. 841.061. ACTION ON APPLICATION. (a) In considering the application, the commissioner shall determine if:

(1) the minimum capital and surplus required by Section 841.054 are the bona fide property of the domestic insurance company;

(2) the proposed officers, directors, and managing executive of the company have sufficient insurance experience, ability, and standing to make success of the proposed company probable; and

(3) the applicants are acting in good faith.

(b) If the commissioner determines that the applicant has not met the standards set out by Subsection (a), the commissioner shall deny the application in writing, giving the reason for the denial. An application may not be granted unless it is adequately supported by competent evidence.

(b-1) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request

a hearing date.

(b-2) An interested party may participate fully and in all respects in any proceeding related to the application. An intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

(c) If the commissioner does not deny the application under Subsection (b), the commissioner shall approve the application. On approval of an application, the department shall record the information required by Section 841.058 in records maintained for that purpose. On receipt of a fee in the amount determined under Chapter 202, the commissioner shall provide to the incorporators a certified copy of the application, articles of incorporation, and submitted affidavit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.021, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 9, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 10, eff. June 19, 2009.

Sec. 841.062. BEGINNING OF CORPORATE EXISTENCE. On receipt of the certified copy of documents under Section 841.061(c), the domestic insurance company becomes a body politic and corporate, and the incorporators may complete organization of the company under Section 841.063.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.063. ORGANIZATION MEETING. (a) After receipt of the certified copy of documents under Section 841.061(c), the incorporators shall promptly call a meeting of the domestic insurance company's shareholders. The shareholders shall:

(1) adopt bylaws to govern the company; and

(2) elect the company's initial board of directors.

(b) The directors elected under this section serve until

directors are first elected under Section 841.153.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 841.101. CERTIFICATE OF AUTHORITY REQUIRED. A domestic insurance company may not engage in the business of insurance in this state, except for the lending of money, without first obtaining from the commissioner a certificate of authority that:

(1) shows that the company has fully complied with the laws of this state; and

(2) authorizes the company to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.102. SCHEDULE OF ASSETS. Two or more officers of the domestic insurance company shall execute and file with the department:

(1) a sworn schedule of each of the assets of the company exhibited to the department during the examination under Section 841.059 showing the value of the assets; and

(2) a sworn statement that the assets are the bona fide, unconditional, and unencumbered property of the company and are worth the amount stated in the schedule.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.103. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) If the commissioner makes a determination favorable to the applicants on all issues under Section 841.061(a), the commissioner, on compliance with the requirements of Section 841.102, shall issue to the domestic insurance company a certificate of authority authorizing the company to engage in the kinds of business authorized by the company's charter.

(b) On written request of a domestic insurance company, the commissioner shall provide a certified copy of the company's certificate of authority to the company for each of the company's

agents in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.104. TAX PAYMENT REQUIRED FOR ISSUANCE OF CERTAIN CERTIFICATES OF AUTHORITY. (a) This section applies to a life insurance company that:

(1) has previously held a certificate of authority to engage in the business of life insurance in this state;

(2) ceased to write new business in this state under that certificate of authority; and

(3) after ceasing to write new business, continued to collect from residents of this state renewal or other premiums on policies written under that certificate of authority.

(b) A life insurance company to which this section applies may not obtain a new certificate of authority to engage in the business of life insurance in this state until the company:

(1) files with the department under oath a report that discloses the gross amount of renewal or other premiums received each calendar year from residents of this state after the period covered by the company's last tax report of gross premium receipts filed under this code; and

(2) pays to the state occupation taxes on those premiums.

(c) The life insurance company shall pay the occupation tax for each year of nonpayment. The company shall pay the tax for each year at the same rate for that year as a company engaged in the business of life insurance in this state during that year.

(d) The life insurance company shall remit the penalties for failure to pay the taxes and file required reports when the company pays the taxes and receives a certificate of authority.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 17, eff. April 1, 2005.

SUBCHAPTER D. MANAGEMENT OF COMPANY

Sec. 841.151. CONDUCTING SHAREHOLDERS' MEETING. (a) At a meeting of a domestic insurance company's shareholders, each shareholder is entitled to one vote for each fully paid up share of stock appearing in the shareholder's name on the company's books, except to the extent that the articles of incorporation increase,

limit, or deny voting rights to the holders of the shares of a class of stock as authorized by the Texas Business Corporation Act.

(b) A shareholder may vote in person or by written proxy.

(c) At a shareholders' meeting, a quorum is any number of shareholders whose cumulative stock ownership in the domestic insurance company represents a majority of the company's paid up capital stock.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.152. BOARD OF DIRECTORS. (a) Subject to the bylaws of the domestic insurance company, as adopted or amended by the shareholders or directors, the board of directors has full management and control of the company.

(b) The board consists of not fewer than five directors. A director is not required to be a shareholder unless such a qualification is required by the articles of incorporation or bylaws of the company.

(c) The directors shall keep a full and correct record of the board's transactions. The shareholders may inspect those records during business hours.

(d) The directors shall fill a vacancy that occurs on the board or in any office of the company.

(e) A majority of the board is a quorum.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.153. ELECTION OF DIRECTORS. (a) After a domestic insurance company completes the organization of the company under Section 841.063, the company shall hold an annual meeting of the company's shareholders on the fourth Tuesday in April at the home office of the company to elect the company's board of directors.

(b) After the directors are first elected under this section, the annual meeting must be held each year as established by the company's bylaws. The directors serve one-year terms beginning immediately after the election, except as provided by Section 841.154.

(c) If the shareholders do not elect directors at an annual meeting, the shareholders may elect the directors at a special

shareholders' meeting called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 380 (S.B. 918), Sec. 3, eff. September 1, 2021.

Sec. 841.154. STAGGERED TERMS FOR DIRECTORS. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 380 (S.B. 918), Sec. 5, eff. September 1, 2021.

(b) The bylaws of a domestic insurance company may provide that the company's directors, other than initial directors, may be elected to serve staggered terms as provided by this section.

(c) The company's directors shall be divided into two or three classes, with each class consisting of an equal number of directors to the extent possible. After the directors are divided into classes:

(1) the terms of the directors in the first class expire on the first annual meeting date after their initial election;

(2) the terms of the directors in the second class expire on the second annual meeting date after their initial election; and

(3) the terms of the directors in the third class, if any, expire on the third annual meeting date after their initial election.

(d) At each annual meeting after the directors are first elected, the shareholders shall elect the number of directors whose terms expire on that date. Directors are elected for:

(1) staggered two-year terms, if the board is divided into two classes; or

(2) staggered three-year terms, if the board is divided into three classes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 380 (S.B. 918), Sec. 4, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 380 (S.B. 918), Sec. 5, eff. September 1, 2021.

Sec. 841.155. OFFICERS. (a) A domestic insurance company's

directors shall choose one of the directors to serve as the company's president.

(b) Other officers of the domestic insurance company shall be chosen in accordance with the company's bylaws. An officer is not required to be a shareholder unless such a qualification is required by the company's articles of incorporation or bylaws. An officer other than the president is not required to be a director unless such a qualification is required by the company's bylaws.

(c) The duties and compensation of a domestic insurance company's officers are as stated in the company's bylaws. If the bylaws do not state the duties or compensation of the officers, the directors shall establish the duties or compensation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.156. AMENDMENT OF CHARTER OR ARTICLES. (a) The shareholders of a domestic insurance company by resolution may amend the company's charter or articles of incorporation at any shareholders' meeting.

(b) The amendment and a copy of the resolution certified by the president and secretary of the domestic insurance company shall be filed and recorded in the same manner as the charter.

(c) An amendment of the charter or articles takes effect when it is recorded.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. CAPITAL AND SURPLUS

Sec. 841.201. FORM OF REQUIRED CAPITAL AND SURPLUS. Notwithstanding any other provision of this code, after a charter is granted under this chapter, the domestic insurance company:

(1) shall maintain the company's minimum capital at all times in a form described by Section 841.054(c); and

(2) may invest the company's surplus as provided by this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.202. AUTHORIZED SHARES. (a) At any shareholders' meeting, shareholders of a domestic insurance company whose cumulative stock ownership represents a majority of the capital stock of the company by resolution may increase or decrease the amount of the company's capital stock, subject to this section.

(b) Capital stock may never be decreased to an amount that is less than the minimum amount of paid-up stock required by Section 841.054.

(c) Two officers of the domestic insurance company must sign and acknowledge a statement of the increase or decrease. The acknowledged statement and a certified copy of the resolution shall be filed and recorded in the same manner as the charter.

(d) For an increase or decrease of capital stock, the domestic insurance company may require the return of the original certificates evidencing the stock in exchange for new certificates. An issuance of new certificates that results in a transfer of stock is subject to Section 841.254.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.203. COMPANY'S REPURCHASE OF STOCK. (a) A legal reserve life insurance company may purchase in the name of the company outstanding shares of the company's capital stock as provided by the Texas Business Corporation Act.

(b) A purchase of stock under this section is not considered an investment and does not violate the provisions of this code relating to eligible investments for a legal reserve life insurance company.

(c) A legal reserve life insurance company that purchases stock under this section shall file with the department not later than the 10th day after the date of the purchase a statement that contains:

(1) the name of each shareholder from whom the shares were purchased; and

(2) the sum of money paid for those shares.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.204. EXEMPTION FROM REQUIRED INCREASE OF CAPITAL AND SURPLUS. (a) Except as otherwise provided by this chapter, a domestic insurance company that after September 1, 1991, had less

than the minimum amount of capital and surplus required for a newly incorporated company under Section 841.054 may continue to transact the kinds of business for which it holds a certificate of authority.

(b) The insurance company shall immediately increase the amount of its capital to the required amount of capital under Section 841.054 if there is:

(1) a change in the control of at least 50 percent of the voting securities of the insurance company;

(2) a change in the control of at least 50 percent of the voting securities of a holding company controlling the insurance company; or

(3) a change in control of at least 50 percent by any other method of control if the insurance company or holding company is not controlled by voting securities.

(c) For purposes of Subsection (b), a transfer of ownership that occurs because of death, regardless of whether the decedent died testate or intestate, may not be considered a change in the control of an insurance company or holding company if ownership is transferred solely to one or more individuals, each of whom would be an heir of the decedent if the decedent had died intestate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.205. COMMISSIONER MAY REQUIRE LARGER CAPITAL AND SURPLUS AMOUNTS. (a) The commissioner by rule or guideline may require a domestic insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds $10,000, to maintain capital and surplus in amounts that exceed the minimum amounts required by this chapter because of:

(1) the nature and kind of risks the company underwrites or reinsures;

(2) the premium volume of risks the company underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of the company's investment portfolio;

(4) fluctuations in the market value of securities the company holds; or

(5) the adequacy of the company's reserves.

(b) A rule adopted under Subsection (a) must be designed to ensure the financial solvency of an insurance company for the protection of policyholders but may not require that the total admitted assets of a company exceed 106 percent of its total liabilities.

(c) A fraternal benefit society operating under Chapter 885 and a mutual life insurance company operating under Chapter 882 are subject to a rule adopted under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.206. IMPAIRMENT OF CAPITAL AND SURPLUS. (a) An insurance company incorporated or authorized to do the lines of business authorized in this chapter may not have:

(1) the company's required capital impaired;

(2) more than 90 percent of the company's required minimum surplus impaired; or

(3) the surplus required under Section 841.205 impaired.

(b) If the commissioner determines that an insurance company's capital or surplus is impaired in violation of this section, the commissioner shall:

(1) order the company to immediately reduce the level of impairment to an acceptable level of impairment as specified by the commissioner or prohibit the company from engaging in the business of insurance in this state; and

(2) begin proceedings as necessary to determine any further actions with respect to the impairment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.021, eff. September 1, 2005.

Sec. 841.207. ACTIONS OF COMMISSIONER WHEN CAPITAL AND SURPLUS REQUIREMENTS NOT SATISFIED. If an insurance company does not comply with the capital and surplus requirements of this chapter, the commissioner may order the insurance company to cease writing new business and may:

(1) place the insurance company under state supervision or conservatorship;

(2) declare the insurance company to be in a hazardous condition as provided by Subchapter A, Chapter 404;

(3) declare the insurance company to be impaired as provided by Section 841.206; or

(4) apply to the insurance company any other applicable sanction provided by this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.022, eff. April 1, 2009.

SUBCHAPTER F. GENERAL POWERS, DUTIES, AND LIMITATIONS

Sec. 841.251. EVIDENCE OF EXPENDITURES. (a) A domestic insurance company may not make an expenditure of $100 or more unless the expenditure is evidenced by a voucher that:

(1) is signed by or on behalf of the individual, firm, or corporation that receives the money; and

(2) describes the consideration received for the payment correctly.

(b) For an expenditure for both services and disbursements, the voucher must state the services rendered and disbursement made.

(c) For an expenditure related to a matter pending before a legislature or public body or a department or officer of a state or government, the voucher must describe both the nature of the matter and the interest of the company in the matter correctly.

(d) If the domestic insurance company cannot obtain a voucher as required by this section, the expenditure must be evidenced by:

(1) a paid check; or

(2) an affidavit that:

(A) describes the nature and purpose of the expenditure; and

(B) states the reason the voucher was not obtained.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.252. PAYMENTS TO OFFICERS, DIRECTORS, AND EMPLOYEES.

(a) Unless first authorized by a vote of a domestic insurance company's board of directors or a committee of the board that has the duty to authorize the payments, the company may not pay any compensation or emolument in an amount that, when added to any compensation or emolument paid to the person by an affiliated domestic insurance company, exceeds $150,000 in any year to an individual, firm, or corporation, including an officer or director of the company.

(b) Subsection (a) does not prevent a domestic insurance company from contracting with its agents for the payment of renewal commissions.

(c) The shareholders of a domestic insurance company may authorize the creation of one or more plans for the payment of pensions, retirement benefits, or group insurance for the company's officers and employees. The shareholders may delegate to the company's board of directors the power and duty to prepare, effect, finally approve, administer, and amend a plan.

(d) A mutual insurance company, acting through the company's policyholders, may exercise the same discretion, and has the same powers, privileges, and rights, as are conferred on a domestic insurance company under Subsection (c).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 94 (H.B. 651), Sec. 1, eff. September 1, 2009.

Sec. 841.253. LIFE INSURANCE COMPANY'S PAYMENT OF DIVIDENDS.

(a) A life insurance company may declare or pay a dividend to its:

(1) policyholders only from the expense loading and profits made by the company; and

(2) shareholders only from the company's earned surplus, as defined by the commissioner.

(b) A life insurance company that is not showing a profit may pay a dividend on its participating policies from the expense loading on those policies.

(c) A life insurance company may not discriminate between policyholders in paying a dividend from the expense loading under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.254. TRANSFER OF STOCK. (a) A domestic insurance company's shares of stock are transferrable on the company's books, in accordance with law and the bylaws of the company, by the owner or the owner's authorized agent.

(b) Each person who becomes a shareholder by a transfer of shares succeeds to all rights of the former holder of those shares, by reason of that ownership.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.255. ANNUAL STATEMENT; FILING FEE. (a) Not later than March 1 of each year, a domestic insurance company shall:

(1) prepare a statement showing the condition of the company on December 31 of the preceding year; and

(2) deliver the statement to the department accompanied by a filing fee in the amount determined under Chapter 202.

(b) The statement must be under oath of two of the domestic insurance company's officers and show in detail:

(1) the character of the company's assets and liabilities on December 31 of the preceding year;

(2) the amount and character of business transacted and money received during the preceding year;

(3) how money was spent during the preceding year;

(4) the number and amount of the company's policies in force in this state on that date; and

(5) the total amount of the company's policies in force on that date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.023, eff. April 1, 2009.

Sec. 841.256. BUSINESS IN SEPARATE DEPARTMENTS OF DOMESTIC INSURANCE COMPANY. A domestic insurance company may not transact more than one of the kinds of insurance business described by Section

841.051(a) unless the company establishes separate departments to transact each kind of business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.257. KINDS OF BUSINESS LIMITED. An insurance company authorized to engage in the business of insurance under this chapter or in accordance with Section 982.051 may not accept a risk or write an insurance policy in this state or any other state or country other than:

(1) a life, accident, or health insurance policy;

(2) reinsurance under Chapter 493 by a life insurance company authorized to engage in the business of insurance in this state; or

(3) reinsurance under Chapter 494 by a domestic insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.022, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.024, eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.04, eff. September 1, 2017.

Sec. 841.258. AGENTS FOR COMPANY THAT CEASES WRITING NEW BUSINESS. An insurance company that ceases to write new business in this state may maintain in this state agents to collect renewal premiums on outstanding policies the company has written under its certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.022, eff. September 1, 2005.

Sec. 841.259. ACTIVITIES OF DIRECTORS AND OFFICERS. (a) A

director or officer of an insurance company may not:

(1) receive money or another valuable thing for negotiating, procuring, recommending, or aiding in a purchase or sale of property by or a loan from the company; or

(2) have a pecuniary interest, as a principal, coprincipal, agent, or beneficiary, in a purchase, sale, or loan described by Subdivision (1).

(b) This section does not prohibit:

(1) a life insurance company from making a loan to a policyholder in an amount that is not greater than the reserve value of the policy; or

(2) a transaction, purchase, sale, or loan approved by the commissioner under Subchapter A of Chapter 805 or Chapter 823.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.260. PROHIBITED COMMISSIONS. (a) In this section, "contingent compensation" means a commission or other compensation an insurance company pays to a person that is contingent on:

(1) the writing or procurement of an insurance policy in the company;

(2) the procurement of an application for an insurance policy in the company;

(3) the payment of a renewal premium; or

(4) the assumption of an insurance risk by the company.

(b) A life insurance company that engages in the business of insurance in this state may not, directly or indirectly, pay or contract to pay a contingent compensation to:

(1) the president, vice president, secretary, or treasurer of the company;

(2) any other officer of the company, other than an agent or solicitor;

(3) an actuary of the company; or

(4) a medical director or other physician of the company whose duty is to examine risks or applications for insurance for the company.

(c) This section does not prohibit a plan of compensation to a marketing officer according to the total amount of insurance the insurance company writes or to the total amount of insurance in force

with the insurance company during a specified period if:

(1) the commissioner approves the plan under Subchapter A, Chapter 805;

(2) the marketing officer is not responsible for underwriting, rating, or otherwise approving the acceptability of insurance risks; and

(3) the plan does not compensate the marketing officer according to commissions on individual sales of any insurance product.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.261. CAUSES OF ACTION. (a) A domestic insurance company may bring an action against any person, including a policyholder or shareholder of the company, for any cause related to the company's business.

(b) A policyholder or an heir or legal representative of a policyholder may bring an action against a domestic insurance company for a loss that accrues on a policy.

(c) An action enjoining, restraining, or interfering with the prosecution of a domestic insurance company's business may be brought only by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. ISSUANCE OF POLICIES

Sec. 841.301. LIMITS ON AMOUNT OF ACCIDENT AND HEALTH INSURANCE POLICIES. (a) A domestic insurance company may not assume liability on or indemnify one person for any risk under one or more accident, health, or hospitalization insurance policies, or a combination of those policies, in an amount that exceeds $10,000, unless the amount of the issued, outstanding, and stated capital of the company is at least equal to the minimum amount of capital required for a newly incorporated company under Section 841.054.

(b) A domestic insurance company that before January 1, 2002, ceases to write or assume liability on, or indemnify any risk under, a policy described by Subsection (a) in the amount specified by Subsection (a) and notifies the commissioner of that action is exempt from the requirements of Subsection (a) until the date the company

resumes writing those policies. A company that resumes assuming liability on or indemnifying risks under those policies shall comply with Subsections (a) and (c).

(c) A domestic insurance company that is exempt under Subsection (b) shall maintain its issued, outstanding, and stated capital in an amount that is at least $100,000 and is at least:

(1) the amount of capital held by the company on December 31, 1991, plus 10 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1993;

(2) the amount of capital held by the company on December 31, 1991, plus 20 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1994;

(3) the amount of capital held by the company on December 31, 1991, plus 30 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1995;

(4) the amount of capital held by the company on December 31, 1991, plus 40 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1996;

(5) the amount of capital held by the company on December 31, 1991, plus 50 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1997;

(6) the amount of capital held by the company on December 31, 1991, plus 60 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 1998;

(7) the amount of capital held by the company on December 31, 1991, plus 70 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the

company writes a policy described by Subsection (a) is during 1999;

(8) the amount of capital held by the company on December 31, 1991, plus 80 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 2000; and

(9) the amount of capital held by the company on December 31, 1991, plus 90 percent of the difference between that amount and an amount equal to the minimum amount of capital required for a newly incorporated company under Section 841.054, if the last date that the company writes a policy described by Subsection (a) is during 2001.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.302. LIMITS ON LIFE OR ACCIDENTAL DEATH INSURANCE. (a) Until the amount of the capital and surplus of a domestic insurance company is at least $100,000, the company may not insure any one life for more than $20,000 in the event of death from natural causes or more than $40,000 in the event of death from accidental causes.

(b) If the net capital and surplus of a domestic insurance company is at least $75,001 but less than $100,000, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $4,000 in the event of death from natural causes and the amount of the benefit that exceeds $8,000 in the event of death from accidental causes.

(c) If the net capital and surplus of a domestic insurance company is at least $50,001 but less than $75,001, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $3,000 in the event of death from natural causes and the amount of the benefit that exceeds $6,000 in the event of death from accidental causes.

(d) If the net capital and surplus of a domestic insurance company is at least $35,001 but less than $50,001, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $2,000 in the event of death from natural causes and the amount of the benefit that exceeds $4,000 in the event of death from accidental causes.

(e) If the net capital and surplus of a domestic insurance company is $35,000 or less, the company, for any policy issued by the company, shall reinsure the amount of the benefit that exceeds $1,000 in the event of death from natural causes and the amount of the benefit that exceeds $2,000 in the event of death from accidental causes.

(f) Benefits under this section must be reinsured with a legal reserve company that is authorized to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.303. ENTIRE CONTRACT. Each policy of insurance issued or delivered in this state by any life insurance company engaged in business in this state constitutes the entire contract between the parties, except that if the application is made a part of the contract, the policy and the application constitute the entire contract.

Redesignated from Insurance Code Sec. 1101.003(a) and amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.204(a), eff. Sept. 1, 2003.

SUBCHAPTER H. DEPOSIT OF SECURITIES

Sec. 841.351. DEPOSIT WITH COMPTROLLER. (a) A domestic insurance company may, at its option, deposit with the comptroller either:

(1) securities in which the company's capital stock is invested; or

(2) securities in an amount equal to the amount of the company's capital stock.

(b) Securities deposited under Subsection (a) must be securities of a class authorized by the laws of this state for investments of a domestic insurance company's capital stock.

(c) A domestic insurance company may, at its option, withdraw a deposit made under Subsection (a), or any portion of the deposit, after substituting a deposit of securities of a like class and of an amount and value equal to the withdrawn deposit or portion of deposit.

(d) The commissioner must first approve any securities

deposited or being substituted under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.352. ISSUANCE OF RECEIPT FOR DEPOSIT. When a domestic insurance company deposits securities under this subchapter, the comptroller shall issue to the company a receipt that:

(1) describes the deposit in a manner that identifies the securities; and

(2) states that the securities are held on deposit as capital stock investments of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.353. ADVERTISEMENT OF DEPOSIT. A domestic insurance company that makes a deposit under this subchapter may:

(1) advertise the fact that a deposit has been made; or

(2) print a copy of the receipt for the deposit on any policy the company issues.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.354. ACCESS TO DEPOSIT. In accordance with reasonable rules adopted by the comptroller and the commissioner, the proper officer or agent of a domestic insurance company making a deposit of securities under this subchapter may at a reasonable time:

(1) examine the deposit;

(2) detach coupons from the securities; and

(3) collect interest on the deposit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.355. WITHDRAWAL OF DEPOSIT AFTER MERGER, CONSOLIDATION, OR TOTAL REINSURANCE. (a) When two or more domestic insurance companies that have two or more deposits of securities under this subchapter merge, consolidate, or enter into a total reinsurance contract by which the ceding company is dissolved and its

assets and liabilities are acquired or assumed by the surviving company, the new, surviving, or reinsuring insurance company, on approval of the commissioner, may withdraw all of the deposits, except for the deposit of the greatest amount and value. The new, surviving, or reinsuring insurance company must demonstrate to the commissioner that the company is the owner of the deposited securities before the commissioner approves the withdrawal of those securities.

(b) In accordance with an order of the commissioner approving a withdrawal of securities under this section, the comptroller shall release, transfer, and deliver the withdrawn securities to their owner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.356. SITUS OF DEPOSIT FOR TAX PURPOSES. For purposes of state, county, or municipal taxation, the situs of deposited securities is the municipality and county in which the depositing company's home office is located.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.357. MAINTENANCE OF DEPOSIT. A domestic insurance company must maintain a deposit of securities under this subchapter as long as the company has outstanding any liability to a policyholder in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER I. LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES

Sec. 841.401. PURPOSE. The purpose of this subchapter is to authorize the establishment of domestic limited purpose subsidiary life insurance companies to enable those companies to support excess reserves for certain life insurance policies.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.402. DEFINITIONS. In this subchapter:

(1) "Affiliated company" means:

(A) domestic life insurance companies that are directly or indirectly wholly owned subsidiaries of the same holding company; or

(B) controlled persons.

(2) "Appointed actuary" means the actuary who is appointed by a limited purpose subsidiary life insurance company to render the actuarial opinion required by Subchapter B, Chapter 425.

(3) "Ceding insurer" means a company that cedes risk to a limited purpose subsidiary life insurance company under a reinsurance contract and that is:

(A) a domestic life insurance company that is the parent of a limited purpose subsidiary life insurance company; or

(B) an affiliated company of a limited purpose subsidiary life insurance company.

(4) "Controlled person" means a person organized or authorized to do business under the laws of this state that is controlled directly or indirectly by a holding company.

(5) "Excess reserves" means the amount of statutory reserves determined to be redundant by the appointed actuary for life insurance policies whose reserves are calculated under 28 T.A.C. Chapter 3, Subchapter EE. Excess reserves may not be an amount greater than the difference between the reserves calculated using 28 T.A.C. Chapter 3, Subchapter EE, and the reserves calculated using generally accepted accounting principles.

(6) "Guarantor" means a holding company or an affiliated company under Section 841.417 of the limited purpose subsidiary life insurance company that is a party to a guaranty.

(7) "Guaranty" means a commissioner-approved agreement by a guarantor with sufficient equity and financial strength to pay, during the life of the guaranty, an amount equal to the specified obligations of a limited purpose subsidiary life insurance company, less the equity of all ceding insurers that are subsidiaries of the guarantor, to satisfy the agreement.

(8) "Holding company" means a person that directly or indirectly controls an insurer.

(9) "Insurer" means a domestic life insurance company organized under this chapter.

(10) "Letter of credit" means a clean, unconditional,

irrevocable letter of credit issued or confirmed by a qualified United States financial institution, as defined by Section 493.104(b)(2)(C).

(11) "Limited purpose subsidiary life insurance company" means a limited purpose subsidiary life insurance company organized under this subchapter:

(A) that is wholly owned by a life insurance company or an affiliated company; and

(B) to which the commissioner issues a certificate of authority under this chapter.

(12) "Material transaction" means a transaction or series of transactions involving amounts equal to or exceeding three percent of a limited purpose subsidiary life insurance company's admitted assets.

(13) "Organizational document" means a limited purpose subsidiary life insurance company's articles of incorporation and the company's bylaws.

(14) "Organizing company" means the company that organizes a limited purpose subsidiary life insurance company under this subchapter.

(15) "Parent" means a person that directly or indirectly controls through one or more intermediaries, or wholly owns, a limited purpose subsidiary life insurance company.

(16) "Person" has the meaning assigned by Section 823.002.

(17) "Reinsurance contract" means a contract between a limited purpose subsidiary life insurance company and a ceding insurer under which the limited purpose subsidiary life insurance company agrees to provide reinsurance to the ceding insurer for certain risks.

(18) "Risk" means a risk associated with life insurance policies written on or after the effective date of this chapter by a ceding insurer, or assumed by a ceding insurer from an affiliated company under life insurance policies which were written on or after the effective date of this chapter, by the affiliated company and for which the ceding insurer calculates statutory reserves for those policies pursuant to 28 T.A.C. Chapter 3, Subchapter EE.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.05, eff. September 1, 2017.

Sec. 841.403. ORGANIZATIONAL DOCUMENTS. (a) A wholly owned domestic insurer authorized to transact the business of insurance under this chapter or an affiliated company organized or authorized to conduct business under the laws of this state may organize a limited purpose subsidiary life insurance company under this subchapter.

(b) A limited purpose subsidiary life insurance company may reinsure risks of the organizing company and of an affiliated company.

(c) A limited purpose subsidiary life insurance company's organizational documents must:

(1) limit the company's authority to transact the business of insurance to reinsuring only the risks of a ceding insurer;

(2) provide that the limited purpose subsidiary life insurance company may not otherwise engage in the business of insurance; and

(3) provide that the limited purpose subsidiary life insurance company must always be wholly owned by a domestic insurer authorized to transact the business of insurance under this chapter or by an affiliated company organized or authorized to do business under the laws of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.404. CERTIFICATE OF AUTHORITY REQUIRED. A limited purpose subsidiary life insurance company may not engage in the business of reinsurance in this state unless the limited purpose subsidiary life insurance company obtains from the commissioner a certificate of authority under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.405. APPLICATION FOR CERTIFICATE OF AUTHORITY. To

obtain a charter for a limited purpose subsidiary life insurance company, the incorporators of the company shall pay to the department a charter fee in an amount determined under Chapter 202 and file with the department:

(1) an application for charter on the form prescribed by, and containing the information prescribed by, the commissioner;

(2) the company's articles of incorporation;

(3) an affidavit made by the company's president, vice president, treasurer, or chief financial officer stating that:

(A) the minimum capital and surplus requirements of this subchapter are satisfied;

(B) the capital and surplus are the bona fide property of the company;

(C) the information in the articles of incorporation is true and correct;

(D) the proposed organization and operation of the limited purpose subsidiary life insurance company comply with all applicable provisions of this subchapter;

(E) the limited purpose subsidiary life insurance company's investment policy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and management of those assets with respect to the risks associated with the reinsurance contract; and

(F) any reinsurance contract and any arrangement for securing the limited purpose subsidiary life insurance company's obligations under the reinsurance contract, including any agreements or other documentation to implement the arrangement;

(4) a business plan that includes pro forma financial statement projections that demonstrate how the limited purpose subsidiary life insurance company will comply with Section 841.412;

(5) a copy of any proposed guaranty that demonstrates how compliance with Sections 841.412 and 841.417 will be achieved;

(6) an opinion of a qualified independent actuary acceptable to the commissioner that the methodology and assumptions used to set and discount reserves make good and sufficient provision for the risk assumed by the limited purpose subsidiary life insurance company, including significant stress tests on key assumptions; and

(7) any other statement or document required by the commissioner to evaluate the limited purpose subsidiary life insurance company's application for a certificate of authority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.406. INVESTMENT OF CERTAIN SURPLUS BY ORGANIZING COMPANY. If the company that organizes a limited purpose subsidiary life insurance company is a domestic life insurance company, the organizing company may invest funds from the organizing company's surplus in the limited purpose subsidiary life insurance company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.407. OFFICERS AND DIRECTORS. The officers and directors of a company that organizes a limited purpose subsidiary life insurance company may serve as officers and directors of the limited purpose subsidiary life insurance company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.408. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner may issue a certificate of authority to a limited purpose subsidiary life insurance company, authorizing the company to transact reinsurance business in this state as a limited purpose subsidiary life insurance company based on a finding that:

(1) the company's application meets the criteria contained in this subsection;

(2) the proposed plan of the limited purpose subsidiary life insurance company provides for viable operation of the company, including a determination by the commissioner that the limited purpose subsidiary life insurance company applicant has sufficiently strong financial support;

(3) the guaranties meet the requirements of Section 841.417;

(4) the terms of any reinsurance arrangement, including the reinsurance contract and related transactions, comply with this subchapter and all applicable insurance laws and rules;

(5) the proposed application and reinsurance arrangement is

not hazardous to any ceding insurer; and

(6) the proposed application and reinsurance contract will always fund authorized investments that comply with Section 841.412, including statutory reserves for life insurance with invested assets at least equal to the amount of reserves required under generally accepted accounting principles.

(b) In conjunction with the issuance of a certificate of authority under this section, the commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the limited purpose subsidiary life insurance company that the commissioner deems appropriate and that are not inconsistent with this chapter, including requesting from the company information to monitor the financial strength of guarantors and requiring the periodic reporting and monitoring of assets behind any guaranties issued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.409. SCOPE OF CERTIFICATE OF AUTHORITY. (a) A limited purpose subsidiary life insurance company that has been issued a certificate of authority may reinsure only the risks of a ceding insurer. A limited purpose subsidiary life insurance company may not otherwise engage in the business of insurance.

(b) A limited purpose subsidiary life insurance company may purchase reinsurance to cede the risks assumed under a reinsurance contract.

(c) A limited purpose subsidiary life insurance company organized under this subchapter is considered to be licensed to transact the business of reinsurance for the purposes of Section 493.051, but may only reinsure risks of the company's affiliated companies.

(d) A limited purpose subsidiary life insurance company shall provide the commissioner with notice of any change in the company's business plan required by Section 841.405, including any material change in the methods used to comply with Section 841.413.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.06, eff. September 1, 2017.

Sec. 841.410. CAPITAL AND SURPLUS. (a) The commissioner may not issue a certificate of authority to a limited purpose subsidiary life insurance company unless the company possesses and maintains unimpaired paid-in capital and surplus of not less than $10 million.

(b) A limited purpose subsidiary life insurance company shall comply with the risk-based capital requirements adopted by the commissioner by rule.

(c) A limited purpose subsidiary life insurance company shall maintain risk-based capital in an amount that is at least equal to 300 percent of the authorized control level of risk-based capital adopted by the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.411. FORECLOSURE ON COLLATERAL. A limited purpose subsidiary life insurance company shall immediately notify the commissioner of any action by a ceding insurer or any other person to foreclose on, or otherwise take possession of, collateral provided by the limited purpose subsidiary life insurance company to secure an obligation of the company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.412. MINIMUM AUTHORIZED INVESTMENT REQUIREMENT AFTER CREDIT FOR REINSURANCE; LETTERS OF CREDIT; GUARANTIES. (a) A limited purpose subsidiary life insurance company shall hold investments authorized under Subchapters C and D, Chapter 425, exclusive of investments in affiliates, in an amount that at least equals the sum of:

(1) the minimum capital and surplus requirements of Section 841.410;

(2) the risk-based capital requirements adopted by the commissioner; and

(3) reserves calculated using generally accepted accounting principles.

(b) Subject to compliance with Subsection (a) and notwithstanding Chapter 425, a limited purpose subsidiary life insurance company may reduce the amount of the company's excess reserves on account of:

(1) reinsurance that complies with Chapter 493;

(2) a letter of credit that complies with Section 493.104(b)(2)(C); or

(3) guaranties from a holding company or an affiliated company as provided by Section 841.417.

(c) Notwithstanding Subsection (b), a limited purpose subsidiary life insurance company may hold guaranties from a holding company or an affiliated company as provided by Section 841.417 as an admitted asset with an offsetting increase in special surplus funds to support excess reserves only.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.07, eff. September 1, 2017.

Sec. 841.413. PERMITTED REINSURANCE. (a) A limited purpose subsidiary life insurance company may only reinsure the risks of a ceding insurer under a reinsurance contract.

(b) Unless otherwise approved in advance by the commissioner, a limited purpose subsidiary life insurance company may not assume or retain exposure to reinsurance losses for the company's own account that are not funded by:

(1) premium and other amounts payable by the ceding insurer to the limited purpose subsidiary life insurance company under the reinsurance contract, or any return on the investment of the premiums or other amounts;

(2) letters of credit that qualify under Section 493.104(b)(2)(C); or

(3) guaranties of a holding company or an affiliated company as provided by Section 841.417.

(c) A limited purpose subsidiary life insurance company may

cede risks assumed under a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the commissioner. The commissioner may approve a reinsurance contract under this subsection if the commissioner finds that:

(1) the proposed reinsurance complies with Chapter 493;

(2) the proposed reinsurer has sufficient liquidity, admitted assets, and policyholder surplus to support the liabilities assumed under the reinsurance contract; and

(3) the proposed reinsurance contract would not result in a hazardous financial condition for the limited purpose subsidiary life insurance company.

(d) A limited purpose subsidiary life insurance company may enter into contracts and conduct other commercial activities related or incidental to, and necessary to fulfill the purposes of, a reinsurance contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.08, eff. September 1, 2017.

Sec. 841.414. REPORTS ON RESERVES AND RISK-BASED CAPITAL. (a) A limited purpose subsidiary life insurance company annually shall file an opinion of the appointed actuary acceptable to the commissioner concerning the methods and assumptions used to set reserves. The opinion must demonstrate that the limited purpose subsidiary life insurance company holds risk-based capital and invested admitted assets that are at least equal to reserves specified by generally accepted accounting principles.

(b) The commissioner may reject the opinion of the appointed actuary if the commissioner determines that accepting the opinion would be hazardous to policyholders, enrollees, creditors, or the public.

(c) A limited purpose subsidiary life insurance company annually shall file with the commissioner a report of the limited purpose subsidiary life insurance company's risk-based capital level as of the end of the preceding calendar year containing the

information required by the risk-based capital instructions adopted by the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.415. OTHER LAWS NOT APPLICABLE. The deposit requirements in Subchapter H do not apply to a limited purpose subsidiary life insurance company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.416. APPLICABILITY OF OTHER LAW. Except as specifically provided by law, all provisions of this code apply to a limited purpose subsidiary life insurance company formed under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.417. GUARANTY REQUIREMENTS. (a) A guaranty may not be used to comply with this chapter without the prior written approval of the commissioner.

(b) Before approving a guaranty, the commissioner must find that:

(1) the guarantor has capital and surplus of $100 million, exclusive of investments in subsidiaries and affiliates;

(2) the guarantor has admitted assets backing capital and surplus in an amount sufficient to fulfill the guaranty, and the sufficiency on an ongoing basis is demonstrated to the satisfaction of the commissioner;

(3) the guarantor and all affiliates are in good standing with the department;

(4) the guarantor has provided all information requested by the commissioner; and

(5) the guarantor is otherwise acceptable to the commissioner.

(c) Notwithstanding Subsection (b), the commissioner may allow, subject to the commissioner's prior approval, an affiliated company of the holding company to serve as guarantor. The commissioner may approve an affiliated company as a guarantor on a finding that the affiliated company possesses the independent financial means to discharge the guaranty using the affiliated company's own financial resources.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.418. SUNSET PROVISION. This subchapter is valid for business sold only until January 1 of the year in which principle-based reserve requirements become operative in Texas under the adoption of the National Association of Insurance Commissioners' 2009 amendments to the NAIC Model Standard Valuation Law. After that January 1, the limited purpose subsidiary life insurance company may not assume new risks of a ceding insurer relating to business sold after that date.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.419. CERTIFICATION OF ACTUARIAL OFFICER. (a) At the time a limited purpose subsidiary life insurance company files an application for a certificate of authority under this subchapter, and not later than March 1 of each year that a limited purpose subsidiary life insurance company is in operation and is ceded new business from a ceding insurer, a senior actuarial officer of each ceding insurer shall file with the commissioner a certification that the ceding insurer's transactions with the limited purpose subsidiary life insurance company are not being used to gain an unfair advantage in the pricing of the ceding insurer's products.

(b) A ceding insurer may not be deemed to have an unfair advantage if the pricing of the policies and contracts reinsured by the limited purpose subsidiary life insurance company reflects, at the time the policies and contracts were issued, a reasonable long-term estimate of the cost to the ceding insurer of an alternative third-party transaction, and uses current pricing assumptions.

(c) The ceding insurer shall keep documentation between examinations that sets forth the manner in which a senior actuarial officer arrived at the conclusions in the certification.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

Sec. 841.420. ACCOUNTING AND FINANCIAL REPORTING. The commissioner shall prescribe accounting and financial reporting requirements with regard to the limited purpose subsidiary life insurance company and any insurer as defined by Section 841.402 that organizes a limited purpose subsidiary life insurance company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1173 (H.B. 3161), Sec. 1, eff. June 17, 2011.

SUBCHAPTER O. ENFORCEMENT AND INTERVENTION

Sec. 841.701. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) If the commissioner determines that an insurance company that holds a certificate of authority does not comply with this chapter or another law described by Section 841.002, the commissioner shall notify the company that the commissioner intends to revoke its certificate of authority on the expiration of the 30-day period after the date actual notice is delivered or mailed under this section.

(b) Notice under this section must:

(1) be in writing; and

(2) be delivered to an executive officer of the company by personal service or by registered mail.

(c) If an insurance company receiving notice under this section does not fully comply before the expiration of the period prescribed by Subsection (a), the commissioner shall revoke the company's certificate of authority.

(d) An insurance company whose certificate of authority is revoked under this section is not entitled to receive another certificate of authority for a period of one year and until the company has fully and in good faith complied with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.702. APPEAL OF DETERMINATION TO REVOKE CERTIFICATE. An insurance company aggrieved by an order of the commissioner to revoke the company's certificate of authority under Section 841.701 may file suit in a court in Travis County to vacate the order.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.022, eff. September 1, 2005.

Sec. 841.703. CERTIFICATE OF AUTHORITY VOID ON FAILURE TO SATISFY JUDGMENT. (a) If an officer holding an execution issued on a final judgment rendered against an insurance company demands payment of the judgment from an officer or attorney of record of the company and the company does not fully satisfy the judgment before the 31st day after the date the demand is made, the officer shall certify the demand and failure to the commissioner, regardless of whether the demand is made in this state.

(b) On receipt of a certification under Subsection (a), the commissioner shall declare void the certificate of authority issued to the company under this chapter.

(c) An insurance company whose certificate of authority is declared void under this section may not engage in the business of insurance in this state until:

(1) the judgment is fully satisfied and discharged; and

(2) the commissioner renews the company's certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 841.704. FALSE STATEMENT, REPORT, OR OTHER DOCUMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person executes or causes to be executed a statement, report, or other document required by law to be filed with the commissioner that contains a material statement or fact that the person knows to be false.

(b) A person commits an offense if the person is an officer of an insurance company that is not organized under the laws of this state and the person files a statement, report, or other document

required by law to be filed with the commissioner that contains a material statement or fact that the person knows to be false.

(c) An offense under this section is punishable by imprisonment in the Texas Department of Criminal Justice for a term of not less than one year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.120, eff. September 1, 2009.

Sec. 841.705. PENALTY FOR FAILURE TO INVEST OR REPORT. (a) In addition to the penalty provided by this subchapter, an insurance company is subject to a penalty as prescribed by Subsection (b) if, while holding a certificate of authority to engage in the business of insurance in this state, or after the company ceases to write new business or ceases to hold a certificate of authority, the company intentionally fails or refuses to:

(1) make the investments required by Chapter 425;

(2) make a report required by a law described by Section 841.002;

(3) make any special report requested by the commissioner under a law described by Section 841.002; or

(4) comply with another provision of a law described by Section 841.002.

(b) A penalty under this section is in the amount of $25 per day for each day the company remains in default after the commissioner notifies the company of the default in the manner provided by this subchapter.

(c) A penalty under this section may be recovered in a suit brought by the attorney general on behalf of the state in a district court of Travis County.

(d) In a suit brought to recover a penalty under this section:

(1) there are rebuttable presumptions that:

(A) any default that may have occurred was intentional; and

(B) the notice required by Subsection (b) was given; and

(2) if the question of whether the investments required by

Chapter 425 were made is at issue, the defendant insurance company has the burden of proving that the investments were made as required by that chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 15, eff. April 1, 2007.

CHAPTER 842. GROUP HOSPITAL SERVICE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 842.001. DEFINITIONS. In this chapter:

(1) "Group hospital service corporation" means a corporation organized under this chapter to establish and operate a nonprofit hospital service plan, under which hospital care may be provided by the corporation through one or more hospitals and sanitariums with which the corporation has contracted for the provision of that care.

(2) "Health care provider" means a person, association, partnership, corporation, or other entity that provides a service or supplies to prevent, alleviate, cure, or heal human illness or injury.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.002. APPLICABILITY OF OTHER LAWS. (a) Except as otherwise required by this chapter, a state agency may not require a group hospital service corporation to post a bond or place a deposit with the agency or another agency of this state to begin or maintain operations authorized under this chapter.

(b) The group hospital service corporation is exempt from a provision of this code that is not expressly made applicable to the corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.003. CORPORATION SUBJECT TO REGULATION BY COMMISSIONER AND DEPARTMENT. Each group hospital service corporation is subject to regulation by the department and the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION AND STRUCTURE OF GROUP HOSPITAL SERVICE CORPORATION

Sec. 842.051. APPLICATION FOR CORPORATE CHARTER; NONPROFIT STATUS REQUIRED. (a) Seven or more persons, a majority of whom are superintendents of hospitals or physicians licensed by the Texas State Board of Medical Examiners, may apply to the secretary of state for a corporate charter to operate a group hospital service corporation.

(b) A group hospital service corporation must be governed and operated as a nonprofit organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.052. MINIMUM MEMBERSHIP REQUIREMENTS. (a) Before a group hospital service corporation may be incorporated, the corporation must have collected in advance from at least 500 applicants for membership:

(1) the application fee; and

(2) an amount at least equal to the amount charged by the corporation for one month's premium for coverage.

(b) A group hospital service corporation must maintain a membership of at least 500 as a condition of continued operation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 842.101. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The department shall issue to a group hospital service corporation a certificate of authority that authorizes the corporation to engage in the business of a group hospital service corporation if the corporation:

(1) files a statement acceptable to the department showing solvency; and

(2) complies with this chapter.

(b) The department shall charge the fee prescribed by law for the issuance of the certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. BOARD OF DIRECTORS; PERSONNEL

Sec. 842.151. BOARD OF DIRECTORS. (a) Each group hospital service corporation is governed by a board of directors that has full control over its management affairs.

(b) A board of directors must be composed of at least 12 but not more than 20 directors. A majority of the directors must be persons who:

(1) are not health care providers or employees of health care providers; and

(2) do not have a financial interest in a health care provider.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.152. COMPENSATION OF DIRECTORS. A director of a group hospital service corporation may not receive compensation for the director's services but is entitled to receive reimbursement for reasonable and necessary expenses incurred in attending a meeting called to manage or direct the affairs of the corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.153. BOARD MEETINGS. The board of directors of a group hospital service corporation may not meet more frequently than once a month. A meeting may not last more than five days.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.154. BOND REQUIREMENTS FOR CERTAIN OFFICERS AND EMPLOYEES. (a) Each group hospital service corporation shall post a bond for the officer or employee responsible for the handling of the corporation's money. The bond must be:

(1) issued by a surety company licensed by the department to do business in this state; and

(2) at all times in an amount at least equal to $25,000.

(b) In addition to the bond required under Subsection (a), the corporation shall post a separate bond or a blanket bond for all employees who have access to the money of the corporation. The bond must be in a reasonable amount set by the commissioner in the amount of at least $500, not to exceed $10,000.

(c) A bond required by this section must be payable to the commissioner for the use and benefit of the corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.155. TREASURER'S BOND. The treasurer of each group hospital service corporation shall post a fidelity bond with a corporation surety. The bond must be in the amount determined by the officers of the corporation as necessary to secure the faithful handling of the corporation's money.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.156. COMPENSATION OF CERTAIN OFFICERS AND EMPLOYEES. A paid officer or employee of a group hospital service corporation may not receive more than $20,000 annually as compensation for the officer's or employee's services unless a higher amount is first authorized by a vote of:

(1) the board of directors of the corporation; or

(2) a committee of the board of directors that is charged with the duty of authorizing that compensation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. REGULATION OF GROUP HOSPITAL SERVICE CORPORATIONS

Sec. 842.201. ANNUAL STATEMENT; FILING FEE. (a) Not later than March 1 of each year, each group hospital service corporation shall file with the department an annual statement that covers the operations for the preceding calendar year.

(b) The statement must be in the form prescribed by and provide the information required by the commissioner.

(c) The department shall charge a fee in an amount determined under Chapter 202 for filing the statement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.025, eff. April 1, 2009.

Sec. 842.202. RESERVE REQUIREMENTS. (a) Each group hospital service corporation shall maintain reserves sufficient to cover liability for claims incurred but not yet paid and the expenses incurred in settling those claims.

(b) A group hospital service corporation shall estimate the amount necessary to satisfy the reserve requirements using a method submitted to the commissioner for approval. The estimate method used by the corporation is considered approved on the 30th day after the date filed with the commissioner unless the commissioner affirmatively approves or disapproves the method before that date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.203. FINAL JUDGMENT DEPOSIT. (a) For each 1,000 members and fraction of 1,000 members, a group hospital service corporation shall deposit $100 with the comptroller through the commissioner. The total deposit required under this subsection may not exceed $2,000.

(b) The deposit required under Subsection (a) shall be used to pay any judgment entered against the group hospital service corporation and is subject to garnishment after a final judgment is entered.

(c) The group hospital service corporation shall immediately replenish the amount on deposit if the amount is impounded or impaired. If the amount is not replenished immediately on the demand of the commissioner, the corporation may be regarded as insolvent and treated accordingly.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.204. INVESTMENT LIMITATIONS. The investment limitations that apply to a life, health, and accident insurance company apply to the investments of a group hospital service

corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.205. INCURRED EXPENSES. (a) In this section, "general expenses" means expenses incurred by a group hospital service corporation in the operation of its business other than:

(1) a tax;

(2) a license fee;

(3) a commission; or

(4) an expense incurred in the performance of a contract:

(A) made directly or indirectly with this state or the United States; and

(B) under which the corporation does not assume an insurance risk.

(b) Subject to Subsection (c), a group hospital service corporation may not incur during a calendar year general expenses that exceed 20 percent of the premiums earned in that calendar year.

(c) For a group hospital service corporation earning $500 million or more in premiums in a calendar year, the maximum percentage of general expenses that may be incurred during a calendar year is reduced by one-half percent for each $50 million of premiums earned to a maximum percentage of 15 percent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.206. MINIMUM SURPLUS REQUIREMENT. Each group hospital service corporation shall maintain a surplus of at least $100,000 to meet adverse contingencies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.207. CONTRACTS; REINSURANCE; OTHER AGREEMENTS. (a) Subject to Subsection (b), a group hospital service corporation may:

(1) contract with another organization similar in character for joint participation through:

(A) a mutualization contract agreement;

(B) a reinsurance treaty; or

(C) another arrangement; and

(2) cede or accept risks from an insurer on all or part of a risk.

(b) Each document used for a purpose described by Subsection (a) must be filed with the department and approved by the commissioner for use in that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.208. BOOKS AND RECORDS. Each group hospital service corporation shall keep complete books and records.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.209. EXAMINATIONS. The following laws apply to a group hospital service corporation:

(1) Subchapter A, Chapter 86; and

(2) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.026, eff. April 1, 2009.

Sec. 842.210. LIQUIDATION, REHABILITATION, OR CONSERVATION OF GROUP HOSPITAL SERVICE CORPORATION. The dissolution, liquidation, rehabilitation, or conservation of a group hospital service corporation is subject to Chapters 441 and 443.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.027, eff. April 1, 2009.

SUBCHAPTER F. PLAN OF OPERATION; PROVISION OF BENEFITS TO MEMBERS

Sec. 842.251. PLAN OF OPERATION. (a) Before accepting

applications for membership in its hospital service plan, a group hospital service corporation must submit to the commissioner a plan of operation. The plan of operation must be accompanied by a schedule of the dues to be charged to members and a statement of the amount of hospital services that the corporation contracts to provide.

(b) The commissioner must approve the plan of operation as fair and reasonable before the corporation may engage in business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.252. MEMBERSHIP CERTIFICATE; CONTRACT. (a) A group hospital service corporation shall issue to each member a membership certificate that states the benefits to which the member is or may become entitled.

(b) The department must approve the form of:

(1) the membership certificate; and

(2) any contract made between the group hospital service corporation and the member's employer or group representative.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.253. POLICY, CERTIFICATE, AND APPLICATION FORMS. A policy, certificate, or application form used by a group hospital service corporation is subject to Chapter 1701.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.028, eff. April 1, 2009.

Sec. 842.254. DEPOSIT REQUIREMENTS. A group hospital service corporation shall deposit in the account of the corporation in a bank money collected by the corporation from a member or subscriber. The bank must be a state depository.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.255. ADVANCE PAYMENTS TO HOSPITAL PROHIBITED. A group hospital service corporation may not pay to a hospital any money collected by the corporation from a member or subscriber before the hospital provides necessary care to that member or subscriber.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.256. CONTRACTS WITH HEALTH CARE PROVIDERS. (a) A group hospital service corporation may contract with health care providers as necessary to ensure to each member or subscriber the provision of services and supplies covered by the membership certificate or policy of the corporation.

(b) A group hospital service corporation may not be required to contract with any particular health care provider.

(c) This section does not authorize a group hospital service corporation to contract with a health care provider in a manner prohibited by a licensing law of this state under which that health care provider operates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.257. MAY LIMIT BENEFITS. A policy or certificate issued by a group hospital service corporation may limit the types of disease for which benefits are provided.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.258. LIMITATIONS ON CONTRACTS FOR MEDICAL SERVICES. (a) A group hospital service corporation may not:

(1) contract to provide to a member a physician or any medical services;

(2) contract to practice medicine in any manner;

(3) control or attempt to control the relations existing between a member and the member's physician; or

(4) restrict the right of a patient to obtain the services of any licensed physician.

(b) This section does not prohibit a group hospital service corporation from contracting with:

(1) a health organization certified under Chapter 162, Occupations Code; or

(2) a physician or other health care provider under rules adopted for preferred provider plans.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.259. USE OF INDEMNITY PLAN AUTHORIZED. A group hospital service corporation may provide benefits for medical care, surgical care, or both medical and surgical care on the basis of indemnity payments for incurred expenses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.260. PAYMENT OF CLAIM; PROOF OF CLAIM. (a) After receipt of due proof of claim, a group hospital service corporation shall pay each claim presented under a membership certificate in full not later than the 60th day after the date on which the applicable services prescribed in the certificate have been provided.

(b) Written notice of a claim given to a group hospital service corporation is considered due proof of claim under this section if the corporation does not provide the claimant with the forms usually provided by the corporation for filing a claim before the 16th day after the date notice is received.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 842.261. INFORMATION AVAILABLE THROUGH INTERNET SITE. (a) A group hospital service corporation that maintains an Internet site shall list on the Internet site the physicians and health care providers, including, if appropriate, mental health providers and substance abuse treatment providers, that may be used by members in accordance with the terms of the policy or certificate applicable to the member. The listing must identify those physicians and health care providers who continue to be available to provide services to new patients or clients.

(b) The group hospital service corporation shall update at least quarterly an Internet site subject to this section.

(c) The commissioner may adopt rules as necessary to implement this section. The rules may govern the form and content of the information required to be provided under Subsection (a).

Acts 2003, 78th Leg., ch. 1177, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER G. DISCIPLINARY PROCEDURES

Sec. 842.301. REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner shall revoke the certificate of authority of a group hospital service corporation that:

(1) is determined to be:

(A) operating fraudulently; or

(B) improperly contesting claims; or

(2) fails to pay valid claims in accordance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 843. HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 843.001. SHORT TITLE. This chapter may be cited as the Texas Health Maintenance Organization Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.002. DEFINITIONS. In this chapter:

(1) "Adverse determination" means a determination by a health maintenance organization or a utilization review agent that health care services provided or proposed to be provided to an enrollee are not medically necessary or are not appropriate.

(2) "Basic health care services" means health care services that the commissioner determines an enrolled population might reasonably need to be maintained in good health.

(3) "Blended contract" means a single document that provides a combination of indemnity and health maintenance organization benefits. The term includes a single contract policy, certificate, or evidence of coverage.

(4) "Capitation" means a method of compensating a physician

or provider for arranging for or providing a defined set of covered health care services to certain enrollees for a specified period that is based on a predetermined payment per enrollee for the specified period, without regard to the quantity of services actually provided.

(5) "Complainant" means an enrollee, or a physician, provider, or other person designated to act on behalf of an enrollee, who files a complaint.

(6) "Complaint" means any dissatisfaction expressed orally or in writing by a complainant to a health maintenance organization regarding any aspect of the health maintenance organization's operation. The term includes dissatisfaction relating to plan administration, procedures related to review or appeal of an adverse determination under Section 843.261, the denial, reduction, or termination of a service for reasons not related to medical necessity, the manner in which a service is provided, and a disenrollment decision. The term does not include:

(A) a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the enrollee; or

(B) a provider's or enrollee's oral or written expression of dissatisfaction or disagreement with an adverse determination.

(7) "Emergency care" means health care services provided in a hospital emergency facility, freestanding emergency medical care facility, or comparable emergency facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the individual's condition, sickness, or injury is of such a nature that failure to get immediate medical care could:

(A) place the individual's health in serious jeopardy;

(B) result in serious impairment to bodily functions;

(C) result in serious dysfunction of a bodily organ or part;

(D) result in serious disfigurement; or

(E) for a pregnant woman, result in serious jeopardy to the health of the fetus.

(8) "Enrollee" means an individual who is enrolled in a health care plan and includes covered dependents.

(9) "Evidence of coverage" means any certificate, agreement, or contract, including a blended contract, that:

(A) is issued to an enrollee; and

(B) states the coverage to which the enrollee is entitled.

(9-a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 915, Sec. 3(1), eff. September 1, 2013.

(9-b) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code.

(10) "Group hospital service corporation" means a corporation operating under Chapter 842.

(11) "Health care" means prevention, maintenance, rehabilitation, pharmaceutical, and chiropractic services, other than medical care, provided by qualified persons.

(12) "Health care plan" means a plan:

(A) under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of health care services; and

(B) that consists in part of providing or arranging for health care services on a prepaid basis through insurance or otherwise, as distinguished from indemnifying for the cost of health care services.

(13) "Health care services" means services provided to an individual to prevent, alleviate, cure, or heal human illness or injury. The term includes:

(A) pharmaceutical services;

(B) medical, chiropractic, or dental care;

(C) hospitalization;

(D) care or services incidental to the health care services described by Paragraphs (A)-(C); and

(E) services provided under a limited health care service plan or a single health care service plan.

(14) "Health maintenance organization" means a person who arranges for or provides to enrollees on a prepaid basis a health care plan, a limited health care service plan, or a single health care service plan.

(15) "Health maintenance organization delivery network" means a health care delivery system in which a health maintenance organization arranges for health care services directly or indirectly through contracts and subcontracts with physicians and providers.

(16) "Life-threatening" means a disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(17) "Limited health care service plan" means a plan:

(A) under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of limited health care services; and

(B) that consists in part of providing or arranging for limited health care services on a prepaid basis through insurance or otherwise, as distinguished from indemnifying for the cost of limited health care services.

(18) "Limited health care services" means:

(A) services for mental health, chemical dependency, or intellectual disability, or any combination of those services; or

(B) an organized long-term care service delivery system that provides for diagnostic, preventive, therapeutic, rehabilitative, and personal care services required by an individual with a loss in functional capacity on a long-term basis.

(19) "Medical care" means the provision of those services defined as practicing medicine under Section 151.002, Occupations Code.

(20) "Net worth" means the amount by which total liabilities, excluding liability for subordinated debt issued in compliance with Chapter 427, is exceeded by total admitted assets.

(21) "Person" means any natural or artificial person, including an individual, partnership, association, corporation, organization, trust, hospital district, community mental health center, intellectual disability center, mental health center, limited liability company, or limited liability partnership or the statewide rural health care system under Chapter 845.

(22) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes);

(C) an approved nonprofit health corporation certified under Chapter 162, Occupations Code;

(D) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education

Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(E) another person wholly owned by physicians.

(23) "Prospective enrollee" means:

(A) an individual eligible to enroll in a health maintenance organization purchased through a group of which the individual is a member; or

(B) for an individual who is not a member of a group or whose group has not purchased or does not intend to purchase a health maintenance organization's health care plan, an individual who has expressed an interest in purchasing individual health maintenance organization coverage and is eligible for coverage by a health maintenance organization.

(24) "Provider" means:

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a chiropractor, registered nurse, pharmacist, optometrist, or acupuncturist; or

(ii) a pharmacy, hospital, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

(25) "Single health care service" means a health care service:

(A) that an enrolled population may reasonably need to be maintained in good health with respect to a particular health care need to prevent, alleviate, cure, or heal human illness or injury of a single specified nature; and

(B) that is provided by one or more persons licensed or otherwise authorized by the state to provide that service.

(26) "Single health care service plan" means a plan:

(A) under which a person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of a single health care service;

(B) that consists in part of providing or arranging for the single health care service on a prepaid basis through insurance or otherwise, as distinguished from indemnifying for the cost of that service; and

(C) that does not include arranging for the provision of more than one health care need of a single specified nature.

(27) "Sponsoring organization" means a person who guarantees the uncovered expenses of a health maintenance organization and who is financially capable, as determined by the commissioner, of meeting the obligations resulting from that guarantee.

(28) "Uncovered expenses" means the estimated amount of administrative expenses and the estimated cost of health care services that are not guaranteed, insured, or assumed by a person other than the health maintenance organization. The term does not include the cost of health care services if the physician or provider agrees in writing that an enrollee is not liable, assessable, or in any way subject to making payment for the services except as described in the evidence of coverage issued to the enrollee under Chapter 1271. The term includes any amount due on loans in the next calendar year unless the amount is specifically subordinated to uncovered medical and health care expenses or the amount is guaranteed by a sponsoring organization.

(29) "Uncovered liabilities" means obligations resulting from unpaid uncovered expenses, the outstanding indebtedness of loans that are not specifically subordinated to uncovered medical and health care expenses or guaranteed by the sponsoring organization, and all other monetary obligations that are not similarly subordinated or guaranteed.

(30) "Delegated entity" means an entity, other than a health maintenance organization authorized to engage in business under this chapter, that by itself, or through subcontracts with one or more entities, undertakes to arrange for or provide medical care or health care to an enrollee in exchange for a predetermined payment on a prospective basis and that accepts responsibility for performing on behalf of the health maintenance organization a function regulated by this chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, or Chapter 1271 or 1272. The term does not include:

(A) an individual physician; or

(B) a group of employed physicians, practicing medicine under one federal tax identification number, whose total claims paid to providers not employed by the group constitute less than 20 percent of the group's total collected revenue computed on a calendar year basis.

(31) "Limited provider network" means a subnetwork within a health maintenance organization delivery network in which contractual relationships exist between physicians, certain providers, independent physician associations, or physician groups that limits an enrollee's access to physicians and providers to those physicians and providers in the subnetwork.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1179, Sec. 8, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.205(a), 10A.206, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.029, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 2, eff. March 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 3(1), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.022, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.01, eff. September 1, 2023.

Sec. 843.003. POWERS OF INSURERS AND GROUP HOSPITAL SERVICE CORPORATIONS. (a) An insurer authorized to engage in the business of insurance in this state under Chapter 822, 841, or 883, an accident insurance company, health insurance company, or life insurance company authorized to engage in the business of insurance in this state under Chapter 982, or a group hospital service corporation may, either directly or through a subsidiary or affiliate, organize and operate a health maintenance organization

under this chapter.

(b) Any two or more insurers or group hospital service corporations described by Subsection (a), or their subsidiaries or affiliates, may jointly organize and operate a health maintenance organization under this chapter.

(c) An insurer or group hospital service corporation may contract with a health maintenance organization to provide:

(1) insurance or similar protection against the cost of care provided by the health maintenance organization; and

(2) coverage if the health maintenance organization does not meet its obligations.

(d) The authority of an insurer or group hospital service corporation under a contract described by Subsection (c) may include the authority to make benefit payments to a health maintenance organization for health care services provided by physicians or providers under a health care plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.004. GOVERNING BODY OF HEALTH MAINTENANCE ORGANIZATION. The governing body of a health maintenance organization may include physicians, providers, or other individuals, or any combination of physicians, providers, and other individuals.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.005. USE OF INSURANCE-RELATED TERMS BY HEALTH MAINTENANCE ORGANIZATION. A health maintenance organization that is not authorized as an insurer may not use in its name, contracts, or literature the word "insurance," "casualty," "surety," or "mutual," or any other words that are:

(1) descriptive of the insurance, casualty, or surety business; or

(2) deceptively similar to the name or description of an insurer or surety corporation engaging in business in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.006. PUBLIC DOCUMENTS. (a) Except as provided by Subsection (b), each application, filing, and report required under this chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, or Chapter 1271 or 1272 is a public document.

(b) An examination report is confidential but may be released if, in the opinion of the commissioner, the release is in the public interest.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.030, eff. April 1, 2009.

Sec. 843.007. CONFIDENTIALITY OF MEDICAL AND HEALTH INFORMATION. (a) Any information relating to the diagnosis, treatment, or health of an enrollee or applicant obtained by a health maintenance organization from the enrollee or applicant or from a physician or provider shall be held in confidence and may not be disclosed to any person except:

(1) to the extent necessary to accomplish the purposes of this chapter or:

(A) Section 1367.053;

(B) Subchapter A, Chapter 1452;

(C) Subchapter B, Chapter 1507;

(D) Chapter 222, 251, or 258, as applicable to a health maintenance organization; or

(E) Chapter 1271 or 1272;

(2) with the express consent of the enrollee or applicant;

(3) in compliance with a statute or court order for the production or discovery of evidence; or

(4) in the event of a claim or litigation between the enrollee or applicant and the health maintenance organization in which the information is pertinent.

(b) A health maintenance organization is entitled to claim the statutory privilege against disclosure that the physician or provider who provides the information to the health maintenance organization is entitled to claim.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.031, eff. April 1, 2009.

Sec. 843.008. COSTS OF ADMINISTERING HEALTH MAINTENANCE ORGANIZATION LAWS. Money collected under this chapter and Chapters 222, 251, and 258, as applicable to a health maintenance organization, must be sufficient to administer this chapter and:

(1) Section 1367.053;

(2) Subchapter A, Chapter 1452;

(3) Subchapter B, Chapter 1507;

(4) Chapters 222, 251, and 258, as applicable to a health maintenance organization; and

(5) Chapters 1271 and 1272.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.032, eff. April 1, 2009.

Sec. 843.009. APPEALS; JUDICIAL REVIEW. (a) A person who is affected by a rule, ruling, or decision of the department or the commissioner is entitled to have the rule, ruling, or decision reviewed by the commissioner by applying to the commissioner.

(b) An application must identify:

(1) the applicant;

(2) the rule, ruling, or decision affecting the applicant;

(3) the interest of the applicant in the rule, ruling, or decision;

(4) the grounds of the applicant's objection;

(5) the action sought of the commissioner; and

(6) the reasons and grounds for the commissioner to take the action.

(c) An applicant shall file the original application with the chief clerk of the department with a certification that a true and correct copy of the application has been filed with the commissioner.

(d) Not later than the 30th day after the date the application

is filed, and after 10 days' written notice to each party of record, the commissioner shall review the action in a hearing. In the hearing, any evidence and any matter pertinent to the application may be submitted to the commissioner regardless of whether it was included in the application.

(e) After the hearing, the commissioner shall render a decision at the earliest possible date. The application has precedence over all other business of a different nature pending before the commissioner.

(f) The commissioner shall adopt rules, consistent with this section, relating to applications under this section and consideration of those applications that the commissioner considers advisable.

(g) A person who is affected by a rule, ruling, or decision of the commissioner and is dissatisfied with the rule, ruling, or decision may, after failing to get relief from the commissioner, file a petition seeking judicial review of the rule, ruling, or decision under Subchapter D, Chapter 36. The action has precedence over all other causes on the docket of a different nature.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Text of section effective until April 1, 2025

Sec. 843.010. APPLICABILITY OF CERTAIN PROVISIONS TO GOVERNMENTAL HEALTH BENEFIT PLANS. Sections 843.306(f) and 843.363(a)(4) do not apply to coverage under:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(2) a Medicaid program, including a Medicaid managed care program operated under Chapter 533, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.119, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 843.010. APPLICABILITY OF CERTAIN PROVISIONS TO GOVERNMENTAL HEALTH BENEFIT PLANS. Sections 843.306(f) and 843.363(a)(4) do not apply to coverage under:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(2) a Medicaid program, including a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable.

Added by Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.119, eff. April 1, 2025.

SUBCHAPTER B. APPLICABILITY OF AND CONSTRUCTION WITH OTHER LAWS

Sec. 843.051. APPLICABILITY OF INSURANCE AND GROUP HOSPITAL SERVICE CORPORATION LAWS. (a) Except to the extent that the commissioner determines that the nature of health maintenance organizations, health care plans, or evidences of coverage renders a provision of the following laws clearly inappropriate, Subchapter A, Chapter 542, Subchapters D and E, Chapter 544, and Chapters 541, 543, and 547 apply to:

(1) health maintenance organizations that offer basic, limited, and single health care coverages;

(2) basic, limited, and single health care plans; and

(3) evidences of coverage under basic, limited, and single health care plans.

(b) A health maintenance organization is subject to:

(1) Chapter 402;

(2) Chapter 827 and is an authorized insurer for purposes of that chapter; and

(3) Subchapter G, Chapter 1251, and Section 1551.064.

(c) Except as otherwise provided by this chapter or other law, insurance laws and group hospital service corporation laws do not apply to a health maintenance organization that holds a certificate of authority under this chapter. This subsection applies to an

insurer or a group hospital service corporation only with respect to the health maintenance organization activities of the insurer or corporation.

(d) Activities permitted under other chapters of this code are not subject to this chapter.

(e) Except for Chapter 251, as applicable to a third-party administrator, and Chapters 259, 4151, and 4201, insurance laws and group hospital service corporation laws do not apply to a physician or provider. Notwithstanding this subsection, a physician or provider who conducts a utilization review during the ordinary course of treatment of patients under a joint or delegated review agreement with a health maintenance organization on services provided by the physician or provider is not required to obtain certification under Subchapter C, Chapter 4201.

(f) A health maintenance organization is subject to Chapter 823 as if the health maintenance organization were an insurer under that chapter.

(g) The merger of a health maintenance organization with another health maintenance organization is subject to Chapter 824 as if the health maintenance organizations were insurance corporations under that chapter. The commissioner may adopt rules as necessary to implement this subsection in a way that reflects the nature of health maintenance organizations, health care plans, or evidences of coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 364 (S.B. 1284), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.033, eff. April 1, 2009.

Sec. 843.052. LAWS RELATING TO SOLICITATION OR ADVERTISING. (a) Solicitation of enrollees by a health maintenance organization or its representative or agent does not violate a law relating to solicitation or advertising by a physician or provider.

(b) The provision of factually accurate information by a health maintenance organization or its personnel to prospective enrollees regarding coverage, rates, location and hours of service, and names

of affiliated institutions, physicians, and providers does not violate any law relating to solicitation or advertising by a physician or provider. The provision of that information with respect to a physician or provider may not be contrary to or in conflict with any law or ethical provision regulating the practice of a practitioner of any professional service provided through or in connection with the physician or provider.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.053. LAWS RELATING TO RESTRAINT OF TRADE. (a) A health maintenance organization that contracts with a health facility or enters into an independent contractual arrangement with physicians or providers practicing individually or as a group is not, because of the contract or arrangement, considered to have entered into a conspiracy in restraint of trade in violation of Sections 15.01-15.26, Business & Commerce Code.

(b) Notwithstanding any other law, a physician who contracts with one or more physicians in the process of conducting activities that are permitted by law but that do not require a certificate of authority under this chapter is not, because of the contract, considered to have entered into a conspiracy in restraint of trade in violation of Sections 15.01-15.26, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.054. LAWS REQUIRING CERTIFICATE OF NEED FOR HEALTH CARE FACILITY OR SERVICE. (a) A health maintenance organization is not exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(b) If the proposed plan of operation of a health maintenance organization includes providing a health care facility or service that makes the health maintenance organization subject to a statute described by Subsection (a), the commissioner may not issue a

certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the appropriate agency.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.055. LAWS RELATING TO PRACTICE OF MEDICINE. (a) This chapter does not authorize the practice of medicine as defined by state law.

(b) This chapter does not repeal, modify, or amend Section 164.051, 164.052, 164.053, 164.054, or 164.056, Occupations Code, and a health maintenance organization is not exempt from those sections.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.056. INAPPLICABILITY OF BANKRUPTCY LAW. By applying for and receiving a certificate of authority to engage in business in this state, a health maintenance organization agrees and admits that it is not subject to and is not eligible to proceed under the United States Bankruptcy Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 843.071. CERTIFICATE OF AUTHORITY REQUIRED; USE OF "HEALTH MAINTENANCE ORGANIZATION" OR "HMO". (a) A person may not organize or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization, without obtaining a certificate of authority under this chapter.

(b) A person may not use "health maintenance organization" or "HMO" in the course of operation unless the person:

(1) complies with this chapter and:

(A) Section 1367.053;

(B) Subchapter A, Chapter 1452;

(C) Subchapter B, Chapter 1507;

(D) Chapters 222, 251, and 258, as applicable to a

health maintenance organization; and

(E) Chapters 1271 and 1272; and

(2) holds a certificate of authority under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.034, eff. April 1, 2009.

Sec. 843.072. AUTHORIZATION REQUIRED TO ACT AS HEALTH MAINTENANCE ORGANIZATION. (a) A person, including a physician or provider, may not perform any act of a health maintenance organization except in accordance with the specific authorization of this chapter or other law.

(b) A person, including a physician or provider, who performs an act of a health maintenance organization that requires a certificate of authority under this chapter without first obtaining the certificate is subject to all enforcement processes and procedures available against an unauthorized insurer under Chapter 101 and Subchapter C, Chapter 36.

(c) This section does not apply to an activity exempt from regulation under Section 843.051(e), 843.053, 843.073, or 843.318.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.073. CERTIFICATE OF AUTHORITY REQUIREMENT: APPLICABILITY TO PHYSICIANS AND PROVIDERS. (a) A person is not required to obtain a certificate of authority under this chapter to the extent that the person is:

(1) a physician engaged in the delivery of medical care; or

(2) a provider engaged in the delivery of health care services other than medical care as part of a health maintenance organization delivery network.

(b) Except as provided by Section 843.101 or 843.318(a), a physician or provider that employs or enters into a contractual arrangement with a provider or group of providers to provide basic or limited health care services or a single health care service is subject to this chapter and the following provisions and is required

to obtain a certificate of authority under this chapter:

(1) Section 1367.053;

(2) Subchapter A, Chapter 1452;

(3) Subchapter B, Chapter 1507;

(4) Chapters 222, 251, and 258, as applicable to a health maintenance organization; and

(5) Chapters 1271 and 1272.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.035, eff. April 1, 2009.

Sec. 843.074. CERTIFICATE OF AUTHORITY REQUIREMENT: APPLICABILITY TO MEDICAL SCHOOL AND MEDICAL AND DENTAL UNIT. A medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school or medical and dental unit contracts to deliver medical care within a health maintenance organization delivery network. This chapter is otherwise applicable to the medical school or medical and dental unit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.075. CERTIFICATE OF AUTHORITY FOR SINGLE HEALTH CARE SERVICE PLAN. The commissioner may issue a certificate of authority to a health maintenance organization organized and operated solely to provide a single health care service plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.076. APPLICATION. (a) Any person may apply to the commissioner for and obtain a certificate of authority to organize and operate a health maintenance organization.

(b) An application for a certificate of authority must:

(1) be on a form prescribed by rules adopted by the commissioner; and

(2) be verified by the applicant or an officer or other authorized representative of the applicant.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.077. ELIGIBILITY OF FOREIGN CORPORATION. A foreign corporation may qualify for a certificate of authority under this chapter, including a certificate of authority for a single health care service plan, subject to the corporation's:

(1) registration to engage in business in this state as a foreign corporation under the Texas Business Corporation Act; and

(2) compliance with this chapter and other applicable state laws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.078. CONTENTS OF APPLICATION. (a) An application for a certificate of authority must include:

(1) a copy of the applicant's basic organizational document, if any, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents;

(2) all amendments to the applicant's basic organizational document; and

(3) a copy of the bylaws, rules and regulations, or similar documents, if any, regulating the conduct of the applicant's internal affairs.

(b) An application for a certificate of authority must include a list of the names, addresses, and official positions of the persons responsible for the conduct of the applicant's affairs, including:

(1) each member of the board of directors, board of trustees, executive committee, or other governing body or committee;

(2) the principal officer, if the applicant is a corporation; and

(3) each partner or member, if the applicant is a partnership or association.

(c) An application for a certificate of authority must include a copy of any independent contract or other contract made or to be made between the applicant and any physician, provider, or person

listed under Subsection (b).

(d) An application for a certificate of authority must include:

(1) a copy of the form of evidence of coverage to be issued to an enrollee;

(2) a copy of the form of the group contract, if any, to be issued to an employer, union, trustee, or other organization; and

(3) a written description of health care plan terms made available to any current or prospective group contract holder or current or prospective enrollee of the health maintenance organization in accordance with Section 843.201.

(e) An application for a certificate of authority must include a financial statement that is current on the date of the application and that includes:

(1) the sources and application of funds;

(2) projected financial statements during the initial period of operations;

(3) a balance sheet reflecting the condition of the applicant on the date operations are expected to start;

(4) a statement of revenue and expenses with expected member months; and

(5) a cash flow statement that states any capital expenditures, purchase and sale of investments, and deposits with the state.

(f) An application for a certificate of authority must include the schedule of charges to be used during the first 12 months of operation.

(g) An application for a certificate of authority must include a statement acknowledging that lawful process in a legal action or proceeding against the health maintenance organization on a cause of action arising in this state is valid if served in accordance with Chapter 804.

(h) An application for a certificate of authority must include a statement reasonably describing the service area or areas to be served by the applicant.

(i) An application for a certificate of authority must include a description of the complaint procedures the applicant will use.

(j) An application for a certificate of authority must include a description of the procedures and programs to be implemented by the applicant to meet the quality of health care requirements of this chapter and:

(1) Section 1367.053;
(2) Subchapter A, Chapter 1452;
(3) Subchapter B, Chapter 1507; and
(4) Chapters 1271 and 1272.

(k) An application for a certificate of authority must include network configuration information, including an explanation of the adequacy of the physician and other provider network configuration. The information provided must:

(1) include the names of physicians, specialty physicians, and other providers by zip code or zip code map; and

(2) indicate whether each physician or other provider is accepting new patients from the health maintenance organization.

(l) An application for a certificate of authority must include a written description of the types of compensation arrangements, such as compensation based on fee-for-service arrangements, risk-sharing arrangements, or capitated risk arrangements, made or to be made with physicians and providers in exchange for the provision of or an arrangement to provide health care services to enrollees, including any financial incentives for physicians and providers. The compensation arrangements are confidential and are not subject to the public information law, Chapter 552, Government Code.

(m) An application for a certificate of authority must include documentation demonstrating that the applicant will comply with Section 1271.005(c).

(n) An application for a certificate of authority must include any other information that the commissioner requires to make the determinations required by this chapter and:

(1) Section 1367.053;
(2) Subchapter A, Chapter 1452;
(3) Subchapter B, Chapter 1507;
(4) Chapters 222, 251, and 258, as applicable to a health maintenance organization; and
(5) Chapters 1271 and 1272.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.036, eff. April 1, 2009.

Sec. 843.079. CONTENTS OF APPLICATION: LIMITED HEALTH CARE SERVICE PLAN. In addition to the items required under Section 843.078, an application for a certificate of authority for a limited health care service plan must include a specific description of the health care services to be provided by the applicant.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.080. MODIFICATION OR AMENDMENT OF APPLICATION INFORMATION. (a) The commissioner may adopt reasonable rules that the commissioner considers necessary for the proper administration of this chapter to require a health maintenance organization, after receiving its certificate of authority, to submit modifications or amendments to the operations or documents described in Sections 843.078 and 843.079 to the commissioner, for the commissioner's approval or only to provide information, before implementing the modification or amendment or to require the health maintenance organization to indicate the modifications to the commissioner at the time of the next site visit or examination.

(b) As soon as reasonably possible after any filing for approval required under this section is made, the commissioner shall approve or disapprove the filing in writing. If, before the 31st day after the date a modification or amendment for which the commissioner's approval is required is filed, the commissioner does not disapprove the modification or amendment, it is considered approved. The commissioner may delay action as necessary for proper consideration for not more than an additional 30 days.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.082. REQUIREMENTS FOR APPROVAL OF APPLICATION. The commissioner shall issue a certificate of authority on payment of the application fee prescribed by Section 843.154(c) if the commissioner is satisfied that:

(1) with respect to health care services to be provided, the applicant:

(A) has demonstrated the willingness and potential ability to ensure that the health care services will be provided in a manner to:

(i) ensure both availability and accessibility of adequate personnel and facilities; and

(ii) enhance availability, accessibility, quality of care, and continuity of services;

(B) has arrangements, established in accordance with rules adopted by the commissioner, for a continuing quality of health care assurance program concerning health care processes and outcomes; and

(C) has a procedure, that is in accordance with rules adopted by the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of services, and availability and accessibility of services;

(2) the person responsible for the conduct of the affairs of the applicant is competent, is trustworthy, and has a good reputation;

(3) the health care plan, limited health care service plan, or single health care service plan is an appropriate mechanism through which the health maintenance organization will effectively provide or arrange for the provision of basic health care services, limited health care services, or a single health care service on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments;

(4) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees, after considering:

(A) the financial soundness of the health care plan's arrangement for health care services and the schedule of charges used in connection with the arrangement;

(B) the adequacy of working capital;

(C) any agreement with an insurer, a group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or providing for automatic applicability of an alternative coverage in the event the plan is discontinued;

(D) any agreement that provides for the provision of health care services; and

(E) any deposit of cash or securities submitted in accordance with Section 843.405 as a guarantee that the obligations will be performed; and

(5) the proposed plan of operation, as shown by the information submitted under Section 843.078 and, if applicable, Section 843.079, or by independent investigation, does not violate state law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.083. DENIAL OF CERTIFICATE OF AUTHORITY. (a) If the commissioner certifies that the health maintenance organization's proposed plan of operation does not meet the requirements of Section 843.082, the commissioner may not issue a certificate of authority.

(b) The commissioner shall notify the applicant that the plan is deficient and specify the deficiencies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.084. DURATION OF CERTIFICATE OF AUTHORITY. A certificate of authority continues in effect:

(1) while the certificate holder meets the requirements of this chapter and:

(A) Section 1367.053;

(B) Subchapter A, Chapter 1452;

(C) Subchapter B, Chapter 1507;

(D) Chapters 222, 251, and 258, as applicable to a health maintenance organization; and

(E) Chapters 1271 and 1272; or

(2) until the commissioner suspends or revokes the certificate or the commissioner terminates the certificate at the request of the certificate holder.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.037, eff. April 1, 2009.

Sec. 843.085. CHANGE IN CONTROL: COMMISSIONER APPROVAL. Any change in control, as defined by Chapter 823, of a health maintenance organization is subject to the approval of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF HEALTH MAINTENANCE ORGANIZATIONS

Sec. 843.101. PROVIDING OR ARRANGING FOR CARE. (a) A health maintenance organization may provide or arrange for medical care services only through:

(1) other health maintenance organizations; or

(2) physicians or groups of physicians who have independent contracts with the health maintenance organizations.

(b) A health maintenance organization may provide or arrange for health care services only through:

(1) other health maintenance organizations;

(2) providers or groups of providers who are:

(A) under contract with or are employed by the health maintenance organization; or

(B) under contract with an entity that is under contract with the health maintenance organization to provide a network of providers to provide health care services only if the contract between the entity and the health maintenance organization:

(i) does not limit the health maintenance organization's authority or responsibility, including financial responsibility, to comply with any regulatory requirement that applies to a function performed by the entity;

(ii) requires the entity to comply with all regulatory requirements that apply to a function performed by the entity; and

(iii) expressly sets forth the requirements of Subparagraphs (i) and (ii); or

(3) additional health maintenance organizations or physicians or providers who have contracted for health care services with:

(A) the other health maintenance organizations;

(B) physicians with whom the health maintenance organization has contracted; or

(C) providers who are under contract with or are employed by the health maintenance organization.

(b-1) Except as provided by Subsection (b-2) and notwithstanding any other law, an entity described by Subsection

(b)(2)(B) and the health maintenance organization with which the entity contracts are subject to Chapter 1272 as if the entity were a delegated entity unless the entity:

(1) is a delegated network or delegated third party as defined by Section 1272.001; or

(2) is not a delegated entity as provided by Section 1272.001(a)(1)(A) or (B).

(b-2) An entity subject to Chapter 1272 under Subsection (b-1) that does not assume risk and the health maintenance organization with which the entity contracts are not subject to the following provisions:

(1) Section 1272.053(1);

(2) Section 1272.057(1);

(3) Section 1272.061(1)(C); and

(4) Subchapter D, Chapter 1272.

(c) Notwithstanding Subsections (a) and (b), a health maintenance organization may provide or authorize the following in a manner approved by the commissioner:

(1) emergency care;

(2) services by referral; and

(3) services provided outside the service area.

(d) A health maintenance organization may not employ or contract with other health maintenance organizations or physicians or providers in a manner that is prohibited by a law of this state under which those health maintenance organizations or physicians or providers are licensed or otherwise authorized.

(e) A health maintenance organization may serve as a workers' compensation health care network, as defined by Section 1305.004, in accordance with Chapter 1305.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.060, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 366 (H.B. 3218), Sec. 1, eff. September 1, 2017.

Sec. 843.102. HEALTH MAINTENANCE ORGANIZATION QUALITY ASSURANCE. (a) A health maintenance organization shall establish

procedures to ensure that health care services are provided to enrollees under reasonable standards of quality of care that are consistent with prevailing professionally recognized standards of medical practice. The procedures must include mechanisms to ensure availability, accessibility, quality, and continuity of care.

(b) A health maintenance organization shall operate a continuing internal quality assurance program to monitor and evaluate its health care services, including primary and specialist physician services and ancillary and preventive health care services, in all institutional and noninstitutional settings.

(c) The commissioner by rule may establish minimum standards and requirements for the quality assurance programs, including standards for ensuring availability, accessibility, quality, and continuity of care.

(d) A health maintenance organization shall record formal proceedings of quality assurance program activities and maintain documentation in a confidential manner. The health maintenance organization shall make the quality assurance program minutes available to the commissioner.

(e) A health maintenance organization shall establish and maintain a physician review panel to assist in:

(1) reviewing medical guidelines or criteria; and

(2) determining prescription drugs to be covered by the health maintenance organization, if the health maintenance organization offers a prescription drug benefit.

(f) A health maintenance organization shall ensure the use and maintenance of an adequate patient record system to facilitate documentation and retrieval of clinical information for the health maintenance organization's evaluation of continuity and coordination of patient care and assessment of the quality of health and medical care provided to enrollees.

(g) The clinical records of enrollees shall be available to the commissioner for examination and review to determine compliance. The records are confidential and privileged and are not subject to the public information law, Chapter 552, Government Code, or to subpoena, except to the extent necessary to enable the commissioner to enforce this section.

(h) A health maintenance organization shall establish a mechanism for the periodic reporting of quality assurance program activities to its governing body, providers, and appropriate health

maintenance organization staff.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.103. ACQUISITION AND OPERATION OF FACILITIES; CERTAIN LOANS; COMMISSIONER APPROVAL OF AFFILIATE TRANSACTIONS. (a) A health maintenance organization may:

(1) purchase, lease, construct, renovate, operate, or maintain hospitals or medical facilities and ancillary equipment and other property reasonably required for the principal office of the health maintenance organization or for another purpose necessary in engaging in the business of the health maintenance organization; and

(2) make loans to a medical group, under an independent contract with the group to further its program, or corporations under its control, to acquire or construct medical facilities and hospitals, or to further a program providing health care services to enrollees.

(b) If the exercise of a power granted under Subsection (a) involves an affiliate, as described by Section 823.003, the health maintenance organization before exercising that power shall file notice and adequate supporting information with the commissioner for approval.

(c) The commissioner shall disapprove the exercise of a power described by Subsection (a) that would in the commissioner's opinion:

(1) substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations; or

(2) impair the interests of the public or the health maintenance organization's enrollees or creditors in this state.

(d) If the commissioner does not disapprove the exercise of a power described by Subsection (a) before the 31st day after the date notice is filed under this section, the exercise of the power is considered approved. The commissioner may, by official order, delay action as necessary for proper consideration for not more than an additional 30 days.

(e) The commissioner may adopt rules exempting from the filing requirements of Subsection (b) an activity that has a de minimis effect.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.104. CONTRACTS FOR CERTAIN ADMINISTRATIVE FUNCTIONS. A health maintenance organization may contract with any person to perform functions such as marketing, enrollment, and administration on behalf of the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.105. MANAGEMENT AND EXCLUSIVE AGENCY CONTRACTS. (a) A health maintenance organization may not enter into a management contract or exclusive agency contract unless the proposed contract is first filed with and approved by the commissioner.

(b) The commissioner must approve or disapprove the contract not later than the 30th day after the date the contract is filed or within a reasonable extended period that the commissioner specifies by notice given within the 30-day period.

(c) The commissioner shall disapprove the proposed contract if the commissioner determines that the contract:

(1) subjects the health maintenance organization to excessive charges;

(2) extends for an unreasonable time;

(3) does not contain fair and adequate standards of performance;

(4) authorizes persons to manage the health maintenance organization who are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the health maintenance organization with due regard for the interests of the health maintenance organization's enrollees or creditors or the public; or

(5) contains provisions that impair the interests of the public in this state or the health maintenance organization's enrollees or creditors.

(d) The commissioner shall disapprove a proposed management contract unless the commissioner determines that the management contractor has in force in its own name a fidelity bond on its officers and employees in the amount of at least $100,000 or another amount prescribed by the commissioner.

(e) The fidelity bond must be issued by an insurer that holds a

certificate of authority in this state. If, after notice and hearing, the commissioner determines that a fidelity bond is not available from an insurer that holds a certificate of authority in this state, the management contractor may obtain a fidelity bond procured by a surplus lines agent resident in this state in compliance with Chapter 981.

(f) The fidelity bond must obligate the surety to pay any loss of money or other property that the health maintenance organization sustains because of an act of fraud or dishonesty by an employee or officer of the management contractor during the period that the management contract is in effect.

(g) Instead of a fidelity bond, the management contractor may deposit with the comptroller cash or securities acceptable to the commissioner. The deposit must be maintained in the amount and is subject to the same conditions required for a fidelity bond under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.106. INSURANCE, REINSURANCE, INDEMNITY, AND REIMBURSEMENT. A health maintenance organization may contract with an insurer or group hospital service corporation authorized to engage in business in this state to provide insurance, reinsurance, indemnification, or reimbursement against the cost of health care and medical care services provided by the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.107. INDEMNITY BENEFITS; POINT-OF-SERVICE PROVISIONS. A health maintenance organization may offer:

(1) indemnity benefits covering out-of-area emergency care;

(2) indemnity benefits, in addition to those relating to out-of-area and emergency care, provided through an insurer or group hospital service corporation;

(3) a point-of-service plan under Subchapter A, Chapter 1273; or

(4) a point-of-service rider under Section 843.108.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.038, eff. April 1, 2009.

Sec. 843.108. POINT-OF-SERVICE RIDER. (a) In this section, "point-of-service rider" means a rider under which indemnity benefits for the cost of health care services are provided by a health maintenance organization in conjunction with corresponding benefits arranged for or provided by a health maintenance organization.

(b) A health maintenance organization may offer a point-of-service rider for out-of-network coverage without obtaining a separate certificate of authority as an insurer if the expenses incurred under the point-of-service rider do not exceed 10 percent of the total medical and hospital expenses incurred for all health plan products sold by the health maintenance organization. If the expenses exceed that level, the health maintenance organization may not issue new point-of-service riders until the expenses fall below that level or until the health maintenance organization obtains a certificate of authority as an insurer.

(c) Indemnity benefits for services provided under a point-of-service rider may be limited to those services defined in the evidence of coverage and may be subject to different cost-sharing provisions. The cost-sharing provisions for indemnity benefits may be higher than the cost-sharing provisions for in-network health maintenance organization coverage. For enrollees in a limited provider network, higher cost-sharing may be imposed only when benefits or services are obtained outside the health maintenance organization delivery network.

(d) A health maintenance organization that issues a point-of-service rider under this section must meet additional net worth requirements prescribed by the commissioner. The commissioner shall base the net worth requirements on the actuarial relation of the amount of insurance risk assumed through the point-of-service rider to the amount of solvency and reserve requirements otherwise required of the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.109. PAYMENT BY GOVERNMENTAL OR PRIVATE ENTITY. A health maintenance organization may accept from a governmental or private entity payments for all or part of the cost of services provided or arranged for by the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.110. CORPORATION, PARTNERSHIP, OR ASSOCIATION POWERS. A health maintenance organization has all powers of a partnership, association, or corporation, including a professional association or corporation, as appropriate under the organizational documents of the health maintenance organization, that are not in conflict with this chapter or other applicable law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.111. GROUP MODEL HEALTH MAINTENANCE ORGANIZATIONS. (a) In this section, "group model health maintenance organization" means a health maintenance organization that provides the majority of its professional services through a single group medical practice that is formally affiliated with the medical school component of a state-supported public college or university in this state.

(b) Unless this section and a power specified in Section 843.101, 843.103, 843.104, 843.106, 843.107, 843.109, or 843.110 are specifically amended by law, a law, without regard to the time of enactment, may not be construed to prohibit or restrict a group model health maintenance organization from:

(1) selectively contracting with or declining to contract with a provider as the group model health maintenance organization considers necessary;

(2) contracting for or declining to contract for an individual health care service or full range of health care services as the group model health maintenance organization considers necessary, if the service or services may be legally provided by the contracting provider; or

(3) requiring enrolled members of the group model health maintenance organization who wish to obtain the services covered by the group model health maintenance organization to use the providers specified by the group model health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.112. DENTAL POINT-OF-SERVICE OPTION. (a) In this section:

(1) "Point-of-service option" means a plan provided through a contractual arrangement under which:

(A) indemnity benefits for the cost of dental care services, other than emergency care or emergency dental care, are provided by an insurer or group hospital service corporation in conjunction with corresponding benefits arranged or provided by a health maintenance organization; and

(B) an enrollee may choose to obtain benefits or services under the indemnity plan or the health maintenance organization plan in accordance with specific provisions of a point-of-service contract.

(2) "Provider panel" means the providers with whom a health maintenance organization contracts to provide dental services to enrollees covered under a dental benefit plan.

(b) This section applies to a dental health maintenance organization or another single service health maintenance organization that provides dental benefits. This section does not apply to a health maintenance organization that has 10,000 or fewer enrollees in this state who are enrolled in dental benefit plans based on a provider panel.

(c) If an employer, association, or other private group arrangement that employs 25 or more employees or has 25 or more members offers and contributes to the cost of dental benefit plan coverage to employees or individuals only through a provider panel, the health maintenance organization with which the employer, association, or other private group arrangement is contracting for the coverage shall offer, or contract with another entity to offer, a dental point-of-service option to the employer, association, or other private group arrangement. The employer may offer the dental point-of-service option to the employee or individual to accept or reject.

(d) If a health maintenance organization's dental provider panel is the sole delivery system offered to employees by an employer, the health maintenance organization:

(1) shall offer the employer a dental point-of-service option;

(2) may not impose a minimum participation level on the dental point-of-service option; and

(3) as part of the group enrollment application, shall provide to each employer disclosure statements as required by rules adopted under this code for each dental plan offered.

(e) An employer may require an employee or individual who accepts the point-of-service option to be responsible for the payment of a premium, over the amount of the premium for the coverage provided to employees or members under the dental benefit plan offered through a provider panel, directly or by payroll deduction in the same manner in which the other premium is paid. The premium for the point-of-service option must be based on the actuarial value of that coverage.

(f) Different cost-sharing provisions may be imposed for the point-of-service option.

(g) An employer may charge an employee or individual who accepts the point-of-service option a reasonable administrative fee for costs associated with the employer's reasonable administration of the point-of-service option.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.113. SPECIFIED POWERS NOT EXCLUSIVE. The powers of a health maintenance organization are not limited to the powers specified by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS

Sec. 843.151. RULES. The commissioner may adopt reasonable rules as necessary and proper to:

(1) implement this chapter and Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including rules to:

(A) prescribe authorized investments for a health maintenance organization for all investments not otherwise addressed in this chapter;

(B) ensure that enrollees have adequate access to

health care services; and

(C) establish minimum physician-to-patient ratios, mileage requirements for primary and specialty care, maximum travel time, and maximum waiting time for obtaining an appointment; and

(2) meet the requirements of federal law and regulations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.039, eff. April 1, 2009.

Sec. 843.152. SUBPOENA AUTHORITY. In implementing this chapter and the following provisions, the commissioner may exercise subpoena authority in accordance with Subchapter C, Chapter 36:

(1) Section 1367.053;

(2) Subchapter A, Chapter 1452;

(3) Subchapter B, Chapter 1507;

(4) Chapters 222, 251, and 258, as applicable to a health maintenance organization; and

(5) Chapters 1271 and 1272.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.040, eff. April 1, 2009.

Sec. 843.153. AUTHORITY TO CONTRACT. In performing duties under this chapter and the following provisions, the commissioner may contract with a state agency or, after notice and opportunity for hearing, with a qualified person to make recommendations concerning determinations to be made by the commissioner:

(1) Section 1367.053;

(2) Subchapter A, Chapter 1452;

(3) Subchapter B, Chapter 1507;

(4) Chapters 222, 251, and 258, as applicable to a health maintenance organization; and

(5) Chapters 1271 and 1272.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.041, eff. April 1, 2009.

Sec. 843.154. FEES. (a) The commissioner shall, within the limits prescribed by this section, prescribe the fees to be charged under this section.

(b) Except for fees collected under Subsections (e) and (f), fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

(b-1) A fee collected under Subsection (e) or (f) shall be deposited to the credit of the account described by Section 401.156(a).

(c) A health maintenance organization shall pay to the commissioner a fee in an amount not to exceed:

(1) $18,000 for filing and review of its original application for a certificate of authority;

(2) $200 for filing of an evidence of coverage that requires approval; and

(3) $100 for a filing that is required by rule but does not require approval.

(d) A health maintenance organization shall pay to the comptroller a fee in an amount not to exceed $500 for filing of an annual report under Section 843.155.

(e) A health maintenance organization shall pay to the commissioner a fee, in an amount certified by the commissioner to be just and reasonable, for the expenses of all examinations of health maintenance organizations made on behalf of the state by the commissioner or under the commissioner's authority.

(f) A health maintenance organization shall pay to the commissioner a fee in an amount assessed by the commissioner and paid in accordance with rules adopted by the commissioner for the expenses of an examination under Section 843.156(a) that:

(1) are incurred by the commissioner or under the commissioner's authority; and

(2) are directly attributable to that examination, including the actual salaries and expenses of the examiners directly attributable to that examination, as determined under rules adopted by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 5, eff. September 1, 2011.

Sec. 843.155. ANNUAL REPORT. (a) Not later than March 1 of each year, a health maintenance organization shall file with the commissioner a report covering the preceding calendar year.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 9

(b) The report shall:

(1) be verified by at least two principal officers;

(2) be in a form prescribed by the commissioner; and

(3) include:

(A) a financial statement of the health maintenance organization, including its balance sheet and receipts and disbursements for the preceding calendar year, certified by an independent public accountant;

(B) the number of individuals enrolled during the preceding calendar year, the number of enrollees as of the end of that year, and the number of enrollments terminated during that year;

(C) a statement of:

(i) an evaluation of enrollee satisfaction;

(ii) an evaluation of quality of care;

(iii) coverage areas;

(iv) accreditation status;

(v) premium costs;

(vi) plan costs;

(vii) premium increases;

(viii) the range of benefits provided;

(ix) copayments and deductibles;

(x) the accuracy and speed of claims payment by the organization;

(xi) the credentials of physicians of the organization; and

(xii) the number of providers;

(D) updated financial projections for the next calendar year of the type described in Section 843.078(e), until the health maintenance organization has had a net income for 12 consecutive

months; and

(E) other information relating to the performance of the health maintenance organization as necessary to enable the commissioner to perform the commissioner's duties under this chapter and Chapter 20A.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.042

(b) The report shall:

(1) be verified by at least two principal officers;

(2) be in a form prescribed by the commissioner; and

(3) include:

(A) a financial statement of the health maintenance organization, including its balance sheet and receipts and disbursements for the preceding calendar year, certified by an independent public accountant;

(B) the number of individuals enrolled during the preceding calendar year, the number of enrollees as of the end of that year, and the number of enrollments terminated during that year;

(C) updated financial projections for the next calendar year of the type described in Section 843.078(e), until the health maintenance organization has had a net income for 12 consecutive months; and

(D) other information relating to the performance of the health maintenance organization as necessary to enable the commissioner to perform the commissioner's duties under:

(i) this chapter;

(ii) Section 1367.053;

(iii) Subchapter A, Chapter 1452;

(iv) Subchapter B, Chapter 1507;

(v) Chapters 222, 251, and 258, as applicable to a health maintenance organization; and

(vi) Chapters 1271 and 1272.

(c) Sections 36.108 and 201.055 and Chapter 802 apply to the annual report of a health maintenance organization.

(d) The annual report filed by the health maintenance organization shall be made publicly available on the department's Internet website in a user-friendly format that allows consumers to make direct comparisons of the financial and other data reported by health maintenance organizations under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.042, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 9, eff. September 1, 2007.

Sec. 843.156. EXAMINATIONS. (a) The commissioner may examine the quality of health care services and the affairs of any health maintenance organization or applicant for a certificate of authority under this chapter. The commissioner may conduct an examination as often as the commissioner considers necessary, but shall conduct an examination at least once every three years.

(b) A health maintenance organization shall make its books and records relating to its operations available for an examination and shall facilitate an examination in every way.

(c) Each physician and provider with whom the health maintenance organization has a contract, agreement, or other arrangement is required to make available for an examination only that portion of the physician's or provider's books and records that is relevant to the physician's or provider's relationship with the health maintenance organization.

(d) On request of the commissioner, a health maintenance organization shall provide to the commissioner a copy of any contract, agreement, or other arrangement between the health maintenance organization and a physician or provider. Documentation provided to the commissioner under this subsection is confidential and is not subject to the public information law, Chapter 552, Government Code.

(e) Medical, hospital, and health records of enrollees and records of physicians and providers providing service under an independent contract with a health maintenance organization are subject to an examination only as necessary for a continuing quality of health assurance program concerning health care procedures and outcomes that is established in accordance with an approved plan under this chapter. The plan shall provide for adequate protection of the confidentiality of medical information. Medical information may be disclosed only in accordance with this chapter and other applicable law and is subject to subpoena only on a showing of good

cause.

(f) The commissioner may examine and use the records of a health maintenance organization, including records of a quality of care assurance program and records of a medical peer review committee, as necessary to implement the purposes of this chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, including commencement of an enforcement action under Section 843.461 or 843.462. Information obtained under this subsection is confidential and privileged and is not subject to the public information law, Chapter 552, Government Code, or to subpoena except as necessary for the commissioner to enforce this chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, or Chapter 1271 or 1272. In this subsection, "medical peer review committee" has the meaning assigned by Section 151.002, Occupations Code.

(g) For the purpose of an examination, the commissioner may administer oaths to and examine the officers and agents of a health maintenance organization and the principals of physicians and providers described by this section concerning their business.

(h) Chapter 86, Section 401.101, and Subchapters B and D, Chapter 401, apply to a health maintenance organization, except to the extent that the commissioner determines that the nature of the examination of a health maintenance organization renders the applicability of those provisions clearly inappropriate.

(i) Section 38.001, Section 81.003, and Chapter 82 apply to a health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.043, eff. April 1, 2009.

Sec. 843.157. REHABILITATION, LIQUIDATION, SUPERVISION, OR CONSERVATION OF HEALTH MAINTENANCE ORGANIZATION. (a) The rehabilitation, liquidation, supervision, or conservation of a health maintenance organization shall be treated as the rehabilitation,

liquidation, supervision, or conservation of an insurer and be conducted under the supervision of the commissioner under Chapter 441 or 443, as appropriate.

(b) The commissioner may also order the rehabilitation, liquidation, supervision, or conservation of a health maintenance organization if in the commissioner's opinion the continued operation of the health maintenance organization would be hazardous to the enrollees or to the people of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.044, eff. April 1, 2009.

SUBCHAPTER F. RELATIONS WITH ENROLLEES AND GROUP CONTRACT HOLDERS

Sec. 843.201. DISCLOSURE OF INFORMATION ABOUT HEALTH CARE PLAN TERMS. (a) A health maintenance organization shall provide an accurate written or electronic description of health care plan terms, including restrictions or limitations related to a limited provider network or delegated network within a health care plan, to allow a current or prospective group contract holder or current or prospective enrollee to make comparisons and informed decisions before selecting among health care plans. The written or electronic description must:

(1) be in readable and understandable format prescribed by the commissioner; and

(2) include a current list of physicians and providers, including a delineation of any limited provider network or delegated network.

(b) A health maintenance organization may satisfy the requirement imposed under Subsection (a) through the member handbook provided under Section 843.205 if:

(1) the handbook's contents are substantially similar to and provide the same level of disclosure as the written or electronic description prescribed by the commissioner; and

(2) the current list of physicians and providers is also provided.

(c) If an enrollee designates a primary care physician who practices in a limited provider network or delegated entity, not

later than the 30th day after the date of the enrollee's enrollment, the health maintenance organization shall provide the information required under this section to the enrollee with the enrollee's identification card or in a mailing separate from other information.

(d) A health maintenance organization shall provide to an enrollee on request information on:

(1) whether a physician or other health care provider is a participating provider in the health maintenance organization's network;

(2) whether proposed health care services are covered by the health plan; and

(3) what the enrollee's personal responsibility will be for payment of applicable copayment or deductible amounts.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 261, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.208(a), eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 12, eff. September 1, 2007.

Sec. 843.2015. INFORMATION AVAILABLE THROUGH INTERNET SITE. (a) A health maintenance organization that maintains an Internet site shall list on the Internet site the physicians and providers, including, if appropriate, mental health providers and substance abuse treatment providers, that may be used by enrollees in accordance with the terms of the enrollee's health care plan. The listing must identify those physicians and providers who continue to be available to provide services to new patients or clients.

(b) The health maintenance organization shall update at least quarterly an Internet site subject to this section.

(c) The commissioner may adopt rules as necessary to implement this section. The rules may govern the form and content of the information required to be provided under Subsection (a).

Acts 2003, 78th Leg., ch. 1177, Sec. 3, eff. Sept. 1, 2003.

Sec. 843.202. DISCLOSURE OF INFORMATION TO MEDICARE RECIPIENTS. (a) Before a prospective enrollee is enrolled in a health care plan

offered to Medicare recipients by a Medicare-contracting health maintenance organization, the health maintenance organization must provide the prospective enrollee with a disclosure form adopted by the commissioner under Subsection (b).

(b) The commissioner shall adopt a disclosure form informing a prospective enrollee in a Medicare-contracting health maintenance organization of:

(1) the effect of enrollment in the health maintenance organization on the prospective enrollee's opportunity to purchase Medicare supplement insurance; and

(2) any differences in the benefits and costs between the health care plan offered to Medicare recipients and Medicare supplement insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.203. SELECTION OF PRIMARY CARE PHYSICIAN OR PROVIDER. (a) Each plan application form shall prominently include a space in which the enrollee at the time of application or enrollment shall select a primary care physician or primary care provider.

(b) An enrollee shall at all times have the right to select or change a primary care physician or primary care provider within the health maintenance organization network of available primary care physicians and primary care providers, except that a health maintenance organization may limit an enrollee's request to change physicians or providers to not more than four changes in a 12-month period.

(c) For purposes of this subchapter, an applicant physician, as defined by Chapter 1452, may not be considered to be an available primary care physician or primary care provider within the health maintenance organization delivery network for selection by an enrollee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 2, eff. September 1, 2007.

Sec. 843.204. UNTRUE OR MISLEADING INFORMATION. (a) A health

maintenance organization or a representative of a health maintenance organization may not:

(1) use or distribute or knowingly permit the use or distribution of prospective enrollee information that is untrue or misleading; or

(2) use or knowingly permit the use of:

(A) advertising that is untrue or misleading;

(B) solicitation that is untrue or misleading; or

(C) any form of evidence of coverage that is deceptive.

(b) In this chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, a statement or item of information is:

(1) considered to be untrue if the statement or item does not conform to fact in any respect that is or may be significant to an enrollee of, or person considering enrollment in, a health care plan; and

(2) considered to be misleading, whether or not the statement or item is literally untrue, if, in the total context in which the statement is made or the item is communicated, the statement or item may be reasonably understood by a reasonable person who does not possess special knowledge regarding health care coverage as indicating:

(A) the inclusion of a benefit or advantage that does not exist and that is of possible significance to an enrollee of, or person considering enrollment in, a health care plan; or

(B) the absence of an exclusion, limitation, or disadvantage that does exist and that is of possible significance to an enrollee of, or person considering enrollment in, a health care plan.

(c) In this chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272, an evidence of coverage is considered to be deceptive if the evidence of coverage, taken as a whole and with consideration given to typography and format as well as language, would cause a reasonable person who does not possess special knowledge regarding health care plans and evidences of coverage for health care plans to expect charges or benefits, services, or other advantages that the evidence of coverage does not provide or that the health care plan

issuing the evidence of coverage does not regularly make available for enrollees covered under the evidence of coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.045, eff. April 1, 2009.

Sec. 843.205. MEMBER'S HANDBOOK; INFORMATION ABOUT COMPLAINTS AND APPEALS. (a) In this section, "major population" means a group constituting 10 percent or more of the enrolled population of the health maintenance organization.

(b) A health maintenance organization shall establish procedures to:

(1) provide to an enrollee a member handbook and materials relating to the complaint and appeals process in the languages of the major populations of the enrolled population; and

(2) provide access to a member handbook and the complaint and appeals process to an enrollee who has a disability that affects the enrollee's ability to communicate or read.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.206. NOTICE OF CHANGE IN PAYMENT ARRANGEMENTS. A health maintenance organization shall notify a group contract holder within 30 days of any substantive change to the payment arrangements between the health maintenance organization and physicians or providers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.207. NOTICE OF CHANGE IN OPERATIONS. A health maintenance organization shall provide to its enrollees reasonable notice of any material adverse change in the operation of the health maintenance organization that will directly affect the enrollees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.2071. NOTICE OF INCREASE IN CHARGE FOR COVERAGE. (a) Not less than 60 days before the date on which an increase in a charge for coverage under this chapter takes effect, a health maintenance organization shall:

(1) give to each enrollee under an individual evidence of coverage written notice of the effective date of the increase; and

(2) provide the enrollee a table that clearly lists:

(A) the actual dollar amount of the charge for coverage on the date of the notice;

(B) the actual dollar amount of the charge for coverage after the charge increase; and

(C) the percentage change between the amounts described by Paragraphs (A) and (B).

(b) The notice required by this section must be based on coverage in effect on the date of the notice.

(c) This section may not be construed to prevent a health maintenance organization, at the request of an enrollee, from negotiating a change in benefits or rates after delivery of the notice required by this section.

(d) A health maintenance organization may not require an enrollee entitled to notice under this section to respond to the health maintenance organization to renew the coverage or take other action relating to the renewal or extension of the coverage before the 45th day after the date the notice described by Subsection (a) is given.

(e) The notice required by this section must include:

(1) contact information for the department, including information concerning how to file a complaint with the department;

(2) contact information for the Texas Consumer Health Assistance Program, including information concerning how to request from the program consumer protection information or assistance with filing a complaint; and

(3) the addresses of Internet websites that provide consumer information related to rate increase justifications, including the websites of the department and the United States Department of Health and Human Services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.001, eff. September 1, 2011.

Sec. 843.208. CANCELLATION OR NONRENEWAL OF COVERAGE. A health maintenance organization may cancel or refuse to renew the coverage of an enrollee only for:

(1) failure to pay the charges for the coverage; or

(2) another reason prescribed by rules adopted by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.209. IDENTIFICATION CARD. An identification card or other similar document issued by a health maintenance organization to an enrollee must:

(1) indicate that the health maintenance organization is regulated under this code and subject to the provisions of Subchapter J; and

(2) display:

(A) the first date on which the enrollee became enrolled; or

(B) a toll-free number a physician or provider may use to obtain that date.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 4, eff. June 17, 2003.

Sec. 843.210. TERMS OF ENROLLEE ELIGIBILITY. (a) A contract between a health maintenance organization and a group contract holder must provide that:

(1) in addition to any other premiums for which the group contract holder is liable, the group contract holder is liable for an enrollee's premiums from the time the enrollee is no longer part of the group eligible for coverage under the contract until the end of the month in which the contract holder notifies the health maintenance organization that the enrollee is no longer part of the group eligible for coverage by the contract; and

(2) the enrollee remains covered by the contract until the end of that period.

(b) Each health maintenance organization that enters into a contract described by Subsection (a) shall notify the group contract holder periodically as provided by this section that the contract holder is liable for premiums on an enrollee who is no longer part of

the group eligible for coverage under the contract until the health maintenance organization receives notification of termination of the enrollee's eligibility for that coverage.

(c) If the health maintenance organization charges the group contract holder on a monthly basis for the coverage premiums, the health maintenance organization shall include the notice required by Subsection (b) in each monthly statement sent to the group contract holder. If the health maintenance organization charges the group contract holder on other than a monthly basis for the premiums, the health maintenance organization shall notify the group contract holder periodically in the manner prescribed by the commissioner by rule.

(d) The notice required by Subsection (b) must include a description of methods preferred by the health maintenance organization for notification by a group contract holder of an enrollee's termination from coverage eligibility.

Added by Acts 2005, 79th Leg., Ch. 669 (S.B. 51), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1217 (S.B. 1143), Sec. 1, eff. September 1, 2009.

Sec. 843.211. APPLICABILITY OF SUBCHAPTER TO ENTITIES CONTRACTING WITH HEALTH MAINTENANCE ORGANIZATION. This subchapter applies to a person to whom a health maintenance organization contracts to:

(1) process or pay claims;

(2) obtain the services of physicians or other providers to provide health care services to enrollees; or

(3) issue verifications or preauthorizations.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 13, eff. September 1, 2007.

SUBCHAPTER G. DISPUTE RESOLUTION

Sec. 843.251. COMPLAINT SYSTEM REQUIRED; COMMISSIONER RULES AND EXAMINATION. (a) A health maintenance organization shall implement and maintain a complaint system that provides reasonable

procedures to resolve an oral or written complaint initiated by a complainant concerning health care services. The complaint system must include a process for the notice and appeal of a complaint.

(b) The commissioner may adopt reasonable rules as necessary or proper to implement the provisions of this subchapter relating to the complaint system and administer matters relating to the complaint system.

(c) The commissioner may examine a complaint system for compliance with this subchapter and may require the health maintenance organization to make corrections as the commissioner considers necessary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.252. COMPLAINT INITIATION AND INITIAL RESPONSE; DEADLINES FOR RESPONSE AND RESOLUTION. (a) If a complainant notifies a health maintenance organization of a complaint, the health maintenance organization, not later than the fifth business day after the date of receiving the complaint, shall send to the complainant a letter acknowledging the date of receipt of the complaint.

(b) The letter required under Subsection (a) must:

(1) include a description of the health maintenance organization's complaint procedures and time frames; and

(2) if the complaint is made orally, be accompanied by a one-page complaint form that prominently and clearly states that the form must be returned to the health maintenance organization for prompt resolution of the complaint.

(c) A health maintenance organization shall acknowledge, investigate, and resolve a complaint not later than the 30th calendar day after the date the health maintenance organization receives the written complaint or one-page complaint form from the complainant.

(d) Subsections (a)-(c) do not apply to a complaint concerning an emergency or a denial of continued hospitalization. A health maintenance organization shall investigate and resolve a complaint concerning an emergency or a denial of continued hospitalization:

(1) in accordance with the medical or dental immediacy of the case; and

(2) not later than one business day after the health maintenance organization receives the complaint.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.253. COMPLAINT INVESTIGATION AND RESOLUTION. (a) A health maintenance organization shall investigate each complaint received in accordance with the health maintenance organization's policies and in compliance with this chapter.

(b) After a health maintenance organization has investigated a complaint, the health maintenance organization shall issue a response letter to the complainant within the time prescribed by Section 843.252(c) that:

(1) explains the health maintenance organization's resolution of the complaint;

(2) states the specific medical and contractual reasons for the resolution;

(3) states the specialization of any physician or other provider consulted; and

(4) contains a complete description of the process for appeal, including the deadlines for the appeals process and the deadlines for the final decision on the appeal.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.254. APPEAL TO COMPLAINT APPEAL PANEL; DEADLINES. (a) A health maintenance organization shall provide an appeals process for a complainant who is not satisfied with the resolution of the complaint. The appeals process must include the right of the complainant to:

(1) appear in person before a complaint appeal panel at the site at which the enrollee normally receives health care services or at another site agreed to by the complainant; or

(2) address a written appeal to the complaint appeal panel.

(b) The health maintenance organization shall send an acknowledgment letter to the complainant not later than the fifth business day after the date the written request for appeal is received.

(c) The health maintenance organization shall complete the appeals process not later than the 30th calendar day after the date the written request for appeal is received.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.255. COMPOSITION OF COMPLAINT APPEAL PANEL. (a) A health maintenance organization shall appoint members to a complaint appeal panel to advise the health maintenance organization on the resolution of a disputed decision appealed by a complainant.

(b) A complaint appeal panel shall be composed of an equal number of health maintenance organization staff members, physicians or other providers, and enrollees. A member of a complaint appeal panel may not have been previously involved in the disputed decision.

(c) The physicians or other providers on a complaint appeal panel must have experience in the area of care that is in dispute and must be independent of any physician or provider who made any previous determination. If specialty care is in dispute, the complaint appeal panel must include a person who is a specialist in the field of care to which the appeal relates.

(d) The enrollee members of a complaint appeal panel may not be employees of the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.256. INFORMATION PROVIDED TO COMPLAINANT RELATING TO COMPLAINT APPEAL PANEL. Not later than the fifth business day before the date a complaint appeal panel is scheduled to meet, unless the complainant agrees otherwise, the health maintenance organization shall provide to the complainant or the complainant's designated representative:

(1) any documentation to be presented to the complaint appeal panel by the health maintenance organization staff;

(2) the specialization of any physicians or providers consulted during the investigation; and

(3) the name and affiliation of each health maintenance organization representative on the complaint appeal panel.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.257. RIGHTS OF COMPLAINANT AT COMPLAINT APPEAL PANEL MEETING. A complainant, or a designated representative if the

enrollee is a minor or is disabled, is entitled to:

(1) appear in person before the complaint appeal panel;

(2) present alternative expert testimony; and

(3) request the presence of and question any person responsible for making the disputed decision that resulted in the appeal.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.258. APPEAL INVOLVING ONGOING EMERGENCY OR CONTINUED HOSPITALIZATION. (a) The investigation and resolution of an appeal of a complaint relating to an ongoing emergency or denial of continued hospitalization shall be concluded:

(1) in accordance with the medical or dental immediacy of the case; and

(2) not later than one business day after the complainant's request for appeal is received.

(b) Because of the ongoing emergency or continued hospitalization and at the request of the complainant, the health maintenance organization shall provide, instead of a complaint appeal panel, a review by a physician or provider who:

(1) has not previously reviewed the case; and

(2) is of the same or a similar specialty as the physician or provider who would typically manage the medical condition, procedure, or treatment under consideration for review in the appeal.

(c) The physician or provider reviewing the appeal may interview the patient or the patient's designated representative and shall decide the appeal.

(d) The physician or provider may deliver initial notice of the decision on the appeal orally if the physician or provider subsequently provides written notice of the decision not later than the third day after the date of the decision.

(e) The investigation and resolution of an appeal after emergency care has been provided shall be conducted in accordance with the procedures otherwise established under this subchapter, including the right to review by a complaint appeal panel.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.259. NOTICE OF DECISION ON APPEAL. (a) A health maintenance organization shall include in a notice of the final decision on an appeal a statement of the specific medical determination, clinical basis, and contractual criteria used to reach the final decision.

(b) The notice must include the toll-free telephone number and address of the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.260. RECORD OF COMPLAINTS. (a) A health maintenance organization shall maintain a complaint and appeal log regarding each complaint. The log must identify those complaints relating to limited provider networks and delegated entities.

(b) A health maintenance organization shall maintain a record of and documentation on each complaint, complaint proceeding, and action taken on each complaint, including a complaint relating to a limited provider network or delegated entity, until the third anniversary of the date the complaint was received.

(c) A complainant is entitled to a copy of the record of the complainant's complaint and any proceeding relating to that complaint.

(d) The department, during any investigation of a health maintenance organization, may review documentation maintained under Subsection (b), including original documentation, regarding a complaint and action taken on the complaint.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.209(a), eff. Sept. 1, 2003.

Sec. 843.261. SPECIAL PROVISIONS FOR APPEALS OF ADVERSE DETERMINATIONS. (a) A health maintenance organization shall implement and maintain an internal appeal system that:

(1) provides reasonable procedures for the resolution of an oral or written appeal concerning dissatisfaction or disagreement with an adverse determination; and

(2) includes procedures for notification, review, and appeal of an adverse determination in accordance with Chapter 4201.

(b) An appeal must be initiated by an enrollee, a person acting on behalf of an enrollee, or an enrollee's provider of record.

(c) When an enrollee, a person acting on behalf of an enrollee, or an enrollee's provider of record expresses orally or in writing any dissatisfaction or disagreement with an adverse determination, the health maintenance organization or utilization review agent shall:

(1) consider the expression of dissatisfaction or disagreement as an appeal of the adverse determination; and

(2) review and resolve the appeal in accordance with Chapter 4201.

(d) A health maintenance organization may integrate its appeal procedures related to adverse determinations with the complaint and appeal procedures established by the health maintenance organization under Section 843.251 and otherwise governed by this subchapter only if the procedures related to adverse determinations comply with this section and Chapter 4201.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.046, eff. April 1, 2009.

Sec. 843.262. CERTAIN DECISIONS BINDING. (a) If an enrollee, a person acting on behalf of an enrollee, or an enrollee's provider of record appeals an adverse determination as provided under Section 843.261 and the health maintenance organization or utilization review agent, as applicable, resolves the claim in favor of the enrollee, the decision is binding on the health maintenance organization.

(b) After a binding decision in favor of an enrollee relating to a proposed health care service, the health maintenance organization shall provide or arrange for the health care service within a time frame that is appropriate for the treatment of the medical condition that was the subject of the appeal.

(c) After a binding decision in favor of an enrollee relating to a health care service already provided, the health maintenance organization shall pay the cost of the service, if not already paid by the health maintenance organization, not later than the 45th day after the date the health maintenance organization receives notice of

the binding decision. A health maintenance organization that fails to pay the cost of service as required by this subsection is subject to penalties provided under Section 843.342.

(d) This section applies only to a health care plan of a political subdivision that is exempt from application of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Added by Acts 2003, 78th Leg., ch. 348, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER H. GENERAL PROVISIONS REGARDING COMPLAINTS

Sec. 843.281. RETALIATORY ACTION PROHIBITED. (a) A health maintenance organization may not engage in retaliatory action, including refusal to renew or cancellation of coverage, against a group contract holder or enrollee because the group or enrollee or a person acting on behalf of the group or enrollee has filed a complaint against the health maintenance organization or appealed a decision of the health maintenance organization.

(b) A health maintenance organization may not engage in retaliatory action, including refusal to renew or termination of a contract, against a physician or provider because the physician or provider has, on behalf of an enrollee, reasonably filed a complaint against the health maintenance organization or appealed a decision of the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.282. SUBMITTING COMPLAINTS TO DEPARTMENT. (a) Any person, including a person who has attempted to resolve a complaint through a health maintenance organization's complaint system process and is dissatisfied with the resolution, may submit a complaint to the department alleging a violation of:

(1) this chapter;

(2) Section 1367.053;

(3) Subchapter A, Chapter 1452;

(4) Subchapter B, Chapter 1507;

(5) Chapters 222, 251, and 258, as applicable to a health maintenance organization; or

(6) Chapter 1271 or 1272.

(b) The commissioner shall complete an investigation of a complaint against a health maintenance organization to determine whether a violation has occurred not later than the 60th day after the date the department receives the complaint and all information necessary for the commissioner to make a determination.

(c) The commissioner may extend the time necessary to complete an investigation if:

(1) additional information is needed;

(2) an on-site review is necessary;

(3) the health maintenance organization, the physician or provider, or the complainant does not provide all documentation necessary to complete the investigation; or

(4) other circumstances beyond the control of the department occur.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.047, eff. April 1, 2009.

Sec. 843.283. POSTING OF INFORMATION ON COMPLAINT PROCESS REQUIRED. A contract between a health maintenance organization and a physician or provider must require the physician or provider to post, in the office of the physician or provider, a notice to enrollees on the process for resolving complaints with the health maintenance organization. The notice must include the department's toll-free telephone number for filing a complaint.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER I. RELATIONS WITH PHYSICIANS AND PROVIDERS

Sec. 843.301. PRACTICE OF MEDICINE NOT AFFECTED. This chapter, Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapters 222, 251, and 258, as applicable to a health maintenance organization, and Chapters 1271 and 1272 do not:

(1) authorize any person, other than a licensed physician or practitioner of the healing arts, acting within the scope of the person's license, to engage directly or indirectly in the practice of medicine or a healing art; or

(2) authorize any person to regulate, interfere with, or intervene in any manner in the practice of medicine or a healing art.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.048, eff. April 1, 2009.

Sec. 843.302. DISCLOSURE OF APPLICATION PROCEDURES AND QUALIFICATION REQUIREMENTS TO PHYSICIAN OR PROVIDER. A health maintenance organization shall, on request, make available and disclose to a physician or provider written application procedures and qualification requirements for contracting with the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.303. DENIAL OF INITIAL CONTRACT TO PHYSICIAN OR PROVIDER. (a) A health maintenance organization that denies a contract to a physician or provider who initially applies to contract with the health maintenance organization to provide health care services on behalf of the health maintenance organization shall provide to the applicant written notice of the reasons the initial application was denied.

(b) Unless otherwise limited by Article 21.52B, this section does not prohibit a health maintenance organization from rejecting an initial application from a physician or provider based on the determination that the plan has sufficient qualified physicians or providers.

(c) A health maintenance organization may not deny a contract to a podiatrist described by Section 843.319.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 237, Sec. 3, eff. Sept. 1, 2003.

Sec. 843.304. EXCLUSION OF PROVIDER BASED ON TYPE OF LICENSE PROHIBITED. (a) A provider licensed or otherwise authorized to practice in this state may not be denied the opportunity to

participate in providing health care services that are delivered by a health maintenance organization and that are within the scope of the provider's license or authorization solely because of the type of license or authorization held by the provider.

(b) If a hospital, facility, agency, or supplier is certified by the Medicare program, Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), or accredited by the Joint Commission on Accreditation of Healthcare Organizations or another national accrediting body, a health maintenance organization shall accept that certification or accreditation.

(c) This section does not require that a health maintenance organization:

(1) use a particular type of provider in its operation;

(2) accept each provider of a category or type, except as provided by Article 21.52B; or

(3) contract directly with providers of a particular category or type.

(d) This section does not limit a health maintenance organization's authority to establish the terms under which health care services are provided by providers.

(e) A provider must comply with the terms established by the health maintenance organization for the provision of health services and for designation as a provider by the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.3041. ACUPUNCTURIST SERVICES. (a) A health maintenance organization that includes acupuncture in the services covered by the organization's health care plan may not refuse to provide reimbursement for the performance of a covered acupuncture service solely because the service is performed by an acupuncturist.

(b) This section does not require a health maintenance organization to offer acupuncture as a covered service.

Added by Acts 2005, 79th Leg., Ch. 622 (H.B. 2371), Sec. 1, eff. September 1, 2005.

Sec. 843.3042. CHIROPRACTIC SERVICES. (a) A health

maintenance organization offering a health care plan that covers a service that is within the scope of a chiropractor's license may not refuse to provide reimbursement to an in-network chiropractor for the performance of the covered service solely because the service is provided by a chiropractor.

(b) This section does not require a health maintenance organization to cover a particular health care service.

(c) This section does not affect the right of a health maintenance organization to determine whether a health care service is medically necessary.

(d) A health maintenance organization that violates this section is subject to an administrative penalty as provided by Chapter 84 of not more than $1,000 for each claim that remains unpaid in violation of this section. Each day the violation continues constitutes a separate violation.

Added by Acts 2019, 86th Leg., R.S., Ch. 116 (S.B. 1739), Sec. 1, eff. September 1, 2019.

Sec. 843.3045. NURSE FIRST ASSISTANT. A health maintenance organization may not refuse to contract with a nurse first assistant, as defined by Section 301.1525, Occupations Code, to be included in the provider's network or refuse to reimburse the nurse first assistant for a covered service that a physician has requested the nurse first assistant to perform.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.210(a), eff. Sept. 1, 2003.

Sec. 843.305. ANNUAL APPLICATION PERIOD FOR PHYSICIANS AND PROVIDERS TO CONTRACT. (a) This section applies only to a health maintenance organization that provides coverage for health care services through:

(1) one or more physicians or providers who are not partners or employees of the health maintenance organization; or

(2) one or more physicians or providers who are not owned or operated by the health maintenance organization.

(b) A health maintenance organization shall provide a period of 20 calendar days each calendar year during which any physician or

provider in a service area may, under the terms established by the health maintenance organization for the provision of services and the designation of physicians and providers, apply to participate in providing health care services.

(c) A health maintenance organization that denies the application of a physician or provider shall notify the physician or provider in writing of the reason for the denial.

(d) This section does not require that a health maintenance organization:

(1) use a particular type of physician or provider in its operation;

(2) accept a physician or provider of a category or type that does not meet the practice standards and qualifications established by the health maintenance organization; or

(3) contract directly with physicians or providers of a particular category or type.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.306. TERMINATION OF PARTICIPATION; ADVISORY REVIEW PANEL. (a) Before terminating a contract with a physician or provider, a health maintenance organization shall provide to the physician or provider a written explanation of the reasons for termination.

(b) On request, before the effective date of the termination and within a period not to exceed 60 days, a physician or provider is entitled to a review by an advisory review panel of the health maintenance organization's proposed termination, except in a case involving:

(1) imminent harm to patient health;

(2) an action by a state medical or dental board, another medical or dental licensing board, or another licensing board or government agency that effectively impairs the physician's or provider's ability to practice medicine, dentistry, or another profession; or

(3) fraud or malfeasance.

(c) An advisory review panel must:

(1) be composed of physicians and providers who are appointed to serve on the standing quality assurance committee or

utilization review committee of the health maintenance organization; and

(2) include, if available, at least one representative of the physician's or provider's specialty or a similar specialty.

(d) The health maintenance organization must consider, but is not bound by, the recommendation of the advisory review panel.

(e) The health maintenance organization on request shall provide to the affected physician or provider a copy of the recommendation of the advisory review panel and the health maintenance organization's determination.

(f) A health maintenance organization may not terminate participation of a physician or provider solely because the physician or provider informs an enrollee of the full range of physicians and providers available to the enrollee, including out-of-network providers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 2, eff. September 1, 2015.

Sec. 843.307. EXPEDITED REVIEW PROCESS ON TERMINATION OR DESELECTION. On request by the physician or provider, a physician or provider whose participation in a health care plan is being terminated or who is deselected is entitled to an expedited review process by the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.308. NOTIFICATION OF PATIENTS OF DESELECTED PHYSICIAN OR PROVIDER. (a) Except as provided by Subsection (b), if a physician or provider is deselected for a reason other than the request of the physician or provider, a health maintenance organization may not notify patients of the deselection until the effective date of the deselection or the advisory review panel makes a formal recommendation.

(b) If the contract of a physician or provider is deselected for a reason related to imminent harm, a health maintenance organization may notify patients immediately.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.309. CONTRACTS WITH PHYSICIANS OR PROVIDERS: NOTICE TO CERTAIN ENROLLEES OF TERMINATION OF PHYSICIAN OR PROVIDER PARTICIPATION IN PLAN. A contract between a health maintenance organization and a physician or provider must provide that reasonable advance notice shall be given to an enrollee of the impending termination from the plan of a physician or provider who is currently treating the enrollee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.310. CONTRACTS WITH PHYSICIANS OR PROVIDERS: CERTAIN INDEMNITY CLAUSES PROHIBITED. A contract between a health maintenance organization and a physician or provider may not contain a clause purporting to indemnify the health maintenance organization for any liability in tort resulting from an act or omission of the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.311. CONTRACTS WITH PODIATRISTS. A contract between a health maintenance organization and a podiatrist licensed by the Texas Department of Licensing and Regulation must provide that:

(1) the podiatrist may request, and the health maintenance organization shall provide not later than the 30th day after the date of the request, a copy of the coding guidelines and payment schedules applicable to the compensation that the podiatrist will receive under the contract for services;

(2) the health maintenance organization may not unilaterally make material retroactive revisions to the coding guidelines and payment schedules; and

(3) the podiatrist may, while practicing within the scope of the law regulating podiatry, provide x-rays and nonprefabricated orthotics covered by the evidence of coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.011, eff. September 1, 2019.

Sec. 843.3115. CONTRACTS WITH DENTISTS. (a) In this section, "covered service" means a dental care service for which reimbursement is available under an enrollee's health care plan contract, or for which reimbursement is available subject to a contractual limitation, including:

(1) a deductible;
(2) a copayment;
(3) coinsurance;
(4) a waiting period;
(5) an annual or lifetime maximum limit;
(6) a frequency limitation; or
(7) an alternative benefit payment.

(b) A contract between a health maintenance organization and a dentist may not limit the fee the dentist may charge for a service that is not a covered service.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1061 (S.B. 554), Sec. 1, eff. September 1, 2011.

Sec. 843.312. PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. (a) A health maintenance organization may not refuse a request by a physician participating in the health maintenance organization delivery network and a physician assistant or advanced practice nurse who is authorized by the physician to provide care under Subchapter B, Chapter 157, Occupations Code, to identify a physician assistant or advanced practice nurse as a provider in the network.

(b) A health maintenance organization may refuse a request under Subsection (a) if the physician assistant or advanced practice nurse does not meet the quality of care standards previously established by the health maintenance organization for participation in the network by physician assistants and advanced practice nurses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.313. ECONOMIC PROFILING. (a) A health maintenance organization that conducts or uses economic profiling of physicians or providers participating in the health maintenance organization delivery network shall make available to a network physician or provider on request that physician's or provider's economic profile, including the standards by which the physician or provider is measured.

(b) The use of an economic profile must recognize the characteristics of a physician's or provider's practice that may account for variations from expected costs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.314. INDUCEMENT TO LIMIT MEDICALLY NECESSARY SERVICES PROHIBITED. (a) A health maintenance organization may not use a financial incentive or make a payment to a physician or provider if the incentive or payment acts directly or indirectly as an inducement to limit medically necessary services.

(b) This section does not prohibit the use of capitation as a method of payment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.315. PAYMENT OF CAPITATION; ASSIGNMENT OF PRIMARY CARE PHYSICIAN OR PROVIDER. (a) This section applies to a health maintenance organization that to any extent uses capitation as a method of compensation.

(b) A health maintenance organization shall begin payment of capitated amounts to an enrollee's primary care physician or primary care provider, computed from the date of enrollment, not later than the 60th day after the date the enrollee selects or is assigned a primary care physician or primary care provider.

(c) If selection or assignment of a primary care physician or primary care provider does not occur at enrollment, capitated amounts that would have been paid to a selected or assigned primary care physician or primary care provider if a selection or assignment had been made shall be reserved as a capitated amount payable until the enrollee makes a selection or the health maintenance organization assigns a primary care physician or primary care provider.

(d) If an enrollee does not select a primary care physician or primary care provider at the time of application or enrollment, a health maintenance organization may assign the enrollee to a primary care physician or primary care provider.

(e) A primary care physician or primary care provider assigned under Subsection (d) must be located within the zip code nearest the enrollee's residence or place of employment.

(f) Subject to Subsection (e), the health maintenance organization shall make the assignment in a manner that results in a fair and equal distribution of enrollees among the health maintenance organization delivery network's primary care physicians or primary care providers.

(g) A health maintenance organization shall inform an enrollee of:

(1) the name, address, and telephone number of a primary care physician or primary care provider to whom the enrollee has been assigned under Subsection (d); and

(2) the enrollee's right to select a different primary care physician or primary care provider.

(h) At any time, an enrollee is entitled to reject the primary care physician or primary care provider assigned and select another physician or provider from the list of primary care physicians or primary care providers for the health maintenance organization delivery network. A rejection by an enrollee of an assigned physician or provider is not a change in provider for purposes of the limitation described by Section 843.203.

(i) A health maintenance organization shall notify a physician or provider of an enrollee's selection of that person as the primary care physician or primary care provider, or of the assignment of the enrollee to that physician or provider by the health maintenance organization, not later than the 30th working day after the date of the selection or assignment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.316. ALTERNATIVE CAPITATION SYSTEM. As an alternative to the procedures prescribed by Section 843.315, a health maintenance organization may request approval from the department of a capitation payment system that ensures:

(1) immediate availability and accessibility of a primary care physician or primary care provider; and

(2) payment to a primary care physician or primary care provider of a capitated amount certified by a qualified actuary to be actuarially sufficient to compensate the primary care physician or primary care provider for the risk assumed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.317. EXCLUSION OF PHYSICIAN OR PROVIDER BASED ON AFFILIATION WITH HEALTH MAINTENANCE ORGANIZATION PROHIBITED. A physician, health care provider, group of physicians or health care providers, or health care facility or institution may not exclude a physician or provider from staff privileges or a facility or institution solely because the physician or provider is associated with a health maintenance organization that holds a certificate of authority under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.318. CERTAIN CONTRACTS OF PARTICIPATING PHYSICIAN OR PROVIDER NOT PROHIBITED. (a) This chapter and this code do not prohibit a physician or provider who is participating in a health maintenance organization delivery network, whether by contracting with a health maintenance organization under Section 843.101 or by subcontracting with a physician or provider in the health maintenance organization delivery network, from entering into a contractual arrangement within a health maintenance organization delivery network described by Subsections (b)-(e).

(b) A physician may contract to provide medical care or arrange to provide medical care through subcontracts with other physicians. A physician may contract to provide through another provider any service that is ancillary to the practice of medicine, other than hospital or other institutional or inpatient provider services.

(c) A provider may contract to provide, or arrange to provide through a subcontract with a similarly licensed provider, any health care service that the providers are licensed to provide, other than medical care.

(d) A provider may contract to provide, or arrange to provide

through a subcontract with another provider, a health care service that the provider is not licensed to provide, other than medical care, if the contracted or subcontracted services constitute less than 15 percent of the total amount of services the provider is to provide or arrange to provide.

(e) A contract or subcontract authorized under this section may provide for compensation under:

(1) a fee-for-service arrangement;

(2) a risk-sharing arrangement; or

(3) a capitation arrangement under which a fixed predetermined payment is made in exchange for the provision of, or for the arrangement to provide and the guaranty of the provision of, a defined set of covered services to covered persons for a specified period without regard to the quantity of services actually provided.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.025, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.025, eff. September 1, 2007.

Sec. 843.319. CERTAIN REQUIRED CONTRACTS. Notwithstanding Section 843.304, a health maintenance organization may not deny a contract to a podiatrist licensed by the Texas Department of Licensing and Regulation who joins the professional practice of a contracted physician or provider, satisfies the application procedures of the health maintenance organization, and meets the qualification and credentialing requirements for contracting with the health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 237, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.012, eff. September 1, 2019.

Sec. 843.320. USE OF HOSPITALIST. (a) In this section, "hospitalist" means a physician who:

(1) serves as physician of record at a hospital for a

hospitalized patient of another physician; and

(2) returns the care of the patient to that other physician at the end of the patient's hospitalization.

(b) A contract between a health maintenance organization and a physician may not require the physician to use a hospitalist for a hospitalized patient.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.211(a), eff. Sept. 1, 2003.

Sec. 843.321. AVAILABILITY OF CODING GUIDELINES. (a) A contract between a health maintenance organization and a physician or provider must provide that:

(1) the physician or provider may request a description and copy of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to specific procedures that the physician or provider will receive under the contract;

(2) the health maintenance organization or the health maintenance organization's agent will provide the coding guidelines and fee schedules not later than the 30th day after the date the health maintenance organization receives the request;

(3) the health maintenance organization or the health maintenance organization's agent will provide notice of changes to the coding guidelines and fee schedules that will result in a change of payment to the physician or provider not later than the 90th day before the date the changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) the contract may be terminated by the physician or provider on or before the 30th day after the date the physician or provider receives information requested under this subsection without penalty or discrimination in participation in other health care products or plans.

(b) A physician or provider who receives information under Subsection (a) may only:

(1) use or disclose the information for the purpose of practice management, billing activities, and other business operations; and

(2) disclose the information to a governmental agency

involved in the regulation of health care or insurance.

(c) The health maintenance organization shall, on request of the physician or provider, provide the name, edition, and model version of the software that the health maintenance organization uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 5, eff. June 17, 2003. Renumbered from Insurance Code, Section 843.319 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(60), eff. September 1, 2005.

Sec. 843.323. CONTRACT PROVISIONS PROHIBITING REJECTION OF BATCHED CLAIMS. (a) If requested by a participating physician or provider, a health maintenance organization shall include a provision in the physician's or provider's contract providing that the health maintenance organization or the health maintenance organization's clearinghouse may not refuse to process or pay an electronically submitted clean claim, as defined by Subchapter J, because the claim is submitted together with or in a batch submission with a claim that is not a clean claim.

(b) In accordance with Chapters 82 and 84, the commissioner may issue a cease and desist order against or impose sanctions on a health maintenance organization that violates this section or a contract provision adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 668 (S.B. 50), Sec. 1, eff. September 1, 2005.

SUBCHAPTER J. PAYMENT OF CLAIMS TO PHYSICIANS AND PROVIDERS

Sec. 843.336. DEFINITION. (a) In this subchapter, "clean claim" means a claim that complies with this section.

(b) A nonelectronic claim by a physician or provider, other than an institutional provider, is a clean claim if the claim is submitted using the Centers for Medicare and Medicaid Services Form 1500 or, if adopted by the commissioner by rule, a successor to that form developed by the National Uniform Claim Committee or its successor. An electronic claim by a physician or provider, other than an institutional provider, is a clean claim if the claim is

submitted using the Professional 837 (ASC X12N 837) format or, if adopted by the commissioner by rule, a successor to that format adopted by the Centers for Medicare and Medicaid Services or its successor.

(c) A nonelectronic claim by an institutional provider is a clean claim if the claim is submitted using the Centers for Medicare and Medicaid Services Form UB-92 or, if adopted by the commissioner by rule, a successor to that form developed by the National Uniform Billing Committee or its successor. An electronic claim by an institutional provider is a clean claim if the claim is submitted using the Institutional 837 (ASC X12N 837) format or, if adopted by the commissioner by rule, a successor to that format adopted by the Centers for Medicare and Medicaid Services or its successor.

(d) The commissioner may adopt rules that specify the information that must be entered into the appropriate fields on the applicable claim form for a claim to be a clean claim.

(e) The commissioner may not require any data element for an electronic claim that is not required in an electronic transaction set needed to comply with federal law.

(f) A health maintenance organization and a physician or provider may agree by contract to use fewer data elements than are required in an electronic transaction set needed to comply with federal law.

(g) An otherwise clean claim submitted by a physician or provider that includes additional fields, data elements, attachments, or other information not required under this section is considered to be a clean claim for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 214, Sec. 6, eff. June 17, 2003.

Sec. 843.337. TIME FOR SUBMISSION OF CLAIM; DUPLICATE CLAIMS; ACKNOWLEDGMENT OF RECEIPT OF CLAIM. (a) A physician or provider must submit a claim to a health maintenance organization not later than the 95th day after the date the physician or provider provides the health care services for which the claim is made. A health maintenance organization shall accept as proof of timely filing a claim filed in compliance with Subsection (e) or information from another health maintenance organization or insurer showing that the

physician or provider submitted the claim to the health maintenance organization or insurer in compliance with Subsection (e).

(b) If a physician or provider fails to submit a claim in compliance with this section, the physician or provider forfeits the right to payment.

(c) The period for submitting a claim under this section may be extended by:

(1) contract;

(2) notice published by the commissioner allowing an extension of prompt payment deadlines to a later date chosen by the commissioner due to a catastrophic event; or

(3) the department's approval of a physician's or provider's request for an extension due to a catastrophic event that substantially interferes with the normal business operations of the physician or provider.

(c-1) The commissioner may adopt rules to implement Subsection (c), including rules establishing requirements for a request made under Subsection (c)(3).

(d) A physician or provider may not submit a duplicate claim for payment before the 46th day after the date the original claim was submitted. The commissioner shall adopt rules under which a health maintenance organization may determine whether a claim is a duplicate claim.

(e) Except as provided by Chapter 1213, a physician or provider may, as appropriate:

(1) mail a claim by United States mail, first class, or by overnight delivery service;

(2) submit the claim electronically;

(3) fax the claim; or

(4) hand deliver the claim.

(f) If a claim for health care services provided to a patient is mailed, the claim is presumed to have been received by the health maintenance organization on the fifth day after the date the claim is mailed or, if the claim is mailed using overnight service or return receipt requested, on the date the delivery receipt is signed. If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the health maintenance organization or the health maintenance organization's clearinghouse. If the health maintenance organization or the health maintenance organization's clearinghouse does not

provide a confirmation within 24 hours of submission by the physician or provider, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the filing contained the correct payor identification of the entity to receive the filing. If the claim is faxed, the claim is presumed to have been received on the date of the transmission acknowledgment. If the claim is hand delivered, the claim is presumed to have been received on the date the delivery receipt is signed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 214, Sec. 7, eff. June 17, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.049, eff. April 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 90 (S.B. 1286), Sec. 1, eff. September 1, 2023.

Sec. 843.338. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except as provided by Sections 843.3385 and 843.339, not later than the 45th day after the date on which a health maintenance organization receives a clean claim from a participating physician or provider in a nonelectronic format or the 30th day after the date the health maintenance organization receives a clean claim from a participating physician or provider that is electronically submitted, the health maintenance organization shall make a determination of whether the claim is payable and:

(1) if the health maintenance organization determines the entire claim is payable, pay the total amount of the claim in accordance with the contract between the physician or provider and the health maintenance organization;

(2) if the health maintenance organization determines a portion of the claim is payable, pay the portion of the claim that is not in dispute and notify the physician or provider in writing why the remaining portion of the claim will not be paid; or

(3) if the health maintenance organization determines that the claim is not payable, notify the physician or provider in writing why the claim will not be paid.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 214, Sec. 8, eff. June 17, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 2, eff. September 1, 2011.

Sec. 843.3385. ADDITIONAL INFORMATION. (a) If a health maintenance organization needs additional information from a treating participating physician or provider to determine payment, the health maintenance organization, not later than the 30th calendar day after the date the health maintenance organization receives a clean claim, shall request in writing that the physician or provider provide an attachment to the claim that is relevant and necessary for clarification of the claim.

(b) The request must describe with specificity the clinical information requested and relate only to information the health maintenance organization can demonstrate is specific to the claim or the claim's related episode of care. The participating physician or provider is not required to provide an attachment that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by a participating physician or provider.

(c) A health maintenance organization that requests an attachment under this section shall determine whether the claim is payable on or before the later of the 15th day after the date the health maintenance organization receives the requested attachment or the latest date for determining whether the claim is payable under Section 843.338 or 843.339.

(d) A health maintenance organization may not make more than one request under this section in connection with a claim. Sections 843.337(e) and (f) apply to a request for and submission of an attachment under Subsection (a).

(e) If a health maintenance organization requests an attachment or other information from a person other than the participating physician or provider who submitted the claim, the health maintenance organization shall provide notice containing the name of the physician or provider from whom the health maintenance organization is requesting information to the physician or provider who submitted the claim. The health maintenance organization may not withhold payment pending receipt of an attachment or information requested

under this subsection. If on receiving an attachment or information requested under this subsection the health maintenance organization determines that there was an error in payment of the claim, the health maintenance organization may recover any overpayment under Section 843.350.

(f) The commissioner shall adopt rules under which a health maintenance organization can easily identify an attachment or other information submitted by a physician or provider under this section.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 9, eff. June 17, 2003.

Sec. 843.339. DEADLINE FOR ACTION ON PRESCRIPTION CLAIMS; PAYMENT. (a) A health maintenance organization, or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization, that affirmatively adjudicates a pharmacy claim that is electronically submitted shall pay the total amount of the claim through electronic funds transfer not later than the 18th day after the date on which the claim was affirmatively adjudicated.

(b) A health maintenance organization, or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization, that affirmatively adjudicates a pharmacy claim that is not electronically submitted shall pay the total amount of the claim not later than the 21st day after the date on which the claim was affirmatively adjudicated.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 214, Sec. 10, eff. June 17, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 3, eff. September 1, 2011.

Sec. 843.340. AUDITED CLAIMS. (a) Except as provided by Section 843.3385, if a health maintenance organization intends to audit a claim submitted by a participating physician or provider, the health maintenance organization shall pay the charges submitted at 100 percent of the contracted rate on the claim not later than the 30th day after the date the health maintenance organization receives the clean claim from the participating physician or provider if

submitted electronically or if submitted nonelectronically not later than the 45th day after the date on which the health maintenance organization receives the clean claim from a participating physician or provider. The health maintenance organization shall clearly indicate on the explanation of payment statement in the manner prescribed by the commissioner by rule that the clean claim is being paid at 100 percent of the contracted rate, subject to completion of the audit.

(b) If the health maintenance organization requests additional information to complete the audit, the request must describe with specificity the clinical information requested and relate only to information the health maintenance organization in good faith can demonstrate is specific to the claim or episode of care. The health maintenance organization may not request as a part of the audit information that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by a participating physician or provider.

(c) If the participating physician or provider does not supply information reasonably requested by the health maintenance organization in connection with the audit, the health maintenance organization may:

(1) notify the physician or provider in writing that the physician or provider must provide the information not later than the 45th day after the date of the notice or forfeit the amount of the claim; and

(2) if the physician or provider does not provide the information required by this section, recover the amount of the claim.

(d) The health maintenance organization must complete the audit on or before the 180th day after the date the clean claim is received by the health maintenance organization, and any additional payment due a participating physician or provider or any refund due the health maintenance organization shall be made not later than the 30th day after the completion of the audit.

(e) If a participating physician or provider disagrees with a refund request made by a health maintenance organization based on the audit, the health maintenance organization shall provide the physician or provider with an opportunity to appeal, and the health maintenance organization may not attempt to recover the payment until all appeal rights are exhausted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 214, Sec. 11, eff. June 17, 2003.

Sec. 843.3405. INVESTIGATION AND DETERMINATION OF PAYMENT. The investigation and determination of payment, including any coordination of other payments, does not extend the period for determining whether a claim is payable under Section 843.338 or 843.339 or for auditing a claim under Section 843.340.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 12, eff. June 17, 2003.

Sec. 843.341. CLAIMS PROCESSING PROCEDURES. (a) A health maintenance organization shall provide a participating physician or provider with copies of all applicable utilization review policies and claim processing policies or procedures.

(b) A health maintenance organization's claims payment processes shall:

(1) use nationally recognized, generally accepted Current Procedural Terminology codes, notes, and guidelines, including all relevant modifiers; and

(2) be consistent with nationally recognized, generally accepted bundling edits and logic.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 214, Sec. 13, eff. June 17, 2003.

Sec. 843.342. VIOLATION OF CERTAIN CLAIMS PAYMENT PROVISIONS; PENALTIES. (a) Except as provided by this section, if a clean claim submitted to a health maintenance organization is payable and the health maintenance organization does not determine under this subchapter that the claim is payable and pay the claim on or before the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay the physician or provider making the claim the contracted rate owed on the claim plus a penalty in the amount of the lesser of:

(1) 50 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or

(2) $100,000.

(b) If the claim is paid on or after the 46th day and before the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay a penalty in the amount of the lesser of:

(1) 100 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or

(2) $200,000.

(c) If the claim is paid on or after the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay a penalty computed under Subsection (b) plus 18 percent annual interest on that amount. Interest under this subsection accrues beginning on the date the health maintenance organization was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(d) Except as provided by this section, a health maintenance organization that determines under this subchapter that a claim is payable, pays only a portion of the amount of the claim on or before the date the health maintenance organization is required to make a determination or adjudication of the claim, and pays the balance of the contracted rate owed for the claim after that date shall pay to the physician or provider, in addition to the contracted amount owed, a penalty on the amount not timely paid in the amount of the lesser of:

(1) 50 percent of the underpaid amount; or

(2) $100,000.

(e) If the balance of the claim is paid on or after the 46th day and before the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay a penalty on the balance of the claim in the amount of the lesser of:

(1) 100 percent of the underpaid amount; or

(2) $200,000.

(f) If the balance of the claim is paid on or after the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health

maintenance organization shall pay a penalty on the balance of the claim computed under Subsection (e) plus 18 percent annual interest on that amount. Interest under this subsection accrues beginning on the date the health maintenance organization was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(g) For the purposes of Subsections (d) and (e), the underpaid amount is calculated on the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to an amount equal to the billed charges as submitted on the claim minus the contracted rate.

(h) A health maintenance organization is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with this subchapter is a result of a catastrophic event and:

(A) the commissioner published a notice allowing an extension of the applicable prompt payment deadlines due to the catastrophic event; or

(B) the department approved the health maintenance organization's request for an extension due to the substantial interference of the catastrophic event with the normal business operations of the health maintenance organization; or

(2) if the claim was paid in accordance with this subchapter, but for less than the contracted rate, and:

(A) the physician or provider notifies the health maintenance organization of the underpayment after the 270th day after the date the underpayment was received; and

(B) the health maintenance organization pays the balance of the claim on or before the 30th day after the date the health maintenance organization receives the notice.

(i) Subsection (h) does not relieve the health maintenance organization of the obligation to pay the remaining unpaid contracted rate owed the physician or provider.

(j) A health maintenance organization that pays a penalty under this section shall clearly indicate on the explanation of payment statement in the manner prescribed by the commissioner by rule the amount of the contracted rate paid and the amount paid as a penalty.

(k) In addition to any other penalty or remedy authorized by this code or another insurance law of this state, a health maintenance organization that violates Section 843.338, 843.339, or

843.340 in processing more than two percent of clean claims submitted to the health maintenance organization is subject to an administrative penalty under Chapter 84. For each day an administrative penalty is imposed under this subsection, the penalty may not exceed $1,000 for each claim that remains unpaid in violation of Section 843.338, 843.339, or 843.340.

(l) In determining whether a health maintenance organization has processed physician and provider claims in compliance with Section 843.338, 843.339, or 843.340, the commissioner shall consider paid claims, other than claims that have been paid under Section 843.340, and shall compute a compliance percentage for physician and provider claims, other than institutional provider claims, and a compliance percentage for institutional provider claims.

(m) Notwithstanding any other provision of this section, this subsection governs the payment of a penalty under this section. For a penalty under this section relating to a clean claim submitted by a physician or provider other than an institutional provider, the health maintenance organization shall pay the entire penalty to the physician or provider, except for any interest computed under Subsection (c), which shall be paid to the Texas Health Insurance Risk Pool. For a penalty under this section relating to a clean claim submitted by an institutional provider, the health maintenance organization shall pay 50 percent of the total penalty amount computed under this section, including interest, to the institutional provider and the remaining 50 percent of that amount to the Texas Health Insurance Risk Pool.

(n) In this section, "institutional provider" means a hospital or other medical or health-related service facility that provides care for the sick or injured or other care that may be covered in an evidence of coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 214, Sec. 14, eff. June 17, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.212, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 435 (S.B. 1884), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 265 (H.B. 2064), Sec. 1, eff. January 1, 2010.

Acts 2023, 88th Leg., R.S., Ch. 90 (S.B. 1286), Sec. 2, eff. September 1, 2023.

Sec. 843.343. ATTORNEY'S FEES. A physician or provider may recover reasonable attorney's fees and court costs in an action to recover payment under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 214, Sec. 15, eff. June 17, 2003.

Sec. 843.344. APPLICABILITY OF SUBCHAPTER TO ENTITIES CONTRACTING WITH HEALTH MAINTENANCE ORGANIZATION. This subchapter applies to a person, including a pharmacy benefit manager, with whom a health maintenance organization contracts to:

(1) process or pay claims;

(2) obtain the services of physicians and providers to provide health care services to enrollees; or

(3) issue verifications or preauthorizations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 214, Sec. 16, eff. June 17, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 5, eff. September 1, 2011.

Sec. 843.345. EXCEPTION. This subchapter does not apply to a capitated payment required to be made to a physician or provider under an agreement to provide health care services.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 214, Sec. 17, eff. June 17, 2003.

Sec. 843.346. PAYMENT OF CLAIMS. Except as provided by this subchapter, a health maintenance organization shall pay a physician

or provider for health care services and benefits provided to an enrollee not later than:

(1) the 45th day after the date on which a claim for payment is received with the documentation reasonably necessary to process the claim; or

(2) if applicable, within the number of calendar days specified by written agreement between the physician or provider and the health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 214, Sec. 18, eff. June 17, 2003.

Sec. 843.347. VERIFICATION. (a) In this section, "verification" means a reliable representation by a health maintenance organization to a physician or provider that the health maintenance organization will pay the physician or provider for proposed health care services if the physician or provider renders those services to the patient for whom the services are proposed. The term includes precertification, certification, recertification, and any other term that would be a reliable representation by a health maintenance organization to a physician or provider and includes preauthorization only when preauthorization is a condition for the verification.

(b) On the request of a physician or provider for verification of a particular health care service the participating physician or provider proposes to provide to a particular patient, the health maintenance organization shall inform the physician or provider without delay whether the service, if provided to that patient, will be paid by the health maintenance organization and shall specify any deductibles, copayments, or coinsurance for which the enrollee is responsible.

(c) A health maintenance organization shall have appropriate personnel reasonably available at a toll-free telephone number to provide a verification under this section between 6 a.m. and 6 p.m. central time Monday through Friday on each day that is not a legal holiday and between 9 a.m. and noon central time on Saturday, Sunday, and legal holidays. A health maintenance organization must have a telephone system capable of accepting or recording incoming phone

calls for verifications after 6 p.m. central time Monday through Friday and after noon central time on Saturday, Sunday, and legal holidays and responding to each of those calls on or before the second calendar day after the date the call is received.

(d) A health maintenance organization may decline to determine eligibility for payment if the insurer notifies the physician or preferred provider who requested the verification of the specific reason the determination was not made.

(e) A health maintenance organization may establish a specific period during which the verification is valid of not less than 30 days.

(f) A health maintenance organization that declines to provide a verification shall notify the physician or provider who requested the verification of the specific reason the verification was not provided.

(g) If a health maintenance organization has provided a verification for proposed health care services, the health maintenance organization may not deny or reduce payment to the physician or provider for those health care services if provided to the enrollee on or before the 30th day after the date the verification was provided unless the physician or provider has materially misrepresented the proposed health care services or has substantially failed to perform the proposed health care services.

(h) A health maintenance organization providing routine vision services as a single health care service plan or providing dental health care services as a single health care service plan is not required to comply with Subsection (c) with respect to those services. For purposes of this subsection, "routine vision services" means a routine annual or biennial eye examination to determine ocular health and refractive conditions that may include provision of glasses or contact lenses.

(i) A health maintenance organization described by Subsection (h) shall:

(1) have appropriate personnel reasonably available at a toll-free telephone number to provide a verification under this section between 8 a.m. and 5 p.m. central time Monday through Friday on each day that is not a legal holiday;

(2) have a telephone system capable of accepting or recording incoming phone calls for verifications after 5 p.m. Monday through Friday and all day on Saturday, Sunday, and legal holidays;

and

(3) respond to calls accepted or recorded on the telephone system described by Subdivision (2) not later than the next business day after the date the call is received.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 19, eff. June 17, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 669 (S.B. 51), Sec. 3, eff. September 1, 2005.

Sec. 843.348. PREAUTHORIZATION OF HEALTH CARE SERVICES. (a) In this section, "preauthorization" means a determination by a health maintenance organization that health care services proposed to be provided to a patient are medically necessary and appropriate.

(b) A health maintenance organization that uses a preauthorization process for health care services shall provide each participating physician or provider, not later than the fifth business day after the date a request is made, a list of health care services that require preauthorization and information concerning the preauthorization process.

(c) If proposed health care services require preauthorization as a condition of the health maintenance organization's payment to a participating physician or provider, the health maintenance organization shall determine whether the health care services proposed to be provided to the enrollee are medically necessary and appropriate.

(d) On receipt of a request from a participating physician or provider for preauthorization, the health maintenance organization shall review and issue a determination indicating whether the health care services are preauthorized. The determination must be issued and transmitted not later than the third calendar day after the date the request is received by the health maintenance organization.

(e) If the proposed health care services involve inpatient care and the health maintenance organization requires preauthorization as a condition of payment, the health maintenance organization shall review the request and issue a length of stay for the admission into a health care facility based on the recommendation of the patient's physician or provider and the health maintenance organization's written medically accepted screening criteria and review procedures.

If the proposed health care services are to be provided to a patient who is an inpatient in a health care facility at the time the services are proposed, the health maintenance organization shall review the request and issue a determination indicating whether proposed services are preauthorized within 24 hours of the request by the physician or provider.

(f) A health maintenance organization shall have appropriate personnel reasonably available at a toll-free telephone number to respond to requests for a preauthorization between 6 a.m. and 6 p.m. central time Monday through Friday on each day that is not a legal holiday and between 9 a.m. and noon central time on Saturday, Sunday, and legal holidays. A health maintenance organization must have a telephone system capable of accepting or recording incoming phone calls for preauthorizations after 6 p.m. central time Monday through Friday and after noon central time on Saturday, Sunday, and legal holidays and responding to each of those calls not later than 24 hours after the call is received.

(g) If the health maintenance organization has preauthorized health care services, the health maintenance organization may not deny or reduce payment to the physician or provider for those services based on medical necessity or appropriateness of care unless the physician or provider has materially misrepresented the proposed health care services or has substantially failed to perform the proposed health care services.

(h) This section applies to an agent or other person with whom a health maintenance organization contracts to perform, or to whom the health maintenance organization delegates the performance of, preauthorization of proposed health care services.

(i) A health maintenance organization providing routine vision services as a single health care service plan or providing dental health care services as a single health care service plan is not required to comply with Subsection (f) with respect to those services. For purposes of this subsection, "routine vision services" means a routine annual or biennial eye examination to determine ocular health and refractive conditions that may include provision of glasses or contact lenses.

(j) A health maintenance organization described by Subsection (i) shall:

(1) have appropriate personnel reasonably available at a toll-free telephone number to respond to requests for

preauthorization under this section between 8 a.m. and 5 p.m. central time Monday through Friday on each day that is not a legal holiday;

(2) have a telephone system capable of accepting or recording incoming phone calls for preauthorizations after 5 p.m. Monday through Friday and all day on Saturday, Sunday, and legal holidays; and

(3) respond to calls accepted or recorded on the telephone system described by Subdivision (2) not later than the next business day after the date the call is received.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 19, eff. June 17, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 669 (S.B. 51), Sec. 4, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.01, eff. September 1, 2019.

Sec. 843.3481. POSTING OF PREAUTHORIZATION REQUIREMENTS. (a) A health maintenance organization that uses a preauthorization process for health care services shall make the requirements and information about the preauthorization process readily accessible to enrollees, physicians, providers, and the general public by posting the requirements and information on the health maintenance organization's Internet website.

(b) The preauthorization requirements and information described by Subsection (a) must:

(1) be posted:

(A) except as provided by Subsection (c) or (d), conspicuously in a location on the Internet website that does not require the use of a log-in or other input of personal information to view the information; and

(B) in a format that is easily searchable and accessible;

(2) except for the screening criteria under Subdivision (4)(C), be written in plain language that is easily understandable by enrollees, physicians, providers, and the general public;

(3) include a detailed description of the preauthorization process and procedure; and

(4) include an accurate and current list of the health care

services for which the health maintenance organization requires preauthorization that includes the following information specific to each service:

(A) the effective date of the preauthorization requirement;

(B) a list or description of any supporting documentation that the health maintenance organization requires from the physician or provider ordering or requesting the service to approve a request for that service;

(C) the applicable screening criteria, which may include Current Procedural Terminology codes and International Classification of Diseases codes; and

(D) statistics regarding preauthorization approval and denial rates for the service in the preceding calendar year, including statistics in the following categories:

(i) physician or provider type and specialty, if any;

(ii) indication offered;

(iii) reasons for request denial;

(iv) denials overturned on internal appeal;

(v) denials overturned by an independent review organization; and

(vi) total annual preauthorization requests, approvals, and denials for the service.

(c) This section may not be construed to require a health maintenance organization to provide specific information that would violate any applicable copyright law or licensing agreement. To comply with a posting requirement described by Subsection (b), a health maintenance organization may, instead of making that information publicly available on the health maintenance organization's Internet website, supply a summary of the withheld information sufficient to allow a licensed physician or provider, as applicable for the specific service, who has sufficient training and experience related to the service to understand the basis for the health maintenance organization's medical necessity or appropriateness determinations.

(d) If a requirement or information described by Subsection (a) is licensed, proprietary, or copyrighted material that the health maintenance organization has received from a third party with which the health maintenance organization has contracted, to comply with a

posting requirement described by Subsection (b), the health maintenance organization may, instead of making that information publicly available on the health maintenance organization's Internet website, provide the material to a physician or provider who submits a preauthorization request using a nonpublic secured Internet website link or other protected, nonpublic electronic means.

Added by Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.02, eff. September 1, 2019.

Sec. 843.3482. CHANGES TO PREAUTHORIZATION REQUIREMENTS. (a) Except as provided by Subsection (b), not later than the 60th day before the date a new or amended preauthorization requirement takes effect, a health maintenance organization that uses a preauthorization process for health care services shall provide notice of the new or amended preauthorization requirement and disclose the new or amended requirement in the health maintenance organization's newsletter or network bulletin, if any, and on the health maintenance organization's Internet website.

(b) For a change in a preauthorization requirement or process that removes a service from the list of health care services requiring preauthorization or amends a preauthorization requirement in a way that is less burdensome to enrollees or participating physicians or providers, a health maintenance organization shall provide notice of the change in the preauthorization requirement and disclose the change in the health maintenance organization's newsletter or network bulletin, if any, and on the health maintenance organization's Internet website not later than the fifth day before the date the change takes effect.

(c) Not later than the fifth day before the date a new or amended preauthorization requirement takes effect, a health maintenance organization shall update its Internet website to disclose the change to the health maintenance organization's preauthorization requirements or process and the date and time the change is effective.

Added by Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.02, eff. September 1, 2019.

Sec. 843.3483. REMEDY FOR NONCOMPLIANCE. In addition to any other penalty or remedy provided by law, a health maintenance organization that uses a preauthorization process for health care services that violates this subchapter with respect to a required publication, notice, or response regarding its preauthorization requirements, including by failing to comply with any applicable deadline for the publication, notice, or response, must provide an expedited appeal under Section 4201.357 for any health care service affected by the violation.

Added by Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.02, eff. September 1, 2019.

Sec. 843.349. COORDINATION OF PAYMENT. (a) A health maintenance organization may require a physician or provider to retain in the physician's or provider's records updated information concerning other health benefit plan coverage and to provide the information to the health maintenance organization on the applicable form described by Section 843.336. Except as provided by this section, a health maintenance organization may not require a physician or provider to investigate coordination of other health benefit plan coverage.

(b) Coordination of other payment under this section does not extend the period for determining whether a service is eligible for payment under Section 843.338 or 843.339 or for auditing a claim under Section 843.340.

(c) A participating physician or provider who submits a claim for particular health care services to more than one health maintenance organization or insurer shall provide written notice on the claim submitted to each health maintenance organization or insurer of the identity of each other health maintenance organization or insurer with which the same claim is being filed.

(d) On receipt of notice under Subsection (c), a health maintenance organization shall coordinate and determine the appropriate payment for each health maintenance organization or insurer to make to the physician or provider.

(e) Except as provided by Subsection (f), if a health maintenance organization is a secondary payor and pays a portion of a claim that should have been paid by the health maintenance

organization or insurer that is the primary payor, the overpayment may only be recovered from the health maintenance organization or insurer that is primarily responsible for that amount.

(f) If the portion of the claim overpaid by the secondary health maintenance organization was also paid by the primary health maintenance organization or insurer, the secondary health maintenance organization may recover the amount of the overpayment under Section 843.350 from the physician or provider who received the payment. A health maintenance organization processing an electronic claim as a secondary payor shall rely on the primary payor information submitted on the claim by the physician or provider. Primary payor information may be submitted electronically by the primary payor to the secondary payor.

(g) A health maintenance organization may share information with another health maintenance organization or an insurer to the extent necessary to coordinate appropriate payment obligations on a specific claim.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 19, eff. June 17, 2003.

Sec. 843.350. OVERPAYMENT. (a) A health maintenance organization may recover an overpayment to a physician or provider if:

(1) not later than the 180th day after the date the physician or provider receives the payment, the health maintenance organization provides written notice of the overpayment to the physician or provider that includes the basis and specific reasons for the request for recovery of funds; and

(2) the physician or provider does not make arrangements for repayment of the requested funds on or before the 45th day after the date the physician or provider receives the notice.

(b) If a physician or provider disagrees with a request for recovery of an overpayment, the health maintenance organization shall provide the physician or provider with an opportunity to appeal, and the health maintenance organization may not recover the overpayment until all appeal rights are exhausted.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 19, eff. June 17, 2003.

Sec. 843.351. SERVICES PROVIDED BY CERTAIN PHYSICIANS AND PROVIDERS. The provisions of this subchapter relating to prompt payment by a health maintenance organization of a physician or provider and to verification of health care services apply to a physician or provider who:

(1) is not included in the health maintenance organization delivery network; and

(2) provides to an enrollee:

(A) care related to an emergency or its attendant episode of care as required by state or federal law; or

(B) specialty or other health care services at the request of the health maintenance organization or a physician or provider who is included in the health maintenance organization delivery network because the services are not reasonably available within the network.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 19, eff. June 17, 2003.

Sec. 843.352. CONFLICT WITH OTHER LAW. To the extent of any conflict between this subchapter and Subchapter C, Chapter 1204, this subchapter controls.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 19, eff. June 17, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.050, eff. April 1, 2009.

Sec. 843.353. WAIVER PROHIBITED. Except as provided by Sections 843.336(f) and 843.337(c), the provisions of this subchapter may not be waived, voided, or nullified by contract.

Added by Acts 2003, 78th Leg., ch. 214, Sec. 19, eff. June 17, 2003.

Sec. 843.354. LEGISLATIVE DECLARATION. It is the intent of the legislature that the requirements contained in this subchapter regarding payment of claims to providers who are pharmacists or pharmacies apply to all health maintenance organizations and pharmacy benefit managers unless otherwise prohibited by federal law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 6, eff. September 1, 2011.

SUBCHAPTER K. RELATIONS BETWEEN ENROLLEE AND PHYSICIAN OR PROVIDER

Sec. 843.361. ENROLLEES HELD HARMLESS. A contract or other agreement between a health maintenance organization and a physician or provider must specify that the physician or provider will hold an enrollee harmless for payment of the cost of covered health care services if the health maintenance organization does not pay the physician or provider for those services.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.362. CONTINUITY OF CARE; OBLIGATION OF HEALTH MAINTENANCE ORGANIZATION. (a) In this section, "special circumstance" means a condition regarding which a treating physician or provider reasonably believes that discontinuing care by that physician or provider could cause harm to an enrollee who is a patient. Examples of an enrollee who has a special circumstance include an enrollee with a disability, acute condition, life-threatening illness, or who is past the 24th week of pregnancy.

(b) Each contract between a health maintenance organization and a physician and provider must provide that termination of the contract, except for reason of medical competence or professional behavior, does not release the health maintenance organization from the obligation of continuing to reimburse a physician or provider providing medically necessary treatment at the time of termination to an enrollee who has a special circumstance in accordance with the dictates of medical prudence. Subject to Subsections (d) and (e), the health maintenance organization must provide continued reimbursement at not less than the contract rate in exchange for the enrollee's continued receipt of ongoing treatment from the physician or provider.

(c) The treating physician or provider shall identify a special circumstance. The treating physician or provider must:

(1) request that an enrollee be permitted to continue treatment under the physician's or provider's care; and

(2) agree not to seek payment from the enrollee of any

amount for which the enrollee would not be responsible if the physician or provider continued to be included in the health maintenance organization delivery network.

(d) Except as provided by Subsection (e), this section does not extend the obligation of a health maintenance organization to reimburse a terminated physician or provider for ongoing treatment of an enrollee after:

(1) the 90th day after the effective date of the termination; or

(2) if the enrollee has been diagnosed with a terminal illness at the time of termination, the expiration of the nine-month period after the effective date of the termination.

(e) If an enrollee is past the 24th week of pregnancy at the time of termination, a health maintenance organization's obligation to reimburse a terminated physician or provider or, if applicable, an enrollee extends through delivery of the child and applies to immediate postpartum care and a follow-up checkup within the six-week period after delivery.

(f) A contract between a health maintenance organization and a physician or provider must provide procedures for resolving disputes regarding the necessity for continued treatment by a physician or provider.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.363. PROTECTED PHYSICIAN OR PROVIDER COMMUNICATIONS WITH PATIENTS. (a) A health maintenance organization may not, as a condition of a contract with a physician, dentist, or provider, or in any other manner, prohibit, attempt to prohibit, or discourage a physician, dentist, or provider from discussing with or communicating in good faith with a current, prospective, or former patient, or a person designated by a patient, with respect to:

(1) information or opinions regarding the patient's health care, including the patient's medical condition or treatment options;

(2) information or opinions regarding the terms, requirements, or services of the health care plan as they relate to the medical needs of the patient;

(3) the termination of the physician's, dentist's, or provider's contract with the health care plan or the fact that the

physician, dentist, or provider will otherwise no longer be providing medical care, dental care, or health care services under the health care plan; or

(4) information regarding the availability of facilities, both in-network and out-of-network, for the treatment of the patient's medical condition.

(a-1) A health maintenance organization may not, as a condition of payment with a physician, dentist, or provider, or in any other manner, require a physician, dentist, or provider to provide a notification form stating that the physician, dentist, or provider is an out-of-network provider to a current, prospective, or former patient, or a person designated by the patient, if the form contains additional information that is intended, or is otherwise required to be presented in a manner that is intended, to intimidate the patient.

(b) A health maintenance organization may not in any manner penalize, terminate, or refuse to compensate for covered services a physician, dentist, or provider for communicating in a manner protected by this section with a current, prospective, or former patient, or a person designated by a patient.

(c) A contract provision that violates this section is void.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 3, eff. September 1, 2015.

SUBCHAPTER L. FINANCIAL REGULATION OF HEALTH MAINTENANCE ORGANIZATIONS

Sec. 843.401. FIDUCIARY RESPONSIBILITY. A director, officer, member, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of the health maintenance organization is responsible for the funds in a fiduciary relationship to the enrollees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.402. OFFICERS' AND EMPLOYEES' BOND. (a) A health maintenance organization shall maintain in force in its own name a fidelity bond on its officers and employees in an amount of at least

$100,000 or another amount prescribed by the commissioner.

(b) The fidelity bond must be issued by an insurer that holds a certificate of authority in this state. If, after notice and hearing, the commissioner determines that a fidelity bond is not available from an insurer that holds a certificate of authority in this state, the health maintenance organization may obtain a fidelity bond procured by a surplus lines agent resident in this state in compliance with Chapter 981.

(c) The fidelity bond must obligate the surety to pay any loss of money or other property the health maintenance organization sustains because of an act of fraud or dishonesty by an employee or officer of the health maintenance organization, acting alone or in concert with others, while employed or serving as an officer of the health maintenance organization.

(d) Instead of a fidelity bond, a health maintenance organization may deposit cash with the comptroller. The deposit must be maintained in the amount and is subject to the same conditions required for a fidelity bond under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.403. MINIMUM NET WORTH. (a) A health maintenance organization authorized to provide basic health care services shall maintain a minimum net worth of $1.5 million.

(b) A health maintenance organization authorized to provide limited health care services shall maintain a minimum net worth of $1 million.

(c) A health maintenance organization authorized to offer only a single health care service plan shall maintain a minimum net worth of $500,000.

(d) The minimum net worth required by this section may consist only of:

(1) money of the United States;

(2) bonds of this state;

(3) bonds or other evidences of indebtedness of the United States that are guaranteed as to principal and interest by the United States; or

(4) bonds or other interest-bearing evidences of indebtedness of a county or municipality of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.404. ADDITIONAL NET WORTH REQUIREMENTS. (a) The commissioner may adopt rules or by rule establish guidelines requiring a health maintenance organization to maintain a specified net worth based on:

(1) the nature and kind of risks the health maintenance organization underwrites or reinsures;

(2) the premium volume of risks the health maintenance organization underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of the health maintenance organization's investment portfolio;

(4) fluctuations in the market value of securities the health maintenance organization holds;

(5) the adequacy of the health maintenance organization's reserves;

(6) the number of individuals enrolled by the health maintenance organization; or

(7) other business risks.

(b) Rules adopted or guidelines established under this section must be designed to ensure the financial solvency of health maintenance organizations for the protection of enrollees. The rules or guidelines may provide for a health maintenance organization to comply with a risk-based net worth requirement established under this section in stages over a two-year period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.405. DEPOSIT WITH COMPTROLLER. (a) Unless otherwise provided by this section, a health maintenance organization shall deposit with the comptroller cash or securities, or any combination of cash, securities, and other guarantees that are acceptable to the commissioner, in the amount prescribed by this section.

(b) The amount of a health maintenance organization's initial deposit or other guarantee must be $100,000 for a health maintenance organization offering basic health care services, $75,000 for a health maintenance organization offering limited health care services, and $50,000 for a health maintenance organization offering

a single health care service plan.

(c) On or before March 15 of the year following the year in which the health maintenance organization receives a certificate of authority, it shall deposit with the comptroller an amount equal to the difference between the initial deposit and 100 percent of its estimated uncovered health care expenses for the first 12 months of operation.

(d) On or before March 15 of each subsequent year, a health maintenance organization shall deposit the amount of the difference between its total uncovered health care expenses, based on its annual statement from the previous year, and the total amount previously deposited and not withdrawn from the state treasury. For any subsequent year in which the amount of the difference specified by this subsection is zero or less, the commissioner may not require the health maintenance organization to make any additional deposit under this subsection.

(e) If, on application made not more than once in each calendar year by a health maintenance organization, the commissioner determines that the amount previously deposited by the health maintenance organization has exceeded the amount required to be on deposit by more than $50,000 for a continuous 12-month period, the commissioner shall allow the health maintenance organization to withdraw the portion of the deposit that exceeds by more than $50,000 the amount required to be on deposit, unless the commissioner determines that the release of a portion of the deposit could be hazardous to enrollees, creditors, or the public.

(f) If, on application, the commissioner determines that the amount previously deposited by a health maintenance organization continues to exceed the amount required to be on deposit, the commissioner shall allow the health maintenance organization to withdraw the portion of the deposit that exceeds the amount required to be on deposit, unless the commissioner determines that the release of that portion of the deposit could be hazardous to enrollees, creditors, or the public.

(g) On application by a health maintenance organization operating for more than one year under a certificate of authority, the commissioner may waive some or all of the requirements imposed by Subsection (b), (c), or (d) for any period if the commissioner determines that the waiver is justified because:

(1) the total amount of the deposit or other guarantee is

equal to at least 25 percent of the health maintenance organization's estimated uncovered expenses for the next calendar year;

(2) the health maintenance organization's net worth is equal to at least 25 percent of its estimated uncovered expenses for the next calendar year;

(3) the health maintenance organization has a net worth of at least $5 million; or

(4) the health maintenance organization's sponsoring organization has a net worth of at least $5 million for each health maintenance organization whose uncovered expenses the sponsoring organization guarantees.

(h) If one or more of the requirements imposed by Subsection (b), (c), or (d) is waived, any amount previously deposited shall remain on deposit until released in whole or in part by the comptroller on order of the commissioner under Subsection (g).

(i) A health maintenance organization that has made a deposit with the comptroller may, at its option, withdraw the deposit or any part of the deposit after substituting a deposit of cash or securities of equal amount and value to the withdrawn deposit or portion of deposit. The commissioner must first approve any securities being substituted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.406. HAZARDOUS FINANCIAL CONDITION. (a) If the financial condition of a health maintenance organization indicates that the continued operation of the health maintenance organization could be hazardous to its enrollees or creditors or the public, the commissioner may, after notice and opportunity for hearing:

(1) suspend or revoke the health maintenance organization's certificate of authority; or

(2) order the health maintenance organization to take action reasonably necessary to correct the condition, including by:

(A) reducing by reinsurance the total amount of present and potential liability for benefits;

(B) reducing the volume of new business being accepted;

(C) reducing expenses by specified methods;

(D) suspending or limiting for a period the writing of new business; or

(E) increasing the health maintenance organization's capital and surplus by contribution.

(b) In a manner consistent with the purposes of this section, the commissioner by rule may establish:

(1) uniform standards and criteria for early warning that the continued operation of a health maintenance organization could be hazardous to the health maintenance organization's enrollees or creditors or the public; and

(2) standards for evaluating the financial condition of a health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.407. RECEIVERSHIP AND DELINQUENCY PROCEEDINGS. (a) In addition to all other remedies available by law, if the commissioner believes that a health maintenance organization or another person is insolvent or does not maintain the net worth required under Sections 843.403, 843.4031, and 843.404, the commissioner may bring an action in a Travis County district court to be named receiver in accordance with Section 843.157 and Chapter 443.

(b) The court may:

(1) find that a receiver should take charge of the assets of the health maintenance organization; and

(2) name the commissioner as the receiver of the health maintenance organization in accordance with Section 843.157 and Chapter 443.

(c) The operations and business of a health maintenance organization represent the business of insurance for purposes of Section 843.157 and Chapters 441 and 443.

(d) Exclusive venue of receivership and delinquency proceedings for a health maintenance organization is in Travis County.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.051, eff. April 1, 2009.

Sec. 843.408. INSOLVENCY AND ALLOCATION TO OTHER HEALTH MAINTENANCE ORGANIZATIONS. (a) If a health maintenance organization

becomes insolvent, the commissioner shall equitably allocate the insolvent health maintenance organization's group contracts and nongroup enrollees among all health maintenance organizations that operate within a portion of the insolvent health maintenance organization's service area. The commissioner shall allocate the group contracts by order. In making allocations, the commissioner shall consider the resources of each health maintenance organization.

(b) A successor health maintenance organization to which one or more groups are allocated shall offer each group the successor health maintenance organization's coverage at rates determined in accordance with the successor health maintenance organization's existing methodology or in accordance with that methodology as adjusted by the commissioner.

(c) A successor health maintenance organization to which nongroup enrollees are allocated shall offer each nongroup enrollee the successor health maintenance organization's existing coverage for individual or conversion coverage, as determined by the nongroup enrollee's type of coverage from the insolvent health maintenance organization, at rates determined in accordance with the successor health maintenance organization's existing methodology or in accordance with that methodology as adjusted by the commissioner. A successor health maintenance organization that does not offer direct nongroup enrollment shall provide coverage at rates that reflect the average group rate of the successor health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.409. EXAMINATION EXPENSES. (a) A credit against the amount of premium taxes to be paid by a health maintenance organization in a taxable year may not be allowed on:

(1) an examination fee or expense paid to another state; or

(2) an examination expense:

(A) directly attributable to an examination of the books, records, accounts, or principal offices of a health maintenance organization located outside this state; or

(B) paid in a different taxable year.

(b) The limitations provided by Subsections (a)(1) and (a)(2)(B) apply to foreign health maintenance organizations.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 9A, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.207, eff. Sept. 1, 2003.

Sec. 843.410. ASSESSMENTS. (a) To provide funds for the administrative expenses of the commissioner regarding rehabilitation, liquidation, supervision, conservatorship, or seizure of a health maintenance organization in this state that is placed under supervision or in conservatorship under Chapter 441 or against which a delinquency proceeding is commenced under Chapter 443 and that is found by the commissioner to have insufficient funds to pay the total amount of health care claims and the administrative expenses incurred by the commissioner regarding the rehabilitation, liquidation, supervision, conservatorship, or seizure, the commissioner shall assess each health maintenance organization in the proportion that the gross premiums of the health maintenance organization that were written in this state during the preceding calendar year bear to the aggregate gross premiums that were written in this state by all health maintenance organizations, as found after review of annual statements and other reports the commissioner considers necessary.

(b) The commissioner may abate or defer an assessment in whole or in part if, in the opinion of the commissioner, payment of the assessment would endanger the ability of a health maintenance organization to fulfill its contractual obligations. If an assessment is abated or deferred in whole or in part, the amount of the abatement or deferral may be assessed against the remaining health maintenance organizations in a manner consistent with the calculations made by the commissioner under Subsection (a).

(c) The total of all assessments on a health maintenance organization may not exceed one-fourth of one percent of the health maintenance organization's gross premiums in any one calendar year.

(d) Notwithstanding any other provision of this subchapter, funds derived from an assessment made under this section may not be used for more than 180 consecutive days for the expenses of administering the affairs of a health maintenance organization the surplus of which is impaired and that is in supervision or conservatorship. The commissioner may extend the period during which the commissioner makes assessments for the administrative expenses.

Transferred, redesignated and amended from Insurance Code, Section

843.441 by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.002, eff. September 1, 2011.

SUBCHAPTER N. ENFORCEMENT

Sec. 843.461. ENFORCEMENT ACTIONS. (a) After notice and opportunity for a hearing, the commissioner may:

(1) suspend or revoke a certificate of authority issued to a health maintenance organization under this chapter;

(2) impose sanctions under Chapter 82;

(3) issue a cease and desist order under Chapter 83; or

(4) impose administrative penalties under Chapter 84.

(b) The commissioner may take an enforcement action listed in Subsection (a) against a health maintenance organization if the commissioner finds that the health maintenance organization:

(1) is operating in a manner that is:

(A) significantly contrary to its basic organizational documents or health care plan; or

(B) contrary to the manner described in and reasonably inferred from other information submitted under Section 843.078, 843.079, or 843.080;

(2) issues an evidence of coverage or uses a schedule of charges for health care services that does not comply with the requirements of Sections 843.346, 1271.001-1271.005, 1271.007, 1271.151, 1271.152, and 1271.156, and Subchapters B, C, E, F, and G, Chapter 1271;

(3) does not meet the requirements of Section 843.082(1);

(4) provides a health care plan that does not provide or arrange for basic health care services, provides a limited health care service plan that does not provide or arrange for the plan's limited health care services, or provides a single health care service plan that does not provide or arrange for a single health care service;

(5) cannot fulfill its obligation to provide:

(A) health care services as required under its health care plan;

(B) limited health care services as required under its limited health care service plan; or

(C) a single health care service as required under its single health care service plan;

(6) is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(7) has not implemented the complaint system required by Section 843.251 in a manner to resolve reasonably valid complaints;

(8) has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner or a person on behalf of the health maintenance organization has advertised or merchandised the health maintenance organization's services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;

(9) would be hazardous to its enrollees if it continued in operation;

(10) has not complied substantially with:

(A) this chapter or a rule adopted under this chapter; or

(B) Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, or Chapter 1271 or 1272 or a rule adopted under one of those provisions; or

(11) has not taken corrective action the commissioner considers necessary to correct a failure to comply with this chapter, any applicable provision of this code, or any applicable rule or order of the commissioner not later than the 30th day after the date of notice of the failure or within any longer period specified in the notice and determined by the commissioner to be reasonable.

(c) The commissioner may suspend or revoke a certificate of authority only after complying with this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.052, eff. April 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 11.001, eff. September 1, 2013.

Sec. 843.462. OPERATIONS DURING SUSPENSION OR AFTER REVOCATION OF CERTIFICATE OF AUTHORITY. (a) During the period a certificate of authority of a health maintenance organization is suspended, the

health maintenance organization may not:

(1) enroll additional enrollees except newborn children or other newly acquired dependents of existing enrollees; or

(2) advertise or solicit in any way.

(b) After a certificate of authority of a health maintenance organization is revoked, the health maintenance organization:

(1) shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs;

(2) may not conduct further business except as essential to the orderly conclusion of its affairs; and

(3) may not advertise or solicit in any way.

(c) Notwithstanding Subsection (b), the commissioner may, by written order, permit the further operation of the health maintenance organization to the extent that the commissioner finds necessary to serve the best interest of enrollees and to provide enrollees with the greatest practical opportunity to obtain continuing health care coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 843.463. INJUNCTIONS. If the commissioner believes that a health maintenance organization or another person is violating or has violated this chapter or a rule adopted under this chapter or Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, or Chapter 1271 or 1272 or a rule adopted under one of those provisions, the commissioner may bring an action in a Travis County district court to enjoin the violation and obtain other relief the court considers appropriate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.053, eff. April 1, 2009.

Sec. 843.464. CRIMINAL PENALTY. (a) A person, including an agent or officer of a health maintenance organization, commits an offense if the person:

(1) wilfully violates this chapter or a rule adopted under

this chapter or Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, or Chapter 1271 or 1272 or a rule adopted under one of those provisions; or

(2) knowingly makes a false statement with respect to a report or statement required under this chapter or Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, or Chapter 1271 or 1272.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.054, eff. April 1, 2009.

CHAPTER 844. CERTIFICATION OF CERTAIN NONPROFIT HEALTH CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 844.001. DEFINITIONS. In this chapter:

(1) "Approved nonprofit health corporation" means a nonprofit health corporation certified under Section 162.001, Occupations Code.

(2) "Certificate holder" means an approved nonprofit health corporation that holds a certificate of authority issued under this chapter.

(3) "Health care plan" has the meaning assigned by Section 843.002.

(4) "Health maintenance organization" means a health maintenance organization licensed under Chapter 843.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 844.002. EXCEPTIONS. This chapter does not apply to:

(1) an approved nonprofit health corporation that contracts to arrange for or provide health care services on a fee-for-service basis;

(2) a contract entered into by a certificate holder to arrange for or provide health care services on a fee-for-service basis; or

(3) an activity exempt from regulation under Section 843.053 or 843.073.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 844.003. EXCEPTIONS TO TEXAS HEALTH MAINTENANCE ORGANIZATION ACT. This chapter may not be construed to alter the exceptions stated in Sections 843.053 and 843.073.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 844.004. RULES. Except as provided by Section 844.101(b), the commissioner shall adopt rules to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 844.005. PROVISION OF CERTAIN SERVICES ON BEHALF OF HEALTH MAINTENANCE ORGANIZATIONS. (a) An approved nonprofit health corporation may arrange for or provide health care services on a risk-sharing or capitated risk arrangement on behalf of a health maintenance organization.

(b) An approved nonprofit health corporation is not required to obtain a certificate of authority under this chapter or under Chapter 843 to arrange for or provide health care services as provided by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 844.051. CERTIFICATE OF AUTHORITY REQUIRED. An approved nonprofit health corporation may not arrange for or provide a health care plan to enrollees on a prepaid basis unless the corporation holds a certificate of authority issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 844.052. CERTIFICATE APPLICATION; ELIGIBILITY REQUIREMENTS. (a) An approved nonprofit health corporation may apply to the department for a certificate of authority under this chapter.

(b) The commissioner may issue a certificate of authority only to an applicant that:

(1) meets the same requirements for the issuance of a certificate of authority that a health maintenance organization is required to meet under Chapter 843; and

(2) establishes accreditation by:

(A) the National Committee on Quality Assurance;

(B) the Joint Commission on Accreditation of Healthcare Organization's accreditation for health care networks; or

(C) an accrediting organization recognized by rule of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 844.053. PROVISIONAL CERTIFICATE OF AUTHORITY. The commissioner shall grant a provisional certificate of authority to an applicant if:

(1) the applicant has applied for accreditation from an accrediting organization described by Section 844.052(b)(2);

(2) the applicant is diligently pursuing accreditation;

(3) the accrediting organization has not denied the application for accreditation; and

(4) the applicant satisfies each other requirement of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 844.054. POWERS AND DUTIES OF CERTIFICATE HOLDER. (a) A certificate holder has all the powers granted to and duties imposed on a health maintenance organization under the insurance laws of this state, including Chapter 843, and is subject to regulation and regulatory enforcement under those laws in the same manner as a health maintenance organization.

(b) A certificate holder shall maintain accreditation as described by Section 844.052(b)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. PROHIBITED CONDUCT

Sec. 844.101. UNFAIR COMPETITION. (a) A certificate holder may not engage in unfair and disruptive provider hiring or contracting practices for the purpose of limiting competition from traditional community providers.

(b) The Texas State Board of Medical Examiners shall adopt rules to implement this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 845. STATEWIDE RURAL HEALTH CARE SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 845.001. SHORT TITLE. This chapter may be cited as the Statewide Rural Health Care System Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the system.

(2) "Enrollee" means an individual who:

(A) resides in a rural area; and

(B) is entitled to receive health care services through a health care plan sponsored by, arranged for, or provided by the system.

(3) "Health care services" has the meaning assigned by Section 843.002.

(4) "Health care provider" means a physician, facility, practitioner, or other person or organization who, under a license or grant of authority issued by this state, provides care or supplies to individuals under a health benefit plan. The term does not include a hospital provider.

(5) "Hospital provider" means a county hospital, county hospital authority, hospital district, municipal hospital, or municipal hospital authority.

(6) "Local health care provider" means:

(A) a person licensed, registered, or certified as a

health care practitioner in this state who resides or practices in a rural area in which the person provides health care services; or

(B) a general or specialty hospital that is not a hospital provider under this chapter.

(7) "Participating hospital provider" means a hospital provider that participates in the system.

(8) "Person" means an individual, professional association, professional corporation, partnership, limited liability corporation, limited liability partnership, or nonprofit corporation, including a nonprofit corporation certified under Section 162.001, Occupations Code.

(9) "Rural area" means:

(A) a county with a population of 50,000 or less;

(B) an area that is not delineated as an urbanized area by the United States Bureau of the Census; or

(C) any other area designated as rural by a rule adopted by the commissioner, subject to Section 845.003.

(10) "System" means the statewide rural health care system established under this chapter.

(11) "Territorial jurisdiction" means the geographical area in which a participating hospital provider is obligated by law to provide health care services.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.213(a), eff. Sept. 1, 2003.

Sec. 845.003. RURAL AREA DESIGNATION. In determining whether to designate an area as a rural area under this chapter, the commissioner shall consider any area that is delineated as an urbanized area by the United States Bureau of the Census and:

(1) is contiguous with and not more than 10 miles away from a rural area described by Section 845.002(9)(A) or (B);

(2) is sparsely populated, compared to areas within a 10-mile radius that are delineated as urbanized areas by the United States Bureau of the Census;

(3) has not increased in population in any single calendar year in the seven years before the commissioner makes the designation; and

(4) in which emergency or primary care services:

(A) are limited or unavailable in accordance with network access standards imposed by the commissioner; and

(B) would be made materially more accessible by allowing access to care in a contiguous area that is otherwise eligible to participate in the system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.213(b), eff. Sept. 1, 2003.

Sec. 845.004. RULES. The commissioner shall adopt rules as necessary to implement this subchapter and Subchapters B, C, and D.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(b), eff. Sept. 1, 2003.

SUBCHAPTER B. SYSTEM

Sec. 845.051. STATEWIDE RURAL HEALTH CARE SYSTEM. The commissioner shall designate a single organization as the statewide rural health care system. The system is authorized to sponsor, arrange for the provision of, or provide health care services to enrollees in programs in rural areas. The programs are not subject to:

(1) a law requiring the coverage or the offer of coverage for services by a particular health care provider under:

(A) Chapter 62, Health and Safety Code;

(B) Chapter 32, Human Resources Code;

(C) a state-, county-, or local government-sponsored indigent care initiative; or

(D) a federal Medicare Plus Choice program; or

(2) Subchapters A-I, Chapter 1251, Subchapter A, Chapter 1364, Subchapter A, Chapter 1366, or Section 1551.064 under a state-, county-, or local government-sponsored uninsured or indigent care initiative.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.214(a), eff.

Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.055, eff. April 1, 2009.

Sec. 845.052. ORGANIZATION REQUIREMENTS. The system must:
(1) be a corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and
(2) consist of a combination of two or more hospital providers, each of which:
(A) is a member of the corporation; and
(B) is located in a rural area.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.053. REQUIREMENTS APPLICABLE TO CERTAIN PLANS. (a) Except as provided by Subsection (b), if the system seeks to sponsor, arrange for the provision of, or provide health care services to enrollees in exchange for a predetermined payment per enrollee on a prepaid basis, the system must comply with:
(1) all requirements under this code imposed on health plans, including health maintenance organizations; and
(2) any additional requirements the commissioner determines are necessary to ensure enrollee access to health care providers and health care services.
(b) The system is not required to comply with requirements described by Subdivision (a)(1) that relate to mileage, distance, network adequacy, and scope of coverage that the commissioner determines are not applicable to the system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.214(a), eff. Sept. 1, 2003.

Sec. 845.054. LOCAL GOVERNMENT. (a) The system is:
(1) a unit of local government that is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code; and

(2) a local government for purposes of Chapter 102, Civil Practice and Remedies Code.

(b) The system may enter into interlocal cooperation contracts under Chapter 791, Government Code, and is a local government for purposes of that chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.055. PROVISION OF ADMINISTRATIVE AND HEALTH CARE SERVICES. (a) The system shall contract with or otherwise arrange for local health care provider networks composed of not more than 19 counties to deliver health care services to enrollees residing in the rural areas of the territorial jurisdiction of the participating hospital providers.

(b) If the local health care provider networks under contract or arrangement with the system as provided by Subsection (a) are unable to provide the type and quality of health care services required by the enrollees, the system may contract with health care practitioners who are not local health care providers.

(c) The system may:

(1) enter into a contract or joint venture to provide administrative services under this chapter;

(2) enter into an intergovernmental or interlocal agreement; or

(3) provide technical assistance and management services to local health care providers as necessary to deliver health care services.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.056. GIFTS AND GRANTS. The system may accept gifts or grants of money or property to provide programs and services.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.057. LIMITATION ON AUTHORITY OF PARTICIPATING HOSPITAL PROVIDERS. The participating hospital providers may exercise only the authority provided by Sections 845.058, 845.101, and 845.103.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.058. SALE OR DISSOLUTION OF SYSTEM. (a) The participating hospital providers may authorize, by a two-thirds vote, the sale of the system or substantially all of the assets of the system.

(b) Except as otherwise provided by law, on the sale or dissolution of the system or the sale of substantially all of the assets of the system, the net revenue shall be distributed equally to the participating hospital providers after payment of any outstanding liabilities incurred by the system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 845.101. APPOINTMENT OF BOARD. (a) The system is governed by a board of directors that consists of 17 members. Notwithstanding the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), appointments to the board shall be made as provided by this section.

(b) The participating hospital providers shall elect, by a majority vote of the governing bodies of the participating hospital providers, five members who represent the participating hospital providers.

(c) Twelve members shall be appointed according to the system's bylaws, including:

(1) six members who reside in the territorial jurisdictions of the participating hospital providers, including:

(A) two members who represent employers;

(B) two members who represent local government officials; and

(C) two members who represent consumers of health care services; and

(2) six members who are licensed physicians who reside and practice in the territorial jurisdictions of the participating hospital providers, including at least three members who perform the general practice of medicine as their professional practice.

(d) Appointments to the board under Subsection (c) shall be

made in a manner that provides representation for the territorial jurisdictions of all participating hospital providers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 41.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.215(a), eff. Sept. 1, 2003.

Sec. 845.102. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms. The terms of five or six members expire December 1 of each even-numbered year.

(b) A person may not be appointed to serve consecutive terms.

(c) A person may be appointed to serve a nonconsecutive term if the person left the board at the expiration of the person's previous term.

(d) If a vacancy occurs during a member's term, the same entity that appointed the member shall appoint a replacement to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 41.02, eff. Sept. 1, 2003.

Sec. 845.103. REMOVAL OF CERTAIN BOARD MEMBERS. The participating hospital providers may remove, by a two-thirds vote, any member of the board elected by the participating hospital providers under Section 845.101(b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.104. BOARD DUTIES. The board shall:

(1) administer the system;

(2) adopt policies and procedures for the system that are consistent with the purposes of this subchapter and Subchapters A, B, and D; and

(3) adopt rules for the holding of regular and special meetings.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(b), eff. Sept. 1, 2003.

Sec. 845.105. RULES RELATING TO ADMINISTRATIVE AND HEALTH CARE SERVICES. The board may adopt rules to regulate the provision of administrative services and health care services by the system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.106. OFFICERS. The board may elect officers as it considers appropriate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.107. EXECUTIVE COMMITTEE. (a) The board may appoint an executive committee as determined by the board to be useful in conducting the business of the board.

(b) The board may delegate to the executive committee any responsibility considered reasonable by the board.

(c) An executive committee appointed under this section must consist of:

(1) two members who represent the participating hospital providers;

(2) two members who are community representatives, including employers, local government officials, or consumers of health care services; and

(3) two members who meet the requirements of Section 845.101(c)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.108. ADMINISTRATIVE SERVICES; PERSONNEL. (a) The board may, by majority vote:

(1) contract for administrative, management, or support services;

(2) hire an executive director;

(3) contract with a consultant, an attorney, or other professional; or

(4) retain other staff as necessary to perform the duties of the system.

(b) If the board hires an executive director for the system, the board shall delegate to the executive director the authority to hire staff for the system and may delegate to the executive director other duties determined by the board to be appropriate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.216(a), eff. Sept. 1, 2003.

Sec. 845.109. ADVISORY COMMITTEES. (a) The board may appoint a health care services advisory committee. The advisory committee must include members who represent rural, urban, and educational groups and organizations. The advisory committee, as directed by the board, shall meet and advise the board on any matter.

(b) The board may appoint other advisory committees as determined by the board to be appropriate.

(c) A member of an advisory committee appointed under this section is not entitled to compensation for service on the committee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.110. OPEN MEETINGS AND RECORDS REQUIREMENTS. (a) Meetings of the board are open to the public in accordance with Chapter 551, Government Code. This subsection does not require the board to conduct an open meeting to deliberate:

(1) pricing or financial planning information relating to a bid or negotiation for arranging or providing services or product lines to another person if disclosure of the information would give the advantage to competitors;

(2) information relating to a proposed new service, product line, or marketing strategy;

(3) patient information made confidential under Chapter 159, Occupations Code, or Subchapter G, Chapter 241, Health and Safety Code; or

(4) information that relates to the credentialing of

physicians or to peer review and that is made confidential under Subchapter A, Chapter 160, Occupations Code, or Subchapter G, Chapter 241, Health and Safety Code.

(b) The board shall keep a record of its proceedings in accordance with Chapter 551, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. STATE MANAGED CARE CONTRACTS

Sec. 845.151. CONTRACT AWARD. To the extent consistent with federal law, the state shall award to the system at least one of the state managed care contracts that are awarded to provide health care services to beneficiaries of the medical assistance program under Chapter 32, Human Resources Code, in the rural areas of the territorial jurisdiction of the participating hospital providers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.152. PARTICIPATION REQUIREMENT. As a requirement of participation in a state contract awarded under Section 845.151, the system must satisfactorily address the qualifications for arranging to provide health care services to beneficiaries of certain governmental health care programs as delineated in the contractor's request for proposal, including:

(1) readiness reviews and adequacy of credentialing, medical management, quality assurance, claims payment, information management, provider and patient education, and complaint and grievance procedures; and

(2) adequacy of physician and provider networks, including factors such as diversity, geographic accessibility, inclusion of physicians and other providers that have furnished a significant amount of Medicaid or charity care to beneficiaries, and tertiary and subspecialty services.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.153. REIMBURSEMENT AT STATE-DEFINED CAPITATION RATE. (a) To the extent the system operates under a certificate of

authority issued under Chapter 843, the Medicaid contracting agency shall reimburse the system at the state-defined capitation rate for each service area in which the system operates.

(b) The system is not required as a condition of participation in a state contract awarded under Section 845.151 to accept from the Medicaid contracting agency a capitation rate that is lower than the state-defined capitation rate for each service area in which the system operates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.154. RIGHT OF STATE TO CANCEL CONTRACT ON SALE OR DISSOLUTION. The state may cancel a contract awarded under this subchapter if the system is sold or dissolved.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 845.155. USE OF SYSTEM AS PILOT PROGRAM, DEMONSTRATION PROJECT, OR STUDY. The commissioner of health and human services may use the system for:

(1) a voluntary pilot or demonstration program that:

(A) evaluates the use of an insured model for beneficiaries of a medical assistance program in a rural area not currently included in an existing Medicaid managed care pilot program area; and

(B) incorporates the principles of prevention and disease management; and

(2) a study of the use of promotoras as defined by Section 48.001, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.217(a), eff. Sept. 1, 2003.

SUBCHAPTER E. GOALS OF SYSTEM

Sec. 845.201. RURAL HEALTH CARE DELIVERY SYSTEM. (a) The system is designed to protect and enhance the rural health care delivery system by:

(1) establishing a statewide rural health care network;

(2) supporting funding to rural communities;

(3) enabling administrative simplification for the benefit of rural providers that participate in various health care plans; and

(4) ensuring the inclusion of consumer-oriented attributes considered important to a successful health care organization.

(b) The attributes described by Subsection (a)(4) include:

(1) consideration of patient rights;

(2) preservation of patient rights;

(3) preservation of the provider-patient relationship;

(4) emphasis on prevention and wellness;

(5) an appropriate credentialing and peer review program; and

(6) emphasis on quality improvement and disease management.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(a), eff. Sept. 1, 2003.

Sec. 845.202. PATIENT RIGHTS POLICIES. It is intended that the system incorporate patient-focused considerations that include:

(1) open communication;

(2) informed consent;

(3) protection of confidentiality and privacy;

(4) full disclosure of program policies and procedures to patients and providers;

(5) coverage of emergency care;

(6) disclosure of compensation arrangements with providers; and

(7) efficient appeal of coverage decisions.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(a), eff. Sept. 1, 2003.

Sec. 845.203. PATIENT-PHYSICIAN RELATIONSHIP. It is intended that the system preserve significant traditional and ethical relationships between a patient and the patient's health care provider by ensuring that:

(1) medical management does not intrude on the delivery of quality patient care;

(2) the process of making health care decisions remains a matter between a patient and the patient's health care provider; and

(3) nothing in the system will place a health care provider in an adverse relationship with a patient.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(a), eff. Sept. 1, 2003.

Sec. 845.204. PUBLIC HEALTH AND PREVENTION. It is intended that the system use incentives to promote healthy communities and individuals by using a public health model that focuses on health promotion, illness prevention, patient self-care education, and incentives that encourage positive health behavior.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(a), eff. Sept. 1, 2003.

Sec. 845.205. CREDENTIALS AND PEER REVIEW. To ensure that enrollees will receive quality health care, it is intended that the system focus on processes for obtaining credentials and performing peer review that take into consideration the unique nature of rural communities and that track processes required under federal and state law. It is intended that local physicians and hospitals retain responsibility for these processes. These processes are not intended to exclude otherwise qualified practitioners from participating in the system.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(a), eff. Sept. 1, 2003.

Sec. 845.206. QUALITY IMPROVEMENT AND MANAGEMENT. It is intended that the system use standard guidelines established by the National Committee on Quality Assurance and other recognized accrediting organizations to:

(1) ensure that the program achieves the objectives of providing quality patient care; and

(2) emphasize establishing benchmarks to measure program outcomes that will be made available to the public through proper

reporting procedures.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.218(a), eff. Sept. 1, 2003.

CHAPTER 846. MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 846.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees or directors, as applicable, of a multiple employer welfare arrangement.

(2) "Employee welfare benefit plan" has the meaning assigned by Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)).

(3) "Health benefit plan" includes any plan that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage, or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance;

(D) coverage for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) workers' compensation insurance coverage or similar insurance coverage;

(K) coverage provided through a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U. S.C. Section 157;

(L) hospital indemnity or other fixed indemnity insurance coverage;

(M) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(N) short-term major medical contracts;

(O) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage;

(P) coverage issued as a supplement to liability insurance coverage;

(Q) automobile medical payment insurance coverage;

(R) coverage for on-site medical clinics;

(S) coverage that provides other limited benefits specified by federal regulations; or

(T) other coverage that is:

(i) similar to the coverage described by this subdivision under which benefits for medical care are secondary or incidental to other coverage benefits; and

(ii) specified in federal regulations.

(4) "Health status related factor" means:

(A) health status;

(B) medical condition, including both physical and mental illness;

(C) claims experience;

(D) receipt of health care;

(E) medical history;

(F) genetic information;

(G) evidence of insurability, including conditions arising out of acts of family violence; and

(H) disability.

(5) "Multiple employer welfare arrangement" has the meaning assigned by Section 3(40) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(40)).

(6) "Organizational document" means the articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of employers, employees, and beneficiaries with respect to a multiple employer welfare arrangement.

(7) "Participation criteria" means any criteria or rules established by an employer to determine the employees who are eligible for enrollment or continued enrollment under the terms of a

health benefit plan.

(8) "Preexisting condition provision" means a provision that excludes or limits coverage for a disease or condition for a specified period after the effective date of coverage.

(9) "Waiting period" means a period established by a multiple employer welfare arrangement that must elapse before an individual who is a potential participating employee in a health benefit plan is eligible to be covered for benefits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.002. APPLICABILITY OF CHAPTER. (a) In this section, "fully insured multiple employer welfare arrangement" means an arrangement that provides to its participating employees and beneficiaries benefits for which 100 percent of the liability has been assumed by an insurance company authorized to do business in this state.

(b) This chapter applies only to a multiple employer welfare arrangement that meets either or both of the following criteria:

(1) one or more of the employer members in the arrangement:

(A) is domiciled in this state; or

(B) has its principal headquarters or principal administrative office in this state; or

(2) the arrangement solicits an employer that:

(A) is domiciled in this state; or

(B) has its principal headquarters or principal administrative office in this state.

(c) This chapter does not apply to a fully insured multiple employer welfare arrangement during the period in which the arrangement is fully insured. The commissioner periodically may require proof that the arrangement is fully insured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) A multiple employer welfare arrangement is exempt from the operation of all insurance laws of this state, except laws that are made applicable by their specific terms or as specified in this section or chapter.

(b) A multiple employer welfare arrangement is subject to the following laws:

(1) Subchapters C and D, Chapter 36;

(2) Section 38.001;

(3) Section 81.002;

(4) Chapter 82;

(5) Chapter 83;

(6) Chapter 86;

(7) Section 201.003;

(8) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156;

(9) Chapter 441;

(10) Chapter 443;

(11) Chapter 461;

(12) Section 521.005;

(13) Chapter 541;

(14) Chapter 701;

(15) Chapter 801;

(16) Chapter 803;

(17) Chapter 804;

(18) Subchapter A, Chapter 805; and

(19) Sections 841.259, 841.701-841.702, and 841.704-841.705.

(c) A multiple employer welfare arrangement is only considered an insurer for purposes of the laws described by this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.056, eff. April 1, 2009.

Sec. 846.0035. APPLICABILITY OF CERTAIN LAWS TO ASSOCIATION PROVIDING HEALTH BENEFITS. (a) This section applies only to a multiple employer welfare arrangement:

(1) that was issued an initial certificate of authority under Section 846.054 on or after January 1, 2024; or

(2) that elects to be bound by this section in the manner prescribed by the commissioner.

(b) A multiple employer welfare arrangement that provides a

comprehensive health benefit plan, as determined by the commissioner, is subject to the following laws as if the arrangement were an insurer, individuals entitled to coverage under the plan were insureds, and the health benefits were provided through an insurance policy:

(1) Chapter 421;

(2) Chapter 422;

(3) Subchapters C, F, and K, Chapter 1451; and

(4) Chapter 4201.

(c) A multiple employer welfare arrangement that provides a comprehensive health benefit plan, as determined by the commissioner, that is determined by the commissioner to be structured in the manner of a preferred provider benefit plan or an exclusive provider benefit plan as defined in Section 1301.001 is subject to the following laws as if the arrangement were an insurer, individuals entitled to coverage under the plan were insureds, and the health benefits were provided through an insurance policy:

(1) Chapter 1301; and

(2) Chapter 1467.

Added by Acts 2023, 88th Leg., R.S., Ch. 117 (H.B. 290), Sec. 1, eff. September 1, 2023.

Sec. 846.004. LATE-PARTICIPATING EMPLOYEE OR DEPENDENT. (a) For purposes of this chapter, an employee or dependent eligible for enrollment in a participating employer's health benefit plan is a late-participating employee or dependent if the individual requests enrollment after the expiration of:

(1) the initial enrollment period established under the terms of the first health benefit plan for which that employee or dependent was eligible through the participating employer; or

(2) an open enrollment period under Section 846.257.

(b) An employee or dependent is not a late-participating employee or dependent if the individual:

(1) was covered under another health benefit plan or self-funded employer health benefit plan at the time the individual was eligible to enroll;

(2) declined enrollment in writing, at the time of the initial eligibility for enrollment, stating that coverage under

another health benefit plan or self-funded employer health benefit plan was the reason for declining enrollment;

(3) has lost coverage under the other health benefit plan or self-funded employer health benefit plan as a result of:

(A) the termination of employment;

(B) a reduction in the number of hours of employment;

(C) the termination of the other plan's coverage;

(D) the termination of contributions toward the premium made by the employer; or

(E) the death of a spouse or divorce; and

(4) requests enrollment not later than the 31st day after the date coverage under the other health benefit plan or self-funded employer health benefit plan terminates.

(c) An employee or dependent is also not a late-participating employee or dependent if the individual is:

(1) employed by an employer that offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period under Section 846.257;

(2) a spouse for whom a court has ordered coverage under a covered employee's plan and the request for enrollment of the spouse is made not later than the 31st day after the date the court order is issued; or

(3) a child for whom a court has ordered coverage under a covered employee's plan and the request for enrollment is made not later than the 31st day after the date the employer receives the court order.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.005. RULES; ORDERS. (a) The commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement this chapter.

(b) The commissioner shall adopt rules necessary to meet the minimum requirements of federal law and regulations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.006. APPEAL OF ORDERS. A person affected by an order

of the commissioner issued under this chapter may appeal that order by filing suit in a district court in Travis County under Subchapter D, Chapter 36.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.007. PREMIUM RATES; ADJUSTMENTS. (a) A multiple employer welfare arrangement may charge premiums in accordance with this section to the group of employees or dependents who meet the participation criteria and who do not decline coverage.

(b) A multiple employer welfare arrangement may not charge an adjustment to premium rates for individual employees or dependents for health status related factors or duration of coverage. Any adjustment must be applied uniformly to the rates charged for all participating employees and dependents of participating employees of the employer.

(c) Subsection (b) does not restrict the amount that an employer may be charged for coverage.

(d) A multiple employer welfare arrangement may establish premium discounts, rebates, or a reduction in otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention. A discount, rebate, or reduction established under this subsection does not violate Section 541.056(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.057, eff. April 1, 2009.

SUBCHAPTER B. FORMATION AND STRUCTURE OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Sec. 846.051. CERTIFICATE OF AUTHORITY REQUIRED. A person may not establish or maintain an employee welfare benefit plan that is a multiple employer welfare arrangement in this state unless the arrangement obtains and maintains a certificate of authority issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.052. APPLICATION FOR INITIAL CERTIFICATE OF AUTHORITY. (a) A person who wants to establish an employee welfare benefit plan that is a multiple employer welfare arrangement must apply for an initial certificate of authority on an application form prescribed by the commissioner.

(b) The application form must be completed and submitted along with all information required by the commissioner, including:

(1) a copy of each organizational document;

(2) current financial statements of the arrangement;

(3) a fully detailed statement indicating the plan under which the arrangement proposes to transact business;

(4) an initial actuarial opinion in compliance with the requirements of Section 846.153(a)(2) and subject to Section 846.157(b); and

(5) demonstration by the applicant that the arrangement is in compliance with all applicable federal and state laws, as determined by the commissioner.

(c) The application must be accompanied by proof of a fidelity bond that:

(1) protects against acts of fraud or dishonesty in servicing the multiple employer welfare arrangement;

(2) covers each person responsible for servicing the employee welfare benefit plan; and

(3) is in an amount equal to the greater of 10 percent of the premiums and contributions received by the arrangement or 10 percent of the benefits paid, during the preceding calendar year, with a minimum of $10,000 and a maximum of $500,000.

(d) A third-party administrator licensed to engage in business in this state is not required to submit a fidelity bond under Subsection (c).

(e) The commissioner shall promptly examine the application and documents submitted by the applicant and may:

(1) conduct any investigation that the commissioner considers necessary; and

(2) examine under oath any person interested in or connected with the multiple employer welfare arrangement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 117 (H.B. 290), Sec. 2, eff. September 1, 2023.

Sec. 846.053. ELIGIBILITY REQUIREMENTS FOR INITIAL CERTIFICATE OF AUTHORITY. (a) An applicant for an initial certificate of authority as a multiple employer welfare arrangement must meet the requirements of this section.

(b) The employers in the multiple employer welfare arrangement must:

(1) be members of an association or group of five or more businesses that are in the same trade or industry, including closely related businesses that provide support, services, or supplies primarily to that trade or industry; or

(2) for a multiple employer welfare arrangement to which Section 846.0035 applies, each have a principal place of business in the same region that does not exceed the boundaries of this state or the boundaries of a metropolitan statistical area designated by the United States Office of Management and Budget.

(c) If the employers in the multiple employer welfare arrangement are members of an association, the association must:

(1) be engaged in substantial activity for its members other than sponsorship of an employee welfare benefit plan; and

(2) if Section 846.0035 does not apply to the multiple employer welfare arrangement, have been in existence for at least two years before engaging in any activities relating to providing employee health benefits to its members.

(d) The employee welfare plan of the association or group in the multiple employer welfare arrangement must be controlled and sponsored directly by participating employers, participating employees, or both.

(d-1) For purposes of a multiple employer welfare arrangement to which Section 846.0035 applies, a working owner of a trade or business without employees may qualify as both an employer and as an employee of the trade or industry for the purposes of this section. In this subsection, "working owner" means an individual who:

(1) has an ownership right of any nature in a trade or business, whether incorporated or unincorporated, including a partner and other self-employed individual;

(2) earns wages or self-employment income from the trade or business for providing personal services to the trade or business; and

(3) either:

(A) works on average at least 20 hours per week or at least 80 hours per month providing personal services to the working owner's trade or business; or

(B) has wages or self-employment income from the individual's trade or business that at least equals the individual's cost of coverage for participation by the individual and any covered beneficiaries in the group health plan sponsored by the group or association in which the individual is participating.

(e) The association or group of employers in the multiple employer welfare arrangement must be a not-for-profit organization.

(f) The multiple employer welfare arrangement must:

(1) have within its own organization adequate facilities and competent personnel, as determined by the commissioner, to administer the employee benefit plan; or

(2) have contracted with a third-party administrator licensed to engage in business in this state.

(g) The multiple employer welfare arrangement:

(1) must have applications from not fewer than five employers and must provide similar benefits for not fewer than 200 separate participating employees; and

(2) will have annual gross premiums of or contributions to the plan of not less than:

(A) $20,000 for a plan that provides only vision benefits;

(B) $75,000 for a plan that provides only dental benefits; and

(C) $200,000 for all other plans.

(h) The multiple employer welfare arrangement must possess a written commitment, binder, or policy for stop-loss insurance issued by an insurer authorized to do business in this state that provides:

(1) at least 30 days' notice to the commissioner of any cancellation or nonrenewal of coverage; and

(2) both specific and aggregate coverage with an aggregate retention of not more than 125 percent of the amount of expected claims for the next plan year and a specific retention amount annually determined by the actuarial opinion required by Section

846.153(a)(2).

(i) Both the specific and aggregate coverage required by Subsection (h)(2) must require all claims to be submitted within 90 days after the claim is incurred and provide a 12-month claims incurred period and a 15-month paid claims period for each policy year.

(j) The contributions must be established to fund at least 100 percent of the aggregate retention plus all other costs of the multiple employer welfare arrangements.

(k) The multiple employer welfare arrangement must establish a procedure for handling claims for benefits on dissolution of the arrangement.

(l) The multiple employer welfare arrangement must obtain the required bond.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 117 (H.B. 290), Sec. 3, eff. September 1, 2023.

Sec. 846.054. ISSUANCE OF INITIAL CERTIFICATE OF AUTHORITY. (a) The commissioner shall approve, deny, or disapprove an application for an initial certificate of authority that meets the requirements of Section 846.053 not later than the 60th day after the date on which the application is filed.

(a-1) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

(b) An initial certificate of authority is a temporary certificate issued for a one-year term.

(c) On receipt of the initial certificate of authority, the multiple employer welfare arrangement shall begin business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 11, eff. June 19, 2009.

Sec. 846.055. EXTENSION OF TERM OF INITIAL CERTIFICATE OF AUTHORITY. The commissioner may extend the term of an initial certificate of authority for a period not to exceed one year if the commissioner determines that the multiple employer welfare arrangement is likely to meet the requirements of this chapter for a final certificate of authority within that period. The commissioner may not grant more than one extension of the initial certificate of authority regardless of the length of time for which an extension was granted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.056. FINAL CERTIFICATE OF AUTHORITY. (a) A multiple employer welfare arrangement that holds an initial certificate of authority must apply for a final certificate of authority not later than the first anniversary of the date of issuance of the initial certificate.

(b) The multiple employer welfare arrangement must file an application for a final certificate of authority on a form prescribed by the commissioner and furnish the information required by the commissioner. The application for a final certificate of authority must include only:

(1) the names and addresses of:

(A) the association or group of employers sponsoring the arrangement;

(B) the board members of the arrangement; and

(C) if the employers in the arrangement are not an association, at least five employers;

(2) proof of compliance with the bonding requirements;

(3) a copy of each plan document and each agreement with service providers; and

(4) a funding report containing:

(A) a statement certified by the board and an actuarial opinion that all applicable requirements of Section 846.153 have been met;

(B) an actuarial opinion describing the extent to which contributions or premium rates:

(i) are not excessive;

(ii) are not unfairly discriminatory; and

(iii) are adequate to provide for the payment of all obligations and the maintenance of required cash reserves and surplus by the arrangement;

(C) a statement of the current value of the assets and liabilities accumulated by the arrangement and a projection of the assets, liabilities, income, and expenses of the arrangement for the next 12-month period; and

(D) a statement of the costs to be charged for coverage, including an itemization of amounts for:

(i) administrative expenses;

(ii) reserves; and

(iii) other expenses associated with operation of the arrangement.

(c) The reserves described in Section 846.154(a) must have been established or be established before the final certificate of authority is issued.

(d) If, after examination and investigation, the commissioner is satisfied that the multiple employer welfare arrangement meets the requirements of this chapter, the commissioner shall issue a final certificate of authority to the arrangement.

(e) The commissioner shall maintain the information required under Subsection (b)(1)(C) and Subsection (b)(3) as confidential information.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.057. DENIAL OF FINAL CERTIFICATE OF AUTHORITY. (a) The commissioner shall deny a final certificate of authority to an applicant that does not comply with this chapter.

(b) If the commissioner denies a final certificate of authority, the commissioner shall issue a written notice of refusal to the applicant. The notice of refusal must state the basis for the denial. The notice of refusal constitutes 30 days' advance notice of the revocation of the initial certificate of authority.

(c) If the applicant submits a written request for a hearing not later than the 30th day after the date of mailing of the notice of refusal, revocation of the initial certificate of authority is temporarily stayed, and the commissioner shall promptly conduct a hearing at which the applicant is given an opportunity to show

compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.058. DISQUALIFICATION. (a) A multiple employer welfare arrangement, each board member and officer of the arrangement, and any agent or other person associated with the arrangement shall be subject to disqualification for eligibility for a certificate of authority if the person:

(1) makes a material misstatement or omission in an application for a certificate of authority under this chapter;

(2) obtains or attempts to obtain at any time a certificate of authority or license for an insurance entity through intentional misrepresentation or fraud;

(3) misappropriates or converts to the person's own use or improperly withholds money under an employee welfare benefit plan or multiple employer welfare arrangement;

(4) is prohibited from serving in any capacity with the arrangement under Section 411, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1111);

(5) without reasonable cause or excuse, fails to appear in response to a subpoena, examination, warrant, or any other order lawfully issued by the commissioner; or

(6) has previously been subject to a determination by the commissioner resulting in:

(A) suspension or revocation of a certificate of authority or license; or

(B) denial of a certificate of authority or license on grounds that would be sufficient for suspension or revocation.

(b) This section does not apply to a participating employer in its capacity as a participating employer and the employer's participating employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.059. FEES; SERVICE OF PROCESS. (a) Each multiple employer welfare arrangement shall pay to the department in the amount set by the commissioner:

(1) an application fee for an initial certificate of

authority;

(2) an application fee for a final certificate of authority; and

(3) a filing fee for submission of the arrangement's annual statement.

(b) The commissioner shall set the fees described by Subsection (a) in amounts reasonable and necessary to defray the costs of administering this chapter.

(c) Each multiple employer welfare arrangement shall appoint the commissioner as its resident agent for purposes of service of process. The fee for that service is $50, payable at the time of appointment.

(d) Fees paid under this section shall be deposited to the credit of the Texas Department of Insurance operating fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.060. SUSPENSION, REVOCATION, OR LIMITATION OF CERTIFICATE OF AUTHORITY. In addition to any requirement or remedy under a law cited under Section 846.003, the commissioner may suspend, revoke, or limit the certificate of authority of a multiple employer welfare arrangement if the commissioner determines, after notice and hearing, that the agreement does not comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.061. ACTION BY ATTORNEY GENERAL. (a) The commissioner may notify the attorney general of a violation of this chapter, and the attorney general may apply to a district court in Travis County for leave to file suit in the nature of quo warranto or for injunctive relief or both.

(b) The attorney general may seek and the court may order:

(1) restitution for victims of an act declared to be unlawful under this chapter;

(2) assessment of a fine under this code; and

(3) recovery of reasonable attorney's fees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. BOARD MEMBERS; OTHER OFFICERS AND PERSONNEL

Sec. 846.101. BOARD MEMBERS; NOTICE OF ELECTIONS. (a) Except as otherwise provided, the powers of a multiple employer welfare arrangement shall be exercised by a board elected to carry out the purposes established by the organizational documents of the arrangement.

(b) The member employers shall elect at least 75 percent of the board members. At least 75 percent of the board members must be individuals who are covered under the arrangement.

(c) An owner, officer, or employee of a third-party administrator who provides services to the multiple employer welfare arrangement or any other person who has received compensation from the arrangement may not serve as a board member.

(d) Each board member shall be elected for a term of at least two years.

(e) Each member employer of a multiple employer welfare arrangement shall be given notice of each election of board members and is entitled to an equal vote, either in person or by a written proxy signed by the member employer. An owner, officer, or employee of a third-party administrator who provides services to the arrangement or any other person who has received compensation from the arrangement may not serve as proxy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.102. DUTIES OF BOARD MEMBERS. (a) The board members of a multiple employer welfare arrangement are responsible for all operations of the arrangement and shall take all necessary precautions to safeguard the assets of the arrangement.

(b) A board member shall give the attention and exercise the vigilance, diligence, care, and skill that a prudent person would use in like or similar circumstances.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.103. LIMITATION ON ACTION AGAINST BOARD MEMBER. A board member may not be held liable in a private cause of action for

any delinquency under Section 846.102 after the expiration of the earlier of:

(1) six years from the date of delinquency; or

(2) two years from the time when the delinquency is discovered by a person complaining of the delinquency.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.104. COMPENSATION OF BOARD MEMBERS. A board member serves without compensation from the multiple employer welfare arrangement except for actual and necessary expenses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.105. OFFICERS; AGENTS. (a) The board shall select officers for the multiple employer welfare arrangement as designated in the organizational documents and may appoint agents as necessary for the arrangement to engage in business. Each officer and agent may exercise the authority and perform the duties required in the management of the property and affairs of the arrangement as delegated by the board.

(b) The board may remove an officer or agent if the board determines that the business interests of the multiple employer welfare arrangement are served by the removal.

(c) The board shall secure the fidelity of any or all of the officers or agents who handle the funds of the multiple employer welfare arrangement by bond or otherwise.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.106. COMPENSATION OF OFFICERS, AGENTS, AND EMPLOYEES. (a) A multiple employer welfare arrangement may pay the officers and agents of the arrangement suitable compensation. An officer, employee, or agent of an arrangement may not be compensated unreasonably.

(b) The compensation of any officer or employee of a multiple employer welfare arrangement may not be computed directly or indirectly as a percentage of money or premium collected.

(c) The compensation of an agent may not exceed five percent of the money or premium collected.

(d) A multiple employer welfare arrangement may pay compensation or make an emolument to an officer of the arrangement only if the compensation or emolument is first authorized by a majority vote of the board of the arrangement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.107. RECEIPT OF THING OF VALUE; CRIMINAL PENALTY. (a) A board member, officer, or employee of a multiple employer welfare arrangement may not, knowingly and intentionally, directly or indirectly:

(1) receive money or another valuable thing for negotiating, procuring, recommending, or aiding in:

(A) a purchase by or sale to the arrangement of property; or

(B) a loan from the arrangement; or

(2) be pecuniarily interested as a principal, coprincipal, agent, or beneficiary in a purchase, sale, or loan described by Subdivision (1).

(b) A person commits an offense if the person violates this section. An offense under this subsection is a felony of the third degree.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. POWERS AND DUTIES OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

Sec. 846.151. GENERAL POWERS. (a) Unless otherwise provided by or inconsistent with this chapter, each multiple employer welfare arrangement may exercise the powers provided by this section.

(b) A multiple employer welfare arrangement may have succession, by its name, for the term stated in its trust agreement.

(c) A multiple employer welfare arrangement may sue and be sued. An arrangement may:

(1) complain and defend in any court;

(2) be a party to any proceedings before a public body of this state or of any other state or government; and

(3) sue a participating employer, an employee, or a beneficiary for any cause relating to the business of the arrangement.

(d) A multiple employer welfare arrangement may have a seal that may be used by having the seal or a facsimile of the seal impressed, affixed, or otherwise reproduced. The arrangement may alter the seal at will.

(e) A multiple employer welfare arrangement may appoint officers and agents as the business of the arrangement requires.

(f) A multiple employer welfare arrangement may adopt, amend, and repeal bylaws as necessary for the government of its affairs.

(g) A multiple employer welfare arrangement may conduct its business in this state, other states, and foreign countries and their territories and colonies.

(h) A multiple employer welfare arrangement may have offices outside this state.

(i) A multiple employer welfare arrangement may acquire, hold, mortgage, pledge, assign, and transfer real and personal property subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.152. FILING OF ORGANIZATIONAL DOCUMENTS. A multiple employer welfare arrangement shall file with the commissioner its organizational documents and all appurtenant amendments before those documents take effect.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.153. REQUIRED FILINGS. (a) A multiple employer welfare arrangement engaging in business in this state shall file the following with the commissioner on forms approved by the commissioner:

(1) a financial statement audited by a certified public accountant;

(2) an actuarial opinion prepared and certified by an actuary who is:

(A) not an employee of the arrangement; and

(B) a fellow of the Society of Actuaries, a member of

the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); and

(3) any modified terms of a plan document together with a certification from the trustees that the changes are in compliance with the minimum requirements of this chapter.

(b) A multiple employer welfare arrangement shall file the financial statement and the actuarial opinion required by Subsection (a) within 90 days of the end of the fiscal year.

(c) The actuarial opinion required under Subsection (a) must include:

(1) a description of the actuarial soundness of the multiple employer welfare arrangement, including any actions recommended to improve the actuarial soundness of the arrangement;

(2) the amount of cash reserves recommended to be maintained by the arrangement; and

(3) the level of specific and aggregate stop-loss insurance recommended to be maintained by the arrangement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.154. CASH RESERVE REQUIREMENTS. (a) The amount of cash reserves recommended under Section 846.153(c)(2) may not be less than the greater of:

(1) 20 percent of the total contributions in the preceding plan year; or

(2) 20 percent of the total estimated contributions for the current plan year.

(b) Cash reserves required by this section must be:

(1) computed with proper actuarial regard for:

(A) known claims, paid and outstanding;

(B) a history of incurred but not reported claims;

(C) claims handling expenses;

(D) unearned premium;

(E) an estimate for bad debts;

(F) a trend factor; and

(G) a margin for error; and

(2) maintained in cash or federally guaranteed obligations of less than five-year maturity that have a fixed or recoverable

principal amount or in other investments as the commissioner may authorize by rule.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.155. ADJUSTMENT OF CONTRIBUTIONS. If the recommended cash reserves required by Section 846.154(a) exceed the greater of 40 percent of the total contributions for the preceding plan year or 40 percent of the total contributions expected for the current plan year, the contributions may be reduced to fund less than 100 percent of the aggregate retention plus all other costs of the multiple employer welfare arrangement, but not less than the level of contributions necessary to fund the minimum reserves required under Section 846.154(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.156. WAIVER OR REDUCTION OF REQUIRED STOP-LOSS INSURANCE OR CASH RESERVES. On the application of a multiple employer welfare arrangement, the commissioner may waive or reduce the requirement for aggregate stop-loss insurance coverage and the amount of recommended cash reserves required by Section 846.154(a) on a determination that the interests of the participating employers and employees are adequately protected.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.157. RENEWAL OF CERTIFICATE; ADDITIONAL ACTUARIAL REVIEW. (a) The commissioner shall review the forms required by Section 846.153 and shall renew a multiple employer welfare arrangement's certificate of authority unless the commissioner determines that the arrangement does not comply with this chapter.

(b) On a finding of good cause, the commissioner may order an actuarial review of a multiple employer welfare arrangement in addition to the actuarial opinion required by Section 846.153(a). The arrangement shall pay the cost of the additional actuarial review.

(c) If the commissioner determines that a multiple employer

welfare arrangement does not comply with this chapter, the commissioner may order the arrangement to correct the deficiencies. The commissioner may take any action against the multiple employer welfare arrangement authorized by this code if the arrangement does not initiate immediate corrective action.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.158. EXAMINATION OF MULTIPLE EMPLOYER WELFARE ARRANGEMENTS. (a) The commissioner or the commissioner's appointee may examine the affairs of any multiple employer welfare arrangement.

(b) For the purposes of this section the commissioner:

(1) shall have free access to all the books, records, and documents that relate to the business of the plan; and

(2) may examine under oath a board member, officer, agent, or employee of the multiple employer welfare arrangement in relation to the affairs, transactions, and conditions of the arrangement.

(c) Each multiple employer welfare arrangement shall pay the expenses of the examination as provided by Sections 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.058, eff. April 1, 2009.

Sec. 846.159. NAME OF MULTIPLE EMPLOYER WELFARE ARRANGEMENT. (a) A multiple employer welfare arrangement shall transact business under the arrangement's own name and may not adopt any assumed name. An arrangement may not use a name that is the same as or closely resembles the name of any other arrangement that:

(1) possesses a certificate of authority; and

(2) is engaged in business in this state.

(b) A multiple employer welfare arrangement may change its name by:

(1) amending the articles of the arrangement; or

(2) taking a new name with the approval of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.160. EVIDENCE OF EXISTENCE. A certified copy of the multiple employer welfare arrangement's certificate of authority is prima facie evidence of the existence of the arrangement in a legal proceeding.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. PROVISION OF COVERAGE

Sec. 846.201. BENEFITS ALLOWED. (a) A multiple employer welfare arrangement may only provide one or more of the following:

(1) medical, dental, vision, surgical, or hospital care;

(2) benefits in the event of sickness, accident, disability, or death;

(3) another benefit authorized to be provided by health insurers in this state; and

(4) prepaid legal services.

(b) Except as otherwise limited by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a multiple employer welfare arrangement may only provide benefits to:

(1) active or retired owners, officers, directors, or employees of or partners in participating employers; and

(2) the beneficiaries of a person described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.202. PREEXISTING CONDITION PROVISION. (a) In this section, "creditable coverage" has the meaning assigned by Section 1205.004.

(b) A preexisting condition provision in a multiple employer welfare arrangement's plan document may apply only to coverage for a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months before the earlier of:

(1) the effective date of coverage; or

(2) the first day of the waiting period.

(c) A preexisting condition provision in a multiple employer welfare arrangement's plan document may not apply to expenses incurred on or after the expiration of the 12 months following the initial effective date of coverage of the participating employee, dependent, or late-participating employee or dependent.

(d) A preexisting condition provision in a multiple employer welfare arrangement's plan document may not apply to an individual who was continuously covered for an aggregate period of 12 months under creditable coverage that was in effect until a date not more than 63 days before the effective date of coverage under the health benefit plan, excluding any waiting period.

(e) In determining whether a preexisting condition provision applies to an individual covered by a multiple employer welfare arrangement's plan document, the arrangement shall credit the time the individual was covered under previous creditable coverage if the previous coverage was in effect at any time during the 12 months preceding the effective date of coverage under the arrangement. If the previous coverage was issued under a health benefit plan, any waiting period that applied before that coverage became effective must also be credited against the preexisting condition provision period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.059, eff. April 1, 2009.

Sec. 846.203. TREATMENT OF CERTAIN CONDITIONS AS PREEXISTING PROHIBITED. (a) A multiple employer welfare arrangement may not treat genetic information as a preexisting condition described by Section 846.202 in the absence of a diagnosis of the condition related to the information.

(b) A multiple employer welfare arrangement may not treat pregnancy as a preexisting condition described by Section 846.202.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.204. WAITING PERIOD PERMITTED. Sections 846.202 and 846.203 do not preclude application of a waiting period that applies

to all new participating employees under the health benefit plan in accordance with the terms of the multiple employer welfare arrangement's plan document.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.205. CERTAIN LIMITATIONS OR EXCLUSIONS OF COVERAGE PROHIBITED. (a) A multiple employer welfare arrangement's plan document may not limit or exclude, by use of a rider or amendment applicable to a specific individual, coverage by type of illness, treatment, medical condition, or accident.

(b) This section does not preclude a multiple employer welfare arrangement from limiting or excluding coverage for a preexisting condition in accordance with Section 846.202.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.206. RENEWABILITY OF COVERAGE; CANCELLATION. (a) Except as provided by Section 846.207, a multiple employer welfare arrangement shall renew the health benefit plan, at the employer's option, unless:

(1) a contribution has not been paid as required by the terms of the plan;

(2) the employer has committed fraud or has intentionally misrepresented a material fact;

(3) the employer has not complied with the terms of the health benefit plan document;

(4) the health benefit plan is ceasing to offer any coverage in a geographic area; or

(5) there has been a failure to meet the terms of an applicable collective bargaining agreement or other agreement requiring or authorizing contributions to the health benefit plan, including a failure to renew the agreement or to employ employees covered by the agreement.

(b) A multiple employer welfare arrangement may refuse to renew the coverage of a participating employee or dependent for fraud or intentional misrepresentation of a material fact by that person.

(c) A multiple employer welfare arrangement may not cancel a health benefit plan except for a reason specified for refusal to

renew under Subsection (a). An arrangement may not cancel the coverage of a participating employee or dependent except for a reason specified for refusal to renew under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.207. REFUSAL TO RENEW. (a) A multiple employer welfare arrangement may elect to refuse to renew all health benefit plans delivered or issued for delivery by the arrangement in this state. The arrangement shall notify:

(1) the commissioner of the election not later than the 180th day before the date coverage under the first health benefit plan terminates under this subsection; and

(2) each affected employer not later than the 180th day before the date on which coverage terminates for that employer.

(b) A multiple employer welfare arrangement that elects under this section to refuse to renew all health benefit plans may not write a health benefit plan in this state before the fifth anniversary of the date notice is delivered to the commissioner under Subsection (a).

(c) A multiple employer welfare arrangement may elect to discontinue a health benefit plan only if the arrangement:

(1) provides notice to each employer of the discontinuation before the 90th day preceding the date of the discontinuation of the plan;

(2) offers to each employer the option to purchase coverage under another health benefit plan offered by the arrangement; and

(3) acts uniformly without regard to the claims experience of the employer or any health status related factor of participating employees or dependents or new employees or dependents who may become eligible for the coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.208. NOTICE TO COVERED PERSONS. (a) A multiple employer welfare arrangement that cancels or refuses to renew coverage under a health benefit plan under Section 846.206 or Section 846.207 shall notify the employer of the cancellation of or refusal to renew coverage not later than the 30th day before the date

termination of coverage is effective. The employer is responsible for notifying participating employees of the cancellation of or refusal to renew coverage.

(b) The notice provided under this section is in addition to any other notice required by Section 846.206 or Section 846.207.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.209. WRITTEN STATEMENT OF DENIAL, CANCELLATION, OR REFUSAL TO RENEW. Denial by a multiple employer welfare arrangement of an application for coverage from an employer or cancellation of or refusal to renew must:

(1) be in writing; and

(2) state the reason or reasons for the denial, cancellation, or refusal to renew.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. PARTICIPATION IN COVERAGE

Sec. 846.251. PARTICIPATION CRITERIA. Participation criteria may not be based on health status related factors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.252. COVERAGE REQUIREMENTS. (a) A multiple employer welfare arrangement:

(1) may refuse to provide coverage to an employer in accordance with the arrangement's underwriting standards and criteria;

(2) shall accept or reject the entire group of individuals who meet the participation criteria and who choose coverage; and

(3) may exclude only those employees or dependents who have declined coverage.

(b) On issuance of coverage to an employer, each multiple employer welfare arrangement shall provide coverage to the employees who meet the participation criteria without regard to an individual's health status related factors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.253. PROHIBITION ON EXCLUSION OF ELIGIBLE EMPLOYEE OR DEPENDENT. A multiple employer welfare arrangement may not exclude an employee who meets the participation criteria or an eligible dependent, including a late-participating employee or dependent, who would otherwise be covered.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.254. WRITTEN NOTICE TO EMPLOYEES COVERED. A multiple employer welfare arrangement, in connection with an employee welfare benefit plan, shall provide to each participating employee covered by the plan a written notice at the time the employee's coverage becomes effective that states that:

(1) individuals covered by the plan are only partially insured; and

(2) if the plan or the arrangement does not ultimately pay medical expenses that are eligible for payment under the plan for any reason, the participating employer or its participating employee covered by the plan may be liable for those expenses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.255. DECLINING COVERAGE. (a) A multiple employer welfare arrangement shall obtain a written waiver from each employee who meets the participation criteria and declines coverage under a health plan offered to an employer. The waiver must ensure that the employee was not induced or pressured to decline coverage because of the employee's health status related factors.

(b) A multiple employer welfare arrangement may not provide coverage to an employer or the employees of an employer if the arrangement or an agent for the arrangement knows that the employer has induced or pressured an employee who meets the participation criteria or a dependent of the employee to decline coverage because of that individual's health status related factors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.256. MINIMUM CONTRIBUTION OR PARTICIPATION REQUIREMENTS. (a) A multiple employer welfare arrangement may require an employer to meet minimum contribution or participation requirements as a condition of issuance and renewal of coverage in accordance with the terms of the arrangement's plan document.

(b) The minimum contribution and participation requirements must be stated in the plan document and must be applied uniformly to each employer offered or issued coverage by the multiple employer welfare arrangement in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.257. ENROLLMENT; WAITING PERIOD. (a) The initial enrollment period for employees meeting the participation criteria must be at least 31 days, with a 31-day annual open enrollment period. The enrollment period must consist of an entire calendar month, beginning on the first day of the month and ending on the last day of the month. If the month is February, the period must last through March 2.

(b) A multiple employer welfare arrangement may establish a waiting period.

(c) A new employee who meets the participation criteria may not be denied coverage if the application for coverage is received by the multiple employer welfare arrangement not later than the 31st day after the later of:

(1) the date on which the employment begins; or

(2) the date on which the waiting period established under Subsection (b) expires.

(d) If dependent coverage is offered to participating employees under the terms of a multiple employer welfare arrangement's plan document:

(1) the initial enrollment period for the dependents must be at least 31 days, with a 31-day annual open enrollment period; and

(2) a dependent of a new employee meeting the participation criteria established by the arrangement may not be denied coverage if the application for coverage is received by the arrangement not later

than the 31st day after the later of:

(A) the date on which the employment begins;

(B) the date on which the waiting period established under Subsection (b) expires; or

(C) the date on which the dependent becomes eligible for enrollment.

(e) A late-participating employee or dependent may be excluded from coverage until the next annual open enrollment period and may be subject to a one-year preexisting condition provision as described by Section 846.202. The period during which a preexisting condition provision applies may not exceed 18 months after the date of the initial application.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.258. COVERAGE FOR NEWBORN CHILDREN. (a) A multiple employer welfare arrangement's plan document may not limit or exclude initial coverage of a newborn child of a participating employee.

(b) Coverage of a newborn child of a participating employee under this section ends on the 32nd day after the date of the child's birth unless:

(1) children are eligible for coverage under the multiple employer welfare arrangement's plan document; and

(2) not later than the 31st day after the date of birth, the arrangement receives:

(A) notice of the birth; and

(B) any required additional premium.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.219(a), eff. Sept. 1, 2003.

Sec. 846.259. COVERAGE FOR ADOPTED CHILDREN. (a) This section applies only if children are eligible for coverage under the terms of a multiple employer welfare arrangement's plan document.

(b) A multiple employer welfare arrangement plan document may not limit or exclude initial coverage of an adopted child of a participating employee. A child is considered to be the child of a participating employee if the participating employee is a party to a

suit in which the employee seeks to adopt the child.

(c) An adopted child of a participating employee may be enrolled, at the employee's option, not later than the 31st day after:

(1) the date the employee becomes a party to a suit in which the employee seeks to adopt the child; or

(2) the date the adoption becomes final.

(d) Coverage of an adopted child of a participating employee under this section ends unless the multiple employer welfare arrangement receives notice of the adoption and any required additional premiums not later than the 31st day after:

(1) the date the participating employee becomes a party to a suit in which the employee seeks to adopt the child; or

(2) the date the adoption becomes final.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.219(b), eff. Sept. 1, 2003.

Sec. 846.260. LIMITING AGE APPLICABLE TO UNMARRIED CHILD. If children are eligible for coverage under the terms of a multiple employer welfare arrangement's plan document, any limiting age applicable to an unmarried child of an enrollee is 25 years of age.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.219(c), eff. Sept. 1, 2003.

SUBCHAPTER G. MARKETING

Sec. 846.301. MARKETING REQUIREMENTS. On request, each employer purchasing a health benefit plan shall be given a summary of the plans for which the employer is eligible.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.302. ADDITIONAL REPORTING REQUIREMENTS. The department may require periodic reports by multiple employer welfare arrangements and agents regarding the health benefit plans issued by the arrangements. The reporting requirements must comply with

federal law and regulations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 846.303. APPLICABILITY TO THIRD-PARTY ADMINISTRATOR. If a multiple employer welfare arrangement enters into an agreement with a third-party administrator to provide administrative, marketing, or other services related to offering health benefit plans to employers in this state, the third-party administrator is subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 847. HEALTH CARE QUALITY ASSURANCE

Sec. 847.001. SHORT TITLE. This chapter may be cited as the Health Care Quality Assurance Act.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

Sec. 847.002. LEGISLATIVE FINDINGS; PURPOSES. The legislature finds that to ensure enrollees high quality care, many health benefit plan issuers voluntarily undergo a rigorous accreditation process conducted by nationally recognized accreditation organizations. To maintain accreditation, these health benefit plan issuers are subject to continuing review of their processes and standards. The legislature recognizes that many of these processes and standards are also reviewed by state agencies, resulting in increased agency costs and increased health benefit plan administrative costs. The purpose of this chapter is to allow appropriate recognition of accreditation by nationally recognized accreditation organizations and to foster coordination among state agencies in order to:

(1) help make health benefit plan coverage more affordable for consumers; and

(2) eliminate duplication of effort by both health benefit plan issuers and state agencies.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June

17, 2005.

Sec. 847.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Health benefit plan" means an individual, group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, or an individual or group subscriber contract or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance coverage;

(D) Medicare services under a federal contract;

(E) Medicare supplement and Medicare Select benefit plans regulated in accordance with federal law;

(F) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(G) workers' compensation insurance coverage or similar insurance coverage;

(H) coverage provided through a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U.S.C. Section 157;

(I) hospital indemnity or other fixed indemnity insurance coverage;

(J) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(K) short-term major medical contracts;

(L) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage, and coverage issued as a supplement to liability insurance coverage, including automobile medical payment insurance coverage;

(M) coverage for on-site medical clinics;

(N) coverage that provides other limited benefits specified by federal regulations;

(O) coverage that provides limited scope dental or vision benefits; or

(P) other coverage that:

(i) is similar to the coverage described by this subdivision under which benefits for medical care are secondary or incidental to other coverage benefits; and

(ii) is specified by federal regulations.

(3) "National accreditation organization" means:

(A) the Accreditation Association for Ambulatory Health Care;

(B) the Joint Commission on Accreditation of Healthcare Organizations;

(C) the National Committee for Quality Assurance;

(D) the American Accreditation HealthCare Commission ("URAC"); or

(E) any other national accreditation entity recognized by rules jointly adopted by the commissioner of insurance and the executive commissioner of the commission.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

Sec. 847.004. APPLICABILITY OF CHAPTER. This chapter applies only to an entity that issues a health benefit plan and that holds a license or certificate of authority issued by the commissioner and provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority issued by the commissioner under Chapter 844;

(5) a multiple employer welfare arrangement that holds a

certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885; or

(8) a reciprocal exchange operating under Chapter 942.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

Sec. 847.005. PRESUMED COMPLIANCE WITH CERTAIN STATUTORY AND REGULATORY REQUIREMENTS. (a) A health benefit plan issuer is presumed to be in compliance with state statutory and regulatory requirements if:

(1) the health benefit plan issuer has received nonconditional accreditation by a national accreditation organization; and

(2) the national accreditation organization's accreditation requirements are the same, substantially similar to, or more stringent than the department's statutory or regulatory requirements.

(b) A health benefit plan issuer that offers a Medicare Advantage coordinated care plan under a contract with the federal Centers for Medicare and Medicaid Services is presumed to be in compliance with any state statutory and regulatory requirements that are the same, substantially similar to, or more stringent than the requirements for Medicare Advantage coordinated care plans, as determined by the commissioner.

(c) If the department determines that a health benefit plan issuer is in compliance with a state statutory or regulatory requirement, the commission may presume that a Medicaid or state child health plan program managed care plan offered by a health benefit plan issuer under contract with the commission is in compliance with any contractual Medicaid or state child health plan program managed care plan requirement that is the same as, substantially similar to, or more stringent than the state statutory or regulatory requirement, as determined by the commission.

(d) The commissioner may take appropriate action, including imposition of sanctions under Chapter 82, against a health benefit plan issuer who is presumed under Subsection (a), (b), or (c) to be

in compliance with state statutory and regulatory requirements but does not maintain compliance with the same, substantially similar, or more stringent requirements applicable to the issuer under Subsection (a), (b), or (c).

(e) The department shall monitor and analyze periodically as prescribed by rule by the commissioner updates and amendments made to national accreditation standards as necessary to ensure that those standards remain the same, substantially similar to, or more stringent than the department's statutory or regulatory requirements.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

Sec. 847.006. FILING OF ACCREDITATION REPORT; CONFIDENTIALITY REQUIREMENTS. (a) The commissioner may require a health benefit plan issuer to submit to the commissioner the accreditation report issued by the national accreditation organization.

(b) An accreditation report submitted under Subsection (a) is proprietary and confidential information under Chapter 552, Government Code, and is not subject to subpoena. The commissioner shall limit the disclosure of the accreditation report to those department employees who need the accreditation report to perform the duties of their job. A department employee may not further disclose the accreditation report.

(c) The national accreditation organization recommendations summary results are not proprietary information and are subject to public disclosure under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

Sec. 847.007. DUTIES OF COMMISSIONER OF INSURANCE. (a) In conducting an examination of a health benefit plan issuer, the commissioner:

(1) shall accept the accreditation report submitted by the health benefit plan issuer as a prima facie demonstration of the issuer's compliance with the processes and standards for which the issuer has received accreditation; and

(2) may adopt relevant findings in a health benefit plan

issuer's accreditation report in the examination report if the accreditation report complies with applicable state and federal requirements regarding the nondisclosure of proprietary and confidential information and personal health information.

(b) Subsection (a) does not apply to any process or standard of a health benefit plan issuer that is not covered as part of the issuer's accreditation. This section does not set minimum quality standards but operates only as a replacement of duplicate requirements.

(c) The commissioner may by rule determine the application of compliance with national accreditation requirements by a delegated entity, delegated third party, or utilization review agent to compliance by the health benefit plan issuer that contracts with the delegated entity, delegated third party, or agent.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

Sec. 847.008. COMMISSION DUTIES. (a) The commission may require the commissioner to submit to the commission the documents reviewed by the department that substantiate the compliance of the health benefit plan issuer with applicable state statutory and regulatory requirements.

(b) Documents submitted under Subsection (a) are proprietary and confidential information under Chapter 552, Government Code, and are not subject to subpoena. The commission shall limit disclosure of the documents to commission employees who need the documentation to perform the duties of their job. A commission employee may not further disclose the compliance documents.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

Sec. 847.009. MEMORANDUM OF UNDERSTANDING. The commissioner and the commission must enter into a memorandum of understanding to specify the responsibilities of the department and the commission under this chapter.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June

17, 2005.

Sec. 847.010. ENFORCEMENT. This chapter may not be construed to prohibit the commissioner or the commission from enforcing laws or rules relating to:

(1) the operation of a health benefit plan; or

(2) violation of a contract.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 1, eff. June 17, 2005.

CHAPTER 848. HEALTH CARE COLLABORATIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 848.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who controls, is controlled by, or is under common control with one or more other persons.

(2) "Health care collaborative" means an entity:

(A) that undertakes to arrange for medical and health care services for insurers, health maintenance organizations, and other payors in exchange for payments in cash or in kind;

(B) that accepts and distributes payments for medical and health care services;

(C) that consists of:

(i) physicians;

(ii) rural hospitals;

(iii) physicians and other health care providers;

(iv) physicians and insurers or health maintenance organizations; or

(v) physicians, other health care providers, and insurers or health maintenance organizations; and

(D) that is certified by the commissioner under this chapter to lawfully accept and distribute payments to physicians and other health care providers using the reimbursement methodologies authorized by this chapter.

(3) "Health care services" means services provided by a physician or health care provider to prevent, alleviate, cure, or heal human illness or injury. The term includes:

(A) pharmaceutical services;

(B) medical, chiropractic, or dental care; and

(C) hospitalization.

(4) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed, certified, registered, or chartered by this state to provide health care services. The term includes a hospital but does not include a physician.

(5) "Health maintenance organization" means an organization operating under Chapter 843.

(6) "Hospital" means a general or special hospital, including a public or private institution licensed under Chapter 241 or 577, Health and Safety Code.

(7) Repealed by Acts 2015, 84th Leg., R.S., Ch. 946 , Sec. 1.14(e)(2), eff. September 1, 2015, and Ch. 837 , Sec. 3.40(d), eff. January 1, 2016.

(8) "Physician" means:

(A) an individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or the Texas Professional Association Law by an individual or group of individuals licensed to practice medicine in this state;

(C) a partnership or limited liability partnership formed by a group of individuals licensed to practice medicine in this state;

(D) a nonprofit health corporation certified under Section 162.001, Occupations Code;

(E) a company formed by a group of individuals licensed to practice medicine in this state under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) or the Texas Professional Limited Liability Company Law; or

(F) an organization wholly owned and controlled by individuals licensed to practice medicine in this state.

(9) "Potentially preventable event" has the meaning assigned by Section 1002.001, Health and Safety Code.

(10) "Rural hospital" means a licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.40(d), eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 1.14(e)(2), eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 915 (H.B. 3934), Sec. 1, eff. June 10, 2019.

Sec. 848.002. EXCEPTION: DELEGATED ENTITIES. (a) This section applies only to an entity, other than a health maintenance organization, that:

(1) by itself or through a subcontract with another entity, undertakes to arrange for or provide medical care or health care services to enrollees in exchange for predetermined payments on a prospective basis; and

(2) accepts responsibility for performing functions that are required by:

(A) Chapter 222, 251, 258, or 1272, as applicable, to a health maintenance organization; or

(B) Chapter 843, Chapter 1271, Section 1367.053, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, as applicable, solely on behalf of health maintenance organizations.

(b) An entity described by Subsection (a) is subject to Chapter 1272 and is not required to obtain a certificate of authority or determination of approval under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.003. USE OF INSURANCE-RELATED TERMS BY HEALTH CARE COLLABORATIVE. A health care collaborative that is not an insurer or health maintenance organization may not use in its name, contracts, or literature:

(1) the following words or initials:

(A) "insurance";

(B) "casualty";

(C) "surety";

(D) "mutual";

(E) "health maintenance organization"; or

(F) "HMO"; or

(2) any other words or initials that are:

(A) descriptive of the insurance, casualty, surety, or health maintenance organization business; or

(B) deceptively similar to the name or description of an insurer, surety corporation, or health maintenance organization engaging in business in this state.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.004. APPLICABILITY OF INSURANCE LAWS. (a) An organization may not arrange for or provide health care services to enrollees on a prepaid or indemnity basis through health insurance or a health benefit plan, including a health care plan, as defined by Section 843.002, unless the organization as an insurer or health maintenance organization holds the appropriate certificate of authority issued under another chapter of this code.

(b) Except as provided by Subsection (c), the following provisions of this code apply to a health care collaborative in the same manner and to the same extent as they apply to an individual or entity otherwise subject to the provision:

(1) Section 38.001;

(2) Subchapter A, Chapter 542;

(3) Chapter 541;

(4) Chapter 543;

(5) Chapter 602;

(6) Chapter 701;

(7) Chapter 803; and

(8) Chapter 804.

(c) The remedies available under this chapter in the manner provided by Chapter 541 do not include:

(1) a private cause of action under Subchapter D, Chapter

541; or

(2) a class action under Subchapter F, Chapter 541.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.005. CERTAIN INFORMATION CONFIDENTIAL. (a) Except as provided by Subsection (b), an application, filing, or report required under this chapter is public information subject to disclosure under Chapter 552, Government Code.

(b) The following information is confidential and is not subject to disclosure under Chapter 552, Government Code:

(1) a contract, agreement, or document that establishes another arrangement:

(A) between a health care collaborative and a governmental or private entity for all or part of health care services provided or arranged for by the health care collaborative; or

(B) between a health care collaborative and participating physicians and health care providers;

(2) a written description of a contract, agreement, or other arrangement described by Subdivision (1);

(3) information relating to bidding, pricing, or other trade secrets submitted to:

(A) the department under Sections 848.057(a)(5) and (6); or

(B) the attorney general under Section 848.059;

(4) information relating to the diagnosis, treatment, or health of a patient who receives health care services from a health care collaborative under a contract for services; and

(5) information relating to quality improvement or peer review activities of a health care collaborative.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.006. COVERAGE BY HEALTH CARE COLLABORATIVE NOT REQUIRED. (a) Except as provided by Subsection (b) and subject to Chapter 843 and Section 1301.0625, an individual may not be required

to obtain or maintain coverage under:

(1) an individual health insurance policy written through a health care collaborative; or

(2) any plan or program for health care services provided on an individual basis through a health care collaborative.

(b) This chapter does not require an individual to obtain or maintain health insurance coverage.

(c) Subsection (a) does not apply to an individual:

(1) who is required to obtain or maintain health benefit plan coverage:

(A) written by an institution of higher education at which the individual is or will be enrolled as a student; or

(B) under an order requiring medical support or dental support for a child; or

(2) who voluntarily applies for benefits under a state administered program under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.).

(d) Except as provided by Subsection (e), a fine or penalty may not be imposed on an individual if the individual chooses not to obtain or maintain coverage described by Subsection (a).

(e) Subsection (d) does not apply to a fine or penalty imposed on an individual described in Subsection (c) for the individual's failure to obtain or maintain health benefit plan coverage.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 55, eff. September 1, 2018.

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 848.051. OPERATION OF HEALTH CARE COLLABORATIVE. A health care collaborative that is certified by the department under this chapter may provide or arrange to provide health care services under contract with a governmental or private entity.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.052. FORMATION AND GOVERNANCE OF HEALTH CARE COLLABORATIVE. (a) A health care collaborative is governed by a board of directors.

(b) The person who establishes a health care collaborative shall appoint an initial board of directors. Each member of the initial board serves a term of not more than 18 months. Subsequent members of the board shall be elected to serve two-year terms by physicians and health care providers who participate in the health care collaborative as provided by this section. The board shall elect a chair from among its members.

(c) If the participants in a health care collaborative are all physicians, each member of the board of directors must be an individual physician who is a participant in the health care collaborative.

(c-1) If the participants in a health care collaborative are all rural hospitals, each member of the board of directors must be a representative of a participant.

(d) If the participants in a health care collaborative are both physicians and other health care providers, the board of directors must consist of:

(1) an even number of members who are individual physicians, selected by physicians who participate in the health care collaborative;

(2) a number of members equal to the number of members under Subdivision (1) who represent health care providers, one of whom is an individual physician, selected by health care providers who participate in the health care collaborative; and

(3) one individual member with business expertise, selected by unanimous vote of the members described by Subdivisions (1) and (2).

(d-1) If a health care collaborative includes hospital-based physicians, one member of the board of directors must be a hospital-based physician.

(e) The board of directors must include at least three nonvoting ex officio members who represent the community in which the health care collaborative operates.

(f) An individual may not serve on the board of directors of a health care collaborative if the individual has an ownership interest in, serves on the board of directors of, or maintains an officer position with:

(1) another health care collaborative that provides health care services in the same service area as the health care collaborative; or

(2) a physician or health care provider that:

(A) does not participate in the health care collaborative; and

(B) provides health care services in the same service area as the health care collaborative.

(g) In addition to the requirements of Subsection (f), the board of directors of a health care collaborative shall adopt a conflict of interest policy to be followed by members.

(h) The board of directors may remove a member for cause. A member may not be removed from the board without cause.

(i) The organizational documents of a health care collaborative may not conflict with any provision of this chapter, including this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 915 (H.B. 3934), Sec. 2, eff. June 10, 2019.

Sec. 848.053. COMPENSATION ADVISORY COMMITTEE; SHARING OF CERTAIN DATA. (a) The board of directors of a health care collaborative shall establish a compensation advisory committee to develop and make recommendations to the board regarding charges, fees, payments, distributions, or other compensation assessed for health care services provided by physicians or health care providers who participate in the health care collaborative. The committee must include:

(1) two members of the board of directors, of which one member is the hospital-based physician member, if the health care collaborative includes hospital-based physicians; and

(2) if the health care collaborative consists of physicians and other health care providers:

(A) a physician who is not a participant in the health care collaborative, selected by the physicians who are participants in the collaborative; and

(B) a member selected by the other health care providers who participate in the collaborative.

(b) A health care collaborative shall establish and enforce policies to prevent the sharing of charge, fee, and payment data among nonparticipating physicians and health care providers.

(c) The compensation advisory committee shall make recommendations to the board of directors regarding all charges, fees, payments, distributions, or other compensation assessed for health care services provided by a physician or health care provider who participates in the health care collaborative.

(d) Except as provided by Subsections (e) and (f), the board of directors and the compensation advisory committee may not use or consider a government payor's payment rates in setting the charges or fees for health care services provided by a physician or health care provider who participates in the health care collaborative.

(e) The board of directors or the compensation advisory committee may use or consider a government payor's payment rates when setting the charges or fees for health care services paid by a government payor.

(f) This section does not prohibit a reference to a government payor's payment rates in agreements with health maintenance organizations, insurers, or other payors.

(g) After the compensation advisory committee submits a recommendation to the board of directors, the board shall formally approve or refuse the recommendation.

(h) For purposes of this section, "government payor" includes:

(1) Medicare;

(2) Medicaid;

(3) the state child health plan program; and

(4) the TRICARE Military Health System.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.054. CERTIFICATE OF AUTHORITY AND DETERMINATION OF APPROVAL REQUIRED. (a) An organization may not organize or operate a health care collaborative in this state unless the organization holds a certificate of authority issued under this chapter.

(b) The commissioner shall adopt rules governing the

application for a certificate of authority under this subchapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.055. EXCEPTIONS. (a) An organization is not required to obtain a certificate of authority under this chapter if the organization holds an appropriate certificate of authority issued under another chapter of this code.

(b) A person is not required to obtain a certificate of authority under this chapter to the extent that the person is:

(1) a physician engaged in the delivery of medical care; or

(2) a health care provider engaged in the delivery of health care services other than medical care as part of a health maintenance organization delivery network.

(c) A medical school, medical and dental unit, or health science center as described by Section 61.003, 61.501, or 74.601, Education Code, is not required to obtain a certificate of authority under this chapter to the extent that the medical school, medical and dental unit, or health science center contracts to deliver medical care services within a health care collaborative. This chapter is otherwise applicable to a medical school, medical and dental unit, or health science center.

(d) An entity licensed under the Health and Safety Code that employs a physician under a specific statutory authority is not required to obtain a certificate of authority under this chapter to the extent that the entity contracts to deliver medical care services and health care services within a health care collaborative. This chapter is otherwise applicable to the entity.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.056. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) An organization may apply to the commissioner for and obtain a certificate of authority to organize and operate a health care collaborative.

(b) An application for a certificate of authority must:

(1) comply with all rules adopted by the commissioner;

(2) be verified under oath by the applicant or an officer or other authorized representative of the applicant;

(3) be reviewed by the division within the office of attorney general that is primarily responsible for enforcing the antitrust laws of this state and of the United States under Section 848.059;

(4) demonstrate that the health care collaborative contracts with a sufficient number of primary care physicians in the health care collaborative's service area;

(5) state that enrollees may obtain care from any physician or health care provider in the health care collaborative; and

(6) identify a service area within which medical services are available and accessible to enrollees.

(c) Not later than the 190th day after the date an applicant submits an application to the commissioner under this section, the commissioner shall approve or deny the application.

(d) The commissioner by rule may:

(1) extend the date by which an application is due under this section; and

(2) require the disclosure of any additional information necessary to implement and administer this chapter, including information necessary to antitrust review and oversight.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.057. REQUIREMENTS FOR APPROVAL OF APPLICATION. (a) The commissioner shall issue a certificate of authority on payment of the application fee prescribed by Section 848.152 if the commissioner is satisfied that:

(1) the applicant meets the requirements of Section 848.056;

(2) with respect to health care services to be provided, the applicant:

(A) has demonstrated the willingness and potential ability to ensure that the health care services will be provided in a manner that:

(i) increases collaboration among health care providers and integrates health care services;

(ii) promotes improvement in quality-based health care outcomes, patient safety, patient engagement, and coordination of services; and

(iii) reduces the occurrence of potentially preventable events;

(B) has processes that contain health care costs without jeopardizing the quality of patient care;

(C) has processes to develop, compile, evaluate, and report statistics on performance measures relating to the quality and cost of health care services, the pattern of utilization of services, and the availability and accessibility of services; and

(D) has processes to address complaints made by patients receiving services provided through the organization;

(3) the applicant is in compliance with all rules adopted by the commissioner under Section 848.151;

(4) the applicant has working capital and reserves sufficient to operate and maintain the health care collaborative and to arrange for services and expenses incurred by the health care collaborative;

(5) the applicant's proposed health care collaborative is not likely to reduce competition in any market for physician, hospital, or ancillary health care services due to:

(A) the size of the health care collaborative; or

(B) the composition of the collaborative, including the distribution of physicians by specialty within the collaborative in relation to the number of competing health care providers in the health care collaborative's geographic market; and

(6) the pro-competitive benefits of the applicant's proposed health care collaborative are likely to substantially outweigh the anticompetitive effects of any increase in market power.

(b) A certificate of authority is effective for a period of one year, subject to Section 848.060(d).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.058. DENIAL OF CERTIFICATE OF AUTHORITY. (a) The commissioner may not issue a certificate of authority if the commissioner determines that the applicant's proposed plan of

operation does not meet the requirements of Section 848.057.

(b) If the commissioner denies an application for a certificate of authority under Subsection (a), the commissioner shall notify the applicant that the plan is deficient and specify the deficiencies.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.059. CONCURRENCE OF ATTORNEY GENERAL. (a) If the commissioner determines that an application for a certificate of authority filed under Section 848.056 complies with the requirements of Section 848.057, the commissioner shall forward the application, and all data, documents, and analysis considered by the commissioner in making the determination, to the attorney general. The attorney general shall review the application and the data, documents, and analysis and, if the attorney general concurs with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(b) If the attorney general does not concur with the commissioner's determination under Sections 848.057(a)(5) and (6), the attorney general shall notify the commissioner.

(c) A determination under this section shall be made not later than the 60th day after the date the attorney general receives the application and the data, documents, and analysis from the commissioner.

(d) If the attorney general lacks sufficient information to make a determination under Sections 848.057(a)(5) and (6), within 60 days of the attorney general's receipt of the application and the data, documents, and analysis the attorney general shall inform the commissioner that the attorney general lacks sufficient information as well as what information the attorney general requires. The commissioner shall then either provide the additional information to the attorney general or request the additional information from the applicant. The commissioner shall promptly deliver any such additional information to the attorney general. The attorney general shall then have 30 days from receipt of the additional information to make a determination under Subsection (a) or (b).

(e) If the attorney general notifies the commissioner that the attorney general does not concur with the commissioner's

determination under Sections 848.057(a)(5) and (6), then, notwithstanding any other provision of this subchapter, the commissioner shall deny the application.

(f) In reviewing the commissioner's determination, the attorney general shall consider the findings, conclusions, or analyses contained in any other governmental entity's evaluation of the health care collaborative.

(g) The attorney general at any time may request from the commissioner additional time to consider an application under this section. The commissioner shall grant the request and notify the applicant of the request. A request by the attorney general or an order by the commissioner granting a request under this section is not subject to administrative or judicial review.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.060. RENEWAL OF CERTIFICATE OF AUTHORITY AND DETERMINATION OF APPROVAL. (a) Not later than the 180th day before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued or most recently renewed, the health care collaborative shall file with the commissioner an application to renew the certificate.

(b) An application for renewal must:

(1) be verified by at least two principal officers of the health care collaborative; and

(2) include:

(A) a financial statement of the health care collaborative, including a balance sheet and receipts and disbursements for the preceding calendar year, certified by an independent certified public accountant;

(B) a description of the service area of the health care collaborative;

(C) a description of the number and types of physicians and health care providers participating in the health care collaborative;

(D) an evaluation of the quality and cost of health care services provided by the health care collaborative;

(E) an evaluation of the health care collaborative's

processes to promote evidence-based medicine, patient engagement, and coordination of health care services provided by the health care collaborative;

(F) the number, nature, and disposition of any complaints filed with the health care collaborative under Section 848.107; and

(G) any other information required by the commissioner.

(c) If a completed application for renewal is filed under this section:

(1) the commissioner shall conduct a review under Section 848.057 as if the application for renewal were a new application, and, on approval by the commissioner, the attorney general shall review the application under Section 848.059 as if the application for renewal were a new application; and

(2) the commissioner shall renew or deny the renewal of a certificate of authority at least 20 days before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued.

(d) If the commissioner does not act on a renewal application before the one-year anniversary of the date on which a health care collaborative's certificate of authority was issued or renewed, the health care collaborative's certificate of authority expires on the 90th day after the date of the one-year anniversary unless the renewal of the certificate of authority or determination of approval, as applicable, is approved before that date.

(e) A health care collaborative shall report to the department a material change in the size or composition of the collaborative. On receipt of a report under this subsection, the department may require the collaborative to file an application for renewal before the date required by Subsection (a).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF HEALTH CARE COLLABORATIVE

Sec. 848.101. PROVIDING OR ARRANGING FOR SERVICES. (a) A health care collaborative may provide or arrange for health care services through contracts with physicians and health care providers or with entities contracting on behalf of participating physicians

and health care providers.

(b) A health care collaborative may not prohibit a physician or other health care provider, as a condition of participating in the health care collaborative, from participating in another health care collaborative.

(c) A health care collaborative may not use a covenant not to compete to prohibit a physician from providing medical services or participating in another health care collaborative in the same service area.

(d) Except as provided by Subsection (f), on written consent of a patient who was treated by a physician participating in a health care collaborative, the health care collaborative shall provide the physician with the medical records of the patient, regardless of whether the physician is participating in the health care collaborative at the time the request for the records is made.

(e) Records provided under Subsection (d) shall be made available to the physician in the format in which the records are maintained by the health care collaborative. The health care collaborative may charge the physician a fee for copies of the records, as established by the Texas Medical Board.

(f) If a physician requests a patient's records from a health care collaborative under Subsection (d) for the purpose of providing emergency treatment to the patient:

(1) the health care collaborative may not charge a fee to the physician under Subsection (e); and

(2) the health care collaborative shall provide the records to the physician regardless of whether the patient has provided written consent.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.102. INSURANCE, REINSURANCE, INDEMNITY, AND REIMBURSEMENT. A health care collaborative may contract with an insurer authorized to engage in business in this state to provide insurance, reinsurance, indemnification, or reimbursement against the cost of health care and medical care services provided by the health care collaborative. This section does not affect the requirement that the health care collaborative maintain sufficient working

capital and reserves.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.103. PAYMENT BY GOVERNMENTAL OR PRIVATE ENTITY. (a) A health care collaborative may:

(1) contract for and accept payments from a governmental or private entity for all or part of the cost of services provided or arranged for by the health care collaborative; and

(2) distribute payments to participating physicians and health care providers.

(b) Notwithstanding any other law, a health care collaborative that is in compliance with this code, including Chapters 841, 842, and 843, as applicable, may contract for, accept, and distribute payments from governmental or private payors based on fee-for-service or alternative payment mechanisms, including:

(1) episode-based or condition-based bundled payments;

(2) capitation or global payments; or

(3) pay-for-performance or quality-based payments.

(c) Except as provided by Subsection (d), a health care collaborative may not contract for and accept payment from a governmental or private entity on a prepaid, capitation, or indemnity basis unless the health care collaborative is licensed as a health maintenance organization or insurer. The department shall review a health care collaborative's proposed payment methodology in contracts with governmental or private entities to ensure compliance with this section.

(d) A health care collaborative may contract for and accept compensation on a prepaid or capitation basis from a health maintenance organization or insurer.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.104. CONTRACTS FOR ADMINISTRATIVE OR MANAGEMENT SERVICES. A health care collaborative may contract with any person, including an affiliated entity, to perform administrative, management, or any other required business functions on behalf of the

health care collaborative.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.105. CORPORATION, PARTNERSHIP, OR ASSOCIATION POWERS. A health care collaborative has all powers of a partnership, association, corporation, or limited liability company, including a professional association or corporation, as appropriate under the organizational documents of the health care collaborative, that are not in conflict with this chapter or other applicable law.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.106. QUALITY AND COST OF HEALTH CARE SERVICES. (a) A health care collaborative shall establish policies to improve the quality and control the cost of health care services provided by participating physicians and health care providers that are consistent with prevailing professionally recognized standards of medical practice. The policies must include standards and procedures relating to:

(1) the selection and credentialing of participating physicians and health care providers;

(2) the development, implementation, monitoring, and evaluation of evidence-based best practices and other processes to improve the quality and control the cost of health care services provided by participating physicians and health care providers, including practices or processes to reduce the occurrence of potentially preventable events;

(3) the development, implementation, monitoring, and evaluation of processes to improve patient engagement and coordination of health care services provided by participating physicians and health care providers; and

(4) complaints initiated by participating physicians, health care providers, and patients under Section 848.107.

(b) The governing body of a health care collaborative shall establish a procedure for the periodic review of quality improvement and cost control measures.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.107. COMPLAINT SYSTEMS. (a) A health care collaborative shall implement and maintain complaint systems that provide reasonable procedures to resolve an oral or written complaint initiated by:

(1) a patient who received health care services provided by a participating physician or health care provider; or

(2) a participating physician or health care provider.

(b) The complaint system for complaints initiated by patients must include a process for the notice and appeal of a complaint.

(c) A health care collaborative may not take a retaliatory or adverse action against a physician or health care provider who files a complaint with a regulatory authority regarding an action of the health care collaborative.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.108. DELEGATION AGREEMENTS. (a) Except as provided by Subsection (b), a health care collaborative that enters into a delegation agreement described by Section 1272.001 is subject to the requirements of Chapter 1272 in the same manner as a health maintenance organization.

(b) Section 1272.301 does not apply to a delegation agreement entered into by a health care collaborative.

(c) A health care collaborative may enter into a delegation agreement with an entity licensed under Chapter 841, 842, or 883 if the delegation agreement assigns to the entity responsibility for:

(1) a function regulated by:

(A) Chapter 222;

(B) Chapter 841;

(C) Chapter 842;

(D) Chapter 883;

(E) Chapter 1272;

(F) Chapter 1301;

(G) Chapter 4201;

(H) Section 1367.053; or

(I) Subchapter A, Chapter 1507; or

(2) another function specified by commissioner rule.

(d) A health care collaborative that enters into a delegation agreement under this section shall maintain reserves and capital in addition to the amounts required under Chapter 1272, in an amount and form determined by rule of the commissioner to be necessary for the liabilities and risks assumed by the health care collaborative.

(e) A health care collaborative that enters into a delegation agreement under this section is subject to Chapters 404, 441, and 443 and is considered to be an insurer for purposes of those chapters.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.109. VALIDITY OF OPERATIONS AND TRADE PRACTICES OF HEALTH CARE COLLABORATIVES. The operations and trade practices of a health care collaborative that are consistent with the provisions of this chapter, the rules adopted under this chapter, and applicable federal antitrust laws are presumed to be consistent with Chapter 15, Business & Commerce Code, or any other applicable provision of law.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.110. RIGHTS OF PHYSICIANS; LIMITATIONS ON PARTICIPATION. (a) Before a complaint against a physician under Section 848.107 is resolved, or before a physician's association with a health care collaborative is terminated, the physician is entitled to an opportunity to dispute the complaint or termination through a process that includes:

(1) written notice of the complaint or basis of the termination;

(2) an opportunity for a hearing not earlier than the 30th day after receiving notice under Subdivision (1);

(3) the right to provide information at the hearing, including testimony and a written statement; and

(4) a written decision that includes the specific facts and reasons for the decision.

(b) A health care collaborative may limit a physician or group of physicians from participating in the health care collaborative if the limitation is based on an established development plan approved by the board of directors. Each applicant physician or group shall be provided with a copy of the development plan.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

SUBCHAPTER D. REGULATION OF HEALTH CARE COLLABORATIVES

Sec. 848.151. RULES. The commissioner and the attorney general may adopt reasonable rules as necessary and proper to implement the requirements of this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.152. FEES AND ASSESSMENTS. (a) The commissioner shall, within the limits prescribed by this section, prescribe the fees to be charged and the assessments to be imposed under this section.

(b) Amounts collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

(c) A health care collaborative shall pay to the department:

(1) an application fee in an amount determined by commissioner rule; and

(2) an annual assessment in an amount determined by commissioner rule.

(d) The commissioner shall set fees and assessments under this section in an amount sufficient to pay the reasonable expenses of the department and attorney general in administering this chapter, including the direct and indirect expenses incurred by the department and attorney general in examining and reviewing health care collaboratives. Fees and assessments imposed under this section shall be allocated among health care collaboratives on a pro rata basis to the extent that the allocation is feasible.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.153. EXAMINATIONS. (a) The commissioner may examine the financial affairs and operations of any health care collaborative or applicant for a certificate of authority under this chapter.

(b) A health care collaborative shall make its books and records relating to its financial affairs and operations available for an examination by the commissioner or attorney general.

(c) On request of the commissioner or attorney general, a health care collaborative shall provide to the commissioner or attorney general, as applicable:

(1) a copy of any contract, agreement, or other arrangement between the health care collaborative and a physician or health care provider; and

(2) a general description of the fee arrangements between the health care collaborative and the physician or health care provider.

(d) Documentation provided to the commissioner or attorney general under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

(e) The commissioner or attorney general may disclose the results of an examination conducted under this section or documentation provided under this section to a governmental agency that contracts with a health care collaborative for the purpose of determining financial stability, readiness, or other contractual compliance needs.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

SUBCHAPTER E. ENFORCEMENT

Sec. 848.201. ENFORCEMENT ACTIONS. (a) After notice and opportunity for a hearing, the commissioner may:

(1) suspend or revoke a certificate of authority issued to a health care collaborative under this chapter;

(2) impose sanctions under Chapter 82;

(3) issue a cease and desist order under Chapter 83; or

(4) impose administrative penalties under Chapter 84.

(b) The commissioner may take an enforcement action listed in

Subsection (a) against a health care collaborative if the commissioner finds that the health care collaborative:

(1) is operating in a manner that is:

(A) significantly contrary to its basic organizational documents; or

(B) contrary to the manner described in and reasonably inferred from other information submitted under Section 848.057;

(2) does not meet the requirements of Section 848.057;

(3) cannot fulfill its obligation to provide health care services as required under its contracts with governmental or private entities;

(4) does not meet the requirements of Chapter 1272, if applicable;

(5) has not implemented the complaint system required by Section 848.107 in a manner to resolve reasonably valid complaints;

(6) has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner or a person on behalf of the health care collaborative has advertised or merchandised the health care collaborative's services in an untrue, misrepresentative, misleading, deceptive, or untrue manner;

(7) has not complied substantially with this chapter or a rule adopted under this chapter;

(8) has not taken corrective action the commissioner considers necessary to correct a failure to comply with this chapter, any applicable provision of this code, or any applicable rule or order of the commissioner not later than the 30th day after the date of notice of the failure or within any longer period specified in the notice and determined by the commissioner to be reasonable; or

(9) has or is utilizing market power in an anticompetitive manner, in accordance with established antitrust principles of market power analysis.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.202. OPERATIONS DURING SUSPENSION OR AFTER REVOCATION OF CERTIFICATE OF AUTHORITY. (a) During the period a certificate of authority of a health care collaborative is suspended, the health care collaborative may not:

(1) enter into a new contract with a governmental or private entity; or

(2) advertise or solicit in any way.

(b) After a certificate of authority of a health care collaborative is revoked, the health care collaborative:

(1) shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs;

(2) may not conduct further business except as essential to the orderly conclusion of its affairs; and

(3) may not advertise or solicit in any way.

(c) Notwithstanding Subsection (b), the commissioner may, by written order, permit the further operation of the health care collaborative to the extent that the commissioner finds necessary to serve the best interest of governmental or private entities that have entered into contracts with the health care collaborative.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.203. INJUNCTIONS. If the commissioner believes that a health care collaborative or another person is violating or has violated this chapter or a rule adopted under this chapter, the attorney general at the request of the commissioner may bring an action in a Travis County district court to enjoin the violation and obtain other relief the court considers appropriate.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

Sec. 848.204. NOTICE. The commissioner shall:

(1) report any action taken under this subchapter to:

(A) the relevant state licensing or certifying agency or board; and

(B) the United States Department of Health and Human Services National Practitioner Data Bank; and

(2) post notice of the action on the department's Internet website.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01,

eff. September 28, 2011.

Sec. 848.205. INDEPENDENT AUTHORITY OF ATTORNEY GENERAL. (a) The attorney general may:

(1) investigate a health care collaborative with respect to anticompetitive behavior that is contrary to the goals and requirements of this chapter; and

(2) request that the commissioner:

(A) impose a penalty or sanction;

(B) issue a cease and desist order; or

(C) suspend or revoke the health care collaborative's certificate of authority.

(b) This section does not limit any other authority or power of the attorney general.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.01, eff. September 28, 2011.

SUBTITLE D. CASUALTY COMPANIES
CHAPTER 861. GENERAL CASUALTY COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 861.001. DEFINITIONS. In this chapter:

(1) "General casualty company" means an accident or casualty insurance company organized or engaging in the business of insurance under this chapter.

(2) "Incorporators" means those persons who associate by written articles of incorporation to organize a general casualty company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION AND STRUCTURE OF GENERAL CASUALTY COMPANY

Sec. 861.051. FORMATION OF COMPANY AUTHORIZED. Three or more persons, a majority of whom are residents of this state, may form a general casualty company in accordance with this chapter to write insurance described by Subchapter E.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.052. ARTICLES OF INCORPORATION; FILING AND RECORDING REQUIREMENT. (a) The articles of incorporation for a general casualty company must specify:

(1) the general purpose of the company; and

(2) the proposed duration of the company.

(b) The incorporators shall file with the department:

(1) articles of incorporation for the general casualty company;

(2) a charter fee in the amount determined under Chapter 202; and

(3) an affidavit, made by two or more of the incorporators, that all of the general casualty company's stock is subscribed in good faith and fully paid for.

(c) On receipt of a filing under Subsection (b), the department shall record the articles of incorporation in records maintained for that purpose.

(d) On receipt of a fee in the amount determined under Chapter 202, the department shall provide the incorporators with a certified copy of the articles of incorporation.

(e) On receipt of a certified copy of the articles of incorporation, the general casualty company is a body politic and corporate, and the incorporators may complete organization of the company in accordance with Section 861.055.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.060, eff. April 1, 2009.

Sec. 861.053. PRELIMINARY OFFICERS AND DIRECTORS. The incorporators shall choose from among themselves a president, a secretary, a treasurer, and at least three directors who continue in office until:

(1) the first anniversary of the date the articles of incorporation are filed; and

(2) their successors are chosen and qualify.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.054. SUBSCRIPTION OF STOCK. The incorporators shall:

(1) open books for the subscription of stock in the general casualty company at the times and places the incorporators consider convenient and proper; and

(2) keep the books open until the full amount specified in the articles of incorporation is subscribed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.055. ORGANIZATIONAL MEETING. (a) After receiving a certified copy of the articles of incorporation under Section 861.052, a general casualty company shall promptly call a meeting of the company's shareholders.

(b) At the meeting the shareholders shall:

(1) adopt bylaws to govern the company; and

(2) elect a board of directors composed of shareholders of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 861.101. CERTIFICATE OF AUTHORITY REQUIRED. A general casualty company may not engage in the business of insurance in this state without a certificate of authority issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.102. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The department shall issue a certificate of authority to a general casualty company authorizing the company to engage in the business of insurance under this chapter if:

(1) the company meets the requirements of this chapter; and

(2) the commissioner has granted a charter to the company in the manner provided by Sections 822.051, 822.052, 822.053, 822.054, 822.057, 822.058, 822.059, 822.060, and 822.210.

(b) A certificate of authority is evidence of a general casualty company's authorization to engage in the business of insurance under this chapter and of the company's solvency and credits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. POWERS AND DUTIES OF GENERAL CASUALTY COMPANY

Sec. 861.151. AUTHORITY OF BOARD OF DIRECTORS. Subject to the bylaws of the company as adopted or amended by the shareholders or directors, the board of directors of a general casualty company has full control and management of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.152. GENERAL POWERS OF COMPANY. A general casualty company may:

(1) sue or be sued in the name of the company;

(2) make or enforce contracts in relation to the business of the company;

(3) have and use a common seal;

(4) in its own name, or through a trustee chosen by the board of directors, acquire, purchase, hold, and dispose of real and personal property to further the purposes of the company; and

(5) through its board of directors, trustees, or managers, adopt and amend bylaws that include provisions establishing the qualifications, duties, and terms of office of and the manner of electing directors, trustees, or managers and officers of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.153. AUTHORIZED SHARES. (a) A general casualty company may increase or decrease its capital stock after:

(1) the intent to increase the stock is ratified by a two-thirds vote of the shareholders or the intent to decrease the stock is ratified by a majority vote of the shareholders; and

(2) notice of the intent to increase or decrease the stock

is published in a newspaper of general circulation for five consecutive days.

(b) An increase in capital stock must be equal to an amount of at least $50,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.154. DIVIDENDS. Except as authorized by Sections 403.001 and 403.051, the directors of a general casualty company may not issue dividends.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.061, eff. April 1, 2009.

Sec. 861.155. INTERFERENCE WITH CONDUCT OF BUSINESS PROHIBITED; EXCEPTIONS. A person, including the department and the commissioner, may not restrain or interfere with the conduct of business of a general casualty company, except in:

(1) a revocation of the company's certificate of authority and appointment of a receiver under Section 861.701;

(2) an action by a judgment creditor; or

(3) a proceeding supplementary to execution.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. INSURANCE COVERAGE PROVIDED BY GENERAL CASUALTY COMPANIES

Sec. 861.201. KINDS OF INSURANCE AUTHORIZED. (a) A general casualty company may:

(1) insure a person against:

(A) bodily injury, disability, or death that results from an accident; or

(B) disability that results from disease;

(2) insure against loss or damage that results from an accident or injury sustained by an employee or other person, for which accident or injury the insured is liable;

(3) insure against loss or damage that results from an accident to or injury sustained by a person, for which loss the insured is liable, other than employers liability insurance under Subdivision (2);

(4) insure against loss or damage by burglary, theft, or housebreaking;

(5) insure glass against breakage;

(6) insure a steam boiler, elevator, electrical device, or engine and any machinery or appliance used or operated in connection with a steam boiler, elevator, electrical device, or engine;

(7) insure against loss or damage from injury to a person or property that results accidentally from an item described by Subdivision (6);

(8) insure against loss or damage by water to goods or premises that arises from the breakage or leakage of a sprinkler or water pipe;

(9) insure against loss that:

(A) results from accidental damage to an automobile; or

(B) is caused accidentally by an automobile;

(10) insure a person, association, or corporation against loss or damage that results from giving or extending credit;

(11) insure against loss that results from the nonpayment of the principal of or interest on a bond, mortgage, or other evidence of indebtedness;

(12) write marine insurance, which may include insurance against the hazards and perils incident to war; or

(13) insure against any other casualty or insurance risk, other than fire or life insurance, specified in the company's articles of incorporation that:

(A) may be lawfully made the subject of insurance; and

(B) is not otherwise provided for by this chapter.

(b) A general casualty company may engage in one or more of the activities specified by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. REGULATION OF GENERAL CASUALTY COMPANY

Sec. 861.251. MINIMUM CAPITAL AND SURPLUS. (a) A general

casualty company must have at least the minimum capital and surplus applicable to casualty, fidelity, guaranty, surety, and trust companies under Sections 822. 054, 822.210, and 822.211. At the time of incorporation, the required capital and surplus must be in cash.

(b) After incorporation and issuance of a certificate of authority, a general casualty company shall invest the minimum capital and surplus as provided by Section 822.204. The company shall invest all other funds of the company in excess of the minimum capital and surplus as provided by:

(1) a provision of Subchapter B, Chapter 424, other than Section 424.052, 424.072, or 424.073; and

(2) Section 862.002.

(c) A general casualty company may not loan any part of the company's capital or paid in surplus to an officer of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.062, eff. April 1, 2009.

Sec. 861.252. SECURITY DEPOSIT. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 447, Sec. 2, eff. June 14, 2013.

(b) If, as a prerequisite to engaging in the business of insurance in another state, country, or province, a general casualty company is required to deposit with the appropriate officer of that state, country, or province, or with the comptroller, securities or cash, the company may deposit with the comptroller any authorized securities or cash sufficient to meet the requirement. The comptroller shall receive and hold the deposit exclusively for the protection of policyholders of the company.

(c) A general casualty company may withdraw a deposit made under Subsection (b) if the company files with the department satisfactory evidence, as determined by the commissioner, that the company:

(1) has withdrawn from business in the other state, country, or province; and

(2) has no unsecured liabilities outstanding in the other state, country, or province.

(d) A general casualty company may change the company's

securities on deposit with the comptroller by withdrawing those securities and substituting an equal amount of other securities consisting only of:

(1) United States currency;

(2) bonds of any state;

(3) bonds or other evidences of indebtedness of the United States the principal and interest of which are guaranteed by the United States;

(4) bonds or other interest-bearing evidences of indebtedness of a county or municipality of any state;

(5) notes secured by first mortgages:

(A) on otherwise unencumbered real property in this state the title to which is valid; and

(B) the payment of which is insured wholly or partly by the United States; or

(6) another form of security acceptable to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.063, eff. April 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 447 (S.B. 801), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 447 (S.B. 801), Sec. 2, eff. June 14, 2013.

Sec. 861.253. INTEREST ON SECURITY DEPOSITS. (a) A general casualty company with securities on deposit under this chapter is entitled to collect the interest on the deposits as the interest becomes due. The comptroller shall deliver to the company the coupons or other evidence of interest pertaining to the deposits.

(b) The comptroller shall collect a general casualty company's interest described by Subsection (a) as the interest becomes due and hold that interest as additional security if:

(1) the company fails to deposit additional security as required by the commissioner; or

(2) proceedings are pending to wind up or enjoin the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.254. ANNUAL STATEMENT; FILING FEE. (a) The president, vice president, and secretary of a general casualty company, or a majority of the directors or trustees of the company, shall, not later than the 60th day after January 1 of each year, deliver to the department a verified statement of the condition of the company as of December 31 of the preceding year.

(b) The statement must include:

(1) the name and location of the company;

(2) the names of the company's officers;

(3) the amount of the company's capital stock;

(4) the amount of the company's capital stock paid in;

(5) the assets of the company;

(6) the liabilities of the company;

(7) the income of the company during the year;

(8) the expenditures of the company during the year;

(9) the amount paid by the company in fees during the year;

(10) the amount paid by the company for losses during the year; and

(11) the total amount of insurance issued by the company and in force.

(c) A general casualty company's assets under Subsection (b)(5) consist of:

(1) the value of real property owned by the company;

(2) the amount of cash on hand;

(3) the amount of cash deposited with a bank or trust company;

(4) the names, amounts, and par and market values of United States bonds and all other bonds;

(5) the amount of loans secured by first mortgage on real estate;

(6) the amount of all other bonds and loans and how secured, with rate of interest;

(7) the amount of notes given for unpaid stock and how secured;

(8) the amount of interest due and unpaid;

(9) if the total value of the equipment exceeds $2,000, the value of all electronic machines that comprise a data processing

system and of all other office equipment, furniture, machines, and labor-saving devices purchased for and used in connection with the business of an insurance company to the extent that the total actual cash market value of those assets is less than five percent of the other admitted assets of the company; and

(10) all other credits or assets.

(d) A general casualty company's liabilities under Subsection (b)(6) consist of:

(1) the amount of losses due and unpaid;

(2) the amount of claims for losses unadjusted; and

(3) the amount of claims for losses resisted.

(e) A general casualty company's income under Subsection (b)(7) consists of:

(1) the amount of fees received;

(2) the amount of interest received from all sources; and

(3) the amount of receipts from all other sources.

(f) A general casualty company's expenditures under Subsection (b)(8) consist of:

(1) the amount paid for losses;

(2) the amount of dividends paid to shareholders;

(3) the amount of commissions and salaries paid to agents;

(4) the amount paid to officers for salaries;

(5) the amount paid for taxes; and

(6) the amount of all other payments or expenditures.

(g) The commissioner may amend the form of the annual statement and require additional information as considered necessary to determine the standing of a general casualty company.

(h) Except as provided by Chapter 202, the department shall charge a fee of $20 for filing the annual statement required by this section. The comptroller shall collect the fee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.064, eff. April 1, 2009.

Sec. 861.255. RULES REGARDING CERTAIN ASSETS. (a) The value of the electronic machines and systems, office equipment, furniture, other machines, and labor-saving devices specified in Section

861.254(c)(9), as determined under this section and in accordance with rules adopted by the commissioner, is an admitted asset of the company.

(b) The commissioner may adopt rules defining electronic machines and systems, office equipment, furniture, other machines, and labor-saving devices as specified in Section 861.254(c)(9) and stating the maximum period for which each class of equipment may be amortized.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.256. FAILURE TO MAKE DEPOSIT OR DELIVER ANNUAL STATEMENT. (a) If a general casualty company fails to make a deposit under Section 861. 252 or to deliver an annual statement under Section 861.254 in a timely manner, the department shall notify the company that the company may not issue new insurance until the deposit is made or the statement is delivered to the department.

(b) A general casualty company may not issue an insurance policy in violation of this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.257. EXAMINATION OF COMPANY. A general casualty company is subject to:

(1) Subchapter A, Chapter 86; and

(2) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.065, eff. April 1, 2009.

Sec. 861.258. REAL PROPERTY. (a) A general casualty company is subject to Section 862.002 and may not purchase, hold, or convey real property except as authorized by that section.

(b) A general casualty company shall sell real property acquired in compliance with Subsection (a) not later than the 10th

anniversary of the date the real property was acquired.

(c) A general casualty company may retain real property after the date specified by Subsection (b) if the commissioner issues a certificate stating:

(1) that sale of the real property in compliance with Subsection (b) would cause the company to incur a material loss; and

(2) a later date by which the real property must be sold.

(d) Subsection (b) does not apply to:

(1) real property occupied by buildings used in whole or in part by a general casualty company in the transaction of business;

(2) an interest in minerals or royalty reserved on the sale of real property acquired under Sections 862.002(c)(1)-(3); and

(3) investment real property acquired under Section 424.064.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.066, eff. April 1, 2009.

SUBCHAPTER O. DISCIPLINARY PROCEDURES AND PENALTY

Sec. 861.701. REVOCATION OF CERTIFICATE. (a) If, as a result of an examination under Section 861.257, the commissioner determines that a general casualty company has not complied with this chapter, the commissioner shall:

(1) revoke the company's certificate of authority; and

(2) notify the attorney general of the revocation.

(b) On receipt of notification under Subsection (a)(2), the attorney general shall request court appointment of a receiver for the general casualty company. Under the direction of the court, the receiver shall wind up the affairs of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.702. PENALTY. A general casualty company that violates Section 861.101 is subject to a penalty of $100 for each day the company writes new business in this state without the certificate of authority required by that section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 861.703. COLLECTION OF PENALTY. (a) The attorney general or a district or county attorney under the direction of the attorney general may file an action in the name of the state to collect a penalty under this chapter.

(b) An action filed under this section must be filed in Travis County or in the county in which the general casualty company's principal office is located.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 862. FIRE AND MARINE INSURANCE COMPANIES

SUBCHAPTER A. REGULATION OF FIRE AND MARINE INSURANCE COMPANIES

Sec. 862.001. ANNUAL STATEMENT. (a) Each year the president or vice president and the secretary of a fire, marine, or inland marine insurance company shall:

(1) prepare under oath a complete and accurate statement of the condition of the company as of December 31 of the preceding year; and

(2) file the statement with the department before the 62nd day of the year in which it is prepared.

(b) The annual statement must show:

(1) the name and location of the company;

(2) the names and residences of the company's officers;

(3) the amount of the capital stock of the company;

(4) the amount of capital stock paid up;

(5) the property and assets held by the company, specifying:

(A) the location, description, and value, as near as may be, of real property owned by the company and, if the company is organized under the laws of this state, the annual statement must include an abstract of the title to that real property;

(B) the amount of cash on hand and on deposit in banks to the credit of the company and the names of those banks;

(C) the amount of cash held by agents of the company and the names of those agents;

(D) the amount of cash in the course of transmission;

(E) the amount of loans secured by a first mortgage on real property, the rate of interest on each loan, the location and value of each property, and the name of each mortgagor;

(F) the amount of all other bonds and loans, the rate of interest on each bond or loan, and a description of the security given for each bond or loan;

(G) the amount due the company from judgments that have been obtained and a description of each judgment;

(H) the amount of all stock owned by the company, including a description of the stock, the amount and number of shares, and the par and market values of each kind of stock;

(I) the amount of stock held by the company as collateral security for loans, including the amount loaned on the stock and the par and market values of the stock;

(J) the amount of interest due and unpaid to the company;

(K) a description and value of all other securities; and

(L) if the total value of the equipment exceeds $2,000, the value of all electronic machines that comprise a data processing system or systems and of all other office equipment, furniture, machines, and labor-saving devices purchased for and used in connection with the business of the insurance company to the extent that the total actual cash market value of those assets is less than five percent of the other admitted assets shown on the statement;

(6) the liabilities of the company, specifying:

(A) losses adjusted and due;

(B) losses adjusted and not due;

(C) losses unadjusted;

(D) losses in suspense and the cause for suspension;

(E) losses resisted and in litigation;

(F) dividends, in scrip or cash, specifying the amount of each declared but not due;

(G) dividends declared and due;

(H) the amount required by law as reserve on all unexpired risks, computed as required by this code;

(I) the amount due banks or other creditors, the name of each bank or creditor, and the amount due each bank or creditor;

(J) the amount of money borrowed by the company, the name of each lender, a description of the security given for each

loan, and the rate of any interest; and

(K) all other claims against the company and a description of each claim;

(7) the income of the company during the preceding year, specifying:

(A) separately the amount received, after deducting reinsurance, as fire, marine, and inland marine transportation premiums;

(B) the amount received as interest; and

(C) the amount received from all other sources;

(8) the expenditures of the company during the preceding year, specifying:

(A) the amount of losses paid, showing losses that accrued before and that accrued after the date of the preceding statement, and the amount at which losses were estimated in that statement;

(B) the amount paid as dividends;

(C) the amount paid for return premiums, commissions, salaries, expenses, and other charges of officers, agents, and employees;

(D) the amount paid for federal, state, and local taxes and duties; and

(E) the amount paid for all other expenses;

(9) the largest amount insured by the company in a single risk, naming that risk;

(10) the amount of risks written during the preceding year;

(11) the amount of risks in force that have less than one year to run;

(12) the amount of risks in force that have more than one year but less than three years to run;

(13) the amount of risks that have more than three years to run; and

(14) a statement of whether dividends are declared on premiums received for risks not terminated.

(c) The commissioner may adopt rules defining electronic machines and systems, office equipment, furniture, machines, and labor-saving devices as specified in Subsection (b)(5)(L) and stating the maximum period for which each class of equipment may be amortized.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 862.002. PROHIBITIONS RELATING TO HOLDING REAL PROPERTY; EXCEPTIONS. (a) A fire, marine, or inland marine insurance company may not purchase, hold, or convey real property, except as provided by Subsections (b) and (c).

(b) The company may erect and maintain buildings ample and adequate for the transaction of the company's business.

(c) Subsection (a) does not apply to:

(1) real property mortgaged to the company in good faith as security for a loan previously contracted or for money due;

(2) real property conveyed to the company in satisfaction of a debt previously contracted in the legitimate business of the company or for money due;

(3) real property purchased under a judgment, decree, or mortgage obtained or made for a debt under Subdivision (2); or

(4) a mineral or royalty interest reserved on the sale of real property acquired under Subdivision (1), (2), or (3) before January 1, 1942.

(d) A fire, marine, or inland marine insurance company may not invest more than 33-1/3 percent of the company's admitted assets in real property. A fire, marine, or inland marine insurance company may not invest any of its capital or minimum surplus in real property, other than real property described by Subsection (c).

(e) Section 861.258 applies to real property acquired under Subsection (c)(1), (2), or (3).

(f) The commissioner shall appoint at least two competent and disinterested residents of this state to appraise real property described by Subsection (b) when the property is acquired or when the company applies for amendment to its charter. The company shall pay to the commissioner the reasonable cost of the appraisal.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 862.003. ADMITTED ASSETS. The value of the property of the company shown on the report as determined under Section 862.001 and the rules adopted by the commissioner adopted under that section is considered to be an admitted asset of the company for all

purposes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. INSURANCE COVERAGE PROVIDED BY FIRE AND MARINE INSURANCE COMPANIES

Sec. 862.051. KINDS OF INSURANCE AUTHORIZED. On filing notice of its intent with the department, an insurance company engaged in the business of insurance in this state under an appropriate certificate of authority may:

(1) insure houses, buildings, and other property against loss or damage by fire;

(2) insure goods, merchandise, and other property in the course of transportation by land or water, or vessels afloat, regardless of their location;

(3) insure motor vehicles, whether stationary or being operated under the motor vehicle's own power, against loss or damage by fire, lightning, windstorm, hail storm, tornado, cyclone, explosion, transportation by land or water, theft, and collision;

(4) lend money on bottomry or respondentia;

(5) obtain insurance against:

(A) any loss or risk the company has incurred in the course of its business; and

(B) any loss or risk on an interest that the company has in property because of a loan it has made on bottomry or respondentia; and

(6) take any action proper to promote an activity described by this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 862.052. PROHIBITIONS RELATING TO LIFE INSURANCE AND LIFE INSURANCE COMPANIES. (a) An insurance company authorized by its charter to write fire, marine, lightning, tornado, or inland marine insurance in this state may not write life insurance.

(b) An insurance company authorized to write life insurance in this state may not write fire, marine, or inland marine insurance or any other insurance described by Section 862.051.

(c) The commissioner shall enforce this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 862.053. FIRE INSURANCE: TOTAL LOSS OF REAL PROPERTY. (a) A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. This subsection does not apply to personal property.

(b) An insurance company shall incorporate verbatim the provisions of Subsection (a) in each fire insurance policy issued as coverage on real property in this state.

(c) The commissioner shall require compliance with this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.220, eff. Sept. 1, 2003.

Sec. 862.054. FIRE INSURANCE: BREACH BY INSURED; PERSONAL PROPERTY COVERAGE. Unless the breach or violation contributed to cause the destruction of the property, a breach or violation by the insured of a warranty, condition, or provision of a fire insurance policy or contract of insurance on personal property, or of an application for the policy or contract:

(1) does not render the policy or contract void; and

(2) is not a defense to a suit for loss.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 862.055. FIRE INSURANCE: INTEREST OF MORTGAGEE OR TRUSTEE. (a) The interest of a mortgagee or trustee under a fire insurance contract covering property located in this state may not be invalidated by:

(1) an act or neglect of the mortgagor or owner of the property; or

(2) the occurrence of a condition beyond the mortgagor's or owner's control.

(b) A provision of a contract that conflicts with Subsection (a) is void.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. REINSURANCE AND RESERVES

Sec. 862.101. FIRE AND ALLIED LINES OF INSURANCE: AUTHORIZED AND REQUIRED REINSURANCE. (a) In this section, "fire and allied lines of insurance" has the meaning assigned by statute, rules adopted by the commissioner, or lawful custom.

(b) An insurance or reinsurance company that is authorized to write or reinsure fire and allied lines of insurance in this state may reinsure all or any part of a single risk in one or more other solvent insurers.

(c) An insurance company that is incorporated under the laws of the United States or a state of the United States and authorized to write fire and allied lines of insurance in this state may not, unless the excess is reinsured by the company in another solvent insurer, expose itself to any loss or hazard on a single risk in an amount that exceeds 10 percent of the company's paid-up capital stock and surplus.

(d) An insurance company that is incorporated under the laws of a jurisdiction other than the United States or a state of the United States and authorized to write fire and allied lines of insurance in this state may not, unless the excess is reinsured by the company in another solvent insurer, expose itself to any loss or hazard on a single risk in an amount that exceeds the sum of:

(1) 10 percent of the company's deposit with the statutory officer in the state through which the company is authorized to do business in the United States; and

(2) 10 percent of the other policyholders' surplus of the company's United States branch.

(e) Subsections (c) and (d) do not apply in connection with the writing of insurance for cotton in bales or for grain.

(f) Reinsurance that is required or permitted by this section must comply with:

(1) Subchapter A, Chapter 491; and

(2) Chapter 493.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.067,

eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.09, eff. September 1, 2017.

Sec. 862.102. REINSURANCE OR RESERVES REQUIRED FOR FIRE INSURANCE. (a) An insurance company writing fire insurance in this state shall maintain reinsurance or unearned premium reserves on its policies in force.

(b) The commissioner may require that reserves required by Subsection (a) equal the unearned portions of the gross premiums in force after deducting reinsurance under Section 862.101, as computed on each respective risk from the policy's date of issue.

(c) If the commissioner does not impose a requirement under Subsection (b), the portions of the gross premium in force held as reinsurance or unearned premium reserves after deducting reinsurance under Section 862.101 shall be computed as follows:

Term for Which Policy Was Written	Reserve for Unearned Premium
1 year or less	1/2
2 years	1st year 3/4
	2nd year 1/4
3 years	1st year 5/6
	2nd year 1/2
	3rd year 1/6
4 years	1st year 7/8
	2nd year 5/8
	3rd year 3/8
	4th year 1/8
5 years	1st year 9/10
	2nd year 7/10
	3rd year 1/2
	4th year 3/10
	5th year 1/10
More than 5 years	pro rata

(d) Notwithstanding Subsection (c), an insurance company may compute, or the commissioner may require an insurance company to compute, the reserves on a quarterly, monthly, or more frequent pro rata basis.

(e) An insurance company that adopts a method for computing the reserve may not adopt another method without commissioner approval.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 862.103. REINSURANCE OR RESERVES REQUIRED FOR HOME WARRANTY INSURANCE COMPANIES. (a) An insurance company writing home warranty insurance in this state shall maintain reinsurance or unearned premium reserves on its policies in force.

(b) Reserves required by Subsection (a) shall be computed in the same manner and to the same extent as is fire insurance under Section 862.102.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 862.104. RESERVES REQUIRED FOR OCEAN AND INLAND MARINE TRIP INSURANCE COMPANIES. The total of the premiums on ocean and inland marine trip insurance risks not terminated is considered to be unearned, and the insurance company shall maintain a reserve equal to the total of the premiums for those policies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. IMPAIRMENT OF SURPLUS

Sec. 862.151. REDUCTION OF CAPITAL STOCK AND PAR VALUE OF SHARES. (a) If the minimum surplus of a fire, marine, or inland marine insurance company is impaired in excess of the amount permitted under Subchapter B, Chapter 404, the commissioner may allow the company to amend its charter as provided by Sections 822.157 and 822.158 to reduce the amount of the company's capital stock and the par value of its shares in proportion to the extent of the permitted amount of impairment.

(b) A company acting under Subsection (a):

(1) may not reduce the par value of its shares below the sum computed under Section 822.055;

(2) may not deduct from the assets and property on hand more than $125,000;

(3) shall retain the remainder of the assets and property

on hand as surplus assets;

(4) may not distribute any of the assets or property to the shareholders; and

(5) may not reduce the capital stock or surplus of the company to an amount less than the minimum capital and the minimum surplus required by Sections 822.202, 822.210, and 822.211, subject to Subchapter B, Chapter 404.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.068, eff. April 1, 2009.

Sec. 862.152. MAKING GOOD ON IMPAIRMENT. (a) This section applies to a fire, marine, or inland marine insurance company that receives notice from the commissioner under Subchapter B, Chapter 404, to make good within 60 days:

(1) any impairment of the company's required capital; or

(2) the company's surplus.

(b) The company shall promptly call on its shareholders for an amount necessary to make the company's capital and surplus equal to the amount required by Sections 822.054 and 822.210, subject to Subchapter B, Chapter 404.

(c) The shareholders of the company shall be informed of a call under Subsection (b):

(1) by personal notice; or

(2) by advertisement for the time and in the manner approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.069, eff. April 1, 2009.

Sec. 862.153. FAILURE OF SHAREHOLDER TO PAY. (a) If a shareholder of the insurance company who is given notice under Section 862.152 does not pay the amount called for by the company under that section, the company may:

(1) require the return of the original certificate of stock

held by the shareholder; and

(2) issue a new certificate for a number of shares that the shareholder may be entitled to in the proportion that the value of the funds of the company, computed without inclusion of any money or other property paid by shareholders in response to the notice under Section 862.152, bears to the total amount of the original capital and the minimum surplus of the company required by Section 822.054 or 822.210, subject to Subchapter B, Chapter 404.

(b) The value of any shares for which new certificates are issued under Subsection (a)(2) shall be computed under the direction of the commissioner. The insurance company shall pay for the fractional parts of shares.

(c) Any interested person may pay all or any part of the amount of the deficit resulting from a shareholder default under Subsection (a). The company shall issue to each person who makes a payment a stock certificate that is representative of the number of shares to which the person is entitled. The certificate must be for the number of shares in proportion to the total number of forfeited shares that the payment made by the person bears to the deficit that resulted from the forfeited shares.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.070, eff. April 1, 2009.

Sec. 862.154. CREATION AND DISPOSAL OF NEW STOCK. (a) A fire, marine, or inland marine insurance company that complies with Sections 822.155, 822.157, and 822.158 may:

(1) create new stock;

(2) dispose of the new stock according to applicable law; and

(3) issue new certificates for the new stock.

(b) The insurance company shall sell any new stock created under Subsection (a) for an amount sufficient to make up any impairment of the company's required minimum capital and to make up the surplus of the company as required by Section 822.054 or 822.210, subject to Subchapter B, Chapter 404, but may not impair the capital of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.071, eff. April 1, 2009.

SUBTITLE E. MUTUAL AND FRATERNAL COMPANIES AND RELATED ENTITIES
CHAPTER 881. STATEWIDE MUTUAL ASSESSMENT COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 881.001. DEFINITION. In this chapter, "statewide mutual assessment company" means a corporation engaged in the statewide business of mutually protecting or insuring members' lives with money provided by assessments on those members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.002. LIMITED EXEMPTION FROM INSURANCE LAWS. (a) Except as provided by this chapter and Chapter 887, the insurance laws of this state do not apply to a statewide mutual assessment company.

(b) A law enacted after June 20, 1933, does not apply to statewide mutual assessment companies unless statewide mutual assessment companies are expressly designated in the law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.003. COMPLIANCE WITH INSURANCE LAWS. An individual, firm, unincorporated association, or corporation may not engage in business as a statewide mutual assessment company in this state unless the entity complies with this chapter and Chapter 887.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.004. EXEMPTION FROM CHAPTER. This chapter applies only to a statewide mutual assessment company. This chapter does not apply to a company operating as a local mutual aid association, fraternal benefit society, or reciprocal exchange or to a foreign assessment company operating under any other law in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.005. ORGANIZATION OF NEW COMPANY PROHIBITED. A new statewide mutual assessment company may not be organized under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.006. ANNUAL STATEMENT. (a) For the filing of each annual statement, the department shall charge the appropriate fee. The fee must be deposited in the Texas Department of Insurance operating account.

(b) Sections 201.001 and 201.002 apply to the fee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.072, eff. April 1, 2009.

SUBCHAPTER B. STRUCTURE AND OPERATION OF STATEWIDE MUTUAL ASSESSMENT COMPANIES

Sec. 881.051. AUTHORITY TO ACT AS STATEWIDE MUTUAL ASSESSMENT COMPANY. A corporation may engage in business as a statewide mutual assessment company only if the corporation:

(1) was incorporated in this state under a law that was amended, repealed, or reenacted before June 20, 1933;

(2) was engaged in business as a statewide mutual assessment company in this state on December 31, 1932;

(3) does not have capital stock; and

(4) is not for profit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.052. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a statewide mutual assessment

company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to statewide mutual assessment companies.

(b) On advance approval of the commissioner, a statewide mutual assessment company may pay dividends to its members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.053. SEPARATE GROUPS, CLUBS, OR CLASSES. A statewide mutual assessment company may provide in its by-laws for the creation of separate groups, clubs, or classes based on reasonable classifications specified in the by-laws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.054. MINIMUM MEMBERSHIP REQUIRED. A statewide mutual assessment company may not issue a certificate or policy unless the membership of the company or the group, class, or club of the company that is liable for assessments on the certificate or policy is sufficient in number at the assessment rate charged the company, group, class, or club to pay 50 percent of the maximum benefit in the certificate or policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.055. USE OF COMPANY NAME. A statewide mutual assessment company may not operate an independent branch office or a separate group, club, or class under a name different from the name of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.056. ISSUANCE OF CERTIFICATE OR POLICY TO SEPARATE GROUPS, CLUBS, OR CLASSES. (a) A certificate or policy issued by the company to members of a group, club, or class may limit benefits under the certificate or policy to the assessments made, levied, and collected from the group, club, or class.

(b) The assets or benefits of a group, club, or class may not be pledged or transferred without the consent of at least three-fourths of the members of the group, club, or class.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.057. INSUFFICIENT MEMBERSHIP: CONSOLIDATION OR DISCONTINUATION OF GROUP, CLUB, OR CLASS OR LIQUIDATION OF COMPANY. (a) If membership of a group, club, or class of a statewide mutual assessment company is less than the number required by Section 881.054, the company shall immediately notify:

(1) the members of the group, club, or class; or

(2) if the company has only one group, club, or class, the members of the company.

(b) Not later than six months after a statewide mutual assessment company notifies the members of a group, club, or class under Subsection (a)(1), the company shall:

(1) increase the membership of the group, club, or class to at least the number required by Section 881.054;

(2) consolidate the group, club, or class with another group, club, or class; or

(3) discontinue the group, club, or class.

(c) Not later than six months after a statewide mutual assessment company notifies the members of the company under Subsection (a)(2), the company shall increase the membership to at least the number required by Section 881.054. If the membership is not increased to at least that number, the commissioner shall take steps to liquidate the company under Subchapter L, Chapter 887.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.058. AGENT. (a) A person who solicits an application for a certificate or policy providing insurance on the life of another is considered to be an agent of the statewide mutual assessment company that issues the certificate or policy in a controversy between the company and the insured or the insured's beneficiary.

(b) An agent described by Subsection (a) may not waive or alter the terms of an application, certificate, or policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. BENEFITS PROVIDED BY STATEWIDE MUTUAL ASSESSMENT COMPANIES

Sec. 881.101. TYPES OF CERTIFICATES OR POLICIES AUTHORIZED. (a) A statewide mutual assessment company may issue only a certificate or policy that provides for the continuous payment of premiums or assessments during the policyholder's life.

(b) A statewide mutual assessment company may not:

(1) issue a certificate or policy on a limited payment plan; or

(2) promise to pay an endowment or annuity benefit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.102. MAXIMUM BENEFIT UNDER CERTIFICATE OR POLICY. A statewide mutual assessment company may not issue a certificate or policy that provides a benefit that exceeds $5,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.103. LOCATION OF ISSUANCE OF CERTIFICATES OR POLICIES. A statewide mutual assessment company may issue certificates or policies only in the home office of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.104. CERTIFICATE OR POLICY AND APPLICATION; REPRESENTATIONS IN APPLICATION. (a) An application for a certificate or policy may not be used as a defense against a claim or loss under the certificate or policy unless a copy of the application is attached to the certificate or policy.

(b) A misrepresentation in an application for a certificate or policy may not be used as a defense against a claim or loss under the certificate or policy unless it is shown that the misrepresentation is material to the risk assumed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. ENFORCEMENT; CRIMINAL PENALTY

Sec. 881.701. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person violates this chapter; or

(2) the person:

(A) is a corporation or a responsible officer of a corporation; and

(B) permits or participates in a violation of this chapter by a corporation.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $500.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 881.702. ENFORCEMENT BY ATTORNEY GENERAL. (a) The attorney general may enforce the penalty provided under Section 881.701 and Section 887.705 against a corporation or unincorporated association.

(b) Notwithstanding Section 887.209, venue of a prosecution under this section may be in Travis County.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 882. MUTUAL LIFE INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 882.001. APPLICABILITY OF THIS CHAPTER AND OTHER LAW. Except to the extent of any conflict with this chapter, a law governing a company organized under Chapter 841 applies to a mutual life insurance company organized under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.002. EXAMINATION OF COMPANY. The following provisions apply to a mutual life insurance company organized under this chapter:

(1) Subchapter A, Chapter 86; and

(2) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.073, eff. April 1, 2009.

Sec. 882.003. ANNUAL STATEMENT. A mutual life insurance company shall file an annual statement with the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION AND STRUCTURE OF MUTUAL LIFE INSURANCE COMPANY

Sec. 882.051. AUTHORITY TO FORM COMPANY; PURPOSE. A mutual life insurance company may be formed under this chapter to insure the lives of individuals on the mutual level premium and legal reserve plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.052. FORMATION OF COMPANY; ARTICLES OF INCORPORATION. (a) Nine or more persons who are residents of this state may form a mutual life insurance company by executing and acknowledging articles of incorporation for that purpose.

(b) The articles of incorporation of the proposed company must state:

(1) the name and residence of each incorporator;

(2) the name of the company;

(3) the location of the company's principal office at which company business is to be transacted;

(4) the number of directors;

(5) the name and residence of each initial director; and

(6) the amount of the company's unencumbered surplus.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.053. COMPANY'S NAME. (a) The name of a mutual life insurance company must contain the words "Mutual Life Insurance Company."

(b) A mutual life insurance company's name may not be so similar to the name of another insurance company as to likely mislead the public.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.054. INITIAL BOARD OF DIRECTORS; TERM. An initial director named as provided in Section 882.052 serves until:

(1) the first annual election of directors;

(2) the initial director's successor qualifies for office; or

(3) the initial director is removed from the board for improper practices.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.055. UNENCUMBERED SURPLUS REQUIREMENTS. A mutual life insurance company must possess at the time of incorporation unencumbered surplus in an amount of at least $200,000. The unencumbered surplus may consist only of:

(1) United States currency;

(2) bonds of the United States, this state, or a county or municipality of this state; or

(3) government insured mortgage loans that are authorized by this chapter, with not more than 25 percent of the unencumbered surplus invested in first mortgage real estate loans.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.056. APPLICATION FOR CHARTER. (a) To obtain a charter for a mutual life insurance company under this chapter, the incorporators must pay the charter fee in the amount determined under Chapter 202 and file with the department:

(1) an application for charter on the form and including the information prescribed by the commissioner;

(2) the company's articles of incorporation; and

(3) an affidavit made by two or more of the incorporators that states that:

(A) the unencumbered surplus requirements of Section 882.055 are satisfied;

(B) the unencumbered surplus is the bona fide property of the company; and

(C) the information in the application and articles of incorporation is true and correct.

(b) The commissioner may require that the incorporators provide at their expense additional evidence of a matter required in the affidavit before the commissioner takes further action on the application for the charter.

(c) The charter must state the name of each director who is to serve until the first annual election.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.074, eff. April 1, 2009.

Sec. 882.057. APPLICATION PROCESS. (a) After the charter fee is paid and all items required for a charter under Section 882.056 are filed with the department, the commissioner shall approve, deny, or disapprove the application.

(b) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

(c) An interested party may participate fully and in all respects in any proceeding related to the application. An intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 12, eff.

June 19, 2009.

Sec. 882.058. ACTION ON APPLICATION. (a) In considering the application, the commissioner shall determine if:

(1) the minimum unencumbered surplus required by Section 882.055 is the bona fide property of the mutual life insurance company;

(2) the proposed officers, directors, and managing executives of the company have sufficient insurance experience, ability, and standing to make success of the proposed company probable; and

(3) the applicants are acting in good faith.

(b) If the commissioner determines that the applicant has not met the standards set out by Subsection (a), the commissioner shall deny the application in writing, giving the reason for the denial. An application may not be granted unless it is adequately supported by competent evidence.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1022, Sec. 19(6), eff. June 19, 2009.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 13, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 19(6), eff. June 19, 2009.

Sec. 882.059. EXAMINATION AFTER DETERMINATION. After making a determination on an application under Section 882.058, the commissioner shall immediately make or cause to be made a full and thorough examination of the mutual life insurance company. The company shall pay for the examination.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 882.101. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) After the examination of a mutual life insurance company under Section

882.059, the commissioner shall issue a certificate of authority to the company if the commissioner finds that:

(1) the company has complied with all applicable laws;

(2) the company satisfies the unencumbered surplus requirements of Section 882.055; and

(3) the company's unencumbered surplus is in the custody of the company's officers.

(b) A certificate of authority issued under this section authorizes the company to engage in the business of life, health, or accident insurance in this state as may be specified in the company's charter or charter application.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. MANAGEMENT OF MUTUAL LIFE INSURANCE COMPANY

Sec. 882.151. BOARD OF DIRECTORS. (a) The board of directors of a mutual life insurance company controls the business of the company.

(b) The board of directors consists of at least five directors as stated in the company's articles of incorporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.152. ADOPTION OF INITIAL BYLAWS. (a) At the first meeting of the initial board of directors of a mutual life insurance company after the department issues a certificate of authority to the company, the board shall adopt the initial bylaws of the company.

(b) The bylaws adopted under Subsection (a) shall govern the company until the first annual meeting of the board of directors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.153. ANNUAL MEETING. (a) Except as provided by Subsection (b), after a mutual life insurance company is issued a certificate of authority under Section 882.101, the company shall hold an annual meeting of the policyholders on the fourth Tuesday in April at the home office of the company or another location properly announced to each policyholder.

(b) The bylaws of a mutual life insurance company may establish an annual meeting date different than the date under Subsection (a). A meeting date established under this subsection must be before April 30 of each year.

(c) At each annual meeting, the policyholders:

(1) shall elect the company's board of directors to serve until the next annual meeting, except as provided by Section 882.154; and

(2) may adopt, amend, or repeal the bylaws of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.154. STAGGERED TERMS FOR LARGE BOARD OF DIRECTORS. (a) This section applies only to a mutual life insurance company whose board of directors consists of at least nine members.

(b) The bylaws of a mutual life insurance company may provide that the company's directors, other than initial directors, may be elected to serve staggered terms as provided by this section.

(c) The company's directors shall be divided into two or three classes, with each class consisting of an equal number of directors to the extent possible. After the directors are divided into classes:

(1) the terms of the directors in the first class expire on the first annual meeting date after their initial election;

(2) the terms of the directors in the second class expire on the second annual meeting date after their initial election; and

(3) the terms of the directors in the third class, if any, expire on the third annual meeting date after their initial election.

(d) At each annual meeting after the directors are first elected, the policyholders shall elect the number of directors whose terms expire on that date. Directors are elected for:

(1) staggered two-year terms, if the board is divided into two classes; or

(2) staggered three-year terms, if the board is divided into three classes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.155. VOTING BY POLICYHOLDERS. (a) At an annual or

special meeting of a mutual life insurance company, each policyholder is entitled to one vote for each $500 of insurance held by the policyholder in the company.

(b) A policyholder may vote at an annual or special meeting by proxy, unless the proxy is revoked before the meeting.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.156. OFFICERS. (a) The board of directors of a mutual life insurance company shall elect the following officers for the company:

(1) a president;

(2) the number of vice presidents as required by the company's bylaws;

(3) a secretary;

(4) a treasurer;

(5) a medical director; and

(6) other officers as required by the company's bylaws.

(b) The board shall establish the compensation of each officer.

(c) The duties of each officer shall be prescribed by the company's bylaws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.157. OFFICER BONDS. The president, secretary, and treasurer of a mutual life insurance company shall each provide a bond for the protection of the company's policyholders:

(1) in an amount and with sureties approved by the commissioner; and

(2) conditioned on the faithful performance of the officer's duties.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.158. BYLAWS MUST COMPLY WITH LAW. The bylaws of a mutual life insurance company may not be inconsistent with this chapter or other laws of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. AGENTS

Sec. 882.201. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a mutual life insurance company organized under this chapter that has a surplus of at least the minimum amount of capital and surplus required of a capital stock company under Sections 841.054, 841.204, 841.205, 841.301, and 841.302.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.202. ISSUANCE OF LICENSE TO AGENT. On written request of a mutual life insurance company to which a certificate of authority has been issued under this chapter, the department shall issue a license to each agent of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.203. LIMITATION ON AGENT COMPENSATION. A contract between a mutual life insurance company and an agent of the company to which a license has been issued under Section 882.202 may not provide a commission or other compensation to the agent that exceeds the expense loading in the premiums on policies that are issued on applications obtained by the agent and for which the premiums are collected and paid to the company in cash.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. GENERAL FINANCIAL REQUIREMENTS

Sec. 882.251. LIMITED AUTHORITY TO BORROW MONEY. (a) Except as provided by this subchapter, a mutual life insurance company may not borrow money for any purpose other than to pay a death loss.

(b) A company may not incur a debt on an account for which any part of the company's assets that exceeds the assets represented by or derived from the expense loading in the premiums collected by the company is subject to execution on a judgment.

(c) Subsection (b) does not prohibit a company from incurring a

debt on an account:

(1) under a policy issued by the company; or

(2) to borrow money to pay a death loss.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.252. INVESTMENT OF MONEY. (a) A mutual life insurance company shall invest the company's money in accordance with the law governing investments of life, health, and accident insurance companies organized under Chapter 841.

(b) An officer of a mutual life insurance company who does not invest the money of the company as required by Subsection (a) shall deposit the money in the name of the company in a bank that:

(1) is subject to state or federal regulation; and

(2) has been approved by the commissioner as a depository for that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.253. LOANS TO COMPANY. (a) An officer or director of a mutual life insurance company, or a person authorized under Chapter 825, may loan to the company money to:

(1) promote or conserve the company's business; or

(2) enable the company to comply with a legal requirement.

(b) The company may repay a loan and agreed interest, at an annual rate not to exceed 10 percent, from the surplus remaining after the company provides for the company's reserves and other liabilities.

(c) A loan under this section or interest on a loan is not otherwise a liability or claim against the company or any of its assets.

(d) A mutual life insurance company may not pay a commission or promotion expense in connection with a loan made to the company.

(e) A mutual life insurance company shall report in its annual statement the amount of each loan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. UNENCUMBERED SURPLUS REQUIREMENTS

Sec. 882.301. AMOUNT OF UNENCUMBERED SURPLUS. (a) A mutual life insurance company that engages in the business of insurance in this state shall maintain an unencumbered surplus of at least $100,000 that consists of cash or classes of investment as provided by Section 882.055.

(b) Except as otherwise authorized by this code, a company that does not maintain an unencumbered surplus as required by this section may not write new insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.302. EXEMPTION FOR CERTAIN COMPANIES. A mutual life insurance company that was authorized and engaged in the business of insurance in this state before May 1, 1955, is not required to increase the amount or convert the class or form of the company's existing unencumbered surplus to comply with Section 882.301 and may not be prohibited from writing new insurance because the company does not maintain an unencumbered surplus as required by that section if the company complies with all other laws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.303. UNENCUMBERED SURPLUS LESS THAN $25,000. A mutual life insurance company whose unencumbered surplus is less than $25,000 shall allocate at least 25 percent of the company's net earned surplus for the preceding calendar year to the company's unencumbered surplus until the company has obtained an unencumbered surplus of at least $25,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.304. INVESTMENT OF EXCESS UNENCUMBERED SURPLUS. A mutual life insurance company that is granted a charter under this chapter may invest that part of the company's unencumbered surplus that exceeds $100,000 as provided by this code for companies operating under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.305. IMPAIRMENT OF UNENCUMBERED SURPLUS. (a) If one-third or more of a mutual life insurance company's unencumbered surplus as required by Section 882.301 is impaired, the company shall correct the impairment not later than the 60th day after the date the surplus is impaired.

(b) A company that does not correct an impairment of surplus as required by Subsection (a) may not write insurance in this state until the company corrects the impairment.

(c) In determining whether a company's surplus is impaired, the company shall compute its liabilities in the manner provided by state law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.306. IMPAIRMENT OF UNENCUMBERED SURPLUS; APPOINTMENT OF RECEIVER. (a) If one-half or more of a mutual life insurance company's unencumbered surplus as required by Section 882.301 is impaired, the commissioner may apply to a court for the appointment of a receiver to wind up the affairs of the company.

(b) In determining whether a company's surplus is impaired, the company shall compute its reserve liability in the manner provided by state law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER H. DIVIDENDS

Sec. 882.351. POLICYHOLDER'S ENTITLEMENT TO DIVIDEND. A policyholder of a mutual life insurance company is entitled to a credit or payment of a dividend from that part of the company's divisible surplus that may be fairly allocated to the policyholder's policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.352. ACCOUNTING AND PROCEDURE FOR ALLOCATION OF

DIVISIBLE SURPLUS; REPORT TO COMMISSIONER. (a) On December 31 of each year, or as soon after as practicable, each mutual life insurance company shall determine the amount of surplus earned by the company during that year.

(b) Not later than the end of the second year in which a policy issued by the company is in effect, the company shall provide to the policyholder:

(1) an annual accounting of the company's divisible surplus; and

(2) if all premiums due on the policy have been paid for at least two years, a fair allocation of the company's divisible surplus that remains after deducting:

(A) any amount approved by the commissioner for retirement of any unpaid loans made under Section 882.253;

(B) the company's contingency reserve; and

(C) any earned surplus the company allocated to unencumbered surplus as provided by this chapter.

(c) The company shall immediately submit to the commissioner a detailed report of an allocation of divisible surplus made under this section. The president or secretary of the company shall sign the report under oath.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.353. DEPARTMENT APPROVAL OF ALLOCATION; REVISIONS. (a) The department shall approve a mutual life insurance company's allocation of divisible surplus under Section 882.352 if the department finds that the allocation is fair to the policyholders and complies with this chapter.

(b) If the department does not approve a company's allocation of surplus, the department shall revise the allocation in a manner that the department determines is fair to the policyholders and necessary to comply with this chapter. The department shall certify the revisions to the company.

(c) An allocation of surplus approved under Subsection (a) takes effect on the date of approval. An allocation of surplus revised by the department under Subsection (b) takes effect on the date the department certifies the revisions to the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.354. DIVIDEND PAYMENT METHOD. (a) A dividend declared by a mutual life insurance company under this subchapter shall be paid in:

(1) cash; or

(2) the equivalent of the dividend's cash value as provided by an option stated in the policy and selected by the policyholder.

(b) A policyholder shall notify the company in writing of an option selected by the policyholder under Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.355. LIMITATIONS ON DIVISIBLE SURPLUS. A mutual life insurance company's divisible surplus available for payment of dividends to the company's policyholders may not include:

(1) any part of the company's unencumbered surplus that has been:

(A) allocated from the company's earned surplus;

(B) transferred from the company's contingency reserve; or

(C) otherwise acquired by the company;

(2) if the company was organized after September 5, 1955, any part of the company's unencumbered surplus required to comply with Section 882.301; or

(3) if the company's unencumbered surplus is less than $25,000, the part of the company's earned surplus for the preceding calendar year in excess of 75 percent of the earned surplus.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.356. PAYMENT OF DIVIDENDS NOT REQUIRED. This subchapter does not require a mutual life insurance company to pay a dividend to a policyholder if the unencumbered surplus acquired by the company is impaired.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER I. CONTINGENCY RESERVE

Sec. 882.401. AMOUNT OF CONTINGENCY RESERVE. (a) A mutual life insurance company organized under this chapter may maintain a contingency reserve that exceeds the reserves and liabilities provided by this chapter. The amount of the contingency reserve may not exceed the greater of:

(1) $10,000;

(2) an amount that:

(A) equals 20 percent of the company's policy reserves and policy liabilities plus one percent of the amount of the company's life insurance in force; and

(B) does not exceed $750,000; or

(3) an amount that equals 20 percent of the company's policy reserves and policy liabilities.

(b) In determining the amount of a company's policy reserves and policy liabilities for purposes of this section, the company may only include the following, after deducting the net value of the company's risks reinsured by other solvent assuming insurers:

(1) the company's reserves on outstanding life insurance policies and annuity contracts, contracts issued as supplemental to the policies or contracts or in connection with the policies or contracts or provisions included in policies or contracts that insure against disability or accidental death; and

(2) the company's liabilities for:

(A) optional modes of settlement; or

(B) dividends left on deposit at interest.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.402. EXCESS CONTINGENCY RESERVE. (a) The commissioner, for good cause shown, may issue an order authorizing a mutual life insurance company to maintain a contingency reserve that exceeds the amount of the reserve authorized by Section 882.401.

(b) The order must state:

(1) a period not exceeding one year during which the company may maintain the excess contingency reserve; and

(2) each reason for authorizing the excess contingency reserve.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.403. CONTINGENCY RESERVE REQUIREMENTS. (a) A mutual life insurance company's contingency reserve as authorized by this subchapter must be:

(1) invested as provided by law; and

(2) used only to pay death claims and dividends to policyholders.

(b) If the interest and earnings from the investment of a company's contingency reserve exceed the amount of reserve authorized by Section 882.401 or 882.402, the company shall pay the excess amount to the policyholders of the company in the form of dividends as provided by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.404. ALLOCATION OF CONTINGENCY RESERVE TO UNENCUMBERED SURPLUS. If a mutual life insurance company's unencumbered surplus is less than $100,000, the company may allocate any part of the company's contingency reserve to the company's unencumbered surplus.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.405. DESIGNATION OF CONTINGENCY RESERVE AS UNASSIGNED SURPLUS. The contingency reserve described by this subchapter is and may be treated as unassigned surplus, including designating the contingency reserve as unassigned surplus in financial statements.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER J. POLICY REQUIREMENTS

Sec. 882.451. APPLICABILITY OF CERTAIN PROVISIONS. Sections 882.452, 882. 453, and 882.454 do not apply to a mutual life insurance company organized under this chapter that has a surplus of at least the minimum amount of capital and surplus required of a capital stock company under Sections 841.054, 841.204, 841.205, 841.301, and 841.302.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.452. TYPE OF POLICY AUTHORIZED. A mutual life insurance company may issue a policy only on the participating plan with dividends payable annually as provided by Subchapter H.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.453. POLICY FORM. An insurance policy issued by a mutual life insurance company must:

(1) be on a form approved by the department; and

(2) contain the following statement on both the front and reverse sides of the policy: "The form of this policy is approved by the Texas Department of Insurance."

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.454. LIMITATION ON AMOUNT OF POLICY VALUE FOR CERTAIN COMPANIES. If the total amount of a mutual life insurance company's insurance in force is less than $10 million, the company may not issue a policy that, after deducting any reinsurance, binds the company for more than $5,000 on a single life.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.455. TABLE OF GUARANTEED VALUES. (a) Each insurance policy issued by a mutual life insurance company must contain a table of guaranteed values. The guaranteed values become nonforfeitable not later than the date of payment of the third full annual premium.

(b) The table of guaranteed values shall be drawn in accordance with the law governing life, health, and accident insurance companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. TOTAL ASSUMPTION REINSURANCE AGREEMENTS

Sec. 882.501. TOTAL ASSUMPTION REINSURANCE AGREEMENTS BETWEEN LIFE INSURANCE COMPANIES. (a) A domestic mutual life insurance company and any other domestic or foreign life insurance company may enter into a total assumption reinsurance agreement if the company assuming the policies under the agreement is authorized to engage in the kinds of insurance provided by those policies.

(b) Before a total assumption reinsurance agreement may be entered into:

(1) the agreement must be submitted to the department; and

(2) the commissioner must approve the agreement as fully protecting the interests of each domestic company's policyholders.

(c) After an assumption reinsurance agreement in which the ceding company is a domestic mutual insurance company is approved by the commissioner as required by Subsection (b), the agreement must be approved by the policyholders of the ceding domestic company in the same manner as required for a merger or consolidation under Subchapter L.

(d) When the reinsurance agreement described by Subsection (c) is effective, the assuming company is entitled to the same rights, privileges, and benefits granted a company that assumes a company by merger or consolidation as provided by Subchapter L.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER L. MERGERS AND CONSOLIDATIONS

Sec. 882.551. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a merger or consolidation in which at least one of the parties to the transaction is a mutual life insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.552. AUTHORITY TO MERGE OR CONSOLIDATE. A domestic or foreign mutual life insurance company may merge with a domestic or foreign mutual or stock legal reserve life insurance company or consolidate into a new domestic or foreign mutual or stock life insurance company as provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.553. PROPOSED PLAN OF MERGER OR CONSOLIDATION; FILING WITH COMMISSIONER. (a) If the boards of directors of at least two life insurance companies determine by majority vote to merge or consolidate, the boards of directors shall prepare a proposed plan of merger or consolidation. The plan may contain:

(1) a future allocation of divisible surplus; or

(2) any other fair arrangement by which any equitable interests of the mutual life insurance company's policyholders may be adjusted.

(b) The boards of directors shall file the proposed plan with the commissioner for approval.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.554. HEARING ON PLAN. As soon as practicable after a proposed plan is filed with the commissioner, the commissioner shall hold a hearing to determine whether to approve the plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.555. COMMISSIONER DETERMINATION ON PLAN. (a) As soon as practicable after the commissioner holds a hearing on a proposed plan under Section 882.554, the commissioner shall approve the plan unless the commissioner determines that:

(1) the plan is contrary to law; or

(2) implementation of the plan:

(A) would not be in the best interests of the policyholders of any mutual life insurance company that is a party to the plan; or

(B) would substantially reduce the security of or service to be rendered to policyholders of any mutual insurance company that is a party to the plan, regardless of whether the policyholders reside in this state or elsewhere.

(b) In determining whether to approve a proposed plan, the commissioner may consider all relevant financial or other information, including past, present, and future operations and accumulations of each company that is a party to the plan.

(c) If the commissioner approves the proposed plan, the commissioner shall notify each party to the plan of the approval.

(d) If the commissioner disapproves the proposed plan, the commissioner shall, within a reasonable time after holding a hearing under Section 882.554:

(1) specify in detail each reason for the disapproval; and

(2) notify each party to the plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.556. APPROVAL OF PLAN BY POLICYHOLDERS. (a) As soon as practicable after receiving from the commissioner notice of approval of a proposed plan under Section 882.555, the board of directors of each mutual life insurance company that is a party to the plan shall submit the plan to the policyholders for a vote at an annual or special meeting.

(b) Not later than the 15th day before the date of the meeting, the company shall provide written notice of the meeting to the policyholders as provided by the company's bylaws. The notice must:

(1) be sent to the policyholder's last known address;

(2) state that one of the purposes of the meeting is to vote on the proposed plan; and

(3) be accompanied by a copy of the proposed plan.

(c) At a meeting under Subsection (a), each policyholder:

(1) is entitled to the number of votes as provided by Section 882.155; and

(2) may vote:

(A) in person;

(B) by written proxy; or

(C) by mailed ballot.

(d) A proposed plan is approved by the policyholders on the affirmative vote of at least two-thirds of the votes cast at the meeting.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.557. DOMESTIC STOCK LIFE INSURANCE COMPANY; APPROVAL OF PLAN BY SHAREHOLDERS. On notice of approval of a proposed plan under Section 882.555, the board of directors of each domestic stock life insurance company that is a party to the plan shall submit the plan for approval to the company's shareholders in the manner

provided by Section 824.003.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.558. FOREIGN LIFE INSURANCE COMPANY; APPROVAL OF PLAN BY POLICYHOLDERS OR SHAREHOLDERS. On notice of approval of a proposed plan under Section 882.555, the board of directors of each foreign life insurance company that is a party to the plan shall submit the plan for approval to the company's policyholders or shareholders as provided by the law of the appropriate jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.559. FILING OF AFFIDAVIT OF PLAN APPROVAL; ISSUANCE OF CERTIFICATE OF MERGER OR CONSOLIDATION. (a) On the approval of a proposed plan under Section 882.556, 882.557, or 882.558, the president or a vice president and the secretary or an assistant secretary of each company that is a party to the plan shall execute and file with the department an affidavit stating that the plan has been approved by the policyholders or shareholders of the company as required by this subchapter.

(b) If the department finds that the affidavit complies with law, the department shall:

(1) endorse the affidavit with:

(A) the word "filed"; and

(B) the date of filing;

(2) if the plan is a plan of merger, issue a certificate of merger to the surviving company or the company's representative; and

(3) if the plan is a plan of consolidation, issue a certificate of consolidation to the new company on the issuance of a charter and a certificate of authority to the new company after:

(A) submission of proper articles of incorporation to the department;

(B) approval by the department in accordance with procedures required for the issuance of a new charter; and

(C) submission of proof that the new company has policyholder surplus at least equal to that of the mutual life insurance company that is a party to the consolidation and has the largest surplus.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.560. EFFECTIVE DATE OF MERGER OR CONSOLIDATION. A merger or consolidation takes effect on the later of:

(1) the date of issuance of the certificate of merger or consolidation; or

(2) a date specified in the plan of merger or consolidation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.561. ASSUMPTION OF OUTSTANDING INSURANCE POLICIES. (a) On the effective date of a merger or consolidation under this subchapter, a new or surviving life insurance company resulting from the merger or consolidation assumes each insurance policy outstanding against each company that merges or consolidates on the same terms and under the same conditions as if the policy had continued in force through the original company.

(b) The new or surviving insurance company shall implement the terms of the policy.

(c) The new or surviving insurance company is entitled to:

(1) all rights and privileges under the policy; and

(2) all reserves and surplus that accumulated on the policy before the merger or consolidation.

(d) A policyholder of a mutual life insurance company that is a party to a merger or consolidation resulting in a new or surviving stock life insurance company is not entitled to any voting rights in the new or surviving company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.562. ASSUMPTION OF LIABILITIES. On the effective date of a merger or consolidation under this subchapter, a new or surviving life insurance company resulting from the merger or consolidation assumes all liabilities of the original companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.563. EFFECT OF MERGER OR CONSOLIDATION ON PROPERTY. On the effective date of a merger or consolidation under this subchapter, the property rights, including any right of recovery, of each company that is a party to the merger or consolidation are transferred to the new or surviving life insurance company resulting from the merger or consolidation without a deed or other transfer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.564. EFFECT OF MERGER OR CONSOLIDATION ON CERTAIN INVESTMENTS. (a) This section applies to each investment of an affected life insurance company, including an investment in real property, that:

(1) was authorized as a proper asset, as of the date on which the investment was made and under the laws of the state in which the company was organized, for investment of funds of a life insurance company; and

(2) is taken over by the new or surviving company under the terms of the merger or consolidation.

(b) On the effective date of a merger or consolidation of two or more life insurance companies under this subchapter, an investment of the affected companies described by Subsection (a) is a proper asset under the laws of this state of the new or surviving company if the investment is:

(1) approved by the commissioner; and

(2) taken over on terms satisfactory to the commissioner.

(c) A new or surviving company that acquires, under the terms of the merger or consolidation, real property that exceeds the amount of real property permitted by the applicable sections of this code relating to owning or holding real property shall sell or dispose of the excess real property:

(1) within the period specified by those sections; or

(2) within a longer period if the company obtains a certificate from the commissioner:

(A) stating that the interests of the company will materially suffer by the forced sale or other disposition of the real property; and

(B) specifying the longer period for the sale or other disposition of the real property.

(d) This section does not preclude the designation and use of the excess real property as branch offices of the company in accordance with this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.565. EFFECT OF MERGER OR CONSOLIDATION ON DIVISIBLE SURPLUS. (a) This section applies only to a mutual life insurance company that is a new company or the surviving company resulting from a merger or consolidation under this subchapter.

(b) If the divisible surplus of each domestic mutual life insurance company that is a party to a merger or consolidation under this subchapter was available for allocation to policyholders as provided by Subchapter H immediately before the effective date of the merger or consolidation, the divisible surplus remains available to the policyholders of the new or surviving mutual life insurance company resulting from the merger or consolidation as provided by Subchapter H.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.566. EFFECT ON ANTITRUST LAWS. This subchapter does not affect in any manner the antitrust laws of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER M. CONVERSION OF MUTUAL LIFE INSURANCE COMPANY TO STOCK LEGAL RESERVE LIFE INSURANCE COMPANY

Sec. 882.601. AUTHORITY TO CONVERT TO STOCK LEGAL RESERVE LIFE INSURANCE COMPANY; POLICYHOLDER AUTHORIZATION REQUIRED. A mutual life insurance company organized under this chapter may convert to a stock legal reserve life insurance company as provided by this subchapter only if the conversion is approved by the policyholders by a vote of at least two-thirds of the votes cast by the policyholders in person or by proxy at a meeting called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.602. AMENDMENT TO CHARTER OR ARTICLES OF INCORPORATION REQUIRED. If the policyholders of a mutual life insurance company authorize a conversion under Section 882.601, the board of directors and officers of the company shall amend the company's charter or articles of incorporation to comply with the requirements applicable to a stock legal reserve life insurance company under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.603. CAPITAL AND SURPLUS REQUIREMENTS. (a) The capital and surplus of the converted stock legal reserve life insurance company must be at least equal to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under Chapter 841.

(b) If a contribution of United States currency is necessary to meet the capital and surplus requirements of this section, the contribution must be made before the effective date of the conversion.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.604. HEARING. (a) After public notice, the commissioner shall hold a hearing on a conversion authorized under Section 882.601.

(b) Any policyholder of the mutual life insurance company that is the subject of the conversion is entitled to appear and be heard at the hearing.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.605. CONVERSION ON COMMISSIONER APPROVAL. A mutual life insurance company is converted to a stock legal reserve life insurance company if:

(1) the company complies with this subchapter; and

(2) after hearing, the conversion is approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.606. APPLICABLE LAW AFTER CONVERSION. After a mutual life insurance company is converted to a stock legal reserve life insurance company, the converted company is governed in the same manner as a company organized under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.607. OTHER TYPES OF CONVERSION NOT PROHIBITED. This subchapter does not prohibit a mutual life insurance company from converting to a stock legal reserve life insurance company by:

(1) merger or consolidation;

(2) a total direct or assumption reinsurance agreement; or

(3) any other plan or procedure approved by the company's policyholders and the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER N. CONVERSION OF CERTAIN MUTUAL ASSESSMENT COMPANIES OR ASSOCIATIONS TO MUTUAL LIFE INSURANCE COMPANIES

Sec. 882.651. AUTHORITY TO CONVERT. A mutual assessment company or association organized and operating under the laws of this state on May 17, 1943, may convert to a mutual life insurance company as provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.652. VOLUNTARY CONVERSION. The department may not require a mutual assessment company or association to convert to a mutual life insurance company under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.653. CONVERSION REQUIREMENTS. Except as provided by Section 882. 654, a mutual assessment company or association may convert to a mutual life insurance company only if the company or

association:

(1) possesses an unencumbered surplus of at least $1.4 million; and

(2) complies with the requirements of this chapter, including the requirements that the company or association execute articles of incorporation and obtain a charter and a certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.654. EXEMPTION FROM SURPLUS REQUIREMENTS. (a) A mutual assessment company or association is exempt from the surplus requirements of Section 882.653 if the company or association:

(1) possesses an unencumbered surplus of at least $200,000; and

(2) converted to a mutual life insurance company before September 1, 1999.

(b) A mutual assessment company or association that is exempt under Subsection (a) and that was converted on or after September 1, 1989, shall immediately increase its surplus to an amount that satisfies Section 882.653 on:

(1) a change of control of at least 50 percent of the voting securities of the converted company or association; or

(2) if the converted company or association or the holding company that controls the converted company or association, if any, is not controlled by voting securities, a change of at least 50 percent of the ownership of the converted company or association or its holding company.

(c) For purposes of Subsection (b), a transfer of ownership because of death, regardless of whether the decedent died testate or intestate, is not considered a change of control of a converted mutual assessment company or association or its holding company, if ownership is transferred only to one or more individuals, each of whom would have been an heir of the decedent if the decedent had died intestate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.655. APPLICABLE LAW AFTER CONVERSION. After a mutual

assessment company or association is converted to a mutual life insurance company, the converted company is governed by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. ENFORCEMENT PROVISIONS

Sec. 882.701. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a mutual life insurance company organized under this chapter that has a surplus of at least the minimum amount of capital and surplus required of a capital stock company under Sections 841.054, 841.204, 841.205, 841.301, and 841.302.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 882.702. INVESTMENT AND DEPOSIT OF FUNDS; CRIMINAL PENALTY. (a) A person commits an offense if the person is an officer or director of a mutual life insurance company and the person knowingly or wilfully violates or assents to the violation of Section 882.252.

(b) An offense under this section is punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than five years or less than one year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.121, eff. September 1, 2009.

Sec. 882.703. POLICY FORM; REVOCATION OF CERTIFICATE. The department shall revoke the certificate of authority of a mutual life insurance company that issues a policy on a form that has not been approved by the department as required by Section 882.453.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER P. CONVERSION OF MUTUAL LIFE INSURANCE COMPANY TO INSURANCE HOLDING COMPANY AND STOCK LIFE INSURANCE COMPANY

Sec. 882.751. AUTHORITY TO CONVERT. A mutual life insurance company organized or operating under this chapter may convert by forming an insurance holding company based on a mutual plan and continuing the corporate existence of the converting mutual life insurance company as a stock life insurance company if the commissioner:

(1) determines that the conversion is fair and equitable to the policyholders of the converting company; and

(2) approves the proposed plan of conversion.

Added by Acts 2005, 79th Leg., Ch. 82 (S.B. 449), Sec. 1, eff. September 1, 2005.

Sec. 882.752. APPLICATION OF OTHER LAW. Except to the extent of a conflict with this subchapter, Chapter 826 applies to conversion of a mutual life insurance company under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 82 (S.B. 449), Sec. 1, eff. September 1, 2005.

Sec. 882.753. JURISDICTION OF COMMISSIONER. The commissioner retains jurisdiction over a company that converts under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 82 (S.B. 449), Sec. 1, eff. September 1, 2005.

Sec. 882.754. INCORPORATION REQUIREMENTS. A mutual insurance holding company that results from a conversion under this subchapter must be incorporated under and subject to this chapter and Chapter 22, Business Organizations Code.

Added by Acts 2005, 79th Leg., Ch. 82 (S.B. 449), Sec. 1, eff. September 1, 2005.

Sec. 882.755. ARTICLES OF INCORPORATION. The articles of incorporation of a mutual insurance holding company that results from

a conversion under this subchapter, and any amendments to the articles of incorporation, are subject to approval by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 82 (S.B. 449), Sec. 1, eff. September 1, 2005.

Sec. 882.756. SALE OF SECURITIES. (a) A sale, issuance, or offering of securities under this subchapter is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code).

(b) An officer, director, or employee of a mutual life insurance company or a mutual insurance holding company or stock life insurance company resulting from a conversion under this subchapter who participates in the conversion is exempt from the registration and licensing provisions of The Securities Act (Title 12, Government Code). A person may not receive compensation, other than that person's usual salary or compensation, for services performed under the exemption provided by this subsection.

Added by Acts 2005, 79th Leg., Ch. 82 (S.B. 449), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.33, eff. January 1, 2022.

CHAPTER 883. MUTUAL INSURANCE COMPANIES OTHER THAN MUTUAL LIFE INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 883.001. DEFINITIONS. In this chapter:

(1) "Domestic mutual insurance company" means a mutual insurance company organized under this chapter.

(2) "Foreign mutual insurance company" means a mutual insurance company organized under the laws of a jurisdiction other than this state and authorized to engage in the business of insurance on a mutual plan in any state, district, or territory.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.002. APPLICABILITY OF CERTAIN GENERAL LAWS. (a) Except as otherwise provided by law, domestic and foreign mutual insurance companies organized or operating under this chapter are subject to the laws applicable to:

(1) a stock insurance company engaging in the same kind of insurance;

(2) investments;

(3) valued policies;

(4) policy forms and rates;

(5) reciprocal or retaliatory laws;

(6) insolvency and liquidation; and

(7) publication and defamatory statements.

(b) This chapter does not exempt a domestic mutual insurance company from being subject to other laws of this state governing the incorporation, organization, regulation, and operation of a company or organization writing insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.003. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a domestic mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to mutual insurance companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION, STRUCTURE, AND MANAGEMENT OF COMPANY

Sec. 883.051. FORMATION OF COMPANY. (a) Twenty or more persons, a majority of whom are residents of this state, may incorporate in accordance with this chapter to engage in the business of mutual insurance as provided by this chapter.

(b) To form a mutual insurance company, each incorporator must sign and acknowledge the articles of incorporation of the company.

(c) The incorporators of a proposed mutual insurance company are subject to Sections 822.001, 822.051, 822.057(a)(1)-(3), (b), and (c), 822.058(a), 822.059, 822.060, and 822.201, except that:

(1) the minimum number of persons required to adopt and sign the proposed company's articles of incorporation under Section 822.051 is equal to the number of the proposed company's incorporators as provided by Subsection (a); and

(2) the unencumbered surplus of the mutual insurance company is capital structure for purposes of Section 822.201.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.052. ARTICLES OF INCORPORATION. Articles of incorporation of a proposed mutual insurance company must specify:

(1) the name of the company;

(2) the purpose for which the company is being formed;

(3) the location of the company's principal or home office;

(4) the name and place of residence of each incorporator; and

(5) the name and address of each member of the initial board of directors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.053. COMPANY'S NAME. (a) The name of a mutual insurance company must contain the word "mutual."

(b) A mutual insurance company's name may not be so similar to the name of any other mutual insurance company organized or engaging in business in the United States, that it is confusing or misleading.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.054. LOCATION OF PRINCIPAL OR HOME OFFICE. The principal or home office of a mutual insurance company must be located in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.055. BEGINNING OF CORPORATE EXISTENCE. The corporate existence of a mutual insurance company begins on the date on which

the commissioner issues a certificate of authority to the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.056. BOARD OF DIRECTORS. (a) The board of directors named in a mutual insurance company's articles of incorporation shall manage the company until the initial meeting of the members of the company.

(b) After a mutual insurance company is issued a certificate of authority, the company's board of directors may:

(1) adopt bylaws;

(2) accept applications for insurance; and

(3) transact the business of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.057. MEMBERSHIP OF PUBLIC OR PRIVATE ENTITIES IN COMPANY AUTHORIZED. (a) Any public or private corporation, board, association, or estate may make an application for, enter into an agreement for, or hold a policy in a mutual insurance company. An officer, shareholder, trustee, or legal representative may act on behalf of the entity for that participation.

(b) An officer, shareholder, trustee, or legal representative of a public or private entity described by Subsection (a) may not be held personally liable on a contract of insurance executed by the person in the person's capacity as a representative of the entity under Subsection (a).

(c) The right of a corporation organized under the laws of this state to participate as a member of a mutual insurance company is:

(1) incidental to the purpose for which the corporation was organized; and

(2) in addition to the corporate rights or powers expressly conferred in the corporation's articles of incorporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.058. MEMBERSHIP VOTES. Each member of a mutual insurance company is entitled to one vote on each matter submitted to

a vote unless a different number of votes is authorized by the company's bylaws based on:

(1) the insurance in force;

(2) the number of policies held by the member; or

(3) the amount of the premium paid by the member.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Sec. 883.101. MUTUAL INSURANCE BUSINESS. Mutual insurance of any kind may not be written in this state except as authorized by this chapter or any other law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.102. CHARTER AND CERTIFICATE OF AUTHORITY REQUIRED. A domestic mutual insurance company may not engage in the business of insurance until:

(1) the company obtains a charter as provided by Chapter 822; and

(2) the commissioner issues to the company a certificate of authority for that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.103. AUTHORIZATION OF FOREIGN MUTUAL INSURANCE COMPANY TO ENGAGE IN BUSINESS. (a) The department shall authorize a foreign mutual insurance company to write the kinds of insurance authorized by the company's charter or articles of incorporation in this state if the company:

(1) is solvent as determined under this chapter;

(2) files with the department:

(A) a copy of the company's bylaws certified by the company's secretary; and

(B) a certified copy of the company's charter or articles of incorporation;

(3) appoints the commissioner as the company's agent for service of process as provided by Chapter 804;

(4) files a financial statement under oath in a form as required by the department; and

(5) complies with legal requirements applicable to the filing of documents and the furnishing of information by a stock insurance company that files an application with the department for authority to transact the same kind of insurance as the company.

(b) A foreign mutual insurance company's name may not be so similar to a name of a mutual insurance company or foreign mutual insurance company organized or authorized to engage in business in this state that it is confusing or misleading.

(c) A foreign mutual insurance company authorized to engage in the business of insurance under this section has, to the same extent, all of the powers granted to and privileges of a mutual insurance company organized and operating under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. POWERS, DUTIES, AND OPERATION OF COMPANY

Sec. 883.151. AUTHORITY TO WRITE CERTAIN INSURANCE. A domestic mutual insurance company may write any kind of insurance that may be lawfully written in this state, other than life insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.152. PRIOR AUTHORITY NOT AFFECTED. This chapter does not affect any authority that existed before September 6, 1955, that allowed mutual insurance companies to write non-assessable policies in this state, subject to any prerequisite imposed by law on that authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.153. POLICY RATES. A mutual insurance company operating under this chapter shall charge the insurance rates prescribed by the commissioner and is subject to the same rate requirements as a domestic insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.154. MAXIMUM PREMIUMS. (a) The maximum premium of an insurance policy issued by a domestic mutual insurance company must be stated in the policy.

(b) A policy's maximum premium may consist only of:

(1) a cash premium; or

(2) a cash premium and a contingent premium in an amount equal to one additional cash premium.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.155. ISSUANCE OF POLICY FOR CASH PREMIUM ONLY. (a) A domestic mutual insurance company may not issue an insurance policy for a cash premium only unless:

(1) the company possesses surplus above all liabilities in an amount at least equal to the minimum capital and surplus required of a stock insurance company engaging in the same kinds of insurance;

(2) the company files with the department:

(A) an application for the issuance of this type of policy; and

(B) a certified copy of the resolution of the company's board of directors authorizing the issuance; and

(3) the commissioner approves the documents filed under Subdivision (2).

(b) A mutual insurance company that issues a policy for a cash premium only may waive all contingent premiums in any outstanding policies.

(c) A foreign mutual insurance company authorized to engage in the business of insurance in this state may issue an insurance policy for a cash premium only and may waive contingent premiums on any of its outstanding policies in the same manner and subject to the same requirements as a mutual insurance company under this section that is engaged in the same kinds of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.156. ASSESSMENT ON POLICYHOLDERS. (a) A policyholder is not liable for an assessment imposed on a policy issued by a

mutual insurance company with approval of the commissioner under Section 883.155(a).

(b) An assessment may not be imposed on the holder of a policy described by Section 883.155(a) by:

(1) the officers or directors of a mutual insurance company;

(2) the department;

(3) a receiver; or

(4) a liquidator.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.157. REINSURANCE OF POLICY. (a) Subject to Subsection (c), a mutual insurance company authorized to engage in the business of insurance in this state may enter into an agreement with an insurer to cede to or accept from the insurer all or part of an insurance risk.

(b) A reinsurance agreement under this section does not create or confer contingent liability, participation, or membership unless otherwise provided by the agreement.

(c) A mutual insurance company may not enter into an agreement with a reinsurer that has been disapproved for that purpose by written order of the commissioner filed in the department's offices.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.158. REQUIREMENTS FOR COMPANIES WRITING BONDS. A mutual insurance company qualifying to write bonds under this chapter is subject to the same legal requirements as any other insurance company writing bonds under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.159. NECESSARY OR INCIDENTAL POWERS. A domestic mutual insurance company has such powers as are necessary or incidental to the transaction of its business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.160. RIGHTS AND PRIVILEGES OF CERTAIN COMPANIES RETAINED. A mutual insurance company engaged in business under Chapters 5, 9, 12, 13, 14, and 15, Title 78, Revised Statutes, before their repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, Acts of the 41st Legislature, 2nd Called Session, 1929, retains the rights and privileges under the repealed law to the extent provided by those sections.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.161. DIVIDENDS. On advance approval of the commissioner, a mutual insurance company may pay dividends to its members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.162. LOANS TO COMPANY. (a) A person, including a director, officer, or member of a mutual insurance company, may loan to the company money necessary:

(1) for the company to engage in the company's business; or

(2) to enable the company to comply with a legal requirement.

(b) The mutual insurance company may repay a loan and agreed interest, at an annual rate not to exceed 20 percent, only from the surplus remaining after the company provides for the company's reserves, other liabilities, and required surplus.

(c) A loan under this section or interest on a loan is not otherwise a liability or claim against the company or any of its assets.

(d) A mutual insurance company may not pay a commission or promotion expense in connection with a loan made to the company.

(e) A mutual insurance company shall report in its annual statement the amount of each loan made to the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.163. IMMEDIATE NOTIFICATION WHEN ASSETS ARE INSUFFICIENT; EXAMINATION. The president and the secretary of a mutual insurance company operating under the law providing for the incorporation of mutual fire, lightning, hail, and storm insurance companies shall immediately notify the commissioner any time the admitted assets of the company are less than the largest single risk for which the company is liable. The commissioner may make an examination into the affairs of the company as the commissioner considers best.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. REGULATION OF COMPANY

Sec. 883.201. SURPLUS REQUIREMENTS. A domestic mutual insurance company must possess a surplus over and above all liabilities in an amount equal to the minimum capital stock and surplus required of a stock insurance company engaged in the same kinds of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.202. REQUIRED DEPOSIT FOR COMPANIES WRITING BONDS. (a) A domestic mutual insurance company that writes fidelity and surety bond coverage shall maintain on deposit with the comptroller cash or securities of the kind described by a provision of Subchapter B, Chapter 424, other than Section 424.052, 424.072, or 424.073, in an amount equal to the amount of cash or securities required of a domestic stock insurance company.

(b) The commissioner must approve for deposit the cash or securities required by this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.075, eff. April 1, 2009.

Sec. 883.203. RESERVES. (a) A domestic mutual insurance company shall maintain unearned premiums and other reserves separately for each kind of insurance. The reserves must be maintained on the same basis as those reserves are required to be maintained by a domestic stock insurance company engaging in the same kinds of insurance.

(b) A mutual insurance company operating under this chapter is subject to the same reserve requirements as a domestic insurance company under law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.204. ANNUAL REPORT. (a) Domestic and foreign mutual insurance companies organized or operating under this chapter shall submit to the commissioner an annual report in the form required by the commissioner.

(b) To the extent practicable, the commissioner shall adopt a form that is similar to a form that is generally used for submission of the annual report throughout the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.205. EXAMINATION OF FOREIGN MUTUAL INSURANCE COMPANY. To the extent practicable, an examination of a foreign mutual insurance company must be conducted in cooperation with the insurance departments of other states in which the foreign company is authorized to transact business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.206. FEES. Each domestic or foreign mutual insurance company organized or operating under this chapter is subject to a fee imposed by law on a stock insurance company engaging in the same kinds of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.207. PREMIUM TAX. Each domestic or foreign mutual insurance company organized or operating under this chapter is subject to taxes imposed by law on that company. The company shall pay the tax on the gross premiums received for direct insurance written on property or risks located in this state. The tax payable must be computed on the portion of the gross premiums remaining after deducting:

(1) premiums charged on policies not taken;

(2) premiums returned on canceled policies; and

(3) any refund or other return made to the policyholders other than for the incurrence of a loss.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. CRIMINAL PENALTIES

Sec. 883.701. VIOLATION OF CHAPTER. (a) Except as otherwise provided by this subchapter, a person or corporation commits an offense if the person or corporation violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.702. FAILURE TO REPORT CONDITION. (a) A person commits an offense if the person is a president or secretary described by Section 883.163 and the person fails to make the report required by that section.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $500.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 883.703. FALSE STATEMENT OR MISAPPROPRIATION. (a) A person commits an offense if the person intentionally submits a false statement or misappropriates the funds of a mutual insurance company organized under the laws providing for the incorporation of mutual fire, lightning, hail, and storm insurance companies.

(b) An offense under this section is a felony punishable by

confinement in the Texas Department of Criminal Justice for not less than 5 years or more than 10 years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.122, eff. September 1, 2009.

Sec. 883.704. UNAUTHORIZED MUTUAL FIRE INSURANCE. (a) A person commits an offense if the person engages in the business of mutual fire insurance in this state in violation of the laws regulating mutual fire insurance.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 884. STIPULATED PREMIUM INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 884.001. DEFINITION. In this chapter, "stipulated premium company" means a:

(1) stipulated premium life insurance company;

(2) stipulated premium accident insurance company;

(3) stipulated premium life and accident insurance company;

(4) stipulated premium accident and health insurance company; or

(5) stipulated premium life, accident, and health insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.002. APPLICABILITY OF OTHER LAW TO COMPANY. (a) Except as expressly provided by this code, a provision of this code, other than this chapter, does not apply to a stipulated premium company organized under this chapter.

(b) A law enacted after August 28, 1961, does not apply to a stipulated premium company unless stipulated premium companies are expressly designated in the law.

(c) The following provisions of this code apply to a stipulated premium company:

(1) Article 21.47;

(2) Section 38.001;

(3) Chapter 86;

(4) Subchapter A, Chapter 401;

(5) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156;

(6) Sections 403.001, 403.052, and 403.102;

(7) Subchapter A, Chapter 404;

(8) Section 421.001;

(9) Subchapter D, Chapter 425;

(10) Chapter 443;

(11) Chapter 493, other than Section 493.051(b);

(12) Chapter 541;

(13) Sections 801.001-801.002;

(14) Sections 801.051-801.055;

(15) Section 801.057;

(16) Sections 801.101-801.102;

(17) Subchapter A, Chapter 821;

(18) Chapter 824;

(19) Chapter 828;

(20) Section 841.251;

(21) Section 841.259;

(22) Section 841.261;

(23) Section 841.703; and

(24) Chapter 4152.

(d) The Securities Act (Title 12, Government Code) applies to a stipulated premium company.

(e) The Texas Business Corporation Act applies to a stipulated premium company to the extent that law is not inconsistent with an insurance law applicable to a stipulated premium company. The department shall perform a duty imposed by the Texas Business Corporation Act on the office of the secretary of state that is applicable to a stipulated premium company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.076, eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.10, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.34, eff. January 1, 2022.

Sec. 884.003. ADMITTED ASSETS. A stipulated premium insurer may include among its admitted assets a net asset under Section 841.004.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION AND STRUCTURE OF STIPULATED PREMIUM INSURANCE COMPANY

Sec. 884.051. FORMATION OF COMPANY. (a) Five or more, but not more than 35, residents of this state may form a stipulated premium company.

(b) To form a stipulated premium company:

(1) each incorporator must sign and acknowledge the articles of incorporation of the company; and

(2) the incorporators must file the articles of incorporation with the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.052. ARTICLES OF INCORPORATION. (a) Articles of incorporation of a stipulated premium company must specify:

(1) the name and place of residence of each incorporator;

(2) the name of the proposed stipulated premium company;

(3) the location of the proposed company's home office;

(4) the kinds of insurance business the proposed company will transact;

(5) the amount of the proposed company's capital stock;

(6) the number of shares of the proposed company's capital stock; and

(7) the period of the proposed company's duration, which may not exceed 500 years.

(b) The incorporators of a stipulated premium company may include other provisions in the articles of incorporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.053. COMPANY'S NAME. (a) The name of a stipulated premium company must contain the words "Insurance Company."

(b) A stipulated premium company's name may not be so similar to the name of another insurance company as to likely mislead the public.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.054. CAPITAL STOCK AND SURPLUS REQUIREMENTS. (a) A proposed stipulated premium company's capital stock must be in an amount of at least $200,000.

(b) All of the capital stock required by Subsection (a) must be fully subscribed and paid up and delivered to the incorporators before the articles of incorporation are filed.

(c) To be incorporated, a stipulated premium company must possess at the time of incorporation, in addition to its capital, surplus in an amount of at least $75,000. The amount of the surplus is not required to be stated in the company's articles of incorporation.

(d) At the time of incorporation the minimum capital and surplus shall consist only of:

(1) United States currency;

(2) bonds of the United States, this state, or a county or municipality of this state; or

(3) government insured mortgage loans that are authorized by this chapter, with not more than 50 percent of the minimum capital invested in first mortgage real property loans.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 1, eff. September 1, 2009.

Sec. 884.055. SHARES OF STOCK. (a) The shares of stock of a stipulated premium company must have a par value of not less than $1 or more than $100.

(b) A stipulated premium company may issue and dispose of authorized shares for money or an instrument authorized for minimum capital under Section 884.054(d). After the company receives payment for a share of stock, the share is nonassessable.

(c) If all of the shares of stock authorized by the charter or an amendment to the charter are not subscribed and paid for when the charter is granted or the amendment is filed, respectively, the stipulated premium company shall file with the department a certificate authenticated by a majority of the directors stating the number of shares issued and the consideration received for those shares. The company shall file the certificate not later than the 90th day after the date of issuance of any of those remaining shares.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.056. APPLICATION FOR CHARTER. (a) To obtain a charter for a stipulated premium company under this chapter, the incorporators must pay a charter fee in an amount determined under Chapter 202 and file with the department:

(1) an application for charter on the form and containing the information prescribed by the department;

(2) the company's articles of incorporation; and

(3) an affidavit made by two or more of the incorporators that states that:

(A) the minimum capital and surplus requirements of Section 884.054 are satisfied;

(B) the capital and surplus is the bona fide property of the company; and

(C) the information in the application and articles of incorporation is true and correct.

(b) The department may require that the incorporators provide at their expense additional evidence of a matter required in the affidavit before the department takes further action on the application for the charter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.077, eff. April 1, 2009.

Sec. 884.057. ACTION BY COMMISSIONER AND DEPARTMENT AFTER FILING. (a) After the charter fee is paid and all items required for a charter under Section 884.056 are filed with the department, the commissioner shall approve or deny the charter application.

(b) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

(c) An interested party may participate fully and in all respects in any proceeding related to the application. An intervenor has the rights and privileges of a proper or necessary party in a civil suit in the courts of this state, including the right to be represented by counsel.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 14, eff. June 19, 2009.

Sec. 884.058. EXAMINATION AFTER DETERMINATION. After making a determination on an application under Section 884.057, the commissioner shall immediately make or cause to be made a full and thorough examination of the company. The company shall pay for the examination.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 15, eff. June 19, 2009.

Sec. 884.059. ACTION ON APPLICATION. (a) In considering the application, the commissioner, not later than the 30th day after the date on which a hearing under Section 884.058 is completed, shall determine if:

(1) the minimum capital and surplus required by Section 884.054 are the bona fide property of the stipulated premium company;

(2) the proposed officers, directors, and managing executives of the company have sufficient insurance experience, ability, and standing to make success of the proposed company

probable; and

(3) the applicants are acting in good faith.

(b) If the commissioner determines by an affirmative finding any of the issues under Subsection (a) adversely to the applicants, the commissioner shall reject the application in writing, giving the reason for the rejection. An application may not be granted unless it is adequately supported by competent evidence.

(c) If the commissioner does not reject the application under Subsection (b), the commissioner shall approve the application and on receipt of a fee in the amount determined under Chapter 202 shall provide to the incorporators a certified copy of the application, articles of incorporation, and submitted affidavit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.078, eff. April 1, 2009.

Sec. 884.060. BEGINNING OF CORPORATE EXISTENCE. On receipt of the certified copy of documents under Section 884.059(c), the stipulated premium company becomes a body politic and corporate and the incorporators may complete organization of the company under Section 884.061.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.061. ORGANIZATIONAL MEETING. (a) After receipt of the certified copy of documents under Section 884.059(c), the incorporators shall promptly call a meeting of the stipulated premium company's shareholders. The shareholders shall:

(1) adopt bylaws to govern the company; and

(2) elect the company's initial board of directors.

(b) The directors elected under this section serve until directors are first elected under Section 884.153.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 884.101. SCHEDULE OF ASSETS. Two or more officers of the stipulated premium company shall execute and file with the department:

(1) a sworn schedule of each of the assets of the company exhibited to the department during the examination under Section 884.057 showing the value of the assets; and

(2) a sworn statement that the assets are bona fide, are the unconditional and unencumbered property of the company, and are worth the amount stated in the schedule.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.102. TEMPORARY CERTIFICATE OF AUTHORITY. (a) If the commissioner makes a determination favorable to the applicants on all issues under Section 884.059(a), the department, on compliance with the requirements of Section 884.101, shall promptly issue to the company a temporary certificate of authority. The temporary certificate must limit the activities of the company solely to negotiating and obtaining a direct reinsurance agreement, as described by Subchapter L, with a company that on August 28, 1961, was chartered and doing business under former Chapter 14 of this code.

(b) A temporary certificate of authority expires on the first anniversary of its date of issuance unless the department renews it for an additional one-year period.

(c) On the expiration of a temporary certificate of authority the incorporators of the stipulated premium company to which the certificate was issued shall promptly surrender the company's charter to the department for cancellation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.103. REGULAR CERTIFICATE OF AUTHORITY. (a) If a direct reinsurance agreement described by Section 884.102(a) is entered into while the temporary certificate of authority is valid, the department shall promptly issue to the stipulated premium company a regular certificate of authority to transact the business of insurance in this state in accordance with Subchapter L.

(b) The regular certificate of authority shall provide for the

kind of insurance business that the stipulated premium company may conduct. If the other party to the agreement conducts the business of life insurance or is a burial association, the stipulated premium company is entitled to write life insurance policies under this chapter. If the other party is permitted under its charter to write accident insurance, health and accident insurance, or life, health, and accident insurance, the stipulated premium company is entitled to write that kind of insurance.

(c) If a stipulated premium company that holds a regular certificate of authority enters into a direct reinsurance agreement with another company engaged in business under Chapter 887 or 888, the stipulated premium company's certificate of authority shall be amended to authorize the writing of any kind of insurance authorized for the other company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. MANAGEMENT OF STIPULATED PREMIUM COMPANY

Sec. 884.151. CONDUCTING SHAREHOLDERS' MEETING. (a) At a meeting of a stipulated premium company's shareholders, each shareholder is entitled to one vote for each fully paid share of stock appearing in the shareholder's name on the company's books.

(b) A shareholder may vote in person or by written proxy.

(c) At a shareholders' meeting, a quorum is any number of shareholders whose cumulative stock ownership in the stipulated premium company represents a majority of the company's paid up capital stock.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.152. BOARD OF DIRECTORS. (a) Subject to the bylaws of the stipulated premium company, as adopted or amended by the shareholders or directors, the board of directors has full management and control of the company.

(b) The board consists of not fewer than five directors.

(c) The directors shall keep a full and correct record of the board's transactions. The shareholders may inspect those records during business hours.

(d) The directors shall fill a vacancy that occurs on the board

or in any office of the company.

(e) A majority of the board is a quorum.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.153. ELECTION OF DIRECTORS. (a) On the second Tuesday of April of each year the shareholders of a stipulated premium company shall meet at the company's home office and shall elect the company's board of directors to serve one-year terms beginning immediately after the election.

(b) If the shareholders do not elect directors at that meeting, the shareholders may elect the directors at a special shareholders' meeting called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.154. OFFICERS. (a) A stipulated premium company's directors shall choose one of the directors to serve as the company's president.

(b) Other officers of the stipulated premium company shall be chosen in accordance with the bylaws of the company. An officer other than the president is not required to be a director or a shareholder unless such a qualification is required by the company's bylaws.

(c) The duties and compensation of a stipulated premium company's officers are as stated in the company's bylaws. If the bylaws do not state the duties or compensation of the officers, the directors shall establish the duties or compensation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.155. AMENDMENT OF CHARTER OR ARTICLES. (a) The shareholders of a stipulated premium company by resolution may amend the company's charter or articles of incorporation at any shareholders' meeting.

(b) The amendment and a copy of the resolution certified by the president and secretary of the stipulated premium company shall be filed and recorded in the same manner as the charter.

(c) An amendment of the charter or articles takes effect when it is recorded.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. CAPITAL AND SURPLUS

Sec. 884.201. FORM OF CAPITAL AND SURPLUS. After a charter is granted under this chapter, the stipulated premium company:

(1) shall maintain the company's minimum capital at all times in a form described by Section 884.054(d); and

(2) may invest the company's surplus as provided by Sections 425.203-425.228.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.079, eff. April 1, 2009.

Sec. 884.202. INCREASE OR DECREASE OF CAPITAL STOCK. (a) At any shareholders' meeting, shareholders of a stipulated premium company whose cumulative stock ownership represents a majority of the capital stock of the company by resolution may increase or decrease the amount of the company's capital stock subject to this section.

(b) Capital stock may be decreased to an amount that is less than $200,000 only to avoid insolvency as provided by Section 884.205.

(c) Two officers of the stipulated premium company must sign and acknowledge a statement of the increase or decrease. The acknowledged statement and a certified copy of the resolution shall be filed and recorded in the same manner as the charter.

(d) For an increase or decrease of capital stock, the stipulated premium company may require the return of the original certificates evidencing the stock in exchange for new certificates. An issuance of new certificates that results in a transfer of stock is subject to Section 884.254.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 2, eff.

September 1, 2009.

Sec. 884.203. PUBLIC OFFERING OF CAPITAL STOCK. A stipulated premium company may not make to the public an offering that is subject to The Securities Act (Title 12, Government Code), of any of its capital stock before the company possesses:

(1) capital in an amount of at least $100,000; and

(2) unencumbered surplus in an amount of at least $100,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.35, eff. January 1, 2022.

Sec. 884.204. COMPANY'S REPURCHASE OF STOCK. (a) Subject to Section 884.202, a stipulated premium company may purchase in the name of the company outstanding shares of the company's capital stock as provided by the Texas Business Corporation Act.

(b) A purchase of stock under this section is not considered an investment and does not violate the provisions of this code relating to eligible investments for a stipulated premium company.

(c) A stipulated premium company that purchases stock under this section shall file with the department not later than the 10th day after the date of the purchase a statement that contains the name of each shareholder from whom the shares were purchased and the sum of money paid for those shares.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.205. IMPAIRMENT OF CAPITAL STOCK. (a) If, when computing the liabilities of a stipulated premium company under this chapter, one-third or more of the company's capital stock becomes impaired, the company shall correct the impairment not later than the 60th day after the date the company becomes subject to this subsection by:

(1) reducing the company's capital stock;

(2) adjusting the premium rate if permitted by policy contract; or

(3) both reducing capital stock and adjusting the premium rate.

(b) If, when computing a stipulated premium company's reserve liability under this chapter, 50 percent or more of the company's capital stock becomes impaired, the commissioner may apply to a court for the appointment of a receiver to wind up the affairs of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 3, eff. September 1, 2009.

Sec. 884.206. COMMISSIONER MAY REQUIRE LARGER CAPITAL AND SURPLUS AMOUNTS. (a) The commissioner by rule may require a stipulated premium company that writes or assumes life insurance, annuity contracts, or accident and health insurance for a risk to one person in an amount that exceeds $10,000 to maintain capital and surplus in amounts that exceed the minimum amounts required by this chapter because of:

(1) the nature and kind of risks the company underwrites or reinsures;

(2) the premium volume of risks the company underwrites or reinsures;

(3) the composition, quality, duration, or liquidity of the company's investment portfolio;

(4) fluctuations in the market value of securities the company holds; or

(5) the adequacy of the company's reserves.

(b) A rule adopted under Subsection (a) must be designed to ensure the financial solvency of a stipulated premium company for the protection of policyholders and may not require that the total admitted assets of a company exceed 106 percent of its total liabilities.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.207. NEW BUSINESS PROHIBITED WHEN CAPITAL REQUIREMENTS NOT SATISFIED. (a) A stipulated premium company may not write new

business in this state unless the company possesses the minimum capital required under this chapter.

(b) A stipulated premium company subject to Section 884.205(a) that does not correct the impairment on or before the date provided by that subsection may not write new business in this state after that date until the impairment is corrected.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. GENERAL POWERS AND DUTIES OF STIPULATED PREMIUM COMPANY

Sec. 884.251. DEPOSIT OF COMPANY'S FUNDS. (a) A director, member of a committee, officer, or clerk of a stipulated premium company who has the duty of handling or investing the company's funds shall deposit or invest those funds in the corporate name of the company.

(b) An individual described by Subsection (a) may not:

(1) borrow the funds of the stipulated premium company;

(2) have an interest in any way in a loan, pledge, security, or property of the company, except as shareholder; or

(3) take or receive for the individual's use a fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.252. PAYMENTS TO OFFICERS, DIRECTORS, AND EMPLOYEES. (a) Unless first authorized by a vote of a stipulated premium company's board of directors or a committee of the board that has the duty of authorizing the payment, the company may not pay:

(1) any compensation or emolument to an officer or director of the company; or

(2) compensation or emolument in an amount that exceeds $50,000 in any year to an individual, firm, or corporation that is not an officer or director of the company.

(b) This section does not prevent a stipulated premium company from contracting with its agents for the payment of renewal commissions.

(c) The shareholders of a stipulated premium company may authorize the creation of one or more plans for the payment of

pensions, retirement benefits, or group insurance for its officers and employees. The shareholders may delegate to the company's board of directors the power and duty to prepare, effect, finally approve, administer, and amend a plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.253. DIVIDENDS. (a) A stipulated premium company may declare or pay a dividend to its shareholders only from the profits made by the company, not including surplus from the sale of stock.

(b) A stipulated premium company may not pay a dividend, other than a stock dividend, unless:

(1) any deficiency reserve under Section 884.453 has been eliminated; and

(2) the capital of the company is maintained in an amount of at least $100,000.

(c) A stipulated premium company that complies with Subsection (b) may pay cash dividends in accordance with Sections 403.001 and 403.052.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.080, eff. April 1, 2009.

Sec. 884.254. TRANSFER OF STOCK. (a) A stipulated premium company's shares of stock are transferable on the company's books, in accordance with law and the bylaws of the company, by the owner or the owner's authorized agent.

(b) Each person who becomes a shareholder by a transfer of shares succeeds to all rights of the former holder of those shares, by reason of that ownership.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.255. USE OF CERTAIN TERMS IN ADVERTISING. A stipulated premium company may not use in its advertising or representation of a policy the words "legal reserve company," "stock

company," "old line legal reserve company," or words of similar meaning that might lead the public to believe that a policy provides nonforfeiture values.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.256. ANNUAL STATEMENT; FILING FEE. (a) Except as provided by Section 884.406, not later than March 31 of each year a stipulated premium company shall:

(1) prepare a statement showing the condition of the company on December 31 of the preceding year; and

(2) deliver the statement to the department accompanied by a filing fee in the amount determined under Chapter 202.

(b) The statement must be under the oath of two of the stipulated premium company's officers and must show in detail:

(1) the character of the company's assets and liabilities on December 31 of the preceding year;

(2) the amount and character of business transacted and money received during the year and how money was spent during the year;

(3) the number and amount of the company's policies in force on that date; and

(4) the total amount of the company's policies in force on that date.

(c) For purposes of Subsection (b), an insured under a family group policy to which Section 884.451(b) applies is accounted for only if a reserve is required for that insured under that section.

(d) The department shall prescribe the form of the statement.

(e) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Sections 201.001 and 201.002 apply to fees collected under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.081, eff. April 1, 2009.

SUBCHAPTER G. POWERS AND DUTIES RELATING TO COVERAGES

Sec. 884.301. REINSURANCE OF POLICY. (a) A stipulated premium company may reinsure on an individual indemnity policy basis any risk or part of a risk that the company underwrites or assumes.

(b) The reinsurer must be a legal reserve company that:

(1) is authorized to write life, health, and accident insurance in this state; and

(2) has capital and surplus in an amount of at least $200,000.

(c) After reinsuring under Subsection (a), a stipulated premium company may take a credit for the reinsurance against the aggregate reserves required by Subchapter J.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.302. LIMITS ON LIFE INSURANCE. (a) Until the amount of the surplus of a stipulated premium company is at least $50,000, the company may not insure one life for more than $1,000 in the event of death from natural causes or more than $2,000 in the event of death from accidental causes, unless the company reinsures the amount of coverage greater than that applicable amount under Section 884.301.

(b) Subsection (a) does not apply to a policy of insurance assumed by a stipulated premium company under Subchapter L.

(c) If the amount of the surplus of a stipulated premium company is at least $50,000 but less than $200,000, the company shall reinsure the insurance amount that exceeds $15,000 on a life insurance risk on one life.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.303. ISSUANCE OF LIFE INSURANCE POLICIES BY CERTAIN COMPANIES. (a) A stipulated premium company that possesses capital and unencumbered surplus in a combined amount of at least $100,000 may issue life insurance policies as authorized for a company operating under Chapter 841.

(b) A stipulated premium company may not insure one life under this section for more than $25,000, except as provided by Section 884.304 or Subchapter I.

(c) A stipulated premium company may issue a policy under this

section only on an endowment or limited pay basis.

(d) A stipulated premium company must reserve and reinsure a policy issued under this section as required for a company operating under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 4, eff. September 1, 2009.

Sec. 884.304. LIFE INSURANCE OF MORE THAN $25,000.(a) Except as provided by this section, a stipulated premium company may not assume liability on a life insurance risk on one life in an amount that exceeds $25,000.

(b) If a stipulated premium company assumes a life insurance risk under a life insurance policy, the initial death benefit of $25,000 or less may increase to an amount greater than $25,000 subject to this section.

(c) For each policy year of a policy for which, after issuance, the death benefit exceeds $25,000, the amount of the increase of the death benefit at the end of that policy year from the end of the preceding policy year may not exceed the greater of:

(1) the amount computed using the maximum rate of increase provided by the policy, which rate may not exceed five percent a year, compounded annually; or

(2) the amount computed using the consumer price index for all urban consumers for all items and for all regions of the United States combined, as determined by the United States Department of Labor, Bureau of Labor Statistics, on September 30 of the year preceding the year in which the policy year ends, compounded annually.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 5, eff. September 1, 2009.

Sec. 884.305. PREMIUMS ON LIFE INSURANCE POLICIES. The premiums charged on a life insurance policy issued by a stipulated

premium company may not be less than the renewal net premium computed under the reserve standard adopted by the stipulated premium company and approved by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.306. LIFE INSURANCE CONTRACT. A life insurance policy issued by a stipulated premium company constitutes the entire contract, except that if a copy of the application for the policy is attached to the policy, the policy and application constitute the entire contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.307. ISSUANCE OF ANNUITY CONTRACT. (a) A stipulated premium company that possesses capital and unencumbered surplus in a combined amount of at least $100,000 more than all of its liabilities, including contingent liabilities, may issue annuity contracts as authorized by Chapters 3 and 1701 and Title 7.

(b) The stipulated premium company shall maintain reserves on the contracts in accordance with the statutes governing reserves on equivalent contracts issued by a legal reserve company.

(c) A stipulated premium company that writes annuity contracts under this section shall maintain capital and unencumbered surplus in at least the combined amount required by Subsection (a).

(d) A stipulated premium company that does not comply with Subsection (c) is considered to be insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.082, eff. April 1, 2009.

Sec. 884.308. LIMITS ON AMOUNT OF ACCIDENT AND HEALTH INSURANCE POLICIES. (a) A stipulated premium company may not assume liability on or indemnify one person for any risk under one or more accident, health, or hospitalization insurance policies, or any combination of those policies in an amount that exceeds $10,000, unless the amount

of the issued, outstanding, and stated capital of the company is at least $700,000.

(b) A stipulated premium company that before January 1, 2002, ceases to assume liability on, or indemnify any risk under a policy described by Subsection (a) in the amount specified by Subsection (a), and notifies the commissioner of that action is exempt from the requirements of Subsection (a) until the date the company resumes writing those policies. A company that resumes assuming liability on or indemnifying risks under these policies shall comply with Subsections (a) and (c). For purposes of this subsection, renewal of a policy is not considered to be writing a policy.

(c) A stipulated premium company that is exempt under Subsection (b) shall maintain its issued, outstanding, and stated capital in an amount that is at least:

(1) $100,000, if the last date that the company writes a policy described by Subsection (a) is before January 1, 1993;

(2) $160,000, if the last date that the company writes a policy described by Subsection (a) is during 1993;

(3) $220,000, if the last date that the company writes a policy described by Subsection (a) is during 1994;

(4) $280,000, if the last date that the company writes a policy described by Subsection (a) is during 1995;

(5) $340,000, if the last date that the company writes a policy described by Subsection (a) is during 1996;

(6) $400,000, if the last date that the company writes a policy described by Subsection (a) is during 1997;

(7) $460,000, if the last date that the company writes a policy described by Subsection (a) is during 1998;

(8) $520,000, if the last date that the company writes a policy described by Subsection (a) is during 1999;

(9) $580,000, if the last date that the company writes a policy described by Subsection (a) is during 2000; and

(10) $640,000, if the last date that the company writes a policy described by Subsection (a) is during 2001.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.309. ADJUSTMENT OF PREMIUMS. (a) The board of directors of a stipulated premium company by resolution may, subject

to this chapter, increase or otherwise adjust a rate of premium on any insurance policy it issues, reinsures, or assumes when, in the board's discretion, the adjustment is necessary.

(b) In making a comprehensive adjustment of one or more classes of the stipulated premium company's policies, the board of directors may provide that an insured who is required to pay an increased premium may choose to pay a part or none of the amount of the increase and receive a reduction of the corresponding insurance benefits proportionate to the value of the unpaid part of the increase.

(c) This section does not apply to a policy:

(1) issued by a stipulated premium company that on the date the policy is issued possesses an unencumbered surplus in an amount of at least $50,000;

(2) on which the stipulated premium company has relinquished the right to adjust rates; and

(3) under which the premium for life insurance requires the payment of a premium for life insurance that alone is sufficient to maintain reserves at least equal to those computed on the basis of the 1958 Commissioners Standard Ordinary Table of Mortality with interest not to exceed 3-1/2 percent a year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.310. AGENT. Each agent of a stipulated premium company must be licensed under Title 13.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.221(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.083, eff. April 1, 2009.

Sec. 884.311. LAW GOVERNING INVESTMENTS; ELECTION. (a) A stipulated premium insurance company issuing life, health, or accident coverages or maintaining policies in force that were issued in accordance with Subchapter I may elect that the company's investments and transactions be governed by Subchapter C, Chapter

425.

(b) The election under Subsection (a) must be made by written notice to the commissioner and is effective on the first day of the calendar quarter following the day on which the notice is filed with the commissioner.

(c) After the second anniversary of the effective date of an initial election authorized by this section, the stipulated premium insurance company may elect that the company's investments and transactions be governed by Sections 425.203-425.228.

(d) The subsequent election under Subsection (c) must be made by written notice to the commissioner and is effective on the first day of the calendar quarter following the day on which the notice is filed with the commissioner.

(e) After a stipulated premium insurance company has made a subsequent election under Subsection (c), the company may make another election under this section, subject to the approval of the election by the commissioner.

Added by Acts 2003, 78th Leg., ch. 487, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.084, eff. April 1, 2009.

SUBCHAPTER H. CONTENTS OF APPLICATIONS AND POLICIES

Sec. 884.351. GENERAL REQUIREMENTS FOR POLICY AND APPLICATION FORMS. (a) Each stipulated premium company policy or application form must contain on its face immediately after the name of the company "A Stipulated Premium Company."

(b) A stipulated premium company shall provide for an adjustment of the premium rate on the insurance contract in each insurance policy it issues, reinsures, or assumes that is subject to a premium adjustment under Section 884.309. Each policy subject to a premium adjustment under that section must contain on the front of the policy a statement that the premium is subject to readjustment.

(c) A stipulated premium company's policy of insurance may not contain "Approved by the Commissioner of Insurance" or words of a similar meaning.

(d) A life insurance policy issued by a stipulated premium company or an application for the policy may not contain language or

be in a form that misleads the policyholder or applicant about the kind of insurance offered or the rights or benefits of the policyholder or applicant.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.352. REQUIREMENTS FOR ACCIDENT, HEALTH, AND HOSPITALIZATION INSURANCE POLICIES. An accident, health, or hospitalization insurance policy issued, reinsured, or assumed by a stipulated premium company must contain a premium redetermination clause that permits the company's board of directors to adjust the premium rate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.353. LIFE INSURANCE APPLICATION FORMS. (a) An application for a life insurance policy issued by a stipulated premium company must be signed by the applicant. If the applicant is a minor, the application may be signed by a parent or guardian.

(b) The application for a policy that provides that a misstatement relating to the applicant's health or physical condition may void the policy within the contestable period must state that provision in language approved by the department. The statement must be in not less than 10-point type.

(c) In the absence of fraud each statement in an application is regarded as a representation and not a warranty.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.354. LIFE INSURANCE POLICY FORMS; INCONTESTABILITY. (a) Each life insurance policy issued by a stipulated premium company must state on the front page:

(1) the amount of death benefit to be paid; and

(2) the circumstances or conditions under which the benefit is to be paid.

(b) Each condition of a life insurance policy must be stated in the policy.

(c) A life insurance policy must provide that a policy in force

for two years becomes incontestable, except for nonpayment of premiums, on the second anniversary of the date of issuance, if the insured does not die before that date.

(d) A life insurance policy must provide that if the age of the insured is misstated, the amount of insurance is the amount that the premium paid would have purchased if the age had been stated correctly, based on premium rates in effect when the insured dies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.355. DESIGNATION OF BENEFICIARIES. The designation of a beneficiary under a life insurance policy issued by a stipulated premium company must comply with Subchapter B, Chapter 1103, and Subchapter A, Chapter 1104.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.356. LIFE INSURANCE BENEFIT REDUCTIONS OR INCREASES. (a) A life insurance policy may provide for reduced benefits if the insured:

(1) dies or is injured while engaged in:

(A) military, naval, or aerial service or aerial flight during peace or war; or

(B) a hazardous occupation specified in the policy; or

(2) dies by the insured's own hand, regardless of whether the insured is sane or insane.

(b) The front page of a life insurance policy must call attention to any reduction or exclusion of benefits provided by the policy. The circumstances or conditions under which the reduction or exclusion applies must be stated plainly in the policy.

(c) If a policy that provides natural death benefits contains a provision for reducing the greatest death benefit provided by the policy for a specified insured for a reason other than a reason specified by Subsection (a):

(1) the reduced death benefit for the insured must at all times when the reduction is in effect equal or exceed 120 percent of the total premium paid on that policy by the insured; and

(2) the reduction must end before the fifth anniversary of the date the policy is issued.

(d) Subsection (c) does not apply to a life insurance policy on which the reduction of the death benefit does not apply at the time of the death of the insured.

(e) If a life insurance policy provides for an increase of the initial amount of the death benefit for a specified insured one or more times during the first five years of the policy, the amount of death benefit for the insured must at all times during the period of the increasing benefit equal at least 120 percent of the premiums paid on that policy by the insured during the period of the increase.

(f) Subsection (e) does not apply to a life insurance policy that has been in force for more than five years from the date the policy is issued.

(g) This section does not apply to a family group life insurance policy described by Section 884.451(b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.357. FORM APPROVAL. The approval of a form of an insurance policy issued by a stipulated premium company is governed by Chapter 1701.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.085, eff. April 1, 2009.

SUBCHAPTER I. AUTHORITY TO ISSUE OTHER COVERAGE

Sec. 884.401. AUTHORITY CUMULATIVE. The authority provided by this subchapter is in addition to the authority provided by this chapter for the issuance of other insurance coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.402. ADDITIONAL COVERAGE. A stipulated premium company that, at the time it begins to issue coverages under this subchapter, possesses the amounts of capital and unencumbered surplus equal to or greater than the corresponding amounts required for organization of a life and health company under Sections 841.052,

841.054, 841.204, 841.205, 841.301, and 841.302 may, subject to Section 884.403:

(1) issue any kind of life insurance coverage authorized by Chapter 3, 841, or 1701 or Title 7;

(2) issue any kind of health or accident insurance coverage authorized by:

(A) Title 7;

(B) Chapter 3, 704, 841, 846, 982, 1201, 1202, 1203, 1210, 1251, 1252, 1253, 1254, 1301, 1351, 1354, 1359, 1364, 1368, 1501, 1504, 1505, 1552, 1575, 1576, 1579, 1581, 1625, 1651, 1652, or 1701;

(C) Chapter 493, other than Section 493.051(b);

(D) Subchapter B, Chapter 38, Subchapter D, Chapter 425, Subchapter A or F, Chapter 1204, Subchapter A, Chapter 1273, Subchapter A, B, or D, Chapter 1355, Subchapter A, Chapter 1366, or Subchapter A, Chapter 1507;

(E) Section 1204.151, 1204.153, 1204.154, or 1451.051; or

(F) Chapter 177, Local Government Code; or

(3) issue life insurance coverage through policies without cash surrender values or nonforfeiture values and that exceed $10,000 on one life.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.086, eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.11, eff. September 1, 2017.

Sec. 884.403. POLICY REQUIREMENTS. (a) A policy issued under Section 884. 402(1) or (2) must be reserved and must comply with the law, including rules, applicable to a policy issued by a company authorized to engage in or engaging in the business of insurance under Chapter 841.

(b) A policy of life insurance issued under Section 884.402(3):

(1) must be reserved in accordance with a reserve table adopted by the department as appropriate for that type of policy;

(2) must contain:

(A) on its first page, a notice that the policy does not provide cash surrender values or other paid up nonforfeiture benefits or loan values; and

(B) provisions for a grace period for the payment of each premium after the first payment during which the policy remains in force; and

(3) may not be approved until the commissioner has adopted the standard of valuation, including an appropriate mortality table and interest rate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.404. CAPITAL AND SURPLUS REQUIREMENTS. (a) A stipulated premium company that issues any insurance coverage under this subchapter shall maintain at all times the capital and unencumbered surplus required under Section 884.054.

(b) A stipulated premium company that does not comply with this section is considered to be impaired unless it reinsures all insurance coverages written under this subchapter with a company that:

(1) is authorized to engage in the business of insurance in this state under this chapter or Chapter 841 or 882 or is an accident insurance company, health insurance company, or life insurance company authorized to engage in the business of insurance in this state under Chapter 982, as appropriate; and

(2) complies with the requirements prescribed by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 6, eff. September 1, 2009.

Sec. 884.405. AGENT; LICENSE. (a) An agent may not solicit or write any coverage authorized by this subchapter unless the agent:

(1) holds a license issued under Chapter 4054; and

(2) is appointed by the stipulated premium company for which the agent is soliciting and writing coverage under this subchapter.

(b) The commissioner may issue under Chapter 4054 a license for an agent to solicit and write any coverage authorized by this subchapter for a stipulated premium company. Chapter 4054 applies to the stipulated premium company as if the company were a legal reserve life insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.087, eff. April 1, 2009.

Sec. 884.406. ANNUAL STATEMENT. A stipulated premium company that issues or maintains in force policies under this subchapter shall file the annual statement required by Section 884.256 not later than March 1 of each year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.407. RELATIONSHIP OF SUBCHAPTER TO OTHER PROVISIONS OF CHAPTER. (a) Section 884.305 and Subchapter J do not apply to a policy issued under this subchapter.

(b) The provisions of Sections 884.309 and 884.351 relating to the adjustment of premiums do not apply to a life insurance policy issued under this subchapter.

(c) The department may not consider losses sustained by a stipulated premium company on a policy issued under this subchapter when applying Section 884.206 or 884.308 to the company's life insurance policies not issued under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.408. IMPLEMENTATION OF SUBCHAPTER. The commissioner shall adopt reasonable rules to implement this subchapter, including:

(1) rules adopting mortality and reserving tables required by Sections 884.403(b)(1) and (3); and

(2) reasonable and necessary rules for the content, form, and style of the notice and terms of the grace period required under Section 884.403(b)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER J. RESERVES

Sec. 884.451. RESERVES ON INDIVIDUAL AND GROUP LIFE INSURANCE POLICIES. (a) A stipulated premium company shall maintain reserves on each of its individual life insurance policies in accordance with the reserve standard adopted by the company and approved by the department. The standard must provide reserves that in the aggregate are equal to at least the reserve amounts computed using the 1956 Chamberlain Reserve Table with interest that does not exceed 3-1/2 percent per year. A stipulated premium company may use the 1956 Chamberlain Reserve Table.

(b) A stipulated premium company shall maintain reserves on family group life insurance policies on which a group premium is charged and under which the amount of a benefit depends on the sequence of deaths. The amount of the reserves must be equal to the reserves that would be required under Subsection (a) on individual life insurance policies on the lives of:

(1) the two oldest living members of the family group, with the amount of insurance for those two members determined assuming that the elder of the two will die first; or

(2) the living members of the family group, with the amount of insurance for each member of the family group determined assuming that each member will die first.

(c) A stipulated premium company may select the method to be used to compute the amount of the reserves under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.452. RESERVES ON ACCIDENT AND HEALTH INSURANCE POLICIES. A stipulated premium company shall maintain reserves on each accident and health insurance policy issued by the company in the manner required of a company authorized to issue that type of policy under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.453. DEFICIENCY RESERVE. (a) On the effective date

of a direct reinsurance agreement under Subchapter L, the stipulated premium company shall compute:

(1) the amount of the reserves required under this chapter on the policies assumed under the agreement; and

(2) the amount of the net assets transferred to the stipulated premium company under the agreement.

(b) If the amount of the net assets transferred is not equal to the amount of the required reserve, the difference shall be designated and carried as a deficiency reserve. The deficiency reserve does not create insolvency of the stipulated premium company if the company, beginning with the first calendar year that begins after the effective date of the direct reinsurance agreement, reduces the computed deficiency amount, including interest at the assumed rate, by at least 10 percent during each year as computed on December 31 of that year. The reduction must result in the deficiency reserve being eliminated on December 31 of the year for which the 11th annual statement is filed after the company enters into the direct reinsurance agreement. The required reduction in the deficiency reserve may not exceed the cumulative aggregate amount of 10 percent a year.

(c) If in any year a stipulated premium company has not reduced its deficiency reserve as required by Subsection (b), the company's board of directors by appropriate action shall increase premium rates by advancing the age of each insured at the date the insured's policy is issued or otherwise equitably adjust premium rates to correct that failure. The board shall take that action not later than the 30th day after the date the reserves are computed.

(d) If the board does not comply with Subsection (c), the stipulated premium company is considered to be insolvent for purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.454. COMMISSIONER'S COMPUTATION OF RESERVE LIABILITY. (a) As soon as practical each year, the department shall compute the reserve liability of each stipulated premium company that has outstanding insurance policies.

(b) To make the computations, the department:

(1) shall use the net premium basis in accordance with the

reserve table and interest rate adopted by the stipulated premium company and approved by the commissioner; and

(2) may use group methods and approximate averages for fractions of a year.

(c) The reserve liability may be computed on not more than a one-year preliminary term with allowance for any deficiency reserve under Section 884.453.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.455. REQUIRED SECURITIES. The commissioner shall require that a stipulated premium company have securities of the class and character required by Sections 425.203-425.228 in the amount of the reserve liability computed for the company under Section 884.454 less any deficiency reserve under Section 884.453 after all the debts and claims against the company and the minimum capital required by this chapter have been applied.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.088, eff. April 1, 2009.

Sec. 884.456. INCREASE OF RESERVES. (a) If a stipulated premium company does not have the reserves required by this subchapter and the minimum capital required under this chapter, the company's board of directors by appropriate action shall increase premium rates on policies in force by advancing the age of each insured at the date the insured's policy is issued or otherwise equitably adjust premium rates to correct the reserve inadequacy. The board shall take that action not later than the 30th day after the date the reserves are computed.

(b) If the board of directors does not comply with Subsection (a), the stipulated premium company is treated as if the company had not corrected an impairment under Section 884.205(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. DIRECT REINSURANCE AGREEMENTS

Sec. 884.501. DIRECT REINSURANCE AGREEMENTS BETWEEN STIPULATED PREMIUM COMPANIES. (a) Stipulated premium companies organized under this chapter may enter into a total or partial direct reinsurance agreement if the company assuming the policies under the agreement is authorized to transact the kinds of insurance provided by those policies.

(b) Before a stipulated premium company may enter into a total direct reinsurance agreement:

(1) the company must submit the agreement to the department; and

(2) the department must approve the agreement as fully protecting the interests of all the holders of policies being assumed.

(c) A partial direct reinsurance agreement shall be filed with the department before the effective date of the agreement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.502. DIRECT REINSURANCE AGREEMENT WITH LEGAL RESERVE COMPANY. (a) A stipulated premium company may enter into a total or partial direct reinsurance agreement with a legal reserve life insurance company authorized to engage in the business of insurance in this state.

(b) Before a reinsurance agreement under this section may take effect, it must be:

(1) approved by a majority vote of the board of directors of each company;

(2) submitted to the department; and

(3) approved by the department as complying with Section 884.503 or 884.504, as applicable.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.503. DIRECT REINSURANCE OF ACCIDENT OR HEALTH INSURANCE POLICIES. (a) In the direct reinsurance of a stipulated premium accident or health insurance policy under Section 884.502, the company assuming the policy under the agreement must assume the exact obligations of the policy.

(b) If a policy is non-cancellable or guaranteed renewable, the assuming company may include in the assumption certificate a premium redetermination clause instead of the clause required by Section 884.352.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.504. DIRECT REINSURANCE OF CERTAIN POLICIES. (a) A reinsurance agreement authorized by Section 884.502 for the direct reinsurance of life insurance policies or a combination of life and accident or health insurance policies must contain provisions that comply with this section.

(b) If the legal reserve life insurance company is the reinsurer and issues an assumption certificate providing whole life coverage for the life benefit, the policyholder is not entitled to receive the policyholder's individual reserve in cash by surrendering the assumption certificate.

(c) If the reserves and premium under the stipulated premium policy are inadequate to provide whole life coverage under the legal reserve assumption certificate and a term coverage assumption is made available, each affected policyholder must be allowed to select:

(1) payment in cash of the amount of the individual reserve, reduced by the deficiency reserve, if any, to the policyholder on surrender of the policy;

(2) an assumption certificate of another stipulated premium company engaging in the business of insurance under this chapter; or

(3) the legal reserve life insurance company's assumption certificate for term coverage that is renewable for the life of the insured without evidence of insurability and the rate for which is based on the legal reserve table selected by the assuming company at the attained age of the insured on the date of the renewal increased by an appropriate expense factor.

(d) To exercise the option described by Subsection (c)(1) the policyholder must request that option not later than the 60th day after the date that the notice of the options available to the policyholder is mailed. A policyholder is entitled to exercise the option under Subsection (c)(2) or (3) not later than the 60th day after the date the assumption certificate of the legal reserve life insurance company is mailed to the policyholder.

(e) If the legal reserve life insurance company makes term coverage available, the company shall use each policyholder's individual reserve, less the amount of the deficiency, if any, as:

(1) a reserve credit to permit the legal reserve assumption certificate to be backdated to the earliest date the reserve credit allows; or

(2) an annuity to reduce the required premium during the initial period of the term coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.505. EFFECT OF TOTAL DIRECT REINSURANCE AGREEMENT. (a) A stipulated premium company that enters into a total direct reinsurance agreement under Section 884.501 or 884.502 under which it is the ceding company shall promptly surrender its certificate of authority to the department.

(b) The stipulated premium company's shareholders and board of directors shall effect the company's dissolution.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.506. ASSUMPTION CERTIFICATE. The company assuming a policy under a partial direct reinsurance agreement shall issue to the holder of the assumed policy an assumption certificate to be attached to the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER L. DIRECT REINSURANCE AGREEMENTS WITH MUTUAL ASSESSMENT COMPANIES

Sec. 884.551. DEFINITIONS. In this subchapter:

(1) "Mutual assessment company" means any entity regulated under Chapter 887 or 888.

(2) "Net assets" means a company's funds that are available for the payment of the company's obligations in this state, including uncollected premiums that are not more than three months past due, after the deduction of all unpaid losses and claims, claims for losses, and all other debts.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.552. AUTHORITY TO CONTRACT. A mutual assessment company may enter into a direct reinsurance agreement with a stipulated premium company in accordance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.553. REINSURANCE AGREEMENT. (a) A reinsurance agreement under this subchapter must provide that the stipulated premium company is to assume the policies of the mutual assessment company.

(b) The reinsurance agreement must provide for the computation, on the effective date of the agreement, of:

(1) the amount of the net assets, including mortuary and expense funds, of the mutual assessment company that is to be transferred to the stipulated premium company after the payment of all liabilities;

(2) the amount of the required reserves to be established under the reserve and interest table used in the agreement; and

(3) the amount of any deficiency reserve resulting from the computation of Subdivisions (1) and (2).

(c) The deficiency reserve is subject to Section 884.453, except that instead of reducing the deficiency as required by that section, the reinsurance agreement may provide for immediate premium rate adjustments, in accordance with accepted actuarial practices and standards, to eliminate the deficiency at the time of reinsurance or during the period allowed for eliminating the deficiency under Section 884.453.

(d) For purposes of computing the reserves of members of a mutual assessment company, the total net assets of the company shall be apportioned among the members assessed. The percentage of the total amount of the net assets allotted to a member is computed by dividing the amount of the required reserve for that member insured under the reinsurance agreement by the total amount of the required reserve for all members under the agreement.

(e) The reinsurance agreement must provide that each policyholder who is dissatisfied with the agreement and who does not

want to accept the assumption certificate offered by the stipulated premium company is entitled to receive the amount of the reserve under the policyholder's policy reduced by the amount of any deficiency reserve applicable to the policy. The policyholder must make a written request for that option to the stipulated premium company not later than the 60th day after the date the assumption certificate is mailed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.554. APPROVAL BY DEPARTMENT. (a) A mutual assessment company's board of directors may determine by a majority vote to submit a proposed direct reinsurance agreement to the members of the company. Before the agreement may be submitted to the members, the board must prepare detailed plans for the reinsurance and must submit the agreement to the department.

(b) If the department determines that the proposed direct reinsurance agreement complies with this chapter, the department shall approve the agreement for submission to the members of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.555. MEMBERS MEETING; NOTICE. (a) After the department approves a proposed direct reinsurance agreement, the board of directors of the mutual assessment company shall:

(1) call a meeting of the company's members in accordance with the company's bylaws for voting on ratification of the direct reinsurance agreement; and

(2) mail to each member:

(A) a copy of the proposed agreement; and

(B) a copy of the notice of the meeting.

(b) The meeting may not be held before the 16th day after the date on which the copies are mailed under Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.556. MEMBERS MEETING; PROCEDURES. (a) In a meeting

called under Section 884.555, a member may vote in person, by proxy to whomever the member designates, or by mail.

(b) All votes must be cast by ballot. A two-thirds vote of the members participating in the election is required to ratify the reinsurance agreement.

(c) The person presiding at the meeting shall supervise and direct the procedure of the meeting and shall appoint an adequate number of inspectors to conduct the voting at the meeting.

(d) The inspectors may determine all questions concerning the qualifications of the voters and the verification, canvassing, and validity of the ballots.

(e) At the conclusion of the meeting, the inspectors shall certify under oath the result of the election to the department and to the stipulated premium company that is a party to the proposed agreement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.557. SUBMISSION OF MEETING FACTS TO DEPARTMENT. Not later than the 90th day after the date of the meeting of the members, all facts relating to the meeting, including the accounting of the meeting and the computation of the required reserves, shall be submitted under oath to the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.558. EFFECTIVE DATE OF AGREEMENT. A direct reinsurance agreement that is ratified under Section 884.556 takes effect on the date specified in the agreement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.559. ACTION AFTER AGREEMENT RATIFICATION. (a) After ratification of the reinsurance agreement under Section 884.556, the mutual assessment company shall cease doing business and shall transfer all of its assets to the assuming stipulated premium company.

(b) The stipulated premium company shall assume:

(1) all policy liability in accordance with the reinsurance agreement; and

(2) all other liabilities in accordance with the method of payment of those liabilities.

(c) On transfer of a mutual assessment company's assets:

(1) the company shall promptly surrender its certificate of authority and charter to the department; and

(2) the company's corporate existence ceases.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.560. ASSUMPTION CERTIFICATE. Immediately after ratification of the reinsurance agreement under Section 884.556, the stipulated premium company shall issue to each member of the mutual assessment company an assumption certificate that states:

(1) the terms of the assumption; and

(2) the reserve and interest table under which the policy is assumed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.561. ADJUSTMENT OF LIFE INSURANCE PREMIUMS. (a) If the premium charged on a life insurance policy assumed by the stipulated premium company is less than the renewal net premium computed under the reserve standard adopted in the reinsurance agreement, the stipulated premium company shall adjust the premium rate to provide an amount that is at least equal to the renewal net premium based on the age of the insured on the date the policy was issued by the mutual assessment company.

(b) Notwithstanding Subsection (a), if the gross premium charged on a family group policy reinsured by a stipulated premium company is less than the renewal net premium for that policy, the stipulated premium company may choose to not adjust the rate if:

(1) the deficiency reserve of the business of the mutual assessment company is less than 25 percent of the required reserve on the business to be reinsured, including the deficiency premium reserve required by Subdivision (3);

(2) at the time of reinsurance, the gross premium of all family group policies to be reinsured by the stipulated premium

company is in the aggregate equal to at least 120 percent of the required net premiums on those family group policies; and

(3) the stipulated premium company maintains on that policy, in addition to any other reserve required by law, a deficiency premium reserve that is equal to the present value, computed using the reserve standard adopted in the reinsurance agreement, of an annuity, the amount of which is equal to the difference between the premium charged and that net premium and the term of which in years is equal to the number of annual premiums for the remainder of the premium paying period.

(c) The deficiency premium reserve required by Subsection (b)(3) is a part of the company's deficiency reserve and shall be reduced in the manner provided by Section 884.453.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.562. APPROVAL OF RATE ADJUSTMENT. A stipulated premium company may not adjust a life insurance premium rate under this subchapter before:

(1) obtaining the approval of the department; and

(2) providing notice to the policyholder.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER M. CONVERSION TO LEGAL RESERVE COMPANY

Sec. 884.601. AUTHORIZATION TO CONVERT. (a) The shareholders of a stipulated premium company that possesses capital in an amount equal to at least $700,000, unencumbered surplus in an amount equal to at least $700,000, and sufficient reserves on hand for the company's policies as required under provisions of Chapter 425, other than Sections 425.002-425.005, may convert the company to a legal reserve company that operates under Chapter 841 by complying with each requirement applicable to a company operating under that chapter.

(b) The department may approve the conversion only after determining that the converting company has complied with the requirements applicable to that company under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.089, eff. April 1, 2009.

Sec. 884.602. ASSUMPTION CERTIFICATE. (a) Not later than the 30th day after the date of a conversion under this subchapter, the converted company shall issue to each policyholder an assumption certificate by which the policy liability is assumed by the converted company.

(b) The certificate must contain all of the provisions applicable to a policy issued by a company operating under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 884.603. EXEMPTION FROM CAPITAL AND SURPLUS REQUIREMENTS. (a) A stipulated premium company is exempt from the capital and surplus requirements of Section 884.601(a) if the company:

(1) was organized before September 1, 1989;

(2) possesses capital in an amount equal to at least $100,000 and unencumbered surplus in an amount equal to at least $100,000; and

(3) converted to a company that operates under Chapter 841 before September 1, 1999.

(b) A stipulated premium company that is exempt under Subsection (a) shall immediately increase its capital and surplus to amounts that satisfy Section 884.601(a) on:

(1) a change of control of at least 50 percent of the voting securities of the converted company; or

(2) if the converted company or the holding company that controls the converted company, if any, is not controlled by voting securities, a change of at least 50 percent of the ownership of the converted company or its holding company.

(c) For purposes of Subsection (b), a transfer of ownership that occurs because of death, regardless of whether the decedent died testate or intestate, may not be considered a change in the control of a converted stipulated premium company or holding company if ownership is transferred solely to one or more individuals, each of

whom would be an heir of the decedent if the decedent had died intestate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. GENERAL FINANCIAL REGULATION

Sec. 884.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Subchapter A, Chapter 404, and Chapters 441 and 443 apply to a stipulated premium company engaged in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.090, eff. April 1, 2009.

CHAPTER 885. FRATERNAL BENEFIT SOCIETIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 885.001. DEFINITIONS. In this chapter:

(1) "Benefit certificate" means a document issued as written evidence of a benefit contract.

(2) "Benefit contract" means an agreement for provision of benefits authorized by Section 885.301, as that agreement is described by Section 885.306.

(3) "Benefit member" means an adult designated by the laws or rules of a fraternal benefit society as a benefit member under a benefit contract.

(4) "Fraternal benefit society's laws" means a fraternal benefit society's articles of incorporation, constitution, and bylaws, however designated.

(5) "Lodge" means a subordinate member unit of a fraternal benefit society. The term includes a camp, court, council, or branch.

(6) "Premium" means a premium, a rate, dues, or another required contribution that is payable under a benefit certificate or benefit contract.

(7) "Rule" means a rule, regulation, or resolution adopted by the supreme governing body or board of directors that has general application to the members of a fraternal benefit society.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.002. LIMITED EXEMPTION FROM INSURANCE LAWS. (a) Except as provided by this chapter, a fraternal benefit society is governed by this chapter and is exempt from all other insurance laws of this state for all purposes.

(b) A law enacted after July 1, 1913, does not apply to fraternal benefit societies unless a fraternal benefit society is expressly designated in the law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.003. EXEMPTION FROM TAXATION. (a) A fraternal benefit society organized or holding a certificate of authority under this chapter, including the former Chapter 10 of this code and Chapter 8, Title 78, Revised Statutes, is a charitable and benevolent institution. Except as provided by Subsection (b), all funds of a fraternal benefit society described by this subsection are exempt from any state, county, district, municipal, or school tax, including an occupation tax.

(b) Real estate or office equipment used for a purpose other than a lodge purpose is subject to taxation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.004. INAPPLICABILITY TO CERTAIN SOCIETIES. (a) Except as provided by Subsection (b), this chapter does not apply to:

(1) a grand or subordinate lodge of Masons, Odd Fellows, Knights of Pythias, or the Junior Order of the United American Mechanics;

(2) a society that limits its membership to those engaged in one or more hazardous occupations in the same or similar lines of business;

(3) a society that does not issue benefit certificates;

(4) an association of local lodges of a society engaged in business in this state on July 1, 1913, that provides:

(A) death benefits of not more than $500 to any one individual;

(B) disability benefits of not more than $300 in any one year to any one individual; or

(C) both death benefits described by Paragraph (A) and disability benefits described by Paragraph (B);

(5) a contract of reinsurance on a plan in this state described by Subdivision (4);

(6) a domestic society that limits its membership to the employees of:

(A) a particular municipality; or

(B) a designated firm or corporation; or

(7) a domestic lodge, order, or association of a purely religious, charitable, and benevolent description that does not provide:

(A) death benefits of more than $100; or

(B) disability benefits of more than $150 to any one individual in any one year.

(b) This chapter applies to:

(1) the insurance department of the supreme lodge Knights of Pythias; and

(2) the beneficiary degree of insurance branch of the Junior Order of the United American Mechanics.

(c) The department may require from any society information that will permit the department to determine whether the society is exempt from this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.005. FRATERNAL BENEFIT SOCIETIES THAT PROVIDE BENEFITS RESULTING FROM ACCIDENTS ONLY. (a) A fraternal benefit society that provides benefits for death or disability resulting from accidents only and does not provide death benefits or benefits for sickness may hold a certificate of authority under this chapter if the society:

(1) was organized and incorporated before July 1, 1913; and

(2) operates as provided by Sections 885.051-885.054 and 885.062.

(b) A fraternal benefit society that holds a certificate of authority as provided by Subsection (a) may exercise all the privileges provided by and is subject to this chapter other than:

(1) provisions requiring medical examination;

(2) provisions requiring that a benefit certificate specify the amount of benefits; and

(3) provisions relating to the valuation of benefit certificates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.006. TREATMENT OF CERTAIN GRAND LODGES. A grand lodge, by whatever name known and without regard to whether incorporated, that holds a charter from any supreme governing body and that was engaging in business in this state on July 1, 1913, as a fraternal beneficiary association under the separate jurisdiction plan is considered to be a single state organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. STRUCTURE OF FRATERNAL BENEFIT SOCIETY

Sec. 885.051. FRATERNAL BENEFIT SOCIETY DEFINED. A corporation, society, order, or voluntary association is a fraternal benefit society if it:

(1) has a lodge system and a representative form of government or limits its membership to a secret fraternity that has a lodge system and a representative form of government;

(2) is organized and operated solely for the mutual benefit of its members and their beneficiaries and not for profit;

(3) does not have capital stock; and

(4) provides for the payment of benefits in accordance with Section 885.301.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.052. CONTROL OF FRATERNAL BENEFIT SOCIETY. (a) In this section, "control" has the meaning described by Sections 823.005 and 823.151.

(b) Control of a fraternal benefit society must be ultimately vested in the membership as provided by this chapter. Control of a fraternal benefit society may be exercised by lodges and a supreme

governing body elected under Section 885.054.

(c) The methods provided by this section for exercising control over a fraternal benefit society are exclusive.

(d) Chapter 823 applies to a fraternal benefit society. Each change in control of a fraternal benefit society must be consistent with the nature of a fraternal benefit society as specified by this section, Sections 885.051, 885.053, and 885.054, and other applicable law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.053. LODGE SYSTEM DEFINED. A fraternal benefit society is considered to be operating on the lodge system if the society:

(1) has a supreme governing body; and

(2) has lodges:

(A) into which members are admitted in accordance with the fraternal benefit society's laws, rituals, and rules; and

(B) that are required by the fraternal benefit society's laws to hold periodic meetings.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.054. REPRESENTATIVE FORM OF GOVERNMENT DEFINED. A fraternal benefit society has a representative form of government if:

(1) the society has a supreme governing body constituted as:

(A) an assembly, as described by Section 885.055; or

(B) a board, as described by Section 885.057;

(2) the officers of the society are elected by the supreme governing body or the board of directors;

(3) only a benefit member is eligible to serve as a member of the supreme governing body, the board of directors, or an intermediate assembly of the society;

(4) only a benefit member may vote on the management of the society's insurance affairs;

(5) a voting member of the society has only one vote; and

(6) a voting member of the society may not cast a vote by proxy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.055. ASSEMBLY AS SUPREME GOVERNING BODY. (a) The supreme governing body of a fraternal benefit society is an assembly if the body is composed of:

(1) delegates elected directly by the members or at intermediate assemblies or conventions by the members or their representatives; and

(2) other delegates as prescribed by the fraternal benefit society's laws.

(b) The elected delegates to an assembly must:

(1) constitute a majority of the assembly in number; and

(2) be entitled to cast the greater of:

(A) two-thirds of the votes in the assembly; or

(B) the number of votes required to amend the fraternal benefit society's laws.

(c) A fraternal benefit society may provide for election of delegates by mail.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.056. ASSEMBLY MEETINGS; DIRECTORS. (a) An assembly that is the supreme governing body of a fraternal benefit society shall:

(1) meet at least once every four years; and

(2) elect a board of directors to conduct the business of the society between meetings of the assembly.

(b) A vacancy on the board of directors that occurs between elections may be filled in the manner prescribed by the fraternal benefit society's laws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.057. BOARD AS SUPREME GOVERNING BODY. (a) The supreme governing body of a fraternal benefit society is a board if the body is composed of:

(1) individuals elected directly by the members or at intermediate assemblies by the members or their representatives; and

(2) other individuals as prescribed by the fraternal benefit society's laws.

(b) The individuals elected to the board must:

(1) constitute a majority of the board in number; and

(2) have at least the number of votes required to amend the fraternal benefit society's laws, other than laws, if any, that must be amended by direct vote of the members.

(c) A fraternal benefit society may provide for election of the board by mail.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.058. BOARD MEMBERS; MEETINGS. (a) The term of a member of a board that is the supreme governing body of a fraternal benefit society may not exceed four years.

(b) A vacancy on the board that occurs between elections may be filled in the manner prescribed by the fraternal benefit society's laws. An individual filling the unexpired term of an elected board member is considered to be an elected member.

(c) A board shall meet at least annually to conduct the business of the fraternal benefit society.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.059. LOCATION OF MEETINGS OF SUPREME GOVERNING BODY. (a) A domestic fraternal benefit society may provide that its supreme governing body may hold meetings in any state, district, province, or territory in which the society has a lodge.

(b) All business transacted at a meeting authorized under Subsection (a) is as valid in all respects as if the meeting were held in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.060. FRATERNAL BENEFIT SOCIETY'S LAWS BINDING. A fraternal benefit society's laws may provide that a lodge or a subordinate officer or member of the society may not waive any provision of those laws. Those laws are binding on:

(1) the society;
(2) each member of the society; and
(3) each beneficiary of a member.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.061. AMENDMENT OF FRATERNAL BENEFIT SOCIETY'S LAWS. (a) A fraternal benefit society transacting business under this chapter shall file with the department a certified copy of each amendment of the fraternal benefit society's laws not later than the 90th day after the date of enactment of the amendment.

(b) A printed copy of a fraternal benefit society's laws, as amended, that is certified by the society's secretary or corresponding officer is prima facie evidence that the laws were legally adopted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.062. QUARTERLY LODGE MEETINGS REQUIRED. A fraternal benefit society's laws must require each lodge to hold regular meetings at least once each calendar quarter to further the society's purposes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.063. MERGER OR TRANSFER OF MEMBERSHIP OR FUNDS. (a) A domestic fraternal benefit society may not merge with or accept a transfer of the membership or funds of another fraternal benefit society unless:

(1) the merger or transfer is evidenced by a written contract that fully sets out the terms of the merger or transfer; and

(2) the societies file with the department:

(A) a copy of the contract;

(B) a sworn statement of the financial condition of each society by its president and secretary or corresponding officers; and

(C) a certificate of those officers, verified under

oath, that the merger or transfer has been approved by a vote of two-thirds of the members of the supreme governing body of each society.

(b) On submission, the commissioner shall examine the contract, financial statements, and certificates. The commissioner shall approve the merger or transfer and issue a certificate to that effect if the commissioner determines that:

(1) the contract conforms with this section and Section 885.052(d);

(2) the financial statements are correct;

(3) the merger or transfer is just and equitable to the members of each society; and

(4) the new or surviving society complies with each requirement of a fraternal benefit society under this chapter.

(c) A contract of merger or transfer takes effect on issuance of a certificate under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. MEMBERS

Sec. 885.101. QUALIFICATIONS FOR FRATERNAL BENEFIT SOCIETY MEMBERSHIP. (a) A fraternal benefit society shall specify in the fraternal benefit society's laws or rules:

(1) subject to Subsection (b), the eligibility standards for each membership class;

(2) the process for admission for each membership class; and

(3) subject to Subsection (c), the rights and privileges of each membership class.

(b) If a fraternal benefit society provides benefits on the lives of children, the minimum age for adult membership may not be less than 15 years or more than 21 years.

(c) Only a benefit member may vote on the management of the insurance affairs of a fraternal benefit society.

(d) Membership rights in a fraternal benefit society are personal to the member, and a member may not assign those rights.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.102. SOCIAL MEMBERS. A fraternal benefit society may

admit social members. A social member may not vote in the management of the insurance affairs of the society.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.103. CHILDREN. (a) A fraternal benefit society may organize and operate branches for children on whose lives the society provides insurance or annuities.

(b) A child is not required to be a member of a lodge or to be initiated in a lodge.

(c) A child may not have any voice in the management of a fraternal benefit society.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.104. GRIEVANCE OR COMPLAINT PROCEDURES. A fraternal benefit society's laws or rules may provide for grievance or complaint procedures for members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 885.151. APPLICABILITY TO CERTAIN FRATERNAL BENEFIT SOCIETIES CONTINUOUSLY AUTHORIZED TO ENGAGE IN BUSINESS. This subchapter does not apply to a fraternal benefit society authorized to engage in business in this state on June 1, 1965, as long as the society's certificate of authority or any renewal or extension of its certificate of authority continues in force.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.152. ELIGIBILITY TO PROVIDE BENEFITS. After June 1, 1965, a corporation, society, order, or voluntary association may qualify as a fraternal benefit society as defined by Section 885.051 for the purpose of providing for the payment of benefits as provided by Section 885.301 only if it:

(1) has at least 500 members and at least 10 lodges; and

(2) has been in continuous operation for at least the five years preceding the filing of its articles of incorporation or association as provided by Section 885.153.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.153. FILING OF ARTICLES OF INCORPORATION OR ASSOCIATION. A corporation, society, order, or voluntary association eligible under Section 885.152 may qualify as a fraternal benefit society by filing with the department:

(1) certified articles of incorporation or association that set out:

(A) the name of the society;

(B) the purpose for which the society is formed; and

(C) the manner in which the society's corporate powers are to be exercised;

(2) certified copies of the fraternal benefit society's laws and rules;

(3) copies of all proposed forms of benefit certificates, applications for benefit certificates, and circulars to be issued by the society;

(4) a surety bond as required by Section 885.156; and

(5) additional information that the commissioner considers necessary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.154. NAME OF FRATERNAL BENEFIT SOCIETY. The name of a fraternal benefit society may not so closely resemble the name of any society or insurance company engaging in business in this state as to mislead the public or lead to confusion.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.155. PURPOSES OF FRATERNAL BENEFIT SOCIETY. (a) The purposes for which a fraternal benefit society is organized may not include more liberal powers than are granted by this chapter. Any lawful, social, intellectual, educational, charitable, benevolent,

moral, fraternal, patriotic, or religious advantages may be set out among the society's purposes.

(b) A fraternal benefit society's purposes may be implemented directly by the society or indirectly through subsidiary corporations or affiliated organizations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.156. SURETY BOND. (a) A fraternal benefit society must file with the department a bond in an amount not less than $300,000 and not more than $1.5 million, as required by the commissioner, with sureties approved by the commissioner.

(b) The bond must be conditioned on the return of advance payments to applicants for benefit certificates as provided by this subchapter if the fraternal benefit society fails to qualify under this subchapter within one year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.157. ISSUANCE OF PRELIMINARY CERTIFICATE OF AUTHORITY. If the purposes of a fraternal benefit society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall:

(1) certify that the society is in compliance with all provisions of law;

(2) retain and record the articles of incorporation or association; and

(3) issue to the society a preliminary certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.158. POWERS AND DUTIES UNDER PRELIMINARY CERTIFICATE OF AUTHORITY; QUALIFICATION. (a) On receipt of a preliminary certificate of authority from the department under Section 885.157, a fraternal benefit society:

(1) may solicit from its members applications for insurance benefits for the purpose of completing the society's qualification;

(2) shall collect from each applicant an amount equal to at least one regular monthly payment, in accordance with the society's table of rates as provided by the fraternal benefit society's laws; and

(3) shall issue to each applicant a receipt for the amount collected under Subdivision (2).

(b) A fraternal benefit society operating under a preliminary certificate of authority may not incur a liability other than for advance payments collected under Subsection (a)(2), issue a benefit certificate, or pay, allow, or offer or promise to pay or allow to any person a death or disability benefit until:

(1) the society has established 10 lodges into which at least 500 applicants have been initiated;

(2) the society has received bona fide applications for death benefit certificates on at least 500 lives for at least $2,000 each;

(3) each applicant for death benefits under Subdivision (2) has been regularly examined by a legally qualified practicing physician;

(4) a certificate of each medical examination has been filed with and approved by the chief medical examiner of the society;

(5) the society submits to the department a list of the applicants for death benefits under Subdivision (2); and

(6) the society shows to the department, by the sworn statement of its treasurer or corresponding officer, that at least 500 applicants have each paid in cash in advance at least one regular monthly payment per $1,000 of indemnity to be provided and that the payments in the aggregate amount to at least $150,000.

(c) The list of applicants for death benefits submitted under Subsection (b)(5) must be under oath of the fraternal benefit society's president and secretary or corresponding officers and must provide for each applicant:

(1) the applicant's name and address;

(2) the date the applicant was examined;

(3) the date the applicant was approved;

(4) the date the applicant was initiated;

(5) the name and number of the lodge of which the applicant is a member;

(6) the amount of benefits to be granted; and

(7) the rate of stated premiums.

(d) The rate of stated premiums under Subsection (c)(7) must be sufficient to provide for meeting the obligations the fraternal benefit society has contracted to pay, when valued for death benefits on the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or, at the society's option, any higher standard, and for disability benefits or combined death and permanent total disability benefits by tables based on reliable experience, with an interest assumption not greater than a rate of four percent a year.

(e) A fraternal benefit society shall hold advance payments received under this section in trust during the period of completing qualification. The society shall credit the advance payments to the mortuary or disability fund on account of the applicants and may not use any part of the payments for expenses. If the society does not complete its qualification within one year, as provided by this subchapter, the society shall return the advance payments to the applicants.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.159. TERMINATION OF AUTHORITY UNDER PRELIMINARY CERTIFICATE OF AUTHORITY. (a) Unless a fraternal benefit society has qualified under this subchapter, a preliminary certificate of authority granted under Section 885. 157 is void on the first anniversary of the date the certificate is issued.

(b) The department, on cause shown, may extend the period prescribed by Subsection (a). An extension may not exceed one year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.160. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The department may make an examination and require information in addition to that required by Section 885.158(b) that the department considers advisable. On presentation of satisfactory evidence that a fraternal benefit society has complied with all provisions of law, the department shall issue to the society a certificate of authority.

(b) The certificate of authority issued is prima facie evidence of the qualification of the fraternal benefit society as of the date of the certificate.

(c) The department shall make a record of a certificate of authority issued under Subsection (a). A certified copy or duplicate of the department's record shall be accepted in evidence with the same effect as the original certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. FOREIGN FRATERNAL BENEFIT SOCIETIES

Sec. 885.201. CERTIFICATE OF AUTHORITY REQUIRED. A foreign fraternal benefit society organized and engaging in business before July 1, 1913, that was not authorized to engage in business in this state as of that date may not engage in business in this state without a certificate of authority from the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.202. ADMISSION OF FOREIGN FRATERNAL BENEFIT SOCIETY. (a) To engage in business in this state, a foreign fraternal benefit society described by Section 885.201 must:

(1) have the qualifications required of a domestic fraternal benefit society under this chapter; and

(2) have its assets invested as required by the laws of the state, territory, district, province, or country in which the society is organized.

(b) A foreign fraternal benefit society described by Section 885.201 is entitled to a certificate of authority to engage in business in this state on filing with the department:

(1) a certified copy of the society's charter or articles of association;

(2) a copy of the fraternal benefit society's laws, certified by its secretary or corresponding officer;

(3) a statement of the society's business;

(4) a certificate from the proper official in the society's home state, province, or country showing that the society is legally organized;

(5) a copy of the society's benefit contract;

(6) information showing that the society's assets are invested as required by Subsection (a)(2); and

(7) additional information the commissioner considers

necessary to demonstrate the society's business and method of operation.

(c) A statement of business filed by a foreign fraternal benefit society under Subsection (b)(3) must:

(1) be under oath of the society's president and secretary or corresponding officers;

(2) be in the form required by the commissioner; and

(3) be verified by an examination made by the supervising insurance official of the society's home state or another state satisfactory to the commissioner.

(d) A benefit contract filed by a foreign fraternal benefit society under Subsection (b)(5) must show that benefits are provided for by premiums paid by persons holding similar contracts.

(e) The commissioner shall issue a certificate of authority to a foreign fraternal benefit society that complies with Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.203. REFUSAL TO ISSUE CERTIFICATE OF AUTHORITY TO FOREIGN FRATERNAL BENEFIT SOCIETY. (a) If the commissioner refuses to issue a certificate of authority to a foreign fraternal benefit society under Section 885.202, the commissioner shall:

(1) make the refusal in writing;

(2) file the refusal in the department's office; and

(3) on request, provide a copy of the refusal and a statement of the commissioner's reasons for the refusal to the society's officers.

(b) The commissioner's refusal to issue a certificate of authority to a foreign fraternal benefit society for authority to engage in business in this state is reviewable by proper proceedings in a state court.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.204. NOTICE OF INTENT TO REVOKE FOREIGN FRATERNAL BENEFIT SOCIETY'S CERTIFICATE OF AUTHORITY. (a) The commissioner shall notify a foreign fraternal benefit society engaging in business under this chapter of the commissioner's determination if, following

an investigation, the commissioner determines that the society:

(1) has failed to comply with this chapter;

(2) has exceeded its powers;

(3) is not fulfilling its contracts in good faith; or

(4) is engaging in business fraudulently.

(b) A notification under Subsection (a) must:

(1) state in writing the grounds of the commissioner's dissatisfaction; and

(2) require that the society, after reasonable notice and on the date stated in the notice, show cause why the society's certificate of authority should not be revoked.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.205. REVOCATION OF FOREIGN FRATERNAL BENEFIT SOCIETY'S CERTIFICATE OF AUTHORITY. (a) The commissioner may revoke a foreign fraternal benefit society's certificate of authority to engage in business in this state if, on the date stated in the notice under Section 885.204, the society:

(1) has not, to the commissioner's satisfaction, removed the commissioner's objections; or

(2) does not present good and sufficient reason why its certificate of authority should not be revoked.

(b) Section 885.203 applies to a decision by the commissioner to revoke a foreign fraternal benefit society's authority to engage in business in this state as if it were a decision to refuse to issue a certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.206. CONTINUANCE OF CONTRACTS FOLLOWING REVOCATION OF CERTIFICATE OF AUTHORITY. This subchapter may not be construed to prevent a foreign fraternal benefit society that has had its certificate of authority refused under former Article 10.23, Insurance Code, or a predecessor to that statute, or that has had its certificate of authority revoked, from continuing in good faith each contract made in this state during the time the society was authorized to engage in business in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. POWERS AND DUTIES OF FRATERNAL BENEFIT SOCIETY

Sec. 885.251. GENERAL POWERS. A fraternal benefit society may:

(1) make a constitution and bylaws for the government of the society, the admission of its members, the management of its affairs, and the setting and readjusting of premiums;

(2) amend its constitution and bylaws; and

(3) exercise other powers necessary and incidental to achieving its purposes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.252. POWERS OF CERTAIN FRATERNAL BENEFIT SOCIETIES. (a) A fraternal benefit society engaged in business in this state on July 1, 1913, may exercise:

(1) each right conferred by this chapter; and

(2) if the society is incorporated, each right, power, or privilege exercised or possessed as of July 1, 1913, by the society under its charter or articles of incorporation consistent with this chapter.

(b) A fraternal benefit society engaged in business in this state on July 1, 1913, that is a voluntary association may incorporate under this chapter.

(c) A fraternal benefit society organized as of July 1, 1913, is not required to reincorporate under this chapter and may amend the society's articles of incorporation in the manner provided in the articles or the fraternal benefit society's laws. A society shall file an amendment described by this subsection with the department. The amendment becomes operative on filing unless a later time is provided in the amendment or in the fraternal benefit society's articles of incorporation or laws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.253. PRINCIPAL OFFICE OF DOMESTIC FRATERNAL BENEFIT SOCIETY. A domestic fraternal benefit society shall have its principal office in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.254. IMMUNITY. (a) A director, officer, employee, member, or volunteer of a fraternal benefit society serving without compensation is not personally liable for damages resulting from an act or omission in the exercise of judgment or discretion in connection with the duties of that person for the society unless the act or omission involved wilful or wanton misconduct.

(b) This section does not limit a fraternal benefit society's direct or indirect liability.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.255. INDEMNIFICATION OR REIMBURSEMENT. (a) A fraternal benefit society may indemnify and reimburse a person for expenses reasonably incurred by, and liabilities imposed on, that person in connection with or arising out of a proceeding, whether civil, criminal, administrative, or investigative, in which the person is involved, or in connection with or arising out of a threat of a proceeding against that person, because that person is or was a director, officer, employee, or agent of:

(1) the society; or

(2) a firm, corporation, or organization with which the person served in any capacity at the request of the society.

(b) The right of indemnification and reimbursement under Subsection (a) is not exclusive of other rights to which a person may be entitled as a matter of law and inures to the benefit of the person's devisees, legatees, heirs, and estate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.256. INDEMNIFICATION OR REIMBURSEMENT IN RELATION TO BREACH OF DUTY PROHIBITED. (a) Except as provided by Subsection (b), a person may not be indemnified or reimbursed under Section 885.255 in relation to:

(1) a matter in a proceeding in which the person is finally adjudged guilty of breach of a duty as a director, officer, employee, or agent of the fraternal benefit society; or

(2) an agreement that settles:

(A) a matter in a proceeding described by Subdivision (1); or

(B) the threat of a proceeding involving the person's alleged breach of a duty as a director, officer, employee, or agent of a fraternal benefit society.

(b) A fraternal benefit society may indemnify or reimburse a person in relation to a matter described by Subsection (a) only if the supreme governing body, the board of directors, or a court determines that:

(1) the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society; and

(2) in a criminal proceeding, the person had no reasonable cause to believe that the person's conduct was unlawful.

(c) A determination by a supreme governing body or board of directors under Subsection (b) must be made by majority vote of a quorum consisting of persons who were not parties to the proceeding under review.

(d) The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of no contest does not create a conclusive presumption that a person does not meet the standard of conduct required to justify indemnification and reimbursement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.257. INSURANCE FOR DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS. (a) A fraternal benefit society may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the society or who is or was serving at the request of the society as a director, officer, employee, or agent of another firm, corporation, or organization against a liability asserted against that person or incurred by that person in any capacity or arising out of that person's status as a director, officer, employee, or agent of the society or the other firm, corporation, or organization.

(b) A fraternal benefit society may purchase and maintain insurance under this section regardless of whether the society has the power to indemnify or reimburse the person with respect to the

covered liability under Sections 885.255 and 885.256.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.258. MANAGEMENT AND USE OF ASSETS AND FUNDS. (a) A fraternal benefit society shall hold, invest, and disburse all assets for the use and benefit of the society. A member or beneficiary may not have or acquire individual rights in the assets of a fraternal benefit society or become entitled to any apportionment or surrender of any part of a society's assets except as provided by a benefit contract.

(b) A fraternal benefit society may create, maintain, invest, disburse, and apply any special fund necessary to implement any purpose permitted by the fraternal benefit society's laws.

(c) A fraternal benefit society may create, maintain, invest, disburse, and apply an emergency surplus or other similar fund in accordance with the fraternal benefit society's laws. Unless otherwise provided by a benefit contract, a fraternal benefit society shall hold, invest, and disburse a fund created under this subsection for the use and benefit of the society. A member or beneficiary may not have or acquire individual rights in a fund created under this subsection or become entitled to any apportionment or the surrender of any part of the fund except as provided by Section 885.301.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.259. SOURCE OF FUNDS. (a) A fraternal benefit society shall derive the funds from which the society pays benefits and the funds from which the society defrays its expenses from:

(1) premiums paid by members of the society; and

(2) accretions of those funds.

(b) A domestic or foreign fraternal benefit society may not engage in business in this state unless the society provides for stated premiums sufficient to permit meeting the obligations contracted, when valued in accordance with the reserving standards specified by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.260. SPECIFIED PAYMENTS. (a) A fraternal benefit society may provide in the fraternal benefit society's laws and benefit certificates for specified payments on account of the expense or general fund.

(b) A payment under this section may or may not be mingled with the general fund of the fraternal benefit society as provided by the society's constitution and bylaws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.261. CONTROL OF FUND BY LODGE. (a) This section applies if the constitution and bylaws of the grand lodge or governing body of a fraternal benefit society:

(1) provide that all or part of the beneficiary, mortuary, or insurance fund of the society that is paid by or collected from the members of a lodge may be retained in the custody of and controlled and managed by the lodge; and

(2) designate an officer of the lodge to have custody and control of a fund described by Subdivision (1) and authority to loan or invest the fund.

(b) A lodge officer having custody and control of a fund described by Subsection (a)(1) shall execute a bond or other written instrument to be prescribed and approved in terms and amount by the commissioner to indemnify the fund against waste, depletion, or loss. The lodge officer shall file the bond or other written instrument with the department, if required to do so by the department.

(c) A fund secured as provided by Subsection (b) is exempt from this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.262. INVESTMENT OF FRATERNAL BENEFIT SOCIETY FUNDS. (a) Except as provided by Subsection (b), a fraternal benefit society may invest its funds only in securities permitted by state law for the investment of the assets of life insurance companies.

(b) A foreign fraternal benefit society authorized to or seeking to engage in the business of insurance in this state that invests its funds in accordance with the laws of the state in which the society is incorporated is considered to meet the requirements of

this chapter for the investment of funds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.263. TREATMENT OF DEFERRED CLAIMS. (a) A deferred payment or an installment of a claim is considered to be a fixed liability on the occurrence of the contingency on which the payment or installment is to be paid. The amount of the liability is the present value of the future payment or installment at the rates of interest and mortality assumed by the fraternal benefit society for valuation.

(b) A fraternal benefit society shall maintain a fund sufficient to meet each fixed liability under Subsection (a) regardless of proposed future collections to meet the liability.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. BENEFITS PROVIDED BY FRATERNAL BENEFIT SOCIETIES

Sec. 885.301. TYPES OF BENEFITS PERMITTED. (a) A fraternal benefit society may provide for the payment of:

(1) death benefits in any form;

(2) endowment benefits;

(3) annuity benefits;

(4) benefits for temporary or permanent disability resulting from disease or accident;

(5) benefits for hospital, medical, or nursing expenses resulting from sickness, bodily infirmity, or accident;

(6) benefits for the erection of a monument or tombstone to the memory of a deceased member;

(7) funeral benefits; and

(8) any other benefit that may be provided by a life, accident, or health insurance company and that is:

(A) offered in compliance with a law described by Section 841.002 applicable to a life, accident, or health insurance company; and

(B) consistent with this chapter.

(b) A fraternal benefit society shall:

(1) specify in the fraternal benefit society's laws or rules those persons to whom a benefit certificate may be issued or

who may be covered by benefits; and

(2) make the provision of those benefits consistent with the provision of benefits to members and their beneficiaries.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.091, eff. April 1, 2009.

Sec. 885.302. ISSUANCE OF BENEFIT CONTRACTS ON VARIABLE BASIS. A fraternal benefit society may, as provided by a resolution of its supreme governing body, establish and operate one or more separate accounts and issue benefit contracts on a variable basis, subject to laws regulating a life insurance company that establishes those types of accounts and issues those types of contracts. To comply with applicable federal or state laws or rules, the society may:

(1) issue on a variable basis contracts to which Sections 885.306(b) and (c) and 885.311(a) do not apply; and

(2) adopt special procedures for conducting the business and affairs of a separate account and provide special voting and other rights for a person having beneficial interests in a separate account, including special procedures and rights relating to:

(A) investment policy;

(B) investment advisory services;

(C) selection of certified public accountants; and

(D) selection of a committee to manage the business and affairs of the account.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.303. BENEFITS FOR CHILDREN. (a) A fraternal benefit society may provide by its laws, in addition to other benefits provided for by the fraternal benefit society's laws, for insurance or annuities, or insurance and annuities, on the lives of children of any age, on the application of an adult individual related to or interested in the child, as provided by the fraternal benefit society's laws.

(b) A life insurance benefit contract issued on the life of an individual who is younger than a fraternal benefit society's minimum

age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the benefit certificate. A fraternal benefit society may require approval of an application for membership in order to make the transfer and may provide in all other respects for control of the benefit certificate and rights, obligations, and liabilities incident and connected to the certificate. Ownership rights under the benefit certificate before a transfer must be specified in the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.304. BENEFICIARIES. (a) The owner of a benefit contract may change the beneficiary at any time in accordance with a fraternal benefit society's laws or rules unless the owner waives that right by specifically requesting in writing that the beneficiary designation be irrevocable.

(b) A fraternal benefit society may, through the fraternal benefit society's laws or rules, limit the scope of beneficiary designations and shall provide that a person whose designation as a beneficiary is revocable may not have or obtain a vested interest in the proceeds, in conformity with the benefit contract.

(c) If, at the death of an insured, a lawful beneficiary to whom the proceeds of the benefit contract are payable does not exist under the benefit contract, a fraternal benefit society shall pay the amount of the benefit under the benefit contract:

(1) to the personal representative of the insured; or

(2) if the owner of the benefit certificate is a person other than the insured, to the owner of the certificate.

(d) Subsection (c) does not apply to the extent funeral benefits may be paid under the benefit contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.305. ORGANIZATION AS BENEFICIARY. A fraternal benefit society may provide in the fraternal benefit society's laws for the issuance to its members of benefit certificates under which an association, society, or corporation that is organized and operated for religious, eleemosynary, or educational purposes is named as beneficiary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.306. BENEFIT CERTIFICATE. (a) A fraternal benefit society may not deliver or issue for delivery in this state a benefit certificate unless the form of the certificate has been filed under Chapter 1701.

(b) Each benefit certificate issued by a fraternal benefit society must:

(1) specify the amount of benefits provided under the certificate;

(2) state the amount of premiums that are payable under the certificate; and

(3) provide that the certificate, the society's charter or articles of incorporation or, if the society is a voluntary association, the society's articles of association, the fraternal benefit society's laws, the application for membership and medical examination, signed by the applicant, and all amendments to each of those constitute the agreement between the society and the member.

(c) An amendment to a fraternal benefit society's charter, articles of incorporation or association, or laws made or enacted after the issuance of a benefit certificate:

(1) binds the member and the member's beneficiaries; and

(2) controls the agreement in all respects as if the amendment had been in force at the time of the application for membership.

(d) A life, accident, health, or disability insurance benefit certificate or annuity benefit certificate issued by a fraternal benefit society must meet the requirements applicable to similar policies issued by an insurer in this state that are not inconsistent with this chapter as determined by rule of the commissioner.

(e) A copy of a document described by Subsection (b)(3), certified by a fraternal benefit society's secretary or corresponding officer, shall be admitted as evidence of the terms of the agreement between the society and the member.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.092, eff. April 1, 2009.

Sec. 885.307. GRACE PERIOD. A fraternal benefit society shall include in the terms of a benefit certificate a grace period of at least one month for payment of premiums.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.308. ASSIGNMENT OF LIFE INSURANCE BENEFIT CONTRACT. A fraternal benefit society may specify the terms for the assignment of a life insurance benefit contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.309. NONFORFEITURE BENEFITS. (a) The value of a nonforfeiture benefit provided under a benefit certificate issued before January 1, 2001, must comply with the law applicable to the certificate immediately before that date.

(b) The value of a nonforfeiture benefit provided under a benefit certificate issued on or after January 1, 2001, is computed as provided under:

(1) the provisions of Chapters 1105 and 1107 applicable to life insurance companies issuing policies containing similar benefits; and

(2) the applicable tables required by those chapters.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.310. ENFORCING PAYMENT OF PREMIUMS; CONTROL OF BENEFIT CERTIFICATES. A fraternal benefit society may provide for:

(1) enforcing payment of premiums;

(2) designating beneficiaries; and

(3) controlling benefit certificates and all rights, obligations, and liabilities incident to the certificates not in conflict with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.311. DEFICIENCY PAYMENTS. (a) A fraternal benefit society shall provide in the fraternal benefit society's laws that if the society's reserves for any class of the society's benefit certificates become impaired, the society's supreme governing body or board of directors may require the certificate holders to pay the society an equitable proportion of the deficiency as determined by the governing body or board. The aggregate assessment for the impaired reserves may not exceed the total amount required to comply with Section 885.408.

(b) If a holder of a benefit certificate does not pay a fraternal benefit society the amount determined under Subsection (a), the holder, in a manner determined by the society, may elect to accept:

(1) the amount determined under Subsection (a) as an indebtedness against the certificate, with the amount drawing interest at a rate that does not exceed the rate specified for a certificate loan under a certificate that has cash value;

(2) a proportionate reduction in the benefits payable under the certificate; or

(3) a combination of the limitations on the certificate described by Subdivisions (1) and (2).

(c) A fraternal benefit society may determine a presumed election for a holder of a benefit certificate under Subsection (b) if the holder fails to make an election.

(d) Not later than the 90th day before the proposed effective date of an assessment under Subsection (a), the fraternal benefit society shall file with the department an application for approval of the assessment and a statement sworn to by the president and secretary or corresponding officers of the society. The statement must:

(1) include:

(A) the terms of the assessment, including the proposed effective date; and

(B) a narrative statement of the financial condition of the fraternal benefit society; and

(2) state that the assessment:

(A) received approval by a majority vote of the supreme governing body or board of directors of the society; and

(B) complies with the requirements of this section.

(e) After the department receives a completed application, the

commissioner may approve or disapprove the application. If the commissioner does not approve or disapprove the application before the 60th day after the date the department receives the completed application, the application is considered approved. The commissioner may impose an effective date earlier than the date requested in the application if the earlier effective date is in the best interests of the certificate holders.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 762 (H.B. 1251), Sec. 1, eff. September 1, 2019.

Sec. 885.312. CONTINUATION OF BENEFIT CERTIFICATE ON EXPULSION OR SUSPENSION OF MEMBER. If a fraternal benefit society's laws provide for expulsion or suspension of a member, the benefit certificate must provide that a member who is expelled or suspended may maintain the certificate in force by continuing payment of the required premium unless the expulsion or suspension:

(1) is for nonpayment of a premium; or

(2) occurs within the contestable period of the benefit contract and is for material misrepresentation in the application for membership or insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.313. CONTINUATION OF BENEFIT CERTIFICATE ISSUED ON CHILD. If the membership in a fraternal benefit society of a person responsible for the support of a child on whose account a benefit certificate has been issued terminates, the certificate may be continued for the benefit of:

(1) the child's estate, if payment of the premiums is continued; or

(2) any other person responsible for the support and maintenance of the child, if the person assumes the payment of the required premiums.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.314. RESPONSIBILITY FOR PAYMENT OF BENEFITS. (a) An officer or member of the supreme, the grand, or any subordinate body of an incorporated fraternal benefit society is not individually liable for the payment of any disability or death benefit provided for by the fraternal benefit society's laws and contracts.

(b) Benefits are payable only out of the fraternal benefit society's funds and in the manner provided by the fraternal benefit society's laws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.315. DAMAGES FOR FAILURE TO TIMELY PAY BENEFITS. A fraternal benefit society that is liable for a loss and that does not pay benefits before the 61st day after the date of the demand for payment is liable to the holder of the benefit certificate, in addition to the amount of the loss, for damages of 12 percent of the amount of the loss and reasonable attorney's fees for the prosecution and collection of the loss.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.316. EXEMPTION OF BENEFITS. Money or another benefit or charity to be paid or provided by a fraternal benefit society, before or after payment is not subject to attachment, garnishment, or other process and may not be seized or applied by any legal or equitable process or operation of law to pay any debt or liability of a member, a beneficiary, or any other person who may have a right under the benefit contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER H. AGENTS

Sec. 885.351. AGENTS. (a) A fraternal benefit society may appoint an agent licensed by the department under Subchapter B, Chapter 4054, to sell benefits listed under Section 885.301(a) to society members.

(b) Except as provided by Section 885.352, a person may not solicit or procure benefit contracts for a fraternal benefit society

unless the person is licensed as a general life, accident, and health agent or a life agent under Subchapter B, Chapter 4054.

(c) The licensing and regulation of agents for fraternal benefit societies is subject to Title 13 and other laws regulating those agents.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.222(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.08, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.093, eff. April 1, 2009.

Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.011, eff. September 1, 2009.

Sec. 885.352. EXCEPTION. (a) Section 885.351(b) does not apply to an agent, representative, or member of a fraternal benefit society who devotes less than 50 percent of the person's time to the solicitation and procurement of benefit contracts for that society.

(b) For purposes of this section, a person is presumed for a calendar year to have devoted at least 50 percent of the person's time to the solicitation or procurement of benefit contracts if, in the preceding calendar year, the person solicited or procured on behalf of a fraternal benefit society:

(1) life insurance contracts that have generated, in the aggregate, more than $20,000 of direct premiums for all lives insured;

(2) benefit contracts other than life insurance contracts that have insured the individual lives of more than 25 persons; or

(3) variable life insurance or variable annuity contracts.

(c) A person to whom this section applies may not solicit or procure on behalf of a fraternal benefit society an interest-sensitive life insurance contract that exceeds $35,000 of coverage on an individual life unless the person holds the designation of fraternal insurance counselor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.222(b), eff.

Sept. 1, 2003.

Sec. 885.353. EMPLOYMENT OF CERTAIN PERSONS TO SOLICIT BUSINESS PROHIBITED. A fraternal benefit society may not employ or otherwise retain a person to solicit business if the person has had a license revoked under Chapter 4005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.094, eff. April 1, 2009.

SUBCHAPTER I. REGULATION OF FRATERNAL BENEFIT SOCIETIES

Sec. 885.401. ANNUAL REPORT. (a) Each fraternal benefit society engaged in business in this state shall annually, on or before March 1:

(1) file with the department in the form required by the commissioner a statement, under oath of the society's president and secretary or corresponding officers, of:

(A) the society's condition and standing on the preceding December 31; and

(B) the society's transactions for the preceding calendar year; and

(2) provide additional information the commissioner considers necessary to demonstrate the society's business and method of operation.

(b) The commissioner may periodically require any additional statement the commissioner considers necessary relating to a fraternal benefit society.

(c) The department or the state may use the report required under Subsection (a) in determining a fraternal benefit society's financial solvency.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.402. REPORTS OF CERTAIN GRAND LODGES. The officers of the supreme state governing body of a grand lodge considered to be a single state organization under Section 885.006 shall make each

report required by this chapter. The report must include the transactions, liabilities, and assets of the state organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.403. VALUATION OF BENEFIT CERTIFICATES. (a) A fraternal benefit society shall include in its report under Section 885.401 a valuation of the society's benefit certificates in force on the preceding December 31. The report of valuation shall show:

(1) as contingent liabilities, the present midyear value of the promised benefits provided by the fraternal benefit society's laws under the benefit certificates subject to valuation; and

(2) as contingent assets, the present midyear value of the future net premiums provided by the fraternal benefit society's laws as the premiums are in practice actually collected.

(b) At the option of a fraternal benefit society, instead of the valuation determined under Subsections (a)(1) and (2), the valuation may show the net value of benefit certificates subject to valuation under Subsection (a). The net value, when computed in case of monthly premiums, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

(c) The valuation, including the valuation of benefit certificates, must be certified by an actuary or, at the request and expense of the fraternal benefit society, verified by the actuary of the insurance department of the society's home state.

(d) The legal minimum standard of valuation for all benefit certificates, other than benefit certificates for accident and health benefits, is computed using a mortality table and interest rate specified by Section 885.404.

(e) Each valuation report must set out clearly and fully the mortality and interest rates and the method of valuation.

(f) The report required by Section 885.401 must also include a valuation of benefit certificates in accordance with Section 885.408.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.404. MORTALITY TABLES; INTEREST RATES. (a) In valuing benefit certificates under Section 885.403, a fraternal benefit society, at the option of the society, may use:

(1) the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899;

(2) any table producing reserves in the aggregate at least as great as the reserves produced by the table described by Subdivision (1);

(3) the Commissioners 1941 Standard Ordinary Mortality Table;

(4) the Commissioners 1958 Standard Ordinary Mortality Table; or

(5) except as provided by Subsection (e), a table based on the society's own experience of at least 20 years and covering at least 100,000 lives.

(b) Notwithstanding Subsection (a), a fraternal benefit society may value the society's benefit certificates in accordance with valuation standards otherwise authorized by state law for the valuation of similar policies issued by life insurance companies.

(c) For any category of benefit certificates issued to insure a female risk, a modified net premium or present value referred to in Subchapter B, Chapter 425, may be computed according to an age not more than six years younger than the actual age of the insured.

(d) The interest assumption used with a mortality table described by Subsection (a)(1), (2), (3), or (4) may not be more than 4-1/2 percent a year. The interest assumption used with a mortality table described by Subsection (a)(5) may not be more than four percent a year.

(e) A fraternal benefit society may not use a table based on the society's own experience for a benefit certificate issued on or after January 1, 1989.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.095, eff. April 1, 2009.

Sec. 885.405. VALUATION OF AND SEPARATE FUND FOR DISABILITY BENEFITS. (a) A fraternal benefit society that provides for disability benefits shall keep the net premiums for disability benefits in a fund separate from all other benefit and expense funds and the valuation of all other business of the society.

(b) Notwithstanding Subsection (a), if a fraternal benefit society uses a combined premium table for both death and permanent total disability benefits:

(1) the valuation must be according to tables of reliable experience; and

(2) the society is not required to maintain a separation of those funds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.406. PUBLICATION OF VALUATION AND CONDITION. A fraternal benefit society shall publish, in the society's official paper, a statement of:

(1) the valuation provided by Sections 885.403 and 885.405; and

(2) an explanation of the facts concerning the society's condition disclosed by that valuation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.407. SOLVENCY. (a) If a fraternal benefit society reports admissible assets greater than the society's liabilities in an amount that authorizes the commissioner to place the society under regulatory control and the commissioner reasonably believes the society's hazardous financial condition will not be promptly remedied without intervention by the department, the commissioner may order the society to promptly seek and negotiate an agreement to transfer in accordance with this section all benefit members, benefit certificates, assets, and liabilities of the society to another fraternal benefit society. A transfer under this section:

(1) may be by merger, consolidation, assumption, or otherwise;

(2) constitutes an entire novation of each benefit certificate transferred by the society in a hazardous financial condition, and the receiving society is legally and contractually responsible for each transferred certificate;

(3) must conclude before the deadline set by the commissioner;

(4) may be approved by a vote of the majority of the

supreme governing body or board of directors of the society in a hazardous financial condition, notwithstanding Section 885.063(a)(2)(C) or any provision of the society's laws to the contrary; and

(5) is subject to approval by the commissioner.

(b) Not later than the seventh day before the date the supreme governing body or board of directors of a fraternal benefit society votes on a transfer proposed under Subsection (a), the governing body or board shall provide the society's certificate holders written notice of and an opportunity to comment on the proposed transfer. If the governing body or board approves the transfer, the governing body or board shall provide the certificate holders' comments to the commissioner.

(c) The supreme governing body or board of directors of a fraternal benefit society receiving benefit certificates pursuant to a transfer under an agreement described by Subsection (a) may suspend or modify qualifications for membership in the receiving society to the extent necessary to permit the society to accept the certificate holders of the society transferring certificates under the agreement, notwithstanding any provision of the receiving society's laws to the contrary.

(d) The commissioner may grant to a fraternal benefit society that is not authorized to engage in the business of insurance in this state the authority to service benefit certificates transferred pursuant to Subsection (a) and fulfill all obligations to the holders of the certificates. Commissioner action under this subsection does not authorize the fraternal benefit society to otherwise engage in the business of insurance in this state.

(e) A transfer under Subsection (a) may be made to an insurer that is not a fraternal benefit society if the insurer is authorized to engage in the business of insurance in this state. A holder of a certificate subject to a transfer as authorized by this subsection is deemed to agree that any term in the certificate, including a term that makes the certificate subject to the transferring society's laws or that provides for maintenance of the transferring society's solvency that is inconsistent with transfer to an insurer that is not a fraternal benefit society, is void on transfer of the certificate. The receiving insurer shall endorse on a form approved by the commissioner each benefit certificate received by a transfer made under this section to reflect any terms of the certificate voided by

this subsection. A certificate holder's obligation to pay an outstanding assessment under Section 885.311 that is not released under the transfer agreement is not released or voided by this subsection.

(f) The commissioner may request the attorney general bring an action under Section 885.502 to terminate a fraternal benefit society that fails to comply with an order under this section or fails to remedy the financial condition that gave rise to the order.

(g) The powers and authority of the commissioner under this section are cumulative and in addition to all other powers and authority to remediate the financial condition of a fraternal benefit society available to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 762 (H.B. 1251), Sec. 2, eff. September 1, 2019.

Sec. 885.408. RESERVES FOR ACCIDENT AND HEALTH INSURANCE. (a) A fraternal benefit society shall establish reserves for the types of coverage specified by Sections 885.301(a)(4) and (5) in the same manner and to the same extent as required for a company organized under Chapter 841.

(b) Sections 425.203-425.228 apply to reserve investments for a domestic fraternal benefit society.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.096, eff. April 1, 2009.

Sec. 885.409. REPORTING OF RESERVES. The report of a fraternal benefit society under Section 885.401 must show as a liability the reserves required by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.410. EXAMINATION OF DOMESTIC FRATERNAL BENEFIT

SOCIETIES. A domestic fraternal benefit society is subject to:

(1) Subchapter A, Chapter 86;

(2) Subchapter A, Chapter 401; and

(3) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.097, eff. April 1, 2009.

Sec. 885.411. EXAMINATION OF FOREIGN FRATERNAL BENEFIT SOCIETIES. (a) The commissioner or a person appointed by the commissioner may examine a foreign fraternal benefit society transacting or applying for admission to engage in business in this state. The commissioner may employ assistants for this purpose.

(b) The commissioner or a person appointed by the commissioner to examine a foreign fraternal benefit society:

(1) is entitled to free access to all books, papers, and documents that relate to the business of the society; and

(2) may summon, qualify as witnesses under oath, and examine the society's officers, agents, and employees and other persons in relation to the affairs, transactions, and conditions of the society.

(c) Instead of an examination under this section, the commissioner may accept the examination of the insurance department of the state, territory, district, province, or country in which a foreign fraternal benefit society is organized.

(d) If a foreign fraternal benefit society or the society's officers refuse to permit an examination under this section or to comply with the provisions of law relating to an examination, the commissioner shall suspend the society's authority to write new business in this state or refuse the society's application for a certificate of authority. A suspension or refusal under this subsection continues until the commissioner receives satisfactory evidence relating to the condition and affairs of the society. A foreign fraternal benefit society may not write any new business in this state during a suspension under this subsection.

(e) A foreign fraternal benefit society is subject to the

provisions of Subchapter A, Chapter 86, and Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 that apply to an insurer that is not organized under the laws of this state but is authorized to engage in business in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.098, eff. April 1, 2009.

Sec. 885.412. ADVERSE PUBLICATION PROHIBITED. (a) Pending, during, or after an examination or investigation of a fraternal benefit society, the commissioner may not make public a financial statement, report, or finding, or permit a financial statement, report, or finding affecting the status, standing, or rights of the society to become public, until:

(1) the commissioner serves a copy of the statement, report, or finding on the society at its home office; and

(2) the society has been provided a reasonable opportunity to:

(A) answer the statement, report, or finding; and

(B) make a showing in connection with the statement, report, or finding as the society desires.

(b) This section does not apply to a proceeding involving a fraternal benefit society instituted by the commissioner or the state, including an administrative hearing, a proceeding under Chapter 441 or 443, or a court proceeding.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.099, eff. April 1, 2009.

Sec. 885.413. FEES. The department shall deposit fees collected under this chapter to the credit of the Texas Department of Insurance operating account. Sections 201.001 and 201.002 apply to fees collected under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.100, eff. April 1, 2009.

Sec. 885.414. REMEDIES NOT EXCLUSIVE. (a) This chapter does not prevent or limit any action by or remedy available to the department or the state under Chapter 441 or 443 or other applicable law.

(b) In addition to any other provision of law relating to disciplinary action regarding a fraternal benefit society, Chapter 82 applies to a fraternal benefit society.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.101, eff. April 1, 2009.

SUBCHAPTER J. CONVERSION OF FRATERNAL BENEFIT SOCIETY

Sec. 885.451. CONVERSION OF FRATERNAL BENEFIT SOCIETY TO MUTUAL OR STOCK COMPANY. (a) Subject to Subsection (b), a fraternal benefit society engaging in business in this state may convert to a mutual life insurance company or incorporated stock company by complying with this subchapter.

(b) A fraternal benefit society may not convert to a mutual life insurance company or incorporated stock company except on terms that, in the commissioner's opinion, will fully protect the rights and interests of the society's members and holders of benefit certificates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.452. MEETING OF LODGE REPRESENTATIVES; NOTICE. (a) The governing body of a fraternal benefit society that proposes converting to a mutual life insurance company or incorporated stock company shall call a meeting of lodge representatives. The meeting may not be held before the 90th day after the date the meeting is called.

(b) Not later than the 40th day before the date of the meeting,

the fraternal benefit society shall mail to each society member or holder of a benefit certificate, at the member's or holder's mailing address as shown by the society's records, and to each lodge:

(1) notice of the meeting; and

(2) a general plan of the proposed conversion.

(c) Not later than the 20th day after the date of receipt of the notice, each lodge shall meet in a regular or called session to act on the proposal and choose a representative to the governing body for the state, if the society operates in more than one state.

(d) The lodge representatives chosen under Subsection (c) shall meet and choose the requisite number of representatives to which the state is entitled to the supreme or grand lodge, if that body is located in this state.

(e) A fraternal benefit society shall submit the plan of the proposed conversion to the commissioner, and the commissioner must approve the plan, before the society may submit the plan to the society's members, holders of benefit certificates, and lodges.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.453. RESOLUTION TO CONVERT; ADDITIONAL REQUIREMENTS. (a) As provided by the notice under Section 885.452 and after convening the supreme governing body of the fraternal benefit society, the lodge representatives shall vote on whether to adopt a resolution authorizing the conversion of the society to a mutual life insurance company or incorporated stock company. To take effect, the resolution must be approved by lodge representatives of lodges that constitute at least 60 percent of the total membership of the fraternal benefit society.

(b) The resolution authorizing the conversion must:

(1) set out or ratify a certificate of incorporation amending the fraternal benefit society's charter; and

(2) state:

(A) the society's name;

(B) the name of the new company by which the society will be known;

(C) the object of the company;

(D) the location of the company's principal office;

(E) the names of the principal officers of the company,

who serve until their successors are elected and qualified; and

(F) the period, if any, of the duration of the company.

(c) If the fraternal benefit society is converting to a mutual life insurance company:

(1) the resolution authorizing the conversion must also state the amount of the unencumbered surplus;

(2) the amount and form of the unencumbered surplus must comply with Sections 882.055, 882.301(a), 882.302, 882.304, and 882.404; and

(3) the conversion must comply with Sections 882.056(a) and (b), 882.057, 882.058, 882.059, and 882.101.

(d) If the fraternal benefit society is converting to an incorporated stock company:

(1) the resolution authorizing the conversion must also state:

(A) the amount of the surplus, the amount of capital stock authorized, and the number of shares into which the capital stock is divided; and

(B) the amount of capital stock to be immediately paid in;

(2) the amounts and form of the surplus and capital must comply with Sections 841.054, 841.055, 841.056, 841.057, 841.204, 841.205, 841.301, and 841.302; and

(3) the conversion must comply with Sections 841.058, 841.059(a)(1), 841. 060, 841.061, 841.062, and 841.063.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.454. CONVERSION DOCUMENTS. (a) A fraternal benefit society that converts to a mutual life insurance company or incorporated stock company shall file with the department:

(1) the certificate of incorporation as adopted or amended; and

(2) a report of the meeting of lodge representatives, certified by the presiding officers under the corporate seal of the fraternal benefit society.

(b) The certificate of incorporation must be incorporated in the charter of the proposed company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.455. SALE OF STOCK OF CONVERTED FRATERNAL BENEFIT SOCIETY. (a) If a fraternal benefit society converts to an incorporated stock company, each holder of a benefit certificate or other member of the society has a preference right to subscribe for the proportion of the total capital stock offered for sale that the amount of the member's insurance bears to the society's total insurance in force at the time the society's supreme governing body authorizes the conversion. The right provided by this subsection expires on the 90th day after the date the society's supreme governing body authorizes the conversion.

(b) Before an incorporated stock company that is converted from a fraternal benefit society may offer any stock for public sale, the society's membership has a preference right to purchase the stock. A member may not subscribe for or purchase more than:

(1) 25 percent of the capital stock of the new company; or

(2) 10 percent of the capital stock of the new company, if there are other members applying in writing to purchase stock whose subscriptions are not filled.

(c) If the membership of a converted fraternal benefit society has not subscribed for the total capital stock authorized, the new company may permit others who were not society members at the time of the conversion to subscribe for stock and hold equal rights in the ownership of the stock.

(d) Not later than the 10th day after the date a fraternal benefit society approves a resolution authorizing the society to convert to an incorporated stock company, the society shall notify each holder of a benefit certificate or other member of:

(1) the member's right to subscribe for and purchase the stock of the incorporated stock company;

(2) the amount of stock for which the member is entitled to subscribe; and

(3) all other terms of the subscription and purchase.

(e) The notice required under Subsection (d) must be in a form approved by the department. Proof of depositing a letter addressed to each holder of a benefit certificate or other member providing the notice in the approved form is considered proof of compliance with the requirements of Subsection (d) and this subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.456. LEGAL EFFECT OF CONVERSION TO MUTUAL LIFE INSURANCE COMPANY. A fraternal benefit society that converts to a mutual life insurance company is subject to Chapter 882.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.457. COMPLETION AND LEGAL EFFECT OF CONVERSION TO STOCK COMPANY. (a) The conversion of a fraternal benefit society to an incorporated stock company is complete when the society has:

(1) complied with this subchapter and other state law regulating the incorporation of a life insurance company; and

(2) received from the commissioner its charter or certificate of authority to transact business as an incorporated stock company.

(b) A fraternal benefit society that converts to an incorporated stock company:

(1) is considered by law to have each right, privilege, power, or authority of any other stock corporation organized for engaging in the business of life insurance in this state;

(2) is subject to laws applicable to a stock corporation organized under Chapter 841 for engaging in the business of life insurance in this state;

(3) is considered by law to be a continuation of the business of the fraternal benefit society on the formation of the new company or amendment of its former charter; and

(4) succeeds to and is invested with each right, privilege, or franchise and all property of the former society, including debts due on any account and all choses in action.

(c) On conversion of a fraternal benefit society to an incorporated stock company, the title to any real estate by deed or otherwise vested in the society vests in the company, and the title is not in any way impaired because of the conversion.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.458. CONTINUING OBLIGATIONS OF CONVERTED FRATERNAL

BENEFIT SOCIETY. (a) The rights of each member, holder of a benefit certificate, or creditor and the standing of each claim against a fraternal benefit society that converts under this subchapter must be preserved unimpaired under the new corporation.

(b) Each debt, liability, and duty of a converted fraternal benefit society attaches to the new corporation and may be enforced against it to the same extent as if the debt or liability had been incurred or contracted by the new corporation.

(c) Each outstanding benefit certificate issued by a converted fraternal benefit society is a valid obligation of the new corporation without the issuance of a new certificate.

(d) A new corporation formed from a converted fraternal benefit society is obligated to perform each obligation owing by the society to a holder of a benefit certificate issued by the society. The holder may enforce a benefit certificate against the new corporation to the same extent as if the certificate had been issued by the new corporation after conversion.

(e) A pending suit in which a converted fraternal benefit society was a party is not affected by the conversion and may be prosecuted by or against the new corporation as if the conversion had not taken place.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.459. NAME OF CONVERTED FRATERNAL BENEFIT SOCIETY. The name of a mutual life insurance company or incorporated stock company to which a fraternal benefit society converts:

(1) must, if possible, be a continuation of the society's name; and

(2) may not, if the new company's name is changed from the society's name, be:

(A) the same as that of any other company engaging in business in this state; or

(B) a name similar to that of any other company engaging in business in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.460. PRINCIPAL OFFICE OF CONVERTED FRATERNAL BENEFIT

SOCIETY. The principal office of a mutual life insurance company or incorporated stock company created by the conversion of a fraternal benefit society under this subchapter must be located in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.461. SOCIAL OR CHARITABLE CLUBS FORMED BY MEMBERS OF CONVERTED FRATERNAL BENEFIT SOCIETY. The members of a converted fraternal benefit society or the policyholders in the new corporation may form local clubs for social and charitable purposes. A club formed under this section:

(1) may not be connected with the management of the corporation; and

(2) does not affect the corporation's liability or the insurance in effect.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. TERMINATION OF FRATERNAL BENEFIT SOCIETY

Sec. 885.501. DISCONTINUATION OF BUSINESS BY DOMESTIC FRATERNAL BENEFIT SOCIETY. A domestic fraternal benefit society's certificate of authority becomes void if the society:

(1) discontinues business for a period of one year; or

(2) has fewer than 400 members holding benefit certificates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.502. INITIATION OF PROCEEDINGS FOR TERMINATION OF DOMESTIC FRATERNAL BENEFIT SOCIETY. (a) The commissioner may advise the attorney general of the commissioner's determination if:

(1) after examining a domestic fraternal benefit society, the commissioner determines that the society:

(A) has failed to comply with any provision of this chapter;

(B) is exceeding its powers;

(C) is not fulfilling its contracts in good faith; or

(D) is engaging in business fraudulently; or

(2) the commissioner determines that a domestic fraternal benefit society:

(A) has, after its first year of existence, had fewer than 400 members; or

(B) has discontinued business.

(b) The attorney general shall bring an action in quo warranto against the fraternal benefit society if the attorney general determines that circumstances warrant the action.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.503. ISSUANCE OF INJUNCTION AND APPOINTMENT OF RECEIVER. (a) If it appears on the trial of an action brought under Section 885.502(b) that the fraternal benefit society should be closed, the court shall:

(1) enjoin the society from engaging in further business; and

(2) appoint a receiver for the society.

(b) A receiver appointed under Subsection (a)(2) shall:

(1) immediately take possession of the books, papers, money, and other assets of the fraternal benefit society; and

(2) promptly, under the court's direction, proceed to close the society's affairs and distribute its funds to the persons entitled to those funds.

(c) A court in this state may not hear an application for an injunction against or proceedings for the dissolution of or the appointment of a receiver for a domestic fraternal benefit society or lodge unless the attorney general makes the application or brings the proceedings.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. CRIMINAL PENALTIES

Sec. 885.701. FALSE STATEMENTS; CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully makes a false or fraudulent statement or representation:

(1) in or with reference to an application for membership in a fraternal benefit society authorized to engage in business in this state; or

(2) for the purpose of obtaining money from or benefits in a fraternal benefit society transacting business under this chapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $100 or more than $500;

(2) confinement in jail for not less than 30 days or more than one year; or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.702. SOLICITING MEMBERSHIP IN UNAUTHORIZED FRATERNAL BENEFIT SOCIETY; CRIMINAL PENALTY. (a) A person commits an offense if the person solicits membership for or in any manner assists in procuring membership in a fraternal benefit society that is not authorized to transact business in this state.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.703. SOLICITING MEMBERSHIP IN LODGE OF UNAUTHORIZED FRATERNAL BENEFIT SOCIETY; CRIMINAL PENALTY. (a) A person commits an offense if the person solicits for or organizes a lodge of a fraternal benefit society without first obtaining from the commissioner a certificate of authority that entitles the society to engage in business in this state.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $100 or more than $250;

(2) confinement in jail for not less than three months or more than six months; or

(3) both a fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.704. EXCEPTION TO SOLICITATION OFFENSES. Sections 885.702 and 885.703 do not:

(1) prohibit a member of an existing lodge from soliciting a person to become a member of the lodge; or

(2) apply to a member of a lodge who participates in, directs, or conducts the organization or establishment of a lodge within the limits of the county in which the person resides or of the person's lodge district.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.705. GENERAL CRIMINAL PENALTY. (a) An officer, agent, or employee of a domestic fraternal benefit society commits an offense if the person neglects, refuses to comply with, or violates any provision of the laws of this state governing domestic fraternal benefit societies.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $200.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 885.706. OTHER PENALTIES. Notwithstanding Section 885.705, if another section of this chapter provides a penalty for a violation of the section, the penalty provided in the other section prevails.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 886. LOCAL MUTUAL AID ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 886.001. DEFINITION. In this chapter, "local mutual aid association" means an entity, including a society or association of any sort, authorized under this chapter to engage in the business of insurance and pay benefits with money provided by assessments on the members as needed, including a burial association described by Section 888.001.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.002. APPLICABILITY OF CHAPTER; EXEMPTIONS. (a) Except as provided by Subsection (b), this chapter and Chapters 887 and 888 apply to local mutual aid associations.

(b) This chapter does not apply to the following entities unless the entity is a burial association described by Section 888.001:

(1) a labor union, domestic order, or association that does not provide a death benefit of more than $150;

(2) an association described by Section 885.004; or

(3) any society or association operating before March 21, 1929, statewide on an assessment basis under a charter granted under another statute of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.003. LIMITED EXEMPTION FROM INSURANCE LAWS. A local mutual aid association is subject only to this chapter and Chapters 887 and 888. Except as otherwise provided by this chapter, a local mutual aid association is exempt from all other insurance laws of this state, unless a local mutual aid association is expressly designated in the law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.004. ORGANIZATION OF NEW ASSOCIATION PROHIBITED. A new local mutual aid association may not be organized under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 886.051. OPERATION UNDER CERTIFICATE OF AUTHORITY. A local mutual aid association engages in business under a certificate of authority issued by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.052. COMPLIANCE WITH LAW REQUIRED. An individual, firm, or corporation may not engage in business in this state as a local mutual aid society or association that pays a death benefit or other benefit and that pays benefits with money provided by assessments made as necessary unless the individual, firm, or corporation is acting in accordance with this chapter or another law of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. POWERS AND DUTIES OF ASSOCIATION

Sec. 886.101. GENERAL POWERS OF ASSOCIATION. A local mutual aid association is a body corporate that may sue and be sued in its own name and exercise the other powers and functions specifically granted in this chapter, but not otherwise.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.102. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a local mutual aid association. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to local mutual aid associations.

(b) On advance approval of the commissioner, a local mutual aid association may pay dividends to its members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.103. ARTICLES OF ASSOCIATION, CONSTITUTION, AND BYLAWS. (a) The articles of association of a local mutual aid association must state:

(1) the name of the association, which must be distinctly different from other associations operating in the same area;

(2) the purpose for which the association is created, including the upper and lower age limits of individuals to whom benefit certificates may be issued;

(3) the location of the principal office of the association;

(4) the territory in which the association will engage in business;

(5) the titles of the officers of the association; and

(6) the number of directors of the association.

(b) The constitution and bylaws of the association may not violate, and must be in harmony with, this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.104. BENEFITS AUTHORIZED. (a) Except as provided by Subsection (b), a local mutual aid association may provide only for the payment of death benefits. An association may not provide for old age benefits or benefits for accidental injury or sickness.

(b) A local mutual aid association organized before March 21, 1929, that provides for the payment of death, old age, and accident benefits may continue to provide those benefits.

(c) The policy issued by the association must clearly state the benefits provided.

(d) A local mutual aid association may not issue a policy providing for:

(1) a level premium;

(2) guaranteed benefits; or

(3) surrender of loan values.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.105. TERRITORIAL LIMITATIONS. (a) A local mutual aid association may conduct business in any county in this state.

(b) If the articles of association of an association provide that the association engages in business only in a limited territory, the association may amend the articles to permit statewide business. After the amendment, the association is entitled to receive a certificate of authority permitting statewide business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.106. CONNECTION WITH OTHER ASSOCIATIONS PROHIBITED. (a) A local mutual aid association may not have any connection with another local mutual aid association.

(b) An association may not contribute any form of salary or compensation to an executive officer of another association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.107. ANNUAL STATEMENT; FILING FEE. (a) For the filing of each annual statement, the department shall charge the appropriate fee. The fee must be:

(1) payable to the department; and

(2) deposited in the Texas Department of Insurance operating account.

(b) Sections 201.001 and 201.002 apply to the fee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.102, eff. April 1, 2009.

Sec. 886.108. SURETY BOND. (a) A local mutual aid association's officer responsible for the funds of the association shall file with the department a surety bond.

(b) The surety bond must be:

(1) executed by a surety company authorized to do business in this state;

(2) satisfactory to the department; and

(3) payable in an amount and conditioned as specified by Section 887.054.

(c) This section does not apply to a local mutual aid association that:

(1) has a total membership of 1,000 or fewer members;

(2) charges $1 or less each for annual dues or assessments; and

(3) charges $2.50 or less for a membership fee.

(d) An association exempted under Subsection (c) shall file with the department a bond in the amount of $1,000 and conditioned as provided by Section 887.054.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.109. VOLUNTARY DISSOLUTION. A local mutual aid association may dissolve by vote of the majority of the members at:

(1) a regular meeting called by the secretary; or

(2) a special meeting called for the purpose of considering dissolution.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.110. AUTOMATIC DISSOLUTION. A local mutual aid association is dissolved automatically and forfeits its right to engage in the business of insurance if:

(1) the association's membership falls below 25 percent of the maximum value of the policy issued; or

(2) the association's membership falls below 50 percent of the maximum value of the policy issued and the association fails to notify each member of the amount paid on the preceding death claim when assessment is made.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. DISCIPLINARY PROCEDURES AND CRIMINAL PENALTY

Sec. 886.701. REVOCATION. Except as otherwise provided by law, the department may revoke the right of a local mutual aid association to engage in the business of insurance in this state only on:

(1) the judgment of a court;

(2) the filing of articles of dissolution by the members of the association or by the officers on behalf of the members; or

(3) a filing showing that the association's membership has been merged and taken over by another association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.702. GROUNDS FOR DISSOLUTION OR FORFEITURE. (a) In addition to any other penalties imposed on a local mutual aid association or on its members or officers, an association is subject

to dissolution and forfeiture of its right to engage in the business of insurance if the association:

(1) ceases to engage in the business of insurance;

(2) falls below the requirements of this chapter;

(3) engages in the business of insurance without a certificate of authority;

(4) fails to make reports as required by law;

(5) refuses to submit to examination by the department or pay the cost of an examination;

(6) engages in the business of insurance in a fraudulent, illegal, or dishonest manner; or

(7) violates this chapter.

(b) The attorney general shall, at the request of the department, file any action necessary to wind up the affairs of an association to which Subsection (a) applies and provide for the appointment of a receiver if necessary.

(c) An action under this section must be brought in Travis County.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 886.703. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $500.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 887. PROVISIONS APPLICABLE TO CERTAIN MUTUAL ASSESSMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 887.001. DEFINITIONS. In this chapter:

(1) "Assessment" means any money or thing of value, including premiums, paid in consideration of insurance provided by an insurance certificate.

(2) "Association" means an organization subject to this chapter.

(3) "Insurance certificate" means an insurance policy, contract of insurance, certificate of membership, or other document

through which insurance is effected or evidenced.

(4) "Member" includes a certificate holder or any other insured of an association.

(5) "Membership fee" means the amount of the first assessment or assessments placed in the expense fund of an association and representing the cost of soliciting or procuring a member, as permitted by the department.

(6) "Mortuary fund" includes a mortuary fund, relief fund, claim fund, or similar fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.002. PURPOSE. The primary purpose of this chapter and Chapter 888 is to secure to members and the beneficiaries of members the full and prompt payment of all claims, according to the maximum benefit provided under the insurance certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.003. APPLICABILITY OF CHAPTER. (a) This chapter governs:

(1) local mutual aid associations;

(2) statewide mutual life associations;

(3) life, health, and accident associations;

(4) mutual assessment life, health, and accident associations;

(5) burial associations; and

(6) similar entities.

(b) Except as provided by Section 887.004, this chapter applies to insurance companies and associations, whether incorporated or not:

(1) that issue policies or certificates of insurance on the lives of individuals on a mutual assessment plan or that provide health and accident benefits on a mutual assessment plan or whose funds are derived from assessments on certificate holders or members; and

(2) that are not governed by:

(A) Chapter 841, 861, 882, 883, 885, 941, or 942; or

(B) Chapter 5, Title 78, Revised Statutes, as provided by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called

Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929.

(c) This chapter does not apply to mutual fire insurance companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.004. INAPPLICABILITY TO CERTAIN ORGANIZATIONS OF MEMBERS OF RELIGIOUS DENOMINATION. This chapter does not apply to an association that:

(1) is not operated for profit;

(2) is composed only of the members of a particular religious denomination;

(3) does not provide insurance benefits in an amount greater than $1,000 on any one individual; and

(4) does not pay any officer of the association a salary greater than $100 a month.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.005. DEPARTMENT OF PUBLIC SAFETY EMPLOYEE MUTUAL ASSOCIATION. Notwithstanding any other provision of this chapter, a mutual association for employees of the Department of Public Safety may provide coverage and benefits to retired officers and employees of that department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.006. CONSTRUCTION. (a) This chapter does not:

(1) enlarge the powers or rights of any association;

(2) enlarge the scope of an association's legal or corporate existence; or

(3) authorize the creation of any association or corporation to engage in the business of insurance described by Section 887.003(b) if that creation is not specifically permitted by law.

(b) The laws prohibiting or limiting creation of an association and the exercise of corporate power are not affected by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.007. DEPOSIT OF FEES. The department shall deposit a fee collected under this chapter to the credit of the Texas Department of Insurance operating account.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.008. INTERPRETATION OF CHAPTER BY COMMISSIONER. If a provision of this chapter appears obscure when applied to health, accident, or disability provisions in an insurance certificate issued by an association authorized to issue health, accident, or disability certificates, the commissioner shall interpret the provision in accordance with the expressed purpose of this chapter and looking to the full payment of claims and preserving to members the benefit of the association's protection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.009. RULES. The commissioner may adopt reasonable rules to implement the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. GENERAL POWERS AND DUTIES; OFFICERS AND DIRECTORS

Sec. 887.051. BYLAWS. (a) An association shall submit to the department a copy of the association's bylaws. The department shall examine the bylaws and approve the bylaws if they comply with this chapter. The association shall conform the bylaws to this chapter if they are not in compliance.

(b) On approval of the bylaws under Subsection (a), an association shall file with the department a copy of the bylaws certified by the president or general manager and the secretary of the association.

(c) An association's bylaws must contain all things required by this chapter and may not contain any provision in conflict with this chapter.

(d) An association's bylaws must provide for periodic and special meetings of the membership.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.052. AMENDMENT OF BYLAWS. (a) A majority of an association's members present at a regular meeting or at a meeting called for the purpose may amend the association's bylaws.

(b) An association shall mail to all members notice of any regular or special meeting at which amendments to bylaws will be considered. The notice must contain:

(1) a complete copy of the proposed amendments; and

(2) a fair explanation of the intent and effect of the proposed amendments.

(c) An amendment must be ratified by the association's board of directors.

(d) An association shall file with the department, in the same manner provided for filing bylaws under Section 887.051, an amendment adopted by the association. An amendment is not effective unless approved by the department.

(e) An association shall mail to each member a certified copy of any amendment to the association's bylaws at the next assessment after the amendment to the bylaws is made.

(f) On adoption of an amendment to an association's bylaws that might affect the insurance rights of the association's members, the association shall immediately send a copy of the amendment by first class mail to each affected member. The burden of proof is on the association to prove that the association mailed the amendment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.053. IMMUNITY. An officer, director, or member of an association is not individually liable because of an insurance certificate issued by the association or a claim arising from an insurance certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.054. FINANCIAL OFFICER; BOND. (a) An association, by resolution entered in its minutes, shall designate an officer to be responsible for handling the association's funds. The president, secretary, or general manager of the association must certify a copy of the resolution, and the association shall file the copy with the department.

(b) Except as provided by Subsection (c) or (d), the association shall make and file a surety bond covering the officer designated under Subsection (a). The bond must:

(1) be issued by a corporate surety company authorized to issue surety bonds in this state;

(2) be satisfactory to the department and payable to the department for the use and benefit of the association;

(3) obligate the principal and surety to pay any monetary loss sustained by the association through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by the officer, whether acting alone or with other persons, while employed as or exercising the powers of an officer designated under Subsection (a); and

(4) be in an amount of:

(A) at least $2,500; or

(B) if the association's mortuary fund exceeds $2,500, an amount equal to the lesser of:

(i) the amount of the association's mortuary fund; or

(ii) $20,000.

(c) Instead of the bond required by Subsection (b), the officer designated under Subsection (a) may deposit with the department cash or securities approved by the department in the amount and subject to the conditions applicable to the bond.

(d) Except as provided by Subsection (e), this section does not apply to a local mutual aid association that was operating on May 12, 1939, and has never:

(1) had a total membership of more than 1,000 members;

(2) charged more than $1 each for annual dues and assessments; and

(3) charged more than $2.50 for membership fees.

(e) An association to which Subsection (d) applies must file with the department a bond in the amount of $1,000, conditioned as provided for a bond under Subsection (b).

(f) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.055. BOND REQUIREMENTS FOR CERTAIN PERSONS. (a) In addition to the bond required by Section 887.054 and any other bond required by law, an association shall obtain a separate or blanket surety bond covering each other person who may have access to the association's mortuary funds. The bond must:

(1) be issued by a surety authorized by the department to engage in business in this state;

(2) be payable to the department for the use and benefit of the association;

(3) obligate the principal and surety to pay any monetary loss sustained by the association through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by a covered person, whether acting alone or with other persons; and

(4) be in an amount determined by the department of at least $1,000 but not more than $5,000.

(b) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.056. RECOVERY ON BOND. (a) On receipt of information that an officer of an association has violated the terms of a bond under Section 887. 054 or 887.055, the department shall demand from the officer a written explanation of the charge.

(b) If after an explanation under Subsection (a) the department is not satisfied regarding the existing facts in controversy, the department shall:

(1) notify the officer to appear in Travis County, not earlier than the 11th day or later than the 16th day after service of notice, with any records and other information the department considers proper; and

(2) conduct an examination into the charge against the officer.

(c) If after an examination under Subsection (b) the department

is satisfied that the officer violated the terms of the bond, the department shall:

(1) immediately notify the company executing the bond;

(2) prepare a written statement covering the facts; and

(3) deliver the statement to the attorney general.

(d) On receipt of a statement under Subsection (c), the attorney general shall investigate the charges. If the attorney general is satisfied that the officer violated the terms of the bond, the attorney general shall:

(1) enforce the liability against the cash or securities provided as surety by the officer; or

(2) in the name of the commissioner, file suit in Travis County on the bond for the benefit of the bond's beneficiaries against the officer as principal and the sureties for the recovery of:

(A) any amounts due by the officer; and

(B) all costs of the suit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.057. DEPOSIT. (a) An association shall, through the department, deposit with the comptroller an amount equal to the largest risk assumed by the association on any one life or individual.

(b) A deposit under this section must be cash or convertible securities subject to approval by the department.

(c) A deposit is liable for the payment of any final judgment against the association and is subject to garnishment after a final judgment against the association.

(d) An association shall immediately replenish a deposit under this section if the deposit is impounded or depleted. If the association fails to immediately replenish the deposit on demand by the department, the department may consider the association insolvent and take appropriate action.

(e) An association may not state in an advertisement, in a letter, in literature, or otherwise that it has made a deposit with the department as required by law, unless the association also states fully:

(1) the purpose of the deposit;

(2) the conditions under which the deposit is made; and
(3) the exact amount and character of the deposit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.058. CHANGE OF ASSOCIATION'S NAME. An association may change its name by amending the association's charter if:
(1) the association submits the proposed amendment to the department for approval; and
(2) the department does not determine that the proposed name is confusing and misleading to the public.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.059. BOOKS AND RECORDS. (a) An association shall keep the association's books and records in a form and manner that:
(1) accurately reflects the condition of the association or the facts essential to the association's faithful and effective operation; and
(2) is acceptable to the department.
(b) The association shall adopt forms or systems that are acceptable to the department and will most effectively serve the purpose described by Subsection (a)(1).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.060. ANNUAL STATEMENT. (a) Not later than April 1 of each year, an association shall file with the department a sworn statement of the association's condition on the preceding December 31.
(b) A statement under this section must be on a form provided by the department for that purpose and include a complete account of:
(1) the association's real and contingent assets;
(2) the association's liabilities; and
(3) income to and disbursements from the association's mortuary and expense funds during the year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.061. REPORT ON CONDITION OF ASSOCIATION. The department may require from an association written reports on the condition of the association at any time the department considers advisable. The department may require that a report be verified by the oath of a responsible officer of the association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.062. EXAMINATION. The following provisions apply to an association:

(1) Subchapter A, Chapter 86; and

(2) Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.103, eff. April 1, 2009.

Sec. 887.063. ADMITTED ASSETS. An association may include among its admitted assets, within the assets of the expense fund only, any asset designated as a net asset under Section 841.004.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.064. DIVIDENDS. If the amount of an association's mortuary fund exceeds the amount of reserves required by Subchapter I, the association may pay dividends from the fund to its certificate holders. The amount of the dividends and the method of distribution of the dividends must be:

(1) equitable and nondiscriminatory; and

(2) approved by the department before payment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.065. MERGER. (a) An association may not merge with another association without the advance approval of the department.

(b) The department may grant approval under Subsection (a) only after the department:

(1) completely investigates the facts; and

(2) determines that the proposed merger is to the advantage of the members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 887.101. CERTIFICATE OF AUTHORITY REQUIRED. (a) Except as provided by Section 887.102, the department shall require an association or person to hold a certificate of authority issued by the department before the association or person may engage in the business of insurance in this state.

(b) If an association or person writes insurance without a certificate of authority issued under Subsection (a), the department shall notify the attorney general. The attorney general shall institute proceedings in the district court of Travis County to restrain the association or person from writing insurance without a certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.102. EXEMPT ASSOCIATION; PERMIT. (a) An association is not required to hold a certificate of authority under Section 887.101 if the association:

(1) limits its membership to:

(A) the employees and the families of employees of a particular designated firm, corporation, or individual; or

(B) borrowers of a federal agency in this state and members of the borrower's immediate family who are living with the borrower and are not engaged in nonfarm work for their chief income;

(2) has been in existence for at least five years;

(3) is not operated for profit; and

(4) does not pay commissions.

(b) An association exempt under this section shall:

(1) make annual reports to the department, on forms

provided for that purpose, showing the financial condition of the association, receipts and expenditures of the association, and any other facts required by the department; and

(2) obtain from the department a permit to engage in the business of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.103. REFUSAL OF CERTIFICATE OF AUTHORITY OR PERMIT. (a) An association may not continue to engage in the business of insurance in this state if the commissioner notifies the association in writing of the commissioner's refusal to issue a certificate of authority or a permit.

(b) Not later than the 60th day after the date notice is received under Subsection (a), an association may file suit to review the commissioner's action in accordance with Subchapter D, Chapter 36.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.104. REFUSAL OR REMOVAL FOR UNWORTHINESS OF PUBLIC TRUST. (a) The department may not issue a certificate of authority to an association if the department determines that an officer, employee, or member of the board of directors of the association is unworthy of the trust or confidence of the public.

(b) On issuance of a certificate of authority to an association, the commissioner shall order the removal of an officer, employee, or director of the association if the officer, employee, or director is found unworthy of the trust or confidence of the public.

(c) If the association does not remove an officer, employee, or director as required by an order issued under Subsection (b), the commissioner shall:

(1) revoke the certificate of authority; and

(2) treat the association as insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. MEMBERS

Sec. 887.151. CLASSES OF MEMBERS. (a) An association's constitution and bylaws shall state the number of members to be admitted in a class of the association.

(b) An association shall keep the accounts of the classes' mortuary assessments separate. The association may not use the funds of a class to pay claims for any other class.

(c) Not later than six months after the date a class of members is created, an association must build the class up to the required membership to pay claims in full. Until the required membership level is reached, the insurance certificates for the class may not provide for a benefit greater than $500, unless the association has sufficient funds to lawfully make the full payment of benefits.

(d) Creation of any new class is subject to advance approval of the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.152. QUALIFYING MEMBERSHIP IN ASSOCIATION. (a) An individual must qualify under an association's bylaws to become a member of the association.

(b) An association must maintain the qualifying membership at all times. If an association fails to maintain the qualifying membership, the commissioner shall treat the association as insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.153. VOTING RIGHTS OF MEMBERS. An association shall permit each member of the association to vote at any periodic meeting or special meeting of the members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.154. MEMBERSHIP RECORDS. An association shall keep:

(1) a complete and correct roster of the association's members, with proper statistical records for determining by age or some other method the proper cost of insurance;

(2) accurate records of classes of memberships; and

(3) records of amounts of assessments paid by each member and by each class that show:

(A) how the funds are distributed between mortuary and expense funds for each class; and

(B) the amounts paid out of the funds of the whole membership or each class in death claims or other benefits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.155. TRANSFER OF MEMBERSHIP OR MERGER OF CLASSES. (a) Without advance approval of the department, an association may not:

(1) transfer any part or class of membership or all membership to another association; or

(2) merge classes or transfer a member from one class to another in the association.

(b) The department may grant approval under Subsection (a) only after the department:

(1) completely investigates the facts; and

(2) determines that the proposed merger or transfer is to the advantage of the members or classes affected by the merger or transfer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. POWERS AND DUTIES RELATING TO INSURANCE AND COVERAGES

Sec. 887.201. LIMIT ON LIFE INSURANCE. An association may not insure an individual life for more than $5,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.202. STIPULATED PREMIUM PLAN; DEDUCTION OF UNPAID PREMIUM BALANCE. (a) An association may issue an insurance certificate on a stipulated premium plan that provides for the insured to pay regular premiums weekly, monthly, quarterly, semiannually, or annually, as determined by the insured.

(b) An association may issue an insurance certificate that provides that on the maturity of benefits payable under the certificate any balance of premium for the certificate year remaining

unpaid is deducted from the benefits payable.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.203. ISSUANCE OF LIFE INSURANCE POLICY BY CERTAIN ASSOCIATIONS. (a) A local mutual aid association or statewide mutual assessment company that has a mortuary fund and expense fund with a combined value of at least $100,000 greater than the liabilities of the combined funds may issue a life insurance policy in the same manner as a company organized under Chapter 841.

(b) An insurance policy issued as provided by Subsection (a):

(1) may not insure an individual life for more than $5,000;

(2) must be reserved as required for a company organized under Chapter 841; and

(3) may be issued only on an endowment or limited pay basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.204. RENEWAL OR REINSTATEMENT OF INSURANCE CERTIFICATE. (a) If an insurance certificate terminates for any reason and the association's rules provide that a reinstated certificate is regarded as a new certificate, an application for reinstatement must state in at least 10-point type that:

(1) the same rules that apply to the original certificate apply to the reinstated certificate; and

(2) the association may invalidate the certificate within the contestable period for a false statement regarding the applicant's health or physical condition or another matter material to the risk.

(b) On reinstatement of an insurance certificate, an association shall send to the certificate holder by first class mail a copy of the application for reinstatement. The burden of proof is on the association to prove that the association mailed the application.

(c) If a renewal insurance certificate is issued after termination of an insurance certificate, the association shall attach to the renewal insurance certificate a copy of the application for reinstatement. The application is part of the renewal insurance

certificate.

(d) If an association renews or reinstates an insurance certificate after termination of the certificate, the association shall divide the reinstated member's payments between the funds in the same percentage as is required of regular payments in the association's bylaws, except that if the period between termination and reinstatement is nine months or longer, the association may:

(1) charge a reinstatement fee not greater than the membership fee; and

(2) place the fee in the expense fund.

(e) A renewal or reinstatement certificate may not be contestable for any cause except nonpayment of assessments for a period longer than six months from the date of renewal or reinstatement, except that if the renewal or reinstatement occurs within the certificate's original two-year contestable period, the contestable period may be extended for six months from the date it would have originally expired.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.205. LIFE INSURANCE CERTIFICATE BENEFICIARIES. (a) An association may pay death benefits only to:

(1) a member's spouse;

(2) a member's relative by blood to the fourth degree or by marriage to the third degree;

(3) a person actually dependent on the member;

(4) a creditor, estate, or other person with an insurable interest; or

(5) a purely charitable or religious institution.

(b) A beneficiary of a life insurance certificate forfeits the beneficiary's interest in the certificate if the beneficiary is the principal or an accomplice in wilfully bringing about the death of the insured. The nearest relative of the insured is entitled to the proceeds of an insurance certificate forfeited under this subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.206. PAYMENT OF CLAIM; PROOF OF CLAIM. (a) An association shall pay each claim under an insurance certificate in

full not later than the 60th day after the date of receipt of due proof of claim.

(b) Written notice of a claim given to an association is considered due proof of claim if the association does not provide the claimant with the forms usually provided for filing claims before the 16th day after the date notice is received.

(c) If an association is unable to pay a valid claim in full within the time prescribed by Subsection (a), the commissioner shall treat the association as insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.207. EXCEPTION TO FULL PAYMENT REQUIREMENT: ASSESSMENT-AS-NEEDED ASSOCIATIONS. (a) Section 887.206 does not apply to a class organized before May 12, 1939, and operating on the postmortem or assessment-as-needed plan on that date.

(b) An association with a postmortem or assessment-as-needed class to which Subsection (a) applies may continue to operate on the plan only if:

(1) the class has a sufficient membership at the assessment rate charged to produce for the mortuary fund at least 50 percent of the maximum value of the largest certificate in the class; and

(2) the association receives the amount required by Subdivision (1).

(c) If the membership of a class is sufficient in number to pay more than 50 percent but less than 100 percent of the maximum value of the largest certificate in the class, an officer of the association shall print on each assessment notice the percentage of the maximum value of the certificate actually paid on the last claim for death benefits in the class.

(d) If the amount realized on an assessment is not sufficient to pay 50 percent of the maximum amount of promised benefits as shown on the certificate, the commissioner shall treat the association as insolvent.

(e) Any benefits paid by an association operating on a postmortem or assessment-as-needed basis are dependent on the amount realized from assessments on the membership. Each of the association's insurance certificates must state:

(1) that any benefits paid are dependent on the amount

realized from assessments on the membership; and

(2) the certificate's maximum payment.

(f) An association or a class in an association organized after May 12, 1939, may not operate on the postmortem or assessment-as-needed plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.208. CONTESTED CLAIMS. (a) An association may not contest a claim:

(1) only for delay or for a captious or inconsequential reason; or

(2) to force settlement at less than full payment.

(b) An association shall notify a claimant of the association's intent to deny liability on a claim not later than the 60th day after the date the association receives due proof of claim.

(c) An association that does not notify a claimant as provided by Subsection (b) is presumed as a matter of law to have accepted liability on the claim.

(d) The commissioner shall revoke the certificate of authority of any association the commissioner finds is operating fraudulently or improperly contesting claims.

(e) An association shall report to the department the costs of contests in the annual statement under Section 887.060. The report must be verified by an officer of the association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.209. VENUE. An action brought against an association that grows out of or is based on any right of claim or loss or proceeds due, arising from or predicated on any claim for benefits under an insurance certificate issued by the association, may be brought in:

(1) the county where the certificate holder or beneficiary instituting the action resides; or

(2) the county of the principal office of the association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.210. REINSURANCE. (a) An association may enter into a reinsurance agreement with a legal reserve company that:

(1) is authorized to write life, health, and accident insurance in this state; and

(2) has capital or surplus of at least $100,000.

(b) A reinsurance agreement under this section is subject to the commissioner's approval.

(c) An association may not pay more out from its mortuary fund for reinsurance under this section than is received at the time of reinsurance by the mortuary fund on the insurance certificates or members reinsured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. CONTENTS OF APPLICATIONS AND INSURANCE CERTIFICATES

Sec. 887.251. GENERAL REQUIREMENTS FOR INSURANCE CERTIFICATE AND APPLICATION FORMS; INCONTESTABILITY. (a) An insurance certificate issued by an association must include:

(1) any condition of the certificate, including any portion of the bylaws of the association that affects the insurance rights of the parties in any material way; and

(2) a statement that the certificate is issued subject to:

(A) the association's constitution and bylaws; and

(B) any amendments to the constitution and bylaws approved by the commissioner.

(b) An insurance certificate must provide that a certificate in force for two years becomes incontestable, except for nonpayment of dues or assessments, on the second anniversary of the date of issuance, if the insured does not die before that date.

(c) An insurance certificate issued by an association or an application for the certificate may not contain language or be in a form that misleads the certificate holder or applicant about the kind of insurance provided under the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.252. APPLICATION FOR INSURANCE CERTIFICATE. (a) An application for an insurance certificate issued by an association must be signed by the applicant. If the applicant is a minor, the

application may be signed by a parent or guardian.

(b) The application for an insurance certificate that provides that a misstatement relating to the applicant's health or physical condition may void the certificate within the contestable period must state that provision in language approved by the commissioner. The statement must be in at least 10-point type.

(c) An association shall attach to an insurance certificate a copy of the application for the certificate. The application is part of the insurance certificate.

(d) In the absence of fraud, each statement in an application for an insurance certificate is regarded as a representation and not a warranty.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.253. LIFE INSURANCE CERTIFICATE FORMS. (a) A life insurance certificate issued by an association must include:

(1) on the front page of the certificate, a definitive statement of the amount of the death benefit to be paid; and

(2) a plain statement of the circumstances or conditions under which the benefit is to be paid.

(b) A life insurance certificate must provide that if the age of the insured is misstated, the amount of insurance is the amount that the premium paid would have purchased if the age had been stated correctly, based on rates in effect when the insured dies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.254. HEALTH AND ACCIDENT INSURANCE CERTIFICATE FORMS. An insurance certificate issued by an association must include a plain statement of each health, accident, or other benefit under the certificate and the terms under which each benefit is paid.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.255. LIFE INSURANCE BENEFIT REDUCTIONS AND EXCLUSIONS. (a) An association may, with the commissioner's approval, issue an insurance certificate that provides for:

(1) reduced benefits if the insured:

(A) dies or is injured while engaged in:

(i) military, naval, or aerial service or aerial flight during peace or war; or

(ii) a hazardous occupation specified in the certificate;

(B) dies by the insured's own hand, regardless of whether the insured was sane or insane; or

(C) dies or is injured by mob violence or legal execution; or

(2) reduced or excluded benefits for sickness from certain causes specified in the certificate.

(b) The front page of an insurance certificate must call attention to any reduction or exclusion of benefits provided by the certificate. The circumstances or conditions under which the reduction or exclusion applies must be stated plainly in the certificate.

(c) If an insurance certificate that provides natural death benefits contains a provision for reducing the greatest death benefit provided by the certificate for a specified insured for a reason other than a reason specified by Subsection (a):

(1) the reduced death benefit for the insured must at all times when the reduction is in effect equal or exceed 120 percent of the total premium paid on that certificate by the insured; and

(2) the reduction must end before the fifth anniversary of the date the certificate is issued.

(d) Subsection (c) does not apply to a life insurance certificate on which the reduction of the death benefit does not apply at the time of the death of the specified insured.

(e) If a life insurance certificate provides for an increase of the initial amount of the death benefit for a specified insured one or more times during the first five years of the certificate, the amount of the death benefit for the insured must at all times during the period of the increasing benefit equal at least 120 percent of the premiums paid on that certificate by the insured during the period of the increase.

(f) Subsection (e) does not apply to a life insurance certificate that has been in force for more than five years from the date the certificate was issued.

(g) Subsections (c)-(f) do not apply to a family group life

insurance certificate described by Section 887.402.

(h) This section does not apply to health and accident insurance policies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.256. FORM APPROVAL. (a) The commissioner shall approve the form and language of an insurance certificate before the certificate is used by an association. The commissioner shall, in cooperation with the several associations, ensure that the certificate forms are as uniform as feasible. Forms for all associations are not required to be uniform.

(b) An insurance certificate form used by an association after May 12, 1939, must comply with this chapter and with any other laws regulating the association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. ASSESSMENTS AND REVENUE

Sec. 887.301. ASSESSMENTS REQUIRED. (a) An association shall levy regular and periodic assessments on its membership in amounts and at intervals necessary to:

(1) meet the reasonable operating expenses of the association; and

(2) allow the association to pay in full any claims arising under its insurance certificates.

(b) An association may also levy an assessment for surplus funds.

(c) An association shall specify the purpose of an assessment.

(d) An assessment on a life insurance certificate issued after May 21, 1965, insuring the life of one or more individuals must be:

(1) in accordance with the reserve standard adopted by the association and approved by the commissioner, except that an association may use the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year; and

(2) in an amount sufficient to deposit in the mortuary fund an amount at least equal to the renewal net premiums computed in accordance with the reserve standard adopted by the association and approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.302. AUTHORITY TO INCREASE ASSESSMENT RATES ON CERTAIN INSURANCE CERTIFICATES. (a) An association's board of directors may by resolution increase assessment rates on life insurance certificates in force up to the rate on an attained age basis in accordance with the 1956 Chamberlain Reserve Table, with interest at 3-1/2 percent a year, or any other reasonable, equitable, or necessary increase. The board may also adjust assessment rates on accident, health, and hospitalization insurance certificates in force.

(b) An assessment rate increase or adjustment under this section on insurance certificates in force applies to all classes of the same or similar certificates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.303. APPROVAL REQUIRED FOR CERTAIN RATE INCREASES. An association may not implement a rate increase on insurance certificates in force before the commissioner approves the rate increase as complying with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.304. LIMIT ON RATE INCREASES. Notwithstanding any other provision of this chapter, on a life insurance certificate issued after May 21, 1965, an association may not during any consecutive five-year period increase the rate to more than double the rate charged the insured at the time of the rate increase.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.305. EXPENSE LOADING ON CERTAIN INSURANCE CERTIFICATES. If an association increases a life insurance assessment rate at any age other than at age of issue, the expense loading on the new assessments may not, on 50 years of age or greater, exceed 25 percent of the gross assessment charged, unless an

additional expense loading is approved by the commissioner as reasonable and necessary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.306. ASSESSMENT-AS-NEEDED ASSOCIATIONS: PAYMENTS ON CERTAIN INSURANCE CERTIFICATES. (a) This section applies only to an association operating on an assessment-as-needed basis.

(b) If the members' payments on insurance certificates issued and in force before May 12, 1939, or on the reinsurance or renewals of those certificates, are not sufficient to pay matured death and disability claims in the maximum amount stated in the certificates and to provide for the creation and maintenance of the funds required by the association's bylaws, the association may, with the commissioner's approval and after proper hearing before the commissioner, provide for meeting the deficiency by additional, increased, or extra rates of payment.

(c) The association may give the members the option of agreeing to reduced maximum benefits or making increased payments.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.307. REVENUE OF ASSOCIATION; DEPOSIT. (a) The revenue of an association must be derived from:

(1) membership fees; and

(2) assessments.

(b) Not later than the fifth day after the date an association collects revenue, the association shall deposit the revenue in a state or national bank.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.308. SUSPENSION OF MEMBER FOR NONPAYMENT. Before suspending a member from membership for nonpayment of assessments or membership fees, an association shall send notice to the member by first class mail stating the final date of payment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.309. FAILURE TO COMPLY WITH CERTAIN COMMISSIONER ORDERS. If an association refuses to comply with an order of the commissioner regarding rates or assessments under this chapter, the commissioner shall treat the association as insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER H. MORTUARY AND EXPENSE FUNDS

Sec. 887.351. MORTUARY AND EXPENSE FUNDS. An association's bylaws must provide for the method and procedure for allocating assessments between the association's mortuary and expense funds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.352. LIMITS ON USE OF FUNDS. An association may spend or invest money from a mortuary fund or expense fund only as provided for each fund by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.353. DIVISION OF FUNDS: CERTAIN LIFE INSURANCE CERTIFICATES. (a) This section applies to a life insurance certificate insuring the life of one or more individuals issued:

(1) after December 31, 1965; or

(2) before December 31, 1965, and on which the assessment rate has been increased based on an age other than age on the date the certificate was issued.

(b) To the extent consistent with this subchapter, an association shall divide collected assessments into at least two funds.

(c) An association shall deposit in a mortuary fund a portion of the association's assessments at least equal to the renewal net premium computed at the age of issue or some other advanced age in accordance with the reserve standard adopted by the association. The association may pay from the mortuary fund only:

(1) fund claims under insurance certificates;

(2) dividends to certificate holders as provided by Section 887.064; and

(3) any other expenditures permitted by law.

(d) An association shall deposit in an expense fund the remaining portion of the assessments not deposited under Subsection (c). The association may pay expenses from the expense fund.

(e) This section does not apply to an association operating on an assessment-as-needed basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.354. DIVISION OF FUNDS: ACCIDENT AND HEALTH INSURANCE CERTIFICATES AND CERTAIN LIFE INSURANCE CERTIFICATES. (a) This section applies to:

(1) a life insurance certificate in force on December 31, 1965, to which Section 887.353 does not apply; and

(2) an accident, health, or hospitalization insurance certificate.

(b) An association shall deposit in a mortuary fund an amount equal to at least 60 percent of the association's assessments, not including membership fees.

(c) An association shall deposit in an expense fund:

(1) membership fees; and

(2) the remaining portion of the assessments not deposited under Subsection (b).

(d) This section does not apply to an association operating on an assessment-as-needed basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.355. DIVISION OF FUNDS: CERTAIN LIFE INSURANCE CERTIFICATES WITH NO RATE INCREASE. (a) This section applies to a life insurance certificate in force on December 31, 1965, on which the assessment rate has not been increased.

(b) An association may:

(1) deposit in a mortuary fund at least the net renewal premium, based on the reserve table adopted by the association; and

(2) deposit in an expense fund the remaining portion of the premium.

(c) This section does not apply to an association operating on an assessment-as-needed basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.356. DIVISION OF FUNDS: ASSESSMENT-AS-NEEDED ASSOCIATIONS. (a) An association operating on an assessment-as-needed basis shall divide collected assessments into at least:

(1) a mortuary fund; and

(2) an expense fund.

(b) An association under this section shall deposit into a mortuary fund an amount equal to at least 60 percent of the association's assessments, not including membership fees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.357. INVESTMENT OF FUNDS. (a) An association may invest money from a mortuary fund only in securities and investments that are a legal investment for the reserve funds of a domestic life, accident, and health insurance company operating under Chapter 841.

(b) An association may invest money from an expense fund only in securities and investments that are a legal investment for the surplus funds of a domestic life, accident, and health insurance company operating under Chapter 841.

(c) An association may invest surplus funds belonging to the association only in securities that are a legal investment for the surplus funds of a domestic life, accident, and health insurance company operating under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.358. PAYMENT OF TAXES ON MORTUARY FUND INCOME. An association may pay from a mortuary fund any taxes that are assessed against income on the fund and required to be paid by the association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.359. PAYMENT OF REINSURANCE PREMIUM. An association may pay from a mortuary fund the premiums for any reinsurance under Section 887.210.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.360. COST OF DEFENDING CONTESTED CLAIMS. An association authorized to write accident, health, or hospitalization insurance may pay the reasonable costs of defending a contested claim on an accident, health, or hospitalization insurance certificate from the mortuary fund of the association if:

(1) the expenditure is approved by the commissioner; and

(2) the association has the reserves required by Subchapter I.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER I. RESERVES

Sec. 887.401. RESERVES ON INDIVIDUAL LIFE INSURANCE CERTIFICATES. (a) An association shall reserve an individual life insurance certificate insuring one or more persons at individual premiums for each person as provided by this section.

(b) An association shall maintain reserves on each of its individual life insurance certificates in accordance with the reserve standard adopted by the association and approved by the commissioner. The standard must provide reserves that in the aggregate are at least equal to the reserve amounts computed using the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year. An association may use the 1956 Chamberlain Reserve Table with interest not to exceed 3-1/2 percent a year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.402. RESERVES ON FAMILY GROUP LIFE INSURANCE CERTIFICATES. (a) An association shall reserve a family group life insurance certificate on which the association charges a group premium that is not reduced on the death of an insured as provided by this section.

(b) An association shall maintain reserves on each of its family group life insurance certificates using one of the following methods:

(1) the reserves must be equal to the reserves that would be required under Section 887.401 on individual life insurance certificates on the lives of the two oldest living members of the family group, with the amount of insurance for those two members determined assuming that the elder of the two will die first;

(2) the reserves must be equal to the reserves required under Section 887.401 on individual life insurance certificates on the lives of the living members of the family group, with the amount of insurance for each member of the family group determined assuming that each member will die first; or

(3) any other table or method of computing reserves approved in advance by the commissioner.

(c) An association may select the method to be used to compute the reserves under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.403. ISSUE YEAR AND ISSUE AGE IN CERTAIN INSURANCE CERTIFICATES. (a) In this section, "gross premium" means the renewal net premium plus any expense loading designated by the association or as otherwise regulated by this chapter.

(b) For an individual or family group life insurance certificate in force on December 31, 1965, or an individual or family group life insurance certificate with a rate increase effective after December 31, 1965, the reserves may be computed as if:

(1) the issue year is the last calendar year that the gross premium computed using the reserve table and interest rate adopted by the association at the insured's age in that calendar year is equal to or less than the premium rate charged by the association on the reserved certificate; and

(2) the issue age is the insured's age in the calendar year under Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.404. RESERVES ON ACCIDENT, HEALTH, AND HOSPITALIZATION

INSURANCE CERTIFICATES. An association shall maintain reserves on each of its accident, health, and hospitalization insurance certificates in the manner required of a company authorized to issue that type of coverage under Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.405. COMPUTATION OF RESERVE LIABILITY. (a) Each year, an association shall compute its reserve liability on all outstanding insurance certificates.

(b) To make the computation, an association:

(1) shall use the net premium basis in accordance with the reserve table and interest rate adopted by the association and approved by the commissioner; and

(2) may use group methods and approximate averages for fractions of a year.

(c) The reserve liability may be computed on not more than a one-year preliminary term.

(d) As soon as practical each year, the commissioner shall compute or cause to be computed the reserve liability of each association. To make the computation, the commissioner may use group methods and approximate averages for fractions of a year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.406. INCREASE OF RESERVES. (a) If an association does not have in its mortuary fund the reserves required by this subchapter, the association's board of directors by appropriate action shall increase assessment rates on insurance certificates in force by advancing the age of each insured from the age at the date the certificate is issued or from the age previously advanced or otherwise equitably or reasonably adjust assessment rates to correct the reserve inadequacy. The board shall take that action not later than the 30th day after the date the reserves are computed.

(b) An association may make an assessment rate adjustment under Subsection (a) at any time if it appears that a reserve inadequacy will exist as of December 31 of the year in which the rate adjustment is made.

(c) The commissioner shall order an association to comply with

this chapter.

(d) If the board of directors does not comply with Subsection (a), the commissioner shall treat the association as insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.407. NONAPPLICABILITY TO ASSESSMENT-AS-NEEDED ASSOCIATIONS. This subchapter does not apply to an association operating on an assessment-as-needed basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER J. CONVERSION TO LEGAL RESERVE INSURANCE COMPANY

Sec. 887.451. AUTHORIZATION TO CONVERT OR REINSURE. Subject to the requirements of this subchapter, an association may convert or reinsure itself to a legal reserve insurance company operating under Chapter 882.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.452. PROPOSAL FOR CONVERSION OR REINSURANCE. An association's board of directors may determine by majority vote to submit a proposed conversion or reinsurance under Section 887.451 to the members of the association. Before the proposed conversion or reinsurance may be submitted to the members, the board must prepare detailed plans for the conversion or reinsurance and submit the plans to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.453. MEMBERS MEETING; NOTICE. (a) On receipt of the commissioner's written approval of proposed plans under Section 887.452 or of the plans as amended to meet the commissioner's requirements in accordance with Chapter 882, an association's board of directors or an officer of the association authorized by its bylaws to call a meeting of its members shall:

(1) call a meeting of the association's members for voting

on ratification of the proposed conversion or reinsurance; and

(2) mail to each member of the association:

(A) a copy of the proposed plans; and

(B) a notice of the meeting.

(b) The meeting may not be held before the 16th day after the date the notice is mailed under Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.454. MEMBERS MEETING; PROCEDURES. (a) In a meeting called under Section 887.453, a member may vote in person, by proxy, or by mail.

(b) All votes must be cast by ballot. A majority vote of the members participating in the election is required to ratify the conversion or reinsurance.

(c) The person presiding at the meeting shall supervise and direct the procedure of the meeting and appoint an adequate number of inspectors to conduct the voting.

(d) Under rules adopted by the commissioner, the inspectors may determine all questions concerning the qualifications of the voters and the verification, canvassing, and validity of the ballots. The inspectors shall certify the result of the election to the commissioner and to the association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.455. COMPLETION AND LEGAL EFFECT OF CONVERSION OR REINSURANCE. (a) An association's conversion or reinsurance is complete when the association has:

(1) complied with all laws regulating the incorporation of a mutual legal reserve insurance company; and

(2) received from the commissioner its charter and certificate of authority to engage in business as a mutual insurance company.

(b) An association that converts or reinsures to a mutual legal reserve insurance company:

(1) is considered by law to have each right, privilege, power, or authority of any other mutual legal reserve company;

(2) is considered by law to be a continuation of the

business of the association; and

(3) succeeds to and is invested with:

(A) each right or privilege of the former association that is not inconsistent with Chapter 882;

(B) each franchise or other interest of the former association; and

(C) all property of the former association, including debts due on any account and all choses in action.

(c) On conversion or reinsurance of an association to a mutual legal reserve insurance company, the title to any real estate by deed or otherwise vested in the former association vests in the company, and the title is not in any way impaired because of the conversion or reinsurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.456. CONTINUING OBLIGATIONS OF CONVERTED OR REINSURED ASSOCIATION. (a) The standing of each claim against an association that converts or reinsures under this subchapter must be preserved unimpaired under the reorganized company or the company reinsuring the membership of the association.

(b) Each debt, liability, and duty of a converted or reinsured association attaches to the reorganized company or the company reinsuring the membership of the association and may be enforced against it to the same extent as if the debt or liability had been incurred or contracted by the company, except that a reorganized company or reinsuring company may alter a liability created under the terms of an insurance certificate outstanding at the date of conversion or reinsurance in accordance with the plan approved by the commissioner under this subchapter.

(c) Notwithstanding Subsection (b), the company may not alter the renewability or noncancellability of an insurance certificate issued before the date of conversion or reinsurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.457. DISBURSEMENT OF MORTUARY FUND. (a) The mortuary fund belonging to an association that converts or reinsures under this subchapter is the property of the reorganized company or the

company reinsuring the membership of the former association. Money in the mortuary fund may be disbursed to:

(1) pay a valid claim outstanding and arising after the date of conversion or reinsurance from an insurance policy issued by the company to the association's members under an approved plan;

(2) establish the legal reserve on new insurance policies issued by the company to the association's members under an approved plan; or

(3) pay the appropriate actuarial portion of the mortuary fund to a member of the association who refuses to accept a new insurance policy offered by the company.

(b) A member must request payment under Subsection (a)(3) not later than the 60th day after the date of the conversion or reinsurance.

(c) The effective date of a mutual legal reserve company's insurance policy may be the effective date of the reinsurance contract. On conversion, 10 percent of the mortuary fund credit allocated to each policy may be credited to the contingency reserve fund of the company for the benefit of the policyholders. The balance of the mortuary fund credit may be applied as:

(1) a reserve credit to permit the company's policy to be backdated to the earliest date the reserve credit allows; or

(2) an annuity to reduce the required premium either for a given term or for the whole of life.

(d) A company may not change the manner in which a mortuary fund credit is applied under Subsections (c)(1) and (2) without the prior approval of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. CONVERSION TO STOCK LEGAL RESERVE LIFE INSURANCE COMPANY

Sec. 887.501. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a local mutual aid association or statewide mutual assessment company or association engaging in business in this state on January 1, 1955.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.502. AUTHORIZATION TO CONVERT. An association may convert to a stock legal reserve life insurance company if the association:

(1) has at least $100,000 in the association's mortuary fund at the time of conversion; and

(2) except as provided by Section 887.508, possesses:

(A) capital in an amount equal to at least $700,000 cash; and

(B) surplus in an amount equal to at least $700,000 cash.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.503. APPROVAL BY MEMBERSHIP. An association may convert under this subchapter only if the association's membership votes to approve the conversion at a meeting called for that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.504. AMENDMENT OF CHARTER OR ARTICLES OF ASSOCIATION REQUIRED. On authorization under Section 887.503, the board of directors and officers of the association shall amend the association's charter or articles of association to comply with Sections 841.051, 841.052, and 841.053.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.505. EXCHANGE OF INSURANCE CERTIFICATES; RESERVES. (a) An association that converts to a stock legal reserve life insurance company shall exchange each insurance certificate in force on the date of the conversion for a legal reserve policy as provided by Section 887.457.

(b) On the exchange of mutual assessment insurance certificates for legal reserve policies as provided by Subsection (a), an association shall establish and maintain the reserves required for a company organized under Chapter 841 for legal reserve policies.

(c) After the reserves are established, the association's capital must remain unimpaired and in an amount equal to at least

$700,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.506. COMPLETION OF CONVERSION. An association becomes a stock legal reserve life insurance company on:

(1) compliance with this subchapter; and

(2) approval by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.507. LEGAL EFFECT OF CONVERSION. Except as provided by this subchapter, an association that converts to a stock legal reserve life insurance company under this subchapter is subject to Chapter 841.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.508. EXEMPTION FROM CAPITAL AND SURPLUS REQUIREMENTS. (a) An association is exempt from the capital and surplus requirements of Section 887.502(2) if the association:

(1) possesses capital in an amount equal to at least $100,000 and unencumbered surplus in an amount equal to at least $100,000; and

(2) converted to a stock legal reserve life insurance company before September 1, 1999.

(b) An association that is exempt under Subsection (a) and that converts on or after September 1, 1989, shall immediately increase its capital and surplus to amounts that satisfy Section 887.502(2) on:

(1) a change of control of at least 50 percent of the voting securities of the converted company; or

(2) if the converted company or the holding company that controls the converted company, if any, is not controlled by voting securities, a change of at least 50 percent of the ownership of the converted company or its holding company.

(c) For purposes of Subsection (b), a transfer of ownership because of death, regardless of whether the decedent died testate or

intestate, is not considered a change of control of a converted company or its holding company if ownership is transferred only to one or more individuals, each of whom would have been an heir of the decedent had the decedent died intestate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.509. LIMITS ON OPERATION OF CONVERTED ASSOCIATION. Unless the association increases the association's capital and surplus to the minimum capital and surplus required for the organization of a stock legal reserve life insurance company under Chapter 841, an association that converts to a stock legal reserve life insurance company under this subchapter may not:

(1) operate in a territory as to which the association was not authorized under the converted association's previous charter or articles of association;

(2) insure a life for more than $5,000 in event of death; or

(3) declare or pay cash dividends.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.510. INCREASE OF CAPITAL AND SURPLUS REQUIRED. (a) An association that converts to a stock legal reserve life insurance company under this subchapter shall, not later than the 10th anniversary of the date of conversion, increase its capital and surplus to the minimum capital and surplus required for a stock legal reserve life insurance company organized under Chapter 841.

(b) The commissioner shall revoke a converted association's certificate of authority to engage in the business of insurance if the association does not comply with Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER L. GENERAL FINANCIAL REGULATION

Sec. 887.551. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. The following provisions apply to an association engaged in the business of insurance in this state:

(1) Subchapter A, Chapter 404;
(2) Chapter 441; and
(3) Chapter 443.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.104, eff. April 1, 2009.

SUBCHAPTER O. PENALTIES

Sec. 887.701. UNLAWFUL CONVERSION; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association commits an offense if the person:

(1) fraudulently takes, misapplies, or converts to the person's own use any money, property, or other item of value belonging to the association or coming into the person's custody, control, or possession by virtue of the person's office, agency, or employment;

(2) conceals any item described by Subdivision (1) with the intent to take, misapply, or convert the item to the person's own use; or

(3) pays or delivers any item described by Subdivision (1) to any other person, knowing that the other person is not entitled to receive the item.

(b) An offense under this section is punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.123, eff. September 1, 2009.

Sec. 887.702. DIVERSION OF SPECIAL FUNDS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association commits an offense if the person wilfully borrows, withholds, or diverts from its purpose all or part of a special fund that:

(1) belongs to or is under the management and control of an

association; and

(2) is designated by law or by rule of the commissioner for a specific use.

(b) An offense under this section is punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.124, eff. September 1, 2009.

Sec. 887.703. APPROPRIATION OF MONEY; CRIMINAL PENALTY. (a) An officer or employee of a mutual accident insurance company commits an offense if the person uses or appropriates, or knowingly permits the use or appropriation by another of, any money belonging to the company in a manner not provided for by the law authorizing the organization of the company.

(b) An offense under this section is punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.125, eff. September 1, 2009.

Sec. 887.704. VIOLATION OF COMMISSIONER ORDER; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association commits an offense if the person wilfully fails to comply with a lawful order of the commissioner.

(b) An offense under this section is punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 887.705. OTHER VIOLATIONS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of an association or other person commits an offense if the person violates a provision of this chapter other than Section 887.701, 887.702, 887.703, or 887.704.

(b) An offense under this section is punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 888. BURIAL ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 888.001. DEFINITIONS. In this chapter:

(1) "Burial association" means an individual, firm, partnership, association, or corporation engaged in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services, not to exceed $150 or the value thereof. The term includes a burial company and a burial society.

(2) "Insurance certificate" and "member" have the meanings assigned by Section 887.001.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.002. LIBERAL CONSTRUCTION. Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204 shall be liberally construed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.003. BYLAWS OF BURIAL ASSOCIATIONS. The bylaws of a burial association may not contain any provision in conflict with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.004. RULES TO IMPLEMENT PURPOSES OF CHAPTER. The commissioner may adopt reasonable rules to implement the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.005. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a burial association. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to burial associations.

(b) On advance approval of the commissioner, a burial association may pay dividends to its members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.006. APPLICABILITY OF OTHER LAW. A burial association is subject to Chapter 887.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. ANNUAL ASSESSMENT

Sec. 888.051. IMPOSITION OF ANNUAL ASSESSMENT; AMOUNT. (a) An annual assessment is imposed on each burial association that holds a certificate of authority to engage in the business of insurance in this state. The assessment is in addition to any other fee that the association is required to pay.

(b) The amount of the assessment is equal to the greater of:

(1) the amount computed by multiplying one-half cent by the number of members in the burial association on December 31 of the applicable year; or

(2) $5.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.052. PAYMENT OF ANNUAL ASSESSMENT. (a) Each burial association shall pay the annual assessment imposed by Section 888.051 to the department between January 1 and March 1 at the same time the association files its annual statement with the department.

(b) Annual assessments collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Sections 201.001 and 201.002 apply to the assessments.

(c) All assessments paid to the department under this section are for the use and benefit of the department to:

(1) obtain advice, information, and knowledge relating to adequate and reasonable rates for burial associations in this state;

(2) compile records for purposes of Subdivision (1); and

(3) implement Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.105, eff. April 1, 2009.

SUBCHAPTER C. INSURANCE CERTIFICATES; PAYMENT OF BENEFITS

Sec. 888.101. INSURANCE CERTIFICATES ISSUED BY BURIAL ASSOCIATION. (a) Except as provided by Subsection (c), an insurance certificate issued by a burial association must provide for the payment of the benefit in specified merchandise or burial services.

(b) The merchandise or services to be provided must be:

(1) stated in the insurance certificate; and

(2) approved by the department as being of the reasonable value stated on the face of the certificate.

(c) Subsections (a) and (b) do not apply if, at the time the insurance certificate is issued, the insured elects to have the benefit paid in cash.

(d) An election under this section must be stated in the insurance certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.102. PAYMENT INSTEAD OF MERCHANDISE OR SERVICES. (a) If a burial association that issues an insurance certificate fails or refuses to provide the merchandise or services specified by the certificate, the association shall pay the benefit in cash.

(b) If a burial association that issues an insurance certificate is not given the opportunity to provide the merchandise or services specified by the certificate, instead of the specified merchandise or services, the association shall pay the greater of:

(1) the total amount paid into its mortuary fund to the credit of that certificate's account; or

(2) the percentage of the certificate's face value specified by the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.103. INSURANCE CERTIFICATE FORMS. An insurance certificate form used by a burial association on or after May 12, 1939, must comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. RATES FOR BURIAL ASSOCIATIONS

Sec. 888.151. DATA COLLECTION RELATED TO RATES. (a) The commissioner shall:

(1) collect data, statistics, and information on the death rates, lapses, experiences, and other information relating to burial association rates in and outside of this state that the commissioner considers useful in determining reasonable and adequate rates for burial associations; and

(2) study the statistics, rates, and experiences of burial associations.

(b) The commissioner may distribute information collected under Subsection (a)(1) to burial associations in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.152. ADOPTION OF RATE SCHEDULE. (a) The commissioner shall adopt a schedule of reasonable and adequate rates that a burial association may charge its members. The schedule of rates must be adopted in compliance with Chapter 2001, Government Code.

(b) The schedule must show the maximum and minimum rates that a burial association may charge per week, per month, per quarter, per six months, and per year, for the definite benefits at the definite ages. The commissioner must designate the ages in convenient groups.

(c) To ensure the adequacy and reasonableness of the rates, the commissioner may consider information gathered from an area of this state that is sufficiently large to include the varying conditions of the risks involved and during a period sufficiently long to ensure that the minimum and maximum rates authorized are:

(1) just and reasonable as they apply to members of the public who become insured under this chapter; and

(2) adequate and non-confiscatory as they apply to the burial associations.

(d) The commissioner may require:

(1) sworn statements from any burial association in this state showing its experience in rates collected and claims paid over a reasonable period; and

(2) any other information the commissioner considers necessary or useful in adopting the rate schedule.

(e) The department shall mail a copy of the adopted rate schedule to each burial association that holds a certificate of authority to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.153. NEW OR AMENDED RATE SCHEDULES. (a) At any time the commissioner considers appropriate, the commissioner may adopt:

(1) a new rate schedule for burial associations; or

(2) an amendment to an existing rate schedule.

(b) After the commissioner adopts a new rate schedule or an amendment to an existing rate schedule and sends a copy to the burial associations, each burial association shall use the new or amended rate schedule for individuals who the association subsequently accepts as members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.154. CONTRACTS WITH EXPERTS AND CONSULTANTS. The department may contract with experts and consultants to assist the department in exercising the department's powers and performing the department's duties under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.155. RETENTION OF BURIAL ASSOCIATION'S INITIAL RATE SCHEDULE. Each burial association shall retain, as part of its permanent records, the initial rate schedule adopted by the association under former Article 14.45, Insurance Code, following the amendment of that article by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.156. CHANGE OF RATES BY BURIAL ASSOCIATION. (a) With the department's consent, a burial association may change its rates by adopting a new rate schedule and filing that schedule with the department.

(b) The new rate schedule must be similar in all respects to the initial schedule adopted by the burial association and each new rate must be not less than the minimum or more than the maximum rate adopted by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.157. CONTINUATION OF FORMER RATES. (a) A burial association that had rates adopted and in use before June 12, 1947, may continue to apply those rates to individuals who were members of the burial association on that date.

(b) With the department's approval, the burial association may:

(1) change the rates described by Subsection (a); and

(2) make the new rates correspond to the rate schedule most recently filed by the burial association with the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.158. FAILURE TO COMPLY WITH COMMISSIONER RATE ORDERS. If a burial association refuses to comply with an order of the commissioner regarding rates under this subchapter, the commissioner shall consider the association insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. PROHIBITIONS

Sec. 888.201. UNAUTHORIZED PROVIDING OF BURIAL OR FUNERAL BENEFITS. An individual, firm, partnership, corporation, or association may not engage in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services unless the individual, firm, partnership, corporation, or association is authorized to engage in that business by this chapter, Chapter 886, Chapter 887, or another law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.202. RATE VIOLATIONS. (a) A burial association or an officer, agent, or employee of a burial association may not charge or collect any rate from a member of the association other than the rate applicable for the age and benefit stated in the association's rate schedule on file with the department and in force at that time.

(b) An officer, agent, or employee of a burial association commits an offense if the officer, agent, or employee violates Subsection (a).

(c) An officer of a burial association commits an offense if the officer knowingly permits a violation of Subsection (a).

(d) An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.

(e) The department may revoke the certificate of authority of a burial association that violates this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.203. CONNECTION BETWEEN BURIAL ASSOCIATIONS. (a) A burial association may not be directly or indirectly connected with another burial association.

(b) A member, director, or officer of a burial association may not be a member, director, or officer of another burial association.

(c) A person whose spouse or employee is an officer or director of a burial association may not be an officer or director of another burial association.

(d) A funeral director or funeral home directly or indirectly connected with a burial association or designated by a burial association as its funeral director or funeral home may not be:

(1) connected in any manner with another burial association; or

(2) designated by another burial association as its funeral director or funeral home to:

(A) provide its members with services or merchandise; or

(B) service its policies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.204. CERTAIN AFFILIATIONS BETWEEN BURIAL ASSOCIATIONS AND FUNERAL HOMES PROHIBITED. (a) It is against the public policy of this state for a funeral home or an owner of an interest in a funeral home to be directly or indirectly connected or affiliated with more than one burial association.

(b) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.205. VIOLATION OF CHAPTER; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a burial association, or other person commits an offense if the person violates a provision of this chapter other than Section 888.202.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed $500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBTITLE F. FARM AND COUNTY MUTUAL INSURANCE COMPANIES
CHAPTER 911. FARM MUTUAL INSURANCE COMPANIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 911.001. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) A provision of this code, other than this chapter, does not apply to a farm mutual insurance company holding a certificate of authority under this chapter unless farm mutual insurance companies are expressly mentioned in the other law.

(b) A law enacted after May 20, 1973, does not apply to a farm mutual insurance company unless the law states that it applies to a farm mutual insurance company.

(c) Except to the extent of any conflict with this chapter, the following provisions apply to a farm mutual insurance company:

(1) Subchapter A, Chapter 32;

(2) Subchapter D, Chapter 36;

(3) Sections 31.002(2), 32.021(c), 32.023, 32.041, 33.002, 38.001, 81.001-81.004, 201.005, 201.055, 401.051, 401.052, 401.054-401.062, 401.103-401.106, 401.151, 401.152, 401.155, 401.156, 421.001, 801.051-801.055, 801.057, 801.101, 801.102, 822.204, 841.004, 841.251, 841.252, 862.101, 1806.001, 1806.101, 1806.103(b), and 1806.104-1806.107;

(4) Chapter 86;

(5) Subchapter A, Chapter 401;

(6) Subchapter B, Chapter 404;

(7) Chapter 422;

(8) Subchapter B, Chapter 424, other than Section 424.052, 424.072, or 424.073;

(9) Chapter 441;

(10) Chapter 443;

(11) Chapter 462;

(12) Chapter 481;

(13) Chapter 541;

(14) Chapter 802;

(15) Subchapter A, Chapter 805;
(16) Chapter 824; and
(17) Article 1.09-1.

(d) After hearing, the commissioner may adopt rules regarding the application of a law referred to in Subsection (c) to farm mutual insurance companies. The department may enforce rules adopted under this subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 631 (H.B. 2565), Sec. 3, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.106, eff. April 1, 2009.

Sec. 911.002. GENERAL RULEMAKING AUTHORITY; ENFORCEMENT. After hearing, the commissioner may adopt rules to clarify and augment this chapter as determined by the commissioner to be necessary to accomplish the purposes of this chapter. The department may enforce rules adopted under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.003. FEES. (a) The department shall charge and collect the following fees:
(1) $10 for an amendment to a farm mutual insurance company's charter; and
(2) $1 for the issuance of a company's certificate of authority.

(b) The department shall charge and the comptroller shall collect a fee of $20 for the filing of an annual statement required by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. ORGANIZATION OF FARM MUTUAL INSURANCE COMPANY; DIRECTORS

Sec. 911.051. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION

ACT. Except to the extent of any conflict with this chapter, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a farm mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to farm mutual insurance companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.052. FORMATION OF COMPANY: INCORPORATION REQUIRED. To form a farm mutual insurance company, an association of individuals that does not hold a certificate of authority issued by the department must obtain a charter as required by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.053. INCORPORATION REQUIREMENTS. (a) In this section, "separate risk" means one or more items of real property and the property's contents, if any, that is not exposed to any other property on which insurance is applied for in the association seeking the charter.

(b) To be granted a charter as a farm mutual insurance company, an association must:

(1) demonstrate that the association:

(A) has existed as an association of individuals for at least three years;

(B) has at least 100 individual members;

(C) operates for the purpose of membership recreation or welfare under a system of subordinate lodges, locals, or districts;

(D) does not have capital stock;

(E) is organized and operates solely for the mutual benefit of its members and not for profit;

(F) has a representative form of government; and

(G) has decided by a majority vote of the association's members to apply for a charter as a farm mutual insurance company under this chapter; and

(2) have:

(A) at least 100 written applications for insurance on

at least 400 separate risks; and

(B) an unencumbered surplus as required by Section 911.308(b).

(c) Coverage for a risk described by Subsection (b)(2)(A) may not be in an amount that exceeds one percent of the total amount of insurance coverage to be issued by the association as stated in its application for a charter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.054. CHARTER AND ARTICLES OF INCORPORATION. (a) The charter and articles of incorporation of an association that wants to form a farm mutual insurance company must state the names and post office addresses of at least 25 charter members of the company, all of whom are residents of one or more adjoining counties in this state and each of whom must:

(1) be a member of the association;

(2) own at least $5,000 of insurable property for which the member has applied in writing for insurance coverage from the company to be formed; and

(3) sign the charter and articles of incorporation.

(b) In addition to the requirements of Subsection (a), the charter must:

(1) be acknowledged before a notary public by at least five of the charter members described by Subsection (a);

(2) state:

(A) the name of the company, which must include the words "Farm Mutual" or "Farmers Mutual";

(B) the location of the company's principal office;

(C) the number, names, and post office addresses of each of the company's first directors, of which there must be at least five; and

(D) the type of property the company will insure and the risk to be insured against; and

(3) include any other provision the incorporators want consistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.055. APPLICATION FOR PERMIT TO SOLICIT INSURANCE. (a) At least 10 residents described by Section 911.054(a) that want to form a farm mutual insurance company may apply to the department for a permit to solicit insurance on the mutual or cooperative plan.

(b) The application for a permit to solicit insurance must:

(1) state:

(A) that at least 100 individuals are members of an association described by Section 911.053(b)(1);

(B) that the association has indicated, by majority vote, that the association wants to:

(i) insure property of the association's members under this chapter; and

(ii) be chartered as a farm mutual insurance company;

(C) the name of the company, which must include the words "Farm Mutual" or "Farmers Mutual";

(D) the location of the company's principal office;

(E) the risks the company proposes to insure; and

(F) the names and places of residence of at least 10 of the applicants; and

(2) be accompanied by:

(A) affidavits of at least two of the applicants, each of whom must:

(i) state the applicant's name and residence; and

(ii) verify the facts stated in the application; and

(B) a filing fee in the amount of $25.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.056. ISSUANCE OF PERMIT TO SOLICIT INSURANCE; TERM. (a) The department shall approve or deny an application for a permit to solicit insurance under Section 911.055. If the department finds that the application complies with this chapter, the department shall issue to the applicants a permit to solicit insurance.

(a-1) If the department finds that the application does not comply with this chapter, the department shall deny the application. On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the

applicant's request for a hearing, the commissioner shall request a hearing date.

(b) A permit issued under this section authorizes the permit holders to solicit insurance on the mutual or cooperative plan in accordance with the terms of the application. The permit does not authorize the permit holders to:

(1) issue insurance policies; or

(2) pay losses.

(c) A permit issued under this section is valid for six months. On receipt of an application for renewal and a fee in the amount of $10, the department may renew a permit issued under Section 911.055 as frequently and for the period as the department determines necessary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 16, eff. June 19, 2009.

Sec. 911.057. COLLECTION AND REFUND OF MONEY FROM CERTAIN INDIVIDUALS APPLYING FOR INSURANCE. An association described by Section 911.053(b)(1) of which the applicants for a permit to solicit insurance are members shall hold in trust money collected from an individual applying for insurance in the association until the association is incorporated. If the association's incorporation is not perfected, the association shall refund the money to the individual applying for the insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.058. MEMBERSHIP CONTROL OF COMPANY. (a) The control of a farm mutual insurance company must be ultimately vested as provided by this chapter in the company's members through a supreme legislative or governing body, the members of which must be elected directly by the company's members or by delegates elected by the company's members.

(b) Through the company's governing body, the company's members may establish local chapters, branches, lodges, or similar organizations.

(c) The methods provided by this section for the control of a farm mutual insurance company are exclusive.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.059. ELIGIBILITY OF BOARD OF DIRECTORS; TERM. (a) An individual is eligible to serve as a director of a farm mutual insurance company if the individual is a policyholder who maintains insurance coverage in the amount of at least $3,000 written by the company on the individual's property.

(b) Except as otherwise provided by the company's bylaws or constitution, a director serves for a term of one year or until the director's successor qualifies for office.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.060. GENERAL POWERS OF BOARD OF DIRECTORS. The board of directors of a farm mutual insurance company has the powers provided by:

(1) this chapter; and

(2) the company's charter, constitution, and bylaws to the extent those powers do not conflict with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.061. AUTHORITY TO BORROW MONEY. (a) The board of directors of a farm mutual insurance company, acting through its authorized officers, may borrow money in an amount determined to be necessary to pay the company's accrued or unaccrued losses.

(b) The board may pledge as security for a loan the assets of the company, including the contingent liability of its policyholders.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.062. REMOVAL OF OFFICER OR DIRECTOR. (a) The board of directors of a farm mutual insurance company, at a meeting, may remove an officer or director of the company if, by a two-thirds

majority vote of all the company's directors, the board determines that the removal of the individual is in the best interest of the company. The board may remove an officer or director under this subsection without stating a reason for the removal.

(b) The board may appoint one or more individuals to assume the duties and serve the unexpired term of an officer or director removed under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.063. CREATION OF LOCAL CHAPTERS AND DISTRICTS. (a) A farm mutual insurance company's bylaws may provide for:

(1) the organization of local chapters to transact the company's business; and

(2) the creation of districts in and for which directors may be elected.

(b) The bylaws may also provide that delegates from the company's local chapters are the company's supreme governing body.

(c) The company may consider the hazards against which the company insures and the company's classes of risks and territory of operation in organizing the local chapters and creating the districts.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.064. POLICYHOLDER MEETINGS. (a) A farm mutual insurance company shall hold a policyholder meeting to elect directors and transact business at the time and place and in the manner prescribed by the company's bylaws.

(b) A special meeting of a company's policyholders may be called by:

(1) the president, the general manager, or one-third of the company's directors; or

(2) the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.065. VOTING BY POLICYHOLDER. (a) Each policyholder

of a farm mutual insurance company is entitled to only one vote at a policyholders' meeting.

(b) A policyholder may not vote by proxy.

(c) A farm mutual insurance company may provide in its constitution or bylaws that a policyholder may vote electronically or by mail without making a personal appearance at a policyholders' meeting.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1083 (H.B. 3496), Sec. 3, eff. September 1, 2017.

Sec. 911.066. AUTHORITY TO PROHIBIT WAIVER OF BYLAWS. A farm mutual insurance company may provide in its bylaws that a company adjuster, representative appointed by the company, or local chapter or officer or agent elected by the local chapter may not waive a provision in the company's constitution or bylaws or in a policy issued by the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.067. APPLICATION FOR EXTENSION OF CHARTER FOR CERTAIN COMPANIES; TERM. (a) Before a farm mutual insurance company's charter expires, the company may apply to the department for an extension of the company's charter if:

(1) the company was chartered, holding a certificate of authority, and operating before May 21, 1973, under Chapter 16, Insurance Code, as it existed on that date; or

(2) the company was organized and engaging in business before April 6, 1937, and the company continues to engage in business.

(b) A farm mutual insurance company described by Subsection (a) and whose charter has expired may apply to the department to have the charter extended perpetually if the company is engaged in business in this state.

(c) The term of the charter begins on the date that the charter is extended or, if the original charter expired before the charter is extended, the date the original charter expired.

(d) An application for an extension must be authorized by either a two-thirds majority vote of the company's directors or by a simple majority vote of those voting at a policyholders' meeting and must:

(1) state in full the charter to be extended;

(2) state the period for which the charter is to be extended; and

(3) be signed and acknowledged by the president and secretary of the company.

(e) A company whose charter is extended retains the rights, privileges, and immunities granted the company under the company's original charter.

(f) The department shall charge and collect a fee of $10 for the extension of a farm mutual insurance company's charter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Sec. 911.101. AUTHORITY TO ENGAGE IN BUSINESS. Except to the extent of any conflict with this chapter, a farm mutual insurance company must hold a certificate of authority under Section 801.051 to engage in the business of insurance in this state under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. POLICIES AND COVERAGE

Sec. 911.151. KINDS OF INSURANCE AUTHORIZED. (a) A farm mutual insurance company may insure property against loss or damage by:

(1) fire, lightning, explosion, theft, windstorm, hurricane, hail, riot, civil commotion, smoke, aircraft, or land vehicles; or

(2) any other hazard against which any other fire or windstorm insurance company operating in this state under Chapter 862 may write insurance on property described by Subsection (b).

(b) The company may write insurance against the hazards described by Subsection (a) on:

(1) a rural or urban dwelling and attendant outhouses and yard buildings and all their contents for home and personal use,

musical instruments and libraries, barns and ranch buildings of any description and vehicles and implements used on or about barns or ranch buildings;

(2) agricultural products that are produced or kept on farms or ranches;

(3) a church building, fraternal lodge hall, private or church school, or nonindustrial use building owned by a nonprofit organization, regardless of the location;

(4) a trailer or mobile home; and

(5) growing crops if the insurance is reinsured by:

(A) the Federal Crop Insurance Corporation under Section 508, Federal Crop Insurance Act (7 U.S.C. Section 1508); or

(B) a property and casualty insurance company that:

(i) is authorized to write insurance in this state; and

(ii) has a rating by the A.M. Best Company of A- or better.

(c) An insurance policy written by a farm mutual insurance company against loss or damage by windstorm, hurricane, or hail, as described by Subsection (a), may include coverage for:

(1) a building or other structure that is built wholly or partially over water; and

(2) the corporeal movable property contained in a building or structure described by Subdivision (1).

(d) The farm mutual insurance company may impose appropriate limits of coverage and deductibles for coverage described by Subsection (c).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1153 (H.B. 3048), Sec. 4, eff. September 1, 2005.

Sec. 911.152. PROPERTY AND HAZARDS AGAINST WHICH COMPANY MAY NOT INSURE. (a) A farm mutual insurance company may not insure:

(1) a building, or the building's contents, with more than 40 percent of the building's floor space or more than 500 square feet of floor space, whichever is less, used for business purposes, except as provided by Section 911.151(b)(3); or

(2) any type of commercial or private passenger motor vehicle, except as provided by Section 911.151(b)(4).

(b) A farm mutual insurance company may not assume or issue an insurance policy that:

(1) indemnifies an insured for liability to a third party the insured incurs in committing a tortious act; or

(2) covers an insured for liability the insured incurs under a contract to maintain, hold, or store property belonging to another.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.153. CONTRACT TERMS: INCORPORATION OF BYLAWS. (a) A farm mutual insurance company's bylaws are part of each contract between the company and an insured.

(b) Each policy issued by the company must state that the company's bylaws are part of the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.154. CONTRACT TERMS: ADOPTION OF ADDITIONAL PROVISIONS. (a) A farm mutual insurance company may adopt as part of the company's bylaws and insurance policies any provision contained in the standard policies of companies writing fire or windstorm insurance as adopted by the commissioner to the extent the provision applies to a farm mutual insurance company.

(b) A company that adopts a provision as provided by Subsection (a) shall state in the company's bylaws or in each policy issued by the company that the provision has been adopted as provided by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.155. REPAIR OR REPLACEMENT OF INSURED PROPERTY. The company's bylaws may authorize the company to require, at its option, that all or a percentage of the money paid for a loss be used to replace or repair the damaged or destroyed property. The requirement may apply equally to personal and real property, including personal

and real property exempt from execution, such as a homestead or a building on the homestead. The company may provide in its bylaws that the requirements of Section 862.053 do not apply to its insurance policies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. CHARGES, PREMIUMS, AND ASSESSMENTS

Sec. 911.201. PAYMENT OF PREMIUM OR ASSESSMENT. (a) A farm mutual insurance company's bylaws must:

(1) state the time and manner of the levy and payment of a premium or assessment for policies written by the company;

(2) in addition to the regular premium or assessment under Subdivision (1), establish the contingent liability of a policyholder for all losses accrued while a policy is in force in the amount of at least $1 for each $100 of insurance coverage, except as provided by Subsection (b); and

(3) state the time and manner of payment of a policyholder's contingent liability established under Subdivision (2).

(b) A company's bylaws may provide for the issuance of policies without contingent liability as required by Subsection (a)(2) if the company has policyholder surplus in the amount of at least $1,000,000.

(c) As required by its bylaws, a farm mutual insurance company shall establish and levy premiums and assessments, including the contingent liability of a policyholder, for all insurance written by the company.

(d) A policyholder shall pay premiums and assessments as required by the company's bylaws.

(e) The premium or assessment for a policy shall be secured by a lien on each item of real or personal property, other than a homestead, covered by the policy, including the land on which an insured building is located. The lien remains on the property while the insured owns the property.

(f) A conservator, receiver, or liquidator of a farm mutual insurance company may not make an assessment against a policyholder for the contingent liability established under Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.202. NONPAYMENT OF PREMIUMS OR ASSESSMENTS: FILING OF ACTION. (a) A farm mutual insurance company may bring an action in the county in which the company's home office is located against a policyholder who defaults on the payment of a premium or an assessment.

(b) The company is entitled to judgment against the policyholder for:

(1) delinquent premiums or assessments;

(2) foreclosure of the lien described by Section 911.201; and

(3) the costs of an action, including a reasonable attorney's fee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.203. POLICYHOLDER LIABILITY. A policyholder is liable for the losses of a farm mutual insurance company only as provided by the company's constitution and bylaws, and only in proportion to the amount that the premium or assessment for the policyholder's policy bears to the total amount of premiums or assessments for all policies written by the company in the class to which the policyholder's policy belongs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. AGENTS

Sec. 911.251. LICENSING AND APPOINTMENT OF CERTAIN AGENTS. (a) An individual or firm may not solicit, write, sign, execute, or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act on behalf of a farm mutual insurance company in the capacity of an insurance agent in the solicitation or sale of crop insurance unless the individual or firm holds a license issued under Title 13.

(b) A farm mutual insurance company may not appoint and act through an agent under Subchapter F, Chapter 4051.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.223(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.107, eff. April 1, 2009.

SUBCHAPTER G. REGULATION OF FARM MUTUAL INSURANCE COMPANY; FINANCIAL REQUIREMENTS

Sec. 911.301. GENERAL OPERATING REQUIREMENTS. (a) In this section:

(1) "Census year" means a year in which the United States Census Bureau conducts a federal decennial census.

(2) "Rural property" means property located outside an area of land subject to the taxing authority of a municipality with a population of more than 6,500, adjusted in accordance with Subsection (e).

(b) A farm mutual insurance company shall:

(1) maintain a majority of the company's total insurance in force on rural property at all times the insurance is written; and

(2) operate on a regular and special assessment basis.

(c) Except as otherwise approved by the commissioner, a farm mutual insurance company may not use more than 33 percent of the company's gross income for expenses.

(d) Property that is rural property at the time the property is originally insured continues to be classified as rural property if:

(1) the policy or policies that insure the property are written by the same farm mutual insurance company; and

(2) the coverage continues in effect without lapse of coverage for more than 60 days.

(e) On January 1 of the second year following a census year, the population limit described by Subsection (a)(2) increases or decreases by a percentage that is equal to the percentage increase or decrease in the population of this state from the previous decennial census.

(f) Not later than November 1 of the year following a census year, the commissioner shall:

(1) compute the new population limit in accordance with Subsection (e); and

(2) publish the limit on the department's Internet website.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 958 (S.B. 2008), Sec. 1, eff. September 1, 2023.

Sec. 911.302. LOCATION OF BUSINESS. (a) Except as provided by Subsection (b), a farm mutual insurance company may write insurance in:

(1) the county in which the company's home office is located at the time of incorporation and in any county adjoining the county in and for which the company is organized;

(2) any county in which another farm mutual insurance company is not organized; and

(3) any county in this state if the company's reserve fund exceeds $200,000 in cash or securities in which the reserve fund of a stock fire insurance company may be invested.

(b) This section does not apply to a farm mutual insurance company organized and operating in this state under a certificate of authority issued before May 21, 1973, under former Chapter 16 of this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.303. REINSURANCE. (a) A farm mutual insurance company may reinsure the company's risks with another company against any hazard against which the farm mutual insurance company is permitted to insure.

(b) The farm mutual insurance company may contract for mutual or reciprocal reinsurance with another company on the mutual or cooperative plan subject to the following conditions:

(1) the farm mutual company may assume the reinsurance on the risks of the other company only if the other company reinsures the risks of the farm mutual insurance company; and

(2) the farm mutual company may write or assume the reinsurance only on property that the company is authorized to insure and that is located in this state.

(c) A farm mutual insurance company that reinsures another company's property is liable for the losses of the other company only

as specified in the reinsurance contract. The farm mutual insurance company does not become a member or partner of the other company as a result of the reinsurance.

(d) A farm mutual insurance company may pay or collect additional assessments or premiums for the purpose of a contract described by Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.304. ANNUAL REPORTS REQUIRED. (a) A farm mutual insurance company shall annually prepare a written report as required by this section and submit the report to the company's policyholders.

(b) The annual report must show:

(1) the total amount of premiums paid during the year for the policyholders' insurance;

(2) the company's operating expenses; and

(3) the total amount of claims paid and the amount paid for each covered peril.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 47, Sec. 2, eff. May 8, 2007.

(d) The company shall make available to each policyholder a copy of the annual report at the time and in the manner prescribed by the company's bylaws.

(e) A farm mutual insurance company shall make annual reports to the department as required by the commissioner or by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 47 (S.B. 849), Sec. 1, eff. May 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 47 (S.B. 849), Sec. 2, eff. May 8, 2007.

Sec. 911.305. EXAMINATION OF COMPANY. The department shall examine each farm mutual insurance company as often as the department determines necessary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.306. SOLVENCY REQUIREMENTS. (a) A farm mutual insurance company is solvent if:

(1) the company's assets, including the policyholders' contingent liability for the company's losses, are reasonably sufficient to pay the company's losses according to the terms of the policies; and

(2) the company's required unencumbered surplus, if any, has not been impaired in excess of 16-2/3 percent of the required unencumbered surplus.

(b) A company that is solvent as provided by this section may continue to engage in the business of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.307. RESERVE REQUIREMENTS. (a) A farm mutual insurance company's board of directors may provide for the accumulation of reserve funds.

(b) The company shall invest the reserve funds in the same type of securities in which the reserve funds of other fire insurance companies are required to be invested by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 911.308. SURPLUS REQUIREMENTS. (a) A farm mutual insurance company organized between January 1, 1955, and May 21, 1973, shall maintain an unencumbered surplus of $2 for each $100 of insurance in force or an unencumbered surplus of $200,000, whichever amount is less.

(b) A farm mutual insurance company organized under this chapter on or after May 21, 1973, shall maintain an unencumbered surplus in cash of $2 for each $100 of insurance in force or an unencumbered surplus of $200,000, whichever amount is greater.

(c) A company described by Subsection (b) shall invest the minimum unencumbered surplus as provided by Section 822.204. The company may invest funds in excess of the minimum unencumbered surplus as provided by the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073.

(d) A company described by Subsection (b) shall, without delay, restore the minimum unencumbered surplus if the surplus is impaired.

The department shall proceed as provided by Subchapter B, Chapter 404.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.108, eff. April 1, 2009.

CHAPTER 912. COUNTY MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 912.001. DEFINITIONS. In this chapter:

(1) "Member" includes a policyholder or another person who is insured by a county mutual insurance company.

(2) "Policy" includes a certificate or contract of insurance, certificate of membership, or other document through which insurance is effected or evidenced.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.002. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) A county mutual insurance company is exempt from the operation of all insurance laws of this state except laws that are made applicable by their specific terms or except as specifically provided by this chapter.

(b) A county mutual insurance company is subject to:

(1) Sections 38.001, 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, 401.156, 501.159, 501.202, 501.203, 822.204, 1806.001, 1806.101, 1806.103(b), 1806.104-1806.107, 1953.051(b), 2002.002, and 2002.005;

(2) Subchapter A, Chapter 86;

(3) Subchapter A, Chapter 401;

(4) the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073;

(5) Chapters 221, 251, 252, 254, 541, and 2210; and

(6) Articles 5.39 and 5.40.

(c) Rate regulation for a residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Chapter 2253. On and after December 1, 2004, rate regulation for a personal automobile insurance policy and a

residential fire and allied lines insurance policy written by a county mutual insurance company is subject to Article 5.13-2 and Chapter 2251. A county mutual insurance company is subject to Chapter 2253. The commissioner may adopt rules as necessary to implement this subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 21.40(a), (b), eff. June 11, 2003; Acts 2003, 78th Leg., ch. 209, Sec. 10, eff. Oct. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 631 (H.B. 2565), Sec. 4, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.109, eff. April 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1137 (S.B. 189), Sec. 3, eff. September 1, 2015.

Sec. 912.003. FEES. The department shall charge and collect a fee in the amount of $1 for the issuance of a county mutual insurer's certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.004. FORMATION OF NEW COUNTY MUTUAL COMPANY PROHIBITED. A new county mutual insurance company may not be formed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.005. LIMITATION ON TRANSFER OF BUSINESS TO COUNTY MUTUAL INSURANCE COMPANY. An insurer may not transfer more than 10 percent of the insurer's insurance policies to a county mutual insurance company without the prior approval of the commissioner.

Added by Acts 2003, 78th Leg., ch. 206, Sec. 21.405, eff. June 11, 2003.

SUBCHAPTER B. ORGANIZATION OF COUNTY MUTUAL INSURANCE COMPANY; DIRECTORS

Sec. 912.051. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a county mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to county mutual insurance companies.

(b) On advance approval of the commissioner, a county mutual insurance company may pay dividends to its members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.052. ELIGIBILITY OF BOARD OF DIRECTORS; TERM. (a) An individual is eligible to serve as a director of a county mutual insurance company if the individual is a policyholder who maintains insurance coverage in the amount of at least $1,000 written by the company on the individual's property.

(b) Except as otherwise provided by the company's bylaws, a director serves for a term of one year or until the director's successor qualifies for office.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.053. GENERAL POWERS OF BOARD OF DIRECTORS. The board of directors of a county mutual insurance company has the powers provided by the company's charter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.054. AUTHORITY TO BORROW MONEY. (a) The board of directors of a county mutual insurance company may borrow money in an amount determined to be necessary to pay the company's accrued or unaccrued losses.

(b) The board may pledge as security for a loan the assets of the company, including the contingent liability of its policyholders.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.055. CHARTER AND ARTICLES OF INCORPORATION. The charter and articles of incorporation of a county mutual insurance company must state:

(1) the name of the company, which must include the words "County Mutual Insurance Company";

(2) the location of the principal office of the company; and

(3) the number of the directors, which must be at least five.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.056. CREATION OF LOCAL CHAPTERS AND DISTRICTS. (a) A county mutual insurance company's bylaws may provide for:

(1) the organization of local chapters to transact the company's business; and

(2) the creation of districts in and for which directors may be elected.

(b) The bylaws may also provide that delegates from the company's local chapters are the company's supreme governing body.

(c) The company may consider the hazards against which the company insures and the company's classes of risks and territory of operation in organizing the local chapters and creating the districts.

(d) A company organized and operating under this chapter that, as of September 1, 2001, and continuously thereafter, appointed managing general agents, created districts, or organized local chapters to manage a portion of the company's business independent of all other business of the company may continue to operate in that manner and may appoint and contract with one or more managing general agents in accordance with this code only if the company:

(1) cedes 85 percent or more of the company's direct and assumed risks to one or more reinsurers; and

(2) has a private passenger automobile insurance business:

(A) with a market share of not greater than five percent; or

(B) that is predominantly nonstandard.

(e) A company described by Subsection (d) shall file, for each managing general agent, district, or local chapter program, the rating information required by the commissioner by rule. Each managing general agent, district, or local chapter program shall be treated as a separate insurer for the purposes of Chapters 544, 2251, 2253, and 2254.

(f) Notwithstanding any other provision of this code, a company operating under Subsection (d) that cedes 85 percent or more of the company's direct and assumed risks to one or more nonaffiliated reinsurers shall maintain unencumbered surplus, or guaranty fund and unencumbered surplus, equal to the greater of $2 million or five percent of the company's recoverable for reinsurance after taking full credit against the recoverable as otherwise permitted for:

(1) premium payable to ceding insurers, net of any ceding commission due the company;

(2) collateral held as required by Section 493.104, letters of credit, and security trusts that secure the collection of the reinsurance; and

(3) reinsurance through reinsurers whose financial strength is rated "A" or better by the A. M. Best Company, Incorporated, or another nationally recognized statistical rating organization acceptable to the commissioner.

(g) The commissioner by rule shall adopt a transition period for insurance companies subject to Subsection (f) to meet the requirements of that subsection and for the pro rata elimination of any deficiencies in the amounts required under that subsection. The transition period adopted under this subsection must be for a period of not less than five years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 677 (H.B. 2449), Sec. 3, eff. September 1, 2009.

Sec. 912.057. POLICYHOLDER MEETINGS. (a) A county mutual insurance company shall hold a policyholder meeting to elect directors and transact business at the time and place and in the manner prescribed by the company's bylaws.

(b) A special meeting of a company's policyholders may be called by:

(1) the president, the general manager, or one-third of the company's directors; or

(2) the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.058. VOTING BY POLICYHOLDERS. (a) Each policyholder of a county mutual insurance company is entitled to only one vote at a policyholders' meeting.

(b) A policyholder may not vote by proxy unless the company's bylaws specifically authorize voting in that manner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.059. AMENDMENT TO BYLAWS. (a) A majority of the members of a county mutual insurance company, either in person or by proxy when ratified by the board of directors, may amend the company's bylaws at a regular meeting or at a special meeting called for that purpose.

(b) Notice of a regular or special meeting at which an amendment to the bylaws will be considered must be mailed or delivered personally to each member.

(c) An amendment to the bylaws is not effective until approved by the commissioner as meeting the requirements of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.060. AUTHORITY TO PROHIBIT WAIVER OF BYLAWS. A county mutual insurance company may provide in its bylaws that a local chapter or an officer or agent elected by the local chapter may not waive a provision of the bylaws.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.061. APPLICATION FOR EXTENSION OF CHARTER; TERM. (a)

Before a county mutual insurance company's charter or extension of the charter expires, the company may apply to the department for an extension of the charter for a term of 50 years from the date the charter would otherwise expire.

(b) The application for an extension must:

(1) demonstrate that the application was authorized either by a two-thirds vote of the company's directors or by a majority vote at a policyholders' meeting;

(2) state in full the charter to be extended;

(3) state the period for which the charter is to be extended;

(4) be signed and acknowledged by the president and secretary of the company; and

(5) be accompanied by a fee of $50.

(c) A company whose charter is extended retains the rights, privileges, and immunities granted a county mutual insurance company by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Sec. 912.101. OPERATION UNDER CERTIFICATE OF AUTHORITY. A county mutual insurance company engages in the business of insurance under a certificate of authority issued by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.102. AUTHORITY TO ENGAGE IN BUSINESS. A county mutual insurance company may engage in the business of insurance in accordance with this chapter and other applicable laws only if:

(1) the company was formed before September 6, 1955, and was actively engaged in the business of insurance on that date; or

(2) the company was formed under a permit to solicit insurance issued before September 6, 1955.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. POLICIES AND COVERAGE

Sec. 912.151. KINDS OF INSURANCE AUTHORIZED. (a) A county mutual insurance company that qualifies to write casualty lines for statewide operation may write all lines of automobile insurance. The company may not assume a risk on any one hazard that is greater than five percent of its assets, unless the company promptly reinsures the excess amount of risk.

(b) A county mutual insurance company may insure property against loss or damage by:

(1) fire, lightning, gas explosion, theft, windstorm, and hail or for any combination of these hazards; or

(2) any other hazard against which any other fire or windstorm insurance company operating in this state may write insurance on property described by Subsection (c).

(c) Unless restricted by its charter, the company may write insurance against the hazards described by Subsection (b) on:

(1) a rural or urban dwelling and attendant outhouses and yard buildings;

(2) the contents, for home and personal use, of a rural or urban dwelling, an attendant outhouse, or a yard building, including a family vehicle, musical instrument, and library;

(3) a barn or other farm, dairy, truck garden, hennery, or ranch building and any other improvement;

(4) a vehicle, harness, implement, tool, or machinery of any description used on and about a farm, truck garden, dairy, hennery, or ranch;

(5) fruit and products, other than growing crops, and any fowl, livestock, or domestic animals that are produced, raised, grown, kept, or used on a farm, truck garden, dairy, hennery, or ranch;

(6) a church house, country school house, country lodge room, or country recreation hall, other than a road house or public dance hall; and

(7) the contents of a church house, country school house, country lodge room, or country recreation hall.

(d) An insurance policy written by a county mutual insurance company against loss or damage by windstorm or hail, as described by Subsection (a), may include coverage for:

(1) a building or other structure that is built wholly or partially over water; and

(2) the corporeal movable property contained in a building

or structure described by Subdivision (1).

(e) The county mutual insurance company may impose appropriate limits of coverage and deductibles for coverage described by Subsection (d).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1153 (H.B. 3048), Sec. 5, eff. September 1, 2005.

Sec. 912.152. POLICY FORMS. (a) A county mutual insurance company is subject to:

(1) Sections 1952.051-1952.055;
(2) Subchapter H, Chapter 1952;
(3) Subchapter B, Chapter 2002;
(4) Chapter 2301; and
(5) Articles 5.06 and 5.35.

(b) County mutual insurance companies shall file policy forms under Subchapter B, Chapter 2301, or continue to use the standard policy forms and endorsements promulgated under former Articles 5.06 and 5.35 on notification to the commissioner in writing in the manner prescribed by those articles that those forms will continue to be used.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 21.41, eff. June 11, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.110, eff. April 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 455 (H.B. 259), Sec. 2, eff. September 1, 2019.

Sec. 912.153. CONTRACT TERMS: INCORPORATION OF BYLAWS. (a) A county mutual insurance company's bylaws are part of each contract between the company and an insured.

(b) Each policy issued by the company must state that the company's bylaws are part of the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.154. AMOUNT OF INSURANCE UNDER MULTIPLE HAZARDS POLICY. The amount of risk or insurance coverage in a policy that insures a risk against more than one hazard is the maximum loss the county mutual insurance company may sustain under the policy at any one time, regardless of the number of hazards against which the company insures.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.155. REPAIR OR REPLACEMENT OF INSURED PROPERTY. (a) The county mutual insurance company's bylaws may authorize the company to require, at its option, that all or a percentage of the money paid for a loss be used to replace or repair the damaged or destroyed property. The requirement may apply equally to personal and real property, including personal and real property exempt from execution, such as a homestead or a building on the homestead. The company may provide in its bylaws that the requirements of Section 862.053 do not apply to its insurance policies.

(b) This section does not apply to a company that meets the requirements of Section 912.308(a)(3), but such a company is subject to Sections 883.154, 883.155, and 883.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.156. CONTESTING CLAIM FOR CERTAIN PURPOSES PROHIBITED. (a) In this section, "full payment" means payment of the full amount of a loss actually sustained on the occurrence of the contingency against which the insurance coverage is obtained, not to exceed the maximum amount stated in the policy.

(b) A county mutual insurance company may not contest a claim:

(1) only for delay or a captious or inconsequential reason; or

(2) to force a settlement for less than full payment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.157. DENIAL OF CLAIM: NOTICE REQUIRED. (a) A county mutual insurance company shall notify a claimant of the company's intent to deny liability on a claim not later than the 60th day after the date the company receives due proofs that the claim will not be paid.

(b) A company that does not notify a claimant as required by Subsection (a) is presumed as a matter of law to have accepted liability on the claim.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. CHARGES, PREMIUMS, AND ASSESSMENTS

Sec. 912.201. SCHEDULE OF CHARGES. A county mutual insurance company shall file with the department a schedule of the amounts the company charges a policyholder or an applicant for a policy, regardless of the term the company uses to refer to those charges, including "rate," "policy fee," "inspection fee," "membership fee," or "initial charge." A county mutual insurance company shall file premium, expense, and loss experience data with the department in the manner prescribed by the commissioner. An insurer shall file the schedules and data required under this section according to rules promulgated by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 206, Sec. 21.42, eff. June 11, 2003.

Sec. 912.202. PAYMENT OF PREMIUM OR ASSESSMENT. (a) A county mutual insurance company's bylaws must:

(1) state the time and manner of the levy and payment of a premium or assessment for policies written by the company;

(2) in addition to the regular premium or assessment under Subdivision (1), establish the contingent liability of a policyholder for all losses accrued while a policy is in force in the amount of $2 for each $100 of insurance coverage; and

(3) state the time and manner of payment of a policyholder's contingent liability established under Subdivision (2).

(b) As required by its bylaws, a county mutual insurance

company shall establish and levy premiums and assessments, including the contingent liability of a policyholder, for all insurance written by the company.

(c) A policyholder shall pay premiums and assessments as required by the company's bylaws.

(d) The premium or assessment for a policy shall be secured by a lien on each item of real or personal property, other than a homestead, covered by the policy, including the land on which an insured building is located. The lien remains on the property while the insured owns the property.

(e) Subsection (a) does not apply to a company that meets the requirements of Section 912.308(a)(3), but such a company is subject to Sections 883.154, 883.155, and 883.156.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.203. NONPAYMENT OF PREMIUM OR ASSESSMENT: FILING OF ACTION. (a) A county mutual insurance company may bring an action in the home county of the company against a policyholder who defaults on the payment of an assessment or premium.

(b) The company is entitled to judgment against the policyholder for:

(1) delinquent premiums or assessments;

(2) foreclosure of the lien described by Section 912.202; and

(3) the costs of an action, including a reasonable attorney's fee in the amount of at least $5.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.204. POLICYHOLDER LIABILITY. A policyholder is liable for the losses of a county mutual insurance company only as provided by Section 912.202 and the company's bylaws, and only in proportion to the amount that the premium or assessment for the policyholder's policy bears to the total amount of premiums or assessments for all policies written by the company in the class to which the policyholder's policy belongs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. AGENTS

Sec. 912.251. LICENSING AND APPOINTMENT OF AGENTS. An agent for a county mutual insurance company must be licensed and appointed as provided by Title 13.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.224(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.111, eff. April 1, 2009.

SUBCHAPTER G. REGULATION OF COUNTY MUTUAL INSURANCE COMPANY; FINANCIAL REQUIREMENTS

Sec. 912.301. REPORT REGARDING CONDITION OF COMPANY. (a) The commissioner may, at any time the commissioner determines advisable, compel written reports from a county mutual insurance company regarding the company's condition.

(b) The commissioner may require that the report be verified under oath by a responsible officer of the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.302. ANNUAL STATEMENT FEE. The department shall charge and the comptroller shall collect a fee of $20 for the filing of an annual statement by a county mutual insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.303. BOOKS AND RECORDS. (a) A county mutual insurance company shall maintain the company's books and records in a form and manner that accurately reflects the condition of the company or the facts essential to the company's faithful and effective operation.

(b) The company shall use forms or systems that most effectively serve the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.304. REINSURANCE. (a) A county mutual insurance company may reinsure any or all of the company's risks with another company against any hazard against which the county mutual insurance company is permitted to insure.

(b) The county mutual insurance company may contract for mutual or reciprocal reinsurance with another company on the mutual or cooperative plan subject to the following conditions:

(1) the county mutual insurance company may assume the reinsurance on the risks of the other company only if the other company reinsures the risks of the county mutual insurance company; and

(2) the county mutual insurance company may write or assume the reinsurance only on property that the company is authorized to insure and that is located in this state.

(c) A county mutual insurance company that reinsures another company's property is liable for the losses of the other company only as specified in the reinsurance contract. The county mutual insurance company does not become a member or partner of the other company as a result of the reinsurance.

(d) A county mutual insurance company may pay or collect additional assessments or premiums for the purpose of a contract described by Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.305. SECURITY DEPOSIT. (a) A county mutual insurance company shall maintain with the comptroller through the department a deposit in cash or, subject to the commissioner's approval, convertible securities. The deposit must be equal to:

(1) the largest amount assumed by the company on any one risk; or

(2) on a demonstration of reinsurance acceptable to the commissioner, the largest amount retained by the company on any one risk after reinsurance.

(b) The deposit is liable for the payment of all judgments against the company and is subject to garnishment after final

judgment against the company. The company, on the commissioner's demand, must immediately replenish the deposit when the deposit is impounded or depleted. If the company does not immediately replenish the deposit, the company may be regarded as insolvent.

(c) If a county mutual insurance company makes a statement, including a statement contained in an advertisement, letter, or literature, that the company deposited cash or securities as required by this section, the company must also state in full:

(1) the purpose, exact amount, and character of the deposit; and

(2) the conditions under which the deposit was made.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.306. REQUIRED BONDS. (a) A county mutual insurance company shall obtain a bond for:

(1) the officer responsible for handling the funds of the company's members; and

(2) all other office employees who may have access to the company's funds.

(b) The bonds required under this section must:

(1) be with a surety authorized by the department to engage in business in this state;

(2) be made payable to the department for the use and benefit of the company's members; and

(3) obligate the principal and surety to pay pecuniary losses that the company sustains through an act of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication, regardless of whether the act is committed by the officer or employee directly and alone, or in cooperation with another person.

(c) A bond under this section must:

(1) be in an amount that is at least the greater of $1,000 or the amount of cash assets on hand, but not more than $20,000, if the bond covers the officer; or

(2) be in an amount established by the department that is at least $1,000 but not more than $5,000, if the bond covers office employees.

(d) One or more persons may recover on a bond under this

section until the bond is exhausted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.307. RESERVE REQUIREMENTS. (a) A county mutual insurance company shall maintain unearned premium reserves as provided by Section 862.102.

(b) The company shall invest the unearned premium reserves and any other type of reserves authorized by the company's board of directors in the same type of securities in which the reserve funds of insurance companies engaged in the same kind of business are required to be invested by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.308. AMOUNT AND INVESTMENT OF SURPLUS. (a) A county mutual insurance company shall maintain an unencumbered surplus which may be invested only in items listed in Section 822.204. The unencumbered surplus must be at least:

(1) $25,000, if the company is organized to write insurance coverage locally in only the county of its domicile;

(2) $50,000, if the company is organized to write insurance coverage in only the county of its domicile and any adjacent county; or

(3) an amount equal to the aggregate of the minimum capital and minimum surplus required under Sections 822.054, 822.202, 822.210, and 822.211, for a fire insurance company if the county mutual insurance company is organized to write insurance coverage statewide.

(b) Except as provided by Section 912.056, a county mutual insurance company is subject to Subchapter B, Chapter 404, and Sections 822.203, 822.210, and 822.212.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.112, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 677 (H.B. 2449), Sec. 2, eff. September 1, 2009.

Sec. 912.309. POLICYHOLDER LOANS TO COMPANY. (a) A policyholder may loan to a county mutual insurance company money as necessary:

(1) for the company to engage in the company's business; or

(2) to enable the company to comply with a requirement of this chapter, including the unencumbered surplus requirement under Section 912.308.

(b) Subject to the approval of the commissioner, the county mutual insurance company may repay a loan and agreed interest, at an annual rate not to exceed 10 percent, only from the surplus remaining after the company provides for the company's reserves, other liabilities, and required surplus.

(c) A loan under this section or interest on a loan is not otherwise a liability or claim against the company or any of its assets.

(d) A county mutual insurance company may not pay a commission, promotion expense, or other bonus in connection with a loan made to the company.

(e) A county mutual insurance company shall report in its annual statement the amount of each loan made to the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.310. CERTAIN COMPANIES EXEMPT. (a) Chapter 196, Acts of the 53rd Legislature, Regular Session, 1953, and Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, do not apply to a county mutual insurance company:

(1) that was organized and operating as a county mutual fire insurance company on May 22, 1953; and

(2) the business of which is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly, or quarterly basis on a continuous premium payment plan.

(b) The exemption established by this section applies only so long as the company is engaged exclusively in the writing of industrial fire insurance policies described by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. GENERAL FINANCIAL REGULATION

Sec. 912.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Subchapter A, Chapter 404, and Chapters 441 and 443 apply to a county mutual insurance company engaged in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.113, eff. April 1, 2009.

SUBCHAPTER P. DISCIPLINARY ACTION AND PROCEDURES IN GENERAL

Sec. 912.751. OFFICER OR DIRECTOR UNWORTHY OF TRUST: REMOVAL AND REVOCATION OF CERTIFICATE OF AUTHORITY. (a) After notice and hearing, the commissioner shall order the removal of an officer or director of a county mutual insurance company holding a certificate of authority if the officer or director is found unworthy of the trust or confidence of the public.

(b) If a county mutual insurance company does not remove an officer or director as required by an order issued under Subsection (a), the commissioner shall:

(1) revoke the company's certificate of authority; and

(2) treat the company as insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.752. FRAUDULENT OPERATION OR IMPROPER CONTESTS: REVOCATION OF CERTIFICATE OF AUTHORITY. After notice and hearing, the commissioner shall revoke the certificate of authority of a county mutual insurance company that is:

(1) operating fraudulently; or

(2) improperly contesting the company's claims.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.753. TIME LIMIT TO APPEAL. An individual or a county mutual insurance company may appeal an order or a ruling of the commissioner under this chapter not later than the 60th day after the date of the order or ruling, in accordance with Subchapter D, Chapter 36.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER Q. GENERAL CRIMINAL PENALTIES

Sec. 912.801. VIOLATION OF CHAPTER; CRIMINAL PENALTY. (a) Except as otherwise provided by this subchapter, a person, including a director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company, commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than $500;

(2) confinement in jail for a term of not more than 180 days; or

(3) both a fine and confinement as provided by Subdivisions (1) and (2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 912.802. CONVERSION; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person fraudulently takes or converts to the person's own use or secretes with the intent to take or convert to the person's own use, and with knowledge that the person is not entitled to receive it, any property or other thing of value of the company that is in the person's custody, control, or possession as a result of the person's office, directorship, agency, or employment or in any other manner.

(b) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person pays or delivers property or another thing of value described by Subsection (a) to another person knowing that the person is not entitled to receive it.

(c) An offense under this section is punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more

than 10 years or less than 2 years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.126, eff. September 1, 2009.

Sec. 912.803. UNLAWFUL DIVERSION OF FUNDS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person wilfully borrows, withholds, or diverts from its purpose in any manner all or part of a special fund that:

(1) belongs to or is under the control and management of the company; and

(2) is designated by law for that purpose.

(b) An offense under this section is punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.127, eff. September 1, 2009.

Sec. 912.804. FALSE AFFIDAVIT; CRIMINAL PENALTY. (a) An officer, director, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person wilfully makes a false affidavit in connection with the requirements of this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than $500; or

(2) confinement in jail or imprisonment in the Texas Department of Criminal Justice for a term of not more than two years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.128, eff. September 1, 2009.

SUBTITLE G. LLOYD'S PLAN AND RECIPROCAL AND INTERINSURANCE EXCHANGES
CHAPTER 941. LLOYD'S PLAN
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 941.001. DEFINITIONS. In this chapter:

(1) "Affiliate" has the meaning described by Section 823.003.

(2) "Attorney in fact" means an attorney in fact authorized under a power of attorney to act for the underwriters of a Lloyd's plan.

(3) "Lloyd's plan" means an entity engaged in the business of writing insurance on the Lloyd's plan.

(4) "Underwriter" means an individual, partnership, or association of individuals that writes insurance on the Lloyd's plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.002. LLOYD'S PLAN INSURANCE AUTHORIZED; LIFE INSURANCE PROHIBITED. (a) Except as provided by Subsection (b), a Lloyd's plan may write any kind of insurance that may be lawfully written in this state, including:

(1) fire insurance, including tornado, hail, crop, and floater insurance;

(2) automobile insurance, including fire, theft, transportation, property damage, collision liability, and tornado insurance;

(3) liability insurance;

(4) marine insurance;

(5) accident and health insurance;

(6) burglary insurance;

(7) plate glass insurance; and

(8) fidelity and surety bonds insurance.

(b) A Lloyd's plan may not write life insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICATION OF CERTAIN LAWS. (a) A Lloyd's plan is exempt from the operation of all insurance laws of this state except as specifically provided in this chapter or unless it is specifically provided in the

other law that the law is applicable.

(b) A Lloyd's plan is subject to:

(1) Subchapter A, Chapter 5, Chapter 254, Subchapters A and B, Chapter 1806, and Subtitle C, Title 10;

(2) Articles 5.35, 5.39, and 5.40;

(3) Article 5.13-2, as provided by that article, Chapter 2251, as provided by that chapter, and Chapter 2301, as provided by that chapter;

(4) Chapters 251, 252, 402, 541, and 2253;

(5) Subchapter A, Chapter 401;

(6) Subchapter B, Chapter 404;

(7) Subchapter C, Chapter 1806; and

(8) Sections 38.001, 501.159, 822.203, 822.205, 822.210, 822.212, 2002.005, 2002.051, and 2002.052.

(c) Chapter 2007 applies to rates for motor vehicle insurance written by a Lloyd's plan.

(d) Underwriters and their attorney in fact are subject to Sections 822.051, 822.057, 822.058, 822.059, 822.060, and 822.201, except that:

(1) the articles of agreement executed by the underwriters are instead of the articles of incorporation; and

(2) the aggregate of the guaranty fund and unencumbered surplus of the Lloyd's plan constitutes capital structure for purposes of Section 822.060.

(e) A Lloyd's plan is subject to Chapter 2210, as provided by that chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 21.43(a), (b), eff. June 11, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 631 (H.B. 2565), Sec. 5, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1295 (H.B. 2614), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.114, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.026, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.026, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 42, eff. June 19, 2009.

Sec. 941.004. WITHDRAWAL FROM THE BUSINESS OF INSURANCE. (a) A Lloyd's plan may withdraw from the business of insurance only if the department determines that adequate provision has been made, through reinsurance or other means, for:

(1) payment of all unadjusted losses of the Lloyd's plan; and

(2) reinsurance of all outstanding risks in favor of residents of this state or covering property located in this state.

(b) On compliance with the requirements of Subsection (a):

(1) any bond of the attorney in fact shall be released; and

(2) the department shall release to the underwriters any net assets over which the department has joint control.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. FORMATION AND STRUCTURE OF LLOYD'S PLAN

Sec. 941.051. FORMATION OF LLOYD'S PLAN. (a) To write insurance on the Lloyd's plan, underwriters must:

(1) execute articles of agreement expressing the intent to write insurance; and

(2) comply with the requirements of this chapter.

(b) A Lloyd's plan must have at least 10 underwriters.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.052. ATTORNEY IN FACT. (a) The attorney in fact may execute insurance policies for the Lloyd's plan.

(b) The principal office of the attorney in fact must be maintained at the place designated by the underwriters in the articles of agreement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.053. DEPUTY OR SUBSTITUTE ATTORNEY IN FACT. An appointed deputy attorney in fact or substitute attorney in fact for an attorney in fact holding a certificate of authority under this chapter and accepting powers of attorney from underwriters is authorized by the certificate of authority to:

(1) issue or make a policy or contract of insurance; and

(2) perform any other act incident to issuing or making a policy or contract of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.054. NAME OF LLOYD'S PLAN. The name under which a Lloyd's plan engages in business:

(1) must contain the word "Lloyd's"; and

(2) may not be so similar to any name in use in this state as to be likely to confuse or deceive.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 941.101. CERTIFICATE OF AUTHORITY REQUIRED. (a) An attorney in fact may not write insurance in this state or for residents of this state or covering property located in this state unless the attorney in fact holds a certificate of authority issued under this chapter.

(b) Except as otherwise provided by this chapter, an attorney in fact must:

(1) be a resident of this state; and

(2) maintain the attorney in fact's office in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.102. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) The attorney in fact shall file with the department a verified application for a certificate of authority that states:

(1) the name of the attorney in fact;

(2) the name under which the Lloyd's plan will engage in the business of insurance;

(3) the names and addresses of the underwriters;

(4) the location of the principal office; and

(5) the kinds of insurance to be written.

(b) The application must be accompanied by:

(1) a copy of each form of policy or contract under which insurance will be written;

(2) a copy of the form of the power of attorney under which the attorney in fact will act for and bind the underwriters;

(3) a copy of the articles of agreement executed by the underwriters and the attorney in fact;

(4) a financial statement showing in detail:

(A) assets held by the attorneys in fact, committee of underwriters, trustees, or other officers of the Lloyd's plan;

(B) liabilities incurred and outstanding; and

(C) income received and disbursements made by the attorney in fact;

(5) an instrument executed by each underwriter authorizing the attorney in fact to accept service of process for each underwriter in any action on a policy or contract of insurance; and

(6) an instrument from the attorney in fact that delegates to the department the power of the attorney in fact to accept service of process.

(c) On filing the application, the attorney in fact shall pay to the department a fee of $10. A fee collected under this subsection shall be deposited to the credit of the Texas Department of Insurance operating account.

(d) Sections 201.001 and 201.002 apply to a fee collected under Subsection (c).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.115, eff. April 1, 2009.

Sec. 941.103. ISSUANCE OF CERTIFICATE OF AUTHORITY. On determination by the department that the underwriters and attorney in fact have complied with the law, the department shall, in accordance with Sections 801.001, 801.002, 801.051-801.055, 801.057, and 801.101, issue a certificate of authority to the attorney in fact.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. OPERATION, POWERS, AND DUTIES OF LLOYD'S PLAN

Sec. 941.151. LIABILITY OF UNDERWRITER. (a) Subject to Subsection (c), an underwriter by contract with the persons insured may limit the underwriter's liability to the percentage of the loss that equals the ratio of the underwriter's subscription paid in cash or securities allowed by this chapter to the total guaranty fund contributed by all the underwriters.

(b) Subject to Subsection (c), an underwriter's total liability on all risks may be limited to the amount of the underwriter's subscription, as expressed in the underwriter's power of attorney and agreement with the attorney in fact.

(c) At least half of an underwriter's subscription must be paid or contributed to the guaranty fund in cash or admissible securities.

(d) An underwriter is responsible solely for the underwriter's liability as provided by the insurance contract. An underwriter is not liable as a partner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.152. LIABILITY OF ADDITIONAL OR SUBSTITUTED UNDERWRITER. An additional or substituted underwriter is liable in the same manner and to the same extent as an original subscriber to the articles of agreement and power of attorney on file with the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.153. ACCRUAL OF PROFITS. The profits of a Lloyd's plan may accrue to an underwriter only on the basis of the underwriter's actual investment in cash or convertible securities, without regard to any obligation or subscription of the underwriter to pay additional cash or securities in the future.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.154. ASSUMPTION OF RISK BY CERTAIN AFFILIATED INSURERS. An insurer who is subject to Article 5.26 may not directly or indirectly assume all or a substantial part of a risk covered by a policy written by a Lloyd's plan that is an affiliate of the insurer if the risk is written at a rate less than the rate that may be lawfully charged by:

(1) the insurer; or

(2) one of the insurer's affiliates that is subject to Article 5.26.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.155. PROMOTION OF LLOYD'S PLAN. (a) An individual, firm, or corporation may not be instrumental in organizing a Lloyd's plan if, in the organization of the Lloyd's plan, compensation is paid to the individual, firm, or corporation or to a representative of the individual, firm, or corporation for procuring underwriters or a guaranty fund for the Lloyd's plan unless the individual, firm, or corporation holds a permit issued by the department that authorizes the charging of a commission in connection with organizing the Lloyd's plan.

(b) Not more than 10 percent of the total amount of an underwriter's subscription to a Lloyd's plan may be paid to any person as a commission for the sale of units of or an interest in the Lloyd's plan or for procuring underwriters for the Lloyd's plan.

(c) This section applies to the continued organization or extension of a Lloyd's plan, if a commission is to be paid in connection with the organization or extension. With respect to a continued organization or extension of a Lloyd's plan, the commissioner may not refuse the permit because of the contemplated size or amount of the guaranty fund of the Lloyd's plan.

(d) After the permit has been granted, securities may not be accepted as contributions to the guaranty fund unless the securities have been approved in advance by the department as complying with this chapter with respect to the investment of the funds of a Lloyd's plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.156. REINSURANCE PERMITTED. This chapter does not prevent a domestic Lloyd's plan from reinsuring:

(1) the Lloyd's plan's excess lines with a solvent foreign Lloyd's plan acceptable to the department that does not hold a certificate of authority to engage in the business of insurance in this state; or

(2) any business from a foreign Lloyd's plan described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. FINANCIAL REQUIREMENTS

Sec. 941.201. REQUIRED NET ASSETS. The department may not issue a certificate of authority to an attorney in fact unless the net assets contributed to the attorney in fact, a committee of underwriters, a trustee, or other officers as provided for in the articles of agreement constitute a guaranty fund and surplus over and above all of the Lloyd's plan's liabilities that is at least equal to the minimum capital stock and surplus required of a stock insurance company engaging in the same kinds of business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.202. LIMITATION OF BUSINESS. (a) Except as provided by Subsection (c), a Lloyd's plan may not assume or write insurance risks in this state, for residents of this state, or covering property located in this state that produce an amount of net premium income that exceeds 10 times the value of the net assets of the underwriters.

(b) If the insurance risks written or assumed by a Lloyd's plan produce a net premium income that exceeds the limit specified by Subsection (a), the Lloyd's plan may not write or assume an additional insurance risk until the net assets have been increased to a level that brings the net premium income produced by the additional insurance risk within that limit.

(c) The limit imposed by Subsection (a) does not apply to a Lloyd's plan if:

(1) the Lloyd's plan's net assets equal at least the amount of money required of a stock insurance company engaged in the same

kind of business in this state; or

(2) the department determines that the Lloyd's plan, through reinsurance or other contracts with other responsible and solvent insurers, has reduced the net lines at risk carried by the Lloyd's plan so that its operations are safe and its solvency is not in danger.

(d) An attorney in fact for a Lloyd's plan may not assume an insurance risk that exceeds one-tenth of the sum of the amount of the net assets of the underwriters as described in this subchapter and the amount of the additional liability assumed by the individual underwriters in the articles of agreement and in policies or contracts of insurance, unless the excess insurance risk is promptly reinsured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.203. COMPUTATION OF RESERVE. A Lloyd's plan shall compute reserve liabilities for outstanding business and incurred losses on the same basis required for a stock insurance company engaged in the same kinds of business in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.204. AUTHORIZED INVESTMENTS. (a) The minimum guaranty fund and surplus required of a Lloyd's plan under Sections 822.054, 822.202, 822.210, 822.211, and 941.201 must be:

(1) in cash; or

(2) invested as provided by:

(A) Section 822.204; or

(B) any other law governing the investment of the capital stock and minimum surplus of a capital stock insurance company engaged in the same kind of business.

(b) Funds of a Lloyd's plan other than the minimum guaranty fund and surplus described by Subsection (a) must, if invested, be invested as provided by:

(1) the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073; or

(2) any other law governing the investment of the funds of a capital stock insurance company engaged in the same kind of

business.

(c) A Lloyd's plan may purchase, hold, or convey real property in accordance with Section 862.002.

(d) A Lloyd's plan organized before August 10, 1943, and engaging in business under a certificate of authority issued by the former Board of Insurance Commissioners is not required to comply with this section except as to securities acquired on or after August 10, 1943, regardless of whether those securities were substituted for securities held before that date or were acquired from additional, successor, or substituted underwriters.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.116, eff. April 1, 2009.

Sec. 941.205. JOINT CONTROL OF MINIMUM ASSETS. (a) To the extent of the minimum required under this subchapter, the assets of a Lloyd's plan must be made subject to the joint control of the attorney in fact and the department, in a manner satisfactory to the department, so that the assets may not be withdrawn, diverted, or spent without the approval of the department or for a purpose not permitted under this chapter.

(b) The underwriters are entitled to the interest or income accruing from property or securities placed under joint control under Subsection (a) as the interest or income becomes payable.

(c) As an alternative to submitting assets to joint control under Subsection (a), an attorney in fact for a Lloyd's plan engaged in business before August 20, 1929, may execute a bond in the amount of $25,000 for the safekeeping of assets, to be released only on approval of the department. The corporate surety and the form of the bond must be approved by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.206. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION; IMPAIRMENT OF SURPLUS. (a) Subchapter A, Chapter 404, and Chapters 441 and 443 apply to a Lloyd's plan engaged in the business of insurance in this state.

(b) Subchapter B, Chapter 404, applies to a Lloyd's plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.117, eff. April 1, 2009.

SUBCHAPTER F. REGULATION OF LLOYD'S PLAN

Sec. 941.251. EXAMINATIONS. (a) The provisions of Sections 86.001, 86.002, 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 that relate to the examination of insurers apply to a Lloyd's plan.

(b) The department may examine the books and affairs of an attorney in fact for a Lloyd's plan. The attorney in fact and each deputy attorney in fact shall facilitate the examination and furnish any information reasonably required by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.118, eff. April 1, 2009.

Sec. 941.252. ANNUAL REPORT. (a) An attorney in fact shall annually file with the department a verified report on a form prepared by the department of:

(1) the business conducted by the attorney in fact on behalf of the Lloyd's plan during the preceding year;

(2) the condition of the affairs of the Lloyd's plan; and

(3) any other information required by the department.

(b) The report must cover all of the business conducted by the attorney in fact on behalf of the Lloyd's plan, without regard to the place where the business was conducted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. FOREIGN LLOYD'S PLAN

Sec. 941.301. FOREIGN LLOYD'S PLAN; BOND OR MINIMUM NET ASSETS REQUIRED. (a) Except as provided by Subsection (b), the

commissioner may not issue a certificate of authority to an attorney in fact if:

(1) the underwriters are not residents of this state; or

(2) the underwriters maintain their principal office outside of this state.

(b) The department may issue a certificate of authority to an attorney in fact in circumstances described by Subsection (a) if the underwriters, at their option:

(1) file a bond with the department that complies with Section 941.302; or

(2) maintain net assets in this state that:

(A) are subject to the joint control of the attorney in fact and the commissioner; and

(B) meet the requirements of Subchapter E regarding the minimum amount of net assets of a Lloyd's plan.

(c) A deposit of securities made under Subsection (b)(2) is considered to have been made on the same terms and conditions as a bond executed in accordance with Section 941.302.

(d) If there is recovery on a deposit or bond made under this section, the commissioner shall immediately demand that additional security be provided to increase the amount of the bonds to the minimum amount required by this section. The additional bond must be posted not later than the 30th day after the date the commissioner makes the demand. Successive recoveries may be made on a bond made under this section until the principal amount of the bond is exhausted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.302. BOND OF FOREIGN LLOYD'S PLAN. (a) A bond filed under Section 941.301 must:

(1) be executed by corporate sureties that:

(A) meet the requirements imposed by the department; and

(B) are authorized to engage in guaranty, fidelity, and surety business in this state;

(2) be in a principal amount that equals the minimum amount of net assets of a Lloyd's plan under this subchapter;

(3) be payable to the department;

(4) be conditioned for the payment of all claims arising under insurance policies or contracts:

(A) issued in this state;

(B) issued to residents of this state; or

(C) covering property located in this state; and

(5) be held by the department for the benefit of any person with a valid claim arising under an insurance policy or contract described by Subdivision (4).

(b) The bond must also provide that if a Lloyd's plan with outstanding insurance policies in favor of residents of this state or covering property located in this state becomes insolvent or ceases to engage in the business of insurance in this state, the department, after 10 days' notice to the attorney in fact for the Lloyd's plan or any receiver in charge of the Lloyd's plan's property and affairs, may contract with another insurer engaging in the business of insurance in this state for the assumption of and reinsurance by that insurer of:

(1) all of the Lloyd's plan's insurance risks outstanding in this state; and

(2) all unsatisfied lawful claims outstanding against the Lloyd's plan.

(c) If the department enters into a contract described by Subsection (b) and the attorney general approves the contract as reasonable, the assuming insurer is entitled to recover from the makers of the bond filed under Section 941.301 the amount of the premium or compensation for reinsurance that is specified in the contract.

(d) A bond filed under Section 941.301 binds any additional or substitute underwriters of the Lloyd's plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER H. CONVERSION TO CAPITAL STOCK INSURANCE COMPANY

Sec. 941.351. CONVERSION AUTHORIZED. The underwriters may convert a Lloyd's plan to a capital stock insurance company governed by Chapter 822 by complying with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.352. ADOPTION OF CONVERSION PLAN. The underwriters by a two-thirds vote may adopt a plan to convert the Lloyd's plan to a capital stock insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.353. REQUIREMENTS OF CONVERSION PLAN. The conversion plan must provide that a capital stock insurance company will be formed in accordance with Chapter 822, except that:

(1) the company's required minimum capital and surplus must equal the required minimum guaranty fund and surplus of the Lloyd's plan;

(2) the company's assets may be in cash or in the form of an investment lawfully held by the Lloyd's plan; and

(3) an original examination under Section 822.058(b) is not required unless directed by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.354. COMMISSIONER APPROVAL OF CONVERSION PLAN. On the commissioner's approval of the conversion plan and the formation of the capital stock insurance company, all assets, interests, obligations, and liabilities of the Lloyd's plan, including all outstanding policies and insurance obligations, are transferred to the capital stock insurance company, except as otherwise provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.355. CONVERSION OF MEMBER OF HOLDING COMPANY SYSTEM. If the Lloyd's plan is a member of a holding company system identified in registration information that the Lloyd's plan filed with the department in accordance with Chapter 823, the rights and interests of the underwriters in the capital stock insurance company may be assigned at the time of conversion to any affiliated person in that holding company system. An assignment under this subsection is not:

(1) a change in control for the purposes of Section

822.212; or

(2) an acquisition of control for the purposes of Chapter 823.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER O. PENALTIES

Sec. 941.701. REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner shall revoke a certificate of authority issued to an attorney in fact if the attorney in fact or an underwriter violates this chapter or any other law of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 941.702. CRIMINAL PENALTY. (a) A person commits an offense if the person, as a principal, attorney in fact, agent, broker, or other representative, engages in the business of writing insurance on the Lloyd's plan in violation of this chapter.

(b) An offense under this section is punishable by a fine of not more than $500.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 942. RECIPROCAL AND INTERINSURANCE EXCHANGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 942.001. DEFINITIONS. In this chapter:

(1) "Attorney in fact" means an individual, firm, or corporation who, under a power of attorney or other appropriate authorization of the attorney in fact, acts for subscribers of an exchange by issuing reciprocal or interinsurance contracts.

(2) "Exchange" means a reciprocal or interinsurance exchange and includes the office through which a reciprocal or interinsurance contract is exchanged.

(3) "Reciprocal or interinsurance contract" means an insurance policy or other contract that provides indemnity among a group of subscribers for certain losses.

(4) "Subscriber" means an individual, partnership, or corporation who, through an attorney in fact, enters into a

reciprocal or interinsurance contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.002. SUBSCRIBER INSURANCE COVERAGE THROUGH EXCHANGE AUTHORIZED; LIFE INSURANCE PROHIBITED. (a) Except as provided by Subsection (c), subscribers of this state may exchange reciprocal or interinsurance contracts with other subscribers of this state or of another state or country to provide indemnity among those subscribers for a loss for which insurance coverage may be obtained under other law.

(b) A public, private, or municipal corporation organized under the laws of this state may act as a subscriber, and the right to exchange a reciprocal or interinsurance contract is:

(1) incidental to the purpose for which the corporation is organized; and

(2) in addition to the corporate rights and powers expressly conferred in the corporation's articles of incorporation.

(c) An exchange may not engage in the business of life insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) An exchange is exempt from the operation of all insurance laws of this state except as specifically provided in this chapter or unless exchanges are specifically mentioned in the other law.

(b) An exchange is subject to:

(1) Subchapter A, Chapter 5, Chapter 254, Subchapters A and B, Chapter 1806, and Subtitle C, Title 10;

(2) Articles 5.35, 5.39, and 5.40;

(3) Article 5.13-2, as provided by that article, Chapter 2251, as provided by that chapter, and Chapter 2301, as provided by that chapter;

(4) Chapters 402, 541, and 2253;

(5) Subchapter A, Chapter 401, and Sections 401.051, 401.052, 401.054, 401.055, 401.056, 401.057, 401.058, 401.059, 401.060, 401.061, 401.062, 401.151, 401.152, 401.155, and 401.156;

(6) Subchapter B, Chapter 404;

(7) Subchapter C, Chapter 1806; and

(8) Sections 38.001, 501.159, 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), 862.003, 2002.002, 2002.005, 2002.051, and 2002.052.

(c) Chapter 2007 applies to rates for motor vehicle insurance written by an exchange.

(d) The provisions of the Texas Business Corporation Act that relate to the indemnification of officers and directors apply to an exchange.

(e) Subscribers and their attorney in fact are subject to Sections 822.051, 822.057-822.060, and 822.201, except that:

(1) the declaration of the subscribers prescribed by Section 942.053 replaces the articles of incorporation; and

(2) the unencumbered surplus of the exchange constitutes capital structure for purposes of Section 822.060.

(f) An exchange is subject to Chapter 2210, as provided by that chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 21.44(a), (b), eff. June 11, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 631 (H.B. 2565), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1295 (H.B. 2614), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.119, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.027, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.027, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 43, eff. June 19, 2009.

SUBCHAPTER B. FORMATION AND STRUCTURE OF EXCHANGE

Sec. 942.051. APPOINTMENT OF ATTORNEY IN FACT; APPROVAL BY DEPARTMENT OF POWER OF ATTORNEY OR OTHER AUTHORIZATION REQUIRED. (a)

A reciprocal or interinsurance contract may be executed by an attorney in fact appointed by the subscribers of an exchange.

(b) A corporation may be organized in this state to act as attorney in fact for an exchange. The general laws regarding incorporation supplement this chapter to the extent consistent with this chapter. A corporation organized in this state to act as attorney in fact for an exchange may be organized under the Texas Business Corporation Act, notwithstanding any conflicting provision of that Act.

(c) The form of the power of attorney or other document granting authority to the attorney in fact and under which the insurance is to be exchanged is subject to approval by the department. This subsection may not be construed to permit the department to require the filing or use of uniform forms of those documents except as otherwise provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.052. SECURITY REQUIREMENTS. (a) Except as provided by Subsection (d), to act as an attorney in fact, an individual, firm, or corporation must execute a good and sufficient fidelity bond that obligates the principal and surety to pay a pecuniary loss of money or property, not exceeding the amount of the bond, that is sustained by the exchange through fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of the attorney in fact, directly or through connivance with others.

(b) The bond must:

(1) be acceptable to the department;

(2) be payable to the subscribers or the department; and

(3) be in the amount of:

(A) $25,000 for an individual or firm; or

(B) $50,000 for a corporation.

(c) If the conditions of the bond are violated, the insurance supervisory authority of any state in which the attorney in fact is authorized to engage in the business of the exchange may bring an action to enforce the bond on behalf of the subscribers.

(d) Instead of a bond, an attorney in fact may deposit with the appropriate official of the exchange's state of domicile cash or

securities of the kind in which a general casualty company is authorized to invest its funds. The deposit must be made in the same amount, and must be conditioned, approved, and payable in the same manner, as a bond required under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.053. SUBSCRIBER DECLARATION. (a) On entering into a reciprocal or interinsurance contract, the subscribers, through the attorney in fact, shall file with the department a declaration verified by the oath of the attorney in fact.

(b) The declaration must include:

(1) the name of the proposed exchange;

(2) the kinds of insurance to be provided under the reciprocal or interinsurance contract;

(3) a copy of the form of the power of attorney or other authorization of the attorney in fact under which the insurance is to be provided;

(4) the location of each office from which the reciprocal or interinsurance contracts are to be issued; and

(5) any other information prescribed by the department, including an affidavit comparable to the affidavit prescribed by Section 822.057(a)(3).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.054. NAME OF EXCHANGE. (a) The name of an exchange must contain the term "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurors."

(b) The name selected for an exchange may not be so similar to the name of a similar organization or an insurer that, in the opinion of the department, the name is calculated to confuse or deceive.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.055. OFFICE LOCATIONS. The attorney in fact shall maintain the offices of the exchange at the places designated by the

subscribers in the power of attorney or other authorization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 942.101. CERTIFICATE OF AUTHORITY REQUIRED; EFFECT ON FOREIGN CORPORATIONS. (a) An attorney in fact must hold a certificate of authority issued by the department under Sections 801.001, 801.002, 801.051-801.055, 801.057, 801.101, and 801.102. A certificate of authority obtained in accordance with this section authorizes the attorney in fact named in the certificate to exercise all powers and perform all duties of an attorney in fact.

(b) A corporation required to obtain a certificate of authority from the department under this section is not considered to be engaging in business in this state within the meaning of any law applying to foreign corporations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. OPERATION, POWERS, AND DUTIES OF EXCHANGE

Sec. 942.151. SUBSCRIBER LIABILITY FOR CERTAIN CONTINGENT PREMIUMS. (a) Except as provided by Section 942.152 and Subsection (b), if a certificate of authority is issued as provided by Subchapter C, the power of attorney or other authorization executed by the subscribers must provide that, in addition to the premium or premium deposit specified in the reciprocal or interinsurance contract, the subscribers are liable for a contingent premium equal to one additional annual premium or premium deposit.

(b) If the subscribers and their attorney in fact are authorized to issue reciprocal or interinsurance contracts for cash premiums only, the power of attorney or other authorization may waive all contingent premiums.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.152. SUBSCRIBER LIMITED LIABILITY BASED ON CERTAIN MINIMUM CAPITAL AND SURPLUS. If the unencumbered surplus of an exchange is at least equal to the minimum capital stock and minimum

surplus required of a stock insurance company engaged in the same kinds of business, the subscribers of the exchange may provide by agreement that the premium or premium deposit specified in the reciprocal or interinsurance contract constitutes the entire liability of the subscribers through the exchange.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.153. PRIOR AUTHORITY NOT AFFECTED. This chapter does not affect any authority that existed before September 6, 1955, that allowed the subscribers of an exchange and their attorney in fact to write non-assessable policies in this state, subject to any prerequisite imposed by law on that authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.154. STATEMENTS RELATING TO INDEMNITY AMOUNTS. (a) The attorney in fact for an exchange shall file with the department a sworn statement that shows the maximum amount of indemnity on any single risk.

(b) The attorney in fact for an exchange shall, as required by the department, file with the department a sworn statement that:

(1) the attorney has examined the commercial rating of each subscriber, as established by the reference book of a commercial agency with at least 100,000 subscribers; and

(2) based on the examination or other information in the attorney's possession, it appears that no subscriber has assumed on any single risk an amount greater than 10 percent of that subscriber's net worth.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.155. FINANCIAL REQUIREMENTS. (a) An exchange shall maintain at all times an unencumbered surplus over and above all liabilities that is at least equal to the minimum capital stock and surplus required of a stock insurance company engaged in the same kinds of business.

(b) An exchange shall maintain at all times the reserves

required by the laws of this state or by rules adopted by the commissioner to be maintained by stock insurance companies engaged in the same kinds of business.

(c) An exchange shall maintain the required assets as to:

(1) minimum surplus requirements, as provided by Section 822.204; and

(2) other funds, as provided by the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.120, eff. April 1, 2009.

Sec. 942.156. ISSUANCE OF FIDELITY AND SURETY BOND INSURANCE; DEPOSIT REQUIRED. (a) If a domestic exchange writes fidelity or surety bond insurance in this state, the exchange shall keep on deposit with the comptroller money, bonds, or other securities in an amount of not less than $50,000. The department shall approve for the deposit securities described by the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073, and the exchange shall maintain the approved securities intact at all times.

(b) A foreign exchange that writes fidelity or surety bond insurance in this state shall file with the department evidence satisfactory to the department that the exchange has, for the protection of its subscribers, at least $100,000 in money, bonds, or other securities as described by the provisions of Subchapter B, Chapter 424, other than Sections 424.052, 424.072, and 424.073, on deposit with the comptroller or other appropriate official of its state of domicile or in escrow under that official's supervision and control in a reliable bank or trust company. If those bonds or other securities are not acceptable to and approved by the department, the department may deny the attorney in fact for the exchange a certificate of authority.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.121,

eff. April 1, 2009.

Sec. 942.157. TRANSACTIONS BETWEEN CERTAIN INSURERS AND AFFILIATED EXCHANGES. (a) In this section, "affiliate" has the meaning assigned by Section 823.003.

(b) An insurer subject to Article 5.26 may not directly or indirectly assume all or a substantial part of any risk covered by a reciprocal or interinsurance contract written by an exchange that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer or any affiliate of the insurer that is subject to Article 5.26.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.158. ADVANCES OF MONEY BY ATTORNEY IN FACT. (a) The attorney in fact for an exchange may advance to the exchange any amount of money necessary to conduct the business of the exchange, including any amount necessary to enable the exchange to comply with a legal requirement.

(b) Subject to the approval of the department, the advanced amount and any agreed interest on that amount, not exceeding 10 percent a year:

(1) is payable only from the surplus of the exchange remaining after providing for all reserves, other liabilities, and required surplus; and

(2) may not otherwise be a liability or claim against the exchange or any of the exchange's assets.

(c) A commission, promotion expense, or other bonus may not be paid in connection with the advance of money to the exchange.

(d) The amount of each advance must be reported in the exchange's annual report.

(e) The department may not arbitrarily refuse approval under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.159. VIOLATION BY ATTORNEY IN FACT OF REQUIREMENTS REGARDING INDEMNITY CONTRACTS; CRIMINAL PENALTY. (a) An attorney

in fact commits an offense if the attorney in fact:

(1) exchanges a reciprocal or interinsurance contract without first complying with the law governing the contract; or

(2) directly or indirectly solicits or negotiates an application for the contract without first complying with the law governing the contract.

(b) Subsection (a) does not apply to an action taken by an attorney in fact for the purpose of applying for a certificate of authority from the commissioner as provided by this chapter.

(c) An offense under this section is punishable by a fine of not less than $100 or more than $1,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. REGULATION OF EXCHANGES

Sec. 942.201. ANNUAL REPORT. (a) Not later than March 1 of each year, the attorney in fact for an exchange shall submit to the commissioner a report covering the previous year ending December 31.

(b) The report must:

(1) demonstrate that the financial condition of affairs at the exchange is in accordance with the financial requirements of this chapter under Section 942.155; and

(2) provide any additional information and reports as required to show:

(A) the total amount of premiums or deposits collected;

(B) the total amount of losses paid;

(C) the total amounts returned to subscribers; and

(D) the amounts retained for expenses.

(c) The attorney in fact is not required to provide in the report the name and address of any subscriber.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.202. EXAMINATION BY DEPARTMENT. The business affairs and assets of an exchange, as shown at the office of the attorney in fact, are subject to examination by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 942.203. FEES; TAXES; FILING FEE. (a) To the extent applicable, the schedule of fees established under Chapter 202 applies to an exchange and the exchange's attorney in fact.

(b) An exchange is subject to:

(1) Chapters 221 and 222; and

(2) Chapters 251-255.

(c) The comptroller shall collect the taxes and the filing fee for the annual report.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.122, eff. April 1, 2009.

SUBTITLE H. OTHER ENTITIES
CHAPTER 961. NONPROFIT LEGAL SERVICES CORPORATIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 961.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for a contract for legal services to be performed through a nonprofit legal services corporation.

(2) "Benefit certificate" means a document issued to a participant that states the benefits and other required matters under a group contract for legal services or an individual contract for legal services issued to a participant.

(3) "Contracting attorney" means an attorney who has entered into a contract under Section 961.301.

(4) "Nonprofit legal services corporation" means a corporation created for the sole purpose of establishing, maintaining, and operating a nonprofit legal services plan under which the corporation contracts for and obtains legal services for participants through contracting attorneys in consideration of each participant's payment of a definite amount to fund the payment of the contracting attorneys' fees.

(5) "Participant" means a person entitled to performance of legal services under contract with a nonprofit legal services corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 961.002. APPLICABILITY OF OTHER LAWS. (a) The Texas Nonprofit Corporation Law as described by Section 1.008, Business Organizations Code, applies to a nonprofit legal services corporation to the extent provided by this chapter.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 17(2), eff. September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.123, eff. April 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 17(2), eff. September 1, 2019.

Sec. 961.003. CORPORATION NOT SUBJECT TO DEPARTMENT REGULATION. A nonprofit legal services corporation is not subject to regulation by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 3, eff. September 1, 2019.

Sec. 961.004. CORPORATION NOT ENGAGED IN BUSINESS OF INSURANCE. A nonprofit legal services corporation is not engaged in the business of insurance and is not subject to laws relating to insurers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 4, eff. September 1, 2019.

SUBCHAPTER B. FORMATION AND STRUCTURE OF NONPROFIT LEGAL SERVICES CORPORATIONS

Sec. 961.051. FILING OF CERTIFICATE OF FORMATION; NONPROFIT STATUS REQUIRED. (a) Seven or more persons may file with the

secretary of state a certificate of formation in accordance with Title 1, Business Organizations Code, to form a nonprofit legal services corporation.

(a-1) Notwithstanding Subsection (a), a nonprofit legal services corporation that on or before September 1, 2019, was organized under the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or was formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code, is a nonprofit legal services corporation for purposes of this chapter.

(b) A nonprofit legal services corporation must be governed and operated as a nonprofit organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 6, eff. September 1, 2019.

SUBCHAPTER D. OFFICERS

Sec. 961.152. FINANCIAL OFFICER. A nonprofit legal services corporation, by resolution entered in its minutes, shall designate one or more officers to be responsible for handling the corporation's funds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 8, eff. September 1, 2019.

SUBCHAPTER E. OPERATION OF NONPROFIT LEGAL SERVICES CORPORATIONS

Sec. 961.206. ADVANCE TO CORPORATION. Any person may advance to a nonprofit legal services corporation, on a contingent liability basis, money necessary for the purposes of the corporation's business or to comply with this chapter. The advance may be made in an amount and at a rate of interest agreed to by the person and the corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 10, eff. September 1, 2019.

Sec. 961.207. PARTICIPATION AGREEMENTS. A nonprofit legal services corporation may:

(1) contract with another nonprofit legal services corporation or an insurer authorized to engage in business in this state for joint participation through:

(A) a mutualization contract agreement; or

(B) a guaranty treaty; and

(2) cede or accept a legal services obligation from such a corporation or insurer on all or part of a legal services obligation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 11, eff. September 1, 2019.

Sec. 961.211. BOOKS AND RECORDS. (a) A nonprofit legal services corporation shall keep complete books and records of all money collected and disbursed.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 17(6), eff. September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 17(6), eff. September 1, 2019.

SUBCHAPTER F. BENEFITS PROVIDED BY NONPROFIT LEGAL SERVICES CORPORATIONS

Sec. 961.251. APPLICANTS; BENEFIT CERTIFICATE. (a) A nonprofit legal services corporation may accept applicants and shall issue a benefit certificate to each applicant that becomes a participant under a legal services contract. Before issuance of the certificate, the applicant must pay the application fee, which does

not apply as part of the cost of receiving benefits under the certificate.

(b) On issuance of the benefit certificate, the participant is entitled to the legal services stated in the certificate for the period provided by the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 961.253. TYPES OF LEGAL SERVICES CONTRACTS. A nonprofit legal services corporation may issue legal services contracts on an individual, group, or franchise basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 961.254. INDEMNITY CONTRACTS. (a) A nonprofit legal services corporation may issue a contract for legal services providing for indemnity for costs of services of an attorney who is not a contracting attorney.

(b) A contract under Subsection (a) may be issued without the guarantee provided by Section 961.302(1).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 12, eff. September 1, 2019.

Sec. 961.255. LIMITATIONS ON BENEFITS. A contract for legal services and a benefit certificate issued by a nonprofit legal services corporation may limit:

(1) the types and extent of benefits; and

(2) the circumstances under which legal services are provided.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 961.256. CLAIMS. (a) A nonprofit legal services corporation shall pay a lawful claim for payment under a benefit

certificate not later than the 120th day after the date of receipt of due proof of claim.

(b) Written notice of a claim given to the corporation is considered due proof of claim under this section if the corporation does not provide to the claimant before the 16th day after the date notice is received the forms usually provided by the corporation for filing a claim.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER G. CONTRACTS WITH ATTORNEYS

Sec. 961.301. CONTRACTS WITH ATTORNEYS. A nonprofit legal services corporation may contract with qualified attorneys to ensure to each participant legal services performed by the attorneys under the contract for legal services between the corporation and the participant. A contracting attorney must be licensed to practice law in the jurisdiction in which legal services are to be provided.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 13, eff. September 1, 2019.

Sec. 961.302. AGREEMENT OF CONTRACTING ATTORNEYS. The contracting attorneys shall:

(1) guarantee to the participants the services stated under the participants' benefit certificates, except as provided by Section 961.254; and

(2) agree to perform without cost to the participants, other than the money of the nonprofit legal services corporation held for the participants' benefit under the corporation's plan of operation, services described by the benefit certificates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 961.303. LIMITATIONS ON CORPORATION'S RELATIONSHIP WITH ATTORNEYS AND PARTICIPANTS. (a) A nonprofit legal services corporation may not:

(1) contract to practice law; or

(2) control or attempt to control the relationship existing between a participant and the participant's attorney.

(b) The corporation may act only as an agent on behalf of its participants for legal services and, except as provided by Section 961.254, those services may be provided only by and through contracting attorneys. A contracting attorney must be an independent contractor maintaining a direct lawyer and client relationship with a participant and may not be an employee of the corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 961.305. ATTORNEY INSURANCE REQUIRED. (a) Each contracting attorney shall maintain professional liability and errors and omissions insurance as required by the nonprofit legal services corporation with which the attorney contracts.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 17(8), eff. September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 17(8), eff. September 1, 2019.

Sec. 961.306. PAYMENT ONLY FOR SERVICES PROVIDED. A nonprofit legal services corporation may not pay any of the claim funds collected from participants to an attorney except for legal services that the attorney provided to participants.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 961.307. COMPLAINT REGARDING ATTORNEY. If a nonprofit legal services corporation receives a complaint concerning the performance of an attorney connected with the corporation, the corporation shall refer the complaint to:

(1) the supreme court of this state or a person that the supreme court designates to receive attorney grievances from the public, if the attorney is licensed by this state; or

(2) the appropriate licensing agency of another jurisdiction where the attorney is licensed, if the attorney is not licensed by this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 14, eff. September 1, 2019.

SUBCHAPTER I. DISSOLUTION AND LIQUIDATION OF CORPORATION

Sec. 961.402. VOLUNTARY DISSOLUTION. (a) The board of directors of a nonprofit legal services corporation may vote to dissolve the corporation at any time.

(b) In a dissolution under this section, the officers of the corporation shall settle all outstanding obligations to participants and otherwise dispose of the corporation's affairs. After the officers have completed the corporation's liquidation, the corporation shall be dissolved as provided by:

(1) the provisions relating to winding up and termination under Subchapter G, Chapter 22, Business Organizations Code; or

(2) if the corporation was organized under the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), the provisions relating to voluntary dissolution under that former law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 15, eff. September 1, 2019.

CHAPTER 962. JOB PROTECTION INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 962.001. GENERAL DEFINITIONS. In this chapter:

(1) "Insured" means an individual whose indemnification against income loss is provided because of the individual's membership in a company or association that offers a job protection insurance plan.

(2) "Insurer" has the meaning assigned by Section 801.001.

(3) "Person" means an individual, corporation, association,

or other legal entity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.002. JOB PROTECTION INSURANCE DEFINED. (a) In this chapter, "job protection insurance" means insurance providing indemnity that is:

(1) paid for loss of position arising from discharge or suspension;

(2) payable in installments that do not exceed the average monthly wage of the insured; and

(3) provided to:

(A) conductors, engineers, motormen, brakemen, switchmen, firemen, dispatchers, clerks, operators, trackmen, signalmen, and maintenance-of-way personnel of steam and electric railways; and

(B) bus drivers and truck drivers employed by common carriers.

(b) The term "job protection insurance" does not include a job benefit fund administered by and through a labor union only for the union's members.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.003. COMPLIANCE WITH CHAPTER REQUIRED. An insurer must comply with this chapter to write the insurance coverages authorized by Section 962.101.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.004. APPLICABILITY OF OTHER LAW. An insurer operating under this chapter is subject to the following provisions, if not in conflict with this chapter:

(1) the other chapters of this code, including:

(A) Chapter 221;

(B) Chapter 281, other than any minimum capital and surplus requirements specified in that chapter;

(C) Chapter 822, including Sections 822.203, 822.205, 822.210, and 822.212;

(D) Chapter 861; and

(E) Chapter 402; and

(2) Section 171.0525, Tax Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.005. AGENTS. Title 13 applies to the licensing and regulation of an agent authorized to solicit job protection insurance for an insurer operating under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 962.051. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY. An insurer may not be issued a certificate of authority to operate under this chapter unless:

(1) it or a predecessor was writing the insurance coverages authorized by Section 962.101 on or before January 1, 1920, in at least one state; and

(2) it had policyholders in this state on August 29, 1983, and provides proof of that fact to the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.052. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall issue a certificate of authority to a domestic or foreign insurer that applies for a certificate if:

(1) the applicant has:

(A) complied with the requirements of this chapter and all other requirements imposed on the applicant by law; and

(B) paid any deposit imposed by law; and

(2) the operational history of the applicant indicates a condition such that the expanded operation of the applicant in this state or the applicant's operations outside this state will not create a condition that might be hazardous to the applicant's policyholders or creditors or to the public, when that operational history is reviewed in conjunction with:

(A) the applicant's loss experience;

(B) the kinds and nature of risks insured;

(C) the financial condition of the applicant and the applicant's ownership;

(D) the applicant's proposed method of operation;

(E) the applicant's affiliations;

(F) the applicant's investments;

(G) any contracts leading to contingent liability or agreements relating to guaranty and surety, other than insurance; and

(H) the ratio of the applicant's total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases.

(b) The commissioner shall file in the department's offices any documents delivered to the commissioner under this section.

(c) The certificate of authority authorizes the insurer to engage in the kind or kinds of business in this state specified in the certificate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.053. COMPLIANCE WITH STATE LAW REQUIRED. A certificate of authority issued under this chapter continues in effect on the condition that the insurer continue to comply with the laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.054. INSURERS NOT MEETING CERTAIN REQUIREMENTS. To write the insurance coverages authorized by Section 962.101, a domestic or foreign insurer that does not meet the requirements of

Sections 962.051 and 962.052 must comply with Chapters 822 and 861.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.055. CAPITAL AND SURPLUS REQUIREMENTS. A domestic or foreign insurer operating under this chapter shall maintain the minimum capital and surplus required by Sections 822.054, 822.210, and 822.211.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

SUBCHAPTER C. COVERAGE

Sec. 962.101. AUTHORIZED COVERAGES. A domestic or foreign insurer operating under this chapter may write:

(1) job protection insurance; and

(2) insurance that:

(A) insures an individual described by Section 962.002(a) against bodily injury or death by accident or against disability on account of sickness or accident;

(B) grants specific hospital benefits and medical, surgical, and sick-care benefits to an individual and the individual's family; and

(C) provides reimbursement of funeral expenses in an amount not to exceed $200 to any person in connection with the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.102. OTHER COVERAGES PROHIBITED. A domestic or foreign insurer operating under this chapter may not write coverage that is not authorized by Section 962.101.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.103. APPLICABILITY OF GUARANTY FUND LAW. A guaranty fund established under this code does not provide coverage for insurance written under this chapter except as specifically provided by a law governing the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

SUBCHAPTER O. ENFORCEMENT PROVISIONS

Sec. 962.701. PROHIBITED ACTS; OFFENSE. (a) A person may not:

(1) provide coverage described by Section 962.101 unless the person holds a certificate of authority to provide that coverage; or

(2) solicit insurance for an insurer authorized to provide insurance coverage under this chapter unless the person holds an insurance agent's license.

(b) A person commits an offense if the person knowingly violates Subsection (a). An offense under this subsection is a Class B misdemeanor.

(c) Venue for prosecution of an offense under this section is in Travis County.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

Sec. 962.702. REFUSAL TO ISSUE OR RENEW CERTIFICATE OF AUTHORITY OR LICENSE; SUSPENSION OR REVOCATION. If, after notice and hearing, the commissioner finds that the applicant, certificate holder, or license holder has violated this chapter or another provision of this code, the commissioner may refuse to issue or renew a certificate of authority or a license, or may suspend or revoke a certificate of authority or a license.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 16, eff. April 1, 2007.

CHAPTER 963. AUTOMOBILE CLUBS

Sec. 963.001. DEFINITION. In this chapter, "automobile club"

has the meaning assigned by Section 722.002, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1E.001, eff. April 1, 2009.

Sec. 963.002. PROVISION OF CERTAIN INSURANCE SERVICES BY AUTOMOBILE CLUB. (a) An automobile club may provide insurance services only as provided by this chapter.

(b) An automobile club may provide accidental injury and death benefit insurance coverage to a member through purchase of a group policy of insurance issued to the automobile club for the benefit of its members. The coverage must be purchased from an insurance company authorized to engage in the business of that type of coverage in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1E.001, eff. April 1, 2009.

Sec. 963.003. CERTIFICATE OF PARTICIPATION. (a) The automobile club shall provide each member covered by insurance described by Section 963.002 a certificate of participation.

(b) The certificate of participation must state on its face in at least 14-point black boldfaced type that the certificate is only a certificate of participation in a group accidental injury and death policy and is not automobile liability insurance coverage.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1E.001, eff. April 1, 2009.

Sec. 963.004. CERTAIN ACTIVITIES PROHIBITED. An automobile club may endorse insurance products and refer members to agents or insurers authorized to provide the insurance products in this state. The automobile club or an agent of the automobile club may not receive consideration for the referral.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1E.001, eff. April 1, 2009.

Sec. 963.005. CERTAIN TRANSPORTATION-RELATED SERVICES. In addition to reimbursement services described by Section 722.002(2), Transportation Code, an automobile club may contract with a member to:

(1) reimburse the member for expenses the member incurs for towing, emergency road service, and lockout or lost key services; and

(2) provide immediate destination assistance and trip interruption service.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1E.001, eff. April 1, 2009.

Sec. 963.006. APPLICABILITY OF INSURANCE LAWS. (a) Except as provided by Subsection (b), an automobile club performing services permitted by this chapter is not subject to regulation under the insurance laws of this state because of the performance of those services.

(b) An automobile club may sell insurance products to a member for a consideration separate from the amount that the member pays for membership in the automobile club if the automobile club is properly licensed as an agent under the applicable provisions of this code.

(c) The insurance laws of this state do not apply to reimbursement provided under Section 963.005.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1E.001, eff. April 1, 2009.

CHAPTER 964. CAPTIVE INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 964.001. DEFINITIONS. (a) In this chapter:

(1) "Affiliated company" or "affiliate" has the meaning assigned by Section 823.003 and includes a parent entity that controls a captive insurance company.

(1-a) "Attorney in fact" means a firm or corporation that, under a power of attorney or other appropriate authorization of the attorney in fact, acts for subscribers of a captive exchange by issuing reciprocal or interinsurance contracts.

(1-b) "Captive exchange" means a reciprocal or interinsurance exchange formed under this chapter. The term includes

the attorney in fact through which a reciprocal or interinsurance contract, as defined by Section 942.001, is exchanged.

(2) "Captive insurance company" means a company that holds a certificate of authority under this chapter to insure the operational risks of the company's affiliates or risks of a controlled unaffiliated business. The term includes a captive exchange.

(3) "Captive management company" means an entity providing administrative services to a captive insurance company.

(4) "Control" means the power to direct, or cause the direction of, the management and policies of an entity, other than the power that results from an official position with or corporate office held in the entity. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(5) "Controlled unaffiliated business" means a person:

(A) that is not an affiliate;

(B) that has an existing contractual relationship with an affiliate under which the affiliate bears a potential financial loss; and

(C) the risks of which are managed by a captive insurance company under Section 964.066.

(6) "Operational risk" means any potential financial loss of an affiliate, except for a loss arising from an insurance policy issued by a captive or insurance affiliate.

(7) "Redomestication" means the transfer to or from this state of the insurance domicile of an authorized captive insurer.

(8) "Subscriber" means an affiliated company or controlled unaffiliated business that enters into a reciprocal contract of insurance with an attorney in fact as a subscriber of a captive exchange.

(b) Notwithstanding Section 30.003, in this chapter, "person" has the meaning assigned by Section 311.005, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.01, eff. June 15, 2017.

Sec. 964.002. APPLICABILITY OF OTHER LAWS. (a) Except as otherwise provided by this chapter, this code does not apply to a captive insurance company except:

(1) Title 2;

(2) Chapter 223A and Subtitles A and C, Title 3;

(3) Chapter 401;

(4) Chapter 441;

(5) Chapter 443; and

(6) Chapter 803.

(b) A captive insurance company operating under this chapter is subject to the Business Organizations Code, including the requirement to be authorized by the secretary of state, to the extent those laws do not conflict with this chapter.

(c) Chapter 823 applies to a captive insurance company only if the company is affiliated with another insurer that is subject to Chapter 823.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. CAPTIVE INSURANCE COMPANIES

Sec. 964.051. AUTHORITY TO WRITE DIRECT BUSINESS. (a) Except as provided by this section, a captive insurance company may write any type of insurance, but may only insure the operational risks of the company's affiliates and risks of a controlled unaffiliated business.

(b) A captive insurance company may not issue:

(1) life insurance, except to insure employee benefits that are subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(2) annuities;

(3) accident and health insurance for the company's parent and affiliates, except to insure employee benefits that are subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(4) title insurance;

(5) mortgage guaranty insurance;

(6) financial guaranty insurance;
(7) residential property insurance;
(8) personal automobile insurance; or
(9) workers' compensation insurance.

(c) A captive insurance company may not issue a type of insurance, including automobile liability insurance, that is required, under the laws of this state or a political subdivision of this state, as a prerequisite for obtaining a license or permit if the law requires that the liability insurance be issued by an insurer authorized to engage in the business of insurance in this state.

(d) A captive insurance company is authorized to issue a contractual reimbursement policy to:

(1) an affiliated certified self-insurer authorized under Chapter 407, Labor Code, or a similar affiliated entity expressly authorized by analogous laws of another state; or

(2) an affiliate that is insured by a workers' compensation insurance policy with a negotiated deductible endorsement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.02, eff. June 15, 2017.

Sec. 964.052. REINSURANCE. (a) A captive insurance company may provide reinsurance to an insurer covering the operational risks of the captive insurance company's affiliates, or risks of a controlled unaffiliated business, that the captive insurance company may insure directly under Section 964.051 and:

(1) employee benefit plans offered by affiliates;

(2) liability insurance an affiliate must maintain as a prerequisite for obtaining a license or permit if the law requires maintenance of the liability insurance;

(3) credit life insurance and credit disability insurance offered as a part of, or directly relating to, the operational risks of an affiliate; and

(4) workers' compensation insurance and employer liability policies issued to affiliates if the insurer that directly issues workers' compensation insurance and employer's liability policies or

its licensed, if required by law, administrator or adjuster:

(A) services all claims incurred during the policy period; and

(B) complies with all requirements for an insurer under this code, including Chapter 462, and under Title 5, Labor Code.

(b) A captive insurance company shall provide notice to the commissioner of a reinsurance agreement that the company becomes a party to not later than the 30th day after the date of the execution of the agreement.

(c) A captive insurance company shall provide notice of a termination of a previously filed reinsurance agreement to the commissioner not later than the 30th day after the date of termination.

(d) A captive insurance company may take credit for reserves on risks or portions of risks ceded to reinsurers under Subchapter C, Chapter 493.

(e) Notwithstanding Section 964.064, a captive insurance company, with the commissioner's approval, may accept risks from and cede risks to or take credit for reserves on risks ceded to:

(1) a captive reinsurance pool composed only of other captive insurance companies holding a certificate of authority under this chapter or a similar law of another jurisdiction; or

(2) an affiliated captive insurance company holding a certificate of authority under this chapter or a similar law of another jurisdiction.

(f) A captive insurance company may cede risks to or take credit for reserves on risks ceded to a nonaffiliated reinsurer if the reinsurer:

(1) holds a certificate of authority to transact insurance or reinsurance in a jurisdiction that is:

(A) on the list of qualified jurisdictions of the National Association of Insurance Commissioners; and

(B) acceptable to the commissioner;

(2) maintains minimum capital and surplus, or the equivalent, of $250 million as of the end of the preceding year; and

(3) maintains a financial strength rating of B+ or its equivalent from a national or international rating agency that:

(A) has registered with the Securities and Exchange Commission;

(B) is designated as a nationally recognized

statistical rating organization;

(C) is on the list of Credit Rating Providers by the Securities Valuation Office of the National Association of Insurance Commissioners; and

(D) is acceptable to the commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 1, eff. June 15, 2015.

Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 2, eff. June 15, 2015.

Acts 2017, 85th Leg., R.S., Ch. 252 (H.B. 1187), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.12, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.03, eff. June 15, 2017.

Sec. 964.053. FORMATION. (a) A captive insurance company, other than a captive exchange, or an attorney in fact must be formed for the purpose of engaging in the business of insurance under this chapter by filing an appropriate application with the secretary of state.

(b) A captive insurance company may be formed and operated in any form of business organization authorized under the Business Organizations Code except a risk retention group or general partnership. A captive insurance company may only be formed as a nonprofit corporation if it is controlled by a nonprofit corporation.

(c) The certificate of formation of a captive insurance company, other than a captive exchange, or an attorney in fact must comply with the applicable requirements of the Business Organizations Code. The name of the company or attorney in fact in the certificate of formation may include the words "insurance," "company," or similar words indicating that the purpose of the company or attorney in fact is to operate as an insurance company or attorney in fact under this chapter.

(d) The board of directors or governing body of a captive

insurance company formed in this state must have at least three members, and at least one of the members must be a resident of this state. If the captive insurance company is a captive exchange, the principal office of the attorney in fact must be in this state.

(e) The certificate of formation, bylaws, or governing document of a captive insurance company must authorize a quorum of the board of directors or governing body to consist of not fewer than one-third of the fixed number of directors or members of the governing body.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.04, eff. June 15, 2017.

Sec. 964.054. RESERVES AND ACCOUNTING BASIS. (a) A captive insurance company shall maintain reserves in an amount stated in the aggregate to provide for the payment of all losses or claims for which the captive insurance company may be liable and that are:

(1) incurred on or before the date of the annual report under Section 964.060, whether reported or unreported; and

(2) unpaid as of the date of the annual report under Section 964.060.

(b) In addition to the reserves required by Subsection (a), a captive insurance company shall maintain reserves in an amount estimated to provide for the expenses of adjustment or settlement of the losses or claims described by Subsection (a).

(c) The captive insurance company shall use generally accepted accounting principles as an accounting basis except that a captive insurance company that is required to hold a certificate of authority under another jurisdiction's insurance laws shall use statutory accounting principles.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.055. CERTIFICATE OF AUTHORITY REQUIRED. (a) An entity may not engage in business as a captive insurance company domiciled in this state unless it holds a certificate of authority

issued by the department to act as a captive insurance company. A captive insurance company, when permitted by its certificate of formation or governing document, may apply for a certificate of authority under this chapter.

(b) An entity does not qualify for a certificate of authority under this chapter unless:

(1) its affiliates have significant operations in this state, as determined by the commissioner;

(2) its board of directors or governing body holds at least one meeting each year in this state;

(3) it maintains its principal office and books and records in this state, unless the commissioner grants an application to relocate the entity's books and records under Chapter 803; and

(4) it complies with Section 804.101 or 804.102.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.05, eff. June 15, 2017.

Sec. 964.056. CAPITAL AND SURPLUS OR EQUIVALENT REQUIREMENTS. (a) The department may not issue a certificate of authority to a captive insurance company unless the company possesses and maintains unencumbered capital and surplus, or the equivalent, in an amount determined by the commissioner after considering:

(1) the amount of premium written by the captive insurance company;

(2) the characteristics of the assets held by the captive insurance company;

(3) the terms of reinsurance arrangements entered into by the captive insurance company;

(4) the type of business covered in policies issued by the captive insurance company;

(5) the underwriting practices and procedures of the captive insurance company; and

(6) any other criteria that has an impact on the operations of the captive insurance company determined to be significant by the commissioner.

(b) The amount of capital and surplus, or the equivalent, determined by the commissioner under Subsection (a) may not be less than $250,000.

(c) The capital and surplus, or the equivalent, required by Subsection (a) must be in the form of:

(1) United States currency;

(2) an irrevocable letter of credit, in a form approved by the commissioner and not secured by a guarantee from an affiliate, naming the commissioner as beneficiary for the security of the captive insurance company's policyholders and issued by a bank approved by the commissioner;

(3) bonds of this state or a county or municipality of this state; or

(4) bonds or other evidences of indebtedness of the United States, the principal and interest of which are guaranteed by the United States.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.06, eff. June 15, 2017.

Sec. 964.057. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) After forming a captive insurance company, other than a captive exchange, or an attorney in fact, the incorporators or organizers must pay to the commissioner an application fee and file with the commissioner an application for a certificate of authority for a captive insurance company, which must include:

(1) a financial statement certified by two principal officers;

(2) a plan of operation and projections, which must include an actuarial report prepared by a qualified independent actuary;

(3) the captive insurance company's certificate of formation or other documentation demonstrating the valid formation of the captive insurance company, other than a captive exchange, or the attorney in fact;

(4) an affidavit by the incorporators, organizers, or officers of the captive insurance company stating that:

(A) the capital and surplus, or the equivalent, are the bona fide property of the company; and

(B) the certificate of formation or other documentation demonstrating the captive insurance company's or attorney in fact's valid formation is true and correct; and

(5) if the application provides for the issuance of shares of stock or other type of equity instrument without par value, a certificate authenticated by the incorporators or officers stating:

(A) the number of shares or other type of equity instrument without par value that are subscribed; and

(B) the actual consideration received by the captive insurance company for those shares or other type of equity instrument.

(b) If the commissioner is not satisfied with the affidavit filed under Subsection (a)(4), the commissioner may require that the incorporators, organizers, or officers provide at their expense additional evidence as described by Subsection (a) before the commissioner takes action on the application.

(c) The application fee required under this section is $1,500 or a greater amount set by the commissioner by rule as necessary to recover the cost of administering this section.

(e) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.07, eff. June 15, 2017.

Sec. 964.058. EXAMINATION BY COMMISSIONER. (a) After the application and application fee for a certificate of authority under Section 964.057 are filed with the department and the applicant has complied with all legal requirements, the commissioner shall conduct an examination of the applicant to determine whether:

(1) the minimum capital and surplus, or the equivalent, requirements of Section 964.056 are satisfied;

(2) the capital and surplus, or the equivalent, are the bona fide property of the applicant; and

(3) the applicant has fully complied with applicable insurance laws.

(b) The commissioner may appoint a competent and disinterested person to conduct the examination required by this section. The examiner shall file an affidavit of the examiner's findings with the commissioner. The commissioner shall record the affidavit.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.08, eff. June 15, 2017.

Sec. 964.059. ACTION ON APPLICATION. (a) The commissioner shall determine whether:

(1) the capital and surplus, or the equivalent, of the applicant meet the requirements of this chapter;

(2) the officers or members of the applicant's governing body have sufficient insurance experience, ability, standing, and good record to make success of the captive insurance company probable;

(3) the applicant is acting in good faith; and

(4) the applicant otherwise satisfies the requirements of this chapter.

(b) In evaluating the application, the commissioner shall consider:

(1) the amount and liquidity of the applicant's assets relative to the risks to be assumed;

(2) the adequacy of the expertise, experience, and character of each individual who will manage the applicant;

(3) the overall soundness of the applicant's plan of operations and the projections contained in that plan;

(4) whether the applicant's affiliates have significant operations located in this state; and

(5) any other factors the commissioner considers relevant to determine whether the applicant will be able to meet its policy obligations.

(c) If the commissioner determines that the applicant has not met the standards set out by Subsection (a), the commissioner shall

deny the application in writing, giving the reason for the denial. On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date the commissioner receives the applicant's request for a hearing, the commissioner shall set a hearing date.

(d) If the commissioner does not deny the application under Subsection (c), the commissioner shall approve the application and:

(1) issue to the applicant a certificate of authority to engage in business as provided for in the applicant's certificate of formation or other governing document;

(2) certify and file the approved document with the department; and

(3) issue a certified copy of the certificate of authority to the applicant's incorporators or officers.

(e) A certificate of authority issued to a captive insurance company under this section may not be sold.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.09, eff. June 15, 2017.

Sec. 964.060. ANNUAL REPORT. (a) A captive insurance company holding a certificate of authority under this chapter is not required to file a report, except as provided by this section, Chapter 223A, and Subtitle C, Title 3.

(b) A captive insurance company that holds a certificate of authority to engage in captive insurance business in this state shall file with the commissioner:

(1) on or before March 1 of each year, a statement of the company's financial condition, verified by two of its executive officers and filed in a format prescribed by the commissioner; and

(2) on or before June 1 of each year, a report of its financial condition at last year-end with an independent certified public accountant's opinion of the company's financial condition.

(c) A captive insurance company may make a written application to the commissioner for filing its annual report required under this section on a fiscal year-end. If an alternative filing date is

granted, the company shall file:

(1) the annual report not later than the 60th day after the date of the company's fiscal year-end;

(2) the report of its financial condition at last year-end with an independent certified public accountant's opinion of the company's financial condition not later than the 150th day after the date the annual report is due; and

(3) its balance sheet, income statement, and statement of cash flows, verified by two of its executive officers, before March 1 of each year to provide sufficient detail to support a premium tax return.

(d) The commissioner may waive the requirement for a captive insurance company to file an actuarial report with the company's annual report if the commissioner determines that the company:

(1) has less than $1 million of net written premium or reinsurance assumed; or

(2) has been in operation for less than six months as of the end of the previous calendar year.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.10, eff. June 15, 2017.

Sec. 964.061. INVESTMENTS. (a) A captive insurance company is not subject to a restriction on allowable investments, except as provided by this section.

(b) A captive insurance company may make loans to its affiliates with the prior approval of the commissioner. Each loan must be evidenced by a note approved by the commissioner. A captive insurance company may not make a loan of the minimum capital and surplus funds, or the equivalent, required by this chapter.

(c) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of a captive insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.11, eff.

June 15, 2017.

Sec. 964.062. AMENDMENTS TO CERTIFICATE OF FORMATION OR GOVERNING DOCUMENT. A captive insurance company may not amend its certificate of formation or other governing document unless the amendment has been filed with and approved by the commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.12, eff. June 15, 2017.

Sec. 964.063. DIVIDENDS AND DISTRIBUTIONS. (a) A captive insurance company shall notify the commissioner in writing when issuing policyholder dividends or distributions to policyholders.

(b) A captive insurance company, with the commissioner's approval, may issue dividends or distributions to the holders of an equity interest in the captive insurance company. The commissioner shall adopt rules to implement this subsection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 3, eff. June 15, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.13, eff. June 15, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.14, eff. June 15, 2017.

Sec. 964.064. PROHIBITION ON JOINING OR CONTRIBUTING TO CERTAIN ENTITIES AND FUNDS. A captive insurance company may not join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, and a captive insurance company, its insured, or any affiliate is not entitled to receive any benefit from a plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.065. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner, after notice and an opportunity for hearing, may revoke or suspend the certificate of authority of a captive insurance company for:

(1) insolvency or impairment of required capital or surplus, or the equivalent, to policyholders;

(2) failure to submit an annual report, as required by Section 964.060;

(3) failure to comply with the provisions of its own charter, bylaws, rules, or other governing document;

(4) failure to submit to examination, as required by Chapter 401;

(5) failure to pay the cost of examination, as required by Chapter 401;

(6) failure to pay any tax or fee required by this code;

(7) removal of its principal office or books and records from this state without prior approval of the commissioner;

(8) use of practices that render its operation detrimental to the public or its condition unsound; or

(9) failure to otherwise comply with the laws of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.15, eff. June 15, 2017.

Sec. 964.066. STANDARDS FOR RISK MANAGEMENT OF CONTROLLED UNAFFILIATED BUSINESS. The commissioner may adopt rules establishing standards to ensure that an affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the captive insurance company. Until rules under this section are adopted, the commissioner may approve the coverage of these risks by a captive insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.067. CAPTIVE MANAGERS. Before providing captive management services to a licensed captive insurance company, a captive management company shall register with the commissioner by providing the information required on a form adopted by the commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.068. MAINTENANCE TAX. A captive insurance company is subject to maintenance tax under Subtitle C, Title 3, on the correctly reported gross premiums from writing insurance on risks located in this state as applicable to the individual lines of business written by the captive insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.069. RULEMAKING AUTHORITY. The commissioner may adopt reasonable rules as necessary to implement the purposes and provisions of this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.070. CONFIDENTIALITY. (a) Any information filed with the commissioner by an applicant or captive insurance company under this chapter is confidential and privileged for all purposes, including for purposes of Chapter 552, Government Code, a response to a subpoena, or evidence in a civil action. Except as provided by Subsections (b) and (c), the information may not be disclosed without the prior written consent of the applicant or captive insurance company to which the information pertains.

(b) If the recipient of the information described by Subsection

(a) has the legal authority to maintain the confidential or privileged status of the information and verifies that authority in writing, the commissioner or another person may disclose the information to any of the following entities functioning in an official capacity:

(1) a commissioner of insurance or an insurance department of another state;

(2) an authorized law enforcement official;

(3) a district attorney of this state;

(4) the attorney general;

(5) a grand jury;

(6) the National Association of Insurance Commissioners if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823;

(7) another state or federal regulator if the applicant or captive insurance company to which the information relates operates in the entity's jurisdiction;

(8) an international insurance regulator or analogous financial agency if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823 and the holding company system operates in the entity's jurisdiction; or

(9) members of a supervisory college described by Section 823.0145, if the captive insurance company is affiliated with an insurance company that is part of an insurance holding company system as described in Chapter 823.

(c) The commissioner may use information described by Subsection (a) in the furtherance of a legal or regulatory action relating to the administration of this code.

(d) The secretary of state may index in the public record any document filed with the secretary by an applicant or captive insurance company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.16, eff. June 15, 2017.

Sec. 964.071. REDOMESTICATION. (a) An authorized foreign or alien captive insurance company licensed under laws of any jurisdiction may become a domestic captive insurance company in this state on a determination by the commissioner that the authorized foreign or alien captive insurance company has complied with all of the requirements of this chapter for the issuance of a certificate of authority to, and the Business Organizations Code for converting to an entity of this state for, a domestic captive insurance company of the same type.

(b) A domestic captive insurance company, on the approval of the commissioner, may transfer its domicile. On the transfer, the captive insurance company ceases to be a domestic captive insurance company. The commissioner shall approve any proposed transfer unless the commissioner determines the transfer is not in the best interest of the policyholders.

(c) The commissioner may postpone or waive the imposition of any fees or taxes under this code for a period not to exceed two years for any foreign or alien captive insurance company redomesticating to this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 569 (S.B. 734), Sec. 2, eff. June 14, 2013.

Sec. 964.072. APPROVAL OF CAPTIVE REINSURANCE POOLS. Before determining whether to approve a captive insurance company's participation in a captive reinsurance pool under Section 964.052, the commissioner may:

(1) require the captive insurance company provide to the commissioner evidence that the captive reinsurance pool:

(A) is composed only of other captive insurance companies holding a certificate of authority under this chapter or a similar law of another jurisdiction; and

(B) will be able to meet the pool's financial obligations; and

(2) impose any other limitation or requirement on the captive insurance company that is necessary and proper to provide adequate security for the captive insurance company.

Added by Acts 2015, 84th Leg., R.S., Ch. 469 (S.B. 667), Sec. 4, eff. June 15, 2015.

Sec. 964.073. ADJUSTER LICENSE NOT REQUIRED; EXCEPTION. (a) Except as provided by Subsection (b), a captive insurance company is not required to use a person licensed as an adjuster under Chapter 4101 to adjust losses.

(b) A captive insurance company shall use a person licensed as an adjuster under Chapter 4101 to adjust a claim that a person that is not an affiliated company or an insured controlled unaffiliated business makes against an affiliated company insured by the captive insurance company.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 1.17, eff. June 15, 2017.

SUBCHAPTER C. CAPTIVE EXCHANGES

Sec. 964.101. APPLICABILITY OF OTHER LAW. (a) A captive exchange is subject to:

(1) this chapter; and

(2) Sections 942.051, 942.053, and 942.054.

(b) To the extent of a conflict, this chapter controls over other law applicable to a captive exchange under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

Sec. 964.102. STATUS OF CAPTIVE EXCHANGES. A captive exchange is formed as an exchange as provided by this subchapter and, except as provided by this subchapter, shall operate as a captive insurance company as provided by this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

Sec. 964.103. SUBSCRIBER REQUIREMENTS. On and after the date of the captive exchange's formation, each subscriber of the captive exchange must:

(1) have an existing affiliation with each other

subscriber; or

(2) satisfy the definition of a controlled unaffiliated business regardless of any affiliation relationship created by the captive exchange.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

Sec. 964.104. ATTORNEY IN FACT REQUIREMENTS. The attorney in fact of a captive exchange must:

(1) be:

(A) a corporation organized in this state; or

(B) a limited liability company organized in this state;

(2) on the date of the captive exchange's formation, have and maintain a power of attorney with all subscribers of the captive exchange;

(3) have its principal office in this state; and

(4) have at least three members in the governing body of the attorney in fact, and at least one of those members must be a resident of this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

Sec. 964.105. ATTORNEY IN FACT POWERS AND DUTIES. (a) The attorney in fact of a captive exchange shall:

(1) supervise the finances of the captive exchange;

(2) supervise the captive exchange's operations to ensure the captive exchange's conformity with the captive exchange's subscriber declaration and power of attorney; and

(3) obtain, as necessary, an audit of the account and records of the attorney in fact at the expense of the captive exchange.

(b) The attorney in fact of a captive exchange has any additional powers and duties conferred by the captive exchange's subscriber declaration and power of attorney.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01,

eff. June 15, 2017.

Sec. 964.106. SUBSCRIBER DECLARATION. A captive exchange shall file with the department a subscriber declaration that includes:

(1) the information described by Section 942.053;

(2) the amount of the captive exchange's initial surplus; and

(3) a provision to authorize a quorum of the governing body of the captive exchange's attorney in fact to consist of not fewer than one-third of the fixed number of members of the governing body.

Added by Acts 2017, 85th Leg., R.S., Ch. 1050 (H.B. 1944), Sec. 2.01, eff. June 15, 2017.

SUBTITLE I. SURPLUS LINES INSURERS; COMPANIES NOT ORGANIZED IN TEXAS

CHAPTER 981. SURPLUS LINES INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 981.001. PURPOSE. (a) An insurance transaction that is entered into by a resident of this state with an eligible surplus lines insurer through a surplus lines agent because of difficulty in obtaining coverage from an authorized insurer is a matter of public interest.

(b) The transaction of surplus lines insurance is a subject of concern and it is necessary to provide for the regulation, taxation, supervision, and control of these transactions and the practices and matters related to these transactions by:

(1) requiring appropriate standards and reports concerning the placement of surplus lines insurance;

(2) imposing requirements necessary to make regulation and control of surplus lines insurance reasonably complete and effective;

(3) providing orderly access to eligible surplus lines insurers;

(4) ensuring the maintenance of fair and honest markets;

(5) protecting the revenues of this state; and

(6) protecting authorized insurers, which under the laws of this state must meet strict standards relating to the regulation and taxation of the business of insurance, from unfair competition by unauthorized insurers.

(c) To regulate and tax surplus lines insurance placed in accordance with this chapter within the meaning and intent of 15 U.S.C. Section 1011 and 15 U.S.C. Chapter 108, this chapter provides an orderly method for each person whose home state is this state for a particular transaction to effect insurance with eligible surplus lines insurers through qualified, licensed, and supervised surplus lines agents in this state, if coverage is not available from authorized and regulated insurers engaged in business in this state, under reasonable and practical safeguards.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 1, eff. June 14, 2013.

Sec. 981.002. DEFINITIONS. In this chapter:

(1) "Affiliate" means, with respect to determining the home state of an insured, and solely for the purpose of determining whether an entity is another entity's affiliate, a person or entity that controls, is controlled by, or is under common control with the insured.

(2) "Affiliated group" means a group of entities whose members are all affiliated.

(3) "Control" means, with respect to determining the home state of an insured, and solely for the purpose of determining whether an entity is another entity's affiliate:

(A) to directly or indirectly, acting through one or more persons, own, control, or hold the power to vote at least 25 percent of any class of voting security of the other entity; or

(B) to control in any manner the election of the majority of directors or trustees of the other entity.

(4) "Eligible surplus lines insurer" means an insurer that is not an authorized insurer, but that is eligible under Subchapter B or B-1, in which surplus lines insurance is placed or may be placed under this chapter.

(5) "Home state" means, with respect to an insured:

(A) the state in which the insured maintains the insured's principal residence, if the insured is an individual;

(B) the state in which the insured maintains the

insured's principal place of business, if the insured is not an individual;

(C) if 100 percent of the insured risk is located outside of the state in which the insured maintains the insured's principal residence or principal place of business, as applicable, the state to which the greatest percentage of the insured's taxable premium for the insurance contract that covers the risk is allocated; or

(D) for an affiliated group, the home state of the member, as determined under Paragraphs (A)-(C), that has the largest percentage of premium attributed to it under the insurance contract.

(6) "Managing underwriter" means a surplus lines agent or agency that exercises, pursuant to a written agreement with an eligible surplus lines insurer, underwriting authority for the eligible surplus lines insurer and that derives the agent or agency's business from a surplus lines agent.

(7) "Stamping office" means the Surplus Lines Stamping Office of Texas.

(8) "Surplus lines agent" means an agent licensed under Subchapter E to procure an insurance contract from a surplus lines insurer.

(9) "Surplus lines insurance" means insurance coverage that may be placed, in accordance with this chapter, with an eligible surplus lines insurer or the insurer's managing underwriter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 837 (H.B. 3410), Sec. 2, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 2, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 2, eff. January 1, 2018.

Sec. 981.003. APPLICABILITY OF CHAPTER. This chapter applies to surplus lines insurance if the home state of the insured is this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 3, eff. June 14, 2013.

Sec. 981.0031. EXEMPT COMMERCIAL PURCHASER DEFINED. (a) For purposes of this chapter, "exempt commercial purchaser" means a person who purchases commercial insurance and, at the time of placement:

(1) employs or retains a qualified risk manager to negotiate insurance coverage;

(2) has paid aggregate nationwide commercial property and casualty insurance premiums of more than $100,000 in the immediately preceding 12 months; and

(3) meets at least one of the following criteria:

(A) has a net worth of more than $20 million;

(B) generates annual revenue of more than $50 million;

(C) employs more than 500 full-time or full-time equivalent employees per individual insured, or is a member of an affiliated group that employs more than 1,000 employees in aggregate;

(D) is a nonprofit organization or public entity generating annual budgeted expenditures of at least $30 million; or

(E) is a municipality with a population of more than 50,000.

(b) Effective on January 1, 2015, and on every fifth January 1 thereafter, the commissioner shall by order adjust the amounts provided by Subsections (a)(3)(A), (B), and (D) to reflect the percentage change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for the five-year period immediately preceding January 1 of the year of the adjustment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 4, eff. June 14, 2013.

Sec. 981.0032. QUALIFIED RISK MANAGER DEFINED. For purposes of this chapter, "qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who:

(1) is an employee of, or third-party consultant retained by, a commercial policyholder;

(2) provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis and the purchase of insurance; and

(3) satisfies the requirements of one of the following paragraphs:

(A) has:

(i) a bachelor's or higher degree from an accredited college or university in risk management, business administration, finance, economics, or another field determined by a state insurance commissioner or other state regulatory official or entity to demonstrate competence in risk management; and

(ii) either:

(a) at least three years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing of commercial lines of insurance; or

(b) a designation, certification, or license:

(1) as a chartered property casualty underwriter (CPCU), issued by the American Institute for CPCU/Insurance Institute of America;

(2) as an associate in risk management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(3) as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education and Research;

(4) as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(5) that is determined by a state insurance commissioner or other state insurance regulatory official or entity to demonstrate minimum competence in risk management;

(B) has at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing of commercial lines of insurance and one of the designations, certifications, or licenses described by Paragraph (A)(ii)(b);

(C) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(D) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or another field determined by a state insurance

commissioner or other state regulatory official or entity to demonstrate competence in risk management.

Added by Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 4, eff. June 14, 2013.

Sec. 981.0033. INDUSTRIAL INSURED DEFINED. For purposes of this chapter, "industrial insured" means a person who purchases commercial insurance and, at the time of placement:

(1) employs or retains a qualified risk manager to negotiate insurance coverage; and

(2) either:

(A) has paid aggregate nationwide commercial property and casualty insurance premiums of more than $25,000 in the immediately preceding 12 months; or

(B) employs at least 25 full-time employees.

Added by Acts 2017, 85th Leg., R.S., Ch. 92 (H.B. 1559), Sec. 1, eff. September 1, 2017.

Sec. 981.004. SURPLUS LINES INSURANCE AUTHORIZED. (a) An eligible surplus lines insurer may provide surplus lines insurance only if:

(1) the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in this state;

(2) the insurance is placed through a surplus lines agent; and

(3) the insurer meets the eligibility requirements of Subchapter B or B-1 as of the inception date and annual anniversary date of each insurance contract, cover note, or other confirmation of insurance.

(b) An eligible surplus lines insurer may provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers.

(c) Subsection (a)(1) does not apply to insurance procured for an exempt commercial purchaser if:

(1) the agent procuring or placing the insurance discloses

to the exempt commercial purchaser that:

(A) comparable insurance may be available from the admitted market that is subject to more regulatory oversight than the surplus lines market; and

(B) a policy purchased in the admitted market may provide greater protection than the surplus lines insurance policy; and

(2) after receiving the notice described by Subdivision (1), the exempt commercial purchaser requests in writing that the agent procure the insurance from or place the insurance with an eligible surplus lines insurer.

(d) Subsection (a)(1) does not apply to insurance procured for an industrial insured if:

(1) the agent procuring or placing the insurance discloses to the industrial insured that:

(A) comparable insurance may be available from the admitted market that is subject to more regulatory oversight than the surplus lines market; and

(B) a policy purchased in the admitted market may provide greater protection than the surplus lines insurance policy;

(2) the surplus lines company offering the coverage has a financial strength rating of A- or better from the A. M. Best Company; and

(3) after receiving the notice described by Subdivision (1), the industrial insured requests in writing that the agent procure the insurance from or place the insurance with an eligible surplus lines insurer.

(e) Subsections (a)(1) and (b) do not apply to flood coverage under an insurance policy issued by an eligible surplus lines insurer that has a financial strength rating of A- or better from the A. M. Best Company.

(f) Notwithstanding Subsection (a)(1), the availability of windstorm and hail insurance from the Texas Windstorm Insurance Association does not preclude an eligible surplus lines insurer from providing windstorm and hail insurance under Subsection (a) or limiting the amount of insurance that may be provided under Subsection (b).

(g) Except with respect to a line of insurance for which the commissioner has temporarily reinstated the requirements for rate and form filings under Section 2251.0031(d) or 2301.0031(d), Subsections

(a)(1) and (b) do not apply to an insurance policy issued by an eligible surplus lines insurer for any line of the kinds of insurance described by Sections 2251.0031(a) and 2301.0031(a) or exempted under Section 2251.0031(c) or 2301.0031(c).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 5, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 92 (H.B. 1559), Sec. 2, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 3, eff. January 1, 2018.
Acts 2019, 86th Leg., R.S., Ch. 763 (H.B. 1306), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1089 (H.B. 1940), Sec. 1, eff. June 14, 2019.
Acts 2021, 87th Leg., R.S., Ch. 42 (S.B. 1367), Sec. 1, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(58), eff. September 1, 2021.

Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a material and intentional violation of this chapter or Chapter 225 exists, an insurance contract obtained from an eligible surplus lines insurer is:

(1) valid and enforceable as to all parties; and

(2) recognized in the same manner as a comparable contract issued by an authorized insurer.

(b) A material and intentional violation of this chapter or Chapter 225 does not preclude the insured from enforcing the insured's rights under the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.125, eff. April 1, 2009.

Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus lines

agent or an eligible surplus lines insurer that violates:

(1) this chapter;

(2) Chapter 225; or

(3) a rule or order adopted under Subchapter B or B-1 or Section 981.005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.126, eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 4, eff. January 1, 2018.

Sec. 981.007. LIABILITY OF SURPLUS LINES INSURER FOR LOSSES AND UNEARNED PREMIUMS. (a) This section applies if:

(1) an eligible surplus lines insurer has assumed a risk under this chapter; and

(2) the surplus lines agent who placed the insurance has received the premium for that risk.

(b) If a coverage question between the eligible surplus lines insurer and the insured arises regarding the assumed risk, the insurer is considered to have received the premium due for that coverage.

(c) The eligible surplus lines insurer is liable to the insured for any:

(1) loss covered by the insurance; and

(2) unearned premium payable to the insured on cancellation of the insurance.

(d) This section applies without regard to whether the surplus lines agent is indebted to the insurer regarding the insurance or for any other cause.

(e) An eligible surplus lines insurer that assumes a risk under this chapter subjects itself to this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The premiums charged for surplus lines insurance are subject to the premium tax, if applicable, imposed under Chapter 225.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.127, eff. April 1, 2009.
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 18.10, eff. September 28, 2011.

Sec. 981.009. RULES. The commissioner may adopt rules to implement this chapter or satisfy requirements under federal law or regulations.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.228(a), eff. Sept. 1, 2003.

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS FOR SURPLUS LINES INSURERS

Sec. 981.051. AUTHORIZATION REQUIRED. (a) Before an insurer may issue surplus lines insurance, the insurer must hold an authorization to engage in the business of insurance from its domiciliary state or country.

(b) The authorization from the domiciliary state or country must be for the same kind or class of insurance to be written in this state as surplus lines insurance.

(c) The surplus lines insurer must provide to the commissioner satisfactory evidence that the insurer holds the authorization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.054. CERTAIN PRECONDITIONS NOT ALLOWED. An eligible surplus lines insurer may not require as a condition precedent to writing new or renewal surplus lines insurance that the insured or prospective insured place with the insurer other insurance that is not obtainable as surplus lines insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.057. MINIMUM CAPITAL AND SURPLUS REQUIREMENTS. (a)

Except as provided by Subsection (b), an eligible surplus lines insurer must maintain capital and surplus in an amount of at least $15 million.

(b) Subsection (a) does not apply to alien surplus lines insurers listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 6, eff. June 14, 2013.

Sec. 981.058. ALIEN INSURERS. An alien surplus lines insurer must be listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department, National Association of Insurance Commissioners.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 7, eff. June 14, 2013.

Sec. 981.063. COMMISSIONER OR DEPARTMENT NOT RESPONSIBLE FOR DETERMINING UNAUTHORIZED INSURER'S FINANCIAL CONDITION OR CLAIMS PRACTICES. This subchapter does not impose on the commissioner or department a responsibility to determine the actual financial condition or claims practices of an unauthorized insurer as described by Chapter 101.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.064. COMMISSIONER MAY ORDER REVOCATION OF CONTRACTS. The commissioner may order the revocation of an insurance contract issued by an eligible surplus lines insurer that does not meet the eligibility requirements of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.065. APPLICABILITY TO CONTRACT EXTENSION. This subchapter and Sections 981.101(b), 981.210, and 981.211 apply to an extension of an insurance contract beyond its original expiration date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.066. UNIFORM STANDARDS. To issue surplus lines insurance in this state, an insurer must comply with all applicable nationwide uniform standards adopted by this state in accordance with 15 U.S.C. Section 8204.

Added by Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 8, eff. June 14, 2013.

SUBCHAPTER B-1. DOMESTIC SURPLUS LINES INSURER

Sec. 981.071. DEFINITION. In this subchapter, "domestic surplus lines insurer" means an insurance company designated as a domestic surplus lines insurer under Section 981.072.

Added by Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 5, eff. January 1, 2018.

Sec. 981.072. DESIGNATION AS DOMESTIC SURPLUS LINES INSURER. (a) A property and casualty insurance company organized under Chapter 822 that has capital and surplus in an amount described by Section 981.057 may apply to the department in a form and manner prescribed by the commissioner for designation as a domestic surplus lines insurer.

(b) On approval of an application under Subsection (a), the commissioner shall designate an applicant as a domestic surplus lines insurer and issue to the applicant a domestic surplus lines insurer certificate.

(c) Notwithstanding Section 822.101, a domestic surplus lines insurer is not entitled to a certificate of authority to engage in the business of insurance in this state in the admitted market.

Added by Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 5, eff. January 1, 2018.

Sec. 981.073. APPLICABILITY OF OTHER LAW; CONFLICTS. (a) Except as provided by Subsection (b), a domestic surplus lines insurer is subject to:

(1) this chapter; and

(2) all other insurance laws, including Title 4, applicable to a property and casualty insurance company organized under Chapter 822.

(b) A domestic surplus lines insurer is not subject to:

(1) Section 38.003;

(2) Chapter 462;

(3) Chapter 463;

(4) Chapter 501;

(5) Section 981.051;

(6) Section 981.101(b);

(7) Chapter 2007;

(8) Chapter 2301;

(9) Chapter 2251; and

(10) Chapter 1006, Transportation Code.

(c) To the extent that this subchapter conflicts with any other insurance law, this subchapter controls.

Added by Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 5, eff. January 1, 2018.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 5.25, eff. September 1, 2019.

Sec. 981.074. AUTHORIZED BUSINESS. (a) A domestic surplus lines insurer may only insure a risk in this state if:

(1) the insurance is procured as eligible surplus lines insurance under this chapter; and

(2) the insurance is a kind of insurance the insurer is authorized to write under the insurer's articles of incorporation.

(b) A domestic surplus lines insurer may not issue:

(1) a policy in the admitted market; or

(2) a policy to satisfy the financial responsibility requirements of Chapter 601, Transportation Code, insurance requirements of Chapter 406, Labor Code, or requirements of any other law of this state mandating insurance coverage by an insurance company authorized to engage in the business of insurance in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 5, eff. January 1, 2018.

Sec. 981.075. TAXES IMPOSED. (a) The premium for a surplus lines policy written under this subchapter is subject to the premium tax, if applicable, imposed under Chapter 225.

(b) A domestic surplus lines insurer is subject to an applicable maintenance tax as if the domestic surplus lines insurer were an authorized insurer under Subtitle C, Title 3.

Added by Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 5, eff. January 1, 2018.

Sec. 981.076. REQUIREMENTS FOR DOMESTIC SURPLUS LINES DOCUMENTS. (a) In this section, "surplus lines document" has the meaning assigned by Section 981.101.

(b) A surplus lines document issued by a domestic surplus lines insurer must include a statement in the form and manner provided by commissioner rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 5, eff. January 1, 2018.

Sec. 981.077. REDOMESTICATION. A foreign insurer may redomesticate to this state as a domestic surplus lines insurer as provided by Chapter 983 if the foreign insurer qualifies under Section 981.072.

Added by Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 5, eff. January 1, 2018.

SUBCHAPTER C. REQUIREMENTS AND PROCEDURES FOR ISSUANCE OF SURPLUS LINES DOCUMENTS

Sec. 981.101. REQUIREMENTS FOR SURPLUS LINES DOCUMENTS. (a) In this section, "surplus lines document" means each new or renewal insurance contract, certificate, cover note, or other confirmation of insurance obtained and delivered as surplus line coverage under this chapter.

(b) A surplus lines document must state, in 11-point type, the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a _____ (insert appropriate tax rate) percent tax on gross premium.

(c) A surplus lines document must show:

(1) the description and location of the subject of the insurance;

(2) the coverage, conditions, and term of the insurance;

(3) the premium and rate charged, and premium taxes to be collected from the insured;

(4) the name and address of:

(A) the insured;

(B) the insurer; and

(C) the insurance agent who obtained the surplus line coverage; and

(5) if the direct risk is assumed by more than one insurer:

(A) the name and address of each insurer; and

(B) the proportion of the entire direct risk assumed by each insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.128, eff. April 1, 2009.

Sec. 981.102. LIMIT ON USE OF SURPLUS LINES POLICY OR CONTRACT FORMS. A surplus lines insurance policy or contract form may not be used unless use of the form is:

(1) reasonably necessary for the principal purposes of the insurance coverage; or

(2) not contrary to the purposes of this chapter regarding the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.103. DELIVERY TO INSURED OF SURPLUS LINES DOCUMENTS. (a) On placing new or renewal surplus lines coverage, a surplus lines agent shall promptly issue and deliver to the insured or to the insured's agent the following evidence of insurance:

(1) the policy issued by the insurer; or

(2) if the policy is not available, a certificate, cover note, or other confirmation of insurance.

(b) If the policy is not available at the time of placement of the insurance, the surplus lines agent shall, on the insured's request and as soon as reasonably possible:

(1) obtain the policy from the insurer; and

(2) deliver the policy to the insured to replace the certificate, cover note, or other confirmation of insurance previously issued.

(c) A surplus lines agent may not deliver the evidence of insurance described by Subsection (a), or purport to insure or represent that insurance will be or has been granted by an eligible surplus lines insurer, unless the agent:

(1) has prior written authority from the insurer for the insurance; or

(2) has received information from the insurer in the regular course of business that:

(A) the insurance has been granted; or

(B) an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.104. DELIVERY TO INSURED OF REVISED SURPLUS LINES DOCUMENTS. (a) A surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation, or endorsement for the original document showing the current status of the coverage and the insurers responsible for that coverage if, after the delivery of the original document, a change is made:

(1) to the identity of the insurers;

(2) to the proportion of the direct risk assumed by the insurer as stated in the original document; or

(3) in any other material respect as to the insurance coverage evidenced by the document.

(b) A change made under Subsection (a) may not result in coverage or an insurance contract that would violate this chapter or Chapter 225, if originally issued on that basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.129, eff. April 1, 2009.

Sec. 981.105. FILING WITH STAMPING OFFICE. (a) Not later than the 60th day after the later of the effective date or the issue date of new or renewal surplus lines insurance, a surplus lines agent responsible under Section 225.006 for the filing, reporting, collection, payment, and other requirements imposed by Chapter 225 shall file with the stamping office:

(1) a copy of the policy issued; or

(2) if the policy has not been issued, a copy of the certificate, cover note, or other confirmation of insurance delivered to the insured.

(b) The surplus lines agent described by Subsection (a) shall also promptly file with the stamping office:

(1) a copy of each substitute certificate, cover note, or other confirmation of insurance delivered to an insured;

(2) a copy of each endorsement of an original policy, certificate, cover note, or other confirmation of insurance delivered to an insured; and

(3) a memorandum from the agent informing the stamping office of the substance of any change represented by a document

described by Subdivision (1) or (2), as compared with the original coverage.

(c) The commissioner may assess a fee against an agent who files a surplus lines policy after the filing deadline specified by Subsection (a).

(d) For an agent who files a surplus lines policy on or before the 180th day after the effective date or issue date described by Subsection (a), the amount of the fee is:

(1) $50 for each late-filed policy if, in the calendar year immediately preceding the year in which the policy is late-filed, the agent has filed not more than five percent of the policies the agent was required to file after the filing deadline specified by Subsection (a); or

(2) $100 for each late-filed policy if, in the calendar year immediately preceding the year in which the policy is late-filed, the agent has filed more than five percent of the policies the agent was required to file after the filing deadline specified by Subsection (a).

(e) For an agent who files a surplus lines policy after the 180th day but before the 365th day after the effective date or issue date described by Subsection (a) and who, during the immediately preceding calendar year, filed not more than two percent of the policies the agent was required to file after the filing deadline specified by Subsection (a), the amount of the fee for the late-filed policy is $200.

(f) Notwithstanding any other provision of this section, for an agent who not later than January 1, 2012, files a late-filed policy with an effective date before January 1, 2010, that, at the time the policy is filed, has not been listed in a previous late-filed policy report of the stamping office, the amount of the fee is $50 for each late-filed policy.

(g) The assessment, imposition, or payment of a fee under this section does not establish a violation for purposes of Section 81.004, 82.051, 82.052, 82.054, 82.056, or 84.022(b)(3).

(h) An agent who files a surplus lines policy after the filing deadline specified by Subsection (a) is subject to Chapters 81, 82, and 84 only if the agent:

(1) fails to timely pay a fee assessed under this section;

(2) files a surplus lines policy on or after the 365th day after the effective date or issue date; or

(3) files a surplus lines policy after the 180th day but before the 365th day of the effective date or issue date, and in the calendar year immediately preceding the year in which the policy is late-filed, filed more than two percent of the policies the agent was required to file after the filing deadline specified in Subsection (a).

(i) The department shall provide notice to each agent of the amount of fees assessed under this section during each calendar year not later than June 15 of the year immediately following the year for which fees are assessed, and each agent shall pay the assessed fees not later than the 30th day after the date of the notice.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 197 (S.B. 1806), Sec. 1, eff. May 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 920 (H.B. 1405), Sec. 2, eff. January 1, 2014.

SUBCHAPTER D. SURPLUS LINES STAMPING OFFICE

Sec. 981.151. STATUS AS NONPROFIT ASSOCIATION. The Surplus Lines Stamping Office of Texas is a nonprofit association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.152. BOARD OF DIRECTORS. (a) The board of directors of the stamping office exercises the powers of the office.

(b) The board consists of nine members appointed by the commissioner. Four members must represent the public and have a minimum of three years of experience in purchasing commercial insurance. A public representative may not:

(1) be an officer, director, or employee of an insurer, insurance agency, agent, broker, solicitor, or adjuster or any other business entity regulated by the department;

(2) be a person required to register under Chapter 305, Government Code; or

(3) be related to a person described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

(c) A board member serves a term as established in the plan of

operation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.153. PLAN OF OPERATION. (a) The procedures to administer the stamping office are established by a plan of operation approved by the commissioner. The plan of operation establishes the terms of the members of the board of directors of the office.

(b) The stamping office shall submit any amendment to the plan of operation to the commissioner. An amendment to the plan of operation is effective on approval by commissioner order.

(c) If the stamping office fails to submit a suitable amendment to the plan of operation, the commissioner may, after notice and hearing, adopt:

(1) an amendment to the plan of operation; and

(2) any rules necessary or advisable to implement this subchapter.

(d) A rule adopted under Subsection (c) continues until:

(1) modified by the commissioner; or

(2) superseded by an amendment to the plan of operation submitted by the stamping office and approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.154. POWERS AND DUTIES. (a) The stamping office shall perform its functions under the plan of operation.

(b) The stamping office shall conduct the following activities as provided in the plan of operation:

(1) receive, record, and review each surplus lines insurance contract that a surplus lines agent is required to file with the office;

(2) provide to the commissioner an evaluation of the eligibility of each surplus lines insurance contract and surplus lines insurer;

(3) prepare monthly reports for the commissioner relating to surplus lines insurance obtained during the preceding month in a form prescribed by the commissioner;

(4) prepare reports for the commissioner relating to surplus lines business;

(5) collect from each surplus lines agent a stamping fee for the costs of operations to be paid by the insured and determined by the department in an amount not to exceed three-fourths of one percent of gross premium resulting from surplus lines insurance contracts;

(6) employ persons;

(7) borrow money;

(8) enter into contracts;

(9) perform any other acts to facilitate or encourage compliance with this chapter and rules adopted under this chapter; and

(10) provide any other service incidental or related to an office purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.155. SUPERVISION BY COMMISSIONER. The commissioner shall supervise the stamping office. The stamping office is subject to the applicable provisions of this code and rules of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.156. EXAMINATION BY COMMISSIONER. (a) The commissioner shall examine the stamping office at any time the commissioner considers an examination necessary.

(b) The stamping office shall pay the cost of the examination.

(c) During an examination, a stamping office board member, officer, agent, or employee:

(1) may be examined under oath regarding the operation of the office; and

(2) shall make available any book, record, account, document, or agreement relating to the operation of the office.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.157. IMMUNITY FROM LIABILITY. A person or entity is not liable for, and a cause of action does not arise out of, an act

or omission in performing a power or duty under this subchapter if the person or entity is:

(1) the stamping office or a board member, officer, agent, or employee of the stamping office; or

(2) the department or an employee or representative of the department, including the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.158. EXEMPTION FROM PUBLIC INFORMATION LAW. (a) An individual surplus lines insurance contract filed with the stamping office is:

(1) confidential; and

(2) not public information under Chapter 552, Government Code.

(b) This section does not prevent access by a state agency to an individual surplus lines insurance contract filed with the stamping office.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.159. EXEMPTION FROM LIBRARY AND ARCHIVES LAW. Chapter 441, Government Code, does not apply to the stamping office or its records.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.160. NO ENFORCEMENT AUTHORITY. This subchapter does not give the stamping office authority to enforce this chapter or Chapter 225.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.130, eff. April 1, 2009.

SUBCHAPTER E. SURPLUS LINES AGENTS

Sec. 981.201. DEFINITION. In this subchapter, "managing general agent" means an agent licensed under Chapter 4053.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.131, eff. April 1, 2009.

Sec. 981.202. SURPLUS LINES LICENSE REQUIRED. An agent licensed by this state may not issue or cause to be issued an insurance contract with an eligible surplus lines insurer unless the agent possesses a surplus lines license issued by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.203. QUALIFICATIONS FOR SURPLUS LINES LICENSE. (a) The department may issue a surplus lines license to an applicant who the department determines complies with Subsection (b) and is:

(1) an individual who:

(A) has passed an examination under Chapter 4002 and department rules; and

(B) holds a current license as:

(i) a general property and casualty agent authorized under Subchapter B, Chapter 4051; or

(ii) a managing general agent; or

(2) a corporation, limited liability company, or partnership that:

(A) has at least one officer or director or at least one active partner who has passed the required surplus lines license examination;

(B) holds a current license as:

(i) a general property and casualty agent authorized under Subchapter B, Chapter 4051; or

(ii) a managing general agent; and

(C) conducts insurance activities under this chapter only through an individual licensed under this section.

(a-1) Notwithstanding Subsection (a)(1)(B), an individual is not required to obtain a general property and casualty agent license to hold a surplus lines agent license if:

(1) the home state of each insured is Texas;

(2) the individual is a nonresident of this state;

(3) the individual is licensed as a surplus lines agent in the individual's state of residence;

(4) the individual is not required by the individual's state of residence to hold a general property and casualty agent license to become licensed as a surplus lines agent;

(5) the individual has provided information acceptable to the commissioner that the individual's state of residence does not require a general property and casualty agent license for a surplus lines agent license;

(6) the individual's state of residence does not require a surplus lines agent to search for the availability of insurance in the individual's state of residence before the insurance is placed through a surplus lines agent;

(7) the individual's state of residence allows a licensed general property and casualty agent to search for the availability of insurance in the individual's state of residence;

(8) the individual has a professional relationship with, and each transaction is conducted through, a person who:

(A) is a licensed general property and casualty agent in this state or in the state of each transaction; and

(B) searches for the availability of insurance in this state before the insurance is placed through a surplus lines agent; and

(9) each transaction complies with the laws of the state in which it occurs.

(b) The agent must:

(1) pay an application fee as determined by the department; and

(2) submit a properly completed license application.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.229(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 402 (S.B. 1564), Sec. 1, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.09, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.132, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.012, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 562 (S.B. 697), Sec. 1, eff. January 1, 2014.

Sec. 981.204. CLASSIFICATION OF SURPLUS LINES AGENTS. The department may classify surplus lines agents and issue a surplus lines license to an agent in accordance with:

(1) a classification created under this section; and

(2) reasonable rules of the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.210. PLACEMENT OF COVERAGE. A surplus lines agent may not place surplus lines coverage with an insurer unless:

(1) the insurer meets the eligibility requirements of Subchapter B or B-1; and

(2) the stamping office provides evidence to the department that the insurer meets those requirements.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 854 (H.B. 2492), Sec. 6, eff. January 1, 2018.

Sec. 981.211. FINANCIAL CONDITION OF SURPLUS LINES INSURERS. (a) A surplus lines agent must make a reasonable effort to determine the financial condition of an eligible surplus lines insurer before placing insurance with that insurer.

(b) A surplus lines agent may not knowingly place surplus lines insurance with a financially unsound insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.212. ACCEPTING SURPLUS LINES INSURANCE FROM OTHER

AGENTS. (a) A surplus lines agent may originate surplus lines insurance or accept surplus lines insurance from another agent who is licensed to handle the kind of insurance being accepted.

(b) A surplus lines agent who accepts surplus lines insurance from an agent may share a commission with that agent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.213. FILING CONTRACT WITH STAMPING OFFICE. A surplus lines agent responsible under Section 225.006 for the filing, reporting, collection, payment, and other requirements imposed by Chapter 225 shall report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the stamping office's plan of operation. The department may accept that filing instead of the filings required under Section 981.105.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 920 (H.B. 1405), Sec. 3, eff. January 1, 2014.

Sec. 981.214. COMPLIANCE WITH STAMPING OFFICE PLAN OF OPERATION. A surplus lines agent shall comply with the stamping office's plan of operation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.215. SURPLUS LINES AGENT RECORDS. (a) A surplus lines agent shall maintain a complete record of each surplus lines contract obtained by the agent, including any of the following, if applicable:

(1) a copy of the daily report;

(2) the amount of the insurance and risks insured against;

(3) a brief general description of the property insured and the location of that property;

(4) the gross premium charged;

(5) the return premium paid;

(6) the rate of premium charged on the different items of

property;

(7) the contract terms, including the effective date;

(8) the insured's name and post office address;

(9) the insurer's name and home office address;

(10) the amount collected from the insured;

(11) an agreement under Section 225.006(c);

(12) evidence establishing that:

(A) the insured qualified as an exempt commercial purchaser and that the surplus lines agent complied with the requirements of Section 981.004(c) if a diligent effort to obtain insurance in the admitted market was not made pursuant to Section 981.004(a)(1); or

(B) the insured qualified as an industrial insured and that the surplus lines agent complied with the requirements of Section 981.004(d) if a diligent effort to obtain insurance in the admitted market was not made pursuant to Section 981.004(a)(1); and

(13) any other information required by the department.

(b) The surplus lines agent shall keep the record required by this section open for examination by the department without notice at any time until the third anniversary of the date the surplus lines contract expires or is canceled.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.233(a), eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 595 (S.B. 951), Sec. 9, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 920 (H.B. 1405), Sec. 4, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 11.002, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 92 (H.B. 1559), Sec. 3, eff. September 1, 2017.

Sec. 981.216. ANNUAL REPORT. (a) Before March 1 of each year, a surplus lines agent shall submit a report to the department for the preceding calendar year.

(b) The commissioner shall adopt the form for the annual

report.

(c) The annual report must:

(1) demonstrate that the amount of insurance obtained from each eligible surplus lines insurer is only the amount that exceeds the amount obtainable from an authorized insurer; and

(2) include any other information required by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.217. NOTICE TO DEPARTMENT REQUIRED. (a) A surplus lines agent shall notify the department not later than the 30th day after the date any of the following occurs:

(1) balances due for more than 90 days to an eligible surplus lines insurer or for more than 60 days to the agent acting on behalf of the surplus lines insurer exceed $1 million or 10 percent of the insurer's policyholder surplus calculated on December 31 of the preceding year;

(2) balances due for more than 60 days from a managing general agent or a local recording agent appointed by or reporting to the managing general agent exceed $500,000;

(3) authority to settle claims for an eligible surplus lines insurer is withdrawn;

(4) funds held for an eligible surplus lines insurer for losses are greater than $100,000 more than the amount necessary to pay losses and loss adjustment expenses expected to be paid on behalf of the insurer in the next 60-day period; or

(5) the agent's contract to act on behalf of a surplus lines insurer is canceled or terminated.

(b) The commissioner shall adopt the form to be used under Subsection (a).

(c) A surplus lines agent may comply with the notification requirement under Subsections (a)(1), (2), and (4) by submitting a single annual report if:

(1) the agent or applicable eligible surplus lines insurer routinely operates beyond the limits provided by those subdivisions; and

(2) the commissioner verifies that fact under a procedure adopted by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.218. DEPARTMENT MONITORING OF SURPLUS LINES AGENTS. The commissioner shall monitor the activities of surplus lines agents as necessary to protect the public interest.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.228(b), eff. Sept. 1, 2003.

Sec. 981.219. ADVERTISING. A surplus lines agent may advertise regarding the agent's ability to place surplus lines insurance permitted by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 981.220. MANAGING GENERAL AGENTS; LIMITED AUTHORITY OF CERTAIN AGENTS. A surplus lines license granted to a managing general agent who is not also licensed under Chapter 4051 is limited to the acceptance of business originating through a licensed general property and casualty agent. The license does not authorize the agent to engage in business directly with the insurance applicant.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.234(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.10, eff. September 1, 2007.

Sec. 981.221. SUSPENSION OR REVOCATION OF LICENSE. If a license holder does not maintain the qualifications necessary to obtain the license, the department may revoke or suspend the license or deny the renewal of that license in accordance with Chapter 4003 and Subchapters B and C, Chapter 4005.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.229(b), eff. Sept.

1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.134, eff. April 1, 2009.

Sec. 981.222. APPLICABILITY OF OTHER LAW. In addition to the requirements of this chapter, the administration and regulation of a surplus lines agent's license is governed by Title 13, except that the provisions of Sections 4001.002(b)(2)-(6), 4001.003, and 4001.004 and Subchapters C-G, Chapter 4001, do not apply to a license issued under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.229(c), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.135, eff. April 1, 2009.

Sec. 981.223. MANAGING UNDERWRITERS. (a) A managing underwriter with whom an insurance policy is placed in the manner described by Section 225.006(b) shall maintain appropriate records and make the records available for inspection by the department and the comptroller, including records of:

(1) the name and address of the insured;

(2) the policy number and policy period;

(3) the name of the eligible surplus lines insurer;

(4) the gross premium charged for the insurance;

(5) the name of the surplus lines agent who placed the policy with the managing underwriter;

(6) the license number of the surplus lines agent who placed the policy with the managing underwriter; and

(7) an agreement, if any, under Section 225.006(c) that applies to the policy.

(b) A managing underwriter who acts as a surplus lines agent for a policy issued by an eligible surplus lines insurer shall maintain appropriate records and make the records available for inspection by the department and the comptroller, including the information listed in Subdivisions (a)(1) through (6). The records

must reflect the name and license number of the managing underwriter as the surplus lines agent placing the policy.

(c) A managing underwriter may hold both a surplus lines agent license and a managing general agent license.

Added by Acts 2011, 82nd Leg., R.S., Ch. 837 (H.B. 3410), Sec. 3, eff. January 1, 2012.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 920 (H.B. 1405), Sec. 5, eff. January 1, 2014.

CHAPTER 982. FOREIGN AND ALIEN INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 982.001. DEFINITIONS. In this chapter:

(1) "Accident insurance company," "health insurance company," "life insurance company," and "United States branch" have the meanings assigned by Section 841.001.

(2) "Alien insurance company" means an insurance company organized under the laws of a foreign country. The term includes an unincorporated insurance company (other than an unincorporated life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company) that is organized under the laws of a foreign country in a form recognized by the department.

(3) "Domestic insurance company" has, in the context of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, the meaning assigned by Section 841.001.

(4) "Foreign insurance company" means an insurance company organized under the laws of another state of the United States.

(5) "Insurance company" means a company engaged as a principal in the business of insurance.

(6) "Policyholder" has, in the context of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, the meaning assigned by Section 841.001.

(7) "Trusteed asset" means an asset that an authorized alien insurance company is required or permitted by this chapter to

deposit with one or more trustees for the security of the company's policyholders in the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.002. APPLICABILITY OF CHAPTER. This chapter applies to any insurance company that is organized under the laws of another state or country and that wants to engage in or is engaging in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.003. LIFE INSURANCE COMPANIES WANTING TO LOAN MONEY. A life insurance company that wants to loan money in this state but does not want to engage in the business of life insurance in this state may obtain from the secretary of state a permit to loan money by complying with the laws of this state relating to foreign corporations engaged in loaning money in this state without having to obtain a certificate of authority to engage in the business of life insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.004. FINANCIAL STATEMENTS OF FOREIGN OR ALIEN INSURANCE COMPANIES. (a) Each foreign insurance company shall file with the department a statement in the form required by Section 982.101 or 982.102 not later than March 1 of each year.

(b) Each authorized alien insurance company shall file with the department a financial statement in the form required by Section 982.252 not later than March 1 of each year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 982.051. CERTIFICATE OF AUTHORITY REQUIRED FOR LIFE, HEALTH, OR ACCIDENT COMPANIES. A foreign insurance company may not engage in the business of insurance as a life insurance company,

accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company in this state, except for the lending of money, without first obtaining from the department a certificate of authority that:

(1) shows that the foreign insurance company has fully complied with the laws of this state; and

(2) authorizes the foreign insurance company to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.052. CERTIFICATE OF AUTHORITY REQUIRED FOR OTHER COMPANIES. Except as provided by Chapter 101 or 981, a foreign or alien insurance company, other than a life insurance company, accident insurance company, life and accident insurance company, or life, health, and accident insurance company, may not engage in this state in the business of insuring others against losses without first obtaining from the department a certificate of authority that authorizes the company to engage in that business.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

Sec. 982.101. FILING OF FINANCIAL STATEMENT BY LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANY. A foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company that wants to engage in the business of insurance in this state shall provide to the department a written or printed statement, under the oath of the president or vice president or under the oath of the treasurer and secretary of the company, that shows:

(1) the company's name and location;

(2) the amount of the company's capital stock;

(3) the amount of the company's paid up capital stock;

(4) the company's assets, including in the following order:

(A) the amount of cash on hand;

(B) the amount of cash held by other persons and the

names and residences of those persons;

(C) unencumbered real estate, its location, and its value;

(D) bonds the company owns, the manner in which the bonds are secured, and the rate of interest on the bonds;

(E) debts due the company that are secured by mortgage, a description of the mortgaged property, and the property's market value;

(F) debts due the company that are secured other than by mortgage and a statement of how they are secured;

(G) debts due the company for premiums; and

(H) all other money and securities;

(5) the amount of the company's liabilities and the name of the person or corporation to whom each liability is owed;

(6) losses adjusted and due;

(7) losses adjusted and not due;

(8) losses adjusted;

(9) losses in suspense and the reason for the suspension;

(10) all other claims against the company and a description of each claim; and

(11) any additional facts required by the department to be shown.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.102. FILING OF FINANCIAL STATEMENT BY OTHER INSURANCE COMPANY; EXAMINATION. (a) This section applies only to a foreign or alien insurance company, other than a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

(b) A foreign or alien insurance company that wants to engage in the business of insurance in this state shall provide to the department copies of its annual financial statements for the two most recent years. The copies must be certified by the commissioner or other insurance supervising official of the state or country in which the company is organized and incorporated. The department may require that the statement show additional facts as requested by the department.

(c) Before approving or denying the application of a foreign or alien insurance company for a certificate of authority to engage in the business of insurance in this state, the commissioner shall:

(1) examine the company, at the company's expense, at its principal office in the United States; or

(2) accept a report of an examination made by the insurance department or other insurance supervisory official of another state or government of a foreign country.

(d) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 17, eff. June 19, 2009.

Sec. 982.103. FILING OF FINANCIAL STATEMENT BY ALIEN INSURANCE COMPANY. An alien insurance company that wants to engage in the business of insurance in this state shall file a financial statement as provided by Section 982.252.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.104. FILING OF ARTICLES OF INCORPORATION. (a) A foreign or alien insurance company shall file with the statement required by Section 982.101 or 982.102:

(1) a copy of the company's acts or articles of incorporation and any amendments to those acts or articles; and

(2) a copy of the company's bylaws and a statement of the name and residence of each of the company's officers and directors.

(b) The president or the secretary of the company shall certify the documents filed under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.105. CAPITAL STOCK AND SURPLUS REQUIREMENTS FOR LIFE,

HEALTH, OR ACCIDENT INSURANCE COMPANIES. (a) A foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company is subject to Sections 841.054, 841.201, 841.204, 841.205, 841.207, 841.301, and 841.302. The department may not issue a certificate of authority to a foreign or alien stock insurance company, and the company may not engage in any business of life, health, or accident insurance in this state, unless the company possesses at least the minimum capital and surplus required for a similar domestic insurance company organized under Chapter 841 in similar circumstances. The minimum capital and surplus must be invested in the same character of investments as required for a domestic insurance company.

(b) The department may not issue a certificate of authority to a foreign or alien mutual insurance company, and the company may not engage in the business of life insurance in this state, unless the company possesses at least the minimum unencumbered surplus required by Chapter 882 for a similar domestic company in similar circumstances. The minimum unencumbered surplus must be invested in the same character of investments as required for a domestic insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.106. CAPITAL STOCK AND SURPLUS REQUIREMENTS FOR OTHER INSURANCE COMPANIES. (a) This section applies only to a foreign or alien insurance company other than a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

(b) A foreign or alien insurance company is subject to Sections 822.203, 822.205, 822.210, and 822.212. The department may not authorize a foreign or alien insurance company to engage in the business of insurance in this state unless the company has and maintains the minimum capital and surplus amounts as required by this code for companies organized under this code and engaging in the same kinds of business.

(c) The department may not deny authorization for a foreign or alien insurance company to engage in the business of insurance in

this state because all of the company's capital stock has not been fully subscribed and paid for, if:

(1) at least the minimum dollar amount of capital stock of the company required by the laws of this state, which may be less than all of the company's authorized capital stock, has been subscribed and paid for; and

(2) the company:

(A) has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business the company seeks to write; and

(B) has fully complied with the laws of the company's domiciliary state or country relating to authorization and issuance of capital stock.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.107. APPLICABILITY OF OTHER LAW. Chapter 402 applies to a foreign or alien insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.136, eff. April 1, 2009.

Sec. 982.108. DEPOSIT REQUIREMENTS FOR ALIEN INSURANCE COMPANY. An alien insurance company may not engage in the business of insurance in this state without first depositing with the comptroller, for the benefit of the company's policyholders who are citizens or residents of the United States, bonds or securities of the United States or this state in an amount at least equal to:

(1) the minimum capital required to be maintained by a domestic stock insurer authorized to engage in the same kind of insurance; or

(2) one-half the minimum unencumbered surplus required to be maintained by a domestic mutual insurer authorized to engage in the same kind of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.109. DURATION OF DEPOSIT BY LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES. An alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company shall maintain the deposit required by Section 982.108 for the period that the company has any outstanding liability arising from its insurance transactions in the United States. The deposit is liable to pay the judgments, as decreed by courts, of the company's policyholders in the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.110. DURATION OF DEPOSIT FOR OTHER INSURANCE COMPANIES. An alien insurance company, other than an alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, shall maintain the deposit required by Section 982.108 for the period that the company has any outstanding liability arising from its insurance transactions in the United States. The deposit is for the exclusive benefit, security, and protection of the company's policyholders in the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.111. EXCEPTION TO DEPOSIT REQUIREMENT: TRUSTEED ASSETS. (a) On approval by the commissioner as provided by Subchapter D, instead of making the deposit with the comptroller under Section 982.108, an authorized alien insurance company may deposit bonds or securities of the United States or this state with a trustee or trustees for the security of the company's policyholders in the United States.

(b) An alien insurance company shall maintain the deposit permitted by Subsection (a) as provided by Subchapter D.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.112. EXCEPTION TO DEPOSIT REQUIREMENT: DEPOSIT WITH OFFICER IN ANOTHER STATE. (a) The deposit required under Section

982.108 is not required in this state if the deposit required by that section has been made in any state of the United States, under the laws of that state, in a manner that secures equally the policyholders of the company who are citizens and residents of the United States.

(b) An alien insurance company that desires to meet the requirements of Section 982.108 as provided by Subsection (a) shall file with the department a certificate of the deposit. The certificate must be signed by and under the seal of the officer of the state with whom the deposit was made.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.113. ISSUANCE OF CERTIFICATE OF AUTHORITY TO LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANY. (a) The commissioner shall file in the commissioner's office the documents delivered to the department under this subchapter and shall approve or deny an application for a certificate of authority.

(b) The commissioner shall issue to a foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company a certificate of authority to engage in this state in the kind of business specified in the documents if:

(1) the company has complied with the requirements of this chapter and any other requirement imposed on the company by law; and

(2) the company's operational history demonstrates that the expanded operation of the company in this state or its operations outside this state will not create a condition that might be hazardous to the company's policyholders or creditors or to the public.

(c) The operational history of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company under Subsection (b)(2) must be reviewed in conjunction with:

(1) the company's loss experience;

(2) the kinds and nature of risks insured by the company;

(3) the company's financial condition and its ownership;

(4) the company's proposed method of operation;

(5) the company's affiliations;

(6) the company's investments;

(7) the company's contracts, if any, leading to contingent liability or agreements in respect to guaranty and surety, other than insurance; and

(8) the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases.

(d) On the applicant's request, the commissioner shall hold a hearing on a denial. Not later than the 30th day after the date of the applicant's request for a hearing, the commissioner shall request a hearing date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1022 (H.B. 4291), Sec. 18, eff. June 19, 2009.

Sec. 982.114. PAYMENT OF TAX BY FOREIGN OR ALIEN LIFE INSURANCE COMPANY. (a) A foreign or alien life insurance company that obtains a certificate of authority under this subchapter on or after April 2, 1909, accepts that certificate and agrees to engage in the business of insurance in this state subject to a requirement that, if the company ceases to transact new insurance business in this state but continues to collect renewal premiums from residents of this state, the company shall continue to pay an occupation tax based on gross premiums for each year from residents of this state.

(b) The rate of the tax imposed by this section may not exceed the rate imposed by law on insurance companies transacting new insurance business in this state.

(c) The foreign or alien life insurance company shall pay the tax and make reports relating to its gross premium receipts in the same manner as a foreign or alien life insurance company that is transacting new insurance business in this state.

(d) The foreign or alien life insurance company is subject to examination by the department or by a department designee in the same manner and to the same extent as a company that is transacting new insurance business in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 19, eff. April 1, 2005.

SUBCHAPTER D. TRUSTEED ASSETS OF ALIEN INSURANCE COMPANIES

Sec. 982.201. DEED OF TRUST: GENERAL PROVISIONS. (a) A deed of trust relating to the trusteed assets of an authorized alien insurance company and all amendments to the deed of trust are effective only if approved by the commissioner.

(b) The deed of trust must contain provisions that:

(1) vest legal title to trusteed assets in the trustee or trustees and the trustees' lawfully appointed successors, in trust for the security of the policyholders of the alien insurance company in the United States;

(2) provide for substitution of a new trustee or trustees, subject to the commissioner's approval, in the event of vacancy by death, resignation, or other incapacity; and

(3) require that the trustee or trustees continuously maintain a record sufficient to identify the trusteed assets.

(c) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the alien insurance company on request.

(d) The deed of trust and all amendments to the deed of trust must be authenticated in the form and manner prescribed by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.202. DEED OF TRUST: APPROVAL BY COMMISSIONER. (a) The commissioner shall approve a deed of trust relating to the trusteed assets of an alien insurance company if the commissioner determines:

(1) the deed of trust or its amendments are sufficient in form and conform with applicable law;

(2) the trustee or trustees are eligible to serve in that capacity; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(b) If, after notice and hearing, the commissioner determines

that a requisite for approval of a deed of trust under Subsection (a) does not exist, the commissioner may withdraw approval.

(c) The commissioner may approve a change in any deed of trust that in the commissioner's judgment is in the best interests of the policyholders of the alien insurance company in the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.203. LOCATION OF TRUSTEED ASSETS. (a) The trusteed assets of an alien insurance company shall be kept continuously in the United States.

(b) The trusteed assets of an alien insurance company that enters the United States through this state shall be kept continuously in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.204. WITHDRAWAL OF TRUSTEED ASSETS. (a) The deed of trust relating to the trusteed assets of an alien insurance company must provide that the trustee or trustees may not make or permit a withdrawal of assets, other than as specified by Section 982.201(c), without the commissioner's prior written approval except to:

(1) make deposits required by law in any state for the security or benefit of the policyholders of the company in the United States;

(2) substitute other assets permitted by law and at least equal in value to those withdrawn, subject to Subsection (b); or

(3) transfer the assets to an official liquidator or rehabilitator in accordance with an order of a court of competent jurisdiction.

(b) A withdrawal under Subsection (a)(2) may be made only on the specific written direction of the United States manager or an assistant United States manager when authorized and acting under general or specific written authority previously given or delegated by the board of directors.

(c) On withdrawal of trusteed assets deposited in another state in which the alien insurance company is authorized to engage in the business of insurance:

(1) the deed of trust may require similar written approval

of the insurance supervising official of that state instead of the commissioner's approval as provided by Subsection (a); and

(2) if approval under Subdivision (1) is required, the company shall notify the commissioner in writing of the nature and extent of the withdrawal.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. TRUSTEED SURPLUS OF ALIEN INSURANCE COMPANIES

Sec. 982.251. TRUSTEED SURPLUS OF ALIEN INSURANCE COMPANY. The total value of an alien insurance company's general state deposits and trusteed assets less the total net amount of all the company's liabilities and reserves in the United States, as determined in accordance with Section 982.252, is the company's trusteed surplus in the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.252. FORM AND CONTENTS OF FINANCIAL STATEMENT OF ALIEN INSURANCE COMPANY. (a) A financial statement required to be filed by an alien insurance company under Section 982.004 must be on a form prescribed by the commissioner and must show, as of the preceding December 31:

(1) the company's general deposits of assets in the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of the company's policyholders in the United States;

(2) the company's special deposits of assets in the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of the company's policyholders in a particular state;

(3) the company's trusteed assets in the United States held for the exclusive benefit, security, and protection of the company's policyholders in the United States;

(4) the company's reserves and other liabilities arising out of policies or obligations issued, assumed, or incurred in the United States; and

(5) any further information as determined necessary to implement this section.

(b) In addition to the requirements under Subsection (a), a financial statement filed by an alien life insurance company must show the amount of the company's policy loans to policyholders in the United States, not exceeding the amount of the legal reserve required on each policy.

(c) In determining the net amount of an alien insurance company's liabilities in the United States, the company may deduct:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due.

(d) Any liability on an asset not considered in the statement may be applied against that asset.

(e) A special state deposit held for the exclusive benefit of policyholders of a particular state may be allowed as an offset against the alien insurance company's liabilities in that state only.

(f) The statement may include accrued interest at the date of the statement on assets deposited with states and trustees if the interest is collected by the states or trustees.

(g) The United States manager, attorney-in-fact, or authorized assistant United States manager of the alien insurance company shall sign and verify the statement. The United States trustee or trustees shall certify the items of securities and other property held under deeds of trust.

(h) The commissioner may at any time and for any period determined necessary require additional statements of the kind required by this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.253. IMPAIRMENT OF TRUSTEED SURPLUS. (a) If the commissioner determines from a statement filed under Section 982.252 or any report that an alien insurance company's trusteed surplus is less than the greater of the minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurance company authorized to engage in the same kinds of insurance, the commissioner shall:

(1) determine the amount of the impairment; and

(2) order the company, through its United States manager or attorney, to eliminate the impairment within the period designated by the commissioner.

(b) The period for eliminating an impairment under Subsection (a) must end not later than the 90th day after the date the order is served.

(c) The commissioner may also by order revoke or suspend an alien insurance company's certificate of authority or prohibit the company from issuing new policies in the United States while an impairment under Subsection (a) exists.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.254. FAILURE TO ELIMINATE IMPAIRMENT OF TRUSTEED SURPLUS. If an alien insurance company has not satisfied the commissioner at the end of the designated period under Section 982.253(a) that the impairment has been eliminated, the commissioner may proceed against the company as provided by Chapter 441 as an insurance company whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.137, eff. April 1, 2009.

Sec. 982.255. EXAMINATION OF ALIEN INSURANCE COMPANY. (a) The books, records, accounting, and verification relating to an authorized alien insurance company's trusteed assets are subject to examination by the department or the department's appointed representative at the United States branch office of the company, in the same manner and to the same extent that applies under Subchapter A, Chapter 86, and Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 to domestic and foreign insurance companies authorized to engage in the same kind of insurance.

(b) The books, records, and accounting for trusteed assets of an alien insurance company that enters the United States through this

state shall be maintained in English in the company's branch office in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.138, eff. April 1, 2009.

SUBCHAPTER F. PROVISIONS APPLICABLE TO CERTAIN COMPANIES

Sec. 982.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a foreign or alien insurance company that is not a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.302. REINSURANCE NOT PROHIBITED. This chapter does not prohibit a foreign insurance company from:

(1) reinsuring a domestic insurance company; or

(2) locating in this state, if the company does not directly insure persons domiciled in this state or insure against risks located in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.303. TEXAS LAW ACCEPTED. A foreign or alien insurance company that issues a contract or policy in this state is considered to have agreed to comply with this code as a prerequisite to engaging in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 982.304. SAME OR DECEPTIVELY SIMILAR NAME. A foreign or alien insurance company may not be denied permission to engage in the business of insurance in this state because the name of the company is the same as or deceptively similar to the name of a domestic

corporation existing under the laws of this state or of another foreign or alien insurance company authorized to engage in the business of insurance in this state if the company desiring to engage in the business of insurance in this state:

(1) files with the department and with any county clerk as provided by Subchapter B or C, Chapter 71, Business & Commerce Code, an assumed name certificate stating a name permitted under the laws of this state; and

(2) does not engage in any business in this state except under the assumed name.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.21, eff. April 1, 2009.

Sec. 982.305. LIMITATION ON ACTIONS IN OTHER STATE COURTS. An action involving a contract entered into in this state between a foreign or alien insurance company and a resident of this state may not be brought in or transferred to a court in another state without the consent of the resident of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 983. REDOMESTICATION OF INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 983.001. DEFINITION. In this chapter, "redomestication" means a change in domicile of an insurer or health maintenance organization by merger, consolidation, or another legal method.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.002. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. REDOMESTICATION PROCESS

Sec. 983.051. REDOMESTICATION: FOREIGN TO DOMESTIC. (a) An insurer or health maintenance organization that is organized under the laws of another state and authorized to write insurance or provide a health care plan in this state may redomesticate to this state if:

(1) the entity amends or restates its articles of incorporation to comply with each requirement of this code relating to the organization and authorization of a domestic entity of the same type; and

(2) the commissioner approves the redomestication.

(b) An insurer or health maintenance organization that redomesticates under this section is:

(1) considered to be domiciled in this state; and

(2) entitled to a certificate of authority to engage in the business of insurance or the business of a health maintenance organization in this state as a domestic insurer or health maintenance organization, as applicable, without interruption of its authority to engage in business in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.052. REDOMESTICATION: DOMESTIC TO FOREIGN. (a) An insurer or health maintenance organization that is organized under the laws of this state and authorized to write insurance or provide a health care plan in another state may redomesticate to that other state if the commissioner and the supervising regulatory official of the proposed state of domicile approve the redomestication.

(b) On the effective date of redomestication, the entity:

(1) ceases to be a domestic insurer or health maintenance organization, as applicable; and

(2) is a qualified foreign insurer or health maintenance organization, as applicable, in this state without interruption of its authority to engage in the business of insurance or the business of a health maintenance organization in this state.

(c) The commissioner may approve a proposed redomestication under this section unless the commissioner determines that:

(1) the proposed redomestication would not be in the interest of this state's policyholders or enrollees; or

(2) the entity cannot qualify for a certificate of authority in this state as a foreign insurer or health maintenance organization, as applicable.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.053. REDOMESTICATION: FOREIGN TO FOREIGN. (a) An insurer or health maintenance organization that is organized under the laws of another state and authorized to engage in the business of insurance or the business of a health maintenance organization in this state may redomesticate to another foreign state without interruption of its authority to engage in business in this state as a foreign insurer or health maintenance organization, as applicable, if:

(1) the entity:

(A) amends or restates its articles of incorporation as required by law; and

(B) provides proper notice to the commissioner; and

(2) the commissioner:

(A) determines that:

(i) the proposed redomestication would not, on the effective date of redomestication, result in a reduction in the amount of the entity's capital or surplus below the amount required for authorization as a foreign insurer or health maintenance organization, as applicable;

(ii) there would not be a material change in the lines of insurance to be written or health care plan provided by the entity;

(iii) the proposed redomestication has been approved by the supervising regulatory officials of both the current and proposed state of domicile;

(iv) the proposed redomestication would not be detrimental to the interest of the insurer's policyholders or the health maintenance organization's enrollees in this state; and

(v) the proposed redomestication is not related to a change in the control of the entity, unless the commissioner has given prior approval to the change in control; and

(B) approves the redomestication.

(b) Subsection (a)(2)(A)(v) does not apply if the

redomesticating insurer or health maintenance organization is to become a parent, subsidiary, or affiliate of a qualified insurer or health maintenance organization, as applicable, that has held a certificate of authority in this state for at least seven years before the date of the redomestication.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.054. NOTICE AND FILING REQUIRED. An insurer or health maintenance organization shall:

(1) notify the commissioner of the details of a proposed redomestication; and

(2) promptly file with the commissioner any amendments to its corporate documents filed or required to be filed with the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.055. FORMS OF INSURANCE POLICY OR EVIDENCE OF COVERAGE. (a) A redomesticated insurer or health maintenance organization shall file with the commissioner a new insurance policy or evidence of coverage form, or an endorsement to an approved policy or evidence of coverage form, that implements the redomestication.

(b) The insurer or health maintenance organization, under conditions approved by the commissioner and with an appropriate endorsement, may continue to use an insurance policy or evidence of coverage form that was approved before the redomestication.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.056. OUTSTANDING INSURANCE POLICY OR EVIDENCE OF COVERAGE: CHANGE OF NAME. A redomesticating insurer or health maintenance organization that changes its name shall endorse each outstanding insurance policy or evidence of coverage with the new name.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.057. ISSUANCE OF AMENDED CERTIFICATE OF AUTHORITY. The commissioner shall issue an amended certificate of authority on approval of a redomestication.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. EFFECT OF REDOMESTICATION

Sec. 983.101. CONTINUATION OF BUSINESS. (a) If a redomesticating insurer or health maintenance organization remains qualified to engage in the business of insurance or the business of a health maintenance organization in this state, the following continue in effect after redomestication:

(1) the approved agents' appointments and licenses;

(2) the approved insurance policy forms and provider contracts;

(3) the authorized premium rates;

(4) the quality of care certificates; and

(5) any other relevant item that exists on the effective date of the redomestication.

(b) Each outstanding insurance policy, evidence of coverage, provider contract, or quality of care certificate of a redomesticating insurer or health maintenance organization continues in effect after redomestication.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 983.102. EFFECT ON ADMITTED ASSETS. Except as provided by other law, the admitted assets of a redomesticating insurer or health maintenance organization that qualify, on the effective date of the redomestication, as admitted assets under this code continue to qualify as admitted assets after the redomestication.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

CHAPTER 984. MEXICAN CASUALTY INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 984.001. AUTHORITY OF MEXICAN CASUALTY INSURANCE COMPANIES. (a) An insurance company that complies with this chapter

may issue an insurance policy described by Subsection (b) as a Mexican casualty insurance company if the company is:

(1) organized under the laws of the United Mexican States or any state of that nation; and

(2) authorized to write insurance policies described by Subsection (b) by those laws, the company's charter or articles of association, and a license that is in effect and that is issued by the appropriate insurance regulatory authority of the United Mexican States or any state of that nation.

(b) A Mexican casualty insurance company described by Subsection (a) may issue in this state an insurance policy only if the policy:

(1) provides automobile coverage or accident or other casualty insurance coverage on a person or personal property; and

(2) is in effect only while the person or property covered by the policy is within the boundaries of the United Mexican States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.002. AUTHORIZED AGENT REQUIRED. A Mexican casualty insurance company may engage in the business of insurance in this state only through an agent licensed by the department under Subchapters A-E and G, Chapter 4051, or Chapter 4055.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.235(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.139, eff. April 1, 2009.

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Sec. 984.051. CERTIFICATE OF AUTHORITY REQUIRED. A Mexican casualty insurance company must hold a certificate of authority to engage in the business of insurance under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.052. APPLICATION. (a) To issue insurance policies under this chapter, a Mexican casualty insurance company must file with the department an application for a certificate of authority under this chapter.

(b) The application must be:

(1) in writing;

(2) accompanied by a correct English translation of the company's charter and bylaws; and

(3) certified by:

(A) two of the company's principal officers; and

(B) the insurance regulatory officials under whose supervision the company operates in the United Mexican States.

(c) Before the department issues a certificate of authority under this chapter to a Mexican casualty insurance company, the company must file with the department:

(1) a photostatic copy of any license held by the company to engage in the business of insurance in the United Mexican States;

(2) a copy of the company's most recent financial reports or statements; and

(3) a copy of the most recent examination reports of the company's affairs and financial condition by the insurance regulatory authorities under which the company operates in the United Mexican States.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER C. DEPOSIT WITH COMPTROLLER

Sec. 984.101. DEPOSIT WITH COMPTROLLER REQUIRED. (a) A Mexican casualty insurance company shall deposit with the comptroller at least $25,000 in:

(1) United States currency; or

(2) securities that are:

(A) eligible for other casualty insurance companies authorized to engage in the business of insurance in this state; and

(B) approved by the department.

(b) The deposit shall be used to pay any lawful claim or final judgment against the company, including any claim or judgment for tax due to this state and any policy claim or other debt or obligation incurred in the course of the company's operations as provided by

this chapter.

(c) The company shall periodically deposit additional currency or securities described by Subsection (a) as necessary to maintain a minimum total deposit of $25,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.102. PAYMENTS FROM DEPOSIT. On approval of the department, the comptroller shall pay from the deposit required under this subchapter any unsatisfied final judgment obtained against the Mexican casualty insurance company in a court of this state based on substituted service as authorized by Chapter 804.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.103. RETURN OF DEPOSIT. With the approval of the department, the comptroller shall return the deposit required under this subchapter, or the unencumbered balance of the deposit, to the Mexican casualty insurance company on:

(1) the company's withdrawal from the business of insurance in this state; and

(2) a showing to the department that:

(A) each policy written by the company in this state has expired or been canceled; and

(B) each claim or obligation of the company on a policy written in this state that constitutes a lawful charge against the deposit has been satisfied.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER D. TAXES AND CHARGES; REPORTS

Sec. 984.151. PREMIUM TAX. (a) A Mexican casualty insurance company shall pay to this state an annual premium tax based solely on the company's gross premium receipts from insurance policies issued by the company in this state that cover resident citizens of this state or property or risks principally domiciled or located in this state, as shown by reports made to the department each year.

(b) The company shall pay the tax at the same percentage rate

and in the same manner that is required of other insurance companies authorized to write accident and casualty coverage in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.152. OTHER TAXES AND CHARGES. In addition to paying a premium tax as required by Section 984.151, a Mexican casualty insurance company shall pay any other maintenance fee, charge, or tax that is required of other insurance companies authorized to write accident and casualty coverage in this state on the same basis as is required of those companies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.153. REPORTS. A Mexican casualty insurance company shall make the same reports that other insurance companies authorized to write accident and casualty coverage in this state are required to make. The company shall make the reports on forms adopted by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

SUBCHAPTER E. REGULATION AND ENFORCEMENT

Sec. 984.201. AGREEMENT TO COMPLY WITH CHAPTER. A Mexican casualty insurance company shall file in English a document executed by the company's officials expressly accepting the terms of this chapter and agreeing that the department may revoke, suspend, or refuse to grant a certificate of authority under this chapter on a determination by the commissioner that the company:

(1) is insolvent or in hazardous financial condition; or

(2) has violated an applicable law of this state or of the company's home jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.202. ANNUAL STATEMENT. A Mexican casualty insurance company shall file annually with the department each of the items

listed in Section 984.052(c).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.203. AUTHORITY TO CONDUCT EXAMINATION. The department may examine at any time the affairs and condition and any books or records of a Mexican casualty insurance company, at the company's expense, to determine the company's:

(1) financial condition and solvency; and

(2) compliance with the applicable laws of this state and of the company's home jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 984.204. AUTHORITY TO REVOKE OR SUSPEND CERTIFICATE OF AUTHORITY. The commissioner may revoke or suspend a Mexican casualty insurance company's certificate of authority under this chapter if the commissioner, after notice and an opportunity for a hearing, determines that the company, with neglect and wilful disregard, systematically failed to comply with obligations derived from insurance policies issued in this state and the laws applicable to those policies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

TITLE 7. LIFE INSURANCE AND ANNUITIES
SUBTITLE A. LIFE INSURANCE IN GENERAL
CHAPTER 1101. LIFE INSURANCE
SUBCHAPTER A. REQUIRED POLICY PROVISIONS

Sec. 1101.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a life insurance policy:

(1) issued or delivered in this state; or

(2) issued by a life insurance company organized under the laws of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.002. POLICY PROVISIONS REQUIRED. (a) Except as provided by this section, a life insurance policy must contain provisions that are substantially the same as the provisions required by this subchapter.

(b) A single premium life insurance policy is not required to contain a provision under this subchapter to the extent that the provision is not applicable to a single premium insurance policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.003. ENTIRE CONTRACT. A life insurance policy must provide that the policy or the policy and the application for the policy constitute the entire contract between the parties.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.204(a), (b), eff. Sept. 1, 2003.

Sec. 1101.004. PREMIUMS PAYABLE IN ADVANCE. A life insurance policy must provide that all premiums are payable in advance at the home office of the company that issues the policy or to an agent of the company on delivery of a receipt signed by at least one of the company officers designated in the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.005. GRACE PERIOD. (a) Except as provided by Subsection (b), a life insurance policy:

(1) must contain a provision for a grace period of at least one month for the payment of each premium after the first payment during which the policy remains in force; and

(2) may:

(A) provide for an interest charge on a premium paid during a grace period; or

(B) provide that if an insured dies during a grace period the overdue premium will be deducted from any settlement made under the policy.

(b) The commissioner by rule may require a life insurance

policy issued under Section 884.402(3) to contain a grace period that is longer than the grace period required by this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.006. INCONTESTABILITY. (a) Except as provided by Subsection (b), a life insurance policy must provide that a policy in force for two years from its date of issue during the lifetime of the insured is incontestable, except for nonpayment of premiums.

(b) At the option of the company, a life insurance policy may provide that the policy may be contested at any time for violation of policy conditions relating to naval and military service in a time of war.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.007. STATEMENTS OF INSURED. A life insurance policy must provide that, in the absence of fraud, a statement made by an insured is considered a representation and not a warranty.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.008. ADJUSTMENT OF AMOUNT PAYABLE IF AGE OF INSURED IS UNDERSTATED. A life insurance policy must provide that if the age of an insured has been understated, the amount payable under the policy is the amount that the premium paid would have purchased if the insured's age had been stated correctly.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.009. POLICY LOANS. (a) The following policies are not required to comply with this section:

(1) a term life insurance policy;

(2) a pure endowment contract issued or granted:

(A) as an original contract; or

(B) in exchange for a lapsed or surrendered policy; or

(3) a policy that does not provide for cash values or

nonforfeiture values and that meets the requirements of Section 884.403(b).

(b) A life insurance policy must provide that the company that issues the policy will loan to the policy owner at a specified interest rate an amount equal to the sum of the policy's cash value and any dividend additions to the policy, or, at the policy owner's option, an amount less than that sum, if:

(1) the policy is in force;

(2) the premiums for the policy have been paid for at least three full years; and

(3) the policy is properly assigned.

(c) A life insurance policy must also provide that:

(1) a policy loan is secured only by the policy;

(2) the company may deduct from a policy loan the sum of the amount of existing debt on the policy and the balance of unpaid premiums for the current policy year;

(3) the company may collect in advance interest on the policy loan to the end of the current policy year; and

(4) failure to repay the policy loan or interest on the loan does not void the policy until the total amount owed under the loan equals or exceeds the policy's cash value.

(d) A life insurance policy may provide that a policy loan may be deferred for a period not to exceed six months after the date the application for the loan is made.

(e) A life insurance policy may not require a prerequisite to a policy loan if the prerequisite is not required or authorized by this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.010. NONFORFEITURE BENEFITS AND CASH SURRENDER VALUES IN GENERAL. A life insurance policy must provide nonforfeiture benefits, including cash surrender values, in accordance with:

(1) Subchapter D; or

(2) Chapter 1105, for a policy issued on or after the date determined under Section 1105.002(a) or (b), as applicable.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.011. TIME FOR SETTLEMENT OF CLAIM. (a) Except as provided by Subsection (b), a life insurance policy must provide that settlement under the policy after the death of the insured will be made not later than two months after the date of receipt of proof of:

(1) the death; and

(2) the right of the claimant to the proceeds of the policy.

(b) A private placement contract issued under Section 1152.110 may provide that:

(1) settlement of that portion of the contract attributable to separate account assets is subject to the liquidity of those assets; and

(2) the portion of the contract described by Subdivision (1) must be settled by the insurer when the separate account assets are converted to cash under any applicable terms, which may be a period longer than the two-month period described by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 737 (H.B. 2765), Sec. 2, eff. September 1, 2007.

Sec. 1101.012. TABLE OF INSTALLMENTS OF PROCEEDS. A life insurance policy that provides that the policy proceeds are payable in installments must include a table that shows the amount of the installments.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.013. STATEMENT OF MAXIMUM AMOUNT PAYABLE UNDER FAMILY GROUP LIFE INSURANCE POLICY. A family group life insurance policy must clearly state:

(1) the maximum amount that is payable to the payee in the policy on the death of an insured or insureds; and

(2) any terms under which an amount other than the maximum amount of the policy is payable.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. PROHIBITED POLICY PROVISIONS

Sec. 1101.051. APPLICABILITY OF SUBCHAPTER. Unless otherwise provided by this subchapter, this subchapter applies to a life insurance policy:

(1) issued or delivered in this state; or

(2) issued by a life insurance company organized in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.052. EXCLUSION. Unless otherwise provided by this subchapter, this subchapter does not apply to a policy issued instead of or in exchange for a policy issued before July 10, 1909.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.053. CERTAIN LIMITATIONS PERIODS. A life insurance policy may not include a provision that limits the time during which an action under the policy may be commenced to a period of less than two years after the date the cause of action accrues.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.054. RETROACTIVE ISSUANCE OR EFFECT; EXCHANGE OR CONVERSION. (a) Except as provided by Subsection (b), a life insurance policy may not contain a provision under which the policy is issued or takes effect on a date more than six months before the date of the original policy application if the provision causes the insured to rate at an age that is younger than the age of the insured on the date of the application. For the purposes of this subsection, the age of the insured on the date of the application is the age of the insured on the birthday of the insured that is nearest to the date of the application.

(b) An issuer of a life or endowment insurance policy or annuity contract may, with the consent of the policyholder or contract holder, exchange the policy or contract for, or convert the policy or contract into, a policy of another plan of insurance or an endowment or annuity contract as of a date not earlier than the

effective date of the original policy or contract.

(c) If an exchange or conversion is made under Subsection (b) and the newly written policy or contract is issued as of a date earlier than the date of the application for exchange or conversion, the amount of life or endowment insurance or annuity provided under the newly written policy or contract may not exceed the greater of:

(1) the amount that the premium paid for the original policy or contract would have purchased on the plan of the newly written policy or contract for an individual the age of the insured on the effective date of the original policy or contract; or

(2) the amount of the original policy or contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.055. SETTLEMENT ON MATURITY LESS THAN FACE VALUE. (a) Except as provided by Subsection (b), a life insurance policy may not contain a provision for a settlement at maturity that is less than the amount insured on the face of the policy plus the amount of any dividend additions to the policy minus the sum of the amount of any debt to the company that issues the policy and the amount of any premium that may be deducted from the settlement under the terms of the policy.

(b) A life insurance policy may provide for a settlement that will be less than the amount required under Subsection (a) if the death of the insured is:

(1) by the insured's own hand regardless of whether the insured is sane or insane;

(2) caused by following a hazardous occupation that is stated in the policy; or

(3) the result of aviation activities under conditions specified in the policy and approved by the department under Chapter 1701.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.001, eff. April 1, 2009.

Sec. 1101.056. PRELIMINARY TERM INSURANCE OF MORE THAN ONE YEAR

IN LEVEL PREMIUM POLICY. (a) Sections 1101.051 and 1101.052 do not apply to this section.

(b) This section does not apply to a life insurance policy issued on or after the date determined under Section 1105.002(a) or (b), as applicable.

(c) A level premium life insurance policy may not be issued or sold in this state by any company if the policy provides for more than one year of preliminary term insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. POLICY PROVISIONS REQUIRED BY OTHER JURISDICTIONS

Sec. 1101.101. REQUIRED POLICY PROVISIONS. (a) A policy issued in this state by a life insurance company not organized under the laws of this state may contain any provision that the law of the state, territory, district, or county under which the company is organized requires the policy to contain.

(b) Notwithstanding Chapter 1701, a policy issued or delivered in another state, territory, district, or county by a life insurance company organized under the laws of this state may contain any provision required by the laws of that state, territory, district, or county.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.002, eff. April 1, 2009.

SUBCHAPTER D. RIGHTS OF INSURED UNDER CERTAIN OLDER POLICIES

Sec. 1101.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued before a date described by Section 1101.010(a)(2). A term life insurance policy is not required to comply with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.152. STIPULATED FORM OF INSURANCE. In case of a default in the payment of a premium after premiums have been paid for

three years, a life insurance policy to which this subchapter applies must contain a provision that secures a stipulated form of insurance on the life of the insured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.153. COMPUTATION OF NET VALUE OF STIPULATED FORM OF INSURANCE. (a) Except as provided by Subsection (c), the net value of a life insurance policy secured under Section 1101.152 must be equal to the amount of the reserve on the policy for which premium payment is in default and on any dividend additions to that policy on the date of default, less the sum of:

(1) not more than two and one-half percent of the amount insured under the policy and any existing dividend additions to the policy; and

(2) the amount of any existing indebtedness to the company on the policy.

(b) The reserve described by Subsection (a) excludes any reserve for disability or accidental death benefits.

(c) The net value of a life insurance policy that is secured under Section 1101.152 for a policy other than an industrial life insurance policy and that is issued to insure a female risk may be computed using an age not more than three years younger than the actual age of the insured if the policy uses the same age differential to compute the policy reserve.

(d) Except as provided by Subsection (e), the amount of the policy reserve under Subsection (a) must be computed according to the mortality table, interest rate, and method adopted in the policy for computing the reserve.

(e) In computing the value of paid-up term insurance with any accompanying pure endowment, a rate of mortality may be assumed that is not more than:

(1) 130 percent of the rate of mortality according to the applicable table, or, for a substandard policy, the adopted multiple of that mortality rate, if the American Men Ultimate Table of Mortality or the Commissioners 1941 Standard Ordinary Mortality Table is adopted for computing the reserve; or

(2) the rate of mortality shown by the Commissioners 1958 Extended Term Insurance Table, or, for a substandard policy, the

adopted multiple of that mortality rate, if the Commissioners 1958 Standard Ordinary Mortality Table is adopted for computing the reserve.

(f) Subject to Subsection (g), a life insurance policy must state:

(1) the amount and term of the insurance to be secured in accordance with Section 1101.152 computed as if there were no indebtedness on the policy and no dividend additions to the policy; and

(2) the mortality table, interest rate, method, and, if the policy is issued to insure the life of a woman, any age differential, that will be used to compute the policy reserve.

(g) A mortality table, interest rate, method, or age differential stated under Subsection (f) must be authorized by law to compute the reserve liability on the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.154. SURRENDER OF POLICY FOR SPECIFIED CASH SURRENDER VALUE. (a) A life insurance policy to which this subchapter applies must:

(1) provide within one month after a due date for a premium, after premiums have been paid for three years, the policy may be surrendered to the company that issues the policy at the company's home office in return for an amount equal to the cash value of the policy; and

(2) specify the cash value of the policy, which, subject to Subsection (b), may not be less than the amount that would otherwise be available to secure insurance in accordance with Section 1101.152.

(b) The cash value of the policy may not exceed the amount of the policy reserve.

(c) The policy may provide that the company that issues the policy may defer payment of the cash value of the policy for a period not to exceed six months after the date of application for the payment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.155. CASH VALUE TABLE. A life insurance policy to

which this subchapter applies must include a table that shows in dollar amounts the cash value of the policy and the options available to the policy owner if the owner defaults in premium payments during each of the first 20 years that the policy will be in force or each of the years during which premiums are payable, beginning with the first year in which the cash values and options are available.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1101.156. PURCHASE OF OTHER INSURANCE AND REINSTATEMENT. A life insurance policy to which this subchapter applies must provide that if there is a default in premium payments, the value of the policy shall be applied to the purchase of other insurance and the original life insurance policy may be reinstated within three years after the date of default if:

(1) other insurance purchased with the value of the original life insurance policy remains in force;

(2) the original life insurance policy has not been surrendered to the company and canceled;

(3) the company receives evidence of insurability that is satisfactory to the company; and

(4) the arrears of premiums are paid with interest.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER E. DISCLOSURES AND NOTICES RELATING TO LIFE INSURANCE POLICIES WITH NON-GUARANTEED CHARGES

Sec. 1101.201. PURPOSE. This subchapter is intended to provide standards for disclosures relating to changes in certain non-guaranteed charges of life insurance policies subject to this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1026 (H.B. 207), Sec. 1, eff. September 1, 2019.

Sec. 1101.202. DEFINITIONS. In this subchapter:

(1) "Adverse change" means a change by an insurer in the insurer's current scale of charges applied to a policy that increases

a premium or charge to a policy owner.

(2) "Current scale of charges" means the scale or schedule of non-guaranteed charges in effect for a policy during the period of time immediately before an adverse change to the policy.

(3) "Non-guaranteed charges" means the scale or schedule of charges in a policy provision at the time the policy was issued that may be changed at the insurer's discretion without the consent or request of the policy owner. The term does not include a policy loan interest rate charged on a policy loan.

Added by Acts 2019, 86th Leg., R.S., Ch. 1026 (H.B. 207), Sec. 1, eff. September 1, 2019.

Sec. 1101.203. APPLICABILITY. (a) This subchapter applies to a life insurance policy issued by an insurer, as defined by Section 1102.001, that contains non-guaranteed charges that may change at the discretion of the insurer.

(b) This subchapter does not apply to:

(1) group life insurance without separately identifiable accounts for insureds;

(2) a life insurance policy in which the insurer assumes all risk and contractually guarantees a death benefit in exchange for a guaranteed premium set at the time of the policy's issuance;

(3) an individual or group annuity contract;

(4) credit life insurance;

(5) a life insurance policy with no illustrated death benefits on any individual exceeding $10,000;

(6) a bank-owned or corporate-owned life insurance policy; or

(7) a life insurance policy that does not provide for cash values or nonforfeiture values.

Added by Acts 2019, 86th Leg., R.S., Ch. 1026 (H.B. 207), Sec. 1, eff. September 1, 2019.

Sec. 1101.204. DISCLOSURE OF NON-GUARANTEED CHARGE INCREASE AFTER ISSUANCE OF POLICY. (a) If an insurer increases a non-guaranteed charge applied to a policy, the insurer must provide a written notice to the policy owner:

(1) disclosing:

(A) each non-guaranteed charge that has changed;

(B) the new scale of non-guaranteed charges after the change;

(C) the current scale of charges; and

(D) the guaranteed maximum scale of charges; and

(2) including a prominent display of any adverse change in the current scale of charges identifying:

(A) the nature of the change;

(B) that the change is adverse or the conditions under which the change would be adverse; and

(C) the new age and year at which the policy will lapse if there are no changes to payments or coverage.

(b) The notice under Subsection (a) must include the insurer's telephone number and the following statement placed prominently on the front of the notice:

"YOU SHOULD KNOW: This increase may change the value of your policy and may change how long your policy will last unless you increase your premium payments or reduce your coverage, if permitted under your policy. Ask your insurance company for an illustration, at no cost, that shows the effect of this change on your policy and discuss with your agent or financial advisor other options that are available to you."

(c) The notice required by Subsection (a) must be given not later than the 90th day before the date the change is applied.

(d) The notice required by Subsection (a) does not constitute an illustration, as defined by rules adopted by the department relating to life insurance illustrations.

Added by Acts 2019, 86th Leg., R.S., Ch. 1026 (H.B. 207), Sec. 1, eff. September 1, 2019.

Sec. 1101.205. DISCLOSURE OF CREDITED INTEREST RATE DECREASE AFTER ISSUANCE OF POLICY. (a) If an insurer decreases the credited interest rate paid on a policy's accumulation value, the insurer must provide annually a written notice to the policy owner:

(1) disclosing:

(A) the new current credited interest rate;

(B) the previous credited interest rate;

(C) the minimum credited interest rate stated in the policy; and

(D) the effective date of the change; and

(2) including a prominent display of the new age and year at which the policy will lapse based on all changes to non-guaranteed charges and the credited interest rate if there are no changes to payments or coverage.

(b) The notice under Subsection (a) must include the insurer's telephone number and the following statement placed prominently on the front of the notice:

"YOU SHOULD KNOW: This decrease may change the value of your policy and may change how long your policy will last unless you increase your premium payments or reduce your coverage. Ask your insurance company for an in-force illustration that shows the effect of this change on your policy and discuss with your agent or financial advisor other options that are available to you."

(c) Notwithstanding any other provision of this section, this section does not apply to or require disclosures for a variable universal or indexed life insurance policy.

Added by Acts 2019, 86th Leg., R.S., Ch. 1026 (H.B. 207), Sec. 1, eff. September 1, 2019.

Sec. 1101.206. ANNUAL ILLUSTRATION. Regardless of whether any non-guaranteed charges are changed, an insurer that issues a policy subject to this subchapter must offer to provide to the policy owner at least annually an in-force illustration. If the insurer has changed any non-guaranteed charges or the credited interest rate, the insurer must offer the illustration at no charge.

Added by Acts 2019, 86th Leg., R.S., Ch. 1026 (H.B. 207), Sec. 1, eff. September 1, 2019.

Sec. 1101.207. RULES. (a) The commissioner may adopt rules as necessary to implement this subchapter.

(b) The commissioner by rule may exempt certain types of life insurance policies from one or more of the requirements of this subchapter.

(c) Section 2001.0045, Government Code, does not apply to rules

adopted under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1026 (H.B. 207), Sec. 1, eff. September 1, 2019.

SUBCHAPTER F. PROHIBITED PRACTICES RELATING TO PRESCRIPTION FOR OR OBTAINMENT OF OPIOID ANTAGONIST

Sec. 1101.251. DEFINITION. In this subchapter, "opioid antagonist" means any drug that binds to opioid receptors and blocks or otherwise inhibits the effects of opioids acting on those receptors to reverse the effects of an opioid overdose.

Added by Acts 2019, 86th Leg., R.S., Ch. 515 (S.B. 437), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(59), eff. September 1, 2021.

Sec. 1101.252. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a life insurance policy:

(1) issued or delivered in this state; or

(2) issued by a life insurance company organized in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 515 (S.B. 437), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(59), eff. September 1, 2021.

Sec. 1101.253. PROHIBITION. A life insurance company may not, based solely on whether an individual has been prescribed or has obtained through a standing order an opioid antagonist:

(1) deny coverage to the individual;

(2) limit the amount, extent, or kind of coverage available to the individual; or

(3) charge the individual or a group to which the individual belongs a rate that is different from the rate charged to other individuals or groups, respectively, for the same coverage, unless the charge is based on sound underwriting or actuarial

principles reasonably related to actual or anticipated loss experience for a particular risk.

Added by Acts 2019, 86th Leg., R.S., Ch. 515 (S.B. 437), Sec. 1, eff. September 1, 2019.
Redesignated by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(59), eff. September 1, 2021.

CHAPTER 1102. PAYMENT OF INSURANCE BENEFITS IN CURRENCY

Sec. 1102.001. DEFINITIONS. In this chapter:

(1) "Insurance policy" means a policy, certificate, or contract of:

(A) life, term, or endowment insurance, including an annuity or pure endowment contract;

(B) group life or term insurance, including a group annuity contract;

(C) industrial life insurance;

(D) accident or health insurance;

(E) group accident or health insurance;

(F) hospitalization insurance;

(G) group hospitalization insurance;

(H) medical or surgical insurance;

(I) group medical or surgical insurance; or

(J) fraternal benefit insurance.

(2) "Insurer" means any insurer, including a:

(A) life, accident, health, or casualty insurance company;

(B) mutual life insurance company;

(C) mutual insurance company other than a life insurance company;

(D) mutual or natural premium life insurance company;

(E) general casualty company;

(F) Lloyd's plan or a reciprocal or interinsurance exchange;

(G) fraternal benefit society; or

(H) group hospital service corporation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1102.002. BENEFITS PAYABLE IN CURRENCY. Each benefit payable under an insurance policy delivered, issued, or used in this state by an insurer shall be payable in currency.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1102.003. STATEMENT REGARDING VALUE OF FOREIGN CURRENCY. (a) An insurance policy described by Section 1102.002 providing that benefits are payable in foreign currency must include a conspicuous statement that the value of the currency denominated in the policy can fluctuate as compared to the value of United States currency.

(b) The statement must be:

(1) included as part of the policy; or

(2) attached to the insurance policy at the time it is issued.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1102.004. PREVIOUSLY APPROVED INSURANCE POLICY FORM PAYABLE IN FOREIGN CURRENCY. (a) The commissioner may disapprove or withdraw approval of a previously approved insurance policy form that provides benefits payable in foreign currency if the commissioner determines that the foreign currency has been less stable than United States currency in the previous 20-year period.

(b) This section does not require the resubmission for approval of any previously approved insurance policy form unless:

(1) withdrawal of approval is authorized under this section or Chapter 1701; or

(2) after notice and hearing, the commissioner determines that approval was obtained by improper means, including by misrepresentation, fraud, or a misleading statement or document.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.003, eff. April 1, 2009.

Sec. 1102.005. RULES. The commissioner may adopt reasonable

rules to accomplish the purposes of this chapter, including rules requiring:

(1) appropriate reserves for insurance policies subject to this chapter; or

(2) prudent investment of premiums collected from insurance policies subject to this chapter regardless of any other provision of this code related to the investment of money by an insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1103. LIFE INSURANCE POLICY BENEFICIARIES

SUBCHAPTER A. STATUTORY LIFE INSURANCE BENEFICIARIES; INSURABLE INTEREST

Sec. 1103.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued by a legal reserve life insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.002. INSURABLE INTEREST OF BENEFICIARY. A beneficiary described by this subchapter who is designated in a life insurance policy has an insurable interest for the face amount of the policy and is entitled to collect that amount.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.003. CORPORATION, JOINT STOCK ASSOCIATION, OR TRUST ESTATE AS BENEFICIARY. A corporation, a joint stock association, or a trust estate that is engaging in business for profit may be designated as a beneficiary in a policy that insures the life of an officer or stockholder of the corporation, joint stock association, or trust estate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.004. PARTNERSHIP OR PARTNER AS BENEFICIARY. A partnership or a member of a partnership may be designated as a

beneficiary in a policy that insures the life of a member of the partnership.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.005. RELIGIOUS, EDUCATIONAL, ELEEMOSYNARY, CHARITABLE, OR BENEVOLENT INSTITUTION OR UNDERTAKING AS BENEFICIARY. A religious, educational, eleemosynary, charitable, or benevolent institution or undertaking may be designated as a beneficiary in a policy that insures the life of an individual.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. DESIGNATION OF BENEFICIARY OR OWNER OF LIFE INSURANCE POLICY; INSURABLE INTEREST

Sec. 1103.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued by:

(1) a legal reserve life insurance company; or

(2) a mutual assessment life insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.052. LIBERAL CONSTRUCTION. This subchapter shall be liberally construed to implement the purposes of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.053. INSURABLE INTEREST OF BENEFICIARY, OWNER, TRANSFEREE, OR ASSIGNEE. (a) Except as provided by Subsection (b), a beneficiary or owner of a life insurance policy who is designated in accordance with this subchapter or an entity to which a life insurance policy or an interest, benefit, right, or title in a life insurance policy is transferred or assigned in accordance with this subchapter has, at all times after the designation, an insurable interest in the life of the individual who is insured under the policy.

(b) An individual, partnership, association, corporation, or

other legal entity that is directly or indirectly engaged in the business of burying the dead does not directly or indirectly have an insurable interest in the life of an individual unless the interest is established under other applicable statutory law or under common law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.0225, eff. September 1, 2005.

Sec. 1103.054. DESIGNATION OF BENEFICIARY OR OWNER IN POLICY APPLICATION. An individual of legal age may:

(1) apply for a policy insuring the individual's life; and

(2) designate in writing in the application for the policy any individual, partnership, association, corporation, or other legal entity as:

(A) a beneficiary of the policy;

(B) an absolute or partial owner of the policy; or

(C) both a beneficiary and an absolute or partial owner of the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.055. DESIGNATION OF BENEFICIARY OF POLICY; TRANSFER OR ASSIGNMENT OF POLICY OR INTEREST. An individual of legal age who is insured under a life insurance policy may in writing:

(1) in a manner and to the extent permitted by the policy, designate any individual, partnership, association, corporation, or other legal entity as a beneficiary of the policy; and

(2) in a manner and to the extent not prohibited by the policy, transfer or assign to any entity described by Subdivision (1):

(A) the policy; or

(B) an interest, benefit, right, or title in the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.056. PURCHASE OF OR APPLICATION FOR POLICY BY THIRD PARTY. An individual of legal age may in a single written document:

(1) consent to the purchase of or application for an individual or group life insurance policy by a third party; and

(2) designate or consent to the designation of any individual, partnership, association, corporation, or other legal entity as:

(A) a beneficiary of the policy;

(B) an absolute or partial owner of the policy; or

(C) both a beneficiary and an absolute or partial owner of the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. PAYMENT OF PROCEEDS

Sec. 1103.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a life insurance policy issued by a legal reserve life insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.102. PAYMENT TO DESIGNATED BENEFICIARY. (a) Except as provided by Subsection (b) or (c), if an individual obtains a policy insuring the individual's life, designates in writing a beneficiary to receive the proceeds of the policy, and files the written designation with the company, the company shall pay the proceeds that become due on the death of the insured to the designated beneficiary.

(b) A company that issues a life insurance policy is not required to pay the proceeds of the policy to a designated beneficiary under Subsection (a) if the company receives notice of an adverse claim to the proceeds from a person who has a bona fide legal claim to all or part of the proceeds.

(c) A private placement contract issued under Section 1152.110 may provide that:

(1) settlement of that portion of the contract attributable to separate account assets is subject to the liquidity of those assets; and

(2) the portion of the contract described by Subdivision

(1) must be settled by the insurer when the separate account assets are converted to cash under any applicable terms, which may be a period longer than the two-month period described by Section 1101.011(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 737 (H.B. 2765), Sec. 3, eff. September 1, 2007.

Sec. 1103.103. DISCHARGE OF LIABILITY. In the absence of notice under Section 1103.102(b) received by the company before the date of payment, a company that issues a life insurance policy is discharged from all liability under the policy if the company pays the proceeds of the policy to a designated beneficiary under Section 1103.102(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.104. INTEREST ON PROCEEDS. (a) Interest on the proceeds of a life insurance policy accrues from the date the company that issues the policy receives due proof of loss until the date the company accepts the claim and offers to pay.

(b) Interest that accrues under this section shall be paid at the same time that the proceeds of the policy are paid under this subchapter.

(c) The interest rate under this section is the rate provided in the policy or, if a rate is not provided in the policy, the rate at which interest accrues on proceeds that are left on deposit with the company that issues the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER D. FORFEITURE OF BENEFICIARY'S RIGHTS

Sec. 1103.151. FORFEITURE. A beneficiary of a life insurance policy or contract forfeits the beneficiary's interest in the policy or contract if the beneficiary is a principal or an accomplice in wilfully bringing about the death of the insured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1103.152. PAYMENT OF PROCEEDS TO CONTINGENT BENEFICIARY OR TO RELATIVE. (a) Except as provided by Subsection (b), if a beneficiary of a life insurance policy or contract forfeits an interest in the policy or contract under Section 1103.151, a contingent beneficiary named by the insured in the policy or contract is entitled to receive the proceeds of the policy or contract.

(b) A contingent beneficiary is not entitled to receive the proceeds of a life insurance policy or contract if the contingent beneficiary forfeits an interest in the policy or contract under Section 1103.151.

(c) If there is not a contingent beneficiary entitled to receive the proceeds of a life insurance policy or contract under Subsection (a), the nearest relative of the insured is entitled to receive those proceeds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1104. LIFE INSURANCE AND ANNUITY CONTRACTS ISSUED TO CERTAIN PERSONS

SUBCHAPTER A. LIFE INSURANCE AND ANNUITY CONTRACTS WITH CERTAIN MINORS

Sec. 1104.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a policy or contract issued by a stock or mutual legal reserve life insurance company that:

(1) is licensed by the department to transact the business of life insurance in this state; and

(2) maintains the legal reserve required by state law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1104.002. CERTAIN TRANSACTIONS EXEMPT. This subchapter does not apply to a transaction between an insurance company and a minor described by Section 1104.003(a) that occurs after the date the company receives at its home office or its principal office in this state written notice from a parent of the minor stating that a parent or the parents of the minor elect that this subchapter not apply to

the minor specifically named in the notice.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1104.003. AUTHORITY TO CONTRACT. (a) Subject to this subchapter, a minor 14 years of age or older who is without a guardian of the estate of the minor may:

(1) contract for or otherwise acquire a life, term, or endowment insurance policy or an annuity contract, including:

(A) applying for the policy or contract; and

(B) making agreements with respect to the policy or contract or a right, privilege, or benefit under the policy or contract;

(2) exercise all rights and powers in regard to the policy or contract in the same manner as an adult; and

(3) surrender an interest in the policy or contract and give a discharge for a benefit paid under the policy or contract.

(b) An insurance policy acquired by a minor under this subchapter must:

(1) be owned by the minor; and

(2) insure the life of:

(A) the minor;

(B) a spouse, child, parent, grandparent, or sibling of the minor; or

(C) another in whose life the minor has an insurable interest.

(c) A minor who acquires an annuity contract under this subchapter is the annuitant of the contract during the minor's life.

(d) A minor who acquires an insurance policy or an annuity contract under this subchapter, the estate of the minor, or a spouse, child, parent, grandparent, or sibling of the minor must be the beneficiary of the policy or, in the case of an annuity contract, of the death benefit of the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1104.004. WRITTEN APPROVAL BY ADULT REQUIRED. An application or agreement made by a minor under this subchapter must be signed or approved in writing by:

(1) a parent, grandparent, or adult sibling of the minor; or

(2) if the minor does not have a parent, grandparent, or adult sibling, an adult eligible under the Estates Code to be appointed guardian of the estate of the minor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.048, eff. September 1, 2017.

Sec. 1104.005. RESCISSION BECAUSE OF MINORITY PROHIBITED. A minor who acquires a policy or contract under this subchapter may not by reason of minority rescind, avoid, or repudiate:

(1) the policy or contract; or

(2) the exercise of a right or privilege, or the receipt of any benefit, under the policy or contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1104.006. EFFECT ON POLICY OR CONTRACT. This subchapter does not modify any provision in a policy or contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. TRUSTEE NAMED AS BENEFICIARY OF LIFE INSURANCE POLICY

Sec. 1104.021. TRUSTEE NAMED AS BENEFICIARY IN POLICY. (a) An individual may make a trust agreement providing that the proceeds of a life insurance policy insuring the individual be made payable to a trustee named as beneficiary in the policy. The validity of a trust agreement or declaration of trust that is designated as a beneficiary of a life insurance policy is not affected by whether any corpus of the trust exists in addition to the right of the trustee to receive insurance proceeds.

(b) Life insurance policy proceeds described by Subsection (a) shall be paid to the trustee. The trustee shall hold and dispose of the proceeds as provided by the trust agreement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. 2368), Sec. 1, eff. September 1, 2009.

Sec. 1104.022. TRUSTEE NAMED AS BENEFICIARY IN WILL. (a) A life insurance policy may provide that the beneficiary of the policy be a trustee designated by will in accordance with the policy provisions and the requirements of the insurance company.

(b) Except as provided by Subsection (c), on probate of a will described by Subsection (a), the life insurance policy proceeds shall be paid to the trustee. The trustee shall hold and dispose of the proceeds as provided under the terms of the will as the will existed on the date of the testator's death and in the same manner as other testamentary trusts are administered.

(c) Except as otherwise provided by agreement with the insurance company during the life of the insured, the insurance company shall pay the life insurance policy proceeds to the executors, administrators, or assigns of the insured if, during the 18-month period beginning on the first day after the date of the insured's death:

(1) a qualified trustee does not make to the insurance company a claim to the proceeds; or

(2) the insurance company is provided satisfactory evidence showing that there is or will be no trustee to receive the proceeds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1104.023. DEBTS; INHERITANCE TAX. Life insurance policy proceeds received by a trustee under this subchapter are not subject to debts of the insured or to inheritance tax to any greater extent than if the proceeds were payable to a beneficiary other than the executor or administrator of the insured's estate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1104.024. COMMINGLING. Life insurance policy proceeds received by a trustee under this subchapter may be commingled with

any other assets properly coming into the trust.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1104.025. CERTAIN PRIOR BENEFICIARY DESIGNATIONS NOT AFFECTED. This subchapter does not affect the validity of a life insurance policy beneficiary designation made before July 1, 1967, that names as beneficiary a trustee of a trust established by will.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1105. STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1105.001. SHORT TITLE. This chapter may be cited as the Standard Nonforfeiture Law for Life Insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.0015. DEFINITION. In this chapter, "operative date of the valuation manual" means the date, if any, on which the valuation manual described by Subchapter B, Chapter 425 (Standard Valuation Law), becomes operative as provided by that subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 16, eff. September 1, 2015.

Sec. 1105.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a policy issued by a company on or after January 1, 1974.

(b) This chapter also applies to a policy issued by a company after a date specified in a written notice:

(1) that was filed by the company with the State Board of Insurance after August 23, 1963, but before January 1, 1974; and

(2) under which the company filing the notice elected to comply before January 1, 1974, with the law codified by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.003. EXEMPTIONS. (a) This chapter does not apply to:

(1) reinsurance;

(2) group insurance;

(3) pure endowment;

(4) an annuity or reversionary annuity contract;

(5) a term policy of uniform amount that:

(A) does not provide guaranteed nonforfeiture or endowment benefits or renewal of the policy;

(B) has a term of 20 years or less that expires before the insured reaches 71 years of age; and

(C) has uniform premiums that are payable during the entire term of the policy;

(6) a term policy of decreasing amount:

(A) that does not provide guaranteed nonforfeiture or endowment benefits; and

(B) on which each adjusted premium, computed as specified by Subchapter B or D, is less than the adjusted premium computed in that manner for a term policy of uniform amount, or a renewal of a term policy of uniform amount, that:

(i) does not provide guaranteed nonforfeiture or endowment benefits;

(ii) is issued at the same age and for the same initial amount of insurance;

(iii) has a term of 20 years or less and expires before the insured reaches 71 years of age; and

(iv) has uniform premiums that are payable during the entire term of the policy;

(7) a policy:

(A) that does not provide guaranteed nonforfeiture or endowment benefits; and

(B) for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, computed as specified by Section 1105.007, 1105.008, 1105.009, Subchapter B, or Subchapter D, exceeds 2-1/2 percent of the amount of insurance at the beginning of the same policy year;

(8) a policy delivered outside this state through an agent or other representative of the company that issued the policy; or

(9) a policy that:

(A) does not provide for cash values or nonforfeiture values; and

(B) meets the requirements of Section 884.403(b).

(b) For purposes of determining the applicability of this chapter, the age at expiry of a joint term life insurance policy is the age at expiry of the oldest insured life on that date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.004. REQUIRED NONFORFEITURE PROVISIONS. (a) A life insurance policy delivered or issued for delivery in this state must contain in substance the provisions prescribed by Subsections (b), (c), and (d) or corresponding provisions that:

(1) in the opinion of the department, are at least as favorable to the defaulting or surrendering policyholder; and

(2) essentially comply with Section 1105.012.

(b) A life insurance policy must provide that if there is a default in the payment of a premium the company, on proper request not later than the 60th day after the due date of the premium that is in default, will grant a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of that due date, in the amount specified by this chapter. A company may substitute for the paid-up nonforfeiture benefit required by this subsection an actuarially equivalent alternative paid-up nonforfeiture benefit that provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits. To elect an alternative paid-up nonforfeiture benefit under this subsection, the person entitled to make the election must submit a proper request not later than the 60th day after the due date of the premium that is in default.

(c) A life insurance policy must:

(1) provide that on surrender of the policy not later than the 60th day after the due date of a premium payment that is in default the company will pay, in lieu of a paid-up nonforfeiture benefit, a cash surrender value in the amount specified by this chapter if the premiums have been paid for at least:

(A) three full years for a policy of ordinary insurance; or

(B) five full years for a policy of industrial

insurance;

(2) provide that a specified paid-up nonforfeiture benefit is effective as specified by the policy unless the person entitled to make the election elects another available option not later than the 60th day after the due date of a premium payment that is in default; and

(3) provide that on surrender of the policy not later than the 30th day after any policy anniversary the company will pay a cash surrender value in the amount specified by this chapter if:

(A) the policy has become paid up by completion of all premium payments; or

(B) the policy is continued under a paid-up nonforfeiture benefit that became effective on or after:

(i) the third policy anniversary for a policy of ordinary insurance; or

(ii) the fifth policy anniversary for a policy of industrial insurance.

(d) A life insurance policy must contain:

(1) subject to Subsection (e), a statement of:

(A) the mortality table, interest rate, and method used to compute the cash surrender values and the paid-up nonforfeiture benefits available under the policy, if the policy:

(i) causes, on a basis guaranteed by the policy, unscheduled changes in benefits or premiums; or

(ii) provides an option for changes in benefits or premiums other than a change to a new policy; or

(B) the mortality table and interest rate used to compute the cash surrender values and the paid-up nonforfeiture benefits available under the policy, with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary during the first 20 policy years or the term of the policy, whichever is shorter, if the policy is a policy other than one described by Paragraph (A)(i) or (ii);

(2) a statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by the insurance laws of this state;

(3) an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered

by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy and, if a detailed statement of the method used to compute the values and benefits shown in the policy is not stated in the policy, a statement that the method of computation has been filed with the department; and

(4) a statement of the method to be used to compute the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary after the last anniversary for which those values and benefits are consecutively shown in the policy.

(e) The values and benefits described by Subsection (d)(1)(B) must be computed on the assumption that:

(1) there are no dividends or paid-up additions credited to the policy; and

(2) there is no indebtedness to the company on the policy.

(f) A provision prescribed by Subsection (b), (c), or (d) or a portion of a provision that does not apply because of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

(g) A company shall reserve the right to defer payment of any cash surrender value for a period of six months after demand for payment of the cash surrender value and surrender of the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.005. COMPUTATION OF ADJUSTED PREMIUMS AND PRESENT VALUES; MORTALITY TABLES AND INTEREST RATES. (a) Except as provided by Subsection (b) or (e) or Section 1105.055, 1105.152, or 1105.153, an adjusted premium or present value determined under this chapter must be computed on the basis of:

(1) the Commissioners 1941 Standard Ordinary Mortality Table for a policy of ordinary insurance; and

(2) the Commissioners 1941 Standard Industrial Mortality Table for a policy of industrial insurance.

(b) For a category of ordinary insurance issued to insure a female risk, an adjusted premium or present value may be computed according to an age not more than three years younger than the actual age of the insured.

(c) All computations must be made using the rate of interest,

not to exceed 3-1/2 percent a year, specified by the policy for computing cash surrender values and paid-up nonforfeiture benefits.

(d) In the computation of the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than 130 percent of the rates shown in the applicable mortality table.

(e) Subject to approval by the department, a company may specify a mortality table other than the applicable table required by this section for use in computing an adjusted premium or present value for insurance issued on a substandard basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.006. DETERMINATION OF RATED AGE. For purposes of this chapter, the date a policy is issued is the date as of which the rated age of the insured is determined.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.007. COMPUTATION OF CASH SURRENDER VALUE FOLLOWING DEFAULT. (a) Any cash surrender value available under a policy on a default in payment of a premium due on a policy anniversary, regardless of whether required by Section 1105.004, must be an amount not less than the amount, if any, by which the present value, on the policy anniversary, of the future guaranteed benefits that would have been available under the policy, including any existing paid-up additions, had there not been a default exceeds the sum of:

(1) the then present value of the adjusted premiums as determined under Subchapter B or D that correspond to premiums that would have become due on and after the policy anniversary; and

(2) the amount of any indebtedness to the company on the policy.

(b) Subsection (a) does not require a cash surrender value greater than the reserve for the policy computed as provided by Subchapter B, Chapter 425.

(c) For a policy to which Subchapter B applies and that by rider or supplemental policy provision provides supplemental life insurance or annuity benefits at the option of the insured and for an

identifiable additional premium, the cash surrender value computed under Subsection (a) must be an amount not less than the sum of:

(1) the cash surrender value as computed under Subsection (a) for an otherwise similar policy issued at the same age without the rider or supplemental policy provision; and

(2) the cash surrender value as computed under Subsection (a) for a policy that provides only the benefits provided by the rider or supplemental policy provision.

(d) For a family policy to which Subchapter B applies and that defines a primary insured and provides term insurance on the life of the spouse of the primary insured that expires before the spouse reaches 71 years of age, the cash surrender value as computed under Subsection (a) must be an amount not less than the sum of:

(1) the cash surrender value as computed under Subsection (a) for an otherwise similar policy issued at the same age that does not provide the term insurance on the life of the spouse; and

(2) the cash surrender value as computed under Subsection (a) for a policy that provides only the benefits provided by the term insurance on the life of the spouse.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.004, eff. April 1, 2009.

Sec. 1105.008. COMPUTATION OF CASH SURRENDER VALUE ON SURRENDER FOLLOWING POLICY ANNIVERSARY. Any cash surrender value available not later than the 30th day after the date of a policy anniversary under a policy paid up by completion of all premium payments or a policy continued under any paid-up nonforfeiture benefit, regardless of whether required by Section 1105.004, must be an amount not less than the present value, on the policy anniversary, of the future guaranteed benefits available under the policy, including any existing paid-up additions, less any indebtedness to the company on the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.009. COMPUTATION OF PAID-UP NONFORFEITURE BENEFITS.

Any paid-up nonforfeiture benefit available under the policy on default in the payment of a premium due on a policy anniversary must be such that its present value as of the policy anniversary is at least equal to:

(1) the cash surrender value then available under the policy; or

(2) if a cash surrender value is not available under the policy, the cash surrender value that would have been required by this chapter in the absence of the condition that premiums must have been paid for at least a specified period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.010. PRORATION OF VALUES; NET VALUE OF PAID-UP ADDITIONS. (a) Any cash surrender value and any paid-up nonforfeiture benefit available under a policy on default in the payment of a premium due at any time other than on the policy anniversary must be computed with allowance for the lapse of time and the payment of fractional premiums after the preceding policy anniversary, except that a cash surrender value or nonforfeiture benefit is not required unless the cash surrender value or nonforfeiture benefit was required on the preceding policy anniversary.

(b) A value determined under Sections 1105.005-1105.009, Subchapter B, or Subchapter D may be computed on the assumption that any death benefit is payable at the end of the policy year of death.

(c) The net value of any paid-up additions, other than paid-up term additions, may not be less than the amounts used to provide those additions.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.011. INCLUSION OF CERTAIN ADDITIONAL BENEFITS IN COMPUTING NONFORFEITURE BENEFITS NOT REQUIRED. (a) Notwithstanding Section 1105.007 or 1105.008, additional benefits described by Subsection (b), and premiums for those benefits, may not be included in computing a cash surrender value or nonforfeiture benefits required by this chapter. Additional benefits described by Subsection (b) are not required to be included in any paid-up

nonforfeiture benefits.

(b) This section applies to additional benefits payable:

(1) in the event of death or dismemberment by accident;

(2) in the event of total and permanent disability;

(3) as reversionary annuity or deferred reversionary annuity benefits;

(4) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this chapter would not apply;

(5) as term insurance on the life of a child that:

(A) is provided in a policy on the life of a parent of the child;

(B) expires before the child reaches 26 years of age;

(C) is uniform in amount after the child reaches one year of age; and

(D) has not become paid up by reason of the death of a parent of the child; or

(6) as other policy benefits additional to life insurance and endowment benefits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.012. PROGRESSION OF CASH SURRENDER VALUES. (a) This section applies only to a policy issued on or after January 1, 1985.

(b) Any cash surrender value available under a policy to which this section applies on default in the payment of a premium due on any policy anniversary must be in an amount that does not differ by more than two-tenths of one percent of the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first 10 policy years, from the sum of:

(1) the greater of:

(A) zero; or

(B) the basic cash value as determined under Subsection (c); and

(2) the present value of any existing paid-up additions minus the amount of any indebtedness to the company under the policy.

(c) The basic cash value must be equal to the present value, on the applicable policy anniversary, of the future guaranteed benefits

that would have been available under the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, had there not been a default, less the then present value of the nonforfeiture factors specified by Subsection (d) corresponding to premiums that would have become due on and after that anniversary. The effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described by Section 1105.007 or 1105.151, as applicable, must be the same as the effects specified by Section 1105.007 or 1105.151, as applicable, on the cash surrender values determined under the applicable section.

(d) The nonforfeiture factor for each policy year must be an amount equal to a percentage of the adjusted premium for the policy year, as computed under Section 1105.052 or 1105.151, as applicable. That percentage must:

(1) be the same percentage for each policy year between the second policy anniversary and the later of:

(A) the fifth policy anniversary; or

(B) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of:

(i) the amount of insurance, if the insurance is uniform in amount; or

(ii) the average amount of insurance at the beginning of each of the first 10 policy years; and

(2) be such that each percentage after the later of the policy anniversaries specified by Subdivision (1) applies to at least five consecutive policy years.

(e) Notwithstanding Subsection (d), the basic cash value may not be less than the value that would be obtained if the adjusted premiums for the policy, as computed under Section 1105.052 or 1105.151, as applicable, were substituted for the nonforfeiture factors in the computation of the basic cash value.

(f) In this section:

(1) an adjusted premium or present value for a particular policy must be computed on the same mortality and interest bases as those used to demonstrate that the policy complies with the other sections of this chapter; and

(2) the cash surrender values must include any endowment

benefits available under the policy.

(g) The amount of any cash surrender value available other than on default in payment of a premium due on a policy anniversary, and the amount of any paid-up nonforfeiture benefits available under the policy on default in the payment of a premium, must be determined in a manner consistent with the manner specified by Section 1105.004, 1105.007, 1105.008, 1105.009, 1105.010, 1105.011, or Subchapter B to determine the analogous minimum amount. The amounts of any cash surrender value or paid-up nonforfeiture benefits granted in connection with additional benefits, such as those listed in Section 1105.011(b), must comply with the principles of this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. COMPUTATION OF ADJUSTED PREMIUMS USING NONFORFEITURE NET LEVEL PREMIUM METHOD

Sec. 1105.051. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to a policy issued on or after January 1, 1989.

(b) This subchapter also applies to a policy issued by a company after the date specified in a written notice:

(1) that was filed with the State Board of Insurance after August 31, 1981, but before January 1, 1989; and

(2) under which the company filing the notice elected to comply before January 1, 1989, with the law codified by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.052. COMPUTATION OF ADJUSTED PREMIUMS USING NONFORFEITURE NET LEVEL PREMIUM METHOD. (a) Except as provided by Section 1105.054 and subject to Subsection (b), the adjusted premiums for a policy to which this section applies must be computed on an annual basis and must be a uniform percentage of the respective premiums specified by the policy for each policy year so that the present value, at the date of issue of the policy, of all adjusted premiums is equal to the sum of:

(1) the then present value of the future guaranteed benefits available under the policy;

(2) one percent of:

(A) the amount of insurance, if the insurance is uniform in amount; or

(B) the average amount of insurance at the beginning of each of the first 10 policy years; and

(3) 125 percent of the nonforfeiture net level premium as determined under Subsection (d).

(b) The amount of premiums specified by the policy and used in computing adjusted premiums under Subsection (a) does not include:

(1) an amount payable as an extra premium to cover an impairment or special hazard; or

(2) any uniform annual contract charge or policy fee specified by the policy in a statement of the method to be used to compute the cash surrender values and paid-up nonforfeiture benefits.

(c) In applying the percentage specified by Subsection (a)(3), a nonforfeiture net level premium may not be considered to exceed four percent of:

(1) the amount of insurance, if the insurance is uniform in amount; or

(2) the average amount of insurance at the beginning of each of the first 10 policy years.

(d) The nonforfeiture net level premium must be equal to the present value, at the date of issue of the policy, of the guaranteed benefits available under the policy divided by the present value, on the date of issue of the policy, of an annuity of one per year payable on the date of issue of the policy and on each anniversary of the policy on which a premium becomes due.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.053. COMPUTATION OF AMOUNTS FOR POLICY WITH CHANGING BENEFITS OR PREMIUMS. (a) This section applies only to a policy that:

(1) causes, on a basis guaranteed by the policy, unscheduled changes in benefits or premiums; or

(2) provides an option for changes in benefits or premiums other than a change to a new policy.

(b) The adjusted premiums and present values as to a policy to which this section applies must initially be computed on the assumption that future benefits and premiums will not change from

those specified on the date the policy is issued. At the time of a change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values must be recomputed on the assumption that future benefits and premiums will not change from those specified by the policy immediately after the change.

(c) Except as provided by Section 1105.054, the recomputed future adjusted premiums as to a policy to which this section applies must be a uniform percentage of the respective future premiums specified by the policy for each policy year, so that the present value, at the time of change to the newly defined benefits or premiums, of all future adjusted premiums is equal to the amount by which the sum of the then present value of the then future guaranteed benefits available under the policy and the additional expense allowance, as computed under Subsection (e), if any, exceeds the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(d) The amount of future premiums specified by the policy and used in computing adjusted premiums under Subsection (c) does not include:

(1) an amount payable as an extra premium to cover an impairment or special hazard; or

(2) any uniform annual contract charge or policy fee specified by the policy in a statement of the method to be used to compute the cash surrender values and paid-up nonforfeiture benefits.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, is the sum of:

(1) one percent of the amount, if any, by which the average amount of insurance at the beginning of each of the first 10 policy years after the change exceeds the average amount of insurance before the change at the beginning of each of the first 10 policy years after the time of the most recent previous change or, if there has not been a previous change, the date the policy is issued; and

(2) 125 percent of any increase in the nonforfeiture net level premium.

(f) The recomputed nonforfeiture net level premium must be equal to the quotient of:

(1) the sum of:

(A) the nonforfeiture net level premium applicable before the change multiplied by the present value of an annuity of

one per year payable on each anniversary of the policy on or after the date of the change on which a premium would have become due had the change not occurred; and

(B) the present value of the increase in future guaranteed benefits available under the policy; divided by

(2) the present value of an annuity of one per year payable on each anniversary of the policy, on or after the date of the change, on which a premium becomes due.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.054. COMPUTATION OF AMOUNTS FOR POLICY ISSUED ON SUBSTANDARD BASIS. (a) This section applies only to a policy issued on a substandard basis that provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis that provides higher uniform amounts of insurance. This section applies notwithstanding any provision of this subchapter to the contrary.

(b) Adjusted premiums and present values as to a policy to which this section applies may be computed as if the policy were issued to provide the higher uniform amounts of insurance of an otherwise similar policy issued on the standard basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.055. USE OF MORTALITY TABLES AND INTEREST RATES WITH NONFORFEITURE NET LEVEL PREMIUM METHOD. (a) Subject to Subsections (c)-(i), an adjusted premium or present value computed under this subchapter must be computed:

(1) for a policy of ordinary insurance:

(A) on the basis of the Commissioners 1980 Standard Ordinary Mortality Table; or

(B) at the option of the company for any one or more specified plans of life insurance, on the basis of the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; and

(2) for a policy of industrial insurance, on the basis of the Commissioners 1961 Standard Industrial Mortality Table.

(b) Subject to Subsections (c)-(i), computations on each policy issued in a particular calendar year must be made using a rate of interest not to exceed the nonforfeiture interest rate as defined by Section 1105.056 for a policy issued in that calendar year.

(c) At the option of the company, computations for each policy issued in a particular calendar year may be made using a rate of interest not to exceed the nonforfeiture interest rate, as defined by Section 1105.056, for a policy issued in the preceding calendar year.

(d) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, regardless of whether required by Section 1105.004, must be computed on the basis of the mortality table and rate of interest used to determine the amount of the paid-up nonforfeiture benefit and any paid-up dividend additions.

(e) A company may compute the amount of any guaranteed paid-up nonforfeiture benefit, including any paid-up additions under the policy, on the basis of an interest rate not less than the rate specified by the policy for computing cash surrender values.

(f) In the computation of the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than the rates shown in:

(1) the Commissioners 1980 Extended Term Insurance Table, for a policy of ordinary insurance; or

(2) the Commissioners 1961 Industrial Extended Term Insurance Table, for a policy of industrial insurance.

(g) For a policy issued on a substandard basis, the computation of any adjusted premium or present value may be based on appropriate modifications to a table described by Subsection (f).

(h) For a policy issued before the operative date of the valuation manual, any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for:

(1) the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors; or

(2) the Commissioners 1980 Extended Term Insurance Table.

(i) For a policy issued before the operative date of the valuation manual, any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners that is

approved by rules adopted by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for:

(1) the Commissioners 1961 Standard Industrial Mortality Table; or

(2) the Commissioners 1961 Industrial Extended Term Insurance Table.

(j) Except as provided by Subsection (k), for a policy described by Subsection (h) issued on or after the operative date of the valuation manual, the valuation manual must provide the commissioners standard ordinary mortality table for use in determining the minimum nonforfeiture standard that may be substituted for:

(1) the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors; or

(2) the Commissioners 1980 Extended Term Insurance Table.

(k) If the commissioner by rule adopts a commissioners standard ordinary mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard determined in accordance with that table supersedes the standard provided by the valuation manual.

(l) Except as provided by Subsection (m), for a policy described by Subsection (i) issued on or after the operative date of the valuation manual, the valuation manual must include the commissioners standard industrial mortality table for use in determining the minimum nonforfeiture standard that may be substituted for:

(1) the 1961 Standard Industrial Mortality Table; or

(2) the Commissioners 1961 Industrial Extended Term Insurance Table.

(m) If the commissioner by rule adopts a commissioners standard industrial mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum nonforfeiture standard for policies issued on or after the operative date of the valuation manual, the minimum nonforfeiture standard determined in accordance with that table supersedes the standard provided by the valuation manual.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 17, eff. September 1, 2015.

Sec. 1105.056. NONFORFEITURE INTEREST RATE. (a) For a policy issued before the operative date of the valuation manual, the annual nonforfeiture interest rate for a policy issued in a particular calendar year is equal to 125 percent of the calendar year statutory valuation interest rate for that policy as defined by Subchapter B, Chapter 425, rounded to the nearest one-fourth of one percent, except that the rate may not be less than four percent.

(b) For a policy issued on or after the operative date of the valuation manual, the annual nonforfeiture interest rate for any policy issued in a particular calendar year is provided by the valuation manual.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.005, eff. April 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 313 (S.B. 1654), Sec. 18, eff. September 1, 2015.

Sec. 1105.057. REFILING OF POLICY PROVISIONS NOT REQUIRED. Notwithstanding any provision of this code to the contrary, as to a policy to which this subchapter applies, a refiling of nonforfeiture values or of the method of computing nonforfeiture values for a previously approved policy form that involves only a change in the interest rate or mortality table used to compute nonforfeiture values does not require refiling of any provision of the policy form.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. NONFORFEITURE BENEFITS FOR CERTAIN PLANS

Sec. 1105.101. NONFORFEITURE BENEFITS FOR INDETERMINATE PREMIUM PLANS AND CERTAIN OTHER PLANS. (a) This section applies to a plan of life insurance that:

(1) provides for future premium determination, the amounts

of which are to be determined by the insurance company based on then estimates of future experience; or

(2) is such that minimum values cannot be determined by a method described by Sections 1105.004-1105.009, Subchapter B, or Subchapter D.

(b) The department must be satisfied that:

(1) the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by Sections 1105.004-1105.009, Subchapter B, or Subchapter D; and

(2) the benefits and the pattern of premiums of the plan are not such as to mislead prospective policyholders or insured persons.

(c) The cash surrender values and paid-up nonforfeiture benefits provided by the plan may not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this subchapter as determined under rules adopted by the commissioner.

(d) Notwithstanding any other law of this state, any policy, contract, or certificate providing life insurance under the plan must be approved by the department before the plan may be marketed, issued, delivered, or used in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER D. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN POLICIES

Sec. 1105.151. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN POLICIES ISSUED BEFORE JANUARY 1, 1989. (a) This section applies only to a policy issued before January 1, 1989, to which Subchapter B does not apply.

(b) The adjusted premiums for a policy to which this section applies must be computed on an annual basis or, at the option of the company, on a fully continuous basis if that basis is consistent with actual policy provisions and the use of that basis is specified by the policy.

(c) Except as provided by Subsection (f), the adjusted premiums must be a uniform percentage of the respective premiums specified by the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, so

that the present value, as of the date the policy is issued, of all the adjusted premiums is equal to the sum of:

(1) the then present value of the future guaranteed benefits available under the policy;

(2) two percent of:

(A) the amount of insurance, if the insurance is uniform in amount; or

(B) the equivalent uniform amount of insurance, as determined under this section, if the amount of insurance varies with the duration of the policy;

(3) 40 percent of the adjusted premium for the first policy year; and

(4) 25 percent of the lesser of:

(A) the adjusted premium for the first policy year; or

(B) the adjusted premium for a whole life policy of the same or an equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance.

(d) In applying the percentages specified by Subsections (c)(3) and (4), an adjusted premium may not be considered to exceed four percent of the amount of insurance or equivalent uniform amount.

(e) For purposes of this section, for a policy that provides an amount of insurance that varies with the duration of the policy:

(1) except as provided by Subdivision (2), the equivalent uniform amount of insurance is considered to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; and

(2) if the policy is issued on the life of a child younger than 10 years of age, the equivalent uniform amount of insurance may be computed as though the amount of insurance provided by the policy before the insured reaches 10 years of age were the amount provided by the policy at age 10.

(f) The adjusted premiums for a policy that provides term insurance benefits by rider or a supplemental policy provision must be equal to the adjusted premiums for an otherwise similar policy issued at the same age without the term insurance benefits, increased, during the period for which premiums for the term

insurance benefits are payable, by the adjusted premiums for the term insurance. The adjusted premiums specified by this subsection must be computed separately in the manner specified by Subsections (b)-(e).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.152. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN ORDINARY POLICIES ISSUED BEFORE JANUARY 1, 1989. (a) Except as provided by Subsection (b), this section applies only to an ordinary policy to which Subchapter B does not apply and that is issued on or after January 1, 1974 and before January 1, 1989.

(b) This section also applies to an ordinary policy issued by a company after a date specified in a written notice:

(1) that was filed by the company with the State Board of Insurance after August 23, 1963, but before January 1, 1974; and

(2) under which the company filing the notice elected to comply before January 1, 1974, with the law codified by this section.

(c) An adjusted premium or present value determined under this chapter as to a policy to which this section applies must be computed on the basis of the Commissioners 1958 Standard Ordinary Mortality Table.

(d) A computation as to a policy to which this section applies must be made using the rate of interest specified by the policy for computing cash surrender values and paid-up nonforfeiture benefits, except that the rate of interest may not exceed:

(1) 3-1/2 percent a year for a policy issued before June 14, 1973;

(2) 4 percent a year for a policy issued on or after June 14, 1973, and before August 29, 1977;

(3) 5-1/2 percent a year for a policy issued on or after August 29, 1977, other than a single premium whole life or endowment insurance policy; or

(4) 6-1/2 percent a year for a single premium whole life or endowment insurance policy issued on or after August 29, 1977.

(e) For a category of ordinary insurance issued to insure a female risk:

(1) an adjusted premium or present value for a policy issued before August 29, 1977, may be computed according to an age

not more than three years younger than the actual age of the insured; and

(2) an adjusted premium or present value for a policy issued on or after August 29, 1977, may be computed according to an age not more than six years younger than the actual age of the insured.

(f) In the computation of the present value of paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not exceed the rates shown in the Commissioners 1958 Extended Term Insurance Table.

(g) Subject to approval by the department, a company may specify a mortality table other than the table required by this section for use in computing an adjusted premium or present value for insurance issued on a substandard basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1105.153. COMPUTATION OF ADJUSTED PREMIUMS FOR CERTAIN INDUSTRIAL POLICIES ISSUED BEFORE JANUARY 1, 1989. (a) Except as provided by Subsection (b), this section applies only to an industrial policy to which Subchapter B does not apply and that is issued on or after January 1, 1974, and before January 1, 1989.

(b) This section also applies to an industrial policy issued by a company after a date specified in a written notice:

(1) that was filed by the company with the State Board of Insurance after August 23, 1963, but before January 1, 1974; and

(2) under which the company filing the notice elected to comply before January 1, 1974, with the law codified by this section.

(c) An adjusted premium or present value determined under this chapter as to a policy to which this section applies must be computed on the basis of the Commissioners 1961 Standard Industrial Mortality Table.

(d) A computation as to a policy to which this section applies must be made using the rate of interest specified by the policy for computing cash surrender values and paid-up nonforfeiture benefits, except that the rate of interest may not exceed:

(1) 3-1/2 percent a year for a policy issued before June 14, 1973;

(2) 4 percent a year for a policy issued on or after June 14, 1973, and before August 29, 1977;

(3) 5-1/2 percent a year for a policy issued on or after August 29, 1977, other than a single premium whole life or endowment insurance policy; or

(4) 6-1/2 percent a year for a single premium whole life or endowment insurance policy issued on or after August 29, 1977.

(e) In the computation of the present value of paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may not exceed the rates shown in the Commissioners 1961 Industrial Extended Term Insurance Table.

(f) Subject to approval by the department, a company may specify a mortality table other than the table required by this section for use in computing an adjusted premium or present value for insurance issued on a substandard basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1106. REINSTATEMENT OF CERTAIN LIFE INSURANCE POLICIES

Sec. 1106.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to each individual life insurance policy issued to a resident of this state by an insurer authorized to engage in the business of insurance in this state, including a stipulated premium company and a fraternal benefit society, that is subject to lapse on or after September 1, 1995.

(b) This chapter does not apply to a life insurance policy that provides nonforfeiture benefits in accordance with the requirements of this code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.002. REINSTATEMENT REQUIRED; EXCEPTION. (a) On the lapse of an individual life insurance policy following the unintentional default in the payment of premiums caused by the mental incapacity of the insured, a person is entitled to have the policy reinstated under this chapter if:

(1) the policy had been in effect continuously for at least five years immediately preceding the lapse; and

(2) there was not a default in the payment of premiums on the policy during the period described by Subdivision (1).

(b) The insurer is not required to reinstate a policy or pay benefits under this chapter if the insured first became mentally incapacitated after the expiration of an applicable grace period contained in the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.003. MENTAL INCAPACITY DEFINED. In this chapter, "mental incapacity" means a lack of the ability to:

(1) understand and appreciate the nature and consequences of a decision regarding the failure to pay a premium when due; and

(2) reach an informed decision in the matter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.004. DIAGNOSIS OF MENTAL INCAPACITY REQUIRED. For purposes of this chapter, mental incapacity must be:

(1) established by the clinical diagnosis of a physician licensed in this state who is qualified to make the diagnosis; and

(2) based on reasonable medical judgment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.005. REQUEST FOR REINSTATEMENT; LIMITATION. (a) A request for reinstatement of a policy under this chapter and proof of mental incapacity may be filed with the insurer by:

(1) the insured;

(2) the insured's legal guardian or other legal representative; or

(3) the legal representative of the insured's estate.

(b) The request and the proof of mental incapacity must be filed not later than the first anniversary of the date the policy lapses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.006. REINSTATEMENT. (a) After the requirements of Section 1106.005 have been satisfied, the insurer shall reinstate the policy.

(b) The policy must be reinstated within one year from the date of lapse on payment of:

(1) the premiums owed from the date of initial lapse to the date of reinstatement; and

(2) interest on the premiums at a rate not to exceed six percent a year for the period.

(c) The insurer may not require evidence of insurability as a condition of reinstatement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.007. EFFECT OF REINSTATEMENT. On reinstatement of the policy, the original contractual provisions apply as if the coverage had been continuous.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.008. REDUCTION IN BENEFITS. If there is an uncontroverted claim for benefits in an amount that exceeds the amount of premiums and interest owed and unpaid under a policy that is eligible for reinstatement under this chapter, the insurer shall pay the amount of benefits owed reduced by the amount of premiums and interest owed and unpaid on the date the benefits are paid.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.009. DISCLOSURE. (a) Each insurer shall disclose fully to each policyholder or insured the requirements of this chapter.

(b) As to a policy to which this chapter applies that was issued on or after September 1, 1995, an insurer may make the disclosure required by Subsection (a):

(1) not later than the 90th day after the date the policy lapses; or

(2) by including the disclosure information in the policy

or in an endorsement attached to the policy.

(c) As to a policy to which this chapter applies that was issued before September 1, 1995, and for which the insurer did not make the required disclosure on or before November 30, 1995, the insurer shall make the disclosure required by Subsection (a) not later than the 90th day after the date the policy lapses.

(d) Notice is considered to comply with Subsection (b) or (c) if the notice is mailed by first class mail to the last known address of the policyholder.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1106.010. RULES. The commissioner shall adopt reasonable rules to implement this chapter, and the disclosure required by Section 1106.009 must be made in the form and manner prescribed by the commissioner after notice and hearing.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1107. STANDARD NONFORFEITURE LAW FOR CERTAIN ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1107.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to an annuity contract issued on or after August 29, 1979.

(b) This chapter also applies to an annuity contract issued by a company after a date specified in a written notice:

(1) that was filed with the State Board of Insurance after August 29, 1977, but before August 29, 1979; and

(2) under which the company filing the notice elected to comply before August 29, 1979, with the law codified by this chapter.

(c) Companies shall issue, and the department shall review, annuity contracts as follows:

(1) under Sections 1107.051-1107.054 until August 31, 2005; or

(2) under Sections 1107.055-1107.057 after September 1, 2003.

(d) Companies shall not issue annuity contracts under Sections 1107.051-1107.054 after August 31, 2005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.002. EXEMPTIONS. (a) This chapter does not apply to:

(1) a reinsurance contract;

(2) a group annuity contract that is purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, by an employee organization, or by both, other than a plan that provides individual retirement accounts or individual retirement annuities under Section 408, Internal Revenue Code of 1986, as amended;

(3) a premium deposit fund;

(4) a variable annuity contract;

(5) an investment annuity contract;

(6) an immediate annuity contract;

(7) a deferred annuity contract under which annuity payments have begun;

(8) a reversionary annuity contract; or

(9) a contingent deferred annuity contract as defined by Section 1116.003.

(b) This chapter does not apply to a contract delivered outside this state through an agent or other representative of the company that issues the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 375 (S.B. 1107), Sec. 1, eff. June 9, 2015.

Sec. 1107.003. REQUIRED NONFORFEITURE PROVISIONS. (a) An annuity contract delivered or issued for delivery in this state must contain in substance the provisions prescribed by this section or corresponding provisions that, in the opinion of the department, are at least as favorable to the contract holder when payment of considerations under the contract ceases.

(b) The annuity contract must provide that when payment of

considerations under a contract ceases, the company will grant a paid-up annuity benefit on a plan stipulated in the contract that has a value that complies with this chapter.

(c) An annuity contract that provides for a lump-sum settlement at maturity or at any other time must provide that on surrender of the contract on or before the time annuity payments begin, the company that issues the contract shall pay a cash surrender benefit in an amount that complies with this chapter in lieu of a paid-up annuity benefit. A company may reserve the right to defer payment of any cash surrender benefit for a period not to exceed six months after demand for payment of the benefit is made with surrender of the contract.

(d) An annuity contract must contain:

(1) a statement of the mortality table, if any, and interest rates to be used to compute any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with information that is sufficient to determine the amounts of the benefits;

(2) a statement that any paid-up annuity, cash surrender, or death benefits available under the contract are not less than the minimum benefits required by this state; and

(3) an explanation of the manner in which a paid-up annuity, cash surrender, or death benefit is altered by the existence of any additional amounts credited to the contract by the company that issues the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.004. OPTIONAL TERMINATION PROVISION. (a) Notwithstanding the requirements of Section 1107.003, an annuity contract may provide that the company has the option to terminate the contract by making a cash payment of the then present value of that portion of the paid-up annuity benefit if:

(1) no considerations are received under the contract for two years; and

(2) at maturity, payments on the portion of the paid-up

annuity benefit on the plan stipulated in the contract attributable to considerations paid before that period would be less than $20 each month.

(b) If an annuity contract contains a provision permitted under Subsection (a):

(1) the present value of a portion of a paid-up annuity benefit paid under that provision must be computed on the basis of the mortality table, if any, and interest rates specified in the contract for determining the paid-up annuity benefit; and

(2) a payment made under that provision relieves the company of any further obligation under the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.005. CONTACT DISCLOSURE THAT CERTAIN BENEFITS NOT PROVIDED. An annuity contract that does not provide a cash surrender benefit or that does not provide a death benefit that is at least equal to the minimum nonforfeiture amount for the contract under Subchapter B before annuity payments begin must include a statement in a prominent place in the contract that those benefits are not provided.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.006. MATURITY DATE. In determining the value of benefits under Sections 1107.102, 1107.103, and 1107.104, the maturity date is the latest date on which an election is permitted by the contract, but not later than the later of:

(1) the next anniversary of the annuity contract that follows the annuitant's 70th birthday; or

(2) the 10th anniversary of the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 408 (H.B. 1919), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. COMPUTATION OF MINIMUM NONFORFEITURE AMOUNT

Sec. 1107.051. MINIMUM NONFORFEITURE AMOUNT. The minimum value under Subchapter C of a paid-up annuity, cash surrender, or death benefit shall be computed on the basis of the minimum nonforfeiture amount prescribed by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.052. CONTRACT WITH FLEXIBLE CONSIDERATIONS. (a) This section applies only to an annuity contract that provides for the payment of flexible considerations.

(b) The minimum nonforfeiture amount on or before annuity payments begin is an amount equal to the accumulation of the prescribed percentages of the amount of net considerations paid to the date of computation, which are accumulated at an interest rate of three percent per year, plus any additional amount credited to the contract by the company, less the amount of:

(1) any withdrawal from or partial surrender of the contract made before the minimum nonforfeiture amount is computed, accumulated at an interest rate of three percent per year; and

(2) any indebtedness to the company on the contract, including any accrued interest due on the indebtedness.

(c) For the purposes of this section, the amount of net consideration for a contract year may not be less than $0 and is computed by subtracting from the amount of gross considerations credited to the contract during that contract year:

(1) an annual contract charge of $30; and

(2) a collection charge of $1.25 for each consideration credited to the contract during that year.

(d) Except as provided by Subsection (e), the percentage of the amount of net consideration to be used in computing a minimum nonforfeiture amount under Subsection (b) is:

(1) 65 percent for the first contract year; and

(2) 87.5 percent for each subsequent contract year.

(e) For a renewal contract year, the percentage of the amount of net consideration to be used to compute a minimum nonforfeiture

amount under Subsection (b) is 65 percent of the portion of the total amount of net consideration that exceeds by not more than two times the sum of those portions of the amount of net consideration in all preceding contract years for which the percentage was 65 percent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.053. CONTRACT WITH FIXED, SCHEDULED CONSIDERATIONS. (a) For an annuity contract that provides for the payment of fixed, scheduled considerations, the minimum nonforfeiture amount is computed in the same manner as the minimum nonforfeiture amount for an annuity contract with flexible considerations that are paid annually, except that:

(1) the amount of net consideration for a contract year is computed using an annual contract charge equal to the lesser of:

(A) $30; or

(B) 10 percent of the amount of the gross annual considerations paid on the contract; and

(2) the percentage of the net consideration amount for the first contract year to be used to compute the minimum nonforfeiture amount is 65 percent of the amount of net consideration for the first contract year plus 22.5 percent of the amount by which the amount of net consideration for the first contract year exceeds the lesser of:

(A) the amount of net consideration for the second contract year; or

(B) the amount of net consideration for the third contract year.

(b) The computation made under Subsection (a) must assume that the considerations are paid annually in advance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.054. CONTRACT WITH SINGLE CONSIDERATION. For an annuity contract that provides for the payment of a single consideration, the minimum nonforfeiture amount is computed in the same manner as the minimum nonforfeiture amount for a contract with flexible considerations, except that:

(1) the net consideration amount to be used to compute the minimum nonforfeiture amount is the amount of the gross considerations paid under the contract less a contract charge of $75; and

(2) the percentage of the net consideration amount to be used to compute the minimum nonforfeiture amount is 90 percent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.055. INTEREST RATE. The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which must be specified in the contract if the interest rate will be redetermined:

(1) the five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than 15 months prior to the contract issue date or redetermination date under Subdivision (4);

(2) reduced by 125 basis points;

(3) where the resulting interest rate is not less than 0.15 percent; and

(4) the interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. As used in this section, basis is the date, or average over a specified period, which produces the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

Added by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 1, eff. September 1, 2021.

Sec. 1107.056. ADDITIONAL INTEREST RATE ADJUSTMENTS. The commissioner may adopt rules to provide for further adjustments to Section 1107.055 for annuity contracts that provide substantive participation in an equity index benefit or other benefits as

appropriate.

Added by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.057. MINIMUM NONFORFEITURE AMOUNT. (a) The minimum values as specified in Sections 1107.006 and 1107.101-1107.105 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(b) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in this subchapter of the net considerations as defined by Subsection (c) paid prior to such time, decreased by the sum of Subdivisions (1) through (4):

(1) any withdrawal from or partial surrender of the contract made before the minimum nonforfeiture amount is computed, accumulated at an interest rate as indicated in this subchapter;

(2) an annual contract charge of $50, accumulated at rates of interest as indicated in this subchapter;

(3) premium tax paid, if any, by the company, and not subsequently credited back to the company, for the contract, accumulated at rates of interest as indicated in this subchapter; and

(4) any indebtedness to the company on the contract, including any accrued interest due on the indebtedness.

(c) For the purposes of this section, the amount of net consideration for a contract year shall be an amount equal to 87.5 percent of the gross considerations credited to the contract during that contract year.

Added by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

SUBCHAPTER C. VALUE OF NONFORFEITURE BENEFITS

Sec. 1107.101. PRESENT VALUE OF NONFORFEITURE BENEFITS. (a) The present value of any paid-up annuity benefit available under an annuity contract on the date annuity payments are to begin may not be less than the minimum nonforfeiture amount for that contract on that date as computed under Subchapter B.

(b) The present value of the paid-up annuity benefit shall be computed using the mortality table, if any, and the interest rates specified in the contract for computing the minimum paid-up annuity benefit guaranteed by the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.102. COMPUTATION OF PAID-UP ANNUITY BENEFIT UNDER CERTAIN CONTRACTS. (a) This section applies only to an annuity contract that does not provide a cash surrender benefit.

(b) Subject to Subsection (e), the present value of a paid-up annuity benefit available as a nonforfeiture option before the maturity date may not be less than the present value of the portion of the maturity value of the paid-up annuity benefit provided under the contract that arises from considerations paid on the contract before the date the contract is surrendered in exchange for or is changed to a deferred paid-up annuity.

(c) The present value of a paid-up annuity benefit under Subsection (b) shall be:

(1) computed for the period before the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations paid on the contract to determine the maturity value; and

(2) increased by any additional amount credited by the company to the contract.

(d) Subject to Subsection (e), for an annuity contract that does not provide a death benefit before annuity payments begin, the present value of a paid-up annuity benefit available as a nonforfeiture option shall be computed using the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit.

(e) The present value of a paid-up annuity benefit may not be less than the minimum nonforfeiture amount on the date of surrender or change.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.103. COMPUTATION OF CASH SURRENDER BENEFIT. (a) Subject to Subsection (c), the value of a cash surrender benefit available under an annuity contract before the maturity date may not be less than the present value on the date the contract is surrendered of the portion of the maturity value of the paid-up annuity benefit that arises from considerations paid under the contract before that date and that would be provided under the contract at maturity less an amount reflecting any withdrawals from or partial surrenders of the contract before that date and the amount of any indebtedness to the company on the contract, including accrued interest due on the indebtedness, plus any additional amount credited by the company to the contract.

(b) The present value used to compute the minimum cash surrender benefit under Subsection (a) shall be computed using an interest rate that is not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations paid on the contract to determine the maturity value.

(c) The value of a cash surrender benefit may not be less than the minimum nonforfeiture amount on the date the contract is surrendered.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.104. COMPUTATION OF DEATH BENEFIT. The value of a death benefit available under an annuity contract that provides a cash surrender benefit may not be less than the value of the cash surrender benefit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.105. COMPUTATION OF BENEFITS AVAILABLE AT THE TIME OTHER THAN CONTRACT ANNIVERSARY. For an annuity contract that requires payment of fixed, scheduled considerations, the value of a paid-up annuity, cash surrender, or death benefit that is available under the contract on a date other than an anniversary of the contract date shall be computed to allow for the lapse of time and any scheduled considerations paid after the beginning of the contract

year in which payment of considerations under the contract ceased.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.106. MINIMUM NONFORFEITURE VALUES UNDER CONTRACT THAT PROVIDES ANNUITY AND LIFE INSURANCE BENEFITS. For a contract that provides, by rider or by supplemental provision, both annuity benefits and life insurance benefits that exceed the greater of the value of the cash surrender benefit or the amount with interest of the gross considerations paid on the contract, the minimum nonforfeiture benefits are equal to the sum of the minimum nonforfeiture benefits for the annuity portion of the contract and the minimum nonforfeiture benefits, if any, for the life insurance portion of the contract, computed as if each portion were a separate contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.107. COMPUTATIONS NOT AFFECTED BY ADDITIONAL BENEFITS. (a) Notwithstanding any other provision of this subchapter or Section 1107.006, a computation of a minimum nonforfeiture amount or of a paid-up annuity, cash surrender, or death benefit under this chapter may not include:

(1) any additional benefit that is:

(A) payable in the event of total and permanent disability;

(B) payable as a reversionary annuity or deferred reversionary annuity benefit; or

(C) payable as another policy benefit in addition to life insurance, endowment, or annuity benefits; or

(2) the considerations paid for the additional benefit.

(b) A paid-up benefit under an annuity contract is not required to include an additional benefit described by Subsection (a) unless the additional benefit separately requires:

(1) a minimum nonforfeiture amount; or

(2) a paid-up annuity, cash surrender, or death benefit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

Sec. 1107.108. RULES. The commissioner may adopt rules to implement the provisions of this chapter.

Added by Acts 2003, 78th Leg., ch. 869, Sec. 1, eff. June 20, 2003.

CHAPTER 1108. BENEFITS EXEMPT FROM SEIZURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1108.001. CONSTRUCTION WITH OTHER LAW. The exemptions under this chapter are in addition to the exemptions from garnishment, attachment, execution, or other seizure under Chapter 42, Property Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1108.002. ANNUITY CONTRACTS. For purposes of regulation under this code, an annuity contract is considered an insurance policy or contract if the annuity contract is issued:

(1) by a life, health, or accident insurance company, including a mutual company or fraternal benefit society; or

(2) under an annuity or benefit plan used by an employer or individual.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. EXEMPTIONS FROM SEIZURE

Sec. 1108.051. EXEMPTIONS FOR CERTAIN INSURANCE AND ANNUITY BENEFITS. (a) Except as provided by Section 1108.053, this section applies to any benefits, including the cash value and proceeds of an insurance policy, to be provided to an insured or beneficiary under:

(1) an insurance policy or annuity contract issued by a life, health, or accident insurance company, including a mutual company or fraternal benefit society; or

(2) an annuity or benefit plan used by an employer or individual.

(b) Notwithstanding any other provision of this code, insurance or annuity benefits described by Subsection (a):

(1) inure exclusively to the benefit of the person for whose use and benefit the insurance or annuity is designated in the policy or contract; and

(2) are fully exempt from:

(A) garnishment, attachment, execution, or other seizure;

(B) seizure, appropriation, or application by any legal or equitable process or by operation of law to pay a debt or other liability of an insured or of a beneficiary, either before or after the benefits are provided; and

(C) a demand in a bankruptcy proceeding of the insured or beneficiary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1108.052. EXEMPTIONS UNAFFECTED BY BENEFICIARY DESIGNATION. The exemptions provided by Section 1108.051 apply regardless of whether:

(1) the power to change the beneficiary is reserved to the insured; or

(2) the insured or the insured's estate is a beneficiary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 91 (S.B. 649), Sec. 1, eff. September 1, 2013.

Sec. 1108.053. EXCEPTIONS TO EXEMPTIONS. The exemptions provided by Section 1108.051 do not apply to:

(1) a premium payment made in fraud of a creditor, subject to the applicable statute of limitations for recovering the payment;

(2) a debt of the insured or beneficiary secured by a pledge of the insurance policy or the proceeds of the policy; or

(3) a child support lien or levy under Chapter 157, Family Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.301(a), eff. Sept. 1, 2003.

SUBCHAPTER C. ASSIGNMENT OF BENEFITS

Sec. 1108.101. ASSIGNMENT GENERALLY. (a) This chapter does not prevent an insured, owner, or annuitant from assigning, in accordance with the terms of the policy or contract:

(1) any benefits to be provided under an insurance policy or annuity contract to which this chapter applies; or

(2) any other rights under the policy or contract.

(b) A benefit or right described by Subsection (a) assigned by an insured, owner, or annuitant after a child support lien notice has been filed against the insured, owner, or annuitant by the Title IV-D agency continues to be subject to the child support lien after the date of assignment. The lien continues to secure payment of all child support arrearages owed by the insured, owner, or annuitant under the underlying child support order, including arrearages that accrue after the date of assignment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 508 (H.B. 1674), Sec. 20, eff. September 1, 2011.

Sec. 1108.102. CERTAIN ASSIGNMENTS VOID. If an insurance policy, annuity contract, or annuity or benefit plan described by Section 1108.051 prohibits a beneficiary from assigning or commuting benefits to be provided or other rights under the policy, contract, or plan, an assignment or commutation or attempted assignment or commutation of the benefits or rights by the beneficiary is void.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1109. UNCLAIMED LIFE INSURANCE AND ANNUITY CONTRACT PROCEEDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1109.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to proceeds held and owing by a life insurance company engaged in the business of insurance in this state if:

(1) the last known address, according to the company's records, of the person entitled to the proceeds is located in this state; and

(2) the proceeds have been unclaimed and unpaid for at least three years after the date, according to the company's records, that the proceeds became due and payable under a life or endowment insurance policy or annuity contract that has matured or terminated.

(b) If a person other than the insured or annuitant is entitled to the proceeds and that person's address is not known to the company or if the identity of the person entitled to the proceeds is not certain from the company's records, it is presumed that the last known address of the person entitled to the proceeds is the same as the last known address of the insured or annuitant according to the company's records.

(c) For purposes of Subsection (a), a life insurance policy not matured by proof of the death of the insured is considered to be matured and the proceeds of the policy are considered to be due and payable only if the policy is in force at the time the insured attained the limiting age under the mortality table on which the reserve is based.

(d) An annuity or other obligation, the payment of which is conditioned on the continued life of any individual, is not considered due and payable for purposes of Subsection (a) without proof that the individual was alive at the time or times required by the contract.

(e) Proceeds otherwise admittedly due and payable under a life or endowment insurance policy or annuity contract that has matured or terminated are considered to be held and owing even if the policy or contract has not been surrendered as required.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1109.002. ADMINISTRATION AND ENFORCEMENT; RULES. (a) This chapter shall be enforced in the manner provided for enforcement of Chapter 74, Property Code, under Subchapter H of that chapter.

(b) The comptroller may adopt rules necessary to administer this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1109.003. APPROPRIATIONS TO ADMINISTER CHAPTER. To enforce and administer this chapter, the legislature may appropriate unclaimed money received under Chapter 74, Property Code, or under any other statute requiring the delivery of unclaimed property to the comptroller.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER A-1. DEATH MASTER FILE SEARCH; IDENTIFICATION OF UNCLAIMED PROCEEDS

Sec. 1109.010. DEFINITIONS. In this subchapter:

(1) "Annuity contract" means an annuity contract issued in this state. The term does not include an annuity used to fund an employment-based retirement plan or program for which the insurer:

(A) does not perform the recordkeeping services; or

(B) is not committed by the terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.

(2) "Death Master File" means:

(A) the United States Social Security Administration's Death Master File; or

(B) any other database or service that is at least as comprehensive as the United States Social Security Administration's Death Master File for determining whether a person is dead.

(3) "Death Master File match" means a match of the social security number or the name and date of birth of an insured or retained asset account holder resulting from a search of the Death Master File.

(4) "Life insurance policy" means a policy or certificate of life insurance issued in this state that provides a death benefit. The term does not include:

(A) a policy or certificate of life insurance that provides a death benefit under an employee benefit plan that is:

(i) subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); or

(ii) under any federal employee benefit program;

(B) a policy or certificate of life insurance that is used to fund a pre-need funeral contract or prearrangement;

(C) a policy or certificate of credit life or

accidental death insurance; or

(D) a policy issued to a group master policyholder for which the insurer does not provide recordkeeping services.

(5) "Recordkeeping services" means services provided by an insurer, under an agreement with a group policy or contract holder, to obtain, maintain, and administer in the insurer's or the insurer's agents' systems the following information about each individual insured under the group policy or contract or a line of coverage under that policy or contract:

(A) the social security number or name and date of birth of the insured;

(B) beneficiary designation information;

(C) coverage eligibility;

(D) benefit amount; and

(E) premium payment status.

(6) "Retained asset account" means a mechanism by which the proceeds payable under a life insurance policy or annuity contract are settled by the insurer or an entity acting on behalf of the insurer by depositing the proceeds into an account with check or draft writing privileges, where those proceeds are retained by the insurer or the insurer's agent, under a supplementary contract not involving annuity contract benefits other than death benefits.

Added by Acts 2017, 85th Leg., R.S., Ch. 42 (S.B. 561), Sec. 1, eff. September 1, 2017.

Sec. 1109.011. IDENTIFICATION OF DEATH MASTER FILE MATCHES. (a) An insurer shall compare its in-force life insurance policies, annuity contracts, and retained asset accounts against a Death Master File at least semiannually to identify potential Death Master File matches. The insurer shall perform the first comparison of a policy, contract, or account against a full Death Master File and thereafter against Death Master File update files to identify potential Death Master File matches.

(b) An insurer shall first conduct the comparison required by Subsection (a) electronically to the extent the insurer's records are available in electronic format, and then use the most easily accessible insurer records for any records that are not available electronically.

(c) Each subsequent comparison made under this section shall include all in-force life insurance policies, annuity contracts, and retained asset accounts and any policies, contracts, or accounts that have lapsed since the previous comparison.

(d) An insurer shall implement procedures for conducting comparisons under this section to account for:

(1) common nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(2) compound last names, maiden or married names, and hyphens, blank spaces, or apostrophes in last names;

(3) transposition of the month and date portions of the date of birth; and

(4) an incomplete social security number.

Added by Acts 2017, 85th Leg., R.S., Ch. 42 (S.B. 561), Sec. 1, eff. September 1, 2017.

Sec. 1109.012. DUTIES REGARDING DEATH MASTER FILE MATCH. (a) For each Death Master File match, the insurer shall, not later than the 90th day after the date the insurer identifies the match:

(1) complete a documented good faith effort to confirm the death of the insured or retained asset account holder against other available records and information;

(2) review the insurer's records to determine whether the deceased individual had purchased or was otherwise covered by any of the insurer's other products; and

(3) determine whether proceeds may be due in accordance with the applicable policy or contract or terms governing the applicable account.

(b) For group life insurance or a group annuity contract, an insurer is required to confirm the possible death of an insured or retained asset account holder under this section only if the insurer provides recordkeeping services for the group policy or group annuity contract.

(c) If the insurer determines under Subsection (a)(3) that proceeds may be due and a beneficiary or other authorized representative has not communicated with the insurer on or before the 90th day after the date the insurer identifies a Death Master File

match, the insurer shall:

(1) complete a documented good faith effort to locate and contact each beneficiary or other authorized representative on the relevant policy, contract, or account; and

(2) provide to the beneficiary or authorized representative the appropriate claim forms, instructions, or information to make a claim, including information about any need to provide an official death certificate or show proof of death under the applicable policy or contract or terms governing the applicable account.

(d) If an insurer is unable to confirm the death of an insured or retained asset account holder after the insurer identifies a Death Master File match, the insurer may consider the relevant policy, contract, or account to remain in force according to its terms.

(e) To the extent permitted by law, the insurer may disclose minimum necessary personal information about the insured, retained asset account holder, or beneficiary to a person the insurer reasonably believes may be able to assist the insurer in locating a person entitled to payment of the claim proceeds.

(f) An insurer or the insurer's service provider may not charge an insured, retained asset account holder, beneficiary, or authorized representative any fees or costs associated with conducting a Death Master File comparison under this subchapter or verifying a Death Master File match under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 42 (S.B. 561), Sec. 1, eff. September 1, 2017.

Sec. 1109.013. PRESUMPTION OF UNCLAIMED PROCEEDS; REPORT AND DELIVERY OF PROCEEDS. (a) The proceeds of a life insurance policy, annuity contract, or retained asset account, and any accrued contractual interest, are first payable to each designated beneficiary or owner as provided by the applicable policy or contract or terms governing the applicable account.

(b) If a Death Master File match is confirmed, the proceeds of the relevant policy, contract, or account are considered unclaimed proceeds for purposes of this chapter on the third anniversary of the date on which, according to the insurer's records, the insurer completed a good faith effort as required by Section 1109.012(c) that failed to locate a beneficiary or authorized representative if the

proceeds remain unpaid and no beneficiary or authorized representative has submitted a claim for the proceeds to the insurer before that date.

(c) An insurer shall report and deliver unclaimed proceeds to the comptroller as required by Chapter 74, Property Code.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 18(1), eff. May 18, 2021.

(e) For purposes of this section, unclaimed proceeds do not include any statutory interest under Section 1103.104.

Added by Acts 2017, 85th Leg., R.S., Ch. 42 (S.B. 561), Sec. 1, eff. September 1, 2017.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 2, eff. May 18, 2021.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 18(1), eff. May 18, 2021.

Sec. 1109.014. RULEMAKING AUTHORITY. The commissioner may adopt rules to implement this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 42 (S.B. 561), Sec. 1, eff. September 1, 2017.

Sec. 1109.015. AUTHORITY TO ISSUE CERTAIN ORDERS. The commissioner may issue an order:

(1) limiting the Death Master File comparisons required by this subchapter to only those files the insurer maintains in searchable electronic format or approving a plan and timeline for an insurer to convert the insurer's files to searchable electronic format;

(2) exempting an insurer from the Death Master File comparisons required by this subchapter or permitting an insurer to perform the comparisons less frequently than required by this subchapter on a showing of hardship to the insurer; or

(3) permitting an insurer to phase in compliance with this subchapter according to a plan and timeline approved by the commissioner.

Added by Acts 2017, 85th Leg., R.S., Ch. 42 (S.B. 561), Sec. 1, eff. September 1, 2017.

Sec. 1109.016. AUTHORITY TO REQUEST DEATH CERTIFICATE. Nothing in this subchapter limits an insurer's right to request a death certificate as part of a claim validation process.

Added by Acts 2017, 85th Leg., R.S., Ch. 42 (S.B. 561), Sec. 1, eff. September 1, 2017.

CHAPTER 1110. INTEREST RATES ON CERTAIN POLICY LOANS

Sec. 1110.001. DEFINITIONS. In this chapter:

(1) "Life insurance policy" includes:

(A) a benefit certificate issued by a fraternal benefit society; or

(B) an annuity contract that provides for a policy loan.

(2) "Policy loan" includes any premium loan made under a life insurance policy to pay one or more premiums not paid to the life insurer when due.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1110.002. APPLICABILITY OF CHAPTER. This chapter applies only to a life insurance policy issued on or after August 31, 1981.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1110.003. APPLICABILITY OF OTHER LAW. A law not included in this chapter applies to interest rates on policy loans only if that law is made specifically applicable to those rates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1110.004. MAXIMUM INTEREST RATE ON POLICY LOANS. (a) In this section, "published monthly average" means:

(1) Moody's Corporate Bond Yield Average--Monthly Average Corporates as published by Moody's Investors Service, Inc., or a successor to that corporation; or

(2) if the rate described by Subdivision (1) is no longer published, a substantially similar average established by rule of the commissioner.

(b) A life insurance policy must include a provision for an interest rate on a policy loan that:

(1) does not exceed 10 percent a year; or

(2) is an adjustable maximum interest rate established from time to time by the life insurer as permitted by law and does not exceed the lesser of:

(A) 15 percent a year; or

(B) the greater of:

(i) the published monthly average for the calendar month that ended two months before the date on which the rate is determined; or

(ii) the rate used to compute the cash surrender values under the life insurance policy during the applicable period plus one percent per year.

(c) This section also applies to the interest rate charged, on reinstatement of a policy loan, for the period during and after a lapse of the life insurance policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1110.005. FREQUENCY OF ADJUSTABLE INTEREST RATE DETERMINATION. A life insurer shall determine the adjustable interest rate under Section 1110.004(b)(2) at regular intervals at least once every 12 months but not more frequently than once in any three-month period. At the intervals specified in the life insurance policy, the insurer:

(1) may increase the rate charged when the interest rate determined under Section 1110.004(b)(2) would result in a rate increase of at least one-half of one percent per year; and

(2) shall reduce the rate charged when the interest rate determined under Section 1110.004(b)(2) would result in a rate decrease of at least one-half of one percent per year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1110.006. INFORMATION TO BE INCLUDED IN POLICY. (a) A life insurance policy must include the substance of the provisions of Section 1110.004(b) that are applicable to the policy.

(b) A life insurance policy that provides for an adjustable interest rate under Section 1110.004(b)(2) must state the frequency at which the rate is to be determined.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1110.007. NOTICE TO POLICYHOLDER. (a) In this section, "policyholder" includes the owner of a life insurance policy or the person designated to pay premiums as shown on the records of the life insurer.

(b) For a cash loan on a life insurance policy, the life insurer shall notify the policyholder of the initial interest rate on the loan at the time the insurer makes the loan.

(c) For a premium loan on a life insurance policy, the life insurer shall notify the policyholder of the initial interest rate on the loan as soon as reasonably practical after making the loan. Except as provided by Subsection (d), subsequent notice is not required to be given when the insurer makes an additional premium loan on the policy.

(d) At least 30 days before an increase in the interest rate on a policy loan, the life insurer shall send a notice of the rate increase to the policyholder.

(e) The life insurer shall include in a notice required by this section the substance of the provisions of Section 1110.004(b) applicable to the policy. For a policy loan with an adjustable interest rate, the notice must state the frequency at which the rate is to be determined.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1110.008. LOAN VALUE OF POLICY; TERMINATION OF POLICY BASED ON CHANGE IN INTEREST RATE. (a) The loan value of a life insurance policy shall be determined in accordance with Section 1101.009.

(b) A life insurance policy may not be terminated in a policy year solely as the result of a change in the policy loan interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which coverage would otherwise have terminated if there had been no change in the interest rate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1111. ACCELERATED TERM LIFE INSURANCE BENEFITS

SUBCHAPTER B. ACCELERATED TERM LIFE INSURANCE BENEFITS

Sec. 1111.051. DEFINITIONS. In this subchapter:

(1) "Accelerated benefit" means a benefit paid to an insured instead of a portion of a death benefit.

(2) "Death benefit" means a benefit payable to a beneficiary on the death of an insured.

(3) "Long-term care illness" means an illness or physical condition that results in the inability to perform the activities of daily life or the substantial and material duties of any occupation.

(4) "Terminal illness" means an illness or physical condition, including a physical injury, that can reasonably be expected to result in death within not more than two years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1111.052. AUTHORITY TO PAY ACCELERATED TERM LIFE BENEFITS. An insurer may pay an accelerated benefit under an individual or group term life insurance policy or certificate if:

(1) the insurer has received a written medical opinion, satisfactory to the insurer, that the insured has:

(A) a terminal illness;

(B) a long-term care illness; or

(C) an illness or physical condition that is likely to cause permanent disability or premature death, including:

(i) acquired immune deficiency syndrome (AIDS);

(ii) a malignant tumor;

(iii) a condition that requires an organ transplant; or

(iv) a coronary artery disease that results in

acute infarction or requires surgery; and

(2) the amount of the accelerated benefit is deducted from:

(A) the amount of the death benefit payable under the policy or certificate; and

(B) any amount the insured would otherwise be entitled to convert to an individual contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.302, eff. Sept. 1, 2003.

Sec. 1111.053. RULES. The commissioner may adopt rules to implement this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1111A. LIFE SETTLEMENT CONTRACTS

Sec. 1111A.001. SHORT TITLE. This Act may be cited as the Life Settlements Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.002. DEFINITIONS. In this chapter:

(1) "Advertisement" means a written, electronic, or printed communication or a communication by means of a recorded telephone message or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy under a life settlement contract.

(2) "Broker" means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate a life settlement contract between an owner and a provider or estimates life expectancies for a life settlement

contract. A broker who offers or attempts to negotiate a life settlement contract represents only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. A broker does not include an attorney, certified public accountant, or financial planner retained in the type of practice customarily performed in a professional capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

(3) "Business of life settlements" means an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking, of life settlement contracts.

(4) "Chronically ill" means:

(A) being unable to perform at least two activities of daily living such as eating, toileting, transferring, bathing, dressing, or continence;

(B) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(C) having a level of disability similar to that described in Paragraph (A) as determined under rules adopted by the commissioner after consideration of any applicable regulation, guideline, or determination of the United States Secretary of Health and Human Services.

(5) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of a policy, and who has an agreement in writing with a provider to finance the acquisition of a life settlement contract. The term does not include a non-accredited investor or purchaser.

(6) "Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity including secured or unsecured financing, a securitization transaction, or a securities offering that is either registered or exempt from registration under federal and state securities law.

(7) "Fraudulent life settlement act" includes:

(A) an act or omission committed by a person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits an employee or an agent to engage in, acts including:

(i) presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance agent, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(a) an application for the issuance of a life settlement contract or an insurance policy;

(b) the underwriting of a life settlement contract or an insurance policy;

(c) a claim for payment or benefit pursuant to a life settlement contract or an insurance policy;

(d) premium paid on an insurance policy;

(e) payment for and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or an insurance policy;

(f) the reinstatement or conversion of an insurance policy;

(g) in the solicitation, offer to enter into, or effectuation of a life settlement contract, or an insurance policy;

(h) the issuance of written evidence of life settlement contracts or insurance; or

(i) an application for or the existence of or any payment related to a loan secured directly or indirectly by an interest in a life insurance policy;

(ii) failing to disclose to the insurer, if the insurer has requested the disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy; or

(iii) employing a device, scheme, or artifice to defraud in the business of life settlements; and

(B) acts or omissions in the furtherance of a fraud or to prevent the detection of a fraud, or acts or omissions that permit

an employee or an agent to:

(i) remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a license holder or another person engaged in the business of life settlements;

(ii) misrepresent or conceal the financial condition of a license holder, financing entity, insurer, or other person;

(iii) transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;

(iv) file with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or concealing information about a material fact;

(v) engage in embezzlement, theft, misappropriation, or conversion of monies, funds, premiums, credits, or other property of a provider, insurer, insured, owner, insurance policy owner, or any other person engaged in the business of life settlements or insurance;

(vi) knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing that fact, for the purpose of misleading another, or providing information concerning any fact material to the policy, if the owner or the owner's agent intended to defraud the policy's issuer;

(vii) attempt to commit, assist, aid or abet in the commission of, or engage in conspiracy to commit the acts or omissions specified in this paragraph; or

(viii) misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.

(8) "Insured" means a person covered under the policy being considered for sale in a life settlement contract.

(9) "Life expectancy" means the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy

company or provider considering medical records and appropriate experiential data.

(10) "Life insurance agent" means a person licensed in this state as a resident or nonresident insurance agent who has received qualification or authority to write life insurance coverage under this code.

(11) "Life settlement contract" means a written agreement entered into between a provider and an owner establishing the terms under which compensation or anything of value will be paid and is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or a portion of an insurance policy or certificate of insurance for compensation; provided, however, that the minimum value for a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. The term also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns the policy if the trust or other entity was formed or used for the principal purpose of acquiring one or more life insurance contracts that insure the life of an individual residing in this state. The term also includes:

(A) a written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy; and

(B) a premium finance loan made for a policy on or before the date of issuance of the policy if:

(i) the loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;

(ii) the owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or

(iii) the owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on a date following the issuance of the policy.

(11-A) "Life settlement contract" does not include:

(A) a policy loan by a life insurance company under the terms of a life insurance policy or accelerated death provision contained in the life insurance policy, whether issued with the

original policy or as a rider;

(B) a premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither default on the loan nor the transfer of the policy in connection with the default is under an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

(C) a collateral assignment of a life insurance policy by an owner;

(D) a loan made by a lender that does not violate Chapter 651, provided that the loan is not described in Subdivision (11) and is not otherwise within the definition of life settlement contract;

(E) an agreement with respect to which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of the parties;

(F) a designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(G) a bona fide business succession planning arrangement:

(i) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(ii) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(H) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(I) any other contract, transaction, or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by this

chapter.

(12) "Net death benefit" means the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

(13) "Owner" means the owner of a life insurance policy or a certificate holder under a group policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. In this chapter, the term "owner" is not limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal or chronic illness or condition except as specifically provided. The term does not include:

(A) a provider or other license holder under this chapter;

(B) a qualified institutional buyer as defined by 17 C.F.R. Section 230.144A, as amended;

(C) a financing entity;

(D) a special purpose entity; or

(E) a related provider trust.

(14) "Patient identifying information" means an insured's address, telephone number, facsimile number, e-mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

(15) "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(16) "Premium finance loan" is a loan made primarily for the purposes of making premium payments on a life insurance policy that is secured by an interest in the life insurance policy.

(17) "Person" means an individual or legal entity, including a partnership, limited liability company, association, trust, or corporation.

(18) "Provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner. The term does not include:

(A) a bank, savings bank, savings and loan association, or credit union;

(B) a licensed lending institution or creditor or

secured party pursuant to a premium finance loan agreement that takes an assignment of a life insurance policy or certificate issued pursuant to a group life insurance policy as collateral for a loan;

(C) the insurer of a life insurance policy or rider to the extent of providing accelerated death benefits or riders under Subchapter B, Chapter 1111, or cash surrender value;

(D) an individual who enters into or effectuates not more than one agreement in a calendar year for the transfer of a life insurance policy or certificate issued pursuant to a group life insurance policy, for compensation or anything of value less than the expected death benefit payable under the policy;

(E) a purchaser;

(F) any authorized or eligible insurer that provides stop loss coverage to a provider, purchaser, financing entity, special purpose entity, or related provider trust;

(G) a financing entity;

(H) a special purpose entity;

(I) a related provider trust;

(J) a broker; or

(K) an accredited investor or qualified institutional buyer as those terms are defined by 17 C.F.R. Sections 230.501 and 230.144A, respectively, as amended, who purchases a life settlement policy from a provider.

(19) "Purchased policy" means a policy or group certificate that has been acquired by a provider pursuant to a life settlement contract.

(20) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust that is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy that has been the subject of a life settlement contract.

(21) "Related provider trust" means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make

all records and files relating to life settlement transactions available to the department as if those records and files were maintained directly by the licensed provider.

(22) "Settled policy" means a life insurance policy or certificate that has been acquired by a provider pursuant to a life settlement contract.

(23) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets:

(A) for a financing entity or provider; or

(B) in connection with a transaction in which:

(i) the securities in the special purpose entity are acquired by the owner or by a qualified institutional buyer as defined by 17 C.F.R. Section 230.144A, as amended; or

(ii) the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(24) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death not later than 24 months after the date of diagnosis.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.003. LICENSING REQUIREMENTS; EXEMPTION. (a) A person, wherever located, may not act as a provider or broker with an owner who is a resident of this state, unless the person holds a license from the department.

(b) An application for a provider or broker license must be made to the department by the applicant on a form prescribed by the commissioner. The application must be accompanied by a fee in an amount established by the commissioner by rule. The license and renewal fees for a provider license must be reasonable and the license and renewal fees for a broker license may not exceed those established for an insurance agent, as otherwise provided by this chapter.

(c) A person who has been licensed as a life insurance agent in this state or the person's home state for at least one year and is

licensed as a nonresident agent in this state meets the licensing requirements of this section and may operate as a broker.

(d) Not later than the 30th day after the first date of operating as a broker, a life insurance agent shall notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and shall pay any applicable fee to be determined by the commissioner by rule. Notification must include an acknowledgement by the life insurance agent that the agent will operate as a broker in accordance with this chapter.

(e) An insurer that issued a policy that is the subject of a life settlement contract is not responsible for any act or omission of a broker or provider or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.

(f) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner and whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts for the owner without having to obtain a license as a broker.

(g) A license expires on the second anniversary of the date of issuance. A license holder may renew the license on payment of a renewal fee. As specified by Subsection (b), the renewal fee for a provider license may not exceed a reasonable fee.

(h) An applicant shall provide the information that the commissioner requires on forms adopted by the commissioner. The commissioner may, at any time, require an applicant to fully disclose the identity of its stockholders, except stockholders owning fewer than 10 percent of the shares of an applicant whose shares are publicly traded, partners, officers and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue a license in the name of any person if the commissioner is not satisfied that an officer, an employee, a stockholder, or a partner of the applicant who may materially influence the applicant's conduct meets the standards of Sections 1111A.001 to 1111A.018.

(i) A license issued to a partnership, corporation, or other entity authorizes each member, officer, and designated employee named

in the application and any supplement to the application to act as a license holder under the license.

(j) After the filing of an application and the payment of the license fee, the commissioner shall investigate each applicant and may issue a license if the commissioner finds that the applicant:

(1) if a provider, has provided a detailed plan of operation;

(2) is competent and trustworthy and intends to transact business in good faith;

(3) has a good business reputation and has had experience, training, or education to qualify in the business for which the license is applied;

(4) if the applicant is a legal entity, is formed or organized under the laws of this state or is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(5) has provided to the commissioner an antifraud plan that meets the requirements of Section 1111A.022 and includes:

(A) a description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) a description of the procedures for reporting fraudulent insurance acts to the commissioner;

(C) a description of the plan for antifraud education and training of its underwriters and other personnel; and

(D) a written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and the investigation of unresolved material inconsistencies between medical records and insurance applications.

(k) The commissioner may not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the department or unless the applicant has filed with the department the applicant's written irrevocable consent that any action against the applicant may be commenced by service of process on the commissioner.

(l) A license holder shall file with the department not later than March 1 of each year an annual statement containing the information as the commissioner by rule prescribes.

(m) A provider may not allow any person to perform the functions of a broker unless the person holds a current, valid license as a broker, and as provided in this section.

(n) A broker may not allow any person to perform the functions of a provider unless the person holds a current, valid license as a provider, and as provided in this section.

(o) A provider or broker shall provide to the commissioner new or revised information about officers, stockholders described by Subsection (h), partners, directors, members, or designated employees within 30 days of the change.

(p) An individual licensed as a broker shall complete on a biennial basis 15 hours of training related to life settlements and life settlement transactions, as required by the commissioner. A life insurance agent who is operating as a broker under this section is not subject to the requirements of this subsection.

(q) The business of life settlements constitutes the business of insurance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.004. LICENSE SUSPENSION, REVOCATION, OR REFUSAL TO RENEW. (a) The commissioner may suspend, revoke, or refuse to renew the license of a license holder if the commissioner finds that:

(1) there was a material misrepresentation in the application for the license;

(2) the license holder or an officer, partner, member, or director of the license holder has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a license holder;

(3) the license holder is a provider and demonstrates a pattern of unreasonably withholding payments to policy owners;

(4) the license holder no longer meets the requirements for initial licensure;

(5) the license holder or any officer, partner, member, or director of the license holder has been convicted of a felony, or of any misdemeanor with respect to which criminal fraud is an element, or has pleaded guilty or nolo contendere with respect to a felony or

a misdemeanor with respect to which criminal fraud or moral turpitude is an element, regardless of whether a judgment of conviction has been entered by the court;

(6) the license holder is a provider and has entered into a life settlement contract using a form that has not been approved under this chapter;

(7) the license holder is a provider and has failed to honor contractual obligations in a life settlement contract;

(8) the license holder is a provider and has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in 17 C.F.R. Section 230.144A, as amended, a financing entity, a special purpose entity, or a related provider trust; or

(9) the license holder or any officer, partner, member, or key management personnel of the license holder has violated this chapter.

(b) The commissioner may deny a license application or suspend, revoke, or refuse to renew the license of a license holder in accordance with Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.005. REQUIREMENTS FOR CONTRACT FORMS, DISCLOSURE FORMS, AND ADVERTISEMENTS. (a) A person may not use any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions for life insurance forms, policies, and contracts.

(b) An insurer may not, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts.

(c) A person may not use a life settlement contract form or provide to an owner a disclosure statement form unless the form is

first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or contract provisions fail to meet the requirements of Sections 1111A.011, 1111A.012, 1111A.014, and 1111A.023(b), or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner.

(d) At the commissioner's discretion, the commissioner may require the submission of advertisements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.006. REPORTING REQUIREMENTS AND PRIVACY. (a) For a policy settled not later than the fifth anniversary of the date of policy issuance, each provider shall file with the commissioner not later than March 1 of each year an annual statement containing the information that the commissioner prescribes by rule. In addition to any other requirements, the annual statement must specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement must also include the names of each insurance company whose policies have been settled and the brokers that have settled the policies.

(b) The information required under Subsection (a) is limited to only those transactions in which the insured is a resident of this state and may not include individual transaction data regarding the business of life settlements or information if there is a reasonable basis to find that the information could be used to identify the owner or the insured.

(c) A provider that wilfully fails to file an annual statement as required in this section, or wilfully fails to reply not later than the 30th day after the date the provider receives a written inquiry from the department about the filing of the annual statement, shall, in addition to other penalties provided by this chapter, after notice and opportunity for hearing be subject to a penalty of up to $250 for each day of delay, not to exceed $25,000 in the aggregate, for the failure to file or respond.

(d) Except as otherwise allowed or required by law, a provider, broker, insurance company, insurance agent, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, may not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure is:

(1) necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure;

(2) necessary to effectuate the sale of a life settlement contract, or interests in the contract, as an investment, provided the sale is conducted in accordance with applicable state and federal securities law and provided further that the owner and the insured have both provided prior written consent to the disclosure;

(3) provided in response to an investigation or examination by the commissioner or another governmental officer or agency or under Section 1111A.018;

(4) a term or condition of the transfer of a policy by one provider to another licensed provider, in which case the receiving provider shall comply with the confidentiality requirements of this subsection;

(5) necessary to allow the provider or broker or the provider's or broker's authorized representative to make contact for the purpose of determining health status provided that in this subdivision, authorized representative does not include a person who has or may have a financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity and that the provider or broker requires the authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or

(6) required to purchase stop loss coverage.

(e) Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract is subject to the provisions applicable to financial institutions under the federal Gramm-Leach-Bliley Act (Pub. L. No. 106-102), and any other state and federal laws relating to confidentiality of nonpublic personal information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3,

eff. September 1, 2011.

Sec. 1111A.007. EXAMINATION. Subchapter B, Chapter 401, applies to a person engaged in the business of life settlements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.008. IMMUNITY FROM LIABILITY. (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for a statement made or conduct performed in good faith while carrying out this chapter.

(b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subsection does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.009. INVESTIGATIVE AUTHORITY OF THE COMMISSIONER. The commissioner may investigate a suspected fraudulent life settlement act and a person engaged in the business of life settlements.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.010. COST OF EXAMINATIONS. The reasonable and necessary cost of an examination under this chapter is to be assessed against the person being examined in accordance with Section 751.208.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.011. ADVERTISING. (a) A broker or provider licensed pursuant to this chapter may conduct or participate in an advertisement in this state. The advertisement must comply with all advertising and marketing laws under Chapter 541 and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter.

(b) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.

(c) A person may not:

(1) market, advertise, solicit, or otherwise promote the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or

(2) use the words "free," "no cost," or words of similar import in the marketing, advertising, or soliciting of, or otherwise promoting, the purchase of a policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.012. DISCLOSURES TO OWNERS. (a) The broker, or the provider if no broker is involved in the application, shall provide in writing, in a separate document that is signed by the owner, the following information to the owner not later than the date of application for a life settlement contract:

(1) the fact that possible alternatives to life settlement contracts exist, including accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

(3) the fact that the proceeds from a life settlement contract could be subject to the claims of creditors;

(4) the fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements

and that advice should be obtained from the appropriate agency;

(5) the fact that the owner has a right to terminate a life settlement contract within 15 days of the date the contract is executed by all parties and the owner has received the disclosures described in this section, that rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider during the rescission period, and that if the insured dies during the rescission period, the contract is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

(6) the fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;

(7) the fact that entering into a life settlement contract may cause the owner to forfeit other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate of a group policy, and that assistance should be sought from a professional financial advisor;

(8) the amount and method of calculating the compensation, including anything of value, paid or given, or to be paid or given, to the broker, or any other person acting for the owner in connection with the transaction;

(9) the date by which the funds will be available to the owner and the identity of the transmitter of the funds;

(10) the fact that the commissioner requires delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;

(11) the following language: "All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members or a spouse or a significant other, may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be

provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.";

(12) the fact that the commissioner requires providers and brokers to print separate signed fraud warnings on the applications and on the life settlement contracts as follows: "Any person who knowingly presents false information in an application for insurance or a life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.";

(13) the fact that the insured may be contacted by either the provider or broker or an authorized representative of the provider or broker for the purpose of determining the insured's health status or to verify the insured's address and that this contact is limited to once every three months if the insured has a life expectancy of more than one year, and not more than once per month if the insured has a life expectancy of one year or less;

(14) the affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(15) that a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

(16) the name, address, and telephone number of the provider;

(17) the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

(18) the fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

(b) The written disclosures described by Subsection (a) must be conspicuously displayed in a life settlement contract furnished to the owner by a provider, including any affiliations or contractual arrangements between the provider and the broker.

(c) A broker shall provide the owner and the provider with at least the following disclosures not later than the date on which the life settlement contract is signed by all parties and which must be conspicuously displayed in the life settlement contract or in a

separate document signed by the owner:

(1) the name, business address, and telephone number of the broker;

(2) a full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

(3) a written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract;

(4) the name of each broker who receives compensation and the amount of compensation, including anything of value, paid or given to the broker in connection with the life settlement contract; and

(5) a complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner.

(d) For the purpose of this section, "gross offer or bid" means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees.

(e) The failure to provide the disclosures or rights described in this section is an unfair method of competition or an unfair or deceptive act or practice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.013. DISCLOSURE TO INSURER. (a) Without limiting the ability of an insurer to assess the insurability of a policy applicant and to determine whether to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, an insurer may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(b) If, as described in Sections 1111A.002(11) and (11-A), the loan provides funds that can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, and notwithstanding

any other law, the application must be rejected as a violation of Section 1111A.017.

(c) If the financing does not violate Section 1111A.017, the insurance carrier:

(1) may make disclosures, not later than the date of the delivery of the policy, to the applicant and the insured, either on the application or on an amendment to the application that include the following or substantially similar statements:

"If you have entered into a loan arrangement in which the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

(A) a change of ownership could lead to a stranger owning an interest in the insured's life;

(B) a change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;

(C) should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, or other factors may reduce the ability to obtain coverage or may result in significantly higher premiums; and

(D) you should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.";

(2) may require certifications, such as the following, from the applicant or the insured:

(A) "I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy";

(B) "My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy"; and

(C) "The borrower has an insurable interest in the insured."

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3,

eff. September 1, 2011.

Sec. 1111A.014. GENERAL RULES. (a) Before entering into a life settlement contract with an owner of a policy with respect to which the insured is terminally or chronically ill, the provider must obtain:

(1) if the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a settlement contract; and

(2) a document in which the insured consents to the release of medical records to a provider, settlement broker, or insurance agent and, if the policy was issued less than two years after the date of application for a settlement contract, to the insurance company that issued the policy.

(b) An insurer shall respond to a request for verification of coverage submitted by a provider, settlement broker, or life insurance agent not later than the 30th calendar day after the date the request is received. The request for verification of coverage must be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects the insurer is unable to respond. In the response, the insurer shall indicate whether at the time of the response, based on the medical evidence and documents provided, the insurer intends to pursue an investigation about the validity of the insurance contract.

(c) On or before the date of execution of the life settlement contract, the provider shall obtain a witnessed document in which the owner consents to the settlement contract, represents that the owner has a full and complete understanding of the settlement contract and of the benefits of the policy, acknowledges that the owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

(d) The insurer may not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in this state or with a resident of this state.

(e) If a settlement broker or life insurance agent performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.

(f) If a broker performs the verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of Section 1111A.012.

(g) Not later than the 20th day after the date that an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by Section 1111A.013(c).

(h) Medical information solicited or obtained by a license holder is subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this chapter.

(i) A life settlement contract entered into in this state must provide that the owner may rescind the contract on or before 15 days after the date the contract is executed by all parties to the contract. Rescission, if exercised by the owner, is effective only if notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(j) Not later than the third business day after the date the provider receives from the owner the documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement into an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer to the owner the proceeds due to the owner not later than the third business day after the date the trustee or escrow officer receives from the insurer acknowledgment of the transfer of the insurance policy.

(k) Failure to tender the life settlement contract proceeds to the owner on or before the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A

failure to give written notice of the right of rescission under this subsection tolls the right of rescission for 30 days after the date the written notice of the right of rescission has been given.

(l) A fee paid by a provider, an owner, or other person to a broker in exchange for services provided to the owner pertaining to a life settlement contract must be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section prohibits a broker from voluntarily reducing the broker's fee to less than a percentage of the offer obtained.

(m) A broker shall disclose to the owner anything of value paid or given to a broker that relates to a life settlement contract.

(n) A person, at any time prior to or at the time of the application for, or issuance of, a policy, or during a two-year period beginning on the date of issuance of the policy, may not enter into a life settlement contract regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition does not apply if:

(1) the owner certifies to the provider that the policy was issued on the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months; or

(2) the owner submits independent evidence to the provider that one or more of the following conditions have been met during the two-year period described by this subsection:

(A) the owner or insured is terminally or chronically ill;

(B) the owner or insured disposes of the owner's or insured's ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued;

(C) the owner's spouse dies;

(D) the owner divorces the owner's spouse;

(E) the owner retires from full-time employment;

(F) the owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

(G) a final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of

the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets.

(o) For the purposes of Subsection (n)(1), time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

(p) Copies of the independent evidence described by Subsection (n)(2) must be submitted to the insurer at the time the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. This section does not prohibit an insurer from exercising its right to contest the validity of a policy.

(q) If the provider submits to the insurer a copy of independent evidence provided for Subsection (n)(2)(A) at the time the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.015. AUTHORITY TO ADOPT RULES. (a) The commissioner may adopt rules implementing this chapter and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives.

(b) The commissioner may not adopt a rule establishing a price or fee for the sale or purchase of a life settlement contract. This subsection does not prohibit the commissioner from adopting a rule relating to an unjust price or fee for the sale or purchase of a life settlement contract.

(c) The commissioner may not adopt a rule that regulates the actions of an investor providing money to a life or viatical settlement company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.016. CONFLICT OF LAWS. (a) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract is governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed on in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing on a state of residence for jurisdictional purposes.

(b) A provider licensed in this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted rules governing life settlement contracts is governed in the effectuation of that life settlement contract by the statutes and rules of the owner's state of residence. If the state in which the owner is a resident has not enacted statutes or adopted rules governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction on which the owner is entering. For transactions in those states, however, the provider shall maintain all records required by this chapter if the transactions were executed in this state. The forms used in those states need not be approved by the department.

(c) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.017. PROHIBITED PRACTICES. (a) A person may not:

(1) enter into a life settlement contract if the person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive, or misleading application for the policy;

(2) engage in a transaction, practice, or course of business if the person knows or reasonably should have known that the intent of engaging in the transaction, practice, or course of business is to avoid the notice requirements of this chapter;

(3) engage in a fraudulent act or practice in connection with a transaction relating to any settlement involving an owner who is a resident of this state;

(4) issue, solicit, market, or otherwise promote the purchase of an insurance policy for the purpose of, or with an emphasis on, settling the policy;

(5) if providing premium financing, receive any proceeds, fee, or other consideration from the policy or owner in addition to the amounts required to pay principal, interest, and any reasonable costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except in event of a default, unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

(6) with respect to any settlement contract or insurance policy and to a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with the broker unless the relationship is fully disclosed to the owner;

(7) with respect to any life settlement contract or insurance policy and a provider, knowingly enter into a life settlement contract with an owner if, in connection with the life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider or the financing entity or related provider trust that is involved in such settlement contract, unless the relationship is fully disclosed to the owner;

(8) with respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner, provided that in no event may any marketing materials expressly reference that the insurance is free for any period of time; or

(9) with respect to any life insurance agent, insurance company, broker, or provider, make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

(b) A violation of this section is a fraudulent life settlement act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.018. FRAUD PREVENTION AND CONTROL. (a) A person may not commit a fraudulent life settlement act.

(b) A person may not interfere with the enforcement of this chapter or an investigation of a suspected or actual violation of this chapter.

(c) A person in the business of life settlements may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(d) A life settlement contract and an application for a life settlement contract, regardless of the form of transmission, must contain the following, or a substantially similar, statement: "Any person who knowingly presents false information in an application for insurance or a life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(e) The failure to include a statement as required in Subsection (d) is not a defense in any prosecution for a fraudulent life settlement act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.019. MANDATORY REPORTING OF FRAUDULENT LIFE SETTLEMENT ACTS. A person engaged in the business of life settlements has a duty under Section 701.051 to report a fraudulent life settlement act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.020. CONFIDENTIALITY. (a) The documents and evidence obtained by the commissioner in an investigation of a

suspected or an actual fraudulent life settlement act are privileged and confidential, are not a public record, and are not subject to discovery or subpoena in a civil or criminal action.

(b) Subsection (a) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of a suspected or an actual fraudulent life settlement act:

(1) in an administrative or judicial proceeding to enforce a provision of this code or another insurance law of this state;

(2) to a federal, state, or local law enforcement or regulatory agency, to an organization established for the purpose of detecting and preventing a fraudulent life settlement act, or to the National Association of Insurance Commissioners; or

(3) at the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(c) Release of documents and evidence under Subsection (b) does not abrogate or modify the privilege granted in Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.021. OTHER LAW ENFORCEMENT OR REGULATORY AUTHORITY. This chapter does not:

(1) preempt the authority or relieve the duty of another law enforcement or regulatory agency to investigate, examine, and prosecute a suspected violation of law;

(2) preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under the law;

(3) prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the department; or

(4) limit the powers granted by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine a possible violation of law and to take appropriate action against wrongdoers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.022. LIFE SETTLEMENT ANTIFRAUD INITIATIVES. (a) A provider or broker shall implement antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a license holder may request and the commissioner may grant, a modification of the following required initiatives as necessary to ensure an effective antifraud program. A modification granted under this section may be more or less restrictive than the required initiatives so long as the modification may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives must include:

(1) fraud investigators, who may be provider or broker employees or independent contractors; and

(2) an antifraud plan, which must be submitted to the commissioner and must include:

(A) a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) a description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(C) a description of the plan for antifraud education and training of underwriters and other personnel; and

(D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(b) An antifraud plan submitted to the commissioner is privileged and confidential, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery or subpoena in a civil action.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.023. INJUNCTION; CIVIL REMEDIES; CEASE AND DESIST ORDERS. (a) In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or

any rule implementing this chapter, the commissioner may seek an injunction in a court in the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.

(b) The commissioner may issue a cease and desist order against a person who violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner, in accordance with Chapter 82.

(c) If the commissioner finds that an action in violation of this chapter presents an immediate danger to the public and requires an immediate final order, the commissioner may issue an emergency cease and desist order under Chapter 83.

(d) The provisions of this chapter may not be waived by agreement. No choice of law provision may prevent the application of this chapter to any settlement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.024. PENALTIES. (a) It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements to commit a fraudulent life settlement act.

(b) A person who knowingly, recklessly, or intentionally commits a fraudulent life settlement act commits a criminal offense and is subject to penalties under Chapter 35, Penal Code.

(c) Subtitle B, Title 2, applies to a violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.025. APPLICABILITY OF OTHER INSURANCE LAWS. The following laws apply to a person engaged in the business of life settlements:

(1) Chapters 82, 83, 84, 101, 481, and 701;

(2) Sections 31.002, 32.021, 32.023, 32.041, 38.001, 81.004, 86.001, 86.051, 86.052, 201.004, 401.051, 401.054,

401.151(a), 521.003, 521.004, 543.001(c), 801.056, and 862.052;

(3) Subchapter A, Chapter 32;

(4) Subchapter C, Chapter 36;

(5) Subchapter B, Chapter 404; and

(6) Subchapter B, Chapter 491.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

Sec. 1111A.026. APPLICABILITY OF CERTAIN PROVISIONS TO LIFE EXPECTANCY ESTIMATORS. (a) The following provisions do not apply to a broker who acts solely as a life expectancy estimator:

(1) Section 1111A.003(p);

(2) Section 1111A.012; and

(3) Sections 1111A.014(l) and (m).

(b) The commissioner may exempt a broker who acts only as a life expectancy estimator from other provisions of this chapter if the commissioner finds that the application of those provisions to the broker is not necessary for the public welfare.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 3, eff. September 1, 2011.

CHAPTER 1112. CERTAIN GUARANTEES IN LIFE INSURANCE POLICIES

Sec. 1112.001. CERTAIN GUARANTEES NOT PROHIBITED. Section 841.253 does not prohibit the issuance of a life insurance policy that guarantees, by coupons or otherwise, definite payments or reductions in premiums.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1F.001, eff. April 1, 2009.

Sec. 1112.002. CERTAIN GUARANTEES CONSTITUTE DEFINITE CONTRACT BENEFIT; VALUATION OF BENEFIT. (a) Except as provided by Subsection (e), a guarantee described by Section 1112.001 that is in a policy or coupon issued after September 5, 1955, shall be treated as a definite contract benefit and valued according to this section and the reserve requirements of Chapter 425.

(b) Except as provided by Subsection (c), for a policy or coupon issued before the date determined under Section 1105.002(a) or (b), as applicable to the company, a contract benefit described by Subsection (a) shall be valued using the reserve valuation net premium for the benefits that is a uniform percentage of the gross premiums.

(c) A policy described by Subsection (b) that contains a contract benefit described by Subsection (a) may be valued on a basis that provides for not more than one year preliminary term insurance.

(d) For a policy or coupon issued on or after the date determined under Section 1105.002(a) or (b), as applicable to the company, a contract benefit described by Subsection (a) shall be valued using the commissioners reserve valuation method described by Section 425.064.

(e) A provision of this section relating to reserves does not apply to a policy issued before September 7, 1955.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1F.001, eff. April 1, 2009.

CHAPTER 1113. MANAGEMENT, CONTROL, AND DISPOSITION OF CERTAIN LIFE INSURANCE AND ANNUITY CONTRACTS

Sec. 1113.001. LIFE INSURANCE AND ANNUITY CONTRACTS OF SPOUSE. A spouse, without the joinder or consent of the other spouse, has management, control, and disposition of any contract of life insurance or annuity issued in the spouse's name or to the extent provided by the contract or any assignment of the contract, regardless of whether the contract was issued before, on, or after January 1, 1968.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1F.001, eff. April 1, 2009.

CHAPTER 1114. REPLACEMENT OF CERTAIN LIFE INSURANCE POLICIES AND ANNUITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1114.001. PURPOSE. The purpose of this chapter is to:

(1) regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities;

(2) protect the interests of purchasers of life insurance or annuities by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions;

(3) ensure that purchasers receive information with which a decision in the purchaser's best interest may be made;

(4) reduce the opportunity for misrepresentation and incomplete disclosure; and

(5) establish penalties for failure to comply with the requirements adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.002. GENERAL DEFINITIONS. In this chapter:

(1) "Agent" means an individual who holds a license under Chapter 4054 and who sells, solicits, or negotiates life insurance or annuities in this state.

(2) "Direct-response solicitation" means a solicitation made:

(A) by a sponsoring or endorsing entity or individually; and

(B) solely through mails, telephone, the Internet, or other mass communication media.

(3) "Existing insurer" means the insurer, the policy or contract of which is or will be changed or affected by a replacement.

(4) "Existing policy or contract" means an individual life insurance policy or annuity contract that is in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(5) "Financed purchase" means the purchase of a new policy that involves the actual or intended use of funds to pay all or part of any premium due on the new policy obtained by:

(A) the withdrawal or surrender of an existing policy; or

(B) borrowing from values of an existing policy.

(6) "Illustration" means a presentation or depiction that includes nonguaranteed elements of a life insurance policy over a period of years.

(7) "Registered contract" means a variable annuity contract

or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(8) "Replacement" means a transaction under which a new policy or contract is to be purchased, and for which it is known or should be known to the proposing agent or proposing insurer that, by reason of the transaction, an existing policy or contract has been or is to be:

(A) lapsed, forfeited, surrendered or partially surrendered, assigned to a replacing insurer, or otherwise terminated;

(B) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) amended so as to effect a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) reissued with any reduction in cash value; or

(E) used in a financed purchase.

(9) "Replacing insurer" means the insurer that issues or proposes to issue a new policy or contract that:

(A) replaces an existing policy or contract; or

(B) is a financed purchase.

(10) "Sales material" means a sales illustration and any other written, printed, or electronically presented information:

(A) created or completed or provided by the insurer or agent; and

(B) used in the presentation to the policy or contract owner relating to the policy or contract purchased.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.003. DEFINITION OF POLICY SUMMARY. (a) For purposes of this chapter, "policy summary" has the meaning assigned by this section.

(b) For a policy or contract other than a universal life insurance policy, "policy summary" means a written statement regarding the policy or contract that at minimum contains, to the

extent applicable, the following information:

(1) the current death benefit;

(2) the annual contract premium;

(3) the current cash surrender value;

(4) the current dividend;

(5) the application of the current dividend; and

(6) the amount of any outstanding loan.

(c) For a universal life insurance policy, "policy summary" means a written statement that contains, at minimum, the following information:

(1) the beginning and ending date of the current reporting period;

(2) the policy value at the end of the previous reporting period and at the end of the current reporting period;

(3) the total amounts that have been credited or debited to the policy value during the current reporting period, identifying each by type, including interest, mortality, expense, and riders;

(4) the current death benefit at the end of the current reporting period on each life covered by the policy;

(5) the net cash surrender value of the policy as of the end of the current reporting period; and

(6) the amount of any outstanding loans as of the end of the current reporting period.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.004. APPLICABILITY; EXEMPTIONS. (a) Except as otherwise specifically provided by this chapter, this chapter does not apply to transactions involving:

(1) credit life insurance;

(2) group life insurance or group annuities for which there is no direct solicitation of individuals by an agent;

(3) life insurance and annuities used to fund prepaid funeral benefits contracts, as defined by Chapter 154, Finance Code;

(4) an application to:

(A) exercise a contractual change or a conversion privilege made to the insurer that issued the existing policy or contract;

(B) replace an existing policy or contract by the insurer that issued the existing policy or contract under a program filed with and approved by the commissioner; or

(C) exercise a term conversion privilege among corporate affiliates;

(5) life insurance proposed to replace life insurance under a binding or conditional receipt issued by the same insurer;

(6) a policy or contract used to fund:

(A) an employee pension benefit plan or employee welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(B) a plan described by Section 401(a), 401(k), or 403(b), Internal Revenue Code of 1986, if established or maintained by an employer;

(C) a government or church plan, as defined by Section 414, Internal Revenue Code of 1986, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization described under Section 457, Internal Revenue Code of 1986; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(7) new coverage provided under a life insurance policy or contract if the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(8) an existing life insurance policy that is a nonconvertible term life insurance policy scheduled to expire in five years or less and that cannot be renewed;

(9) immediate annuities purchased with proceeds from an existing contract; or

(10) structured settlements.

(b) Notwithstanding Subsection (a)(6), this chapter applies to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, if:

(1) the insurer has been notified that plan participants may choose from among two or more insurers; and

(2) there is a direct solicitation of an individual employee by an insurance agent for the purchase of a contract or policy.

(c) Group life insurance or group annuity certificates marketed

through direct response solicitation are subject to Section 1114.055.

(d) Notwithstanding Subsection (a)(9), immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this chapter.

(e) For the purpose of Subsections (a), (b), and (c), "direct solicitation" does not include a group meeting held by an insurance agent solely for the purpose of:

(1) educating or enrolling individuals; or

(2) if initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 4, eff. September 1, 2011.

Sec. 1114.005. FINANCED PURCHASE. (a) If a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy that is owned by the same policyholder and is issued by the same insurer not earlier than four months before the effective date of the new policy or 13 months after the effective date of the new policy, it is deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values.

(b) Subsection (a) applies only to regulatory review of an individual transaction.

(c) The prima facie standard under Subsection (a) is not intended to increase or decrease the monitoring obligations contained in Section 1114.052(g).

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.006. CONSUMER NOTICE DOCUMENTS. (a) The commissioner by rule shall adopt or approve model documents to be used for consumer notices under this chapter.

(b) The department may develop model documents under this

section, or the commissioner may approve model documents developed by insurers or published by national organizations recognized by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.007. RULES. The commissioner may adopt reasonable rules in the manner prescribed by Subchapter A, Chapter 36, to accomplish and enforce the purpose of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

Sec. 1114.051. DUTIES OF AGENT; NOTICE. (a) An agent who initiates an application for a life insurance policy or annuity contract shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the agent as to whether the applicant has existing policies or contracts.

(b) If the applicant states that the applicant does not have existing policies or contracts, the agent's duties, after compliance with Subsection (a), with respect to replacement are complete.

(c) If the applicant states that the applicant does have existing policies or contracts, the agent shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements as provided by Subsection (d).

(d) Except as provided by Subsection (e), the notice required by this section must be given in a form adopted or approved by the commissioner. The notice shall be signed by both the applicant and the agent attesting that the notice has been read aloud by the agent or that the applicant did not wish the notice to be read aloud, in which case the agent is not required to read the notice aloud. The notice must be left with the applicant unless it is presented to the applicant by electronic means and signed electronically, in which case the insurer shall mail the applicant a copy of the notice not later than the third business day after the date the application is received by the insurer. The notice must list all life insurance policies or annuities proposed to be replaced, properly identified by

the name of the insurer, the name of the insured or annuitant, and the policy or contract number if available, and include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, must be listed.

(e) Commissioner approval of a notice is not required if a notice adopted or approved by the commissioner is used and amendments to that notice are limited to the omission of references not applicable to the product being sold or replaced.

(f) In connection with a replacement transaction, the agent shall leave with the applicant, at the time an application for a new policy or contract is completed, the original of all sales material or a copy of that material. Electronically presented sales material must be provided to the policy or contract owner in printed form not later than the date that the policy or contract is delivered.

(g) Except as provided by Section 1114.053(g), in connection with a replacement transaction, the agent shall submit to the insurer to which an application for a policy or contract is presented:

(1) a copy of each document required by this section;

(2) a statement identifying any preprinted or electronically presented insurer-approved sales materials used; and

(3) copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.052. DUTIES OF INSURERS THAT USE AGENTS. (a) An insurer that uses an agent shall comply with this section.

(b) Each insurer shall maintain a system of supervision and control to ensure compliance with the requirements of this chapter. Under the system, the insurer must, at minimum:

(1) inform its agents of the requirements of this chapter and incorporate the requirements of this chapter into all relevant agent training manuals prepared by the insurer;

(2) provide each agent a written statement of the insurer's

position with respect to the acceptability of replacements and provide guidance to the agent as to the appropriateness of these transactions;

(3) review the appropriateness of each replacement transaction that the agent does not indicate is in accord with Subdivision (2);

(4) implement procedures to confirm that the requirements of this chapter have been met; and

(5) implement procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer but that have not been reported as such by the applicant or agent.

(c) Compliance with Subsection (b)(5) may include systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring.

(d) Each insurer must have the capacity to monitor each agent's life insurance policy and annuity contract replacements for that insurer. The insurer shall maintain records regarding the monitoring and shall produce and make the records available to the department on request. The capacity to monitor under this subsection must include the ability to produce records for:

(1) each agent's life insurance replacements, including financed purchases, as a percentage of the agent's total annual sales for life insurance;

(2) the number of lapses of policies by the agent as a percentage of the agent's total annual sales for life insurance;

(3) each agent's annuity contract replacements as a percentage of the agent's total annual annuity contract sales;

(4) the number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the insurer's monitoring system as required by Subsection (b)(5); and

(5) replacements, indexed by replacing agent and existing insurer.

(e) Each insurer shall require, with or as a part of each application for life insurance or an annuity, a signed statement by both the applicant and the agent as to whether the applicant has existing policies or contracts.

(f) Each insurer shall require, with each application for life insurance or an annuity that indicates an existing policy or

contract, a completed notice regarding replacements.

(g) If the applicant has existing policies or contracts, each insurer must be able to produce, for at least five years after the date of termination or expiration of the proposed policy or contract, copies of any sales material required by Section 1114.051(g), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the agent's and applicant's signed statements with respect to financing and replacement.

(h) The insurer shall ascertain that the sales material and illustrations required by Section 1114.051(g) meet the requirements of this chapter and are complete and accurate for the proposed policy or contract.

(i) If an application does not meet the requirements of this chapter, the insurer shall notify the agent and applicant and fulfill the outstanding requirements.

(j) The insurer shall maintain records required by this section in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.053. DUTIES OF REPLACING INSURERS THAT USE AGENTS. (a) If a transaction under this chapter involves a replacement, the replacing insurer shall comply with this section.

(b) The replacing insurer shall verify that the required forms are received and are in compliance with this chapter.

(c) The replacing insurer shall:

(1) notify any existing insurer that may be affected by the proposed replacement not later than the fifth business day after:

(A) the date of receipt of a completed application indicating replacement; or

(B) the date that replacement is identified if it is not indicated on the application; and

(2) mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract to the existing insurer not later than the

fifth business day after the date of a request from the existing insurer.

(d) The replacing insurer must be able to produce copies of the notification regarding replacement required by Section 1114.051(d), indexed by agent, until the later of:

(1) the fifth anniversary of the date of the notification; or

(2) the date of the replacing insurer's next regular examination by the insurance regulatory authority of the insurer's state of domicile.

(e) The replacing insurer shall provide to the policy or contract owner notice of the owner's right to return the policy or contract within 30 days of the delivery of the policy or contract and to receive an unconditional full refund of all premiums or considerations paid on the policy or contract, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract. The notice may be combined with other notices required under this chapter in accordance with rules of the commissioner.

(f) In transactions in which the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control, the replacing insurer shall allow credit for the period that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount that the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(g) If an insurer prohibits the use of sales material other than that approved by the insurer, as an alternative to the requirements under Section 1114.051(g), the insurer shall:

(1) require with each application a statement signed by the agent that:

(A) represents that the agent used only insurer-approved sales material; and

(B) states that copies of all sales material were left with the applicant in accordance with Section 1114.051(f);

(2) not later than the 10th day after the date of issuance of the policy or contract:

(A) notify the applicant by sending a letter, or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the agent has represented that copies of all sales material have been left with the applicant in accordance with Section 1114.051(f);

(B) provide the applicant with a toll-free telephone number to contact the insurer's personnel involved in the compliance function if copies of all sales material have not been left with the applicant in accordance with Section 1114.051(f); and

(C) stress the importance of retaining copies of the sales material for future reference; and

(3) be able to produce a copy of the letter or other verification in the policy file until the fifth anniversary of the date of termination or expiration of the policy or contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.054. DUTIES OF EXISTING INSURER. (a) If a transaction involves a replacement, the existing insurer shall comply with this section.

(b) The existing insurer shall retain and be able to produce all replacement notifications received, indexed by the replacing insurer, until the later of:

(1) the fifth anniversary of the date of receipt of the notification; or

(2) the date of conclusion of the next regular examination conducted by the insurance regulatory authority of the existing insurer's state of domicile.

(c) The existing insurer shall send a letter to the policy or contract owner regarding the owner's right to receive information regarding the existing policy or contract values. The letter must include, if available, an in force illustration or, if an in force illustration cannot be produced not later than the fifth business day after the date of receipt of a notice that an existing policy or contract is being replaced, a policy summary. The information must be provided not later than the fifth business day after the date of

receipt of the request from the policy or contract owner.

(d) On receipt of a request to borrow, surrender, or withdraw any policy values, the existing insurer shall send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, nonguaranteed elements, face amount, or surrender value of the policy from which the values are released. The notice must be sent separately from the payment if the payment is sent to any person other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.055. DUTIES OF INSURERS REGARDING DIRECT RESPONSE SOLICITATIONS. (a) In the case of an application initiated as a result of a direct response solicitation, the insurer shall require submission of a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. The statement may be included with, or submitted as part of, each completed application for a policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice, in a form adopted or approved by the commissioner, regarding replacement.

(b) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(1) provide to the applicant or prospective applicant, with the policy or contract, a notice adopted or approved by the commissioner; and

(2) comply with the requirements of:

(A) Section 1114.053(c), if the applicant furnishes the names of the existing insurers; and

(B) Sections 1114.053(d), (e), and (f).

(c) In a situation described by Subsection (b)(1), the insurer may use a notice that deletes references to the agent, including the agent's signature, and references not applicable to the product being

sold or replaced, without having to obtain prior approval of the notice from the commissioner. The insurer's obligation to obtain the applicant's signature is satisfied if the insurer can demonstrate that the insurer has made a diligent effort to secure a signed copy of the notice. The requirement to make a diligent effort is deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.056. REGISTERED CONTRACTS. A registered contract is exempt from the requirements of Sections 1114.053(c) and 1114.054(c) with respect to the provision of illustrations or policy summaries, but must provide instead premium or contract contribution amounts and identification of the appropriate prospectus or offering circular.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF SURRENDER CHARGES. An insurer that offers to waive surrender charges as described by Section 541.058(b)(4) shall provide reasonable notice of that offer to the insurer's prospective or current contract holders. The notice may be provided by any available means, including a disclosure document or by display on a link that is prominently placed on the insurer's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 5, eff. September 1, 2011.

SUBCHAPTER C. ENFORCEMENT

Sec. 1114.101. UNFAIR METHOD OF COMPETITION; SANCTIONS AND PENALTIES. (a) A failure by an insurer or agent to comply with this chapter constitutes a violation of Chapter 541 and is subject to sanctions and penalties as provided by that chapter. For purposes of this section, examples of violations include:

(1) deceptive or misleading information set forth in any sales material;

(2) failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

(3) intentionally recording an answer incorrectly;

(4) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(5) advising a policy or contract owner to contact the insurer directly in such a way as to attempt to obscure the identity of the replacing agent or insurer.

(b) A policy or contract owner has the right to replace an existing life insurance policy or annuity contract after indicating in or as a part of applications for new coverage that replacement is not the intention. However, patterns of that action by policy or contract owners of the same agent shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with the identified transactions, and those patterns of action shall be deemed prima facie evidence of the agent's intent to violate this chapter.

(c) If it is determined that the requirements of this chapter have not been met, the replacing insurer shall provide to the policy owner:

(1) an in force illustration or, if an in force illustration is not available, a policy summary for the replacement policy or an available disclosure document for the replacement contract; and

(2) the appropriate notice regarding replacements.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

Sec. 1114.102. ADDITIONAL SANCTIONS. (a) In addition to sanctions and penalties under Chapter 541 as provided by Section 1114.101, an insurer or agent that violates this chapter is subject to sanctions as provided by Chapter 82, which may include:

(1) the revocation or suspension of the agent's license or the insurer's certificate of authority;

(2) administrative penalties under Chapter 84; and

(3) forfeiture of any commissions or other compensation paid to an agent as a result of the transaction in connection with which the violations occurred.

(b) In addition, if the commissioner has determined that the violations of this chapter were material to the sale, the insurer may be required to:

(1) make restitution in the manner provided by Section 82.053;

(2) restore policy or contract values; and

(3) pay interest at the rate set by Section 84.050 on the amount refunded in cash.

Added by Acts 2007, 80th Leg., R.S., Ch. 904 (H.B. 2762), Sec. 1, eff. September 1, 2007.

CHAPTER 1115. SUITABILITY OF CERTAIN ANNUITY TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1115.001. PURPOSE. The purpose of this chapter is to require an agent to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise those recommendations so that the insurance needs and financial objectives of the consumer as of the time of the transaction are effectively addressed.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 6, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 2, eff. September 1, 2021.

Sec. 1115.002. DEFINITIONS. In this chapter:

(1) "Agent" means an individual who holds a license under Chapter 4054 and who sells, solicits, or negotiates insurance or annuity contracts in this state.

(2) "Annuity" means an annuity that is an insurance product under the laws of this state that is individually solicited, whether

the product is classified as an individual annuity or group annuity.

(2-a) "Cash compensation" means a discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent from an insurer, intermediary, or consumer in connection with the recommendation or sale of an annuity.

(2-b) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including the following:

(A) age;

(B) annual income;

(C) existing assets and financial products, including investment, annuity, and insurance holdings;

(D) financial situation and needs, including debts and other obligations;

(E) financial experience;

(F) financial objectives;

(G) financial resources used to fund the annuity;

(H) financial time horizon;

(I) insurance needs;

(J) intended use of the annuity;

(K) liquid net worth;

(L) liquidity needs;

(M) risk tolerance, including willingness to accept non-guaranteed elements in the annuity; and

(N) tax status.

(2-c) "Continuing education provider" means a person authorized to offer continuing education courses under Chapter 4004.

(3) "Insurer" means a company authorized to engage in the business of life insurance and annuities in this state, and includes a fraternal benefit society operating under Chapter 885.

(3-a) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents.

(3-b) "Material conflict of interest" means a financial interest of an agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash or noncash compensation paid to an agent.

(3-c) "Noncash compensation" means any form of compensation

that is not cash compensation, including health insurance, office rent, office support, and retirement benefits.

(3-d) "Non-guaranteed element" means a premium, credited interest rate, including any bonus, benefit, value, dividend, non-interest based credit, or charge, or an element of a formula used to determine any of those elements, that is determined at the discretion of the insurer and is not guaranteed at issue. The term includes an element that is calculated using an element that is determined at the discretion of the insurer and is not guaranteed at issue.

(4) "Recommendation" means advice provided by an agent, or an insurer if no agent is involved, to an individual consumer that is intended to result or does result in a purchase, exchange, or replacement of an annuity made in accordance with that advice. The term does not include a general communication to the public, any generalized customer service assistance or administrative support, any general educational information or tools, a prospectus, or any other product or sales material.

(5) "Replacement" means a transaction in which a new annuity is to be purchased and the proposing agent, or the proposing insurer regardless of whether an agent is involved, knows or should know that, by reason of the transaction, an existing annuity or other insurance policy has been or is to be:

(A) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(B) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) reissued with any reduction in cash value; or

(E) used in a financed purchase.

(6) Repealed by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(1), eff. September 1, 2021.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 7, eff.

September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(1), eff. September 1, 2021.

Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This chapter applies to any sale of an annuity.

(b) Unless otherwise specifically included, this chapter does not apply to transactions involving:

(1) direct response solicitations if there is no recommendation based on information collected from the consumer under this chapter;

(2) contracts used to fund:

(A) an employee pension benefit plan or employee welfare benefit plan covered by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(B) a plan described by Section 401(a), 401(k), 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if established or maintained by an employer;

(C) a government or church plan, as defined by Section 414, Internal Revenue Code of 1986, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization described under Section 457, Internal Revenue Code of 1986; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(3) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(4) prepaid funeral benefits contracts, as defined by Chapter 154, Finance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 8, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 4, eff.

September 1, 2021.

Sec. 1115.004. NO CAUSE OF ACTION CREATED. This chapter may not be construed to create or imply a private cause of action against an agent or insurer or to subject an agent or insurer to civil liability for a violation of:

(1) this chapter or a rule adopted under this chapter; or

(2) a standard governing the conduct of a fiduciary or a fiduciary relationship.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 5, eff. September 1, 2021.

Sec. 1115.005. RULES. The commissioner may adopt reasonable rules in the manner prescribed by Subchapter A, Chapter 36, to accomplish and enforce the purpose of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

SUBCHAPTER B. DUTIES OF INSURERS AND AGENTS

Sec. 1115.0505. AGENTS EXERCISING MATERIAL CONTROL. (a) This subchapter applies to each agent who:

(1) exercises material control or influence in making a recommendation or sale; and

(2) receives direct compensation as a result of the recommendation or sale, regardless of whether the agent has direct contact with the consumer.

(b) Activities that do not constitute material control or influence include providing or delivering marketing or educational materials, product wholesaling or other back office product support, general supervision of an agent, and similar activities.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 6, eff. September 1, 2021.

Sec. 1115.0506. TRANSACTIONS NOT BASED ON RECOMMENDATION; CERTAIN EXEMPTIONS FROM SUBCHAPTER. An agent does not have an obligation to a consumer under Section 1115.0513 if:

(1) the agent does not make a recommendation;

(2) the agent makes a recommendation based on materially inaccurate information provided by the consumer;

(3) the consumer refuses to provide consumer profile information; or

(4) the consumer enters into an annuity transaction that is not based on the recommendation from the agent or the insurer.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 6, eff. September 1, 2021.

Sec. 1115.0507. INSURER OBLIGATIONS. (a) Notwithstanding Section 1115.0506, an insurer's issuance of an annuity must be reasonable under the circumstances known to the insurer at the time the annuity is issued.

(b) If there is no agent involved in an annuity transaction, the obligations described in this subchapter apply to the insurer that recommends or sells the annuity in the same way those obligations would apply to an agent.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 6, eff. September 1, 2021.

Sec. 1115.0508. ADDITIONAL LICENSURE NOT REQUIRED. Nothing in this subchapter may be construed to require an agent to obtain a license other than the license described by Chapter 4054.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 6, eff. September 1, 2021.

Sec. 1115.051. BEST-INTEREST OBLIGATION. (a) When making a recommendation of an annuity, an agent shall act in the best interest of the consumer under the circumstances known to the agent at the

time the recommendation is made, without placing the agent's or the insurer's financial interest ahead of the consumer's interest.

(b) An agent is presumed to act in the best interest of the consumer if the agent satisfies the care, disclosure, conflict of interest, and documentation obligations described by this subchapter.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(2), eff. September 1, 2021.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(2), eff. September 1, 2021.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(2), eff. September 1, 2021.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(2), eff. September 1, 2021.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 9, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 7, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 8, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(2), eff. September 1, 2021.

Sec. 1115.0513. CARE OBLIGATION. (a) In making a recommendation, an agent shall exercise reasonable diligence, care, and skill to:

(1) obtain consumer profile information from the consumer before making the recommendation of an annuity;

(2) know the consumer's financial situation, insurance needs, and financial objectives;

(3) understand the available recommendation options available to the agent;

(4) consider the types of products the agent is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives;

(5) have a reasonable basis to believe the recommendation

addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, in light of the consumer profile information;

(6) have a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, a death or living benefit, or other insurance-related feature; and

(7) communicate the basis of the recommendation.

(b) Subsection (a) does not require:

(1) analysis or consideration of a product outside the authority and license of the agent;

(2) analysis or consideration of a product or strategy that is an alternative to an annuity;

(3) recommendation of the annuity with the lowest one-time or multiple occurrence compensation structure; or

(4) ongoing monitoring of the consumer's financial situation.

(c) The agent shall consider consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features in determining whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives. The agent may place varying levels of importance on each of those factors based on the facts and circumstances of a particular case, but may not consider one factor in isolation.

(d) In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, including whether:

(1) the consumer will incur a surrender charge, be subjected to the commencement of a new surrender period, lose existing benefits such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(2) the replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(3) the consumer has had an annuity exchange or replacement in the preceding 60 months.

(e) This section applies to an annuity as a whole, including:

(1) underlying subaccounts to which money is allocated at the time of the purchase or exchange of an annuity; and

(2) any riders and similar product enhancements.

(f) An agent shall be held to standards applicable to an agent

with similar authority and licensure with respect to the requirements of this section. This section does not create a fiduciary obligation or relationship and only creates a regulatory obligation. This section does not affect any ongoing monitoring obligation an agent may have under a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the agent.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 9, eff. September 1, 2021.

Sec. 1115.0514. DISCLOSURE OBLIGATION. (a) Before the recommendation or sale of an annuity, an agent shall provide a disclosure to the consumer on a form prescribed by the commissioner by rule.

(b) The prescribed form must be substantially similar to the National Association of Insurance Commissioners Insurance Agent Disclosure for Annuities form. The form must include:

(1) a description of the scope and terms of the agent's relationship with the consumer and role in the transaction;

(2) an affirmative statement on whether the agent is licensed and authorized to sell:

(A) fixed annuities;

(B) fixed indexed annuities;

(C) variable annuities;

(D) life insurance;

(E) mutual funds;

(F) stocks and bonds; or

(G) certificates of deposit;

(3) a statement describing the insurers for whom the agent is authorized, contracted or appointed, or otherwise able to sell insurance products, described as follows:

(A) one insurer;

(B) two or more insurers; or

(C) two or more insurers though primarily contracted with one insurer;

(4) a description of the sources and types of cash compensation and noncash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other

remuneration received from the insurer, intermediary, or other agent or by fee as a result of a contract for advice or consulting services; and

(5) a notice of the consumer's right to request additional information regarding cash compensation under Subsection (c).

(c) On request of the consumer or the consumer's designated representative, an agent shall disclose:

(1) a reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages; and

(2) whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of occurrence, which may be stated as a range of amounts or percentages.

(d) Prior to or at the time of the recommendation or sale of an annuity, the agent must have a reasonable basis to believe the consumer has been informed of the features of the annuity, including:

(1) the potential surrender period and surrender charge;

(2) the potential tax penalty if the consumer sells exchanges, surrenders, or annuitizes the annuity;

(3) mortality and expense fees;

(4) investment advisory fees;

(5) annual fees;

(6) potential charges for and features of riders or other options of the annuity;

(7) limitations on interest returns;

(8) potential changes in non-guaranteed elements of the annuity;

(9) insurance and investment components; and

(10) market risk.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 9, eff. September 1, 2021.

Sec. 1115.0515. CONFLICT OF INTEREST OBLIGATION. (a) An agent shall take reasonable steps to discover a material conflict of interest, including a material conflict of interest related to an ownership interest.

(b) An agent shall:

(1) identify and avoid a material conflict of interest; or
(2) reasonably manage and disclose the conflict.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 9, eff. September 1, 2021.

Sec. 1115.0516. DOCUMENTATION OBLIGATION. At the time of the recommendation or sale, an agent shall:

(1) make a written record of the recommendation and the basis for the recommendation;

(2) if applicable, obtain a statement signed by the consumer on a form prescribed by the commissioner by rule that is substantially similar to the National Association of Insurance Commissioners Consumer Refusal to Provide Information form documenting:

(A) a consumer's refusal to provide consumer profile information; and

(B) a consumer's understanding of the ramifications of failing to provide consumer profile information or providing insufficient consumer profile information; and

(3) if a consumer decides to enter into an annuity transaction that is not based on the agent's recommendation, obtain a statement signed by the consumer on a form prescribed by the commissioner by rule that is substantially similar to the National Association of Insurance Commissioners Consumer Decision to Purchase an Annuity Not Based on a Recommendation, acknowledging that the annuity transaction is not recommended.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 9, eff. September 1, 2021.

Sec. 1115.052. SUPERVISION SYSTEM. (a) Except as provided in Section 1115.0506, an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

(b) Each insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and the

insurer's agent's compliance with this chapter, including:

(1) establishing and maintaining reasonable procedures to inform the insurer's agents of the requirements of this chapter and incorporating the requirements of this chapter into relevant agent training manuals;

(2) establishing and maintaining standards for agent product training and establishing and maintaining reasonable procedures to require the insurer's agents to comply with the requirements of Section 1115.056;

(3) providing product-specific training and training materials that explain all material features of the insurer's annuity products to the insurer's agents;

(4) establishing and maintaining procedures to review each recommendation electronically, physically, or otherwise before the issuance of an annuity that:

(A) are designed to ensure that there is a reasonable basis to determine that the recommended annuity would effectively address the consumer's financial situation, insurance needs, and financial objectives; and

(B) may:

(i) include the application of a screening system to identify selected transactions for additional review; and

(ii) be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(5) establishing and maintaining reasonable procedures, such as confirmation of consumer profile information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and programs of internal monitoring, to detect recommendations that are not in compliance with Sections 1115.0505 through 1115.051 and Sections 1115.0521 and 1115.054, which may include applying sampling procedures or confirming consumer profile information after the issuance or delivery of the annuity;

(6) establishing and maintaining reasonable procedures to assess, before or on issuance or delivery of an annuity, whether an agent has provided to the consumer the information required to be provided under this subchapter;

(7) establishing and maintaining reasonable procedures to identify and address suspicious consumer refusals to provide consumer

profile information;

(8) establishing and maintaining reasonable procedures to identify and eliminate sales contests, sales quotas, bonuses, or noncash compensation that are based on the sale of specific annuities within a limited period of time; and

(9) annually providing a written report to the insurer's senior management, including to the senior manager responsible for audit functions, that details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and any corrective action taken or recommended.

(b-1) Subsection (b)(8) does not prohibit the receipt by employees of health insurance, office rent, office support, retirement benefits, or other employee benefits so long as those benefits are not based on the volume of sales of a specific annuity within a limited period of time.

(c) This subsection and Subsection (c-1) do not prohibit an insurer from contracting for the performance of a function, including maintenance of procedures, required by Subsection (b). An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties under Section 1115.102 regardless of whether the insurer contracts for performance of a function and regardless of whether the insurer complies with Subsection (c-1).

(c-1) An insurer's supervision system under Subsection (b) must include the supervision of contractual performance under this subsection that includes, at a minimum:

(1) annually obtaining certification that complies with Section 1115.053 from a senior manager who represents that the contracted function is properly performed; and

(2) monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed.

(d) An insurer is not required by this section to include in the supervision system:

(1) an agent's recommendations to consumers of products other than the annuities offered by the insurer; or

(2) consideration of or comparison to options available to the agent or compensation relating to those options other than annuities or other products offered by the insurer.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(3), eff. September 1, 2021.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 10, eff. September 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 10, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 18(3), eff. September 1, 2021.

Sec. 1115.0521. PROHIBITED PRACTICES. An agent or insurer may not dissuade or attempt to dissuade a consumer from:
(1) truthfully responding to an insurer's request for confirmation of consumer profile information;
(2) filing a complaint; or
(3) cooperating with the investigation of a complaint.

Added by Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 11, eff. September 1, 2021.

Sec. 1115.053. CERTIFICATION REQUIREMENTS. A person may not provide a certification under Section 1115.052(c-1)(1) unless the person:
(1) is a senior manager with responsibility for the delegated functions; and
(2) has a reasonable basis for making the certification.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 11, eff. September 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 12, eff. September 1, 2021.

Sec. 1115.054. SAFE HARBOR. (a) Recommendations and sales of annuities made in compliance with comparable standards satisfy the requirements of this chapter. This section applies to

recommendations and sales of annuities made by a financial professional in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue.

(b) This section does not affect or limit the commissioner's ability to enforce or investigate under this chapter.

(c) This section does not limit the insurer's obligation to comply with Section 1115.052(a), although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

(d) Subsection (a) applies only if the insurer:

(1) using information collected in the normal course of the insurer's business, monitors the relevant conduct of the financial professional or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities laws; and

(2) provides to the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, information and reports that are reasonably appropriate to assist the entity in maintaining the entity's supervision system.

(e) For purposes of this section, "financial professional" means an agent that is regulated and acting as:

(1) a broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(2) an investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(3) a plan fiduciary under Section 3(21), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(21)) or a fiduciary under Section 4975(e)(3), Internal Revenue Code of 1986.

(f) For purposes of this section, "comparable standards" means:

(1) with respect to a broker-dealer or a registered representative of a broker-dealer, applicable rules of the Financial Industry Regulatory Authority (FINRA) or a successor agency and the United States Securities and Exchange Commission pertaining to best interest obligations and supervision of annuity recommendations and

sales, including Regulation Best Interest (17 C.F.R. Section 240.15l-1), including subsequent amendments or successor regulations;

(2) with respect to an investment adviser registered under federal or state securities laws or an investment adviser representative, the fiduciary duties and all other requirements imposed on those investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or applicable state securities law or regulations, including Form ADV (17 C.F.R. Section 279.1), and interpretations; and

(3) with respect to a plan fiduciary or a fiduciary, the duties, obligations, prohibitions, and all other requirements attendant to that status under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.) or the Internal Revenue Code of 1986.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1043 (H.B. 4492), Sec. 1, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 12, eff. September 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 13, eff. September 1, 2021.

Sec. 1115.055. RECORDKEEPING REQUIREMENTS. (a) Each agent, general agent, independent agency, and insurer shall maintain, or otherwise be able to make available to the commissioner, records of the information collected from the consumer, disclosures made to the consumer, including summaries of oral disclosures, and other information used in making a recommendation that was the basis for an insurance transaction subject to this chapter until the fifth anniversary of the date on which the transaction is completed by the insurer.

(b) An insurer may, but is not required to, maintain documentation on behalf of an agent.

(c) Records required to be maintained under this section may be maintained in paper, photographic, microprocess, magnetic,

mechanical, or electronic media by any process that accurately reproduces the actual document.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 14, eff. September 1, 2021.

Sec. 1115.056. AGENT TRAINING REQUIREMENTS. (a) An agent may not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials to comply with this subsection.

(b) An agent who engages in the sale of annuity products must complete a one-time four-credit training course approved by the department and provided by a continuing education provider.

(c) The training required by Subsection (b) must be of a length sufficient to qualify for at least four continuing education credits, as determined by the commissioner in accordance with Chapter 4004 and any rules adopted under that chapter, but may be longer. The training required by Subsection (b) may be used to satisfy the continuing education requirements under Subchapters B and E, Chapter 4004, and is not in addition to the continuing education requirements in Section 4004.202.

(d) The training required by Subsection (b) must include information on the following topics:

(1) the types of annuities and various classifications of annuities;

(2) identification of the parties to an annuity;

(3) how product-specific annuity features affect consumers;

(4) the application of income taxation of qualified and nonqualified annuities;

(5) the primary uses of annuities; and

(6) appropriate standard of conduct sales practices, replacement, and disclosure requirements.

(e) A provider of a course intended to comply with Subsection (b) must cover all topics listed in Subsection (d) and may not

present any marketing information, provide training on sales techniques, or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required topics.

(f) A provider of an annuity training course intended to comply with Subsection (b) must register as a continuing education provider in this state and comply with the rules and guidelines applicable to agent continuing education courses provided by Chapter 4004.

(g) An annuity training course may be conducted and completed by classroom or self-study methods in accordance with Chapter 4004.

(h) A provider of annuity training under Subsection (b) must comply with the reporting requirements and issue certificates of completion in accordance with Chapter 4004.

(i) The satisfaction of the training requirements of another state that are substantially similar to the provisions of this section is considered to satisfy the training requirements of this section.

(i-1) A course that is substantially similar to a course required by this section satisfies the requirement.

(j) An insurer must verify that an agent has completed the annuity training course required by this section before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy the insurer's responsibility under this section by:

(1) obtaining a certificate of completion of the training course or obtaining an appropriate report provided by the department;

(2) using a department-sponsored database or vendor; or

(3) using a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 1.001, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 13, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 15, eff. September 1, 2021.

SUBCHAPTER C. MITIGATION; ENFORCEMENT

Sec. 1115.101. MITIGATION. An insurer is responsible for compliance with this chapter. If a violation occurs because of the action or inaction of the insurer or the insurer's agent, the commissioner may:

(1) order:

(A) the insurer to take reasonable appropriate corrective action for any consumer harmed by a failure to comply with this chapter by the insurer, the insurer's agent, or an entity contracted to perform the insurer's supervisory duties; or

(B) a general agency, independent agency, or the agent to take reasonably appropriate corrective action for any consumer harmed by the agent's violation of this chapter; and

(2) impose appropriate sanctions as provided by Section 1115.102.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 14, eff. September 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 262 (H.B. 1777), Sec. 17, eff. September 1, 2021.

Sec. 1115.102. SANCTIONS. (a) The commissioner may impose sanctions as provided by Chapter 82 for a violation of this chapter.

(b) The commissioner shall reduce or eliminate a sanction for a violation of this chapter otherwise applicable if:

(1) corrective action for the consumer was taken promptly by the agent or insurer after a violation was discovered; or

(2) the violation was not part of a pattern or practice.

Added by Acts 2007, 80th Leg., R.S., Ch. 736 (H.B. 2761), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 15, eff. September 1, 2011.

CHAPTER 1116. REQUIRED PROVISIONS FOR ANNUITY CONTRACT

Sec. 1116.001. DEFINITION. In this chapter, "annuity" means a

fixed, variable, or modified guaranteed annuity that is individually solicited, whether classified as an individual annuity or group annuity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 77 (H.B. 1032), Sec. 1, eff. September 1, 2011.

Sec. 1116.002. RESCISSION PERIOD REQUIRED. (a) A fixed annuity contract must provide that, for a period of at least 20 days after the date the contract is delivered, the purchaser may rescind the contract and receive an unconditional refund of premiums paid for the contract, including any contract fees or charges.

(b) Except as provided by Subsection (c), a variable or modified guaranteed annuity contract must provide that, for a period of at least 20 days after the date the contract is delivered, the purchaser may rescind the contract and receive an unconditional refund that is equal to the cash surrender value provided in the contract plus any fees or charges deducted from the premiums or imposed under the contract.

(c) Subsection (b) does not apply to an annuity contract if the prospective owner is an accredited investor, as defined by 17 C.F.R. Section 230.501(a) as adopted by the United States Securities and Exchange Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 77 (H.B. 1032), Sec. 1, eff. September 1, 2011.

Sec. 1116.003. RULEMAKING AUTHORITY FOR CONTINGENT DEFERRED ANNUITY CONTRACTS. (a) In this section, "contingent deferred annuity contract" means an annuity contract in which a life insurer makes periodic payments for the annuitant's lifetime beginning when a designated investment that is not owned or held by the insurer is depleted to an amount specified by the contract due to contractually permitted withdrawals, market performance, fees, or other charges.

(b) The commissioner by rule may adopt reasonable standards for contingent deferred annuity contracts, including standards for:

(1) the procedures for department review and approval of contingent deferred annuity contracts and the criteria the department will use in approving the contracts;

(2) replacement, suitability, and disclosure requirements that are consistent with applicable model regulations developed by the National Association of Insurance Commissioners; and

(3) advertising of contingent deferred annuity contracts that are consistent with applicable model regulations developed by the National Association of Insurance Commissioners.

Added by Acts 2015, 84th Leg., R.S., Ch. 375 (S.B. 1107), Sec. 2, eff. June 9, 2015.

CHAPTER 1117. USE OF SENIOR-SPECIFIC CERTIFICATIONS OR PROFESSIONAL DESIGNATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1117.001. PURPOSE. The purpose of this chapter is to establish standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of certain senior-specific certifications and professional designations in soliciting the sale or purchase of, or providing advice made concerning, life insurance or annuity products.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 2.001, eff. September 1, 2009.

Sec. 1117.002. DEFINITIONS. In this chapter:

(1) "Insurance agent" means an agent licensed under this code to sell, solicit the sale of, or negotiate a life insurance or annuity product.

(2) "Senior-specific certification or professional designation" means a certification or designation that implies that an insurance agent holds a special certification or has specialized training in advising or servicing seniors regarding purchasing or selling a life insurance or annuity product.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 2.001, eff. September 1, 2009.

Sec. 1117.003. APPLICABILITY OF CHAPTER; CONSTRUCTION WITH OTHER LAW. (a) This chapter applies to any solicitation, sale or

purchase of, or advice made in connection with, a life insurance or annuity product by an insurance agent.

(b) Nothing in this chapter may be construed to limit the commissioner's authority to enforce any other provision of this code or another law.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 2.001, eff. September 1, 2009.

SUBCHAPTER B. USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

Sec. 1117.051. CERTAIN USES OF SENIOR-SPECIFIC CERTIFICATIONS AND DESIGNATIONS PROHIBITED. (a) An insurance agent may not, directly or indirectly, use a senior-specific certification or professional designation in such a way as to mislead a purchaser or prospective purchaser that the agent has special certification or training in advising or servicing seniors in connection with the solicitation, sale, or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product:

(1) through any writing or other publication; or

(2) by issuing or disseminating analyses or reports related to a life insurance or annuity product.

(b) Subsection (a) prohibits the use of a senior-specific certification or professional designation only by an insurance agent using:

(1) a certification or professional designation that the agent has not actually earned or for which the agent is ineligible;

(2) a nonexistent or self-conferred certification or professional designation;

(3) a certification or professional designation that indicates or implies a level of occupational qualification obtained through education, training, or experience that the agent has not obtained; and

(4) a certification or professional designation that was obtained from an organization that:

(A) is primarily engaged in the business of instruction in sales or marketing;

(B) does not have reasonable standards or procedures for:

(i) assuring the competency of individuals granted a certification or designation by the organization; or

(ii) monitoring and disciplining individuals granted a certification or designation by the organization for improper or unethical conduct; or

(C) does not have reasonable continuing education requirements in order to maintain the certification or designation for individuals granted a certification or designation by the organization.

(c) A rebuttable presumption exists that a certification or professional designation granted by an organization described by Subsection (b)(4) is not prohibited under Subsection (a) if the certification or designation issued by the organization does not primarily apply to sales or marketing and if the organization or the certification or designation has been accredited by:

(1) the American National Standards Institute;

(2) the National Commission for Certifying Agencies;

(3) any organization that is included in "Accrediting Agencies Recognized for Title IV Purposes" published by the U.S. Department of Education; or

(4) any other national accrediting organization recognized by the commissioner.

(d) In determining whether a word, a combination of words, or an acronym constitutes a senior-specific certification or professional designation, the commissioner shall consider:

(1) the use of one or more words such as "senior," "retirement," "elder," or similar words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or similar words, in the name of the certification or professional designation; and

(2) the manner in which those words are combined.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 2.001, eff. September 1, 2009.

Sec. 1117.052. APPLICABILITY TO CERTAIN FINANCIAL SERVICES. (a) Notwithstanding Section 1117.003, for purposes of this chapter,

a job title used within an organization that is licensed or registered by a state or federal financial services regulatory agency and that indicates seniority or standing within the organization, or that specifies an individual's area of specialization within the organization, is not a senior-specific certification or professional designation unless the title is used in a manner that is likely to confuse or mislead a reasonable consumer.

(b) For purposes of Subsection (a), "financial services regulatory agency" includes an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies, as defined by the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.).

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 2.001, eff. September 1, 2009.

SUBTITLE B. GROUP LIFE INSURANCE

CHAPTER 1131. GROUP LIFE INSURANCE AND WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1131.001. DEFINITION. In this chapter, "wholesale, franchise, or employee life insurance" means a term life insurance plan under which a number of individual term life insurance policies are issued to a selected group at a rate that is lower than the rate shown in the issuing insurer's manual for an individually issued policy of the same type issued to an insured of the same class.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.002. CERTAIN GROUP LIFE INSURANCE AUTHORIZED. A group life insurance policy may be delivered in this state only if the policy:

(1) covers a group described by Subchapter B; and

(2) complies with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.003. CERTAIN WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE

INSURANCE AUTHORIZED. A wholesale, franchise, or employee life insurance policy may be issued or delivered in this state only if the policy:

(1) covers a group described by Section 1131.065; and

(2) complies with Subchapter P.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.004. FORFEITURE OF CERTIFICATE OF AUTHORITY FOR UNAUTHORIZED GROUP LIFE INSURANCE CONTRACT. The certificate of authority to engage in the business of insurance in this state of an insurer that enters into a group life insurance contract other than as authorized by this chapter may be forfeited by an action brought for that purpose by the attorney general at the department's request.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.005. GUARANTEEING ISSUANCE OF LIFE INSURANCE POLICY WITHOUT EVIDENCE OF INSURABILITY. (a) In this section, "qualified pension or profit-sharing plan" means a plan that meets the requirements of:

(1) Section 401 or 403, Internal Revenue Code of 1986, and their subsequent amendments; or

(2) any corresponding provisions of prior or subsequent United States revenue laws.

(b) This code does not prohibit a life insurance company authorized to engage in the business of insurance in this state from guaranteeing to issue individual life insurance policies insuring participants in a qualified pension or profit-sharing plan on other than the term plan without evidence of insurability.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.006. ASSIGNMENT OF BENEFITS. (a) Subject to the terms of a group life insurance policy, an insured under the policy may make to any individual, firm, corporation, association, trust, or other legal entity, other than the insured's employer, an absolute or collateral assignment of all rights and benefits conferred on the

insured by the policy or by Subchapter C.

(b) Subsection (a) applies without regard to the date a policy is issued.

(c) Subject to the terms of the policy, an assignment by an insured before September 1, 1969, is valid for the purpose of vesting in the assignee all assigned rights and privileges but without prejudice to the insurer because of any payment the insurer makes or individual policy the insurer issues before receiving notice of the assignment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.007. POLICY FORM. A policy of group life insurance is subject to Chapter 1701.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.007, eff. April 1, 2009.

SUBCHAPTER B. GROUP AND WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE: ELIGIBLE POLICYHOLDERS

Sec. 1131.051. EMPLOYERS. (a) A group life insurance policy may be issued to an employer or to trustees of a fund established by an employer to insure the employer's employees for the benefit of persons other than the employer.

(b) A policy to which this section applies may provide that "employee" includes:

(1) an individual proprietor or partner, if the employer is an individual proprietorship or partnership;

(2) an employee of a subsidiary corporation of the employer;

(3) an employee, individual proprietor, or partner of an affiliated corporation, proprietorship, or partnership, if the business of the employer and the affiliated corporation, proprietorship, or partnership is under common control through stock ownership, contract, or otherwise; or

(4) a retired employee.

(c) The employer or the trustees of a fund established by an

employer are the policyholder under a policy to which this section applies.

(d) A policy to which this section applies is subject to Subchapter E.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.052. LABOR UNIONS. (a) A group life insurance policy may be issued to a labor union to insure the union's members who are actively engaged in the same occupation.

(b) For purposes of this chapter:

(1) a labor union is considered to be an employer; and

(2) a member of a labor union is considered to be an employee of the union.

(c) The labor union is the policyholder under a policy to which this section applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.053. FUNDS ESTABLISHED BY EMPLOYERS OR LABOR UNIONS. (a) A group life insurance policy that insures the employers' employees or the unions' members for the benefit of persons other than the employers or unions may be issued to the trustees of a fund established or adopted by two or more employers in the same industry or by one or more labor unions, by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades.

(b) A policy to which this section applies may provide that "employee" includes:

(1) an individual proprietor or partner, if the employer is an individual proprietorship or partnership;

(2) a trustee, an employee of the trustee, or both, if the person's duties are principally connected with the trusteeship; or

(3) a retired employee.

(c) The trustees are the policyholder under a policy to which this section applies.

(d) A policy may not be issued under this section to insure employees of:

(1) an employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer, without regard to whether the other employer participates in the fund; or

(2) an employer that is not located in this state, unless:

(A) the majority of the employers whose employees are to be insured are located in this state; or

(B) the policy is issued to the trustees of a fund established or adopted by one or more labor unions.

(e) A policy to which this section applies is subject to Subchapter F.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 689 (H.B. 2690), Sec. 1, eff. September 1, 2009.

Sec. 1131.054. GOVERNMENTAL ENTITIES OR ASSOCIATIONS OF PUBLIC EMPLOYEES. (a) In this section, "employee" includes an elected or appointed officer of the state.

(b) A group life insurance policy may be issued to a governmental entity or an association of public employees listed in Subsection (c) to insure the governmental entity's employees or the association's members for the benefit of persons other than the governmental entity or association.

(c) This section authorizes issuance of a group life insurance policy to:

(1) a municipality, independent school district, or common school district;

(2) a department of state government;

(3) a state college or university; or

(4) an association of public employees, including an association of:

(A) employees of the United States government, if the majority of the members of the association reside in this state;

(B) state employees; or

(C) any combination of state, county, and municipal employees.

(d) The governmental entity or association is the policyholder under a policy to which this section applies.

(e) A policy to which this section applies is subject to Subchapter G.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.055. SPOUSES AND CHILDREN OF EMPLOYEES OF UNITED STATES GOVERNMENT. (a) A group term life insurance policy may be extended, in the form of group term life insurance only, to insure the spouse and natural or adopted minor children of an insured employee of the United States government if:

(1) the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government; and

(2) the spouse or children of other employees covered by the same employee benefit program in other states are or may be covered by group term life insurance.

(b) A policy to which this section applies is subject to Subchapter H.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.056. PRINCIPALS. (a) In this section, "agent" includes a general agent or a salesperson.

(b) A group life insurance policy may be issued to a principal, or if the principal is a life, life and accident, or life, accident, and health insurer, by or to the principal, to insure the principal's agents for the benefit of persons other than the principal.

(c) A policy to which this section applies is subject to Subchapter I.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 6, eff. September 1, 2021.

Sec. 1131.057. CREDITORS. (a) A group life insurance policy

may be issued to a creditor to insure the creditor's debtors.

(b) The creditor is the policyholder under a policy to which this section applies.

(c) A policy to which this section applies is subject to Subchapter J.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.058. VETERANS' LAND BOARD. (a) A group life insurance policy may be issued to the Veterans' Land Board to insure persons purchasing land under the Veterans' Land Program as provided by Subchapter I, Chapter 161, Natural Resources Code.

(b) The Veterans' Land Board is the policyholder under a policy to which this section applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.059. ASSOCIATIONS OR TRUSTS FOR PAYMENT OF FUNERAL EXPENSES. A group life insurance policy may be issued to an association or trust for a group of individuals for the payment of future funeral expenses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.060. NONPROFIT ORGANIZATIONS OR ASSOCIATIONS. (a) A group life insurance policy may be issued to a nonprofit service, civic, fraternal, or community organization or association to insure the organization's or association's members and employees for the benefit of persons other than the organization or association or an officer of the organization or association.

(b) To be eligible to obtain a group life insurance policy under this section, an organization or association must:

(1) have a constitution or bylaws;

(2) have actively existed for at least two years; and

(3) have been formed for purposes other than that of obtaining insurance.

(c) The organization or association is the policyholder under a policy to which this section applies.

(d) A policy to which this section applies is subject to Subchapter K.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.064. OTHER GROUPS. (a) A group life insurance policy may be issued to cover a group other than a group described by Sections 1131.051-1131.060 if the commissioner finds that:

(1) the issuance of the policy is not contrary to the best interest of the public;

(2) the issuance of the policy would result in economies of acquisition or administration; and

(3) the benefits are reasonable in relation to the premiums charged.

(b) Group life insurance coverage may not be offered under this section in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those prescribed by Subsections (a)(1)-(3) has determined that those requirements have been met.

(c) A policy to which this section applies is subject to Subchapter O.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.065. WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE. (a) Policies of wholesale, franchise, or employee life insurance may be issued to:

(1) the employees of a common employer or employers;

(2) the members of one or more labor unions; or

(3) the members of one or more credit unions.

(b) A policy to which this section applies is subject to Subchapter P.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. GROUP LIFE INSURANCE: REQUIRED PROVISIONS

Sec. 1131.101. REQUIRED PROVISIONS. (a) A group life insurance policy may not be delivered in this state unless the policy

contains in substance the provisions prescribed by this subchapter or provisions in relation to provisions prescribed by this subchapter that, in the opinion of the commissioner, are:

(1) more favorable to an insured under the policy; or

(2) at least as favorable to an insured under the policy and more favorable to the policyholder.

(b) The standard provisions required for individual life insurance policies do not apply to group life insurance policies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.102. NONFORFEITURE. (a) A group life insurance policy other than a group term life insurance policy must contain nonforfeiture provisions that, in the commissioner's opinion, are equitable to the insured and the policyholder.

(b) This section does not require that a group life insurance policy contain the same nonforfeiture provisions as required for an individual life insurance policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.103. GRACE PERIOD. (a) A group life insurance policy must provide that the policyholder or premium payor is entitled to a grace period of 31 days for the payment of any premium, other than the first, due under the policy. During the grace period, the death benefit coverage continues in force unless the policyholder or premium payor gives the insurer written notice of discontinuance before the date of discontinuance and in accordance with the policy.

(b) The policy may provide that the policyholder or premium payor is liable to the insurer for payment of a pro rata premium for the time the policy was in force during a grace period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.104. INCONTESTABILITY OF POLICY. A group life insurance policy must provide that:

(1) the validity of the policy may not be contested, except for nonpayment of premiums, after the policy has been in force for

two years after its date of issue; and

(2) a statement made by any insured under the policy relating to the insured's insurability may not be used in contesting the validity of the insurance with respect to which the statement was made after the insurance has been in force before the contest for a period of two years from its date of issue during the insured's lifetime and unless the statement is contained in a written instrument signed by the insured making the statement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.105. APPLICATION FOR POLICY; STATEMENTS OF INSURED. A group life insurance policy must provide that:

(1) a copy of any application for the policy by the policyholder must be attached to the policy when issued;

(2) a statement made by the policyholder or an insured is considered a representation and not a warranty; and

(3) a statement made by an insured may not be used in any contest under the policy unless a copy of the instrument containing the statement is or has been furnished to the person or the person's beneficiary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.106. EVIDENCE OF INSURABILITY. A group life insurance policy must state the conditions, if any, under which the insurer reserves the right to require an individual eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition of obtaining part or all of the coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.107. ADJUSTMENT OF PREMIUMS OR BENEFITS IF AGE OF INSURED IS MISSTATED. (a) A group life insurance policy must specify an equitable adjustment of premiums, benefits, or both, to be made if the age of an insured has been misstated.

(b) The provision required by Subsection (a) must contain a

clear statement of the method of adjustment to be used.

(c) This section does not apply to a policy to which Section 1131.703 applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.108. INSURANCE CERTIFICATE. (a) A group life insurance policy must provide that the insurer will issue to the policyholder for delivery to each insured an individual certificate stating:

(1) the insurance protection to which the insured is entitled;

(2) to whom the insurance benefits are payable; and

(3) the rights and conditions specified by Sections 1131.110-1131.112.

By agreement between the insurer and the policyholder, the certificate of insurance may be delivered electronically.

(b) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1075, Sec. 1, eff. Sept. 1, 2003.

Sec. 1131.109. PERSON TO WHOM BENEFITS ARE PAYABLE. (a) A group life insurance policy must provide that any amount due because of an insured's death must be paid to the beneficiary designated by the insured or the beneficiary's assignee, subject to:

(1) the provisions of the policy, if the designated beneficiary as to all or any part of the amount is not living at the time the insured dies; and

(2) any right reserved by the insurer in the policy and stated in the certificate to pay at the insurer's option a portion of the amount not to exceed $250 to any person the insurer determines is equitably entitled to the portion because of having incurred funeral or other expenses incident to the last illness or death of the insured.

(b) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.110. RIGHT TO INDIVIDUAL POLICY ON TERMINATION OF EMPLOYMENT OR MEMBERSHIP. (a) A group life insurance policy must provide that if any portion of the insurance on an individual insured under the policy ceases because the individual's employment or membership in the class or classes eligible for coverage under the policy terminates, the individual is entitled to have the insurer issue to the individual an individual life insurance policy without disability or other supplementary benefits.

(b) An individual must apply for an individual policy and pay the first premium to the insurer not later than the 31st day after the date the individual's employment or membership terminates.

(c) An individual policy under this section must be issued without evidence of insurability.

(d) The insured may select any individual policy, other than a term life insurance policy, customarily issued by the insurer for an individual of the insured's age and for the amount requested.

(e) Except as provided by Subsection (f), the individual policy must be in an amount not to exceed the amount of life insurance that ceases because of the termination of employment or membership.

(f) For purposes of Subsection (e), any amount of insurance that, on or before the date of the termination of employment or membership, has matured as an endowment payable to the insured is not included in the amount that is considered to cease because of the termination. This subsection applies without regard to whether the endowment is payable in full, in installments, or in the form of an annuity.

(g) The premium on an individual policy must be at the insurer's then customary rate applicable to:

(1) the form and amount of the individual policy;

(2) the class of risk to which the insured then belongs; and

(3) the insured's age on the effective date of the

individual policy.

(h) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.111. RIGHT TO INDIVIDUAL POLICY ON TERMINATION OF COVERAGE UNDER GROUP POLICY. (a) A group life insurance policy must provide that if the policy terminates or is amended so as to terminate the insurance of a class of insured individuals, each individual insured under the policy on the date of the termination or amendment whose insurance terminates and who has been insured under the policy for at least five years before the date of the termination or amendment is entitled to have the insurer issue to the individual an individual life insurance policy, subject to the conditions and limitations provided by Section 1131.110.

(b) Notwithstanding Section 1131.110(e), a group life insurance policy may provide that the amount of an individual policy issued under this section may not exceed the lesser of:

(1) the amount of the individual's life insurance coverage that ceases because of the termination or amendment of the group policy, less the amount of any life insurance for which the individual is or becomes eligible under any group policy issued or reinstated by the same or another insurer not later than the 31st day after the date of the termination or amendment; or

(2) $2,000.

(c) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.112. PAYMENT OF BENEFITS ON DEATH OF INSURED BEFORE INDIVIDUAL POLICY BECOMES EFFECTIVE. (a) A group life insurance policy must provide that if an individual insured under the group policy dies during the period within which the individual would have

been entitled to have an individual policy issued as provided by Section 1131.110 or 1131.111 and before such an individual policy takes effect, the amount of life insurance that the individual would have been entitled to have issued to the individual under the individual policy is payable as a claim under the group policy.

(b) This section applies without regard to whether:

(1) the application for the individual policy has been made; or

(2) the first premium for the individual policy has been paid.

(c) This section does not apply to:

(1) a policy issued to a creditor to insure the creditor's debtors; or

(2) a policy to which Section 1131.703 applies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER D. GROUP LIFE INSURANCE: OPTIONAL PROVISIONS

Sec. 1131.151. CONTINUATION OF BENEFITS FOR FAMILY MEMBERS AFTER DEATH OF INSURED. (a) A group life insurance policy that provides for the insurer to pay benefits for members of the family or dependents of an individual in the insured group may provide for a continuation of any part of those benefits after the death of the individual in the insured group.

(b) Any amounts of insurance provided by benefits under Subsection (a) are not considered to be life insurance for the purpose of determining the maximum amount of term insurance that may be issued on any one life.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER E. GROUP LIFE INSURANCE POLICIES ISSUED TO EMPLOYERS: ADDITIONAL REQUIREMENTS

Sec. 1131.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.051.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.202. ELIGIBLE EMPLOYEES. All employees of the employer, or all of any class or classes of employees determined by conditions relating to their employment, are eligible for insurance under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.203. PAYMENT OF PREMIUMS. The policyholder must pay the premium for the policy:

(1) wholly from the employer's fund or funds contributed by the employer;

(2) partly from funds described by Subdivision (1) and partly from funds contributed by the insured employees; or

(3) wholly from funds contributed by the insured employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1073 (H.B. 1571), Sec. 1, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1073 (H.B. 1571), Sec. 2, eff. June 18, 2005.

Sec. 1131.204. MINIMUM ENROLLMENT. (a) The policy must cover at least two employees on the date the policy is issued.

(b) Repealed by Acts 2005, 79th Leg., Ch. 1073, Sec. 2, eff. June 18, 2005.

(c) A policy as to which the insured employees do not pay any part of the premium must insure:

(1) all eligible employees; or

(2) all eligible employees except any employees as to whom evidence of individual insurability is not satisfactory to the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 2 (S.B. 88), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1073 (H.B. 1571), Sec. 2, eff. June 18, 2005.

Sec. 1131.205. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the employees or by the employer or trustees.

(b) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(1), eff. June 17, 2005.

(c) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(1), eff. June 17, 2005.

(d) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(1), eff. June 17, 2005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 496 (H.B. 526), Sec. 2(1), eff. June 17, 2005.

SUBCHAPTER F. GROUP LIFE INSURANCE POLICIES ISSUED TO FUNDS ESTABLISHED BY EMPLOYERS OR LABOR UNIONS: ADDITIONAL REQUIREMENTS

Sec. 1131.251. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.053.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.252. ELIGIBLE EMPLOYEES OR MEMBERS. (a) The individuals eligible for insurance under the policy are:

(1) all employees of the employers and the employees of the trade association of those employers;

(2) all members of the labor union; or

(3) all of any class or classes of employees or members determined by conditions relating to their employment, to their membership in the unions, or both.

(b) A director of a corporate employer is not eligible for insurance under the policy unless the person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director.

(c) An individual proprietor or partner is not eligible for insurance under the policy unless the person is actively engaged in

and devotes a substantial part of the person's time to conducting the business of the proprietorship or partnership.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.253. PAYMENT OF PREMIUMS. (a) Subject to Subsection (b), the policyholder must pay the premium for the policy:

(1) wholly from funds contributed by the employer or employers, the labor union or unions, or both; or

(2) partly from funds described by Subdivision (1) and partly from funds contributed by the insureds.

(b) An insured's contribution toward the cost of the insurance may not exceed 40 cents per month for each $1,000 of insurance coverage.

(c) The policy may provide that a participating employer or labor union may pay the premium directly to the insurer for the policy issued to the trustee. If payment is made as provided by this subsection, the employer or labor union is the premium payor for the insured employees or union members for that employer unit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.254. MINIMUM ENROLLMENT. (a) The policy must cover at least 100 individuals on the date the policy is issued unless the policy is issued to the trustees of a fund established by:

(1) employers that have assumed obligations through a collective bargaining agreement and are participating in the fund to:

(A) comply with those obligations with regard to one or more classes of their employees who are covered by the collective bargaining agreement; or

(B) provide insurance benefits for other classes of their employees; or

(2) one or more labor unions.

(b) A policy as to which the insureds are to pay part of the premium from funds contributed specifically for their insurance may take effect only if at least 75 percent of the individuals of each participating employer unit who are eligible on the date the policy takes effect, excluding any individuals as to whom evidence of insurability is not satisfactory to the insurer, elect to make the

required contributions.

(c) A policy as to which the insureds do not pay any part of the premium must insure:

(1) all eligible individuals; or

(2) all eligible individuals except any individuals as to whom evidence of individual insurability is not satisfactory to the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.255. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insureds or by the policyholder or employer.

(b) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(2), eff. June 17, 2005.

(c) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(2), eff. June 17, 2005.

(d) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(2), eff. June 17, 2005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 496 (H.B. 526), Sec. 2(2), eff. June 17, 2005.

SUBCHAPTER G. GROUP LIFE INSURANCE POLICIES ISSUED TO GOVERNMENTAL ENTITIES OR ASSOCIATIONS OF PUBLIC EMPLOYEES: ADDITIONAL REQUIREMENTS

Sec. 1131.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.054.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.302. ELIGIBLE EMPLOYEES OR MEMBERS. All employees of the employer or all members of the association are eligible for insurance under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.303. PAYMENT OF PREMIUMS. (a) The premium for the policy may be paid wholly or partly from funds contributed by:

(1) the employer;

(2) the individuals insured under the policy; or

(3) the insured employees who are members of the association of employees.

(b) Any money or credits received by or allowed to the policyholder under any participation agreement contained in or issued in connection with the policy must be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution for future premiums.

(c) The employer may deduct from an employee's salary the employee's contribution for the premiums if authorized to do so in writing by that employee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.304. MINIMUM ENROLLMENT. (a) The policy must cover at least 10 employees or members on the date the policy is issued.

(b) A policy as to which the insured employees or members pay part of the premium may take effect only if at least 75 percent of the employees or members eligible on the date the policy takes effect, excluding any employees or members as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.

(c) A group policy issued before September 1, 1969, to a group described by Section 1131.054 that was in existence on that date continues in force without regard to whether the number of the employees or members insured under the policy was less than 75 percent of the employees or members eligible on that date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER H. GROUP TERM LIFE INSURANCE POLICIES EXTENDED TO SPOUSES AND CHILDREN OF EMPLOYEES OF UNITED STATES: ADDITIONAL REQUIREMENTS

Sec. 1131.351. APPLICABILITY OF SUBCHAPTER. This subchapter

applies only to a group term life insurance policy extended to a group described by Section 1131.055.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.352. PAYMENT OF PREMIUMS. The policyholder must pay the premium for the group term life insurance solely from funds contributed by the insured employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.353. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insured employees or by the policyholder.

(b) Group term life insurance on the life of an employee's spouse may not exceed the lesser of:

(1) $10,000; or

(2) one-half of the amount of insurance on the life of the insured employee under the group policy.

(c) Group term life insurance on the life of an employee's minor child may not exceed $2,000.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.354. CONVERSION RIGHTS. On termination of group term life insurance coverage for a spouse insured under this subchapter because the insured employee's employment terminates or the employee dies, or because the group contract terminates, the spouse has the same conversion rights as to the group term life insurance on the spouse's life as the employee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.355. CERTIFICATE OF INSURANCE. Only one certificate of insurance issued for delivery to an insured employee is required if the certificate includes a statement concerning any dependent's coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER I. GROUP LIFE INSURANCE POLICIES ISSUED TO PRINCIPALS: ADDITIONAL REQUIREMENTS

Sec. 1131.401. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.056.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.402. ELIGIBLE AGENTS. Agents who are under contract to provide personal services for the principal for a commission or other fixed or ascertainable compensation, or any class or classes of those agents determined by conditions relating to the services the agents provide to the principal, are eligible for insurance under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.403. PAYMENT OF PREMIUMS. The premium for the policy must be paid:

(1) wholly by the principal; or

(2) partly from funds contributed by the principal and partly from funds contributed by the insured agents.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.404. MINIMUM ENROLLMENT. (a) The policy must cover at least 10 agents on the date the policy is issued.

(b) Subject to Subsection (c), a policy as to which the insured agents pay part of the premium must cover, on the date the policy is issued, at least:

(1) 75 percent of the eligible agents; or

(2) 75 percent of any class or classes of eligible agents, determined by conditions relating to the services the agents provide to the principal.

(c) Benefits may be extended to another class of agents if 75

percent of the class request coverage.

(d) A policy as to which the insured agents do not pay any part of the premium must insure:

(1) all eligible agents; or

(2) all of any class or classes of eligible agents determined by conditions relating to the services the agents provide to the principal.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.405. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the agents or by the principal.

(b) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(3), eff. June 17, 2005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 496 (H.B. 526), Sec. 2(3), eff. June 17, 2005.

SUBCHAPTER J. GROUP LIFE INSURANCE POLICIES ISSUED TO CREDITORS: ADDITIONAL REQUIREMENTS

Sec. 1131.451. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.057.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.452. ELIGIBLE DEBTORS. All individuals who become borrowers, or purchasers of securities, merchandise, or other property, under an agreement to pay the borrowed amount or to pay the balance of the price of the securities, merchandise, or other property purchased, are eligible for insurance under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.453. PAYMENT OF PREMIUMS. The policyholder must pay the premium for the policy from:

(1) the creditor's funds;

(2) charges collected from the insured debtors; or

(3) both the creditor's funds and charges collected from the insured debtors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.454. MINIMUM ENROLLMENT. The policy must cover at least 50 debtors at all times.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.455. AMOUNT OF INSURANCE. (a) Except as otherwise provided by this section, the amount of insurance on a debtor's life under the policy may not exceed the amount of the debtor's indebtedness.

(b) Subject to Subsections (c) and (d), the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricultural or horticultural purposes, secured or unsecured, under which the debtor becomes personally liable for the payment of the loan, may be insured in an initial amount of insurance not to exceed the total amount payable under the contract of indebtedness.

(c) If indebtedness described by Subsection (b) is payable in substantially equal installments, the amount of insurance may not at any time exceed the greater of the scheduled or actual amount of unpaid indebtedness.

(d) Insurance on a loan commitment described by Subsection (b) that does not exceed one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 496 (H.B. 526), Sec. 1, eff. June 17, 2005.

Sec. 1131.456. PAYMENT OF PROCEEDS. (a) The proceeds of the insurance must be payable to the policyholder.

(b) Payment to the policyholder reduces or extinguishes the debtor's unpaid indebtedness to the extent of the payment. In the case of a debtor under a loan or loan commitment described by Section 1131.455(b), any insurance proceeds in excess of the indebtedness to the creditor are payable:

(1) to the debtor's estate; or

(2) under a facility of payment clause.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.457. ANNUITIES AND ENDOWMENT INSURANCE PROHIBITED. The insurance issued may not include annuities or endowment insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER K. GROUP LIFE INSURANCE POLICIES ISSUED TO NONPROFIT ORGANIZATIONS OR ASSOCIATIONS: ADDITIONAL REQUIREMENTS

Sec. 1131.501. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.060.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.502. ELIGIBLE MEMBERS. All members of the organization or association, or all of any class of members determined by conditions relating to their membership in the organization or association, are eligible for insurance under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.503. PAYMENT OF PREMIUMS. (a) The policyholder must pay the premium from:

(1) the policyholder's funds;

(2) funds contributed by the employees or members specifically for their insurance; or

(3) both the policyholder's funds and funds contributed by the employees or members.

(b) The policy may provide that the premium may be paid directly to the insurer by individual employees or members from their own funds. If the premium is paid as provided by this subsection, the respective employees or members become the premium payor for that particular certificate.

(c) For purposes of Sections 222.002, 257.001, and 281.004, only the final retrospectively determined premium amount remitted to the issuer by the group policyholder is taxable as gross premiums, without regard to whether membership contributions, fees, assessments, dues, revenues, or other considerations in excess of that final amount are also collected from members. This subsection applies only to a nonprofit membership association that:

(1) qualifies under Section 501(c)(9), Internal Revenue Code of 1986;

(2) has been in existence for at least 50 years;

(3) limits association membership to:

(A) members of the uniformed services of the United States serving on active duty;

(B) members of the ready reserve forces of the United States, including the Army and Air National Guard;

(C) retirees and separatees of:

(i) the uniformed services of the United States; or

(ii) the ready reserve forces of the United States, including the Army and Air National Guard;

(D) cadets and midshipmen in the service academies of the United States and other officer candidates;

(E) federal employees and contractors who are employed by the United States government or other related governmental entities or retired with pay from that employment;

(F) employees or members of any state, county, municipal, or other local governmental body or other organized governmental entity who are involved in homeland defense and homeland security operations; and

(G) any other category of membership established by the governing body of the association that falls within the scope of permissible membership authorized by Section 501(c)(9), Internal

Revenue Code of 1986;

(4) has no separate membership enrollment or application requirement;

(5) collects member contributions, fees, or dues, including funds contributed specifically for insurance and remitted by the group policyholder to the issuer following a retrospective premium determination; and

(6) provides insurance and noninsurance membership benefits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1252 (H.B. 2718), Sec. 1, eff. June 15, 2007.

Sec. 1131.504. MINIMUM ENROLLMENT. The policy must cover at least 25 individuals on the date the policy is issued.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.505. AMOUNTS OF INSURANCE. The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insured members or by the organization or association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER O. GROUP LIFE INSURANCE POLICIES ISSUED TO OTHER GROUPS: ADDITIONAL REQUIREMENTS

Sec. 1131.701. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy issued to a group described by Section 1131.064.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.702. PAYMENT OF PREMIUMS. The premium for the policy must be paid from:

(1) the policyholder's funds;

(2) funds contributed by the insureds; or

(3) both the policyholder's funds and funds contributed by the insureds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.703. INSURANCE FOR LIABILITIES RELATED TO FRINGE BENEFITS. (a) Notwithstanding any other law, an employer may insure the lives of the employer's officers, directors, employees, and retired employees under Section 1131.064 to and in an amount necessary to provide funds to offset liabilities related to fringe benefits.

(b) An employer shall submit evidence of the purpose of the policy to the commissioner.

(c) A policy issued for the purpose described by this section does not reduce any other life insurance benefits offered or provided by the employer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER P. WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE POLICIES: ADDITIONAL REQUIREMENTS

Sec. 1131.751. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a wholesale, franchise, or employee life insurance policy issued as provided by Section 1131.065.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.752. PAYMENT OF PREMIUMS. (a) The premium for the policy must be paid:

(1) wholly from funds contributed by the employer or employers of the insureds;

(2) wholly from funds contributed by the labor or credit union or unions; or

(3) partly from funds described by Subdivision (1) or (2) and partly from funds contributed by the insureds.

(b) An insured's contribution toward the cost of the insurance

may not exceed 40 cents per month for each $1,000 of insurance coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.753. MINIMUM ENROLLMENT. A policy of wholesale, franchise, or employee life insurance must cover at least five employees or members of a labor union or credit union on the date the policy is issued.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.755. INDIVIDUAL APPLICATION REQUIRED. (a) An insurer must take an individual application for each policy of wholesale, franchise, or employee life insurance.

(b) Repealed by Acts 2005, 79th Leg., Ch. 496, Sec. 2(5), eff. June 17, 2005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 496 (H.B. 526), Sec. 2(5), eff. June 17, 2005.

Sec. 1131.756. RIGHT TO INDIVIDUAL POLICY ON TERMINATION OF EMPLOYMENT OR MEMBERSHIP. (a) A policy of wholesale, franchise, or employee life insurance must contain in substance the provisions prescribed by this section.

(b) The policy must provide that, subject to Subsections (c) and (d), if the insurance on an individual insured under the policy ceases because the individual's employment or membership in the labor or credit union terminates, the individual is entitled to have the insurer issue to the individual an individual life insurance policy without disability or other supplementary benefits.

(c) An individual policy under this section must be issued without evidence of insurability.

(d) An individual must apply for an individual policy and pay the first premium to the insurer not later than the 31st day after the date the individual's employment or membership terminates.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.757. OPTIONAL POLICY PROVISIONS. A policy of wholesale, franchise, or employee life insurance may contain in substance provisions under which:

(1) the policy is renewable at the option of the insurer only;

(2) coverage by the insurer terminates on termination of employment or membership by the insured employee or member; or

(3) an individual eligible for insurance must furnish evidence of individual insurability satisfactory to the insurer as a condition to coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.758. CERTAIN POLICIES AND PLANS UNAFFECTED. This subchapter does not impair or otherwise affect:

(1) a policy issued before August 28, 1961;

(2) a plan of wholesale, franchise, or employee life insurance in effect before August 28, 1961, if the plan was legal on the date policies were issued under the plan; or

(3) a policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan, or similar plan of premium collection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER Q. EXTENSION OF GROUP LIFE INSURANCE TO SPOUSES AND CHILDREN

Sec. 1131.801. APPLICABILITY OF SUBCHAPTER. This subchapter applies to any group life insurance policy issued and delivered under the laws of this state other than a policy issued and delivered to a creditor as provided by Section 1131.057 or other law providing for credit life insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.802. EXTENSION OF GROUP LIFE INSURANCE TO SPOUSES AND CHILDREN; ELIGIBLE CHILDREN. Insurance under a group life insurance policy may be extended to cover:

(1) the spouse of each individual eligible to be insured under the policy;

(2) a natural or adopted child of each individual eligible to be insured under the policy if the child is:

(A) younger than 25 years of age or an older age stated in the policy; or

(B) physically or mentally disabled and under the parents' supervision; or

(3) a natural or adopted grandchild of each individual eligible to be insured under the policy if the child is younger than 25 years of age or an older age stated in the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1243 (H.B. 2549), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1000 (H.B. 2172), Sec. 1, eff. September 1, 2011.

Sec. 1131.803. PAYMENT OF PREMIUMS. The premium for group life insurance extended to cover a spouse or child may be paid by:

(1) the group policyholder;

(2) the insured under the policy; or

(3) the group policyholder and the insured jointly.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.804. AMOUNTS OF INSURANCE. (a) The amounts of insurance under the policy must be based on a plan that precludes individual selection by the insured or the policyholder.

(b) The amount of insurance on the life of the spouse or a child may not exceed the amount of insurance for which the insured is eligible under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.805. CONVERSION RIGHTS. On termination of group life insurance coverage for a spouse insured under this subchapter because the insured's employment terminates, the insured's eligibility for insurance terminates, or the insured dies, or because the group life insurance policy terminates, the spouse has the same conversion rights as to the group life insurance on the spouse's life as the insured.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.806. CERTIFICATE OF INSURANCE. Only one certificate of insurance issued for delivery to an insured is required if the certificate includes a statement concerning any spouse's or child's coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER R. CONTINUATION OF CERTAIN GROUP LIFE INSURANCE DURING LABOR DISPUTE

Sec. 1131.851. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group life insurance policy that is delivered or issued for delivery in this state and as to which any part of the premium is paid or is to be paid by an employer under the terms of a collective bargaining agreement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.852. CONTINUATION OF GROUP LIFE INSURANCE DURING LABOR DISPUTE REQUIRED FOR CERTAIN POLICIES. An insurer may not deliver or issue for delivery a policy subject to this subchapter unless the policy provides that if the employees covered by the policy stop work because of a labor dispute, coverage continues under the policy, on timely payment of the premium, for each employee who:

(1) is covered under the policy on the date the work stoppage begins;

(2) continues to pay the employee's individual contribution, subject to the conditions provided by this subchapter; and

(3) assumes and pays during the work stoppage the contribution due from the employer, subject to the conditions provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.853. CONTRIBUTIONS IF POLICYHOLDER IS TRUSTEE. (a) An employee's contribution for purposes of a policy as to which the policyholder is a trustee or the trustees of a fund established or maintained wholly or partly by the employer is the amount the employee and employer would have been required to contribute to the fund for the employee if:

(1) the work stoppage had not occurred; and

(2) the agreement requiring the employer to make contributions to the fund were in effect.

(b) The policy may provide that continuation of coverage is contingent on the collection of individual contributions by the policyholder or the policyholder's agent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.854. CONTRIBUTIONS IF POLICYHOLDER IS NOT TRUSTEE. (a) A policy as to which the policyholder is not a trustee or the trustees of a fund established or maintained in whole or in part by the employer must provide that the employee's individual contribution:

(1) is the policy rate applicable:

(A) on the date the work stoppage begins; and

(B) to an individual in the class to which the employee belongs as provided by the policy; or

(2) if the policy does not provide for a rate applicable to an individual, is an amount equal to the amount determined by dividing:

(A) the total monthly premium in effect under the policy on the date the work stoppage begins; by

(B) the total number of insureds under the policy on that date.

(b) The policy may provide that continuation of coverage under this subchapter is contingent on the collection of individual

contributions by the union or unions representing the employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.855. PAYMENT OF CONTRIBUTION AND PREMIUM. A policy may provide that continuation of coverage for an employee under the policy is contingent on timely payment of:

(1) contributions by the employee; and

(2) the premium by the entity responsible for collecting the individual employee contributions.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.856. PAST DUE PREMIUM. (a) A policy may provide that the continuation of coverage is contingent on payment of any premium that:

(1) is unpaid on the date the work stoppage begins; and

(2) became due before the date the work stoppage begins.

(b) A premium described by Subsection (a) must be paid before the date the next premium becomes due under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.857. INDIVIDUAL PREMIUM RATE INCREASE. (a) A policy may provide that, during the period of a work stoppage, an individual premium rate may be increased by an amount not to exceed 20 percent of the amount shown in the policy, or a greater percentage as approved by the commissioner, to provide sufficient compensation to the insurer to cover increased:

(1) administrative costs; and

(2) mortality and morbidity.

(b) If a policy provides for a premium rate increase in accordance with this section, the amount of an employee's contribution must be increased by the same percentage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.858. PREMIUM RATE CHANGE NOT LIMITED. (a) This subchapter does not limit any right of the insurer under a policy to increase or decrease a premium rate before, during, or after a work stoppage if the insurer would be entitled to increase the premium rate had a work stoppage not occurred.

(b) A change in a premium rate made in accordance with this section takes effect on a date that is determined by the insurer in accordance with the terms of the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.859. LIMITATIONS ON CONTINUATION OF COVERAGE. This subchapter does not require the continuation of coverage under a policy for a period:

(1) longer than six months after a work stoppage occurs;

(2) beyond the time that 75 percent of the covered employees continue the coverage; or

(3) as to an individual covered employee, beyond the time that the employee takes a full-time job with another employer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1131.860. OTHER PROVISIONS; COMMISSIONER APPROVAL REQUIRED. A policy may contain any other provision relating to continuation of policy coverage during a work stoppage that the commissioner approves.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1132. NOTICE OF RATE INCREASE FOR GROUP LIFE INSURANCE

Sec. 1132.001. NOTICE OF RATE INCREASE. (a) In this section, "insurer" means:

(1) a life insurance company;

(2) an accident insurance company;

(3) a general casualty insurance company;

(4) a mutual life insurance company;

(5) a mutual or natural premium life insurance company;

(6) a fraternal benefit society; or

(7) a local mutual aid association.

(b) Not later than the 61st day before the date on which a premium rate increase takes effect on a group policy of life insurance delivered or issued for delivery in this state by an insurer, the insurer shall give written notice to the policyholder of:

(1) the amount of the increase; and

(2) the date on which the increase is to take effect.

(c) An insurer that issues a group policy described by Subsection (b) to a multiple employer trust shall give the notice required by that subsection to the trustee or group policyholder.

(d) The notice required by this section must be based on coverage in effect on the date of the notice.

(e) This section may not be construed to prevent an insurer, at the request of a policyholder, from negotiating a change in benefits or rates after delivery of the notice required by this section.

(f) An insurer may not require a policyholder or trustee entitled to notice under this section to respond to the insurer to renew the policy or take other action relating to the renewal or extension of the policy before the 45th day after the date the notice described by Subsection (b) is given.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 222, Sec. 2, eff. Sept. 1, 2003.

SUBTITLE C. SPECIALIZED COVERAGES
CHAPTER 1151. INDUSTRIAL LIFE INSURANCE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1151.001. DEFINITION. In this chapter, "industrial life insurance" means life insurance under which the premiums are payable:

(1) weekly; or

(2) less often than weekly but at least monthly, if the face amount of insurance coverage provided by the policy is $1,000 or less.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.002. GENERAL APPLICABILITY OF CHAPTER. (a) Except as provided by other law, this chapter controls the form and content

of an industrial life insurance policy delivered or issued for delivery in this state by an insurance company.

(b) This chapter does not control an industrial life insurance policy delivered or issued for delivery in this state by an association described by Section 1151.004.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.003. APPLICABILITY OF CHAPTER TO POLICY PROVIDING ACCIDENT AND HEALTH BENEFITS. Except as otherwise provided by this chapter, if an industrial life insurance policy provides accident and health benefits in addition to natural death benefits, this chapter applies only to the life insurance benefits provided by that policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.004. CERTAIN ASSOCIATIONS EXCEPTED. This chapter does not apply to any of the following associations operating under Chapter 886:

(1) a local mutual aid association;

(2) a statewide mutual life, health, and accident association; or

(3) a burial association.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.005. CERTAIN NONPROFIT ORGANIZATIONS EXCEPTED. This chapter does not apply to:

(1) an order, society, association, or labor organization that:

(A) admits to membership only persons engaged in one or more crafts or hazardous occupations in the same or similar lines of business; and

(B) does not operate for profit;

(2) a ladies auxiliary to an order, society, association, or labor organization described by Subdivision (1); or

(3) a fraternal order, association, or society.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. REQUIRED POLICY PROVISIONS

Sec. 1151.051. POLICY TITLE. An industrial life insurance policy must contain a title on the face of the policy that:

(1) briefly describes the form of the policy; and

(2) includes the printed words "Industrial Policy."

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.052. ENTIRE CONTRACT. (a) An industrial life insurance policy must provide that the policy is the entire contract between the parties, except that at the option of the insurer, the insurer may make the policy and the policy application the entire contract between the parties.

(b) To make the policy application a part of the contract, a copy of the application must be endorsed on or attached to the policy at the time the policy is issued.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.053. AGENT UNAUTHORIZED TO WAIVE OR CHANGE TERMS. An industrial life insurance policy must provide that an agent may not waive or change the terms of an application or policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.054. STATEMENT MADE BY OR ON BEHALF OF INSURED. An industrial life insurance policy must provide that, in the absence of fraud, a statement made by the insured or on behalf of the insured is considered a representation and not a warranty.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.055. INCONTESTABILITY OF POLICY. An industrial life insurance policy must provide that, after the policy has been in

force for two years from its date of issue during the lifetime of the insured, the policy is incontestable except:

(1) for nonpayment of a premium;

(2) for violation of any policy condition relating to naval or military service in time of war; and

(3) concerning a provision relating to:

(A) benefits in case of total or permanent disability as defined by the policy; or

(B) additional insurance:

(i) specifically against accidental death; or

(ii) against loss of, or loss of use of, specific parts of the body.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.056. ADJUSTMENT OF AMOUNT PAYABLE IF AGE OF INSURED IS MISSTATED. An industrial life insurance policy must provide that, if the age of the insured is misstated, the amount payable under the policy is the amount of insurance that the premium paid would have purchased if the insured's age had been stated correctly.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.057. GRACE PERIOD. (a) An industrial life insurance policy must provide that the insured is entitled to a grace period stated in the policy within which any premium after the first premium may be paid. The grace period must be at least a four-week period.

(b) During the grace period the policy continues in effect, but if an event under which the insurer may be liable under the policy occurs during the grace period and before the overdue premiums are paid, the amount of the overdue premiums may be deducted in a settlement made under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.058. NONFORFEITURE BENEFITS AND CASH SURRENDER VALUES IN GENERAL. An industrial life insurance policy must provide, in case of default in payment of premiums, nonforfeiture benefits and

cash surrender values in accordance with:

(1) Sections 1151.152-1151.154; or

(2) Chapter 1105, for a policy issued on or after the date determined under Section 1105.002(a) or (b), as applicable.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.059. SURPLUS. An industrial life insurance policy that is a participating policy must provide that the insurer shall annually determine and apportion any divisible surplus accruing on the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.060. CLAIM BASED ON DEATH OF INSURED. An industrial life insurance policy must provide that if a claim arises as the result of the death of the insured, the insurer shall settle the claim not later than two months after the date the insurer receives at the insurer's home office:

(1) proof of death satisfactory to the insurer; and

(2) proof of the right of the claimant to the insurance proceeds.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.061. REINSTATEMENT OF POLICY. (a) An industrial life insurance policy must provide that unless the cash surrender value has been paid or the term of extended insurance has expired, the policy may be reinstated not later than the first anniversary of or, at the option of the insurer, not later than the 52nd week after the date of default in payment of premiums if the insured:

(1) pays all overdue premiums;

(2) pays or reinstates any other debt owed to the insurer on the policy; and

(3) presents evidence of insurability satisfactory to the insurer.

(b) The insurer may impose on the overdue premiums interest at an annual rate specified in the policy, not to exceed six percent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.062. EXCEPTION FOR POLICIES ISSUED OR GRANTED UNDER CERTAIN NONFORFEITURE PROVISIONS. This subchapter does not apply to a policy issued or granted under a nonforfeiture provision prescribed by Section 1151.058.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. AUTHORIZED OR PROHIBITED POLICY PROVISIONS

Sec. 1151.101. AUTHORIZED PROVISIONS. In addition to the provisions required by Subchapter B and Section 1151.152, an industrial life insurance policy may:

(1) exclude liability or promise a benefit that is less than the full amount payable as a death benefit if the insured:

(A) dies by the insured's own hand, regardless of whether the insured is sane or insane; or

(B) dies as a result of engaging in a stated hazardous occupation;

(2) promise a benefit that is less than the full amount payable if the insured dies as a result of an aviation activity under a condition specified in the policy approved by the department as provided by Chapter 1701;

(3) limit the maximum amount payable on the death of a child younger than 15 years of age; and

(4) include any other provision not otherwise prohibited by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.008, eff. April 1, 2009.

Sec. 1151.102. PROHIBITED PROVISIONS. (a) An industrial life insurance policy may not:

(1) require a cause of action based on the policy to be initiated before the second anniversary of the date the cause of action accrues; or

(2) except as otherwise provided by this subchapter, establish a method of settlement at maturity that provides less value than the face amount of insurance coverage provided by the policy and any dividend additions to the policy, less:

(A) any debt owed to the insurer on the policy; and

(B) any premium that may be deducted under the terms of the policy.

(b) Subsection (a)(2) does not prevent a limitation from being imposed on payment of an additional accidental death benefit in case of accidental death resulting from certain specified causes.

(c) A nonparticipating or term policy may not incorporate any part of a provision described by Subchapter B or Section 1151.152 that does not apply to that type of policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER D. RIGHTS OF INSURED UNDER CERTAIN OLDER POLICIES

Sec. 1151.151. EXTENDED TERM OR PAID-UP INSURANCE FOR CERTAIN POLICIES. (a) This section applies only to a policy delivered or issued for delivery in this state before March 29, 1941, under former Article 3.43 of this code.

(b) An insured or a beneficiary of the insured is entitled to elect extended term or paid-up insurance under an industrial life insurance policy that does not by its terms provide a stipulated form of insurance to the insured or beneficiary on default in payment of premiums if:

(1) premiums have been paid on the policy for at least three years; and

(2) the insured or beneficiary gives written notice of the election to the insurer at the insurer's home office before the expiration of the term of extended insurance.

(c) An insured or beneficiary who does not make an election as provided by Subsection (b) is considered to have elected extended term insurance.

(d) The net value of extended term or paid-up insurance shall be determined as provided by Section 1151.153.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.152. PROVISIONS CONCERNING STIPULATED FORM OF INSURANCE OR SPECIFIED CASH SURRENDER VALUE IN CERTAIN POLICIES. (a) An industrial life insurance policy issued before the date described by Section 1151.058(2) must contain a provision substantially as follows:

(1) in case of default in payment of premiums:

(A) after premiums have been paid for three years, a stipulated form of insurance is available, effective from the due date of the defaulted premium; and

(B) after premiums have been paid for five years, the stipulated form of insurance described by Paragraph (A) or a specified cash surrender value is available, at the election of the insured; and

(2) the stipulated form of insurance takes effect unless the insured applies in writing for the specified cash surrender value within the grace period following the due date of the defaulted premium.

(b) The policy must:

(1) state the amount and term of the stipulated form of insurance, computed assuming that there is no debt owed on or dividend additions to the policy;

(2) specify the mortality table, the rate of interest, and the method of valuation, if a method of valuation other than net level premium is used, adopted for computing the reserve on the policy; and

(3) provide a table showing in numbers the nonforfeiture options available under the policy at the end of each year in case of default in payment of premiums.

(c) Subsections (a), (b)(1), and (b)(3) do not apply to a term insurance policy with a term of 20 years or less.

(d) The table described by Subsection (b)(3) must begin with the year in which the numbers on the nonforfeiture options become available and must cover not more than the first 20 years of the policy. On the expiration of the period for which the numbers are shown by the policy, the insurer shall provide an extension of the table on request.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.153. COMPUTATION OF NET VALUE OF STIPULATED FORM OF INSURANCE OR SPECIFIED CASH SURRENDER VALUE. (a) The net value of the stipulated form of insurance or the specified cash surrender value available under Section 1151.152 may not be less than the reserve on the policy at the end of the last completed quarter of the policy year for which premiums have been paid, less:

(1) an amount of not more than:

(A) 2-1/2 percent of the maximum amount insured under the policy and any dividend additions to the policy, if the age of the insured on the date the policy was issued is younger than 10 years; or

(B) 2-1/2 percent of the amount insured under the policy at the time the computation is made and any dividend additions to the policy, if the age of the insured on the date the policy was issued is 10 years or older; and

(2) any existing debt to the insurer on or secured under the policy.

(b) The reserve described by Subsection (a):

(1) includes:

(A) the reserve for any paid-up additions to the policy; and

(B) the amount of any dividends credited to the policy; and

(2) excludes any reserve on:

(A) total or permanent disability, as defined by the policy; and

(B) additional accidental death benefits.

(c) In computing the value of paid-up term insurance with any accompanying pure endowment, a rate of mortality may be assumed that is not more than:

(1) 130 percent of the rate of mortality according to the applicable table, if the 1941 Standard Industrial Mortality Table or the 1941 Sub-standard Industrial Mortality Table is adopted for computing the reserve; or

(2) the rate of mortality shown by:

(A) the Commissioners 1961 Industrial Extended Term Insurance Table, if the Commissioners 1961 Standard Industrial Mortality Table is adopted for computing the reserve; or

(B) any other mortality table specified by the insurer and approved by the department, if the policy is substandard.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1151.154. SURRENDER OF POLICY FOR SPECIFIED CASH SURRENDER VALUE. (a) An industrial life insurance policy issued before the date described by Section 1151.058(2) under which the insured applies for cash surrender value must be surrendered for the specified cash surrender value to the insurer at the insurer's home office within the grace period following the due date of the defaulted premium.

(b) The insurer may defer payment for a period of not more than six months after the date of application for the specified cash surrender value.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1152. SEPARATE ACCOUNTS, VARIABLE CONTRACTS, AND RELATED PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1152.001. APPLICABILITY OF CODE. (a) Except as provided by Subsection (b), this code applies to separate accounts described by this chapter and contracts relating to those accounts.

(b) The following sections do not apply to the separate accounts and contracts:

(1) Sections 882.303 and 882.703;

(2) Subchapters H and J, Chapter 882;

(3) Sections 1101.002(b), 1101.005, 1101.009, 1101.012, 1101.052, 1101.055, and 1101.152-1101.156;

(4) Chapter 1105; and

(5) Section 1131.103.

(c) A separate account established under former Article 3.39 Part III, 3.72, or 3.73 is considered to be established under this chapter. A policy or other agreement issued before September 1, 1984, under one of those articles remains subject to the article, as the article existed immediately before September 1, 1984.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.002. RULES. The commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement this

chapter, including rules establishing requirements for:

(1) agent licensing;

(2) standard policy provisions; and

(3) disclosure.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. SEPARATE ACCOUNTS

Sec. 1152.051. ESTABLISHMENT OF SEPARATE ACCOUNTS. A domestic life insurance company may establish separate accounts under this subchapter and may allocate to each account amounts, including proceeds applied under optional modes of settlement or under dividend options, to:

(1) provide for life insurance, an annuity, or a benefit incidental to the insurance or annuity, payable in a fixed amount, a variable amount, or both a fixed amount and a variable amount; or

(2) fund a benefit for a pension, retirement, or profit sharing plan payable in a fixed amount, a variable amount, or both a fixed amount and a variable amount.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.052. OWNERSHIP OF AMOUNTS IN SEPARATE ACCOUNT. (a) An insurance company owns an amount allocated to a separate account under this subchapter.

(b) The company is not and may not represent itself as a trustee regarding an amount allocated to a separate account under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.053. TRANSFER OF ASSETS BETWEEN SEPARATE ACCOUNTS. (a) Except as provided by Subsection (b), an insurance company may not sell, exchange, or otherwise transfer an asset between the company's separate accounts or between any other investment account and a separate account unless:

(1) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the

operation of a contract regarding the separate account to which the transfer was made; and

(2) the transfer, whether into or from a separate account, is made:

(A) by a transfer of cash; or

(B) by a transfer of securities if the securities have a readily determinable market value and the commissioner approves the transfer.

(b) The commissioner may approve a transfer between accounts other than a transfer described by Subsection (a) if, in the commissioner's opinion, the transfer would not be inequitable.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.054. COMPLIANCE WITH FEDERAL OR STATE LAW FOR SEPARATE ACCOUNT. (a) To comply with a federal or state law, an insurance company with respect to any separate account, including a separate account that is a management investment company or a unit investment trust, may, to the extent the company considers it necessary, provide:

(1) for appropriate voting and other rights for persons who have an interest in the account; and

(2) special rights and procedures to conduct the business of the account, including rights and procedures related to:

(A) investment policy;

(B) investment advisory services;

(C) selection of independent public accountants; and

(D) selection of a committee to manage the business of the account.

(b) The members of a committee selected under Subsection (a)(2)(D) are not required to be affiliated with the company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.055. GUARANTEED BENEFITS AND MONEY RESTRICTION FOR SEPARATE ACCOUNTS. A domestic insurance company may not maintain a reserve for a benefit guaranteed as to dollar amount and duration or funds guaranteed as to principal amount or stated rate of interest in a separate account except with the commissioner's approval and under

conditions for investments, and other matters, that recognize the guaranteed nature of the benefits provided and that are prescribed by the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 412 (H.B. 1587), Sec. 2, eff. June 9, 2023.

Sec. 1152.056. INVESTMENT LIMITS NOT APPLICABLE TO SEPARATE ACCOUNT. Except as provided by Section 1152.055:

(1) an amount allocated to a separate account, including an accumulation on that amount, may be invested without regard to a law of this state governing a life insurance company investment; and

(2) an investment in a separate account may not be considered in applying an investment limit otherwise applicable to the insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.057. ALLOCATION OF INCOME, GAINS, OR LOSSES ON SEPARATE ACCOUNT. An insurance company shall credit to or charge against a separate account the income, gain, or loss, realized or unrealized, from an asset allocated to the account without regard to other income, gains, or losses of the insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.058. ASSET VALUATION IN SEPARATE ACCOUNT. An asset allocated to a separate account is valued:

(1) at its market value on the date of valuation;

(2) as provided under a contract, rule, or other written agreement applicable to the separate account, if a readily available market does not exist;

(3) as provided by the rules otherwise applicable to the insurance company's assets for any portion of the assets that is equal to the company's reserve liability with regard to the guaranteed benefits and funds under Section 1152.055; or

(4) under any other method approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.059. SEPARATE ACCOUNT NOT CHARGEABLE WITH OTHER LIABILITIES. To the extent provided under the applicable contracts, the portion of a separate account's assets equal to the reserves and other contract liabilities regarding that account is not chargeable with a liability arising out of any other business of the insurance company.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. VARIABLE CONTRACTS

Sec. 1152.101. SOLE AUTHORITY TO REGULATE VARIABLE CONTRACTS. The commissioner has sole authority to regulate the issuance and sale of a variable contract under:

(1) this chapter; and

(2) rules adopted under Section 1152.002.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.102. AUTHORIZATION REQUIRED FOR VARIABLE CONTRACTS. (a) An insurance company may not deliver or issue for delivery a variable contract in this state unless authorized by the commissioner under this section.

(b) If the commissioner finds, after notice and hearing, that the company is qualified to issue, deliver, and use a variable contract under this chapter and rules adopted under Section 1152.002, the commissioner shall issue an order relating to the company's authority to issue, deliver, and use a variable contract in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.103. CONSIDERATION OF COMPANY'S CONDITION OR METHOD OF OPERATION. (a) For purposes of this section, the domicile of an

alien company is its state of entry.

(b) In considering a company's condition or method of operation, the factors the commissioner shall consider must include:

(1) the company's history and financial condition;

(2) the character, responsibility, and fitness of the company's officers and directors;

(3) the law, including rules, under which the company is authorized to do business in the state of domicile to issue a variable contract; and

(4) whether the condition or method of operation in connection with the issuance of a variable contract will make the company's operation hazardous to the public or the company's policyholders in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.104. AUTHORIZATION FOR SUBSIDIARY OR AFFILIATE OF AUTHORIZED LIFE INSURANCE COMPANY. The commissioner may determine, after notice and hearing, that a company that is a subsidiary of or affiliated with an authorized life insurance company through common management or ownership meets the requirements of this subchapter if either the company or the parent or affiliated company meets the requirements of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.105. WAIVER OF HEARING REQUIREMENT. (a) If a company, its parent, or a commonly controlled affiliate is an authorized life insurance company, the company may apply to the commissioner for a waiver of the hearing requirements under Section 1152.102 or 1152.104.

(b) The commissioner may waive the hearing requirement if the commissioner determines that a hearing is not necessary to find the company qualified under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.106. RESERVE LIABILITY FOR VARIABLE CONTRACT. The

reserve liability for a variable contract must be established under actuarial procedures that recognize:

(1) the variable nature of the benefits provided; and

(2) any mortality guarantees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.107. SEPARATE ANNUAL STATEMENT REQUIRED. (a) An insurance company authorized under this subchapter to issue, deliver, or use a variable annuity contract or variable life contract shall file with the department a separate annual statement of its separate variable contract accounts.

(b) The company shall file the statement:

(1) on a form prescribed or approved by the department; and

(2) simultaneously with the annual statement required by Sections 841.255 and 882.003.

(c) The statement must:

(1) include details as to all income, disbursements, assets, and liability items associated with the separate variable contract accounts; and

(2) be under oath of two company officers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.108. GRACE, REINSTATEMENT, AND NONFORFEITURE PROVISIONS REQUIRED. (a) An individual variable life insurance or individual variable annuity contract delivered or issued for delivery in this state must contain grace, reinstatement, and nonforfeiture provisions appropriate to the contract.

(b) A group variable contract delivered or issued for delivery in this state must contain a grace period provision appropriate to the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.109. VARIABLE BENEFITS PROVISIONS. (a) A contract providing benefits payable in variable amounts that is delivered or

issued for delivery in this state must state the essential features of the procedures the insurance company will follow in determining the dollar amount of the variable benefits.

(b) A contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued under that group contract, must state:

(1) on its first page, that the benefits under the contract are on a variable basis; and

(2) that the dollar amount will vary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.110. PRIVATE PLACEMENT CONTRACTS. (a) In this section, "private placement contract" means a variable annuity contract or variable life insurance policy that is:

(1) issued exclusively to an accredited investor or qualified purchaser, as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts; and

(2) offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(b) A private placement contract may provide that the insurer issuing the contract may defer payments or advances for loans, cash surrender values, or death benefits until the separate account assets, or any portion of the separate account assets, comprising rights to loans, cash surrender values, or death benefits can be converted to cash under any applicable terms.

(c) Section 1103.104 does not apply to the computation of the interest on the proceeds of a private placement contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 737 (H.B. 2765), Sec. 1, eff. September 1, 2007.

SUBCHAPTER D. VARIABLE CONTRACT AGENTS

Sec. 1152.151. AGENT'S LICENSE REQUIRED. (a) A person may not sell or offer for sale in this state a variable contract, or act to

negotiate, make, or consummate a variable contract for another, unless the department has licensed the person under Chapter 4054 as a general life, accident, and health agent or a life agent.

(b) The licensing and regulation of a person acting as a variable contract agent is subject to the same provisions applicable to the licensing and regulation of other agents under Title 13.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.303(b), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2F.009, eff. April 1, 2009.

SUBCHAPTER E. MODIFIED GUARANTEED CONTRACTS

Sec. 1152.201. DEFINITION. In this subchapter, "modified guaranteed contract" means an individual life insurance policy or deferred annuity contract as to which:

(1) the underlying assets are held in a separate account; and

(2) the values are guaranteed if the policy or contract is held for a specified period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.202. APPLICABILITY OF LAWS GOVERNING LIFE INSURANCE COMPANIES. Unless otherwise approved by the commissioner, the laws of this state governing the investments of life insurance companies apply to an asset held in a separate account that relates to a modified guaranteed contract that provides for nonforfeiture values that may vary based on a market-value adjustment formula.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.203. RULES. In addition to any rules adopted under Section 1152.002, the commissioner may adopt reasonable rules that

apply only to a modified guaranteed contract, to appropriately regulate:

(1) a modified guaranteed contract under this chapter; and

(2) the separate account maintained in relation to a modified guaranteed contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.204. NONFORFEITURE VALUES. (a) A modified guaranteed contract must contain nonforfeiture values that are based on a market-value adjustment formula if the contract is held for a period shorter than the period specified in the contract. The formula may or may not reflect the value of assets held in the separate account.

(b) A modified guaranteed contract must prominently state on its first page that the nonforfeiture values may increase or decrease based on the market-value formula specified in the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1152.205. SEPARATE ACCOUNT STATEMENT. An insurance company that files a separate account statement under Section 1152.107 shall include in that statement a statement for each separate account that relates to a modified guaranteed contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1153. CREDIT LIFE INSURANCE AND CREDIT ACCIDENT AND HEALTH INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1153.001. SHORT TITLE. This chapter may be cited as the Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.002. PURPOSE; LEGISLATIVE INTENT; CONSTRUCTION.

(a) The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit accident and health insurance.

(b) This chapter is not intended to prohibit or discourage reasonable competition.

(c) This chapter shall be liberally construed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.003. DEFINITIONS. In this chapter:

(1) "Credit accident and health insurance" means insurance to provide indemnity for payments that become due on a specific credit transaction of a debtor when the debtor is disabled, as defined in the insurance policy.

(2) "Credit life insurance" means insurance on the life of a debtor in connection with a specific credit transaction.

(3) "Credit transaction" includes the lending of money.

(4) "Creditor" means:

(A) a person who lends money or who sells or leases goods, services, property, rights, or privileges, for which the payment is arranged through a credit transaction;

(B) a successor to the right, title, or interest of a person described by Paragraph (A); or

(C) a person who is in any way associated with a person described by Paragraph (A) or (B), including a director, officer, employee, affiliate, associate, or subsidiary of the person described by Paragraph (A) or (B).

(5) "Debtor" means a person who borrows money or who purchases or leases goods, services, property, rights, or privileges, the payment for which is arranged through a credit transaction.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.004. APPLICABILITY OF CHAPTER. (a) This chapter applies to life insurance and accident and health insurance that is sold in connection with a credit transaction that is charged to or paid for by, in whole or part, the debtor, except insurance that is issued or sold:

(1) in connection with a credit transaction of more than 10

years' duration;

(2) in connection with a credit transaction that is:

(A) secured by a first mortgage or deed of trust; and

(B) made to:

(i) finance the purchase of commercial real property or the construction of or improvement to a building, other than a single-family dwelling, on the real property if the purchase, construction, or improvement is secured by a lien on the real property; or

(ii) refinance a credit transaction made for a purpose described by Subparagraph (i); or

(3) as an isolated transaction on the part of the insurer that is not related to an agreement or a plan for insuring debtors of the creditor.

(b) This chapter applies to insurance described by Subsection (a) regardless of the nature, kind, or plan of the credit insurance coverage or premium payment system and regardless of whether the credit insurance is charged to or paid for by the debtor directly or indirectly.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.005. RULES. After notice and a hearing, the commissioner may adopt rules to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.006. FILING FEE. (a) The department shall set and collect a fee for a form or schedule filed under this chapter in an amount not to exceed $200.

(b) Fees collected under this section shall be deposited in the Texas Department of Insurance operating account.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.007. GAIN OR ADVANTAGE FROM INSURANCE NOT PROHIBITED CHARGE. (a) The premium or cost of credit life insurance or credit accident and health insurance authorized under this chapter is not

considered to be interest, a charge, consideration, or an amount in excess of permitted charges in connection with the underlying credit transaction.

(b) Any benefit, return, or other gain or advantage to the creditor arising out of the sale or provision of the insurance under this chapter is not a violation of any law of this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. FORMS

Sec. 1153.051. FILING OF FORM. (a) An insurer shall file with the commissioner the form of each policy, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, and rider to which this chapter applies that is delivered or issued for delivery in this state.

(b) If a group policy of credit life insurance or credit accident and health insurance is delivered in another state, the insurer is required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state, as specified in Section 1153.052.

(c) The commissioner shall approve a certificate filed under Subsection (b) if it conforms with the requirements provided by Section 1153.052 and if the schedule of premium rates applicable to the insurance evidenced by that certificate or notice does not exceed the presumptive premium rate established by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.052. REQUIREMENTS RELATING TO INSURANCE POLICY OR CERTIFICATE. (a) A policy or certificate of credit life insurance or credit accident and health insurance must:

(1) specify:

(A) the name and home office address of the insurer;

(B) the name of each debtor;

(C) in the case of a certificate under a group policy, the identity, by name or otherwise, of each insured;

(D) the full amount of premium or the total identifiable insurance charge, if any, to the debtor, separately for credit life insurance and credit accident and health insurance; and

(E) each exception or limitation to or restriction on the coverage;

(2) describe the coverage, including the amount and term of the coverage; and

(3) state that the benefits are to be paid to the creditor to reduce or extinguish the unpaid amount of the debt and that any amount of benefits that exceeds the unpaid debt is to be paid to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(b) The requirements of this section are in addition to the other requirements of law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.053. DISAPPROVAL OF FORM. (a) Not later than the 60th day after the date an insurer files a form under Section 1153.051, the commissioner shall disapprove the form if:

(1) the benefits provided are not reasonable in relation to the premium charge; or

(2) the form contains a provision that:

(A) is unjust, unfair, inequitable, misleading, or deceptive;

(B) encourages misrepresentation of the coverage; or

(C) is contrary to this code or a rule adopted under this code.

(b) The commissioner shall specify in the notice of disapproval of a form the reason for the disapproval and state that, if the insurer delivers to the commissioner a written request for a hearing on the disapproval of the form, the hearing will be granted not later than the 20th day after the date of the request.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.054. WITHDRAWAL OF APPROVAL OF FORM. The commissioner may hold a hearing on the withdrawal of the approval of a form not earlier than the 21st day after the date written notice of the hearing is given to the insurer who submitted the form. The notice of the hearing must state the reason for the proposed withdrawal of approval. At any time after the hearing, the

commissioner may withdraw approval of the form for any ground provided by Section 1153.053(a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.055. PROHIBITIONS RELATING TO ISSUANCE OR USE OF FORM. (a) A policy, certificate of insurance, notice of proposed insurance, application for insurance, endorsement, or rider to which this chapter applies may not be issued or used before the 61st day after the date the form is filed with the commissioner under Section 1153.051, unless the commissioner gives prior written approval of the issuance or use of the form.

(b) An insurer who is notified by the commissioner that a form is disapproved may not issue or use that form.

(c) After the effective date of the withdrawal of the approval of a form under Section 1153.054, the insurer may not issue or use that form.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. RATES

Sec. 1153.101. FILING OF SCHEDULE OF RATES. An insurer shall file with the commissioner each schedule of premium rates relating to a document required to be filed under Section 1153.051.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.102. REVISION OF SCHEDULE OF RATES. (a) An insurer may revise its schedules of premium rates for various classes of business.

(b) The insurer shall file the revised schedules and classes of business with the commissioner.

(c) An insurer may not issue a credit life insurance policy or credit accident and health insurance policy for which the premium rate exceeds the rate determined by using the appropriate schedule for that class of business that the insurer has on file with the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.103. PRESUMPTIVE PREMIUM RATE. (a) After notice and a hearing, the commissioner by rule may adopt a presumptive premium rate for various classes of business and terms of coverage. An insurer that does not file a different rate under Section 1153.105 or 1153.106 shall file the presumptive rate adopted by the commissioner.

(b) Except as provided by this chapter, any hearing conducted or order adopting a presumptive rate under this subchapter shall be held in accordance with the rulemaking provisions of Chapter 2001, Government Code.

(c) In the commissioner's order adopting a presumptive rate, the commissioner shall set forth findings and conclusions on all material issues presented at the hearing.

(d) In determining the presumptive premium rate, the commissioner shall consider any relevant data, including reasonable acquisition costs, loss ratios, administrative expenses, reserves, loss settlement expenses, the type or class of business, the duration of various credit transactions, and reasonable and adequate profits to the insurers.

(e) In determining the presumptive premium rate, the commissioner may not set or limit the amount of compensation actually paid by a company to an agent but may request from an insurer or agent any relevant data relating to the presumptive premium rate, including information relating to compensation paid for the sale of credit insurance, expenses, losses, and profits. An insurer or agent shall provide the requested information to the commissioner in a timely manner.

(f) The commissioner may not adopt a presumptive premium rate that is unjust, unreasonable, inadequate, confiscatory, or excessive to the insureds, the insurers, or the agents.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.304(a), eff. Sept. 1, 2003.

Sec. 1153.104. APPEAL OF PRESUMPTIVE RATE. Any person who is aggrieved by any action of the commissioner taken in the setting of a

presumptive rate may, not later than the 30th day after the date the commissioner adopts a presumptive rate order, file a petition for judicial review in a district court in Travis County. Judicial review under this section is governed by Subchapter B, Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.304(a), eff. Sept. 1, 2003.

Sec. 1153.105. RATE WITHIN CERTAIN PERCENTAGES OF PRESUMPTIVE RATE. (a) An insurer electing to deviate from the presumptive rate shall file with the commissioner the insurer's proposed rate for credit life and credit accident and health insurance.

(b) On filing the rate with the commissioner, the insurer may use the filed rate until the insurer elects to file a different rate.

(c) Except as provided by Section 1153.106, an insurer may not use a rate that is more than 30 percent higher or more than 30 percent lower than the presumptive rate.

(d) Except as provided by this subchapter, a rate that complies with this section is valid and in compliance with the requirements of this subchapter and other applicable law.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.304(b), eff. Sept. 1, 2003.

Sec. 1153.106. RATE OUTSIDE CERTAIN PERCENTAGES OF PRESUMPTIVE RATE. (a) An insurer may file with the commissioner a proposed rate for credit life and credit accident and health insurance that is more than 30 percent higher or more than 30 percent lower than the presumptive rate adopted by the commissioner under this subchapter.

(b) The commissioner may disapprove a rate filed under this section on the ground that the rate is not actuarially justified.

(c) A rate filed under this section is considered approved and the insurer may use the rate if the rate is not disapproved by the commissioner before the 60th day after the date the insurer filed the rate.

(d) A hearing under this section is a contested case hearing conducted under Chapter 2001, Government Code. Judicial review of

any action of the commissioner under this section is governed by Subchapter D, Chapter 36.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.304(b), eff. Sept. 1, 2003.

Sec. 1153.107. RATE STANDARD. (a) A rate filed under this subchapter is not excessive unless the rate is unreasonably high for the coverage provided and a reasonable degree of competition does not exist with respect to the classification to which the rate is applicable.

(b) A rate filed under this subchapter is not inadequate unless the rate is insufficient to sustain projected losses and expenses or the rate substantially impairs, or is likely to substantially impair, competition with respect to the sale of the product.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.304(b), eff. Sept. 1, 2003.

SUBCHAPTER D. CREDIT INSURANCE REQUIREMENTS

Sec. 1153.151. FORMS OF CREDIT LIFE INSURANCE. Credit life insurance may be issued only as:

(1) an individual policy of life insurance issued to a debtor on a term plan; or

(2) a group policy of life insurance issued to a creditor on a term plan providing insurance on the lives of debtors.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.152. FORMS OF CREDIT ACCIDENT AND HEALTH INSURANCE. Credit accident and health insurance may be issued only as:

(1) an individual policy of accident and health insurance issued to a debtor on a term plan;

(2) a disability benefit provision in an individual policy of credit life insurance;

(3) a group policy of accident and health insurance issued to a creditor on a term plan insuring debtors; or

(4) a disability benefit provision in a group policy of

credit life insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.153. EVIDENCE OF INSURANCE. Credit life insurance or credit accident and health insurance shall be evidenced by an individual policy or group certificate of insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.154. REQUIREMENTS FOR DELIVERY OR ISSUANCE OF CREDIT INSURANCE POLICY. A policy of credit life insurance or credit accident and health insurance that is delivered or issued for delivery in this state may be delivered or issued for delivery only by an insurer authorized to engage in the business of insurance in this state and may be issued only through a holder of a license issued by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.155. LIMITS ON AMOUNT OF CREDIT LIFE INSURANCE. (a) The initial amount of credit life insurance on a debtor may not exceed the total amount of debt repayable under the contract that evidences the credit transaction.

(b) If the debt is repayable in substantially equal installments, the amount of insurance may not at any time exceed the greater of the scheduled or actual unpaid amount of the debt under the contract.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.156. LIMITS ON AMOUNT OF CREDIT ACCIDENT AND HEALTH INSURANCE. (a) The total amount of indemnity payable by credit accident and health insurance may not exceed the total amount of debt repayable under the contract that evidences the credit transaction.

(b) The amount of a periodic indemnity payment may not exceed the scheduled periodic installment payment on the debt.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.157. BEGINNING OF TERM OF CREDIT INSURANCE COVERAGE. (a) Except as otherwise provided by this section, the term of credit life insurance or credit accident and health insurance begins, subject to acceptance by the insurer, on the date that the debtor becomes obligated to the creditor.

(b) With respect to an obligation that exists when a group policy takes effect, coverage begins on the later of the effective date of the policy or the date of enrollment for coverage under the policy.

(c) If evidence of insurability is required and is provided after the 30th day after the date the debtor becomes obligated to the creditor, the term of the insurance may begin on the date the insurance company determines that the evidence is satisfactory.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.158. DELIVERY OF EVIDENCE OF INSURANCE TO DEBTOR. (a) At the time a debt for which credit insurance is sold is incurred:

(1) the individual policy or group certificate of insurance, as appropriate, shall be delivered to the debtor; or

(2) a copy of the application for the policy or certificate of insurance or a notice of proposed insurance that satisfies Section 1153.159 shall be delivered to the debtor.

(b) If delivery to the debtor is made under Subsection (a)(2), the insurer shall deliver the individual policy or group certificate of insurance to the debtor on acceptance of the insurance by the insurer and not later than the 45th day after the date the debt is incurred.

(c) If the insurer named in the application or notice under Subsection (a)(2) does not accept the risk, the debtor shall receive a policy or certificate of insurance that specifies the name and home office address of the substituted insurer and the amount of the premium to be charged for the insurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.159. REQUIREMENTS RELATING TO APPLICATION FOR INSURANCE OR NOTICE OF PROPOSED INSURANCE. A copy of an application for insurance or a notice of proposed insurance delivered under Section 1153.158 must:

(1) be signed by the debtor;

(2) specify:

(A) the name and home office address of the insurer;

(B) the name of each debtor;

(C) the full amount of the premium or the total identifiable insurance charge, if any, to be paid by the debtor, separately for credit life insurance and credit accident and health insurance; and

(D) the amount, term, and a brief description of the coverage to be provided;

(3) refer exclusively to insurance coverage;

(4) be separate from the instrument or agreement for the loan or sale or other credit statement of account, unless the information required by this section is prominently set forth in that instrument, agreement, or statement; and

(5) provide that on acceptance by the insurer, the insurance becomes effective as provided by Section 1153.157.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.160. TERMINATION OF CREDIT INSURANCE. (a) The term of credit life insurance or credit accident and health insurance must end not later than the 15th day after the scheduled maturity date of the debt unless the coverage after that date is without additional cost to the debtor.

(b) If the debt is discharged by renewing or refinancing the debt before the scheduled maturity date, the insurance in force must terminate before new insurance may be issued in connection with the renewed or refinanced debt.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.161. INSURANCE MAY BE PROVIDED BY DEBTOR. If credit life insurance or credit accident and health insurance is required as additional security for a debt, the debtor, on request to the

creditor, may provide the required amount of insurance through:

(1) an existing insurance policy owned or controlled by the debtor; or

(2) an insurance policy obtained from an insurer authorized to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER E. CHARGES, REFUNDS, ADJUSTMENTS, AND CLAIMS

Sec. 1153.201. MAXIMUM AMOUNT OF INSURANCE CHARGE TO DEBTOR. A creditor may not charge a debtor for credit life or credit accident and health insurance issued to the debtor an amount that exceeds the amount of the premium that the insurer charges the creditor for that insurance, as computed at the time the charge to the debtor is determined.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.202. REFUND OF INSURANCE CHARGE ON TERMINATION OF DEBT OR INSURANCE; FILING OF FORMULA. (a) Each individual policy or group policy and group certificate must include a written notice stating that:

(1) if the underlying debt or the insurance terminates before the originally scheduled termination date of the insurance, including the termination of a debt by renewing or refinancing the debt, the debtor shall be entitled to a refund of unearned premium; and

(2) in the event that the underlying debt or the insurance terminates before the originally scheduled termination date of the insurance, including the termination of a debt by renewing or refinancing the debt, the person who is the holder of the underlying debt instrument on the date the debt terminates shall, no later than 60 days after the termination of the insurance, provide notice to the insurer of the termination of the debt, that includes the name and address of the insured and the payoff date of the underlying debt.

(a-1) The refund of any amount of unearned premium paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled to the refund no later than 30 days after receipt of the notice required to be sent to the insurer under

Subsection (a)(2).

(a-2) In any claim or action asserted by an insured against an insurer for failure to refund any unearned premium in accordance with this section, the insurer shall be entitled to indemnity from a holder who failed to provide the notice required under Subsection (a)(2).

(b) A refund is not required if the amount of the refund is less than $3.

(c) The formula to be used in computing the refund of the amount paid by or charged to the debtor for insurance if the underlying debt or the insurance terminates before the scheduled maturity date of the debt must be filed with and approved by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 502 (S.B. 382), Sec. 1, eff. September 1, 2007.

Sec. 1153.203. CERTAIN REFUNDS OR ADJUSTMENTS REQUIRED. (a) If the beginning of the term of insurance is delayed under Section 1153.157(c), the charge to the debtor for insurance shall be adjusted or the appropriate amount shall be refunded to the debtor.

(b) If insurance is substituted under Section 1153.158(c) and the amount of premium for the substituted insurance is less than the amount specified in the application or notice of proposed insurance, the appropriate amount shall be refunded to the debtor.

(c) If a creditor requires a debtor to make any payment for credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall:

(1) immediately give written notice to the debtor; and

(2) promptly make an appropriate credit to the debtor's account.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.204. CLAIM UNDER POLICY. (a) A claim for recovery under a policy to which this chapter applies shall be reported

promptly to the insurer or the insurer's designated claim representative.

(b) An insurer shall maintain adequate claim files.

(c) A claim shall be settled as soon as possible and in accordance with the insurance contract.

(d) A claim shall be paid by a draft drawn on the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due under the policy or on direction of the claimant to the person specified.

(e) A plan or arrangement may not be used to authorize an individual, firm, or corporation, other than the insurer or the insurer's designated claim representative, to settle or adjust a claim. The creditor may not be designated as claim representative for the insurer in settling or adjusting a claim. Notwithstanding this subsection, a group policyholder, under an arrangement with the group insurer, may draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

SUBCHAPTER O. ENFORCEMENT OF CHAPTER; PENALTY

Sec. 1153.701. COMPLIANCE ORDER. (a) If, after written notice to an insurer or other person who holds a license or other authorization issued by the commissioner and a hearing, the commissioner determines that a violation of this chapter or a rule adopted under this chapter has occurred, the commissioner shall issue the details of that determination and an order for compliance by a specified date.

(b) An order issued under this section is binding on the insurer or other person to whom it is issued on the date specified in the order unless:

(1) the order is withdrawn by the commissioner before that date; or

(2) the order is appealed under Subchapter D, Chapter 36.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.702. PENALTY. (a) An individual, firm, or corporation who violates a final order issued under this chapter is

liable to the state in a civil action for a penalty of not more than:

(1) $250; or

(2) $1,000, if the court finds the violation to be wilful.

(b) The penalty provided by this section is in addition to any other penalty provided by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

Sec. 1153.703. REVOCATION OR SUSPENSION OF AUTHORITY ON VIOLATION OF ORDER. After notice and a hearing, the commissioner may revoke or suspend the license or certificate of authority of an individual, firm, or corporation that violates an order issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 2, eff. June 1, 2003.

CHAPTER 1154. FUNDING AGREEMENTS, GUARANTEED INVESTMENT CONTRACTS, AND SYNTHETIC GUARANTEED INVESTMENT CONTRACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1154.001. SHORT TITLE. This chapter may be cited as the Act for the Regulation of Funding Agreements, Guaranteed Investment Contracts, and Synthetic Guaranteed Investment Contracts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 2, eff. September 1, 2015.

Sec. 1154.002. PURPOSE; LEGISLATIVE INTENT; CONSTRUCTION. (a) The purpose of this chapter is to:

(1) promote the public welfare by regulating funding agreements, guaranteed investment contracts, and synthetic guaranteed investment contracts; and

(2) clarify and codify the existing law pertaining to funding agreements, guaranteed investment contracts, and synthetic guaranteed investment contracts.

(b) This chapter shall be liberally construed.

Added by Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 2, eff. September 1, 2015.

Sec. 1154.003. DEFINITIONS. In this chapter:

(1) "Annuity contract" means a contract, including a funding agreement, guaranteed investment contract, and synthetic guaranteed investment contract, issued by a life insurer, with or without a mortality or morbidity contingency, under which:

(A) the owner deposits cash or assets in one or more installments with the life insurer; and

(B) the owner or a beneficiary designated by the owner has a right to receive periodic payments for a specified future term.

(2) "Funding agreement" means a type of annuity contract under which a life insurer:

(A) accepts and accumulates funds, including noncash assets; and

(B) makes one or more payments at a future date in amounts that are not based on mortality or morbidity contingencies.

(3) "Governmental body" means a federal, state, municipal, local, or foreign court, tribunal, governmental department, commission, board, bureau, agency, authority, instrumentality, regulatory body, or quasi-regulatory body.

(4) "Group" means a group to which a group life insurance policy may be issued under Subchapter B, Chapter 1131.

(5) "Group annuity contract" means an annuity contract issued to a group and not an individual.

(6) "Guaranteed investment contract" means a type of annuity contract issued by a life insurer:

(A) that is a funding vehicle typically issued to a retirement plan; and

(B) under which the life insurer accepts a deposit or series of deposits from the purchaser and guarantees to pay a specified interest rate of return on the funds deposited during a specified period.

(7) "Life insurer" means an insurance company authorized to engage in the business of life insurance, including issuing annuity contracts, in this state.

(8) "Synthetic guaranteed investment contract" means a group annuity contract or other agreement issued by a life insurer that, wholly or partly, establishes the life insurer's obligations by reference to a segregated portfolio of assets that the life insurer

does not own.

Added by Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 2, eff. September 1, 2015.

Sec. 1154.004. APPLICABILITY OF CERTAIN OTHER LAW. Chapters 521, 1107, 1115, and 1131 do not apply to funding agreements, guaranteed investment contracts, or synthetic guaranteed investment contracts without mortality or morbidity contingencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 2, eff. September 1, 2015.

Sec. 1154.005. RULES. The commissioner may adopt rules to implement or clarify this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 2, eff. September 1, 2015.

SUBCHAPTER B. FUNDING AGREEMENTS

Sec. 1154.051. ESTABLISHMENT OF FUNDING AGREEMENTS. (a) A life insurer may issue a funding agreement to generate an income stream for the purchaser of the agreement or fund a future liability or program of the purchaser or the purchaser's designee. A life insurer may issue a funding agreement to:

(1) an accredited investor, as defined by 17 C.F.R. Section 230.501;

(2) a governmental body; or

(3) an institution with assets in excess of $25 million.

(b) A life insurer that issues a funding agreement in this state engages in the business of insurance for the purpose of regulation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 2, eff. September 1, 2015.

SUBCHAPTER C. GUARANTEED INVESTMENT CONTRACTS

Sec. 1154.101. ESTABLISHMENT OF GUARANTEED INVESTMENT CONTRACTS. A life insurer may issue a guaranteed investment contract to provide a benefit in a fixed amount or a variable amount or a fixed amount and a variable amount.

Added by Acts 2015, 84th Leg., R.S., Ch. 1187 (S.B. 1196), Sec. 2, eff. September 1, 2015.

TITLE 8. HEALTH INSURANCE AND OTHER HEALTH COVERAGES
SUBTITLE A. HEALTH COVERAGE IN GENERAL
CHAPTER 1201. ACCIDENT AND HEALTH INSURANCE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1201.001. DEFINITIONS. In this chapter:

(1) "Accident and health insurance policy" includes any policy or contract that provides insurance against loss resulting from:

(A) accidental bodily injury;

(B) accidental death; or

(C) sickness.

(2) "Policy" means the entire contract between an insurer and an insured and includes riders, endorsements, and the application, if attached.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.002. PURPOSE. The purpose of this chapter is to:

(1) provide for reasonable standardization, readability, and simplification of terms and coverages in individual accident and health insurance policies;

(2) promote public understanding of coverages;

(3) eliminate provisions in individual accident and health insurance policies that may be unjust, unfair, misleading, or unreasonably confusing in connection with:

(A) the purchase of coverage; or

(B) the settlement of claims; and

(4) provide for full and fair disclosure in sales of accident and health coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to an accident and health insurance policy delivered or issued for delivery in this state.

(b) Except as otherwise provided by this chapter, this chapter applies only to an individual accident and health insurance policy delivered or issued for delivery by:

(1) a life, health, and accident insurance company;

(2) a mutual insurance company, including:

(A) a mutual life insurance company; and

(B) a mutual assessment life insurance company;

(3) a local mutual aid association;

(4) a mutual or natural premium life or casualty insurance company;

(5) a general casualty company;

(6) a Lloyd's plan;

(7) a reciprocal or interinsurance exchange;

(8) a nonprofit hospital, medical, or dental service corporation, including a corporation operating under Chapter 842; or

(9) another insurer required by law to be authorized by the department.

(c) This chapter applies to an accident and health insurance policy issued by a stipulated premium company subject to Chapter 884.

(d) This chapter does not apply to:

(1) any society, company, or other insurer whose activities are exempt by statute from the control of the department and that is entitled by statute to a certificate from the department that shows the entity's exempt status;

(2) a credit accident and health insurance policy issued under Chapter 1153;

(3) a workers' compensation insurance policy;

(4) a liability insurance policy, with or without supplementary expense coverage;

(5) a reinsurance policy or contract;

(6) a blanket or group insurance policy, except as otherwise provided by this chapter; or

(7) a life insurance endowment or annuity contract or a contract supplemental to a life insurance endowment or annuity contract if the contract or supplemental contract contains only

provisions relating to accident and health insurance that:

(A) provide additional benefits in case of accidental death, accidental dismemberment, or accidental loss of sight; or

(B) operate to:

(i) safeguard the contract or supplemental contract against lapse; or

(ii) give a special surrender value, a special benefit, or an annuity if the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

(e) Subchapters C and D do not apply to a conversion policy issued under a contractual conversion privilege under a group accident and health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.004. CONSTRUCTION OF CHAPTER. This chapter does not enlarge the powers of an entity listed in Section 1201.003.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.005. REFERENCES TO CHAPTER. In this chapter, a reference to this chapter includes a reference to:

(1) Section 1202.052;

(2) Section 1271.005(a), to the extent that the subsection relates to the applicability of Section 1201.105, and Sections 1271.005(d) and (e);

(3) Chapter 1351;

(4) Subchapters C and E, Chapter 1355;

(5) Chapter 1356;

(6) Chapter 1365;

(7) Subchapter A, Chapter 1367; and

(8) Subchapters A, B, and G, Chapter 1451.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.006. RULEMAKING AUTHORITY. The commissioner may adopt reasonable rules as necessary to implement the purposes and

provisions of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.007. NOTICE AND HEARING. The commissioner may adopt a general rule or order relating to a matter covered by this chapter only after a hearing held after the 10th day following the date the department by mail notifies each insurer to which this chapter applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.008. JUDICIAL REVIEW. An insurer that is dissatisfied with an order, act, rule, administrative ruling, or decision of the commissioner under this chapter may, after failing to get relief from the commissioner, file a petition seeking judicial review of the order, act, rule, ruling, or decision in accordance with Subchapter D, Chapter 36. The action has precedence over all other causes on the docket of a different nature.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.009. NONCONFORMING POLICY. (a) This chapter governs the rights, duties, and obligations of the insurer, the insured, and the beneficiary of an accident and health insurance policy regardless of a provision in the policy that conflicts with this chapter.

(b) An accident and health insurance policy that violates this chapter is a valid policy, but the policy shall be construed in a manner to make the policy consistent with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.010. THIRD-PARTY OWNERSHIP OF POLICY. The use of "insured" in this chapter does not prevent a person with an insurable interest, other than the insured, from:

(1) applying for and owning an individual accident and health insurance policy covering the insured; or

(2) being entitled to an indemnity, right, or benefit provided for in an individual accident and health insurance policy covering the insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.011. COVERAGE FOR PREMIUM PERIOD WITH LIMITATIONS BY AGE OR DATE; MISSTATEMENT OF AGE OF INSURED. (a) Regardless of a provision in an individual accident and health insurance policy that specifies a date, by age limitation or otherwise, after which coverage under the policy is not effective, coverage continues in force, subject to any right of cancellation, until the end of the period for which the insurer accepts a premium if:

(1) the insurer accepts the premium after the specified date; or

(2) the specified date falls before the end of the period for which the insurer accepts the premium.

(b) Notwithstanding Subsection (a), if the age of the insured is misstated and, because of the insured's correct age, coverage of the insured would not have become effective or would have terminated before the insurer's acceptance of a premium, the liability of the insurer is limited to the refund, on request, of the premiums paid for the period not covered by the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.012. DEFENSE OF CLAIM. The following actions by an insurer do not operate as a waiver of the insurer's rights in defense of a claim that arises under an individual accident and health insurance policy:

(1) acknowledgment of the receipt of notice given under the policy;

(2) provision of a form for filing a proof of loss;

(3) acceptance of a proof of loss; or

(4) investigation of a claim under the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.013. PROGRAMS PROMOTING DISEASE PREVENTION, WELLNESS, AND HEALTH. (a) An insurer issuing an accident and health insurance policy may establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, for an insured who participates in programs promoting disease prevention, wellness, and health.

(b) A discount, rebate, or reduction established under this section does not violate Section 541.056(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 112 (H.B. 2252), Sec. 2, eff. May 17, 2007.

SUBCHAPTER B. POLICY TERMS

Sec. 1201.051. ENTIRE CONSIDERATION. An individual accident and health insurance policy must state the entire monetary and other consideration for the policy in the policy or in the application, if the application is made a part of the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.052. TIME OF EFFECTIVENESS AND TERMINATION. An individual accident and health insurance policy must state the time the insurance takes effect and the time the insurance terminates.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.053. PERSONS INSURED. (a) Except as provided by this section, an individual accident and health insurance policy may not insure more than one individual.

(b) On the application of an adult member of a family, an individual accident and health insurance policy may, at the time of original issuance or by subsequent amendment, insure two or more eligible members of the adult's family, including a spouse, unmarried children younger than 25 years of age, including a grandchild of the adult as described by Section 1201.062(a)(1), a child the adult is required to insure under a medical support order or dental support order, if the policy provides dental coverage, issued under Chapter 154, Family Code, or enforceable by a court in this state, and any

other individual dependent on the adult.

(c) The adult who applies for the individual accident and health insurance policy is considered the policyholder.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 56, eff. September 1, 2018.

Sec. 1201.054. APPEARANCE OF TEXT. (a) In this section, "text" includes all printed matter of an individual accident and health insurance policy except:

(1) the name and address of the insurer;

(2) the name or title of the policy;

(3) the brief description, if any; and

(4) captions and subcaptions.

(b) An individual accident and health insurance policy must have:

(1) a style, arrangement, or overall appearance that does not give undue prominence to any portion of the text; and

(2) every printed portion of its text and of any endorsements or attached papers printed plainly in a lightfaced type:

(A) of a style in general use; and

(B) in a uniform size not less than 10-point with a lowercase unspaced alphabet length not less than 120-point.

(c) Subsection (b)(2) does not apply to a copy of an application or identification card.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.055. EXCEPTIONS AND REDUCTIONS OF INDEMNITY. (a) An individual accident and health insurance policy must state each exception to or reduction of indemnity for the policy.

(b) Except as provided by Subchapter E, each exception to or reduction of indemnity for the policy must be printed, at the insurer's option:

(1) with the benefit provision to which the exception or reduction applies; or

(2) under an appropriate caption such as:

(A) "Exceptions"; or

(B) "Exceptions and Reductions."

(c) Notwithstanding Subsection (b), if an exception or reduction specifically applies only to a particular benefit of an individual accident and health insurance policy, the statement of the exception or reduction must be included with the benefit provision to which the exception or reduction applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.056. FORM NUMBER. Each form that constitutes a part of an individual accident and health insurance policy, including each rider or endorsement, must be identified by a form number placed in the lower left corner of the first page of the form.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.057. INCORPORATION OF OR REFERENCE TO OTHER DOCUMENTS. (a) An individual accident and health insurance policy that provides that a portion of the charter, rules, constitution, or bylaws of the insurer are a part of the policy must state that portion fully in the policy.

(b) An individual accident and health insurance policy may incorporate or refer to:

(1) a statement of rates or classification of risks; or

(2) a short-rate table filed with the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.058. NOTIFICATION THAT POLICY IS RETURNABLE; EFFECT OF RETURN. (a) An individual accident and health insurance policy must include a notice that states in substance that the individual to whom the policy is issued is entitled to have the premium paid refunded if, after the individual examines the policy, the individual is not satisfied with the policy for any reason and returns the policy not later than the 10th day after the date the policy is delivered to the individual.

(b) An individual accident and health insurance policy returned

to the insurer at the insurer's home or branch office or to the agent through whom the policy was purchased within the time provided by the notice is void from the date the policy was issued, and the parties are in the same position as if the policy had not been issued.

(c) The notice required by this section may be printed on the policy or attached to the policy.

(d) This section does not apply to a single premium nonrenewable policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.059. TERMINATION OF COVERAGE BASED ON AGE OF CHILD IN INDIVIDUAL, BLANKET, OR GROUP POLICY. (a) An accident and health insurance policy, including an individual, blanket, or group policy, and including a policy issued by a corporation operating under Chapter 842, that provides that coverage of a child terminates when the child attains a limiting age specified in the policy must provide in substance that the child's attainment of that age does not terminate coverage while the child is:

(1) incapable of self-sustaining employment because of an intellectual or physical disability; and

(2) chiefly dependent on the insured or group member for support and maintenance.

(b) To obtain coverage for a child as described by Subsection (a), the insured or group member must provide to the insurer proof of the child's incapacity and dependency:

(1) not later than the 31st day after the date the child attains the limiting age; and

(2) subsequently as the insurer requires, except that the insurer may not require proof more frequently than annually after the second anniversary of the date the child attains the limiting age.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.02, eff. September 1, 2023.

Sec. 1201.060. REQUIRED DEFINITION OF "EMERGENCY CARE" IN INDIVIDUAL OR GROUP POLICY. An individual or group accident and

health insurance policy that provides an emergency care benefit, including a policy issued by a corporation operating under Chapter 842, must define "emergency care" as follows:

"Emergency care" means bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(1) placing the patient's health in serious jeopardy;

(2) serious impairment to bodily functions; or

(3) serious dysfunction of any bodily organ or part.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.0601. REQUIRED DEFINITIONS: SPECIFIED DISEASE POLICY. An individual or group specified disease insurance policy that uses the term "actual charge" or "actual fee" must define the terms as follows:

"Actual charge" or "actual fee" means the amount actually paid by or on behalf of the insured and accepted by a provider for services provided.

Added by Acts 2005, 79th Leg., Ch. 974 (H.B. 1775), Sec. 1, eff. September 1, 2005.

Sec. 1201.061. COVERAGE FOR ADOPTED CHILD. (a) An individual accident and health insurance policy that provides coverage for an insured's immediate family or children may not, solely because the insured's child is adopted:

(1) exclude the child from coverage; or

(2) limit coverage for the child.

(b) For the purposes of this section, a child is an insured's child if the insured is a party to a suit in which the insured seeks to adopt the child.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.062. COVERAGE FOR CERTAIN CHILDREN IN INDIVIDUAL OR

GROUP POLICY OR IN PLAN OR PROGRAM. (a) An individual or group accident and health insurance policy that is delivered, issued for delivery, or renewed in this state, including a policy issued by a corporation operating under Chapter 842, or a self-funded or self-insured welfare or benefit plan or program, to the extent that regulation of the plan or program is not preempted by federal law, that provides coverage for a child of an insured or group member, on payment of a premium, must provide coverage for:

(1) each grandchild of the insured or group member if the grandchild is:

(A) unmarried;

(B) younger than 25 years of age; and

(C) a dependent of the insured or group member for federal income tax purposes at the time application for coverage of the grandchild is made; and

(2) each child for whom the insured or group member must provide medical support or dental support, if the policy provides dental coverage, under an order issued under Chapter 154, Family Code, or enforceable by a court in this state.

(b) Coverage for a grandchild of the insured or group member may not be terminated solely because the grandchild is no longer a dependent of the insured or group member for federal income tax purposes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 57, eff. September 1, 2018.

Sec. 1201.063. PROHIBITION OF CERTAIN CRITERIA RELATING TO CHILD'S COVERAGE IN INDIVIDUAL OR GROUP POLICY. Regarding a natural or adopted child of an insured or group member or a child for whom the insured or group member must provide medical support or dental support, if the policy provides dental coverage, under an order issued under Chapter 154, Family Code, or enforceable by a court in this state, an individual or group accident and health insurance policy that provides coverage for a child of an insured or group member may not set a different premium for the child, exclude the child from coverage, or discontinue coverage of the child because:

(1) the child does not reside with the insured or group member; or

(2) the insured or group member does not claim the child as an exemption for federal income tax purposes under Section 151(c), Internal Revenue Code of 1986.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 58, eff. September 1, 2018.

Sec. 1201.064. COVERAGE FOR CHILD OF SPOUSE IN INDIVIDUAL OR GROUP POLICY. An individual or group accident and health insurance policy that provides coverage for a child of an insured or group member may not:

(1) set a premium for a child that is different from the premium for other children because the child is the natural or adopted child of the spouse of the insured or group member;

(2) exclude a child described by Subdivision (1) from coverage; or

(3) discontinue coverage of a child described by Subdivision (1).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.065. AGE AND SCHOOL ENROLLMENT ELIGIBILITY CRITERIA FOR DEPENDENT CHILDREN IN INDIVIDUAL OR GROUP POLICY; LATE ENROLLMENT. (a) An individual or group accident and health insurance policy may contain criteria relating to a maximum age or enrollment in school to establish continued eligibility for coverage of a child 25 years of age or older.

(b) In the case of a late enrollment, an insurer may require evidence of insurability that is satisfactory to the insurer before a child is included for coverage under the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.023(a), eff. September 1, 2005.

SUBCHAPTER C. GENERAL POLICY STANDARDS AND PROVISIONS

Sec. 1201.101. STANDARDS FOR POLICY PROVISIONS. (a) The commissioner shall adopt reasonable rules establishing specific standards for:

(1) the content of an individual accident and health insurance policy; and

(2) the manner of sale of an individual accident and health insurance policy, including disclosures required to be made in connection with the sale.

(b) Rules adopted under this section must establish standards for:

(1) policy readability; and

(2) full and fair policy disclosures.

(c) Standards established under this section may include standards that address:

(1) terms of policy renewability;

(2) initial and subsequent conditions of eligibility;

(3) nonduplication of coverage;

(4) coverage of dependents;

(5) preexisting conditions;

(6) termination of insurance;

(7) probationary periods;

(8) limitations;

(9) exceptions;

(10) reductions;

(11) elimination periods;

(12) requirements for replacement;

(13) recurrent conditions; and

(14) definitions of terms, including definitions of:

(A) "accident";

(B) "accidental means";

(C) "guaranteed renewable and noncancellable";

(D) "hospital";

(E) "injury";

(F) "nervous disorder";

(G) "partial disability";

(H) "physician";

(I) "sickness"; and

(J) "total disability."

(d) A definition of "hospital" adopted under Subsection (c) may not apply to a corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.102. PROHIBITION OF POLICY PROVISIONS. The commissioner may adopt rules prohibiting specific individual accident and health insurance policy provisions not specifically authorized by statute that the commissioner determines are unjust, unfair, or unfairly discriminatory to:

(1) the policyholder;

(2) an insured under the policy; or

(3) a beneficiary.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.103. COMPLIANCE WITH MINIMUM STANDARDS FOR BENEFITS. (a) An individual accident and health insurance policy must meet the minimum standards for benefits established under Section 1201.104 for each category of coverage provided under the policy.

(b) Subsection (a) does not apply if the commissioner determines that the policy is a supplemental policy or experimental policy or determines that the policy will fulfill a reasonable public need and the policy meets the requirements of Chapter 1701.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.104. MINIMUM STANDARDS FOR BENEFITS. (a) For individual accident and health insurance policies, the commissioner shall adopt rules establishing minimum standards for benefits under each of the following categories of coverage:

(1) basic hospital expense;

(2) basic medical-surgical expense;

(3) hospital indemnity or other fixed indemnity;

(4) major medical expense;

(5) disability income protection;

(6) accident only;

(7) specified disease;
(8) specified accident; and
(9) limited benefit.

(b) This section does not prohibit the issuance of an individual accident and health insurance policy that combines categories of coverage listed by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 25 (S.B. 979), Sec. 1, eff. May 15, 2015.

Sec. 1201.105. MINIMUM STANDARDS FOR BENEFITS FOR LONG-TERM CARE IN INDIVIDUAL, GROUP, OR BLANKET POLICY. (a) The commissioner shall adopt rules establishing minimum standards for benefits for long-term care coverage under individual, group, and blanket accident and health insurance policies and certificates delivered or issued for delivery in this state.

(b) Rules adopted under this section apply to group coverages delivered or issued for delivery by a corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.106. IDENTIFICATION OF POLICIES ACCORDING TO COVERAGE PROVIDED. The commissioner shall prescribe the method to identify an individual accident and health insurance policy according to the coverages the policy provides.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.107. OUTLINE OF COVERAGE REQUIRED. (a) An outline of coverage for an individual accident and health insurance policy must be delivered to the applicant at the time application is made, and an acknowledgment of receipt or certificate of delivery of an outline of coverage must be provided to the insurer with the application.

(b) If the policy issued differs from the policy for which the

applicant applied, an outline of coverage that properly describes the policy must:

(1) accompany the policy when delivered; and

(2) clearly state that the policy is not the policy for which the applicant applied.

(c) Subsection (a) does not apply to a direct response insurance product.

(d) An outline of coverage under a direct response insurance product must accompany the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.108. FORMAT AND CONTENT OF OUTLINE OF COVERAGE. (a) In this section, "format" means style, arrangement, and overall appearance, including:

(1) the size, color, and prominence of type; and

(2) the arrangement of text and captions.

(b) The commissioner shall prescribe the format and content of an outline of coverage required by Section 1201.107.

(c) An outline of coverage must include:

(1) a statement that identifies the applicable categories of coverage listed by Section 1201.104 and provided by the policy;

(2) a description of the principal benefits and coverage provided by the policy;

(3) a statement of the exceptions, reductions, and limitations in the policy;

(4) a statement of the renewal provision, including any reservation of the insurer's right to change premiums;

(5) a statement that:

(A) the outline is a summary of the policy issued or applied for; and

(B) the policy should be consulted to determine governing contractual provisions;

(6) as the commissioner determines necessary to carry out the purposes of this chapter, a summary of the provisions required by Subchapter E to be in the policy; and

(7) any other statement, description, or outline that the commissioner determines is reasonably necessary to carry out the purposes of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.109. NOTICE OF RATE INCREASE FOR MAJOR MEDICAL EXPENSE INSURANCE POLICY. (a) Not less than 60 days before the date on which a premium rate increase takes effect on an individual accident and health insurance policy that provides major medical expense coverage and that is delivered or issued for delivery in this state by an insurer, the insurer shall:

(1) give written notice to the insured of the effective date of the increase; and

(2) provide the insured a table that clearly lists:

(A) the actual dollar amount of the premium on the date of the notice;

(B) the actual dollar amount of the premium after the premium rate increase; and

(C) the percentage change between the amounts described by Paragraphs (A) and (B).

(b) The notice required by this section must be based on coverage in effect on the date of the notice.

(c) This section may not be construed to prevent an insurer, at the request of an insured, from negotiating a change in benefits or rates after delivery of the notice required by this section.

(d) An insurer may not require an insured entitled to notice under this section to respond to the insurer to renew the policy or take other action relating to the renewal or extension of the policy before the 45th day after the date the notice described by Subsection (a) is given.

(e) The notice required by this section must include:

(1) contact information for the department, including information concerning how to file a complaint with the department;

(2) contact information for the Texas Consumer Health Assistance Program, including information concerning how to request from the program consumer protection information or assistance with filing a complaint; and

(3) the addresses of Internet websites that provide consumer information related to rate increase justifications, including the websites of the department and the United States Department of Health and Human Services.

(f) For purposes of this section, "major medical expense

coverage" means an individual major medical expense insurance policy to which this chapter applies under Section 1201.003 that constitutes creditable coverage under Section 1205.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.002, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 454 (S.B. 853), Sec. 1, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 454 (S.B. 853), Sec. 2, eff. June 14, 2013.

SUBCHAPTER D. PREEXISTING CONDITIONS

Sec. 1201.151. COMPLIANCE WITH SUBCHAPTER; PROHIBITION OF DEFENSE. Except as provided by this subchapter, an individual accident and health insurance policy may not include a provision that permits a defense based on a preexisting condition.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.152. COVERAGE UNDER SIMPLIFIED APPLICATION FORM. (a) Notwithstanding Clause (b) of the provision required by Section 1201.208(a), an individual accident and health insurance policy must cover any loss that occurs after 12 months from a preexisting condition if the insurer uses a simplified application form that does not include a question concerning the applicant's health history or medical treatment history.

(b) This section applies regardless of whether the simplified application form includes a question regarding the applicant's health at the time of application.

(c) This section does not require an insurer to cover a loss from a condition that the policy specifically excludes from coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.153. COVERAGE FOR INDIVIDUALS AGE 65 OR OLDER. (a) Notwithstanding Section 1201.152 or Clause (b) of the provision required by Section 1201.208(a), an individual accident and health

insurance policy delivered or issued for delivery to an individual who is 65 years of age or older may not include a provision that excludes from coverage a loss that occurs from a preexisting condition more than six months after the effective date of coverage under the policy.

(b) Notwithstanding Subsection (a), the commissioner may authorize a policy provision that excludes coverage for a preexisting condition for a period of not more than one year if the commissioner determines that the provision would serve the public interest.

(c) This section does not require an insurer to provide coverage for a loss from a preexisting condition specifically excluded from coverage by name or specific description in an exclusion endorsement or rider that is effective on the date of the loss.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.154. COVERAGE FOR CERTAIN PREVIOUSLY COVERED PERSONS. (a) In this section, "creditable coverage" has the meaning assigned by Section 1205.004(a).

(b) A preexisting condition provision in an individual accident and health insurance policy may not apply to an individual who was continuously covered for an aggregate period of 18 months by creditable coverage that was in effect up to a date not more than 63 days before the effective date of the individual coverage, excluding any waiting period.

(c) In determining whether a preexisting condition provision of an individual accident and health insurance policy applies to an individual, an insurer shall credit the time the individual previously was covered under creditable coverage if the previous coverage was in effect at any time during the 18 months preceding the effective date of the individual coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.024, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1070 (H.B. 2548), Sec. 1, eff. June 15, 2007.

SUBCHAPTER E. REQUIRED POLICY PROVISIONS

Sec. 1201.201. POLICY PROVISIONS REQUIRED. (a) Except as provided by Subsections (b) and (c), an individual accident and health insurance policy must contain the provisions required by this subchapter in the words provided by this subchapter.

(b) An insurer may substitute for a policy provision required by this subchapter a provision with different wording approved by the commissioner in accordance with reasonable rules adopted by the commissioner. A substituted provision may not be less favorable to an insured or a beneficiary of the policy than the provision required by this subchapter.

(c) If a policy provision required by this subchapter is wholly or partly inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the commissioner's approval, shall:

(1) omit from the policy each inapplicable provision or part of a provision; and

(2) modify each inconsistent provision or part of a provision so that the provision as contained in the policy is consistent with the coverage provided by the policy.

(d) A policy provision required by this subchapter must be preceded by the caption for the provision provided by this subchapter or, at the option of the insurer, by an appropriate individual or group caption or subcaption approved by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.202. ORDER OF REQUIRED POLICY PROVISIONS. (a) Except as provided by Subsection (b), policy provisions required by this subchapter or corresponding substitute provisions must be printed in the same consecutive order as provided by this subchapter.

(b) An insurer may print a policy provision required by this subchapter or a corresponding substitute provision as a unit in any part of the policy with other provisions to which the provision is logically related.

(c) A policy printed under Subsection (b) may not be wholly or partly unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.203. OTHER POLICY PROVISIONS. A policy provision that is not otherwise subject to this subchapter may not make an individual accident and health insurance policy or any portion of the policy less favorable in any way to the insured or the beneficiary than the policy provisions that are subject to this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.204. POLICY PROVISIONS REQUIRED BY OTHER JURISDICTION. An individual accident and health insurance policy of a foreign or alien insurer may contain any provision that is:

(1) not less favorable to the insured or the beneficiary than the provisions of this chapter; and

(2) prescribed or required by the law of the state under which the insurer is organized.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.205. POLICY PROVISIONS FOR POLICY DELIVERED OUTSIDE THIS STATE. An individual accident and health insurance policy issued by a domestic insurer for delivery in another state or country may contain any provision permitted or required by the laws of that state or country.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.206. FILING PROCEDURE. (a) The commissioner may adopt reasonable rules regarding the procedure for submitting policies subject to this chapter that are necessary, proper, or advisable for the administration of this chapter.

(b) This section does not limit any authority otherwise granted by law to the commissioner or department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.207. POLICY PROVISION: ENTIRETY OF CONTRACT; POLICY CHANGES. An individual accident and health insurance policy must contain the following provision:

"Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. A change in this policy is not valid until the change is approved by an executive officer of the insurer and unless the approval is endorsed on or attached to the policy. An agent does not have authority to change this policy or to waive any of its provisions."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.208. POLICY PROVISION: INCONTESTABILITY. (a) Except as provided by Subsection (c), an individual accident and health insurance policy must contain the following provision:

"Time Limit on Certain Defenses: (a) After the second anniversary of the date this policy is issued, a misstatement, other than a fraudulent misstatement, made by the applicant in the application for the policy may not be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) beginning after that anniversary.

"(b) A claim for loss incurred or disability (as defined in the policy) beginning after the second anniversary of the date this policy is issued may not be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss existed before the effective date of coverage of this policy."

(b) Clause (a) of the provision required by Subsection (a) does not:

(1) affect any legal requirement for avoidance of a policy or denial of a claim during the initial two-year period; or

(2) limit the application of Section 1201.219, 1201.220, or 1201.221 in a case of a misstatement regarding age, occupation, or other insurance.

(c) For a policy that provides that the insured is entitled to continue the policy in force by the timely payment of premiums until the insured reaches at least 50 years of age or, if the policy was issued after the insured reached 44 years of age, until at least the

fifth anniversary of the policy's date of issuance, an insurer may use the following clause instead of Clause (a) of the provision required by Subsection (a):

"After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestible as to the statements contained in the application."

(d) The provision provided by Subsection (c) must be under the caption "Incontestable." An insurer that uses the provision may omit the parenthetical clause.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.209. POLICY PROVISION: GRACE PERIOD. (a) An individual accident and health insurance policy must contain the following provision:

"Grace Period: A grace period of _____ (insert appropriate number) days will be granted for the payment of each premium due after the first premium. During the grace period, the policy continues in force."

(b) The number of days of the grace period may not be less than:

(1) 7 for a weekly premium policy;

(2) 10 for a monthly premium policy; or

(3) 31 for any other policy.

(c) A policy that contains a cancellation provision may add, at the end of the provision required by Subsection (a): "subject to the right of the insurer to cancel the policy in accordance with the policy's cancellation provision."

(d) A policy in which the insurer reserves the right to refuse any renewal must include the following provision at the beginning of the provision required by Subsection (a):

"Unless, not less than five days before the premium due date, the insurer has delivered to the insured, or has mailed to the insured's last address as shown by the insurer's records, a written notice of the insurer's intention not to renew this policy beyond the period for which the premium has been accepted, ..."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.210. POLICY PROVISION: REINSTATEMENT. (a) Except as provided by Subsection (b), an individual accident and health insurance policy must contain the following provision:

"Reinstatement: If a renewal premium is not paid before the expiration of the period granted for the insured to make the payment, a subsequent acceptance of the premium by the insurer or any agent authorized by the insurer to accept the premium, without requiring in connection with the acceptance an application for reinstatement, reinstates the policy. However, if the insurer or authorized agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated on approval of the application by the insurer or, if the application is not approved, on the 45th day after the date of the conditional receipt unless the insurer before that date has notified the insured in writing of the insurer's disapproval of the application. The reinstated policy covers only loss resulting from an accidental injury sustained after the date of reinstatement and loss due to sickness that begins more than 10 days after the date of reinstatement. In all other respects the insured and insurer have the same rights under the reinstated policy as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed in the policy or attached to the policy in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days before the date of reinstatement."

(b) The insurer may omit the last sentence of the provision required by Subsection (a) in a policy that provides that the insured is entitled to continue the policy in force by the timely payment of premiums until the insured reaches at least 50 years of age or, if the policy was issued after the insured reached 44 years of age, until at least the fifth anniversary of the policy's date of issuance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.211. POLICY PROVISION: NOTICE OF CLAIM. (a) Except as provided by Subsection (b), an individual accident and health insurance policy must contain the following provision:

"Notice of Claim: A written notice of claim must be given to the insurer before the 21st day after the date of the occurrence or beginning of any loss covered by the policy, or as soon after that date as is reasonably possible. A notice given by or on behalf of the insured or the beneficiary to the insurer at _____ (insert the location of any office the insurer designates for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, constitutes notice to the insurer."

(b) In a policy that provides a loss of time benefit that may be payable for at least two years, an insurer may insert, between the first and second sentences of the provision required by Subsection (a), the following provision:

"Subject to the qualifications below, and except in the event of a legal incapacity, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, the insured shall, at least once in every _____ (insert appropriate number) months after having given notice of claim, give to the insurer notice of continuance of the disability. In applying this provision, the period of _____ (insert appropriate number) months following a filing of proof by the insured or any payment by the insurer on account of the claim or any denial of liability in whole or in part by the insurer shall be excluded. Delay in giving the notice does not impair the insured's right to any indemnity that would otherwise have accrued during the period of _____ (insert appropriate number) months preceding the date on which the notice is actually given."

(c) The number of months inserted in the clause permitted by Subsection (b) may not be less than one or greater than six.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.212. POLICY PROVISION: CLAIM FORMS. (a) Except as provided by Subsection (b), an individual accident and health insurance policy must contain the following provision:

"Claim Forms: The insurer, on receipt of a notice of claim, will provide to the claimant the forms usually provided by the insurer for filing proof of loss. If the forms are not provided before the 16th day after the date of the notice, the claimant shall

be considered to have complied with the requirements of this policy as to proof of loss on submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character, and the extent of the loss for which the claim is made."

(b) The provision required by this section is not required to be contained in a policy issued by a corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.213. POLICY PROVISION: PROOF OF LOSS. An individual accident and health insurance policy must contain the following provision:

"Proof of Loss: For a claim for loss for which this policy provides any periodic payment contingent on continuing loss, a written proof of loss must be provided to the insurer at the insurer's designated office before the 91st day after the termination of the period for which the insurer is liable. For a claim for any other loss, a written proof of loss must be provided to the insurer at the insurer's designated office before the 91st day after the date of the loss. Failure to provide the proof within the required time does not invalidate or reduce any claim if it was not reasonably possible to give proof within the required time. In that case, the proof must be provided as soon as reasonably possible but not later than one year after the time proof is otherwise required, except in the event of a legal incapacity."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.214. POLICY PROVISION: TIME OF PAYMENT OF CLAIMS. (a) Except as provided by Subsection (c), an individual accident and health insurance policy must contain the following provision:

"Time of Payment of Claims: Indemnities payable under this policy for any loss, other than a loss for which this policy provides any periodic payment, will be paid immediately on receipt of due written proof of the loss. Subject to due written proof of loss, all accrued indemnities for a loss for which this policy provides periodic payment will be paid _____ (insert period for payment)

and any balance remaining unpaid on termination of liability will be paid immediately on receipt of due written proof of loss."

(b) The period for payment to be inserted in the clause required by Subsection (a) may not be less frequent than monthly.

(c) The provision required by this section is not required to be contained in a policy issued by a corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.215. POLICY PROVISION: PAYMENT OF CLAIMS. (a) Except as provided by Subsection (d), an individual accident and health insurance policy must contain the following provision:

"Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting indemnity payments that may be prescribed in this policy and effective at the time of payment. If such a designation or provision is not then effective, the indemnity will be payable to the insured's estate. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either in accordance with the beneficiary designation or to the insured's estate. All other indemnities will be payable to the insured."

(b) An insurer may include with the provision required by Subsection (a) one or both of the following provisions:

"If any indemnity of this policy is payable to the insured's estate, or to an insured or beneficiary who is a minor or is otherwise not competent to give a valid release, the insurer may pay the indemnity, up to an amount not exceeding $_____ (insert amount), to any relative by blood or connection by marriage of the insured or beneficiary who is considered by the insurer to be equitably entitled to the indemnity. Any payment made by the insurer in good faith in accordance with this provision fully discharges the insurer to the extent of the payment."

"Subject to any written direction of the insured, in the application or otherwise, all or a portion of any indemnity provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proof of the loss, be paid directly to the hospital or person providing the

services. It is not required that the service be provided by a particular hospital or person."

(c) The amount to be inserted in the clause permitted by Subsection (b) may not exceed $1,000.

(d) The provision required by Subsection (a) is not required to be contained in a policy issued by a corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.216. POLICY PROVISION: PHYSICAL EXAMINATIONS AND AUTOPSY. An individual accident and health insurance policy must contain the following provision:

"Physical Examinations and Autopsy: The insurer at its own expense has the right and opportunity to conduct a physical examination of the insured when and as often as the insurer reasonably requires while a claim under the policy is pending and, in case of death, to require that an autopsy be conducted if not forbidden by law."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.217. POLICY PROVISION: LEGAL ACTIONS. An individual accident and health insurance policy must contain the following provision:

"Legal Actions: An action at law or in equity may not be brought to recover on this policy before the 61st day after the date written proof of loss has been provided in accordance with the requirements of this policy. An action at law or in equity may not be brought after the expiration of three years after the time written proof of loss is required to be provided."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.218. POLICY PROVISION: CHANGE OF BENEFICIARY. (a) Except as provided by Subsection (b), an individual accident and health insurance policy must contain the following provision:

"Change of Beneficiary: Unless the insured makes an irrevocable

designation of beneficiary, the right to change a beneficiary is reserved for the insured, and the consent of the beneficiary or beneficiaries is not required for the surrender or assignment of this policy, for any change of beneficiary or beneficiaries, or for any other changes in this policy."

(b) An insurer may omit the first clause of the provision required by Subsection (a) relating to an irrevocable designation of beneficiary.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.219. POLICY PROVISION: CHANGE OF OCCUPATION. An individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision:

"Change of Occupation: If the insured is injured or contracts a sickness after the insured changes the insured's occupation to one classified by the insurer as more hazardous than the occupation stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only the portion of the indemnity provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for the more hazardous occupation. If the insured changes the insured's occupation to one classified by the insurer as less hazardous than the occupation stated in this policy, the insurer, on receipt of proof of the change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding the receipt of the proof, whichever date is more recent. In applying this provision, the classification of occupational risk and the premium rates are the classification and rates that, before the occurrence of the loss for which the insurer is liable or before the date of proof of change in occupation, were:

(1) last filed by the insurer with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; or

(2) if filing was not required, last made effective by the insurer in the state where the insured resided at the time this

policy was issued."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.220. POLICY PROVISION: MISSTATEMENT OF AGE. An individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision:

"Misstatement of Age: If the age of the insured has been misstated, the amounts payable under this policy are the amounts the premium paid would have purchased at the correct age."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.221. POLICY PROVISION: EXCESS INSURANCE. An individual accident and health insurance policy must contain one of the following provisions if the policy addresses the subject matter of the provision:

"Other Insurance With This Insurer: If an accident or health or accident and health policy or policies previously issued by the insurer to the insured is in force concurrently with this policy, making the aggregate indemnity for _____ (insert types of coverages) in excess of $_____ (insert maximum limit of indemnity or indemnities), the excess insurance is void and all premiums paid for the excess shall be returned to the insured or to the insured's estate."

"Other Insurance With This Insurer: Insurance effective at any one time on the insured under the same type of policy or policies with this insurer is limited to the one policy elected by the insured, the insured's beneficiary, or the insured's estate, as the case may be, and the insurer will return all premiums paid for all other policies of the same type."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.222. POLICY PROVISION: RELATION OF EARNINGS TO INSURANCE. (a) Subject to Subsection (b), an individual accident and health insurance policy must contain the following provision if

the policy addresses the subject matter of the provision:

"Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage on the insured, regardless of whether the benefits are payable on a weekly or monthly basis, exceeds the amount of monthly earnings of the insured at the time the insured's disability began or the insured's average amount of monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever amount is greater, the insurer will be liable only for the proportionate amount of loss of time benefits under this policy as the amount of the insured's monthly earnings or average monthly earnings bears to the total amount of monthly benefits for the same loss under all loss of time coverage on the insured at the time the disability begins and for the return of the part of the premiums paid during the immediately preceding two years that exceeds the pro rata amount of the premiums for the benefits actually paid under this policy. This provision does not reduce the total monthly amount of benefits payable under all loss of time coverage on the insured to less than $200 or the sum of the monthly benefits specified in the loss of time coverages, whichever amount is less, and does not reduce benefits other than loss of time benefits."

(b) The provision described by Subsection (a) may be included only in a policy that provides that the insured is entitled to continue the policy in force subject to its terms by the timely payment of premiums until the insured reaches at least 50 years of age or, if the policy was issued after the insured reached 44 years of age, until at least the fifth anniversary of the policy's date of issuance.

(c) An insurer may include in the provision described by Subsection (a) a definition of "valid loss of time coverage." The form of the definition must be approved by the commissioner. The subject matter of the definition must be limited to:

(1) coverage provided by:

(A) governmental agencies; or

(B) organizations subject to regulation by insurance laws or by insurance authorities of this or any other state or any province of Canada;

(2) any other coverage the inclusion of which is approved by the commissioner; or

(3) any combination of coverages described by Subdivisions

(1) and (2).

(d) In the absence of a definition authorized under Subsection (c), "valid loss of time coverage" does not include:

(1) coverage provided for the insured under a compulsory benefit statute, including a workers' compensation or employer's liability statute; or

(2) benefits provided by:

(A) a union welfare plan;

(B) an employer benefit organization; or

(C) an employee benefit organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.223. POLICY PROVISION: UNPAID PREMIUM. An individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision:

"Unpaid Premium: At the time of payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted from the payment."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.224. POLICY PROVISION: CANCELLATION. An individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision:

"Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to the insured's last address as shown by the records of the insurer, stating when the cancellation is effective, which may not be earlier than five days after the date the notice is delivered or mailed. After this policy has been continued beyond its original term, the insured may cancel the policy at any time by written notice delivered or mailed to the insurer, effective on receipt or on a later date specified in the notice. In the event of cancellation, the insurer will promptly return the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having

supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro rata. Cancellation is without prejudice to any claim originating before the effective date of cancellation."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.225. POLICY PROVISION: CONFORMITY WITH STATE STATUTES. An individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision:

"Conformity With State Statutes: Any provision of this policy that, on its effective date, conflicts with the statutes of the state in which the insured resides on the effective date is by this clause effectively amended to conform to the minimum requirements of that state's statutes."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.226. POLICY PROVISION: ILLEGAL OCCUPATION. An individual accident and health insurance policy must contain the following provision if the policy addresses the subject matter of the provision:

"Illegal Occupation: The insurer is not liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER F. APPLICATION FOR POLICY

Sec. 1201.271. ALTERATION OF POLICY APPLICATION. (a) A person may not alter a written application for an individual accident and health insurance policy unless the person has the written consent of the applicant.

(b) Notwithstanding Subsection (a), an insurer may make an insertion to an application solely for administrative purposes in a manner that indicates clearly that the insertion is not attributed to

the applicant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.272. FALSE STATEMENTS. The falsity of a statement in an application for an individual accident and health insurance policy does not bar a right to recovery under the policy unless the statement materially affected the acceptance of the risk or the hazard assumed by the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.273. BINDING STATEMENTS. An insured may not be bound by a statement made in an application for an individual accident and health insurance policy unless a copy of the application is attached to or endorsed on the policy as a part of the policy when issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.274. INSURER'S EVIDENTIARY USE OF APPLICATION FOR REINSTATEMENT OR RENEWAL. (a) If an individual accident and health insurance policy is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes a written request for a copy of the application for reinstatement or renewal, the insurer shall, not later than the 15th day after the date the insurer receives the request at its home or branch office, deliver or mail a copy of the application to the person who made the request.

(b) An insurer that fails to comply with this section may not introduce the application for reinstatement or renewal as evidence in any action or proceeding based on or involving the policy or its reinstatement or renewal.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER O. ENFORCEMENT

Sec. 1201.701. CIVIL PENALTY. A person, partnership, or corporation that wilfully violates this chapter or an order of the

commissioner made under this chapter is liable to the state for a civil penalty in an amount not to exceed $5,000 for each violation. The penalty may be recovered through a civil action.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1201.702. ACTION AGAINST CERTIFICATE OF AUTHORITY OR LICENSE. The commissioner may suspend or revoke the certificate of authority or license of an insurer or agent who wilfully violates this chapter or an order of the commissioner made under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1202. CANCELLATION AND CONTINUATION OF POLICIES IN GENERAL

SUBCHAPTER A. CONTINUOUS POLICIES

Sec. 1202.001. CONTINUOUS POLICIES. (a) A guaranteed renewable insurance policy or a noncancellable insurance policy is considered to be a continuous policy, subject only to the policy terms and conditions, including payment of the policy premium.

(b) A guaranteed renewable insurance policy or a noncancellable insurance policy:

(1) is continued in effect by the payment of the policy premium in accordance with the policy terms and conditions; and

(2) may not be considered or treated as a renewed policy by the payment of the policy premium.

(c) This section does not apply to a small employer health benefit plan adopted in accordance with Chapter 1501.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. INDIVIDUAL HEALTH INSURANCE POLICIES

Sec. 1202.051. RENEWABILITY AND CONTINUATION OF INDIVIDUAL HEALTH INSURANCE POLICIES. (a) This section applies only to an individual health insurance policy that provides benefits for medical care under a hospital, medical, or surgical policy.

(b) Except as provided by Subsection (c), an insurer shall renew or continue an individual health insurance policy at the option of the individual.

(c) An insurer may decline to renew or continue an individual health insurance policy:

(1) for failure to pay a premium or contribution in accordance with the terms of the policy;

(2) for fraud or intentional misrepresentation;

(3) because the insurer is ceasing to offer coverage in the individual market in accordance with rules adopted by the commissioner;

(4) because an individual no longer resides, lives, or works in an area in which the insurer is authorized to provide coverage, but only if all policies are not renewed or not continued under this subdivision uniformly without regard to any health-status related factor of covered individuals; or

(5) in accordance with federal law, including regulations.

(d) The commissioner shall adopt rules necessary to:

(1) implement this section; and

(2) meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1202.052. CANCELLATION PROHIBITED FOR AIDS OR HIV. (a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

(b) Except as provided by Subsection (c), an insurer that delivers or issues for delivery an individual accident and health insurance policy in this state may not cancel that policy during its term because the insured:

(1) has been diagnosed as having AIDS or HIV;

(2) has been treated for AIDS or HIV; or

(3) is being treated for AIDS or HIV.

(c) The insurer may cancel the policy for:

(1) failure to pay a premium when due; or

(2) fraud or misrepresentation in obtaining coverage by not disclosing a diagnosis of an AIDS or HIV-related condition.

(d) The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that

chapter, apply to this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1203. COORDINATION OF BENEFITS PROVISIONS

SUBCHAPTER A. SUPPLEMENTAL INSURANCE POLICIES

Sec. 1203.001. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to:

(1) a policy of group accident and health insurance as described by Chapter 1251;

(2) a policy of blanket accident and health insurance as described by Chapter 1251;

(3) a policy of individual accident and health insurance as defined by Section 1201.001; or

(4) an evidence of coverage as defined by Section 843.002.

(b) This subchapter does not apply to an individual accident and health insurance policy that is designed to fully integrate with other policies through a variable deductible.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 572 (H.B. 3024), Sec. 3, eff. September 1, 2015.

Sec. 1203.002. CERTAIN COORDINATION OF BENEFITS PROVISIONS PROHIBITED. (a) An accident and health insurance policy or evidence of coverage may not be delivered, issued for delivery, or renewed in this state if:

(1) a provision of the policy or evidence of coverage excludes or reduces the payment of benefits to or on behalf of an insured or enrollee;

(2) the reason for the exclusion or reduction is that benefits are also payable or have been paid to or on behalf of the insured or enrollee under a supplemental policy of accident and health insurance; and

(3) the supplemental policy is individually underwritten and individually issued as a plan of coverage for:

(A) hospital confinement indemnity;

(B) a specified disease; or

(C) a limited benefit.

(b) Application of Subsection (a) to a provision of an accident and health insurance policy or evidence of coverage is not affected by:

(1) the mode or channel by which the premium for a supplemental policy of accident and health insurance is paid to the insurer; or

(2) a reduction in the premium for a supplemental policy of accident and health insurance because of the insured's membership in an organization or status as an employee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1203.003. CERTAIN COORDINATION OF BENEFITS PROVISIONS VOID. A provision of an accident and health insurance policy or evidence of coverage that violates Section 1203.002 is void.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. DENTAL INSURANCE

Sec. 1203.051. APPLICABILITY OF SUBCHAPTER; EXCEPTION. (a) This subchapter applies only to an insurance policy that provides benefits for dental expenses, including, except as provided by Subsection (b), an individual, group, blanket, or franchise insurance policy or insurance agreement, or a group hospital service contract, that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942; or

(6) a Lloyd's plan operating under Chapter 941.

(b) This subchapter does not apply to a separate dental policy that exclusively provides a non-coordinated, fixed indemnity benefit, regardless of expenses incurred paid directly to the policyholder or to the provider under an assignment of benefits provision.

Added by Acts 2015, 84th Leg., R.S., Ch. 572 (H.B. 3024), Sec. 1, eff. September 1, 2015.

Sec. 1203.052. COORDINATION OF BENEFITS BETWEEN PRIMARY AND SECONDARY INSURERS. (a) This section applies if:

(1) an insured is covered by at least two different insurance policies; and

(2) each policy provides the insured dental benefits.

(b) The primary insurer, as determined under a coordination of benefits provision applicable to the policies, is responsible for dental expenses covered under the insurance policy issued by the primary insurer up to the full amount of any policy limit applicable to the covered dental expenses.

(c) Before the policy limit described by Subsection (b) is reached, the secondary insurer, as determined under a coordination of benefits provision applicable to the policies, is responsible only for dental expenses covered under the insurance policy issued by the secondary insurer that are not covered under the policy issued by the primary insurer.

(d) After the policy limit described by Subsection (b) has been reached, the secondary insurer, in addition to the responsibility described by Subsection (c), is responsible for any dental expenses covered by both policies that exceed the policy limit described by Subsection (b), not to exceed the policy limit of the secondary policy.

Added by Acts 2015, 84th Leg., R.S., Ch. 572 (H.B. 3024), Sec. 1, eff. September 1, 2015.

Sec. 1203.053. CERTAIN COORDINATION OF BENEFITS PROVISIONS PROHIBITED. An insurance policy subject to this subchapter may not be delivered, issued for delivery, or renewed in this state if:

(1) a provision of the policy excludes or reduces the payment of benefits for dental expenses to or on behalf of an insured;

(2) the reason for the exclusion or reduction is that dental benefits are payable or have been paid to or on behalf of the insured under another insurance policy; and

(3) the exclusion or reduction would apply before the full amount of the dental expenses incurred by the insured and covered by both policies have been paid or reimbursed or the full amount of the applicable policy limit of the policy containing the exclusion or reduction is reached.

Added by Acts 2015, 84th Leg., R.S., Ch. 572 (H.B. 3024), Sec. 1, eff. September 1, 2015.

Sec. 1203.054. CERTAIN COORDINATION OF BENEFITS PROVISIONS VOID. A provision of an insurance policy that violates Section 1203.053 is void.

Added by Acts 2015, 84th Leg., R.S., Ch. 572 (H.B. 3024), Sec. 1, eff. September 1, 2015.

SUBCHAPTER C. VISION AND EYE CARE BENEFITS

Sec. 1203.101. DEFINITIONS. In this subchapter:

(1) "Eye care expenses" means expenses related to vision or medical eye care services, procedures, or products.

(2) "Health benefit plan" means a policy, agreement, contract, or evidence of coverage that provides comprehensive medical coverage.

(3) "Vision benefit plan" means a limited-scope policy, agreement, contract, or evidence of coverage that provides coverage for eye care expenses but does not provide comprehensive medical coverage.

Added by Acts 2023, 88th Leg., R.S., Ch. 15 (S.B. 861), Sec. 1, eff. September 1, 2023.

Sec. 1203.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan or vision benefit plan that provides or arranges for benefits for vision or medical eye care services, procedures, or products, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, an evidence of coverage, or a vision benefit plan offered by:

(1) an insurance company;
(2) a group hospital service corporation operating under Chapter 842;
(3) a health maintenance organization operating under Chapter 843;
(4) a stipulated premium company operating under Chapter 884;
(5) a fraternal benefit society operating under Chapter 885;
(6) a Lloyd's plan operating under Chapter 941;
(7) an exchange operating under Chapter 942; or
(8) a person or entity that provides a vision benefit plan.

Added by Acts 2023, 88th Leg., R.S., Ch. 15 (S.B. 861), Sec. 1, eff. September 1, 2023.

Sec. 1203.103. EXCEPTION. This subchapter does not apply to a supplemental insurance policy that only pays benefits directly to the policyholder.

Added by Acts 2023, 88th Leg., R.S., Ch. 15 (S.B. 861), Sec. 1, eff. September 1, 2023.

Sec. 1203.104. COORDINATION OF BENEFITS BETWEEN PRIMARY AND SECONDARY PLAN ISSUERS. (a) This section applies if:
(1) an enrollee is covered by at least two different health benefit plans or vision benefit plans; and
(2) each plan provides the enrollee coverage for the same vision or medical eye care services, procedures, or products.
(b) The issuer of the primary health benefit plan or vision benefit plan, as determined under a coordination of benefits provision applicable to the plan, is responsible for eye care expenses covered under the plan up to the full amount of any plan coverage limit applicable to the covered eye care expenses.
(c) Before the plan coverage limit described by Subsection (b) is reached, the issuer of a secondary health benefit plan or vision benefit plan, as determined under a coordination of benefits provision applicable to the plan, is responsible only for eye care expenses covered under the plan that are not covered under the health

benefit plan or vision benefit plan issued by the primary plan issuer.

(d) After the plan coverage limit described by Subsection (b) has been reached, the secondary plan issuer, in addition to the responsibilities described by Subsection (c), is responsible for any eye care expenses covered by both plans that exceed the plan coverage limit described by Subsection (b) up to the coverage limit of the secondary plan.

(e) When an enrollee is covered by more than one health benefit plan or vision benefit plan that provides benefits for eye care expenses, the enrollee may use each plan on the same date of service up to the coverage limit of each plan.

(f) A vision benefit plan issuer shall coordinate benefits with a health benefit plan issuer if both provide benefits for eye care expenses.

(g) A vision benefit plan issuer may not require a claim denial before adjudicating a claim up to the coverage limit of the plan.

(h) Nothing in this section prevents a secondary plan issuer from requiring proof that a related claim has been submitted to a primary plan issuer for purposes of determining the remaining balance up to the secondary plan's coverage limits.

(i) If a secondary plan issuer requires proof that a related claim has been submitted to a primary plan issuer as described by Subsection (h), the mechanism of providing proof must be through an online submission.

Added by Acts 2023, 88th Leg., R.S., Ch. 15 (S.B. 861), Sec. 1, eff. September 1, 2023.

Sec. 1203.105. CERTAIN COORDINATION OF BENEFITS PROVISIONS PROHIBITED. (a) A health benefit plan or vision benefit plan subject to this subchapter may not be delivered, issued for delivery, or renewed in this state if:

(1) a provision of the plan excludes or reduces the payment of benefits for eye care expenses to or on behalf of an enrollee;

(2) the reason for the exclusion or reduction is that eye care benefits are payable or have been paid to or on behalf of the enrollee under another plan; and

(3) the exclusion or reduction would apply before the full

amount of the eye care expenses incurred by the enrollee and covered by both plans have been paid or reimbursed or the full amount of the applicable coverage limit of the plan containing the exclusion or reduction is reached.

(b) Nothing in this section requires a secondary plan issuer to pay an amount that, when added to a payment amount made by a primary plan issuer, would exceed the usual and customary billed charges of the health care provider.

Added by Acts 2023, 88th Leg., R.S., Ch. 15 (S.B. 861), Sec. 1, eff. September 1, 2023.

Sec. 1203.106. CERTAIN COORDINATION OF BENEFITS PROVISIONS VOID. A provision of a health benefit plan or vision benefit plan that violates this subchapter is void.

Added by Acts 2023, 88th Leg., R.S., Ch. 15 (S.B. 861), Sec. 1, eff. September 1, 2023.

Sec. 1203.107. RULES. The commissioner may adopt rules necessary to implement this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 15 (S.B. 861), Sec. 1, eff. September 1, 2023.

CHAPTER 1204. PROCEDURES FOR PAYMENT OF CERTAIN HEALTH AND ACCIDENT INSURANCE POLICY OR PLAN BENEFITS

SUBCHAPTER A. PAYMENTS TO CERTAIN PUBLIC HOSPITALS

Sec. 1204.001. NONAPPLICABILITY TO CERTAIN FACILITIES. This subchapter does not apply to indigent care or chronic disease care provided in or by an eleemosynary institution, sanitarium, sanitorium, mental health treatment facility, tuberculosis treatment facility, or cancer treatment facility that is owned or controlled by the state or by a unit of local government.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.002. BENEFITS PAYABLE FOR TREATMENT PROVIDED BY HOSPITAL OWNED BY STATE OR UNIT OF LOCAL GOVERNMENT. An insurance policy providing hospital, nursing, medical, or surgical coverage that is issued or delivered in this state after August 27, 1973, may not include a provision that prevents the payment of benefits for expenses of a nonindigent patient incurred in a hospital facility that:

(1) is owned or controlled by the state or by a unit of local government; and

(2) regularly and customarily demands and collects from nonindigent persons payment for those expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. ASSIGNMENT OF BENEFIT PAYMENTS

Sec. 1204.051. DEFINITIONS. In this subchapter:

(1) "Covered person" means a person who is insured or covered by a health insurance policy or is a participant in an employee benefit plan. The term includes:

(A) a person covered by a health insurance policy because the person is an eligible dependent; and

(B) an eligible dependent of a participant in an employee benefit plan.

(2) "Employee benefit plan" or "plan" means a plan, fund, or program established or maintained by an employer, an employee organization, or both, to the extent that it provides, through the purchase of insurance or otherwise, health care services to employees, participants, or the dependents of employees or participants.

(3) "Health care provider" means a person who provides health care services under a license, certificate, registration, or other similar evidence of regulation issued by this or another state of the United States.

(4) "Health care service" means a service to diagnose, prevent, alleviate, cure, or heal a human illness or injury that is provided to a covered person by a physician or other health care provider.

(5) "Health insurance policy" means an individual, group, blanket, or franchise insurance policy, or an insurance agreement,

that provides reimbursement or indemnity for health care expenses incurred as a result of an accident or sickness.

(6) "Insurer" means an insurance company, association, or organization authorized to engage in business in this state under Chapter 841, 861, 881, 882, 883, 884, 885, 886, 887, 888, 941, 942, or 982.

(7) "Person" means an individual, association, partnership, corporation, or other legal entity.

(8) "Physician" means an individual licensed to practice medicine in this or another state of the United States.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.052. APPLICABILITY TO CERTAIN PLANS OR PROGRAMS. This subchapter applies to:

(1) an employee benefit plan, to the extent not preempted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(2) benefit programs under Chapters 1551 and 1601, to the extent that the benefit programs are self-insuring; and

(3) insurance coverage provided under Chapter 1575.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.053. ASSIGNMENT OF BENEFITS. (a) An insurer may not deliver, renew, or issue for delivery in this state a health insurance policy that prohibits or restricts a covered person from making a written assignment of benefits to a physician or other health care provider who provides health care services to the person.

(b) This section does not:

(1) provide a coverage or benefit that is not otherwise available under the health insurance policy;

(2) allow assignment of a benefit to:

(A) a person who is not legally entitled to receive such a direct payment; or

(B) another person if, under the health insurance policy or plan, the benefit must be provided to the covered person by a physician or other health care provider who is a contractor or preferred provider under the policy; or

(3) prohibit an insurer from verifying, through the insurer's normal process, the health care services the physician or other health care provider provides to the covered person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.054. PAYMENT OF BENEFITS ACCORDING TO ASSIGNMENT. An insurer shall pay benefits directly to a physician or other health care provider, and the insurer is relieved of the obligation to pay, and of any liability for paying, those benefits to the covered person if:

(1) the covered person makes a written assignment of those benefits payable to the physician or other health care provider; and

(2) the assignment is obtained by or delivered to the insurer with the claim for benefits.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.055. CONTRACTUAL RESPONSIBILITY FOR DEDUCTIBLES AND COPAYMENTS. (a) The payment of benefits under an assignment does not relieve a covered person of a contractual obligation to pay a deductible or copayment.

(b) A physician or other health care provider may not waive a deductible or copayment by the acceptance of an assignment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. UNIFORM CLAIM BILLING FORMS

Sec. 1204.101. DEFINITIONS. In this subchapter:

(1) "Health benefit plan" means a group, blanket, or franchise insurance policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization, that provides benefits for health care services.

(2) "Health benefit plan issuer" means an entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state, including:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a health maintenance organization operating under Chapter 843; and

(D) a stipulated premium company operating under Chapter 884.

(3) "Provider" means a person who provides health care under a license issued by this state. The term includes a health care practitioner listed in Section 1451.001 and a nurse first assistant, as defined by Section 1451.101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.102. REQUIRED CLAIM BILLING FORMS. A provider who seeks payment or reimbursement under a health benefit plan and the health benefit plan issuer that issued the plan shall use uniform claim billing form UB-82/HCFA or HCFA 1500, or a successor to one of those forms, as developed by the National Uniform Billing Committee or its successor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. PAYMENTS FOR CERTAIN PUBLICLY PROVIDED SERVICES

Sec. 1204.151. DEFINITION. In this subchapter, "policy" means an individual or group policy of accident and health insurance, including a policy issued by a group hospital service corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.152. PAYMENT FOR CERTAIN EXPENSES INCURRED BY TEXAS DEPARTMENT OF HUMAN SERVICES. Each policy delivered or issued for delivery in this state must provide for the repayment of the actual costs of medical expenses the Texas Department of Human Services pays through medical assistance for an insured person if, under the policy, the insured person is entitled to payment for the medical expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.153. PAYMENTS TO TEXAS DEPARTMENT OF HUMAN SERVICES FOR CERTAIN CHILDREN. (a) This section applies only to a policy that is delivered, issued for delivery, or renewed in this state and that provides coverage for a child whose parent:

(1) purchased the policy; or

(2) is a member of the group covered under the policy.

(b) Each policy must include a requirement that, after written notice to the insurer or group hospital service corporation at the insurer's or group hospital service corporation's home office, benefits payable on behalf of a child must be paid to the Texas Department of Human Services if:

(1) the parent who purchased the policy or who is a group member is required to pay child support by a court order or court-approved agreement and:

(A) is a possessory conservator of the child under a court order issued in this state; or

(B) is not entitled to possession of or access to the child;

(2) the Texas Department of Human Services is paying benefits on behalf of the child under Chapter 31 or 32, Human Resources Code; and

(3) the insurer or group hospital service corporation is notified, through an attachment to the claim for benefits at the time the claim is first submitted to the insurer or group hospital service corporation, that the benefits must be paid directly to the Texas Department of Human Services.

(c) The commissioner and the Texas Department of Human Services may consult regarding implementation of this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.154. UNIFORM PROVISIONS. (a) The commissioner shall adopt uniform policy provisions, riders, and endorsements for the policy requirement of Section 1204.153.

(b) Before the commissioner adopts or makes a change to a provision, rider, or endorsement under Subsection (a), the

commissioner shall present each provision, rider, or endorsement, and any amendment to a provision, rider, or endorsement, to the Texas Department of Human Services for comment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER E. EXCLUSIONARY CLAUSES

Sec. 1204.201. PROHIBITION OF EXCLUSION OF CERTAIN MEDICAL ASSISTANCE BENEFITS. An individual or group accident and health insurance policy delivered or issued for delivery in this state, including a policy issued by a group hospital service corporation operating under Chapter 842, may not include a provision that excludes or limits the insurer's or group hospital service corporation's coverage from paying benefits covered by Chapter 32, Human Resources Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER F. PAYMENT OF BENEFITS TO CONSERVATOR OF MINOR

Sec. 1204.251. PAYMENT TO CONSERVATOR OTHER THAN GROUP MEMBER. (a) An insurer or group hospital service corporation operating under Chapter 842 that delivers, issues for delivery, or renews in this state a group accident and health insurance policy that provides coverage for a minor child who qualifies as a dependent of a group member may pay benefits on the child's behalf to a person who is not a group member if an order providing for the appointment of a possessory or managing conservator of the child has been issued by a court in this or another state.

(b) A person who is not a group member is entitled to be paid benefits under this section only if the person presents to the insurer or group hospital service corporation, with the claim application:

(1) written notice that the person is a possessory or managing conservator of the child on whose behalf the claim is made; and

(2) a certified copy of a court order designating the person as possessory or managing conservator of the child or other evidence designated by rule of the commissioner that the person is eligible for the benefits as this section provides.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.252. PRECONDITIONS FOR PAYMENT; EXCEPTIONS. (a) In accordance with the terms of the policy and this subchapter, an insurer or group hospital service corporation may be required to pay benefits under a group accident and health insurance policy to a person who is not a group member and who complies with:

(1) Section 1204.251;

(2) the insurer's or group hospital service corporation's claim application procedures; and

(3) department rules.

(b) Any requirement imposed on a possessory or managing conservator of a child under this subchapter does not apply with regard to:

(1) an unpaid medical bill for which an assignment of benefits has been exercised, whether in accordance with policy provisions or otherwise; or

(2) a claim presented by a group member for which the group member paid any portion of a medical bill that is covered under the policy's terms.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1204.253. RULES. The commissioner may adopt rules to ensure the effective implementation of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1205. CERTIFICATION OF CREDITABLE COVERAGE

Sec. 1205.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act and operating under Chapter 846; or

(ii) an analogous benefit arrangement;

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(3) is offered by any other entity that:

(A) is not authorized under this code or another insurance law of this state; and

(B) contracts directly for health care services on a risk-sharing basis, including a capitation basis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1205.002. CERTIFICATION OF COVERAGE. (a) A health benefit plan issuer shall provide a certification of coverage as necessary to determine the period of applicable creditable coverage under that health benefit plan.

(b) The certification required under this section must be provided in accordance with the standards adopted by rule by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1205.003. RULES. The commissioner shall adopt rules as necessary to:

(1) implement this chapter and related provisions of this code; and

(2) meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1205.004. CREDITABLE COVERAGE. (a) An individual's coverage is creditable coverage for purposes of this chapter if the coverage is provided under:

(1) a self-funded or self-insured employee welfare benefit plan that:

(A) provides health benefits; and

(B) is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(2) a group health benefit plan provided by a health insurer or health maintenance organization;

(3) an individual health insurance policy or evidence of coverage;

(4) Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. Section 1395c et seq.);

(5) Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), other than coverage consisting solely of benefits under Section 1928 of that act (42 U.S.C. Section 1396s);

(6) 10 U.S.C. Section 1071 et seq.;

(7) a medical care program of the Indian Health Service or of a tribal organization;

(8) a state health benefits risk pool;

(9) a health plan offered under 5 U.S.C. Section 8901 et seq.;

(10) a public health plan as defined by federal regulations; or

(11) a health benefit plan under Section 5(e), Peace Corps Act (22 U.S.C. Section 2504(e)).

(b) For purposes of this chapter, creditable coverage does not include:

(1) accident-only or disability income insurance or a combination of accident-only and disability income insurance;

(2) coverage issued as a supplement to liability insurance;

(3) liability insurance, including general liability

insurance and automobile liability insurance;

(4) workers' compensation insurance or other similar insurance;

(5) automobile medical payment insurance;

(6) credit-only insurance;

(7) coverage for on-site medical clinics;

(8) other coverage that is:

(A) similar to the coverage described by this subsection under which benefits for medical care are secondary or incidental to other insurance benefits; and

(B) specified by federal regulations;

(9) coverage that provides limited-scope dental or vision benefits;

(10) long-term care, nursing home care, home health care, or community-based care coverage or benefits or any combination of those coverages or benefits;

(11) coverage that provides other limited benefits specified by federal regulations;

(12) coverage for a specified disease or illness;

(13) hospital indemnity or other fixed indemnity insurance; or

(14) Medicare supplemental health insurance, as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), coverage supplemental to the coverage provided under 10 U.S.C. Section 1071 et seq., or other similar supplemental coverage provided under a group plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1206. DENIAL OF HEALTH BENEFIT PLAN ENROLLMENT BASED ON EXISTING COVERAGE PROHIBITED

Sec. 1206.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;
(2) a group hospital service corporation operating under Chapter 842;
(3) a fraternal benefit society operating under Chapter 885;
(4) a stipulated premium company operating under Chapter 884;
(5) a reciprocal exchange operating under Chapter 942;
(6) a health maintenance organization operating under Chapter 843;
(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or
(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1206.002. EXCEPTION. This chapter does not apply to:
(1) a plan that provides coverage:
(A) only for a specified disease or for another limited benefit;
(B) only for accidental death or dismemberment;
(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;
(D) as a supplement to a liability insurance policy;
(E) for credit insurance;
(F) only for dental or vision care;
(G) only for hospital expenses;
(H) only for indemnity for hospital confinement; or
(I) in accordance with Title XXI of the Social Security Act (42 U.S.C. Section 1397aa et seq.);
(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;
(3) a workers' compensation insurance policy;
(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or
(5) a long-term care insurance policy, including a nursing

home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1206.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1206.003. DENIAL OF ENROLLMENT PROHIBITED. A health benefit plan issuer may not refuse to enroll an individual in the plan solely because the individual is enrolled in another health benefit plan at the time the individual applies for coverage under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1206.004. VIOLATION OF CHAPTER: UNFAIR DISCRIMINATION. A health benefit plan issuer who violates this chapter engages in unfair discrimination under Subchapter B, Chapter 544.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1207. ENROLLMENT OF MEDICAL ASSISTANCE RECIPIENTS AND CHILDREN ELIGIBLE FOR STATE CHILD HEALTH PLAN

Sec. 1207.001. APPLICABILITY OF CHAPTER. This chapter applies only to a group health benefit plan, including a small employer health benefit plan written under Chapter 1501, a plan provided under Chapter 1551, 1575, or 1601, or a successor to a plan provided under one of those chapters, or a medical savings account plan or other health reimbursement arrangement authorized by law, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including a group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage or similar group coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.025(a), eff. September 1, 2005.

Sec. 1207.002. ENROLLMENT REQUIRED. (a) A group health benefit plan issuer shall permit an individual who is otherwise eligible for enrollment in the plan to enroll in the plan, without regard to any enrollment period restriction, on receipt of written notice from the Health and Human Services Commission that the individual is:

(1) a recipient of medical assistance under the state Medicaid program and is a participant in the health insurance premium payment reimbursement program under Section 32.0422, Human Resources Code; or

(2) a child eligible for the state child health plan under Chapter 62, Health and Safety Code, and eligible to participate in the health insurance premium assistance program under Section 62.059, Health and Safety Code.

(b) A group health benefit plan issuer shall permit an individual who is otherwise eligible for enrollment in the plan to enroll in the plan, without regard to any enrollment period restriction, if the individual:

(1) becomes ineligible for medical assistance under the state Medicaid program or enrollment in the state child health plan under Chapter 62, Health and Safety Code, after initially establishing eligibility; and

(2) provides a written request for enrollment in the group health benefit plan not later than the 30th day after the date the

individual's eligibility for the state Medicaid program or the state child health plan terminated.

(c) If an individual described by Subsection (a)(1) or (2) or Subsection (b) is not eligible to enroll in the group health benefit plan unless a family member of the individual is also enrolled in the plan, the plan issuer, on receipt of written notice under Subsection (a) or a written request under Subsection (b), shall enroll both the individual and the family member in the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.026(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 24(a), eff. September 1, 2007.

Sec. 1207.003. EFFECTIVE DATE OF ENROLLMENT. (a) Unless enrollment occurs during an established enrollment period, enrollment in a group health benefit plan under Section 1207.002 takes effect on:

(1) the eligibility enrollment date specified in the written notice from the Health and Human Services Commission under Section 1207.002(a); or

(2) the first day of the first calendar month that begins at least 30 days after the date written notice or a written request is received by the plan issuer under Section 1207.002(a) or (b), as applicable.

(b) Notwithstanding Subsection (a), the individual must comply with a waiting period required under the state child health plan under Chapter 62, Health and Safety Code, or under the health insurance premium assistance program under Section 62.059, Health and Safety Code, as applicable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.026(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 24(b), eff. September 1, 2007.

Sec. 1207.004. TERMINATION OF ENROLLMENT. (a) Notwithstanding any other requirement of a group health benefit plan, the plan issuer shall permit an individual who is enrolled in the plan under Section 1207.002(a)(1), and any family member of the individual enrolled under Section 1207.002(c), to terminate enrollment in the plan not later than the 60th day after the date on which the individual provides satisfactory proof to the issuer that the individual is no longer:

(1) a recipient of medical assistance under the state Medicaid program; or

(2) a participant in the health insurance premium payment reimbursement program under Section 32.0422, Human Resources Code.

(b) Notwithstanding any other requirement of a group health benefit plan, the plan issuer shall permit an individual who is enrolled in the plan under Section 1207.002(a)(2), and any family member of the individual enrolled under Section 1207.002(c), to terminate enrollment in the plan not later than the 60th day after the date on which the individual provides a written request to disenroll from the plan because the individual no longer wishes to participate in the health insurance premium assistance program under Section 62.059, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.026(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 268 (S.B. 10), Sec. 24(c), eff. September 1, 2007.

CHAPTER 1208. IDENTITY OF AVAILABLE EMPLOYEE OF HEALTH BENEFIT PLAN ISSUER

Sec. 1208.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1208.002. DISCLOSURE REQUIRED. After an oral or written request by an insured or enrollee of a health benefit plan, the plan issuer shall provide to the insured or enrollee the name or employee identifier of the issuer's employee who is available to respond to questions or other communication from the insured or enrollee relating to coverage and benefits provided under the plan to the insured or enrollee. The issuer shall also provide:

(1) the employee's mailing address;

(2) the municipality and state of the employee's business location; and

(3) the employee's job title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1210. NOTICE OF CERTAIN POLICY PROVISIONS

Sec. 1210.001. NOTICE REQUIRED. A policy, contract, or certificate of insurance that insures against loss resulting from sickness or accidental bodily injury and that is subject to an increase in the premium at time of renewal or to nonrenewal on the insured attaining a certain age may not be delivered, issued, or used in this state unless the document contains on the first page above the policy provisions a printed notice in 10-point type that states that the policy, contract, or certificate is subject to either or

both conditions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1211. WAIVERS REGARDING CERTAIN FEDERAL HEALTH PLANS

Sec. 1211.001. WAIVER OF CERTAIN PROVISIONS FOR CERTAIN FEDERAL PLANS. If the commissioner of insurance, in consultation with the commissioner of health and human services, determines that a provision of Section 843.209 or 843.321, Subchapter J, Chapter 843, Chapter 1213, Subchapter C or C-1, Chapter 1301, or Section 1301.008, 1301.069, or 1301.162 will cause a negative fiscal impact on the state with respect to providing benefits or services under Subchapter XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), as amended, or Subchapter XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), as amended, the commissioner of insurance by rule shall waive the application of that provision to the providing of those benefits or services.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.027(a), eff. September 1, 2005.

CHAPTER 1213. ELECTRONIC HEALTH CARE TRANSACTIONS

Sec. 1213.001. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means a plan that provides benefits for medical, surgical, or other treatment expenses incurred as a result of a health condition, a mental health condition, an accident, sickness, or substance abuse, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium insurance company operating under Chapter 884;

(5) a Lloyd's plan operating under Chapter 941;

(6) an exchange operating under Chapter 942;

(7) a health maintenance organization operating under Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) The term includes:

(1) a small employer health benefit plan written under Chapter 1501; and

(2) a health benefit plan offered under Chapter 1551, 1575, 1579, or 1601.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.029(a), eff. September 1, 2005.

Sec. 1213.002. ELECTRONIC SUBMISSION OF CLAIMS. (a) The issuer of a health benefit plan by contract may require that a health care professional licensed or registered under the Occupations Code or a health care facility licensed under the Health and Safety Code electronically submit a health care claim or equivalent encounter information, a referral certification, or an authorization or eligibility transaction. The health benefit plan issuer shall comply with the standards for electronic transactions required by this section and established by the commissioner by rule.

(b) The issuer of a health benefit plan by contract shall establish a default method to submit claims in a nonelectronic format if there is a system failure or failures or a catastrophic event substantially interferes with the normal business operations of the physician, provider, or health benefit plan or its agents. The health benefit plan issuer shall comply with the standards for nonelectronic transactions established by the commissioner by rule.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.029(a), eff. September 1, 2005.

Sec. 1213.003. ELECTRONIC SUBMISSION OF CLAIMS: WAIVER. (a) A contract between the issuer of a health benefit plan and a health care professional or health care facility must provide for a waiver of any requirement for electronic submission established under this

chapter.

(b) The commissioner shall establish circumstances under which a waiver is required, including:

(1) circumstances in which no method is available for the submission of claims in electronic form;

(2) the operation of small physician practices;

(3) the operation of other small health care provider practices;

(4) undue hardship, including fiscal or operational hardship; or

(5) any other special circumstance that would justify a waiver.

(c) Any health care professional or health care facility that is denied a waiver by the issuer of a health benefit plan may appeal the denial to the commissioner. The commissioner shall determine whether a waiver must be granted.

(d) The issuer of a health benefit plan may not refuse to contract or renew a contract with a health care professional or health care facility based in whole or in part on the professional or facility requesting or receiving a waiver or appealing a waiver determination.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.029(a), eff. September 1, 2005.

Sec. 1213.004. MODE OF TRANSMISSION. The issuer of a health benefit plan may not by contract limit the mode of electronic transmission that a health care professional or health care facility may use to submit information under this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.029(a), eff. September 1, 2005.

Sec. 1213.005. CERTAIN CHARGES PROHIBITED. A health benefit plan may not directly or indirectly charge or hold a health care professional, health care facility, or person enrolled in a health benefit plan responsible for a fee for the adjudication of a claim.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.029(a),

eff. September 1, 2005.

Sec. 1213.006. RULES. The commissioner may adopt rules as necessary to implement this chapter. The commissioner may not require any data element for electronically filed claims that is not required to comply with federal law.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.029(a), eff. September 1, 2005.

CHAPTER 1214. ADVERTISING FOR CERTAIN HEALTH BENEFITS

Sec. 1214.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or agreement, a group hospital service contract, or an individual or group evidence of coverage issued by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843, Chapter 1271, and Chapter 1272; or

(4) an approved nonprofit health corporation holding a certificate of authority under Chapter 844.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.001, eff. April 1, 2009.

Sec. 1214.002. EXCEPTION. This chapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment; or

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(2) a long-term care insurance policy, including a nursing

home fixed indemnity policy, unless the commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan as described by Section 1214.001.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.001, eff. April 1, 2009.

Sec. 1214.003. RATE INFORMATION DISCLAIMERS. (a) Subject to Chapter 541 and Section 543.001, an advertisement for a health benefit plan may include rate information without including information about each benefit exclusion or limitation if the advertisement includes prominent disclaimers clearly indicating that:

(1) the rates are illustrative;

(2) a person should not send money to the health benefit plan issuer in response to the advertisement;

(3) a person cannot obtain coverage under the plan until the person completes an application for coverage; and

(4) benefit exclusions or limitations may apply to the plan.

(b) An advertisement that states a rate must also indicate the age, gender, and geographic location on which the rate is based.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.001, eff. April 1, 2009.

CHAPTER 1215. REPORTING OF CLAIMS INFORMATION

Sec. 1215.001. DEFINITIONS. (a) Except as provided by Subsection (b), in this chapter:

(1) "Employer" has the meaning assigned by 29 U.S.C. Section 1002(5).

(2) "Governmental entity" means a state agency or political subdivision of this state.

(3) "Group health plan" has the meaning assigned by 45 C.F.R. Section 160.103, except that the term does not include disability income or long-term care insurance.

(4) "Health insurance issuer" has the meaning assigned by 45 C.F.R. Section 160.103.

(5) "Plan" means an employee welfare benefit plan as defined by 29 U.S.C. Section 1002(1).

(6) "Plan administrator" means an administrator as defined by 29 U.S.C. Section 1002(16)(A).

(7) "Plan sponsor" has the meaning assigned by 29 U.S.C. Section 1002(16)(B).

(8) "Political subdivision" means a county, municipality, school district, special-purpose district, or other subdivision of state government that has jurisdiction limited to a geographic portion of the state.

(9) "Protected health information" has the meaning assigned by 45 C.F.R. Section 160.103.

(b) A reference to a federal statute or regulation under Subsection (a) means that statute or regulation as it existed on September 1, 2007, except that the commissioner, by rule, may adopt a definition based on a later amended, enacted, or adopted federal statute or regulation if the commissioner determines that use of the later amended, enacted, or adopted statute or regulation is consistent with the purposes of this chapter and promotes regulatory consistency.

Added by Acts 2007, 80th Leg., R.S., Ch. 700 (H.B. 2015), Sec. 1, eff. September 1, 2007.

Sec. 1215.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL ENTITY; APPLICABILITY OF OTHER LAW WITH REFERENCE TO GOVERNMENTAL ENTITY. (a) This chapter applies to a governmental entity that enters into a contract with a health insurance issuer that results in the health insurance issuer delivering, issuing for delivery, or renewing a group health plan.

(b) For purposes of this chapter, a health insurance issuer shall treat a governmental entity described by Subsection (a) as a plan sponsor or plan administrator.

(c) A report of claim information provided under this section to a governmental entity is confidential and exempt from public disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 700 (H.B. 2015), Sec. 1, eff. September 1, 2007.

Sec. 1215.003. RECEIPT OF AND RESPONSE TO REQUEST FOR CLAIM

INFORMATION. (a) Not later than the 30th day after the date a health insurance issuer receives a written request for a written report of claim information from a plan, plan sponsor, or plan administrator, the health insurance issuer shall provide the requesting party the report, subject to Subsections (d), (e), and (f). The health insurance issuer is not obligated to provide a report under this subsection regarding a particular employer or group health plan more than twice in any 12-month period.

(b) A health insurance issuer shall provide the report of claim information under Subsection (a):

(1) in a written report;

(2) through an electronic file transmitted by secure electronic mail or a file transfer protocol site; or

(3) by making the required information available through a secure website or web portal accessible by the requesting plan, plan sponsor, or plan administrator.

(c) A report of claim information provided under Subsection (a) must contain all information available to the health insurance issuer that is responsive to the request made under Subsection (a), including, subject to Subsections (d), (e), and (f), protected health information, for the 36-month period preceding the date of the report or the period specified by Subdivisions (4), (5), and (6), if applicable, or for the entire period of coverage, whichever period is shorter. Subject to Subsections (d), (e), and (f), a report provided under Subsection (a) must include:

(1) aggregate paid claims experience by month, including claims experience for medical, dental, and pharmacy benefits, as applicable;

(2) total premium paid by month;

(3) total number of covered employees on a monthly basis by coverage tier, including whether coverage was for:

(A) an employee only;

(B) an employee with dependents only;

(C) an employee with a spouse only; or

(D) an employee with a spouse and dependents;

(4) the total dollar amount of claims pending as of the date of the report;

(5) a separate description and individual claims report for any individual whose total paid claims exceed $15,000 during the 12-month period preceding the date of the report, including the

following information related to the claims for that individual:

(A) a unique identifying number, characteristic, or code for the individual;

(B) the amounts paid;

(C) dates of service; and

(D) applicable procedure codes and diagnosis codes; and

(6) for claims that are not part of the report described by Subdivisions (1)-(5), a statement describing precertification requests for hospital stays of five days or longer that were made during the 30-day period preceding the date of the report.

(d) A health insurance issuer may not disclose protected health information in a report of claim information provided under this section if the health insurance issuer is prohibited from disclosing that information under another state or federal law that imposes more stringent privacy restrictions than those imposed under federal law under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191). To withhold information in accordance with this subsection, the health insurance issuer must:

(1) notify the plan, plan sponsor, or plan administrator requesting the report that information is being withheld; and

(2) provide to the plan, plan sponsor, or plan administrator a list of categories of claim information that the health insurance issuer has determined are subject to the more stringent privacy restrictions under another state or federal law.

(e) A plan sponsor is entitled to receive protected health information under Subsections (c)(5) and (6) and Section 1215.004 only after an appropriately authorized representative of the plan sponsor makes to the health insurance issuer a certification substantially similar to the following certification:

"I hereby certify that the plan documents comply with the requirements of 45 C.F.R. Section 164.504(f)(2) and that the plan sponsor will safeguard and limit the use and disclosure of protected health information that the plan sponsor may receive from the group health plan to perform the plan administration functions."

(f) A plan sponsor that does not provide the certification required by Subsection (e) is not entitled to receive the protected health information described by Subsections (c)(5) and (6) and Section 1215.004, but is entitled to receive a report of claim information that includes the information described by Subsections (c)(1)-(4).

(g) In the case of a request made under Subsection (a) after the date of termination of coverage, the report must contain all information available to the health insurance issuer as of the date of the report that is responsive to the request, including protected health information, and including the information described by Subsections (c)(1)-(6), for the period described by Subsection (c) preceding the date of termination of coverage or for the entire policy period, whichever period is shorter. Notwithstanding this subsection, the report may not include the protected health information described by Subsections (c)(5) and (6) unless a certification has been provided in accordance with Subsection (e).

(h) A plan, plan sponsor, or plan administrator must request a report under Subsection (a) before or on the second anniversary of the date of termination of coverage under a group health plan issued by the health benefit plan issuer.

Added by Acts 2007, 80th Leg., R.S., Ch. 700 (H.B. 2015), Sec. 1, eff. September 1, 2007.

Sec. 1215.004. REQUEST FOR ADDITIONAL INFORMATION. (a) On receipt of the report required by Section 1215.003(a), the plan, plan sponsor, or plan administrator may review the report and, not later than the 10th day after the date the report is received, may make a written request to the health insurance issuer for additional information in accordance with this section for specified individuals.

(b) With respect to a request for additional information concerning specified individuals for whom claims information has been provided under Section 1215.003(c)(5), the health insurance issuer shall provide additional information on the prognosis or recovery if available and, for individuals in active case management, the most recent case management information, including any future expected costs and treatment plan, that relate to the claims for that individual.

(c) The health insurance issuer must respond to the request for additional information under this section not later than the 15th day after the date of the request under this section unless the requesting plan, plan sponsor, or plan administrator agrees to a request for additional time.

(d) The health insurance issuer is not required to produce the report described by this section unless a certification has been provided in accordance with Section 1215.003(e).

Added by Acts 2007, 80th Leg., R.S., Ch. 700 (H.B. 2015), Sec. 1, eff. September 1, 2007.

Sec. 1215.005. COMPLIANCE WITH CHAPTER DOES NOT CREATE LIABILITY. A health insurance issuer that releases information, including protected health information, in accordance with this chapter has not violated a standard of care and is not liable for civil damages resulting from, and is not subject to criminal prosecution for, releasing that information.

Added by Acts 2007, 80th Leg., R.S., Ch. 700 (H.B. 2015), Sec. 1, eff. September 1, 2007.

Sec. 1215.006. ADMINISTRATIVE PENALTIES. A health insurance issuer that does not comply with this chapter is subject to administrative penalties under Chapter 84.

Added by Acts 2007, 80th Leg., R.S., Ch. 700 (H.B. 2015), Sec. 1, eff. September 1, 2007.

CHAPTER 1216. OUT-OF-COUNTRY COVERAGE PROHIBITED

Sec. 1216.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual entitled to coverage under a health benefit plan.

(2) "Foreign country" means a governmental unit other than:

(A) the United States;

(B) a state, district, commonwealth, territory, or insular possession of the United States;

(C) the Panama Canal Zone; or

(D) the Trust Territory of the Pacific Islands.

(3) "Health care service" means a service to diagnose, prevent, alleviate, cure, or heal a health condition, sickness, or injury that is provided to an enrollee by a physician or other health care provider.

Added by Acts 2007, 80th Leg., R.S., Ch. 1322 (S.B. 1391), Sec. 1, eff. September 1, 2007.
Renumbered from Insurance Code, Section 1215.001 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(62), eff. September 1, 2009.

Sec. 1216.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for health care services, including medical or surgical expenses, incurred as a result of a health condition, accident, or sickness, including:

(1) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884; or

(E) a health maintenance organization operating under Chapter 843; and

(2) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(A) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(B) another analogous benefit arrangement.

(b) For purposes of Subsection (a), a health benefit plan includes a consumer choice of benefits plan issued under Chapter 1507.

Added by Acts 2007, 80th Leg., R.S., Ch. 1322 (S.B. 1391), Sec. 1, eff. September 1, 2007.
Renumbered from Insurance Code, Section 1215.002 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(62), eff. September 1, 2009.

Sec. 1216.003. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) only for dental or vision care;

(F) only for indemnity for hospital confinement; or

(G) only for health care services provided to an enrollee while the enrollee is traveling to, visiting, or residing in a foreign country;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1216.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 1322 (S.B. 1391), Sec. 1, eff. September 1, 2007.
Renumbered from Insurance Code, Section 1215.003 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(62), eff. September 1, 2009.
Renumbered from Insurance Code, Section 1215.003 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(12), eff. September 1, 2009.

Sec. 1216.004. OUT-OF-COUNTRY CARE PROHIBITED. A health benefit plan issuer may not issue or offer for sale in this state a health benefit plan that requires an enrollee to travel to a foreign country to receive a particular health care service under the health benefit plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 1322 (S.B. 1391), Sec. 1, eff. September 1, 2007.

Renumbered from Insurance Code, Section 1215.004 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(62), eff. September 1, 2009.

CHAPTER 1217. STANDARD REQUEST FORM FOR PRIOR AUTHORIZATION OF HEALTH CARE SERVICES

Sec. 1217.001. DEFINITIONS. In this chapter:

(1) "Health benefit plan issuer" means an entity authorized under this code or another insurance law of this state that delivers or issues for delivery a health benefit plan or other coverage that is covered under this chapter as described by Section 1217.002. The term includes:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a reciprocal exchange operating under Chapter 942;

(F) a health maintenance organization operating under Chapter 843;

(G) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(H) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(2) "Health care services" includes medical or health care treatments, consultations, procedures, drugs, supplies, imaging and diagnostic services, inpatient and outpatient care, medical devices, and durable medical equipment. The term does not include prescription drugs as defined by Section 551.003, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1198 (S.B. 1216), Sec. 1, eff. September 1, 2013.

Sec. 1217.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health

condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This chapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

Text of subsection effective until April 1, 2025

(d) Notwithstanding any other law, this chapter applies to coverage under:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; and

(2) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

Text of subsection effective on April 1, 2025

(d) Notwithstanding any other law, this chapter applies to coverage under:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; and

(2) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1198 (S.B. 1216), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.120, eff. April 1, 2025.

Sec. 1217.003. EXCEPTION. This chapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another single benefit;

(B) only for accidental death or dismemberment;

(C) only for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882, Social Security Act (42 U.S.C. Section 1395ss);

(3) medical payment insurance coverage provided under a motor vehicle insurance policy;

(4) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1217.002; or

(5) a workers' compensation insurance policy.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1198 (S.B. 1216), Sec. 1, eff. September 1, 2013.

Sec. 1217.004. STANDARD FORM. (a) The commissioner by rule shall:

(1) prescribe a single, standard form for requesting prior authorization of health care services;

(2) require a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers health care services benefits to use the form for any prior authorization required by the plan of health care services; and

(3) require that the department and a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers health care services benefits make the form available in paper form and electronically on the website of:

(A) the department;

(B) the health benefit plan issuer; and

(C) the agent of the health benefit plan issuer.

(b) Not later than the second anniversary of the date national standards for electronic prior authorization of benefits are adopted, a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers health care services benefits shall exchange prior authorization requests electronically with a physician or health care provider who has electronic capability and who initiates a request electronically. For requests initiated on paper, a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers health care services benefits shall accept prior authorization requests using the standard paper form developed pursuant to this chapter.

(c) In prescribing a form under this section, the commissioner shall:

(1) develop the form with input from the advisory committee on uniform prior authorization forms for health care services benefits established under Section 1217.005; and

(2) take into consideration:

(A) any form for requesting prior authorization of health care services benefits that is widely used in this state or any form currently used by the department;

(B) request forms for prior authorization of health care services benefits established by the federal Centers for Medicare and Medicaid Services; and

(C) national standards, or draft standards, pertaining to electronic prior authorization of benefits.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1198 (S.B. 1216), Sec. 1, eff. September 1, 2013.

Sec. 1217.005. ADVISORY COMMITTEE ON UNIFORM PRIOR AUTHORIZATION FORMS. (a) The commissioner shall appoint a committee to advise the commissioner on the technical, operational, and practical aspects of developing the single, standard prior authorization form required under Section 1217.004 for requesting prior authorization of health care services, including:

(1) requirements for the health benefit plan issuer or agent of the health benefit plan issuer to acknowledge receipt of the standard form;

(2) timelines under which the health benefit plan issuer or agent of the health benefit plan issuer must acknowledge receipt of the standard form; and

(3) implications, including administrative penalties, for the failure of a health benefit plan issuer or agent of a health benefit plan issuer to:

(A) timely acknowledge receipt of the standard form; or

(B) use or accept the form.

(b) The commissioner shall consult the advisory committee with respect to any rule relating to a subject described by Section 1217.004 before adopting the rule and may consult the committee as needed with respect to a subsequent amendment of an adopted rule.

(c) The advisory committee shall be composed of an equal number of members from each of the following groups of stakeholders:

(1) physicians;

(2) health care providers other than physicians;

(3) hospitals;

(4) representatives of health benefit plans; and

(5) Health and Human Services Commission representatives.

(d) A physician may not serve on the advisory committee as a physician member under Subsection (c)(1) if the physician is or has been employed by or consults or has consulted for an insurance company.

(e) A member of the advisory committee serves without compensation.

(f) Section 39.003(a) of this code and Chapter 2110, Government Code, do not apply to the advisory committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1198 (S.B. 1216), Sec. 1, eff. September 1, 2013.

Sec. 1217.006. FAILURE TO PRESCRIBE STANDARD FORM. Nothing in this chapter may be construed as authorizing the commissioner to decline to prescribe the form required by Section 1217.004.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1198 (S.B. 1216), Sec. 1, eff. September 1, 2013.

Sec. 1217.007. CONSTRUCTION WITH OTHER LAW. Nothing in this chapter may be construed as permitting a health benefit plan issuer or an agent of a health benefit plan issuer to require prior authorization of health care services benefits when otherwise prohibited by law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1198 (S.B. 1216), Sec. 1, eff. September 1, 2013.

CHAPTER 1218. COVERAGE FOR ELECTIVE ABORTION; PROHIBITIONS AND REQUIREMENTS

Sec. 1218.001. DEFINITION. In this chapter, "elective abortion" means an abortion, as defined by Section 245.002, Health and Safety Code, other than an abortion performed due to a medical emergency as defined by Section 171.002, Health and Safety Code.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 2, eff. December 1, 2017.

Sec. 1218.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) an exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This chapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

(d) Notwithstanding Section 1501.251 or any other law, this chapter applies to coverage under a small or large employer health benefit plan subject to Chapter 1501.

(e) Notwithstanding Section 1507.003 or 1507.053 or any other law, this chapter applies to a standard health benefit plan provided under Chapter 1507.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 2, eff. December 1, 2017.

Sec. 1218.003. CERTAIN COVERAGE NOT AFFECTED. This chapter does not apply to health benefit plan coverage provided to an enrollee for any abortion other than an elective abortion as defined by Section 1218.001.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 2, eff. December 1, 2017.

Sec. 1218.004. COVERAGE BY HEALTH BENEFIT PLAN. A health benefit plan may provide coverage for elective abortion only if:

(1) the coverage is provided to an enrollee separately from other health benefit plan coverage offered by the health benefit plan issuer;

(2) the enrollee pays the premium for coverage for elective abortion separately from, and in addition to, the premium for other health benefit plan coverage, if any; and

(3) the enrollee provides a signature for coverage for elective abortion, separately and distinct from the signature required for other health benefit plan coverage, if any, provided to the enrollee by the health benefit plan issuer.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 2, eff. December 1, 2017.

Sec. 1218.005. CALCULATION OF PREMIUM. (a) A health benefit plan issuer that provides coverage for elective abortion shall calculate the premium for the coverage so that the premium fully covers the estimated cost of elective abortion per enrollee, determined on an actuarial basis.

(b) In calculating a premium under Subsection (a), the health benefit plan issuer may not take into account any cost savings in other health benefit plan coverage offered by the health benefit plan issuer that is estimated to result from coverage for elective abortion.

(c) A health benefit plan issuer may not provide a premium discount to or reduce the premium for an enrollee for other health benefit plan coverage on the basis that the enrollee has coverage for elective abortion.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 2, eff. December 1, 2017.

Sec. 1218.006. NOTICE BY ISSUER. A health benefit plan issuer that provides coverage for elective abortion shall at the time of enrollment in other health benefit plan coverage provide each enrollee with a notice that:

(1) coverage for elective abortion is optional and separate

from other health benefit plan coverage offered by the health benefit plan issuer;

(2) the premium cost for coverage for elective abortion is a premium paid separately from, and in addition to, the premium for other health benefit plan coverage offered by the health benefit plan issuer; and

(3) the enrollee may enroll in a health benefit plan without obtaining coverage for elective abortion.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 2, eff. December 1, 2017.

CHAPTER 1221. EMPLOYER CONTRIBUTIONS TO INDIVIDUAL HEALTH INSURANCE POLICIES

Sec. 1221.001. RULES; EMPLOYER CONTRIBUTIONS. The commissioner by rule, unless it would violate state or federal law, may develop procedures to allow an employer to make financial contributions to or premium payments for an employee or retiree's individual consumer directed health insurance policy in a manner that eliminates or minimizes the state or federal tax consequences, or provides positive state or federal tax consequences, to the employer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 7, eff. June 17, 2011.

CHAPTER 1222. PREAUTHORIZATION FOR MEDICAL OR HEALTH CARE SERVICE

Sec. 1222.0001. DEFINITIONS. In this chapter:

(1) "Health benefit plan" means a plan to which this chapter applies under Section 1222.0002.

(2) "Health benefit plan issuer" means an entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state.

(3) "Preauthorization" has the meaning assigned by Section 1301.001.

Added by Acts 2019, 86th Leg., R.S., Ch. 488 (H.B. 3041), Sec. 1, eff. September 1, 2019.

Sec. 1222.0002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is issued by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

Text of subsection effective until April 1, 2025

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(8) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(9) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(10) the child health plan program under Chapter 62, Health and Safety Code;

(11) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(12) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Text of subsection effective on April 1, 2025

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(8) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(9) the state Medicaid program, including the Medicaid managed care program operated under Chapters 540 and 540A, Government Code;

(10) the child health plan program under Chapter 62, Health and Safety Code;

(11) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(12) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 488 (H.B. 3041), Sec. 1, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.121, eff. April 1, 2025.

Sec. 1222.0003. PREAUTHORIZATION RENEWAL REQUEST. A health

benefit plan issuer that requires preauthorization as a condition of payment for a medical or health care service shall provide a preauthorization renewal process that allows a renewal of an existing preauthorization to be requested by a physician or health care provider at least 60 days before the date the preauthorization expires.

Added by Acts 2019, 86th Leg., R.S., Ch. 488 (H.B. 3041), Sec. 1, eff. September 1, 2019.

Sec. 1222.0004. DETERMINATION REQUIRED. If a health benefit plan issuer receives a preauthorization renewal request before the existing preauthorization expires, the health benefit plan issuer shall, if practicable, review the request and issue a determination indicating whether the medical or health care service is preauthorized before the existing preauthorization expires.

Added by Acts 2019, 86th Leg., R.S., Ch. 488 (H.B. 3041), Sec. 1, eff. September 1, 2019.

CHAPTER 1223. VERIFICATION OF HEALTH BENEFITS

Sec. 1223.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is issued by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a Lloyd's plan operating under Chapter 941; or

(8) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) alternative health benefit coverage offered by a subsidiary of the Texas Mutual Insurance Company under Subchapter M, Chapter 2054;

(8) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(9) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(10) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(c) This chapter does not apply to the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code, or the child health plan program operated under Chapter 62, Health and Safety Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 881 (H.B. 4500), Sec. 1, eff. January 1, 2024.

Sec. 1223.002. INTERNET WEBSITE FOR VERIFICATION REQUIRED FOR EMERGENCY PHYSICIANS AND HEALTH CARE PROVIDERS. (a) A health benefit plan issuer shall maintain and make available a secure system on the issuer's Internet website that allows a physician or health care provider for a hospital or freestanding emergency medical care facility to determine at any time:

(1) whether the physician's or provider's patient is covered by the issuer's health benefit plan; and

(2) the deductible, copayment, or coinsurance for which the patient is responsible.

(b) A health benefit plan issuer may provide the information described by Subsection (a) through:

(1) an existing Internet portal that is available at all times; or

(2) an Internet portal that is:

(A) provided by a third party contracting with the issuer; and

(B) available at all times.

Added by Acts 2023, 88th Leg., R.S., Ch. 881 (H.B. 4500), Sec. 1, eff. January 1, 2024.

SUBTITLE B. GROUP HEALTH COVERAGE
CHAPTER 1251. GROUP AND BLANKET HEALTH INSURANCE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1251.001. DEFINITIONS. In this chapter:

(1) "Blanket accident and health insurance" means accident, health, or accident and health insurance covering a group described by Subchapter H.

(2) "Group accident and health insurance" means accident, health, or accident and health insurance covering a group described by Subchapter B.

(3) "Group hospital service corporation" means a corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.002. CERTAIN GROUP HEALTH INSURANCE AUTHORIZED. A group policy of accident, health, or accident and health insurance, including a group contract issued by a group hospital service corporation, may be delivered or issued for delivery in this state only if the policy:

(1) covers a group described by Subchapter B; and

(2) meets the requirements adopted under this chapter for a group policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.003. CERTAIN BLANKET HEALTH INSURANCE AUTHORIZED. A blanket policy of accident, health, or accident and health insurance may be delivered or issued for delivery in this state only if the policy:

(1) covers a group described by Subchapter H; and

(2) meets the requirements adopted under this chapter for a blanket policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.004. CERTAIN PAYMENTS BY INSURERS PROHIBITED. (a) Except as reimbursement for the cost of services that otherwise would have been provided by the insurer, an insurer may not pay to any individual, firm, corporation, or group entity a fee or allowance for services related to:

(1) a group accident and health insurance policy; or

(2) a blanket accident and health insurance policy.

(b) Subsection (a) does not limit an insurer's right to:

(1) pay dividends;

(2) return a premium to a group or a combination of groups;

(3) provide for a rate stabilization fund with combinations of groups; or

(4) pay compensation, including a commission, to a licensed agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.005. PAYMENT OF BENEFITS. (a) Except as otherwise provided by this section or Section 1251.113, benefits under a group accident and health insurance policy or blanket accident and health insurance policy must be paid to:

(1) the insured;

(2) the insured's designated beneficiary;

(3) the insured's estate; or

(4) if the insured is a minor or is otherwise not competent to give a valid release, the insured's parent, guardian, or other person actually supporting the insured.

(b) A group accident and health insurance policy or blanket accident and health insurance policy may provide that all or a

portion of any indemnity provided by the policy because of hospital, nursing, medical, or surgical services may, at the option of the insurer and unless the insured requests otherwise in writing not later than the time of filing a proof of the loss, be paid directly to the hospital or person providing the services. A payment made as provided by this subsection discharges the obligation of the insurer with respect to the amount paid.

(c) A group accident and health insurance policy or blanket accident and health insurance policy must provide that all or a portion of any benefits provided by the policy for dental care services may, at the option of the insured, be assigned to the dentist providing the services. In the case of an assignment under this subsection, payment must be made directly to the dentist designated. A payment made pursuant to an assignment under this subsection discharges the obligation of the insurer with respect to the amount paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.006. POLICY MAY NOT SPECIFY SERVICE PROVIDER. A group accident and health insurance policy or blanket accident and health insurance policy may not require that a covered service be provided by a particular hospital or person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.007. EXCEPTIONS. This subchapter and Subchapters B-I do not apply to:

(1) a credit accident and health insurance policy subject to Chapter 1153;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance before April 1, 1975;

(3) accident or health coverage that is incidental to any form of a group automobile, casualty, property, workers' compensation, or employers' liability policy approved by the commissioner; or

(4) any policy or contract of insurance with a state agency, department, or board providing health services:

(A) to eligible individuals under Chapter 32, Human Resources Code; or

(B) under a state plan adopted in accordance with 42 U.S.C. Sections 1396-1396g, as amended, or 42 U.S.C. Section 1397aa et seq., as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.008. RULES. The commissioner may adopt rules necessary to administer this chapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. GROUP ACCIDENT AND HEALTH INSURANCE: ELIGIBLE POLICYHOLDERS

Sec. 1251.051. EMPLOYERS. (a) For purposes of this section, "employee" includes:

(1) an officer, manager, or employee of the employer;

(2) an individual proprietor or partner, if the employer is an individual proprietorship or partnership;

(3) an officer, manager, or employee of a subsidiary or affiliated corporation; and

(4) an individual proprietor, partner, or employee of an individual or firm, if the business of the employer and the individual or firm is under common control through stock ownership, contract, or otherwise.

(b) A policy issued to insure employees of a public body may provide that the term "employee" includes an elected or appointed officer of the body.

(c) A policy issued to the trustees of a fund established by an employer may provide that the term "employee" includes a trustee, an employee of the trustees, or both, if the person's duties are principally connected with the trusteeship.

(d) A group accident and health insurance policy may be issued to an employer or trustees of a fund established by an employer to insure the employer's active and retired employees for the benefit of persons other than the employer.

(e) The employer or the trustees of a fund established by an employer are the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.052. ASSOCIATIONS. (a) A group accident and health insurance policy may be issued to an association, including a labor union or an organization of labor unions, a membership corporation organized or holding a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and a cooperative or corporation subject to the supervision and control of the Farm Credit Administration, to insure the association's active and retired members, employees, or employees of members for the benefit of persons other than the association or its officers or trustees.

(b) To be eligible to obtain a group accident and health insurance policy, an association must:

(1) have a constitution and bylaws;

(2) have been organized and have actively existed for at least two years; and

(3) be maintained in good faith for purposes other than that of obtaining insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.053. FUNDS ESTABLISHED BY EMPLOYERS, LABOR UNIONS, OR ASSOCIATIONS. (a) A group accident and health insurance policy may be issued to the trustees of a fund established by two or more employers in the same or related industry, by one or more labor unions, by one or more employers and one or more labor unions, or by an association described by Section 1251.052 to insure the active and retired employees of the employers, members of the union or association, or employees of the association for the benefit of persons other than the employers, union, or association.

(b) A policy issued to the trustees of a fund established by employers or a labor union or association may provide that the term "employee" includes:

(1) an officer or manager of the employer;

(2) an individual proprietor or partner, if the employer is an individual proprietorship or partnership; or

(3) a trustee, an employee of the trustees, or both, if the person's duties are principally connected with the trusteeship.

(c) The trustees of a fund established by employers or a labor union or association are the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.054. ELIGIBILITY FOR GROUP LIFE INSURANCE. A group accident and health insurance policy may be issued to any individual or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under the group life policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.055. FUND FOR FORMER EMPLOYEES AND MEMBERS. (a) An insurer may issue a group accident and health insurance policy to a trustee of a fund to insure former employees, former members, and the spouses, former spouses, and dependents of former employees and members who were previously insured by the insurer under a policy issued to any entity described by this subchapter.

(b) The trustee of a fund is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.056. OTHER GROUPS. (a) Under the requirements prescribed by this section, a group accident and health insurance policy may be issued to cover a group other than a group described by Sections 1251.051-1251.055 if the commissioner determines that:

(1) the issuance of the policy is not contrary to the best interest of the public;

(2) the issuance of the policy would result in economies of acquisition or administration; and

(3) the benefits are reasonable in relation to the premiums

charged.

(b) Group accident and health insurance coverage may not be offered to a group in this state by an insurer under a policy issued in another state unless this state or another state having requirements substantially similar to those prescribed by Subsections (a)(1)-(3) has determined that those requirements have been met.

(c) The premium for the policy must be paid from the policyholder's funds, funds contributed by the covered persons, or both.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. GROUP ACCIDENT AND HEALTH INSURANCE: REQUIRED PROVISIONS

Sec. 1251.101. REQUIRED PROVISIONS. (a) A group accident and health insurance policy, including a group contract issued by a group hospital service corporation, may not be delivered in this state unless the policy contains in substance the provisions prescribed by this subchapter or provisions in relation to provisions prescribed by this subchapter that, in the opinion of the commissioner, are:

(1) more favorable to the insureds under the policy; or

(2) at least as favorable to the insureds under the policy and more favorable to the policyholder.

(b) The standard provisions required for individual health insurance policies do not apply to group health insurance policies.

(c) If any provision of this subchapter is wholly or partly inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall:

(1) omit the inapplicable provision or part from the policy; or

(2) modify the inconsistent provision in a manner that makes the provision as contained in the policy consistent with the coverage provided by the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.102. PAYMENT OF PREMIUMS. A group accident and health insurance policy must provide that premiums due under the

policy must be remitted by the premium payor as designated in the policy:

(1) on or before the due date; or

(2) within any grace period specified in the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.103. INCONTESTABILITY OF POLICY. (a) A group accident and health insurance policy must provide that:

(1) the validity of the policy may not be contested after the policy has been in force for two years after its date of issue; and

(2) in the absence of fraud, a statement made by any individual covered by the policy relating to the individual's insurability may not be used in contesting the validity of the insurance with respect to which the statement was made:

(A) after the insurance has been in force before the contest for two years during the individual's lifetime; and

(B) unless the statement is contained in a written instrument signed by the individual making the statement.

(b) Subsection (a)(1) does not apply to a contest based on nonpayment of premiums.

(c) The provisions required by this section do not preclude the assertion at any time of a defense based on:

(1) a provision in the policy that relates to eligibility for coverage;

(2) a provision in a group accident and health insurance policy or disability insurance policy that relates to overinsurance;

(3) a provision in a disability policy that relates to the relation of earnings to insurance; or

(4) another similar provision in a group accident and health insurance policy or disability insurance policy that limits the amounts of recovery from all sources to not more than 100 percent of the total actual losses or expenses incurred.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.104. ENTIRE CONTRACT. A group accident and health insurance policy must provide that the policy and any application

attached to the policy constitute the entire contract between the parties.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.105. STATEMENT MADE BY POLICYHOLDER OR INSURED. A group accident and health insurance policy must provide that:

(1) in the absence of fraud, a statement made by the policyholder or an insured is considered a representation and not a warranty; and

(2) a statement made by the policyholder or an insured may not be used in any contest under the policy, unless a copy of the written instrument containing the statement is or has been provided to:

(A) the person making the statement; or

(B) if the statement was made by the insured and the insured has died or become incapacitated, the insured's beneficiary or personal representative.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.106. DISTINCTION BASED ON MARITAL STATUS PROHIBITED. A group accident and health insurance policy must include a provision that prohibits a distinction on the basis of the marital status or lack of marital status between an insured and the other parent in the determination of the dependents or the beneficiaries of the insured, or both.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.107. EVIDENCE OF INSURABILITY. A group accident and health insurance policy must state the conditions, if any, under which the insurer reserves the right to require an individual eligible for insurance to provide evidence of individual insurability satisfactory to the insurer as a condition of obtaining part or all of the coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.108. EXCLUSION OR LIMITATION OF COVERAGE FOR PREEXISTING CONDITIONS. (a) A group accident and health insurance policy must specify the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of an insured, not otherwise excluded from the insured's coverage by name or specific description effective on the date of the insured's loss, that existed before the effective date of the insured's coverage under the policy.

(b) An exclusion or limitation described by Subsection (a) may apply only to a disease or physical condition for which the insured received medical advice or treatment during the 12 months before the effective date of the insured's coverage.

(c) An exclusion or limitation described by Subsection (a) may not apply to a loss incurred or disability beginning after the earlier of:

(1) the end of 12 consecutive months, beginning on or after the effective date of the insured's coverage, during which the insured has not received medical advice or treatment in connection with the disease or physical condition; or

(2) the second anniversary of the effective date of the insured's coverage.

(d) This section does not apply to:

(1) a credit accident and health insurance policy; or

(2) a group accident and health insurance policy subject to Chapter 1501.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.109. ADJUSTMENT OF PREMIUMS OR BENEFITS IF AGE OF INSURED IS MISSTATED. (a) A group accident and health insurance policy under which the premiums or benefits vary by age must specify an equitable adjustment of premiums or benefits, or both, to be made if the age of an insured has been misstated.

(b) The provision required by Subsection (a) must contain a clear statement of the method of adjustment to be used.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.110. DEADLINE FOR NOTICE OF CLAIM. (a) A group accident and health insurance policy must provide that written notice of a claim must be given to the insurer not later than the 20th day after the date of the occurrence or beginning of any loss covered by the policy.

(b) Failure to give notice within the time prescribed by Subsection (a) does not invalidate or reduce any claim if it is shown that:

(1) it was not reasonably possible to give the notice within that time; and

(2) notice was given as soon as was reasonably possible.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.111. CLAIM FORMS. (a) A group accident and health insurance policy must provide that the insurer will furnish to the person making a claim or to the policyholder for delivery to a person making a claim the forms usually provided by the insurer for filing a proof of loss.

(b) If the forms for a proof of loss are not provided before the 16th day after the date the insurer received notice of a claim under the policy, the person making the claim is considered to have complied with the requirements of the policy as to proof of loss on submitting, within the time set in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which the claim is made.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.112. DEADLINE FOR CLAIM. (a) A group accident and health insurance policy must provide that:

(1) in the case of a claim for a loss other than a claim for a loss of time for disability, written proof of the loss must be provided to the insurer not later than the 90th day after the date of the loss; and

(2) in the case of a claim for loss of time for disability:

(A) written proof of the loss must be provided to the insurer not later than the 90th day after the beginning of the period for which the insurer is liable; and

(B) subsequent written proofs of the continuance of the disability must be provided to the insurer at intervals as reasonably required by the insurer.

(b) Failure to provide written proof of a loss within the time prescribed by Subsection (a) does not invalidate or reduce a claim if:

(1) it was not reasonably possible to provide written proof of the loss within that time;

(2) written proof of the loss is provided as soon as reasonably possible; and

(3) unless the claimant does not have the legal capacity to provide proof of loss, proof of loss is provided not later than the first anniversary of the date the proof of loss is otherwise required.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.113. PROMPT PAYMENT OF BENEFITS REQUIRED. A group accident and health insurance policy must provide that:

(1) all benefits payable under the policy, other than benefits for loss of time, must be paid not later than the 60th day after the date the proof of loss is received; and

(2) subject to written proof of loss, all accrued benefits payable under the policy for loss of time must be paid at least monthly during the period for which the insurer is liable, and that any balance remaining unpaid at the end of that period must be paid as soon as possible after the proof of loss is received.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.114. PAYMENT OF BENEFITS. (a) A group accident and health insurance policy must provide that all benefits of the policy, other than benefits for loss of life, must be paid to the insured or the insured's assignee.

(b) A group accident and health insurance policy must provide that, subject to the provisions of the policy, benefits for loss of life of an insured must be paid to:

(1) the beneficiary designated by the insured or the beneficiary's assignee;

(2) the family member specified by the policy terms, if the policy contains conditions relating to family status; or

(3) the estate of the insured, if the designated or specified beneficiary is not living at the time the insured dies.

(c) A group accident and health insurance policy may provide that if any benefits are payable to the estate of an individual or to an individual who is a minor or is otherwise not competent to give a valid release, the insurer may pay the benefits, up to an amount established by the commissioner, to any individual related by consanguinity or affinity to the individual who is considered by the insurer to be equitably entitled to the benefits.

(d) This section does not apply to:

(1) a credit accident and health insurance policy; or

(2) a group contract issued by a group hospital service corporation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.115. RIGHT TO CONDUCT PHYSICAL EXAMINATION OR AUTOPSY. A group accident and health insurance policy must provide that the insurer has the right and opportunity to:

(1) conduct a physical examination of an individual for whom a claim is made when and as often as the insurer reasonably requires during the pendency of the claim under the policy; and

(2) in the case of a death, require that an autopsy be conducted, unless the autopsy is prohibited by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.116. LEGAL OR EQUITABLE ACTIONS; LIMITATIONS. A group accident and health insurance policy must provide that an action at law or in equity may not be brought to recover on the policy:

(1) before the 61st day after the date written proof of loss is filed as required under the policy; or

(2) after the third anniversary of the date on which written proof of loss is required under the policy to be filed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.117. CONTINUATION OR CONVERSION OF COVERAGE. (a) A group accident and health insurance policy must describe the continuation of group coverage and any conversion coverage provided in accordance with Subchapter F.

(b) Subsection (a) does not apply to a credit accident and health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. GROUP ACCIDENT AND HEALTH INSURANCE: COVERAGE FOR DEPENDENTS

Sec. 1251.151. COVERAGE FOR CERTAIN GRANDCHILDREN. (a) A group policy or contract of insurance for hospital, surgical, or medical expenses incurred as a result of accident or sickness, including a group contract issued by a group hospital service corporation, that provides coverage under the policy or contract for a child of an insured must, on payment of a premium, provide coverage for any grandchild of the insured if the grandchild is:

(1) unmarried;

(2) younger than 25 years of age; and

(3) a dependent of the insured for federal income tax purposes at the time the application for coverage of the grandchild is made.

(b) Coverage for a grandchild of the insured under this section may not be terminated solely because the covered grandchild is no longer a dependent of the insured for federal income tax purposes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.152. OPTIONAL COVERAGE FOR SPOUSES AND DEPENDENTS. (a) For purposes of this section, "dependent" includes:

(1) a child of an employee or member who is:

(A) unmarried; and

(B) younger than 25 years of age; and

(2) a grandchild of an employee or member who is:

(A) unmarried;

(B) younger than 25 years of age; and

(C) a dependent of the insured for federal income tax purposes at the time the application for coverage of the grandchild is made.

(b) A group accident and health insurance policy may provide coverage for the spouse or a dependent of an employee or member.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.153. OPTIONAL CONTINUATION OF DEPENDENTS' BENEFITS ON DEATH OF INSURED. (a) A group accident and health insurance policy that provides for the payment by the insurer of benefits for members of the family or dependents of an insured may provide for a continuation of all or part of those benefits after the death of the insured.

(b) Insurance provided by benefits described by Subsection (a) is not life insurance under Title 7.

(c) Coverage described by Subsection (a) may continue for any period subject to any other policy provisions relating to the termination of a dependent's coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.154. COVERAGE FOR ADOPTED CHILDREN. A group policy or contract of insurance for hospital, surgical, or medical expenses incurred as a result of accident or sickness, including a group contract issued by a group hospital service corporation, that provides coverage for the immediate family or a child of an insured may not exclude from coverage or limit coverage of a child of the insured solely because the child is adopted. A child is considered to be the child of an insured if the insured is a party to a suit in which the insured seeks to adopt the child.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER E. GROUP ACCIDENT AND HEALTH INSURANCE: GENERAL PROVISIONS

Sec. 1251.201. CERTIFICATE OF INSURANCE; NOTICE OF SEPARATE AVAILABLE COVERAGE. (a) An insurer issuing a group policy under

this chapter shall provide to the policyholder for delivery to each employee or member of the insured group:

(1) a certificate of insurance that:

(A) summarizes the essential features of the insurance coverage of the employee or member, including the annual deductibles, annual and lifetime policy limits, and maximum out-of-pocket expenses under the policy; and

(B) states the person to whom benefits are payable; and

(2) a notice that informs the employee or member of the availability of and premiums for a rider or separate insurance policy that would provide coverage in addition to the coverage provided under the policy.

(b) If dependents are included in the coverage, an insurer is not required to provide more than one certificate or notice for each family unit.

(c) By agreement between the insurer and the policyholder, a certificate may be delivered electronically.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.030(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 939 (H.B. 765), Sec. 1, eff. September 1, 2005.

Sec. 1251.202. NOTICE REGARDING CERTAIN EMPLOYER HEALTH BENEFIT PLANS. (a) In this section, "standard health benefit plan" means a plan offered under Chapter 1507.

(b) If an employer offers to employees a standard health benefit plan, the employer shall:

(1) provide a copy of the disclosure statement provided to the employer by the plan issuer under Section 1507.006 or 1507.056 to:

(A) each employee:

(i) before the employee initially enrolls in the plan, unless the employee received notice under Paragraph (B) on or after the 90th day before the date the employee initially enrolls; and

(ii) not later than the 30th day before the date

the employee renews enrollment in the plan; and

(B) each prospective employee before the prospective employee is hired by the employer; and

(2) obtain a copy of the notice signed by the employee or prospective employee at the time the notice is provided.

Added by Acts 2005, 79th Leg., Ch. 939 (H.B. 765), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.001, eff. April 1, 2009.

SUBCHAPTER F. CONTINUATION OR CONVERSION PRIVILEGE ON TERMINATION OF COVERAGE UNDER GROUP POLICY

Sec. 1251.251. CONTINUATION OF GROUP COVERAGE REQUIRED; EXCEPTION. (a) An insurer or group hospital service corporation that issues policies that provide hospital, surgical, or major medical expense insurance coverage or any combination of those coverages on an expense incurred basis shall, as required by this subchapter, provide continuation of group coverage for employees or members and their eligible dependents, subject to the eligibility provisions prescribed by Section 1251.252.

(b) This subchapter does not apply to an insurance policy that provides benefits only for expenses incurred because of a specified disease or an accident.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.252. ELIGIBILITY FOR CONTINUATION OF GROUP COVERAGE. (a) An employee, member, or dependent is entitled to continuation of group coverage if:

(1) the individual's coverage under the group policy is terminated for any reason other than involuntary termination for cause, including discontinuance of the group policy in its entirety or with respect to an insured class; and

(2) the individual has been continuously insured under the group policy, or under any group policy providing similar benefits that the policy replaces, for at least three consecutive months immediately before termination.

(b) For purposes of Subsection (a), involuntary termination for cause does not include termination for any health-related cause.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.253. REQUEST FOR CONTINUATION OF GROUP COVERAGE. An employee, member, or dependent must provide to the employer or group policyholder a written request for continuation of group coverage not later than the 60th day after the later of:

(1) the date the group coverage would otherwise terminate; or

(2) the date the individual is given, in a format prescribed by the commissioner, notice by either the employer or the group policyholder of the right to continuation of group coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 550 (S.B. 1771), Sec. 2, eff. June 19, 2009.

Sec. 1251.254. PAYMENT OF CONTRIBUTIONS. Except as provided by this section, an employee, member, or dependent who elects to continue group coverage under this subchapter must pay to the employer or group policyholder each month the amount of contribution required by the employer or policyholder, plus two percent of the group rate for the coverage being continued under the group policy. A payment under this section must be made not later than the 45th day after the date of the initial election for coverage and on the due date of each payment thereafter. Following the first payment made after the initial election for coverage, the payment of any other premium shall be considered timely if made on or before the 30th day after the date on which the payment is due.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 550 (S.B. 1771), Sec. 3, eff. June 19, 2009.

Sec. 1251.255. TERMINATION OF CONTINUED COVERAGE. (a) Group coverage continued under this subchapter may not terminate until the earliest of:

(1) the date the maximum continuation period provided by law would end, which is:

(A) for any employee, member, or dependent not eligible for continuation coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA), nine months after the date the employee, member, or dependent elects to continue the group coverage; or

(B) for any employee, member, or dependent eligible for continuation coverage under COBRA, six additional months following any period of continuation coverage provided under COBRA;

(2) the date failure to make timely payments would terminate the group coverage;

(3) the date the group coverage terminates in its entirety;

(4) the date the insured is or could be covered under Medicare;

(5) the date the insured is covered for similar benefits by another plan or program, including:

(A) a hospital, surgical, medical, or major medical expense insurance policy;

(B) a hospital or medical service subscriber contract; or

(C) a medical practice or other prepayment plan;

(6) the date the insured is eligible for similar benefits, whether or not covered for those benefits, under any arrangement of coverage for individuals in a group, whether on an insured or uninsured basis; or

(7) the date similar benefits are provided or available to the insured under any state or federal law other than continuation coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA).

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 615, Sec. 8(a)(3), eff. January 1, 2014.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 550 (S.B. 1771), Sec. 4, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 615 (S.B. 1367), Sec. 8(a)(3), eff. January 1, 2014.

Sec. 1251.256. CONVERSION OF GROUP POLICY. (a) An insurer may offer a conversion policy to each employee, member, or dependent who is covered under a group accident and health insurance policy that is terminating.

(b) If offered, an issuer shall issue a conversion policy without evidence of insurability if a written application for the policy and payment of the first premium are made not later than the 31st day after the date of termination.

(c) Any conversion policy must meet the minimum standards for benefits for conversion policies.

(d) The insurer may provide the conversion coverage on an individual or group basis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.257. PREMIUM FOR CONVERTED POLICY. (a) An insurer shall determine the premium for a converted policy issued under this subchapter in accordance with the insurer's table of premium rates for coverage that was provided under the group policy. The premium:

(1) must be based on the type of converted policy and the coverage provided by the policy; and

(2) may be based on the age and geographic location of each individual to be covered.

(b) The premium for the same coverage and benefits under a converted policy may not exceed 200 percent of the premium determined for the group policy in accordance with Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.258. BENEFITS UNDER CONVERTED POLICY. The commissioner by rule shall establish minimum standards for benefits under converted policies issued under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.259. TERMINATION OF CONVERTED POLICY. Conversion coverage under this subchapter for an insured may not terminate until the earlier of:

(1) the date failure to make timely payments would terminate coverage; or

(2) the date of an event specified by Section 1251.255(a)(4), (5), (6), or (7) for termination of continued group coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.260. NOTICE OF CONTINUATION AND CONVERSION PRIVILEGES. (a) An employer that provides to its employees group accident and health insurance coverage that includes a group continuation or conversion privilege on termination of coverage shall give written notice of the continuation or conversion privileges under the policy to each employee or dependent insured under the group and affected by the termination.

(b) The commissioner by rule shall establish minimum standards for the notice required by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER G. CONTINUATION OF GROUP COVERAGE FOR CERTAIN FAMILY MEMBERS AND DEPENDENTS

Sec. 1251.301. CONTINUATION OF GROUP COVERAGE. A group policy or contract delivered, issued for delivery, renewed, amended, or extended in this state, including a group contract issued by a group hospital service corporation, that provides insurance for hospital, surgical, or medical expenses incurred as a result of accident or sickness must include an option for each individual covered by the policy or contract because of a family or dependent relationship to an individual who is a member of the group for which the policy or contract is provided to continue coverage with the group if the individual's eligibility for coverage under the policy or contract ends because of:

(1) the severance of the family relationship; or

(2) the retirement or death of the group member.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.302. ELIGIBILITY FOR CONTINUED COVERAGE. A family member or dependent of an insured is eligible for continued coverage under this subchapter if the family member or dependent:

(1) has been a member of the group for a period of at least one year; or

(2) is an infant under one year of age.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.303. PHYSICAL EXAMINATION NOT REQUIRED. An individual who exercises the option to continue group coverage under this subchapter may not be required to take and pass a physical examination as a condition to continuing coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.304. SCOPE OF COVERAGE. (a) An individual covered under group continuation coverage under this subchapter is entitled to coverage that is identical in scope to the coverage provided under the group health insurance policy or contract. An exclusion that was not included in the health insurance policy or contract may not be included in the group continuation coverage.

(b) If the group policyholder or contract holder replaces the health insurance policy or contract within the period prescribed by Section 1251.310(3), an individual covered under group continuation coverage may obtain coverage identical in scope to the coverage under the replacement group policy as provided by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.305. AMOUNT OF PREMIUM. Except as provided by Section 1551.064, the premium for continuation of a spouse or dependent on the group health insurance policy or contract may not be more than the premium charged under the group policy or contract for the individual had the family relationship not been severed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.306. PAYMENT OF PREMIUMS. (a) An individual covered under group continuation coverage under this subchapter shall pay premiums for the coverage directly to the group policyholder or contract holder.

(b) The coverage must provide the individual with the option of paying the premiums in monthly installments.

(c) The group policyholder or contract holder may require the individual to pay a monthly fee of not more than $5 for administrative costs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.307. NOTICE OF CONTINUATION OPTION. Except as provided by Section 1551.064, at the time a health insurance policy or contract is issued, the group policyholder or contract holder shall give written notice to each group member and each dependent of a group member covered by the policy or contract of the continuation option under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.308. NOTICE OF SEVERANCE OF FAMILY RELATIONSHIP; NOTICE OF DESIRE TO EXERCISE OPTION. (a) Except as provided by Section 1551.064, each group health insurance policy or contract must require a group member to give written notice to the group policyholder or contract holder not later than the 15th day after the date of any severance of the family relationship that might activate the continuation option under this subchapter. Written notice under this subsection may be given by the group member's dependent.

(b) On receipt of notice under Subsection (a), the group policyholder or contract holder shall immediately give written notice of the continuation option under this subchapter to each affected dependent of the group member.

(c) On receipt of notice of the death or retirement of a group member, the group policyholder or contract holder shall immediately give written notice of the continuation option under this subchapter

to each dependent of the group member. The notice must state the amount of the premium to be charged and must be accompanied by any necessary enrollment forms.

(d) Not later than the 60th day after the date of the severance of the family relationship or the retirement or death of the group member, a dependent must give written notice to the group policyholder or contract holder of the individual's desire to exercise the continuation option under this subchapter. Coverage under the health insurance policy or contract remains in effect during the period prescribed by this subsection if the policy or contract premiums are paid.

(e) If a dependent does not give written notice of the individual's desire to exercise the continuation option under this subchapter within the time prescribed by Subsection (d), the option expires.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.309. CONTINUATION OF CERTAIN COVERAGES. (a) Any period of previous coverage under the health insurance policy or contract, including a policy or contract executed under Chapter 1551, must be used in full or partial satisfaction of any required probationary or waiting periods provided in the contract for dependent coverage.

(b) If a health insurance policy or contract provides to a group member continuation rights to cover the period between the time the member retires and the time the member is eligible for coverage by Medicare, those same continuation rights must be made available to the group member's dependents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.310. TERMINATION OF CONTINUED COVERAGE. The coverage of an individual who exercises the continuation option under this subchapter continues without interruption and may not be canceled or otherwise terminated until:

(1) the insured fails to make a premium payment within the time required to make the payment;

(2) the insured becomes eligible for substantially similar

coverage under another plan or program, including a group health insurance policy or contract, hospital or medical service subscriber contract, or medical practice or other prepayment plan; or

(3) the third anniversary of:

(A) the severance of the family relationship; or

(B) the retirement or death of the group member.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER H. BLANKET ACCIDENT AND HEALTH INSURANCE: ELIGIBLE POLICYHOLDERS

Sec. 1251.351. COMMON CARRIER OR MOTOR VEHICLE RENTAL OR LEASING COMPANY. (a) A blanket accident and health insurance policy may be issued to:

(1) a common carrier or the operator, owner, or lessor of a means of transportation to cover a group of individuals who may become passengers defined by reference to their travel status on the common carrier or means of transportation; or

(2) an automobile or truck rental or leasing company to cover a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles.

(b) The common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.352. EMPLOYERS. (a) A blanket accident and health insurance policy may be issued to an employer to cover any group of employees, dependents, or guests defined by reference to specified hazards incident to an activity or operation of the employer.

(b) The employer is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.353. EDUCATIONAL INSTITUTIONS. (a) A blanket accident and health insurance policy may be issued to a college, school, or other institution of learning, to a school district or school jurisdictional unit, or to the head, principal, or governing board of such an educational unit to cover students, teachers, or employees.

(b) The institution, head, principal, or governing board is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.354. RELIGIOUS, CHARITABLE, RECREATIONAL, EDUCATIONAL, OR CIVIC ORGANIZATION. (a) A blanket accident and health insurance policy may be issued to a religious, charitable, recreational, educational, or civic organization, or a branch of the organization, to cover any group of members or participants defined by reference to specified hazards incident to an activity or operation sponsored or supervised by the organization or branch.

(b) The organization or branch is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.355. SPORTS TEAM OR CAMP. (a) A blanket accident and health insurance policy may be issued to a sports team or camp or the sponsor of a sports team or camp to cover members, campers, employees, officials, or supervisors.

(b) The sports team, camp, or sponsor is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.356. GOVERNMENTAL OR VOLUNTEER EMERGENCY SERVICES ORGANIZATION. (a) A blanket accident and health insurance policy may be issued to a governmental or volunteer fire department or fire company, first aid or civil defense organization, or similar governmental or volunteer organization to cover a group of members or participants defined by reference to specified hazards incident to an

activity or operation sponsored or supervised by the organization.

(b) The governmental or volunteer organization is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.357. NEWSPAPER OR OTHER PUBLISHER. (a) A blanket accident and health insurance policy may be issued to a newspaper or other publisher to cover the publisher's carriers.

(b) The publisher is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.358. ASSOCIATION. (a) A blanket accident and health insurance policy may be issued to an association, including a labor union, to cover any group of members or participants defined by reference to specified hazards incident to an activity or operation sponsored or supervised by the association.

(b) To be eligible to obtain a blanket accident and health insurance policy, an association must:

(1) have a constitution and bylaws; and

(2) have been organized and be maintained in good faith for purposes other than that of obtaining insurance.

(c) The association is the policyholder under a policy to which this section applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.359. COVERAGE FOR OTHER RISKS. (a) A blanket accident and health insurance policy may be issued to cover any risk or class of risks other than a risk described by this subchapter that, as determined by the commissioner, is eligible for blanket accident and health insurance.

(b) The commissioner may make a determination under Subsection (a) based on an individual risk, a class of risks, or both.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER I. BLANKET ACCIDENT AND HEALTH INSURANCE: GENERAL PROVISIONS

Sec. 1251.401. INDIVIDUAL APPLICATION AND CERTIFICATE NOT REQUIRED. (a) An individual application from an insured under a blanket accident and health insurance policy is not required.

(b) An insurer is not required to provide a certificate to each insured under a blanket accident and health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1251.402. LIABILITY OF POLICYHOLDER NOT AFFECTED. Subchapter H and this subchapter do not affect the legal liability of a policyholder for the death of or injury to a member of a group.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER J. REGULATION OF OUT-OF-STATE GROUP ACCIDENT AND HEALTH INSURANCE COVERAGE

Sec. 1251.451. APPLICABILITY OF CERTAIN LAWS TO OUT-OF-STATE GROUP ACCIDENT AND HEALTH INSURANCE COVERAGE. (a) Chapters 1365 and 1368 and Subchapters A and C, Chapter 1451, apply to:

(1) a certificate of insurance issued to a resident of this state under a group accident and health insurance policy delivered, issued for delivery, or renewed outside this state; or

(2) a certificate issued to a resident of this state under a policy delivered, issued for delivery, or renewed outside this state by a group hospital service corporation.

(b) Subsection (a) does not apply to a specified disease or limited benefit policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1252. DISCONTINUATION AND REPLACEMENT OF GROUP AND GROUP-TYPE HEALTH BENEFIT PLAN COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1252.001. DEFINITIONS. In this chapter:

(1) "Carrier" means:

(A) an insurer; or

(B) a group hospital service corporation operating under Chapter 842.

(2) "Health benefit plan" means:

(A) any accident and health insurance policy;

(B) a subscriber contract of a group hospital service corporation; or

(C) an accident and health benefits package of a multiple employer trust that is not exempt from regulation by this state as an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), as amended.

(3) "Previous carrier" means a carrier whose health benefit plan coverage has been replaced with health benefit plan coverage provided by a succeeding carrier.

(4) "Succeeding carrier" means a carrier that replaces the health benefit plan coverage provided by another carrier with its own health benefit plan coverage.

(5) "Total disability" or "totally disabled" means:

(A) with respect to an employee or other primary insured covered under a health benefit plan, the complete inability of that individual to perform all of the substantial and material duties and functions of the individual's occupation and any other gainful occupation in which the individual earns substantially the same compensation earned before the disability; and

(B) with respect to any other individual covered under a health benefit plan, confinement as a bed patient in a hospital.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that:

(1) provides coverage on a group or group-type basis to an individual eligible for that coverage because of the individual's status as:

(A) an employee of an employer; or

(B) a member of a labor union or a member of an association; and

(2) is delivered or issued for delivery in this state.

(b) This chapter does not apply to an entity that is not engaged in the business of insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.003. COVERAGE ISSUED ON GROUP-TYPE BASIS. (a) For purposes of this chapter, health benefit plan coverage is provided on a group-type basis if:

(1) the plan provides coverage under an insurance policy or subscriber contract to a class of employees or a class of members of a labor union or members of an association and the class is determined by conditions relating to their employment or to their membership in the union or association;

(2) coverage under the plan is not available to the general public and can be obtained and maintained only because of the covered individual's employment status or membership in a labor union or an association;

(3) premiums or subscription charges for the plan are paid to the carrier on an aggregate or bulk-payment basis; and

(4) the plan is sponsored by:

(A) the employer of the class of employees covered by the plan; or

(B) the labor union or an association to which the class of members covered by the plan belongs.

(b) Health benefit plan coverage is not provided on a group-type basis if it is a salary-budget plan using individual insurance policies or subscriber contracts that do not meet the conditions for group-type coverage specified by Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. DISCONTINUATION OF COVERAGE

Sec. 1252.101. NOTICE OF DISCONTINUATION OF COVERAGE. A notice of discontinuation of a health benefit plan must include a request to the group policyholder or other entity responsible for making payments or submitting subscription charges to the carrier to notify employees or members covered by the plan of the discontinuation and the date of the discontinuation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.102. EXTENSION OF BENEFITS PROVISION; EXEMPTION. (a) A health benefit plan must contain, subject to this section and Section 1252.103, a reasonable provision providing for an extension of benefits for a total disability that exists on the date of the plan's discontinuation.

(b) A health benefit plan must contain a reasonable extension of benefits provision for coverage for hospital or medical expenses other than dental expenses. A provision is considered reasonable if it provides to an individual who is covered under the plan and who is totally disabled on the date of the plan's discontinuation an extension of benefits for expenses incurred in treating the condition causing the total disability and the extension is provided for at least the lesser of:

(1) 90 days; or

(2) the duration of the total disability.

(c) An extension of benefits provision required under this section may provide for an exclusion from coverage for an individual whose coverage is being discontinued and replaced with coverage that:

(1) is provided by a succeeding carrier; and

(2) provides a level of benefits that is at least substantially equal to the level of benefits provided under the replaced health benefit plan.

(d) An applicable extension of benefits provision must be described in the policy or contract and the group insurance certificate.

(e) Benefits payable during an extension period may be subject to the regular benefit limits of the health benefit plan.

(f) This section does not apply to a health benefit plan that was delivered or issued for delivery in this state before January 1, 1982, and whose level of benefits has not been modified after December 31, 1981.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.103. INDEMNITY OR BENEFITS PAYABLE FOR DISABILITY. A discontinuation of health benefit plan coverage occurring during a

period of disability does not affect:

(1) any benefits payable under the plan for loss of time from work because of the disability; or

(2) any specific indemnity required to be provided under the plan during a period of hospital confinement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.104. LIABILITY FOR LOSS UNDER AUTOMATICALLY DISCONTINUED COVERAGE. (a) If a health benefit plan provides for automatic discontinuation of coverage when a premium or subscription charge due under the plan is not paid before the expiration of a grace period specified in the plan for that payment, the carrier or other entity responsible for making premium payments or for submitting premiums or subscription charges to the carrier is liable, on the submission of a valid claim, for a loss that is:

(1) covered by the plan; and

(2) incurred before the expiration of the grace period.

(b) The commissioner may adopt reasonable rules necessary to implement this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. REPLACEMENT OF COVERAGE

Sec. 1252.201. TOTAL DISABILITY STATUS. In this subchapter, a reference to the total disability status of an individual means the individual's disability status immediately preceding the date on which the succeeding carrier's coverage takes effect.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.202. EFFECTIVE DATE OF COVERAGE UNDER REPLACEMENT PLAN. (a) An individual who was covered by a previous carrier's health benefit plan on the date on which that plan was discontinued shall be provided coverage under the succeeding carrier's health benefit plan as of the replacement plan's effective date if the individual:

(1) is eligible for coverage because the individual is a

member of a class eligible for coverage under the replacement plan and satisfies the replacement plan's actively at work and nonconfinement requirements; and

(2) elects to be covered under the replacement plan.

(b) An individual who would be covered by the succeeding carrier under Subsection (a) but who does not satisfy the replacement plan's actively at work and nonconfinement requirements shall be covered under the replacement plan when the individual satisfies those requirements.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.203. EXTENSION OF BENEFITS FOR TOTAL DISABILITY. (a) With respect to providing a type of coverage for which Section 1252.102 requires an extension of benefits for an individual with a total disability, a succeeding carrier replacing a previous carrier's plan that is not subject to that section must provide, subject to Subsection (b), the lesser of:

(1) extended benefit coverage that the previous carrier would have been required to provide under Section 1252.102 if the previous carrier had been subject to that section; or

(2) extended benefit coverage that the succeeding carrier is required to provide under Section 1252.102.

(b) The extended benefit coverage may be reduced by any benefits actually payable under the previous carrier's health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.204. COVERAGE FOR PREEXISTING CONDITIONS. (a) A succeeding carrier's health benefit plan that limits coverage in accordance with a preexisting conditions provision, other than a waiting period, must provide, during the period the limitation on coverage is in effect, the level of benefits prescribed by this section to an individual covered by the succeeding carrier who:

(1) has a preexisting condition; and

(2) was covered by the previous carrier's plan on the date on which that plan was discontinued.

(b) The health benefit plan must provide a level of benefits

equal to the lesser of:

(1) the level of benefits available under the succeeding carrier's plan as determined without applying the preexisting conditions provision; or

(2) the level of benefits that would have been available under the previous carrier's plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.205. WAITING PERIOD. If the benefits that were available under a previous carrier's health benefit plan are similar to the benefits available under a succeeding carrier's health benefit plan, the succeeding carrier shall give credit for the satisfaction or partial satisfaction of any waiting period or similar provision that has been satisfied under the previous carrier's plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.206. DETERMINATION OF BENEFITS AVAILABLE UNDER REPLACED PLAN. (a) If a succeeding carrier requires a determination of the benefits available under the previous carrier's health benefit plan, the previous carrier shall provide at the request of the succeeding carrier:

(1) a statement of the benefits available under the previous carrier's plan; or

(2) pertinent information sufficient either to allow verification of those benefits or to allow the succeeding carrier to make a determination of those benefits.

(b) A determination of benefits under this section must be made using the definitions of, and in accordance with all of the conditions and covered expense provisions of, the previous carrier's plan as if that plan had not been replaced.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1252.207. LIABILITY OF PREVIOUS CARRIER. A carrier of a health benefit plan that is being discontinued is liable only for any accrued liabilities regarding the plan and for any extension of

benefits provided under the plan, regardless of whether the group policyholder or any other entity responsible for making payments or for submitting subscription charges to the carrier:

(1) replaces the coverage provided under the discontinued plan with health benefit plan coverage provided by another carrier;

(2) self-insures a health benefit plan; or

(3) does not provide health benefit plan coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1253. CANCELLATION OF GROUP COVERAGE IN CERTAIN CIRCUMSTANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1253.001. LIMITATION OF SERVICES AND BENEFITS ON CONTRACT RENEGOTIATION. (a) In this section, "health benefit contract" means a contract providing group health care coverage for employees that is delivered, issued for delivery, or renewed in this state by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842; or

(3) a health maintenance organization operating under Chapter 843.

(b) Subject to Subsection (c), if an employer in this state agrees to renegotiate a health benefit contract, a change in the renegotiated contract may not operate solely to terminate eligibility with respect to any member of the group who, before the contract was renegotiated:

(1) was covered under the contract; and

(2) had a sickness or injury for which a service was being provided or a benefit was being paid under the contract.

(c) A renegotiated health benefit contract may include a different durational or dollar limit or a different deductible amount or amount of coinsurance applicable to a sickness or injury for which a service was being provided or benefit was being paid before the contract was renegotiated if that same or a similar limit or amount applies to a service provided or benefit paid for a similar sickness or a related condition or injury covered by the contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. CONTINUATION OF GROUP ACCIDENT AND HEALTH INSURANCE POLICIES DURING LABOR DISPUTE

Sec. 1253.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a group accident and health insurance policy that is delivered or issued for delivery in this state and as to which any part of the premium is paid or is to be paid by an employer under the terms of a collective bargaining agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.052. CONTINUATION OF GROUP ACCIDENT AND HEALTH INSURANCE DURING LABOR DISPUTE REQUIRED FOR CERTAIN POLICIES. An insurer may not deliver or issue for delivery a policy subject to this subchapter unless the policy provides that if the employees covered by the policy stop work because of a labor dispute, coverage continues under the policy, on timely payment of the premium, for each employee who:

(1) is covered under the policy on the date the work stoppage begins;

(2) continues to pay the employee's individual contribution, subject to the conditions provided by this subchapter; and

(3) assumes and pays during the work stoppage the contribution due from the employer, subject to the conditions provided by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.053. CONTRIBUTIONS IF POLICYHOLDER IS TRUSTEE. (a) An employee's contribution for purposes of a policy as to which the policyholder is a trustee or the trustees of a fund established or maintained wholly or partly by the employer is the amount the employee and employer would have been required to contribute to the fund for the employee if:

(1) the work stoppage had not occurred; and

(2) the agreement requiring the employer to make contributions to the fund were in effect.

(b) The policy may provide that continuation of coverage is contingent on the collection of individual contributions by the

policyholder or the policyholder's agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.054. CONTRIBUTIONS IF POLICYHOLDER IS NOT TRUSTEE. (a) A policy as to which the policyholder is not a trustee or the trustees of a fund established or maintained in whole or in part by the employer must provide that the employee's individual contribution:

(1) is the policy rate applicable:

(A) on the date the work stoppage begins; and

(B) to an individual in the class to which the employee belongs as provided by the policy; or

(2) if the policy does not provide for a rate applicable to an individual, is an amount equal to the amount determined by dividing:

(A) the total monthly premium in effect under the policy on the date the work stoppage begins; by

(B) the total number of insureds under the policy on that date.

(b) The policy may provide that continuation of coverage under this subchapter is contingent on the collection of individual contributions by the union or unions representing the employees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.055. PAYMENT OF CONTRIBUTION AND PREMIUM. A policy may provide that continuation of coverage for an employee under the policy is contingent on timely payment of:

(1) contributions by the employee; and

(2) the premium by the entity responsible for collecting the individual employee contributions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.056. PAST DUE PREMIUM. (a) A policy may provide that the continuation of coverage is contingent on payment of any premium that:

(1) is unpaid on the date the work stoppage begins; and
(2) became due before the date the work stoppage begins.

(b) A premium described by Subsection (a) must be paid before the date the next premium becomes due under the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.057. INDIVIDUAL PREMIUM RATE INCREASE. (a) A policy may provide that, during the period of a work stoppage, each individual premium rate shall be increased by an amount not to exceed 20 percent of the amount shown in the policy, or a greater percentage as approved by the commissioner, to provide sufficient compensation to the insurer to cover increased:

(1) administrative costs; and
(2) mortality and morbidity.

(b) If a policy provides for a premium rate increase in accordance with this section, the amount of an employee's contribution must be increased by the same percentage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.058. PREMIUM RATE CHANGE NOT LIMITED. (a) This subchapter does not limit any right of the insurer under a policy to increase or decrease a premium rate before, during, or after a work stoppage if the insurer would be entitled to increase the premium rate had a work stoppage not occurred.

(b) A change in a premium rate made in accordance with this section takes effect on a date that is determined by the insurer in accordance with the terms of the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.059. LIMITATIONS ON CONTINUATION OF COVERAGE. This subchapter does not require the continuation of coverage under a policy for any loss of time benefits included in the policy or the continuation of other coverage for a period:

(1) longer than six months after a work stoppage occurs;
(2) beyond the time that 75 percent of the covered

employees continue the coverage; or

(3) as to an individual covered employee, beyond the time that the employee takes a full-time job with another employer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1253.060. OTHER PROVISIONS; COMMISSIONER APPROVAL REQUIRED. A policy may contain any other provision relating to continuation of policy coverage during a work stoppage that the commissioner approves.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1254. NOTICE OF RATE INCREASE FOR GROUP HEALTH AND ACCIDENT COVERAGE

Sec. 1254.001. NOTICE OF RATE INCREASE. (a) In this section, "insurer" means:

(1) a life insurance company;

(2) a health insurance company;

(3) an accident insurance company;

(4) a general casualty company;

(5) a mutual life insurance company or other mutual insurance company;

(6) a mutual or natural premium life insurance company;

(7) a Lloyd's plan;

(8) a reciprocal or interinsurance exchange;

(9) a fraternal benefit society;

(10) a local mutual aid association; or

(11) a group hospital service corporation.

(b) Not less than 60 days before the date on which a premium rate increase takes effect on a group policy of health insurance, accident and health insurance, or life, health, and accident insurance delivered or issued for delivery in this state by an insurer, the insurer shall give written notice to the policyholder of:

(1) the amount of the increase; and

(2) the date on which the increase is to take effect.

(c) A health maintenance organization shall give notice of an increase in subscriber charges and service fees under a group

contract or coverage in the same manner as is required of an insurer under Subsection (b).

(d) An insurer that issues a group policy described by Subsection (b) to a multiple employer trust shall give the notice required by that subsection to the trustee or group policyholder.

(e) The notice required by this section must be based on coverage in effect on the date of the notice.

(f) This section may not be construed to prevent an insurer or health maintenance organization, at the request of a policyholder or contract holder, from negotiating a change in benefits or rates after delivery of the notice required by this section.

(g) An insurer may not require a policyholder or trustee entitled to notice under this section to respond to the insurer to renew the policy or take other action relating to the renewal or extension of the policy before the 45th day after the date the notice described by Subsection (b) is given.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.031(a), eff. September 1, 2005.

CHAPTER 1255. GROUP FAMILY LEAVE INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1255.001. DEFINITIONS. In this chapter:

(1) "Continuing supervision by a health care provider" includes a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective and for which the affected individual is not receiving active treatment by a health care provider.

(2) "Dependent" means an individual who is under 18 years of age, or 18 years of age or older and incapable of self-care due to a mental or physical disability, and is, in relation to an insured:

(A) a biological, adopted, or foster child;

(B) a legal ward;

(C) a child of the insured's spouse;

(D) a child with respect to whom the insured is a party to a suit in which the insured seeks to adopt the child; or

(E) a child of a person to whom the insured stands in

loco parentis.

(3) "Family leave" means leave taken by an employee from work for reasons described by Section 1255.102.

(4) "Family leave insurance" means an insurance policy issued through an employer related to a benefit program provided to an employee to pay for a portion of the employee's income loss due to family leave taken by the employee.

(5) "Family member," in relation to an insured, includes a dependent, spouse, or parent or any other person defined as a family member in the family leave insurance policy.

(6) "Health care provider" means a person licensed, certified, or otherwise authorized by the laws of this state to provide health care services in the ordinary course of business or practice of a profession.

(7) "Parent" means, in relation to an insured:

(A) a biological, adoptive, or foster parent;

(B) a stepparent;

(C) a legal guardian; or

(D) a person who stood in loco parentis to the insured when the insured was a child.

(8) "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, that involves:

(A) inpatient care in a hospital, hospice, or residential health care facility;

(B) continuing treatment; or

(C) continuing supervision by a health care provider.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a family leave insurance policy, amendment, or rider to a group disability policy delivered or issued for delivery in this state by a life, health, and accident insurance company.

(b) Notwithstanding Chapter 1701 and except as provided by Section 1255.108, this chapter does not apply to a certificate of family leave insurance delivered to a resident in this state if the

group policy was delivered or issued for delivery in another state.

(c) This chapter applies to an insurance company authorized to write life, health, and accident insurance in this state, including a stipulated premium company operating under Chapter 884.

(d) This chapter does not apply to:

(1) a society, company, or other insurer whose activities are exempt by statute from department regulation and that is entitled by statute to a certificate from the department that shows the entity's exempt status;

(2) a credit accident and health insurance policy issued under Chapter 1153;

(3) a workers' compensation insurance policy;

(4) a liability insurance policy, with or without supplementary expense coverage;

(5) a reinsurance policy or contract;

(6) a blanket or group insurance policy, except as otherwise provided by this chapter; or

(7) a life insurance endowment or annuity contract, or a contract supplemental to a life insurance endowment or annuity contract, if the contract or supplemental contract contains only provisions relating to accident and health insurance that:

(A) provide additional benefits in case of accidental death, accidental dismemberment, or accidental loss of sight; or

(B) operate to:

(i) safeguard the contract or supplemental contract against lapse; or

(ii) give a special surrender value, a special benefit, or an annuity if the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.003. CONSIDERATION AS DISABILITY INCOME INSURANCE. A family leave insurance policy is considered a type of disability income insurance for all purposes under this code.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.004. APPLICATION OF OTHER LAW; CONFLICTS. (a) The provisions of Subchapter B, Chapter 1251, governing eligibility for group accident and health insurance apply to govern the eligibility of a group for purposes of this chapter to the extent those provisions do not conflict with this chapter. This chapter prevails over Subchapter B, Chapter 1251, if there is a conflict.

(b) Notwithstanding any other law, the law of the state in which the group or master policy providing family leave insurance is delivered or issued for delivery governs disputes between the insurer, group policyholder, and certificate holder.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.005. RULEMAKING AUTHORITY. The commissioner may adopt reasonable rules as necessary to implement this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. MINIMUM POLICY STANDARDS

Sec. 1255.101. COMPLIANCE WITH MINIMUM STANDARDS FOR BENEFITS. A group family leave insurance policy must meet the minimum standards for benefits as provided by this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.102. FAMILY LEAVE BENEFITS. A group family leave insurance policy may provide benefits for any leave taken by an insured from work to:

(1) participate in providing care, including physical or psychological care, for a family member of the insured made necessary by a serious health condition of the family member;

(2) bond with the insured's child during the first 12 months after the child's birth, or the first 12 months after the

placement of the child for adoption or foster care with the insured;

(3) address a qualifying exigency, as interpreted under the Family and Medical Leave Act of 1993 (29 U.S.C. Section 2612(a)(1)(E)) and 29 C.F.R. Sections 825.126(b)(1)-(8), arising from the fact that the spouse, dependent, or parent of the insured is on active duty or has been notified of an impending call or order to active duty in the armed forces of the United States, including the National Guard and armed forces reserves;

(4) care for a family member described by Subdivision (3) who is injured in the line of duty; or

(5) take other leave to provide care for a family member or other family leave as specified in the policy.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.103. EXPLANATION OF COVERED FAMILY LEAVE REASONS. A group family leave insurance policy must provide the details regarding and requirements for each covered family leave reason.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.104. BENEFIT PERIOD. (a) A group family leave insurance policy must establish the length of family leave benefits that are available for each covered family leave reason.

(b) The length of family leave benefits available for a covered family leave reason may not be less than two weeks during a period of 52 consecutive calendar weeks.

(c) A group family leave insurance policy may calculate the 52 consecutive calendar weeks by any of the following methods:

(1) a calendar year;

(2) a fixed period starting on a particular date, including an effective or anniversary date;

(3) the period measured forward from the insured's first day of family leave;

(4) a rolling period measured from the insured's first day of family leave; or

(5) any other method that is specified in the policy.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.105. WAITING PERIOD. (a) A group family leave insurance policy must specify whether there is an unpaid waiting period.

(b) If a group family leave insurance policy contains an unpaid waiting period, the terms of the unpaid waiting period may include:

(1) whether the waiting period runs over a consecutive calendar day period;

(2) whether the waiting period is counted toward the annual allotment of family leave benefits or is in addition to the annual allotment of family leave benefits;

(3) whether the waiting period must be met only once per benefit year or must be met for each separate claim for benefits; and

(4) whether the insured may work or receive paid time off or other compensation by the employer during the waiting period.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.106. AMOUNT OF FAMILY LEAVE BENEFITS; OTHER INCOME. (a) A group family leave insurance policy must specify:

(1) the amount of benefits that will be paid for covered family leave reasons;

(2) the definition of wages or other income on which the amount of family leave benefits is based; and

(3) the method for calculating those wages or other income.

(b) If the family leave benefits are subject to offsets for wages or other income received by the insured or for which the insured may be eligible, the group family leave insurance policy must specify:

(1) which wages or other income may be offset; and

(2) the circumstances under which the wages or other income may be offset.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.107. PERMISSIBLE LIMITATIONS, EXCLUSIONS, OR REDUCTIONS. (a) A group family leave insurance policy that limits, excludes, or reduces eligibility for family leave benefits under this chapter must state the limit, exclusion, or reduction in the policy.

(b) Permissible limitations, exclusions, or reductions in the policy include a limitation, exclusion, or reduction for:

(1) a period of family leave for which the required notice and medical certification have not been provided as prescribed by the policy;

(2) family leave related to a serious health condition or other harm to a family member brought about by the wilful intention of the insured;

(3) a period of family leave during which the insured performed work for compensation or profit;

(4) a period of family leave for which the insured is eligible to receive money from the insured's employer or from a fund to which the employer has contributed;

(5) a period of family leave in which the insured is eligible to receive benefits under another statutory program or employer-sponsored program, including unemployment insurance benefits, workers' compensation benefits, statutory disability benefits, statutory paid leave benefits, or paid time off from the employer's paid leave policy;

(6) a period of family leave beginning before the insured becomes eligible for family leave benefits under the policy; or

(7) periods of family leave during which more than one person covered under the policy seeks family leave for the same family member.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

Sec. 1255.108. CERTIFICATE OF INSURANCE. (a) An insurer providing family leave insurance shall issue a certificate of insurance to each employee or member of the insured group.

(b) The certificate of insurance must include:

(1) a summary of the essential features of the paid family leave insurance coverage and benefits available to the insured;

(2) the limitations, exclusions, or reductions;

(3) the annual and lifetime policy limits; and

(4) the person to whom the benefits are payable.

(c) An insurer may file a certificate issued to an insured in this state for a group policy providing family leave insurance that was delivered or issued for delivery in another state with the department for informational purposes.

(d) An insurer is not required to file or receive approval under Chapter 1701 for a certificate for a foreign group.

Added by Acts 2023, 88th Leg., R.S., Ch. 703 (H.B. 1996), Sec. 2, eff. September 1, 2023.

SUBTITLE C. MANAGED CARE

CHAPTER 1271. BENEFITS PROVIDED BY HEALTH MAINTENANCE ORGANIZATIONS; EVIDENCE OF COVERAGE; CHARGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1271.001. APPLICABILITY OF DEFINITIONS. In this chapter, terms defined by Section 843.002 have the meanings assigned by that section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.002. RIGHT TO EVIDENCE OF COVERAGE; ISSUANCE. (a) Each enrollee residing in this state is entitled to evidence of coverage under a health care plan.

(b) The health maintenance organization shall issue the evidence of coverage, except as provided by Subsection (c).

(c) If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or the group hospital service corporation shall issue the evidence of coverage.

(d) By agreement between the health maintenance organization, insurer, or group hospital service corporation and the subscriber or person entitled to receive the evidence of coverage, policy, or contract, the evidence of coverage required by this section may be delivered electronically.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.032(a), eff. September 1, 2005.

Sec. 1271.003. EVIDENCE OF COVERAGE NOT HEALTH INSURANCE POLICY. An evidence of coverage is not a health insurance policy as that term is defined by this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.004. INDIVIDUAL HEALTH CARE PLAN. (a) In this section, "individual health care plan" means a health care plan:

(1) that provides health care services for individuals and their dependents;

(2) under which an enrollee:

(A) pays the premium; and

(B) is not covered under the contract in accordance with a continuation of services or continuation of benefits requirement applicable under federal or state law; and

(3) in which the evidence of coverage meets the requirements of the definition of "basic health care services" provided by Section 843.002.

(b) A health maintenance organization may provide an individual health care plan in accordance with this section and Section 1271.307.

(c) A health maintenance organization may limit enrollment in an individual health care plan to individuals who reside or work within the service area for the plan's network.

(d) The commissioner may adopt rules necessary to implement this section and to meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.005. APPLICABILITY OF OTHER LAW. (a) Chapters 1368 and 1652 apply to a health maintenance organization other than a health maintenance organization that offers only a single health care service plan.

(b) Subchapter B, Chapter 1355, applies to a health maintenance organization providing benefits for mental health treatment in a residential treatment center for children and adolescents or crisis stabilization unit to the extent that:

(1) Subchapter B, Chapter 1355, does not conflict with this chapter, Chapter 843, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507; and

(2) the residential treatment center for children and adolescents or crisis stabilization unit is located within the service area of the health maintenance organization and is subject to inspection and review as required by this chapter, Chapter 843, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, or rules adopted under this chapter, Chapter 843, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(c) A health maintenance organization shall comply with Subchapter B, Chapter 542, with respect to prompt payment to an enrollee.

(d) Notwithstanding any other law, Subchapter C, Chapter 1355, applies to a group contract issued by a health maintenance organization.

(e) Notwithstanding any other law, Section 1201.062 applies to an evidence of coverage issued by a health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(b), eff. September 1, 2005.

Sec. 1271.006. BENEFITS TO DEPENDENT CHILD AND GRANDCHILD. (a) If children are eligible for coverage under the terms of an evidence of coverage, any limiting age applicable to an unmarried child of an enrollee, including an unmarried grandchild of an enrollee, is 25 years of age. The limiting age applicable to a child must be stated in the evidence of coverage.

(b) A health maintenance organization may provide benefits under a health care plan to an enrollee's dependent grandchild who is living with and in the household of the enrollee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.007. RELIGIOUS CONVICTIONS. (a) This chapter, Chapters 843, 1272, and 1367, Subchapter A, Chapter 1452, and Subchapter B, Chapter 1507, do not require a health maintenance organization, physician, or provider to recommend, offer advice concerning, pay for, provide, assist in, perform, arrange, or participate in providing or performing any health care service that violates the religious convictions of the health maintenance organization, physician, or provider.

(b) A health maintenance organization that limits or denies health care services under this section shall state the limitations in the evidence of coverage as required by Section 1271.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(c), eff. September 1, 2005.

Text of section effective until September 1, 2025

Sec. 1271.008. BALANCE BILLING PROHIBITION NOTICE. (a) A health maintenance organization shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or provider in connection with a health care service or supply or transport provided by a non-network physician or provider. The notice must include:

(1) a statement of the billing prohibition under Section 1271.155, 1271.157, 1271.158, or 1271.159, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's health benefit plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) A health maintenance organization shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the health maintenance organization makes a payment under Section 1271.155, 1271.157, 1271.158, or 1271.159, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.02, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 2(a), eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 2(b), eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 1271.008. BALANCE BILLING PROHIBITION NOTICE. (a) A health maintenance organization shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or provider in connection with a health care service or supply provided by a non-network physician or provider. The notice must include:

(1) a statement of the billing prohibition under Section 1271.155, 1271.157, or 1271.158, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's health benefit plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) A health maintenance organization shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the health maintenance organization makes a payment under Section 1271.155, 1271.157, or 1271.158, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.02, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 2(a), eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 2(b), eff. September 1, 2025.

SUBCHAPTER B. CONTENTS OF EVIDENCE OF COVERAGE

Sec. 1271.051. EVIDENCE OF COVERAGE: CONTRACT AND CERTIFICATE REQUIREMENTS. (a) An evidence of coverage that is a contract must contain a clear and complete statement of the information required by Sections 1271.052, 1271.053, and 1271.054.

(b) An evidence of coverage that is a certificate must contain a reasonably complete facsimile of the information required by Sections 1271.052, 1271.053, and 1271.054.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.052. INFORMATION ABOUT BENEFITS AND LIMITATIONS. An evidence of coverage must state:

(1) the health care services, limited health care services, or single health care service to which the enrollee is entitled under the health care plan, limited health care service plan, or single health care service plan;

(2) the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan, limited health care service plan, or single health care service plan; and

(3) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or copayment feature.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.053. INFORMATION ABOUT OBTAINING SERVICES. An evidence of coverage must indicate where and in what manner information is available about how to obtain services.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.054. INFORMATION ABOUT COMPLAINTS AND APPEALS. (a) An evidence of coverage must contain a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints, including:

(1) the enrollee's right to appeal denial of an adverse determination to an independent review organization; and

(2) the procedures for appealing to an independent review organization.

(b) A health maintenance organization may indicate a subsequent change to the methods for resolving enrollee complaints in a separate document issued to the enrollee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.055. OUT-OF-NETWORK SERVICES. (a) An evidence of coverage must contain a provision regarding non-network physicians and providers in accordance with the requirements of this section.

(b) If medically necessary covered services are not available through network physicians or providers, the health maintenance organization, on the request of a network physician or provider and within a reasonable period, shall:

(1) allow referral to a non-network physician or provider; and

(2) fully reimburse the non-network physician or provider at the usual and customary rate or at an agreed rate.

(c) Before denying a request for a referral to a non-network physician or provider, a health maintenance organization must provide for a review conducted by a specialist of the same or similar type of specialty as the physician or provider to whom the referral is requested.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.056. UNFAIR OR DECEPTIVE PROVISIONS AND STATEMENTS PROHIBITED. An evidence of coverage may not contain a provision or statement that:

(1) is unjust, unfair, inequitable, misleading, or deceptive;

(2) encourages misrepresentation; or

(3) is untrue, misleading, or deceptive within the meaning of Section 843.204.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.057. DISCRETIONARY CLAUSES PROHIBITED. (a) An evidence of coverage may not contain a discretionary clause provision.

(b) A discretionary clause provision includes a provision that:

(1) purports or acts to bind the enrollee to, or grant deference in subsequent proceedings to, adverse eligibility or benefit decisions or interpretations of the evidence of coverage by the health maintenance organization; or

(2) specifies:

(A) that an enrollee or other claimant may not contest or appeal a denial of a benefit;

(B) that the health maintenance organization's interpretation of the terms of an evidence of coverage or other form or its decision to deny coverage or the amount of benefits is binding on an enrollee or other claimant;

(C) that in an appeal, the health maintenance organization's decision-making power as to the interpretation of the terms of an evidence of coverage or other form, or as to coverage, is binding; or

(D) a standard of review in any appeal process that gives deference to the original benefit decision or provides standards of interpretation or review that are inconsistent with the laws of this state, including the common law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 560 (H.B. 3017), Sec. 1, eff. June 17, 2011.

SUBCHAPTER C. COMMISSIONER APPROVAL

Sec. 1271.101. APPROVAL OF FORM OF EVIDENCE OF COVERAGE OR GROUP CONTRACT. (a) An evidence of coverage or an amendment of an evidence of coverage may not be issued or delivered to a person in this state until the form of the evidence of coverage or amendment has been filed with and approved by the commissioner.

(b) Except as provided by Subsection (c), the form of an evidence of coverage or group contract to be used in this state or an amendment to one of those forms is subject to the filing and approval requirements of Section 1271.102.

(c) If the form of an evidence of coverage or group contract or of an amendment to one of those forms is subject to the jurisdiction

of the commissioner under laws governing health insurance or group hospital service corporations, the filing and approval provisions of those laws apply to that form. However, Subchapters B and E apply to that form to the extent that laws governing health insurance or group hospital service corporations do not apply to the requirements of Subchapters B and E.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.102. PROCEDURES FOR APPROVAL OF FORM OF EVIDENCE OF COVERAGE OR GROUP CONTRACT; WITHDRAWAL OF APPROVAL. (a) The commissioner shall, within a reasonable period, approve the form of an evidence of coverage or group contract or an amendment to one of those forms if the form meets the requirements of this chapter.

(b) If the commissioner does not disapprove a form before the 31st day after the date the form is filed, the form is considered approved. The commissioner may, by written notice, extend the period for approval or disapproval as necessary for proper consideration of the filing for not more than an additional 30 days.

(c) If the commissioner disapproves a form, the commissioner shall notify the person who filed the form of the reason for the disapproval.

(d) A hearing on the disapproval of a form shall be granted not later than the 30th day after the date the person filing the form makes a written request for a hearing.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.103. WITHDRAWAL OF APPROVAL OF FORM. (a) After notice and opportunity for hearing, the commissioner may withdraw approval of the form of an evidence of coverage or group contract or an amendment to one of those forms if the commissioner determines that the form violates this chapter, Chapter 843, 1272, or 1367, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, or a rule adopted by the commissioner.

(b) If the commissioner withdraws approval of a form under this section, the form may not be issued until it is approved.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(d), eff. September 1, 2005.

Sec. 1271.104. INFORMATION REQUIRED BY COMMISSIONER. The commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove a filing under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. CERTAIN BENEFITS REQUIRED

Sec. 1271.151. PROVISION OF BASIC HEALTH CARE SERVICES. A health maintenance organization that offers a basic health care plan shall provide or arrange for basic health care services to its enrollees as needed and without limitation as to time and cost other than any limitation prescribed by rule of the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.152. STANDARDS FOR BASIC HEALTH CARE SERVICES. The commissioner may adopt minimum standards relating to basic health care services.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.153. PERIODIC HEALTH EVALUATIONS. (a) The basic health care services provided under an evidence of coverage must include periodic health evaluations for each adult enrollee.

(b) The services provided under this section must include a health risk assessment at least once every three years and, for a female enrollee, an annual well-woman examination provided in accordance with Subchapter F, Chapter 1451.

(c) This section does not apply to an evidence of coverage for a limited health care service plan or a single health care service plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.154. WELL-CHILD CARE FROM BIRTH. (a) In this section, "well-child care from birth" has the meaning used under Section 1302, Public Health Service Act (42 U.S.C. Section 300e-1), and its subsequent amendments. The term includes administration of newborn screening required by the Department of State Health Services and the cost of the newborn screening test kit described by Section 33.019, Health and Safety Code.

(b) A health maintenance organization shall ensure that each health care plan provided by the health maintenance organization includes well-child care from birth that complies with:

(1) federal requirements adopted under Chapter XI, Public Health Service Act (42 U.S.C. Section 300e et seq.), and its subsequent amendments; and

(2) the rules adopted by the executive commissioner of the Health and Human Services Commission to implement those requirements, including rules on the cost of the newborn screening test kit described by Section 33.019, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 4, eff. September 1, 2019.

Sec. 1271.155. EMERGENCY CARE. (a) A health maintenance organization shall pay for emergency care performed by non-network physicians or providers at the usual and customary rate or at an agreed rate.

(b) A health care plan of a health maintenance organization must provide the following coverage of emergency care:

(1) a medical screening examination or other evaluation required by state or federal law necessary to determine whether an emergency medical condition exists shall be provided to covered enrollees in a hospital emergency facility or comparable facility;

(2) necessary emergency care shall be provided to covered enrollees, including the treatment and stabilization of an emergency medical condition;

(3) services originated in a hospital emergency facility, freestanding emergency medical care facility, or comparable emergency facility following treatment or stabilization of an emergency medical condition shall be provided to covered enrollees as approved by the health maintenance organization, subject to Subsections (c) and (d); and

(4) supplies related to a service described by this subsection shall be provided to covered enrollees.

(c) A health maintenance organization shall approve or deny coverage of poststabilization care as requested by a treating physician or provider within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, but not to exceed one hour from the time of the request.

(d) A health maintenance organization shall respond to inquiries from a treating physician or provider in compliance with this provision in the health care plan of the health maintenance organization.

(e) A health care plan of a health maintenance organization shall comply with this section regardless of whether the physician or provider furnishing the emergency care has a contractual or other arrangement with the health maintenance organization to provide items or services to covered enrollees.

(f) For emergency care subject to this section or a supply related to that care, a health maintenance organization shall make a payment required by Subsection (a) directly to the non-network physician or provider not later than, as applicable:

(1) the 30th day after the date the health maintenance organization receives an electronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim; or

(2) the 45th day after the date the health maintenance organization receives a nonelectronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim.

(g) For emergency care subject to this section or a supply related to that care, a non-network physician or provider or a person asserting a claim as an agent or assignee of the physician or provider may not bill an enrollee in, and the enrollee does not have financial responsibility for, an amount greater than an applicable

copayment, coinsurance, and deductible under the enrollee's health care plan that:

(1) is based on:

(A) the amount initially determined payable by the health maintenance organization; or

(B) if applicable, a modified amount as determined under the health maintenance organization's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the physician or provider under Chapter 1467.

(h) This section may not be construed to require the imposition of a penalty under Section 843.342.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 3, eff. March 1, 2010.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.03, eff. September 1, 2019.

Sec. 1271.156. BENEFITS FOR REHABILITATION SERVICES AND THERAPIES. (a) If benefits are provided for rehabilitation services and therapies under an evidence of coverage, the provision of a rehabilitation service or therapy that, in the opinion of a physician, is medically necessary may not be denied, limited, or terminated if the service or therapy meets or exceeds treatment goals for the enrollee.

(b) For an enrollee with a physical disability, treatment goals may include maintenance of functioning or prevention of or slowing of further deterioration.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.157. NON-NETWORK FACILITY-BASED PROVIDERS. (a) In this section, "facility-based provider" means a physician or provider who provides health care services to patients of a health care facility.

(b) Except as provided by Subsection (d), a health maintenance organization shall pay for a covered health care service performed

for or a covered supply related to that service provided to an enrollee by a non-network physician or provider who is a facility-based provider at the usual and customary rate or at an agreed rate if the provider performed the service at a health care facility that is a network provider. The health maintenance organization shall make a payment required by this subsection directly to the physician or provider not later than, as applicable:

(1) the 30th day after the date the health maintenance organization receives an electronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim; or

(2) the 45th day after the date the health maintenance organization receives a nonelectronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim.

(c) Except as provided by Subsection (d), a non-network facility-based provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's health care plan that:

(1) is based on:

(A) the amount initially determined payable by the health maintenance organization; or

(B) if applicable, a modified amount as determined under the health maintenance organization's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each non-network physician or provider providing the service; and

(2) for which a non-network physician or provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the physician or provider does not have a contract with the enrollee's health benefit plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

(e) This section may not be construed to require the imposition of a penalty under Section 843.342.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.04, eff. September 1, 2019.

Sec. 1271.158. NON-NETWORK DIAGNOSTIC IMAGING PROVIDER OR LABORATORY SERVICE PROVIDER. (a) In this section, "diagnostic imaging provider" and "laboratory service provider" have the meanings assigned by Section 1467.001.

(b) Except as provided by Subsection (d), a health maintenance organization shall pay for a covered health care service performed by or a covered supply related to that service provided to an enrollee by a non-network diagnostic imaging provider or laboratory service provider at the usual and customary rate or at an agreed rate if the provider performed the service in connection with a health care service performed by a network physician or provider. The health maintenance organization shall make a payment required by this subsection directly to the physician or provider not later than, as applicable:

(1) the 30th day after the date the health maintenance organization receives an electronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim; or

(2) the 45th day after the date the health maintenance organization receives a nonelectronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim.

(c) Except as provided by Subsection (d), a non-network diagnostic imaging provider or laboratory service provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's health

care plan that:

(1) is based on:

(A) the amount initially determined payable by the health maintenance organization; or

(B) if applicable, a modified amount as determined under the health maintenance organization's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each non-network physician or provider providing the service; and

(2) for which a non-network physician or provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the physician or provider does not have a contract with the enrollee's health benefit plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

(e) This section may not be construed to require the imposition of a penalty under Section 843.342.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.04, eff. September 1, 2019.

For expiration of this section, see Subsection (g).

Sec. 1271.159. NON-NETWORK EMERGENCY MEDICAL SERVICES PROVIDER. (a) In this section, "emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code, except that the term does not include an air ambulance.

(b) Except as provided by Subsection (c), a health maintenance organization shall pay for a covered health care service performed for, or a covered supply or covered transport related to that service provided to, an enrollee by a non-network emergency medical services provider at:

(1) if the political subdivision has submitted the rate to the department under Section 38.006, the rate set, controlled, or regulated by the political subdivision in which:

(A) the service originated; or

(B) the transport originated if transport is provided; or

(2) if the political subdivision has not submitted the rate to the department, the lesser of:

(A) the provider's billed charge; or

(B) 325 percent of the current Medicare rate, including any applicable extenders and modifiers.

(c) A health maintenance organization shall adjust a payment required by Subsection (b)(1) each plan year by increasing the payment by the lesser of the Medicare Inflation Index or 10 percent of the provider's previous calendar year rates.

(d) The health maintenance organization shall make a payment required by this section directly to the provider not later than, as applicable:

(1) the 30th day after the date the health maintenance organization receives an electronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim; or

(2) the 45th day after the date the health maintenance organization receives a nonelectronic clean claim as defined by Section 843.336 for those services that includes all information necessary for the health maintenance organization to pay the claim.

(e) A non-network emergency medical services provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care service or supply or transport described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's health care plan that is based on:

(1) the amount initially determined payable by the health maintenance organization; or

(2) if applicable, a modified amount as determined under the health maintenance organization's internal appeal process.

(f) This section may not be construed to require the imposition of a penalty under Section 843.342.

(g) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 3, eff. September 1, 2023.

SUBCHAPTER E. CHOICE OF PRIMARY CARE PHYSICIAN FOR CERTAIN ENROLLEES

Sec. 1271.201. DESIGNATION OF SPECIALIST AS PRIMARY CARE PHYSICIAN. (a) An evidence of coverage must provide that an enrollee with a chronic, disabling, or life-threatening illness may apply to the health maintenance organization's medical director to use a nonprimary care physician specialist as the enrollee's primary care physician.

(b) The application must:

(1) include information specified by the health maintenance organization, including certification of the medical need; and

(2) be signed by the enrollee and the nonprimary care physician specialist interested in serving as the enrollee's primary care physician.

(c) To be eligible to serve as the enrollee's primary care physician, a physician specialist must:

(1) meet the health maintenance organization's requirements for primary care physician participation; and

(2) agree to accept the responsibility to coordinate all of the enrollee's health care needs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.202. APPEAL. If a health maintenance organization denies a request under Section 1271.201, the enrollee may appeal the decision through the health maintenance organization's established complaint and appeals process.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.203. EFFECTIVE DATE OF DESIGNATION. (a) The effective date of the designation of a nonprimary care physician specialist as an enrollee's primary care physician under Section 1271.201 may not be applied retroactively.

(b) A health maintenance organization may not reduce the amount of compensation owed to the original primary care physician for

services provided before the date of the new designation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER F. SCHEDULE OF CHARGES

Sec. 1271.251. APPROVAL OF FORMULA OR METHOD FOR COMPUTING SCHEDULE OF CHARGES. (a) The formula or method for computing the schedule of charges for enrollee coverage for health care services must be filed with the commissioner before the formula or method is used in conjunction with a health care plan.

(b) The formula or method must be established in accordance with actuarial principles for the various categories of enrollees. The filing of the method or formula must contain:

(1) a statement by a qualified actuary that certifies that the formula or method is appropriate; and

(2) supporting information that the commissioner considers adequate.

(c) The formula or method must produce charges that are not excessive, inadequate, or unfairly discriminatory. Benefits must be reasonable with respect to the rates produced by the formula or method.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.252. CONSIDERATION OF INDIVIDUAL HEALTH STATUS PROHIBITED. The charges resulting from the application of a formula or method described by Section 1271.251 may not be altered for an individual enrollee based on the status of that enrollee's health.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.253. INFORMATION REQUIRED BY COMMISSIONER. The commissioner may require the submission of any relevant information the commissioner considers necessary in determining whether to approve or disapprove a filing under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER G. CONTINUATION OF COVERAGE, CONVERSION CONTRACTS, AND RENEWAL

Sec. 1271.301. ENTITLEMENT TO CONTINUATION OF GROUP COVERAGE. (a) In this section, "involuntary termination for cause" does not include termination for any health-related reason.

(b) A health maintenance organization shall provide a group coverage continuation privilege as required by and subject to the eligibility provisions of this subchapter.

(c) An enrollee is entitled to continue group coverage as provided by this subchapter if:

(1) the enrollee's coverage under a group contract is terminated for any reason except involuntary termination for cause; and

(2) the enrollee for at least three consecutive months immediately before the termination of coverage has been continuously covered under the group contract and under any previous group contract providing similar services and benefits that the current group contract replaced.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.302. REQUEST FOR CONTINUED COVERAGE; DEADLINE. An enrollee must provide to the employer or group contract holder a written notice of election to continue group coverage under this subchapter not later than the 60th day after the later of:

(1) the date the group coverage would otherwise terminate; or

(2) the date the enrollee is given notice of the right of continuation by the employer or group contract holder.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 550 (S.B. 1771), Sec. 5, eff. June 19, 2009.

Sec. 1271.303. PAYMENT FOR CONTINUED COVERAGE. (a) An enrollee electing continuation of group coverage must pay to the employer or group contract holder the amount of contribution required by the employer or group contract holder, plus an amount equal to two

percent of the group rate for the coverage being continued under the group contract.

(b) The enrollee must make the payment not later than the 45th day after the initial election for coverage and on the due date of each payment thereafter. Following the first payment made after the initial election for coverage, the payment of any other premium shall be considered timely if made by the 30th day after the date on which payment is due.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 550 (S.B. 1771), Sec. 6, eff. June 19, 2009.

Sec. 1271.304. TERMINATION OF CONTINUED COVERAGE. Group continued coverage under this subchapter may not terminate until the earliest of:

(1) the date the maximum continuation period provided by law would end, which is:

(A) for any enrollee not eligible for continuation coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA), the end of the nine-month period after the date the election to continue coverage is made; or

(B) for any enrollee eligible for continuation coverage under COBRA, six additional months following any period of continuation provided under that statute;

(2) the date on which failure to make timely payments terminates coverage;

(3) the date on which the enrollee is covered for similar services and benefits by any other plan or program, including a hospital, surgical, medical, or major medical expense insurance policy, hospital or medical service subscriber contract, or medical practice or other prepayment plan; or

(4) the date on which the group coverage terminates in its entirety.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 550 (S.B. 1771), Sec. 7, eff.

June 19, 2009.

Sec. 1271.306. CONVERSION CONTRACTS. (a) A health maintenance organization may offer to each enrollee a conversion contract.

(b) A health maintenance organization shall issue the conversion contract without evidence of insurability if written application for the contract and payment of the first premium are made not later than the 31st day after the date of termination of coverage.

(c) A conversion contract must meet the minimum standards for services and benefits for conversion contracts. The commissioner shall adopt rules to prescribe the minimum standards for services and benefits applicable to conversion contracts.

(d) The premium for a conversion contract shall be determined in accordance with the health maintenance organization's premium rates for coverage provided under the group contract or plan. The premium may be based on the geographic location of each person to be covered and must be based on the type of conversion contract and the coverage provided by the contract. The premium may not exceed 200 percent of the premium rates for the same coverage provided under a group contract or plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1271.307. RENEWABILITY OF COVERAGE: INDIVIDUAL HEALTH CARE PLANS AND CONVERSION CONTRACTS. (a) In this section, "individual health care plan" has the meaning assigned by Section 1271.004.

(b) An individual health care plan or a conversion contract that provides health care services to an enrollee is renewable at the option of the enrollee. A health maintenance organization may decline to renew an individual health care plan or conversion contract only:

(1) for failure to pay premiums or contributions in accordance with the terms of the plan or because the issuer of the plan has not received timely premium payments;

(2) for fraud or intentional misrepresentation;

(3) because the health maintenance organization ceases to

offer coverage in the individual market in accordance with rules established by the commissioner;

(4) because the enrollee no longer resides or works in the area in which the health maintenance organization is authorized to provide coverage, if coverage under the plan is terminated uniformly for this reason without regard to any factor related to the health status of a covered enrollee; or

(5) in accordance with applicable federal law, including regulations.

(c) The commissioner may adopt rules necessary to implement this section and to meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1272. DELEGATION OF CERTAIN FUNCTIONS BY HEALTH MAINTENANCE ORGANIZATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1272.001. DEFINITIONS. (a) In this chapter:

(1) "Delegated entity" means an entity, other than a health maintenance organization authorized to engage in business under Chapter 843, that by itself, or through subcontracts with one or more entities, undertakes to arrange for or provide medical care or health care to an enrollee in exchange for a predetermined payment on a prospective basis and that accepts responsibility for performing on behalf of the health maintenance organization a function regulated by this chapter, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843 or 1271, Section 1367.053, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507. The term does not include:

(A) an individual physician; or

(B) a group of employed physicians, practicing medicine under one federal tax identification number, whose total claims paid to providers not employed by the group constitute less than 20 percent of the group's total collected revenue computed on a calendar year basis.

(2) "Delegated network" means a delegated entity that assumes total financial risk for more than one of the following categories of health care services: medical care, hospital or other

institutional services, or prescription drugs, as defined by Section 551.003, Occupations Code. The term does not include a delegated entity that shares risk for a category of services with a health maintenance organization.

(3) "Delegated third party" means a third party other than a delegated entity that contracts with a delegated entity, either directly or through another third party, to:

(A) accept responsibility for performing a function regulated by this chapter, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843 or 1271, Section 1367.053, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507; or

(B) receive, handle, or administer funds, if the receipt, handling, or administration is directly or indirectly related to a function regulated by this chapter, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843 or 1271, Section 1367.053, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(4) "Delegation agreement" means an agreement by which a health maintenance organization assigns the responsibility for a function regulated by this chapter, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843 or 1271, Section 1367.053, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(5) "Limited provider network" means a subnetwork within a health maintenance organization delivery network in which contractual relationships exist between physicians, certain providers, independent physician associations, or physician groups that limits an enrollee's access to physicians and providers to those physicians and providers in the subnetwork.

(b) In this chapter, terms defined by Section 843.002 have the meanings assigned by that section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(e), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.02701, eff. September 1, 2007.

Sec. 1272.002. COMPLIANCE OF LIMITED PROVIDER NETWORK OR DELEGATED ENTITY WITH CERTAIN LEGAL REQUIREMENTS. A limited provider network or delegated entity shall comply with each statutory or regulatory requirement that relates to a function assumed by or carried out by the network or entity under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. DELEGATION AGREEMENTS

Sec. 1272.051. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a group model health maintenance organization, as defined by Section 843.111.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.052. DELEGATION AGREEMENT REQUIRED. (a) A health maintenance organization that delegates a function required by this chapter, Chapter 843, 1271, or 1367, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507, shall execute a written delegation agreement with the entity to which the function is delegated.

(b) The health maintenance organization shall file the delegation agreement with the department not later than the 30th day after the date the agreement is executed.

(c) The parties to the delegation agreement shall determine which party bears the expense of complying with a requirement of this subchapter, including the cost of an examination required by the department under Subchapter B, Chapter 401, if applicable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(f), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.002, eff. April 1, 2009.

Sec. 1272.053. MONITORING PLAN. A delegation agreement required by Section 1272.052 must establish a monitoring plan that:

(1) allows the health maintenance organization to monitor

compliance with the minimum solvency requirements established under Subchapter D, if applicable; and

(2) includes:

(A) a description of financial practices that will ensure that the delegated entity tracks and reports liabilities that have been incurred but not reported;

(B) a summary of the total amount paid by the entity to physicians and providers on a monthly basis; and

(C) a summary of complaints from physicians, providers, and enrollees regarding delays in payment or nonpayment of claims, including the status of each complaint, on a monthly basis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.054. REQUIREMENTS FOR TERMINATION WITHOUT CAUSE. A delegation agreement required by Section 1272.052 must provide that the agreement cannot be terminated without cause by the delegated entity or the health maintenance organization unless the party terminating the agreement provides written notice before the 90th day before the termination date.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.055. COLLECTION OF PAYMENTS. A delegation agreement required by Section 1272.052 must prohibit the delegated entity and the physicians and providers with whom the entity has contracted from billing or attempting to collect from an enrollee under any circumstance, including the insolvency of the health maintenance organization or entity, payments for covered services other than authorized copayments and deductibles.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.056. COMPLIANCE WITH STATUTORY AND REGULATORY REQUIREMENTS. A delegation agreement required by Section 1272.052 must provide that:

(1) the agreement does not limit in any way the health maintenance organization's authority or responsibility, including

financial responsibility, to comply with each statutory or regulatory requirement; and

(2) the delegated entity shall comply with each statutory or regulatory requirement relating to a function assumed by or carried out by the entity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.057. EXAMINATION BY COMMISSIONER. A delegation agreement required by Section 1272.052 must require the delegated entity to permit the commissioner to examine at any time any information the commissioner reasonably believes is relevant to:

(1) the financial solvency of the entity; or

(2) the ability of the entity to meet the entity's responsibilities in connection with any function delegated to the entity by the health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.058. INFORMATION RELATING TO DELEGATED THIRD PARTY. A delegation agreement required by Section 1272.052 must require the delegated entity to provide the license number of a delegated third party performing a function that requires:

(1) a license as a third-party administrator under Chapter 4151 or utilization review agent under Chapter 4201; or

(2) another license under this code or another insurance law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.003, eff. April 1, 2009.

Sec. 1272.059. CONTRACTS WITH DELEGATED THIRD PARTY. A delegation agreement required by Section 1272.052 must provide that:

(1) any agreement under which the delegated entity directly or indirectly delegates a function required by this chapter, Chapter 843, 1271, or 1367, Subchapter A, Chapter 1452, or Subchapter B,

Chapter 1507, including the handling of funds, if applicable, to a delegated third party must be in writing; and

(2) the delegated entity, in contracting with a delegated third party directly or through a third party, shall require the delegated third party to comply with the requirements of Section 1272.057 and any rules adopted by the commissioner implementing that section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(g), eff. September 1, 2005.

Sec. 1272.060. UTILIZATION REVIEW. A delegation agreement required by Section 1272.052 must provide that:

(1) enrollees shall receive notification at the time of enrollment of which entity is responsible for performing utilization review;

(2) the delegated entity or third party performing utilization review shall perform that review in accordance with Chapter 4201; and

(3) the delegated entity or third party shall forward utilization review decisions made by the entity or third party to the health maintenance organization on a monthly basis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.004, eff. April 1, 2009.

Sec. 1272.061. RIGHTS AND DUTIES OF DELEGATED ENTITY AND HEALTH MAINTENANCE ORGANIZATION. A delegation agreement required by Section 1272.052 must provide that the delegated entity acknowledges and agrees that:

(1) the health maintenance organization:

(A) is required to establish, operate, and maintain a health care delivery system, quality assurance system, provider credentialing system, and other systems and programs that meet statutory and regulatory standards;

(B) is directly accountable for compliance with those standards; and

(C) is not precluded from contractually requesting that the delegated entity provide proof of financial viability;

(2) the role of another delegated entity with which the delegated entity subcontracts through a delegated third party is limited to performing certain delegated functions of the health maintenance organization, using standards that are approved by the health maintenance organization and that are in compliance with applicable statutes and rules and subject to the health maintenance organization's oversight and monitoring of the entity's performance; and

(3) if the delegated entity fails to meet monitoring standards established to ensure that functions delegated or assigned to the entity under the delegation agreement are in full compliance with all statutory and regulatory requirements, the health maintenance organization may cancel delegation of any or all delegated functions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.062. INFORMATION TO BE PROVIDED BY DELEGATED ENTITY TO HEALTH MAINTENANCE ORGANIZATION. (a) A delegation agreement required by Section 1272.052 must provide that:

(1) except as provided by Subsection (b), the delegated entity shall make available to the health maintenance organization samples of contracts with physicians and providers to ensure compliance with the contractual requirements described by Sections 1272.054 and 1272.055; and

(2) the delegated entity shall provide to the health maintenance organization, in a format usable for audit purposes and not more frequently than quarterly unless otherwise specified in the delegation agreement, the data necessary for the health maintenance organization to comply with the department's reporting requirements with respect to any delegated functions performed under the delegation agreement, including:

(A) a summary describing the methods, including capitation, fee-for-service, or other risk arrangements, that the delegated entity used to pay the entity's physicians and providers,

and including the percentage of physicians and providers paid for each payment category;

(B) the period that claims and debts for medical services owed by the delegated entity have been pending and the aggregate dollar amount of those claims and debts;

(C) information to enable the health maintenance organization to file claims for reinsurance, coordination of benefits, and subrogation, if required by the delegation agreement; and

(D) documentation, except for information, documents, and deliberations related to peer review that are confidential or privileged under Subchapter A, Chapter 160, Occupations Code, that relates to:

(i) a regulatory agency's inquiry or investigation of the delegated entity or an individual physician or provider with whom the entity contracts that relates to an enrollee of the health maintenance organization; and

(ii) the final resolution of a regulatory agency's inquiry or investigation.

(b) A delegation agreement may not require a delegated entity to make available to the health maintenance organization contractual provisions relating to financial arrangements with the entity's physicians and providers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.063. ENROLLEE COMPLAINTS. (a) A delegation agreement required by Section 1272.052 must provide that:

(1) if the delegated entity receives a complaint that does not involve emergency care, the entity shall report the complaint to the health maintenance organization not later than the second business day after the date the entity receives the complaint; and

(2) if the delegated entity receives a complaint involving emergency care, the entity shall immediately forward the complaint to the health maintenance organization.

(b) Subsection (a) does not prohibit a delegated entity from attempting to resolve a complaint.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.064. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. INFORMATION REPORTING TO DELEGATED ENTITY

Sec. 1272.101. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a group model health maintenance organization, as defined by Section 843.111.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.102. REPORTING REQUIRED. (a) The commissioner shall determine the information a health maintenance organization shall provide to a delegated entity with which the health maintenance organization has entered into a delegation agreement.

(b) The information must include:

(1) for each enrollee who is eligible or assigned to receive services from the delegated entity:

(A) the enrollee's name, birth date or social security number, age, and sex;

(B) the benefit plan and any riders to that plan that are applicable to the enrollee; and

(C) the enrollee's employer;

(2) the name and birth date or social security number of each enrollee added or terminated since the health maintenance organization last provided the information;

(3) if the health maintenance organization pays any claims on behalf of the delegated entity, a summary of the number and amount of:

(A) claims paid during the previous reporting period; and

(B) pharmacy prescriptions paid for each enrollee during the previous reporting period for which the delegated entity has taken partial risk;

(4) information that enables the delegated entity to file claims for reinsurance, coordination of benefits, and subrogation;

(5) patient complaint data that relates to the delegated entity;

(6) detailed risk-pool data, reported quarterly and on settlement;

(7) if hospital or facility costs impact the delegated entity's costs, the percent of premium attributable to hospital or facility costs, reported quarterly; and

(8) if there are changes in hospital or facility contracts with the health maintenance organization, the projected impact of those changes on the percent of premium attributable to hospital and facility costs during the 30-day period following those changes.

(c) Notwithstanding Subsection (b)(3), a delegated entity may, on request, receive additional nonproprietary information regarding claims paid by a health maintenance organization on behalf of the entity.

(d) A health maintenance organization shall provide information required under Subsections (b)(1)-(5) in standard electronic format at least monthly unless the delegation agreement provides otherwise.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.103. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. RESERVE REQUIREMENTS

Sec. 1272.151. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a group model health maintenance organization, as defined by Section 843.111.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.152. GENERAL RESERVE REQUIREMENTS. (a) A delegated network shall maintain reserves adequate for the liabilities and risks assumed by the network, as computed in accordance with accepted standards, practices, and procedures relating to the liabilities and risks for which the reserves are maintained, including known and unknown components and anticipated expenses of providing benefits or services.

(b) Except as provided by Sections 1272.153 and 1272.154, a delegated network shall maintain reserves as described by Subsection (c) only with respect to the portion of services assumed under the delegation agreement that is outside the scope of the network's license for medical care or hospital or other institutional services, as applicable.

(c) A delegated network shall maintain financial reserves equal to the greater of:

(1) 80 percent of the amount of liabilities and risks for which reserves must be maintained under this subchapter and that have been incurred but not paid by the network; or

(2) an amount equal to two months of the premium amount assumed by the network for services with respect to which reserves must be maintained under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.153. RESERVE REQUIREMENTS FOR MEDICAL CARE AND HOSPITAL OR INSTITUTIONAL SERVICES. A delegated network that assumes under a delegation agreement both medical care and hospital or institutional services shall maintain reserves adequate to cover the liabilities and risks associated with medical care or hospital or institutional services, whichever category of services is allocated the largest portion of the premium by the health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.154. RESERVE REQUIREMENTS FOR PRESCRIPTION DRUGS. A delegated network that assumes financial risk for medical care or hospital or institutional services and for prescription drugs, as defined by Section 551. 003, Occupations Code, shall maintain, in addition to any other reserves required under this subchapter, reserves adequate to cover the liabilities and risks associated with the prescription drug benefits.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.155. FORM OF RESERVES. The reserves required under this subchapter must be:

(1) secured by and consist only of United States legal tender or bonds of the United States or this state;

(2) held at a financial institution in this state that is chartered by the United States or this state; and

(3) held in trust for, for the benefit of, or to provide health care services to enrollees under the delegation agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.156. ESCROW ACCOUNT. (a) A delegated network required to maintain reserves under this subchapter shall establish an escrow account to pay claims and deposit the reserves into the escrow account on:

(1) notification of the network's intent to terminate or refuse to renew a contract under which the network assumed liabilities and risks from a health maintenance organization; or

(2) modification of a contract under which the network assumed liabilities and risks from a health maintenance organization if the modified contract eliminates those liabilities and risks.

(b) The delegated network shall notify the commissioner on establishing an escrow account under this section.

(c) On the 271st day after the date the reserves are deposited into the escrow account, the delegated network is entitled to the release of funds remaining in escrow. Funds released from the escrow account shall be distributed to each individual who contributed to the reserves deposited into the account in proportion to the individual's total contribution.

(d) The commissioner shall take any action necessary to ensure the release of funds remaining in escrow after the date specified by Subsection (c).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER E. COMPLIANCE

Sec. 1272.201. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a group model health maintenance organization, as defined by Section 843.111.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.202. NOTICE OF NONCOMPLIANCE OR HAZARDOUS OPERATING CONDITION. (a) If a health maintenance organization becomes aware of information that indicates a delegated entity with which the health maintenance organization has entered into a delegation agreement is not operating in accordance with the agreement or is operating in a condition that renders continuing the entity's business hazardous to the enrollees, the health maintenance organization shall in writing:

(1) notify the entity of those findings; and

(2) request a written explanation and documentation supporting that explanation of the entity's apparent noncompliance or the existence of the hazardous condition.

(b) A health maintenance organization shall provide to the commissioner a copy of each notice and request submitted to a delegated entity under this section and each response or other documentation the health maintenance organization receives or generates in response to the notice and request.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.203. RESPONSE TO NOTICE. A delegated entity shall respond in writing to a request from a health maintenance organization under Section 1272.202 not later than the 30th day after the date the entity receives the request.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.204. COOPERATION OF HEALTH MAINTENANCE ORGANIZATION. A health maintenance organization shall cooperate with a delegated entity to correct a failure by the entity to comply with the department's regulatory requirements relating to:

(1) a function delegated to the entity by the health maintenance organization; or

(2) a matter necessary for the health maintenance organization to ensure compliance with each statutory or regulatory requirement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.205. EXAMINATION BY DEPARTMENT; REPORT. (a) On receipt of a notice under Section 1272.202 or if complaints are filed with the department, the department may conduct an examination regarding:

(1) any matter contained in the notice; and

(2) any other matter relating to the financial solvency of the delegated entity or the entity's ability to meet the entity's responsibilities in connection with a function delegated to the entity by the health maintenance organization.

(b) Except as provided by Subsection (c), the department, on completion of an examination under this section, shall report to the delegated entity and the health maintenance organization:

(1) the results of the examination; and

(2) any action the department determines is necessary to ensure that:

(A) the health maintenance organization meets the health maintenance organization's responsibilities under this code, any other insurance laws of this state, and rules adopted by the commissioner; and

(B) the entity is able to meet the entity's responsibilities in connection with a function delegated to the entity by the health maintenance organization.

(c) The department may not report to the health maintenance organization information relating to fee schedules, prices, or cost of care or other information not relevant to the monitoring plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.206. RESPONSE TO DEPARTMENT REPORT; CORRECTIVE PLAN. The delegated entity and health maintenance organization shall respond to the department's report under Section 1272.205(b) and submit a corrective plan to the department not later than the 30th day after the date of receipt of the report.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.207. REQUEST FOR CORRECTIVE ACTION. The department may request at any time that a delegated entity take corrective action to comply with the department's statutory and regulatory requirements that:

(1) relate to a function delegated by the health maintenance organization to the entity; or

(2) are necessary to ensure the health maintenance organization's compliance with each statutory or regulatory requirement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.208. AUTHORITY OF COMMISSIONER TO ISSUE ORDER. (a) Regardless of whether a delegated entity complies with a request for corrective action under Section 1272.207, the commissioner may order a health maintenance organization with which the entity has entered into a delegation agreement to take any action the commissioner determines is necessary to ensure that the health maintenance organization is complying with this chapter, Chapter 843, 1271, or 1367, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507.

(b) Actions the commissioner may order a health maintenance organization to take under this section include:

(1) reassuming the functions delegated to the delegated entity, including claims payments for services previously provided to enrollees;

(2) temporarily or permanently ceasing assignment of new enrollees to the entity;

(3) temporarily or permanently transferring enrollees to alternative delivery systems to receive services; or

(4) terminating the delegation agreement with the entity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(h), eff. September 1, 2005.

Sec. 1272.209. PUBLIC DOCUMENTS. (a) Except as provided by Subsection (b), a report required under Section 1272.205(b) or corrective plan required under Section 1272.206 is a public document.

(b) Health care provider fee schedules, prices, costs of care, or other information that is not relevant to the monitoring plan or is confidential by law is not a public document under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.210. RECORD OF COMPLAINTS; REPORT. (a) The department shall:

(1) maintain enrollee and provider complaints in a manner that identifies complaints made about limited provider networks and delegated entities; and

(2) periodically issue a report on the complaints that includes a list of complaints organized by:

(A) category;

(B) action taken on the complaint; and

(C) entity or network name and type.

(b) The department shall make available to the public the report and information to assist the public in evaluating the information contained in the report.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.211. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER F. PENALTIES

Sec. 1272.251. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a group model health maintenance organization, as defined by Section 843.111.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.252. SUSPENSION OR REVOCATION OF LICENSE OF THIRD-PARTY ADMINISTRATOR OR UTILIZATION REVIEW AGENT. Notwithstanding any other provision of this code or another insurance law of this state,

the commissioner may suspend or revoke the license of a third-party administrator or utilization review agent that fails to comply with Subchapter B, C, or E.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.253. SANCTIONS AND PENALTIES AGAINST HEALTH MAINTENANCE ORGANIZATION. The commissioner may impose sanctions or penalties under Chapters 82, 83, and 84 on a health maintenance organization that does not provide in a timely manner information required by Subchapter C.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.254. CONTRACTUAL PENALTIES REQUIRED. A health maintenance organization by contract shall establish penalties for a delegated entity that does not provide in a timely manner information required under a monitoring plan established under Section 1272.053.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1272.255. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER G. PROVISION OF SERVICES BY LIMITED PROVIDER NETWORK OR DELEGATED ENTITY

Sec. 1272.301. ACCESS TO OUT-OF-NETWORK SERVICES. (a) A contract between a health maintenance organization and a limited provider network or delegated entity must provide that:

(1) if medically necessary covered services are not available through network physicians or providers, the limited provider network or delegated entity, on the request of a network physician or provider, shall:

(A) allow a referral to a non-network physician or provider; and

(B) fully reimburse the non-network physician or provider at the usual and customary rate or an agreed rate; and

(2) before the limited provider network or delegated entity may deny a referral to a non-network physician or provider, a specialist of the same or similar specialty as the type of physician or provider to whom the referral is requested must conduct a review of the request.

(b) The limited provider network or delegated entity shall allow the referral within the time appropriate to the circumstances relating to the delivery of the services and the condition of the enrollee who is a patient, but not later than the fifth business day after the date the network or entity receives any reasonably requested documentation.

(c) An enrollee may not be required to change the enrollee's primary care physician or specialist providers to receive medically necessary covered services that are not available within the limited provider network or through the delegated entity.

(d) A denial of out-of-network services under this section is subject to appeal under Chapter 4201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.005, eff. April 1, 2009.

Sec. 1272.302. CONTINUITY OF CARE. (a) In this section, "special circumstance" means a condition regarding which a treating physician or provider reasonably believes that discontinuing care by that physician or provider could cause harm to an enrollee who is a patient. Examples of an enrollee who has a special circumstance include an enrollee with a disability, acute condition, or life-threatening illness and an enrollee who is past the 24th week of pregnancy.

(b) A contract between a health maintenance organization and a limited provider network or delegated entity must require that each contract between the network or entity and a physician or provider must:

(1) require that reasonable advance notice be given to an enrollee of an impending termination from the network or entity of a

physician or provider who is currently treating the enrollee; and

(2) provide that the termination of the physician's or provider's contract, except for reason of medical competence or professional behavior, does not release the network or entity from the obligation to reimburse the physician or provider for treatment of an enrollee who has a special circumstance at a rate that is not less than the contract rate for that enrollee's care in exchange for continuity of ongoing treatment of the enrollee then receiving medically necessary treatment in accordance with the dictates of medical prudence.

(c) The treating physician or provider shall identify a special circumstance. That physician or provider must:

(1) request that the enrollee be permitted to continue treatment under the physician's or provider's care; and

(2) agree not to seek payment from the enrollee who is a patient of any amount for which the enrollee would not be responsible if the physician or provider continued to be included in the limited provider network or delegated entity.

(d) Except as provided by Subsection (e), this section does not extend the obligation of a limited provider network or delegated entity to reimburse a terminated physician or provider for ongoing treatment of an enrollee after:

(1) the 90th day after the effective date of the termination; or

(2) if the enrollee has been diagnosed with a terminal illness at the time of termination, the expiration of the nine-month period after the effective date of the termination.

(e) If an enrollee is past the 24th week of pregnancy at the time of termination, the obligation of the limited provider network or delegated entity to reimburse the terminated physician or provider or, if applicable, the enrollee extends through delivery of the child, immediate postpartum care, and a follow-up checkup within the six-week period after delivery.

(f) A contract between a limited provider network or delegated entity and a physician or provider must provide procedures for resolving disputes regarding the necessity for continued treatment by a physician or provider.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1273. POINT-OF-SERVICE PLANS
SUBCHAPTER A. BLENDED CONTRACTS

Sec. 1273.001. DEFINITIONS. In this subchapter:

(1) "Blended contract" means a single document, including a single contract policy, certificate, or evidence of coverage, that provides a combination of indemnity and health maintenance organization benefits.

(2) "Health maintenance organization" has the meaning assigned by Section 843.002.

(3) "Insurer" means an insurance company, association, or organization authorized to engage in business in this state under Chapter 841, 842, 861, 881, 882, 883, 884, 885, 886, 887, 888, 941, 942, or 982.

(4) "Point-of-service plan" means an arrangement under which:

(A) an enrollee chooses to obtain benefits or services through:

(i) a health maintenance organization delivery network, including a limited provider network; or

(ii) a non-network delivery system outside the health maintenance organization delivery network, including an exclusive provider benefit plan under Chapter 1301 or a limited provider network, that is administered under an indemnity benefit arrangement for the cost of health care services; or

(B) indemnity benefits for the cost of health care services are provided by an insurer or group hospital service corporation in conjunction with network benefits arranged or provided by a health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 1, eff. September 1, 2011.

Sec. 1273.002. POINT-OF-SERVICE PLAN. An insurer may contract with a health maintenance organization to provide benefits under a point-of-service plan, including optional coverage for out-of-area services or out-of-network care.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.003. BLENDED CONTRACT. (a) A health maintenance organization and an insurer may offer a blended contract. The use of a blended contract is limited to point-of-service arrangements between a health maintenance organization and an insurer.

(b) A blended contract delivered, issued, or used in this state is subject to, and must be filed with the department for approval as provided by, Chapter 1701 and Section 1271.101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.004. LIMITED BENEFITS AND SERVICES; COST-SHARING PROVISIONS. Indemnity benefits and services provided under a point-of-service plan may be limited to those services described by the blended contract and may be subject to different cost-sharing provisions. The cost-sharing provisions for indemnity benefits may be higher than the cost-sharing provisions for in-network health maintenance organization coverage. For an enrollee in a limited provider network, higher cost-sharing may be imposed only when the enrollee obtains benefits or services outside the health maintenance organization delivery network.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.005. RULES. The commissioner may adopt rules to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. AVAILABILITY OF HEALTH BENEFIT COVERAGE OPTIONS

Sec. 1273.051. DEFINITIONS. In this subchapter:

(1) "Employee" means an individual employed by an employer.

(2) "Health benefit plan" has the meaning assigned by Section 1501.002.

(3) "Non-network plan" means health benefit coverage that provides an enrollee an opportunity to obtain health care services through a health delivery system other than a health maintenance

organization delivery network, as defined by Section 843.002.

(4) "Point-of-service plan" means an arrangement under which an enrollee chooses to obtain benefits or services through:

(A) a health maintenance organization delivery network, including a limited provider network; or

(B) a non-network delivery system outside the health maintenance organization delivery network, including a limited provider network, that is administered under an indemnity benefit arrangement for the cost of health care services.

(5) "Preferred provider benefit plan" means an insurance policy issued under Chapter 1301.

(6) "Small employer health benefit plan" has the meaning assigned by Section 1501.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.052. OFFER OF COVERAGE THROUGH NON-NETWORK PLAN REQUIRED. (a) Except as provided by Subsection (b), if the only health benefit coverage offered under an employer's health benefit plan is a network-based delivery system of coverage offered by one or more health maintenance organizations, each health maintenance organization offering coverage must offer to all eligible employees, at the time of enrollment and at least annually, the opportunity to obtain coverage through a non-network plan.

(b) Each health maintenance organization to which Subsection (a) applies may enter into an agreement designating one or more of those health maintenance organizations to offer the coverage required by Subsection (a) for eligible employees of the employer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.053. COVERAGE OPTIONS. The coverage required to be offered under this subchapter may be provided through:

(1) a point-of-service plan;

(2) a preferred provider benefit plan; or

(3) any coverage arrangement that provides an enrollee with access to services outside the health maintenance organization's or limited provider network's delivery network.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.054. PREMIUM FOR COVERAGE OPTIONS. The premium for coverage required to be offered under this subchapter must be based on the actuarial value of that coverage and may be different from the premium for coverage otherwise offered by the health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.055. COST-SHARING PROVISIONS. (a) Different cost-sharing provisions may be imposed for a point-of-service plan offered under this subchapter, and those provisions may be higher than the cost-sharing provisions for in-network health maintenance organization coverage. For an enrollee in a limited provider network, higher cost-sharing may be imposed only when the enrollee obtains benefits or services outside the health maintenance organization delivery network.

(b) An employee who chooses the non-network plan is responsible for any additional costs for the non-network plan, and the employer may impose a reasonable administrative fee for providing the non-network plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.056. EXCEPTIONS. This subchapter does not apply to:

(1) a small employer health benefit plan; or

(2) a group model health maintenance organization that is a nonprofit, state-certified health maintenance organization that:

(A) provides the majority of its professional services through a single group medical practice that is governed by a board composed entirely of physicians; and

(B) educates medical students or resident physicians through a contract with the medical school component of a Texas state-supported college or university accredited by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1273.057. RULES. The commissioner shall adopt rules necessary to administer this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1274. ELECTRONIC TRANSMISSION OF ELIGIBILITY AND PAYMENT STATUS

Sec. 1274.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual who is eligible for coverage under a health benefit plan, including a covered dependent.

(2) "Health benefit plan" means a group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance coverage;

(D) coverage only for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select policies regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) coverage issued as a supplement to liability insurance;

(K) workers' compensation insurance coverage or similar

insurance coverage;

(L) automobile medical payment insurance coverage;

(M) a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U.S.C. Section 157;

(N) hospital indemnity or other fixed indemnity insurance coverage;

(O) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(P) liability insurance coverage, including general liability insurance and automobile liability insurance coverage; or

(Q) coverage that provides other limited benefits specified by federal regulations.

(3) "Health benefit plan issuer" means a health maintenance organization operating under Chapter 843, a preferred provider organization operating under Chapter 1301, an approved nonprofit health corporation that holds a certificate of authority under Chapter 844, and any other entity that issues a health benefit plan, including:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885; or

(D) a stipulated premium company operating under Chapter 884.

(4) "Health care provider" means:

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a pharmacist or dentist; or

(ii) a pharmacy, hospital, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital

organization.

(5) "Participating provider" means:

(A) a physician or health care provider who contracts with a health benefit plan issuer to provide medical care or health care to enrollees in a health benefit plan; or

(B) a physician or health care provider who accepts and treats a patient on a referral from a physician or provider described by Paragraph (A).

(6) "Physician" means:

(A) an individual licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code;

(B) a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes);

(C) a nonprofit health corporation certified under Chapter 162, Occupations Code;

(D) a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code, that employs or contracts with physicians to teach or provide medical services or employs physicians and contracts with physicians in a practice plan; or

(E) another entity wholly owned by physicians.

Added by Acts 2005, 79th Leg., Ch. 880 (S.B. 1149), Sec. 1, eff. September 1, 2005.

Sec. 1274.0015. EXEMPTION. This chapter does not apply to a single-service health maintenance organization that provides coverage only for dental or vision benefits.

Added by Acts 2005, 79th Leg., Ch. 880 (S.B. 1149), Sec. 1, eff. September 1, 2005.

Sec. 1274.002. TRANSMISSION OF ENROLLEE ELIGIBILITY AND PAYMENT STATUS. (a) Each health benefit plan issuer shall, upon the participating provider's submission of the patient's name, relationship to the primary enrollee, and birth date, make available telephonically, electronically, or by an Internet website portal to each participating provider information maintained in the ordinary

course of business and sufficient for the provider to determine at the time of the enrollee's visit information concerning:

(1) the enrollee, including:

(A) the enrollee's identification number assigned by the health benefit plan issuer;

(B) the name of the enrollee and all covered dependents, if appropriate;

(C) the birth date of the enrollee and the birth dates of all covered dependents, if appropriate;

(D) the gender of the enrollee and the gender of each covered dependent, if appropriate; and

(E) the current enrollment and eligibility status of the enrollee under the health benefit plan;

(2) the enrollee's benefits, including:

(A) whether a specific type or category of service is a covered benefit; and

(B) excluded benefits or limitations, both group and individual; and

(3) the enrollee's financial information, including:

(A) copayment requirements, if any; and

(B) the unmet amount of the enrollee's deductible or enrollee financial responsibility.

(b) Information required to be made available under this section may be made available only to a participating provider who is authorized under state and federal law to receive personally identifiable information on an enrollee or dependent.

Added by Acts 2005, 79th Leg., Ch. 880 (S.B. 1149), Sec. 1, eff. September 1, 2005.

Sec. 1274.003. CERTAIN CHARGES PROHIBITED. A health benefit plan issuer may not directly or indirectly charge or hold a physician, health care provider, or enrollee responsible for a fee for making available or accessing information under this chapter.

Added by Acts 2005, 79th Leg., Ch. 880 (S.B. 1149), Sec. 1, eff. September 1, 2005.

Sec. 1274.004. RULES. (a) The commissioner shall adopt rules

as necessary to implement this chapter.

(b) Before adopting rules under this section, the commissioner shall consult and receive advice from the technical advisory committee on claims processing established under Chapter 1212.

Added by Acts 2005, 79th Leg., Ch. 880 (S.B. 1149), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.006, eff. April 1, 2009.

Sec. 1274.005. WAIVER OF CERTAIN PROVISIONS FOR CERTAIN FEDERAL PLANS. If the commissioner, in consultation with the commissioner of health and human services, determines that a provision of Section 1274.002 will cause a negative fiscal impact on the state with respect to providing benefits or services under Subchapter XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), or Subchapter XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.), the commissioner of insurance by rule shall waive the application of that provision to the providing of those benefits or services.

Added by Acts 2005, 79th Leg., Ch. 880 (S.B. 1149), Sec. 1, eff. September 1, 2005.

CHAPTER 1275. BALANCE BILLING PROHIBITIONS AND OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION FOR CERTAIN PLANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1275.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual enrolled in a health benefit plan to which this chapter applies.

(2) "Usual and customary rate" means the relevant allowable amount as described by the applicable master benefit plan document.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.

Sec. 1275.002. APPLICABILITY OF CHAPTER. This chapter applies only to:

(1) a health benefit plan offered by a nonprofit agricultural organization under Chapter 1682; and

(2) a health benefit plan:

(A) that is a self-insured or self-funded plan established by an employer for the benefit of the employer's employees in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); and

(B) for which the plan sponsor has made an election, submitted to the commissioner in the form and manner prescribed by the commissioner, to apply this chapter to the plan for the relevant plan year.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 696 (H.B. 1592), Sec. 1, eff. September 1, 2023.

Text of section effective until September 1, 2025

Sec. 1275.003. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a health benefit plan to which this chapter applies shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or health care provider in connection with a health care or medical service or supply or transport provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1275.051, 1275.052, 1275.053, or 1275.054, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's health benefit plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a

payment under Section 1275.051, 1275.052, 1275.053, or 1275.054, as applicable.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 4(a), eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 4(b), eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 1275.003. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a health benefit plan to which this chapter applies shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or health care provider in connection with a health care or medical service or supply provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1275.051, 1275.052, or 1275.053, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's health benefit plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a payment under Section 1275.051, 1275.052, or 1275.053, as applicable.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 4(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 4(b), eff. September 1, 2025.

Sec. 1275.004. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION. Chapter 1467 applies to a health benefit plan to which this chapter applies, and the administrator of a health benefit plan to which this chapter applies is an administrator for purposes of that chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. PAYMENTS FOR CERTAIN SERVICES; BALANCE BILLING PROHIBITIONS

Sec. 1275.051. EMERGENCY CARE PAYMENTS. (a) In this section, "emergency care" has the meaning assigned by Section 1301.155.

(b) The administrator of a health benefit plan to which this chapter applies shall pay for covered emergency care performed by or a covered supply related to that care provided by an out-of-network provider at the usual and customary rate or at an agreed rate. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) For emergency care subject to this section or a supply related to that care, an out-of-network provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's health benefit plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined

under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.

Sec. 1275.052. OUT-OF-NETWORK FACILITY-BASED PROVIDER PAYMENTS. (a) In this section, "facility-based provider" means a physician or health care provider who provides health care or medical services to patients of a health care facility.

(b) Except as provided by Subsection (d), the administrator of a health benefit plan to which this chapter applies shall pay for a covered health care or medical service performed for or a covered supply related to that service provided to an enrollee by an out-of-network provider who is a facility-based provider at the usual and customary rate or at an agreed rate if the provider performed the service at a health care facility that is a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a facility-based provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's health benefit plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the provider does not have a contract with the enrollee's health benefit plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.

Sec. 1275.053. OUT-OF-NETWORK DIAGNOSTIC IMAGING PROVIDER OR LABORATORY SERVICE PROVIDER PAYMENTS. (a) In this section, "diagnostic imaging provider" and "laboratory service provider" have the meanings assigned by Section 1467.001.

(b) Except as provided by Subsection (d), the administrator of a health benefit plan to which this chapter applies shall pay for a covered health care or medical service performed for or a covered supply related to that service provided to an enrollee by an out-of-network provider who is a diagnostic imaging provider or laboratory service provider at the usual and customary rate or at an agreed rate if the provider performed the service in connection with a health care or medical service performed by a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all

information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a diagnostic imaging provider or laboratory service provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's health benefit plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, the modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the provider does not have a contract with the enrollee's health benefit plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 1, eff. September 1, 2021.

For expiration of this section, see Subsection (f).

Sec. 1275.054. OUT-OF-NETWORK EMERGENCY MEDICAL SERVICES PROVIDER PAYMENTS. (a) In this section, "emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code, except that the term does not include an air ambulance.

(b) Except as provided by Subsection (c), the administrator of a health benefit plan to which this chapter applies shall pay for a covered health care or medical service performed for, or a covered supply or covered transport related to that service provided to, an enrollee by an out-of-network provider who is an emergency medical services provider at:

(1) if the political subdivision has submitted the rate to the department under Section 38.006, the rate set, controlled, or regulated by the political subdivision in which:

(A) the service originated; or

(B) the transport originated if transport is provided; or

(2) if the political subdivision has not submitted the rate to the department, the lesser of:

(A) the provider's billed charge; or

(B) 325 percent of the current Medicare rate, including any applicable extenders and modifiers.

(c) The administrator shall adjust a payment required by Subsection (b)(1) each plan year by increasing the payment by the lesser of the Medicare Inflation Index or 10 percent of the provider's previous calendar year rates.

(d) The administrator shall make a payment required by this section directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(e) An out-of-network provider who is an emergency medical services provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply or transport described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's health benefit plan that is based on:

(1) the amount initially determined payable by the administrator; or

(2) if applicable, the modified amount as determined under

the administrator's internal appeal process.

(f) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 5, eff. September 1, 2023.

SUBTITLE D. PROVIDER PLANS
CHAPTER 1301. PREFERRED PROVIDER BENEFIT PLANS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1301.001. DEFINITIONS. In this chapter:

(1) "Exclusive provider benefit plan" means a benefit plan in which an insurer excludes benefits to an insured for some or all services, other than emergency care services required under Section 1301.155, provided by a physician or health care provider who is not a preferred provider.

(1-a) "Health care provider" means a practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state. The term includes a pharmacist and a pharmacy. The term does not include a physician.

(2) "Health insurance policy" means a group or individual insurance policy, certificate, or contract providing benefits for medical or surgical expenses incurred as a result of an accident or sickness.

(3) "Hospital" means a licensed public or private institution as defined by Chapter 241, Health and Safety Code, or Subtitle C, Title 7, Health and Safety Code.

(4) "Institutional provider" means a hospital, nursing home, or other medical or health-related service facility that provides care for the sick or injured or other care that may be covered in a health insurance policy.

(5) "Insurer" means a life, health, and accident insurance company, health and accident insurance company, health insurance company, or other company operating under Chapter 841, 842, 884, 885, 982, or 1501, that is authorized to issue, deliver, or issue for delivery in this state health insurance policies.

(5-a) "Out-of-network provider" means a physician or health care provider who is not a preferred provider.

(6) "Physician" means a person licensed to practice

medicine in this state.

(6-a) "Post-emergency stabilization care" means health care services that are furnished by an out-of-network provider, including an out-of-network hospital, freestanding emergency medical care facility, or comparable emergency facility, regardless of the department of the facility in which the services are furnished, after an insured is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit in which the emergency care, as defined by Section 1301.155, is furnished.

(7) "Practitioner" means a person who practices a healing art and is a practitioner described by Section 1451.001 or 1451.101.

(7-a) "Preauthorization" means a determination by an insurer that medical care or health care services proposed to be provided to a patient are medically necessary and appropriate.

(8) "Preferred provider" means a physician or health care provider, or an organization of physicians or health care providers, who contracts with an insurer to provide medical care or health care to insureds covered by a health insurance policy.

(9) "Preferred provider benefit plan" means a benefit plan in which an insurer provides, through its health insurance policy, for the payment of a level of coverage that is different from the basic level of coverage provided by the health insurance policy if the insured person uses a preferred provider.

(10) "Service area" means a geographic area or areas specified in a health insurance policy or preferred provider contract in which a network of preferred providers is offered and available.

(11) "Verification" means a reliable representation by an insurer to a physician or health care provider that the insurer will pay the physician or provider for proposed medical care or health care services if the physician or provider renders those services to the patient for whom the services are proposed. The term includes precertification, certification, recertification, and any other term that would be a reliable representation by an insurer to a physician or provider.

(12) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.033(a), eff.

September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 4, eff. March 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 4, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 1, eff. September 1, 2023.

Sec. 1301.002. NONAPPLICABILITY TO DENTAL CARE BENEFITS. This chapter does not apply to a provision for dental care benefits in a health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.003. PREFERRED PROVIDER BENEFIT PLANS AND EXCLUSIVE PROVIDER BENEFIT PLANS PERMITTED. A preferred provider benefit plan or an exclusive provider benefit plan that meets the requirements of this chapter is not:

(1) unjust under Chapter 1701;

(2) unfair discrimination under Subchapter A or B, Chapter 544; or

(3) a violation of Subchapter B or C, Chapter 1451.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 3, eff. September 1, 2011.

Sec. 1301.0041. APPLICABILITY. (a) Except as otherwise specifically provided by this chapter, this chapter applies to each preferred provider benefit plan in which an insurer provides, through the insurer's health insurance policy, for the payment of a level of

coverage that is different depending on whether an insured uses a preferred provider or a nonpreferred provider.

(b) Unless otherwise specified, an exclusive provider benefit plan is subject to this chapter in the same manner as a preferred provider benefit plan.

Text of subsection effective until April 1, 2025

(c) This chapter does not apply to:

(1) the child health plan program under Chapter 62, Health and Safety Code; or

(2) a Medicaid managed care program under Chapter 533, Government Code.

Text of subsection effective on April 1, 2025

(c) This chapter does not apply to:

(1) the child health plan program under Chapter 62, Health and Safety Code; or

(2) a Medicaid managed care program under Chapter 540 or 540A, Government Code, as applicable.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0271(b), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0271(b), eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 4, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.122, eff. April 1, 2025.

Sec. 1301.0042. APPLICABILITY OF INSURANCE LAW. (a) Except as provided by Subsection (b), a provision of this code or another insurance law of this state that applies to a preferred provider benefit plan applies to an exclusive provider benefit plan except to the extent that the commissioner determines the provision to be inconsistent with the function and purpose of an exclusive provider benefit plan.

(b) An exclusive provider benefit plan may not provide dental care benefits.

Added by Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 5, eff.

September 1, 2011.

Sec. 1301.0045. CONSTRUCTION OF CHAPTER. (a) Except as provided by Section 1301.0046, this chapter may not be construed to limit the level of reimbursement or the level of coverage, including deductibles, copayments, coinsurance, or other cost-sharing provisions, that are applicable to preferred providers or, for plans other than exclusive provider benefit plans, nonpreferred providers.

Text of subsection effective until September 1, 2025

(b) Except as provided by Sections 1301.0052, 1301.0053, 1301.155, 1301.164, 1301.165, and 1301.166, this chapter may not be construed to require an exclusive provider benefit plan to compensate a nonpreferred provider for services provided to an insured.

Text of subsection effective on September 1, 2025

(b) Except as provided by Sections 1301.0052, 1301.0053, 1301.155, 1301.164, and 1301.165, this chapter may not be construed to require an exclusive provider benefit plan to compensate a nonpreferred provider for services provided to an insured.

Added by Acts 2005, 79th Leg., Ch. 1221 (H.B. 1030), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 6, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.05, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 6(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 6(b), eff. September 1, 2025.

Sec. 1301.0046. COINSURANCE REQUIREMENTS FOR SERVICES OF NONPREFERRED PROVIDERS. The insured's coinsurance applicable to payment to nonpreferred providers may not exceed 50 percent of the total covered amount applicable to the medical or health care services. This section does not apply to an exclusive provider benefit plan.

Added by Acts 2005, 79th Leg., Ch. 1221 (H.B. 1030), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 7, eff. September 1, 2011.

Sec. 1301.005. AVAILABILITY OF PREFERRED PROVIDERS; SERVICE AREA LIMITATIONS. (a) An insurer offering a preferred provider benefit plan shall ensure that both preferred provider benefits and basic level benefits, including benefits for emergency care, as defined by Section 1301.155, and post-emergency stabilization care, are reasonably available to all insureds within a designated service area. This subsection does not apply to an exclusive provider benefit plan.

(b) If services are not available through a preferred provider within a designated service area under a preferred provider benefit plan or an exclusive provider benefit plan, an insurer shall reimburse a physician or health care provider who is not a preferred provider at the same percentage level of reimbursement as a preferred provider would have been reimbursed had the insured been treated by a preferred provider.

(c) Subsection (b) does not require reimbursement at a preferred level of coverage solely because an insured resides out of the service area and chooses to receive services from a provider other than a preferred provider for the insured's own convenience.

(d) A service area, other than a statewide service area, may include noncontiguous geographic areas but may not divide a county.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 8, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 2, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 3, eff. September 1, 2023.

Sec. 1301.0051. EXCLUSIVE PROVIDER BENEFIT PLANS: QUALITY

IMPROVEMENT AND UTILIZATION MANAGEMENT. (a) An insurer that offers an exclusive provider benefit plan shall establish procedures to ensure that health care services are provided to insureds under reasonable standards of quality of care that are consistent with prevailing professionally recognized standards of care or practice. The procedures must include:

(1) mechanisms to ensure availability, accessibility, quality, and continuity of care;

(2) subject to Section 1301.059, a continuing quality improvement program to monitor and evaluate services provided under the plan, including primary and specialist physician services and ancillary and preventive health care services, provided in institutional or noninstitutional settings;

(3) a method of recording formal proceedings of quality improvement program activities and maintaining quality improvement program documentation in a confidential manner;

(4) subject to Section 1301.059, a physician review panel to assist the insurer in reviewing medical guidelines or criteria;

(5) a patient record system that facilitates documentation and retrieval of clinical information for the insurer's evaluation of continuity and coordination of services and assessment of the quality of services provided to insureds under the plan;

(6) a mechanism for making available to the commissioner the clinical records of insureds for examination and review by the commissioner on request of the commissioner; and

(7) a specific procedure for the periodic reporting of quality improvement program activities to:

(A) the governing body and appropriate staff of the insurer; and

(B) physicians and health care providers that provide health care services under the plan.

(b) Minutes of a formal proceeding of the quality improvement program established under Subsection (a) shall be made available to the commissioner on request of the commissioner.

(c) Insured records made available to the commissioner under Subsection (a)(6) are confidential and privileged, and are not subject to Chapter 552, Government Code, or to subpoena, except to the extent necessary for the commissioner to enforce this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 9, eff.

September 1, 2011.

Sec. 1301.0052. EXCLUSIVE PROVIDER BENEFIT PLANS: REFERRALS FOR MEDICALLY NECESSARY SERVICES. (a) If a covered service is medically necessary and is not available through a preferred provider, the issuer of an exclusive provider benefit plan, on the request of a preferred provider, shall:

(1) approve the referral of an insured to a nonpreferred provider within a reasonable period; and

(2) fully reimburse the nonpreferred provider at the usual and customary rate or at a rate agreed to by the issuer and the nonpreferred provider.

(b) An exclusive provider benefit plan must provide for a review by a health care provider with expertise in the same specialty as or a specialty similar to the type of health care provider to whom a referral is requested under Subsection (a) before the issuer of the plan may deny the referral.

Added by Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 9, eff. September 1, 2011.

Sec. 1301.0053. EXCLUSIVE PROVIDER BENEFIT PLANS: EMERGENCY CARE. (a) If an out-of-network provider provides emergency care as defined by Section 1301.155 or post-emergency stabilization care to an enrollee in an exclusive provider benefit plan, the issuer of the plan shall reimburse the out-of-network provider at the usual and customary rate or at a rate agreed to by the issuer and the out-of-network provider for the provision of the services and any supply related to those services. The insurer shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the insurer receives an electronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim; or

(2) the 45th day after the date the insurer receives a nonelectronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to

pay the claim.

(b) For emergency care or post-emergency stabilization care subject to this section or a supply related to that care, an out-of-network provider or a person asserting a claim as an agent or assignee of the provider may not bill an insured in, and the insured does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the insured's exclusive provider benefit plan that:

(1) is based on:

(A) the amount initially determined payable by the insurer; or

(B) if applicable, a modified amount as determined under the insurer's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(c) This section may not be construed to require the imposition of a penalty under Section 1301.137.

(d) Post-emergency stabilization care that is subject to this section and a supply related to that care are subject to Chapter 1467 in the same manner as if the care and supply are emergency care, as defined by Section 1301.155.

(e) This section does not apply to claims for post-emergency stabilization care if all of the conditions described by 42 U.S.C. Section 300gg-111(a)(3)(C)(ii)(II) are met.

Added by Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 9, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.06, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 4, eff. September 1, 2023.

Sec. 1301.0055. NETWORK ADEQUACY STANDARDS. (a) The commissioner shall by rule adopt network adequacy standards that:

(1) require an insurer offering a preferred provider benefit plan to:

(A) monitor compliance with network adequacy standards, including provisions of this chapter relating to network adequacy, on

an ongoing basis, reporting any material deviation from network adequacy standards to the department within 30 days of the date the material deviation occurred; and

(B) promptly take any corrective action required to ensure that the network is compliant not later than the 90th day after the date the material deviation occurred unless:

(i) there are no uncontracted licensed physicians or health care providers in the affected county; or

(ii) the insurer requests a waiver under this subsection;

(2) ensure availability of, and accessibility to, a full range of contracted physicians and health care providers to provide current and projected utilization of health care services for adult and minor insureds;

(3) may allow a waiver for a departure from network adequacy standards for a period not to exceed one year if the commissioner determines after receiving public testimony at a public hearing under Section 1301.00565 that good cause is shown and posts on the department's Internet website the name of the preferred provider benefit plan, the insurer offering the plan, each affected county, the specific network adequacy standards waived, and the insurer's access plan;

(4) require disclosure by the insurer of the information described by Subdivision (3) in all promotion and advertisement of the preferred provider benefit plan for which a waiver is allowed under that subdivision;

(5) except as provided by Subdivision (6), limit a waiver from being issued to a preferred provider benefit plan:

(A) more than twice consecutively for the same network adequacy standard in the same county unless the insurer demonstrates, in addition to the good cause described by Subdivision (3), multiple good faith attempts to bring the plan into compliance with the network adequacy standard during each of the prior consecutive waiver periods; or

(B) more than a total of four times within a 21-year period for each county in a service area for issues that may be remedied through good faith efforts; and

(6) authorize the commissioner to issue a waiver that would otherwise be unavailable under Subdivision (5) if the waiver request demonstrates, and the department confirms annually, that there are no

uncontracted physicians or health care providers in the area to meet the specific standard for a county in a service area.

(b) The standards described by Subsection (a)(2) must include factors regarding time, distance, and appointment availability. The factors must:

(1) require that all insureds are able to receive an appointment with a preferred provider within the maximum travel times and distances established under Sections 1301.00553 and 1301.00554;

(2) require that all insureds are able to receive an appointment with a preferred provider within the maximum appointment wait times established under Section 1301.00555;

(3) require a preferred provider benefit plan to ensure sufficient choice, access, and quality of physicians and health care providers, in number, size, and geographic distribution, to be capable of providing the health care services covered by the plan from preferred providers to all insureds within the insurer's designated service area, taking into account the insureds' characteristics, medical conditions, and health care needs, including:

(A) the current utilization of covered health care services within the counties of the service area; and

(B) an actuarial projection of utilization of covered health care services, physicians, and health care providers needed within the counties of the service area to meet the needs of the number of projected insureds;

(4) require a sufficient number of preferred providers of emergency medicine, anesthesiology, pathology, radiology, neonatology, oncology, including medical, surgical, and radiation oncology, surgery, and hospitalist, intensivist, and diagnostic services, including radiology and laboratory services, at each preferred hospital, ambulatory surgical center, or freestanding emergency medical care facility that credentials the particular specialty to ensure all insureds are able to receive covered benefits, including access to clinical trials covered by the health benefit plan, at that preferred location;

(5) require that all insureds have the ability to access a preferred institutional provider listed in Section 1301.00553 within the maximum travel times and distances established under Section 1301.00553 for the corresponding county classification;

(6) require that insureds have the option of facilities, if

available, of pediatric, for-profit, nonprofit, and tax-supported institutions, with special consideration to contracting with:

(A) teaching hospitals that provide indigent care or care for uninsured individuals as a significant percentage of their overall patient load; and

(B) teaching facilities that specialize in providing care for rare and complex medical conditions and conducting clinical trials;

(7) require that there is an adequate number of preferred provider physicians who have admitting privileges at one or more preferred provider hospitals located within the insurer's designated service area to make any necessary hospital admissions;

(8) provide for necessary hospital services by requiring contracting with general, pediatric, specialty, and psychiatric hospitals on a preferred benefit basis within the insurer's designated service area, as applicable;

(9) ensure that emergency care, as defined by Section 1301.155, is available and accessible 24 hours a day, seven days a week, by preferred providers;

(10) ensure that covered urgent care is available and accessible from preferred providers within the insurer's designated service area within 24 hours for medical and behavioral health conditions;

(11) require an adequate number of preferred providers to be available and accessible to insureds 24 hours a day, seven days a week, within the insurer's designated service area; and

(12) require sufficient numbers and classes of preferred providers to ensure choice, access, and quality of care across the insurer's designated service area.

(c) Subsection (b)(6) does not apply to an exclusive provider benefit plan if the plan has:

(1) contracted with preferred provider hospitals in sufficient number capable of meeting the covered inpatient and outpatient health care benefits for current and actuarially projected utilization in accordance with Subsection (b)(3); or

(2) received a waiver under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 2, eff. June 19, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 5, eff. September 1, 2023.

Sec. 1301.00553. MAXIMUM TRAVEL TIME AND DISTANCE STANDARDS BY PREFERRED PROVIDER TYPE. (a) In this section, "maximum distance" means the miles calculated to drive by automobile within a service area to a particular type of preferred provider.

(b) For purposes of this section, each county in this state is classified as a large metro, metro, micro, or rural county, or a county with extreme access considerations as determined by the federal Centers for Medicare and Medicaid Services by population and density thresholds as of March 1, 2023.

(c) Maximum travel time in minutes and maximum distance in miles for preferred provider benefit plans by preferred provider type for each large metro county are:

(1) for the following physicians, as designated by physician specialty:

	Time	Distance
Allergy and Immunology	30	15
Cardiology	20	10
Cardiothoracic Surgery	30	15
Dermatology	20	10
Emergency Medicine	20	10
Endocrinology	30	15
Ear, Nose, and Throat/Otolaryngology	30	15
Gastroenterology	20	10
General Surgery	20	10
Gynecology and Obstetrics	10	5
Infectious Diseases	30	15
Nephrology	30	15
Neurology	20	10
Neurosurgery	30	15
Oncology: Medical, Surgical	20	10
Oncology: Radiation	30	15
Ophthalmology	20	10
Orthopedic Surgery	20	10
Physical Medicine and Rehabilitation	30	15
Plastic Surgery	30	15

Primary Care: Adults	10	5
Primary Care: Pediatric	10	5
Psychiatry	20	10
Pulmonology	20	10
Rheumatology	30	15
Urology	20	10
Vascular Surgery	30	15

(2) for health care practitioners in the following disciplines:

	Time	Distance
Chiropractic	30	15
Occupational Therapy	20	10
Physical Therapy	20	10
Podiatry	20	10
Speech Therapy	20	10

(3) for the following types of institutional providers:

	Time	Distance
Acute Inpatient Hospitals (Emergency Services Available 24/7)	20	10
Cardiac Catheterization Services	30	15
Cardiac Surgery Program	30	15
Critical Care Services: Intensive Care Units	20	10
Diagnostic Radiology (Freestanding; Hospital Outpatient; Ambulatory Health Facilities with Diagnostic Radiology)	20	10
Inpatient or Residential Behavioral Health Facility Services	30	15
Mammography	20	10
Outpatient Infusion/Chemotherapy	20	10
Skilled Nursing Facilities	20	10
Surgical Services (Outpatient or Ambulatory Surgical Center)	20	10

(4) for the following settings:

	Time	Distance

Outpatient Clinical Behavioral Health (Licensed, Accredited, or Certified)	10	5
Urgent Care	20	10

(d) Maximum travel time in minutes and maximum distance in miles for preferred provider benefit plans by preferred provider type for each metro county are:

(1) for the following physicians, as designated by physician specialty:

	Time	Distance
Allergy and Immunology	45	30
Cardiology	30	20
Cardiothoracic Surgery	60	40
Dermatology	45	30
Emergency Medicine	45	30
Endocrinology	60	40
Ear, Nose, and Throat/Otolaryngology	45	30
Gastroenterology	45	30
General Surgery	30	20
Gynecology and Obstetrics	15	10
Infectious Diseases	60	40
Nephrology	45	30
Neurology	45	30
Neurosurgery	60	40
Oncology: Medical, Surgical	45	30
Oncology: Radiation	60	40
Ophthalmology	30	20
Orthopedic Surgery	30	20
Physical Medicine and Rehabilitation	45	30
Plastic Surgery	60	40
Primary Care: Adults	15	10
Primary Care: Pediatric	15	10
Psychiatry	45	30
Pulmonology	45	30
Rheumatology	60	40
Urology	45	30
Vascular Surgery	60	40

(2) for health care practitioners in the following disciplines:

	Time	Distance
Chiropractic	45	30
Occupational Therapy	45	30
Physical Therapy	45	30
Podiatry	45	30
Speech Therapy	45	30

(3) for the following types of institutional providers:

	Time	Distance
Acute Inpatient Hospitals (Emergency Services Available 24/7)	45	30
Cardiac Catheterization Services	60	40
Cardiac Surgery Program	60	40
Critical Care Services: Intensive Care Units	45	30
Diagnostic Radiology (Freestanding; Hospital Outpatient; Ambulatory Health Facilities with Diagnostic Radiology)	45	30
Inpatient or Residential Behavioral Health Facility Services	70	45
Mammography	45	30
Outpatient Infusion/Chemotherapy	45	30
Skilled Nursing Facilities	45	30
Surgical Services (Outpatient or Ambulatory Surgical Center)	45	30

(4) for the following settings:

	Time	Distance
Outpatient Clinical Behavioral Health (Licensed, Accredited, or Certified)	15	10
Urgent Care	45	30

(e) Maximum travel time in minutes and maximum distance in miles for preferred provider benefit plans by preferred provider type

for each micro county are:

(1) for the following physicians, as designated by physician specialty:

	Time	Distance
Allergy and Immunology	80	60
Cardiology	50	35
Cardiothoracic Surgery	100	75
Dermatology	60	45
Emergency Medicine	80	60
Endocrinology	100	75
Ear, Nose, and Throat/Otolaryngology	80	60
Gastroenterology	60	45
General Surgery	50	35
Gynecology and Obstetrics	30	20
Infectious Diseases	100	75
Nephrology	80	60
Neurology	60	45
Neurosurgery	100	75
Oncology: Medical, Surgical	60	45
Oncology: Radiation	100	75
Ophthalmology	50	35
Orthopedic Surgery	50	35
Physical Medicine and Rehabilitation	80	60
Plastic Surgery	100	75
Primary Care: Adults	30	20
Primary Care: Pediatric	30	20
Psychiatry	60	45
Pulmonology	60	45
Rheumatology	100	75
Urology	60	45
Vascular Surgery	100	75

(2) for health care practitioners in the following disciplines:

	Time	Distance
Chiropractic	80	60
Occupational Therapy	80	60
Physical Therapy	80	60
Podiatry	60	45
Speech Therapy	80	60

(3) for the following types of institutional providers:

	Time	Distance
Acute Inpatient Hospitals (Emergency Services Available 24/7)	80	60
Cardiac Catheterization Services	160	120
Cardiac Surgery Program	160	120
Critical Care Services: Intensive Care Units	160	120
Diagnostic Radiology (Freestanding; Hospital Outpatient; Ambulatory Health Facilities with Diagnostic Radiology)	80	60
Inpatient or Residential Behavioral Health Facility Services	100	75
Mammography	80	60
Outpatient Infusion/Chemotherapy	80	60
Skilled Nursing Facilities	80	60
Surgical Services (Outpatient or Ambulatory Surgical Center)	80	60

(4) for the following settings:

	Time	Distance
Outpatient Clinical Behavioral Health (Licensed, Accredited, or Certified)	30	20
Urgent Care	80	60

(f) Maximum travel time in minutes and maximum distance in miles for preferred provider benefit plans by preferred provider type for each rural county are:

(1) for the following physicians, as designated by physician specialty:

	Time	Distance
Allergy and Immunology	90	75
Cardiology	75	60
Cardiothoracic Surgery	110	90
Dermatology	75	60
Emergency Medicine	75	60

Endocrinology	110	90
Ear, Nose, and Throat/Otolaryngology	90	75
Gastroenterology	75	60
General Surgery	75	60
Gynecology and Obstetrics	40	30
Infectious Diseases	110	90
Nephrology	90	75
Neurology	75	60
Neurosurgery	110	90
Oncology: Medical, Surgical	75	60
Oncology: Radiation	110	90
Ophthalmology	75	60
Orthopedic Surgery	75	60
Physical Medicine and Rehabilitation	90	75
Plastic Surgery	110	90
Primary Care: Adults	40	30
Primary Care: Pediatric	40	30
Psychiatry	75	60
Pulmonology	75	60
Rheumatology	110	90
Urology	75	60
Vascular Surgery	110	90

(2) for health care practitioners in the following disciplines:

	Time	Distance
Chiropractic	90	75
Occupational Therapy	75	60
Physical Therapy	75	60
Podiatry	75	60
Speech Therapy	75	60

(3) for the following types of institutional providers:

	Time	Distance
Acute Inpatient Hospitals (Emergency Services Available 24/7)	75	60
Cardiac Catheterization Services	145	120
Cardiac Surgery Program	145	120

Critical Care Services: Intensive Care Units	145	120
Diagnostic Radiology (Freestanding; Hospital Outpatient; Ambulatory Health Facilities with Diagnostic Radiology)	75	60
Inpatient or Residential Behavioral Health Facility Services	90	75
Mammography	75	60
Outpatient Infusion/Chemotherapy	75	60
Skilled Nursing Facilities	75	60
Surgical Services (Outpatient or Ambulatory Surgical Center)	75	60

(4) for the following settings:

	Time	Distance
Outpatient Clinical Behavioral Health (Licensed, Accredited, or Certified)	40	30
Urgent Care	75	60

(g) Maximum travel time in minutes and maximum distance in miles for preferred provider benefit plans by preferred provider type for each county with extreme access considerations are:

(1) for the following physicians, as designated by physician specialty:

	Time	Distance
Allergy and Immunology	125	110
Cardiology	95	85
Cardiothoracic Surgery	145	130
Dermatology	110	100
Emergency Medicine	110	100
Endocrinology	145	130
Ear, Nose, and Throat/Otolaryngology	125	110
Gastroenterology	110	100
General Surgery	95	85
Gynecology and Obstetrics	70	60
Infectious Diseases	145	130
Nephrology	125	110

Neurology	110	100
Neurosurgery	145	130
Oncology: Medical, Surgical	110	100
Oncology: Radiation	145	130
Ophthalmology	95	85
Orthopedic Surgery	95	85
Physical Medicine and Rehabilitation	125	110
Plastic Surgery	145	130
Primary Care: Adults	70	60
Primary Care: Pediatric	70	60
Psychiatry	110	100
Pulmonology	110	100
Rheumatology	145	130
Urology	110	100
Vascular Surgery	145	130

(2) for health care practitioners in the following disciplines:

	Time	Distance
Chiropractic	125	110
Occupational Therapy	110	100
Physical Therapy	110	100
Podiatry	110	100
Speech Therapy	110	100

(3) for the following institutional providers:

	Time	Distance
Acute Inpatient Hospitals (Emergency Services Available 24/7)	110	100
Cardiac Catheterization Services	155	140
Cardiac Surgery Program	155	140
Critical Care Services: Intensive Care Units	155	140
Diagnostic Radiology (Freestanding; Hospital Outpatient; Ambulatory Health Facilities with Diagnostic Radiology)	110	100
Inpatient or Residential Behavioral Health Facility Services	155	140

Mammography	110	100
Outpatient Infusion/Chemotherapy	110	100
Skilled Nursing Facilities	95	85
Surgical Services (Outpatient or Ambulatory Surgical Center)	110	100

(4) for the following settings:

	Time	Distance
Outpatient Clinical Behavioral Health (Licensed, Accredited, or Certified)	70	60
Urgent Care	110	100

Added by Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 6, eff. September 1, 2023.

Sec. 1301.00554. OTHER MAXIMUM DISTANCE STANDARD REQUIREMENTS; COMMISSIONER AUTHORITY. (a) In this section, "maximum distance" has the meaning assigned by Section 1301.00553.

(b) For a physician specialty not specifically listed in Section 1301.00553, the maximum distance, in any county classification, is 75 miles.

(c) When necessary due to utilization or supply patterns, the commissioner by rule may decrease the base maximum travel time and distance standards listed in this section or Section 1301.00553 for specific counties.

Added by Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 6, eff. September 1, 2023.

Sec. 1301.00555. MAXIMUM APPOINTMENT WAIT TIME STANDARDS. An insurer must ensure that:

(1) routine care is available and accessible from preferred providers:

(A) within three weeks for medical conditions; and

(B) within two weeks for behavioral health conditions; and

(2) preventive health care services are available and accessible from preferred providers:

(A) within two months for a child, or earlier if necessary for compliance with recommendations for specific preventive health care services; and

(B) within three months for an adult.

Added by Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 6, eff. September 1, 2023.

Sec. 1301.0056. EXAMINATIONS AND FEES. (a) The commissioner shall by rule adopt a process for the commissioner to examine a preferred provider benefit plan before an insurer offers the plan for delivery to insureds to determine whether the plan meets the quality of care and network adequacy standards of this chapter. An insurer may not offer a preferred provider benefit plan or an exclusive provider benefit plan before the commissioner determines that the network meets the quality of care and network adequacy standards of this chapter or the insurer receives a waiver under Section 1301.0055.

(a-1) An insurer is subject to a qualifying examination of the insurer's preferred provider benefit plans and subsequent quality of care and network adequacy examinations by the commissioner at least once every three years, in connection with a public hearing under Section 1301.00565 concerning a material deviation from network adequacy standards by a previously authorized plan or a request for a waiver of a network adequacy standard, and whenever the commissioner considers an examination necessary. Documentation provided to the commissioner during an examination conducted under this section is confidential and is not subject to disclosure as public information under Chapter 552, Government Code.

(b) An insurer examined under this section shall pay the cost of the examination in an amount determined by the commissioner.

(c) The department shall collect an assessment in an amount determined by the commissioner from the insurer at the time of the examination to cover all expenses attributable directly to the examination, including the salaries and expenses of department employees and all reasonable expenses of the department necessary for the administration of this chapter.

(d) The department shall deposit an assessment collected under this section to the credit of the account described by Section 401.156(a). Money deposited under this subsection shall be used to pay the salaries and expenses of examiners and all other expenses relating to the examination of insurers under this section.

(e) Rules adopted under this section must require insurers to provide access to or submit data or information necessary for the commissioner to evaluate and make a determination of compliance with quality of care and network adequacy standards. The rules must require insurers to provide access to or submit data or information that includes:

(1) a searchable and sortable database of network physicians and health care providers by national provider identifier, county, physician specialty, hospital privileges and credentials, and type of health care provider or licensure, as applicable;

(2) actuarial data of current and projected number of insureds by county;

(3) actuarial data of current and projected utilization of each preferred provider type listed in Section 1301.00553 and described by Section 1301.00554 by county; and

(4) any other data or information considered necessary by the commissioner to make a determination to authorize the use of the preferred provider benefit plan in the most efficient and effective manner possible.

Added by Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 9, eff. September 1, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1316 (H.B. 3911), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 7, eff. September 1, 2023.

Sec. 1301.00565. PUBLIC HEARING ON NETWORK ADEQUACY STANDARDS WAIVERS. (a) In this section, "good faith effort" means honesty in fact, timely participation, observance of reasonable commercial standards of fair dealing, and prioritizing patients' access to in-network care.

(b) The commissioner shall set a public hearing for a

determination of whether there is good cause for a waiver when an insurer:

(1) requests a waiver that does not satisfy Section 1301.0055(a)(6);

(2) requests a waiver that the commissioner does not deny; and

(3) does not complete corrective action for a material deviation reported under Section 1301.0055.

(c) The commissioner shall notify affected physicians and health care providers that may be the subject of a discussion of good faith efforts on behalf of the insurer to meet network adequacy standards and provide the physicians and health care providers with an opportunity to submit evidence, including written testimony, and to attend the public hearing and offer testimony either in person or virtually. An out-of-network physician or hospital, including a physician group or health care system referenced in the insurer's waiver request or notice of material deviation, may not be identified by name at the hearing unless the physician or hospital consents to the identification in advance of the hearing.

(d) At the hearing, the commissioner shall consider all written and oral testimony and evidence submitted by the insurer and the public pertinent to the requested waiver, including:

(1) the total number of physicians or health care providers in each preferred provider type listed in Section 1301.00553 within the county and service area being submitted for the waiver and whether the insurer made a good faith effort to contract with those required preferred provider types to meet network adequacy standards of this chapter;

(2) the total number of facilities, and availability of pediatric, for-profit, nonprofit, tax-supported, and teaching facilities, within the county and service area being submitted for a waiver and whether the insurer made a good faith effort to contract with these facilities and facility-based physicians and health care providers to meet network adequacy standards of this chapter;

(3) population, density, and geographical information to determine the possibility of meeting travel time and distance requirements within the county and service area being submitted for a waiver; and

(4) availability of services, population, and density within the county and service area being submitted for the waiver.

(e) The commissioner may not consider a prohibition on balance billing in determining whether to grant a waiver from network adequacy standards.

(f) The commissioner may not grant a waiver without a public hearing.

(g) Except as provided by this subsection, any evidence submitted to the commissioner as evidence for the public hearing that is proprietary in nature is confidential and not subject to disclosure as public information under Chapter 552, Government Code. Information related to provider directories, credentials, and privileges, estimates of patient populations, and actuarial estimates of needed providers to meet the estimated patient population is not protected under this subsection.

(h) A policyholder is entitled to seek judicial review of the commissioner's decision to grant a waiver under this section in a Travis County district court. Review by the district court under this subsection is de novo.

Added by Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 8, eff. September 1, 2023.

Sec. 1301.00566. EFFECT OF NETWORK ADEQUACY STANDARDS WAIVER ON BALANCE BILLING PROHIBITIONS. After a network adequacy standards waiver is granted by the commissioner, an insurer may refer to the provisions prohibiting balance billing under Sections 1301.0053, 1301.155, 1301.164, or 1301.165, as applicable, in an access plan submitted to the department for the sole purpose of explaining how the insurer will coordinate care to limit the likelihood of a balance bill for services subject to those provisions and not to justify a departure from network adequacy standards.

Added by Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 8, eff. September 1, 2023.

Sec. 1301.0057. ACCESS TO OUT-OF-NETWORK PROVIDERS. An insurer may not terminate, or threaten to terminate, an insured's participation in a preferred provider benefit plan solely because the insured uses an out-of-network provider.

Added by Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 5, eff. September 1, 2015.

Sec. 1301.0058. PROTECTED COMMUNICATIONS BY PREFERRED PROVIDERS. (a) An insurer may not in any manner prohibit, attempt to prohibit, penalize, terminate, or otherwise restrict a preferred provider from communicating with an insured about the availability of out-of-network providers for the provision of the insured's medical or health care services.

(b) An insurer may not terminate the contract of or otherwise penalize a preferred provider solely because the provider's patients use out-of-network providers for medical or health care services.

(c) An insurer's contract with a preferred provider may require that, except in a case of a medical emergency as determined by the preferred provider, before the provider may make an out-of-network referral for an insured, the preferred provider inform the insured:

(1) that:

(A) the insured may choose a preferred provider or an out-of-network provider; and

(B) if the insured chooses the out-of-network provider the insured may incur higher out-of-pocket expenses; and

(2) whether the preferred provider has a financial interest in the out-of-network provider.

Added by Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 5, eff. September 1, 2015.

Sec. 1301.006. AVAILABILITY OF AND ACCESSIBILITY TO HEALTH CARE SERVICES. (a) An insurer that markets a preferred provider benefit plan shall contract with physicians and health care providers to ensure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the health insurance policy in a manner ensuring availability of and accessibility to adequate personnel, specialty care, and facilities.

(b) A contract between an insurer that markets a plan regulated under this chapter and an institutional provider may not, as a condition of staff membership or privileges, require a physician or

other practitioner to enter into a preferred provider contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 10.01, eff. September 28, 2011.

Sec. 1301.0061. TERMS OF ENROLLEE ELIGIBILITY. (a) A contract between an insurer and a group policyholder under a preferred provider benefit plan must provide that:

(1) in addition to any other premiums for which the group policyholder is liable, the group policyholder is liable for an individual insured's premiums from the time the individual is no longer part of the group eligible for coverage under the policy until the end of the month in which the policyholder notifies the insurer that the individual is no longer part of the group eligible for coverage under the policy; and

(2) the individual remains covered under the policy until the end of that period.

(b) Each insurer that enters into a contract described by Subsection (a) shall notify the group policyholder periodically as provided by this section that the policyholder is liable for premiums on an individual who is no longer part of the group eligible for coverage until the insurer receives notification of termination of the individual's eligibility for coverage.

(c) If the insurer charges the group policyholder on a monthly basis for the premiums, the insurer shall include the notice required by Subsection (b) in each monthly statement sent to the group policyholder. If the insurer charges the group policyholder on other than a monthly basis for the premiums, the insurer shall notify the group policyholder periodically in the manner prescribed by the commissioner by rule.

(d) The notice required by Subsection (b) must include a description of methods preferred by the insurer for notification by a group policyholder of an individual's termination from coverage eligibility.

Added by Acts 2005, 79th Leg., Ch. 669 (S.B. 51), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1217 (S.B. 1143), Sec. 2, eff. September 1, 2009.

Sec. 1301.007. RULES. The commissioner shall adopt rules as necessary to:

(1) implement this chapter; and

(2) ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 1221 (H.B. 1030), Sec. 2, eff. September 1, 2005.

Sec. 1301.008. CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Subchapter C, Chapter 1204, this chapter controls.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(c), eff. September 1, 2005.

Sec. 1301.009. ANNUAL REPORT. (a) Not later than March 1 of each year, an insurer shall file with the commissioner a report relating to the preferred provider benefit plan offered under this chapter and covering the preceding calendar year.

(b) The report shall:

(1) be verified by at least two principal officers;

(2) be in a form prescribed by the commissioner; and

(3) include:

(A) a financial statement of the insurer, including its balance sheet and receipts and disbursements for the preceding calendar year, certified by an independent public accountant;

(B) the number of individuals enrolled during the preceding calendar year, the number of enrollees as of the end of that year, and the number of enrollments terminated during that year; and

(C) a statement of:

(i) an evaluation of enrollee satisfaction;

(ii) an evaluation of quality of care;
(iii) coverage areas;
(iv) accreditation status;
(v) premium costs;
(vi) plan costs;
(vii) premium increases;
(viii) the range of benefits provided;
(ix) copayments and deductibles;
(x) the accuracy and speed of claims payment by the insurer for the plan;
(xi) the credentials of physicians who are preferred providers;
(xii) the number of preferred providers;
(xiii) any waiver requests made and waivers of network adequacy standards granted under Section 1301.00565;
(xiv) any material deviation from network adequacy standards reported to the department under Section 1301.0055; and
(xv) any corrective actions, sanctions, or penalties assessed against the insurer by the department for deficiencies related to the preferred provider benefit plan.

(c) The annual report filed by the insurer shall be made publicly available on the department's website in a user-friendly format that allows consumers to make direct comparisons of the financial and other data reported by insurers under this section.

(d) An insurer providing group coverage of $10 million or less in premiums or individual coverage of $2 million or less in premiums is not required to report the data required under Subsection (b)(3)(C).

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 10, eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 9, eff. September 1, 2023.

Text of section effective until September 1, 2025

Sec. 1301.010. BALANCE BILLING PROHIBITION NOTICE. (a) An insurer shall provide written notice in accordance with this section in an explanation of benefits provided to the insured and the

physician or health care provider in connection with a medical care or health care service or supply or transport provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1301.0053, 1301.155, 1301.164, 1301.165, or 1301.166, as applicable;

(2) the total amount the physician or provider may bill the insured under the insured's preferred provider benefit plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) An insurer shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the insurer makes a payment under Section 1301.0053, 1301.155, 1301.164, 1301.165, or 1301.166, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.07, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 7(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 7(b), eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 1301.010. BALANCE BILLING PROHIBITION NOTICE. (a) An insurer shall provide written notice in accordance with this section in an explanation of benefits provided to the insured and the physician or health care provider in connection with a medical care or health care service or supply provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1301.0053, 1301.155, 1301.164, or 1301.165, as applicable;

(2) the total amount the physician or provider may bill the insured under the insured's preferred provider benefit plan and an itemization of copayments, coinsurance, deductibles, and other

amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) An insurer shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the insurer makes a payment under Section 1301.0053, 1301.155, 1301.164, or 1301.165, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.07, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 7(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 7(b), eff. September 1, 2025.

SUBCHAPTER B. RELATIONS WITH PHYSICIANS OR HEALTH CARE PROVIDERS

Sec. 1301.051. DESIGNATION AS PREFERRED PROVIDER. (a) An insurer shall afford a fair, reasonable, and equivalent opportunity to apply to be and to be designated as a preferred provider to practitioners and institutional providers and to health care providers other than practitioners and institutional providers, if those other health care providers are included by the insurer as preferred providers, provided that the practitioners, institutional providers, or health care providers:

(1) are licensed to treat injuries or illnesses or to provide services covered by a health insurance policy; and

(2) comply with the terms established by the insurer for designation as preferred providers.

(b) An insurer may not unreasonably withhold a designation as a preferred provider.

(c) An insurer shall give a physician or health care provider who, on the person's initial application, is not designated as a preferred provider written reasons for denial of the designation.

(d) Unless otherwise limited by this code, this section does not prohibit an insurer from rejecting a physician's or health care provider's application for designation based on a determination that

the preferred provider benefit plan has sufficient qualified providers.

(e) An insurer may not withhold a designation to:

(1) a podiatrist described by Section 1301.0521; or

(2) an optometrist, therapeutic optometrist, or ophthalmologist described by Section 1301.0522.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.034(a), eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1271 (S.B. 684), Sec. 1, eff. September 1, 2015.

Sec. 1301.0515. ACUPUNCTURIST SERVICES. (a) An insurer offering a preferred provider benefit plan that includes acupuncture in the services covered by the plan may not refuse to provide reimbursement for the performance of a covered acupuncture service solely because the service is provided by an acupuncturist.

(b) This section does not require an insurer to offer acupuncture as a covered service.

Added by Acts 2005, 79th Leg., Ch. 622 (H.B. 2371), Sec. 2, eff. September 1, 2005.

Sec. 1301.0516. CHIROPRACTIC SERVICES. (a) An insurer offering a preferred provider benefit plan that covers a service that is within the scope of a chiropractor's license may not refuse to provide reimbursement for the performance of the covered service solely because the service is provided by a chiropractor.

(b) This section does not require an insurer to cover a particular medical or health care service.

(c) This section does not affect the right of an insurer to determine whether a medical or health care service is medically necessary.

(d) An insurer that violates this section is subject to an administrative penalty as provided by Chapter 84 of not more than $1,000 for each claim that remains unpaid in violation of this section. Each day a violation continues constitutes a separate

violation.

Added by Acts 2019, 86th Leg., R.S., Ch. 116 (S.B. 1739), Sec. 2, eff. September 1, 2019.

Sec. 1301.052. DESIGNATION OF ADVANCED PRACTICE NURSE OR PHYSICIAN ASSISTANT AS PREFERRED PROVIDER. An insurer offering a preferred provider benefit plan may not refuse a request made by a physician participating as a preferred provider under the plan and an advanced practice nurse or physician assistant to have the advanced practice nurse or physician assistant included as a preferred provider under the plan if:

(1) the advanced practice nurse or physician assistant is authorized by the physician to provide care under Subchapter B, Chapter 157, Occupations Code; and

(2) the advanced practice nurse or physician assistant meets the quality of care standards previously established by the insurer for participation in the plan by advanced practice nurses and physician assistants.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.0521. DESIGNATION OF CERTAIN PODIATRISTS AS PREFERRED PROVIDERS. (a) Notwithstanding Section 1301.051, an insurer may not withhold the designation of preferred provider to a podiatrist licensed by the Texas Department of Licensing and Regulation who:

(1) joins the professional practice of a contracted preferred provider;

(2) applies to the insurer for designation as a preferred provider; and

(3) complies with the terms and conditions of eligibility to be a preferred provider.

(b) A podiatrist designated as a preferred provider under this section must comply with the terms of the preferred provider contract used by the insurer or the insurer's network provider.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.035(a), eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.013, eff. September 1, 2019.

Sec. 1301.0522. DESIGNATION OF CERTAIN OPTOMETRISTS, THERAPEUTIC OPTOMETRISTS, AND OPHTHALMOLOGISTS AS PREFERRED PROVIDERS. (a) Notwithstanding Section 1301.051, an insurer may not withhold the designation of preferred provider to an optometrist or therapeutic optometrist licensed by the Texas Optometry Board or an ophthalmologist licensed by the Texas Medical Board who:

(1) joins the professional practice of a contracted preferred provider;

(2) applies to the insurer for designation as a preferred provider; and

(3) complies with the terms and conditions of eligibility to be a preferred provider.

(b) An optometrist, therapeutic optometrist, or ophthalmologist designated as a preferred provider under this section must comply with the terms of the preferred provider contract used by the insurer or the insurer's network provider.

Added by Acts 2015, 84th Leg., R.S., Ch. 1271 (S.B. 684), Sec. 2, eff. September 1, 2015.

Sec. 1301.053. APPEAL RELATING TO DESIGNATION AS PREFERRED PROVIDER. (a) An insurer that does not designate a practitioner as a preferred provider shall provide a reasonable mechanism for reviewing that action. The review mechanism must incorporate, in an advisory role only, a review panel.

(b) A review panel must be composed of at least three individuals selected by the insurer from a list of participating practitioners and must include one member who is a practitioner in the same or similar specialty as the affected practitioner, if available. The practitioners contracting with the insurer in the applicable service area shall provide the list of practitioners to the insurer.

(c) On request, the insurer shall provide to the affected practitioner:

(1) the panel's recommendation, if any; and

(2) a written explanation of the insurer's determination, if that determination is contrary to the panel's recommendation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.054. NOTICE TO PRACTITIONERS OF PREFERRED PROVIDER BENEFIT PLAN. (a) When sponsoring a preferred provider benefit plan, an insurer shall immediately notify each practitioner in the plan's service area of the insurer's intent to offer the plan and of the opportunity to participate. The notification must be made by publication or in writing to each practitioner.

(b) After establishing a preferred provider benefit plan, an insurer shall annually provide notice of and an opportunity to participate in the plan to practitioners in the plan's service area who do not participate in the plan.

(c) On request, an insurer shall provide to any physician or health care provider information concerning the application process and qualification requirements for participation as a preferred provider in the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.055. COMPLAINT RESOLUTION. (a) Each contract under a preferred provider benefit plan between an insurer and a physician or other practitioner or a physicians' group must have a mechanism for resolving complaints initiated by an insured, a physician or other practitioner, or a physicians' group.

(b) A complaint resolution mechanism must provide for reasonable due process that includes, in an advisory role only, a review panel selected in the manner described by Section 1301.053(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.056. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT. (a) An insurer or third-party administrator may not reimburse a physician or other practitioner, institutional provider, or organization of physicians and health care providers on a discounted fee basis for covered services that are provided to an insured unless:

(1) the insurer or third-party administrator has contracted with either:

(A) the physician or other practitioner, institutional provider, or organization of physicians and health care providers; or

(B) a preferred provider organization that has a network of preferred providers and that has contracted with the physician or other practitioner, institutional provider, or organization of physicians and health care providers;

(2) the physician or other practitioner, institutional provider, or organization of physicians and health care providers has agreed to the contract and has agreed to provide health care services under the terms of the contract; and

(3) the insurer or third-party administrator has agreed to provide coverage for those health care services under the health insurance policy.

(b) A party to a preferred provider contract, including a contract with a preferred provider organization, may not sell, lease, or otherwise transfer information regarding the payment or reimbursement terms of the contract without the express authority of and prior adequate notification to the other contracting parties. This subsection does not affect the authority of the commissioner of insurance or the commissioner of workers' compensation under this code or Title 5, Labor Code, to request and obtain information.

(c) An insurer or third-party administrator who violates this section:

(1) commits an unfair claim settlement practice in violation of Subchapter A, Chapter 542; and

(2) is subject to administrative penalties under Chapters 82 and 84.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.061, eff. September 1, 2005.

Sec. 1301.057. TERMINATION OF PARTICIPATION; EXPEDITED REVIEW PROCESS. (a) Before terminating a contract with a preferred provider, an insurer shall:

(1) provide written reasons for the termination; and

(2) if the affected provider is a practitioner, provide, on request, a reasonable review mechanism, except in a case involving:

(A) imminent harm to a patient's health;

(B) an action by a state medical or other physician licensing board or other government agency that effectively impairs the practitioner's ability to practice medicine; or

(C) fraud or malfeasance.

(b) The review mechanism described by Subsection (a)(2) must incorporate, in an advisory role only, a review panel selected in the manner described by Section 1301.053(b) and must be completed within a period not to exceed 60 days.

(c) The insurer shall provide to the affected practitioner:

(1) the panel's recommendation, if any; and

(2) on request, a written explanation of the insurer's determination, if that determination is contrary to the panel's recommendation.

(d) On request, an insurer shall provide to a practitioner whose participation in a preferred provider benefit plan is being terminated:

(1) an expedited review conducted in accordance with a process that complies with rules established by the commissioner; and

(2) all information on which the insurer wholly or partly based the termination, including the economic profile of the preferred provider, the standards by which the provider is measured, and the statistics underlying the profile and standards.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 6, eff. September 1, 2015.

Sec. 1301.058. ECONOMIC PROFILING. An insurer that conducts, uses, or relies on economic profiling to admit or terminate the participation of physicians or health care providers in a preferred provider benefit plan shall make available to a physician or health care provider on request the economic profile of that physician or health care provider, including the written criteria by which the physician or health care provider's performance is to be measured.

An economic profile must be adjusted to recognize the characteristics of a physician's or health care provider's practice that may account for variations from expected costs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.059. QUALITY ASSESSMENT. (a) In this section, "quality assessment" means a mechanism used by an insurer to evaluate, monitor, or improve the quality and effectiveness of the medical care delivered by physicians or health care providers to persons covered by a health insurance policy to ensure that the care delivered is consistent with the care delivered by an ordinary, reasonable, and prudent physician or health care provider under the same or similar circumstances.

(b) An insurer may not engage in quality assessment except through a panel of at least three physicians selected by the insurer from among a list of physicians contracting with the insurer. The physicians contracting with the insurer in the applicable service area shall provide the list of physicians to the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.060. COMPENSATION ON DISCOUNTED FEE BASIS. A preferred provider contract must include a provision by which the physician or health care provider agrees that if the preferred provider is compensated on a discounted fee basis, the insured may be billed only on the discounted fee and not the full charge.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.061. PREFERRED PROVIDER NETWORKS. (a) An insurer may enter into an agreement with a preferred provider organization for the purposes of offering a network of preferred providers. The agreement may provide that either the insurer or the preferred provider organization on the insurer's behalf will comply with the notice requirements and other requirements imposed on the insurer by this subchapter.

(b) An insurer that enters into an agreement with a preferred

provider organization under this section shall meet the requirements of this chapter or ensure that those requirements are met.

(c) Each preferred provider benefit plan offered in this state must comply with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0271(a), eff. September 1, 2007.

Sec. 1301.062. PREFERRED PROVIDER CONTRACTS BETWEEN INSURERS AND PODIATRISTS. A preferred provider contract between an insurer and a podiatrist licensed by the Texas Department of Licensing and Regulation must provide that:

(1) the podiatrist may request a copy of the coding guidelines and payment schedules applicable to the compensation that the podiatrist will receive under the contract for services;

(2) the insurer shall provide a copy of the coding guidelines and payment schedules not later than the 30th day after the date of the podiatrist's request;

(3) the insurer may not unilaterally make material retroactive revisions to the coding guidelines and payment schedules; and

(4) the podiatrist may, practicing within the scope of the law regulating podiatry, furnish x-rays and nonprefabricated orthotics covered by the health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.014, eff. September 1, 2019.

Sec. 1301.0625. HEALTH CARE COLLABORATIVES. (a) Subject to the requirements of this chapter, a health care collaborative may be designated as a preferred provider under a preferred provider benefit plan and may offer enhanced benefits for care provided by the health care collaborative.

(b) A preferred provider contract between an insurer and a health care collaborative may use a payment methodology other than a

fee-for-service or discounted fee methodology. A reimbursement methodology used in a contract under this subsection is not subject to Chapter 843.

(c) A contract authorized by Subsection (b) must specify that the health care collaborative and the physicians or providers providing health care services on behalf of the collaborative will hold an insured harmless for payment of the cost of covered health care services if the insurer or the health care collaborative do not pay the physician or health care provider for the services.

(d) An insurer issuing an exclusive provider benefit plan authorized by another law of this state may limit access to only preferred providers participating in a health care collaborative if the limitation is consistent with all requirements applicable to exclusive provider benefit plans.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.03, eff. September 28, 2011.

Sec. 1301.063. CONTRACT PROVISIONS RELATING TO USE OF HOSPITALIST. (a) In this section, "hospitalist" means a physician who:

(1) serves as physician of record at a hospital for a hospitalized patient of another physician; and

(2) returns the care of the patient to that other physician at the end of the patient's hospitalization.

(b) A preferred provider contract between an insurer and a physician may not require the physician to use a hospitalist for a hospitalized patient.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.064. CONTRACT PROVISIONS RELATING TO PAYMENT OF CLAIMS. Subject to Subchapter C, a preferred provider contract must provide for payment to a physician or health care provider for health care services and benefits provided to an insured under the contract and to which the insured is entitled under the terms of the contract not later than:

(1) the 45th day after the date on which a claim for payment is received with the documentation reasonably necessary to

process the claim; or

(2) if applicable, within the number of calendar days specified by written agreement between the physician or health care provider and the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.0641. CONTRACT PROVISIONS PROHIBITING REJECTION OF BATCHED CLAIMS. (a) If requested by a preferred provider, an insurer shall include a provision in the preferred provider's contract providing that the insurer or the insurer's clearinghouse may not refuse to process or pay an electronically submitted clean claim, as defined by Subchapter C, because the claim is submitted together with or in a batch submission with a claim that is not a clean claim.

(b) In accordance with Chapters 82 and 84, the commissioner may issue a cease and desist order against or impose sanctions on an insurer that violates this section or a contract provision adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 668 (S.B. 50), Sec. 2, eff. September 1, 2005.

Sec. 1301.0642. CONTRACT PROVISIONS ALLOWING CERTAIN ADVERSE MATERIAL CHANGES PROHIBITED. (a) In this section, "adverse material change" means a change to a preferred provider contract with a physician, health care practitioner, or organization of physicians or health care practitioners that would decrease the preferred provider's payment or compensation, change the provider's tier to a less preferred tier, or change the administrative procedures in a way that may reasonably be expected to significantly increase the provider's administrative expenses or decrease the provider's payment or compensation. The term does not include:

(1) a decrease in payment or compensation resulting solely from a change in a published governmental fee schedule on which the payment or compensation is based if the applicability of the schedule is clearly identified in the contract;

(2) a decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date

of applicability of the decrease is clearly identified in the contract;

(3) an administrative change that may significantly increase the provider's administrative expense, the specific applicability of which is clearly identified in the contract;

(4) a change that is required by federal or state law;

(5) a termination for cause; or

(6) a termination without cause at the end of the term of the contract.

(b) An adverse material change to a preferred provider contract may only be made during the term of the preferred provider contract with the mutual agreement of the parties. A provision in a preferred provider contract that allows the insurer to unilaterally make an adverse material change during the term of the contract is void and unenforceable.

(c) Any adverse material change to the preferred provider contract may not go into effect until the 120th day after the date the preferred provider affirmatively agrees to the adverse material change in writing.

(d) A proposed amendment by an insurer seeking an adverse material change to a preferred provider contract must include notice that clearly and conspicuously states that a preferred provider may choose to not agree to the amendment and that the decision to not agree to the amendment may not affect:

(1) the terms of the provider's existing contract with the insurer; or

(2) the provider's participation in other health plans or products.

(e) A preferred provider's failure to agree to an adverse material change to a preferred provider contract does not affect:

(1) the terms of the provider's existing contract with the insurer; or

(2) the provider's participation in other health care products or plans.

(f) An insurer's failure to include the notice described by Subsection (d) with the proposed amendment makes an otherwise agreed-to adverse material change void and unenforceable.

(g) This section does not apply to a preferred provider contract:

(1) with an unspecified and indefinite duration;

(2) with no stated or automatic renewal period or event; and

(3) that may only be terminated by notice from one party to the other.

Added by Acts 2023, 88th Leg., R.S., Ch. 740 (H.B. 3359), Sec. 10, eff. September 1, 2023.

Sec. 1301.065. SHIFTING OF INSURER'S TORT LIABILITY PROHIBITED. A preferred provider contract may not require any physician, health care provider, or physicians' group to execute a hold harmless clause to shift the insurer's tort liability resulting from the insurer's acts or omissions to the preferred provider.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.066. RETALIATION AGAINST PREFERRED PROVIDER PROHIBITED. An insurer may not engage in any retaliatory action against a physician or health care provider, including terminating the physician's or provider's participation in the preferred provider benefit plan or refusing to renew the physician's or provider's contract, because the physician or provider has:

(1) on behalf of an insured, reasonably filed a complaint against the insurer; or

(2) appealed a decision of the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.067. INTERFERENCE WITH RELATIONSHIP BETWEEN PATIENT AND PHYSICIAN OR HEALTH CARE PROVIDER PROHIBITED. (a) An insurer may not, as a condition of a preferred provider contract with a physician or health care provider or in any other manner, prohibit, attempt to prohibit, or discourage a physician or provider from discussing with or communicating to a current, prospective, or former patient, or a person designated by a patient, information or an opinion:

(1) regarding the patient's health care, including the patient's medical condition or treatment options; or

(2) in good faith regarding the provisions, terms, requirements, or services of the health insurance policy as they relate to the patient's medical needs.

(a-1) An insurer may not, as a condition of payment with a physician or health care provider or in any other manner, require a physician or health care provider to provide a notification form stating that the physician or health care provider is an out-of-network provider to a current, prospective, or former patient, or a person designated by the patient, if the form contains additional information that is intended, or is otherwise required to be presented in a manner that is intended, to intimidate the patient.

(b) An insurer may not in any way penalize, terminate the participation of, or refuse to compensate for covered services a physician or health care provider for discussing or communicating with a current, prospective, or former patient, or a person designated by a patient, pursuant to this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 275 (H.B. 574), Sec. 7, eff. September 1, 2015.

Sec. 1301.068. INDUCEMENT TO LIMIT MEDICALLY NECESSARY SERVICES PROHIBITED. (a) An insurer may not use any financial incentive or make payment to a physician or health care provider that acts directly or indirectly as an inducement to limit medically necessary services.

(b) This section does not prohibit the use of capitation as a method of payment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.069. SERVICES PROVIDED BY CERTAIN PHYSICIANS AND HEALTH CARE PROVIDERS. The provisions of this chapter relating to prompt payment by an insurer of a physician or health care provider and to verification of medical care or health care services apply to a physician or provider who:

(1) is not a preferred provider included in the preferred provider network; and

(2) provides to an insured:

(A) care related to an emergency or its attendant episode of care as required by state or federal law; or

(B) specialty or other medical care or health care services at the request of the insurer or a preferred provider because the services are not reasonably available from a preferred provider who is included in the preferred delivery network.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(d), eff. September 1, 2005.

SUBCHAPTER C. PROMPT PAYMENT OF CLAIMS

Sec. 1301.101. DEFINITION. In this subchapter, "clean claim" means a claim that complies with Section 1301.131.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.102. SUBMISSION OF CLAIM. (a) A physician or health care provider must submit a claim to an insurer not later than the 95th day after the date the physician or provider provides the medical care or health care services for which the claim is made.

(b) Except as provided by Chapter 1213, a physician or health care provider may, as appropriate:

(1) mail a claim by United States mail, first class, or by overnight delivery service;

(2) submit the claim electronically;

(3) fax the claim; or

(4) hand deliver the claim.

(c) An insurer shall accept as proof of timely filing a claim filed in compliance with Subsection (b) or information from another insurer or health maintenance organization showing that the physician or health care provider submitted the claim to the insurer or health maintenance organization in compliance with Subsection (b).

(d) If a physician or health care provider fails to submit a claim in compliance with this section, the physician or provider forfeits the right to payment.

(e) The period for submitting a claim under this section may be extended by:

(1) contract;

(2) notice published by the commissioner allowing an extension of prompt payment deadlines to a later date chosen by the commissioner due to a catastrophic event; or

(3) the department's approval of a physician's or health care provider's request for an extension due to a catastrophic event that substantially interferes with the normal business operations of the physician or provider.

(e-1) The commissioner may adopt rules to implement Subsection (e), including rules establishing requirements for a request made under Subsection (e)(3).

(f) A physician or health care provider may not submit a duplicate claim for payment before the 46th day after the date the original claim was submitted. The commissioner shall adopt rules under which an insurer may determine whether a claim is a duplicate claim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 90 (S.B. 1286), Sec. 3, eff. September 1, 2023.

Sec. 1301.1021. RECEIPT OF CLAIM. (a) If a claim for medical care or health care services provided to a patient is mailed, the claim is presumed to have been received by the insurer on the fifth day after the date the claim is mailed or, if the claim is mailed using overnight service or return receipt requested, on the date the delivery receipt is signed.

(b) If the claim is submitted electronically, the claim is presumed to have been received on the date of the electronic verification of receipt by the insurer or the insurer's clearinghouse. If the insurer or the insurer's clearinghouse does not provide a confirmation within 24 hours of submission by the physician or health care provider, the physician's or provider's clearinghouse shall provide the confirmation. The physician's or

provider's clearinghouse must be able to verify that the filing contained the correct payor identification of the entity to receive the filing.

(c) If the claim is faxed, the claim is presumed to have been received on the date of the transmission acknowledgment.

(d) If the claim is hand delivered, the claim is presumed to have been received on the date the delivery receipt is signed.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except as provided by Sections 1301.104 and 1301.1054, not later than the 45th day after the date an insurer receives a clean claim from a preferred provider in a nonelectronic format or the 30th day after the date an insurer receives a clean claim from a preferred provider that is electronically submitted, the insurer shall make a determination of whether the claim is payable and:

(1) if the insurer determines the entire claim is payable, pay the total amount of the claim in accordance with the contract between the preferred provider and the insurer;

(2) if the insurer determines a portion of the claim is payable, pay the portion of the claim that is not in dispute and notify the preferred provider in writing why the remaining portion of the claim will not be paid; or

(3) if the insurer determines that the claim is not payable, notify the preferred provider in writing why the claim will not be paid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 8, eff. September 1, 2011.

Sec. 1301.104. DEADLINE FOR ACTION ON PHARMACY CLAIMS; PAYMENT. (a) An insurer, or a pharmacy benefit manager that administers

pharmacy claims for the insurer under a preferred provider benefit plan, that affirmatively adjudicates a pharmacy claim that is electronically submitted shall pay the total amount of the claim through electronic funds transfer not later than the 18th day after the date on which the claim was affirmatively adjudicated.

(b) An insurer, or a pharmacy benefit manager that administers pharmacy claims for the insurer under a preferred provider benefit plan, that affirmatively adjudicates a pharmacy claim that is not electronically submitted shall pay the total amount of the claim not later than the 21st day after the date on which the claim was affirmatively adjudicated.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 9, eff. September 1, 2011.

Sec. 1301.105. AUDITED CLAIMS. (a) Except as provided by Section 1301.1054, an insurer that intends to audit a claim submitted by a preferred provider shall pay the charges submitted at 100 percent of the contracted rate on the claim not later than:

(1) the 30th day after the date the insurer receives the clean claim from the preferred provider if the claim is submitted electronically; or

(2) the 45th day after the date the insurer receives the clean claim from the preferred provider if the claim is submitted nonelectronically.

(b) The insurer shall clearly indicate on the explanation of payment statement in the manner prescribed by the commissioner by rule that the clean claim is being paid at 100 percent of the contracted rate, subject to completion of the audit.

(c) If the insurer requests additional information to complete the audit, the request must describe with specificity the clinical information requested and relate only to information the insurer in good faith can demonstrate is specific to the claim or episode of care. The insurer may not request as a part of the audit information that is not contained in, or is not in the process of being

incorporated into, the patient's medical or billing record maintained by a preferred provider.

(d) If the preferred provider does not supply information reasonably requested by the insurer in connection with the audit, the insurer may:

(1) notify the provider in writing that the provider must provide the information not later than the 45th day after the date of the notice or forfeit the amount of the claim; and

(2) if the provider does not provide the information required by this section, recover the amount of the claim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.1051. COMPLETION OF AUDIT. The insurer must complete an audit under Section 1301.105 on or before the 180th day after the date the clean claim is received by the insurer, and any additional payment due a preferred provider or any refund due the insurer shall be made not later than the 30th day after the completion of the audit.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.1052. PREFERRED PROVIDER APPEAL AFTER AUDIT. If a preferred provider disagrees with a refund request made by an insurer based on an audit under Section 1301.105, the insurer shall provide the provider with an opportunity to appeal, and the insurer may not attempt to recover the payment until all appeal rights are exhausted.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.1053. DEADLINES NOT EXTENDED. The investigation and

determination of payment, including any coordination of other payments, does not extend the period for determining whether a claim is payable under Section 1301.103 or 1301.104 or for auditing a claim under Section 1301.105.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.1054. REQUESTS FOR ADDITIONAL INFORMATION. (a) If an insurer needs additional information from a treating preferred provider to determine payment, the insurer, not later than the 30th calendar day after the date the insurer receives a clean claim, shall request in writing that the preferred provider provide an attachment to the claim that is relevant and necessary for clarification of the claim. The request must describe with specificity the clinical information requested and relate only to information the insurer can demonstrate is specific to the claim or the claim's related episode of care. The preferred provider is not required to provide an attachment that is not contained in, or is not in the process of being incorporated into, the patient's medical or billing record maintained by a preferred provider.

(b) An insurer that requests an attachment under Subsection (a) shall determine whether the claim is payable on or before the later of the 15th day after the date the insurer receives the requested attachment or the latest date for determining whether the claim is payable under Section 1301.103 or 1301.104.

(c) An insurer may not make more than one request under Subsection (a) in connection with a claim. Sections 1301.102(b) and 1301.1021 apply to a request for and submission of an attachment under Subsection (a).

(d) If an insurer requests an attachment or other information from a person other than the preferred provider who submitted the claim, the insurer shall provide notice containing the name of the physician or health care provider from whom the insurer is requesting information to the preferred provider who submitted the claim. The insurer may not withhold payment pending receipt of an attachment or information requested under this subsection. If on receiving an attachment or information requested under this subsection the insurer

determines that there was an error in payment of the claim, the insurer may recover any overpayment under Section 1301.132.

(e) The commissioner shall adopt rules under which an insurer can easily identify attachments or other information submitted by a physician or health care provider under this section.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.106. CLAIMS PROCESSING PROCEDURES AND CLAIMS PAYMENT PROCESSES. (a) An insurer shall provide a preferred provider with copies of all applicable utilization review policies and claim processing policies or procedures.

(b) An insurer's claims payment processes shall:

(1) use nationally recognized, generally accepted Current Procedural Terminology codes, notes, and guidelines, including all relevant modifiers; and

(2) be consistent with nationally recognized, generally accepted bundling edits and logic.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.107. CONTRACTUAL WAIVER AND OTHER ACTIONS PROHIBITED. Except as provided by Section 1301.102(e), the provisions of this subchapter may not be waived, voided, or nullified by contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.108. ATTORNEY'S FEES. A preferred provider may recover reasonable attorney's fees and court costs in an action to recover payment under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.

Sec. 1301.109. APPLICABILITY TO ENTITIES CONTRACTING WITH INSURER. This subchapter applies to a person, including a pharmacy benefit manager, with whom an insurer contracts to:

(1) process or pay claims;

(2) obtain the services of physicians and health care providers to provide health care services to insureds; or

(3) issue verifications or preauthorizations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(a), eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 11, eff. September 1, 2011.

SUBCHAPTER C-1. OTHER PROVISIONS RELATING TO PAYMENT OF CLAIMS

Sec. 1301.131. ELEMENTS OF CLEAN CLAIM. (a) A nonelectronic claim by a physician or health care provider, other than an institutional provider, is a "clean claim" if the claim is submitted using the Centers for Medicare and Medicaid Services Form 1500 or, if adopted by the commissioner by rule, a successor to that form developed by the National Uniform Claim Committee or the committee's successor. An electronic claim by a physician or provider, other than an institutional provider, is a "clean claim" if the claim is submitted using the Professional 837 (ASC X12N 837) format or, if adopted by the commissioner by rule, a successor to that format adopted by the Centers for Medicare and Medicaid Services or the center's successor.

(b) A nonelectronic claim by an institutional provider is a "clean claim" if the claim is submitted using the Centers for Medicare and Medicaid Services Form UB-92 or, if adopted by the commissioner by rule, a successor to that form developed by the National Uniform Billing Committee or the committee's successor. An

electronic claim by an institutional provider is a "clean claim" if the claim is submitted using the Institutional 837 (ASC X12N 837) format or, if adopted by the commissioner by rule, a successor to that format adopted by the Centers for Medicare and Medicaid Services or the centers' successor.

(c) The commissioner may adopt rules that specify the information that must be entered into the appropriate fields on the applicable claim form for a claim to be a clean claim.

(d) The commissioner may not require any data element for an electronic claim that is not required in an electronic transaction set needed to comply with federal law.

(e) An insurer and a preferred provider may agree by contract to use fewer data elements than are required in an electronic transaction set needed to comply with federal law.

(f) An otherwise clean claim submitted by a physician or health care provider that includes additional fields, data elements, attachments, or other information not required under this section is considered to be a clean claim for the purposes of this chapter.

(g) Except as provided by Subsection (e), the provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.

Sec. 1301.132. OVERPAYMENT. (a) An insurer may recover an overpayment to a physician or health care provider if:

(1) not later than the 180th day after the date the physician or provider receives the payment, the insurer provides written notice of the overpayment to the physician or provider that includes the basis and specific reasons for the request for recovery of funds; and

(2) the physician or provider does not make arrangements for repayment of the requested funds on or before the 45th day after the date the physician or provider receives the notice.

(b) If a physician or health care provider disagrees with a request for recovery of an overpayment, the insurer shall provide the physician or provider with an opportunity to appeal, and the insurer may not attempt to recover the overpayment until all appeal rights are exhausted.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.

Sec. 1301.133. VERIFICATION. (a) In this section, "verification" includes preauthorization only when preauthorization is a condition for the verification.

(b) On the request of a preferred provider for verification of a particular medical care or health care service the preferred provider proposes to provide to a particular patient, the insurer shall inform the preferred provider without delay whether the service, if provided to that patient, will be paid by the insurer and shall specify any deductibles, copayments, or coinsurance for which the insured is responsible.

(c) An insurer shall have appropriate personnel reasonably available at a toll-free telephone number to provide a verification under this section between 6 a.m. and 6 p.m. central time Monday through Friday on each day that is not a legal holiday and between 9 a.m. and noon central time on Saturday, Sunday, and legal holidays. An insurer must have a telephone system capable of accepting or recording incoming phone calls for verifications after 6 p.m. central time Monday through Friday and after noon central time on Saturday, Sunday, and legal holidays and responding to each of those calls on or before the second calendar day after the date the call is received.

(d) An insurer may decline to determine eligibility for payment if the insurer notifies the physician or preferred provider who requested the verification of the specific reason the determination was not made.

(e) An insurer may establish a specific period during which the verification is valid of not less than 30 days.

(f) An insurer that declines to provide a verification shall notify the physician or provider who requested the verification of the specific reason the verification was not provided.

(g) If an insurer has provided a verification for proposed medical care or health care services, the insurer may not deny or reduce payment to the physician or provider for those medical care or health care services if provided to the insured on or before the 30th day after the date the verification was provided unless the physician or provider has materially misrepresented the proposed medical care

or health care services or has substantially failed to perform the proposed medical care or health care services.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.

Sec. 1301.134. COORDINATION OF PAYMENT. (a) An insurer may require a physician or health care provider to retain in the physician's or provider's records updated information concerning other health benefit plan coverage and to provide the information to the insurer on the applicable form described by Section 1301.131. Except as provided by this subsection, an insurer may not require a physician or provider to investigate coordination of other health benefit plan coverage.

(b) Coordination of payment under this section does not extend the period for determining whether a service is eligible for payment under Section 1301.103 or 1301.104 or for auditing a claim under Section 1301.105.

(c) A physician or health care provider who submits a claim for particular medical care or health care services to more than one health maintenance organization or insurer shall provide written notice on the claim submitted to each health maintenance organization or insurer of the identity of each other health maintenance organization or insurer with which the same claim is being filed.

(d) On receipt of notice under Subsection (c), an insurer shall coordinate and determine the appropriate payment for each health maintenance organization or insurer to make to the physician or health care provider.

(e) Except as provided by Subsection (f), if an insurer is a secondary payor and pays a portion of a claim that should have been paid by the insurer or health maintenance organization that is the primary payor, the overpayment may only be recovered from the health maintenance organization or insurer that is primarily responsible for that amount.

(f) If the portion of the claim overpaid by the secondary insurer was also paid by the primary health maintenance organization or insurer, the secondary insurer may recover the amount of

overpayment under Section 1301.132 from the physician or health care provider who received the payment. An insurer processing an electronic claim as a secondary payor shall rely on the primary payor information submitted on the claim by the physician or provider. Primary payor information may be submitted electronically by the primary payor to the secondary payor.

(g) An insurer may share information with a health maintenance organization or another insurer to the extent necessary to coordinate appropriate payment obligations on a specific claim.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.

Sec. 1301.135. PREAUTHORIZATION OF MEDICAL AND HEALTH CARE SERVICES. (a) An insurer that uses a preauthorization process for medical care or health care services shall provide to each preferred provider, not later than the fifth business day after the date a request is made, a list of medical care and health care services that require preauthorization and information concerning the preauthorization process.

(b) If proposed medical care or health care services require preauthorization as a condition of the insurer's payment to a preferred provider under a health insurance policy, the insurer shall determine whether the medical care or health care services proposed to be provided to the insured are medically necessary and appropriate.

(c) On receipt of a request from a preferred provider for preauthorization, the insurer shall review and issue a determination indicating whether the proposed medical care or health care services are preauthorized. The determination must be issued and transmitted not later than the third calendar day after the date the request is received by the insurer.

(d) If the proposed medical care or health care services involve inpatient care and the insurer requires preauthorization as a condition of payment, the insurer shall review the request and issue a length of stay for the admission into a health care facility based on the recommendation of the patient's physician or health care

provider and the insurer's written medically accepted screening criteria and review procedures. If the proposed medical or health care services are to be provided to a patient who is an inpatient in a health care facility at the time the services are proposed, the insurer shall review the request and issue a determination indicating whether proposed services are preauthorized within 24 hours of the request by the physician or provider.

(e) An insurer shall have appropriate personnel reasonably available at a toll-free telephone number to respond to requests for a preauthorization between 6 a.m. and 6 p.m. central time Monday through Friday on each day that is not a legal holiday and between 9 a.m. and noon central time on Saturday, Sunday, and legal holidays. An insurer must have a telephone system capable of accepting or recording incoming phone calls for preauthorizations after 6 p.m. central time Monday through Friday and after noon central time on Saturday, Sunday, and legal holidays and responding to each of those calls not later than 24 hours after the call is received.

(f) If an insurer has preauthorized medical care or health care services, the insurer may not deny or reduce payment to the physician or health care provider for those services based on medical necessity or appropriateness of care unless the physician or provider has materially misrepresented the proposed medical or health care services or has substantially failed to perform the proposed medical or health care services.

(g) This section applies to an agent or other person with whom an insurer contracts to perform, or to whom the insurer delegates the performance of, preauthorization of proposed medical or health care services.

(h) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.03, eff. September 1, 2019.

Sec. 1301.1351. POSTING OF PREAUTHORIZATION REQUIREMENTS. (a) An insurer that uses a preauthorization process for medical care or

health care services shall make the requirements and information about the preauthorization process readily accessible to insureds, physicians, health care providers, and the general public by posting the requirements and information on the insurer's Internet website.

(b) The preauthorization requirements and information described by Subsection (a) must:

(1) be posted:

(A) except as provided by Subsection (c) or (d), conspicuously in a location on the Internet website that does not require the use of a log-in or other input of personal information to view the information; and

(B) in a format that is easily searchable and accessible;

(2) except for the screening criteria under Subdivision (4)(C), be written in plain language that is easily understandable by insureds, physicians, health care providers, and the general public;

(3) include a detailed description of the preauthorization process and procedure; and

(4) include an accurate and current list of medical care and health care services for which the insurer requires preauthorization that includes the following information specific to each service:

(A) the effective date of the preauthorization requirement;

(B) a list or description of any supporting documentation that the insurer requires from the physician or health care provider ordering or requesting the service to approve a request for the service;

(C) the applicable screening criteria, which may include Current Procedural Terminology codes and International Classification of Diseases codes; and

(D) statistics regarding the insurer's preauthorization approval and denial rates for the medical care or health care service in the preceding calendar year, including statistics in the following categories:

(i) physician or health care provider type and specialty, if any;

(ii) indication offered;

(iii) reasons for request denial;

(iv) denials overturned on internal appeal;

(v) denials overturned by an independent review organization; and

(vi) total annual preauthorization requests, approvals, and denials for the service.

(c) This section may not be construed to require an insurer to provide specific information that would violate any applicable copyright law or licensing agreement. To comply with a posting requirement described by Subsection (b), an insurer may, instead of making that information publicly available on the insurer's Internet website, supply a summary of the withheld information sufficient to allow a licensed physician or other health care provider, as applicable for the specific service, who has sufficient training and experience related to the service to understand the basis for the insurer's medical necessity or appropriateness determinations.

(d) If a requirement or information described by Subsection (a) is licensed, proprietary, or copyrighted material that the insurer has received from a third party with which the insurer has contracted, to comply with a posting requirement described by Subsection (b), the insurer may, instead of making that information publicly available on the insurer's Internet website, provide the material to a physician or health care provider who submits a preauthorization request using a nonpublic secured Internet website link or other protected, nonpublic electronic means.

(e) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.04, eff. September 1, 2019.

Sec. 1301.1352. CHANGES TO PREAUTHORIZATION REQUIREMENTS. (a) Except as provided by Subsection (b), not later than the 60th day before the date a new or amended preauthorization requirement takes effect, an insurer that uses a preauthorization process for medical care or health care services shall provide notice of the new or amended preauthorization requirement and disclose the new or amended requirement in the insurer's newsletter or network bulletin, if any, and on the insurer's Internet website.

(b) For a change in a preauthorization requirement or process that removes a service from the list of medical care or health care

services requiring preauthorization or amends a preauthorization requirement in a way that is less burdensome to insureds, physicians, or health care providers, an insurer shall provide notice of the change in the preauthorization requirement and disclose the change in the insurer's newsletter or network bulletin, if any, and on the insurer's Internet website not later than the fifth day before the date the change takes effect.

(c) Not later than the fifth day before the date a new or amended preauthorization requirement takes effect, an insurer shall update its Internet website to disclose the change to the insurer's preauthorization requirements or process and the date and time the change is effective.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.04, eff. September 1, 2019.

Sec. 1301.1353. REMEDY FOR NONCOMPLIANCE. (a) In addition to any other penalty or remedy provided by law, an insurer that uses a preauthorization process for medical care or health care services that violates this subchapter with respect to a required publication, notice, or response regarding its preauthorization requirements, including by failing to comply with any applicable deadline for the publication, notice, or response, must provide an expedited appeal under Section 4201.357 for any medical care or health care service affected by the violation.

(b) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 2.04, eff. September 1, 2019.

Sec. 1301.136. AVAILABILITY OF CODING GUIDELINES. (a) A contract between an insurer and a preferred provider must provide that:

(1) the preferred provider may request a description and copy of the coding guidelines, including any underlying bundling, recoding, or other payment process and fee schedules applicable to

specific procedures that the preferred provider will receive under the contract;

(2) the insurer or the insurer's agent will provide the coding guidelines and fee schedules not later than the 30th day after the date the insurer receives the request;

(3) the insurer or the insurer's agent will provide notice of changes to the coding guidelines and fee schedules that will result in a change of payment to the preferred provider not later than the 90th day before the date the changes take effect and will not make retroactive revisions to the coding guidelines and fee schedules; and

(4) the contract may be terminated by the preferred provider on or before the 30th day after the date the preferred provider receives information requested under this subsection without penalty or discrimination in participation in other health care products or plans.

(b) A preferred provider who receives information under Subsection (a) may only:

(1) use or disclose the information for the purpose of practice management, billing activities, and other business operations; and

(2) disclose the information to a governmental agency involved in the regulation of health care or insurance.

(c) The insurer shall, on request of the preferred provider, provide the name, edition, and model version of the software that the insurer uses to determine bundling and unbundling of claims.

(d) The provisions of this section may not be waived, voided, or nullified by contract.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.

Sec. 1301.137. VIOLATION OF CLAIMS PAYMENT REQUIREMENTS; PENALTY. (a) Except as provided by this section, if a clean claim submitted to an insurer is payable and the insurer does not determine under Subchapter C that the claim is payable and pay the claim on or before the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay the preferred provider making the claim the contracted rate owed on the claim plus

a penalty in the amount of the lesser of:

(1) 50 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or

(2) $100,000.

(b) If the claim is paid on or after the 46th day and before the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a penalty in the amount of the lesser of:

(1) 100 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or

(2) $200,000.

(c) If the claim is paid on or after the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a penalty computed under Subsection (b) plus 18 percent annual interest on that amount. Interest under this subsection accrues beginning on the date the insurer was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(d) Except as provided by this section, an insurer that determines under Subchapter C that a claim is payable, pays only a portion of the amount of the claim on or before the date the insurer is required to make a determination or adjudication of the claim, and pays the balance of the contracted rate owed for the claim after that date shall pay to the preferred provider, in addition to the contracted amount owed, a penalty on the amount not timely paid in the amount of the lesser of:

(1) 50 percent of the underpaid amount; or

(2) $100,000.

(e) If the balance of the claim is paid on or after the 46th day and before the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a penalty on the balance of the claim in the amount of the lesser of:

(1) 100 percent of the underpaid amount; or

(2) $200,000.

(f) If the balance of the claim is paid on or after the 91st day after the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay a penalty on the balance of the claim computed under Subsection (e) plus 18 percent annual interest on that amount. Interest under this subsection

accrues beginning on the date the insurer was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(g) For the purposes of Subsections (d) and (e), the underpaid amount is computed on the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to an amount equal to the billed charges as submitted on the claim minus the contracted rate.

(h) An insurer is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with Subchapter C is a result of a catastrophic event and:

(A) the commissioner published a notice allowing an extension of the applicable prompt payment deadlines due to the catastrophic event; or

(B) the department approved the insurer's request for an extension due to the substantial interference of the catastrophic event with the normal business operations of the insurer; or

(2) if the claim was paid in accordance with Subchapter C, but for less than the contracted rate, and:

(A) the preferred provider notifies the insurer of the underpayment after the 270th day after the date the underpayment was received; and

(B) the insurer pays the balance of the claim on or before the 30th day after the date the insurer receives the notice.

(i) Subsection (h) does not relieve the insurer of the obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(j) An insurer that pays a penalty under this section shall clearly indicate on the explanation of payment statement in the manner prescribed by the commissioner by rule the amount of the contracted rate paid and the amount paid as a penalty.

(k) In addition to any other penalty or remedy authorized by this code, an insurer that violates Section 1301.103, 1301.104, or 1301.105 in processing more than two percent of clean claims submitted to the insurer is subject to an administrative penalty under Chapter 84. For each day an administrative penalty is imposed under this subsection, the penalty may not exceed $1,000 for each claim that remains unpaid in violation of Section 1301.103, 1301.104, or 1301.105. In determining whether an insurer has processed preferred provider claims in compliance with Section 1301.103,

1301.104, or 1301.105, the commissioner shall consider paid claims, other than claims that have been paid under Section 1301.105, and shall compute a compliance percentage for physician and provider claims, other than institutional provider claims, and a compliance percentage for institutional provider claims.

(l) Notwithstanding any other provision of this section, this subsection governs the payment of a penalty under this section. For a penalty under this section relating to a clean claim submitted by a preferred provider other than an institutional provider, the insurer shall pay the entire penalty to the preferred provider, except for any interest computed under Subsection (c), which shall be paid to the Texas Health Insurance Risk Pool. For a penalty under this section relating to a clean claim submitted by an institutional provider, the insurer shall pay 50 percent of the penalty amount computed under this section, including interest, to the institutional provider and the remaining 50 percent of that amount to the Texas Health Insurance Risk Pool.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 435 (S.B. 1884), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 265 (H.B. 2064), Sec. 2, eff. January 1, 2010.

Acts 2023, 88th Leg., R.S., Ch. 90 (S.B. 1286), Sec. 4, eff. September 1, 2023.

Sec. 1301.138. APPLICABILITY TO ENTITIES CONTRACTING WITH INSURER. This subchapter applies to a person described by Section 1301.109.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(b), eff. September 1, 2005.

Sec. 1301.139. LEGISLATIVE DECLARATION. It is the intent of the legislature that the requirements contained in this subchapter regarding payment of claims to preferred providers who are pharmacists or pharmacies apply to all insurers and pharmacy benefit

managers unless otherwise prohibited by federal law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 798 (H.B. 2292), Sec. 12, eff. September 1, 2011.

Sec. 1301.140. OUT-OF-POCKET EXPENSE CREDIT. (a) An insurer shall credit toward an insured's deductible and annual maximum out-of-pocket expenses an amount the insured pays directly to any physician or health care provider for a medically necessary covered medical or health care service or supply if a claim for the service or supply is not submitted to the insurer and the amount paid by the insured to the physician or health care provider is less than the average discounted rate for the service or supply paid to an equivalently licensed or authorized preferred provider under the insured's preferred provider benefit plan.

(b) An insurer shall:

(1) establish a procedure by which an insured may claim a credit under Subsection (a); and

(2) identify documentation necessary to support a claim for a credit under Subsection (a).

(c) Information about the procedure and documentation described by Subsection (b) must be readily accessible to an insured on the insurer's Internet website.

Added by Acts 2023, 88th Leg., R.S., Ch. 437 (H.B. 2002), Sec. 1, eff. September 1, 2023.

SUBCHAPTER D. RELATIONS BETWEEN INSUREDS AND PREFERRED PROVIDERS

Sec. 1301.151. INSURED'S RIGHT TO TREATMENT. Each insured is entitled to treatment and diagnostic techniques that are prescribed by the physician or health care provider included in the preferred provider benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.152. CONTINUING CARE IN GENERAL. (a) An insurer shall establish reasonable procedures for ensuring a transition of insureds to physicians or health care providers and for continuity of

treatment.

(b) An insurer shall:

(1) provide, subject to Section 1301.160, reasonable advance notice to an insured of the impending termination of the participation in the plan of a physician or health care provider who is currently treating the insured; and

(2) in the event of termination of a preferred provider's participation in the plan, make available to the insured a current listing of preferred providers.

(c) A contract between an insurer and a physician or health care provider must include a procedure for resolving disputes regarding the necessity for continued treatment by the physician or provider.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.153. CONTINUITY OF CARE. (a) In this section:

(1) "Life-threatening" means a disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(2) "Special circumstances" means a condition regarding which the treating physician or health care provider reasonably believes that discontinuing care by the treating physician or provider could cause harm to the insured. Examples of an insured who has a special circumstance include an insured with a disability, acute condition, or life-threatening illness or an insured who is past the 24th week of pregnancy.

(b) Each contract between an insurer and a physician or health care provider must provide that the termination of the physician's or provider's participation in a preferred provider benefit plan, except for reason of medical competence or professional behavior, does not:

(1) release the physician or health care provider from the generally recognized obligation to:

(A) treat an insured whom the physician or provider is currently treating; and

(B) cooperate in arranging for appropriate referrals; or

(2) release the insurer from the obligation to reimburse the physician or health care provider or, if applicable, the insured,

at the same preferred provider rate if, at the time a physician's or provider's participation is terminated, an insured whom the physician or provider is currently treating has special circumstances in accordance with the dictates of medical prudence.

(c) The treating physician or health care provider shall identify a special circumstance. The treating physician or health care provider shall:

(1) request that the insured be permitted to continue treatment under the physician's or provider's care; and

(2) agree not to seek payment from the insured of any amount for which the insured would not be responsible if the physician or provider were still a preferred provider.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.154. OBLIGATION FOR CONTINUITY OF CARE OF INSURER. (a) Except as provided by Subsection (b), Sections 1301.152 and 1301.153 do not extend an insurer's obligation to reimburse the terminated physician or provider or, if applicable, the insured at the preferred provider level of coverage for ongoing treatment of an insured after:

(1) the 90th day after the effective date of the termination; or

(2) if the insured has been diagnosed as having a terminal illness at the time of the termination, the expiration of the nine-month period after the effective date of the termination.

(b) If an insured is past the 24th week of pregnancy at the time of termination, an insurer's obligation to reimburse, at the preferred provider level of coverage, the physician or provider or, if applicable, the insured, extends through delivery of the child, immediate postpartum care, and the follow-up checkup within the six-week period after delivery.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.155. EMERGENCY CARE. (a) In this section, "emergency care" means health care services provided in a hospital emergency facility, freestanding emergency medical care facility, or comparable emergency facility to evaluate and stabilize a medical

condition of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the person's condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(1) placing the person's health in serious jeopardy;

(2) serious impairment to bodily functions;

(3) serious dysfunction of a bodily organ or part;

(4) serious disfigurement; or

(5) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

(b) If an insured cannot reasonably reach a preferred provider, an insurer shall provide reimbursement for the following emergency care services at the usual and customary rate or at an agreed rate and at the preferred level of benefits until the insured can reasonably be expected to transfer to a preferred provider:

(1) a medical screening examination or other evaluation required by state or federal law to be provided in the emergency facility of a hospital that is necessary to determine whether a medical emergency condition exists;

(2) necessary emergency care services, including the treatment and stabilization of an emergency medical condition;

(3) services originating in a hospital emergency facility or freestanding emergency medical care facility following treatment or stabilization of an emergency medical condition; and

(4) supplies related to a service described by this subsection.

(c) For emergency care subject to this section or a supply related to that care, an insurer shall make a payment required by this section directly to the out-of-network provider not later than, as applicable:

(1) the 30th day after the date the insurer receives an electronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim; or

(2) the 45th day after the date the insurer receives a nonelectronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim.

(d) For emergency care subject to this section or a supply

related to that care, an out-of-network provider or a person asserting a claim as an agent or assignee of the provider may not bill an insured in, and the insured does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the insured's preferred provider benefit plan that:

(1) is based on:

(A) the amount initially determined payable by the insurer; or

(B) if applicable, a modified amount as determined under the insurer's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(e) This section may not be construed to require the imposition of a penalty under Section 1301.137.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1273 (H.B. 1357), Sec. 5, eff. March 1, 2010.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.08, eff. September 1, 2019.

Sec. 1301.156. PAYMENT OF CLAIMS TO INSURED. An insurer shall comply with Subchapter B, Chapter 542, with respect to prompt payment to insureds.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.157. PLAIN LANGUAGE REQUIREMENTS. Each health insurance policy, health benefit plan certificate, endorsement, amendment, application, or rider must:

(1) be written in plain language;

(2) be in a readable and understandable format; and

(3) comply with all applicable requirements relating to minimum readability requirements.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.158. INFORMATION CONCERNING PREFERRED PROVIDER BENEFIT PLANS. (a) In this section, "prospective insured" means:

(1) for group coverage, an individual or an individual's dependent who is eligible for coverage under a health insurance policy issued to the group; or

(2) for individual coverage, an individual or an individual's dependent who is eligible for coverage and who has expressed an interest in purchasing an individual health insurance policy.

(b) An insurer shall provide to a current or prospective group contract holder or current or prospective insured on request an accurate written description of the terms of the health insurance policy to allow the current or prospective group contract holder or current or prospective insured to make comparisons and an informed decision before selecting among health care plans. The description must be in a readable and understandable format as prescribed by the commissioner and must include a current list of preferred providers. The insurer may satisfy this requirement by providing its handbook if:

(1) the handbook's content is substantively similar to and achieves the same level of disclosure as the written description prescribed by the commissioner; and

(2) the current list of preferred providers is provided.

(c) An insurer or an agent or representative of an insurer may not use or distribute, or permit the use or distribution of, information for prospective insureds that is untrue or misleading.

(d) An insurer shall provide to an insured on request information on:

(1) whether a physician or other health care provider is a participating provider in the insurer's preferred provider network;

(2) whether proposed health care services are covered by the health insurance policy;

(3) what the insured's personal responsibility will be for payment of applicable copayment or deductible amounts; and

(4) coinsurance amounts owed based on the provider's contracted rate for in-network services or the insurer's usual and customary reimbursement rate for out-of-network services.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 14, eff. September 1, 2007.

Sec. 1301.1581. INFORMATION CONCERNING EXCLUSIVE PROVIDER BENEFIT PLANS. (a) In this section, "prospective insured" has the meaning assigned by Section 1301.158.

(b) In addition to the information required to be provided under Section 1301.158, an insurer that offers an exclusive provider benefit plan shall provide to a current or prospective group contract holder or current or prospective insured notice that the benefit plan includes limited coverage for services provided by a physician or health care provider that is not a preferred provider.

(c) An identification card or similar document issued by an insurer to an insured in an exclusive provider benefit plan must display:

(1) the first date on which the insured became insured under the plan;

(2) a toll-free number that a physician or health care provider may use to obtain the date on which the insured became insured under the plan; and

(3) the acronym "EPO" or the phrase "Exclusive Provider Organization" on the card in a location of the insurer's choice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 288 (H.B. 1772), Sec. 10, eff. September 1, 2011.

Sec. 1301.159. ANNUAL LIST OF PREFERRED PROVIDERS. A current list of preferred providers shall be provided to each insured at least annually.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.1591. PREFERRED PROVIDER INFORMATION ON INTERNET. (a) An insurer subject to this chapter that maintains an Internet site shall list on the Internet site the preferred providers, including, if appropriate, mental health providers and substance abuse treatment providers, that insureds may use in accordance with the terms of the insured's preferred provider benefit plan. The

listing must identify those preferred providers who continue to be available to provide services to new patients or clients.

(b) The insurer shall update at least quarterly an Internet site subject to this section.

(c) The commissioner may adopt rules as necessary to implement this section. The rules may govern the form and content of the information required to be provided under Subsection (a).

(d) Notwithstanding any other provision of this chapter, this section applies to an entity subject to Chapter 941 or 942 and to a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.036(a), eff. September 1, 2005.

Sec. 1301.160. NOTIFICATION OF TERMINATION OF PARTICIPATION OF PREFERRED PROVIDER. (a) If a practitioner's participation in a preferred provider benefit plan is terminated for a reason other than at the practitioner's request, an insurer may not notify insureds of the termination until the later of:

(1) the effective date of the termination; or

(2) the time at which a review panel makes a formal recommendation regarding the termination.

(b) A physician or health care provider that voluntarily terminates the physician's or provider's participation in a preferred provider benefit plan shall provide reasonable notice to each insured under the physician's or provider's care. The insurer shall provide assistance to the physician or provider in ensuring that the notice requirements of this subsection are met.

(c) If a practitioner's participation in a preferred provider benefit plan is terminated for reasons related to imminent harm, an insurer may notify insureds immediately.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.161. RETALIATION AGAINST INSURED PROHIBITED. An insurer may not engage in any retaliatory action against an insured, including canceling or refusing to renew a health insurance policy, because the insured or a person acting on the insured's behalf has:

(1) filed a complaint against the insurer or against a preferred provider; or

(2) appealed a decision of the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.162. IDENTIFICATION CARD. An identification card or other similar document issued by an insurer regulated by this code and subject to this chapter to an individual insured must display:

(1) the first date on which the individual became insured under the plan; or

(2) a toll-free number a physician or health care provider may use to obtain that date.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.037(e), eff. September 1, 2005.

Sec. 1301.163. APPLICABILITY OF SUBCHAPTER TO ENTITIES CONTRACTING WITH INSURER. This subchapter applies to a person to whom an insurer contracts to:

(1) process or pay claims;

(2) obtain the services of physicians or other providers to provide health care services to enrollees; or

(3) issue verifications or preauthorizations.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 15, eff. September 1, 2007.

Sec. 1301.164. OUT-OF-NETWORK FACILITY-BASED PROVIDERS. (a) In this section, "facility-based provider" means a physician or health care provider who provides medical care or health care services to patients of a health care facility.

(b) Except as provided by Subsection (d), an insurer shall pay for a covered medical care or health care service performed for or a covered supply related to that service provided to an insured by an out-of-network provider who is a facility-based provider at the usual and customary rate or at an agreed rate if the provider performed the service at a health care facility that is a preferred provider. The

insurer shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the insurer receives an electronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim; or

(2) the 45th day after the date the insurer receives a nonelectronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a facility-based provider or a person asserting a claim as an agent or assignee of the provider may not bill an insured receiving a medical care or health care service or supply described by Subsection (b) in, and the insured does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the insured's preferred provider benefit plan that:

(1) is based on:

(A) the amount initially determined payable by the insurer; or

(B) if applicable, a modified amount as determined under the insurer's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an insured elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the insured that:

(A) explains that the provider does not have a contract with the insured's preferred provider benefit plan;

(B) discloses projected amounts for which the insured may be responsible; and

(C) discloses the circumstances under which the insured would be responsible for those amounts.

(e) This section may not be construed to require the imposition

of a penalty under Section 1301.137.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.09, eff. September 1, 2019.

Sec. 1301.165. OUT-OF-NETWORK DIAGNOSTIC IMAGING PROVIDER OR LABORATORY SERVICE PROVIDER. (a) In this section, "diagnostic imaging provider" and "laboratory service provider" have the meanings assigned by Section 1467.001.

(b) Except as provided by Subsection (d), an insurer shall pay for a covered medical care or health care service performed by or a covered supply related to that service provided to an insured by an out-of-network provider who is a diagnostic imaging provider or laboratory service provider at the usual and customary rate or at an agreed rate if the provider performed the service in connection with a medical care or health care service performed by a preferred provider. The insurer shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the insurer receives an electronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim; or

(2) the 45th day after the date the insurer receives a nonelectronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a diagnostic imaging provider or laboratory service provider or a person asserting a claim as an agent or assignee of the provider may not bill an insured receiving a medical care or health care service or supply described by Subsection (b) in, and the insured does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the insured's preferred provider benefit plan that:

(1) is based on:

(A) the amount initially determined payable by the insurer; or

(B) if applicable, the modified amount as determined under the insurer's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an insured elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the insured that:

(A) explains that the provider does not have a contract with the insured's preferred provider benefit plan;

(B) discloses projected amounts for which the insured may be responsible; and

(C) discloses the circumstances under which the insured would be responsible for those amounts.

(e) This section may not be construed to require the imposition of a penalty under Section 1301.137.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.09, eff. September 1, 2019.

For expiration of this section, see Subsection (g).

Sec. 1301.166. OUT-OF-NETWORK EMERGENCY MEDICAL SERVICES PROVIDER. (a) In this section, "emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code, except that the term does not include an air ambulance.

(b) Except as provided by Subsection (c), an insurer shall pay for a covered medical care or health care service performed for, or a covered supply or covered transport related to that service provided to, an insured by an out-of-network provider who is an emergency medical services provider at:

(1) if the political subdivision has submitted the rate to the department under Section 38.006, the rate set, controlled, or regulated by the political subdivision in which:

(A) the service originated; or

(B) the transport originated if transport is provided; or

(2) if the political subdivision has not submitted the rate

to the department, the lesser of:

(A) the provider's billed charge; or

(B) 325 percent of the current Medicare rate, including any applicable extenders and modifiers.

(c) An insurer shall adjust a payment required by Subsection (b)(1) each plan year by increasing the payment by the lesser of the Medicare Inflation Index or 10 percent of the provider's previous calendar year rates.

(d) The insurer shall make a payment required by this section directly to the provider not later than, as applicable:

(1) the 30th day after the date the insurer receives an electronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim; or

(2) the 45th day after the date the insurer receives a nonelectronic clean claim as defined by Section 1301.101 for those services that includes all information necessary for the insurer to pay the claim.

(e) An out-of-network provider who is an emergency medical services provider or a person asserting a claim as an agent or assignee of the provider may not bill an insured receiving a medical care or health care service or supply or transport described by Subsection (b) in, and the insured does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the insured's preferred provider benefit plan that is based on:

(1) the amount initially determined payable by the insurer; or

(2) if applicable, the modified amount as determined under the insurer's internal appeal process.

(f) This section may not be construed to require the imposition of a penalty under Section 1301.137.

(g) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 8, eff. September 1, 2023.

SUBCHAPTER E. CERTAIN HEALTH CARE PROVIDERS

Sec. 1301.201. CONTRACTS WITH AND REIMBURSEMENT FOR NURSE FIRST

ASSISTANTS. A preferred provider may not refuse to:

(1) contract with a nurse first assistant, as defined by Section 301.1525, Occupations Code, to be included in the provider's network; or

(2) reimburse the nurse first assistant for a covered service that a physician has requested the nurse first assistant to perform.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1301.202. CONTRACTS WITH HOSPITALS. (a) An insurer that contracts with hospitals to provide services to insureds under a preferred provider benefit plan may not deny a hospital the opportunity to participate in providing health care services as a preferred provider solely because the hospital is not accredited by the Joint Commission on Accreditation of Healthcare Organizations or another specified national accrediting body. If a hospital is certified by the Medicare program, Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.), or accredited by the Joint Commission on Accreditation of Healthcare Organizations or another national accrediting body, an insurer shall accept that certification or accreditation.

(b) This section does not limit an insurer's authority to establish other reasonable terms under which a hospital may provide health care services to individuals covered by a preferred provider benefit plan.

(c) On the request of a hospital, the commissioner shall conduct an investigation, review, hearing, or other proceeding to determine whether an insurer is complying with this section.

(d) The commissioner shall take reasonable action to ensure compliance with this section, including issuing orders and imposing sanctions.

Added by Acts 2005, 79th Leg., Ch. 1305 (H.B. 2999), Sec. 1, eff. June 18, 2005.

CHAPTER 1305. WORKERS' COMPENSATION HEALTH CARE NETWORKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1305.001. SHORT TITLE. This chapter may be cited as the

Workers' Compensation Health Care Network Act.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.002. PURPOSE. The purpose of this chapter is to:

(1) authorize the establishment of workers' compensation health care networks for the provision of workers' compensation medical benefits; and

(2) provide standards for the certification, administration, evaluation, and enforcement of the delivery of health care services to injured employees by networks contracting with or established by:

(A) workers' compensation insurance carriers;

(B) employers certified to self-insure under Chapter 407, Labor Code;

(C) groups of employers certified to self-insure under Chapter 407A, Labor Code; and

(D) governmental entities that self-insure, either individually or collectively.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.003. LIMITATIONS ON APPLICABILITY. (a) This chapter does not affect the authority of the division of workers' compensation of the department to exercise the powers granted to the division under Title 5, Labor Code, that do not conflict with this chapter.

(b) In the event of a conflict between Title 5, Labor Code, and this chapter as to the provision of medical benefits for injured employees, the establishment and regulation of fees for medical treatments and services, the time frames for payment of medical bills, the operation and regulation of workers' compensation health care networks, the regulation of health care providers who contract with those networks, or the resolution of disputes regarding medical benefits provided through those networks, this chapter prevails.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff.

September 1, 2005.

Sec. 1305.004. DEFINITIONS. (a) In this chapter, unless the context clearly indicates otherwise:

(1) "Adverse determination" has the meaning assigned by Chapter 4201.

(1-a) "Administrator" has the meaning assigned by Section 4151.001.

(2) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

(3) "Capitation" means a method of compensation for arranging for or providing health care services to employees for a specified period that is based on a predetermined payment for each employee for the specified period, without regard to the quantity of services provided for the compensable injury.

(4) "Complainant" means a person who files a complaint under this chapter. The term includes:

(A) an employee;

(B) an employer;

(C) a health care provider; and

(D) another person designated to act on behalf of an employee.

(5) "Complaint" means any dissatisfaction expressed orally or in writing by a complainant to a network regarding any aspect of the network's operation. The term includes dissatisfaction relating to medical fee disputes and the network's administration and the manner in which a service is provided. The term does not include:

(A) a misunderstanding or a problem of misinformation that is resolved promptly by clearing up the misunderstanding or supplying the appropriate information to the satisfaction of the complainant; or

(B) an oral or written expression of dissatisfaction or disagreement with an adverse determination.

(6) "Credentialing" means the review, under nationally recognized standards to the extent that those standards do not conflict with other laws of this state, of qualifications and other relevant information relating to a health care provider who seeks a contract with a network.

(7) "Emergency" means either a medical or mental health emergency.

(8) "Employee" has the meaning assigned by Section 401.012, Labor Code.

(9) "Fee dispute" means a dispute over the amount of payment due for health care services determined to be medically necessary and appropriate for treatment of a compensable injury.

(10) "Independent review" means a system for final administrative review by an independent review organization of the medical necessity and appropriateness, or the experimental or investigational nature, of health care services being provided, proposed to be provided, or that have been provided to an employee.

(11) "Independent review organization" means an entity that is certified by the commissioner to conduct independent review under Chapter 4202 and rules adopted by the commissioner.

(12) "Life-threatening" has the meaning assigned by Chapter 4201.

(13) "Medical emergency" means the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health or bodily functions in serious jeopardy; or

(B) serious dysfunction of any body organ or part.

(14) "Medical records" means the history of diagnosis and treatment for an injury, including medical, dental, and other health care records from each health care practitioner who provides care to an injured employee.

(15) "Mental health emergency" means a condition that could reasonably be expected to present danger to the person experiencing the mental health condition or another person.

(16) "Network" or "workers' compensation health care network" means an organization that is:

(A) formed as a health care provider network to provide health care services to injured employees;

(B) certified in accordance with this chapter and commissioner rules; and

(C) established by, or operates under contract with, an insurance carrier.

(17) "Nurse" has the meaning assigned by Chapter 4201.

(18) "Person" means any natural or artificial person, including an individual, partnership, association, corporation, organization, trust, hospital district, community mental health center, intellectual disability center, mental health center, limited liability company, or limited liability partnership.

(19) "Preauthorization" means the process required to request approval from the insurance carrier or the network to provide a specific treatment or service before the treatment or service is provided.

(20) "Quality improvement program" means a system designed to continuously examine, monitor, and revise processes and systems that support and improve administrative and clinical functions.

(21) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1330, Sec. 19(1), eff. September 1, 2009.

(22) "Rural area" means:

(A) a county with a population of 50,000 or less;

(B) an area that is not designated as an urbanized area by the United States Census Bureau; or

(C) any other area designated as rural under rules adopted by the commissioner.

(23) "Screening criteria" means the written policies, medical protocols, and treatment guidelines used by an insurance carrier or a network as part of utilization review.

(24) "Service area" means a geographic area within which health care services from network providers are available and accessible to employees who live within that geographic area.

(25) "Texas Workers' Compensation Act" means Subtitle A, Title 5, Labor Code.

(26) "Transfer of risk" means, for purposes of this chapter only, an insurance carrier's transfer of financial risk for the provision of health care services to a network through capitation or other means.

(27) "Utilization review" has the meaning assigned by Chapter 4201.

(28) "Utilization review agent" has the meaning assigned by Chapter 4201.

(29) "Utilization review plan" means the screening criteria and utilization review procedures of an insurance carrier, a workers' compensation health care network, or a utilization review agent.

(b) In this chapter, the following terms have the meanings

assigned by Section 401.011, Labor Code:

(1) "compensable injury";
(2) "doctor";
(3) "employer";
(4) "health care";
(5) "health care facility";
(6) "health care practitioner";
(7) "health care provider";
(8) "injury";
(9) "insurance carrier";
(10) "orthotic device";
(11) "prosthetic device"; and
(12) "treating doctor."

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 4, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 147 (S.B. 458), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.007, eff. April 1, 2009.
Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 2.01, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 1, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 19(1), eff. September 1, 2009.
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.03, eff. September 1, 2023.

Sec. 1305.005. PARTICIPATION IN NETWORK; NOTICE OF NETWORK REQUIREMENTS. (a) An employer that elects to provide workers' compensation insurance coverage under the Texas Workers' Compensation Act may receive workers' compensation health care services for the employer's injured employees through a workers' compensation health care network.

(b) An insurance carrier may establish or contract with

networks certified under this chapter to provide health care services under the Texas Workers' Compensation Act. If an employer elects to contract with an insurance company for the provision of health care services through a network, or if a self-insured employer under Chapter 407, Labor Code, a group of employers certified to self-insure under Chapter 407A, Labor Code, or a public employer under Subtitle C, Title 5, Labor Code, elects to establish or contract with a network, the employer's employees who live within the network's service area are required to obtain medical treatment for a compensable injury within the network, except as provided by Sections 1305.006(1) and (3).

(c) Notwithstanding Subsection (b), the State Office of Risk Management shall have exclusive authority to establish or contract with networks certified under this chapter to provide health care services under Chapter 501, Labor Code.

(d) The insurance carrier shall provide to the employer, and the employer shall provide to the employer's employees, notice of network requirements, including all information required by Section 1305.451. The employer shall:

(1) obtain a signed acknowledgment from each employee, written in English, Spanish, and any other language common to the employer's employees, that the employee has received information concerning the network and the network's requirements; and

(2) post notice of the network requirements at each place of employment.

(e) The employer shall provide to each employee hired after the notice is given under Subsection (d) the notice and information required under that subsection not later than the third day after the date of hire.

(f) An injured employee who has received notice of network requirements but refuses to sign the acknowledgment form required under Subsection (d) remains subject to the network requirements established under this chapter.

(g) The employer shall notify an injured employee of the network requirements at the time the employer receives actual or constructive notice of an injury.

(h) An injured employee is not required to comply with the network requirements until the employee receives the notice under Subsection (d), (e), or (g). An insurance carrier that establishes or contracts with a network is liable for the payment of medical care

under the requirements of Title 5, Labor Code, for an injured employee who does not receive notice until the employee receives notice of network requirements under this section.

(i) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.006. INSURANCE CARRIER LIABILITY FOR OUT-OF-NETWORK HEALTH CARE. An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee:

(1) emergency care;

(2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract; and

(3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section 1305.103.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.007. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.008. ADMINISTRATOR CERTIFICATE OF AUTHORITY REQUIRED. A person that performs the functions of an administrator under Chapter 4151 must hold a certificate of authority issued under that chapter to provide those functions under this chapter for an insurance carrier.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 2.02,

eff. September 1, 2007.

SUBCHAPTER B. CERTIFICATION

Sec. 1305.051. CERTIFICATION REQUIRED. (a) A person may not operate a workers' compensation health care network in this state unless the person holds a certificate issued under this chapter and rules adopted by the commissioner.

(b) A person may not perform any act of a workers' compensation health care network except in accordance with the specific authorization of this chapter or rules adopted by the commissioner.

(c) A health maintenance organization regulated under Chapter 843 or an organization of physicians and providers that operates as a preferred provider benefit plan, as defined by Chapter 1301, may obtain a certification as a workers' compensation health care network in the same manner as any other person if that entity meets the requirements of this chapter and rules adopted by the commissioner under this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.052. CERTIFICATE APPLICATION. (a) A person who seeks to operate as a workers' compensation health care network shall apply to the department for a certificate to organize and operate as a network.

(b) A certificate application must be:

(1) filed with the department in the form prescribed by the commissioner;

(2) verified by the applicant or an officer or other authorized representative of the applicant; and

(3) accompanied by a nonrefundable fee set by commissioner rule.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.053. CONTENTS OF APPLICATION. Each certificate application must include:

(1) a description or a copy of the applicant's basic organizational structure documents and other related documents, including organizational charts or lists that show:

(A) the relationships and contracts between the applicant and any affiliates of the applicant; and

(B) the internal organizational structure of the applicant's management and administrative staff;

(2) biographical information regarding each person who governs or manages the affairs of the applicant, accompanied by information sufficient to allow the commissioner to determine the competence, fitness, and reputation of each officer or director of the applicant or other person having control of the applicant;

(3) a copy of the form of any contract between the applicant and any provider or group of providers, and with any third party performing services on behalf of the applicant under Subchapter D;

(4) a copy of the form of each contract with an insurance carrier, as described by Section 1305.154;

(5) a financial statement, current as of the date of the application, that is prepared using generally accepted accounting practices and includes:

(A) a balance sheet that reflects a solvent financial position;

(B) an income statement;

(C) a cash flow statement; and

(D) the sources and uses of all funds;

(6) a statement acknowledging that lawful process in a legal action or proceeding against the network on a cause of action arising in this state is valid if served in the manner provided by Chapter 804 for a domestic company;

(7) a description and a map of the applicant's service area or areas, with key and scale, that identifies each county or part of a county to be served;

(8) a description of programs and procedures to be utilized, including:

(A) a complaint system, as required under Subchapter I;

(B) a quality improvement program, as required under Subchapter G; and

(C) the utilization review program described in Subchapter H;

(9) a list of all contracted network providers that demonstrates the adequacy of the network to provide comprehensive health care services sufficient to serve the population of injured employees within the service area and maps that demonstrate that the access and availability standards under Subchapter G are met; and

(10) any other information that the commissioner requires by rule to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 2, eff. September 1, 2009.

Sec. 1305.054. ACTION ON APPLICATION; RENEWAL OF CERTIFICATION. (a) The commissioner shall approve or disapprove an application for certification as a network not later than the 60th day after the date the completed application is received by the department. An application is considered complete on receipt of all information required by this chapter and any commissioner rules, including receipt of any additional information requested by the commissioner as needed to make the determination.

(b) Additional information requested by the commissioner under Subsection (a) may include information derived from an on-site quality-of-care examination.

(c) The department shall notify the applicant of any deficiencies in the application and may allow the applicant to request additional time to revise the application, in which case the 60-day period for approval or disapproval is tolled. The commissioner may grant or deny requests for additional time at the commissioner's discretion.

(d) An order issued by the commissioner disapproving an application must specify in what respects the application does not comply with applicable statutes and rules. An applicant whose application is disapproved may request a hearing not later than the 30th day after the date of the commissioner's disapproval order. The hearing is a contested case hearing under Chapter 2001, Government Code.

(e) A certificate issued under this subchapter is valid until

revoked or suspended.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.055. USE OF CERTAIN INSURANCE TERMS BY NETWORK PROHIBITED. A network is not an insurer and may not use in the network's name or informational literature the word "insurance," "casualty," "surety," or "mutual" or any other word that is:

(1) descriptive of the insurance, casualty, or surety business; or

(2) deceptively similar to the name or description of an insurer or surety corporation engaging in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.056. RESTRAINT OF TRADE; APPLICATION OF CERTAIN LAWS. (a) A network that contracts with a provider or providers practicing individually or as a group is not, because of the contract or arrangement, considered to have entered into a conspiracy in restraint of trade in violation of Chapter 15, Business & Commerce Code.

(b) Notwithstanding any other law, a person who contracts under this chapter with one or more providers in the process of conducting activities that are permitted by law but that do not require a certificate of authority or other authorization under this code is not, because of the contract, considered to have entered into a conspiracy in restraint of trade in violation of Chapter 15, Business & Commerce Code.

(c) A network is subject to Chapters 441 and 443 and is considered an insurer or insurance company, as applicable, for purposes of those laws.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.008,

eff. April 1, 2009.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF WORKERS' COMPENSATION HEALTH CARE NETWORKS

Sec. 1305.101. PROVIDING OR ARRANGING FOR HEALTH CARE. (a) Except for emergencies and out-of-network referrals, a network shall provide or arrange for health care services only through providers or provider groups that are under contract with or are employed by the network.

(b) A network doctor may not serve as a designated doctor or perform a required medical examination, as those terms are used under the Texas Workers' Compensation Act, for an employee receiving medical care through a network with which the doctor contracts or is employed.

(c) Notwithstanding any other provision of this chapter, prescription medication or services, as defined by Section 401.011(19)(E), Labor Code, may not, directly or through a contract, be delivered through a workers' compensation health care network. Prescription medication and services shall be reimbursed as provided by Section 408.0281, Labor Code, other provisions of the Texas Workers' Compensation Act, and applicable rules of the commissioner of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 4, eff. June 17, 2011.

Sec. 1305.102. MANAGEMENT CONTRACTS. (a) A network may not enter into a contract with another entity for management services unless the proposed contract is first filed with the department and approved by the commissioner.

(b) The commissioner shall approve or disapprove the contract not later than the 30th day after the date the contract is filed, or within a reasonable extended period that the commissioner specifies by notice given within the 30-day period.

(c) The contract must state that:

(1) the contract may not be canceled without cause without at least 90 days' prior written notice;

(2) notice of any cancellation must be sent simultaneously to the commissioner by certified mail; and

(3) the network is responsible for ensuring that all functions delegated by the contract are performed in accordance with applicable statutes and rules, subject to the carrier's oversight and monitoring of the network's performance.

(d) The management contractor proposing to contract shall provide to the commissioner information sufficient to allow the commissioner to determine the competence, fitness, or reputation of each of the contractor's officers and directors or other person having control of the contractor, including criminal history information demonstrating that none of those individuals has been convicted of a felony involving moral turpitude or breach of fiduciary duty.

(e) The commissioner shall disapprove the proposed contract if the commissioner determines that the contract authorizes a person who is not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the network with due regard for the interests of employers, employees, creditors, or the public.

(f) The commissioner may not approve a proposed management contract unless the management contractor has in force in the management contractor's own name a fidelity bond on the contractor's officers and employees in the amount of $250,000 or a greater amount prescribed by the commissioner.

(g) The fidelity bond must be issued by an insurer authorized to engage in business in this state and must be filed with the department. If the commissioner determines that a fidelity bond is not available from an insurer authorized to engage in business in this state, the management contractor may obtain a fidelity bond procured by a surplus lines agent under Chapter 981.

(h) The fidelity bond must obligate the surety to pay any loss of money or other property or damage that the network sustains because of an act of fraud or dishonesty by an employee or officer of the management contractor during the period that the management contract is in effect.

(i) In lieu of a fidelity bond, and at the commissioner's discretion, the management contractor may deposit with the comptroller cash or readily marketable liquid securities acceptable

to the commissioner. The deposit must be maintained in the amount of, and is subject to the same conditions required for, a fidelity bond under this section.

(j) A management contract approved by the commissioner under this section may not be assigned to any other entity.

(k) A management contract filed with the department under this section is confidential and is not subject to disclosure as public information under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.103. TREATING DOCTOR; REFERRALS. (a) A network shall determine the specialty or specialties of doctors who may serve as treating doctors.

(b) For each injury, an injured employee shall select a treating doctor from the list of all treating doctors under contract with the network in that service area.

(c) An employee who lives within the service area of a network and who is being treated by a non-network provider for an injury that occurred before the employer's insurance carrier established or contracted with the network, shall select a network treating doctor on notification by the carrier that health care services are being provided through the network. The carrier shall provide to the employee all information required by Section 1305.451. If the employee fails to select a treating doctor on or before the 14th day after the date of receipt of the information required by Section 1305.451, the network may assign the employee a network treating doctor. An issue regarding whether a carrier properly provided an employee the information required by this subsection may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

(d) Each network shall, by contract, require treating doctors to provide, at a minimum, the functions and services for injured employees described by this section.

(e) A treating doctor shall provide health care to the employee for the employee's compensable injury and shall make referrals to other network providers, or request referrals to out-of-network

providers if medically necessary services are not available within the network. Referrals to out-of-network providers must be approved by the network. The network shall approve a referral to an out-of-network provider not later than the seventh day after the date on which the referral is requested, or sooner if circumstances and the condition of the employee require expedited approval. If the network denies the referral request, the employee may appeal the decision through the network's complaint process under Subchapter I.

(f) The treating doctor shall participate in the medical case management process as required by the network, including participation in return-to-work planning.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 4, eff. September 1, 2011.

Sec. 1305.104. SELECTION OF TREATING DOCTOR. (a) An injured employee is entitled to the employee's initial choice of a treating doctor from the list provided by the network of all treating doctors under contract with the network who provide services within the service area in which the injured employee lives. The following does not constitute an initial choice of treating doctor:

(1) a doctor salaried by the employer;

(2) a doctor providing emergency care; or

(3) any doctor who provides care before the employee is enrolled in the network, except for a doctor selected under Section 1305.105.

(b) An employee who is dissatisfied with the initial choice of a treating doctor is entitled to select an alternate treating doctor from the network's list of treating doctors who provide services within the service area in which the injured employee lives by notifying the network in the manner prescribed by the network. The network may not deny a selection of an alternate treating doctor.

(c) An employee who is dissatisfied with an alternate treating doctor must obtain authorization from the network to select any subsequent treating doctor. The network shall establish procedures and criteria to be used in authorizing an employee to select

subsequent treating doctors. The criteria must include, at a minimum, whether:

(1) treatment by the current treating doctor is medically inappropriate;

(2) the employee is receiving appropriate medical care to reach maximum medical improvement or medical care in compliance with the network's treatment guidelines; and

(3) a conflict exists between the employee and the current treating doctor to the extent that the doctor-patient relationship is jeopardized or impaired.

(d) Denial of a request for any subsequent treating doctor is subject to the appeal process for a complaint filed under Subchapter I.

(e) For purposes of this section, the following do not constitute the selection of an alternate or any subsequent treating doctor:

(1) a referral made by the treating doctor, including a referral for a second or subsequent opinion;

(2) the selection of a treating doctor because the original treating doctor:

(A) dies;

(B) retires; or

(C) leaves the network; or

(3) a change of treating doctor required because of a change of address by the employee to a location outside the service area distance requirements, as described by Section 1305.302(g).

(f) A network shall provide that an injured employee with a chronic, life-threatening injury or chronic pain related to a compensable injury may apply to the network's medical director to use a nonprimary care physician specialist that is in the network as the injured employee's treating doctor.

(g) An application under Subsection (f) must:

(1) include information specified by the network, including certification of the medical need provided by the nonprimary care physician specialist; and

(2) be signed by the injured employee and the nonprimary care physician specialist interested in serving as the injured employee's treating doctor.

(h) To be eligible to serve as the injured employee's treating doctor, a physician specialist must agree to accept the

responsibility to coordinate all of the injured employee's health care needs.

(i) If a network denies a request under Subsection (f), the injured employee may appeal the decision through the network's established complaint resolution process under Subchapter I.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.105. TREATMENT BY A PRIMARY CARE PHYSICIAN OR PROVIDER UNDER CHAPTER 843; RECOMMENDATIONS REGARDING USE OF PREFERRED PROVIDER PLAN. (a) Notwithstanding any other provision of this chapter, an injured employee required to receive health care services within a network may select as the employee's treating doctor a doctor who the employee selected, prior to injury, as the employee's primary care physician or provider under Chapter 843, as the terms "physician" and "provider" are defined in that chapter.

(b) A doctor serving as an employee's treating doctor under Subsection (a) must agree to abide by the terms of the network's contract and comply with the provisions of this subchapter and Subchapters D and G. Services provided by such a doctor are considered to be network services and are subject to Subchapters H and I.

(c) Any change of doctor requested by an employee being treated by a doctor under Subsection (a) must be to a network doctor and is subject to the requirements of this chapter.

(d) In studying the adequacy of networks under this chapter, the department shall offer recommendations to the 80th Legislature regarding whether to make statutory changes to allow treatment by non-network providers through a preferred provider benefit plan, as defined by Chapter 1301.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.106. PAYMENT OF HEALTH CARE PROVIDER. Notwithstanding any other provision of this chapter, an insurance carrier shall pay, reduce, deny, or determine to audit, a claim for services provided through a workers' compensation health care network

only in accordance with Section 408.027, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.107. TELEPHONE ACCESS. (a) Each network shall have appropriate personnel reasonably available through a toll-free telephone service at least 40 hours per week during normal business hours, in both time zones in this state if applicable, to discuss an employee's care and to allow response to requests for information, including information regarding adverse determinations.

(b) A network must have a telephone system capable of accepting or recording or providing instructions to incoming calls during other than normal business hours. The network shall respond to those calls not later than two business days after the date:

(1) the call was received by the network; or

(2) the details necessary to respond were received by the network from the caller.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBCHAPTER D. CONTRACTING PROVISIONS

Sec. 1305.151. TRANSFER OF RISK. A contract under this subchapter may not involve a transfer of risk.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.152. NETWORK CONTRACTS WITH PROVIDERS. (a) A network shall enter into a written contract with each provider or group of providers that participates in the network. A provider contract under this section is confidential and is not subject to disclosure as public information under Chapter 552, Government Code.

(b) A network is not required to accept an application for participation in the network from a health care provider who otherwise meets the requirements specified in this chapter for participation if the network determines that the network has

contracted with a sufficient number of qualified health care providers.

(c) Provider contracts and subcontracts must include, at a minimum, the following provisions:

(1) a hold-harmless clause stating that the network and the network's contracted providers are prohibited from billing or attempting to collect any amounts from employees for health care services under any circumstances, including the insolvency of the insurance carrier or the network, except as provided by Section 1305.451(b)(6);

(2) a statement that the provider agrees to follow treatment guidelines adopted by the network under Section 1305.304, as applicable to an employee's injury;

(3) a continuity of treatment clause that states that if a provider leaves the network, the insurance carrier or network is obligated to continue to reimburse the provider for a period not to exceed 90 days at the contracted rate for care of an employee with a life-threatening condition or an acute condition for which disruption of care would harm the employee;

(4) a clause regarding appeal by the provider of termination of provider status and applicable written notification to employees regarding such a termination, including provisions determined by the commissioner; and

(5) any other provisions required by the commissioner by rule.

(d) Continued care as described by Subsection (c)(3) must be requested by a provider. A dispute involving continuity of care is subject to the dispute resolution process under Subchapter I.

(e) An insurance carrier and a network may not use any financial incentive or make a payment to a health care provider that acts directly or indirectly as an inducement to limit medically necessary services.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.153. PROVIDER REIMBURSEMENT. (a) The amount of reimbursement for services provided by a network provider is determined by the contract between the network and the provider or

group of providers.

(b) If an insurance carrier or network has preauthorized a health care service, the insurance carrier or network or the network's agent or other representative may not deny payment to a provider except for reasons other than medical necessity.

(c) Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation.

(d) Subject to Subsection (a), billing by, and reimbursement to, contracted and out-of-network providers is subject to the requirements of the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation, as consistent with this chapter. This subsection may not be construed to require application of rules of the commissioner of workers' compensation regarding reimbursement if application of those rules would negate reimbursement amounts negotiated by the network.

(e) An insurance carrier shall notify in writing a network provider if the carrier contests the compensability of the injury for which the provider provides health care services. A carrier may not deny payment for health care services provided by a network provider before that notification on the grounds that the injury was not compensable. Payment for medically necessary health care services provided prior to written notification of a compensability denial is not subject to denial, recoupment, or refund from a network provider based on compensability. If the insurance carrier successfully contests compensability, the carrier is liable for health care provided before issuance of the notification required by this subsection, up to a maximum of $7,000.

(f) If, for the purposes of credentialing and contracting with health care providers on behalf of the certified network, a person is serving as both a management contractor under Section 1305.102 or a third party to which the network delegates a function and as an agent of the health care provider, the contract between the management contractor or third party and the health care provider must specify:

(1) the certified network's contract rate for health care services; and

(2) the amount of reimbursement the health care provider will be paid after the health care provider agent's fee for providing administrative services is applied.

(g) If a management contractor or third party to which the network delegates a function is serving as an agent for health care providers in the certified network, the management contractor or third party must disclose that relationship in its contract with the certified network.

(h) A contract described by Subsection (f), or a contract between a management contractor or third party to which the network delegates a function and a certified network, must comply with the requirements of this chapter.

(i) If a contract described by Subsection (f) complies with the requirements of this chapter, the health care provider shall be reimbursed in accordance with the terms of the contract. If a contract described by Subsection (f) does not comply with the requirements of this chapter, the health care provider shall be reimbursed in accordance with the certified network's contracted rate.

(j) A certified network, management contractor, or third party to which the network delegates a function may not require a health care provider, as a condition for contracting with the certified network, to utilize as a health care provider agent the management contractor or the third party.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 374 (H.B. 3152), Sec. 1, eff. September 1, 2013.

Sec. 1305.154. NETWORK-CARRIER CONTRACTS. (a) Except for emergencies and out-of-network referrals, a network may provide health care services to employees only through a written contract with an insurance carrier. A network-carrier contract under this section is confidential and is not subject to disclosure as public information under Chapter 552, Government Code.

(b) A carrier and a network may negotiate the functions to be provided by the network, except that the network shall contract with providers for the provision of health care, and shall perform functions related to the operation of a quality improvement program and credentialing in accordance with the requirements of this

chapter.

(c) A network's contract with a carrier must include:

(1) a description of the functions that the carrier delegates to the network, consistent with the requirements of Subsection (b), and the reporting requirements for each function;

(2) a statement that the network and any management contractor or third party to which the network delegates a function will perform all delegated functions in full compliance with all requirements of this chapter, the Texas Workers' Compensation Act, and rules of the commissioner or the commissioner of workers' compensation;

(3) a provision that the contract:

(A) may not be terminated without cause by either party without 90 days' prior written notice; and

(B) must be terminated immediately if cause exists;

(4) a hold-harmless provision stating that the network, a management contractor, a third party to which the network delegates a function, and the network's contracted providers are prohibited from billing or attempting to collect any amounts from employees for health care services under any circumstances, including the insolvency of the carrier or the network, except as provided by Section 1305.451(b)(6);

(5) a statement that the carrier retains ultimate responsibility for ensuring that all delegated functions and all management contractor functions are performed in accordance with applicable statutes and rules and that the contract may not be construed to limit in any way the carrier's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements;

(6) a statement that the network's role is to provide the services described under Subsection (b) as well as any other services or functions delegated by the carrier, including functions delegated to a management contractor, subject to the carrier's oversight and monitoring of the network's performance;

(7) a requirement that the network provide the carrier, at least monthly and in a form usable for audit purposes, the data necessary for the carrier to comply with reporting requirements of the department and the division of workers' compensation with respect to any services provided under the contract, as determined by commissioner rules;

(8) a requirement that the carrier, the network, any management contractor, and any third party to which the network delegates a function comply with the data reporting requirements of the Texas Workers' Compensation Act and rules of the commissioner of workers' compensation;

(9) a contingency plan under which the carrier would, in the event of termination of the contract or a failure to perform, reassume one or more functions of the network under the contract, including functions related to:

(A) payments to providers and notification to employees;

(B) quality of care;

(C) utilization review; and

(D) continuity of care, including a plan for identifying and transitioning employees to new providers;

(10) a provision that requires that any agreement by which the network delegates any function to a management contractor or any third party be in writing, and that such an agreement require the delegated third party or management contractor to be subject to all the requirements of this subchapter;

(11) a provision that requires the network to provide to the department the license number of a management contractor or any delegated third party who performs a function that requires a license as a utilization review agent under Chapter 4201 or any other license under this code or another insurance law of this state;

(12) an acknowledgment that:

(A) any management contractor or third party to whom the network delegates a function must perform in compliance with this chapter and other applicable statutes and rules, and that the management contractor or third party is subject to the carrier's and the network's oversight and monitoring of its performance; and

(B) if the management contractor or the third party fails to meet monitoring standards established to ensure that functions delegated to the management contractor or the third party under the delegation contract are in full compliance with all statutory and regulatory requirements, the carrier or the network may cancel the delegation of one or more delegated functions;

(13) a requirement that the network and any management contractor or third party to which the network delegates a function provide all necessary information to allow the carrier to provide

information to employees as required by Section 1305.451; and

(14) a provision that requires the network, in contracting with a third party directly or through another third party, to require the third party to permit the commissioner to examine at any time any information the commissioner believes is relevant to the third party's financial condition or the ability of the network to meet the network's responsibilities in connection with any function the third party performs or has been delegated.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 5, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.009, eff. April 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 3, eff. September 1, 2009.

Sec. 1305.1545. RESTRICTIONS ON PAYMENT AND REIMBURSEMENT. (a) An insurance carrier or administrator may not reimburse a doctor or other health care provider, an institutional provider, or an organization of doctors and health care providers on a discounted fee basis for services that are provided to an injured employee unless:

(1) the carrier or administrator has contracted with either:

(A) the doctor or other health care provider, institutional provider, or organization of doctors and health care providers; or

(B) a network that has contracted with the doctor or other health care provider, institutional provider, or organization of doctors and health care providers; and

(2) the doctor or other health care provider, institutional provider, or organization of doctors and health care providers has agreed to the contract and has agreed to provide health care services under the terms of the contract.

(b) A party to a carrier-network contract may not sell, lease, or otherwise transfer information regarding the payment or reimbursement terms of the contract without the express authority of

and prior adequate notification to the other contracting parties. This subsection does not affect the authority of the commissioner under this code to request and obtain information.

(c) An insurance carrier or administrator who violates this section:

(1) commits an unfair claim settlement practice in violation of Subchapter A, Chapter 542, Insurance Code; and

(2) is subject to administrative penalties under Chapters 82 and 84, Insurance Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 2.03, eff. September 1, 2007.

Sec. 1305.155. COMPLIANCE REQUIREMENTS. (a) An insurance carrier that becomes aware of any information that indicates that the network, any management contractor, or any third party to which the network delegates a function is not operating in accordance with the contract or is operating in a condition that renders the continuance of the network's business hazardous to employees shall:

(1) notify the network in writing of those findings;

(2) request in writing a written explanation, with documentation supporting the explanation, of:

(A) the network's apparent noncompliance with the contract; or

(B) the existence of the condition that apparently renders the continuance of the network's business hazardous to employees; and

(3) notify the commissioner and provide the department with copies of all notices and requests submitted to the network and the responses and other documentation the carrier generates or receives in response to the notices and requests.

(b) A network shall respond to a request from a carrier under Subsection (a) in writing not later than the 30th day after the date the request is received.

(c) The carrier shall cooperate with the network to correct any failure by the network to comply with any regulatory requirement of

the department.

(d) On receipt of a notice under Subsection (a), or if a complaint is filed with the department, on receipt of that complaint, the commissioner or the commissioner's designated representative shall examine the matters contained in the notice or complaint as well as any other matter relating to the financial solvency of the network or the network's ability to meet its responsibilities in connection with any function performed by the network or delegated to the network by the carrier.

(e) Except as provided by this subsection, on completion of the examination, the department shall report to the network and the carrier the results of the examination and any action the department determines is necessary to ensure that the carrier meets its responsibilities under this chapter, this code, and rules adopted by the commissioner, and that the network can meet the network's responsibilities in connection with any function delegated by the carrier or performed by the network, any management contractor, or any third party to which the network delegates a function. The department may not report to the carrier any information regarding fee schedules, prices, cost of care, or other information not relevant to the monitoring plan.

(f) The network and the carrier shall respond to the department's report and submit a corrective plan to the department not later than the 30th day after the date of receipt of the report.

(g) The commissioner may order a carrier to take any action the commissioner determines is necessary to ensure that the carrier can provide all health care services under the Texas Workers' Compensation Act, including:

(1) reassuming the functions performed by or delegated to the network, including claims payments for services previously provided to injured employees;

(2) temporarily or permanently ceasing coverage of employees through the network;

(3) complying with the contingency plan required by Section 1305.154(c)(9), including permitting an injured employee to select a treating doctor in the manner provided by Section 408.022, Labor Code; or

(4) terminating the carrier's contract with the network.

(h) The carrier retains ultimate responsibility for ensuring that all delegated functions and all management contractor functions

are performed in accordance with applicable statutes and rules and nothing in this section may be construed to limit in any way the carrier's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBCHAPTER E. FINANCIAL REQUIREMENTS

Sec. 1305.201. NETWORK FINANCIAL REQUIREMENTS. (a) Each network shall prepare financial statements in accordance with generally accepted accounting standards, which must include adequate provisions for liabilities, including incurred but not reported obligations relating to providing benefits or services.

(b) Each network shall file the financial statement under Subsection (a) with the department in the manner prescribed by commissioner rule.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBCHAPTER F. EXAMINATIONS

Sec. 1305.251. EXAMINATION OF NETWORK. (a) As often as the commissioner considers necessary, the commissioner or the commissioner's designated representative may review the operations of a network to determine compliance with this chapter. The review may include on-site visits to the network's premises.

(b) During on-site visits, the network must make available to the department all records relating to the network's operations.

(c) A network shall pay a fee to the department, in an amount set by the commissioner and in accordance with rules adopted by the commissioner, for the expenses of an examination conducted under this section or Section 1305.252 that:

(1) are incurred by the commissioner or under the commissioner's authority; and

(2) are directly attributable to that examination, including the actual salaries and expenses of the examiners directly attributable to that examination, as determined under rules adopted by the commissioner.

(d) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 188 (S.B. 1253), Sec. 2, eff. September 1, 2007.

Sec. 1305.252. EXAMINATION OF PROVIDER OR THIRD PARTY. If requested by the commissioner or the commissioner's representative, each provider, provider group, or third party with which the network has contracted to provide health care services or any other services delegated to the network by an insurance carrier shall make available for examination by the department that portion of the books and records of the provider, provider group, or third party that is relevant to the relationship with the network of the provider, provider group, or third party.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBCHAPTER G. PROVISION OF SERVICES BY NETWORK; QUALITY IMPROVEMENT PROGRAM

Sec. 1305.301. NETWORK ORGANIZATION; SERVICE AREAS. (a) The chief executive officer, operations officer, or governing body of a network is responsible for:

(1) the development, approval, implementation, and enforcement of:

(A) administrative, operational, personnel, and patient care policies; and

(B) network procedures; and

(2) the development of any documents necessary for the operation of the network.

(b) Each network shall have a chief executive officer or operations officer who:

(1) is accountable for the day-to-day administration of the network; and

(2) shall ensure compliance with all applicable statutes

and rules pertaining to the operation of the network.

(c) Each network shall have a medical director, who must be an occupational medicine specialist or employ or contract with an occupational medicine specialist, and who must be licensed to practice medicine in the United States. The medical director shall:

(1) be available at all times to address complaints, clinical issues, and any quality improvement issues on behalf of the network;

(2) be actively involved in all quality improvement activities; and

(3) comply with the network's credentialing requirements.

(d) The network shall establish one or more service areas within this state. For each defined service area, the network must:

(1) demonstrate to the satisfaction of the department the ability to provide continuity, accessibility, availability, and quality of services;

(2) specify the counties and zip code areas, or any parts of a county or zip code area, included in the service area; and

(3) provide a complete provider directory to all policyholders who have selected a network in the service area.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.302. ACCESSIBILITY AND AVAILABILITY REQUIREMENTS. (a) All services specified by this section must be provided by a provider who holds an appropriate license, unless the provider is exempt from license requirements.

(b) The network shall ensure that the network's provider panel includes an adequate number of treating doctors and specialists, who must be available and accessible to employees 24 hours a day, seven days a week, within the network's service area. A network must include sufficient numbers and types of health care providers to ensure choice, access, and quality of care to injured employees. An adequate number of the treating doctors and specialists must have admitting privileges at one or more network hospitals located within the network's service area to ensure that any necessary hospital admissions are made.

(c) Hospital services must be available and accessible 24 hours

a day, seven days a week, within the network's service area. The network shall provide for the necessary hospital services by contracting with general, special, and psychiatric hospitals.

(d) Physical and occupational therapy services and chiropractic services must be available and accessible within the network's service area.

(e) Emergency care must be available and accessible 24 hours a day, seven days a week, without restrictions as to where the services are rendered.

(f) Except for emergencies, a network shall arrange for services, including referrals to specialists, to be accessible to employees on a timely basis on request, but not later than the last day of the third week after the date of the request.

(g) Each network shall provide that network services are sufficiently accessible and available as necessary to ensure that the distance from any point in the network's service area to a point of service by a treating doctor or general hospital is not greater than 30 miles in nonrural areas and 60 miles in rural areas and that the distance from any point in the network's service area to a point of service by a specialist or specialty hospital is not greater than 75 miles in nonrural areas and 75 miles in rural areas. For portions of the service area in which the network identifies noncompliance with this subsection, the network must file an access plan with the department in accordance with Subsection (h).

(h) The network shall submit an access plan, as required by commissioner rules, to the department for approval at least 30 days before implementation of the plan if any health care service or a network provider is not available to an employee within the distance specified by Subsection (g) because:

(1) providers are not located within that distance;

(2) the network is unable to obtain provider contracts after good faith attempts; or

(3) providers meeting the network's minimum quality of care and credentialing requirements are not located within that distance.

(i) The network may make arrangements with providers outside the service area to enable employees to receive a skill or specialty not available within the network service area.

(j) The network may not be required to expand services outside the network's service area to accommodate employees who live outside the service area.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.303. QUALITY OF CARE REQUIREMENTS. (a) A network shall develop and maintain an ongoing quality improvement program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care and services and to pursue opportunities for improvement. The quality improvement program must include return-to-work and medical case management programs.

(b) The network's governing body is ultimately responsible for the quality improvement program. The governing body shall:

(1) appoint a quality improvement committee that includes network providers;

(2) approve the quality improvement program;

(3) approve an annual quality improvement plan;

(4) meet at least annually to receive and review reports of the quality improvement committee or group of committees, and take action as appropriate; and

(5) review the annual written report on the quality improvement program.

(c) The quality improvement committee or committees shall evaluate the overall effectiveness of the quality improvement program as determined by commissioner rules.

(d) The quality improvement program must be continuous and comprehensive and must address both the quality of clinical care and the quality of services. The network shall dedicate adequate resources, including adequate personnel and information systems, to the quality improvement program.

(e) The network shall develop a written description of the quality improvement program that outlines the organizational structure of the program, the functional responsibilities of the program, and the frequency of committee meetings.

(f) The network shall develop an annual quality improvement work plan designed to reflect the type of services and the populations served by the network in terms of age groups, disease or injury categories, and special risk status, such as type of industry.

(g) The network shall prepare an annual written report to the department on the quality improvement program. The report must include:

(1) completed activities;
(2) the trending of clinical and service goals;
(3) an analysis of program performance; and
(4) conclusions regarding the effectiveness of the program.

(h) Each network shall implement a documented process for the selection and retention of contracted providers, in accordance with rules adopted by the commissioner.

(i) The quality improvement program must provide for a peer review action procedure for providers, as described by Section 151.002, Occupations Code.

(j) The network shall have a medical case management program with certified case managers. Case managers shall work with treating doctors, referral providers, and employers to facilitate cost-effective care and employee return-to-work.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.304. GUIDELINES AND PROTOCOLS. Each network shall adopt treatment guidelines, return-to-work guidelines, and individual treatment protocols. The treatment guidelines and individual treatment protocols must be evidence-based, scientifically valid, and outcome-focused and be designed to reduce inappropriate or unnecessary health care while safeguarding necessary care. Treatment may not be denied solely on the basis that the treatment for the compensable injury in question is not specifically addressed by the treatment guidelines used by the insurance carrier or network.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBCHAPTER H. UTILIZATION REVIEW

Sec. 1305.351. UTILIZATION REVIEW IN NETWORK. (a) The requirements of Chapter 4201 apply to utilization review conducted in relation to claims in a workers' compensation health care network. In the event of a conflict between Chapter 4201 and this chapter, this chapter controls.

(b) Any screening criteria used for utilization review related to a workers' compensation health care network must be consistent

with the network's treatment guidelines.

(c) The preauthorization requirements of Section 413.014, Labor Code, and commissioner of workers' compensation rules adopted under that section, do not apply to health care provided through a workers' compensation network. If a network or carrier uses a preauthorization process within a network, the requirements of this subchapter and commissioner rules apply. A network or an insurance carrier may not require preauthorization of treatments and services for a medical emergency.

(d) A utilization review agent or an insurance carrier that uses doctors to perform reviews of health care services provided under this chapter, including utilization review, or peer reviews under Section 408.0231(g), Labor Code, may only use doctors licensed to practice in this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 6, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.010, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 5, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.11, eff. September 1, 2019.

Sec. 1305.353. NOTICE OF CERTAIN UTILIZATION REVIEW DETERMINATIONS; PREAUTHORIZATION REQUIREMENTS. (a) The entity performing utilization review shall notify the employee or the employee's representative, if any, and the requesting provider of a determination made in a utilization review.

(b) Notification of an adverse determination must include:

(1) the principal reasons for the adverse determination;

(2) the clinical basis for the adverse determination;

(3) a description of or the source of the screening criteria that were used as guidelines in making the determination;

(4) a description of the procedure for the reconsideration process; and

(5) notification of the availability of independent review in the form prescribed by the commissioner.

(c) On receipt of a preauthorization request from a provider for proposed services that require preauthorization, the utilization review agent shall issue and transmit a determination indicating whether the proposed health care services are preauthorized. The utilization review agent shall respond to requests for preauthorization within the periods prescribed by this section.

(d) For services not described under Subsection (e) or (f), the determination under Subsection (c) must be issued and transmitted not later than the third working day after the date the request is received. For the purposes of this subsection, "working day" has the meaning assigned by Section 4201.002.

(e) If the proposed services are for concurrent hospitalization care, the utilization review agent shall, within 24 hours of receipt of the request, transmit a determination indicating whether the proposed services are preauthorized.

(f) If the proposed health care services involve poststabilization treatment or a life-threatening condition, the utilization review agent shall transmit to the requesting provider a determination indicating whether the proposed services are preauthorized within the time appropriate to the circumstances relating to the delivery of the services and the condition of the patient, not to exceed one hour from receipt of the request. If the utilization review agent issues an adverse determination in response to a request for poststabilization treatment or a request for treatment involving a life-threatening condition, the utilization review agent shall provide to the employee or the employee's representative, if any, and the employee's treating provider the notification required under Subsection (a).

(g) For life-threatening conditions, the notification of adverse determination must include notification of the availability of independent review in the form prescribed by the commissioner.

(h) Treatments and services for an emergency do not require preauthorization.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 972 (H.B. 3625), Sec. 1, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 6, eff. September 1, 2009.

Sec. 1305.354. RECONSIDERATION OF ADVERSE DETERMINATION. (a) A utilization review agent shall maintain and make available a written description of the reconsideration procedures involving an adverse determination. The reconsideration procedures must be reasonable and must include:

(1) a provision stating that reconsideration must be performed by a provider other than the provider who made the original adverse determination;

(2) a provision that an employee, a person acting on behalf of the employee, or the employee's requesting provider may, not later than the 30th day after the date of issuance of written notification of an adverse determination, request reconsideration of the adverse determination either orally or in writing;

(3) a provision that, not later than the fifth calendar day after the date of receipt of the request, the network shall send to the requesting party a letter acknowledging the date of the receipt of the request that includes a reasonable list of documents the requesting party is required to submit;

(4) a provision that, after completion of the review of the request for reconsideration of the adverse determination, the utilization review agent shall issue a response letter to the employee or person acting on behalf of the employee, and the employee's requesting provider, that:

(A) explains the resolution of the reconsideration; and

(B) includes:

(i) a statement of the specific medical or clinical reasons for the resolution;

(ii) the medical or clinical basis for the decision;

(iii) the professional specialty of any provider consulted; and

(iv) notice of the requesting party's right to seek review of the denial by an independent review organization and the procedures for obtaining that review; and

(5) written notification to the requesting party of the

determination of the request for reconsideration as soon as practicable, but not later than the 30th day after the date the utilization review agent received the request.

(b) In addition to the written request for reconsideration, the reconsideration procedures must include a method for expedited reconsideration procedures for denials of proposed health care services involving poststabilization treatment or life-threatening conditions, and for denials of continued stays for hospitalized employees. The procedures must include a review by a provider who has not previously reviewed the case and who is of the same or a similar specialty as a provider who typically manages the condition, procedure, or treatment under review. The period during which that reconsideration must be completed shall be based on the medical or clinical immediacy of the condition, procedure, or treatment, but may not exceed one calendar day from the date of receipt of all information necessary to complete the reconsideration.

(c) Notwithstanding Subsection (a) or (b), an employee with a life-threatening condition is entitled to an immediate review by an independent review organization and is not required to comply with the procedures for a reconsideration of an adverse determination.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.355. INDEPENDENT REVIEW OF ADVERSE DETERMINATION. (a) The utilization review agent shall:

(1) permit the employee or person acting on behalf of the employee and the employee's requesting provider whose reconsideration of an adverse determination is denied to seek review of that determination within the period prescribed by Subsection (b) by an independent review organization assigned in accordance with Chapter 4202 and commissioner rules; and

(2) provide to the appropriate independent review organization, not later than the third business day after the date the utilization review agent receives notification of the assignment of the request to an independent review organization:

(A) any medical records of the employee that are relevant to the review;

(B) any documents used by the utilization review agent

in making the determination;

(C) the response letter described by Section 1305.354(a)(4);

(D) any documentation and written information submitted in support of the request for reconsideration; and

(E) a list of the providers who provided care to the employee and who may have medical records relevant to the review.

(b) A request for independent review under Subsection (a) must be timely filed by the requestor as follows:

(1) for a request for preauthorization or concurrent review by an independent review organization, not later than the 45th day after the date of denial of a reconsideration for health care requiring preauthorization or concurrent review; or

(2) for a request for retrospective medical necessity review, not later than the 45th day after the denial of reconsideration.

(c) The insurance carrier shall pay for the independent review provided under this subchapter.

(d) The department shall assign the review request to an independent review organization. An independent review organization that uses doctors to perform reviews of health care services under this chapter may only use doctors licensed to practice in this state.

(e) A party to a medical dispute that remains unresolved after a review under this section is entitled to a hearing and judicial review of the decision in accordance with Section 1305.356. The division of workers' compensation and the department are not considered to be parties to the medical dispute.

(f) A determination of an independent review organization related to a request for preauthorization or concurrent review is binding during the pendency of a dispute and the carrier and network shall comply with the determination.

(g) If a contested case hearing or judicial review is not sought under Section 1305.356, the carrier and network shall comply with the independent review organization's determination.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 133 (H.B. 1003), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.011, eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 2, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.12, eff. September 1, 2019.

Sec. 1305.356. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute that remains unresolved after a review under Section 1305.355 is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the department's division of workers' compensation in the same manner as a hearing conducted under Section 413.0311, Labor Code.

(b) At a contested case hearing held under Subsection (a), the administrative law judge conducting the hearing shall consider evidence-based treatment guidelines adopted by the network under Section 1305.304.

(c) A party that has exhausted all administrative remedies under Subsection (a) and is aggrieved by a final decision of the department's division of workers' compensation may seek judicial review of the decision.

(d) Judicial review under Subsection (c) shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, and is governed by the substantial evidence rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 1, eff. September 1, 2017.

SUBCHAPTER I. COMPLAINT RESOLUTION

Sec. 1305.401. COMPLAINT SYSTEM REQUIRED. (a) Each network shall implement and maintain a complaint system that provides reasonable procedures to resolve an oral or written complaint.

(b) The network may require a complainant to file the complaint

not later than the 90th day after the date of the event or occurrence that is the basis for the complaint.

(c) The complaint system must include a process for the notice and appeal of a complaint.

(d) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.402. COMPLAINT INITIATION AND INITIAL RESPONSE; DEADLINES FOR RESPONSE AND RESOLUTION. (a) If a complainant notifies a network of a complaint, the network, not later than the seventh calendar day after the date the network receives the complaint, shall respond to the complainant, acknowledging the date of receipt of the complaint and providing a description of the network's complaint procedures and deadlines.

(b) The network shall investigate and resolve a complaint not later than the 30th calendar day after the date the network receives the complaint.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.403. RECORD OF COMPLAINTS. (a) Each network shall maintain a complaint and appeal log regarding each complaint. The commissioner shall adopt rules designating the classification of network complaints under this section.

(b) Each network shall maintain a record of and documentation on each complaint, complaint proceeding, and action taken on the complaint until the third anniversary of the date the complaint was received.

(c) A complainant is entitled to a copy of the network's record regarding the complaint and any proceeding relating to that complaint.

(d) The department, during any investigation or examination of a network, may review documentation maintained under this subchapter, including original documentation, regarding a complaint and action taken on the complaint.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.404. RETALIATORY ACTION PROHIBITED. A network may not engage in any retaliatory action against an employer or employee because the employer or employee or a person acting on behalf of the employer or employee has filed a complaint against the network.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.405. POSTING OF INFORMATION ON COMPLAINT PROCESS REQUIRED. (a) A contract between a network and a provider must require the provider to post, in the provider's office, a notice to injured employees on the process for resolving complaints with the network.

(b) The notice required under Subsection (a) must include the department's toll-free telephone number for filing a complaint.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBCHAPTER J. EMPLOYEE INFORMATION AND RESPONSIBILITIES

Sec. 1305.451. EMPLOYEE INFORMATION; RESPONSIBILITIES OF EMPLOYEE. (a) An insurance carrier that establishes or contracts with a network shall provide to employers, and the employer shall provide to its employees, an accurate written description of the terms and conditions for obtaining health care within the network's service area.

(b) The written description required under Subsection (a) must be in English, Spanish, and any additional language common to an employer's employees, must be in plain language and in a readable and understandable format, and must include, in a clear, complete, and accurate format:

(1) a statement that the entity providing health care to employees is a workers' compensation health care network;

(2) the network's toll-free number and address for obtaining additional information about the network, including

information about network providers;

(3) a statement that in the event of an injury, the employee must select a treating doctor:

(A) from a list of all the network's treating doctors who have contracts with the network in that service area; or

(B) as described by Section 1305.105;

(4) a statement that, except for emergency services, the employee shall obtain all health care and specialist referrals through the employee's treating doctor;

(5) an explanation that network providers have agreed to look only to the network or insurance carrier and not to employees for payment of providing health care, except as provided by Subdivision (6);

(6) a statement that if the employee obtains health care from non-network providers without network approval, except as provided by Section 1305.006, the insurance carrier may not be liable, and the employee may be liable, for payment for that health care;

(7) information about how to obtain emergency care services, including emergency care outside the service area, and after-hours care;

(8) a list of the health care services for which the insurance carrier or network requires preauthorization or concurrent review;

(9) an explanation regarding continuity of treatment in the event of the termination from the network of a treating doctor;

(10) a description of the network's complaint system, including a statement that the network is prohibited from retaliating against:

(A) an employee if the employee files a complaint against the network or appeals a decision of the network; or

(B) a provider if the provider, on behalf of an employee, reasonably files a complaint against the network or appeals a decision of the network;

(11) a summary of the insurance carrier's or network's procedures relating to adverse determinations and the availability of the independent review process;

(12) a list of network providers updated at least quarterly, including:

(A) the names and addresses of the providers;

(B) a statement of limitations of accessibility and referrals to specialists; and

(C) a disclosure of which providers are accepting new patients; and

(13) a description of the network's service area.

(c) The network and the network's representatives and agents may not cause or knowingly permit the use or distribution to employees of information that is untrue or misleading.

(d) A network that contracts with an insurance carrier shall provide all the information necessary to allow the carrier to comply with this section.

(e) An issue regarding whether an employer properly provided an employee with the information required by this section may be resolved using the process for adjudication of disputes under Chapter 410, Labor Code, as used by the department's division of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 5, eff. September 1, 2011.

SUBCHAPTER K. EVALUATION OF NETWORKS; CONSUMER REPORT CARD

Sec. 1305.502. CONSUMER REPORT CARDS. (a) Not later than December 1 of each even-numbered year, the group shall develop and issue an informational report card that identifies and compares, on an objective basis, the quality, costs, health care provider availability, and other analogous factors of workers' compensation health care networks operating under the workers' compensation system of this state with each other and with medical care provided outside of networks.

(b) The group may procure services as necessary to produce the report card. The report card must include a risk-adjusted evaluation of:

(1) employee access to care;

(2) return-to-work outcomes;

(3) health-related outcomes;

(4) employee satisfaction with care; and

(5) health care costs and utilization of health care.

(c) The report cards may be based on information or data from any person, agency, organization, or governmental entity that the group considers reliable. The group may not endorse or recommend a specific workers' compensation health care network or plan, or subjectively rate or rank networks or plans, other than through comparison and evaluation of objective criteria.

(d) The commissioner shall ensure that consumer report cards issued by the group under this section are accessible to the public on the department's Internet website and available to any person on request. The commissioner by rule may set a reasonable fee for obtaining a paper copy of report cards.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 670 (H.B. 1753), Sec. 1, eff. June 15, 2021.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 21, eff. September 1, 2021.

Sec. 1305.503. CONFIDENTIALITY REQUIREMENTS. (a) As necessary to implement this subchapter, the department may access information from an executive agency that is otherwise confidential under any law of this state, including the Texas Workers' Compensation Act.

(b) Confidential information provided to or obtained by the department under this section remains confidential and is not subject to disclosure under Chapter 552, Government Code. The department may not release, and a person may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of an injured employee; or

(2) discloses provider discounts or differentials between payments and billed charges for individual providers or networks.

(c) Information that is in the possession of the department and that relates to an individual injured employee, and any compilation, report, or analysis produced from the information that identifies an individual injured employee, are not:

(1) subject to discovery, subpoena, or other means of legal

compulsion for release to any person; or

(2) admissible in any civil, administrative, or criminal proceeding.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBCHAPTER L. DISCIPLINARY ACTIONS

Sec. 1305.551. DETERMINATION OF VIOLATION; NOTICE. (a) If the commissioner determines that a network, insurance carrier, or any other person or third party operating under this chapter, including a third party to which a network delegates a function, or any third party with which a network contracts for management services, is in violation of this chapter, rules adopted by the commissioner under this chapter, or applicable provisions of the Labor Code or rules adopted under that code, the commissioner or a designated representative may notify the network, insurance carrier, person, or third party of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred.

(b) The commissioner's designated representative may initiate the proceedings under this section.

(c) A proceeding under this section is a contested case under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

Sec. 1305.552. DISCIPLINARY ACTIONS. If under Section 1305.551 the commissioner determines that a network, insurance carrier, or other person or third party described under Section 1305.551 has violated or is violating this chapter, rules adopted by the commissioner under this chapter, or the Labor Code or rules adopted under that code, the commissioner may:

(1) suspend or revoke a certificate issued under this code;

(2) impose sanctions under Chapter 82;

(3) issue a cease and desist order under Chapter 83;

(4) impose administrative penalties under Chapter 84; or

(5) take any combination of these actions.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 4.02, eff. September 1, 2005.

SUBTITLE E. BENEFITS PAYABLE UNDER HEALTH COVERAGES

CHAPTER 1351. HOME HEALTH SERVICES

Sec. 1351.001. DEFINITIONS. In this chapter:

(1) "Health services" includes:

(A) skilled nursing by a registered nurse or a licensed vocational nurse under the supervision of at least one registered nurse and at least one physician;

(B) physical, occupational, speech, or respiratory therapy;

(C) the services of a home health aide under the supervision of a registered nurse; and

(D) the furnishing of medical equipment and supplies other than drugs or medicines.

(2) "Home health agency" means a business that:

(A) provides home health services; and

(B) is licensed by the Texas Department of Human Services under Chapter 142, Health and Safety Code.

(3) "Home health services" means the provision of health services for payment or other consideration in a patient's residence under a plan of care that is:

(A) established, approved in writing, and reviewed at least every two months by the attending physician; and

(B) certified by the attending physician as necessary for medical purposes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a group health benefit plan that is delivered or issued for delivery in this state and that is a group policy of accident and health insurance, including a policy issued by a group hospital service corporation operating under Chapter 842.

(b) This chapter applies to an accident and health insurance policy issued by a stipulated premium company subject to Chapter 884.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.003. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, the construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.004. EXCEPTION. This chapter does not apply to:

(1) a group policy of accident and health insurance that provides coverage only for:

(A) a specified disease or diseases;

(B) vision care;

(C) dental care;

(D) hospital indemnity;

(E) prescription drugs; or

(F) other limited benefits;

(2) a blanket insurance policy, as described by Chapter 1251;

(3) a short-term travel insurance policy;

(4) an accident-only insurance policy;

(5) a hospital indemnity insurance policy;

(6) a limited or specified disease insurance policy;

(7) an insurance policy or contract issued under a right of conversion; or

(8) an insurance policy or contract designed for issuance to a person eligible for Medicare coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.005. COVERAGE REQUIRED. Except as provided by Section 1351.008, a group health benefit plan must provide coverage for home health services provided by a home health agency.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.006. REIMBURSEMENT FOR HOME HEALTH SERVICES: PHYSICIAN CERTIFICATION REQUIRED. A group health benefit plan issuer may not provide reimbursement for home health services provided under the plan unless the attending physician certifies that hospitalization or confinement in a skilled facility would be required if a treatment plan for home health care were not provided.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.007. LIMITATIONS AND EXCLUSIONS ON COVERAGE PERMITTED. (a) A group health benefit plan may include:

(1) a limitation on the number of visits for home health services for which benefits are payable, subject to Subsection (b);

(2) an exclusion for home health services coverage for:

(A) custodial care;

(B) services provided by an individual who:

(i) resides in the covered individual's home; or

(ii) is a member of the covered individual's family; or

(C) services provided to a covered individual who is eligible for Medicare coverage;

(3) annual deductible and coinsurance provisions for home health services coverage that are not less favorable than the deductible or coinsurance provisions applicable to hospital services coverage under the plan; and

(4) other coverage limitations or exclusions consistent with the remaining provisions of the plan.

(b) A limitation under Subsection (a)(1) may not limit each individual covered under the plan to fewer than 60 visits in any calendar year or continuous 12-month period.

(c) For purposes of this section, each of the following is considered to be one visit for home health services:

(1) a visit by a representative of a home health agency;

(2) four hours of home health aide service; and

(3) if home health aide service extends beyond four hours, each additional four hours or portion of that four-hour period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.008. REJECTION OF COVERAGE BY PLAN HOLDER; NEGOTIATION OF ALTERNATIVE COVERAGE. (a) If the holder of a group health benefit plan rejects in writing the coverage required under this chapter, the plan issuer:

(1) may not include the coverage in the plan; and

(2) is not required to:

(A) offer the coverage to the plan holder; or

(B) provide the coverage under the plan.

(b) If a plan holder rejects in writing the coverage required under this chapter, the plan holder and the plan issuer may negotiate coverage for home health services other than the coverage required under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1351.009. ADDITIONAL COVERAGE NOT PRECLUDED. This chapter does not preclude a group health benefit plan issuer from providing coverage for home health services that exceeds the coverage required under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1352. BRAIN INJURY

Sec. 1352.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan, including, subject to this chapter, a small employer health benefit plan written under Chapter 1501, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;
(6) a Lloyd's plan operating under Chapter 941;
(7) a health maintenance organization operating under Chapter 843;
(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or
(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:
(1) a basic coverage plan under Chapter 1551;
(2) a basic plan under Chapter 1575;
(3) a primary care coverage plan under Chapter 1579; and
(4) basic coverage under Chapter 1601.

(c) This chapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 1, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 370 (H.B. 2929), Sec. 1, eff. September 1, 2013.

Sec. 1352.002. EXCEPTION; APPLICATION TO QUALIFIED HEALTH PLAN. (a) This chapter does not apply to:
(1) a plan that provides coverage:
(A) only for a specified disease or for another limited benefit other than an accident policy;
(B) only for accidental death or dismemberment;
(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;
(D) as a supplement to a liability insurance policy;
(E) for credit insurance;
(F) only for dental or vision care;
(G) only for hospital expenses; or
(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1352.001.

(b) This chapter does not apply to a standard health benefit plan issued under Chapter 1507.

(c) To the extent that a change in law made to this chapter after January 1, 2013, would otherwise require this state to make a payment under 42 U.S.C. Section 18031(d)(3)(B)(ii), a qualified health plan, as defined by 45 C.F.R. Section 155.20, is not required to provide a benefit under this section that exceeds the specified essential health benefits required under 42 U.S.C. Section 18022(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 370 (H.B. 2929), Sec. 2, eff. September 1, 2013.

Sec. 1352.003. REQUIRED COVERAGES--HEALTH BENEFIT PLANS OTHER THAN SMALL EMPLOYER HEALTH BENEFIT PLANS. (a) A health benefit plan must include coverage for cognitive rehabilitation therapy, cognitive communication therapy, neurocognitive therapy and rehabilitation, neurobehavioral, neurophysiological, neuropsychological, and psychophysiological testing and treatment, neurofeedback therapy, and remediation required for and related to treatment of an acquired brain injury.

(b) A health benefit plan must include coverage for post-acute transition services, community reintegration services, including outpatient day treatment services, or other post-acute care treatment services necessary as a result of and related to an acquired brain injury.

(c) A health benefit plan may not include, in any annual or lifetime limitation on the number of days of acute care treatment

covered under the plan, any post-acute care treatment covered under the plan.

(c-1) A health benefit plan may not limit the number of days of covered post-acute care, including any therapy or treatment or rehabilitation, testing, remediation, or other service described by Subsections (a) and (b), or the number of days of covered inpatient care to the extent that the treatment or care is determined to be medically necessary as a result of and related to an acquired brain injury. The insured's or enrollee's treating physician shall determine whether treatment or care is medically necessary for purposes of this subsection in consultation with the treatment or care provider, the insured or enrollee, and, if appropriate, members of the insured's or enrollee's family. The determination is subject to review under Section 1352.006.

(d) Except as provided by Subsection (c) or (c-1), a health benefit plan must include the same amount limitations, deductibles, copayments, and coinsurance factors for coverage required under this chapter as applicable to other medical conditions for which coverage is provided under the health benefit plan.

(e) To ensure that appropriate post-acute care treatment is provided, a health benefit plan must include coverage for reasonable expenses related to periodic reevaluation of the care of an individual covered under the plan who:

(1) has incurred an acquired brain injury;

(2) has been unresponsive to treatment; and

(3) becomes responsive to treatment at a later date.

(f) A determination of whether expenses, as described by Subsection (e), are reasonable may include consideration of factors including:

(1) cost;

(2) the time that has expired since the previous evaluation;

(3) any difference in the expertise of the physician or practitioner performing the evaluation;

(4) changes in technology; and

(5) advances in medicine.

(g) The commissioner shall adopt rules as necessary to implement this chapter.

(h) This section does not apply to a small employer health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 2, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 370 (H.B. 2929), Sec. 3, eff. September 1, 2013.

Sec. 1352.0035. REQUIRED COVERAGES--SMALL EMPLOYER HEALTH BENEFIT PLANS. (a) A small employer health benefit plan may not exclude coverage for cognitive rehabilitation therapy, cognitive communication therapy, neurocognitive therapy and rehabilitation, neurobehavioral, neurophysiological, neuropsychological, or psychophysiological testing or treatment, neurofeedback therapy, remediation, post-acute transition services, or community reintegration services necessary as a result of and related to an acquired brain injury.

(b) Coverage required under this section may be subject to deductibles, copayments, coinsurance, or annual or maximum amount limits that are consistent with the deductibles, copayments, coinsurance, or annual or maximum amount limits applicable to other medical conditions for which coverage is provided under the small employer health benefit plan.

(c) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 3, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 370 (H.B. 2929), Sec. 4, eff. September 1, 2013.

Sec. 1352.004. TRAINING FOR CERTAIN PERSONNEL REQUIRED. (a) In this section, "preauthorization" means the provision of a reliable representation to a physician or health care provider of whether a health benefit plan issuer will pay the physician or provider for proposed medical or health care services if the physician or provider provides those services to the patient for whom the services are proposed. The term includes precertification, certification,

recertification, or any other activity that involves providing a reliable representation by the issuer to a physician or health care provider.

(b) The commissioner by rule shall require a health benefit plan issuer to provide adequate training to personnel responsible for preauthorization of coverage or utilization review under the plan. The purpose of the training is to prevent denial of coverage in violation of Section 1352.003 and to avoid confusion of medical benefits with mental health benefits. The commissioner shall prescribe by rule the basic requirements for the training described by this subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.38, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.35, eff. January 1, 2016.

Sec. 1352.005. NOTICE TO INSUREDS AND ENROLLEES. (a) A health benefit plan issuer subject to this chapter, other than a small employer health benefit plan issuer, must annually notify each insured or enrollee under the plan in writing about the coverages described by Section 1352.003.

(b) The commissioner shall prescribe by rule the specific contents and wording of the notice required under this section.

(c) The notice required under this section must include:

(1) a description of the benefits listed under Section 1352.003;

(2) a statement that the fact that an acquired brain injury does not result in hospitalization or receipt of a specific treatment or service described by Section 1352.003 for acute care treatment does not affect the right of the insured or enrollee to receive benefits described by Section 1352.003 commensurate with the condition of the insured or enrollee; and

(3) a statement of the fact that benefits described by Section 1352.003 may be provided in a facility listed in Section

1352.007.

Added by Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 5, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. 200), Sec. 3.39, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. 277), Sec. 2.36, eff. January 1, 2016.

Sec. 1352.006. DETERMINATION OF MEDICAL NECESSITY; EXTENSION OF COVERAGE. (a) In this section, "utilization review" has the meaning assigned by Section 4201.002.

(b) Notwithstanding Chapter 4201 or any other law relating to the determination of medical necessity under this code, a health benefit plan shall respond to a person requesting utilization review or appealing for an extension of coverage based on an allegation of medical necessity not later than three business days after the date on which the person makes the request or submits the appeal. The person must make the request or submit the appeal in the manner prescribed by the terms of the plan's health insurance policy or agreement, contract, evidence of coverage, or similar coverage document. To comply with the requirements of this section, the health benefit plan issuer must respond through a direct telephone contact made by a representative of the issuer. This subsection does not apply to a small employer health benefit plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 5, eff. September 1, 2007.

Sec. 1352.007. TREATMENT FACILITIES. (a) A health benefit plan may not deny coverage under this chapter based solely on the fact that the treatment or services are provided at a facility other than a hospital. Treatment for an acquired brain injury may be provided under the coverage required by this chapter, as appropriate, at a facility at which appropriate services may be provided, including:

(1) a hospital regulated under Chapter 241, Health and Safety Code, including an acute or post-acute rehabilitation

hospital; and

(2) an assisted living facility regulated under Chapter 247, Health and Safety Code.

(b) This section does not apply to a small employer health benefit plan.

(c) The issuer of a health benefit plan, including a preferred provider benefit plan or health maintenance organization plan, that contracts with or approves admission to a service provider under this chapter may not, solely because a facility is licensed by this state as an assisted living facility, refuse to contract with or approve admission to that facility to provide services that are:

(1) required under this chapter;

(2) within the scope of the license of an assisted living facility; and

(3) within the scope of the services provided under a CARF-accredited rehabilitation program for brain injury or another nationally recognized accredited rehabilitation program for brain injury.

(d) The issuer of a health benefit plan that requires or encourages insureds or enrollees to use health care providers designated by the plan shall ensure that the services required by this chapter that are within the scope of the license of an assisted living facility and that may be provided under a program described by Subsection (c)(3) are made available and accessible to the insureds or enrollees at an adequate number of assisted living facilities.

(e) A health benefit plan may not treat care provided in accordance with this chapter as custodial care solely because it is provided by an assisted living facility if the facility holds a CARF accreditation or other nationally recognized accreditation for a rehabilitation program for brain injury.

(f) To ensure the health and safety of insureds and enrollees, the commissioner may require that a licensed assisted living facility that provides covered post-acute care other than custodial care under this chapter to an insured or enrollee with acquired brain injury hold a CARF accreditation or other nationally recognized accreditation for a rehabilitation program for brain injury.

Added by Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 5, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 370 (H.B. 2929), Sec. 5, eff. September 1, 2013.

Sec. 1352.008. CONSUMER INFORMATION. The commissioner shall prepare information for use by consumers, purchasers of health benefit plan coverage, and self-insurers regarding coverages recommended for acquired brain injuries. The department shall publish information prepared under this section on the department's Internet website.

Added by Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 5, eff. September 1, 2007.

CHAPTER 1353. IMMUNIZATION OR VACCINATION PROTOCOLS UNDER MANAGED CARE PLANS

Sec. 1353.001. PROHIBITED CONDUCT. A managed care entity may not:

(1) require a physician participating in a managed care plan to issue an immunization or vaccination protocol for an immunization or vaccination to be administered to an enrollee in the plan;

(2) limit an enrollee's benefits for immunizations or vaccinations to circumstances in which an immunization or vaccination protocol is issued;

(3) provide a financial incentive to a physician to issue an immunization or vaccination protocol; or

(4) impose a financial or other penalty on a physician who refuses to issue an immunization or vaccination protocol.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1353.002. RULES. The commissioner may adopt rules to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1354. ELIGIBILITY FOR BENEFITS FOR ALZHEIMER'S DISEASE

Sec. 1354.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that:

(1) provides coverage for Alzheimer's disease; and

(2) is an individual or group policy, contract, certificate, or evidence of coverage that is delivered or issued for delivery in this state by an insurer or a group hospital service corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1354.002. PROOF OF ORGANIC DISEASE. If a health benefit plan requires demonstrable proof of organic disease or other proof before the health benefit plan issuer will authorize payment of benefits for Alzheimer's disease, that proof requirement is satisfied by a clinical diagnosis of Alzheimer's disease made by a physician licensed in this state, including a history and physical, neurological, and psychological or psychiatric evaluations, and laboratory studies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1355. BENEFITS FOR CERTAIN MENTAL DISORDERS

SUBCHAPTER A. GROUP HEALTH BENEFIT PLAN COVERAGE FOR CERTAIN SERIOUS MENTAL ILLNESSES AND OTHER DISORDERS

Sec. 1355.001. DEFINITIONS. In this subchapter:

(1) "Serious mental illness" means the following psychiatric illnesses as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual (DSM):

(A) bipolar disorders (hypomanic, manic, depressive, and mixed);

(B) depression in childhood and adolescence;

(C) major depressive disorders (single episode or recurrent);

(D) obsessive-compulsive disorders;

(E) paranoid and other psychotic disorders;

(F) schizo-affective disorders (bipolar or depressive); and

(G) schizophrenia.

(2) "Small employer" has the meaning assigned by Section

1501.002.

(3) "Autism spectrum disorder" means a neurobiological disorder that includes autism, Asperger's syndrome, or Pervasive Developmental Disorder--Not Otherwise Specified.

(4) "Neurobiological disorder" means an illness of the nervous system caused by genetic, metabolic, or other biological factors.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 7, eff. September 1, 2007.

Sec. 1355.002. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a group health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(1) a group insurance policy, group insurance agreement, group hospital service contract, or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884; or

(E) a health maintenance organization operating under Chapter 843; and

(2) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a plan offered under:

(A) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(B) another analogous benefit arrangement.

(b) Notwithstanding any provision in Chapter 1575 or 1579 or any other law, Section 1355.015 applies to:

(1) a basic plan under Chapter 1575; and

(2) a primary care coverage plan under Chapter 1579.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1107 (H.B. 451), Sec. 1, eff. September 1, 2009.

Sec. 1355.003. EXCEPTION. (a) This subchapter does not apply to coverage under:

(1) a blanket accident and health insurance policy, as described by Chapter 1251;

(2) a short-term travel policy;

(3) an accident-only policy;

(4) a limited or specified-disease policy that does not provide benefits for mental health care or similar services;

(5) except as provided by Subsection (b), a plan offered under Chapter 1551 or Chapter 1601;

(6) a plan offered in accordance with Section 1355.151; or

(7) a Medicare supplement benefit plan, as defined by Section 1652.002.

(b) For the purposes of a plan described by Subsection (a)(5), "serious mental illness" has the meaning assigned by Section 1355.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.004. REQUIRED COVERAGE FOR SERIOUS MENTAL ILLNESS. (a) A group health benefit plan:

(1) must provide coverage, based on medical necessity, for not less than the following treatments of serious mental illness in each calendar year:

(A) 45 days of inpatient treatment; and

(B) 60 visits for outpatient treatment, including group and individual outpatient treatment;

(2) may not include a lifetime limitation on the number of days of inpatient treatment or the number of visits for outpatient treatment covered under the plan; and

(3) must include the same amount limitations, deductibles, copayments, and coinsurance factors for serious mental illness as the plan includes for physical illness.

(b) A group health benefit plan issuer:

(1) may not count an outpatient visit for medication management against the number of outpatient visits required to be covered under Subsection (a)(1)(B); and

(2) must provide coverage for an outpatient visit described by Subsection (a)(1)(B) under the same terms as the coverage the issuer provides for an outpatient visit for the treatment of physical illness.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.005. MANAGED CARE PLAN AUTHORIZED. A group health benefit plan issuer may provide or offer coverage required by Section 1355.004 through a managed care plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.006. COVERAGE FOR CERTAIN CONDITIONS RELATED TO CONTROLLED SUBSTANCE OR MARIHUANA NOT REQUIRED. (a) In this section, "controlled substance" and "marihuana" have the meanings assigned by Section 481.002, Health and Safety Code.

(b) This subchapter does not require a group health benefit plan to provide coverage for the treatment of:

(1) addiction to a controlled substance or marihuana that is used in violation of law; or

(2) mental illness that results from the use of a controlled substance or marihuana in violation of law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.007. SMALL EMPLOYER COVERAGE. An issuer of a group health benefit plan to a small employer must offer the coverage described by Section 1355.004 to the employer but is not required to provide the coverage if the employer rejects the coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.015. REQUIRED COVERAGE FOR CERTAIN ENROLLEES. (a) At a minimum, a health benefit plan must provide coverage for screening a child for autism spectrum disorder at the ages of 18 and 24 months.

(a-1) At a minimum, a health benefit plan must provide coverage for treatment of autism spectrum disorder as provided by this section to an enrollee who is diagnosed with autism spectrum disorder from the date of diagnosis, only if the diagnosis was in place prior to the child's 10th birthday.

(b) The health benefit plan must provide coverage under this section to the enrollee for all generally recognized services prescribed in relation to autism spectrum disorder by the enrollee's primary care physician in the treatment plan recommended by that physician. An individual providing treatment prescribed under this subsection must be:

(1) a health care practitioner:

(A) who is licensed, certified, or registered by an appropriate agency of this state;

(B) whose professional credential is recognized and accepted by an appropriate agency of the United States; or

(C) who is certified as a provider under the TRICARE military health system; or

(2) an individual acting under the supervision of a health care practitioner described by Subdivision (1).

(c) For purposes of Subsection (b), "generally recognized services" may include services such as:

(1) evaluation and assessment services;

(2) applied behavior analysis;

(3) behavior training and behavior management;

(4) speech therapy;

(5) occupational therapy;

(6) physical therapy; or

(7) medications or nutritional supplements used to address symptoms of autism spectrum disorder.

(c-1) The health benefit plan is not required to provide coverage under Subsection (b) for benefits for an enrollee 10 years of age or older for applied behavior analysis in an amount that exceeds $36,000 per year.

(d) Coverage under Subsection (b) may be subject to annual deductibles, copayments, and coinsurance that are consistent with

annual deductibles, copayments, and coinsurance required for other coverage under the health benefit plan.

(e) Notwithstanding any other law, this section does not apply to a standard health benefit plan provided under Chapter 1507.

(f) Subsection (a) does not apply to a qualified health plan defined by 45 C.F.R. Section 155.20 if a determination is made under 45 C.F.R. Section 155.170 that:

(1) this subchapter requires the qualified health plan to offer benefits in addition to the essential health benefits required under 42 U.S.C. Section 18022(b); and

(2) this state must make payments to defray the cost of the additional benefits mandated by this subchapter.

(g) To the extent that this section would otherwise require this state to make a payment under 42 U.S.C. Section 18031(d)(3)(B)(ii), a qualified health plan, as defined by 45 C.F.R. Section 155.20, is not required to provide a benefit under this section that exceeds the specified essential health benefits required under 42 U.S.C. Section 18022(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 877 (H.B. 1919), Sec. 8, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1107 (H.B. 451), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1070 (H.B. 3276), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1359 (S.B. 1484), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1359 (S.B. 1484), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 11.003(a), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 11.003(b), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(37), eff. September 1, 2015.

SUBCHAPTER B. ALTERNATIVE MENTAL HEALTH TREATMENT BENEFITS

Sec. 1355.051. DEFINITIONS. In this subchapter:

(1) "Crisis stabilization unit" means a 24-hour residential program that provides, usually for a short term, intensive supervision and highly structured activities to individuals who demonstrate a moderate to severe acute psychiatric crisis.

(2) "Individual treatment plan" means a treatment plan with specific attainable goals and objectives that are appropriate to:

(A) the patient; and

(B) the program's treatment modality.

(3) "Residential treatment center for children and adolescents" means a child-care institution that:

(A) is accredited as a residential treatment center by:

(i) the Council on Accreditation;

(ii) the Joint Commission on Accreditation of Healthcare Organizations; or

(iii) the American Association of Psychiatric Services for Children; and

(B) provides residential care and treatment for emotionally disturbed children and adolescents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a group health benefit plan that is delivered or issued for delivery in this state and that is:

(1) an accident and health insurance group policy;

(2) a group policy issued by a group hospital service corporation operating under Chapter 842; or

(3) a group health care plan provided by a health maintenance organization operating under Chapter 843.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.053. REQUIRED COVERAGE FOR CERTAIN ILLNESSES AND DISORDERS. A group health benefit plan that provides coverage for treatment of mental or emotional illness or disorder for a covered individual when the individual is confined in a hospital must also provide coverage for treatment in a residential treatment center for children and adolescents or a crisis stabilization unit that is at least as favorable as the coverage the plan provides for treatment of

mental or emotional illness or disorder in a hospital.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.054. CONDITIONS FOR COVERAGE. (a) Benefits of coverage provided under this subchapter may be used only in a situation in which:

(1) the covered individual has a serious mental illness that requires confinement of the individual in a hospital unless treatment is available through a residential treatment center for children and adolescents or a crisis stabilization unit; and

(2) the covered individual's mental illness:

(A) substantially impairs the individual's thought, perception of reality, emotional process, or judgment; or

(B) as manifested by the individual's recent disturbed behavior, grossly impairs the individual's behavior.

(b) The service for which benefits are to be paid from coverage provided under this subchapter must be:

(1) based on an individual treatment plan for the covered individual; and

(2) provided by a service provider licensed or operated by the appropriate state agency to provide those services.

(c) Benefits under coverage provided under this subchapter are subject to the same benefit maximums, durational limitations, deductibles, and coinsurance factors that apply to inpatient psychiatric treatment under the coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.055. DETERMINATIONS FOR TREATMENT IN A RESIDENTIAL TREATMENT CENTER FOR CHILDREN AND ADOLESCENTS. (a) Treatment in a residential treatment center for children and adolescents must be determined as if necessary care and treatment were inpatient care and treatment in a hospital.

(b) For the purposes of determining policy benefits and benefit maximums, each two days of treatment in a residential treatment center for children and adolescents is the equivalent of one day of treatment of mental or emotional illness or disorder in a hospital or inpatient program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.056. DETERMINATIONS FOR TREATMENT BY A CRISIS STABILIZATION UNIT. (a) Treatment by a crisis stabilization unit must be determined as if necessary care and treatment were inpatient care and treatment in a hospital.

(b) For the purposes of determining plan benefits and benefit maximums, each two days of treatment in a crisis stabilization unit is the equivalent of one day of treatment of mental or emotional illness or disorder in a hospital or inpatient program.

(c) Treatment provided to an individual by a crisis stabilization unit licensed or certified by the Health and Human Services Commission shall be reimbursed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.04, eff. September 1, 2023.

Sec. 1355.057. REVIEW AND ADJUSTMENT OF MINIMUM RATIOS OF REIMBURSEMENT. (a) The commissioner shall monitor and review the minimum ratios of reimbursement for alternative treatments required by Sections 1355.055 and 1355.056.

(b) If the commissioner finds that the limits provided by this subchapter are creating an artificial increase in the costs of services, the commissioner by rule may adjust the ratios to the extent necessary to prevent the artificial increase.

(c) Before the commissioner adjusts a ratio under Subsection (b), the commissioner must give notice and hold a hearing to:

(1) consider information related to the adjustment; and

(2) determine whether the information justifies the adjustment.

(d) The department shall review the reimbursement ratios at least every two years.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.058. HEALTH AND HUMAN SERVICES COMMISSION ASSISTANCE.

(a) The Health and Human Services Commission shall assist the department in carrying out the department's responsibilities under this subchapter.

(b) The department and the Health and Human Services Commission by rule may adopt a memorandum of understanding to carry out this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.05, eff. September 1, 2023.

SUBCHAPTER C. PSYCHIATRIC DAY TREATMENT FACILITIES

Sec. 1355.101. DEFINITION. In this subchapter, "psychiatric day treatment facility" means a mental health facility that:

(1) provides treatment for individuals suffering from acute mental and nervous disorders in a structured psychiatric program using individualized treatment plans with specific attainable goals and objectives that are appropriate to the patient and the program's treatment modality; and

(2) is clinically supervised by a doctor of medicine who is certified in psychiatry by the American Board of Psychiatry and Neurology.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a group policy of accident and health insurance delivered or issued for delivery in this state, including a group policy issued by a group hospital service corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.103. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply

to this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.104. REQUIRED COVERAGE FOR TREATMENT IN PSYCHIATRIC DAY TREATMENT FACILITY. (a) A group insurance policy that provides coverage for treatment of mental or emotional illness or disorder when an individual is confined in a hospital must also provide coverage for treatment obtained under the direction and continued medical supervision of a doctor of medicine or doctor of osteopathy in a psychiatric day treatment facility that provides organizational structure and individualized treatment plans separate from an inpatient program.

(b) The psychiatric day treatment facility coverage required by this section may not be less favorable than the hospital coverage and must be subject to the same durational limits, deductibles, and coinsurance factors.

(c) A group insurance policy subject to this section may require that:

(1) the treatment obtained in a psychiatric day treatment facility be provided by a facility that treats a patient for not more than 8 hours in any 24-hour period;

(2) the attending physician certify that the treatment is in lieu of hospitalization; and

(3) the psychiatric day treatment facility be accredited by the Program for Psychiatric Facilities, or its successor, of the Joint Commission on Accreditation of Healthcare Organizations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.105. DETERMINATIONS FOR TREATMENT IN PSYCHIATRIC DAY TREATMENT FACILITY. (a) Benefits provided under this subchapter shall be determined as if necessary care and treatment in a psychiatric day treatment facility were inpatient care and treatment in a hospital.

(b) For the purpose of determining policy benefits and benefit maximums, each full day of treatment in a psychiatric day treatment facility is the equivalent of one-half of one day of treatment of mental or emotional illness or disorder in a hospital or inpatient

program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.106. OFFER OF COVERAGE REQUIRED; ALTERNATIVE BENEFITS. (a) An insurer shall offer, and a policyholder is entitled to reject, coverage under a group insurance policy for treatment of mental or emotional illness or disorder when confined in a hospital or in a psychiatric day treatment facility.

(b) A policyholder may select an alternative level of benefits under the group insurance policy if the alternative level is offered by or negotiated with the insurer.

(c) The alternative level of benefits must provide policy benefits and benefit maximums for treatment in a psychiatric day treatment facility equal to at least one-half of that provided for treatment in a hospital, except that benefits for treatment in a psychiatric day treatment facility may not exceed the usual and customary charges of the facility.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. CERTAIN COVERAGES PROVIDED BY LOCAL GOVERNMENTS

Sec. 1355.151. PROHIBITION ON EXCLUSION OR LIMITATION OF CERTAIN COVERAGES. (a) In this section, "serious mental illness" has the meaning assigned by Section 1355.001.

(b) A political subdivision that provides group health insurance coverage, health maintenance organization coverage, or self-insured health care coverage to the political subdivision's officers or employees may not contract for or provide coverage that is less extensive for serious mental illness than the coverage provided for any other physical illness.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER E. BENEFITS FOR TREATMENT BY TAX-SUPPORTED INSTITUTION

Sec. 1355.201. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter,

construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1355.202. PROHIBITION OF EXCLUSION OF MENTAL HEALTH OR INTELLECTUAL DISABILITY BENEFITS FOR TREATMENT BY TAX-SUPPORTED INSTITUTION. (a) An individual or group accident and health insurance policy delivered or issued for delivery to a person in this state that provides coverage for mental illness or intellectual disability may not exclude benefits under that coverage for support, maintenance, and treatment provided by a tax-supported institution of this state, or by a community center for mental health services or intellectual disability services, that regularly and customarily charges patients who are not indigent for those services.

(b) In determining whether a patient is not indigent, as provided by Subchapter B, Chapter 552, Health and Safety Code, a tax-supported institution of this state or a community center for mental health services or intellectual disability services shall consider any insurance policy or policies that provide coverage to the patient for mental illness or intellectual disability.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.06, eff. September 1, 2023.

SUBCHAPTER F. COVERAGE FOR MENTAL HEALTH CONDITIONS AND SUBSTANCE USE DISORDERS

Sec. 1355.251. DEFINITIONS. In this subchapter:

(1) "Mental health benefit" means a benefit relating to an item or service for a mental health condition, as defined under the terms of a health benefit plan and in accordance with applicable federal and state law.

(2) "Nonquantitative treatment limitation" means a limit on the scope or duration of treatment that is not expressed numerically. The term includes:

(A) a medical management standard limiting or excluding

benefits based on medical necessity or medical appropriateness or based on whether a treatment is experimental or investigational;

(B) formulary design for prescription drugs;

(C) network tier design;

(D) a standard for provider participation in a network, including reimbursement rates;

(E) a method used by a health benefit plan to determine usual, customary, and reasonable charges;

(F) a step therapy protocol;

(G) an exclusion based on failure to complete a course of treatment; and

(H) a restriction based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of a benefit.

(3) "Quantitative treatment limitation" means a treatment limitation that determines whether, or to what extent, benefits are provided based on an accumulated amount such as an annual or lifetime limit on days of coverage or number of visits. The term includes a deductible, a copayment, coinsurance, or another out-of-pocket expense or annual or lifetime limit, or another financial requirement.

(4) "Substance use disorder benefit" means a benefit relating to an item or service for a substance use disorder, as defined under the terms of a health benefit plan and in accordance with applicable federal and state law.

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

Sec. 1355.252. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits or coverage for medical or surgical expenses incurred as a result of a health condition, accident, or sickness and for treatment expenses incurred as a result of a mental health condition or substance use disorder, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, an individual or group evidence of coverage, or a similar coverage document, that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a health maintenance organization operating under Chapter 843;

(6) a reciprocal exchange operating under Chapter 942;

(7) a Lloyd's plan operating under Chapter 941;

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(9) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846.

(b) Notwithstanding Section 1501.251 or any other law, this subchapter applies to coverage under a small employer health benefit plan subject to Chapter 1501.

(c) This subchapter applies to a standard health benefit plan issued under Chapter 1507.

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

Sec. 1355.253. EXCEPTIONS. (a) This subchapter does not apply to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(B) as a supplement to a liability insurance policy;

(C) for credit insurance;

(D) only for dental or vision care;

(E) only for hospital expenses;

(F) only for indemnity for hospital confinement; or

(G) only for accidents;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss(g)(1));

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a

motor vehicle insurance policy; or

(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1355.252.

(b) To the extent that this section would otherwise require this state to make a payment under 42 U.S.C. Section 18031(d)(3)(B)(ii), a qualified health plan, as defined by 45 C.F.R. Section 155.20, is not required to provide a benefit under this subchapter that exceeds the specified essential health benefits required under 42 U.S.C. Section 18022(b).

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

Sec. 1355.254. COVERAGE FOR MENTAL HEALTH CONDITIONS AND SUBSTANCE USE DISORDERS. (a) A health benefit plan must provide benefits and coverage for mental health conditions and substance use disorders under the same terms and conditions applicable to the plan's medical and surgical benefits and coverage.

(b) Coverage under Subsection (a) may not impose quantitative or nonquantitative treatment limitations on benefits for a mental health condition or substance use disorder that are generally more restrictive than quantitative or nonquantitative treatment limitations imposed on coverage of benefits for medical or surgical expenses.

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

Sec. 1355.255. COMPLIANCE. The commissioner shall enforce compliance with Section 1355.254 by evaluating the benefits and coverage offered by a health benefit plan for quantitative and nonquantitative treatment limitations in the following categories:

(1) in-network and out-of-network inpatient care;

(2) in-network and out-of-network outpatient care;

(3) emergency care; and

(4) prescription drugs.

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

Sec. 1355.256. DEFINITIONS UNDER PLAN. (a) A health benefit plan must define a condition to be a mental health condition or not a mental health condition in a manner consistent with generally recognized independent standards of medical practice.

(b) A health benefit plan must define a condition to be a substance use disorder or not a substance use disorder in a manner consistent with generally recognized independent standards of medical practice.

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

Sec. 1355.257. COORDINATION WITH OTHER LAW; INTENT OF LEGISLATURE. This subchapter supplements Subchapters A and B of this chapter and Chapter 1368 and the department rules adopted under those statutes. It is the intent of the legislature that Subchapter A or B of this chapter or Chapter 1368 or a department rule adopted under those statutes controls in any circumstance in which that other law requires:

(1) a benefit that is not required by this subchapter; or

(2) a more extensive benefit than is required by this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

Sec. 1355.2571. PARITY COMPLAINT PORTAL. (a) The commissioner shall develop and maintain a parity complaint portal that is an integrated system that allows for the enrollee of a health benefit plan to submit complaints of suspected violations of the provisions of this subchapter. The parity complaint portal must:

(1) allow for an enrollee to submit a complaint through multiple ways;

(2) provide updates on the status of an enrollee's complaint;

(3) ensure timely, effective, and equitable resolution for submitted complaints;

(4) include educational materials regarding:

(A) benefits for mental health conditions and substance use disorders required under this subchapter;

(B) an enrollee's rights and responsibilities under a health benefit plan concerning coverage under this subchapter;

(C) circumstances under which a claim may be denied; and

(D) the processes for reviewing a complaint submitted through the portal;

(5) adhere to national best practices as determined by the commissioner; and

(6) include the findings of the report required by Section 1355.2572(b).

(b) In developing the parity complaint portal under Subsection (a), the commissioner:

(1) shall conduct an assessment of complaint portals and similar systems used by other relevant public or private entities;

(2) shall develop best practice standards for complaint submissions and tracking consistent with the findings of the assessment conducted under Subdivision (1); and

(3) may develop a new complaint portal or modify an existing complaint portal.

(c) The Health and Human Services Commission shall appoint a liaison to the department to receive reports of concerns, complaints, and potential violations submitted through the parity complaint portal established under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 703 (H.B. 2595), Sec. 2, eff. September 1, 2021.

Sec. 1355.2572. EDUCATIONAL MATERIALS AND PARITY LAW TRAINING; REPORT. (a) The commissioner, in collaboration with the Health and Human Services Commission's ombudsman for behavioral health, shall develop educational materials and parity law training sessions regarding the coverage for mental health conditions and substance use disorders required under this subchapter. The commissioner shall ensure that the materials and training sessions:

(1) are available to health benefit plan issuers and enrollees;

(2) include online, print, and in-person formats;

(3) are made available through the parity complaint portal established under Section 1355.2571 and at relevant locations and settings, including:

(A) any relevant agency offices;

(B) health benefit plan provider service locations; and

(C) relevant professional conferences and trade association meetings; and

(4) include a list of relevant third-party organization educational and parity law awareness materials that provide additional information regarding mental health conditions and substance use disorder parity and, if provided in an online format, provide the links needed to access those materials online.

(b) Not later than September 1 of each year, the commissioner, in collaboration with the Health and Human Services Commission's ombudsman for behavioral health, shall:

(1) prepare and submit a report to the appropriate committees of the legislature and the appropriate state agencies on the status of:

(A) rights and responsibilities for mental health condition and substance use disorder benefits; and

(B) resolved and unresolved complaints submitted through the parity complaint portal established under Section 1355.2571(a); and

(2) publish the findings of the report under Subdivision (1) to the parity complaint portal established under Section 1355.2571(a).

Added by Acts 2021, 87th Leg., R.S., Ch. 703 (H.B. 2595), Sec. 2, eff. September 1, 2021.

Sec. 1355.258. RULES. The commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 769 (H.B. 10), Sec. 2, eff. September 1, 2017.

CHAPTER 1356. MAMMOGRAPHY AND OTHER BREAST IMAGING

Sec. 1356.001. DEFINITIONS. In this chapter:

(1) "Breast tomosynthesis" means a radiologic mammography procedure that involves the acquisition of projection images over a stationary breast to produce cross-sectional digital three-dimensional images of the breast from which applicable breast cancer screening diagnoses may be determined.

(1-a) "Diagnostic imaging" means an imaging examination using mammography, ultrasound imaging, or magnetic resonance imaging that is designed to evaluate:

(A) a subjective or objective abnormality detected by a physician or patient in a breast;

(B) an abnormality seen by a physician on a screening mammogram;

(C) an abnormality previously identified by a physician as probably benign in a breast for which follow-up imaging is recommended by a physician; or

(D) an individual with a personal history of breast cancer or dense breast tissue.

(2) "Low-dose mammography" means:

(A) the x-ray examination of the breast using equipment dedicated specifically for mammography, including an x-ray tube, filter, compression device, and screens, with an average radiation exposure delivery of less than one rad mid-breast and with two views for each breast;

(B) digital mammography; or

(C) breast tomosynthesis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 816 (H.B. 1036), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1356 (H.B. 170), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 867 (S.B. 1065), Sec. 2, eff. September 1, 2021.

Sec. 1356.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a health benefit plan, including a small employer health

benefit plan written under Chapter 1501 or coverage that is provided by a health group cooperative under Subchapter B of that chapter, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) This chapter applies to coverage under a group health benefit plan described by Subsection (a) provided to a resident of this state, regardless of whether the group policy or contract is delivered, issued for delivery, or renewed within or outside this state.

(c) This chapter applies to group health coverage made available by a school district in accordance with Section 22.004(b), Education Code.

(d) This chapter applies to a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(e) Notwithstanding Section 22.409, Business Organizations Code, or any other law, this chapter applies to a church benefits board established under Chapter 22, Business Organizations Code.

(f) Notwithstanding Section 75.104, Health and Safety Code, or any other law, this chapter applies to a regional or local health care program established under Chapter 75, Health and Safety Code.

(g) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

(h) Notwithstanding any other law, a standard health benefit plan provided under Chapter 1507 must provide the coverage required by this chapter.

Text of subsection effective until April 1, 2025

(i) To the extent allowed by federal law, this chapter applies to:

(1) the state Medicaid program operated under Chapter 32, Human Resources Code; and

(2) a Medicaid managed care program operated under Chapter 533, Government Code.

Text of subsection effective on April 1, 2025

(i) To the extent allowed by federal law, this chapter applies to:

(1) the state Medicaid program operated under Chapter 32, Human Resources Code; and

(2) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 816 (H.B. 1036), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1356 (H.B. 170), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.123, eff. April 1, 2025.

Sec. 1356.003. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1356.004. EXCEPTION. This chapter does not apply to a plan that provides coverage only for a specified disease or for another limited benefit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1356.005. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage to a female who is 35 years of age or older must include coverage for an annual screening by all forms of low-dose mammography for the presence of occult breast cancer.

(a-1) A health benefit plan that provides coverage for a screening mammogram must provide coverage for diagnostic imaging that is no less favorable than the coverage for a screening mammogram.

(b) Coverage required by this section:

(1) may not be less favorable than coverage for other radiological examinations under the plan; and

(2) must be subject to the same dollar limits, deductibles, and coinsurance factors as coverage for other radiological examinations under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 816 (H.B. 1036), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1356 (H.B. 170), Sec. 3, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 867 (S.B. 1065), Sec. 3, eff. September 1, 2021.

CHAPTER 1357. MASTECTOMY

SUBCHAPTER A. RECONSTRUCTIVE SURGERY FOLLOWING MASTECTOMY

Sec. 1357.001. DEFINITIONS. In this subchapter:

(1) "Breast reconstruction" means reconstruction of a breast incident to mastectomy to restore or achieve breast symmetry. The term includes surgical reconstruction of a breast on which mastectomy has been performed and surgical reconstruction of a breast

on which mastectomy has not been performed.

(2) "Enrollee" means an individual entitled to coverage under a health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.003. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or another limited benefit, other than benefits for cancer;

(B) only for accidental death or dismemberment;

(C) only for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) only for credit insurance;

(E) only for dental or vision care;

(F) only for indemnity for hospital confinement; or

(G) as a supplement to a liability insurance policy;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1357.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.004. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for mastectomy must provide coverage for:

(1) reconstruction of the breast on which the mastectomy has been performed;

(2) surgery and reconstruction of the other breast to achieve a symmetrical appearance; and

(3) prostheses and treatment of physical complications, including lymphedemas, at all stages of mastectomy.

(b) Coverage required under this section:

(1) shall be provided in a manner determined to be appropriate in consultation with the attending physician and the enrollee;

(2) may be subject to annual deductibles, copayments, and coinsurance that are consistent with annual deductibles, copayments, and coinsurance required for other coverage under the health benefit plan; and

(3) may not be subject to dollar limits other than the lifetime maximum benefits under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.005. PROHIBITED CONDUCT. (a) An issuer of a health benefit plan may not:

(1) offer a financial incentive for an enrollee to not receive breast reconstruction or to waive the coverage required under this subchapter;

(2) condition, limit, or deny the eligibility of a person to enroll in the plan or to renew coverage under the terms of the plan solely to avoid the requirements of this subchapter; or

(3) reduce or limit the reimbursement or amount paid to, or otherwise penalize, an attending physician or provider or provide a financial incentive or other benefit to an attending physician or provider to induce the physician or provider to provide care to an enrollee in a manner that is inconsistent with this subchapter.

(b) This section does not prevent an issuer of a health benefit plan from negotiating with a physician or provider the level and type of reimbursement that the physician or provider will receive for care provided in accordance with this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.006. NOTICE OF COVERAGE. (a) An issuer of a health benefit plan that provides coverage under this subchapter shall provide to each enrollee notice of the availability of the coverage.

(b) The notice must be provided in accordance with rules adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.007. RULES. The commissioner may adopt rules to implement this subchapter and to meet the minimum requirements of federal law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. HOSPITAL STAY FOLLOWING MASTECTOMY AND CERTAIN RELATED PROCEDURES

Sec. 1357.051. DEFINITION. In this subchapter, "enrollee" means an individual entitled to coverage under a health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(ii) another analogous benefit arrangement;

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(3) provides coverage only for a specific disease or condition or for hospitalization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.053. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for accidental death or dismemberment;

(B) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(C) as a supplement to a liability insurance policy;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1357.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.054. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for the treatment of breast cancer must provide to each enrollee coverage for inpatient care for a minimum of:

(1) 48 hours following a mastectomy; and

(2) 24 hours following a lymph node dissection for the treatment of breast cancer.

(b) A health benefit plan is not required to provide the minimum hours of coverage of inpatient care required under Subsection (a) if the enrollee and the enrollee's attending physician determine that a shorter period of inpatient care is appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.055. PROHIBITED CONDUCT. An issuer of a health benefit plan may not:

(1) deny the eligibility or continued eligibility of an individual to enroll in the plan or renew coverage under the plan solely to avoid the requirements of this subchapter;

(2) provide money payments or rebates to an enrollee to encourage the enrollee to accept less than the minimum coverage required under this subchapter;

(3) reduce or limit the amount paid to an attending physician, or otherwise penalize the physician, because the physician

provided care to an enrollee in accordance with this subchapter; or

(4) provide financial or other incentives to an attending physician to encourage the physician to provide care to an enrollee in a manner inconsistent with this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.056. NOTICE OF COVERAGE. (a) An issuer of a health benefit plan shall provide to each enrollee written notice of the coverage required under this subchapter.

(b) The notice must be provided in accordance with rules adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1357.057. RULES. The commissioner shall adopt rules necessary to administer this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1358. DIABETES

SUBCHAPTER A. GUIDELINES FOR DIABETES CARE; MINIMUM COVERAGE REQUIRED

Sec. 1358.001. DEFINITION. In this subchapter, "enrollee" means an individual entitled to coverage under a health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(1) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating

under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884; or

(E) a health maintenance organization operating under Chapter 843;

(2) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(A) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(B) another analogous benefit arrangement; and

(3) health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.003. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) only for dental or vision care; or

(F) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy

is a health benefit plan as described by Section 1358.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.004. ADOPTION OF MINIMUM STANDARDS. The commissioner, in consultation with the Texas Diabetes Council, by rule shall adopt minimum standards for coverage provided to an enrollee with diabetes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.005. COVERAGE REQUIRED. (a) A health benefit plan must provide coverage in accordance with the standards adopted under Section 1358.004.

(b) Coverage required under this section may not be subject to a deductible, coinsurance, or copayment requirement that exceeds the deductible, coinsurance, or copayment requirement applicable to other similar coverage provided under the health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. SUPPLIES AND SERVICES ASSOCIATED WITH DIABETES TREATMENT

Sec. 1358.051. DEFINITIONS. In this subchapter:

(1) "Diabetes equipment" means:

(A) blood glucose monitors, including noninvasive glucose monitors and glucose monitors designed to be used by blind individuals;

(B) insulin pumps and associated appurtenances;

(C) insulin infusion devices; and

(D) podiatric appliances for the prevention of complications associated with diabetes.

(2) "Diabetes supplies" means:

(A) test strips for blood glucose monitors;

(B) visual reading and urine test strips;

(C) lancets and lancet devices;

(D) insulin and insulin analogs;

(E) injection aids;

(F) syringes;

(G) prescriptive and nonprescriptive oral agents for controlling blood sugar levels; and

(H) glucagon emergency kits.

(3) "Nutrition counseling" has the meaning assigned by Section 701.002, Occupations Code.

(4) "Qualified enrollee" means an individual eligible for coverage under a health benefit plan who has been diagnosed with:

(A) insulin dependent or noninsulin dependent diabetes;

(B) elevated blood glucose levels induced by pregnancy; or

(C) another medical condition associated with elevated blood glucose levels.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.038(a), eff. September 1, 2005.

Sec. 1358.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884;

(v) a reciprocal exchange operating under Chapter 942; or

(vi) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.053. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care; or

(G) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1358.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.054. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for the treatment of diabetes and conditions associated with diabetes must provide to each qualified enrollee coverage for:

(1) diabetes equipment;

(2) diabetes supplies; and

(3) diabetes self-management training in accordance with the requirements of Section 1358.055.

(a-1) A health benefit plan described by Subsection (a) must provide to each qualified enrollee coverage for emergency refills of diabetes equipment or diabetes supplies dispensed to the enrollee in accordance with Section 562.0541, Occupations Code, in the same manner as for a nonemergency refill of diabetes equipment or diabetes supplies.

(b) A health benefit plan may require a deductible, copayment, or coinsurance for coverage provided under this section. The amount of the deductible, copayment, or coinsurance may not exceed the amount of the deductible, copayment, or coinsurance required for treatment of other analogous chronic medical conditions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 679 (H.B. 1935), Sec. 2, eff. September 1, 2021.

Sec. 1358.055. DIABETES SELF-MANAGEMENT TRAINING. (a) Diabetes self-management training must be provided by a health care practitioner or provider who is:

(1) licensed, registered, or certified in this state to provide appropriate health care services; and

(2) acting within the scope of practice authorized by the license, registration, or certification.

(b) For purposes of this subchapter, "self-management training" includes:

(1) training provided to a qualified enrollee, after the initial diagnosis of diabetes, in the care and management of that condition, including nutrition counseling and counseling on the proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified enrollee's symptoms or condition that requires changes in the qualified enrollee's self-management regime; and

(3) periodic or episodic continuing education training

prescribed by an appropriate health care practitioner as warranted by the development of new techniques or treatments for diabetes.

(c) If the diabetes self-management training is provided on the written order of a physician or other health care practitioner, including a health care practitioner practicing under protocols jointly developed with a physician, the training must also include:

(1) a diabetes self-management training program recognized by the American Diabetes Association;

(2) diabetes self-management training provided by a multidisciplinary team:

(A) the nonphysician members of which are coordinated by:

(i) a diabetes educator who is certified by the National Certification Board for Diabetes Educators; or

(ii) an individual who has completed at least 24 hours of continuing education that meets guidelines established by the Texas Board of Health and that includes a combination of diabetes-related educational principles and behavioral strategies;

(B) that consists of at least a licensed dietitian and a registered nurse and may include a pharmacist and a social worker; and

(C) each member of which, other than a social worker, has recent didactic and experiential preparation in diabetes clinical and educational issues as determined by the member's licensing agency, in consultation with the commissioner of public health, unless the member's licensing agency, in consultation with the commissioner of public health, determines that the core educational preparation for the member's license includes the skills the member needs to provide diabetes self-management training;

(3) diabetes self-management training provided by a diabetes educator certified by the National Certification Board for Diabetes Educators; or

(4) diabetes self-management training that provides one or more of the following components:

(A) a nutrition counseling component provided by a licensed dietitian, for which the licensed dietitian shall be paid;

(B) a pharmaceutical component provided by a pharmacist, for which the pharmacist shall be paid;

(C) a component provided by a physician assistant or registered nurse, for which the physician assistant or registered

nurse shall be paid, except that the physician assistant or registered nurse may not be paid for providing a nutrition counseling or pharmaceutical component unless a licensed dietitian or pharmacist is unavailable to provide that component; or

(D) a component provided by a physician.

(d) An individual may not provide a component of diabetes self-management training under Subsection (c)(4) unless:

(1) the subject matter of the component is within the scope of the individual's practice; and

(2) the individual meets the education requirements, as determined by the individual's licensing agency in consultation with the commissioner of public health.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.056. COVERAGE FOR NEW OR IMPROVED EQUIPMENT AND SUPPLIES. A health benefit plan must provide coverage for new or improved diabetes equipment or supplies, including improved insulin or another prescription drug, approved by the United States Food and Drug Administration if the equipment or supplies are determined by a physician or other health care practitioner to be medically necessary and appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1358.057. RULES. (a) The commissioner shall adopt rules necessary to implement this subchapter.

(b) In adopting rules under this section, the commissioner may consult with the commissioner of public health and other appropriate entities.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. COST-SHARING LIMIT

Sec. 1358.101. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual,

group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This subchapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this subchapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

(d) Notwithstanding any other law, this subchapter applies to coverage under:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; and

(2) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 589 (S.B. 827), Sec. 1, eff. September 1, 2021.

Sec. 1358.102. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another single benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) medical payment insurance coverage provided under a motor vehicle insurance policy;

(4) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1358.101;

(5) health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code; or

(6) a workers' compensation insurance policy.

Added by Acts 2021, 87th Leg., R.S., Ch. 589 (S.B. 827), Sec. 1, eff. September 1, 2021.

Sec. 1358.103. LIMIT ON COST-SHARING REQUIREMENT. (a) In this section, "insulin" means a prescription drug that contains insulin and is used to treat diabetes. The term does not include an insulin drug that is administered to a patient intravenously.

(b) A health benefit plan may not impose a cost-sharing provision for insulin that is included in the health benefit plan's formulary if the total amount the enrollee is required to pay exceeds $25 per prescription for a 30-day supply, regardless of the amount or type of insulin needed to fill the enrollee's prescription.

Added by Acts 2021, 87th Leg., R.S., Ch. 589 (S.B. 827), Sec. 1, eff. September 1, 2021.

Sec. 1358.104. FORMULARY REQUIREMENT. A health benefit plan must include at least one insulin from each therapeutic class in the plan's formulary.

Added by Acts 2021, 87th Leg., R.S., Ch. 589 (S.B. 827), Sec. 1, eff. September 1, 2021.

CHAPTER 1359. FORMULAS FOR INDIVIDUALS WITH PHENYLKETONURIA OR OTHER HERITABLE DISEASES

Sec. 1359.001. DEFINITIONS. In this chapter:

(1) "Heritable disease" means an inherited disease that may result in a physical or intellectual disability or death.

(2) "Phenylketonuria" means an inherited condition that, if not treated, may cause a severe intellectual disability.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.07, eff. September 1, 2023.

Sec. 1359.002. APPLICABILITY OF CHAPTER. This chapter applies only to a group health benefit plan that is a group policy, contract, or certificate of health insurance or an evidence of coverage delivered, issued for delivery, or renewed in this state by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842; or

(3) a health maintenance organization operating under Chapter 843.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1359.003. COVERAGE REQUIRED. (a) A group health benefit plan must provide coverage for formulas necessary to treat phenylketonuria or a heritable disease.

(b) The group health benefit plan must provide the coverage to the same extent that the plan provides coverage for drugs that are available only on the orders of a physician.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1360. DIAGNOSIS AND TREATMENT AFFECTING TEMPOROMANDIBULAR JOINT

Sec. 1360.001. DEFINITION. In this chapter, "temporomandibular joint" includes the jaw and the craniomandibular joint.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1360.002. APPLICABILITY OF CHAPTER. This chapter applies only to a group health benefit plan delivered or issued for delivery in this state that:

(1) provides benefits for dental, medical, or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) a group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act;

(ii) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(iii) another analogous benefit arrangement; or

(2) is offered by an approved nonprofit health corporation

that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1360.003. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for vision care; or

(G) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) a small employer health benefit plan written under Chapter 1501;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1360.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1360.004. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for medically necessary diagnostic or surgical treatment of conditions affecting skeletal joints must provide comparable coverage for diagnostic or surgical treatment of conditions affecting the temporomandibular joint if the treatment is medically necessary as a result of:

(1) an accident;

(2) a trauma;

(3) a congenital defect;

(4) a developmental defect; or

(5) a pathology.

(b) Coverage required under this section may be subject to any provision in the health benefit plan that is generally applicable to surgical treatment, including a requirement for precertification of coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1360.005. DENTAL SERVICES COVERAGE NOT REQUIRED. (a) This chapter does not require a health benefit plan to provide coverage for dental services if dental services are not otherwise scheduled or provided as part of the coverage provided under the plan.

(b) A health benefit plan may not exclude from coverage under the plan an individual who is unable to undergo dental treatment in an office setting or under local anesthesia due to a documented physical, mental, or medical reason as determined by the individual's physician or by the dentist providing the dental care.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1361. DETECTION AND PREVENTION OF OSTEOPOROSIS

Sec. 1361.001. DEFINITION. In this chapter, "qualified enrollee" means an individual entitled to coverage under a group health benefit plan who is:

(1) a postmenopausal woman who is not receiving estrogen replacement therapy;

(2) an individual with:

(A) vertebral abnormalities;

(B) primary hyperparathyroidism; or

(C) a history of bone fractures; or

(3) an individual who is:

(A) receiving long-term glucocorticoid therapy; or

(B) being monitored to assess the response to or efficacy of an approved osteoporosis drug therapy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1361.002. APPLICABILITY OF CHAPTER. This chapter applies only to a group health benefit plan delivered, issued for delivery, or renewed in this state that provides coverage for medical or surgical expenses incurred as a result of accident or sickness, including:

(1) a group insurance policy;

(2) a group contract issued by a group hospital service corporation operating under Chapter 842; and

(3) a group contract issued by a health maintenance organization operating under Chapter 843.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1361.003. COVERAGE REQUIRED. A group health benefit plan must provide to a qualified enrollee coverage for medically accepted bone mass measurement to detect low bone mass and to determine the enrollee's risk of osteoporosis and fractures associated with osteoporosis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1362. CERTAIN TESTS FOR DETECTION OF PROSTATE CANCER

Sec. 1362.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating

under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(ii) another analogous benefit arrangement;

(2) is offered by:

(A) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(B) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1362.002. EXCEPTION. This chapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy; or

(E) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing

home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1362.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1362.003. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for diagnostic medical procedures must provide to each male enrolled in the plan coverage for expenses for an annual medically recognized diagnostic examination for the detection of prostate cancer.

(b) Coverage required under this section includes at a minimum:

(1) a physical examination for the detection of prostate cancer; and

(2) a prostate-specific antigen test used for the detection of prostate cancer for each male who:

(A) is at least 50 years of age and is asymptomatic; or

(B) is at least 40 years of age and has a family history of prostate cancer or another prostate cancer risk factor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1362.004. NOTICE OF COVERAGE. (a) A health benefit plan issuer shall provide to each individual enrolled in the plan written notice of the coverage required under this chapter.

(b) The notice must be provided in accordance with rules adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1362.005. RULES. The commissioner shall adopt rules necessary to administer this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1363. CERTAIN TESTS FOR DETECTION OF COLORECTAL CANCER

Sec. 1363.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501 or coverage that is provided by a health group cooperative under Subchapter B of that chapter, that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a Lloyd's plan operating under Chapter 941;

(v) a stipulated premium company operating under Chapter 884;

(vi) a health maintenance organization operating under Chapter 843; or

(vii) a reciprocal or interinsurance exchange operating under Chapter 942; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(ii) another analogous benefit arrangement;

(2) is offered by an approved nonprofit health corporation operating under Chapter 844; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 308 (S.B. 1028), Sec. 1, eff.

September 1, 2021.

Sec. 1363.002. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or other limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) only for indemnity for hospital confinement; or

(F) only for dental or vision care;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a credit-only insurance policy;

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy;

(6) a limited benefit policy that does not provide coverage for physical examinations or wellness exams;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1363.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 308 (S.B. 1028), Sec. 2, eff. September 1, 2021.

Sec. 1363.003. MINIMUM COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for screening medical procedures must provide to each individual enrolled in the plan who is 45 years of age or older and at normal risk for developing colon cancer

coverage for expenses incurred in conducting a medically recognized screening examination for the detection of colorectal cancer.

(b) The minimum coverage required under this section must include:

(1) all colorectal cancer examinations, preventive services, and laboratory tests assigned a grade of "A" or "B" by the United States Preventive Services Task Force for average-risk individuals, including the services that may be assigned a grade of "A" or "B" in the future; and

(2) an initial colonoscopy or other medical test or procedure for colorectal cancer screening and a follow-up colonoscopy if the results of the initial colonoscopy, test, or procedure are abnormal.

(c) For an enrollee in a managed care plan as defined by Section 1451.151, the plan may impose a cost-sharing requirement for coverage described by this section only if the enrollee obtains the covered benefit or service outside the plan's network.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 308 (S.B. 1028), Sec. 3, eff. September 1, 2021.

Sec. 1363.004. NOTICE OF COVERAGE. (a) A health benefit plan issuer shall provide to each individual enrolled in the plan written notice of the coverage required under this chapter.

(b) The notice must be provided in accordance with rules adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1363.005. RULES. The commissioner shall adopt rules as necessary to administer this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1364. COVERAGE PROVISIONS RELATING TO HIV, AIDS, OR HIV-RELATED ILLNESSES

SUBCHAPTER A. EXCLUSION FROM OR DENIAL OF COVERAGE PROHIBITED

Sec. 1364.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group health benefit plan that is delivered, issued for delivery, or renewed and that is:

(1) a group accident and health insurance policy;

(2) a group contract issued by a group hospital service corporation operating under Chapter 842; or

(3) a group evidence of coverage issued by a health maintenance organization operating under Chapter 843.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1364.002. EXCEPTION. This subchapter does not apply to:

(1) a credit accident and health insurance policy subject to Chapter 1153;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance before April 1, 1975;

(3) accident or health coverage that is incidental to any form of a group automobile, casualty, property, workers' compensation, or employers' liability policy approved by the department; or

(4) any policy or contract of insurance with a state agency, department, or board providing health services:

(A) to eligible individuals under Chapter 32, Human Resources Code; or

(B) under a state plan adopted in accordance with 42 U.S.C. Sections 1396-1396g, as amended, or 42 U.S.C. Section 1397aa et seq., as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1364.003. PROHIBITION. A group health benefit plan may not exclude or deny coverage for:

(1) human immunodeficiency virus (HIV);

(2) acquired immune deficiency syndrome (AIDS); or

(3) an HIV-related illness.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1364.004. RULES. The commissioner may adopt rules necessary to administer this subchapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. CANCELLATION OF GROUP COVERAGE PROHIBITED

Sec. 1364.051. DEFINITIONS. In this subchapter, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1364.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insurer that delivers or issues for delivery a group health insurance policy or contract in this state, including a group hospital service corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1364.053. PROHIBITION. (a) Except as provided by Subsection (b), an insurer may not cancel during the term of a group health insurance policy or contract an individual's coverage provided by the policy or contract because the individual:

(1) has been diagnosed as having AIDS or HIV;

(2) has been treated for AIDS or HIV; or

(3) is being treated for AIDS or HIV.

(b) The insurer may cancel the coverage provided by the policy or contract for fraud or misrepresentation in the obtaining of coverage by failure to disclose a diagnosis of AIDS or an HIV-related condition.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. CERTAIN COVERAGES PROVIDED BY LOCAL GOVERNMENTS

Sec. 1364.101. PROHIBITION ON EXCLUSION OR LIMITATION OF COVERAGES. A political subdivision that provides group health insurance coverage, health maintenance organization coverage, or self-insured health care coverage to the political subdivision's officers or employees may not contract for or provide coverage that excludes or limits coverage or services for:

(1) acquired immune deficiency syndrome, as defined by the Centers for Disease Control and Prevention of the United States Public Health Service; or

(2) human immunodeficiency virus infection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1365. LOSS OR IMPAIRMENT OF SPEECH OR HEARING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1365.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group health benefit plan that provides hospital and medical coverage on an expense-incurred, service, or prepaid basis, including a group policy, contract, or plan that is offered in this state by:

(1) an insurer;

(2) a group hospital service corporation operating under Chapter 842; or

(3) a health maintenance organization operating under Chapter 843.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 8 (H.B. 109), Sec. 2, eff. September 1, 2023.

Sec. 1365.002. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 8 (H.B. 109), Sec. 2, eff. September 1, 2023.

Sec. 1365.003. OFFER OF COVERAGE REQUIRED. (a) A group health benefit plan issuer shall offer and make available under the plan coverage for the necessary care and treatment of loss or impairment of speech or hearing.

(b) Coverage required under this section:

(1) may not be less favorable than coverage for physical illness generally under the plan; and

(2) must be subject to the same durational limits, dollar limits, deductibles, and coinsurance factors as coverage for physical illness generally under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1365.004. RIGHT TO REJECT COVERAGE OR SELECT ALTERNATIVE BENEFITS. An offer of coverage required under Section 1365.003 is subject to the right of the group contract holder to reject the coverage or to select an alternative level of benefits that is offered by or negotiated with the group health benefit plan issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.028, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.028, eff. September 1, 2007.

SUBCHAPTER B. HEARING AID COVERAGE

Sec. 1365.051. APPLICABILITY. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or

similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) This subchapter applies to coverage under a group health benefit plan described by Subsection (a) provided to a resident of this state, regardless of whether the group policy, agreement, or contract is delivered, issued for delivery, or renewed within or outside this state.

(c) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(8) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 8 (H.B. 109), Sec. 3, eff. September 1, 2023.

Sec. 1365.052. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(B) only for hospital expenses; or

(2) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 8 (H.B. 109), Sec. 3, eff. September 1, 2023.

Sec. 1365.053. CHOICE OF HEARING AID. (a) A health benefit plan that provides coverage for hearing aids may not deny an enrollee's claim for a hearing aid solely on the basis that the price of the hearing aid is more than the benefit available under the health benefit plan.

(b) Notwithstanding Section 1367.253(d), this section applies to a health benefit plan subject to Subchapter F, Chapter 1367.

(c) Nothing in this section requires a health benefit plan to pay an enrollee's claim for a hearing aid in an amount that is more than the benefit available under the health benefit plan.

Added by Acts 2023, 88th Leg., R.S., Ch. 8 (H.B. 109), Sec. 3, eff. September 1, 2023.

CHAPTER 1366. BENEFITS RELATED TO FERTILITY AND CHILDBIRTH

SUBCHAPTER A. COVERAGE FOR IN VITRO FERTILIZATION PROCEDURES

Sec. 1366.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a group health benefit plan that provides benefits for hospital, medical, or surgical expenses incurred as a result of accident or sickness, including a group health insurance policy, health care service contract or plan, or other provision of group health benefits, coverage, or services in this state that is issued, entered into, or provided by:

(1) an insurer;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under

Chapter 843; or

(4) an employer, multiple employer, union, association, trustee, or other self-funded or self-insured welfare or benefit plan, program, or arrangement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.002. EXCEPTION. This subchapter does not apply to:

(1) a credit accident and health insurance policy subject to Chapter 1153;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance before April 1, 1975;

(3) accident and health coverages that are incidental to any form of a group automobile, casualty, property, workers' compensation, or employers' liability policy approved by the commissioner; or

(4) any policy or contract of insurance with a state agency, department, or board providing health services:

(A) to eligible individuals under Chapter 32, Human Resources Code; or

(B) under a state plan adopted in accordance with 42 U.S.C. Sections 1396-1396g, as amended, or 42 U.S.C. Section 1397aa et seq., as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.003. OFFER OF COVERAGE REQUIRED. (a) Subject to this subchapter, an issuer of a group health benefit plan that provides pregnancy-related benefits for individuals covered under the plan shall offer and make available to each holder or sponsor of the plan coverage for services and benefits on an expense incurred, service, or prepaid basis for outpatient expenses that arise from in vitro fertilization procedures.

(b) Benefits for in vitro fertilization procedures required under this section must be provided to the same extent as benefits provided for other pregnancy-related procedures under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.004. REJECTION OF OFFER. A rejection of an offer under Section 1366.003 to provide coverage for in vitro fertilization procedures must be in writing.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.005. CONDITIONS APPLICABLE TO COVERAGE. The coverage offered under Section 1366.003 is required only if:

(1) the patient for the in vitro fertilization procedure is an individual covered under the group health benefit plan;

(2) the fertilization or attempted fertilization of the patient's oocytes is made only with the sperm of the patient's spouse;

(3) the patient and the patient's spouse have a history of infertility of at least five continuous years' duration or the infertility is associated with:

(A) endometriosis;

(B) exposure in utero to diethylstilbestrol (DES);

(C) blockage of or surgical removal of one or both fallopian tubes; or

(D) oligospermia;

(4) the patient has been unable to attain a successful pregnancy through any less costly applicable infertility treatments for which coverage is available under the group health benefit plan; and

(5) the in vitro fertilization procedures are performed at a medical facility that conforms to the minimal standards for programs of in vitro fertilization adopted by the American Society for Reproductive Medicine.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.006. CERTAIN ISSUERS OF HEALTH BENEFIT PLANS NOT REQUIRED TO OFFER COVERAGE. An insurer, health maintenance organization, or self-insuring employer that is owned by or that is part of an entity, group, or order that is directly affiliated with a bona fide religious denomination that includes as an integral part of

its beliefs and practices that in vitro fertilization is contrary to moral principles that the religious denomination considers to be an essential part of its beliefs is not required to offer coverage for in vitro fertilization under Section 1366.003.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.007. RULES. The commissioner may adopt rules necessary to administer this subchapter. A rule adopted under this section is subject to notice and hearing as provided by Section 1201.007 for a rule adopted under Chapter 1201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. MINIMUM INPATIENT STAY FOLLOWING BIRTH OF CHILD AND POSTDELIVERY CARE

Sec. 1366.051. SHORT TITLE. This subchapter may be cited as the Lee Alexandria Hanley Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.052. DEFINITIONS. In this subchapter:

(1) "Attending physician" means an obstetrician, pediatrician, or other physician who attends a woman who has given birth to a child or who attends a newborn child.

(2) "Postdelivery care" means postpartum health care services provided in accordance with accepted maternal and neonatal physical assessments. The term includes parent education, assistance and training in breast-feeding and bottle-feeding, and the performance of any necessary and appropriate clinical tests.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.053. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness,

including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act;

(ii) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(iii) another analogous benefit arrangement; or

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.054. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care; or

(G) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1366.053.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.055. COVERAGE FOR INPATIENT CARE REQUIRED. (a) Except as provided by Subsection (b), a health benefit plan that provides maternity benefits, including benefits for childbirth, must provide to a woman who has given birth to a child and the newborn child coverage for inpatient care in a health care facility for not less than:

(1) 48 hours after an uncomplicated vaginal delivery; and

(2) 96 hours after an uncomplicated delivery by cesarean section.

(b) A health benefit plan that provides to a woman who has given birth to a child and the newborn child coverage for in-home postdelivery care is not required to provide the coverage required under Subsection (a) unless:

(1) the attending physician determines that inpatient care is medically necessary; or

(2) the woman requests inpatient care.

(c) For purposes of Subsection (a), the attending physician shall determine whether a delivery is complicated.

(d) This section does not require a woman who is eligible for coverage under a health benefit plan to:

(1) give birth to a child in a hospital or other health care facility; or

(2) remain under inpatient care in a hospital or other health care facility for any fixed term following the birth of a child.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.056. COVERAGE FOR POSTDELIVERY CARE REQUIRED. (a) If a decision is made to discharge a woman who has given birth to a child or the newborn child from inpatient care before the expiration of the minimum hours of coverage required under Section 1366.055(a), a health benefit plan must provide to the woman and child coverage for timely postdelivery care.

(b) The timeliness of the postdelivery care shall be determined in accordance with recognized medical standards for that care.

(c) The postdelivery care may be provided by a physician, registered nurse, or other appropriate licensed health care provider.

(d) Subject to Subsection (e), the postdelivery care may be provided at:

(1) the woman's home;

(2) a health care provider's office;

(3) a health care facility; or

(4) another location determined to be appropriate under rules adopted by the commissioner.

(e) The coverage required under this section must give the woman the option to have the care provided in the woman's home.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.057. PROHIBITED CONDUCT. An issuer of a health benefit plan may not:

(1) modify the terms and conditions of coverage based on a request by an enrollee for less than the minimum coverage required under Section 1366.055(a);

(2) offer to a woman who has given birth to a child a financial incentive or other compensation the receipt of which is contingent on the waiver by the woman of the minimum coverage required under Section 1366.055(a);

(3) refuse to accept a physician's recommendation for inpatient care made in consultation with the woman who has given birth to a child if the period of inpatient care recommended by the physician does not exceed the minimum periods recommended in guidelines for perinatal care developed by:

(A) the American College of Obstetricians and Gynecologists;

(B) the American Academy of Pediatrics; or

(C) another nationally recognized professional association of obstetricians and gynecologists or of pediatricians;

(4) reduce payments or other forms of reimbursement for inpatient care below the usual and customary rate of reimbursement for that care; or

(5) penalize a physician for recommending inpatient care for a woman or the woman's newborn child by:

(A) refusing to permit the physician to participate as a provider in the health benefit plan;

(B) reducing payments made to the physician;

(C) requiring the physician to:

(i) provide additional documentation; or

(ii) undergo additional utilization review; or

(D) imposing other analogous sanctions or disincentives.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.058. NOTICE OF COVERAGE. (a) An issuer of a health benefit plan shall provide to each individual enrolled in the plan written notice of the coverage required under this subchapter.

(b) The notice must be provided in accordance with rules adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1366.059. RULES. The commissioner shall adopt rules necessary to administer this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. COVERAGE FOR CERTAIN FERTILITY PRESERVATION SERVICES

Sec. 1366.101. DEFINITION. In this subchapter, "fertility preservation services":

(1) means the collection and preservation of sperm,

unfertilized oocytes, and ovarian tissue; and

(2) does not include the storage of such unfertilized genetic materials.

Added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 2, eff. September 1, 2023.

Sec. 1366.102. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is issued in this state by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter; and

(2) a standard health benefit plan issued under Chapter 1507.

Added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 2, eff. September 1, 2023.

Sec. 1366.103. EXCEPTIONS. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(B) only for hospital expenses;

(2) Medicaid managed care programs operated under Chapter 533, Government Code;

(3) Medicaid programs operated under Chapter 32, Human Resources Code; or

(4) the state child health plan operated under Chapter 62 or 63, Health and Safety Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 2, eff. September 1, 2023.

Sec. 1366.104. REQUIRED COVERAGE. (a) Subject to Subsection (b), a health benefit plan must provide coverage for fertility preservation services to a covered person who will receive a medically necessary treatment for cancer, including surgery, chemotherapy, or radiation, that the American Society of Clinical Oncology or the American Society for Reproductive Medicine has established may directly or indirectly cause impaired fertility.

(b) The fertility preservation services described by Subsection (a) must be standard procedures to preserve fertility consistent with established medical practices or professional guidelines published by the American Society of Clinical Oncology or the American Society for Reproductive Medicine.

Added by Acts 2023, 88th Leg., R.S., Ch. 819 (H.B. 1649), Sec. 2, eff. September 1, 2023.

CHAPTER 1367. COVERAGE OF CHILDREN

SUBCHAPTER A. NEWBORN CHILDREN

Sec. 1367.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan delivered or issued for delivery in this state that is an individual or group policy of accident and health insurance, including a policy issued by a group hospital service corporation operating under Chapter 842.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.002. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.003. CERTAIN LIMITATIONS ON COVERAGE FOR NEWBORN CHILDREN PROHIBITED. A health benefit plan that provides maternity benefits or accident and health coverage for additional newborn children may not be issued in this state if the plan excludes or limits:

(1) initial coverage of a newborn child for a period of time;

(2) coverage for congenital defects of a newborn child; or

(3) coverage for administration of the newborn screening tests required by Section 33.011, Health and Safety Code, including for the cost of a newborn screening test kit in the amount provided by the Department of State Health Services on its Internet website under Section 33.019 of that code on the date the test was administered.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 599 (S.B. 747), Sec. 5, eff. September 1, 2019.

SUBCHAPTER B. CHILDHOOD IMMUNIZATIONS

Sec. 1367.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or

an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a health maintenance organization operating under Chapter 843; or

(F) a multiple employer welfare arrangement subject to regulation under Chapter 846;

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.052. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care; or

(G) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a

motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.051.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.053. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for a family member of an insured or enrollee shall provide for each covered child from birth through the date of the child's sixth birthday coverage for:

(1) immunization against:

(A) diphtheria;

(B) haemophilus influenzae type b;

(C) hepatitis B;

(D) measles;

(E) mumps;

(F) pertussis;

(G) polio;

(H) rubella;

(I) tetanus; and

(J) varicella; and

(2) any other immunization that is required for the child by law.

(b) For purposes of Subsection (a), a covered child is a child who, as a result of the child's relationship to an insured or enrollee in a health benefit plan, would be entitled to coverage under an accident and health insurance policy under Section 1201.061, 1201.062, 1201.063, or 1201.064.

(c) In addition to the immunizations required under Subsection (a), a health maintenance organization that issues a health benefit plan shall provide under the plan coverage for immunization against rotovirus and any other immunization required for a child by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0281, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0281,

eff. September 1, 2007.

Sec. 1367.054. COPAYMENT, DEDUCTIBLE, OR COINSURANCE REQUIREMENT PROHIBITED. (a) Coverage required under Section 1367.053(a) may not be made subject to a deductible, copayment, or coinsurance requirement.

(b) This section does not prohibit the application of a deductible, copayment, or coinsurance requirement to another service provided at the same time the immunization is administered.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.055. RULES. The commissioner may adopt rules necessary to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.039, eff. September 1, 2005.

SUBCHAPTER C. HEARING TEST

Sec. 1367.101. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a health maintenance organization operating under Chapter 843; or

(F) a multiple employer welfare arrangement subject to

regulation under Chapter 846;

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

(b) This subchapter applies to a health benefit plan described by Subsection (a) that provides coverage to a resident of this state, regardless of whether the plan issuer is located in or outside this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.102. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care; or

(G) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.103. COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for a family member of an insured or enrollee shall provide to each covered child coverage for:

(1) a screening test for hearing loss from birth through the date the child is 30 days of age, as provided by Chapter 47, Health and Safety Code; and

(2) necessary diagnostic follow-up care related to the screening test from birth through the date the child is 24 months of age.

(b) For purposes of Subsection (a), a covered child is a child who, as a result of the child's relationship to an insured or enrollee in a health benefit plan, would be entitled to coverage under an accident and health insurance policy under Section 1201.061, 1201.062, 1201.063, or 1201.064.

(c) This section does not require a health benefit plan to provide the coverage described by this section to a child of an individual residing in this state if the individual is:

(1) employed outside this state; and

(2) covered under a health benefit plan maintained for the individual by the individual's employer as an employment benefit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.104. COPAYMENT OR COINSURANCE REQUIREMENT PERMITTED; DEDUCTIBLE REQUIREMENT OR DOLLAR LIMIT PROHIBITED; NOTICE REQUIRED. (a) Coverage required under this subchapter:

(1) may be subject to a copayment or coinsurance requirement; and

(2) may not be subject to a deductible requirement or a dollar limit.

(b) The requirements of this section must be stated in the coverage document.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.105. RULES. The commissioner may adopt rules necessary to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. CHILD CRANIOFACIAL ABNORMALITIES

Sec. 1367.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act;

(ii) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(iii) another analogous benefit arrangement; or

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.152. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or for another limited

benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care; or

(G) only for indemnity for hospital confinement or other hospital expenses;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.151.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.153. RECONSTRUCTIVE SURGERY FOR CRANIOFACIAL ABNORMALITIES; DEFINITION REQUIRED. A health benefit plan that provides coverage for a child who is younger than 18 years of age must define "reconstructive surgery for craniofacial abnormalities" under the plan to mean surgery to improve the function of, or to attempt to create a normal appearance of, an abnormal structure caused by congenital defects, developmental deformities, trauma, tumors, infections, or disease.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1367.154. RULES. The commissioner shall adopt rules necessary to administer this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER E. DEVELOPMENTAL DELAYS

Sec. 1367.201. DEFINITION. In this subchapter, rehabilitative and habilitative therapies include:

(1) occupational therapy evaluations and services;

(2) physical therapy evaluations and services;

(3) speech therapy evaluations and services; and

(4) dietary or nutritional evaluations.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.040(a), eff. September 1, 2005.

Sec. 1367.202. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a health maintenance organization operating under Chapter 843; or

(F) a multiple employer welfare arrangement subject to regulation under Chapter 846;

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.040(a), eff. September 1, 2005.

Sec. 1367.203. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care; or

(G) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.202.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.040(a), eff. September 1, 2005.

Sec. 1367.204. OFFER OF COVERAGE REQUIRED. (a) A health benefit plan issuer must offer coverage that complies with this subchapter.

(b) The individual or group policy or contract holder may reject coverage required to be offered under this section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.040(a), eff. September 1, 2005.

Sec. 1367.205. COVERAGE OF CERTAIN THERAPIES. (a) A health

benefit plan that provides coverage for rehabilitative and habilitative therapies under this subchapter may not prohibit or restrict payment for covered services provided to a child and determined to be necessary to and provided in accordance with an individualized family service plan issued by the Interagency Council on Early Childhood Intervention under Chapter 73, Human Resources Code.

(b) Rehabilitative and habilitative therapies described by Subsection (a) must be covered in the amount, duration, scope, and service setting established in the child's individualized family service plan.

(c) A child is entitled to benefits under this subchapter if the child, as a result of the child's relationship to an insured or enrollee in a health benefit plan, would be entitled to coverage under an accident and health insurance policy under Section 1201.061, 1201.062, 1201.063, or 1201.064.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.040(a), eff. September 1, 2005.

Sec. 1367.206. PROHIBITED ACTIONS. Under the coverage required to be offered under this subchapter, a health benefit plan issuer may not:

(1) apply the cost of rehabilitative and habilitative therapies described by Section 1367.205(a) to an annual or lifetime maximum plan benefit or similar provision under the plan; or

(2) use the cost of rehabilitative or habilitative therapies described by Section 1367.205(a) as the sole justification for:

(A) increasing plan premiums; or

(B) terminating the insured's or enrollee's participation in the plan.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.040(a), eff. September 1, 2005.

Sec. 1367.207. RULES. The commissioner may adopt rules necessary to implement this subchapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.040(a), eff. September 1, 2005.

SUBCHAPTER F. HEARING AIDS AND COCHLEAR IMPLANTS

Sec. 1367.251. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501 or coverage provided through a health group cooperative under Subchapter B of that chapter, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a Lloyd's plan operating under Chapter 941;

(5) a stipulated premium insurance company operating under Chapter 884;

(6) a reciprocal exchange operating under Chapter 942;

(7) a health maintenance organization operating under Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This subchapter applies to coverage under a group health benefit plan described by Subsection (a) provided to a resident of this state, regardless of whether the group policy, agreement, or contract is delivered, issued for delivery, or renewed within or outside this state.

(c) This subchapter applies to a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(d) Notwithstanding Section 22.409, Business Organizations Code, or any other law, this subchapter applies to health benefits

provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code.

(e) Notwithstanding Section 75.104, Health and Safety Code, or any other law, this subchapter applies to a regional or local health care program operated under that section.

(f) Notwithstanding any other law, a standard health benefit plan provided under Chapter 1507 must provide the coverage required by this subchapter.

(g) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this subchapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

Added by Acts 2017, 85th Leg., R.S., Ch. 979 (H.B. 490), Sec. 1, eff. September 1, 2017.

Text of section effective until April 1, 2025

Sec. 1367.252. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(B) as a supplement to a liability insurance policy;

(C) for credit insurance;

(D) only for dental or vision care;

(E) only for hospital expenses; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy;

(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.251; or

(6) the state Medicaid program, including the Medicaid

managed care program operated under Chapter 533, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 979 (H.B. 490), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.124, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1367.252. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(B) as a supplement to a liability insurance policy;

(C) for credit insurance;

(D) only for dental or vision care;

(E) only for hospital expenses; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy;

(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1367.251; or

(6) the state Medicaid program, including the Medicaid managed care program operated under Chapters 540 and 540A, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 979 (H.B. 490), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.124, eff. April 1, 2025.

Sec. 1367.253. COVERAGE REQUIRED. (a) A health benefit plan must provide coverage for the cost of a medically necessary hearing aid or cochlear implant and related services and supplies for a covered individual who is 18 years of age or younger.

(b) Coverage required under this section:

(1) must include:

(A) fitting and dispensing services and the provision of ear molds as necessary to maintain optimal fit of hearing aids;

(B) any treatment related to hearing aids and cochlear implants, including coverage for habilitation and rehabilitation as necessary for educational gain; and

(C) for a cochlear implant, an external speech processor and controller with necessary components replacement every three years; and

(2) is limited to:

(A) one hearing aid in each ear every three years; and

(B) one cochlear implant in each ear with internal replacement as medically or audiologically necessary.

(c) Except as provided by Subsections (b) and (d), coverage required under this section:

(1) may not be less favorable than coverage for physical illness generally under the plan; and

(2) must be subject to durational limits and coinsurance factors no less favorable than coverage provided for physical illness generally under the plan.

(d) Coverage required under this section is subject to any provision that applies generally to coverage provided for durable medical equipment benefits under the plan, including a provision relating to deductibles, coinsurance, or prior authorization.

(e) This section does not apply to a qualified health plan defined by 45 C.F.R. Section 155.20 if a determination is made under 45 C.F.R. Section 155.170 that:

(1) this subchapter requires the plan to offer benefits in addition to the essential health benefits required under 42 U.S.C. Section 18022(b); and

(2) this state must make payments to defray the cost of the additional benefits mandated by this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 979 (H.B. 490), Sec. 1, eff. September 1, 2017.

CHAPTER 1368. AVAILABILITY OF CHEMICAL DEPENDENCY COVERAGE

Sec. 1368.001. DEFINITIONS. In this chapter:

(1) "Chemical dependency" means the abuse of, a psychological or physical dependence on, or an addiction to alcohol or a controlled substance.

(2) "Chemical dependency treatment center" means a facility that provides a program for the treatment of chemical dependency under a written treatment plan approved and monitored by a physician and that is:

(A) affiliated with a hospital under a contractual agreement with an established system for patient referral;

(B) accredited as a chemical dependency treatment center by the Joint Commission on Accreditation of Healthcare Organizations;

(C) licensed as a chemical dependency treatment program by the Texas Commission on Alcohol and Drug Abuse; or

(D) licensed, certified, or approved as a chemical dependency treatment program or center by another state agency.

(3) "Controlled substance" means an abusable volatile chemical, as defined by Section 485.001, Health and Safety Code, or a substance designated as a controlled substance under Chapter 481, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1368.002. APPLICABILITY OF CHAPTER. This chapter applies only to a group health benefit plan that provides hospital and medical coverage or services on an expense incurred, service, or prepaid basis, including a group insurance policy or contract or self-funded or self-insured plan or arrangement that is offered in this state by:

(1) an insurer;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843; or

(4) an employer, trustee, or other self-funded or self-

insured plan or arrangement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1368.003. EXCEPTION. This chapter does not apply to:

(1) an employer, trustee, or other self-funded or self-insured plan or arrangement with 250 or fewer employees or members;

(2) an individual insurance policy;

(3) an individual evidence of coverage issued by a health maintenance organization;

(4) a health insurance policy that provides only:

(A) cash indemnity for hospital or other confinement benefits;

(B) supplemental or limited benefit coverage;

(C) coverage for specified diseases or accidents;

(D) disability income coverage; or

(E) any combination of those benefits or coverages;

(5) a blanket insurance policy;

(6) a short-term travel insurance policy;

(7) an accident-only insurance policy;

(8) a limited or specified disease insurance policy;

(9) an individual conversion insurance policy or contract;

(10) a policy or contract designed for issuance to a person eligible for Medicare coverage or other similar coverage under a state or federal government plan; or

(11) an evidence of coverage provided by a health maintenance organization if the plan holder is the subject of a collective bargaining agreement that was in effect on January 1, 1982, and that has not expired since that date.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1368.004. COVERAGE REQUIRED. (a) A group health benefit plan shall provide coverage for the necessary care and treatment of chemical dependency.

(b) Coverage required under this section may be provided:

(1) directly by the group health benefit plan issuer; or

(2) by another entity, including a single service health maintenance organization, under contract with the group health

benefit plan issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1368.005. MINIMUM COVERAGE REQUIREMENTS. (a) Except as provided by Subsection (b), coverage required under this chapter:

(1) may not be less favorable than coverage provided for physical illness generally under the plan; and

(2) shall be subject to the same durational limits, dollar limits, deductibles, and coinsurance factors that apply to coverage provided for physical illness generally under the plan.

(b) A group health benefit plan may set dollar or durational limits for coverage required under this chapter that are less favorable than for coverage provided for physical illness generally under the plan if those limits are sufficient to provide appropriate care and treatment under the guidelines and standards adopted under Section 1368.007. If guidelines and standards adopted under Section 1368.007 are not in effect, the dollar and durational limits may not be less favorable than for physical illness generally.

(c) This section does not require payment of a usual, customary, and reasonable rate for treatment of a covered individual if a health maintenance organization or preferred provider organization establishes a negotiated rate for the locality in which the covered individual customarily receives care.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1368.006. LIMITATION ON COVERAGE. (a) In this section, "treatment series" means a planned, structured, and organized program to promote chemical-free status that:

(1) may include different facilities or modalities; and

(2) is completed when the covered individual:

(A) is, on medical advice, discharged from:

(i) inpatient detoxification;

(ii) inpatient rehabilitation or treatment;

(iii) partial hospitalization or intensive outpatient treatment; or

(iv) a series of those levels of treatments without a lapse in treatment; or

(B) fails to materially comply with the treatment program for a period of 30 days.

(b) Notwithstanding Section 1368.005, coverage required under this chapter is limited to a lifetime maximum of three separate treatment series for each covered individual.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1368.007. TREATMENT STANDARDS. (a) Coverage provided under this chapter for necessary care and treatment in a chemical dependency treatment center must be provided as if the care and treatment were provided in a hospital.

(b) The department by rule shall adopt standards formulated and approved by the department and the Texas Commission on Alcohol and Drug Abuse for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers.

(c) Standards adopted under this section must provide for:

(1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and

(2) appropriate utilization review of treatment as well as necessary extensions of treatment.

(d) Coverage required under this chapter is subject to the standards adopted under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1368.008. USE OF ENDORSEMENT OR RIDER TO COMPLY WITH CHAPTER. A group health benefit plan issuer that uses a policy form approved by the commissioner before November 10, 1981, may use an endorsement or rider to comply with this chapter if the endorsement or rider is approved by the commissioner as complying with this chapter and other provisions of this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1369. BENEFITS RELATED TO PRESCRIPTION DRUGS AND DEVICES AND RELATED SERVICES

SUBCHAPTER A. COVERAGE OF PRESCRIPTION DRUGS IN GENERAL

Sec. 1369.001. DEFINITIONS. In this subchapter:

(1) "Contraindication" means the potential for, or the occurrence of:

(A) an undesirable change in the therapeutic effect of a prescribed drug because of the presence of a disease condition in the patient for whom the drug is prescribed; or

(B) a clinically significant adverse effect of a prescribed drug on a disease condition of the patient for whom the drug is prescribed.

(2) "Drug" has the meaning assigned by Section 551.003, Occupations Code.

(2-a) "Enrollee" means an individual who is covered under a health benefit plan, including a covered dependent.

(3) "Indication" means a symptom, cause, or occurrence in a disease that points out the cause, diagnosis, course of treatment, or prognosis of the disease.

(4) "Peer-reviewed medical literature" means scientific studies published in a peer-reviewed national professional journal.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 727 (S.B. 1076), Sec. 1, eff. September 1, 2017.

Sec. 1369.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.003. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1369.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.004. COVERAGE REQUIRED. (a) A health benefit plan

that covers drugs must cover any drug prescribed to treat an enrollee for a chronic, disabling, or life-threatening illness covered under the plan if the drug:

(1) has been approved by the United States Food and Drug Administration for at least one indication; and

(2) is recognized by the following for treatment of the indication for which the drug is prescribed:

(A) a prescription drug reference compendium approved by the commissioner for purposes of this section; or

(B) substantially accepted peer-reviewed medical literature.

(b) Coverage of a drug required under Subsection (a) must include coverage of medically necessary services associated with the administration of the drug.

(c) A health benefit plan issuer may not, based on a "medical necessity" requirement, deny coverage of a drug required under Subsection (a) unless the reason for the denial is unrelated to the legal status of the drug use.

(d) This section does not require a health benefit plan to cover:

(1) experimental drugs that are not otherwise approved for an indication by the United States Food and Drug Administration;

(2) any disease or condition that is excluded from coverage under the plan; or

(3) a drug that the United States Food and Drug Administration has determined to be contraindicated for treatment of the current indication.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.0041. CERTAIN PAYMENTS AND REFILLS. (a) A health benefit plan issuer that covers prescription drugs may not require an enrollee to make a payment for a prescription drug at the point of sale in an amount greater than the lesser of:

(1) the applicable copayment;

(2) the allowable claim amount for the prescription drug; or

(3) the amount an individual would pay for the drug if the individual purchased the drug without using a health benefit plan or

any other source of drug benefits or discounts.

(b) A health benefit plan that covers prescription eye drops to treat a chronic eye disease or condition must allow the refill of prescription eye drops if the enrollee timely pays at the point of sale the maximum amount allowed by Subsection (a) and:

(1) the original prescription states that additional quantities of the eye drops are needed;

(2) the refill does not exceed the total quantity of dosage units authorized by the prescribing provider on the original prescription, including refills; and

(3) the refill is dispensed on or before the last day of the prescribed dosage period and:

(A) not earlier than the 21st day after the date a prescription for a 30-day supply of eye drops is dispensed;

(B) not earlier than the 42nd day after the date a prescription for a 60-day supply of eye drops is dispensed; or

(C) not earlier than the 63rd day after the date a prescription for a 90-day supply of eye drops is dispensed.

Added by Acts 2017, 85th Leg., R.S., Ch. 727 (S.B. 1076), Sec. 2, eff. September 1, 2017.

Sec. 1369.005. RULES. The commissioner may adopt rules to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. REQUIREMENTS AFFECTING COVERAGE OF SPECIFIC PRESCRIPTION DRUGS OR COST SHARING

Sec. 1369.051. DEFINITIONS. In this subchapter:

(1) "Clinical practice guideline" means a statement systematically developed by a multidisciplinary panel of experts composed of physicians and, as necessary, other health care providers to assist a patient or health care provider in making a decision about appropriate health care for a specific clinical circumstance or condition.

(1-a) "Clinical review criteria" means the written screening procedures, decision abstracts, clinical protocols, and clinical practice guidelines used by a health benefit plan issuer,

utilization review organization, or independent review organization to determine the medical necessity and appropriateness or the experimental or investigational nature of a health care service or prescription drug.

(1-b) "Drug formulary" means a list of drugs:

(A) for which a health benefit plan provides coverage;

(B) for which a health benefit plan issuer approves payment; or

(C) that a health benefit plan issuer encourages or offers incentives for physicians to prescribe.

(2) "Enrollee" means an individual who is covered under a health benefit plan, including a covered dependent.

(3) "Physician" means a person licensed as a physician by the Texas State Board of Medical Examiners.

(4) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

(5) "Step therapy protocol" means a protocol that requires an enrollee to use a prescription drug or sequence of prescription drugs other than the drug that the enrollee's physician recommends for the enrollee's treatment before the health benefit plan provides coverage for the recommended drug.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 103 (S.B. 680), Sec. 1, eff. September 1, 2017.

Sec. 1369.052. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 2, eff. September 1, 2011.

Text of section effective until April 1, 2025

Sec. 1369.053. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another single benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy;

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that

the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1369.052;

(6) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(7) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 3, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.125, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1369.053. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another single benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy;

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy

is a health benefit plan as described by Section 1369.052;

(6) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(7) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 3, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.125, eff. April 1, 2025.

Sec. 1369.054. NOTICE AND DISCLOSURE OF CERTAIN INFORMATION REQUIRED. An issuer of a health benefit plan that covers prescription drugs and uses one or more drug formularies to specify the prescription drugs covered under the plan shall:

(1) provide in plain language in the coverage documentation provided to each enrollee:

(A) notice that the plan uses one or more drug formularies;

(B) an explanation of what a drug formulary is;

(C) a statement regarding the method the issuer uses to determine the prescription drugs to be included in or excluded from a drug formulary;

(D) a statement of how often the issuer reviews the contents of each drug formulary; and

(E) notice that an enrollee may contact the issuer to determine whether a specific drug is included in a particular drug formulary;

(2) disclose to an individual on request, not later than the third business day after the date of the request, whether a specific drug is included in a particular drug formulary; and

(3) notify an enrollee and any other individual who requests information under this section that the inclusion of a drug in a drug formulary does not guarantee that an enrollee's health care provider will prescribe that drug for a particular medical condition

or mental illness.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 4, eff. September 1, 2011.

Sec. 1369.0541. MODIFICATION OF DRUG COVERAGE UNDER PLAN. (a) A health benefit plan issuer may modify drug coverage provided under a health benefit plan if:

(1) the modification occurs at the time of coverage renewal;

(2) the modification is effective uniformly among all group health benefit plan sponsors covered by identical or substantially identical health benefit plans or all individuals covered by identical or substantially identical individual health benefit plans, as applicable; and

(3) not later than the 60th day before the date the modification is effective, the issuer provides written notice of the modification to the commissioner, each affected group health benefit plan sponsor, each affected enrollee in an affected group health benefit plan, and each affected individual health benefit plan holder.

(b) Modifications affecting drug coverage that require notice under Subsection (a) include:

(1) removing a drug from a formulary;

(2) adding a requirement that an enrollee receive prior authorization for a drug;

(3) imposing or altering a quantity limit for a drug;

(4) imposing a step-therapy restriction for a drug; and

(5) moving a drug to a higher cost-sharing tier unless a generic drug alternative to the drug is available.

(c) A health benefit plan issuer may elect to offer an enrollee in the plan the option of receiving notifications required by this section by e-mail.

Added by Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 5, eff. September 1, 2011.

Sec. 1369.0542. EFFECT OF REDUCTIONS IN OUT-OF-POCKET EXPENSES ON COST SHARING. (a) This section applies only to a reduction in out-of-pocket expenses made by or on behalf of an enrollee for a prescription drug covered by the enrollee's health benefit plan for which:

(1) a generic equivalent does not exist;

(2) a generic equivalent does exist but the enrollee has obtained access to the prescription drug under the enrollee's health benefit plan using:

(A) a prior authorization process;

(B) a step therapy protocol; or

(C) the health benefit plan issuer's exceptions and appeals process;

(3) an interchangeable biological product does not exist; or

(4) an interchangeable biological product does exist but the enrollee has obtained access to the prescription drug under the enrollee's health benefit plan using:

(A) a prior authorization process;

(B) a step therapy protocol; or

(C) the health benefit plan issuer's exceptions and appeals process.

(b) An issuer of a health benefit plan that covers prescription drugs or a pharmacy benefit manager shall apply any third-party payment, financial assistance, discount, product voucher, or other reduction in out-of-pocket expenses made by or on behalf of an enrollee for a prescription drug to the enrollee's deductible, copayment, cost-sharing responsibility, or out-of-pocket maximum applicable to health benefits under the enrollee's plan.

Added by Acts 2023, 88th Leg., R.S., Ch. 489 (H.B. 999), Sec. 2, eff. September 1, 2023.

Sec. 1369.0545. STEP THERAPY PROTOCOLS. (a) A health benefit plan issuer that requires a step therapy protocol before providing coverage for a prescription drug must establish, implement, and administer the step therapy protocol in accordance with clinical review criteria readily available to the health care industry. The health benefit plan issuer shall take into account the needs of

atypical patient populations and diagnoses in establishing the clinical review criteria. The clinical review criteria:

(1) must consider generally accepted clinical practice guidelines that are:

(A) developed and endorsed by a multidisciplinary panel of experts described by Subsection (b);

(B) based on high quality studies, research, and medical practice;

(C) created by an explicit and transparent process that:

(i) minimizes bias and conflicts of interest;

(ii) explains the relationship between treatment options and outcomes;

(iii) rates the quality of the evidence supporting the recommendations; and

(iv) considers relevant patient subgroups and preferences; and

(D) updated at appropriate intervals after a review of new evidence, research, and treatments; or

(2) if clinical practice guidelines described by Subdivision (1) are not reasonably available, may be based on peer-reviewed publications developed by independent experts, which may include physicians, with expertise applicable to the relevant health condition.

(b) A multidisciplinary panel of experts composed of physicians and, as necessary, other health care providers that develops and endorses clinical practice guidelines under Subsection (a)(1) must manage conflicts of interest by:

(1) requiring each member of the panel's writing or review group to:

(A) disclose any potential conflict of interest, including a conflict of interest involving an insurer, health benefit plan issuer, or pharmaceutical manufacturer; and

(B) recuse himself or herself in any situation in which the member has a conflict of interest;

(2) using a methodologist to work with writing groups to provide objectivity in data analysis and the ranking of evidence by preparing evidence tables and facilitating consensus; and

(3) offering an opportunity for public review and comment.

(c) Subsection (b) does not apply to a panel or committee of

experts, including a pharmacy and therapeutics committee, established by a health benefit plan issuer or a pharmacy benefit manager that advises the health benefit plan issuer or pharmacy benefit manager regarding drugs or formularies.

Added by Acts 2017, 85th Leg., R.S., Ch. 103 (S.B. 680), Sec. 2, eff. September 1, 2017.

Sec. 1369.0546. STEP THERAPY PROTOCOL EXCEPTION REQUESTS. (a) A health benefit plan issuer shall establish a process in a user-friendly format that is readily accessible to a patient and prescribing provider, in the health benefit plan's formulary document and otherwise, through which an exception request under this section may be submitted by the provider.

(b) A prescribing provider on behalf of a patient may submit to the patient's health benefit plan issuer a written request for an exception to a step therapy protocol required by the patient's health benefit plan. The provider shall submit the request on the standard form prescribed by the commissioner under Section 1369.304.

(c) A health benefit plan issuer shall grant a written request under Subsection (b) if the request includes the prescribing provider's written statement, with supporting documentation, stating that:

(1) the drug required under the step therapy protocol:

(A) is contraindicated;

(B) will likely cause an adverse reaction in or physical or mental harm to the patient; or

(C) is expected to be ineffective based on the known clinical characteristics of the patient and the known characteristics of the prescription drug regimen;

(2) the patient previously discontinued taking the drug required under the step therapy protocol, or another prescription drug in the same pharmacologic class or with the same mechanism of action as the required drug, while under the health benefit plan currently in force or while covered under another health benefit plan because the drug was not effective or had a diminished effect or because of an adverse event;

(3) the drug required under the step therapy protocol is not in the best interest of the patient, based on clinical

appropriateness, because the patient's use of the drug is expected to:

(A) cause a significant barrier to the patient's adherence to or compliance with the patient's plan of care;

(B) worsen a comorbid condition of the patient; or

(C) decrease the patient's ability to achieve or maintain reasonable functional ability in performing daily activities; or

(4)(A) the drug that is subject to the step therapy protocol was prescribed for the patient's condition;

(B) the patient:

(i) received benefits for the drug under the health benefit plan currently in force or a previous health benefit plan; and

(ii) is stable on the drug; and

(C) the change in the patient's prescription drug regimen required by the step therapy protocol is expected to be ineffective or cause harm to the patient based on the known clinical characteristics of the patient and the known characteristics of the required prescription drug regimen.

(d) Except as provided by Subsection (e), if a health benefit plan issuer does not deny an exception request described by Subsection (c) before 72 hours after the health benefit plan issuer receives the request, the request is considered granted.

(e) If an exception request described by Subsection (c) also states that the prescribing provider reasonably believes that denial of the request makes the death of or serious harm to the patient probable, the request is considered granted if the health benefit plan issuer does not deny the request before 24 hours after the health benefit plan issuer receives the request.

(f) The denial of an exception request under this section is an adverse determination for purposes of Section 4201.002 and is subject to appeal under Subchapters H and I, Chapter 4201.

Added by Acts 2017, 85th Leg., R.S., Ch. 103 (S.B. 680), Sec. 2, eff. September 1, 2017.

Sec. 1369.0547. STEP THERAPY PROTOCOLS FOR PRESCRIPTION DRUGS TO TREAT SERIOUS MENTAL ILLNESSES. (a) In this section, "serious

mental illness" has the meaning assigned by Section 1355.001.

(b) This section applies only to a drug prescribed to an enrollee who is 18 years of age or older to treat a diagnosis of a serious mental illness.

(c) A health benefit plan that provides coverage for prescription drugs to treat a serious mental illness may not require, before the health benefit plan provides coverage of a prescription drug approved by the United States Food and Drug Administration, that the enrollee:

(1) fail to successfully respond to more than one different drug for each drug prescribed, excluding the generic or pharmaceutical equivalent of the prescribed drug; or

(2) prove a history of failure of more than one different drug for each drug prescribed, excluding the generic or pharmaceutical equivalent of the prescribed drug.

(d) Subject to Section 1369.0546, a health benefit plan issuer may implement a step therapy protocol to require a trial of a generic or pharmaceutical equivalent of a prescribed prescription drug as a condition of continued coverage of the prescribed drug only:

(1) once in a plan year; and

(2) if the generic or pharmaceutical equivalent drug is added to the plan's drug formulary.

Added by Acts 2023, 88th Leg., R.S., Ch. 684 (H.B. 1337), Sec. 1, eff. September 1, 2023.

Sec. 1369.055. CONTINUATION OF COVERAGE REQUIRED; OTHER DRUGS NOT PRECLUDED. (a) An issuer of a health benefit plan that covers prescription drugs shall offer to each enrollee at the contracted benefit level and until the enrollee's plan renewal date any prescription drug that was approved or covered under the plan for a medical condition or mental illness, regardless of whether the drug has been removed from the health benefit plan's drug formulary before the plan renewal date.

(b) This section does not prohibit a physician or other health professional who is authorized to prescribe a drug from prescribing a drug that is an alternative to a drug for which continuation of coverage is required under Subsection (a) if the alternative drug is:

(1) covered under the health benefit plan; and

(2) medically appropriate for the enrollee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 6, eff. September 1, 2011.

Sec. 1369.056. ADVERSE DETERMINATION. (a) The refusal of a health benefit plan issuer to provide benefits to an enrollee for a prescription drug is an adverse determination for purposes of Section 4201.002 if:

(1) the drug is not included in a drug formulary used by the health benefit plan; and

(2) the enrollee's physician has determined that the drug is medically necessary.

(b) The enrollee may appeal the adverse determination under Subchapters H and I, Chapter 4201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.012, eff. April 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 7, eff. September 1, 2011.

Sec. 1369.057. RULES. The commissioner may adopt rules to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B-1. TRANSPARENCY REQUIREMENTS FOR CERTAIN INDIVIDUAL HEALTH BENEFIT PLANS

Sec. 1369.076. DEFINITIONS. In this subchapter, terms defined by Subchapter B have the meanings assigned by that subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 135 (H.B. 1227), Sec. 1, eff. September 1, 2017.

Sec. 1369.077. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to an individual health benefit plan to which Subchapter B applies.

Added by Acts 2017, 85th Leg., R.S., Ch. 135 (H.B. 1227), Sec. 1, eff. September 1, 2017.

Sec. 1369.078. FORMULARY INFORMATION ON INTERNET WEBSITE. (a) A health benefit plan issuer shall display on a public Internet website maintained by the issuer formulary information for each of the issuer's individual health benefit plans as required by the commissioner by rule.

(b) A direct electronic link to the formulary information must be displayed in a conspicuous manner in the electronic summary of benefits and coverage of each individual health benefit plan issued by the health benefit plan issuer on the health benefit plan issuer's Internet website. The information must be publicly accessible to enrollees, prospective enrollees, and others without necessity of providing a password, a user name, or personally identifiable information.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 1, eff. September 1, 2015.
Transferred, redesignated and amended from Insurance Code, Section 1369.0542 by Acts 2017, 85th Leg., R.S., Ch. 135 (H.B. 1227), Sec. 2, eff. September 1, 2017.

Sec. 1369.079. FORMULARY DISCLOSURE REQUIREMENTS. (a) The commissioner shall develop and adopt by rule requirements to promote consistency and clarity in the disclosure of formularies to facilitate comparison shopping among individual health benefit plans.

(b) The requirements adopted under Subsection (a) must apply to each prescription drug:

(1) included in a formulary and dispensed in a network pharmacy; or

(2) covered under an individual health benefit plan and typically administered by a physician or health care provider.

(c) The formulary disclosures must:

(1) be electronically searchable by drug name;

(2) include for each drug the information required by Subsection (d) in the order listed in that subsection; and

(3) indicate each formulary that applies to each individual health benefit plan issued by the issuer.

(d) The formulary disclosures must include for each drug:

(1) the cost-sharing amount for each drug, including as applicable:

(A) the dollar amount of a copayment; or

(B) for a drug subject to coinsurance:

(i) an enrollee's cost-sharing amount stated in dollars; or

(ii) a cost-sharing range, denoted as follows:

(a) under $100 - $;

(b) $100-$250 - $$;

(c) $251-$500 - $$$;

(d) $501-$1,000 - $$$$; or

(e) over $1,000 - $$$$$;

(2) a disclosure of prior authorization, step therapy, or other protocol requirements for each drug;

(3) if the individual health benefit plan uses a tier-based formulary, the specific tier for each drug listed in the formulary;

(4) a description of how prescription drugs will specifically be included in or excluded from the deductible, including a description of out-of-pocket costs for a prescription drug that may not apply to the deductible;

(5) identification of preferred formulary drugs; and

(6) an explanation of coverage of each formulary drug.

(e) The commissioner by rule may allow an alternative method of making disclosures required under Subsection (d)(1) relating to cost-sharing through a web-based tool that must:

(1) be publicly accessible to enrollees, prospective enrollees, and others without necessity of providing a password, a user name, or personally identifiable information;

(2) allow consumers to electronically search formulary information by the name under which the individual health benefit plan is marketed; and

(3) be accessible through a direct link that is displayed on each page of the formulary disclosure that lists each drug as required under Subsection (c).

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 1, eff. September 1, 2015.
Transferred, redesignated and amended from Insurance Code, Section 1369.0543 by Acts 2017, 85th Leg., R.S., Ch. 135 (H.B. 1227), Sec. 2, eff. September 1, 2017.

Sec. 1369.080. FORMULARY INFORMATION PROVIDED BY TOLL-FREE TELEPHONE NUMBER. In addition to providing the information described by Section 1369.079(d)(1) in the manner required by Section 1369.079, a health benefit plan issuer may make the information available to enrollees, prospective enrollees, and others through a toll-free telephone number that operates at least during normal business hours.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 1, eff. September 1, 2015.
Transferred, redesignated and amended from Insurance Code, Section 1369.0544 by Acts 2017, 85th Leg., R.S., Ch. 135 (H.B. 1227), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B-2. DISCLOSURE OF CERTAIN PRESCRIPTION DRUG INFORMATION SPECIFIED BY DRUG FORMULARY

Sec. 1369.091. DEFINITIONS. In this subchapter:

(1) "Cost-sharing information" means the actual out-of-pocket amount an enrollee is required to pay a dispensing pharmacy or prescribing provider for a prescription drug under the enrollee's health benefit plan.

(2) "Drug formulary," "enrollee," and "prescription drug" have the meanings assigned by Section 1369.051.

(3) "Standard API" means an application interface that meets the requirements of an applicable American National Standards Institute (ANSI) accredited standard to conform to standards adopted under 45 C.F.R. Section 170.215.

Added by Acts 2023, 88th Leg., R.S., Ch. 272 (S.B. 622), Sec. 1, eff. September 1, 2023.

Sec. 1369.092. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides

benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) alternative health benefit coverage offered by a subsidiary of the Texas Mutual Insurance Company under Subchapter M, Chapter 2054;

(8) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(9) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 272 (S.B. 622), Sec. 1, eff. September 1, 2023.

Sec. 1369.093. EXCEPTIONS TO APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under:

(1) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(2) the child health plan program under Chapter 62, Health and Safety Code;

(3) the TRICARE military health system; or

(4) a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 272 (S.B. 622), Sec. 1, eff. September 1, 2023.

Sec. 1369.094. DISCLOSURE OF PRESCRIPTION DRUG INFORMATION. (a) This section applies only with respect to a prescription drug covered under a health benefit plan's pharmacy benefit.

(b) A health benefit plan issuer that covers prescription drugs shall provide information regarding a covered prescription drug to an enrollee or the enrollee's prescribing provider on request. The information provided must include the issuer's drug formulary and, for the prescription drug and any formulary alternative:

(1) the enrollee's eligibility;

(2) cost-sharing information, including any deductible, copayment, or coinsurance, which must:

(A) be consistent with cost-sharing requirements under the enrollee's plan;

(B) be accurate at the time the cost-sharing information is provided; and

(C) include any variance in cost-sharing based on the patient's preferred dispensing retail or mail-order pharmacy or the prescribing provider; and

(3) applicable utilization management requirements.

(c) In providing the information required under Subsection (b), a health benefit plan issuer shall:

(1) respond in real time to a request made through a

standard API;

(2) allow the use of an integrated technology or service as necessary to provide the required information;

(3) ensure that the information provided is current no later than one business day after the date a change is made; and

(4) provide the information if the request is made using the drug's unique billing code and National Drug Code.

(d) A health benefit plan issuer may not:

(1) deny or delay a response to a request for information under Subsection (b) for the purpose of blocking the release of the information;

(2) restrict a prescribing provider from communicating to the enrollee the information provided under Subsection (b), information about the cash price of the drug, or any additional information on any lower cost or clinically appropriate alternative drug, whether or not the drug is covered under the enrollee's plan;

(3) except as required by law, interfere with, prevent, or materially discourage access to or the exchange or use of the information provided under Subsection (b), including by:

(A) charging a fee to access the information;

(B) not responding to a request within the time required by this section; or

(C) instituting a consent requirement for an enrollee to access the information; or

(4) penalize, including by taking any action intended to punish or discourage future similar behavior by the prescribing provider, a prescribing provider for:

(A) disclosing the information provided under Subsection (b); or

(B) prescribing, administering, or ordering a lower cost or clinically appropriate alternative drug.

(e) A health benefit plan issuer with fewer than 10,000 enrollees may:

(1) register with the department to receive an additional 12 months after the effective date of this subchapter to comply with the requirements of this subchapter; and

(2) after the additional 12 months provided for in Subdivision (1), request from the department a temporary exception from one or more requirements of this section by submitting a report to the department that demonstrates that compliance would impose an

unreasonable cost relative to the public value that would be gained from full compliance.

Added by Acts 2023, 88th Leg., R.S., Ch. 272 (S.B. 622), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. COVERAGE OF PRESCRIPTION CONTRACEPTIVE DRUGS AND DEVICES AND RELATED SERVICES

Sec. 1369.101. DEFINITIONS. In this subchapter:

(1) "Enrollee" means a person who is entitled to benefits under a health benefit plan.

(2) "Outpatient contraceptive service" means a consultation, examination, procedure, or medical service that is provided on an outpatient basis and that is related to the use of a drug or device intended to prevent pregnancy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.102. APPLICABILITY OF SUBCHAPTER. Except as otherwise provided by this subchapter, this subchapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 395 (H.B. 916), Sec. 1, eff. September 1, 2023.

Sec. 1369.103. EXCEPTION. This subchapter does not apply to:
(1) a health benefit plan that provides coverage only:
(A) for a specified disease or for another limited benefit other than for cancer;
(B) for accidental death or dismemberment;
(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;
(D) as a supplement to a liability insurance policy;
(E) for credit insurance;
(F) for dental or vision care; or
(G) for indemnity for hospital confinement;
(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;
(3) a workers' compensation insurance policy;
(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or
(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1369.102.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.1031. CERTAIN COVERAGE REQUIRED. (a) This section applies to a health benefit plan described by Section 1369.102.
(b) Notwithstanding any other law, this section applies to:
(1) a standard health benefit plan issued under Chapter 1507;
(2) a basic coverage plan under Chapter 1551;

(3) a basic plan under Chapter 1575;

(4) a primary care coverage plan under Chapter 1579;

(5) a plan providing basic coverage under Chapter 1601;

(6) group health coverage made available by a school district in accordance with Section 22.004, Education Code; and

(7) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code.

(c) A health benefit plan that provides benefits for a prescription contraceptive drug must provide for an enrollee to obtain up to:

(1) a three-month supply of the covered prescription contraceptive drug at one time the first time the enrollee obtains the drug; and

(2) a 12-month supply of the covered prescription contraceptive drug at one time each subsequent time the enrollee obtains the same drug, regardless of whether the enrollee was enrolled in the health benefit plan the first time the enrollee obtained the drug.

(d) An enrollee may obtain only one 12-month supply of a covered prescription contraceptive drug during each 12-month period.

Added by Acts 2023, 88th Leg., R.S., Ch. 395 (H.B. 916), Sec. 2, eff. September 1, 2023.

Sec. 1369.104. EXCLUSION OR LIMITATION PROHIBITED. (a) A health benefit plan that provides benefits for prescription drugs or devices may not exclude or limit benefits to enrollees for:

(1) a prescription contraceptive drug or device approved by the United States Food and Drug Administration; or

(2) an outpatient contraceptive service.

(b) This section does not prohibit a limitation that applies to all prescription drugs or devices or all services for which benefits are provided under a health benefit plan.

(c) This section does not require a health benefit plan to cover abortifacients or any other drug or device that terminates a pregnancy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.105. CERTAIN COST-SHARING PROVISIONS PROHIBITED. (a) A health benefit plan may not impose a deductible, copayment, coinsurance, or other cost-sharing provision applicable to benefits for prescription contraceptive drugs or devices unless the amount of the required cost-sharing is the same as or less than the amount of the required cost-sharing applicable to benefits for other prescription drugs or devices under the plan.

(b) A health benefit plan may not impose a deductible, copayment, coinsurance, or other cost-sharing provision applicable to benefits for outpatient contraceptive services unless the amount of the required cost-sharing is the same as or less than the amount of the required cost-sharing applicable to benefits for other outpatient services under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.106. CERTAIN WAITING PERIODS PROHIBITED. (a) A health benefit plan may not impose a waiting period applicable to benefits for prescription contraceptive drugs or devices unless the waiting period is the same as or shorter than any waiting period applicable to benefits for other prescription drugs or devices under the plan.

(b) A health benefit plan may not impose a waiting period applicable to benefits for outpatient contraceptive services unless the waiting period is the same as or shorter than any waiting period applicable to benefits for other outpatient services under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.107. PROHIBITED CONDUCT. A health benefit plan issuer may not:

(1) solely because of the applicant's or enrollee's use or potential use of a prescription contraceptive drug or device or an outpatient contraceptive service, deny:

(A) the eligibility of an applicant to enroll in the plan;

(B) the continued eligibility of an enrollee for coverage under the plan; or

(C) the eligibility of an enrollee to renew coverage

under the plan;

(2) provide a monetary incentive to an applicant for enrollment or an enrollee to induce the applicant or enrollee to accept coverage that does not satisfy the requirements of this subchapter; or

(3) reduce or limit a payment to a health care professional, or otherwise penalize the professional, because the professional prescribes a contraceptive drug or device or provides an outpatient contraceptive service.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.108. EXEMPTION FOR ENTITIES ASSOCIATED WITH RELIGIOUS ORGANIZATION. (a) This subchapter does not require a health benefit plan that is issued by an entity associated with a religious organization or any physician or health care provider providing medical or health care services under the plan to offer, recommend, offer advice concerning, pay for, provide, assist in, perform, arrange, or participate in providing or performing a medical or health care service that violates the religious convictions of the organization, unless the prescription contraceptive coverage is necessary to preserve the life or health of the enrollee.

(b) An issuer of a health benefit plan that excludes or limits coverage for medical or health care services under this section shall state the exclusion or limitation in:

(1) the plan's coverage document;

(2) the plan's statement of benefits;

(3) plan brochures; and

(4) other informational materials for the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.109. ENFORCEMENT. A health benefit plan issuer that violates this subchapter is subject to the enforcement provisions of Subtitle B, Title 2.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. PHARMACY BENEFIT CARDS

Sec. 1369.151. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) Notwithstanding any other law, this subchapter applies to coverage under:

(1) the basic coverage plan under Chapter 1551;

(2) the basic plan under Chapter 1575;

(3) the primary care coverage plan under Chapter 1579;

(4) the basic coverage plan under Chapter 1601;

(5) the child health plan program under Chapter 62, Health and Safety Code; and

(6) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1117 (H.B. 1138), Sec. 1, eff. September 1, 2009.

Sec. 1369.152. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1369.151.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1369.153. INFORMATION REQUIRED ON IDENTIFICATION CARD. (a) An issuer of a health benefit plan that provides pharmacy benefits to enrollees shall include on the front of the identification card of each enrollee:

(1) the name of the entity administering the pharmacy benefits if the entity is different from the health benefit plan issuer;

(2) the group number applicable to the enrollee;

(3) the identification number of the enrollee, which may not be the enrollee's social security number;

(4) the bank identification number necessary for electronic billing;

(5) the effective date of the coverage evidenced by the

card; and

(6) copayment information for generic and brand-name prescription drugs.

(b) In addition to the information required under Subsection (a), the issuer of a health benefit plan shall include on the identification card of each enrollee:

(1) the logo of the entity administering the pharmacy benefits if the entity is different from the health benefit plan issuer; and

(2) a telephone number for contacting an appropriate person to obtain information relating to the pharmacy benefits provided under the plan.

(c) In addition to complying with Subsections (a) and (b), an issuer of a health benefit plan may provide the information required under Subsections (a) and (b) in electronically readable form on the back of the identification card.

(d) This section does not require a health benefit plan issuer that administers its own pharmacy benefits to issue an identification card separate from any identification card issued to an enrollee to evidence coverage under the plan if the identification card issued to evidence coverage contains the information required by Subsections (a) and (b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1117 (H.B. 1138), Sec. 2, eff. September 1, 2009.

Sec. 1369.154. RULES. (a) The commissioner shall adopt rules as necessary to implement this subchapter.

(b) Rules adopted by the commissioner must be consistent with national standards established by the Workgroup for Electronic Data Interchange or by other similar organizations recognized by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1117 (H.B. 1138), Sec. 3, eff. September 1, 2009.

SUBCHAPTER E. COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS

Sec. 1369.201. DEFINITIONS. In this subchapter:

(1) "Health benefit exchange" means an American Health Benefit Exchange administered by the federal government or created pursuant to Section 1311(b), Patient Protection and Affordable Care Act (42 U.S.C. Section 18031).

(2) "Qualified health plan" has the meaning assigned by Section 1301(a), Patient Protection and Affordable Care Act (42 U.S.C. Section 18021).

Added by Acts 2011, 82nd Leg., R.S., Ch. 105 (H.B. 438), Sec. 1, eff. September 1, 2011.

Sec. 1369.202. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501 or coverage provided by a health group cooperative under Subchapter B of that chapter, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) an exchange operating under Chapter 942;

(6) a Lloyd's plan operating under Chapter 941;

(7) a health maintenance organization operating under Chapter 843; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2011, 82nd Leg., R.S., Ch. 105 (H.B. 438), Sec. 1, eff. September 1, 2011.

Sec. 1369.203. EXCEPTION. (a) This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for fixed indemnity benefits for a specified disease or diseases;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) only for dental or vision care; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under an automobile insurance policy;

(5) a credit insurance policy;

(6) a limited benefit policy that does not provide coverage for physical examinations or wellness exams;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1369.201.

(b) This subchapter does not apply to a qualified health plan offered through a health benefit exchange.

Added by Acts 2011, 82nd Leg., R.S., Ch. 105 (H.B. 438), Sec. 1, eff. September 1, 2011.

Sec. 1369.204. REQUIRED COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS. (a) A health benefit plan that provides coverage for cancer treatment must provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than

intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

(b) This section does not prohibit a health benefit plan from requiring prior authorization for an orally administered anticancer medication. If an orally administered anticancer medication is authorized, the cost to the covered individual may not exceed the coinsurance or copayment that would be applied to a chemotherapy or other cancer treatment visit.

(c) A health benefit plan issuer may not reclassify anticancer medications or increase a coinsurance, copayment, deductible, or other out-of-pocket expense imposed on anticancer medications to achieve compliance with this section. Any plan change that otherwise increases an out-of-pocket expense applied to anticancer medications must also be applied to the majority of comparable medical or pharmaceutical benefits under the plan.

(d) This section does not prohibit a health benefit plan issuer from increasing cost-sharing for all benefits, including anticancer treatments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 105 (H.B. 438), Sec. 1, eff. September 1, 2011.

SUBCHAPTER E-1. COVERAGE OF PRESCRIPTION DRUGS FOR STAGE-FOUR ADVANCED, METASTATIC CANCER

Sec. 1369.211. DEFINITIONS. In this subchapter:

(1) "Associated conditions" means the symptoms or side effects associated with stage-four advanced, metastatic cancer or its treatment and which, in the judgment of the health care practitioner, further jeopardize the health of a patient if left untreated.

(2) "Stage-four advanced, metastatic cancer" means cancer that has spread from the primary or original site of the cancer to nearby tissues, lymph nodes, or other areas or parts of the body.

Added by Acts 2019, 86th Leg., R.S., Ch. 1350 (H.B. 1584), Sec. 1, eff. September 1, 2019.

Sec. 1369.212. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses or pharmacy benefits

incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is issued by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

Text of subsection effective until April 1, 2025

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(8) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(9) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(10) the child health plan program under Chapter 62, Health and Safety Code;

(11) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(12) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Text of subsection effective on April 1, 2025

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(8) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(9) the state Medicaid program, including the Medicaid managed care program operated under Chapters 540 and 540A, Government Code;

(10) the child health plan program under Chapter 62, Health and Safety Code;

(11) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(12) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(c) This subchapter applies to coverage under a group health benefit plan provided to a resident of this state regardless of whether the group policy, agreement, or contract is delivered, issued for delivery, or renewed in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 1350 (H.B. 1584), Sec. 1, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.126, eff. April 1, 2025.

Sec. 1369.213. PROHIBITED CONDUCT. (a) A health benefit plan that provides coverage for stage-four advanced, metastatic cancer and associated conditions may not require, before the health benefit plan provides coverage of a prescription drug approved by the United States Food and Drug Administration, that the enrollee:

(1) fail to successfully respond to a different drug; or

(2) prove a history of failure of a different drug.

(b) This section applies only to a drug the use of which is:

(1) consistent with best practices for the treatment of stage-four advanced, metastatic cancer or an associated condition;

(2) supported by peer-reviewed, evidence-based literature; and

(3) approved by the United States Food and Drug Administration.

Added by Acts 2019, 86th Leg., R.S., Ch. 1350 (H.B. 1584), Sec. 1, eff. September 1, 2019.

SUBCHAPTER F. AUDITS OF PHARMACISTS AND PHARMACIES

Sec. 1369.251. DEFINITIONS. In this subchapter:

(1) "Desk audit" means an audit conducted by a health benefit plan issuer or pharmacy benefit manager at a location other than the location of the pharmacist or pharmacy. The term includes an audit performed at the offices of the plan issuer or pharmacy benefit manager during which the pharmacist or pharmacy provides requested documents for review by hard copy or by microfiche, disk, or other electronic media. The term does not include a review conducted not later than the third business day after the date a claim is adjudicated provided recoupment is not demanded.

(2) "Extrapolation" means a mathematical process or technique used by a health benefit plan issuer or pharmacy benefit manager that administers pharmacy claims for a health benefit plan issuer in the audit of a pharmacy or pharmacist to estimate audit results or findings for a larger batch or group of claims not reviewed by the plan issuer or pharmacy benefit manager.

(3) "Health benefit plan" means a plan that provides benefits for medical, surgical, or other treatment expenses incurred as a result of a health condition, a mental health condition, an accident, sickness, or substance abuse, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is issued by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a health maintenance organization operating under Chapter 843;

(iv) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(v) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(vi) a stipulated premium company operating under Chapter 884;

(vii) a fraternal benefit society operating under Chapter 885;

(viii) a Lloyd's plan operating under Chapter 941; or

(ix) an exchange operating under Chapter 942;

(B) a small employer health benefit plan written under Chapter 1501; or

(C) a health benefit plan issued under Chapter 1551, 1575, 1579, or 1601.

(4) "On-site audit" means an audit that is conducted at:

(A) the location of the pharmacist or pharmacy; or

(B) another location at which the records under review are stored.

(5) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.252. EXCEPTIONS TO APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under:

(1) the state Medicaid program;

(2) the federal Medicare program;

(3) the state child health plan or health benefits plan for children under Chapter 62 or 63, Health and Safety Code;

(4) the TRICARE military health system;

(5) a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code; or

(6) a self-funded health benefit plan as defined by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.253. CONFLICT WITH OTHER LAWS. If there is a conflict between this subchapter and a provision of Chapter 843 or 1301 related to a pharmacy benefit manager, this subchapter prevails.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.254. AUDIT OF PHARMACIST OR PHARMACY; NOTICE; GENERAL PROVISIONS. (a) Except as provided by Subsection (d), a health benefit plan issuer or pharmacy benefit manager that performs an on-site audit under this subchapter of a pharmacist or pharmacy shall provide the pharmacist or pharmacy reasonable notice of the audit and accommodate the pharmacist's or pharmacy's schedule to the greatest extent possible. The notice required under this subsection must be in writing and must be sent by a means that allows tracking of delivery to the pharmacist or pharmacy not later than the 14th day before the date on which the on-site audit is scheduled to occur.

(b) Not later than the seventh day after the date a pharmacist or pharmacy receives notice under Subsection (a), the pharmacist or pharmacy may request that an on-site audit be rescheduled to a mutually convenient date. The request must be reasonably granted.

(c) Unless the pharmacist or pharmacy consents in writing, a health benefit plan issuer or pharmacy benefit manager may not schedule or have an on-site audit conducted:

(1) except as provided by Subsection (d), before the 14th day after the date the pharmacist or pharmacy receives notice under

Subsection (a), if applicable;

(2) more than twice annually in connection with a particular payor; or

(3) during the first five calendar days of January and December.

(d) A health benefit plan issuer or pharmacy benefit manager is not required to provide notice before conducting an audit if, after reviewing claims data, written or oral statements of pharmacy staff, wholesalers, or others, or other investigative information, including patient referrals, anonymous reports, or postings on Internet websites, the plan issuer or pharmacy benefit manager suspects the pharmacist or pharmacy subject to the audit committed fraud or made an intentional misrepresentation related to the pharmacy business. The pharmacist or pharmacy may not request that the audit be rescheduled under Subsection (b).

(e) A pharmacist or pharmacy may be required to submit documents in response to a desk audit not earlier than the 20th day after the date the health benefit plan issuer or pharmacy benefit manager requests the documents.

(f) A contract between a pharmacist or pharmacy and a health benefit plan issuer or pharmacy benefit manager must state detailed audit procedures. If a health benefit plan issuer or pharmacy benefit manager proposes a change to the audit procedures for an on-site audit or a desk audit, the plan issuer or pharmacy benefit manager must notify the pharmacist or pharmacy in writing of a change in an audit procedure not later than the 60th day before the effective date of the change.

(g) The list of the claims subject to an on-site audit must be provided in the notice under Subsection (a) to the pharmacist or pharmacy and must identify the claims only by the prescription numbers or a date range for prescriptions subject to the audit. The last two digits of the prescription numbers provided may be omitted.

(h) If the health benefit plan issuer or pharmacy benefit manager in an on-site audit or a desk audit applies random sampling procedures to select claims for audit, the sample size may not be greater than 300 individual prescription claims.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.255. COMPLETION OF AUDIT. An audit of a claim under Section 1369.254 must be completed on or before the one-year anniversary of the date the claim is received by the health benefit plan issuer or pharmacy benefit manager.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.256. AUDIT REQUIRING PROFESSIONAL JUDGMENT. A health benefit plan issuer or pharmacy benefit manager that conducts an on-site audit or a desk audit involving a pharmacist's clinical or professional judgment must conduct the audit in consultation with a licensed pharmacist.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.257. ACCESS TO PHARMACY AREA. A health benefit plan issuer or pharmacy benefit manager that conducts an on-site audit may not enter the pharmacy area unless escorted by an individual authorized by the pharmacist or pharmacy.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.258. VALIDATION USING CERTAIN RECORDS AUTHORIZED. A pharmacist or pharmacy that is being audited may:

(1) validate a prescription, refill of a prescription, or change in a prescription with a prescription that complies with applicable federal laws and regulations and state laws and rules adopted under Section 554.051, Occupations Code; and

(2) validate the delivery of a prescription with a written record of a hospital, physician, or other authorized practitioner of the healing arts.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.2581. AUDIT DISCREPANCIES; WHOLESALE INVOICES. (a) A health benefit plan issuer or pharmacy benefit manager that audits wholesale invoices during an audit of a pharmacist or pharmacy may not audit the pharmacy claims of another health benefit plan or pharmacy benefit manager.

(b) A health benefit plan issuer or pharmacy benefit manager shall reverse a finding of a discrepancy if:

(1) the National Drug Code for the dispensed drug is in a quantity that is a subunit or multiple of the drug purchased by the pharmacist or pharmacy as supported by a wholesale invoice;

(2) the pharmacist or pharmacy dispensed the correct quantity of the drug according to the prescription; and

(3) the drug dispensed by the pharmacist or pharmacy shares all but the last two digits of the National Drug Code of the drug reflected on the supplier invoice.

(c) A health benefit plan issuer or pharmacy benefit manager must accept as evidence to support the validity of a pharmacy claim related to a dispensed drug:

(1) subject to validation, including validation by pharmacy purchase order and payment of a supplier invoice, copies of supplier invoices in the pharmacist's or pharmacy's possession, including:

(A) supplier invoices issued before the date the drug was dispensed and not earlier than 60 days before the first day of the audit period; and

(B) invoices and any supporting documents from any supplier authorized by federal or state law to transfer ownership of the drug acquired by the pharmacist or pharmacy; and

(2) reports required by any state board or agency.

(d) A health benefit plan issuer or pharmacy benefit manager must provide, not later than the fifth business day after the date of a request by the pharmacist or pharmacy, any supporting documents the pharmacist's or pharmacy's suppliers provided to the health benefit plan issuer or pharmacy benefit manager.

Added by Acts 2019, 86th Leg., R.S., Ch. 481 (H.B. 1455), Sec. 1, eff. September 1, 2019.

Sec. 1369.259. CALCULATION OF RECOUPMENT; USE OF EXTRAPOLATION PROHIBITED. (a) A health benefit plan issuer or pharmacy benefit

manager may not calculate the amount of a recoupment based on:

(1) an absence of documentation the pharmacist or pharmacy is not required by applicable federal laws and regulations and state laws and rules to maintain; or

(2) an error that does not result in actual financial harm to the patient or enrollee, the health benefit plan issuer, or the pharmacy benefit manager.

(b) A health benefit plan issuer or pharmacy benefit manager may not require extrapolation audits as a condition of participation in a contract, network, or program for a pharmacist or pharmacy.

(c) A health benefit plan issuer or pharmacy benefit manager may not use extrapolation to complete an on-site audit or a desk audit of a pharmacist or pharmacy. Notwithstanding Subsection (a)(2), the amount of a recoupment must be based on the actual overpayment or underpayment and may not be based on an extrapolation.

(d) A health benefit plan issuer or pharmacy benefit manager may not include a dispensing fee amount in the calculation of an overpayment unless:

(1) the fee was a duplicate charge;

(2) the prescription for which the fee was charged:

(A) was not dispensed; or

(B) was dispensed:

(i) without the prescriber's authorization;

(ii) to the wrong patient; or

(iii) with the wrong instructions; or

(3) the wrong drug was dispensed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.260. CLERICAL OR RECORDKEEPING ERROR; FRAUD ALLEGATION. (a) An unintentional clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error, found during an on-site audit or a desk audit:

(1) is not prima facie evidence of fraud or intentional misrepresentation; and

(2) may not be the basis of a recoupment unless the error results in actual financial harm to a patient or enrollee, health benefit plan issuer, or pharmacy benefit manager.

(b) If the health benefit plan issuer or pharmacy benefit manager alleges that the pharmacist or pharmacy committed fraud or intentional misrepresentation described by Subsection (a), the health benefit plan issuer or pharmacy benefit manager must state the allegation in the final audit report required by Section 1369.264.

(c) After an audit is initiated, a pharmacist or pharmacy may resubmit a claim described by Subsection (a) if the deadline for submission of a claim under Section 843.337 or 1301.102 has not expired.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.261. ACCESS TO PREVIOUS AUDIT REPORTS; UNIFORM AUDIT STANDARDS. (a) Except as provided by Subsection (b), a health benefit plan issuer or pharmacy benefit manager may have access to an audit report of a pharmacist or pharmacy only if the report was prepared in connection with an audit conducted by the health benefit plan issuer or pharmacy benefit manager.

(b) A health benefit plan issuer or pharmacy benefit manager may have access to audit reports other than the reports described by Subsection (a) if, after reviewing claims data, written or oral statements of pharmacy staff, wholesalers, or others, or other investigative information, including patient referrals, anonymous reports, or postings on Internet websites, the plan issuer or the pharmacy benefit manager suspects the audited pharmacist or pharmacy committed fraud or made an intentional misrepresentation related to the pharmacy business.

(c) An auditor must conduct an on-site audit or a desk audit of similarly situated pharmacists or pharmacies under the same audit standards.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.262. COMPENSATION OF AUDITOR. An individual performing an on-site audit or a desk audit may not directly or indirectly receive compensation based on a percentage of the amount recovered as a result of the audit.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.263. CONCLUSION OF AUDIT; SUMMARY; PRELIMINARY AUDIT REPORT. (a) At the conclusion of an on-site audit or a desk audit, the health benefit plan issuer or pharmacy benefit manager shall:

(1) provide to the pharmacist or pharmacy a summary of the audit findings; and

(2) allow the pharmacist or pharmacy to respond to questions and alleged discrepancies, if any, and comment on and clarify the findings.

(b) Not later than the 60th day after the date the audit is concluded, the health benefit plan issuer or pharmacy benefit manager shall send by a means that allows tracking of delivery to the pharmacist or pharmacy a preliminary audit report stating the results of the audit and a list identifying documentation, if any, required to resolve discrepancies, if any, found as a result of the audit.

(c) The pharmacist or pharmacy may, by providing documentation or otherwise, challenge a result or remedy a discrepancy stated in the preliminary audit report not later than the 30th day after the date the pharmacist or pharmacy receives the report.

(d) The pharmacist or pharmacy may request an extension to provide documentation supporting a challenge. The request shall be reasonably granted. A health benefit plan issuer or pharmacy benefit manager that grants an extension is not subject to the deadline to send the final audit report under Section 1369.264.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.264. FINAL AUDIT REPORT. Not later than the 120th day after the date the pharmacist or pharmacy receives a preliminary audit report under Section 1369.263, the health benefit plan issuer or pharmacy benefit manager shall send by a means that allows tracking of delivery to the pharmacist or pharmacy a final audit report that states:

(1) the audit results after review of the documentation submitted by the pharmacist or pharmacy in response to the

preliminary audit report; and

(2) the audit results, including a description of all alleged discrepancies and explanations for and the amount of recoupments claimed after consideration of the pharmacist's or pharmacy's response to the preliminary audit report.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.265. CERTAIN AUDITS EXEMPT FROM DEADLINES. A health benefit plan issuer or pharmacy benefit manager is not subject to the deadlines for sending a report under Sections 1369.263 and 1369.264 if, after reviewing claims data, written or oral statements of pharmacy staff, wholesalers, or others, or other investigative information, including patient referrals, anonymous reports, or postings on Internet websites, the plan issuer or pharmacy benefit manager suspects the audited pharmacist or pharmacy committed fraud or made an intentional misrepresentation related to the pharmacy business.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.266. RECOUPMENT AND INTEREST CHARGED AFTER AUDIT. (a) If an audit under this subchapter is conducted, the health benefit plan issuer or pharmacy benefit manager:

(1) may recoup from the pharmacist or pharmacy an amount based only on a final audit report; and

(2) may not accrue or assess interest on an amount due until the date the pharmacist or pharmacy receives the final audit report under Section 1369.264.

(b) The limitations on recoupment and interest accrual or assessment under Subsection (a) do not apply to a health benefit plan issuer or pharmacy benefit manager that, after reviewing claims data, written or oral statements of pharmacy staff, wholesalers, or others, or other investigative information, including patient referrals, anonymous reports, or postings on Internet websites, suspects the audited pharmacist or pharmacy committed fraud or made an intentional misrepresentation related to the pharmacy business.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.267. WAIVER PROHIBITED. The provisions of this subchapter may not be waived, voided, or nullified by contract.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.268. REMEDIES NOT EXCLUSIVE. This subchapter may not be construed to waive a remedy at law available to a pharmacist or pharmacy.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.269. ENFORCEMENT; RULES. The commissioner may enforce this subchapter and adopt and enforce reasonable rules necessary to accomplish the purposes of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

Sec. 1369.270. LEGISLATIVE DECLARATION. Except as provided by Section 1369.252, it is the intent of the legislature that the requirements contained in this subchapter regarding the audit of claims to providers who are pharmacists or pharmacies apply to all health benefit plan issuers and pharmacy benefit managers unless otherwise prohibited by federal law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 915 (H.B. 1358), Sec. 1, eff. September 1, 2013.

SUBCHAPTER G. STANDARD REQUEST FORM FOR PRIOR AUTHORIZATION OF PRESCRIPTION DRUG BENEFITS

Sec. 1369.301. DEFINITION. In this subchapter, "prescription

drug" has the meaning assigned by Section 551.003, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1328 (S.B. 644), Sec. 1, eff. September 1, 2013.
Redesignated from Insurance Code, Section 1369.251 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(38), eff. September 1, 2015.

Sec. 1369.302. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This subchapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this subchapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

(d) Notwithstanding any other law, this subchapter applies to

coverage under:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; and

(2) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1328 (S.B. 644), Sec. 1, eff. September 1, 2013.
Redesignated from Insurance Code, Section 1369.252 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(38), eff. September 1, 2015.

Sec. 1369.303. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another single benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) medical payment insurance coverage provided under a motor vehicle insurance policy;

(4) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1369.302;

(5) health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code; or

(6) a workers' compensation insurance policy.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1328 (S.B. 644), Sec. 1, eff. September 1, 2013.

Redesignated from Insurance Code, Section 1369.253 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(38), eff. September 1, 2015.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.002(14), eff. September 1, 2015.

Sec. 1369.304. STANDARD FORM. (a) The commissioner by rule shall:

(1) prescribe a single, standard form for requesting prior authorization of prescription drug benefits;

(2) require a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers prescription drug benefits to use the form for any prior authorization of prescription drug benefits required by the plan;

(3) require that the department and a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers prescription drug benefits make the form available electronically on the website of:

(A) the department;

(B) the health benefit plan issuer; and

(C) the agent of the health benefit plan issuer; and

(4) establish penalties for failure to accept the form and acknowledge receipt of the form as required by commissioner rule.

(b) Not later than the second anniversary of the date national standards for electronic prior authorization of benefits are adopted, a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers prescription drug benefits shall exchange prior authorization requests electronically with a prescribing provider who has e-prescribing capability and who initiates a request electronically.

(c) In prescribing a form under this section, the commissioner shall:

(1) develop the form with input from the advisory committee on uniform prior authorization forms established under Section 1369.305; and

(2) take into consideration:

(A) any form for requesting prior authorization of benefits that is widely used in this state or any form currently used

by the department;

(B) request forms for prior authorization of benefits established by the federal Centers for Medicare and Medicaid Services; and

(C) national standards, or draft standards, pertaining to electronic prior authorization of benefits.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1328 (S.B. 644), Sec. 1, eff. September 1, 2013.
Redesignated from Insurance Code, Section 1369.254 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(38), eff. September 1, 2015.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.002(15), eff. September 1, 2015.

Sec. 1369.305. ADVISORY COMMITTEE ON UNIFORM PRIOR AUTHORIZATION FORMS. (a) The commissioner shall appoint a committee to advise the commissioner on the technical, operational, and practical aspects of developing the single, standard prior authorization form required under Section 1369.304 for requesting prior authorization of prescription drug benefits.

(b) The advisory committee shall determine the following:

(1) a single standard form for requesting prior authorization of prescription drug benefits;

(2) the length of the standard prior authorization form;

(3) the length of time allowed for acknowledgement of receipt of the form by the health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers prescription drug benefits;

(4) the acceptable methods to acknowledge receipt; and

(5) the penalty imposed on the health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers prescription drug benefits for failure to acknowledge receipt of the form.

(c) The commissioner shall consult the advisory committee with respect to any rule relating to a subject described by Section 1369.304 or this section before adopting the rule and may consult the committee as needed with respect to a subsequent amendment of an

adopted rule.

(d) Not later than the second anniversary of the final approval of the standard prior authorization form, and every two years subsequently, the commissioner shall convene the advisory committee to review the standard prior authorization form, examine the form's effectiveness and impact on patient safety, and determine whether changes are needed.

(e) The advisory committee shall be composed of the commissioner of insurance or the commissioner's designee, the executive commissioner of the Health and Human Services Commission or the executive commissioner's designee, and an equal number of members from each of the following groups:

(1) physicians;

(2) other prescribing health care providers;

(3) consumers experienced with prior authorizations;

(4) hospitals;

(5) pharmacists;

(6) specialty pharmacies;

(7) pharmacy benefit managers;

(8) specialty drug distributors;

(9) health benefit plan issuers for the Texas Health Insurance Pool established under Chapter 1506;

(10) health benefit plan issuers; and

(11) health benefit plan networks of providers.

(f) A member of the advisory committee serves without compensation.

(g) Section 39.003(a) of this code and Chapter 2110, Government Code, do not apply to the advisory committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1328 (S.B. 644), Sec. 1, eff. September 1, 2013.
Redesignated from Insurance Code, Section 1369.255 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(38), eff. September 1, 2015.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.002(16), eff. September 1, 2015.

Sec. 1369.306. FAILURE TO USE OR ACKNOWLEDGE STANDARD FORM. If

a health benefit plan issuer or the agent of the health benefit plan issuer that manages or administers prescription drug benefits fails to use or accept the form prescribed under this subchapter or fails to acknowledge the receipt of a completed form submitted by a prescribing provider, as required by commissioner rule, the health benefit plan issuer or the agent of the health benefit plan issuer is subject to the penalties established by the commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1328 (S.B. 644), Sec. 1, eff. September 1, 2013.
Redesignated from Insurance Code, Section 1369.256 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(38), eff. September 1, 2015.

SUBCHAPTER H. MAXIMUM ALLOWABLE COST

Sec. 1369.351. DEFINITIONS. In this subchapter:

(1) "Health benefit plan" has the meaning assigned by Section 1369.251, as added by Chapter 915 (H.B. 1358), Acts of the 83rd Legislature, Regular Session, 2013.

(2) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Text of section effective until April 1, 2025

Sec. 1369.352. CERTAIN BENEFITS EXCLUDED. This subchapter does not apply to maximum allowable costs for pharmacy benefits provided under:

(1) a Medicaid managed care program operated under Chapter 533, Government Code;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the child health plan program under Chapter 62, Health and Safety Code;

(4) the health benefits plan for children under Chapter 63, Health and Safety Code;

(5) a health benefit plan issued under Chapter 1551, 1575,

1579, or 1601; or

(6) a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.127, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1369.352. CERTAIN BENEFITS EXCLUDED. This subchapter does not apply to maximum allowable costs for pharmacy benefits provided under:

(1) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the child health plan program under Chapter 62, Health and Safety Code;

(4) the health benefits plan for children under Chapter 63, Health and Safety Code;

(5) a health benefit plan issued under Chapter 1551, 1575, 1579, or 1601; or

(6) a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.127, eff. April 1, 2025.

Sec. 1369.353. CRITERIA FOR DRUGS ON MAXIMUM ALLOWABLE COST LISTS. A health benefit plan issuer or pharmacy benefit manager may not include a drug on a maximum allowable cost list unless:

(1) the drug:

(A) has an "A" or "B" rating in the most recent version

of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book; or

(B) is rated "NR" or "NA" or has a similar rating by a nationally recognized reference; and

(2) the drug is:

(A) generally available for purchase by pharmacists and pharmacies in this state from a national or regional wholesaler; and

(B) not obsolete.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.354. FORMULATION OF MAXIMUM ALLOWABLE COSTS; DISCLOSURES. (a) In formulating the maximum allowable cost price for a drug, a health benefit plan issuer or pharmacy benefit manager may only use the price of that drug and any drug listed as therapeutically equivalent to that drug in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book.

(b) Notwithstanding Subsection (a), if a therapeutically equivalent generic drug is unavailable or has limited market presence, a health benefit plan issuer or pharmacy benefit manager may place on a maximum allowable cost list a drug that has:

(1) a "B" rating in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book; or

(2) an "NR" or "NA" rating or a similar rating by a nationally recognized reference.

(c) A health benefit plan issuer or pharmacy benefit manager must, in accordance with Subsection (d), disclose to a pharmacist or pharmacy the sources of the pricing data used in formulating maximum allowable cost prices.

(d) The information described by Subsection (c) must be disclosed:

(1) on the date the health benefit plan issuer or pharmacy benefit manager enters into the contract with the pharmacist or

pharmacy; and

(2) after that contract date, on the request of the pharmacist or pharmacy.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.355. UPDATES. (a) A health benefit plan issuer or pharmacy benefit manager shall establish a process that will in a timely manner eliminate drugs from maximum allowable cost lists or modify maximum allowable cost prices to remain consistent with changes in pricing data used in formulating maximum allowable cost prices and product availability.

(b) A health benefit plan issuer or pharmacy benefit manager shall review and update maximum allowable cost price information for each drug at least once every seven days to reflect any modification of maximum allowable cost pricing.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.356. ACCESS TO MAXIMUM ALLOWABLE COST LISTS. A health benefit plan issuer or pharmacy benefit manager must provide to each pharmacist or pharmacy under contract with the health benefit plan issuer or pharmacy benefit manager a process to readily access the maximum allowable cost list that applies to the pharmacist or pharmacy.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.357. APPEAL FROM MAXIMUM ALLOWABLE COST PRICE DETERMINATION. (a) A health benefit plan issuer or pharmacy benefit manager must provide in the contract with each pharmacist or pharmacy a procedure for the pharmacist or pharmacy to appeal a maximum allowable cost price of a drug on or before the 10th day after the date a pharmacy benefit claim for the drug is made.

(b) The health benefit plan issuer or pharmacy benefit manager

shall respond to an appeal described by Subsection (a) in a documented communication not later than the 10th day after the date the appeal is received by the health benefit plan issuer or pharmacy benefit manager.

(c) If the appeal is successful, the health benefit plan issuer or pharmacy benefit manager shall:

(1) adjust the maximum allowable cost price that is the subject of the appeal effective on the day after the date the appeal is decided;

(2) apply the adjusted maximum allowable cost price to all similarly situated pharmacists and pharmacies as determined by the health benefit plan issuer or pharmacy benefit manager; and

(3) allow the pharmacist or pharmacy that succeeded in the appeal to reverse and rebill the pharmacy benefit claim giving rise to the appeal.

(d) If the appeal is not successful, the health benefit plan issuer or pharmacy benefit manager shall disclose to the pharmacist or pharmacy:

(1) each reason the appeal is denied; and

(2) the national drug code number from the national or regional wholesalers from which the drug is generally available for purchase by pharmacists and pharmacies in this state at the maximum allowable cost price that is the subject of the appeal.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.358. CONFIDENTIALITY OF MAXIMUM ALLOWABLE COST LIST. A maximum allowable cost list that applies to a pharmacist or pharmacy and is maintained by a health benefit plan issuer or pharmacy benefit manager is confidential. This section may not be construed to alter a health benefit plan issuer's or pharmacy benefit manager's obligations under Section 1369.356.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.359. WAIVER PROHIBITED. The provisions of this subchapter may not be waived, voided, or nullified by contract.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.360. REMEDIES NOT EXCLUSIVE. This subchapter may not be construed to waive a remedy at law available to a pharmacist or pharmacy.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.361. ENFORCEMENT. The commissioner shall enforce this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

Sec. 1369.362. LEGISLATIVE DECLARATION. It is the intent of the legislature that, except with respect to the benefits excluded under Section 1369.352, the requirements contained in this subchapter apply to all health benefit plan issuers and pharmacy benefit managers unless otherwise prohibited by federal law.

Added by Acts 2015, 84th Leg., R.S., Ch. 596 (S.B. 332), Sec. 1, eff. January 1, 2016.

SUBCHAPTER I. PHARMACY BENEFIT CLAIM ADJUDICATION

Sec. 1369.401. DEFINITION. In this subchapter, "pharmacy benefit manager" has the meaning assigned by Section 4151.151.

Added by Acts 2015, 84th Leg., R.S., Ch. 10 (S.B. 94), Sec. 1, eff. September 1, 2015.

Sec. 1369.402. CERTAIN FEES PROHIBITED. A health benefit plan issuer or a pharmacy benefit manager may not directly or indirectly charge or hold a pharmacist or pharmacy responsible for a fee for any step of or component or mechanism related to the claim adjudication

process, including:

(1) the adjudication of a pharmacy benefit claim;

(2) the processing or transmission of a pharmacy benefit claim;

(3) the development or management of a claim processing or adjudication network; or

(4) participation in a claim processing or adjudication network.

Added by Acts 2015, 84th Leg., R.S., Ch. 10 (S.B. 94), Sec. 1, eff. September 1, 2015.

SUBCHAPTER J. COVERAGE RELATED TO PRESCRIPTION DRUG SYNCHRONIZATION

Sec. 1369.451. DEFINITIONS. In this subchapter:

(1) "Cost-sharing amount" includes an amount charged for a deductible, coinsurance, or copayment.

(2) "Health care provider" means a person who provides health care services under a license, certificate, registration, or other similar evidence of regulation issued by this or another state of the United States.

(3) "Physician" means an individual licensed to practice medicine in this or another state of the United States.

Added by Acts 2017, 85th Leg., R.S., Ch. 1007 (H.B. 1296), Sec. 1, eff. September 1, 2017.

Sec. 1369.452. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a

certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885; or

(8) an exchange operating under Chapter 942.

(b) This subchapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this subchapter applies to health benefit plan coverage provided under:

(1) Chapter 1551;

(2) Chapter 1575;

(3) Chapter 1579; and

(4) Chapter 1601.

(d) Notwithstanding Section 1501.251 or any other law, this subchapter applies to coverage under a small employer health benefit plan subject to Chapter 1501.

(e) This subchapter applies to a standard health benefit plan issued under Chapter 1507.

Text of subsection effective until April 1, 2025

(f) To the extent allowed by federal law, the child health plan program operated under Chapter 62, Health and Safety Code, and the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code, shall provide the coverage required under this subchapter to a recipient.

Text of subsection effective on April 1, 2025

(f) To the extent allowed by federal law, the child health plan program operated under Chapter 62, Health and Safety Code, and the state Medicaid program, including the Medicaid managed care program operated under Chapters 540 and 540A, Government Code, shall provide the coverage required under this subchapter to a recipient.

Added by Acts 2017, 85th Leg., R.S., Ch. 1007 (H.B. 1296), Sec. 1, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.128, eff.

April 1, 2025.

Sec. 1369.453. APPLICABILITY TO CERTAIN MEDICATIONS. This subchapter applies with respect to only a medication that:

(1) is covered by the enrollee's health benefit plan;

(2) meets the prior authorization criteria specifically applicable to the medication under the health benefit plan on the date the request for synchronization is made;

(3) is used for treatment and management of a chronic illness, as that term is defined by Section 1369.456;

(4) may be prescribed with refills;

(5) is a formulation that can be effectively dispensed in accordance with the medication synchronization plan described by Section 1369.456; and

(6) is not, according to the schedules established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code:

(A) a Schedule II controlled substance; or

(B) a Schedule III controlled substance containing hydrocodone.

Added by Acts 2017, 85th Leg., R.S., Ch. 1007 (H.B. 1296), Sec. 1, eff. September 1, 2017.

Sec. 1369.454. PRORATION OF COST-SHARING AMOUNT REQUIRED. (a) A health benefit plan that provides benefits for prescription drugs shall prorate any cost-sharing amount charged for a partial supply of a prescription drug if:

(1) the pharmacy or the enrollee's prescribing physician or health care provider notifies the health benefit plan that:

(A) the quantity dispensed is to synchronize the dates that the pharmacy dispenses the enrollee's prescription drugs; and

(B) the synchronization of the dates is in the best interest of the enrollee; and

(2) the enrollee agrees to the synchronization.

(b) The proration described by Subsection (a) must be based on the number of days' supply of the drug actually dispensed.

Added by Acts 2017, 85th Leg., R.S., Ch. 1007 (H.B. 1296), Sec. 1,

eff. September 1, 2017.

Sec. 1369.455. PRORATION OF DISPENSING FEE PROHIBITED. A health benefit plan that prorates a cost-sharing amount as required by Section 1369.454 may not prorate the fee paid to the pharmacy for dispensing the drug for which the cost-sharing amount was prorated.

Added by Acts 2017, 85th Leg., R.S., Ch. 1007 (H.B. 1296), Sec. 1, eff. September 1, 2017.

Sec. 1369.456. IMPLEMENTATION OF CERTAIN MEDICATION SYNCHRONIZATION PLANS. (a) For the purposes of this section:

(1) "Chronic illness" means an illness or physical condition that may be:

(A) reasonably expected to continue for an uninterrupted period of at least three months; and

(B) controlled but not cured by medical treatment.

(2) "Medication synchronization plan" means a plan established for the purpose of synchronizing the filling or refilling of multiple prescriptions.

(b) A health benefit plan shall establish a process through which the following parties may jointly approve a medication synchronization plan for medication to treat an enrollee's chronic illness:

(1) the health benefit plan;

(2) the enrollee;

(3) the prescribing physician or health care provider; and

(4) a pharmacist.

(c) A health benefit plan shall provide coverage for a medication dispensed in accordance with the dates established in the medication synchronization plan described by Subsection (b).

(d) A health benefit plan shall establish a process that allows a pharmacist or pharmacy to override the health benefit plan's denial of coverage for a medication described by Subsection (b).

(e) A health benefit plan shall allow a pharmacist or pharmacy to override the health benefit plan's denial of coverage through the process described by Subsection (d), and the health benefit plan shall provide coverage for the medication if:

(1) the prescription for the medication is being refilled in accordance with the medication synchronization plan described by Subsection (b); and

(2) the reason for the denial is that the prescription is being refilled before the date established by the plan's general prescription refill guidelines.

Added by Acts 2017, 85th Leg., R.S., Ch. 1007 (H.B. 1296), Sec. 1, eff. September 1, 2017.

SUBCHAPTER K. PRESCRIPTION DRUG COST TRANSPARENCY

Sec. 1369.501. DEFINITIONS. In this subchapter:

(1) "Animal health product" means a medical product approved and licensed for use in animal or veterinary medicine, including a pharmaceutical, a biologic, an insecticide, and a parasiticide.

(2) "Health benefit plan" means an individual, blanket, or group plan, policy, or contract for health care services issued or delivered by a health benefit plan issuer in this state.

(3) "Health benefit plan issuer" means an insurance company, a health maintenance organization, or a hospital and medical service corporation.

(4) "Pharmaceutical drug manufacturer" means a person engaged in the business of producing, preparing, propagating, compounding, converting, processing, packaging, labeling, or distributing a prescription drug. The term does not include a wholesale distributor or retailer of prescription drugs or a pharmacist licensed under Subtitle J, Title 3, Occupations Code.

(5) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

(6) "Prescription drug" has the meaning assigned by Section 551.003, Occupations Code, except that the term "prescription drug" does not include a device or an animal health product.

(7) "Rebate" means a discount or concession that affects the price of a prescription drug to a pharmacy benefit manager or health benefit plan issuer for a prescription drug manufactured by the pharmaceutical drug manufacturer.

(8) "Specialty drug" means a prescription drug covered under Medicare Part D that exceeds the specialty tier cost threshold

established by the Centers for Medicare and Medicaid Services.

(9) "Utilization management" means a set of formal techniques designed to monitor the use of, or evaluate the medical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 2, eff. September 1, 2019.

Sec. 1369.502. PHARMACY BENEFIT MANAGER INFORMATION. (a) Not later than March 1 of each year, each pharmacy benefit manager shall file a report with the commissioner. The report must state for the immediately preceding calendar year:

(1) the aggregated rebates, fees, price protection payments, and any other payments collected from pharmaceutical drug manufacturers; and

(2) the aggregated dollar amount of rebates, fees, price protection payments, and any other payments collected from pharmaceutical drug manufacturers that were:

(A) passed to:

(i) health benefit plan issuers; or

(ii) enrollees at the point of sale of a prescription drug; or

(B) retained as revenue by the pharmacy benefit manager.

(b) A report submitted by a pharmacy benefit manager may not disclose the identity of a specific health benefit plan or enrollee, the price charged for a specific prescription drug or class of prescription drugs, or the amount of any rebate or fee provided for a specific prescription drug or class of prescription drugs.

(c) Not later than June 1 of each year, the commissioner shall publish the aggregated data from all reports for that year required by this section in an appropriate location on the department's Internet website. The combined aggregated data from the reports must be published in a manner that does not disclose or tend to disclose proprietary or confidential information of any pharmacy benefit manager.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 2, eff. September 1, 2019.

Amended by:
Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 6, eff. September 1, 2021.

Sec. 1369.503. HEALTH BENEFIT PLAN ISSUER INFORMATION. (a) Not later than March 1 of each year, each health benefit plan issuer shall submit to the commissioner a report that states for the immediately preceding calendar year:

(1) the names of the 25 most frequently prescribed prescription drugs across all plans;

(2) the percent increase in annual net spending for prescription drugs across all plans;

(3) the percent increase in premiums that were attributable to prescription drugs across all plans;

(4) the percentage of specialty drugs with utilization management requirements across all plans; and

(5) the premium reductions that were attributable to specialty drug utilization management.

(b) A report submitted by a health benefit plan issuer may not disclose the identity of a specific health benefit plan or the price charged for a specific prescription drug or class of prescription drugs.

(c) Not later than June 1 of each year, the commissioner shall publish the aggregated data from all reports for that year required by this section in an appropriate location on the department's Internet website. The combined aggregated data from the reports must be published in a manner that does not disclose or tend to disclose proprietary or confidential information of any health benefit plan issuer.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 2, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 7, eff. September 1, 2021.

Sec. 1369.5035. CONTENT OF REPORTS. The reports required by Sections 1369.502 and 1369.503 must include information relating to

private health benefit plans that cover prescription drugs and are regulated by the department. The reports may not include information relating to:

(1) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(2) the medical assistance program under Chapter 32, Human Resources Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 50 (H.B. 1033), Sec. 8, eff. September 1, 2021.

Sec. 1369.504. RULES. The commissioner may adopt rules to implement this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1291 (H.B. 2536), Sec. 2, eff. September 1, 2019.

SUBCHAPTER L. CONTRACTS WITH PHARMACISTS AND PHARMACIES

SUBCHAPTER L. AFFILIATED PROVIDERS

Sec. 1369.551. DEFINITIONS. In this subchapter:

(1) "Affiliated provider" means a pharmacy or durable medical equipment provider that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a health benefit plan issuer or pharmacy benefit manager.

(2) "Health benefit plan" has the meaning assigned by Section 1369.251.

(3) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

Added by Acts 2021, 87th Leg., R.S., Ch. 1012 (H.B. 1919), Sec. 1, eff. September 1, 2021.

Text of section effective until April 1, 2025

Sec. 1369.552. EXCEPTIONS TO APPLICABILITY OF SUBCHAPTER. Notwithstanding the definition of "health benefit plan" provided by Section 1369.551, this subchapter does not apply to an issuer or

provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under:

(1) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(2) the child health plan program under Chapter 62, Health and Safety Code;

(3) the TRICARE military health system;

(4) a basic coverage plan under Chapter 1551;

(5) a basic plan under Chapter 1575;

(6) a coverage plan under Chapter 1579;

(7) a plan providing basic coverage under Chapter 1601; or

(8) a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 1012 (H.B. 1919), Sec. 1, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.129, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1369.552. EXCEPTIONS TO APPLICABILITY OF SUBCHAPTER. Notwithstanding the definition of "health benefit plan" provided by Section 1369.551, this subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under:

(1) the state Medicaid program, including the Medicaid managed care program operated under Chapters 540 and 540A, Government Code;

(2) the child health plan program under Chapter 62, Health and Safety Code;

(3) the TRICARE military health system;

(4) a basic coverage plan under Chapter 1551;

(5) a basic plan under Chapter 1575;

(6) a coverage plan under Chapter 1579;

(7) a plan providing basic coverage under Chapter 1601; or

(8) a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 1012 (H.B. 1919), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.129, eff. April 1, 2025.

Sec. 1369.553. TRANSFER OR ACCEPTANCE OF CERTAIN RECORDS PROHIBITED. (a) In this section, "commercial purpose" does not include pharmacy reimbursement, formulary compliance, pharmaceutical care, utilization review by a health care provider, or a public health activity authorized by law.

(b) A health benefit plan issuer or pharmacy benefit manager may not transfer to or receive from the issuer's or manager's affiliated provider a record containing patient- or prescriber-identifiable prescription information for a commercial purpose.

Added by Acts 2021, 87th Leg., R.S., Ch. 1012 (H.B. 1919), Sec. 1, eff. September 1, 2021.

Sec. 1369.554. PROHIBITION ON CERTAIN COMMUNICATIONS. (a) A health benefit plan issuer or pharmacy benefit manager may not steer or direct a patient to use the issuer's or manager's affiliated provider through any oral or written communication, including:

(1) online messaging regarding the provider; or

(2) patient- or prospective patient-specific advertising, marketing, or promotion of the provider.

(b) This section does not prohibit a health benefit plan issuer or pharmacy benefit manager from including the issuer's or manager's affiliated provider in a patient or prospective patient communication, if the communication:

(1) is regarding information about the cost or service provided by pharmacies or durable medical equipment providers in the network of a health benefit plan in which the patient or prospective patient is enrolled; and

(2) includes accurate comparable information regarding pharmacies or durable medical equipment providers in the network that are not the issuer's or manager's affiliated providers.

Added by Acts 2021, 87th Leg., R.S., Ch. 1012 (H.B. 1919), Sec. 1,

eff. September 1, 2021.

Sec. 1369.555. PROHIBITION ON CERTAIN REFERRALS AND SOLICITATIONS. (a) A health benefit plan issuer or pharmacy benefit manager may not require a patient to use the issuer's or manager's affiliated provider in order for the patient to receive the maximum benefit for the service under the patient's health benefit plan.

(b) A health benefit plan issuer or pharmacy benefit manager may not offer or implement a health benefit plan that requires or induces a patient to use the issuer's or manager's affiliated provider, including by providing for reduced cost-sharing if the patient uses the affiliated provider.

(c) A health benefit plan issuer or pharmacy benefit manager may not solicit a patient or prescriber to transfer a patient prescription to the issuer's or manager's affiliated provider.

(d) A health benefit plan issuer or pharmacy benefit manager may not require a pharmacy or durable medical equipment provider that is not the issuer's or manager's affiliated provider to transfer a patient's prescription to the issuer's or manager's affiliated provider without the prior written consent of the patient.

Added by Acts 2021, 87th Leg., R.S., Ch. 1012 (H.B. 1919), Sec. 1, eff. September 1, 2021.

SUBCHAPTER M. CONTRACTS WITH PHARMACISTS AND PHARMACIES

Sec. 1369.601. DEFINITIONS. In this subchapter:

(1) "Pharmacy benefit manager" has the meaning assigned by Section 4151.151.

(2) "Pharmacy benefit network" means a network of pharmacies that have contracted with a pharmacy benefit manager to provide pharmacist services to enrollees.

(3) "Pharmacy services administrative organization" means an entity that contracts with a pharmacist or pharmacy to conduct on behalf of the pharmacist or pharmacy the pharmacist's or pharmacy's business with a third-party payor, including a pharmacy benefit manager, in connection with pharmacy benefits and to assist the pharmacist or pharmacy by providing administrative services, including negotiating, executing, and administering a contract with a

third-party payor and communicating with the third-party payor in connection with a contract or pharmacy benefits.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.551 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.602. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations

Code;

(4) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(5) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(6) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(c) This subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.552 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.603. REDUCTION OF CERTAIN CLAIM PAYMENT AMOUNTS PROHIBITED. (a) A health benefit plan issuer or pharmacy benefit manager may not directly or indirectly reduce the amount of a claim payment to a pharmacist or pharmacy after adjudication of the claim through the use of an aggregated effective rate, quality assurance program, other direct or indirect remuneration fee, or otherwise, except in accordance with an audit performed under Subchapter F.

(b) Nothing in this section prohibits a health benefit plan issuer or pharmacy benefit manager from increasing a claim payment amount after adjudication of the claim.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.553 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.604. REIMBURSEMENT OF AFFILIATED AND NONAFFILIATED PHARMACISTS AND PHARMACIES. (a) In this section:

(1) "Affiliated pharmacist or pharmacy" means a pharmacist or pharmacy that directly, or indirectly through one or more

intermediaries, controls or is controlled by, or is under common control with, a pharmacy benefit manager.

(2) "Nonaffiliated pharmacist or pharmacy" means a pharmacist or pharmacy that does not directly, or indirectly through one or more intermediaries, control and is not controlled by or under common control with a pharmacy benefit manager.

(b) A pharmacy benefit manager may not pay an affiliated pharmacist or pharmacy a reimbursement amount that is more than the amount the pharmacy benefit manager pays a nonaffiliated pharmacist or pharmacy for the same pharmacist service.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.554 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.605. NETWORK CONTRACT FEE SCHEDULE. A pharmacy benefit network contract must specify or reference a separate fee schedule. Unless otherwise available in the contract, the fee schedule must be provided electronically in an easily accessible and complete spreadsheet format and, on request, in writing to each contracted pharmacist and pharmacy. The fee schedule must describe:

(1) specific services or procedures that the pharmacist or pharmacy may deliver and the amount of the corresponding payment;

(2) a methodology for calculating the amount of the payment based on a published fee schedule; or

(3) any other reasonable manner that provides an ascertainable amount for payment for services.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.555 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.606. DISCLOSURE OF PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION CONTRACT. A pharmacist or pharmacy that is a member of a pharmacy services administrative organization that enters into a

contract with a health benefit plan issuer or pharmacy benefit manager on the pharmacist's or pharmacy's behalf is entitled to receive from the pharmacy services administrative organization a copy of the contract provisions applicable to the pharmacist or pharmacy, including each provision relating to the pharmacist's or pharmacy's rights and obligations under the contract.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.556 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.607. DELIVERY OF DRUGS. (a) Except in a case in which the health benefit plan issuer or pharmacy benefit manager makes a credible allegation of fraud against the pharmacist or pharmacy and provides reasonable notice of the allegation and the basis of the allegation to the pharmacist or pharmacy, a health benefit plan issuer or pharmacy benefit manager may not as a condition of a contract with a pharmacist or pharmacy prohibit the pharmacist or pharmacy from:

(1) mailing or delivering a drug to a patient on the patient's request, to the extent permitted by law; or

(2) charging a shipping and handling fee to a patient requesting a prescription be mailed or delivered if the pharmacist or pharmacy discloses to the patient before the delivery:

(A) the fee that will be charged; and

(B) that the fee may not be reimbursable by the health benefit plan issuer or pharmacy benefit manager.

(b) A pharmacist or pharmacy may not charge a health benefit plan issuer or pharmacy benefit manager for the delivery of a prescription drug as described by this section unless the charge is specifically agreed to by the health benefit plan issuer or pharmacy benefit manager.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.557 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.608. PROFESSIONAL STANDARDS AND SCOPE OF PRACTICE REQUIREMENTS. A health benefit plan issuer or pharmacy benefit manager may not as a condition of a contract with a pharmacist or pharmacy:

(1) require pharmacist or pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements; or

(2) prohibit a licensed pharmacist or pharmacy from dispensing any drug that may be dispensed under the pharmacist's or pharmacy's license unless:

(A) applicable state or federal law prohibits the pharmacist or pharmacy from dispensing the drug; or

(B) the manufacturer of the drug requires that a pharmacist or pharmacy possess one or more accreditations or certifications to dispense the drug and the pharmacist or pharmacy does not meet the requirement.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.558 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.609. RETALIATION PROHIBITED. (a) A pharmacy benefit manager may not retaliate against a pharmacist or pharmacy based on the pharmacist's or pharmacy's exercise of any right or remedy under this chapter. Retaliation prohibited by this section includes:

(1) terminating or refusing to renew a contract with the pharmacist or pharmacy;

(2) subjecting the pharmacist or pharmacy to increased audits; or

(3) failing to promptly pay the pharmacist or pharmacy any money owed by the pharmacy benefit manager to the pharmacist or pharmacy.

(b) For purposes of this section, a pharmacy benefit manager is not considered to have retaliated against a pharmacist or pharmacy if the pharmacy benefit manager:

(1) takes an action in response to a credible allegation of fraud against the pharmacist or pharmacy; and

(2) provides reasonable notice to the pharmacist or pharmacy of the allegation of fraud and the basis of the allegation before taking the action.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.559 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

Sec. 1369.610. WAIVER PROHIBITED. The provisions of this subchapter may not be waived, voided, or nullified by contract.

Added by Acts 2021, 87th Leg., R.S., Ch. 142 (H.B. 1763), Sec. 1, eff. September 1, 2021.
Redesignated from Insurance Code, Section 1369.560 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(27), eff. September 1, 2023.

SUBCHAPTER N. COVERAGE OF PRESCRIPTION DRUGS FOR AUTOIMMUNE DISEASES AND CERTAIN BLOOD DISORDERS

Sec. 1369.651. DEFINITION. In this subchapter, "prescription drug" has the meaning assigned by Section 551.003, Occupations Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 669 (H.B. 755), Sec. 1, eff. September 1, 2023.

Sec. 1369.652. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical, surgical, or prescription drug expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is issued by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) group health coverage made available by a school district in accordance with Section 22.004, Education Code; and

(8) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(c) This subchapter applies to coverage under a group health benefit plan provided to a resident of this state regardless of whether the group policy, agreement, or contract is delivered, issued for delivery, or renewed in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 669 (H.B. 755), Sec. 1, eff. September 1, 2023.

Sec. 1369.653. EXCEPTIONS. (a) This subchapter does not apply to:

(1) a plan that provides coverage:

(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(B) only for hospital expenses;

(2) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code; or

(3) the child health plan program under Chapter 62, Health and Safety Code.

(b) This subchapter does not apply to an individual health benefit plan issued on or before March 23, 2010, that has not had any significant changes since that date that reduce benefits or increase costs to the individual.

Added by Acts 2023, 88th Leg., R.S., Ch. 669 (H.B. 755), Sec. 1, eff. September 1, 2023.

Sec. 1369.654. PROHIBITION ON MULTIPLE PRIOR AUTHORIZATIONS. (a) A health benefit plan issuer that provides prescription drug benefits may not require an enrollee to receive more than one prior authorization annually of the prescription drug benefit for a prescription drug prescribed to treat an autoimmune disease, hemophilia, or Von Willebrand disease.

(b) This section does not apply to:

(1) opioids, benzodiazepines, barbiturates, or carisoprodol;

(2) prescription drugs that have a typical treatment period of less than 12 months;

(3) drugs that:

(A) have a boxed warning assigned by the United States Food and Drug Administration for use; and

(B) must have specific provider assessment; or

(4) the use of a drug approved for use by the United States Food and Drug Administration in a manner other than the approved use.

Added by Acts 2023, 88th Leg., R.S., Ch. 669 (H.B. 755), Sec. 1, eff. September 1, 2023.

SUBCHAPTER Q. CLINICIAN-ADMINISTERED DRUGS

Sec. 1369.761. DEFINITIONS. In this subchapter:

(1) "Administer" means to directly apply a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) "Clinician-administered drug" means an outpatient prescription drug other than a vaccine that:

(A) cannot reasonably be:

(i) self-administered by the patient to whom the drug is prescribed; or

(ii) administered by an individual assisting the patient with the self-administration; and

(B) is typically administered:

(i) by a physician or other health care provider authorized under the laws of this state to administer the drug, including when acting under a physician's delegation and supervision; and

(ii) in a physician's office.

(3) "Health care provider" means an individual who is licensed, certified, or otherwise authorized to provide health care services in this state.

(4) "Physician" means an individual licensed to practice medicine in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 417 (H.B. 1647), Sec. 1, eff. September 1, 2023.

Sec. 1369.762. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a

certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this subchapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) group health coverage made available by a school district in accordance with Section 22.004, Education Code;

(4) a regional or local health care program operating under Section 75.104, Health and Safety Code; and

(5) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 417 (H.B. 1647), Sec. 1, eff. September 1, 2023.

Sec. 1369.763. EXCEPTIONS TO APPLICABILITY OF SUBCHAPTER. (a) This subchapter does not apply to an issuer or provider of health benefits under or a pharmacy benefit manager administering pharmacy benefits under:

(1) the state Medicaid program, including the Medicaid managed care program under Chapter 533, Government Code;

(2) the child health plan program under Chapter 62, Health and Safety Code;

(3) the TRICARE military health system; or

(4) a workers' compensation insurance policy or other form of providing medical benefits under Title 5, Labor Code.

(b) This subchapter does not apply to a prescription drug administered in a hospital, hospital facility-based practice setting, or hospital outpatient infusion center.

Added by Acts 2023, 88th Leg., R.S., Ch. 417 (H.B. 1647), Sec. 1, eff. September 1, 2023.

Sec. 1369.764. CERTAIN LIMITATIONS ON COVERAGE OF CLINICIAN-ADMINISTERED DRUGS PROHIBITED. (a) Subject to Subsection (b), a health benefit plan issuer may not, for an enrollee with a chronic, complex, rare, or life-threatening medical condition:

(1) require clinician-administered drugs to be dispensed only by certain pharmacies or only by pharmacies participating in the health benefit plan issuer's network;

(2) if a clinician-administered drug is otherwise covered, limit or exclude coverage for such drugs based on the enrollee's choice of pharmacy or because the drug was not dispensed by a pharmacy that participates in the health benefit plan issuer's network;

(3) require a physician or health care provider participating in the health benefit plan issuer's network to bill for or be reimbursed for the delivery and administration of clinician-administered drugs under the pharmacy benefit instead of the medical benefit without:

(A) informed written consent of the patient; and

(B) a written attestation by the patient's physician or health care provider that a delay in the drug's administration will not place the patient at an increased health risk; or

(4) require that an enrollee pay an additional fee, higher copay, higher coinsurance, second copay, second coinsurance, or any other price increase for clinician-administered drugs based on the enrollee's choice of pharmacy or because the drug was not dispensed by a pharmacy that participates in the health benefit plan issuer's network.

(b) Subsection (a) applies only if the patient's physician or health care provider determines that:

(1) a delay of care would make disease progression probable; or

(2) the use of a pharmacy within the health benefit plan issuer's network would:

(A) make death or patient harm probable;

(B) potentially cause a barrier to the patient's adherence to or compliance with the patient's plan of care; or

(C) because of the timeliness of the delivery or dosage requirements, necessitate delivery by a different pharmacy.

(c) Nothing in this section may be construed to:

(1) authorize a person to administer a drug when otherwise prohibited under the laws of this state or federal law; or

(2) modify drug administration requirements under the laws of this state, including any requirements related to delegation and supervision of drug administration.

Added by Acts 2023, 88th Leg., R.S., Ch. 417 (H.B. 1647), Sec. 1, eff. September 1, 2023.

CHAPTER 1370. CERTAIN TESTS FOR DETECTION OF HUMAN PAPILLOMAVIRUS, OVARIAN CANCER, AND CERVICAL CANCER

Sec. 1370.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, an individual or group evidence of coverage, or a similar coverage document, that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a health maintenance organization operating under Chapter 843;

(6) a reciprocal exchange operating under Chapter 942;

(7) a Lloyd's plan operating under Chapter 941;

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(9) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846.

(b) This chapter applies to a small employer health benefit plan written under Chapter 1501.

Added by Acts 2005, 79th Leg., Ch. 577 (H.B. 1485), Sec. 1, eff. September 1, 2005.

Sec. 1370.002. EXCEPTIONS. (a) This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for benefits for a specified disease or for another limited benefit, other than a plan that provides benefits for cancer treatment or similar services;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) only for dental or vision care; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under an automobile insurance policy;

(5) a credit insurance policy;

(6) a limited benefit policy that does not provide coverage for physical examinations or wellness exams; or

(7) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1370.001.

(b) To the extent that providing coverage for ovarian cancer screening under this chapter would otherwise require this state to make a payment under 42 U.S.C. Section 18031(d)(3)(B)(ii), a qualified health plan, as defined by 45 C.F.R. Section 155.20, is not required to provide a benefit for the ovarian cancer screening under this chapter that exceeds the specified essential health benefits required under 42 U.S.C. Section 18022(b).

Added by Acts 2005, 79th Leg., Ch. 577 (H.B. 1485), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 176 (H.B. 2813), Sec. 2, eff. September 1, 2015.

Sec. 1370.003. COVERAGE REQUIRED. (a) A health benefit plan

that provides coverage for diagnostic medical procedures must provide to each woman 18 years of age or older enrolled in the plan coverage for expenses for an annual medically recognized diagnostic examination for the early detection of ovarian cancer and cervical cancer.

(b) Coverage required under this section includes at a minimum:

(1) a CA 125 blood test;

(2) a conventional Pap smear screening or a screening using liquid-based cytology methods, as approved by the United States Food and Drug Administration, alone or in combination with a test approved by the United States Food and Drug Administration for the detection of the human papillomavirus; and

(3) any other test or screening approved by the United States Food and Drug Administration for the detection of ovarian cancer.

(c) A screening test required under this section must be performed in accordance with the guidelines adopted by:

(1) the American College of Obstetricians and Gynecologists; or

(2) another similar national organization of medical professionals recognized by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 577 (H.B. 1485), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 176 (H.B. 2813), Sec. 3, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 312 (H.B. 428), Sec. 1, eff. September 1, 2021.

Sec. 1370.004. NOTICE OF COVERAGE. (a) A health benefit plan issuer shall provide to each woman 18 years of age or older enrolled in the plan written notice of the coverage required under this chapter.

(b) The notice must be provided in accordance with rules adopted by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 577 (H.B. 1485), Sec. 1, eff. September 1, 2005.

CHAPTER 1371. COVERAGE FOR CERTAIN PROSTHETIC DEVICES, ORTHOTIC DEVICES, AND RELATED SERVICES

Sec. 1371.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual entitled to coverage under a health benefit plan.

(2) "Orthotic device" means a custom-fitted or custom-fabricated medical device that is applied to a part of the human body to correct a deformity, improve function, or relieve symptoms of a disease.

(3) "Prosthetic device" means an artificial device designed to replace, wholly or partly, an arm or leg.

Added by Acts 2009, 81st Leg., R.S., Ch. 30 (H.B. 806), Sec. 1, eff. September 1, 2009.

Sec. 1371.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501 or coverage provided by a health group cooperative under Subchapter B of that chapter, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a Lloyd's plan operating under Chapter 941;

(7) a health maintenance organization operating under Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a

certificate of authority under Chapter 844.

(b) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

Added by Acts 2009, 81st Leg., R.S., Ch. 30 (H.B. 806), Sec. 1, eff. September 1, 2009.

Sec. 1371.003. REQUIRED COVERAGE FOR PROSTHETIC DEVICES, ORTHOTIC DEVICES, AND RELATED SERVICES. (a) A health benefit plan must provide coverage for prosthetic devices, orthotic devices, and professional services related to the fitting and use of those devices that equals the coverage provided under federal laws for health insurance for the aged and disabled under Sections 1832, 1833, and 1834, Social Security Act (42 U.S.C. Sections 1395k, 1395l, and 1395m), and 42 C.F.R. Sections 410.100, 414.202, 414.210, and 414.228, as applicable.

(b) Covered benefits under this chapter are limited to the most appropriate model of prosthetic device or orthotic device that adequately meets the medical needs of the enrollee as determined by the enrollee's treating physician or podiatrist and prosthetist or orthotist, as applicable.

(c) Subject to applicable copayments and deductibles, the repair and replacement of a prosthetic device or orthotic device is a covered benefit under this chapter unless the repair or replacement is necessitated by misuse or loss by the enrollee.

(d) Coverage required under this section:

(1) must be provided in a manner determined to be appropriate in consultation with the treating physician or podiatrist and prosthetist or orthotist, as applicable, and the enrollee;

(2) may be subject to annual deductibles, copayments, and coinsurance that are consistent with annual deductibles, copayments, and coinsurance required for other coverage under the health benefit plan; and

(3) may not be subject to annual dollar limits.

(e) Covered benefits under this chapter may be provided by a

pharmacy that has employees who are qualified under the Medicare system and applicable Medicaid regulations to service and bill for orthotic services. This chapter does not preclude a pharmacy from being reimbursed by a health benefit plan for the provision of orthotic services.

Added by Acts 2009, 81st Leg., R.S., Ch. 30 (H.B. 806), Sec. 1, eff. September 1, 2009.

Sec. 1371.004. PREAUTHORIZATION. A health benefit plan may require prior authorization for a prosthetic device or an orthotic device in the same manner that the health benefit plan requires prior authorization for any other covered benefit.

Added by Acts 2009, 81st Leg., R.S., Ch. 30 (H.B. 806), Sec. 1, eff. September 1, 2009.

Sec. 1371.005. MANAGED CARE PLAN. A health benefit plan provider may require that, if coverage is provided through a managed care plan, the benefits mandated under this chapter are covered benefits only if the prosthetic devices or orthotic devices are provided by a vendor or a provider, and related services are rendered by a provider, that contracts with or is designated by the health benefit plan provider. If the health benefit plan provider provides in-network and out-of-network services, the coverage for prosthetic devices or orthotic devices provided through out-of-network services must be comparable to that provided through in-network services.

Added by Acts 2009, 81st Leg., R.S., Ch. 30 (H.B. 806), Sec. 1, eff. September 1, 2009.

CHAPTER 1372. COVERAGE FOR BIOMARKER TESTING

Sec. 1372.001. DEFINITIONS. In this chapter:

(1) "Biomarker" means a characteristic that is objectively measured and evaluated as an indicator of normal biological processes, pathogenic processes, or pharmacologic responses to a specific therapeutic intervention. The term includes:

(A) gene mutations; and

(B) protein expression.

(2) "Biomarker testing" means the analysis of a patient's tissue, blood, or other biospecimen for the presence of a biomarker. The term includes:

(A) single-analyte tests;

(B) multiplex panel tests; and

(C) whole genome sequencing.

(3) "Consensus statements" means statements that:

(A) address specific clinical circumstances based on the best available evidence for the purpose of optimizing clinical care outcomes; and

(B) are developed by an independent, multidisciplinary panel of experts that uses a transparent methodology and reporting structure and is subject to a conflict of interest policy.

(4) "Nationally recognized clinical practice guidelines" means evidence-based clinical practice guidelines that:

(A) establish a standard of care informed by a systematic review of evidence and an assessment of the benefits and costs of alternative care options;

(B) include recommendations intended to optimize patient care; and

(C) are developed by an independent organization or medical professional society that uses a transparent methodology and reporting structure and is subject to a conflict of interest policy.

Added by Acts 2023, 88th Leg., R.S., Ch. 279 (S.B. 989), Sec. 1, eff. September 1, 2023.

Sec. 1372.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under

Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(8) the child health plan program under Chapter 62, Health and Safety Code; and

(9) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 279 (S.B. 989), Sec. 1, eff. September 1, 2023.

Sec. 1372.003. COVERAGE REQUIRED. (a) Subject to Subsection (b), a health benefit plan must provide coverage for biomarker testing for the purpose of diagnosis, treatment, appropriate management, or ongoing monitoring of an enrollee's disease or condition to guide treatment when the test is supported by the following kinds of medical and scientific evidence:

(1) a labeled indication for a test approved or cleared by the United States Food and Drug Administration;

(2) an indicated test for a drug approved by the United States Food and Drug Administration;

(3) a national coverage determination made by the Centers for Medicare and Medicaid Services or a local coverage determination made by a Medicare administrative contractor;

(4) nationally recognized clinical practice guidelines; or

(5) consensus statements.

(b) A health benefit plan issuer must provide coverage under Subsection (a) only when use of biomarker testing provides clinical utility because use of the test for the condition:

(1) is evidence-based;

(2) is scientifically valid based on the medical and scientific evidence described by Subsection (a);

(3) informs a patient's outcome and a provider's clinical decision; and

(4) predominately addresses the acute or chronic issue for which the test is being ordered, except that a test may include some information that cannot be immediately used in the formulation of a clinical decision.

(c) A health benefit plan must provide coverage under Subsection (a) in a manner that limits disruptions in care, including limiting the number of biopsies and biospecimen samples.

Added by Acts 2023, 88th Leg., R.S., Ch. 279 (S.B. 989), Sec. 1, eff. September 1, 2023.

CHAPTER 1376. CERTAIN TESTS FOR EARLY DETECTION OF CARDIOVASCULAR DISEASE

Sec. 1376.001. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating

under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a Lloyd's plan operating under Chapter 941;

(v) a stipulated premium company operating under Chapter 884; or

(vi) a health maintenance organization operating under Chapter 843;

(B) a health benefit plan that is offered by a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(C) a small employer health benefit plan written under Chapter 1501; or

(D) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss); or

(2) is offered by an approved nonprofit health corporation operating under Chapter 844.

(b) Notwithstanding any provision in Chapter 1601 or any other law, this chapter applies to basic coverage under Chapter 1601.

Added by Acts 2009, 81st Leg., R.S., Ch. 1270 (H.B. 1290), Sec. 1, eff. September 1, 2009.

Sec. 1376.002. EXCEPTIONS. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease or other limited benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy; or

(E) only for indemnity for hospital confinement;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1376.001.

Added by Acts 2009, 81st Leg., R.S., Ch. 1270 (H.B. 1290), Sec. 1, eff. September 1, 2009.

Sec. 1376.003. MINIMUM COVERAGE REQUIRED. (a) A health benefit plan that provides coverage for screening medical procedures must provide the minimum coverage required by this section to each covered individual:

(1) who is:

(A) a male older than 45 years of age and younger than 76 years of age; or

(B) a female older than 55 years of age and younger than 76 years of age; and

(2) who:

(A) is diabetic; or

(B) has a risk of developing coronary heart disease, based on a score derived using the Framingham Heart Study coronary prediction algorithm, that is intermediate or higher.

(b) The minimum coverage required to be provided under this section is coverage of up to $200 for one of the following noninvasive screening tests for atherosclerosis and abnormal artery structure and function every five years, performed by a laboratory that is certified by a national organization recognized by the commissioner by rule for the purposes of this section:

(1) computed tomography (CT) scanning measuring coronary artery calcification; or

(2) ultrasonography measuring carotid intima-media thickness and plaque.

Added by Acts 2009, 81st Leg., R.S., Ch. 1270 (H.B. 1290), Sec. 1, eff. September 1, 2009.

CHAPTER 1377. COVERAGE FOR CERTAIN AMINO ACID-BASED ELEMENTAL FORMULAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1377.001. DEFINITION. In this chapter, "enrollee" means an individual entitled to coverage under a health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1129 (H.B. 2000), Sec. 1, eff. September 1, 2009.

Sec. 1377.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan, including a small employer health benefit plan written under Chapter 1501 or coverage provided by a health group cooperative under Subchapter B of that chapter, that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) an exchange operating under Chapter 942;

(6) a Lloyd's plan operating under Chapter 941;

(7) a health maintenance organization operating under Chapter 843;

(8) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(9) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579; and

(4) basic coverage under Chapter 1601.

Added by Acts 2009, 81st Leg., R.S., Ch. 1129 (H.B. 2000), Sec. 1, eff. September 1, 2009.

Sec. 1377.003. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for benefits for a specified disease or for another limited benefit, other than a plan that provides benefits for a disease or disorder listed in Section 1377.051(a);

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) only for dental or vision care; or

(F) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under an automobile insurance policy;

(5) a credit insurance policy;

(6) a limited benefit policy that does not provide coverage for physical examinations or wellness exams; or

(7) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1377.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 1129 (H.B. 2000), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. COVERAGE FOR CERTAIN AMINO ACID-BASED ELEMENTAL FORMULAS

Sec. 1377.051. REQUIRED COVERAGE FOR CERTAIN AMINO ACID-BASED ELEMENTAL FORMULAS. (a) A health benefit plan must provide coverage as provided by this chapter for amino acid-based elemental formulas, regardless of the formula delivery method, that are used for the diagnosis and treatment of:

(1) immunoglobulin E and non-immunoglobulin E mediated allergies to multiple food proteins;

(2) severe food protein-induced enterocolitis syndrome;

(3) eosinophilic disorders, as evidenced by the results of a biopsy; and

(4) impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract.

(b) Subject to Subsection (c), the coverage required under Subsection (a) is required if the treating physician has issued a written order stating that the amino acid-based elemental formula is medically necessary for the treatment of an enrollee who is diagnosed with a disease or disorder listed in Subsection (a). The coverage must include coverage of any medically necessary services associated with the administration of the formula.

(c) A health benefit plan must provide the coverage described by Subsection (a) on a basis no less favorable than the basis on which prescription drugs and other medications and related services are covered by the plan, and to the same extent that the plan provides coverage for drugs that are available only on the orders of a physician.

Added by Acts 2009, 81st Leg., R.S., Ch. 1129 (H.B. 2000), Sec. 1, eff. September 1, 2009.

Sec. 1377.052. UTILIZATION REVIEW. (a) A utilization review agent acting on behalf of a health benefit plan issuer may review a treating physician's determination of the medical necessity of the use of an amino acid-based elemental formula for the treatment of an enrollee who is diagnosed with a disease or disorder listed in Section 1377.051(a).

(b) Utilization review under this section is subject to Chapter 4201.

Added by Acts 2009, 81st Leg., R.S., Ch. 1129 (H.B. 2000), Sec. 1, eff. September 1, 2009.

CHAPTER 1379. COVERAGE FOR ROUTINE PATIENT CARE COSTS FOR ENROLLEES PARTICIPATING IN CERTAIN CLINICAL TRIALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1379.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual entitled to coverage under a health benefit plan.

(2) "Life-threatening disease or condition" means a disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(3) "Research institution" means the institution or other person or entity conducting a phase I, phase II, phase III, or phase IV clinical trial.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) an exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

(b) This chapter applies to group health coverage made available by a school district in accordance with Section 22.004, Education Code.

(c) Notwithstanding any provision in Chapter 1551, 1575, 1579, or 1601 or any other law, this chapter applies to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;
(3) a primary care coverage plan under Chapter 1579; and
(4) basic coverage under Chapter 1601.

(d) Notwithstanding Section 1501.251 or any other law, this chapter applies to coverage under a small employer health benefit plan subject to Chapter 1501.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.003. APPLICABILITY TO CERTAIN GOVERNMENT PROGRAMS. To the extent allowed by federal law, the state Medicaid program, and a managed care organization that contracts with the Health and Human Services Commission to provide health care services to Medicaid recipients through a managed care plan, shall provide the benefits required under this chapter to a Medicaid recipient.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.004. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:
(A) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;
(B) as a supplement to a liability insurance policy;
(C) for credit insurance;
(D) for a specified disease or diseases;
(E) only for dental or vision care;
(F) only for hospital expenses; or
(G) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);
(3) a workers' compensation insurance policy;
(4) medical payment insurance coverage provided under a motor vehicle insurance policy; or
(5) a long-term care policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a

health benefit plan as described by Section 1379.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.005. RULES. The commissioner, in accordance with Subchapter A, Chapter 36, may adopt rules to implement this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. COVERAGE FOR ROUTINE PATIENT CARE COSTS

Sec. 1379.051. ROUTINE PATIENT CARE COSTS. For purposes of this chapter, routine patient care costs means the costs of any medically necessary health care service for which benefits are provided under a health benefit plan, without regard to whether the enrollee is participating in a clinical trial. Routine patient care costs do not include:

(1) the cost of an investigational new drug or device that is not approved for any indication by the United States Food and Drug Administration, including a drug or device that is the subject of the clinical trial;

(2) the cost of a service that is not a health care service, regardless of whether the service is required in connection with participation in a clinical trial;

(3) the cost of a service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis;

(4) a cost associated with managing a clinical trial; or

(5) the cost of a health care service that is specifically excluded from coverage under a health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.052. COVERAGE REQUIRED. A health benefit plan issuer shall provide benefits for routine patient care costs to an enrollee in connection with a phase I, phase II, phase III, or phase IV

clinical trial if the clinical trial is conducted in relation to the prevention, detection, or treatment of a life-threatening disease or condition and is approved by:

(1) the Centers for Disease Control and Prevention of the United States Department of Health and Human Services;

(2) the National Institutes of Health;

(3) the United States Food and Drug Administration;

(4) the United States Department of Defense;

(5) the United States Department of Veterans Affairs; or

(6) an institutional review board of an institution in this state that has an agreement with the Office for Human Research Protections of the United States Department of Health and Human Services.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.053. RESEARCH INSTITUTION. (a) A health benefit plan issuer is not required to reimburse the research institution conducting the clinical trial for the cost of routine patient care provided through the research institution unless the research institution, and each health care professional providing routine patient care through the research institution, agrees to accept reimbursement under the health benefit plan, at the rates that are established under the plan, as payment in full for the routine patient care provided in connection with the clinical trial.

(b) A health benefit plan issuer is not required to provide benefits under this section for services that are a part of the subject matter of the clinical trial and that are customarily paid for by the research institution conducting the clinical trial.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.054. LIMITATIONS ON COVERAGE. (a) Notwithstanding Section 1379.053, this chapter does not require a health benefit plan issuer to provide benefits for routine patient care services provided outside of the plan's health care provider network unless out-of-network benefits are otherwise provided under the plan.

(b) This chapter does not require a health benefit plan issuer to provide benefits for health care services provided outside this state unless the health benefit plan otherwise provides benefits for health care services provided outside this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.055. DEDUCTIBLE, COINSURANCE, AND COPAYMENT REQUIREMENTS. The benefits required under this chapter may be made subject to a deductible, coinsurance, or copayment requirement comparable to other deductible, coinsurance, or copayment requirements applicable under the health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

Sec. 1379.056. CANCELLATION OR NONRENEWAL PROHIBITED. The issuer of a health benefit plan may not cancel or refuse to renew coverage under a plan solely because an enrollee in the plan participates in a clinical trial described by Section 1379.052.

Added by Acts 2009, 81st Leg., R.S., Ch. 719 (S.B. 39), Sec. 1, eff. September 1, 2009.

CHAPTER 1380. HUMAN ORGAN TRANSPLANT

Sec. 1380.001. DEFINITION. In this chapter, "forced organ harvesting" means the removal of one or more organs from a living person by means of coercion, abduction, deception, fraud, or abuse of power or a position of vulnerability.

Added by Acts 2023, 88th Leg., R.S., Ch. 1155 (S.B. 1040), Sec. 1, eff. September 1, 2023.

Sec. 1380.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health

condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(8) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(9) the child health plan program under Chapter 62, Health and Safety Code;

(10) a regional or local health care program operated under Section 75.104, Health and Safety Code;

(11) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code;

(12) county employee group health benefits provided under Chapter 157, Local Government Code; and

(13) health and accident coverage provided by a risk pool created under Chapter 172, Local Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1155 (S.B. 1040), Sec. 1, eff. September 1, 2023.

Sec. 1380.003. COVERAGE PROHIBITED. (a) A health benefit plan issuer may not cover a human organ transplant or post-transplant care if:

(1) the transplant operation is performed in China or another country known to have participated in forced organ harvesting, as designated by the commissioner of state health services; or

(2) the human organ to be transplanted was procured by a sale or donation originating in China or another country known to have participated in forced organ harvesting, as designated by the commissioner of state health services.

(b) The commissioner of state health services may designate additional countries with governments that fund, sponsor, or otherwise facilitate forced organ harvesting and shall provide written notice to the commissioner, Teacher Retirement System of Texas, Employees Retirement System of Texas, and executive commissioner of the Health and Human Services Commission when the commissioner of state health services designates an additional country.

Added by Acts 2023, 88th Leg., R.S., Ch. 1155 (S.B. 1040), Sec. 1, eff. September 1, 2023.

CHAPTER 1425. APPLICATION OF SUBTITLE TO CERTAIN COVERAGE

SUBCHAPTER A. EXCEPTED BENEFITS

Sec. 1425.001. EXEMPTION FROM APPLICATION OF SUBTITLE. (a) Except as provided by Section 1425.002, a provision of this subtitle that becomes effective on or after January 2, 2010, does not apply to:

(1) a plan that provides coverage only:

(A) for a specified disease or diseases or under an

individual limited benefit policy;

(B) for accidental death or dismemberment;

(C) as a supplement to a liability insurance policy; or

(D) for dental or vision care;

(2) disability income insurance coverage or a combination of accident-only and disability income insurance coverage;

(3) credit insurance coverage;

(4) a hospital confinement indemnity policy;

(5) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(6) a workers' compensation insurance policy;

(7) medical payment insurance coverage provided under a motor vehicle insurance policy;

(8) a long-term care insurance policy, including a nursing home fixed indemnity policy, except as provided by Subsection (b); or

(9) an occupational accident policy.

(b) A long-term care insurance policy, including a nursing home fixed indemnity policy, is subject to this subtitle if the commissioner determines that the policy provides benefits so comprehensive that it is a health benefit plan and should not be subject to the exemption provided under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 228 (S.B. 1479), Sec. 1, eff. May 27, 2009.

Sec. 1425.002. SPECIFIC LANGUAGE CONTROLS. A provision of this subtitle that becomes effective on or after January 2, 2010, and that requires coverage or the offer of coverage of a health care service or benefit applies to a plan or policy described by Section 1425.001(a) only to the extent expressly and specifically provided by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 228 (S.B. 1479), Sec. 1, eff. May 27, 2009.

SUBCHAPTER B. BENEFITS REQUIRING DEFRAYAL

Sec. 1425.051. DEFINITION. In this subchapter, "qualified health plan" has the meaning assigned by 45 C.F.R. Section 155.20.

Added by Acts 2021, 87th Leg., R.S., Ch. 890 (S.B. 2016), Sec. 3, eff. June 16, 2021.

Sec. 1425.052. EXEMPTION FROM SUBTITLE FOR BENEFITS REQUIRING DEFRAYAL. (a) A provision of this subtitle that is enacted on or after January 1, 2012, does not apply to a qualified health plan if a determination is made under 45 C.F.R. Section 155.170 that:

(1) the provision requires the qualified health plan to offer benefits in addition to the essential health benefits required under 42 U.S.C. Section 18022(b); and

(2) this state must make payments to defray the cost of the additional benefits mandated by the provision.

(b) If a determination described by Subsection (a) is made as to a qualified health plan, the provision to which the determination relates does not apply to a non-qualified health plan if the non-qualified health plan is offered in the same market as the qualified health plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 890 (S.B. 2016), Sec. 3, eff. June 16, 2021.

SUBTITLE F. PHYSICIANS AND HEALTH CARE PROVIDERS

CHAPTER 1451. ACCESS TO CERTAIN PRACTITIONERS AND FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1451.001. DEFINITIONS; HEALTH CARE PRACTITIONERS. In this chapter:

(1) "Acupuncturist" means an individual licensed to practice acupuncture by the Texas State Board of Medical Examiners.

(2) "Advanced practice nurse" means an individual licensed by the Texas Board of Nursing as a registered nurse and recognized by that board as an advanced practice nurse.

(3) "Audiologist" means an individual licensed to practice audiology by the Texas Department of Licensing and Regulation.

(4) "Chemical dependency counselor" means an individual licensed by the Texas Commission on Alcohol and Drug Abuse.

(5) "Chiropractor" means an individual licensed by the Texas Board of Chiropractic Examiners.

(6) "Dentist" means an individual licensed to practice

dentistry by the State Board of Dental Examiners.

(7) "Dietitian" means an individual licensed by the Texas Department of Licensing and Regulation under Chapter 701, Occupations Code.

(8) "Hearing instrument fitter and dispenser" means an individual licensed by the Texas Department of Licensing and Regulation under Chapter 402, Occupations Code.

(9) "Licensed clinical social worker" means an individual licensed as a clinical social worker under Chapter 505, Occupations Code.

(10) "Licensed professional counselor" means an individual licensed under Chapter 503, Occupations Code.

(11) "Marriage and family therapist" means an individual licensed under Chapter 502, Occupations Code.

(12) "Occupational therapist" means an individual licensed as an occupational therapist by the Texas Board of Occupational Therapy Examiners.

(13) "Optometrist" means an individual licensed to practice optometry by the Texas Optometry Board.

(13-a) "Pharmacist" means an individual licensed to practice pharmacy by the Texas State Board of Pharmacy.

(14) "Physical therapist" means an individual licensed as a physical therapist by the Texas Board of Physical Therapy Examiners.

(15) "Physician" means an individual licensed to practice medicine by the Texas State Board of Medical Examiners. The term includes a doctor of osteopathic medicine.

(16) "Physician assistant" means an individual licensed by the Texas State Board of Physician Assistant Examiners.

(17) "Podiatrist" means an individual licensed to practice podiatry by the Texas Department of Licensing and Regulation.

(18) "Psychological associate" means an individual licensed as a psychological associate by the Texas Behavioral Health Executive Council.

(19) "Psychologist" means an individual licensed as a psychologist by the Texas Behavioral Health Executive Council.

(20) "Speech-language pathologist" means an individual licensed to practice speech-language pathology by the Texas Department of Licensing and Regulation.

(21) "Surgical assistant" means an individual licensed as a surgical assistant by the Texas State Board of Medical Examiners.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.041(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 71, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 10.002, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 281 (H.B. 1757), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.015, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 3.006, eff. September 1, 2019.

SUBCHAPTER B. DESIGNATION OF PRACTITIONERS UNDER ACCIDENT AND HEALTH INSURANCE POLICY

Sec. 1451.051. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to an accident and health insurance policy, including an individual, blanket, or group policy.

(b) This subchapter applies to an accident and health insurance policy issued by a stipulated premium company subject to Chapter 884.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.052. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, the construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.053. PRACTITIONER DESIGNATION. (a) An accident and health insurance policy may not make a benefit contingent on treatment or examination by one or more particular health care practitioners listed in Section 1451.001 unless the policy contains a

provision that designates the practitioners whom the insurer will and will not recognize.

(b) The insurer may include the provision anywhere in the policy or in an endorsement attached to the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.054. TERMS USED TO DESIGNATE HEALTH CARE PRACTITIONERS. A provision of an accident and health insurance policy that designates the health care practitioners whom the insurer will and will not recognize must use the terms defined by Section 1451.001 with the meanings assigned by that section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. SELECTION OF PRACTITIONERS

Sec. 1451.101. DEFINITIONS. In this subchapter:

(1) "Health insurance policy" means a policy, contract, or agreement described by Section 1451.102.

(2) "Insured" means an individual who is issued, is a party to, or is a beneficiary under a health insurance policy.

(3) "Insurer" means an insurer, association, or organization described by Section 1451.102.

(4) "Nurse first assistant" has the meaning assigned by Section 301.1525, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.102. APPLICABILITY OF SUBCHAPTER. Except as provided by this subchapter, this subchapter applies only to an individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract that provides health benefits, accident benefits, or health and accident benefits for medical or surgical expenses incurred as a result of an accident or sickness and that is delivered, issued for delivery, or renewed in this state by any incorporated or unincorporated insurance company, association, or organization, including:

(1) a fraternal benefit society operating under Chapter

885;

(2) a general casualty company operating under Chapter 861;

(3) a life, health, and accident insurance company operating under Chapter 841 or 982;

(4) a Lloyd's plan operating under Chapter 941;

(5) a local mutual aid association operating under Chapter 886;

(6) a mutual insurance company writing insurance other than life insurance operating under Chapter 883;

(7) a mutual life insurance company operating under Chapter 882;

(8) a reciprocal exchange operating under Chapter 942;

(9) a statewide mutual assessment company, mutual assessment company, or mutual assessment life, health, and accident association operating under Chapter 881 or 887; and

(10) a stipulated premium company operating under Chapter 884.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.103. CONFLICTING PROVISIONS VOID. (a) A provision of a health insurance policy that conflicts with this subchapter is void to the extent of the conflict.

(b) The presence in a health insurance policy of a provision void under Subsection (a) does not affect the validity of other policy provisions.

(c) An insurer shall bring each approved policy form that contains a provision that conflicts with this subchapter into compliance with this subchapter by use of:

(1) a rider or endorsement approved by the commissioner; or

(2) a new or revised policy form approved by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.104. NONDISCRIMINATORY PAYMENT OR REIMBURSEMENT; EXCEPTION. (a) An insurer may not classify, differentiate, or discriminate between scheduled services or procedures provided by a

health care practitioner selected under this subchapter and performed in the scope of that practitioner's license and the same services or procedures provided by another type of health care practitioner whose services or procedures are covered by a health insurance policy, in regard to:

(1) the payment schedule or payment provisions of the policy; or

(2) the amount or manner of payment or reimbursement under the policy.

(b) An insurer may not deny payment or reimbursement for services or procedures in accordance with the policy payment schedule or payment provisions solely because the services or procedures were performed by a health care practitioner selected under this subchapter.

(c) Notwithstanding Subsection (a), a health insurance policy may provide for a different amount of payment or reimbursement for scheduled services or procedures performed by an advanced practice nurse, nurse first assistant, licensed surgical assistant, or physician assistant if the methodology used to compute the amount is the same as the methodology used to compute the amount of payment or reimbursement when the services or procedures are provided by a physician.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.105. SELECTION OF ACUPUNCTURIST. An insured may select an acupuncturist to provide the services or procedures scheduled in the health insurance policy that are within the scope of the acupuncturist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.106. SELECTION OF ADVANCED PRACTICE NURSE. An insured may select an advanced practice nurse to provide the services scheduled in the health insurance policy that are within the scope of the nurse's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.107. SELECTION OF AUDIOLOGIST. An insured may select an audiologist to measure hearing to determine the presence or extent of the insured's hearing loss or provide aural rehabilitation services to the insured if the insured has a hearing loss and the services or procedures are scheduled in the health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.108. SELECTION OF CHEMICAL DEPENDENCY COUNSELOR. An insured may select a chemical dependency counselor to provide services or procedures scheduled in the health insurance policy that are within the scope of the counselor's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.109. SELECTION OF CHIROPRACTOR. (a) An insured may select a chiropractor to provide the medical or surgical services or procedures scheduled in the health insurance policy that are within the scope of the chiropractor's license.

(b) If physical modalities and procedures are covered services under a health insurance policy and within the scope of the license of a chiropractor and one or more other type of practitioner, a health insurance policy issuer may not:

(1) deny payment or reimbursement for physical modalities and procedures provided by a chiropractor if:

(A) the chiropractor provides the modalities and procedures in strict compliance with state law; and

(B) the health insurance policy issuer allows payment or reimbursement for the same physical modalities and procedures performed by another type of practitioner that an insured may select under this subchapter;

(2) make payment or reimbursement for particular covered physical modalities and procedures within the scope of a chiropractor's license contingent on treatment or examination by a practitioner that is not a chiropractor; or

(3) establish other limitations on the provision of covered physical modalities and procedures that would prohibit an insured from seeking the covered physical modalities and procedures from a chiropractor to the same extent that the insured may obtain covered

physical modalities and procedures from another type of practitioner.

(c) Nothing in this section requires a health insurance policy issuer to cover particular services or affects the ability of a health insurance policy issuer to determine whether specific procedures for which payment or reimbursement is requested are medically necessary.

Text of subsection effective until April 1, 2025

(d) This section does not apply to:

(1) workers' compensation insurance coverage as defined by Section 401.011, Labor Code;

(2) a self-insured employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

Text of subsection effective on April 1, 2025

(d) This section does not apply to:

(1) workers' compensation insurance coverage as defined by Section 401.011, Labor Code;

(2) a self-insured employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable, or a Medicaid program operated under Chapter 32, Human Resources Code.

(e) A health insurance policy issuer that violates this section is subject to an administrative penalty as provided by Chapter 84 of not more than $1,000 for each claim that remains unpaid in violation of this section. Each day the violation continues constitutes a separate violation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 11.01, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 116 (S.B. 1739), Sec. 3, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.130, eff. April 1, 2025.

Sec. 1451.110. SELECTION OF DENTIST. An insured may select a dentist to provide the medical or surgical services or procedures scheduled in the health insurance policy that are within the scope of the dentist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.111. SELECTION OF DIETITIAN. An insured may select a licensed dietitian or a provisionally licensed dietitian acting under the supervision of a licensed dietitian to provide the services scheduled in the health insurance policy that are within the scope of the dietitian's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.112. SELECTION OF HEARING INSTRUMENT FITTER AND DISPENSER. An insured may select a hearing instrument fitter and dispenser to provide the services or procedures scheduled in the health insurance policy that are within the scope of the license of the fitter and dispenser.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.113. SELECTION OF LICENSED CLINICAL SOCIAL WORKER. An insured may select a licensed clinical social worker to provide the services or procedures scheduled in the health insurance policy that:

(1) are within the scope of the social worker's license, including the provision of direct, diagnostic, preventive, or clinical services to individuals, families, and groups whose

functioning is threatened or affected by social or psychological stress or health impairment; and

(2) are specified as services under the terms of the health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.042(a), eff. September 1, 2005.

Sec. 1451.114. SELECTION OF LICENSED PROFESSIONAL COUNSELOR. An insured may select a licensed professional counselor to provide the services scheduled in the health insurance policy that are within the scope of the counselor's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 221 (S.B. 1291), Sec. 1, eff. September 1, 2009.

Sec. 1451.115. SELECTION OF SURGICAL ASSISTANT. An insured may select a surgical assistant to provide the services or procedures scheduled in the health insurance policy that are within the scope of the assistant's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.116. SELECTION OF MARRIAGE AND FAMILY THERAPIST. An insured may select a marriage and family therapist to provide the services scheduled in the health insurance policy that are within the scope of the therapist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 221 (S.B. 1291), Sec. 2, eff. September 1, 2009.

Sec. 1451.117. SELECTION OF NURSE FIRST ASSISTANT. An insured may select a nurse first assistant to provide the services scheduled in the health insurance policy that:

(1) are within the scope of the nurse's license; and

(2) are requested by the physician whom the nurse is assisting.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.118. SELECTION OF OCCUPATIONAL THERAPIST. An insured may select an occupational therapist to provide the services scheduled in the health insurance policy that are within the scope of the therapist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.119. SELECTION OF OPTOMETRIST. An insured may select an optometrist to provide the services or procedures scheduled in the health insurance policy that are within the scope of the optometrist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.120. SELECTION OF PHYSICAL THERAPIST. An insured may select a physical therapist to provide the services scheduled in the health insurance policy that are within the scope of the therapist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.121. SELECTION OF PHYSICIAN ASSISTANT. An insured may select a physician assistant to provide the services scheduled in the health insurance policy that are within the scope of the assistant's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.122. SELECTION OF PODIATRIST. An insured may select a podiatrist to provide the medical or surgical services or procedures scheduled in the health insurance policy that are within the scope of the podiatrist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.123. SELECTION OF PSYCHOLOGICAL ASSOCIATE. An insured may select a psychological associate to provide the services scheduled in the health insurance policy that are within the scope of the associate's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.124. SELECTION OF PSYCHOLOGIST. An insured may select a psychologist to provide the services or procedures scheduled in the health insurance policy that are within the scope of the psychologist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.125. SELECTION OF SPEECH-LANGUAGE PATHOLOGIST. An insured may select a speech-language pathologist to evaluate speech or language, provide habilitative or rehabilitative services to restore speech or language loss, or correct a speech or language impairment if the services or procedures are scheduled in the health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.126. REIMBURSEMENT FOR PHYSICAL MODALITIES AND PROCEDURES BY HEALTH INSURER, ADMINISTRATOR, HEALTH MAINTENANCE ORGANIZATION, OR PREFERRED PROVIDER BENEFIT PLAN ISSUER. (a) A health insurer or licensed third-party administrator may not deny reimbursement to a health care practitioner for the provision of covered services of physical modalities and procedures that are within the scope of the practitioner's practice if the services are

performed in strict compliance with:

(1) laws and rules related to that practitioner's license; and

(2) the terms of the insurance policy or other coverage agreement.

(b) A health maintenance organization or preferred provider benefit plan issuer may not deny reimbursement to a participating health care practitioner for services provided under a coverage agreement solely because of the type of practitioner providing the services if the services are performed in strict compliance with:

(1) laws and rules related to that practitioner's license; and

(2) the terms of the insurance policy or other coverage agreement.

(c) This section may not be construed to circumvent any contractual provider network agreement between a health insurer or third-party administrator and a licensed health care practitioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.1261. REIMBURSEMENT FOR CERTAIN SERVICES AND PROCEDURES PERFORMED BY PHARMACISTS. (a) Notwithstanding any other law, in addition to applying to a policy, agreement, or contract described by Section 1451.102, this section applies to any other individual or group health benefit plan that provides benefits described by Section 1451.102, including:

(1) a health benefit plan issued by:

(A) a group hospital service corporation operating under Chapter 842;

(B) a health maintenance organization operating under Chapter 843; or

(C) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(2) a small employer health benefit plan subject to Chapter 1501;

(3) a standard health benefit plan issued under Chapter 1507;

(4) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations

Code;

(5) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(6) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

Text of subsection effective until April 1, 2025

(b) This section does not apply to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579;

(4) a plan providing basic coverage under Chapter 1601;

(5) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code; or

(6) the child health plan program under Chapter 62, Health and Safety Code.

Text of subsection effective on April 1, 2025

(b) This section does not apply to:

(1) a basic coverage plan under Chapter 1551;

(2) a basic plan under Chapter 1575;

(3) a primary care coverage plan under Chapter 1579;

(4) a plan providing basic coverage under Chapter 1601;

(5) the state Medicaid program, including the Medicaid managed care program operated under Chapters 540 and 540A, Government Code; or

(6) the child health plan program under Chapter 62, Health and Safety Code.

(c) Notwithstanding Section 1451.102, this section applies to coverage under a group health benefit plan provided to a resident of this state regardless of whether the group policy, agreement, or contract is delivered, issued for delivery, or renewed in this state.

(d) An insurer or other health benefit plan issuer or a third-party administrator or pharmacy benefit manager of a health benefit plan may not deny reimbursement to a pharmacist for the provision of a service or procedure within the scope of the pharmacist's license to practice pharmacy under Subtitle J, Title 3, Occupations Code, that:

(1) would be covered by the insurance policy or other coverage agreement if the service or procedure were provided by:

(A) a physician;

(B) an advanced practice nurse; or

(C) a physician assistant; and

(2) is performed by the pharmacist in strict compliance with laws and rules related to:

(A) the provision of the service or procedure; and

(B) the pharmacist's license.

(e) This section may not be construed to require an insurer or other health benefit plan issuer or a third-party administrator or pharmacy benefit manager to reimburse a pharmacist or pharmacy as an in-network or preferred provider.

Added by Acts 2019, 86th Leg., R.S., Ch. 324 (H.B. 3441), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.131, eff. April 1, 2025.

Sec. 1451.127. DUTY OF PERSON ARRANGING PROVIDER CONTRACTS FOR HEALTH INSURER OR HEALTH MAINTENANCE ORGANIZATION. (a) A person who arranges contracts with providers on behalf of a health maintenance organization or health insurer shall comply with laws related to the duties of the organization or insurer to notify and consider providers for those contracts.

(b) A violation of this section:

(1) is an unlawful practice under Section 15.05, Business & Commerce Code; and

(2) constitutes restraint of trade.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.128. SELECTION OF PHARMACIST. An insured may select a pharmacist to provide the services scheduled in the health insurance policy that are within the scope of the pharmacist's license to practice pharmacy under Subtitle J, Title 3, Occupations Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 281 (H.B. 1757), Sec. 2, eff. September 1, 2019.

SUBCHAPTER D. ACCESS TO OPTOMETRISTS USED UNDER MANAGED CARE PLAN

Sec. 1451.151. DEFINITION. In this subchapter, "managed care plan" means a plan under which a health maintenance organization, preferred provider benefit plan issuer, vision benefit plan issuer, vision benefit plan administrator, or other organization provides or arranges for health care benefits or vision benefits to plan participants and requires or encourages plan participants to use health care practitioners the plan designates.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 2, eff. September 1, 2023.

Sec. 1451.152. APPLICABILITY AND CONSTRUCTION OF SUBCHAPTER. (a) This subchapter applies only to a managed care plan that provides or arranges for benefits for vision or medical eye care services or procedures that are within the scope of an optometrist's or therapeutic optometrist's license.

(b) This subchapter does not require a managed care plan to provide vision or medical eye care services or procedures.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.153. USE OF OPTOMETRIST OR THERAPEUTIC OPTOMETRIST. (a) A managed care plan may not:

(1) discriminate against a health care practitioner because the practitioner is an optometrist or a therapeutic optometrist;

(2) restrict or discourage a plan participant from obtaining covered vision or medical eye care services or procedures from a participating optometrist or therapeutic optometrist solely because the practitioner is an optometrist or therapeutic optometrist;

(3) exclude an optometrist or a therapeutic optometrist as a participating practitioner in the plan because the optometrist or therapeutic optometrist does not have medical staff privileges at a hospital or at a particular hospital;

(4) identify a participating optometrist or therapeutic optometrist differently from another optometrist or therapeutic

optometrist based on:

(A) a discount or incentive offered on a medical or vision care product or service, as defined by Section 1451.155, that is not a covered product or service, as defined by Section 1451.155, by the optometrist or therapeutic optometrist;

(B) the dollar amount, volume amount, or percent usage amount of any product or good purchased by the optometrist or therapeutic optometrist; or

(C) the brand, source, manufacturer, or supplier of a medical or vision care product or service, as defined by Section 1451.155, utilized by the optometrist or therapeutic optometrist to practice optometry;

(5) incentivize, recommend, encourage, persuade, or attempt to persuade an enrollee to obtain covered or uncovered products or services:

(A) at any particular participating optometrist or therapeutic optometrist instead of another participating optometrist or therapeutic optometrist;

(B) at a retail establishment owned by, partially owned by, contracted with, or otherwise affiliated with the managed care plan instead of a different participating optometrist or therapeutic optometrist; or

(C) at any Internet or virtual provider or retailer owned by, partially owned by, contracted with, or otherwise affiliated with the managed care plan instead of a different participating optometrist or therapeutic optometrist;

(6) exclude an optometrist or a therapeutic optometrist as a participating practitioner in the plan because the services or procedures provided by the optometrist or therapeutic optometrist may be provided by another type of health care practitioner; or

(7) as a condition for a therapeutic optometrist to be included in one or more of the plan's medical panels, require the therapeutic optometrist to be included in, or to accept the terms of payment under or for, a particular vision panel in which the therapeutic optometrist does not otherwise wish to be included.

(b) A managed care plan shall:

(1) include optometrists and therapeutic optometrists as participating health care practitioners in the plan;

(2) include the name of a participating optometrist or therapeutic optometrist in any list of participating health care

practitioners and give equal prominence to each name;

(3) provide directly to an optometrist, therapeutic optometrist, or plan enrollee immediate access by electronic means to an enrollee's complete plan coverage information, including in-network and out-of-network coverage details;

(4) publish complete plan information, including in-network and out-of-network coverage details, with any marketing materials that describe the plan benefits, including any summary plan description;

(5) allow an optometrist or a therapeutic optometrist to utilize any third-party claim-filing service, billing service, or electronic data interchange clearinghouse company that uses the standardized claim submission protocol of the National Uniform Claim Committee and that allows the optometrist or therapeutic optometrist to submit details for both services and vision care products to facilitate the authorization, submission, and reimbursement of claims; and

(6) allow an optometrist or a therapeutic optometrist to receive reimbursement through an electronic funds transfer.

(c) For the purposes of Subsection (a)(7), "medical panel" and "vision panel" have the meanings assigned by Section 1451.154(a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.043, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 12.001, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 3, eff. September 1, 2023.

Sec. 1451.154. PARTICIPATION OF THERAPEUTIC OPTOMETRIST. (a) In this section:

(1) "Medical panel" means the health care practitioners who are listed as participating providers in a managed care plan or who a patient seeking diagnosis or treatment of a medical disease, disorder, or condition is encouraged or required to use under a managed care plan.

(2) "Vision panel" means the optometrists and therapeutic

optometrists who are listed as participating providers for routine eye examinations under a managed care plan or who a patient seeking a routine eye examination is encouraged or required to use under a managed care plan.

(b) A managed care plan must allow a therapeutic optometrist who is on one or more of the plan's vision panels to be a fully participating provider on the plan's medical panels to the full extent of the therapeutic optometrist's license to practice therapeutic optometry.

(c) A therapeutic optometrist who is included in a managed care plan's medical panels under Subsection (b) must:

(1) abide by the terms and conditions of the managed care plan;

(2) satisfy the managed care plan's credentialing standards for therapeutic optometrists; and

(3) provide proof that the Texas Optometry Board considers the therapeutic optometrist's license to practice therapeutic optometry to be in good standing.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 10, eff. September 1, 2023.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.044(a), eff. September 1, 2005.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 5, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 10, eff. September 1, 2023.

Sec. 1451.155. CONTRACTS WITH OPTOMETRISTS OR THERAPEUTIC OPTOMETRISTS. (a) In this section:

(1) "Chargeback" means a dollar amount, fee, surcharge, or item of value that reduces, modifies, or offsets all or part of the patient responsibility, provider reimbursement, or fee schedule for a covered product or service.

(2) "Covered product or service" means a medical or vision care product or service for which reimbursement is available under an

enrollee's managed care plan contract or for which reimbursement is available subject to a contractual limitation, including:

(A) a deductible;

(B) a copayment;

(C) coinsurance;

(D) a waiting period;

(E) an annual or lifetime maximum limit;

(F) a frequency limitation; or

(G) an alternative benefit payment.

(3) "Medical or vision care product or service" means a product or service provided within the scope of the practice of optometry or therapeutic optometry under Chapter 351, Occupations Code.

(a-1) For the purposes of this section, a product or service reimbursed to an optometrist or therapeutic optometrist at a nominal or de minimis rate is not a covered product or service.

(a-2) For the purposes of this section, a product or service reimbursed to an optometrist or therapeutic optometrist solely by the enrollee is not a covered product or service.

(b) A contract between a managed care plan and an optometrist or therapeutic optometrist may not limit the fee the optometrist or therapeutic optometrist may charge for a product or service that is not a covered product or service.

(c) A contract between a managed care plan and an optometrist or therapeutic optometrist may not require a discount on a product or service that is not a covered product or service.

(d) A contract between a managed care plan and an optometrist or therapeutic optometrist may not contain a provision authorizing a chargeback to the patient, optometrist, or therapeutic optometrist if the chargeback is for a covered product or service that the managed care plan does not incur the cost to produce, deliver, or provide to the patient, optometrist, or therapeutic optometrist.

(e) A contract between a managed care plan and an optometrist or therapeutic optometrist may not contain a provision authorizing a reimbursement fee schedule for a covered product or service that is different from the fee schedule applicable to another optometrist or therapeutic optometrist because of the optometrist's or therapeutic optometrist's choice of:

(1) optical laboratory;

(2) source or supplier of:

(A) contact lenses;
(B) ophthalmic lenses;
(C) ophthalmic glasses frames; or
(D) covered or uncovered products or services;
(3) equipment used for patient care;
(4) retail optical affiliation;
(5) vision support organization;
(6) group purchasing organization;
(7) doctor alliance;
(8) professional trade association membership;
(9) affiliation with an arrangement defined as a franchise by 16 C.F.R. Part 436;
(10) electronic health record software, electronic medical record software, or practice management software; or
(11) third-party claim-filing service, billing service, or electronic data interchange clearinghouse company.

(f) A managed care plan may not change a contract between a managed care plan and an optometrist or therapeutic optometrist, including terms, reimbursements, or fee schedules, unless the managed care plan provides written notice of the change to the optometrist or therapeutic optometrist at least 90 days before the date the proposed change takes effect.

(g) A contract between a managed care plan and an optometrist or therapeutic optometrist may not contain a provision requiring the optometrist or therapeutic optometrist to provide a covered product at a loss.

(h) A contract between a managed care plan and an optometrist or therapeutic optometrist may not contain a provision requiring the optometrist or therapeutic optometrist to accept a reimbursement payment in the form of a virtual credit card or any other payment method where a processing fee, administrative fee, percentage amount, or dollar amount is assessed to receive the reimbursement payment, except in the case of a nominal fee assessed by the optometrist's or therapeutic optometrist's bank to receive an electronic funds transfer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 755 (S.B. 632), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 6, eff.

September 1, 2023.

Sec. 1451.156. CERTAIN CONDUCT PROHIBITED. (a) A managed care plan, as described by Section 1451.152(a), may not directly or indirectly:

(1) control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(2) employ an optometrist or therapeutic optometrist to provide a vision care product or service as defined by Section 1451.155;

(3) pay an optometrist or therapeutic optometrist for a service not provided;

(4) reimburse an optometrist or therapeutic optometrist a different amount for a covered product or service as defined by Section 1451.155 because of the optometrist's or therapeutic optometrist's choice of:

(A) optical laboratory;

(B) source or supplier of:

(i) contact lenses;

(ii) ophthalmic lenses;

(iii) ophthalmic glasses frames; or

(iv) covered or uncovered products or services;

(C) equipment used for patient care;

(D) retail optical affiliation;

(E) vision support organization;

(F) group purchasing organization;

(G) doctor alliance;

(H) professional trade association membership;

(I) affiliation with an arrangement defined as a franchise by 16 C.F.R. Part 436;

(J) electronic health record software, electronic medical record software, or practice management software; or

(K) third-party claim-filing service, billing service, or electronic data interchange clearinghouse company;

(5) restrict, limit, or influence an optometrist's or therapeutic optometrist's choice of sources or suppliers of services or materials, including optical laboratories used by the optometrist or therapeutic optometrist to provide services or materials to a

patient;

(6) restrict, limit, or influence an optometrist's or therapeutic optometrist's choice of electronic health record software, electronic medical record software, or practice management software;

(7) restrict, limit, or influence an optometrist's or therapeutic optometrist's choice of third-party claim-filing service, billing service, or electronic data interchange clearinghouse company;

(8) restrict or limit an optometrist's or therapeutic optometrist's access to a patient's complete plan coverage information, including in-network and out-of-network coverage details;

(9) apply a chargeback, as defined by Section 1451.155, to a patient, optometrist, or therapeutic optometrist if the chargeback is for a covered product or service that the managed care plan does not incur the cost to produce, deliver, or provide to the patient, optometrist, or therapeutic optometrist;

(10) require an optometrist or therapeutic optometrist to provide a covered product at a loss;

(11) require an optometrist or therapeutic optometrist to disclose a patient's confidential or protected health information unless the disclosure is authorized by the patient or permitted without authorization under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) or under Section 602.053;

(12) require an optometrist or therapeutic optometrist to disclose or report a medical history or diagnosis as a condition to file a claim, adjudicate a claim, or receive reimbursement for a routine or wellness vision eye exam;

(13) require an optometrist or therapeutic optometrist to disclose or report a patient's glasses prescription, contact lens prescription, ophthalmic device measurements, facial photograph, or unique anatomical measurements as a condition to file a claim, adjudicate a claim, or receive reimbursement for a claim unless the information is needed for the managed care plan to manufacture or cause to be manufactured a covered product that is submitted on the claim;

(14) require an optometrist or therapeutic optometrist to disclose any patient information, other than information identified

on the version of the Health Insurance Claim Form approved by the National Uniform Claim Committee as of March 1, 2023, as a condition to file a claim, adjudicate a claim, or receive reimbursement for a claim unless the information is needed for the managed care plan to manufacture or cause to be manufactured a covered product that is submitted on the claim; or

(15) require an optometrist or therapeutic optometrist to accept a reimbursement payment in the form of a virtual credit card or any other payment method where a processing fee, administrative fee, percentage amount, or dollar amount is assessed to receive the reimbursement payment, except in the case of a nominal fee assessed by the optometrist's or therapeutic optometrist's bank to receive an electronic funds transfer.

(b) Subsection (a)(2) does not prohibit a managed care plan from employing an optometrist or therapeutic optometrist for utilization review or for operations of the managed care plan.

(c) Subsection (a)(3) does not prohibit the use of capitation as a method of payment.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 10, eff. September 1, 2023.

(e) An optometrist or therapeutic optometrist must disclose to a patient any business interest the optometrist or therapeutic optometrist has in an out-of-network supplier or manufacturer to which the optometrist or therapeutic optometrist refers the patient.

(f) This section shall be liberally construed to prevent managed care plans from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist.

Added by Acts 2015, 84th Leg., R.S., Ch. 1271 (S.B. 684), Sec. 3, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 7, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 8, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 10, eff. September 1, 2023.

Sec. 1451.157. EXTRAPOLATION PROHIBITED. (a) In this section:

(1) "Extrapolation" means a mathematical process or technique used by a vision care plan in the audit of an optometrist or therapeutic optometrist to estimate audit results or findings for a larger batch or group of claims not reviewed by the plan.

(2) "Vision care plan" means a limited-scope policy, agreement, contract, or evidence of coverage that provides coverage for eye care expenses but does not provide comprehensive medical coverage.

(b) A vision care plan may not use extrapolation to complete an audit of a participating optometrist or therapeutic optometrist. Any additional payment due to a participating optometrist or therapeutic optometrist or any refund due to the vision care plan must be based on the actual overpayment or underpayment and may not be based on an extrapolation.

Added by Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 9, eff. September 1, 2023.

Sec. 1451.158. ENFORCEMENT OF SUBCHAPTER. (a) A violation of this subchapter by a managed care plan is subject to an administrative penalty under Chapter 84.

(b) The commissioner shall take all reasonable actions to ensure compliance with this subchapter, including issuing orders to enforce this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 898 (H.B. 1696), Sec. 9, eff. September 1, 2023.

SUBCHAPTER E. DENTAL CARE BENEFITS IN HEALTH INSURANCE POLICIES OR EMPLOYEE BENEFIT PLANS

Sec. 1451.201. DEFINITIONS. In this subchapter:

(1) "Dental care service" means a service provided to a person to prevent, alleviate, cure, or heal a human dental illness or injury.

(2) "Employee benefit plan" means a plan, fund, or program established or maintained by an employer or employee organization.

(3) "Health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group

hospital service contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.202. APPLICABILITY AND CONSTRUCTION OF SUBCHAPTER. (a) This subchapter applies only to an employee benefit plan or health insurance policy delivered, issued for delivery, renewed, or contracted for in this state to the extent that:

(1) the employee benefit plan is established or maintained to provide dental care services, through insurance or otherwise, for the plan's participants or the beneficiaries of the plan's participants; or

(2) the health insurance policy provides benefits for dental care services.

(b) This subchapter does not apply to a health maintenance organization governed by Chapter 843.

(c) The exemptions and exceptions of Sections 881.002 and 881.004 and Article 21.41 do not apply to this subchapter.

(d) This subchapter does not require an employee benefit plan or health insurance policy to provide any type of benefits for dental care expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.203. CONFLICTING PROVISIONS. A provision of an employee benefit plan or health insurance policy that conflicts with this subchapter is void to the extent of the conflict.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.204. CERTAIN CONDUCT PERMITTED. (a) Notwithstanding any other provision of this subchapter, a dentist may contract directly with a patient to provide dental care services to the patient as authorized by law.

(b) Notwithstanding any other provision of this subchapter, a person providing a health insurance policy or employee benefit plan or an employer or an employee organization may:

(1) make information available to its insureds,

beneficiaries, participants, employees, or members regarding dental care services through the distribution of factually accurate information about dental care services and the rates, fees, locations, and hours for the services if the information is distributed on the request of a dentist;

(2) establish an administrative mechanism to facilitate payments for dental care services from an insured, beneficiary, participant, employee, or member to a dentist chosen by the insured, beneficiary, participant, employee, or member; or

(3) nondiscriminatorily pay or reimburse its insured, beneficiary, participant, employee, or member for the cost of dental care services provided by a dentist chosen by the insured, beneficiary, participant, employee, or member.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.205. DISCLOSURE OF BENEFIT TERMS. (a) An employee benefit plan or health insurance policy shall:

(1) if applicable, disclose that the benefit for dental care services offered is limited to the least costly treatment; and

(2) specify in dollars and cents the amount of the payment or reimbursement to be provided for dental care services or define and explain the standard on which payment of benefits or reimbursement for the cost of dental care services is based, such as:

(A) "usual and customary" fees;

(B) "reasonable and customary" fees;

(C) "usual, customary, and reasonable" fees; or

(D) words of similar meaning.

(b) A person or entity who provides or issues an employee benefit plan or health insurance policy or the employer or employee organization, if applicable, shall establish an Internet website to provide resources and information to dentists, insureds, participants, employees, and members.

(c) An employee benefit plan or health insurance policy provider or issuer shall make accessible on the Internet website established under Subsection (b) information about the plan or policy sufficient for patients and dentists to determine the type of dental care services covered by the plan or policy, the percentage of the allowed charges for a covered service that will be paid or reimbursed

under the plan or policy, and, for a contracting provider dentist, an estimate of the amount of the payment or reimbursement available for the provider's services under the plan or policy. Access to the Internet website must be at no charge to patients under the plan or policy and dentists providing dental care services to the patients.

(d) An employee benefit plan or health insurance policy provider or issuer is not required to comply with Subsection (b) or (c) for a plan or policy that:

(1) provides for payment of the benefit for dental care services under the plan or policy:

(A) as an indemnity benefit based on a fixed schedule, regardless of the cost of the dental care service;

(B) on a cash-payment-only basis;

(C) directly to the beneficiary of the plan or policy or to the beneficiary's assigns; and

(D) regardless of other coverage; and

(2) does not provide for a copayment, a deductible, a network, or contracting provider dentists.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1290 (H.B. 2486), Sec. 1, eff. September 1, 2019.

Sec. 1451.206. PAYMENT OR REIMBURSEMENT OF DENTIST. (a) The employee benefit plan or health insurance policy shall:

(1) provide:

(A) that payment or reimbursement for a noncontracting provider dentist shall be the same as payment or reimbursement for a contracting provider dentist;

(B) that the party to or beneficiary of the plan or policy may assign the right to payment or reimbursement to the dentist who provides the dental care services; and

(C) one or more methods of payment or reimbursement that provide the dentist 100 percent of the contracted amount of the payment or reimbursement and that do not require the dentist to incur a fee to access the payment or reimbursement; and

(2) disclose on the Internet website required under Section 1451.205 and on request of a dentist or a party to or beneficiary of

the plan or policy the fees, if any, associated with the methods of payment or reimbursement available under the plan or policy.

(b) Notwithstanding Subsection (a)(1), the employee benefit plan or health insurance policy is not required to make payment or reimbursement in an amount greater than:

(1) the amount specified in the plan or policy; or

(2) the fee the providing dentist charges for the dental care services provided.

(c) If the right to payment or reimbursement is assigned as provided by Subsection (a)(2):

(1) payment or reimbursement shall be made directly to the designated dentist; and

(2) direct payment to the designated dentist discharges the payor's obligation.

(d) An employee benefit plan or health insurance policy provider or issuer may not recover an overpayment made to a dentist unless:

(1) not later than the 180th day after the date the dentist receives the payment, the provider or issuer provides written notice of the overpayment to the dentist that includes the basis and specific reasons for the request for recovery of funds; and

(2) the dentist:

(A) fails to provide a written objection to the request for recovery of funds and does not make arrangements for repayment of the requested funds on or before the 45th day after the date the dentist receives the notice; or

(B) objects to the request in accordance with the procedure described by Subsection (e) and exhausts all rights of appeal.

(e) An employee benefit plan or health insurance policy provider or issuer shall provide a dentist with the opportunity to challenge an overpayment recovery request and establish written policies and procedures for a dentist to object to an overpayment recovery request. The procedures must allow the dentist to access the claims information in dispute.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1290 (H.B. 2486), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1002 (H.B. 1527), Sec. 1, eff. September 1, 2023.

Sec. 1451.2065. CONTRACTS WITH DENTISTS. (a) In this section:

(1) "Covered service" means a dental care service for which reimbursement is available under a patient's employee benefit plan or health insurance policy, or for which reimbursement is available subject to a contractual limitation, including:

(A) a deductible;

(B) a copayment;

(C) coinsurance;

(D) a waiting period;

(E) an annual or lifetime maximum limit;

(F) a frequency limitation;

(G) an alternative benefit payment; or

(H) any other limitation.

(2) "Insurer" means a provider or issuer of an employee benefit plan or health insurance policy.

(b) A contract between an insurer and a dentist may not:

(1) limit the fee the dentist may charge for a service that is not a covered service; or

(2) include a provision that both:

(A) allows the insurer to disallow a service, resulting in denial of payment to the dentist for a service that ordinarily would have been covered; and

(B) prohibits the dentist from billing for and collecting the amount owed from the patient for that service if there is a dental necessity, as defined by Section 32.054, Human Resources Code, for that service.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1061 (S.B. 554), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1002 (H.B. 1527), Sec. 2, eff. September 1, 2023.

Sec. 1451.207. PROHIBITED CONDUCT. (a) An employee benefit plan or health insurance policy may not:

(1) interfere with or prevent an individual who is a party to or beneficiary of the plan or policy from selecting a dentist of the individual's choice to provide a dental care service the plan or policy offers if the dentist selected is licensed in this state to provide the service;

(2) deny a dentist the right to participate as a contracting provider under the plan or policy if the dentist is licensed to provide the dental care services the plan or policy offers;

(3) authorize a person to regulate, interfere with, or intervene in the provision of dental care services a dentist provides a patient, including diagnosis, if the dentist practices within the scope of the dentist's license;

(4) require a dentist to make or obtain a dental x-ray or other diagnostic aid in providing dental care services; or

(5) deduct the amount of an overpayment of a claim from a payment or reimbursement for a dental care service provided by a dentist who did not receive the overpayment.

(b) Subsection (a)(4) does not prohibit a request for an existing dental x-ray or other existing diagnostic aid for a determination of benefits payable under an employee benefit plan or health insurance policy.

(c) This section does not prohibit the predetermination of benefits for dental care expenses before the attending dentist provides treatment. In this subsection, "predetermination" means an estimate by the patient's employee benefit plan or health insurance policy provider or issuer of:

(1) the patient's eligibility under the plan or policy for benefits or covered services;

(2) the amount of the patient's deductible, copayment, or coinsurance related to benefits or covered services; and

(3) the maximum benefit limits for benefits or covered services.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1290 (H.B. 2486), Sec. 3, eff. September 1, 2019.

Sec. 1451.208. PRIOR AUTHORIZATION OF DENTAL CARE SERVICES. (a) For purposes of this section, "prior authorization" means a written and verifiable determination that one or more specific dental care services are covered under the patient's employee benefit plan or health insurance policy and are payable and reimbursable in a specific stated amount, subject to applicable coinsurance and deductible amounts. The term:

(1) includes preauthorization or similar authorization; and

(2) does not include a predetermination as defined by Section 1451.207(c).

(b) For services for which a prior authorization is required, on request of a patient or treating dentist, an employee benefit plan or health insurance policy provider or issuer shall provide to the dentist a written prior authorization of benefits for a dental care service for the patient. The prior authorization must include a specific benefit payment or reimbursement amount. Except as provided by Subsection (c), the plan or policy provider or issuer may not pay or reimburse the dentist in an amount that is less than the amount stated in the prior authorization.

(c) An employee benefit plan or health insurance policy provider or issuer that preauthorizes a dental care service under Subsection (b) may deny a claim for the dental care service or reduce payment or reimbursement to the dentist for the service only if:

(1) the denial or reduction is in accordance with the patient's employee benefit plan or health insurance policy benefit limitations, including an annual maximum or frequency of treatment limitation, and the patient met the benefit limitation after the date the prior authorization was issued;

(2) the documentation for the claim fails to reasonably support the claim as preauthorized;

(3) the preauthorized dental care service was not medically necessary based on the prevailing standard of care on the date of the service, or is subject to denial under the conditions for coverage under the patient's plan or policy in effect at the time the service was preauthorized, because of a change in the patient's condition or because the patient received additional dental care services after the date the prior authorization was issued;

(4) a payor other than the employee benefit plan or health insurance policy provider or issuer is responsible for payment of the claim;

(5) the dentist received full payment for the preauthorized dental care service on which the claim is based;

(6) the claim is fraudulent;

(7) the prior authorization was based wholly or partly on a material error in information provided to the employee benefit plan or health insurance policy provider or issuer by any person not related to the provider or issuer; or

(8) the patient was otherwise ineligible for the dental care service under the patient's plan or policy, and the plan or policy provider or issuer did not know and could not reasonably have known that the patient was ineligible for the dental care service on the date the plan or policy provider or issuer preauthorized the dental care service.

Added by Acts 2019, 86th Leg., R.S., Ch. 1290 (H.B. 2486), Sec. 4, eff. September 1, 2019.

Sec. 1451.209. REQUIREMENTS FOR THIRD PARTY ACCESS TO PROVIDER NETWORKS. (a) At the time a provider network contract is entered into or when material modifications are made to the contract relevant to granting a third party access to the contract, an employee benefit plan or health insurance policy provider or issuer shall allow any dentist that is part of the provider network to elect not to participate in the third party access to the contract and to elect not to enter into a contract directly with the third party that will obtain access to the provider network. This subsection does not permit the plan or policy provider or issuer to cancel or otherwise end a contractual relationship with a dentist if the dentist elects to not participate in or agree to third party access to the provider network contract.

(b) An employee benefit plan or health insurance policy provider or issuer that enters into a provider network contract with a dentist, or a contracting entity that has leased or acquired the provider network contract, may grant a third party access to the provider network contract or to a dentist's dental care services or contractual discounts provided under the contract only if:

(1) the provider network contract conspicuously states that the provider or issuer or contracting entity may enter into an agreement with a third party that allows the third party to obtain

the provider's, issuer's, or contracting entity's rights and responsibilities as if the third party were the provider, issuer, or contracting entity;

(2) if the contracting entity is an employee benefit plan or health insurance policy provider or issuer, the provider network contract conspicuously states, in addition to the language required by Subdivision (1), that the dentist may elect not to participate in third party access to the provider network contract:

(A) at the time the provider network contract is entered into; or

(B) when there are material modifications to the provider network contract relevant to granting a third party access to the provider network contract;

(3) the third party accessing the provider network contract agrees to comply with all of the original contract's terms, including the contracted fee schedule and obligations concerning patient steerage;

(4) the provider, issuer, or other contracting entity provides in writing to the dentist the names of all third parties with access to the provider network in existence as of the date the contract is entered into;

(5) the provider, issuer, or other contracting entity identifies all current third parties with access to the provider network on its Internet website with a list updated at least once every 90 days;

(6) the provider, issuer, or other contracting entity requires a third party with access to the provider network to identify the source of any discount on all remittance advices or explanations of payment under which a discount is taken, provided that this subsection does not apply to electronic transactions mandated by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(7) the provider, issuer, or other contracting entity provides written or electronic notice to network dentists that a third party will lease, acquire, or obtain access to the provider network at least 30 days before the lease or access takes effect;

(8) the provider, issuer, or other contracting entity provides written or electronic notice to network dentists of the termination of the provider network contract at least 30 days before the termination date;

(9) a third party's right to a dentist's discounted rate ceases as of the termination date of the provider network contract; and

(10) the provider, issuer, or other contracting entity makes available a copy of the provider network contract relied on in the adjudication of a claim to a network dentist not later than the 30th day after the date the dentist requests a copy of that contract.

(c) Subsections (b)(7) and (8) do not apply to a contracting entity that only organizes and leases networks but does not engage in the business of insurance.

(d) A person may not bind or require a dentist to perform dental care services under a provider network contract that has been sold, leased, or assigned to a third party or for which a third party has otherwise obtained provider network access in violation of this section.

(e) This section does not apply:

(1) if access to a provider network contract is granted to:

(A) a third party operating in accordance with the same brand licensee program as the employee benefit plan provider, health insurance policy issuer, or other contracting entity selling or leasing the provider network contract, provided that the third party accessing the provider network contract agrees to comply with all of the original contract's terms, including the contracted fee schedule and obligations concerning patient steerage; or

(B) an entity that is an affiliate of the employee benefit plan provider, health insurance policy issuer, or other contracting entity selling or leasing the provider network contract, provided that:

(i) the provider, issuer, or entity publicly discloses the names of the affiliates on its Internet website; and

(ii) the affiliate accessing the provider network contract agrees to comply with all of the original contract's terms, including the contracted fee schedule and obligations concerning patient steerage;

(2) to the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(3) to a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1002 (H.B. 1527), Sec. 3, eff. September 1, 2023.

SUBCHAPTER F. ACCESS TO OBSTETRICAL OR GYNECOLOGICAL CARE

Sec. 1451.251. DEFINITION. In this subchapter, "enrollee" means an individual enrolled in a health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.252. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that requires an enrollee to obtain certain specialty health care services through a referral made by a primary care physician or other gatekeeper and that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(ii) another analogous benefit arrangement;

(2) is offered by:

(A) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(B) an entity that is not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(3) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.253. EXCEPTION. This subchapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment;

(C) for wages or payments instead of wages for a period during which an employee is absent from work because of sickness or injury; or

(D) as a supplement to a liability insurance policy;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy;

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1451.252; or

(7) any health benefit plan that does not provide:

(A) benefits related to pregnancy; or

(B) well-woman care benefits.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.254. RULES. The commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.255. RIGHT OF FEMALE ENROLLEE TO SELECT OBSTETRICIAN OR GYNECOLOGIST. (a) Except as provided by Subsection (b), a health benefit plan shall permit a female enrollee to select, in addition to a primary care physician, an obstetrician or gynecologist to provide the enrollee with health care services that are within the scope of the professional specialty practice of a properly credentialed obstetrician or gynecologist.

(b) A health benefit plan may limit an enrollee's self-referral under Subsection (a) to only one participating obstetrician or gynecologist to provide both gynecological and obstetrical care to the enrollee. This subsection does not affect the right of an enrollee to select the physician who provides that care.

(c) This section does not preclude an enrollee from selecting a qualified physician, including a family physician or internal medicine physician, to provide the enrollee with health care services described by Subsection (a).

(d) This section does not affect the authority of a health benefit plan issuer to establish selection criteria regarding other physicians who provide services under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.256. DIRECT ACCESS TO SERVICES OF OBSTETRICIAN OR GYNECOLOGIST. (a) In this section, "health care services" includes:

(1) one well-woman examination each year;

(2) care related to pregnancy;

(3) care for any active gynecological condition; and

(4) diagnosis, treatment, and referral for any disease or condition that is within the scope of the professional specialty practice of a properly credentialed obstetrician or gynecologist.

(b) In addition to other benefits authorized under the health benefit plan, a health benefit plan shall permit an enrollee who selects an obstetrician or gynecologist under Section 1451.255 to have direct access to the health care services of that selected physician without:

(1) a referral from the enrollee's primary care physician;

or

(2) prior authorization or precertification from the plan issuer.

(c) A health benefit plan may not impose a copayment or deductible for direct access to health care services as required by this section unless the same copayment or deductible is imposed for access to other health care services provided under the plan.

(d) This section does not affect the authority of a health benefit plan issuer to require an obstetrician or gynecologist selected by an enrollee under Section 1451.255 to forward information concerning the medical care of the enrollee to the enrollee's primary care physician.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.257. AVAILABILITY OF PROVIDERS. To ensure access to services that are within the scope of the professional specialty practice of a properly credentialed obstetrician or gynecologist, a health benefit plan shall include in the classification of persons authorized to provide medical services under the plan a sufficient number of properly credentialed obstetricians and gynecologists.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.258. NOTICE OF AVAILABLE PROVIDERS. (a) A health benefit plan issuer shall provide to each person covered under the plan a timely written notice of the choices of the types of physician providers available for the direct access required under this subchapter.

(b) The notice must be stated in clear and accurate language.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.259. LIMITS ON PHYSICIAN SANCTIONS. (a) A health benefit plan may not sanction or terminate a primary care physician because of female enrollees' access to participating obstetricians and gynecologists under this subchapter.

(b) A health benefit plan may not impose a financial or other

penalty on an obstetrician or gynecologist selected under Section 1451.255, or on the enrollee who selected the physician, because the selected physician failed to provide to the enrollee's primary care physician information concerning the medical care of the enrollee if the selected physician made a reasonable good faith effort to forward the information.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.260. ADMINISTRATIVE PENALTY. An entity that operates a health benefit plan in violation of this subchapter is subject to an administrative penalty as provided by Chapter 84.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER G. ACCESS TO DIETITIAN SERVICES

Sec. 1451.301. APPLICABILITY OF GENERAL PROVISIONS OF OTHER LAW. The provisions of Chapter 1201, including provisions relating to the applicability, purpose, and enforcement of that chapter, the construction of policies under that chapter, rulemaking under that chapter, and definitions of terms applicable in that chapter, apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.302. DIETITIAN SERVICES. An individual or group accident and health insurance policy delivered or issued for delivery in this state may not:

(1) exclude or deny coverage for services performed by:

(A) a dietitian; or

(B) a provisionally licensed dietitian acting under the supervision of a dietitian; or

(2) refuse payment or reimbursement for charges for services described by Subdivision (1) if the services:

(A) are in the scope of the dietitian's license;

(B) are related to an injury or illness the policy covers if the services are scheduled in the policy; and

(C) are provided under a professional recommendation of

a physician whose treatment or examination for the injury or illness would be covered by the policy and would be payable or reimbursable under the policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER H. DISABILITY CERTIFIED BY PODIATRIST

Sec. 1451.351. LOSS OF INCOME BENEFITS FOR DISABILITY TREATABLE BY PODIATRIST. (a) This section applies only to an insurance policy delivered, issued for delivery, or renewed in this state that provides benefits covering loss of income as a result of an acute temporary disability caused by sickness or injury.

(b) An insurance policy may not deny payment of benefits described by Subsection (a) solely because the disability is certified or attested to by a podiatrist if the disability is caused by a sickness or injury that may be treated within the scope of the podiatrist's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER I. USE OF OSTEOPATHIC HOSPITAL

Sec. 1451.401. CONTRACT WITH OSTEOPATHIC HOSPITAL. A health maintenance organization or preferred provider benefit plan issuer that contracts with a hospital to provide services to covered individuals may not refuse to contract with an osteopathic hospital solely because the hospital is an osteopathic hospital.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.402. SERVICES AT OSTEOPATHIC HOSPITAL. A health maintenance organization or preferred provider benefit plan issuer that provides benefits for inpatient or outpatient services provided by an allopathic hospital shall seek to provide benefits for similar services provided by an osteopathic hospital if there is an osteopathic hospital within the service area of the health maintenance organization or preferred provider benefit plan issuer that will provide the services at a substantially similar cost.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.403. REQUEST FOR ACTION OF COMMISSIONER. An aggrieved party may request that the commissioner conduct an investigation, review, hearing, or other proceeding to determine compliance with this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1451.404. ENFORCEMENT. The commissioner shall take all reasonable actions to ensure compliance with this subchapter, including issuing orders and assessing penalties.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER J. REIMBURSEMENT OF HEALTH CARE PROVIDERS

Sec. 1451.451. REIMBURSEMENT UNDER MEDICAID-BASED FEE SCHEDULE.

Text of subsection effective until April 1, 2025

(a) An insurance company, health maintenance organization, or preferred provider organization that contracts with a health care provider to provide services in connection with Chapter 533, Government Code, or Chapter 62, Health and Safety Code, may not require the health care provider to provide access to or transfer the provider's name and contracted discounted fee for use with health benefit plans issued to individuals and groups under Chapter 1271 or 1301.

Text of subsection effective on April 1, 2025

(a) An insurance company, health maintenance organization, or preferred provider organization that contracts with a health care provider to provide services in connection with Chapter 540 or 540A, Government Code, as applicable, or Chapter 62, Health and Safety Code, may not require the health care provider to provide access to or transfer the provider's name and contracted discounted fee for use with health benefit plans issued to individuals and groups under Chapter 1271 or 1301.

(b) An insurance company, health maintenance organization, or

preferred provider organization may provide access to or transfer a provider's name and discounted fee described by Subsection (a) only if:

(1) the insurance company, health maintenance organization, or preferred provider organization provides written notice to the provider that is printed in conspicuous boldface type near a separate signature line and includes a statement substantially similar to the following: "By signing on this line, you may be agreeing to apply this company's Medicaid or CHIP fee schedule to services you provide to commercial insurance or HMO enrollees."; and

(2) the provider authorizes the access or transfer and agrees to accept the contracted discounted fee by signing the notice described in Subdivision (1).

Added by Acts 2013, 83rd Leg., R.S., Ch. 778 (S.B. 1221), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.132, eff. April 1, 2025.

SUBCHAPTER K. HEALTH CARE PROVIDER DIRECTORIES

Sec. 1451.501. DEFINITIONS. In this subchapter:

(1) "Facility" has the meaning assigned by Section 324.001, Health and Safety Code.

(1-a) "Facility-based physician or provider" means a physician or health care provider:

(A) to whom a facility has granted clinical privileges; and

(B) who provides services to patients of the facility under those clinical privileges.

(1-b) "Health care provider" means a practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state. The term includes a pharmacist, pharmacy, hospital, nursing home, or other medical or health-related service facility that provides care for the sick or injured or other care. The term does not include a physician.

(2) "Physician" means an individual licensed to practice medicine in this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 2, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 1.01, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 18 (S.B. 1003), Sec. 1, eff. September 1, 2023.

Sec. 1451.502. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or a small or large employer group contract or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 2, eff. September 1, 2015.

Text of section effective until April 1, 2025

Sec. 1451.503. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another single benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy;

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1451.502;

(6) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(7) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 2, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.133, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1451.503. EXCEPTION. This subchapter does not apply to:

(1) a health benefit plan that provides coverage:

(A) only for a specified disease or for another single benefit;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period

during which an employee is absent from work because of sickness or injury;

(D) as a supplement to a liability insurance policy;

(E) for credit insurance;

(F) only for dental or vision care;

(G) only for hospital expenses; or

(H) only for indemnity for hospital confinement;

(2) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(3) a workers' compensation insurance policy;

(4) medical payment insurance coverage provided under a motor vehicle insurance policy;

(5) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1451.502;

(6) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(7) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 2, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.133, eff. April 1, 2025.

Sec. 1451.504. PHYSICIAN AND HEALTH CARE PROVIDER DIRECTORIES. (a) A health benefit plan issuer that offers coverage for health care services through preferred providers, exclusive providers, or a network of physicians or health care providers shall develop and maintain a physician and health care provider directory in accordance with this subchapter.

(b) The directory must include the name, street address, specialty, if any, and telephone number of each physician and health care provider described by Subsection (a) and indicate whether the

physician or provider is accepting new patients.

(c) Except as provided by Subsection (e), for each health care provider that is a facility included in the directory under this section, the directory must:

(1) list under the facility name separate headings for specialties, including radiologists, anesthesiologists, nurse anesthetists, anesthesiologist assistants, pathologists, emergency department physicians, neonatologists, nurse midwives, surgical assistants, physical therapists, occupational therapists, speech-language pathologists, and any other specialty identified by commissioner rule;

(2) list under each heading described by Subdivision (1) each facility-based physician or provider described by Subsection (a) practicing in the specialty corresponding with that heading that is a preferred provider, exclusive provider, or network physician or provider;

(3) for the facility and each facility-based physician or provider described by Subdivision (2), clearly indicate each health benefit plan issued by the issuer that may provide coverage for the services provided by that facility or facility-based physician or provider; and

(4) include the facility in a listing of all facilities included in the directory indicating:

(A) the name of the facility;

(B) the municipality in which the facility is located or county in which the facility is located if the facility is in the unincorporated area of the county;

(C) for each specialty of facility-based physician or provider practicing at the facility, the name, street address, and telephone number of any facility-based physician or provider that is a preferred provider, exclusive provider, or network physician or provider or of the physician or provider group in which the facility-based physician or provider practices;

(D) each health benefit plan issued by the issuer that may provide coverage for the services provided by the facility; and

(E) each health benefit plan issued by the issuer that may provide coverage for the services provided by each facility-based physician or provider group.

(d) The directory must list a facility-based physician or provider individually and, if the physician or provider belongs to a

physician or provider group, as part of the physician or provider group.

(e) The directory is not required to list a physician or health care provider who is employed by the facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 2, eff. September 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 1.02, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 18 (S.B. 1003), Sec. 2, eff. September 1, 2023.

Sec. 1451.505. PHYSICIAN AND HEALTH CARE PROVIDER DIRECTORY ON INTERNET WEBSITE. (a) A health benefit plan issuer shall display on a public Internet website maintained by the issuer the directory required by Section 1451.504. A direct electronic link to the directory must be displayed in a conspicuous manner in the electronic summary of benefits and coverage of each health benefit plan issued by the health benefit plan issuer on the Internet website.

(b) The health benefit plan issuer shall clearly indicate in the directory each health benefit plan issued by the issuer that may provide coverage for services provided by each physician or health care provider included in the directory.

(c) The directory must be:

(1) electronically searchable by physician or health care provider name, specialty, if any, facility, and location; and

(2) publicly accessible without necessity of providing a password, a user name, or personally identifiable information.

(d) The health benefit plan issuer shall conduct an ongoing review of the directory and correct or update the information as necessary. Except as provided by Subsection (e), corrections and updates, if any, must be made not less than once each month.

(e) The health benefit plan issuer shall conspicuously display in the directory required by Section 1451.504 an e-mail address and a toll-free telephone number to which any individual may report any inaccuracy in the directory. If the issuer receives a report from any person that specifically identified directory information may be inaccurate, the issuer shall investigate the report and correct the

information, as necessary, not later than the seventh day after the date the report is received.

Added by Acts 2015, 84th Leg., R.S., Ch. 1038 (H.B. 1624), Sec. 2, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 1.03, eff. September 1, 2019.

CHAPTER 1452. PHYSICIAN AND PROVIDER CREDENTIALS

SUBCHAPTER A. CREDENTIALING OF PHYSICIANS AND PROVIDERS BY HEALTH MAINTENANCE ORGANIZATION

Sec. 1452.001. APPLICABILITY OF CERTAIN DEFINITIONS. In this subchapter, a term defined by Section 843.002 has the meaning assigned by that section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1452.002. VERIFICATION OF PHYSICIAN'S LICENSE OR CERTIFICATE. The commissioner shall require a health maintenance organization to verify that a physician's license to practice medicine and any other certificate the physician is required to hold, including a certificate issued by the Department of Public Safety or the federal Drug Enforcement Administration or a certificate issued under the Medicare program, is valid as of the date of:

(1) initial credentialing of the physician; and

(2) each recredentialing.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1452.003. SITE VISIT FOR INITIAL CREDENTIALING. (a) The commissioner shall require a health maintenance organization that conducts a site visit for the purpose of initial credentialing of a physician or provider to evaluate during the visit a site's accessibility, appearance, space, medical or dental recordkeeping practices, availability of appointments, and confidentiality procedures.

(b) The commissioner may not require the health maintenance

organization to evaluate the appropriateness of equipment during the site visit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1452.004. LIMITATION ON COMMISSIONER'S AUTHORITY. The commissioner may not require a health maintenance organization to:

(1) formally recredential a physician or provider more frequently than once in any three-year period;

(2) verify the validity of a license or certificate held by a physician as of a date other than the date of initial credentialing or recredentialing of the physician;

(3) use clinical personnel to perform a site visit for initial credentialing of a physician or provider unless clinical review is needed during the site visit; or

(4) require a site visit be performed for the purpose of recredentialing of a physician or provider.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1452.005. SITE VISIT FOR CAUSE NOT PRECLUDED. This subchapter does not preclude a health maintenance organization from conducting a site visit of a physician or provider at any time for cause, including a complaint made by a member or another external complaint made to the health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1452.006. RULES RELATED TO SELECTION OF PHYSICIANS AND PROVIDERS BY HEALTH MAINTENANCE ORGANIZATION. A rule adopted by the commissioner under Section 843.102 that relates to implementation and maintenance by a health maintenance organization of a process for selecting and retaining affiliated physicians and providers must comply with:

(1) this subchapter; and

(2) standards adopted by the National Committee for Quality Assurance, to the extent those standards do not conflict with other laws of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. STANDARDIZED FORMS

Sec. 1452.051. DEFINITIONS. In this subchapter:

(1) "Advanced practice nurse" has the meaning assigned by Section 301.152, Occupations Code.

(2) "Physician" means an individual licensed to practice medicine in this state.

(3) "Physician assistant" means an individual who holds a license issued under Chapter 204, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.045(a), eff. September 1, 2005.

Sec. 1452.052. STANDARDIZED FORM FOR VERIFICATION OF CREDENTIALS. (a) The commissioner by rule shall:

(1) prescribe a standardized form for the verification of the credentials of a physician, advanced practice nurse, or physician assistant; and

(2) require a public or private hospital, a health maintenance organization operating under Chapter 843, or the issuer of a preferred provider benefit plan under Chapter 1301 to use the form for verification of credentials.

(b) In prescribing a form under this section, the commissioner shall consider any credentialing application form that is widely used in this state or any form currently used by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.045(a), eff. September 1, 2005.

SUBCHAPTER C. EXPEDITED CREDENTIALING PROCESS FOR CERTAIN PHYSICIANS

Sec. 1452.101. DEFINITIONS. In this subchapter:

(1) "Applicant physician" means a physician applying for

expedited credentialing under this subchapter.

(2) "Enrollee" means an individual who is eligible to receive health care services under a managed care plan.

(3) "Health care provider" means:

(A) an individual who is licensed, certified, or otherwise authorized to provide health care services in this state; or

(B) a hospital, emergency clinic, outpatient clinic, or other facility providing health care services.

(4) "Managed care plan" means a health benefit plan under which health care services are provided to enrollees through contracts with health care providers and that requires enrollees to use participating providers or that provides a different level of coverage for enrollees who use participating providers. The term includes a health benefit plan issued by:

(A) a health maintenance organization;

(B) a preferred provider benefit plan issuer; or

(C) any other entity that issues a health benefit plan, including an insurance company.

(5) "Medical group" means:

(A) a single legal entity owned by two or more physicians;

(B) a professional association composed of licensed physicians;

(C) any other business entity composed of licensed physicians as permitted under Subchapter B, Chapter 162, Occupations Code; or

(D) two or more physicians on the medical staff of, or teaching at, a medical school or medical and dental unit, as defined or described by Section 61.003, 61.501, or 74.601, Education Code.

(6) "Participating provider" means a health care provider who has contracted with a health benefit plan issuer to provide services to enrollees.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 296 (H.B. 389), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 414 (S.B. 822), Sec. 1, eff.

September 1, 2011.

Sec. 1452.102. APPLICABILITY. This subchapter applies only to a physician who joins an established medical group that has a current contract in force with a managed care plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1, eff. September 1, 2007.

Sec. 1452.103. ELIGIBILITY REQUIREMENTS. To qualify for expedited credentialing under this subchapter and payment under Section 1452.104, an applicant physician must:

(1) be licensed in this state by, and in good standing with, the Texas Medical Board;

(2) submit all documentation and other information required by the issuer of the managed care plan as necessary to enable the issuer to begin the credentialing process required by the issuer to include a physician in the issuer's health benefit plan network; and

(3) agree to comply with the terms of the managed care plan's participating provider contract currently in force with the applicant physician's established medical group.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1, eff. September 1, 2007.

Sec. 1452.104. PAYMENT OF APPLICANT PHYSICIAN DURING CREDENTIALING PROCESS. On submission by the applicant physician of the information required by the managed care plan issuer under Section 1452.103(2), and for payment purposes only, the issuer shall treat the applicant physician as if the physician were a participating provider in the health benefit plan network when the applicant physician provides services to the managed care plan's enrollees, including:

(1) authorizing the applicant physician to collect copayments from the enrollees; and

(2) making payments to the applicant physician.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1,

eff. September 1, 2007.

Sec. 1452.105. DIRECTORY ENTRIES. Pending the approval of an application submitted under Section 1452.104, the managed care plan may exclude the applicant physician from the managed care plan's directory of participating physicians, the managed care plan's website listing of participating physicians, or any other listing of participating physicians.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1, eff. September 1, 2007.

Sec. 1452.106. EFFECT OF FAILURE TO MEET CREDENTIALING REQUIREMENTS. If, on completion of the credentialing process, the managed care plan issuer determines that the applicant physician does not meet the issuer's credentialing requirements:

(1) the managed care plan issuer may recover from the applicant physician or the physician's medical group an amount equal to the difference between payments for in-network benefits and out-of-network benefits; and

(2) the applicant physician or the physician's medical group may retain any copayments collected or in the process of being collected as of the date of the issuer's determination.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1, eff. September 1, 2007.

Sec. 1452.107. ENROLLEE HELD HARMLESS. An enrollee in the managed care plan is not responsible and shall be held harmless for the difference between in-network copayments paid by the enrollee to a physician who is determined to be ineligible under Section 1452.106 and the managed care plan's charges for out-of-network services. The physician and the physician's medical group may not charge the enrollee for any portion of the physician's fee that is not paid or reimbursed by the enrollee's managed care plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1, eff. September 1, 2007.

Sec. 1452.108. LIMITATION ON MANAGED CARE ISSUER LIABILITY. A managed care plan issuer that complies with this subchapter is not subject to liability for damages arising out of or in connection with, directly or indirectly, the payment by the issuer of an applicant physician as if the physician were a participating provider in the health benefit plan network.

Added by Acts 2007, 80th Leg., R.S., Ch. 1203 (H.B. 1594), Sec. 1, eff. September 1, 2007.

SUBCHAPTER D. EXPEDITED CREDENTIALING PROCESS FOR CERTAIN PODIATRISTS

Sec. 1452.151. DEFINITIONS. In this subchapter:

(1) "Applicant podiatrist" means a podiatrist applying for expedited credentialing under this subchapter.

(2) "Enrollee" means an individual who is eligible to receive health care services under a managed care plan.

(3) "Health care provider" means:

(A) an individual who is licensed, certified, or otherwise authorized to provide health care services in this state; or

(B) a hospital, emergency clinic, outpatient clinic, or other facility providing health care services.

(4) "Managed care plan" means a health benefit plan under which health care services are provided to enrollees through contracts with health care providers and that requires enrollees to use participating providers or that provides a different level of coverage for enrollees who use participating providers. The term includes a health benefit plan issued by:

(A) a health maintenance organization;

(B) a preferred provider benefit plan issuer; or

(C) any other entity that issues a health benefit plan, including an insurance company.

(5) "Participating provider" means a health care provider who has contracted with a health benefit plan issuer to provide services to enrollees.

(6) "Professional practice" means a business entity that is

owned by one or more podiatrists or physicians.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.152. APPLICABILITY. This subchapter applies only to a podiatrist who joins an established professional practice that has a current contract in force with a managed care plan.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.153. ELIGIBILITY REQUIREMENTS. To qualify for expedited credentialing under this subchapter and payment under Section 1452.154, an applicant podiatrist must:

(1) be licensed as a podiatrist in this state by, and be in good standing with, the Texas Department of Licensing and Regulation;

(2) submit all documentation and other information required by the issuer of the managed care plan as necessary to enable the issuer to begin the credentialing process required by the issuer to include a podiatrist in the issuer's health benefit plan network; and

(3) agree to comply with the terms of the managed care plan's participating provider contract currently in force with the applicant podiatrist's established professional practice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.016, eff. September 1, 2019.

Sec. 1452.154. PAYMENT OF APPLICANT PODIATRIST DURING CREDENTIALING PROCESS. On submission by the applicant podiatrist of the information required by the managed care plan issuer under Section 1452.153(2), and for payment purposes only, the issuer shall treat the applicant podiatrist as if the podiatrist were a participating provider in the health benefit plan network when the applicant podiatrist provides services to the managed care plan's

enrollees, including:

(1) authorizing the applicant podiatrist to collect copayments from the enrollees; and

(2) making payments to the applicant podiatrist.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.155. DIRECTORY ENTRIES. Pending the approval of an application submitted under Section 1452.154, the managed care plan may exclude the applicant podiatrist from the managed care plan's directory of participating podiatrists, the managed care plan's website listing of participating podiatrists, or any other listing of participating podiatrists.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.156. EFFECT OF FAILURE TO MEET CREDENTIALING REQUIREMENTS. If, on completion of the credentialing process, the managed care plan issuer determines that the applicant podiatrist does not meet the issuer's credentialing requirements:

(1) the managed care plan issuer may recover from the applicant podiatrist or the podiatrist's professional practice an amount equal to the difference between payments for in-network benefits and out-of-network benefits; and

(2) the applicant podiatrist or the podiatrist's professional practice may retain any copayments collected or in the process of being collected as of the date of the issuer's determination.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.157. ENROLLEE HELD HARMLESS. An enrollee in the managed care plan is not responsible and shall be held harmless for the difference between in-network copayments paid by the enrollee to a podiatrist who is determined to be ineligible under Section

1452.156 and the managed care plan's charges for out-of-network services. The podiatrist and the podiatrist's professional practice may not charge the enrollee for any portion of the podiatrist's fee that is not paid or reimbursed by the enrollee's managed care plan.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.158. LIMITATION ON MANAGED CARE ISSUER LIABILITY. A managed care plan issuer that complies with this subchapter is not subject to liability for damages arising out of or in connection with, directly or indirectly, the payment by the issuer of an applicant podiatrist as if the podiatrist were a participating provider in the health benefit plan network.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

SUBCHAPTER E. EXPEDITED CREDENTIALING PROCESS FOR CERTAIN THERAPEUTIC OPTOMETRISTS

Sec. 1452.201. DEFINITIONS. In this subchapter:

(1) "Applicant therapeutic optometrist" means a therapeutic optometrist applying for expedited credentialing under this subchapter.

(2) "Enrollee" means an individual who is eligible to receive health care services under a managed care plan.

(3) "Health care provider" has the meaning assigned by Section 1452.151.

(4) "Managed care plan" has the meaning assigned by Section 1452.151.

(5) "Participating provider" means a health care provider who has contracted with a health benefit plan issuer to provide services to enrollees.

(6) "Professional practice" means a business entity that is owned by one or more therapeutic optometrists or physicians.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.202. APPLICABILITY. This subchapter applies only to a therapeutic optometrist who joins an established professional practice that has a current contract in force with a managed care plan.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.203. ELIGIBILITY REQUIREMENTS. To qualify for expedited credentialing under this subchapter and payment under Section 1452.204, an applicant therapeutic optometrist must:

(1) be licensed in this state by, and in good standing with, the Texas Optometry Board;

(2) submit all documentation and other information required by the issuer of the managed care plan as necessary to enable the issuer to begin the credentialing process required by the issuer to include a therapeutic optometrist in the issuer's health benefit plan network; and

(3) agree to comply with the terms of the managed care plan's participating provider contract currently in force with the applicant therapeutic optometrist's established professional practice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.204. PAYMENT OF APPLICANT THERAPEUTIC OPTOMETRIST DURING CREDENTIALING PROCESS. On submission by the applicant therapeutic optometrist of the information required by the managed care plan issuer under Section 1452.203(2), and for payment purposes only, the issuer shall treat the applicant therapeutic optometrist as if the therapeutic optometrist were a participating provider in the health benefit plan network when the applicant therapeutic optometrist provides services to the managed care plan's enrollees, including:

(1) authorizing the applicant therapeutic optometrist to collect copayments from the enrollees; and

(2) making payments to the applicant therapeutic optometrist.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.205. DIRECTORY ENTRIES. Pending the approval of an application submitted under Section 1452.204, the managed care plan may exclude the applicant therapeutic optometrist from the managed care plan's directory of participating therapeutic optometrists, the managed care plan's website listing of participating therapeutic optometrists, or any other listing of participating therapeutic optometrists.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.206. EFFECT OF FAILURE TO MEET CREDENTIALING REQUIREMENTS. If, on completion of the credentialing process, the managed care plan issuer determines that the applicant therapeutic optometrist does not meet the issuer's credentialing requirements:

(1) the managed care plan issuer may recover from the applicant therapeutic optometrist or the therapeutic optometrist's professional practice an amount equal to the difference between payments for in-network benefits and out-of-network benefits; and

(2) the applicant therapeutic optometrist or the therapeutic optometrist's professional practice may retain any copayments collected or in the process of being collected as of the date of the issuer's determination.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.207. ENROLLEE HELD HARMLESS. An enrollee in the managed care plan is not responsible and shall be held harmless for the difference between in-network copayments paid by the enrollee to a therapeutic optometrist who is determined to be ineligible under Section 1452.206 and the managed care plan's charges for out-of-network services. The therapeutic optometrist and the therapeutic optometrist's professional practice may not charge the enrollee for any portion of the therapeutic optometrist's fee that is not paid or

reimbursed by the enrollee's managed care plan.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

Sec. 1452.208. LIMITATION ON MANAGED CARE ISSUER LIABILITY. A managed care plan issuer that complies with this subchapter is not subject to liability for damages arising out of or in connection with, directly or indirectly, the payment by the issuer of an applicant therapeutic optometrist as if the therapeutic optometrist were a participating provider in the health benefit plan network.

Added by Acts 2013, 83rd Leg., R.S., Ch. 79 (S.B. 365), Sec. 1, eff. September 1, 2013.

CHAPTER 1453. DISCLOSURE OF REIMBURSEMENT GUIDELINES UNDER MANAGED CARE PLAN

Sec. 1453.001. DEFINITIONS. In this chapter:

(1) "Health care provider" means:

(A) a hospital, emergency clinic, outpatient clinic, or other facility providing health care services; or

(B) an individual who is licensed in this state to provide health care services.

(2) "Managed care entity" means:

(A) a health maintenance organization;

(B) a preferred provider benefit plan issuer;

(C) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(D) another entity that offers a managed care plan, including:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884;

(v) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; and

(vi) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis.

(3) "Managed care plan" means a health benefit plan:

(A) under which health care services are provided through contracts with health care providers to individuals enrolled in or insured under the plan; and

(B) that provides financial incentives to individuals enrolled in or insured under the plan to use health care providers participating in the plan and procedures covered by the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1453.002. PROVISION OF INFORMATION REGARDING REIMBURSEMENT GUIDELINES. (a) On the written request of an out-of-network health care provider, a managed care entity shall furnish to the provider a written description of the factors considered by the entity in determining the amount of reimbursement the provider may receive for goods or services provided to an individual enrolled in or insured under the entity's managed care plan.

(b) This section does not require a managed care entity to disclose proprietary information that is prohibited from disclosure by a contract between the entity and a vendor that supplies payment or statistical data to the entity.

(c) A contract between a managed care entity and a vendor that supplies payment or statistical data to the entity may not prohibit the entity from disclosing under this section:

(1) the name of the vendor; or

(2) the methodology and origin of information used to determine the amount of reimbursement.

(d) A managed care entity that denies a request for information described by Subsection (b) shall send a copy of the request and the information requested to the department for review.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1453.003. RULES. The commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1454. EQUAL HEALTH CARE FOR WOMEN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1454.001. DEFINITIONS. In this chapter:

(1) "Health care provider" means a home health aide, hospital, nurse practitioner, nurse midwife, outpatient care center, physician assistant, registered nurse, or surgery center.

(2) "Physician" has the meaning assigned by Section 151.002, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.002. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(9) a small employer health benefit plan written under Chapter 1501.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER B. REIMBURSEMENT FOR HEALTH CARE SERVICES

Sec. 1454.051. EQUAL REIMBURSEMENT REQUIRED. A health benefit plan issuer that reimburses a physician or health care provider for reproductive health or oncology services provided to women must reimburse the physician or provider in an amount at least equal to the annual average compensation per hour or unit that would be paid in the service area to a physician or provider for the same medical, surgical, hospital, pharmaceutical, nursing, or other similar resources used to provide the services if the resources would be used to provide health services exclusively to men or to the general population.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.052. REIMBURSEMENT FOR ABORTION NOT REQUIRED. This chapter does not require a health benefit plan issuer to provide reimbursement for an abortion, as defined by the Family Code, or for a service related to an abortion.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER C. ENFORCEMENT

Sec. 1454.101. SANCTIONS AUTHORIZED. The sanctions authorized by Chapter 82 apply to a health benefit plan issuer that violates this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.102. CEASE AND DESIST PROCEDURES AND RESTITUTION FOR ATTORNEY'S FEES AUTHORIZED. The commissioner may use the cease and desist procedures authorized by Chapter 83 against a health benefit plan issuer that violates this chapter. In accordance with Chapter 83, the commissioner may order the health benefit plan issuer to make complete restitution for the violation, which may include restitution for the reasonable attorney's fees incurred by a person making a complaint under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.103. ADMINISTRATIVE PENALTIES AUTHORIZED. (a) In addition to any sanctions authorized by this subchapter, the commissioner may impose an administrative penalty in accordance with Chapter 84 on a health benefit plan issuer that violates this chapter.

(b) On a finding that a health benefit plan issuer knowingly violated this chapter, the commissioner may impose in addition to the administrative penalty authorized by Section 84.022 an administrative penalty that does not exceed $25,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.104. AMOUNT OF DAMAGES. Notwithstanding this subchapter, in imposing a sanction or penalty for a violation of this chapter, the commissioner may order a health benefit plan issuer to pay the greater of complete or economic damages.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.105. APPLICABILITY OF CERTAIN PROCEDURAL REQUIREMENTS TO SANCTIONS OR ADMINISTRATIVE PENALTIES. Subchapter C, Chapter 84, applies to the imposition of a sanction or administrative penalty under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.106. INTERVENTION IN PROCEEDING. (a) In a proceeding relating to the imposition by the commissioner of a sanction or administrative penalty under this chapter, a person affected by an order of the commissioner, including a physician or health care provider, may intervene in the proceeding by filing a notice of intervention with the commissioner. The commissioner shall provide an affected person a reasonable period to intervene.

(b) At the time the commissioner notifies a health benefit plan issuer of the issuer's opportunity for a hearing regarding an alleged violation, the commissioner shall notify each affected person of all

relevant information regarding the hearing.

(c) A person who intervenes under this section has the rights and powers of a party under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.107. TIME FOR COMMISSIONER'S DETERMINATION. Not later than the 120th day after the date a complaint alleging a violation of this chapter is filed with the department, the commissioner shall determine whether the alleged violation occurred and impose appropriate sanctions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.108. FAILURE OF COMMISSIONER TO MAKE DETERMINATION BY ORDER; ACTION IN DISTRICT COURT. (a) If the commissioner fails to determine by order in the time prescribed by Section 1454.107 whether a violation alleged in a complaint filed under this chapter occurred, the person who filed the complaint may bring an action in district court for the violation.

(b) The action must be commenced not later than the first anniversary of the date by which the commissioner is required to make a determination under Section 1454.107.

(c) In an action filed under this section, a court may:

(1) impose the sanctions authorized by this subchapter or similar sanctions;

(2) assess an additional civil penalty of $25,000 if the trier of fact finds the defendant knowingly violated this chapter; and

(3) award a claimant who prevails in an action filed under this section reasonable attorney's fees and court costs, including reasonable and necessary expert witness fees.

(d) On a finding by the court that an action filed under this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award the defendant reasonable and necessary attorney's fees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1454.109. APPEAL OF COMMISSIONER'S ORDER. (a) A person affected by an order of the commissioner regarding a violation of this chapter, including a person who intervenes under Section 1454.106, may file an appeal in district court.

(b) The standard of review for an appeal filed under this section is substantial evidence.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1455. TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH

Sec. 1455.001. DEFINITIONS. In this chapter:

(1) "Dentist" means a person licensed to practice dentistry in this state under Subtitle D, Title 3, Occupations Code.

(1-a) "Health professional" means:

(A) a physician;

(B) an individual who is:

(i) licensed or certified in this state to perform health care services; and

(ii) authorized to assist:

(a) a physician in providing telemedicine medical services that are delegated and supervised by the physician; or

(b) a dentist in providing teledentistry dental services that are delegated and supervised by the dentist;

(C) a licensed or certified health professional acting within the scope of the license or certification who does not perform a telemedicine medical service or a teledentistry dental service; or

(D) a dentist.

(2) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(2-a) "Platform" means the technology, system, software, application, modality, or other method through which a health professional remotely interfaces with a patient when providing a health care service or procedure as a telemedicine medical service or telehealth service.

(3) "Teledentistry dental service," "telehealth service," and "telemedicine medical service" have the meanings assigned by Section 111.001, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 5, eff. January 1, 2018.

Acts 2019, 86th Leg., R.S., Ch. 1174 (H.B. 3345), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 26, eff. September 1, 2021.

Sec. 1455.002. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(ii) another analogous benefit arrangement; or

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1455.003. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(D) as a supplement to a liability insurance policy;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1455.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1455.004. COVERAGE FOR TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) A health benefit plan:

(1) must provide coverage for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service, teledentistry dental service, or telehealth service on the same basis and to the same extent that the plan provides coverage for the service or procedure in an in-person setting; and

(2) may not:

(A) exclude from coverage a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service, a teledentistry dental service, or a telehealth service solely because the covered health care service or procedure is not provided through an in-person consultation; and

(B) subject to Subsection (c), limit, deny, or reduce coverage for a covered health care service or procedure delivered as

a telemedicine medical service, teledentistry dental service, or telehealth service based on the health professional's choice of platform for delivering the service or procedure.

(b) A health benefit plan may require a deductible, a copayment, or coinsurance for a covered health care service or procedure delivered by a preferred or contracted health professional to a covered patient as a telemedicine medical service, a teledentistry dental service, or a telehealth service. The amount of the deductible, copayment, or coinsurance may not exceed the amount of the deductible, copayment, or coinsurance required for the covered health care service or procedure provided through an in-person consultation.

(b-1) Subsection (b) does not authorize a health benefit plan to charge a separate deductible that applies only to a covered health care service or procedure delivered as a telemedicine medical service, teledentistry dental service, or telehealth service.

(c) Notwithstanding Subsection (a), a health benefit plan is not required to provide coverage for a telemedicine medical service, a teledentistry dental service, or a telehealth service provided by only synchronous or asynchronous audio interaction, including:

(1) an audio-only telephone consultation;

(2) a text-only e-mail message; or

(3) a facsimile transmission.

(d) A health benefit plan may not impose an annual or lifetime maximum on coverage for covered health care services or procedures delivered as telemedicine medical services, teledentistry dental services, or telehealth services other than the annual or lifetime maximum, if any, that applies in the aggregate to all items and services and procedures covered under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 6, eff. January 1, 2018.

Acts 2019, 86th Leg., R.S., Ch. 1174 (H.B. 3345), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 27, eff. January 1, 2022.

Sec. 1455.005. RULES. Subject to Section 111.004, Occupations Code, the commissioner may adopt rules necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.002(10), eff. September 1, 2005.

Sec. 1455.006. TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES STATEMENT. (a) Each issuer of a health benefit plan shall adopt and display in a conspicuous manner on the health benefit plan issuer's Internet website the issuer's policies and payment practices for telemedicine medical services, teledentistry dental services, and telehealth services.

(b) This section does not require an issuer of a health benefit plan to display negotiated contract payment rates for health professionals who contract with the issuer to provide telemedicine medical services, teledentistry dental services, or telehealth services.

Added by Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 7, eff. January 1, 2018.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 28, eff. January 1, 2022.

CHAPTER 1456. DISCLOSURE OF PROVIDER STATUS

Sec. 1456.001. DEFINITIONS. In this chapter:

(1) "Balance billing" means the practice of charging an enrollee in a health benefit plan that uses a provider network to recover from the enrollee the balance of a non-network health care provider's fee for service received by the enrollee from the health care provider that is not fully reimbursed by the enrollee's health benefit plan.

(2) "Enrollee" means an individual who is eligible to receive health care services through a health benefit plan.

(3) "Facility-based physician" means a radiologist, an anesthesiologist, a pathologist, an emergency department physician, a

neonatologist, or an assistant surgeon:

(A) to whom the facility has granted clinical privileges; and

(B) who provides services to patients of the facility under those clinical privileges.

(4) "Health care facility" means a hospital, emergency clinic, outpatient clinic, birthing center, ambulatory surgical center, or other facility providing health care services.

(5) "Health care practitioner" means an individual who is licensed to provide and provides health care services.

(6) "Provider network" means a health benefit plan under which health care services are provided to enrollees through contracts with health care providers and that requires those enrollees to use health care providers participating in the plan and procedures covered by the plan. The term includes a network operated by:

(A) a health maintenance organization;

(B) a preferred provider benefit plan issuer; or

(C) another entity that issues a health benefit plan, including an insurance company.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 11, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 467 (S.B. 481), Sec. 2, eff. September 1, 2015.

Sec. 1456.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to any health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a health maintenance organization operating under Chapter 843;

(F) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(G) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(H) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(2) provides health and accident coverage through a risk pool created under Chapter 172, Local Government Code, notwithstanding Section 172.014, Local Government Code, or any other law.

(b) This chapter applies to a person to whom a health benefit plan contracts to:

(1) process or pay claims;

(2) obtain the services of physicians or other providers to provide health care services to enrollees; or

(3) issue verifications or preauthorizations.

Text of subsection effective until April 1, 2025

(c) This chapter does not apply to:

(1) Medicaid managed care programs operated under Chapter 533, Government Code;

(2) Medicaid programs operated under Chapter 32, Human Resources Code; or

(3) the state child health plan operated under Chapter 62 or 63, Health and Safety Code.

Text of subsection effective on April 1, 2025

(c) This chapter does not apply to:

(1) Medicaid managed care programs operated under Chapter 540 or 540A, Government Code, as applicable;

(2) Medicaid programs operated under Chapter 32, Human Resources Code; or

(3) the state child health plan operated under Chapter 62 or 63, Health and Safety Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 11, eff. September 1, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.134, eff. April 1, 2025.

Sec. 1456.003. REQUIRED DISCLOSURE: HEALTH BENEFIT PLAN. (a) Each health benefit plan that provides health care through a provider network shall provide notice to its enrollees that:

(1) a facility-based physician or other health care practitioner may not be included in the health benefit plan's provider network; and

(2) a health care practitioner described by Subdivision (1) may balance bill the enrollee for amounts not paid by the health benefit plan unless the health care or medical service or supply provided to the enrollee is subject to a law prohibiting balance billing.

(b) The health benefit plan shall provide the disclosure in writing to each enrollee:

(1) in any materials sent to the enrollee in conjunction with issuance or renewal of the plan's insurance policy or evidence of coverage;

(2) in an explanation of payment summary provided to the enrollee or in any other analogous document that describes the enrollee's benefits under the plan; and

(3) conspicuously displayed, on any health benefit plan website that an enrollee is reasonably expected to access.

(c) A health benefit plan must clearly identify any health care facilities within the provider network in which facility-based physicians do not participate in the health benefit plan's provider network. Health care facilities identified under this subsection must be identified in a separate and conspicuous manner in any provider network directory or website directory.

(d) Along with any explanation of benefits sent to an enrollee that contains a remark code indicating a payment made to a non-network physician has been paid at the health benefit plan's allowable or usual and customary amount, a health benefit plan must also include the number for the department's consumer protection division for complaints regarding payment.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 11,

eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.01, eff. September 1, 2019.

Sec. 1456.004. REQUIRED DISCLOSURE: FACILITY-BASED PHYSICIANS. (a) If a facility-based physician bills a patient who is covered by a health benefit plan described in Section 1456.002 that does not have a contract with the facility-based physician, the facility-based physician shall send a billing statement that:

(1) contains an itemized listing of the services and supplies provided along with the dates the services and supplies were provided;

(2) contains a conspicuous, plain-language explanation that:

(A) the facility-based physician is not within the health plan provider network; and

(B) the health benefit plan has paid a rate, as determined by the health benefit plan, which is below the facility-based physician billed amount;

(3) contains a telephone number to call to discuss the statement, provide an explanation of any acronyms, abbreviations, and numbers used on the statement, or discuss any payment issues;

(4) contains a statement that the patient may call to discuss alternative payment arrangements;

(5) contains a notice that the patient may file complaints with the Texas Medical Board and includes the Texas Medical Board mailing address and complaint telephone number; and

(6) for billing statements that total an amount greater than $200, over any applicable copayments or deductibles, states, in plain language, that if the patient finalizes a payment plan agreement within 45 days of receiving the first billing statement and substantially complies with the agreement, the facility-based physician may not furnish adverse information to a consumer reporting agency regarding an amount owed by the patient for the receipt of medical treatment.

(b) A patient may be considered by the facility-based physician to be out of substantial compliance with the payment plan agreement if payments are not made in compliance with the agreement for a

period of 90 days.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(1), eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 11, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 3, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 467 (S.B. 481), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(1), eff. September 1, 2019.

Sec. 1456.005. DISCIPLINARY ACTION AND ADMINISTRATIVE PENALTY. (a) The commissioner may take disciplinary action against a licensee that violates this chapter, in accordance with Chapter 84.

(b) A violation of this chapter by a facility-based physician is grounds for disciplinary action and imposition of an administrative penalty by the Texas Medical Board.

(c) The Texas Medical Board shall:

(1) notify a facility-based physician of a finding by the Texas Medical Board that the facility-based physician is violating or has violated this chapter or a rule adopted under this chapter; and

(2) provide the facility-based physician with an opportunity to correct the violation without penalty or reprimand.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 11, eff. September 1, 2007.

Sec. 1456.006. COMMISSIONER RULES; FORM OF DISCLOSURE. The commissioner by rule may prescribe specific requirements for the disclosure required under Section 1456.003. The form of the disclosure must be substantially as follows:

NOTICE: "ALTHOUGH HEALTH CARE SERVICES MAY BE OR HAVE BEEN PROVIDED TO YOU AT A HEALTH CARE FACILITY THAT IS A MEMBER OF THE PROVIDER NETWORK USED BY YOUR HEALTH BENEFIT PLAN, OTHER PROFESSIONAL SERVICES MAY BE OR HAVE BEEN PROVIDED AT OR THROUGH THE FACILITY BY PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS WHO ARE NOT MEMBERS OF

THAT NETWORK. YOU MAY BE RESPONSIBLE FOR PAYMENT OF ALL OR PART OF THE FEES FOR THOSE PROFESSIONAL SERVICES THAT ARE NOT PAID OR COVERED BY YOUR HEALTH BENEFIT PLAN UNLESS BALANCE BILLING FOR THOSE SERVICES IS PROHIBITED."

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 11, eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.02, eff. September 1, 2019.

Sec. 1456.007. HEALTH BENEFIT PLAN ESTIMATE OF CHARGES. A health benefit plan that must comply with this chapter under Section 1456.002 shall, on the request of an enrollee, provide an estimate of payments that will be made for any health care service or supply and shall also specify any deductibles, copayments, coinsurance, or other amounts for which the enrollee is responsible. The estimate must be provided not later than the 10th business day after the date on which the estimate was requested. A health benefit plan must advise the enrollee that:

(1) the actual payment and charges for the services or supplies will vary based upon the enrollee's actual medical condition and other factors associated with performance of medical services; and

(2) the enrollee may be personally liable for the payment of services or supplies based upon the enrollee's health benefit plan coverage.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 11, eff. September 1, 2007.

CHAPTER 1457. PROVISIONAL CREDENTIALING STATUS

Sec. 1457.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual who is eligible to receive health care services through a health benefit plan.

(2) "Physician" means an individual licensed to practice medicine in this state under the authority of Subtitle B, Title 3, Occupations Code.

(3) "Provider network" means a health benefit plan under

which health care services are provided to enrollees through contracts with physicians and that requires those enrollees to use physicians participating in the plan and procedures covered by the plan. The term includes a network operated by:

(A) a health maintenance organization;

(B) a preferred provider organization; or

(C) another entity that issues a health benefit plan, including an insurance company.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 2, eff. June 17, 2005.

Sec. 1457.002. PROVISIONAL CREDENTIALING STATUS. (a) A health benefit plan shall have a process for provisional credentialing status in compliance with the requirements of the National Committee for Quality Assurance.

(b) A health benefit plan may grant provisional credentialing status to a physician who:

(1) submits a completed standard credentialing application to the health benefit plan;

(2) meets the health plan's requirements for provisional credentialing; and

(3) joins as a partner, shareholder, or employee of another physician who is contracted with a health benefit plan to provide medical or health care services to enrollees.

(c) A health benefit plan must complete the credentialing process within 60 calendar days of the date a physician is granted provisional status. In the event the physician does not meet the health plan's credentialing standards, the physician must be provided the same appeal process as any other physician applying for participation with the health benefit plan.

Added by Acts 2005, 79th Leg., Ch. 789 (S.B. 155), Sec. 2, eff. June 17, 2005.

CHAPTER 1458. PROVIDER NETWORK CONTRACT ARRANGEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1458.001. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly

through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(1-a) "Anti-steering clause" means a provision in a provider network contract that restricts the ability of a general contracting entity to encourage an enrollee to obtain a health care service from a competitor of the provider, including offering incentives to encourage enrollees to use specific providers.

(1-b) "Anti-tiering clause" means a provision in a provider network contract that:

(A) restricts the ability of a general contracting entity to introduce or modify a tiered network plan or assign providers into tiers; or

(B) requires a general contracting entity to place all members of a provider in the same tier of a tiered network plan.

(2) "Contracting entity" means a person who:

(A) enters into a direct contract with a provider for the delivery of health care services to covered individuals; and

(B) in the ordinary course of business establishes a provider network or networks for access by another party.

(3) "Covered individual" means an individual who is covered under a health benefit plan.

(4) "Express authority" means a provider's consent that is obtained through separate signature lines for each line of business.

(4-a) "Gag clause" means a provision in a provider network contract that restricts the ability of a general contracting entity or provider to disclose:

(A) price or quality information, including the allowed amount, negotiated rates or discounts, fees for services, or other claim-related financial obligations included in the contract, to a governmental entity as authorized by law or its contractors or agents, an enrollee, a treating provider of an enrollee, a plan sponsor, or potential eligible enrollees and plan sponsors; or

(B) out-of-pocket costs to an enrollee.

(4-b) "General contracting entity" means a person who enters into a direct contract with a provider for the delivery of health care services to covered individuals regardless of whether the person, in the ordinary course of business, establishes a provider network for access by another party. The term does not include a health care provider or facility unless the provider or facility is entering into the contract in the provider's or facility's role as a

health benefit plan.

(5) "Health care services" means services provided for the diagnosis, prevention, treatment, or cure of a health condition, illness, injury, or disease.

(5-a) "Most favored nation clause" means a provision in a provider network contract that:

(A) prohibits or grants an option to prohibit:

(i) a provider from contracting with another general contracting entity to provide health care services at a lower rate; or

(ii) a general contracting entity from contracting with another provider to provide health care services at a higher rate;

(B) requires or grants an option to require:

(i) a provider to accept a lower rate for health care services if the provider agrees with another general contracting entity to accept a lower rate for the services; or

(ii) a general contracting entity to pay a higher rate for health care services if the entity agrees with another provider to pay a higher rate for the services;

(C) requires or grants an option to require termination or renegotiation of an existing provider network contract if:

(i) a provider agrees with another general contracting entity to accept a lower rate for providing health care services; or

(ii) a general contracting entity agrees with a provider to pay a higher rate for health care services; or

(D) requires:

(i) a provider to disclose the provider's contractual reimbursement rates with other general contracting entities; or

(ii) a general contracting entity to disclose the general contracting entity's contractual reimbursement rates with other providers.

(6) "Person" has the meaning assigned by Section 823.002.

(7)(A) "Provider" means:

(i) an advanced practice nurse;

(ii) an optometrist;

(iii) a therapeutic optometrist;

(iv) a physician;

(v) a physician assistant;

(vi) a professional association composed solely of physicians, optometrists, or therapeutic optometrists;

(vii) a single legal entity authorized to practice medicine owned by two or more physicians;

(viii) a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Occupations Code;

(ix) a partnership composed solely of physicians, optometrists, or therapeutic optometrists;

(x) a physician-hospital organization that acts exclusively as an administrator for a provider to facilitate the provider's participation in health care contracts; or

(xi) an institution that is licensed under Chapter 241, Health and Safety Code.

(B) "Provider" does not include a physician-hospital organization that leases or rents the physician-hospital organization's network to another party.

(8) "Provider network contract" means a contract between a contracting entity and a provider for the delivery of, and payment for, health care services to a covered individual.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 639 (H.B. 711), Sec. 1, eff. June 12, 2023.

Sec. 1458.002. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means:

(1) a hospital and medical expense incurred policy;

(2) a nonprofit health care service plan contract;

(3) a health maintenance organization subscriber contract; or

(4) any other health care plan or arrangement that pays for or furnishes medical or health care services.

(b) "Health benefit plan" does not include one or more or any combination of the following:

(1) coverage only for accident or disability income insurance or any combination of those coverages;

(2) credit-only insurance;

(3) coverage issued as a supplement to liability insurance;

(4) liability insurance, including general liability insurance and automobile liability insurance;

(5) workers' compensation or similar insurance;

(6) a discount health care program, as defined by Section 7001.001;

(7) coverage for on-site medical clinics;

(8) automobile medical payment insurance;

(9) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(10) other similar insurance coverage, as specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the coverage:

(1) dental or vision benefits;

(2) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these benefits;

(3) other similar, limited benefits, including benefits specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); or

(4) a Medicare supplement benefit plan described by Section 1652.002.

(d) "Health benefit plan" does not include coverage limited to a specified disease or illness or hospital indemnity coverage or other fixed indemnity insurance coverage if:

(1) the coverage is provided under a separate policy, certificate, or contract of insurance;

(2) there is no coordination between the provision of the coverage and any exclusion of benefits under any group health benefit plan maintained by the same plan sponsor; and

(3) the coverage is paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health benefit plan maintained by the same plan

sponsor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Sec. 1458.003. EXEMPTIONS. This chapter does not apply:

(1) under circumstances in which access to the provider network is granted to an entity that operates under the same brand licensee program as the contracting entity; or

(2) to a contract between a contracting entity and a discount health care program operator, as defined by Section 7001.001.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Sec. 1458.004. RULEMAKING AUTHORITY. The commissioner may adopt rules to implement this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 1458.051. REGISTRATION REQUIRED. (a) Unless the person holds a certificate of authority issued by the department to engage in the business of insurance in this state or operates a health maintenance organization under Chapter 843, a person must register with the department not later than the 30th day after the date on which the person begins acting as a contracting entity in this state.

(b) Notwithstanding Subsection (a), under Section 1458.055 a contracting entity that holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization shall file with the commissioner an application for exemption from registration under which the affiliates may access the contracting entity's network.

(c) An application for an exemption filed under Subsection (b) must be accompanied by a list of the contracting entity's affiliates. The contracting entity shall update the list with the commissioner on

an annual basis.

(d) A list of affiliates filed with the commissioner under Subsection (c) is public information and is not exempt from disclosure under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Sec. 1458.052. DISCLOSURE OF INFORMATION. (a) A person required to register under Section 1458.051 must disclose:

(1) all names used by the contracting entity, including any name under which the contracting entity intends to engage or has engaged in business in this state;

(2) the mailing address and main telephone number of the contracting entity's headquarters;

(3) the name and telephone number of the contracting entity's primary contact for the department; and

(4) any other information required by the commissioner by rule.

(b) The disclosure made under Subsection (a) must include a description or a copy of the applicant's basic organizational structure documents and a copy of organizational charts and lists that show:

(1) the relationships between the contracting entity and any affiliates of the contracting entity, including subsidiary networks or other networks; and

(2) the internal organizational structure of the contracting entity's management.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Sec. 1458.053. SUBMISSION OF INFORMATION. Information required under this subchapter must be submitted in a written or electronic format adopted by the commissioner by rule.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Sec. 1458.054. FEES. The department may collect a reasonable fee set by the commissioner as necessary to administer the registration process. Fees collected under this chapter shall be deposited in the Texas Department of Insurance operating fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Sec. 1458.055. EXEMPTION FOR AFFILIATES. (a) The commissioner shall grant an exemption for affiliates of a contracting entity if the contracting entity holds a certificate of authority issued by the department to engage in the business of insurance in this state or is a health maintenance organization if the commissioner determines that:

(1) the affiliate is not subject to a disclaimer of affiliation under Chapter 823; and

(2) the relationships between the person who holds a certificate of authority and all affiliates of the person, including subsidiary networks or other networks, are disclosed and clearly defined.

(b) An exemption granted under this section applies only to registration. An entity granted an exemption is otherwise subject to this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

SUBCHAPTER C. RIGHTS AND RESPONSIBILITIES OF A CONTRACTING ENTITY

Sec. 1458.101. CONTRACT REQUIREMENTS. (a) In this section, the following are each considered a single separate line of business:

(1) preferred provider benefit plans covering individuals and groups;

(2) exclusive provider benefit plans covering individuals and groups;

(3) health maintenance organization plans covering individuals and groups;

(4) Medicare Advantage or similar plans issued in connection with a contract with the Centers for Medicare and Medicaid Services;

(5) Medicaid managed care; and

(6) the state child health plan established under Chapter 62, Health and Safety Code, or the comparable plan under Chapter 63, Health and Safety Code.

(b) A contracting entity may not sell, lease, or otherwise transfer information regarding the payment or reimbursement terms of the provider network contract without the express authority of and prior adequate notification to the provider. The prior adequate notification may be provided in the written format specified by a provider network contract subject to this chapter.

(c) A contracting entity may not provide a person access to health care services or contractual discounts under a provider network contract unless the provider network contract specifically states that the contracting entity may contract with a person to provide access to the contracting entity's rights and responsibilities under the provider network contract.

(d) The provider network contract must require that on the request of the provider, the contracting entity will provide information necessary to determine whether a particular person has been authorized to access the provider's health care services and contractual discounts.

(e) To be enforceable against a provider, a provider network contract, including the lines of business described by Subsections (a) and (f), must also specify or reference a separate fee schedule for each such line of business. The separate fee schedule may describe specific services or procedures that the provider will deliver along with a corresponding payment, may describe a methodology for calculating payment based on a published fee schedule, or may describe payment in any other reasonable manner that specifies a definite payment for services. The fee information may be provided by any reasonable method, including electronically.

(f) The commissioner may, by rule, add additional lines of business for which express authority is required.

(g) A provider may not:

(1) offer to a general contracting entity a written provider network contract that includes an anti-steering, anti-tiering, gag, or most favored nation clause;

(2) enter into a provider network contract that includes an anti-steering, anti-tiering, gag, or most favored nation clause; or

(3) amend or renew an existing provider network contract

previously entered into with a general contracting entity so that the contract as amended or renewed adds or retains an anti-steering, anti-tiering, gag, or most favored nation clause.

(h) Any provision in a provider network contract that is an anti-steering, anti-tiering, gag, or most favored nation clause is void and unenforceable. The remaining provisions in the provider network contract remain in effect and are enforceable.

(i) A health benefit plan issuer that encourages an enrollee to obtain a health care service from a particular provider, including offering incentives to encourage enrollees to use specific providers, or that introduces or modifies a tiered network plan or assigns providers into tiers has a fiduciary duty to the enrollee or policyholder to engage in that conduct only for the primary benefit of the enrollee or policyholder.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 639 (H.B. 711), Sec. 2, eff. June 12, 2023.

Sec. 1458.102. CONTRACT ACCESS. (a) A contracting entity may not provide a person access to health care services or contractual discounts under a provider network contract unless the provider network contract specifically states that the person must comply with all applicable terms, limitations, and conditions of the provider network contract.

(b) For the purposes of this section, a contracting entity shall permit reasonable access, including electronic access, during business hours for the review of the provider network contract. The information may be used or disclosed only for the purposes of complying with the terms of the contract or state law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

Sec. 1458.103. ENFORCEMENT. The commissioner may impose a sanction under Chapter 82 or assess an administrative penalty under Chapter 84 on a contracting entity that violates this chapter or a

rule adopted to implement this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 197 (S.B. 822), Sec. 1, eff. September 1, 2013.

CHAPTER 1460. STANDARDS REQUIRED REGARDING CERTAIN PHYSICIAN RANKINGS BY HEALTH BENEFIT PLANS

Sec. 1460.001. DEFINITIONS. In this chapter:

(1) "Health benefit plan issuer" means an entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state, including:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a health maintenance organization operating under Chapter 843; and

(D) a stipulated premium company operating under Chapter 884.

(2) "Physician" means an individual licensed to practice medicine in this state or another state of the United States.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff. September 1, 2009.

Text of section effective until April 1, 2025

Sec. 1460.002. EXEMPTION. This chapter does not apply to:

(1) a Medicaid managed care program operated under Chapter 533, Government Code;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicare supplement benefit plan, as defined by Chapter 1652.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.135, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1460.002. EXEMPTION. This chapter does not apply to:

(1) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(4) a Medicare supplement benefit plan, as defined by Chapter 1652.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.135, eff. April 1, 2025.

Sec. 1460.003. PHYSICIAN RANKING REQUIREMENTS. (a) A health benefit plan issuer, including a subsidiary or affiliate, may not rank physicians, classify physicians into tiers based on performance, or publish physician-specific information that includes rankings, tiers, ratings, or other comparisons of a physician's performance against standards, measures, or other physicians, unless:

(1) the standards used by the health benefit plan issuer conform to nationally recognized standards and guidelines as required by rules adopted under Section 1460.005;

(2) the standards and measurements to be used by the health benefit plan issuer are disclosed to each affected physician before any evaluation period used by the health benefit plan issuer; and

(3) each affected physician is afforded, before any publication or other public dissemination, an opportunity to dispute the ranking or classification through a process that, at a minimum, includes due process protections that conform to the following protections:

(A) the health benefit plan issuer provides at least 45 days' written notice to the physician of the proposed rating, ranking, tiering, or comparison, including the methodologies, data, and all other information utilized by the health benefit plan issuer in its rating, tiering, ranking, or comparison decision;

(B) in addition to any written fair reconsideration process, the health benefit plan issuer, upon a request for review that is made within 30 days of receiving the notice under Paragraph (A), provides a fair reconsideration proceeding, at the physician's option:

(i) by teleconference, at an agreed upon time; or

(ii) in person, at an agreed upon time or between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday;

(C) the physician has the right to provide information at a requested fair reconsideration proceeding for determination by a decision-maker, have a representative participate in the fair reconsideration proceeding, and submit a written statement at the conclusion of the fair reconsideration proceeding; and

(D) the health benefit plan issuer provides a written communication of the outcome of a fair reconsideration proceeding prior to any publication or dissemination of the rating, ranking, tiering, or comparison. The written communication must include the specific reasons for the final decision.

(b) This section does not apply to the publication of a list of network physicians and providers if ratings or comparisons are not made and the list is not a product of nor reflects the tiering or classification of physicians or providers.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff. September 1, 2009.

Sec. 1460.004. DUTIES OF PHYSICIANS. A physician may not require or request that a patient of the physician enter into an agreement under which the patient agrees not to:

(1) rank or otherwise evaluate the physician;

(2) participate in surveys regarding the physician; or

(3) in any way comment on the patient's opinion of the physician.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff.

September 1, 2009.

Sec. 1460.005. RULES; STANDARDS. (a) The commissioner shall adopt rules as necessary to implement this chapter.

(b) The commissioner shall adopt rules as necessary to ensure that a health benefit plan issuer that uses a physician ranking system complies with the standards and guidelines described by Subsection (c).

(c) In adopting rules under this section, the commissioner shall consider the standards, guidelines, and measures prescribed by nationally recognized organizations that establish or promote guidelines and performance measures emphasizing quality of health care, including the National Quality Forum and the AQA Alliance. If neither the National Quality Forum nor the AQA Alliance has established standards or guidelines regarding an issue, the commissioner shall consider the standards, guidelines, and measures prescribed by the National Committee on Quality Assurance and other similar national organizations. If neither the National Quality Forum, nor the AQA Alliance, nor other national organizations have established standards or guidelines regarding an issue, the commissioner shall consider standards, guidelines, and measures based on other bona fide nationally recognized guidelines, expert-based physician consensus quality standards, or leading objective clinical evidence and scholarship.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff. September 1, 2009.

Sec. 1460.006. DUTIES OF HEALTH BENEFIT PLAN ISSUER. A health benefit plan issuer shall ensure that:

(1) physicians currently in clinical practice are actively involved in the development of the standards used under this chapter; and

(2) the measures and methodology used in the comparison programs described by Section 1460.003 are transparent and valid.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff. September 1, 2009.

Sec. 1460.007. SANCTIONS; DISCIPLINARY ACTIONS. (a) A health benefit plan issuer that violates this chapter or a rule adopted under this chapter is subject to sanctions and disciplinary actions under Chapters 82 and 84.

(b) A violation of this chapter by a physician constitutes grounds for disciplinary action by the Texas Medical Board, including imposition of an administrative penalty.

Added by Acts 2009, 81st Leg., R.S., Ch. 652 (H.B. 1888), Sec. 1, eff. September 1, 2009.

CHAPTER 1461. DISCRIMINATION AGAINST PHYSICIAN BASED ON MAINTENANCE OF CERTIFICATION

Sec. 1461.001. DEFINITIONS. In this chapter:

(1) "Enrollee" means an individual who is eligible to receive health care services under a managed care plan.

(2) "Maintenance of certification" has the meaning assigned by Section 151.002, Occupations Code.

(3) "Managed care plan" means a health benefit plan under which health care services are provided to enrollees through contracts with physicians and that requires enrollees to use participating physicians or that provides a different level of coverage for enrollees who use participating physicians. The term includes a health benefit plan issued by:

(A) a health maintenance organization;

(B) a preferred provider benefit plan issuer; or

(C) any other entity that issues a health benefit plan, including an insurance company.

(4) "Participating physician" means a physician who has directly or indirectly contracted with a health benefit plan issuer to provide services to enrollees.

(5) "Physician" means an individual licensed to practice medicine in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 1, eff. January 1, 2018.

Sec. 1461.002. APPLICABILITY. (a) This chapter applies to a physician regardless of whether the physician is a participating

physician.

(b) This chapter applies to a person with whom a managed care plan issuer contracts to:

(1) process or pay claims;

(2) obtain the services of physicians to provide health care services to enrollees; or

(3) issue verifications or preauthorizations.

Added by Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 1, eff. January 1, 2018.

Sec. 1461.003. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Except as provided by Subsection (b), a managed care plan issuer may not differentiate between physicians based on a physician's maintenance of certification in regard to:

(1) paying the physician;

(2) reimbursing the physician; or

(3) directly or indirectly contracting with the physician to provide services to enrollees.

(b) A managed care plan issuer may differentiate between physicians based on a physician's maintenance of certification only if the designation under law or certification or accreditation by a national certifying or accrediting organization of an entity described by Section 151.0515(a), Occupations Code, is contingent on the entity requiring a specific maintenance of certification by physicians seeking staff privileges or credentialing at the entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 1, eff. January 1, 2018.

CHAPTER 1467. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1467.001. DEFINITIONS. In this chapter:

(1) "Administrator" means:

(A) an administering firm for a health benefit plan providing coverage under Chapter 1551, 1575, or 1579; and

(B) if applicable, the claims administrator for the health benefit plan.

(1-a) "Arbitration" means a process in which an impartial

arbiter issues a binding determination in a dispute between a health benefit plan issuer or administrator and an out-of-network provider or the provider's representative to settle a health benefit claim.

(2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(2), eff. September 1, 2019.

(2-a) "Diagnostic imaging provider" means a health care provider who performs a diagnostic imaging service on a patient for a fee or interprets imaging produced by a diagnostic imaging service.

(2-b) "Diagnostic imaging service" means magnetic resonance imaging, computed tomography, positron emission tomography, or any hybrid technology that combines any of those imaging modalities.

(2-c) "Emergency care" has the meaning assigned by Section 1301.155.

(2-d) "Emergency care provider" means a physician, health care practitioner, facility, or other health care provider who provides and bills an enrollee, administrator, or health benefit plan for emergency care.

(3) "Enrollee" means an individual who is eligible to receive benefits through a health benefit plan subject to this chapter.

(3-a) "Facility" has the meaning assigned by Section 324.001, Health and Safety Code.

(4) "Facility-based provider" means a physician, health care practitioner, or other health care provider who provides health care or medical services to patients of a facility.

(4-a) "Health care practitioner" means an individual who is licensed to provide health care services.

(4-b) "Laboratory service provider" means an accredited facility in which a specimen taken from a human body is interpreted and pathological diagnoses are made or a physician who makes an interpretation of or diagnosis based on a specimen or information provided by a laboratory based on a specimen.

(5) "Mediation" means a process in which an impartial mediator facilitates and promotes agreement between the health benefit plan issuer or the administrator and an out-of-network provider or the provider's representative to settle a health benefit claim of an enrollee.

(6) "Mediator" means an impartial person who is appointed to conduct a mediation under this chapter.

(6-a) "Out-of-network provider" means a diagnostic imaging

provider, emergency care provider, facility-based provider, or laboratory service provider that is not a participating provider for a health benefit plan.

(7) "Party" means a health benefit plan issuer offering a health benefit plan, an administrator, or an out-of-network provider or the provider's representative who participates in a mediation or arbitration conducted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 467 (S.B. 481), Sec. 4, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 139 (H.B. 1428), Sec. 1, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.01, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(2), eff. September 1, 2019.

Sec. 1467.002. APPLICABILITY OF CHAPTER. This chapter applies to:

(1) a health benefit plan offered by a health maintenance organization operating under Chapter 843;

(2) a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Chapter 1301; and

(3) an administrator of a health benefit plan, other than a health maintenance organization plan, under Chapter 1551, 1575, or 1579.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 2, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 139 (H.B. 1428), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.02, eff. September 1, 2019.

Sec. 1467.003. RULES. (a) The commissioner, the Texas Medical Board, and any other appropriate regulatory agency shall adopt rules as necessary to implement their respective powers and duties under this chapter.

(b) Section 2001.0045, Government Code, does not apply to a rule adopted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 3, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.02, eff. September 1, 2019.

Sec. 1467.004. REMEDIES NOT EXCLUSIVE. The remedies provided by this chapter are in addition to any other defense, remedy, or procedure provided by law, including the common law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.

Sec. 1467.005. REFORM. This chapter may not be construed to prohibit:

(1) a health benefit plan issuer or administrator from, at any time, offering a reformed claim settlement; or

(2) an out-of-network provider from, at any time, offering a reformed charge for health care or medical services or supplies.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 4, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.02, eff.

September 1, 2019.

Sec. 1467.006. BENCHMARKING DATABASE. (a) In this section, "geozip area" means an area that includes all zip codes with identical first three digits. For purposes of this section, a health care or medical service or supply provided at a location that does not have a zip code is considered to be provided in the geozip area closest to the location at which the service or supply is provided.

(b) The commissioner shall select an organization to maintain a benchmarking database in accordance with this section. The organization may not:

(1) be affiliated with a health benefit plan issuer or administrator or a physician, health care practitioner, or other health care provider; or

(2) have any other conflict of interest.

(c) The benchmarking database must contain information necessary to calculate, with respect to a health care or medical service or supply, for each geozip area in this state:

(1) the 80th percentile of billed charges of all physicians or health care providers who are not facilities; and

(2) the 50th percentile of rates paid to participating providers who are not facilities.

(d) The commissioner may adopt rules governing the submission of information for the benchmarking database described by Subsection (c).

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.03, eff. September 1, 2019.

SUBCHAPTER B. MANDATORY MEDIATION FOR OUT-OF-NETWORK FACILITIES

Sec. 1467.050. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only with respect to a health benefit claim submitted by an out-of-network provider that is a facility.

(b) This subchapter does not apply to a health benefit claim for the professional or technical component of a physician service.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.05, eff. September 1, 2019.

Sec. 1467.0505. ESTABLISHMENT AND ADMINISTRATION OF MEDIATION PROGRAM. (a) The commissioner shall establish and administer a mediation program to resolve disputes over out-of-network provider charges in accordance with this subchapter.

(b) The commissioner:

(1) shall adopt rules, forms, and procedures necessary for the implementation and administration of the mediation program, including the establishment of a portal on the department's Internet website through which a request for mediation under Section 1467.051 may be submitted; and

(2) shall maintain a list of qualified mediators for the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.05, eff. September 1, 2019.

Sec. 1467.051. AVAILABILITY OF MANDATORY MEDIATION. (a) An out-of-network provider or a health benefit plan issuer or administrator may request mediation of a settlement of an out-of-network health benefit claim through a portal on the department's Internet website if:

(1) there is an amount billed by the provider and unpaid by the issuer or administrator after copayments, deductibles, and coinsurance for which an enrollee may not be billed; and

(2) the health benefit claim is for:

(A) emergency care;

(B) an out-of-network laboratory service; or

(C) an out-of-network diagnostic imaging service.

(b) If a person requests mediation under this subchapter, the out-of-network provider or the provider's representative, and the health benefit plan issuer or the administrator, as appropriate, shall participate in the mediation.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(3), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(3), eff. September 1, 2019.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 467 (S.B. 481), Sec. 5, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.06, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.07, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(3), eff. September 1, 2019.

Sec. 1467.052. MEDIATOR QUALIFICATIONS. (a) Except as provided by Subsection (b), to qualify for an appointment as a mediator under this subchapter a person must have completed at least 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution organization or other dispute resolution organization approved by the commissioner.

(b) A person not qualified under Subsection (a) may be appointed as a mediator on agreement of the parties.

(c) A person may not act as mediator for a claim settlement dispute if the person has been employed by, consulted for, or otherwise had a business relationship with a health benefit plan issuer or administrator or a physician, health care practitioner, or other health care provider during the three years immediately preceding the request for mediation.

(d) The commissioner shall immediately terminate the approval of a mediator who no longer meets the requirements under this subchapter and rules adopted under this subchapter to serve as a mediator.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 7, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.08, eff. September 1, 2019.

Sec. 1467.053. APPOINTMENT OF MEDIATOR; FEES. (a) A mediation shall be conducted by one mediator.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(5), eff. September 1, 2019.

(b-1) If the parties do not select a mediator by mutual agreement on or before the 30th day after the date the mediation is requested, the party requesting the mediation shall notify the commissioner, and the commissioner shall select a mediator from the commissioner's list of approved mediators.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(5), eff. September 1, 2019.

(d) The mediator's fees shall be split evenly and paid by the health benefit plan issuer or administrator and the out-of-network provider.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 8, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.09, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(5), eff. September 1, 2019.

Sec. 1467.054. REQUEST AND PRELIMINARY PROCEDURES FOR MANDATORY MEDIATION. (a) An out-of-network provider or a health benefit plan issuer or administrator may request mandatory mediation under this subchapter.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(6), eff. September 1, 2019.

(b-1) The person who requests the mediation shall provide written notice on the date the mediation is requested in the form and manner provided by commissioner rule to:

(1) the department; and

(2) each other party.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(6), eff. September 1, 2019.

(d) In an effort to settle the claim before mediation, all

parties must participate in an informal settlement teleconference not later than the 30th day after the date on which a person submits a request for mediation under this subchapter.

(e) A dispute to be mediated under this chapter that does not settle as a result of a teleconference conducted under Subsection (d) must be conducted in the county in which the health care or medical services were rendered.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(6), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(6), eff. September 1, 2019.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 9, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(6), eff. September 1, 2019.

Sec. 1467.055. CONDUCT OF MEDIATION; CONFIDENTIALITY. (a) A mediator may not impose the mediator's judgment on a party about an issue that is a subject of the mediation.

(b) A mediation session is under the control of the mediator.

(c) Except as provided by this chapter, the mediator must hold in strict confidence all information provided to the mediator by a party and all communications of the mediator with a party.

(c-1) Information submitted by the parties to the mediator is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(7), eff. September 1, 2019.

(e) A party must have an opportunity during the mediation to speak and state the party's position.

(f) Except on the agreement of the participating parties, a mediation may not last more than four hours.

(g) A mediation shall be held not later than the 180th day

after the date of the request for mediation.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(7), eff. September 1, 2019.

(i) A health care or medical service or supply provided by an out-of-network provider may not be summarily disallowed. This subsection does not require a health benefit plan issuer or administrator to pay for an uncovered service or supply.

(j) A mediator may not testify in a proceeding, other than a proceeding to enforce this chapter, related to the mediation agreement.

(k) On agreement of all parties, any deadline under this subchapter may be extended.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 10, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.11, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(7), eff. September 1, 2019.

Sec. 1467.056. MATTERS CONSIDERED IN MEDIATION; AGREED RESOLUTION. (a) In a mediation under this subchapter, the parties shall evaluate whether:

(1) the amount charged by the out-of-network provider for the health care or medical service or supply is excessive; and

(2) the amount paid by the health benefit plan issuer or administrator represents the usual and customary rate for the health care or medical service or supply or is unreasonably low.

(b) The out-of-network provider may present information regarding the amount charged for the health care or medical service or supply. The health benefit plan issuer or administrator may present information regarding the amount paid by the issuer or administrator.

(c) Nothing in this chapter prohibits mediation of more than one claim between the parties during a mediation.

(d) The goal of the mediation is to reach an agreement between

the out-of-network provider and the health benefit plan issuer or administrator, as applicable, as to the amount paid by the issuer or administrator to the out-of-network provider and the amount charged by the out-of-network provider.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 11, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.12, eff. September 1, 2019.

Sec. 1467.0575. RIGHT TO FILE ACTION. Not later than the 45th day after the date that the mediator's report is provided to the department under Section 1467.060, either party to a mediation for which there was no agreement may file a civil action to determine the amount due to an out-of-network provider. A party may not bring a civil action before the conclusion of the mediation process under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.13, eff. September 1, 2019.

Sec. 1467.060. REPORT OF MEDIATOR. Not later than the 45th day after the date the mediation concludes, the mediator shall report to the commissioner and the Texas Medical Board or other appropriate regulatory agency:

(1) the names of the parties to the mediation; and
(2) whether the parties reached an agreement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 15, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.14, eff. September 1, 2019.

SUBCHAPTER B-1. MANDATORY BINDING ARBITRATION FOR OTHER PROVIDERS

Sec. 1467.081. APPLICABILITY OF SUBCHAPTER. This subchapter applies only with respect to a health benefit claim submitted by an out-of-network provider who is not a facility.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.082. ESTABLISHMENT AND ADMINISTRATION OF ARBITRATION PROGRAM. (a) The commissioner shall establish and administer an arbitration program to resolve disputes over out-of-network provider charges in accordance with this subchapter.

(b) The commissioner:

(1) shall adopt rules, forms, and procedures necessary for the implementation and administration of the arbitration program, including the establishment of a portal on the department's Internet website through which a request for arbitration under Section 1467.084 may be submitted; and

(2) shall maintain a list of qualified arbitrators for the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.083. ISSUE TO BE ADDRESSED; BASIS FOR DETERMINATION. (a) The only issue that an arbitrator may determine under this subchapter is the reasonable amount for the health care or medical services or supplies provided to the enrollee by an out-of-network provider.

(b) The determination must take into account:

(1) whether there is a gross disparity between the fee billed by the out-of-network provider and:

(A) fees paid to the out-of-network provider for the same services or supplies rendered by the provider to other enrollees for which the provider is an out-of-network provider; and

(B) fees paid by the health benefit plan issuer to reimburse similarly qualified out-of-network providers for the same services or supplies in the same region;

(2) the level of training, education, and experience of the

out-of-network provider;

(3) the out-of-network provider's usual billed charge for comparable services or supplies with regard to other enrollees for which the provider is an out-of-network provider;

(4) the circumstances and complexity of the enrollee's particular case, including the time and place of the provision of the service or supply;

(5) individual enrollee characteristics;

(6) the 80th percentile of all billed charges for the service or supply performed by a health care provider in the same or similar specialty and provided in the same geozip area as reported in a benchmarking database described by Section 1467.006;

(7) the 50th percentile of rates for the service or supply paid to participating providers in the same or similar specialty and provided in the same geozip area as reported in a benchmarking database described by Section 1467.006;

(8) the history of network contracting between the parties;

(9) historical data for the percentiles described by Subdivisions (6) and (7); and

(10) an offer made during the informal settlement teleconference required under Section 1467.084(d).

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.084. AVAILABILITY OF MANDATORY ARBITRATION. (a) Not later than the 90th day after the date an out-of-network provider receives the initial payment for a health care or medical service or supply, the out-of-network provider or the health benefit plan issuer or administrator may request arbitration of a settlement of an out-of-network health benefit claim through a portal on the department's Internet website if:

(1) there is a charge billed by the provider and unpaid by the issuer or administrator after copayments, coinsurance, and deductibles for which an enrollee may not be billed; and

(2) the health benefit claim is for:

(A) emergency care;

(B) a health care or medical service or supply provided by a facility-based provider in a facility that is a participating

provider;

(C) an out-of-network laboratory service; or

(D) an out-of-network diagnostic imaging service.

(b) If a person requests arbitration under this subchapter, the out-of-network provider or the provider's representative, and the health benefit plan issuer or the administrator, as appropriate, shall participate in the arbitration.

(c) The person who requests the arbitration shall provide written notice on the date the arbitration is requested in the form and manner prescribed by commissioner rule to:

(1) the department; and

(2) each other party.

(d) In an effort to settle the claim before arbitration, all parties must participate in an informal settlement teleconference not later than the 30th day after the date on which the arbitration is requested. A health benefit plan issuer or administrator, as applicable, shall make a reasonable effort to arrange the teleconference.

(e) The commissioner shall adopt rules providing requirements for submitting multiple claims to arbitration in one proceeding. The rules must provide that:

(1) the total amount in controversy for multiple claims in one proceeding may not exceed $5,000; and

(2) the multiple claims in one proceeding must be limited to the same out-of-network provider.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.085. EFFECT OF ARBITRATION AND APPLICABILITY OF OTHER LAW. (a) Notwithstanding Section 1467.004, an out-of-network provider or health benefit plan issuer or administrator may not file suit for an out-of-network claim subject to this chapter until the conclusion of the arbitration on the issue of the amount to be paid in the out-of-network claim dispute.

(b) An arbitration conducted under this subchapter is not subject to Title 7, Civil Practice and Remedies Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.086. SELECTION AND APPROVAL OF ARBITRATOR. (a) If the parties do not select an arbitrator by mutual agreement on or before the 30th day after the date the arbitration is requested, the party requesting the arbitration shall notify the commissioner, and the commissioner shall select an arbitrator from the commissioner's list of approved arbitrators.

(b) In selecting an arbitrator under this section, the commissioner shall give preference to an arbitrator who is knowledgeable and experienced in applicable principles of contract and insurance law and the health care industry generally.

(c) In approving an individual as an arbitrator, the commissioner shall ensure that the individual does not have a conflict of interest that would adversely impact the individual's independence and impartiality in rendering a decision in an arbitration. A conflict of interest includes current or recent ownership or employment of the individual or a close family member in any health benefit plan issuer or administrator or physician, health care practitioner, or other health care provider.

(d) The commissioner shall immediately terminate the approval of an arbitrator who no longer meets the requirements under this subchapter and rules adopted under this subchapter to serve as an arbitrator.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.087. PROCEDURES. (a) The arbitrator shall set a date for submission of all information to be considered by the arbitrator.

(b) A party may not engage in discovery in connection with the arbitration.

(c) On agreement of all parties, any deadline under this subchapter may be extended.

(d) Unless otherwise agreed to by the parties, an arbitrator may not determine whether a health benefit plan covers a particular health care or medical service or supply.

(e) The parties shall evenly split and pay the arbitrator's

fees and expenses.

(f) Information submitted by the parties to the arbitrator is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.088. DECISION. (a) Not later than the 51st day after the date the arbitration is requested, an arbitrator shall provide the parties with a written decision in which the arbitrator:

(1) determines whether the billed charge or the payment made by the health benefit plan issuer or administrator, as those amounts were last modified during the issuer's or administrator's internal appeal process, if the provider elects to participate, or the informal settlement teleconference required by Section 1467.084(d), as applicable, is the closest to the reasonable amount for the services or supplies determined in accordance with Section 1467.083(b); and

(2) selects the amount determined to be closest under Subdivision (1) as the binding award amount.

(b) An arbitrator may not modify the binding award amount selected under Subsection (a).

(c) An arbitrator shall provide written notice in the form and manner prescribed by commissioner rule of the reasonable amount for the services or supplies and the binding award amount. If the parties settle before a decision, the parties shall provide written notice in the form and manner prescribed by commissioner rule of the amount of the settlement. The department shall maintain a record of notices provided under this subsection.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

Sec. 1467.089. EFFECT OF DECISION. (a) An arbitrator's decision under Section 1467.088 is binding.

(b) Not later than the 45th day after the date of an arbitrator's decision under Section 1467.088, a party not satisfied with the decision may file an action to determine the payment due to

an out-of-network provider.

(c) In an action filed under Subsection (b), the court shall determine whether the arbitrator's decision is proper based on a substantial evidence standard of review.

(d) Not later than the 30th day after the date of an arbitrator's decision under Section 1467.088, a health benefit plan issuer or administrator shall pay to an out-of-network provider any additional amount necessary to satisfy the binding award.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.15, eff. September 1, 2019.

SUBCHAPTER C. BAD FAITH PARTICIPATION

Sec. 1467.101. BAD FAITH. (a) The following conduct constitutes bad faith participation for purposes of this chapter:

(1) failing to participate in the informal settlement teleconference under Section 1467.084(d) or an arbitration or mediation under this chapter;

(2) failing to provide information the arbitrator or mediator believes is necessary to facilitate a decision or agreement; or

(3) failing to designate a representative participating in the arbitration or mediation with full authority to enter into any agreement.

(b) Failure to reach an agreement under Subchapter B is not conclusive proof of bad faith participation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 17, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.16, eff. September 1, 2019.

Sec. 1467.102. PENALTIES. (a) Bad faith participation or otherwise failing to comply with Subchapter B-1 is grounds for imposition of an administrative penalty by the regulatory agency that issued a license or certificate of authority to the party who

committed the violation.

(b) Except for good cause shown, on a report of a mediator and appropriate proof of bad faith participation under Subchapter B, the regulatory agency that issued the license or certificate of authority shall impose an administrative penalty.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.16, eff. September 1, 2019.

SUBCHAPTER D. COMPLAINTS; CONSUMER PROTECTION

Sec. 1467.151. CONSUMER PROTECTION; RULES. (a) The commissioner and the Texas Medical Board or other regulatory agency, as appropriate, shall adopt rules regulating the investigation and review of a complaint filed that relates to the settlement of an out-of-network health benefit claim that is subject to this chapter. The rules adopted under this section must:

(1) distinguish among complaints for out-of-network coverage or payment and give priority to investigating allegations of delayed health care or medical care;

(2) develop a form for filing a complaint; and

(3) ensure that a complaint is not dismissed without appropriate consideration.

(b) The department and the Texas Medical Board or other appropriate regulatory agency shall maintain information on each complaint filed that concerns a claim, arbitration, or mediation subject to this chapter, including:

(1) the type of services or supplies that gave rise to the dispute;

(2) the type and specialty, if any, of the out-of-network provider who provided the out-of-network service or supply;

(3) the county and metropolitan area in which the health care or medical service or supply was provided;

(4) whether the health care or medical service or supply was for emergency care; and

(5) any other information about:

(A) the health benefit plan issuer or administrator

that the commissioner by rule requires; or

(B) the out-of-network provider that the Texas Medical Board or other appropriate regulatory agency by rule requires.

(c) The information collected and maintained under Subsection (b) is public information as defined by Section 552.002, Government Code, and may not include personally identifiable information or health care or medical information.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(11), eff. September 1, 2019.

Added by Acts 2009, 81st Leg., R.S., Ch. 1290 (H.B. 2256), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 100 (S.B. 507), Sec. 16, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 2.17, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 3.03(11), eff. September 1, 2019.

SUBTITLE G. HEALTH COVERAGE AVAILABILITY

CHAPTER 1501. HEALTH INSURANCE PORTABILITY AND AVAILABILITY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1501.001. SHORT TITLE. This chapter may be cited as the Health Insurance Portability and Availability Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.002. DEFINITIONS. In this chapter:

(1) "Agent" means a person who may act as an agent for the sale of a health benefit plan under a license issued under Title 13.

(2) "Dependent" means:

(A) a spouse;

(B) a child younger than 25 years of age, including a newborn child;

(C) a child of any age who is:

(i) medically certified as disabled; and

(ii) dependent on the parent;

(D) an individual who must be covered under:

(i) Section 1251.154; or

(ii) Section 1201.062; and

(E) any other child eligible under an employer's health benefit plan, including a child described by Section 1503.003.

(3) "Eligible employee" means an employee who works on a full-time basis and who usually works at least 30 hours a week. The term includes a sole proprietor, a partner, and an independent contractor, if the individual is included as an employee under a health benefit plan of a small or large employer. The term does not include an employee who:

(A) works on a part-time, temporary, seasonal, or substitute basis;

(B) is covered under:

(i) another health benefit plan; or

(ii) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); or

(C) elects not to be covered under the employer's health benefit plan and is covered under:

(i) the Medicaid program;

(ii) another federal program, including the CHAMPUS program or Medicare program; or

(iii) a benefit plan established in another country.

(4) "Employee" means an individual employed by an employer.

(5) "Health benefit plan" means a group, blanket, or franchise insurance policy, a certificate issued under a group policy, a group hospital service contract, or a group subscriber contract or evidence of coverage issued by a health maintenance organization that provides benefits for health care services. The term does not include:

(A) accident-only or disability income insurance coverage or a combination of accident-only and disability income insurance coverage;

(B) credit-only insurance coverage;

(C) disability insurance coverage;

(D) coverage for a specified disease or illness;

(E) Medicare services under a federal contract;

(F) Medicare supplement and Medicare Select benefit

plans regulated in accordance with federal law;

(G) long-term care coverage or benefits, nursing home care coverage or benefits, home health care coverage or benefits, community-based care coverage or benefits, or any combination of those coverages or benefits;

(H) coverage that provides limited-scope dental or vision benefits;

(I) coverage provided by a single service health maintenance organization;

(J) workers' compensation insurance coverage or similar insurance coverage;

(K) coverage provided through a jointly managed trust authorized under 29 U.S.C. Section 141 et seq. that contains a plan of benefits for employees that is negotiated in a collective bargaining agreement governing wages, hours, and working conditions of the employees that is authorized under 29 U.S.C. Section 157;

(L) hospital indemnity or other fixed indemnity insurance coverage;

(M) reinsurance contracts issued on a stop-loss, quota-share, or similar basis;

(N) short-term major medical contracts;

(O) liability insurance coverage, including general liability insurance coverage and automobile liability insurance coverage, and coverage issued as a supplement to liability insurance coverage, including automobile medical payment insurance coverage;

(P) coverage for on-site medical clinics;

(Q) coverage that provides other limited benefits specified by federal regulations; or

(R) other coverage that:

(i) is similar to the coverage described by this subdivision under which benefits for medical care are secondary or incidental to other coverage benefits; and

(ii) is specified by federal regulations.

(6) "Health benefit plan issuer" means an entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state, including:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a health maintenance organization operating under

Chapter 843; and

(D) a stipulated premium company operating under Chapter 884.

(7) "Health status related factor" means:

(A) health status;

(B) medical condition, including both physical and mental illness;

(C) claims experience;

(D) receipt of health care;

(E) medical history;

(F) genetic information;

(G) evidence of insurability, including conditions arising out of acts of family violence; and

(H) disability.

(8) "Large employer" means a person who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least two employees on the first day of the plan year. The term includes a governmental entity subject to Article 3.51-1, 3.51-4, or 3.51-5, to Subchapter C, Chapter 1364, to Chapter 1578, or to Chapter 177, Local Government Code, that otherwise meets the requirements of this subdivision. For purposes of this definition, a partnership is the employer of a partner.

(9) "Large employer health benefit plan" means a health benefit plan offered to a large employer.

(10) "Large employer health benefit plan issuer" means a health benefit plan issuer, to the extent that the issuer is offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C and M.

(11) "Person" means an individual, corporation, partnership, or other legal entity.

(12) "Preexisting condition provision" means a provision that excludes or limits coverage as to a disease or condition for a specified period after the effective date of coverage.

(13) "Premium" means all amounts paid by a small or large employer and employees as a condition of receiving coverage from a small or large employer health benefit plan issuer, including any fees or other contributions associated with a health benefit plan.

(14) "Small employer" means a person who employed an average of at least two employees but not more than 50 employees on business days during the preceding calendar year and who employs at

least two employees on the first day of the plan year. The term includes a governmental entity subject to Article 3.51-1, 3.51-4, or 3.51-5, to Subchapter C, Chapter 1364, to Chapter 1578, or to Chapter 177, Local Government Code, that otherwise meets the requirements of this subdivision. For purposes of this definition, a partnership is the employer of a partner.

(15) "Small employer health benefit plan" means a health benefit plan developed by the commissioner under Subchapter F or any other health benefit plan offered to a small employer in accordance with Section 1501.252(c) or 1501.255.

(16) "Small employer health benefit plan issuer" means a health benefit plan issuer, to the extent that the issuer is offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C-H.

(16-a) "Small employer health coalition" means a private purchasing cooperative composed solely of small employers that is formed under Subchapter B.

(17) "Waiting period" means a period established by an employer that must elapse before an individual who is a potential enrollee in a health benefit plan is eligible to be covered for benefits.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.046(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.013, eff. April 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 199 (S.B. 1332), Sec. 1, eff. September 1, 2013.

Sec. 1501.003. APPLICABILITY: SMALL EMPLOYER HEALTH BENEFIT PLANS. An individual or group health benefit plan is a small employer health benefit plan subject to Subchapters C-H if it provides health care benefits covering two or more employees of a small employer and:

(1) the employer pays a portion of the premium or benefits;

(2) the employer or a covered individual treats the health benefit plan as part of a plan or program for purposes of Section 106

or 162, Internal Revenue Code of 1986 (26 U.S.C. Section 106 or 162); or

(3) the health benefit plan is an employee welfare benefit plan under 29 C.F.R. Section 2510.3-1(j).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 199 (S.B. 1332), Sec. 2, eff. September 1, 2013.

Sec. 1501.004. APPLICABILITY: LARGE EMPLOYER HEALTH BENEFIT PLANS. An individual or group health benefit plan is a large employer health benefit plan subject to Subchapters C and M if the plan provides health care benefits to employees of a large employer and:

(1) the employer pays a portion of the premium or benefits;

(2) the employer or a covered individual treats the health benefit plan as part of a plan or program for purposes of Section 106 or 162, Internal Revenue Code of 1986 (26 U.S.C. Section 106 or 162); or

(3) the health benefit plan is an employee welfare benefit plan under 29 C.F.R. Section 2510.3-1(j).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 199 (S.B. 1332), Sec. 3, eff. September 1, 2013.

Sec. 1501.005. EXCEPTION: CERTAIN INDIVIDUALLY UNDERWRITTEN POLICIES. Except as provided by Section 1501.003 or 1501.004, this chapter does not apply to an individual health insurance policy that is subject to individual underwriting, even if the premium is paid through a payroll deduction method.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.006. CERTIFICATION. (a) In accordance with rules adopted by the commissioner, each health benefit plan issuer shall

certify that the issuer is offering, delivering, issuing for delivery, or renewing, or that the issuer intends to offer, deliver, issue for delivery, or renew:

(1) a health benefit plan to or through a small employer in this state that is subject to this chapter; or

(2) a health benefit plan to or through a large employer in this state that is subject to this chapter.

(b) A health benefit plan issuer must submit a revised certification to the commissioner only if the issuer changes its status as a small or large employer health benefit plan issuer or changes its intent to become a small or large employer health benefit plan issuer to the extent that its previous certification ceases to be accurate.

(c) The certification must include a statement that the health benefit plan issuer is complying with this chapter to the extent it applies to the issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.007. AFFILIATES. (a) In this section, "affiliate" has the meaning described by Section 823.003.

(b) For purposes of this chapter, health benefit plan issuers that are affiliates or that are eligible to file a consolidated tax return are considered to be one issuer, and a restriction imposed by this chapter applies as if the health benefit plans delivered or issued for delivery to small employers in this state by the affiliates were issued by one issuer.

(c) Notwithstanding Subsection (b), a health maintenance organization that is an affiliate is considered to be a separate health benefit plan issuer for purposes of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.008. LATE ENROLLEES. (a) For purposes of this chapter, an employee or dependent eligible for enrollment in a small or large employer's health benefit plan is a late enrollee if the individual requests enrollment after the expiration of:

(1) the initial enrollment period established under the terms of the first plan for which the individual was eligible through

the small or large employer; or

(2) an open enrollment period under Section 1501.156(a) or 1501.606(a).

(b) An employee or dependent eligible for enrollment is not a late enrollee if the individual:

(1) was covered under another health benefit plan or self-funded employer health benefit plan at the time the individual was eligible to enroll;

(2) declined enrollment in writing, at the time of the initial eligibility for enrollment, stating that coverage under another health benefit plan or self-funded employer health benefit plan was the reason for declining enrollment;

(3) has lost coverage under the other health benefit plan or self-funded employer health benefit plan as a result of:

(A) the termination of employment;

(B) a reduction in the number of hours of employment;

(C) the termination of the other plan's coverage;

(D) the termination of contributions toward the premium made by the employer; or

(E) the death of a spouse or divorce; and

(4) requests enrollment not later than the 31st day after the date coverage under the other health benefit plan or self-funded employer health benefit plan terminates.

(c) An employee or dependent eligible for enrollment is also not a late enrollee if the individual is:

(1) employed by an employer that offers multiple health benefit plans and the individual elects a different health benefit plan during an open enrollment period;

(2) a spouse for whom a court has ordered coverage under a covered employee's plan and the request for enrollment of the spouse is made not later than the 31st day after the date the court order is issued;

(3) a child for whom a court has ordered coverage under a covered employee's plan and the request for enrollment is made not later than the 31st day after the date the employer receives the court order; or

(4) a child of a covered employee who has lost coverage under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), other than coverage consisting solely of benefits under Section 1928 of that Act (42 U.S.C. Section 1396s), or under Chapter

62, Health and Safety Code, and the request for enrollment is made not later than the 31st day after the date on which the child loses coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.009. SCHOOL DISTRICT ELECTION. (a) An independent school district may elect to participate as a small employer without regard to the number of employees in the district. An independent school district that makes the election is treated as a small employer under this chapter for all purposes.

(b) An independent school district that is participating in the uniform group coverage program established under Chapter 1579 may not participate in the small employer market under this section for health insurance coverage and may not renew a health insurance contract obtained in accordance with this section after the date on which the program of coverages provided under Chapter 1579 is implemented. This subsection does not affect a contract for the provision of optional coverages not included in a health benefit plan under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.014, eff. April 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 199 (S.B. 1332), Sec. 4, eff. September 1, 2013.

Sec. 1501.0095. SCHOOL DISTRICT EMPLOYEE ELECTION. (a) Notwithstanding any other provision of this chapter, a school district employee who is eligible for coverage under a large or small employer health benefit plan providing coverage to the school district's employees and who is the spouse of another school district employee covered under the plan may elect whether to be treated under the plan as:

(1) an employee; or

(2) the dependent of the other employee.

(b) The commissioner shall adopt rules under Section 1501.010 governing the manner in which an election under this section must be

made.

Added by Acts 2005, 79th Leg., Ch. 998 (H.B. 407), Sec. 1, eff. June 18, 2005.

Sec. 1501.010. GENERAL RULES. The commissioner shall adopt rules necessary to:

(1) implement this chapter; and

(2) meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.011. DETERMINATION OF EMPLOYER STATUS FOR CERTAIN EMPLOYERS. (a) For an employer that did not exist throughout the calendar year preceding the year in which the determination of whether the employer is a small employer is made, the determination is based on the average number of employees the employer reasonably expects to employ on business days in the calendar year in which the determination is made.

(b) For an employer that did not exist throughout the calendar year preceding the year in which the determination of whether the employer is a large employer is made, the determination is based on the average number of employees the employer reasonably expects to employ on business days in the calendar year in which the determination is made.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 199 (S.B. 1332), Sec. 5, eff. September 1, 2013.

SUBCHAPTER B. COALITIONS AND COOPERATIVES

Sec. 1501.051. DEFINITIONS. In this subchapter:

(1) "Board of directors" means the board of directors elected by a private purchasing cooperative or a health group cooperative.

(2) "Board of trustees" means the board of trustees of the

Texas cooperative.

(3) "Cooperative" means a private purchasing cooperative or a health group cooperative established under this subchapter.

(3-a) "Eligible single-employee business" means a business entity that:

(A) is owned and operated by a sole proprietor;

(B) employed an average of fewer than two employees on business days during the preceding calendar year; and

(C) is eligible to participate in a cooperative under this subchapter in accordance with Section 1501.066.

(3-b) "Expanded service area" means any area larger than one county in which a health group cooperative offers coverage.

(4) "Texas cooperative" means the Texas Health Benefits Purchasing Cooperative established under Section 1501.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.048(a), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 1, eff. June 17, 2011.

Sec. 1501.052. TEXAS HEALTH BENEFITS PURCHASING COOPERATIVE; BOARD OF TRUSTEES. (a) The Texas Health Benefits Purchasing Cooperative is a nonprofit corporation established to make health care coverage available to small and large employers and their eligible employees and the eligible employees' dependents.

(b) The Texas cooperative is administered by a board of trustees of five members appointed by the governor with the advice and consent of the senate. Two members must represent employers, two members must represent employees, and one member must represent the public.

(c) Members of the board of trustees serve staggered six-year terms, with the terms of one or two members expiring February 1 of each odd-numbered year.

(d) A member of the board of trustees may not be compensated for serving on the board but is entitled to reimbursement for actual expenses incurred in performing functions as a member of the board as provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.049(a), eff. September 1, 2005.

Sec. 1501.053. TEXAS HEALTH BENEFITS PURCHASING COOPERATIVE: EXECUTIVE DIRECTOR AND OTHER EMPLOYEES. (a) The board of trustees shall employ an executive director. The executive director may hire other employees of the Texas cooperative as necessary.

(b) Salaries for employees of the Texas cooperative and related costs may be paid from administrative fees collected from employers and participating health benefit plan issuers or other sources of funding arranged by the Texas cooperative.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.054. REGIONAL SUBDIVISIONS OF TEXAS HEALTH BENEFITS PURCHASING COOPERATIVE. The board of trustees may:

(1) develop regional subdivisions of the Texas cooperative; and

(2) authorize each subdivision to separately exercise the powers and duties of a cooperative.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.055. APPLICABILITY OF PUBLIC INFORMATION LAW TO TEXAS HEALTH BENEFITS PURCHASING COOPERATIVE. The Texas cooperative is subject to the public information law, Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.056. PRIVATE PURCHASING COOPERATIVES AND HEALTH GROUP COOPERATIVES. (a) Two or more small or large employers may form a private purchasing cooperative to purchase small or large employer health benefit plans. Subject to Subsection (d), a person may form a health group cooperative to purchase employer health benefit plans. A cooperative must be organized as a nonprofit corporation and has

the rights and duties provided by the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(b) On receipt of a certificate of incorporation or certificate of authority from the secretary of state, the cooperative shall file written notice of the receipt of the certificate and a copy of the cooperative's organizational documents with the commissioner.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 42 , Sec. 3.01(5), eff. September 1, 2015.

(d) A health benefit plan issuer may not form, or be a member of, a health group cooperative. A health benefit plan issuer may associate with a sponsoring entity, such as a business association, chamber of commerce, or other organization representing employers or serving an analogous function, to assist the sponsoring entity in forming a health group cooperative.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.050(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.050(b), eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 3.01(5), eff. September 1, 2015.

Sec. 1501.057. IMMUNITY. (a) The Texas cooperative or a member of the board of trustees, the executive director, or an employee or agent of the Texas cooperative is not liable for:

(1) an act performed in good faith in the execution of duties in connection with the cooperative; or

(2) an independent action of a small employer health benefit plan issuer or a person who provides health care services under a health benefit plan.

(b) A private purchasing cooperative, a health group cooperative, or a member of the board of directors, the executive director, or an employee or agent of the private purchasing or health group cooperative is not liable for:

(1) an act performed in good faith in the execution of duties in connection with the private purchasing or health group cooperative; or

(2) an independent action of a small or large employer health benefit plan issuer or a person who provides health care services under a health benefit plan.

(c) A health group cooperative or a member of the board of directors, the executive director, or an employee or agent of the health group cooperative is not liable for failure to arrange for coverage of any particular illness, disease, or health condition.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.050(c), eff. September 1, 2005.

Sec. 1501.0575. VOLUNTARY PARTICIPATION BY ISSUER IN COOPERATIVE. A health benefit plan issuer may elect not to participate in a health group cooperative. The health benefit plan issuer may elect to participate in one or more health group cooperatives and may select the cooperatives in which the issuer will participate.

Added by Acts 2005, 79th Leg., Ch. 823 (S.B. 805), Sec. 1, eff. September 1, 2005.

Sec. 1501.058. POWERS AND DUTIES OF COOPERATIVES. (a) A cooperative shall:

(1) arrange for small or large employer health benefit plan coverage for small employer groups, large employer groups, and, subject to Section 1501.0581, eligible single-employee businesses that participate in the cooperative by contracting with small or large employer health benefit plan issuers that meet the requirements established by Section 1501.061;

(2) collect premiums to cover the cost of:

(A) small or large employer health benefit plan coverage purchased through the cooperative; and

(B) the cooperative's administrative expenses;

(3) establish administrative and accounting procedures for the operation of the cooperative;

(4) establish procedures under which an applicant for or participant in coverage issued through the cooperative may have a

grievance reviewed by an impartial person;

(5) contract with small or large employer health benefit plan issuers to provide services to small or large employers covered through the cooperative; and

(6) develop and implement a plan to maintain public awareness of the cooperative and publicize the eligibility requirements for, and the procedures for enrollment in, coverage through the cooperative.

(b) A cooperative may:

(1) contract with agents to market coverage issued through the cooperative;

(2) contract with a small or large employer health benefit plan issuer or third-party administrator to provide administrative services to the cooperative;

(3) negotiate the premiums paid by its members; and

(4) offer other ancillary products and services to its members that are customarily offered in conjunction with health benefit plans.

(c) A cooperative shall comply with:

(1) federal laws applicable to cooperatives and health benefit plans issued through cooperatives, to the extent required by state law or rules adopted by the commissioner; and

(2) state laws applicable to cooperatives and health benefit plans issued through cooperatives.

(d) To be eligible to exercise the authority granted under Subsection (a)(1), a health group cooperative must have at least 10 participating employers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.053(a), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 2, eff. June 17, 2011.

Sec. 1501.0581. SPECIAL PROVISIONS RELATING TO HEALTH GROUP COOPERATIVES. (a) The membership of a health group cooperative may consist of only small employers; only large employers; both small and large employers; small employers and eligible single-employee

businesses; large employers and eligible single-employee businesses; or small employers, large employers, and eligible single-employee businesses. To participate as a member of a health group cooperative, an employer must be a small or large employer as described by this chapter or an eligible single-employee business.

(a-1) Notwithstanding Subsections (b) and (c), membership in a health group cooperative may be restricted to small and large employers within a single industry grouping as defined by the most recent edition of the United States Census Bureau's North American Industry Classification System.

(b) Subject to the requirements imposed on small employer health benefit plan issuers under Section 1501.101 and subject to Subsections (a-1) and (o), a health group cooperative:

(1) shall allow a small employer to join a health group cooperative, other than a health group cooperative consisting of only large employers, and enroll in health benefit plan coverage;

(2) subject to Subsection (t), may allow eligible single-employee businesses to join a health group cooperative and enroll in health benefit plan coverage; and

(3) may allow a large employer to join the health group cooperative and enroll in health benefit plan coverage.

(c) Subject to Subsections (a-1) and (o), a health group cooperative consisting of only small employers or both small and large employers shall allow any small employer to join the health group cooperative and enroll in the cooperative's health benefit plan coverage during the initial enrollment and annual open enrollment periods.

(d) A sponsoring entity of a health group cooperative may inform the members of the entity about the cooperative and the health benefit plans offered by the cooperative. Coverage issued through the cooperative must be issued through a licensed agent marketing the coverage in accordance with Section 1501.058(b)(1).

(e) The commissioner shall adopt rules that govern the manner in which an employer may terminate, because of a financial hardship affecting the employer, participation in a health group cooperative.

(f) An employer's participation in a health group cooperative is voluntary, but an employer electing to participate in a health group cooperative must commit to purchasing coverage through the health group cooperative for two years, except as provided by Subsection (e).

(g) A health benefit plan issuer issuing coverage to a health group cooperative:

(1) shall use a standard presentation form, prescribed by the commissioner by rule, to market health benefit plan coverage through the health group cooperative;

(2) may contract to provide health benefit plan coverage with only one health group cooperative in any county, except that a health benefit plan issuer may contract with additional health group cooperatives if it is providing health benefit plan coverage in an expanded service area in accordance with Subsection (l);

(3) shall allow enrollment in health benefit plan coverage in compliance with Subsection (c) and with the health benefit plan issuer's agreement with the health group cooperative;

(4) is exempt from the premium tax or tax on revenues imposed by Chapter 222, and the retaliatory tax under Chapter 281 for two years, with respect to the premiums or revenues received for coverage provided to each uninsured employee or dependent as defined by the commissioner in accordance with Subsection (h); and

(5) shall maintain documentation to be provided by health group cooperatives to ensure compliance with the rules adopted by the commissioner under Subsection (h) with respect to uninsured employees or dependents.

(h) The commissioner by rule shall determine who constitutes an uninsured employee or dependent for purposes of Subsection (g)(4).

(i) Notwithstanding any other law, and except as provided by Subsection (n), a health benefit plan issued by a health benefit plan issuer to provide coverage with a health group cooperative is not subject to a state law, including a rule, that:

(1) relates to a particular illness, disease, or treatment; or

(2) regulates the differences in rates applicable to services provided within a health benefit plan network or outside the network.

(j) The commissioner by rule shall implement the exemption authorized by Subsection (i).

(k) A health group cooperative may offer more than one health benefit plan, but each plan offered must be made available to all employers participating in the cooperative.

(l) A health benefit plan issuer may, with notice to the commissioner, provide health benefit plan coverage to an expanded

service area that includes the entire state. A health benefit plan issuer may apply for approval of an expanded service area that comprises less than the entire state by filing with the commissioner an application, in a form and manner prescribed by the commissioner, at least 60 days before the date the health benefit plan issuer issues coverage to the health group cooperative in the expanded service area. At the expiration of 60 days after the date of receipt by the department of a filed application, the application is considered approved by the department unless, before that date, the application was either affirmatively approved or disapproved by written order of the commissioner. The commissioner, after notice and opportunity for hearing, may rescind an approval granted to a health benefit plan issuer under this subsection if the commissioner finds that the health benefit plan issuer has failed to market fairly to all eligible employers in the state or the expanded service area.

(m) The provisions of this section do not limit or restrict a small or large employer's access to health benefit plans under this chapter.

(n) A health benefit plan provided through a health group cooperative must provide coverage for diabetes equipment, supplies, and services as required by Subchapter B, Chapter 1358.

(o) A health group cooperative consisting only of small employers is not required to allow a small employer to join the health group cooperative under Subsection (c) if:

(1) the cooperative has elected to restrict membership in the cooperative in accordance with this subsection and Subsection (p); and

(2) after the small employer has joined the cooperative, the total number of eligible employees employed on business days during the preceding calendar year by all small employers participating in the cooperative would exceed 50.

(p) A health group cooperative must make the election described by Subsection (o) at the time the cooperative is initially formed. A health group cooperative making this election may not include an eligible single-employee business. Evidence of the election must be filed in writing with the commissioner in the form and at the time prescribed by the commissioner by rule.

(q) Except as provided by Subsection (r), a health group cooperative may file an election with the commissioner, on a form and in the manner prescribed by the commissioner, to permit eligible

single-employee businesses to join the cooperative and to enroll in health benefit plan coverage. The election must be filed not later than the 90th day before the date coverage for eligible single-employee businesses is to become effective.

(r) A health group cooperative may file an election under Subsection (q) only if a small or large employer health benefit plan issuer has agreed in writing to offer to issue coverage to the cooperative based on its membership after the election to permit eligible single-employee businesses to participate in the cooperative has become effective.

(s) On the date an election under Subsection (q) becomes effective and until the election is rescinded, the provisions of this subchapter relating to guaranteed issuance of plans, to rating requirements, and to mandated benefits that are applicable to small employers apply to eligible single-employee businesses that are members of the health group cooperative.

(t) A health group cooperative that files an election with the commissioner to permit an eligible single-employee business to join the health group cooperative and enroll in health benefit plan coverage must permit participation and enrollment in the cooperative's health benefit plan coverage during the initial enrollment and annual open enrollment periods by each eligible single-employee business that elects to participate and agrees to satisfy requirements associated with participation in and coverage through the cooperative. For purposes of this subsection, the provisions of Subsection (a-1) applicable to small employers apply to eligible single-employee businesses.

(u) A health group cooperative may rescind its election to permit eligible single-employee businesses to join the cooperative and enroll in health benefit plan coverage only if:

(1) the election has been effective for at least two years, except as provided by Subsection (v);

(2) the health group cooperative files notice of the rescission with the commissioner not later than the 180th day before the effective date of the rescission; and

(3) the health group cooperative provides written notice of termination of coverage to all eligible single-employee business members of the cooperative not later than the 180th day before the effective date of the termination.

(v) The commissioner shall adopt rules under which a health

group cooperative may for good cause rescind an election described by Subsection (u) before the second anniversary of the effective date of the election.

(w) Notwithstanding Subsection (u), a health group cooperative that files notice of rescission may choose to permit existing eligible single-employee businesses to remain active, covered members of the cooperative, but only if all such members of the cooperative are provided the same opportunity.

(x) A health group cooperative that has rescinded an election under Subsection (u) may not file a subsequent election to permit eligible single-employee businesses to join the cooperative and enroll in health benefit plan coverage before the fifth anniversary of the effective date of the rescission.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.051(a), eff. September 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 823 (S.B. 805), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 547 (S.B. 1255), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 3, eff. June 17, 2011.

Sec. 1501.0582. HEALTH GROUP COOPERATIVE: EXPEDITED APPROVAL PROCESS. The department shall develop an expedited approval process for health benefit plan coverage arranged by a health group cooperative.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.052(a), eff. September 1, 2005.

Sec. 1501.059. SELF-INSURED OR SELF-FUNDED PLAN PROHIBITED. A cooperative may not self-insure or self-fund any health benefit plan or portion of a plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.060. SCOPE OF GROUP COVERAGE. Subchapter B, Chapter 1251, does not limit the type of group that may be covered by a group health benefit plan issued through a cooperative.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.061. REQUIREMENTS APPLICABLE TO HEALTH BENEFIT PLAN ISSUERS WITH WHICH COOPERATIVE MAY CONTRACT. A cooperative may contract only with a small or large employer health benefit plan issuer that demonstrates that the issuer:

(1) is in good standing with the department;

(2) has the capacity to administer health benefit plans;

(3) is able to monitor and evaluate the quality and cost-effectiveness of care and applicable procedures;

(4) is able to conduct utilization management and establish applicable procedures and policies;

(5) is able to ensure that enrollees have adequate access to health care providers, including adequate numbers and types of providers;

(6) has a satisfactory grievance procedure and is able to respond to enrollees' calls, questions, and complaints; and

(7) has financial capacity, either through satisfying financial solvency standards, as applied by the commissioner, or through appropriate reinsurance or other risk-sharing mechanisms.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.053(b), eff. September 1, 2005.

Sec. 1501.062. COOPERATIVE NOT INSURER; AGENTS AND ADMINISTRATORS. (a) A cooperative is not an insurer and the employees of the cooperative are not required to be licensed under Title 13. This exemption from licensure includes a health group cooperative that acts to provide information about and to solicit membership in the cooperative, subject to Section 1501.0581(d).

(b) An agent or third-party administrator used and compensated by a cooperative must be licensed as required by Title 13.

(c) An agent used and compensated by a cooperative may market

the products and services sponsored by the cooperative without being appointed by each small or large employer health benefit plan issuer participating in the cooperative. The agent may not market any other product or service of a participating small or large employer health benefit plan issuer that is not sponsored by the cooperative unless the agent has been appointed by that issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.052(b), eff. September 1, 2005.

Sec. 1501.063. STATUS AS EMPLOYER. (a) A small employer health coalition that otherwise meets the description of a small employer is considered a single small employer for all purposes under this chapter.

(b) A health group cooperative that is composed of only small employers, only large employers, or both small and large employers is considered a single employer under this code.

(b-1) A health group cooperative that is composed only of small employers and that has made the election described by Section 1501.0581(o)(1) in accordance with Subsection (p) of that section shall be treated in the same manner as a small employer for the purposes of this chapter, including for the purposes of any provision relating to premium rates and issuance and renewal of coverage.

(b-2) A health group cooperative that is composed only of small employers and that has not made the election described by Section 1501.0581(o)(1) in accordance with Subsection (p) of that section, or a health group cooperative that is composed of both small and large employers, may be treated in the same manner as a large employer for the purposes of this chapter, including for the purposes of any provision relating to premium rates and issuance and renewal of coverage.

(b-3) Except as provided by Section 1501.0581(k), a health group cooperative shall have sole authority to make benefit elections and perform other administrative functions under this code for the cooperative's participating employers.

(c) Any other cooperative formed under this subchapter is considered an employer solely for the purposes of benefit elections

under this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.052(c), eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 823 (S.B. 805), Sec. 3, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 547 (S.B. 1255), Sec. 2, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 4, eff. June 17, 2011.

Sec. 1501.064. CERTAIN USE OF APPROPRIATED MONEY PROHIBITED. The Texas cooperative may not use money appropriated by the state to pay or otherwise subsidize any portion of the premium for a small employer covered through the cooperative.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.065. CERTAIN ACTIONS BASED ON RISK CHARACTERISTICS OR HEALTH STATUS PROHIBITED. A cooperative may not limit, restrict, or condition an employer's or employee's membership in a cooperative or an employee's choice among benefit plans based on:

(1) risk characteristics of a group or of any member of a group; or

(2) health status related factors, duration of coverage, or any similar characteristic related to the health status or experience of a group or of any member of a group.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.053(c), eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 5, eff. June 17, 2011.

Sec. 1501.066. ELECTION TO TREAT PARTICIPATING EMPLOYERS SEPARATELY FOR RATING PURPOSES. (a) Notwithstanding Section

1501.063, a health group cooperative may file with the commissioner, on a form and in the manner prescribed by the commissioner, an election to treat each participating employer within the cooperative as a separate employer for purposes of rating small and large employer health benefit plans, subject to the rating requirements of this code applicable to such plans. An existing health group cooperative must file the election with the department not later than the 90th day before the date on which the election is to become effective.

(b) A health group cooperative must provide to all participating and prospective employers, in a manner prescribed by the commissioner, a written notice of the cooperative's election to treat participating employers within the cooperative as separate employers for purposes of rating small and large employer health benefit plans. Employers participating in the cooperative when such an election is made must be provided notice of the election not later than the 90th day before the date the election is to become effective. For a participating employer, the notice must contain the quote for the premium rate applicable to the employer as of the date the plan is renewed. Prospective employers must be provided notice of the election when the prospective employer applies to become a participating employer in the health group cooperative.

(c) An election under this section is effective on the earliest date after the election is made on which the plan to which the election applies is initially issued or renewed. The election remains in effect for not less than 12 months after the effective date.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 6, eff. June 17, 2011.

Sec. 1501.067. ELIGIBLE SINGLE-EMPLOYEE BUSINESS. The commissioner shall adopt rules governing the eligibility of a single-employee business to participate in a health group cooperative under this subchapter. The rules must include provisions to ensure that each eligible single-employee business has a business purpose and was not formed solely to obtain health benefit plan coverage under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1067 (S.B. 859), Sec. 6,

eff. June 17, 2011.

SUBCHAPTER C. PROVISION OF COVERAGE

Sec. 1501.101. GEOGRAPHIC SERVICE AREAS. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 42 , Sec. 3.01(6), eff. September 1, 2015.

(b) A small employer health benefit plan issuer that refuses to issue a small employer health benefit plan in a geographic service area may not offer a health benefit plan to a small employer in the applicable service area before the fifth anniversary of the date of the refusal.

(c) A small or large employer health benefit plan issuer is not required to offer or issue a small or large employer health benefit plan to:

(1) a small or large employer that is not located within a geographic service area of the issuer;

(2) an employee of a small or large employer who neither resides nor works in the geographic service area of the issuer; or

(3) a small or large employer located within a geographic service area of the issuer with respect to which area the issuer demonstrates to the commissioner's satisfaction that the issuer:

(A) reasonably anticipates that it will not have the capacity to deliver services adequately because of obligations to existing covered individuals; and

(B) is acting uniformly without regard to the claims experience of the employer or any health status related factor of employees, employees' dependents, or new employees or dependents who may become eligible for the coverage.

(d) A small or large employer health benefit plan issuer that is unable to offer coverage in a geographic service area in accordance with a determination made by the commissioner under Subsection (c)(3) may not offer a small or large employer benefit plan, as applicable, in that service area before the 180th day after the later of:

(1) the date the issuer refuses to offer coverage; or

(2) the date the issuer demonstrates to the satisfaction of the commissioner that it has regained the capacity to deliver services to small or large employers in the geographic service area.

(e) If the commissioner determines that requiring the acceptance of small or large employers under this chapter would place

a small or large employer health benefit plan issuer in a financially impaired condition and that the issuer is acting uniformly without regard to the claims experience of the small or large employer or any health status related factors of eligible employees, eligible employees' dependents, or new employees or dependents who may become eligible for the coverage, the issuer may not offer coverage to small or large employers until the later of:

(1) the 180th day after the date the commissioner makes the determination; or

(2) the date the commissioner determines that accepting small or large employers would not place the issuer in a financially impaired condition.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 3.01(6), eff. September 1, 2015.

Sec. 1501.102. PREEXISTING CONDITION PROVISION. (a) In this section, "creditable coverage" has the meaning assigned by Section 1205.004 and includes coverage provided under:

(1) a political subdivision health benefits risk pool; and

(2) a short-term limited duration coverage plan.

(b) A preexisting condition provision in a small or large employer health benefit plan may apply only to coverage for a disease or condition for which medical advice, diagnosis, care, or treatment was recommended or received during the six months before the earlier of:

(1) the effective date of coverage; or

(2) the first day of the waiting period.

(c) A preexisting condition provision in a small or large employer health benefit plan may not apply to expenses incurred on or after the first anniversary of the initial effective date of coverage of the enrollee, including a late enrollee.

(d) A preexisting condition provision in a small or large employer health benefit plan may not apply to an individual who was continuously covered for an aggregate period of 12 months under creditable coverage that was in effect until a date not more than 63 days before the effective date of coverage under the plan, excluding

any waiting period.

(e) In determining whether a preexisting condition provision applies to an individual covered by a small or large employer health benefit plan, the plan issuer shall credit the time the individual was covered under previous creditable coverage if the previous coverage was in effect at any time during the 12 months preceding the effective date of coverage under the plan. If the previous coverage was issued under a health benefit plan, any waiting period that applied before that coverage became effective must also be credited against the preexisting condition provision period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.103. TREATMENT OF CERTAIN CONDITIONS AS PREEXISTING PROHIBITED. (a) A small or large employer health benefit plan issuer may not treat genetic information as a preexisting condition described by Section 1501.102(b) in the absence of a diagnosis of the condition related to the information.

(b) A small or large employer health benefit plan issuer may not treat pregnancy as a preexisting condition described by Section 1501.102(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.104. AFFILIATION PERIOD. (a) In this section, "affiliation period" means a period that, under a small or large employer health benefit plan offered by a health maintenance organization, must expire before the coverage becomes effective.

(b) A health maintenance organization may impose an affiliation period if the period is applied uniformly without regard to any health status related factor. The affiliation period may not exceed:

(1) two months for an enrollee, other than a late enrollee; or

(2) 90 days for a late enrollee.

(c) An affiliation period under a small or large employer health benefit plan must run concurrently with any applicable waiting period under the plan. A health maintenance organization must credit an affiliation period against any preexisting condition provision period.

(d) During an affiliation period, a health maintenance organization:

(1) is not required to provide health care services or benefits to the participant or beneficiary; and

(2) may not charge a premium to the participant or beneficiary.

(e) A health maintenance organization may use an alternative method approved by the commissioner to address adverse selection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.105. WAITING PERIOD PERMITTED. Sections 1501.102-1501.104 do not preclude application of a waiting period that applies to all new enrollees under a small or large employer health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.106. CERTAIN LIMITATIONS OR EXCLUSIONS OF COVERAGE PROHIBITED. (a) A small or large employer health benefit plan may not limit or exclude, by use of a rider or amendment applicable to a specific individual, coverage by type of illness, treatment, medical condition, or accident.

(b) This section does not preclude a small or large employer health benefit plan from limiting or excluding coverage for a preexisting condition in accordance with Section 1501.102.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.107. DISCOUNTS, REBATES, AND REDUCTIONS. (a) A small or large employer health benefit plan issuer may establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, in return for participation in programs promoting disease prevention, wellness, and health.

(b) A discount, rebate, or reduction established under this section does not violate Section 541.056(a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 112 (H.B. 2252), Sec. 3, eff. May 17, 2007.

Sec. 1501.108. RENEWABILITY OF COVERAGE; CANCELLATION. (a) Except as provided by this section and Section 1501.109, a small or large employer health benefit plan issuer shall renew the small or large employer health benefit plan for any covered small or large employer, as applicable, at the employer's option, unless:

(1) a premium has not been paid as required by the terms of the plan;

(2) the employer has committed fraud or has intentionally misrepresented a material fact;

(3) the employer has not complied with the terms of the plan;

(4) no enrollee in the plan resides or works in the geographic service area of the small or large employer health benefit plan issuer or in the area for which the issuer is authorized to do business; or

(5) membership of the employer in an association terminates, but only if coverage is terminated uniformly without regard to a health status related factor of a covered individual.

(b) A small or large employer health benefit plan issuer may refuse to renew the coverage of a covered employee or dependent for fraud or intentional misrepresentation of a material fact by that individual.

(c) A small or large employer health benefit plan issuer may not cancel a small or large employer health benefit plan except for a reason specified for refusal to renew under Subsection (a). A small or large employer health benefit plan issuer may not cancel the coverage of a covered employee or dependent except for a reason specified for refusal to renew under Subsection (b).

(d) Notwithstanding Subsection (a), a small or large employer health benefit plan issuer may modify a small or large employer health benefit plan in accordance with Section 1369.0541 or if:

(1) the modification occurs at the time of coverage renewal;

(2) the modification is effective uniformly among all small

or large employers covered by that health benefit plan; and

(3) the issuer notifies the commissioner and each affected covered small or large employer of the modification not later than the 60th day before the date the modification is effective.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 891 (H.B. 2467), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 501 (H.B. 1405), Sec. 8, eff. September 1, 2011.

Sec. 1501.109. REFUSAL TO RENEW; DISCONTINUATION OF COVERAGE. (a) A small or large employer health benefit plan issuer may elect to refuse to renew all small or large employer health benefit plans delivered or issued for delivery by the issuer in this state or in a geographic service area. The issuer shall notify:

(1) the commissioner of the election not later than the 180th day before the date coverage under the first plan terminates under this subsection; and

(2) each affected covered small or large employer not later than the 180th day before the date coverage terminates for that employer.

(b) A small employer health benefit plan issuer that elects under this section to refuse to renew all small employer health benefit plans in this state or in a geographic service area may not write a new small employer health benefit plan in this state or in the geographic service area, as applicable, before the fifth anniversary of the date notice is provided to the commissioner under Subsection (a).

(c) A large employer health benefit plan issuer that elects under this section to refuse to renew all large employer health benefit plans in this state or in a geographic service area may not write a new large employer health benefit plan in this state or in the geographic service area, as applicable, before the fifth anniversary of the date notice is provided to the commissioner under Subsection (a).

(d) A small or large employer health benefit plan issuer may elect to discontinue a particular type of small or large employer

coverage only if the issuer:

(1) before the 90th day preceding the date of the discontinuation of the coverage:

(A) provides notice of the discontinuation to the employer and the commissioner; and

(B) offers to each employer the option to purchase other small or large employer coverage offered by the issuer at the time of the discontinuation; and

(2) acts uniformly without regard to the claims experience of the employer or any health status related factors of eligible employees, eligible employees' dependents, or new employees or dependents who may become eligible for the coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 2.01, eff. September 1, 2015.

Sec. 1501.110. NOTICE TO COVERED PERSONS. (a) A small or large employer health benefit plan issuer that cancels or refuses to renew coverage under a small or large employer health benefit plan under Section 1501.108 or 1501.109 shall, not later than the 30th day before the date termination of coverage is effective, notify the small or large employer of the cancellation of or refusal to renew coverage. The employer is responsible for notifying enrollees in the plan of the cancellation of or refusal to renew coverage.

(b) The notice provided to a small or large employer by a small or large employer health benefit plan issuer under this section is in addition to any other notice required by Section 1501.109.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.111. WRITTEN STATEMENT OF DENIAL, CANCELLATION, OR REFUSAL TO RENEW REQUIRED. Denial by a small or large employer health benefit plan issuer of an application from a small or large employer for coverage from the issuer or cancellation of or refusal to renew coverage by a small or large employer health benefit plan issuer must:

(1) be in writing; and

(2) state the reason or reasons for the denial, cancellation, or refusal to renew.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER D. GUARANTEED ISSUE OF SMALL EMPLOYER HEALTH BENEFIT PLANS; CONTINUATION OF COVERAGE

Sec. 1501.151. GUARANTEED ISSUE. (a) A small employer health benefit plan issuer shall issue the small employer health benefit plan chosen by the small employer to each small employer that elects to be covered under the plan and agrees to satisfy the other requirements of the plan.

(b) A small employer health benefit plan issuer shall provide small employer health benefit plans without regard to health status related factors.

(c) This chapter does not require a small employer to purchase health coverage for the employer's employees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.152. EXCLUSION OF ELIGIBLE EMPLOYEE OR DEPENDENT PROHIBITED. A small employer health benefit plan issuer may not exclude an eligible employee or dependent, including a late enrollee, who would otherwise be covered under a small employer group.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.153. EMPLOYER CONTRIBUTION. (a) This chapter does not require a small employer to make an employer contribution to the premium paid to a small employer health benefit plan issuer, but the issuer may require an employer contribution in accordance with the issuer's usual and customary practices applicable to the issuer's employer group health benefit plans in this state. The issuer shall apply the employer contribution level uniformly to each small employer offered or issued coverage by the issuer in this state.

(a-1) Notwithstanding Subsection (a), a small employer health benefit plan issuer may offer a small employer the option of a small employer health benefit plan for which the employer is required to

contribute 100 percent of the premium paid. A plan offered under this subsection may be offered in addition to a plan offered by the issuer in accordance with Subsection (a) that requires a lower percentage of the premium paid to be contributed by the employer. A plan issued under this subsection must require the employer to contribute 100 percent of the premium paid for each eligible participating employee.

(b) If two or more small employer health benefit plan issuers participate in a purchasing cooperative established under Section 1501.056, each participating issuer may use the employer contribution requirement established by the cooperative for policies marketed by the cooperative.

(c) A small employer that elects to make an employer contribution to the premium paid to a small employer health benefit plan issuer is not required to pay any amount with respect to an employee who elects not to be covered.

(d) A small employer may elect to pay the premium for additional coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 462 (S.B. 80), Sec. 1, eff. September 1, 2009.

Sec. 1501.154. MINIMUM PARTICIPATION REQUIREMENT. (a) Except as provided by Section 1501.155, coverage is available under a small employer health benefit plan if at least 75 percent of a small employer's eligible employees elect to participate in the plan.

(b) If a small employer offers multiple health benefit plans, the collective participation in those plans must be at least:

(1) 75 percent of the employer's eligible employees; or

(2) if applicable, the lower participation level offered by the small employer health benefit plan issuer under Section 1501.155.

(c) A small employer health benefit plan issuer may elect not to offer a health benefit plan to a small employer that offers multiple health benefit plans if:

(1) the plans are provided by more than one issuer; and

(2) the issuer would have less than 75 percent of the employer's eligible employees enrolled in the issuer's plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.054(a), eff. September 1, 2005.

Sec. 1501.155. EXCEPTION TO MINIMUM PARTICIPATION REQUIREMENT. (a) A small employer health benefit plan issuer may offer a small employer health benefit plan to a small employer with a participation level of less than 75 percent of the employer's eligible employees if the issuer permits the same qualifying participation level for each small employer health benefit plan offered by the issuer in this state.

(b) A small employer health benefit plan issuer may offer a small employer health benefit plan to a small employer even if the employer's participation level is less than the issuer's qualifying participation level established in accordance with Subsection (a) if:

(1) the employer obtains a written waiver from each eligible employee who declines coverage under a health benefit plan offered to the employer stating that the employee was not induced or pressured to decline coverage because of the employee's risk characteristics; and

(2) the issuer accepts or rejects the entire group of eligible employees who choose to participate and excludes only those employees who have declined coverage.

(c) A small employer health benefit plan issuer may underwrite the group of eligible employees who do not decline coverage under Subsection (b).

(d) A small employer health benefit plan issuer may not provide coverage to a small employer or the employer's employees under Subsection (b) if the issuer or an agent for the issuer knows that the employer has induced or pressured an eligible employee or a dependent of the employee to decline coverage because of the individual's risk characteristics.

(e) A small employer health benefit plan issuer, a small employer, or an agent may not use the exception provided by Subsection (b) to circumvent the requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.156. EMPLOYEE ENROLLMENT; WAITING PERIOD. (a) The initial enrollment period under a small employer health benefit plan for employees and dependents must be at least 31 days, with a 31-day open enrollment period provided annually.

(b) A small employer may establish a waiting period not to exceed 90 days from the first day of employment.

(c) A small employer health benefit plan issuer may not deny coverage to a new employee of a covered small employer or the employee's dependents if the issuer receives an application for coverage not later than the 31st day after the date employment begins or on completion of a waiting period established under Subsection (b).

(d) A small employer health benefit plan issuer may deny coverage to a late enrollee until the next annual open enrollment period and may subject the enrollee to a one-year preexisting condition provision as described by Section 1501.102. The period during which the preexisting condition provision applies may not exceed 18 months from the date of the initial application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.157. COVERAGE FOR NEWBORN CHILDREN. (a) A small employer health benefit plan may not limit or exclude initial coverage of a newborn child of a covered employee.

(b) Coverage of a newborn child of a covered employee under this section ends on the 32nd day after the date of the child's birth unless, not later than the 31st day after the date of birth, the small employer health benefit plan issuer receives:

(1) notice of the birth; and

(2) any required additional premium.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.158. COVERAGE FOR ADOPTED CHILDREN. (a) A small employer health benefit plan may not limit or exclude initial coverage of an adopted child of an insured. A child is considered to be the child of an insured if the insured is a party to a suit in which the insured seeks to adopt the child.

(b) An adopted child of an insured may be enrolled, at the

insured's option, not later than the 31st day after:

(1) the date the insured becomes a party to a suit in which the insured seeks to adopt the child; or

(2) the date the adoption becomes final.

(c) Coverage of an adopted child of an insured under this section ends unless the small employer health benefit plan issuer receives notice of the adoption and any required additional premium not later than the 31st day after:

(1) the date the insured becomes a party to a suit in which the insured seeks to adopt the child; or

(2) the date the adoption becomes final.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.159. CONTINUATION OF COVERAGE FOR CERTAIN DEPENDENTS. An employee's dependent may choose to continue coverage under a small employer health benefit plan if:

(1) the dependent:

(A) is under one year of age; or

(B) has been covered by the small employer under a plan for at least one year;

(2) the dependent loses eligibility for coverage because of the death, divorce, or retirement of the employee, as provided by Subchapter G, Chapter 1251; and

(3) the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) does not require continuation or conversion coverage for dependents of an employee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER E. UNDERWRITING AND RATING OF SMALL EMPLOYER HEALTH BENEFIT PLANS

Sec. 1501.201. DEFINITIONS. In this subchapter:

(1) "Base premium rate" means, for each class of business and for a specific rating period, the lowest premium rate that is charged or that could be charged under a rating system for that class of business by a small employer health benefit plan issuer to small employers with similar case characteristics for small employer health benefit plans that provide the same or similar coverage.

(2) "Case characteristics" means, with respect to a small employer, the geographic area in which the employer's employees reside, the age and gender of the individual employees and their dependents, the number of employees and dependents, the appropriate industry classification as determined by the small employer health benefit plan issuer, and other objective criteria established by the issuer that are considered by the issuer in setting premium rates for the employer. The term does not include:

(A) health status related factors;

(B) duration of coverage since the date of issuance of a health benefit plan; or

(C) whether a covered individual is or may become pregnant.

(3) "Class of business" means all small employers or a separate grouping of small employers established under this subchapter.

(4) "Index rate" means, for each class of business and for a specific rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and corresponding highest premium rate.

(5) "New business premium rate" means, for each class of business and for a specific rating period, the lowest premium rate that is charged or offered or that could be charged or offered by a small employer health benefit plan issuer to small employers with similar case characteristics for newly issued small employer health benefit plans that provide the same or similar coverage.

(6) "Rating period" means a calendar period during which premium rates established by a small employer health benefit plan issuer are assumed to be in effect.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.202. ESTABLISHMENT OF CLASSES OF BUSINESS. (a) Except as otherwise provided by this subchapter, a small employer health benefit plan issuer may not establish a separate class or classes of business for small employers.

(b) A small employer health benefit plan issuer may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs related to the

following reasons:

(1) the issuer uses more than one type of system to market and sell small employer health benefit plans to small employers;

(2) the issuer has acquired a class of business from another small employer health benefit plan issuer; or

(3) the issuer provides coverage to one or more employer-based association groups.

(c) Except as provided by Subsection (e), a small employer health benefit plan issuer may not establish more than nine separate classes of business under this section.

(d) The commissioner may adopt rules to provide for a transition period to permit a small employer health benefit plan issuer to comply with Subsection (c) after acquiring an additional class of business from another small employer health benefit plan issuer.

(e) On application to the commissioner, the commissioner may approve the establishment of additional classes of business if the commissioner finds that the establishment of additional classes would enhance the efficiency and fairness of the health coverage market for small employers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.203. ESTABLISHMENT OF CLASSES OF BUSINESS ON CERTAIN BASES PROHIBITED. (a) A small employer health benefit plan issuer may not establish a separate class of business based on:

(1) participation requirements; or

(2) whether the coverage provided to a small employer group is provided on a guaranteed issue basis or is subject to underwriting or proof of insurability.

(b) A small employer health benefit plan issuer may not directly or indirectly use as a criterion for establishing a separate class of business:

(1) the number of employees and dependents of a small employer; or

(2) except as provided by Section 1501.202(b)(3), the trade or occupation of the employees of a small employer or the industry or type of business of the small employer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.204. INDEX RATES. Under a small employer health benefit plan:

(1) the index rate for a class of business may not exceed the index rate for any other class of business by more than 20 percent; and

(2) premium rates charged during a rating period to small employers in a class of business with similar case characteristics for the same or similar coverage, or premium rates that could be charged to those employers under the rating system for that class of business, may not vary from the index rate by more than 25 percent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.205. PREMIUM RATES: ESTABLISHMENT. (a) In this section:

(1) "Risk characteristic" means:

(A) a health status related factor;

(B) the duration of coverage; or

(C) any characteristic similar to a characteristic described by Paragraph (A) or (B) that is related to the health status or experience of a small employer group or of any member of a small employer group.

(2) "Risk load" means the percentage above the applicable base premium rate a small employer health benefit plan issuer charges to a small employer to reflect the risk characteristics associated with that particular small employer group.

(b) Small employer health benefit plan issuers shall develop premium rates for each small employer group in a two-step process. In the first step, the small employer health benefit plan issuer shall develop a base premium rate for each small employer group without regard to any risk characteristic of the group. In the second step, the small employer health benefit plan issuer may adjust the resulting base premium rate by the risk load of the group, subject to this subchapter, to reflect the risk characteristics of the group.

(c) The risk load assessed to a particular group shall reflect the risk characteristics of the particular group.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.206. PREMIUM RATES: ADJUSTMENTS. (a) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:

(1) the percentage change in the new business premium rate, measured from the first day of the preceding rating period to the first day of the new rating period;

(2) any adjustment, not to exceed 15 percent annually and adjusted pro rata for a rating period of less than one year, due to the claims experience, health status, or duration of coverage of the employees or dependents of employees of the small employer, as determined under the small employer health benefit plan issuer's rate manual for the class of business; and

(3) any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined under the issuer's rate manual for the class of business.

(b) An adjustment in the premium rate for claims experience, health status, or duration of coverage:

(1) may not be charged to individual employees or dependents; and

(2) must be applied uniformly to the rates charged for all employees and dependents of employees of the small employer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.207. PREMIUM RATE ADJUSTMENT IN CLOSED PLAN. For a closed health benefit plan under which a small employer health benefit plan issuer is no longer enrolling new small employers, the issuer shall use the percentage change in the base premium rate to adjust premium rates under Section 1501.206(a)(1). The portion of change in premium rates computed under that subdivision may not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan under which the issuer is enrolling new small employers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.208. PREMIUM RATES: INDUSTRY CLASSIFICATION. A small employer health benefit plan issuer may use the industry classification to which a small employer belongs as a case characteristic in establishing the premium rate, but the highest rate factor associated with any industry classification may not exceed by more than 15 percent the lowest rate factor associated with any industry classification.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.209. PREMIUM RATES: NUMBER OF EMPLOYEES. A small employer health benefit plan issuer may use the number of employees and dependents of a small employer as a case characteristic in establishing premium rates for the group. The highest rate factor associated with a classification based on the number of employees and dependents of a small employer may not exceed by more than 20 percent the lowest rate factor associated with a classification based on the number of employees and dependents of a small employer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.210. PREMIUM RATES: NONDISCRIMINATION. (a) A small employer health benefit plan issuer shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premium rates for identical groups that:

(1) differ only by the amounts attributable to health benefit plan design; and

(2) do not reflect differences because of the nature of the groups assumed to select particular health benefit plans.

(b) A small employer health benefit plan issuer shall treat each health benefit plan issued or renewed in the same calendar month as having the same rating period.

(c) Without the prior approval of the commissioner, a small employer health benefit plan issuer may not use case characteristics other than:

(1) the geographic area in which the small employer's employees reside;

(2) the age and gender of the individual employees and

their dependents;

(3) the number of employees and dependents; and

(4) the appropriate industry classification.

(d) Premium rates for a small employer health benefit plan must comply with the requirements of this chapter, notwithstanding any assessment paid or payable by a small employer health benefit plan issuer.

(e) A small employer health benefit plan issuer may not transfer a small employer involuntarily into or out of a class of business. The issuer may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all other small employers in the employer's class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the issuance of the health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.211. RULES CONCERNING PREMIUM RATES. Rules adopted under Section 1501.010 may ensure that:

(1) rating practices used by small employer health benefit plan issuers are consistent with the purposes of this chapter; and

(2) differences in premium rates charged for each small employer health benefit plan are reasonable and reflect objective differences in plan design.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.212. RESTRICTED PROVIDER NETWORK. (a) A small employer health benefit plan may use a restricted provider network to provide benefits under the plan.

(b) A small employer health benefit plan that uses a restricted provider network does not provide similar coverage to a plan that does not use a restricted provider network if the use of the network results in reduced premium rates charged to the small employer or substantial differences in claim costs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.213. PREMIUM RATES: HEALTH MAINTENANCE ORGANIZATION HEALTH BENEFIT PLAN. (a) The premium rates for a state-approved health benefit plan offered by a health maintenance organization under Section 1501.255 must be established in accordance with formulas or schedules of charges filed with the department.

(b) A health maintenance organization that participates in a purchasing cooperative that provides employees of small employers a choice of health benefit plans may use rating methods in accordance with this subchapter that are used by other small employer health benefit plan issuers participating in the same cooperative, including rating by age and gender, if the health maintenance organization has established:

(1) a separate class of business, as provided by Section 1501.202; and

(2) a separate line of business, as provided under Section 1501.255(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.055(a), eff. September 1, 2005.

Sec. 1501.214. ENFORCEMENT. If the commissioner determines that a small employer health benefit plan issuer subject to this chapter exceeds the applicable premium rate established under this subchapter, the commissioner may order restitution and assess penalties as provided by Chapter 82.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.215. REPORTING REQUIREMENTS. (a) Annually, each small employer health benefit plan issuer that offers a small employer health benefit plan shall file with the commissioner an actuarial certification stating that the issuer's underwriting and rating methods:

(1) comply with accepted actuarial practices;

(2) are uniformly applied to each small employer health benefit plan covering a small employer; and

(3) comply with this subchapter.

(b) Each small employer health benefit plan issuer shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based on commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(c) A small employer health benefit plan issuer shall make the information and documentation described in Subsection (b) available to the commissioner on request. Unless the information or documentation relates to a violation of this chapter, the information or documentation is considered proprietary and trade secret information and is not subject to disclosure by the commissioner to a person outside the department except as agreed to by the issuer or as ordered by a court.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.216. PREMIUM RATES: NOTICE OF INCREASE. (a) Not less than 60 days before the date on which a premium rate increase takes effect on a small employer health benefit plan delivered or issued for delivery in this state by an insurer, the insurer shall:

(1) give written notice to the small employer of the effective date of the increase; and

(2) provide the small employer a table that clearly lists:

(A) the actual dollar amount of the premium on the date of the notice;

(B) the actual dollar amount of the premium after the premium rate increase; and

(C) the percentage change between the amounts described by Paragraphs (A) and (B).

(b) The notice required by this section must be based on coverage in effect on the date of the notice.

(c) This section may not be construed to prevent an insurer, at the request of a small employer, from negotiating a change in benefits or rates after delivery of the notice required by this section.

(d) An insurer may not require a small employer entitled to notice under this section to respond to the insurer to renew the

policy or take other action relating to the renewal or extension of the policy before the 45th day after the date the notice described by Subsection (a) is given.

(e) The notice required by this section must include:

(1) contact information for the department, including information concerning how to file a complaint with the department;

(2) contact information for the Texas Consumer Health Assistance Program, including information concerning how to request from the program consumer protection information or assistance with filing a complaint; and

(3) the addresses of Internet websites that provide consumer information related to rate increase justifications, including the websites of the department and the United States Department of Health and Human Services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.003, eff. September 1, 2011.

SUBCHAPTER F. COVERAGE UNDER SMALL EMPLOYER HEALTH BENEFIT PLANS

Sec. 1501.251. EXCEPTION FROM CERTAIN MANDATED BENEFIT REQUIREMENTS. Except as expressly provided by this chapter, a small employer health benefit plan is not subject to a law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.252. HEALTH BENEFIT PLANS. (a) A small employer health benefit plan issuer shall offer a standard health benefit plan as authorized by Chapter 1507.

(b) A small employer health benefit plan issuer may offer to a small employer additional benefit riders to the standard health benefit plan or may design and offer standard health benefit plans with additional mandatory benefits.

(c) Subject to this chapter, a small employer health benefit plan issuer shall also offer to a small employer at least one other health benefit plan authorized under this code that provides state-mandated health benefits. Section 1501.251 does not apply to a health benefit plan offered to a small employer under this

subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.056(a), eff. September 1, 2005.

Sec. 1501.254. ALCOHOL AND SUBSTANCE ABUSE BENEFITS. (a) This section applies only if the basic coverage health benefit plan developed by the commissioner under Section 1501.253 includes coverage for alcohol and substance abuse benefits.

(b) A small employer health benefit plan issuer may offer and the employees of a small employer group may accept a basic coverage health benefit plan without coverage for alcohol and substance abuse benefits if:

(1) at least 50 percent of the employees in writing:

(A) waive the benefits; and

(B) indicate that they have undergone alcoholism or substance abuse treatment or counseling within the preceding three years; and

(2) the exclusion of those benefits applies only to those employees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.255. HEALTH MAINTENANCE ORGANIZATION PLANS. (a) In this section, "point-of-service contract" means a health benefit plan offered through a health maintenance organization that:

(1) includes corresponding indemnity benefits in addition to benefits relating to out-of-area or emergency services provided through insurers or group hospital service corporations; and

(2) permits the covered individual to obtain coverage under either the health maintenance organization conventional plan or the indemnity plan as determined in accordance with the terms of the contract.

(b) A health maintenance organization:

(1) shall offer at least one state-approved basic health care plan that complies with this chapter, Chapters 843, 1271, 1272, and 1367, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507,

Title XIII, Public Health Service Act (42 U.S.C. Section 300e et seq.), and its subsequent amendments, and rules adopted under those laws and may offer additional such plans;

(2) shall offer a standard health benefit plan under Subchapter B, Chapter 1507, and may offer additional benefit riders to the standard health benefit plan or offer standard health benefit plans with additional mandatory benefits; and

(3) may offer a point-of-service contract in connection with an insurer that includes optional coverage for out-of-area services, emergency care, or out-of-network care.

(c) A point-of-service contract offered under Subsection (b)(3) is subject to this chapter unless specifically exempted. The insurer with which the health maintenance organization offers a point-of-service contract is not required to otherwise make available the health benefit plans adopted under this subchapter if the insurer's small employer products are limited to the point-of-service contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.057(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(i), eff. September 1, 2005.

Sec. 1501.256. COORDINATION WITH FEDERAL LAW. (a) To the extent required to comply with federal law applicable to a small employer health benefit plan described by this subchapter, the commissioner by rule may:

(1) modify the plan; or

(2) adopt a substitute for the plan.

(b) The commissioner shall use the Texas Health Benefits Purchasing Cooperative in implementing this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.2561. WAIVER OF CERTAIN FEDERAL REQUIREMENTS. The commissioner may apply to and negotiate with the United States secretary of health and human services to obtain a waiver under 42 U.S.C. Section 18052 for small employer health benefit plans of the

actuarial value requirements and related levels of health plan coverage requirements imposed under 42 U.S.C. Section 18022(d)(3).

Added by Acts 2017, 85th Leg., R.S., Ch. 106 (S.B. 1406), Sec. 1, eff. May 23, 2017.

Sec. 1501.257. COST CONTAINMENT. (a) A small employer health benefit plan issuer may use cost containment and managed care features in a small employer health benefit plan, including:

(1) utilization review of health care services, including review of the medical necessity of hospital and physician services;

(2) case management, including discharge planning and review of stays in hospitals or other health care facilities;

(3) selective contracting with hospitals, physicians, and other health care providers;

(4) reasonable benefit differentials applicable to health care providers that participate or do not participate in restricted network arrangements;

(5) precertification or preauthorization for certain covered services; and

(6) coordination of benefits.

(b) A provision of a small employer health benefit plan that provides for coordination of benefits must comply with this chapter and guidelines established by the commissioner.

(c) Utilization review performed for any cost containment, case management, or managed care arrangement must comply with Chapter 4201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.015, eff. April 1, 2009.

Sec. 1501.258. FORMS. (a) A small employer health benefit plan issuer shall comply with:

(1) Chapter 1701 as it relates to policy form approval; and

(2) Chapter 1271 as it relates to evidence of coverage approval.

(b) A small employer health benefit plan issuer may not offer

benefit plans through a policy form or evidence of coverage that does not comply with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.058(b), eff. September 1, 2005.

Sec. 1501.259. RIDERS; FILING WITH COMMISSIONER. (a) A small employer health benefit plan issuer shall file with the commissioner, in a form and manner prescribed by the commissioner, each rider to a small employer health benefit plan to be used by the issuer, as authorized by Section 1501.252.

(b) A small employer health benefit plan issuer may use a rider filed under this section after the 30th day after the date the rider is filed unless the commissioner disapproves its use.

(c) The commissioner, after notice and an opportunity for a hearing, may disapprove the continued use of a rider by a small employer health benefit plan issuer if the rider does not meet the requirements of this chapter and other applicable statutes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.260. PLAIN LANGUAGE REQUIRED. (a) A health benefit plan issuer may not issue and the commissioner may not approve a health benefit plan certificate or policy or a rider to a health benefit plan certificate or policy unless it is written in plain language.

(b) Each provision of a health benefit plan certificate or policy or a rider to a health benefit plan certificate or policy relating to renewal of coverage, conditions of coverage, or per occurrence or aggregate dollar limitations on coverage must be clearly explained in plain language.

(c) A health benefit plan issuer may not use and the commissioner may not approve a health benefit plan application form unless it is written in plain language.

(d) Subsections (a)-(c) do not apply if the specific language to be used is required by federal law or state statute or by rules implementing federal law.

(e) For purposes of Subsections (a)-(d), a health benefit plan certificate or policy, a rider to or a provision of a health benefit plan certificate or policy, or a health benefit plan application form is written in plain language if it achieves the minimum score established by the commissioner on the Flesch reading ease test or an equivalent test selected by the commissioner.

(f) This section does not apply to:

(1) a health benefit plan group master policy; or

(2) a policy application or enrollment form for a health benefit plan group master policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER G. REINSURANCE FOR SMALL EMPLOYER HEALTH BENEFIT PLANS

Sec. 1501.301. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the Texas Health Reinsurance System.

(2) "Plan of operation" means the plan of operation of the system established under Section 1501.306.

(3) "Reinsured health benefit plan issuer" means a small employer health benefit plan issuer that participates in the system.

(4) "Risk-assuming health benefit plan issuer" means a small employer health benefit plan issuer that does not participate in the system.

(5) "System" means the Texas Health Reinsurance System established under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.302. TEXAS HEALTH REINSURANCE SYSTEM. (a) The Texas Health Reinsurance System is a nonprofit entity administered by a board of directors and subject to the supervision and control of the commissioner.

(b) The system may operate only during the period an order authorizing operation of the system under Section 1501.3021 is in effect. The system may not operate after the effective date of an order of suspension of operation of the system under Section 1501.3022 until a subsequent order authorizing the operation of the system under Section 1501.3021, if any, is effective.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 105 (S.B. 1171), Sec. 1, eff. May 23, 2017.

Sec. 1501.3021. AUTHORIZATION OF OPERATION. (a) The commissioner shall hold a hearing if:

(1) the commissioner believes small employer health benefit plan issuers in this state are threatened with the inability to secure reinsurance coverage in the open market; or

(2) the commissioner receives a petition requesting the hearing from an association of health benefit plan issuers in this state or a group of at least 15 small employer health benefit plan issuers operating in this state.

(b) If, after a hearing under Subsection (a), the commissioner finds that the operation of the system is in the public interest, the commissioner by order shall:

(1) authorize the operation of the system;

(2) appoint a board of directors under Section 1501.303; and

(3) direct the board to develop a plan of operation under Section 1501.306 to ensure the system is fully implemented on a date specified in the order that is not later than the 60th day after the effective date of the order.

(c) Sections 1501.307-1501.326 apply to the operation of the system after the date the system is implemented as described by Subsection (b)(3).

Added by Acts 2017, 85th Leg., R.S., Ch. 105 (S.B. 1171), Sec. 2, eff. May 23, 2017.

Sec. 1501.3022. SUSPENSION OF OPERATION. (a) The commissioner shall hold a hearing if the system is operating or is authorized to operate and:

(1) the commissioner believes small employer health benefit plan issuers in this state are not threatened with the inability to secure reinsurance coverage in the open market; or

(2) the commissioner receives a petition requesting the

hearing from an association of health benefit plan issuers in this state or a group of at least 15 small employer health benefit plan issuers operating in this state.

(b) If, after a hearing under Subsection (a), the commissioner finds that suspension of the operation of the system is in the public interest, the commissioner by order shall direct the board to submit to the commissioner for approval, not later than the 60th day after the date of the order, a plan of suspension of operation of the system.

(c) A plan of suspension under Subsection (b) must:

(1) specify the date after which a health benefit plan issuer that is a risk-assuming health benefit plan issuer on the effective date of the plan of suspension may not:

(A) become a reinsured health benefit plan issuer under Sections 1501.310, 1501.311, and 1501.312; and

(B) reinsure with the system a small employer group, or any risk, covered under any small employer health benefit plan;

(2) specify the date after which a health benefit plan issuer that is a reinsured health benefit plan issuer on the effective date of the plan of suspension may not:

(A) reinsure with the system additional small employer groups in accordance with Section 1501.314; or

(B) cede additional eligible lives to the system in accordance with Section 1501.314;

(3) provide for:

(A) the filing, receipt, processing, and payment of all claims against and debts of the system, and extinguishment of all liabilities of the system, including balances on any lines of credit that may have been established by or on behalf of the system;

(B) the collection and receipt of all assessments made with respect to reinsured health benefit plan issuers, including any deferred assessments and any final assessment made under Subsection (f); and

(C) a final audit of the system by the state auditor as provided by Subsection (g);

(4) specify that the transactions required by the plan of suspension and addressed in Subdivisions (1)-(3) must be closed not later than the effective date of the suspension of the operation of the system as specified under Subdivision (5);

(5) state the effective date of the suspension of the

operation of the system; and

(6) provide for the proportionate distribution of any surplus assets of the system that remain after the date specified under Subdivision (5).

(d) The effective date of the suspension of the operation of the system as specified under Subsection (c)(5) may not be later than the 270th day after the date the commissioner by order approves the plan of suspension.

(e) If the board fails to submit a suitable plan of suspension, the commissioner, after notice and hearing, shall adopt a plan in accordance with Subsection (c).

(f) The board may make a final assessment of the small employer health benefit plan issuers that, for any portion of the last year in which the system operated, were reinsured health benefit plan issuers. An assessment under this subsection may be made only if the board determines the assessment is necessary to recover net losses of the system, as provided in Sections 1501.319-1501.326, including administrative expenses for transactions essential to complete execution of the plan of suspension, and the cost of the final audit by the state auditor.

(g) The transactions necessary to complete execution of the plan of suspension are subject to audit by the state auditor under Chapter 321, Government Code. The state auditor shall report the cost of the final audit conducted under this section to the board and the comptroller, and the board shall remit that amount to the comptroller for deposit to the general revenue fund.

(h) The board serving immediately before the effective date of the suspension of the operation of the system is discharged on the effective date of the suspension of the operation of the system as specified under Subsection (c)(5).

(i) After the effective date of the suspension of the operation of the system as specified under Subsection (c)(5), the commissioner shall take any action necessary under Subsection (c)(6) to distribute the surplus assets of the system until all remaining assets are distributed.

(j) During a period in which the operation of the system is suspended, Sections 1501.307-1501.326 have no effect.

Added by Acts 2017, 85th Leg., R.S., Ch. 105 (S.B. 1171), Sec. 2, eff. May 23, 2017.

Sec. 1501.303. SYSTEM BOARD OF DIRECTORS. (a) The board of directors of the system is composed of:

(1) nine members appointed by the commissioner; and

(2) the commissioner or the commissioner's representative, who serves as an ex officio member.

(b) Five of the appointed members must be representatives of reinsured health benefit plan issuers selected from individuals nominated by small employer health benefit plan issuers in this state according to procedures developed by the commissioner.

(c) Four of the appointed members must represent the public. A member representing the public may not:

(1) be an officer, director, or employee of an insurance company, agency, agent, broker, solicitor, or adjuster or any other business entity regulated by the department;

(2) be a person required to register under Chapter 305, Government Code; or

(3) be related to a person described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

(d) Appointed members serve two-year terms expiring December 31 of each odd-numbered year. A member's term continues until a successor is appointed.

(e) A member of the board may not be compensated for serving on the board but is entitled to reimbursement for actual expenses incurred in performing functions as a member of the board as provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.304. OPEN MEETINGS; PUBLIC INFORMATION. The board is subject to:

(1) the open meetings law, Chapter 551, Government Code; and

(2) the public information law, Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.305. BOARD MEMBER IMMUNITY. (a) A member of the board is not liable for an act performed, or omission made, in good faith in the performance of powers and duties under this subchapter.

(b) A cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.306. SYSTEM PLAN OF OPERATION. (a) The board shall submit to the commissioner a plan of operation and any amendments to that plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the system.

(b) The commissioner, after notice and hearing, may approve the plan of operation if the commissioner determines the plan:

(1) is suitable to ensure the fair, reasonable, and equitable administration of the system; and

(2) provides for the sharing of system gains or losses on an equitable and proportionate basis in accordance with this subchapter.

(c) The plan of operation is effective on the written approval of the commissioner.

(d) The plan of operation must:

(1) establish procedures for:

(A) handling and accounting for system assets and money;

(B) making an annual fiscal report to the commissioner;

(C) selecting an administering health benefit plan issuer or third-party administrator and establishing the powers and duties of the administering issuer or third-party administrator;

(D) reinsuring risks in accordance with this subchapter; and

(E) collecting assessments from reinsured health benefit plan issuers to fund claims and administrative expenses incurred or estimated to be incurred by the system, including the imposition of penalties for late payment of an assessment; and

(2) provide for any additional matter necessary to implement and administer the system.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.307. SYSTEM POWERS. (a) The system has the general powers and authority granted under state law to an insurer or a health maintenance organization authorized to engage in business, except that the system may not directly issue a health benefit plan.

(b) The system may:

(1) enter into contracts necessary or proper to implement this subchapter, including, with the commissioner's approval, contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(2) sue or be sued, including taking legal action necessary or proper to recover assessments and penalties for, on behalf of, or against the system or a reinsured health benefit plan issuer;

(3) take legal action necessary to avoid the payment of improper claims against the system;

(4) issue reinsurance contracts in accordance with this subchapter;

(5) establish guidelines, conditions, and procedures for reinsuring risks under the plan of operation;

(6) establish actuarial functions as appropriate for the operation of the system;

(7) assess reinsured health benefit plan issuers in accordance with Sections 1501.319-1501.323;

(8) appoint appropriate legal, actuarial, and other committees necessary to provide technical assistance in:

(A) the operation of the system;

(B) policy and other contract design; and

(C) any other function within the authority of the system; and

(9) borrow money for a period not to exceed one year to accomplish the purposes of the system.

(c) The system is exempt from all taxes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.308. SYSTEM NOTES AS LEGAL INVESTMENT FOR SMALL EMPLOYER HEALTH BENEFIT PLAN ISSUER. A note or other evidence of indebtedness of the system that is not in default is a legal investment for a small employer health benefit plan issuer and may be

carried as an admitted asset.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.309. SYSTEM AUDIT. (a) The transactions of the system are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) The state auditor shall report the cost of each audit conducted under this section to the board and the comptroller, and the board shall remit that amount to the comptroller.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.310. ELECTION OF STATUS. (a) Each small employer health benefit plan issuer shall notify the commissioner of the issuer's election to operate as a risk-assuming health benefit plan issuer or as a reinsured health benefit plan issuer. An issuer that elects to operate as a risk-assuming health benefit plan issuer shall file an application in accordance with Section 1501.312.

(b) A small employer health benefit plan issuer's election under this section is effective until the fifth anniversary of the date of the election.

(c) The commissioner may permit a small employer health benefit plan issuer to modify its election at any time for good cause shown.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.311. CHANGE IN STATUS. (a) The commissioner shall establish an application process for a small employer health benefit plan issuer that elects to change its status under this subchapter.

(b) A reinsured health benefit plan issuer that elects to change its status to operate as a risk-assuming health benefit plan issuer may not continue to reinsure a small employer health benefit plan with the system. The issuer shall pay a prorated assessment based on business issued as a reinsured health benefit plan issuer for the portion of the year the business was reinsured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.312. APPLICATION TO OPERATE AS RISK-ASSUMING HEALTH BENEFIT PLAN ISSUER. (a) A small employer health benefit plan issuer may apply to operate as a risk-assuming health benefit plan issuer by filing an application with the commissioner in a form and manner prescribed by the commissioner.

(b) In evaluating an application, the commissioner shall consider the small employer health benefit plan issuer's:

(1) financial condition;

(2) history of rating and underwriting small employer groups;

(3) commitment to market fairly to all small employers in the state or in the issuer's established geographic service area; and

(4) experience managing the risk of small employer groups.

(c) The commissioner shall provide public notice of an application and shall provide at least a 60-day period for public comment before making a decision on the application. If the commissioner does not act on the application before the 90th day after the date the commissioner receives the application, the issuer may request and the commissioner shall grant a hearing.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.313. RESCISSION OF APPROVAL TO OPERATE AS RISK-ASSUMING HEALTH BENEFIT PLAN ISSUER. The commissioner, after notice and hearing, may rescind approval to operate as a risk-assuming health benefit plan issuer if the commissioner finds that the issuer:

(1) is not financially able to support the assumption of risk from issuing coverage to small employers without the protection provided by the system;

(2) has failed to market fairly to all small employers in the state or in the issuer's established geographic service area; or

(3) has failed to provide coverage to eligible small employers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.314. REINSURANCE. (a) A small employer health benefit plan issuer may reinsure risks covered under a small employer health benefit plan with the system as provided by this subchapter.

(b) The system shall reinsure the level of coverage provided under the small employer health benefit plan.

(c) A small employer health benefit plan issuer may reinsure:

(1) an entire small employer group not later than the 60th day after the date the group's coverage under the small employer health benefit plan takes effect;

(2) an eligible employee of a small employer or the employee's dependent not later than the 60th day after the date the person's coverage takes effect; or

(3) a newly eligible employee of a reinsured small employer group, the employee's dependent, or an individual covered under the small employer health benefit plan not later than the 60th day after the date the individual's coverage takes effect.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.315. LIMITS ON REINSURANCE. (a) The system may not reimburse a reinsured health benefit plan issuer for the claims of a reinsured individual until the issuer has incurred an initial level of claims of $5,000 in a calendar year for that individual for benefits covered by the system. In addition, the reinsured health benefit plan issuer is responsible for 10 percent of the next $50,000 of benefit payments during a calendar year, and the system shall reinsure the remainder. A reinsured health benefit plan issuer's liability to a reinsured individual may not exceed a maximum of $10,000 in a calendar year.

(b) The board annually shall adjust the initial level of claims and the maximum liability to be retained by a reinsured health benefit plan issuer under Subsection (a) to reflect increases in:

(1) costs; and

(2) the use of small employer health benefit plans in this state.

(c) An adjustment under Subsection (b) may not be less than the annual change in the medical component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor unless the board proposes

and the commissioner approves a lower adjustment factor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.316. TERMINATION OF REINSURANCE. A small employer health benefit plan issuer may terminate reinsurance with the system for one or more reinsured employees or dependents of employees of a small employer on a contract anniversary of the small employer health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.317. APPLICATION OF MANAGED CARE PROCEDURES. Except as provided by the plan of operation, a reinsured health benefit plan issuer shall apply consistently with respect to reinsured and nonreinsured business all managed care procedures, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.318. PREMIUM RATES FOR REINSURANCE. (a) As part of the plan of operation, the board shall adopt a method to determine premium rates to be charged by the system for reinsuring small employer groups and individuals under this subchapter.

(b) The method adopted must:

(1) include a classification system for small employer groups that reflects the variations in premium rates allowed by this chapter; and

(2) provide for the development of base reinsurance premium rates that reflect the allowable variations.

(c) Subject to approval by the commissioner, the board shall establish the base reinsurance premium rates at levels that reasonably approximate the gross premiums charged to small employers by small employer health benefit plan issuers for small employer health benefit plans, adjusted to reflect retention levels required under this subchapter.

(d) The board shall periodically review the method adopted under this section, including the classification system and any rating factors, to ensure that the method reasonably reflects the claims experience of the system. The board may propose changes to the method. Any changes are subject to approval by the commissioner.

(e) An entire small employer group may be reinsured at a rate that is 1-1/2 times the base reinsurance premium rate for that group. An eligible employee of a small employer or the employee's dependent covered under a small employer health benefit plan may be reinsured at a rate that is five times the base reinsurance premium rate for that individual.

(f) The board may consider adjustments to the premium rates charged by the system to reflect the use of effective cost containment and managed care arrangements.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.319. DETERMINATION OF NET LOSS. (a) Not later than March 1 of each year, the board shall determine the system's net loss for the preceding calendar year, including administrative expenses and incurred losses for the year, and report the net loss to the commissioner.

(b) In determining the net loss, the board shall take into account investment income and other appropriate gains and losses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.320. ASSESSMENTS TO RECOVER NET LOSSES. (a) The board shall recover any net loss of the system by assessing each reinsured health benefit plan issuer an amount determined annually by the board based on information in annual statements and other reports required by and filed with the board.

(b) The board shall establish, as part of the plan of operation, a formula by which to make assessments against reinsured health benefit plan issuers. With the approval of the commissioner, the board may periodically change the assessment formula as appropriate. The board shall base the assessment formula on each reinsured issuer's share of:

(1) the total premiums earned in the preceding calendar

year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers to small employer groups in this state; and

(2) the premiums earned in the preceding calendar year from newly issued small employer health benefit plans delivered or issued for delivery during the calendar year by reinsured health benefit plan issuers to small employer groups in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.321. LIMITS ON ASSESSMENTS. (a) The formula established under Section 1501.320(b) may not result in an assessment for a reinsured health benefit plan issuer that is less than 50 percent or more than 150 percent of an amount based on the proportion of the total premiums earned in the preceding calendar year from small employer health benefit plans delivered or issued for delivery to small employer groups in this state by that issuer to the total premiums earned in the preceding calendar year from small employer health benefit plans delivered or issued for delivery to small employer groups in this state by all reinsured health benefit plan issuers.

(b) In determining assessments, the board may not consider premiums earned by a reinsured health benefit plan issuer that are less than an amount determined by the board to justify the cost of collecting an assessment based on those premiums.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.322. ADJUSTMENT TO ASSESSMENTS ON FEDERALLY QUALIFIED HEALTH MAINTENANCE ORGANIZATIONS. With the commissioner's approval, the board may adjust the formula established under Section 1501.320(b) for a reinsured health benefit plan issuer that is an approved health maintenance organization that is federally qualified under Title XIII, Public Health Service Act (42 U.S.C. Section 300e et seq.), to the extent that any restriction is imposed on that issuer that is not imposed on other issuers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.323. ADVANCE INTERIM ASSESSMENTS. (a) The system may make advance interim assessments as reasonable and necessary for organizational and interim operating expenses.

(b) After the end of the fiscal year, the system shall credit an interim assessment made under this section as an offset against regular assessments due.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.324. LIMIT ON TOTAL ASSESSMENTS. The maximum assessment amount payable for a calendar year may not exceed five percent of the total premiums earned in the preceding calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.325. ESTIMATE OF ASSESSMENTS; EVALUATION AND PROTECTION OF SYSTEM. (a) Not later than March 1 of each year, the board shall file with the commissioner an estimate of the assessments necessary to fund the losses for small employer groups incurred by the system during the preceding calendar year.

(b) If the board determines that the necessary assessments exceed five percent of the total premiums earned in the preceding calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers to small employer groups in this state, the board shall evaluate the operation of the system and shall report its findings, including any recommendations for changes to the plan of operation, to the commissioner not later than April 1 of the year following the calendar year in which the losses were incurred. The evaluation must:

(1) include an estimate of future assessments; and

(2) consider:

(A) the administrative costs of the system;

(B) the appropriateness of the premiums charged;

(C) the level of health benefit plan issuer retention under the system; and

(D) the costs of coverage for small employer groups.

(c) If the board fails to timely file a report required by Subsection (b), the commissioner may:

(1) evaluate the operations of the system; and

(2) implement amendments to the plan of operation that the commissioner considers necessary to reduce future losses and assessments.

(d) A reinsured health benefit plan issuer may not cede additional eligible lives to the system during a calendar year if the assessment amount payable for the preceding calendar year is at least five percent of the total premiums earned in that calendar year from small employer health benefit plans delivered or issued for delivery by reinsured health benefit plan issuers in this state.

(e) A reinsured health benefit plan issuer may not cede additional eligible lives to the system after the board determines that the expected loss from the reinsurance system for a year will exceed the total amount of assessments payable at a rate of five percent of the total premiums earned for the preceding calendar year. A reinsured health benefit plan issuer may not resume ceding additional eligible lives to the system until the board determines that the expected loss will be less than the maximum established by this subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 823 (S.B. 805), Sec. 5, eff. September 1, 2005.

Sec. 1501.326. DEFERMENT OF ASSESSMENT. (a) A reinsured health benefit plan issuer may petition the commissioner for a deferment in whole or in part of an assessment imposed by the board.

(b) The commissioner may defer all or part of the assessment if the commissioner determines that payment of the assessment would endanger the ability of the reinsured health benefit plan issuer to fulfill its contractual obligations.

(c) The board shall assess the amount of a deferred assessment against other reinsured health benefit plan issuers in a manner consistent with the basis for assessment established by this subchapter.

(d) A reinsured health benefit plan issuer that receives a

deferment:

(1) is liable to the system for the amount deferred; and

(2) until the issuer pays the outstanding assessment, may not:

(A) market, deliver, or issue for delivery a small employer health benefit plan; or

(B) reinsure any individual or group with the system.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER H. MARKETING OF SMALL EMPLOYER HEALTH BENEFIT PLANS

Sec. 1501.351. MARKETING REQUIREMENTS. (a) Each small employer health benefit plan issuer shall market a small employer health benefit plan to eligible small employers in this state through properly licensed agents.

(b) Each small employer purchasing a small employer health benefit plan must be given a summary, in a format prescribed by the commissioner, of the health benefit plans established by the commissioner under Subchapter F.

(c) An agent shall offer and explain to a small employer on inquiry and request by the employer each health benefit plan established by the commissioner under Subchapter F.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.352. HEALTH STATUS AND CLAIMS EXPERIENCE; PROHIBITED ACTS. (a) A small employer health benefit plan issuer or agent may not, because of the health status or claims experience of the eligible employees of a small employer and those employees' dependents, directly or indirectly encourage or direct the employer to:

(1) refrain from applying for coverage with the issuer;

(2) seek coverage from another issuer;

(3) apply for a particular small employer health benefit plan; or

(4) become or not become a member of a particular small employer health coalition.

(b) A small employer health benefit plan issuer may not directly or indirectly enter into an agreement or arrangement with an

agent that provides for or results in compensation paid to the agent for the sale of small employer health benefit plans that varies because of health status or claims experience.

(c) Subsection (b) does not apply to an arrangement that provides compensation to an agent based on a percentage of premium, provided that:

(1) the percentage may not vary because of health status or claims experience; and

(2) the small employer health benefit plan issuer does not:

(A) exclude any additional premium charged to the small employer because of health status or claims experience from the premium amount to which the percentage is applied; or

(B) apply a smaller percentage to any additional premium charged to the small employer because of health status or claims experience than is applied to other premiums charged to the small employer.

(d) A small employer health benefit plan issuer or agent may not encourage a small employer to exclude an eligible employee from health coverage provided in connection with the employee's employment.

(e) A small employer health benefit plan issuer may not terminate, fail to renew, or limit its contract or agreement of representation with an agent for a reason related to the health status or claims experience of a small employer group placed by the agent with the issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.059(a), eff. September 1, 2005.

Sec. 1501.353. AGENT COMPENSATION. (a) A small employer health benefit plan issuer shall pay the same commission, percentage of premium, or other amount to an agent for renewal of a small employer health benefit plan as the issuer paid for original placement of the plan, except that the issuer may increase compensation for renewal of a plan to reflect an increase in the cost of living or similar factors.

(b) A small employer health benefit plan issuer may not

implement, directly or indirectly, agent commission schedules that vary the level of agent commissions based on the size of the group or otherwise reduce access to small employer health benefit plans.

(c) Notwithstanding Subsection (b), a small employer health benefit plan issuer may:

(1) vary agent commission amounts or percentages based on group size if the variation in the commission amounts or percentages are inversely related to the size of the group;

(2) vary agent commission amounts or percentages based on the cumulative premium paid by a single small employer over a specific period if the variation in the commission amounts or percentages are inversely related to the cumulative premium paid during the period; or

(3) pay agent commissions as a percentage of premiums charged to a small employer if the commission percentage is based on all premiums paid by the small employer.

(d) A small employer health benefit plan issuer may not use an agent compensation schedule that provides compensation in a specific dollar amount for each individual covered during a specified period or for each group of individuals covered during a specified period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.059(b), eff. September 1, 2005.

Sec. 1501.354. REQUIRED DISCLOSURES. (a) In connection with offering a small employer health benefit plan for sale, each small employer health benefit plan issuer and agent shall make a reasonable disclosure, as part of its solicitation and sales materials, of:

(1) the extent to which premium rates for a specific small employer are established or adjusted based on the actual or expected variation in:

(A) claim costs; or

(B) health status of the employer's employees and their dependents;

(2) provisions concerning the issuer's right to change premium rates and factors other than claims experience that affect changes in premium rates;

(3) provisions relating to renewability of policies and contracts; and

(4) any preexisting condition provisions.

(b) On request by a small employer, each small employer health benefit plan issuer shall disclose the benefits and premiums available under all small employer coverage for which the employer is qualified.

(c) A small employer health benefit plan issuer is not required to disclose information to a small employer that is proprietary or trade secret information under applicable law.

(d) Information provided under this section to a small employer must be provided in a manner that is:

(1) understandable by the average small employer; and

(2) sufficient to reasonably inform a small employer of its rights and obligations under a small employer health benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.355. RULES CONCERNING MARKETING AND AVAILABILITY. Rules adopted under Section 1501.010 may establish additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.356. REPORTING REQUIREMENTS. (a) In this section, "case characteristics" has the meaning assigned by Section 1501.201.

(b) The department may require periodic reports by small employer health benefit plan issuers and agents regarding small employer health benefit plans issued by those issuers and agents. The reporting requirements must include information regarding:

(1) case characteristics; and

(2) the number of small employer health benefit plans in various categories that are marketed or issued to small employers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.357. VIOLATIONS. A violation of Section 1501.352 by

a small employer health benefit plan issuer or agent is an unfair method of competition and an unfair or deceptive act or practice under Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.358. APPLICABILITY TO THIRD-PARTY ADMINISTRATOR. If a small employer health benefit plan issuer enters into an agreement with a third-party administrator to provide administrative, marketing, or other services related to offering small employer health benefit plans to small employers in this state, the third-party administrator is subject to Sections 1501.111, 1501.351-1501.353, and 1501.355-1501.357.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

SUBCHAPTER M. LARGE EMPLOYER HEALTH BENEFIT PLANS

Sec. 1501.601. PARTICIPATION CRITERIA. (a) In this subchapter, "participation criteria" means any criteria or rules established by a large employer to determine the employees who are eligible for enrollment or continued enrollment under the terms of a health benefit plan.

(b) The participation criteria may not be based on health status related factors.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.602. COVERAGE REQUIREMENTS. (a) A large employer health benefit plan issuer:

(1) may refuse to provide coverage to a large employer in accordance with the issuer's underwriting standards and criteria;

(2) shall accept or reject the entire group of individuals who meet the participation criteria and choose coverage; and

(3) may exclude only those employees or dependents who decline coverage.

(b) On issuance of a health benefit plan to a large employer, a large employer health benefit plan issuer shall provide coverage to the employees who meet the participation criteria without regard to

an individual's health status related factors.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.603. EXCLUSION OF ELIGIBLE EMPLOYEE OR DEPENDENT PROHIBITED. A large employer health benefit plan issuer may not exclude an employee who meets the participation criteria or an eligible dependent, including a late enrollee, who would otherwise be covered under a large employer group.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.604. DECLINING COVERAGE. (a) A large employer health benefit plan issuer shall obtain a written waiver from each employee who meets the participation criteria and declines coverage under a health benefit plan offered to a large employer. The waiver must ensure that the employee was not induced or pressured to decline coverage because of the employee's health status related factors.

(b) A large employer health benefit plan issuer may not provide coverage to a large employer or the employer's employees if the issuer or an agent for the issuer knows that the employer has induced or pressured an employee who meets the participation criteria or a dependent of the employee to decline coverage because of the individual's health status related factors.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.605. MINIMUM CONTRIBUTION OR PARTICIPATION REQUIREMENTS. (a) A large employer health benefit plan issuer may require a large employer to meet a minimum contribution or participation requirement as a condition of issuance or renewal in accordance with the issuer's usual and customary practices for all the issuer's employer health benefit plans in this state.

(b) A participation requirement may determine the percentage of eligible employees who meet the participation criteria and who must be enrolled in the health benefit plan.

(c) A large employer health benefit plan issuer may apply a participation requirement to a large employer's eligible employees,

but may not apply the requirement to eligible dependents of those employees.

(d) A participation requirement must be stated in the health benefit plan contract and must be applied uniformly to each large employer offered or issued coverage by a large employer health benefit plan issuer in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.606. EMPLOYEE ENROLLMENT; WAITING PERIOD. (a) The initial enrollment period for employees meeting the participation criteria under a large employer health benefit plan must be at least 31 days, with a 31-day annual open enrollment period.

(b) A large employer may establish a waiting period. The employer shall determine the duration of the waiting period.

(c) A new employee who meets the participation criteria may not be denied coverage if the application for coverage is received by the large employer not later than the 31st day after the later of:

(1) the date employment begins; or

(2) the date the waiting period established under Subsection (b) expires.

(d) If dependent coverage is offered to the enrollees under a large employer health benefit plan:

(1) the initial enrollment period for the dependents must be at least 31 days, with a 31-day annual open enrollment period; and

(2) a dependent of a new employee who meets the participation criteria may not be denied coverage if the application for coverage is received by the large employer not later than the 31st day after the latest of:

(A) the date on which the employment begins;

(B) the date the waiting period established under Subsection (b) expires; or

(C) the date the dependent becomes eligible for enrollment.

(e) A late enrollee may be excluded from coverage until the next annual open enrollment period and may be subject to a one-year preexisting condition provision as described by Section 1501.102. The period during which a preexisting condition provision applies may

not exceed 18 months from the date of the initial application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.607. COVERAGE FOR NEWBORN CHILDREN. (a) A large employer health benefit plan may not limit or exclude initial coverage of a newborn child of a covered employee.

(b) Coverage of a newborn child of a covered employee under this section ends on the 32nd day after the date of the child's birth unless:

(1) children are eligible for coverage under the large employer health benefit plan; and

(2) not later than the 31st day after the date of birth, the large employer health benefit plan issuer receives:

(A) notice of the birth; and

(B) any required additional premium.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.608. COVERAGE FOR ADOPTED CHILDREN. (a) This section applies only if children are eligible for coverage under a large employer health benefit plan.

(b) A large employer health benefit plan may not limit or exclude initial coverage of an adopted child of an insured. A child is considered to be the adopted child of an insured if the insured is a party to a suit in which the insured seeks to adopt the child.

(c) An adopted child of an insured may be enrolled, at the insured's option, not later than the 31st day after:

(1) the date the insured becomes a party to a suit in which the insured seeks to adopt the child; or

(2) the date the adoption becomes final.

(d) Coverage of an adopted child of an insured under this section ends unless the large employer health benefit plan issuer receives notice of the adoption and any required additional premium not later than the 31st day after:

(1) the date the insured becomes a party to a suit in which the insured seeks to adopt the child; or

(2) the date the adoption becomes final.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.609. COVERAGE FOR UNMARRIED CHILDREN. (a) This section applies only if children are eligible for coverage under a large employer health benefit plan.

(b) Any limiting age applicable under a large employer health benefit plan to an unmarried child of an enrollee is 25 years of age.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.610. PREMIUM RATES; ADJUSTMENTS. (a) A large employer health benefit plan issuer may charge premiums in accordance with this section to the group of employees or dependents who meet the participation criteria and do not decline coverage.

(b) A large employer health benefit plan issuer may not charge an adjustment to premium rates for individual employees or dependents for health status related factors or duration of coverage. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of employees of a large employer.

(c) Subsection (b) does not restrict the amount that a large employer may be charged for coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.611. MARKETING REQUIREMENTS. On request, each large employer purchasing a health benefit plan shall be given a summary of all plans for which the employer is eligible.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.612. ENCOURAGING EXCLUSION OF EMPLOYEE PROHIBITED. A large employer health benefit plan issuer or agent may not encourage a large employer to exclude an employee who meets the participation criteria from health coverage provided in connection with the employee's employment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.613. AGENTS. A large employer health benefit plan issuer may not terminate, fail to renew, or limit its contract or agreement of representation with an agent because of health status related factors of a large employer group placed by the agent with the issuer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.615. ADDITIONAL REPORTING REQUIREMENTS. The department may require periodic reports by large employer health benefit plan issuers and agents regarding the large employer health benefit plans issued by those issuers. The reporting requirements must:

(1) require information regarding the number of plans in various categories that are marketed or issued to large employers; and

(2) comply with federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1501.616. APPLICABILITY TO THIRD-PARTY ADMINISTRATOR. If a large employer health benefit plan issuer enters into an agreement with a third-party administrator to provide administrative, marketing, or other services related to offering large employer health benefit plans to large employers in this state, the third-party administrator is subject to this subchapter and Subchapter C.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1502. HEALTH BENEFIT PLANS FOR CHILDREN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1502.001. APPLICABILITY OF CHAPTER. This chapter applies only to the issuer of a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act or another analogous benefit arrangement; or

(ii) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis; or

(2) is offered by an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1502.0011. EXCEPTION. This chapter does not apply to a health benefit plan provided under the state Medicaid program or the state child health plan.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.061(a), eff. September 1, 2005.

Sec. 1502.002. RULES. (a) The commissioner may adopt rules to implement this chapter, including rules necessary to:

(1) increase the availability of coverage to children younger than 19 years of age;

(2) establish an open enrollment period; and

(3) establish qualifying events as exceptions to the open enrollment period, including loss of coverage when a child becomes ineligible for coverage under the state child health plan.

(b) The commissioner may adopt rules on an emergency basis using the procedures established under Section 2001.034, Government Code.

(c) Notwithstanding Subsection (b), the commissioner is not required to make a finding under Section 2001.034(a), Government Code, before adopting rules on an emergency basis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 9.001, eff. September 1, 2011.

SUBCHAPTER B. CHILDREN'S HEALTH BENEFIT PLAN

Sec. 1502.051. CHILDREN'S HEALTH BENEFIT PLAN. A health benefit plan issuer may offer a children's health benefit plan that provides coverage only to children younger than 18 years of age. The issuer may offer the plan only if the commissioner approves the plan's structure and the benefits offered under the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1502.052. MANDATED BENEFIT PROVISIONS INAPPLICABLE. A children's health benefit plan is not subject to any law that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The issuer of a children's health benefit plan approved under Section 1502.051 is not subject to the premium tax or the tax on revenues imposed under Chapter 222 with respect to money received for coverage provided under that plan.

(b) The issuer of a children's health benefit plan approved

under Section 1502.051 is not subject to the retaliatory tax imposed under Chapter 281 with respect to money received for coverage provided under that plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.062(a), eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 19, eff. June 15, 2007.

CHAPTER 1503. COVERAGE OF CERTAIN STUDENTS

Sec. 1503.001. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that:

(1) provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including:

(A) an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(i) an insurance company;

(ii) a group hospital service corporation operating under Chapter 842;

(iii) a fraternal benefit society operating under Chapter 885;

(iv) a stipulated premium company operating under Chapter 884; or

(v) a health maintenance organization operating under Chapter 843; and

(B) to the extent permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), a health benefit plan that is offered by:

(i) a multiple employer welfare arrangement as defined by Section 3 of that Act; or

(ii) an analogous benefit arrangement; or

(2) is offered by:

(A) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(B) another entity that:

(i) is not authorized under this code or another insurance law of this state; and

(ii) contracts directly for health care services on a risk-sharing basis, including a capitation basis.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1503.002. EXCEPTION. This chapter does not apply to:

(1) a plan that provides coverage:

(A) only for a specified disease;

(B) only for accidental death or dismemberment;

(C) for wages or payments in lieu of wages for a period during which an employee is absent from work because of sickness or injury; or

(D) as a supplement to a liability insurance policy;

(2) a small employer health benefit plan written under Chapter 1501;

(3) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss), as amended;

(4) a workers' compensation insurance policy;

(5) medical payment insurance coverage provided under a motor vehicle insurance policy; or

(6) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefit coverage so comprehensive that the policy is a health benefit plan as described by Section 1503.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1503.003. COVERAGE OF CERTAIN STUDENTS. (a) A health benefit plan may not condition coverage for a child younger than 25 years of age on the child's being enrolled at an educational institution.

(b) A health benefit plan that requires as a condition of coverage for a child 25 years of age or older that the child be a full-time student at an educational institution must provide the coverage:

(1) for the entire academic term during which the child begins as a full-time student and remains enrolled, regardless of whether the number of hours of instruction for which the child is enrolled is reduced to a level that changes the child's academic status to less than that of a full-time student; and

(2) continuously until the 10th day of instruction of the subsequent academic term, on which date the health benefit plan may terminate coverage for the child if the child does not return to full-time student status before that date.

(c) For purposes of this section, determination of the full-time student status of a child is made in the manner provided by the educational institution at which the child is enrolled.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.063(a), eff. September 1, 2005.

CHAPTER 1504. MEDICAL AND DENTAL CHILD SUPPORT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1504.001. DEFINITIONS. In this chapter:

(1) "Child" has the meaning assigned by Section 101.003, Family Code.

(2) "Child support agency" has the meaning assigned by Section 101.004, Family Code.

(3) "Custodial parent" means an individual who:

(A) is a managing conservator of a child or a possessory conservator of a child who is a parent of the child; or

(B) is a guardian of the person or other custodian of a child and is designated as guardian or custodian by a court or administrative agency of this or another state.

(4) "Benefit plan issuer" means:

(A) an insurance company, group hospital service corporation, or health maintenance organization that delivers or issues for delivery an individual, group, blanket, or franchise insurance policy or agreement, a group hospital service contract, or an evidence of coverage that provides benefits for medical or surgical expenses incurred as a result of an accident or sickness, or dental expenses;

(B) a governmental entity subject to Subchapter D, Chapter 1355, Subchapter C, Chapter 1364, Chapter 1578, Article 3.51-1, 3.51-4, or 3.51-5, or Chapter 177, Local Government Code;

(C) the issuer of a multiple employer welfare arrangement as defined by Section 846.001; or

(D) the issuer of a group health plan as defined by Section 607, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1167).

(5) "Medical assistance" means medical assistance under the state Medicaid program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.016, eff. April 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 60, eff. September 1, 2018.

Sec. 1504.002. RULES. (a) The commissioner shall adopt reasonable rules as necessary to implement this chapter and 42 U.S.C. Section 1396a(a)(60), including rules that define acts that constitute unfair or deceptive practices under Subchapter I, Chapter 541.

(b) The commissioner shall adopt rules that define "comparable health or dental coverage" in a manner that:

(1) is consistent with federal law; and

(2) complies with the requirements necessary to maintain federal Medicaid funding.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 61, eff. September 1, 2018.

Sec. 1504.003. VIOLATION OF CHAPTER: RELIEF AVAILABLE TO INJURED PERSON. A benefit plan issuer that violates this chapter is subject to the same penalties, and an injured person has the same rights and remedies, as those provided by Subchapter D, Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 62, eff. September 1, 2018.

SUBCHAPTER B. DUTIES OF BENEFIT PLAN ISSUER

Sec. 1504.051. ENROLLMENT OF CERTAIN CHILDREN REQUIRED. (a) A benefit plan issuer shall permit a parent to enroll a child in dependent health or dental coverage offered through the issuer regardless of any enrollment period restriction if the parent is:

(1) eligible for dependent health or dental coverage; and

(2) required by a court order or administrative order to provide health or dental insurance coverage for the child.

(b) A benefit plan issuer shall enroll a child of a parent described by Subsection (a) in dependent health or dental coverage offered through the issuer if:

(1) the parent does not apply to obtain health or dental coverage for the child through the issuer; and

(2) the child, a custodial parent of the child, or a child support agency having a duty to collect or enforce support for the child applies for the coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 64, eff. September 1, 2018.

Sec. 1504.052. CHILD RESIDING OUTSIDE SERVICE AREA; COMPARABLE HEALTH OR DENTAL COVERAGE REQUIRED. (a) A benefit plan issuer may not deny enrollment of a child under the health or dental coverage of the child's parent on the ground that the child does not reside in the issuer's service area.

(b) A benefit plan issuer may not enforce an otherwise applicable provision of the health or dental coverage that would deny, limit, or reduce payment of a claim for a covered child who resides outside the issuer's service area but inside the United States.

(c) For a covered child who resides outside the benefit plan

issuer's service area and whose coverage under a policy or plan is required by a medical support order or dental support order, the issuer shall provide coverage that is comparable health or dental coverage to that provided to other dependents under the policy or plan.

(d) Comparable health or dental coverage may include coverage in which a benefit plan issuer uses different procedures for service delivery and health care provider reimbursement. Comparable health or dental coverage may not include coverage:

(1) that is limited to emergency services only; or

(2) for which the issuer charges a higher premium.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 65, eff. September 1, 2018.

Sec. 1504.053. CANCELLATION OR NONRENEWAL OF COVERAGE FOR CERTAIN CHILDREN. (a) A benefit plan issuer may not cancel or refuse to renew health or dental coverage provided to a child who is enrolled or entitled to enrollment under this chapter unless satisfactory written evidence is filed with the issuer showing that:

(1) the court or administrative order that required the coverage is not in effect; or

(2) the child:

(A) is enrolled in comparable health or dental coverage; or

(B) will be enrolled in comparable health or dental coverage that takes effect not later than the effective date of the cancellation or nonrenewal.

(b) For purposes of this section, a child is not enrolled or entitled to enrollment under this chapter if the child's eligibility for health or dental coverage ends because the parent ceases to be eligible for dependent health or dental coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 66, eff. September 1, 2018.

Sec. 1504.054. CONTINUATION OR CONVERSION OF COVERAGE. (a) If a child's eligibility for dependent health or dental coverage ends because the parent ceases to be eligible for the coverage and the coverage provides for the continuation or conversion of the coverage for the child, the benefit plan issuer shall notify the custodial parent and the child support agency of the costs and other requirements for continuing or converting the coverage.

(b) The benefit plan issuer shall, on application of a parent of the child, a child support agency, or the child, enroll or continue enrollment of a child whose eligibility for coverage ended under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 67, eff. September 1, 2018.

Sec. 1504.055. PROCEDURE FOR CLAIMS. (a) A benefit plan issuer that provides health or dental coverage to a child through a covered parent of the child shall:

(1) provide to each custodial parent of the child or to an adult child documents and other information necessary for the child to obtain benefits under the coverage, including:

(A) the name of the issuer;

(B) the number of the policy or evidence of coverage;

(C) a copy of the policy or evidence of coverage and schedule of benefits;

(D) a health or dental coverage membership card;

(E) claim forms; and

(F) any other document or information necessary to submit a claim in accordance with the issuer's policies and procedures;

(2) permit a custodial parent, health care provider, state agency that has been assigned medical or dental support rights, or adult child to submit claims for covered services without the approval of the covered parent; and

(3) make payments on covered claims submitted in accordance with this subsection directly to a custodial parent, health care or dental care provider, adult child, or state agency making a claim.

(b) A benefit plan issuer shall provide to a state agency that provides medical assistance, including medical assistance for dental services, to the child or shall provide to a child support agency that enforces medical or dental support on behalf of a child the information necessary to obtain reimbursement of medical or dental services provided to or paid on behalf of the child.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 68, eff. September 1, 2018.

SUBCHAPTER C. PROHIBITED CONDUCT

Sec. 1504.101. DENIAL OF ENROLLMENT ON CERTAIN GROUNDS PROHIBITED. A benefit plan issuer may not deny enrollment of a child under the health or dental coverage of the child's parent on the ground that the child:

(1) has a preexisting condition;

(2) was born out of wedlock;

(3) is not claimed as a dependent on the parent's federal income tax return;

(4) does not reside with the parent; or

(5) receives or has applied for medical assistance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 69, eff. September 1, 2018.

Sec. 1504.102. ASSIGNMENT OF MEDICAL OR DENTAL SUPPORT RIGHTS: DIFFERENT REQUIREMENTS PROHIBITED. A benefit plan issuer may not require a state agency that has been assigned the rights of an individual who is eligible for medical assistance and is covered for health or dental benefits from the issuer to comply with a requirement that is different from a requirement imposed on an agent or assignee of any other covered individual.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 70, eff. September 1, 2018.

CHAPTER 1505. GROUP HEALTH INSURANCE PLANS FOR PERSONS 65 YEARS OF AGE OR OLDER

Sec. 1505.001. DEFINITION. In this chapter, "health insurer" means an insurance company authorized to provide a hospital, surgical, and medical expense insurance plan in this state, including:

(1) a stock insurance company;

(2) a reciprocal or interinsurance exchange;

(3) a Lloyd's plan;

(4) a fraternal benefit society;

(5) a stipulated premium company; and

(6) a mutual insurance company, including a statewide mutual assessment company or a local mutual aid association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1505.002. PLANS FOR CERTAIN PERSONS 65 YEARS OF AGE OR OLDER. (a) Two or more health insurers may provide a hospital, surgical, and medical expense insurance plan under a group insurance policy that covers residents of this state who are at least 65 years of age and the spouses of those residents.

(b) The participating health insurers may enter into agreements regarding matters within the scope of this chapter, including:

(1) premium rates;

(2) policy provisions; and

(3) sales, administrative, technical, and accounting procedures.

(c) Each participating health insurer is subject to regulation under the laws of this state and is severally liable on a group insurance policy issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1505.003. APPLICATION AND OTHER EVIDENCE OF INSURANCE FORMS. An application, policy, certificate, or other evidence of

insurance form for an insurance plan under this chapter is subject to Chapter 1701.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1505.004. EXECUTION OF POLICY. An authorized person may execute an insurance policy subject to this chapter on behalf of the participating health insurers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1505.005. USE OF UNINCORPORATED ENTITY. (a) The participating health insurers may issue the group insurance policy in their own names or in the name of an unincorporated association, trust, or other organization formed for the sole purposes of this chapter and evidenced by a written contract executed by the insurers. An unincorporated association, trust, or other organization formed under this subsection may sue and be sued in the name of the association, trust, or organization.

(b) A person licensed as a general life, accident, and health agent under Chapter 4054, as a general property and casualty agent under Chapter 4051 authorized to write health and accident insurance under Section 4051.053, or as a personal lines property and casualty agent authorized to write health and accident insurance under Section 4051.402, may act in the licensed capacity in connection with an insurance policy or a certificate of insurance issued by an unincorporated association, trust, or other organization formed under Subsection (a). The agent is not required to notify the department that the person has been appointed to act for that purpose.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.12, eff. September 1, 2007.

Sec. 1505.006. REQUIRED FILINGS; DEPARTMENT APPROVAL. (a) The participating health insurers shall provide for the filing with the department on behalf of the insurers of:

(1) a copy of any contract of association or organization or trust agreement entered into by the insurers under this chapter;

(2) the schedule of premium rates to be charged for the insurance coverage; and

(3) the plan for operating and marketing the insurance.

(b) Except as provided by Subsection (c), a contract, schedule, or plan described by Subsection (a) may not be effective until approved by the commissioner.

(c) A contract, schedule, or plan described by Subsection (a) that is not approved or disapproved in a written order of the commissioner on or before the 30th day after the date on which the document is filed with the department is considered approved on the 31st day after the date of filing.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1505.007. EFFECT OF COMMISSIONER DISAPPROVAL. If, after notice and public hearing, the commissioner determines under reasonable assumptions that a premium rate charged for the insurance coverage offered under this chapter or the plan for operating and marketing that insurance is excessive, inadequate, or contrary to the public interest or that any activity or practice performed in connection with the insurance is unfair, unreasonable, or contrary to the public interest, the commissioner shall:

(1) enter an order containing the commissioner's determination and disapproving the premium rate or plan or the activity or practice; and

(2) require the discontinuance of the premium rate, plan, activity, or practice within a period that is not less than 30 days after the date of the commissioner's order containing the determination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1505.008. EXEMPTION FROM PREMIUM TAXES. Each premium received for group insurance coverage authorized by this chapter is exempt from any premium tax imposed by any other law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

Sec. 1505.009. EXEMPTION FROM CERTAIN ANTITRUST REQUIREMENTS. An association, trust, or other organization formed and operated in accordance with this chapter or an insurance business conducted in accordance with this chapter is not considered a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily and does not otherwise violate the antitrust laws of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 3, eff. April 1, 2005.

CHAPTER 1507. CONSUMER CHOICE OF BENEFITS PLANS

SUBCHAPTER A. CONSUMER CHOICE OF BENEFITS HEALTH INSURANCE PLANS

Sec. 1507.001. PURPOSE. The legislature recognizes the need for individuals, employers, and other purchasers of coverage in this state to have the opportunity to choose health insurance plans that are more affordable and flexible than existing market policies offering accident and sickness insurance coverage. The legislature, therefore, seeks to increase the availability of health insurance coverage by allowing insurers authorized to engage in the business of insurance in this state to issue accident and sickness policies that, in whole or in part, do not offer or provide state-mandated health benefits.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.002. DEFINITIONS. In this subchapter:

(1) "Health carrier" means any entity authorized under this code or another insurance law of this state that provides health insurance or health benefits in this state. The term includes an insurance company, a group hospital service corporation under Chapter 842, and a stipulated premium company under Chapter 884.

(2) "Standard health benefit plan" means an accident or sickness insurance policy that, in whole or in part, does not offer or provide state-mandated health benefits, but that provides creditable coverage as defined by Section 1205.004(a) or 1501.102(a).

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.003. STATE-MANDATED HEALTH BENEFITS. (a) For purposes of this subchapter, "state-mandated health benefits" means coverage required under this code or other laws of this state to be provided in an individual, blanket, or group policy for accident and health insurance or a contract for a health-related condition that:

(1) includes coverage for specific health care services or benefits;

(2) places limitations or restrictions on deductibles, coinsurance, copayments, or any annual or lifetime maximum benefit amounts; or

(3) includes a specific category of licensed health care practitioner from whom an insured is entitled to receive care.

(b) For purposes of this subchapter, "state-mandated health benefits" does not include benefits that are mandated by federal law or standard provisions or rights required under this code or other laws of this state to be provided in an individual, blanket, or group policy for accident and health insurance that are unrelated to a specific health illness, injury, or condition of an insured, including provisions related to:

(1) continuation of coverage under:

(A) Subchapters F and G, Chapter 1251;

(B) Section 1201.059; and

(C) Subchapter B, Chapter 1253;

(2) termination of coverage under Sections 1202.051 and 1501.108;

(3) preexisting conditions under Subchapter D, Chapter 1201, and Sections 1501.102-1501.105;

(4) coverage of children, including newborn or adopted children, under:

(A) Subchapter D, Chapter 1251;

(B) Sections 1201.053, 1201.061, 1201.063-1201.065, and Subchapter A, Chapter 1367;

(C) Chapter 1504;

(D) Chapter 1503;

(E) Section 1501.157;

(F) Section 1501.158; and

(G) Sections 1501.607-1501.609;

(5) services of practitioners under:

(A) Subchapters A, B, and C, Chapter 1451; or

(B) Section 1301.052;

(6) supplies and services associated with the treatment of diabetes under Subchapter B, Chapter 1358;

(7) coverage for serious mental illness under Subchapter A, Chapter 1355;

(8) coverage for childhood immunizations and hearing screening as required by Subchapters B and C, Chapter 1367, other than Section 1367.053(c) and Chapter 1353;

(9) coverage for reconstructive surgery for certain craniofacial abnormalities of children as required by Subchapter D, Chapter 1367;

(10) coverage for the dietary treatment of phenylketonuria as required by Chapter 1359;

(11) coverage for referral to a non-network physician or provider when medically necessary covered services are not available through network physicians or providers, as required by Section 1271.055; and

(12) coverage for cancer screenings under:

(A) Chapter 1356;

(B) Chapter 1362;

(C) Chapter 1363; and

(D) Chapter 1370.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.029(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.029(a), eff. September 1, 2007.

Sec. 1507.004. STANDARD HEALTH BENEFIT PLANS AUTHORIZED; MINIMUM REQUIREMENT. (a) A health carrier may offer one or more standard health benefit plans.

(b) Any standard health benefit plan must include coverage for direct services to an obstetrical or gynecological care provider as

required by Subchapter F, Chapter 1451.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.005. NOTICE TO POLICYHOLDER. (a) Each written application for participation in a standard health benefit plan must contain the following language at the beginning of the document in bold type:

"You have the option to choose this Consumer Choice of Benefits Health Insurance Plan that, either in whole or in part, does not provide state-mandated health benefits normally required in accident and sickness insurance policies in Texas. This standard health benefit plan may provide a more affordable health insurance policy for you, although, at the same time, it may provide you with fewer health benefits than those normally included as state-mandated health benefits in policies in Texas. If you choose this standard health benefit plan, please consult with your insurance agent to discover which state-mandated health benefits are excluded in this policy."

(b) Each standard health benefit plan must contain the following language at the beginning of the document in bold type:

"This Consumer Choice of Benefits Health Insurance Plan, either in whole or in part, does not provide state-mandated health benefits normally required in accident and sickness insurance policies in Texas. This standard health benefit plan may provide a more affordable health insurance policy for you, although, at the same time, it may provide you with fewer health benefits than those normally included as state-mandated health benefits in policies in Texas. Please consult with your insurance agent to discover which state-mandated health benefits are excluded in this policy."

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.006. DISCLOSURE STATEMENT. (a) A health carrier providing a standard health benefit plan must provide a proposed policyholder or policyholder with a written disclosure statement

that:

(1) acknowledges that the standard health benefit plan being purchased does not provide some or all state-mandated health benefits;

(2) lists those state-mandated health benefits not included in the standard health benefit plan; and

(3) if the standard health benefit plan is issued to an individual policyholder, provides a notice that purchase of the plan may limit the policyholder's future coverage options in the event the policyholder's health changes and needed benefits are not available under the standard health benefit plan.

(b) Each applicant for initial coverage must sign the disclosure statement provided by the health carrier under Subsection (a) and return the statement to the health carrier. Under a group policy or contract, the term "applicant" means the employer.

(c) A health carrier must:

(1) retain the signed disclosure statement in the health carrier's records; and

(2) on request from the commissioner, provide the signed disclosure statement to the department.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 657 (S.B. 1852), Sec. 1, eff. September 1, 2019.

Sec. 1507.007. ADDITIONAL POLICIES. A health carrier that offers one or more standard health benefit plans under this subchapter must also offer at least one accident or sickness insurance policy that provides state-mandated health benefits and is otherwise authorized by this code.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.008. RATES. A health carrier shall file for informational purposes the rates to be used with a standard health benefit plan. Nothing in this section shall be construed as granting

the commissioner any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual accident and sickness insurance policy or policies.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.009. RULES. The commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

SUBCHAPTER B. CONSUMER CHOICE OF BENEFITS HEALTH MAINTENANCE ORGANIZATION PLANS

Sec. 1507.051. PURPOSE. The legislature recognizes the need for individuals and employers in this state to have the opportunity to choose health maintenance organization plans that are more affordable and flexible than existing market health care plans offered by health maintenance organizations. The legislature, therefore, seeks to increase the availability of health care plans by allowing health maintenance organizations authorized to operate health maintenance organizations in this state to issue group or individual evidences of coverage that, in whole or in part, do not offer or provide state-mandated health benefits.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.052. DEFINITIONS. (a) In this subchapter, "standard health benefit plan" means a group or individual evidence of coverage that, in whole or in part, does not offer or provide state-mandated health benefits but that provides creditable coverage as defined by Section 1205.004(a) or 1501.102(a).

(b) In this subchapter, terms defined by Section 843.002 have the meanings assigned by that section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a),

eff. September 1, 2005.

Sec. 1507.053. STATE-MANDATED HEALTH BENEFITS. (a) For purposes of this subchapter, "state-mandated health benefits" means coverage required under this code or other laws of this state to be provided in an evidence of coverage that:

(1) includes coverage for specific health care services or benefits;

(2) places limitations or restrictions on deductibles, coinsurance, copayments, or any annual or lifetime maximum benefit amounts, including limitations provided in Section 1271.151; or

(3) includes a specific category of licensed health care practitioner from whom an enrollee is entitled to receive care.

(b) For purposes of this subchapter, "state-mandated health benefits" does not include coverage that is mandated by federal law or standard provisions or rights required under this code or other laws of this state to be provided in an evidence of coverage that are unrelated to a specific health illness, injury, or condition of an enrollee, including provisions related to:

(1) continuation of coverage under Subchapter G, Chapter 1251;

(2) termination of coverage under Sections 1202.051 and 1501.108;

(3) preexisting conditions under Subchapter D, Chapter 1201, and Sections 1501.102-1501.105;

(4) coverage of children, including newborn or adopted children, under:

(A) Chapter 1504;

(B) Chapter 1503;

(C) Section 1501.157;

(D) Section 1501.158; and

(E) Sections 1501.607-1501.609;

(5) services of providers under Section 843.304;

(6) coverage for serious mental health illness under Subchapter A, Chapter 1355; and

(7) coverage for cancer screenings under:

(A) Chapter 1356;

(B) Chapter 1362;

(C) Chapter 1363; and

(D) Chapter 1370.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.030(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.030(a), eff. September 1, 2007.

Sec. 1507.054. STANDARD HEALTH BENEFIT PLANS AUTHORIZED. A health maintenance organization authorized to issue an evidence of coverage in this state may offer one or more standard health benefit plans.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.055. NOTICE TO ENROLLEES. (a) Each written application for enrollment in a standard health benefit plan must contain the following language at the beginning of the document in bold type:

"You have the option to choose this Consumer Choice of Benefits Health Maintenance Organization health care plan that, either in whole or in part, does not provide state-mandated health benefits normally required in evidences of coverage in Texas. This standard health benefit plan may provide a more affordable health plan for you, although, at the same time, it may provide you with fewer health plan benefits than those normally included as state-mandated health benefits in Texas. If you choose this standard health benefit plan, please consult with your insurance agent to discover which state-mandated health benefits are excluded in this evidence of coverage."

(b) Each standard health benefit plan must contain the following language at the beginning of the document in bold type:

"This Consumer Choice of Benefits Health Maintenance Organization health care plan, either in whole or in part, does not provide state-mandated health benefits normally required in evidences of coverage in Texas. This standard health benefit

plan may provide a more affordable health plan for you, although, at the same time, it may provide you with fewer health plan benefits than those normally included as state-mandated health benefits in Texas. Please consult with your insurance agent to discover which state-mandated health benefits are excluded in this evidence of coverage."

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.056. DISCLOSURE STATEMENT. (a) A health maintenance organization providing a standard health benefit plan must provide a proposed contract holder or a contract holder with a written disclosure statement that:

(1) acknowledges that the standard health benefit plan being purchased does not provide some or all state-mandated health benefits;

(2) lists those state-mandated health benefits not included in the standard health benefit plan; and

(3) if the standard health benefit plan is issued to an individual certificate holder, provides a notice that purchase of the plan may limit the certificate holder's future coverage options in the event the certificate holder's health changes and needed benefits are not available under the standard health benefit plan.

(b) Each applicant for initial enrollment must sign the disclosure statement provided by the health maintenance organization under Subsection (a) and return the statement to the health maintenance organization. Under a group evidence of coverage, the term "applicant" means the employer.

(c) A health maintenance organization must:

(1) retain the signed disclosure statement in the organization's records; and

(2) on request from the commissioner, provide the signed disclosure statement to the department.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 657 (S.B. 1852), Sec. 2, eff. September 1, 2019.

Sec. 1507.057. ADDITIONAL EVIDENCES OF COVERAGE. A health maintenance organization that offers one or more standard health benefit plans under this subchapter must also offer at least one evidence of coverage that provides state-mandated health benefits and is otherwise authorized by this code.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.058. RATES. A health maintenance organization shall file for informational purposes the rates to be used with a standard health benefit plan. Nothing in this section shall be construed as granting the commissioner any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any evidence of coverage.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Sec. 1507.059. RULES. The commissioner shall adopt rules necessary to implement this subchapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(a), eff. September 1, 2005.

Text of chapter effective on September 1, 2009, but only if a specific appropriation is provided as described by Acts 2009, 81st Leg., R.S., Ch. 721, Sec. 2.04, which states: This Act does not make an appropriation. This Act takes effect only if a specific appropriation for the implementation of the Act is provided in a general appropriations act of the 81st Legislature.

CHAPTER 1508. HEALTHY TEXAS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1508.001. PURPOSE. (a) The purposes of the Healthy Texas Program are to:

(1) provide access to quality small employer health benefit

plans at an affordable price;

(2) encourage small employers to offer health benefit plan coverage to employees and the dependents of employees; and

(3) maximize reliance on proven managed care strategies and procedures.

(b) The Healthy Texas Program is not intended to diminish the availability of traditional small employer health benefit plan coverage under Chapter 1501.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.002. DEFINITIONS. In this chapter:

(1) "Dependent" has the meaning assigned by Section 1501.002(2).

(2) "Eligible employee" has the meaning assigned by Section 1501.002(3).

(3) "Fund" means the healthy Texas small employer premium stabilization fund established under Subchapter F.

(4) "Health benefit plan" and "health benefit plan issuer" have the meanings assigned by Sections 1501.002(5) and 1501.002(6), respectively.

(5) "Program" means the Healthy Texas Program established under this chapter.

(6) "Qualifying health benefit plan" means a health benefit plan that provides benefits for health care services in the manner described by this chapter.

(7) "Small employer" has the meaning assigned by Section 1501.002(14).

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.003. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

SUBCHAPTER B. EMPLOYER ELIGIBILITY; CONTRIBUTIONS

Sec. 1508.051. EMPLOYER ELIGIBILITY TO PARTICIPATE. (a) A small employer may participate in the program if:

(1) during the 12-month period immediately preceding the date of application for a qualifying health benefit plan, the small employer does not offer employees group health benefits on an expense-reimbursed or prepaid basis; and

(2) at least 30 percent of the small employer's eligible employees receive annual wages from the employer in an amount that is equal to or less than 300 percent of the poverty guidelines for an individual, as defined and updated annually by the United States Department of Health and Human Services.

(b) A small employer ceases to be eligible to participate in the program if any health benefit plan that provides employee benefits on an expense-reimbursed or prepaid basis, other than another qualifying health benefit plan, is purchased or otherwise takes effect after the purchase of a qualifying health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.052. COMMISSIONER ADJUSTMENTS AUTHORIZED. (a) The commissioner by rule may adjust the 12-month period described by Section 1508.051(a)(1) to an 18-month period if the commissioner determines that the 12-month period is insufficient to prevent inappropriate substitution of other health benefit plans for qualifying health benefit plan coverage under this chapter.

(b) The commissioner by rule may adjust the percentage of the poverty guidelines described by Section 1508.051(a)(2) to a higher or lower percentage if the commissioner determines that the adjustment is necessary to fulfill the purposes of this chapter. An adjustment made by the commissioner under this subsection takes effect on the first July 1 following the adjustment.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.053. MINIMUM EMPLOYER PARTICIPATION REQUIREMENTS. A small employer that meets the eligibility requirements described by

Section 1508.051(a) may apply to purchase a qualifying health benefit plan if 60 percent or more of the employer's eligible employees elect to participate in the plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.054. EMPLOYER CONTRIBUTION REQUIREMENTS. (a) A small employer that purchases a qualifying health benefit plan must:

(1) pay 50 percent or more of the premium for each employee covered under the qualifying health benefit plan;

(2) offer coverage to all eligible employees receiving annual wages from the employer in an amount described by Section 1508.051(a)(2) or 1508.052(b), as applicable; and

(3) contribute the same percentage of premium for each covered employee.

(b) A small employer that purchases a qualifying health benefit plan under the program may elect to pay, but is not required to pay, all or any portion of the premium paid for dependent coverage under the qualifying health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

SUBCHAPTER C. PROGRAM PARTICIPATION; REQUIRED COVERAGE AND BENEFITS

Sec. 1508.101. PARTICIPATING PLAN ISSUERS. (a) Subject to Subsection (b), any health benefit plan issuer may participate in the program.

(b) The commissioner by rule may limit which health benefit plan issuers may participate in the program if the commissioner determines that the limitation is necessary to achieve the purposes of this chapter.

(c) If the commissioner limits participation in the program under Subsection (b), the commissioner shall contract on a competitive procurement basis with one or more health benefit plan issuers to provide qualifying health benefit plan coverage under the program.

(d) Nothing in this chapter prohibits a regional or local health care program described by Chapter 75, Health and Safety Code,

from participating in the program. The commissioner by rule shall establish participation requirements applicable to regional and local health care programs that consider the unique plan designs, benefit levels, and participation criteria of each program.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.102. PREEXISTING CONDITION PROVISION REQUIRED. A health benefit plan offered under the program must include a preexisting condition provision that meets the requirements described by Section 1501.102.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.103. EXCEPTION FROM MANDATED BENEFIT REQUIREMENTS. Except as expressly provided by this chapter, a small employer health benefit plan issued under the program is not subject to a law of this state that requires coverage or the offer of coverage of a health care service or benefit.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.104. CERTAIN COVERAGE PROHIBITED OR REQUIRED. (a) A qualifying health benefit plan may only provide coverage for in-plan services and benefits, except for:

(1) emergency care; or

(2) other services not available through a plan provider.

(b) In-plan services and benefits provided under a qualifying health benefit plan must include the following:

(1) inpatient hospital services;

(2) outpatient hospital services;

(3) physician services; and

(4) prescription drug benefits.

(c) The commissioner may approve in-plan benefits other than those required under Subsection (b) or emergency care or other

services not available through a plan provider if the commissioner determines the inclusion to be essential to achieve the purposes of this chapter.

(d) The commissioner may, with respect to the categories of services and benefits described by Subsections (b) and (c):

(1) prepare specifications for a coverage provided under this chapter;

(2) determine the methods and procedures of claims administration;

(3) establish procedures to decide contested cases arising from coverage provided under this chapter;

(4) study, on an ongoing basis, the operation of all coverages provided under this chapter, including gross and net costs, administration costs, benefits, utilization of benefits, and claims administration;

(5) administer the healthy Texas small employer premium stabilization fund established under Subchapter F;

(6) provide the beginning and ending dates of coverages for enrollees in a qualifying health benefit plan;

(7) develop basic group coverage plans applicable to all individuals eligible to participate in the program;

(8) provide for optional group coverage plans in addition to the basic group coverage plans described by Subdivision (7);

(9) provide, as determined to be appropriate by the commissioner, additional statewide optional coverage plans;

(10) develop specific health benefit plans that permit access to high-quality, cost-effective health care;

(11) design, implement, and monitor health benefit plan features intended to discourage excessive utilization, promote efficiency, and contain costs for qualifying health benefit plans;

(12) develop and refine, on an ongoing basis, a health benefit strategy for the program that is consistent with evolving benefits delivery systems;

(13) develop a funding strategy that efficiently uses employer contributions to achieve the purposes of this chapter; and

(14) modify the copayment and deductible amounts for prescription drug benefits under a qualifying health benefit plan, if the commissioner determines that the modification is necessary to achieve the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

SUBCHAPTER D. PROGRAM ADMINISTRATION

Sec. 1508.151. EMPLOYER CERTIFICATION. (a) At the time of initial application, a health benefit plan issuer shall obtain from a small employer that seeks to purchase a qualifying health benefit plan a written certification that the employer meets the eligibility requirements described by Section 1508.051 and the minimum employer participation requirements described by Section 1508.053.

(b) Not later than the 90th day before the renewal date of a qualifying health benefit plan, a health benefit plan issuer shall obtain from the small employer that purchased the qualifying health benefit plan a written certification that the employer continues to meet the eligibility requirements described by Section 1508.051 and the minimum employer participation requirements described by Section 1508.053.

(c) A participating health benefit plan issuer may require a small employer to submit appropriate documentation in support of a certification described by Subsection (a) or (b).

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.152. APPLICATION PROCESS. (a) Subject to Subsection (b), a health benefit plan issuer shall accept applications for qualifying health benefit plan coverage from small employers at all times throughout the calendar year.

(b) The commissioner may limit the dates on which a health benefit plan issuer must accept applications for qualifying health benefit plan coverage if the commissioner determines the limitation to be necessary to achieve the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.153. EMPLOYEE ENROLLMENT; WAITING PERIOD. (a) A qualifying health benefit plan must provide employees with an initial

enrollment period that is 31 days or longer, and annually at least one open enrollment period that is 31 days or longer. The commissioner by rule may require an additional open enrollment period if the commissioner determines that the additional open enrollment period is necessary to achieve the purposes of this chapter.

(b) A small employer may establish a waiting period for employees during which an employee is not eligible for coverage under a qualifying health benefit plan. The last day of a waiting period established under this subsection may not be later than the 90th day after the date on which the employee begins employment with the small employer.

(c) A health benefit plan issuer may not deny coverage under a qualifying health benefit plan to a new employee of a small employer that purchased the qualifying health benefit plan if the health benefit plan issuer receives an application for coverage from the employee not later than the 31st day after the latter of:

(1) the first day of the employee's employment; or

(2) the first day after the expiration of a waiting period established under Subsection (b).

(d) Subject to Subsection (e), a health benefit plan issuer may deny coverage under a qualifying health benefit plan to an employee of a small employer who applies for coverage after the period described by Subsection (c).

(e) A health benefit plan issuer that denies an employee coverage under Subsection (d):

(1) may only deny the employee coverage until the next open enrollment period; and

(2) may subject the enrollee to a one-year preexisting condition provision, as described by Section 1508.102, if the period during which the preexisting condition provision applies does not exceed 18 months from the date of the initial application for coverage under the qualifying health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.154. REPORTS. A health benefit plan issuer that participates in the program shall submit reports to the department in the form and at the time the commissioner prescribes.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

SUBCHAPTER E. RATING OF QUALIFIED HEALTH BENEFIT PLANS

Sec. 1508.201. RATING; PREMIUM PRACTICES IN GENERAL. (a) A health benefit plan issuer participating in the program must:

(1) use rating practices for qualifying health benefit plans that are consistent with the purposes of this chapter; and

(2) in setting premiums for qualifying health benefit plans, consider the availability of reimbursement from the fund.

(b) A health benefit plan issuer participating in the program shall apply rating factors consistently with respect to all small employers in a class of business.

(c) Differences in premium rates charged for qualifying health benefit plans must be reasonable and reflect objective differences in plan design.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.202. PREMIUM RATE DEVELOPMENT AND CALCULATION. (a) Rating factors used to underwrite qualifying health benefit plans must produce premium rates for identical groups that:

(1) differ only by the amounts attributable to health benefit plan design; and

(2) do not reflect differences because of the nature of the groups assumed to select a particular health benefit plan.

(b) A health benefit plan issuer shall treat each qualifying health benefit plan that is issued or renewed in a calendar month as having the same rating period.

(c) A health benefit plan issuer may use only age and gender as case characteristics, as defined by Section 1501.201(2), in setting premium rates for a qualifying health benefit plan.

(d) The commissioner by rule may establish additional rating criteria and requirements for qualifying health benefit plans if the commissioner determines that the criteria and requirements are necessary to achieve the purposes of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01,

eff. September 1, 2009.

Sec. 1508.203. FILING; APPROVAL. (a) A health benefit plan issuer shall file with the department, for review and approval by the commissioner, premium rates to be charged for qualifying health benefit plans.

(b) If the commissioner limits health benefit plan issuer participation in the program under Section 1508.101(b), premium rates proposed to be charged for each qualifying health benefit plan will be considered as an element in the contract procurement process required under that section.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

SUBCHAPTER F. HEALTHY TEXAS SMALL EMPLOYER PREMIUM STABILIZATION FUND

Sec. 1508.251. ESTABLISHMENT OF FUND. (a) To the extent that funds appropriated to the department are available for this purpose, the commissioner shall establish a fund from which health benefit plan issuers may receive reimbursement for claims paid by the health benefit plan issuers for individuals covered under qualifying group health plans.

(b) The fund established under this section shall be known as the healthy Texas small employer premium stabilization fund.

(c) The commissioner shall adopt rules necessary to implement and administer the fund, including rules that set out the procedures for operation of the fund and distribution of money from the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.252. OPERATION OF FUND; CLAIM ELIGIBILITY. (a) A health benefit plan issuer is eligible to receive reimbursement in an amount that is equal to 80 percent of the dollar amount of claims paid between $5,000 and $75,000 in a calendar year for an enrollee in a qualifying health benefit plan.

(b) A health benefit plan issuer is eligible for reimbursement

from the fund only for the calendar year in which claims are paid.

(c) Once the dollar amount of claims paid on behalf of a covered individual reaches or exceeds $75,000 in a given calendar year, a health benefit plan issuer may not receive reimbursement for any other claims paid on behalf of the individual in that calendar year.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.253. REIMBURSEMENT REQUEST SUBMISSION. (a) A health benefit plan issuer seeking reimbursement from the fund shall submit a request for reimbursement in the form prescribed by the commissioner by rule.

(b) A health benefit plan issuer must request reimbursement from the fund annually, not later than the date determined by the commissioner, following the end of the calendar year for which the reimbursement requests are made.

(c) The commissioner may require a health benefit plan issuer participating in the program to submit claims data in connection with reimbursement requests as the commissioner determines to be necessary to ensure appropriate distribution of reimbursement funds and oversee the operation of the fund. The commissioner may require that the data be submitted on a per covered individual, aggregate, or categorical basis.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.254. FUND AVAILABILITY. (a) The commissioner shall compute the total claims reimbursement amount for all health benefit plan issuers participating in the program for the calendar year for which claims are reported and reimbursement requested.

(b) If the total amount requested by health benefit plan issuers participating in the program for reimbursement for a calendar year exceeds the amount of funds available for distribution for claims paid during that same calendar year, the commissioner shall provide for the pro rata distribution of any available funds. A health benefit plan issuer participating in the program is eligible

to receive a proportional amount of any available funds that is equal to the proportion of total eligible claims paid by all participating health benefit plan issuers that the requesting health benefit plan issuer paid.

(c) If the amount of funds available for distribution for claims paid by all health benefit plan issuers participating in the program during a calendar year exceeds the total amount requested for reimbursement by all participating health benefit plan issuers during that calendar year, the commissioner shall carry forward any excess funds and make those excess funds available for distribution in the next calendar year. Excess funds carried over under this section are added to the fund in addition to any other money appropriated for the fund for the calendar year into which the funds are carried forward.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.255. PROGRAM REPORTING. (a) Each health benefit plan issuer participating in the program shall provide the department, in the form prescribed by the commissioner, monthly reports of total enrollment under qualifying health benefit plans.

(b) On the request of the commissioner, each health benefit plan issuer participating in the program shall furnish to the department, in the form prescribed by the commissioner, data other than data described by Subsection (a) that the commissioner determines necessary to oversee the operation of the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.256. CLAIMS EXPERIENCE DATA. (a) Based on available data and appropriate actuarial assumptions, the commissioner shall separately estimate the per covered individual annual cost of total claims reimbursement from the fund for qualifying health benefit plans.

(b) On request, a health benefit plan issuer participating in the program shall furnish to the department claims experience data for use in the estimates described by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.257. TOTAL ELIGIBLE ENROLLMENT DETERMINATION. (a) The commissioner shall determine total eligible enrollment under qualifying health benefit plans by dividing the total funds available for distribution from the fund by the estimated per covered individual annual cost of total claims reimbursement from the fund.

(b) At the end of the first year of enrollment and annually thereafter, the commissioner shall submit a report to the governor and the legislature regarding enrollment for the previous year and limitations on future enrollment that ensure that the program does not necessitate a substantial increase in funding to continue the program, as consistent with Section 1508.001.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.258. EVALUATION AND PROTECTION OF FUND; EMPLOYER ENROLLMENT SUSPENSION. (a) The commissioner shall suspend the enrollment of new employers in qualifying health benefit plans if the commissioner determines that the total enrollment reported by all health benefit plan issuers under qualifying health benefit plans exceeds the total eligible enrollment determined under Section 1508.257 and is likely to result in anticipated annual expenditures from the fund in excess of the total funds available for distribution from the fund.

(b) The commissioner shall provide a health benefit plan issuer participating in the program with notification of any enrollment suspension under Subsection (a) as soon as practicable after:

(1) receipt of all enrollment data; and

(2) determination of the need to suspend enrollment.

(c) A suspension of issuance of qualifying health benefit plans to employers under Subsection (a) does not preclude the addition of new employees of an employer already covered under a qualifying health benefit plan or new dependents of employees already covered under a qualifying health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01,

eff. September 1, 2009.

Sec. 1508.259. EMPLOYER ENROLLMENT REACTIVATION. If, at any point during a suspension of enrollment under Section 1508.258, the commissioner determines that funds are sufficient to provide for the addition of new enrollments, the commissioner:

(1) may reactivate new enrollments; and

(2) shall notify all participating group health benefit plan issuers that enrollment of new employers may be resumed.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.260. FUND ADMINISTRATOR. (a) The commissioner may obtain the services of an independent organization to administer the fund.

(b) The commissioner shall establish guidelines for the submission of proposals by organizations for the purposes of administering the fund and may approve, disapprove, or recommend modification to the proposal of an applicant to administer the fund.

(c) An organization approved to administer the fund shall submit reports to the commissioner, in the form and at the times required by the commissioner, as necessary to facilitate evaluation and ensure orderly operation of the fund, including an annual report of the affairs and operations of the fund. The annual report must also be delivered to the governor, the lieutenant governor, and the speaker of the house of representatives.

(d) An organization approved to administer the fund shall maintain records in the form prescribed by the commissioner and make those records available for inspection by or at the request of the commissioner.

(e) The commissioner shall determine the amount of compensation to be allocated to an approved organization as payment for fund administration. Compensation is payable only from the fund.

(f) The commissioner may remove an organization approved to administer the fund from fund administration. An organization removed from fund administration under this subsection must cooperate in the orderly transition of services to another approved

organization or to the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.261. STOP-LOSS INSURANCE; REINSURANCE. (a) The administrator of the fund, on behalf of and with the prior approval of the commissioner, may purchase stop-loss insurance or reinsurance from an insurance company licensed to write that coverage in this state.

(b) Stop-loss insurance or reinsurance may be purchased to the extent that the commissioner determines funds are available for the purchase of that insurance.

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

Sec. 1508.262. PUBLIC EDUCATION AND OUTREACH. (a) The commissioner may use an amount of the fund, not to exceed eight percent of the annual amount of the fund, for purposes of developing and implementing public education, outreach, and facilitated enrollment strategies targeted to small employers who do not provide health insurance.

(b) The commissioner shall solicit and accept recommendations concerning the development and implementation of education, outreach, and enrollment strategies under Subsection (a) from agents licensed under Title 13 to write health benefit plans in this state.

(c) The commissioner may contract with marketing organizations to perform or provide assistance with education, outreach, and enrollment strategies described by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 721 (S.B. 78), Sec. 2.01, eff. September 1, 2009.

CHAPTER 1509. SHORT-TERM LIMITED-DURATION INSURANCE

Sec. 1509.001. DEFINITION. In this chapter, "short-term limited-duration insurance" has the meaning assigned by 26 C.F.R. Section 54.9801-2.

Added by Acts 2019, 86th Leg., R.S., Ch. 657 (S.B. 1852), Sec. 3, eff. September 1, 2019.

Sec. 1509.002. POLICY DISCLOSURE FORM. (a) The commissioner by rule shall prescribe a disclosure form to be provided with a short-term limited-duration insurance policy and application.

(b) The disclosure form must be in an easily readable font at least 14-point in size and include:

(1) the duration of coverage;

(2) a statement:

(A) of the number of times the policy may be renewed or that the policy may not be renewed, as applicable;

(B) that the expiration of short-term coverage is not a qualifying life event that would make a person eligible for a special enrollment period; and

(C) that the policy may expire outside of the open enrollment period;

(3) to the extent the information is available, the dates of the next three open enrollment periods under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) following the date the policy expires;

(4) whether the policy contains any limitations or exclusions to preexisting conditions;

(5) the maximum dollar amount payable under the policy;

(6) the deductibles under the policy and the health care services to which the deductibles apply;

(7) whether the following health care services are covered, including:

(A) prescription drug coverage;

(B) mental health services;

(C) substance abuse treatment;

(D) maternity care;

(E) hospitalization;

(F) surgery;

(G) emergency health care; and

(H) preventive health care; and

(8) any other information the commissioner determines is important for a purchaser of a short-term limited-duration insurance policy.

(c) An insurer issuing a short-term limited-duration insurance policy shall adopt procedures in accordance with commissioner rule to obtain a signed form from the insured acknowledging receipt of the disclosure form described by this section. The rule must allow for electronic acknowledgment. The insurer shall retain an acknowledgment form until the fifth anniversary of the date the insurer receives the form, and the insurer shall make the form available to the department on request.

Added by Acts 2019, 86th Leg., R.S., Ch. 657 (S.B. 1852), Sec. 3, eff. September 1, 2019.

SUBTITLE H. HEALTH BENEFITS AND OTHER COVERAGES FOR GOVERNMENTAL EMPLOYEES

CHAPTER 1550. CERTAIN REQUIREMENTS FOR INSURERS CONTRACTING WITH GOVERNMENTAL ENTITIES

SUBCHAPTER B. CERTAIN CONTRACTS WITH MUNICIPALITIES

Sec. 1550.051. DEFINITION OF INSURER. In this subchapter, "insurer" means:

(1) an insurance company, including a company providing stop-loss or excess loss insurance;

(2) a health maintenance organization operating under Section 1367.053, Subchapter A, Chapter 1452, Subchapter B, Chapter 1507, Chapter 222, 251, or 258, as applicable to a health maintenance organization, Chapter 843, Chapter 1271, and Chapter 1272;

(3) an approved nonprofit health corporation that holds a certificate of authority issued under Chapter 844; or

(4) a third-party administrator that holds a certificate of authority under Chapter 4151.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.002, eff. April 1, 2009.

Sec. 1550.052. BID REQUIREMENTS. (a) Except as provided by Section 1550.054, an insurer that bids on a contract subject to the competitive bidding and competitive proposal requirements adopted under Section 252.021, Local Government Code, may not submit a bid for a contract to provide stop-loss or other insurance coverage that

is subject to any qualification imposed by the insurer that permits the insurer to modify or limit the terms of insurance coverage to be provided after the contract has been made.

(b) An insurer's bid submitted under Section 252.021, Local Government Code, must contain the insurer's entire offer.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.002, eff. April 1, 2009.

Sec. 1550.053. CERTAIN EXCLUSIONS AND INCREASED DEDUCTIBLES PROHIBITED. Except as provided by Section 1550.054, an insurer that provides stop-loss or other insurance coverage for health benefits under a contract subject to this subchapter may not, based on an individual's prior medical history:

(1) exclude from coverage an individual who is otherwise eligible for the health benefits coverage; or

(2) assign a higher deductible to the individual.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.002, eff. April 1, 2009.

Sec. 1550.054. EXCEPTION FOR WRITTEN WAIVER. By executing a written waiver in favor of the insurer, a municipality as defined by Section 1.005, Local Government Code, may waive a requirement of Section 1550.052 or 1550.053(2).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.002, eff. April 1, 2009.

CHAPTER 1551. TEXAS EMPLOYEES GROUP BENEFITS ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1551.001. SHORT TITLE. This chapter may be cited as the Texas Employees Group Benefits Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.002. PURPOSES. The purposes of this chapter are to:

(1) provide uniformity in life, accident, and health benefit coverages for all state officers and employees and their dependents;

(2) enable the state to attract and retain competent and able employees by providing employees and their dependents with life, accident, and health benefit coverages at least equal to those commonly provided in private industry;

(3) foster, promote, and encourage employment by and service to the state as a career profession for individuals of high standards of competence and ability;

(4) recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among employees and their dependents;

(5) foster and develop high standards of employer-employee relationships between the state and its employees;

(6) recognize the long and faithful service and dedication of state officers and employees and encourage them to remain in state service until eligible for retirement by providing health benefits for them and their dependents; and

(7) recognize the service to the state by employees and retired employees of community supervision and corrections departments by extending to them and their dependents the same life, accident, and health benefit coverages as those provided under this chapter to state employees, retired state employees, and their dependents.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1030, Sec. 1.01, eff. Sept. 1, 2003.

Sec. 1551.003. GENERAL DEFINITIONS. In this chapter:

(1) "Administering firm" means a firm designated by the board of trustees to administer coverages, services, benefits, or requirements in accordance with this chapter and the rules adopted by the board of trustees under this chapter.

(2) "Annuitant" means an individual eligible to participate in the group benefits program under Section 1551.102.

(3) "Basic coverage" means the group coverage plans determined by the board of trustees in which each eligible full-time

employee and annuitant participates automatically unless participation is specifically waived.

(4) "Board of trustees" means the board of trustees established under Chapter 815, Government Code, to administer the Employees Retirement System of Texas.

(5) "Cafeteria plan" means a plan defined and authorized by Section 125, Internal Revenue Code of 1986.

(6) "Employee" means an individual eligible to participate in the group benefits program under Section 1551.101.

(7) "Employer" means this state and its agencies.

(8) "Executive director" means the executive director of the Employees Retirement System of Texas.

(9) "Full-time employee" means an employee designated as a full-time employee under Section 1551.319(c) or (d) or an employee designated by the employer as working 30 or more hours a week.

(9-a) "Good cause" means that a person's failure to act was not because of a lack of due diligence the exercise of which would have caused a reasonable person to take prompt and timely action. A failure to act based on ignorance of the law or facts reasonably discoverable through the exercise of due diligence does not constitute good cause.

(10) "Group benefits program" means the state employees group benefits program provided by this chapter.

(10-a) "Participant" means an eligible individual who participates in the group benefits program.

(11) "Part-time employee" means an employee designated by the employer as working less than 30 hours a week. For purposes of this chapter, an individual described by Section 1551.101(e)(2) is considered a part-time employee.

(12) "Serious mental illness" has the meaning assigned by Section 1355.001.

(13) "Service" means personal service to the state creditable in accordance with rules adopted by the board of trustees.

(14) "State agency" means a commission, board, department, division, institution of higher education, or other agency of this state created by the constitution or statutes of this state. The term also includes the Texas Municipal Retirement System and the Texas County and District Retirement System.

(15) "Usual and customary rate" means the relevant allowable amount as described by the applicable master benefit plan

document or policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.01, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 24, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.018, eff. April 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 31, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 618 (S.B. 1459), Sec. 21, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.10, eff. September 1, 2019.

Sec. 1551.004. DEFINITION OF DEPENDENT. (a) In this chapter, "dependent" with respect to an individual eligible to participate in the group benefits program means the individual's:

(1) spouse;

(2) unmarried child younger than 26 years of age;

(3) child of any age who the board of trustees determines lives with or has the child's care provided by the individual on a regular basis if the child is mentally or physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the board of trustees;

(4) child of any age who is unmarried, for purposes of health benefit coverage under this chapter, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its subsequent amendments; and

(5) ward, as that term is defined by Chapter 1002, Estates Code, who is 26 years of age or younger.

(b) In this section, "child" includes:

(1) a natural child, adopted child, stepchild, foster child, or child in the possession of a participant who is designated as managing conservator of the child under an irrevocable or unrevoked affidavit of relinquishment under Chapter 161, Family Code;

or

(2) a child who is related by blood or marriage and was claimed as a dependent on the federal income tax return of an individual who is eligible to participate in the group benefits program under Section 1551.101 or 1551.102 for the calendar year preceding the plan year in which the child is first enrolled as a dependent under Subchapter D, and for each subsequent year in which the child is enrolled as a dependent.

(c) The requirement in Subsection (b)(2) that a child must be claimed as a dependent on a federal income tax return in the calendar year preceding the child's enrollment does not apply if:

(1) the child is born in the year in which the child is first enrolled; or

(2) the participant can demonstrate good cause for not claiming the child as a dependent in the preceding calendar year.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.401(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 32, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 109 (H.B. 755), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 17, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 618 (S.B. 1459), Sec. 22, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1285 (H.B. 2155), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.049, eff. September 1, 2017.

Sec. 1551.005. DEFINITION OF HEALTH BENEFIT PLAN. (a) In this chapter, "health benefit plan" means a plan that provides, pays for, or reimburses expenses for health care services, including comparable health care services for participants who rely solely on spiritual means through prayer for healing in accordance with the teaching of a well-recognized church or denomination.

(b) A health benefit plan shall be provided on a group basis through:

(1) a policy or contract;

(2) a medical, dental, or hospital service agreement;

(3) a membership or subscription contract;

(4) a salary continuation plan;

(5) a health maintenance organization agreement;

(6) a preferred provider arrangement; or

(7) any other similar group arrangement or a combination of policies, plans, contracts, agreements, or arrangements described by this subsection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.006. DEFINITION OF INSTITUTION OF HIGHER EDUCATION. (a) In this chapter, except as provided by Subsection (b), "institution of higher education" means a public junior college, a senior college or university, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Education Code.

(b) In this chapter, "institution of higher education" does not include:

(1) an entity in The University of Texas System, as described by Section 65.02, Education Code; and

(2) an entity in The Texas A&M University System, as described by Subtitle D, Title 3, Education Code, including the Texas Veterinary Medical Diagnostic Laboratory.

(c) Notwithstanding Subsection (b), The Texas A&M University System, including the Texas Veterinary Medical Diagnostic Laboratory, participates in the group benefits program if, not later than November 1, 2004, the system notifies the board of trustees of the system's election to participate. If notice is provided as required by this subsection, the employees and annuitants of the system, including the veterinary medical laboratory, and the dependents of those employees and annuitants, participate in the group benefits program effective not later than September 1, 2005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.02, eff. Sept. 1, 2003.

Sec. 1551.007. DEFINITION OF CARRIER. In this chapter, "carrier" means:

(1) an insurance company that is authorized by the department under this code or another insurance law of this state to provide any of the types of insurance coverages, benefits, or services provided for in this chapter and that:

(A) has a surplus of $1 million;

(B) has a successful operating history; and

(C) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter;

(2) a corporation operating under Chapter 842 or 843 that provides any of the types of coverage, benefits, or services provided for in this chapter and that:

(A) has a successful operating history; and

(B) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter; or

(3) any combination of carriers described by Subdivisions (1) and (2) on terms the board of trustees prescribes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.402, eff. Sept. 1, 2003.

Sec. 1551.008. APPLICABILITY OF DEFINITIONS. The definition of a term defined by this subchapter and the use of the terms "employee" and "annuitant" to refer to individuals eligible to participate in the group benefits program under Sections 1551.101 and 1551.102 apply to this chapter unless a different meaning is plainly required by the context in which the term appears.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.009. BOARD OF TRUSTEES MAY DEFINE OTHER WORDS. The board of trustees may define by rule a word in terms necessary in the administration of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.010. BOARD OF TRUSTEES APPROVAL FOR PAYROLL DEDUCTIONS OR REDUCTIONS. A state agency may not establish, continue, or authorize payroll deductions or reductions for any benefit or coverage as provided by this chapter without the express approval of the board of trustees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.011. EXEMPTION FROM EXECUTION. All benefit payments, contributions of employees and annuitants, and optional benefit payments, any rights, benefits, or payments accruing to a person under this chapter, and all money in a fund created by this chapter:

(1) are exempt from execution, attachment, garnishment, or any other process; and

(2) may not be assigned, except:

(A) for direct payment that a participant may assign to a provider of health care services; and

(B) as specifically provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.012. EXEMPTION FROM STATE TAXES AND FEES. Any coverage established under this chapter, including a policy, an insurance contract, a certificate of coverage, an evidence of coverage, and an agreement with a health maintenance organization or a plan administrator, is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.013. COMBINING OF CARRIERS NOT RESTRAINT OF TRADE. Carriers combining to bid, underwrite, or both bid and underwrite for the group benefits program are not in violation of Chapter 15, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.014. EXCLUSIVE REMEDIES. The remedies provided under this chapter are the exclusive remedies available to an employee, participant, annuitant, or dependent.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.403(a), eff. Sept. 1, 2003.

Text of section effective until September 1, 2025

Sec. 1551.015. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a managed care plan provided under the group benefits program shall provide written notice in accordance with this section in an explanation of benefits provided to the participant and the physician or health care provider in connection with a health care or medical service or supply or transport provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1551.228, 1551.229, 1551.230, or 1551.231, as applicable;

(2) the total amount the physician or provider may bill the participant under the participant's managed care plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a payment under Section 1551.228, 1551.229, 1551.230, or 1551.231, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.11, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 9(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 9(b), eff.

September 1, 2025.

Text of section effective on September 1, 2025

Sec. 1551.015. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a managed care plan provided under the group benefits program shall provide written notice in accordance with this section in an explanation of benefits provided to the participant and the physician or health care provider in connection with a health care or medical service or supply provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1551.228, 1551.229, or 1551.230, as applicable;

(2) the total amount the physician or provider may bill the participant under the participant's managed care plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a payment under Section 1551.228, 1551.229, or 1551.230, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.11, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 9(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 9(b), eff. September 1, 2025.

SUBCHAPTER B. ADMINISTRATION AND IMPLEMENTATION

Sec. 1551.051. ADMINISTRATION AND IMPLEMENTATION. The administration and implementation of this chapter are vested solely in the board of trustees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.052. AUTHORITY FOR RULES, PLANS, PROCEDURES, AND ORDERS. (a) The board of trustees may adopt rules consistent with this chapter as it considers necessary to implement this chapter and its purposes, including rules that provide standards for determining eligibility for participation in the group benefits program, including standards for determining disability.

(b) The board of trustees may adopt a plan, procedure, or order reasonably necessary to implement this chapter and its purposes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.053. AUTHORITY TO HIRE EMPLOYEES. (a) The board of trustees may hire employees as the board considers necessary to ensure the proper administration of this chapter and the coverages, services, and benefits provided for or authorized by this chapter.

(b) The board of trustees shall determine and assign the compensation and duties of the employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.055. GENERAL POWERS OF BOARD OF TRUSTEES REGARDING COVERAGE PLANS. The board of trustees may:

(1) prepare specifications for a coverage provided under this chapter;

(2) prescribe the time and conditions under which an employee, annuitant, or dependent is eligible for a coverage provided under this chapter;

(3) determine the methods and procedures of claims administration;

(4) determine the amount of payroll deductions and reductions applicable to employees and annuitants and establish procedures to implement those deductions and reductions;

(5) establish procedures for the board of trustees to decide contested cases arising from a coverage provided under this chapter;

(6) study, on an ongoing basis, the operation of all

coverages provided under this chapter, including gross and net costs, administration costs, benefits, utilization of benefits, and claims administration;

(7) administer the employees life, accident, and health insurance and benefits fund;

(8) provide the beginning and ending dates of coverages of participants under all benefit plans;

(9) develop basic group coverage plans applicable to all individuals eligible to participate in the group benefits program under Sections 1551.101 and 1551.102;

(10) provide for optional group coverage plans in addition to the basic group coverage plans;

(11) provide, as the board of trustees determines is appropriate, either additional statewide optional coverage plans or individual agency coverage plans;

(12) develop health benefit plans that permit access to high-quality, cost-effective health care;

(13) design, implement, and monitor health benefit plan features intended to discourage excessive utilization, promote efficiency, and contain costs;

(14) develop and refine, on an ongoing basis, a health benefit strategy consistent with evolving benefit delivery systems;

(15) develop a funding strategy that efficiently uses employer contributions to achieve the purposes of this chapter and that is reasonable and ensures participants a fair choice among health benefit plans as provided by Section 1551.302; and

(16) appoint an advisory committee for the group benefits program under the terms provided by Section 815.509, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.406(a), eff. Sept. 1, 2003.

Sec. 1551.056. INDEPENDENT ADMINISTRATOR. (a) The board of trustees may, on a competitive bid basis, contract with an entity to act for the board as an independent administrator or manager of the coverages, services, and benefits authorized under this chapter.

(b) The entity must be a qualified, experienced firm of group insurance specialists or an administering firm and shall assist the

board of trustees in ensuring the proper administration of this chapter and the coverages, services, and benefits provided for or authorized by this chapter.

(c) The board of trustees shall pay an independent administrator selected under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.057. COMPENSATION OF PERSON EMPLOYED BY BOARD OF TRUSTEES. The board of trustees shall pay the compensation and expenses of a person employed by the board at the rate or in the amount approved by the board. The rate or amount may not exceed the rate or amount paid for similar services.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.058. ELECTRONIC AUTHORIZATIONS. (a) The board of trustees may develop a system for a participant to electronically authorize:

(1) enrollment in a coverage or benefit;

(2) contributions to a coverage or benefit; and

(3) deductions or reductions to the participant's compensation or annuity for participation in a coverage or benefit.

(b) Notwithstanding any other law, the board of trustees may permit or require an authorization covered by Subsection (a) to be made electronically.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.059. CERTIFICATE OF COVERAGE. The board of trustees shall provide for issuance to each employee or annuitant participating in the group benefits program a certificate of coverage that states:

(1) the benefits to which the participant is entitled;

(2) to whom the benefits are payable;

(3) to whom a claim must be submitted; and

(4) the provisions of the plan document, in summary form, that principally affect the participant.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.060. IDENTIFICATION CARDS. (a) The board of trustees may issue a single identification card to a participant in a health benefit plan and separately administered coverage under this chapter that offers pharmacy benefits.

(b) The card may contain information regarding both health and pharmacy benefits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.061. ANNUAL REPORT. The board of trustees shall submit a written report not later than February 1 of each year to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board concerning the coverages provided and the benefits and services being received by all participants under this chapter. The report must include:

(1) information about the effectiveness and efficiency of:

(A) managed care cost containment practices; and

(B) fraud detection and prevention procedures;

(2) basic information about each group coverage plan provided under this chapter, including the number of participants in each plan and the claims amounts and administrative expenses incurred under each plan;

(3) a summary of recent changes to the benefits provided under this chapter that highlights any key benefits the board of trustees evaluated but did not implement;

(4) a discussion of trends in claims under group coverage plans as well as other areas of interest identified by the board of trustees;

(5) recommendations for any statutory changes the board of trustees determines necessary to achieve its goals for the group benefits program; and

(6) any other information the board of trustees determines appropriate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 530 (S.B. 301), Sec. 10, eff.

September 1, 2017.

Sec. 1551.062. INFORMATION ON OPERATION AND ADMINISTRATION OF CHAPTER. (a) The board of trustees shall:

(1) conduct a continuing study of the operation and administration of this chapter, including:

(A) conducting surveys and preparing reports on group coverages and benefits available to participants; and

(B) studying experience relating to group coverages and benefits available to participants; and

(2) maintain statistics on the number, type, and disposition of fraudulent claims for benefits under this chapter.

(b) A contract entered into under this chapter must require a carrier to:

(1) furnish any reasonable report the board of trustees determines is necessary to enable the board to perform its functions under this chapter; and

(2) permit the board and a representative of the state auditor to examine records of the carrier as necessary to accomplish the purposes of this chapter.

(c) Each state agency shall keep records, make certifications, and furnish the board of trustees with information and reports necessary to enable the board to perform its functions under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.063. CONFIDENTIALITY OF CERTAIN RECORDS. (a) The records of a participant in the group benefits program in the custody of the Employees Retirement System of Texas, or of an administering firm, carrier, or another governmental entity acting on behalf of the retirement system, are confidential and not subject to disclosure, and the retirement system, administering firm, carrier, or governmental entity is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the provisions of Chapter 552, Government Code, except as provided by this section.

(b) The records may be released to a participant or to an authorized attorney, family member, or representative acting on behalf of the participant.

(c) To accomplish the purposes of this chapter, the board of trustees may release the records to:

(1) an administering firm, carrier, agent, or attorney acting on behalf of the board;

(2) another governmental entity having a legitimate need for the information to perform a function of the board of trustees;

(3) an authorized medical provider of the participant; or

(4) a party in response to a subpoena issued under applicable law.

(d) The records of a participant remain confidential after release to a person as authorized by this section.

(d-1) A record released or received by the Employees Retirement System of Texas under this section may be transmitted electronically, including through the use of an electronic signature or certification in a form acceptable to the retirement system. An unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

(e) The records of a participant may become part of the public record of an administrative or judicial proceeding related to a contested case under this chapter unless the records are closed to public access by a protective order issued under applicable law. If a participant's records have become part of the public record of a proceeding and the records are not the subject of a protective order, the participant is considered to have waived the privacy of the participant's records.

(f) The Employees Retirement System of Texas has sole discretion in determining if a record is subject to this section. For purposes of this section, a record includes any identifying information about a person, living or deceased, who is or was an employee, annuitant, dependent, or participant in the group benefits program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 33, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.404(a), eff. Sept. 1,

2003.
Amended by:
Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 25, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 33, eff. September 1, 2009.

Sec. 1551.064. CERTAIN GROUP HEALTH AND ACCIDENT POLICIES OR CONTRACTS. (a) This section applies only to a group policy or contract described by Section 1251.301. A policy or contract executed under this chapter must provide that:

(1) premium payments must be:

(A) paid directly to the Employees Retirement System of Texas; and

(B) postmarked or received not later than the 10th day of the month for which the premium is due;

(2) the premium for group continuation coverage under Subchapter G, Chapter 1251, may not exceed the level established for other surviving dependents of deceased employees and annuitants;

(3) at the time the group policy or contract is delivered, issued for delivery, renewed, amended, or extended, the Employees Retirement System of Texas shall give notice of the continuation option to each state agency covered by the group benefits program; and

(4) each state agency shall give written notice of the continuation option to each employee and dependent of an employee who is covered by the group benefits program.

(b) A group policy or contract executed under this chapter must provide that, not later than the 15th day after the date of any severance of the family relationship that might activate the continuation option under Subchapter G, Chapter 1251, the group member shall give written notice of the severance to the employing state agency.

(c) On receipt of notice under Subsection (b) or on the death of an employee, the employing state agency shall give written notice of the continuation option to each affected dependent. The notice must state the amount of the premium to be charged and must be accompanied by any necessary enrollment forms.

(d) A covered dependent must exercise the continuation option

not later than the 45th day after the date of:

(1) the severance of the family relationship; or

(2) the retirement or death of the group member.

(e) A covered dependent must provide written notice of the exercise of the continuation option to the employing state agency within the time prescribed by Subsection (d). Coverage under the policy or contract remains in effect during the period prescribed by Subsection (d) if the premiums are paid.

(f) Any period of previous coverage under the policy or contract must be used in full or partial satisfaction of any required probationary or waiting periods provided in the policy or contract for dependent coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.019, eff. April 1, 2009.

Sec. 1551.065. DISCLOSURE OF SOCIAL SECURITY NUMBER. The board of trustees may require an individual to disclose the individual's social security number as the board considers necessary to properly administer this chapter and any coverage, service, or benefit authorized by this chapter or as otherwise required by state or federal law.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.404(b), eff. Sept. 1, 2003.

Sec. 1551.066. INFORMATION RELATING TO MISCONDUCT. (a) This section applies to:

(1) the Employees Retirement System of Texas;

(2) a carrier or other insurance company or health maintenance organization;

(3) an administering firm or other insurance support organization that provides information or services to the group benefits program or the Employees Retirement System of Texas;

(4) an agent or third-party administrator authorized under this chapter or licensed under this code;

(5) a regulatory authority or department; and

(6) a board member, executive director, employee, auditor, or actuary of an entity described by this section.

(b) A person may collect from, furnish to, or exchange with another person information, including medical records or other confidential information, to the extent the person considers necessary to detect or to impose a sanction for a criminal act, a misrepresentation, or nondisclosure that is related to an attempt to obtain coverage, payment, reimbursement, or a benefit under this chapter.

(c) A person who acts under Subsection (b) is immune from suit and criminal or civil liability unless the person acts with malice or intent to defraud.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.405(a), eff. Sept. 1, 2003.

Sec. 1551.067. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In awarding a contract to provide pharmacy benefit manager services under this chapter, the board of trustees is not required to select the lowest bid but must select a contract that meets the criteria established by this section.

(b) The contract must state that:

(1) the board of trustees is entitled to audit the pharmacy benefit manager to verify costs and discounts associated with drug claims, pharmacy benefit manager compliance with contract requirements, and services provided by subcontractors;

(2) the audit must be conducted by an independent auditor in accordance with established auditing standards; and

(3) to conduct the audit, the board of trustees and the independent auditor are entitled access to information related to the services and the costs associated with the services performed under the contract, including access to the pharmacy benefit manager's facilities, records, contracts, medical records, and agreements with subcontractors.

(c) The contract must define the information that the pharmacy benefit manager is required to provide to the board of trustees concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits must be reported to the board of

trustees, including how often the results must be reported. The contract must state whether the pharmacy benefit manager is required to return recovered overpayments to the board of trustees.

(d) The contract must state that any audit of a mail order pharmacy owned by the pharmacy benefit manager must be conducted by an independent auditor selected by the board of trustees in accordance with established auditing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 3, eff. September 1, 2009.

Sec. 1551.068. QUALIFICATION OF GROUP BENEFITS PROGRAM. Notwithstanding any provision of this chapter or any other law, it is intended that the provisions of this chapter be construed and administered in a manner that coverages under the group benefits program will be considered in compliance with applicable federal law. The board of trustees may adopt rules that modify the coverage provided under the program by adding, deleting, or changing a provision of the program, including rules that modify eligibility and enrollment requirements and the benefits available under the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 18, eff. September 1, 2011.

SUBCHAPTER C. COVERAGE AND PARTICIPATION

Sec. 1551.101. PARTICIPATION ELIGIBILITY: STATE OFFICERS AND EMPLOYEES. (a) An elected or appointed officer or employee who performs service, other than as an independent contractor, for this state, including an institution of higher education, and who is described by this section is eligible to participate in the group benefits program as an employee on the date specified by Section 1551.1055.

(b) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual receives compensation for service performed for this state pursuant to a payroll certified by a state agency, other than an institution of higher education, or by an elected or appointed officer of this state, including a payment made from:

(1) an amount appropriated by the legislature from a state

fund;

(2) a trust fund held by the comptroller; or

(3) money paid under the official budget of a state agency, other than money appropriated under a general appropriations act.

(c), (d) Repealed by Acts 2003, 78th Leg., ch. 366, Sec. 2.14.

(e) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual receives compensation for service performed for an institution of higher education pursuant to a payroll certified by an institution of higher education or by an elected or appointed officer of this state and either:

(1) is eligible to become a member of the Teacher Retirement System of Texas after any waiting period provided by law before membership in that retirement system; or

(2) is employed at least 20 hours a week and is not permitted to be a member of the Teacher Retirement System of Texas because the individual is employed by an institution of higher education only in a position that as a condition of employment requires the individual to be enrolled as a student in the institution in graduate-level courses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.03, 2.14, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 26, eff. September 1, 2005.

Sec. 1551.102. PARTICIPATION ELIGIBILITY: ANNUITANTS. (a) An individual who has at least 10 years of service credit, as determined by the board of trustees, for which the individual was eligible to participate in the group benefits program under Section 1551.101 or who has at least five years of membership and five years of military service credited in the Employees Retirement System of Texas and who retires in a manner described by this section is eligible, subject to Section 1551.1055, to participate as an annuitant in the group benefits program.

(b) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if:

(1) the individual retires under the jurisdiction of the Employees Retirement System of Texas; and

(2) the individual:

(A) receives or is eligible to receive an annuity under Section 814.104(a)(2), Government Code, and has at least 10 years of eligible service credit;

(B) receives or is eligible to receive an annuity under Chapter 803 or Section 814.104(a)(1), Government Code, has at least 10 years of eligible service credit, and is at least 65 years of age;

(C) receives or is eligible to receive an annuity that is based on eligibility under Section 814.002, 814.102, 814.104(b), 814.107(a), 834.101, or 839.101 or Subchapter B, Chapter 840A, Government Code; or

(D) receives or is eligible to receive an annuity under Subchapter B, Chapter 820, Government Code, and has at least 10 years of eligible service credit.

(c) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if:

(1) the individual retires under the jurisdiction of the Teacher Retirement System of Texas and has at least 10 years of eligible service credit, including not more than five years of military service credited in the Employees Retirement System of Texas, or has five years of eligible service credit and is the sole surviving spouse of military personnel who was killed in action;

(2) the individual:

(A) has accumulated eligible service credit in an amount so that the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80; or

(B) is at least 65 years of age; and

(3) the individual was employed, as the last state employment before retirement, including employment by a public junior college, by a state agency whose employees are authorized to participate in the group benefits program.

(c-1) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if:

(1) the individual meets the minimum requirements under Subsection (c) except that the individual does not have at least 10 years of eligible service credit as described by Subsection (c)(1);

(2) the individual has at least 10 years of combined

service in a position for which the individual was eligible to participate in the group benefits program or in the uniform program under Section 1601.101; and

(3) either:

(A) the individual's greatest number of years of state employment was in a position for which the individual was eligible to participate in the group benefits program; or

(B) if the individual's years of employment in positions eligible to participate in the group benefits program and the uniform program are equal, the individual's last state employment before retirement was in a position for which the individual was eligible to participate in the group benefits program.

(c-2) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual:

(1) was employed for at least 10 years by a school district established as specified by Section 19.002, Education Code, as the individual's last position of employment before retirement;

(2) has at least:

(A) 10 years of eligible service credit, including not more than five years of military service credited in the Employees Retirement System of Texas; or

(B) five years of eligible service credit and is the sole surviving spouse of military personnel who was killed in action; and

(3) retires under the jurisdiction of the Teacher Retirement System of Texas and:

(A) has accumulated membership service credit as provided by Section 823.201(a), Government Code, in an amount so that the sum of the person's age and amount of membership service credit, including months of age and credit, equals or exceeds the number 80; or

(B) is at least 65 years of age.

(d) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if:

(1) the individual retires under the optional retirement program established by Chapter 830, Government Code;

(2) the individual has at least 10 years of eligible service credit; and

(3) the individual:

(A) is at least 65 years of age, or would have been

eligible to retire and receive a service or disability retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas in an amount such that the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80 or would have been eligible to retire and receive a disability retirement annuity from the Teacher Retirement System of Texas or the Employees Retirement System of Texas, if the individual had not elected to participate in the optional retirement program, and is eligible to receive an annuity or periodic distribution of funds from an account under the optional retirement program; or

(B) is disabled as determined by the Employees Retirement System of Texas based on at least 10 years of eligible service credit, and is receiving an annuity or periodic distribution of funds from an account under the optional retirement program.

(e) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual retired under Subtitle C, Title 8, Government Code, before September 1, 1991, with at least five and less than 10 years of service credit.

(f) An individual is eligible to participate in the group benefits program if the individual is certified and qualified as disabled and receives or is eligible to receive an annuity under Section 814.202, 814.207, 824.302, only as to higher education, or 839.201, Government Code.

(g) An individual is eligible to participate in the group benefits program as provided by Subsection (a) if the individual is at least 65 years of age and retires under a federal or state statutory retirement program not described by another provision of this section, to which an institution of higher education has made employer contributions, and the individual has met service requirements, age requirements, and other applicable requirements comparable to the requirements for retirement under the Teacher Retirement System of Texas, based on at least 10 years of service credit.

(h) A person eligible to participate and participating in the group benefits program as an annuitant on September 1, 2003, may continue to participate in the program as an annuitant if a lapse in coverage has not occurred.

(i) Subject to Section 1551.323, an individual and the individual's dependents are eligible to participate in the group

benefits program as an annuitant and the dependents of an annuitant if the individual:

(1) served in a position for which the individual was eligible to participate in the group benefits program under Section 1551.101 on or before August 31, 2003; and

(2) at the time of retirement meets the requirements for eligibility for participation in the program as an annuitant as those requirements existed on August 31, 2003.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.04, 2.05, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1111, Sec. 34, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.401(b), eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.01, eff. Jan. 11, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 34, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 2, eff. June 15, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1121 (H.B. 2384), Sec. 33, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 940 (S.B. 321), Sec. 22, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 748 (H.B. 3813), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1092 (S.B. 1245), Sec. 17, eff. June 18, 2023.

Sec. 1551.1021. PARTICIPATION ELIGIBILITY: CERTAIN FACULTY OF INSTITUTIONS OF HIGHER EDUCATION. (a) An adjunct faculty member at a public institution of higher education is eligible to participate in the group benefits program as an employee if the faculty member:

(1) receives compensation for services rendered to a public institution of higher education as an adjunct faculty member;

(2) was employed as a faculty member by the same public institution of higher education and taught at least one course in the regular fall and spring semester at the public institution of higher education in the preceding academic year; and

(3) is under contract or is scheduled to teach at least 12 semester credit hours in the academic year of coverage or, if the person is also employed by the public institution of higher education to perform nonteaching duties, is under contract or is scheduled to teach at least six semester credit hours in the academic year of coverage and has been approved by the public institution of higher education to participate in the group benefits program.

(a-1) Notwithstanding Subsection (a)(3), an adjunct faculty member at a public institution of higher education who is a professional librarian is eligible to participate in the group benefits program as an employee if the faculty member receives compensation for services rendered to a public institution of higher education as an adjunct faculty member.

(b) From money appropriated from a fund other than the general revenue fund or from money available from local sources, a public institution of higher education may, for an adjunct faculty member eligible to receive benefits under this section, contribute:

(1) not more than 50 percent of the cost of basic coverage for the employee; and

(2) not more than 25 percent of the cost of dependent coverage.

(c) Subsection (b) does not prohibit a public institution of higher education from contributing, from money other than money appropriated from the general revenue fund, amounts that exceed the amount specified in Subsection (b) to provide coverage for a person employed by a public institution of higher education who meets the criteria for eligibility under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 366, Sec. 4.04, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 343 (H.B. 2127), Sec. 1, eff. September 1, 2013.

Sec. 1551.1022. PARTICIPATION ELIGIBILITY: CERTAIN POSTDOCTORAL FELLOWS AND GRADUATE STUDENTS. (a) An individual who is not eligible to participate in the group benefits program under Section 1551.101 is eligible to participate in the group benefits program under this section if the individual, at an institution of

higher education:

(1) holds:

(A) a postdoctoral fellowship; or

(B) one or more graduate student fellowships awarded to the individual on a competitive basis that, either singly or in combination, are valued at not less than $10,000 per year; and

(2) is currently receiving a stipend from an applicable fellowship.

(b) An individual who is eligible to participate in the group benefits program under this section shall pay all contributions required under this chapter for the coverage selected by the individual, except that an institution of higher education may make contributions for the individual from available funds other than money appropriated to the institution from the general revenue fund.

(c) An institution of higher education shall determine which individuals are eligible to participate in the group benefits program under this section and, at the time of initial eligibility, shall notify each individual of the individual's eligibility to participate in the program.

(d) An individual who participates in the group benefits program under this section is not considered an employee of an institution of higher education solely as a result of the individual's participation in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1198 (S.B. 29), Sec. 1, eff. September 1, 2011.

Sec. 1551.103. RIGHT TO COVERAGE. Subject to Section 1551.351, an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 may not be denied any group coverage under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.104. AUTOMATIC COVERAGE. (a) Subject to Sections 1551.101 and 1551.102, each full-time employee is covered automatically by the basic coverage plan for employees and each annuitant is covered by the basic coverage plan for annuitants unless:

(1) participation is specifically waived as provided by Section 1551.1045;

(2) the employee or annuitant is expelled from the program under Section 1551.351; or

(3) eligibility is otherwise limited by this chapter.

(b) This section does not apply to an employee described by Section 1551.101(e)(2).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.06, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 4.01, eff. August 29, 2005.

Sec. 1551.1045. WAIVER. (a) Subject to Subsections (b) and (c), an employee or annuitant may waive in writing any coverage provided under this chapter.

(b) To waive coverage under the basic coverage plan for employees, a full-time employee must demonstrate, in the manner required by the board of trustees, that the employee is:

(1) covered by another health benefit plan that provides substantially equivalent coverage, as determined by the board of trustees, to the coverage provided to employees by the basic coverage plan; or

(2) eligible for benefits under the TRICARE Military Health System.

(c) To waive coverage under the basic coverage plan for annuitants for the purpose of eligibility for an incentive payment under Section 1551.222, an annuitant must demonstrate, in the manner required by the board of trustees, that the annuitant is:

(1) covered by another health benefit plan that provides substantially equivalent coverage, as determined by the board of trustees, to the coverage provided to annuitants by the basic coverage plan; or

(2) eligible for benefits under the TRICARE Military Health System.

Added by Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 4.02, eff. August 29, 2005.

Sec. 1551.105. DATE AUTOMATIC COVERAGE BEGINS. Automatic coverage under this subchapter begins on the date an employee or annuitant becomes eligible for coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.1055. DATE ELIGIBILITY BEGINS; WAITING PERIOD. (a) Except as provided by Subsection (c), (d), or (e), eligibility under Section 1551.101 begins not later than the 90th day after the date the employee performs services for a state agency or is qualified for and begins to hold elected or appointed office.

(b) Except as provided by Subsection (c), eligibility under Section 1551.102, for an individual who does not retire at the end of the last month for which the individual is on the payroll of a state agency before retirement, begins not later than the 90th day after the date the individual retires.

(c) The waiting period established by Subsections (a) and (b) applies only to the determination of initial eligibility to participate in the group benefits program and does not apply to the determination of initial eligibility to participate in optional and voluntary insurance coverages under the group benefits program.

(d) This subsection applies only to an employee of an institution of higher education or a dependent of the employee. Notwithstanding Subsection (a), eligibility under Section 1551.101 may not begin earlier than the first day that an employee performs services for an institution of higher education if any amount paid for premium incurred before the date specified under Subsection (a) for the employee and any dependents of the employee is paid from money not appropriated from the general revenue fund, in accordance with policies and procedures established by the governing body of the institution of higher education.

(e) Eligibility under Section 1551.101 for an employee reemployed under Chapter 613, Government Code, begins on the first day of reemployment on which the employee performs services for a state agency.

Added by Acts 2003, 78th Leg., ch. 366, Sec. 2.07, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 618 (S.B. 1459), Sec. 23, eff. September 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 150 (H.B. 437), Sec. 1, eff. September 1, 2015.

Sec. 1551.106. GROUP COVERAGE PLAN PURCHASED TO PROVIDE FOR AUTOMATIC COVERAGE. A group coverage plan purchased by the board of trustees must provide for the automatic coverage described by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.107. CONTINGENT COVERAGE. (a) Each part-time employee or employee eligible to participate in the group benefits program under Section 1551.101(e)(2) may participate in the program on execution of an appropriate application for coverage unless the employee is:

(1) ineligible for the group benefits program under Section 1551.110; or

(2) expelled from the group benefits program under Section 1551.351.

(b) An institution of higher education shall, at the time of employment, notify each of the institution's employees eligible to participate in the group benefits program under Section 1551.101(e)(2) of the employee's eligibility to participate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.108. CONTINUING ELIGIBILITY OF CERTAIN PERSONS WITH LEGISLATIVE SERVICE OR EMPLOYMENT. Subject to Section 1551.351, on application to the board of trustees and on arrangement for payment of contributions and postage:

(1) an individual who has at least eight years of service credit in the Employees Retirement System of Texas for service as a member of the legislature, on ending the individual's service in the legislature, remains eligible for participation in the group benefits program; and

(2) an individual who has at least 10 years of service credit in the Employees Retirement System of Texas as an employee of the legislature, on ending the individual's service for the legislature, remains eligible for participation in the group benefits program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.109. CONTINUING ELIGIBILITY OF CERTAIN MEMBERS OF BOARDS, COMMISSIONS, AND INSTITUTIONS OF HIGHER EDUCATION. (a) Subject to Section 1551.351, on application to the board of trustees and arrangement for payment of contributions, an individual participating in the group benefits program on August 31, 2003, as a current or former member of a governing body with administrative responsibility over a state agency created under a statute of this state that has statewide jurisdiction and whose employees are covered by this chapter or as a current or former member of the State Board of Education or the governing body of an institution of higher education remains eligible for participation in a health benefit plan offered under this chapter if a lapse in coverage has not occurred.

(b) A participant described by this section may not receive a state contribution for premiums. The governing body of an institution of higher education may pay from local funds part or all of the contributions the state would pay for similar coverage of other participants in the group benefits program.

(c) The participant's contribution for coverage under a health benefit plan may not be greater than the contribution for continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.09, eff. Sept. 1, 2003.

Sec. 1551.110. INELIGIBILITY OF CERTAIN JUNIOR COLLEGE EMPLOYEES. (a) Except as provided by Subsections (c) and (d), an employee of a public junior college who is employed to perform services outside this state is not eligible to participate in the group benefits program unless the college elects, under procedures

adopted by the board of trustees, to permit the employee to participate in the group benefits program.

(b) For purposes of this section, an employee is employed to perform services outside this state if 75 percent or more of the services performed by the employee are performed outside this state.

(c) This section does not apply to an individual employed by a public junior college on August 31, 1999. That individual remains eligible to participate in the group benefits program in the same manner as other employees of the college even if the individual's employment by the college is not continuous.

(d) An employee of a public junior college who is employed to perform services outside this state and who is employed after June 18, 1999, is eligible to participate in a group coverage provided under this chapter if the coverage is provided under an insurance policy, contract, or other agreement that:

(1) is in effect on June 18, 1999; and

(2) requires that the employee be eligible to participate in the coverage provided under the agreement.

(e) Eligibility to participate in a coverage under Subsection (d) ends on the date the insurance policy, contract, or other agreement is terminated or renewed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.111. PARTICIPATION BY CERTAIN RETIREMENT SYSTEMS. (a) The Texas Municipal Retirement System and the Texas County and District Retirement System shall participate in the group benefits program in the manner described by this section.

(b) Participation is limited to:

(1) an officer or employee of either system who has been an officer or employee of either system following completion of the waiting period described by Section 1551.1055;

(2) an eligible dependent of an officer or employee of either system described by Subdivision (1);

(3) an individual who:

(A) was an officer or employee of either system;

(B) has retired from either system, subject to Section 1551.1055;

(C) receives or is eligible to receive an annuity from

either system or under Chapter 803, Government Code, based on at least 10 years of service credit and is at least 65 years of age; and

(D) has at least 10 years of service credit with a state agency whose employees are authorized to participate in the group benefits program; and

(4) an eligible dependent of a retired officer or employee described by Subdivision (3).

(c) Except as provided by Section 1551.114, participation in the group benefits program does not extend to:

(1) the governing body of either system;

(2) a municipality or subdivision participating in either system; or

(3) a trustee, officer, or employee, or a dependent of a trustee, officer, or employee, of a participating municipality or subdivision.

(d) A participant described by this section may not receive a state contribution for premiums.

(e) Subject to Section 1551.323, an individual and the individual's dependents are eligible to participate in the group benefits program as an annuitant and the dependents of an annuitant as described under this section if the individual:

(1) served as an officer or employee as described by Subsection (b)(1) on or before August 31, 2003; and

(2) at the time of retirement meets the requirements for eligibility for participation in the program as an annuitant as those requirements existed on August 31, 2003.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.10, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1030, Sec. 1.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.02, eff. Jan. 11, 2004.

Sec. 1551.112. PARTICIPATION BY TEXAS TURNPIKE AUTHORITY. (a) An individual may participate in the group benefits program as an annuitant, subject to Section 1551.1055, and may obtain coverage for the individual's dependents as any other participating annuitant if the individual:

(1) began employment with, or became an officer of, the Texas Turnpike Authority within the three-year period preceding August 31, 1997;

(2) was an officer or employee of the Texas Turnpike Authority on August 31, 1997;

(3) became an officer or employee of the North Texas Tollway Authority on September 1, 1997; and

(4) retires or is eligible to retire with at least 10 years of service credit under the proportionate retirement program established by Chapter 803, Government Code, or under a public retirement system to which Chapter 803 applies and is at least 65 years of age.

(b) The North Texas Tollway Authority is responsible for payment of the contributions the state would make if the annuitant were a state employee.

(c) Subject to Section 1551.323, an individual and the individual's dependents are eligible to participate in the group benefits program as an annuitant and the dependents of an annuitant as described under this section if the individual:

(1) served in a position described by Subsection (a) on or before August 31, 2003; and

(2) at the time of retirement meets the requirements for eligibility for participation in the program as an annuitant as those requirements existed on August 31, 2003.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.03, eff. Jan. 11, 2004.

Sec. 1551.113. PARTICIPATION BY CERTAIN EMPLOYEES WHOSE POSITIONS ARE PRIVATIZED OR ELIMINATED. (a) An individual described by Subsection (b) is entitled to receive state contributions required to provide health benefit plan coverage under the group benefits program for two months after the effective date of the individual's separation from state service.

(b) This section applies only to an individual who separates from state service and receives a cash payment under an incentive program implemented by the Texas Department of Human Services or the

Texas Department of Health for certain employees whose positions are eliminated as a result of privatization or other reductions in services provided by those agencies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.114. PARTICIPATION BY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS. (a) In this section, "employee of a community supervision and corrections department" means an employee of a department established under Chapter 76, Government Code.

(b) An employee or retired employee of a community supervision and corrections department shall be treated as an employee or annuitant, as applicable, for purposes of this chapter only as provided by this section.

(c) A community supervision and corrections department of this state participates in the group benefits program administered by the board of trustees under this chapter. Participation under this section is limited to:

(1) active employees of a community supervision and corrections department;

(2) retired employees of a community supervision and corrections department who retire on or after September 1, 2004, and who:

(A) have been employed by one or more community supervision and corrections departments for a total of at least 10 years of creditable service; and

(B) meet all the requirements for retirement benefits prescribed by the Texas County and District Retirement System; and

(3) eligible dependents of the active employees and retired employees described by Subdivisions (1) and (2).

(d) Each full-time active employee of a community supervision and corrections department is automatically covered by the basic coverage for employees unless the employee specifically waives coverage or unless the employee is expelled from the program. Each part-time active employee of a community supervision and corrections department is eligible to participate in the group benefits program on application in the manner provided by the board of trustees, unless the employee has been expelled from the program. Each community supervision and corrections department shall notify each of

its part-time employees of the employee's eligibility for participation.

(e) The state is responsible for payment of the contributions for each of a department's participating active employees and the employees' dependents under Subchapter G.

(f) A retired employee is eligible to participate in the group benefits program on application to the board of trustees. On application, a retired employee is automatically covered by the basic coverage for annuitants unless the retired employee specifically waives coverage or unless the retired employee is expelled from the program. The state is responsible for payment of the contributions for each of a department's retired employees and the retired employees' participating dependents under Subchapter G. The retired employee shall pay contributions required from the retired employee in the manner prescribed by the board of trustees. Each community supervision and corrections department shall notify each of its retired employees of the eligibility for participation and the costs associated with participation.

(g) All contributions received under this section from the state, active employees of community supervision and corrections departments, and retired employees of community supervision and corrections departments for basic, optional, and voluntary coverages under the group benefits program shall be paid into the employees life, accident, and health insurance and benefits fund and shall be used by the board of trustees to provide those coverages as provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 1030, Sec. 1.03, eff. Sept. 1, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 346 (H.B. 1526), Sec. 2, eff. September 1, 2017.

Sec. 1551.115. PARTICIPATION BY WRONGFULLY IMPRISONED PERSONS. Subject to Section 103.001, Civil Practice and Remedies Code, a person who is entitled to compensation under Chapter 103, Civil Practice and Remedies Code, is eligible to obtain health benefit plan coverage under the group benefits program in the manner and to the extent that an employee of the Texas Department of Criminal Justice

would be entitled to coverage. The person's spouse and dependents may be included in the person's coverage as if the person were an employee of the Texas Department of Criminal Justice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 698 (H.B. 417), Sec. 9, eff. June 17, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1107 (S.B. 1686), Sec. 4, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 315 (H.B. 1455), Sec. 2, eff. September 1, 2023.

SUBCHAPTER D. COVERAGE FOR DEPENDENTS

Sec. 1551.151. ENTITLEMENT TO COVERAGE. An individual who is eligible to participate in the group benefits program under Section 1551.101, 1551.102, or 1551.1022 is entitled to secure for a dependent of the individual any group coverages provided under this chapter, as determined by the board of trustees and subject to the exceptions provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1198 (S.B. 29), Sec. 2, eff. September 1, 2011.

Sec. 1551.152. ELIGIBILITY OF FOSTER CHILD. A foster child is eligible for health benefit plan coverage only if the child is not covered by another governmental health program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.153. PARTICIPANT RESIDING OUTSIDE OF SERVICE AREA. An individual who is eligible to participate in the group benefits program under Section 1551.101 or 1551.102 and who resides outside of a health maintenance organization service area is entitled to group coverages for a dependent of the individual without evidence of insurability if the individual applies for the coverage for the dependent during the annual enrollment period.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.154. EMPLOYEE PAYMENTS. In the manner and form the board of trustees determines, payments required of an employee in excess of employer contributions shall be made by:

(1) a deduction from the employee's monthly pay or retirement benefits; or

(2) a reduction of the employee's salary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.155. COVERAGE OPTIONS FOR SURVIVING SPOUSE. (a) A surviving spouse of an individual who is eligible to participate in the group benefits program under Section 1551.101 or 1551.102 and who is entitled to monthly benefits paid by a retirement system named in this chapter may, following the death of the individual, elect to retain:

(1) the spouse's authorized coverages; and

(2) authorized coverages for any dependent of the spouse.

(b) The coverage is at the group rate for other participants if:

(1) the coverage was previously secured by the deceased participant for the surviving spouse or dependent; and

(2) the surviving spouse directs the applicable retirement system to deduct required contributions from the monthly benefits paid to the spouse by the retirement system.

(c) A person who is the surviving spouse of an individual described by Subsection (a) may secure group health coverage without evidence of the person's insurability if the individual was eligible to participate in the group benefits program under Section 1551.101 or 1551.102 but was not participating at the time of the individual's death.

(d) A surviving spouse seeking group coverage under Subsection (c):

(1) must apply for the coverage not later than the 30th day after the date on which the individual who was eligible to participate in the group benefits program dies; and

(2) shall pay for the coverage at the group rate as

provided by Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 35, eff. September 1, 2009.

Sec. 1551.156. COVERAGE OPTIONS FOR SURVIVING DEPENDENT. (a) A surviving dependent of an annuitant who was receiving monthly benefits paid by a retirement system named in this chapter may, following the death of the annuitant if there is not a surviving spouse, elect to retain any coverage previously secured by the annuitant until the dependent becomes ineligible for coverage for a reason other than the death of the member of the group.

(b) The coverage is at the group rate for other participants.

(c) A dependent who elects to retain coverage under this section and who is entitled to monthly benefits from a retirement system named in this chapter based on the service of the deceased annuitant must direct the retirement system to deduct required contributions for the coverage from the monthly benefits paid the surviving dependent by the retirement system.

(d) A person who is a surviving dependent of an annuitant may secure group health coverage after the death of the annuitant without evidence of the person's insurability if the annuitant was eligible to participate in the group benefits program of a retirement system named in this chapter but was not participating at the time of the individual's death.

(e) A surviving dependent seeking group coverage under Subsection (d):

(1) must apply for the coverage not later than the 30th day after the date on which the individual who was eligible to participate in the group benefits program dies; and

(2) shall pay for the coverage at the group rate as provided by Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 36, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 37, eff.

September 1, 2009.

Sec. 1551.157. COVERAGE OPTIONS AFTER EXPIRATION OF ANNUITY OPTION. The surviving spouse or dependent of an employee or annuitant may retain authorized coverages after expiration of a time-certain annuity option selected by the employee or annuitant. To retain the coverages, the surviving spouse or dependent must make advance payment of contributions to the Employees Retirement System of Texas under rules adopted by the board of trustees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.158. REINSTATEMENT OF HEALTH BENEFIT PLAN COVERAGE BY CERTAIN DEPENDENTS. (a) A dependent child who is unmarried and whose coverage under this chapter ends when the child becomes 26 years of age may, on expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272), reinstate health benefit plan coverage under this chapter if the child, or the child's participating parent, pays the full cost of the health benefit plan coverage.

(b) A state contribution is not payable for coverage under this section.

(c) Coverage under this section terminates at the end of the month in which the child marries.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 618 (S.B. 1459), Sec. 24, eff. September 1, 2013.

SUBCHAPTER E. GROUP COVERAGES

Sec. 1551.201. ESTABLISHMENT. (a) The board of trustees by rule shall establish group coverage plans for individuals eligible to participate in the group benefits program.

(b) The group coverage plans may, in the board of trustees' discretion, include:

(1) life coverage;

(2) accidental death and dismemberment coverage;

(3) health benefit coverage, including coverage for:

(A) hospital care and benefits;

(B) surgical care and treatment;

(C) medical care and treatment;

(D) dental care;

(E) obstetrical benefits;

(F) prescribed drugs, medicines, and prosthetic devices; and

(G) supplemental benefits, supplies, and services in accordance with this chapter;

(4) coverage providing protection against either long-term or short-term loss of salary; and

(5) any other group coverage that the board of trustees, in consultation with the advisory committee, considers advisable.

(c) The group coverage plans for annuitants may, at the discretion of the board of trustees, be separate or a part of the group coverage plans for employees. If the trustee establishes separate group coverage plans for annuitants, the separate group coverage plans must include both full benefits and supplemental coverage options.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.412(b), eff. Sept. 1, 2003.

Sec. 1551.2011. EMPLOYEE AWARENESS AND EDUCATION. (a) The board of trustees by rule shall ensure that employees receive information about life coverage, accidental death and dismemberment coverage, and long-term and short-term loss of salary coverage, if those coverages are included in a group coverage plan established under Section 1551.201.

(b) The information must contain descriptions of:

(1) probabilities of death and disability; and

(2) policy exclusions and limitations, including:

(A) limitations based on multiple sources of benefits;

(B) preexisting condition exclusions; and

(C) required waiting periods for benefits.

(c) The board of trustees by rule may provide the information described by Subsections (a) and (b) in printed materials for new

employees distributed on the first day of employment. The board of trustees may consider using printed materials, online presentations, and educational presentations to ensure the information described by Subsections (a) and (b) is provided to employees.

(d) If applicable, the board of trustees shall annually review the materials and presentations described by Subsection (c) to determine if changes to the contents of the materials or presentations are necessary. If applicable, the department shall adopt rules necessary for considering and making changes to the materials or presentations.

(e) The board of trustees shall publish the information described by Subsections (a) and (b) on the Employees Retirement System of Texas website.

Added by Acts 2013, 83rd Leg., R.S., Ch. 296 (H.B. 1265), Sec. 1, eff. June 14, 2013.

Sec. 1551.202. AUTHORITY TO DEFINE BASIC COVERAGES. (a) The board of trustees may define the basic coverage applicable to each individual for whom coverage is automatic unless participation is specifically waived.

(b) The board of trustees may define different basic coverage plans for individuals eligible to participate in the uniform program under Section 1551.101 and for individuals eligible to participate in the group benefits program under Section 1551.102.

(c) Basic coverage must include basic health coverage. The coverage may be offered through any health benefit plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.203. AUTHORITY TO DEFINE OPTIONAL COVERAGES. The board of trustees may define optional coverages for which the board may make available employer contributions under Section 1551.303.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.204. AUTHORITY TO DEFINE VOLUNTARY COVERAGES. Subject to Section 1551.304, the board of trustees may define

voluntary coverages.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.205. LIMITATIONS. The board of trustees may not contract for or provide a coverage plan that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control and Prevention of the United States Public Health Service, or human immunodeficiency virus infection;

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any physical illness; or

(3) may provide coverage for prescription drugs to assist in stopping smoking at a lower benefit level than is provided for other prescription drugs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 213, Sec. 1, eff. Sept. 1, 2003.

Sec. 1551.206. CAFETERIA PLAN. (a) The board of trustees may develop, implement, and administer a cafeteria plan if the board determines that establishment of the plan:

(1) is feasible;

(2) would be beneficial to the state and to employees who would be eligible to participate in the plan; and

(3) would not adversely affect the coverage plans provided under the group benefits program.

(b) The board of trustees may include in the cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

(c) The board of trustees may enter into a contract or agreement with an independent and qualified agency, individual, or entity to:

(1) develop, implement, or administer a cafeteria plan; or

(2) assist in those activities.

(d) The board of trustees may adopt an order terminating the cafeteria plan and providing a procedure for the orderly withdrawal of the state and its employees from the plan if the board determines that a cafeteria plan established under this section is no longer

advantageous to the state or its employees.

(e) The board of trustees may adopt rules for the use of a debit card or other similar technology for claims administration under this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.408(a), eff. Sept. 1, 2003.

Sec. 1551.207. PREMIUM CONVERSION BENEFIT PORTION OF CAFETERIA PLAN. Each employee must be enrolled in the premium conversion benefit portion of a cafeteria plan established under Section 1551.206.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.208. DETERMINATION TO SELF-FUND. (a) The board of trustees, in the board's sole discretion, shall determine those coverage plans that the board does not intend to purchase but intends to provide directly from the employees life, accident, and health insurance and benefits fund.

(b) The board of trustees, in the board's sole discretion and under conditions the board approves, may reinsure any coverage the board determines will be provided directly from the employees life, accident, and health insurance and benefits fund under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.209. COVERAGE EXEMPT FROM INSURANCE LAW. A coverage plan provided under this chapter is exempt from any other insurance law, including common law, that does not expressly apply to the plan or this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 35, eff. Sept. 1, 2003.

Sec. 1551.210. ACTUARIAL ADVICE FOR SELF-FUNDED COVERAGE. A qualified actuary selected by the board of trustees shall advise the board regarding an actuarially sound level of contributions required to provide coverage directly from the employees life, accident, and health insurance and benefits fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.211. CONTINGENCY RESERVE FUND FOR SELF-FUNDED COVERAGE. (a) Before the first day of each state fiscal biennium, the board of trustees shall estimate for an average 60-day period during the biennium the expenditures from the employees life, accident, and health insurance and benefits fund anticipated for self-funded coverage plans, considering projected claims and administrative expenses for those plans.

(b) The board of trustees shall place the estimated amount in a contingency reserve fund to provide for adverse fluctuations in claims or administrative expenses.

(c) The board of trustees shall include in each request for legislative appropriations to the group benefits program the amount the board determines to be necessary to maintain the contingency reserve fund at the level required by this section.

(d) The board of trustees may invest and reinvest any portion of the contingency reserve fund under the standard of care provided by Section 815.307, Government Code, considering the functional need to provide for adverse fluctuations in claims or administrative expenses.

(e) The interest on, earnings of, and proceeds from the sale of investments of assets in the contingency reserve fund shall be credited to the fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.212. FIRMS TO ADMINISTER SELF-FUNDED COVERAGE. (a) For those coverage plans that the board of trustees funds from the employees life, accident, and health insurance and benefits fund, the board may contract with one or more qualified and experienced administering firms to administer the plans in the best interest of the participants in the group benefits program.

(b) The contract may be awarded only after a competitive bid process. The board of trustees is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to service large group programs and past experience.

(c) If the board of trustees selects a firm whose bid was not the lowest or whose bid differs from that specified, the board shall fully justify and explain the reasons for the action in the minutes of the next meeting of the board.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.213. BIDS FOR PURCHASED COVERAGE. (a) For those coverage plans for which the board of trustees determines to purchase coverage, the board shall notify eligible carriers:

(1) that competitive bidding will be conducted; and

(2) of the date by which an eligible carrier must submit a bid on the contract to the board.

(b) The board of trustees shall submit the group coverages provided by the group benefits program for competitive bidding at least every six years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.214. SELECTION OF BIDS FOR PURCHASED COVERAGE. (a) An actuary selected by the board of trustees shall advise the board as to the actuarial soundness of the bids received under Section 1551.213.

(b) The board of trustees:

(1) shall select carriers to provide services that will be in the best interest of participants; and

(2) is not required to select the lowest bid but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and financial ability.

(c) If the board of trustees selects a carrier whose bid differs from that advertised, the board shall record the deviation and shall fully justify and explain the reasons for the deviation in the minutes of the next meeting of the board.

(d) The board of trustees shall notify the carriers that

submitted bids of the results of the bidding.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.215. ACCOUNTING BY CARRIER PROVIDING PURCHASED COVERAGE. (a) A carrier providing a coverage purchased under this chapter shall provide an accounting to the board of trustees not later than the 90th day after the end of each plan year.

(b) The accounting must be in a form approved by the board of trustees.

(c) The accounting must state for the period from the coverage's date of issue to the end of the plan year:

(1) the amounts of contributions accrued under the coverage;

(2) the total of mortality and other claims, charges, losses, and expenses incurred; and

(3) the amounts of the carrier's allowance for a reasonable profit and contingencies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.216. SPECIAL CONTINGENCY RESERVE. (a) A carrier issuing a group coverage plan under this chapter shall hold as a special contingency reserve an amount that equals the amount by which the amount described by Section 1551.215(c)(1) exceeds the sum of the amounts described by Sections 1551.215(c)(2) and (3).

(b) The carrier may use the special contingency reserve only for charges, claims, and expenses under the plan.

(c) The special contingency reserve earns interest at a rate determined before each plan year by the carrier and approved by the board of trustees as consistent with the rates generally used by the carrier for similar funds held under other group coverage plans.

(d) On a determination by the board of trustees that the special contingency reserve has attained an amount estimated by the board to make satisfactory provision for adverse fluctuations in future charges, claims, or expenses under the plan, any further excess shall be deposited to the credit of the employees life, accident, and health insurance and benefits fund.

(e) On discontinuation of a plan, any balance remaining in the

special contingency reserve after all charges have been made shall be deposited to the credit of the employees life, accident, and health insurance and benefits fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.217. USE OF EMPLOYEE'S SALARY IN COMPUTATION OF PREMIUM OR COVERAGE. (a) If the board of trustees establishes a group coverage plan that protects against either long-term or short-term loss of salary, the board may use an employee's annual salary in computing the amount of the employee's premium or coverage, or both, under the plan.

(b) In this section, an employee's annual salary includes benefit replacement pay under Subchapter H, Chapter 659, Government Code, as added by Chapter 417, Acts of the 74th Legislature, Regular Session, 1995.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.218. PRIOR AUTHORIZATION FOR CERTAIN DRUGS. (a) In this section, "drug formulary" means a list of drugs preferred for use and eligible for coverage under a health benefit plan.

(b) A health benefit plan provided under this chapter that uses a drug formulary in providing a prescription drug benefit must require prior authorization for coverage of the following categories of prescribed drugs if the specific drug prescribed is not included in the formulary:

(1) a gastrointestinal drug;

(2) a cholesterol-lowering drug;

(3) an anti-inflammatory drug;

(4) an antihistamine drug; and

(5) an antidepressant drug.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1308, Sec. 41(8), eff. September 1, 2009.

Added by Acts 2003, 78th Leg., ch. 213, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 41(8),

eff. September 1, 2009.

Sec. 1551.2181. EXEMPTION FROM PREAUTHORIZATION REQUIREMENTS FOR PHYSICIANS AND HEALTH CARE PROVIDERS PROVIDING CERTAIN HEALTH CARE SERVICES. A preauthorization process used by a health benefit plan provided under this chapter is subject to the same limitations and requirements provided by Subchapter N, Chapter 4201, for a preauthorization process used by an insurer.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 1, eff. September 1, 2021.

Sec. 1551.219. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist an individual manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the board of trustees identifies populations requiring disease management.

(b) A group health benefit plan offered under the group benefits program must provide disease management services or coverage for disease management services in the manner required by the board of trustees, including:

(1) patient self-management education;

(2) provider education;

(3) evidence-based models and minimum standards of care;

(4) standardized protocols and participation criteria; and

(5) physician-directed or physician-supervised care.

Added by Acts 2003, 78th Leg., ch. 589, Sec. 3, eff. June 20, 2003.

Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT. (a) Any benefits, funds, or account balances payable on the death of a participant or the beneficiary of a participant in the group benefits program may not be paid to a person convicted of or adjudicated as having caused that death but instead are payable as if the convicted person had predeceased the decedent.

(b) The Employees Retirement System of Texas is not required to

change the recipient of any benefits, funds, or account balances under this section unless it receives actual notice of the conviction or adjudication of a beneficiary. However, the retirement system may delay payment of any benefits, funds, or account balances payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation or civil proceeding and other legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of or adjudicated as having caused the death of a participant or beneficiary of a participant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court or jury in a criminal proceeding of, causing the death of the participant or beneficiary of a participant, regardless of whether sentence is imposed or probated, and no appeal of the conviction is pending and the time provided for appeal has expired; or

(2) is found liable by a court or jury in a civil proceeding for causing the death of the member or annuitant and no appeal of the judgment is pending and the time provided for appeal has expired.

Added by Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 27, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 19, eff. September 1, 2011.

Sec. 1551.222. INCENTIVE PAYMENTS. (a) The board of trustees may allow an incentive payment under this section to an employee or annuitant who elects to waive coverage under the basic coverage plan for employees or annuitants as provided by Section 1551.1045(b) or (c).

(b) The incentive payment authorized by this section is in the amount authorized by the General Appropriations Act and may be used by the employee or annuitant, in the manner prescribed by the board of trustees, only to pay for other group coverage plans provided under the group benefits program, including the supplemental health coverage offered under Section 1551.221.

(c) The board of trustees, at the time of initial enrollment in

the group benefits program and during subsequent open-enrollment periods, shall inform employees and annuitants that they may make an election described by Subsection (a), if eligible, and receive any authorized incentive payment.

Added by Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 4.03, eff. August 29, 2005.

Sec. 1551.224. MAIL ORDER REQUIREMENT FOR PRESCRIPTION DRUG COVERAGE PROHIBITED. (a) The board of trustees or a health benefit plan under this chapter that provides benefits for prescription drugs may not require a participant in the group benefits program to purchase a prescription drug through a mail order program.

(b) Except as provided by Subsection (c), the board of trustees or a health benefit plan shall require that a participant who chooses to obtain a prescription drug through a retail pharmacy or other method other than by mail order pay a deductible, copayment, coinsurance, or other cost-sharing obligation to cover the additional cost of obtaining a prescription drug through that method rather than by mail order.

(c) The board of trustees or a health benefit plan may not require a participant who obtains a multiple-month supply of a prescription drug from a retail pharmacy under Section 1560.003 to pay a deductible, copayment, coinsurance, or other cost-sharing obligation that differs from the amount the participant pays for a multiple-month supply of that drug through a mail order program.

Added by Acts 2003, 78th Leg., ch. 213, Sec. 2, eff. Sept. 1, 2003.
Renumbered from Insurance Code, Section 1551.219 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(52), eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 4, eff. September 1, 2009.

Sec. 1551.225. BARIATRIC SURGERY COVERAGE. (a) The board of trustees shall develop a cost-neutral or cost-positive plan for providing under the group benefits program bariatric surgery coverage for employees eligible to participate in the program under Section

1551.101.

(b) The board of trustees may adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1270 (H.B. 1290), Sec. 2, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 1399 (S.B. 2577), Sec. 1, eff. September 1, 2009.

Sec. 1551.226. TOBACCO CESSATION COVERAGE. (a) The board of trustees shall develop a plan for providing under any health benefit plan provided under the group benefits program tobacco cessation coverage for participants.

(b) The plan developed under Subsection (a) must include coverage for prescription drugs that aid participants in ceasing the use of tobacco products.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 20, eff. September 1, 2011.

Sec. 1551.227. TRICARE MILITARY HEALTH SYSTEM SUPPLEMENTAL PLAN. (a) The board of trustees shall make available a TRICARE Military Health System supplemental plan to an employee or annuitant who waives coverage under the basic coverage plan under Section 1551.1045 and is eligible for benefits under the TRICARE Military Health System. The board of trustees may not contribute to the cost of the supplemental plan, including the premium cost.

(b) A plan offered under this section must be considered a permissible offering to TRICARE participants and beneficiaries under 10 U.S.C. Section 1097c.

(c) The board of trustees may adopt rules necessary to implement this section, including rules regarding eligibility for the plan, available insurance products, and enrollment in the plan.

Added by Acts 2015, 84th Leg., R.S., Ch. 807 (H.B. 3307), Sec. 1, eff. June 17, 2015.

Sec. 1551.228. EMERGENCY CARE PAYMENTS. (a) In this section,

"emergency care" has the meaning assigned by Section 1301.155.

(b) The administrator of a managed care plan provided under the group benefits program shall pay for covered emergency care performed by or a covered supply related to that care provided by an out-of-network provider at the usual and customary rate or at an agreed rate. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) For emergency care subject to this section or a supply related to that care, an out-of-network provider or a person asserting a claim as an agent or assignee of the provider may not bill a participant in, and the participant does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the participant's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.12, eff. September 1, 2019.

Sec. 1551.229. OUT-OF-NETWORK FACILITY-BASED PROVIDER PAYMENTS. (a) In this section, "facility-based provider" means a physician or health care provider who provides health care or medical services to patients of a health care facility.

(b) Except as provided by Subsection (d), the administrator of a managed care plan provided under the group benefits program shall pay for a covered health care or medical service performed for or a covered supply related to that service provided to a participant by

an out-of-network provider who is a facility-based provider at the usual and customary rate or at an agreed rate if the provider performed the service at a health care facility that is a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a facility-based provider or a person asserting a claim as an agent or assignee of the provider may not bill a participant receiving a health care or medical service or supply described by Subsection (b) in, and the participant does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the participant's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that a participant elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the participant that:

(A) explains that the provider does not have a contract with the participant's managed care plan;

(B) discloses projected amounts for which the participant may be responsible; and

(C) discloses the circumstances under which the

participant would be responsible for those amounts.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.12, eff. September 1, 2019.

Sec. 1551.230. OUT-OF-NETWORK DIAGNOSTIC IMAGING PROVIDER OR LABORATORY SERVICE PROVIDER PAYMENTS. (a) In this section, "diagnostic imaging provider" and "laboratory service provider" have the meanings assigned by Section 1467.001.

(b) Except as provided by Subsection (d), the administrator of a managed care plan provided under the group benefits program shall pay for a covered health care or medical service performed for or a covered supply related to that service provided to a participant by an out-of-network provider who is a diagnostic imaging provider or laboratory service provider at the usual and customary rate or at an agreed rate if the provider performed the service in connection with a health care or medical service performed by a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a diagnostic imaging provider or laboratory service provider or a person asserting a claim as an agent or assignee of the provider may not bill a participant receiving a health care or medical service or supply described by Subsection (b) in, and the participant does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the participant's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, the modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be

owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that a participant elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the participant that:

(A) explains that the provider does not have a contract with the participant's managed care plan;

(B) discloses projected amounts for which the participant may be responsible; and

(C) discloses the circumstances under which the participant would be responsible for those amounts.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.12, eff. September 1, 2019.

For expiration of this section, see Subsection (f).

Sec. 1551.231. OUT-OF-NETWORK EMERGENCY MEDICAL SERVICES PROVIDER PAYMENTS. (a) In this section, "emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code, except that the term does not include an air ambulance.

(b) Except as provided by Subsection (c), the administrator of a managed care plan provided under the group benefits program shall pay for a covered health care or medical service performed for, or a covered supply or covered transport related to that service provided to, a participant by an out-of-network provider who is an emergency medical services provider at:

(1) if the political subdivision has submitted the rate to the department under Section 38.006, the rate set, controlled, or regulated by the political subdivision in which:

(A) the service originated; or

(B) the transport originated if transport is provided; or

(2) if the political subdivision has not submitted the rate to the department, the lesser of:

(A) the provider's billed charge; or

(B) 325 percent of the current Medicare rate, including any applicable extenders and modifiers.

(c) The administrator shall adjust a payment required by Subsection (b)(1) each plan year by increasing the payment by the lesser of the Medicare Inflation Index or 10 percent of the provider's previous calendar year rates.

(d) The administrator shall make a payment required by this section directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(e) An out-of-network provider who is an emergency medical services provider or a person asserting a claim as an agent or assignee of the provider may not bill a participant receiving a health care or medical service or supply or transport described by Subsection (b) in, and the participant does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the participant's managed care plan that is based on:

(1) the amount initially determined payable by the administrator; or

(2) if applicable, the modified amount as determined under the administrator's internal appeal process.

(f) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 10, eff. September 1, 2023.

SUBCHAPTER F. GROUP LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE COVERAGE PLAN

Sec. 1551.251. GROUP LIFE INSURANCE COVERAGE PLAN. (a) The board of trustees shall administer a group life insurance coverage plan to provide each individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 group life coverages that provide payments and benefits in an amount and manner the board determines.

(b) The group life insurance coverage plan is subject to the conditions and limitations of:

(1) this chapter and rules adopted under this chapter; and

(2) the policy or policies purchased by the board of trustees.

(c) The board of trustees may include the dependents of individuals eligible to participate in the group benefits program under Section 1551.101 or 1551.102 in the group life insurance coverage plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.252. ADDITIONAL TERM LIFE INSURANCE. Notwithstanding any other provision of this code, the board of trustees may authorize:

(1) dependent term life insurance in an amount equal to the term life insurance provided under the basic coverage; and

(2) optional term life insurance in an amount equal to four times the employee's annual salary plus the amount of term life insurance provided under the basic coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.253. DETERMINATION OF ANNUAL SALARY. (a) To implement this subchapter, the board of trustees shall:

(1) adopt rules for the conversion of other than annual rates of salary; and

(2) specify the types of pay included in annual salary and any other matter necessary to implement this subchapter.

(b) For the purpose of determining the amount of an employee's optional term life insurance coverage, an employee's annual salary includes benefit replacement pay under Subchapter H, Chapter 659, Government Code, as added by Chapter 417, Acts of the 74th Legislature, Regular Session, 1995.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.254. ACCELERATED LIFE INSURANCE BENEFITS. (a) In

addition to exercising the authority granted under Subchapter B, Chapter 1111, the board of trustees may adopt rules to provide for payment of accelerated life insurance benefits to a terminally ill, terminally injured, or permanently disabled participant, including an annuitant participating in optional term life insurance coverage, in amounts that benefit the participant without increasing the cost of providing the benefits.

(b) The amount of any payment of an accelerated benefit under a rule adopted under this section must be deducted from the amount that would otherwise be payable as a death benefit.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.255. INCLUSION OF PROVISIONS FOR VIATICAL SETTLEMENTS. (a) In this section, "viatical settlement" has the meaning assigned to "life settlement contract" by Section 1111A.002.

(b) The board of trustees shall adopt rules that require a group life insurance coverage plan established under this chapter to allow a participant in the plan to make, in conjunction with receipt of a viatical settlement, an irrevocable designation of beneficiary for part or all of the group life coverage benefits.

(c) A viatical settlement is not valid for any coverage under the group benefits program unless the participant has a terminal illness or terminal injury, as defined by rules adopted by the board of trustees, at the time application for benefits is made.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1156 (H.B. 2277), Sec. 16, eff. September 1, 2011.

Sec. 1551.256. OPTIONAL TERM LIFE INSURANCE COVERAGE AFTER RETIREMENT. (a) A participant in the optional group term life insurance coverage plan may maintain optional term life insurance coverage after retirement in addition to basic term life insurance coverage after retirement.

(b) The board of trustees may adopt rules to implement and administer Subsection (a).

(c) Under Subsection (a), the participant may maintain an

amount of optional term life insurance coverage on the participant's life on the date of retirement, not to exceed two times the participant's annual salary on the last September 1 before retirement and subject to benefit reduction factors based on age as determined by the board of trustees.

(d) The board of trustees shall determine the premium rate for optional term life insurance coverage for annuitants under Subsection (a). The rate must be comparable to the premium rate for optional term life insurance coverage for employees of the same age.

(e) As an alternative to the optional term life insurance coverage plan, an annuitant may choose a minimum optional term life insurance coverage amount not subject to benefit reduction factors based on age, with a coverage amount and premium rate determined by the board of trustees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.257. ELIGIBILITY OF ANNUITANT FOR EXTENDED INSURANCE BENEFITS. An annuitant participating in optional term life insurance coverage is not eligible for premium-waived extended insurance benefits if the total disability begins after the date of retirement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.258. TERMINATION OF ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE COVERAGE ON RETIREMENT. Without regard to the employee's age, accidental death and dismemberment insurance coverage ends on the employee's date of retirement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.259. ORDER OF PRECEDENCE OF PAYMENT TO SURVIVORS. (a) The amount of group life coverage and group accidental death and dismemberment coverage in force for a participant on the date the participant dies shall be paid, on the establishment of a valid claim, to a person surviving the death in the following order of precedence:

(1) to the beneficiary designated by the participant in a

signed and witnessed document mailed before the death of the participant;

(2) if a beneficiary is not designated, to the spouse of the participant;

(3) if Subdivisions (1) and (2) do not apply, to the children of the participant and descendants of the deceased children by representation;

(4) if Subdivisions (1)-(3) do not apply, to the parents of the participant or the survivor of the parents;

(5) if Subdivisions (1)-(4) do not apply, to the executor or administrator of the estate of the participant; or

(6) if Subdivisions (1)-(5) do not apply, to other relatives of the participant entitled under applicable laws of the participant's domicile on the date of the participant's death.

(b) If before the first anniversary of the date of death of the participant a claim for payment has not been filed by a person entitled under the order of precedence in Subsection (a), or if payment to the person within that period is prohibited by any statute or rule, payment may be made in the order of precedence as if the person had predeceased the participant.

(c) If before the second anniversary of the date of death of the participant a claim for payment has not been filed by a person entitled under the order of precedence in Subsection (a), and neither the board of trustees nor the office established by the administering carrier has received notice that the claim will be made, payment may be to a claimant equitably entitled to the payment as determined by the board.

(d) If before the fourth anniversary of the date of death of the participant payment has not been made under this section and a claim for payment by a person entitled under this section is not pending, the amount payable escheats to the credit of the employees life, accident, and health insurance and benefits fund.

(e) The board of trustees shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property Code.

(f) Payment under Subsection (b) or (c) bars recovery by any other person.

(g) For purposes of Subsection (a)(1), a designation, change, or cancellation of a beneficiary in a document, including a will, that is not executed and filed in the manner described by that

subsection is not valid.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 28, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. 2428), Sec. 12, eff. September 1, 2015.

SUBCHAPTER G. CONTRIBUTIONS AND COSTS

Sec. 1551.301. FUNDING OF BASIC COVERAGE. The board of trustees shall use the amount appropriated for employer contributions in the manner provided by this subchapter to fund the basic coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.3015. COST ASSESSMENT FOR CERTAIN PARTICIPANTS. Notwithstanding any other provision of law, the board of trustees may impose against an employer whose employees are not paid salaries from amounts appropriated by the General Appropriations Act and whose participation in the group benefits program begins after August 31, 2003, as a condition for participation in the program, a one-time assessment of administrative costs for participation of the employees and annuitants in the program, which may include the actuarial costs of including the group in the program and a participation premium determined by the board. The board of trustees shall deposit all amounts recovered under this section in the employees life, accident, and health insurance and benefits fund.

Added by Acts 2003, 78th Leg., ch. 366, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1551.302. ALLOCATION OF EMPLOYER CONTRIBUTIONS. (a) The board of trustees may equitably allocate to each health benefit plan the employer contributions that would be required to fund basic health coverage for participants in the plans to the extent funds are available.

(b) In allocating the employer contributions among plans, the

board of trustees shall consider the relevant risk characteristics of each plan's enrollment, including:

(1) demographic variations in the use and cost of health care; and

(2) prevailing cost patterns in the area in which the plan operates.

(c) The allocation must be reasonable and set in a manner that ensures participants a fair choice among health benefit plans providing a basic plan.

(d) The contribution set for each participant must be within the total amount appropriated in the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.303. FUNDING OF OPTIONAL COVERAGES. The board of trustees may allocate any employer contributions remaining after the basic coverage has been funded to fund optional coverages in any manner the board determines is appropriate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.304. FUNDING OF VOLUNTARY COVERAGES. The board of trustees may not allocate any employer contributions to fund voluntary coverages. Voluntary coverages may be funded only by participant contributions.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.305. COST OF BASIC COVERAGE EXCEEDING EMPLOYER CONTRIBUTIONS. If the cost of the basic coverage for an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 exceeds the amount of employer contributions allocated to fund the basic coverage, the state shall deduct from or reduce the monthly compensation of the participant or deduct from the retirement benefits of the participant, as applicable, an amount sufficient to pay the cost of the basic coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.306. PAYMENT OF EXCESS COST OVER BASIC COVERAGE CONTRIBUTION. (a) The board of trustees shall apply the amount of any employer contribution for optional coverages to the excess of the cost of the basic and optional coverages for which an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 applies over the basic coverage contribution.

(b) Except as provided by Section 1551.309, if a participant applies for basic and optional coverages for which the cost exceeds the employer contributions for those coverages under this chapter, the participant shall authorize in a form and manner satisfactory to the board of trustees a deduction from the participant's monthly compensation or monthly annuity equal to the difference between:

(1) the cost of basic and optional coverages for which the participant applies; and

(2) the employer contributions for basic and optional coverages.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.307. PAYMENT FOR VOLUNTARY COVERAGES. Except as provided by Section 1551.309, if an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 applies for voluntary coverages, the participant shall authorize in a form and manner satisfactory to the board of trustees a deduction from the participant's monthly compensation or monthly annuity equal to the cost of the voluntary coverages.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.3075. TOBACCO USER PREMIUM DIFFERENTIAL. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products a tobacco user premium differential, to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal

biennium sets the amount of the monthly installments of the tobacco user premium differential for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 21, eff. September 1, 2011.

Sec. 1551.3076. EMPLOYER ENROLLMENT FEE. (a) The board of trustees shall assess each employer whose employees participate in the group benefits program an employer enrollment fee in an amount not to exceed a percentage of the employer's total payroll, as determined by the General Appropriations Act.

(b) The board of trustees shall deposit the enrollment fees to the credit of the employees life, accident, and health insurance and benefits fund to be used for the purposes specified by Section 1551.401.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 22, eff. September 1, 2011.

Sec. 1551.308. NO CONTRIBUTION ON REFUSAL OF COVERAGE. The state and a state agency may not make any contribution to the cost of any coverages or benefits provided under this chapter for an individual who refuses the coverages or benefits in a form and manner satisfactory to the board of trustees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.309. EMPLOYEE PAYMENTS FOR PARTICIPATION IN CAFETERIA PLAN. (a) If an employee elects to participate in the cafeteria plan, the employee must execute a salary reduction agreement under which the employee's monthly compensation will be reduced in an amount equal to the difference between:

(1) the employer contributions for basic and optional coverages; and

(2) the cost of the cafeteria plan coverages the board of trustees identifies as comparable to the basic and optional coverages

for which the employee is eligible.

(b) The salary reduction agreement must also provide for an additional reduction in the employee's compensation equal to the cost of voluntary coverages for which the employee has applied.

(c) An employee who executes a salary reduction agreement for a group coverage plan included in the cafeteria plan elects to participate in the cafeteria plan and agrees to a salary reduction for the coverages for subsequent plan years unless the employee, during an annual enrollment period specified by the board of trustees, elects in a form and manner satisfactory to the board not to participate for the next plan year in the coverages.

(d) An employee who elects not to participate in the cafeteria plan group coverage plans may reenroll by executing a new salary reduction agreement during a subsequent annual enrollment period.

(e) A salary reduction agreement for cafeteria plan benefits, other than a group coverage plan, must be executed annually during the annual enrollment period.

(f) The employee shall pay any remaining portion of the cost of benefits that is not covered by the contributions for basic and optional coverages and the salary reduction under the cafeteria plan by executing a payroll deduction agreement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.310. STATE CONTRIBUTION REQUIRED. The state shall contribute to the cost of each participant's group coverages, including dependents' group coverages, the amounts appropriated for the coverages in the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.311. AMOUNT OF STATE CONTRIBUTION. (a) Not later than November 1 preceding each regular session of the legislature, the board of trustees, in coordination with the Legislative Budget Board, shall certify to the budget division of the governor's office for information and review the amount necessary to pay the contributions of the state to the board for the coverages provided under this chapter during the following biennium.

(b) The governor shall include the amount in the budget that

the governor submits to the legislature.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 812 (S.B. 1812), Sec. 4, eff. June 14, 2013.

Sec. 1551.3111. AMOUNT OF STATE CONTRIBUTION FOR CERTAIN JUNIOR COLLEGE EMPLOYEES. (a) In computing the amount to be certified under Section 1551.311, for participants who are employed by public junior colleges or public junior college districts, the board of trustees shall include:

(1) 50 percent of the cost associated with eligible employees who:

(A) otherwise are eligible to participate in the group benefits program; and

(B) are instructional or administrative employees whose salaries may be fully paid from funds appropriated under the General Appropriations Act, regardless of whether such salaries are actually paid from appropriated funds; and

(2) none of the cost associated with employees who:

(A) do not meet the requirements of Subdivision (1)(B) but are otherwise eligible to participate in the group benefits program; or

(B) cannot be included as a qualifying employee under Subdivision (1) by application of Subsection (c).

(b) For qualifying employees under Subsection (a)(1), the board of trustees shall include only the amount payable by the state under Subsection (a)(1) in determining the amount to be certified under Section 1551.311.

(c) In determining the amount described by Subsection (b), the number of qualifying employees under Subsection (a)(1) whose group benefits program costs may be included for each public junior college or public junior college district in each biennium may not be adjusted in a proportion greater than the change in student enrollment at each college during the reporting period except that a college that experiences a decline in student enrollment may petition the Legislative Budget Board to maintain the number of eligible employees up to 98 percent of the level of the prior biennium.

Added by Acts 2013, 83rd Leg., R.S., Ch. 812 (S.B. 1812), Sec. 5, eff. June 14, 2013.

Sec. 1551.313. AMOUNT OF STATE CONTRIBUTION FOR CERTAIN SURVIVING DEPENDENTS. If funds are specifically appropriated for the purpose, this state shall pay the same portion of the cost of the required contributions for a deceased annuitant's surviving spouse or other surviving dependent who elects to retain coverage under Section 1551.156 as this state pays for similar dependent coverage for an employee or annuitant participating in the program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay a tobacco user premium differential assessed under Section 1551.3075.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 23, eff. September 1, 2011.

Sec. 1551.315. REQUIRED CONTRIBUTIONS BY STATE AGENCIES. (a) The governing board of each state agency participating in the group benefits program shall pay to the board of trustees an amount equal to the amount appropriated by the legislature for each employee's individual group coverages or dependents' group coverages for the agency's employees who are, and annuitants who were, compensated from funds not appropriated in the General Appropriations Act.

(b) The state agency shall:

(1) include the required contributions from funds not appropriated in the General Appropriations Act in its annual

operating budget;

(2) ensure current participant coverages based on the records of the board of trustees;

(3) make timely payments of amounts due the board of trustees from all fund sources under the state agency's control; and

(4) each month reconcile board of trustees and state agency records of coverages and payments.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.316. ALLOCATION TO BOARD OF TRUSTEES OF EMPLOYER CONTRIBUTIONS. From the several funds from which employees receive their respective salaries, all employer contributions computed in accordance with this chapter and rules adopted under this chapter are allocated to the board of trustees as provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.317. PAYMENT OF EMPLOYER CONTRIBUTIONS ALLOCATED BY THE STATE. (a) All money allocated by this state, including by institutions of higher education, to the board of trustees under this chapter shall be paid to the board in monthly installments based on the annual estimate by the board of the contributions to be received for all employees during the year.

(b) At the end of each fiscal year, the board of trustees shall make any adjustments required to cover the difference between:

(1) the annual estimate; and

(2) the actual amount of the employer contributions during the year.

(c) Each monthly installment shall be paid to the appropriate fund created by this chapter in the amount certified by the board of trustees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.318. PAYMENT OF EMPLOYER CONTRIBUTIONS NOT ALLOCATED BY THE STATE. (a) The board of trustees shall certify to the governing board of each state agency participating in the group

benefits program that provides contributions for its employees' group coverages and dependents' group coverages from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts required to pay its contributions.

(b) The board of trustees shall make the certification not later than the 30th day before the date of the meeting at which the governing board of the state agency adopts its operating budget.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.319. AMOUNT OF CONTRIBUTION FOR FULL-TIME AND PART-TIME EMPLOYEES. (a) A full-time employee receives the benefits of a full state contribution for coverage under this chapter.

(b) A part-time employee receives the benefits of one-half of the amount of the state contribution received by a full-time employee.

(c) The superintendent of the Texas School for the Deaf and the superintendent of the Texas School for the Blind and Visually Impaired shall determine whether an educational professional employee under contract with the school under Section 30.024 or 30.055, Education Code, as applicable, is a full-time employee for purposes of this chapter.

(d) The executive head of the Windham School District shall determine whether an educational professional employee of the school is a full-time employee for purposes of this chapter.

(e) This section does not prohibit an institution of higher education from contributing, from money not appropriated from the general revenue fund, amounts in excess of the state contribution for a part-time employee described by Section 1551.101(e)(2).

(f) Notwithstanding any other provision of this section, if the board of trustees establishes a supplemental health coverage program under Section 1551.221, the amount of the contribution made for an individual who elects to receive supplemental health coverage under the program may be reduced, as provided in the General Appropriations Act, to reflect the reduced cost of the supplemental health coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 366, Sec. 2.12, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 178 (H.B. 417), Sec. 2, eff. May 27, 2005.

Sec. 1551.3195. AMOUNT OF CONTRIBUTION FOR ANNUITANTS WHO WERE PART-TIME EMPLOYEES. An annuitant who as an employee received the benefits of a state contribution under Section 1551.319(b) for coverage during any portion of the annuitant's last employment by a state agency is not eligible to receive more than the state contribution provided under Section 1551.319(b) unless the annuitant was designated by the annuitant's employer as a full-time employee during the three-consecutive-month period before retirement.

Added by Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 29, eff. January 1, 2006.

Sec. 1551.3196. AMOUNT OF CONTRIBUTION FOR CERTAIN ANNUITANTS. (a) An annuitant receives the benefits of a state contribution for coverage under this chapter based on the annuitant's eligible service credit, as follows:

(1) for an annuitant with 20 years or more of eligible service credit, a full state contribution;

(2) for an annuitant with at least 15 years but less than 20 years of eligible service credit, 75 percent of a full state contribution; and

(3) for an annuitant with less than 15 years of eligible service credit, 50 percent of a full state contribution.

(b) An annuitant receiving a reduced state contribution under Subsection (a) shall have any state contribution for dependent coverage reduced in an amount proportional to the reduction under Subsection (a).

(c) This section does not apply to an individual who:

(1) receives or is eligible to receive an annuity that is based on eligibility under Section 814.002, 814.102, 834.101, 839.101, or 840A.052, Government Code; or

(2) is eligible to participate in the group benefits program under:

(A) Section 1551.102(d) because of a disability; or

(B) Section 1551.102(f).

Added by Acts 2013, 83rd Leg., R.S., Ch. 618 (S.B. 1459), Sec. 25, eff. September 1, 2014.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1092 (S.B. 1245), Sec. 18, eff. June 18, 2023.

Sec. 1551.320. CERTAIN COSTS. The Texas Higher Education Coordinating Board shall pay all costs incurred in determining whether an individual is disabled if:

(1) the individual is an annuitant under the optional retirement program established by Chapter 830, Government Code; and

(2) the individual's last state employment was as an officer or employee of the coordinating board.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.323. COST OF CERTAIN ANNUITANTS. (a) An annuitant eligible to participate under Section 1551.102(i), 1551.111(e), or 1551.112(c) is, except as provided by this subsection, required to pay the total cost, as determined by the board, attributable to the participation of that individual and the dependents of that individual until the date the individual is 65 years of age. If the General Appropriations Act or other similar legislation addresses the payment of those costs, those costs shall be paid in the manner specified by that legislation.

(b) This section applies only to an individual who is eligible to participate as an annuitant under Section 1551.102(i), 1551.111(e), or 1551.112(c) and who is not eligible to participate under another provision of Section 1551.102, 1551.111, or 1551.112.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.04, eff. Jan. 11, 2004.

Sec. 1551.324. REDUCTION IN CONTRIBUTION FOR CERTAIN ACTIVE EMPLOYEES AND ANNUITANTS; INCENTIVE PAYMENTS. (a) Notwithstanding any other provision of this subchapter, the state contribution for an employee's coverage or an annuitant's coverage under this chapter may be reduced, as provided in the General Appropriations Act, to reflect

the reduced cost of coverage for an employee or annuitant who elects to waive basic coverage as provided by Section 1551.1045(b) or (c).

(b) Instead of the full state contribution for an employee or annuitant who makes an election described by Subsection (a), the state may contribute, as specified by the General Appropriations Act, an amount for the incentive payment authorized by Section 1551.222.

Added by Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 4.04, eff. August 29, 2005.

SUBCHAPTER H. SANCTIONS AND ADJUDICATION OF CLAIMS

Sec. 1551.351. ADMINISTRATIVE PROCESS AND SANCTIONS FOR PROGRAM VIOLATIONS. (a) The Employees Retirement System of Texas may impose one or more sanctions described by this section against any employee, participant, annuitant, or dependent who:

(1) submits a materially false claim or application for coverage under a group coverage plan offered under the group benefits program;

(2) defrauds or attempts to defraud a group coverage plan offered under the group benefits program;

(3) obtains or induces the extension of coverage under any program provided under this chapter by a materially negligent or intentional misrepresentation, a failure to disclose material information, or fraud; or

(4) induces the extension of coverage under any program provided under this chapter by supplying false information on an application for coverage or in related documentation or in any communication.

(b) On receipt of a complaint or on its own motion, if the Employees Retirement System of Texas determines that an employee, participant, annuitant, or dependent has engaged in conduct described by Subsection (a), the retirement system may:

(1) expel from the program the employee, participant, annuitant, or dependent;

(2) impose limitations on the person's participation in the program;

(3) rescind any coverage obtained or extended as a result of the conduct under Subsection (a);

(4) deny a claim arising from coverage; or

(5) require the person to reimburse the employees life, accident, and health insurance and benefits fund for any benefit obtained as a result of the conduct.

(c) An expulsion under Subsection (b) may be permanent or for a specified period. A rescission of coverage under Subsection (b) may be from the date of inception of the coverage or from the date of the prohibited conduct.

(d) A person may appeal a determination made under Subsection (a) or (b) or Section 1551.352 only to the board of trustees. A proceeding under this subsection is a contested case under Chapter 2001, Government Code. This subchapter applies to an appeal to the board of trustees under this subsection. The appellant has the burden of proof on all issues, including issues in the nature of an affirmative defense. Any sanction imposed is not stayed during an appeal under this subsection. An appeal of a decision of the board of trustees under this subsection is under the substantial evidence rule.

(e) An employee, participant, annuitant, or dependent expelled from the group benefits program may not participate in a coverage plan offered by the program for the period determined by the Employees Retirement System of Texas.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 36, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.409(b), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 30, eff. September 1, 2005.

Sec. 1551.352. EXECUTIVE DIRECTOR DETERMINES QUESTIONS RELATING TO ENROLLMENT OR PAYMENT OF CLAIMS. The executive director has exclusive authority to determine all questions relating to enrollment in or payment of a claim arising from group coverages or benefits provided under this chapter other than questions relating to payment of a claim by a health maintenance organization.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.354. DOUBLE OR MULTIPLE LIABILITY. (a) The executive director may determine that a claim arising under any group coverage plan administered by the board of trustees may expose the plan to double or multiple liability.

(b) The executive director may cause the filing of an action for interpleader concerning the claim in a district court in Travis County on behalf of the Employees Retirement System of Texas to protect the group coverage plan from double or multiple liability.

(c) A person may not pursue a counterclaim or other cause of action against the Employees Retirement System of Texas, a trustee, officer, or employee of the retirement system, or a carrier or administering firm for the retirement system in connection with a transaction or occurrence related to the interpleader action.

(d) A person who violates Subsection (c) is liable for the costs and attorney's fees incurred by the Employees Retirement System of Texas, a trustee, officer, or employee of the retirement system, or a carrier or administering firm for the retirement system as a result of the violation.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 38, eff. September 1, 2009.

Sec. 1551.355. APPEAL OF EXECUTIVE DIRECTOR'S DETERMINATION. (a) Subject to Subsection (b), an appeal of a determination of the executive director under this subchapter is only to the board of trustees.

(b) On behalf of the board of trustees and notwithstanding any other law, including Section 2003.021, Government Code, the executive director may:

(1) refer an appeal to the State Office of Administrative Hearings for a hearing; or

(2) employ, select, or contract for the services of an administrative law judge or other hearing examiner not affiliated with the State Office of Administrative Hearings to conduct the hearing of an appeal.

(c) The appeal is a contested case under Chapter 2001, Government Code.

(d) The board of trustees shall develop and implement a process to allow an employee, participant, annuitant, or covered dependent affected by a determination described by Section 1551.352 to participate directly in the process of appealing the determination.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 37, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 530 (S.B. 301), Sec. 11, eff. September 1, 2017.

Sec. 1551.356. STANDING. (a) A person has standing to appeal a determination of the executive director under this subchapter only if the person is:

(1) an employee, participant, annuitant, or covered dependent participating in the group benefits program; or

(2) after the death of an employee, participant, annuitant, or covered dependent, the person's estate, personal representative, heir at law, or designated beneficiary.

(b) A person has no standing to appeal a determination of the executive director under this subchapter or to pursue a private cause of action against the state, the board of trustees, the retirement system, the executive director, an administering firm, or an employee of any of those persons based on a determination or the implementation by the board or executive director of the type or scope of plan design features under the group benefits program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 38, eff. Sept. 1. 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.411(a), eff. Sept. 1, 2003.

Sec. 1551.357. DETERMINATION OF APPEAL BY BOARD OF TRUSTEES. (a) Notwithstanding any other law, in a proceeding considered to be a contested case under Chapter 2001, Government Code, the board of trustees in its sole discretion may modify, refuse to accept, or delete any proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an administrative law judge or

other hearing examiner, or make alternative findings of fact and conclusions of law.

(b) The board of trustees shall state in writing the specific reason for the board's determination.

(c) The board of trustees may adopt rules to implement this section.

(d) The appellant in a contested case under this subchapter has the burden of proof on all issues, including issues in the nature of an affirmative defense.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 39, eff. Sept. 1, 2003.

Sec. 1551.358. NEGOTIATION. (a) Notwithstanding any other provision of this subchapter, the board of trustees and a person who has standing to pursue an administrative appeal under this subchapter may at any time informally negotiate an award of benefits.

(b) Negotiated benefits may not exceed the maximum benefits otherwise available or required by law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.359. JUDICIAL REVIEW. A person aggrieved by a final decision of the Employees Retirement System of Texas in a contested case under this subchapter is entitled to judicial review of the decision. Venue of an appeal under this subchapter is only in a district court in Travis County. The standard of review for the appeal of a determination made by the board of trustees under this subchapter is by substantial evidence.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1111, Sec. 40, eff. Sept. 1, 2003.

Sec. 1551.360. DELEGATION. (a) The board of trustees may delegate its duty to hear an appeal to the executive director.

(b) The executive director may delegate the director's duty

under this subchapter to another employee of the Employees Retirement System of Texas.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.361. DILIGENT PROSECUTION OF SUIT. The plaintiff shall prosecute with reasonable diligence any suit brought under Section 1551.359. If the plaintiff does not secure proper service of process or does not prosecute the suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made on or behalf of the Employees Retirement System of Texas, unless the plaintiff, after receiving appropriate notice, shows good cause for the delay.

Added by Acts 2005, 79th Leg., Ch. 347 (S.B. 1176), Sec. 31, eff. September 1, 2005.

Sec. 1551.362. SUBPOENA. Notwithstanding any other law, the Employees Retirement System of Texas may issue a subpoena that conforms to Rule 176, Texas Rules of Civil Procedure, including a preappeal investigative subpoena or any subpoena otherwise authorized by the Texas Rules of Civil Procedure, that the retirement system determines necessary to protect the interests of a program or system administered by the retirement system.

Added by Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 39, eff. September 1, 2009.

Sec. 1551.363. PRECEDENT MANUAL. (a) The board of trustees shall develop and maintain a precedent manual relating to the enrollment and claims determinations under Section 1551.352 and appeals of those determinations. The precedent manual:

(1) must be composed of precedent-establishing determinations made by the board, executive director, or other staff, initially and on appeal, and include examples of previous determinations that are consistent with the identified precedent; and

(2) may include other information identified by the board.

(b) The board of trustees shall make the precedent manual available to appropriate staff and to employees, participants, annuitants, and covered dependents.

(c) The board of trustees and staff involved in the claims appeal process are not bound by a decision in the manual.

Added by Acts 2017, 85th Leg., R.S., Ch. 530 (S.B. 301), Sec. 12, eff. September 1, 2017.

SUBCHAPTER I. FUNDS

Sec. 1551.401. EMPLOYEES LIFE, ACCIDENT, AND HEALTH INSURANCE AND BENEFITS FUND. (a) The employees life, accident, and health insurance and benefits fund is in the state treasury.

(b) The board of trustees shall administer the fund.

(c) Contributions of participants and the state provided for under this chapter shall be credited to the fund.

(d) The fund is available:

(1) without fiscal year limitation for all payments for any coverages provided for under this chapter; and

(2) for payment of expenses of administering this chapter within the limitations that may be specified annually by the legislature.

(e) The board of trustees shall regularly set aside in the fund an amount equal to a percentage of the contributions made by participants and the state that the board determines is reasonably adequate to pay the expenses of administering this chapter.

(f) The board of trustees, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves to be used by the board only for charges, claims, and expenses under the group benefits program.

(g) Except as provided by Section 1551.259(d), the retirement system may deposit to the credit of the fund any unclaimed money on a finding that a good faith effort has been made to locate the person entitled to the money.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1308 (H.B. 2559), Sec. 40, eff. September 1, 2009.

Sec. 1551.402. STATE EMPLOYEES CAFETERIA PLAN TRUST FUND. (a) The state employees cafeteria plan trust fund is in the state treasury.

(b) The board of trustees shall administer the fund.

(c) The following shall be credited to the fund:

(1) salary reduction payments for benefits included in a cafeteria plan other than group coverage plans under the group benefits program; and

(2) appropriations by the state for the administration of a cafeteria plan.

(d) The trust fund is available without fiscal year limitation:

(1) for all payments for any benefits included in a cafeteria plan other than group coverage plans under the group benefits program; and

(2) for payment of expenses of administering a cafeteria plan.

(e) The board of trustees may establish accounts for money in the fund as the board considers necessary, including accounts for the administration of a cafeteria plan. The board of trustees may transfer assets from one account to another:

(1) to pay benefits if:

(A) the transfer is necessary for financial management purposes; and

(B) adequate arrangements are made to reimburse the account from which the transfer was made; and

(2) to pay administrative expenses.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.403. FEES FOR STATE EMPLOYEES CAFETERIA PLAN TRUST FUND. (a) Subject to Subsection (e), the board of trustees may establish a monthly fee to be paid by each employee who elects to participate in a cafeteria plan for the purpose of paying the expenses of administering the cafeteria plan.

(b) The board of trustees shall establish the amount of the monthly fee and may establish a separate fee for each benefit included in a cafeteria plan.

(c) If the board of trustees establishes a monthly fee, each employee who participates in the cafeteria plan must authorize

payment of the fee by executing a separate payroll deduction agreement or as part of the salary reduction agreement, as determined by the board.

(d) The monthly fee shall be paid into the state employees cafeteria plan trust fund.

(e) The board of trustees may not establish a fee for administering the premium conversion benefit portion of a cafeteria plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.404. INSUFFICIENT EARNINGS FOR EMPLOYEE TO PARTICIPATE IN CAFETERIA FUND. (a) If the earnings of an employee who elects to participate in a cafeteria plan are insufficient to pay the cost of the coverages and benefits selected by the employee, the employee is liable to the board of trustees for an amount equal to the difference between:

(1) the amount received by the board; and

(2) the cost of the coverages and benefits.

(b) If the employee does not pay the difference within the time specified by the board of trustees, the board may:

(1) cancel the coverages and benefits retroactive to the last month for which full payment was made; or

(2) pursue any other available legal remedy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.405. EMPLOYEES' HEALTH CARE STABILIZATION TRUST FUND. (a) The employees' health care stabilization trust fund is a fund in the state treasury.

(b) The board of trustees shall administer the fund.

(c) The following shall be credited to the fund:

(1) money transferred to the fund at the direction of the legislature; and

(2) gifts and grants contributed to the fund.

(d) In administering the fund, the board of trustees shall make investments in a manner that preserves the purchasing power of the fund's assets.

(e) Money in the fund may not be spent for any purpose, except

that the interest and investment returns of the fund may be appropriated only to stabilize the cost of state and participant contributions for health benefit coverage under this chapter by minimizing to the greatest extent possible increases in those contributions.

(f) The fund is exempt from the application of Section 403.095, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.406. INVESTMENT OF FUNDS. (a) Under the standard of care provided by Section 815.307, Government Code, the board of trustees may manage and has full power to invest and reinvest the money in:

(1) the employees life, accident, and health insurance and benefits fund;

(2) the state employees cafeteria plan trust fund; and

(3) the employees' health care stabilization trust fund.

(b) The earnings, including interest on money in the fund and proceeds from the sale of any investments, become a part of the fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1551.407. MANAGEMENT OF ASSETS. The board of trustees may commingle for investment purposes the assets of a fund created under this chapter with another fund created under this chapter or any other trust fund administered by the board if the board maintains and credits proportionate ownership records.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

SUBCHAPTER J. STATE CONSUMER-DIRECTED HEALTH PLAN

Sec. 1551.451. DEFINITIONS. In this subchapter:

(1) "High deductible health plan" means a health benefit plan that complies with Section 223(c), Internal Revenue Code of 1986, and other federal law.

(2) "Plan enrollee" means an employee or annuitant who is enrolled in the plan established under this subchapter.

(3) "Qualified medical expense" means an expense paid by a plan enrollee for medical care, as defined by Section 213(d), Internal Revenue Code of 1986, for the plan enrollee or the enrollee's dependents as defined by Section 152, Internal Revenue Code of 1986.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.452. ESTABLISHMENT OF STATE CONSUMER-DIRECTED HEALTH PLAN. (a) The state consumer-directed health plan is established for the benefit of individuals eligible to participate in the group benefits program and those individuals' eligible dependents.

(b) The board of trustees may adopt rules necessary to administer this subchapter. In implementing this subchapter the board shall:

(1) establish health savings accounts under this subchapter and administer or select an administrator in accordance with Section 1551.453 for the accounts;

(2) finance a self-funded high deductible health plan that:

(A) is an integral part of the state consumer-directed health plan; and

(B) provides health benefit coverage, including preventive health care, to a plan enrollee in the state consumer-directed health plan and to the dependents of a plan enrollee in accordance with Section 1551.455; and

(3) provide to individuals eligible to participate in the group benefits program information regarding the operation of and option to participate in the state consumer-directed health plan established under this subchapter.

(c) In adopting rules and administering health savings accounts or selecting administrators for health savings accounts under this subchapter, the board of trustees shall ensure that the health savings accounts are qualified for appropriate federal tax exemptions.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.453. ACCOUNT ADMINISTRATOR. (a) The account administrator selected to administer a health savings account established under this subchapter must be a person:

(1) qualified to serve as trustee under Section 223(d)(1)(B), Internal Revenue Code of 1986, and the rules adopted under that section; and

(2) experienced in administering health savings accounts or other similar trust accounts.

(b) An account administrator is the fiduciary of a plan enrollee who has a health savings account established under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.454. PARTICIPATION IN PROGRAM. (a) Each individual eligible to participate in the basic coverage may choose instead to participate in the state consumer-directed health plan if the plan enrollee is an eligible individual under Section 223(c)(1), Internal Revenue Code of 1986. The dependents of a plan enrollee may participate in the state consumer-directed health plan in accordance with Section 1551.455.

(b) Participation in the state consumer-directed health plan qualifies a plan enrollee to receive a contribution to a health savings account under Section 1551.456. An individual who elects not to participate in the plan is not eligible to receive a contribution under that section.

(c) Under this section, the board of trustees has exclusive authority to determine an individual's eligibility to participate in the state consumer-directed health plan and may adopt rules regarding eligibility to participate in the plan.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.455. COVERAGE FOR DEPENDENTS; REQUIRED CONTRIBUTIONS. (a) A plan enrollee may obtain for the enrollee's dependents coverage in the state consumer-directed health plan in the manner determined by the board of trustees.

(b) If the plan enrollee elects to obtain dependent coverage under Subsection (a), the plan enrollee shall pay any required contribution for the dependent coverage in the state consumer-directed health plan in the manner prescribed by the board of trustees.

(c) Amounts contributed by a plan enrollee under this section may be:

(1) used to pay the cost of coverage in the high deductible health plan not paid by the state under Section 1551.456(b); or

(2) allocated by the board of trustees to an enrollee's health savings account in the manner described by Section 1551.456(c).

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.456. STATE CONTRIBUTION. (a) For each plan enrollee, from the state contribution that would otherwise be made for basic coverage for the enrollee, the state shall contribute annually to a high deductible health plan under this subchapter the amount that is necessary to pay the cost of coverage under the high deductible health plan and does not exceed the amount the state annually contributes for a full-time or part-time employee, as applicable, who is covered by the basic coverage.

(b) For each plan enrollee's dependent covered under this subchapter, from the state contribution that would otherwise be made for basic coverage for the dependent, the state shall contribute annually to the high deductible health plan under this subchapter the same percentage of the cost of coverage under the high deductible health plan as the state annually contributes for dependent coverage in the basic coverage.

(c) Before each plan year, the board of trustees may determine the amount of allocation of the state's contribution, if any, to an enrollee's health savings account that would otherwise be made for basic coverage for the enrollee and that remains after payment for coverage under Subsection (a) or (b).

(d) For a calendar year, the amount of any allocations made under Subsection (c) and Section 1551.455(c)(2), in the aggregate, may not exceed the sum of the monthly limitations imposed by federal

law for health savings accounts.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.457. PLAN ENROLLEE CONTRIBUTIONS. (a) Each plan enrollee, in accordance with Section 1551.305, shall contribute any amount required to cover the selected participation in the high deductible health plan that exceeds the state contribution amount under Section 1551.456.

(b) A plan enrollee may contribute any amount allowed under federal law to the enrollee's health savings account in addition to the state contribution under Section 1551.456.

(c) A plan enrollee shall make contributions under this section in the manner prescribed by the board of trustees.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.458. COORDINATION WITH CAFETERIA PLAN. (a) The board of trustees has exclusive authority to determine the eligibility of a plan enrollee to participate in any flexible spending account that is part of a cafeteria plan offered under this chapter.

(b) The board of trustees may adopt rules regarding the eligibility of a plan enrollee to participate in any flexible spending account that is part of a cafeteria plan offered under this chapter.

(c) A plan enrollee may not participate in any flexible spending account that would disqualify the enrollee's health savings account from favorable tax treatment under federal law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.459. EXEMPTION FROM EXECUTION; UNASSIGNABILITY. A state contribution to a health savings account or a high deductible health plan is exempt from execution and is unassignable in the same

manner and to the same extent as an amount described by Section 1551.011.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

Sec. 1551.460. SINGLE UNDIVIDED RISK POOL. In implementing and administering the state consumer-directed health plan established under this subchapter, the board of trustees may not divide the self-funded risk pool of the group benefits program provided under this chapter or create a separate self-funded risk pool for that program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1015 (H.B. 966), Sec. 1, eff. September 1, 2015.

CHAPTER 1552. LONG-TERM CARE INSURANCE FOR STATE EMPLOYEES

Sec. 1552.001. DEFINITIONS. In this chapter, "annuitant," "board of trustees," and "employee" have the meanings assigned by Section 1551.003.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1552.002. ESTABLISHMENT OF PROGRAM. (a) The board of trustees may establish a long-term care insurance program to provide long-term care insurance coverage for:

(1) an individual eligible to participate in the program provided by Chapter 1551 as an employee or annuitant;

(2) the spouse, parent, or grandparent of an employee or annuitant; and

(3) a parent of a spouse described by Subdivision (2).

(b) The board of trustees may not implement a long-term care insurance program unless any cost or administrative burden associated with the development of, implementation of, or communications about the program is incidental.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 158 (H.B. 392), Sec. 2, eff.

September 1, 2019.

Sec. 1552.003. ADMINISTERING FIRM. The board of trustees may select an administering firm to administer the long-term care insurance program under contract with the board.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 158 (H.B. 392), Sec. 3, eff. September 1, 2019.

Sec. 1552.005. PROGRAM NOT PART OF OTHER GROUP COVERAGES. (a) The long-term care insurance program is not part of the group coverages offered under Chapter 1551.

(b) The state may not contribute any part of the premiums for coverage offered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 158 (H.B. 392), Sec. 4, eff. September 1, 2019.

Sec. 1552.006. RULES. The board of trustees may adopt rules as necessary to implement this chapter, including rules specifying the coverage to be offered under the long-term care insurance program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 158 (H.B. 392), Sec. 5, eff. September 1, 2019.

CHAPTER 1560. DELIVERY OF PRESCRIPTION DRUGS BY MAIL

Sec. 1560.001. DEFINITIONS. In this chapter:

(1) "Community retail pharmacy" means a pharmacy that is licensed as a Class A pharmacy under Chapter 560, Occupations Code.

(2) "Mail order pharmacy" means a pharmacy that is licensed under Chapter 560, Occupations Code, and that primarily delivers

prescription drugs to an enrollee through the United States Postal Service or a commercial delivery service.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 5, eff. September 1, 2009.

Sec. 1560.002. APPLICABILITY OF CHAPTER. This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered or administered by:

(1) the Teacher Retirement System of Texas under Chapter 1575 or 1579; or

(2) the Employees Retirement System of Texas under Chapter 1551.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 5, eff. September 1, 2009.

Sec. 1560.003. MULTIPLE-MONTH SUPPLY OF PRESCRIPTION DRUG. (a) In this section, "multiple-month supply" means a supply for 60 or more days.

(b) Notwithstanding any other law, an issuer of a health benefit plan that provides pharmacy benefits to enrollees must allow an enrollee to obtain from a community retail pharmacy a multiple-month supply of any prescription drug under the same terms and conditions applicable when the prescription drug is obtained from a mail order pharmacy, if the community retail pharmacy agrees to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy.

(c) This section does not require:

(1) the issuer of a health benefit plan to contract with:

(A) a retail pharmacy that does not agree to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy; or

(B) more than one mail order pharmacy; or

(2) a community retail pharmacy to:

(A) provide a multiple-month supply of a prescription drug under the same terms and conditions applicable when the prescription drug is obtained from a mail order pharmacy; or

(B) agree to accept reimbursement on exactly the same terms and conditions that apply to a mail order pharmacy.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 5, eff. September 1, 2009.

Sec. 1560.004. PRESCRIPTION DRUG REIMBURSEMENT RATES. (a) An issuer of a health benefit plan that provides pharmacy benefits to enrollees shall reimburse pharmacies participating in the health plan using prescription drug reimbursement rates, for both brand name and generic prescription drugs, that are based on a current and nationally recognized benchmark index that includes average wholesale price and maximum allowable cost.

(b) Regardless of whether a pharmacy is a mail order pharmacy or a community retail pharmacy, an issuer of a health benefit plan shall use the same benchmark index, including the same average wholesale price, maximum allowable cost, and national prescription drug codes, to reimburse all pharmacies participating in the health benefit plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 5, eff. September 1, 2009.

CHAPTER 1575. TEXAS PUBLIC SCHOOL EMPLOYEES GROUP BENEFITS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1575.001. SHORT TITLE. This chapter may be cited as the Texas Public School Retired Employees Group Benefits Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.413(a), eff. Sept. 1, 2003.

Sec. 1575.002. GENERAL DEFINITIONS. In this chapter:

(1) "Active employee" means a contributing member of the Teacher Retirement System of Texas who:

(A) is employed by a public school; and

(B) is not entitled to coverage under a plan provided under Chapter 1551 or 1601.

(2) "Carrier" means an insurance company or hospital service corporation authorized by the department under this code or another insurance law of this state to provide any of the insurance coverages, benefits, or services provided by this chapter.

(3) "Fund" means the retired school employees group insurance fund.

(4) "Group program" means the Texas Public School Employees Group Insurance Program authorized by this chapter.

(5) "Health benefit plan" means any group arrangement to provide health care benefits or to pay or reimburse expenses for health care services.

(5-a) "Medicare Advantage plan" means a health benefit plan operated under Part C of the Medicare program.

(5-b) "Medicare prescription drug plan" means a health benefit plan operated under Part D of the Medicare program.

(6) "Public school" means:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center established under Chapter 8, Education Code; or

(D) an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(7) "Trustee" means the Teacher Retirement System of Texas.

(8) "Usual and customary rate" means the relevant allowable amount as described by the applicable master benefit plan document or policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 47, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 366, Sec. 3.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 1, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.414(a), eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.13, eff.

September 1, 2019.

Sec. 1575.0025. REFERENCES TO BASIC PLAN. A reference in this code to a "basic plan" under this chapter means a health benefit plan provided under this chapter other than a Medicare Advantage plan or a Medicare prescription drug plan.

Added by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 2, eff. September 1, 2017.

Sec. 1575.003. DEFINITION OF DEPENDENT AND RELATED TERMS. In this chapter:

(1) "Dependent" means:

(A) the spouse of a retiree;

(B) a child of a retiree or deceased active member if the child is younger than 26 years of age, including:

(i) an adopted child or child who is lawfully placed for legal adoption;

(ii) a foster child, stepchild, or other child who is in a regular parent-child relationship; or

(iii) a natural child;

(C) a retiree's natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship and who lives with or has his or her care provided by the retiree or surviving spouse on a regular basis regardless of the child's age, if the child has a mental disability or is physically incapacitated to an extent that the child is dependent on the retiree or surviving spouse for care or support, as determined by the trustee; or

(D) a deceased active member's natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship, without regard to the age of the child, if, while the active member was alive, the child:

(i) lived with or had the child's care provided by the active member on a regular basis; and

(ii) had a mental disability or was physically incapacitated to an extent that the child was dependent on the active member or surviving spouse for care or support, as determined by the

trustee.

(2) "Surviving dependent child" means:

(A) the dependent child of a deceased retiree who has survived the deceased retiree and the deceased retiree's spouse; or

(B) the dependent child of a deceased active member who has survived the deceased member and the deceased member's spouse if the deceased member:

(i) had contributions made to the group program at the last place of employment of the deceased member in public education in this state;

(ii) had 10 or more years of service credit in the Teacher Retirement System of Texas; and

(iii) died on or after September 1, 1986.

(3) "Surviving spouse" means:

(A) the surviving spouse of a deceased retiree; or

(B) the surviving spouse of a deceased active member:

(i) for whom contributions have been made to the group program at the last place of employment of the deceased member in public education in this state;

(ii) who had 10 or more years of service credit in the Teacher Retirement System of Texas; and

(iii) who died on or after September 1, 1986.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.414(b), (c), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 455 (S.B. 1667), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1078 (H.B. 3357), Sec. 18, eff. June 14, 2013.

Sec. 1575.004. DEFINITION OF RETIREE. (a) In this chapter, "retiree" means:

(1) an individual not eligible for coverage under a plan provided under Chapter 1551 or 1601 who:

(A) has taken a service retirement under the Teacher Retirement System of Texas after September 1, 2005, with at least 10 years of service credit in the system, which may include up to five

years of military service credit, but which may not include any other service credit purchased for equivalent or special service credit, and either:

(i) the sum of the retiree's age and years of service credit in the retirement system equals or exceeds 80 at the time of retirement, regardless of whether the retiree had a reduction in the retirement annuity for early age; or

(ii) the retiree has 30 or more years of service credit in the retirement system at the time of retirement;

(B) has taken a service retirement under the Teacher Retirement System of Texas after September 1, 2004, but on or before August 31, 2005, and on September 1, 2005, either:

(i) meets the requirements for eligibility for the group program for coverage as a retiree as those requirements existed on August 31, 2004;

(ii) meets the requirements of Paragraph (A); or

(iii) is enrolled in the group program and was enrolled in the group program on August 31, 2005; or

(C) has taken a service retirement under the Teacher Retirement System of Texas on or before August 31, 2004, and who is enrolled in the group program on August 31, 2005;

(2) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas; and

(B) is entitled to receive monthly benefits from the Teacher Retirement System of Texas; or

(3) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas;

(B) has at least 10 years of service credit in the Teacher Retirement System of Texas on the date of disability retirement, as determined under Section 824.304, Government Code; and

(C) is not entitled to receive monthly benefits from the Teacher Retirement System of Texas because those benefits have been suspended in accordance with Section 824.310, Government Code.

(b) In this section, "public school" has the meaning assigned by Section 821.001, Government Code.

(c) For purposes of this section, to meet the requirements for eligibility that existed on August 31, 2004, for a service retiree, an individual must not have been eligible to be covered by a plan

provided under Chapter 1551 or 1601 and must have taken a service retirement under the Teacher Retirement System of Texas with either:

(1) at least 10 years of service credit in the retirement system for actual service in public schools in this state; or

(2) at least five years of service credit for actual service in the public schools in this state and five years of out-of-state service credit in the Teacher Retirement System of Texas.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 201, Sec. 48, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 2, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.415, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.05, eff. Sept. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 38, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1230 (H.B. 2427), Sec. 15, eff. September 1, 2007.

Sec. 1575.005. ISSUANCE OF CERTIFICATE OF COVERAGE. At the time and in the circumstances specified by the trustee, a carrier shall issue to each retiree, surviving spouse, or surviving dependent child covered under this chapter a certificate of coverage that:

(1) states the benefits to which the person is entitled;

(2) states to whom the benefits are payable;

(3) states to whom a claim must be submitted; and

(4) summarizes the provisions of the coverage principally affecting the person.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.416(a), eff. Sept. 1, 2003.

Sec. 1575.006. EXEMPTION FROM PROCESS. (a) The following are exempt from execution, attachment, garnishment, or any other process:

(1) benefit payments, active employee and state contributions, and retiree, surviving spouse, and surviving dependent child contributions;

(2) any rights, benefits, or payments accruing to any person under this chapter; and

(3) any money in the fund.

(b) The items listed in Subsection (a) may not be assigned except for direct payment to benefit providers as authorized by the trustee by contract, rule, or otherwise.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.417, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 3, eff. September 1, 2017.

Sec. 1575.007. EXEMPTION FROM STATE TAXES AND FEES. A premium or contribution on a policy, insurance contract, or agreement authorized by this chapter is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.008. COVERAGE EXEMPT FROM INSURANCE LAW. A coverage plan provided under this chapter is exempt from any other insurance law, including common law, that does not expressly apply to the plan or this chapter.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 39, eff. September 1, 2005.

Text of section effective until September 1, 2025

Sec. 1575.009. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a managed care plan provided under the group program shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or health care provider in connection with a health care or medical service or supply or transport provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1575.171, 1575.172, 1575.173, or 1575.174, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's managed care plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a payment under Section 1575.171, 1575.172, 1575.173, or 1575.174, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.14, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 11(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 11(b), eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 1575.009. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a managed care plan provided under the group program shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or health care provider in connection with a health care or medical service or supply provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1575.171, 1575.172, or 1575.173, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's managed care plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the

physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a payment under Section 1575.171, 1575.172, or 1575.173, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.14, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 11(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 11(b), eff. September 1, 2025.

Sec. 1575.010. INFORMATION REGARDING APPEALS. The trustee shall develop and distribute informational materials to individuals enrolled in a health benefit plan offered under the group program regarding:

(1) the enrollee's right to appeal denial of an adverse determination, as defined by Section 4201.002, to an independent review organization;

(2) the procedures for appealing to an independent review organization; and

(3) the assistance available from the trustee in navigating the procedures for appeal.

Added by Acts 2021, 87th Leg., R.S., Ch. 141 (H.B. 1585), Sec. 16, eff. May 26, 2021.

SUBCHAPTER B. ADMINISTRATION

Sec. 1575.051. ADMINISTRATION OF GROUP PROGRAM. The trustee shall take the actions it considers necessary to devise, implement, and administer the group program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.419, eff. Sept. 1, 2003.

Sec. 1575.052. AUTHORITY TO ADOPT RULES AND PROCEDURES; OTHER AUTHORITY. (a) The trustee may adopt rules, plans, procedures, and orders reasonably necessary to implement this chapter, including:

(1) minimum benefit and financing standards for group coverage for retirees, dependents, surviving spouses, and surviving dependent children;

(2) group coverage for retirees, dependents, surviving spouses, and surviving dependent children;

(3) procedures for contributions and deductions;

(4) periods for enrollment and selection of coverage and procedures for enrolling and exercising options under the group program;

(5) procedures for claims administration;

(6) procedures to administer the fund; and

(7) a timetable for:

(A) developing minimum benefit and financial standards for group coverage;

(B) establishing health benefit plans offered under the group program; and

(C) taking bids and awarding contracts for health benefit plans offered under the group program.

(b) The trustee may:

(1) study the operation of all group coverage provided under this chapter; and

(2) contract for advice and counsel in implementing and administering the group program with independent and experienced group insurance consultants and actuaries.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.420(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 40, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 4, eff. September 1, 2017.

Sec. 1575.053. PERSONNEL. (a) The trustee may employ persons to assist the trustee in implementing this chapter.

(b) The trustee shall prescribe the duties and compensation of each employee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.421, eff. Sept. 1, 2003.

Sec. 1575.054. BUDGET. Expenses incurred in developing and administering the group program shall be paid as provided by a budget adopted by the trustee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.421, eff. Sept. 1, 2003.

Sec. 1575.055. DEPARTMENT ASSISTANCE. The department shall, as requested by the trustee, assist the trustee in implementing and administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.421, eff. Sept. 1, 2003.

Sec. 1575.056. TRANSFER OF RECORDS RELATING TO ACTIVE EMPLOYEE PROGRAM. The trustee shall transfer from the program all records relating to active employees participating in the program established under Chapter 1579 not later than the date on which the program established under Chapter 1579 is implemented.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.422(a), eff. Sept. 1, 2003.

SUBCHAPTER C. PROVISION OF BENEFITS

Sec. 1575.101. SYSTEM AS GROUP PLAN HOLDER. The Teacher Retirement System of Texas is the group plan holder of a plan

established under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.423, eff. Sept. 1, 2003.

Sec. 1575.102. SELF-INSURED PLANS. The trustee may self-insure any plan established under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.423, eff. Sept. 1, 2003.

Sec. 1575.104. TERMS OF CONTRACT. A contract for group coverage awarded by the trustee must meet the minimum benefit and financial standards adopted by the trustee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.423, eff. Sept. 1, 2003.

Sec. 1575.105. PLAN COVERAGE SECONDARY TO CERTAIN OTHER COVERAGE. The coverage provided by a plan established under this chapter:

(1) is secondary to Medicare hospital and medical insurance to the extent permitted by federal law if the retiree, dependent, surviving spouse, or surviving dependent child is entitled to receive Medicare hospital insurance benefits without charge; and

(2) may be made secondary to other coverage to which the retiree, dependent, surviving spouse, or surviving dependent child is entitled.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.106. COMPETITIVE BIDDING REQUIREMENTS; RULE. (a) A contract to provide group benefits under this chapter may be awarded only through competitive bidding under rules adopted by the trustee.

(b) The trustee shall submit for competitive bidding at least every six years each contract for coverage under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.424(a), eff. Sept. 1, 2003.

Sec. 1575.107. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a contract to provide group benefits under this chapter, the trustee is not required to select the lowest bid and may consider any relevant criteria, including the bidder's:

(1) ability to service contracts;

(2) past experiences; and

(3) financial stability.

(b) If the trustee awards a contract to a bidder whose bid deviates from that advertised, the trustee shall record the deviation and fully justify the reason for the deviation in the minutes of the next meeting of the trustee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.424(b), eff. Sept. 1, 2003.

Sec. 1575.108. USE OF PRIVATE ENTITIES. The trustee may engage a private entity to collect contributions from or to settle claims in connection with a plan established by the trustee under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.425, eff. Sept. 1, 2003.

Sec. 1575.109. USE OF HEALTH CARE PROVIDER. To provide benefits to participants in the group program, the trustee may contract directly with a health care provider, including a health maintenance organization, a preferred provider organization, a carrier, an administrator, and any other qualified vendor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.425, eff. Sept. 1, 2003.

Sec. 1575.110. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In awarding a contract to provide pharmacy benefit manager services under this chapter, the trustee is not required to select the lowest bid but must select a contract that meets the criteria established by this section.

(b) The contract must state that:

(1) the trustee is entitled to audit the pharmacy benefit manager to verify costs and discounts associated with drug claims, pharmacy benefit manager compliance with contract requirements, and services provided by subcontractors;

(2) the audit must be conducted by an independent auditor in accordance with established auditing standards; and

(3) to conduct the audit, the trustee and the independent auditor are entitled access to information related to the services and the costs associated with the services performed under the contract, including access to the pharmacy benefit manager's facilities, records, contracts, medical records, and agreements with subcontractors.

(c) The contract must define the information that the pharmacy benefit manager is required to provide to the trustee concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits must be reported to the trustee, including how often the results must be reported. The contract must state whether the pharmacy benefit manager is required to return recovered overpayments to the trustee.

(d) The contract must state that any audit of a mail order pharmacy owned by the pharmacy benefit manager must be conducted by an independent auditor selected by the trustee in accordance with established auditing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 6, eff. September 1, 2009.

SUBCHAPTER D. COVERAGES AND PARTICIPATION

Sec. 1575.151. TYPES OF COVERAGES. The trustee may include in a plan any coverage it considers advisable, including:

(1) life insurance;

(2) accidental death and dismemberment coverage;

(3) coverage for:

(A) hospital care and benefits;

(B) surgical care and treatment;

(C) medical care and treatment;

(D) dental care;

(E) eye care;

(F) obstetrical benefits;

(G) long-term care;

(H) prescribed drugs, medicines, and prosthetic devices; and

(I) supplemental benefits, supplies, and services in accordance with this chapter; and

(4) protection against loss of salary.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.425, eff. Sept. 1, 2003.

Sec. 1575.152. HEALTH BENEFIT PLAN MUST COVER PREEXISTING CONDITIONS. A health benefit plan offered under the group program, other than a Medicare Advantage plan or a Medicare prescription drug plan, must cover preexisting conditions.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 5, eff. September 1, 2017.

For expiration of Subsections (d) and (e), see Subsection (e).

Sec. 1575.153. HEALTH BENEFIT PLAN COVERAGE FOR RETIREES. (a) A retiree who applies for coverage during an enrollment period may not be denied coverage in a health benefit plan provided under this chapter for which the retiree is eligible unless the trustee finds under Subchapter K that the retiree defrauded or attempted to defraud

the group program.

(b) A retiree who has coverage under a health benefit plan offered under the group program shall pay a monthly contribution, as determined by the trustee.

(c) As a condition of electing coverage under a health benefit plan, the retiree must, in writing, authorize the trustee to deduct the amount of the contribution from the retiree's monthly annuity payment. The trustee shall deduct the contribution in the manner and form determined by the trustee.

(d) Notwithstanding Subsection (b), a retiree is not required to pay a monthly contribution under this section until the 2022 plan year if the retiree:

(1) has taken a disability retirement under the Teacher Retirement System of Texas on or before January 1, 2017;

(2) is receiving disability retirement benefits from the Teacher Retirement System of Texas; and

(3) is not eligible to enroll in Medicare.

(e) This subsection and Subsection (d) expire at the end of the 2021 plan year on December 31, 2021.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 49(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 3(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.426(a), eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 6, eff. September 1, 2017.

Sec. 1575.155. COVERAGE FOR DEPENDENTS OF RETIREE. (a) A retiree participating in the group program is entitled to secure for the retiree's dependents group coverage under this chapter for which the dependents are eligible under this chapter or any other law, including requirements established by the trustee.

(b) The additional contribution payments for the dependent coverage shall be deducted from the annuity payments to the retiree in the manner and form determined by the trustee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.427, eff. Sept. 1, 2003.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 7, eff. September 1, 2017.

Sec. 1575.156. COVERAGE FOR SURVIVING SPOUSE OR DEPENDENTS OF SURVIVING SPOUSE. (a) A surviving spouse who is entitled to group coverage under this chapter may elect to retain or obtain coverage for which the surviving spouse or dependents of the surviving spouse are eligible.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(2), eff. September 1, 2017.

(c) A surviving spouse who elects under this section to retain or obtain coverage under a health benefit plan offered under the group program for the surviving spouse or dependents of the surviving spouse shall pay a monthly contribution, as determined by the trustee.

(d) As a condition of electing coverage under a health benefit plan, the surviving spouse must, in writing, authorize the trustee to deduct the amount of the contribution from the surviving spouse's monthly annuity payment. The trustee shall deduct the contribution in the manner and form determined by the trustee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.428, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 8, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(2), eff. September 1, 2017.

Sec. 1575.157. COVERAGE FOR SURVIVING DEPENDENT CHILD. (a) A surviving dependent child, the guardian of the child's estate, or the person having custody of the child may elect to retain or obtain group coverage for which the surviving dependent child is eligible at the applicable rate for a dependent.

(b) A surviving dependent child who has coverage under a health benefit plan offered under the group program shall pay a monthly

contribution, as determined by the trustee. The applicable contributions must be provided by the surviving dependent child in the manner established by the trustee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.429, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 9, eff. September 1, 2017.

Sec. 1575.158. GROUP HEALTH BENEFIT PLANS. (a) The trustee shall establish or contract for and make available under the group program a high deductible health plan for retirees, dependents, surviving spouses, or surviving dependent children who are eligible under Section 1575.1582.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(3), eff. September 1, 2017.

(c) The trustee shall establish or contract for and make available under the group program a Medicare Advantage plan and a Medicare prescription drug plan for retirees, dependents, surviving spouses, and surviving dependent children who are eligible under Section 1575.1582.

(d) Notwithstanding Subsection (c), if the trustee determines that a Medicare Advantage plan or a Medicare prescription drug plan is no longer appropriate for the group program, the trustee may establish or contract for and make available under the group program other health benefit plans to provide medical or pharmacy benefits.

(e) To the extent the group program has available funds, the trustee shall consider implementing a plan design for non-Medicare eligible enrollees in the high deductible health plan established or made available under Subsection (a) that provides assistance in the payment of preventive care, including generic preventive maintenance medications, in a manner that is consistent with federal law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.430, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1214 (S.B. 1458), Sec. 9, eff.

September 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 10, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 11, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(3), eff. September 1, 2017.

Sec. 1575.1582. ELIGIBILITY FOR GROUP HEALTH BENEFIT PLANS. (a) A retiree, dependent, surviving spouse, or surviving dependent child who is not eligible to enroll in Medicare is eligible to enroll in a high deductible health plan offered under the group program, subject to any other applicable eligibility requirements, including requirements established by the trustee, but is not eligible to enroll in another health benefit plan offered under the group program.

(b) A retiree, dependent, surviving spouse, or surviving dependent child who is eligible to enroll in Medicare is eligible to enroll in a Medicare Advantage plan or a Medicare prescription drug plan offered under the group program, subject to any other applicable eligibility requirements, including requirements established by the trustee, but is not eligible to enroll in another health benefit plan offered under the group program unless authorized by Subsection (c).

(c) If the trustee makes another health benefit plan available under Section 1575.158(d), any individual otherwise eligible under this section to enroll in a Medicare Advantage plan or Medicare prescription drug plan is eligible to enroll in that health benefit plan.

Added by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 12, eff. September 1, 2017.

Sec. 1575.159. COVERAGE FOR PROSTATE-SPECIFIC ANTIGEN TEST. A health benefit plan offered under the group program, other than a Medicare Advantage plan or a Medicare prescription drug plan, must provide coverage for a medically accepted prostate-specific antigen test used for the detection of prostate cancer for each male enrolled in the health benefit plan who:

(1) is at least 50 years of age; or
(2) is at least 40 years of age and:
(A) has a family history of prostate cancer; or
(B) exhibits another cancer risk factor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 13, eff. September 1, 2017.

Sec. 1575.160. GROUP LIFE OR ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE: PAYMENT OF CLAIM. The amount of group life insurance or group accidental death and dismemberment insurance covering a retiree, dependent, surviving spouse, or surviving dependent child on the date of death shall be paid, on the establishment of a valid claim, only to:
(1) the beneficiary designated by the person in a signed and witnessed document received before death in the office of the trustee; or
(2) a person in the order prescribed by Section 824.103(b), Government Code, if a beneficiary is not properly designated or a beneficiary does not exist.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.431(a), eff. Sept. 1, 2003.

Sec. 1575.1601. GROUP BENEFITS FOR DENTAL AND VISION CARE. The trustee shall establish or contract for and make available under the group program the following plans for retirees, dependents, surviving spouses, and surviving dependent children:
(1) an optional plan that provides coverage for dental care; and
(2) an optional plan that provides coverage for vision care.

Added by Acts 2023, 88th Leg., R.S., Ch. 955 (S.B. 1854), Sec. 1, eff. September 1, 2023.

For expiration of Subsections (b) and (c), see Subsection (c).

Sec. 1575.161. ENROLLMENT PERIODS. (a) A retiree eligible for coverage under the group program may select for the retiree and the retiree's eligible dependents any coverage provided under this chapter for which each of those individuals is otherwise eligible:

(1) on any date that is on or after the date the retiree retires and on or before the 90th day after that date;

(2) during a period beginning on the date the retiree reaches 65 years of age and ending on a date set by the trustee by rule; and

(3) during any other open enrollment periods for retirees set by the trustee by rule.

(b) Notwithstanding Subsection (a), the trustee by rule shall provide one opportunity to reenroll in a health benefit plan offered under the group program for an otherwise eligible retiree:

(1) who is eligible to enroll in Medicare;

(2) whose initial enrollment was voluntarily terminated on or after January 1, 2017, and on or before December 31, 2019; and

(3) who opts to reenroll on or before December 31, 2023.

(c) Subsection (b) and this subsection expire September 1, 2024.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(5), eff. September 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(5), eff. September 1, 2017.

(f) An individual enrolled in a health benefit plan offered under the group program may remain enrolled in that health benefit plan as long as the individual remains eligible for that health benefit plan. If an individual becomes ineligible for a health benefit plan in which the individual is enrolled, the trustee shall enroll the individual in a health benefit plan for which the individual is eligible, if any, in accordance with procedures established by the trustee.

Added by Acts 2003, 78th Leg., ch. 201, Sec. 50, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 2004. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.06, eff. Jan. 11, 2004.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 354 (H.B. 1191), Sec. 1, eff.

September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 14, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 15, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(5), eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 681 (H.B. 2022), Sec. 1, eff. June 15, 2021.

Sec. 1575.162. SPECIAL ENROLLMENTS. This chapter does not limit the ability of an individual to enroll in the group program if the individual:

(1) experiences a special enrollment event as provided by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191, 110 Stat. 1936 (1996)), as amended; and

(2) is otherwise eligible to enroll in the group program.

Added by Acts 2003, 78th Leg., ch. 201, Sec. 50, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 4, eff. Sept. 1, 2004.

Sec. 1575.163. LIMITATIONS. The Teacher Retirement System of Texas, as trustee, may not contract for or provide a health benefit plan that excludes from participation in the network a general hospital that:

(1) is located in the geographical service area or areas of the health coverage plan that includes a county that:

(A) has a population of at least 100,000 and not more than 233,500; and

(B) is located in the Texas-Louisiana border region, as that term is defined in Section 2056.002(e), Government Code; and

(2) agrees to provide medical and health care services under the plan subject to the same terms and conditions as other hospital providers under the plan.

Added by Acts 2003, 78th Leg., ch. 201, Sec. 50, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 57, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 117, eff. September 1, 2023.

Sec. 1575.164. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist an individual manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the Teacher Retirement System of Texas identifies populations requiring disease management.

(b) A health benefit plan provided under this chapter, other than a Medicare Advantage plan or a Medicare prescription drug plan, must provide disease management services or coverage for disease management services in the manner required by the Teacher Retirement System of Texas, including:

(1) patient self-management education;

(2) provider education;

(3) evidence-based models and minimum standards of care;

(4) standardized protocols and participation criteria; and

(5) physician-directed or physician-supervised care.

Added by Acts 2003, 78th Leg., ch. 589, Sec. 4, eff. June 20, 2003. Renumbered from Insurance Code, Section 1575.162 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(62), eff. September 1, 2005. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 16, eff. September 1, 2017.

Sec. 1575.170. PRIOR AUTHORIZATION FOR CERTAIN DRUGS. (a) In this section, "drug formulary" means a list of drugs preferred for use and eligible for coverage under a health benefit plan.

(b) A health benefit plan provided under this chapter, other than a Medicare Advantage plan or a Medicare prescription drug plan, that uses a drug formulary in providing a prescription drug benefit must require prior authorization for coverage of the following categories of prescribed drugs if the specific drug prescribed is not included in the formulary:

(1) a gastrointestinal drug;

(2) a cholesterol-lowering drug;
(3) an anti-inflammatory drug;
(4) an antihistamine; and
(5) an antidepressant drug.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1312, Sec. 99(27), eff. September 1, 2013.

Added by Acts 2003, 78th Leg., ch. 213, Sec. 3, eff. Sept. 1, 2003.
Renumbered from Insurance Code Sec. 1575.161 by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.07, eff. Jan. 11, 2004.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(27), eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 17, eff. September 1, 2017.

Sec. 1575.1701. EXEMPTION FROM PREAUTHORIZATION REQUIREMENTS FOR PHYSICIANS AND HEALTH CARE PROVIDERS PROVIDING CERTAIN HEALTH CARE SERVICES. A preauthorization process used by a health benefit plan provided under this chapter is subject to the same limitations and requirements provided by Subchapter N, Chapter 4201, for a preauthorization process used by an insurer.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 2, eff. September 1, 2021.

Sec. 1575.171. EMERGENCY CARE PAYMENTS. (a) In this section, "emergency care" has the meaning assigned by Section 1301.155.

(b) The administrator of a managed care plan provided under the group program shall pay for covered emergency care performed by or a covered supply related to that care provided by an out-of-network provider at the usual and customary rate or at an agreed rate. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all

information necessary for the administrator to pay the claim.

(c) For emergency care subject to this section or a supply related to that care, an out-of-network provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.15, eff. September 1, 2019.

Sec. 1575.172. OUT-OF-NETWORK FACILITY-BASED PROVIDER PAYMENTS. (a) In this section, "facility-based provider" means a physician or health care provider who provides health care or medical services to patients of a health care facility.

(b) Except as provided by Subsection (d), the administrator of a managed care plan provided under the group program shall pay for a covered health care or medical service performed for or a covered supply related to that service provided to an enrollee by an out-of-network provider who is a facility-based provider at the usual and customary rate or at an agreed rate if the provider performed the service at a health care facility that is a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network

provider who is a facility-based provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the provider does not have a contract with the enrollee's managed care plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.15, eff. September 1, 2019.

Sec. 1575.173. OUT-OF-NETWORK DIAGNOSTIC IMAGING PROVIDER OR LABORATORY SERVICE PROVIDER PAYMENTS. (a) In this section, "diagnostic imaging provider" and "laboratory service provider" have the meanings assigned by Section 1467.001.

(b) Except as provided by Subsection (d), the administrator of a managed care plan provided under the group program shall pay for a covered health care or medical service performed for or a covered

supply related to that service provided to an enrollee by an out-of-network provider who is a diagnostic imaging provider or laboratory service provider at the usual and customary rate or at an agreed rate if the provider performed the service in connection with a health care or medical service performed by a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a diagnostic imaging provider or laboratory service provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, the modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the provider does not have a contract with the enrollee's managed care plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.15, eff. September 1, 2019.

For expiration of this section, see Subsection (f).

Sec. 1575.174. OUT-OF-NETWORK EMERGENCY MEDICAL SERVICES PROVIDER PAYMENTS. (a) In this section, "emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code, except that the term does not include an air ambulance.

(b) Except as provided by Subsection (c), the administrator of a managed care plan provided under the group program shall pay for a covered health care or medical service performed for, or a covered supply or covered transport related to that service provided to, an enrollee by an out-of-network provider who is an emergency medical services provider at:

(1) if the political subdivision has submitted the rate to the department under Section 38.006, the rate set, controlled, or regulated by the political subdivision in which:

(A) the service originated; or

(B) the transport originated if transport is provided; or

(2) if the political subdivision has not submitted the rate to the department, the lesser of:

(A) the provider's billed charge; or

(B) 325 percent of the current Medicare rate, including any applicable extenders and modifiers.

(c) The administrator shall adjust a payment required by Subsection (b)(1) each plan year by increasing the payment by the lesser of the Medicare Inflation Index or 10 percent of the provider's previous calendar year rates.

(d) The administrator shall make a payment required by this section directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all

information necessary for the administrator to pay the claim.

(e) An out-of-network provider who is an emergency medical services provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply or transport described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that is based on:

(1) the amount initially determined payable by the administrator; or

(2) if applicable, the modified amount as determined under the administrator's internal appeal process.

(f) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 12, eff. September 1, 2023.

SUBCHAPTER E. CONTRIBUTIONS

Sec. 1575.201. ADDITIONAL STATE CONTRIBUTIONS; CERTAIN CONTRIBUTIONS. (a) The state through the trustee shall contribute from money in the fund an amount prescribed by the General Appropriations Act to cover all or part of the cost for each retiree, surviving spouse, and surviving dependent child enrolled in a health benefit plan offered under the group program.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(6), eff. September 1, 2017.

(c) The trustee may spend a part of the money received for the group program to offset a part of the costs for dependent coverage if the group program is projected to remain financially solvent during the currently funded biennium.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 51, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 5, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.432, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 18, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(6), eff.

September 1, 2017.

Sec. 1575.202. STATE CONTRIBUTION BASED ON ACTIVE EMPLOYEE COMPENSATION. (a) Each state fiscal year, the state shall contribute to the fund an amount equal to 1.25 percent of the salary of each active employee.

(b) The state may contribute to the fund an amount in addition to the contribution required by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 52, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 6, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 19, eff. September 1, 2017.

Sec. 1575.203. ACTIVE EMPLOYEE CONTRIBUTION. (a) Each state fiscal year, each active employee shall, as a condition of employment, contribute to the fund an amount equal to 0.65 percent of the employee's salary.

(b) The employer of an active employee shall monthly:

(1) deduct the employee's contribution from the employee's salary and remit the contribution to the trustee in the manner required by the trustee; or

(2) assume and pay the total contributions due from its active employees.

(c) Contributions to the fund deducted from the salary of an active employee are included in annual compensation for purposes of the Teacher Retirement System of Texas.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 53, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 366, Sec. 3.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 7, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.433, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 17.02, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 41, eff.

September 1, 2005.

Sec. 1575.204. PUBLIC SCHOOL CONTRIBUTION. (a) Each state fiscal year, each public school shall contribute to the fund the amount prescribed by the General Appropriations Act, which may not be less than 0.25 percent or greater than 0.75 percent of the salary of each active employee of the public school. The public school shall make the contributions on a monthly basis and as otherwise prescribed by the trustee.

(b) Each state fiscal year, each employer who reports to the retirement system under Section 824.6022, Government Code, the employment of a retiree who is enrolled in and receiving coverage under the group program shall contribute to the fund an amount established by the trustee. In determining the amount to be contributed by the employer under this subsection, the trustee shall consider the amount a retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the cost of all retirees' and enrolled dependents' participation in the group program. If more than one employer reports the retiree to the retirement system during a month, the amount of the contribution required by this subsection shall be prorated among the employers. The amounts required to be paid under this subsection are not required to be paid by a reporting employer for a retiree who retired from the retirement system before September 1, 2005.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 201, Sec. 54, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 42, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1389 (S.B. 1846), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1102 (H.B. 2974), Sec. 8, eff. September 1, 2015.

Sec. 1575.206. CONTRIBUTIONS HELD IN TRUST FOR FUND. An employing public school and its governing body:

(1) hold contributions required by this subchapter in trust for the fund and its participants; and

(2) may not divert the contributions for any other purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 455 (S.B. 1667), Sec. 22, eff. September 1, 2011.

Sec. 1575.207. INTEREST ASSESSED ON LATE PAYMENT OF DEPOSITS BY EMPLOYING PUBLIC SCHOOLS. (a) An employing public school that does not remit to the trustee all contributions required by this subchapter before the seventh day after the last day of the month shall pay to the fund:

(1) the contributions; and

(2) interest on the unpaid amounts at the annual rate of six percent compounded monthly.

(b) On request, the trustee may grant a waiver of the deadline imposed by this section based on an employing public school's financial or technological resources.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.435(a), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 455 (S.B. 1667), Sec. 23, eff. September 1, 2011.

Sec. 1575.208. CERTIFICATION OF AMOUNT NECESSARY TO PAY STATE CONTRIBUTIONS. Not later than October 31 preceding each regular session of the legislature, the trustee shall certify the amount necessary to pay the state contributions to the fund to:

(1) the Legislative Budget Board; and

(2) the budget division of the governor's office.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.436, eff. Sept. 1, 2003.

Sec. 1575.209. CERTIFICATION OF AMOUNT OF STATE CONTRIBUTIONS. Not later than August 31 of each year, the trustee shall certify to the comptroller the estimated amount of state contributions to be received by the fund for the next fiscal year under the appropriations authorized by this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.436, eff. Sept. 1, 2003.

Sec. 1575.210. PAYMENT OF STATE CONTRIBUTIONS; RECONCILIATION. (a) Contributions allocated and appropriated under this subchapter for a state fiscal year shall be:

(1) paid in equal monthly installments;

(2) based on the estimated amount certified by the trustee to the comptroller for that year; and

(3) subject to any express limitations specified in the Act making the appropriation.

(b) A variation between the certified amount and the actual amount due for the state fiscal year shall be reconciled at the end of the fiscal year, and the annual contributions to the fund shall be adjusted accordingly.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.437, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 20, eff. September 1, 2017.

Sec. 1575.211. COST SHARING. (a) The total costs for the operation of the group program shall be shared among the state, the public schools, the active employees, the retirees, the surviving spouses, and the surviving dependent children in the manner prescribed by the General Appropriations Act.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(8), eff. September 1, 2017.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1359, Sec. 55(a)(2), eff. September 1, 2005.

Added by Acts 2003, 78th Leg., ch. 201, Sec. 55, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 8, eff. Sept. 1, 2004. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 16.08, eff. Sept. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 55(a)(2), eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 21, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(8), eff. September 1, 2017.

Sec. 1575.212. PAYMENT BY RETIREES; RANGES. (a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(9), eff. September 1, 2017.
(a-1) The trustee shall establish and collect payments for the share of total costs allocated under Section 1575.211 to retirees, surviving spouses, and surviving dependent children.
(b) In establishing the payments under Subsection (a-1), the trustee may consider various factors, including an enrollee's Medicare status, health benefit plan election, and dependent coverage.

Added by Acts 2003, 78th Leg., ch. 201, Sec. 55, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1231, Sec. 8, eff. Sept. 1, 2004.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 22, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 24(9), eff. September 1, 2017.

Sec. 1575.213. CERTAIN DISABILITY RETIREES. An individual who is eligible as a retiree under Section 1575.004(a)(3) shall pay an additional premium in an amount determined by the trustee. The amount of the premium may not exceed the total cost, as determined by the trustee, attributable to the participation of that retiree and the dependents of that retiree during the period the individual is eligible as a retiree under Section 1575.004(a)(3).

Added by Acts 2007, 80th Leg., R.S., Ch. 1230 (H.B. 2427), Sec. 16, eff. September 1, 2007.

SUBCHAPTER F. FEDERAL OR PRIVATE SOURCE CONTRIBUTIONS

Sec. 1575.251. DEFINITION. In this subchapter, "employer" has the meaning assigned by Section 821.001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.252. APPLICATION BY EMPLOYER FOR MONEY TO PAY STATE CONTRIBUTIONS. An employer who applies for money provided by the United States or a privately sponsored source shall:

(1) if any of the money will pay part or all of an active employee's salary, also apply for any legally available money to pay state contributions required by Subchapter E; and

(2) immediately send any money received for state contributions as a result of the application to the trustee for deposit in the fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.438, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1223 (H.B. 2358), Sec. 3, eff. September 1, 2007.

Sec. 1575.253. MONTHLY CERTIFICATION. An employer shall monthly certify to the trustee in a form prescribed by the trustee:

(1) the total amount of salary paid from federal funds and private grants; and

(2) the total amount of state contributions provided by the funds and grants.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.438, eff. Sept. 1, 2003.

Sec. 1575.254. MONTHLY MAINTENANCE OF INFORMATION. An employer shall monthly maintain:

(1) the name of each employee whose salary is paid wholly or partly from a grant;

(2) the source of the grant;

(3) the amount of the employee's salary paid from the grant;

(4) the amount of the money provided by the grant for state contributions for the employee; and

(5) any other information the trustee determines is necessary to enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.438, eff. Sept. 1, 2003.

Sec. 1575.255. PROOF OF COMPLIANCE. The trustee may:

(1) require an employer to report an application for federal or private money;

(2) require evidence that the application includes a request for funds available to pay state contributions for active employees; and

(3) examine the records of an employer to determine compliance with this subchapter and rules adopted under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.438, eff. Sept. 1, 2003.

Sec. 1575.256. CRIMINAL OFFENSE: FAILURE OF ADMINISTRATOR TO COMPLY. (a) An administrator of an employer commits an offense if the administrator knowingly fails to comply with this subchapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.257. CIVIL SANCTIONS FOR FAILURE OF EMPLOYER TO

COMPLY. (a) An employer who fails to comply with this subchapter may not apply for or spend any money received from a federal or private grant.

(b) The trustee shall report an alleged noncompliance with this subchapter to the attorney general, the Legislative Budget Board, the comptroller, and the governor.

(c) On receipt of a report under Subsection (b), the attorney general shall bring a writ of mandamus against the employer to compel compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.439, eff. Sept. 1, 2003.

SUBCHAPTER G. RETIRED SCHOOL EMPLOYEES GROUP INSURANCE FUND

Sec. 1575.301. FUND; ADMINISTRATION. (a) The retired school employees group insurance fund is a trust fund with the comptroller, who is custodian of the fund.

(b) The trustee shall administer the fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.440(a), eff. Sept. 1, 2003.

Sec. 1575.302. PAYMENTS INTO FUND. The following shall be paid into the fund:

(1) contributions from active employees and the state;

(2) investment income;

(3) appropriations for implementation of the group program; and

(4) other money required or authorized to be paid into the fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 712 (H.B. 3976), Sec. 23, eff. September 1, 2017.

Sec. 1575.303. PAYMENTS FROM FUND. (a) The following shall, without state fiscal year limitation, be paid from the fund:

(1) the appropriate premiums to a carrier providing group coverage under a plan under this chapter;

(2) claims for benefits under the group coverage; and

(3) money spent by the trustee to administer the group program.

(b) The appropriate portion of the contributions to the fund to provide for incurred but unreported claim reserves and contingency reserves, as determined by the trustee, shall be retained in the fund.

(c) The fund is held in trust for the benefit of participants of the group program and may not be diverted.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.441, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 43, eff. September 1, 2005.

Sec. 1575.304. TRANSFER OF CERTAIN CONTRIBUTIONS. The trustee shall transfer into the fund the amounts deducted from annuities for contributions.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.441, eff. Sept. 1, 2003.

Sec. 1575.305. INVESTMENT OF FUND. The trustee may invest money in the fund in the manner provided by Subchapter D, Chapter 825, Government Code, for assets of the Teacher Retirement System of Texas.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.441, eff. Sept. 1, 2003.

Sec. 1575.306. EMPLOYEE CONTRIBUTIONS PROPERTY OF FUND ON RECEIPT; NO REFUND. A contribution from an active employee:

(1) is the property of the fund on receipt by the trustee; and

(2) may not be refunded to the active employee under any circumstances, including termination of employment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.441, eff. Sept. 1, 2003.

Sec. 1575.307. CONTINGENCY RESERVE ACCOUNT. (a) Before the first day of each state fiscal biennium, the trustee shall estimate for an average 60-day period during the biennium the expenditures from the fund anticipated for the group program, considering projected claims and administrative expenses.

(b) The trustee shall place the estimated amount in a contingency reserve account to provide for adverse fluctuations in claims or administrative expenses.

(c) The trustee shall include in each request for legislative appropriations to the group program the amount the trustee determines to be necessary to maintain the contingency reserve account at the level required by this section.

(d) The trustee may invest and reinvest any portion of the contingency reserve account in accordance with Sections 825.103(b) and 825.301, Government Code, considering the functional need to provide for adverse fluctuations in claims or administrative expenses.

(e) The interest on, earnings of, and proceeds from the sale of investments of assets in the contingency reserve account shall be credited to the account.

(f) The trustee, from time to time and in amounts the trustee considers appropriate, may transfer unused money for administrative expenses to the contingency reserve account to be used by the trustee only for charges, claims, and expenses under the group program.

Added by Acts 2019, 86th Leg., R.S., Ch. 445 (S.B. 1682), Sec. 1, eff. June 4, 2019.

SUBCHAPTER H. COORDINATED CARE NETWORK

Sec. 1575.351. DEFINITIONS. In this subchapter:

(1) "Credentialing committee" means a credentialing committee created by the trustee under Section 1575.354.

(2) "Health care provider" means:

(A) an individual licensed as a health care practitioner; or

(B) a health care facility.

(3) "Network" means the coordinated care network implemented and administered by the trustee under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.442, eff. Sept. 1, 2003.

Sec. 1575.352. IMPLEMENTATION AND ADMINISTRATION. The trustee may implement and administer a coordinated care network for the group program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.443, eff. Sept. 1, 2003.

Sec. 1575.353. CONTRACTS WITH HEALTH CARE PROVIDERS AND OTHERS. As the trustee determines is necessary to implement and administer the network, the trustee may contract with a health care provider or other individuals or entities.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.443, eff. Sept. 1, 2003.

Sec. 1575.354. CREDENTIALING COMMITTEES. The trustee may establish credentialing committees to evaluate the qualifications of health care providers to participate in the network.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.443, eff. Sept.

1, 2003.

Sec. 1575.355. IMMUNITY FROM LIABILITY ARISING FROM ACTS OR OMISSIONS OF HEALTH CARE PROVIDER. (a) The following are not liable for damages arising from an act or omission of a health care provider participating in the network:

(1) the trustee and its officers and employees, including the board of trustees of the trustee;

(2) the group program;

(3) the fund; and

(4) a member of an advisory committee to the trustee.

(b) A health care provider participating in the network is an independent contractor and is responsible for the provider's acts or omissions.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.444, eff. Sept. 1, 2003.

Sec. 1575.356. IMMUNITY FROM LIABILITY ARISING FROM EVALUATION OF QUALIFICATIONS OR CARE. The following are not liable for damages arising from an act, including a statement, determination, report of an act, or recommendation, committed without malice in the course of the evaluation of the qualifications of a health care provider or of the patient care provided by a health care provider participating in the network:

(1) the trustee and its officers and employees, including the board of trustees;

(2) the group program;

(3) the fund;

(4) a member of an advisory committee to the trustee; and

(5) a member of a credentialing committee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.445, eff. Sept. 1, 2003.

Sec. 1575.357. IMMUNITY FROM LIABILITY ARISING FROM ACTS

RELATING TO CREDENTIALING COMMITTEE. An individual, a health care provider, or a medical peer review committee is not liable for damages arising from an act committed without malice that consists of:

(1) participating in the activity of a credentialing committee; or

(2) furnishing records, information, or assistance to a credentialing committee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.358. OPEN MEETINGS LAW NOT APPLICABLE TO CREDENTIALING COMMITTEE. The proceedings of a credentialing committee are not subject to Chapter 551, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.359. RECORDS AND PROCEEDINGS OF CREDENTIALING COMMITTEE NOT SUBJECT TO SUBPOENA. Except to the extent required by the constitution of this state or the United States, the records and proceedings of a credentialing committee and a communication made to a credentialing committee are not subject to court subpoena.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.360. CONFIDENTIALITY. Except as otherwise provided by this subchapter:

(1) proceedings and records of a credentialing committee are confidential; and

(2) a communication made to a credentialing committee is privileged.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.361. DISCLOSURE TO HEALTH CARE PROVIDER. Disclosure of confidential credentialing committee information that is relevant to the matter under review to an affected health care provider is not

a waiver of the confidentiality requirements under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.362. DISCLOSURE TO CERTAIN ENTITIES. (a) A written or oral communication made to a credentialing committee, or a record or proceeding of the committee, may be disclosed to an appropriate:

(1) state or federal agency, including a state board of registration or licensing;

(2) national accreditation body; or

(3) medical peer review committee.

(b) A disclosure under this section is not a waiver of the confidential and privileged nature of the information.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.363. DISCLOSURE TO DEFENDANTS IN CIVIL ACTIONS. (a) Any of the following persons named as a defendant in any civil action filed as a result of participation in the credentialing process may use, including in the person's own defense, otherwise confidential information obtained for legitimate internal business and professional purposes:

(1) the trustee and its officers and employees, including the board of trustees;

(2) a credentialing committee;

(3) a person participating in a credentialing review;

(4) a health care provider;

(5) the group program; and

(6) a member of an advisory committee.

(b) Use of information under this section is not a waiver of the confidential and privileged nature of the information.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.446, eff. Sept. 1, 2003.

SUBCHAPTER I. RETIREES ADVISORY COMMITTEE

Sec. 1575.401. DEFINITION. In this subchapter, "committee"

means the Retirees Advisory Committee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.402. APPOINTMENT OF COMMITTEE MEMBERS. (a) The Retirees Advisory Committee is composed of the following seven members appointed by the trustee:

(1) one member who is an active school administrator;

(2) one member who is a retired school administrator;

(3) two members who are active teachers; and

(4) three members who are retired teachers.

(b) A person is not eligible for appointment as a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.447, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 930 (S.B. 1663), Sec. 16, eff. September 1, 2017.

Sec. 1575.403. TERMS. (a) Members of the committee serve staggered four-year terms.

(b) The terms of the active school administrator, one active teacher, and two retired teachers expire February 1, 2002, and every fourth year after that date.

(c) The remaining members' terms expire February 1, 2004, and every fourth year after that date.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 930 (S.B. 1663), Sec. 17, eff. September 1, 2017.

Sec. 1575.404. VACANCY. The trustee shall fill a vacancy on the committee by appointing a person who meets the qualifications applicable to the vacated position.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.448, eff. Sept. 1, 2003.

Sec. 1575.405. MEETINGS. (a) The committee shall meet:

(1) at least twice each year; and

(2) at the call of the trustee.

(b) If there is an emergency, the committee may meet at the call of a majority of the members of the committee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.449, eff. Sept. 1, 2003.

Sec. 1575.406. DUTIES. The committee shall:

(1) hold public hearings on group coverage;

(2) recommend to the trustee minimum standards and features of a plan under the group program that the committee considers appropriate; and

(3) recommend to the trustee desirable changes in rules and legislation affecting the group program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.450, eff. Sept. 1, 2003.

Sec. 1575.407. PROCEDURAL RULES. The trustee shall adopt procedural rules for the committee to follow in implementing its powers and duties under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.450, eff. Sept. 1, 2003.

Sec. 1575.408. REIMBURSEMENT FOR ACTUAL AND REASONABLE EXPENSES. A committee member is entitled to reimbursement for actual and reasonable expenses incurred in performing functions as a

committee member.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

SUBCHAPTER J. ACCOUNTING, REPORTS, AND RECORDS

Sec. 1575.451. ANNUAL ACCOUNTING. (a) In this section, "plan year" means the period beginning on September 1 and ending on the following August 31.

(b) Group coverage purchased under this chapter must provide for an accounting to the trustee by each carrier providing the coverage.

(c) The accounting must be submitted:

(1) not later than the 90th day after the last day of each plan year; and

(2) on a form approved by the trustee.

(d) Each carrier shall prepare any other report that the trustee considers necessary.

(e) A carrier may not assess an extra charge for an accounting report.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.451, eff. Sept. 1, 2003.

Sec. 1575.453. STUDY AND REPORT BY TRUSTEE. (a) The trustee shall study the operation and administration of this chapter, including:

(1) conducting surveys and preparing reports on financing group coverages and health benefit plans available to participants;

(2) studying the experience and projected cost of coverage; and

(3) reviewing the group coverages provided to and the benefits and services being received by individuals covered under this chapter.

(b) The trustee shall report annually to the legislature and the department on the operation and administration of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.452, eff. Sept.

1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 141 (H.B. 1585), Sec. 17, eff. May 26, 2021.

Sec. 1575.454. REPORTS BY AND EXAMINATION OF CARRIER. Each contract entered into under this chapter between the trustee and a carrier must require the carrier to:

(1) furnish to the trustee in a timely manner reasonable reports that the trustee determines are necessary to implement this chapter; and

(2) permit the trustee and the state auditor to examine records of the carrier as necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.452, eff. Sept. 1, 2003.

Sec. 1575.455. PUBLIC INSPECTION. A report required by this chapter shall be made available for public inspection in a form that protects the identity of individual claimants.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.456. CONFIDENTIALITY OF RECORDS. (a) Section 825.507, Government Code, concerning confidentiality and disclosure of records applies to records in the custody of the Teacher Retirement System of Texas or in the custody of an administrator, carrier, agent, attorney, consultant, or governmental body acting in cooperation with or on behalf of the system relating to a retiree, active employee, annuitant, or beneficiary under the group program.

(b) The Teacher Retirement System of Texas may disclose to a health or benefit provider information in the records of an individual that the system determines is necessary to administer the group program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.453(a), eff.

Sept. 1, 2003.

SUBCHAPTER K. EXPULSION FOR FRAUD

Sec. 1575.501. EXPULSION FOR FRAUD. After notice and hearing as provided by this subchapter, the trustee may expel from participation in the group program a retiree, dependent, surviving spouse, or surviving dependent child who:

(1) submits a fraudulent claim or application for coverage under the group program; or

(2) defrauds or attempts to defraud a health benefit plan offered under the group program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.454(a), eff. Sept. 1, 2003.

Sec. 1575.502. HEARING. On receipt of a complaint or on its own motion, the trustee may call and hold a hearing to determine whether an individual has acted in the manner described by Section 1575.501.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.455, eff. Sept. 1, 2003.

Sec. 1575.503. CONTESTED CASE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1575.504. EXPULSION AT CONCLUSION OF HEARING. At the conclusion of the hearing under Section 1575.502, if the trustee determines that the individual acted in the manner described by Section 1575.501, the trustee shall expel the individual from participation in the group program.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.455, eff. Sept. 1, 2003.

Sec. 1575.505. EFFECT OF EXPULSION. An individual expelled from participation in the group program may not be covered by a health benefit plan offered under the group program for a period determined by the trustee, not to exceed five years, beginning on the date the expulsion takes effect.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.455, eff. Sept. 1, 2003.

Sec. 1575.506. APPEAL. An appeal of a determination by the trustee under this subchapter is under the substantial evidence rule.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.455, eff. Sept. 1, 2003.

CHAPTER 1576. GROUP LONG-TERM CARE INSURANCE FOR PUBLIC SCHOOL EMPLOYEES

Sec. 1576.001. DEFINITIONS. In this chapter:

(1) "Active employee" has the meaning assigned by Section 1575.002.

(2) "Trustee" means the Teacher Retirement System of Texas.

(3) "Retiree" has the meaning assigned by Section 1575.004.

(4) "Surviving spouse" has the meaning assigned by Section 1575.003.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.457, eff. Sept. 1, 2003.

Sec. 1576.002. ESTABLISHMENT OF PROGRAM. (a) The trustee may establish a group long-term care insurance program to provide long-term care insurance coverage for:

(1) an active employee or retiree;

(2) the spouse of an active employee or retiree, including a surviving spouse;

(3) a parent or grandparent of an active employee or retiree; and

(4) a parent of the spouse of an employee or retiree, including a parent of a surviving spouse.

(b) The trustee may not implement a group long-term care insurance program unless any cost or administrative burden associated with the development of, implementation of, or communications about the program is incidental.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.458, eff. Sept. 1, 2003.

Sec. 1576.003. CONTRACTS TO PROVIDE COVERAGES. The trustee may contract with one or more carriers authorized to provide long-term care insurance to provide that coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.458, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 44, eff. September 1, 2005.

Sec. 1576.004. PREMIUMS. (a) The trustee shall determine the procedures by which each program participant pays premiums and any other program costs. Each participant is responsible for required payments.

(b) The trustee may authorize any payment method appropriate for the program, including a payment method under which:

(1) a participating employee is required to pay premiums by payroll deduction remitted by the employee's employer at the times and in the manner determined by the trustee;

(2) a participating retiree is required to pay premiums by deduction from the retiree's monthly annuity; or

(3) a carrier with which the trustee has contracted under

Section 1576.003 bills a program participant directly.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 44, eff. September 1, 2005.

Sec. 1576.005. PROGRAM NOT PART OF OTHER GROUP COVERAGES. (a) The group long-term care insurance program is not part of the group coverages offered under Chapter 1575 or 1579.

(b) The state may not contribute any part of the premiums for coverage offered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 45, eff. September 1, 2005.

Sec. 1576.006. RULES. The trustee may adopt rules as necessary to administer this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.458, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 46, eff. September 1, 2005.

Sec. 1576.007. EXEMPTION FROM STATE TAXES AND FEES. A premium or contribution on a policy, insurance contract, or agreement authorized under this chapter is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.459(a), eff. Sept. 1, 2003.

Sec. 1576.008. COMPETITIVE BIDDING REQUIREMENTS; RULES. (a) A contract to provide benefits under this chapter may be awarded only through competitive bidding under rules adopted by the trustee.

(b) The rules may provide criteria for determining whether a carrier is qualified.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 47, eff. September 1, 2005.

Sec. 1576.009. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a contract under this chapter, the trustee is not required to select the lowest bid and may consider any relevant criteria, including a bidder's:

(1) ability to service contracts;

(2) past experience; and

(3) financial stability.

(b) If the trustee awards a contract to a bidder whose bid deviates from that advertised, the trustee shall record the deviation and fully justify the reason for the deviation in the minutes of the next meeting of the trustee.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 47, eff. September 1, 2005.

Sec. 1576.010. GROUP LONG-TERM CARE INSURANCE PROGRAM FUND. (a) The group long-term care insurance program fund is a trust fund with the comptroller.

(b) The trustee shall administer the fund on behalf of the participants in the plan of insurance coverage provided under this chapter.

(c) The following shall be credited to the fund:

(1) money recovered under contracts for providing insurance coverage under this chapter; and

(2) investment and depository income.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 47, eff. September 1, 2005.

Sec. 1576.011. INVESTMENT OF FUND. The trustee may invest the group long-term care insurance program fund in the manner provided by Section 67(a)(3), Article XVI, Texas Constitution.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 47, eff. September 1, 2005.

Sec. 1576.012. PAYMENTS FROM FUND. Money in the group long-term care insurance program fund may be used only to cover the cost of administering the program and to provide coverage under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 47, eff. September 1, 2005.

Sec. 1576.013. COVERAGE EXEMPT FROM INSURANCE LAW. A coverage plan provided under this chapter is exempt from any other insurance law, including common law, that does not expressly apply to the plan or this chapter.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 47, eff. September 1, 2005.

CHAPTER 1578. PURCHASE OF INSURANCE BY ASSOCIATION OF TEACHERS AND SCHOOL ADMINISTRATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1578.001. APPLICABILITY OF CHAPTER. This chapter applies only to a voluntary association that is:

(1) composed of teachers or school administrators of public or private primary or secondary schools, colleges, or universities; and

(2) incorporated under federal law or a law of this state on a nonprofit membership basis.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1578.002. AUTHORITY TO ISSUE. Notwithstanding any other

law, an insurance company authorized to engage in the business of insurance in this state may issue a group policy to a voluntary association in accordance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

SUBCHAPTER B. PURCHASE OF INSURANCE

Sec. 1578.051. AUTHORITY TO OBTAIN INSURANCE. (a) A voluntary association may obtain for any class of the association's membership and for the class's dependents a group policy of:

(1) life insurance;

(2) health insurance;

(3) accident insurance;

(4) accidental death or dismemberment insurance; or

(5) hospital, surgical, or medical expense insurance.

(b) The association may obtain a separate policy for each type of insurance listed under Subsection (a).

(c) The association is the policyholder.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1578.052. PAYMENT OF PREMIUM. A voluntary association that obtains a group policy under this chapter shall pay the premium for the policy wholly or partly from money:

(1) contributed by the association; or

(2) contributed by the insured association members for that purpose.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1578.053. MINIMUM REQUIREMENTS TO OBTAIN POLICY. (a) A voluntary association may obtain a group policy under this chapter only if the policy will cover at least 25 association members on the date of issue.

(b) If the premium for the group policy is paid wholly or partly from money contributed by association members for that purpose, the policy on the date of issue must cover at least the lesser of 75 percent of the eligible members or 400 members,

excluding any member whose evidence of individual insurability is not satisfactory to the insurer, who elect to make the required contributions and to be insured under the policy.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1578.054. AMOUNT OF INSURANCE. The amount of insurance under a policy issued under this chapter must be based on a plan that precludes individual selection by the voluntary association or an insured association member.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

CHAPTER 1579. TEXAS SCHOOL EMPLOYEES UNIFORM GROUP HEALTH COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1579.001. SHORT TITLE. This chapter may be cited as the Texas School Employees Uniform Group Health Coverage Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.002. GENERAL DEFINITIONS. In this chapter:

(1) "Administering firm" means any entity designated by the trustee to administer any coverages, services, benefits, or requirements under this chapter and the trustee's rules adopted under this chapter.

(2) "Trustee" means the Teacher Retirement System of Texas.

(3) "Charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(4) "Health coverage plan" means any group policy or contract, hospital service agreement, health maintenance organization agreement, preferred provider arrangement, or any similar group arrangement or any combination of those policies, contracts, agreements, or arrangements that provides for, pays for, or reimburses expenses for health care services.

(5) "Participating entity" means an entity participating in the uniform group coverage program established under this chapter. The term includes:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center; and

(D) a charter school that meets the requirements of Section 1579.154.

(6) "Program" means the uniform group coverage program established under this chapter.

(7) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

(8) "Usual and customary rate" means the relevant allowable amount as described by the applicable master benefit plan document or policy.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.16, eff. September 1, 2019.

Sec. 1579.003. DEFINITION OF EMPLOYEE. In this chapter, "employee" means a participating member of the Teacher Retirement System of Texas who is employed by a participating entity and who is not receiving coverage from a program under Chapter 1551, 1575, or 1601. The term does not include an individual performing personal services as an independent contractor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.004. DEFINITION OF DEPENDENT. In this chapter, "dependent" means:

(1) a spouse of a full-time employee or part-time employee;

(2) a child of a full-time or part-time employee if the child is younger than 26 years of age, including:

(A) an adopted child or child who is lawfully placed for adoption;

(B) a foster child, stepchild, or other child who is in a regular parent-child relationship; and

(C) a natural child;

(3) a full-time or part-time employee's natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship and who lives with or has his or her care provided by the employee or the surviving spouse on a regular basis, regardless of the child's age, if the child has a mental disability or is physically incapacitated to an extent that the child is dependent on the employee or surviving spouse for care or support, as determined by the board of trustees; and

(4) notwithstanding any other provision of this code, any other dependent of a full-time or part-time employee specified by rules adopted by the board of trustees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 455 (S.B. 1667), Sec. 24, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1078 (H.B. 3357), Sec. 20, eff. June 14, 2013.

Sec. 1579.005. CONFIDENTIALITY. (a) Section 825.507, Government Code, applies to records relating to an employee or dependent under the program and in the custody of the Teacher Retirement System of Texas or in the custody of an administrator, carrier, agent, attorney, consultant, or governmental body acting in cooperation with or on behalf of the system.

(b) The Teacher Retirement System of Texas may disclose to a health care provider, benefit provider, or claims administrator information in the records of an individual that the system determines is necessary to administer the program.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 48, eff. September 1, 2005.

Sec. 1579.006. EXEMPTION FROM PROCESS. (a) The following are exempt from execution, attachment, garnishment, or any other process:

(1) benefit payments, including optional benefit payments;

(2) contributions of active employees, the state, and a

participating entity, and any other contributions;

(3) any rights, benefits, or payments accruing to any person under this chapter; and

(4) any money in the Texas school employees uniform group coverage trust fund.

(b) The items listed in Subsection (a) may not be assigned except for direct payment to benefit providers as authorized by the trustee by contract, rule, or otherwise.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 48, eff. September 1, 2005.

Sec. 1579.007. EXEMPTION FROM STATE TAXES AND FEES. A premium or contribution on a policy, insurance contract, or agreement authorized by this chapter is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 48, eff. September 1, 2005.

Sec. 1579.008. COVERAGE EXEMPT FROM INSURANCE LAW. A coverage plan provided under this chapter is exempt from any other insurance law, including common law, that does not expressly apply to the plan or this chapter.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 48, eff. September 1, 2005.

Text of section effective until September 1, 2025

Sec. 1579.009. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a managed care plan provided under this chapter shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or health care provider in connection with a health care or medical service or supply or transport provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section

1579.109, 1579.110, 1579.111, or 1579.112, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's managed care plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a payment under Section 1579.109, 1579.110, 1579.111, or 1579.112, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.17, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 13(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 13(b), eff. September 1, 2025.

Text of section effective on September 1, 2025

Sec. 1579.009. BALANCE BILLING PROHIBITION NOTICE. (a) The administrator of a managed care plan provided under this chapter shall provide written notice in accordance with this section in an explanation of benefits provided to the enrollee and the physician or health care provider in connection with a health care or medical service or supply provided by an out-of-network provider. The notice must include:

(1) a statement of the billing prohibition under Section 1579.109, 1579.110, or 1579.111, as applicable;

(2) the total amount the physician or provider may bill the enrollee under the enrollee's managed care plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total; and

(3) for an explanation of benefits provided to the physician or provider, information required by commissioner rule

advising the physician or provider of the availability of mediation or arbitration, as applicable, under Chapter 1467.

(b) The administrator shall provide the explanation of benefits with the notice required by this section to a physician or health care provider not later than the date the administrator makes a payment under Section 1579.109, 1579.110, or 1579.111, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.17, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 13(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 13(b), eff. September 1, 2025.

Sec. 1579.010. INFORMATION REGARDING APPEALS. The trustee shall develop and distribute informational materials to individuals enrolled in a health coverage plan provided under this chapter regarding:

(1) an enrollee's right to appeal denial of an adverse determination, as defined by Section 4201.002, to an independent review organization;

(2) the procedures for appealing to an independent review organization; and

(3) the assistance available from the trustee in navigating the procedures for appeal.

Added by Acts 2021, 87th Leg., R.S., Ch. 141 (H.B. 1585), Sec. 18, eff. May 26, 2021.

SUBCHAPTER B. ADMINISTRATION

Sec. 1579.051. ADMINISTRATION OF GROUP PROGRAM. The Teacher Retirement System of Texas, as trustee, shall implement and administer the uniform group coverage program described by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.052. AUTHORITY TO ADOPT RULES; OTHER AUTHORITY. (a) The trustee may adopt rules relating to the program as considered necessary by the trustee.

(b) The trustee may adopt rules to administer the program, including rules relating to adjudication of claims and expelling participants from the program for cause.

(c) The trustee may contract with independent and experienced group insurance consultants and actuaries for advice and counsel in implementing and administering the program.

(d) The trustee may enter into interagency contracts with any agency of the state, including the Employees Retirement System of Texas and the department, for the purpose of assistance in implementing the program.

(e) The trustee shall take the actions it considers necessary to devise, implement, and administer the program.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 49, eff. September 1, 2005.

Sec. 1579.053. PERSONNEL. The trustee may hire and compensate employees as necessary to implement the program.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.054. COMPETITIVE BIDDING REQUIREMENTS; RULES. A contract to provide group health coverage under this chapter may be awarded only through competitive bidding under rules adopted by the trustee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.055. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a contract to provide group benefits under this chapter, the

trustee is not required to select the lowest bid and may consider also any relevant criteria, including the bidder's:

(1) ability to service contracts;

(2) past experiences; and

(3) financial stability.

(b) If the trustee awards a contract to a bidder whose bid deviates from that advertised, the trustee shall record the deviation and fully justify the reason for the deviation in the minutes of the next board meeting.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.057. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In awarding a contract to provide pharmacy benefit manager services under this chapter, the trustee is not required to select the lowest bid but must select a contract that meets the criteria established by this section.

(b) The contract must state that:

(1) the trustee is entitled to audit the pharmacy benefit manager to verify costs and discounts associated with drug claims, pharmacy benefit manager compliance with contract requirements, and services provided by subcontractors;

(2) the audit must be conducted by an independent auditor in accordance with established auditing standards; and

(3) to conduct the audit, the trustee and the independent auditor are entitled access to information related to the services and the costs associated with the services performed under the contract, including access to the pharmacy benefit manager's facilities, records, contracts, medical records, and agreements with subcontractors.

(c) The contract must define the information that the pharmacy benefit manager is required to provide to the trustee concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits must be reported to the trustee, including how often the results must be reported. The contract must state whether the pharmacy benefit manager is required to return recovered overpayments to the trustee.

(d) The contract must state that any audit of a mail order pharmacy owned by the pharmacy benefit manager must be conducted by an independent auditor selected by the trustee in accordance with established auditing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 7, eff. September 1, 2009.

SUBCHAPTER C. COVERAGES

Sec. 1579.101. PLANS OF GROUP COVERAGES. (a) The trustee by rule shall establish plans of group coverages for employees participating in the program and their dependents.

(b) The plans must include at least two tiers of group coverage, with coverage at different levels in each tier, ranging from the catastrophic care coverage plan to the primary care coverage plan. Each tier must contain a health coverage plan.

(c) The trustee by rule shall define the requirements of each coverage plan and tier of coverage.

(d) Comparable coverage plans of each tier of coverage established must be offered to employees of all participating entities.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.102. CATASTROPHIC CARE COVERAGE PLAN. The coverage provided under the catastrophic care coverage plan shall be prescribed by the trustee by rule and must provide coverage at least as extensive as the coverage provided under the TRS-Care 1 plan operated under Chapter 1575.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 50, eff. September 1, 2005.

Sec. 1579.104. OPTIONAL COVERAGES. The trustee may not offer

optional coverages, other than optional permanent life insurance, optional long-term care insurance, and optional disability insurance, to employees participating in the program. This section does not affect the right of a participating entity to offer optional coverages to its employees under terms and conditions established by the participating entity.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.
Reenacted by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 51(a), eff. September 1, 2005.

Sec. 1579.1045. ALTERNATIVE GROUP HEALTH COVERAGE PROHIBITED. Notwithstanding any other law, a participating entity may not offer or make available to the entity's employees or their dependents group health coverage not provided under the program.

Added by Acts 2021, 87th Leg., R.S., Ch. 399 (S.B. 1444), Sec. 1, eff. September 1, 2021.

Sec. 1579.105. PREEXISTING CONDITION LIMITATION. During the initial period of eligibility, coverage provided under the program may not be made subject to a preexisting condition limitation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.106. PRIOR AUTHORIZATION FOR CERTAIN DRUGS. (a) In this section, "drug formulary" means a list of drugs preferred for use and eligible for coverage by a health coverage plan.

(b) A health coverage plan provided under this chapter that uses a drug formulary in providing a prescription drug benefit must require prior authorization for coverage of the following categories of prescribed drugs if the specific drug prescribed is not included in the formulary:

(1) a gastrointestinal drug;

(2) a cholesterol-lowering drug;

(3) an anti-inflammatory drug;

(4) an antihistamine drug; and

(5) an antidepressant drug.

(c) Every 12 months the trustee shall submit to the comptroller and the Legislative Budget Board a report regarding any cost savings achieved in the program through implementation of the prior authorization requirement of this section. The report must cover the previous 12-month period.

(d) In the report under Subsection (c), the trustee:

(1) may include any cost savings achieved in the program for coverage of prescribed drugs that are not included in the categories listed in Subsection (b) for which prior authorization is required by a health coverage plan provided under this chapter; and

(2) considering cost and medical necessity, shall identify any categories of prescribed drugs in addition to the categories listed in Subsection (b) for which requiring prior authorization could achieve cost savings.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.003, eff. April 1, 2009.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 141 (H.B. 1585), Sec. 19, eff. May 26, 2021.

Sec. 1579.1061. EXEMPTION FROM PREAUTHORIZATION REQUIREMENTS FOR PHYSICIANS AND HEALTH CARE PROVIDERS PROVIDING CERTAIN HEALTH CARE SERVICES. A preauthorization process used by a health coverage plan provided under this chapter is subject to the same limitations and requirements provided by Subchapter N, Chapter 4201, for a preauthorization process used by an insurer.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 3, eff. September 1, 2021.

Sec. 1579.107. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist an individual manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the trustee identifies populations requiring disease management.

(b) A health coverage plan provided under this chapter must provide disease management services or coverage for disease management services in the manner required by the trustee, including:

(1) patient self-management education;

(2) provider education;

(3) evidence-based models and minimum standards of care;

(4) standardized protocols and participation criteria; and

(5) physician-directed or physician-supervised care.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.003, eff. April 1, 2009.

Sec. 1579.108. LIMITATIONS. The trustee may not contract for or provide a health coverage plan that excludes from participation in the network a general hospital that:

(1) is located in the geographical service area or areas of the health coverage plan that includes a county that:

(A) has a population of at least 100,000 and not more than 233,500; and

(B) is located in the Texas-Louisiana border region, as that term is defined in Section 2056.002(e), Government Code; and

(2) agrees to provide medical and health care services under the plan subject to the same terms as other hospital providers under the plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1G.003, eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 58, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 118, eff. September 1, 2023.

Sec. 1579.109. EMERGENCY CARE PAYMENTS. (a) In this section, "emergency care" has the meaning assigned by Section 1301.155.

(b) The administrator of a managed care plan provided under this chapter shall pay for covered emergency care performed by or a covered supply related to that care provided by an out-of-network provider at the usual and customary rate or at an agreed rate. The

administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) For emergency care subject to this section or a supply related to that care, an out-of-network provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.18, eff. September 1, 2019.

Sec. 1579.110. OUT-OF-NETWORK FACILITY-BASED PROVIDER PAYMENTS. (a) In this section, "facility-based provider" means a physician or health care provider who provides health care or medical services to patients of a health care facility.

(b) Except as provided by Subsection (d), the administrator of a managed care plan provided under this chapter shall pay for a covered health care or medical service performed for or a covered supply related to that service provided to an enrollee by an out-of-network provider who is a facility-based provider at the usual and customary rate or at an agreed rate if the provider performed the service at a health care facility that is a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a facility-based provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the provider does not have a contract with the enrollee's managed care plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.18, eff. September 1, 2019.

Sec. 1579.111. OUT-OF-NETWORK DIAGNOSTIC IMAGING PROVIDER OR LABORATORY SERVICE PROVIDER PAYMENTS. (a) In this section, "diagnostic imaging provider" and "laboratory service provider" have the meanings assigned by Section 1467.001.

(b) Except as provided by Subsection (d), the administrator of a managed care plan provided under this chapter shall pay for a covered health care or medical service performed for or a covered supply related to that service provided to an enrollee by an out-of-network provider who is a diagnostic imaging provider or laboratory service provider at the usual and customary rate or at an agreed rate if the provider performed the service in connection with a health care or medical service performed by a participating provider. The administrator shall make a payment required by this subsection directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(c) Except as provided by Subsection (d), an out-of-network provider who is a diagnostic imaging provider or laboratory service provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that:

(1) is based on:

(A) the amount initially determined payable by the administrator; or

(B) if applicable, a modified amount as determined under the administrator's internal appeal process; and

(2) is not based on any additional amount determined to be owed to the provider under Chapter 1467.

(d) This section does not apply to a nonemergency health care or medical service:

(1) that an enrollee elects to receive in writing in advance of the service with respect to each out-of-network provider providing the service; and

(2) for which an out-of-network provider, before providing the service, provides a complete written disclosure to the enrollee that:

(A) explains that the provider does not have a contract with the enrollee's managed care plan;

(B) discloses projected amounts for which the enrollee may be responsible; and

(C) discloses the circumstances under which the enrollee would be responsible for those amounts.

Added by Acts 2019, 86th Leg., R.S., Ch. 1342 (S.B. 1264), Sec. 1.18, eff. September 1, 2019.

For expiration of this section, see Subsection (f).

Sec. 1579.112. OUT-OF-NETWORK EMERGENCY MEDICAL SERVICES PROVIDER PAYMENTS. (a) In this section, "emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code, except that the term does not include an air ambulance.

(b) Except as provided by Subsection (c), the administrator of a managed care plan provided under this chapter shall pay for a covered health care or medical service performed for, or a covered supply or covered transport related to that service provided to, an enrollee by an out-of-network provider who is an emergency medical services provider at:

(1) if the political subdivision has submitted the rate to the department under Section 38.006, the rate set, controlled, or regulated by the political subdivision in which:

(A) the service originated; or

(B) the transport originated if transport is provided; or

(2) if the political subdivision has not submitted the rate to the department, the lesser of:

(A) the provider's billed charge; or

(B) 325 percent of the current Medicare rate, including any applicable extenders and modifiers.

(c) The administrator shall adjust a payment required by Subsection (b)(1) each plan year by increasing the payment by the lesser of the Medicare Inflation Index or 10 percent of the provider's previous calendar year rates.

(d) The administrator shall make a payment required by this section directly to the provider not later than, as applicable:

(1) the 30th day after the date the administrator receives an electronic claim for those services that includes all information necessary for the administrator to pay the claim; or

(2) the 45th day after the date the administrator receives a nonelectronic claim for those services that includes all information necessary for the administrator to pay the claim.

(e) An out-of-network provider who is an emergency medical services provider or a person asserting a claim as an agent or assignee of the provider may not bill an enrollee receiving a health care or medical service or supply or transport described by Subsection (b) in, and the enrollee does not have financial responsibility for, an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee's managed care plan that is based on:

(1) the amount initially determined payable by the administrator; or

(2) if applicable, a modified amount as determined under the administrator's internal appeal process.

(f) This section expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 981 (S.B. 2476), Sec. 14, eff. September 1, 2023.

SUBCHAPTER D. PARTICIPATING ENTITIES

Sec. 1579.151. REQUIRED PARTICIPATION OF SCHOOL DISTRICTS WITH 500 OR FEWER EMPLOYEES. (a) Each school district with 500 or fewer employees and each regional education service center is required to participate in the program.

(b) Notwithstanding Subsection (a), a school district otherwise subject to Subsection (a) that, on January 1, 2001, was individually self-funded for the provision of health coverage to its employees may elect not to participate in the program.

(c) An educational district described by Section 1579.002(5)(B) that, on January 1, 2001, had 500 or fewer employees may elect not to participate in the program.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.152. PARTICIPATION OF OTHER SCHOOL DISTRICTS. Effective September 1, 2005, a school district with more than 500 employees may elect to participate in the program. A school district that elects to participate under this section shall apply for participation in the manner prescribed by the trustee by rule.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.153. PARTICIPATION BY CERTAIN RISK POOLS. (a) In determining the number of employees of a school district for purposes of Sections 1579.151 and 1579.152, school districts that, on January 1, 2001, were members of a risk pool established under the authority of Chapter 172, Local Government Code, as provided by Section 22.004, Education Code, may elect to be treated as a single unit. A school district shall elect whether to be considered as a member of a risk pool under this section by notifying the trustee not later than September 1, 2001.

(b) A risk pool in existence on January 1, 2001, that, as of that date, provided group health coverage to 500 or fewer school district employees may elect to participate in the program.

(c) A school district with 500 or fewer employees that is a member of a risk pool described by Subsection (a) that provides group health coverage to more than 500 school district employees must elect, not later than September 1, 2001, whether to be treated as a school district with 500 or fewer employees or as part of a unit with more than 500 employees. The school district must notify the trustee of the election, in the manner prescribed by the trustee, not later than September 1, 2001.

(d) For purposes of this section, participation in the program by school districts covered by a risk pool is limited to school districts covered by the risk pool as of January 1, 2001.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.154. PARTICIPATION BY CHARTER SCHOOLS; ELIGIBILITY.

(a) A charter school is eligible to participate in the program if the school agrees:

(1) that all records of the school relating to participation in the program are open to inspection by the trustee, the administering firm, the commissioner of education, or a designee of any of those entities; and

(2) to have the school's accounts relating to participation in the program annually audited by a certified public accountant at the school's expense.

(b) A charter school must notify the trustee of the school's intent to participate in the program in the manner and within the time required by rules adopted by the trustee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.155. PROGRAM PARTICIPATION: ELECTION. (a) Effective September 1, 2022, a participating entity may elect to discontinue the entity's participation in the program by providing written notice to the trustee not later than December 31 of the year preceding the first day of the plan year in which the election will be effective.

(b) A participating entity that elects to discontinue participation in the program under Subsection (a) may not elect to:

(1) participate in the program until the fifth anniversary of the effective date of the entity's election to discontinue participation; or

(2) discontinue the entity's participation after an election described by Subdivision (1) until the fifth anniversary of the effective date of that election.

(c) Effective September 1, 2022, an entity that elects to participate in the program shall provide written notice to the trustee not later than December 31 of the year preceding the first day of the plan year in which the election will be effective. The entity may not elect to discontinue the entity's participation until the fifth anniversary of the effective date of the entity's election to participate.

(d) The trustee by rule shall prescribe the time and manner for making an election under this section and may adopt rules necessary to administer this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 399 (S.B. 1444), Sec. 2, eff. September 1, 2021.

SUBCHAPTER E. PARTICIPATION BY EMPLOYEE

Sec. 1579.201. DEFINITION. In this subchapter, "full-time employee" and "part-time employee" have the meanings assigned by rules adopted by the trustee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.202. ELIGIBLE EMPLOYEES. (a) Except as provided by Section 1579.204, participation in the program is limited to employees of participating entities who are full-time employees and to part-time employees who are participating members in the Teacher Retirement System of Texas.

(b) An employee described by Subsection (a) who applies for coverage during an open enrollment period prescribed by the trustee is automatically covered by the catastrophic care coverage plan unless the employee:

(1) specifically waives coverage under this chapter;

(2) selects a higher tier coverage plan; or

(3) is expelled from the program.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.203. SELECTION OF COVERAGE. (a) A participating employee may select coverage in any coverage plan offered by the trustee.

(b) The employee is not required to continue participation in the coverage plan initially selected and may select a higher or lower tier coverage plan than the plan initially selected by the employee in the manner provided by rules adopted by the trustee.

(c) If the combined contributions received from the state and the employing participating entity under Subchapter F exceed the cost of a coverage plan selected by the employee, the employee may use the excess amount of contributions to obtain coverage under a higher tier

coverage plan or to pay all or part of the cost of coverage for the employee's dependents.

(d) A married couple, both of whom are eligible for coverage under the program, may pool the amount of contributions to which the couple are entitled under the program to obtain coverage for themselves and dependent coverage.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.204. CERTAIN PART-TIME EMPLOYEES. A part-time employee of a participating entity who is not a participating member in the Teacher Retirement System of Texas is eligible to participate in the program only if the employee pays all of the premiums and other costs associated with the health coverage plan selected by the employee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.205. PAYMENT BY PARTICIPATING ENTITY. Notwithstanding Section 1579.204, a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

SUBCHAPTER F. CONTRIBUTIONS

Sec. 1579.251. STATE ASSISTANCE. (a) The state shall assist employees of participating school districts and charter schools in the purchase of group health coverage under this chapter by providing for each covered employee the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act. The state contribution shall be distributed through the school finance formulas under Chapters 48 and 49, Education Code, and used by school districts and charter schools as provided by Section 48.275, Education Code.

(b) The state shall assist employees of participating regional education service centers and educational districts described by Section 1579.002(5)(B) in the purchase of group health coverage under this chapter by providing to the employing service center or educational district, for each covered employee, the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 83, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.085, eff. September 1, 2019.

Sec. 1579.252. CONTRIBUTION BY PARTICIPATING ENTITIES. A participating entity shall make contributions for the program as provided by Chapter 1581.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.253. CONTRIBUTION BY EMPLOYEE. (a) An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution under Section 1579.251 and the participating entity contribution under Section 1579.252.
(b) The employee may pay the employee's contribution under this subsection from the amount distributed to the employee under Subchapter D, Chapter 22, Education Code.
(c) Notwithstanding Subsection (a), a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 18.04, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 52, eff. September 1, 2005.

Sec. 1579.254. CONTRIBUTIONS HELD IN TRUST FOR FUND. A participating entity:

(1) shall hold contributions required by this subchapter in trust for the Texas school employees uniform group coverage trust fund and its participants; and

(2) may not divert the contributions for any other purpose.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 53, eff. September 1, 2005.

Sec. 1579.255. INTEREST ASSESSED ON LATE PAYMENT OF CONTRIBUTIONS BY PARTICIPATING ENTITIES. (a) A participating entity that does not remit to the trustee all contributions required by this subchapter before the seventh day after the last day of the month shall pay to the Texas school employees uniform group coverage trust fund:

(1) the contributions; and

(2) interest on the unpaid amounts at the annual rate of six percent compounded monthly.

(b) On request, the trustee may grant a waiver of the deadline imposed by this section based on a participating entity's financial or technological resources.

Added by Acts 2005, 79th Leg., Ch. 1359 (S.B. 1691), Sec. 53, eff. September 1, 2005.

SUBCHAPTER G. TEXAS SCHOOL EMPLOYEES UNIFORM GROUP COVERAGE TRUST FUND

Sec. 1579.301. FUND; ADMINISTRATION. The Texas school employees uniform group coverage trust fund is a trust fund with the comptroller.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept.

1, 2003.

Sec. 1579.302. COMPOSITION OF FUND. The fund is composed of:

(1) all contributions made to the fund under this chapter from employees, participating entities, and the state;

(2) contributions made by employees or participating entities for optional coverages;

(3) investment income;

(4) any additional amounts appropriated by the legislature for contingency reserves, administrative expenses, or other expenses; and

(5) any other money required or authorized to be paid into the fund.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.303. PAYMENTS FROM FUND. The trustee may use amounts in the fund only to provide group coverages under this chapter and to pay the expenses of administering the program.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1579.304. INVESTMENT OF FUND. The trustee may invest assets of the fund in the manner provided by Section 67(a)(3), Article XVI, Texas Constitution.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

CHAPTER 1581. EMPLOYER EXPENDITURES FOR SCHOOL EMPLOYEE HEALTH COVERAGE PLANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1581.001. DEFINITIONS. In this chapter:

(1) "Participating employee" means an employee of a school district, other educational district whose employees are members of

the Teacher Retirement System of Texas, participating charter school, or regional education service center who participates in a group health coverage plan provided by or through the district, school, or service center.

(2) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code, that participates in the uniform group coverage program established under Chapter 1579.

(3) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

SUBCHAPTER B. MAINTENANCE OF EFFORT; MINIMUM EFFORT

Sec. 1581.051. MAINTENANCE OF EFFORT FOR 2000-2001 SCHOOL YEAR. (a) Subject to Sections 1581.052 and 1581.053, and except as provided by Section 1581.054, a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center that, for the 2000-2001 school year, paid amounts to share with employees the cost of coverage under a group health coverage plan shall, for each fiscal year, use to provide health coverage an amount for each participating employee at least equal to the amount computed as provided by this section.

(b) The school district, other educational district, participating charter school, or regional education service center shall divide the amount that the district, school, or service center paid during the 2000-2001 school year for the prior group health coverage plan by the total number of full-time employees of the district, school, or service center in the 2000-2001 school year and multiply the result by the number of full-time employees of the district, school, or service center in the fiscal year for which the computation is made. If, for the 2000-2001 school year, a school district, other educational district, participating charter school, or regional education service center provided group health coverage to its employees through a self-funded insurance plan, the amount the district, school, or service center paid during that school year for the plan includes only the amount of regular contributions made by

the district, school, or service center to the plan.

(c) Amounts used as required by this section shall be deposited, as applicable, in a fund described by Section 1581.052(b).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1581.052. REQUIRED MINIMUM EFFORT. (a) A school district, other educational district, participating charter school, or regional education service center shall, for each fiscal year, use to provide health coverage an amount equal to the number of participating employees of the district, school, or service center multiplied by $1,800.

(b) Amounts used as required by this section shall be deposited, as applicable, in:

(1) the Texas school employees uniform group coverage trust fund established under Subchapter G, Chapter 1579; or

(2) another fund established for the payment of employee health coverage that meets requirements for those funds prescribed by the Texas Education Agency.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Sec. 1581.053. USE OF STATE FUNDS. (a) To comply with Section 1581.052, a school district or participating charter school may use state funds received under Chapter 48, Education Code, other than funds that may be used under that chapter only for a specific purpose.

(b) Notwithstanding Subsection (a), amounts a district or school is required to use to pay contributions under a group health coverage plan for district or school employees under Section 48.275, Education Code, other than amounts described by Section 48.275(c)(2), are not used in computing whether the district or school complies with Section 1581.052.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 84, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.086, eff. September 1, 2019.

Sec. 1581.054. EXCESS OF MAINTENANCE OF EFFORT. If the amount a school district, other educational district, or participating charter school is required to use to provide health coverage under Section 1581.051 for a fiscal year exceeds the amount necessary for the district or school to comply with Section 1581.052(a) for that year, the district or school may use the excess only to provide employee compensation at a rate greater than the rate of compensation that the district or school paid an employee in the 2000-2001 school year, benefits, or both.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.471(a), eff. Sept. 1, 2003.

CHAPTER 1601. UNIFORM INSURANCE BENEFITS ACT FOR EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND THE TEXAS A&M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1601.001. SHORT TITLE. This chapter may be cited as the State University Employees Uniform Insurance Benefits Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.002. PURPOSES. The purposes of this chapter are to:

(1) provide uniformity in the basic group life, accident, and health benefit coverages for all system employees;

(2) enable the systems to attract and retain competent and able employees by providing employees with basic life, accident, and health benefit coverages comparable to those commonly provided in private industry and to employees of a state agency other than a system, including a public college or university whose employees are covered under Chapter 1551;

(3) foster, promote, and encourage employment by and service to the systems as a career profession for individuals of high standards of competence and ability;

(4) recognize and protect the investment of the systems in each employee by promoting and preserving economic security and good health among employees;

(5) foster and develop high standards of employer-employee relationships between the systems and their employees; and

(6) recognize the long and faithful service and dedication of employees and encourage them to remain in service until eligible for retirement by providing health benefits and other group benefits for them.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.003. GENERAL DEFINITIONS. In this chapter:

(1) "Administering carrier" means a carrier or organization that is:

(A) qualified to engage in business in this state; and

(B) designated by a system to administer services, benefits, insurance coverages, or requirements in accordance with this chapter.

(2) "Basic coverage" means coverage, including health benefit coverage, that meets the basic coverage standards required under Section 1601.053(a)(1).

(3) "Cafeteria plan" means a plan defined and authorized by Section 125, Internal Revenue Code of 1986.

(4) "Group life, accident, or health benefit plan" means a group agreement, policy, contract, or arrangement provided by an administering carrier, including:

(A) a group insurance policy or contract;

(B) a life, accident, medical, dental, or hospital service agreement;

(C) a membership or subscription contract; or

(D) any other similar group arrangement.

(5) "Optional coverage" means group coverage other than the basic coverage.

(6) "Service" means personal service to a system for which an employee is credited in accordance with rules adopted by the system.

(7) "System" means The University of Texas System or The Texas A&M University System.

(8) "The Texas A&M University System" means the entities governed under Chapters 85 through 88, Education Code, including the Texas Veterinary Diagnostic Laboratory.

(9) "The University of Texas System" means the entities listed or described by Section 65.02, Education Code.

(10) "Uniform program" means an employees uniform insurance benefits program provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.004. DEFINITION OF DEPENDENT. (a) In this chapter, "dependent," with respect to an individual eligible to participate in the uniform program under Section 1601.101 or 1601.102, means the individual's:

(1) spouse;

(2) unmarried child younger than 25 years of age; and

(3) child of any age who lives with or has the child's care provided by the individual on a regular basis if the child is a person with an intellectual disability or is physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the system.

(b) In this section:

(1) "Child" includes:

(A) an adopted child; and

(B) a stepchild, foster child, or other child who is in a parent-child relationship with an individual who is eligible to participate in the uniform program under Section 1601.101 or 1601.102.

(2) "Spouse" has the meaning assigned by the Family Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 8.08, eff. September 1, 2023.

Sec. 1601.005. DEFINITION OF CARRIER. In this chapter, "carrier" means:

(1) an insurance company that is authorized by the department to provide under this code any of the types of insurance

coverages, benefits, or services provided for in this chapter, and that:

(A) has an adequate surplus;

(B) has a successful operating history; and

(C) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter;

(2) a corporation operating under Chapter 842 that provides any of the types of coverage, benefits, or services provided for in this chapter and that:

(A) has a successful operating history; and

(B) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter; or

(3) any combination of carriers described by Subdivisions (1) and (2) on terms the system prescribes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.006. APPLICABILITY OF DEFINITIONS. The definition of a term defined by this subchapter and the use of the terms "employee" and "retired employee" as described by Sections 1601.101 and 1601.102 apply to this chapter unless a different meaning is plainly required by the context in which the term appears.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.007. SYSTEM MAY DEFINE OTHER WORDS. A system may define by rule a word or term necessary in the administration of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.008. EXEMPTION FROM EXECUTION. All insurance benefits and other payments and transactions made under this chapter to a participant under this chapter are exempt from execution, attachment, garnishment, or any other process.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.009. EXEMPTION FROM TAXATION AND FEES. Premiums on a policy, an insurance contract, or an agreement established under this chapter with a health maintenance organization are not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.010. CERTAIN COMBINING OF CARRIERS NOT RESTRAINT OF TRADE. Carriers combining to bid, underwrite, or both bid and underwrite, a group life, accident, or health benefit plan for the uniform program are not in violation of Chapter 15, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.011. PARTICIPATION OF THE TEXAS A&M UNIVERSITY SYSTEM. Notwithstanding any other provision of this chapter, if The Texas A&M University System elects to participate in the group benefits program under Section 1551.006(c), that system, including the Texas Veterinary Medical Diagnostic Laboratory, does not participate in a uniform program established under this chapter, effective on the date participation in the group benefits program under Chapter 1551 begins.

Added by Acts 2003, 78th Leg., ch. 366, Sec. 4.01, eff. Sept. 1, 2003.

SUBCHAPTER B. ADMINISTRATION AND IMPLEMENTATION

Sec. 1601.051. ADMINISTRATION AND IMPLEMENTATION. A system shall:

(1) implement a uniform program for the benefit of its employees and retired employees; and

(2) determine basic procedural and administrative practices for insurance coverage provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.052. RULEMAKING AUTHORITY. A system shall adopt rules consistent with this chapter as it considers necessary to implement this chapter and its purposes.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.053. GENERAL DUTIES RELATING TO COVERAGE. (a) A system shall:

(1) determine basic coverage standards that must be comparable to those commonly provided:

(A) in private industry; and

(B) to employees of another agency or an institution of higher education in this state under Chapter 1551; and

(2) establish procedures to allow each covered employee and retired employee to obtain prompt action regarding claims pertaining to coverages provided under this chapter.

(b) In designing a coverage plan, a system may consider existing local conditions.

(c) Notwithstanding any other provision of this chapter, a system may adjust a plan and coverage standards as necessary to comply with applicable state and federal law and to provide consistent eligibility for all plans under the program, including eligibility for optional coverages.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 3, eff. June 15, 2017.

Sec. 1601.054. COMPETITIVE BIDDING REQUIRED. A system shall submit the uniform program, including any agreement under which a carrier is engaged to administer a self-insured program, for competitive bidding at least every six years.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.055. IDENTIFICATION OF ADMINISTRATIVE COSTS IN BIDS. A system shall include in its respective bid documents for the various coverages a provision calling for each bidder to identify the system's administrative costs as a distinguishable figure and to enumerate the services the bidder will render in exchange for the administrative costs.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.056. INFORMATION ON BIDDERS AND BIDDING CONTRACTS. (a) The department shall, on request by a system, provide a list of all carriers:

(1) authorized to engage in business in this state; and

(2) eligible to bid on insurance coverage provided under this chapter.

(b) The department shall, on request by a system, examine and evaluate a bidding contract and certify the contract's actuarial soundness to the system not later than the 15th day after the date of the request.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.057. SELECTION OF BIDS. (a) A system is not required to select the lowest bid under Section 1601.054 but shall take into consideration other relevant criteria, such as ability to service contracts, past experience, and financial stability.

(b) If a system selects a carrier whose bid differs from that advertised, the governing board of the system shall fully justify and record the reasons for the deviation in the minutes of the next meeting of the governing board.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.058. SELECTION OF HEALTH MAINTENANCE ORGANIZATIONS. A system shall select and contract for services performed by health maintenance organizations that are approved by this state to offer health care services in specific areas of the state to eligible employees and retired employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.059. CERTIFICATE OF COVERAGE. A system shall ensure that each employee and retired employee participating under this chapter is issued a certificate of coverage that states:

(1) the benefits to which the participant is entitled;

(2) to whom the benefits are payable;

(3) to whom a claim must be submitted; and

(4) the provisions of the plan document, in summary form, that principally affect the participant.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.060. ACCOUNTING BY CARRIER PROVIDING PURCHASED COVERAGE. (a) A carrier providing coverage purchased under this chapter to a system shall provide an accounting for each line of coverage to the system not later than the 120th day after the end of each plan year.

(b) The accounting must be in a form acceptable to the system.

(c) The accounting for each line of coverage must state:

(1) the cumulative amount of contributions remitted to the carrier under the coverage;

(2) the total of all mortality and other claims, charges, losses, costs, contingency reserve for pending and unreported claims, and expenses incurred; and

(3) the amounts of the allowance for a reasonable profit, contingency reserve, and all other administrative charges.

(d) Information provided under Subsection (c) must be provided:

(1) for the period from the coverage's date of issue to the end of the plan year; and

(2) for the plan year covered by the report.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.061. SPECIAL RESERVE. (a) A carrier issuing a group coverage plan under this chapter may hold as a special reserve for a system an amount that equals the amount by which the total amount described by Section 1601.060(c)(1) exceeds the sum of the

corresponding amounts described by Sections 1601.060(c)(2) and (3).

(b) The system may use money in the special reserve at its discretion, including for:

(1) providing additional coverage for participating employees or retired employees;

(2) offsetting necessary rate increases; or

(3) reducing contributions to the coverage by participating employees or retired employees.

(c) A special reserve held by a carrier for a system earns interest at a rate determined each plan year by the carrier and approved by the system as consistent with the rate generally used by the carrier for similar funds held under other group coverages.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.062. REPORTS AND RECORDS BY ADMINISTERING CARRIER. Each contract entered into under this chapter between a system and an administering carrier must:

(1) require the administering carrier to provide reasonable reports that the system determines are necessary for the system to perform its functions under this chapter; and

(2) permit the system and representatives of the state auditor to examine records of the administering carrier as necessary to accomplish the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.063. ASSISTANCE IN REQUESTING MONEY. The Legislative Budget Board and the Governor's Budget and Planning Office shall:

(1) establish procedures to ensure that each system requests appropriate money to support its uniform program; and

(2) present appropriate budget recommendations to the legislature.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.064. PHARMACY BENEFIT MANAGER CONTRACTS. (a) In awarding a contract to provide pharmacy benefit manager services

under this chapter, a system is not required to select the lowest bid but must select a contract that meets the criteria established by this section.

(b) The contract must state that:

(1) the system is entitled to audit the pharmacy benefit manager to verify costs and discounts associated with drug claims, pharmacy benefit manager compliance with contract requirements, and services provided by subcontractors;

(2) the audit must be conducted by an independent auditor in accordance with established auditing standards; and

(3) to conduct the audit, the system and the independent auditor are entitled access to information related to the services and the costs associated with the services performed under the contract, including access to the pharmacy benefit manager's facilities, records, contracts, medical records, and agreements with subcontractors.

(c) The contract must define the information that the pharmacy benefit manager is required to provide to the system concerning the audit of the retail, independent, and mail order pharmacies performing services under the contract and describe how the results of these audits must be reported to the system, including how often the results must be reported. The contract must state whether the pharmacy benefit manager is required to return recovered overpayments to the system.

(d) The contract must state that any audit of a mail order pharmacy owned by the pharmacy benefit manager must be conducted by an independent auditor selected by the system in accordance with established auditing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1207 (S.B. 704), Sec. 8, eff. September 1, 2009.

SUBCHAPTER C. COVERAGE AND PARTICIPATION

Sec. 1601.101. PARTICIPATION ELIGIBILITY: EMPLOYEES. (a) An individual who is employed by the governing board of a system, who performs service, other than as an independent contractor, for the system, and who is described by this section is eligible to participate as an employee in the uniform program on the date specified by Section 1601.1045.

(b) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual receives compensation for services performed for the system, is eligible to be a member of the Teacher Retirement System of Texas, and either:

(1) is expected to work at least 20 hours per week and to continue in the employment for a term of at least 4-1/2 months; or

(2) is appointed for at least 50 percent of a standard full-time appointment.

(c) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual:

(1) receives compensation for services performed for the system;

(2) is employed at least 20 hours a week; and

(3) is not permitted to be a member of the Teacher Retirement System of Texas because the individual is solely employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate-level courses.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1198, Sec. 5, eff. January 1, 2012.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 4.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1266, Sec. 2.11, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 14.002, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1198 (S.B. 29), Sec. 5, eff. January 1, 2012.

Sec. 1601.102. PARTICIPATION ELIGIBILITY: RETIREES. (a) An individual who retires in a manner described by this section and who meets the requirements of Subsection (f) is eligible to participate, subject to Section 1601.1045, as a retired employee in the uniform program.

(b) An individual is eligible to participate in the uniform program as provided by Subsection (a) if:

(1) the individual has at least 10 years of service with a system for which the individual was eligible to participate in the

uniform program under Section 1601.101;

(2) the individual's last state employment before retirement was with that system; and

(3) the individual retires under the jurisdiction of:

(A) the Teacher Retirement System of Texas under Subtitle C, Title 8, Government Code;

(B) the Employees Retirement System of Texas; or

(C) subject to Subsection (c):

(i) the optional retirement program established by Chapter 830, Government Code; or

(ii) any other federal or state statutory retirement program to which the system has made employer contributions.

(c) An individual retiring in the manner described by Subsection (b)(3)(C) is a retired employee only if the individual meets all applicable requirements for retirement, including service and age requirements, adopted by the system comparable to the requirements for retirement under the Teachers Retirement System of Texas.

(d) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual:

(1) meets the minimum requirements under Subsection (b) except that the last state employment before retirement is not at the employing system; and

(2) does not meet the requirements for an annuitant under Section 1551.102.

(d-1) An individual is eligible to participate in the uniform program as provided by Subsection (a) if:

(1) the individual meets the minimum requirements under Subsection (b) except that the individual does not have at least 10 years of service as described by Subsection (b)(1);

(2) the individual has at least 10 years of combined service in a position for which the individual was eligible to participate in the uniform program or in the group benefits program under Section 1551.101; and

(3) either:

(A) the individual's greatest number of years of state employment was in a position for which the individual was eligible to participate in the uniform program; or

(B) if the individual's years of employment in

positions eligible to participate in the uniform program and the group benefits program are equal, the individual's last state employment before retirement was in a position for which the individual was eligible to participate in the uniform program.

(e) An individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual retired under Subtitle C, Title 8, Government Code, before September 1, 1991, with at least five and less than 10 years of service.

(f) Notwithstanding Subsections (b)-(d), an individual is eligible to participate in the uniform program only if the individual:

(1) has at least 10 years of service credit and the sum of the person's age and amount of service credit, including months of age and credit, equals or exceeds the number 80; or

(2) is at least 65 years old and has at least 10 years of service credit.

(g) A person eligible to participate and participating in the uniform program as an annuitant on September 1, 2003, may continue to participate in the program as an annuitant if a lapse in coverage has not occurred.

(h) Notwithstanding Subsection (b), an individual to whom this subsection applies is eligible to participate in the uniform program as provided by Subsection (a) if:

(1) the individual has at least three years of service with a system for which the individual was eligible to participate in the uniform program under Section 1601.101;

(2) the individual's last state employment before retirement was with that system; and

(3) the individual retires under the jurisdiction of:

(A) the Teacher Retirement System of Texas under Subtitle C, Title 8, Government Code;

(B) the Employees Retirement System of Texas; or

(C) subject to Subsection (c):

(i) the optional retirement program established by Chapter 830, Government Code; or

(ii) any other federal or state statutory retirement program to which the system has made employer contributions.

(i) Subsection (h) applies only to a person who, on August 31, 2003:

(1) was eligible to participate in the uniform program as an employee under Section 1601.101; or

(2) was eligible to participate in the uniform program as a retired employee under this section as this section existed on January 1, 2003.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 366, Sec. 4.03, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1266, Sec. 2.08, eff. June 20, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 4, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 5, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 6, eff. June 15, 2017.

Sec. 1601.1021. PARTICIPATION ELIGIBILITY: CERTAIN POSTDOCTORAL FELLOWS AND GRADUATE STUDENTS. (a) An individual who is not eligible to participate in the uniform program under Section 1601.101 is eligible to participate in the uniform program under this section if the individual, at an institution in a system:

(1) holds:

(A) a postdoctoral fellowship; or

(B) one or more graduate student fellowships awarded to the individual on a competitive basis that, either singly or in combination, are valued at not less than $10,000 per year; and

(2) is currently receiving a stipend from an applicable fellowship.

(b) An individual who is eligible to participate in the uniform program under this section shall pay all contributions required under this chapter for the coverage selected by the individual, except that an institution of higher education may make contributions for the individual from available funds other than money appropriated to the institution from the general revenue fund.

(c) An institution of higher education shall determine which individuals are eligible to participate in the uniform program under this section and, at the time of initial eligibility, shall notify each individual of the individual's eligibility to participate in the

program.

(d) An individual who participates in the uniform program under this section is not considered an employee of an institution of higher education solely as a result of the individual's participation in the program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1198 (S.B. 29), Sec. 3, eff. September 1, 2011.

Sec. 1601.103. RIGHT TO COVERAGE. An individual eligible to participate in the uniform program under Section 1601.101 or 1601.102 may not be denied enrollment in any coverage provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.104. AUTOMATIC COVERAGE. (a) A system shall automatically provide the basic coverage to each full-time employee unless the employee has:

(1) waived participation in the basic coverage; or

(2) selected an optional coverage plan.

(b) An employee or retired employee who is automatically covered under this section may subsequently:

(1) retain the basic coverage or waive participation in the basic coverage; and

(2) apply for any other coverage provided under this chapter within applicable standards.

(c) Automatic coverage as described under this section begins on the first date of employment.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.1045. DATE ELIGIBILITY BEGINS; WAITING PERIOD. (a) Except as provided by Subsection (c), (d), or (e), eligibility under Section 1601.101 begins on the first day of the calendar month that begins after the 90th day after the date the employee performs services for a system.

(b) Except as provided by Subsection (c), eligibility under

Section 1601.102, for an individual who does not retire at the end of the last month for which the individual is on the payroll of a system before retirement, begins on the first day of the calendar month that begins after the 90th day after the date the individual retires.

(c) The waiting period established by Subsections (a) and (b) applies only to the determination of initial eligibility to participate in the group health benefits program and does not apply to the determination of initial eligibility to participate in optional coverages under the uniform program.

(d) Notwithstanding Subsection (a), eligibility under Section 1601.101 may not begin earlier than the first day that an employee performs services for a system if any amount paid for premium incurred before the date specified under Subsection (a) for the employee and any dependents of the employee is paid from money not appropriated from the general revenue fund, in accordance with policies and procedures established by the system.

(e) Eligibility under Section 1601.101 for an employee reemployed under Chapter 613, Government Code, begins on the first day of reemployment on which the employee performs services for a system.

Added by Acts 2003, 78th Leg., ch. 366, Sec. 4.05, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 150 (H.B. 437), Sec. 2, eff. September 1, 2015.

Sec. 1601.105. WAIVER. An employee or retired employee may waive in writing any coverage provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.106. OPTIONAL COVERAGE. A system shall provide optional coverage in accordance with Section 1601.201.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.1065. OPTIONAL BASIC COVERAGE PLAN FOR GRADUATE

STUDENTS. The system may design and offer a separate optional basic coverage plan for employees who are graduate students. The system shall determine the participation eligibility, coverage, payments, contributions, and costs of a plan offered under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 7, eff. June 15, 2017.

Sec. 1601.107. COVERAGE FOR DEPENDENTS. An individual who is eligible to participate in the uniform program under Section 1601.101, 1601.102, or 1601.1021 is entitled to secure for a dependent of the individual any group coverages provided under this chapter for dependents under rules adopted by the applicable system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1198 (S.B. 29), Sec. 4, eff. September 1, 2011.

Sec. 1601.108. COVERAGE OPTIONS FOR CERTAIN SURVIVING SPOUSES. (a) This section applies only to the surviving spouse of:

(1) an individual eligible to participate in the uniform program under Section 1601.101 who had at least five years of service on the date of the individual's death, including at least three years of service as an eligible employee with the employing system; or

(2) an individual eligible to participate in the uniform program under Section 1601.102.

(b) A surviving spouse to whom this section applies may elect to retain any of the following coverages in effect on the date of the participant's death:

(1) the surviving spouse's authorized coverages; and

(2) authorized coverages for any eligible dependent of the deceased participant.

(c) The coverage is at the group rate for other participants.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.109. COVERAGE FOR AIDS, HIV, OR SERIOUS MENTAL

ILLNESS. (a) In this section, "serious mental illness" has the meaning assigned by Section 1355.001.

(b) A system may not contract for or provide for group insurance or HMO coverage or provide self-insured coverage, that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control and Prevention of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) provides coverage for serious mental illness that is less extensive than the coverage provided for any other physical illness.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2G.020, eff. April 1, 2009.

Sec. 1601.110. DISEASE MANAGEMENT SERVICES. (a) In this section, "disease management services" means services to assist an individual manage a disease or other chronic health condition, such as heart disease, diabetes, respiratory illness, end-stage renal disease, HIV infection, or AIDS, and with respect to which the governing board of a system identifies populations requiring disease management.

(b) A health benefit plan provided under this chapter must provide disease management services or coverage for disease management services in the manner required by the governing board of a system, including:

(1) patient self-management education;

(2) provider education;

(3) evidence-based models and minimum standards of care;

(4) standardized protocols and participation criteria; and

(5) physician-directed or physician-supervised care.

Added by Acts 2003, 78th Leg., ch. 589, Sec. 5, eff. June 20, 2003.

Sec. 1601.111. PROGRAMS PROMOTING DISEASE PREVENTION, WELLNESS, AND HEALTH. A system may establish premium discounts, surcharges, rebates, or a revision in otherwise applicable copayments,

coinsurance, or deductibles, or any combination of those incentives, for an individual who participates in system-approved programs promoting disease prevention, wellness, and health.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 3.02, eff. June 17, 2011.

SUBCHAPTER D. GROUP COVERAGES

Sec. 1601.151. AUTHORITY TO SELF-INSURE; EXEMPTION FROM OTHER INSURANCE LAWS. (a) Notwithstanding any other provisions of this chapter, the governing board of a system may:

(1) self-insure a plan provided under this chapter; and

(2) hire a carrier to administer the system's uniform program.

(b) A plan for which a system provides coverage on a self-insured basis is exempt from any other insurance law of this state that does not expressly apply to that plan or this chapter.

(c) Expenses for the administration of a self-insured plan may come from the contributions of employees and the state after payments for any coverage provided under this chapter have been made.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.152. CAFETERIA PLAN. (a) The governing board of a system may develop, implement, and administer a cafeteria plan.

(b) The governing board may include in the cafeteria plan any benefit that may be included in a cafeteria plan under federal law.

(c) The governing board may cooperate and work with and enter into a necessary contract or agreement with an independent and qualified agency, person, or entity to:

(1) develop, implement, or administer a cafeteria plan; or

(2) assist in those activities.

(d) The governing board may adopt an order terminating the cafeteria plan and providing a procedure for the orderly withdrawal of the system and its employees from the cafeteria plan if the governing board determines that a cafeteria plan adopted under this section is no longer advantageous to the system and its employees.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.153. SYSTEMS MAY JOIN IN PROCURING INSURANCE. The systems may join together to procure one or more group contracts with an insurance company authorized to engage in business in this state to insure the employees and retired employees of each participating system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.154. LONG-TERM CARE COVERAGE. (a) A system may join with a board of trustees that administers the uniform program established under Chapter 1551 or the group program established under Chapter 1575 to provide long-term care insurance coverage.

(b) Each participating board of trustees and the governing board of the system must mutually agree to join together for this purpose, subject to terms that are beneficial to all participants.

(c) A system may not participate in an agreement under this section unless any cost or administrative burden associated with the development or implementation of or communications about the long-term care coverage plan is incidental.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.155. REINSURANCE. A system may arrange with an administering carrier issuing a policy under this chapter for the reinsurance of portions of the total amount of insurance under the policy with other carriers that elect to participate in the reinsurance.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

SUBCHAPTER E. PAYMENTS, CONTRIBUTIONS, AND COSTS

Sec. 1601.201. PAYMENT FOR COVERAGE. (a) A system may not contribute more than the amounts specified by this section for coverages provided under the uniform program.

(b) For an employee designated by the system as working 40 or more hours a week, the system may contribute:

(1) the full cost of basic coverage for the employee; and

(2) not more than 50 percent of the cost of dependent coverage.

(c) For an employee designated by the system as working less than 40 hours a week, including an individual employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate-level courses, the system, from money appropriated from the general revenue fund, may contribute:

(1) not more than 50 percent of the cost of basic coverage for the employee; and

(2) not more than 25 percent of the cost of dependent coverage.

(d) Subsection (c) does not prohibit a system from contributing, from money not appropriated from the general revenue fund, amounts in excess of the amount specified by that subsection for:

(1) an individual employed by the system in a position that as a condition of employment requires the individual to be enrolled as a student in the system in graduate level courses; or

(2) an individual who is a tenured faculty member with whom the system has entered into a phased retirement agreement under which the individual will work less than 40 hours a week for a specified period of time at the end of which the individual will retire.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 366, Sec. 4.06, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 3.03, eff. June 17, 2011.

Sec. 1601.202. FEES FOR CAFETERIA PLAN. (a) The governing board of a system may establish a monthly fee in an amount set by the board to be paid by each employee who elects to participate in a cafeteria plan for the purpose of paying the expenses of administering the cafeteria plan.

(b) If the governing board establishes a monthly fee, each employee who participates in the cafeteria plan must authorize

payment of the fee by executing a separate payroll deduction agreement or as part of a salary reduction agreement, as determined by the governing board.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.203. PAYMENT FOR COVERAGE FOR DEPENDENTS. Contributions for coverages for a dependent of an individual eligible to participate in the uniform program under Section 1601.101 or 1601.102 required of the participant that exceed the amount of system contributions shall be paid:

(1) by a deduction from the monthly compensation of the participant;

(2) by a reduction of the monthly compensation of the participant in the appropriate amount; or

(3) in the form and manner the system determines.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.204. AUTHORIZATION OF EMPLOYEE DEDUCTION. (a) Except for a participant who participates in a cafeteria plan, each individual eligible to participate in the uniform program under Section 1601.101 must authorize a deduction from the participant's monthly compensation in an amount equal to the difference between:

(1) the total cost for coverages for which the participant applies; and

(2) the amount contributed by the system.

(b) The authorization must be:

(1) in writing or performed electronically; and

(2) in a form satisfactory to the system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.2041. EMPLOYEE DEDUCTION FOR AUTOMATIC COVERAGE. Each individual automatically enrolled in a uniform program under Section 1601.104 is considered to have authorized a deduction from the participant's monthly compensation in an amount equal to the difference between:

(1) the total cost of the employee's basic coverage; and

(2) the amount contributed by the system for the employee's basic coverage.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 3.04, eff. June 17, 2011.

Sec. 1601.2042. COMPENSATION INSUFFICIENT TO COVER DEDUCTION. If a participant's monthly compensation from which the participant's contribution is deducted is insufficient to pay the participant's contribution for coverage, the system may adopt rules under which the system considers the coverage to have terminated after the last full month for which the contribution was paid in full, as determined by the system.

Added by Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 8, eff. June 15, 2017.

Sec. 1601.205. EMPLOYEE PAYMENTS FOR PARTICIPATION IN CAFETERIA PLAN. (a) If an employee elects to participate in a cafeteria plan, the employee must execute a salary reduction agreement under which the employee's monthly compensation will be reduced in an amount equal to the difference between:

(1) the amount appropriated for that purpose in the General Appropriations Act or the system's budget; and

(2) the cost of the employee's selected coverages for which the employee is eligible to pay under the cafeteria plan.

(b) The employee must execute a salary reduction agreement for any portion of the cost that is not covered by state or system appropriations and cafeteria plan contributions.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.206. PAYMENT BY RETIRED EMPLOYEE. An individual eligible to participate in the uniform program under Section 1601.102 must execute an agreement and make appropriate contributions in a manner analogous to the requirements adopted under Sections 1601.204 and 1601.205 for an individual eligible to participate in the uniform

program under Section 1601.101.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.207. SYSTEM CONTRIBUTIONS. A system shall contribute monthly to the cost of each participant's coverage provided under this chapter an amount:

(1) if the participants are compensated from amounts appropriated in the General Appropriations Act, equal to or greater than the amount appropriated for that purpose in the Act; or

(2) if the participants are compensated from amounts appropriated by the governing board of the system in its official operating budget, an amount equal to the amount appropriated for a participant under the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.208. AMOUNT OF SYSTEM CONTRIBUTION. Not later than November 1 preceding each regular session of the legislature, each system shall certify to the Legislative Budget Board and the budget division of the Governor's Budget and Planning Office the amount necessary to pay the contributions of the system for the coverages provided under this chapter to each employee and retired employee of the system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.209. ORDER OF PRECEDENCE OF PAYMENT TO SURVIVORS. (a) The amount of group life coverages and group accidental death and dismemberment coverages in force for a participant on the date the participant dies shall be paid, on the establishment of a valid claim, to a person surviving the death in the following order of precedence:

(1) to the beneficiary designated by the participant in a signed and witnessed writing received before death by the appropriate office of the applicable system; or

(2) if a beneficiary is not designated under Subdivision (1), in accordance with the death benefit provisions of Subtitle C,

Title 8, Government Code.

(b) For purposes of Subsection (a)(1), a designation, change, or cancellation of a beneficiary in a document, including a will, that is not executed and filed in the manner described by that subsection is not valid.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.210. PROVISION OF NECESSARY INFORMATION. The Teacher Retirement System of Texas, Optional Retirement Program carriers, and Employees Retirement System of Texas shall provide to each system information the system considers necessary to provide retired employees with the coverages and system contributions provided under this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.211. LIABILITY FOR BACK CONTRIBUTIONS FOR DROPPED COVERAGE. (a) This section applies to a participant in the uniform program for whom appropriate contributions were not made during the entire plan year because of nonpayment of premiums.

(b) As a condition of enrollment in the same coverage for a subsequent plan year, the participant must make a contribution equal to the contributions not made for the plan year for which appropriate contributions were not made during the entire plan year, unless the nonpayment of premiums was related to a qualified change in status, as determined by the system. The payment shall be made in the form and manner determined by the system.

Added by Acts 2017, 85th Leg., R.S., Ch. 1106 (H.B. 4035), Sec. 8, eff. June 15, 2017.

SUBCHAPTER F. CAFETERIA PLAN FUND

Sec. 1601.251. SYSTEM CAFETERIA PLAN FUND. (a) The governing board of each system may establish and administer a cafeteria plan fund.

(b) The following shall be credited to the cafeteria plan fund of a system:

(1) salary reduction payments for benefits included in a cafeteria plan adopted under this chapter, other than group coverage plans under the uniform program;

(2) appropriations by the state for the administration of a cafeteria plan; and

(3) a monthly fee established under Section 1601.202.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.252. USE OF FUND. The cafeteria plan fund of a system is available without fiscal year limitation:

(1) for all payments for any benefits included in a cafeteria plan adopted by the system under this chapter other than group coverage plans under the uniform program; and

(2) for payment of expenses of administering the cafeteria plan.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.253. INVESTMENT OF MONEY IN FUND. (a) The governing board of a system may invest the money in the system's cafeteria plan fund.

(b) The earnings, including interest, and the proceeds from the sale of the investments become a part of the fund.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

SUBCHAPTER G. ADVISORY COMMITTEE

Sec. 1601.301. ADVISORY COMMITTEE. An advisory committee for each system shall be selected, serve, and perform duties as provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.302. ELECTION OF MEMBERS. One member of the advisory committee shall be elected from each of the components, units, or agencies of the system:

(1) at times designated by the system; and

(2) in accordance with general guidelines for the election provided by the system.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.303. QUALIFICATIONS OF MEMBERS. (a) A member of a system's advisory committee must be an employee of the system.

(b) A member must:

(1) demonstrate mature judgment, special abilities, and sincere interest in employee coverage plans; and

(2) be able to represent the needs of all employees of the component, unit, or agency the member represents with respect to an action of the advisory committee.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.304. TERMS. A member of the advisory committee is elected for a two-year term, subject to reelection.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.305. OFFICERS. Annually, the members of a system's advisory committee shall elect a presiding officer and other necessary officers.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.306. VACANCY. The chief executive officer of a component, unit, or agency of a system shall appoint to the system's advisory committee an employee of the component, unit, or agency to fill the remainder of a vacated term of a member who is an employee of the component, unit, or agency.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.307. DUTIES OF COMMITTEE. (a) The advisory committee of a system shall cooperate and work with the governing board of the system in coordinating and correlating the administration of the uniform program among the various components, units, and agencies of the system.

(b) Members of the advisory committee shall cooperate and work with the governing board of the system as advisors in the development, implementation, coordination, and administration of the uniform program among the various components, units, and agencies of the system.

(c) The advisory committee shall provide a channel for open communication of ideas and suggestions regarding coverages, eligibility, claims, procedures, bidding, administration, and any other aspect of employee plan benefits.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1601.308. EXPENSES. (a) A member's service on the advisory committee of a system is in addition to the duties of the member's state office or employment.

(b) An expense incurred by an advisory committee member in performing a duty as a member of the committee shall be paid from money made available for that purpose to the system of which the member is an employee or officer.

(c) Employees may not be required to pay from the amount of employer contributions due the employees or from the amount of additional contributions due for selected coverages under this chapter the expenses of an advisory committee established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.017(a), eff. September 1, 2009.

CHAPTER 1625. TRANSFER BETWEEN CERTAIN GOVERNMENTAL PROGRAMS

Sec. 1625.001. DEFINITIONS. In this chapter:

(1) "Board of trustees" has the meaning assigned by Section 1551.003.

(2) "Institution of higher education" means a senior college or university, medical or dental unit, technical institute, or agency of higher education under the policy direction of a single governing board. The term does not include a public junior college.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1625.002. INAPPLICABILITY OF PREEXISTING CONDITIONS REQUIREMENT. A person, including a covered dependent, who obtains insurance, benefits, or any type of health care services coverage under Chapter 1551 or 1601 may transfer from an institution of higher education or other state agency to which either law applies to another institution of higher education or state agency to which either law applies without being required to comply with any preexisting conditions requirement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1625.003. RULES. The board of trustees and the governing boards of institutions of higher education may adopt rules necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1625.004. MEMORANDUM OF UNDERSTANDING. The board of trustees and the governing boards of institutions of higher education may enter into memoranda of understanding with one another to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

Sec. 1625.005. UNIFORM PROCEDURES. The governing board of an institution of higher education and the board of trustees may:

(1) adopt uniform procedures to implement a transfer under this chapter; and

(2) impose conditions necessary to ensure the efficient operation of the programs over which each has jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 3, eff. June 1, 2003.

SUBTITLE I. SPECIALIZED COVERAGES
CHAPTER 1651. LONG-TERM CARE BENEFIT PLANS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1651.001. APPLICABILITY OF CHAPTER. (a) Notwithstanding Section 101.053(b)(5) and subject to Subsection (b), this chapter applies only to:

(1) an individual long-term care benefit plan that is delivered or issued for delivery in this state;

(2) a group long-term care benefit plan that is:

(A) delivered or issued for delivery in this state; and

(B) issued to an eligible group as described by Subchapter B, Chapter 1251;

(3) a certificate issued under a group long-term care benefit plan issued to an eligible group as described by Subchapter B, Chapter 1251, if the certificate is delivered or issued for delivery in this state, regardless of the place where the plan is delivered or issued for delivery; and

(4) an evidence of coverage delivered or issued for delivery in this state for long-term care.

(b) This chapter applies only to a policy, certificate, or evidence of coverage that is issued by:

(1) a capital stock insurance company, including a life, health and accident, or general casualty insurance company;

(2) a mutual life insurance company;

(3) a mutual assessment life insurance company, including a statewide mutual assessment corporation, local mutual aid association, and burial association;

(4) a mutual or mutual assessment association, including an association subject to Section 887.101;

(5) a mutual insurance company other than a life insurance company;

(6) a mutual or natural premium life or casualty insurance company;

(7) a fraternal benefit society;

(8) a Lloyd's plan insurer;

(9) a reciprocal or interinsurance exchange;

(10) a nonprofit medical, hospital, or dental service corporation, including a company subject to Chapter 842;

(11) a stipulated premium company;

(12) a health maintenance organization under Chapter 843; or

(13) another insurer required to be licensed by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.002. EXEMPTIONS. This chapter does not apply to:

(1) a certificate that is delivered or issued for delivery in this state under a single employer or labor union group policy that is delivered or issued for delivery outside this state; or

(2) a benefit plan that is not advertised, marketed, or offered as a long-term care benefit plan or nursing home benefit plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.003. LONG-TERM CARE BENEFIT PLAN DEFINED. (a) In this chapter, "long-term care benefit plan" means an insurance policy or group certificate, or rider to the policy or certificate, or evidence of coverage issued by a health maintenance organization subject to Chapter 843, that is advertised or marketed as providing, or offered or designed to provide, coverage for not less than 12 consecutive months for each covered individual on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.

(b) The term includes a plan or rider, other than a group or individual annuity or life insurance policy, that provides for payment of benefits based on cognitive impairment or the loss of functional capacity.

(c) The term does not include an insurance policy, group certificate, or evidence of coverage that is offered primarily to provide:

(1) basic Medicare supplement coverage, basic hospital

expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident-only coverage, specified disease or specified accident coverage, or limited benefit health coverage; or

(2) basic or single health care services.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.004. RULES. (a) In addition to other rules required or authorized by this chapter, the department may adopt reasonable rules that are necessary and proper to carry out this chapter.

(b) Rules adopted under this section must include requirements no less favorable than the minimum standards for long-term care benefit plans adopted in any model laws or regulations relating to minimum standards for benefits for long-term care benefit plans and in accordance with all applicable federal law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.005. CONSTRUCTION OF CHAPTER. This chapter may not be construed to enlarge the powers of an entity listed in Section 1651.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.006. CONFLICTS WITH OTHER PROVISIONS. This chapter prevails to the extent of any conflict with another provision of this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

SUBCHAPTER B. BENEFIT PLAN STANDARDS

Sec. 1651.051. MINIMUM STANDARDS. (a) The commissioner by rule shall establish:

(1) specific standards for provisions of long-term care benefit plans; and

(2) standards for full and fair disclosure setting forth the manner, content, and required disclosures for the marketing and sale of those benefit plans.

(b) The standards are in addition to and must be in accordance with:

(1) applicable laws of this state, including Chapter 1201;

(2) applicable federal law; and

(3) any rules, regulations, and standards required by federal law.

(c) The standards must address:

(1) terms of renewability;

(2) initial and subsequent conditions of eligibility;

(3) nonduplication of coverage;

(4) coverage of dependents;

(5) coverage of parents of the insured or enrollee and parents of the spouse of the insured or enrollee;

(6) preexisting conditions;

(7) termination of insurance;

(8) continuation or conversion;

(9) probationary periods;

(10) benefit limitations, exceptions, and reductions;

(11) elimination periods;

(12) requirements for replacement;

(13) recurrent conditions;

(14) definitions of terms; and

(15) inflation protection.

(d) The standards may:

(1) establish standard claim forms;

(2) establish standard benefits for:

(A) skilled nursing care;

(B) intermediate nursing care;

(C) custodial care; and

(D) home health care;

(3) require coverage for skilled nursing care, intermediate nursing care, and custodial care to facilitate comparison among long-term care products;

(4) require long-term care benefit plan issuers to offer coverage for home health care benefits;

(5) require that rates may not be increased for a covered individual unless:

(A) the covered individual requests and receives a change of benefits; or

(B) the increase applies to all members of the class to which the individual has been assigned by the benefit plan issuer; or

(6) require a benefit plan issuer to pay for a service covered by the benefit plan that is provided by an institution licensed to provide that service under Chapter 242, Health and Safety Code.

(e) Rules adopted under this section must include requirements no less favorable than the minimum standards of benefits for long-term care benefit plans adopted in any model laws or regulations relating to minimum standards for benefits for long-term care benefit plans and required by federal law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.052. PREEXISTING CONDITIONS. (a) A long-term care benefit plan may not contain a provision that denies coverage for a claim for losses incurred more than six months after the effective date of coverage for a preexisting condition.

(b) A long-term care benefit plan may not define a preexisting condition more restrictively than as a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(c) The commissioner by rule may:

(1) establish additional reasonable regulation of preexisting conditions consistent with this section and Section 1651.051; and

(2) extend a limitation period specified in this section as to a specific age group category in a specific benefit plan form if the commissioner finds that the extension is in the best interest of the public.

(d) Rules adopted under this section must comply with Section 1651.051(e).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.053. LOSS RATIO STANDARDS. (a) A long-term care

benefit plan must provide a benefit plan holder with benefits that are reasonable in relation to the rates charged.

(b) The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of long-term care benefit plans on the basis of:

(1) incurred claims experience;

(2) earned premiums;

(3) the period for which rates are computed to provide coverage;

(4) experienced and projected trends;

(5) concentration of experience within early benefit plan duration;

(6) expected claim fluctuations;

(7) experience refunds;

(8) adjustments;

(9) dividends;

(10) renewability features;

(11) all relevant expense factors;

(12) interest;

(13) reserves;

(14) mix of business by risk classification; and

(15) product features otherwise affecting claims experience.

(c) Annually, each entity providing a long-term care benefit plan in this state shall:

(1) file its rates, rating schedule, and supporting documentation to demonstrate compliance with the applicable loss ratio standards of this state; and

(2) comply with any other filing requirement adopted by the commissioner relating to loss ratios.

(d) Rules adopted under this section shall be no less favorable to the holders of long-term care benefit plans than any model laws, rules, and regulations adopted in connection with minimum standards for benefits for long-term care benefit plans.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.054. NOTICE OF RIGHT TO REFUND. (a) In this section, "applicant" means:

(1) in the case of an individual long-term care benefit plan, the individual who seeks to contract for insurance or other health benefits; and

(2) in the case of a group long-term care benefit plan, the proposed certificate holder.

(b) A long-term care benefit plan must have a notice prominently printed on the first page of or attached to the benefit plan document.

(c) The notice must state in substance that, if the applicant is not satisfied for any reason after examining the benefit plan document, the applicant is entitled to:

(1) return the document not later than the 30th day after the date of its delivery; and

(2) have any premium refunded.

(d) The long-term care benefit plan issuer shall pay in a timely manner the refund directly to the individual or entity that paid the premium.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1651.055. RATE STABILIZATION. (a) The commissioner shall adopt rules to stabilize long-term care premium rates by:

(1) ensuring that:

(A) initial rates for long-term care benefit plan forms are adequate; and

(B) any rate schedule increases for long-term care benefit plans made after issuance of the plans are justified, adequate, and reasonable in relation to benefits provided to plan holders;

(2) requiring any appropriate plan terms;

(3) imposing penalties on insurers or other entities subject to this chapter that violate a rule adopted under this section; and

(4) protecting plan holders affected by a rate schedule increase.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 432 (S.B. 1492), Sec. 1, eff. September 1, 2017.

(c) In adopting rules under this section, the commissioner may exempt long-term care benefit plans from the requirements of Sections

1651.053(a), (b), and (d).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 432 (S.B. 1492), Sec. 1, eff. September 1, 2017.

Sec. 1651.056. REVIEW; APPROVAL OR DISAPPROVAL OF PREMIUM RATES. (a) A long-term care premium rate may not be used until the rate has been filed with the department and approved by the commissioner.

(b) The commissioner may disapprove a long-term care premium rate that is not actuarially justified or does not comply with standards established under this chapter or adopted by rule by the commissioner.

(c) An insurer who obtains the commissioner's approval of an increase of a long-term care premium rate under Subsection (a) shall:

(1) notify policyholders of the scheduled rate increase at least 45 days prior to the date that the policyholder is required to make a premium payment at the increased rate; and

(2) provide contingent nonforfeiture benefits consistent with nationally recognized models and rules adopted by the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 1374 (S.B. 963), Sec. 1, eff. September 1, 2009.

SUBCHAPTER C. PARTNERSHIP FOR LONG-TERM CARE PROGRAM

Sec. 1651.101. DEFINITIONS. In this subchapter:

(1) "Approved plan" means a long-term care benefit plan that is approved by the department under this subchapter.

(2) "Dollar-for-dollar asset disregard" and "asset protection" have the meanings assigned by Section 32.251, Human Resources Code.

(3) "Medical assistance program" means the medical assistance program established under Chapter 32, Human Resources Code.

(4) "Partnership for long-term care program" means the program established under Subchapter F, Chapter 32, Human Resources

Code, and this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 3, eff. March 1, 2008.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(13), eff. September 1, 2009.

Sec. 1651.102. APPLICABILITY. Except to the extent of a conflict, Subchapters A and B apply to a plan issued in accordance with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 3, eff. March 1, 2008.

Sec. 1651.103. ASSISTANCE OF DEPARTMENT. The department shall assist the Health and Human Services Commission as necessary for the commission to perform its duties and functions with respect to the administration of the partnership for long-term care program.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 3, eff. March 1, 2008.

Sec. 1651.104. LONG-TERM CARE INSURANCE POLICY FOR PARTNERSHIP FOR LONG-TERM CARE PROGRAM. The commissioner, in consultation with the Health and Human Services Commission, shall adopt minimum standards for a long-term care benefit plan that may qualify as an approved plan under the partnership for long-term care program. The standards must be consistent with provisions governing the expansion of a state long-term care partnership program established under the federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171).

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 3, eff. March 1, 2008.

Sec. 1651.105. REQUIRED TRAINING. (a) Each individual who sells a long-term care benefit plan under the partnership for long-

term care program must complete training and demonstrate evidence of an understanding of these plans and how the plans relate to other public and private coverage of long-term care.

(b) Each long-term care benefit plan issuer that offers a plan under the partnership for long-term care program shall certify to the commissioner, in the form required by the commissioner, that each individual who sells the plan on behalf of the issuer complies with the requirements of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 3, eff. March 1, 2008.

Sec. 1651.106. EFFECT OF DISCONTINUATION OF PROGRAM ON POLICY. If the partnership for long-term care program is discontinued, an individual who purchased an approved plan before the date the program is discontinued remains eligible to receive dollar-for-dollar asset disregard and asset protection under the medical assistance program.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 3, eff. March 1, 2008.

Sec. 1651.107. RULES. The commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 795 (S.B. 22), Sec. 3, eff. March 1, 2008.

CHAPTER 1652. MEDICARE SUPPLEMENT BENEFIT PLANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1652.001. DEFINITIONS. In this chapter:

(1) "Applicant" means:

(A) an individual who seeks to contract for insurance or other health benefits under an individual Medicare supplement benefit plan; or

(B) the proposed certificate holder of a group Medicare supplement benefit plan.

(2) "Approved regulatory program" means a state regulatory program that complies with the requirements of Section 1882, Social

Security Act (42 U.S.C. Section 1395ss).

(3) "Medicare" means the Health Insurance for the Aged Act (42 U.S.C. Section 1395 et seq.), as amended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.002. MEDICARE SUPPLEMENT BENEFIT PLAN. (a) "Medicare supplement benefit plan" means a group or individual policy of accident and health insurance, a subscriber contract of a group hospital service corporation operating under Chapter 842, or, to the extent required by federal law, an evidence of coverage issued by a health maintenance organization operating under Chapter 843 that is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of an individual eligible for Medicare.

(b) A policy, contract, subscriber contract, or evidence of coverage is not considered to be a Medicare supplement benefit plan if it is:

(1) a policy, contract, subscriber contract, or evidence of coverage of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or a combination, for employees or former employees, or a combination, or for members or former members, or a combination, of the labor organizations;

(2) a policy or health care benefit plan, including a policy or contract of group insurance, a group contract of a group hospital service corporation operating under Chapter 842, or a group evidence of coverage issued by a health maintenance organization operating under Chapter 843 that is not marketed or held to be a Medicare supplement benefit plan; or

(3) an individual or group evidence of coverage issued in accordance with a contract under Section 1833 or 1876, Social Security Act (42 U.S.C. Section 1395l or 1395mm), by a health maintenance organization operating under Chapter 843.

(c) The commissioner by rule may modify the definition of "Medicare supplement benefit plan" provided by Subsection (a) to the extent necessary for this state to qualify as a state with an approved regulatory program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.003. APPLICABILITY OF CHAPTER. This chapter applies to an individual or group Medicare supplement benefit plan delivered or issued for delivery in this state and, regardless of the place where the plan was delivered or issued for delivery, a certificate that was issued under a group Medicare supplement benefit plan and delivered or issued for delivery in this state, if the plan or certificate is issued by:

(1) a capital stock insurance company, including a life, health and accident, and general casualty insurance company;

(2) a mutual life insurance company;

(3) a mutual assessment life insurance company, including a statewide mutual assessment company, local mutual aid association, and burial association;

(4) a mutual or mutual assessment association of any kind, including an association subject to Section 887.102;

(5) a mutual insurance company other than a life insurance company;

(6) a mutual or natural premium life or casualty insurance company;

(7) a fraternal benefit society;

(8) a Lloyd's plan;

(9) a reciprocal or interinsurance exchange;

(10) a nonprofit hospital, medical, or dental service corporation, including a corporation operating under Chapter 842;

(11) a stipulated premium company;

(12) another insurer that by law is required to be authorized by the department; or

(13) a health maintenance organization operating under Chapter 843, to the extent required by federal law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.004. CONSTRUCTION OF CHAPTER. (a) This chapter may not be construed to enlarge the powers of an entity described by Section 1652.003.

(b) This chapter controls to the extent of any conflict with another provision of this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.005. RULES NECESSARY FOR CERTIFICATION. In addition to other rules required or authorized by this chapter, the commissioner shall adopt reasonable rules necessary and proper to carry out this chapter, including rules adopted in accordance with federal law relating to the regulation of Medicare supplement benefit plan coverage that are necessary for this state to obtain or retain certification as a state with an approved regulatory program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

SUBCHAPTER B. BENEFITS

Sec. 1652.051. MINIMUM STANDARDS. (a) The commissioner shall adopt reasonable rules to establish specific standards for provisions in Medicare supplement benefit plans and standards for facilitating comparisons of different Medicare supplement benefit plans. The standards are in addition to and must be in accordance with:

(1) applicable laws of this state, including Chapters 842 and 1201;

(2) applicable federal law, rules, regulations, and standards; and

(3) any model rules and regulations required by federal law, including Section 1882, Social Security Act (42 U.S.C. Section 1395ss).

(b) The standards may include provisions relating to:

(1) terms of renewability;

(2) initial and subsequent conditions of eligibility;

(3) nonduplication of coverage;

(4) probationary periods;

(5) benefit limitations, exceptions, and reductions;

(6) elimination periods;

(7) requirements for replacement;

(8) recurrent conditions;

(9) definitions of terms; and

(10) exclusions required by state or federal law.

(c) The commissioner may adopt reasonable rules that specifically prohibit benefit plan provisions that:

(1) are not otherwise specifically authorized by statute; and

(2) the commissioner determines are unjust, unfair, or unfairly discriminatory to a person who is covered or proposed for coverage.

(d) Rules adopted under this section must include requirements that are at least equal to those required by federal law, rules, regulations, and standards, including Section 1882, Social Security Act (42 U.S.C. Section 1395ss).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.052. MINIMUM STANDARDS FOR BENEFITS AND CLAIM PAYMENTS. (a) The commissioner shall adopt reasonable rules to establish minimum standards for benefits and claim payments under Medicare supplement benefit plans.

(b) The standards for benefits and claim payments must include the requirements for certification of Medicare supplement benefit plans prescribed by Section 1882, Social Security Act (42 U.S.C. Section 1395ss).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.053. DUPLICATE BENEFITS PROHIBITED. A Medicare supplement benefit plan or certificate in force in this state may not contain benefits that duplicate benefits provided by Medicare.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.054. BASIC PLAN. An entity described by Section 1652.003 that offers for sale in this state a Medicare supplement benefit plan must offer a basic Medicare supplement benefit plan that:

(1) provides only those benefits common to all Medicare supplement benefit plans; and

(2) meets but does not exceed the minimum standards of benefits for Medicare supplement benefit plans adopted by the commissioner and authorized by Section 1882, Social Security Act (42

U.S.C. Section 1395ss).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.055. ADDITIONAL BENEFITS. (a) In addition to the basic Medicare supplement benefit plan described by Section 1652.054, an entity may offer additional Medicare supplement benefit plans for sale in this state.

(b) The combination of benefits provided by an additional plan must conform to one of the benefit packages adopted by the commissioner and authorized by Section 1882, Social Security Act (42 U.S.C. Section 1395ss).

(c) The commissioner by rule shall provide for the approval of new or innovative benefits that may be provided in a plan other than the basic plan and that otherwise comply with this subchapter. The benefits must:

(1) be offered in a manner consistent with the goal of Medicare supplement benefit plan simplification; and

(2) meet the requirements prescribed by Section 1882, Social Security Act (42 U.S.C. Section 1395ss).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.056. COVERAGE FOR MAMMOGRAPHY. (a) In this section, "low-dose mammography" means the x-ray examination of the breast using equipment dedicated specifically for mammography, including the x-ray tube, filter, compression device, screens, films, and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with two views for each breast.

(b) Each Medicare supplement benefit plan must include coverage for an annual screening by low-dose mammography for the presence of occult breast cancer.

(c) The coverage for the annual screening may not be less favorable than coverage for other radiological examinations and must be subject to the same dollar limits, deductibles, and coinsurance factors.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.057. WAIVER OF WAITING PERIOD. (a) An entity that delivers or issues for delivery in this state a Medicare supplement benefit plan or certificate that replaces a Medicare supplement benefit plan or certificate shall give credit for the satisfaction or partial satisfaction of any waiting period, elimination period, or probationary period for a preexisting condition that has been satisfied under the plan being replaced.

(b) A replacement plan that clearly provides a new or additional benefit may include appropriate and clearly stated periods as a condition for payment of the new or additional benefit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.058. COVERAGE FOR PREEXISTING CONDITION. (a) A Medicare supplement benefit plan may not contain a provision that excludes coverage for a claim for losses incurred more than six months after the effective date of coverage for a preexisting condition.

(b) A Medicare supplement benefit plan may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

SUBCHAPTER C. LOSS RATIO STANDARDS

Sec. 1652.101. LOSS RATIO STANDARDS. (a) A Medicare supplement benefit plan must return to a plan holder benefits that are reasonable in relation to the premium charged.

(b) The commissioner shall adopt reasonable rules to establish minimum loss ratio standards for Medicare supplement benefit plans. The standards must be established:

(1) on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage;

(2) in accordance with accepted actuarial principles and practices; and

(3) to the extent necessary for the state to obtain or

retain certification as a state with an approved regulatory program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.102. FILING REQUIREMENTS. (a) Annually, each entity providing Medicare supplement benefit plans in this state shall file with the department the entity's rates, rating schedule, and supporting documentation demonstrating that:

(1) the entity is complying with the applicable loss ratio standards of this state; and

(2) the actual and expected losses in relation to premiums comply with the requirements of this subchapter and the rules adopted by the commissioner.

(b) The documentation required by Subsection (a) must include a report of the ratio of incurred losses to covered premiums for the preceding calendar year, illustrated by calendar year of issue.

(c) The commissioner may adopt rules relating to filing requirements for rates, rating schedules, and loss ratios.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.103. REVIEW OF PREMIUM INCREASES. (a) The commissioner by rule shall provide a process for reviewing and approving or disapproving a proposed premium increase relating to a Medicare supplement benefit plan.

(b) The rules must comply with federal law, including Section 1882, Social Security Act (42 U.S.C. Section 1395ss).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.104. BENEFIT CHANGES. (a) Before the date on which a Medicare benefit change required by federal law takes effect, each entity providing in this state a Medicare supplement benefit plan existing on the effective date of the change shall file with the commissioner, in accordance with Chapter 1701:

(1) each appropriate premium adjustment necessary to produce the loss ratios originally anticipated for the applicable plan, accompanied by any supporting documents necessary to justify

the adjustment; and

(2) each appropriate rider, endorsement, or plan form necessary to modify the coverage so as to eliminate benefit duplications with Medicare.

(b) A rider, endorsement, or plan form required by Subsection (a) must provide a clear description of the Medicare supplement benefits provided by the plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.105. REPORTING LOSS RATIO INFORMATION TO SECRETARY OF HEALTH AND HUMAN SERVICES. To the extent necessary for this state to obtain or retain certification as a state with an approved regulatory program, the department shall comply with federal requirements relating to periodic reporting of loss ratio information to the secretary of health and human services, based on a uniform methodology, as authorized by federal law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

SUBCHAPTER D. CONSUMER INFORMATION AND NOTICE

Sec. 1652.151. RULES RELATING TO DISCLOSURE. The rules adopted under Sections 1652.152, 1652.153, and 1652.154 must include provisions and requirements that are at least equal to those required by federal law, including the rules, regulations, and standards adopted under Section 1882, Social Security Act (42 U.S.C. Section 1395ss).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.152. OUTLINE OF COVERAGE. (a) To provide for full and fair disclosure in the sale of Medicare supplement benefit plans, a Medicare supplement benefit plan or certificate may not be delivered or issued for delivery in this state unless an outline of coverage that complies with this section is delivered to the applicant when the applicant applies for the coverage.

(b) The commissioner by rule shall prescribe the format and content of the outline of coverage required by Subsection (a). The

rules must address the style, arrangement, and overall appearance of the outline of coverage, including the size, color, and prominence of type and the arrangement of text and captions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.153. INFORMATIONAL BROCHURE. (a) The commissioner by rule may prescribe a standard form and the contents of an informational brochure intended to improve the ability of an individual eligible for Medicare to understand Medicare and to select the most appropriate Medicare supplement coverage.

(b) Except as provided by Subsection (c), the commissioner by rule may require that the informational brochure be provided to an individual eligible for Medicare concurrently with delivery of the outline of coverage.

(c) If the plan is a direct response Medicare supplement benefit plan, the commissioner by rule may require that the informational brochure be provided on request to an individual eligible for Medicare at any time not later than the time the plan is delivered.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.154. NOTICE RELATING TO OTHER TYPES OF COVERAGE. (a) The commissioner may adopt reasonable rules for captions or notice requirements for each accident and health insurance policy, subscriber contract, or evidence of coverage sold to an individual eligible for Medicare that are determined to be in the public interest and designed to inform the individual that a particular coverage is not a Medicare supplement benefit plan. This subsection does not apply to:

(1) a Medicare supplement benefit plan;

(2) a disability income policy;

(3) a basic, catastrophic, or major medical expense policy;

(4) a single premium nonrenewable policy; or

(5) another policy, contract, or subscriber contract described by Section 1652.002(b)(1) or (2).

(b) The commissioner may adopt reasonable rules to govern the full and fair disclosure of information relating to replacing an

accident and health insurance policy, a subscriber contract, or a certificate by an individual eligible for Medicare.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.155. RIGHT TO RETURN FOR REFUND; NOTICE. (a) If an applicant is not satisfied for any reason after examining a Medicare supplement benefit plan document or certificate, the applicant is entitled to receive a refund of the premium if the applicant returns the document or certificate not later than the 30th day after the date it is delivered.

(b) The entity issuing the plan or certificate shall refund the premium directly to the applicant in a timely manner.

(c) A Medicare supplement benefit plan or certificate must have a notice stating the substance prescribed by Subsection (a) prominently printed on the first page of or attached to the plan or certificate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.156. ADVERTISING FILING REQUIREMENTS. (a) The commissioner shall adopt reasonable rules to require each entity described by Section 1652.003 to file with the department a copy of any advertisement relating to Medicare supplement benefit plans that the entity intends to use in this state. The rules must require that the entity file the copy not later than the 60th day before the date of intended use.

(b) At the expiration of the 60-day period provided by Subsection (a), an advertisement filed in accordance with that subsection is considered acceptable, unless before the end of that 60-day period the department notifies the entity of the advertisement's nonacceptance.

(c) An entity may not use an advertisement for Medicare supplement benefit plans that does not comply with state law, including department rules and Section 541.084.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 475 (H.B. 2251), Sec. 3, eff.

September 1, 2007.

SUBCHAPTER E. AGENTS

Sec. 1652.201. INFORMATION PROVIDED TO AGENTS. (a) An entity that offers a Medicare supplement benefit plan for sale in this state shall provide to each agent authorized to sell that plan information relating to:

(1) Medicare;

(2) the Medicare supplement benefit plans offered by that entity; and

(3) the agent's ethical obligations to clients.

(b) The commissioner by rule may prescribe the information that must be provided under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

Sec. 1652.202. PERMITTED COMPENSATION ARRANGEMENTS. (a) The commissioner by rule shall limit the commission or other compensation that may be paid to an agent for the sale of a Medicare supplement benefit plan or certificate, including a replacement plan or certificate.

(b) The rules must conform to, but may not be more restrictive than, the requirements of federal law necessary for this state to obtain or retain certification as a state with an approved regulatory program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 4, eff. April 1, 2005.

SUBCHAPTER F. OUTPATIENT PRESCRIPTION DRUGS

Sec. 1652.251. OUTPATIENT PRESCRIPTION DRUG BENEFIT PLANS. (a) An entity described by Section 1652.003 that issues a Medicare supplement benefit plan in this state may offer a group or individual policyholder:

(1) an outpatient prescription drug benefit plan authorized under 42 U.S.C. Section 1395ss; or

(2) a new or innovative outpatient prescription drug benefit plan filed with and approved by the commissioner under Section 1652.055.

(b) The commissioner shall approve or disapprove an outpatient drug benefit plan described by Subsection (a) that is filed for approval under Section 1652.055 not later than the 60th day after the date the entity files the plan with the department. A drug benefit plan that has not been approved or disapproved by the commissioner before the 61st day after the date the plan is filed with the department is considered approved on that day.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.075(a), eff. September 1, 2005.

Sec. 1652.252. PRESCRIPTION DRUG DISCOUNT PROGRAMS. (a) In this section, "prescription drug discount program" means any program that entitles a participant to purchase prescription drugs or other medical supplies and services from vendors at a discount under an agreement made with a participating pharmacy.

(b) An entity described by Section 1652.003 may offer participation in a prescription drug discount program in connection with the solicitation of an application for issuance of a Medicare supplement benefit plan.

(c) An offer of participation in a prescription drug discount program described by this section is not a violation of Chapter 541 or any other law prohibiting the offer of rebates in the solicitation of insurance policies.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.075(a), eff. September 1, 2005.

CHAPTER 1653. HIGH DEDUCTIBLE HEALTH PLAN

Sec. 1653.001. DEFINITION. In this chapter, "high deductible health plan" has the meaning assigned by Section 223, Internal Revenue Code of 1986.

Added by Acts 2005, 79th Leg., Ch. 151 (H.B. 1602), Sec. 1, eff. May 24, 2005.

Sec. 1653.002. APPLICABILITY OF OTHER LAW. (a) Subject to Subsection (b), a high deductible health plan is subject to any law

mandating a minimum health insurance benefit or reimbursement.

(b) Notwithstanding any other law, a provision of this code may not be construed to prevent an insurer, health maintenance organization, or other entity issuing a health insurance policy or certificate of coverage from applying deductible or copayment requirements to benefits, including state-mandated health benefits, in order to qualify the health insurance policy or certificate of coverage as a high deductible health plan.

Added by Acts 2005, 79th Leg., Ch. 151 (H.B. 1602), Sec. 1, eff. May 24, 2005.

Sec. 1653.003. RULES. The commissioner shall adopt rules necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 151 (H.B. 1602), Sec. 1, eff. May 24, 2005.

SUBTITLE J. HEALTH INFORMATION TECHNOLOGY AND AVAILABILITY

CHAPTER 1660. ELECTRONIC DATA EXCHANGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1660.001. FINDINGS AND PURPOSE. (a) The legislature finds that patients deserve accurate, instantaneous information about coverage and financial responsibility to make well-informed decisions about their treatment and spending.

(b) The legislature finds that the ability of health benefit plan issuers and administrators to exchange eligibility and benefit information with physicians, health care providers, hospitals, and patients will ensure a more efficient and effective health care delivery system.

(c) The legislature finds that electronic access to eligibility information will reduce the amount of time and resources spent on administrative functions, prevent abuse and fraud, streamline and simplify processing of insurance claims, and increase transparency in premium cost and health care cost.

(d) The legislature finds that patients often request information about their health care coverage from their health care providers and that health care providers therefore need access to real-time information about their patients' eligibility to receive

health care under the health benefit plan, coverage of health care under the health benefit plan, and the benefits associated with the health benefit plan.

(e) The legislature finds that adoption of technology by insurers, health maintenance organizations, and health care providers to facilitate use of electronic data exchange standards currently available will make coverage and health care electronic transactions more predictable, reliable, and consistent.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff. May 25, 2007.

Sec. 1660.002. DEFINITIONS. In this chapter:

(1) "Administrator" has the meaning assigned by Section 4151.001.

(2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec. 2.008(7), eff. September 1, 2011.

(3) "Enrollee" means an individual who is insured by or enrolled in a health benefit plan.

(4) "Health benefit plan" means an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an evidence of coverage that provides health insurance or health care benefits.

(5) "Transaction standards" means the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) transaction standards of the Centers for Medicare and Medicaid Services under 45 C.F.R. Part 162.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff. May 25, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.008(7), eff. September 1, 2011.

Sec. 1660.003. APPLICABILITY. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital

service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a fraternal benefit society operating under Chapter 885;

(4) a stipulated premium insurance company operating under Chapter 884;

(5) a reciprocal exchange operating under Chapter 942;

(6) a health maintenance organization operating under Chapter 843;

(7) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846; or

(8) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844.

Text of subsection effective until April 1, 2025

(b) This chapter does not apply to:

(1) a Medicaid managed care program operated under Chapter 533, Government Code;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the state child health plan or any similar plan operated under Chapter 62 or 63, Health and Safety Code; or

(4) a health benefit plan offered by an insurer or health maintenance organization that provides coverage only for dental services.

Text of subsection effective on April 1, 2025

(b) This chapter does not apply to:

(1) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable;

(2) a Medicaid program operated under Chapter 32, Human Resources Code;

(3) the state child health plan or any similar plan operated under Chapter 62 or 63, Health and Safety Code; or

(4) a health benefit plan offered by an insurer or health maintenance organization that provides coverage only for dental services.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff.

May 25, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.137, eff. April 1, 2025.

Sec. 1660.004. GENERAL RULEMAKING. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff. May 25, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.003, eff. September 1, 2011.

SUBCHAPTER C. IDENTIFICATION CARD PILOT PROGRAM

Sec. 1660.101. PILOT PROGRAM. (a) The commissioner shall designate a county or counties for initial participation in an identification card pilot program to begin not later than May 1, 2008.

(b) The commissioner shall require the issuer of a health benefit plan that is offered in the county or counties selected for initial participation in the identification card pilot program to issue identification cards that comply with commissioner rules to each enrollee of the plan.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec. 2.008(9), eff. September 1, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff. May 25, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.008(9), eff. September 1, 2011.

Sec. 1660.102. PILOT PROGRAM RULES. (a) The commissioner shall adopt rules as necessary to implement the identification card pilot program, including the coordination of a testing phase and incorporation of changes identified in the testing phase.

(b) The commissioner may consider recommendations or any other

information provided in response to a department-issued request for information relating to electronic data exchange, including identification card programs, before adopting rules regarding:

(1) information to be included on the identification cards;

(2) technology to be used to implement the identification card pilot program; and

(3) confidentiality and accuracy of the information required to be included on the identification cards.

(c) The commissioner shall consider the requirements of any federal program requiring health benefit plan issuers and administrators to provide point-of-service access to physicians and other health care providers regarding eligibility information before adopting rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff. May 25, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.004, eff. September 1, 2011.

Sec. 1660.103. REQUESTS FOR INFORMATION. The commissioner may issue requests for information as needed to implement the identification card pilot program under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff. May 25, 2007.

Sec. 1660.104. HEALTH BENEFIT PLAN ISSUER COMPLIANCE. (a) Each issuer of a health benefit plan that offers a health benefit plan in a county or counties designated by the commissioner under Section 1660.101 for initial participation in the identification card pilot program shall comply with this subchapter and rules adopted under this subchapter.

(b) To ensure timely compliance with the requirements of this subchapter, the commissioner may require the issuer of a health benefit plan to submit its procedures for implementation of the requirements to the department in the form prescribed by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 209 (H.B. 522), Sec. 1, eff. May 25, 2007.

CHAPTER 1661. INFORMATION TECHNOLOGY

Sec. 1661.001. DEFINITIONS. In this chapter:

(1) "Health benefit plan" means a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

(A) an insurance company;

(B) a group hospital service corporation operating under Chapter 842;

(C) a fraternal benefit society operating under Chapter 885;

(D) a stipulated premium company operating under Chapter 884;

(E) a Lloyd's plan operating under Chapter 941;

(F) an exchange operating under Chapter 942;

(G) a health maintenance organization operating under Chapter 843;

(H) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(I) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844; or

(J) an entity not authorized under this code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis.

(2) "Health benefit plan issuer" means an entity authorized to issue a health benefit plan in this state.

(3) "Health care provider" means:

(A) an individual who is licensed, certified, or otherwise authorized to provide health care services; or

(B) a hospital, emergency clinic, outpatient clinic, or other facility providing health care services.

(4) "Participating provider" means a health care provider who has contracted with a health benefit plan issuer to provide services to enrollees.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Sec. 1661.002. USE OF CERTAIN INFORMATION TECHNOLOGY REQUIRED. (a) A health benefit plan issuer shall use information technology that provides a participating provider with real-time information at the point of care concerning:

(1) the enrollee's:

(A) copayment and coinsurance;

(B) applicable deductibles; and

(C) covered benefits and services; and

(2) the enrollee's estimated total financial responsibility for the care.

(b) A health benefit plan issuer shall use information technology that provides an enrollee with information concerning the enrollee's:

(1) copayment and coinsurance;

(2) applicable deductibles;

(3) covered benefits and services; and

(4) estimated financial responsibility for the health care provided to the enrollee.

(c) Nothing in this section may be interpreted as a guarantee of payment for health care services.

(d) A health benefit plan issuer's Internet website may be used to meet the information technology requirements of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Text of section effective until April 1, 2025

Sec. 1661.003. EXCEPTIONS. This chapter does not apply to:

(1) a health benefit plan that provides coverage only:

(A) for a specified disease or diseases or under a limited benefit policy;

(B) for accidental death or dismemberment;

(C) as a supplement to a liability insurance policy; or

(D) for dental or vision care;

(2) disability income insurance coverage;

(3) credit insurance coverage;

(4) a hospital confinement indemnity policy;

(5) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(6) a workers' compensation insurance policy;

(7) medical payment insurance coverage provided under a motor vehicle insurance policy;

(8) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan and should not be subject to the exemption provided under this section;

(9) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(10) a Medicaid managed care program operated under Chapter 533, Government Code, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.138, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 1661.003. EXCEPTIONS. This chapter does not apply to:

(1) a health benefit plan that provides coverage only:

(A) for a specified disease or diseases or under a limited benefit policy;

(B) for accidental death or dismemberment;

(C) as a supplement to a liability insurance policy; or

(D) for dental or vision care;

(2) disability income insurance coverage;

(3) credit insurance coverage;

(4) a hospital confinement indemnity policy;

(5) a Medicare supplemental policy as defined by Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

(6) a workers' compensation insurance policy;

(7) medical payment insurance coverage provided under a motor vehicle insurance policy;

(8) a long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan and should not be subject to the exemption provided under this section;

(9) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(10) a Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable, or a Medicaid program operated under Chapter 32, Human Resources Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.138, eff. April 1, 2025.

Sec. 1661.004. REQUIRED USE OF TECHNOLOGY BY PROVIDERS. A physician, hospital, or other health care provider shall use information technology as required under this chapter beginning not later than September 1, 2013.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Sec. 1661.005. REFUND OF OVERPAYMENT. A physician, hospital, or other health care provider that receives an overpayment from an enrollee must refund the amount of the overpayment to the enrollee not later than the 30th day after the date the physician, hospital, or health care provider determines that an overpayment has been made. This section does not apply to an overpayment subject to Section 843.350 or 1301.132.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Sec. 1661.0055. USE OF TECHNOLOGY: WAIVER. (a) Notwithstanding Section 1661.004, physicians or health care providers with fewer than five full-time-equivalent employees are not required to use information technology as required under this chapter.

(b) A health benefit plan issuer may not require, through contract or otherwise, physicians or health care providers with fewer than five full-time-equivalent employees to use information technology as required under this chapter.

(c) A contract between the issuer of a health benefit plan and a physician or health care provider must provide for a waiver of any requirement for the use of information technology as established or required under this chapter.

(d) The commissioner shall establish the circumstances under which the requirements of this chapter do not apply to a physician or health care provider including:

(1) undue hardship, including fiscal or operational hardship; or

(2) any other special circumstance that would justify an exclusion.

(e) The commissioner shall establish circumstances under which a waiver under Subsection (c) is required, including:

(1) undue hardship, including fiscal or operational hardship; or

(2) any other special circumstance that would justify a waiver.

(f) Any physician or health care provider that is denied a waiver by a health benefit plan issuer may appeal the denial to the commissioner. The commissioner shall determine whether a waiver must be granted.

(g) A health benefit plan issuer may not refuse to contract or renew a contract with a physician or health care provider based in whole or in part on the physician or provider requesting or receiving a waiver or appealing a waiver determination. A health benefit plan issuer may not refuse to contract or renew a contract with a physician or health care provider based in whole or in part on the physician or provider meeting the exemptions contained in Subsections (a) and (b).

(h) A waiver approved under this section expires September 1, 2013.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Sec. 1661.006. HEALTH BENEFIT PLAN ISSUER CONDUCT. A contract between a health benefit plan issuer and a physician, hospital, or other health care provider may not prohibit the physician, hospital, or health care provider from collecting, at the time of care, the estimated amount for which the enrollee may be financially responsible.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Sec. 1661.007. CERTAIN FEES PROHIBITED. A health benefit plan issuer may not directly charge or collect from an enrollee or a physician, or other health care provider, a fee to cover the costs incurred by the health benefit plan issuer in complying with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

Sec. 1661.009. RULES. (a) The commissioner shall adopt rules as necessary to implement this chapter, including rules that ensure that the information technology used by a health benefit plan issuer does not have legal or technical restrictions for encoding, displaying, exchanging, reading, printing, transmitting, or storing information or data in electronic form.

(b) Rules adopted by the commissioner must be consistent with national standards established by the Workgroup for Electronic Data Interchange or by other similar organizations recognized by the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 261 (H.B. 1342), Sec. 1, eff. May 30, 2009.

CHAPTER 1662. HEALTH CARE COST TRANSPARENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1662.001. DEFINITIONS. In this chapter:

(1) "Billed charge" means the total charges for a health care service or supply billed to a health benefit plan by a health care provider.

(2) "Billing code" means the code used by a health benefit plan issuer or administrator or health care provider to identify a health care service or supply for the purposes of billing, adjudicating, and paying claims for a covered health care service or supply, including the Current Procedural Terminology code, the Healthcare Common Procedure Coding System code, the Diagnosis-Related Group code, the National Drug Code, or other common payer identifier.

(3) "Bundled payment arrangement" means a payment model under which a health care provider is paid a single payment for all covered health care services and supplies provided to an enrollee for a specific treatment or procedure.

(4) "Copayment assistance" means the financial assistance an enrollee receives from a prescription drug or medical supply manufacturer toward the purchase of a covered health care service or supply.

(5) "Cost-sharing information" means information related to any expenditure required by or on behalf of an enrollee with respect to health care benefits that are relevant to a determination of the enrollee's cost-sharing liability for a particular covered health care service or supply.

(6) "Cost-sharing liability" means the amount an enrollee is responsible for paying for a covered health care service or supply under the terms of a health benefit plan. The term generally includes deductibles, coinsurance, and copayments but does not include premiums, balance billing amounts by out-of-network providers, or the cost of health care services or supplies that are not covered under a health benefit plan.

(7) "Covered health care service or supply" means a health care service or supply, including a prescription drug, for which the costs are payable, wholly or partly, under the terms of a health benefit plan.

(8) "Derived amount" means the price that a health benefit plan assigns to a health care service or supply for the purpose of internal accounting, reconciliation with health care providers, or submitting data in accordance with state or federal regulations.

(9) "Enrollee" means an individual, including a dependent, entitled to coverage under a health benefit plan.

(10) "Health care service or supply" means any encounter, procedure, medical test, supply, prescription drug, durable medical equipment, and fee, including a facility fee, provided or assessed in connection with the provision of health care.

(11) "Historical net price" means the retrospective average amount a health benefit plan paid for a prescription drug, inclusive of any reasonably allocated rebates, discounts, chargebacks, and fees and any additional price concessions received by the plan or plan issuer or administrator with respect to the prescription drug, determined in accordance with Section 1662.106.

(12) "Machine-readable file" means a digital representation of data in a file that can be imported or read by a computer system for further processing without human intervention while ensuring no semantic meaning is lost.

(13) "National drug code" means the unique 10- or 11-digit 3-segment number assigned by the United States Food and Drug Administration that is a universal product identifier for drugs in the United States.

(14) "Negotiated rate" means the amount a health benefit plan issuer or administrator has contractually agreed to pay a network provider, including a network pharmacy or other prescription drug dispenser, for covered health care services and supplies, whether directly or indirectly, including through a third-party administrator or pharmacy benefit manager.

(15) "Network provider" means any health care provider of a health care service or supply with which a health benefit plan issuer or administrator or a third party for the issuer or administrator has a contract with the terms on which a relevant health care service or supply is provided to an enrollee.

(16) "Out-of-network allowed amount" means the maximum amount a health benefit plan issuer or administrator will pay for a covered health care service or supply provided by an out-of-network provider.

(17) "Out-of-network provider" means a health care provider of any health care service or supply that does not have a contract under an enrollee's health benefit plan.

(18) "Out-of-pocket limit" means the maximum amount that an enrollee is required to pay during a coverage period for the

enrollee's share of the costs of covered health care services and supplies under the enrollee's health benefit plan, including for self-only and other than self-only coverage, as applicable.

(19) "Prerequisite" means concurrent review, prior authorization, or a step-therapy or fail-first protocol related to a covered health care service or supply that must be satisfied before a health benefit plan issuer or administrator will cover the service or supply. The term does not include a medical necessity determination generally or another form of medical management technique.

(20) "Underlying fee schedule rate" means the rate for a covered health care service or supply from a particular network provider or health care provider that a health benefit plan issuer or administrator uses to determine an enrollee's cost-sharing liability for the service or supply when that rate is different from the negotiated rate or derived amount.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.002. DEFINITION OF ACCUMULATED AMOUNTS. (a) In this chapter, "accumulated amounts" means:

(1) the amount of financial responsibility an enrollee has incurred at the time a request for cost-sharing information is made, with respect to a deductible or out-of-pocket limit; and

(2) to the extent a health benefit plan imposes a cumulative treatment limitation, including a limitation on the number of health care supplies, days, units, visits, or hours covered in a defined period, on a particular covered health care service or supply independent of individual medical necessity determinations, the amount that has accrued toward the limit on the health care service or supply.

(b) For an individual enrolled in coverage other than self-only coverage, the term includes the financial responsibility the individual has incurred toward meeting the individual's own deductible or out-of-pocket limit and the amount of financial responsibility that all individuals enrolled in the individual's coverage have incurred, in aggregate, toward meeting the plan's other than self-only deductible or out-of-pocket limit, as applicable.

(c) The term includes any expense that counts toward a

deductible or out-of-pocket limit, including a copayment or coinsurance, but excludes any expense that does not count toward a deductible or out-of-pocket limit, including a premium payment, out-of-pocket expense for out-of-network health care services or supplies, or an amount for a health care service or supply not covered by the health benefit plan.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(8) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(c) This chapter does not apply to a health reimbursement arrangement or other account-based health benefit plan or a workers' compensation insurance policy.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.004. RULES. The commissioner may adopt rules necessary to implement this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

SUBCHAPTER B. REQUIRED DISCLOSURES TO ENROLLEES

Sec. 1662.051. REQUIRED DISCLOSURE TO ENROLLEE ON REQUEST. (a) On request of a health benefit plan enrollee, the health benefit plan issuer or administrator shall provide to the enrollee a disclosure in accordance with this subchapter.

(b) A health benefit plan issuer or administrator may allow an enrollee to request cost-sharing information for a specific preventive or non-preventive health care service or supply by including terms such as "preventive," "non-preventive," or "diagnostic" when requesting information under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.052. REQUIRED DISCLOSURE INFORMATION. (a) A disclosure provided under this subchapter must have the following information that is accurate at the time the disclosure request is made, with respect to the requesting enrollee's cost-sharing

liability for a covered health care service and supply:

(1) an estimate of the enrollee's cost-sharing liability for the requested service or supply provided by a health care provider that is calculated based on the information described by Subdivisions (4), (5), and (6);

(2) except as provided by Subsection (b), if the request relates to a service or supply that is provided within a bundled payment arrangement and the arrangement includes a service or supply that has a separate cost-sharing liability, an estimate of the cost-sharing liability for:

(A) the requested covered service or supply; and

(B) each service or supply in the arrangement that has a separate cost-sharing liability;

(3) for a requested service or supply that is a recommended preventive service under Section 2713, Public Health Service Act (42 U.S.C. Section 300gg-13), if the health benefit plan issuer or administrator cannot determine whether the request is for preventive or non-preventive purposes, the cost-sharing liability for non-preventive purposes;

(4) accumulated amounts;

(5) the network provider rate that is composed of the following that are applicable to the health benefit plan's payment model:

(A) the negotiated rate, reflected as a dollar amount, for a network provider for the requested service or supply regardless of whether the issuer or administrator uses the rate to calculate the enrollee's cost-sharing liability; and

(B) the underlying fee schedule rate, reflected as a dollar amount, for the requested service or supply, to the extent that is different from the negotiated rate;

(6) the out-of-network allowed amount or any other rate that provides a more accurate estimate of an amount a health benefit plan issuer or administrator will pay for the requested service or supply, reflected as a dollar amount, if the request for cost-sharing information is for a covered service or supply provided by an out-of-network provider;

(7) if an enrollee requests information for a service or supply subject to a bundled payment arrangement, a list of the services and supplies included in the arrangement;

(8) if applicable, notification that coverage of a specific

service or supply is subject to a prerequisite; and

(9) notice that includes the following information in plain language:

(A) unless balance billing is prohibited for the requested service or supply, a statement that out-of-network providers may bill an enrollee for the difference between a provider's billed charges and the sum of the amount collected from the health benefit plan issuer or administrator and from the enrollee in the form of a copayment or coinsurance amount and that the cost-sharing information provided for the service or supply does not account for that potential additional charge;

(B) a statement that the actual charges to the enrollee for the requested service or supply may be different from the estimate provided, depending on the actual services or supplies the enrollee receives at the point of care;

(C) a statement that the estimate of cost-sharing liability for the requested service or supply is not a guarantee that benefits will be provided for that service or supply;

(D) a statement disclosing whether the health benefit plan counts copayment assistance and other third-party payments in the calculation of the enrollee's deductible and out-of-pocket maximum;

(E) for a service or supply that is a recommended preventive service under Section 2713, Public Health Service Act (42 U.S.C. Section 300gg-13), a statement that a service or supply provided by a network provider may not be subject to cost sharing if it is billed as a preventive service or supply when the health benefit plan issuer or administrator cannot determine whether the request is for a preventive or non-preventive service or supply; and

(F) any additional information, including other disclosures, that the health benefit plan issuer or administrator determines is appropriate provided that the additional information does not conflict with the information required to be provided under this section.

(b) A health benefit plan issuer or administrator is not required to provide an estimate of cost-sharing liability for a bundled payment arrangement in which the cost sharing is imposed separately for each health care service or supply included in the arrangement. If an issuer or administrator provides an estimate for multiple health care services or supplies in a situation in which the

estimate could be relevant to an enrollee, the issuer or administrator must disclose information about the relevant services or supplies individually as required by Subsection (a).

(c) If a health benefit plan issuer or administrator reimburses an out-of-network provider with a percentage of the billed charge for a covered health care service or supply, the out-of-network allowed amount described by Subsection (a) is that reimbursed percentage.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.053. METHOD AND FORMAT FOR DISCLOSURE. A health benefit plan issuer or administrator shall provide the disclosure required under this subchapter through an Internet-based self-service tool described by Section 1662.054, a physical copy in accordance with Section 1662.055, or another means authorized by Section 1662.056.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.054. INTERNET-BASED SELF-SERVICE TOOL. (a) A health benefit plan issuer or administrator may develop and maintain an Internet-based self-service tool to provide a disclosure required under this subchapter.

(b) Information provided on the self-service tool must be made available in plain language, without a subscription or other fee, on an Internet website that provides real-time responses based on cost-sharing information that is accurate at the time of the request.

(c) A health benefit plan issuer or administrator shall ensure that the self-service tool allows a user to:

(1) search for cost-sharing information for a covered health care service or supply by a specific network provider or by all network providers by inputting:

(A) a billing code or descriptive term at the option of the user;

(B) the name of the network provider if the user seeks cost-sharing information with respect to a specific network provider; or

(C) other factors used by the issuer or administrator that are relevant for determining the applicable cost-sharing information, including the location in which the service or supply will be sought or provided, the facility name, or the dosage;

(2) search for an out-of-network allowed amount, percentage of billed charges, or other rate that provides a reasonably accurate estimate of the amount the issuer or administrator will pay for a covered health care service or supply provided by an out-of-network provider by inputting:

(A) a billing code or descriptive term at the option of the user; or

(B) other factors used by the issuer or administrator that are relevant for determining the applicable out-of-network allowed amount or other rate, including the location in which the covered health care service or supply will be sought or provided; and

(3) refine and reorder search results based on geographic proximity of network providers and the amount of the enrollee's estimated cost-sharing liability for the covered health care service or supply if the search returns multiple results.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.055. PHYSICAL COPY OF DISCLOSURE. (a) A health benefit plan issuer or administrator shall make the disclosure required under this subchapter available in a physical form. A disclosure under this section must be made available in plain language, without a fee, at the request of the enrollee.

(b) In providing a disclosure under this section, a health benefit plan issuer or administrator may limit the number of health care providers with respect to which cost-sharing information for a covered health care service or supply is provided to no fewer than 20 providers per request.

(c) A health benefit plan issuer or administrator providing a disclosure under this section shall:

(1) disclose any applicable provider-per-request limit described by Subsection (b) to the enrollee;

(2) provide the cost-sharing information in a physical form in accordance with the enrollee's request as if the request was made

using a self-service tool under Section 1662.054; and

(3) mail the disclosure not later than two business days after the date the enrollee's request is received.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.056. OTHER MEANS OF DISCLOSURE. If an enrollee requests the disclosure required by this subchapter by a means other than a physical copy or the self-service tool described by Section 1662.054, a health benefit plan issuer or administrator may provide the disclosure through the requested means if:

(1) the enrollee agrees that disclosure through that means is sufficient to satisfy the request;

(2) the request is fulfilled at least as rapidly as required for the physical copy; and

(3) the disclosure includes the information required for a physical copy under Section 1662.055.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.057. OTHER CONTRACTUAL AGREEMENTS. (a) A health benefit plan issuer or administrator may satisfy the requirements of this subchapter by entering into a written agreement under which another person, including a pharmacy benefit manager or other third party, provides the disclosure required under this subchapter.

(b) If a health benefit plan issuer or administrator and another person enter into an agreement under Subsection (a), the issuer or administrator is subject to an enforcement action for failure to provide a required disclosure in accordance with this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.058. COMPLIANCE WITH SUBCHAPTER. (a) A health benefit plan issuer or administrator that, acting in good faith and

with reasonable diligence, makes an error or omission in a disclosure required under this subchapter does not fail to comply with this subchapter solely because of the error or omission if the issuer or administrator corrects the error or omission as soon as practicable.

(b) A health benefit plan issuer or administrator, acting in good faith and with reasonable diligence, does not fail to comply with this subchapter solely because the issuer's or administrator's Internet website is temporarily inaccessible if the issuer or administrator makes the information available as soon as practicable.

(c) To the extent compliance with this subchapter requires a health benefit plan issuer or administrator to obtain information from another person, the issuer or administrator does not fail to comply with the subchapter because the issuer or administrator relies in good faith on information from the other person unless the issuer or administrator knows or reasonably should have known that the information is incomplete or inaccurate.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

SUBCHAPTER C. REQUIRED PUBLIC DISCLOSURES

Sec. 1662.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan for which federal reporting requirements under 26 C.F.R. Part 54, 29 C.F.R. Part 2590, and 45 C.F.R. Parts 147 and 158 do not apply.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.102. PUBLICATION REQUIRED. A health benefit plan issuer or administrator shall publish on an Internet website the information required under Section 1662.103 in three machine-readable files in accordance with this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.103. REQUIRED INFORMATION. (a) A health benefit plan

issuer or administrator shall publish the following information:

(1) a network rate machine-readable file that includes the following information for all covered health care services and supplies, except for prescription drugs that are subject to a fee-for-service reimbursement arrangement:

(A) for each coverage option offered by a health benefit plan issuer or administered by a health benefit plan administrator, the option's name and:

(i) the option's 14-digit health insurance oversight system identifier;

(ii) if the 14-digit identifier is not available, the option's 5-digit health insurance oversight system identifier; or

(iii) if the 14- and 5-digit identifiers are not available, the employer identification number associated with the option;

(B) a billing code, which must be the national drug code for a prescription drug, and a plain-language description for each billing code for each covered service or supply under each coverage option offered by the issuer or administered by the administrator; and

(C) all applicable rates, including negotiated rates, underlying fee schedules, or derived amounts, provided in accordance with Section 1662.104;

(2) an out-of-network allowed amount machine-readable file, including:

(A) for each coverage option offered by a health benefit plan issuer or administered by a health benefit plan administrator, the option's name and:

(i) the option's 14-digit health insurance oversight system identifier;

(ii) if the 14-digit identifier is not available, the option's 5-digit health insurance oversight system identifier; or

(iii) if the 14- and 5-digit identifiers are not available, the employer identification number associated with the option;

(B) a billing code, which must be the national drug code for a prescription drug, and a plain-language description for each billing code for each covered service or supply under each coverage option offered by the issuer or administered by the administrator; and

(C) except as provided by Subsection (b), unique out-of-network billed charges and allowed amounts provided in accordance with Section 1662.105 for covered health care services or supplies provided by out-of-network providers during the 90-day period that begins on the 180th day before the date the machine-readable file is published; and

(3) a prescription drug machine-readable file that includes:

(A) for each coverage option offered by a health benefit plan issuer or administered by a health benefit plan administrator, the option's name and:

(i) the option's 14-digit health insurance oversight system identifier;

(ii) if the 14-digit identifier is not available, the option's 5-digit health insurance oversight system identifier; or

(iii) if the 14- and 5-digit identifiers are not available, the employer identification number associated with the option;

(B) the national drug code and the proprietary and nonproprietary name assigned to the national drug code by the United States Food and Drug Administration for each covered prescription drug provided under each coverage option offered by the issuer or administered by the administrator;

(C) the negotiated rates, which must be:

(i) reflected as a dollar amount with respect to each national drug code that is provided by a network provider, including a network pharmacy or other prescription drug dispenser;

(ii) associated with the national provider identifier, tax identification number, and place of service code for each network provider, including each network pharmacy or other prescription drug dispenser; and

(iii) associated with the last date of the contract term for each provider-specific negotiated rate that applies to each national drug code; and

(D) except as provided by Subsection (b), historical net prices, which must be:

(i) reflected as a dollar amount with respect to each national drug code that is provided by a network provider, including a network pharmacy or other prescription drug dispenser;

(ii) associated with the national provider

identifier, tax identification number, and place of service code for each network provider, including each network pharmacy or other prescription drug dispenser; and

(iii) associated with the 90-day period that begins on the 180th day before the date the machine-readable file is published for each provider-specific historical net price calculated in accordance with Section 1662.106 that applies to each national drug code.

(b) A health benefit plan issuer or administrator shall omit information described by Subsection (a)(2)(C) or (a)(3)(D) in relation to a particular health care service or supply if compliance with that subsection would require the issuer to report payment information in connection with fewer than 20 different claims for payments under a single health benefit plan.

(c) This section does not require the disclosure of information that would violate any applicable health information privacy law.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.104. NETWORK RATE DISCLOSURES. (a) If a health benefit plan issuer or administrator does not use negotiated rates for health care provider reimbursement, the issuer or administrator shall disclose for purposes of Section 1662.103(a)(1)(C) derived amounts to the extent those amounts are already calculated in the normal course of business.

(b) If a health benefit plan issuer or administrator uses underlying fee schedule rates for calculating cost sharing, the issuer or administrator shall disclose for purposes of Section 1662.103(a)(1)(C) the underlying fee schedule rates in addition to the negotiated rate or derived amount.

(c) The applicable rates, including for both individual health care services and supplies and services and supplies in a bundled payment arrangement, that a health benefit plan issuer or administrator must provide under Section 1662.103(a)(1)(C) must be:

(1) except as provided by Subdivision (2), reflected as dollar amounts with respect to each covered health care service or supply that is provided by a network provider;

(2) the base negotiated rate applicable to the service or

supply before an adjustment for enrollee characteristics if the rate is a negotiated rate subject to change based on enrollee characteristics;

(3) associated with the national provider identifier, tax identification number, and place of service code for each network provider;

(4) associated with the last date of the contract term or expiration date for each health care provider-specific applicable rate that applies to each covered service or supply; and

(5) indicated with a notation where a reimbursement arrangement other than a standard fee-for-service model, including capitation or a bundled payment arrangement, applies.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.105. OUT-OF-NETWORK ALLOWED AMOUNTS. (a) An out-of-network allowed amount provided under Section 1662.103(a)(2)(C) must be:

(1) reflected as a dollar amount with respect to each covered health care service or supply that is provided by an out-of-network provider; and

(2) associated with the national provider identifier, tax identification number, and place of service code for each out-of-network provider.

(b) This subchapter does not prohibit a health benefit plan issuer or administrator from satisfying the disclosure requirements described by Section 1662.103(a)(2)(C) by disclosing out-of-network allowed amounts made available by, or otherwise obtained from, an issuer, a health care provider, or other party with which the issuer or administrator has entered into a written agreement to provide the information if the minimum claim threshold described by Section 1662.103(b) is independently met for each health care service or supply and for each plan included in an aggregated allowed amount file.

(c) If a health benefit plan issuer or administrator enters into an agreement under Subsection (b), the health benefit plan issuers, health care providers, or other persons with which the issuer or administrator has contracted may aggregate out-of-network

allowed amounts for more than one plan.

(d) This subchapter does not prohibit a third party from hosting an allowed amount file on its Internet website or a health benefit plan issuer or administrator from contracting with a third party to post the file. If the issuer or administrator does not host the file separately on its Internet website, the issuer or administrator shall provide a link on its Internet website to the location where the file is made publicly available.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.106. HISTORICAL NET PRICE. (a) For purposes of determining the historical net price for a prescription drug, the allocation of price concessions is determined by the dollar value for non-product specific and product-specific rebates, discounts, chargebacks, fees, and other price concessions to the extent that the total amount of any such price concession is known to the health benefit plan issuer or administrator at the time of publication of the historical net price under Section 1662.103(a)(3)(D).

(b) To the extent that the total amount of any non-product specific and product-specific rebates, discounts, chargebacks, fees, or other price concessions is not known to a health benefit plan issuer or administrator at the time of publication of the historical net price under Section 1662.103(a)(3)(D), the issuer or administrator shall allocate those price concessions by using a good faith, reasonable estimate of the average price concessions based on the price concessions received over a period before the current reporting period and of equal duration to the current reporting period.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.107. REQUIRED METHOD AND FORMAT FOR DISCLOSURE. The machine-readable files described by Section 1662.103 must be available in a form and manner prescribed by department rule. The files must be available and accessible to any person free of charge and without conditions, including establishment of a user account,

password, or other credentials, or submission of personally identifiable information to access the file.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.108. FILE UPDATES. A health benefit plan issuer or administrator shall update the machine-readable files described by Section 1662.103 and the information described by this subchapter monthly. The issuer or administrator must clearly indicate in the files the date that the files were most recently updated.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.109. OTHER CONTRACTUAL AGREEMENTS. (a) A health benefit plan issuer or administrator may satisfy the requirements of this subchapter by entering into a written agreement under which another person, including a third-party administrator or health care claims clearinghouse, provides the disclosure required under this subchapter in compliance with this subchapter.

(b) If a health benefit plan issuer or administrator and another person enter into an agreement under Subsection (a), the issuer or administrator is subject to an enforcement action for failure to provide a required disclosure in accordance with this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

Sec. 1662.110. COMPLIANCE WITH SUBCHAPTER. (a) A health benefit plan issuer or administrator that, acting in good faith and with reasonable diligence, makes an error or omission in a disclosure required under this subchapter does not fail to comply with this subchapter solely because of the error or omission if the issuer or administrator corrects the error or omission as soon as practicable.

(b) A health benefit plan issuer or administrator, acting in good faith and with reasonable diligence, does not fail to comply

with this subchapter solely because the issuer's or administrator's Internet website is temporarily inaccessible if the issuer or administrator makes the information available as soon as practicable.

(c) To the extent compliance with this subchapter requires a health benefit plan issuer or administrator to obtain information from another person, the issuer or administrator does not fail to comply with the subchapter because the issuer or administrator relies in good faith on information from the other person unless the issuer or administrator knows or reasonably should have known that the information is incomplete or inaccurate.

Added by Acts 2021, 87th Leg., R.S., Ch. 333 (H.B. 2090), Sec. 3, eff. September 1, 2021.

SUBTITLE K. CERTAIN BENEFITS AND ARRANGEMENTS THAT ARE NOT INSURANCE

CHAPTER 1681. HEALTH CARE SHARING MINISTRIES

Sec. 1681.001. TREATMENT AS HEALTH CARE SHARING MINISTRY. A faith-based, nonprofit organization that is tax-exempt under the Internal Revenue Code of 1986 qualifies for treatment as a health care sharing ministry under this chapter if it:

(1) limits its participants to individuals of a similar faith;

(2) acts as a facilitator among participants who have medical bills and matches those participants with other participants with the present ability to assist those with medical bills in accordance with criteria established by the health care sharing ministry;

(3) provides for the medical bills of a participant through contributions from one participant to another;

(4) provides amounts that participants may contribute with no assumption of risk or promise to pay among the participants and no assumption of risk or promise to pay by the health care sharing ministry to the participants;

(5) provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution;

(6) discloses administrative fees and costs to

participants;

(7) provides that any card issued to a participant for the purpose of presentation to a health care provider clearly indicates that the participant is part of a health care sharing ministry that is not engaging in the business of insurance;

(8) provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the ministry that complies with Section 1681.002; and

(9) does not operate a discount health care program as defined by Section 7001.001.

Added by Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 1, eff. June 14, 2013.

Sec. 1681.002. NOTICE. To qualify as a health care sharing ministry under this chapter, the notice described by Section 1681.001(8) must read substantially as follows:

"Notice: This health care sharing ministry facilitates the sharing of medical expenses and is not an insurance company, and neither its guidelines nor its plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. As such, participation in the ministry or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payment for medical expenses or whether this ministry continues to operate, you are always personally responsible for the payment of your own medical bills. Complaints concerning this health care sharing ministry may be reported to the office of the Texas attorney general."

Added by Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 1, eff. June 14, 2013.

Sec. 1681.003. EXEMPTION. Notwithstanding any other provision of this code, a health care sharing ministry that acts in accordance with this chapter is not considered to be engaging in the business of insurance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 1, eff. June 14, 2013.

CHAPTER 1682. HEALTH BENEFITS PROVIDED BY CERTAIN NONPROFIT AGRICULTURAL ORGANIZATIONS

Sec. 1682.001. DEFINITIONS. In this chapter:

(1) "Nonprofit agricultural organization" means an organization that:

(A) is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(5) of that code;

(B) is domiciled in this state;

(C) was in existence prior to 1940;

(D) is composed of members who are residents of at least 98 percent of the counties in this state;

(E) collects annual dues from its members; and

(F) was created to promote and develop the most profitable and desirable system of agriculture and the most wholesome and satisfactory conditions of rural life in accordance with its articles of organization and bylaws.

(2) "Nonprofit agricultural organization health benefits" means health benefits:

(A) sponsored by a nonprofit agricultural organization or an affiliate of the organization;

(B) offered only to:

(i) members of the nonprofit agricultural organization; and

(ii) family members of members of the nonprofit agricultural organization;

(C) that are not provided through an insurance policy or other product the offering or issuance of which is regulated as the business of insurance in this state; and

(D) that are deemed by the nonprofit agricultural organization to be important in assisting its members to live long and productive lives.

(3) "Preexisting condition" means a condition present before the effective date of an individual's enrollment in nonprofit agricultural organization health benefits.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 3, eff. September 1, 2021.

Sec. 1682.002. NONPROFIT AGRICULTURAL ORGANIZATION HEALTH BENEFITS AUTHORIZED. A nonprofit agricultural organization or an affiliate of the organization may offer in this state nonprofit agricultural organization health benefits.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 3, eff. September 1, 2021.

Sec. 1682.003. WAITING PERIOD FOR PREEXISTING CONDITION. Notwithstanding any other provision of this chapter, a nonprofit agricultural organization that offers nonprofit agricultural organization health benefits may not require a waiting period of more than six months for treatment of a preexisting condition otherwise included in nonprofit agricultural organization health benefits.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 3, eff. September 1, 2021.

Sec. 1682.004. REQUIRED DISCLOSURE BY NONPROFIT AGRICULTURAL ORGANIZATION. (a) A nonprofit agricultural organization that offers nonprofit agricultural organization health benefits must provide to an individual applying for nonprofit agricultural organization health benefits written notice that the benefits are not provided through an insurance policy or other product the offering or issuance of which is regulated as the business of insurance in this state.

(b) An individual must sign and return to the nonprofit agricultural organization the notice described by Subsection (a) before the individual may enroll in nonprofit agricultural organization health benefits. The nonprofit agricultural organization must:

(1) maintain a copy of the signed written notice for the duration of the term during which the nonprofit agricultural organization health benefits are provided to the individual; and

(2) at the request of the individual, provide a copy of the written notice to the individual.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 3, eff. September 1, 2021.

Sec. 1682.005. NONPROFIT AGRICULTURAL ORGANIZATION NOT ENGAGED IN BUSINESS OF HEALTH INSURANCE. Notwithstanding any other provision of this code, for the purposes of offering nonprofit agricultural organization health benefits, a nonprofit agricultural organization that acts in accordance with this chapter is not a health insurer and is not engaging in the business of health insurance in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 3, eff. September 1, 2021.

Sec. 1682.006. RISK TRANSFER OR COVERAGE. A nonprofit agricultural organization that offers nonprofit agricultural organization health benefits under this chapter may contract with a company authorized to engage in the business of insurance in this state that is not under common control with the nonprofit agricultural organization to:

(1) transfer to that company all or a portion of the organization's risks arising from nonprofit agricultural organization health benefits offered under this chapter; or

(2) obtain insurance coverage from the company guarantying the nonprofit agricultural organization's obligations arising from nonprofit agricultural organization health benefits offered under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1034 (H.B. 3924), Sec. 3, eff. September 1, 2021.

SUBTITLE L. QUALIFIED HEALTH PLAN MANDATORY DISCLOSURES

CHAPTER 1693. QUALIFIED HEALTH PLAN IDENTIFICATION CARDS

Sec. 1693.001. DEFINITIONS. Except as provided by Section 1693.003, in this chapter, "enrollee," "exchange," "qualified health plan," and "qualified health plan issuer" have the meanings assigned by 45 C.F.R. Section 155.20 as that section existed on January 1, 2015.

Added by Acts 2015, 84th Leg., R.S., Ch. 732 (H.B. 1514), Sec. 1, eff. September 1, 2015.

Sec. 1693.002. REQUIRED INFORMATION. An identification card or other similar document issued by a qualified health plan issuer to an enrollee of a qualified health plan purchased through an exchange must, in addition to any requirement under other law, including Sections 843.209, 1301.162, and 1369.153, display on the card or document in a location of the issuer's choice the acronym "QHP."

Added by Acts 2015, 84th Leg., R.S., Ch. 732 (H.B. 1514), Sec. 1, eff. September 1, 2015.

Sec. 1693.003. COMMISSIONER DETERMINATIONS REGARDING FEDERAL REGULATIONS. (a) The commissioner shall monitor 45 C.F.R. Section 155.20 for amendments to the definitions listed in Section 1693.001 and determine if it is in the best interest of the state to adopt an amended definition for purposes of this chapter. If the commissioner determines that it is in the best interest of the state to adopt the amended definition, the commissioner by rule shall adopt the amended definition.

(b) In making the determination about an amendment, the commissioner shall consider, in addition to other factors affecting the public interest, the beneficial and adverse effects the amendment may have on:

(1) individuals who are receiving medical care and health care services in this state; and

(2) health care providers and physicians.

Added by Acts 2015, 84th Leg., R.S., Ch. 732 (H.B. 1514), Sec. 1, eff. September 1, 2015.

Sec. 1693.004. REPORT TO LEGISLATURE. The commissioner shall prepare a report of a determination made under Section 1693.003, including an explanation of the reasons for the determination, and file the report with the presiding officer of each house of the legislature not later than the 30th day after the date the determination is made.

Added by Acts 2015, 84th Leg., R.S., Ch. 732 (H.B. 1514), Sec. 1, eff. September 1, 2015.

Sec. 1693.005. RULES. The commissioner may adopt rules as necessary to administer and enforce this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 732 (H.B. 1514), Sec. 1, eff. September 1, 2015.

SUBTITLE M. FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT

CHAPTER 1695. LEGISLATIVE CONSIDERATIONS

Sec. 1695.001. CONSTITUTIONALITY OF PATIENT PROTECTION AND AFFORDABLE CARE ACT. This subtitle does not constitute an acknowledgment by the legislature of the legitimacy of the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as a constitutional exercise of the power of the United States Congress.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 1, eff. December 1, 2017.

CHAPTER 1696. COVERAGE FOR ELECTIVE ABORTION; PROHIBITIONS AND REQUIREMENTS

Sec. 1696.001. DEFINITIONS. In this chapter:

(1) "Elective abortion" means an abortion, as defined by Section 245.002, Health and Safety Code, other than an abortion performed due to a medical emergency as defined by Section 171.002, Health and Safety Code.

(2) "Health benefit exchange" means an American Health Benefit Exchange administered by the federal government or created under Section 1311(b) of the Patient Protection and Affordable Care Act (42 U.S.C. Section 18031(b)).

(3) "Qualified health plan" has the meaning assigned by Section 1301(a) of the Patient Protection and Affordable Care Act (42 U.S.C. Section 18021(a)).

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 1, eff. December 1, 2017.

Sec. 1696.002. PROHIBITED COVERAGE THROUGH HEALTH BENEFIT EXCHANGE. (a) A qualified health plan offered through a health benefit exchange may not provide coverage for elective abortion.

(b) This section does not prevent a person from purchasing optional or supplemental coverage for elective abortion under a health benefit plan other than a qualified health plan offered through a health benefit exchange.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 5 (H.B. 214), Sec. 1, eff. December 1, 2017.

SUBTITLE N. RATES

CHAPTER 1698. RATES FOR CERTAIN COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1698.001. APPLICABILITY OF CHAPTER. This chapter applies only to rates for the following health benefit plans:

(1) an individual major medical expense insurance policy to which Chapter 1201 applies;

(2) individual health maintenance organization coverage; or

(3) a small employer health benefit plan provided under Chapter 1501.

Added by Acts 2021, 87th Leg., R.S., Ch. 877 (S.B. 1296), Sec. 1, eff. September 1, 2021.

Sec. 1698.002. APPLICABILITY OF OTHER LAWS GOVERNING RATES. The requirements of this chapter are in addition to any other provision of this code governing health benefit plan rates. Except as otherwise provided by this chapter, in the case of a conflict between this chapter and another provision of this code, this chapter controls.

Added by Acts 2021, 87th Leg., R.S., Ch. 877 (S.B. 1296), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. REVIEW OF RATES

Sec. 1698.051. REVIEW OF PREMIUM RATES. (a) In this section:

(1) "Individual health benefit plan" means:

(A) an individual accident and health insurance policy to which Chapter 1201 applies; or

(B) individual health maintenance organization coverage.

(2) "Small employer health benefit plan" has the meaning assigned by Section 1501.002.

(b) The commissioner by rule shall establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with this chapter and other applicable state and federal law, including 42 U.S.C. Sections 300gg, 300gg-94, and 18032(c) and those sections' implementing regulations, including rules establishing geographic rating areas.

Added by Acts 2021, 87th Leg., R.S., Ch. 877 (S.B. 1296), Sec. 1, eff. September 1, 2021.

Sec. 1698.052. ADDITIONAL RULES AND GUIDANCE RELATED TO INDIVIDUAL HEALTH PLAN RATES. (a) In this section, "qualified health plan" has the meaning assigned by Section 1301(a), Patient Protection and Affordable Care Act (42 U.S.C. Section 18021).

(b) The commissioner shall adopt rules and provide guidance regarding additional requirements related to individual health benefit plans, including qualified health plans, to address the following factors:

(1) whether the plan issuer has complied with all requirements for pooling risk and participating in risk adjustment programs in effect under state or federal law;

(2) the covered benefits or health benefit plan design or, for a rate change, any changes to the benefits or design;

(3) the allowable variations for case characteristics, risk classifications, and participation in programs promoting wellness; and

(4) any other factor listed in 45 C.F.R. Section 154.301(a)(4) to the extent applicable.

(c) In making a determination under this section regarding a proposed rate for a qualified health plan, the commissioner shall consider, in addition to the factors under Subsection (b), the following factors:

(1) the purchasing power of consumers who are eligible for

a premium subsidy under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148);

(2) if the plan is in the silver level, as described by 42 U.S.C. Section 18022(d), whether the rate is appropriate for the plan in relation to the rates charged for qualified health plans offering different levels of coverage, taking into account any funding or lack of funding for cost-sharing reductions and the covered benefits for each level of coverage; and

(3) whether the plan issuer utilized the induced demand factors developed by the Centers for Medicare and Medicaid Services for the risk adjustment program established under 42 U.S.C. Section 18063 for the level of coverage offered by the plan or any state-specific induced demand factors established by department regulations.

(d) The commissioner may consider the following factors:

(1) if the commissioner determines appropriate for comparison purposes, medical claims trends reported by plan issuers in this state or in a region of this country or the country as a whole; and

(2) inflation indexes.

Added by Acts 2021, 87th Leg., R.S., Ch. 877 (S.B. 1296), Sec. 1, eff. September 1, 2021.

Sec. 1698.053. PLAN DESIGN FLEXIBILITY WITHIN RATING AREAS. Notwithstanding any other provision of this code, a health benefit plan issuer may:

(1) offer different plan designs by rating area to individuals and small employers; and

(2) provide network access beyond the geographic rating area.

Added by Acts 2021, 87th Leg., R.S., Ch. 877 (S.B. 1296), Sec. 1, eff. September 1, 2021.

Sec. 1698.054. FEDERAL ACTUARIAL LEVELS AND PLAN COST-SHARING. Notwithstanding any other provision of this code, a health benefit plan issuer may offer plan designs with deductibles, coinsurance, and other cost-sharing mechanisms necessary to comply with federal

actuarial values in the individual and small group market in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 877 (S.B. 1296), Sec. 1, eff. September 1, 2021.

Sec. 1698.055. FEDERAL FUNDING. The commissioner shall seek all available federal funding to cover the cost to the department of reviewing rates under this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 877 (S.B. 1296), Sec. 1, eff. September 1, 2021.

TITLE 9. PROVISIONS APPLICABLE TO LIFE AND HEALTH COVERAGES

CHAPTER 1701. POLICY FORMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1701.001. DEFINITION. In this chapter, "use" includes issue and deliver.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.002. APPLICABILITY OF CHAPTER TO FORMS OF CERTAIN DOCUMENTS. This chapter applies to the form of the following document:

(1) a policy, contract, or certificate of:

(A) accident or health insurance, including group accident or health insurance;

(B) medical or surgical insurance, including group medical or surgical insurance;

(C) life or term insurance, including group life or term insurance;

(D) endowment insurance;

(E) industrial life insurance; or

(F) fraternal benefit insurance;

(2) an annuity or pure endowment contract, including a group annuity contract;

(3) an application attached or required to be attached to the policy, contract, or certificate; or

(4) a rider or endorsement to be attached to, printed on, or used in connection with the policy, contract, or certificate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.003. APPLICABILITY OF CHAPTER TO CERTAIN INSURERS. (a) Except as provided by Subsection (b), this chapter applies to any insurer that uses a document described by Section 1701.002 in this state, including:

(1) a life, accident, health, or casualty insurance company;

(2) a mutual life insurance company;

(3) a mutual insurance company other than a mutual life insurance company;

(4) a mutual or natural premium life insurance company;

(5) a general casualty company;

(6) a Lloyd's plan;

(7) a reciprocal or interinsurance exchange;

(8) a fraternal benefit society; and

(9) a group hospital service corporation.

(b) This chapter does not apply to a society, company, or other insurer whose activities are by statute exempt from department control and that is entitled by statute to a certificate from the department showing that exempt status.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.004. CONSTRUCTION OF CHAPTER. This chapter may not be construed to enlarge the powers of an insurer subject to this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.005. EXEMPTIONS. (a) This chapter does not apply to:

(1) a rider or endorsement that is used at the request of the holder of a policy, contract, or certificate subject to this chapter and that relates to:

(A) the manner of distribution of benefits under the policy, contract, or certificate; or

(B) the reservation of rights and benefits under the policy, contract, or certificate; or

(2) the modification of a previously approved insurance policy form for the sole purpose of adding the statement required by Section 154.2021(a)(3), Finance Code.

(b) The commissioner by written order may exempt a document from the requirements of this chapter for the period the commissioner considers proper if the commissioner determines that:

(1) this chapter may not practically be applied to the document;

(2) the document's preparation, use, and meaning have become routine or commonplace; or

(3) the filing and approval of the form of the document are not desirable, appropriate, required, or necessary for the protection of the public.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 34, eff. September 1, 2009.

Sec. 1701.006. EXEMPTION FOR CERTAIN GROUP ANNUITY TRANSACTIONS. (a) The filing and approval requirements in this chapter do not apply to any group annuity policy, certificate, or contract written or issued by an insurer authorized to engage in the business of insurance in this state that involves use of a separate account if benefits would also have guarantees from an insurer's general account.

(b) For purposes of this section, a group annuity policy, certificate, or contract includes a single premium group annuity policy, certificate, or contract that is negotiated between an insurer and an applicable group or plan sponsor.

Added by Acts 2023, 88th Leg., R.S., Ch. 412 (H.B. 1587), Sec. 3, eff. June 9, 2023.

SUBCHAPTER B. FILING REQUIREMENT

Sec. 1701.051. FILING REQUIRED. (a) Except as provided by Section 1701.005, an insurer may not use a document described by Section 1701.002 in this state unless the form of the document is filed with the department in accordance with this chapter.

(b) Except as provided by Section 1701.052, the insurer must file the form of the document not later than the 60th day before the date the document is used.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.052. FILE AND USE. (a) An insurer may use a document described by Section 1701.002 immediately after the form of the document is filed if the form, when filed, is accompanied by a certification that meets the requirements of Subsection (b).

(b) The certification accompanying a form must:

(1) be signed by:

(A) an attorney licensed to practice law in this state;

(B) an actuary familiar with the requirements of this code and applicable rules adopted under this code;

(C) the chief executive officer of the insurer; or

(D) an individual designated by the chief executive officer of the insurer; and

(2) affirm that:

(A) the certification is made on behalf of the insurer filing the form;

(B) the insurer is bound by the certification;

(C) the individual making the certification has reviewed the form; and

(D) to the best knowledge, information, and belief of the individual making the certification, the form complies with this code and rules applicable to the form.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.053. FILING FEE. (a) The department shall collect a fee in an amount determined by the commissioner for the filing of the form of a document under this chapter.

(b) The fee may not exceed:

(1) $100 for filing the form of a new or amended document

that is not exempt from review under Section 1701.005(b); and

(2) $50 for filing the form of a new or amended document that is exempt from review under Section 1701.005(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.054. APPROVAL OF FORM. (a) A form filed under this chapter that is not affirmatively approved or disapproved in a written order of the commissioner on or before the 60th day after the date the form is filed is considered approved on the 61st day after the date of filing unless the approval period is extended under this section.

(b) An insurer may request in writing that the approval period for a form be extended for an additional period not to exceed 45 days.

(c) An extension requested under this section is considered granted on the date the department receives the request.

(d) Only one extension may be granted under this section.

(e) If an extension is granted under this section and the commissioner does not affirmatively approve or disapprove the form before the extended period expires, the form is considered approved on the day after the date the extended period expires.

(f) If the commissioner approves a form that is filed without a certification meeting the requirements of Section 1701.052(b) before the expiration of the approval period, including any extension, the remaining portion of the period is waived.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.055. DISAPPROVAL OF FORM OR WITHDRAWAL OF APPROVAL OR EXEMPTION. (a) Except as provided by Subsection (d), the commissioner may disapprove or, after notice and hearing, withdraw approval of a form if the form:

(1) violates this code, a rule of the commissioner, or any other law; or

(2) contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive.

(b) A form filed under this chapter that contains a coordination of benefits provision may not be approved for use in

this state unless the form provides for the order of benefits determination for insured dependent children. An order of benefits determination provision may not be approved if the provision:

(1) violates this code, a rule of the commissioner, or any other law; or

(2) contains a provision, title, or heading that is unjust, encourages misrepresentation, or is deceptive.

(c) If necessary to accomplish the purpose of Subsection (b), the commissioner may adopt a policy provision and order the inclusion of that provision in a document subject to that subsection.

(d) If a form has been on file with the department for at least 180 days and has previously been affirmatively approved by the commissioner, been considered approved under this chapter, or been exempted from the approval requirements under this chapter, the commissioner may withdraw the approval or exemption only if:

(1) the form violates this code or a rule adopted under this code; or

(2) the commissioner finds proof of gross misrepresentation or fraud to a policyholder.

(e) An order of the commissioner disapproving or withdrawing approval for a form must state the grounds for the disapproval or withdrawal of approval and describe in adequate detail the changes that are necessary to obtain approval.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.056. USE OF DISAPPROVED FORM PROHIBITED. An insurer who receives written notice that a form filed by the insurer has been disapproved by the commissioner shall immediately stop using the form.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.057. WITHDRAWAL OF INDIVIDUAL ACCIDENT AND HEALTH INSURANCE POLICY FORM APPROVAL. (a) Except as provided by Subsection (b), the commissioner may, after notice and hearing, withdraw approval of an individual accident and health insurance policy form if, after consideration of all relevant facts, the commissioner determines that:

(1) the benefits provided under the form are unreasonable in relation to the premium charged; or

(2) the reserve required by Section 862.102 is not maintained by the insurer on the policies issued on the form.

(b) If an individual accident and health insurance policy form has been on file with the department for at least 360 days and has been affirmatively approved by the commissioner, been considered approved under this chapter, or been exempted from the approval requirements of this chapter, the commissioner may withdraw the approval or exemption only if:

(1) the form violates this code or a rule adopted under this code; or

(2) the commissioner finds proof of gross misrepresentation or fraud to a policyholder.

(c) To enable the department to determine compliance with Subsection (b), the commissioner:

(1) shall require an insurer to file the rates charged by that insurer for individual accident and health insurance policies; and

(2) may adopt and require an insurer to file in conjunction with the annual statement required under Section 841.255, 982.101, or 982.103 a form for reporting the insurer's experience on individual accident and health insurance policy forms issued by the insurer.

(d) The commissioner shall, in accordance with Section 1201.007, adopt reasonable rules necessary to establish standards under which the approval of an individual accident and health insurance policy form may be withdrawn.

(e) This section does not grant the commissioner the authority to determine, fix, prescribe, or promulgate rates to be charged for an individual accident and health insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.058. RECONSIDERATION OF FORM. (a) Not later than the 45th day after the date of an order of the commissioner disapproving or withdrawing approval of a form under Section 1701.055, an insurer may correct the deficiencies described by the order and file the corrected form with the department for reconsideration by the commissioner.

(b) If the commissioner does not approve or disapprove a form filed for reconsideration under this section on or before the 45th day after the date the form is filed, the form is considered approved on the 46th day after the date the form is filed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.059. REPLACEMENT OR AMENDMENT OF DOCUMENT. The commissioner may order an insurer to replace a document described by Section 1701.002 with a corrected document or to amend and correct the document by endorsement or rider if:

(1) the commissioner disapproves or withdraws approval of the form of the document under Section 1701.055(a); or

(2) the document is used before the form was approved under this chapter and corrections must be made to the document to bring the document into compliance with this code and rules of the commissioner before the commissioner will approve the form of the document.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.060. GENERAL RULEMAKING AUTHORITY. (a) The commissioner may adopt reasonable rules necessary to implement the purposes of this chapter, including, after notice and hearing, rules that establish procedures and criteria under which:

(1) each type of form submitted to the department under this chapter will be reviewed and approved by the commissioner or exempted under Section 1701.005(b); and

(2) particular types of forms designated by the commissioner may be given a summary review and approval if considered appropriate by the commissioner to expedite review and approval of those forms.

(b) A rule adopted under this chapter may not be repealed or amended until after the first anniversary of the date the rule was adopted unless the commissioner determines that repeal or amendment is in the significant and material interests of the citizens of this state or is necessary as a result of legislative enactment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.076(a), eff. September 1, 2005.

Sec. 1701.061. NONINSURANCE BENEFITS. (a) In this section, "noninsurance benefit" means a good or service provided or disclosed as part of a policy or certificate of insurance that is reasonably related to the type of policy or certificate being issued. Examples of noninsurance benefits include:

(1) discount cards for health care programs, vision care programs, dental care programs, prescriptions, physical fitness programs or facilities, or other similar programs;

(2) financial planning, will preparation, or similar services; and

(3) contributions for educational savings on behalf of a policyholder or certificate holder.

(b) An insurer may include a noninsurance benefit that is reasonably related to a policy or certificate as part of the policy or certificate form to be issued to an insured or certificate holder.

(c) A policy form filing that includes a noninsurance benefit shall include:

(1) a description of the noninsurance benefit;

(2) a notice that fully discloses the noninsurance benefit to the policyholder or certificate holder; and

(3) an explanation of any condition on which termination of the noninsurance benefit will occur.

(d) Section 541.061 applies to a noninsurance benefit provided as part of a policy or certificate.

(e) Section 1102.002 does not apply to a noninsurance benefit provided as part of a policy or certificate.

(f) The commissioner may adopt rules to implement this section, including rules to:

(1) determine which noninsurance benefits are reasonably related to the types of insurance subject to this chapter;

(2) ensure that noninsurance benefits included as part of a policy or certificate are not unfairly deceptive or do not otherwise constitute a prohibited inducement; and

(3) address application of other chapters of this code to noninsurance benefits provided as part of a policy or certificate,

including Chapters 82-84, 222, 257, 463, 541-544, 1501, and 1506.

Added by Acts 2007, 80th Leg., R.S., Ch. 695 (H.B. 1847), Sec. 1, eff. June 15, 2007.

Sec. 1701.062. DISCRETIONARY CLAUSES PROHIBITED. (a) An insurer may not use a document described by Section 1701.002 in this state if the document contains a discretionary clause.

(b) A discretionary clause includes a provision that:

(1) purports or acts to bind the claimant to, or grant deference in subsequent proceedings to, adverse eligibility or claim decisions or policy interpretations by the insurer; or

(2) specifies:

(A) that a policyholder or other claimant may not contest or appeal a denial of a claim;

(B) that the insurer's interpretation of the terms of a document or decision to deny coverage or the amount of benefits is binding upon a policyholder or other claimant;

(C) that in an appeal, the insurer's decision about or interpretation of the terms of a document or coverage is binding; or

(D) a standard of review in any appeal process that gives deference to the original claim decision or provides standards of interpretation or review that are inconsistent with the laws of this state, including the common law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 560 (H.B. 3017), Sec. 2, eff. June 17, 2011.

SUBCHAPTER C. SANCTIONS; APPLICABILITY OF OTHER LAWS

Sec. 1701.101. RESTITUTION. (a) The commissioner may order an insurer to make complete restitution to each insured of this state who is financially damaged by the insurer's use of a form filed and used but not approved under this chapter if, after notice and opportunity for hearing, the commissioner determines:

(1) the form does not comply with this code and the rules of the commissioner;

(2) use of the form resulted in financial damage to an insured of this state; and

(3) the insurer intentionally used the form with the

knowledge that it did not comply with this code and the rules of the commissioner.

(b) The commissioner may determine the form and amount of restitution ordered under this section and the period in which the restitution must be made.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.102. LIMIT ON SANCTIONS. Except as provided by Section 1701.101, the commissioner may not impose penalties or other sanctions on an insurer for the issuance of a document the form of which is filed under Section 1701.052.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

Sec. 1701.103. APPLICABILITY OF OTHER LAWS. Except as provided by Section 1701.102, this chapter may not be construed to limit the applicability of any other statute.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

SUBCHAPTER D. CERTAIN POLICY APPLICATION FORMS

Sec. 1701.151. POLICY APPLICATION FORM FOR INDIVIDUAL ACCIDENT AND HEALTH POLICY. A policy application form that is required to be or that is attached to an individual accident and health policy shall comply with the rules of the commissioner adopted under Chapter 1201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 5, eff. April 1, 2005.

TITLE 10. PROPERTY AND CASUALTY INSURANCE

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 1802. PROPERTY AND CASUALTY INSURANCE INITIATIVES TASK FORCE

Sec. 1802.001. PROPERTY AND CASUALTY INSURANCE INITIATIVES TASK FORCE. (a) The commissioner may establish a task force to study the utility and feasibility of instituting various property and casualty insurance initiatives in this state.

(b) The initiatives studied may include:

(1) possible coordination with:

(A) the Texas Economic Development Bank to make certain property and casualty insurance an enterprise zone program under Chapter 2303, Government Code; and

(B) Neighborhood Housing Service (NHS) programs to establish voluntary NHS-Insurance Industry Partnerships;

(2) possible insurance agent programs to increase minority agency access to standard insurance companies, including minority intern programs with insurance companies;

(3) possible tax incentives for insurance written in underserved areas; and

(4) a consumer education program designed to increase the ability of consumers to differentiate among different products and providers in the property and casualty insurance market.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 1803. REPORTS OF INSURANCE COVERAGE FOR STATE AGENCIES

Sec. 1803.001. DEFINITIONS. In this chapter:

(1) "Insurer" means an insurance company or other entity that is authorized by the department to engage in the business of insurance in this state, including:

(A) a reciprocal or interinsurance exchange;

(B) a mutual insurance company;

(C) a county mutual insurance company; and

(D) a Lloyd's plan.

(2) "State agency" has the meaning assigned by Section 412.001, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1803.002. REPORTING REQUIREMENTS. (a) Each insurer that enters into an insurance policy or other contract or agreement with a state agency for the purchase by the state agency of property, casualty, or liability insurance coverage, including a policy, contract, or agreement subject to competitive bidding requirements, shall report to the State Office of Risk Management the intended sale

of the insurance coverage.

(b) The insurer shall report the intended sale of the insurance coverage not later than the 30th day before the date the sale is scheduled to occur in the manner prescribed by the State Office of Risk Management.

(c) The State Office of Risk Management may require an insurer to submit copies of insurance forms, policies, and other relevant information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1803.003. FAILURE TO REPORT. An insurer that fails to comply with the reporting requirements of this chapter is subject to sanctions under Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1803.004. RULES. The State Office of Risk Management shall adopt rules as necessary to implement this chapter. The office shall consult with the commissioner in adopting rules.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 1804. RATES AND FORMS FOR NATIONAL DEFENSE PROJECTS

Sec. 1804.001. APPLICABILITY OF CHAPTER. This chapter applies only to insurance in relation to a national defense project in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1804.002. SPECIAL RATES AND RATING PLANS FOR CASUALTY INSURANCE. (a) The commissioner may promulgate special rates and special rating plans for workers' compensation insurance, automobile

insurance, and other lines of casualty insurance, to apply only to the construction or operation of a national defense project.

(b) The commissioner may promulgate the special rates and special rating plans separately for each class of insurance or in combination for all classes of insurance.

(c) The commissioner may adopt rules as may be necessary, proper, or advisable to place in effect special rates and special rating plans promulgated under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1804.003. SPECIAL RATES AND FORMS FOR MATERIAL DAMAGE INSURANCE. (a) The commissioner may promulgate special rates and forms for fire insurance, windstorm insurance, and other kinds of material damage insurance required or used on a national defense project.

(b) The commissioner may adopt rules incidental to the business described by Subsection (a) and necessary to place in effect special rates and forms promulgated under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 1805. JOINT UNDERWRITING AND ADVISORY ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1805.001. APPLICABILITY OF CHAPTER. This chapter applies to the kinds of insurance and insurers subject to:

(1) Section 403.002;

(2) Section 941.003 with respect to the application of a law described by Section 941.003(b)(1) or (c);

(3) Section 942.003 with respect to the application of a law described by Section 942.003(b)(1) or (c);

(4) Subchapter A, B, or C, Chapter 5;

(5) Subchapter H, Chapter 544;

(6) Subchapter A, Chapter 2301;

(7) Chapter 252, 253, 254, 255, 426, 1806, 1807, 2001, 2002, 2003, 2004, 2005, 2006, 2008, 2051, 2052, 2053, 2055, 2171, 2251, or 2252;

(8) Subtitle B or C, Title 10; or

(9) Chapter 2154, Occupations Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.001, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(e), eff. September 1, 2007.

SUBCHAPTER B. ADVISORY ORGANIZATIONS

Sec. 1805.051. LICENSE APPLICATION. (a) A corporation, unincorporated association, partnership, or individual may file with the commissioner an application for an advisory organization license for the kinds of insurance specified in the application.

(b) The applicant must:

(1) file with the commissioner:

(A) a copy of the applicant's:

(i) constitution and bylaws;

(ii) article of agreement or association or certificate of incorporation; and

(iii) rules governing the applicant's activities as an advisory organization; and

(B) a statement of qualifications to act as an advisory organization; and

(2) pay a $100 license fee.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.052. ISSUANCE OF LICENSE; TERM. (a) The commissioner shall issue a license to an applicant the commissioner determines is qualified, without regard to:

(1) the state of domicile or residence of the applicant; or

(2) the location of the applicant's place of business.

(b) The commissioner shall grant or deny a license to an applicant not later than the 60th day after the date the commissioner receives the application.

(c) A license issued under this subchapter remains in effect until the commissioner suspends or revokes the license.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.053. INFORMATION REPORTED BY ADVISORY ORGANIZATION. (a) An advisory organization may file with the commissioner prospective loss costs, supplementary rating information, and policy forms. A filing made by an advisory organization under this section is subject to the provisions of this code or other insurance laws of this state governing rate filings.

(b) An advisory organization at least quarterly shall file with the commissioner a list of:

(1) each subscriber company engaging in business in this state; and

(2) the products or information the subscriber company purchases.

(c) On request by the commissioner, an advisory organization shall provide to the department a summary of the actuarial assumptions, trend factors, economic factors, and other criteria used in trending data for companies engaging in business in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.054. INSURER'S AUTHORITY TO SUBSCRIBE TO ADVISORY ORGANIZATION. An insurer engaging in business in this state may subscribe to an advisory organization.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.055. SUBMISSION, RECEIPT, AND USE OF INFORMATION BY INSURER. (a) Except as provided by Subsection (b), an insurer may submit to or receive from an advisory organization the following only if the advisory organization holds a license issued under this subchapter:

(1) statistical plans;
(2) historical data;
(3) prospective loss costs;
(4) supplementary rating information;
(5) policy forms and endorsements;
(6) research;
(7) rates of individual insurers that are effective at the time the information is submitted or received or that were previously in effect; and
(8) performance of inspections.

(b) An insurer may not:
(1) accept from an advisory organization recommendations for rates; or
(2) submit to or receive from an advisory organization recommendations for profit or expenses other than loss adjustment expenses.

(c) An insurer that subscribes to an advisory organization may use prospective loss costs, supplementary rating information, and policy forms filed by the advisory organization under Section 1805.053(a) and may incorporate the information into the insurer's filings.

(d) Notwithstanding any other law, an insurer that reports data under this subchapter is not relieved of the responsibility of reporting that data directly to the department at the department's request.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.056. AUDIT. (a) The department shall require an annual audit of an advisory organization that provides statistics or other information to the department in a proceeding to set rates.

(b) The audit must:
(1) be conducted at the expense of the advisory organization under rules adopted by the commissioner; and
(2) examine the advisory organization's method of collecting, analyzing, and reporting data to ensure the accuracy of data.

(c) The audit may examine source documents within individual

companies.

(d) Except for individual company information, an audit is public information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.057. RATE FILING REVIEW. The commissioner may:

(1) review the rate filing of an insurer that relies on the prospective loss costs provided by an advisory organization; and

(2) require the insurer to provide the insurer's actual data and loss experience in addition to the information provided by the advisory organization.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.058. PROHIBITED ACTS. (a) An advisory organization may not compile or distribute recommendations for:

(1) rates; or

(2) profit or expenses other than loss adjustment expenses.

(b) An insurer or advisory organization may not:

(1) attempt to monopolize, combine, or conspire with another person to monopolize an insurance market;

(2) engage in a boycott, on a concerted basis, of an insurance market; or

(3) make an agreement with another insurer, advisory organization, or person if the agreement has the purpose or effect of restraining trade unreasonably or substantially lessening competition in the business of insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.059. DISCIPLINARY ACTION. (a) If, after a hearing, the commissioner determines that the furnishing of specified services by an advisory organization involves an act or practice that is unfair, unreasonable, or otherwise inconsistent with this chapter or

other applicable laws of this state, the commissioner may issue a written order:

(1) specifying the manner in which the act or practice is unfair, unreasonable, or inconsistent with the applicable law; and

(2) requiring the advisory organization to discontinue the act or practice.

(b) In addition to any other remedies available at law, the commissioner may impose a sanction authorized under Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.060. SUNSET REVIEW. During the period in which the Sunset Advisory Commission performs its review of the department under Chapter 325, Government Code, the commission shall review the authority granted under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.061. CONFLICT WITH OTHER LAW. To the extent this subchapter conflicts with Section 2053.052(c), 2053.055, 2053.151, 2053.152, or 2053.153, or Subchapter A or C, Chapter 2053, with respect to the setting of rates for workers' compensation insurance, the referenced provision of Chapter 2053 controls.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. EXAMINATIONS

Sec. 1805.101. EXAMINATION AUTHORIZED. (a) As often as the department determines expedient, the department may examine a group, association, or other organization referred to in this chapter, including an advisory organization described by Subchapter B.

(b) An officer, manager, agent, or employee of the group, association, or organization may be examined at any time under oath and shall make available any book, record, account, document, or agreement governing the method of operation of the group,

association, or organization.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.102. EXAMINATION COSTS. The group, association, or other organization shall pay the reasonable costs of an examination under this subchapter on presentation of a detailed account of the costs.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1805.103. OUT-OF-STATE EXAMINATION. In lieu of an examination under this subchapter, the department may accept the report of an examination made by the insurance supervisory official of another state in accordance with the laws of that state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. CERTAIN PRACTICES IN JOINT UNDERWRITING OR JOINT REINSURANCE

Sec. 1805.151. AUTHORITY OF COMMISSIONER. If, after a hearing, the commissioner determines that an activity or practice of a group, association, or other organization of insurers engaging in joint underwriting or joint reinsurance is unfair, unreasonable, or otherwise inconsistent with this chapter or other applicable law, the commissioner may issue a written order:

(1) specifying the manner in which the activity or practice is unfair, unreasonable, or inconsistent with the applicable law; and

(2) requiring the group, association, or organization to discontinue the activity or practice.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 1806. PROHIBITED PRACTICES AND REBATES RELATED TO POLICIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1806.001. DEFINITION. In this chapter, "nonprofit business association" means a business association that is a nonprofit corporation exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments by being described as an exempt organization by Section 501(c)(6) of that code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.002. CONSTRUCTION OF CERTAIN PROVISIONS; SERVICES RELATED TO LOSS CONTROL. (a) Nothing in Section 1806.053, 1806.054, 1806.059, 1806.104, 1806.1041, 1806.153, 1806.1541, or 1806.156 may be construed as:

(1) permitting an unfair method of competition or a false, misleading, or deceptive act or practice under Section 17.46, Business & Commerce Code; or

(2) prohibiting an insurer or an insurer's agent from offering or giving to an insured or applicant, for free or at a discounted price in a manner that is not unfairly discriminatory to insureds or applicants of the same class and of essentially the same hazard, services or other offerings not specified in the insurance policy that relate to loss control of the risks covered under the policy, subject to Subsection (b).

(b) The cost to the insurer or the insurer's agent offering the product or service to any given customer must be reasonable in comparison to that customer's premiums or insurance coverage for the policy class.

(c) Other than for purposes related to loss control of risks covered under the policy, the insurer or insurer's agent offering the product or service may not provide to another person any data or other information obtained about the customer from or in connection with the product or service.

(d) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 396 (H.B. 1074), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. PROVISIONS APPLICABLE TO AUTOMOBILE INSURANCE

Sec. 1806.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insurer writing automobile insurance in this state, including an insurance company, corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.052. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to prohibit the modification of rates by a rating plan that is filed in accordance with the requirements of Chapter 2251 or Article 5.13-2, as applicable, that has not been disapproved by the commissioner, and that is designed to encourage the prevention of accidents, and to account for all relevant factors inside and outside this state, including the peculiar hazards and experience of past and prospective individual risks.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.053. DISCRIMINATIONS OR DISTINCTIONS. Except as provided by this subchapter, with respect to business written in this state:

(1) an insurer may not discriminate or make a distinction, or permit discrimination or a distinction to be made, among insureds having like hazards with respect to premiums charged for, or dividends or other benefits payable under, an insurance policy;

(2) an insurer or an insurer's agent may not make an insurance contract or an agreement relating to that insurance, other than as expressed in the policy; and

(3) an insurer or an insurer's agent or other representative may not directly or indirectly pay, allow, or give, or offer to pay, allow, or give, as an inducement to the insured, a rebate payable on the policy or a special favor or advantage in the dividends or other benefits to accrue, or anything of value, not

specified in the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 2, eff. September 1, 2013.

Sec. 1806.054. OTHER PROHIBITED INDUCEMENTS. Except as provided by Section 1806.055, 1806.056, or 1806.057, an insurer or an insurer's officer, director, agent, or other representative may not, for the purpose of writing the insurance of an insured, grant to the insured or contract with the insured for a special favor or advantage in dividends or other profits, or commissions or dividends of commissions or profits to accrue on the policy, or compensation or other valuable consideration not specified in the policy, or an inducement not specified in the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.055. PROFIT SHARING AUTHORIZED; CERTAIN PROHIBITIONS. (a) Section 1806.054 does not prohibit an insurer from sharing earned profits with the insurer's policyholders under a profit sharing agreement contained in the policy if:

(1) the insurer shares profits uniformly among those insured under the policy; and

(2) the insurer distributes earnings equitably among those insureds under the terms of the policy.

(b) An insurer may not:

(1) discriminate in the distribution of profits among insureds of the same class;

(2) distribute the profit to an insured before the expiration of the policy; or

(3) establish a class of insureds for the distribution of profits, except on the commissioner's approval.

(c) A violation of this section is unjust discrimination and rebating.

(d) The commissioner may revoke the certificate of authority of

an insurer that violates this section or the license of an agent who violates this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.056. PROFIT SHARING BASED ON COMBAT DUTY AUTHORIZED. (a) This subchapter does not prohibit an insurer from distributing to policyholders who are on active duty in the United States Armed Forces any estimated profits resulting from service by those policyholders in a foreign country in a combat theater of operations after January 1, 1990.

(b) An insurer that elects to make distributions under this section must:

(1) file a written application describing the insurer's distribution with the commissioner for approval of a policyholder dividend amount that exceeds 10 percent of surplus; or

(2) notify the commissioner in writing of each distribution of a policyholder dividend amount that is not greater than 10 percent of surplus.

(c) If the commissioner does not act on the application on or before the fifth business day after the date the commissioner receives the application, the distribution is considered approved.

(d) An insurer may distribute estimated profits among policyholders under this section based on:

(1) the time served by a policyholder in a combat theater of operations;

(2) the location of the policyholder's military service;

(3) the duration of the applicable insurance policy; or

(4) any other reasonable basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 2, eff. June 14, 2013.

Sec. 1806.057. PROFIT SHARING WITH MEMBERS OF CERTAIN ASSOCIATIONS AUTHORIZED. (a) Section 1806.054 does not prohibit an

insurer from sharing profits with policyholders who are part of a group program established by a nonprofit business association and who participate in the group program because of membership in the association.

(b) An insurer that elects to make distributions under this section must:

(1) file a written application describing the insurer's distribution with the commissioner for approval of a policyholder dividend amount that exceeds 10 percent of surplus; or

(2) notify the commissioner in writing of each distribution of a policyholder dividend amount that is not greater than 10 percent of surplus.

(c) If the commissioner does not act on the application on or before the fifth business day after the date the commissioner receives the application, the distribution is considered approved.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 3, eff. June 14, 2013.

Sec. 1806.058. PARTICIPATING POLICIES. (a) This subchapter, Subtitle C, and Subchapter A, Chapter 5, may not be construed to prohibit:

(1) a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan from operating under this subchapter, Subchapter A, Chapter 5, and Subtitle C; or

(2) a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan from issuing participating policies.

(b) An insurer must obtain commissioner approval before distributing a policyholder dividend if the dividend amount exceeds 10 percent of surplus. The commissioner may not approve a distribution of profits or dividends until the insurer has adequate reserves. The reserves must be computed on the same basis for all classes of insurers operating under this subchapter, Subtitle C, and Subchapter A, Chapter 5.

(c) The insurer must notify the commissioner in writing of each

distribution if the insurer's policyholder dividend amount is not greater than 10 percent of surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 4, eff. June 14, 2013.

Sec. 1806.059. CERTAIN PROMOTIONAL PRACTICES AUTHORIZED. Section 1806.053 does not prohibit an insurer or an insurer's agent or other representative from, in connection with an offer or sale of an insurance policy subject to this subchapter, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at $25 or less.

Added by Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 3, eff. September 1, 2013.

SUBCHAPTER C. PROVISIONS APPLICABLE TO CASUALTY INSURANCE AND FIDELITY, GUARANTY, AND SURETY BONDS

Sec. 1806.101. DEFINITIONS. In this subchapter:
(1) "Insurance" includes a suretyship.
(2) "Insurer" means an insurance company or other legal entity described by Sections 1806.102(a) and (b).
(3) "Policy" includes a bond.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.032(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.032(a), eff. September 1, 2007.

Sec. 1806.102. APPLICABILITY OF SUBCHAPTER. (a) This

subchapter applies to an insurer, including a corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other organization, writing casualty insurance or writing fidelity, surety, or guaranty bonds, on risks or operations in this state.

(b) This subchapter applies to:

(1) a farm mutual insurance company with respect to each line of insurance that a farm mutual insurance company is authorized to write under Section 911.151; and

(2) a county mutual insurance company with respect to each line of insurance that a county mutual insurance company is authorized to write under Section 912.151.

(c) Except as otherwise provided by this subchapter, this subchapter does not apply to the writing of:

(1) automobile insurance;

(2) life, health, or accident insurance;

(3) professional liability insurance;

(4) reinsurance;

(5) aircraft insurance;

(6) fraternal benefit insurance;

(7) fire insurance;

(8) workers' compensation insurance;

(9) marine insurance, including noncommercial inland marine insurance and ocean marine insurance;

(10) title insurance;

(11) explosion insurance, except insurance against loss from personal injury or property damage resulting accidentally from:

(A) a steam boiler;

(B) a heater or pressure vessel;

(C) an electrical device;

(D) an engine; or

(E) all machinery and appliances used in connection with or in the operation of a boiler, heater, vessel, electrical device, or engine described by Paragraphs (A)-(D); or

(12) insurance coverage for any of the following conditions or risks:

(A) weather or climatic conditions, including lightning, tornado, windstorm, hail, cyclone, rain, or frost and freeze;

(B) earthquake or volcanic eruption;

(C) smoke or smudge;

(D) excess or deficiency of moisture;

(E) flood;

(F) the rising water of an ocean or an ocean's tributary;

(G) bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, or any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe;

(H) vandalism or malicious mischief;

(I) strike or lockout;

(J) water or other fluid or substance resulting from:

(i) the breakage or leakage of a sprinkler, pump, or other apparatus erected for extinguishing fire, or a water pipe or other conduit or container; or

(ii) casual water entering a building through a leak or opening in the building or by seepage through building walls; or

(K) accidental damage to a sprinkler, pump, fire apparatus, pipe, or other conduit or container described by Paragraph (J)(i).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.033, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.033, eff. September 1, 2007.

Sec. 1806.103. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not limit in any manner the kinds or classes of insurance that an insurer may write under an appropriate statute or the insurer's charter or certificate of authority.

(b) This subchapter may not be construed to prohibit the modification of rates by a rating plan that complies with Chapter 2251 or Article 5.13-2, as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.104. PROHIBITED ACTS. (a) Except as otherwise provided by this subchapter, an insurer, an insurer's employee, or a broker or agent may not knowingly:

(1) issue an insurance policy that is not in accordance with an applicable filing; or

(2) charge, demand, or receive a premium on an insurance policy that is not in accordance with an applicable filing.

(b) Except as provided in an applicable filing, an insurer, an insurer's employee, or a broker or agent may not directly or indirectly pay, allow, or give, or offer to pay, allow, or give, as an inducement to insurance, or after insurance has been written, a rebate, discount, abatement, credit or reduction of the premium stated in an insurance policy, or a special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement, not specified in the policy.

(c) An insured named in an insurance policy or an employee of an insured may not knowingly receive or accept, directly or indirectly, a rebate, discount, abatement, credit, or reduction of the premium stated in an insurance policy, or a special favor or advantage or valuable consideration or inducement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.032(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.032(b), eff. September 1, 2007.

Sec. 1806.1041. CERTAIN PROMOTIONAL PRACTICES AUTHORIZED. Section 1806.104 does not prohibit an insurer, an insurer's employee, or a broker or agent from, in connection with an offer or sale of an insurance policy subject to this subchapter, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at $25 or less.

Added by Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 4, eff. September 1, 2013.

Sec. 1806.105. PROFIT SHARING AUTHORIZED; CERTAIN PROHIBITIONS. (a) This subchapter does not prohibit an insurer from sharing earned profits with the insurer's policyholders in accordance with a profit sharing agreement contained in the policy, provided that any profit sharing under the policy with those insureds must be uniform among the insureds and may consist only of the equitable distribution of earnings among the insureds in accordance with the terms of the policy.

(b) An insurer may not:

(1) discriminate in the distribution of profits among insureds of the same class;

(2) distribute the profit to an insured before the expiration of the policy; or

(3) establish a class of insureds for the distribution of profits, except on the commissioner's approval.

(c) A distribution of profits or dividends to an insured may not take effect or be distributed until:

(1) the insurer has adequate reserves, as computed on the same basis for all classes of insurers to which this subchapter applies; and

(2) if the policyholder dividend amount exceeds 10 percent of surplus, the commissioner approves the distribution.

(d) The insurer must notify the commissioner in writing of each distribution if the insurer's policyholder dividend amount is not greater than 10 percent of surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 5, eff. June 14, 2013.

Sec. 1806.106. PROFIT SHARING WITH CERTAIN ASSOCIATIONS AUTHORIZED. (a) This subchapter does not prohibit an insurer from sharing profits with policyholders who are part of a group program

established by a nonprofit business association and who participate in the group program because of membership in the association.

(b) An insurer that elects to make distributions under this section must:

(1) file a written application describing the insurer's distribution with the commissioner for approval of a policyholder dividend amount that exceeds 10 percent of surplus; or

(2) notify the commissioner in writing of each distribution of a policyholder dividend amount that is not greater than 10 percent of surplus.

(c) If the commissioner does not act on the application on or before the fifth business day after the date the commissioner receives the application, the distribution is considered approved.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 6, eff. June 14, 2013.

Sec. 1806.107. ENFORCEMENT. (a) A violation of this subchapter is unjust discrimination and rebating.

(b) The commissioner may revoke the certificate of authority of an insurer that violates this subchapter or the license of an agent who violates this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. PROVISIONS APPLICABLE TO FIRE INSURANCE AND ALLIED LINES

Sec. 1806.151. APPLICABILITY OF SUBCHAPTER. (a) Each insurance policy or contract insuring property in this state against loss by fire, including a policy or contract or portion of a policy or contract that insures the shore end of a marine risk against loss by fire, must be issued in accordance with:

(1) this subchapter;

(2) Section 403.002;

(3) Subchapter C, Chapter 5;

(4) Subchapter H, Chapter 544; and

(5) Chapters 252, 2001, 2002, 2003, 2004, 2005, 2006, and 2171.

(b) An insurer issuing an insurance policy or contract described by Subsection (a), including a fire insurance company, marine insurance company, fire and marine insurance company, and fire and tornado insurance company, is governed by the laws described by Subsection (a).

(c) This section applies to an insurer or to an insurance policy or contract regardless of:

(1) the kind and character of property insured;

(2) whether the property is:

(A) fixed or movable;

(B) stationary or in transit; or

(C) consigned or billed for shipment inside or outside the boundaries of this state or to a foreign country;

(3) whether the insurer is organized:

(A) under the laws of this state, another state, territory, or possession of the United States, or a foreign country; or

(B) by authority of the federal government; or

(4) the kind of insurer or the name of the insurer issuing the policy or contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.152. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter, Subtitle D, and Subchapter C, Chapter 5, may not be construed to deal with the collection of premiums, but each insurer may make rules and regulations the insurer considers just between the insurer and the insurer's agents and policyholders.

(b) A bona fide extension of credit may not be construed as discrimination or as a violation of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.153. UNJUST DISCRIMINATION; REBATES. (a) An insurer

or an insurer's officer, director, agent, or other representative may not grant or contract for a special favor or advantage in:

(1) dividends or other profits to accrue on an insurance policy;

(2) commissions in the dividends or other profits to accrue on an insurance policy;

(3) commissions or division of commission; or

(4) a position, valuable consideration, or inducement not specified in an insurance policy.

(b) An insurer may not directly or indirectly give, sell, or purchase or offer to give, sell, or purchase as an inducement to insurance or in connection with insurance:

(1) stocks, bonds, or other securities of an insurer or other corporation, partnership, or individual;

(2) dividends or profits that have accrued or will accrue on stocks, bonds, or other securities of an insurer or other corporation, partnership, or individual; or

(3) anything of value not specified in the policy.

(c) An insurer or an insurer's officer, director, agent, or other representative that violates this section has engaged in unjust discrimination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.154. PROFIT SHARING AUTHORIZED. (a) Section 1806.153 does not prohibit an insurer from sharing profits with the insurer's policyholders if:

(1) a profit sharing agreement is placed on or in the face of the policy;

(2) the profit sharing is uniform and does not discriminate among individuals or among classes; and

(3) the profit is not distributed to an insured before the expiration of the insurance policy.

(b) An insurer or an insurer's officer, director, agent, or other representative that violates this section has engaged in unjust discrimination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.1541. CERTAIN PROMOTIONAL PRACTICES AUTHORIZED. Section 1806.153 does not prohibit an insurer from, in connection with an offer or sale of an insurance policy or contract subject to this subchapter, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at $25 or less.

Added by Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 5, eff. September 1, 2013.

Sec. 1806.155. INSURER LIABILITY ON POLICY ISSUED WITHOUT AUTHORITY. (a) If an insurer or an insurer's agent issues an insurance policy without authority and the policyholder sustains a loss or damage covered under the policy, the insurer is liable to the policyholder under the policy in the same manner and to the same extent as if the insurer had been authorized to issue the policy, although the policy was issued in violation of this code.

(b) This section may not be construed to give an insurer the authority to issue an insurance policy or contract other than as provided by this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1806.156. ACCEPTANCE OF REBATE OR OTHER INDUCEMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly receives or accepts from an insurer, an insurer's agent, broker, or other representative, or any other person a rebate of premium payable on an insurance policy, or a special favor or advantage in dividends or other financial profits accrued or to accrue on the policy, or any valuable consideration, position or inducement not specified in the policy.

(b) An offense under this section is punishable by:

(1) a fine of not more than $100;

(2) confinement in jail for not more than 90 days; or

(3) both a fine and confinement under this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 1807. APPLICABILITY TO MARINE INSURANCE

Sec. 1807.001. DEFINITIONS. In this chapter:

(1) "Insurable property and interests" includes:

(A) goods, freights, and cargoes;

(B) merchandise;

(C) effects;

(D) disbursements;

(E) profits;

(F) money, bullion, and precious stones;

(G) securities;

(H) choses in action;

(I) evidences of debt;

(J) valuable papers; and

(K) bottomry and respondentia interests.

(2) "Marine insurance" means:

(A) insurance and reinsurance that covers:

(i) loss or damage to:

(a) a hull, vessel, or craft of any kind, an aid to navigation, a dry dock, or a marine railway, whether complete, under construction, or awaiting construction; or

(b) insurable property and interests in respect to, appertaining to, or in connection with a risk or peril of navigation, transit, or transportation:

(1) on or under a sea, lake, or river or other water, in the air, or on land in connection with or incident to export, import, or waterborne risks;

(2) while being assembled, packed, crated, baled, compressed, or similarly prepared for shipment;

(3) while awaiting shipment; or

(4) during any delay, storage, or transshipment or reshipment incident to the initial shipment;

(ii) a marine builder or repairer risk;

(iii) a marine protection or indemnity risk; or

(iv) a war risk regarding any insurable property or interest described by this section; and

(B) insurance defined as marine insurance by another

statute, lawful custom, or rule adopted by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1807.002. INAPPLICABILITY OF CERTAIN LAWS TO MARINE INSURANCE; EXCEPTION. (a) The following provisions do not apply to marine insurance:

(1) Sections 36.002, 37.051, 403.002, and 501.159;

(2) Subchapter H, Chapter 544;

(3) Chapters 5, 252, 253, 493, 494, 1804, 1805, 1806, and 2171; and

(4) Subtitles B, C, D, E, F, H, and I.

(b) Subsection (a) does not apply to:

(1) a farm mutual insurance company operating under Chapter 911;

(2) a mutual insurance company engaged in business under Chapter 12, Title 78, Revised Statutes, before that chapter's repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections; or

(3) a county mutual insurance company operating under Chapter 912.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.13, eff. September 1, 2017.

CHAPTER 1810. PROMOTIONAL EVENT PRIZE PROGRAMS

Sec. 1810.001. DEFINITION. In this chapter, "promotional event prize program" means a written contract entered into in this state for commercial marketing or promotional purposes:

(1) under which a monetary risk is transferred from one or more parties to the contract to another party to the contract;

(2) that does not require as a condition precedent to the

imposition of contractual liability on the part of the person accepting the risk:

(A) actual economic loss by the person who transfers the risk; or

(B) submission of proof of economic loss by the person transferring the risk; and

(3) that specifically states that the contract is not for insurance and performance under the contract is not covered by any state guaranty association.

Added by Acts 2007, 80th Leg., R.S., Ch. 246 (H.B. 2708), Sec. 1, eff. May 25, 2007.

Sec. 1810.002. PROGRAM NOT INSURANCE; NOT COVERED BY GUARANTY ASSOCIATION. A promotional event prize program does not constitute the business of insurance in this state. A person's claim for performance under a contract for a promotional event prize program is not a covered claim under Chapter 462 and a promotional event prize program is not covered by the Texas Property and Casualty Insurance Guaranty Association or any other state guaranty association.

Added by Acts 2007, 80th Leg., R.S., Ch. 246 (H.B. 2708), Sec. 1, eff. May 25, 2007.

Sec. 1810.003. CERTAIN MARKETING PROHIBITED. A promotional event prize program may not be marketed or described as insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 246 (H.B. 2708), Sec. 1, eff. May 25, 2007.

CHAPTER 1811. CERTIFICATES OF PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1811.001. DEFINITIONS. In this chapter:

(1) "Agent" means a person required to hold a license as a property and casualty agent or surplus lines agent.

(2) "Certificate holder" means a person, other than a policyholder:

(A) who is designated on a certificate of insurance as

a certificate holder; or

(B) to whom a certificate of insurance has been issued by an insurer or agent at the request of the policyholder.

(3) "Certificate of insurance" means a document, instrument, or record, including an electronic record, no matter how titled or described, that is executed by an insurer or agent and issued to a third person not a party to the subject insurance contract, as a statement or summary of property or casualty insurance coverage. The term does not include an insurance binder or policy form.

(4) "Electronic record" has the meaning assigned by Section 322.002, Business & Commerce Code.

(5) "Insurance" means an insurance contract for property or casualty insurance.

(6) "Insurer" means a company or insurance carrier that is engaged in the business of making property or casualty insurance contracts. The term includes:

(A) a stock fire or casualty insurance company;

(B) a mutual fire or casualty insurance company;

(C) a Mexican casualty insurance company;

(D) a Lloyd's plan;

(E) a reciprocal or interinsurance exchange;

(F) a county mutual insurance company;

(G) a farm mutual insurance company;

(H) a risk retention group;

(I) the Medical Liability Insurance Joint Underwriting Association under Chapter 2203;

(J) the Texas Windstorm Insurance Association under Chapter 2210;

(K) the FAIR Plan Association under Chapter 2211;

(L) an eligible surplus lines insurer; and

(M) any other insurer authorized to write property or casualty insurance in this state.

(7) "Lender" has the meaning assigned by Section 549.001.

(8) "Person" means:

(A) an individual; or

(B) a partnership, corporation, limited liability company, association, trust, or other legal entity, including an insurer or a political subdivision or agency of this state.

(9) "Policyholder" means a person who has contracted with a

property or casualty insurer for insurance coverage.

(10) "Record" has the meaning assigned by Section 322.002, Business & Commerce Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.002. APPLICABILITY. (a) This chapter applies to a certificate holder, policyholder, insurer, or agent with regard to a certificate of insurance issued on property or casualty operations or a risk located in this state, regardless of where the certificate holder, policyholder, insurer, or agent is located.

(b) This chapter may not be construed to apply to:

(1) a statement, summary, or evidence of property insurance required by a lender in a lending transaction involving:

(A) a mortgage;

(B) a lien;

(C) a deed of trust; or

(D) any other security interest in real or personal property as security for a loan;

(2) a certificate issued under:

(A) a group or individual policy for:

(i) life insurance;

(ii) credit insurance;

(iii) accident and health insurance;

(iv) long-term care benefit insurance; or

(v) Medicare supplement insurance; or

(B) an annuity contract; or

(3) standard proof of motor vehicle liability insurance under Section 601.081, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.003. RULES. The commissioner may adopt rules as necessary or proper to accomplish the purposes of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.004. FILING FEE. (a) The department may collect a fee in an amount determined by the commissioner for the filing of a new or amended certificate of insurance form under this chapter.

(b) The fee may not exceed $100.

(c) A fee collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. PROHIBITED ACTS AND PRACTICES

Sec. 1811.051. ALTERING, AMENDING, OR EXTENDING THE TERMS OF AN INSURANCE POLICY; CONTRACTUAL RIGHTS OF CERTIFICATE HOLDER. (a) A property or casualty insurer or agent may not issue a certificate of insurance or any other type of document purporting to be a certificate of insurance if the certificate or document alters, amends, or extends the coverage or terms and conditions provided by the insurance policy referenced on the certificate or document.

(b) A certificate of insurance or any other type of document may not convey a contractual right to a certificate holder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.052. USE OF APPROVED CERTIFICATE OF INSURANCE FORMS. (a) An insurer or an agent may not issue a certificate of insurance unless the form of the certificate:

(1) has been filed with and approved by the department under Section 1811.101; or

(2) is a standard form deemed approved by the department under Section 1811.103.

(b) A person may not execute, issue, or require the issuance of a certificate of insurance for risks located in this state, unless the certificate of insurance form has been filed with and approved by the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1,

eff. September 1, 2011.

Sec. 1811.053. ALTERATION OR MODIFICATION OF APPROVED CERTIFICATE OF INSURANCE FORMS. A person may not alter or modify a certificate of insurance form approved under Section 1811.101 unless the alteration or modification is approved by the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.054. ISSUANCE OF FALSE OR MISLEADING CERTIFICATE OF INSURANCE. A person may not require the issuance of a certificate of insurance from an insurer, agent, or policyholder that contains any false or misleading information concerning the policy of insurance to which the certificate refers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.055. REQUEST FOR DOCUMENTS IN LIEU OF CERTIFICATE OF INSURANCE. A person may not require an agent or insurer, either in addition to or in lieu of a certificate of insurance, to issue any other document or correspondence, instrument, or record, including an electronic record, that is inconsistent with this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.056. USE OF DISAPPROVED CERTIFICATE OF INSURANCE FORMS. A person who receives written notice under Section 1811.102 that a certificate of insurance form filed under this chapter has been disapproved by the commissioner shall immediately stop using the form.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. CERTIFICATE OF INSURANCE FORMS

Sec. 1811.101. FILING AND APPROVAL OF FORMS. (a) Except as provided by Subsection (b), an insurer or agent may not deliver or issue for delivery in this state a certificate of insurance unless the certificate's form:

(1) has been filed with and approved by the commissioner; and

(2) contains the phrase "for information purposes only" or similar language.

(b) If a certificate of insurance form does not contain the language required by Subsection (a)(2), the commissioner may approve the form if the form states:

(1) that the certificate of insurance does not confer any rights or obligations other than the rights and obligations conveyed by the policy referenced on the form; and

(2) that the terms of the policy control over the terms of the certificate of insurance.

(c) A filed form is approved at the expiration of 60 days after the date the form is filed unless the commissioner by order approves or disapproves the form during the 60-day period beginning the date the form is filed. The commissioner's approval of a filed form constitutes a waiver of any unexpired portion of the 60-day period.

(d) The commissioner may extend by not more than 10 days the 60-day period described by Subsection (c) during which the commissioner may approve or disapprove a form filed by an insurer or agent. The commissioner shall notify the insurer or agent of the extension before the expiration of the 60-day period.

(e) A filed form for which an extension has been granted under Subsection (d) is considered approved at the expiration of the extension period described by that subsection absent an earlier approval or disapproval of the form.

(f) A person may not use a form unless the form has been filed with and approved by the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.102. DISAPPROVAL OF FORMS; WITHDRAWAL OF APPROVAL. (a) The commissioner shall disapprove a form filed under Section

1811.101 or withdraw approval of a form if the form:

(1) contains a provision or has a title or heading that is misleading, is deceptive, or violates public policy;

(2) violates any state law, including a rule adopted under this code;

(3) requires an agent to provide certification of insurance coverage that is not available in the line or type of insurance coverage referenced on the form; or

(4) directly or indirectly requires the commissioner to make a coverage determination under a policy of insurance or insurance transaction.

(b) The commissioner may not disapprove a form filed under Section 1811.101 or withdraw approval of a form based solely on the fact that the form contains language described by Section 1811.101(b).

(c) An order issued by the commissioner disapproving a form, or a notice of the commissioner's intention to withdraw approval of a form, must state the grounds for the disapproval or withdrawal of approval in sufficient detail to reasonably inform the person filing the form of those grounds and the changes to the form necessary to obtain approval.

(d) An order disapproving a form or withdrawing approval of a form takes effect on the date prescribed by the commissioner in the order. An order withdrawing approval of a form may not become effective until the 30th day after the date of the order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.103. STANDARD CERTIFICATE OF INSURANCE FORMS. A standard certificate of insurance form promulgated by the Association for Cooperative Operations Research and Development, the American Association of Insurance Services, or the Insurance Services Office (ISO) is deemed approved on the date the form is filed with the department. Notwithstanding this section, the commissioner may withdraw approval of a standard form under Section 1811.102.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.104. PUBLIC INSPECTION OF INFORMATION. A certificate of insurance form and any supporting information filed with the department under this subchapter is open to public inspection as of the date of the filing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

SUBCHAPTER D. EFFECT OF APPROVAL OF CERTIFICATE OF INSURANCE FORM

Sec. 1811.151. CONFIRMATION OF POLICY ISSUANCE. A certificate of insurance form that has been approved by the commissioner and properly executed and issued by a property and casualty insurer or an agent constitutes a confirmation that the referenced insurance policy has been issued or that coverage has been bound. This section applies regardless of whether the face of the certificate includes the phrase "for information purposes only" or similar language.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.152. CERTIFICATE OF INSURANCE NOT POLICY OF INSURANCE. A certificate of insurance is not a policy of insurance and does not amend, extend, or alter the coverage afforded by the referenced insurance policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.153. RIGHTS CONFERRED BY CERTIFICATE OF INSURANCE. A certificate of insurance shall not confer to a certificate holder new or additional rights beyond what the referenced policy or any executed endorsement of insurance provides.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.154. REFERENCE TO OTHER CONTRACTS. A certificate of

insurance may not contain a reference to a legal or insurance requirement contained in a contract other than the underlying contract of insurance, including a contract for construction or services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.155. NOTICE. (a) A person may have a legal right to notice of cancellation, nonrenewal, or material change or any similar notice concerning a policy of insurance only if:

(1) the person is named within the policy or an endorsement to the policy; and

(2) the policy or endorsement or a law, including a rule, of this state requires notice to be provided.

(b) A certificate of insurance may not alter the terms and conditions of the notice required by a policy of insurance or the law of this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.156. CERTIFICATE OF INSURANCE ISSUED IN VIOLATION OF CHAPTER. A certificate of insurance that is executed, issued, or required and that is in violation of this chapter is void and has no effect.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

SUBCHAPTER E. ENFORCEMENT AND REMEDIES

Sec. 1811.201. POWERS OF COMMISSIONER. (a) If the commissioner has reason to believe that an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter, the commissioner may:

(1) issue a cease and desist order;

(2) seek an injunction under Section 1811.203;

(3) request that the attorney general recover a civil

penalty under Section 1811.203;

(4) impose sanctions on the insurer or agent as provided by Chapter 82; or

(5) take any combination of those actions.

(b) This section does not prevent or limit any action by or remedy available to the commissioner under applicable law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.202. HEARING; NOTICE. (a) The commissioner may hold a hearing on whether to issue a cease and desist order under Section 1811.201 if the commissioner has reason to believe that:

(1) an insurer or agent has violated or is threatening to violate this chapter or a rule adopted under this chapter; or

(2) an insurer or agent has engaged in or is threatening to engage in an unfair act related to a certificate of insurance.

(b) The commissioner shall serve on the insurer or agent a statement of charges and a notice of hearing in the form provided by Section 2001.052, Government Code.

(c) A hearing under this section is a contested case under Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.203. CIVIL PENALTY; INJUNCTION. (a) A person, including an insurer or agent, who wilfully violates this chapter is subject to a civil penalty of not more than $1,000 for each violation.

(b) The commissioner may request that the attorney general institute a civil suit in a district court in Travis County for injunctive relief to restrain a person, including an insurer or agent, from continuing a violation or threat of violation of Subchapter B. On application for injunctive relief and a finding that a person, including an insurer or agent, is violating or threatening to violate Subchapter B, the district court shall grant the injunctive relief and issue an injunction without bond.

(c) On request by the commissioner, the attorney general may

institute and conduct a civil suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

Sec. 1811.204. INVESTIGATION OF COMPLAINTS. (a) The commissioner may:

(1) investigate a complaint or allegation of specific violations by a person, including an insurer or agent, who has allegedly engaged in an act or practice prohibited by Subchapter B; and

(2) enforce the provisions of this chapter.

(b) If the commissioner has reason to believe that a person, including an insurer or agent, is performing an act in violation of Subchapter B, the person shall immediately provide to the commissioner, on written request of the commissioner, information relating to that act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1212 (S.B. 425), Sec. 1, eff. September 1, 2011.

CHAPTER 1812. AVAILABILITY OF SPECIMEN POLICIES

Sec. 1812.001. DEFINITION. In this chapter, "specimen policy" means a standardized form, including an insurance policy form or endorsement, used by an insurer to write personal automobile, commercial automobile, inland marine, or residential property insurance in this state that does not contain personally identifiable information about an insured.

Added by Acts 2013, 83rd Leg., R.S., Ch. 101 (S.B. 852), Sec. 1, eff. September 1, 2013.

Sec. 1812.002. AVAILABILITY OF CERTAIN FORMS. (a) Notwithstanding any other provision of this code relating to the delivery of policy forms, an insurer may elect to make a personal automobile, commercial automobile, inland marine, or residential

property insurance policy available to an insured by posting a specimen policy on the insurer's Internet website instead of other authorized means. An insurer making the election must comply with Section 1812.003.

(b) On request of and at no cost to an insured, an insurer shall provide to the insured a copy of a specimen policy applicable to the insured that is posted on the insurer's Internet website.

(c) The office of public insurance counsel may post an insurer's specimen policy on the office's Internet website. The posting, other than a posting described by Subsection (a), of an insurer's specimen policy on an Internet website does not create a duty to comply with the requirements of this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 101 (S.B. 852), Sec. 1, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 842 (S.B. 494), Sec. 1, eff. September 1, 2015.

Sec. 1812.003. NOTICE OF AVAILABILITY OF CERTAIN FORMS. (a) An insurer that posts a specimen policy on the insurer's Internet website under this chapter must, on issuance or renewal of a policy incorporating the specimen policy:

(1) on the declarations page of the insured's policy:

(A) disclose that the specimen policy is available on the insurer's Internet website; and

(B) clearly identify each posted specimen policy incorporated into the insured's policy;

(2) explain that and how an insured, on request and at no charge, may obtain a copy of the specimen policy from the insurer; and

(3) provide to the department and the office of public insurance counsel an electronic copy of the specimen policy that may be posted on the Internet website of the department or the office of public insurance counsel.

(b) An insurer that during an insured's policy period posts a specimen policy or amends a posted specimen policy incorporated into an insured's policy must, on the date the specimen policy is posted or amended, in writing and in the insurer's customary manner of

communicating with the insured:

(1) notify the insured that the specimen policy is available on the insurer's Internet website;

(2) clearly identify each added or amended specimen policy incorporated into the insured's policy; and

(3) explain that and how the insured, on request and at no charge, may obtain a copy of the specimen policy from the insurer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 101 (S.B. 852), Sec. 1, eff. September 1, 2013.

Sec. 1812.004. ACCESSIBILITY OF CERTAIN AVAILABLE FORMS. A specimen policy posted on the insurer's Internet website under this chapter must be, until no policy incorporating the specimen policy is in force:

(1) easily accessible on the website; and

(2) provided in a format readily capable of being saved or printed using a widely available and free computer application or program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 101 (S.B. 852), Sec. 1, eff. September 1, 2013.

Sec. 1812.005. RETENTION OF CERTAIN AVAILABLE FORMS. An insurer that posts a specimen policy on the insurer's Internet website under this chapter must for at least five years after the latest date a policy incorporating the specimen policy is in force:

(1) preserve an electronic copy of the specimen policy; and

(2) make a printed or electronic copy of the specimen policy available on request at no cost.

Added by Acts 2013, 83rd Leg., R.S., Ch. 101 (S.B. 852), Sec. 1, eff. September 1, 2013.

SUBTITLE B. LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

CHAPTER 1901. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1901.001. DEFINITIONS. In this chapter:

(1) "Health care provider" means:

(A) a person, partnership, professional association, corporation, facility, or institution, or an officer, employee, or agent of the person or entity acting in the course and scope of authority, employment, or agency, as applicable, if the person or entity is licensed or chartered by this state to provide health care as:

(i) a registered nurse;

(ii) a hospital;

(iii) a dentist;

(iv) a podiatrist;

(v) a chiropractor;

(vi) an optometrist or therapeutic optometrist;

(vii) a pharmacist;

(viii) a veterinarian;

(ix) a not-for-profit kidney dialysis center;

(x) a blood bank that is a nonprofit corporation chartered to operate a blood bank and is accredited by the American Association of Blood Banks;

(xi) a for-profit or not-for-profit nursing home; or

(xii) a for-profit or not-for-profit assisted living facility; or

(B) a health care practitioner or facility that the commissioner, in accordance with Section 2203.103(b), determines is eligible for coverage under this chapter.

(2) "Hospital" means a public or private institution licensed under Chapter 241 or 577, Health and Safety Code.

(3) "Physician" means a person licensed to practice medicine in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.002. APPLICABILITY OF CHAPTER. This chapter applies to:

(1) an insurer authorized to write or engaged in writing

professional liability insurance for a physician or health care provider; and

(2) a rating organization acting on behalf of an insurer described by Subdivision (1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.003. APPLICABILITY OF OTHER LAW. Chapters 2251 and 2301 and Article 5.13-2 apply to rates and forms for professional liability insurance for physicians and health care providers under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.004. ANNUAL REPORTS. (a) An insurer that issues professional liability insurance policies covering physicians and health care providers shall file annually with the commissioner a report of:

(1) all claims and the amounts of those claims;

(2) amounts of claims reserves;

(3) investment income of the insurer derived from medical professional liability premiums;

(4) information relating to amounts of judgments and settlements paid on claims; and

(5) other information required by the commissioner.

(b) The commissioner may promulgate a form on which the information under Subsection (a) must be reported. The form must require that the information be reported in an accurate manner and be reasonably calculated to:

(1) facilitate interpretation; and

(2) protect the confidentiality of the physician or health care provider.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.005. RULES. The commissioner shall establish by rule:

(1) criteria that insurers must follow in establishing reconsideration procedures under Section 1901.101; and

(2) standards and procedures to be followed in the review of rates and premiums by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. RATE STANDARDS

Sec. 1901.051. CONSIDERATIONS IN SETTING RATES. (a) In setting rates, an insurer shall consider:

(1) past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written in this state, subject to Subsection (b);

(2) a reasonable margin for underwriting profit and contingencies;

(3) investment income; and

(4) dividends or savings allowed or returned by the insurer to the insurer's policyholders or members.

(b) If the department finds that the group or risk to be insured is not of sufficient size to be credible, an insurer must also consider in setting rates past and prospective loss and expense experience for all professional liability insurance for physicians and health care providers written outside this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.052. GROUPING OF RISKS. In setting rates, an insurer may group risks by classification, rating schedule, or any other reasonable method.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.053. MODIFICATION OF CLASSIFICATION RATES. (a) An

insurer may modify classification rates to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards or expense provisions.

(b) The standards may measure any difference among risks that can be demonstrated to have a probable effect on losses or expenses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.054. LIMITATIONS ON RATES. (a) Rates set under this chapter may not be excessive or inadequate, as described by this section, or unreasonable or unfairly discriminatory.

(b) A rate is not excessive unless the rate is unreasonably high for the insurance coverage provided.

(c) A rate is not inadequate unless the rate is unreasonably low for the insurance coverage provided and:

(1) is insufficient to sustain projected losses and expenses; or

(2) the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.034(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.034(a), eff. September 1, 2007.

Sec. 1901.0541. USE IN UNDERWRITING OF CERTAIN INFORMATION RELATED TO LAWSUITS; REFUND. (a) Notwithstanding any other provision of this code, an insurer may not consider for the purpose of setting premiums or reducing a claims-free discount for a particular insured physician's professional liability insurance a lawsuit filed against the physician if:

(1) before trial, the lawsuit was dismissed by the claimant or nonsuited; and

(2) no payment was made to the claimant under a settlement agreement.

(b) An insurer that, in setting premiums or reducing a claims-free discount for a physician's professional liability insurance, considers a lawsuit filed against the physician shall refund to the physician any increase in premiums paid by the physician that is attributable to that lawsuit or reinstate the claims-free discount if the lawsuit is dismissed by the claimant or nonsuited without payment to the claimant under a settlement agreement. The insurer shall issue the refund or reinstate the discount on or before the 30th day after the date the insurer receives written evidence that the lawsuit was dismissed or nonsuited without payment to the claimant under a settlement agreement.

(c) This section does not prohibit an insurer from considering and using aggregate historical loss and expense experience applicable generally to a classification of physicians' professional liability insurance to set rates for that classification to the extent authorized by Chapter 2251 and Article 5.13-2. Notwithstanding Section 2251.052(c), an insurer may not assign a physician to a particular classification based on a factor described by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.035(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.035(a), eff. September 1, 2007.

Sec. 1901.055. CLAIM SURCHARGE. A claim surcharge assessed by an insurer against a physician or health care provider under a professional liability insurance policy may be based only on claims actually paid by an insurer as a result of:

(1) a settlement; or

(2) an adverse judgment or decision of a court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.056. ABSOLUTE RATES PROHIBITED. (a) In this section, "absolute rates" means rates, rating plans, or rating classifications that are filed under Chapter 2251 or Article 5.13-2 by an insurer or authorized rating organization and that are required

to be used, to the exclusion of all others, by each insurer authorized to write policies.

(b) A provision of this chapter, Chapter 2251, or Article 5.13-2 relating to the regulation of rates, rating plans, and rating classifications for professional liability insurance for physicians and health care providers does not:

(1) give the commissioner the power to promulgate uniform or absolute rates; or

(2) prevent different insurers or organizations authorized to file rates from filing different rates for risks in a given classification or modified rates for individual risks made in accordance with rating plans.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.057. CONSIDERATIONS IN APPROVING RATES. In approving rates under this chapter, the department shall consider the impact of risk management courses taken by physicians and health care providers in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.034(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.034(b), eff. September 1, 2007.

SUBCHAPTER C. REVIEW OF RATES

Sec. 1901.101. RECONSIDERATION OF RATES AND PREMIUMS. (a) Each insurer to which this chapter applies shall adopt a procedure for reconsideration of a rate or premium charged a physician or health care provider for professional liability insurance coverage.

(b) The procedure must include:

(1) an opportunity for a hearing before officers or employees who have responsibility for determining rates and premiums to be charged for professional liability insurance; and

(2) a requirement that the insurer reconsider the rate or

premium and provide the physician or health care provider a written explanation of the rate or premium being charged.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.102. APPEAL. A physician or health care provider that is not satisfied with a decision under procedures established under Section 1901.101 may appeal to the commissioner for:

(1) a review of the rate or premium; and

(2) a determination of whether the rate or premium being charged complies with criteria under Sections 1901.051-1901.054 and 1901.057.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. BEST PRACTICES FOR NURSING HOMES

Sec. 1901.151. BEST PRACTICES. (a) The commissioner shall adopt best practices for risk management and loss control that may be used by for-profit and not-for-profit nursing homes.

(b) In developing or amending the best practices, the commissioner shall consult with the Health and Human Services Commission and a task force appointed by the commissioner.

(c) The task force must be composed of representatives of:

(1) insurers that write professional liability insurance for nursing homes;

(2) the Texas Medical Liability Insurance Underwriting Association;

(3) nursing homes; and

(4) consumers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.152. CONSIDERATION OF BEST PRACTICES IN SETTING RATES. In setting rates for professional liability insurance applicable to a for-profit or not-for-profit nursing home, an insurer

or the Texas Medical Liability Insurance Underwriting Association may consider whether the nursing home adopts and implements the best practices adopted under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.153. STANDARD OF CARE FOR CIVIL ACTIONS NOT ESTABLISHED. The best practices for risk management and loss control adopted under this subchapter do not establish standards of care for nursing homes applicable in a civil action against a nursing home.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. POLICY FORMS

Sec. 1901.201. STANDARDIZED POLICY FORMS; APPROVAL OF OTHER FORMS. (a) The commissioner shall prescribe standardized policy forms for occurrence, claims-made, and claims-paid professional liability insurance policies for physicians and health care providers.

(b) An insurer may not use a form other than a standardized policy form in writing professional liability insurance for physicians and health care providers unless the form has been approved by the commissioner.

(c) An insurer writing professional liability insurance for physicians and health care providers may use an endorsement if the endorsement has been filed with and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. COVERAGE

Sec. 1901.251. PREMIUM BASIS. An insurer may not write a professional liability insurance policy under this chapter on less than an annual premium basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 1901.252. COVERAGE FOR EXEMPLARY DAMAGES. (a) Except as provided by Subsection (b), a medical professional liability insurance policy issued to or renewed for a physician or health care provider in this state may not include coverage for exemplary damages that may be assessed against the physician or health care provider.

(b) The commissioner may approve an endorsement form that provides for coverage for exemplary damages for use on a medical professional liability insurance policy issued to:

(1) a hospital; or

(2) a for-profit or not-for-profit nursing home or assisted living facility.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.253. NOTICE OF PREMIUM INCREASE, CANCELLATION, OR NONRENEWAL. (a) An insurer that issues a professional liability insurance policy for a physician or health care provider must provide to the insured written notice of at least 90 days if the insurer intends to:

(1) increase the premiums on the policy; or

(2) cancel or not renew the policy for a reason other than for nonpayment of premiums or because the insured is no longer licensed.

(b) If the insurer intends to increase the premiums, the insurer shall state in the notice the amount of the increase.

(c) If the insurer intends to cancel or not renew the policy, the insurer shall state in the notice the reason for cancellation or nonrenewal.

(d) An insurer may provide notice of cancellation under this section only within the first 90 days from the effective date of the policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1901.254. PROHIBITION OF USE OF CERTAIN INFORMATION FOR PHYSICIAN OR HEALTH CARE PROVIDER. (a) For the purpose of writing professional liability insurance for physicians and health care providers, an insurer may not consider whether, or the extent to which, a physician or health care provider provides services in this state to individuals who are recipients of Medicaid or covered by the state child health plan program established by Chapter 62, Health and Safety Code, including any consideration resulting in:

(1) denial of coverage;

(2) refusal to renew coverage;

(3) cancellation of coverage;

(4) limitation of the amount, extent, or kind of coverage available; or

(5) a determination of the rate or premium to be paid.

(b) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.035(b), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.035(b), eff. September 1, 2007.

Sec. 1901.255. COVERAGE FOR VOLUNTEER HEALTH CARE PROVIDERS. (a) In this section:

(1) "Charitable organization" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(2) "Volunteer health care provider" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(b) An insurer may make available professional liability insurance covering a volunteer health care provider for an act or omission resulting in death, damage, or injury to a patient while the person is acting in the course and scope of the person's duties as a volunteer health care provider as described by Chapter 84, Civil Practice and Remedies Code.

(c) This section does not affect the liability of a volunteer health care provider who is serving as a direct service volunteer of a charitable organization. Section 84.004(c), Civil Practice and Remedies Code, applies to the volunteer health care provider without regard to whether the volunteer health care provider obtains

liability insurance under this section.

(d) An insurer may make professional liability insurance available under this section to a volunteer health care provider without regard to whether the volunteer health care provider is a "health care provider" as defined by Section 1901.001.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.036(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.036(a), eff. September 1, 2007.

CHAPTER 1902. CERTAIN LIABILITY COVERAGE FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Sec. 1902.001. DEFINITIONS. In this chapter:

(1) "Health care provider" has the meaning assigned by Section 1901.001.

(2) "Manufacturer" has the meaning assigned by Section 82.001, Civil Practice and Remedies Code.

(3) "Physician" has the meaning assigned by Section 1901.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1902.002. COVERAGE FOR PHYSICIANS OR HEALTH CARE PROVIDERS UNDER VENDOR ENDORSEMENTS OR CERTAIN POLICIES. A physician or health care provider is considered a vendor for purposes of coverage under a vendor's endorsement or a manufacturer's general liability or products liability policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1902.003. EXCLUSIONS AND LIMITATIONS ON COVERAGE UNDER VENDOR ENDORSEMENTS PROHIBITED. An insurer may not exclude or otherwise limit coverage for physicians or health care providers under a vendor's endorsement issued to a manufacturer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 1903. LOSS CONTROL INFORMATION AND SERVICES

SUBCHAPTER A. LOSS CONTROL SERVICES FOR PROFESSIONAL LIABILITY INSURANCE FOR HOSPITALS

Sec. 1903.001. DEFINITION. In this subchapter, "hospital" means a public or private institution licensed under Chapter 241 or 577, Health and Safety Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1903.002. INAPPLICABILITY OF SUBCHAPTER. This subchapter and Subchapter C do not apply to insurance policies that provide excess coverage issued by the Texas Medical Liability Insurance Underwriting Association under Chapter 2203, or to those policies if the policies are serviced by an insurer acting as a servicing carrier under an agreement entered into between the association and the insurer and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1903.003. LOSS CONTROL SERVICES REQUIRED. (a) Before writing professional liability insurance for a hospital in this state, an insurer must maintain or provide loss control facilities that:

(1) provide loss control services reasonably commensurate with the risks, exposures, and experience of the insured's business;

(2) are adequate to provide loss control services required by the nature of the policyholder's operations; and

(3) include surveys, recommendations, training programs, consultations, and analyses of accident causes.

(b) To provide the facilities required by this section, the insurer may:

(1) employ qualified personnel;

(2) retain qualified independent contractors;

(3) contract with the policyholder to provide qualified loss control personnel and services; or

(4) use a combination of methods described by this subsection.

(c) Independent contractors and other personnel described by Subsection (b) must have the qualifications of a field safety representative. A field safety representative must be an individual who:

(1) holds a:

(A) bachelor's degree in science or engineering;

(B) bachelor of arts degree in nursing;

(C) bachelor of science degree in nursing, pharmacy, or physical therapy; or

(D) master's degree in hospital administration;

(2) is a licensed engineer;

(3) is a certified safety professional;

(4) is a certified industrial hygienist;

(5) has at least 10 years' experience in occupational safety and health; or

(6) has completed a course of training in loss control services approved by the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1903.004. SANCTIONS. (a) If there is evidence that reasonable loss control services are not being maintained or provided by an insurer as required by this subchapter or are not being used by the insurer in a reasonable manner to prevent injury to patients of the insurer's policyholders, the commissioner shall order a hearing to determine whether the insurer is not in compliance with this subchapter.

(b) If it is determined that the insurer is not in compliance, the commissioner may impose any sanction authorized by Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1903.005. RULES. The commissioner may adopt reasonable

rules for the enforcement of this subchapter after holding a public hearing on the proposed rules.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. LOSS CONTROL INFORMATION FOR GENERAL AND CERTAIN PROFESSIONAL LIABILITY INSURANCE

Sec. 1903.051. LOSS CONTROL INFORMATION REQUIRED. (a) Before writing professional liability insurance, including medical professional liability insurance, for insureds other than hospitals or general liability insurance in this state, an insurer must provide to the insurer's policyholders loss control information reasonably commensurate with the risks, exposures, and experience of the insured's business.

(b) To provide the information described by Subsection (a) or services, the insurer may:

(1) employ qualified personnel;

(2) retain qualified independent contractors;

(3) contract with the policyholder to provide qualified loss control personnel and services; or

(4) use a combination of methods described by this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1903.052. SANCTIONS. (a) If there is evidence that reasonable loss control information is not being provided by an insurer as required by this subchapter or is not being used by the insurer in a reasonable manner to reduce losses, the commissioner shall order a hearing to determine whether the insurer is not in compliance with this subchapter.

(b) If it is determined that the insurer is not in compliance, the commissioner may impose any sanction authorized by Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1903.053. RULES. After opportunity for a hearing, the commissioner may adopt reasonable rules for the enforcement of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. CIVIL PROCEEDINGS

Sec. 1903.101. IMMUNITY FROM LIABILITY. (a) An insurer or an agent or employee of the insurer is not liable, and a cause of action does not arise against the insurer, agent, or employee, for an accident based on an allegation that the accident was caused or could have been prevented by a program, information, inspection, or other activity or service undertaken by the insurer to prevent accidents or to control losses, as applicable, in connection with the operations of the insured.

(b) The immunity from liability provided by this section does not affect the liability of an insurer as otherwise provided in an insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1903.102. LOSS CONTROL INFORMATION NOT DISCOVERABLE OR ADMISSIBLE. Loss control information provided by an insurer to an insured is not discoverable or admissible as evidence in a civil proceeding.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBTITLE C. AUTOMOBILE INSURANCE

CHAPTER 1951. GENERAL PROVISIONS: AUTOMOBILE INSURANCE

Sec. 1951.001. RATES FOR AUTOMOBILE INSURANCE. Rates for personal and commercial automobile insurance in this state are determined as provided by Chapter 2251 and Article 5.13-2.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 1951.002. RULES. The commissioner may adopt and enforce reasonable rules necessary to carry out the provisions of this subtitle.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1951.003. FORMER MILITARY VEHICLES. (a) In this section, "former military vehicle" has the meaning assigned by Section 504.502, Transportation Code.

(b) A rating plan that includes a classification applicable to antique, privately owned passenger vehicles that are maintained primarily for use in exhibitions, club activities, parades, or other functions of public interest and that may be used occasionally for other purposes must include in that classification former military vehicles maintained for those uses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1951.004. CRIMINAL PENALTY. (a) An insurer, or an officer or representative of an insurer, commits an offense if the insurer, officer, or representative violates:

(1) Section 1951.001, 1951.002, 1952.051, 1952.052, 1952.053, 1952.054, or 1952.055;

(2) Subchapter B, Chapter 1806;

(3) Subchapter C, Chapter 1953;

(4) Chapter 254; or

(5) Article 5.01, 5.03, 5.06, 5.10, or 5.11.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $500.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.002,

eff. April 1, 2009.

CHAPTER 1952. POLICY PROVISIONS AND FORMS FOR AUTOMOBILE INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1952.001. APPLICABILITY OF CHAPTER. Except as otherwise provided by this chapter, this chapter applies to an insurer writing automobile insurance in this state, including an insurance company, corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 282 (H.B. 949), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. POLICY FORMS AND PROVISIONS IN GENERAL

Sec. 1952.051. POLICY FORMS FOR AUTOMOBILE INSURANCE. Notwithstanding Subsections (1)-(4) and (7), Article 5.06, policy forms and endorsements for automobile insurance in this state are regulated under Chapter 2301 and Article 5.13-2.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.0515. REQUIRED COVERAGE. An agent or insurer, including a county mutual insurance company, may not deliver or issue for delivery in this state a personal automobile insurance policy unless the policy provides at least the minimum coverage specified by Subchapter D, Chapter 601, Transportation Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 803 (S.B. 1567), Sec. 1, eff. September 1, 2013.

Sec. 1952.052. USE OF PREVIOUSLY APPROVED OR ADOPTED POLICY FORMS AUTHORIZED. An insurer may continue to use a policy form or

endorsement approved or adopted by the commissioner under Article 5.06 before June 11, 2003, on notification in writing to the commissioner that the insurer will continue to use the policy form or endorsement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.053. WITHDRAWAL OF APPROVAL. The commissioner may, after notice and hearing, withdraw the commissioner's approval of a policy or endorsement form that was approved by the commissioner under Article 5.06.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.054. REQUIRED DISCLOSURES REGARDING SHORT-TERM POLICIES. (a) An insurance policy or other document evidencing proof of purchase of a personal automobile insurance policy written for a term of less than 30 days may not be used to obtain an original or renewal driver's license, an automobile registration or license plates, or a motor vehicle inspection certificate. An insurance policy or other document described by this subsection must contain the following statement:

TEXAS LAW PROHIBITS USE OF THIS DOCUMENT TO OBTAIN A MOTOR VEHICLE INSPECTION CERTIFICATE, AN ORIGINAL OR RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE REGISTRATION OR LICENSE PLATES.

(b) Before accepting any premium or fee for a personal automobile insurance policy or binder for a term of less than 30 days, an agent or insurer must make the following written disclosure to the applicant or insured:

TEXAS LAW PROHIBITS USE OF THIS POLICY OR BINDER TO OBTAIN A MOTOR VEHICLE INSPECTION CERTIFICATE, AN ORIGINAL OR RENEWAL DRIVER'S LICENSE, OR AN AUTOMOBILE REGISTRATION OR LICENSE PLATES.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.055. CERTIFICATE OF INSURANCE AS SUBSTITUTE FOR INSURANCE POLICY. (a) An insurer that complies with applicable requirements may issue and deliver a certificate of insurance as a substitute for issuing and delivering an insurance policy adopted or approved by the commissioner. The certificate must:

(1) be in the form prescribed by the commissioner; and

(2) refer to and identify the policy form for which the certificate is substituted.

(b) A certificate under this section represents the insurance policy and, when issued, is evidence that the certificate holder is insured under the identified policy form. The certificate is subject to the same limitations, conditions, coverages, selection of options, and other provisions provided in the policy, and the certificate must show and adequately reference that policy information. The certificate or subsequent attachments to the certificate must refer to all endorsements to the policy.

(c) A certificate under this section must be executed in the same manner as though an insurance policy were issued. If an insurer substitutes a certificate for a policy, the insurer shall simultaneously provide the insured receiving the certificate with an outline of coverages in the form and content approved by the commissioner. At the insured's request, the insurer shall provide the insured with a copy of the policy.

(d) The commissioner may adopt rules necessary to implement this section, including a rule limiting the application of this section to private passenger automobile insurance policies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.056. REQUIRED PROVISION: COVERAGE FOR CERTAIN SPOUSES. A personal automobile insurance policy or any similar policy form adopted or approved by the commissioner under Article 5.06 or filed under Subchapter B, Chapter 2301, that covers liability arising out of ownership, maintenance, or use of a motor vehicle of a spouse who is otherwise insured by the policy must contain a provision to continue coverage for the spouse during a period of

separation in contemplation of divorce.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.057. PROHIBITED PROVISION: PAYMENT ON CONVICTION FOR DRUG OFFENSE. (a) An insurer may not deliver or issue for delivery in this state an automobile insurance policy that provides payment on final conviction of the named insured for loss for a covered motor vehicle seized by federal or state law enforcement officers as evidence in a case against the named insured under Chapter 481, Health and Safety Code, or under the federal Controlled Substances Act (21 U.S.C. Section 801 et seq.).

(b) For purposes of this section, a named insured for:

(1) an individual automobile insurance policy is the person named on the declaration page of the policy and the person's spouse; and

(2) an automobile insurance policy other than an individual policy is the company or corporation named on the declaration page of the policy and any officer, director, or shareholder of that company or corporation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.058. LOSS CONTROL INFORMATION AND SERVICES REQUIRED. (a) An insurer must provide loss control information as a prerequisite to writing commercial automobile liability insurance in this state.

(b) The insurer shall provide to the insurer's policyholders loss control information reasonably commensurate with the risks, exposures, and experience of the insured's business. To provide loss control information or services, the insurer may:

(1) employ qualified personnel;

(2) retain qualified independent contractors;

(3) contract with the policyholder to provide qualified loss control personnel and services; or

(4) use a combination of methods described by this subsection.

(c) If there is evidence that an insurer is not providing reasonable loss control information or is not using that information in a reasonable manner to reduce losses, the commissioner shall order a hearing to determine whether the insurer is in compliance with this section. If the commissioner determines that the insurer is not in compliance, the commissioner may impose any sanction authorized by Chapter 82.

(d) An insurer or an agent or employee of the insurer is not liable, and a cause of action does not arise against the insurer, agent, or employee, for any accident based on the allegation that the accident was caused or could have been prevented by a program, information, inspection, or other activity or service undertaken by the insurer for the prevention of accidents in connection with operations of the insured. The immunity provided by this subsection does not affect the liability of an insurer for compensation or as otherwise provided in an insurance policy.

(e) Loss control information an insurer provides to an insured under this section is not subject to discovery and is not admissible as evidence in any civil proceeding.

(f) The commissioner, after holding a public hearing on the proposed rules, may adopt reasonable rules for the enforcement of this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.059. REQUIRED PROVISION: COVERAGE FOR CERTAIN VEHICLES ACQUIRED DURING POLICY TERM. (a) This section applies to an insurer authorized to write automobile insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other entity.

(b) A personal automobile insurance policy must contain a provision defining a covered vehicle in accordance with this section for a motor vehicle acquired by the insured during the policy term.

(c) Coverage under this section is required only for a vehicle that is:

(1) a private passenger automobile; or

(2) a pickup, utility vehicle, or van with a gross vehicle

weight of 25,000 pounds or less that is not used for the delivery or transportation of goods, materials, or supplies, other than samples, unless:

(A) the delivery of the goods, materials, or supplies is not the primary use for which the vehicle is employed; or

(B) the vehicle is used for farming or ranching.

(d) Coverage under this section is required only for a vehicle that is acquired during the policy term and of which the insurer is notified on or before:

(1) the 20th day after the date on which the insured becomes the owner of the vehicle; or

(2) a later date specified by the policy.

(e) Coverage under this section for a vehicle that replaces a covered vehicle shown in the declarations for the policy must be the same as the coverage for the vehicle being replaced. An insured must notify the insurer of a replacement vehicle during the time prescribed by Subsection (d) only if the insured wishes to:

(1) add coverage for damage to the vehicle; or

(2) continue existing coverage for damage to the vehicle after the period prescribed by Subsection (d) expires.

(f) Coverage under this section for a vehicle that is acquired during the policy term in addition to the covered vehicles shown in the declarations for the policy and of which the insurer is notified as prescribed by Subsection (d) must be the broadest coverage provided under the policy for any covered vehicle shown in the declarations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 282 (H.B. 949), Sec. 2, eff. September 1, 2013.

Sec. 1952.060. REQUIRED PROVISION: LIABILITY COVERAGE FOR TEMPORARY VEHICLES DURING POLICY TERM; PRIMARY COVERAGE REQUIRED.

(a) In this section:

(1) "Repair facility" means a person who rebuilds, repairs, or services a motor vehicle for consideration or under a warranty, service, or maintenance contract.

(2) "Resident relative" means an individual who:

(A) resides in the same household as the insured; and

(B) is related to the insured within the third degree

of consanguinity or affinity as described by Chapter 573, Government Code.

(3) "Temporary vehicle" includes a vehicle that is loaned or provided to an insured by an automobile repair facility for the insured's use while the insured's vehicle is at the facility for service, repair, maintenance, or damage or to obtain an estimate and is:

(A) in the lawful possession of the insured or resident relative of the insured;

(B) not owned by the insured, any resident relative of the insured, or any other person residing in the insured's household; and

(C) operated by or in the possession of the insured or resident relative of the insured until the vehicle is returned to the repair facility.

(b) A personal automobile insurance policy, including a policy issued by a county mutual insurance company, must define temporary vehicle as defined by this section and include in the policy's primary liability coverage primary liability coverage for a temporary vehicle as a covered vehicle during the policy term.

(c) Coverage under this section is required only for a vehicle that is:

(1) a private passenger automobile; or

(2) a pickup, utility vehicle, or van with a gross vehicle weight of 14,000 pounds or less that is not used for the delivery or transportation of goods, materials, or supplies, other than samples, unless:

(A) the delivery of the goods, materials, or supplies is not the primary use for which the vehicle is employed; or

(B) the vehicle is used for farming or ranching.

(d) The coverage required by this section provides primary coverage for the insured's legal liability for bodily injury and property damage and for damage to the temporary vehicle, not excess coverage. The coverage must insure:

(1) the person named in the personal automobile insurance policy; and

(2) any resident relative of the insured and licensed operator residing in the household except for a person specifically named in a named driver exclusion under Section 1952.353(b).

(e) The policy limits of a personal automobile insurance policy

must be available for the coverage required by this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1367 (H.B. 3420), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 24 (H.B. 1787), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. UNINSURED OR UNDERINSURED MOTORIST COVERAGE

Sec. 1952.101. UNINSURED OR UNDERINSURED MOTORIST COVERAGE REQUIRED. (a) In this section, "uninsured or underinsured motorist coverage" means the provisions of an automobile liability insurance policy that provide for coverage in at least the limits prescribed by Chapter 601, Transportation Code, that protects insureds who are legally entitled to recover from owners or operators of uninsured or underinsured motor vehicles damages for bodily injury, sickness, disease, or death, or property damage resulting from the ownership, maintenance, or use of any motor vehicle.

(b) An insurer may not deliver or issue for delivery in this state an automobile liability insurance policy, including a policy provided through the Texas Automobile Insurance Plan Association under Chapter 2151, that covers liability arising out of the ownership, maintenance, or use of any motor vehicle unless the insurer provides uninsured or underinsured motorist coverage in the policy or supplemental to the policy.

(c) The coverage required by this subchapter does not apply if any insured named in the insurance policy rejects the coverage in writing. Unless the named insured requests in writing the coverage required by this subchapter, the insurer is not required to provide that coverage in or supplemental to a reinstated insurance policy or renewal insurance policy if the named insured rejected the coverage in connection with that insurance policy or an insurance policy previously issued to the insured by the same insurer or by an affiliated insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.037(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.037(a), eff. September 1, 2007.

Sec. 1952.102. UNINSURED MOTOR VEHICLE. (a) For purposes of the coverage required by this subchapter, "uninsured motor vehicle," subject to the terms of the coverage, is considered to include an insured motor vehicle as to which the insurer providing liability insurance is unable because of insolvency to make payment with respect to the legal liability of the insured within the limits specified in the insurance.

(b) The commissioner may, in the policy forms filed under Subchapter B, Chapter 2301, allow "uninsured motor vehicle" to be defined or, in policy forms adopted under Article 5.06, define "uninsured motor vehicle," to exclude certain motor vehicles whose operators are in fact uninsured.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.103. UNDERINSURED MOTOR VEHICLE. For purposes of the coverage required by this subchapter, "underinsured motor vehicle" means an insured motor vehicle on which there is collectible liability insurance coverage with limits of liability for the owner or operator that were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.104. REQUIRED PROVISIONS RELATING TO UNINSURED OR UNDERINSURED MOTORIST COVERAGE. The portion of a policy form adopted under Article 5.06 or filed as provided by Subchapter B, Chapter 2301, to provide coverage under this subchapter must:

(1) provide that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who

sustains bodily injury or property damage as the result of a single occurrence may not exceed the limit of liability for those coverages as stated in the insurance policy and that the total aggregate limit of liability to all claimants, if more than one, may not exceed the total limit of liability per occurrence as stated in the policy;

(2) provide for the exclusion of the recovery of damages for bodily injury or property damage, or both, resulting from the intentional acts of the insured; and

(3) require that, for the insured to recover under the uninsured motorist coverage if the owner or operator of any motor vehicle that causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by the unknown person and the person or property of the insured.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.105. LIABILITY LIMITS. (a) The limits of liability for bodily injury, sickness, disease, or death must be offered to an insured in the amounts desired by the insured, but not in amounts greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.

(b) Subject to a deductible amount of $250, coverage for property damage must be offered to an insured in the amounts desired by the insured, but not in amounts greater than the limits of liability specified in the property damage liability provisions of the insured's policy.

(c) Notwithstanding Subsections (a) and (b), amounts of liability limits for bodily injury, sickness, disease, or death and amounts for coverage for property damage may not be offered in amounts less than those prescribed by Chapter 601, Transportation Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.106. RECOVERY UNDER UNDERINSURED MOTORIST COVERAGE. Underinsured motorist coverage must provide for payment to the

insured of all amounts that the insured is legally entitled to recover as damages from owners or operators of underinsured motor vehicles because of bodily injury or property damage, not to exceed the limit specified in the insurance policy, and reduced by the amount recovered or recoverable from the insurer of the underinsured motor vehicle.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.107. RECOVERY UNDER COLLISION OR COMBINED COVERAGE. (a) An insured who has collision coverage and uninsured or underinsured property damage liability coverage may recover under the coverage the insured chooses.

(b) If neither the collision coverage or the uninsured or underinsured property damage liability coverage is sufficient alone to cover all damage resulting from a single occurrence, the insured may recover under both coverages. If recovering under both coverages, the insured shall designate one coverage as the primary coverage and pay the deductible applicable to that coverage. The primary coverage must be exhausted before any recovery is made under the secondary coverage.

(c) If both the primary and secondary coverages are used to pay damages from a single occurrence, the insured may not be required to pay the deductible applicable to the secondary coverage when the amount of the deductible otherwise applicable to the secondary coverage is the same as or less than the amount of the deductible applicable to the primary coverage. If both coverages are used to pay damages from a single occurrence and the amount of the deductible otherwise applicable to the secondary coverage is greater than the amount of the deductible applicable to the primary coverage, the insured shall pay the difference between the amount of the two deductibles with respect to the secondary coverage.

(d) The insured may not recover under both the primary and secondary coverages more than the actual damages suffered.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.108. INSURER'S RIGHT OF RECOVERY. (a) An insurer that makes a payment to any person under any coverage required by this subchapter is subject to the terms of that coverage and, to the extent of the payment, is entitled to the proceeds of any settlement or judgment resulting from the exercise of any right of recovery of the person to whom the payment is made against any person or organization legally responsible for the bodily injury, sickness, disease, or death for which the payment is made, including the proceeds recoverable from the assets of an insolvent insurer.

(b) If, under an insurance policy issued under this subchapter, an insurer makes a payment as a result of the insolvency of another insurer:

(1) the insolvent insurer's insured shall be given credit to the extent of the paying insurer's payment in any judgment obtained against the insured with respect to the insured's legal liability for damages described by Subsection (a); and

(2) subject to Subchapter F, Chapter 462, the paying insurer has the right to proceed directly against the insolvent insurer or that insurer's receiver, and in pursuing that right the paying insurer has any rights that the insolvent insurer's insured might otherwise have had if the insured had made the payment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.109. BURDEN OF PROOF IN DISPUTE. The insurer has the burden of proof in a dispute as to whether a motor vehicle is uninsured.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.110. VENUE. Notwithstanding Section 15.032, Civil Practice and Remedies Code, an action against an insurer in relation to the coverage provided under this subchapter, including an action to enforce that coverage, may be brought only in the county in which:

(1) the policyholder or beneficiary instituting the action resided at the time of the accident involving the uninsured or underinsured motor vehicle; or

(2) the accident occurred.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. PERSONAL INJURY PROTECTION COVERAGE

Sec. 1952.151. PERSONAL INJURY PROTECTION. "Personal injury protection" consists of provisions of an automobile liability insurance policy that provide for payment to the named insured in the policy, members of the insured's household, and any authorized operator or passenger of the named insured's motor vehicle, including a guest occupant, of all reasonable expenses that:

(1) arise from an accident;

(2) are incurred not later than the third anniversary of the date of the accident; and

(3) are for:

(A) necessary medical, surgical, x-ray, or dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing, or funeral services;

(B) in the case of an income producer, replacement of income lost as the result of the accident; or

(C) in the case of a person injured in the accident who was not an income or wage producer at the time of the accident, reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.152. PERSONAL INJURY PROTECTION COVERAGE REQUIRED. (a) An insurer may not deliver or issue for delivery in this state an automobile liability insurance policy, including a policy provided through the Texas Automobile Insurance Plan Association under Chapter 2151, that covers liability arising out of the ownership, maintenance, or use of any motor vehicle unless the insurer provides personal injury protection coverage in the policy or supplemental to the policy.

(b) The coverage required by this subchapter does not apply if

any insured named in the insurance policy rejects the coverage in writing. Unless the named insured requests in writing the coverage required by this subchapter, the insurer is not required to provide that coverage in or supplemental to a reinstated insurance policy or renewal insurance policy if the named insured rejected the coverage in connection with that insurance policy or an insurance policy previously issued to the insured by the same insurer or by an affiliated insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.038(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.038(a), eff. September 1, 2007.

Sec. 1952.153. MAXIMUM REQUIRED AMOUNT OF PERSONAL INJURY PROTECTION. This subchapter does not require an insurer to provide personal injury protection coverage in an amount that exceeds $2,500 for all benefits, in the aggregate, for each person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.154. LOSS OF INCOME BENEFITS. An insurer providing loss of income benefits under coverage required by this subchapter may require that the insured, as a condition of receiving those benefits, provide the insurer with reasonable medical proof of the insured's injury causing loss of income.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.155. BENEFITS PAYABLE WITHOUT REGARD TO FAULT OR COLLATERAL SOURCE; EFFECT ON SUBROGATION. (a) The benefits under coverage required by this subchapter are payable without regard to:
(1) the fault or nonfault of the named insured or recipient

in causing or contributing to the collision; and

(2) any collateral source of medical, hospital, or wage continuation benefits.

(b) Except as provided by Subsection (c), an insurer paying benefits under coverage required by this subchapter does not have a right of subrogation or claim against any other person or insurer to recover any benefits by reason of the alleged fault of the other person in causing or contributing to the collision.

(c) An insurer paying benefits pursuant to this subchapter, including a county mutual insurance company, shall have a right of subrogation and a claim against a person causing or contributing to the collision if, on the date of loss, financial responsibility as required by Chapter 601, Transportation Code, has not been established for a motor vehicle involved in the collision and operated by that person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.039(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.039(a), eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 135, eff. September 1, 2023.

Sec. 1952.156. PAYMENT OF BENEFITS. (a) Subject to the requirements of this section and Section 1952.157, an insurer shall pay benefits under the coverage required by this subchapter periodically as claims for those benefits arise, but not later than the 30th day after the date the insurer receives satisfactory proof of a claim.

(b) The coverage required by this subchapter may:

(1) prescribe a period of not less than six months after the date of an accident within which the original proof of loss with respect to a claim for benefits must be presented to the insurer; and

(2) provide that an insurer may require reasonable medical proof of an alleged recurrence of an injury for which an original claim for benefits was made if a lapse occurs in the period of total

disability or in the medical treatment of an injured person who:

(A) has received benefits under that coverage; and

(B) subsequently claims additional benefits based on the alleged recurrence.

(c) The aggregate benefits payable under the coverage required by this subchapter to any person may not exceed the maximum limits prescribed in the insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.157. ACTION FOR FAILURE TO PAY BENEFITS. (a) If the insurer fails to pay benefits under the coverage required by this subchapter when due, the person entitled to those benefits may bring an action in contract to recover the benefits.

(b) If the insurer is required to pay benefits described by Subsection (a), the person entitled to the benefits is entitled to recover reasonable attorney's fees, a penalty of 12 percent, and interest at the legal rate from the date those amounts became overdue.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.158. EXCLUSION OF BENEFITS. An insurer shall exclude benefits to an insured or the insured's personal representative under the coverage required by this subchapter if the insured's conduct contributed to the injury the insured sustained and that conduct:

(1) involved intentionally causing injury to the insured; or

(2) occurred while committing a felony or while seeking to elude lawful apprehension or arrest by a law enforcement official.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.159. OFFSET AGAINST LIABILITY CLAIM. (a) If a liability claim is made by a guest or passenger described by Section

1952.151 against the owner or operator of the motor vehicle in which the guest or passenger was riding or against the owner's or operator's liability insurer, the owner or operator of the motor vehicle or the owner's or operator's liability insurer is entitled to an offset, credit, or deduction against any award made to the guest or passenger in an amount equal to the amounts paid by the owner, the operator, or the owner's or operator's automobile liability insurer to the guest or passenger under personal injury protection.

(b) This subchapter does not authorize a direct action against a liability insurer if that right does not presently exist at law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.160. INAPPLICABILITY TO ACCIDENT OR HEALTH INSURANCE. This subchapter applies only to an automobile insurance policy subject to this subtitle or Subchapter A, Chapter 5, and does not apply to any other accident or health insurance policy, regardless of whether the accident or health insurance policy provides indemnity against automobile-connected injuries.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.161. CERTAIN COVERAGE UNAFFECTED. This subchapter does not:

(1) affect the offering of medical payments coverage, disability benefits, or accidental death benefits, as presently prescribed by the commissioner; or

(2) prevent an insurer from providing benefits broader than the minimum benefits described by this subchapter, subject to the rules prescribed by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. SHORT-TERM LIABILITY INSURANCE FOR CERTAIN MOTORISTS

Sec. 1952.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies to an insurer authorized to write automobile insurance in this state, including an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other entity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.202. DEFINITIONS. In this subchapter:

(1) "Motor vehicle" means any private passenger vehicle or utility type vehicle that has a gross weight of not more than 25,000 pounds.

(2) "Short-term liability insurance policy" means an insurance policy that:

(A) provides coverage for at least 24 hours but not for more than one week;

(B) meets the requirements of Chapter 601, Transportation Code;

(C) covers liability for bodily injury, death, and property damage arising from the use or operation of a motor vehicle; and

(D) is not insurance assigned to an authorized insurer by the Texas Automobile Insurance Plan Association under Section 2151.102(a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.203. SHORT-TERM LIABILITY INSURANCE PROGRAM. (a) The commissioner by rule may establish a program to provide for the sale of short-term liability insurance policies to nonresident motorists who are visiting this state.

(b) The commissioner may negotiate an agreement with any insurer under which the insurer will sell insurance policies described by this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 1952.204. AGENT LICENSE REQUIRED. A person representing an insurer in selling short-term liability insurance policies under this subchapter must be licensed under Title 13.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.205. SALE OF SHORT-TERM LIABILITY INSURANCE POLICIES. An insurer selling short-term liability insurance policies under this subchapter shall use policy forms adopted by the commissioner under Article 5.06 or filed and in effect as provided by Subchapter B, Chapter 2301, as applicable, unless the insurer is exempt from using those forms.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. GARAGE INSURANCE

Sec. 1952.251. DEFINITIONS. In this subchapter:

(1) "Garage customer" means a person or organization other than:

(A) the named insured under a garage insurance policy;

(B) an employee, director, officer, shareholder, partner, or agent of the named insured; or

(C) a resident of the same household as:

(i) the named insured; or

(ii) an employee, director, officer, shareholder, partner, or agent of the named insured.

(2) "Garage insurance" means automobile insurance as defined by Article 5.01 issued to a named insured who is engaged in the business of selling, servicing, or repairing motor vehicles as defined by commissioner rule or order.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.252. GARAGE INSURANCE. (a) A garage insurance policy may provide that a garage customer is not an insured under the policy and that the coverage under the policy does not apply to a garage customer except to the extent that any other insurance coverage that is collectible and available to the garage customer is not equal to the minimum financial responsibility limits specified by Chapter 601, Transportation Code.

(b) Notwithstanding any provision to the contrary in another insurance policy as to whether the insurance coverage described by Subsection (a) that is provided under that policy is primary, excess, or contingent insurance, or otherwise, the other insurance coverage is the primary insurance as to the garage customer.

(c) A garage insurance policy containing a provision described by Subsection (a) may not cover a garage customer except to the extent permitted by this section, notwithstanding the terms of the other insurance policy providing coverage described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. REPAIR OF MOTOR VEHICLES

Sec. 1952.301. LIMITATION ON PARTS, PRODUCTS, OR REPAIR PERSONS OR FACILITIES PROHIBITED. (a) Except as provided by rules adopted by the commissioner, under an automobile insurance policy that is delivered, issued for delivery, or renewed in this state, an insurer may not directly or indirectly limit the insurer's coverage under a policy covering damage to a motor vehicle by:

(1) specifying the brand, type, kind, age, vendor, supplier, or condition of parts or products that may be used to repair the vehicle; or

(2) limiting the beneficiary of the policy from selecting a repair person or facility to repair damage to the vehicle.

(b) In settling a liability claim by a third party against an insured for property damage claimed by the third party, an insurer may not require the third-party claimant to have repairs made by a particular repair person or facility or to use a particular brand, type, kind, age, vendor, supplier, or condition of parts or products.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 1952.302. PROHIBITED ACTS IN CONNECTION WITH REPAIR OF MOTOR VEHICLE. In connection with the repair of damage to a motor vehicle covered under an automobile insurance policy, an insurer, an employee or agent of an insurer, an insurance adjuster, or an entity that employs an insurance adjuster may not:

(1) solicit or accept a referral fee or gratuity in exchange for referring a beneficiary or third-party claimant to a repair person or facility to repair the damage;

(2) state or suggest, either orally or in writing, to a beneficiary that the beneficiary must use a specific repair person or facility or a repair person or facility identified on a preferred list compiled by an insurer for the damage repair or parts replacement to be covered by the policy; or

(3) restrict the right of a beneficiary or third-party claimant to choose a repair person or facility by requiring the beneficiary or third-party claimant to travel an unreasonable distance to repair the damage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.303. CONTRACTS BETWEEN INSURER AND REPAIR PERSON OR FACILITY. (a) A contract between an insurer and a repair person or facility, including an agreement under which the repair person or facility agrees to extend discounts for parts or labor to the insurer in exchange for referrals by the insurer, may not result in a reduction of coverage under an insured's automobile insurance policy.

(b) The commissioner may adopt rules under Chapter 542 with respect to any fraudulent activity of any party to an agreement described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.304. PROVISION OF INFORMATION REGARDING REPAIRS. An insurer may not prohibit a repair person or facility from providing a

beneficiary or third-party claimant with information that states:

(1) the description, manufacturer, or source of the parts used; and

(2) the amounts charged to the insurer for the parts and related labor.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.305. NOTICE OF RIGHTS REGARDING REPAIR OF MOTOR VEHICLE. (a) At the time a motor vehicle is presented to an insurer, an insurance adjuster, or other person in connection with a claim for damage repair, the insurer, insurance adjuster, or other person shall provide to the beneficiary or third-party claimant notice of the provisions of this subchapter.

(b) The commissioner shall adopt a rule establishing the method or methods insurers must use to comply with the notice provisions of this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.306. COMPLAINTS. A beneficiary, third-party claimant, or repair person or facility may submit a written, documented complaint to the department with respect to an alleged violation of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 1952.307. RULES. Rules adopted by the commissioner to implement this subchapter must include requirements that:

(1) any limitation described by Section 1952.301(a) be clearly and prominently displayed on the face of the insurance policy or certificate in lieu of an insurance policy; and

(2) the insured give written consent to a limitation described by Section 1952.301(a) after the insured is notified orally and in writing of the limitation at the time the insurance policy is

purchased.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER H. NAMED DRIVER POLICIES

Sec. 1952.351. DEFINITIONS. In this subchapter:

(1) "Household" means a unit composed of individuals living together in the same dwelling, without regard to whether they are related to each other. The term includes a unit composed of individuals living together in:

(A) a home or mobile home;

(B) a duplex unit, apartment unit, or condominium unit; or

(C) any dwelling unit in a multiunit residential structure.

(2) "Named driver exclusion" means a provision or endorsement of an automobile insurance policy that excludes specified drivers from coverage under the policy.

(3) "Named driver policy" means an automobile insurance policy that provides any type of coverage for individuals named on the policy but that does not provide coverage for every individual who has permission to use a covered vehicle and who resides in a named insured's household.

(4) "Operator's policy" means an automobile insurance policy that, in accordance with Section 601.077, Transportation Code, provides coverage for the named insured when operating an automobile the insured does not own.

Added by Acts 2019, 86th Leg., R.S., Ch. 455 (H.B. 259), Sec. 1, eff. September 1, 2019.

Sec. 1952.352. APPLICABILITY. This subchapter applies to an insurer writing automobile insurance in this state, including an insurance company, corporation, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, association, county mutual insurance company, Lloyd's plan, and any other insurer.

Added by Acts 2019, 86th Leg., R.S., Ch. 455 (H.B. 259), Sec. 1, eff. September 1, 2019.

Sec. 1952.353. NAMED DRIVER POLICIES PROHIBITED; CERTAIN NAMED DRIVER EXCLUSIONS AUTHORIZED. (a) An insurer may not deliver, issue for delivery, or renew a named driver policy unless the named driver policy is an operator's policy.

(b) An insurer may use a named driver exclusion only if the exclusion specifically names each excluded driver and does not exclude a class of drivers and the named insured accepts the exclusion in writing.

Added by Acts 2019, 86th Leg., R.S., Ch. 455 (H.B. 259), Sec. 1, eff. September 1, 2019.

CHAPTER 1953. RATE REGULATION AND RATEMAKING FOR AUTOMOBILE INSURANCE

SUBCHAPTER A. RATE REGULATION

Sec. 1953.001. EXCLUSION OF CERTAIN TYPES OR CLASSES OF INSURANCE FROM CERTAIN REGULATIONS. (a) This section applies only to insurance against liability for damages arising out of the ownership, operation, maintenance, or use of a motor vehicle described by Article 5.01 or against loss of or damage to a motor vehicle described by Article 5.01 that, in the judgment of the commissioner, is a type or class of insurance that is also the subject of or is more properly regulated under other insurance rating laws that cover that type or class of insurance.

(b) A type or class of insurance to which this section applies is excluded from regulation under this chapter and:

(1) Articles 5.01, 5.01B, 5.03, 5.04, 5.04-1, 5.06, 5.10, and 5.11;

(2) Chapters 251 and 254;

(3) Subchapters A and B, Chapter 1806; and

(4) Chapters 1951 and 1952.

(c) If the commissioner finds that a type or class of insurance to which this section applies is also the subject of or is more properly regulated under other insurance rating laws that cover that type or class of insurance, the commissioner shall issue an order declaring which other insurance rating laws apply to:

(1) the type or class of insurance; and

(2) any motor vehicle equipment described by Article 5.01.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.001, eff. April 1, 2009.

SUBCHAPTER B. RATEMAKING

Sec. 1953.051. CERTAIN RATING PLANS PROHIBITED. (a) A rating plan regarding the writing of automobile insurance, other than insurance written under Chapter 2151, may not:

(1) assign a rate consequence to a charge or conviction for a violation of Subtitle C, Title 7, Transportation Code; or

(2) otherwise cause premiums for automobile insurance to be increased because of a charge or conviction described by Subdivision (1).

(b) A rating plan regarding the writing of personal automobile insurance may not:

(1) assign a rate consequence solely to:

(A) a consumer inquiry, as defined by Section 544.551, made by an applicant or insured; or

(B) a claim filed by an insured under a personal automobile insurance policy that is not paid or payable under the policy; or

(2) otherwise cause premiums for personal automobile insurance to be increased solely because of an inquiry or claim described by Subdivision (1).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.001, eff. April 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1137 (S.B. 189), Sec. 4, eff. September 1, 2015.

Sec. 1953.052. PREMIUM SURCHARGE REQUIRED. (a) An insurer described by Section 1952.001 shall assess a premium surcharge in an amount as stated in the insurer's rating plan against an insured for no more than three years immediately following the date the insured is convicted of:

(1) an offense relating to the operating of a motor vehicle

while intoxicated in violation of Section 49.04 or 49.07, Penal Code; or

(2) an offense under Section 49.08, Penal Code.

(b) An insurer may apply the premium surcharge described by Subsection (a) only to a private passenger automobile policy, as defined by the department.

(c) If an insured assessed a premium surcharge under Subsection (a) is convicted of an offense under one of the statutes listed in Subsection (a)(1) or (2) during the period the insured is assessed the premium surcharge, the period for which the premium surcharge is assessed is increased by three additional consecutive years for each conviction.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.001, eff. April 1, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 216 (S.B. 1490), Sec. 1, eff. September 1, 2017.

SUBCHAPTER C. LOSS AND EXPENSE EXPERIENCE

Sec. 1953.101. RECORDING AND REPORTING OF LOSS AND EXPENSE EXPERIENCE AND OTHER DATA. (a) The commissioner shall adopt reasonable rules and statistical plans for the recording and reporting of loss experience and other required data by insurers. The rules and plans must ensure that each insurer's total loss and expense experience is made available at least as frequently as annually in the form and with the detail necessary to aid in determining whether rates and rating systems in use under the following provisions comply with the standards adopted under those provisions:

(1) this chapter;

(2) Articles 5.01, 5.03, and 5.04, if applicable;

(3) Subchapters A and B, Chapter 1806; and

(4) Chapters 1951 and 1952.

(b) In adopting the rules, the commissioner shall adopt rules that are as uniform as is practicable to the rules and forms of statistical plans used in other states.

(c) Each insurer shall use the statistical plans adopted under this section to record and report loss experience and other required

data in accordance with the rules adopted by the commissioner.

(d) The commissioner may modify statistical plans adopted under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.001, eff. April 1, 2009.

Sec. 1953.102. RULES ALLOWING INTERCHANGE OF LOSS EXPERIENCE INFORMATION. The commissioner may adopt reasonable rules to allow the interchange of loss experience information as necessary for the application of rating plans.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.001, eff. April 1, 2009.

Sec. 1953.103. EXCHANGE OF INFORMATION AND EXPERIENCE DATA WITH OTHER STATES. To further the uniform administration of rating laws, the department or an insurer may:

(1) exchange information and experience data with insurance supervisory officials, insurers, and rating organizations in other states; and

(2) consult and cooperate with the individuals or entities described by Subdivision (1) with respect to ratemaking and the application of rating systems.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.001, eff. April 1, 2009.

Sec. 1953.104. SWORN STATEMENTS. (a) The department may require a sworn statement from an insurer affected by this subchapter that shows:

(1) the insurer's experience on any classification or classifications of risks; and

(2) other information that is necessary or helpful in performing duties or exercising authority imposed by law.

(b) The department shall prescribe the necessary forms for statements and reports required under Subsection (a) with due regard for the rules, methods, and forms in use in other states for similar

purposes so that uniformity of statistics is not disturbed.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.001, eff. April 1, 2009.

CHAPTER 1954. INSURANCE FOR TRANSPORTATION NETWORK COMPANY DRIVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1954.001. DEFINITIONS. In this chapter:

(1) "Digital network" means any online-enabled application, software, website, or system offered or used by a transportation network company that enables a prearranged ride with a transportation network company driver.

(2) "Personal vehicle" means a vehicle that is used by a transportation network company driver and is:

(A) owned, leased, or otherwise authorized for use by the driver; and

(B) not a taxicab, limousine, or similar for-hire vehicle.

(3) "Prearranged ride" means transportation provided by a transportation network company driver to a transportation network company rider, beginning at the time a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company and ending at the time the last requesting rider departs from the driver's personal vehicle. The term does not include:

(A) a shared expense carpool or vanpool arrangement or service; or

(B) transportation provided using a taxicab, limousine, or similar for-hire vehicle.

(4) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity operating in this state that uses a digital network to connect a transportation network company rider to a transportation network company driver for a prearranged ride.

(5) "Transportation network company driver" means an individual who:

(A) receives connections to potential transportation network company riders and related services from a transportation network company in exchange for payment of a fee to the company; and

(B) uses a personal vehicle to offer or provide a prearranged ride to a transportation network company rider on connection with the rider through a digital network controlled by the company in exchange for compensation or payment of a fee.

(6) "Transportation network company rider" means an individual who uses a transportation network company's digital network to connect with a transportation network company driver who provides a prearranged ride to the individual in the driver's personal vehicle between points chosen by the individual.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 855 (H.B. 2501), Sec. 1, eff. September 1, 2017.

Sec. 1954.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to automobile insurance policies in this state, including policies issued by a Lloyd's plan, a reciprocal or interinsurance exchange, and a county mutual insurance company.

(b) This chapter does not apply to an entity arranging nonemergency medical transportation services under a contract with the state or a managed care organization for individuals qualifying for Medicaid or Medicare unless the entity:

(1) provides the transportation services through a digital network that connects transportation network company drivers to transportation network company riders for prearranged rides;

(2) contracts individually with each transportation network company driver who is connected to transportation network company riders for the prearranged rides through the entity's digital network; and

(3) otherwise meets all requirements under the Medicaid or Medicare program for delivery of nonemergency medical transportation services.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 855 (H.B. 2501), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B. INSURANCE REQUIREMENTS

Sec. 1954.051. GENERAL INSURANCE REQUIREMENT. (a) A transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance as required by this subchapter.

(b) Insurance maintained under this subchapter must allow a transportation network company driver to use a personal vehicle to transport transportation network company riders for compensation and cover the driver while:

(1) the driver is logged on to the transportation network company's digital network as provided by Section 1954.052; or

(2) the driver is engaged in a prearranged ride as provided by Section 1954.053.

(c) Insurance maintained under this subchapter must comply with the law applicable to personal automobile insurance in this state, including this subtitle and Chapter 601, Transportation Code.

(d) The coverage requirements of this subchapter may be satisfied by:

(1) automobile insurance maintained by the transportation network company driver;

(2) automobile insurance maintained by the transportation network company; or

(3) a combination of Subdivisions (1) and (2).

(e) Insurance required under this subchapter may be placed with an automobile insurer authorized to engage in business in this state or with an eligible surplus lines insurer.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.052. INSURANCE REQUIREMENTS: BETWEEN PREARRANGED RIDES. At the time a transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation network requests but is not engaged in a prearranged ride, the automobile insurance policy must provide:

(1) the following minimum amounts of liability insurance

coverage:

(A) $50,000 for bodily injury to or death for each person in an incident;

(B) $100,000 for bodily injury to or death of a person per incident; and

(C) $25,000 for damage to or destruction of property of others in an incident;

(2) uninsured or underinsured motorist coverage where required by Section 1952.101; and

(3) personal injury protection coverage where required by Section 1952.152.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.053. INSURANCE REQUIREMENTS: DURING PREARRANGED RIDES. At the time a transportation network company driver is engaged in a prearranged ride, the automobile insurance policy must provide, at a minimum:

(1) coverage with a total aggregate limit of liability of $1 million for death, bodily injury, and property damage for each incident;

(2) uninsured or underinsured motorist coverage where required by Section 1952.101; and

(3) personal injury protection coverage where required by Section 1952.152.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.054. LAPSE OF OR INSUFFICIENT COVERAGE. If an insurance policy maintained by a transportation network company driver under this subchapter has lapsed or does not provide the coverage required by this subchapter, the transportation network company shall provide the coverage required by this subchapter beginning with the first dollar of a claim against the driver.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.055. RELATION TO PERSONAL AUTOMOBILE INSURANCE. Coverage under an automobile insurance policy maintained by the transportation network company is not contingent on a transportation network company driver's personal automobile insurer initially denying a claim.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.056. FINANCIAL RESPONSIBILITY. (a) Insurance satisfying the requirements of this subchapter satisfies the financial responsibility requirement for an automobile under Chapter 601, Transportation Code.

(b) A transportation network company driver shall carry proof of insurance that satisfies Sections 1954.052 and 1954.053 with the driver when the driver uses a vehicle in connection with a transportation network company's digital network. In the event of a collision, a driver shall provide the proof of insurance to a directly interested person, automobile insurer, and investigating peace officer on request under Section 601.053, Transportation Code. On request, a driver shall also disclose to a directly interested person, automobile insurer, and investigating peace officer whether, at the time of the collision, the driver was:

(1) logged on to the company's digital network; or

(2) engaged in a prearranged ride.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 136, eff. September 1, 2023.

SUBCHAPTER C. RELATIONSHIP BETWEEN TRANSPORTATION NETWORK COMPANY AND TRANSPORTATION NETWORK COMPANY DRIVER

Sec. 1954.101. REQUIRED DISCLOSURES. Before a transportation network company driver may accept a request for a prearranged ride on a transportation network company's digital network, the company shall

disclose in writing the following:

(1) the insurance policy, including the types of coverage and the limits for the policy, that the company provides while a driver uses a personal vehicle in connection with the company's digital network; and

(2) that the driver's personal automobile insurance policy may not provide coverage, depending on the policy's terms, while the driver is logged on to the company's digital network and is available to receive transportation requests or is engaged in a prearranged ride.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.102. CONTROL OF TRANSPORTATION NETWORK COMPANY DRIVERS. A transportation network company does not control, direct, or manage a personal vehicle or a transportation network company driver who connects to the company's digital network except as agreed by written contract.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

SUBCHAPTER D. PERSONAL AUTOMOBILE INSURANCE

Sec. 1954.151. AUTHORIZED EXCLUSIONS FROM COVERAGE. (a) An insurer may exclude from coverage under a personal automobile insurance policy issued to an owner or operator of a personal vehicle any loss or injury that occurs while a transportation network company driver using the personal vehicle:

(1) is logged on to a transportation network company's digital network; or

(2) is engaged in a prearranged ride.

(b) Subsection (a) applies to any coverage included in a personal automobile insurance policy, including:

(1) liability coverage for bodily injury and property damage;

(2) personal injury protection coverage under Subchapter D, Chapter 1952;

(3) uninsured and underinsured motorist coverage;

(4) medical payment coverage;

(5) comprehensive physical damage coverage; and

(6) collision physical damage coverage.

(c) An exclusion authorized under this section applies notwithstanding a financial responsibility requirement under Chapter 601, Transportation Code.

(d) This subchapter may not be construed to invalidate or limit an exclusion contained in a policy form, including a policy form in use or approved for use in this state before January 1, 2016, that excludes coverage for automobiles used to carry persons or property for compensation or available for hire by the public.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.152. COVERAGE UNDER PERSONAL AUTOMOBILE INSURANCE NOT REQUIRED. (a) This subchapter does not require a personal automobile insurance policy to cover a transportation network company driver while:

(1) the driver is logged on to a transportation network company's digital network;

(2) the driver is engaged in a prearranged ride; or

(3) the driver otherwise uses a vehicle to transport passengers for compensation.

(b) This section does not prevent an insurer from providing coverage that may be excluded under this section if the insurer elects to provide the coverage in the policy or by endorsement.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.153. DEFENSE OR INDEMNIFICATION OF CLAIM. (a) An automobile insurer that issues a personal automobile insurance policy that includes an exclusion from coverage authorized by Section 1954.151 does not have a duty to defend or indemnify a claim arising from an event subject to the exclusion.

(b) An automobile insurer that defends or indemnifies a claim against a transportation network company driver for which coverage is excluded under the terms of the policy as authorized by this

subchapter has a right of contribution against another insurer that provides automobile insurance to the driver in satisfaction of the coverage requirements under Section 1954.052 or 1954.053, as applicable.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.154. ASSISTANCE IN CLAIM INVESTIGATION. In an insurance claim investigation, a transportation network company and any insurer providing coverage under Subchapter B shall assist each insurer involved in the claim by providing information to directly interested persons and an insurer of the transportation network company driver. Information provided under this section must include:

(1) the precise times that a driver logged on and off of the transportation network company's digital network in the 12-hour period immediately preceding and the 12-hour period immediately following the accident; and

(2) a clear description of the coverage, exclusions, and limits provided under an automobile insurance policy maintained under Subchapter B.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

Sec. 1954.155. PAYMENT OF CERTAIN CLAIMS. If there is a lien on a personal vehicle and the transportation network company's insurer covers a claim arising out of an incident that occurred during a prearranged ride, the insurer shall issue payment for the claim:

(1) directly to the person who is repairing the vehicle; or

(2) jointly to the owner of the personal vehicle and the primary lienholder.

Added by Acts 2015, 84th Leg., R.S., Ch. 742 (H.B. 1733), Sec. 1, eff. January 1, 2016.

SUBTITLE D. FIRE INSURANCE AND ALLIED LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

CHAPTER 2001. GENERAL PROVISIONS: FIRE INSURANCE AND ALLIED LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

Sec. 2001.001. APPLICABILITY OF SUBTITLE. (a) Each insurance policy or contract insuring property in this state against loss by fire, including a policy or contract or portion of a policy or contract that insures the shore end of a marine risk against loss by fire, must be issued in accordance with:

(1) this chapter;

(2) Section 403.002;

(3) Subchapter C, Chapter 5;

(4) Subchapter H, Chapter 544;

(5) Subchapter D, Chapter 1806; and

(6) Chapters 252, 2002, 2003, 2004, 2005, 2006, and 2171.

(b) An insurer issuing an insurance policy or contract described by Subsection (a), including a fire insurance company, marine insurance company, fire and marine insurance company, and fire and tornado insurance company, is governed by the laws described by Subsection (a).

(c) This section applies to an insurer or to an insurance policy or contract regardless of:

(1) the kind and character of property insured;

(2) whether the property is:

(A) fixed or movable;

(B) stationary or in transit; or

(C) consigned or billed for shipment inside or outside the boundaries of this state or to a foreign country;

(3) whether the insurer is organized:

(A) under the laws of this state, another state, territory, or possession of the United States, or a foreign country; or

(B) by authority of the federal government; or

(4) the kind of insurer or the name of the insurer issuing the policy or contract.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.002. RATES. (a) Rates for all lines of insurance subject to a law described by Section 2001.001(a) are determined as provided by Chapter 2251 and Article 5.13-2.

(b) The requirement imposed by Subsection (a) does not affect the requirement for the commissioner to conduct inspections of commercial property and prescribe a manual of rules and rating schedules for commercial property under a law described by Section 2001.001(a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.003. AUTHORITY TO REQUIRE SWORN STATEMENTS. For an insurer described by Section 2001.001, the department may require from the insurer or a director, officer, representative, or agent of the insurer a sworn statement covering any period that states:

(1) the rates and premiums collected for fire insurance on each class of risks and on all property in this state;

(2) the causes of fire, if known to the insurer or individual or if the insurer or individual possesses relevant information or data or can obtain the information or data at reasonable expense; and

(3) all necessary facts and information to allow the department to determine enforcement and to enforce a law described by Section 2001.001(a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.004. AUTHORITY TO INSPECT AND TAKE TESTIMONY REGARDING RECORDS. (a) The commissioner or a person authorized by the commissioner may:

(1) visit:

(A) a general, local, or other office of an insurer engaged in the business of insurance in this state;

(B) the insurer's home office located outside this state, if applicable; and

(C) the office of any of the insurer's officers, directors, agents, or other representatives; and

(2) require the insurer or an officer, director, agent, or other representative of the insurer to produce for inspection by the commissioner or the commissioner's authorized representative all of the books, records, and papers of the insurer, officer, director, agent, or representative.

(b) The commissioner or the commissioner's authorized representative may:

(1) examine and make or have made copies of the books, records, and papers described by Subsection (a); and

(2) take testimony under oath regarding the books, records, and papers and compel the attendance of witnesses for that purpose.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.005. AUTHORITY TO REQUIRE PROVISION OF DATA. The department may require:

(1) any or all of the fire insurance companies engaged in the business of insurance in this state to jointly or separately provide to the department any data the company or companies possess, including maps, tariffs, inspection reports, and any data affecting fire insurance risks in this state or any part of this state; and

(2) any two or more of those companies or any joint agents or representatives of the companies to provide to the department for use in implementing a law described by Section 2001.001(a) any data the companies, agents, or representatives possess.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.006. REPORT OF INFORMATION RELATING TO CERTAIN FIRE LOSSES. (a) The state fire marshal, a fire marshal of a political subdivision of this state, the chief of a fire department in this state, or a peace officer in this state may request an insurer investigating a fire loss of property in which damages or losses exceed $1,000 to release information in the insurer's possession relating to that loss. The insurer shall release the requested information and cooperate with the official. The requested information may include only:

(1) an insurance policy relevant to the fire loss under investigation and any application for a policy;

(2) policy premium payment records;

(3) the history of the insured's previous claims for fire loss; and

(4) material relating to the investigation of the loss, including:

(A) statements of any person;

(B) proof of loss; or

(C) other relevant evidence.

(b) This section does not authorize a public official or agency to adopt or require any type of periodic report by an insurer.

(c) An insurer that has reason to suspect that a fire loss to the property of a person insured by the insurer was caused by incendiary means and that receives a request for information under Subsection (a) shall:

(1) notify the requesting official and provide the official with all relevant material acquired during the insurer's investigation of the fire loss;

(2) cooperate with and take any action requested of the insurer by a law enforcement agency; and

(3) permit a person ordered by a court to inspect any of the insurer's records relating to the insurance policy and the loss.

(d) In the absence of fraud or malice, an insurer or a person who provided information on the insurer's behalf is not liable for damages in a civil action or subject to criminal prosecution for an oral or written statement made or any other action taken that is necessary to supply information required under this section.

(e) An official or a department or agency employee who receives information under this section shall maintain the confidentiality of the information until the information is required to be released in a criminal or civil proceeding.

(f) An official described by Subsection (a) may be required to testify as to any information in the official's possession regarding the fire loss of property in a civil action in which a person seeks recovery for the loss from an insurer under an insurance policy.

(g) A person may not intentionally:

(1) refuse to release information requested under Subsection (a);

(2) refuse to notify the fire marshal of a fire loss

required to be reported under Subsection (c);

(3) refuse to provide the fire marshal with relevant information required to be provided under Subsection (c); or

(4) fail to maintain the confidentiality of information that is confidential under Subsection (e).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.007. CRIMINAL PENALTY. (a) An officer or director of a fire insurance company described by Section 2001.001, or an agent or person acting on behalf of or employed by a fire insurance company described by Section 2001.001, commits an offense if the officer, director, agent, or person intentionally:

(1) performs or causes to be performed, alone or in conjunction with a corporation, company, or person, an act prohibited by a law described by Section 2001.001(a);

(2) fails to perform an act required to be performed by a law described by Section 2001.001(a);

(3) permits an act prohibited by a law described by Section 2001.001(a); or

(4) otherwise violates a law described by Section 2001.001(a).

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $300 or more than $1,000.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.008. IMMUNITY FROM PROSECUTION. (a) A person is not excused from giving testimony or producing evidence when legally required at the trial of another person charged with violating a law relating to fire insurance on the ground that the testimony or evidence may incriminate the person under the laws of this state.

(b) A person may not be prosecuted or subjected to a penalty or forfeiture for or because of a transaction, matter, or thing about which the person testifies or produces evidence under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2001.009. LIMITATION ON COMPENSATION AND EXPENSES. The total amount of necessary compensation for experts, clerical personnel, and other department employees and necessary expenses, including travel expenses, incurred by the department in implementing the laws described by Section 2001.001(a) may not exceed the amount of the assessments on the gross premiums of all fire insurance companies engaged in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2001.010. PUBLIC GUIDE RELATING TO COMMERCIAL PROPERTY RATING. (a) In this section, "rating agency" means a public or private legal entity that is authorized to conduct commercial property rating in this state.

(b) The commissioner shall make available to the public a generalized guide that:

(1) summarizes the procedures used by the department or other rating agency to rate nonresidential commercial buildings in this state; and

(2) specifies how different construction elements and techniques used in a building project affect the insurance rating of the completed building.

(c) The commissioner may charge a reasonable fee to cover the administrative costs of producing and distributing the guide.

(d) The commissioner shall review the information in the guide in January of each odd-numbered year and shall revise the guide as necessary to incorporate any changes that have occurred in the preceding biennium that affect the information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2002. POLICY PROVISIONS AND FORMS FOR FIRE INSURANCE AND ALLIED LINES, INCLUDING RESIDENTIAL PROPERTY INSURANCE

SUBCHAPTER A. POLICY PROVISIONS

Sec. 2002.001. POLICY FORM OR ENDORSEMENT MAKING MATERIAL CHANGE TO POLICY. (a) In this section, "material change" means a change to a policy that, with respect to a prior or existing policy:

(1) reduces coverage;

(2) changes conditions of coverage; or

(3) changes the duties of the insured.

(b) An insurer may not use a policy form or endorsement to a policy form to which Article 5.35, Subchapter B of this chapter, or Subchapter B, Chapter 2301, applies that makes a material change to the policy unless:

(1) the insured requests the material change; or

(2) the insurer provides the policyholder in a written notice an explanation of the material change that:

(A) appears in a conspicuous place on the notice of the material change;

(B) clearly indicates each material change to the policy;

(C) is written in plain language; and

(D) is provided to the policyholder not later than the 30th day before the date on which the policy expires.

(c) Notice required by Subsection (b) may be provided to the policyholder in a notice of renewal.

(d) In addition to the notice to the policyholder provided under Subsection (b), if an insurer elects to make a material change to a policy form or use an endorsement to make a material change to a policy form, not later than the 30th day before the earliest date on which the new policy form or endorsement is used, the insurer shall provide written notice to each agent of the insurer that clearly indicates each material change being made to the policy form. An insurer may provide the notice to the agents in a single notice given to each agent of the insurer that summarizes substantially similar material changes to more than one policy form.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1018 (H.B. 2655), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 60 (S.B. 417), Sec. 4, eff. September 1, 2017.

Sec. 2002.002. LIEN ON INSURED PROPERTY. A provision in an insurance policy issued by an insurer subject to this subtitle or Subchapter C, Chapter 5, is void if the provision states that the encumbrance of the insured property by a lien of any character at the time of or after the policy's issuance renders the policy void.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2002.003. COVERAGES FOR SPOUSES AND FORMER SPOUSES. A homeowners insurance policy or fire insurance policy promulgated under Article 5.35 or filed and in effect as provided by Subchapter B, Chapter 2301, may not be delivered, issued for delivery, or renewed in this state unless the policy contains the following language: "It is understood and agreed that this policy, subject to all other terms and conditions contained in this policy, when covering residential community property, as defined by state law, shall remain in full force and effect as to the interest of each spouse covered, irrespective of divorce or change of ownership between the spouses unless excluded by endorsement attached to this policy until the expiration of the policy or until canceled in accordance with the terms and conditions of this policy."

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2002.004. JEWELRY COVERAGE. (a) In this section, "personal property insurance" means insurance against damage to or loss of tangible personal property, including coverage provided in a homeowners insurance policy, residential fire and allied lines insurance policy, or farm and ranch owners insurance policy.

(b) This section applies to each insurer that provides personal property insurance in this state, including a county mutual insurance company, farm mutual insurance company, Lloyd's plan, and reciprocal or interinsurance exchange.

(c) An insurer that provides personal property insurance coverage in this state for jewelry may elect to pay either:

(1) the stated value of the jewelry item; or

(2) the actual cost of replacing the jewelry item with one of like kind and quality.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2002.005. COINSURANCE CLAUSES. (a) Except as otherwise provided by this section, an insurer subject to this subtitle or Subchapter C, Chapter 5, may not issue an insurance policy or contract covering property in this state that contains a clause that:

(1) requires the insured to obtain or maintain a larger amount of insurance than expressed in the policy or contract; or

(2) in any way provides that the insured is liable as a coinsurer with the insurer issuing the policy or contract for any part of the loss or damage that may be caused by fire to the property described in the policy or contract.

(b) A clause described by Subsection (a) is void.

(c) A coinsurance clause may be included in an insurance policy written on cotton, grain, or other products in the process of marketing, shipping, storing, or manufacturing.

(d) An insured may be given an option to accept an insurance policy or contract that contains a clause described by Subsection (a) covering a class of property other than the property described by Subsection (c), a private dwelling, or a stock of merchandise offered for sale at retail that has a value of less than $10,000, if the insured is allowed a reduction in the premium rate for the policy or contract. A clause to which this subsection applies is valid and binding. The commissioner may promulgate the premium rates that apply to a coinsurance clause under this subsection.

(e) The commissioner by order may authorize or require the use of any form of coinsurance clause in connection with an insurance policy that insures against the hazards of tornado, windstorm, and hail on any class of property. The commissioner may adopt rules with reference to:

(1) coinsurance clauses authorized or required by this subsection and the use of those clauses; and

(2) credits in premium rates for the use of coinsurance clauses authorized or required by this subsection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2002.006. PROVISIONS GOVERNING CERTAIN CONDITIONS OR RISKS. (a) This chapter; Sections 403.002, 2001.001-2001.006, 2001.009, and 2001.010; Subchapter H, Chapter 544; Subchapter D, Chapter 1806; Chapters 2003, 2004, 2006, and 2171; and Articles 5.25, 5.25A, 5.25-3, 5.26, 5.27, 5.28, 5.29, 5.30, 5.31, 5.32, 5.34, 5.35, 5.39, 5.40, and 5.41 govern the following in the same manner and to the same extent those provisions govern fire insurance and fire insurance rates:

(1) insurance coverage for any of the following conditions or risks:

(A) weather or climatic conditions, including lightning, tornado, windstorm, hail, cyclone, rain, or frost and freeze;

(B) earthquake or volcanic eruption;

(C) smoke or smudge;

(D) excess or deficiency of moisture;

(E) flood;

(F) the rising water of an ocean or an ocean's tributary;

(G) bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, or any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe;

(H) vandalism or malicious mischief;

(I) strike or lockout;

(J) explosion, as provided by Subsection (b);

(K) water or other fluid or substance resulting from:

(i) the breakage or leakage of a sprinkler, pump, or other apparatus erected for extinguishing fire, or a water pipe or other conduit or container; or

(ii) casual water entering a building through a leak or opening in the building or by seepage through building walls; or

(L) accidental damage to a sprinkler, pump, fire apparatus, pipe, or other conduit or container described by Paragraph (K)(i);

(2) premium rates in this state for the insurance described by Subdivision (1); and

(3) all matters pertaining to the insurance described by Subdivision (1), except as provided by this section with respect to marine insurance as defined by Section 1807.001.

(b) In this section:

(1) "explosion" includes:

(A) the explosion of a pressure vessel, other than a steam boiler of more than 15 pounds pressure, in a building designed and used solely for residential purposes by not more than four families;

(B) an explosion of any kind originating outside of an insured building or outside of the building containing the insured property;

(C) the explosion of a pressure vessel that does not contain steam or that is not operated with steam coils or steam jets; and

(D) an electric disturbance causing or concomitant with an explosion in public service or public utility property; and

(2) insurance coverage for explosion does not include coverage for loss of or damage to any property of the insured resulting from the explosion of or injury to:

(A) a boiler, heater, or other fired pressure vessel;

(B) an unfired pressure vessel;

(C) a pipe or container connected with a boiler or vessel described by Paragraph (A) or (B);

(D) an engine, turbine, compressor, pump, or wheel;

(E) an apparatus generating, transmitting, or using electricity; or

(F) any other machinery or apparatus connected with or operated by a boiler, vessel, or machine described by Paragraphs (A)-(E).

(c) This section does not apply to:

(1) a farm mutual insurance company operating under Chapter 911;

(2) a county mutual insurance company operating under Chapter 912;

(3) a mutual insurance company engaged in business under Chapter 12, Title 78, Revised Statutes, before that chapter's repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called

Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections;

(4) the making of inspections or issuance of certificates of inspections on a boiler, apparatus, or machinery described by Subsection (b)(2), whether insured or otherwise; or

(5) the insurance of a vessel or craft, its cargo, marine builder's risk, marine protection and indemnity, or another risk commonly insured under a marine insurance policy, as distinguished from an inland marine insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. POLICY FORMS

Sec. 2002.051. POLICY FORMS AND ENDORSEMENTS FOR RESIDENTIAL PROPERTY INSURANCE. Notwithstanding Subsections (a)-(j), Article 5.35, policy forms and endorsements for residential property insurance in this state are regulated under Subchapter A, Chapter 2301, and Article 5.13-2.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2002.052. APPLICABILITY OF OTHER LAW TO RESIDENTIAL PROPERTY INSURANCE. An insurer may continue to use a policy form or endorsement promulgated, approved, or adopted by the commissioner under Article 5.35 before June 11, 2003, on notification in writing to the commissioner that the insurer will continue to use the policy form or endorsement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. ITEMS PROVIDED IN CONNECTION WITH INSURANCE POLICY

Sec. 2002.101. RATE ANALYSIS. (a) On issuing a fire insurance policy, an insurer engaged in the business of fire insurance in this

state shall provide the policyholder with a written analysis of the rate or premium charged for the policy showing the items of charge and credit that determine the rate or premium.

(b) Subsection (a) does not apply if the insurer has previously provided the policyholder with an analysis of the rate or premium.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2002.102. NOTICE OF RENEWAL. (a) In this section, "material change" means a change to a policy that, with respect to a prior or existing policy:

(1) reduces coverage;

(2) changes conditions of coverage; or

(3) changes the duties of the policyholder.

(b) An insurer, including a farm mutual insurance company, county mutual insurance company, Lloyd's plan, or reciprocal or interinsurance exchange, that renews a homeowners insurance policy, fire and residential allied lines insurance policy, farm and ranch owners insurance policy, or farm and ranch insurance policy must provide the policyholder with written notice in accordance with this section of any material change in each form of the policy offered to the policyholder on renewal from the form of the policy held immediately before renewal.

(c) A notice provided under this section must:

(1) appear in a conspicuous place in the notice of renewal;

(2) clearly indicate each material change to the policy being made on renewal;

(3) be written in plain language; and

(4) be provided to the policyholder not later than the 30th day before the renewal date.

(d) In addition to the notice to the policyholder provided under this section, if an insurer elects to make a material change to a policy form on renewal, not later than the 30th day before the earliest renewal date on which the new policy form is used, the insurer shall provide written notice to each agent of the insurer that clearly indicates each material change being made to the policy form. An insurer may provide the notice to the agents in a single notice given to each agent of the insurer that summarizes

substantially similar material changes to more than one policy form.

(e) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 60 (S.B. 417), Sec. 6, eff. September 1, 2017.

Sec. 2002.103. DISCLOSURE REGARDING FLOOD COVERAGE REQUIRED. (a) In this section:

(1) "Commercial property insurance" has the meaning assigned by Section 2301.002, except that the term includes a commercial multiperil insurance policy that provides commercial property insurance coverage.

(2) "Residential property insurance" has the meaning assigned by Section 2301.002, except that the term includes a farm and ranch insurance policy and a farm and ranch owners insurance policy.

(b) This section applies to each insurer authorized to engage in the business of commercial or residential property insurance in this state, including a county mutual insurance company, farm mutual insurance company, Lloyd's plan, and reciprocal or interinsurance exchange.

(c) An insurer that issues or renews a commercial or residential property insurance policy that does not provide coverage against loss caused by flooding shall include with the policy documents provided to the policyholder at the time the policy is issued or renewed the following statement:

"Flood Insurance: You may also need to consider the purchase of flood insurance. Your insurance policy does not include coverage for damage resulting from a flood even if hurricane winds and rain caused the flood to occur. Without separate flood insurance coverage, you may have uncovered losses caused by a flood. Please discuss the need to purchase separate flood insurance coverage with your insurance agent or insurance company, or visit www.floodsmart.gov."

(d) The statement described by Subsection (c) must be conspicuous, as defined by Section 1.201, Business & Commerce Code.

(e) An insurer's failure to comply with this section does not invalidate any exclusion, including a flood exclusion, in an insurance policy subject to this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 332 (S.B. 442), Sec. 1, eff. September 1, 2019.

CHAPTER 2003. PROCEDURES FOR EVALUATING FIRE LOSS RISK

SUBCHAPTER A. EVALUATING FIRE LOSS RISK

Sec. 2003.001. FIRE LOSS INFORMATION. (a) The department shall ascertain as soon as practicable the annual fire loss in this state.

(b) The department shall, in a manner that will aid in determining equitable insurance rates and methods to reduce annual fire loss and insurance rates of this state or subdivisions of this state:

(1) obtain, make, and maintain records regarding the annual fire loss in this state; and

(2) collect data concerning the annual fire loss as necessary to enable the department to classify:

(A) fire losses in this state;

(B) the causes of those fire losses;

(C) the amount of the premiums collected for fire loss for each class of risk; and

(D) the amount paid for the fire losses.

(c) The commissioner may designate one or more advisory organizations or other agencies to gather, audit, and compile the fire loss experience of insurers. The insurers shall bear the costs incurred under this subsection.

(d) To implement this section, the department may:

(1) employ clerical personnel, inspectors, experts, and other assistants; and

(2) incur other necessary expenses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.002. FIRE SUPPRESSION RATINGS FOR BORDER MUNICIPALITIES. In assigning or evaluating a fire suppression rating

for a municipality at or near the border between this state and another state or the United Mexican States, the commissioner shall consider the existence and capabilities of a fire department or volunteer fire department that:

(1) serves an adjoining or nearby municipality in the other state or the United Mexican States; and

(2) by agreement or by long-standing practice provides fire suppression services to the municipality in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.003. CREDIT FOR REDUCING FIRE HAZARD. The commissioner may give a locality, municipality, or other political subdivision credit for:

(1) each fire hazard that the locality, municipality, or other political subdivision reduces or removes;

(2) additional fire-fighting equipment, increased police protection, or any other equipment or improvement that tends to reduce the fire hazard of the locality, municipality, or other political subdivision; and

(3) a good fire record made by the locality, municipality, or other political subdivision.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.004. POLICYHOLDER CREDIT FOR REDUCING HAZARD. (a) The commissioner may require an insurer to give credit to a policyholder for a hazard that the policyholder reduces or removes.

(b) For purposes of this section, the following actions constitute a reduction in hazard by a policyholder:

(1) the installation of a new standard fire hydrant approved by the department within the required distance of a risk, as prescribed by the department; or

(2) the use of compressed air foam technology in fire-fighting equipment.

(c) The insurer shall give credit in the proportion that the hazard is reduced or removed and shall refund to the policyholder the

proportional part of the unearned premium charged for the hazard that is reduced or removed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. MUNICIPAL FIRE LOSS LISTS

Sec. 2003.051. ANNUAL LIST OF INSURED FIRE LOSSES BY MUNICIPALITY. (a) The department shall compile for each municipality in this state a list for distribution to the municipality of the insured fire and lightning losses that:

(1) exceed $100; and

(2) are paid in the municipality for the preceding statistical year under policy forms:

(A) adopted or approved by the commissioner and authorized for use by Section 2301.052(b); or

(B) filed and in effect as provided by Section 2301.052(a).

(b) Each list must include:

(1) the name of each person recovering a loss under a policy form described by Subsection (a);

(2) the address or location where the loss occurred; and

(3) the amount paid by the insurer on the loss.

(c) The department shall develop each list from information obtained from insurer reports of individual losses during the statistical year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.052. MUNICIPALITY'S REQUEST FOR LIST; RETURN REPORT. (a) The department shall provide to a municipality a copy of the list compiled under Section 2003.051 for the municipality on the request of the municipality or the municipality's authorized agent or fire marshal.

(b) Each municipality shall investigate the information contained in the list to determine the losses actually occurring within the limits of the municipality. The municipality shall report to the department:

(1) a list of the losses that actually occurred within the limits of the municipality;

(2) a list of the losses that did not occur within the limits of the municipality; and

(3) other evidence essential to establishing the losses occurring in the municipality.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.053. LIST CORRECTIONS; USE. The department shall:

(1) make changes that the department considers appropriate to correct the list compiled under Section 2003.051 for a municipality; and

(2) use the corrected list to determine the fire record credit or debit for the municipality for the next year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.054. CHARGE FOR LIST AND FIRE RECORD SYSTEM. The commissioner shall set and collect a charge for compiling and providing a list under this subchapter and as the commissioner considers appropriate for administering the fire record system.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.055. DEPARTMENT AUTHORITY TO REQUIRE PROVISION OF FIRE LOSS INFORMATION. To accumulate statistical information for the control and prevention of fires, the department may require each municipality in this state and each insurer engaged in business in this state to provide to the department a complete and accurate report that lists all fire and lightning losses occurring in this state that are reflected in the municipality's or insurer's records.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.056. DISCRETIONARY PROVISION OF LIST. The department is not required to provide a list compiled under this subchapter if the fire record system is not in effect.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. VOLUNTARY INSPECTION PROGRAM

Sec. 2003.101. DEFINITIONS. In this subchapter:

(1) "Inspection" means a physical inspection of property for which residential property insurance is sought.

(2) "Inspection certificate" means a certificate issued under this subchapter by an inspector indicating that the condition of property meets or exceeds minimum standards.

(3) "Inspector" means a person authorized by the commissioner to perform inspections under this subchapter.

(4) "Minimum standards" means the standards adopted by the commissioner by rule regarding the insurability of property under this subchapter.

(5) "Residential property insurance" means insurance against loss to real or tangible personal property at a fixed location that is provided though a homeowners insurance policy, a residential fire and allied lines insurance policy, or a farm and ranch owners insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.102. RIGHT TO VOLUNTARY INSPECTION OF PROPERTY CONDITION. A person with an insurable interest in real or tangible personal property at a fixed location who desires to purchase residential property insurance may obtain an independent inspection of the condition of the property by an inspector authorized to perform inspections under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.103. PLAN OF OPERATION. (a) The commissioner shall adopt a plan of operation for the voluntary inspection program.

(b) The plan of operation must include rules and standards for the voluntary inspection program, including:

(1) the manner and scope of the inspections to be performed;

(2) the contents of the written evaluation report;

(3) the form of the inspection certificate to be issued;

(4) the term during which an inspection certificate is valid;

(5) rules for the certification or licensing of persons authorized to perform inspections under the program; and

(6) the fee that may be charged a person requesting an inspection under the program.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.104. ELIGIBLE INSPECTORS. Persons who may be certified or licensed to perform inspections under this subchapter include:

(1) a person licensed to perform real property inspections under Chapter 1102, Occupations Code; and

(2) a designated employee or agent of a county or municipality that chooses to establish a voluntary inspection program to inspect residential properties within the territorial limits of the county or municipality.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.105. PRESUMPTION OF INSURABILITY. (a) The existence of an inspection certificate issued under this subchapter creates a presumption that the condition of the property inspected is adequate for the issuance of residential property insurance.

(b) If an inspection certificate is used in whole or in part to determine insurability, an insurer may require as a condition of

issuing a residential property insurance policy that the applicant for that insurance provide a written statement that there has not been a material or substantial change to the property condition since the date of the inspection certificate.

(c) An insurer who receives an inspection certificate may not use the condition of the property as grounds to refuse to issue or renew residential property insurance unless the insurer:

(1) reinspects the property; and

(2) specifies the areas of deficiency in the insurer's declination letter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.106. ENFORCEMENT. The commissioner by rule may provide for the use of any disciplinary procedure authorized by this code to:

(1) maintain the integrity of the voluntary inspection program; or

(2) ensure compliance with this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2003.107. RULES. In addition to the plan of operation adopted under Section 2003.103, the commissioner may adopt rules that are appropriate to accomplish the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2004. RESIDENTIAL PROPERTY INSURANCE IN UNDERSERVED AREAS

Sec. 2004.001. DEFINITION. In this chapter, "residential property insurance" means insurance against loss to real or tangible personal property at a fixed location that is provided through a homeowners insurance policy, residential fire and allied lines insurance policy, or farm and ranch owners insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2004.002. DESIGNATION OF UNDERSERVED AREAS. (a) The commissioner by rule may designate an area as an underserved area for residential property insurance.

(b) In determining which areas to designate as underserved, the commissioner shall consider:

(1) whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the area;

(2) whether access to the full range of coverages and policy forms for residential property insurance does not reasonably exist; and

(3) any other relevant factor as determined by the commissioner.

(c) The commissioner shall determine which areas to designate as underserved under this section not less than once every six years.

(d) The commissioner shall conduct a study concerning the accuracy of current designations of underserved areas under this section for the purpose of increasing and improving access to insurance in those areas not less than once every six years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 8.001, eff. September 1, 2011.

Sec. 2004.003. AUTHORIZATION FOR ISSUANCE OF INSURANCE. An insurer authorized to write property or casualty insurance in this state, including a Lloyd's plan and a reciprocal or interinsurance exchange, that writes residential property insurance in this state may write that insurance on forms adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2004.004. EXCLUSION OF CERTAIN COVERAGE. Insurance provided under this chapter may not include windstorm and hail insurance coverage for a risk eligible for that coverage under Chapter 2210.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2004.005. AVAILABILITY OF COVERAGE. In a designated underserved area, each insurer described by Section 2004.003 shall provide to the insurer's agents, and the agents shall offer to all insureds, the full range of coverages prescribed under this chapter subject to the insurer's applicable rates and underwriting guidelines.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2004.006. POLICY FORMS. (a) The commissioner shall adopt policy forms for residential property insurance that are specifically for use in designated underserved areas. The policy forms must include a basic policy covering fire and allied lines perils with endorsements providing additional coverage at the insured's option.

(b) An insurer writing insurance in an underserved area may use the policy forms adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2004.007. INAPPLICABILITY OF CERTAIN LAWS TO PREMIUMS. The premium for an insurance policy written under this chapter is not:

(1) subject to tax under Chapter 221; and

(2) considered net direct premiums under Section 2210.003(7).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2004.008. RATES. Rates for coverage provided under this chapter are determined according to the provisions of this code applicable to the insurer providing the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2005. HOME WARRANTY AND HOME PROTECTION INSURANCE

Sec. 2005.001. DEFINITIONS. In this chapter:

(1) "Home protection insurance" means coverage insuring a purchaser of a home protection service or product against actual property loss.

(2) "Home protection service or product" means a service or product used for the protection of residential property, including a service or product provided by a person regulated under Chapter 1702, Occupations Code.

(3) "Home warranty insurance" means coverage:

(A) insuring performance by a builder of residential property of the builder's warranty obligations to a purchaser of the residential property; or

(B) insuring against named defects arising from failure of the builder to construct residential property in accordance with specified construction standards.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2005.002. AUTHORIZATION TO WRITE CERTAIN INSURANCE. An insurer authorized to engage in the business of fire insurance and allied lines or inland marine insurance may write home warranty insurance or home protection insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2005.003. MANNER OF REGULATION. Home warranty insurance or home protection insurance is not inland marine insurance, but is governed in the same manner and to the same extent as inland marine insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2005.004. LIMITS OF COVERAGE. The amount of coverage under a home protection insurance policy may not exceed $2,000 for any single occurrence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2006. PREMIUM RATE DISCOUNTS AND RATING PROGRAMS

SUBCHAPTER A. OPTIONAL PREMIUM DISCOUNT FOR USE OF INSULATING CONCRETE FORM SYSTEM

Sec. 2006.001. DEFINITIONS. In this subchapter:

(1) "Applicant" includes:

(A) an applicant for new insurance coverage; and

(B) a policyholder renewing insurance coverage.

(2) "Insulating concrete form system" means a building construction system primarily used to frame exterior walls in which polystyrene foam forms are placed in the walls of a structure under construction and filled with concrete and steel reinforcing material to become a permanent part of the structure.

(3) "Insurer" means an insurer authorized to write property and casualty insurance in this state, including:

(A) a county mutual insurance company;

(B) a farm mutual insurance company;

(C) a Lloyd's plan; and

(D) a reciprocal or interinsurance exchange.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2006.002. OPTIONAL PREMIUM DISCOUNT. (a) In accordance

with the rules adopted by the commissioner under this subchapter, an insurer may grant to an applicant a discount in the applicant's homeowners insurance premiums for insured property on receipt of written verification from the applicant that the property was constructed with an insulating concrete form system.

(b) The commissioner by rule shall prescribe the requirements for determining that a structure was constructed with an insulating concrete form system.

(c) Verification under this section must comply with the requirements prescribed by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2006.003. PROPERTY INSPECTION. (a) If determined necessary by the commissioner, the rules adopted under this subchapter may require an inspection of the property to be insured.

(b) The applicant shall pay the costs of a required inspection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2006.004. PREMIUM DISCOUNT; EXCEPTION. (a) The commissioner by rule shall establish the premium discount under this subchapter based on sound actuarial principles.

(b) The commissioner may approve a premium discount greater or less than the discount established by rule under Subsection (a) if:

(1) the insurer files the proposed discount with the department; and

(2) the commissioner determines that the proposed discount is actuarially justified.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2006.005. RULES. The commissioner may adopt rules as necessary to implement this subchapter in addition to other rules adopted under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. OPTIONAL PREMIUM DISCOUNTS AND RATING PROGRAMS FOR CERTAIN RESIDENTIAL PROPERTY INSURANCE POLICIES

Sec. 2006.051. DEFINITIONS. In this subchapter:

(1) "Affiliate" means an entity classified as an affiliate under Section 823.003.

(2) "Insurer" means an insurer authorized to write residential property insurance, including:

(A) a county mutual insurance company;

(B) a farm mutual insurance company;

(C) a Lloyd's plan; and

(D) a reciprocal or interinsurance exchange.

(3) "Residential property insurance" means property or property and casualty insurance covering a dwelling, including:

(A) homeowners insurance;

(B) residential fire and allied lines insurance;

(C) farm and ranch insurance; and

(D) farm and ranch owners insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2006.052. OPTIONAL PREMIUM DISCOUNT. (a) Except as provided by Section 2006.053, an insurer that issues a residential property insurance policy may:

(1) discount the premiums that would otherwise be charged for the policy by not less than three percent if the policyholder:

(A) has continuously been a residential property insurance policyholder with the insurer or an affiliate of the insurer; and

(B) has not filed a residential property insurance claim during the three years before the effective date of the policy; and

(2) increase the amount of the discount by one percent for each subsequent year in which the policyholder:

(A) has been a residential property insurance

policyholder with the insurer or an affiliate of the insurer; and

(B) has not filed a residential property insurance claim.

(b) This section applies to an insurer that uses a tier classification or discount program that has a premium consequence based in whole or in part on claims experience, regardless of whether any of the policies that continuously covered the policyholder was a different kind of residential property insurance policy from the policy eligible for the premium discount.

(c) A residential property insurance claim under this section does not include a claim:

(1) resulting from a loss caused by natural causes;

(2) that is filed but is not paid or payable under the policy; or

(3) that an insurer is prohibited from using under Section 544.353.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.040(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.040(a), eff. September 1, 2007.

Sec. 2006.0521. COMPLIANCE WITH OTHER LAW REQUIRED. Any change in the amount of a premium discount provided under this subchapter must comply with the requirements of Section 551.107.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.040(b), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.040(b), eff. September 1, 2007.

Sec. 2006.053. APPROVAL OF CERTAIN ACTUARIALLY JUSTIFIED PREMIUM DISCOUNTS AND RATING PROGRAMS. The commissioner may approve:

(1) a premium discount filed with the department that is greater or less than the discount specified by Section 2006.052 if the commissioner determines the discount is actuarially justified; or

(2) a rating program filed with the department that is based on claim or loss experience and is not a discount described by Section 2006.052 or Subdivision (1) if the commissioner determines the program is actuarially justified.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 569 (H.B. 2776), Sec. 3, eff. September 1, 2015.

Sec. 2006.054. LIMIT ON PREMIUM DISCOUNT. An insurer that provides a premium discount under Section 2006.052 is not required to provide the discount in an amount that exceeds 10 percent of the premiums that would otherwise be charged for the residential property insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 569 (H.B. 2776), Sec. 3, eff. September 1, 2015.

Sec. 2006.055. RULES AND GUIDELINES. (a) The commissioner shall adopt rules as necessary to implement Section 2006.052.
(b) The commissioner by rule shall establish guidelines under which an insurer that provides a premium discount under Section 2006.052 shall determine the appropriate discount based on sound actuarial principles.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 569 (H.B. 2776), Sec. 3, eff. September 1, 2015.

CHAPTER 2007. ASSESSMENT FOR RURAL FIRE PROTECTION

Sec. 2007.001. APPLICABILITY OF CHAPTER. This chapter applies

only to an insurer that:

(1) is authorized to engage in business in this state, including a stock company, mutual insurance company, farm mutual insurance company, county mutual insurance company, Lloyd's plan, and reciprocal or interinsurance exchange; and

(2) writes a policy of:

(A) homeowners insurance;

(B) fire insurance;

(C) farm and ranch owners insurance;

(D) private passenger automobile physical damage insurance;

(E) commercial automobile physical damage insurance; or

(F) commercial multiple peril insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2007.002. ASSESSMENT. The comptroller shall assess against all insurers to which this chapter applies amounts for each state fiscal year necessary, as determined by the commissioner, to collect a combined total equal to the lesser of:

(1) the total amount that the General Appropriations Act appropriates from the volunteer fire department assistance fund account in the general revenue fund for that state fiscal year other than appropriations for contributions to the Texas Emergency Services Retirement System made under Section 614.104(d), Government Code; or

(2) $30 million.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 932 (H.B. 3315), Sec. 20, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 9, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 24, eff. September 1, 2015.

Sec. 2007.003. DETERMINATION OF ASSESSMENT. (a) In this

section, "net direct premium" means the gross direct premium written and reported by an insurer on annual financial statements on:

(1) an insurance policy described by Section 2007.001(2), other than a commercial multiple peril policy; and

(2) the nonliability portion of a commercial multiple peril policy.

(b) Each insurer shall pay a portion of the assessment in the proportion that the insurer's net direct premiums for the period for which the assessment is made bear to the aggregate net direct premiums written in this state by all insurers for that period.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2007.004. DATES OF ASSESSMENT AND PAYMENT. (a) The comptroller shall assess insurers under this chapter on or before September 1 of each year.

(b) An insurer shall pay the amount of the insurer's assessment on or after the 60th day after the date the comptroller assesses the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2007.005. RECOVERY OF ASSESSMENT. An insurer may recover an assessment under this chapter by:

(1) reflecting the assessment as an expense in a rate filing required under this code; or

(2) charging the insurer's policyholders.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2007.006. NOTICE TO POLICYHOLDERS. (a) An insurer that recovers an assessment by charging the insurer's policyholders under Section 2007.005 shall provide notice to each policyholder regarding the amount of the assessment being recovered.

(b) The notice may be included on:

(1) a declarations page;
(2) a renewal certificate; or
(3) a billing statement.

(c) The commissioner by rule may adopt a form for providing the notice.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2007.007. VOLUNTEER FIRE DEPARTMENT ASSISTANCE FUND. The comptroller shall credit assessments collected under this chapter to the volunteer fire department assistance fund created under Section 614.104, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2007.008. RULES; COOPERATION. (a) The comptroller and the commissioner shall adopt rules as necessary to implement this chapter.

(b) The comptroller and the department shall cooperate as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2008. COVERAGE FOR CERTAIN DAMAGE TO PROPERTY BUILT WHOLLY OR PARTIALLY OVER WATER

Sec. 2008.001. APPLICABILITY OF CHAPTER. This chapter applies only to an insurer described by Section 2251.003(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.002, eff. April 1, 2009.

Sec. 2008.002. COVERAGE; LIMITS AND DEDUCTIBLES. (a) An insurance policy written by an insurer against loss or damage by windstorm, hurricane, or hail may include coverage for:

(1) a building or other structure that is built wholly or partially over water; and

(2) the corporeal movable property contained in a building or structure described by Subdivision (1).

(b) An insurer that writes coverage described by Subsection (a) may impose appropriate limits of coverage and deductibles for the coverage.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1H.002, eff. April 1, 2009.

SUBTITLE E. WORKERS' COMPENSATION INSURANCE

CHAPTER 2051. GENERAL PROVISIONS: WORKERS' COMPENSATION INSURANCE

SUBCHAPTER A. APPLICABILITY AND CONSTRUCTION

Sec. 2051.001. DEFINITION. In this chapter, "insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2051.002. CONSTRUCTION OF CERTAIN LAWS. The following shall be construed and applied independently of any other law that relates to insurance rates and forms or prescribes the duties of the commissioner or the department:

(1) this chapter;

(2) Chapter 251, as that chapter relates to workers' compensation insurance; and

(3) Chapters 255, 426, 2052, 2053, and 2055.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.003, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(f), eff. September 1, 2007.

SUBCHAPTER B. COMPENSATION AND EXPENSES

Sec. 2051.051. LIMITATION ON COMPENSATION AND EXPENSES. The total amount of necessary compensation of experts, clerical personnel, and other department employees, necessary travel expenses, and other expenses necessarily incurred to implement the purposes of the laws referenced in Sections 2051.002(1), (2), (3), (4), and (5) may not exceed the total amount assessed and collected from insurance companies writing workers' compensation insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. POLICYHOLDER DUTIES

Sec. 2051.101. DISCLOSURE BY POLICYHOLDER REQUIRED. (a) A policyholder shall fully disclose to the policyholder's insurance company:

(1) information concerning the policyholder's ownership, change of ownership, operations, or payroll; and

(2) the policyholder's records relating to workers' compensation insurance.

(b) The commissioner shall adopt rules necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. DUTIES AND PROHIBITED ACTS; ENFORCEMENT

Sec. 2051.151. NOTICE OF CLAIMS INFORMATION TO POLICYHOLDER REQUIRED; ADMINISTRATIVE PENALTY. (a) Except as otherwise provided by Subsection (b), an insurance company that writes workers' compensation insurance in this state shall notify a policyholder of a claim that is filed against the policyholder's policy and, after the initial notice, the company shall notify the policyholder of:

(1) any proposal to settle the claim; or

(2) on receipt of a written request from the policyholder, any administrative or judicial proceeding relating to the resolution of the claim.

(b) A policyholder may waive the notice required by Subsection (a).

(c) An insurance company that writes workers' compensation insurance in this state, on the written request of a policyholder, shall provide to the policyholder:

(1) a list of:

(A) claims charged against the policy; and

(B) payments made and reserves established on each claim; and

(2) a statement explaining the effect of claims on premium rates.

(d) The insurance company shall provide the information described by Subsection (c) in writing not later than the 30th day after the date the company receives the policyholder's written request for the information. For purposes of this subsection, information is considered to be provided to the policyholder on the date the information is:

(1) received by the United States Postal Service; or

(2) personally delivered to the policyholder.

(e) An insurance company that fails to comply with this section commits an administrative violation under Subtitle A, Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.041(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.041(a), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 4, eff. September 1, 2011.

Sec. 2051.152. PROHIBITED ACTS BY PERSON; ADMINISTRATIVE PENALTY. (a) A person commits an administrative violation if the person:

(1) to obtain workers' compensation insurance coverage for the person or another person, intentionally or knowingly:

(A) makes a false statement;

(B) misrepresents or conceals a material fact;

(C) makes a false entry in, fabricates, alters,

conceals, or destroys a document; or

(D) conspires to commit an act listed in Paragraph (A), (B), or (C); or

(2) intentionally and knowingly obtains or maintains:

(A) workers' compensation insurance coverage from an insurer that is not authorized to engage in business in this state; or

(B) alternative coverage from an insurer in violation of this code.

(b) An administrative violation under Subsection (a) is punishable by an administrative penalty not to exceed $5,000 assessed in accordance with the procedures established for an administrative violation under Chapter 415, Labor Code.

(c) Each day an administrative violation under Subsection (a)(2) occurs or continues is a separate violation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2051.153. LIABILITY OF POLICYHOLDER FOR ADDITIONAL PREMIUM. (a) If a policyholder commits an administrative violation under Section 2051.152 and obtains workers' compensation insurance coverage at a premium that is less than the premium that would have been charged if the policyholder had not committed the administrative violation, the policyholder is liable to the insurer for:

(1) the difference between the premium due and the premium actually charged; and

(2) reasonable interest and attorney's fees.

(b) For the purposes of this section, "insurer" includes the Texas Mutual Insurance Company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2051.154. PROHIBITED ACT BY INSURER; ADMINISTRATIVE PENALTY. (a) An insurer commits an administrative violation if the insurer directly or indirectly requires a person to apply for or purchase an insurance policy, other than a workers' compensation insurance policy, as a condition of issuing a workers' compensation

insurance policy.

(b) An insurer that violates this section is subject to administrative penalties under Chapter 84.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2051.155. SANCTION OF AGENT REQUIRED. The commissioner shall impose a sanction in accordance with Chapter 82 against an agent who commits an administrative violation under Section 2051.152 or 2051.154.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2051.156. CANCELLATION OF CERTIFICATE OF AUTHORITY REQUIRED. The commissioner shall cancel an insurance company's certificate of authority to engage in the business of workers' compensation insurance in this state on a second conviction of an officer or representative of the company for violating a provision of a law referenced in Section 2051.002(1), (2), (3), (4), or (5) relating to that business.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2051.157. PENALTY FOR CERTAIN VIOLATIONS. An officer or other representative of an insurance company is subject to a fine of not less than $100 or more than $500 if the officer or other representative violates any provision of the following relating to the company's business:

(1) Subchapter A or B;
(2) Section 2051.156 or 2051.201;
(3) Chapter 426 or 2052;
(4) Subchapter A, C, or D, Chapter 2053; or
(5) Section 2053.051, 2053.052, or 2053.055.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.004, eff. April 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 1, eff. September 1, 2019.

SUBCHAPTER E. RULES

Sec. 2051.201. RULEMAKING AUTHORITY: WORKERS' COMPENSATION INSURANCE. The commissioner may adopt and enforce all reasonable rules as are necessary to carry out the provisions of a law referenced in Section 2051.002(1), (2), (3), (4), or (5).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2052. POLICY PROVISIONS AND FORMS FOR WORKERS' COMPENSATION INSURANCE

Sec. 2052.001. DEFINITION. In this chapter, "insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2052.002. STANDARD POLICY FORMS AND UNIFORM POLICY; EXCEPTIONS. (a) The commissioner shall prescribe standard policy forms and a uniform policy for workers' compensation insurance.

(b) In writing workers' compensation insurance in this state, an insurance company may not use a form other than one prescribed under this section unless the form is an endorsement:

(1) appropriate to the company's plan of operation; and

(2) submitted to and approved by the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2052.003. AGREEMENT REQUIRED TO BE CONTAINED IN APPLICATION AND POLICY. (a) A contract or other agreement with respect to workers' compensation insurance coverage that is not contained in the application and policy required by this chapter violates this subtitle and is void.

(b) An insurance company that uses a contract or other agreement described by Subsection (a) engages in conduct that constitutes sufficient grounds for the revocation of the company's certificate of authority to write workers' compensation insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2052.004. POLICYHOLDER DIVIDENDS. (a) Subject to Subsections (b) and (c), this subtitle may not be construed to prohibit an insurance company, including the Texas Mutual Insurance Company, from issuing participating policies.

(b) A policyholder dividend under a workers' compensation insurance policy:

(1) must be approved by the department if the insurer's policyholder dividend amount exceeds 10 percent of surplus; and

(2) may not be approved by the department until the insurance company has adequate reserves.

(c) For purposes of Subsection (b), reserves must be computed on the same basis for all classes of insurance companies operating under this subtitle and Section 2051.002.

(d) An insurer must notify the department in writing of a distribution if the insurer's policyholder dividend amount is not greater than 10 percent of surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.005, eff. April 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 463 (S.B. 1006), Sec. 7, eff. June 14, 2013.

CHAPTER 2053. RATES FOR WORKERS' COMPENSATION INSURANCE

SUBCHAPTER A. RATE FILINGS

Sec. 2053.001. DEFINITIONS. In this subchapter:

(1) "Filer" means an insurance company that files rates, prospective loss costs, or supplementary rating information under this subchapter.

(2) "Insurance company" means a person authorized to engage in the business of workers' compensation insurance in this state. The term includes:

(A) the Texas Mutual Insurance Company;

(B) a Lloyd's plan under Chapter 941; and

(C) a reciprocal and interinsurance exchange under Chapter 942.

(2-a) "Premium" means the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations.

(3) "Prospective loss cost" means that portion of a rate that:

(A) does not include a provision for expenses or profit, other than loss adjustment expenses; and

(B) is based on historical aggregate losses and loss adjustment expenses projected by development to the ultimate value of those losses and expenses and projected through trending to a future point in time.

(4) "Rate" means the cost of workers' compensation insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, adjusted to account for the treatment of expenses, profit, and individual insurance company variation in loss experience, before applying individual risk variations based on loss or expense considerations. The term does not include a minimum premium.

(5) "Supplementary rating information" means any manual, rating plan or schedule, plan of rules, rating rule, classification system, territory code or description, or other similar information required to determine the applicable premium for an insured. The term includes increased limits factors, deductible relativities, and other similar factors and relativities.

(6) "Supporting information" means:

(A) the experience and judgment of the filer and the

experience or information of other insurance companies;

(B) the interpretation of any other information on which the filer relied;

(C) a description of methods used in making a rate; and

(D) any other information the department requires to be filed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.042(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.042(a), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 2, eff. September 1, 2019.

Sec. 2053.002. RATE STANDARDS. (a) In setting rates, an insurance company shall consider:

(1) past and prospective loss cost experience;

(2) operation expenses;

(3) investment income;

(4) a reasonable margin for profit and contingencies;

(5) the effect on premiums of individual risk variations based on loss or expense considerations; and

(6) any other relevant factor.

(b) A rate or premium established under this subchapter may not be excessive, inadequate, or unfairly discriminatory.

(c) An insurance company may:

(1) group risks by classification to establish rates and minimum premiums; and

(2) modify classification rates to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in those risks on the basis of any factor listed in Subsection (a).

(d) In setting rates that apply only to policyholders in this state, an insurance company shall use available premium, loss, claim, and exposure information from this state to the full extent that the information is actuarially credible. The insurance company may use

experience from outside this state as necessary to supplement information from this state that is not actuarially credible.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.043(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.043(a), eff. September 1, 2007.

Sec. 2053.003. RATE FILING AND SUPPORTING INFORMATION. (a) Each insurance company shall file with the department all rates, supplementary rating information, and reasonable and pertinent supporting information for risks written in this state.

(b) An insurance company may not make a filing described by Subsection (a) more frequently than once every six months.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.004. PUBLIC INFORMATION. (a) Each filing made, including any supporting information filed, under this subchapter is public information subject to Chapter 552, Government Code, including any applicable exception from required disclosure under that chapter.

(b) Each year the department shall make available to the public information concerning the department's general process and methodology for rate review under this chapter, including factors that contribute to the disapproval of a rate. Information provided under this subsection must be general in nature and may not reveal proprietary or trade secret information of any insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 309 (S.B. 978), Sec. 1, eff. September 1, 2015.

Sec. 2053.005. EFFECTIVE DATE OF RATE; HEARING. (a) A filer shall designate the date a rate proposed in a filing made under Section 2053.003 is to take effect. Subject to Subsections (b)-(d), the rate does not take effect until the department receives all necessary information required for the filing.

(b) A filing made under Section 2053.003 takes effect on the date designated by the filer under Subsection (a) unless the department, not later than the 30th day after the date the department receives the filing, notifies the filer that the filing is missing specific required information. The filer must provide the missing information not later than the 30th day after the date the filer is notified under this subsection.

(c) If the filer in good faith believes that information requested under Subsection (b) has already been provided to the department, the filer may request a hearing. The commissioner shall hold the hearing not later than the 30th day after the date the department receives the request for a hearing.

(d) The commissioner shall issue an order not later than the 30th day after the date of the hearing under Subsection (c). If the commissioner determines that the filing is still missing required information, the commissioner shall specify in the order the information that is missing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.006. DISAPPROVAL OF RATE FILING; HEARING. (a) The commissioner shall disapprove a rate filing made under Section 2053.003 if the commissioner determines that the filing does not meet the standards established under this subchapter.

(b) If the commissioner disapproves a rate filing, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this subchapter.

(c) A filer whose rate filing is disapproved is entitled to a hearing on written request made to the department not later than the 30th day after the date the order disapproving the filing takes effect.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.007. DISAPPROVAL OF RATE; HEARING. (a) The commissioner may issue an order after a hearing disapproving a rate that is in effect. The commissioner must provide the insurance company that filed the rate written notice of the hearing not later than the 10th day before the date of the hearing.

(b) The commissioner shall issue an order disapproving a rate under Subsection (a) not later than the 15th day after the close of the hearing. The order must:

(1) specify in what respects the rate fails to meet the requirements of this subchapter; and

(2) state the date further use of the rate is prohibited.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 3B.044, eff. September 1, 2007.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.044, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.044, eff. September 1, 2007.

Sec. 2053.008. EFFECT OF DISAPPROVAL ORDER. (a) If a workers' compensation insurance policy is issued and the commissioner subsequently disapproves the rate or filing that governs the premium charged on the policy, the policyholder may:

(1) continue the policy at the original rate;

(2) cancel the policy without penalty; or

(3) enter into an agreement with the insurance company issuing the policy to amend the policy to reflect the premium that would have been charged based on the insurance company's most recently approved rate.

(b) An amendment under Subsection (a)(3) may not take effect before the date further use of the rate is prohibited under an order issued under Section 2053.007.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.009. GRIEVANCE. (a) The office of public insurance counsel or an insured who is aggrieved with respect to a filing made under Section 2053.003 that is in effect may apply to the department in writing for a hearing on the filing. The application must specify the grounds for the applicant's grievance.

(b) The commissioner shall hold a hearing on an application filed under Subsection (a) not later than the 30th day after the date the department receives the application if the department determines that:

(1) the application is made in good faith;

(2) the applicant would be aggrieved as alleged if the grounds specified in the application were established; and

(3) the grounds specified in the application otherwise justify holding the hearing.

(c) The department shall provide written notice of a hearing under Subsection (b) to the applicant and to each insurance company that made the filing not later than the 10th day before the date of the hearing. The notice must specify:

(1) which of the grounds specified in the application are in question; and

(2) whether the insurance company's entire filing will be considered at the hearing or whether the hearing is limited to consideration of the grounds specified in the application.

(d) If, after the hearing, the commissioner determines that the filing does not meet the requirements of this subchapter, the commissioner shall issue an order specifying:

(1) in what respects the filing fails to meet those requirements;

(2) the date the filing is no longer in effect, which must be within a reasonable period that is not less than 60 days after the date the order is issued; and

(3) whether the order applies with respect to all insureds affected by the filing or only with respect to the applicant, if the applicant was an aggrieved insured.

(e) The department shall send copies of the order issued under Subsection (d) to the applicant and each affected insurance company.

(f) An order issued under Subsection (d) does not affect an insurance policy or contract made or issued before the expiration of

the period stated in the order.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.010. PENALTIES. If a workers' compensation insurance policy is issued and the commissioner subsequently disapproves the rate or filing on which the premium is based, the commissioner, after notice and the opportunity for a hearing, may:

(1) impose sanctions under Chapter 82;
(2) issue a cease and desist order under Chapter 83;
(3) impose administrative penalties under Chapter 84; or
(4) take any combination of these actions.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.045(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.045(a), eff. September 1, 2007.

Sec. 2053.011. EXCLUSIVE JURISDICTION. The department has exclusive jurisdiction over all rates and premiums subject to this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.046(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.046(a), eff. September 1, 2007.

Sec. 2053.013. REVIEW OF RATES; CONSIDERATION OF OTHER LAW. In reviewing rates under this subchapter, the commissioner shall consider any state or federal legislation that has been enacted and that may impact rates and premiums for workers' compensation insurance coverage in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec.

3B.047(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.047(a), eff. September 1, 2007.

SUBCHAPTER A-1. UNDERWRITING GUIDELINES

Sec. 2053.031. DEFINITIONS. In this subchapter:

(1) "Insurance company" has the meaning assigned by Section 2053.001.

(2) "Underwriting guideline" means a rule, standard, guideline, or practice, whether written, oral, or electronic, that is used by an insurance company or its agent to decide whether to accept or reject an application for coverage under a workers' compensation insurance policy or to determine how to classify those risks that are accepted for the purpose of determining a rate.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.048(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.048(a), eff. September 1, 2007.

Sec. 2053.032. UNDERWRITING GUIDELINES. Each underwriting guideline used by an insurance company in writing workers' compensation insurance must be sound, actuarially justified, or otherwise substantially commensurate with the contemplated risk. An underwriting guideline may not be unfairly discriminatory.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.048(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.048(a), eff. September 1, 2007.

Sec. 2053.033. ENFORCEMENT. This subchapter may be enforced in the manner provided by Section 38.003(g).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.048(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.048(a), eff. September 1, 2007.

Sec. 2053.034. FILING REQUIREMENTS. Each insurance company shall file with the department a copy of the insurance company's underwriting guidelines. The insurance company shall update its filing each time the underwriting guidelines are changed. If a group of insurance companies files one set of underwriting guidelines for the group, the group shall identify which underwriting guidelines apply to each insurance company in the group.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.048(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.048(a), eff. September 1, 2007.

Sec. 2053.035. APPLICABILITY OF SECTION 38.003. Section 38.003 applies to this subchapter to the extent consistent with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.048(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.048(a), eff. September 1, 2007.

SUBCHAPTER B. RATE ADMINISTRATION

Sec. 2053.051. HAZARD CLASSIFICATION SYSTEM. (a) For workers' compensation insurance, the department shall:

(1) determine hazards by class; and

(2) revise the classification system as necessary to carry out the purposes of this chapter.

(b) A stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state may not use hazard classifications other than the classifications established by the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 3, eff. September 1, 2019.

Sec. 2053.052. EXPERIENCE RATING PLAN. (a) The commissioner shall adopt a uniform experience rating plan for workers' compensation insurance. The plan must:

(1) encourage accident prevention; and

(2) account for:

(A) the peculiar hazard and experience of individual risks, past and prospective, inside and outside this state; and

(B) any other relevant factor.

(b) The commissioner shall revise the rating plan at least once every five years.

(c) The commissioner may adopt reasonable rules and plans requiring the interchange of loss experience necessary for the application of the rating plan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.054. USE OF INCURRED CLAIMS EXPERIENCE IN FUTURE RATINGS REQUIRED. (a) Regardless of a change in a policyholder's ownership, control, management, or operations, incurred claims experience must be used in future ratings to ensure that an employer does not evade an unfavorable or high-cost experience.

(b) On application by an affected party, the department may modify a rating under Subsection (a) on proof that a change in a policyholder's management or operations is clearly designed to result in a probable reduction of the insured's loss experience.

(c) The commissioner shall adopt rules necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.055. RATE ADJUSTMENT. If the commissioner determines that an insurance company's rates do not meet with the standards imposed by Section 2053.002, the commissioner may order the insurance

company to adjust the rates to meet those standards. An insurance company may appeal an order under this section in accordance with Subchapter D, Chapter 36.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.056. RATE HEARINGS. (a) The commissioner may conduct a public hearing each biennium to review rates to be charged for workers' compensation insurance written in this state. A public hearing under this section is not a contested case as defined by Section 2001.003, Government Code.

(b) Not later than the 30th day before the date of a public hearing conducted under Subsection (a), each insurance company subject to this subtitle shall file the insurance company's rates, supporting information, and supplementary rating information with the commissioner.

(c) The commissioner shall review the information submitted under Subsection (b) to determine the positive or negative impact of the enactment of workers' compensation reform legislation enacted by the 79th Legislature, Regular Session, 2005, on workers' compensation rates and premiums. The commissioner may consider other factors in determining whether a change in rates has impacted the premium charged to policyholders.

(d) The commissioner shall implement rules as necessary to mandate rate reductions or to modify the use of individual risk variations if the commissioner determines that the rates or premiums charged by insurance companies do not meet the rating standards as defined in this code.

(e) The commissioner shall adopt rules as necessary to mandate rate or premium reductions by insurance companies for the use of cost-containment strategies that result in savings to the workers' compensation system, including use of a workers' compensation health care network health care delivery system, as described by Chapter 1305.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.049(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.049(a), eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 1.01, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 4, eff. September 1, 2019.

SUBCHAPTER C. STATISTICAL PLANS; AGENT

Sec. 2053.101. STATISTICAL PLANS FOR REPORTING LOSS EXPERIENCE AND OTHER DATA. The commissioner shall develop and may periodically modify reasonable statistical plans for workers' compensation insurance to be used by each insurance company in recording and reporting the insurance company's loss experience and other data required by the department, so that the total loss and expense experience of all insurance companies is made available at least annually in the form and detail necessary to assist in determining whether an insurance company's rates meet the standards imposed under Section 2053.002.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.102. TREATMENT OF PAYMENTS UNDER STATISTICAL PLAN. A statistical plan developed under Section 2053.101 must require the following payments to be reported separately and not to be considered as a loss or expense for purposes of computing a premium rate modifier or surcharge of an insured:

(1) a direct payment made by an insurance company to influence public policy; and

(2) any amount paid by an insurance company:

(A) as damages in an action against the insurance company for malice or bad faith; or

(B) as a fine or penalty.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.103. STATISTICAL AGENT. (a) The commissioner may designate or contract with a qualified organization to serve as the

statistical agent for the commissioner under this subchapter as provided by Subchapter E, Chapter 38.

(b) The statistical agent may provide to one or more advisory organizations any information provided by the agent to the commissioner under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. REPORTING REQUIREMENTS AND EXCHANGE OF INFORMATION

Sec. 2053.151. WORKERS' COMPENSATION CLAIMS REPORTS AND INFORMATION. (a) The commissioner by rule shall prescribe the information that must be reported on each workers' compensation claim.

(b) For purposes of Subsection (a), the commissioner shall establish standards and procedures for categorizing insurance and medical benefits required to be reported on each workers' compensation claim to ensure that the data collection methodology will yield data necessary for research and medical cost containment efforts.

(c) The commissioner by rule shall establish reporting requirements for insurance companies regarding workers' compensation claims. The commissioner may reduce or eliminate reporting requirements for insurance companies whose workers' compensation insurance business falls below a specific minimum premium volume established by the commissioner by rule.

(d) A person may not distribute or otherwise disclose a social security number or any other information collected under Subsection (a) that would disclose the identity of a claimant.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 65 (S.B. 471), Sec. 1, eff. September 1, 2007.

Sec. 2053.152. UPDATE AND TRANSMISSION OF CLAIMS REPORTS. (a) An insurance company, in accordance with the filing requirements of a statistical plan developed under Section 2053.101, shall update and

transmit to the commissioner or the commissioner's statistical agent a claims report filed under Section 2053.151.

(b) Each insurance company that writes at least one-half of one percent of the workers' compensation insurance in this state shall report the company's data in a compatible electronic format prescribed by the commissioner. The commissioner shall take necessary measures to ensure the accuracy of the data and the adequacy of the electronic format for the data.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.153. EXCHANGE OF INFORMATION AND CONSULTATION WITH OTHERS. To further the uniform administration of rating laws relating to workers' compensation insurance, the commissioner and each insurance company may:

(1) exchange information and experience data with the National Association of Insurance Commissioners and with insurance supervisory officials, insurance companies, and advisory organizations in other states; and

(2) consult and cooperate with a person or entity described by Subdivision (1) with respect to ratemaking and the application of rating systems.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.154. LOSS STATEMENT AND PAYROLL REPORT. (a) For purposes of this section, "insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state. The term includes the Texas Mutual Insurance Company.

(b) The department may require an insurance company to submit a sworn statement or report showing:

(1) the payroll reported to the insurance company;

(2) incurred losses by classification; and

(3) other information the department determines may be necessary to implement the department's duties.

(c) The department shall prescribe the necessary forms for a statement or report required by Subsection (b) with consideration of the methods and forms used for similar purposes in other states so that uniformity of statistics will not be affected.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. OPTIONAL DEDUCTIBLE PLANS

Sec. 2053.201. DEFINITION. In this subchapter, "insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.202. ESTABLISHMENT OF OPTIONAL DEDUCTIBLE PLANS. (a) The department shall require each insurance company writing workers' compensation insurance in this state to offer at least three optional deductible plans adopted under this section that allow a policyholder to self-insure for the amount of the deductible.

(b) The commissioner by rule shall allow an employer to enter into an agreement with an insurer for a negotiated deductible that exceeds the highest deductible available under a plan described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.203. PAYMENT OF CLAIMS; REIMBURSEMENT. (a) An insurance company issuing a deductible policy under this subchapter shall service all claims that arise during the policy period, including those claims payable, wholly or partly, from the deductible amount.

(b) A deductible policy must provide that:

(1) the insurance company issuing the policy shall pay all benefits that are payable from the deductible amount; and

(2) the policyholder shall make reimbursements periodically, rather than at the time claim costs are incurred.

(c) The commissioner shall adopt rules to provide for adequate security for reimbursement of the amount paid by an insurance company that is payable from the deductible amount.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.204. RATE REDUCTION. (a) The department shall perform an actuarial analysis to determine the amount of rate reduction applicable to a deductible policy under this subchapter as compared to a standard workers' compensation insurance policy without a deductible.

(b) In years subsequent to the year in which the actuarial analysis described by Subsection (a) is performed, the department shall determine the amount of rate reduction according to rating procedures adopted by the commissioner.

(c) When establishing procedures for the computation of experience modifiers, the commissioner may allow the exclusion of any claim amount paid under a deductible by an employer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.205. PROHIBITED CONDUCT. A person who is employed by a policyholder who self-insures the deductible amount as provided by this subchapter may not be required to pay any portion of the deductible amount or be harassed, discharged, or otherwise discriminated against because the person, in good faith:

(1) is considering initiating or has initiated a workers' compensation claim;

(2) has retained a representative to represent the person regarding a claim;

(3) has testified or will testify at an administrative or judicial proceeding under Subtitle A, Title 5, Labor Code;

(4) has reported a hazardous working condition or hazardous practice to the Texas Workers' Compensation Commission; or

(5) has taken or is considering taking any other action

that may result in a requirement that the policyholder pay a deductible amount through a self-insurance plan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.206. VIOLATION OF SUBCHAPTER. (a) A person commits an administrative violation under Subtitle A, Title 5, Labor Code, if the person engages in conduct that violates this subchapter.

(b) Liability for damages for a violation of this subchapter is determined exclusively under Subtitle A, Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 5, eff. September 1, 2011.

SUBCHAPTER F. PREMIUM INCENTIVES AND SURCHARGE FOR SMALL EMPLOYERS

Sec. 2053.251. DEFINITIONS. In this subchapter:

(1) "Insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state.

(2) "Premium" means workers' compensation insurance premium.

(3) "Small employer" means an employer:

(A) who is not experience-rated by the department for workers' compensation insurance purposes; and

(B) whose annual premium is less than $5,000.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.252. PLAN FOR PREMIUM DISCOUNT AND SURCHARGE. The commissioner shall adopt a plan under which each insurance company writing workers' compensation insurance in this state shall:

(1) grant a premium discount to a small employer who qualifies for a discount under this subchapter; and

(2) assess a surcharge as provided by Section 2053.254.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.253. ELIGIBILITY FOR PREMIUM DISCOUNT. (a) A small employer who has not experienced a compensable employee lost-time injury during the most recent one-year period for which statistics are available shall receive a discount of 10 percent on the amount of the employer's premium.

(b) A small employer who has not experienced a compensable employee lost-time injury during the most recent two-year period for which statistics are available shall receive a discount of 15 percent on the amount of the employer's premium.

(c) A small employer who has experienced one or more compensable employee lost-time injuries during the most recent one-year period for which statistics are available is not eligible for a discount on the amount of the employer's premium.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.254. ASSESSMENT OF PREMIUM SURCHARGE. A small employer who has experienced two or more compensable employee lost-time injuries during the most recent one-year period for which statistics are available shall be assessed a surcharge of 10 percent on the amount of the employer's premium.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.255. MAXIMUM DISCOUNT AND ASSESSMENT. For any annual premium, a small employer may not:

(1) receive a discount of more than 15 percent; or

(2) be required to pay a surcharge of more than 10 percent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2053.256. DISCOUNTS AND SURCHARGES NOT CUMULATIVE. (a) The discounts and surcharges established under this subchapter are not cumulative.

(b) A small employer is entitled to receive the discount under this subchapter in addition to any lesser deviation in the rate used to write an insurance policy under Sections 2053.051 and 2053.052(a) and (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2054. TEXAS MUTUAL INSURANCE COMPANY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2054.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the company.

(2) Repealed by Acts 2007, 80th Leg., R.S., Ch. 730, Sec. 3B.056, eff. September 1, 2007.

(3) "Company" means the Texas Mutual Insurance Company.

(4) "Workers' compensation insurance" means insurance for a risk under:

(A) Subtitle A, Title 5, Labor Code;

(B) Chapter 504, Labor Code;

(C) the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901 et seq.);

(D) the Federal Mine Safety and Health Act of 1977 (30 U.S.C. Section 801 et seq.);

(E) the Defense Base Act (42 U.S.C. Sections 1651-1654);

(F) the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.);

(G) the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171-8173);

(H) the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331 et seq.); or

(I) the Merchant Marine Act of 1920 (46 App. U.S.C.

Section 861 et seq.).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.056, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.056, eff. September 1, 2007.

Sec. 2054.002. REFERENCE TO TEXAS WORKERS' COMPENSATION INSURANCE FUND. A reference in state law to the Texas Workers' Compensation Insurance Fund means the Texas Mutual Insurance Company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.003. OPERATION AS DOMESTIC MUTUAL INSURANCE COMPANY. (a) The company operates as a domestic mutual insurance company under Chapter 883. The company is subject to that chapter, but is not subject to Chapter 826.

(b) The company:

(1) has the legal rights of a mutual insurance company operating under Chapter 883 and of an individual in this state; and

(2) may bring a suit in the company's own name without any procedural prerequisites to the exercise of that power.

(c) The company is not a state agency or executive agency or a governmental entity for any purpose.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 23 (S.B. 192), Sec. 1, eff. May 4, 2007.

Sec. 2054.004. INSURANCE COMPANY UNDER TEXAS WORKERS' COMPENSATION ACT. The company is an insurance company for purposes of Subtitle A, Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.005. APPLICABILITY OF CODE. The company is subject to this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.006. AUTHORITY OF COMMISSIONER AND DEPARTMENT. (a) The commissioner may regulate the company to the same extent that the commissioner may regulate a mutual insurance company.

(b) The company is subject to the jurisdiction of the commissioner and department in the same manner as a private insurance company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.007. OPEN MEETINGS LAW AND OPEN RECORDS LAW NOT APPLICABLE. Notwithstanding any other state law, Chapters 551 and 552, Government Code, do not apply to the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 23 (S.B. 192), Sec. 2, eff. May 4, 2007.

Sec. 2054.008. INVESTIGATION FILES. (a) In this section, "investigation file" means information the company compiles or maintains with respect to a company investigation authorized by law.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 23, Sec. 6, eff. May 4, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 23, Sec. 6, eff. May 4, 2007.

(d) Except as provided by Subsection (e), a company

investigation file:

(1) is confidential; and

(2) may be disclosed only:

(A) in a criminal proceeding;

(B) in a hearing conducted by the division of workers' compensation of the department;

(C) on a judicial determination of good cause; or

(D) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of a law of this state, another state, or the United States.

(e) Disclosure of information in an investigation file that is contained in or derived from a claim file, an employer injury report, or an occupational disease report is governed by any confidentiality provision applicable to that information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 23 (S.B. 192), Sec. 3, eff. May 4, 2007.

Acts 2007, 80th Leg., R.S., Ch. 23 (S.B. 192), Sec. 4, eff. May 4, 2007.

Acts 2007, 80th Leg., R.S., Ch. 23 (S.B. 192), Sec. 6, eff. May 4, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.051(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.051(a), eff. September 1, 2007.

Sec. 2054.009. CONFLICTS WITH CERTAIN INSURANCE LAWS. To the extent of a conflict between this chapter and Chapter 883 or another law of this state applicable to a nonlife mutual insurance company, this chapter prevails.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 2054.051. BOARD OF DIRECTORS; COMPOSITION. (a) The company is governed by a board composed of nine members.

(b) The governor, with the advice and consent of the senate, shall appoint five board members. The company's policyholders shall elect the remaining members.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.052. QUALIFICATIONS. (a) Each board member must be a resident of this state.

(b) An individual may not serve as a board member if the individual, another individual related to the individual within the second degree by consanguinity or affinity, or another individual residing in the same household with the individual:

(1) is registered or licensed under this code or is required to be registered or licensed under this code;

(2) is employed by or acts as a consultant to a person registered or licensed under this code or required to be registered or licensed under this code;

(3) owns, controls, has a financial interest in, or participates in the management of an organization registered or licensed under this code or required to be registered or licensed under this code;

(4) receives a substantial tangible benefit from the company or the department; or

(5) is an officer, employee, or consultant of an association in the field of insurance.

(c) Subsection (b) does not prohibit an individual from serving as a board member if the individual is only a policyholder or a consumer of insurance or insurance products.

(d) An individual who is ineligible to serve on the board under Subsection (b) may not serve as a board member until the first anniversary of the date the condition that makes the individual ineligible ends.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.053. PRESIDING OFFICER; OTHER OFFICERS. (a) The governor shall designate a board member as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The board members shall elect annually any other officers the board considers necessary to perform the board's duties.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.054. TERMS. (a) Board members serve staggered six-year terms, with the terms of three members expiring July 1 of each odd-numbered year.

(b) A board member whose term has expired shall continue to serve until the member's successor is appointed by the governor or is elected by the company's policyholders, as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.055. VACANCIES. (a) The governor shall fill a vacancy in the appointed board members by appointment with the advice and consent of the senate.

(b) A vacancy in the elected board members shall be filled as provided by the company's bylaws.

(c) If a vacancy occurs before the date the vacating member's term expires, the successor member shall be appointed or elected for a term that expires on the same date as the vacating member's term.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment or election the qualifications required by Section 2054.052;

(2) does not maintain during service on the board the qualifications required by Section 2054.052;

(3) cannot because of illness or disability discharge the

member's duties for a substantial part of the term for which the member is appointed or elected; or

(4) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

(b) The validity of a board action is not affected by the fact that it is taken when a ground for removal of a board member exists.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.057. PROCEDURES FOR REMOVAL. (a) If the president of the company has knowledge that a potential ground for removal of a board member exists, the president shall notify the presiding officer of the board of the potential ground.

(b) If the potential ground for removal involves an appointed board member, the presiding officer shall notify the governor and the attorney general that a potential ground for removal exists.

(c) If the potential ground for removal involves the presiding officer, the president shall notify the next highest board officer, who shall notify the governor and the attorney general that a potential ground for removal exists.

(d) If the potential ground for removal involves an elected board member, the board shall act on the potential ground for removal as provided by the company's bylaws.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.058. COMMITTEES AND SUBCOMMITTEES. The board may create committees and subcommittees.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.059. MEETINGS. (a) The board shall hold a meeting at least once each calendar quarter, at other times at the call of the presiding officer, and at times established by the company's

bylaws.

(b) A special meeting may be called by any two board members on two days' notice.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.060. QUORUM. Five board members constitute a quorum.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.061. COMPENSATION. A board member is entitled to receive:

(1) fees for service on the board commensurate with industry standards; and

(2) actual and necessary travel expenses and any other expense incurred in performing the member's duties.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. MANAGEMENT OF COMPANY

Sec. 2054.101. GENERAL POWERS OF BOARD. The board has full authority over the company and may:

(1) perform any act necessary or convenient to administer the company or in connection with the company's insurance business; and

(2) function in all aspects as the governing body of a domestic mutual insurance company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.102. GENERAL DUTIES OF BOARD RELATING TO WORKERS' COMPENSATION INSURANCE. The board shall:

(1) provide for engaging in the business of workers'

compensation insurance and for the delivery in this state of workers' compensation insurance to the same extent as any other insurance company engaging in the business of workers' compensation insurance in this state;

(2) propose rates for workers' compensation insurance issued by the company; and

(3) exercise any other authority necessary to engage in the business of workers' compensation insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.103. APPOINTMENT OF PRESIDENT. (a) The board shall appoint a president who serves at the pleasure of the board.

(b) The president must have proven successful experience as an executive at the general management level in the business of insurance.

(c) The president shall receive compensation as set by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.104. APPOINTMENT OF INTERNAL AUDITOR. The board shall appoint an internal auditor who serves at the pleasure of the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.105. PERSONAL LIABILITY OF BOARD MEMBERS, OFFICERS, AND EMPLOYEES. In connection with the administration, management, or conduct of the company, the company's business, or a related matter, a board member, the president, or an officer or employee of the company is not personally liable in the individual's private capacity for an act performed or a contract or other obligation entered into or undertaken in the individual's official capacity in good faith and without intent to defraud.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.106. PRINCIPAL OFFICE. The board shall maintain the company's principal office in Travis County.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.107. CERTAIN RELATIONSHIPS WITH OTHER INSURERS PROHIBITED. Except as provided by Section 2054.602, the company may not have:

(1) an affiliate, spin-off, or subsidiary that writes a line of insurance other than workers' compensation insurance; or

(2) interlocking boards of directors with an insurer that writes a line of insurance other than workers' compensation insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 1, eff. September 1, 2021.

Sec. 2054.108. PROGRAM AND FACILITY ACCESSIBILITY. (a) The company shall comply with federal and state laws that relate to program and facility accessibility.

(b) The president shall prepare and maintain a written plan that describes the manner in which an individual who does not speak English can be provided reasonable access to the company's programs and services.

(c) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the company's jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. OPERATION OF COMPANY; FINANCIAL ADMINISTRATION

Sec. 2054.151. PURPOSES OF COMPANY. The company shall:

(1) serve as a competitive force in the marketplace;

(2) guarantee the availability of workers' compensation insurance in this state; and

(3) serve as an insurer of last resort as provided by Subchapter H.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.152. PAYMENT OF TAXES, FEES, AND OTHER CHARGES. The company shall pay the following in the same manner as a domestic mutual insurance company authorized to engage in the business of insurance and to write workers' compensation insurance in this state:

(1) taxes, including maintenance and premium taxes;

(2) fees; and

(3) payments due in lieu of taxes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.153. MEMBERSHIP IN TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION. (a) In this section, "association" means the Texas Property and Casualty Insurance Guaranty Association.

(b) The company is:

(1) a member of and protected by the association; and

(2) subject to assessment under Chapter 462.

(c) Notwithstanding Subsection (b), the company is liable only for an assessment by the association regarding a claim with a date of injury occurring on or after January 1, 2000, and the association, with respect to an insolvency of the company, is liable only for a claim with a date of injury occurring on or after that date.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.154. COMPANY ASSETS; STATE LIABILITY. (a) All

money, revenues, and other assets of the company belong solely to the company and are governed by the laws applicable to domestic mutual insurance companies.

(b) The state:

(1) covenants with the company's policyholders, persons receiving workers' compensation benefits, and the company's creditors that the state will not borrow, appropriate, or direct payments from the company's money, revenues, or other assets for any purpose; and

(2) has no liability or responsibility to those policyholders, persons receiving benefits, or creditors if the company is placed in conservatorship or receivership or becomes insolvent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.155. REQUIRED RESERVES. The company shall establish and maintain reserves for losses on an actuarially sound basis in accordance with Chapter 426.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.156. RATIO OF CERTAIN PREMIUMS TO SURPLUS. The company shall maintain a ratio of net written premiums on policies written after reinsurance to surplus of not more than three to one.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.157. DISSOLUTION PROHIBITED. The company may not be dissolved.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. EXAMINATIONS, REPORTS, AND FILINGS

Sec. 2054.201. EXAMINATION BY DEPARTMENT. (a) The department shall examine the company in the manner and under the conditions specified by Chapters 86 and 401 for the examination of insurers.

(b) The company shall pay the costs of the examination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.202. PROVIDING INFORMATION TO LEGISLATURE. The company shall provide requested information to each appropriate legislative committee in the manner requested by the committee.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.203. ANNUAL ACCOUNTING OF MONEY RECEIVED AND DISBURSED. Each year, the company shall prepare a complete and detailed written report accounting for all money the company received and disbursed during the preceding fiscal year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.204. ANNUAL STATEMENTS. (a) The company shall file annual statements with the department in the same manner as is required of other workers' compensation insurance companies.

(b) The department shall include in the department's annual report under Section 32.021 a report on the company's condition.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.052(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.052(a), eff. September 1, 2007.

Sec. 2054.205. PUBLICATION AND FILING OF AUDITED REPORT. The board shall:

(1) publish an independently audited report analyzing the company's activities and fiscal condition during the preceding fiscal year; and

(2) file the audited report with the department for submission simultaneously with its annual financial report.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.206. ADDITIONAL REPORTS. The company shall file with the department all reports required of other workers' compensation insurance companies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.053(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.053(a), eff. September 1, 2007.

Sec. 2054.207. PERIODIC REPORTS TO BOARD. The president shall make periodic reports to the board regarding:

(1) the company's status; and

(2) the company's investments.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. GENERAL POWERS AND DUTIES RELATING TO INSURANCE

Sec. 2054.251. RATEMAKING AUTHORITY. (a) Except as provided by this section, the board may propose rates to be charged by the company for insurance.

(b) The board shall engage the services of an independent actuary who is a member in good standing with the Casualty Actuarial Society or the American Academy of Actuaries to develop and recommend

actuarially sound rates.

(c) The company is subject to the requirements of Subchapter A, Chapter 2053, and shall include the recommendations of the independent actuary as part of the company's filing under that subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.252. AMOUNTS OF RATES. Rates charged by the company for insurance must be set in amounts sufficient, when invested, to:

(1) carry all claims to maturity;

(2) meet the reasonable expenses of conducting the company's business; and

(3) maintain a reasonable surplus.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.253. MULTITIERED PREMIUM SYSTEMS. (a) Notwithstanding any other provision of this code or another insurance law of this state, the company may establish multitiered premium systems to price workers' compensation insurance policies to:

(1) insureds in the company's competitive programs; and

(2) insureds to whom policies are offered by the company under Subchapter H.

(b) The systems may provide for a higher or lower premium payment by an insured based on the company's evaluation of the underwriting characteristics of the individual risk and the appropriate premium to be charged for the policy coverages.

(c) The systems must be filed in accordance with Subchapter A, Chapter 2053.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0531, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0531,

eff. September 1, 2007.

Sec. 2054.254. CASH DIVIDENDS; CREDIT ON RENEWAL PREMIUM. (a) The company may pay a cash dividend or allow a credit on the renewal premium for a policyholder insured with the company, other than a policyholder insured under Subchapter H.

(b) Payment of a cash dividend or allowance of a credit:

(1) must be made in accordance with criteria approved by the board, which may consider the policyholder's safety record and performance; and

(2) may be made only with the department's prior approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.255. APPOINTMENT OF AGENT NOT REQUIRED. (a) Notwithstanding any other provision of this code or another insurance law of this state, the company is not required to appoint a general property and casualty agent to act as an agent for the company.

(b) An agent who transacts business with the company acts as an agent for the applicant and not as an agent for the company, unless the company and the agent have entered into a written agreement for the agent to act on behalf of the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.256. WORK PRODUCT INFORMATION. (a) Information submitted to the company by an insurance agent on behalf of an employer, including a policy expiration date, is the work product of the agent. The company may not use the information in any marketing or direct sales activity.

(b) The company may not provide to an insurance agent information obtained from another insurance agent.

(c) This section does not prevent:

(1) an employer from designating another insurance agent or the company as the agent of record; or

(2) the company from using information submitted to the

company under this section for underwriting or a fraud investigation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 23 (S.B. 192), Sec. 5, eff. May 4, 2007.

Sec. 2054.257. PAYMENT OF COMMISSION TO AGENT. The company shall pay an insurance agent a reasonable commission on a workers' compensation insurance policy that is written through the agent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. ISSUANCE OF COVERAGE

Sec. 2054.301. APPLICATION FOR COVERAGE. An application to the company for workers' compensation insurance coverage must be:

(1) made on the form prescribed by the company; and

(2) submitted directly by the applicant or by a general property and casualty agent on behalf of the applicant.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.302. POLICY FORMS. The company shall use the uniform policy and standard policy forms prescribed by the department under Section 2052.002.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.303. DENIAL OF COVERAGE BASED ON CREDIT RISK. The company may refuse to write insurance coverage for an applicant that the company identifies as a credit risk unless the applicant, before a policy is issued:

(1) pays the total estimated premium and related charges;

or

(2) provides security for payment of the total estimated premium and related charges.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.304. CANCELLATION AND NONRENEWAL. The company may cancel or refuse to renew coverage on a policyholder as provided by Section 406.008, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER H. COMPANY AS INSURER OF LAST RESORT

Sec. 2054.351. INSURER OF LAST RESORT. (a) Except as provided by Section 2054.304 and this subchapter, the company may not refuse to insure a risk that tenders:

(1) the necessary premium; and

(2) any applicable accident prevention service fee.

(b) If an applicant would be rejected for workers' compensation insurance under the company's underwriting standards, the company may not reject the risk, but shall insure the risk at a higher premium as provided by the company's requirements. The company may require the risk to meet other conditions considered necessary to protect the company's interests.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.352. REQUIRED DECLINATION OF CERTAIN RISKS. (a) In this section, "good faith" means honesty in fact in any conduct or transaction.

(b) The company shall decline to insure a risk if:

(1) insuring the risk would cause the company to exceed the premium-to-surplus ratios established by Section 2054.156; or

(2) the risk is not, in good faith, entitled to insurance through the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.353. REQUIRED INSURANCE OF CERTAIN COMMONLY OWNED OR CONTROLLED ENTITIES. If the company suspects fraud or identifies conditions that may result in acts of fraud, the company may require an applicant for workers' compensation insurance coverage who is identified as a risk for purposes of Section 2054.351(b) to insure all business entities that are commonly owned or controlled by the applicant.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.354. DEVELOPMENT AND PUBLICATION OF CERTAIN INFORMATION. (a) The company shall develop statistical and other information as necessary to allow the company to distinguish between the company's:

(1) writings in the voluntary market; and

(2) writings as the insurer of last resort.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 6, eff. July 1, 2020.

(c) On request, the company shall report statistical or other information developed under Subsection (a) to:

(1) the department; or

(2) any successor entity for research and oversight of the workers' compensation system of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 6, eff. July 1, 2020.

SUBCHAPTER I. APPEALS

Sec. 2054.401. APPEAL OF CERTAIN ACTIONS AND DECISIONS. (a) An act or decision by the company to deny, cancel, or refuse to renew a policy or risk insured under Subchapter H may be appealed to the

board not later than the 30th day after the date the affected party receives actual notice that the act occurred or the decision was made.

(b) The company shall:

(1) not later than the 30th day after the date the request for hearing is made, hear the appeal; and

(2) not later than the 10th day before the date of the hearing, notify the appellant in writing of the time and place of the hearing.

(c) Not later than the 30th day after the last day of the hearing, the board shall affirm, reverse, or modify the act or decision appealed to the board.

(d) Unless the board specifically orders otherwise, a hearing under this section does not suspend the operation of an act or decision of the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.402. REVIEW OF BOARD DECISION BY COMMISSIONER. (a) A board decision under Section 2054.401 is subject to review by the commissioner in the manner provided by Chapter 2001, Government Code.

(b) The commissioner's review of a board decision does not suspend the operation of an act or decision of the company unless the commissioner specifically orders the suspension on a showing by an aggrieved party of:

(1) immediate, irreparable injury, loss, or damage; and

(2) probable success on the merits.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.403. APPEAL OF COMMISSIONER'S DECISION. (a) A person aggrieved by a decision of the commissioner under Section 2054.402 may appeal the decision to a district court.

(b) Judicial review under this section is governed by the substantial evidence rule.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

SUBCHAPTER J. CONTROL OF FRAUD AND OTHER VIOLATIONS

Sec. 2054.451. IDENTIFICATION AND INVESTIGATION PROGRAM FOR FRAUD AND OTHER VIOLATIONS. (a) The company shall develop and implement a program to identify and investigate acts of fraud and violations of this code relating to workers' compensation insurance by applicants, policyholders, claimants, agents, insurers, health care providers, or other persons.

(b) The company shall cooperate with the division of workers' compensation of the department to compile and maintain information necessary to detect practices or patterns of conduct that violate this code relating to workers' compensation insurance or that violate Subtitle A, Title 5, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.054(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.054(a), eff. September 1, 2007.

Sec. 2054.452. INVESTIGATIONS; COORDINATION. (a) The company may investigate cases of suspected fraud and violations of this code relating to workers' compensation insurance.

(b) The company may:

(1) coordinate the company's investigations with those conducted by the division of workers' compensation of the department to avoid duplication of efforts; and

(2) refer to the division of workers' compensation of the department a case that is not otherwise resolved by the company so that the division may:

(A) perform any further investigation necessary under the circumstances;

(B) conduct administrative violation proceedings; and

(C) assess and collect penalties and restitution.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.054(b), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.054(b), eff. September 1, 2007.

Sec. 2054.453. RESTITUTION PAYABLE TO COMPANY. Restitution collected under Section 2054.452(b) must be paid to the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.454. DEPOSIT AND USE OF PENALTIES COLLECTED BY DIVISION. A penalty collected under Section 2054.452(b):
(1) must be deposited in the Texas Department of Insurance operating account; and
(2) may be appropriated only to the division of workers' compensation of the department to offset the costs of the program under Section 2054.451.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.054(c), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.054(c), eff. September 1, 2007.

Sec. 2054.455. FUNDING AGREEMENTS FOR CRIMINAL PROSECUTIONS. The company may enter into funding agreements with local prosecutors to prosecute offenses against the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.456. IMMUNITY FOR CERTAIN ACTIONS. The company, the

board, and company employees are not liable in a civil action for an action taken in good faith in executing a duty under this subchapter, including identifying or referring a person for investigation of or prosecution for a possible administrative violation or criminal offense.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER K. ACCIDENT PREVENTION

Sec. 2054.501. DEFINITION. In this subchapter, "division" means the division of workers' compensation of the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.055(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.055(a), eff. September 1, 2007.

Sec. 2054.502. REQUIREMENTS FOR PREVENTION OF INJURIES. The company may make and enforce requirements for the prevention of injuries to an employee of a policyholder or applicant for insurance under this chapter. On reasonable notice, a policyholder or applicant shall grant representatives of the company or the department free access to the premises of the policyholder or applicant during regular working hours for purposes of this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.055(b), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.055(b), eff. September 1, 2007.

Sec. 2054.503. GROUNDS FOR CANCELLATION OR DENIAL OF COVERAGE.

A failure or refusal by a policyholder or applicant for insurance to comply with a requirement prescribed by the company under Section 2054.502, or a failure or refusal to fully disclose all information pertinent to insuring or servicing the policyholder or applicant, constitutes sufficient grounds for the company to cancel a policy or deny an application.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.504. SAFETY CONSULTATION FOR CERTAIN INSUREDS. (a) A policyholder who is insured under Subchapter H shall obtain a safety consultation:

(1) if the policyholder:

(A) has a Texas experience modifier greater than 1.25;

(B) has a national experience modifier greater than 1.25 and estimated premium allocable to this state of $2,500 or more; or

(C) does not have an experience modifier but has had a loss ratio greater than 0.70 in at least two of the three most recent policy years for which information is available; or

(2) as required by the company, if the policyholder:

(A) has been in business for less than three years; and

(B) meets the criteria established by the company for a safety consultation.

(b) The criteria under Subsection (a)(2)(B) may include:

(1) the number and classification of employees;

(2) the policyholder's industry; and

(3) the policyholder's previous workers' compensation experience in this state or another jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.505. SAFETY CONSULTATION PROCEDURES. Not later than the 30th day after the effective date of a policy, the policyholder shall obtain a safety consultation required under Section 2054.504 from a safety consultant. The safety consultant must be:

(1) the company;

(2) the division; or

(3) a professional source approved for that purpose by the division.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.506. SAFETY CONSULTANT REPORT. A safety consultant acting under this subchapter shall file a written report with the division and the policyholder specifying any hazardous condition or practice identified in the safety consultation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.055(c), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.055(c), eff. September 1, 2007.

Sec. 2054.507. ACCIDENT PREVENTION PLAN. (a) If a safety consultant identifies a hazardous condition or practice, the policyholder and the safety consultant shall develop a specific accident prevention plan that addresses the condition or practice.

(b) The safety consultant may approve an existing accident prevention plan.

(c) The policyholder shall comply with the accident prevention plan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.508. ACCIDENT INVESTIGATIONS; OTHER MONITORING. The division may:

(1) investigate an accident that occurs at a work site of a policyholder for whom an accident prevention plan was developed under Section 2054.507; and

(2) otherwise monitor as the division determines necessary

the implementation of the accident prevention plan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.509. FOLLOW-UP INSPECTION. (a) Not earlier than the 90th day after or later than the sixth month after the date an accident prevention plan is developed under Section 2054.507, the division shall conduct a follow-up inspection of the policyholder's premises in accordance with rules adopted by the commissioner of workers' compensation.

(b) The division may require the participation of the safety consultant who performed the initial consultation and developed the accident prevention plan.

(c) If the commissioner of workers' compensation determines that a policyholder has complied with the terms of the accident prevention plan or has implemented other accepted corrective measures, the commissioner of workers' compensation shall certify that determination.

(d) If the commissioner of workers' compensation determines that a policyholder has failed or refuses to implement the accident prevention plan or other suitable hazard abatement measures, the policyholder may elect to cancel coverage not later than the 30th day after the date of the determination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.055(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.055(d), eff. September 1, 2007.

Sec. 2054.510. CANCELLATION OF COVERAGE BY COMPANY; IMPOSITION OF ADMINISTRATIVE PENALTY. (a) If a policyholder described by Section 2054.509(d) does not elect to cancel coverage as provided by that section:

(1) the company may cancel the coverage; or

(2) the commissioner of workers' compensation may impose an

administrative penalty on the policyholder.

(b) The amount of an administrative penalty under Subsection (a)(2) may not exceed $5,000. Each day of noncompliance constitutes a separate violation.

(c) In imposing an administrative penalty, the commissioner of workers' compensation may consider any matter that justice may require and shall consider:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(2) the history and extent of previous administrative violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(4) any economic benefit resulting from the prohibited act; and

(5) the penalty necessary to deter future violations.

(d) A penalty collected under this section:

(1) must be deposited in the general revenue fund; and

(2) may be appropriated to the division to offset the costs of implementing and administering this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.055(e), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.055(e), eff. September 1, 2007.

Sec. 2054.511. CONTINUING COMPLIANCE WITH SUBCHAPTER. The procedures established under this subchapter must be followed each year the policyholder meets the criteria established by Section 2054.504(a)(1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.512. FEES FOR SERVICES. The division shall:

(1) charge a policyholder for the reasonable cost of services provided to the policyholder under Sections 2054.505, 2054.506, 2054.507, 2054.509, and 2054.510(a); and

(2) set the fees for the services at a cost-reimbursement level, including a reasonable allocation of the division's administrative costs.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.055(f), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.055(f), eff. September 1, 2007.

Sec. 2054.513. ENFORCEMENT OF SUBCHAPTER. The division shall enforce compliance with this subchapter through the administrative violation proceedings under Chapter 415, Labor Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.055(g), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.055(g), eff. September 1, 2007.

SUBCHAPTER L. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 2054.551. PUBLIC INTEREST INFORMATION. (a) The company shall prepare information of public interest describing the functions of the company and the procedures by which complaints are submitted to and resolved by the company.

(b) The company shall make the information available to the public and appropriate state agencies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.552. COMPLAINTS. (a) The company shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the company for the purpose of directing a complaint to the company.

(b) The company may provide for the notice:

(1) by a supplement or endorsement to a written policy;

(2) on a sign prominently displayed in the place of business of each regional office of the company; or

(3) in a bill for services provided by the company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2054.553. COMPLAINT RECORD. (a) The company shall keep information about each written complaint filed with the company. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the company takes no action, an explanation of the reason the complaint was closed without action.

(b) For each written complaint the company receives and has authority to resolve, the company shall:

(1) provide the company's policies and procedures relating to complaint investigation and resolution to the person filing the complaint and each person or entity that is a subject of the complaint; and

(2) at least quarterly and until final disposition of the complaint, notify the person filing the complaint and each person or entity that is a subject of the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER M. SUBSIDIARIES AUTHORIZED TO PROVIDE HEALTH BENEFIT COVERAGE

Sec. 2054.601. DEFINITION. In this subchapter, "alternative health benefit coverage" means health benefit coverage:

(1) provided by a subsidiary of the company that is not authorized to engage in the business of insurance in this state;

(2) offered only to:

(A) individuals;

(B) small businesses with not more than 250 full-time equivalent employees; or

(C) the company's policyholders or their employees; and

(3) that is not:

(A) provided through an insurance policy or other product the offering or issuance of which constitutes the business of insurance in this state; or

(B) benefit coverage subject to the laws governing workers' compensation in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 2, eff. September 1, 2021.

Sec. 2054.602. HEALTH BENEFIT COVERAGE OFFERED BY SUBSIDIARY AUTHORIZED. (a) The company may create, acquire, or otherwise own or operate one or more subsidiaries that offer accident or health insurance or another type of health benefit coverage or health benefit plan as provided by this subchapter.

(b) A subsidiary of the company may offer in this state:

(1) accident or health insurance or another type of health benefit plan authorized under this code, in accordance with a certificate of authority issued to the subsidiary under this code; or

(2) alternative health benefit coverage as described by Section 2054.601.

(c) A subsidiary of the company may not offer or issue an occupational policy for an employer or an employer's employees covering an occupational bodily injury, disease, or death that explicitly provides liability coverage to an employer that elects not to maintain workers' compensation insurance coverage under Chapter 406, Labor Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 2,

eff. September 1, 2021.

Sec. 2054.603. CONSIDERATIONS AND GUIDING PRINCIPLES FOR DEVELOPING HEALTH BENEFIT COVERAGE OFFERINGS. (a) In developing health benefit coverage or health benefit plan options to be offered through a subsidiary of the company, the company shall fully explore all health coverage options that may be offered under this subchapter and place emphasis on:

(1) increasing competition in the health insurance market;

(2) utilizing innovations that improve the quality of health care while lowering health care costs;

(3) ensuring adequacy of benefits and access to care for individuals in this state with preexisting conditions;

(4) issuing coverage in a manner that does not discriminate against individuals with preexisting conditions;

(5) leveraging federal tax credits that may be available for private health benefit plans to the greatest extent possible to increase the affordability of health benefit plans;

(6) ensuring transparency and coherence of costs and coverage to inform individuals shopping for health benefits;

(7) reducing incidences of medical debt faced by individuals in this state and uncompensated care faced by providers in this state; and

(8) ensuring equitable costs regardless of gender or prospects of pregnancy or childbirth.

Added by Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 2, eff. September 1, 2021.

Sec. 2054.604. RULES. Except with respect to alternative health benefit coverage as described by Section 2054.601 or a subsidiary of the company offering alternative health benefit coverage, the commissioner may adopt rules as necessary to implement this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 2, eff. September 1, 2021.

Sec. 2054.605. EXEMPTION FROM OTHER INSURANCE LAWS. A provision of this code, other than this chapter, does not apply to alternative health benefit coverage as described by Section 2054.601 unless alternative health benefit coverage is expressly mentioned in the other law.

Added by Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 2, eff. September 1, 2021.

Sec. 2054.606. SUBSIDIARY NOT ENGAGED IN BUSINESS OF INSURANCE. Notwithstanding any other provision of this code, for the purposes of offering alternative health benefit coverage as described by Section 2054.601, a subsidiary of the company that acts in accordance with this subchapter is not an insurer and is not engaging in the business of insurance in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 2, eff. September 1, 2021.

Sec. 2054.607. RISK TRANSFER OR COVERAGE. A subsidiary of the company that offers health benefit coverage under this subchapter may contract with an outside company authorized to engage in the business of insurance in this state that is not under common control with the company or the subsidiary to:

(1) transfer to the outside company all or a portion of the subsidiary's risks arising from health benefit coverage offered under this subchapter; or

(2) obtain insurance coverage from the outside company guarantying the subsidiary's obligations arising from health benefit coverage offered under this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 1019 (H.B. 3752), Sec. 2, eff. September 1, 2021.

CHAPTER 2055. GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE COVERAGE

Sec. 2055.001. DEFINITION. In this chapter, "business entity" means a business enterprise owned by a single person or a

corporation, organization, business trust, trust, partnership, joint venture, association, or other business entity.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(b), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.001 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(b), eff. September 1, 2007.

Sec. 2055.002. CERTIFICATION PROGRAM. (a) The department shall:

(1) maintain a certification program for groups organized under this chapter; and

(2) issue certificates of approval to eligible business entities authorizing formation and maintenance of a group.

(b) The commissioner by rule shall adopt forms, criteria, and procedures for issuing certificates of approval to groups under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 17, eff. April 1, 2007.
Redesignated from Labor Code, Section 406A.002 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(a)(2), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.002 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.

Sec. 2055.003. FORMATION OF GROUP. (a) On receipt of a certificate of approval issued by the department under this chapter, two or more business entities or two or more members of a trade association may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(b) To be eligible to join a group, a business entity must:

(1) be engaged in a business pursuit that is the same as or similar to the other business entities participating in the group as determined by the department; or

(2) be a member of the same trade association as the other business entities participating in the group.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 17, eff. April 1, 2007.
Redesignated from Labor Code, Section 406A.003 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(a)(2), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.003 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.

Sec. 2055.004. PLAN OF OPERATION. (a) A group shall:

(1) adopt a plan of operation; and

(2) file a copy of the plan of operation with the department.

(b) The plan of operation must include:

(1) provisions governing the composition and selection of a governing board;

(2) the methods for administering the group; and

(3) guidelines governing the workers' compensation insurance coverage obtained by the group that include provisions governing:

(A) the payment of premiums;

(B) the distribution of discounts; and

(C) the methods for providing risk management.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 17, eff. April 1, 2007.
Redesignated from Labor Code, Section 406A.004 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(a)(2), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.004 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.

Sec. 2055.005. GROUP PURCHASE AUTHORIZED. A group certified under this chapter may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 17, eff. April 1, 2007.
Redesignated from Labor Code, Section 406A.005 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(a)(2), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.005 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.

Sec. 2055.006. POLICY RATES. Rates for policies purchased under this chapter must be computed using manual rules and rates. The department shall determine any experience rating factor that must be applied to those policies as provided by the commissioner by rule.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 17, eff. April 1, 2007.
Redesignated from Labor Code, Section 406A.006 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(a)(2), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.006 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.

Sec. 2055.007. GROUP DISCOUNT. (a) A group that purchases a policy under this chapter is entitled to any premium or volume discount that would be applicable to a policy of the combined premium amount.

(b) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 17, eff. April 1, 2007.

Redesignated from Labor Code, Section 406A.007 by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(a)(2), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.007 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.

Sec. 2055.008. APPLICABILITY OF OTHER LAW. (a) A group established under this chapter is entitled to any deviation applicable under Section 2052.004, 2053.051, or 2053.052(a) or (b).

(b) A member of a group is not subject to the discounts and surcharges established under Subchapter F, Chapter 2053.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0591(c), eff. September 1, 2007.
Redesignated from Labor Code, Section 406A.008 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(a)(2), eff. September 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0591(c), eff. September 1, 2007.

SUBTITLE F. OTHER COVERAGE

CHAPTER 2101. COVERAGE FOR AIRCRAFT

Sec. 2101.001. APPLICABILITY OF CHAPTER. This chapter applies only to aircraft hull and aircraft liability insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2101.002. FILING OF POLICY FORMS AND ENDORSEMENTS MAY BE REQUIRED. If the commissioner finds that a public need exists to regulate the insurance subject to this chapter, the commissioner by order may require each insurer issuing that insurance in this state to file with the department each policy form and endorsement the insurer uses to write the insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2101.003. DISAPPROVAL OF POLICY FORM OR ENDORSEMENT. (a) The commissioner may disapprove the use of a policy form or endorsement filed under this chapter.

(b) After the commissioner disapproves a policy form or endorsement, an insurer may not use the form or endorsement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2101.004. CERTAIN CONTRACTS OR OTHER AGREEMENTS VOID. (a) A contract or other agreement is void if the contract or agreement is not written into:

(1) the application for an insurance policy subject to this chapter; or

(2) the policy.

(b) A contract or other agreement that is void under Subsection (a) is:

(1) a violation of this chapter; and

(2) sufficient cause to revoke the insurer's certificate of authority to write aircraft insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2101.005. RULES. When the commissioner acts under this chapter, the commissioner may adopt any rules that are necessary to carry out the provisions of this chapter or Chapter 251 or 256.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE
CHAPTER 2151. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2151.001. DEFINITIONS. In this chapter:

(1) "Association" means the Texas Automobile Insurance Plan Association.

(2) "Authorized insurer" means an insurer authorized by the department to write automobile liability coverage under this title. The term includes a county mutual insurance company organized under Chapter 912.

(3) "Insurance" means an insurance policy that meets the requirements of Chapter 601, Transportation Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 312 (S.B. 1554), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

Sec. 2151.051. NATURE AND COMPOSITION OF ASSOCIATION. (a) The Texas Automobile Insurance Plan Association is a nonprofit corporate body composed of all authorized insurers.

(b) Each authorized insurer must be a member of the association as a condition of the insurer's authority to write automobile liability insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.052. AUTHORITY OF GOVERNING COMMITTEE. The association is administered by a governing committee under a plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.053. MEMBERSHIP OF GOVERNING COMMITTEE. The governing committee is composed of 15 members selected as follows:

(1) eight members who represent the interests of insurers, elected by the association members according to a method the members

determine;

(2) five public members, nominated by the office of public insurance counsel and selected by the commissioner; and

(3) two members who are general or personal lines property and casualty agents, as required by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.13, eff. September 1, 2007.

Sec. 2151.054. ELIGIBILITY TO SERVE AS INSURER REPRESENTATIVE. To be eligible to serve on the governing committee as a representative of insurers, an individual must be a full-time employee of an authorized insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.055. INELIGIBILITY TO SERVE AS PUBLIC MEMBER. An individual may not serve on the governing committee as a public member if the individual, another individual related to that individual within the second degree by consanguinity or affinity, or another individual residing in the same household with that individual:

(1) is required to be registered or licensed under this code or another insurance law of this state;

(2) is employed by or acts as a consultant to a person required to be registered or licensed or required to hold a certificate of authority under this code or another insurance law of this state;

(3) is the owner of, has a financial interest in, or participates in the management of an organization required to be registered or licensed or required to hold a certificate of authority under this code or another insurance law of this state;

(4) is an officer, employer, or consultant of an association in the field of insurance; or

(5) is required to register as a lobbyist under Chapter

305, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.056. IMMUNITY FROM LIABILITY. (a) The association, a member of the governing committee, or an employee of the association is not personally liable for:

(1) an act performed in good faith within the scope of the person's authority as determined under this chapter or the plan of operation; or

(2) damages occasioned by the person's official act or omission except an act or omission that is corrupt or malicious.

(b) The association shall provide counsel to defend an action brought against a member of the governing committee or an employee because of the person's official act or omission regardless of whether the person has terminated service with the association when the action is instituted.

(c) This section is cumulative of and does not affect or modify a common law or statutory privilege or immunity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.057. COMMITTEE MEETINGS BY TELEPHONE AND VIDEOCONFERENCE. (a) Chapter 551, Government Code, applies to a meeting of the governing committee.

(b) Notwithstanding Chapter 551, Government Code, or any other law, the governing committee may meet by telephone conference call, videoconference, or other similar telecommunication method for any meeting purpose, including conducting a vote or establishing a quorum, regardless of the subject matter discussed or considered.

(c) A meeting authorized by this section is subject to the notice requirements that apply to other meetings of the governing committee under Chapter 551, Government Code.

(d) The notice of a meeting authorized by this section must:

(1) specify that the location of the meeting is a location at which at least one member of the governing committee is physically present; and

(2) state clear instructions and requirements for electronic attendance by a member of the committee.

(e) Each part of a meeting authorized by this section must be audible to the public at the location specified by Subsection (d).

(f) Two-way audio communication must be available during the entire meeting between all members of the governing committee attending a meeting authorized by this section, and if the two-way audio communication is disrupted so that a quorum of the committee is no longer participating in the meeting, the meeting may not continue until the two-way audio communication is reestablished.

Added by Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 2, eff. May 18, 2013.

SUBCHAPTER C. POWERS AND DUTIES OF ASSOCIATION

Sec. 2151.101. POWERS OF NONPROFIT CORPORATION. (a) The association has the powers granted to a nonprofit corporation under the Business Organizations Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.102. ASSIGNMENT OF INSURANCE; ELIGIBILITY. (a) The association shall provide for the assignment of insurance to an authorized insurer for a person required by Chapter 601, Transportation Code, to show proof of financial responsibility for the future.

(b) An applicant is not eligible for insurance through the association unless the applicant and the servicing agent certify as part of the application to the association that the applicant has been rejected for insurance by at least two insurers that are authorized to engage in business in this state and that are writing automobile insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.103. ASSESSMENTS. (a) The association may assess

authorized insurers to provide money to operate the association.

(b) The amount assessed against an authorized insurer must be in proportion to the insurer's writing of automobile liability insurance in this state.

(c) The association may bring an action to collect an assessment against an authorized insurer that does not pay the assessment within a reasonable time. In addition, the association may report to the commissioner an authorized insurer's failure to pay the assessment to the association. The commissioner may institute a disciplinary action against the insurer under Chapter 82.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 1, eff. May 18, 2013.

SUBCHAPTER D. PLAN OF OPERATION

Sec. 2151.151. CONTENTS OF PLAN OF OPERATION; AMENDMENTS. (a) The plan of operation must:

(1) provide for the efficient, economical, fair, and nondiscriminatory administration of the association; and

(2) provide a means by which insurance may be provided in accordance with Section 2151.102(a).

(b) Subject to the commissioner's approval, the governing committee may amend the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.152. CORRECTIVE ACTION TO PLAN OF OPERATION. If the commissioner at any time believes that any part of the plan of operation is inconsistent with the purposes of Chapter 601, Transportation Code, the commissioner shall notify the governing committee in writing so that the governing committee may take corrective action.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.153. INCENTIVE PROGRAMS. (a) The plan of operation must include an incentive program to target underserved geographic areas, which the commissioner by rule shall designate. In designating underserved areas, the commissioner shall consider with respect to an area:

(1) the availability of insurance;

(2) the number of uninsured drivers;

(3) the number of drivers insured through the association; and

(4) any other relevant factor.

(b) The plan of operation may include other incentive programs to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance.

(c) The incentive programs are effective on the commissioner's approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 3, eff. May 18, 2013.

Sec. 2151.154. ASSIGNMENT DISTRIBUTION PLAN. (a) The plan of operation must include a voluntary, competitive limited assignment distribution plan that allows an authorized insurer to contract directly with a servicing carrier to accept assignments to the servicing carrier by the association.

(b) A servicing carrier must be authorized to write automobile insurance in this state and must:

(1) have written automobile liability insurance in this state for at least five years; or

(2) be currently engaged as a servicing carrier for assigned risk automobile business in at least one other state.

(c) After notice and hearing, the commissioner may prohibit an insurer from acting as a servicing carrier.

(d) An authorized insurer and a servicing carrier shall

determine through negotiation the terms of a contract described by this section, including the buy-out fee.

(e) The governing committee may:

(1) adopt reasonable rules for the conduct of business under a contract described by this section; and

(2) establish reasonable standards of eligibility for servicing carriers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.058, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.058, eff. September 1, 2007.

SUBCHAPTER E. RATES FOR INSURANCE; HEARING

Sec. 2151.201. RATE STANDARDS. Rates for insurance provided under this chapter must be:

(1) just, reasonable, adequate, not excessive, not confiscatory, and not unfairly discriminatory for the risks to which the rates apply; and

(2) sufficient to carry all claims to maturity and meet the expenses incurred in the writing and servicing of the business.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.202. RATE FILINGS. (a) The association shall file with the department rates to be charged for insurance provided through the association for approval by the commissioner.

(b) The association may not file rates under this section more than once in any 12-month period.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 4, eff. May 18, 2013.

Sec. 2151.2021. FILE AND USE. The association may use a rate, excluding a rate described by Section 2151.2041, on the later of the date specified by the association in the filing or the date the rate is approved or considered approved under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 5, eff. May 18, 2013.

Sec. 2151.2022. COMMISSIONER ACTION ON CERTAIN RATE FILINGS. (a) Not later than the 30th day after the date the association files a rate, excluding a rate described by Section 2151.2041, the commissioner shall:

(1) approve the rate if the commissioner determines that the rate meets the standards under Section 2151.201; or

(2) disapprove the rate if the commissioner determines that the rate does not meet the standards under Section 2151.201.

(b) If the commissioner fails to act as required under Subsection (a) on or before the 30th day after the date the rate is filed, the rate is considered approved on the 31st day after the date of filing unless the approval period is extended under Subsection (c).

(c) The commissioner may extend the approval period under Subsection (a) for one additional period not to exceed 30 days. The commissioner and the association may agree to extend the approval period for additional periods not to exceed 30 days. If the commissioner does not affirmatively approve or disapprove the rate before the extended period expires, the rate is considered approved on the day after the date the extended period expires.

Added by Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 5, eff. May 18, 2013.

Sec. 2151.2023. NOTICE OF RATE APPROVAL OR DISAPPROVAL. The commissioner shall give written notice by first class mail or electronic mail to the association of the approval or disapproval by the commissioner of the rate filed under Section 2151.202 or that the rate is considered approved under Section 2151.2022.

Added by Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 5, eff. May 18, 2013.

Sec. 2151.203. RECORDING AND REPORTING OF PREMIUM, LOSS, AND EXPENSE EXPERIENCE. (a) The commissioner shall adopt reasonable rules and statistical plans for the recording and reporting of premium, loss, and expense experience and other required data by each authorized insurer. The premium, loss, and expense experience must be reported separately for business assigned to the insurer.

(b) Each authorized insurer shall use the statistical plans adopted under this section to record and report premium, loss, and expense experience and other required data in accordance with the rules adopted by the commissioner.

(c) In approving rates under this subchapter, the commissioner shall consider the reports collected under the statistical plan regarding aggregated premiums earned and losses and expenses incurred in the writing of automobile insurance through the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.204. NOTICE OF FILING. (a) The department shall file with the secretary of state for publication in the Texas Register notice that a filing has been made under Section 2151.202 not later than the seventh day after the date the filing is received by the department.

(b) The notice must include information relating to:

(1) the availability of the filing for public inspection at the department during regular business hours;

(2) the procedures for obtaining copies of the filing;

(3) procedures for making written comments related to the filing; and

(4) the time, place, and date of the hearing scheduled under Section 2151.206.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.2041. HEARING ON CERTAIN RATE FILINGS. If the association files a rate under Section 2151.202 that exceeds 105 percent of the current average rate for each coverage written through the association on the date of the filing, the commissioner shall conduct a hearing under Section 2151.206.

Added by Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 6, eff. May 18, 2013.

Sec. 2151.205. OPPORTUNITY TO REVIEW FILING. Before approving, disapproving, or modifying a filing described by Section 2151.2041, the commissioner must provide to all interested persons a reasonable opportunity to:

(1) review the filing;

(2) obtain a copy of the filing on payment of any legally required copying cost; and

(3) submit to the commissioner written comments, analyses, or information related to the filing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 7, eff. May 18, 2013.

Sec. 2151.206. HEARING ON FILING. (a) Not later than the 45th day after the date the department receives a filing described by Section 2151.2041, the commissioner shall schedule a hearing at which interested persons may present written or oral comments relating to the filing.

(b) The association, the public insurance counsel, and any other interested person or entity that submits proposed changes or actuarial analyses may ask questions of any person testifying at the hearing.

(c) A hearing held under this section is not a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 8, eff. May 18, 2013.

Sec. 2151.207. ACTION OF COMMISSIONER ON FILING. (a) After the conclusion of the hearing under Section 2151.206, the commissioner shall approve, disapprove, or modify the filing in writing.

(b) If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria to be met by the association to obtain approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.208. AMENDED FILING. The association may file with the commissioner an amended filing to comply with the commissioner's comments not later than the 10th day after the date the association receives the commissioner's written disapproval under Section 2151.2023 or 2151.207.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 95 (S.B. 733), Sec. 9, eff. May 18, 2013.

Sec. 2151.209. OPPORTUNITY TO REVIEW AMENDED FILING. Before approving or disapproving an amended filing, the commissioner must provide to all interested persons a reasonable opportunity, in the same manner an opportunity is provided under Section 2151.205, to:

(1) review the amended filing;

(2) obtain a copy of the amended filing on payment of any legally required copying cost; and

(3) submit to the commissioner written comments or information related to the amended filing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2151.210. HEARING ON AMENDED FILING. (a) The commissioner may hold a hearing in the manner provided by Section 2151.206 not later than the 20th day after the date the department receives an amended filing.

(b) Not later than the 10th day after the date the hearing on the amended filing is concluded, the commissioner shall approve or disapprove the amended filing.

(c) Not later than the 30th day after the date the amended filing is received by the department, the commissioner shall disapprove the amended filing or the filing is considered approved.

(d) The requirements provided under Sections 2151.204 and 2151.207 apply to a hearing conducted under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.211. APPEAL. (a) A person aggrieved by a decision of the commissioner under this subchapter may appeal the decision not later than the 30th day after the date of the decision.

(b) An appeal of a commissioner's decision under this subchapter must be made in accordance with Subchapter D, Chapter 36.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2151.212. HEARINGS BY DEPARTMENT. Subchapter B, Chapter 40, does not apply to this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2152. GROUP INSURANCE IN UNDERSERVED AREAS

Sec. 2152.001. DEFINITION. In this chapter, "residential property insurance" means insurance against loss to real or tangible personal property at a fixed location that is provided through a

homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2152.002. DESIGNATION OF UNDERSERVED AREAS. (a) The commissioner by rule may designate an area as an underserved area for personal automobile insurance or residential property insurance.

(b) In determining which areas to designate as underserved, the commissioner shall consider:

(1) whether the insurance described by Subsection (a) is not reasonably available to a substantial number of insurable risks and the availability of insurance in general; and

(2) any other relevant factor as determined by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2152.003. AUTHORIZATION FOR ISSUANCE OF GROUP INSURANCE IN UNDERSERVED AREA. An insurer authorized to write property or casualty insurance in this state, including a Lloyd's plan and a reciprocal or interinsurance exchange, that writes personal automobile insurance or residential property insurance in this state may write the personal automobile insurance or residential property insurance on a group basis in an underserved area designated by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2152.004. EXCLUSION OF CERTAIN COVERAGE. Group insurance provided under this chapter may not include windstorm and hail insurance coverage for a risk eligible for that coverage under Chapter 2210.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2152.005. FORMATION OF GROUP. A group may be formed solely to purchase insurance subject to this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2152.006. RATES. Rates for coverage provided under this chapter are subject to the applicable statutes relating to the insurers providing the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2152.007. POLICY FORMS AND CERTIFICATES. The commissioner shall adopt policy forms and certificates for use in underserved areas designated by the commissioner under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2152.008. RULES. In addition to other rules adopted under this chapter, the commissioner may adopt any rules that are appropriate and necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2153. GROUP MARKETING OF AUTOMOBILE INSURANCE FOR PERSONS OVER 55 YEARS OF AGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2153.001. DEFINITIONS. In this chapter:

(1) "Group automobile insurance" means automobile insurance that:

(A) covers individuals who are over 55 years of age;

and

(B) is offered under a group marketing plan.

(2) "Group marketing" means the marketing of group automobile insurance to an eligible group under Section 2153.052.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.002. APPLICABILITY OF CERTAIN PROVISIONS. Sections 4001.051 and 4001.053 do not apply to a group participating in a group marketing plan under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.003. RULES. The commissioner may adopt any rules necessary to carry out the provisions of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. CONDITIONS FOR ISSUANCE OF GROUP AUTOMOBILE INSURANCE

Sec. 2153.051. AUTHORIZATION FOR ISSUANCE OF GROUP AUTOMOBILE INSURANCE. An insurer may issue group automobile insurance in this state if the conditions of Sections 2153.054(b), 2153.055-2153.059, and 2153.103 are met.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.052. ELIGIBILITY OF GROUP. (a) To be eligible for group marketing, a group must:

(1) have existed for at least six months before the date the group automobile insurance is purchased; and

(2) be organized for a purpose other than to become an insurance group under this chapter.

(b) The group may include any group that is actuarially

credible for underwriting purposes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.053. ELIGIBILITY OF GROUP MEMBER. A member of a group described by Section 2153.052 is eligible to participate in a group marketing plan if the member is:

(1) in good standing with the group;

(2) over 55 years of age; and

(3) authorized to operate a motor vehicle in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.054. GUARANTEED ISSUE. (a) An insurer shall issue group automobile insurance:

(1) on a guaranteed basis under a single insurance program; and

(2) without individual underwriting selection or individual proof of insurability.

(b) An insurer that issues group automobile insurance and the insured group shall accept for participation in the group marketing plan any member of the group who is eligible under Section 2153.053 and who wants to participate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.055. INSURER QUALIFICATIONS. To qualify to write group automobile insurance, an insurer:

(1) must be authorized to engage in the business of automobile insurance in this state;

(2) must also be engaged in the business of writing automobile insurance for independent individual risks; and

(3) may not be organized solely to provide group automobile insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.056. VEHICLES COVERED. A group marketing plan must provide that a motor vehicle is eligible for group automobile insurance coverage only if the vehicle is owned by a group member or the member's spouse jointly or severally.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.057. INDIVIDUAL POLICIES. An insurer shall issue an individual policy to each participating group member.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.058. GROUP PAYMENT OF PREMIUMS. An insurer shall provide group automobile insurance under an agreement under which the group periodically pays the premiums on the policies to the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.059. LIMITATIONS ON CANCELING INSURANCE. (a) An insurer may not cancel the insurance of a group member unless:

(1) the member fails to pay the premiums; or

(2) the insurance for the entire group is canceled.

(b) An insurer that cancels insurance under Subsection (a) shall provide to each group member whose insurance is canceled the same notice of cancellation the insurer provides for cancellation of individual automobile insurance policies.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. RECORDS, RATES, AND FORMS

Sec. 2153.101. MAINTENANCE OF RECORDS. An insurer that writes insurance under a group marketing plan shall maintain separate experience data on the group marketing plan business, including complete records of premium income, losses, and expenses, so that the experience may be fairly ascertained.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.102. RATES. Rates for group automobile insurance are determined in the manner provided by Chapter 2251 and Article 5.13-2, to the extent that those laws apply.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2153.103. POLICY FORMS. An insurer that writes group automobile insurance shall use policy forms:

(1) prescribed by the commissioner and authorized for use by Section 2301.052(b); or

(2) filed and in effect as provided by Section 2301.052(a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2154. VOLUNTEER FIRE DEPARTMENT MOTOR VEHICLE SELF-INSURANCE PROGRAM

Sec. 2154.001. DEFINITIONS. In this chapter:

(1) "Fund" means the volunteer fire department self-insurance fund established under Section 2154.005.

(2) "Program" means the volunteer fire department motor vehicle self-insurance program administered under this chapter.

(3) "Service" means the Texas Forest Service of The Texas A&M University System.

(4) "Volunteer fire department" means a fire department operated by the fire department's members on a not-for-profit basis. The term includes a fire department that is exempt from federal

income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c)(3) of that code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2154.002. MOTOR VEHICLE SELF-INSURANCE PROGRAM. (a) The service shall administer a volunteer fire department self-insurance program that:

(1) identifies and evaluates risks arising from the use of motor vehicles by volunteer fire departments;

(2) maintains a loss-prevention and loss-control program to reduce risks arising from the use of motor vehicles by volunteer fire departments;

(3) consolidates and administers volunteer fire department risk management and self-insurance programs; and

(4) provides motor vehicle self-insurance coverage in accordance with Section 2154.003.

(b) The service may employ staff to administer the program.

(c) The director of the service may adopt rules to implement and administer the program.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2154.003. SELF-INSURANCE POOL; COVERAGE. (a) The program shall administer a self-insurance pool to provide coverage for motor vehicles a volunteer fire department uses for fire fighting.

(b) The coverage may indemnify an official, employee, member, or volunteer of a volunteer fire department for liability arising from the use of a covered motor vehicle in performing the person's fire-fighting duties. The maximum limits of coverage are:

(1) for bodily injury or death:

(A) $100,000 for each person; and

(B) $300,000 for each single occurrence; and

(2) for injury to or destruction of property, $100,000 for each single occurrence.

(c) Self-insurance coverage provided under this section may be

funded only from money available from the fund.

(d) The director of the service may establish:

(1) eligibility requirements for participation in coverage under this section; and

(2) equipment and safety standards for the motor vehicles to be covered under this section.

(e) Coverage limits of self-insurance provided under this section must be based on the liquidity of the fund after deducting the cost of administering this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2154.004. PARTICIPATION IN SELF-INSURANCE POOL. (a) To participate in coverage provided under Section 2154.003, a volunteer fire department must submit a written request to the program.

(b) The director of the program shall approve the request for participation if each motor vehicle to be covered meets the eligibility requirements and equipment and safety standards established under Section 2154.003(d).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2154.005. VOLUNTEER FIRE DEPARTMENT SELF-INSURANCE FUND. (a) The fund is an account in a depository selected by the board of regents of The Texas A&M University System in the manner provided by Section 51.003, Education Code, for funds subject to the control of institutions of higher education under Section 51.002, Education Code.

(b) The fund is composed of:

(1) money collected under Section 2154.007; and

(2) interest accruing on money in the fund.

(c) Money in the fund may be spent only for:

(1) funding self-insurance under the program; or

(2) administering this chapter, including paying the salaries and expenses of staff for the program and the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.059(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.059(a), eff. September 1, 2007.

Sec. 2154.006. LIMITATION ON STATE'S LIABILITY. The state's liability for a loss covered by self-insurance provided under this chapter is limited to the assets of the fund, and the state is not otherwise liable for that loss.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2154.007. SELF-INSURANCE FEE. (a) The service may assess and collect a reasonable fee from participating volunteer fire departments to provide self-insurance coverage under this chapter. In establishing the amount of the fee, the service shall consider the amount that could be charged to the volunteer fire department for similar insurance coverage provided to that department in accordance with this code.
(b) Fees collected under this section shall be deposited to the credit of the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2154.008. LEGAL REPRESENTATION. (a) The service may employ an attorney to represent a volunteer fire department or an official, employee, member, or volunteer of a volunteer fire department in a liability action for which insurance coverage is provided under this chapter.
(b) The attorney general may not provide the services described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2171. COMMERCIAL GROUP PROPERTY INSURANCE

Sec. 2171.001. DEFINITION. In this chapter, "large risk" means an insured described by Section 2301.004.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2171.002. AUTHORIZATION FOR ISSUANCE. An insurer may write commercial group property insurance for:

(1) a group of businesses that constitutes a large risk if the members of the group have clearly identifiable underwriting characteristics; or

(2) an association that constitutes a large risk if the members of the association are engaged in similar undertakings.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2171.003. POLICY FORM FILINGS. (a) An insurer shall file a policy form with the commissioner before using the form for a group of businesses or an association described by Section 2171.002 in which each member of the group or association is not a large risk.

(b) A filing made under this section is for informational purposes only.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2171.004. RATE FILINGS. An insurer shall file with the commissioner in accordance with Chapter 2251 the following information for commercial group property insurance written under this chapter in this state:

(1) rates;

(2) supplementary rating information; and

(3) pertinent supporting information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2171.005. IDENTIFICATION OF INSURED REQUIRED. An insurer filing a policy form under Section 2171.003 or rates and related information under Section 2171.004 shall clearly identify the group of businesses or the association to be insured.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2201. RISK RETENTION GROUPS AND PURCHASING GROUPS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2201.001. PURPOSE OF CHAPTER. The purpose of this chapter is to:

(1) regulate the formation and operation of risk retention groups and purchasing groups in this state formed under:

(A) the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.); or

(B) the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.); and

(2) protect the public by the appropriate regulation of groups described by Subdivision (1) to the extent permitted by law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.002. GENERAL DEFINITIONS. In this chapter:

(1) "Agent" includes the terms "agent" and "broker" as used in the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.).

(2) "Hazardous financial condition" means a condition in which a risk retention group, based on the group's present or reasonably anticipated financial condition and although the group is not yet financially impaired or insolvent, is unlikely to be able to:

(A) meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) pay other obligations in the normal course of

business.

(3) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for transferring and distributing risk that is determined to be insurance under the laws of this state.

(4) "State" means any state of the United States or the District of Columbia.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.003. LIABILITY DEFINED. (a) In this chapter, except as provided by Subsection (b) or as otherwise provided by this chapter:

(1) "Completed operations liability" means liability, including liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability, arising out of the installation, maintenance, or repair of any product at a site that is not owned or controlled by:

(A) a person who performs that work; or

(B) a person who hires an independent contractor to perform that work.

(2) "Liability" means legal liability for damages, including costs of defense, legal costs, fees, and other claims expenses, incurred because of personal injury, property damage, or other damage or loss to another person resulting from or arising out of:

(A) a product, trade, or business, regardless of whether the business operates for profit;

(B) operations, premises, or services, including professional services; or

(C) any activity of:

(i) a state or local government; or

(ii) an agency or political subdivision of a state or local government.

(3) "Product liability" means liability for damages incurred because of any personal injury, death, emotional harm, consequential economic damage, or property damage, including damage resulting from the loss of use of property, arising out of the

manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of that person when the incident giving rise to the claim occurred.

(b) In this chapter, "liability" does not include:

(1) liability for damages incurred because of personal injury, property damage, or other damage or loss resulting from a personal, familial, or household activity or responsibility; or

(2) an employer's liability with respect to the employer's employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. Section 51 et seq.).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.004. AGENT LICENSE REQUIRED. (a) A person, firm, partnership, or corporation may not act or offer to act as an agent for, or aid in any manner in the solicitation, negotiation, or placement of insurance on behalf of, a risk retention group or purchasing group operating in this state or a group member in this state without first obtaining a license as an agent under:

(1) Chapter 4051, if a resident of this state; or

(2) Chapter 4056, if a nonresident of this state.

(b) A person, firm, partnership, or corporation must comply with Chapter 981 before the person, firm, partnership, or corporation, on behalf of a purchasing group or a group member in this state:

(1) acts or offers to act as an agent for an insurer not authorized to engage in business in this state; or

(2) aids in any manner in the solicitation, negotiation, or placement of insurance with an insurer not authorized to engage in business in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.005. EXEMPTION FROM CERTAIN REQUIREMENTS. (a) A provision of Chapter 981, 4055, or 4056 does not apply to an agent

described by Subsection (b) if the provision:

(1) requires residency in this state;

(2) requires countersignatures;

(3) prohibits the solicitation of insurance in this state by a nonresident or the payment of commissions to a nonresident; or

(4) prohibits a nonresident from acting as a surplus or excess lines agent.

(b) The exemption provided by Subsection (a) applies to an agent licensed under Chapter 981, 4055, or 4056 who is acting on behalf of a risk retention group or purchasing group operating in this state or a group member in this state in providing or placing liability insurance for risks located in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.006. AUTHORITY OF COMMISSIONER. (a) To enforce the laws of this state, the commissioner may use any authority provided by this code that is not specifically preempted by the Product Liability Risk Retention Act of 1981, as amended by the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.), including the authority to investigate, issue a subpoena, conduct a deposition or hearing, issue an order, and impose a penalty.

(b) The commissioner shall rely on the procedural laws and rules of this state with regard to an investigation, an administrative proceeding, or litigation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.007. ANNUAL REPORT TO COMMISSIONER. An agent licensed as required by Section 2201.004 shall report to the commissioner not later than March 1 of each year the activities and scope of services being provided to a risk retention group or purchasing group. The report must be made in accordance with rules adopted by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.008. RULES. The commissioner may adopt rules relating to risk retention groups and purchasing groups that are necessary to carry out this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. RISK RETENTION GROUP QUALIFICATIONS

Sec. 2201.051. GENERAL QUALIFICATIONS OF RISK RETENTION GROUP. A risk retention group must be a corporation or other limited liability association that:

(1) is organized primarily to assume and spread, and engages primarily in assuming and spreading, all or any portion of the liability exposure of the group's members; and

(2) otherwise meets the qualifications of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.052. NAME OF GROUP. A risk retention group must include in its name the phrase "risk retention group."

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.053. STATUS AS LIABILITY INSURER REQUIRED. A corporation or other limited liability association must be chartered and authorized to engage in the business of insurance as a liability insurer under the laws of any state to act as a risk retention group.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.054. QUALIFICATIONS REGARDING AUTHORITY OF CERTAIN ENTITIES TO ENGAGE IN BUSINESS. (a) In this section, "completed

operations liability" and "product liability" have the meanings assigned by the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.) before the effective date of the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.).

(b) Notwithstanding Section 2201.053, a corporation or other limited liability association may be considered a risk retention group if:

(1) before January 1, 1985, the corporation or association:

(A) was chartered and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands; and

(B) had certified to the commissioner, director, or superintendent of insurance of at least one state that it satisfied the capitalization requirements of that state; and

(2) since January 1, 1985, the corporation or association has been continuously engaged in business solely to continue to provide insurance to cover completed operations liability or product liability.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.055. QUALIFICATIONS REGARDING MEMBERSHIP. (a) A risk retention group must be composed of members who are engaged in similar or related businesses or activities with respect to the liability to which those members are exposed by virtue of any related, similar, or common product, trade, business, operations, premises, or services.

(b) A risk retention group must have:

(1) as members, only persons who are provided insurance by the group; or

(2) as the sole owner, an organization that has:

(A) as members, only persons who comprise the membership of the group; and

(B) as owners, only persons who comprise the membership of the group and are provided insurance by the group.

(c) A risk retention group may not exclude a person from membership in the group solely to provide a competitive advantage for

group members over that person.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.056. AUTHORIZED ACTIVITIES. (a) A risk retention group may provide:

(1) liability insurance for assuming and spreading all or any portion of the liability of the group's members; and

(2) reinsurance with respect to the liability of another risk retention group, or a member of that group, engaged in businesses or activities that meet the requirements of Section 2201.055(a) for membership in the group providing reinsurance.

(b) A risk retention group may not engage in activities that include providing insurance other than the insurance described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. RISK RETENTION GROUPS CHARTERED IN THIS STATE

Sec. 2201.101. ELIGIBILITY REQUIREMENTS. Except as otherwise provided by this chapter, a risk retention group that applies to be chartered in this state must:

(1) be chartered and authorized to engage in the business of insurance under Chapter 822, 861, 883, or 942; and

(2) comply with all the laws, rules, and requirements, including Chapter 804, applicable to insurers authorized to engage in business under those chapters and with Subchapter D to the extent those requirements do not limit the laws, rules, or requirements of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.102. CHARTER APPLICATION. (a) A risk retention group that applies to be chartered in this state shall provide to the

commissioner with the application for charter the following in accordance with rules adopted by the commissioner:

(1) the group's name;

(2) the identity of the group's initial members;

(3) the identity of the individuals who organized the group or who will provide administrative services or otherwise influence or control the group's activities;

(4) the amount and nature of initial capitalization;

(5) the coverages to be afforded; and

(6) the states in which the group intends to operate.

(b) Immediately on receipt of an application for charter, the commissioner shall provide summary information concerning the filing, including the information provided under Subsection (a), to the National Association of Insurance Commissioners.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.103. PLAN OF OPERATION; REVISIONS. (a) Except as provided by Subsection (b), before a risk retention group chartered in this state may offer insurance in any state, the group must submit to the commissioner for approval a plan of operation as described by Section 2201.202.

(b) A risk retention group is not required to submit a plan of operation under this section with respect to any kind or classification of liability insurance that:

(1) was defined in the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act existed before October 27, 1986; and

(2) was offered before October 27, 1986, by any risk retention group that had been chartered and operating for at least three years before that date.

(c) The risk retention group must submit a revision of the group's plan of operation to the commissioner and the commissioner must approve the revision before the group:

(1) offers an additional line of insurance in this state or in any other state; or

(2) effects a change in the group's operations as described in the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.104. FILING FEE. (a) In addition to all other fees imposed on an insurer chartered and authorized to engage in business under Chapter 822, 861, 883, or 942, a risk retention group chartered in this state shall pay a filing fee in an amount not to exceed $1,000 as set by rules adopted by the commissioner.

(b) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account to pay expenses incurred by the commissioner under Sections 2201.102 and 2201.103.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE

Sec. 2201.151. COMPLIANCE REQUIRED. A risk retention group chartered and authorized to engage in business in another state, Bermuda, or the Cayman Islands shall comply with this subchapter to engage in business as a risk retention group in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.152. PREREQUISITES TO OFFERING INSURANCE. (a) Before offering insurance in this state, a risk retention group not chartered in this state must submit to the commissioner:

(1) a statement that:

(A) identifies the state or states in which the group is chartered and authorized to engage in business as a liability insurer, the date of charter, and the group's principal place of business; and

(B) provides any other information the commissioner requires to verify that the group qualifies as a risk retention group under Subchapter B, including information on the group's membership;

(2) except as provided by Subsection (b), a copy of the

group's plan of operation, as described by Section 2201.202, and revisions of that plan submitted to the state in which the group is chartered and authorized to engage in business; and

(3) a statement of registration that designates the commissioner as the group's agent for the purpose of receiving service of legal documents or process as provided by Chapter 804.

(b) A risk retention group is not required to submit a plan of operation under this section with respect to any line or classification of liability insurance that:

(1) was defined in the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act existed before October 27, 1986; and

(2) was offered before October 27, 1986, by any risk retention group that had been chartered and operating for at least three years before that date.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.153. REQUIREMENTS FOR CONTINUING BUSINESS. (a) A risk retention group not chartered in this state that engages in business in this state shall submit to the commissioner:

(1) a copy of the group's financial statement submitted to the state in which the group is chartered and authorized to engage in business;

(2) a copy of each examination of the group as certified by the commissioner, director, or superintendent of insurance of another state or other public official conducting the examination;

(3) on the commissioner's request, a copy of any audit performed with respect to the group; and

(4) any other information required to verify that the group continues to qualify as a risk retention group under Subchapter B.

(b) A financial statement submitted under Subsection (a)(1) must:

(1) be certified by an independent public accountant; and

(2) contain a statement of opinion on loss and loss adjustment expense reserves made:

(A) under criteria established by the National Association of Insurance Commissioners; and

(B) by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.154. FILING FEES. (a) The commissioner by rule shall impose a filing fee in an amount not to exceed $500 for filing the items described by Sections 2201.152(a)(1) and (2).

(b) The commissioner by rule may impose a filing fee in an amount not to exceed $500 for filing the financial statement under Section 2201.153(a)(1). A risk retention group shall provide to the comptroller all information the comptroller requests in connection with the reporting, collection, enforcement, and administration of the fee.

(c) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.155. PAYMENT OF TAXES. (a) A risk retention group not chartered in this state is liable for the payment of premium and maintenance taxes and taxes on premiums of direct business for risks located in this state and shall report to the commissioner the net premiums written for risks located in this state. The group is subject to taxation, and any fine or penalty related to that taxation, on the same basis as a foreign admitted insurer in accordance with Chapters 4, 201, 202, 203, 221, 222, 224, 227, 228, and 251-257.

(b) A risk retention group shall provide to the comptroller all information the comptroller requests in connection with the reporting, collection, enforcement, and administration of taxes under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.006,

eff. April 1, 2009.

Sec. 2201.156. EXAMINATION OF FINANCIAL CONDITION; DISSOLUTION OR DELINQUENCY PROCEEDINGS. (a) A risk retention group not chartered in this state must submit to an examination by the commissioner to determine the group's financial condition if the commissioner of insurance of the jurisdiction in which the group is chartered and authorized to engage in business has not initiated an examination on or before the 60th day after the date the commissioner of this state requests an examination.

(b) The commissioner shall:

(1) coordinate the examination under Subsection (a) to avoid unjustified repetition; and

(2) conduct the examination in an expeditious manner under Sections 401.051, 401.052, 401.054-401.062, 401.103-401.106, 401.151, 401.152, 401.155, and 401.156 and Chapters 86 and 803 in accordance with the National Association of Insurance Commissioners Financial Condition Examiner's Handbook.

(c) A risk retention group not chartered in this state that engages in business in this state must comply with an order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the commissioner or by a commissioner of another jurisdiction if, after an examination under this section, there is a finding that the group is financially impaired.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.157. APPLICABILITY OF STATE LAWS PROHIBITING CERTAIN ACTS OR PRACTICES. (a) A risk retention group not chartered in this state shall comply with the laws of this state relating to deceptive, false, or fraudulent acts or practices, including Chapters 541 and 543.

(b) A risk retention group not chartered in this state and the group's agents and representatives shall comply with Chapter 542.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.158. INJUNCTIVE RELIEF. (a) A risk retention group not chartered in this state must comply with the terms of an injunction issued by a court of this state or any other state based on a finding that the group is in a hazardous financial condition or is financially impaired.

(b) Injunctive relief must be issued by a court if the commissioner seeks to enjoin a risk retention group not chartered in this state from:

(1) violating the law of this state prohibiting deceptive, false, or fraudulent acts or practices;

(2) soliciting or selling insurance to a person who is not eligible for membership in the group; or

(3) soliciting or selling insurance or operating when the group is in a hazardous financial condition or is financially impaired.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. PROVISIONS REGULATING GENERAL OPERATION OF RISK RETENTION GROUPS

Sec. 2201.201. SCOPE OF AUTHORITY. A risk retention group may engage in the business of insurance in this state only:

(1) as a risk retention group; and

(2) to conduct the activities described in this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.202. PLAN OF OPERATION. A plan of operation submitted to the commissioner under Section 2201.103 or 2201.152 must be in the form of an analysis that presents the expected activities and results of a risk retention group, including, at a minimum:

(1) information sufficient to verify that the group's members are engaged in businesses or activities that are similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common product, trade, business, operations, premises, or services;

(2) for each state in which the group intends to operate,

the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;

(3) historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(4) pro forma financial statements and projections;

(5) appropriate opinions, including a determination of minimum premium or participation levels required to begin operations and to prevent a hazardous financial condition, by:

(A) a qualified, independent casualty actuary who is a member in good standing of the American Academy of Actuaries; or

(B) an individual who the commissioner recognizes as having comparable training and experience;

(6) identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, and investment policies; and

(7) other matters prescribed by the insurance laws of the state in which the group is chartered.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.203. AGENT TO VERIFY AUTHORITY. Before placing business with a risk retention group, each agent shall secure from the appropriate insurance regulatory authority a certified copy of the certificate of authority verifying that the insurer is authorized in the insurer's domiciliary jurisdiction to write the liability insurance policy the agent proposes to procure from the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.204. APPLICABILITY OF CERTAIN REQUIREMENTS FOR LIABILITY INSURERS. A risk retention group authorized to engage in business in this state under Subchapter C or D must participate on the same basis as a liability insurer holding a certificate of authority to engage in the business of insurance in this state in:

(1) the Texas Windstorm Insurance Association;

(2) joint underwriting associations;
(3) mandatory liability and assigned risk pools; and
(4) residual market facilities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.205. RISK RETENTION GROUP PARTICIPATION IN INSOLVENCY GUARANTY FUND PROHIBITED. A risk retention group may not be required or permitted to join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. A risk retention group, and any of the group's insureds or claimants against an insured, may not receive any benefit from an insurance insolvency guaranty fund or similar mechanism in this state for a claim arising under an insurance policy issued by the group.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.206. REQUIRED NOTICE. (a) Any policy issued by a risk retention group must contain in 10-point type on the front page and on the declarations page the following notice:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(b) Each person, firm, partnership, or corporation licensed under Chapter 981, 4051, or 4056 shall inform each prospective insured on business to be placed with a risk retention group of the notice required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.207. PROHIBITED ACTIVITIES. A risk retention group may not:

(1) solicit or sell insurance to any person who is not eligible for membership in the group;

(2) solicit or sell insurance or operate if the group is in a hazardous financial condition or is financially impaired; or

(3) engage in business in this state if an insurer is directly or indirectly a member or owner of the group, unless all of the group members are insurers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.208. INJUNCTIVE RELIEF. An order issued by a United States district court enjoining a risk retention group from soliciting or selling insurance or operating in any state, in all states, or in any territory or possession of the United States on a finding that the group is in a hazardous financial condition, is financially impaired, or is insolvent is enforceable in the courts of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.209. PENALTIES. (a) A risk retention group that is authorized to engage in business in this state under Subchapter C or D and that violates this chapter is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under Chapters 822 and 861, including revocation of the authority to engage in business in this state.

(b) A risk retention group not chartered in this state that violates this chapter is also subject to any fine or penalty applicable to a foreign admitted insurer generally, including revocation of the authority to engage in business in this state.

(c) A risk retention group engaging in business in this state that is not authorized to engage in business under Subchapter C or D is considered an unauthorized insurer and is subject to Section 823.457, Subchapters A-P, Chapter 442, and Chapters 101, 441, 804, and 801, other than Section 801.056.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. PURCHASING GROUPS

Sec. 2201.251. GENERAL QUALIFICATIONS OF PURCHASING GROUP. (a) A purchasing group must:

(1) have as one of the group's purposes the purchase of liability insurance on a group basis;

(2) be composed of members whose businesses or activities are similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common product, trade, business, operations, premises, or services; and

(3) purchase group liability insurance only for the group's members and only to cover the members' similar or related liability exposure as described in Subdivision (2).

(b) A purchasing group may be domiciled in any state.

(c) Notwithstanding any other provision of this code, a purchasing group composed primarily of employees of a political subdivision, including a county, municipality, or school district, may purchase first-party indemnity coverage, in addition to the liability coverage described in Subsection (a)(3), on a group basis for other risks to which members may be exposed provided that the aggregate coverage limit per group member for the risk does not exceed three percent of the per member coverage limit for liability coverage.

(d) A purchasing group shall notify the commissioner of the group's intent to purchase coverage described by Subsection (c) not later than the 60th day before the date the policy that includes the coverage is initially issued.

(e) Subsection (d) does not apply to a purchasing group described by Subsection (c) that was providing to its members coverage described by Subsection (c) on January 1, 2013, and has continued to provide that coverage without lapse.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 476 (S.B. 1125), Sec. 1, eff. September 1, 2013.

Sec. 2201.252. DETERMINATION OF LOCATION. (a) For purposes of this subchapter, a purchasing group is considered to be located in the state in which the highest aggregate premiums are in force on the date the group insurance policy is written or renewed. The group's location is ascertained on each placement or renewal of insurance by the group with an insurer or risk retention group.

(b) For purposes of this section, a group insurance policy is considered to be renewed annually.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.253. LIMITATIONS ON AUTHORITY. (a) A purchasing group located in this state may not purchase liability insurance from a risk retention group that is not chartered in a state or from an insurer that does not hold a certificate of authority to engage in the business of insurance in this state unless the purchase is effected through a licensed agent acting under Chapter 981.

(b) A purchasing group may not offer insurance policy coverage declared unlawful by the Texas Supreme Court.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.254. APPLICATION OF STATE LAW. (a) A purchasing group meeting the criteria established under the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et seq.) is exempt from any law of this state that:

(1) relates to the creation of groups for the purchase of insurance;

(2) requires countersignatures;

(3) prohibits group purchasing; or

(4) discriminates against a purchasing group or the group's members.

(b) An insurer is exempt from any law of this state that prohibits providing or offering to provide to a purchasing group or the group's members advantages based on the group's or members' loss

and expense experience that are not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

(c) A purchasing group is subject to all other applicable laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.255. NOTICE TO COMMISSIONER; FILING FEE. (a) Before engaging in business in this state, a purchasing group must provide notice to the commissioner. The notice must:

(1) identify the state in which the group is domiciled;

(2) specify the lines and classifications of liability insurance the group intends to purchase;

(3) specify the method by which and the persons, if any, through whom insurance will be offered to group members whose risks are located in this state;

(4) identify the insurer from which the group intends to purchase group insurance and the domicile of that insurer;

(5) identify the group's principal place of business and, if ascertainable at the time of filing, the group's location; and

(6) provide other information the commissioner requires to verify that the group qualifies as a purchasing group under Section 2201.251.

(b) The commissioner by rule shall impose a filing fee in an amount not to exceed $100 for filing notice under this section. Fees collected under this subsection shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.256. REGISTRATION REQUIREMENT; FEES. (a) A purchasing group shall register with and designate the commissioner or other appropriate authority as the group's agent solely for the purpose of receiving service of legal documents or process unless the group:

(1) was domiciled before April 1, 1986, in any state of the United States and is domiciled on and after October 27, 1986, in any

state of the United States;

(2) before October 27, 1986, purchased the group's insurance from an insurer authorized to engage in business in any state, and after October 27, 1986, purchased the group's insurance from an insurer authorized to engage in business in any state;

(3) was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section 3901 et seq.) before October 27, 1986; and

(4) does not purchase insurance that was not authorized for purposes of an exemption under that Act as effective before October 27, 1986.

(b) The commissioner by rule may impose a fee in an amount not to exceed $50 for each document served on the commissioner and forwarded to the purchasing group. Fees collected under this subsection shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.257. PAYMENT OF PREMIUM TAXES. (a) Premiums paid for coverage of risks located in this state by a purchasing group or any group member are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment that apply to premiums paid for similar coverage by other insureds.

(b) Title 3 is used to compute applicable tax rates for a purchasing group or any group member that pays premiums for coverage of risks located in this state to:

(1) an insurer holding a certificate of authority to engage in the business of insurance in this state; or

(2) a risk retention group authorized to engage in business in this state.

(c) To the extent that a purchasing group or group member pays premiums as described by Subsection (b), the insurer or risk retention group receiving those premiums shall remit the tax to the department.

(d) Chapter 225 is used to compute applicable tax rates for a purchasing group or any group member that pays premiums for coverage of risks located in this state to an eligible surplus lines insurer.

If a purchasing group or member pays those premiums, the surplus lines agent shall report and remit the tax. If the agent does not remit the tax, the purchasing group shall remit the tax.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.258. PURCHASING GROUP PARTICIPATION IN INSOLVENCY GUARANTY FUND PROHIBITED; EXCEPTION. (a) A claim against a purchasing group or a group member may not be paid from any insurance insolvency guaranty fund or similar mechanism in this state.

(b) A purchasing group, a group member, or any claimant against the group or group member may not receive any benefit from an insurance insolvency guaranty fund or similar mechanism in this state for a claim arising under an insurance policy procured through the group unless the policy is underwritten by an insurer authorized to engage in business in this state that, at the time of the policy's issuance:

(1) has capital and surplus of at least $25 million; or

(2) is a member of a company group that has combined capital and surplus of at least $25 million.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2201.259. REQUIRED NOTICE. (a) A purchasing group that obtains liability insurance from an insurer or a risk retention group shall provide notice to each group member that has a risk located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and that the insurer or risk retention group may not be subject to all the insurance laws and rules of this state.

(b) Each person, firm, partnership, or corporation licensed under Chapter 981, 4051, or 4056 shall inform each prospective insured on business to be written through a purchasing group of the notice required by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2202. JOINT UNDERWRITING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2202.001. DEFINITIONS. In this chapter:

(1) "Insurer" means any insurance company, corporation, reciprocal or interinsurance exchange, mutual association, county mutual insurance company, Lloyd's plan, or other insurer authorized to engage in business in this state. The term does not include an insurer that writes only life, health, or accident insurance, variable life insurance, or variable annuity contracts.

(2) "Joint underwriting association" means a voluntary unincorporated association of insurers authorized to engage in business in this state that has been authorized by the association's member insurers to act on behalf of the member insurers in joint underwriting or in issuing syndicate insurance policies on a several, but not joint, basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.002. INAPPLICABILITY OF CHAPTER. This chapter does not apply to the transaction of life, health, or accident insurance business.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.003. DEPOSIT OF FEES. Fees collected under this chapter shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.004. CERTAIN APPROPRIATIONS FROM GENERAL REVENUE FUND PROHIBITED. The legislature may not appropriate money from the general revenue fund to administer this chapter, other than fees

collected under this chapter and deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. AUTHORITY TO ACT AS JOINT UNDERWRITING ASSOCIATION

Sec. 2202.051. CERTIFICATE OF AUTHORITY REQUIRED. An association of insurers may not act as a joint underwriting association in this state on behalf of the association's member insurers unless the association holds a certificate of authority issued under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.052. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) An association of insurers that applies for a certificate of authority under this chapter must file a written application on forms prescribed by the commissioner.

(b) The application must include:

(1) the names and addresses of the association's officers and directors;

(2) a copy of the association's constitution, articles of agreement or association, bylaws, rules, powers of attorney, or other agreements governing the association's activities;

(3) a list of the insurers authorized to engage in business in this state who are association members and the addresses of those insurers' principal administrative offices;

(4) the name and address of a resident of this state who will act as the association's agent for receipt of notices or orders of the commissioner and for service of process; and

(5) other information as required by the commissioner.

(c) At least one officer of the association must swear to the application.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.053. ISSUANCE OF CERTIFICATE OF AUTHORITY. The commissioner shall issue a certificate of authority to a joint underwriting association that complies with the requirements of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.054. TERM OF CERTIFICATE OF AUTHORITY. Unless renewed, a certificate of authority issued under this chapter expires on the third anniversary of the date the certificate is issued.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.055. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) An applicant for the renewal of a certificate of authority must file an application for renewal with the commissioner and pay the renewal fee on or before the date the certificate expires.

(b) The applicant shall file a list of the names and addresses of the association's officers and directors and a list of the association's member insurers with the application for renewal. At least one officer of the association must swear to the list.

(c) A renewed certificate of authority expires on the third anniversary of the renewal date.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.056. FEE FOR CERTIFICATE OF AUTHORITY. (a) An applicant for the issuance or renewal of a certificate of authority must pay a nonrefundable fee in an amount set by the commissioner when the applicant files the application.

(b) The fee may not exceed $200.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.057. RECIPROCITY. The commissioner may waive any requirement for a certificate of authority for an applicant who holds a certificate of authority from another state if the other state has requirements for a certificate of authority that are substantially equivalent to the requirements of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. POWERS AND DUTIES OF JOINT UNDERWRITING ASSOCIATION

Sec. 2202.101. AUTHORITY TO ACT. A joint underwriting association may:

(1) act only on behalf of association members who are authorized to engage in business in this state; and

(2) engage in only those activities the association is authorized to perform by the association members.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.102. NOTIFICATION OF CERTAIN INFORMATION REQUIRED. An association holding a certificate of authority under this chapter shall notify the commissioner of a change in the information required to be filed under Section 2202.052 not later than the 30th day after the date the change takes effect.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.103. MAINTENANCE OF INFORMATION. (a) A joint underwriting association shall maintain at the association's principal administrative office adequate records of all transactions.

(b) The association shall maintain the records in accordance with prudent recognized industry standards of recordkeeping.

(c) The commissioner or the commissioner's designated representative is entitled to access to records maintained under Subsection (a) for examination, audit, and inspection.

(d) Trade secrets, including the identity and addresses of policyholders and certificate holders, are confidential, except that the commissioner may use information otherwise confidential in proceedings instituted against an association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. AUDIT AND EXAMINATION REQUIREMENTS

Sec. 2202.151. ANNUAL AUDIT. An independent certified public accountant shall annually audit the books of accounts of a joint underwriting association as provided by Subchapter A, Chapter 401. A copy of the audit must be filed with the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.152. EXAMINATION BY COMMISSIONER. (a) The commissioner may require an examination of a joint underwriting association as often as the commissioner considers necessary. The association shall pay the reasonable costs of the examination on presentation to the association of a detailed account of the costs of the examination.

(b) The association's officers and employees may be examined under oath at any time and shall exhibit on request all books, records, accounts, documents, or agreements governing the association's operations.

(c) Instead of the examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state under the laws of that state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES; ENFORCEMENT

Sec. 2202.201. GROUNDS FOR DENIAL OF CERTIFICATE OF AUTHORITY OR FOR DISCIPLINARY ACTION. The commissioner may deny an application

for a certificate of authority or discipline a certificate holder under this subchapter if the commissioner finds that the applicant or certificate holder, or an officer or director of an applicant or certificate holder:

(1) wilfully violated or participated in the violation of this chapter or any other insurance law of this state;

(2) intentionally made a material misstatement in the original or renewal application;

(3) obtained or attempted to obtain the certificate by fraud or misrepresentation;

(4) misappropriated, converted to a personal or other inappropriate use, or illegally withheld money required to be held in a fiduciary capacity;

(5) has been convicted of a felony or convicted of a misdemeanor of which criminal fraud is an essential element; or

(6) is incompetent or untrustworthy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.202. DENIAL OF CERTIFICATE OF AUTHORITY OR DISCIPLINARY ACTION. If the commissioner finds that a ground for a denial of a certificate of authority or disciplinary action under Section 2202.201 exists, the commissioner may:

(1) deny the application for the certificate; or

(2) suspend, revoke, or refuse to renew the certificate of authority.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.203. NOTICE AND HEARING. (a) Before the commissioner may deny an application for a certificate of authority or discipline a certificate holder under this subchapter, the commissioner must:

(1) give notice by certified mail to the applicant or certificate holder; and

(2) set a date on which the applicant or certificate holder may appear to be heard and produce evidence.

(b) A hearing under Subsection (a) may not be set for a date that is earlier than the 20th day or later than the 30th day after the date the notice is mailed.

(c) The notice must contain specific reasons for the hearing and a list of the matters to be considered at the hearing.

(d) At the hearing, the commissioner or a department employee designated to conduct the hearing may:

(1) administer oaths, require the appearance of witnesses, and examine any person under oath; and

(2) on the commissioner's initiative or on the request of the applicant or certificate holder, require the production of books, records, or papers relevant to the inquiry.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.204. ISSUANCE OF ORDER. On the termination of the hearing, the findings shall be written and filed with the department. The commissioner shall issue an order showing the findings approved by the commissioner and shall send the order by certified mail to the applicant or certificate holder.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.205. APPEAL. If the commissioner denies an application for a certificate of authority as provided by this chapter or suspends, revokes, or refuses to renew a certificate at a hearing as provided by this chapter, the applicant or certificate holder may appeal the commissioner's action as provided by Subchapter D, Chapter 36.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.206. APPLICATION AFTER DENIAL, REFUSAL, OR REVOCATION. (a) Except as provided by Subsection (b), an applicant for a certificate of authority or certificate holder whose

certificate of authority has been denied, refused, or revoked under this chapter may not file another application for a certificate of authority before the first anniversary of the effective date of the denial, refusal, or revocation.

(b) If an applicant or certificate holder seeks judicial review of a denial, refusal, or revocation, the applicant or certificate holder may not file another application for a certificate of authority before the first anniversary of the date of a final court order or decree affirming the denial, refusal, or revocation.

(c) If an applicant files an application after the date specified by this section, the commissioner may refuse the application unless the applicant shows good cause why the denial of the previous application or the refusal to renew or the revocation of the original certificate of authority should not be a bar to the issuance of a new certificate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2202.207. ADDITIONAL SANCTIONS; INJUNCTION. (a) An association that violates this chapter or a rule or order adopted under this chapter is subject to sanctions under Chapter 82.

(b) The attorney general, a district or county attorney, or the commissioner may institute proceedings for an injunction or any other proceeding necessary to enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2203. MEDICAL LIABILITY INSURANCE JOINT UNDERWRITING ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2203.001. SHORT TITLE. This chapter may be cited as the Texas Medical Liability Insurance Underwriting Association Act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.002. DEFINITIONS. In this chapter:

(1) "Assisted living facility" means a for-profit or not-for-profit assisted living facility.

(2) "Association" means the joint underwriting association established under this chapter.

(3) "Board of directors" means the board of directors of the association.

(4) "Health care provider" means:

(A) a person, partnership, professional association, corporation, facility, or institution licensed or chartered by this state to provide health care, as defined in Section 74.001(a)(10), Civil Practice and Remedies Code, as:

(i) a registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist;

(ii) a hospital;

(iii) a nursing home;

(iv) a radiation therapy center that is independent of any other medical treatment facility, is licensed by the Department of State Health Services in that agency's capacity as the Texas Radiation Control Agency under Chapter 401, Health and Safety Code, and is in compliance with the regulations adopted under that chapter;

(v) a blood bank that is a nonprofit corporation chartered to operate a blood bank and is accredited by the American Association of Blood Banks;

(vi) a nonprofit corporation that is organized for the delivery of health care to the public and is certified under Chapter 162, Occupations Code;

(vii) a health center, as defined by 42 U.S.C. Section 254b, as amended; or

(viii) an assisted living facility; or

(B) an officer, employee, or agent of an entity listed in Paragraph (A) acting in the course and scope of that person's office, employment, or agency.

(5) "Medical liability insurance" means primary and excess liability insurance coverage against:

(A) the legal liability of the insured; and

(B) loss, damage, or expense incident to a claim arising out of the death or injury of a person as the result of negligence in rendering or failing to render professional service by

a health care provider or physician who is in a category eligible for coverage by the association.

(6) "Net direct premiums" means gross direct premiums written on automobile liability and other liability insurance written under this code, less:

(A) policyholder dividends;

(B) return premiums for the unused or unabsorbed portion of premium deposits; and

(C) return premiums on canceled contracts written on the liability risks.

(7) "Nursing home" means a for-profit or not-for-profit nursing home.

(8) "Physician" means a person licensed to practice medicine in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.003. IMMUNITY. Liability does not exist on the part of, and a cause of action does not arise against, the association, an association agent or employee, an insurer, an agent licensed under this code, the commissioner or department, or an authorized representative of the commissioner or department for a statement made in good faith by any of them:

(1) in a report or communication concerning risks insured or to be insured through the association; or

(2) at an administrative hearing conducted in connection with the report or communication.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.004. APPLICABILITY OF OTHER LAW. The association is subject to Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 and Subchapter A, Chapter 86.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.005. RELATIONSHIP TO SURPLUS LINES INSURANCE. The association is not an authorized insurer for purposes of Chapter 981 with respect to medical liability insurance for physicians.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. ASSOCIATION ADMINISTRATION AND OPERATION

Sec. 2203.051. PURPOSE OF ASSOCIATION. The association provides medical liability insurance on a self-supporting basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.052. BOARD OF DIRECTORS. (a) The association is governed by a board of directors composed of the following nine members:

(1) five representatives of insurers that are required to be association members, elected by association members;

(2) one physician, appointed by the Texas Medical Association or a successor to that association;

(3) one representative of hospitals, appointed by the Texas Hospital Association or a successor to that association; and

(4) two public members, appointed by the commissioner.

(b) The board members serve one-year terms beginning on October 1 of each year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.053. PLAN OF OPERATION. (a) The association operates under a plan of operation adopted by the commissioner.

(b) The plan of operation must:

(1) provide for economic, fair, and nondiscriminatory administration;

(2) provide for the prompt and efficient provision of medical liability insurance; and

(3) contain other provisions, including provisions relating

to:

(A) the establishment of necessary facilities;

(B) the association's management;

(C) the assessment of members and policyholders to defray losses and expenses;

(D) the administration of the policyholder's stabilization reserve funds;

(E) commission arrangements;

(F) reasonable and objective underwriting standards;

(G) the acceptance, assumption, and cession of reinsurance;

(H) the appointment of servicing insurers; and

(I) procedures for determining amounts of insurance to be provided by the association.

(c) The plan of operation must direct that any revenue exceeding expenditures that remains in the association's funds at the close of the association's fiscal year, after the association reimburses members' contributions in accordance with Section 2203.255(a), be added to the association's reserves.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.054. AMENDMENTS TO PLAN OF OPERATION. Amendments to the plan of operation:

(1) shall be made at the commissioner's direction; or

(2) may be made by the board of directors, subject to the commissioner's approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.055. JOINT UNDERWRITING ASSOCIATION MEMBERSHIP. (a) The association is composed of each insurer, including a Lloyd's plan and a reciprocal or interinsurance exchange, authorized to write and writing liability insurance, including automobile liability insurance, on a direct basis in this state, other than:

(1) a farm mutual insurance company authorized under Chapter 911; and

(2) a county mutual insurance company authorized under Chapter 912.

(b) An insurer that is a member of the association must remain a member as a condition of the insurer's authority to engage in the business of the insurance described by Subsection (a).

(c) Each association member participates in the writings, expenses, and losses of the association in the proportion that the net direct premiums of the member, excluding the portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all association members.

(d) The association shall annually determine a member's participation in the association on the basis of the net direct premiums written by the member during the preceding calendar year, as reported in the annual statements and other reports the member files as required by the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.056. ANNUAL STATEMENT; ADDITIONAL INFORMATION. (a) Not later than March 1 of each year, the association shall file with the department a statement that contains information regarding the association's transactions, condition, operations, and affairs during the preceding calendar year.

(b) The statement must:

(1) contain the matters and information required by the department; and

(2) be in the form approved by the department.

(c) The department at any time may require the association to provide additional information regarding the association's transactions or condition, or any related matter considered to be:

(1) material; and

(2) of assistance in evaluating the scope, operation, and experience of the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. ELIGIBILITY FOR COVERAGE

Sec. 2203.101. GENERAL ELIGIBILITY. (a) The commissioner shall by order establish the categories of physicians and health care providers that are eligible to obtain insurance coverage from the association. The commissioner may revise the order to:

(1) include as eligible for that coverage other categories of physicians and health care providers; or

(2) exclude from eligibility for that coverage particular categories of physicians and health care providers.

(b) If a category of physicians or health care providers is excluded from eligibility to obtain insurance coverage from the association, the commissioner may determine, after notice of at least 10 days and a hearing, that medical liability insurance is not otherwise available. On that determination, the previously excluded category is eligible to obtain insurance coverage from the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.102. INSURER OF LAST RESORT FOR CERTAIN NURSING HOMES AND ASSISTED LIVING FACILITIES. (a) A nursing home or assisted living facility not otherwise eligible for insurance coverage from the association under Section 2203.101 is eligible for that coverage if the home or facility demonstrates, in accordance with the requirements of the association, that the home or facility:

(1) made a verifiable effort to obtain insurance coverage from authorized insurers and eligible surplus lines insurers; and

(2) was unable to obtain substantially equivalent insurance coverage and rates.

(b) In consultation with the Department of Aging and Disability Services, the commissioner by rule shall adopt minimum rating standards for for-profit nursing homes and for-profit assisted living facilities that must be met before a for-profit nursing home or for-profit assisted living facility may obtain insurance coverage through the association. The standards must promote the highest practical level of care for residents of the nursing homes and assisted living facilities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2203.1021. VOLUNTEER HEALTH CARE PROVIDERS. (a) In this section:

(1) "Charitable organization" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(2) "Volunteer health care provider" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(b) The association shall make available medical liability insurance or appropriate health care liability insurance covering a volunteer health care provider for the legal liability of the person against any loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering or the failure to render professional service while acting in the course and scope of the person's duties as a volunteer health care provider as described by Chapter 84, Civil Practice and Remedies Code.

(c) A volunteer health care provider who is serving as a direct service volunteer of a charitable organization is eligible to obtain from the association the liability insurance made available under this section. A volunteer health care provider who obtains coverage under this section is subject to Section 2203.302 and the other provisions of this chapter in the same manner as physicians who are eligible to obtain medical liability insurance from the association.

(d) This section does not affect the liability of a volunteer health care provider who is serving as a direct service volunteer of a charitable organization. Section 84.004(c), Civil Practice and Remedies Code, applies to the volunteer health care provider without regard to whether the volunteer health care provider obtains liability insurance under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.060(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.060(a), eff. September 1, 2007.

Sec. 2203.103. ELIGIBILITY OF OTHER HEALTH CARE PRACTITIONERS AND FACILITIES. (a) In this section:

(1) "Health care" includes a medical or health care service, including an examination, treatment, medical diagnosis, or evaluation, and care provided in an inpatient, outpatient, or residential setting.

(2) "Health care facility" means a facility providing health care, other than a facility described by Section 2203.002(4).

(3) "Health care practitioner" means an individual, other than an individual described by Section 2203.002(4), who:

(A) is licensed to provide health care; or

(B) is not licensed to provide health care but provides health care under the direction or supervision of a licensed individual.

(b) After notice and opportunity for hearing, the commissioner may:

(1) determine that appropriate liability insurance coverage written by insurers authorized to engage in business in this state is not reasonably available to a type of health care practitioner or health care facility; and

(2) by order designate that type of health care practitioner or health care facility to be included as a health care provider eligible to receive coverage under this chapter.

(c) A health care practitioner or facility designated under Subsection (b) is entitled to receive insurance coverage under this chapter in accordance with Chapter 1901 in the same manner as other health care providers described by Section 2203.002 and Section 1901.001.

(d) The commissioner's order may indicate whether a health care practitioner or facility designated under Subsection (b) is included under the policyholder's stabilization reserve fund established under Section 2203.301 or 2203.303 or whether a separate policyholder's stabilization reserve fund is created. A separate policyholder's stabilization reserve fund established under this subsection operates in the same manner as a policyholder's stabilization reserve fund created under Section 2203.303.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.104. APPLICATION FOR COVERAGE. (a) A health care

provider or physician included in a category eligible for insurance coverage by the association is entitled to apply to the association for the coverage. An agent authorized under Chapter 4051 may apply on behalf of an applicant.

(b) The association shall issue a medical liability insurance policy to an applicant:

(1) if the association determines that:

(A) the applicant meets the underwriting standards of the association prescribed by the plan of operation; and

(B) there is no unpaid and uncontested premium, policyholder's stabilization reserve fund charge, or assessment due from the applicant for prior insurance, as shown by the insured's failure to pay or to object in writing to the charges on or before the 30th day after the date of the billing; and

(2) on receipt of the premium and the policyholder's stabilization reserve fund charge, or the portion of the premium and charge prescribed by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. ASSOCIATION COVERAGE

Sec. 2203.151. POWERS RELATING TO MEDICAL LIABILITY INSURANCE COVERAGE. (a) Under this chapter and the plan of operation, the association, on behalf of the association members, may:

(1) issue, or cause to be issued, medical liability insurance policies to applicants, including primary, excess, and incidental coverages, subject to the limits specified in the plan of operation and Section 2203.152;

(2) underwrite medical liability insurance and adjust and pay losses related to that insurance, or appoint servicing insurers to perform those functions;

(3) either or both accept and refuse the assumption of reinsurance from association members; and

(4) cede and purchase reinsurance.

(b) The association may provide general liability insurance coverage to be issued in connection with medical liability insurance issued by the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2203.152. POLICY LIMITS. The association may not issue one or more policies insuring an individual or organization for an amount exceeding $1 million for each occurrence and $3 million in the aggregate for a year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.153. FOLLOWING FORM EXCESS LIABILITY COVERAGE. Excess liability insurance coverage written for a physician or health care provider by the association under this chapter must be written as following form excess liability insurance to the physician's or provider's primary insurance coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.154. PUNITIVE DAMAGES EXCLUDED. The association may not issue or renew a medical liability insurance policy for a physician or health care provider under this chapter that includes coverage for punitive damages assessed against the physician or health care provider.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.155. INSTALLMENT PLAN. The association may offer an installment payment plan for insurance coverage obtained through the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.156. TERM OF POLICY; NOTICE OF CERTAIN CHANGES. (a)

A policy issued by the association must be for a term of one year or less, as determined by the association.

(b) Section 1901.253 does not apply to a medical liability insurance policy issued by the association for a term of less than one year.

(c) The association shall ensure that appropriate written notice is provided to the insured for a policy described by Subsection (b) if the association intends to:

(1) increase the premiums on the policy; or

(2) cancel or not renew the policy for a reason other than for nonpayment of premiums or because the insured is no longer licensed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. RATES AND POLICY FORMS

Sec. 2203.201. APPLICABILITY OF OTHER LAW TO RATES AND POLICY FORMS. (a) Except as provided by Subsection (b) and subject to Section 2203.203, the following laws govern the rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and related statistics:

(1) Section 36.002(1);

(2) Subchapter B, Chapter 5;

(3) Subchapters A and C, Chapter 1806;

(4) Subchapter A, Chapter 2301;

(5) Chapter 251, as that chapter relates to casualty insurance and fidelity, guaranty, and surety bond insurance;

(6) Chapter 253;

(7) Chapters 2251 and 2252; and

(8) Subtitle B.

(b) If a provision of a law described by Subsections (a)(1)-(8) conflicts with a provision of this chapter, this chapter prevails.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.202. RATE STANDARDS. (a) In determining rates,

rating plans, rating rules, rating classifications, territories, and policy forms, the association shall consider:

(1) the past and prospective loss and expense experience for medical professional liability insurance, inside and outside this state, of all of the association members;

(2) trends in the frequency and severity of losses;

(3) the association's investment income; and

(4) other information the commissioner may require.

(b) Rates, rating plans, and rating rules must be based on:

(1) the association's loss and expense experience; and

(2) other information based on that experience the department considers appropriate.

(c) The resultant premium rates must be:

(1) actuarially sound; and

(2) computed to be self-supporting.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.203. DISCOUNT FOR CERTAIN HEALTH CARE PROVIDERS. (a) The rates applicable to professional liability insurance coverage provided by the association for not-for-profit nursing homes and not-for-profit assisted living facilities must reflect a discount of 30 percent from the rates for the same coverage provided to others in the same category of insureds.

(b) The commissioner shall ensure compliance with this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. FINANCIAL PARTICIPATION BY MEMBERS AND POLICYHOLDERS

Sec. 2203.251. DEFICIT RECOUPMENT. (a) This section applies to a deficit sustained in a single year by the association with respect to:

(1) physicians and health care providers, other than nursing homes and assisted living facilities; or

(2) a nursing home or assisted living facility.

(b) The deficit must be recouped in accordance with the plan of operation and the rating plan in effect when the deficit is sustained

under one or more of the following procedures, in this sequence:

(1) a contribution from the policyholder's stabilization reserve fund established under Section 2203.301 or the policyholder's stabilization reserve fund established under Section 2203.303, as appropriate, until the respective fund is exhausted;

(2) an assessment on the policyholders in accordance with Section 2203.252; or

(3) an assessment on the members in accordance with Sections 2203.055(c) and (d) and 2203.253.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.252. ASSESSMENT OF POLICYHOLDERS FOR DEFICIT RECOUPMENT. (a) Each policyholder within the group of physicians and health care providers, other than nursing homes and assisted living facilities, or within the group of nursing homes and assisted living facilities, has contingent liability for a proportionate share of an assessment made under this chapter of policyholders in the applicable group.

(b) If a deficit, as computed under the plan of operation, is sustained with respect to a group described by Subsection (a) in a single year, the board of directors shall levy an assessment only on the policyholders in the applicable group who held policies in force at any time during the two most recently completed calendar years:

(1) before the date the assessment is levied; and

(2) in which the association was issuing policies.

(c) The aggregate amount of an assessment under Subsection (b) must be equal to the amount of the deficit not recouped under Section 2203.251(b)(1) from the applicable policyholder's stabilization reserve fund. Subject to Subsection (d), each policyholder in the applicable group shall be assessed for a portion of the deficit that reflects the proportion that the earned premium on the policies of that policyholder bears to the total earned premium for all policies of the association in the applicable group in the two most recently completed calendar years.

(d) The maximum aggregate assessment on each policyholder in the applicable group may not exceed the annual premium for the liability insurance policy most recently in effect.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.253. LIMITATION ON REIMBURSEMENT BY MEMBER FOR DEFICIT RECOUPMENT. (a) An association member is not obligated in a single year to reimburse the association for the member's proportionate share of the deficits from the association's operations in that year in an amount that exceeds one percent of the member's policyholder surplus. The aggregate amount not reimbursed in accordance with this subsection shall be reallocated among the other association members. The association shall reallocate that amount in accordance with the method of determining a member's participation under Sections 2203.055(c) and (d), after excluding the total net direct premiums of all members not sharing in the excess deficits.

(b) If the deficits from the association's operations allocated to all association members in a calendar year exceed one percent of all members' respective policyholder surplus, the association shall allocate to each member the amount of the deficits in accordance with the method of determining a member's participation under Sections 2203.055(c) and (d).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.254. CONTRIBUTION BY MEMBERS FOR SOUND FINANCIAL OPERATION. If sufficient funds are not available for the sound financial operation of the association, each association member shall contribute to the financial requirements of the association in accordance with Sections 2203.055(c) and (d), 2203.252, and 2203.253, as authorized and considered necessary by the department. A contribution under this section is in addition to:

(1) an assessment paid in accordance with the plan of operation under Section 2203.053(b); and

(2) a contribution from a policyholder's stabilization reserve fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.255. REIMBURSEMENT OF ASSESSMENT OR CONTRIBUTION; PREMIUM TAX CREDIT. (a) Subject to commissioner approval, the association shall reimburse an assessment or contribution, with interest at a rate approved by the commissioner, to:

(1) the association members; or

(2) the state, to the extent that the members have recouped their assessments using premium tax credits as provided by Subsection (c).

(b) Pending recoupment or reimbursement of an assessment or contribution paid by a member to the association, the unrepaid balance of the assessment or contribution may be reflected in the member's books and records as an admitted asset of the member for all purposes, including exhibition in an annual statement under Section 862.001.

(c) To the extent a member has paid one or more assessments and has not received reimbursement from the association in accordance with Subsection (a), a credit against premium taxes under Chapter 221 is allowed at a rate of 20 percent a year for five successive years following the year in which the deficit was sustained. At the member's option, the tax credit may be taken over an additional number of years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.256. STANDARDS FOR RECOUPMENT PROVISIONS. A provision for recoupment must be based on:

(1) the association's loss and expense experience; and

(2) other information based on that experience the department considers appropriate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. POLICYHOLDER'S STABILIZATION RESERVE FUNDS

Sec. 2203.301. POLICYHOLDER'S STABILIZATION RESERVE FUND FOR PHYSICIANS AND CERTAIN HEALTH CARE PROVIDERS. (a) The policyholder's stabilization reserve fund for physicians and health care providers other than nursing homes and assisted living

facilities is collected and administered by the association as provided by this section, Section 2203.302, and the plan of operation.

(b) The policyholder's stabilization reserve fund shall be:

(1) credited with all policyholder's stabilization reserve fund charges collected under Section 2203.302;

(2) charged with any deficit sustained by physicians and health care providers, other than nursing homes and assisted living facilities, from the association's operation during the previous year;

(3) treated as a liability of the association along with, and in the same manner as, premium and loss reserves; and

(4) valued annually by the board of directors as of the close of the preceding year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.302. POLICYHOLDER'S STABILIZATION RESERVE FUND CHARGE FOR PHYSICIANS AND CERTAIN HEALTH CARE PROVIDERS. (a) Each policyholder other than a nursing home or assisted living facility shall pay annually into the policyholder's stabilization reserve fund under Section 2203.301 a charge that:

(1) is in an amount established annually by advisory directors chosen by physicians and health care providers, other than nursing homes and assisted living facilities, eligible for insurance through the association in accordance with the plan of operation;

(2) is in proportion to each premium payment due for liability insurance through the association; and

(3) is separately stated in the policy.

(b) A charge stated in a policy as required by Subsection (a)(3) is not:

(1) a part of premiums; or

(2) subject to premium taxation or a servicing fee, acquisition cost, or any other similar charge.

(c) If the association offers an installment payment plan for coverage obtained through the association, the association may:

(1) permit payment of the policyholder's stabilization reserve fund charge under this section on an installment basis; or

(2) require the policyholder to pay the charge as an annual lump sum.

(d) Collections of the policyholder's stabilization reserve fund charge under this section shall continue until the net balance of the policyholder's stabilization reserve fund under Section 2203.301 is not less than the projected sum of premiums for physicians and health care providers, other than nursing homes and assisted living facilities, to be written in the year following the valuation date.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.303. POLICYHOLDER'S STABILIZATION RESERVE FUND FOR NURSING HOMES AND ASSISTED LIVING FACILITIES. (a) The policyholder's stabilization reserve fund for nursing homes and assisted living facilities is collected and administered by the association as provided by this section, Section 2203.304, and the plan of operation.

(b) The policyholder's stabilization reserve fund shall be:

(1) credited with:

(A) all policyholder's stabilization reserve fund charges collected under Section 2203.304; and

(B) the net earnings on liability insurance policies issued to nursing homes and assisted living facilities;

(2) charged with any deficit sustained by nursing homes and assisted living facilities from the association's operation during the previous year;

(3) treated as a liability of the association along with, and in the same manner as, premium and loss reserves; and

(4) valued annually by the board of directors as of the close of the preceding year.

(c) The policyholder's stabilization reserve fund under this section, and any earnings of the fund, are state funds and shall be held by the comptroller outside the state treasury on behalf of, and with legal title in, the department. No part of the fund or the earnings of the fund may inure to the benefit of an association member, a policyholder, or another individual. The fund assets may be used in accordance with the association's plan of operation only

to implement this chapter and for the purposes of the association, including to make payment to satisfy, wholly or partly, the liability of the association regarding a claim made on a policy written by the association.

(d) Notwithstanding Sections 11, 12, and 13, Article 21.49-3, the policyholder's stabilization reserve fund under this section may be terminated only by law.

(e) Notwithstanding Section 11, Article 21.49-3, on termination of the policyholder's stabilization reserve fund under this section, all assets of the fund shall be transferred to the general revenue fund to be appropriated for purposes related to ensuring the provision of the kinds of liability insurance coverage that the association may provide under this chapter to nursing homes and assisted living facilities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.304. POLICYHOLDER'S STABILIZATION RESERVE FUND CHARGE FOR NURSING HOMES AND ASSISTED LIVING FACILITIES. (a) Each policyholder that is a nursing home or assisted living facility shall pay annually into the policyholder's stabilization reserve fund under Section 2203.303 a charge that:

(1) is in an amount established annually by advisory directors chosen by nursing homes and assisted living facilities eligible for insurance through the association in accordance with the plan of operation;

(2) is in proportion to each premium payment due for liability insurance through the association; and

(3) is separately stated in the policy.

(b) A charge stated in a policy as required by Subsection (a)(3) is not:

(1) a part of premiums; or

(2) subject to premium taxation or a servicing fee, acquisition cost, or any other similar charge.

(c) If the association offers an installment payment plan for coverage obtained through the association, the association may:

(1) permit payment of the policyholder's stabilization reserve fund charge under this section on an installment basis; or

(2) require the policyholder to pay the charge as an annual lump sum.

(d) Collections of the policyholder's stabilization reserve fund charge under this section shall continue only until the net balance of the policyholder's stabilization reserve fund under Section 2203.303 is not less than the projected sum of premiums for nursing homes and assisted living facilities to be written in the year following the valuation date.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.305. SEPARATE FUNDS. The policyholder's stabilization reserve fund for physicians and health care providers other than nursing homes and assisted living facilities described by Section 2203.301 is separate from the policyholder's stabilization reserve fund for nursing homes and assisted living facilities described by Section 2203.303.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER H. REVENUE BOND PROGRAM

Sec. 2203.351. PURPOSE. The legislature finds that the issuance of bonds to provide a method to raise funds to provide professional liability insurance for nursing homes and assisted living facilities in this state through the association is to benefit the public and to further a public purpose.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.352. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the Texas Public Finance Authority.

(2) "Bond resolution" means the resolution or order authorizing bonds to be issued under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.353. APPLICABILITY OF OTHER LAWS. The following laws apply to bonds issued under this subchapter to the extent consistent with this subchapter:

(1) Chapters 1201, 1202, 1204, 1205, 1231, 1232, and 1371, Government Code; and

(2) Subchapter A, Chapter 1206, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.354. ISSUANCE OF BONDS AUTHORIZED. On behalf of the association and subject to Section 2203.355, the Texas Public Finance Authority shall issue revenue bonds to:

(1) fund the policyholder's stabilization reserve fund for nursing homes and assisted living facilities under Section 2203.303;

(2) pay costs related to issuing the bonds; and

(3) pay other costs related to the bonds as determined by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.355. LIMITATION ON AMOUNT OF BONDS. The Texas Public Finance Authority may issue on behalf of the association bonds in a total amount not to exceed $75 million.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.356. TERMS OF ISSUANCE. (a) Bonds issued under this subchapter may be issued at a public or private sale.

(b) Bonds must:

(1) be issued in the name of the association; and

(2) mature not more than 10 years after the date issued.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.357. CONTENTS OF BOND RESOLUTION; ADMINISTRATION OF ACCOUNTS. (a) In a bond resolution, the board may:

(1) provide for the flow of funds and the establishment, maintenance, and investment of funds and special accounts with regard to the bonds, including an interest and sinking fund account, a reserve account, and other accounts; and

(2) make additional covenants with regard to the bonds and the designated income and receipts of the association pledged to the payment of the bonds.

(b) The association shall administer the accounts in accordance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.358. SOURCE OF PAYMENT. (a) Bonds issued under this subchapter are payable only from:

(1) the surcharge fee established under Section 2203.359; or

(2) other sources the association is authorized to levy and charge and from which the association is authorized to collect in connection with paying any portion of the bonds.

(b) The bonds are obligations solely of the association and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state.

(c) Each bond must:

(1) include a statement that the state is not obligated to pay any amount on the bond and that the faith, credit, and taxing authority of this state are not pledged, given, or loaned to those payments; and

(2) state on the bond's face that the bond:

(A) is payable solely from the revenue pledged for that purpose; and

(B) is not a legal or moral obligation of the state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2203.359. SURCHARGE FEE. (a) A surcharge fee is assessed against:

(1) each association member; and

(2) the association.

(b) The commissioner shall set the surcharge fee in an amount sufficient to pay all debt service on the bonds issued under this subchapter. Each association member and the association shall pay the surcharge fee as required by the commissioner by rule.

(c) The comptroller shall collect the surcharge fee and the department shall reimburse the comptroller in the manner described by Section 201.052.

(d) The commissioner, in consultation with the comptroller, may coordinate payment and collection of the surcharge fee with other payments made by association members and collected by the comptroller.

(e) Except as provided by Subsection (f), as a condition of engaging in the business of insurance in this state, an association member agrees that, if the member leaves the liability insurance market in this state, the member remains obligated to pay the member's share of the surcharge fee assessed under this section until the bonds are retired. The amount assessed against a member under this subsection must be:

(1) proportionate to the member's share of the liability insurance market, including automobile liability insurance, in this state as of the last complete reporting period before the date the member ceases to engage in the liability insurance business in this state; and

(2) based on the member's gross premiums for liability insurance, including automobile liability insurance, for the member's last reporting period.

(f) An association member is not required to pay the proportionate amount under Subsection (e) in any year in which the surcharge fee assessed against association members continuing to write liability insurance in this state is sufficient to service the bond obligation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2203.360. EXEMPTION FROM TAXATION. Bonds issued under this subchapter, any interest from the bonds, and all assets pledged to secure the payment of the bonds are exempt from taxation by the state or a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.361. AUTHORIZED INVESTMENTS. Bonds issued under this subchapter are authorized investments under Subchapter B, Chapter 424, and Subchapter D, Chapter 425.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.362. STATE PLEDGE REGARDING BOND OWNER RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the owners of bonds issued in accordance with this subchapter that the state will not limit or alter the rights vested in the association to fulfill the terms of agreements made with the owners or impair the rights and remedies of the owners until the following obligations are fully discharged:

(1) the bonds;

(2) any bond premium;

(3) interest; and

(4) all costs and expenses related to an action or proceeding by or on behalf of the owners.

(b) The association may include the state's pledge and agreement under Subsection (a) in an agreement with the owners of the bonds.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.363. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of

mandamus and any other legal or equitable remedy are available to a party in interest to require the association or another party to fulfill an agreement or perform a function or duty under:

(1) this subchapter;

(2) the Texas Constitution; or

(3) a bond resolution.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER I. APPEALS

Sec. 2203.401. DEFINITION. In this subchapter, "act" includes a ruling or decision.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.402. APPEAL TO BOARD OF DIRECTORS; HEARING. (a) A person insured or applying for insurance under this chapter, the person's authorized representative, or an affected insurer that may be aggrieved by an act of the association may appeal to the board of directors not later than the 30th day after the date the act occurs. At the time the person is notified of the act, the association shall provide to the person written notice of the person's right to appeal under this subsection.

(b) The board of directors shall:

(1) hear an appeal brought under Subsection (a) not later than the 30th day after the date the board of directors receives the appeal; and

(2) give not less than 10 days' written notice of the time and place of the hearing to the person bringing the appeal or the person's authorized representative.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.403. DECISION OF BOARD OF DIRECTORS. (a) Not later than the 10th day after the date of the hearing under Section

2203.402(b), the board of directors shall affirm, reverse, or modify the board's previous action or the appealed act.

(b) At the time the person is notified of the final action of the board of directors, the association shall provide to the person written notice of the person's right to appeal under Section 2203.404.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.404. APPEAL TO COMMISSIONER; HEARING. (a) Not later than the 30th day after the date of the final action of the board of directors under Section 2203.403, a person insured or applying for insurance aggrieved by that final action may appeal to the commissioner by making a written request for a hearing.

(b) The appeal shall be heard not later than the 30th day after the date the appeal is received. The person bringing the appeal or the person's authorized representative must be given written notice of the time and place of the hearing on or before the 10th day before the date of the hearing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.405. COMMISSIONER'S DECISION. (a) Not later than the 30th day after the date of the hearing under Section 2203.404, the commissioner shall affirm, reverse, or modify the appealed act.

(b) Pending the hearing and decision, the commissioner may suspend or postpone the effective date of a rule or of the act appealed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2203.406. APPEAL OF COMMISSIONER'S DECISION. (a) The association or a person aggrieved by an order or decision of the commissioner may appeal in accordance with Subchapter D, Chapter 36.

(b) At the time the person is notified of the commissioner's

order or decision, the commissioner shall provide to the person written notice of the person's right to appeal under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2204. TEXAS INSURANCE EXCHANGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2204.001. DEFINITIONS. In this chapter:

(1) "Directors" means the board of directors of the exchange.

(2) "Exchange" means the Texas Insurance Exchange.

(3) "Member" means a person, firm, corporation, or underwriting syndicate authorized by the directors to insure or reinsure risks through the exchange.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2204.002. EXEMPTION. (a) This chapter, Chapters 251 and 261, and rules adopted by the commissioner or comptroller, as applicable, apply to the exchange, a member, and insurance and reinsurance written through the exchange, except to the extent exempted by rules adopted by the commissioner or comptroller, as applicable.

(b) An exemption may not be:

(1) unfairly discriminatory; or

(2) detrimental to the solvency of an insurer authorized to engage in the business of insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2204.003. RULES. The commissioner shall adopt rules for the operation and management of the exchange.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. OPERATION AND MANAGEMENT

Sec. 2204.051. PURPOSE OF EXCHANGE; SPECIFIC AUTHORIZATION FOR CERTAIN INSURANCE. (a) The exchange shall provide a facility for underwriting:

(1) reinsurance of any kind of insurance;

(2) direct insurance of any kind of risk located entirely outside the United States;

(3) direct insurance of any kind of risk that:

(A) is located in another state; and

(B) qualifies for placement under the excess and surplus lines requirements of the jurisdiction in which the risk is located; and

(4) a risk located in this state that has been submitted to and certified as rejected by a committee representing at least three and not more than seven insurers authorized to engage in the business of insurance in this state and subject to conditions imposed by rules adopted by the commissioner.

(b) For purposes of Chapter 101, insurance or reinsurance a member writes to cover a risk described by Subsection (a)(4) is considered to be specifically authorized by the laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2204.052. OPERATION OF EXCHANGE. The exchange shall operate under:

(1) a constitution and bylaws adopted by the exchange and approved by the department; and

(2) rules adopted by the commissioner under Section 2204.003.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2204.053. CONSTITUTION AND BYLAWS. (a) In this section:

(1) "Principal office" means an office at which officers and personnel who are engaged in administration, underwriting, claims

adjustment, policyholders' service, marketing, accounting, recordkeeping, and support services are located.

(2) "Subscriber" means a person, firm, corporation, or other organization that, on payment of fees or dues required by the constitution and bylaws, the directors designate as a subscriber.

(b) The constitution and bylaws of the exchange must provide for:

(1) the election of nine directors, four of whom represent the public interest and are not members, subscribers, or agents of the exchange;

(2) the locations of the principal offices of the exchange and the members in this state for transacting business described by Section 2204.051(a);

(3) the submission by the exchange, members, and applicants for membership in the exchange of financial information required by rules adopted by the commissioner;

(4) the establishment and maintenance by the exchange of a security fund in a form and amount specified by rules adopted by the commissioner;

(5) the voting power of members; and

(6) members' rights and duties, including the manner of conducting business, financial stability, dues, membership fees, mandatory arbitration, and any other matter necessary or appropriate to conduct business authorized by this chapter.

(c) For an agent transacting business on the exchange to participate in the operation and management of the exchange, the constitution and bylaws of the exchange must provide for the voting power and other rights granted to a nonprofit corporation under the Business Organizations Code.

(d) In a manner that complies with the requirements adopted under this section, the exchange may, with the department's approval, amend the exchange's constitution or bylaws in accordance with the terms of the constitution and bylaws.

(e) The constitution, a bylaw, or an amendment to the constitution or a bylaw is invalid without the department's approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2204.054. DIRECTORS. (a) The directors shall operate and manage the exchange in accordance with rules adopted under Section 2204.003.

(b) The directors shall be elected by the members and any other person authorized by the exchange's constitution and bylaws to vote in an election of directors.

(c) At least two-thirds of the directors must be citizens of the United States.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. FINANCES

Sec. 2204.101. TAXES. (a) Except as provided by this section and Chapters 251 and 261, the exchange is not subject to state or local taxes that are measured by income, premiums, or gross receipts.

(b) A direct premium written, procured, or received by a member through the exchange on a risk located in this state is:

(1) considered written, procured, or received by the exchange; and

(2) subject to the premium taxes imposed under Subtitle B, Title 3.

(c) Premium taxes shall be reported, paid, and administered as provided by Subtitle B, Title 3.

(d) The exchange and the members are considered insurers for purposes of:

(1) Sections 201.052, 201.053, and 201.054;

(2) Chapters 4, 202, 203, 221, 222, 224, 227, 228, 251, 257, and 1109; and

(3) Section 171.0525, Tax Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2H.007, eff. April 1, 2009.

Sec. 2204.102. INVESTMENTS IN MEMBER OR AGENT. (a) The commissioner by rule may establish limitations on investments in a

member.

(b) An investment, directly or indirectly, in a member by an agent transacting business on the exchange or in an agent transacting business on the exchange by a member is limited in the aggregate to:

(1) less than 20 percent of the total investment in the member or agent; or

(2) a lesser amount provided by a rule adopted by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2204.103. COVERAGE BY GUARANTY FUNDS. (a) The performance of a contractual obligation of the exchange or a member entered into under this chapter is not covered by an insurance guaranty fund provided by the laws of this state.

(b) This section does not apply to the security fund established under Section 2204.053(b)(4).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2205. TEXAS CHILD-CARE FACILITY LIABILITY POOL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2205.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of the pool.

(2) "Child-care facility" has the meaning assigned by Section 42.002, Human Resources Code.

(3) "Fund" means the Texas child-care facility liability fund.

(4) "Pool" means the Texas Child-Care Facility Liability Pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE. (a) Except as provided by this section and Section 2205.003(b), the pool

is not engaged in the business of insurance under this code or other state law, and this code and other state insurance laws do not apply to the pool.

(b) The pool is subject to:

(1) this chapter;

(2) the requirements of this code or commissioner rules relating to reporting liability claims information; and

(3) the requirements of Chapter 2251 and Article 5.13-2 relating to making, filing, and approving rates.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.003. DEPARTMENT AND COMMISSIONER SUPERVISION. (a) The pool is subject to the department's continuing supervision relating to the pool's solvency.

(b) The commissioner may set minimum requirements to ensure the capability of the pool to satisfy the pool's obligations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. CREATION OF POOL

Sec. 2205.051. CREATION OF POOL. (a) The Texas Child-Care Facility Liability Pool is created when the governing bodies of 10 or more child-care facilities agree in writing to participate in the pool.

(b) The pool provides liability insurance coverage for child-care facilities as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.052. PARTICIPATION IN POOL. A child-care facility is entitled to coverage from the pool if the facility:

(1) submits a complete application;

(2) provides other information required by the pool;

(3) meets the underwriting standards established by the

pool; and

(4) pays the premiums required for the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.053. SELECTION OF TEMPORARY BOARD. At the time the governing bodies of the child-care facilities enter into the written agreement under Section 2205.051, the governing bodies shall select nine individuals to:

(1) serve as the temporary board; and

(2) draft the plan of operation for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. PLAN OF OPERATION

Sec. 2205.101. TIME FOR CREATION OF PLAN OF OPERATION. (a) Not later than the 30th day after the date the last member of the temporary board is selected, the temporary board shall meet to prepare a plan of operation for the pool.

(b) The temporary board shall complete and adopt the plan of operation not later than the 90th day after the date the last member of the temporary board is selected.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.102. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, the plan of operation must include:

(1) the organizational structure of the pool, including:

(A) the method of selecting the board;

(B) the board's methods of procedure and operation; and

(C) a summary of the methods for managing and operating the pool;

(2) a description of the contributions and other financial arrangements necessary to cover the initial expenses of the pool and estimates, supported by statistical information, of the amounts of

those contributions or other financial arrangements;

(3) underwriting standards and procedures for evaluating risks;

(4) a requirement that each participant in the pool receive continuing training in the methods of controlling liability losses;

(5) procedures for purchasing reinsurance;

(6) procedures and guidelines for:

(A) establishing premium rates for and maximum limits of excess liability coverage available from the pool;

(B) negotiating and paying settlements, defending claims, and paying judgments; and

(C) managing and investing the fund;

(7) procedures for:

(A) processing and paying claims; and

(B) defraying losses or expenses of the pool;

(8) guidelines for nonrenewal of coverage;

(9) the minimum capital and surplus to be maintained by the pool; and

(10) the minimum standards for reserve requirements for the pool.

(b) The plan of operation may include any matter relating to the organization and operation of the pool or to the pool's finances.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.103. APPROVAL OF PLAN OF OPERATION. (a) On completion of the plan of operation, the temporary board shall submit the plan to the department for examination, suggested changes, and final approval.

(b) The department shall approve the plan of operation on the determination that the pool is able and will continue to be able to pay valid claims made against the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. BOARD OF TRUSTEES

Sec. 2205.151. GOVERNANCE OF POOL. (a) The pool is governed

by a board of trustees composed of nine members selected as provided by the plan of operation.

(b) Not later than the 15th day after the date the department approves the plan of operation, the initial regular board must be selected as provided by the plan of operation. The members of the initial regular board shall take office not later than the 30th day after the date the plan of operation is adopted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.152. TERMS; VACANCY. (a) Board members serve two-year terms. The terms expire as provided by the plan of operation.

(b) A vacancy on the board shall be filled as provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.153. PERFORMANCE BOND REQUIRED. (a) Each board member shall execute a bond in the amount required by the plan of operation. The bond must be payable to the pool and conditioned on the faithful performance of the member's duties.

(b) The pool shall pay the cost of the bond executed under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.154. COMPENSATION. A board member is not entitled to compensation for the member's service on the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.155. OFFICERS; MEETINGS. (a) The board shall elect from the board's membership a presiding officer and other officers as

provided by the plan of operation.

(b) Each officer serves a one-year term that expires as provided by the plan of operation.

(c) The board shall meet at the call of the presiding officer and at times established by the board's rules.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.156. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) approve contracts, other than liability insurance contracts issued by the pool to child-care facilities; and

(2) adopt premium rate schedules and policy forms for the pool.

(b) The board may:

(1) adopt rules as necessary for the operation of the pool;

(2) delegate specific responsibilities to the pool manager; and

(3) with the department's approval, amend the plan of operation as necessary to ensure the orderly management and operation of the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN LIABILITIES. A board member is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a child-care facility covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. OPERATION OF POOL

Sec. 2205.201. GENERAL POWERS AND DUTIES OF POOL. (a) The

pool shall:

(1) issue primary and excess liability coverage to each child-care facility entitled to coverage under this chapter;

(2) collect premiums for coverage issued or renewed by the pool;

(3) process and pay valid claims;

(4) maintain detailed information regarding the pool; and

(5) establish a plan to conduct loss control training or contract with an outside entity to establish continuing training and inspections programs designed to reduce the potential liability losses of pool participants.

(b) The pool may:

(1) enter into contracts;

(2) purchase reinsurance;

(3) cancel or refuse to renew coverage; and

(4) perform any other act necessary to implement this chapter, the plan of operation, or a rule adopted by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.202. POOL MANAGER; PERFORMANCE BOND REQUIRED. (a) The board shall appoint a pool manager who serves at the pleasure of the board, and the board shall supervise the pool manager's activities.

(b) The pool manager shall execute a bond in the amount determined by the board. The bond must be payable to the pool and conditioned on the faithful performance of the pool manager's duties.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.203. GENERAL POWERS AND DUTIES OF POOL MANAGER. (a) The pool manager shall direct the general operation of the pool and perform other duties as directed by the board.

(b) The pool manager shall:

(1) receive and approve applications for liability coverage from the pool;

(2) negotiate contracts for the pool; and

(3) prepare proposed policy forms for board approval.

(c) The pool manager may refuse to renew the coverage of a child-care facility insured by the pool that fails to meet the guidelines included in the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.204. PERSONNEL. (a) The pool manager may employ or contract with persons as necessary to assist the board and the pool manager in implementing the powers and duties of the pool.

(b) The board must approve:

(1) the compensation paid to a pool employee; and

(2) a contract made with a person under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.205. PERFORMANCE BOND AUTHORIZED. The board may require an employee or a person with whom the pool manager contracts under Section 2205.204 to execute a bond in an amount determined by the board. The bond must be payable to the board and conditioned on the faithful performance of the employee's or other person's duties to the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2205.204 is not liable with respect to a claim or judgment against a child-care facility covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.207. OFFICE; RECORDS. (a) The pool shall maintain the pool's principal office in Austin, Texas.

(b) Records and other information relating to the operation of the pool must be maintained in the pool's principal office.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.208. ANNUAL AUDIT. The board shall require an annual audit of the pool's capital, surplus, and reserves. The audit must be conducted by an actuary who is a member of the American Academy of Actuaries or a similar national organization of actuaries recognized by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. TEXAS CHILD-CARE FACILITY LIABILITY FUND

Sec. 2205.251. FUND CREATION; MANAGEMENT. (a) The Texas child-care facility liability fund is established on the creation of the pool.

(b) The fund is composed of:

(1) premiums paid by child-care facilities for coverage provided by the pool;

(2) contributions and other money received by the pool to cover the initial expenses of the fund;

(3) investments of the fund and money earned from those investments; and

(4) any other money received by the pool.

(c) The pool manager, under the general supervision of the board, shall manage and invest the money in the fund in the manner provided by the plan of operation.

(d) Money earned by the investment of money in the fund must be deposited in the fund or reinvested for the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.252. CONTRIBUTIONS. The board shall determine the amount of contributions necessary to meet the initial expenses of the pool. The board shall make this determination based on the information provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.253. USES OF FUND. (a) Administrative expenses of the pool may be paid from the fund. Payments for administrative expenses during a fiscal year may not exceed 10 percent of the total amount of the money in the fund during that fiscal year.

(b) Money in the fund may not be used to pay:

(1) punitive damages; or

(2) a fine or penalty imposed for a violation of:

(A) a statute;

(B) a rule of a state agency; or

(C) an ordinance or order of a local government.

(c) A claim or judgment may be paid from the fund under excess liability insurance coverage only if all benefits payable under any other underlying liability insurance policy covering that claim or judgment are exhausted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.254. DEPOSITORY BANK. (a) The board may select one or more banks to serve as a depository for the fund.

(b) A depository bank must provide security before money in the fund may be deposited in the bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation. The security must be in an amount sufficient to secure the excess amount of the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. POOL COVERAGE

Sec. 2205.301. SCOPE OF COVERAGE. (a) The pool shall insure a child-care facility and the facility's officers and employees against liability for acts and omissions under the laws of this state by the officers and employees in their official or employment capacities.

(b) The pool shall provide to a child-care facility that qualifies under this chapter and the plan of operation:

(1) primary liability insurance coverage in an amount not to exceed $300,000; and

(2) excess liability insurance coverage in an amount that the board determines is actuarially sound.

(c) The pool may participate in evaluating, settling, and defending a claim against a child-care facility insured by the pool.

(d) The pool is liable in an amount not to exceed the limit of coverage provided to a child-care facility on a claim made against the facility.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.302. BASIS OF COVERAGE. The pool may provide liability insurance coverage on a claims-made basis or an occurrence basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.303. RATES AND LIMITS OF COVERAGE. (a) To ensure that the pool is actuarially sound, the board shall:

(1) set the premium rates charged; and

(2) determine the maximum limits of coverage provided.

(b) The pool manager, for the board's consideration, shall:

(1) collect and compile statistical information relating to the liability coverage provided by the pool, including relevant loss, expense, and premium information, and other necessary information;

(2) prepare the proposed premium rate schedules for the approval of the board; and

(3) prepare the maximum limits of coverage.

(c) The board shall periodically reexamine the rate schedules and the maximum limits of coverage.

(d) The pool manager shall make available to the public the information described by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.304. COVERAGE PERIOD. A child-care facility that accepts coverage provided by the pool shall maintain that coverage for at least 24 consecutive months following the date the pool issued the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.305. NONRENEWAL OF COVERAGE. (a) Except as provided by Subsection (b), the pool may refuse to renew the coverage of a child-care facility that fails to comply with the pool's underwriting standards.

(b) The pool may not refuse to renew the coverage of a child-care facility during the first 24 months following the date the facility is first provided coverage by the pool if the facility maintains the underwriting standards established by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.306. SUBSEQUENT COVERAGE. A child-care facility that voluntarily discontinues coverage provided by the pool is not eligible to subsequently obtain coverage from the pool for at least 12 months following the date the coverage is discontinued.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2205.307. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If money in the fund would be exhausted by the payment of all final and

settled claims and final judgments during a fiscal year, the pool shall prorate the amount paid to each person having the claim or judgment.

(b) If the amount paid by the pool is prorated under this section, each person described by Subsection (a) shall receive an amount equal to the percentage that the amount owed to that person by the pool bears to the total amount owed, outstanding, and payable by the pool.

(c) The pool shall pay in the next fiscal year the remaining amount that is due and unpaid to a person who receives a prorated payment under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2206. RISK MANAGEMENT POOLS FOR CERTAIN EDUCATIONAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2206.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of a pool.

(2) "Fund" means a risk management fund.

(3) "Junior college district" means a junior college district created under the laws of this state.

(4) "Pool" means a risk management pool created under this chapter.

(5) "School district" means a public school district created under the laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.002. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), a pool is not considered insurance under this code or other laws of this state, and the department does not have jurisdiction over the pool.

(b) The pool is subject to Chapter 541 and Section 543.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 2.02, eff. September 1, 2015.

SUBCHAPTER B. SCHOOL DISTRICT RISK MANAGEMENT POOL

Sec. 2206.051. CREATION OF SCHOOL DISTRICT RISK MANAGEMENT POOL. (a) The boards of trustees of five or more school districts may create the school district risk management pool by adopting a resolution to create the pool.

(b) The school district risk management pool insures each school district that purchases coverage in the pool against liability under law for the district's acts and omissions.

(c) Not more than one school district risk management pool may be created under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.052. PARTICIPATION IN POOL. (a) A school district that meets the criteria established by the school district risk management pool in the pool's plan of operation may:

(1) purchase coverage from the pool; and

(2) use district money to pay the fees, contributions, or premiums required to participate in the pool and obtain the coverage.

(b) A junior college district may not participate in the school district risk management pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.053. ORGANIZATIONAL MEETING; SELECTION OF TEMPORARY BOARD. (a) On authorization to create the school district risk management pool as provided by Section 2206.051, the board of trustees of each school district adopting a resolution to create the pool shall select one representative to meet with representatives of the other school districts adopting the resolution.

(b) At the meeting, the representatives shall:

(1) adopt guidelines for developing an organizational plan for the pool; and

(2) select nine individuals to serve as a temporary board for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. JUNIOR COLLEGE DISTRICT RISK MANAGEMENT POOL

Sec. 2206.101. CREATION OF JUNIOR COLLEGE DISTRICT RISK MANAGEMENT POOL. (a) The board of trustees of five or more junior college districts may create the junior college district risk management pool by adopting a resolution to create the pool.

(b) The junior college district risk management pool insures each junior college district that purchases coverage in the pool against liability under law for the district's acts and omissions.

(c) Not more than one junior college district risk management pool may be created under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.102. PARTICIPATION IN POOL. (a) A junior college district that meets the criteria established by the junior college district risk management pool in the pool's plan of operation may:

(1) purchase coverage from the pool; and

(2) use district money to pay the fees, contributions, or premiums required to participate in the pool and obtain the coverage.

(b) A school district may not participate in the junior college district risk management pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.103. ORGANIZATIONAL MEETING; SELECTION OF TEMPORARY BOARD. (a) On authorization to create the junior college district risk management pool as provided by Section 2206.101, the board of trustees of each junior college district adopting a resolution to create the pool shall select one representative to meet with representatives of the other junior college districts adopting the

resolution.

(b) At the meeting, the representatives shall:

(1) adopt guidelines for developing an organizational plan for the pool; and

(2) select nine individuals to serve as a temporary board for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. PLAN OF OPERATION

Sec. 2206.151. TIME FOR CREATION OF PLAN OF OPERATION. (a) Not later than the 30th day after the date the temporary board of a pool is selected, the temporary board shall meet and begin preparing a detailed plan of operation for the pool.

(b) The temporary board shall complete the plan of operation not later than the 90th day after the date the temporary board is selected.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.152. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, a pool's plan of operation must include:

(1) the organizational structure of the pool, including:

(A) the number of regular board members;

(B) the method of selecting the board members;

(C) the board's method of procedure and operation; and

(D) a summary of the method for managing and operating the pool;

(2) a description of the fees, contributions, or financial arrangements necessary to cover the initial expenses of the pool and estimates, supported by statistical data, of the amounts of those fees, contributions, or other financial arrangements;

(3) underwriting guidelines and procedures for evaluating risks;

(4) procedures for purchasing reinsurance;

(5) methods, procedures, and guidelines for establishing:

(A) premium rates for pool coverage; and

(B) pool coverage limits;

(6) procedures for processing and paying claims;

(7) methods and procedures for defraying losses and expenses of the pool;

(8) methods, procedures, and guidelines for managing and investing the money in the fund created for the pool;

(9) minimum capital and surplus to be maintained by the pool; and

(10) minimum standards for reserve requirements for the pool.

(b) The plan of operation may include any matter relating to the organization and operation of the pool and the pool's finances.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. BOARD OF TRUSTEES

Sec. 2206.201. BOARD OF TRUSTEES. (a) A pool is governed by a board of trustees as provided by the plan of operation.

(b) Not later than the 15th day after the date the temporary board of a pool completes the plan of operation, the initial regular board must be selected and take office as provided by the plan.

(c) An individual serving on the board who is an officer or employee of a school district or junior college district covered by the pool performs duties on the board as additional duties required of the individual's original office or employment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.202. GENERAL AUTHORITY OF BOARD; RULES. (a) A board is responsible for the general administration and operation of the pool and the pool's fund.

(b) The board may:

(1) exercise powers and enter into contracts necessary to implement this chapter and the plan of operation; and

(2) adopt rules to implement this chapter and the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.203. PERSONNEL; CONTRACTS FOR SERVICES. (a) A board may employ a fund manager and other persons necessary to implement this chapter and the plan of operation.

(b) The board may employ or contract with a person or insurer for underwriting, accounting, claims, and other services.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.204. PERFORMANCE BOND REQUIRED. (a) Each board member and each board employee who has authority over money in the fund or money collected or invested by the pool shall execute a bond in an amount determined by the board. The bond must be payable to the pool and conditioned on the faithful performance of the person's duties.

(b) The pool shall pay the cost of a bond executed under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.205. IMMUNITY FROM CERTAIN LIABILITIES. A board member or board employee is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment made against a school district or junior college district covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. RISK MANAGEMENT FUND

Sec. 2206.251. FUND CREATION; MANAGEMENT. (a) Immediately after taking office, an initial regular board shall create a risk

management fund. The fund must include:

(1) fees, contributions, and premiums collected by the pool;

(2) investments of money in the fund;

(3) interest earned on investments made by the pool; and

(4) all other income received by the pool.

(b) The board shall manage and invest the money in the fund in the manner provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.252. USES OF FUND. (a) The money in a pool's fund:

(1) shall be used to pay liability claims and judgments against school districts or junior college districts that participate in the pool, not to exceed the limits of the coverage provided by the pool; and

(2) may be used to pay the administrative and management costs of the pool and the fund, not to exceed the limits provided in the plan of operation.

(b) On the board's approval, a pool may pay commissions from the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. PREMIUM RATES AND COVERAGE; REINSURANCE

Sec. 2206.301. PREMIUM RATES AND COVERAGE LIMITS. A pool's board shall determine the premium rates charged by the pool and pool coverage limits to ensure that the pool and the fund are actuarially sound.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.302. GUARANTEED ISSUANCE OF INITIAL COVERAGE; RISK MANAGEMENT. (a) Subject to Subsection (b), a school district or junior college district that applies for initial coverage through a

pool is entitled to that coverage for a period of not less than one year, regardless of loss history. The board may approve a longer period for the initial coverage.

(b) For a school district or junior college district to obtain initial coverage, the board may require that the district participate in a risk management appraisal and comply with the recommendations resulting from the appraisal.

(c) If complying with the recommended risk management techniques resulting from the appraisal does not reduce the school district's or junior college district's losses during the initial coverage period sufficiently to meet the pool's underwriting standards, the board may deny the district subsequent coverage through the pool.

(d) The pool may assess a surcharge to a school district or junior college district covered during the initial coverage period if the district does not meet the basic underwriting guidelines for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2206.303. REINSURANCE. A board may purchase reinsurance for a risk covered through the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2207. EXCESS LIABILITY POOLS FOR COUNTIES AND CERTAIN EDUCATIONAL ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2207.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of a pool.

(2) "County" means a county in this state.

(3) "Fund" means an excess liability fund.

(4) "Junior college district" means a junior college district created under the laws of this state.

(5) "Pool" means an excess liability pool created under this chapter.

(6) "School district" means a public school district

created under the laws of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE. (a) Except as provided by Subsection (b), a pool is not engaged in the business of insurance under this code or other laws of this state, and the department does not have jurisdiction over a pool.

(b) A pool is subject to Chapter 541 and Section 543.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 2.03, eff. September 1, 2015.

SUBCHAPTER B. COUNTY EXCESS LIABILITY POOL

Sec. 2207.051. CREATION OF COUNTY EXCESS LIABILITY POOL. (a) The county judges of five or more counties may, on written agreement, create a county excess liability pool.

(b) The county excess liability pool provides excess liability insurance coverage as provided by this chapter and the pool's plan of operation.

(c) Not more than one county excess liability pool may be created under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.052. PARTICIPATION IN OTHER POOLS NOT PERMITTED. A county may participate only in a pool created for counties.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.053. SELECTION OF TEMPORARY BOARD. At the time a

written agreement is executed under Section 2207.051, the county judges of each county executing the agreement to create the pool shall select nine individuals to:

(1) serve as a temporary board; and

(2) draft the plan of operation for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. SCHOOL DISTRICT EXCESS LIABILITY POOL

Sec. 2207.101. CREATION OF SCHOOL DISTRICT EXCESS LIABILITY POOL. (a) Acting on behalf of their boards, the presidents of the boards of trustees of five or more school districts may, on written agreement, create a school district excess liability pool.

(b) The school district excess liability pool provides excess liability insurance coverage as provided by this chapter and the pool's plan of operation.

(c) Not more than one school district excess liability pool may be created under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.102. PARTICIPATION IN OTHER POOLS NOT PERMITTED. A school district may participate only in a pool created for school districts.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.103. SELECTION OF TEMPORARY BOARD. At the time a written agreement is executed under Section 2207.101, the presidents of the boards of trustees of each school district executing the agreement to create the pool shall select nine individuals to:

(1) serve as a temporary board; and

(2) draft the plan of operation for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

SUBCHAPTER D. JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL

Sec. 2207.151. CREATION OF JUNIOR COLLEGE DISTRICT EXCESS LIABILITY POOL. (a) Acting on behalf of their boards, the presiding officers of the boards of trustees of five or more junior college districts may, on written agreement, create a junior college district excess liability pool.

(b) The junior college district excess liability pool provides excess liability insurance coverage as provided by this chapter and the pool's plan of operation.

(c) Not more than one junior college district excess liability pool may be created under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.152. PARTICIPATION IN OTHER POOLS NOT PERMITTED. A junior college district may participate only in a pool created for junior college districts.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.153. SELECTION OF TEMPORARY BOARD. At the time a written agreement is executed under Section 2207.151, the presiding officers of the boards of trustees of each junior college district executing the agreement to create the pool shall select nine individuals to:

(1) serve as a temporary board; and

(2) draft the plan of operation for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. PLAN OF OPERATION

Sec. 2207.201. TIME FOR CREATION OF PLAN OF OPERATION. (a)

Not later than the 30th day after the date the temporary board of a pool is selected, the temporary board shall meet to prepare a detailed plan of operation for the pool.

(b) The temporary board shall complete and adopt the plan of operation not later than the 90th day after the date the temporary board is selected.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.202. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, a pool's plan of operation must include:

(1) the organizational structure of the pool, including:

(A) the method of selecting the board;

(B) the board's method of procedure and operation; and

(C) a summary of the method for managing and operating the pool;

(2) a description of the contributions and other financial arrangements necessary to cover the initial expenses of the pool and estimates, supported by statistical data, of the amounts of those contributions or other financial arrangements;

(3) underwriting standards and procedures for evaluating risks;

(4) procedures for purchasing reinsurance;

(5) methods, procedures, and guidelines for:

(A) establishing the premium rates for and maximum limits of excess liability insurance coverage available from the pool; and

(B) managing and investing money in the fund created for the pool;

(6) procedures for processing and paying claims;

(7) methods and procedures for defraying losses and expenses of the pool;

(8) guidelines for nonrenewal of coverage;

(9) minimum capital and surplus to be maintained by the pool; and

(10) minimum standards for reserve requirements for the pool.

(b) The plan of operation may include any matter relating to the organization and operation of the pool or to the pool's finances.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. BOARD OF TRUSTEES

Sec. 2207.251. BOARD OF TRUSTEES. (a) A pool is governed by a board of trustees composed of nine members selected as provided by the plan of operation.

(b) Not later than the 15th day after the date the temporary board of a pool adopts the plan of operation, the initial regular board must be selected as provided by the plan. The members of the initial regular board shall take office not later than the 30th day after the date the plan of operation is adopted.

(c) An individual serving on the board who is an officer or employee of a county, school district, or junior college district covered by the pool performs duties on the board as additional duties required of the individual's original office or employment.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.252. TERMS; VACANCY. (a) Board members serve two-year terms that expire at the time provided by the plan of operation.

(b) A vacancy on the board shall be filled as provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.253. PERFORMANCE BOND REQUIRED. (a) Each board member shall execute a bond in the amount required by the plan of operation. The bond must be payable to the pool and conditioned on the faithful performance of the member's duties.

(b) The pool shall pay the cost of the bond executed under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.254. COMPENSATION. A board member is not entitled to compensation for the member's service on the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.255. OFFICERS; MEETINGS. (a) The board shall select from the board members a presiding officer, an assistant presiding officer, and a secretary who serve one-year terms that expire as provided by the plan of operation.

(b) The board shall hold meetings at the call of the presiding officer and at times established by the board's rules.

(c) A majority of the board members constitutes a quorum.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.256. GENERAL POWERS AND DUTIES OF BOARD. (a) In addition to other duties provided by the plan of operation, the board shall:

(1) approve contracts other than excess liability insurance contracts issued by the pool to a county, school district, or junior college district, as applicable;

(2) adopt premium rate schedules and policy forms for the pool; and

(3) receive service of summons on behalf of the pool.

(b) The board may:

(1) adopt necessary rules, including rules to implement this chapter;

(2) delegate specific responsibilities to the pool manager; and

(3) amend the plan of operation to ensure the orderly management and operation of the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2207.257. ANNUAL AUDIT; REPORT. (a) Each year as provided by the plan of operation, the board shall have an actuary audit the capital, surplus, and reserves of the pool and prepare a formal report for the pool and the members of the pool.

(b) The actuary must be a member of the American Academy of Actuaries.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.258. IMMUNITY OF BOARD MEMBERS FROM CERTAIN LIABILITIES. A board member is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a county, school district, or junior college district covered by the applicable pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. OPERATION OF POOL

Sec. 2207.301. GENERAL POWERS AND DUTIES OF POOL. (a) A pool shall:

(1) issue excess liability insurance coverage to each county, school district, or junior college district entitled to coverage under this chapter;

(2) collect premiums for coverage issued or renewed by the pool;

(3) process and pay valid claims; and

(4) maintain detailed data regarding the pool.

(b) The pool may:

(1) enter into contracts;

(2) purchase reinsurance;

(3) cancel or refuse to renew coverage; and

(4) perform any other act necessary to implement this chapter, the plan of operation, or a rule adopted by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.302. POOL MANAGER; PERFORMANCE BOND REQUIRED. (a) The board shall appoint a pool manager who serves at the pleasure of the board, and the board shall supervise the pool manager's activities.

(b) The pool manager is entitled to receive the compensation authorized by the board.

(c) The pool manager shall execute a bond in the amount determined by the board. The bond must be payable to the pool and conditioned on the faithful performance of the pool manager's duties.

(d) The pool shall pay the cost of the bond executed under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.303. GENERAL POWERS AND DUTIES OF POOL MANAGER. (a) The pool manager shall manage and conduct the affairs of the pool under the general supervision of the board and shall perform any other duties as directed by the board.

(b) In addition to any other duties provided by the board, the pool manager shall:

(1) receive and pass on applications for excess liability insurance coverage from the pool;

(2) negotiate contracts for the pool; and

(3) prepare and submit to the board for approval proposed policy forms for coverage from the pool.

(c) The pool manager may refuse to renew the coverage of a county, school district, or junior college district insured by the pool based on the guidelines included in the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.304. PERSONNEL. (a) The pool manager shall employ or contract with persons necessary to assist the board and the pool

manager in implementing the powers and duties of the pool.

(b) The board must approve:

(1) the compensation paid to a pool employee; and

(2) a contract made with a person under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.305. PERFORMANCE BOND AUTHORIZED. The board may require an employee or a person with whom the pool manager contracts under Section 2207.304 to execute a bond in an amount determined by the board. The bond must be payable to the board and conditioned on the faithful performance of the employee's or other person's duties to the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.306. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2207.304 is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a county, school district, or junior college district covered by the applicable pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.307. OFFICE; RECORDS. (a) A pool shall maintain the pool's principal office in Austin, Texas.

(b) Records, files, and other documents and information relating to the pool must be maintained in the pool's principal office.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER H. EXCESS LIABILITY FUND

Sec. 2207.351. FUND CREATION; MANAGEMENT. (a) On creation of a pool, the initial regular board shall create an excess liability fund.

(b) The fund is composed of:

(1) premiums paid by counties, school districts, or junior college districts, as applicable, for coverage provided by the pool;

(2) contributions and other money received by the pool to cover the initial expenses of the fund;

(3) investments of the fund and money earned from those investments; and

(4) any other money received by the pool.

(c) The pool manager shall manage the fund under the general supervision of the board. The fund manager, under the general supervision of the board, shall manage and invest the money in the fund in the manner provided by the plan of operation.

(d) Money earned by the investment of money in the fund must be deposited in the fund or reinvested for the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.352. CONTRIBUTIONS. The board shall determine the amount of any contributions necessary to meet the initial expenses of the pool. The board shall make this determination based on the data provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.353. USES OF FUND. (a) Administrative expenses of the pool may be paid from the fund. Payments for administrative expenses during a fiscal year of the pool may not exceed the amount established by the board.

(b) The pool may pay commissions from the fund on approval of the board.

(c) Money in the fund may not be used to pay:

(1) punitive damages; or

(2) a fine or penalty imposed for a violation of:

(A) a statute;
(B) an administrative rule or regulation; or
(C) an order, rule, or ordinance.

(d) Money for a claim may not be paid from the fund under excess liability insurance coverage until all benefits payable under any other underlying liability insurance policy covering the claim or judgment are exhausted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.354. DEPOSITORY BANK. (a) The board may select one or more banks to serve as a depository for money in the fund.

(b) A depository bank must execute a bond or provide other security before the pool manager may deposit fund money in the bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation. The bond or other security must be in an amount sufficient to secure the excess amount of the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER I. POOL COVERAGE

Sec. 2207.401. ENTITLEMENT TO COVERAGE. A county, school district, or junior college district is entitled to coverage from the pool if the county, school district, or junior college district:

(1) submits a complete application;
(2) provides other information required by the pool;
(3) meets the underwriting standards established by the pool; and
(4) pays the premiums required for the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.402. SCOPE OF COVERAGE. (a) A pool shall insure a county, school district, or junior college district and the entity's officers and employees against liability for acts and omissions under

the laws governing that county, school district, or junior college district and the entity's officers and employees in their official or employment capacities.

(b) Except as provided by Subsection (c), under the excess liability insurance coverage, a pool shall pay any portion of a claim against a county, school district, or junior college district, as applicable, and the entity's officers and employees that:

(1) exceeds $500,000; and

(2) is finally determined or settled or is included in a final judgment of a court.

(c) The amount paid by a pool under this section may not exceed the amount the board determines is actuarially sound for the pool.

(d) A pool may participate in evaluating, settling, or defending a claim made under the excess liability insurance coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.403. BASIS OF COVERAGE. The pool may provide excess liability insurance coverage on a claims-made basis or an occurrence basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.404. RATES AND LIMITS OF COVERAGE. (a) To ensure that the pool is actuarially sound, the board shall:

(1) set the premium rates charged; and

(2) determine the maximum limits of coverage provided.

(b) The pool manager, for the board's consideration, shall:

(1) collect and compile statistical data relating to the excess liability insurance coverage provided by the pool, including relevant loss, expense, and premium data, and other information;

(2) prepare the proposed premium rate schedules for the approval of the board; and

(3) prepare the maximum limits of coverage.

(c) The board shall periodically reexamine the rate schedules and the maximum limits of coverage as conditions change.

(d) The pool manager shall make available to the public the

information described by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.405. USE OF ENTITY MONEY FOR POOL COVERAGE AUTHORIZED. A county, school district, or junior college district may use its money to pay any contributions or premiums required by the applicable pool to purchase excess liability insurance coverage from the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.406. COVERAGE PERIOD. A county, school district, or junior college district that accepts coverage provided by the applicable pool shall maintain that coverage for at least 36 calendar months following the month in which the pool issued the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.407. NONRENEWAL OF COVERAGE. (a) Except as provided by Subsection (b), the applicable pool may refuse to renew the coverage of a county, school district, or junior college district that fails to comply with the pool's underwriting standards.

(b) The applicable pool may not refuse to renew the coverage of a county, school district, or junior college district during the first 36 calendar months following the month in which the entity is first provided coverage by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.408. SUBSEQUENT COVERAGE. (a) A county, school district, or junior college district that voluntarily discontinues coverage provided by the applicable pool may not subsequently obtain

coverage from the pool for at least 36 calendar months following the month in which the entity discontinues the coverage.

(b) A county, school district, or junior college district whose coverage is not renewed under Section 2207.407 is not eligible to subsequently apply for coverage during the 12 calendar months following the month in which the applicable pool gives written notice of nonrenewal.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2207.409. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If money in the fund would be exhausted by the payment of all final and settled claims and final judgments during a fiscal year, the pool shall prorate the amount paid to each person having the claim or judgment.

(b) If the amount paid by the pool is prorated under this section, each person described by Subsection (a) shall receive an amount equal to the percentage that the amount owed to that person by the pool bears to the total amount owed, outstanding, and payable by the pool.

(c) The pool shall pay in the next fiscal year the remaining amount that is due and unpaid to a person who receives a prorated payment under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2208. TEXAS PUBLIC ENTITY EXCESS INSURANCE POOL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2208.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of the pool.

(2) "Fund" means the Texas public entity excess insurance fund.

(3) "Insurance" means liability insurance or workers' compensation insurance.

(4) "Pool" means the Texas public entity excess insurance pool.

(5) "Public entity" means one or more municipalities that

have formed an insurance pool under Chapter 791, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE. (a) Except as provided by Subsection (b), the pool is not engaged in the business of insurance under this code or other laws of this state, and the department has no jurisdiction over the pool.

(b) The pool is subject to Chapter 541.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 2.04, eff. September 1, 2015.

SUBCHAPTER B. CREATION OF POOL

Sec. 2208.051. CREATION OF POOL. (a) The Texas Public Entity Excess Insurance Pool is created on the written agreement of the presiding officers of 25 or more public entities in this state.

(b) The pool provides excess liability and workers' compensation insurance coverage to a public entity and the entity's officers and employees as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.052. PARTICIPATION IN POOL. A public entity is entitled to coverage from the pool if the entity:

(1) submits a complete application;

(2) provides other relevant information required by the pool;

(3) meets the underwriting guidelines established by the pool; and

(4) pays the premiums required for the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

SUBCHAPTER C. BOARD OF TRUSTEES

Sec. 2208.101. ADMINISTRATION OF POOL; BOARD MEMBERSHIP. (a) A board of trustees shall administer the pool.

(b) The board is composed of the members of the governing board of an association that:

(1) on September 2, 1987, had been providing pooled self-insurance in this state for more than five years; and

(2) has as the association's members the public entities that entered into the written agreement under Section 2208.051.

(c) Board members shall represent members of the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.102. COMPENSATION. A board member is not entitled to compensation for the member's service on the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.103. OFFICERS; MEETINGS. (a) Each individual who serves as an officer of the governing board of the association described by Section 2208.101(b) serves as an officer of the board.

(b) The board shall hold meetings at the call of the presiding officer and at times established by the board's rules.

(c) A majority of the board members constitutes a quorum.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.104. GENERAL POWERS AND DUTIES OF BOARD. (a) In addition to other duties provided by the plan of operation, the board shall:

(1) approve contracts other than excess insurance contracts issued to public entities by the pool;

(2) adopt premium rate schedules and policy forms for the pool; and

(3) receive service of summons on behalf of the pool.

(b) The board may:

(1) adopt necessary rules, including rules to implement this chapter;

(2) delegate specific responsibilities to the pool manager; and

(3) amend the plan of operation to ensure the orderly management and operation of the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.105. IMMUNITY OF BOARD MEMBERS FROM CERTAIN LIABILITIES. A board member is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a public entity covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. PLAN OF OPERATION

Sec. 2208.151. TIME FOR CREATION OF PLAN OF OPERATION. Not later than the 30th day after the date the pool is created, the board shall meet to prepare a detailed plan of operation for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.152. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, the plan of operation must include:

(1) the organizational structure of the pool, the board's method of procedure and operation, and a summary of the method for managing and operating the pool;

(2) a description of the financial arrangements necessary

to cover the initial expenses of the pool and estimates, supported by statistical data, of the amounts of those contributions or other financial arrangements;

(3) underwriting guidelines and procedures for evaluating risks;

(4) procedures for purchasing reinsurance;

(5) methods, procedures, and guidelines for:

(A) establishing premium rates for and maximum limits of excess coverage available from the pool; and

(B) managing and investing the fund;

(6) procedures for processing and paying claims;

(7) methods and procedures for defraying losses and expenses of the pool; and

(8) guidelines for nonrenewal of coverage.

(b) The plan of operation may include any matter relating to the organization and operation of the pool or to the pool's finances.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. OPERATION OF POOL

Sec. 2208.201. GENERAL POWERS AND DUTIES OF POOL. (a) The pool shall:

(1) issue insurance coverage to each public entity entitled to coverage under this chapter;

(2) collect premiums for coverage issued or renewed by the pool;

(3) process and pay valid claims; and

(4) maintain detailed data regarding the pool.

(b) The pool may:

(1) enter into contracts;

(2) purchase reinsurance;

(3) cancel or refuse to renew coverage; and

(4) perform any other act necessary to implement this chapter, the plan of operation, or a rule adopted by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.202. POOL MANAGER. (a) The board shall appoint a pool manager who serves at the pleasure of the board, and the board shall supervise the pool manager's activities.

(b) The pool manager is entitled to receive compensation as authorized by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.203. GENERAL POWERS AND DUTIES OF POOL MANAGER. (a) The pool manager shall manage and conduct the affairs of the pool under the general supervision of the board and shall perform any other duties as directed by the board.

(b) In addition to any other duties provided by the board, the pool manager shall:

(1) receive and pass on applications for insurance coverage from the pool;

(2) negotiate contracts for the pool; and

(3) prepare, and submit to the board for approval, proposed policy forms for coverage from the pool.

(c) The pool manager may refuse to renew the coverage of a public entity insured by the pool based on the guidelines included in the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.204. PERSONNEL. (a) The pool manager shall employ or contract with persons necessary to assist the board and the pool manager in implementing the powers and duties of the pool.

(b) The board must approve:

(1) the compensation paid to a pool employee; and

(2) a contract made with a person under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.205. PERFORMANCE BOND AUTHORIZED. The board may

require an employee or a person with whom the pool manager contracts under Section 2208.204 to execute a bond in an amount determined by the board. The bond must be payable to the board and conditioned on the faithful performance of the employee's or other person's duties to the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2208.204 is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a public entity covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.207. OFFICE; RECORDS. (a) The pool shall maintain the pool's principal office in Austin, Texas.

(b) Records, files, and other documents and information relating to the pool must be maintained in the pool's principal office.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. TEXAS PUBLIC ENTITY EXCESS INSURANCE FUND

Sec. 2208.251. FUND CREATION; MANAGEMENT. (a) On creation of the pool, the board shall create the Texas public entity excess insurance fund.

(b) The fund is composed of:

(1) premiums paid by public entities for coverage provided by the pool;

(2) proceeds from bonds and other money received by the pool to cover the expenses of the fund;

(3) investments of the fund and money earned from those investments; and

(4) any other money received by the pool.

(c) The pool manager shall manage the fund under the general supervision of the board. The fund manager, under the general supervision of the board, shall manage and invest the money in the fund in the manner provided by the plan of operation.

(d) Money earned by the investment of money in the fund must be deposited in the fund or reinvested for the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.252. USES OF FUND. (a) Administrative expenses of the pool may be paid from the fund.

(b) Money in the fund may not be used to pay:

(1) punitive damages;

(2) a fine or penalty imposed for a violation of:

(A) a statute;

(B) an administrative rule or regulation; or

(C) an order or ordinance of a public entity; or

(3) a claim under excess insurance coverage until all benefits payable under any other underlying policy or self-insurance covering the claim or judgment are exhausted.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.253. DEPOSITORY. (a) The board may select one or more banks to serve as depository for money in the fund.

(b) A depository bank must execute a bond or provide other security before the pool manager may deposit fund money in the bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation. The bond or other security must be in an amount sufficient to secure the excess amount of the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. POOL COVERAGE

Sec. 2208.301. SCOPE OF COVERAGE. (a) Except as provided by Subsection (b), under the excess insurance coverage, the pool shall pay any portion of a claim against a public entity and the entity's officers and employees that:

(1) exceeds $1 million; and

(2) is finally determined or settled or is included in a final judgment of a court.

(b) The amount paid by the pool under this section may not exceed the amount the board determines is actuarially sound for the pool.

(c) The pool may participate in evaluating or defending a claim made under the insurance coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.302. BASIS OF COVERAGE. The pool may provide excess insurance coverage on a claims-made basis or an occurrence basis.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.303. PUNITIVE DAMAGES NOT COVERED. Excess insurance coverage provided by the pool may not include coverage for punitive damages.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.304. RATES AND LIMITS OF COVERAGE. (a) To ensure that the pool is actuarially sound, the board shall:

(1) set the premium rates charged; and

(2) determine the maximum limits of insurance coverage provided.

(b) The pool manager, for the board's consideration, shall:

(1) collect and compile statistical data relating to the insurance coverage provided by the pool, including relevant loss,

expense, and premium data and other information;

(2) prepare the proposed premium rate schedules for the approval of the board; and

(3) prepare the maximum limits of insurance coverage.

(c) The board shall periodically reexamine the rate schedules and the maximum limits of insurance coverage as conditions change.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.305. USE OF PUBLIC MONEY FOR POOL COVERAGE AUTHORIZED. A public entity may use the entity's money to pay any contributions or premiums required by the pool to purchase excess insurance coverage from the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.306. COVERAGE PERIOD. A public entity that accepts coverage provided by the pool shall maintain that coverage for at least 35 calendar months following the month in which the pool issued the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.307. NONRENEWAL OF COVERAGE. The pool may refuse to renew the insurance coverage of a public entity that fails to comply with the pool's underwriting or risk management guidelines.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.308. SUBSEQUENT COVERAGE. (a) A public entity that voluntarily discontinues insurance coverage provided by the pool may not subsequently obtain coverage from the pool for at least 36 calendar months following the month in which the entity discontinues

the coverage.

(b) A public entity whose insurance coverage is not renewed by the pool is not eligible to subsequently apply for coverage during the 11 calendar months following the month in which the pool gives written notice of nonrenewal.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2208.309. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If money in the fund would be exhausted by the payment of all final and settled claims and final judgments during a fiscal year, the pool shall prorate the amount paid to each person having the claim or judgment.

(b) If the amount paid by the pool is prorated under this section, each person described by Subsection (a) shall receive an amount equal to the percentage that the amount owed to that person by the pool bears to the total amount owed, outstanding, and payable by the pool.

(c) The public entity incurring the original liability shall pay the remaining amount that is due and unpaid to a person who receives a prorated payment under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2209. TEXAS NONPROFIT ORGANIZATIONS LIABILITY POOL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2209.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of the pool.

(2) "Fund" means the Texas nonprofit organizations liability fund.

(3) "Nonprofit organization" means an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being described as an exempt organization by Section 501(c)(3) or (4), Internal Revenue Code of 1986.

(4) "Pool" means the Texas Nonprofit Organizations Liability Pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.002. POOL NOT ENGAGED IN BUSINESS OF INSURANCE. (a) Except as provided by this section and Section 2209.003(b), the pool is not engaged in the business of insurance under this code or other laws of this state, and this code, including Chapter 462, and other insurance laws of this state do not apply to the pool.

(b) The pool is subject to:

(1) this chapter;

(2) the requirements of this code or the commissioner relating to reporting liability claims data; and

(3) the requirements of Chapter 2251 and Article 5.13-2 relating to making, filing, and approving rates.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.003. DEPARTMENT AND COMMISSIONER SUPERVISION. (a) The pool is subject to the department's continuing supervision relating to the pool's solvency.

(b) The commissioner may set certain minimum requirements to ensure the capability of the pool to satisfy the pool's obligations.

(c) The department shall charge the pool reasonable fees for services performed by the department under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. CREATION OF POOL

Sec. 2209.051. CREATION OF POOL. (a) The Texas Nonprofit Organizations Liability Pool is created on the written agreement of the chief executive officers of 15 or more nonprofit organizations.

(b) The pool provides primary and excess liability insurance coverage as provided by this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.052. PARTICIPATION IN POOL. A nonprofit organization is entitled to coverage from the pool if the organization:

(1) submits a complete application;

(2) provides other information required by the pool;

(3) meets the underwriting standards established by the pool; and

(4) pays the premiums required for the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.053. SELECTION OF TEMPORARY BOARD. At the time the chief executive officers of the nonprofit organizations enter into the written agreement under Section 2209.051, the officers shall select nine individuals to:

(1) serve as the temporary board; and

(2) draft the plan of operation for the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. PLAN OF OPERATION

Sec. 2209.101. TIME FOR CREATION OF PLAN OF OPERATION. (a) Not later than the 30th day after the date the temporary board is selected, the temporary board shall meet to prepare a detailed plan of operation for the pool.

(b) The temporary board shall complete and adopt the plan of operation not later than the 90th day after the date the temporary board is selected.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.102. CONTENTS OF PLAN OF OPERATION. (a) Subject to the requirements of this chapter, the plan of operation must include:

(1) the organizational structure of the pool, including:

(A) the method of selecting the board;

(B) the board's method of procedure and operation; and

(C) a summary of the method for managing and operating the pool;

(2) a description of the contributions and other financial arrangements necessary to cover the initial expenses of the pool and estimates, supported by statistical data, of the amounts of those contributions or other financial arrangements;

(3) underwriting standards and procedures for evaluating risks, including a requirement that all participants in the pool receive ongoing training in the methods of controlling liability losses;

(4) procedures for purchasing reinsurance;

(5) methods, procedures, and guidelines for:

(A) establishing premium rates for and maximum limits of excess coverage available from the pool;

(B) negotiating and paying settlements, defending claims, and paying judgments; and

(C) managing and investing the fund;

(6) procedures for processing and paying claims;

(7) methods and procedures for defraying losses and expenses of the pool; and

(8) guidelines for nonrenewal of coverage.

(b) The plan of operation may include any matter relating to the organization and operation of the pool or to the pool's finances.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.103. APPROVAL OF PLAN. (a) On completion of the plan of operation, the temporary board shall submit the plan to the department for examination, suggested changes, and final approval.

(b) The department shall approve the plan of operation only if the department is satisfied that the pool is able and will continue to be able to pay valid claims made against the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. BOARD OF TRUSTEES

Sec. 2209.151. GOVERNANCE OF POOL; BOARD MEMBERSHIP. (a) The pool is governed by a board of trustees composed of nine members selected as provided by the plan of operation.

(b) Not later than the 15th day after the date the department approves the plan of operation, the initial regular board must be selected as provided by the plan of operation. The members of the initial regular board shall take office not later than the 30th day after the date the plan of operation is adopted.

(c) Four board members must be representatives of the public. A public representative may not:

(1) be an officer, director, or employee of an insurer, insurance agency, agent, broker, solicitor, adjuster, or other business entity regulated by the department;

(2) be a person required to register under Chapter 305, Government Code; or

(3) be related to a person described by Subdivision (1) or (2) within the second degree by consanguinity or affinity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.152. TERMS; VACANCY. (a) Board members serve staggered two-year terms. The terms of four members expire in odd-numbered years as provided by the plan of operation.

(b) A vacancy on the board shall be filled as provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.153. PERFORMANCE BOND REQUIRED. (a) Each board member shall execute a bond in the amount required by the plan of operation. The bond must be payable to the pool and conditioned on the faithful performance of the member's duties.

(b) The pool shall pay the cost of the bond executed under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2209.154. COMPENSATION. A board member is not entitled to compensation for the member's service on the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.155. OFFICERS; MEETINGS. (a) The board shall select from the board members a presiding officer, an assistant presiding officer, and a secretary, who serve one-year terms that expire as provided by the plan of operation.

(b) The board shall hold meetings at the call of the presiding officer and at times established by the board's rules.

(c) A majority of the board members constitutes a quorum.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.156. GENERAL POWERS AND DUTIES OF BOARD. (a) In addition to other duties provided by the plan of operation, the board shall:

(1) approve contracts other than insurance contracts issued by the pool to nonprofit organizations;

(2) adopt premium rate schedules and policy forms for the pool; and

(3) receive service of summons on behalf of the pool.

(b) The board may:

(1) adopt necessary rules, including rules to implement this chapter;

(2) delegate specific responsibilities to the pool manager; and

(3) with the department's approval, amend the plan of operation to ensure the orderly management and operation of the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.157. IMMUNITY OF BOARD MEMBERS FROM CERTAIN LIABILITIES. A board member is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a nonprofit organization covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. OPERATION OF POOL

Sec. 2209.201. GENERAL POWERS AND DUTIES OF POOL. (a) The pool shall:

(1) issue primary and excess liability coverage to each nonprofit organization entitled to coverage under this chapter;

(2) collect premiums for coverage issued or renewed by the pool;

(3) process and pay valid claims;

(4) maintain detailed data regarding the pool; and

(5) establish a plan to conduct loss control training or contract with an outside organization or individual to establish ongoing training and facilities inspection programs designed to reduce the potential liability losses of pool participants.

(b) The pool may:

(1) enter into contracts;

(2) purchase reinsurance;

(3) cancel or refuse to renew coverage; and

(4) perform any other act necessary to carry out this chapter, the plan of operation, or a rule adopted by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.202. POOL MANAGER; PERFORMANCE BOND REQUIRED. (a) The board shall appoint a pool manager who serves at the pleasure of the board, and the board shall supervise the pool manager's activities.

(b) The pool manager is entitled to receive compensation as authorized by the board.

(c) The pool manager shall execute a bond in the amount determined by the board. The bond must be payable to the pool and conditioned on the faithful performance of the pool manager's duties.

(d) The pool shall pay the cost of the bond executed under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.203. GENERAL POWERS AND DUTIES OF POOL MANAGER. (a) The pool manager shall manage and conduct the affairs of the pool under the general supervision of the board and shall perform any other duties as directed by the board.

(b) In addition to any other duties provided by the board, the pool manager shall:

(1) receive and pass on applications for liability coverage from the pool;

(2) negotiate contracts for the pool; and

(3) prepare, and submit to the board for approval, proposed policy forms for coverage from the pool.

(c) The pool manager may refuse to renew the coverage of a nonprofit organization insured by the pool based on the guidelines included in the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.204. PERSONNEL. (a) The pool manager shall employ or contract with persons necessary to assist the board and the pool manager in carrying out the powers and duties of the pool.

(b) The board must approve:

(1) the compensation paid to a pool employee; and

(2) a contract made with a person under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.205. PERFORMANCE BOND AUTHORIZED. The board may

require an employee or a person with whom the pool manager contracts under Section 2209.204 to execute a bond in an amount determined by the board. The bond must be payable to the board and conditioned on the faithful performance of the employee's or other person's duties to the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.206. IMMUNITY OF EMPLOYEES AND CONTRACTORS FROM CERTAIN LIABILITIES. An employee or a person with whom the pool manager contracts under Section 2209.204 is not liable:

(1) with respect to a claim or judgment for which coverage is provided by the pool; or

(2) for a claim or judgment against a nonprofit organization covered by the pool.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.207. RECORDS. Records, files, and other documents and information relating to the pool must be maintained in the pool's principal office.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. TEXAS NONPROFIT ORGANIZATIONS LIABILITY FUND

Sec. 2209.251. FUND CREATION; MANAGEMENT. (a) On creation of the pool, the initial regular board shall create the Texas nonprofit organizations liability fund.

(b) The fund is composed of:

(1) premiums paid by nonprofit organizations for coverage provided by the pool;

(2) contributions and other money received by the pool to cover the initial expenses of the fund;

(3) investments of the fund and money earned from those investments; and

(4) any other money received by the pool.

(c) The pool manager shall manage the fund under the general supervision of the board. The fund manager, under the general supervision of the board, shall manage and invest the money in the fund in the manner provided by the plan of operation.

(d) Money earned by the investment of money in the fund must be deposited in the fund or reinvested for the fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.252. CONTRIBUTIONS. The board shall determine the amount of any contributions necessary to meet the initial expenses of the pool. The board shall make this determination based on the data provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.253. USES OF FUND. (a) Administrative expenses of the pool may be paid from the fund. Payments for administrative expenses during a fiscal year of the pool may not exceed 10 percent of the total amount of the money in the fund during that fiscal year.

(b) Money in the fund may not be used to pay:

(1) punitive damages; or

(2) a fine or penalty imposed for a violation of:

(A) a statute;

(B) an administrative rule of a state agency; or

(C) an ordinance or order of a local government.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.254. DEPOSITORY BANK. (a) The board may select one or more banks to serve as a depository for money in the fund.

(b) A depository bank must execute a bond or provide other security before the pool manager may deposit fund money in the bank in an amount that exceeds the maximum amount secured by the Federal

Deposit Insurance Corporation. The bond or other security must be in an amount sufficient to secure the excess amount of the deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER G. POOL COVERAGE

Sec. 2209.301. SCOPE OF COVERAGE. (a) The pool shall insure a nonprofit organization and the organization's officers and employees against liability for acts and omissions under the laws of this state.

(b) The pool shall provide to a nonprofit organization that qualifies under this chapter and the plan of operation:

(1) primary liability insurance coverage in an amount not to exceed $250,000; and

(2) excess liability insurance coverage in an amount that the board finds is actuarially sound.

(c) The pool may participate in evaluating, settling, and defending a claim against a nonprofit organization insured by the pool if the claim is covered by pool coverage.

(d) The pool is liable in an amount not to exceed the limit of coverage provided to a nonprofit organization on a claim made against the organization.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.302. COVERAGE ON CLAIMS-MADE BASIS. The pool may provide liability insurance coverage on a claims-made basis on forms approved by the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.303. PUNITIVE DAMAGES NOT COVERED. Liability insurance coverage provided by the pool may not include coverage for punitive damages.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.304. RATES AND LIMITS OF COVERAGE. (a) To ensure that the pool is actuarially sound, the board shall:

(1) set the premium rates charged; and

(2) determine the maximum limits of coverage provided.

(b) The pool manager, for the board's consideration, shall:

(1) collect and compile statistical data relating to the liability insurance coverage provided by the pool, including relevant loss, expense, and premium data, and other information;

(2) prepare the proposed premium rate schedules for the approval of the board; and

(3) prepare the maximum limits of coverage.

(c) The board shall periodically reexamine the rate schedules and the maximum limits of coverage as conditions change.

(d) The pool manager shall make available to the public the information described by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.305. COVERAGE PERIOD. A nonprofit organization that accepts coverage provided by the pool shall maintain that coverage for at least 24 calendar months following the month in which the pool issued the coverage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.306. NONRENEWAL OF COVERAGE. (a) Except as provided by Subsection (b), the pool may refuse to renew the coverage of a nonprofit organization that fails to comply with the pool's underwriting standards.

(b) The pool may not refuse to renew the coverage of a nonprofit organization during the first 24 calendar months following the month in which the nonprofit organization is first provided coverage by the pool if the organization maintains the underwriting

standards established by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.307. SUBSEQUENT COVERAGE. (a) A nonprofit organization that voluntarily discontinues coverage provided by the pool may not subsequently obtain coverage from the pool for at least 12 calendar months following the month in which the organization discontinues the coverage.

(b) A nonprofit organization whose coverage is not renewed under Section 2209.306 is not eligible to subsequently apply for coverage during the 12 calendar months following the month in which the pool gives written notice of nonrenewal.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2209.308. PAYMENT OF CLAIMS AND JUDGMENTS. (a) If money in the fund would be exhausted by the payment of all final and settled claims and final judgments during a fiscal year, the pool shall prorate the amount paid to each person having the claim or judgment.

(b) If the amount paid by the pool is prorated under this section, each person described by Subsection (a) shall receive an amount equal to the percentage that the amount owed to that person by the pool bears to the total amount owed, outstanding, and payable by the pool.

(c) The pool shall pay in the next fiscal year the remaining amount that is due and unpaid to a person who receives a prorated payment under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2210. TEXAS WINDSTORM INSURANCE ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2210.001. PURPOSE. The primary purpose of the Texas

Windstorm Insurance Association is the provision of an adequate market for windstorm and hail insurance in the seacoast territory of this state. The legislature finds that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance, the orderly growth and development of this state would be severely impeded. This chapter provides a method by which adequate windstorm and hail insurance may be obtained in certain designated portions of the seacoast territory of this state. The association is intended to serve as a residual insurer of last resort for windstorm and hail insurance in the seacoast territory. The association shall:

(1) function in such a manner as to not be a direct competitor in the private market; and

(2) provide windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 5, eff. June 19, 2009.

Sec. 2210.002. SHORT TITLE; SUNSET PROVISION. (a) This chapter may be cited as the Texas Windstorm Insurance Association Act.

(b) The association is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The association shall be reviewed during the period in which state agencies abolished in 2031 are reviewed. The association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs. This subsection expires September 1, 2031.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 6, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.04, eff. June 17, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 3, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.06, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 1, eff. September 1, 2019.

Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or before December 31 of each even-numbered year, the board of directors shall submit to the commissioner, the appropriate committees of each house of the legislature, and the Sunset Advisory Commission a written report relating to the operations of the association during the preceding biennium. The report must include:

(1) any proposed changes in the laws relating to regulation of the association and a statement of the reasons for the changes; and

(2) any information regarding association operations or procedures that is requested by the department to be addressed in the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 7, eff. June 19, 2009.

Sec. 2210.003. GENERAL DEFINITIONS. In this chapter, unless the context clearly indicates otherwise:

(1) "Administrator" means an entity contractually retained to manage the association and administer the plan of operation under Section 2210.062.

(1-a) "Association" means the Texas Windstorm Insurance Association.

(2) "Board of directors" means the board of directors of the association.

(3) "Catastrophe area" means a municipality, a part of a municipality, a county, or a part of a county designated by the

commissioner under Section 2210.005.

(3-a) "Catastrophe reserve trust fund" means the trust fund established under Subchapter J.

(3-b) "Catastrophe year" means a calendar year in which an occurrence or a series of occurrences results in insured losses, regardless of when the insured losses are ultimately paid.

(4) "First tier coastal county" means:

(A) Aransas County;

(B) Brazoria County;

(C) Calhoun County;

(D) Cameron County;

(E) Chambers County;

(F) Galveston County;

(G) Jefferson County;

(H) Kenedy County;

(I) Kleberg County;

(J) Matagorda County;

(K) Nueces County;

(L) Refugio County;

(M) San Patricio County; or

(N) Willacy County.

(5) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1408, Sec. 44(1), eff. June 19, 2009.

(6) "Insurance" means Texas windstorm and hail insurance.

(7) "Net direct premium" means gross direct written premium less return premium on each canceled contract, regardless of assumed or ceded reinsurance, that is written on property in this state, as defined by the board of directors.

(8) "New building code" means a building standard, specification, or guideline adopted by the commissioner after May 1, 1997, that must be satisfied before new residential construction qualifies for a certificate of compliance that constitutes evidence of insurability of the structure by the association.

(9) "Plan of operation" means the plan adopted under this chapter for the operation of the association.

(10) "Seacoast territory" means the territory of this state composed of the first tier coastal counties and the second tier coastal counties.

(11) "Second tier coastal county" means:

(A) Bee County;

(B) Brooks County;
(C) Fort Bend County;
(D) Goliad County;
(E) Hardin County;
(F) Harris County;
(G) Hidalgo County;
(H) Jackson County;
(I) Jim Wells County;
(J) Liberty County;
(K) Live Oak County;
(L) Orange County;
(M) Victoria County; or
(N) Wharton County.

(12) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1408, Sec. 44(1), eff. June 19, 2009.

(13) "Texas windstorm and hail insurance" means deductible insurance against:

(A) direct loss to insurable property incurred as a result of windstorm or hail, as those terms are defined and limited in policies and forms approved by the department; and

(B) indirect losses resulting from the direct loss.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 8, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 44(1), eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 4, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 1, eff. September 1, 2015.

Sec. 2210.004. DEFINITION OF INSURABLE PROPERTY. (a) Except as provided by Subsection (h), for purposes of this chapter and subject to this section, "insurable property" means immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in

the plan of operation, that is determined by the association according to the criteria specified in the plan of operation to be in an insurable condition against windstorm and hail, as determined by normal underwriting standards. The term includes property described by Section 2210.209.

(b) A structure located in a catastrophe area, construction of which began on or after the 30th day after the date of publication of the plan of operation, that is not built in compliance with building specifications set forth in the plan of operation or continued in compliance with those specifications, does not constitute an insurable risk for purposes of windstorm and hail insurance except as otherwise provided by this chapter.

(c) A structure, or an addition to a structure, that is constructed in conformity with plans and specifications that comply with the specifications set forth in the plan of operation at the time construction begins may not be declared ineligible for windstorm and hail insurance as a result of subsequent changes in the building specifications set forth in the plan of operation.

(d) Except as otherwise provided by this section, if repair of damage to a structure involves replacement of items covered in the building specifications set forth in the plan of operation, the repairs must be completed in a manner that complies with those specifications for the structure to continue to be insurable property for windstorm and hail insurance.

(e) If repair to a structure, other than a roof repair that exceeds 100 square feet, is less than five percent of the total amount of property coverage on the structure, the repairs may be completed in a manner that returns the structure to the structure's condition immediately before the loss without affecting the eligibility of the structure to qualify as insurable property.

(f) This chapter does not preclude special rating of individual risks as may be provided in the plan of operation.

(g) For purposes of this chapter, a residential structure is insurable property if:

(1) the residential structure is not:

(A) a condominium, apartment, duplex, or other multifamily residence; or

(B) a hotel or resort facility;

(2) the residential structure is located within an area designated as a unit under the Coastal Barrier Resources Act (Pub. L.

No. 97-348); and

(3) a building permit or plat for the residential structure was filed with the municipality, the county, or the United States Army Corps of Engineers before June 11, 2003.

(h) For purposes of this chapter, a structure is not insurable property if the commissioner of the General Land Office notifies the association of a determination that the structure is located on the public beach under procedures established under Section 61.011, Natural Resources Code, and that the structure:

(1) constitutes an imminent hazard to safety, health, or public welfare; or

(2) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.061(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.061(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 9, eff. June 19, 2009.

Sec. 2210.005. DESIGNATION AS CATASTROPHE AREA; REVOCATION OF DESIGNATION. (a) After at least 10 days' notice and a hearing, the commissioner may designate an area of the seacoast territory of this state as a catastrophe area if the commissioner determines, unless such a determination results in an adverse impact to the exposure of the association, that windstorm and hail insurance is not reasonably available to a substantial number of the owners of insurable property located in that territory because the territory is subject to unusually frequent and severe damage resulting from windstorms or hailstorms.

(b) The commissioner shall revoke a designation made under Subsection (a) if the commissioner determines, after at least 10

days' notice and a hearing, that the applicable insurance coverage is no longer reasonably unavailable to a substantial number of owners of insurable property within the designated territory.

(c) If the association determines that windstorm and hail insurance is no longer reasonably unavailable to a substantial number of owners of insurable property in a territory designated as a catastrophe area, the association may request in writing that the commissioner revoke the designation. After at least 10 days' notice and a hearing, but not later than the 30th day after the date of the hearing, the commissioner shall:

(1) approve the request and revoke the designation; or

(2) reject the request.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 10, eff. June 19, 2009.

Sec. 2210.006. APPLICABILITY OF CHAPTER TO CERTAIN INSURERS. (a) Except as provided by Subsection (b), this chapter applies to each insurer authorized to engage in the business of property insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(b) This chapter does not apply to:

(1) a farm mutual insurance company operating under Chapter 911, unless the company is acting as a fronting insurer, as defined by Section 221.001(c);

(2) a nonaffiliated county mutual fire insurance company described by Section 912.310 that is writing exclusively industrial fire insurance policies as described by Section 912.310(a)(2); or

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by Section 18, Chapter 40, Acts of the 41st Legislature, 1st Called Session, 1929, as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, that retains the rights and privileges under the repealed law to the extent provided by those sections.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.063(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.063(a), eff. September 1, 2007.
Acts 2017, 85th Leg., R.S., Ch. 1083 (H.B. 3496), Sec. 4, eff. September 1, 2017.

Sec. 2210.007. IMMUNITY FROM LIABILITY IN GENERAL. (a) This section applies to:

(1) the association and a director, agent, or association staff;

(2) the commissioner, the department, and department staff; and

(3) a participating insurer and the insurer's agents and staff.

(b) A person described by Subsection (a) is not liable, and a cause of action does not arise against the person, for:

(1) an inspection made under the plan of operation; or

(2) any statement made in good faith by the person:

(A) in a report or communication concerning risks submitted to the association; or

(B) at any administrative hearing conducted under this chapter in connection with the inspection or statement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.008. DEPARTMENT ORDERS; GENERAL RULEMAKING AUTHORITY. (a) The commissioner may issue any orders that the commissioner considers necessary to implement this chapter.

(b) The commissioner may adopt rules in the manner prescribed by Subchapter A, Chapter 36, as reasonable and necessary to implement this chapter.

(c) In rules adopted under this chapter, the commissioner shall define the meaning of "alter" and "alteration" for purposes of this

chapter, specifically as used in Subchapters E and F.

(d) The association may propose a rule for adoption by the commissioner. Except as provided by this section, the association's proposal is governed by Subchapter B, Chapter 2001, Government Code. The association is an interested person under that subchapter for purposes of a proceeding initiated under this section.

(e) Notwithstanding Section 2001.021(c), Government Code, not later than the 30th day after the date the commissioner receives a proposed rule from the association, the commissioner shall initiate a rulemaking proceeding under Subchapter B, Chapter 2001, Government Code.

(f) The association may request a public hearing under Section 2001.029, Government Code, in connection with a rule proposed under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 11, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 2, eff. September 1, 2019.

Sec. 2210.0081. CERTAIN ACTIONS BROUGHT AGAINST ASSOCIATION BY COMMISSIONER. In an action brought by the commissioner against the association under Chapter 441:

(1) the association's inability to satisfy obligations under Subchapter M related to the issuance of public securities under this chapter constitutes a condition that makes the association's continuation in business hazardous to the public or to the association's policyholders for the purposes of Section 441.052;

(2) the time for the association to comply with the requirements of supervision or for the conservator to complete the conservator's duties, as applicable, is limited to three years from the date the commissioner commences the action against the association; and

(3) unless the commissioner takes further action against the association under Chapter 441, as a condition of release from supervision, the association must demonstrate to the satisfaction of

the commissioner that the association is able to satisfy obligations under Subchapter M related to the issuance of public securities under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.009. LIST OF PRIVATE INSURERS; INCENTIVE PLAN. (a) The department shall maintain a list of all insurers that engage in the business of property and casualty insurance in the voluntary market in the seacoast territory.

(b) The department shall develop incentive programs in the manner described by Section 2210.053(b) to encourage authorized insurers to write insurance on a voluntary basis and to minimize the use of the association as a means to obtain insurance.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 12, eff. June 19, 2009.

Sec. 2210.010. CERTAIN CONDUCT IN DISPUTE RESOLUTION PROHIBITED. (a) For purposes of this section, "presiding officer" includes a judge, mediator, arbitrator, appraiser, or panel member.

(b) If a person insured under this chapter is assigned to act as presiding officer to preside over or resolve a dispute involving the association and another person insured under this chapter, the presiding officer shall, not later than the seventh day after the date of assignment, give written notice to the association and to each other party to the dispute, or the association's or other party's attorney, that the presiding officer is insured under this chapter.

(c) In a proceeding with respect to which the commissioner has authority to designate the presiding officer, the association or other party that receives notice under Subsection (b) may file with the commissioner a written objection to the assignment of the presiding officer to the dispute. The written objection must contain the factual basis on which the association or other party objects to the assignment.

(d) The commissioner shall assign a different presiding officer to the dispute if, after reviewing the objection filed under

Subsection (c), the commissioner determines that the presiding officer originally assigned to the dispute has a direct financial or personal interest in the outcome of the dispute.

(e) The association or another party must file an objection under Subsection (c) not later than the earlier of:

(1) the seventh day after the date the association or other party receives actual notice that the presiding officer is insured under this chapter; or

(2) the seventh day before the date of the first proceeding concerning the dispute.

(f) The commissioner may, on a showing of good cause, extend the deadline to file an objection under Subsection (e).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.012. STANDARDS OF CONDUCT: BOARD OF DIRECTORS AND EMPLOYEES; REPORT OF CERTAIN FRAUDULENT CONDUCT. (a) A member of the board of directors or an employee of the association may not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the member or employee in the discharge of duties related to the operation or business of the association or that the member or employee knows or should know is being offered with the intent to influence the member's or employee's conduct related to the operation or business of the association;

(2) accept other employment or engage in a business or professional activity that the member or employee might reasonably expect would require or induce the member or employee to disclose confidential information acquired by reason of the member's or employee's position with the association;

(3) accept other employment or compensation that could reasonably be expected to impair the member's or employee's independence of judgment in the performance of the member's or employee's duties related to the operation or business of the association;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the member's or employee's private interest and the interest of the association; or

(5) intentionally or knowingly solicit, accept, or agree to

accept any benefit for having exercised the member's or employee's powers related to the operation or business of the association or having performed, in favor of another, the member's or employee's duties related to the operation or business of the association.

(b) An association employee who violates Subsection (a) or a code of conduct established under Section 2210.107(a)(4) is subject to an employment-related sanction, including termination of the employee's employment with the association.

(c) A member of the board of directors or an association employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(d) A board member or employee of the association who reasonably suspects that a fraudulent insurance act has been or is about to be committed by any board member or employee of the association shall, not later than the 30th day after discovering the conduct, report the conduct and identity of the person engaging in the conduct to the department and may report the conduct and the identity of the person engaging in the conduct to another authorized governmental agency. The department shall forward a report received under this subsection to the authorized governmental agency in accordance with Chapter 701.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.013. CERTAIN EMPLOYMENT AND CONTRACTS PROHIBITED. A member of the board of directors or an employee of the association may not appoint or employ, or contract with, the following individuals for the provision of goods or services in connection with the operation or business of the association, if the individual to be appointed or employed, or with whom a contract is to be entered into, is to be directly or indirectly compensated from funds of the association:

(1) an individual related to the member or employee within a degree of relationship described by Section 573.002, Government Code; or

(2) an individual related to any member of the board of directors or employee of the association within a degree of

relationship described by Section 573.002, Government Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.

Sec. 2210.014. APPLICABILITY OF CERTAIN OTHER LAW. (a) A person may not bring a private action against the association, including a claim against an agent or representative of the association, under Chapter 541 or 542. Notwithstanding any other provision of this code or this chapter, a class action under Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil Procedure, may only be brought against the association by the attorney general at the request of the department.

(b) Chapter 542 does not apply to the association or to an agent or representative of the association.

(c) An administrator contracted under Section 2210.062, if applicable, is an agent of the association for purposes of managing the association and administering the plan of operation under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 5, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 2, eff. September 1, 2015.

Sec. 2210.015. STUDY OF MARKET INCENTIVES; BIENNIAL REPORTING. (a) Each biennium, the department shall conduct a study of market incentives to promote participation in the voluntary windstorm and hail insurance market in the seacoast territory of this state. The study must address as possible incentives the mandatory or voluntary issuance of windstorm and hail insurance in conjunction with the issuance of a homeowners policy in the seacoast territory.

(b) The department shall include the results of the study conducted under this section in the report submitted under Section 32.022.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 3, eff. September 1, 2015.

Sec. 2210.016. AGENT REQUIREMENTS. (a) The association may establish requirements that an agent must comply with to offer or sell a Texas windstorm and hail insurance policy under this chapter.

(b) The association may audit an agent who offers or sells Texas windstorm and hail insurance policies under this chapter to determine the agent's compliance with requirements established under Subsection (a). If the association finds that an agent is not in compliance with association requirements, the association may take appropriate action to limit or prohibit the agent from offering or selling a Texas windstorm and hail insurance policy under this chapter until the agent complies with those requirements.

(c) An agent who offers or sells Texas windstorm and hail insurance policies under this chapter is not an agent of the association.

Added by Acts 2023, 88th Leg., R.S., Ch. 39 (S.B. 2232), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. ADMINISTRATION OF ASSOCIATION

Sec. 2210.051. COMPOSITION OF ASSOCIATION; REQUIRED MEMBERSHIP. (a) The association is composed of all property insurers authorized to engage in the business of property insurance in this state, other than insurers prevented by law from writing on a statewide basis coverages available through the association.

(b) As a condition of the insurer's authority to engage in the business of insurance in this state, each insurer subject to Subsection (a) must be a member of the association and must remain a member for the duration of the association's existence. An insurer that ceases to be a member of the association remains liable on insurance contracts entered into during the insurer's membership in the association to the same extent and effect as if the insurer's membership in the association had not been terminated.

(c) An insurer that becomes authorized to write and is engaged in writing insurance that requires the insurer to be a member of the association shall become a member of the association on the January 1 following the effective date of that authorization. The determination of the insurer's participation in the association is

made as of the date of the insurer's membership in the manner used to determine participation for all other members of the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.052. MEMBER PARTICIPATION IN ASSOCIATION. (a) Each member of the association shall participate in insured losses and operating expenses of the association, in excess of premium and other revenue of the association, in the proportion that the net direct premiums of that member during the preceding calendar year bears to the aggregate net direct premiums by all members of the association, as determined using the information provided under Subsection (b).

(b) The department shall review annual statements, other reports, and other statistics that the department considers necessary to obtain the information required under Subsection (a) and shall provide that information to the association. The department is entitled to obtain the annual statements, other reports, and other statistics from any member of the association.

(c) Each member's participation in the association shall be determined annually in the manner provided by the plan of operation. For purposes of determining participation in the association, two or more members that are subject to common ownership or that operate in this state under common management or control shall be treated as a single member. The determination shall also include the net direct premiums of an affiliate that is under that common management or control, including an affiliate that is not authorized to engage in the business of property insurance in this state.

(d) Notwithstanding Subsection (a), a member, in accordance with the plan of operation, is entitled to receive credit for similar insurance voluntarily written in areas designated by the commissioner. The member's participation in the insured losses and operating expenses of the association in excess of premium and other revenue of the association shall be reduced in accordance with the plan of operation.

(e) Notwithstanding Subsections (a)-(d), an insurer that becomes a member of the association and that has not previously been a member of the association is not subject to participation in any insured losses and operating expenses of the association in excess of

premium and other revenue of the association until the second anniversary of the date on which the insurer first becomes a member of the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 13, eff. June 19, 2009.

Sec. 2210.053. OPERATION OF ASSOCIATION. (a) In accordance with this chapter and the plan of operation, and with respect to insurance on insurable property, the association, on behalf of the association's members, may:

(1) cause issuance of insurance policies to applicants for insurance coverage;

(2) assume reinsurance from the members;

(3) cede reinsurance to the members; and

(4) purchase reinsurance on behalf of the members.

(b) The department may develop programs to improve the efficient operation of the association, including a program for approving policy forms under Section 2301.010 and a program designed to create incentives for insurers to write windstorm and hail insurance voluntarily to cover property located in a catastrophe area, especially property located on the barrier islands of this state.

(c) The association may not be considered a debtor authorized to file a petition or seek relief in bankruptcy under Title 11, United States Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 6, eff. September 28, 2011.

Sec. 2210.054. ANNUAL STATEMENT. (a) The association shall file annually with the department and the state auditor's office a statement covering periods designated by the department that

summarizes the transactions, conditions, operations, and affairs of the association during the preceding year.

(b) The statement must:

(1) be filed at times designated by the department;

(2) contain the information prescribed by the department; and

(3) be in the form prescribed by the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 7, eff. September 28, 2011.

Sec. 2210.055. LEGAL COUNSEL. (a) The association shall establish a plan in the plan of operation under which the association's legal representation before the department and the legislature is without conflict of interest or the appearance of a conflict of interest as defined by the Texas Disciplinary Rules of Professional Conduct.

(b) The association shall adopt separate and distinct procedures for legal counsel in disputes involving policyholder claims against the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.056. USE OF ASSOCIATION ASSETS. (a) The association's net earnings may not inure, in whole or in part, to the benefit of a private shareholder or individual.

(b) The association's assets may not be used for or diverted to any purpose other than to:

(1) satisfy, in whole or in part, the liability of the association on claims made on policies written by the association;

(2) make investments authorized under applicable law;

(3) pay reasonable and necessary administrative expenses incurred in connection with the operation of the association and the processing of claims against the association;

(4) satisfy, in whole or in part, the obligations of the

association incurred in connection with Subchapters B-1, J, and M, including reinsurance, public securities, and financial instruments; or

(5) make remittance under the laws of this state to be used by this state to:

(A) pay claims made on policies written by the association;

(B) purchase reinsurance covering losses under those policies; or

(C) prepare for or mitigate the effects of catastrophic natural events.

(c) On dissolution of the association, all assets of the association, other than assets pledged for the repayment of public securities issued under this chapter, revert to this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 14, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 8, eff. September 28, 2011.

Sec. 2210.057. EXAMINATION OF ASSOCIATION. (a) The association is subject to Sections 401.051, 401.052, 401.054-401.062, 401.151, 401.152, 401.155, and 401.156 and Subchapter A, Chapter 86.

(b) A final examination report of the association resulting from an examination as provided by this section is a public record and is available to the public at the offices of the department in accordance with Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.058. AUDIT OF ASSOCIATION. (a) The association is subject to audit by the state auditor and shall pay the costs incurred by the state auditor in performing an audit under this section.

(b) The association shall pay the costs described by Subsection

(a) promptly after receipt of a statement from the state auditor's office regarding the amount of those costs.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 9, eff. September 28, 2011.

Sec. 2210.059. CLAIMS PRACTICES AUDIT. (a) The commissioner, in the manner and at the time the commissioner determines to be necessary, shall conduct a random audit of claim files concerning claims the bases of which are damage to insured property caused by a particular storm to:

(1) determine whether the association is adequately and properly documenting claims decisions in each claim file; and

(2) ensure that each claim is being handled appropriately, including being handled in accordance with the terms of the policy under which the claim is filed.

(b) The department shall conduct an audit required under this section as soon as possible to ensure the quality of the process with which the association is handling claims described by Subsection (a).

(c) If, following an audit conducted under this section, the commissioner determines that the association is not adequately and properly documenting claims decisions or that claims described by Subsection (a) are not otherwise being handled appropriately, the commissioner shall:

(1) notify the board of directors of that determination; and

(2) identify the manner in which the association should correct any deficiencies identified by the commissioner and issue an order to that effect.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 9, eff. September 28, 2011.

Sec. 2210.060. INDEMNIFICATION BY ASSOCIATION. (a) Except as provided by Subsection (b), the association shall indemnify each director, officer, and employee of the association and each member of the association against all costs and expenses actually and necessarily incurred by the person or entity in connection with the defense of an action or proceeding in which the person or entity is

made a party because of the person's status as a director, officer, or employee of the association or the member's status as a member of the association.

(b) Subsection (a) does not apply to a matter in which the person or entity is determined in the action or proceeding to be liable because of misconduct in the performance of duties as a director, officer, or employee of the association or a member of the association.

(c) Subsection (a) does not authorize the association to indemnify a member of the association for participating in the assessments made by the association in the manner provided by this chapter.

(d) Indemnification under this section is not exclusive of other rights to which the member or officer may be entitled as a matter of law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 15, eff. June 19, 2009.

Sec. 2210.061. CONTRACTORS AND MANAGERIAL EMPLOYEES: COMPENSATION AND BONUSES. The association shall post on the association's Internet website any compensation, monetary or otherwise, and any bonus that, when aggregated, exceed $100,000 in a calendar year and that are paid or given by the association to:

(1) a vendor or independent contractor with whom the association has a contract; or

(2) an association employee.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 9, eff. September 28, 2011.

Sec. 2210.062. ADMINISTRATION BY CONTRACTED ADMINISTRATOR AUTHORIZED. (a) Notwithstanding any other law, if determined by the commissioner to be in the best interest of the policyholders and the public, the commissioner may contract with an administrator to manage the association and administer the plan of operation.

(b) The commissioner shall adopt rules as necessary to implement this section if the commissioner determines management of the association and administration of the plan of operation by an administrator is in the best interest of the policyholders and the public.

(c) The administrator must hold either a managing general agent license issued under Chapter 4053 or a third-party administrator certificate of authority issued under Chapter 4151.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 4, eff. September 1, 2015.

SUBCHAPTER B-1. PAYMENT OF LOSSES

Sec. 2210.071. PAYMENT OF EXCESS LOSSES. (a) If, in a catastrophe year, an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses shall be paid as provided by this subchapter.

(b) The association may not pay insured losses and operating expenses resulting from an occurrence or series of occurrences in a catastrophe year with premium and other revenue earned in a subsequent year.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 10, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 1, eff. June 10, 2019.

Sec. 2210.0715. PAYMENT FROM RESERVES AND TRUST FUND. (a) The association shall pay losses resulting from an occurrence or series of occurrences in a catastrophe year in excess of premium and other revenue of the association for that catastrophe year from reserves of the association available before or accrued during that catastrophe

year and amounts in the catastrophe reserve trust fund available before or accrued during that catastrophe year.

(b) Proceeds of public securities issued or assessments made before or as a result of any occurrence or series of occurrences in a catastrophe year that results in insured losses may not be included in reserves available for a subsequent catastrophe year for purposes of this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 5, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 2, eff. June 10, 2019.

Sec. 2210.072. PAYMENT FROM CLASS 1 PUBLIC SECURITIES; FINANCIAL INSTRUMENTS. (a) Losses not paid under Section 2210.0715 shall be paid as provided by this section from the proceeds from Class 1 public securities issued in accordance with Subchapter M before, on, or after the date of any occurrence or series of occurrences that results in insured losses. Public securities described by this section must be paid within a period not to exceed 14 years, and may be paid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a) that are issued before an occurrence or series of occurrences that results in incurred losses:

(1) may be issued on the request of the board of directors with the approval of the commissioner; and

(2) may not, in the aggregate, exceed $500 million at any one time, regardless of the calendar year or years in which the outstanding public securities were issued.

(b-1) Public securities described by Subsection (a):

(1) shall be issued as necessary in a principal amount not to exceed $500 million per catastrophe year, in the aggregate, for securities issued during that catastrophe year before the occurrence or series of occurrences that results in incurred losses in that year and securities issued on or after the date of that occurrence or series of occurrences, and regardless of whether for a single occurrence or a series of occurrences; and

(2) subject to the maximum described by Subdivision (1), may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(c) If public securities are issued as described by this section, the public securities shall be repaid in the manner prescribed by Subchapter M.

(d) The association may borrow from, or enter into other financing arrangements with, any market source, under which the market source makes interest-bearing loans or other financial instruments to the association to enable the association to pay losses under this section or to obtain public securities under this section. For purposes of this subsection, financial instruments includes commercial paper.

(e) The proceeds of any outstanding public securities described by Subsection (a) that are issued before an occurrence or series of occurrences, together with the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, shall be depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used. This subsection does not prohibit the association from issuing securities after an occurrence or series of occurrences before the proceeds of outstanding public securities issued during a previous catastrophe year have been depleted.

(f) If, under Subsection (e), the proceeds of any outstanding public securities issued during a previous catastrophe year, together with the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, must be depleted, those proceeds shall count against the limit on public securities described by this section in the catastrophe year in which the proceeds must be depleted.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 11, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 6, eff. September 1, 2015.

Sec. 2210.0725. PAYMENT FROM CLASS 1 ASSESSMENTS. (a) Losses in a catastrophe year not paid under Sections 2210.0715 and 2210.072 shall be paid as provided by this section from Class 1 member assessments not to exceed $500 million for that catastrophe year.

(b) The association, with the approval of the commissioner, shall notify each member of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge or tax credit.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 7, eff. September 1, 2015.

Sec. 2210.073. PAYMENT FROM CLASS 2 PUBLIC SECURITIES. (a) Losses not paid under Sections 2210.0715, 2210.072, and 2210.0725 shall be paid as provided by this section from the proceeds from Class 2 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence or series of occurrences that results in insured losses. Public securities issued under this section must be paid within a period not to exceed 10 years and may be paid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a):

(1) shall be issued as necessary in a principal amount not to exceed $250 million per catastrophe year, in the aggregate, whether for a single occurrence or a series of occurrences; and

(2) subject to the maximum described by Subdivision (1), may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(c) If the losses are paid with public securities described by this section, the public securities shall be paid in the manner prescribed by Subchapter M.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 12, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 8, eff. September 1, 2015.

Sec. 2210.074. PAYMENT THROUGH CLASS 2 ASSESSMENTS. (a) Losses in a catastrophe year not paid under Sections 2210.0715, 2210.072, 2210.0725, and 2210.073 shall be paid as provided by this section from Class 2 member assessments not to exceed $250 million for that catastrophe year.

(b) The association, with the approval of the commissioner, shall notify each member of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge or tax credit.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 13, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 9, eff. September 1, 2015.

Sec. 2210.0741. PAYMENT THROUGH CLASS 3 PUBLIC SECURITIES. (a) Losses not paid under Sections 2210.0715, 2210.072, 2210.0725, 2210.073, and 2210.074 shall be paid as provided by this section from the proceeds from Class 3 public securities authorized to be issued in accordance with Subchapter M on or after the date of any occurrence or series of occurrences that results in insured losses. Public securities issued under this section must be paid within a period not to exceed 10 years, and may be paid sooner if the board of directors elects to do so and the commissioner approves.

(b) Public securities described by Subsection (a):

(1) shall be issued as necessary in a principal amount not to exceed $250 million per catastrophe year, in the aggregate, whether for a single occurrence or a series of occurrences; and

(2) subject to the maximum described by Subdivision (1), may be issued, in one or more issuances or tranches, during the calendar year in which the occurrence or series of occurrences occurs or, if the public securities cannot reasonably be issued in that year, during the following calendar year.

(c) If the losses are paid with public securities described by this section, the public securities shall be paid in the manner prescribed by Subchapter M.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 10, eff. September 1, 2015.

Sec. 2210.0742. PAYMENT FROM CLASS 3 ASSESSMENTS. (a) Losses in a catastrophe year not paid under Sections 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, and 2210.0741 shall be paid as provided by this section from Class 3 member assessments not to exceed $250 million for that catastrophe year.

(b) The association, with the approval of the commissioner, shall notify each member of the amount of the member's assessment under this section. The proportion of the losses allocable to each insurer under this section shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(c) A member of the association may not recoup an assessment paid under this section through a premium surcharge or tax credit.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 10, eff. September 1, 2015.

Sec. 2210.075. REINSURANCE. (a) Before any occurrence or series of occurrences, an insurer may elect to purchase reinsurance to cover an assessment for which the insurer would otherwise be liable under this subchapter.

(b) An insurer must notify the board of directors, in the manner prescribed by the association whether the insurer will be purchasing reinsurance. If the insurer does not elect to purchase

reinsurance under this section, the insurer remains liable for any assessment imposed under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 16, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 14, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 11, eff. September 1, 2015.

SUBCHAPTER C. ASSOCIATION BOARD OF DIRECTORS; GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS

Sec. 2210.101. ACCOUNTABLE TO COMMISSIONER. The board of directors is responsible and accountable to the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.102. COMPOSITION. (a) The board of directors is composed of nine members appointed by the commissioner in accordance with this section.

(b) Three members must be representatives of the insurance industry who actively write and renew windstorm and hail insurance in the first tier coastal counties.

(c) Three members must, as of the date of the appointment, reside in the first tier coastal counties. Each of the following regions must be represented by a member residing in the region and appointed under this subsection:

(1) the region consisting of Cameron, Kenedy, Kleberg, and Willacy Counties;

(2) the region consisting of Aransas, Calhoun, Nueces, Refugio, and San Patricio Counties; and

(3) the region consisting of Brazoria, Chambers, Galveston, Jefferson, and Matagorda Counties and any part of Harris County designated as a catastrophe area under Section 2210.005.

(c-1) One of the members appointed under Subsection (c) must be a property and casualty agent who is licensed under this code and is not a captive agent.

(d) Three members must reside in an area of this state that is located more than 100 miles from the Texas coastline.

(e) All members must have demonstrated experience in insurance, general business, or actuarial principles and the member's area of expertise, if any, sufficient to make the success of the association probable.

(f) Repealed by Acts 2023, 88th Leg., R.S., Ch. 530 (H.B. 3311), Sec. 1, eff. September 1, 2023.

(g) Members appointed to the board of directors under Subsections (c) and (d), other than the member appointed under Subsection (c-1), must represent the general public in the regions described by those subsections. A person may not be appointed to represent the general public under Subsection (c) or (d) if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization:

(A) operating in the property and casualty insurance industry in this state;

(B) receiving money from the association, other than insurance claim payments; or

(C) receiving money from association policyholders with respect to the policyholders' claims;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization:

(A) operating in the property and casualty insurance industry in this state;

(B) receiving money from the association, other than insurance claim payments; or

(C) receiving money from association policyholders with respect to the policyholders' claims; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the association, other than:

(A) insurance claim payments; or

(B) compensation or reimbursement authorized by law for the board members' membership, attendance, or expenses.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(1), eff. September 1, 2015.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.14, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 18, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 15, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 12, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 31(1), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 3, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 530 (H.B. 3311), Sec. 1, eff. September 1, 2023.

Sec. 2210.103. TERMS. (a) Members of the board of directors serve three-year staggered terms, with the terms of three members expiring on the third Tuesday of March of each year.

(b) A person may serve on the board of directors for not more than three consecutive full terms, not to exceed nine years.

(c) A member of the board of directors may be removed by the commissioner with cause stated in writing and posted on the association's website. The commissioner shall appoint a replacement in accordance with Section 2210.102 for a member who leaves or is removed from the board of directors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 19, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 13, eff. September 1, 2015.

Sec. 2210.1031. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board of directors may not vote, deliberate, or be counted as a member in attendance at a

meeting of the board of directors until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing the operation of the association;

(2) the programs, functions, rules, and budget of the association;

(3) the scope of and limitations on the rulemaking authority of the board of directors;

(4) the results of the most recent formal audit of the association;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and conflict of interest disclosure; and

(B) other laws applicable to the board of directors in performing the board's duties; and

(6) any applicable ethics policies adopted by the association or the Texas Ethics Commission.

(c) The general manager of the association shall create a training manual that includes the information required by Subsection (b). The general manager shall distribute a copy of the training manual annually to each member of the board of directors. Each member of the board of directors shall sign and submit to the general manager a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 4, eff. September 1, 2019.

Sec. 2210.104. OFFICERS. The board of directors shall elect from the board's membership an executive committee consisting of a presiding officer, assistant presiding officer, and secretary-treasurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 20, eff. June 19, 2009.

Sec. 2210.105. MEETINGS. (a) Except for an emergency meeting, the association shall:

(1) notify the department not later than the 11th day before the date of a meeting of the board of directors or of the members of the association; and

(2) not later than the seventh day before the date of a meeting of the board of directors, post notice of the meeting on the association's Internet website and the department's Internet website.

(b) Except for a closed meeting authorized by Subchapter D, Chapter 551, Government Code, a meeting of the board of directors or of the members of the association is open to the public.

(b-1) The commissioner or the commissioner's designated representative may attend a meeting of the board of directors or the members of the association, including a closed meeting authorized by Subchapter D, Chapter 551, Government Code, except for those portions of a closed meeting that involve the rendition of legal advice to the board concerning a regulatory matter or that would constitute an ex parte communication with the commissioner.

(c) Notice of a meeting of the board of directors or the association must be given as provided by Chapter 551, Government Code.

(d) Except for an emergency meeting, a meeting of the board of directors shall be held at a location as determined by the board of directors.

(e) The association shall:

(1) broadcast live on the association's Internet website all meetings of the board of directors, other than closed meetings; and

(2) maintain on the association's Internet website an archive of meetings of the board of directors.

(f) A recording of a meeting must be maintained in the archive required under Subsection (e) through and including the second anniversary of the meeting.

(g) The presence of the commissioner or the commissioner's designated representative at a closed meeting does not waive or impair any privilege, including attorney-client privilege, that exists in statute or at common law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 21, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 16, eff. September 28, 2011.

Sec. 2210.1051. MEETINGS OF BOARD OF DIRECTORS. (a) Notwithstanding Chapter 551, Government Code, or any other law, members of the board of directors may meet by telephone conference call, videoconference, or other similar telecommunication method. The board may use telephone conference call, videoconference, or other similar telecommunication method for purposes of establishing a quorum or voting or for any other meeting purpose in accordance with this subsection and Subsection (b). This subsection applies without regard to the subject matter discussed or considered by the members of the board at the meeting.

(b) A meeting held by telephone conference call, videoconference, or other similar telecommunication method:

(1) is subject to the notice requirements applicable to other meetings of the board of directors;

(2) may not be held unless notice of the meeting specifies the location of the meeting and a recording of the meeting is posted on the association's website;

(3) must be audible to the public at the location specified in the notice under Subdivision (2); and

(4) must provide two-way audio communication between all members of the board attending the meeting during the entire meeting, and if the two-way audio communication link with members attending the meeting is disrupted so that a quorum of the board is no longer participating in the meeting, the meeting may not continue until the two-way audio communication link is reestablished.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 22, eff. June 19, 2009.

Sec. 2210.1052. EMERGENCY MEETING. If the ultimate loss estimate for an occurrence or series of occurrences made by the chief financial officer or chief actuary of the association indicates

member insurers may be subject to an assessment under Subchapter B-1, the board of directors shall call an emergency meeting to notify the member insurers about the assessment.

Added by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 3, eff. June 10, 2019.

Sec. 2210.106. IMMUNITY OF DIRECTOR OR OFFICER FROM LIABILITY. (a) A director or officer of the association is not individually liable for an act or failure to act in the performance of official duties in connection with the association.

(b) Subsection (a) does not apply to:

(1) an act or failure to act of the association or an employee of the association;

(2) an act or omission involving a motor vehicle; or

(3) an act or failure to act that constitutes bad faith, intentional misconduct, or gross negligence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.107. PRIMARY BOARD OBJECTIVES; REPORT. (a) The primary objectives of the board of directors are to ensure that the board and the association:

(1) operate in accordance with this chapter, the plan of operation, and commissioner rules;

(2) comply with sound insurance principles;

(3) meet all standards imposed under this chapter;

(4) establish a code of conduct and performance standards for association employees and persons with which the association contracts; and

(5) establish, and adhere to terms of, an annual evaluation of association management necessary to achieve the statutory purpose, board objectives, and any performance or enterprise risk management objectives established by the board.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 17, eff. September 1, 2019.

(c) Not later than June 1 of each year, the association shall submit to the commissioner, the legislative oversight board

established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a report evaluating the extent to which the board met the objectives described by Subsection (a) in the 12-month period immediately preceding the date of the report.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 23, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 17, eff. September 28, 2011.
Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 17, eff. September 1, 2019.

Sec. 2210.108. OPEN MEETINGS AND OPEN RECORDS. (a) Except as specifically provided by this chapter or another law, the association is subject to Chapters 551 and 552, Government Code.

(b) A settlement agreement to which the association is a party:

(1) is public information and is not exempted from required disclosure under Chapter 552, Government Code; and

(2) if applicable, must contain the name of any attorney or adjuster representing a claimant or the association in connection with the claim that is the basis of the settlement.

(c) Subsection (b) may not be construed to limit or otherwise restrict the categories of information that are public information under Section 552.022, Government Code.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 18, eff. September 28, 2011.

Sec. 2210.109. DISCLOSURE OF CONFLICTS. (a) A member of the board of directors, or a member of a subcommittee of the board of directors that relates to underwriting and actuarial matters, shall disclose any potential conflict of interest of the member known by the member with respect to a matter for discussion or vote by the board or subcommittee, as applicable, before the discussion or vote. A potential conflict of interest is an interest that may reasonably be expected to diminish the member's independent judgment with respect to the matter for discussion or vote. Potential conflicts of

interest required to be disclosed under this section include:

(1) a financial or personal interest in an entity that may financially benefit from the outcome of the discussion or vote; and

(2) holding an insurance policy issued by the association that may be affected by the discussion or vote.

(b) A disclosure under this section must be made available to the public. A board or subcommittee member satisfies this requirement if:

(1) with respect to an open meeting or meeting broadcast live on the association's Internet website, the member publicly discloses the conflict of interest in the meeting or during the broadcast; or

(2) with respect to a meeting that is not an open meeting or broadcast live on the association's Internet website, the member discloses the conflict of interest in the agenda of the meeting and makes the agenda publicly available on the association's Internet website before the meeting.

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 5, eff. September 1, 2019.

SUBCHAPTER D. PLAN OF OPERATION

Sec. 2210.151. ADOPTION OF PLAN OF OPERATION. With the advice of the board of directors, the commissioner by rule shall adopt the plan of operation to provide Texas windstorm and hail insurance in a catastrophe area.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 24, eff. June 19, 2009.

Sec. 2210.152. CONTENTS OF PLAN OF OPERATION. (a) The plan of operation must:

(1) provide for the efficient, economical, fair, and nondiscriminatory administration of the association; and

(2) include:

(A) a plan for the equitable assessment of the members

of the association to defray losses and expenses;

(B) underwriting standards;

(C) procedures for accepting and ceding reinsurance;

(D) procedures for obtaining and repaying amounts under any financial instruments authorized under this chapter;

(E) procedures for determining the amount of insurance to be provided to specific risks;

(F) time limits and procedures for processing applications for insurance;

(G) a requirement that a nonresident agent licensed under Section 4056.052 may not offer or sell a Texas windstorm and hail insurance policy under this chapter unless the nonresident agent's state of residence authorizes a resident agent licensed in this state to act in the nonresident agent's state as an agent for that state's residual insurer of last resort for windstorm and hail insurance; and

(H) other provisions as considered necessary by the department to implement the purposes of this chapter.

(b) The plan of operation may provide for liability limits for an insured structure and for the corporeal movable property located in the structure.

(c) The plan of operation shall require the association to use the claim settlement guidelines published by the commissioner under Section 2210.578(f) in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 25, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 19, eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 878 (H.B. 3018), Sec. 1, eff. January 1, 2018.

Sec. 2210.153. AMENDMENTS TO PLAN OF OPERATION. (a) The association may present a recommendation for a change in the plan of

operation to the department at:

(1) periodic hearings conducted by the department for that purpose; or

(2) hearings relating to property and casualty insurance rates.

(b) The association must present a proposed change to the department in writing in the manner prescribed by the commissioner. A proposed change does not take effect unless adopted by the commissioner by rule.

(c) An interested person may, in accordance with Chapter 2001, Government Code, petition the commissioner to modify the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER E. INSURANCE COVERAGE

Sec. 2210.201. DEFINITION OF INSURABLE INTEREST. In this subchapter, "insurable interest" includes any lawful and substantial economic interest in the safety or preservation of property from loss, destruction, or pecuniary damage.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.202. APPLICATION FOR COVERAGE; DECLINATION REQUIREMENT. (a) A person who has an insurable interest in insurable property may apply to the association for insurance coverage provided under the plan of operation and an inspection of the property, subject to any rules established by the board of directors and approved by the commissioner. The association shall make insurance available to each applicant in the catastrophe area whose property is insurable property but who, after diligent efforts, is unable to obtain property insurance through the voluntary market, as evidenced by one declination from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail coverage in the first tier coastal counties. For purposes of this section, "declination" has the meaning assigned by the plan of operation and shall include a refusal to offer coverage

for the perils of windstorm and hail and the inability to obtain substantially equivalent insurance coverage for the perils of windstorm and hail. Notwithstanding Section 2210.203(c), evidence of one declination every three calendar years is required before renewal of an association policy.

(b) A property and casualty agent must submit an application for initial insurance coverage on behalf of the applicant on forms prescribed by the association. An application for initial coverage must contain:

(1) a statement as to whether the applicant has submitted or will submit the required premium payment from personal funds or, if not, to whom a balance is or will be due; and

(2) a statement that the agent acting on behalf of the applicant possesses proof of the declination described by Subsection (a) and proof of flood insurance coverage or unavailability of that coverage as described by Section 2210.203(a-1).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.15, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 26, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 20, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 6, eff. September 1, 2019.

Sec. 2210.203. ISSUANCE OF COVERAGE; TERM; RENEWAL. (a) If the association determines that the property for which an application for initial insurance coverage is made is insurable property, the association, on payment of the premium in full or in part as authorized under Section 2210.2032, shall direct the issuance of an insurance policy as provided by the plan of operation.

(a-1) This subsection applies only to a structure constructed, altered, remodeled, or enlarged on or after September 1, 2009, and only for insurable property located in areas designated by the commissioner. Notwithstanding Subsection (a), if all or any part of

the property to which this subsection applies is located in Zone V or another similar zone with an additional hazard associated with storm waves, as defined by the National Flood Insurance Program, and if flood insurance under that federal program is available, the association may not issue an insurance policy for initial or renewal coverage unless evidence that the property is covered by a flood insurance policy is submitted to the association. An agent offering or selling a Texas windstorm and hail insurance policy in any area designated by the commissioner under this subsection shall offer flood insurance coverage to the prospective insured, if that coverage is available.

(b) A policy issued under this section is for a one-year term.

(c) A policy may be renewed annually as long as the property continues to be insurable property.

(c-1) With the advice of the association, the commissioner shall adopt rules establishing a grace period of not more than 10 days after the due date for the receipt of payment of premium for the renewal of a policy.

(d) The commissioner, after receiving a recommendation from the board of directors, shall approve a commission structure for payment of an agent who submits an application for coverage to the association on behalf of a person who has an insurable interest in insurable property. The commission structure adopted by the commissioner must be fair and reasonable, taking into consideration the amount of work performed by an agent in submitting an application to the association and the prevailing commission structure in the private windstorm market.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 27, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 21, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 353 (H.B. 2920), Sec. 1, eff. September 1, 2021.

Sec. 2210.2031. AUTOMATIC RENEWAL. (a) The association shall establish a process for automatic renewal of a residential property policy in accordance with this section.

(b) The process established under Subsection (a) must:

(1) provide for the association to verify:

(A) the declination required by Section 2210.202;

(B) flood insurance coverage required by Section 2210.203; and

(C) any other information related to insurability of a property, including changes to the condition or value of the property that would affect the availability of coverage or premium cost to insure the property; and

(2) provide an opportunity for the policyholder to elect to cancel the policy before the policy automatically renews.

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 8, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 40 (S.B. 2233), Sec. 1, eff. September 1, 2023.

Sec. 2210.2032. PREMIUM PAYMENT METHODS. (a) The association shall accept payment of premium by credit card. The association may impose a fee on a policyholder for the use of a credit card to pay premium. The fee may not exceed the amount necessary to recoup the cost incurred by the association in connection with the policyholder's use of a credit card.

(b) The association shall provide to policyholders the option to pay premium in installments. A policyholder that pays premium in accordance with an installment payment plan established by the association and remains current on the payments satisfies the obligation for payment of premium under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 8, eff. September 1, 2019.

Sec. 2210.204. CANCELLATION OF CERTAIN COVERAGE. (a) Subsections (b) and (c) apply if:

(1) an agent or another person, firm, or corporation

finances the payment of all or a portion of the premium for insurance coverage;

(2) there is an outstanding balance for the financing of the premium; and

(3) that balance, or an installment of that balance, is not paid before the expiration of the 10th day after the due date.

(b) The agent or other person, firm, or corporation to whom the balance described by Subsection (a) is due may request cancellation of the insurance coverage by:

(1) returning the policy, with proof that the insured was notified of the return; or

(2) requesting the association to cancel the insurance coverage by a notice mailed to the insured and to any others shown in the policy as having an insurable interest in the property.

(c) On completion of cancellation under Subsection (b), the association shall refund the unearned premium, less any minimum retained premium set forth in the plan of operation, to the person, firm, or corporation to whom the unpaid balance is due.

(d) If an insured requests cancellation of the insurance coverage, the association shall refund the unearned premium only if the cancellation was for one of the following reasons:

(1) the purchase of similar coverage in the voluntary market;

(2) sale of the insured property to an unrelated party;

(3) total loss of the insured property; or

(4) a determination by the association that the insured property is no longer insurable under the association's rules and procedures.

(d-1) The property and casualty agent who received a commission as the result of the issuance of an association policy providing the coverage canceled under Subsection (d) shall refund the agent's commission on any unearned premium in the same manner.

(d-2) An insured must provide proof in the form and manner prescribed by the association of a cancellation reason described by Subsection (d)(1), (2), or (3) to be eligible for a refund under that subsection.

(d-3) If an insured requests cancellation for a reason other than a reason described by Subsection (d) or fails to provide proof under Subsection (d-2), the insured's premium is considered earned and is not refundable.

(e) For cancellation of insurance coverage under this section, the minimum retained premium in the plan of operation must be for a period of not less than the full annual policy term, except for events specified in the plan of operation that reflect a significant change in the exposure or the policyholder concerning the insured property, including:

(1) the purchase of similar coverage in the voluntary market;

(2) sale of the property to an unrelated party;

(3) death of the policyholder; or

(4) total loss of the property.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.16, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 28, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 22, eff. September 28, 2011.

Acts 2023, 88th Leg., R.S., Ch. 526 (H.B. 3208), Sec. 1, eff. September 1, 2023.

Sec. 2210.2041. NONREFUNDABLE SURCHARGE. A nonrefundable surcharge established under this chapter is not refundable under this code for any reason or purpose.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 29, eff. June 19, 2009.

Sec. 2210.205. REQUIRED POLICY PROVISIONS: DEADLINE FOR FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES. (a) A windstorm and hail insurance policy issued by the association must:

(1) require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs;

(2) contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy, including:

(A) the processes and deadlines for appraisal under Section 2210.574 and alternative dispute resolution under Section 2210.575;

(B) the binding effect of appraisal under Section 2210.574; and

(C) the necessity of complying with the requirements of Subchapter L-1 to seek relief, including judicial relief; and

(3) contain a conspicuous notice concerning the availability of supplemental payments under the policy, including:

(A) a description of the process for requesting a supplemental payment; and

(B) notice of applicable deadlines related to supplemental payments.

(b) The commissioner, on a showing of good cause by a person insured under this chapter, may extend the one-year period described by Subsection (a)(1) for a period not to exceed 180 days.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 23, eff. September 28, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 9, eff. September 1, 2019.

Sec. 2210.207. WINDSTORM AND HAIL INSURANCE: REPLACEMENT COST COVERAGE. (a) In this section, "roof covering" means:

(1) the roofing material exposed to the weather;

(2) the underlayments applied for moisture protection; and

(3) all flashings required in the replacement of a roof covering.

(b) Subject to any applicable deductibles and the limits for the coverage purchased by the insured, a windstorm and hail insurance policy issued by the association may include replacement cost coverage for one- and two-family dwellings, including outbuildings, as provided under the dwelling extension coverage in the policy.

(c) If, on the effective date of an association policy, the total amount of insurance applicable to a dwelling is equal to 80 percent or more of the full replacement cost of the dwelling or equal to the maximum amount of insurance otherwise available through the association, coverage applicable to the dwelling under the policy is

extended to include the full cost of repair or replacement, without a deduction for depreciation.

(d) If, on the effective date of an association policy, the total amount of insurance applicable to a dwelling is equal to less than 80 percent of the full replacement cost of the dwelling and less than the maximum amount of insurance available through the association, liability for loss under the policy may not exceed the replacement cost of the part of the dwelling that is damaged or destroyed, less depreciation.

(e) Notwithstanding this chapter or any other law, the commissioner, after notice and hearing, may adopt rules to:

(1) authorize the association to provide actual cash value coverage instead of replacement cost coverage on the roof covering of a building insured by the association; and

(2) establish:

(A) the conditions under which the association may provide that actual cash value coverage;

(B) the appropriate premium reductions when coverage for the roof covering is provided on an actual cash value basis; and

(C) the disclosure that must be provided to the policyholder, prominently displayed on the face of the windstorm and hail insurance policy.

(f) Notwithstanding Chapter 40, a hearing under Subsection (e) shall be held before the commissioner or the commissioner's designee.

(g) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 4, eff. June 10, 2019.

Sec. 2210.208. WINDSTORM AND HAIL INSURANCE: COVERAGE FOR CERTAIN INDIRECT LOSSES. (a) Except as provided by Subsections (e) and (f), a windstorm and hail insurance policy issued by the association for a dwelling, as that term is defined by the department

or a successor to the department, must include coverage for:

(1) wind-driven rain damage, regardless of whether an opening is made by the wind;

(2) loss of use; and

(3) consequential losses.

(b) A windstorm and hail insurance policy issued by the association for tenant contents of a dwelling or other residential building must include coverage for loss of use and consequential losses.

(c) The coverage required under Subsection (a) or (b) must be made:

(1) according to forms approved by the commissioner; and

(2) for a premium paid by the insured based on rates established by commissioner rule.

(d) The association shall provide coverage under this section as directed by commissioner rule.

(e) The association is not required to offer coverage for indirect losses as provided by Subsection (a) or (b) unless that coverage was excluded from a companion policy in the voluntary market.

(f) The association is not required to provide coverage for:

(1) loss of use, if the loss is loss of rent or loss of rental value; or

(2) additional living expenses, if the insured property is a secondary or a nonprimary residence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.209. WINDSTORM AND HAIL INSURANCE: COVERAGE FOR CERTAIN PROPERTY LOCATED OVER WATER. (a) A windstorm and hail insurance policy issued by the association may include coverage for:

(1) a building or other structure located in the seacoast territory that is built wholly or partially over water; and

(2) the corporeal movable property contained in a building or structure described by Subdivision (1).

(b) The association may impose appropriate limits of coverage and deductibles for coverage described by Subsection (a).

(c) The board of directors of the association shall submit any

proposed changes to the plan of operation necessary to implement Subsections (a) and (b) to the commissioner in the manner provided by Section 2210.153.

(d) The commissioner shall adopt rules as necessary to implement this section, including any rules necessary to implement changes in the plan of operation proposed under Subsection (c).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.062(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.062(a), eff. September 1, 2007.

Sec. 2210.210. COVERAGE OF CERTAIN STRUCTURES PROHIBITED. The association may not issue coverage for a wind turbine regardless of whether the turbine could otherwise be considered insurable property under this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 23, eff. September 28, 2011.

SUBCHAPTER F. PROPERTY INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

Sec. 2210.251. PLAN OF OPERATION COMPLIANCE REQUIREMENTS. (a) Except as provided by this section, to be considered insurable property eligible for windstorm and hail insurance coverage from the association, a structure that is constructed, altered, remodeled, enlarged, or repaired or to which additions are made on or after January 1, 1988, must comply with the plan of operation.

(b) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule shall adopt the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to that code.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

(d) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988, that is located in an area that was governed at the time of the

construction, alteration, remodeling, enlargement, repair, or addition by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection or approval requirements of this section or the plan of operation.

(e) A structure constructed, altered, remodeled, enlarged, or repaired or to which additions were made before January 1, 1988, that is located in an area not governed by a building code recognized by the association is insurable property eligible for windstorm and hail insurance coverage from the association without compliance with the inspection or approval requirements of this section or the plan of operation if the structure was previously insured by an insurer authorized to engage in the business of insurance in this state and the structure is in essentially the same condition as when previously insured, except for normal wear and tear, and is without any structural change other than a change made according to code. For purposes of this subsection, evidence of previous insurance coverage must reflect coverage for the perils of windstorm and hail for the property within the 12-month period immediately preceding the date of the application for coverage through the association and includes:

(1) a copy of a previous insurance policy;

(2) copies of canceled checks or agent's records that show payments for previous policies; and

(3) a copy of the title to the structure or mortgage company records that show previous policies.

(f) Notwithstanding any other provision of this subchapter, insurance coverage for a residential structure may be issued or renewed through the association subject to the inspection requirements imposed under Section 2210.258, if applicable.

(g) A certificate of compliance issued by the department under Section 2210.2515 demonstrates compliance with the applicable building code under the plan of operation. The certificate is evidence of insurability of the structure by the association.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

(i) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

(j) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

(k) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439

), Sec. 9(1), eff. September 1, 2015.

(l) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

(m) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 30, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 24, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1228 (S.B. 1702), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 188 (S.B. 498), Sec. 1, eff. May 28, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(1), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 10.003, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 11, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 5, eff. June 10, 2019.

Sec. 2210.2515. ISSUANCE OF CERTIFICATES OF COMPLIANCE. (a) In this section:

(1) "Completed improvement" means:

(A) an improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under Paragraph (A) is not contemplated, an improvement that is substantially completed.

(2) "Improvement" means the construction of or repair,

alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(3) "Ongoing improvement" means:

(A) an improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under Paragraph (A) is not contemplated, an improvement that is not substantially completed.

(b) A person shall provide written notice on a form prescribed by and submitted to the department of the person's intent to construct, repair, alter, remodel, or enlarge a structure for which the person is seeking coverage under this chapter before the person begins to construct, repair, alter, remodel, or enlarge the structure.

(c) A person may apply to the department on a form prescribed by the department for a certificate of compliance for a completed improvement. The department shall issue a certificate of compliance for a completed improvement if a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors:

(1) has designed the improvement, has affixed the engineer's seal on the design, and submits to the department on a form prescribed by the department an affirmation that the design complies with the applicable building code under the plan of operation and that the improvement was constructed in accordance with the design; or

(2) completes and submits to the department a sealed post-construction evaluation report that:

(A) confirms the improvement's compliance with the applicable building code under the plan of operation; and

(B) includes documentation supporting the engineer's post-construction evaluation report on a form prescribed by the department on which the engineer has affixed the engineer's seal.

(c-1) The department may deny an application for a certificate of compliance under Subsection (c) if the evaluation report or the form prescribed by the department under Subsection (c)(1) is not fully documented as required under Subsection (c).

(c-2) A form prescribed by the department under Subsection (c) may not require a professional engineer to assume liability for the construction of an improvement.

(d) A person may apply to the department on a form prescribed

by the department for a certificate of compliance for an ongoing improvement. Except as provided by Subsection (e), the department shall issue a certificate of compliance for an ongoing improvement if a qualified inspector under Section 2210.254 inspects the ongoing improvement in accordance with commissioner rule and affirms that the improvement:

(1) conforms to a design of the improvement that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers and Land Surveyors and complies with the applicable building code under the plan of operation; or

(2) complies with the applicable building code under the plan of operation.

(e) Except as otherwise provided by this subchapter, the department may not issue a certificate of compliance under Subsection (d) if within six months after the date of the final inspection of the structure that is the subject of the application, the department has not received:

(1) fully completed forms prescribed by the department demonstrating that the improvement satisfies the requirements under Subsection (d)(1) or (2); and

(2) payment in full of all inspection fees, including fees for prior department inspections, owed to the department.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 12, eff. June 10, 2019.

(g) The department may enter into contracts as necessary to implement this section.

(h) The department may charge a reasonable fee to cover the cost of making building requirements and inspection standards available to the public. The department shall charge a reasonable fee for each inspection of each structure under this section in an amount set by the commissioner.

(i) The department is authorized to submit a formal complaint under Chapter 1001, Occupations Code, to the Texas Board of Professional Engineers and Land Surveyors related to the engineering work of a professional engineer as reflected in the sealed post-construction evaluation report or other materials submitted by an engineer under Subsection (c).

(j) If the department finds that a person acting as a qualified inspector under Section 2210.254 has failed to provide complete and accurate information in connection with an inspection for a

certificate of compliance under this section, the department may impose a reasonable penalty on the inspector, including by prohibiting the inspector from applying for certificates of compliance under this section. The commissioner may adopt rules as necessary to implement this subsection.

(k) The department may not rescind a certificate of compliance after issuing the certificate under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 3, eff. September 1, 2015.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 12, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 6, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 12, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.10, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 494 (H.B. 3564), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 12.001, eff. September 1, 2021.

Sec. 2210.252. INTERNATIONAL RESIDENTIAL CODE BUILDING SPECIFICATIONS. (a) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule may supplement the plan of operation building specifications with the structural provisions of the International Residential Code for one- and two-family dwellings, as published by the International Code Council or an analogous entity recognized by the department.

(b) For a geographic area specified under Subsection (a), the commissioner by rule may adopt a subsequent edition of the International Residential Code for one- and two-family dwellings and may adopt a supplement published by the International Code Council or an amendment to that code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.253. INSURER ASSESSMENT: FIRST TIER COASTAL COUNTY. (a) In this section, "property insurance" means a commercial or residential insurance policy prescribed or approved by the department that provides coverage for windstorm and hail damage, including a Texas windstorm and hail insurance policy.

(b) The department shall assess each insurer that provides property insurance in a first tier coastal county in accordance with this section.

(c) The total assessment under this section in a state fiscal year must be in the amount estimated by the department as necessary to cover the administrative costs of the windstorm inspection program under Section 2210.251 to be incurred in the first tier coastal counties in that fiscal year.

(d) The assessment must be based on each insurer's proportionate share of the total extended coverage and other allied lines premium received by all insurers for property insurance in the first tier coastal counties in the calendar year preceding the year in which the assessment is made.

(e) The commissioner shall adopt rules to implement the assessment of insurers under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.254. QUALIFIED INSPECTORS. (a) For purposes of this chapter, a "qualified inspector" includes:

(1) a person determined by the department to be qualified because of training or experience to perform building inspections;

(2) a licensed professional engineer; and

(3) an inspector who:

(A) is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc.;

(B) has certifications as a buildings inspector and coastal construction inspector; and

(C) complies with other requirements specified by commissioner rule.

(b) A windstorm inspection may be performed only by a qualified

inspector.

(c) Before performing building inspections, a qualified inspector must be approved and appointed or employed by the department.

(d) The department may charge a reasonable fee for the filing of applications by and determining the qualifications of persons for appointment as qualified inspectors.

(e) The department may establish an annual renewal period for persons appointed as qualified inspectors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 25, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 4, eff. September 1, 2015.

Sec. 2210.2551. ENFORCEMENT AUTHORITY; RULES. (a) The department has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of this chapter and to the physical inspection of structures for the purposes of determining whether to issue a certificate of compliance under Section 2210.2515(d), including the submission of documents to the department or association regarding the physical inspection of structures.

(b) The commissioner by rule shall establish criteria to ensure that a person seeking appointment as a qualified inspector under this subchapter possesses the knowledge, understanding, and professional competence to perform windstorm inspections for the issuance of a certificate of compliance under Section 2210.2515(d) and to comply with other requirements of this chapter.

(c) Subsection (b) applies only to a determination concerning the appointment of a qualified inspector under this chapter. The exclusive jurisdiction of the department under this section does not apply to the practice of engineering as defined by Section 1001.003, Occupations Code, or to a license issued, qualification required, determination made, order issued, judgment rendered, or other action of a board operating under Chapter 1001, Occupations Code. In the

event of conflict, the authority of that board prevails with regard to the practice of engineering.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 , Sec. 9(3), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 , Sec. 9(3), eff. September 1, 2015.

(f) The commissioner may not adopt or enforce a rule that requires an engineer to affix the engineer's seal to an inspection form submitted under this subchapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 27, eff. September 28, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(3), eff. September 1, 2015.

Sec. 2210.256. DISCIPLINARY PROCEEDINGS REGARDING APPOINTED INSPECTORS AND CERTAIN OTHER PERSONS. (a) After notice and hearing, the department may revoke an appointment made under Section 2210.254 if the appointee is found to be in violation of this subchapter or a rule of the commissioner adopted under this subchapter.

(a-1) In addition to any other action authorized under this section, the commissioner ex parte may enter an emergency cease and desist order under Chapter 83 against a qualified inspector, or a person acting as a qualified inspector, if:

(1) the commissioner believes that:

(A) the qualified inspector has:

(i) through submitting or failing to submit to the department substantiating information, failed to demonstrate that a structure or a portion of a structure subject to inspection is built to a design that conforms to the requirements described by Section 2210.2515(d); or

(ii) refused to comply with requirements imposed under this chapter or department rules; or

(B) the person acting as a qualified inspector is acting without appointment as a qualified inspector under Section 2210.254; and

(2) the commissioner determines that the conduct described by Subdivision (1) is fraudulent or hazardous or creates an immediate danger to the public.

(b) The commissioner, instead of revocation, may impose one or more of the following sanctions if the commissioner determines from the facts that the sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year;

(2) issuance of an order directing the appointee to cease and desist from the specified activity or failure to act determined to be in violation of this subchapter or rules of the commissioner adopted under this subchapter; or

(3) if the commissioner finds that the appointee knowingly, wilfully, fraudulently, or with gross negligence signed or caused to be prepared an inspection report that contains a false or fraudulent statement, issuance of an order directing the appointee to pay within a specified time, not to exceed 60 days, a fine not to exceed $5,000 for the violation.

(c) A fine paid as a result of an order issued under Subsection (b)(3) shall be deposited in the general revenue fund.

(d) If it is found after a hearing that an appointee has failed to comply with an order issued under Subsection (b), the department shall, unless the order is stayed, revoke the appointment of the person.

(e) The department may informally dispose of any matter under Subsection (a) or (b) by consent order or default.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1073 , Sec. 9(4), eff. September 1, 2015.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 28, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 29, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 9(4), eff. September 1, 2015.

Sec. 2210.257. DEPOSIT OF FEES. All fees collected by the department under this subchapter shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.258. COMPLIANCE WITH BUILDING CODES; ELIGIBILITY. (a) Except as provided by Subsections (c) and (d) and notwithstanding any other provision of this chapter, to be eligible for insurance through the association, all construction, alteration, remodeling, enlargement, and repair of, or addition to, any structure located in the catastrophe area that is begun on or after the effective date of Sections 5 through 49, H.B. 4409, 81st Legislature, Regular Session, 2009, must be performed in compliance with the applicable building code standards, as set forth in the plan of operation.

(b) Except as provided by Subsections (c) and (d), the association may not insure a structure described by Subsection (a) until a certificate of compliance has been issued for the structure in accordance with Section 2210.2515.

(c) The association may insure a residential structure constructed, altered, remodeled, enlarged, repaired, or added to on or after June 19, 2009, that is not in compliance with the applicable building code standards, as set forth in the plan of operation, provided that:

(1) the structure had been insured on or after June 19, 2009, by an insurer in the private market that canceled or nonrenewed the insurance coverage of the structure;

(2) the applicant provides to the association proof that insurance coverage that was issued to the applicant or the previous insured for the structure was canceled or nonrenewed in the private market as described by Subdivision (1); and

(3) no construction, alteration, remodeling, enlargement, or repair of, or addition to, the structure occurred after cancellation or nonrenewal of the coverage and before submission of an application for coverage through the association.

(d) The association may insure a structure described by Subsection (a) for a policy term not to exceed 30 days if an inspection verification form or other inspection form adopted by the department has been issued for the structure for purposes of providing temporary coverage while an applicant seeks to secure a certificate of compliance for the structure if the structure is otherwise insurable property.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 31, eff. June 19, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1228 (S.B. 1702), Sec. 2, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 188 (S.B. 498), Sec. 2, eff. May 28, 2015.
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 14, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1073 (H.B. 2439), Sec. 7, eff. September 1, 2015.

Sec. 2210.259. SURCHARGE FOR CERTAIN NONCOMPLIANT STRUCTURES. (a) Except as provided by Subsection (a-1), an insurance policy insuring a noncompliant residential structure under Section 2210.251(f) is subject to an annual premium surcharge in an amount equal to 15 percent of the premium for insurance coverage obtained through the association. The surcharge under this subsection applies to each policy issued or renewed by the association on or after the effective date of Sections 5 through 49, H.B. No. 4409, Acts of the 81st Legislature, Regular Session, 2009, and is due on the issuance or renewal of the policy.

(a-1) For a policy insuring a noncompliant residential structure eligible for coverage under Section 2210.258(c), the association shall charge:

(1) a premium based on the rate charged in the voluntary market for the portion of the canceled or nonrenewed policy that provides windstorm and hail insurance coverage for the applicable risk; and

(2) an annual premium surcharge in an amount equal to 10 percent of that premium.

(b) A premium surcharge collected under this section shall be deposited in the catastrophe reserve trust fund. A premium surcharge under this section is a separate nonrefundable charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure to pay the surcharge by a policyholder constitutes failure to pay premium for purposes of policy cancellation.

(c) The commissioner by rule may provide for a discount of, or a credit against, a surcharge assessed under Subsection (a) in instances in which a policyholder demonstrates that the noncompliant structure was constructed with at least one structural building component that complies with the building code standards set forth in the plan of operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 31, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 30, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1228 (S.B. 1702), Sec. 4, eff. June 14, 2013.

SUBCHAPTER H. RATES; DISCOUNTS AND CREDITS

Sec. 2210.351. ASSOCIATION FILINGS. (a) The association must file with the department each manual of classifications, rules, rates, including condition charges, and each rating plan, and each modification of those items that the association proposes to use.

(b) A filing under this section must indicate the character and the extent of the coverage contemplated and must be accompanied by the policy and endorsement forms proposed to be used. The forms may be designed specifically for use by the association without regard to other forms filed with, approved by, or prescribed by the department for use in this state.

(c) Except as provided by Subsection (d), as soon as reasonably possible after the filing has been made, the commissioner in writing shall approve or disapprove the filing. A filing is considered approved unless disapproved on or before the 30th day after the date of the filing. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval

and the criteria the association is required to meet to obtain approval.

(d) The association may use a rate filed by the association without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate;

(2) the filed rate does not exceed the rate in effect on the date on which the filing is made; and

(3) the commissioner has not disapproved the filing in writing, advising of the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

(e) The department shall value the loss and loss adjustment expense data to be used for a filing not earlier than March 31 of the year before the year in which the filing is to be made.

(f) The association may not file a rate under this section that exceeds the rate in effect on the date on which the filing is made unless two-thirds of the board of directors votes to approve the rate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 32, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 147 (S.B. 1448), Sec. 1, eff. September 1, 2021.

Sec. 2210.3511. PUBLIC ACCESS TO RATE ADEQUACY ANALYSIS. (a) The association shall make the association's rate adequacy analysis publicly available on its Internet website for at least 14 days before the date the board of directors votes on the submission of a proposed rate filing based on the analysis to the department. The rate adequacy analysis must include:

(1) all user selected hurricane model input assumptions; and

(2) output data:

(A) with the same content and in the same format that is customarily provided to:

(i) the association by hurricane modelers; and

(ii) the department by the association; and

(B) in a searchable electronic format that allows for efficient analysis and is sufficiently detailed to allow the historical experience in this state to be compared to results produced by the model.

(b) The association shall accept public comment with respect to the association's rate adequacy analysis at a public meeting of the board of directors before the board of directors votes on the submission of a proposed rate filing to the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 13, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 7, eff. June 10, 2019.

Sec. 2210.3512. REQUIREMENT FOR VOTE ON RATE FILING. The board of directors may not vote on a proposed rate increase if:

(1) there is a vacancy on the board; and

(2) the vacancy has existed for at least 60 days at the time the vote is to be taken.

Added by Acts 2021, 87th Leg., R.S., Ch. 639 (H.B. 769), Sec. 1, eff. September 1, 2021.

Sec. 2210.352. MANUAL RATE FILINGS: ANNUAL FILING. (a) Not later than August 15 of each year, the association shall file with the department a proposed manual rate for all types and classes of risks written by the association.

(a-1) The association may use a rate filed by the association under this section without prior commissioner approval if:

(1) the filing is made not later than the 30th day before the date of any use or delivery for use of the rate; and

(2) the filed rate does not exceed the rate used by the association in effect on the date on which the filing is made.

(a-2) The association may not file to use a rate described by Subsection (a-1) more than once per year.

(a-3) The association may not file a rate under this section that exceeds the rate in effect on the date on which the filing is made unless two-thirds of the board of directors votes to approve the

rate.

(b) Except as provided by Subsection (a-1), before approving or disapproving a filing under this section, the commissioner shall provide all interested persons a reasonable opportunity to:

(1) review the filing;

(2) obtain copies of the filing on payment of any legally required copying cost; and

(3) submit to the commissioner written comments or information related to the filing.

(c) Except as provided by Subsection (a-1), the commissioner shall approve or disapprove the filing in writing not later than October 15 of the year in which the filing was made. If the filing is not approved or disapproved on or before that date, the filing is considered approved.

(d) Except as provided by Subsection (a-1), if the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the disapproval and the criteria the association is required to meet to obtain approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 33, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 147 (S.B. 1448), Sec. 2, eff. September 1, 2021.

Sec. 2210.353. MANUAL RATE FILINGS: AMENDED ANNUAL FILING. (a) Not later than the 30th day after the date the association receives the commissioner's written disapproval under Section 2210.352(c), the association may file with the commissioner an amended annual filing that conforms to all criteria stated in that written disapproval.

(b) Not later than the 30th day after the date an amended filing made under Subsection (a) is received, the commissioner shall approve or disapprove the amended filing. If the filing is not disapproved on or before the 30th day after the date of receipt, the filing is considered approved. If the commissioner disapproves a filing, the commissioner shall state in writing the reasons for the

disapproval and the criteria the association is required to meet to obtain approval.

(c) Before approving or disapproving an amended annual filing under this section, the commissioner shall, in the manner provided by Section 2210.352(b), provide all interested persons a reasonable opportunity to:

(1) review the amended annual filing;

(2) obtain copies of the amended annual filing on payment of any legally required copying cost; and

(3) submit to the commissioner written comments or information related to the amended annual filing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 34, eff. June 19, 2009.

Sec. 2210.354. MANUAL RATE FILINGS: ADDITIONAL SUPPORTING INFORMATION. (a) In conjunction with the review of a filing under Section 2210.352, other than a filing made under Subsection (a-1) of that section:

(1) the commissioner may request the association to provide additional supporting information relating to the filing; and

(2) any interested person may file a written request with the commissioner, during a period specified by the commissioner by rule, for additional supporting information relating to the filing.

(b) A request under this section must be reasonable and must be directly related to the filing.

(c) The commissioner shall submit to the association all requests for additional supporting information made under this section for the commissioner's use and the use of any interested person not later than the 21st day after the date of receipt of the filing.

(d) Unless a different period is requested by the association and approved by the commissioner, the association shall provide the information to the commissioner not later than the fifth day after the date the written request for additional supporting information is delivered to the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 35, eff. June 19, 2009.

Sec. 2210.355. GENERAL RATE REQUIREMENTS; RATE STANDARDS. (a) Rates for coverage under this chapter must be made in accordance with this section.

(b) In adopting rates under this chapter, the following must be considered:

(1) the past and prospective loss experience within and outside this state of hazards for which insurance is made available through the plan of operation, if any;

(2) expenses of operation, including acquisition costs;

(3) a reasonable margin for profit and contingencies;

(4) payment of public security obligations issued under this chapter, including the additional amount of any debt service coverage determined by the association to be required for the issuance of marketable public securities; and

(5) all other relevant factors, within and outside this state.

(c) Rates must be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory as to any class of insurer.

(d) For the establishment of rates and minimum premiums, the risks may be grouped by classification.

(e) Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in those risks on the basis of any or all of the factors described by Subsection (b). The classification rates may include rules for classification of risks insured under this chapter and rate modifications to those classifications.

(f) Each provision regarding a rate, classification, standard, or premium must be made without prejudice to, or prohibition of, provision by the association for consent rates on individual risks if the rate and risk are acceptable to the association, and are analogous to the rate provided for under Article 5.26(a). This subsection applies regardless of whether such a risk would otherwise

be subject to or the subject of a rate classification provision or eligibility provision.

(g) A commission paid to an agent for a windstorm and hail insurance policy issued by the association must comply with the commission structure approved by the commissioner under Section 2210.203(d) and be reasonable, adequate, not unfairly discriminatory, and nonconfiscatory.

(h) In adopting rates under this chapter, recognized catastrophe models may be considered.

(i) The association may establish rating territories and may vary rates among the territories as provided by this subsection. A rating territory that subdivides a county may be used only if the rate for any subdivision in the county is not more than:

(A) five percent higher than the rate used by the association in 2009 in any other subdivision in the county;

(B) six percent higher than the rate used by the association in 2010 in any other subdivision in the county;

(C) seven percent higher than the rate used by the association in 2011 in any other subdivision in the county; and

(D) eight percent higher than the rate used by the association in 2012 in any other subdivision in the county.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 36, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 33, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 16, eff. September 1, 2015.

Sec. 2210.357. RATE CLASSIFICATIONS. All premiums written and losses paid under this chapter, as appropriate, must be included in applicable classifications for general ratemaking purposes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.358. EXPERIENCE DATA. (a) Not later than June 1 of each year, the department shall provide to the association and other interested persons the experience data to be used in establishing the rates under this subchapter in that year.

(b) On request from the department, an insurer shall provide the data to the department or the department may obtain the data from a designated statistical agent, as defined by Section 38.201.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.359. LIMITATION ON CERTAIN RATE CHANGES. (a) Except as otherwise provided by this subsection, a rate approved by the commissioner under this subchapter may not reflect an average rate change that is more than 10 percent higher or lower than the rate for commercial windstorm and hail insurance or 10 percent higher or lower than the rate for noncommercial windstorm and hail insurance in effect on the date the filing is made. The rate may not reflect a rate change for an individual rating class that is 15 percent higher or lower than the rate for that individual rating class in effect on the date the filing is made. This subsection does not apply to a rate filed under Sections 2210.351(a)-(d).

(b) The commissioner may, after notice and hearing, suspend this section on a finding that a catastrophe loss or series of occurrences resulting in losses in the catastrophe area justify a need to ensure:

(1) rate adequacy in the catastrophe area; and

(2) availability of insurance outside the catastrophe area.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.0631, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.0631, eff. September 1, 2007.

Sec. 2210.361. ASSOCIATION RECOMMENDATIONS REGARDING REDUCTIONS IN COVERAGES OR INCREASES IN DEDUCTIBLES. (a) The association may

make recommendations to the commissioner that would result in a reduction of coverages or an increase in an applicable deductible if the resultant reduction in coverages or increase in deductibles is accompanied by proposed rate credits.

(b) After notice and hearing, the commissioner may accept or reject a recommendation made by the association under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 37, eff. June 19, 2009.

Sec. 2210.362. IMPLIED CONSENT BY APPLICANT FOR INSURANCE COVERAGE. For purposes of this chapter, an applicant for insurance coverage is considered to have consented to the appropriate rates and classifications authorized by this chapter regardless of any other rates or classifications.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.363. PREMIUM DISCOUNTS; SURCHARGE CREDITS. (a) The association may offer a person insured under this chapter an actuarially justified premium discount on a policy issued by the association, or an actuarially justified credit against a surcharge assessed against the person, other than a surcharge assessed under Subchapter M, if:

(1) the construction, alteration, remodeling, enlargement, or repair of, or an addition to, insurable property exceeds applicable building code standards set forth in the plan of operation; or

(2) the person elects to purchase a binding arbitration endorsement under Section 2210.554.

(b) A premium discount or a credit against a surcharge under Subsection (a)(2) may not exceed 10 percent of the premium for the policy, before the application of the discount.

(c) The commissioner shall adopt rules necessary to implement and enforce this section, including rules defining "actuarially

justified" for the purposes of this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 34, eff. September 28, 2011.

SUBCHAPTER J. CATASTROPHE RESERVE TRUST FUND; REINSURANCE AND ALTERNATIVE RISK FINANCING

Sec. 2210.451. DEFINITION. In this subchapter, "trust fund" means the catastrophe reserve trust fund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.452. ESTABLISHMENT AND USE OF TRUST FUND. (a) The commissioner shall adopt rules under which the association makes payments to the catastrophe reserve trust fund. Except as otherwise specifically provided by this section, the trust fund may be used only for purposes directly related to funding the payment of insured losses, including:

(1) funding the obligations of the trust fund under Subchapter B-1; and

(2) purchasing reinsurance or using alternative risk financing mechanisms under Section 2210.453.

(b) All money, including investment income, deposited in the trust fund constitutes state funds until disbursed as provided by this chapter and commissioner rules. The comptroller shall hold the money outside the state treasury on behalf of, and with legal title in, the department. The department shall keep and maintain the trust fund in accordance with this chapter and commissioner rules. The comptroller, as custodian of the trust fund, shall administer the trust fund strictly and solely as provided by this chapter and commissioner rules.

(c) At the end of each calendar year or policy year, the association shall use the net gain from operations of the association, including all premium and other revenue of the association in excess of incurred losses, operating expenses, public security obligations, and public security administrative expenses, to make payments to the trust fund, procure reinsurance, or use alternative risk financing mechanisms, or to make payments to the

trust fund and procure reinsurance or use alternative risk financing mechanisms.

(d) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to policyholders and for association administrative expenses directly related to funding the payment of insured losses in the event of an occurrence or series of occurrences within a catastrophe area that results in a disbursement under Subchapter B-1.

(e) The trust fund may be terminated only by law. On termination of the trust fund, all assets of the trust fund revert to the state to provide funding for the mitigation and preparedness plan established under Section 2210.454.

(f) The commissioner by rule shall establish the procedure relating to the disbursement of money from the trust fund to pay for operating expenses, including reinsurance or alternative risk financing mechanisms under Section 2210.453, if the association does not have sufficient premium and other revenue.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 38, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 35, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 18, eff. September 1, 2015.

Sec. 2210.4521. INVESTMENT OF TRUST FUND BALANCES. (a) The comptroller shall invest in accordance with the investment standard described by Section 404.024(j), Government Code, the portion of the trust fund balance that exceeds the amount of the sufficient balance determined under Subsection (b). The comptroller's investment of that portion of the balance is not subject to any other limitation or other requirement provided by Section 404.024, Government Code.

(b) At least once each 12-month period, the board of directors shall determine a balance for the trust fund that the board considers to be sufficient to meet the cash flow requirements of the fund in funding the payment of insured losses as provided by Section

2210.452(a). After determining that sufficient balance, the board shall provide notice of the sufficient balance to the comptroller.

(c) Not later than the 30th day after the date the board of directors provides notice of the sufficient balance determined under Subsection (b), the comptroller shall adjust the investment portfolio of trust fund money to ensure that only the portion of the fund that exceeds the sufficient balance is invested as required by Subsection (a).

(d) The comptroller shall include the fair market value of the investment portfolio of the trust fund in calculating the amount in the fund for purposes of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 19, eff. September 1, 2015.

Sec. 2210.453. FUNDING LEVELS; REINSURANCE AND ALTERNATIVE RISK FINANCING MECHANISMS; REINSURANCE FROM CERTAIN INSURER OR BROKER PROHIBITED. (a) The association may purchase reinsurance or use alternative risk financing mechanisms or both as necessary.

(b) The association shall maintain total available loss funding in an amount not less than the probable maximum loss for the association for a catastrophe year with a probability of one in 100. If necessary, the required funding level shall be achieved through the purchase of reinsurance or the use of alternative financing mechanisms, or both, to operate in addition to or in concert with the trust fund, public securities, financial instruments, and assessments authorized by this chapter.

(c) The attachment point for reinsurance purchased under this section may not be less than the aggregate amount of all funding available to the association under Subchapter B-1.

(d) The cost of the reinsurance purchased or alternative financing mechanisms used under this section in excess of the minimum funding level required by Subsection (b) shall be paid by assessments as provided by this subsection. The association, with the approval of the commissioner, shall notify each member of the association of the amount of the member's assessment under this subsection. The proportion of the cost to each insurer under this subsection shall be determined in the manner used to determine each insurer's participation in the association for the year under Section 2210.052.

(e) A member of the association may not recoup an assessment paid under Subsection (d) through a premium surcharge or tax credit.

(f) The association may not purchase reinsurance under this section from an insurer or broker involved in the execution of a catastrophe model on which the association relies in:

(1) determining the probable maximum loss applicable for the period covered by the reinsurance; or

(2) adopting rates under Section 2210.355.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 39, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 36, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 20, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 8, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 639 (H.B. 769), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 639 (H.B. 769), Sec. 3, eff. September 1, 2021.

Sec. 2210.454. MITIGATION AND PREPAREDNESS PLAN. (a) The commissioner shall annually develop and implement a mitigation and preparedness plan.

(b) Each state fiscal year, the department may fund the mitigation and preparedness plan using available funds.

(c) The mitigation and preparedness plan must provide for actions to be taken in the seacoast territory by the commissioner, or by a local government, state agency, educational institution, or nonprofit organization designated by the commissioner in the plan, to implement programs to:

(1) improve preparedness for windstorm and hail catastrophes;

(2) reduce potential losses in the event of such a catastrophe; and

(3) provide research into the means to:

(A) reduce those losses;

(B) educate or inform the public in determining the appropriateness of particular upgrades to structures; or

(C) protect infrastructure from potential damage from those catastrophes.

(d) Money in excess of $1 million may not be used under this section if the commissioner determines that an expenditure of investment income from the trust fund would jeopardize the actuarial soundness of the fund or materially impair the ability of the fund to serve the state purposes for which the fund was established.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 40, eff. June 19, 2009.

Sec. 2210.455. CATASTROPHE PLAN. (a) Not later than June 1 of each year, the board shall submit to the commissioner, the legislative oversight board established under Subchapter N, the governor, the lieutenant governor, and the speaker of the house of representatives a catastrophe plan covering the period beginning on the date the plan is submitted and ending on the following May 31.

(b) The catastrophe plan must:

(1) describe the manner in which the association will, during the period covered by the plan, evaluate losses and process claims after the following windstorms affecting an area of maximum exposure to the association:

(A) a windstorm with a four percent chance of occurring during the period covered by the plan;

(B) a windstorm with a two percent chance of occurring during the period covered by the plan; and

(C) a windstorm with a one percent chance of occurring during the period covered by the plan; and

(2) include, if the association does not purchase reinsurance under Section 2210.453 for the period covered by the plan, an actuarial plan for paying losses in the event of a catastrophe with estimated damages of $2.5 billion or more.

(c) The catastrophe plan must include a description of how losses under association policies will be paid, and how claims under association policies will be administered and adjusted, during the period covered by the plan.

(d) The catastrophe plan submitted under this section is for informational purposes only and does not bind the association to a particular course of action.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 37, eff. September 28, 2011.

SUBCHAPTER K. LIABILITY LIMITS

Sec. 2210.501. MAXIMUM LIABILITY LIMITS. (a) The board of directors shall propose the maximum liability limits under a windstorm and hail insurance policy issued by the association under this chapter. The maximum liability limits are considered approved by the commissioner unless the commissioner disapproves or modifies the liability limits by order issued not later than the 30th day after the date of receipt of a filing under Section 2210.503.

(b) Subject to Section 2210.502, the maximum liability limits for coverage on a single insurable property may not be less than:

(1) $350,000 for:

(A) a dwelling, including an individually owned townhouse unit; and

(B) the corporeal movable property located in or about the dwelling and, as an extension of coverage, away from those premises, as provided under the policy;

(2) $2,192,000 for a building, and the corporeal movable property located in the building, if the building is:

(A) owned by, and at least 75 percent of which is occupied by, a governmental entity; or

(B) not owned by, but is wholly and exclusively occupied by, a governmental entity;

(3) $125,000 for individually owned corporeal movable property located in an apartment unit, residential condominium unit, or townhouse unit that is occupied by the owner of that property and, as an extension of coverage, away from those premises, as provided under the policy; and

(4) $1,500,000 for:

(A) a structure other than a dwelling or a public building; and

(B) the corporeal movable property located in that structure and, as an extension of coverage, away from those premises, as provided under the policy.

(c) Maximum liability limits for insurable property not described by Subsection (b) are established by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 307 (H.B. 1902), Sec. 1, eff. September 1, 2019.

Sec. 2210.502. ADJUSTMENTS TO MAXIMUM LIABILITY LIMITS. (a) Not later than September 30 of each year, the board of directors shall propose inflation adjustments to the maximum liability limits imposed under Section 2210.501 in increments of $1,000, rounded to the nearest $1,000, considering the limits imposed by Section 2210.501(b), at a rate that reflects any change in the BOECKH Index. If the BOECKH Index ceases to exist, the board of directors shall propose the adjustments in the same manner based on another index that the board of directors determines accurately reflects changes in the cost of construction or residential values in the catastrophe area.

(b) An adjustment to the maximum liability limits that is approved by the commissioner applies to each windstorm and hail insurance policy delivered, issued for delivery, or renewed on or after January 1 of the year following the date of the approval. The indexing of the limits shall adjust for changes occurring on and after January 1, 1997.

(c) The board of directors may propose additional increases in the maximum liability limits as the board determines necessary to implement the purposes of this chapter.

(d) Notwithstanding Section 2210.501(b), the maximum liability limit imposed under Section 2210.501(b)(2) is frozen, and the indexing and adjustments provided by this section do not apply to that limit, until the limit imposed on a structure subject to Section 2210.501(b)(4) and the corporeal property located in that structure

reaches or exceeds $2,192,000, at which time the limit imposed under Section 2210.501(b)(2) shall be indexed and adjusted as provided for a risk under Section 2210.501(b)(4).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.503. FILING OF PROPOSED ADJUSTMENTS WITH COMMISSIONER. Not later than the 10th day after the date a proposed adjustment to the maximum liability limits is determined under Section 2210.501(a) or (b) or Section 2210.502, the association shall file the proposed adjustments with the commissioner in writing. The filing must include:

(1) a statement of the proposed adjusted limits;

(2) a statement of the limits in effect immediately preceding the effective date of the proposed adjustment;

(3) a brief summary of the changes to the BOECKH Index or other index on which the proposed adjustments are based; and

(4) a brief summary of the computations used in determining the proposed adjustments.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.504. COMMISSIONER ACTION ON PROPOSED ADJUSTMENTS. (a) Not later than the 30th day after the date the commissioner disapproves or modifies a filing under Section 2210.503, and after notice and hearing, the commissioner by order shall approve, disapprove, or modify the proposed adjustment to the maximum liability limits.

(b) Notwithstanding Subsection (a) and Sections 2210.501(c), 2210.502(a)-(c), and 2210.503, the commissioner may not approve adjustments of maximum liability limits to amounts lower than the amounts prescribed under Section 2210.501(b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 307 (H.B. 1902), Sec. 2, eff.

September 1, 2019.

Sec. 2210.505. REINSURED EXCESS LIMITS. (a) Notwithstanding any other law, the association may issue a windstorm and hail insurance policy that includes coverage for an amount in excess of a maximum liability limit established under Sections 2210.501-2210.504 if the association first obtains from a reinsurer approved by the commissioner reinsurance for the full amount of policy exposure above that limit.

(b) The premium charged by the association for the excess coverage must equal the amount of the reinsurance premium charged to the association by the reinsurer, plus any payment to the association that is approved by the commissioner.

(c) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2210.506. EXCEPTION FROM CERTAIN ADMINISTRATIVE PROCEDURES. Chapter 40 does not apply to an action taken under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER L. CERTAIN APPEALS AND OTHER ACTIONS

Sec. 2210.551. APPEALS. (a) This section:

(1) does not apply to:

(A) a person who is required to resolve a dispute under Subchapter L-1; or

(B) a person insured under this chapter who has elected to purchase a binding arbitration endorsement offered by the association under Section 2210.554; and

(2) applies only to:

(A) a person not described by Subdivision (1) who is insured under this chapter or an authorized representative of the person; or

(B) an affected insurer.

(b) A person or entity described by Subsection (a)(2) who is aggrieved by an act, ruling, or decision of the association may appeal to the commissioner not later than the 30th day after the date of that act, ruling, or decision.

(c) If the association is aggrieved by the action of the commissioner with respect to a ruling, order, or determination of the commissioner, the association may, not later than the 30th day after the date of the action, make a written request to the commissioner for a hearing on the action.

(d) On 10 days' written notice of the time and place of the hearing, the commissioner shall conduct a hearing on the association's request or the appeal from an act, ruling, or decision of the association, not later than the 30th day after the date of receipt of the request or appeal.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 2, Sec. 57, eff. September 28, 2011.

(f) Not later than the 30th day after the date of the hearing, the commissioner shall affirm, reverse, or modify the commissioner's previous action or the act, ruling, or decision appealed to the commissioner. Pending the hearing and decision, the commissioner may suspend or postpone the effective date of the previous action or of the act, ruling, or decision appealed to the commissioner.

(g) The association, or the person or entity aggrieved by the order or decision of the commissioner, may appeal to a district court in the county in which the covered property is located or a district court in Travis County.

(h) An action brought under this section is subject to the procedures established under Subchapter D, Chapter 36.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 39, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 57, eff. September 28, 2011.

Sec. 2210.554. VOLUNTARY ARBITRATION OF CERTAIN COVERAGE AND

CLAIM DISPUTES. (a) A person insured under this chapter may elect to purchase a binding arbitration endorsement in a form prescribed by the commissioner. A person who elects to purchase an endorsement under this section must arbitrate a dispute involving an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of the claim.

(b) An arbitration under this section shall be conducted in the manner and under rules and deadlines prescribed by the commissioner by rule.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 40, eff. September 28, 2011.

SUBCHAPTER L-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

Sec. 2210.571. DEFINITIONS. In this subchapter:

(1) "Association policy" means a windstorm and hail insurance policy issued by the association.

(2) "Claim" means a request for payment under an association policy. The term also includes any other claim against the association, or an agent or representative of the association, relating to an insured loss, under any theory or cause of action of any kind, regardless of the theory under which the claim is asserted, the cause of action brought, or the type of damages sought.

(3) "Claimant" means a person who makes a claim.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.572. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD. (a) This subchapter provides the exclusive remedies for a claim against the association, including an agent or representative of the association.

(b) Subject to Section 2210.576, the association may not be held liable for any amount other than covered losses payable under the terms of the association policy.

(c) The association, and an agent or representative of the association, may not be held liable for damages under Chapter 17, Business & Commerce Code, or, except as otherwise specifically provided by this chapter, under any provision of any law providing

for additional damages, punitive damages, or a penalty.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.573. FILING OF CLAIM; CLAIM PROCESSING. (a) Subject to Section 2210.205(b), an insured must file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs.

(b) The claimant may submit written materials, comments, documents, records, and other information to the association relating to the claim. If the claimant fails to submit information in the claimant's possession that is necessary for the association to determine whether to accept or reject a claim, the association may, not later than the 30th day after the date the claim is filed, request in writing the necessary information from the claimant.

(c) The association shall, on request, provide a claimant reasonable access to all information relevant to the determination of the association concerning the claim. The claimant may copy the information at the claimant's own cost or may request the association to provide a copy of all or part of the information to the claimant. The association may charge a claimant the actual cost incurred by the association in providing a copy of information under this section, excluding any amount for labor involved in making any information or copy of information available to a claimant.

(d) Unless the applicable 60-day period described by this subsection is extended by the commissioner under Section 2210.581, not later than the later of the 60th day after the date the association receives a claim or the 60th day after the date the association receives information requested under Subsection (b), the association shall provide the claimant, in writing, notification that:

(1) the association has accepted coverage for the claim in full;

(2) the association has accepted coverage for the claim in part and has denied coverage for the claim in part; or

(3) the association has denied coverage for the claim in full.

(e) In a notice described by Subsection (d)(1), the association must inform the claimant of the amount of loss the association will pay and of the time limit to request appraisal under Section 2210.574.

(f) In a notice described by Subsection (d)(2) or (3), the association must inform the claimant of, as applicable:

(1) the portion of the loss for which the association accepts coverage and the amount of loss the association will pay;

(2) the portion of the loss for which the association denies coverage and a detailed summary of the manner in which the association determined not to accept coverage for that portion of the claim; and

(3) the time limit to:

(A) request appraisal under Section 2210.574 of the portion of the loss for which the association accepts coverage; and

(B) provide notice of intent to bring an action as required by Section 2210.575.

(f-1) In a notice described by Subsection (d)(1) or (2), the association must include additional information concerning the availability of supplemental payments under the policy, including:

(1) a description of the process for requesting a supplemental payment; and

(2) applicable deadlines related to supplemental payments.

(g) In addition to the notice required under Subsection (d)(2) or (3), the association shall provide a claimant with a form on which the claimant may provide the association notice of intent to bring an action as required by Section 2210.575.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 14, eff. September 1, 2019.

Sec. 2210.5731. PAYMENT OF CLAIM. (a) Except as provided by Subsection (b), if the association notifies a claimant under Section 2210.573(d)(1) or (2) that the association has accepted coverage for a claim in full or has accepted coverage for a claim in part, the association shall pay the accepted claim or accepted portion of the

claim not later than the 10th day after the date notice is made.

(b) If payment of the accepted claim or accepted portion of the claim is conditioned on the performance of an act by the claimant, the association shall pay the claim not later than the 10th day after the date the act is performed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.5732. SUPPLEMENTAL PAYMENTS. (a) The association is authorized to provide for supplemental payments under a windstorm and hail insurance policy issued by the association.

(b) The commissioner shall adopt rules clarifying the deadlines related to supplemental payments. The commissioner shall solicit and consider comments from the association, association members, and policyholders in adopting rules under this section.

(c) The rules adopted under this section must ensure that a request for supplemental payment will not impair a policyholder's right to appraisal under Section 2210.574.

Added by Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 15, eff. September 1, 2019.

Sec. 2210.574. DISPUTES CONCERNING AMOUNT OF ACCEPTED COVERAGE. (a) If the association accepts coverage for a claim in full and a claimant disputes only the amount of loss the association will pay for the claim, or if the association accepts coverage for a claim in part and a claimant disputes the amount of loss the association will pay for the accepted portion of the claim, the claimant may request from the association a detailed summary of the manner in which the association determined the amount of loss the association will pay.

(b) If a claimant disputes the amount of loss the association will pay for a claim or a portion of a claim, the claimant, not later than the 60th day after the date the claimant receives the notice described by Section 2210.573(d)(1) or (2), may demand appraisal in accordance with the terms of the association policy.

(c) If a claimant, on a showing of good cause and not later than the 15th day after the expiration of the 60-day period described by Subsection (b), requests in writing that the 60-day period be

extended, the association may grant an additional 30-day period in which the claimant may demand appraisal.

(d) If a claimant demands appraisal under this section:

(1) the appraisal must be conducted as provided by the association policy;

(2) the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the appraisal, including a fee charged under Subsection (e); and

(3) the appraisal must be completed within the period established under Subsection (d-1).

(d-1) In consultation with the association, the commissioner shall adopt rules establishing the period in which an appraisal demanded under this section must be completed. In adopting the rules, the commissioner shall:

(1) allow flexibility for an adequate investigation of the claim that is the subject of the appraisal; and

(2) consider the time necessary to preserve the independence of the appraisers.

(e) If a claimant demands appraisal under this section and the appraiser retained by the claimant and the appraiser retained by the association are able to agree on an appraisal umpire to participate in the resolution of the dispute, the appraisal umpire is the umpire chosen by the two appraisers. If the appraiser retained by the claimant and the appraiser retained by the association are unable to agree on an appraisal umpire to participate in the resolution of the dispute, the commissioner shall select an appraisal umpire from a roster of qualified umpires maintained by the department. The department may:

(1) require appraisers to register with the department as a condition of being placed on the roster of umpires; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting an appraisal umpire under this subsection.

(f) Except as provided by Subsection (g), the appraisal decision is binding on the claimant and the association as to the amount of loss the association will pay for a fully accepted claim or the accepted portion of a partially accepted claim and is not appealable or otherwise reviewable. A claimant that does not demand appraisal before the expiration of the periods described by Subsections (b) and (c) waives the claimant's right to contest the

association's determination of the amount of loss the association will pay with reference to a fully accepted claim or the accepted portion of a partially accepted claim.

(g) A claimant or the association may, not later than the second anniversary of the date of an appraisal decision, file an action in a district court in the county in which the loss that is the subject of the appraisal occurred to vacate the appraisal decision and begin a new appraisal process if:

(1) the appraisal decision was obtained by corruption, fraud, or other undue means;

(2) the rights of the claimant or the association were prejudiced by:

(A) evident partiality by an appraisal umpire;

(B) corruption in an appraiser or appraisal umpire; or

(C) misconduct or wilful misbehavior of an appraiser or appraisal umpire; or

(3) an appraiser or appraisal umpire:

(A) exceeded the appraiser's or appraisal umpire's powers;

(B) refused to postpone the appraisal after a showing of sufficient cause for the postponement;

(C) refused to consider evidence material to the claim; or

(D) conducted the appraisal in a manner that substantially prejudiced the rights of the claimant or the association.

(h) Except as provided by Subsection (g), a claimant may not bring an action against the association with reference to a claim for which the association has accepted coverage in full.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 600 (H.B. 3310), Sec. 1, eff. September 1, 2023.

Sec. 2210.5741. REPLACEMENT COST COVERAGE CLAIM PROCESSING. (a) After the association accepts coverage for a claim in full or in part, a claimant whose association policy includes replacement cost

coverage for the claim may request the replacement cost payment by submitting to the association documentation of the cost and completion of the repairs related to the claim not later than the 545th day after the date the claimant receives a notification under Section 2210.573(d)(1) or (2).

(b) Not later than the 30th day after the date the association receives documentation under Subsection (a), the association shall provide the claimant, in writing, notification of:

(1) the amount of the replacement cost payment the association will make; and

(2) the deadline to request appraisal under this section.

(c) The association shall pay the amount described by Subsection (b)(1) not later than the 10th day after the date notification is provided under Subsection (b).

(d) If a claimant has not demanded appraisal with respect to a claim under Section 2210.574 and the claimant disputes the replacement cost amount the association will pay with respect to the claim, the claimant may demand appraisal of the replacement cost amount not later than the 30th day after the date the claimant receives the notification under Subsection (b). A claimant may demand appraisal under this section without regard to whether all repairs related to the claim are complete.

(e) Except with respect to the deadlines applicable to an appraisal under this section, the appraisal under this section shall be conducted in the same manner as an appraisal demanded under Section 2210.574.

(f) If a claimant's association policy includes replacement cost coverage, the written notification provided to the claimant under Section 2210.573(d)(1) or (2) must notify the claimant of the deadlines under this section for:

(1) completing repairs and submitting documentation under Subsection (a); and

(2) demanding appraisal under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 9, eff. June 10, 2019.

Sec. 2210.575. DISPUTES CONCERNING DENIED COVERAGE. (a) If the association denies coverage for a claim in part or in full and

the claimant disputes that determination, the claimant, not later than the expiration of the limitations period described by Section 2210.577(a), but after the date the claimant receives the notice described by Section 2210.573(d)(2) or (3), must provide the association with notice that the claimant intends to bring an action against the association concerning the partial or full denial of the claim.

(b) If a claimant provides notice of intent to bring an action under Subsection (a), the association may require the claimant, as a prerequisite to filing the action against the association, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference, as provided by Chapter 154, Civil Practice and Remedies Code. A claimant that does not provide notice of intent to bring an action before the expiration of the period described by Subsection (a) waives the claimant's right to contest the association's partial or full denial of coverage and is barred from bringing an action against the association concerning the denial of coverage.

(c) The association must request alternative dispute resolution of a dispute described by Subsection (b) not later than the 60th day after the date the association receives from the claimant notice of intent to bring an action.

(d) Alternative dispute resolution under this section must be completed not later than the 60th day after the date a request for alternative dispute resolution is made under Subsection (c). The 60-day period described by this subsection may be extended by the commissioner by rule in accordance with Section 2210.581 or by the association and a claimant by mutual consent.

(e) If the claimant is not satisfied after completion of alternative dispute resolution, or if alternative dispute resolution is not completed before the expiration of the 60-day period described by Subsection (d) or any extension under that subsection, the claimant may bring an action against the association in a district court in the county in which the loss that is the subject of the coverage denial occurred. An action brought under this subsection shall be presided over by a judge appointed by the judicial panel on multidistrict litigation designated under Section 74.161, Government Code. A judge appointed under this section must be an active judge, as defined by Section 74.041, Government Code, who is a resident of the county in which the loss that is the basis of the disputed denied

coverage occurred or of a first tier coastal county or a second tier coastal county adjacent to the county in which that loss occurred.

(f) If a claimant brings an action against the association concerning a partial or full denial of coverage, the court shall abate the action until the notice of intent to bring an action has been provided and, if requested by the association, the dispute has been submitted to alternative dispute resolution, in accordance with this section.

(g) A moderated settlement conference under this section may be conducted by a panel consisting of one or more impartial third parties.

(h) If the association requests mediation under this section, the claimant and the association are responsible in equal shares for paying any costs incurred or charged in connection with the mediation.

(i) If the association requests mediation under this section, and the claimant and the association are able to agree on a mediator, the mediator is the mediator agreed to by the claimant and the association. If the claimant and the association are unable to agree on a mediator, the commissioner shall select a mediator from a roster of qualified mediators maintained by the department. The department may:

(1) require mediators to register with the department as a condition of being placed on the roster; and

(2) charge a reasonable registration fee to defray the cost incurred by the department in maintaining the roster and the commissioner in selecting a mediator under this section.

(j) The commissioner shall establish rules to implement this section, including provisions for expediting alternative dispute resolution, facilitating the ability of a claimant to appear with or without counsel, establishing qualifications necessary for mediators to be placed on the roster maintained by the department under Subsection (i), and providing that formal rules of evidence shall not apply to the proceedings.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.576. ISSUES BROUGHT TO SUIT; LIMITATIONS ON RECOVERY.

(a) The only issues a claimant may raise in an action brought against the association under Section 2210.575 are:

(1) whether the association's denial of coverage was proper; and

(2) the amount of the damages described by Subsection (b) to which the claimant is entitled, if any.

(b) Except as provided by Subsections (c) and (d), a claimant that brings an action against the association under Section 2210.575 may recover only:

(1) the covered loss payable under the terms of the association policy less, if applicable, the amount of loss already paid by the association for any portion of a covered loss for which the association accepted coverage;

(2) prejudgment interest from the first day after the date specified in Section 2210.5731 by which the association was or would have been required to pay an accepted claim or the accepted portion of a claim, at the prejudgment interest rate provided in Subchapter B, Chapter 304, Finance Code; and

(3) court costs and reasonable and necessary attorney's fees.

(c) Nothing in this chapter, including Subsection (b), may be construed to limit the consequential damages, or the amount of consequential damages, that a claimant may recover under common law in an action against the association.

(d) A claimant that brings an action against the association under Section 2210.575 may, in addition to the covered loss described by Subsection (b)(1) and any consequential damages recovered by the claimant under common law, recover damages in an amount not to exceed the aggregated amount of the covered loss described by Subsection (b)(1) and the consequential damages recovered under common law if the claimant proves by clear and convincing evidence that the association mishandled the claimant's claim to the claimant's detriment by intentionally:

(1) failing to meet the deadlines or timelines established under this subchapter without good cause, including the applicable deadline established under Section 2210.5731 for payment of an accepted claim or the accepted portion of a claim;

(2) disregarding applicable guidelines published by the commissioner under Section 2210.578(f);

(3) failing to provide the notice required under Section

2210.573(d);

(4) rejecting a claim without conducting a reasonable investigation with respect to the claim; or

(5) denying coverage for a claim in part or in full if the association's liability has become reasonably clear as a result of the association's investigation with respect to the portion of the claim that was denied.

(e) For purposes of Subsection (d), "intentionally" means actual awareness of the facts surrounding the act or practice listed in Subsection (d)(1), (2), (3), (4), or (5), coupled with the specific intent that the claimant suffer harm or damages as a result of the act or practice. Specific intent may be inferred from objective manifestations that the association acted intentionally or from facts that show that the association acted with flagrant disregard of the duty to avoid the acts or practices listed in Subsection (d)(1), (2), (3), (4), or (5).

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.577. LIMITATIONS PERIOD. (a) Notwithstanding any other law, a claimant who brings an action against the association under Section 2210.575 must bring the action not later than the second anniversary of the date on which the person receives a notice described by Section 2210.573(d)(2) or (3).

(b) This section is a statute of repose and controls over any other applicable limitations period.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.578. EXPERT PANEL. (a) The commissioner shall appoint a panel of experts to advise the association concerning the extent to which a loss to insurable property was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges. The panel shall consist of a number of experts to be decided by the commissioner. The commissioner shall appoint one member of the panel to serve as the presiding officer of the panel.

(b) Members of the panel must have professional expertise in,

and be knowledgeable concerning, the geography and meteorology of the Texas seacoast territory, as well as the scientific basis for determining the extent to which damage to property is caused by wind, waves, tidal surges, or rising waters not caused by waves or surges.

(c) The panel shall meet at the request of the commissioner or the call of the presiding officer of the panel.

(d) The panel shall investigate, collect, and evaluate the information necessary to provide recommendations under Subsection (e). The cost and expense incurred by the panel associated with the work of the panel under this section shall be paid or reimbursed by the association.

(e) At the request of the commissioner, the panel shall recommend to the commissioner methods or models for determining the extent to which a loss to insurable property may be or was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges for geographic areas or regions designated by the commissioner.

(f) After consideration of the recommendations made by the panel under Subsection (e), the commissioner shall publish guidelines that the association will use to settle claims.

(g) A member of the panel is not individually liable for an act or failure to act in the performance of the official duties in connection with the individual's work on the panel.

(h) In any review of a claim under this subchapter, and in any action brought against the association under Section 2210.575, the guidelines published by the commissioner under Subsection (f) govern the claim and are presumed to be accurate and correct, unless clear and convincing evidence supports a deviation from the guidelines.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.579. CONSTRUCTION WITH OTHER LAW. (a) To the extent of any conflict between a provision of this subchapter and any other law, the provision of this subchapter prevails.

(b) Notwithstanding any other law, the association may not bring an action against a claimant, for declaratory or other relief, before the 180th day after the date an appraisal under Section 2210.574, or alternate dispute resolution under Section 2210.575, is

completed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.580. RULEMAKING. (a) The commissioner shall adopt rules regarding the provisions of this subchapter, including rules concerning:

(1) qualifications and selection of appraisers for the appraisal procedure, mediators for the mediation process, and members of the expert panel;

(2) procedures and deadlines for the payment and handling of claims by the association as well as the procedures and deadlines for a review of a claim by the association;

(3) notice of expert panel meetings and the transparency of deliberations of the panel; and

(4) any other matters regarding the handling of claims that are not inconsistent with this subchapter.

(b) All rules adopted by the commissioner under this section shall promote the fairness of the process, protect the rights of aggrieved policyholders, and ensure that policyholders may participate in the claims review process without the necessity of engaging legal counsel.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Sec. 2210.581. COMMISSIONER EXTENSION OF DEADLINES. (a) Subject to Subsection (b), the commissioner, on a showing of good cause, may by rule:

(1) extend any deadline established under this subchapter; and

(2) set the length of the extension.

(b) With reference to deadlines applicable to the association only, all deadline extensions related to claims arising from an occurrence may not exceed 120 days in the aggregate. This subsection does not affect the extension of a deadline applicable to a claimant or to both the association and a claimant.

(c) For the purposes of Subsection (a), "good cause" includes

military deployment.

(d) The commissioner shall adopt rules as necessary to implement this section. Section 2001.0045, Government Code, does not apply to rules adopted under this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 140 (H.B. 1944), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 790 (H.B. 1900), Sec. 10, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 12.002, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 12.003, eff. September 1, 2021.

Sec. 2210.582. OMBUDSMAN PROGRAM. (a) The department shall establish an ombudsman program to provide information and educational programs to assist persons insured under this chapter with the claim processes under this subchapter.

(b) Not later than March 1 of each year, the department shall prepare and submit to the commissioner a budget for the ombudsman program, including approval of all expenditures incurred in administering and operating the program. The commissioner shall adopt or modify and adopt the budget not later than April 1 of the year in which the budget is submitted.

(c) Not later than May 1 of each year, the association shall transfer to the ombudsman program money in an amount equal to the amount of the budget adopted under Subsection (b). The ombudsman program, not later than April 30 of each year, shall return to the association any unexpended funds that the program received from the association in the previous year.

(d) The department shall, not later than 60 days after the date of a catastrophic event, prepare and submit an amended budget to the commissioner for approval and report to the commissioner the approximate number of claimants eligible for ombudsman services. The commissioner shall adopt rules as necessary to implement an amended budget submitted under this section, including rules regarding the

transfer of additional money from the association to the program.

(e) The ombudsman program may provide to persons insured under this chapter information and educational programs through:

(1) informational materials;

(2) toll-free telephone numbers;

(3) public meetings;

(4) outreach centers;

(5) the Internet; and

(6) other reasonable means.

(f) The ombudsman program is administratively attached to the department. The department shall provide the staff, services, and facilities necessary for the ombudsman program to operate, including:

(1) administrative assistance and service, including budget planning and purchasing;

(2) personnel services;

(3) office space; and

(4) computer equipment and support.

(g) The ombudsman program shall prepare and make available to each person insured under this chapter information describing the functions of the ombudsman program.

(h) The association, in the manner prescribed by the commissioner by rule, shall notify each person insured under this chapter concerning the operation of the ombudsman program.

(i) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 41, eff. September 28, 2011.

SUBCHAPTER M. PUBLIC SECURITIES PROGRAM

Sec. 2210.601. PURPOSE. The legislature finds that authorizing the issuance of public securities to provide a method to raise funds to provide windstorm and hail insurance through the association in certain designated portions of the state is for the benefit of the public and in furtherance of a public purpose.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.602. DEFINITIONS. In this subchapter:

(1) "Authority" means the Texas Public Finance Authority.

(1-a) "Board" means the board of directors of the Texas Public Finance Authority.

(1-b) "Catastrophic event" means an occurrence or a series of occurrences that occurs in a catastrophe area during a calendar year and that results in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

(2) "Class 1 public securities" means public securities authorized to be issued by Section 2210.072, including a commercial paper program authorized before the occurrence of a catastrophic event.

(2-a) "Class 1 public security trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which premium surcharges collected under Section 2210.612 for the purpose of paying Class 1 public securities are deposited.

(3) "Class 2 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section 2210.073.

(3-a) "Class 2 public security trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which premium surcharges collected under Section 2210.613 for the purpose of paying Class 2 public securities are deposited.

(4) "Class 3 public securities" means public securities authorized to be issued on or after the occurrence of a catastrophic event by Section 2210.0741.

(4-a) "Class 3 public security trust fund" means the dedicated trust fund established by the board and held by the Texas Treasury Safekeeping Trust Company into which premium surcharges collected under Section 2210.6131 for the purpose of paying Class 3 public securities are deposited.

(5) "Credit agreement" has the meaning assigned by Chapter 1371, Government Code.

(5-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(6-b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(6-c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(7) "Public security" means a debt instrument or other public security issued by the Texas Public Finance Authority.

(8) "Public security administrative expenses" means expenses incurred to administer public securities issued under this subchapter, including fees for credit enhancement, paying agents, trustees, and attorneys, and for other professional services.

(9) "Public security obligations" means the principal of a public security and any premium and interest on a public security issued under this subchapter, together with any amount owed under a related credit agreement.

(10) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(2), eff. September 1, 2015.

(11) "Public security resolution" means the resolution or order authorizing public securities to be issued under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 42, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 21, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 31(2), eff. September 1, 2015.

Sec. 2210.603. APPLICABILITY OF OTHER LAWS. (a) The board shall issue the public securities as described by Section 2210.604 in accordance with and subject to the requirements of Chapter 1232, Government Code, other than Section 1232.108 of that chapter, and in accordance with and subject to other provisions of Title 9, Government Code, that apply to issuance of a public security by a state agency. In the event of a conflict, this subchapter controls.

(b) A purpose for which public securities are issued under this chapter constitutes an eligible project for purposes of Chapter 1371,

Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.604. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. (a) At the request of the association and with the approval of the commissioner, the Texas Public Finance Authority shall issue Class 1, Class 2, or Class 3 public securities. The association shall submit to the commissioner a cost-benefit analysis of various financing methods and funding structures when requesting the issuance of public securities under this subsection.

(a-1) The association and the commissioner must approve each tranche of commercial paper issued under a commercial paper program established under this chapter.

(b) The association shall specify in the association's request to the board the maximum principal amount of the public securities and the maximum term of the public securities.

(c) The principal amount determined by the association under Subsection (b) may be increased to include an amount sufficient to:

(1) pay the costs related to issuance of the public securities;

(2) provide a public security reserve fund;

(3) capitalize interest for the period determined necessary by the association, not to exceed two years; and

(4) provide the amount of debt service coverage for public securities determined by the association, in consultation with the authority, to be required for the issuance of marketable public securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 43, eff. September 28, 2011.

Sec. 2210.605. TERMS OF ISSUANCE. (a) The board shall determine the method of sale, type and form of public security, maximum interest rates, and other terms of the public securities

that, in the board's judgment, best achieve the goals of the association and effect the borrowing at the lowest practicable cost. The board may enter into a credit agreement in connection with the public securities.

(b) Public securities must be issued by the board on behalf of the association.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 615 , Sec. 31(3), eff. September 1, 2015.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 44, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 31(3), eff. September 1, 2015.

Sec. 2210.606. ADDITIONAL COVENANTS. The board may make additional covenants with respect to the public securities and the designated income and receipts of the association pledged to their payment, and provide for the flow of funds and the establishment, maintenance, and investment of funds and accounts with respect to the public securities, and the administration of those funds and accounts, as provided in the proceedings authorizing the public securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.607. PUBLIC SECURITY PROCEEDS. The proceeds of public securities issued by the board under this subchapter may be deposited with the Texas Treasury Safekeeping Trust Company.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.608. USE OF PUBLIC SECURITY PROCEEDS. (a) Public security proceeds, including investment income, shall be held in

trust for the exclusive use and benefit of the association. The association may use the proceeds to:

(1) pay incurred claims and operating expenses of the association;

(2) purchase reinsurance for the association;

(3) pay the costs of issuing the public securities, and public security administrative expenses, if any;

(4) provide a public security reserve;

(5) pay capitalized interest and principal on the public securities for the period determined necessary by the association;

(6) pay private financial agreements entered into by the association as temporary sources of payment of losses and operating expenses of the association; and

(7) reimburse the association for any cost described by Subdivisions (1)-(6) paid by the association before issuance of the public securities.

(b) Any excess public security proceeds remaining after the purposes for which the public securities were issued are satisfied may be used to purchase or redeem outstanding public securities. If there are no outstanding public security obligations or public security administrative expenses, the excess proceeds shall be transferred to the catastrophe reserve trust fund.

(c) Notwithstanding Subsection (a)(2), the proceeds from public securities issued under Section 2210.072 before an occurrence or series of occurrences that results in incurred losses, including investment income, may not be used to purchase reinsurance for the association.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 45, eff. September 28, 2011.

Sec. 2210.609. REPAYMENT OF ASSOCIATION'S PUBLIC SECURITY OBLIGATIONS. (a) The board and the association shall enter into an agreement under which the association shall provide for the payment of all public security obligations from available funds collected by the association and deposited as required by this subchapter. If the

association determines that it is unable to pay the public security obligations and public security administrative expenses, if any, with available funds, the association shall pay those obligations and expenses in accordance with Sections 2210.612, 2210.613, and 2210.6131 as applicable. Class 1, Class 2, or Class 3 public securities may be issued on a parity or subordinate lien basis with other Class 1, Class 2, or Class 3 public securities, respectively.

(b) If any public securities issued under this chapter are outstanding, the authority shall notify the association of the amount of the public security obligations and the estimated amount of public security administrative expenses, if any, each calendar year in a period sufficient, as determined by the association, to permit the association to determine the availability of funds and assess a premium surcharge if necessary.

(c) The association shall deposit all revenue collected under Section 2210.612 in the Class 1 public security trust fund, all revenue collected under Section 2210.613 in the Class 2 public security trust fund, and all revenue collected under Section 2210.6131 in the Class 3 public security trust fund. Money deposited in a fund may be invested as permitted by general law. Money in a fund required to be used to pay public security obligations and public security administrative expenses, if any, shall be transferred to the appropriate funds in the manner and at the time specified in the proceedings authorizing the public securities to ensure timely payment of obligations and expenses. This may include the board establishing funds and accounts with the comptroller that the board determines are necessary to administer and repay the public security obligations. If the association has not transferred amounts sufficient to pay the public security obligations to the board's designated interest and sinking fund in a timely manner, the board may direct the Texas Treasury Safekeeping Trust Company to transfer from the Class 1 public security trust fund, the Class 2 public security trust fund, or the Class 3 public security trust fund to the appropriate account the amount necessary to pay the public security obligation.

(d) The association shall provide for the payment of the public security obligations and the public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the Class 1 public security trust fund, the Class 2 public security trust fund, and the Class 3

public security trust fund, together with any public security reserve fund, as provided in the proceedings authorizing the public securities and related credit agreements.

(e) An amount owed by the board under a credit agreement shall be payable from and secured by a pledge of revenues received by the association from the Class 1 public security trust fund, the Class 2 public security trust fund, and the Class 3 public security trust fund to the extent provided in the proceedings authorizing the credit agreement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 46, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 22, eff. September 1, 2015.

Sec. 2210.610. PUBLIC SECURITY PAYMENTS. (a) Revenues received from the premium surcharges under Sections 2210.612, 2210.613, and 2210.6131 may be applied only as provided by this subchapter.

(b) The association may pay public security obligations with other legally available funds.

(c) Public security obligations are payable only from sources provided for payment in this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 47, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 23, eff. September 1, 2015.

Sec. 2210.611. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Revenue collected in any calendar year from a premium surcharge under Sections 2210.612, 2210.613, and 2210.6131 that exceeds the amount of the public security obligations and public

security administrative expenses payable in that calendar year and interest earned on the funds may, in the discretion of the association, be:

(1) used to pay public security obligations payable in the subsequent calendar year, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under this subchapter;

(2) used to redeem or purchase outstanding public securities; or

(3) deposited in the catastrophe reserve trust fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 48, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 24, eff. September 1, 2015.

Sec. 2210.612. PAYMENT OF CLASS 1 PUBLIC SECURITIES. (a) The association shall pay Class 1 public securities issued under Section 2210.072 from:

(1) net premium and other revenue; and

(2) if net premium and other revenue are not sufficient to pay the securities, a catastrophe area premium surcharge collected in accordance with this section.

(b) On approval by the commissioner, the association shall assess, as provided by this section, a premium surcharge to each policyholder of a policy described by Subsection (c). The premium surcharge must be set in an amount sufficient to pay, for the duration of the issued public securities, all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under this section shall be assessed on all policyholders of association policies issued under this chapter.

(d) A premium surcharge under this section is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure by a policyholder to pay the surcharge

constitutes failure to pay premium for purposes of policy cancellation.

(e) The association may enter financing arrangements as described by Section 2210.072(d) as necessary to obtain public securities issued under Section 2210.072. Nothing in this subsection shall prevent the authorization and creation of one or more programs for the issuance of commercial paper before the date of an occurrence or series of occurrences that results in insured losses under Section 2210.072(a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 49, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 25, eff. September 1, 2015.

Sec. 2210.613. PAYMENT OF CLASS 2 PUBLIC SECURITIES. (a) The association shall pay Class 2 public securities issued under Section 2210.073 from:

(1) net premium and other revenue; and

(2) if net premium and other revenue are not sufficient to pay the securities, a catastrophe area premium surcharge collected in accordance with this section.

(b) On approval by the commissioner, the association shall assess, as provided by this section, a premium surcharge to each policyholder of a policy described by Subsection (c). The premium surcharge must be set in an amount sufficient to pay, for the duration of the issued public securities, all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under this section shall be assessed on all policyholders of association policies issued under this chapter.

(d) A premium surcharge under this section is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy

cancellation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 50, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 26, eff. September 1, 2015.

Sec. 2210.6131. PAYMENT OF CLASS 3 PUBLIC SECURITIES. (a) The association shall pay Class 3 public securities issued under Section 2210.0741 from:

(1) net premium and other revenue; and

(2) if net premium and other revenue are not sufficient to pay the securities, a catastrophe area premium surcharge collected in accordance with this section.

(b) On approval by the commissioner, the association shall assess, as provided by this section, a premium surcharge to each policyholder of a policy described by Subsection (c). The premium surcharge must be set in an amount sufficient to pay, for the duration of the issued public securities, all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under this section shall be assessed on all policyholders of association policies issued under this chapter.

(d) A premium surcharge under this section is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions. Failure by a policyholder to pay the surcharge constitutes failure to pay premium for purposes of policy cancellation.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 27, eff. September 1, 2015.

Sec. 2210.6132. CONTINGENT SOURCE OF PAYMENT FOR CLASS 2 AND CLASS 3 PUBLIC SECURITIES. (a) The commissioner may determine, in consultation with the board and the authority, that:

(1) the authority is unable to issue Class 2 or Class 3 public securities to be payable under Section 2210.613 or 2210.6131, as applicable; or

(2) the issuance of Class 2 or Class 3 public securities to be payable under Section 2210.613 or 2210.6131, as applicable, is financially unreasonable for the association.

(b) If the commissioner makes a determination under Subsection (a), the commissioner shall order the Class 2 or Class 3 public securities, as applicable, to be paid by a premium surcharge assessed by each insurer, the association, and the Texas FAIR Plan Association on all policyholders of policies that are in effect on or after the 180th day after the date the commissioner issues the order. The premium surcharge must be set in an amount sufficient to pay all debt service not already covered by available funds and all related expenses on the public securities.

(c) The premium surcharge under this section shall be assessed on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in a catastrophe area. The premium surcharge shall be assessed on each Texas windstorm and hail insurance policy and each property and casualty policy, including an automobile insurance policy, issued for automobiles and other property located in the catastrophe area. A premium surcharge under Subsection (b) applies to:

(1) all policies written under the following lines of insurance:

(A) fire and allied lines;

(B) farm and ranch owners;

(C) residential property insurance;

(D) private passenger automobile liability and physical damage insurance; and

(E) commercial automobile liability and physical damage insurance; and

(2) the property insurance portion of a commercial multiple peril insurance policy.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 27, eff. September 1, 2015.

Sec. 2210.614. REFINANCING PUBLIC SECURITIES. The association may request the board to refinance any public securities issued in accordance with Subchapter B-1, whether Class 1, Class 2, or Class 3 public securities, with public securities payable from the same sources as the original public securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.615. SOURCE OF PAYMENT; STATE DEBT NOT CREATED. (a) A public security or credit agreement is payable solely from revenue as provided by this subchapter.

(b) A public security issued under this subchapter, and any related credit agreement, is not a debt of this state or any state agency or political subdivision of this state, and does not constitute a pledge of the faith and credit of this state or any state agency or political subdivision of this state.

(c) Each public security, and any related credit agreement, issued under this subchapter must state on the security's face that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the public security except as provided by this subchapter; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the public security.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.616. STATE NOT TO IMPAIR PUBLIC SECURITY OBLIGATIONS. (a) The state pledges for the benefit and protection of financing parties, the board, and the association that the state will not take or permit any action that would:

(1) impair the collection of premium surcharges or the deposit of those funds into the applicable trust fund;

(2) reduce, alter, or impair the premium surcharges to be imposed, collected, and remitted to financing parties until the

principal, interest, and premium, and any other charges incurred and contracts to be performed in connection with the related public securities, have been paid and performed in full; or

(3) in any way impair the rights and remedies of the public security owners until the public securities are fully discharged.

(b) A party issuing public securities under this subchapter may include the pledge described by Subsection (a) in any documentation relating to those securities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 53, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 28, eff. September 1, 2015.

Sec. 2210.6165. PROPERTY RIGHTS. If public securities issued under this subchapter are outstanding, the rights and interests of the association, a successor to the association, any member of the association, or any member of the Texas FAIR Plan Association, including the right to impose, collect, and receive a premium surcharge authorized under this subchapter, are only contract rights until those revenues are first pledged for the repayment of the association's public security obligations as provided by Section 2210.609.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 54, eff. September 28, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 29, eff. September 1, 2015.

Sec. 2210.617. ENFORCEMENT BY MANDAMUS. A writ of mandamus and any other legal and equitable remedies are available to a party at interest to require the association or another party to fulfill an agreement and to perform functions and duties under:

(1) this subchapter;

(2) the Texas Constitution; or

(3) a relevant public security resolution.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.618. EXEMPTION FROM TAXATION. A public security issued under this subchapter, any transaction relating to the public security, and profits made from the sale of the public security are exempt from taxation by this state or by a municipality or other political subdivision of this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.619. NO PERSONAL LIABILITY. The members of the association, members of the association board of directors, association employees, the board, the employees of the Texas Public Finance Authority, the commissioner, and department employees are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.620. AUTHORIZED INVESTMENTS. Public securities issued under this subchapter are authorized investments under:

(1) Subchapter B, Chapter 424;

(2) Subchapter C, Chapter 425; and

(3) Sections 425.203-425.213.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

SUBCHAPTER N. LEGISLATIVE OVERSIGHT BOARD

Sec. 2210.651. DEFINITION. In this subchapter, "board" means the windstorm insurance legislative oversight board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.652. COMPOSITION OF BOARD. The windstorm insurance legislative oversight board is composed of eight members as follows:

(1) four members of the senate appointed by the lieutenant governor, including the chairperson of the Senate Business and Commerce Committee, who shall serve as co-chairperson of the board; and

(2) four members of the house of representatives appointed by the speaker of the house of representatives.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.653. POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) receive information about rules proposed by the department relating to windstorm insurance and may submit comments to the commissioner on the proposed rules;

(2) monitor windstorm insurance in this state, including:

(A) the adequacy of rates;

(B) the operation of the association; and

(C) the availability of coverage; and

(3) review recommendations for legislation proposed by the department or the association.

(b) The board may request reports and other information from the department and the association as necessary to implement this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

Sec. 2210.654. REPORT. (a) Not later than November 15 of each even-numbered year, the board shall report on the board's activities under Section 2210.653 to:

(1) the governor;

(2) the lieutenant governor; and

(3) the speaker of the house of representatives.

(b) The report must include:

(1) an analysis of any problems identified; and

(2) recommendations for any legislative action necessary to address those problems and to foster stability, availability, and competition within the windstorm insurance industry.

Added by Acts 2009, 81st Leg., R.S., Ch. 1408 (H.B. 4409), Sec. 41, eff. June 19, 2009.

SUBCHAPTER O. DEPOPULATION PROGRAM

Sec. 2210.701. DEPOPULATION PROGRAM. (a) The association shall administer, subject to commissioner approval, a depopulation program that encourages the transfer of association policies to insurers through the voluntary market or assumption reinsurance.

(b) An insurer engaged in the business of property and casualty insurance in this state may elect to participate in the depopulation program.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Sec. 2210.702. ASSUMPTION REINSURANCE DEPOPULATION. (a) The association shall make available to insurers who elect to participate in the depopulation program association policy information necessary for the insurers to determine whether to reinsure a policy ceded to the insurer by the association. The commissioner shall by rule establish the information that is necessary to provide to an insurer under this subsection.

(b) If an insurer elects to reinsure a policy under this section, the reinsurance must be provided as assumption reinsurance by novation and the insurer is legally and contractually responsible for the association policy ceded to the insurer on the effective date of the reinsurance agreement regardless of whether the association continues to provide some services on the policy. The association is not liable under the policy on and after the effective date of the assumption reinsurance agreement. Except as specifically provided in an agreement between the association and the insurer, the insurer shall administer the policy and process, adjust, and pay claims in

accordance with the policy.

(c) If an insurer elects to provide reinsurance under this section, the insurer shall comply with the applicable provisions of Chapters 202 and 493.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Sec. 2210.703. RENEWAL OF REINSURED POLICIES; COMPARABLE COVERAGE. (a) An insurer electing to offer a policy under Section 2210.702 shall offer a renewal of that policy to the association policyholder for each of the next three years subject to the insurer's rate and underwriting guidelines as filed under this code.

(b) An insurer may not offer a policy to an association policyholder under this section unless the policy contains generally comparable coverage and premiums to the association policy as determined by commissioner rule. The premiums for a policy of generally comparable coverage may not exceed 115 percent of the premiums for the association policy.

(c) Subchapter L-1 does not apply to a policy renewed under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Sec. 2210.704. CONFIDENTIALITY OF INFORMATION; USE OF POLICYHOLDER'S AGENT. (a) An insurer may use information concerning a specific policy or insured provided by the association under Section 2210.702(a) only for the purposes of this subchapter and may not use or disclose the information for any other purpose.

(b) If an insurer elects to renew a policy for an association policyholder identified from information provided to the insurer under Section 2210.702, the insurer must offer the policy through the insurance agent of record for the association policyholder under the prevailing terms, conditions, and commissions of the agent.

(c) An insurer that offers to renew a policy under Section 2210.703 shall allow the policyholder's agent to enter into a limited service agreement with the insurer for the agent to continue to provide services to the policyholder.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.

Sec. 2210.705. TRANSFER OF POLICIES. The commissioner shall by rule establish the procedure for the transfer of reinsured policies. The rules may not contain deadlines that require a property and casualty insurer or agent or a policyholder to take action or make a decision on or after June 1 or before December 1 in any year. The rule must provide that a reinsurance agreement include:

(1) the opportunity for the policyholder to opt out of the reinsurance agreement not more than 60 days after the policyholder receives notice of the reinsurance agreement;

(2) a transfer of the earned premium on a reinsured policy to a trust account to be held until the expiration of the opt-out period described by Subdivision (1) when the earned premium for the final reinsured policy will be transferred to the reinsurer;

(3) a period of not less than 60 days for the agent of record to accept an appointment or other written agreement with the reinsurer; and

(4) any other requirements as the commissioner determines necessary for the protection of policyholders and the policyholders' agents.

Added by Acts 2015, 84th Leg., R.S., Ch. 615 (S.B. 900), Sec. 30, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 525 (S.B. 615), Sec. 16, eff. September 1, 2019.

CHAPTER 2211. FAIR PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2211.001. DEFINITIONS. In this chapter:

(1) "Association" means the FAIR Plan Association established under this chapter.

(2) "FAIR Plan" means a Fair Access to Insurance Requirements Plan established under Section 2211.051.

(3) "Governing committee" means the governing committee of the association.

(4) "Inspection bureau" means the organization or organizations designated by the association under Section 2211.153.

(5) "Insurer" means an authorized insurer writing property insurance in this state, including:

(A) a Lloyd's plan; and

(B) a reciprocal or interinsurance exchange.

(6) "Net direct premiums" means gross direct written premiums less return premiums on canceled contracts, regardless of reinsurance assumed or ceded, written on residential property under this chapter.

(6-a) "Property owners' association insurance" means property and liability insurance covering:

(A) common areas and facilities of a homeowners' association; or

(B) common elements of a condominium owners' association.

(7) "Residential property insurance" means the coverage provided by a homeowners insurance policy, residential fire and allied lines insurance policy, or farm and ranch owners insurance policy against loss incurred to real or tangible personal property at a fixed location.

(8) "Underserved area" or "underserved areas" means an area or areas designated as underserved by the commissioner by rule.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 1, eff. September 1, 2023.

Sec. 2211.002. IMMUNITY. Liability does not exist on the part of, and a cause of action does not arise against, an insurer, the inspection bureau, the association, the governing committee, the commissioner, an authorized representative of the commissioner, or an agent or employee of an insurer, the inspection bureau, the association, or the governing committee for:

(1) an inspection required by this chapter;

(2) an act or omission in connection with an inspection; or

(3) a statement made:

(A) in a report and communication concerning the insurability of property;

(B) in the determinations required by this subchapter or Subchapter B, C, D, or F; or

(C) at a hearing conducted in connection with an inspection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.003. APPEALS; JUDICIAL REVIEW. (a) An applicant or affected insurer is entitled to appeal to the association. The association's decision may be appealed to the commissioner not later than the 30th day after the date of the decision.

(b) An order or decision made by the commissioner under this chapter is subject to judicial review in accordance with Subchapter D, Chapter 36.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. ESTABLISHMENT AND ADMINISTRATION OF FAIR PLAN

Sec. 2211.051. ESTABLISHMENT OF FAIR PLAN. (a) The commissioner may establish a Fair Access to Insurance Requirements Plan to deliver residential property insurance to residents of this state in underserved areas if the commissioner determines, after a public hearing, that:

(1) in all or any part of the state, residential property insurance is not reasonably available in the voluntary market to a substantial number of insurable risks; or

(2) at least 25 percent of the applicants to the residential property market assistance program who are qualified under that program's plan of operation have not been placed with an insurer in the preceding six months.

(b) The commissioner may include in the plan established under Subsection (a) the delivery of property owners' association insurance in underserved areas as provided by Section 2211.1515 if the commissioner determines, after notice and a hearing, that in all or any part of the area designated under Section 2211.1515(a), property

owners' association insurance is not reasonably available in the voluntary market to a substantial number of insurable risks.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.065(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.065(a), eff. September 1, 2007.
Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 2, eff. September 1, 2023.

Sec. 2211.052. ADMINISTRATION OF FAIR PLAN; COMPOSITION OF GOVERNING COMMITTEE. (a) The governing committee shall administer the FAIR Plan under a plan of operation.

(b) The governing committee is composed of 11 members appointed by the commissioner as follows:

(1) five members who represent the interests of insurers;

(2) four public members who reside in this state; and

(3) two members who are general property and casualty agents.

(c) The commissioner or an employee of the department designated by the commissioner serves as an ex officio member.

(d) Each member of the governing committee who represents the interests of insurers must be a full-time employee of an insurer that is a member of the association.

(e) The commissioner may remove a member of the governing committee without cause and may replace the member in accordance with Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.065(b), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.065(b), eff. September 1, 2007.

Sec. 2211.0521. MEETINGS OF GOVERNING BODY. (a) Notwithstanding Chapter 551, Government Code, or any other law, members of the governing committee may meet by telephone conference call, video conference, or other similar telecommunication method. The governing committee may use telephone conference call, video conference, or other similar telecommunication method for purposes of establishing a quorum or voting or for any other meeting purpose in accordance with this subsection and Subsection (b). This subsection applies without regard to the subject matter discussed or considered by the members of the governing committee at the meeting.

(b) A meeting held by telephone conference call, video conference, or other similar telecommunication method:

(1) is subject to the notice requirements applicable to other meetings of the governing committee;

(2) may not be held unless notice of the meeting specifies the location of the meeting at which at least one member of the governing committee is physically present;

(3) must be audible to the public at the location specified in the notice under Subdivision (2); and

(4) must provide two-way audio communication between all members of the governing committee attending the meeting during the entire meeting, and if the two-way audio communication link with members attending the meeting is disrupted so that a quorum of the governing committee is no longer participating in the meeting, the meeting may not continue until the two-way audio communication link is reestablished.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.065(c), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.065(c), eff. September 1, 2007.

Sec. 2211.053. AMENDMENTS TO PLAN OF OPERATION. (a) The governing committee may, on the committee's own initiative or at the commissioner's request, propose amendments to the plan of operation.

(b) Amendments to the plan must be adopted by the commissioner by rule.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.054. CONTENTS OF PLAN OF OPERATION. The plan of operation must:

(1) provide for a nonprofit association to issue residential property insurance and, if applicable, property owners' association insurance under this chapter and distribute the losses and expenses in writing that insurance in this state;

(2) provide that all insurers that write residential property insurance shall participate in the association in accordance with Sections 2211.101(b) and (c);

(3) provide that a participating insurer is entitled to receive credit in accordance with Section 2211.101(d);

(4) provide for the immediate binding of eligible risks;

(5) provide for the use of premium installment payment plans, adequate marketing, and service facilities;

(6) provide for the establishment of reasonable service standards;

(7) provide procedures for efficient, economical, fair, and nondiscriminatory administration of the association;

(8) provide procedures for determining the net level of participation required for each insurer in the association;

(9) provide for the use of deductibles and other underwriting devices;

(10) provide for assessment of all members in amounts sufficient to operate the association;

(11) establish maximum limits of liability to be placed through the program;

(12) establish commissions to be paid to the insurance agents submitting applications;

(13) provide that the association issue policies in the association's own name;

(14) provide reasonable underwriting standards for determining insurability of a risk;

(15) provide procedures for the association to assume and cede reinsurance; and

(16) provide any other procedure or operational matter the governing committee or the commissioner considers necessary.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 3, eff. September 1, 2023.

Sec. 2211.055. ASSOCIATION DUTIES WITH RESPECT TO POLICIES. (a) The association may, for FAIR Plan purposes only:

(1) issue insurance policies and endorsements to those policies in the association's own name or a trade name adopted for that purpose; and

(2) act on behalf of all participating insurers in connection with those policies and act in any other manner necessary to accomplish the purposes of this chapter, including:

(A) issuing insurance policies;

(B) collecting premiums;

(C) issuing cancellations; and

(D) paying commissions, losses, judgments, and expenses.

(b) In connection with an insurance policy issued by the association:

(1) service of a notice, proof of loss, legal process, or other communication with regard to the policy must be made on the association; and

(2) an action by the insured constituting a claim under the policy may be brought only against the association, and the association is the proper party for all purposes in an action brought under or in connection with the policy.

(c) The requirements of Subsection (b) must be stated in an insurance policy issued by the association.

(d) The form and content of an insurance policy issued by the association are subject to the commissioner's approval.

(e) The association may assume and cede reinsurance as provided by the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.056. FILING AND APPROVAL OF RATES. (a) The

association shall file with the commissioner for approval the proposed rates and supplemental rate information to be used in connection with the issuance of insurance policies or endorsements.

(b) The association shall set rates in an amount sufficient to:

(1) carry all claims to maturity; and

(2) meet the expenses incurred in the writing and servicing of the business.

(c) Not later than the 60th day after the date the association files the proposed rates, the commissioner shall enter an order approving or disapproving, wholly or partly, the proposed rates. The commissioner may, on notice to the association, extend the period for entering an order under this section an additional 30 days.

(d) An order disapproving a rate must state:

(1) the grounds for the disapproval; and

(2) the findings in support of the disapproval.

(e) The association may not issue an insurance policy or endorsement until the commissioner approves the rates to be applied to the policy or endorsement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.057. POWERS OF COMMISSIONER. The commissioner is charged with the authority to supervise the association and the inspection bureau. The commissioner also has the power to:

(1) examine the operation of the association and the inspection bureau through free access to all the books, records, files, papers, and documents relating to the operation of the association and the inspection bureau;

(2) summon, qualify, and examine as a witness any person who has knowledge of the operation of the association or the inspection bureau, including a member of the governing committee or an officer or employee of the association or the inspection bureau;

(3) take any action necessary to enable this state and the association to fully participate in any federal reinsurance program that is enacted for purposes similar to the purposes of this chapter;

(4) require reports from the association concerning risks the association insures under this chapter as the commissioner considers necessary; and

(5) adopt policy forms and endorsements, promulgate rates, and adopt rating and rule manuals for use by the association.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.058. ANNUAL OPERATING REPORT. (a) Not later than March 31 of each year, the association shall compile and submit to the commissioner an operating report covering the preceding calendar year.

(b) The report is a public record.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.059. ASSETS OF ASSOCIATION. On dissolution of the association, all assets of the association shall be deposited in the general revenue fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.067(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.067(a), eff. September 1, 2007.

SUBCHAPTER C. INSURER PARTICIPATION IN FAIR PLAN

Sec. 2211.101. COVERAGE PROVIDED TO INSUREDS IN UNDERSERVED AREA. (a) In accordance with the plan of operation, the association shall develop and administer a program for participation by each insurer that writes residential property insurance in this state.

(b) Except as provided by this subsection, each insurer, as a condition of the insurer's authority to engage in the business of residential property insurance in this state, shall participate in the association in accordance with this chapter, including participating in the association's assessments in the proportion that the insurer's net direct premiums written in this state during the preceding calendar year bear to the aggregate net direct premiums written in this state by all participating insurers. The Texas Windstorm Insurance Association established by Chapter 2210 may not

participate in the association for any purpose.

(c) An insurer's participation under Subsection (b) in the association's assessments must be determined in accordance with the residential property statistical plan adopted by the commissioner.

(d) A participating insurer is entitled to receive credit for similar insurance voluntarily written in an underserved area. The participation of an insurer entitled to receive credit under this subsection must be reduced in accordance with the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.065(d), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.065(d), eff. September 1, 2007.

Sec. 2211.102. LIABILITY OF INSURERS TO ASSOCIATION; ASSESSMENTS. The participating insurers are liable to the association as provided by this chapter and the plan of operation for the expenses and liabilities incurred by the association as provided by this chapter and the plan. The association shall make assessments against the participating insurers as required to meet those expenses and liabilities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.103. RECOMPUTATION OF REIMBURSEMENT RATIOS. If a participating insurer fails to pay an assessment because of the insurer's insolvency, the association shall immediately recompute the reimbursement ratios to exclude from the ratios the amount of that assessment the commissioner determines is uncollectible, so that the uncollectible amount is assumed by and redistributed among the remaining participating insurers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.104. ADDITIONAL ASSESSMENT IN EVENT OF DEFICIT; PREMIUM SURCHARGE AUTHORIZED. (a) If the association incurs a deficit, the association, at the commissioner's direction, shall:

(1) request the issuance of public securities as authorized by Subchapter E; or

(2) assess participating insurers in accordance with this section.

(b) As reimbursement for assessments paid under this section or service fees paid under Section 2211.209, each insurer may charge a premium surcharge on every property insurance policy insuring property in this state that the insurer issues, the effective date of which is within the three-year period beginning on the 90th day after the date of the assessment or the 90th day after the date the service fee under Section 2211.209 is paid, as applicable.

(c) The insurer shall compute the amount of the surcharge under Subsection (b) as a uniform percentage of the premium on each policy described by Subsection (b). The percentage must be equal to one-third of the ratio of the amount of the participating insurer's assessment or service fee payment to the amount of the insurer's direct earned premiums, as reported to the department in the insurer's financial statement for the calendar year preceding the year in which the assessment or service fee payment is made so that, over the three-year period, the aggregate of all surcharges by the insurer under this section is at least equal to the amount of the assessment or service fee payment.

(d) The amount of any assessment paid and surcharged under this section may be carried by the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements under Section 862.001, until collected.

(e) The commissioner shall adopt rules and procedures as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.066(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.066(a), eff. September 1, 2007.

Sec. 2211.105. RETENTION AND USE OF PROFITS BY ASSOCIATION. (a) The association shall retain any profits of the association to be used for the purposes of the association.

(b) The association:

(1) shall use the profits to mitigate losses, including purchasing reinsurance and offsetting future assessments; and

(2) may not distribute the profits to insurers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. COVERAGE PROVIDED TO INSUREDS

Sec. 2211.151. MANDATORY COVERAGE PROVIDED TO CERTAIN INSUREDS. The association shall make residential property insurance available to each applicant in an underserved area whose property is insurable in accordance with reasonable underwriting standards but who, after diligent efforts, is unable to obtain residential property insurance through the voluntary market, as evidenced by two declinations from insurers authorized to engage in the business of, and writing, residential property insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.1515. MANDATORY PROPERTY OWNERS' ASSOCIATION POLICIES IN CERTAIN AREAS. (a) This section applies only to the area designated by the commissioner by rule. In determining the boundaries of the area, the commissioner shall:

(1) to the extent practicable, ensure the area is not more than 10 miles beyond the Texas Windstorm Insurance Association catastrophe area designated under Section 2210.005; and

(2) follow geographical features.

(b) If the commissioner makes the determination described by Section 2211.051(b), the association shall make property owners' association insurance available to each applicant in an underserved area of the area designated under Subsection (a) whose property is insurable in accordance with reasonable underwriting standards but who, after diligent efforts, is unable to obtain property owners' association insurance through the voluntary market, as evidenced by

two declinations from insurers authorized to engage in the business of, and writing, property owners' association insurance in this state.

(c) If the area designated under Subsection (a) changes after the association issues a policy under Subsection (b), the policy is valid until renewal regardless of whether the insured property is located in the area designated under Subsection (a) after the change.

Added by Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 4, eff. September 1, 2023.

Sec. 2211.152. DESIGNATION OF AREA AS UNDERSERVED. The commissioner by rule shall designate the areas determined to be underserved. In determining which areas to designate as underserved, the commissioner shall consider the factors specified in Section 2004.002.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.153. INSPECTION BUREAU. The association, with the approval of the commissioner, shall designate one or more organizations as the inspection bureau. The inspection bureau shall:

(1) make inspections to determine the condition of a property for which residential property insurance or property owners' association insurance is sought; and

(2) perform other duties authorized by the association or the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 5, eff. September 1, 2023.

Sec. 2211.154. PROPERTY INSPECTION. (a) A person who has an insurable interest in real or tangible personal property at a fixed location in an underserved area and who, after diligent effort, is

unable to obtain residential property insurance, or a homeowners' or condominium owners' association located in an underserved area as provided by Section 2211.1515 that, after diligent effort, is unable to obtain property owners' association insurance, as evidenced by two current declinations from insurers authorized to engage in the business of residential property insurance or property owners' association insurance, as applicable, in this state and actually writing residential property insurance or property owners' association insurance in this state, is entitled on application to the association to an inspection and evaluation of the property by representatives of the inspection bureau.

(b) A general property and casualty agent or personal lines property and casualty agent may make an application on behalf of the applicant. The applicant or agent must submit the application on a form prescribed by the association.

(c) Promptly after the application is received, the inspection bureau shall make an inspection and file an inspection report with the association. The inspection report must be made available to the applicant on request. The association shall prescribe the manner and scope of the inspection and inspection report for residential property in accordance with the plan of operation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.17, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 6, eff. September 1, 2023.

Sec. 2211.155. INSPECTION RESULTS; REINSPECTION. (a) If, after an inspection, the inspection bureau determines that property meets the underwriting standards established in the plan of operation, the applicant must be informed in writing of that determination and the association shall issue a policy or binder. If the property does not meet the underwriting standards, the applicant must be informed in writing of the reason for the failure of the property to meet the standards.

(b) If, at any time, an applicant whose property did not meet

the underwriting standards makes improvements to the property or the property's condition that the applicant believes are sufficient to make the property meet the standards, an inspection bureau representative shall reinspect the property on request. In any case, the applicant is eligible for one reinspection on or before the 60th day after the date of the initial inspection.

(c) If, on reinspection, the property meets the underwriting standards, the applicant must be informed in writing of that fact and the association shall issue a policy or binder.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 7, eff. September 1, 2023.

Sec. 2211.156. CERTAIN COVERAGE EXCLUDED. The FAIR Plan may not provide windstorm and hail insurance coverage for a risk eligible for that coverage under Chapter 2210.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.157. COVERAGE FOR CERTAIN WINDSTORM AND HAIL DAMAGE; COVERAGE FOR CERTAIN PROPERTY LOCATED OVER WATER. (a) A policy issued by the association may include coverage against loss or damage by windstorm or hail for:

(1) a building or other structure that is built wholly or partially over water; and

(2) the corporeal movable property contained in a building or structure described by Subdivision (1).

(b) The association may impose appropriate limits of coverage and deductibles for coverage described by Subsection (a).

(c) The governing committee of the association shall submit any proposed changes to the plan of operation necessary to implement Subsections (a) and (b) to the commissioner for the approval of the commissioner in the manner provided by Section 2211.053.

(d) The commissioner shall adopt rules as necessary to implement this section, including any rules necessary to implement

changes in the plan of operation proposed under Subsections (a) and (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.068(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.068(a), eff. September 1, 2007.

SUBCHAPTER E. REVENUE BOND PROGRAM

Sec. 2211.201. PURPOSE. The legislature finds that issuing public securities to provide a method to raise funds to provide residential property insurance and property owners' association insurance in this state through the association is to benefit the public and to further a public purpose.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 44 (H.B. 998), Sec. 8, eff. September 1, 2023.

Sec. 2211.202. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the Texas Public Finance Authority.

(2) "Bond" means a debt instrument or other public security issued by the Texas Public Finance Authority.

(3) "Public security resolution" means the resolution or order authorizing public securities to be issued under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.203. APPLICABILITY OF OTHER LAWS. The following laws apply to public securities issued under this subchapter to the extent consistent with this subchapter:

(1) Chapters 1201, 1202, 1204, 1205, 1231, 1232, and 1371, Government Code; and

(2) Subchapter A, Chapter 1206, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.204. ISSUANCE OF PUBLIC SECURITIES AUTHORIZED. At the request of the association and subject to Section 2211.205, the Texas Public Finance Authority shall issue public securities to:

(1) fund the association, including to:

(A) establish and maintain reserves to pay claims;

(B) pay operating expenses; and

(C) purchase reinsurance;

(2) pay costs related to issuing the public securities; and

(3) pay other costs related to the public securities as determined by the board.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.205. LIMITATION ON AMOUNT OF PUBLIC SECURITIES. The Texas Public Finance Authority may issue on behalf of the association public securities in a total amount not to exceed $75 million.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.206. TERMS OF ISSUANCE. (a) Public securities issued under this subchapter may be issued at a public or private sale.

(b) Public securities must:

(1) be issued in the name of the association; and

(2) mature not more than 10 years after the date issued.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.207. CONTENTS OF PUBLIC SECURITY RESOLUTION;

ADMINISTRATION OF ACCOUNTS. (a) In a public security resolution, the board may:

(1) provide for the flow of funds and the establishment, maintenance, and investment of funds and special accounts with regard to the public securities, including an interest and sinking fund account, a reserve account, and other accounts; and

(2) make additional covenants with regard to the public securities and the designated income and receipts of the association pledged to the payment of the public securities.

(b) The association shall administer the accounts in accordance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.208. SOURCE OF PAYMENT. (a) Public securities issued under this subchapter are payable only from:

(1) the service fee established under Section 2211.209; or

(2) other amounts the association is authorized to levy, charge, and collect.

(b) The public securities are obligations solely of the association and do not create a pledge, gift, or loan of the faith, credit, or taxing authority of this state.

(c) Each public security must:

(1) include a statement that the state is not obligated to pay any amount on the security and that the faith, credit, and taxing authority of this state are not pledged, given, or loaned to those payments; and

(2) state on the security's face that the security:

(A) is payable solely from the revenue pledged for that purpose; and

(B) is not a legal or moral obligation of the state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.209. SERVICE FEE. (a) A service fee may be assessed against:

(1) each participating insurer; and

(2) the association.

(b) The commissioner shall set the service fee in an amount sufficient to pay all debt service on the public securities issued under this subchapter. Each participating insurer and the association shall pay the service fee as required by the commissioner by rule.

(c) The comptroller shall collect the service fee and the department shall reimburse the comptroller in the manner described by Section 201.052.

(d) The commissioner, in consultation with the comptroller, may coordinate payment and collection of the service fee with other payments made by participating insurers and collected by the comptroller.

(e) As a condition of engaging in the business of insurance in this state, a participating insurer agrees that, if the insurer leaves the property insurance market in this state, the insurer remains obligated to pay the insurer's share of the service fee assessed under this section until the public securities are retired. The amount assessed against an insurer under this subsection must be:

(1) proportionate to the insurer's share of the property insurance market, including residential property insurance, in this state as of the last complete reporting period before the date the insurer ceases to engage in the property insurance business in this state; and

(2) based on the insurer's gross premiums for property insurance, including residential property insurance, for the insurer's last reporting period.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.210. EXEMPTION FROM TAXATION. Public securities issued under this subchapter, any interest from the public securities, and all assets pledged to secure the payment of the public securities are exempt from taxation by the state or a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.211. AUTHORIZED INVESTMENTS. Public securities issued under this subchapter are authorized investments under Subchapter B, Chapter 424, and Subchapters C and D, Chapter 425.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.212. STATE PLEDGE REGARDING PUBLIC SECURITY OWNER RIGHTS AND REMEDIES. (a) The state pledges to and agrees with the owners of public securities issued in accordance with this subchapter that the state will not limit or alter the rights vested in the association to fulfill the terms of agreements made with the owners or impair the rights and remedies of the owners until the following obligations are fully discharged:

(1) the public securities;

(2) any bond premium;

(3) interest; and

(4) all costs and expenses related to an action or proceeding by or on behalf of the owners.

(b) The association may include the state's pledge and agreement under Subsection (a) in an agreement with the owners of the public securities.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.213. PAYMENT ENFORCEABLE BY MANDAMUS. A writ of mandamus and any other legal or equitable remedy are available to a party in interest to require the association or another party to fulfill an agreement or perform a function or duty under:

(1) this subchapter;

(2) the Texas Constitution; or

(3) a public security resolution.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER F. PENALTIES

Sec. 2211.251. SANCTIONS AND ADMINISTRATIVE PENALTIES. If the association, the inspection bureau, or a participating insurer is found to be in violation of or to have failed to comply with this chapter, that entity is subject to:

(1) the sanctions authorized by Chapter 82; and

(2) administrative penalties authorized by Chapter 84.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2211.252. ADDITIONAL DISCIPLINARY PROCEDURES. In addition to the remedies provided by Section 2211.251, the commissioner may use any other disciplinary procedures authorized by this code, including the cease and desist procedures authorized by Chapter 83.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2212. SELF-INSURANCE TRUSTS FOR HEALTH CARE LIABILITY CLAIMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2212.001. DEFINITIONS. In this chapter:

(1) "Charitable organization" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

(2) "Dentist" means a person licensed to practice dentistry in this state.

(3) "Health care liability claim" means a cause of action against a physician or dentist for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety that proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(4) "Physician" means a person licensed to practice medicine in this state.

(5) "Trust" means a self-insurance trust organized and operated under this chapter.

(6) "Volunteer health care provider" has the meaning assigned by Section 84.003, Civil Practice and Remedies Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.069(a), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.069(a), eff. September 1, 2007.

Sec. 2212.002. TRUST NOT ENGAGED IN BUSINESS OF INSURANCE. A trust is not engaged in the business of insurance under this code and other laws of this state, and this code, other than this chapter, does not apply to the trust, except as provided by Section 2212.052.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. CREATION AND OPERATION OF TRUST

Sec. 2212.051. CREATION OF TRUST. (a) Subject to Subsection (b), an incorporated association, a purpose of which is to unite in one compact organization the entire profession licensed to practice medicine or dentistry in this state, or a portion of the members of the profession licensed to practice medicine who are practicing a particular specialty within the practice of medicine in the state or are practicing within a particular region of the state, may create a trust to self-insure physicians or dentists and agree, by contract or otherwise, to insure other members of the organization or association against health care liability claims and related risks.

(b) The organization or association must:

(1) have been in continuing existence for at least two years;

(2) have established a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employ appropriate professional staff and consultants for program management.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.052. MINIMUM REQUIREMENTS. (a) The department may require a trust to satisfy reasonable minimum requirements that ensure the trust is able to satisfy the trust's contractual obligations.

(b) On request, a trust shall provide books, records, and documents required by the department to fulfill the requirements of this section relating to the trust's solvency.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.053. FILING REQUIREMENTS. (a) A trust shall file with the department:

(1) all rates and forms, for informational purposes only; and

(2) the trust's independently audited annual financial statement.

(b) An audited annual financial statement filed under this section may not be considered an examination document.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 2.05, eff. September 1, 2015.

Sec. 2212.054. POWERS OF TRUST. (a) A trust may:

(1) purchase, on behalf of the members of the association that created the trust, medical professional liability insurance, specific excess insurance, aggregate excess insurance, and reinsurance, as necessary in the opinion of the trustees;

(2) purchase required risk management services; and

(3) pay claims that arise under any deductible provisions.

(b) A trust's investment powers and limitations are the same as the investment powers and limitations of a state bank with trust powers.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.055. GUARANTEE OF CERTAIN LIABILITIES. The trust shall adopt rules to guarantee all contingent liabilities in the event of dissolution.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.056. ADMINISTRATIVE SANCTIONS. If a trust is found to have violated this code or a rule adopted by the commissioner that is declared applicable to the trust, the commissioner may order sanctions under Chapter 82 for the violation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. INSURANCE CONTRACTS ISSUED BY TRUST

Sec. 2212.101. COVERAGE UNDER CONTRACT. A contract of professional liability insurance issued by a trust may include coverage of:

(1) a professional association or partnership of physicians, with respect to health care liability claims and related risks if a majority of the persons having a proprietary interest in the association or partnership are members of the association that created the trust;

(2) proprietary members, associates, stockholders, and executive officers and directors of an association or partnership described by Subdivision (1), with respect to potential vicarious liability for acts or omissions of others giving rise to health care liability claims and related risks;

(3) an insured physician and, as applicable, an insured professional association or partnership, including proprietary members, associates, stockholders, and executive officers and directors of the association or partnership, with respect to liability of an insured arising out of:

(A) injury to a patient related to ownership, maintenance, or use of premises for the practice of medicine, including necessary or incidental operations;

(B) service by an insured physician as a member of a committee, board, or similar group of a hospital medical staff or of a professional association or society with respect to medical staff privileges, accreditation, or disciplinary matters relating to competency or patient safety and risk reduction programs; or

(C) a health care liability claim or related risk based in whole or part on an act or omission occurring before the date a contract of professional insurance is issued by the trust; or

(4) an applicant for membership in the association that created the trust, pending final action on the application, with respect to health care liability claims and related risks, including coverage described by Subdivision (1), (2), or (3), as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2212.102. COVERAGE FOR VOLUNTEER HEALTH CARE PROVIDERS. (a) The trust, in accordance with Section 2212.054, may make available professional liability insurance covering a volunteer health care provider for an act or omission resulting in death, damage, or injury to a patient while the person is acting in the course and scope of the person's duties as a volunteer health care provider as described by Chapter 84, Civil Practice and Remedies Code.

(b) This section does not affect the liability of a volunteer health care provider who is serving as a direct service volunteer of a charitable organization. Section 84.004(c), Civil Practice and Remedies Code, applies to the volunteer health care provider without regard to whether the volunteer health care provider obtains liability insurance under this section.

(c) The trust may make professional liability insurance available under this section to a volunteer health care provider without regard to whether the volunteer health care provider is a physician or dentist.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.070(a), eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.070(a), eff. September 1, 2007.

CHAPTER 2213. SELF-INSURANCE TRUSTS FOR BANKS AND SAVINGS AND LOAN ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2213.001. DEFINITIONS. In this chapter:

(1) "Bank" means a bank chartered under federal or state law.

(2) "Plan" means a self-insurance trust's plan of organization and operation.

(3) "Savings and loan association" means a savings and loan association chartered under federal or state law.

(4) "Self-insurance trust" means a self-insurance trust organized and operated under this chapter.

(5) "Trustees" means the trustees of a self-insurance trust.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2213.002. SELF-INSURANCE TRUST NOT ENGAGED IN BUSINESS OF INSURANCE. (a) A self-insurance trust is not engaged in the business of insurance under this code or other laws of this state.

(b) Other than this chapter, the provisions of this code, including the Texas Property and Casualty Insurance Guaranty Act, Chapter 462, do not apply to a self-insurance trust.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2213.003. RULES. The commissioner may adopt:

(1) necessary rules to carry out the provisions of this chapter relating to bank self-insurance trusts; and

(2) reasonable rules necessary to carry out the provisions of this chapter relating to savings and loan self-insurance trusts.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. CREATION AND OPERATION OF SELF-INSURANCE TRUST

Sec. 2213.051. CREATION OF BANK SELF-INSURANCE TRUST; COVERAGE. (a) A group or association of banks or bankers, composed of any number of members, may create a bank self-insurance trust to self-insure banks that are members of the group or association, or that have any officers who are members of the group or association, against losses described by this section.

(b) The bank self-insurance trust may self-insure a bank described by Subsection (a) against losses resulting from:

(1) dishonest acts and criminal acts of employees;

(2) a robbery or other act commonly included within a bank's bond coverage; and

(3) indemnification for a wrongful act committed by a director, officer, or employee of a member of the group or association, subject to the limitations under Chapter 8, Business Organizations Code.

(c) The trustees shall determine, according to the plan, the amount of coverage to be provided to a bank participating in the bank self-insurance trust.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2213.052. CREATION OF SAVINGS AND LOAN SELF-INSURANCE TRUST; COVERAGE. (a) Two or more savings and loan associations that have their principal offices located in this state may create a savings and loan self-insurance trust to provide insurance and indemnity coverage for the savings and loan self-insurance trust's members and the officers and directors of the savings and loan self-insurance trust's members.

(b) Insurance and indemnity coverage provided by the savings and loan self-insurance trust is limited to savings and loan blanket bonds covering losses resulting from:

(1) dishonest acts and criminal acts of employees; or

(2) robbery.

(c) The trustees shall determine, according to the plan, the amount of coverage to be provided to a savings and loan association participating in the savings and loan self-insurance trust.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2213.053. PLAN OF ORGANIZATION AND OPERATION; TRUSTEES. (a) Before organizing and operating a self-insurance trust, the group or association of banks or bankers or the savings and loan associations, as applicable, proposing to organize the self-insurance trust shall:

(1) select trustees to administer the self-insurance trust; and

(2) prepare a detailed plan of organization and operation in the form and manner prescribed by the commissioner.

(b) The group or association of banks or bankers or the savings and loan associations shall submit the proposed plan to the commissioner for examination, suggested changes, and final approval.

(c) The commissioner shall approve the proposed plan only if the commissioner is satisfied that the self-insurance trust is able and will continue to be able to pay valid claims made to the self-insurance trust.

(d) After final approval, the plan may be amended with the commissioner's approval.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2213.054. MINIMUM REQUIREMENTS; COMMISSIONER SUPERVISION. (a) After approval of a self-insurance trust's plan, the self-insurance trust is subject to continuing supervision by the commissioner relating to:

(1) the solvency of the self-insurance trust; and

(2) the approval of the self-insurance trust's policy forms.

(b) The commissioner may set minimum requirements to ensure that a self-insurance trust is able to satisfy the self-insurance trust's contractual obligations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2213.055. CREATION OF TRUST FUND. (a) The trustees shall

create a trust fund to pay claims made under the coverage provided by the self-insurance trust under Section 2213.051 or 2213.052, as applicable.

(b) The trustees shall administer and control the trust fund and shall pay claims from and invest the money of the trust fund as provided by the plan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2213.056. PERSONNEL; PAYMENT OF EXPENSES. (a) The trustees shall employ appropriate professional employees and consultants for management of the self-insurance trust program.

(b) The trustees shall pay the salaries of professional employees and consultants and other costs of administering the self-insurance trust program from the trust fund.

(c) The total amount paid for salaries and administration may not exceed an amount set by the commissioner. The amount set by the commissioner may not exceed 35 percent of the total amount of money in the trust fund in any year.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. PARTICIPATION IN SELF-INSURANCE TRUST

Sec. 2213.101. PARTICIPATION. A bank that is a member, or that has an officer who is a member, of a group or association of banks or bankers organizing a bank self-insurance trust or of savings and loan associations organizing a savings and loan self-insurance trust may participate in the applicable self-insurance trust by:

(1) entering into a contract or agreement with the trustees for coverage that the self-insurance trust may provide under Section 2213.051 or 2213.052, as applicable; and

(2) paying the required contribution to the trust fund in the amount determined by the trustees in accordance with the plan.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBTITLE H. RATEMAKING IN GENERAL
CHAPTER 2251. RATES
SUBCHAPTER A. GENERAL PROVISIONS FOR RATES

Sec. 2251.001. PURPOSE. The purposes of this subchapter and Subchapters B, C, D, and E are to:

(1) promote the public welfare by regulating insurance rates to prohibit excessive, inadequate, or unfairly discriminatory rates;

(2) promote the availability of insurance;

(3) promote price competition among insurers to provide rates and premiums that are responsive to competitive market conditions;

(4) prohibit price-fixing agreements and other anticompetitive behavior by insurers; and

(5) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.002. DEFINITIONS. In this chapter:

(1) "Commercial property insurance" means insurance coverage against loss caused by or resulting from loss, damage, or destruction of real or personal property provided through a commercial property insurance policy. The term includes any combination of:

(A) commercial fire or allied lines;

(B) commercial inland marine insurance;

(C) commercial crime coverage;

(D) boiler and machinery insurance other than explosion;

(E) glass insurance provided as part of other coverage; and

(F) as authorized by commissioner rule, insurance covering other perils or providing other coverages or other lines of first party property insurance.

(1-a) "Disallowed expenses" includes:

(A) administrative expenses, other than acquisition, loss control, and safety engineering expenses, that exceed 110

percent of the industry median for those expenses;

(B) lobbying expenses;

(C) advertising expenses, other than for advertising:

(i) directly related to the services or products provided by the insurer; or

(ii) designed and directed at loss prevention;

(D) amounts paid by an insurer:

(i) as damages in an action brought against the insurer for bad faith, fraud, or any matters other than payment under the insurance contract; or

(ii) as fees, fines, penalties, or exemplary damages for a civil or criminal violation of law;

(E) contributions to:

(i) social, religious, political, or fraternal organizations; or

(ii) organizations engaged in legislative advocacy;

(F) except as authorized by commissioner rule, fees and assessments paid to advisory organizations;

(G) any amount determined by the commissioner to be excess premiums charged by the insurer; and

(H) any unreasonably incurred expenses, as determined by the commissioner after notice and hearing.

(2) "Filer" means an insurer that files rates, prospective loss costs, or supplementary rating information under this chapter.

(3) "Prospective loss cost" means that portion of a rate that:

(A) does not include a provision for expenses or profit, other than loss adjustment expenses; and

(B) is based on historical aggregate losses and loss adjustment expenses projected by development to the ultimate value of those losses and expenses and projected through trending to a future point in time.

(4) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, adjusted to account for the treatment of expenses, profit, and individual insurer variation in loss experience, before applying individual risk variations based on loss or expense considerations.

(5) "Rating manual" means a publication or schedule that lists rules, classifications, territory codes and descriptions, rates, premiums, and other similar information used by an insurer to

determine the applicable premium charged an insured.

(6) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners insurance policy, including a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

(7) "Supplementary rating information" means any manual, rating schedule, plan of rules, rating rules, classification systems, territory codes and descriptions, rating plans, and other similar information used by the insurer to determine the applicable premium for an insured. The term includes factors and relativities, including increased limits factors, classification relativities, deductible relativities, premium discount, and other similar factors and rating plans such as experience, schedule, and retrospective rating.

(8) "Supporting information" means:

(A) the experience and judgment of the filer and the experience or information of other insurers or advisory organizations on which the filer relied;

(B) the interpretation of any other information on which the filer relied;

(C) a description of methods used in making a rate; and

(D) any other information the department receives from a filer as a response to a request under Section 38.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.004, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 254 (H.B. 1298), Sec. 1, eff. May 29, 2017.

Sec. 2251.003. APPLICABILITY OF CERTAIN SUBCHAPTERS. (a) This subchapter and Subchapters B, C, and D apply to:

(1) an insurer to which Article 5.13 applies, other than the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association; and

(2) except as provided by Subsection (c), a Lloyd's plan, reciprocal or interinsurance exchange, and county mutual insurance company with respect to the lines of insurance described by Subsection (b).

(b) Except as provided by Section 2251.0031, this subchapter and Subchapters B, C, and D apply to all lines of the following kinds of insurance written under an insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state:

(1) general liability insurance;

(2) residential and commercial property insurance, including farm and ranch insurance and farm and ranch owners insurance;

(3) personal and commercial casualty insurance, except as provided by Section 2251.004;

(4) medical professional liability insurance;

(5) fidelity, guaranty, and surety bonds other than criminal court appearance bonds;

(6) personal umbrella insurance;

(7) personal liability insurance;

(8) guaranteed auto protection (GAP) insurance;

(9) involuntary unemployment insurance;

(10) financial guaranty insurance;

(11) inland marine insurance;

(12) rain insurance;

(13) hail insurance on farm crops;

(14) personal and commercial automobile insurance;

(15) multi-peril insurance; and

(16) identity theft insurance issued under Chapter 706.

(c) Sections 2251.008, 2251.052, 2251.101, 2251.102, 2251.103, 2251.104, 2251.105, and 2251.107 do not apply to a Lloyd's plan or a reciprocal or interinsurance exchange with respect to commercial property insurance, inland marine insurance, rain insurance, or hail insurance on farm crops.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.071(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.071(a), eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 312 (S.B. 1554), Sec. 2, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 42 (S.B. 1367), Sec. 2, eff. September 1, 2021.

Sec. 2251.0031. EXCEPTIONS FOR CERTAIN LINES. (a) Except as provided by Subsection (d), Subchapter C does not apply to any line of the following kinds of insurance written under a commercial insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state:

(1) surety bonds;

(2) fidelity bonds;

(3) commercial inland marine;

(4) boiler and machinery;

(5) environmental impairment or pollution liability;

(6) kidnap and ransom;

(7) political risk or expropriation;

(8) commercial excess liability or umbrella liability;

(9) directors' and officers' liability;

(10) fiduciary liability;

(11) employment practices liability;

(12) errors and omission and professional liability other than medical professional liability;

(13) media liability;

(14) product liability, product recall, or completed operations;

(15) commercial cybersecurity, including first- and third-party commercial lines coverage for losses arising out of or relating to data privacy breaches, network security, computer viruses, and similar exposures;

(16) highly protected commercial property;

(17) commercial flood insurance not provided through the National Flood Insurance Program; or

(18) any combination of only the kinds of insurance listed in this subsection or exempted under Subsection (c).

(b) For purposes of Subsection (a), "highly protected commercial property" is commercial property that is subject to a much

lower than normal probability of loss due to low-hazard occupancy or property type, superior construction, special fire protection equipment and procedures, and management commitment to loss prevention.

(c) The commissioner by rule may exempt a commercial line of insurance or commercial risk not listed in Subsection (a) from the rate filing requirements of Subchapter C to promote enhanced competition or more effectively use the resources of the department that might otherwise be used to review commercial lines filings.

(d) Notwithstanding Subsection (a), the commissioner may temporarily require rate filings under Subchapter C for a specific kind of insurance listed in Subsection (a) for a period of not longer than one year if, after notice and hearing, the commissioner issues an order that:

(1) includes a finding that a reasonable degree of competition does not exist for that specific kind of insurance; and

(2) specifies the relevant tests and test results used to determine the degree of competition for that kind of insurance.

(e) In the absence of a finding described by Subsection (d) with respect to a specific kind of insurance, a competitive market is presumed to exist for that kind of insurance.

(f) The commissioner may adopt reasonable and necessary rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 42 (S.B. 1367), Sec. 3, eff. September 1, 2021.

Sec. 2251.004. REGULATION OF INLAND MARINE RATES. The commissioner shall adopt rules governing the manner in which rates for the various classifications of risks insured under inland marine insurance, as determined by the commissioner, are regulated.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.005. NOTICE OF RATE INCREASE FOR RESIDENTIAL PROPERTY INSURANCE POLICIES. (a) An insurer shall notify a policyholder of a residential property insurance policy issued by the insurer of a rate increase scheduled to take effect on the policy's renewal that will

result in a premium amount to be paid by the policyholder that is at least 10 percent greater than the lesser of:

(1) the premium amount paid by the policyholder for coverage under the policy during the 12-month period preceding the policy's renewal date; or

(2) the premium amount paid by the policyholder for coverage under the policy during the policy period preceding the policy's renewal date.

(b) An insurer shall send the notice required by Subsection (a) before the renewal date and not later than the 30th day before the date the rate increase is scheduled to take effect.

(c) An insurer may send the notice described by Subsection (a) to any policyholder of a residential property insurance policy issued by the insurer, regardless of whether the policyholder's premium amount will increase as a result of the scheduled rate change.

(d) The commissioner by rule may exempt an insurer from the notice requirements of this section for a short-term policy, as defined by the commissioner, that is written by the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.006. CONSIDERATION OF CERTAIN OTHER LAW. In reviewing rates under this chapter, the commissioner shall consider any state or federal law that may affect rates for liability coverage included in an insurance policy subject to this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.007. ADMINISTRATIVE PROCEDURE ACT APPLICABLE. Chapter 2001, Government Code, applies to all rate hearings conducted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.008. ANNUAL REPORT OF INSURER; LEGISLATIVE REPORT.

(a) The commissioner shall require each insurer subject to this subchapter to annually file with the commissioner information relating to changes in losses, premiums, and market share since January 1, 1993. The commissioner may require an insurer subject to this subchapter to report to the commissioner, in the form and in the time required by the commissioner, any other information the commissioner determines is necessary to comply with this section.

(b) Annually, the commissioner shall report to the governor, the lieutenant governor, the speaker of the house of representatives, the legislature, and the public regarding:

(1) the information provided to the commissioner, other than information made confidential by law, in the insurers' reports under Subsection (a); and

(2) market conduct, especially rates and consumer complaints.

(c) The report required by this section must cover a calendar year and:

(1) for each insurer that writes a line of insurance subject to this subchapter, must state the insurer's:

(A) market share;

(B) profits and losses;

(C) average loss ratio; and

(D) whether the insurer submitted a rate filing during the year covered in the report; and

(2) for each rate filing submitted under Subdivision (1)(D), must indicate any significant impact on policyholders, the overall rate change from the rate previously used by the insurer stated as a percentage, and any rate changes for the previous 12, 24, and 36 months.

(d) Except as provided by Subsection (e), the annual report required by this section must be made available to the governor, lieutenant governor, speaker of the house of representatives, legislature, and public not later than the 90th day after the last day of the calendar year covered by the report.

(e) If the commissioner determines that it is not feasible to provide the report required by this section within the period specified by Subsection (d) for all lines of insurance subject to this subchapter, the department:

(1) shall make the annual report, as applicable to lines of residential property insurance and personal automobile insurance,

available within the period specified by Subsection (d); and

(2) may delay publication of the annual report as it relates to other lines of insurance subject to this subchapter until a date specified by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 151 (S.B. 611), Sec. 2, eff. May 21, 2007.

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 1.02, eff. September 1, 2015.

SUBCHAPTER B. RATE STANDARDS

Sec. 2251.051. EXCESSIVE, INADEQUATE, AND UNFAIRLY DISCRIMINATORY RATES. (a) A rate is excessive, inadequate, or unfairly discriminatory for purposes of this chapter as provided by this section.

(b) A rate is excessive if the rate is likely to produce a long-term profit that is unreasonably high in relation to the insurance coverage provided.

(c) A rate is inadequate if:

(1) the rate is insufficient to sustain projected losses and expenses to which the rate applies; and

(2) continued use of the rate:

(A) endangers the solvency of an insurer using the rate; or

(B) has the effect of substantially lessening competition or creating a monopoly in a market.

(d) A rate is unfairly discriminatory if the rate:

(1) is not based on sound actuarial principles;

(2) does not bear a reasonable relationship to the expected loss and expense experience among risks; or

(3) is based wholly or partly on the race, creed, color, ethnicity, or national origin of the policyholder or an insured.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.052. RATE STANDARDS. (a) In setting rates, an insurer shall consider:

(1) past and prospective loss experience:

(A) inside this state; and

(B) outside this state if the data from this state are not credible;

(2) the peculiar hazards and experiences of individual risks, past and prospective, inside and outside this state;

(3) the insurer's actuarially credible historical premium, exposure, loss, and expense experience;

(4) catastrophe hazards in this state;

(5) operating expenses, excluding disallowed expenses;

(6) investment income;

(7) a reasonable margin for profit; and

(8) any other factors inside and outside this state:

(A) determined to be relevant by the insurer; and

(B) not disallowed by the commissioner.

(b) A rate may not be excessive, inadequate, unreasonable, or unfairly discriminatory for the risks to which the rate applies.

(c) The insurer may:

(1) group risks by classification to establish rates and minimum premiums; and

(2) modify classification rates to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in those risks on the basis of any factor listed in Subsection (a).

(d) In setting rates that apply only to policyholders in this state, an insurer shall use available premium, loss, claim, and exposure information from this state to the full extent of the actuarial credibility of that information. The insurer may use experience from outside this state as necessary to supplement information from this state that is not actuarially credible.

(e) In determining rating territories and territorial rates, an insurer shall use methods based on sound actuarial principles.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. RATE FILINGS

Sec. 2251.101. RATE FILINGS AND SUPPORTING INFORMATION. (a) Except as provided by Subchapter D, for risks written in this state, each insurer shall file with the commissioner all rates, applicable rating manuals, supplementary rating information, and additional information as required by the commissioner. An insurer may use a rate filed under this subchapter on and after the date the rate is filed.

(b) The commissioner by rule shall:

(1) determine the information required to be included in the filing, including:

(A) categories of supporting information and supplementary rating information;

(B) statistics or other information to support the rates to be used by the insurer;

(C) information necessary to evidence that the computation of the rate does not include disallowed expenses for personal lines; and

(D) information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Section 550.001 or 4005.003; and

(2) prescribe the process through which the department requests supplementary rating information and supporting information under this section, including:

(A) the number of times the department may make a request for information; and

(B) the types of information the department may request when reviewing a rate filing.

(c) This section does not apply to rates for use with an insured that has:

(1) total insured property values of $5 million or more;

(2) total annual gross revenues of $10 million or more; or

(3) a total premium of $25,000 or more for property insurance, $25,000 or more for general liability insurance, or $50,000 or more for multi-peril insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.005, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 1.03, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 42 (S.B. 1367), Sec. 4, eff. September 1, 2021.

Sec. 2251.102. FILING REQUIREMENTS FOR INSURERS WITH LESS THAN FIVE PERCENT OF MARKET. In determining filing requirements under Section 2251.101 for an insurer with less than five percent of the market, the commissioner shall consider insurer and market-specific attributes, as applicable. The commissioner shall determine filing requirements for those insurers accordingly to accommodate premium volume and loss experience, targeted markets, limitations on coverage, and any potential barriers to market entry or growth.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.103. COMMISSIONER ACTION CONCERNING RATE FILING NOT YET IN EFFECT; HEARING AND ANALYSIS. (a) Not later than the earlier of the date the rate takes effect or the 30th day after the date a rate is filed with the department under Section 2251.101, the commissioner shall disapprove the rate if the commissioner determines that the rate does not comply with the requirements of this chapter.

(b) Except as provided by Subsection (c), if a rate has not been disapproved by the commissioner before the expiration of the 30-day period described by Subsection (a), the rate is not considered disapproved under this section.

(c) For good cause, the commissioner may, on the expiration of the 30-day period described by Subsection (a), extend the period for disapproval of a rate for one additional 30-day period. The commissioner and the insurer may not by agreement extend the 30-day period described by Subsection (a) or this subsection.

(d) If the commissioner disapproves a rate under this section, the commissioner shall issue an order specifying in what respects the rate fails to meet the requirements of this chapter.

(e) An insurer that files a rate that is disapproved under this section is entitled to a hearing on written request made to the commissioner not later than the 30th day after the date the order

disapproving the rate takes effect.

(f) The department shall track, compile, and routinely analyze the factors that contribute to the disapproval of rates under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.006, eff. September 1, 2011.

Sec. 2251.1031. REQUESTS FOR ADDITIONAL INFORMATION. (a) If the department determines that the information filed by an insurer under this subchapter or Subchapter D is incomplete or otherwise deficient, the department may request additional information from the insurer.

(b) If the department requests additional information from the insurer during the 30-day period described by Section 2251.103(a) or 2251.153(a) or under a second 30-day period described by Section 2251.103(c) or 2251.153(c), as applicable, the time between the date the department submits the request to the insurer and the date the department receives the information requested is not included in the computation of the first 30-day period or the second 30-day period, as applicable.

(c) For purposes of this section, the date of the department's submission of a request for additional information is the earlier of:

(1) the date of the department's electronic mailing or documented telephone call relating to the request for additional information; or

(2) the postmarked date on the department's letter relating to the request for additional information.

(d) The department shall track, compile, and routinely analyze the volume and content of requests for additional information made under this section to ensure that all requests for additional information are fair and reasonable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.007, eff. September 1, 2011.

Sec. 2251.104. COMMISSIONER DISAPPROVAL OF RATE IN EFFECT; HEARING. (a) The commissioner may disapprove a rate that is in effect only after a hearing. The commissioner shall provide the filer at least 20 days' written notice.

(b) The commissioner must issue an order disapproving a rate under Subsection (a) not later than the 15th day after the close of the hearing. The order must:

(1) specify in what respects the rate fails to meet the requirements of this chapter; and

(2) state the date on which further use of the rate is prohibited, which may not be earlier than the 45th day after the close of the hearing under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.008, eff. September 1, 2011.

Sec. 2251.105. GRIEVANCE. (a) An insured who is aggrieved with respect to any filing under this chapter that is in effect, or the public insurance counsel, may apply to the commissioner in writing for a hearing on the filing. The application must specify the grounds for the applicant's grievance.

(b) The commissioner shall hold a hearing on an application filed under Subsection (a) not later than the 30th day after the date the commissioner receives the application if the commissioner determines that:

(1) the application is made in good faith;

(2) the applicant would be aggrieved as alleged if the grounds specified in the application were established; and

(3) the grounds specified in the application otherwise justify holding the hearing.

(c) The commissioner shall provide written notice of a hearing under Subsection (b) to the applicant and each insurer that made the filing not later than the 10th day before the date of the hearing.

(d) If, after the hearing, the commissioner determines that the filing does not meet the requirements of this chapter, the commissioner shall issue an order:

(1) specifying in what respects the filing fails to meet those requirements; and

(2) stating the date on which the filing is no longer in effect, which must be within a reasonable period after the order date.

(e) The commissioner shall send copies of the order issued under Subsection (d) to the applicant and each affected insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.106. ROLE OF PUBLIC INSURANCE COUNSEL. (a) On request to the commissioner, the public insurance counsel may review all rate filings and additional information provided by an insurer under this chapter. Confidential information reviewed under this subsection remains confidential.

(b) The public insurance counsel, not later than the 30th day after the date of a rate filing under this chapter, may file with the commissioner a written objection to:

(1) an insurer's rate filing; or

(2) the criteria on which the insurer relied to determine the rate.

(c) A written objection filed under Subsection (b) must contain the reasons for the objection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.107. PUBLIC INFORMATION. (a) Each filing made, and any supporting information filed, under this chapter is public information subject to Chapter 552, Government Code, including any applicable exception from required disclosure under that chapter.

(b) Each year the department shall make available to the public information concerning the department's general process and methodology for rate review under this chapter, including factors that contribute to the disapproval of a rate. Information provided under this subsection must be general in nature and may not reveal proprietary or trade secret information of any insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.009, eff. September 1, 2011.

SUBCHAPTER D. PRIOR APPROVAL OF RATES UNDER CERTAIN CIRCUMSTANCES

Sec. 2251.151. REQUIREMENT TO FILE RATES FOR PRIOR APPROVAL UNDER CERTAIN CIRCUMSTANCES. (a) The commissioner by order may require an insurer to file with the department for the commissioner's approval all rates, supplementary rating information, and any supporting information in accordance with this subchapter if the commissioner determines that:

(1) the insurer's rates require supervision because of the insurer's financial condition or rating practices; or

(2) a statewide insurance emergency exists.

(a-1) If an insurer files a petition under Subchapter D, Chapter 36, for judicial review of an order disapproving a rate under this chapter, the insurer must use the rates in effect for the insurer at the time the petition is filed and may not file and use any higher rate for the same line of insurance subject to this chapter before the matter subject to judicial review is finally resolved unless the insurer, in accordance with this subchapter, files the new rate with the department, along with any applicable supplementary rating information and supporting information, and obtains the commissioner's approval of the rate.

(b) From the date of the filing of the rate with the department to the effective date of the new rate, the insurer's previously filed rate that is in effect on the date of the filing remains in effect.

(c) The commissioner may require an insurer to file the insurer's rates under this section until the commissioner determines that the conditions described by Subsection (a) no longer exist.

(c-1) If the commissioner requires an insurer to file the insurer's rates under this section, the commissioner shall periodically assess whether the conditions described by Subsection (a) continue to exist. If the commissioner determines that the conditions no longer exist, the commissioner shall issue an order excusing the insurer from filing the insurer's rates under this

section.

(d) For purposes of this section, a rate is filed with the department on the date the department receives the rate filing.

(e) If the commissioner requires an insurer to file the insurer's rates under this section, the commissioner shall issue an order specifying the commissioner's reasons for requiring the rate filing and explaining any steps the insurer must take and any conditions the insurer must meet in order to be excused from filing the insurer's rates under this section. An affected insurer is entitled to a hearing on written request made to the commissioner not later than the 30th day after the date the order is issued.

(f) The commissioner by rule shall define:

(1) the financial conditions and rating practices that may subject an insurer to this section under Subsection (a)(1); and

(2) the process by which the commissioner determines that a statewide insurance emergency exists under Subsection (a)(2).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1096 (H.B. 3358), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.010, eff. September 1, 2011.

Sec. 2251.152. RATE APPROVAL REQUIRED; EXCEPTION. (a) An insurer subject to this subchapter may not use a rate until the rate has been filed with the department and approved by the commissioner in accordance with this subchapter.

(b) Notwithstanding Subsection (a), after a rate filing is approved under this subchapter, an insurer, without prior approval of the commissioner, may use any rate subsequently filed by the insurer if the subsequently filed rate does not exceed the lesser of:

(1) 107.5 percent of the rate approved by the commissioner; or

(2) 110 percent of any rate used by the insurer in the previous 12-month period.

(c) Filed rates under Subsection (b) take effect on the date specified by the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.153. COMMISSIONER ACTION. (a) Not later than the 30th day after the date a rate is filed with the department under this subchapter, the commissioner shall:

(1) approve the rate if the commissioner determines that the rate complies with the requirements of this chapter; or

(2) disapprove the rate if the commissioner determines that the rate does not comply with the requirements of this chapter.

(b) Except as provided by Subsection (c), if a rate has not been approved or disapproved by the commissioner before the expiration of the 30-day period described by Subsection (a), the rate is considered approved and the insurer may use the rate unless the rate proposed in the filing represents an increase of 12.5 percent or more from the insurer's previously filed rate.

(c) For good cause, the commissioner may, on the expiration of the 30-day period described by Subsection (a), extend the period for approval or disapproval of a rate for one additional 30-day period. The commissioner and the insurer may not by agreement extend the 30-day period described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.155. RATE FILING APPROVAL BY COMMISSIONER; USE OF RATE. (a) The commissioner shall approve a rate filing under this subchapter if the proposed rate is adequate, not excessive, and not unfairly discriminatory.

(b) If the commissioner approves a rate filing under this section, the commissioner shall provide the insurer with a written or electronic notification of the approval. The insurer may use the rate on receipt of the approval notice.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.156. RATE FILING DISAPPROVAL BY COMMISSIONER;

HEARING. (a) If the commissioner disapproves a rate filing under Section 2251.153(a)(2), the commissioner shall issue an order disapproving the filing in accordance with Section 2251.103(d).

(b) An insurer whose rate filing is disapproved is entitled to a hearing in accordance with Section 2251.103(e).

(c) The department shall track precedents related to disapprovals of rates under this subchapter to ensure uniform application of rate standards by the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.011, eff. September 1, 2011.

SUBCHAPTER F. EXEMPTIONS FOR CERTAIN INSURERS FROM RATE FILING AND APPROVAL REQUIREMENTS

Sec. 2251.251. APPLICABILITY OF SUBCHAPTER. This subchapter applies to:

(1) an insurer, including an insurance company, a reciprocal or interinsurance exchange, a mutual insurance company, a capital stock insurance company, a county mutual insurance company, a Lloyd's plan, or any other legal entity authorized to write residential property insurance in this state; and

(2) an insurer's affiliate, as described by this code, if the affiliate is authorized to write residential property insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2251.252. EXEMPTION FROM CERTAIN OTHER LAW. (a) Except as provided by Subsections (b), (c), and (d), an insurer is exempt from the rate filing and approval requirements of this chapter if the insurer, during the calendar year preceding the date filing is otherwise required under this chapter, issued residential property insurance policies in this state that accounted for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state, more than 50 percent of which cover property:

(1) valued at less than $100,000; and

(2) located in an area designated by the commissioner as underserved for residential property insurance under Chapter 2004.

(b) If an insurer described by Subsection (a) is a member of an affiliated insurance group, this subchapter applies to the insurer only if the total aggregate premium collected by the group accounts for less than two percent of the total amount of premiums collected by insurers for residential property insurance policies issued in this state.

(c) An insurer described by Subsection (a) that proposes to increase the premium rates charged policyholders for a residential property insurance product by an amount that is 10 percent or more over the amount the insurer charged policyholders for the same or an equivalent residential property insurance product during the preceding calendar year must file the insurer's proposed rates in accordance with this chapter and, if applicable, obtain approval of the proposed rates as provided by this chapter.

(d) An insurer described by Subsection (a) that increases the premium rates charged policyholders for a residential property insurance product by an annual average amount of eight percent or greater for three consecutive calendar years must file the insurer's proposed rates in accordance with this chapter in the calendar year following the three consecutive years and, if applicable, obtain approval of the proposed rates as provided by this chapter. In calculating the three consecutive calendar years' average premium increases, an insurer is not required to consider a year in which there is a weather-related catastrophe or other major natural disaster that requires the commissioner to extend the claim-handling deadlines under Section 542.059(b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 5 (S.B. 965), Sec. 1, eff. September 1, 2021.

CHAPTER 2252. RATE ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2252.001. APPLICABILITY OF CHAPTER. (a) Except as

provided by Subsections (b) and (c), this chapter applies to an insurer, including a corporation, reciprocal or interinsurance exchange, mutual insurance company, association, Lloyd's plan, or other organization, writing casualty insurance or writing fidelity, surety, or guaranty bonds, on risks or operations in this state.

(b) This chapter does not apply to:

(1) a farm mutual insurance company or association regulated under Chapter 911; or

(2) a county mutual insurance company regulated under Chapter 912.

(c) This chapter does not apply to the writing of:

(1) automobile insurance;

(2) life, health, or accident insurance;

(3) professional liability insurance;

(4) reinsurance;

(5) aircraft insurance;

(6) fraternal benefit insurance;

(7) fire insurance;

(8) workers' compensation insurance;

(9) marine insurance, including noncommercial inland marine insurance and ocean marine insurance;

(10) title insurance;

(11) explosion insurance, except insurance against loss from personal injury or property damage resulting accidentally from:

(A) a steam boiler;

(B) a heater or pressure vessel;

(C) an electrical device;

(D) an engine; or

(E) all machinery and appliances used in connection with or in the operation of a boiler, heater, vessel, electrical device, or engine described by Paragraphs (A)-(D); or

(12) insurance coverage for any of the following conditions or risks:

(A) weather or climatic conditions, including lightning, tornado, windstorm, hail, cyclone, rain, or frost and freeze;

(B) earthquake or volcanic eruption;

(C) smoke or smudge;

(D) excess or deficiency of moisture;

(E) flood;

(F) the rising water of an ocean or an ocean's tributary;

(G) bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, or any order of a civil authority made to prevent the spread of a conflagration, epidemic or catastrophe;

(H) vandalism or malicious mischief;

(I) strike or lockout;

(J) water or other fluid or substance resulting from:

(i) the breakage or leakage of a sprinkler, pump, or other apparatus erected for extinguishing fire, or a water pipe or other conduit or container; or

(ii) casual water entering a building through a leak or opening in the building or by seepage through building walls; or

(K) accidental damage to a sprinkler, pump, fire apparatus, pipe, or other conduit or container described by Paragraph (J)(i).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2252.002. CONSTRUCTION OF CHAPTER. This chapter does not limit in any manner the kinds or classes of insurance that an insurer may write under an appropriate statute or the insurer's charter or certificate of authority.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER B. RATING SYSTEMS

Sec. 2252.051. INSURER TO PROVIDE RATE INFORMATION. (a) An insurer shall provide all information relevant to a rate used by the insurer to:

(1) any person who is or will be affected by the rate or by a modification of the rate; or

(2) the authorized representative of a person described by Subdivision (1).

(b) The insurer shall provide the information within a

reasonable time after receipt of a written request for the information and on payment of any reasonable charge set by the insurer.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2252.052. RIGHT TO HEARING ON RATING SYSTEM. (a) An insurer shall provide within this state reasonable means by which a person aggrieved by the application of the insurer's rating system may be heard on written request to review the manner in which the rating system has been applied in connection with the insurance afforded the person.

(b) The person may be heard under this section in person or through the person's authorized representative.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2252.053. APPEAL OF DECISION ON RATING SYSTEM. Any party affected by an action taken by an insurer or rating organization in response to a request for a hearing under Section 2252.052 may appeal that action to the commissioner not later than the 10th day after the date the party receives written notice of the action.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER C. LOSS AND EXPENSE EXPERIENCE

Sec. 2252.101. RECORDING AND REPORTING OF LOSS AND EXPENSE EXPERIENCE AND OTHER DATA. (a) The commissioner shall adopt reasonable rules and statistical plans for the recording and reporting of loss experience and other required data by insurers. The rules and plans must ensure that each insurer's total loss and expense experience is made available at least as frequently as biennially in the form and with the detail necessary to aid in determining whether rating plans comply with the standards provided by this chapter, Chapter 1901, Chapter 2251, or Subchapter B, Chapter

5.

(b) In adopting the rules and statistical plans, the commissioner shall have due regard for:

(1) the rating plans used under this chapter, Chapter 1901, Chapter 2251, or Subchapter B, Chapter 5; and

(2) the rules and forms of plans used in other states to ensure that the rules and plans are as uniform as is practicable.

(c) Each insurer shall use the statistical plans adopted under this section to record and report loss experience and other required data in accordance with the rules adopted by the commissioner.

(d) The commissioner may designate other agencies to gather and compile the loss experience and other data.

(e) The commissioner may adopt modifications to statistical plans adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2252.102. RULES AND PLANS REQUIRING INTERCHANGE OF LOSS EXPERIENCE. The commissioner may adopt reasonable rules and plans requiring the interchange of loss experience necessary for the application of rating plans.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2252.103. EXCHANGE OF RATE INFORMATION WITH OTHER STATES. To further the uniform administration of rating laws, the department or an insurer may:

(1) exchange information and experience data with insurance supervisory officials, insurers, and rating organizations in other states; and

(2) consult and cooperate with the individuals or entities described by Subdivision (1) with respect to ratemaking and the application of rating systems.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBCHAPTER D. PROHIBITED ACTS

Sec. 2252.151. PROHIBITED CONDUCT RELATED TO RATES AND PREMIUMS. (a) A person or organization may not knowingly give false or misleading information to the department or commissioner, an insurer, or any other entity that will in any manner affect the proper determination of rates or premiums.

(b) An insurer or agent who knowingly misrepresents the actual or replacement value of real or personal property to achieve an unfair competitive rate advantage commits an offense.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

CHAPTER 2253. RATING TERRITORIES

Sec. 2253.001. RATING TERRITORIES. (a) Notwithstanding any other provision of this code, an insurer, in writing residential property or personal automobile insurance, may use rating territories that subdivide a county only if:

(1) the county is subdivided; and

(2) the rate for any subdivision in the county is not greater than 15 percent higher than the rate used in any other subdivision in the county by that insurer.

(b) The commissioner by rule may allow a greater rate difference than the rate difference specified by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.073(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.073(a), eff. September 1, 2007.

CHAPTER 2254. PREMIUM REFUND FOR CERTAIN PERSONAL LINES

Sec. 2254.001. DEFINITIONS. In this chapter:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write residential property insurance or

personal automobile insurance in this state. The term includes an affiliate, as described by this code, that is authorized to write residential property insurance. The term does not include:

(A) the Texas Windstorm Insurance Association under Chapter 2210; or

(B) the FAIR Plan Association under Chapter 2211.

(2) "Personal automobile insurance" means motor vehicle insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is:

(A) owned or leased by one or more individuals; and

(B) not used primarily for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(3) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through:

(A) a homeowners policy, including a tenants policy;

(B) a condominium owners policy; or

(C) a residential fire and allied lines policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2254.002. INAPPLICABILITY OF CHAPTER. This chapter does not apply to rates for personal automobile insurance or residential property insurance for which an insurer obtains prior rate approval under Subchapter D, Chapter 2251.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2254.003. REFUND OR DISCOUNT BASED ON EXCESSIVE OR UNFAIRLY DISCRIMINATORY PREMIUM RATES. (a) This section applies to a rate for personal automobile insurance or residential property insurance filed on or after the effective date of Chapter 206, Acts of the 78th Legislature, Regular Session, 2003.

(b) Except as provided by Section 2254.004(c), if the commissioner determines that an insurer has charged a rate for

personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Section 2251.051, the commissioner may:

(1) order the insurer to refund directly to each affected policyholder the portion of the premium, plus interest on that amount, that is excessive or unfairly discriminatory, if that portion of the premium is at least 7.5 percent of the total premium charged for the coverage; or

(2) if that portion of the premium is less than 7.5 percent of the total premium, order the insurer to provide, to each affected policyholder:

(A) who renews the policy, a future premium discount equal to the amount of the excessive or unfairly discriminatory portion of the premium, plus interest on that amount; and

(B) who does not renew or whose coverage is otherwise terminated, a refund in the amount described by Subdivision (1).

(c) The rate for interest assessed under Subsection (b) is the lesser of 18 percent or the sum of six percent and the prime rate for the calendar year in which the commissioner's order finding that the rate is excessive or unfairly discriminatory is issued. For purposes of this subsection, the prime rate is the prime rate as published in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday. The period for the refund and interest begins on the date the department first provides the insurer with formal written notice that the insurer's filed rate is excessive or unfairly discriminatory, and interest continues to accrue until the refund is paid. An insurer may not be required to pay any interest penalty if the insurer prevails in an appeal of the commissioner's order under Subchapter D, Chapter 36.

(d) An insurer may not claim a premium tax credit to which the insurer is otherwise entitled unless the insurer complies with Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 484 (H.B. 2551), Sec. 1, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 3.012, eff. September 1, 2011.

Sec. 2254.004. RATE HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) Not later than the 20th day after the date of an order under Section 2254.003, the insurer may request that the State Office of Administrative Hearings conduct a rate hearing to determine whether the rate that is subject to the order is excessive or unfairly discriminatory.

(b) The office of public insurance counsel may participate in and present evidence at the hearing.

(c) After completion of the hearing, the administrative law judge shall:

(1) prepare a proposal for decision under Section 40.058; and

(2) remand the matter to the commissioner recommending that the commissioner affirm the order or that:

(A) the commissioner complete an additional review of the order not later than the 10th day after the date the commissioner receives the proposal;

(B) the parties enter into negotiations; or

(C) the commissioner take within a period specified by the administrative law judge other appropriate action with respect to the order.

(d) The commissioner's action or failure to act on a proposal or recommendation under Subsection (c) is subject to judicial review under Subchapter D, Chapter 36.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

SUBTITLE I. POLICY FORMS IN GENERAL

CHAPTER 2301. POLICY FORMS

SUBCHAPTER A. POLICY FORMS GENERALLY

Sec. 2301.001. PURPOSE. The purposes of this subchapter are to:

(1) promote the availability of insurance;

(2) regulate the insurance forms used for lines of insurance to which this subchapter applies to ensure that the forms are not unjust, unfair, inequitable, misleading, or deceptive; and

(3) provide regulatory procedures for the maintenance of appropriate information reporting systems.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.002. DEFINITIONS. In this subchapter:

(1) "Commercial property insurance" means insurance coverage against loss caused by or resulting from loss, damage, or destruction of real or personal property provided through a commercial property insurance policy. The term includes any combination of:

(A) commercial fire or allied lines;

(B) commercial inland marine insurance;

(C) commercial crime coverage;

(D) boiler and machinery insurance other than explosion;

(E) glass insurance provided as part of other coverage; and

(F) as authorized by commissioner rule, insurance covering other perils or providing other coverages or other lines of first party property insurance.

(1-a) "Form" means an insurance policy form or a printed endorsement form.

(2) "Residential property insurance" means insurance coverage against loss to real or tangible personal property at a fixed location that is provided through a homeowners insurance policy, including a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

(3) "Supporting information" means any information required by the department to be filed.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 254 (H.B. 1298), Sec. 2, eff. May 29, 2017.

Sec. 2301.003. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies to:

(1) an insurer to which Article 5.13 applies, other than the Texas Windstorm Insurance Association, the FAIR Plan Association, and the Texas Automobile Insurance Plan Association; and

(2) except as provided by Subsections (c) and (d), a Lloyd's plan, reciprocal or interinsurance exchange, and county mutual insurance company with respect to the lines of insurance described by Subsection (b).

(b) Except as provided by Section 2301.0031, this subchapter applies to all lines of the following kinds of insurance written under an insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state:

(1) general liability insurance;

(2) residential and commercial property insurance, including farm and ranch insurance and farm and ranch owners insurance;

(3) personal and commercial casualty insurance, except as provided by Section 2301.005;

(4) medical professional liability insurance;

(5) fidelity, guaranty, and surety bonds other than criminal court appearance bonds;

(6) personal umbrella insurance;

(7) personal liability insurance;

(8) guaranteed auto protection (GAP) insurance;

(9) involuntary unemployment insurance;

(10) financial guaranty insurance;

(11) inland marine insurance;

(12) rain insurance;

(13) hail insurance on farm crops;

(14) personal and commercial automobile insurance;

(15) multi-peril insurance; and

(16) identity theft insurance issued under Chapter 706.

(c) Section 2301.009 does not apply to a Lloyd's plan or a reciprocal or interinsurance exchange with respect to commercial property insurance.

(d) This subchapter does not apply to a Lloyd's plan or reciprocal or interinsurance exchange with respect to inland marine insurance, rain insurance, or hail insurance on farm crops.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.071(b), eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.071(b), eff. September 1, 2007.
Acts 2021, 87th Leg., R.S., Ch. 42 (S.B. 1367), Sec. 5, eff. September 1, 2021.

Sec. 2301.0031. EXCEPTIONS FOR CERTAIN LINES. (a) Except as provided by Subsection (d), Sections 2301.006, 2301.007(a) and (b), and 2301.008 do not apply to any line of the following kinds of insurance written under a commercial insurance policy or contract issued by an insurer authorized to engage in the business of insurance in this state:

(1) surety bonds;
(2) fidelity bonds;
(3) commercial inland marine;
(4) boiler and machinery;
(5) environmental impairment or pollution liability;
(6) kidnap and ransom;
(7) political risk or expropriation;
(8) commercial excess liability or umbrella liability;
(9) directors' and officers' liability;
(10) fiduciary liability;
(11) employment practices liability;
(12) errors and omission and professional liability other than medical professional liability;
(13) media liability;
(14) product liability, product recall, or completed operations;
(15) commercial cybersecurity, including first- and third-party commercial lines coverage for losses arising out of or relating to data privacy breaches, network security, computer viruses, and similar exposures;
(16) highly protected commercial property;
(17) commercial flood insurance not provided through the National Flood Insurance Program; or

(18) any combination of only the kinds of insurance listed in this subsection or exempted under Subsection (c).

(b) For purposes of Subsection (a), "highly protected commercial property" is commercial property that is subject to a much lower than normal probability of loss due to low-hazard occupancy or property type, superior construction, special fire protection equipment and procedures, and management commitment to loss prevention.

(c) The commissioner by rule may exempt a commercial line of insurance or commercial risk not listed in Subsection (a) from the form filing requirements of this subchapter to promote enhanced competition or more effectively use the resources of the department that might otherwise be used to review commercial lines filings.

(d) Notwithstanding Subsection (a), the commissioner may temporarily impose the requirements of Sections 2301.006, 2301.007(a) and (b), and 2301.008 for a specific kind of insurance listed in Subsection (a) for a period of not longer than one year if, after notice and hearing, the commissioner issues an order that:

(1) includes a finding that a reasonable degree of competition does not exist for that specific kind of insurance; and

(2) specifies the relevant tests and test results used to determine the degree of competition for that kind of insurance.

(e) In the absence of a finding described by Subsection (d) with respect to a specific kind of insurance, a competitive market is presumed to exist for that kind of insurance.

(f) The commissioner may adopt reasonable and necessary rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 42 (S.B. 1367), Sec. 6, eff. September 1, 2021.

Sec. 2301.004. EXEMPTION FOR LARGE RISKS. Sections 2301.006, 2301.007(a) and (b), and 2301.008 do not apply to forms for use with an insured that has:

(1) total insured property values of $5 million or more;

(2) total annual gross revenues of $10 million or more; or

(3) a total premium of $25,000 or more for property insurance, $25,000 or more for general liability insurance, or $50,000 or more for multiperil insurance.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.005. REGULATION OF INLAND MARINE FORMS. The commissioner shall adopt rules governing the manner in which forms for the various classifications of risks insured under inland marine insurance, as determined by the commissioner, are regulated.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.006. FILING AND APPROVAL OF FORMS. (a) Except as provided by Section 2301.008, an insurer may not deliver or issue for delivery in this state a form for use in writing insurance described by Section 2301.003 unless the form has been filed with and approved by the commissioner.

(b) An insurer must file the form not later than the 60th day before the date an insurer uses the form or delivers the form for use.

(c) A filed form is approved at the expiration of 60 days after the date the form is filed unless the commissioner by order approves or disapproves the form during the 60-day period. The commissioner's approval of a filed form constitutes a waiver of any unexpired portion of the 60-day period.

(d) The commissioner may extend by not more than 10 days the 60-day period described by Subsection (c) during which the commissioner may approve or disapprove a form filed by an insurer. The commissioner shall notify the insurer of the extension before the expiration of the 60-day period.

(e) A filed form for which an extension has been granted under Subsection (d) is considered approved at the expiration of the extension period described by that subsection absent an earlier approval or disapproval of the form.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.007. DISAPPROVAL OF FORMS; WITHDRAWAL OF APPROVAL.

(a) The commissioner may disapprove a form filed under Section 2301.006 or withdraw approval of a form if the form:

(1) violates any law, including a rule adopted under this code; or

(2) contains a provision or has a title or heading that is unjust or deceptive, encourages misrepresentation, or violates public policy.

(b) For good cause shown, the commissioner may withdraw approval of a form after notice and hearing.

(c) An order issued by the commissioner disapproving a form, or a notice of the commissioner's intention to withdraw approval of a form, must state the grounds for the disapproval or withdrawal of approval in sufficient detail to reasonably inform the insurer of those grounds.

(d) An order of withdrawal of approval of a form takes effect on the date prescribed by the commissioner in the order. The commissioner may not prescribe a date earlier than the 30th day after the effective date of the order, as prescribed by the commissioner.

(e) An insurer may not use a form in this state after the commissioner disapproves the form or withdraws approval of the form.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.008. ADOPTION AND USE OF STANDARD FORMS. The commissioner may adopt standard insurance policy forms, printed endorsement forms, and related forms other than insurance policy forms and printed endorsement forms, that an insurer may use instead of the insurer's own forms in writing insurance subject to this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.009. PUBLIC INSPECTION OF INFORMATION. Each filing made, and any supporting information filed, under this subchapter is open to public inspection as of the date of the filing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2301.010. CONTRACTUAL LIMITATIONS PERIOD AND CLAIM FILING PERIOD IN CERTAIN PROPERTY INSURANCE FORMS. (a) This section applies only to an insurer that issues windstorm and hail insurance in the catastrophe area, as defined by Section 2210.003.

(b) Notwithstanding Section 16.070, Civil Practice and Remedies Code, and for the purpose described by Section 2210.053(b), a policy form or printed endorsement form for residential or commercial property insurance that is filed by an insurer described by Subsection (a) or adopted by the department under this subchapter for use by an insurer described by Subsection (a) may provide for a contractual limitations period for filing suit on a first-party claim under the policy. The contractual limitations period may not end before the earlier of:

(1) two years from the date the insurer accepts or rejects the claim; or

(2) three years from the date of the loss that is the subject of the claim.

(c) A policy or endorsement described by Subsection (b) may also contain a provision requiring that a claim be filed with the insurer not later than one year after the date of the loss that is the subject of the claim. A provision under this subsection must include a provision allowing the filing of claims after the first anniversary of the date of the loss for good cause shown by the person filing the claim.

(d) A contractual provision contrary to Subsection (b) or (c) is void. If a contractual provision is voided under this subsection, the voiding of the provision does not affect the validity of other provisions of a contract that may be given effect without the voided provision to the extent those provisions are severable.

(e) The department, to encourage the authorized insurers to write windstorm and hail insurance in the catastrophe area, as defined by Section 2210.003, and in other areas of the state, may approve policy or contractual provisions other than those described by Subsections (b) and (c) that are consistent with sound underwriting and insurance principles, provided that the policy or contractual provisions meet the requirements of Sections 2301.007(a) and 2301.053.

(f) An insurer using a policy form or endorsement form in this state that includes a provision described by Subsection (b) or (c) shall, at the time the policy or endorsement is issued or renewed, disclose in writing to an applicant or insured the contractual limitations or claims filing period, as applicable, in the policy or endorsement.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 2 (H.B. 3), Sec. 55, eff. September 28, 2011.

SUBCHAPTER B. POLICY FORMS FOR PERSONAL AUTOMOBILE INSURANCE COVERAGE AND RESIDENTIAL PROPERTY INSURANCE COVERAGE

Sec. 2301.051. DEFINITIONS. In this subchapter:

(1) "Insurer" means an insurance company, reciprocal or interinsurance exchange, mutual insurance company, capital stock insurance company, county mutual insurance company, Lloyd's plan, or other legal entity authorized to write personal automobile insurance or residential property insurance in this state. The term includes an affiliate, as described by this code, that is authorized to write and is writing personal automobile insurance or residential property insurance in this state. The term does not include:

(A) the Texas Windstorm Insurance Association;

(B) the FAIR Plan Association; or

(C) the Texas Automobile Insurance Plan Association.

(2) "Personal automobile insurance" means automobile insurance coverage for the ownership, maintenance, or use of a private passenger, utility, or miscellaneous type motor vehicle, including a motor home, trailer, or recreational vehicle, that is:

(A) owned or leased by one or more individuals; and

(B) not primarily used for the delivery of goods, materials, or services, other than for use in farm or ranch operations.

(3) "Residential property insurance" means insurance coverage against loss to tangible personal property or to residential real property at a fixed location that is provided through a homeowners insurance policy, including a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April

1, 2007.

Sec. 2301.052. REGULATION OF POLICY FORMS AND ENDORSEMENTS. (a) Notwithstanding any other provision of this code and except as provided by this section, Subchapter A applies to an insurer with respect to insurance policy forms and endorsements for personal automobile insurance and residential property insurance.

(b) An insurer may continue to use an insurance policy form or endorsement promulgated, approved, or adopted under Article 5.06 or 5.35 before June 11, 2003, on written notification to the commissioner that the insurer will continue to use the form or endorsement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.053. REQUIREMENTS FOR FORMS; PLAIN-LANGUAGE REQUIREMENT. (a) Each form filed in accordance with this subchapter must comply with applicable state and federal law.

(b) Each form for a personal automobile insurance policy must provide the coverages mandated under Subchapters C and D, Chapter 1952, unless the coverages are rejected by the named insured in the manner provided by those subchapters.

(c) A form may not be used unless the form is written in plain language. For purposes of this section, a form is written in plain language if:

(1) the form achieves the minimum score established by the commissioner on the Flesch reading ease test or an equivalent test selected by the commissioner; or

(2) at the commissioner's option, the form conforms to the language requirements in a National Association of Insurance Commissioners model act relating to plain language.

(d) Subsection (c) does not apply to policy language that is mandated by state or federal law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.054. CERTAIN CONTRACTS OR AGREEMENTS PROHIBITED; REVOCATION OF CERTIFICATE OF AUTHORITY. (a) A contract or agreement that is not written into an application for personal automobile insurance coverage and the personal automobile insurance policy is void and violates this code.

(b) A contract or agreement described by Subsection (a) constitutes grounds for the revocation of an insurer's certificate of authority to write personal automobile insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.055. RULES. The commissioner may adopt reasonable and necessary rules to implement this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 2, eff. April 1, 2007.

Sec. 2301.056. REQUIREMENT FOR FORMS; DECLARATIONS PAGE REQUIREMENT. (a) A residential property insurance policy form must include a declarations page that:

(1) lists and identifies each type of deductible under the residential property insurance policy; and

(2) states the exact dollar amount of each deductible under the residential property insurance policy.

(b) If a residential property insurance policy or an endorsement attached to the policy contains a provision that may cause the exact dollar amount of a deductible under the policy to change, the declarations page must identify or include a written disclosure that clearly identifies the applicable policy provision or endorsement. The policy provision or endorsement must explain how any change in the applicable deductible amount is determined.

(c) A disclosure containing a list required by Subsection (a)(1), or a disclosure containing an identification of each applicable policy provision or endorsement, may be provided on a page separate from the declarations page.

Added by Acts 2013, 83rd Leg., R.S., Ch. 730 (S.B. 112), Sec. 1, eff. September 1, 2013.

Sec. 2301.057. CERTAIN DOCUMENTS NOT PART OF FORM. (a) A document providing a summary of a policy of personal automobile insurance or residential property insurance or a summary of an endorsement to such a policy or other ancillary material, including an advertisement for the policy or endorsement, is not part of the policy or endorsement form.

(b) A summary described by Subsection (a) does not modify the provisions of the insurance policy for which the summary was provided.

(c) A summary described by Subsection (a) is not admissible as evidence of the coverage provided by the insurance policy for which the summary is provided.

Added by Acts 2019, 86th Leg., R.S., Ch. 125 (H.B. 1555), Sec. 1, eff. May 23, 2019.

Sec. 2301.058. PROVISION OF POLICY DOCUMENTS AND RELATED MATERIALS IN LANGUAGE OTHER THAN ENGLISH. (a) An insurer may provide a customer a version of a personal automobile or residential property insurance policy or endorsement, or related explanatory or advertising material, in a language other than English. The version of the document must state, in the language of the version, that the English version of the insurance policy document controls.

(b) In the case of a dispute or complaint, the English version of the insurance policy document controls.

Added by Acts 2019, 86th Leg., R.S., Ch. 183 (H.B. 1554), Sec. 1, eff. May 24, 2019.

TITLE 11. TITLE INSURANCE
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 2501. GENERAL PROVISIONS

Sec. 2501.001. SHORT TITLE. This title may be cited as the Texas Title Insurance Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2501.002. PURPOSE; LEGISLATIVE INTENT. (a) The purpose of this title is to completely regulate the business of title insurance on real property and, as described by Subtitle F, on personal property, including the direct issuance of policies and the reinsurance of any assumed risks, to:

(1) protect consumers and purchasers of title insurance policies; and

(2) provide adequate and reasonable rates of return for title insurance companies and title insurance agents.

(b) It is the express legislative intent that this title accomplish the purpose described by Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 2, eff. September 1, 2007.

Sec. 2501.003. DEFINITIONS. In this title:

(1) "Abstract plant" means an abstract plant as defined by the department under Section 2501.004.

(2) "Attorney" means:

(A) a person who is licensed to practice law and is a member of the State Bar of Texas; or

(B) a Texas professional corporation organized to provide professional legal services.

(3) "Direct operation" means the operations of a title insurance company under a license issued to the company under Subchapter B, Chapter 2651. A reference in this title to a title insurance agent shall be construed to include a direct operation unless the context indicates otherwise.

(4) "Escrow officer" means an attorney, a bona fide employee of an attorney licensed as an escrow officer, a bona fide employee of a direct operation, or a bona fide employee of a title insurance agent whose responsibilities include:

(A) countersigning title insurance forms;

(B) supervising the preparation and delivery of title insurance forms;

(C) signing escrow checks; or

(D) closing the transaction, as described by Section

2501.006.

(5) "Foreign title insurance company" means a title insurance company organized under the laws of a jurisdiction other than this state.

(6) "Joint abstract plant operation" means a joint abstract plant operation as defined by the department under Section 2501.004.

(7) "Person" includes an individual, corporation, association, partnership, or trust.

(8) "Premium" means the premium rates promulgated by the commissioner under Subchapters D and E, Chapter 2703, and includes a charge for:

(A) title examination and closing the transaction, regardless of whether the examination or closing is performed by an attorney; and

(B) issuing the policy.

(9) "Residential real property" means real property that is improved and is designed principally for occupancy by one to four families. The term includes an individual unit of a condominium or cooperative.

(10) "Thing of value" includes any payment, advance, funds, loan, service, or other consideration.

(11) "Title examination" means the search and examination of a title to determine the conditions of the title to be insured and to evaluate the risk to be undertaken in the issuance of a title insurance policy or other title insurance form.

(12) "Title insurance" means:

(A) insurance that insures, guarantees, or indemnifies an owner of real property, or another interested in the real property, against loss or damage resulting from:

(i) a lien or encumbrance on or defect in the title to the real property; or

(ii) the invalidity or impairment of a lien on the real property;

(B) personal property title insurance, as defined by Chapter 2751; or

(C) any business that is substantially equivalent to the insurance described by Paragraphs (A) and (B) and is conducted in a manner designed to evade the provisions of this title.

(13) "Title insurance agent" means a person owning or leasing and controlling an abstract plant or as a participant in a

bona fide joint abstract plant operation and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies on the company's behalf.

(14) "Title insurance company" means:

(A) a domestic company organized under this title to engage in the business of title insurance, as described by Section 2501.005;

(B) a foreign title insurance company that:

(i) meets the requirements of this title; and

(ii) holds a certificate of authority to engage in business in this state; or

(C) any other domestic or foreign company that:

(i) meets the requirements of this title; and

(ii) holds a certificate of authority to insure a title to real property in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 3, eff. September 1, 2007.

Sec. 2501.004. ABSTRACT PLANT; JOINT ABSTRACT PLANT OPERATION. (a) For purposes of this title, the department shall define "abstract plant" and "joint abstract plant operation."

(b) To provide for the safety and protection of policyholders, the department shall require that an abstract plant:

(1) be geographically arranged;

(2) cover a period beginning not later than January 1, 1979, and be kept current; and

(3) be adequate for use in insuring titles, as determined by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 1, eff. September 1, 2009.

Sec. 2501.005. BUSINESS OF TITLE INSURANCE. (a) For purposes of this title, a person engages in the business of title insurance if

the person:

(1) as insurer, guarantor, or surety, makes or proposes to make a contract or policy of title insurance or its equivalent;

(2) transacts or proposes to transact any phase of title insurance, including:

(A) soliciting;

(B) title examination other than an examination conducted by an attorney;

(C) closing the transaction other than a closing conducted by an attorney;

(D) executing a contract of title insurance; and

(E) insuring and transacting matters arising out of the contract after the contract is executed, including reinsurance; or

(3) makes a guaranty or warranty of a title search or a title examination, or any component of a title search or title examination, if the person is not the person who performs the search or examination.

(b) A person engages in the business of title insurance if the person engages in or proposes to engage in any business that is substantially equivalent to the business of title insurance as described by this section, regardless of whether that conduct is performed in a manner designed to evade the provisions of this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2501.006. CLOSING THE TRANSACTION. (a) For purposes of this title, "closing the transaction" describes the investigation that is made:

(1) on behalf of a title insurance company, title insurance agent, or direct operation before the title insurance policy is issued; and

(2) to determine proper execution, acknowledgment, and delivery of all conveyances, mortgage papers, and other title instruments necessary to consummate a transaction.

(b) Closing the transaction includes a determination that:

(1) all delinquent taxes have been paid;

(2) in the case of an owner title insurance policy, all current taxes, based on the latest available information, have been properly prorated between the purchaser and seller;

(3) the consideration has been passed;
(4) all proceeds have been properly disbursed;
(5) a final search of the title has been made; and
(6) all necessary papers have been filed for record.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2501.007. REFERENCES TO TITLE. In this title, a reference to this title includes a reference to:
(1) Chapter 223;
(2) Chapter 271; and
(3) Subchapter U, Chapter 171, Tax Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.077, eff. September 1, 2005.

Sec. 2501.008. THIRD-PARTY CHARGES. A title insurance company, title insurance agent, or direct operation may charge, separate from the title insurance premium, actual costs or a reasonable estimate of costs incurred in connection with a closing and settlement, including:
(1) a charge by a third party for an electronic filing fee; or
(2) a fee of a third party for the provision of an ad valorem tax report.

Added by Acts 2009, 81st Leg., R.S., Ch. 1159 (H.B. 3073), Sec. 1, eff. January 1, 2010.

Sec. 2501.009. GIFTS, GRANTS, AND DONATIONS FOR EDUCATIONAL PURPOSES. (a) The department may accept gifts, grants, and donations to enable employees of the department to participate in educational events, and for other educational purposes, related to title insurance.
(b) The commissioner may adopt rules related to the acceptance of gifts, grants, and donations described in Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 1, eff. September 1, 2011.

CHAPTER 2502. PROHIBITED CONDUCT

SUBCHAPTER A. PROHIBITED CONDUCT IN GENERAL

Sec. 2502.001. ENGAGING IN CERTAIN INSURANCE BUSINESS PROHIBITED. (a) A domestic or foreign corporation operating under this title may not engage in the business of any kind of insurance other than title insurance.

(b) A company may not engage in the business of title insurance if the company engages in the business of another kind of insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.002. COVERAGE FOR UNMARKETABILITY OF TITLE PROHIBITED. (a) An insurance company may not insure against loss or damage by reason of unmarketability of title.

(b) The commissioner may not adopt a rule or form providing for coverage prohibited by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.003. INSURING AROUND DEFINED; PROHIBITIONS AND EXCEPTIONS. (a) Except as provided by Subsection (c), a title insurance company may not wilfully issue a binder for title insurance or a title insurance policy showing no outstanding enforceable recorded liens on real property against which the company knows an outstanding enforceable recorded lien exists.

(b) A title insurance company knows that an outstanding enforceable recorded lien exists against real property if, based on an examination of the title under which the binder for title insurance or title insurance policy is issued, the company determines that the lien is valid and enforceable.

(c) The commissioner by rule may approve circumstances under which a title insurance company may issue a binder for title insurance or a title insurance policy otherwise prohibited by Subsection (a).

(d) Except as otherwise provided by this section, a title

insurance company may determine the insurability of title to real property and any other matter that the company considers to be insurable under a binder for title insurance or a title insurance policy issued in connection with the property.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.004. GUARANTEE OF MORTGAGE PAYMENT PROHIBITED. (a) A title insurance company may not guarantee the payment of a mortgage on real property.

(b) A title insurance company that violates this section forfeits its authority to engage in business in this state and shall immediately surrender its certificate of authority.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.005. CIVIL PENALTY. (a) A person is liable to the state for a civil penalty of not more than $5,000 if the person:

(1) wilfully violates Section 2502.003 or 2502.004; or

(2) violates an order of the commissioner refusing to approve an application to issue a binder for title insurance or a title insurance policy prohibited by Section 2502.003(a).

(b) The department may bring an action in a Travis County district court to recover the penalty provided by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.006. CERTAIN EXTRA HAZARDOUS COVERAGES PROHIBITED. (a) A title insurance company may not insure against loss or damage sustained by reason of any claim that under federal bankruptcy, state insolvency, or similar creditor's rights laws the transaction vesting title in the insured as shown in the policy or creating the lien of the insured mortgage is:

(1) a preference or preferential transfer under 11 U.S.C. Section 547;

(2) a fraudulent transfer under 11 U.S.C. Section 548;

(3) a transfer that is fraudulent as to present and future creditors under Section 24.005, Business & Commerce Code, or a

similar law of another state; or

(4) a transfer that is fraudulent as to present creditors under Section 24.006, Business & Commerce Code, or a similar law of another state.

(b) The commissioner may by rule designate coverages that violate this section. It is not a defense against a claim that a title insurance company has violated this section that the commissioner has not adopted a rule under this subsection.

(c) Title insurance issued in or on a form prescribed by the commissioner shall be considered to comply with this section.

(d) Nothing in this section prohibits title insurance with respect to liens, encumbrances, or other defects to title to land that:

(1) appear in the public records before the date on which the contract of title insurance is made;

(2) occur or result from transactions before the transaction vesting title in the insured or creating the lien of the insured mortgage; or

(3) result from failure to timely perfect or record any instrument before the date on which the contract of title insurance is made.

(e) A title insurance company may not engage in the business of title insurance in this state if the title insurance company provides insurance of the type prohibited by Subsection (a) anywhere in the United States, except to the extent that the laws of another state require the title insurance company to provide that type of insurance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1059 (S.B. 322), Sec. 1, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1063 (S.B. 735), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. REBATES AND DISCOUNTS

Sec. 2502.051. REBATES AND DISCOUNTS PROHIBITED. A commission, rebate, discount, portion of a title insurance premium, or other thing of value may not be directly or indirectly paid, allowed, or permitted by a person engaged in the business of title insurance or received or accepted by a person for engaging in the business of

title insurance or for soliciting or referring title insurance business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.052. CERTAIN DIVISIONS OF REAL PROPERTY CHARGES PROHIBITED. Other than for services actually performed, a person may not give or accept any portion, split, or percentage of a charge made or received for a settlement or closing performed in connection with a transaction involving the conveyance or mortgaging of real property located in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.053. CERTAIN COMPENSATORY PAYMENTS NOT PROHIBITED. This subchapter does not prohibit:

(1) payment for services actually performed by a title insurance company, title insurance agent, or direct operation in connection with title examination or with closing the transaction or furnishing title evidence if:

(A) the payment does not exceed the percentage of premium or other amount established by the commissioner for the payment; and

(B) the person receiving the payment is licensed as provided by this title;

(2) payment of bona fide compensation to a bona fide employee principally employed by a title insurance company, title insurance agent, or direct operation;

(3) reasonable payment for goods or facilities actually provided and received; or

(4) payment for services actually performed by an attorney in connection with title examination or with closing the transaction, if the payment does not exceed a reasonable charge for the services.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.054. CERTAIN DIVISIONS OF PREMIUMS NOT PROHIBITED. (a) For purposes of this section, a subsidiary is a company at least

50 percent of the voting stock of which is owned by the title insurance company or by a wholly owned subsidiary of the title insurance company.

(b) This subchapter does not:

(1) prohibit a title insurance company from:

(A) appointing as its title insurance agent for a county a person who owns or leases and operates an abstract plant for that county; and

(B) arranging for a division of premiums with the agent as set by the commissioner; or

(2) affect the division of a premium between a title insurance company and its subsidiary title insurance agent when the company directly issues a title insurance policy or contract under Section 2704.002.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.055. PROMOTIONAL AND EDUCATIONAL ACTIVITIES NOT REBATES. (a) The activities described in this section are not rebates. Nothing in this subchapter prohibits a title insurance company or a title insurance agent from:

(1) engaging in promotional and educational activities that are not conditioned on the referral of title insurance business and not prohibited by Subchapter B, Chapter 541;

(2) purchasing advertising promoting the title insurance company or the title insurance agent at market rates from any person in any publication, event, or media;

(3) delivering to a party in the transaction or the party's representative legal documents or funds which are directly or indirectly related to a transaction closed by the title insurance company or title insurance agent;

(4) participating in an association of attorneys, builders, developers, realtors, or other real estate practitioners provided that the level of such participation does not exceed normal participation of a volunteer member of the association and is not activity that would ordinarily be performed by paid staff of an association; or

(5) providing continuing education courses at market rates, regardless of whether participants receive credit hours.

(b) "Market rate" means the price at which a seller, under no obligation or duress to sell, is willing to accept and a buyer, under no obligation or duress to buy, is willing to pay in an arms-length transaction. The market rate is determined by comparing the rights or items purchased or sold to similar rights or items that have been recently purchased by others or sold to others, including others not in the title insurance business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2005, 79th Leg., Ch. 631 (H.B. 2565), Sec. 7, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 2, eff. September 1, 2011.

Sec. 2502.056. MONETARY FORFEITURE. (a) A person who pays or receives a commission, rebate, discount, or other thing of value for soliciting or referring title insurance business in violation of Section 2502.051 is engaging in the unauthorized business of insurance.

(b) After notice and opportunity for hearing, a person who makes or receives a payment described by Subsection (a) is liable for a monetary forfeiture in an amount not less than the value of or more than three times the value of the payment.

(c) A monetary forfeiture under Subsection (b) is in addition to any other penalty provided by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2502.057. CERTAIN COMPENSATORY PAYMENTS RELATED TO CERTAIN ELECTRIC ENERGY PROJECTS PERMITTED. (a) This section applies with respect to a utility project that is:

(1) designed to produce, generate, transmit, distribute, sell, or furnish electric energy; and

(2) valued on completion at more than $25 million.

(b) A payment for furnishing title evidence for the issuance of a title insurance policy related to a project described by Subsection (a) may be:

(1) a flat fee or fee calculated on an hourly basis that:

(A) is payable on the date the title evidence is furnished; and

(B) does not exceed $25,000; or

(2) a portion of the title insurance premium:

(A) based on the percentage established by the commissioner for payment by a title insurance company, title insurance agent, or direct operation for services performed by another title insurance company, title insurance agent, or direct operation; and

(B) payable on the date of the issuance of the policy for which the evidence is furnished.

(c) The payment must be:

(1) made by the proposed insured to the title insurance company, title insurance agent, or direct operation that furnishes the title evidence; and

(2) credited against the title insurance premium charged for the issuance of the title insurance policy for which the evidence is furnished.

(d) Nothing in this section may be construed to allow the payment of an amount in violation of the premium rates promulgated or the division of premium established by the commissioner.

(e) This section does not apply to a payment to a reinsurer for the assumption of reinsurance described by Subchapter G, Chapter 2551.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1056 (H.B. 3106), Sec. 1, eff. September 1, 2013.

SUBTITLE B. ORGANIZATION OF TITLE INSURANCE COMPANIES

CHAPTER 2551. TITLE INSURERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2551.001. APPLICABILITY OF TITLE AND OTHER LAW. (a) Except as provided by Subsection (c) and unless the business of title insurance or title insurance companies are expressly mentioned, the provisions of this code other than this title do not apply to:

(1) a corporation incorporated or engaging in business exclusively under this title; or

(2) any title insurance business engaged in by a corporation created under:

(A) Subdivision 57, Article 1302, Revised Statutes;
(B) Chapter 861; or
(C) any other law.

(b) A law enacted after September 7, 1951, does not apply to a title insurance company or title insurance business described by Subsection (a) unless the law expressly states that it applies.

(c) To the extent applicable, the following provisions of this code apply to a title insurance company:

(1) Articles 1.09-1 and 21.47;

(2) Subsection (b), Article 1.04D;

(3) Chapters 33, 82, 83, 84, 86, 102, 261, 281, 401, 402, 493, 494, 541, 547, 555, 701, 801, 802, 824, 828, 1805, and 2204;

(4) Chapter 31, other than Section 31.005;

(5) Chapter 32, other than Section 32.022(b);

(6) Chapter 36, other than Sections 36.003, 36.004, and 36.101-36.106;

(7) Subchapter A, Chapter 38;

(8) Subchapters A-G, Chapter 101;

(9) Chapter 982, other than Sections 982.003, 982.051, 982.101, 982.105, 982.106(b), 982.109, and 982.113; and

(10) Sections 37.052, 39.001, 39.002, 81.001, 81.002, 81.004, 201.004, 201.005, 201.051, 201.055, 403.001, 403.051, 403.101, 521.002-521.004, 805.021, 822.001, 822.051, 822.052(1), (2), and (3), 822.053, 822.057, except Subsection (a)(4), 822.058, 822.059, 822.060, 822.155, 822.157, 822.158, except Subsection (a)(5), 841.004, 841.251, 841.252(a)-(c), and 4001.103.

(d) This title governs in any conflict between a provision listed by Subsection (c) and a provision of this title.

(e) This title does not regulate the practice of law by an attorney. The actions of an attorney in examining title, in examining records regarding an interest insured under Chapter 2751, or in closing a real property or personal property transaction, regardless of whether a title insurance policy is issued, does not constitute the business of title insurance, unless the attorney elects to be licensed as an escrow officer.

(f) Subsection (e) does not prohibit the commissioner from promulgating a premium for title insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 4, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.001, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 447 (H.B. 2353), Sec. 1, eff. September 1, 2009.

Sec. 2551.002. APPLICABILITY OF LAW GOVERNING CORPORATIONS. A title insurance company is subject to the Texas Business Corporation Act, the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes), and any other law of this state that governs corporations in general, to the extent those laws are not inconsistent with this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.003. RULEMAKING; AUTHORITY OF DEPARTMENT AND COMMISSIONER. (a) The commissioner may adopt and enforce rules:

(1) that prescribe underwriting standards and practices on which a title insurance contract must be issued;

(2) that define risks that may not be assumed under a title insurance contract, including risks that may not be assumed because of the insolvency of the parties to the transaction; and

(3) that the commissioner determines are necessary to accomplish the purposes of this title.

(b) With respect to a company operating under this title that engages in the kinds of business described by Section 2551.051(b)(1) or (2) in a manner that might subject the company to another regulatory statute of this state, all examination and regulation shall be exercised by the department rather than any other state agency named in the other regulatory statute, as long as the corporation engages in the business of title insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER B. FORMATION

Sec. 2551.051. FORMATION; GENERAL PURPOSES AND POWERS. (a) A private corporation may be created and licensed under this title for

the following purposes:

(1) to compile and own or lease, or to acquire and own or lease, records or abstracts of title to real property or interests in real property in this state or other jurisdictions, to insure titles to that real property or interests in that real property, and to indemnify the owners of that real property, or the holders of interests in or liens on that real property, against loss or damage resulting from an encumbrance on or defect in the title to the real property or interests in the real property;

(2) in transactions in which title insurance is to be or is being issued, to supervise or approve the signing of legal instruments affecting the interest to be insured, disbursement of money, prorations, delivery of legal instruments, closing of transactions, or issuance of commitments for title insurance specifying the requirements for title insurance and the defects in title necessary to be cured or corrected; and

(3) to issue personal property title insurance under Chapter 2751.

(b) A corporation described by Subsection (a) may exercise any of the following powers by including the power in the corporation's charter:

(1) to make and sell abstracts of title in any county of this state or another state;

(2) to accumulate and lend money and to purchase, sell or deal in notes, bonds, and securities, but without banking privileges;

(3) to act as trustee under a lawful trust committed to the corporation by contract or will or by appointment by a court as trustee, receiver, or guardian; and

(4) to act as executor or guardian under the terms of a will or as an administrator of a decedent's estate under the appointment of a court.

(c) Notwithstanding any other provision of this section, a corporation described by Subsection (a) is not authorized to practice law, as that term is defined by the courts of this state. A corporation described by Subsection (a) is not authorized to prepare a legal instrument described by Subsection (a)(2).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 5, eff.

September 1, 2007.

Sec. 2551.052. NAME. (a) The name of a corporation chartered or operating under this title may contain the words "Title and Trust Company."

(b) The name of a corporation chartered or operating under this title may not contain the word "Trust" alone. If the word "Trust" appears in the corporation's letterhead or literature, the corporation shall include the words "Without Banking Privileges."

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.053. STOCK AND SURPLUS REQUIREMENTS. (a) A title insurance company must have a paid-up capital of at least $1 million and a surplus of at least $1 million.

(b) The capital stock and minimum surplus requirements of a title insurance company must be maintained intact over and above all outstanding liabilities, except contingent liabilities on title insurance policies.

(c) If a title insurance company suffers the impairment of its capital stock or minimum surplus requirements, the company shall immediately report the impairment to the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.007, eff. September 1, 2017.

Sec. 2551.054. PURCHASE OF OWN STOCK. (a) Subject to Section 2551.053(a) and the Texas Business Corporation Act, a title insurance company may purchase its own shares of stock. A purchase of its own shares is not considered an investment and does not constitute a violation of a provision of this code relating to admissible investments.

(b) A title insurance company that purchases its own shares must, not later than the 10th day after the date of purchase, file with the commissioner a statement listing:

(1) the name of each shareholder from whom the shares have

been purchased; and

(2) the amount paid for the shares.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.055. CHARTER OF CORPORATION ENGAGING IN BUSINESS OF TITLE INSURANCE. (a) The incorporators of a corporation engaging in the business of title insurance and incorporated under this title, Subdivision 57, Article 1302, Revised Statutes, Chapter 40, Acts of the 41st Legislature, Regular Session, 1929 (Article 1302a, Vernon's Texas Civil Statutes), or any other law shall file the corporation's original charter only with the department and shall certify the charter only to the department.

(b) Only the department may collect from a company described by this section any filing fees required by law.

(c) A corporation described by this section is not subject to another law to the extent that the law conflicts with this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.056. REGULATION OF CERTAIN CORPORATIONS. (a) A corporation incorporated under Subdivision 57, Article 1302, Revised Statutes, before February 27, 1929, and engaging in business in this state on February 27, 1929:

(1) may continue to engage in business;

(2) is subject to this title; and

(3) shall comply with the requirements of this title regarding investments and deposits.

(b) A shareholder in a company acting under this title is not liable in the event of default in the payment of any debt or liability of the company beyond the shareholder's subscription for stock.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Sec. 2551.101. CERTIFICATE OF AUTHORITY REQUIRED. A title insurance company may not engage in the business of title insurance

in this state unless the company holds a certificate of authority issued under this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.102. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) Subject to Subsection (c), the department shall issue a certificate of authority to engage in the business of title insurance if, following any examination the department considers proper, the department makes a determination favorable to the title insurance company with respect to:

(1) the payment of capital stock and surplus as required by this title; and

(2) the value of the assets used to pay the capital stock and surplus.

(b) The title insurance company shall pay the expense of any examination conducted under Subsection (a).

(c) Issuance of a certificate of authority to a foreign corporation is governed by Section 2553.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER D. GENERAL POWERS AND DUTIES

Sec. 2551.151. ADMISSIBLE INVESTMENTS. (a) A title insurance company shall hold all investments in cash or in the following:

(1) an abstract plant or plants, provided that:

(A) the corporation is organized under this title and has the right to engage in the business of title insurance;

(B) except as provided by Subsection (b), the investment is not more than 50 percent of the corporation's capital stock; and

(C) the valuation of the plant or plants is approved by the department;

(2) securities described by Subchapter D, Chapter 425, other than Sections 425.202 and 425.229-425.232, or investments authorized for title insurance companies under the laws of any other state in which the company is authorized to engage in business;

(3) real property or any real property interest that is:

(A) required for the company's convenient accommodation

in the transaction of business with reasonable regard to future needs;

(B) acquired in connection with a claim under a title insurance policy;

(C) acquired in satisfaction or on account of loans, mortgages, liens, judgments, or decrees previously owed to the company in the course of business;

(D) acquired in partial payment of the consideration of the sale of real property owned by the company if the transaction results in a net reduction in the company's investment in real property; or

(E) reasonably necessary to maintain or enhance the sale value of real property previously acquired or held by the company under this subdivision;

(4) a first mortgage note secured by any of the following, provided that the amount of the note does not exceed 80 percent of the appraised value of the security for the note:

(A) an abstract plant and connected personal property in or outside this state;

(B) stock of a title insurance agent in or outside this state;

(C) a construction contract to build an abstract plant and connected personal property; or

(D) any two or more of the items listed in this subdivision;

(5) the shares of any federal home loan bank in an amount necessary to qualify for membership and any additional amounts approved by the commissioner;

(6) foreign securities that are substantially of the same kinds, classes, and investment grade as securities otherwise qualified for investment under this section, provided that, unless the investment is also qualified under Subdivision (2), the aggregate amount of foreign investments made under this subdivision does not exceed:

(A) five percent of the insurer's admitted assets at the end of the preceding year;

(B) two percent of the insurer's admitted assets at the end of the preceding year invested in the securities of all entities domiciled in any one foreign country; and

(C) one-half of one percent of the insurer's admitted

assets at the end of the preceding year invested in the securities of any one individual entity domiciled in a foreign country;

(7) securities lending, repurchase, reverse repurchase, and dollar roll transactions, as described by Section 425.121; or

(8) money market funds, as described by Section 425.123.

(b) If a corporation maintains with the department a deposit described by Subchapter E in the amount of $100,000, the corporation may invest more than 50 percent of the corporation's capital stock under Subsection (a)(1), as considered necessary by the corporation's board of directors.

(c) A corporation created or operating under this title may own or acquire more than one abstract plant in any one county, but only one abstract plant in any one county is admissible as an investment under Subsection (a)(1).

(d) A title insurance company may not hold real property acquired under Subsection (a)(3)(B), (C), or (D) for more than 10 years without written approval of the department.

(e) Any investment that does not qualify under this section and was owned by the title insurance company on October 1, 1967, continues to qualify.

(f) If any otherwise valid investment qualified under this section exceeds in amount any of the limitations on investment provided by this section, the investment is inadmissible only to the extent that it exceeds the limitation.

(g) A title insurance company may invest in a certified capital company in the manner provided by Chapter 228.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 99 (H.B. 532), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.002, eff. April 1, 2009.

Sec. 2551.152. ANNUAL STATEMENT. (a) Not later than March 1 of each year, each title insurance company shall file with the commissioner a verified statement.

(b) The statement must be in a form required by the commissioner and must:

(1) provide a statement of the business engaged in by the title insurance company during the preceding year; and

(2) describe the condition of the company's affairs on December 31 of the preceding year.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.153. FEES. The general laws applicable to payment of a filing fee by a corporation having capital stock apply to a corporation subject to this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.154. TRANSFER OF CERTAIN BUSINESS TO STATE BANKS OR TRUST COMPANIES. (a) This section applies to a corporation chartered under Section 2551.051, or its antecedents, Article 9.01, Texas Insurance Code, or Chapter 40, Acts of the 41st Legislature, Regular Session, 1929 (Article 1302a, Vernon's Texas Civil Statutes), and empowered to act as:

(1) trustee under a lawful trust committed to the corporation by contract or will or by appointment by a court as trustee, receiver, or guardian; and

(2) executor or guardian under the terms of a will or as an administrator of a decedent's estate under the appointment of the court.

(b) A corporation described by Subsection (a) may transfer and assign to one of the following entities all of the corporation's fiduciary business in which the corporation is named or acts as guardian, trustee, executor, or administrator or in any other fiduciary capacity:

(1) a state bank created under Subtitle A, Title 3, Finance Code, or a predecessor to that law; or

(2) a state trust company created under Chapter 181, Finance Code, or a predecessor to that law.

(c) On a corporation's transfer or assignment to a state bank or trust company under this section, the state bank or trust company shall, without the necessity of any action in a court of this state or any action by the creator or beneficiary of the trust or estate:

(1) continue the guardianship, trust, executorship,

administration, or other fiduciary relationship related to the trust or estate;

(2) perform all of the duties and obligations of the corporation related to the trust or estate; and

(3) exercise any powers and authority:

(A) related to the trust or estate; and

(B) exercised by the corporation at the time of the transfer or assignment.

(d) A transfer or assignment by a corporation under this section is not a resignation or refusal by the corporation to act on behalf of the guardianship, trust, executorship, administration, or other fiduciary relationship.

(e) On a corporation's transfer or assignment to a state bank or trust company under this section, the naming or designation by a testator or the creator of a living trust of the corporation to act as trustee, guardian, or executor or in any other fiduciary capacity includes the naming or designation of the state bank or trust company and authorizes the state bank or trust company to act in that capacity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER E. REQUIRED DEPOSIT

Sec. 2551.201. DEPOSIT REQUIRED; AMOUNT. (a) Except as provided by Section 2551.202, a title insurance company shall deposit and maintain in the state treasury, or other depository in this state named by the company and approved by the department, either:

(1) cash; or

(2) securities described by Section 2551.151.

(b) A title insurance company's deposit under this section must be in an amount equal to the lesser of:

(1) one-fourth of the authorized capital of the company; or

(2) $100,000.

(c) A deposit under this section is for the benefit of all policyholders.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.202. EXCEPTION: FOREIGN TITLE INSURANCE COMPANY. (a) A foreign title insurance company is not required to make a deposit under Section 2551.201 if the company has on deposit with insurance regulatory bodies in the United States an aggregate amount of deposit that:

(1) is equal to the amount required by Section 2551.201; and

(2) secures all policyholders of the company, regardless of their location.

(b) The foreign title insurance company must file with the department a certificate of deposit under the hand and seal of each insurance regulatory body holding a deposit of the company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.203. WITHDRAWAL AND SUBSTITUTION OF DEPOSIT. A title insurance company may withdraw the deposit of securities made under Section 2551.201, or any portion of the deposit, after substituting other securities of a sufficient value to maintain the amount of deposit required under that section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.204. USE OF DEPOSIT. (a) Except as otherwise provided by Subsection (e), a deposit made under this subchapter may be used only to pay an obligation connected with title insurance.

(b) On the insolvency or dissolution of a title insurance company, the company's deposit shall be used to protect title insurance policyholders even if no accrued title insurance claims exist and other unpaid obligations do exist, except as permitted by Subsection (e).

(c) A title insurance company's deposit must be applied to:

(1) the complete payment of any obligations and liabilities of the company connected with title insurance business; and

(2) the establishment of adequate reserves or reinsurance to protect any subsequently accruing or maturing title insurance obligations and liabilities.

(d) The amount, handling, and distribution of any reserves required under Subsection (c)(2) are subject to the control and

discretion of the department and are reviewable in judicial proceedings governed by rules applicable to review of rates under Subchapters D and E, Chapter 2703.

(e) Any deposit amount remaining after payments under Subsection (c) must be applied to:

(1) payment of other obligations and liabilities of the title insurance company; or

(2) distribution to shareholders.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER F. RESERVES

Sec. 2551.251. STATUTORY PREMIUM RESERVE REQUIRED. (a) Each domestic title insurer shall establish and maintain a statutory premium reserve. The reserve is cumulative. The reserve must consist of the amounts required under Sections 2551.252-2551.260 and must be established and maintained during the period and for the uses and purposes provided by those sections.

(b) The reserve required under this section:

(1) is considered to be unearned portions of the original premium; and

(2) must be charged as a reserve liability of the title insurer in determining the insurer's financial condition.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.252. AMOUNTS ADDED TO RESERVE FOR CALENDAR YEAR 1997; REDUCTIONS. (a) The total charges of a domestic title insurer for title insurance policies written or assumed on or after January 1, 1997, and before January 1, 1998, are computed by adding the following, as described in the insurer's annual statement:

(1) the direct premium written by the insurer;

(2) the escrow and settlement service fees paid directly to and collected by the insurer;

(3) other title fees and service charges paid directly to and collected by the insurer, including fees for closing protection letters; and

(4) premiums for any reinsurance assumed by the insurer, less premiums for reinsurance ceded by the insurer during that year.

(b) The amount a domestic title insurer must set aside in the statutory premium reserve for the 1997 calendar year is computed by multiplying the total charges computed under Subsection (a) by:

(1) 6-1/5 percent if the insurer had $250 million or more in direct premium written for the year 1996; or

(2) 3-1/2 percent if the insurer had less than $250 million in direct premium written for the year 1996.

(c) A domestic title insurer shall reduce additions to the statutory premium reserve set aside for title insurance policies written or assumed during the year 1997 over a 20-year period beginning in the year after the year in which the policies are written or assumed, as provided by Subsection (d), by:

(1) 26 percent of the additions in the first year following the year of addition;

(2) 20 percent of the additions in the second year following the year of addition;

(3) 10 percent of the additions in the third year following the year of addition;

(4) nine percent of the additions in the fourth year following the year of addition;

(5) five percent of the additions in the fifth and sixth years following the year of addition;

(6) three percent of the additions in the seventh, eighth, and ninth years following the year of addition;

(7) two percent of the additions in the 10th through 14th years following the year of addition; and

(8) one percent of the additions in the last six years of the 20-year period.

(d) A domestic title insurer shall make the annual reductions under Subsection (c) in increments of one-fourth of the appropriate percentage of the additions each on March 31, June 30, September 30, and December 31 of each year.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.253. AMOUNTS ADDED TO RESERVE FOR CALENDAR YEARS AFTER 1997; REDUCTIONS. (a) Out of total charges for title insurance policies written or assumed on or after January 1, 1998, and before January 1, 2005, a domestic title insurer shall add to and

set aside in the statutory premium reserve an amount equal to the total of the following, as described in the insurer's annual statement:

(1) 25 cents per $1,000 of net retained liability if the insurer had $250 million or more in direct written premiums written for the most recent calendar year; or

(2) 30 cents per $1,000 of net retained liability if the insurer had less than $250 million in direct written premiums written for the most recent calendar year.

(b) Out of total charges for title insurance policies written or assumed on or after January 1, 2005, a domestic title insurer shall add to and set aside in the statutory premium reserve an amount equal to the total of 18.5 cents per $1,000 of net retained liability for the most recent calendar year, as described in the insurer's annual statement.

(c) A domestic title insurer shall reduce additions to the statutory premium reserve set aside for title insurance policies written or assumed after the year 1997 over a 20-year period beginning in the year after the year in which the policies are written or assumed in the manner and under the same percentages applied under Sections 2551.252(c) and (d).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 56 (H.B. 885), Sec. 1, eff. September 1, 2005.

Sec. 2551.254. TRANSITIONAL RELEASE; TRANSITIONAL CHARGE. (a) In addition to the requirements described by Sections 2551.252 and 2551.253, each domestic title insurer shall compute a total statutory premium reserve balance for all policy years combined as of December 31, 1996.

(b) A domestic title insurer shall compute the balance under Subsection (a) as if Section 2551.252 were in effect during the 20-year period ending December 31, 1996. That balance, less the total actual statutory premium reserve balance carried by the insurer on December 31, 1996, is the insurer's transitional charge if the resulting amount is more than zero or is the insurer's transitional release if the resulting amount is zero or less.

(c) If a domestic title insurer has a transitional charge under Subsection (b), in addition to any changes to the statutory premium reserve otherwise required by this subchapter, the insurer shall add to its statutory premium reserve, on December 31 of each year for 10 consecutive years beginning on December 31, 1997, an amount equal to one-tenth of the transitional charge.

(d) If a domestic title insurer has a transitional release under Subsection (b), in addition to any changes to the statutory premium reserve otherwise required by this subchapter, the insurer shall reduce its statutory premium reserve, on December 31 of each year for 10 consecutive years beginning on December 31, 1997, by an amount equal to one-tenth of the transitional release.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.255. RUNOFF BALANCE. (a) At the end of each calendar year beginning in 1997, each domestic title insurer shall compute a total statutory premium reserve balance for all policy years before January 1, 1997, combined. The balance shall be computed as of the year-end evaluation date and as if Section 2551.252 were in effect during the 20-year period ending December 31, 1996. The balance computed under this subsection is the runoff balance.

(b) A domestic title insurer shall reduce its statutory premium reserve by an amount equal to the difference between:

(1) the runoff balance computed under Subsection (a); and

(2) the runoff balance computed for the preceding calendar year.

(c) The reduction of the statutory premium reserve under Subsection (b) is in addition to any other changes to the statutory premium reserve required by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.256. ACTUARIAL CERTIFICATION. (a) Each domestic or foreign title insurer shall file annually with the insurer's annual statement required under Section 2551.152 an actuarial certification made by a member in good standing of the American Academy of Actuaries.

(b) An actuarial certification must:

(1) conform to the annual statement instructions for a title insurer adopted by the National Association of Insurance Commissioners; and

(2) include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement.

(c) The reserves analyzed under this section must include reserves for known claims, including adverse development on known claims, and reserves for incurred but not reported claims.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.257. SUPPLEMENTAL RESERVE. Each domestic or foreign title insurer shall establish a supplemental reserve in an amount equal to the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the insurer's annual statement required under Section 2551.152.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.258. REEVALUATION OF CERTAIN RESERVE REQUIREMENTS. (a) The commissioner may:

(1) reevaluate the adequacy of the statutory premium reserves required under Section 2551.253; and

(2) based on an actuarial review, change by order the amount of the statutory premium reserve required of any domestic title insurer or all domestic title insurers.

(b) Any change in the amount of a statutory premium reserve under Subsection (a)(2) is considered a statutory premium reserve and is not considered a supplemental reserve.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 56 (H.B. 885), Sec. 2, eff. September 1, 2005.

Sec. 2551.259. STATUTORY PREMIUM RESERVE AND SUPPLEMENTAL

RESERVE FUND. The statutory premium reserve and supplemental reserve fund shall be:

(1) held in cash; or

(2) invested in first mortgage notes or other securities admissible for investment by title insurers under Section 2551.151.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.260. EFFECT OF INSOLVENCY OR DISSOLUTION. On the insolvency or dissolution of a title insurer, the statutory premium reserve and supplemental reserve fund shall be used to protect title insurance policyholders, even if no accrued title insurance claims exist and other unpaid obligations do exist.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.261. RESERVE FOR UNPAID LOSSES AND LOSS EXPENSES. (a) A title insurance company shall establish and maintain, in addition to any other reserves, a reserve against:

(1) unpaid losses; and

(2) loss expense for costs of defense of an insured and other costs expected to be paid to other parties in the defense, settlement, or processing of a claim under the terms of a title insurance policy.

(b) A title insurance company shall compute the amount of the reserve required by this section by carefully estimating any loss and loss expense likely to be incurred on a proper disposition of each claim presented, under notice from or on behalf of the insured, of a title defect in or lien or adverse claim against a title insured by the company.

(c) The total expenses of the title insurance company are equal to the estimate under Subsection (b) for payment of loss and costs of defense of the insured and other costs expected to be paid to other parties in the defense, settlement, or processing of the claim under the terms of the title insurance policy. The title insurance company shall revise the estimate at least annually and may additionally revise the estimate as circumstances warrant.

(d) The amounts set aside in the reserve in any year shall be deducted in determining the net profits for that year of any title

insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER G. LIABILITY AND REINSURANCE

Sec. 2551.301. MAXIMUM POLICY LIABILITY. (a) Except as provided by Subsection (b), a title insurance company may issue a title insurance policy on any real property located in this state involving a potential policy liability of not more than 50 percent of the sum of the company's surplus as regards policyholders and the company's statutory premium reserves as stated in the most recent annual statement of the company.

(b) A title insurance company may exceed the limit described by Subsection (a) if the excess liability is reinsured in due course in accordance with Section 2551.302, 2551.305, or 2551.3055.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 38 (S.B. 572), Sec. 1, eff. September 1, 2015.

Sec. 2551.302. REQUIREMENTS FOR REINSURING POLICIES. A title insurance company may reinsure any of its policies and contracts issued on real property located in this state or on policies and contracts issued in this state under Chapter 2751, if:

(1) the reinsuring title insurance company is authorized to engage in business in this state under this title; or

(2) the title insurance company acquires reinsurance in accordance with Section 2551.305 or 2551.3055.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 6, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1059 (S.B. 322), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 38 (S.B. 572), Sec. 2, eff. September 1, 2015.

Sec. 2551.304. ACCEPTANCE OF REINSURANCE. A title insurance company may accept a reinsurance risk on real property located in this state or on interests described by Section 2751.002(2) only from an authorized title insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 7, eff. September 1, 2007.

Sec. 2551.305. REINSURANCE FROM NON-ADMITTED TITLE INSURER. Notwithstanding any other provision of this subchapter, a title insurance company may acquire reinsurance on an individual policy or facultative basis from a title insurance company not authorized to engage in the business of title insurance in this state if the title insurance company from which the reinsurance is acquired:

(1) has a combined capital and surplus of at least $20 million as stated in the company's most recent annual statement preceding the acceptance of reinsurance; and

(2) is domiciled in another state and is authorized to engage in the business of title insurance in one or more states.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1059 (S.B. 322), Sec. 3, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1056 (H.B. 3106), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 38 (S.B. 572), Sec. 3, eff. September 1, 2015.

Sec. 2551.3055. REINSURANCE FROM INSURER OTHER THAN TITLE INSURER. Notwithstanding any other provision of this subchapter, a title insurance company may obtain reinsurance by a reinsurance treaty or other reinsurance agreement from an assuming insurer with a financial strength rating of B+ or better from the A. M. Best Company, which reinsurance meets the requirements of Subchapter C, Chapter 493, if the title insurance company has provided the department with notice that:

(1) contains representations that the title insurance company was unable after diligent effort to procure sufficient reinsurance from another title insurance company; and

(2) summarizes the terms of the reinsurance treaty or other reinsurance agreement that the title insurance company will obtain.

Added by Acts 2015, 84th Leg., R.S., Ch. 38 (S.B. 572), Sec. 3, eff. September 1, 2015.

SUBCHAPTER H. ENFORCEMENT AND INTERVENTION

Sec. 2551.351. FORFEITURE OF RIGHT TO ENGAGE IN BUSINESS. (a) A foreign or domestic corporation forfeits any right to engage in business in this state if the corporation:

(1) issues any form of title insurance policy, or any other adopted or approved form, on real property in this state other than a form prescribed by the department;

(2) charges any premium rate on an owner, mortgagee, or other title insurance policy, or on any other adopted or approved form, on real property in this state other than a premium rate prescribed by the commissioner; or

(3) otherwise engages in the business of title insurance in relation to real property in this state on a form or for a premium rate not prescribed by the department or commissioner.

(b) This section does not apply to a premium rate charged in connection with a reinsurance transaction between two or more title insurance companies, provided that the reinsurance contract complies with Subchapter G.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.352. REVOCATION OF PERMIT AND FORFEITURE OF CHARTER. (a) A domestic corporation engaged in the business of title insurance that violates this title is subject to:

(1) revocation by the commissioner of the corporation's permit; and

(2) forfeiture of the corporation's charter.

(b) A foreign corporation engaged in the business of title insurance that violates this title is subject to revocation by the commissioner of the corporation's permit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.353. PROCEDURE FOR REVOCATION OF CERTIFICATE. (a) If the commissioner determines that a domestic or foreign corporation that holds a certificate of authority to engage in business in this state has violated this title, the commissioner shall notify the company that the commissioner intends to revoke the company's certificate of authority on the expiration of the 30-day period following the date actual notice is delivered or mailed under this section.

(b) Notice under this section must:

(1) be in writing; and

(2) be delivered to an executive officer of the company by personal service or by registered mail.

(c) If a company receiving notice under this section does not fully comply before the expiration of the period described by Subsection (a), the commissioner shall revoke the company's certificate of authority.

(d) A company whose certificate of authority is revoked under this section is ineligible for another certificate of authority until the later of:

(1) the date on which the company fully and in good faith complies; or

(2) the first anniversary of the date of the revocation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2551.354. APPEAL OF COMMISSIONER ACTION. (a) A company qualified or seeking to qualify under this title and aggrieved by an action of the commissioner, including any action against the company, may file an appeal of the commissioner's action in a district court in Travis County.

(b) The appeal must be filed not later than the 30th day after the date the commissioner issues the order or ruling, except that if the order or ruling is directed against the company, whether or not directed against any other party, the company has 30 days after the date of receipt of official notice of the commissioner's action to review the action.

(c) An appeal under this section is subject to the same standard of review as an appeal under this code in accordance with Section 36.203.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

CHAPTER 2553. FOREIGN OR ALIEN CORPORATIONS

Sec. 2553.001. AUTHORITY TO ENGAGE IN BUSINESS OF TITLE INSURANCE. (a) A corporation organized under the laws of another state may engage in the business of title insurance in this state on exactly the same basis and is subject to the same rules, prices, and supervision as provided for a corporation that is organized under the laws of this state and engaged in the business of title insurance under this title.

(b) To engage in the business of title insurance in this state, a foreign corporation must file with the department:

(1) an application for a permit or certificate of authority; and

(2) a financial statement demonstrating the condition of the corporation.

(c) The department shall prescribe the form of the application and financial statement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2553.002. CAPITAL AND SURPLUS REQUIREMENTS. (a) A foreign corporation may not engage in the business of title insurance in this state unless the corporation has unimpaired capital in an amount of at least $1 million and a surplus in an amount of at least $1 million.

(b) The foreign corporation must demonstrate the required capital and surplus from its financial statement and any other examination the department may want to conduct.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2553.003. TAXES AND FEES. (a) A corporation organized and incorporated under the laws of another state, territory, or

country for the purpose of engaging in the business of title insurance shall pay the same filing fees and occupation tax as a foreign casualty company is required to pay to obtain a permit to engage in the business of insurance in this state.

(b) A foreign title insurance company described by Subsection (a) is not required to pay a franchise tax.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBTITLE C. FINANCIAL SOLVENCY

CHAPTER 2601. SUPERVISION, LIQUIDATION, REHABILITATION, REORGANIZATION, OR CONSERVATION OF TITLE INSURANCE COMPANIES AND AGENTS

Sec. 2601.001. SUPERVISION, LIQUIDATION, REHABILITATION, REORGANIZATION, OR CONSERVATION OF TITLE INSURANCE COMPANIES AND AGENTS. Each title insurance agent and title insurance company is subject to Chapters 441 and 443.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.003, eff. April 1, 2009.

CHAPTER 2602. TEXAS TITLE INSURANCE GUARANTY ASSOCIATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2602.001. SHORT TITLE. This chapter may be cited as the Texas Title Insurance Guaranty Act.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.002. PURPOSES AND FINDINGS. (a) This chapter is for:

(1) the purposes and findings stated in Sections 441.001, 441.003, 441.005, and 441.006;

(2) the protection of holders of covered claims; and

(3) the protection of consumers served by impaired agents.

(b) This chapter and the powers granted and functions authorized by this chapter shall be exercised to accomplish the

purposes of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.004, eff. April 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 2, eff. September 1, 2009.

Sec. 2602.003. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an impaired title insurance company on December 31 of the year preceding the date the company becomes impaired.

(2) "Agent" includes:

(A) a title insurance agent, as defined by Section 2501.003; and

(B) a direct operation or a title insurance company's wholly owned subsidiary or affiliate that performs the services usually and customarily performed by a title insurance agent.

(3) "Association" means the Texas Title Insurance Guaranty Association.

(4) "Board" means the board of directors of the association.

(5) "Impaired agent" means a title agent or direct operation that is designated by the commissioner as an impaired agent and is:

(A) placed by a court in this state or another state under an order of supervision, conservatorship, rehabilitation, or liquidation;

(B) placed under an order of supervision or conservatorship under Chapter 441;

(C) placed under an order of rehabilitation or liquidation under Chapter 443; or

(D) otherwise found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due.

(6) "Impaired title insurance company" means a title

insurance company that is designated by the commissioner as an impaired title insurance company and is:

(A) placed by a court in this state or another state under an order of supervision, conservatorship, rehabilitation, or liquidation;

(B) placed under an order of supervision or conservatorship under Chapter 441;

(C) placed under an order of rehabilitation or liquidation under Chapter 443; or

(D) otherwise found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due.

(7) "Net direct written premiums" means the gross amount of premiums paid by policyholders for issuance of title insurance policies insuring risks located in this state and to which this chapter applies, without deduction for premiums for reinsurance ceded to other title insurance companies and not including premiums for reinsurance accepted from other authorized title insurance companies.

(8) "Payment of covered claims" means:

(A) the actual payment of claims; or

(B) the use of money of the impaired title insurance company and money derived from assessments or guaranty fees for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(9) "Trust funds or escrow accounts" includes accounts subject to annual audit under Subchapter D, Chapter 2651.

(10) "Unauthorized insurer" means a person, firm, association, or corporation that has engaged in activities prohibited by Subchapter C, Chapter 101, while engaging in the business of title insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 3, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 5.008, eff. September 1, 2017.

Sec. 2602.004. DESCRIPTION OF CONTROL. (a) For purposes of this chapter, control is the power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services.

(b) A person is presumed to control another person if the person directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of the other person. This presumption may be rebutted by a showing that the person does not in fact control the other person.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.005. APPLICABILITY; CONFLICT WITH OTHER LAWS. (a) This chapter applies to:

(1) a title insurance company engaging in business under this title;

(2) all title insurance, direct or reinsurance, written by a title insurance company engaging in business under this title; and

(3) trust funds or escrow accounts of:

(A) title insurance companies engaging in business under this title; or

(B) agents authorized to engage in business in this state and engaging in business under and governed by this title.

(b) If this chapter conflicts with another law relating to the subject matter of this chapter or its application, other than Chapter 441 or 443, this chapter controls. If this chapter conflicts with Chapter 441 or 443, that chapter controls.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.005, eff. April 1, 2009.

Sec. 2602.006. CONSTRUCTION. (a) This chapter shall be liberally construed to implement the purposes of this chapter

described by Section 2602.002, which shall be used to aid and guide interpretation of this chapter.

(b) This chapter does not:

(1) expand or diminish a right or obligation between or among policyholders, title insurance companies, or agents; or

(2) require a person to assign, waive, or relinquish a claim, right, or cause of action arising under Chapter 541 of this code or Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.007. PROHIBITED USE OF PROTECTION PROVIDED BY CHAPTER. (a) A title insurance company or agent may not advertise or refer to this chapter as an inducement to the purchase of title insurance.

(b) The use by a person of the protection provided by this chapter in the sale of insurance is unfair competition and an unfair practice under Chapter 541.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.008. IMMUNITY. (a) Liability does not exist and a cause of action does not arise against any of the following persons for a good faith action or omission of the person in exercising the person's powers and performing the person's duties under this chapter:

(1) the commissioner or the commissioner's representative;

(2) the association or the association's agent, representative, or employee;

(3) a title insurance company or the company's agent or employee;

(4) a board member; and

(5) a special deputy receiver or the special deputy receiver's agent or employee.

(b) The attorney general shall defend any action to which Subsection (a) applies that is brought against a person listed in that subsection, including an action instituted after the defendant's service with the association, commissioner, or department has terminated. This subsection does not require the attorney general to

defend a person or entity with respect to an issue other than the applicability or effect of the immunity created by Subsection (a). The attorney general is not required to defend a person listed in Subsection (a)(2), (3), (4), or (5) against an action regarding the disposition of a claim filed with the association under this chapter or any issue other than the applicability or effect of the immunity created by Subsection (a). The association may contract with the attorney general under Chapter 771, Government Code, for legal services not covered by this subsection.

(c) A title insurance company that reinsures or assumes the policies of an impaired title insurance company is not liable, and a cause of action does not arise against that company:

(1) for an action or omission by the impaired title insurance company or an officer, director, employee, attorney, or agent of the impaired title insurance company;

(2) by subrogation; or

(3) under any type of indemnity agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 1, eff. September 1, 2019.

Sec. 2602.009. ASSOCIATION AND TITLE INSURANCE COMPANIES AS INTERESTED PARTIES. The association and each title insurance company assessed under this chapter are interested parties under Sections 3(h) and 12(b), Article 21.28.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.010. RULES. The commissioner shall adopt reasonable rules as necessary to implement and supplement this chapter and its purposes.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.011. INFORMATION PROVIDED BY AND TO COMMISSIONER. (a) The commissioner shall notify the association of the existence

of an impaired title insurance company or impaired agent not later than the third day after the date on which the commissioner gives notice of the designation of impairment to the impaired agent or impaired title insurance company. The association is entitled to a copy of any complaint seeking an order of receivership with a finding of insolvency against a title insurance company at the time the complaint is filed with a court.

(b) The commissioner shall notify the board when the commissioner receives a report from the commissioner of insurance or other analogous officer of another state that indicates that a title insurance company has been designated impaired in another state. The report to the board must contain all significant details of the action taken or the report received.

(c) The commissioner shall report to the board when the commissioner has reasonable cause to believe from a completed or continuing examination of any title insurance company that the company may be an impaired title insurance company. The board may use this information in performing its duties under this chapter. The board shall keep the report and the information contained in the report confidential until it is made public by the commissioner or other lawful authority.

(d) On the board's request, the commissioner shall provide the association with a statement of the net direct written premiums of each title insurance company.

(e) The commissioner may require that the association notify the insureds of the impaired title insurance company and any other interested party of the designation of impairment and of the person's rights under this chapter. Notification by publication in a newspaper of general circulation is sufficient notice under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 4, eff. September 1, 2009.

Sec. 2602.012. APPEALS. (a) A title insurance company may appeal to the commissioner an action or ruling of the association relating to an assessment.

(b) An action or ruling of the commissioner under this chapter may be appealed as provided by Subchapter D, Chapter 36.

(c) A title insurance company appealing an assessment shall pay the assessment. The association may use the money to meet its obligations while the appeal is pending. If the appeal on the assessment is upheld, the association shall return to the company the amount paid in error or excess.

(d) Venue in a suit relating to an action or ruling under this chapter is in Travis County. Each party to the action may appeal, and the appeal is at once returnable to the appellate court and has precedence over all cases of a different character pending before the court. The commissioner or association is not required to give an appeal bond in an appeal of a cause of action arising under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.013. VENUE. An action against the association or an action against the association's board member, agent, representative, or employee that arises from the exercise of the person's powers or performance of the person's duties under this chapter must be brought in a district court in Travis County.

Added by Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. GOVERNANCE OF TEXAS TITLE INSURANCE GUARANTY ASSOCIATION

Sec. 2602.051. ASSOCIATION AS LEGAL ENTITY; SUPERVISION; MEMBERSHIP. (a) The Texas Title Insurance Guaranty Association is a nonprofit legal entity.

(b) The association is subject to the applicable insurance laws of this state and the immediate supervision of the commissioner.

(c) A title insurance company may not engage in the business of title insurance in this state unless the company is a member of the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.052. BOARD OF DIRECTORS. (a) The association's powers are exercised through a board of directors consisting of nine individuals appointed by the commissioner.

(b) Three board members must be officers or employees of title insurance companies. Two board members must be officers or employees of agents. Four board members must be public representatives.

(c) Board members other than public representatives shall be chosen to give fair representation to all title insurance companies and agents, considering the following categories:

(1) premium income;

(2) geographical location; and

(3) segments of the industry represented in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.053. ELIGIBILITY TO SERVE AS PUBLIC REPRESENTATIVE. (a) In this section, "immediate family" includes parents, a spouse, children, brothers, and sisters residing in the same household.

(b) To be eligible to serve as a public representative on the board, an individual must have resided in this state during the five years preceding appointment and may not be:

(1) licensed by or subject to the regulation of the department;

(2) financially involved in an organization subject to the regulation of the department other than by ownership of an insurance policy or contract;

(3) a member of the immediate family of an individual who is financially involved in an organization subject to the regulation of the department;

(4) engaged in or employed by an entity having a contract with an organization subject to the regulation of the department;

(5) employed by, on the board of directors of, or a holder of an elective office by or under the authority of a unit of federal, state, or local government or an organization that receives a significant part of its funding from a unit of federal, state, or local government;

(6) employed by or associated with an organization formed to represent license holders of the department or organizations or individuals subject to the regulation of the department; or

(7) required to register as a lobbyist under Chapter 305, Government Code, because of activities on behalf of an organization representing the regulated industry.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.054. TERM; VACANCY. (a) Board members serve staggered six-year terms, with the terms of three members expiring each odd-numbered year. A member may serve more than one term.

(b) A member shall serve until a successor is appointed.

(c) If a member other than a public representative ceases to be an officer or employee of a title insurance company or agent, the member's office becomes vacant.

(d) The commissioner shall appoint an individual to fill a vacancy on the board for the unexpired term.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.055. COMPENSATION OF BOARD MEMBERS. A board member may not receive compensation for the member's services but is entitled to reimbursement for actual expenses incurred in performing the member's duties.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.057. RIGHTS OF TITLE INSURANCE COMPANY WITH REPRESENTATIVE ON BOARD. (a) A title insurance company is not prohibited, because the company has an officer, director, or employee serving as a board member, from negotiating for or entering into a contract of reinsurance or assumption of liability or a contract of substitution to provide for liabilities for covered claims with the association, the commissioner, or the receiver or conservator of an impaired title insurance company or agent.

(b) A conflict of interest does not arise from entering into a contract described by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 3, eff. September 1, 2019.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF ASSOCIATION

Sec. 2602.101. GENERAL POWERS AND DUTIES. (a) In addition to the other powers and duties provided by this chapter, the association may:

(1) borrow money as necessary to implement this chapter according to the plan of operation;

(2) lend money to the receiver, supervisor, or conservator of an impaired title insurance company or its agent;

(3) sue and be sued, including taking any legal action necessary or proper to recover an unpaid assessment;

(4) enter into contracts as necessary or proper to implement this chapter;

(5) ensure payment of the policy obligations of an impaired title insurance company;

(6) negotiate and contract with a rehabilitator, conservator, supervisor, receiver, ancillary receiver, or other third party to exercise the powers and perform the duties of the association;

(7) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, a policy or contract of an impaired title insurance company;

(8) take legal action necessary to avoid the payment of improper claims or to settle claims or potential claims against an impaired title insurance company or agent, or the association;

(9) assume control of and consolidate the escrow accounts transferred to the association by an impaired agent that has been placed in receivership, supervision, or conservatorship, and:

(A) pay covered claims from the consolidated escrow accounts to facilitate processing and payment of claims;

(B) maintain a separate accounting for each transferred escrow account; and

(C) return money not used to pay a covered claim to the owner of the money in accordance with the contract governing the escrow of the money; and

(10) perform any other acts as necessary or proper to implement this chapter.

(b) The association has standing to appear before a court in this state with jurisdiction over an impaired title insurance company or agent concerning which the association is or may become obligated under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 4, eff. September 1, 2019.

Sec. 2602.102. PLAN OF OPERATION. (a) The association shall perform its functions under a plan of operation. The plan of operation must contain provisions necessary or proper for the execution of the association's powers and duties. The plan of operation must, in addition to the other requirements of this chapter:

(1) establish:

(A) procedures for handling the assets of the association;

(B) the amount and method of reimbursing board members;

(C) regular places and times for board meetings;

(D) procedures for maintaining records of all financial transactions of the association, its agents, and the board; and

(E) procedures for determining the amount of guaranty fees, for collecting those fees, and for assessments;

(2) provide for the establishment of a claims filing procedure that includes:

(A) notice by the association to claimants;

(B) procedures for filing claims seeking recovery from the association; and

(C) a procedure for appealing the denial of claims by the association; and

(3) contain additional provisions necessary or proper for the execution of the association's powers and duties.

(b) The association shall submit to the commissioner any amendment to the plan of operation necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The amendment takes effect on the commissioner's written approval or the 90th day after the date the amendment is

submitted unless disapproved by the commissioner.

(c) If the association does not submit a suitable amendment to the plan of operation, the commissioner after notice and hearing may adopt reasonable rules as necessary or advisable to implement this chapter. A rule continues in effect until modified by the commissioner or superseded by an amendment submitted by the association and approved by the commissioner.

(d) Each title insurance company shall comply with the plan of operation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 5, eff. September 1, 2019.

Sec. 2602.103. EMPLOYEES AND EXPERTS. (a) The association may employ or retain persons to perform the functions necessary or proper under this chapter, including persons necessary to handle the association's financial transactions.

(b) On the commissioner's approval, the association shall reimburse the department out of the guaranty fee account for the cost, including reasonable and necessary expenses, to employ or retain one or more persons to:

(1) audit and review agent escrow and trust accounts, financial condition, and compliance with applicable statutes and rules;

(2) report to the commissioner on the accounts, condition, and compliance; or

(3) supervise a person employed or retained to perform audit and review under Subdivision (1).

(c) A person employed or retained under Subsection (b) acts solely under the direction of and as assigned by the commissioner but shall report the person's activity and expenses to the association on the request of the association.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 31, eff. September 1, 2019.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 6, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 31, eff. September 1, 2019.

Sec. 2602.104. ASSOCIATION RECORDS. (a) The association shall maintain a record of its activities in exercising its powers and performing its duties under this chapter.

(b) A record under Subsection (a) may be made public only on:

(1) termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent title insurance company;

(2) termination of the impairment or insolvency of the title insurance company; or

(3) order of a court.

(c) This section does not limit the association's duty to report on its activities under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 7, eff. September 1, 2019.

Sec. 2602.105. MEETING BY CONFERENCE CALL. Notwithstanding Chapter 551, Government Code, the board may hold an open meeting by telephone conference call if immediate action is required and convening of a quorum of the board at a single location is not reasonable or practical. The meeting is subject to the notice requirements that apply to other meetings. The notice of the meeting must specify as the location of the meeting the location at which meetings of the board are usually held. Each part of the meeting that is required to be open to the public must be audible to the public at that location and must be recorded. The audio recording shall be retained and made available to the public for 30 days after the meeting date.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 8, eff. September 1, 2019.

Sec. 2602.106. ACCOUNTS. For purposes of administration and assessment, the board shall establish:

(1) an administrative account;

(2) a title account; and

(3) a guaranty fee account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.107. ADMINISTRATIVE EXPENSES. (a) The association may use money in the administrative account to pay administrative costs and other general expenses of the association.

(b) The association may transfer income from investment of the association's money in any account to the administrative account.

(c) The association shall assess title insurance companies as provided by Subchapter E for any additional money needed for the administrative account.

(d) The association shall pay from the guaranty fee account fees and reasonable and necessary expenses that the department incurs in an examination or audit of a title agent or direct operation under this chapter and Chapter 2651.

(e) The association may advance money from any account to the administrative account to pay the administrative expenses of the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 5, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 9, eff. September 1, 2019.

Sec. 2602.108. DEPOSIT OF FEES AND ASSESSMENTS. The association may deposit fees and assessments it collects into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller. The comptroller shall account to the association for the deposited money separately from all other money.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.109. USE OF EXCESS MONEY IN ACCOUNTS. (a) The association shall reserve in the title account the amount of money the association determines reasonably necessary for efficient future administration under this chapter. The association shall return the excess money pro rata to the holders of participation receipts on which an outstanding balance exists after deducting any credits against premium taxes taken under Section 2602.210. The amount deducted for those credits shall be deposited with the comptroller for credit to the general revenue fund. The association shall transfer to the guaranty fee account any excess money remaining in the title account after the distribution and reservation of money for administration.

(b) If the association determines that money in the administrative account exceeds the amount reasonably necessary for efficient future operation under this chapter, the association shall transfer the excess money to the guaranty fee account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 10, eff. September 1, 2019.

Sec. 2602.110. EXPENSES OF ADMINISTERING IMPAIRED INSURER OR IMPAIRED AGENT. (a) The association may spend or advance money necessary to pay the expenses of administering the supervision, rehabilitation, receivership, conservatorship, or, as determined by a court of competent jurisdiction, other insolvency of an impaired title insurance company or impaired agent, on terms the association negotiates, if the company's or agent's assets are insufficient to pay those expenses.

(b) The association may file a claim in a receivership proceeding against an impaired title insurance company or impaired agent to recover the association's reasonable costs incurred in exercising the association's powers or performing the association's duties under this chapter with respect to the impaired title insurance company or impaired agent. Payment of a claim asserted by

the association under this section in a receivership proceeding in this state is governed by Section 443.301. Payment of a claim asserted by the association under this section in a receivership proceeding in another state is governed by the law governing priority of payment of distributions on unsecured claims by an insurance guaranty association in that state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 6, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 11, eff. September 1, 2019.

Sec. 2602.111. DELEGATION OF POWERS AND DUTIES. (a) The plan of operation may provide that, on approval of the board, a power or duty of the association may be delegated to a corporation or other organization that:

(1) performs or will perform in two or more states functions similar to those of the association or its equivalent; and

(2) provides protection not substantially less favorable and effective than that provided by this chapter.

(b) A power or duty under Section 2602.101(a)(1) or (4), 2602.107, 2602.201, 2602.202, 2602.203, or 2602.205 may not be delegated under this section.

(c) The corporation or other organization shall be:

(1) reimbursed as a servicing facility would be reimbursed; and

(2) paid for its performance of any other functions of the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 12, eff. September 1, 2019.

Sec. 2602.112. EXEMPTION FROM TAXATION. The association is exempt from payment of all fees and all taxes levied by this state or a subdivision of this state, except taxes levied on real or personal

property.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.113. DETECTION AND PREVENTION OF IMPAIRMENT. (a) The board may make recommendations to the commissioner for detecting and preventing title insurance company or agent impairments. The board shall advise and counsel with the commissioner on matters relating to the solvency of title insurance companies and agents.

(b) The board may report and make recommendations to the commissioner relating to any matter germane to the solvency, liquidation, rehabilitation, or conservation of a title insurance company or agent. A report or recommendation under this subsection is not a public document until a title insurance company is designated impaired.

(c) The board shall notify the commissioner of any information indicating that a title insurance company or agent may be unable or potentially unable to fulfill its contractual obligations and shall request a meeting with the commissioner. The board may request appropriate investigation and action by the commissioner. The commissioner may investigate and act as the commissioner considers appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.114. MEETING OF BOARD ON IMPAIRED TITLE INSURANCE COMPANY OR AGENT. (a) The commissioner:

(1) shall call a meeting of the board when the commissioner determines that a title insurance company or agent is insolvent or impaired; and

(2) may call a meeting of the board when the commissioner determines that a title insurance company or agent is in danger of becoming insolvent or impaired.

(b) The meeting is not open to the public. Only board members, association counsel and other association representatives, the commissioner, and persons the commissioner authorizes may attend the meeting.

(c) The commissioner may require an officer, director, or employee of the title insurance company or agent to appear before the

board for conference or to give testimony.

(d) At the meeting the commissioner may disclose to the board information that the commissioner possesses and may disclose department records, including an examination report or a preliminary report from an examiner that relates to the title insurance company or agent.

(e) A board member may not disclose information received in the meeting unless authorized by the commissioner or required as witness in court. A board member and the meeting are subject to the confidentiality standard imposed on an examiner under Sections 401.105 and 401.106, except that a bond is not required of a board member.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.006, eff. April 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 13, eff. September 1, 2019.

Sec. 2602.115. ASSOCIATION AND BOARD ADVICE AND ASSISTANCE. (a) On the commissioner's request, the board shall attend hearings before the commissioner and meet with and advise the commissioner or the receiver or the conservator appointed by the commissioner on matters relating to:

(1) the affairs of an impaired title insurance company or agent;

(2) action that the commissioner, receiver, or conservator may take to best protect the interest of holders of covered claims against the company or agent; and

(3) the marshalling of assets.

(b) On the commissioner's request, the association may assist and advise the commissioner concerning rehabilitation, payment of claims, continuation of coverage, or the performance of other contractual obligations of an impaired title insurance company or agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.116. BOARD ACCESS TO RECORDS. The receiver, supervisor, conservator, or other statutory successor of an impaired title insurance company or agent shall give the board or its representative:

(1) access to the company's or agent's records as necessary for the board to perform its functions under this chapter relating to covered claims; and

(2) copies of those records on the board's request and at the board's expense.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 14, eff. September 1, 2019.

Sec. 2602.117. BOARD REPORT AT CONCLUSION OF IMPAIRMENT. At the conclusion of a title insurance company or agent impairment in which the association exercised its powers or performed its duties under this chapter, the board shall prepare, from information available to the association, and submit to the commissioner a report on the history and causes of the impairment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER D. POLICY GUARANTY FEES

Sec. 2602.151. PAYMENT OF FEE. (a) An agent or, if there is no agent, the title insurance company shall pay the association a quarterly guaranty fee for each owner or mortgagee title insurance policy that the agent or company is required to report on its statistical report to the department.

(b) The fee is due:

(1) May 1, for the quarter ending March 31;

(2) August 1, for the quarter ending June 30;

(3) November 1, for the quarter ending September 30; and

(4) February 1, for the quarter ending December 31.

(c) The association shall deposit the fee in the guaranty fee account.

(d) Except as provided by Section 2602.109, money in the guaranty fee account shall be derived only from guaranty fees as

provided by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.152. AMOUNT OF FEE. Annually or more frequently, the board shall determine the amount of the guaranty fee, considering the amount of money to be maintained in the guaranty fee account that is reasonably necessary for efficient future operation under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 7, eff. September 1, 2009.

Sec. 2602.153. USE OF FEE. (a) The association shall collect, receive, retain, disburse, and advance the guaranty fees only as specifically provided by this chapter.

(b) The following claims shall be paid from guaranty fees only and may not be paid from assessments:

(1) covered claims against trust funds or an escrow account of an impaired agent under Section 2602.252;

(2) expenses incurred in complying with Subchapter J;

(3) conservator and receiver expenses under Section 2602.254; and

(4) administrative expenses with respect to the estate of an impaired agent under Section 2602.110.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1025, Sec. 18, eff. September 1, 2009.

(d) Guaranty fees may be used only for payment of:

(1) claims described by Subsection (b); and

(2) expenses related to:

(A) an audit or an examination conducted by the department or the association under this chapter;

(B) the supervision and coordination of such an audit or examination; and

(C) an action under Section 2602.452.

(e) The association may advance money from the guaranty fee account as the association considers necessary to provide for the

payment of covered claims related to an impaired agent and administrative expenses related to the evaluation and payment of those claims. The advanced money shall be repaid to the guaranty fee account as soon as is practicable with money from guaranty fees or the estate of the impaired agent. No interest may accrue on the advanced money.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 8, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 18, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 15, eff. September 1, 2019.

Sec. 2602.154. ENFORCEMENT OF FEE. (a) After notice and opportunity for hearing, the commissioner may suspend or revoke the certificate of authority or license to engage in business in this state of a title insurance company or agent that does not comply with this subchapter.
(b) The commissioner shall adopt rules that implement the program created under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER E. ASSESSMENTS

Sec. 2602.201. MAKING OF ASSESSMENT. (a) If the commissioner determines that a title insurance company has become impaired, the association shall promptly estimate the amount of additional money needed to supplement the assets of the impaired title insurance company to pay all covered claims and administrative expenses, including expenses related to processing and payment of the claims.
(b) The association shall assess title insurance companies in writing an amount as determined under Section 2602.202. A title insurance company does not incur real or contingent liability under this chapter until the association actually makes the written assessment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 16, eff. September 1, 2019.

Sec. 2602.202. AMOUNT OF ASSESSMENT; PRORATION OF PAYMENT. (a) The association shall assess title insurance companies the amount necessary to pay:

(1) the association's obligations under this chapter and the expenses of handling covered claims subsequent to an impairment; and

(2) other expenses authorized by this chapter.

(b) The assessment of each title insurance company must be in the proportion that the net direct written premiums of that company in this state for the calendar year preceding the assessment bear to the net direct written premiums of all title insurance companies for that year. Assessments and supplemental assessments may be made in consecutive years until the association has collected an amount sufficient to pay the obligations and expenses described under Subsection (a). The association may make a supplemental assessment only against the same title insurance companies and in the same proportion for each company as the initial assessment.

(c) The total assessment of a title insurance company in a year may not exceed an amount equal to two percent of the company's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment and the association's other assets are insufficient in any one year to make all necessary payments, the money available shall be prorated and the unpaid portion shall be paid as soon as money becomes available.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 17, eff. September 1, 2019.

Sec. 2602.203. NOTICE AND PAYMENT. The association shall give each title insurance company to be assessed at least 90 days' written notice of the due date of the assessment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 18, eff. September 1, 2019.

Sec. 2602.204. EXEMPTION FOR IMPAIRED TITLE INSURANCE COMPANY. A title insurance company is exempt from assessment during the period beginning on the date the commissioner designates the company as an impaired title insurance company and ending on the date the commissioner determines that the company is no longer an impaired title insurance company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.205. DEFERMENT. (a) The association may defer in whole or in part an assessment of a title insurance company that would cause the company's financial statement to show amounts of capital or surplus less than the minimum amount required for a certificate of authority in any jurisdiction in which the company is authorized to engage in the business of insurance.

(b) The title insurance company shall pay the deferred assessment when payment will not reduce capital or surplus below required minimums. The payment shall be refunded to or credited against future assessments of any title insurance company receiving a larger assessment because of the deferment, as elected by that company.

(c) During a period of deferment, the title insurance company may not pay a dividend to shareholders or policyholders.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.206. PARTICIPATION RECEIPTS. (a) On receipt from a title insurance company of payment of an assessment or partial assessment, the association shall provide the company with a participation receipt. A participation receipt creates liability against the impaired title insurance company.

(b) The holder of the receipt is a general creditor of the impaired title insurance company, except that if the amount of

assessments the association receives exceeds the amount paid for covered claims and administrative expenses, the holders of participation receipts have preference over other general creditors to, and are entitled to share pro rata in, the excess.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 19, eff. September 1, 2019.

Sec. 2602.207. ACCOUNTING; REPORTS; REFUND. (a) The association shall adopt accounting procedures to show how money received from assessments or partial assessments is used.

(b) The association shall make interim accounting reports as the commissioner requires.

(c) The association shall make a final report to the commissioner showing how money received from assessments or partial assessments has been used, including a statement of any final balance of that money. As soon as practicable after completion of the final report, the association shall refund the remaining balance to the holders of participation receipts as required by Section 2602.206(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.208. USE OF ASSESSMENTS. (a) Money from assessments is considered to supplement the marshalling of an impaired title insurance company's assets to make payments of covered claims on the impaired title insurance company's behalf and to pay administrative expenses related to payment of covered claims. The association may assess title insurance companies or use money from assessments to pay covered claims before the receiver exhausts the impaired title insurance company's assets.

(b) The association may use money from assessments to negotiate and consummate contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims.

(c) Except as provided by Section 2602.109, money from assessments may not be used for the guaranty fee account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 20, eff. September 1, 2019.

Sec. 2602.209. FAILURE TO PAY; COLLECTION BY COMMISSIONER. (a) The association shall promptly report to the commissioner a failure of a title insurance company to pay an assessment when due.

(b) On failure of a title insurance company to pay an assessment when due, the commissioner may either:

(1) suspend or revoke, after notice and hearing, the company's certificate of authority to engage in business in this state; or

(2) assess an administrative penalty as provided by Chapter 84 in an amount not to exceed the greater of five percent of the unpaid assessment each month or $100 each month.

(c) A title insurance company whose certificate of authority is canceled or surrendered is liable for any unpaid assessments made before the date of the cancellation or surrender.

(d) The commissioner may collect an assessment on behalf of the association through a suit brought for that purpose.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.210. RECOVERY OF ASSESSMENT IN RATES; TAX CREDIT. (a) A title insurance company is entitled to recover in its rates for the succeeding 12 months amounts paid in assessments not to exceed one percent of the company's net direct written premiums. In promulgating or establishing rates the commissioner shall consider assessments and refunds of assessments and shall adjust the rates to allow for recovery under this subsection.

(b) Unless the department determines that all amounts paid as assessments by each title insurance company have been recovered under Subsection (a), for any amount not recovered the title insurance company is entitled to a credit against its premium tax under Chapter 223. The credit may be taken at a rate of 20 percent each year for five successive years following the date of assessment and, if the title insurance company elects, may be taken over an additional

number of years.

(c) An amount of a tax credit allowed by this section that is unclaimed may be shown in the title insurance company's books and records as an admitted asset for all purposes, including an annual statement under Section 862.001.

(d) If the association receives money related to a title insurance company receivership from any source, including payment of a claim made by the association against the estate of the title insurance company, that is in excess of the amount title insurance companies have recovered or are entitled to recover under this section, the excess money shall be held by the association in its title account to offset the amounts required for future assessments or administrative expenses of the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 21, eff. September 1, 2019.

SUBCHAPTER F. COVERED CLAIMS

Sec. 2602.251. COVERED CLAIMS IN GENERAL. An unpaid claim is a covered claim if:

(1) the claim is made by an insured under a title insurance policy to which this chapter applies;

(2) the claim arises out of the policy and is within the coverage and applicable limits of the policy, subject to all applicable policy provisions and defenses available under the policy and applicable law;

(3) the title insurance company that issued the policy or assumed the policy under an assumption certificate is an impaired title insurance company; and

(4) the insured real property or a lien on the property is located in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 22, eff. September 1, 2019.

Sec. 2602.252. CLAIM AGAINST TRUST FUNDS OR ESCROW ACCOUNT. An unpaid claim is a covered claim if the claim:

(1) is:

(A) against trust funds or an escrow account of an impaired title insurance company or agent; or

(B) for money received by an impaired title insurance company, the company's agent, or an authorized agent of the company's agent for deposit into a trust fund or an escrow account; and

(2) is unpaid because of a shortage of those funds or in that account, including a shortage that exists because the money was not deposited by the impaired title insurance company or the company's agent in the fund or account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 23, eff. September 1, 2019.

Sec. 2602.253. CLAIM IN CONNECTION WITH FIDELITY OF AGENT. An unpaid claim is a covered claim if an impaired title insurance company is liable for the claim in connection with the fidelity of the company's agent as authorized by Subchapter A, Chapter 2702.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.254. CERTAIN CONSERVATOR AND RECEIVER EXPENSES COVERED. Reasonable and necessary administrative expenses incurred by a conservator appointed by the commissioner or a receiver appointed by a court for an unauthorized insurer operating in this state are covered claims if the commissioner has notified the association or the association has otherwise become aware that:

(1) the unauthorized insurer has insufficient liquid assets to pay those expenses; and

(2) insufficient money is available from:

(A) abandoned money under Section 443.304; and

(B) department appropriations for use in paying those expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.007, eff. April 1, 2009.

Sec. 2602.255. CLAIMS NOT COVERED. The following are not covered claims:

(1) an amount due a reinsurer, title insurance company, insurance pool, or underwriting association as a subrogation recovery or otherwise;

(2) a supplementary payment obligation incurred before a determination is made under this chapter that a title insurance company or agent is impaired, including:

(A) adjustment fees or expenses;

(B) attorney's fees or expenses;

(C) court costs;

(D) interest;

(E) enhanced damages, sought as a recovery against the insured, the impaired title insurance company or agent, or the association, that arise under Chapter 541 of this code or Subchapter E, Chapter 17, Business & Commerce Code, or a similar law of another state; and

(F) bond premiums;

(3) a shortage of trust funds or in an escrow account resulting from the insolvency of a financial institution;

(4) exemplary, extracontractual, or bad faith damages awarded against an insured or title insurance company by a court judgment;

(5) a claim under Section 2602.252 by a claimant who has a lien against the real property that was the subject of the transaction from which the claim arises, unless the lien is held to be invalid as a matter of law;

(6) a claim under Section 2602.251, 2602.252, or 2602.253 by a claimant who caused or substantially contributed to the claimant's loss by the claimant's action or omission, as determined by the association or the association's agent; and

(7) a claim filed with the association after the claim filing deadline for an impaired title insurance company or agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 24, eff. September 1, 2019.

Sec. 2602.256. AMOUNT OF COVERED CLAIM; LIMIT. (a) A covered claim under Section 2602.251 or 2602.253 may not exceed the lesser of $500,000 for each claimant or $500,000 for each policy.

(b) A covered claim under Section 2602.252 may not exceed the lesser of $500,000 for each claimant or the amount of money actually received by the impaired title insurance company or agent as trust funds or an escrow account for each claimant in a transaction from which the claim arises, except that the cumulative amount of covered claims arising from a single transaction may not exceed $500,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 25, eff. September 1, 2019.

Sec. 2602.257. EXHAUSTION OF OTHER RIGHTS REQUIRED. (a) A person having a covered claim that is also a claim against a title insurance company under law or under an insurance policy other than a policy of an impaired title insurance company must exhaust the person's rights under law or the policy before asserting the covered claim under this chapter.

(b) The amount payable on the covered claim is reduced by the amount of any recovery under law or the policy.

(c) Notwithstanding any other provision, to avoid undue hardship to a claimant the association may authorize payment of a covered claim against an impaired agent without regard to the liability of any title insurance company or coverage under any insurance policy, subject to the approval of the receivership court or commissioner, as applicable. On payment, the association is in all respects subrogated to the rights and claims of the claimant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.258. CERTAIN MONEY AUTHORIZED FOR USE IN PAYING

COVERED CLAIM; LIMIT. (a) Money from assessments or guaranty fees is liable only for the difference between the amount of covered claims and the amount of assets marshalled by a receiver or conservator for payment to holders of covered claims.

(b) In an ancillary receivership in this state, money from assessments is liable only for the difference between the amount of covered claims and the amount of assets marshalled by receivers in other states for payment of covered claims in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.259. STAY OF PROCEEDINGS; CERTAIN DECISIONS NOT BINDING. (a) To permit the receiver or association to properly defend a pending cause of action, a proceeding in which an impaired title insurance company is a party or is obligated to defend a party in a court in this state, other than a proceeding directly related to the receivership or instituted by the receiver, is stayed for:

(1) a six-month period beginning on the later of the date of the designation of impairment or the date an ancillary proceeding is brought in this state; and

(2) any subsequent period as determined by the court.

(b) If a covered claim arises from a judgment, order, verdict, finding, or other decision based on the default of an impaired title insurance company or its failure to defend an insured, the association on its own behalf or on behalf of the insured may apply to the court or administrator that made the decision to have the decision set aside and may defend the claim on its merits.

(c) In a proceeding considering a covered claim, a judgment against an insured taken after the date the delinquency proceeding or supervision begins or a conservator is appointed is not evidence of liability or of the amount of damages, and a default or consent judgment against an insured or the impaired title insurance company or a settlement, release, or judgment entered into by the insured or the impaired title insurance company does not bind the association and is not evidence of liability or of the amount of damages in connection with a claim brought against the association or another party under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 26, eff. September 1, 2019.

Sec. 2602.260. ADMISSIBILITY OF PAYMENT. In a lawsuit brought by a conservator, supervisor, or receiver of an impaired title insurance company or agent to recover assets of the company or agent, the fact that a claim against the company or agent has been or will be paid under this chapter is not admissible and may not be placed before a jury by evidence, argument, or reference.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 27, eff. September 1, 2019.

Sec. 2602.261. APPEAL OF CLAIM DETERMINATION. A claimant's right of appeal with respect to a claim determination by the association is governed by the association's plan of operation. A claimant must bring an action, including an action for declaratory relief, challenging denial of a claim not later than one year after the date the claim was denied.

Added by Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 28, eff. September 1, 2019.

SUBCHAPTER G. ASSOCIATION POWERS AND DUTIES RELATING TO COVERED CLAIMS

Sec. 2602.301. GENERAL POWERS AND DUTIES OF ASSOCIATION IN CONNECTION WITH PAYMENT OF COVERED CLAIMS. (a) The association shall:

(1) investigate a claim brought against the association, the commissioner, or a special deputy receiver appointed under Chapter 443 if the claim involves or may involve the association's rights and obligations under this chapter; and

(2) adjust, compromise, settle, and pay a covered claim to the extent of the association's obligation, and deny all other claims.

(b) The association may review a settlement, release, or

judgment to which an impaired title insurance company or agent or its insured was a party to determine the extent to which the settlement, release, or judgment is contested.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2I.008, eff. April 1, 2009.

Sec. 2602.302. PAYMENT OF COVERED CLAIMS. (a) The association shall pay covered claims:

(1) existing before the determination of impairment; or

(2) arising on or before:

(A) the date of cancellation of the impaired title insurance company's policies or the claim deadline for claims against the impaired title insurance company, as applicable; or

(B) the claim deadline for covered claims against an impaired agent, which is the first anniversary of the date of determination of impairment.

(b) A court in this state in which receivership proceedings of an impaired title insurance company are pending shall set, as applicable:

(1) the date of cancellation of the policies, which may not be later than the fifth anniversary of the date of determination of impairment; or

(2) the claim deadline, which may not be later than the first anniversary of the date of determination of impairment.

(b-1) If an impaired title insurance company is in receivership proceedings outside of this state, the claim deadline is the first anniversary of the date of determination of impairment.

(c) Subject to the approval of the commissioner, the association shall establish:

(1) procedures for filing claims with the association; and

(2) acceptable forms of proof of covered claims.

(d) The association shall pay claims in the order the association considers reasonable, including payment as claims are received from the claimants or in groups or categories of claims.

(e) The association may not pay a claimant an amount exceeding the amount of the claimant's covered claim.

(f) On payment of the last timely filed covered claim, the association is discharged from the association's obligations under this chapter. This subsection does not discharge the association of obligations related to pending litigation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 29, eff. September 1, 2019.

Sec. 2602.303. SERVICING FACILITY. (a) The association may handle claims through its employees or through one or more title insurance companies or other persons designated, subject to the approval of the commissioner, as a servicing facility.

(b) A title insurance company may decline designation as a servicing facility.

(c) The association shall reimburse a servicing facility for:

(1) obligations of the association paid by the facility; and

(2) expenses incurred by the facility in handling claims for the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.304. ADVANCE AS LOAN. Money advanced by the association under this chapter is considered a special fund loan to the impaired title insurance company or agent for payment of covered claims and does not become an asset of the title insurance company or agent. The loan is repayable to the extent money from the title insurance company or agent is available.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.305. ASSOCIATION IN PLACE OF IMPAIRED TITLE INSURANCE COMPANY OR AGENT. (a) To the extent of the association's obligation on a covered claim, the association stands in the place of the impaired title insurance company or agent and has all the rights, duties, and obligations of the company or agent as if the company or

agent were not impaired.

(b) In performing its obligations under this chapter, the association is not considered:

(1) to be engaged in the business of insurance;

(2) to have assumed or succeeded to a liability of the impaired title insurance company or agent; or

(3) to otherwise stand in the place of the impaired title insurance company or agent, including as to whether the association is subject to personal jurisdiction of the courts of another state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.306. ASSIGNMENT OF CLAIMANT'S RIGHTS. (a) Any cause of action or other right of the holder of a covered claim arising from the occurrence on which the claim is based is assigned to the association on the holder's acceptance of:

(1) the association's payment of the claim; or

(2) a benefit of a contract by the association providing for reinsurance or assumption of liabilities or for substitution.

(b) Rights are assigned to the association under Subsection (a) to the extent of the amount accepted or the value of the benefit provided.

(c) The association may assign the rights acquired under this section to the title insurance company executing the reinsurance, assumption, or substitution agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.307. SETTLEMENT BY ASSOCIATION BINDING; PRIORITY OF CLAIM AND EXPENSES. (a) The settlement of a covered claim by the association binds the receiver or statutory successor of an impaired title insurance company.

(b) The court shall give the covered claim the same priority against assets of the impaired title insurance company that the claim would have had in the absence of this chapter.

(c) The association's expenses in handling claims have the same priority as the receiver's expenses.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.308. REPORT TO RECEIVER. The association shall periodically file with the receiver of an impaired title insurance company a statement of covered claims paid by the association and an estimate of claims anticipated against the association. The statement preserves the rights of the association against the assets of the company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER H. CONSERVATOR OR RECEIVER POWERS AND DUTIES RELATING TO COVERED CLAIMS

Sec. 2602.351. DETERMINATION OF CONSERVATOR CONCERNING REINSURANCE, ASSUMPTION, OR SUBSTITUTION. A conservator appointed to handle the affairs of an impaired title insurance company or agent shall determine whether covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.352. NOTICE OF DETERMINATION CONCERNING ACTUAL PAYMENT. (a) On determination by the conservator that covered claims should be actually paid, the conservator shall give notice of the determination to holders of covered claims.

(b) The conservator shall mail the notice to each holder of a covered claim at the most recent address shown in the impaired title insurance company's or agent's records, except that if those records do not show the claimant's address the conservator may give notice by publication in a newspaper of general circulation.

(c) The notice must state a date, not earlier than the 91st day after the date of the mailing or publication of the notice, before which the claimant must file a claim with the conservator.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.353. FILING OF COVERED CLAIM. The conservator may require in whole or in part that claimants file:

(1) sworn claim forms; and

(2) additional information or evidence reasonably necessary for the conservator to determine the legality of or amount due under a covered claim.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.354. CLAIM BY PERSON WITH CAUSE OF ACTION AGAINST INSURED. (a) On determination by the conservator that covered claims should be actually paid or on order of the court to the receiver to give notice for the filing of claims, a person having a cause of action that constitutes a covered claim against an insured of the impaired title insurance company under a title insurance policy issued or assumed by the company may file the claim with the receiver or conservator, regardless of whether the claim is unliquidated or undetermined.

(b) A claim under this section may be approved as a covered claim if:

(1) it may be reasonably inferred from the proof presented that the claimant would be able to obtain a judgment on the cause of action against the insured;

(2) the claimant provides suitable proof that no valid claim exists against the impaired title insurance company arising from the cause of action other than claims already made; and

(3) the total liability of the impaired title insurance company to all claimants under the same title insurance policy does not exceed the amount of the company's total liability if the company were not in liquidation, rehabilitation, or conservation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2602.355. REPORT TO ASSOCIATION. (a) A receiver of an impaired title insurance company or agent shall periodically submit a list of claims to the association or a similar organization in another state.

(b) Notice of a claim to the receiver is considered notice to the association.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER I. OPERATION OF IMPAIRED TITLE INSURANCE COMPANY OR AGENT

Sec. 2602.401. ISSUANCE OR RENEWAL OF POLICIES. (a) If an assessment has been made under this chapter for an impaired title insurance company or association funds have been provided for the company, the company, on release from the supervision, rehabilitation, conservatorship, receivership, or other proceeding in which the company was found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due, may not issue a new or renewal insurance policy until the company:

(1) has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assignee; and

(2) has repaid in full the amount of guaranty fees paid by the association.

(b) If an assessment has been made under this chapter for an impaired agent or guaranty fees have been provided for the impaired agent, the agent, on release from the supervision, conservatorship, rehabilitation, receivership, or other proceeding in which the agent was found by a court of competent jurisdiction to be insolvent or otherwise unable to pay obligations as they come due, subject to dischargeability, may not act as an agent until the agent has repaid in full the amount of guaranty fees paid by the association.

(c) Notwithstanding Subsections (a) and (b), on application of the association and after hearing, the commissioner may permit the impaired title insurance company or agent to issue new policies as provided by a plan of operation for repayment. In approving the plan, the commissioner may restrict the issuance of new or renewal policies as the commissioner considers necessary to implement the plan.

(d) Not later than the 11th day before the date of a hearing under Subsection (c), the commissioner shall give notice of the hearing to the association. The commissioner shall give 10 days' notice of the hearing to title insurance companies to whom participation receipts were issued for an assessment made for the benefit of the released title insurance company. The association and title insurance companies are entitled to appear at and participate in the hearing.

(e) Money recovered against an impaired title insurance company under this section shall be repaid to the title insurance companies that paid assessments in relation to the impaired title insurance company on return of the participation receipt.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 9, eff. September 1, 2009.

Sec. 2602.402. DISTRIBUTIONS TO SHAREHOLDERS AND AFFILIATES. (a) An impaired or insolvent title insurance company may not make a distribution to shareholders until the association has recovered the total amount of valid claims for money spent in exercising the association's powers and performing the association's duties under this chapter with respect to that company, plus interest on that amount.

(b) Except as otherwise provided by this section, the receiver appointed under an order of receivership of a title insurance company domiciled in this state may recover on behalf of the company from an affiliate that controlled the company the amount of a distribution, other than a stock dividend the company paid on its capital stock, made during the five years preceding the date of the petition for liquidation or rehabilitation.

(c) A person who was an affiliate that controlled the title insurance company when the distribution described by Subsection (b) was paid is liable for the amount of the distribution received. A person who was an affiliate that controlled the title insurance company when the distribution was declared is liable for the amount of the distribution the affiliate would have received if the distribution had been paid immediately. Two or more persons liable for the same distribution are jointly and severally liable. If a person liable under this subsection is insolvent, all of the affiliates that controlled the insolvent person when the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent person.

(d) The maximum amount recoverable under Subsections (b) and (c) is the amount needed in excess of all other available assets of the insolvent title insurance company to pay the company's

contractual obligations.

(e) The receiver may not recover a distribution under Subsection (b) if the title insurance company shows that:

(1) the distribution was lawful and reasonable on the date of payment; and

(2) the company did not know and could not reasonably have known that the distribution might adversely affect the ability of the company to fulfill its contractual obligations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.079, eff. September 1, 2005.

Sec. 2602.403. ASSETS ATTRIBUTABLE TO COVERED POLICIES. (a) For the purposes of this section, assets attributable to covered policies are the proportion of the assets that the reserves that should have been established for the covered policies bear to the reserves that should have been established for all insurance policies written by the impaired or insolvent title insurance company.

(b) To perform its obligations under this chapter, the association is considered a creditor of the impaired or insolvent title insurance company to the extent of assets attributable to covered policies, less any amount that the association recovers as a subrogee under this chapter.

(c) Assets of the impaired or insolvent title insurance company attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent company as required by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER J. ADDITIONAL DUTIES OF ASSOCIATION

Sec. 2602.451. APPLICABILITY. This subchapter applies, at the commissioner's discretion and regardless of whether there are covered claims against an agent, to any agent that is designated by the commissioner as an impaired agent.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 10,

eff. September 1, 2009.

Sec. 2602.452. ACTIONS FOR CERTAIN AGENTS. (a) The commissioner may direct the association, at the association's expense and on behalf of an impaired agent, to:

(1) close real estate transactions;

(2) disburse escrow funds;

(3) record documents; and

(4) issue final title insurance policies.

(b) The association may employ or retain a person or persons to perform any action required under Subsection (a), in accordance with Section 2602.103(a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 10, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 775 (H.B. 1614), Sec. 30, eff. September 1, 2019.

Sec. 2602.453. AUTHORITY OF ASSOCIATION; COOPERATION OF OFFICERS, OWNERS, AND EMPLOYEES. (a) On the direction of the commissioner under Section 2602.452, the association may implement any direction made by the commissioner and may access all books, records, accounts, networks, and electronic document storage and management systems as necessary to implement the commissioner's direction.

(b) Any present or former officer, manager, director, trustee, owner, employee, or agent of the agent, or any other person with authority over or in charge of any segment of the agent's affairs, shall cooperate with the association. For purposes of this subsection:

(1) "Person" includes a person who exercised or exercises control directly or indirectly over activities of the agent through a holding company or other affiliate of the agent.

(2) "Cooperate" means:

(A) replying promptly in writing to any request for information from the association within the period established in the request; and

(B) making available to the association any books, accounts, documents, or other records or information of, or relating to, the agent within the period set in the request.

(c) A person who fails to cooperate as required under Subsection (b) is subject to sanctions under Chapter 82, in addition to all other sanctions available under law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 10, eff. September 1, 2009.

SUBTITLE D. TITLE INSURANCE PROFESSIONALS
CHAPTER 2651. TITLE INSURANCE AGENTS AND DIRECT OPERATIONS
SUBCHAPTER A. TITLE INSURANCE AGENT'S LICENSE

Sec. 2651.001. LICENSE AND BOND OR DEPOSIT REQUIRED. (a) An individual, firm, association, or corporation may not act in this state as a title insurance agent for a title insurance company unless the individual or entity:

(1) holds a license as an agent issued by the department; and

(2) maintains a surety bond or deposit required under Subchapter C.

(b) A title insurance company may not allow or permit an individual, firm, association, or corporation to act as its agent in this state unless the individual or entity complies with this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.002. LICENSE APPLICATION. (a) Before an initial license is issued to an individual, firm, association, or corporation to act as an agent in this state for a title insurance company, the company must file an application for an agent's license with the department on forms provided by the department.

(b) The application must be:

(1) accompanied by a nonrefundable license fee; and

(2) signed and sworn to by the title insurance company and by the proposed agent.

(c) The completed application must state that:

(1) the proposed agent is:

(A) an individual who is a bona fide resident of this state;

(B) an association or firm composed only of Texas residents; or

(C) a Texas corporation or a foreign corporation authorized to engage in business in this state;

(2) the proposed agent has unencumbered assets in excess of liabilities, exclusive of the value of abstract plants, as required by Section 2651.012;

(3) the proposed agent, including a corporation's managerial personnel, if applicable, has reasonable experience or instruction in the field of title insurance;

(4) the title insurance company:

(A) knows that the proposed agent has a good business reputation and is worthy of the public trust; and

(B) is unaware of any fact or condition that disqualifies the proposed agent from receiving a license; and

(5) the proposed agent qualifies as a title insurance agent under this chapter.

(d) Except as provided by Section 2651.0021(e), an agent applying for an initial license under this subchapter must provide evidence that the agent and its management personnel have successfully completed a professional training program that complies with Section 2651.0021. The program must have been completed within one year preceding the date of application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 11, eff. September 1, 2009.

Sec. 2651.0021. PROFESSIONAL TRAINING PROGRAM. (a) The commissioner shall adopt by rule a professional training program for a title insurance agent and the management personnel of the title insurance agent.

(b) The professional training program must be designed to provide information regarding:

(1) the basic principles and coverages related to title insurance;

(2) recent and prospective changes in those principles and coverages;

(3) applicable rules and laws;

(4) proper conduct of the license holder's title insurance business;

(5) accounting principles and practices and financial responsibilities and practices relevant to title insurance; and

(6) the duties and responsibilities of a title insurance agent.

(c) Professional training program hours may be used to satisfy the continuing education requirements established under Section 2651.204.

(d) A professional training program course must be offered by:

(1) a statewide title insurance association, statewide title agents' association or professional association, or local chapter of a statewide title insurance or title agents' association or professional association;

(2) an accredited college or university;

(3) a career school or college as defined by Section 132.001, Education Code;

(4) the State Bar of Texas;

(5) an educational publisher;

(6) a title insurance company authorized to engage in business in this state;

(7) a company that owns one or more title insurance companies authorized to engage in business in this state;

(8) a public school system in this state; or

(9) an individual accredited as an instructor by an entity described by Subdivisions (1)-(8).

(e) An individual is exempt from the professional training requirement of this section if the individual has held in this state for at least five years a position as management personnel with a title insurance agent, or a comparable position, as determined under rules adopted by the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 12, eff. September 1, 2009.

Sec. 2651.003. LICENSE AND RENEWAL FEES. (a) The department

shall prescribe the license fee in an amount not to exceed $50.

(b) License fees, and renewal fees collected under this subchapter, shall be deposited to the credit of the Texas Department of Insurance operating account to be used by the department to enforce this chapter and any other law of this state that regulates title insurance agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.004. LICENSE ISSUANCE. The department shall issue a license if the department determines, based on the application and the department's investigation, that the requirements of Section 2651.002 are satisfied.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.005. DUPLICATE LICENSE. (a) The department shall collect in advance a fee from a title insurance agent who requests a duplicate license.

(b) The department shall prescribe the fee in an amount not to exceed $20.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.006. LICENSE TERM. Unless a system of staggered license renewal is adopted under Section 4003.002, a license issued under this subchapter expires on June 1 after the second anniversary of the date of issuance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.007. LICENSE RENEWAL. (a) A title insurance agent may renew a license by:

(1) filing a completed license renewal application form with the department; and

(2) paying the nonrefundable license renewal fee to the department.

(b) The department shall prescribe the license renewal application form.

(c) The department shall prescribe the license renewal fee in an amount not to exceed $50.

(d) Not later than the 20th business day after the date the department receives a renewal application, the department shall notify the applicant in writing of any deficiencies in the application that render the renewal application incomplete.

(e) Not later than the fifth business day after the date the renewal application is complete, the department shall notify the applicant in writing of the date that the renewal application is complete.

(f) A renewal application is automatically approved on the 30th business day after the date the renewal application is complete, unless on or before that date the department notifies the applicant in writing of the factual grounds on which the department proposes to deny the license under Section 2651.301.

(g) The department may provide a notice required under this section by e-mail.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 3, eff. September 1, 2011.

Sec. 2651.008. RECORDS OF AGENTS. The department shall maintain a record of the name and address of each title insurance agent licensed by the department in a manner that ensures that the agents appointed by any company authorized to engage in the business of title insurance in this state may be conveniently ascertained and inspected by any person on request.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.009. MULTIPLE APPOINTMENTS. (a) A licensed title insurance agent may be appointed to represent additional title insurance companies.

(b) Any additional title insurance company must notify the department of the appointment in the manner prescribed by the

department. The agent must include with the notice a nonrefundable fee for each additional appointment. The department shall prescribe the fee in an amount not to exceed $16.

(c) Not later than the 20th business day after the date the department receives a notice under Subsection (b), the department shall notify the title insurance agent and appointing title insurance company in writing of any deficiencies in the notice that render the notice incomplete. A notice under Subsection (b) is considered complete on the date the department receives the notice, unless the department provides notice of the deficiencies under this section.

(c-1) Not later than the fifth business day after the date the notice under Subsection (b) is complete, the department shall notify the title insurance agent and appointing title insurance company in writing of the date that the notice under Subsection (b) is complete.

(c-2) The appointment is effective on the eighth business day following the date the notice of appointment is complete and the department receives the fee, unless the department proposes to reject the appointment. If the department proposes to reject the appointment, the department shall notify the title insurance agent and the appointing title insurance company in writing of the factual grounds on which the department proposes to reject the appointment not later than the seventh business day after the date on which the notice of appointment is complete.

(c-3) The department may provide a notice required under this section by e-mail.

(d) A title insurance company may not permit an agent appointed by the company to write, sign, or deliver title insurance until the agent's appointment is effective.

(e) The appointment remains effective, without the necessity of renewal, until the appointment:

(1) is terminated by the title insurance company as provided by this section; or

(2) is otherwise terminated under this subchapter.

(f) A renewal license issued to an agent authorizes the agent to represent and act for the title insurance companies for which the agent holds appointments until the appointments are terminated, and the agent is considered to be the agent of the appointing companies for purposes of this subchapter.

(g) When a title insurance company terminates the appointment of an agent, the company shall immediately file with the department a

statement that contains:

(1) the facts relating to the termination of the appointment; and

(2) the effective date and reason for the termination.

(h) On receipt of the statement, the department shall terminate the appointment of the agent to represent that title insurance company in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 4, eff. September 1, 2011.

Sec. 2651.010. SUSPENSION OF LICENSE. The department shall suspend the license of a title insurance agent during any period in which the agent does not have a valid appointment. The department shall end the suspension when the department receives an acceptable notice of a valid appointment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.011. PRIVILEGED COMMUNICATIONS; FINANCIAL INFORMATION. (a) Any information, including a document, record, or statement, and including information provided to or received from the commissioner under Subsection (b) or (c), or any other information required or permitted to be made or disclosed to or by the department under this subchapter, other than Section 2651.001, is not public information subject to Chapter 552, Government Code, except to the extent described by Subsection (b), and is a privileged communication and may not be disclosed to the public except as evidence in an administrative hearing or proceeding. This subsection does not apply to a document, record, or statement required to be made or disclosed to the department under Chapter 36.

(b) A title insurance company may provide information to the commissioner about a financial matter that would reasonably call into question the solvency of a title agent that the title insurance company appointed. Each title insurance company shall provide annually to the department a list of officers authorized to provide to the department the information under this subsection. Information

provided under this subsection is not subject to Chapter 552, Government Code, except that the commissioner may release information that the commissioner received under this subsection to a title insurance company that has appointed, or that is considering appointing, the title agent. The commissioner may also release information that the commissioner received under this subsection to a title agent under Section 2651.206, Insurance Code, if the information is evidence on which an audit report or examination report relies. A title insurance company that receives information under this subsection may not release the information except under a subpoena issued by a court of competent jurisdiction.

(c) Each title insurance agent shall provide the department, on a quarterly basis, with a copy of the agent's quarterly withholding tax report furnished by the agent to the United States Internal Revenue Service. The title insurance agent must also provide to the department proof of the payment of the tax. An agent that does not have employees shall certify to the department on a quarterly basis that there has not been a material change in the agent's financial condition.

(d) The commissioner by rule may prescribe the types of information under Subsections (b) and (c) that are privileged under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 13, eff. September 1, 2009.

For contingent effect of this section, see Subsection (j).

For expiration of Subsections (g) and (i), see Subsection (i).

Sec. 2651.012. UNENCUMBERED ASSETS. (a) In this section:

(1) "Principal office" means a principal office of the business organization, unincorporated association, sole proprietorship, or partnership in this state in which the decision makers for the organization conduct the daily affairs of the organization. The presence of an agency or representative does not establish a principal office.

(2) "Unencumbered assets" means:

(A) cash or cash equivalents;

(B) liquid assets that have a readily determinable market value and that do not have any lien against them;

(C) real estate, in excess of any encumbrances;

(D) investments, such as mutual funds, certificates of deposit, and stocks and bonds;

(E) a surety bond, the form and content of which shall be prescribed by the commissioner in accordance with this code;

(F) a deposit made in accordance with Section 2651.102;

(G) a letter of credit that meets the requirements of Section 493.104(b)(2)(C); and

(H) a solvency account that meets the requirements of Section 2651.0121.

(b) The unencumbered assets required under this section are reserves for contingencies. The reserves must be deducted from premiums for purposes of proceedings conducted under Subchapter D, Chapter 2703. The reserves may only be spent or released:

(1) as permitted by the commissioner if the agent is declared impaired;

(2) if the agent merges or consolidates with another agent who maintains the amount of unencumbered assets that would be required for the survivor of the merger or consolidation;

(3) if the agent surrenders the agent's license under Section 2651.201;

(4) if the agent is liquidated; or

(5) if the agent's license is revoked.

(c) Except as provided by Subsection (d), an agent must maintain unencumbered assets with a market value in excess of liabilities, exclusive of the value of abstract plants, in the following amounts unless the commissioner establishes lesser amounts by rule:

(1) if the agent maintains its principal office in a county with a population of 10,000 or more but less than 50,000: $25,000;

(2) if the agent maintains its principal office in a county with a population of 50,000 or more but less than 200,000: $50,000;

(3) if the agent maintains its principal office in a county with a population of 200,000 or more but less than one million: $100,000; and

(4) if the agent maintains its principal office in a county with a population of one million or more: $150,000.

(d) Except as provided by the commissioner by rule, an agent

that maintains its principal office in a county with a population of less than 10,000 is exempt from this section.

(e) An agent that maintains a principal office in more than one county must meet the asset standards for the largest county for which the agent will hold a license.

(f) An agent may elect to:

(1) maintain unencumbered assets as required by this section; or

(2) place a deposit with the department as authorized by Section 2652.102.

(g) An agent that holds a license on September 1, 2009, and that has held the license for at least three years as of that date is not required to comply with Subsection (c) on September 1, 2009, but shall increase the unencumbered assets held by the agent, or make and increase the required deposit, until the agent is in compliance with the required capitalization amounts in accordance with the schedule established under this subsection. The agent must hold unencumbered assets, or make a deposit in an amount, such that:

(1) if the agent has been licensed at least three years but less than four years:

(A) the agent has at least 33 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 66 percent of the required capitalization amount on September 1, 2011; and

(C) the agent has at least 100 percent of the required capitalization amount on September 1, 2012;

(2) if the agent has been licensed at least four years but less than five years:

(A) the agent has at least 25 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 50 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 75 percent of the required capitalization amount on September 1, 2012; and

(D) the agent has at least 100 percent of the required capitalization amount on September 1, 2013;

(3) if the agent has been licensed at least five years but less than six years:

(A) the agent has at least 20 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 40 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 60 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 80 percent of the required capitalization amount on September 1, 2013; and

(E) the agent has at least 100 percent of the required capitalization amount on September 1, 2014;

(4) if the agent has been licensed at least six years but less than seven years:

(A) the agent has at least 16.66 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 33.32 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 49.98 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 66.64 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 83.3 percent of the required capitalization amount on September 1, 2014; and

(F) the agent has at least 100 percent of the required capitalization amount on September 1, 2015;

(5) if the agent has been licensed at least seven years but less than eight years:

(A) the agent has at least 14.29 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 28.58 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 42.87 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 57.16 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 71.45 percent of the required capitalization amount on September 1, 2014;

(F) the agent has at least 85.74 percent of the required capitalization amount on September 1, 2015; and

(G) the agent has at least 100 percent of the required capitalization amount on September 1, 2016;

(6) if the agent has been licensed at least eight years but less than nine years:

(A) the agent has at least 12.5 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 25 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 37.5 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 50 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 62.5 percent of the required capitalization amount on September 1, 2014;

(F) the agent has at least 75 percent of the required capitalization amount on September 1, 2015;

(G) the agent has at least 87.5 percent of the required capitalization amount on September 1, 2016; and

(H) the agent has at least 100 percent of the required capitalization amount on September 1, 2017; and

(7) if the agent has been licensed at least nine years:

(A) the agent has at least 11.11 percent of the required capitalization amount on September 1, 2010;

(B) the agent has at least 22.22 percent of the required capitalization amount on September 1, 2011;

(C) the agent has at least 33.33 percent of the required capitalization amount on September 1, 2012;

(D) the agent has at least 44.44 percent of the required capitalization amount on September 1, 2013;

(E) the agent has at least 55.55 percent of the required capitalization amount on September 1, 2014;

(F) the agent has at least 66.66 percent of the required capitalization amount on September 1, 2015;

(G) the agent has at least 77.77 percent of the required capitalization amount on September 1, 2016;

(H) the agent has at least 88.88 percent of the required capitalization amount on September 1, 2017; and

(I) the agent has at least 100 percent of the required capitalization amount on September 1, 2018.

(h) If the agent has been licensed less than three years as of September 1, 2009, the agent must have:

(1) at least 50 percent of the required capitalization amount required under Subsection (c) on September 1, 2010; and

(2) 100 percent of that required capitalization amount on

September 1, 2011.

(i) This subsection and Subsection (g) expire September 2, 2018.

(j) Notwithstanding any other provision of this section, this section takes effect only after the commissioner adopts the form, content, and procedures for use of the surety bond authorized under Subsection (a). The commissioner by rule shall establish the procedures for making, filing, using, and paying for the surety bond. Notwithstanding Subsections (g) and (h), the commissioner by rule may extend the dates established under those subsections as necessary to comply with this subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 14, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 536 (H.B. 2604), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 536 (H.B. 2604), Sec. 2, eff. June 17, 2011.

Sec. 2651.0121. SOLVENCY ACCOUNT. (a) An agent may maintain a solvency account to accrue and hold unencumbered assets as provided by this section.

(b) An account under this section must be:

(1) in a financial institution in this state that is insured by an agency of the United States;

(2) accessible only to the department, on order of the commissioner; and

(3) audited in the same manner provided for trust funds by Section 2651.151.

(c) Subject to Subsection (d), an account under this section may be established by an initial deposit in an amount less than the amount provided by Section 2651.012(c).

(d) An account established by an initial deposit of an amount less than the amount provided by Section 2651.012(c) must be funded with a minimum deposit in the amount for each policy of title insurance issued by the agent that is equal to the greater of $5 or one percent of the agent's portion of the retained premium received by the agent rounded to the nearest whole dollar.

(e) Deposits to the account must be made at least quarterly and must be made from and based on the agent's portion of retained premiums collected during the calendar quarter during which premiums were collected.

(f) Interest that accrues in an account the principal balance of which is less than the amount provided by Section 2651.012(c) must be retained in the account. Interest that accrues in an account the principal balance of which is greater than the amount provided by Section 2651.012(c) shall be paid to the agent maintaining the account.

(g) The commissioner may issue an order to access or release funds held in an account under this section if any of the events described by Section 2651.012(b) occur.

(h) The commissioner by rule shall adopt procedures and requirements for the release, transfer, or expenditure of the funds held in an account. The rules must establish the procedures and requirements by which the department shall account for any expenditures that the department makes from an account or funds transferred by the department to a third party.

(i) If an agent or an agent's principal office voluntarily ceases to engage in business, surrenders the agent's license, and liquidates the agent's assets, the agent may apply to the department in a form prescribed by the commissioner by rule for the release of the agent's solvency account.

(j) Not later than the 60th day after the date the department receives an application under Subsection (i), provided that the title agent complied with all applicable rules adopted under Subsection (h), the commissioner shall enter an order authorizing the financial institution in which the solvency account is held to release all or part of the account balance to the agent or the agent's principal office. If the commissioner does not enter the order within that 60-day period, the application is denied.

(k) An agent may appeal an order of the commissioner or denial of an application without an order by filing a petition in a district court of Travis County to seek injunctive or other relief against the commissioner.

(l) An account established, funded, and maintained as provided by this section complies with the requirement for maintenance of unencumbered assets under Section 2651.012(c), regardless of whether the amount required by that section is fully accrued. The amount

required by Section 2651.012(c) may be accrued in an account as provided by this section according to the schedule established by Section 2651.012(g) or as provided by the commissioner by rule under Section 2651.012(j).

(m) In a home office issue transaction in which a title insurance company issues a policy of title insurance, an agent who closes the transaction and remits premium to the title insurance company shall make the deposit required by this section. An agent who otherwise participates in a home office issue transaction but does not close the transaction is not required to make a deposit under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 536 (H.B. 2604), Sec. 3, eff. June 17, 2011.

Sec. 2651.013. DIVISION OF PREMIUM HELD IN TRUST; RULES. (a) The funds held by a title insurance agent that are owed to a title insurance company, another title insurance agent, or a direct operation arising from a division of premium, whether as determined under rules adopted by the commissioner or by agreement among the parties, are considered to be held in trust for the title insurance company, other title insurance agent, or direct operation.

(b) This section does not require, and the commissioner may not require by rule, that funds described by Subsection (a) be held in a separate account subject to an external audit. This section does not affect the department's or association's authority to examine or audit a title agent or direct operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 14, eff. September 1, 2009.

SUBCHAPTER B. DIRECT OPERATION LICENSE

Sec. 2651.051. LICENSE REQUIRED. (a) A title insurance company may not own or lease and operate an abstract plant or participate in a bona fide joint abstract plant operation in a county in this state unless the company holds a license as a direct operation issued by the department for that county.

(b) A title insurance company may not write, sign, or deliver title insurance in a county in which the company operates an abstract

plant until the department has issued a direct operation license to the company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.052. LICENSE APPLICATION. (a) Before a direct operation license is issued to a title insurance company, the company must file an application for a direct operation license on forms provided by the department.

(b) The application must be:

(1) accompanied by a nonrefundable license fee; and

(2) signed and sworn to by the title insurance company.

(c) The completed application must state that:

(1) the title insurance company is a Texas corporation or a foreign corporation holding a certificate of authority to insure titles to real property in this state and meets the requirements of this title; and

(2) the abstract plant to be licensed:

(A) complies with department requirements relating to abstract plants; and

(B) has been approved by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.053. LICENSE AND RENEWAL FEES. (a) The department shall prescribe the license fee in an amount not to exceed $50.

(b) License fees, and renewal fees collected under this subchapter, shall be deposited to the credit of the Texas Department of Insurance operating account to be used by the department to enforce this chapter and the laws of this state that regulate title insurance agents and title insurance companies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.054. LICENSE TERM. Unless a system of staggered license renewal is adopted, a license issued under this subchapter expires on the second June 1 following the date of issuance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.055. LICENSE RENEWAL. (a) On or before the expiration date of a license issued under this subchapter, a title insurance company may renew the license by:

(1) certifying to the department each county and address at which the company operates the abstract plant for each license to be renewed;

(2) filing a completed renewal application; and

(3) paying a nonrefundable license renewal fee for each license.

(b) The department shall provide the forms used under this section.

(c) The department shall prescribe the license renewal fee in an amount not to exceed $50.

(d) If a license has been expired for 90 days or less, the license holder may renew the license by paying to the department the required nonrefundable renewal fee and a nonrefundable fee equal to one-half of the original license fee.

(e) If a license has been expired for more than 90 days, the license may not be renewed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.056. CEASING OPERATION OF ABSTRACT PLANT; REQUEST FOR LICENSE CANCELLATION. If a title insurance company ceases to operate a licensed abstract plant, the company shall immediately notify the department in writing and request cancellation of the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.057. AUTOMATIC TERMINATION OF LICENSES. If a title insurance company surrenders the company's certificate of authority or if the certificate of authority is revoked by the department, all licenses of the company's abstract plants automatically terminate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.058. RECORDS OF DIRECT OPERATIONS. The department shall maintain a record of the county and address of each location at which a title insurance company operates an abstract plant in a manner that ensures that the abstract plants may be conveniently ascertained and inspected by any person on request.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.059. USE OF AGENTS NOT PROHIBITED. This subchapter does not prohibit a title insurance company from issuing title insurance through a licensed title insurance agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER C. BOND AND DEPOSIT REQUIREMENTS

Sec. 2651.101. BOND REQUIRED. (a) Each licensed title insurance agent and direct operation shall make, file, and pay for a surety bond payable to the department and issued by a corporate surety company authorized to write surety bonds in this state. The bond shall obligate the principal and surety to pay for any pecuniary loss sustained by:

(1) any participant in an insured real property transaction through an act of fraud, dishonesty, theft, embezzlement, or wilful misapplication by a title insurance agent or direct operation; or

(2) the department as a result of any administrative expense incurred in a receivership of a title insurance agent or direct operation.

(b) The amount of the bond must be the greater of:

(1) $10,000; or

(2) an amount equal to 10 percent of the gross premium written by the title insurance agent or direct operation in accordance with the latest statistical report to the department but not to exceed $100,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.102. ALTERNATIVE TO BOND. (a) Instead of the bond required by Section 2651.101, a title insurance agent or direct operation may deposit with the department:

(1) cash;

(2) irrevocable letters of credit issued by a financial institution in this state that is insured by an agency of the United States; or

(3) securities approved by the department.

(b) The cash, letters of credit, or securities deposited under this section are subject to the conditions required for a bond under Section 2651.101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.103. EXAMINATION OF LOSS COVERED BY BOND OR DEPOSIT. (a) At any time it appears that a loss covered by a bond or deposit has occurred, the department may require the title insurance agent or direct operation to appear in Travis County, with records the department determines to be proper, for an examination.

(b) The department shall specify a date for the examination that is not earlier than the 10th day or later than the 15th day after the date of service of notice of the requirement to appear.

(c) If after the examination the department determines that a loss covered by the bond or deposit has occurred, the department shall immediately notify the surety on the bond, if applicable, and prepare a written statement of the facts of the loss and deliver the statement to the attorney general.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.104. INVESTIGATION BY ATTORNEY GENERAL. (a) On receipt of a written statement under Section 2651.103, the attorney general shall investigate the charges and, on determining that a loss covered by the bond or deposit has occurred, shall enforce the liability by collecting against the deposited cash or securities or by filing suit on the bond.

(b) A suit brought under this section shall be filed in the name of the department in Travis County for the benefit of all parties who have suffered any loss covered by the bond or deposit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER D. ANNUAL AUDIT

Sec. 2651.151. ANNUAL AUDIT OF TRUST FUND ACCOUNTS: TITLE INSURANCE AGENTS AND DIRECT OPERATIONS. (a) Each title insurance agent and direct operation shall have an annual audit made of trust fund accounts. The agent or direct operation shall pay for the audit.

(b) Not later than the 90th day after the date of the end of the agent's or direct operation's fiscal year, the agent or direct operation shall file with the department one copy of the audit report with a transmittal letter. The agent shall also send a copy of the audit report and transmittal letter to each title insurance company that the agent represents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 429 (H.B. 1901), Sec. 1, eff. September 1, 2023.

Sec. 2651.152. ANNUAL AUDIT OF TRUST FUND ACCOUNTS: TITLE INSURANCE COMPANIES. (a) Each title insurance company shall have an annual audit made of trust fund accounts for each county in which it operates in its own name. The company shall pay for the audit.

(b) Not later than the 90th day after the date of the end of the title insurance company's fiscal year, the company shall file with the department one copy of the audit report.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 429 (H.B. 1901), Sec. 2, eff. September 1, 2023.

Sec. 2651.153. RULES. The commissioner by rule shall adopt:

(1) the standards for an audit; and

(2) the form of the required audit report.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.154. PERFORMANCE OF AUDIT BY PUBLIC ACCOUNTANT. An audit required under this subchapter must be performed by an independent certified public accountant or licensed public accountant, or a firm composed of either.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.155. CONFIDENTIALITY OF AUDIT. The commissioner may classify an audit report that is filed with the department by a title insurance company under this subchapter as confidential and privileged.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.156. FAILURE TO RECEIVE AUDIT REPORT FROM AGENTS OR DIRECT OPERATIONS. If a title insurance company fails to receive an audit report from any of the company's agents or direct operations in the specified period required by Section 2651.151, the company shall report that failure to the department not later than the 30th day after the expiration of the specified period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.157. ENFORCEMENT; HEARING. (a) After notice and hearing, the department may revoke the license or certificate of authority of a title insurance agent, direct operation, or title insurance company that:

(1) fails to furnish an audit report in the time required; or

(2) furnishes an audit report that reveals any irregularity, including a shortage, or any practice not in keeping with sound, honest business practices.

(b) The notice must be provided to the agent, the direct operation, or each title insurance company involved.

(c) At a hearing under this section, the agent, direct operation, or title insurance company may offer evidence explaining

or excusing a failure or irregularity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.158. CERTIFICATION OF UNENCUMBERED ASSETS. (a) Unless the agent has elected to make a deposit with the department under Section 2651.012(f), the annual audit of escrow accounts must be accompanied by a certification by the title insurance agent or direct operation that the title insurance agent has the appropriate unencumbered assets in excess of liabilities, exclusive of the value of its abstract plants, as required by Section 2651.012.

(b) The commissioner by rule shall establish the method by which the certification required by this section must be made, which shall not include an audit of operating accounts or a certification by a certified public accountant.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 15, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 536 (H.B. 2604), Sec. 4, eff. June 17, 2011.

SUBCHAPTER E. GENERAL REGULATION OF TITLE INSURANCE AGENTS AND DIRECT OPERATIONS

Sec. 2651.201. LICENSE SURRENDER OR FORFEITURE. (a) A title insurance agent or direct operation may voluntarily surrender at any time a license issued under this chapter by giving notice to:

(1) the department; and

(2) the affected title insurance company.

(b) A title insurance agent or direct operation that terminates the agency contract with a title insurance company automatically forfeits the license under that company.

(c) A surrender or forfeiture of a license under this section does not affect the culpability of the license holder for conduct committed before the effective date of the surrender or forfeiture. The department may institute a disciplinary proceeding against the former license holder for conduct committed before the effective date of the surrender or forfeiture.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.202. TRUST FUND ACCOUNT DISBURSEMENTS. (a) A title insurance company, title insurance agent, or direct operation may not disburse funds from a trust fund account until good funds related to the transaction have been received and deposited in the account in amounts sufficient to fund any disbursements from the transaction.

(b) A title insurance company, title insurance agent, or direct operation is not liable for a violation of this section if the violation:

(1) was not intentional; and

(2) resulted from a bona fide error despite the maintenance of procedures reasonably adopted to avoid the error.

(c) The commissioner shall adopt rules and definitions to implement this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.203. DISCLOSURE OF OWNERSHIP AND PREMIUM INFORMATION. (a) A title insurance agent who receives a portion of a premium shall disclose to each purchaser of a title insurance policy or other title insurance form the following:

(1) each shareholder, owner, or partner owning or controlling at least one percent of the agent;

(2) each shareholder, owner, or partner owning or controlling at least 10 percent of an entity that owns or controls at least one percent of the agent;

(3) each person who is not a full-time employee of the agent and who receives a portion of the premium for services performed on behalf of the agent in connection with the issuance of a title insurance form; and

(4) the amount of premium that a person disclosed in Subdivision (3) receives.

(b) The department shall prescribe the form of the disclosure required by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.204. CONTINUING EDUCATION. (a) To protect the public and to preserve and improve the competence of license holders, the department shall require as a condition of holding a title insurance agent license that the license holder enroll in and attend or teach continuing education consisting of class instruction, lectures, seminars, or other forms of education approved by the department for title insurance agents.

(b) The department shall prescribe the required number of hours of continuing education, not to exceed 15 hours in each two-year license period.

(c) Continuing education instruction must be designed to refresh the license holder's understanding of:

(1) basic principles and coverages relating to title insurance;

(2) recent and prospective changes in those principles and coverages;

(3) applicable rules of the commissioner and laws;

(4) the proper conduct of the license holder's business; and

(5) the duties and responsibilities of the license holder.

(d) The department may permit a license holder to complete an equivalent course of study and instruction by mail if, because of the remote location of the license holder's residence or business, the license holder is unable to attend educational sessions with reasonable convenience.

(e) On written request by the license holder, the department may extend the time for the license holder to comply with the requirements of this section or may exempt the license holder from all or part of the requirements for a license period if the department determines that the license holder is unable to comply with the requirements because of illness, medical disability, or another extenuating circumstance beyond the control of the license holder. The commissioner shall prescribe the criteria for an extension or exemption by rule.

(f) The commissioner shall adopt rules to administer this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.205. TITLE AGENT RECORDS. (a) A landlord or storage facility, including electronic storage, that accepts possession of an agent's guaranty file or other records takes possession subject to:

(1) the right of access of the title insurance company involved in the transaction that the file documents, during customary business hours, for the purpose of copying the guaranty file; and

(2) the obligation to maintain the confidentiality of nonpublic information in the title insurance agent's records according to state and federal laws that govern the title insurance agent.

(b) If the title insurance agent has been designated impaired, the Texas Title Insurance Guaranty Association has the right to access the guaranty files and other records of the title insurance agent, including electronic records, for 60 days from the date of impairment, during customary business hours, for purposes of copying those records.

(c) Except for the right of access granted under Subsections (a) and (b), a lien created in favor of the landlord by contract or otherwise is not impaired.

(d) For purposes of this section, "title insurance agent" includes an agent owned wholly or partly by a title insurance company and includes a direct operation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 16, eff. September 1, 2009.

Sec. 2651.206. EXAMINATION REPORTS. (a) An audit, review, or examination conducted under this chapter or Chapter 2602 must be conducted in accordance with rules adopted by the commissioner. The rules must provide:

(1) that before a report from an examination, review, or audit becomes final, the department will furnish to the title agent or direct operation a copy of the report and any evidence on which the report relies;

(2) a reasonable period of not less than 10 days after the title agent or direct operation receives the report and evidence from the department for the title agent or direct operation to respond;

(3) an opportunity for an appeal under a process similar to the process under Title 28, Part 1, Chapter 7, Subchapter A, Texas

Administrative Code; and

(4) procedures to ensure that the report and any evidence regarding the report remain confidential and are transmitted only to designated representatives of the title agent or direct operation.

(b) The commissioner shall furnish the title agent or direct operation with a draft of the report and a copy of any evidence not later than the 10th day before the scheduled date of a meeting requested by the department regarding a report.

(c) This section does not require the department to turn over work papers. For purposes of this subsection, work papers are the records of an auditor or examiner of the procedures followed, the tests performed, the information obtained, and the conclusions reached that are pertinent to the audit or examination. Work papers include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules, and commentaries prepared or obtained by the auditor or examiner that support the opinions of the auditor or examiner.

Added by Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 16, eff. September 1, 2009.

SUBCHAPTER F. TITLE INSURANCE COMPANY POWERS AND DUTIES REGARDING TITLE INSURANCE AGENTS

Sec. 2651.251. EXAMINATION OF TRUST FUND ACCOUNTS BY TITLE INSURANCE COMPANY. (a) A title insurance company may examine, at any time, the trust fund accounts and related records of the company's title insurance agents through the company's examiners or auditors or through independent certified public accountants commissioned by the company.

(b) The title insurance company shall pay for each examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.252. SPECIAL REPORTS. A title insurance company may require special reports from the company's title insurance agents regarding any of its transactions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.253. AUDIT OF UNUSED FORMS. (a) A title insurance company shall periodically audit the unused forms in the possession of each of the company' s title insurance agents to determine that all used forms have been reported to the company.

(b) A title insurance company shall conduct an audit required by this section at least once every two years.

(c) A report of each audit conducted under this section shall be made to the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER G. LICENSE DENIAL AND DISCIPLINARY ACTION

Sec. 2651.301. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. The department may deny an application for a license or discipline a title insurance agent or direct operation under Sections 4005.102, 4005.103, and 4005.104 if the department determines that the applicant or license holder has:

(1) wilfully violated this title;

(2) intentionally made a material misstatement in the license application;

(3) obtained or attempted to obtain the license by fraud or misrepresentation;

(4) misappropriated or converted to the applicant's or license holder's own use or illegally withheld money belonging to a title insurance company, an insured, or another person;

(5) been guilty of fraudulent or dishonest practices;

(6) materially misrepresented the terms and conditions of a title insurance policy or contract; or

(7) failed to maintain:

(A) a separate and distinct accounting of escrow funds; and

(B) an escrow bank account or accounts separate and apart from all other accounts.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.3015. PROHIBITED GROUNDS FOR REJECTION, DELAY, OR DENIAL. (a) Except as provided by Subsection (b) or (c), the department may not reject, delay, or deny a notice of appointment

under Section 2651.009 based wholly or partly on a pending department audit or complaint investigation or a pending disciplinary action against a title insurance agent or appointing title insurance company that has not been finally closed or resolved by a final order issued by the commissioner on or before the date on which the notice is received by the department.

(b) The department may reject a notice of appointment under Section 2651.009 if the department determines that the appointing title insurance company or the title insurance agent intentionally made a material misstatement in the notice of appointment or attempted to have the appointment approved by fraud or misrepresentation.

(c) The department may delay approval of a notice of appointment if:

(1) the title insurance agent or the appointing title insurance company is the subject of a criminal investigation or prosecution; or

(2) the deputy commissioner of the title division of the department makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by the title insurance agent or appointing title insurance company.

(d) Except as provided by Subsection (e) or (f), the department may not delay or deny a renewal application under Section 2651.007 based wholly or partly on a department audit or complaint investigation of, or disciplinary or enforcement action against, an applicant or license holder that is pending and has not been finally closed or resolved by a final order issued by the commissioner on or before the date on which the application is complete.

(e) The department may deny a renewal application under Section 2651.007 if the department determines that the applicant or license holder intentionally made a material misstatement in the renewal application or attempted to obtain the license renewal by fraud or misrepresentation.

(f) The department may delay a renewal application if:

(1) the applicant or license holder is the subject of a criminal investigation or prosecution; or

(2) the deputy commissioner of the title division of the department makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by the applicant or license holder.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 5, eff. September 1, 2011.

Sec. 2651.302. LICENSE APPLICATION AFTER DENIAL, REFUSAL, OR REVOCATION. (a) An applicant whose license application has been denied or refused or a license holder whose license has been revoked under this subchapter may not file another application for a license as a title insurance agent or direct operation before the first anniversary of:

(1) the effective date of the denial, refusal, or revocation; or

(2) the date of a final court order affirming the denial, refusal, or revocation if judicial review is sought.

(b) A license application filed after the time required by this section may be denied by the department unless the applicant shows good cause why the denial, refusal, or revocation should not be a bar to the issuance of a license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2651.303. NOTICE OF DISCIPLINARY OR ENFORCEMENT ACTION; AUTOMATIC DISMISSAL. (a) The department shall notify a license holder in writing of a disciplinary or enforcement action against the license holder not later than the 30th business day after the date the department assigns a file number to the action, except that this subsection does not apply to a file or action:

(1) that is the subject of a pending criminal investigation or prosecution; or

(2) about which the deputy commissioner of the title division of the department makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by a person who is the subject of the action.

(b) A notice required by Subsection (a) may be provided by e-mail and must provide a license holder fair notice of the alleged facts known by the department on the date of the notice that constitute grounds for the action.

(c) A disciplinary or enforcement action is automatically dismissed with prejudice, unless the department serves a notice of

hearing on the license holder not later than the 60th business day after the date the department receives a hearing request from the license holder.

(d) The department may provide information about an enforcement action, including a copy of a notice issued under this section, to each title insurance company with which a title insurance agent has, or proposes to obtain, an appointment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 5, eff. September 1, 2011.

CHAPTER 2652. ESCROW OFFICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2652.001. LICENSE AND BOND OR DEPOSIT REQUIRED. An individual may not act as an escrow officer unless the individual:

(1) holds a license issued by the department;

(2) is covered by a surety bond or deposit required under Subchapter C; and

(3) is appointed under Section 2652.1511 as an escrow officer by a title insurance agent or direct operation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 1, eff. September 1, 2015.

Sec. 2652.002. EMPLOYMENT OF ESCROW OFFICER. (a) A title insurance agent or direct operation may not employ an individual as an escrow officer unless the individual:

(1) holds a license issued by the department;

(2) is covered by a surety bond or deposit as required under Subchapter C; and

(3) is appointed under Section 2652.1511 as an escrow officer by the title insurance agent or direct operation.

(b) A title insurance agent or direct operation may not permit an individual to act as an escrow officer in this state before the agent or direct operation has complied with Sections 2652.151 and 2652.1511 with respect to the individual.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 1, eff. September 1, 2015.

Sec. 2652.003. ATTORNEY ACTING AS ESCROW OFFICER. (a) Notwithstanding Section 2652.001, an attorney is not required to be licensed as an escrow officer to perform the duties of an escrow officer as defined by Section 2501.003.

(b) An attorney may hold a license to act as an escrow officer. An employee of an attorney licensed as an escrow officer also may hold a license to act as an escrow officer. An attorney licensed as an escrow officer shall comply with the provisions of this code that apply to escrow officers and trust funds as if the attorney were a title insurance agent.

(c) Notwithstanding any other provision of this chapter, a title insurance company or title insurance agent may not permit an attorney to conduct the attorney's business in the name of the company or agent unless the attorney and the attorney's bona fide employees who close transactions are licensed escrow officers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.004. TRUST FUND ACCOUNT DISBURSEMENTS. (a) An escrow officer may not disburse funds from a trust fund account until good funds related to the transaction have been received and deposited in the account in amounts sufficient to fund any disbursements from the transaction.

(b) An escrow officer is not liable for a violation of this section if the violation:

(1) was not intentional; and

(2) resulted from a bona fide error despite the maintenance of procedures reasonably adopted to avoid the error.

(c) The commissioner shall adopt rules and definitions to implement this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.005. ESCROW ACCOUNT AUDIT. Each escrow account used by a licensed escrow officer for closing a transaction is subject to the audit requirements of Subchapter D, Chapter 2651.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.006. RECORD OF ESCROW OFFICERS; PUBLIC INFORMATION. (a) The department shall maintain a record of each escrow officer licensed by the department in a manner that ensures that the escrow officers employed and appointed under Section 2652.1511 by any title insurance agent or direct operation in this state may be conveniently determined.

(b) The department shall make available to the public from the records maintained under Subsection (a) or from other records of the department each escrow officer's name, license number, continuing education compliance status, and appointment history.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. LICENSE APPLICATION AND RENEWAL

Sec. 2652.051. LICENSE APPLICATION. (a) Before an initial license is issued to an individual to act as an escrow officer in this state for a title insurance agent or direct operation, the individual must file an application for an escrow officer's license with the department on forms provided by the department and the title insurance agent or direct operation must file an appointment of the escrow officer under Section 2652.1511.

(b) The application must be:

(1) accompanied by a nonrefundable license fee; and

(2) signed and sworn to by the title insurance agent or direct operation and by the proposed escrow officer.

(c) The completed application must state that:

(1) the proposed escrow officer is an individual who is a bona fide resident of:

(A) this state; or

(B) a state adjacent to this state;

(2) the proposed escrow officer is an attorney or is a bona fide employee of:

(A) an attorney licensed as an escrow officer; or

(B) a title insurance agent or direct operation;

(3) the proposed escrow officer has reasonable experience or instruction in the field of title insurance;

(4) the title insurance agent or direct operation does not know of any fact or condition that disqualifies the proposed escrow officer from receiving a license; and

(5) the proposed escrow officer is a bona fide employee of a title insurance agent or direct operation with an office in this state.

(d) Notwithstanding Sections 406.004 and 406.020, Government Code, a person qualified under this section as an escrow officer may hold a license and operate as a notary public under Chapter 406, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 155 (H.B. 652), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 2, eff. September 1, 2015.

Sec. 2652.052. LICENSE AND RENEWAL FEES. (a) The department shall prescribe the license fee in an amount not to exceed $50.

(b) License and renewal fees collected under this chapter and appointment fees collected under Section 2652.1511 shall be deposited to the credit of the Texas Department of Insurance operating account to be used by the department to enforce this chapter and any other law of this state that regulates escrow officers for title insurance agents or direct operations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 3, eff. September 1, 2015.

Sec. 2652.053. LICENSE ISSUANCE. The department shall issue a

license if the department determines, based on the application and the department's investigation, that the requirements of Section 2652.051 are satisfied.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.054. DUPLICATE LICENSE. (a) The department shall collect in advance a fee from a title insurance agent or direct operation that requests a duplicate license.

(b) The department shall prescribe the fee in an amount not to exceed $20.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.055. LICENSE TERM. Unless a system of staggered license renewal is adopted or required under Chapter 4003, a license expires on the second June 1 following the date of issuance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 4, eff. September 1, 2015.

Sec. 2652.056. PROCEDURE FOR LICENSE RENEWAL. An individual may renew an unexpired escrow officer license by:

(1) submitting to the department on a form provided by the department a completed application, signed and sworn by the individual, stating that the applicant is an individual who is a bona fide resident of this state or a state adjacent to this state; and

(2) paying to the department a renewal fee in an amount set by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 4, eff. September 1, 2015.

Sec. 2652.057. LICENSE SURRENDER OR FORFEITURE. (a) An escrow officer may voluntarily surrender the escrow officer's license at any time by giving notice to the department.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 232 , Sec. 11, eff. September 1, 2015.

(c) A surrender or forfeiture of a license under this section does not affect the culpability of the license holder for conduct committed before the effective date of the surrender or forfeiture. The department may institute a disciplinary proceeding against the former license holder for conduct committed before the effective date of the surrender or forfeiture.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 11, eff. September 1, 2015.

Sec. 2652.058. CONTINUING EDUCATION. (a) To protect the public and to preserve and improve the competence of license holders, the department shall require as a condition of holding an escrow officer license that the license holder enroll in and attend or teach continuing education consisting of class instruction, lectures, seminars, or other forms of education approved by the department for escrow officers.

(b) The department shall prescribe the required number of hours of continuing education, not to exceed 15 hours in each two-year license period.

(c) Continuing education instruction must be designed to refresh the license holder's understanding of:

(1) basic principles and coverages relating to title insurance;

(2) recent and prospective changes in those principles and coverages;

(3) applicable rules of the commissioner and laws;

(4) the proper conduct of the license holder's business; and

(5) the duties and responsibilities of the license holder.

(d) The department may permit a license holder to complete an equivalent course of study and instruction by mail if, because of the

remote location of the license holder's residence or business, the license holder is unable to attend educational sessions with reasonable convenience.

(e) On written request by the license holder, the department may extend the time for the license holder to comply with the requirements of this section or may exempt the license holder from all or part of the requirements for a license period if the department determines that the license holder is unable to comply with the requirements because of illness, medical disability, or another extenuating circumstance beyond the control of the license holder. The commissioner shall prescribe the criteria for an extension or exemption by rule.

(f) The commissioner shall adopt rules to administer this section.

(g) Continuing education programs to satisfy the requirements of this section must be certified under Subchapter C, Chapter 4004. The department may enter into an agreement with an independent contractor as authorized by Section 4004.104 to certify and register the programs and providers of those programs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 5, eff. September 1, 2015.

Sec. 2652.059. DENIAL OF LICENSE APPLICATION OR LICENSE RENEWAL; APPROVAL. (a) Not later than the 20th business day after the date the department receives a license application or a license renewal under this chapter, the department shall notify the applicant or license holder in writing of any deficiencies in the application that render the application incomplete.

(b) Not later than the fifth business day after the date the application is complete, the department shall notify the applicant or license holder in writing of the date that the license application or license renewal is complete.

(c) An application is automatically approved on the 30th business day after the date the application is complete, unless on or before that date the department notifies the applicant or license holder in writing of the factual grounds on which the department

proposes to deny the application.

(d) The department may provide a notice required under this section by e-mail.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 6, eff. September 1, 2011.

SUBCHAPTER C. BOND AND DEPOSIT REQUIREMENTS

Sec. 2652.101. BOND REQUIRED. (a) A title insurance agent or direct operation shall obtain, at its own expense, a bond for its escrow officers appointed under Section 2652.1511 payable to the department. The bond shall obligate the principal and surety to pay for any pecuniary loss sustained by the title insurance agent or direct operation through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by an escrow officer, either directly and alone or in conspiracy with another person.

(b) The bond must be:

(1) of a type approved by the department; and

(2) issued by a surety licensed by the department to do business in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 6, eff. September 1, 2015.

Sec. 2652.102. ALTERNATIVE TO BOND. (a) Instead of the bond required by Section 2652.101, a title insurance agent or direct operation may deposit with the department:

(1) cash;

(2) irrevocable letters of credit issued by a financial institution insured by an agency of the United States; or

(3) securities approved by the department.

(b) The cash, letters of credit, or securities deposited under this section are subject to the conditions required for a bond under Section 2652.101.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.103. AMOUNT OF BOND OR DEPOSIT. (a) The amount of the bond or deposit required under this subchapter is determined by multiplying the number of escrow officers employed by the title insurance agent or direct operation by:

(1) $5,000 for an application of an individual who is a bona fide resident of this state; or

(2) $10,000 for an application of an individual who is a bona fide resident of a state adjacent to this state.

(b) Notwithstanding Subsection (a), the maximum amount of the bond or deposit required under this subchapter is $50,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 155 (H.B. 652), Sec. 2, eff. September 1, 2009.

Sec. 2652.104. EXAMINATION OF LOSS COVERED BY BOND OR DEPOSIT. (a) At any time it appears that a loss covered by a bond or deposit has occurred, the department may require the escrow officer to appear in Travis County, with records the department determines to be proper, for an examination.

(b) The department shall specify a date for the examination that is not earlier than the 10th day or later than the 15th day after the date of service of notice of the requirement to appear. Copies of the notice shall be sent to any title insurance agent or direct operation concerned.

(c) If after the examination the department determines that a loss covered by the bond or deposit has occurred, the department shall immediately notify the appropriate title insurance agent or direct operation and the surety on the bond, if applicable, and prepare a written statement of the facts of the loss and deliver the statement to the attorney general.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.105. INVESTIGATION BY ATTORNEY GENERAL. (a) On receipt of a written statement under Section 2652.104, the attorney general shall investigate the charges and, on determining that a loss covered by the bond or deposit has occurred, shall enforce the

liability by collecting against the deposited cash or securities or by filing suit on the bond.

(b) A suit brought under this section shall be filed in the name of the department in Travis County for the benefit of all parties who have suffered any loss covered by the bond or deposit.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER D. DUTIES OF TITLE INSURANCE AGENTS AND DIRECT OPERATIONS REGARDING ESCROW OFFICERS

Sec. 2652.151. LIST OF ESCROW OFFICERS. (a) A title insurance agent or direct operation shall certify to the department, not later than the expiration date of the title insurance agent's or direct operation's license, the name and address of each individual employed and appointed under Section 2652.1511 by the title insurance agent or direct operation to serve as an escrow officer in this state.

(b) The certification required by this section must be on a form provided by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 7, eff. September 1, 2015.

Sec. 2652.1511. APPOINTMENT OF ESCROW OFFICER. (a) An escrow officer may be employed and appointed by more than one title insurance agent or direct operation.

(b) Before an escrow officer may act in that capacity for a title insurance agent or direct operation, the title insurance agent or direct operation must appoint the escrow officer and file the escrow officer's appointment with the department on the electronic or nonelectronic form provided by the department.

(c) The appointment form must:

(1) be accompanied by a nonrefundable appointment fee;

(2) certify that:

(A) the escrow officer is a bona fide employee of the title insurance agent or direct operation making the appointment; and

(B) the title insurance agent or direct operation has an office in this state;

(3) be signed and sworn to by the title insurance agent or direct operation and by the escrow officer; and

(4) acknowledge that the escrow officer is covered by a surety bond or deposit required under Subchapter C.

(d) The appointment of the escrow officer expires on the revocation, termination, or nonrenewal of the escrow officer's license or termination of the escrow officer's employment with the title insurance agent or direct operation that made the appointment.

(e) Unless otherwise notified by the department, the escrow officer may act as an escrow officer for the appointing title insurance agent or direct operation after:

(1) the second business day after the date the appointment is submitted to the department electronically; or

(2) the eighth business day after the date the appointment is submitted to the department on a nonelectronic form.

Added by Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 8, eff. September 1, 2015.

Sec. 2652.153. NOTICE OF TERMINATION. A title insurance agent or direct operation that terminates the employment of a licensed escrow officer shall:

(1) immediately notify the department in writing of the termination and request cancellation of the appointment under Section 2652.1511; and

(2) notify the escrow officer of the action by the title insurance agent or direct operation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 9, eff. September 1, 2015.

SUBCHAPTER E. LICENSE DENIAL AND DISCIPLINARY ACTION

Sec. 2652.201. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. (a) The department may deny an application for a license or discipline an escrow officer under Sections 4005.102, 4005.103, and 4005.104 if the department determines that the applicant or license holder has:

(1) wilfully violated this title;

(2) intentionally made a material misstatement in the license application;

(3) obtained or attempted to obtain the license by fraud or misrepresentation;

(4) misappropriated or converted to the escrow officer's own use or illegally withheld money belonging to a title insurance agent, direct operation, or another person;

(5) been guilty of fraudulent or dishonest practices;

(6) materially misrepresented the terms and conditions of a title insurance policy or contract; or

(7) failed to complete all educational requirements.

(b) The department may not deny an application for a license or discipline an escrow officer under Section 4005.102, 4005.103, or 4005.104 solely because the individual resides in an adjacent state and acts as an escrow officer in this state as a bona fide employee of a title insurance agent or direct operation in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 155 (H.B. 652), Sec. 3, eff. September 1, 2009.

Sec. 2652.2015. PROHIBITED GROUNDS FOR DELAY OR DENIAL. (a) Except as provided by Subsection (b) or (c), the department may not delay or deny a license application or a license renewal based wholly or partly on a department audit or complaint investigation of, or disciplinary or enforcement action against, a license holder or applicant that is pending and has not been finally closed or resolved by a final order issued by the commissioner on or before the date on which the initial or renewal application is complete.

(b) The department may delay a license application or license renewal if:

(1) the applicant or license holder is the subject of a criminal investigation or prosecution; or

(2) the deputy commissioner of the title division of the department makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by the applicant or license holder.

(c) The department may deny a license application or license renewal if the department determines that the applicant or license holder intentionally made a material misstatement in the license application or license renewal or the applicant or license holder attempted to obtain the license or renewal by fraud or misrepresentation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 7, eff. September 1, 2011.

Sec. 2652.202. LICENSE APPLICATION AFTER DENIAL, REFUSAL, OR REVOCATION. (a) An applicant whose license application has been denied or refused or a license holder whose license has been revoked under this subchapter may not file another application for a license as an escrow officer before the first anniversary of:

(1) the effective date of the denial, refusal, or revocation; or

(2) the date of a final court order affirming the denial, refusal, or revocation if judicial review is sought.

(b) A license application filed after the time required by this section may be denied by the department unless the applicant shows good cause why the denial, refusal, or revocation should not be a bar to the issuance of a license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2652.203. NOTICE OF DISCIPLINARY OR ENFORCEMENT ACTION; AUTOMATIC DISMISSAL. (a) The department shall notify a license holder of a disciplinary action or enforcement action against the license holder not later than the 30th business day after the date the department assigns a file number to the action, except that this subsection does not apply to a file or action:

(1) that is the subject of a pending criminal investigation or prosecution; or

(2) about which the department makes a good faith determination that there is a credible suspicion that there are ongoing or continuing acts of fraud by a person who is the subject of the action.

(b) A notice required by Subsection (a) must provide a license

holder fair notice of the alleged facts known by the department on the date of the notice that constitute grounds for the action.

(c) A disciplinary or enforcement action is automatically dismissed with prejudice, unless the department serves a notice of hearing on the license holder not later than the 60th business day after the date the department receives a hearing request from the license holder.

(d) The department may provide information about an enforcement action, including a copy of a notice issued under this section, to each title insurance agent or direct operation with which an escrow officer has, or proposes to obtain, an appointment under Section 2652.1511.

(e) Except as prohibited by Chapter 552, Government Code, or any other law, on the date an enforcement action against an escrow officer becomes final, the department shall provide information about the action, including a copy of a commissioner's order or department warning issued under this section, to each title insurance agent or direct operation for which the escrow officer holds appointment under Section 2652.1511.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 7, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 232 (H.B. 2491), Sec. 10, eff. September 1, 2015.

SUBTITLE E. THE BUSINESS OF TITLE INSURANCE

CHAPTER 2701. GENERAL PROVISIONS

Sec. 2701.001. ABSTRACT OF TITLE DISTINGUISHED; PROHIBITION ON REGULATION OF ABSTRACT OF TITLE. (a) In this section, "commitment for title insurance" means a title insurance form under which a title insurance company offers to issue a title insurance policy subject to stated exceptions, requirements, and terms. The term includes a mortgagee title policy binder on an interim construction loan.

(b) A commitment for title insurance constitutes a statement of the terms and conditions on which a title insurance company is willing to issue its policy. A title insurance policy or other title insurance form constitutes a statement of the terms and conditions of the indemnity under the policy or form.

(c) An abstract of title prepared from an abstract plant for a chain of title to real property described in the abstract of title is not title insurance, a commitment for title insurance, or any other title insurance form. A commitment for title insurance, title insurance policy, or other title insurance form is not an abstract of title.

(d) The commissioner may not adopt rules relating to abstracts of title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2701.002. CONSTRUCTION OF CHAPTER 601, BUSINESS & COMMERCE CODE. Chapter 601, Business & Commerce Code, is a consumer protection law when construed in connection with a title insurance policy issued in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.22, eff. April 1, 2009.

CHAPTER 2702. CLOSING AND SETTLEMENT

SUBCHAPTER A. INSURED CLOSING AND SETTLEMENT LETTERS

Sec. 2702.001. INSURED CLOSING AND SETTLEMENT LETTER: LOANS. (a) On request, a title insurance company may issue insured closing and settlement letters in connection with the closing and settlement by a title insurance agent or direct operation of loans relating to real property located in this state.

(b) Insured closing and settlement letters must be issued in the form prescribed by the commissioner.

(c) A title insurance company may not impose a charge for issuing insured closing and settlement letters under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2702.002. INSURED CLOSING AND SETTLEMENT LETTER: CERTAIN BUYERS OR SELLERS. (a) On written request, a title insurance company may issue to the buyer or seller of real property located in

this state, the sales price of which exceeds the maximum covered claim specified by Chapter 2602, an insured closing and settlement letter in connection with the closing and settlement of the transaction by a title insurance agent or direct operation. Only the title insurance company that is to issue an owner title insurance policy in connection with the transaction may issue the insured closing and settlement letter.

(b) An insured closing and settlement letter must be issued:

(1) at or before closing; and

(2) in the form and manner prescribed by the commissioner.

(c) The commissioner may adopt a charge for the issuance of an insured closing and settlement letter under this section and prescribe the form and manner in which the charge must be made.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2702.003. EFFECT OF FAILURE TO ISSUE INSURED CLOSING AND SETTLEMENT LETTER. The failure of a title insurance company to issue an insured closing and settlement letter does not affect the company's liability under an issued title insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER B. UNIFORM CLOSING AND SETTLEMENT STATEMENTS

Sec. 2702.051. APPLICABILITY. This subchapter does not apply to the closing or settlement of:

(1) a residential real property transaction regulated by the Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533); or

(2) a real property transaction if the closing or settlement is not actually handled by:

(A) a title insurance company, a title insurance agent, or an attorney for a title insurance company or title insurance agent; or

(B) a representative of a title insurance company, a title insurance agent, or an attorney for a title insurance company or title insurance agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2702.052. DUTY TO PRESCRIBE UNIFORM CLOSING AND SETTLEMENT STATEMENT FORMS. (a) The department, after notice and hearing, shall prescribe uniform closing and settlement statement forms to be used in connection with the closing and settlement of a transaction involving:

(1) the conveyance or mortgage of real property; and

(2) the issuance of a title insurance policy by a title insurance company or title insurance agent.

(b) The department may prescribe separate forms under this section for transactions involving improved residential real property and for all other real property transactions.

(c) The department shall design the forms under this section to enable each party to the transaction to be provided with a dual or separate form identifying only the charges made to that party.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2702.053. CONTENT OF CLOSING AND SETTLEMENT STATEMENT. (a) Each closing and settlement statement provided to a party to a transaction described by Section 2702.052(a) must state the name of any person receiving any amount from that party.

(b) Notwithstanding Subsection (a), the title insurance company or title insurance agent is required to include in the closing and settlement statement only those items of disbursement that are actually disbursed by the company or agent.

(c) If an attorney, other than a full-time employee of the title insurance company or title insurance agent, examines a title or provides any closing or settlement services, the closing and settlement statement must include:

(1) the amount of the fee for the services, shown as included in the premium; and

(2) the name of the attorney or, if applicable, the name of the firm to which the fee was paid.

(d) The closing and settlement statement must conspicuously and clearly itemize the charges imposed on the party in connection with the closing and settlement.

(e) If a charge for title insurance is made to the party, the

closing and settlement statement must state whether the title insurance premium included in the charge covers the mortgagee's interest in the real property, the borrower's interest, or both.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2702.054. USE OF ALTERNATE SETTLEMENT STATEMENT FORM PERMITTED. A title insurance company or title insurance agent may use the uniform settlement statement form prepared under the Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) instead of the uniform closing and settlement statement form prescribed by the department under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER C. ADVANCE DISCLOSURE OF CLOSING AND SETTLEMENT COSTS IN TRANSACTIONS INVOLVING RESIDENTIAL REAL PROPERTY

Sec. 2702.101. APPLICABILITY. This subchapter does not apply to the closing or settlement of a real property transaction if the closing or settlement is not actually handled by:

(1) a title insurance company, a title insurance agent, or an attorney for a title insurance company or title insurance agent; or

(2) a representative of a title insurance company, a title insurance agent, or an attorney for a title insurance company or title insurance agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2702.102. DUTY TO PROVIDE ADVANCE DISCLOSURE OF CLOSING AND SETTLEMENT COSTS. (a) Except as provided by Subsection (c), on the written request of the buyer, seller, or borrower before the closing and settlement of a transaction involving improved residential real property, a title insurance company or title insurance agent shall, in connection with the issuance of any kind of title insurance policy guaranteeing a lien on or the title to the property, provide to the requesting party an itemized disclosure of each charge to be made to that party that arises in connection with

the closing and settlement.

(b) The itemized disclosure must be provided on a closing and settlement statement form prescribed or permitted under Subchapter B.

(c) The title insurance company or title insurance agent is required to provide the itemized disclosure only to the extent that information is available concerning each charge to be made to the party. If information concerning a charge is not available, the title insurance company or title insurance agent shall:

(1) make a notation that the charge is to be made but that the information is not available or that the amount shown is an estimate of the charge; and

(2) advise the party in writing as to the identity of the person or organization responsible for the charge.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2702.103. TITLE INSURANCE COMPANY OR TITLE INSURANCE AGENT NOT SUBJECT TO REQUIREMENTS APPLICABLE TO LENDERS. (a) Notwithstanding Section 2702.102, a title insurance company or title insurance agent is not required to disclose a cost or charge that a lender is required by law to disclose to a party.

(b) Section 2702.102 does not impose on a title insurance company or title insurance agent any obligation imposed on a lender by the Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

CHAPTER 2703. POLICY FORMS AND PREMIUM RATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2703.001. COMPLIANCE WITH TITLE AND RULES. (a) This section applies to a corporation organized under this title, a foreign corporation, and, to the extent that the corporation is engaged in the business of title insurance, a corporation organized under another law, including:

(1) Subdivision 57, Article 1302, Revised Statutes, before repeal of that statute; and

(2) Chapter 861.

(b) A corporation operates in this state under the control and

supervision of the commissioner and under uniform rules adopted by the commissioner relating to:

(1) forms of policies and underwriting contracts;

(2) premiums for those policies and contracts; and

(3) underwriting standards and practices.

(c) With respect to real property located in this state, a corporation may not issue any kind of title insurance coverage, any kind of guarantee, or reinsurance of a risk assumed under a title insurance policy, except as provided by Section 2551.305 or 2551.3055, unless the corporation is authorized to engage in the business of title insurance under this title and otherwise complies with this title. In engaging in the business of title insurance with respect to real property located in this state, the corporation shall comply with this title and rules described by Subsection (b), including when:

(1) issuing any kind of title insurance policy or an underwriting contract;

(2) reinsuring any portion of a risk assumed under a title insurance policy; and

(3) deleting a title insurance policy exclusion.

(d) Title insurance coverage, reinsurance, or a guarantee issued in violation of Subsection (c) is invalid.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 38 (S.B. 572), Sec. 4, eff. September 1, 2015.

Sec. 2703.002. USE OF FORMS IN GENERAL. A title insurance company or title insurance agent may not use a form required under this title to be prescribed or approved until the commissioner has prescribed or approved the form.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.003. PAYMENT OF PREMIUMS. The premium for a title insurance policy or for another form prescribed or approved by the commissioner shall be paid in the due and ordinary course of business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER B. POLICY PROVISIONS

Sec. 2703.051. CERTAIN PROVISIONS REQUIRED. A title insurance policy delivered or issued for delivery in this state to insure an owner of real property must include certain provisions, the form and content of which shall be prescribed by the commissioner, in accordance with this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.0515. CERTAIN REQUIREMENTS PROHIBITED. (a) A title insurance company is not required to offer or provide in connection with a title insurance policy an endorsement insuring a loss from damage resulting from the use of the surface of the land for the extraction or development of coal, lignite, oil, gas, or another mineral if the policy includes a general exception or exclusion from coverage a loss from damage resulting from the use of the surface of the land for the extraction or development of coal, lignite, oil, gas, or another mineral.

(b) In this section, "general exception or exclusion" means a provision in a title insurance policy or other title insuring form that provides that title insurance coverage under the policy or form:

(1) is subject to, and the title insurer does not insure title to, and excepts from the description of the covered property, coal, lignite, oil, gas, and other minerals in and under and that may be produced from the covered property, together with related rights, privileges, and immunities; or

(2) does not cover a lease, grant, exception, or reservation of coal, lignite, oil, gas, or other minerals, or related rights, privileges, and immunities, appearing in the public records.

(c) An additional premium or other amount may not be charged for an endorsement to a loan policy of title insurance if the endorsement:

(1) insures against loss from damage to improvements or permanent buildings located on land that results from the future exercise of any right existing on the date of the loan policy to use the surface of the land for the extraction or development of coal,

lignite, oil, gas, or another mineral;

(2) expressly does not insure against loss resulting from subsidence; and

(3) was promulgated by the commissioner in calendar year 2009.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 8, eff. September 1, 2011.

Sec. 2703.052. DUTY OF TITLE INSURANCE COMPANY. (a) On a report to a title insurance company made by an insured after a title insurance policy has been issued that a lien, encumbrance, or title defect exists that is not excepted under the policy or otherwise excluded from coverage, the company shall promptly investigate to determine whether the lien or encumbrance is valid and not barred by statute or other law.

(b) A title insurance company that concludes that a valid lien or encumbrance that is not barred by statute or other law exists or that a title defect exists shall:

(1) institute all necessary legal proceedings to clear the title to the property;

(2) indemnify the insured according to the terms of the policy;

(3) reinsure at current value the title to the property without making exception to the lien, encumbrance, or defect or indemnify another insurer for reinsuring the title without making exception to the lien, encumbrance, or defect;

(4) secure a release of the lien, encumbrance, or defect; or

(5) take a combination of the actions described by this subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.053. ESTABLISHMENT OF STANDARDS AND SCHEDULES. The commissioner by rule shall establish standards and time schedules for implementing and handling claims by title insurance companies in accordance with this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.054. AUTHORITY OF COMMISSIONER IN IMPLEMENTING SUBCHAPTER. (a) The commissioner may adopt, by amendment to an owner title insurance policy or by separate endorsement to an owner title insurance policy, language to implement this subchapter in a manner consistent with the terms, provisions, conditions, and stipulations of the policy or the exceptions to coverage contained in the schedules to the policy.

(b) This subchapter does not prohibit the commissioner from adopting for use in this state one or more policies in a simplified, generally more understandable, and usable form.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.055. REQUIREMENT OF CERTAIN PROVISIONS PROHIBITED. The commissioner may not require by rule, or through adoption of a title insurance policy or other insuring form, that a title insurance policy delivered or issued for delivery in this state:

(1) insure against a loss that a person with an interest in real property sustains from damage to the property by reason of severance of minerals from the surface estate; or

(2) provide insurance as to ownership of minerals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 9, eff. September 1, 2011.

Sec. 2703.056. EXCEPTIONS; MINERAL AND GEOTHERMAL ENERGY INTERESTS. (a) Subject to the underwriting standards of the title insurance company, a title insurance company may in a commitment for title insurance or a title insurance policy include a general exception or a special exception to except from coverage:

(1) a mineral estate or the geothermal energy and associated resources below the surface of the land; or

(2) an instrument that purports to reserve or transfer all or part of a mineral estate or the geothermal energy and associated resources below the surface of the land.

(b) A reduction to, or credit on a premium charge for, a policy

of title insurance or other insuring form may not be directly or indirectly based on an exclusion of, or general or special exception to, a mineral estate or the geothermal energy and associated resources below the surface of the land in the title insurance policy.

(c) The inclusion in a title insurance policy of a general exception or a special exception described by Subsection (a) does not create title insurance coverage as to the condition or ownership of the mineral estate or the geothermal energy and associated resources below the surface of the land.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 9, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1108 (S.B. 785), Sec. 1, eff. June 18, 2023.

SUBCHAPTER C. POLICY FORMS FOR RESIDENTIAL REAL PROPERTY

Sec. 2703.101. POLICY FORMS FOR RESIDENTIAL REAL PROPERTY. (a) The commissioner shall prescribe an owner title insurance policy form to be issued in connection with a transaction involving residential real property in this state.

(b) A title insurance company or title insurance agent shall use the form prescribed by the commissioner in issuing to an individual an owner title insurance policy relating to residential real property in this state.

(c) Unless authorized by rule adopted by the commissioner, an insurer may not enter into a contract or other agreement concerning an individual title insurance policy if the contract or other agreement is not expressed in the policy. A contract or agreement prohibited by this subsection is void.

(d) An endorsement prescribed by the commissioner may be attached to the title insurance policy form as authorized by rule adopted by the commissioner.

(e) The commissioner may not prescribe an owner title insurance policy form for residential real property or an endorsement to the policy if the policy form or endorsement is not written in plain language. For purposes of this subsection, a policy form or endorsement is written in plain language if it achieves the minimum

score established by the commissioner on the Flesch reading ease test or an equivalent test selected by the commissioner or, at the commissioner's option, if it conforms to the language requirements in a National Association of Insurance Commissioners model act relating to plain language. This subsection does not apply to policy language required by state or federal law.

(f) For an owner title insurance policy on residential real property that is issued to an individual, the commissioner may adopt coverages that insure against ad valorem taxes, including penalties and interest, to be paid with respect to the property for a previous tax year:

(1) that are delinquent on the effective date of the policy because of sale, diversion, or change of use, unless excluded because the insured has actual knowledge of the delinquent taxes; or

(2) that result from an exemption granted to a previous owner of the property under Section 11.13, Tax Code, or from an improvement not assessed for a previous tax year, unless excluded because the insured has actual knowledge of the taxes.

(g) For an owner's title insurance policy on residential real property that is issued to an individual, the commissioner shall adopt terms that provide for continuation of coverage subject to rights and defenses against the original named insured for:

(1) a person who inherits the original named insured's title on the original named insured's death;

(2) the original named insured's spouse who receives title in a dissolution of marriage with the original named insured;

(3) the trustee or successor of a trust established by the original named insured to whom the original named insured transfers title after the date of policy; or

(4) the beneficiaries of a trust described by Subdivision (3) on the death of the original named insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 985 (H.B. 3768), Sec. 1, eff. September 1, 2009.

SUBCHAPTER D. FIXING AND PROMULGATING PREMIUM RATES

Sec. 2703.151. FIXING AND PROMULGATING PREMIUM RATES. (a)

Except as provided by Subsection (b), the commissioner shall fix and promulgate the premium rates to be charged by a title insurance company or by a title insurance agent for title insurance policies or for other forms prescribed or approved by the commissioner.

(b) The commissioner may not fix or promulgate the premium rates for reinsurance between title insurance companies. Title insurance companies may establish the premium rates in amounts to which the companies agree.

(c) Except for a premium charged for reinsurance, a premium may not be charged for a title insurance policy or for another prescribed or approved form at a rate different than the rate fixed and promulgated by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.152. FACTORS CONSIDERED IN FIXING PREMIUM RATES. (a) In fixing premium rates, the commissioner shall consider all relevant income and expenses of title insurance companies and title insurance agents attributable to engaging in the business of title insurance in this state.

(b) The premium rates fixed by the commissioner must be:

(1) reasonable as to the public; and

(2) nonconfiscatory as to title insurance companies and title insurance agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.153. COLLECTION OF DATA FOR FIXING PREMIUM RATES; ANNUAL STATISTICAL REPORT. (a) Each title insurance company and title insurance agent engaged in the business of title insurance in this state shall annually submit to the department, as required by the department to collect data to use to fix premium rates, a statistical report containing information relating to:

(1) loss experience;

(2) expense of operation; and

(3) other material matters.

(b) The information must be submitted in the form prescribed by the department.

(c) Not less frequently than once every five years, the

commissioner shall evaluate the information required under this section to determine whether the department needs additional or different information or no longer needs certain information to promulgate rates. If the department requires a title insurance company or title insurance agent to include new or different information in the statistical report, that information may be considered by the commissioner in fixing premium rates if the information collected is reasonably credible for the purposes for which the information is to be used.

(d) A title insurance company or a title insurance agent aggrieved by a department requirement concerning the submission of information may bring a suit in a district court in Travis County alleging that the request for information:

(1) is unduly burdensome; or

(2) is not a request for information material to fixing and promulgating premium rates or another matter that may be the subject of the periodic hearing and is not a request reasonably designed to lead to the discovery of that information.

(e) On filing of a suit under Subsection (d), the requirement that the title insurance company or title insurance agent bringing the suit comply with the request for the information is abated as to that title insurance company or title insurance agent. The district court may enter an order requiring the title insurance company or title insurance agent to comply with the request for information subject to the limitations, if any, imposed by the court.

(f) A title insurance company or title insurance agent must bring suit under Subsection (d) not later than the 30th day after the date the company or agent receives the request for information from the department.

(g) This section may not be construed to limit the department's authority to request information under Section 38.001 or other applicable provisions of this code.

(h) The contents of the statistical report, including any amendments to the statistical report, must be established in a rulemaking hearing under Subchapter B, Chapter 2001, Government Code.

(i) An amendment to the contents of the statistical report may not apply retroactively.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 930 (H.B. 3271), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 5.001, eff. September 1, 2011.

SUBCHAPTER E. PROCEDURES REGARDING PREMIUM RATES, POLICY FORMS, AND OTHER RELATED MATTERS

Sec. 2703.201. HEARING REQUIRED FOR FIXING PREMIUM RATE. Before a premium rate may be fixed and a premium charged, the department must provide reasonable notice and a hearing must be afforded to title insurance companies, title insurance agents, and the public.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.202. HEARING REQUIRED FOR CHANGE IN PREMIUM RATE. (a) A premium rate previously fixed by the commissioner may not be changed until after the commissioner holds a public hearing.

(b) The commissioner shall order a public hearing to consider changing a premium rate, including fixing a new premium rate, in response to a written request of:

(1) a title insurance company;

(2) an association composed of at least 50 percent of the number of title insurance agents and title insurance companies licensed or authorized by the department;

(3) an association composed of at least 20 percent of the number of title insurance agents licensed or authorized by the department; or

(4) the office of public insurance counsel.

(b-1) An interested person by a written request to the commissioner may request a public hearing to consider changing a premium rate, including fixing a new premium rate. For the purposes of this subsection, "interested person" means:

(1) a resident of this state;

(2) a business entity doing business in this state;

(3) a political subdivision located in this state; or

(4) a public or private organization, other than a state agency, that is located in this state.

(b-2) Not later than the 60th day after the date of submission of a request under Subsection (b-1), the commissioner shall:

(1) deny the request in writing, stating the reasons for the denial; or

(2) initiate a hearing under Subsection (a).

(c) Except as provided by Subsection (d), a public hearing held under Subsection (a) or under Section 2703.206 shall be conducted by the commissioner as a rulemaking hearing under Subchapter B, Chapter 2001, Government Code.

(d) Notwithstanding Subsection (c), a person or entity described by Subsection (b) or an interested person described by, and subject to, Subsection (b-1) may petition the commissioner in writing that a public hearing held under Subsection (a) or under Section 2703.206 be conducted by the commissioner as a contested case hearing under Subchapters C through H and Subchapter Z, Chapter 2001, Government Code. The petition must state the grounds for the petitioner's request.

(d-1) Not later than the 30th day after the date the commissioner receives a petition under Subsection (d), the commissioner shall hold a public hearing on the petition to determine whether:

(1) the petition is made in good faith; and

(2) the grounds stated in the petition otherwise justify conducting the proceeding as a contested case hearing.

(d-2) Not later than the 60th day after the date a petition under Subsection (d) is submitted, the commissioner shall:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) grant the petition to initiate a hearing under Subsections (a) and (h) as a contested hearing.

(e) Information received or requested by the commissioner as part of an individual audit or examination under Chapters 2602 and 2651 may not be used for rate setting under Subchapter D, Chapter 2703. Nothing in this section prohibits a party from conducting discovery in a ratemaking or other proceeding or producing other information requested by the department, or verifying the data reported under a statistical plan or report promulgated by the commissioner.

(f) Subsections (c) through (e) apply only to a public hearing held on or after January 1, 2009.

(g) If a hearing held under Subsection (a) is not conducted as a contested case hearing, the commissioner shall render a decision and issue a final order not later than the 120th day after the date the commissioner receives a written request under Subsection (b) or (b-1).

(h) If a hearing held under Subsection (a) is conducted as a contested case hearing:

(1) not later than the 30th day after the date the commissioner rules on a petition for a public hearing under Subsection (d-2), the commissioner shall issue a notice of call for items to be considered at the hearing;

(2) the commissioner may not require responses to the notice of call before the 60th day after the date the commissioner issues the notice of call;

(3) the commissioner shall issue a notice of the public hearing not later than the 30th day after the date responses to the notice of call are required under Subdivision (2);

(4) the commissioner shall commence the public hearing not earlier than the 120th day after the date the commissioner issues a notice of hearing under Subdivision (3);

(5) the commissioner shall close the public hearing not later than the 150th day after the date the commissioner issues the notice of hearing under Subdivision (3); and

(6) the commissioner shall render a decision and issue a final order not later than the 60th day after the record made in the public hearing is closed under Subdivision (5).

(i) A party's presentation of relevant, admissible oral testimony in a hearing under this section may not be limited.

(j) The commissioner shall consider each matter presented in a hearing under this section and announce in a public hearing all decisions on all matters considered.

(k) A party described by Subsection (b) or (b-1) may petition a district court in Travis County to enter an order requiring the commissioner to comply with the deadlines described by this section if the commissioner fails to meet a requirement in Subsection (g) or (h).

(l) Subject to Subsection (m), if the commissioner fails to comply with the requirements under Subsection (g) or (h)(6), a

combination of at least three associations, persons, or entities listed in Subsection (b) or (b-1) may jointly petition a district court of Travis County to adopt a rate based on the record made in the hearing before the commissioner under this section.

(m) If the record made in the hearing before the commissioner is not complete before the request for the court to adopt a premium rate under Subsection (l), the court shall hold an evidentiary hearing to establish a record before adopting the premium rate.

(n) After a petition has been filed under Subsection (l), the commissioner may not issue findings or an order related to the subject matter of the petition until after the date the court enters a final judgment.

(o) A district court may appoint a magistrate to adopt a rate under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1025 (H.B. 4338), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 11, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 884 (H.B. 3228), Sec. 1, eff. September 1, 2019.

Sec. 2703.203. PERIODIC HEARING. The commissioner shall hold a public hearing not earlier than July 1 after the fifth anniversary of the closing of a hearing held under this chapter to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an interested person, association, title insurance company, title insurance agent, or entity under Section 2703.204 requests to be considered or that the commissioner determines necessary to consider.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 930 (H.B. 3271), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 12, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 884 (H.B. 3228), Sec. 2, eff.

September 1, 2019.

Sec. 2703.204. ADMISSION AS PARTY TO HEARING. (a) Subject to this section, the following persons, associations, and entities shall be admitted as parties to a contested case hearing under Section 2703.202, the periodic hearing under Section 2703.203, or a hearing under Section 2703.206:

(1) a trade association whose membership is composed of at least 20 percent of the members of an industry or group represented by the trade association;

(2) an association, person, or entity described by Section 2703.202(b);

(3) an interested person described by Section 2703.202(b-1); or

(4) department staff.

(b) A party to any portion of the periodic hearing relating to ratemaking may request that the commissioner remove any other party to that portion of the hearing on the grounds that the other party does not have a substantial interest in the subject matter of the hearing. A decision of the commission to deny or grant the request is final and subject to appeal in accordance with Section 36.202.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 930 (H.B. 3271), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 13, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 884 (H.B. 3228), Sec. 3, eff. September 1, 2019.

Sec. 2703.206. COMMISSIONER AUTHORITY TO HOLD HEARINGS AS NECESSARY. At any time, the commissioner may order a public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance as the commissioner determines necessary or proper.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2703.207. NOTICE OF CERTAIN HEARINGS. Not later than the 60th day before the date of a hearing under Section 2703.202, 2703.203, or 2703.206, notice of the hearing and of each item to be considered at the hearing shall be:

(1) sent directly to all parties to the previous hearing conducted under Section 2703.202, 2703.203, or 2703.206, if the hearing was conducted as a contested case hearing; and

(2) published in the Texas Register and on the department's Internet website.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1011 (H.B. 2408), Sec. 14, eff. September 1, 2011.

Sec. 2703.208. ADDITIONS OR AMENDMENTS TO MANUAL. (a) An addition or amendment to the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the Texas Register.

(b) Notice under this section must include:

(1) a brief summary of the substance of the matter to be added or amended; and

(2) a statement that the full text of the matter is available for review in the office of the chief clerk of the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

CHAPTER 2704. ISSUANCE OF POLICY OR CONTRACT; DETERMINATION OF INSURABILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2704.001. ISSUANCE OF POLICY OR CONTRACT. A title insurance policy or contract may not be written unless:

(1) Sections 2502.053, 2502.054, and 2502.055 have been complied with;

(2) the policy or contract is based on an examination of title made from title evidence prepared from an abstract plant owned, or leased and operated by a title insurance agent or direct operation

for the county in which the real property is located, except as provided by Section 2704.002;

(3) insurability of title has been determined in accordance with sound title underwriting practices; and

(4) evidence thereof is preserved and retained in the files of the title insurance company, title insurance agent, or direct operation for a period of not less than 15 years after the date of issuance of the policy or contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2704.002. DIRECT ISSUANCE OF POLICY OR CONTRACT. A title insurance company may directly issue a title insurance policy or contract based on the best title evidence available if:

(1) a title insurance agent or direct operation does not exist for the county in which the real property is located; or

(2) each title insurance agent and direct operation for that county refuses to provide title evidence:

(A) in a reasonable period as determined by the department; and

(B) in compliance with Section 2502.053(1).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2704.003. COPY OF POLICY OR CONTRACT TO AGENT OR DIRECT OPERATION. In a reasonable period as determined by the department, a copy of each title insurance policy or contract issued in a real property transaction shall be provided to each title insurance agent or direct operation providing the title evidence on which the policy or contract is issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2704.004. EXCEPTIONS TO APPLICABILITY OF CHAPTER. This chapter does not apply to a company that:

(1) does not assume primary liability in a reinsurance contract; or

(2) acts as coinsurer, if at least one of the other

coinsurers has complied with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER B. ISSUANCE OF OWNER AND MORTGAGEE POLICIES FOR RESIDENTIAL REAL PROPERTY

Sec. 2704.051. ISSUANCE OF OWNER POLICY REQUIRED IN CONNECTION WITH ISSUANCE OF MORTGAGEE POLICY. (a) In this section, "mortgagee title insurance policy" means a mortgagee policy of title insurance or another agreement or the equivalent that constitutes the business of title insurance.

(b) Except as provided by Section 2704.052, a title insurance company or title insurance agent that issues a mortgagee title insurance policy in connection with a lien on improved residential real property in this state that is sold shall also issue an owner title insurance policy to the owner of the property.

(c) The title insurance company or title insurance agent issuing the owner title insurance policy shall charge the required premium promulgated by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2704.052. REJECTION OF ISSUANCE OF OWNER POLICY. At or before closing and settlement, the person acquiring title may reject the issuance of the owner title insurance policy required under Section 2704.051 by executing a written and acknowledged rejection in the form prescribed, after notice and hearing, by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBCHAPTER C. TITLE INSURANCE COVERING AREAS AND BOUNDARIES

Sec. 2704.101. DEFINITION. In this subchapter, "area and boundary coverage" means title insurance coverage relating to discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2704.102. RULES AUTHORIZING ACCEPTANCE OF EXISTING SURVEY. (a) The commissioner by rule may authorize a title insurance company providing area and boundary coverage to accept an existing real property survey as provided by this section.

(b) A title insurance company may accept an existing real property survey rather than requiring a new survey if, notwithstanding the age of the survey or the identity of the person for whom the survey was prepared, the company is willing to accept:

(1) evidence of the existing survey; and

(2) an affidavit prescribed by the commissioner that verifies the existing survey.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2704.103. CERTAIN DISCRIMINATION PROHIBITED. A title insurance company may not discriminate in providing area and boundary coverage in connection with residential real property solely because:

(1) the real property is platted or unplatted; or

(2) a municipality did not accept a subdivision plat relating to the real property before September 1, 1975.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

Sec. 2704.104. INDEMNITY PROHIBITED. A title insurance company may not require an indemnity from a seller, buyer, borrower, or lender to provide area and boundary coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 6, eff. April 1, 2005.

SUBTITLE F. TITLE INSURANCE FOR CERTAIN PERSONAL PROPERTY INTERESTS

CHAPTER 2751. TITLE INSURANCE FOR PERSONAL PROPERTY INTERESTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2751.001. GENERAL DEFINITIONS. (a) The definitions under Sections 2501.003(2)-(5), (7), (10), and (12)-(14) apply to the regulation of title insurance under this chapter.

(b) In this subtitle, a term not defined under Subsection (a)

that is used in Chapter 9, Business & Commerce Code, has the meaning assigned by that code.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.002. DEFINITIONS OF PERSONAL PROPERTY AND PERSONAL PROPERTY TITLE INSURANCE. In this subtitle:

(1) "Personal property" has the meaning assigned by Section 1.04, Tax Code.

(2) "Personal property title insurance" means coverage that insures:

(A) whether affirming or negating, one or more of the elements of attachment, perfection, or priority of a security interest in personal property or fixtures;

(B) the results, as to correctness, completeness, or other criteria, of a search of:

(i) the filing office of the financing statement record of a debtor; or

(ii) any other database, whether publicly or privately maintained, such as court dockets, tax records, motor vehicle department records, or the records of the Federal Aviation Administration as to aircraft, the United States Coast Guard as to vessels, or the United States Department of Transportation;

(C) the status of ownership of, rights in, powers to transfer rights in, or title with respect to personal property or fixtures;

(D) the effectiveness of the filing of a financing statement with a filing office, or any other record with any publicly maintained database or registry;

(E) the lien status of personal property or fixtures, or compliance with Title 1, Business & Commerce Code, the Uniform Commercial Code, international conventions such as the United Nations Commission on International Trade Law (UNCITRAL), or similar laws or regulations; or

(F) any of the matters covered by Paragraphs (A)-(E) with respect to the laws of any other domestic or foreign jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff.

September 1, 2007.

Sec. 2751.003. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), this code, other than this chapter, does not apply to the business of personal property title insurance.

(b) The following laws apply to the business of personal property title insurance:

(1) Section 2501.005, other than Subsections (a)(2)(A)-(C) of that section;

(2) Section 2501.007;

(3) Section 2502.001;

(4) Sections 2502.051, 2502.053, and 2502.055;

(5) Chapter 2551;

(6) Chapter 2553;

(7) Chapter 2601;

(8) Chapter 2651;

(9) Chapter 2652;

(10) Section 2701.002;

(11) Chapter 2703, except to the extent of any conflict with Subchapter B of this chapter;

(12) Section 2704.001, other than Subdivisions (1) and (2) of that section;

(13) Section 2704.002; and

(14) Section 2704.004.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.004. GENERAL RULES. The commissioner, in the manner prescribed by Subchapter A, Chapter 36, shall adopt rules as necessary to implement and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

SUBCHAPTER B. RATES AND FORMS

Sec. 2751.051. FIXING AND PROMULGATING PREMIUM RATES AND FORMS. (a) The commissioner shall, in the manner prescribed by this

subchapter:

(1) fix and promulgate the premium rates to be charged by a title insurance company or by a title insurance agent for personal property title insurance policies under this chapter; and

(2) prescribe the forms to be used in connection with those policies.

(b) A premium may not be charged for a personal property title insurance policy or for another prescribed or approved form at a rate different than the rate fixed and promulgated by the commissioner.

(c) The commissioner may not limit the number of forms for personal property title insurance if the forms meet the requirements of this title.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.052. FACTORS CONSIDERED IN FIXING PREMIUM RATES. (a) In fixing premium rates, the commissioner shall consider all relevant income and expenses of title insurance companies and title insurance agents attributable to engaging in the business of personal property title insurance in this state.

(b) The premium rates fixed by the commissioner must be reasonable, adequate, not unfairly discriminatory, nonconfiscatory, and not excessive.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.053. HEARING REQUIRED. (a) Before a premium rate may be fixed and forms adopted for personal property title insurance under this chapter, the department must provide reasonable notice and a hearing must be afforded to title insurance companies, title insurance agents, and the public.

(b) A hearing under this section is subject to Subchapter B, Chapter 40, and is handled as a contested case under Chapter 2001, Government Code, in the manner prescribed by that subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.054. COMMISSIONER ORDER. (a) Not later than the 90th day after the date of a hearing under Section 2751.053, the commissioner shall issue an order prescribing the rates and forms to be used in connection with personal property title insurance policies under this chapter.

(b) The commissioner's order promulgating rates must be based on the evidence adduced at the hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.055. REVISIONS TO RATES AND FORMS; HEARING. (a) A title insurance company may apply to the department in the manner prescribed by the commissioner for approval of a new or revised personal property title insurance form or a change in a rate associated with such a form. The commissioner may approve or disapprove an application after a hearing conducted in the manner prescribed by Section 2751.053.

(b) A hearing under this section must be conducted not later than the 60th day after the date on which the department receives the application.

(c) The commissioner shall approve or disapprove the application not later than the 90th day after the date of the hearing under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

SUBCHAPTER C. POWERS AND DUTIES OF INSURERS AND AGENTS

Sec. 2751.101. ISSUANCE OF POLICIES. A title insurance company may issue a personal property title insurance policy in this state if the policy covers personal property or fixtures, or a secured party or other insured, or a debtor, located in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.102. USE OF FORMS. (a) A title insurance company or title insurance agent shall use the forms prescribed by the commissioner in issuing a personal property title insurance policy.

(b) Unless authorized by rule adopted by the commissioner, an insurer may not enter into a contract or other agreement concerning a personal property title insurance policy if the contract or other agreement is not expressed in the policy. A contract or agreement prohibited by this subsection is void.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.103. AGENTS. A title insurance agent or direct operation may accept orders for insurance products authorized under this chapter. The agent or direct operation shall act according to the authority granted to the agent or direct operation by the title insurance company issuing the product.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

Sec. 2751.104. AGENT COMPENSATION. (a) The title insurance company that issues a personal property title insurance policy shall pay the title insurance agent that places the order for the policy a total commission equal to 30 percent of the premium charged for the personal property title insurance or personal property title insurance product authorized under this chapter.

(b) Notwithstanding Subsection (a), a title insurance company may not pay a commission to a title insurance agent for an application for coverage that is placed with the title insurance company directly.

(c) A commission paid under Subsection (a) does not constitute a violation of Section 2502.051.

Added by Acts 2007, 80th Leg., R.S., Ch. 543 (S.B. 1153), Sec. 1, eff. September 1, 2007.

TITLE 12. OTHER COVERAGE

CHAPTER 3501. CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE

Sec. 3501.001. DEFINITION. In this chapter, "credit involuntary unemployment insurance" means insurance that indemnifies a debtor for installment or other periodic payments on an indebtedness while the debtor is involuntarily unemployed. The term includes policy forms and endorsements that define involuntary unemployment to provide coverage and a premium charge for interruption or reduction of a debtor's income during periods of leave, whether paid or unpaid, authorized by the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.), as amended, or other state or federal law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3501.002. AUTHORIZATION. (a) Any insurer authorized to write any form of casualty insurance in this state may also write group or individual credit involuntary unemployment insurance.

(b) Credit involuntary unemployment insurance may be written alone or in conjunction with credit life insurance, credit accident and health insurance, or both, in a policy issued by an authorized insurer.

(c) Credit involuntary unemployment insurance may not be written in contravention of Chapter 15, Business & Commerce Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3501.003. RATES AND FORMS. Rates and forms for credit involuntary unemployment insurance must be set and filed in accordance with Chapters 2251 and 2301 and Article 5.13-2.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

CHAPTER 3502. MORTGAGE GUARANTY INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3502.001. APPLICABILITY OF CHAPTER. This chapter applies

only to mortgage guaranty insurance and does not affect any other provision of this code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.002. APPLICABILITY OF OTHER LAW. (a) This code and other state laws apply to the business of mortgage guaranty insurance.

(b) This chapter controls to the extent of any conflict with another provision of this code or other state law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.003. MORTGAGE GUARANTY INSURANCE DEFINED. In this chapter, "mortgage guaranty insurance" means insurance against:

(1) financial loss because of nonpayment of principal, interest, and other amounts agreed to be paid under the terms of a note, bond, or other evidence of indebtedness that is secured by an authorized real estate security, provided the improvement on the real estate is:

(A) one or more residential buildings designed to be occupied by not more than four families;

(B) a condominium unit; or

(C) one or more buildings designed to be occupied by five or more families or for industrial or commercial purposes; or

(2) financial loss because of nonpayment of rent and other amounts agreed to be paid under the terms of a written lease for the possession, use, or occupancy of real estate, provided the improvement on the real estate is one or more buildings designed to be occupied for industrial or commercial purposes.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.004. AUTHORIZED REAL ESTATE SECURITY DEFINED. (a) In this chapter, "authorized real estate security" means:

(1) a proprietary lease and a stock membership certificate issued to a tenant stockholder or resident member of a fee simple cooperative housing corporation as defined in Section 216, Internal Revenue Code of 1986; or

(2) a mortgage, deed of trust, wraparound mortgage, or other instrument that constitutes a first lien or charge on real estate or is considered to be the equivalent of a first lien or charge on real estate by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Finance Board, a successor of one of those entities, an agency of this state, or a federal agency, provided:

(A) the improvement on the real estate is a building or buildings designed to be occupied as specified by Section 3502.003(1); and

(B) the real estate loan is a type of loan that is:

(i) authorized to be made by a bank, savings and loan association, credit union, or insurer that is supervised and regulated by a department of this state or a federal agency;

(ii) authorized to be made by a mortgage banker that is an approved seller-servicer of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a successor of one of those entities; or

(iii) approved by the federal secretary of housing and urban development for participation in a mortgage insurance program.

(b) The lien on real estate described by Subsection (a)(2) may be subject and subordinate to:

(1) the lien of a public bond, assessment, or tax if there is not a delinquent installment, call, or payment of or under the bond, assessment, or tax;

(2) an outstanding mineral, oil, or timber right, right-of-way, easement or right-of-way support, sewer right, building restriction, other restriction or covenant, or other condition or regulation of use; or

(3) an outstanding lease on the real estate under which rents or profits are reserved to the owner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER B. MORTGAGE GUARANTY INSURERS

Sec. 3502.051. GENERAL ELIGIBILITY TO WRITE MORTGAGE GUARANTY INSURANCE. (a) An insurer that writes anywhere any class of insurance other than mortgage guaranty insurance may not be issued or continue to hold a certificate of authority to write mortgage guaranty insurance in this state.

(b) A mortgage guaranty insurer that writes anywhere the class of mortgage guaranty insurance described by Section 3502.003(1)(C) or (2) may not be issued or continue to hold a certificate of authority to write in this state the class of mortgage guaranty insurance described by Section 3502.003(1)(A) or (B).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.052. ELIGIBILITY OF FOREIGN OR ALIEN INSURER TO WRITE MORTGAGE GUARANTY INSURANCE. The department may not issue a certificate of authority to a foreign or alien insurer writing mortgage guaranty insurance unless the insurer demonstrates a satisfactory operating experience in the insurer's state of domicile.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.053. DISCRIMINATION PROHIBITED. In extending or issuing mortgage guaranty insurance, a mortgage guaranty insurer may not discriminate on the basis of the applicant's sex, marital status, race, color, creed, national origin, disability, or age or solely on the basis of the geographic location of the property to be insured unless:

(1) the discrimination related to geographic location is for a business purpose that is not a mere pretext for unfair discrimination; or

(2) the refusal, cancellation, or limitation of the insurance is required by law or regulatory mandate.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER C. FORMS AND RATES

Sec. 3502.101. RATE FILINGS. (a) Not later than the 15th day before the date a mortgage guaranty insurer uses a rate or supplementary rate information in this state, the insurer must file the rate and supplementary rate information, and any changes to the rate or supplementary rate information, with the department.

(b) The rate filing must include adequate supporting data, including:

(1) information on:

(A) past and prospective loss experience in this state and outside the state;

(B) catastrophe hazards;

(C) expenses of operation; and

(D) a reasonable margin for profit and contingencies;

(2) an explanation of the insurer's interpretation of any statistical data on which the insurer relied;

(3) an explanation and description of the methods used in making the rates; and

(4) certification by an appropriate official of the insurer relating to the appropriateness of the charges, rates, or rating plans based on reasonable assumptions and accompanied by adequate supporting information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.102. RATE STANDARDS. (a) A mortgage guaranty insurance rate, rating plan, or charge may not be excessive, inadequate, or unfairly discriminatory and must be reasonable with respect to the benefits provided.

(b) This chapter does not require the department to:

(1) establish standard and absolute rates or a single and uniform rate for each risk or risks; or

(2) compel all insurers to adhere to rates previously filed by other insurers.

(c) The department may accept different rates for different insurers for the same risk or risks on mortgage guaranty insurance. The department may accept different rates for different insurers as filed by any authorized insurer unless the department finds that the

filing does not meet the requirements of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.103. RECORDING AND REPORTING OF LOSS AND EXPENSE EXPERIENCE AND OTHER DATA. (a) The commissioner shall adopt reasonable rules and statistical plans for the recording and reporting of loss experience and other required data by a mortgage guaranty insurer. The rules and plans must ensure that each insurer's total loss and expense experience is made available in the form and with the detail the commissioner considers necessary.

(b) Each mortgage guaranty insurer shall use the statistical plans adopted under this section to record and report loss experience and other required data in accordance with the rules adopted by the commissioner.

(c) The commissioner may modify statistical plans adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.104. POLICY FORM FILINGS. (a) Except as provided by Subsection (b), not later than the 15th day before the date a mortgage guaranty insurer uses a policy form, related form, classification, or rule in this state, the insurer must file the form, classification, or rule with the department.

(b) This subsection applies only to a policy form, related form, classification, or rule a mortgage guaranty insurer uses in this state for a policy that provides coverage for a pool or group of loans in connection with the issuance of mortgage-backed securities or bonds. Not later than the 15th day after the date the insurer uses the form, classification, or rule, the insurer shall file the form, classification, or rule with the department.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.105. POLICY FORM STANDARDS. The commissioner shall disapprove a mortgage guaranty insurance policy form if the form:

(1) violates this code or rules adopted by the commissioner; or

(2) contains a provision that encourages misrepresentation or is unjust, unfair, inequitable, misleading, deceptive, or contrary to law or to the public policy of this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.106. CLAIM AGAINST RESIDENTIAL BORROWER. A mortgage guaranty insurance policy may not contain a provision that allows subrogation rights or any other claim by the insurer against the borrower for a deficiency arising from a foreclosure sale of a single-family dwelling that is occupied by the borrower as the borrower's principal residence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.107. EXEMPTION; WITHDRAWAL OF APPROVAL. (a) A policy form, related form, classification, or rule a mortgage guaranty insurer uses in this state, including for a policy described by Section 3502.104(b), is exempt from department approval.

(b) If the commissioner finds, after notice and hearing, that the filing of a policy form, related form, classification, or rule is no longer in the best interest of the public, the commissioner may issue an order:

(1) suspending the exemption under Subsection (a) with respect to one or more insurers that filed the form, classification, or rule; and

(2) requiring each affected insurer to cease and desist using the form, classification, or rule, as the commissioner specifies.

(c) If the commissioner finds, after notice and hearing, that a filed policy form or rate no longer meets the requirements of this code, the commissioner may issue an order withdrawing approval of the form or rate. The order must specify the reasons the form or rate no

longer meets the requirements. An order under this subsection may not take effect until the 30th day after the date the commissioner issues the order.

(d) The commissioner must provide to each insurer that filed a form, classification, rule, or rate that is the subject of a hearing under this section notice of the hearing not later than the 20th day before the date of the hearing. The notice must specify the matters to be considered at the hearing.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.108. RULES. (a) The commissioner may, after notice and hearing, adopt reasonable rules:

(1) relating to the minimum standards for coverage under policy forms consistent with the purpose of this chapter and the public policy of this state; and

(2) necessary to establish guidelines, procedures, methods, standards, and criteria by which the types of forms and documents submitted to the department are to be reviewed and acted on by the department.

(b) The department may establish requirements for data and information filed under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER D. FINANCIAL REQUIREMENTS

Sec. 3502.151. DEFINITION. In this subchapter, "contingency reserve" means an additional premium reserve established to protect policyholders against the effect of adverse economic cycles or losses.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.152. CAPITAL AND SURPLUS REQUIREMENTS. An insurer may not write mortgage guaranty insurance unless the insurer has the

minimum capital and surplus required by Chapter 861 for a general casualty company.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.153. UNEARNED PREMIUM RESERVE. (a) Except as provided by Subsection (b), the unearned premium reserve on mortgage guaranty insurance must be computed in accordance with this code.

(b) For a policy covering a risk period of more than one year, the unearned premium reserve must be computed in accordance with standards adopted by the commissioner after appropriate hearings.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.154. LOSS RESERVE. A mortgage guaranty insurer shall determine the loss reserve using the case basis method. The loss reserve must include a reserve for claims incurred but not reported.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.155. CONTINGENCY RESERVE. (a) In addition to the capital, surplus, and reserves required by Sections 3502.152, 3502.153, and 3502.154, a mortgage guaranty insurer shall establish a contingency reserve and report the contingency reserve as a liability in the insurer's financial statements.

(b) To establish and maintain the contingency reserve, the mortgage guaranty insurer shall annually contribute to the contingency reserve 50 percent of the earned premiums on the insurer's mortgage guaranty insurance business. The reserved earned premiums may be released to the insurer's surplus annually after the premiums have been maintained for 120 months.

(c) In addition, the mortgage guaranty insurer may withdraw premiums from the contingency reserve in any year for which the insurer can demonstrate to the department that the incurred losses for that year exceed 35 percent of the corresponding earned premiums

for that year. The insurer shall reduce any subsequent annual release to surplus from the established contingency reserve by an amount equal to the amount withdrawn and released for the losses. The insurer shall deduct from subsequent annual releases any balance that exceeds the normal annual release from the contingency reserve.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.156. OUTSTANDING TOTAL LIABILITY. (a) Except as provided by Subsection (d), a mortgage guaranty insurer may not at any time have outstanding under the insurer's aggregate mortgage guaranty insurance policies a total liability, net of reinsurance, that exceeds the sum of the insurer's capital, surplus, and contingency reserve, multiplied by 25.

(b) An insurer shall compute the insurer's liability for leases on the basis of the insurer's liability as determined by the department.

(c) Except as provided by Subsection (d), a mortgage guaranty insurer that has outstanding total liability that exceeds the amount computed under Subsection (a) may not write new mortgage guaranty insurance business until the insurer's total liability no longer exceeds that amount.

(d) The commissioner may waive the limit imposed by Subsection (a) at the written request of a mortgage guaranty insurer on a finding by the commissioner that the sum of the insurer's capital, surplus, and contingency reserve is reasonable in relationship to the insurer's aggregate insured risk and adequate to the insurer's financial needs. The request must be made in writing on or before the 90th day before the date the insurer expects to exceed the limit imposed by Subsection (a) and shall, at a minimum, address the factors listed in Subsection (e).

(e) In determining whether a mortgage guaranty insurer's capital, surplus, and contingency reserve is reasonable in relation to the insurer's aggregate insured risk and adequate to the insurer's financial needs, the commissioner, in the commissioner's sole discretion, may consider relevant factors including:

(1) the insurer's size as measured by the insurer's assets, capital and surplus, reserves, premium writings, insurance in force,

and other appropriate criteria;

(2) the extent to which the insurer's business is diversified across time, geography, credit quality, origination, and distribution channels;

(3) the nature and extent of the insurer's reinsurance program;

(4) the quality, diversification, and liquidity of the insurer's investment portfolio;

(5) the historical and forecasted trend in the size of the insurer's capital, surplus, and contingency reserve;

(6) the capital, surplus, and contingency reserve maintained by other comparable mortgage guaranty insurers in relation to the nature of the insurers' respective insured risks;

(7) the reasonableness of the insurer's reserves;

(8) the quality and liquidity of the insurer's investments in affiliates; and

(9) the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.

(f) With respect to the factors listed in Subsection (e)(8), the commissioner may treat an investment in an affiliate as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

(g) The commissioner may retain accountants, actuaries, or other experts to assist the commissioner in the review of a request made by a mortgage guaranty insurer under Subsection (d). The insurer shall pay the commissioner's cost of retaining those persons.

(h) A waiver granted under Subsection (d) must be for a specified period that does not exceed two years and is subject to any terms and conditions the commissioner considers best suited to restoring the mortgage guaranty insurer's capital, surplus, and contingency reserve to the level required by Subsection (a). The mortgage guaranty insurer may apply to extend the waiver on or before the 90th day before the date the waiver period expires.

(i) The commissioner may not under any circumstances allow the mortgage guaranty insurer to have outstanding under the insurer's aggregate mortgage guaranty insurance policies a total liability, net of reinsurance, that exceeds the sum of the insurer's capital, surplus, and contingency reserve, multiplied by 50.

(j) An insurer may not be allowed a waiver under Subsections (d) and (h) for a continuous period of more than six years.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 41 (S.B. 416), Sec. 1, eff. May 10, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 734 (S.B. 147), Sec. 1, eff. June 14, 2013.

Sec. 3502.157. LIMIT ON INSURANCE OF CERTAIN LOANS. (a) In this section, "contiguous" means not separated by more than one-half mile.

(b) A mortgage guaranty insurer may not insure loans secured by properties in a single housing tract or a contiguous tract in an amount that exceeds 10 percent of the insurer's capital, surplus, and contingency reserve.

(c) In determining the amount of risk under this section, a mortgage guaranty insurer shall deduct from the total direct risk insured any applicable reinsurance in an assuming insurer authorized to engage in the business of mortgage guaranty insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER E. LENDER POWERS AND DUTIES

Sec. 3502.201. DEFINITION. In this subchapter, "lender" has the meaning assigned by Section 549.001.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.202. NOTICE OF BORROWER'S RIGHT TO CANCEL. (a) A lender that requires a borrower to purchase mortgage guaranty insurance shall provide annually to the borrower a copy of the following written notice printed in at least 10-point boldfaced type:

"NOTICE OF RIGHT TO CANCEL PRIVATE MORTGAGE INSURANCE: If you currently pay private mortgage insurance premiums, you may have the right to cancel the insurance and cease paying premiums. This would

permit you to make a lower total monthly mortgage payment and to possibly receive a refund of any unearned premiums on the policy. In most cases, you have the right to cancel private mortgage insurance if the principal balance of your loan is 80 percent or less of the current fair market appraised value of your home. If you want to learn whether you are eligible to cancel this insurance, please contact us at (address and telephone number of lender) or the Texas Department of Insurance consumer help line at (the appropriate toll-free telephone number)."

(b) If federal law requires a lender to provide a borrower with a written notice containing substantially the same information required by Subsection (a), a lender that provides the notice required by federal law within the period prescribed by federal law satisfies the notice requirement of Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.203. REFUND OF PREMIUM. A lender that receives a refund of an unearned mortgage guaranty insurance premium paid by a borrower shall remit the refund to the borrower not later than the 10th business day after the date the lender receives the refund.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3502.204. ADVERTISING OF "INSURED LOANS." A bank, savings and loan association, insurer, or approved seller-servicer of the Federal National Mortgage Association, any of whose authorized real estate securities are insured by a mortgage guaranty insurer, may not state in a brochure, pamphlet, or report or any form of advertising that the real estate loans of the bank, savings and loan association, insurer, or seller-servicer are "insured loans" unless:

(1) the brochure, pamphlet, report, or advertising also:

(A) clearly states that the loans are insured by private insurers; and

(B) lists the names of the private insurers; and

(2) the insurance on the real estate loans is written by an insurer authorized to write that insurance in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

CHAPTER 3503. SURETY BONDS AND RELATED INSTRUMENTS

SUBCHAPTER A. CERTAIN REQUIRED OR PERMITTED OBLIGATIONS

Sec. 3503.001. DEFINITION. In this subchapter, "obligation" means a bond, undertaking, recognizance, guaranty, or other obligation that is by law or by a charter, ordinance, or rule of a municipality, board, body, organization, court, or public officer required or permitted to be made, given, tendered, or filed to guarantee the performance of an act, duty, or obligation or the refraining from an act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.002. EXECUTION OF OBLIGATION BY SURETY COMPANY. (a) A surety company authorized to engage in business in this state may execute an obligation.

(b) Except as provided by Section 3503.004 or 3503.005, the execution of an obligation by a surety company under Subsection (a) is in full compliance with each law, charter, ordinance, or rule that requires:

(1) the obligation to be executed by one or more sureties; or

(2) the executing sureties to possess any qualification, including the requirement that a surety be a resident, householder, or freeholder.

(c) Each municipality, board, body, organization, court, public officer, and head of department shall accept and treat an obligation executed by a surety company under Subsection (a) as fully complying with each law, charter, ordinance, or rule described by Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.003. DESIGNATION OF AGENT BY CORPORATE SURETY

REQUIRED. Notwithstanding Section 3503.002, in specifications by a municipality for work or supplies for which sealed bids are required, the municipality may require that a corporate surety tender designate, in a manner satisfactory to the municipality, an agent:

(1) who is a resident of the county in which the municipality is located; and

(2) to whom any required notices may be delivered and on whom process may be served in matters arising out of the suretyship.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.004. WRITTEN CERTIFICATION OF REINSURANCE AS CONDITION OF ACCEPTANCE OF OBLIGATION. (a) If an obligation is in an amount that exceeds 10 percent of the surety company's capital and surplus, the municipality, board, body, organization, court, or public officer may require, as a condition of accepting the obligation, written certification that the surety company has reinsured the portion of the risk that exceeds 10 percent of the surety company's capital and surplus with one or more reinsurers who are authorized, accredited, or trusteed to engage in business in this state.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec. 14.002, eff. September 1, 2011.

(c) On request, the department shall provide the amount of the allowed capital and surplus, as of the date of the last annual statutory financial statement, for a surety company or reinsurer authorized to engage in business in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 14.002, eff. September 1, 2011.

Sec. 3503.005. ADDITIONAL REQUIREMENTS FOR CERTAIN BONDS. (a) A bond that is made, given, tendered, or filed under Chapter 53, Property Code, or Chapter 2253, Government Code, may be executed only by a surety company that is authorized to write surety bonds in this

state. If the amount of the bond exceeds $100,000, the surety company must also:

(1) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or

(2) have obtained reinsurance for any liability in excess of $1 million from a reinsurer that:

(A) is an authorized reinsurer in this state; or

(B) holds a certificate of authority from the United States secretary of the treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

(b) To determine whether the surety on the bond or the reinsurer holds a certificate of authority from the United States secretary of the treasury, a party may conclusively rely on the list published in the Federal Register by the United States Department of the Treasury, covering the date on which the bond was executed, of the companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies. A purchaser, insurer of title, or lender acquiring or insuring an interest in or title to real property may also conclusively rely on, and is protected by, a statement on a recorded bond or a sworn, recorded statement by the surety that refers to the specific recorded bond and states that, at the time the bond was executed, the surety complied with Subsection (a)(1) or (2).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 14.001, eff. September 1, 2011.

SUBCHAPTER B. PROMPT PAYMENT OF CONSTRUCTION PAYMENT BONDS

Sec. 3503.051. DEFINITIONS. In this subchapter:

(1) "Claimant" means a person directly entitled to payment under a construction payment bond.

(2) "Construction payment bond" means a surety agreement or obligation issued to guarantee or assure payment by a principal obligor for work performed or materials supplied or specially fabricated for a public or private construction project.

(3) "Notice of claim" means a written notification by a claimant who makes a claim for payment from the surety company. The term does not include a routine statutory notice required by Section 53.056 or 53.057, Property Code, or Section 2253.047, Government Code.

(4) "Surety company" means an authorized surety or guaranty company that executes and delivers a construction payment bond as a surety for a principal obligor.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 1, eff. January 1, 2022.

Sec. 3503.052. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed to encourage prompt payment of just claims made under construction payment bonds of surety companies. This subchapter does not foreclose any other remedy available to a claimant by law or contract.

(b) This subchapter may not be construed to:

(1) create a private cause of action;

(2) be a precondition to judicially enforcing an obligation under a construction payment bond;

(3) diminish any other obligation of a surety company that exists by law; or

(4) prohibit a surety company from asserting a defense against a construction payment bond claim in a proceeding to enforce a claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.053. CERTAIN TERMS VOID. A term contained in a construction payment bond that is inconsistent with this subchapter is void.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.054. NOTICE OF CLAIM; ACKNOWLEDGMENT AND INVESTIGATION. (a) A surety company that issues a construction payment bond shall, not later than the 15th day after the date of receipt of notice of claim under the bond:

(1) acknowledge receipt of the claim;

(2) begin any review or investigation necessary to determine whether the surety company is obligated to satisfy the claim under the bond; and

(3) request from the claimant each document, item of information, accounting, statement, or form that the surety company reasonably believes, at that time, will be required from the claimant.

(b) If a construction payment bond provides an address to which a notice of claim under the bond should be submitted, the notice is effective on the date the notice is received at that address.

(c) This subchapter does not exempt a claimant from complying with any applicable statutory or contractual notice requirement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.055. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM. (a) Except as provided by Subsection (c), a surety company shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 30th day after the date the company receives all documents, items of information, accountings, statements, and forms requested by the company under Section 3503.054.

(b) If the surety company rejects all or part of the claim, the notice required by Subsection (a) must state in specific terms the reasons for the rejection that are known by the company at the time of the rejection.

(c) If the surety company is unable to accept or reject the claim within the period specified by Subsection (a), the company, in that same period, shall notify the claimant in writing that the company is unable to accept or reject the claim. The notice provided under this subsection must:

(1) state the reasons for which the company needs

additional time to accept or reject the claim; and

(2) include a request for any additional information the company reasonably needs to process the claim.

(d) Not later than the 30th day after the date a surety company notifies a claimant under Subsection (c), the company shall notify the claimant in writing of the acceptance or rejection of the claim. If the company rejects all or part of the claim, the company shall state in specific terms the reasons for the rejection that are known by the company at the time of the rejection.

(e) In addition to any other contractual or statutory basis for denying a claim, the surety company may reject all or part of a claim:

(1) that is the subject of a legitimate dispute between the principal obligor and the claimant; or

(2) for which the claimant has failed to provide supporting documents or information the company reasonably requested.

(f) The time limits provided by this section and Section 3503.054 may be varied by any statute requiring a construction payment bond.

(g) This section does not preclude a surety company from asserting any defense in an action brought by a claimant on a construction payment bond if the company makes a good faith effort to inform the claimant in accordance with this section of the reasons for rejecting all or part of the claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.056. PAYMENT OF CLAIM. (a) If a surety company notifies a claimant under Section 3503.055 that the company accepts a claim or part of a claim, the company shall pay the claim not later than the 15th day after the date of the notice.

(b) If payment of the claim or part of the claim is conditioned on the execution of a document or performance of an act by the claimant, the surety company shall pay the claim not later than the seventh day after the date the company receives the executed document or evidence that the act has been performed.

(c) For purposes of this section, payment of a claim occurs when the surety company places the company's check or draft in the

United States mail properly addressed to the claimant or the claimant's representative.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.057. RULES. The commissioner may adopt rules enforcing this subchapter in cases in which a surety company violates this subchapter as a general business practice.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER C. OTHER BONDS

Sec. 3503.101. BAIL BOND CERTIFICATES. (a) In any year, an insurance company authorized to engage in fidelity and surety insurance business in this state may become surety in an amount not to exceed $200 with respect to each bail bond certificate issued in that year by:

(1) an automobile club authorized to transact business in this state; or

(2) a truck and bus association incorporated in this state.

(b) The bail bond certificate must be a printed card or other certificate that:

(1) is issued by:

(A) an automobile club authorized to transact business within this state; or

(B) a truck and bus association incorporated in this state;

(2) is issued to a member of the club or association and signed by the member of the club or association; and

(3) contains a printed statement that:

(A) a fidelity and surety company authorized to engage in business in this state guarantees the appearance of the member whose signature appears on the card or certificate; and

(B) if the member fails to appear in court at the time of trial, the fidelity and surety company will pay any fine or forfeiture imposed on the member in an amount not to exceed $200.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER D. SUIT ON CERTAIN BONDS OR OTHER OBLIGATIONS

Sec. 3503.151. VENUE OF SUIT ON CERTAIN BONDS OR OTHER OBLIGATIONS. (a) This section applies to:

(1) a bond or other obligation of an insurance company authorized to engage in business in this state and to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians, or others appointed to, or assuming the performance of, any public or private trust under appointment of a court or tribunal, or under contract between private individuals or corporations; or

(2) a bond that may be required:

(A) to be filed in a judicial proceeding;

(B) to guarantee a contract or undertaking between:

(i) individuals;

(ii) private corporations;

(iii) individuals and corporations; or

(iv) individuals or private corporations and the state, a municipal corporation, or a county; or

(C) of a state, county, municipal, or district official, including a school district official.

(b) A proper court in the county in which a bond or other obligation described by Subsection (a) is filed has jurisdiction of a suit instituted on the bond or obligation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.152. RESIDENCE OF INSURANCE COMPANY. An insurance company described by Section 3503.151 is a resident of a county in which the company engages in business.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.153. SERVICE OF PROCESS. In a suit described by

Section 3503.151, process shall be served in accordance with Sections 804.003, 804.101, 804.102, 804.103, 804.201, 804.202, 804.203(a), (c), and (d), and 804.204, as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.154. ACCEPTANCE OF SUBCHAPTER. The doing or performance of any business in any county is considered an acceptance of the provisions of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER E. REGULATION OF SURETY COMPANY

Sec. 3503.201. MERGER OR CONSOLIDATION OF CERTAIN COMPANIES. When two or more companies authorized to write fidelity, guaranty, and surety insurance in this state merge or consolidate and, incident to the merger or consolidation, enter into a total reinsurance contract under which the merged or ceding company is dissolved and that company's assets are acquired and liabilities are assumed by the new or surviving company, the commissioner, on finding that the contracting companies have on deposit with the comptroller two or more deposits made for the same or similar purposes under former Article 7.03, repealed by Chapter 388, Acts of the 55th Legislature, Regular Session, 1957, or under Section 861.252, shall authorize the comptroller to:

(1) retain for a single purpose only the deposit of the greatest amount and value; and

(2) permit the new or surviving company, on proper showing that there is duplication of deposits and that the new or surviving company is the owner of those deposits, to withdraw a duplicate or excessive deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.202. UNEARNED PREMIUM RESERVE FOR BAIL BOND NOT

REQUIRED. A surety company is not required to maintain an unearned premium reserve for a bail bond, as defined by Section 1704.001, Occupations Code, executed or delivered by the company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 896 (H.B. 1047), Sec. 2, eff. September 1, 2013.

Sec. 3503.203. DIRECT WRITTEN PREMIUM CALCULATION. Direct written premium reported by a surety company in a financial statement filed with the department may be calculated excluding any premiums or service fees retained by a bail bond surety licensed under Chapter 1704, Occupations Code, or by a property and casualty agent in connection with the execution or delivery of a bail bond as defined by Section 1704.001, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 896 (H.B. 1047), Sec. 2, eff. September 1, 2013.

Sec. 3503.204. DISCLOSURE REQUIREMENTS. A surety company that executes or delivers in this state a bail bond as defined by Section 1704.001, Occupations Code, shall disclose in the company's financial statement filed with the department the aggregate amount of:

(1) gross premium for bail bond business reported in the company's surety line of business;

(2) premium or service fees retained by the bail bond surety or agent; and

(3) premium for bail bond business received by the company, net of amounts retained by the bail bond surety or agent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 896 (H.B. 1047), Sec. 2, eff. September 1, 2013.

CHAPTER 3504. TRAVEL INSURANCE

Sec. 3504.0001. DEFINITIONS. In this chapter:

(1) "Aggregator site" means an Internet website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(2) "Blanket travel insurance" means a policy of travel insurance issued to an eligible group that provides coverage for specific classes of persons with coverage provided to each member of the eligible group defined in the policy without a separate charge to individual members of the eligible group.

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and the supplier's customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) "Eligible group" means two or more persons who are engaged in a common enterprise or have an economic, educational, or social affinity or relationship, including any of the following:

(A) an entity engaged in the business of providing travel or travel services, including a tour operator, a lodging provider, a vacation property owner, a hotel or resort, a travel club, a travel agency, a property manager, a cultural exchange program, and a common carrier or the operator, owner, or lessor of a means of transportation of passengers, including an airline, a cruise line, a railroad, a steamship company, and a public bus carrier, wherein with regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to the travel;

(B) a college, school, or other institution of learning covering students, teachers, employees, or volunteers;

(C) an employer covering a board of directors or a group of employees, volunteers, contractors, dependents, or guests;

(D) a sports team or camp or sponsor of a team or camp covering participants, members, campers, employees, officials, supervisors, or volunteers;

(E) a religious, charitable, recreational, educational, or civic organization or branch of the organization covering members, participants, or volunteers;

(F) a financial institution or financial institution vendor or a parent holding company, trustee, or agent or designee of a financial institution or financial institution vendor covering persons, including account holders, credit card holders, debtors, guarantors, or purchasers;

(G) an incorporated or unincorporated association,

including a labor union that has a common interest, constitution, and bylaws, organized and maintained in good faith for a purpose other than obtaining insurance for the association's members or participants;

(H) a trust, or the trustees of a fund, established, created, or maintained for the benefit of and covering members, employees, or customers of one or more associations meeting the requirements of Paragraph (G), subject to the commissioner's approval and the state premium tax provisions of Section 3504.0004;

(I) an entertainment production company covering a group of participants, volunteers, audience members, contestants, or workers;

(J) a volunteer fire department or an ambulance, rescue, police, court, first aid, or civil defense volunteer group or other similar volunteer group;

(K) a preschool, a day-care facility for children or adults, or a senior citizen club;

(L) an automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by the individual's status on the rented or leased vehicles, in which circumstance the common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company is the policyholder; or

(M) any other group with respect to which the commissioner has determined:

(i) the members are engaged in a common enterprise or have an economic, educational, or social affinity or relationship; and

(ii) issuance of the policy is not contrary to the public interest.

(5) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan that confirms the purchase and provides the travel protection plan's coverage and assistance details.

(6) "Group travel insurance" means travel insurance issued to an eligible group.

(7) "Planned trip" or "planned travel" means any journey or travel arranged through the services of a travel agency.

(8) "Primary certificate holder," specific to Section 3504.0004, means an individual who elects and purchases travel

insurance under a group policy.

(9) "Primary policyholder," specific to Section 3504.0004, means an individual who elects and purchases individual travel insurance.

(10) "Travel assistance services" means noninsurance services that do not indemnify the consumer based on a fortuitous event or result in the transfer or shifting of risk constituting the business of insurance. Travel assistance services include security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance, concierge services, and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and are not related to insurance.

(11) "Travel insurance" means insurance coverage for personal risks incident to planned travel, including:

(A) interruption or cancellation of a trip or event;

(B) loss of baggage or personal effects;

(C) damages to accommodations or rental vehicles;

(D) sickness, accident, disability, or death occurring during travel;

(E) emergency evacuation;

(F) repatriation of remains; or

(G) any other contractual obligations to indemnify or pay a specified amount to the traveler on determinable contingencies related to travel as approved by the commissioner. Travel insurance does not include a major medical plan that provides comprehensive medical protection for a traveler on a trip of longer than six months, such as an individual working or residing overseas as an expatriate, or any other insurance product that must be sold by an agent with a specific agent's license.

(12) "Travel protection plan" means a plan that provides one or more of the following:

(A) travel insurance;

(B) travel assistance services; and

(C) cancellation fee waivers.

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 1, eff. September 1, 2019.

Sec. 3504.0002. APPLICABILITY. (a) This chapter applies to a travel insurance policy or certificate that:

(1) provides coverage to a resident of this state or is sold, solicited, negotiated, or offered in this state; and

(2) is delivered or issued for delivery in this state.

(b) This chapter does not apply to a cancellation fee waiver or travel assistance service except as expressly provided in this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 1, eff. September 1, 2019.

Sec. 3504.0003. LINE OF INSURANCE. (a) Except as provided by Subsection (b) and notwithstanding any other provision of this code, travel insurance is classified and filed for purposes of rates and forms under an inland marine line of insurance.

(b) Travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, exclusively or in conjunction with related coverage for emergency evacuation, repatriation of remains, or incidental limited property and casualty benefits, including baggage or trip cancellation, may be filed by an authorized insurer under an accident and health line of insurance or an inland marine line of insurance.

(c) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels if the standards meet underwriting standards for an inland marine line of insurance.

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 1, eff. September 1, 2019.

Sec. 3504.0004. PREMIUM TAX. (a) A travel insurer shall pay premium tax, as provided by Section 221.002, on travel insurance premiums paid by any of the following:

(1) an individual primary policyholder who is a resident of this state;

(2) a primary certificate holder who is a resident of this state and elects and purchases coverage under a group travel insurance policy; or

(3) a blanket travel insurance policyholder who buys a blanket travel insurance policy for members of an eligible group if:

(A) the policyholder is a resident of this state; or

(B) the policyholder's principal place of business is located in this state.

(b) A travel insurer shall:

(1) document the state of residence or principal place of business of the policyholder or certificate holder described by Subsection (a); and

(2) report as premium:

(A) only the amount allocable to travel insurance and not amounts received for travel assistance services or cancellation fee waivers; and

(B) only the amount allocable to residents of this state.

(c) Amounts received for travel assistance services and cancellation fee waivers, whether the travel assistance services and cancellation waivers are offered separately or for a combined price authorized by Section 3504.0005, are not subject to taxation under Section 221.002(b).

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 1, eff. September 1, 2019.

Sec. 3504.0005. TRAVEL PROTECTION PLANS. A travel protection plan composed of multiple features may be offered for a combined price if:

(1) at the time or before the consumer buys the travel protection plan it is clearly disclosed to the consumer that the plan includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity for the consumer to obtain additional information regarding the features and the pricing of each feature; and

(2) the fulfillment materials:

(A) describe the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan; and

(B) include the travel insurance disclosures and the contact information for persons providing travel assistance services and cancellation fee waivers, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 1, eff. September 1, 2019.

Sec. 3504.0006. SALES PRACTICES; PROHIBITED PRACTICES. (a) Offering or selling a travel insurance policy that could never result in payment of a claim for an insured under the policy is an unfair trade practice under Subtitle C, Title 5.

(b) All documents provided to a consumer before the purchase of travel insurance, including sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy, including forms, endorsements, policies, rate filings, and certificates of insurance.

(c) Before the consumer buys travel insurance and subsequently in the fulfillment materials, the consumer must be provided information about any preexisting condition exclusion that is included in the travel insurance policy or certificate. The consumer must have the opportunity to learn more about the exclusion.

(d) The fulfillment materials and the information described in Section 4055.154(a) must be provided to a policyholder or certificate holder as soon as practicable after the purchase of a travel protection plan. Unless the policyholder or certificate holder has started a covered trip or filed a claim under the travel insurance coverage, the policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price. The policyholder or certificate holder must exercise the right to cancel a travel protection plan before:

(1) the 15th day after the date of delivery of the travel protection plan's fulfillment materials by United States mail or a later date specified by the plan; or

(2) the 10th day after the date of delivery of the travel protection plan's fulfillment materials by means other than United States mail or a later date specified by the plan.

(e) For the purposes of this section, delivery means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by United States mail or electronic means to the policyholder or certificate holder.

(f) The company shall disclose in the policy documentation and fulfillment materials if the travel insurance is primary or secondary to other applicable coverage.

(g) If travel insurance is marketed directly to a consumer through an insurer's Internet website or by others through an aggregator site, it is not an unfair trade practice or other violation of law if:

(1) an accurate summary or short description of coverage is provided on the Internet website; and

(2) the consumer has access to the full provisions of the policy through electronic means.

(h) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not do so by using a negative option or opt out that requires a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(i) It is an unfair trade practice to market blanket travel insurance coverage as free.

(j) If a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(1) purchasing the coverage required by the destination jurisdiction through the travel retailer or supervising entity supplying the trip or travel package; or

(2) agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 1, eff. September 1, 2019.

Sec. 3504.0007. RULEMAKING. (a) The commissioner may adopt rules necessary to implement this chapter. Section 2001.0045, Government Code, does not apply to rules adopted under this section.

(b) The comptroller, in consultation with the commissioner, may adopt rules to implement this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 1, eff. September 1, 2019.

TITLE 13. REGULATION OF PROFESSIONALS
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 4001. AGENT LICENSING IN GENERAL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4001.001. PURPOSE. It is the intent of the legislature to:

(1) simplify and reform the regulation of agents and other persons regulated under this title in this state by consolidating the kinds of licenses issued to those persons under this title; and

(2) promote uniformity in the licensing, examination, continuing education, and disciplinary requirements for those persons in this state and with other states.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.002. APPLICABILITY. (a) Except as otherwise provided by this code, this title applies to each person licensed under:

(1) Subchapter H, Chapter 885;
(2) Subchapter F, Chapter 911;
(3) Section 912.251;
(4) Subchapter E, Chapter 981;
(5) Subchapter D, Chapter 1152;
(6) Subchapter C or D of this chapter;
(7) Subtitle B, C, or D of this title; or
(8) Subsection (c), Article 5.13-1.

(a-1) Except as otherwise provided by this code, this title applies to each individual who holds a specialty certification under Subchapter H, Chapter 4054.

(b) This title does not apply to:

(1) a resident of this state who arbitrates in the adjustment of losses between an insurer and an insured, a marine adjuster who adjusts particular or general average losses of vessels

or cargoes if the adjuster paid an occupation tax of $200 for the year in which the adjustment is made, or a practicing attorney at law in this state, acting in the regular transaction of the person's business as an attorney at law, who is not a local agent and is not acting as an adjuster for an insurer;

(2) an attorney in fact or the traveling salaried representative of a reciprocal or interinsurance exchange admitted to engage in the business of insurance in this state as to business transacted through the attorney in fact or salaried representative;

(3) the attorney in fact for a Lloyd's plan;

(4) the group motor vehicle insurance business or the group motor vehicle department of a company engaged in that business; or

(5) a salaried employee who is not involved in soliciting or negotiating insurance in the office of an agent and who devotes the employee's full time to clerical and administrative services, including the incidental taking of information from customers and receipt of premiums in the office of an agent, if:

(A) the employee does not receive any commissions; and

(B) the employee's compensation is not varied by the volume of premiums taken and received.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2J.001, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 2, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 643 (S.B. 1623), Sec. 16, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 7, eff. September 1, 2021.

Sec. 4001.003. DEFINITIONS. Unless the context clearly indicates otherwise, in this title:

(1) "Agent" means a person who is an authorized agent of an insurer or health maintenance organization and any other person who performs the acts of an agent, whether through an oral, written, electronic, or other form of communication, by soliciting, negotiating, procuring, or collecting a premium on an insurance or

annuity contract, or who represents or purports to represent a health maintenance organization, including a health maintenance organization offering only a single health care service plan, in soliciting, negotiating, procuring, or effectuating membership in the health maintenance organization. The term does not include:

(A) a regular salaried officer or employee of an insurer, health maintenance organization, or agent who:

(i) devotes substantially all of the officer's or employee's time to activities other than the solicitation of applications for insurance, annuity contracts, or memberships;

(ii) does not receive a commission or other compensation directly dependent on the business obtained; and

(iii) does not solicit or accept from the public applications for insurance, annuity contracts, or memberships;

(B) an employer or an employer's officer or employee or a trustee of an employee benefit plan, to the extent that the employer, officer, employee, or trustee is engaged in the administration or operation of an employee benefits program involving the use of insurance or annuities issued by an insurer or memberships issued by a health maintenance organization, if the employer, officer, employee, or trustee is not directly or indirectly compensated by the insurer or health maintenance organization issuing the insurance or annuity contracts or memberships;

(C) except as otherwise provided by this code, a depository institution, or an officer or employee of a depository institution, to the extent that the depository institution or officer or employee collects and remits premiums or charges by charging those premiums or charges against accounts of depositors on the orders of those depositors; or

(D) a person or the employee of a person who has contracted to provide administrative, management, or health care services to a health maintenance organization and who is compensated for those services by the payment of an amount computed as a percentage of the revenues, net income, or profit of the health maintenance organization, if that method of compensation is the sole basis for subjecting that person or the employee of the person to this title.

(2) "Control" means the power to direct or cause the direction of the management and policies of a license holder, whether directly or indirectly. For the purposes of this title, a person is

considered to control:

(A) a corporate license holder if the person, individually or acting with others, directly or indirectly, holds with the power to vote, owns, or controls, or holds proxies representing, at least 10 percent of the voting stock or voting rights of the corporate license holder; or

(B) a partnership if the person through a right to vote or through any other right or power exercises rights in the management, direction, or conduct of the business of the partnership.

(3) "Corporation" means a legal entity that is organized under the business corporation laws or limited liability company laws of this state or another state and that has as one of its purposes the authority to act as an agent.

(4) "Depository institution" means:

(A) a bank or savings association as defined by 12 U.S.C. Section 1813, as amended;

(B) a foreign bank that maintains a branch, agency, or commercial lending company in the United States;

(C) a federal or state credit union as defined by 12 U.S.C. Section 1752, as amended;

(D) a bank branch; or

(E) a bank subsidiary, as defined by state or federal law.

(5) "Individual" means a natural person. The term includes a resident or a nonresident of this state.

(6) "Insurer" means an insurance company or insurance carrier regulated by the department. The term includes:

(A) a stock life, health, or accident insurance company;

(B) a mutual life, health, or accident insurance company;

(C) a stock fire or casualty insurance company;

(D) a mutual fire or casualty insurance company;

(E) a Mexican casualty insurance company;

(F) a Lloyd's plan;

(G) a reciprocal or interinsurance exchange;

(H) a fraternal benefit society;

(I) a stipulated premium company;

(J) a nonprofit or for-profit legal services corporation;

(K) a statewide mutual assessment company;
(L) a local mutual aid association;
(M) a local mutual burial association;
(N) an association exempt under Section 887.102;
(O) a nonprofit hospital, medical, or dental service corporation, including a company subject to Chapter 842;
(P) a health maintenance organization;
(Q) a county mutual insurance company; and
(R) a farm mutual insurance company.

(7) "Partnership" means an association of two or more persons organized under the partnership laws or limited liability partnership laws of this state or another state. The term includes a general partnership, limited partnership, limited liability partnership, and limited liability limited partnership.

(8) "Person" means an individual, partnership, corporation, or depository institution.

(9) Repealed by Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(1), eff. September 1, 2021.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 8, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(1), eff. September 1, 2021.

Sec. 4001.004. LIMITED LIABILITY COMPANIES. The licensing and regulation of a limited liability company are subject to each provision of this title that applies to a corporation licensed under this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.005. RULES. The commissioner may adopt rules necessary to implement this title and to meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.006. FEES. (a) The department shall collect from each agent of an insurer writing insurance in this state under this code:

(1) a nonrefundable license application fee; and

(2) a nonrefundable appointment fee for each appointment of the agent by an insurer.

(b) The department shall deposit the fees described by Subsection (a), together with other license application fees, examination fees, and license renewal application fees, to the credit of the Texas Department of Insurance operating account.

(c) The department shall set the fees in amounts reasonable and necessary to implement this title and may use any portion of those fees to enforce this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 1, eff. September 1, 2015.

Sec. 4001.007. INVESTIGATION OF ALLEGED VIOLATIONS. (a) The department may:

(1) employ persons as the department considers necessary to investigate and make reports regarding alleged violations of this code and misconduct on the part of agents; and

(2) pay the salaries and expenses of those persons and office employees and other expenses necessary to enforce this title from the fees described by Section 4001.006.

(b) A person employed by the department under this section may:

(1) administer the oath to, and examine under oath, any person considered necessary in gathering information and evidence; and

(2) have that information and evidence reduced to writing if considered necessary.

(c) All expenses related to the activities described by Subsection (b) shall be paid from the fees described by Section 4001.006.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.008. COMMISSIONER AGENT FOR SERVICE OF PROCESS. In the manner provided by Subchapter C, Chapter 804, the commissioner is a corporation's or partnership's agent for service of process in a legal proceeding against the corporation or partnership if:

(1) the corporation or partnership is licensed to engage in business in this state and does not appoint or maintain an agent for service in this state;

(2) an agent for service cannot be found with reasonable diligence; or

(3) the license of the corporation or partnership is revoked.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. ACTS CONSTITUTING ACTING AS AGENT; CONSEQUENCES OF AGENT'S ACTIONS

Sec. 4001.051. ACTS CONSTITUTING ACTING AS AGENT. (a) This section applies regardless of whether an insurer is incorporated under the laws of this state or another state or a foreign government.

(b) Regardless of whether the act is done at the request of or by the employment of an insurer, broker, or other person, a person is the agent of the insurer for which the act is done or risk is taken for purposes of the liabilities, duties, requirements, and penalties provided by this title or Chapter 21 if the person:

(1) solicits insurance on behalf of the insurer;

(2) receives or transmits other than on the person's own behalf an application for insurance or an insurance policy to or from the insurer;

(3) advertises or otherwise gives notice that the person will receive or transmit an application for insurance or an insurance policy;

(4) receives or transmits an insurance policy of the insurer;

(5) examines or inspects a risk;

(6) receives, collects, or transmits an insurance premium;

(7) makes or forwards a diagram of a building;

(8) takes any other action in the making or consummation of an insurance contract for or with the insurer other than on the

person's own behalf; or

(9) examines into, adjusts, or aids in adjusting a loss for or on behalf of the insurer.

(c) This section does not authorize an agent to orally, in writing, or otherwise alter or waive a term or condition of an insurance policy or an application for an insurance policy.

(d) The referral by an unlicensed person of a customer or potential customer to an agent is not an act of an agent under this section unless the unlicensed person discusses specific insurance policy terms or conditions with the customer or potential customer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 9, eff. September 1, 2021.

Sec. 4001.052. SOLICITOR OF APPLICATION FOR INSURANCE CONSIDERED AGENT OF INSURER. (a) A person who solicits an application for life, accident, or health insurance or property or casualty insurance is considered the agent of the insurer issuing a policy on the application and not the agent of the insured in any controversy between the insurer and the insured, the insured's beneficiary, or the insured's dependents.

(b) The agent may not alter or waive a term or condition of the application or policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.053. PERSONAL LIABILITY FOR ACTING AS AGENT. A person who takes an action listed in Section 4001.051 for or on behalf of an insurer before the insurer complies with the requirements of the laws of this state is personally liable to the holder of any insurance policy with respect to which the action was taken for any loss covered by the insurance policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.054. LIABILITY OF AGENT AND INSURER FOR TAXES. (a)

If a person takes an action in this state listed in Section 4001.051 for or on behalf of an insurer, the insurer is considered to be engaged in the business of insurance in this state and is subject to the same state, county, and municipal taxes as an insurer that has been legally qualified and admitted to engage in the business of insurance in this state.

(b) Taxes shall be assessed against and collected from an insurer under this section in the same manner as taxes are assessed against and collected from insurers that are legally qualified and admitted to engage in the business of insurance in this state.

(c) A person who takes an action by means of which an insurer is considered to be engaged in the business of insurance in this state under this section is personally liable for any taxes assessed against the insurer under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 4001.101. LICENSE OR CERTIFICATE OF AUTHORITY REQUIRED; DESIGNATED PRODUCT CERTIFICATE. (a) Unless the person holds a license or certificate of authority issued by the department and, if required by rules adopted under Chapter 4008, a certificate to sell a designated product or product line, a person may not:

(1) solicit or receive an application for insurance in this state; or

(2) aid in the transaction of the business of an insurer.

(b) A person may not act as an agent of a health maintenance organization or other type of insurer authorized to engage in business in this state unless the person holds:

(1) a license issued by the department as provided by this title; and

(2) if required by rules adopted under Chapter 4008, a certificate to sell a designated product or product line.

(c) An insurer described by Subsection (b) may not appoint a person to act as its agent unless the person holds:

(1) a license under this title; and

(2) if required by rules adopted under Chapter 4008, a certificate to sell a designated product or product line.

(d) This subchapter does not permit an employee or agent of a

corporation or partnership to perform an act of an agent under this title without obtaining:

(1) a license; and

(2) if required by rules adopted under Chapter 4008, a certificate to sell a designated product or product line.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 1, eff. June 19, 2009.

Sec. 4001.102. LICENSE APPLICATION. (a) To become an agent for an insurer or health maintenance organization, a person must submit to the department a completed license application in the form required by the department.

(b) The commissioner by rule shall prescribe the requirements for a properly completed application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.103. FAILURE TO PROVIDE COMPLETE SET OF FINGERPRINTS: GROUND FOR DENIAL OF APPLICATION. (a) In this section, "authorization" means any authorization issued by the department to engage in an activity regulated under this title, including a license or permit.

(b) The department may deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.104. ISSUANCE OF LICENSE: INTENT TO ACTIVELY ENGAGE IN BUSINESS OF INSURANCE FOR GENERAL PUBLIC. (a) The department may not issue a license as an agent to write any line of insurance unless the department determines that:

(1) the applicant is or intends to be actively engaged in the soliciting or writing of insurance for the general public and is to be actively engaged in the business of insurance; and

(2) the application is not made to evade the laws against rebating and discrimination, either for the applicant or for another person.

(b) This subchapter does not prohibit an applicant from insuring property that the applicant owns or in which the applicant has an interest. It is the intent of this subchapter to prohibit coercion of insurance and to preserve to each individual the right to choose that individual's own agent or insurer and to prohibit the licensing of an applicant to engage in the business of insurance principally to handle business that the applicant controls only through ownership, mortgage, sale, family relationship, or employment. An applicant for an original license must have a bona fide intention to engage in business in which, in any calendar year, at least 25 percent of the total volume of premiums is derived from persons other than the applicant and from property other than that on which the applicant controls the placing of insurance through ownership, mortgage, sale, family relationship, or employment.

(c) The department may not deny a license application solely on the ground that the applicant will act only part-time as an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.105. ISSUANCE OF LICENSE TO INDIVIDUAL. The department shall issue a license to an individual to engage in business as an agent if the department determines that the individual:

(1) is at least 18 years of age;

(2) has passed the licensing examination required under this code within the past 12 months;

(3) has not committed an act for which a license may be denied under Subchapter C, Chapter 4005; and

(4) has submitted the application, appropriate fees, and any other information required by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.106. ISSUANCE OF LICENSE TO CORPORATION OR PARTNERSHIP. (a) In this section, "customer" means a person or firm to which a corporation or partnership sells or attempts to sell an

insurance policy or from which a corporation or partnership accepts an application for insurance.

(b) The department shall issue a license to a corporation or partnership if the department determines that:

(1) the corporation or partnership is:

(A) organized under the laws of this state or another state; and

(B) authorized by its articles of incorporation or its partnership agreement to act as an agent;

(2) at least one officer of the corporation or one active partner of the partnership and all other persons performing any acts of an agent on behalf of the corporation or partnership in this state are individually licensed by the department separately from the corporation or partnership;

(3) the corporation or partnership will have the ability to pay any amount up to $25,000 that it might become legally obligated to pay under a claim made against it by a customer and caused by a negligent act, error, or omission of the corporation or partnership or a person for whose acts the corporation or partnership is legally liable in the conduct of its business under this code;

(4) if engaged in the business of insurance, the corporation or partnership intends to be actively engaged in that business as required under Section 4001.104(a);

(5) the corporation or partnership has submitted the application, appropriate fees, and any other information required by the department; and

(6) an officer, director, member, manager, partner, or other person who has the right or ability to control the corporation or partnership has not:

(A) had a license suspended or revoked or been the subject of any other disciplinary action by a financial or insurance regulator of this state, another state, or the United States; or

(B) committed an act for which a license may be denied under Subchapter C, Chapter 4005.

(c) A corporation or partnership shall maintain the ability to pay a claim described by Subsection (b)(3) by obtaining:

(1) an errors and omissions policy insuring the corporation or partnership against errors and omissions in at least the amount of $250,000, with a deductible of not more than 10 percent of the full amount of the policy, issued by:

(A) an insurer authorized to engage in the business of insurance in this state; or

(B) if a policy cannot be obtained from an insurer authorized to engage in the business of insurance in this state, a surplus lines insurer under Chapter 981; or

(2) a bond in the principal amount of $25,000 that is:

(A) executed by the corporation or partnership as principal and a surety company authorized to engage in business in this state as surety;

(B) payable to the department for the use and benefit of customers of the corporation or partnership; and

(C) conditioned that the corporation or partnership shall pay any final judgment recovered against it by a customer.

(d) A binding commitment to issue a policy or bond described by Subsection (c) is sufficient in connection with an application for a license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 162 (H.B. 2503), Sec. 1, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 10, eff. September 1, 2021.

Sec. 4001.107. ISSUANCE OF LICENSE TO DEPOSITORY INSTITUTION. The department shall issue a license to a depository institution in the manner provided by this subchapter for the licensing of a corporation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.108. ISSUANCE OF LICENSE TO ENTITY CHARTERED BY FEDERAL FARM CREDIT ADMINISTRATION. The department may license an entity chartered by the federal Farm Credit Administration under the farm credit system established under 12 U.S.C. Section 2001 et seq., as amended, to solicit insurance in this state as provided by 12 U.S.C. Section 2218, as amended. The department shall issue the license in the manner provided by this subchapter for the licensing of a corporation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. TEMPORARY LICENSE

Sec. 4001.151. AUTHORITY TO ISSUE TEMPORARY LICENSE. The department may issue a temporary agent's license to an applicant for a license under Section 4001.102 who is being considered for appointment as an agent by another agent, an insurer, or a health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.152. EXAMINATION NOT REQUIRED. An applicant is not required to pass a written examination to obtain a temporary license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.153. APPLICATION FOR AND ISSUANCE OF TEMPORARY LICENSE. (a) Except as provided by Subsection (b), the department shall issue a temporary license immediately on receipt of a properly completed application executed by the applicant in the form required by Section 4001.102 and accompanied by:

(1) the nonrefundable filing fee set by the department; and

(2) a certificate signed by an officer or properly authorized representative of an agent, insurer, or health maintenance organization stating that:

(A) the applicant is being considered for appointment by the agent, insurer, or health maintenance organization as its full-time agent;

(B) the agent, insurer, or health maintenance organization desires that the applicant be issued a temporary license; and

(C) the applicant will complete training as prescribed by Section 4001.160 under the agent's, insurer's, or health maintenance organization's supervision.

(b) The department may deny a license application under this subchapter if the department determines that any of the grounds exist for license denial or disciplinary action under Section 4005.101, Insurance Code, or Chapter 53, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 347 (H.B. 2819), Sec. 1, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 11, eff. September 1, 2021.

Sec. 4001.154. AUTHORITY TO ACT AS AGENT PENDING RECEIPT OF TEMPORARY LICENSE. If a temporary license is not received from the department before the eighth day after the date the application, nonrefundable fee, and certificate are delivered or mailed to the department and the appropriate agent, insurer, or health maintenance organization has not been notified that the application is denied, the agent, insurer, or health maintenance organization may assume that the temporary license will be issued and the applicant may proceed to act as an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.155. TERM OF TEMPORARY LICENSE. A temporary license is valid for 180 days after the date of issuance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 347 (H.B. 2819), Sec. 2, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 12, eff. September 1, 2021.

Sec. 4001.156. RESTRICTION ON ISSUANCE OR RENEWAL OF TEMPORARY LICENSE. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 347 (H.B. 2819), Sec. 3, and Ch. 355 (H.B. 4030), Sec. 22(3), eff. September 1, 2021.

(b) A temporary license may not be issued to a person who does not intend to apply for a license to sell insurance or memberships to the general public.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 347 (H.B. 2819), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(3), eff. September 1, 2021.

Sec. 4001.157. OBTAINING CERTAIN COMMISSIONS PROHIBITED. (a) A temporary license holder may not obtain a commission on a sale made to a person who has a family, employment, or business relationship with the temporary license holder.

(b) An agent, insurer, or health maintenance organization may not knowingly pay, directly or indirectly, to a temporary license holder, and a temporary license holder may not receive or accept, a commission on the sale of a contract of insurance or membership covering:

(1) the temporary license holder;

(2) a person related to the temporary license holder by consanguinity or affinity;

(3) a person who is or has been during the past six months the temporary license holder's employer, either as an individual or as a member of a partnership, association, firm, or corporation; or

(4) a person who is or has been during the past six months an employee of the temporary license holder.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.158. REPLACEMENT OF EXISTING LIFE INSURANCE OR ANNUITY CONTRACT PROHIBITED. (a) A temporary license holder who is acting under the authority of that license may not:

(1) engage in an insurance solicitation, sale, or other agency transaction that the license holder knows or should know will result or is intended to result in:

(A) the purchase of a new life insurance or annuity contract; and

(B) any of the following actions with regard to an existing individual life insurance or annuity contract as a result of that purchase:

(i) termination of the contract by lapse,

forfeiture, surrender, or other means;

(ii) conversion of the contract to reduced paid-up insurance, continuation of the contract as extended term insurance, or reduction in value of the contract by the use of nonforfeiture benefits or other policy values;

(iii) amendment of the contract to reduce:

(a) benefits; or

(b) the term for which coverage would otherwise remain in force or for which benefits would be paid;

(iv) reissuance of the contract with a reduction in cash value; or

(v) pledge of the contract as collateral or subjection of the contract to borrowing, whether in a single loan or under a schedule of borrowing, for amounts that in the aggregate exceed 25 percent of the loan value prescribed by the contract; or

(2) directly or indirectly receive a commission or other compensation that results or may result from a solicitation, sale, or other agency transaction described by Subdivision (1).

(b) A person who holds a permanent license may not circumvent or attempt to circumvent the intent of this section by acting for or with a person holding a temporary license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.159. SUSPENSION OR REVOCATION OF TEMPORARY APPOINTMENT POWERS OF AGENT, INSURER, OR HEALTH MAINTENANCE ORGANIZATION. (a) The department may suspend or revoke the temporary appointment powers of an agent, insurer, or health maintenance organization if, after notice and opportunity for hearing, the department determines that the agent, insurer, or health maintenance organization has abused the temporary appointment powers.

(b) In determining whether abuse has occurred, the department may consider:

(1) the number of temporary appointments made;

(2) the percentage of appointees taking the examination required for licensing as an agent, as provided by Section 4001.161; and

(3) the number of appointees who pass the examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.160. TRAINING OF APPLICANT FOR TEMPORARY LICENSE. (a) An agent, insurer, or health maintenance organization that is considering appointment of a temporary license applicant as its agent shall provide at least 40 hours of training to the applicant not later than the 30th day after the date the application, nonrefundable fee, and certificate are delivered or mailed to the department.

(b) At least 10 hours of the training must be taught in a classroom setting, including:

(1) an accredited college, university, junior college, or community college;

(2) a business school; or

(3) a private institute or classes sponsored by the agent, insurer, or health maintenance organization and specifically established for that purpose.

(c) The training program must be designed to provide an applicant with basic knowledge of:

(1) the broad principles of insurance, including the licensing and regulatory laws of this state;

(2) the broad principles of health maintenance organizations, including membership requirements and related licensing and regulatory laws of this state; and

(3) the ethical obligations and duties of an agent.

(d) If the department determines under Section 4001.159 that an abuse of temporary appointment powers has occurred, the department may require the affected agent, insurer, or health maintenance organization to:

(1) file with the department a description of the agent's, insurer's, or health maintenance organization's training program; and

(2) obtain the approval of the department before continuing to use the training program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 134 (H.B. 1197), Sec. 1, eff. May 26, 2017.

Sec. 4001.161. DUTY TO ENSURE THAT APPLICANTS TAKE LICENSING EXAMINATION. An agent, insurer, or health maintenance organization shall ensure that, during any two consecutive calendar quarters, at least 70 percent of the agent's, insurer's, or health maintenance organization's applicants for temporary licenses take the required licensing examination. At least 50 percent of the applicants taking the examination must pass the examination during that period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.162. RESTRICTION ON APPOINTMENT OF TEMPORARY LICENSE HOLDERS. (a) Except as provided by Subsection (b), an agent, insurer, or health maintenance organization may not appoint more than 500 temporary license holders during a calendar year.

(b) The commissioner shall adopt reasonable rules setting standards for an agent, insurer, or health maintenance organization to appoint more than 500 temporary license holders during a calendar year. The standards must include consideration of the ability of an agent, insurer, or health maintenance organization to monitor appointed temporary agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 201 (H.B. 1201), Sec. 1, eff. May 27, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 2, eff. September 1, 2015.

SUBCHAPTER E. APPOINTMENT OF AGENT

Sec. 4001.201. APPOINTMENT REQUIRED. A person who obtains a license under this title may not engage in business as an agent unless the person has been appointed to act as an agent by an insurer designated by the provisions of this code and authorized to engage in business in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.202. APPOINTMENT BY MULTIPLE INSURERS. (a) Except

as specifically prohibited by this code, an agent may represent and act as an agent for more than one insurer.

(b) Not later than the 30th day after the effective date of the appointment, the agent and the insurer involved shall notify the department, on a form prescribed by the department, of any additional appointment authorizing the agent to act as agent for one or more additional insurers. The notice must be accompanied by a nonrefundable fee in an amount set by the department for each additional appointment for which the insurer applies.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.203. TERM OF APPOINTMENT. (a) An appointment authorizing an agent to act for an insurer continues in effect without the necessity of renewal until the appointment is terminated or withdrawn by the insurer or the agent.

(b) A renewal license issued to an agent authorizes the agent to represent and act for each insurer for which the agent holds an appointment until the appointment is terminated or withdrawn, and the agent is considered to be the agent of each appointing insurer for the purposes of this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.204. AUTHORITY TO ACT AS AGENT BEFORE NOTICE OF APPOINTMENT. An agent appointed under this subchapter may act on behalf of the appointing insurer before the department receives the notice filed under Section 4001.202(b).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.206. TERMINATION OF APPOINTMENT OF AGENT FOR CAUSE; LIABILITY. (a) On termination of the appointment of an agent for cause, the insurer or agent shall immediately file with the department a statement of the facts relating to the termination of the appointment and the date and cause of the termination. On receipt of the statement, the department shall record the termination of the appointment of that agent to represent the insurer in this

state.

(b) A document, record, statement, or other information required to be made or disclosed to the department under this section is a privileged and confidential communication and is not admissible in evidence in a court action or proceeding except under a subpoena issued by a court of record.

(c) A person, including an insurer or an employee or agent of an insurer, who provides without malice information required to be disclosed under this section is not liable for providing the information.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER F. REGULATION OF AGENTS

Sec. 4001.251. INCORPORATION OF SOLE PROPRIETORSHIP. An individual engaged in business as a sole proprietorship under a license issued under this title may incorporate. The corporation does not have greater license authority than that granted to the license holder in the holder's individual capacity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.252. NOTIFICATION TO DEPARTMENT OF CERTAIN INFORMATION. (a) An individual licensed as an agent shall notify the department on a monthly basis of:

(1) a change of the license holder's mailing address;

(2) a felony conviction of the license holder; or

(3) an administrative action taken against the license holder by a financial or insurance regulator of this state, another state, or the United States.

(b) A corporation or partnership licensed as an agent under this title shall file under oath, on a form developed by the department, biographical information for:

(1) each executive officer, director, or unlicensed partner who administers the entity's operations in this state;

(2) each shareholder who is in control of the corporation or partner who has the right or ability to control the partnership; and

(3) if the corporation or partnership is owned, in whole or

in part, by another entity, each individual who is in control of the parent entity.

(c) A corporation or partnership shall notify the department not later than the 30th day after the date of:

(1) a felony conviction of a licensed agent of the entity or an individual associated with the entity who is required to file biographical information with the department;

(2) an event for which notification would be required under Section 81.003; or

(3) the addition or removal of an officer, director, partner, member, or manager.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.253. RESTRICTION ON ACQUISITION OF OWNERSHIP INTEREST IN ENTITY LICENSED AS AGENT. (a) A person may not acquire in any manner an ownership interest in an entity licensed as an agent under this title if the person is, or after the acquisition would be, directly or indirectly in control of the license holder, or otherwise acquire control of or exercise any control over the license holder, unless the person has filed with the department under oath:

(1) a biographical form for each person by whom or on whose behalf the acquisition of control is to be effected;

(2) a statement certifying that no person who is acquiring an ownership interest in or control of the license holder has been the subject of a disciplinary action taken by a financial or insurance regulator of this state, another state, or the United States;

(3) a statement certifying that, immediately on the change of control, the license holder will be able to satisfy the requirements for the issuance of the license to solicit each line of insurance for which it is licensed; and

(4) any additional information that the commissioner by rule may prescribe as necessary or appropriate to the protection of the insurance consumers of this state or as in the public interest.

(b) The department may require a partnership, syndicate, or other group that is required to file a statement under Subsection (a) to provide the information under that subsection for each partner of the partnership, each member of the syndicate or group, and each

person who controls the partner or member. If the partner, member, or person is a corporation or the person required to file the statement under Subsection (a) is a corporation, the department may require that the information required under that subsection be provided regarding:

(1) the corporation;

(2) each individual who is an executive officer or director of the corporation; and

(3) each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

(c) The department may disapprove an acquisition of control if, after notice and opportunity for hearing, the commissioner determines that:

(1) immediately on the change of control the license holder would not be able to satisfy the requirements for the issuance of the license to solicit each line of insurance for which it is presently licensed;

(2) the competence, trustworthiness, experience, and integrity of the persons who would control the operation of the license holder are such that it would not be in the interest of the insurance consumers of this state to permit the acquisition of control; or

(3) the acquisition of control would violate this code or another law of this state, another state, or the United States.

(d) Notwithstanding Subsection (c), a change in control is considered approved if the department has not proposed to deny the requested change before the 61st day after the date the department receives all information required by this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.254. MAINTENANCE OF QUALIFICATIONS. The department shall, in the manner provided by Subchapter C, Chapter 4005, revoke, suspend, or refuse to renew the license of a license holder who does not maintain the qualifications necessary to obtain the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.255. MAINTENANCE OF RECORDS. An agent shall maintain all insurance records, including all records relating to customer complaints, separate from the records of any other business in which the agent may be engaged.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER G. OTHER PERSONS WHO MAY SHARE IN PROFITS OF AGENCY

Sec. 4001.301. PROFITS AFTER DEATH OF AGENT WHO IS MEMBER OF AGENCY PARTNERSHIP. On the death of an agent who is a member of an agency partnership, the surviving spouse and children, if any, of the deceased partner, or a trust for the surviving spouse and children, may share in the profits of the agency partnership during the lifetime of the surviving spouse or children, as the case may be, as provided by:

(1) a written partnership agreement; or

(2) in the absence of a written agreement, an agreement by the surviving partner or partners and the surviving spouse, the trustee, and the legal representative of the surviving children.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.302. PROFITS AFTER DEATH OF AGENT WHO IS SOLE PROPRIETOR. (a) On the death of an agent who is a sole proprietor, unless otherwise provided by the probated will of the deceased agent, the surviving spouse and children, if any, of the deceased agent, or a trust for the surviving spouse or children, may share in the profits of the agency business of the deceased agent during the lifetime of the surviving spouse and children if the agency business is continued by an agent.

(b) The surviving spouse and children or trust is not required to qualify as an agent to share in the profits of the agency but may not perform an act of an agent in connection with the agency business without first being licensed as an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.303. PROFITS AFTER DEATH OF SHAREHOLDER OF CORPORATE

AGENCY. (a) On the death of a shareholder of a corporate licensed agency, the surviving spouse and children, if any, of the deceased shareholder, or a trust for the surviving spouse and children, may share in the profits of the corporate agency during the lifetime of the surviving spouse or children as provided by a contract entered into by each shareholder and the corporation.

(b) The surviving spouse and children or trust is not required to qualify as an agent to share in the profits of the corporation but may not perform an act of an agent on behalf of the corporation without qualifying as an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.304. TRANSFER OF INTEREST IN AGENCY BY AGENT WHO IS SOLE PROPRIETOR. (a) An agent who is a sole proprietor may transfer an interest in the agency to the agent's children, or a trust for the agent's children, and may operate that interest for their use and benefit. The children may share in the profits of the agency during their lifetime.

(b) The children are not required to qualify as agents to share in the profits of the agency but may not perform an act of an agent in connection with the agency business without first being licensed as agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4001.305. TRANSFER OF INTEREST IN AGENCY BY SHAREHOLDER OF CORPORATE AGENCY. (a) A shareholder of a corporate licensed agency may, if provided by a contract entered into by each shareholder and the corporation, transfer an interest in the agency to the shareholder's children or a trust for the shareholder's children. The children or trust may share in the profits of the agency to the extent of that interest during the children's lifetime.

(b) The children or trust is not required to qualify as an agent to share in the profits of the corporation but may not perform an act of an agent on behalf of the corporation without qualifying as an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER H. PROVISIONAL PERMIT

Sec. 4001.351. APPLICABILITY. This subchapter applies only to an applicant for a license as an agent under:

(1) Subchapters B and E, Chapter 4051; and

(2) Subchapters B, D, E, and G, Chapter 4054.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 128 (H.B. 1073), Sec. 1, eff. September 1, 2017.

Sec. 4001.352. AUTHORITY TO ISSUE PROVISIONAL PERMIT. (a) The department may, in conjunction with a license application under Section 4001.102, issue a provisional permit to an applicant who is being considered for appointment as an agent by another agent, an insurer, or a health maintenance organization.

(b) The department may suspend the issuance of a provisional permit under this subchapter if:

(1) the department's processing time for license applications has not exceeded 21 days in any month in the preceding 90 days before the suspension; and

(2) the department provides notice both on its Internet website and to applicants for provisional licenses that the provisional license applications are temporarily suspended because sufficient processing time for permanent licenses is available to allow for those licenses to be processed in not more than 21 days for a completed application.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 13, eff. September 1, 2021.

Sec. 4001.353. APPLICATION FOR AND ISSUANCE OF PROVISIONAL PERMIT. (a) The department may issue a provisional permit under

this subchapter on receipt of:

(1) a written application for a provisional permit;

(2) a properly completed license application, nonrefundable fee, and each other item required for a license under this chapter and Subchapter B or E, Chapter 4051, or Subchapter B, D, E, or G, Chapter 4054, as applicable;

(3) the nonrefundable fee in an amount authorized by Subsection (c); and

(4) a certificate signed by the appointing agent, insurer, or health maintenance organization stating that:

(A) the applicant completed the training, if any, and passed the examination required for the issuance of the license for which the application is submitted;

(B) the appointing agent, insurer, or health maintenance organization completed a background check on the applicant that shows that the applicant has not been convicted of:

(i) a felony; or

(ii) an act that requires the applicant to receive written consent under 18 U.S.C. Section 1033 to engage in the business of insurance;

(C) the applicant has not responded affirmatively to any question on the license application that indicates the applicant has a criminal conviction or has been involved in an administrative action that may disqualify the applicant from receiving a license; and

(D) the appointing agent, insurer, or health maintenance organization will supervise the work of the applicant.

(b) An applicant is not qualified to receive a provisional permit if the applicant has not taken and passed the examination required for the issuance of the permanent license for which the applicant applied under Section 4001.102.

(c) The nonrefundable fee described by Subsection (a) shall be set by the department in an amount that:

(1) is reasonable and necessary to implement this subchapter; and

(2) may not exceed the amount of the fee required for an application for a permanent license.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 128 (H.B. 1073), Sec. 2, eff. September 1, 2017.

Sec. 4001.354. AUTHORITY TO ACT AS AGENT UNDER PROVISIONAL PERMIT. (a) An applicant may proceed to act as an agent if:

(1) a provisional permit is not received from the department before the eighth day after the date the application, nonrefundable fee, and other items required under Section 4001.353(a) are delivered or mailed to the department; and

(2) the applicant or appointing agent, insurer, or health maintenance organization has not been notified that the application for the permit is incomplete or is or may be denied.

(b) An applicant may act as an agent only for the appointing agent, insurer, or health maintenance organization except that an appointing insurer may include appointments for one or more affiliated insurers that are part of the same insurance holding company group.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.

Sec. 4001.355. TERM OF PROVISIONAL PERMIT. (a) Except as provided by Subsection (b), a provisional permit expires on the earlier of:

(1) the 90th day after the date the permit is issued; or

(2) the date a license is issued or the license application is denied.

(b) If the license, or a notice that the license is denied, is not received from the department on or before the 90th day after the date the application, nonrefundable fee, and other items required under Section 4001.353(a) are delivered or mailed to the department, the authority of the applicant to act as an agent under this subchapter automatically extends until the earlier of the date the license is issued or the license application is denied or the 90th day after the expiration of the 90-day period under Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.

Sec. 4001.356. NOTIFICATION REGARDING LICENSE. (a) The department may notify the applicant or appointing agent, insurer, or health maintenance organization that the license application is incomplete or is or may be denied at any time before the issuance or denial of a license.

(b) An applicant who receives a notice under Subsection (a) shall immediately cease acting as an agent under this subchapter. An appointing agent, insurer, or health maintenance organization that receives notice under Subsection (a) shall immediately notify the applicant of the notice.

(c) An applicant acting as an agent under this subchapter before receiving a notice under Subsection (a), if applicable, is not engaged in the unauthorized business of insurance and any transaction entered into by the applicant before receiving the notice, if applicable, is presumed lawful.

(d) A notification under this section applies only to a provisional permit, and the department shall continue to process an application for a license unless the license has been denied.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.

Sec. 4001.357. DENIAL OR REVOCATION OF LICENSE. If the applicant's license application is denied or the applicant's license is revoked, an applicant is subject to Section 4005.105 with respect to an application for a provisional permit under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.

Sec. 4001.358. COMPLIANCE WITH OTHER LAW. (a) A provisional permit holder who is acting under the authority of that permit is subject to all provisions of this code regulating the solicitation and sale of insurance that relate to the type of permanent license for which the provisional permit holder applied.

(b) A provisional permit holder that applied for a life and annuity license must comply with Chapter 1114 with respect to the

replacement of life insurance policies and annuities.

(c) A person who holds a permanent license may not circumvent or attempt to circumvent the intent of this section by acting for or with a provisional permit holder.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.

Sec. 4001.359. SUPERVISORY RESPONSIBILITY. An appointing agent, insurer, or health maintenance organization that allows a permit holder to act as an agent under a provisional permit has supervisory responsibility over the permit holder.

Added by Acts 2015, 84th Leg., R.S., Ch. 404 (H.B. 2145), Sec. 1, eff. September 1, 2015.

CHAPTER 4002. EXAMINATION OF LICENSE APPLICANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4002.001. EXAMINATION REQUIRED. (a) Except as otherwise provided by this code, an applicant for a license to act as an agent in this state must:

(1) take a personal written examination prescribed by the commissioner; and

(2) pass the examination to the satisfaction of the department.

(b) The examination must determine the applicant's competence with respect to:

(1) the type of insurance contracts for which the applicant seeks a license;

(2) the laws of this state regulating the business of insurance; and

(3) the ethical obligations and duties of an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.002. EXAMINATION FOR LIMITED LICENSE. (a) The commissioner shall prescribe a limited written examination for an applicant for a limited agent' s license under Chapter 4051 or 4054.

(b) The examination must determine the applicant's competence and understanding of:

(1) the basic principles of insurance contracts;

(2) the basic laws of this state regulating the business of insurance; and

(3) the ethical obligations and duties of an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.003. EXEMPTIONS FROM EXAMINATION REQUIREMENT. (a) The department may not require a person to take an examination under this chapter if the person is:

(1) an applicant for the renewal of an unexpired license issued by the department;

(2) an applicant whose license issued by the department expired less than one year before the date of the application, if the previous license was not denied, revoked, or suspended by the commissioner;

(3) a partnership, corporation, or depository institution;

(4) an applicant for a life, accident, and health license who is designated as a chartered life underwriter (CLU);

(5) an applicant for a property and casualty license who is designated as a chartered property casualty underwriter (CPCU);

(6) an applicant for a specialty license issued under Chapter 4055;

(7) a nonresident individual who is exempt from the examination requirement under Chapter 4056; or

(8) an applicant for a general life, accident, and health license or a life agent license who was authorized to solicit or procure insurance on behalf of a fraternal benefit society on September 1, 1999, if the applicant:

(A) solicited or procured insurance on behalf of the fraternal benefit society for at least 24 months preceding September 1, 1999; and

(B) does not, on or after September 1, 1999, solicit or procure:

(i) insurance for any other insurer or a different fraternal benefit society;

(ii) an insurance contract from anyone other than a

person who is eligible for membership in the fraternal benefit society; or

(iii) an interest-sensitive life insurance contract that exceeds $35,000 of coverage on an individual life, unless the applicant is designated as a "Fraternal Insurance Counselor" at the time the contract is solicited or procured.

(b) A license to which the exemption authorized by Subsection (a)(9) applies must be held by the applicant in an individual capacity and is not transferable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.19, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 14, eff. September 1, 2021.

Sec. 4002.005. EXAMINATION FEE. (a) The department shall charge each applicant an examination fee in an amount determined by the department as necessary to administer the examination.

(b) The examination fee must accompany each application to take the examination.

(c) An applicant may receive a refund of the examination fee only if:

(1) the applicant fails to take the examination because of an emergency;

(2) the applicant notifies the department of the emergency at least 24 hours before the time of the examination; and

(3) the department agrees to refund the fee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.006. BILINGUAL EXAMINATION. An examination administered under this chapter shall be offered in English and Spanish.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.007. EXAMINATION RESULTS. (a) The department shall notify each examinee of the results of a licensing examination administered under this code not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a testing service, the department shall notify each examinee of the results of the examination not later than the 14th day after the date the department receives the results from the testing service.

(b) The department may require a testing service to notify examinees of the results of an examination.

(c) If the notice of the results of an examination graded or reviewed by a testing service will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails a licensing examination administered under this code, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.008. STANDARDS FOR EXAMINATION PASS RATES; ANNUAL REPORT. (a) This section applies only to insurance agent license examinations for limited and single lines licenses, including agent licenses issued under:

(1) Subchapters C and I, Chapter 4051; and

(2) Subchapters C and G, Chapter 4054.

(b) The commissioner or, at the commissioner's discretion, a vendor under contract with the department, shall review a license examination subject to this section if, during any 12-month period beginning on September 1 of a year, that examination exhibits an overall pass rate of less than 70 percent for first-time examinees.

(c) The department shall collect demographic information, including, race, gender, and national origin, from an individual taking a license examination subject to this section.

(d) The department shall compile an annual report based on the review required under Subsection (b). The report must indicate whether there was any disparity in the pass rate based on demographic information.

(e) The commissioner by rule may establish procedures as necessary to:

(1) collect demographic information necessary to implement this section; and

(2) ensure that a review required under Subsection (b) is conducted and the resulting report is prepared.

(f) The commissioner shall deliver the report prepared under Subsection (d) to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each year.

Added by Acts 2009, 81st Leg., R.S., Ch. 398 (H.B. 1757), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. ADMINISTRATION OF EXAMINATION BY TESTING SERVICE

Sec. 4002.051. ADMINISTRATION BY TESTING SERVICE AUTHORIZED. The commissioner may accept an examination administered by a testing service to satisfy the examination requirements of a person seeking a license as an agent, counselor, or adjuster under this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.052. AGREEMENT WITH TESTING SERVICE. (a) The commissioner may negotiate an agreement with a testing service to perform examination services, including:

(1) developing an examination;

(2) scheduling an examination;

(3) arranging the site for an examination; and

(4) administering, grading, reporting, and analyzing an examination.

(b) The commissioner may require a testing service to:

(1) correspond directly with applicants with regard to the administration of examinations;

(2) collect fees for administering examinations directly from applicants; and

(3) provide for the administration of examinations in specific locations and at specified frequencies.

(c) The commissioner shall retain the authority to establish the scope and type of each examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.053. HEARING REQUIRED BEFORE AGREEMENT. Before the department may negotiate and enter into an agreement with a testing service:

(1) a hearing must be held in accordance with Chapter 2001, Government Code; and

(2) the commissioner must adopt any rules or standards that the commissioner considers appropriate to implement the authority granted by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. DUTIES OF DEPARTMENT

Sec. 4002.101. ADMINISTRATION BY DEPARTMENT. In the absence of an agreement with a testing service, the department shall administer any required examination in accordance with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.102. RULES. (a) The commissioner may adopt rules relating to:

(1) the scope, type, and conduct of an examination;

(2) the time and location in this state at which an examination is conducted; or

(3) the designation of textbooks, manuals, and other materials to be studied by an applicant for an examination.

(b) The textbooks, manuals, or other materials designated by the commissioner under Subsection (a)(3) may consist of:

(1) material available to an applicant by purchase from the publisher; or

(2) material prepared at the direction of the commissioner and distributed to an applicant on request and on payment of the reasonable cost of the material.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4002.103. CONTENT OF EXAMINATION QUESTIONS. All examination questions must be prepared from the contents of the textbooks, manuals, and other materials designated or prepared by the commissioner under Section 4002.102.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

CHAPTER 4003. LICENSE EXPIRATION AND RENEWAL

Sec. 4003.001. LICENSE EXPIRATION. (a) Unless a staggered renewal system is adopted under Section 4003.002, each license issued or renewed by the department under Chapter 981 or Subtitle A, B, or C and not suspended or revoked by the commissioner expires on:

(1) the second anniversary of the date the license is issued to or renewed by a person that is not an individual; or

(2) except as provided in Subsection (c):

(A) for a license issued or renewed in an even-numbered year, the individual license holder's birthday each even-numbered year; or

(B) for a license issued or renewed in an odd-numbered year, the individual license holder's birthday each odd-numbered year.

(b) The commissioner by rule may change the two-year expiration period if the commissioner determines that the change is necessary to promote uniformity of license periods of this state with those of other states.

(c) If a person holds more than one license, all licenses issued to the person expire on the earliest expiration date of the licenses held. Thereafter, all licenses expire in accordance with Subsection (a).

(d) Notwithstanding Section 4003.002(b), the commissioner may not prorate the initial application fee for a license based on the expiration period of the license under Subsection (c).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 3, eff. September 1, 2015.

Sec. 4003.002. STAGGERED RENEWAL SYSTEM. (a) The commissioner

by rule may adopt a system under which licenses expire on various dates during a licensing period.

(b) For the licensing period in which the license expiration is changed, license fees shall be prorated so that each license holder pays only that portion of the license fee allocable to the period during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

(c) The commissioner shall adopt a system under which a person who holds more than one license may renew all the licenses held in a single process.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4003.003. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license expires, the department shall send written notice of the impending license expiration to the person at the person's last known mailing address according to the department's records.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4003.004. PROCEDURE FOR RENEWAL OF LICENSE. (a) A person may renew an unexpired license by:

(1) filing a properly completed renewal application with the department in the form prescribed by the department; and

(2) paying to the department the required renewal fee in an amount set by the department.

(b) A person may not renew a license that has been suspended or revoked.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4003.005. RENEWAL FEE NONREFUNDABLE. A renewal fee paid under this chapter is nonrefundable.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4003.006. CONTINUATION OF ORIGINAL LICENSE. The original license of a person who has applied for license renewal in compliance with Section 4003.004 remains in effect from the date the renewal application is filed until the date:

(1) the department issues the renewal license;

(2) the license is not renewed under Section 4004.055; or

(3) the commissioner issues an order revoking the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 4, eff. September 1, 2015.

Sec. 4003.007. RENEWAL OF EXPIRED LICENSE. (a) A person whose license has been expired for 90 days or less may renew the license by:

(1) filing a renewal application with the department in the form prescribed by the department; and

(2) paying to the department:

(A) the required renewal fee; and

(B) an additional fee equal to one-half of the required renewal fee.

(b) A person whose license has been expired for more than 90 days but less than one year may not renew the license. The person may obtain a new license without taking the applicable examination by:

(1) filing a new application with the department; and

(2) paying to the department:

(A) the license fee; and

(B) an additional fee equal to one-half of the license fee.

(c) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by:

(1) submitting to reexamination, if examination is required for original issuance of the license; and

(2) complying with the other requirements and procedures for obtaining an original license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4003.008. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE AGENT. (a) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in continual practice in the other state preceding the date of the application.

(b) The person must pay to the department a fee equal to the license application fee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 5, eff. September 1, 2015.

Sec. 4003.009. INTERSTATE MOVE BY AGENT. (a) Not later than the 30th day after moving from one state to another state, an agent licensed in this state shall file with the department:

(1) the agent's new address; and

(2) proof of authorization to engage in the business of insurance in the new state of residence.

(b) The department may not charge a fee or require a license application under this section.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4003.010. CHAPTER NOT APPLICABLE TO THIRD-PARTY ADMINISTRATORS. This chapter does not apply to a certificate of authority issued under Chapter 4151.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

CHAPTER 4004. CONTINUING EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4004.001. DEPARTMENT JURISDICTION EXCLUSIVE. The department has exclusive jurisdiction of all matters relating to the continuing education of agents licensed under this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. AGENT CONTINUING EDUCATION REQUIREMENTS

Sec. 4004.051. GENERAL REQUIREMENTS. (a) Except as provided by Section 4004.052 or other law, each individual who holds a license issued by the department shall complete, as a condition of licensure, continuing education as provided by this chapter.

(b) All required continuing education hours must be completed before the expiration date of the individual's license.

(c) At least 50 percent of all required continuing education hours must be completed in a classroom setting or a classroom equivalent setting approved by the department.

(d) The department may accept continuing education hours completed in other professions or in association with professional designations in an insurance-related field.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 6, eff. September 1, 2015.

Sec. 4004.052. EXTENSIONS AND EXEMPTIONS. (a) On the timely written request of an agent, the department may extend the time for the agent to comply with the continuing education requirements of this chapter or may exempt the agent from some or all of the requirements for a licensing period if the department determines that the agent is unable to comply with the requirements because of illness, medical disability, or another extenuating circumstance beyond the control of the agent. The commissioner by rule shall prescribe the criteria for an exemption or extension under this subsection.

(b) An individual who has continuously held for at least 20 years an agent license issued under this code is exempt from the continuing education requirements of this chapter.

(c) The commissioner by rule may provide for other reasonable exemptions from the continuing education requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4004.053. REQUIREMENTS BASED ON TYPE OF LICENSE HELD. (a) An individual who holds a general life, accident, and health license, a life agent license, an adjuster license, a managing general agent license, a general property and casualty license, or a personal lines property and casualty license must complete 24 hours of continuing education during the license period. If the individual holds more than one license for which continuing education is otherwise required, the individual is not required to complete more than 24 continuing education hours for all licenses during the license period. An individual who is required under rules adopted under Chapter 4008 to hold a certificate to sell a designated product or product line may use continuing education programs administered under Section 4004.151 to satisfy the continuing education requirements under this subsection.

(b) An individual who holds a limited life, accident, and health license or a limited property and casualty license must complete five hours of continuing education annually.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.20, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 7, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 15, eff. September 1, 2021.

Sec. 4004.0535. CONTINUING EDUCATION CREDIT FOR PARTICIPATION IN CERTAIN ASSOCIATIONS. (a) The commissioner by rule may authorize the department to grant not more than four hours of continuing education credit to an agent who is an active member of a state or national insurance association.

(b) The commissioner by rule shall:

(1) specify the types of associations that constitute state or national insurance associations; and

(2) establish reasonable requirements for active participation in such an association.

(c) An agent may not use continuing education credit granted under this section to satisfy:

(1) continuing education hours required to be completed in a classroom setting or classroom equivalent under Section 4004.051; or

(2) the ethics requirement adopted under Section 4004.054.

(d) An agent who seeks continuing education credit under this section shall provide to the department in the manner prescribed by the commissioner a sworn affirmation that the agent is an active member of a state or national insurance association described by Subsection (a) and, for the number of continuing education hours claimed, has:

(1) reviewed educational materials provided by that association; or

(2) attended educational presentations sponsored by that association.

Added by Acts 2005, 79th Leg., Ch. 691 (S.B. 265), Sec. 1, eff. September 1, 2005.

Sec. 4004.054. ETHICS REQUIREMENT. Each individual who holds a license issued by the department shall complete three hours of continuing education in ethics during each license renewal period.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 16, eff. September 1, 2021.

Sec. 4004.055. CONSEQUENCES OF FAILURE TO COMPLETE CONTINUING EDUCATION REQUIREMENT. (a) The department may not renew a license issued under this title if the license holder fails to:

(1) complete an applicable continuing education requirement not later than the 90th day after the last day of the licensing period; or

(2) pay an applicable fine related to the failure to timely complete continuing education.

(b) The department may not issue a new license under this title to an individual who was previously licensed under this title if the individual fails to:

(1) provide evidence of completion of an applicable continuing education requirement for the expired, nonrenewed, canceled, or revoked license; or

(2) pay an applicable fine related to the failure to timely complete continuing education.

(c) Completion of continuing education after expiration of a license is not a defense in a disciplinary action under Section 4005.101, Section 4005.109, or another provision of this code against an individual who failed to complete continuing education as required by this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 8, eff. September 1, 2015.

SUBCHAPTER C. CONTINUING EDUCATION PROGRAMS

Sec. 4004.101. PROGRAM CERTIFICATION. (a) The department shall certify continuing education programs for agents and adjusters. The certification criteria must be designed to ensure that continuing education programs enhance the knowledge, understanding, and professional competence of the license holder.

(b) Only a program that satisfies the criteria established by rule by the commissioner may receive certification.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 9, eff. September 1, 2015.

Sec. 4004.102. CERTIFICATION FEE. (a) A nonrefundable certification fee, in an amount set by the commissioner as necessary to administer this chapter, must accompany each application for certification of a continuing education program.

(b) The commissioner by rule shall establish the certification fee based on a graduated scale according to the number of hours required to complete the program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4004.103. PROVIDER REGISTRATION; OTHER REQUIREMENTS. (a) Each continuing education program provider shall register with the department as a course provider.

(b) The department shall assess a registration fee for each application for registration as a course provider, set by the commissioner in an amount necessary for the proper administration of this chapter.

(c) The commissioner may adopt rules establishing other requirements for continuing education program providers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4004.104. INDEPENDENT CONTRACTORS. (a) The department may enter into agreements with independent contractors under which the independent contractor certifies and registers continuing education programs and providers.

(b) The department may require the independent contractors to correspond directly with providers with regard to the administration of continuing education programs. The contractors may collect fees from the providers for administration of the courses.

(c) Notwithstanding Subsections (a) and (b), the department retains the authority to establish the scope and type of continuing education requirements for each type of license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4004.105. ADJUSTER CONTINUING EDUCATION PROGRAM CONTENTS. A continuing education program for adjusters licensed under Chapter 4101 must include education relating to:

(1) Chapter 541;

(2) Chapter 547;

(3) Subchapter A, Chapter 542;

(4) Subchapter E, Chapter 17, Business & Commerce Code; and

(5) any other similar laws specified by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 10,

eff. September 1, 2015.

SUBCHAPTER D. AGENT EDUCATION PROGRAMS FOR COMPLEX PRODUCTS

Sec. 4004.151. AGENT EDUCATION PROGRAMS. The department shall administer continuing education and precertification training programs required by rules adopted under Chapter 4008.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 3, eff. June 19, 2009.

Sec. 4004.152. PROGRAM ADMINISTRATION. (a) The department shall administer a program described by Section 4004.151 in a manner consistent with the administration of continuing education programs under Subchapter C.

(b) The department may enter into agreements with independent contractors for programs described by Section 4004.151 in the manner prescribed by Section 4004.104 for continuing education programs.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 3, eff. June 19, 2009.

SUBCHAPTER E. CONTINUING EDUCATION REQUIREMENTS FOR SALE OF ANNUITIES

Sec. 4004.201. DEFINITION. In this subchapter, "annuity" has the meaning assigned by Section 1115.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 1.002, eff. September 1, 2009.

Sec. 4004.202. REQUIRED CONTINUING EDUCATION REGARDING ANNUITIES. (a) This section applies to a resident agent who:

(1) sells, solicits, or negotiates a contract for an annuity in this state; or

(2) represents or purports to represent an insurer in relation to such an annuity.

(b) Each agent described by Subsection (a) must complete eight

hours of continuing education that specifically relates to annuities during the agent's two-year licensing period.

(c) The continuing education required under this section may be used to satisfy the continuing education requirements under Subchapter B.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 1.002, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 998 (H.B. 2154), Sec. 1, eff. September 1, 2011.

Sec. 4004.203. PROGRAM CERTIFICATION REQUIREMENTS. (a) The commissioner by rule shall adopt criteria for continuing education programs used to satisfy the requirements of Section 4004.202. Those criteria must include:

(1) topics related specifically to annuities;

(2) state laws and rules related to annuities, including requirements adopted under Chapter 1115;

(3) prohibited sales practices regarding annuities;

(4) recognition of indicators that a prospective insured may lack the short-term memory or judgment to knowingly purchase an annuity; and

(5) fraudulent and unfair trade practices regarding the sale of annuities.

(b) Subject matter determined by the commissioner to be primarily intended to promote the sale or marketing of annuities does not qualify as continuing education for purposes of this subchapter.

(c) Subchapter C applies to continuing education programs described by Subsection (a) and training under Section 1115.056. Any training program disapproved under Subsection (b) shall be presumed invalid for certification under Subchapter C unless the program is approved in writing by the commissioner.

Added by Acts 2009, 81st Leg., R.S., Ch. 362 (H.B. 1294), Sec. 1.002, eff. September 1, 2009.

SUBCHAPTER F. ADDITIONAL CONTINUING EDUCATION REQUIREMENTS FOR SALE OF MEDICARE-RELATED PRODUCTS

Sec. 4004.251. DEFINITIONS. In this subchapter:

(1) "Medicare advantage plan" means a health benefit plan operated under the Medicare program as a managed care plan, special needs plan, or private fee-for-service plan.

(2) "Medicare program" means the federal health insurance program that is operated under the Health Insurance for the Aged Act (42 U.S.C. Section 1395 et seq.).

(3) "Medicare-related product" means a Medicare advantage plan, a Medicare prescription drug plan, or another health plan operated under the Medicare program, such as a Medicare cost plan or a Medicare demonstration plan. The term does not include a Medicare supplement benefit plan regulated under Chapter 1652.

Redesignated from Insurance Code, Subchapter D, Chapter 4004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(41), eff. September 1, 2011.

Sec. 4004.252. AGENT EDUCATION REQUIREMENTS. (a) Unless an agent has completed eight hours of professional training related to a Medicare-related product, an agent may not:

(1) sell, solicit, negotiate, or receive an application or contract for the Medicare-related product in this state; or

(2) represent an insurer in relation to the Medicare-related product in this state.

(b) The training required under Subsection (a) may be used to satisfy the continuing education requirements established under Subchapter B.

Redesignated from Insurance Code, Subchapter D, Chapter 4004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(41), eff. September 1, 2011.

Sec. 4004.253. REQUIRED CONTINUING EDUCATION REGARDING MEDICARE PRODUCTS. (a) This section applies to an agent who:

(1) solicits, negotiates, procures, or collects a premium on a Medicare-related product; or

(2) represents or purports to represent an insurer, a health maintenance organization, or a preferred provider organization in relation to such a Medicare-related product.

(b) Each agent described by Subsection (a) must complete four hours of continuing education that specifically relates to Medicare-related products during the agent's two-year licensing period.

(c) Only training in a program that has been certified by the department may be used to satisfy the requirements of Subsection (b).

(d) The continuing education required under Subsection (b) may be used to satisfy the continuing education requirements established under Subchapter B.

Redesignated from Insurance Code, Subchapter D, Chapter 4004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(41), eff. September 1, 2011.

Sec. 4004.254. PROGRAM CERTIFICATION REQUIREMENTS. (a) Subchapter C, including the authorization to contract with an independent contractor under Section 4004.104, applies to programs used to satisfy the requirements of Sections 4004.252 and 4004.253. For the purpose of administering this subchapter, professional training courses shall be considered to be continuing education courses under Subchapter C.

(b) The commissioner by rule shall adopt criteria for the programs used to satisfy the requirements of Sections 4004.252 and 4004.253 that are designed to ensure that an agent has knowledge, understanding, and professional competence concerning a Medicare-related product. The rules adopted under this subsection may incorporate by reference any requirements established by the Centers for Medicare and Medicaid Services or any other appropriate federal agency.

Redesignated from Insurance Code, Subchapter D, Chapter 4004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(41), eff. September 1, 2011.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(13), eff. September 1, 2011.

Sec. 4004.255. NONAPPLICATION OF CERTAIN EXEMPTIONS. The continuing education exemptions for certain agents established under Section 4004.052(b) and Section 9.02(e), Chapter 703 (S.B. 414), Acts

of the 77th Legislature, Regular Session, 2001, do not apply to requirements under this subchapter.

Redesignated from Insurance Code, Subchapter D, Chapter 4004 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(41), eff. September 1, 2011.

CHAPTER 4005. CONDUCT, DISCIPLINARY ACTIONS, AND SANCTIONS

SUBCHAPTER A. AUTHORIZED CONDUCT

Sec. 4005.001. DEFINITION. In this subchapter, "client" means:

(1) an applicant for insurance coverage; or

(2) an insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.002. AUTHORIZATION TO OBTAIN CERTAIN RECORDS OR PHOTOGRAPHS. (a) In connection with a client's application for insurance coverage or with the issuance of an insurance policy to a client, or on a client's request, a general property and casualty agent or personal lines property and casualty agent may obtain:

(1) the motor vehicle record of a person insured under or to be insured under an insurance policy; or

(2) a photograph of property insured under or to be insured under an insurance policy.

(b) The agent must provide a copy of the motor vehicle record to the client.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.21, eff. September 1, 2007.

Sec. 4005.003. FEES. (a) A general property and casualty agent or personal lines property and casualty agent may charge a client a fee to reimburse the agent for costs the agent incurred in obtaining a motor vehicle record or photograph of property described under Section 4005.002. The fee may not exceed the actual costs to the agent.

(b) For services provided to a client, a property and casualty agent described by Subsection (a) may charge a reasonable fee, including a fee for:

(1) special delivery or postal charges;

(2) printing or reproduction costs;

(3) electronic mail costs;

(4) telephone transmission costs; and

(5) similar costs that the agent incurs on behalf of the client.

(c) A property and casualty agent described by Subsection (a) may charge a client a fee under this section only if, before the agent incurs an expense for the client, the agent:

(1) notifies the client of the agent's fee; and

(2) obtains the client's written consent for each fee to be charged.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.22, eff. September 1, 2007.

Sec. 4005.004. DISCLOSURE OF COMPENSATION. (a) In this section:

(1) "Affiliate" has the meaning described by Section 823.003(a).

(2) "Agent" means a person licensed under Chapter 4051, 4053, 4054, or 4056.

(3) "Compensation from an insurer or other third party" includes payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes, or any other form of valuable consideration, whether or not payable under a written contract or agreement.

(4) "Compensation from a customer" does not include a fee described by Section 4005.003, an application fee, or an inspection fee.

(5) "Customer" means the person signing the application for insurance or the authorized representative of the insured actually negotiating the placement of an insurance product with the agent. A person is not to be considered a "customer" of an agent for purposes

of this section solely because the person is a participant or beneficiary:

(A) of an employee benefit plan; or

(B) of, or otherwise covered by, a group or blanket insurance policy or group annuity contract sold, solicited, or negotiated by an agent or the agent's affiliate.

(6) "Documented acknowledgment" means a customer's dated acknowledgment, obtained before the customer's purchase of an insurance product, as demonstrated by the customer's written or electronic signature or recorded voice, or by other additional methods that the commissioner may authorize by rule.

(b) If an agent, or any affiliate of an agent, receives compensation from a customer for the placement or renewal of an insurance product, other than a service fee described under Section 4005.003, an application fee, or an inspection fee, the agent or the affiliate may not accept or receive any compensation from an insurer or other third party for that placement or renewal unless the agent has, before the customer's purchase of insurance:

(1) obtained the customer's documented acknowledgment that the compensation will be received by the agent or affiliate; and

(2) provided a description of the method and factors used to compute the compensation to be received from the insurer or other third party for that placement.

(c) This section does not apply to:

(1) a licensed agent who acts only as an intermediary between an insurer and the customer's agent, including a managing general agent;

(2) a reinsurance intermediary or surplus lines agent placing reinsurance or surplus lines insurance; or

(3) an agent whose sole compensation for the placement or servicing of an insurance product is derived from commissions, salaries, and other remuneration paid by the insurer.

(d) An agent may satisfy any requirements imposed by this section through an affiliate.

(e) The commissioner may adopt rules as necessary to implement the disclosure and acknowledgment of disclosure requirements under this section.

Added by Acts 2005, 79th Leg., Ch. 755 (H.B. 2941), Sec. 1, eff. September 1, 2005.

SUBCHAPTER B. PROHIBITED CONDUCT

Sec. 4005.051. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to a person who holds a license or certificate of authority issued under Title 11.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.052. CERTAIN CONDUCT PROHIBITED AFTER REVOCATION OF LICENSE. A person whose insurance license has been revoked in this state or any other state may not:

(1) solicit or otherwise engage in business under Chapter 885 unless the department determines it to be in the public interest, for good cause shown, to permit the person to act in that capacity; or

(2) act as an officer, director, member, manager, or partner, or as a shareholder with a controlling interest, of an entity holding a license issued under this title unless the department determines it to be in the public interest, for good cause shown, to permit the person to act in that capacity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.053. CERTAIN PAYMENTS PROHIBITED TO OR FROM PERSON NOT HOLDING LICENSE. (a) An insurer or agent engaged in the business of insurance in this state may not pay to any person, directly or indirectly, and may not accept from any person a commission or other valuable consideration for a service performed by that person as an agent in this state unless the person holds a license to act as an agent in this state.

(b) Subsection (a) does not prevent the payment of a renewal or other deferred commission to a person or the acceptance of a renewal or other deferred compensation by a person solely because the person no longer holds a license to act as an agent.

(c) An agent may not pay, permit, or give or offer to pay, permit, or give, directly or indirectly, to any person who does not hold a license as an agent:

(1) a rebate of premiums payable, a commission, employment,

a contract for service, or any other valuable consideration or inducement that is not specified in the insurance policy or contract for or on account of the solicitation or negotiation of an insurance contract; or

(2) a fee or other valuable consideration for referring a customer who seeks to purchase an insurance product or seeks an opinion on or advice regarding an insurance product, based on that customer's purchase of insurance.

(d) Subsection (c) does not prohibit an agent from, in connection with an offer or sale of an insurance policy or contract, giving, providing, or allowing or offering to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at $25 or less.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 28 (S.B. 840), Sec. 6, eff. September 1, 2013.

Sec. 4005.054. RECEIVING ADDITIONAL FEE PROHIBITED. A person who holds a license under this code and receives a commission or other consideration for services as an agent may not receive an additional fee for those services provided to the same client except for a fee:

(1) described by Section 550.001 or 4005.003; and

(2) for which disclosure is made as required under Section 4005.003 or Section 4005.004.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 755 (H.B. 2941), Sec. 2, eff. September 1, 2005.

Sec. 4005.055. CERTAIN COVERAGE FOR LOSS BY FIRE PROHIBITED. A property and casualty agent may not knowingly grant, write, or permit a greater amount of insurance against loss by fire than the reasonable value of the insured subject.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. DISCIPLINARY ACTIONS AND PROCEDURES; ENFORCEMENT

Sec. 4005.101. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. (a) This section does not apply to a person who holds a license or certificate of authority issued under Title 11.

(b) The department may deny a license application or discipline a license holder under this subchapter if the department determines that the applicant or license holder, individually or through an officer, director, or shareholder:

(1) has wilfully violated an insurance law of this state;

(2) has intentionally made a material misstatement in the license application;

(3) has obtained or attempted to obtain a license by fraud or misrepresentation;

(4) has misappropriated, converted to the applicant's or license holder's own use, or illegally withheld money belonging to:

(A) an insurer;

(B) a health maintenance organization; or

(C) an insured, enrollee, or beneficiary;

(5) has engaged in fraudulent or dishonest acts or practices;

(6) has materially misrepresented the terms and conditions of an insurance policy or contract, including a contract relating to membership in a health maintenance organization;

(7) has made or issued, or caused to be made or issued, a statement misrepresenting or making incomplete comparisons regarding the terms or conditions of an insurance or annuity contract legally issued by an insurer or a membership issued by a health maintenance organization to induce the owner of the contract or membership to forfeit or surrender the contract or membership or allow it to lapse for the purpose of replacing the contract or membership with another;

(8) has been convicted of a felony;

(9) has offered or given a rebate of an insurance premium or commission to an insured or enrollee;

(10) is not actively engaged in soliciting or writing insurance for the public generally as required by Section 4001.104(a); or

(11) has obtained or attempted to obtain a license, not for

the purpose of holding the applicant or license holder out to the general public as an agent, but primarily for the purpose of soliciting, negotiating, or procuring an insurance or annuity contract or membership covering:

(A) the applicant or license holder;

(B) a member of the applicant's or license holder's family; or

(C) a business associate of the applicant or license holder.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.102. REMEDIES FOR VIOLATION OF INSURANCE LAWS OR COMMISSIONER RULES. In addition to any other remedy available under Chapter 82, for a violation of this code, another insurance law of this state, or a rule of the commissioner, the department may:

(1) deny an application for:

(A) an original license; or

(B) a certificate issued under Chapter 4008;

(2) suspend, revoke, or deny renewal of:

(A) a license; or

(B) a certificate issued under Chapter 4008;

(3) place on probation a person whose license has been suspended;

(4) assess an administrative penalty;

(5) reprimand a license holder; or

(6) require a license holder to qualify, or re-qualify if the agent has already qualified, for a certificate to sell a product or product line designated by rule under Chapter 4008.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 4, eff. June 19, 2009.

Sec. 4005.103. PROBATED LICENSE SUSPENSION. If a license suspension is probated, the commissioner may require the license holder to:

(1) report regularly to the department on any matter that

is the basis of the probation;

(2) limit the license holder's practice to the areas prescribed by the department; or

(3) continue or review professional education until the license holder attains a degree of skill satisfactory to the commissioner in each area that is the basis of the probation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.104. HEARING. (a) If the department proposes to deny an application for an original license or to suspend, revoke, or deny renewal of a license, the applicant or license holder is entitled to a hearing conducted by the State Office of Administrative Hearings as provided by Chapter 40.

(b) Notice of the hearing shall be provided to:

(1) the applicant or license holder; and

(2) any insurer indicated on the application as desiring that the license be issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.105. APPLICATION FOR LICENSE AFTER DENIAL OF APPLICATION OR REVOCATION OF LICENSE. (a) This section does not apply to a person who holds a license or certificate of authority issued under Title 11.

(b) An individual whose license application has been denied or whose license has been revoked under this subchapter may not apply for an agent license before the fifth anniversary of:

(1) the effective date of the denial or revocation; or

(2) the date of a final court order affirming the denial or revocation if judicial review was sought.

(c) A license application filed after the time required by Subsection (b) may be denied by the commissioner if the applicant fails to show good cause why the denial or revocation should not be a bar to the issuance of a new license.

(d) Subsections (b) and (c) do not apply to an applicant whose license application was denied or revoked for failure by the applicant to:

(1) pass a required written examination;

(2) complete continuing education or pay an applicable fine under Section 4004.055(a); or

(3) submit a properly completed license application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 11, eff. September 1, 2015.

Sec. 4005.106. APPLICATION FOR LICENSE AFTER CERTAIN DETERMINATIONS. (a) In addition to any other penalty imposed under this code, a person who the department determines has engaged in conduct described by this section may not obtain a license as an agent before the fifth anniversary of the date of the determination.

(b) This section applies to a person who:

(1) acts as an agent without holding a license under this code;

(2) solicits an insurance contract or acts as an agent without having been appointed or designated by an authorized insurer, association, or organization to do so as provided by this code;

(3) solicits an insurance contract or acts as an agent for a person, including an insurer, association, or organization, who is not authorized to engage in the business of insurance in this state without holding a surplus lines agent license issued under Chapter 981; or

(4) as an officer or representative of an insurer, knowingly contracts with or appoints as an agent a person who does not hold a valid license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.107. DISCIPLINARY PROCEEDING FOR CONDUCT COMMITTED BEFORE SURRENDER OR FORFEITURE OF LICENSE. (a) The department may institute a disciplinary proceeding against a former license holder for conduct committed before the effective date of a voluntary surrender or automatic forfeiture of the license.

(b) In a proceeding under this section, the fact that the license holder has surrendered or forfeited the license does not affect the former license holder's culpability for the conduct that

is the subject of the proceeding.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.108. DISABILITY PROBATION. (a) This section does not apply to a person who holds a license or certificate of authority issued under Title 11.

(b) Instead of or in addition to taking disciplinary action under Section 4005.102, 4005.103, 4005.105(c), or 4005.107, the department may order that a license holder who is disabled be placed on disability probation under the terms specified under Chapter 4006 and department rules.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.109. FINES. (a) To expedite the department's processing of certain violations of this code, the commissioner by rule may establish fines for certain violations.

(b) A violation for which a fine may be assessed under this section includes a failure to:

(1) obtain the total number of continuing education hours before the expiration date of a license;

(2) timely report a change of address to the department; or

(3) notify the department of an administrative action against the agent by a financial or insurance regulator of another state or of the federal government.

(c) This section does not limit the department's authority to take any other disciplinary action against a license holder as otherwise provided by this code.

(d) The dispute of an assessment of a fine under this section is a contested case subject to Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 12, eff. September 1, 2015.

Sec. 4005.110. ENFORCEMENT OF TITLE. The attorney general, a

district or county attorney, or the department acting through the commissioner may bring a proceeding for an injunction or bring any other proceeding to enforce this title and to enjoin any person, firm, corporation, or depository institution from engaging in or attempting to engage in the business of insurance in violation of this code or any other insurance law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. CRIMINAL PENALTIES

Sec. 4005.151. ACTING AS AGENT AFTER LICENSE SUSPENSION OR REVOCATION; CRIMINAL PENALTY. (a) A person commits an offense if the person acts as an agent after the person's agent license has been suspended or revoked.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 58 (H.B. 1305), Sec. 1, eff. September 1, 2013.

Sec. 4005.152. AGENT ASSISTING OR CONSPIRING WITH PERSON WHOSE LICENSE HAS BEEN SUSPENDED OR REVOKED; CRIMINAL PENALTY. (a) A person commits an offense if the person is an agent who holds a license under this code and the person assists or conspires with a person whose license as an agent has been suspended or revoked to act as an agent.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed $1,000;

(2) confinement in jail for a term of not more than six months; or

(3) both fine and confinement in jail under this subsection.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4005.153. EMBEZZLEMENT OR CONVERSION BY AGENT; CRIMINAL PENALTY. (a) A person commits an offense if the person, as an agent for an insurer lawfully engaged in the business of insurance in this state, collects premiums or otherwise receives money or a substitute for money, and the person:

(1) embezzles, fraudulently converts, or appropriates to the person's own use the money or substitute for money; or

(2) with intent to embezzle and contrary to the instructions of or without the consent of the insurer, takes, secretes, or otherwise disposes of or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies, any money or substitute for money received by the person in the person's capacity as agent or broker.

(b) A person who commits an offense under this section shall be punished as if the person had stolen the money or substitute for money.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

CHAPTER 4006. DISABILITY PROBATION OF AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4006.001. DEFINITION. In this chapter, "disability" means any physical, mental, or emotional condition that results in an agent's inability to carry out the agent's professional responsibilities to insureds, the profession, or the public.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4006.002. RULES. The commissioner may adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 4006.051. DISABILITY PROBATION ORDER. (a) The department may order that an agent be placed on disability probation if, after notice and an opportunity for a hearing, the department determines that the agent is suffering from a disability.

(b) The department may order disability probation for an agent only if the agent demonstrates that:

(1) the disability can be successfully arrested and treated while the agent is engaged in the agent's professional business;

(2) the disability is unlikely to cause harm to the public during the period of rehabilitation;

(3) adequate supervision of any necessary conditions of the probation will occur; and

(4) the agent is capable of competently performing the agent's professional duties.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4006.052. RESTITUTION. (a) The department may order disability probation for an agent only if the agent makes full restitution during the probation period to all insureds and other persons harmed by the agent's:

(1) violation of this code or other laws regulating the business of insurance in this state; or

(2) failure to comply with other professional responsibilities.

(b) The department shall require the restitution described by Subsection (a) as a condition of the probation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4006.053. DURATION OF PROBATION. (a) If the department orders disability probation, the department shall set the probation for a specified period or until further order of the department.

(b) The department may order a probation period that exceeds the one-year maximum suspension authorized under Section 82.052(1).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4006.054. PROBATION CONDITIONS. (a) An order placing an agent on disability probation must state the probation conditions.

(b) In establishing the probation conditions, the department shall consider:

(1) the nature and circumstances of the agent's conduct;

(2) the agent's history, character, and condition; and

(3) the nature of the agent's disability.

(c) The department may impose on the agent any of the following probation conditions:

(1) periodic reports to the department;

(2) satisfactory completion of a course of study required by the department;

(3) payment of costs, including reasonable attorney's fees and other expenses, related to the proceedings before the department;

(4) psychological evaluation, counseling, and treatment;

(5) drug and alcohol abuse evaluation, counseling, and treatment;

(6) abstinence from alcohol or drugs;

(7) mandatory attendance at meetings of Alcoholics Anonymous, Narcotics Anonymous, or similar support groups;

(8) periodic random urine testing to screen for drug and alcohol abuse; and

(9) any other probation condition that the department considers appropriate.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4006.055. SUPERVISION DURING PROBATION. The department shall supervise an agent placed on disability probation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4006.056. EFFECT OF NONCOMPLIANCE. On a showing of an agent's failure to comply with the disability probation conditions, the department may:

(1) revoke the probation; or

(2) impose other conditions that the department considers necessary for the public's protection and the agent's rehabilitation.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

CHAPTER 4007. NOTICE TO DEPARTMENT BY CERTAIN PROPERTY AND CASUALTY INSURANCE COMPANIES REGARDING AGENTS

Sec. 4007.001. APPLICABILITY OF CHAPTER. This chapter applies only to an insurance company authorized to engage in the business of insurance in this state under:

(1) a provision of:

(A) Chapter 5, 1805, or 2171; or

(B) Subtitle B, C, D, E, F, H, or I, Title 10; or

(2) Chapter 861, 862, 883, 911, 912, 941, 942, 984, or 3503.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1I.001, eff. April 1, 2009.

Sec. 4007.002. NOTICE TO DEPARTMENT REQUIRED. (a) On forms prescribed by the commissioner, an insurance company shall notify the department not later than the 30th day after the date on which:

(1) balances due from an insurance agent for more than 90 days exceed $1 million or 10 percent of the company's policyholder surplus computed on December 31 of the preceding year or the most recent quarter if a report is specifically required by the department;

(2) an agent's authority to settle claims for the company is withdrawn; or

(3) the contract with an agent is canceled or terminated.

(b) An insurance company may comply with the notification requirement of Subsection (a)(1) by submitting a single annual report if:

(1) the company routinely operates above the limit established by Subsection (a)(1); and

(2) the commissioner verifies that fact under a procedure adopted by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1I.001, eff. April 1, 2009.

CHAPTER 4008. AGENT CERTIFICATION AND EDUCATION PROGRAMS FOR COMPLEX INSURANCE PRODUCTS

Sec. 4008.001. PURPOSE. Certain insurance products are so complex that the general agent licensing and continuing education requirements are insufficient to ensure the level of agent expertise

necessary to safeguard consumer interests. Agents should be equipped with the necessary skills and knowledge to assist insureds appropriately in their purchases. Requiring agent training or demonstration of knowledge before an agent may sell particularly complex products mitigates the negative impact caused by agents selling complex products without the training and knowledge necessary to sell those products in a manner that is fair and beneficial to insureds.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

Sec. 4008.002. TRAINING AND EXAMINATION REQUIREMENTS AUTHORIZED. (a) The commissioner may adopt rules requiring an agent who holds a license issued under this code to be certified, through specific education, training, examination, and experience requirements as provided by this chapter, before an agent may sell a product or product line designated by the commissioner.

(b) Education, training, examination, and experience requirements established by rule under this chapter may be used to satisfy any other agent education, training, examination, and experience requirements otherwise established under this code.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

Sec. 4008.003. RULES. (a) In adopting rules under this chapter, the commissioner shall:

(1) designate the products or product lines that may not be sold without certification under this chapter; and

(2) specify the reasons why it is necessary that the sale of a designated product or product line requires education, experience, or examination.

(b) By rule, the commissioner may specify:

(1) any precertification education or experience that must be completed before a designated product or product line may be sold by an agent;

(2) whether an agent must complete a precertification examination concerning the designated product or product line the

agent intends to sell;

(3) whether an agent certified under this chapter must complete specific continuing education to maintain the certificate; and

(4) whether, and if so, how frequently, an agent certified under this chapter must periodically retake the examination to maintain the certificate.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

Sec. 4008.004. APPLICATION OF CERTIFICATION REQUIREMENTS TO CERTAIN AGENTS. (a) The commissioner by rule shall establish whether the certification requirements established under this chapter for sale by an agent of a designated product or product line apply:

(1) only to an agent who, as of the effective date of the certification requirement, does not hold the underlying agent license required to sell that product or product line; or

(2) to each licensed agent who engages in the sale of that product or product line.

(b) If the commissioner adopts rules requiring each agent described by Subsection (a)(2) to be certified under this chapter, the rules must specify the date by which the agent must comply with the certification requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

Sec. 4008.005. ISSUANCE OF CERTIFICATE. The department shall issue a certificate under this chapter to an agent if the department determines that the agent:

(1) has submitted a properly completed certification application to the department in a form acceptable to the department;

(2) has completed, within the 12-month period preceding the date of the certification application, all requirements for the certification required by rules adopted under this chapter; and

(3) has not committed an act for which a license or certification may be denied under Subchapter C, Chapter 4005.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

Sec. 4008.006. CERTIFICATE EXPIRATION. Unless the commissioner by rule specifies a different period, each certificate issued under this chapter expires on the expiration date of the agent's appropriate underlying license.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

Sec. 4008.007. CERTIFICATE RENEWAL. (a) An agent may renew an unexpired certificate before the expiration of the certificate by:

(1) completing all renewal requirements established by rule under this chapter; and

(2) filing a properly completed renewal application with the department in a form acceptable to the department.

(b) A person may not renew a certificate that has been suspended or revoked.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

Sec. 4008.008. ADMINISTRATION BY TESTING SERVICE AUTHORIZED. The commissioner may accept an examination administered by a testing service, as provided under Subchapter B, Chapter 4002, to satisfy an examination requirement required by rule under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 451 (H.B. 2456), Sec. 5, eff. June 19, 2009.

SUBTITLE B. AGENTS

CHAPTER 4051. PROPERTY AND CASUALTY AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4051.001. APPLICABILITY OF CHAPTER. (a) This subchapter and Subchapters B-E, G, and I apply to each agent of an insurer authorized to engage in the business of property and casualty

insurance in this state.

(b) This subchapter and Subchapters B-E, G, and I apply to each person who performs the acts of an agent, as described by Section 4001.051, whether through an oral, written, electronic, or other form of communication, by soliciting, negotiating, procuring, or collecting a premium on an insurance contract offered by any kind of insurer authorized to engage in the business of property and casualty insurance in this state, including:

(1) a fidelity or surety company;

(2) a mutual insurance company, including a farm mutual or a county mutual;

(3) a reciprocal or interinsurance exchange; and

(4) a Lloyd's plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.23, eff. September 1, 2007.

Sec. 4051.002. REQUIREMENTS APPLICABLE TO CERTAIN AGENT CONTRACTS. An agent's contract entered into on or after August 27, 1973, by an insurer engaged in the business of property and casualty insurance in this state is subject to Chapter 444.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2J.003, eff. April 1, 2009.

SUBCHAPTER B. GENERAL PROPERTY AND CASUALTY LICENSE

Sec. 4051.051. LICENSE REQUIRED. (a) A person is required to hold a general property and casualty license if the person acts as:

(1) an agent who writes property and casualty insurance for an insurer authorized to engage in the business of property and casualty insurance in this state; or

(2) an agent who writes any other kind of insurance as required by the commissioner for the protection of the insurance consumers of this state.

(b) Notwithstanding Subsection (a), a person is not required to

hold a general property and casualty license to engage in an activity described by Subsection (a) if the person:

(1) holds a license under this chapter as a personal lines property and casualty agent; and

(2) limits activities described by Subsection (a) to those activities authorized under the scope of the person's license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.24, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 17, eff. September 1, 2021.

Sec. 4051.052. AUTHORITY TO WRITE ADDITIONAL LINES. A person who holds a general property and casualty license may, in addition, write the kinds of insurance contracts described by:

(1) Section 4051.101 and Subchapter E; or

(2) Chapter 4055.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.053. AUTHORITY TO WRITE CERTAIN ACCIDENT AND HEALTH INSURANCE. A person who holds a general property and casualty license may, without holding a license under Chapter 4054, write health and accident insurance for a property and casualty insurer authorized to sell those insurance products in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.054. DECEASED, DISABLED, OR INSOLVENT AGENTS; EMERGENCY LICENSE. (a) If a property and casualty agent dies, becomes disabled, or is found to be insolvent and unable to pay for premiums as they become due to an insurer, the department may issue, without examination, to an applicant for a property and casualty agent license an emergency license on receipt of proof satisfactory to the department that the emergency license is necessary to preserve the agency assets of the deceased, disabled, or insolvent agent.

(b) An emergency license is valid for 90 days in any 12 consecutive months and may be renewed by the department for an additional 90 days during the 12-month period if the other requirements of Subtitle A are satisfied.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. LIMITED PROPERTY AND CASUALTY LICENSE

Sec. 4051.101. LICENSE REQUIRED. (a) Except as provided by Section 4051.052, a person is required to hold a limited property and casualty license if the person acts as an agent who writes:

(1) job protection insurance as defined by Section 962.002;

(2) exclusively, insurance on growing crops under Subchapter F;

(3) any form of insurance authorized under Chapter 911 for a farm mutual insurance company;

(4) exclusively, any form of insurance authorized to be solicited and written in this state that relates to:

(A) the ownership, operation, maintenance, or use of a motor vehicle designed for use on the public highways, including a trailer or semitrailer, and the motor vehicle's accessories or equipment; or

(B) the ownership, occupancy, maintenance, or use of a manufactured home classified as personal property under Section 2.001, Property Code;

(5) a prepaid legal services contract under Article 5.13-1 or Chapter 961;

(6) exclusively, an industrial fire insurance policy:

(A) covering dwellings, household goods, and wearing apparel;

(B) written on a weekly, monthly, or quarterly basis on a continuous premium payment plan; and

(C) written for an insurer exclusively engaged in the business as described by Section 912.310;

(7) credit insurance, except as otherwise provided by Chapter 4055; or

(8) any other kind of insurance, if holding a limited property and casualty license to write that kind of insurance is determined necessary by the commissioner for the protection of the

insurance consumers of this state.

(b) Subsection (a)(2) applies to an entity chartered by the federal Farm Credit Administration, as provided by the farm credit system under 12 U.S.C. Section 2001 et seq., as amended.

(c) This section does not apply to a person who wrote for the previous calendar year:

(1) policies authorized by Chapter 911 for a farm mutual insurance company that generated, in the aggregate, less than $50,000 in direct premium;

(2) industrial fire insurance policies that generated, in the aggregate, less than $20,000 in direct premium; or

(3) policies authorized by Chapter 962 for an insurer that generated, in the aggregate, less than $40,000 in direct premium.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2J.004, eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 11.001, eff. September 1, 2011.

Sec. 4051.102. DESIGNATION OF KINDS OF INSURANCE. A person who holds a limited property and casualty license may write only the kind of insurance designated on the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER E. COUNTY MUTUAL AGENT LICENSE

Sec. 4051.201. LICENSE ISSUANCE. The department shall issue a license to an individual applicant to act as an agent for a county mutual insurance company under Chapter 912 on receipt of certification from the company that the applicant has:

(1) completed a course of study and instruction in compliance with this subchapter; and

(2) passed without aid a written examination administered by the company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.202. COURSE. (a) To be eligible to receive a license under this subchapter, an applicant must complete a course of study and instruction offered by the applicable company on motor vehicle insurance and insurance covering dwellings.

(b) The course of study and instruction must:

(1) be at least five hours in duration; and

(2) include instruction on:

(A) the policies to be sold; and

(B) the laws relating to the regulation of insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.203. EXAMINATION. (a) The commissioner shall prescribe a uniform examination for applicants that fairly tests knowledge of the information contained in the course provided under Section 4051.202.

(b) The department shall authorize a county mutual insurance company to administer the examination after approval by the department of a complete outline and explanation of the course and the manner of conducting the examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.204. INVESTIGATION BY DEPARTMENT. The department may investigate as necessary the manner of instruction and the examination administered by a company under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.205. WITHDRAWAL OF COMPANY'S AUTHORITY. The department may withdraw from a county mutual insurance company the authority under this subchapter to offer instruction and administer an examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.206. APPLICABILITY OF LIMITED LICENSE LAWS. Except as specifically provided by this subchapter, the provisions of this title that apply to the holder of a limited license apply to the holder of a license issued under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER F. AGRICULTURAL INSURANCE AGENT

Sec. 4051.251. APPOINTMENT OF AGENT. (a) An insurer that holds a valid certificate of authority to engage in the business of insurance in this state and whose authority in this state and each other jurisdiction in which the insurer is authorized to engage in the business of insurance is limited to the business of insuring risks on growing crops may, subject to this subchapter, appoint and act through an agent licensed under Subchapter B, C, or E.

(b) An agent appointed under Subsection (a) may act as an agent for more than one insurer but may act as an agent under this subchapter only with respect to the business of insuring risks on growing crops.

(c) This title applies to the licensing and regulation of an agent appointed under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.252. REQUIREMENTS FOR APPOINTMENT; PROCEDURE. (a) To appoint an agent under this subchapter, an insurer must submit a completed appointment form to the department and pay a nonrefundable fee in an amount set by the department.

(b) The appointment form must be signed by a representative of the insurer.

(c) The department shall approve an appointment unless the department determines that the applicant does not meet the requirements of this title.

(d) The department may waive any examination requirement imposed by this title for a license applicant seeking an appointment under this subchapter who has passed an examination as required by Federal Crop Insurance Corporation guidelines for administering the federal crop insurance program.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.253. ACCEPTANCE OF CERTAIN CONTINUING EDUCATION. The department may accept continuing education hours completed under the guidelines of the Federal Crop Insurance Corporation as satisfying the continuing education requirements imposed under this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.254. RULES. The commissioner may adopt rules necessary to implement this subchapter and to meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER H. TERMINATION OR SUSPENSION OF AGENT CONTRACTS BY PROPERTY AND CASUALTY INSURERS

Sec. 4051.351. APPLICABILITY OF SUBCHAPTER. (a) Except as provided by Subsection (b), this subchapter applies to each contract between an agent and an insurer engaged in the business of property and casualty insurance in this state.

(b) This subchapter does not apply to:

(1) the termination or suspension by an insurer of an agent's contract because of:

(A) insolvency;

(B) abandonment;

(C) gross and wilful misconduct;

(D) failure to pay the insurer money due to the insurer after receipt of a written demand; or

(E) revocation of the agent's license by the department; or

(2) the termination or suspension by an insurer of an agent's contract if the insurance policies and insurance business are owned by the insurer rather than the agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.352. SUSPENSION OF AGENT'S CONTRACT; OTHER DEFINITIONS. (a) For purposes of this subchapter, "suspension," with regard to an agent's contract, means the temporary cessation of business relations between an insurer and an agent and refusal by the insurer to accept insurance contracts submitted by the agent. The term does not include a situation in which business is suspended immediately after a natural disaster.

(b) The commissioner shall adopt reasonable rules to provide definitions necessary to accomplish the purposes of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.353. NOTICE REQUIRED BEFORE TERMINATION OR SUSPENSION OF CONTRACT. (a) An insurer may not terminate or suspend a contract with an appointed agent that has been in effect for at least two years unless the insurer provides written notice of the termination or suspension to the agent at least six months before the date the termination or suspension takes effect.

(b) A contract that replaces or revises a contract that has been in effect for at least two years is subject to this subchapter if there has not been a material change in the ownership of the agency.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.354. AUTOMATIC TERMINATION OF CONTRACT ON WITHDRAWAL FROM STATE OR REDUCTION OF BUSINESS. (a) An insurer that withdraws from this state or reduces the insurer's total annual premium volume by at least 75 percent in any year is considered to have terminated the contracts of the insurer's agents. Except as provided by Subsection (b), the insurer shall comply with the requirements of this subchapter.

(b) An insurer described by Subsection (a) shall renew each contract for property and casualty insurance for the affected agent for 24 months from the date of the notice of termination or suspension of the contract.

(c) This section does not apply to the transfer of business from an insurer to another insurer with which the agent has a contract and that:

(1) is under common ownership; and

(2) is admitted to engage in the business of insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.355. RENEWAL OF INSURANCE CONTRACTS AFTER NOTICE OF TERMINATION OR SUSPENSION. (a) Except as provided by Subsection (b), an insurer that terminates or suspends an agent's contract with an appointed agent shall renew all contracts for property and casualty insurance for the agent during the six months after the effective date of the termination or suspension of the contract.

(b) The insurer may decline to renew an insurance contract if any risk does not meet the insurer's current underwriting standards. The insurer must provide at least 60 days' notice to the agent of the insurer's intent not to renew the contract.

(c) An insurer that renews an insurance contract under this section shall pay to the agent commissions for the renewal according to the commission schedule that was in effect for the agent before the insurer's decision to terminate or suspend the agent's contract.

(d) An insurer that renews an insurance contract under this section may not require the agent to convert from agency billing to company billing during the termination period unless the agent agrees in writing to the conversion.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.356. INSURER REFUSAL TO RENEW AGENT'S BUSINESS PROHIBITED. During the term of the agent's contract, the insurer may not refuse to renew business from the agent that complies with the underwriting standards in effect for agents of the insurer whose contracts have not been terminated or suspended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.357. INSURER APPROVAL FOR NEW BUSINESS OR INCREASE IN LIABILITY. An agent who receives notice of termination or suspension of the agent's contract from an insurer may not write, without the

written approval of the insurer:

(1) any new business; or

(2) any increase in liability on a renewal policy or an existing policy.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.358. PROVISION OF UNDERWRITING STANDARDS TO AGENT WHOSE CONTRACT IS TERMINATED OR SUSPENDED. (a) On providing notice to an agent of termination or suspension of the agent's contract under this subchapter, the insurer shall provide to the agent the insurer's written underwriting standards. The standards must conform to the underwriting standards that were in effect for that agent before the insurer's decision to terminate or suspend the agent's contract.

(b) An insurer may provide different underwriting standards to different agents of the insurer if the standards are not used in a way that prevents or discourages the renewal of the insurance policies of an agent whose contract is terminated or suspended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.359. PAYMENT OF MONEY DUE INSURER. An insurer shall allow an agent whose contract has been terminated or suspended under this subchapter to pay to the insurer all money due under the same accounts current payment terms in effect for agents of the insurer whose contracts have not been terminated or suspended.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.360. REVISION OF TERMINATION PROVISIONS OF AGENT'S CONTRACT. (a) This subchapter does not prohibit an amendment of or addendum to an agent's contract providing that the contract may be terminated before the time required by this subchapter if the agent agrees in writing to the earlier termination.

(b) An insurer that proposes to revise the termination provisions of an agent's contract must first present the agent with a separate written impact statement that summarizes any effect that the

proposed amendment or addendum would have on the agent's rights under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.361. ADMINISTRATIVE PENALTY. If the department determines that an insurer has violated this subchapter, the insurer is subject to an administrative penalty as provided by Chapter 84 of not less than $1,000 or more than $10,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4051.362. ACTION FOR DAMAGES. An agent who has sustained actual damages as a result of an insurer's violation of this subchapter may bring an action against the insurer regardless of whether the department has determined that there has been a violation of this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER I. PERSONAL LINES PROPERTY AND CASUALTY AGENT

Sec. 4051.401. PERSONAL LINES PROPERTY AND CASUALTY LICENSE; LICENSE REQUIRED. A person is required to hold a personal lines property and casualty license if the person acts as an agent who writes property and casualty insurance sold to individuals and families primarily for personal or household use for an insurer authorized to engage in the business of property and casualty insurance in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.01, eff. September 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 18, eff. September 1, 2021.

Sec. 4051.402. AUTHORITY TO WRITE ADDITIONAL LINES. (a) A person who holds a personal lines property and casualty license may

write the kind of insurance contracts described by:

(1) this subchapter;

(2) Subchapters C and E; and

(3) Chapter 4055.

(b) In addition to any of the insurance contracts described by Subsection (a), a person who holds a personal lines property and casualty license may write accident and health insurance contracts for individuals and families for personal, family, or household purposes for a property and casualty insurer authorized to sell those insurance products in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.01, eff. September 1, 2007.

Sec. 4051.403. PERSONAL LINES INCLUDED IN GENERAL PROPERTY AND CASUALTY LICENSE. Notwithstanding Section 4051.401, a person who holds a general property and casualty license under Subchapter B may write the kinds of insurance described by this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.01, eff. September 1, 2007.

Sec. 4051.404. FEES. Section 4001.006 applies to all fees collected under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.01, eff. September 1, 2007.

CHAPTER 4053. MANAGING GENERAL AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4053.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means a person who is classified as an affiliate under Section 823.003(a).

(2) "Insurer" means an insurance company, carrier, corporation, reciprocal or interinsurance exchange, mutual, association, county mutual insurance company, Lloyd's plan, or other insurance carrier authorized to engage in the business of insurance in this state.

(3) "Managing general agent" means a person, firm, or corporation that has supervisory responsibility for the local agency and field operations of an insurer in this state or that is authorized by an insurer to accept or process on the insurer's behalf insurance policies produced and sold by other agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.002. EXCEPTION. An agent licensed under Subchapter E, Chapter 981, Subchapters B-E or I, Chapter 4051, or Chapter 4056 is not a managing general agent unless the agent accepts 50 percent or more of the agent's total annual business or does $500,000 or more of total annual business as measured by premium volume, whichever amount is less, from insurance policies produced and sold by other agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.25, eff. September 1, 2007.

Sec. 4053.003. INAPPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) the transaction of the business of life, health, and accident insurance, including variable life insurance and variable annuity contracts;

(2) a full-time salaried employee of an insurer acting for and in connection with the insurance business of the insurer; or

(3) an adjuster or inspector of risks for an insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.004. REGULATION OF MANAGING GENERAL AGENTS. This title applies to the licensing and regulation of a person acting as a managing general agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.005. RULES. The commissioner may adopt reasonable rules for the administration of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 4053.051. LICENSE REQUIRED; EXEMPTIONS. (a) Except as provided by Subsection (b), a person, firm, or corporation may not act as a managing general agent unless the person, firm, or corporation holds a license issued under this chapter.

(b) A business corporation is not required to hold a license issued under this chapter to act as a managing general agent if:

(1) the corporation is authorized to engage in business in this state;

(2) all of the corporation's outstanding stock is solely owned by an insurer authorized to engage in business in this state and the corporation's business affairs are completely controlled by that insurer;

(3) the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurer and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive the commissions directly from the insurer and its subsidiaries and affiliates; and

(4) the corporation does not engage in any other act of a managing general agent as provided by this chapter.

(c) Notwithstanding Subsection (b), the managing general agent shall execute on the insurer's behalf a contract entered into with an agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.053. SINGLE LICENSE REQUIRED. A license issued under this chapter entitles the license holder to represent or act for one or more insurers as a managing general agent. The license holder is not required to hold a separate license for each insurer the license holder represents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.054. NOTICE AND APPROVAL OF APPOINTMENT. (a) Each appointment to act as a managing general agent shall be reported to the commissioner on a form prescribed by the commissioner.

(b) The form must include:

(1) the details required by rules adopted under this chapter;

(2) the insurer's name and identifying number;

(3) the managing general agent's name and address;

(4) a statement by an officer of the insurer that the officer or the officer's agent has personal knowledge that the managing general agent has had experience or instruction that qualifies the agent to act as a managing general agent;

(5) a statement of whether the managing general agent may exercise claim settlement authority for the insurer and, if so:

(A) whether that authority exceeds $25,000 on any one claim; and

(B) whether that authority includes third-party liability other than property damage; and

(6) a statement of whether funds exceeding $100,000 are customarily held by the managing general agent to pay losses and loss adjustment expenses for the insurer.

(c) For each additional appointment for which a managing general agent applies, the agent shall pay a nonrefundable fee in an amount not to exceed $16 as determined by the department.

(d) If approval of an additional appointment is not received from the commissioner before the eighth day after the date the commissioner receives the completed application and fee, the managing general agent and insurer may assume, in the absence of notice of disapproval from the commissioner, that the commissioner approves the application and the managing general agent may act for the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.055. LAPSE OF LICENSE. If a license holder is not appointed or under appointment to represent an insurer at the time the license is subject to renewal, the license lapses and the commissioner shall deny the renewal application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. POWERS AND DUTIES OF MANAGING GENERAL AGENTS

Sec. 4053.101. GENERAL POWERS AND DUTIES. A managing general agent acting for an insurer may:

(1) receive and pass on daily reports and monthly accounts;

(2) receive and be responsible for agency balances;

(3) handle the adjustment of losses; or

(4) appoint or direct general property and casualty agents and personal lines property and casualty agents in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.26, eff. September 1, 2007.

Sec. 4053.102. CONTRACTS. (a) An insurer may not accept business from a managing general agent and the agent may not place business with the insurer without a written contract that addresses:

(1) the responsibilities of each party;

(2) cancellation or termination;

(3) reports, records, and auditing; and

(4) if applicable:

(A) premium volume limits;

(B) appointment or cancellation of agents;

(C) claims settlement;

(D) underwriting; and

(E) reinsurance.

(b) The commissioner may adopt rules establishing requirements for a contract with a managing general agent.

(c) A contract with a managing general agent and a report or record submitted under that contract are subject to review by the department under Section 38.001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.103. ACCOUNT REPORT. (a) At least once each calendar quarter, a managing general agent shall submit an account report to each insurer with whom the agent has a contract.

(b) The account report must include, as applicable, a statement of:

(1) written, earned, and unearned premiums;
(2) losses and loss expenses paid and outstanding;
(3) losses incurred but not reported; and
(4) management fees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.104. SEPARATE RECORDS. (a) For each insurer with which a managing general agent has a contract, the agent shall maintain separate records of the business handled by the agent for the insurer.

(b) The managing general agent shall make a record required under Subsection (a) available for inspection by:
(1) each insurer; and
(2) the department's examiners.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.105. ESCROW ACCOUNT. (a) A managing general agent shall maintain an escrow account in a bank that:
(1) is a member of the Federal Reserve System; and
(2) has its accounts insured by the Federal Deposit Insurance Corporation.

(b) On receipt, the managing general agent shall deposit in the escrow account all money collected for each insurer with which the agent has a contract.

(c) Except as provided by the contract required by Section 4053.102, a managing general agent may not use, take as an offset, or convert money that is or should have been deposited in the escrow account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.106. FIDUCIARY CAPACITY. A managing general agent holds money on behalf of an insured or insurer in a fiduciary capacity and shall properly account for that money as required by law, department rules, and a contract with an insurer. The department's examiners may audit money held in a fiduciary capacity.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.107. FINANCIAL EXAMINATION. (a) As the commissioner considers necessary, a managing general agent shall submit to an examination of the agent's financial condition and the agent's compliance with the laws of this state affecting the conduct of the agent's business.

(b) The examination may be conducted by:

(1) the commissioner;

(2) one or more commissioned examiners; or

(3) a certified public accountant or other person or firm qualified to perform those examinations.

(c) The managing general agent shall pay the examination expenses in an amount the commissioner certifies as just and reasonable.

(d) A person with whom another state contracts to perform any examination initiated by the other state of a managing general agent licensed under this chapter shall register with and provide the following information to the department's chief examiner:

(1) the person's name;

(2) if the person is not an individual, the identity of each examiner or other person who will perform any part of the examination;

(3) the name of the state that contracted with the person;

(4) the identity of the managing general agent to be examined;

(5) a description of each issue that the person has been contracted to examine;

(6) an estimate of the examination costs to be charged to the managing general agent to be examined;

(7) a copy of any contract between the person and the state regulatory body that initiated the examination and the letter authorizing the examination; and

(8) a list of the previous examinations conducted on the same managing general agent on behalf of any state within the last three years.

(d-1) On accepting a person's registration under Subsection (d), the department shall send written confirmation of the acceptance to:

(1) the person;

(2) the managing general agent to be examined; and

(3) the state regulatory body that initiated the examination.

(e) It is a violation of this code for a person to accept compensation from multiple states for the same examination, if doing so results in duplicative costs to the managing general agent being examined. It is not a violation of this code for:

(1) an examiner to conduct an examination of a managing general agent for the benefit of multiple states in a coordinated examination; and

(2) the examiner to accept compensation from the states participating in the coordinated examination to reduce the examination costs to the managing general agent being examined.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1030 (H.B. 4359), Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 185 (S.B. 1229), Sec. 3, eff. May 28, 2011.

Sec. 4053.108. REQUIRED NOTICES TO DEPARTMENT. (a) On forms prescribed by the department, a managing general agent shall notify the department not later than the 30th day after the date any of the following occurs:

(1) balances due to an insurer for more than 90 days exceed:

(A) $1 million; or

(B) 10 percent of the insurer's policyholder surplus, as reported in the annual statement filed with the department;

(2) balances due for more than 60 days from a property and casualty agent or managing general agent appointed by or reporting to the managing general agent exceed $500,000;

(3) authority to settle claims for an insurer is withdrawn;

(4) money held for an insurer for losses is greater than an amount that is $100,000 more than the amount necessary to pay the losses and loss adjustment expenses expected to be paid on the insurer's behalf within the next 60-day period; or

(5) the contract required under Section 4053.102 is canceled or terminated.

(b) Notwithstanding the time limitation imposed by Subsection (a), the requirement to file under Subsections (a)(1), (2), and (4) may be met with a single annual report if:

(1) the managing general agent routinely operates above the limits established by those subsections; and

(2) the department verifies that fact in accordance with rules adopted by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.109. REINSURANCE. (a) A managing general agent may not knowingly cede, arrange, facilitate, or bind an insurer to reinsurance.

(b) Notwithstanding Subsection (a), a managing general agent may bind a facultative reinsurance contract in accordance with an obligatory facultative agreement if the contract with the insurer contains reinsurance underwriting guidelines including, for both assumed and ceded reinsurance:

(1) a list of reinsurers with whom the automatic agreements are in effect;

(2) the coverages and amounts or percentages that may be reinsured; and

(3) commission schedules.

(c) A managing general agent may not commit an insurer to participate in insurance or reinsurance syndicates.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.110. REDEMPTION OF CORPORATE SHARES. A corporation acting as a managing general agent may redeem the shares of a shareholder or a deceased shareholder:

(1) on terms agreed on by the board of directors and the shareholder or the shareholder's personal representative; or

(2) at a price and on terms provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. ENFORCEMENT

Sec. 4053.151. DISCIPLINARY ACTION. A person, firm, or corporation that violates this chapter or a rule or order adopted under this title, including this chapter, is subject to:

(1) Subchapters B and C, Chapter 4005; and

(2) Chapter 82.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4053.152. GUARANTY FUND REIMBURSEMENT. (a) If a court finds by a final nonappealable judgment that a violation of this chapter by a managing general agent contributes materially to the insolvency of an insurer under which the agent held an appointment, the agent shall reimburse the appropriate guaranty fund for money paid to cover losses of the insolvent insurer in an amount equal to all payments made from that guaranty fund in excess of:

(1) gross earned premiums and investment income earned on those premiums; and

(2) loss reserves for that business.

(b) The reimbursement made under this section shall be used for losses, loss adjustments, and administrative expenses on business placed by the managing general agent.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

CHAPTER 4054. LIFE, ACCIDENT, AND HEALTH AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4054.001. APPLICABILITY OF CHAPTER. (a) This chapter applies to each agent of an insurer authorized to provide life, accident, and health insurance coverage in this state.

(b) This chapter applies to each person who:

(1) performs the acts of an agent, as described by Section 4001.051, whether through an oral, written, electronic, or other form of communication by soliciting, negotiating, procuring, or collecting a premium on an insurance or annuity contract offered by any type of insurer authorized to engage in the business of life, accident, and

health insurance in this state; or

(2) represents or purports to represent a health maintenance organization in soliciting, negotiating, procuring, or effecting membership in the health maintenance organization.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. GENERAL LIFE, ACCIDENT, AND HEALTH LICENSE

Sec. 4054.051. LICENSE REQUIRED. Except as provided by Subchapter G, a person is required to hold a general life, accident, and health license if the person acts as:

(1) an agent who represents a health maintenance organization;

(2) an industrial life insurance agent for an insurer that writes only weekly premium life insurance on a debit basis under Chapter 1151;

(3) an agent who writes life, accident, and health insurance for a life insurance company;

(4) an agent who writes only accident and health insurance;

(5) an agent who writes fixed or variable annuity contracts or variable life contracts;

(6) an agent who writes for a stipulated premium company:

(A) only life insurance in excess of $25,000 on any one life;

(B) only accident and health insurance; or

(C) both kinds of insurance described by Paragraphs (A) and (B);

(7) an agent who writes life, accident, and health insurance for any type of authorized life insurance company that is domiciled in this state, including a legal reserve life insurance company, and who represents the company:

(A) in a foreign country or territory; and

(B) on a United States military installation or with United States military personnel;

(8) an agent who writes life, accident, and health insurance for a fraternal benefit society except as provided by Section 885.352; or

(9) an agent who writes any other kind of insurance as required by the commissioner for the protection of the insurance

consumers of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.27, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 7, eff. September 1, 2009.

Sec. 4054.052. COMBINATION LIFE INSURANCE AGENT. (a) In this section, a "combination company" means an insurer that writes weekly premium life insurance or monthly ordinary life insurance on a debit basis.

(b) A person may not act as a combination life insurance agent for a combination company unless the person holds a general life, accident, and health license or a life agent license.

(c) A combination company and a combination life insurance agent may also write ordinary life insurance contracts.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.28, eff. September 1, 2007.

Sec. 4054.053. AUTHORITY TO WRITE ADDITIONAL LINES. A person who holds a general life, accident, and health license may, without obtaining an additional license, write the kinds of insurance contracts described by:

(1) Subchapter C, D, or E; or

(2) Chapter 4055.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. LIMITED LIFE, ACCIDENT, AND HEALTH LICENSE

Sec. 4054.101. LICENSE REQUIRED. Except as provided by Section 4054.053, an agent is required to hold a limited life, accident, and health license if the agent writes:

(1) a policy or rider to a policy that provides only:

(A) lump-sum cash benefits in the event of accidental death or dismemberment; or

(B) ambulance expense benefits in the event of accident or sickness;

(2) a prepaid legal services contract under Article 5.13-1 or Chapter 961;

(3) credit insurance, except as otherwise provided by Chapter 4055; or

(4) any other kind of insurance, if holding a limited life, accident, and health license to write that kind of insurance is determined necessary by the commissioner for the protection of the insurance consumers of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.102. DESIGNATION OF KINDS OF INSURANCE. A person who holds a limited life, accident, and health license may write only the kind of insurance designated on the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.103. TEMPORARY LICENSE. An applicant for a limited life, accident, and health license is eligible for a temporary license under Subchapter D, Chapter 4001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. FUNERAL PREARRANGEMENT LIFE INSURANCE LICENSE

Sec. 4054.151. FUNERAL PREARRANGEMENT LIFE INSURANCE AGENT. A funeral prearrangement life insurance agent is a life insurance agent who, subject to the limitations of this subchapter, writes only life insurance policies and fixed annuity contracts to secure the delivery of funeral services and merchandise under prepaid funeral contracts regulated by the Texas Department of Banking under Chapter 154, Finance Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.152. LICENSE ISSUANCE. The department shall issue a license to an individual applicant to act as a funeral prearrangement life insurance agent on receipt of certification from an insurer authorized to write life insurance policies and fixed annuity contracts in this state that the applicant has:

(1) completed a course of study and instruction in compliance with this subchapter; and

(2) passed without aid a written examination administered by the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.153. COURSE. (a) To be eligible to receive a license under this subchapter, an applicant must complete a course of study and instruction offered by an insurer under this section on life insurance policies and fixed annuity contracts.

(b) The course of study and instruction must:

(1) be at least five hours in duration; and

(2) include instruction on:

(A) the life insurance policies and fixed annuity contracts to be sold; and

(B) the laws relating to funeral prearrangement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.154. EXAMINATION. (a) The commissioner shall prescribe a uniform examination for applicants that fairly tests knowledge of the information contained in the course under Section 4054.153.

(b) The department shall authorize an insurer to administer the examination as provided by this section after approval by the department of a complete outline and explanation of the course and the manner of conducting the examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.155. INVESTIGATION BY DEPARTMENT. The department may investigate as necessary the manner of instruction and the

examination administered by an insurer under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.156. WITHDRAWAL OF INSURER'S AUTHORITY. The department may withdraw from an insurer the authority under this subchapter to offer instruction and administer an examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.157. LIMIT ON AGENT'S AUTHORITY. Except as provided by Section 154.2021, Finance Code, a funeral prearrangement life insurance agent licensed under this subchapter may not write any coverage or combination of coverages with an initial guaranteed death benefit on any life that exceeds the total cost of the prepaid funeral benefits purchased under the prepaid funeral contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 615 (S.B. 579), Sec. 1, eff. September 1, 2011.

Sec. 4054.158. REVOCATION; NOTIFICATION. (a) A license issued under this subchapter to act as an agent for an insurer is revoked if the license holder ceases to act as an agent for the insurer.

(b) Not later than the 15th day after the date on which the license holder ceases to act as an agent for an insurer, the insurer or agent shall send written notification to the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.159. CONTINUING EDUCATION EXEMPTION. (a) Notwithstanding any other provision of this code, a funeral home employee or other person who holds a funeral prearrangement life insurance agent license and who writes only life insurance policies and fixed annuity contracts to secure the delivery of funeral

services and merchandise under prepaid funeral contracts regulated by the Texas Department of Banking under Chapter 154, Finance Code, is not required to comply with any continuing education requirements to maintain the license, except that the appointing insurer must educate its appointed agents about any new products sold by the agent to fund prepaid funeral contracts.

(b) A license holder to whom this section applies may be appointed by more than one insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.160. APPLICABILITY OF LIMITED LICENSE LAWS. Except as specifically provided by this subchapter, the provisions of this title that apply to the holder of a limited license apply to the holder of a license issued under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER E. LIFE INSURANCE NOT EXCEEDING $25,000

Sec. 4054.201. LICENSE ISSUANCE; EXCEPTION. (a) The department shall issue a license to an individual applicant to act as an agent who writes only life insurance policies in an amount that does not exceed $25,000 on any one life on receipt of certification from a stipulated premium company, a statewide mutual assessment company, a local mutual aid association, or a local mutual burial association, that the applicant has:

(1) completed a course of study and instruction in compliance with this subchapter; and

(2) passed without aid a written examination administered by the insurer.

(b) A license is not required under this subchapter for an agent who, in the preceding calendar year, wrote policies that generated, in the aggregate, less than $20,000 in direct premium.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 9, eff. September 1, 2009.

Sec. 4054.202. COURSE. (a) To be eligible to receive a license under this subchapter, an applicant must complete a course of study and instruction offered by an insurer under this section on life insurance and fixed annuities.

(b) The course of study and instruction must:

(1) be at least five hours in duration; and

(2) include instruction on:

(A) the policies to be sold; and

(B) the laws relating to the regulation of insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.203. EXAMINATION. (a) The commissioner shall prescribe a uniform examination for applicants that fairly tests knowledge of the information contained in the course provided under Section 4054.202.

(b) The department shall authorize an insurer described by Section 4054.201 to administer the examination as provided by this section after approval by the department of a complete outline and explanation of the course and the manner of conducting the examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.204. INVESTIGATION BY DEPARTMENT. The department may investigate as necessary the manner of instruction and the examination administered by an insurer under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.205. WITHDRAWAL OF INSURER'S AUTHORITY. The department may withdraw from an insurer the authority under this subchapter to offer instruction and administer an examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.206. LIMIT ON AGENT'S AUTHORITY. An insurance agent licensed under this subchapter may not write any coverage or combination of coverages with an initial guaranteed death benefit that exceeds $25,000 on any life.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 10, eff. September 1, 2009.

Sec. 4054.207. CONTINUING EDUCATION EXEMPTION. (a) Notwithstanding any other provision of this code, a person who holds a license under this subchapter and who writes only life insurance policies and fixed annuity contracts to secure the delivery of funeral services and merchandise under prepaid funeral contracts regulated by the Texas Department of Banking under Chapter 154, Finance Code, is not required to comply with any continuing education requirements to maintain the license, except that the appointing insurer must educate its appointed agents about any new products sold by the agent to fund prepaid funeral contracts.

(b) A license holder to whom this section applies may be appointed by more than one insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.208. APPLICABILITY OF LIMITED LICENSE LAWS. Except as specifically provided by this subchapter, the provisions of this title that apply to the holder of a limited license apply to the holder of a license issued under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER F. RENEWAL OR SERVICE COMMISSIONS TO AGENTS OF LIFE INSURANCE COMPANIES DISCONTINUING BUSINESS IN STATE

Sec. 4054.251. INSURANCE COMPANY LIABILITY FOR PAYMENT OF COMMISSIONS. A life insurance company that discontinues the business

of issuing life insurance policies on the lives of residents of this state remains liable for the payment of renewal or service commissions on life insurance policies previously written by the company under the terms of the company's contracts previously made with agents residing in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.252. MONTHLY AND QUARTERLY STATEMENTS. (a) A life insurance company shall provide to each agent who may be entitled to receive renewal or service commissions from the company under Section 4054.251:

(1) a monthly statement that shows the policies written by the agent for the company that terminated during the month for which the statement is made; and

(2) at least quarterly, a detailed statement of all policies written by the agent for the company on the lives of residents of this state that shows:

(A) the policies in force; and

(B) the policies that have terminated, with the reason for the termination.

(b) A life insurance company is not required to provide an agent with a statement under this section after the expiration of the period during which renewal or service commissions are payable as to all of the policies written by the agent for the company.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4054.253. PRESUMPTION IN LAWSUIT. In a suit against a life insurance company for the recovery of a renewal or service commission under this subchapter, a presumption exists that each policy written by the company on the life of a resident of this state by the agent bringing the suit continues in effect unless the defendant proves the contrary by competent evidence.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER G. LIFE AGENT

Sec. 4054.301. LICENSE REQUIRED. (a) Except as provided by Subsection (b), a person is required to hold a life agent license if the person does not hold a general life, accident, and health license under Subchapter B and the person acts as:

(1) an agent who writes insurance coverage on human lives, including endowment benefits and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income;

(2) an industrial life insurance agent for an insurer that writes only weekly premium life insurance on a debit basis under Chapter 1151;

(3) an agent who writes fixed or variable annuity contracts or variable life contracts;

(4) an agent who writes for a stipulated premium company only life insurance in excess of $25,000 on any one life; or

(5) an agent who writes any other kind of insurance as required by the commissioner for the protection of the insurance consumers of this state.

(b) A person who holds a limited license under Subchapter C and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. A person who holds a life agent license may write the insurance described by that subchapter.

(c) A person who holds a funeral prearrangement life insurance license under Subchapter D and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. A person who holds a life agent license may write the insurance described by that subchapter.

(d) A person who holds a license to write life insurance not exceeding $25,000 under Subchapter E and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. A person who holds a life agent license may write the insurance described by that subchapter.

(e) This subchapter does not apply to a person who holds a specialty license under Chapter 4055 and who engages in the business of insurance only within the scope of the specialty license.

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.02, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1309 (H.B. 2570), Sec. 11, eff. September 1, 2009.

Sec. 4054.302. AUTHORITY TO WRITE SPECIFIED COVERAGES. A person who holds a license under this subchapter may write only insurance described by Sections 4054.301(a)-(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.02, eff. September 1, 2007.

Sec. 4054.303. APPLICABILITY OF CERTAIN REQUIREMENTS. Except as otherwise provided by this code, the provisions of this title that apply to the holder of a general life, accident, and health license apply to the holder of a license issued under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.02, eff. September 1, 2007.

Sec. 4054.304. FEES. Section 4001.006 applies to all fees collected under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 1.02, eff. September 1, 2007.

SUBCHAPTER H. SPECIALTY CERTIFICATION FOR AGENTS SERVING CERTAIN EMPLOYER GROUPS

Sec. 4054.351. CERTIFICATION PROGRAM. The department shall establish a voluntary specialty certification program for individuals who market small employer health benefit plans in accordance with Chapter 1501.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.352. QUALIFICATIONS. (a) To be eligible to receive a specialty certification under this subchapter, an individual must:

(1) hold a general life, accident, and health license under this chapter;

(2) satisfy the requirements of this subchapter; and

(3) submit evidence of completion of training to the department in the manner prescribed by the commissioner.

(b) To maintain a specialty certification under this subchapter, an individual must continue to hold a general life, accident, and health license under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.353. INITIAL TRAINING. (a) To be certified under this subchapter, an individual must first complete training in the law, including department rules, applicable to small employer health benefit plans offered under Chapter 1501.

(b) An individual seeking specialty certification under this subchapter must complete a course applicable to small employer health benefit plans under Chapter 1501, as prescribed and approved by the commissioner. Except as provided by Subsection (c), an individual is not eligible for the specialty certification unless, on completion of the course, it is certified to the commissioner as required by the department that the individual has:

(1) completed the course; and

(2) passed an examination testing the individual's knowledge and qualification.

(c) An individual seeking specialty certification under this subchapter is not required to complete the course and examination required by Subsection (b) if the individual demonstrates to the department, in the manner prescribed by the department, that the individual holds a designation as:

(1) a Registered Health Underwriter (RHU);

(2) a Certified Employee Benefit Specialist (CEBS); or

(3) a Registered Employee Benefits Consultant (REBC).

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.354. RENEWAL. To renew a specialty certification

under this subchapter, the individual must complete five hours of continuing education applicable to small employer health benefit plans during the two-year certification period.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.355. SATISFACTION OF CONTINUING EDUCATION REQUIREMENTS. Each hour of education completed in accordance with this subchapter to obtain or renew a specialty license may be used to satisfy an hour of a continuing education requirement otherwise applicable to the agent under this title.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.356. OFFER OF SERVICES TO ALL GROUP SIZES. To hold a specialty certification under this subchapter, an individual must agree to market small employer health benefit plans to small employers that satisfy the requirements of Chapter 1501 without regard to the number of employees to be covered under the plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.357. ADVERTISING. An individual who holds a specialty certification may advertise, in the manner specified by department rule, that the individual is specially trained to serve small employers.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.358. LIST MAINTAINED BY DEPARTMENT; WEBSITE. The department shall maintain a list of all individuals who hold a specialty certification under this subchapter, together with the business address and phone number of each individual and a general

description of the individual's service area. The department shall publish the list on the department website.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

Sec. 4054.359. RULES. The commissioner, in accordance with Section 36.001, may adopt rules as necessary to administer this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1338 (S.B. 79), Sec. 1, eff. September 1, 2009.

CHAPTER 4055. SPECIALTY AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4055.001. DEFINITION. In this chapter, "specialty license holder" means a person who holds a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.002. APPLICABILITY OF CHAPTER TO CERTAIN AGENTS. (a) A person who holds a general property and casualty license issued under Chapter 4051 or a general life, accident, and health license issued under Chapter 4054 or who holds a substantially equivalent license under this code, as determined by the commissioner, is not required to obtain a specialty license.

(b) A person described by Subsection (a) is subject to the other requirements of this chapter in the solicitation, sale, or delivery of an insurance product that is subject to this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.003. RULES. The commissioner may adopt rules necessary to implement this chapter and to meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.004. APPLICATION. To obtain a specialty license an applicant must:

(1) submit to the commissioner:

(A) a written application:

(i) signed by the applicant;

(ii) on a form and supplements to the form prescribed by the commissioner; and

(iii) containing the information prescribed by the commissioner;

(B) a certification by an insurer authorized to engage in business in this state:

(i) signed and sworn to by an officer of the insurer;

(ii) stating that the insurer is satisfied that the applicant is trustworthy and competent to act as the insurer's agent for a limited purpose authorized by this chapter; and

(iii) stating that if the specialty license applied for is issued by the department the insurer will appoint the applicant to act as an agent for a kind of insurance that is subject to this chapter; and

(C) a nonrefundable license fee set by the department in an amount necessary to administer this chapter; and

(2) comply with the other requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.005. LICENSE ISSUANCE. The commissioner may issue a specialty license to an applicant who complies with Section 4055.004 and the other requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.006. EXAMINATION AND CONTINUING EDUCATION NOT REQUIRED. (a) An examination is not required for issuance of a specialty license.

(b) A person is not required to comply with continuing education requirements to hold a specialty license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.007. APPOINTMENT AS AGENT BY INSURER. An insurer that appoints an agent under this chapter shall:

(1) submit a certification of the appointment signed by an officer of the insurer; and

(2) affirm that the insurer is satisfied that the specialty license holder is trustworthy and competent to act as an agent on behalf of the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.008. GENERAL POWERS AND DUTIES. (a) A specialty license holder may act as an agent for the kinds of insurance that are subject to this chapter for any insurer authorized to engage in the business of those kinds of insurance in this state.

(b) Except as otherwise provided by this chapter, a specialty license holder acting under this chapter shall comply with this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.009. CERTAIN REPRESENTATIONS PROHIBITED. A specialty license holder may not advertise, represent, or otherwise hold out the license holder or an employee of the license holder as an agent licensed under another chapter unless the entity or individual holds the applicable license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.010. TREATMENT OF CERTAIN PREMIUMS. Notwithstanding any other provision of this title or any rule adopted by the commissioner, a specialty license holder is not required to treat as money received in a fiduciary capacity premiums collected from a consumer who purchases insurance coverage when completing a consumer transaction associated with the coverage if:

(1) the insurer represented by the license holder has

consented in writing, signed by an officer of the insurer, that premiums are not required to be segregated from money received by the license holder because of the consumer transaction associated with the insurance coverage; and

(2) the charges for insurance coverage are itemized but not billed to the consumer separately from the charges for the associated consumer transaction.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.011. AUTHORITY OF EMPLOYEE OF SPECIALTY LICENSE HOLDER. An employee of a specialty license holder may act as an agent with respect to the kinds of insurance the license holder is authorized to offer under this chapter only if the employee:

(1) is trained under Section 4055.012 to act individually on behalf of the license holder;

(2) acts on behalf of and under the supervision of the license holder; and

(3) is not compensated based primarily on the amount of insurance sold by the employee under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.012. TRAINING REQUIRED TO ACT ON BEHALF OF SPECIALTY LICENSE HOLDER. (a) A specialty license holder may not allow an individual to act on the license holder's behalf with respect to a kind of insurance that the license holder is authorized to offer unless the individual has completed an approved training program.

(b) The materials for the training program must be provided to the specialty license holder by an insurer that writes the kind of insurance authorized under the specialty license.

(c) An insurer that provides training program materials under Subsection (b) must submit the training program to the commissioner for approval before the training program is used.

(d) The training program must meet the following minimum standards:

(1) each trainee must receive basic instruction about the kinds of insurance the specialty license holder is authorized to offer for purchase by prospective consumers;

(2) each trainee must be instructed to inform a prospective consumer that, except as may be specifically provided by another law of this state or the United States, the purchase of the kind of insurance offered is not required to complete the associated consumer transaction; and

(3) each trainee must be instructed with respect to the disclosures required to be made to consumers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.013. ASSIGNMENT AND TRANSFER OF COMPENSATION BY CERTAIN AGENTS. A person who is licensed as a general life, accident, and health agent, life insurance agent, general property and casualty agent, or personal lines property and casualty agent or who holds a substantially equivalent license under this code, as determined by the commissioner, and who enters into a contract with an insurer to act as the insurer's agent in soliciting or writing policies or certificates of insurance that are subject to this chapter may assign and transfer to the agent's employer any commission, fee, or other compensation to be paid to the agent under the agent's contract with the insurer only if the sale of the insurance product occurs within the scope of the agent's employment.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.29, eff. September 1, 2007.

Sec. 4055.014. DISCLOSURES REQUIRED BEFORE ISSUANCE OF INSURANCE. Except as provided by Section 4055.105, insurance coverage may not be issued under this chapter unless:

(1) at each location at which sales of the coverage occur, brochures or other written materials are prominently displayed and readily available to a prospective consumer that:

(A) summarize, clearly and correctly, the material terms of the coverage offered to consumers, including the identity of the insurer;

(B) disclose that the coverage offered by the specialty license holder may duplicate coverage already provided by a

consumer's personal auto insurance policy, homeowner's insurance policy, personal liability insurance policy, or another source of coverage;

(C) state that, except as specifically provided by another law of this state or the United States, the purchase by the consumer of the kind of insurance offered is not required to complete the associated consumer transaction;

(D) describe the process for filing a claim for benefits; and

(E) contain any additional information required by the commissioner by rule regarding the price, benefits, exclusions, conditions, or other limitations of the coverage; and

(2) evidence of coverage is provided to each consumer who purchases the coverage.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.015. VIOLATION BY SPECIALTY LICENSE HOLDER; PENALTIES. If a specialty license holder violates this title, the commissioner may:

(1) impose any disciplinary action authorized by Subchapter C, Chapter 4005; or

(2) after notice and opportunity for hearing, impose other penalties, including suspending the transaction of insurance at specific locations where a violation of this title has occurred, as the commissioner considers necessary or appropriate to implement the purposes of this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. RENTAL CAR COMPANY LICENSE

Sec. 4055.051. DEFINITIONS. In this subchapter:

(1) "Rental agreement" means a written agreement that states the terms and conditions governing the use of a vehicle or vehicle equipment provided by a rental car company.

(2) "Rental car company" means a person engaged in the business of providing leased or rented vehicles or vehicle equipment to the public.

(3) "Renter" means a person who obtains the use of a

vehicle or vehicle equipment from a rental car company under the terms of a rental agreement.

(4) "Vehicle" means:

(A) a private passenger motor vehicle, including passenger vans and minivans that are primarily intended for the transport of persons;

(B) a motor home;

(C) a motorcycle;

(D) a trailer with a gross vehicle weight rating of 10,000 pounds or less; or

(E) a truck with a gross vehicle weight rating of 26,000 pounds or less and the operation of which does not require a commercial driver's license.

(5) "Vehicle equipment" means a cartop carrier, tow bar, or tow dolly specifically designed for use with a vehicle.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.052. ISSUANCE OF LICENSE. Notwithstanding any other provision of this chapter or this code, the commissioner shall issue a specialty license to a rental car company, or to the franchisee of a rental car company, that complies with this subchapter. The specialty license may be issued only for the limited purposes specified by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.053. AUTHORITY OF RENTAL CAR COMPANY OR FRANCHISEE. (a) A rental car company or franchisee licensed under this chapter may act as an agent for an authorized insurer only:

(1) in connection with the rental of vehicles or vehicle equipment; and

(2) with respect to:

(A) excess liability insurance that provides coverage in excess of the standard liability limits provided by the rental car company in the rental agreement to the rental car company or franchisee and to renters and other authorized drivers of rental vehicles for liability arising from the negligent operation or use of the rental vehicle or vehicle equipment;

(B) accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident involving the vehicle or vehicle equipment that occurs during the rental period;

(C) personal effects insurance that provides coverage to renters and other rental vehicle occupants for the loss of or damage to personal effects or household belongings that occurs during the rental period; or

(D) any other coverage the commissioner approves as meaningful and appropriate in connection with the rental of vehicles or vehicle equipment.

(b) A rental car company or franchisee licensed under this chapter may not issue insurance under this subchapter in connection with a rental agreement if the rental period under the agreement exceeds 30 consecutive days.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. CREDIT INSURANCE LICENSE

Sec. 4055.101. GENERAL DEFINITIONS. In this subchapter:

(1) "Credit insurance" includes:

(A) credit life insurance;

(B) credit accident and health insurance;

(C) credit property insurance;

(D) credit involuntary unemployment insurance; and

(E) insurance that covers the difference between the actual cash value of a motor vehicle used as security for a loan or lease and the outstanding balance of that loan or lease if loss or damage renders the vehicle an actual or constructive total loss while the debt for which the vehicle serves as security exceeds the actual cash value of the vehicle.

(2) "Credit insurance agent" means a person licensed under this chapter to sell credit insurance as specifically provided by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.102. DEFINITION OF CREDIT PROPERTY INSURANCE. (a)

In this subchapter, "credit property insurance" means insurance that covers personal property:

(1) used as security for a personal or consumer loan; or

(2) under an installment sales agreement or through a consumer credit transaction that is purchased in connection with or in relation to the personal or consumer loan, installment sale, or consumer credit transaction.

(b) "Credit property insurance" does not include insurance that:

(1) provides theft, collision, liability, property damage, or comprehensive insurance coverage on an automobile, motorized aircraft, motorcycle, truck, truck-tractor, traction engine, or any other self-propelled vehicle or craft that is designed primarily for operation in the air, or on highways, roadways, waterways, or the sea, and the operating equipment of the self-propelled vehicle or craft; or

(2) is necessary because of liability imposed by law for damages arising out of the ownership, operation, maintenance, or use of a vehicle or craft described by Subdivision (1), other than single interest coverage on any vehicle or craft described by Subdivision (1) that insures the interest of the creditor in the same manner as security for a loan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.103. ISSUANCE OF LICENSE. Notwithstanding any other provision of this chapter or this code, the commissioner may issue a specialty license to a retail distributor of goods, an automobile dealer, a bank, a state or federal savings and loan, a state or federal credit union, a finance company, a production credit association, a manufactured home retailer, or a mobile home retailer that complies with this subchapter. The specialty license may be issued only for the limited purposes specified by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.104. AUTHORITY OF CREDIT INSURANCE AGENT. A credit insurance agent appointed by an insurer authorized to engage in the business of insurance under this code may act as the agent for the

insurer in the sale of any kind of credit insurance in the business of which the insurer is authorized to engage, including individual or group credit insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.105. EXEMPTION FROM CERTAIN DISCLOSURE REQUIREMENTS. A specialty license holder and the license holder's representative are not required to make the disclosures required by Section 4055.014 as that section relates to the sale or delivery of a credit insurance product that is subject to this subchapter if the license holder or representative complies with all disclosure requirements prescribed by another provision of this code or another law of this state or the United States with regard to the sale or delivery of that product.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. TRAVEL INSURANCE

Sec. 4055.151. DEFINITIONS. In this subchapter:

(1) "Offer and disseminate" means to:

(A) provide general information, including the price and a description of the coverage; and

(B) process the application and collect premiums.

(1-a) "Planned trip" means any journey or travel arranged through the services of a travel agency.

(1-b) "Supervising entity" means a travel insurance supervising entity designated by an insurer under Section 4055.1515.

(1-c) "Travel administrator" means a person who directly or indirectly underwrites, collects a charge, collateral, or premium from, or adjusts or settles a claim of, a resident of this state in connection with travel insurance. A person is not a travel administrator if the person's only actions that would otherwise cause the person to be considered a travel administrator include:

(A) the person working for a travel administrator to the extent the person's activities are subject to the supervision and control of the travel administrator;

(B) an insurance agent selling insurance or engaged in administrative and claims-related activities within the scope of the agent's license;

(C) a travel retailer, registered under the license of a supervising entity in accordance with this subchapter, offering and disseminating travel insurance;

(D) an individual adjusting or settling claims in the normal course of the individual's practice or employment as an attorney and who does not collect charges or premiums in connection with insurance coverage; or

(E) a business entity that is affiliated with a licensed insurer acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer.

(2) "Travel agency" means an entity engaged in the business of selling or arranging transportation or accommodations for the public.

(2-b) "Travel retailer" means a business entity that makes, arranges, or offers travel services.

(3) "Traveler" means an individual who seeks the assistance of a travel agency in connection with the planning and purchase of a trip.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 2, eff. September 1, 2019.

Sec. 4055.1515. TRAVEL INSURANCE SUPERVISING ENTITY AND TRAVEL ADMINISTRATOR. (a) An insurer authorized to engage in the business of travel insurance in this state may designate a travel insurance supervising entity for purposes of this subchapter. The supervising entity must be:

(1) a licensed managing general agent;

(2) a licensed third-party administrator;

(3) a licensed insurance agent, including a specialty license holder and a person described by Section 4055.002(a); or

(4) a travel administrator.

(b) Notwithstanding any other provisions of this code, a person may not act or represent the person as a travel administrator for travel insurance unless the person is:

(1) a licensed property and casualty insurance agent;

(2) a licensed managing general agent; or

(3) a third-party administrator engaging in the business of insurance in this state under a certificate of authority.

(c) A travel administrator and a travel administrator's employees are exempt from the licensing requirements under Chapter 4101 with respect to travel insurance.

(d) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer. The insurer must ensure that the travel administrator maintains all books and records relevant to the insurer and makes the books and records available to the department on request of the commissioner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 3, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 3, eff. September 1, 2019.

Sec. 4055.152. SPECIALTY LICENSE; LICENSE NOT REQUIRED FOR TRAVEL RETAILER. (a) The commissioner may issue to an applicant under this chapter a specialty license that authorizes the license holder to sell, solicit, or negotiate travel insurance through a licensed insurer.

(b) Notwithstanding any other provision of this chapter or this code, a travel retailer that operates on behalf of and under the license and direction of a supervising entity does not require a license issued under this title, subject to Section 4055.153.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 4, eff. September 1, 2013.

Sec. 4055.153. AUTHORITY OF TRAVEL RETAILER. A travel retailer may offer and disseminate travel insurance as a service to the retailer's customers on behalf of and under the license and direction of a supervising entity only:

(1) in connection with the sale or arrangement of transportation, accommodations, or events for travelers; and

(2) with respect to travel insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 4, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 3, eff. September 1, 2019.

Sec. 4055.154. TRAVEL INSURANCE GENERALLY. (a) A travel retailer, or the supervising entity, shall provide to a traveler seeking to purchase travel insurance:

(1) a description of the material terms or the actual terms of the insurance coverage;

(2) a description of the claims filing process;

(3) a description of the review and cancellation process for the travel insurance policy; and

(4) the name and contact information for the insurer and the supervising entity.

(b) Travel insurance coverage may be provided under an individual or group insurance policy or a blanket travel insurance policy, as defined by Section 3504.0001.

Added by Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 5, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 3, eff. September 1, 2019.

Sec. 4055.155. DUTIES OF INSURERS AND SUPERVISING ENTITIES. (a) An insurer must notify the department in the manner prescribed by the commissioner by rule of the designation of a supervising entity described by Subsection (b).

(b) A supervising entity designated by an insurer that provides travel insurance may authorize a travel retailer to offer and disseminate a travel insurance policy on behalf of the supervising entity by establishing a retailer registry.

(c) The registry established under Subsection (b) must be maintained and updated on an ongoing basis in a form prescribed by the commissioner by rule. The registry must include the name, address, and contact information, and federal employer identification number, if any, of each registered travel retailer and an individual contact person at the retailer.

(d) The registry must be submitted to the department on the request of the commissioner.

(e) The supervising entity must certify in a form prescribed by the commissioner by rule that each registered travel retailer is in compliance with 18 U.S.C. Section 1033. The grounds for suspension or revocation and the penalties that apply to a resident insurance agent apply to a supervising entity and travel retailer.

(f) The supervising entity shall designate an individual who is an officer of the entity and a licensed agent as the compliance officer responsible for compliance with insurance laws, rules, and regulations related to travel insurance.

(g) The compliance officer and the officers of the supervising entity that direct or control the travel insurance business of the supervising entity must submit fingerprints as required by the commissioner by rule.

(g-1) The supervising entity shall pay all applicable licensing fees required by state law with respect to travel insurance.

(h) The supervising entity shall provide travel insurance instruction and training to each employee of a registered travel retailer whose duties include offering and disseminating travel insurance. The instruction and training material are subject to review by the commissioner and must include instruction relating to the insurance offered, ethical sales practices, and required disclosures to travelers.

(i) The supervising entity is responsible for the acts of a travel retailer and shall use reasonable means to ensure each registered retailer's compliance with this subchapter.

(j) Any person licensed in a major line of authority, as determined by the commissioner, as an insurance agent may sell, solicit, and negotiate travel insurance. A property and casualty insurance agent is not required to be appointed by an insurer to sell, solicit, or negotiate travel insurance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 5, eff.

September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 4, eff. September 1, 2019.

Sec. 4055.156. DUTIES OF TRAVEL RETAILERS. (a) A travel retailer offering and disseminating travel insurance under this subchapter shall register with an insurer in a registry established under Section 4055.155.

(b) The travel retailer shall make available to travelers brochures or other written materials that:

(1) provide the name, address, and contact information of the authorized insurer and the supervising entity;

(2) explain that the purchase of travel insurance is not required for the purchase from the travel retailer of any other product or service; and

(3) disclose that the travel retailer is authorized to provide general information about travel insurance, including a description of coverage and the price for coverage, but is not qualified or authorized to provide answers to questions about specific policy terms or to evaluate the adequacy of the traveler's existing insurance coverage.

(c) A travel retailer may not:

(1) evaluate or interpret technical words or phrases used in a travel insurance policy or benefits under or terms of the policy;

(2) evaluate or provide advice related to a traveler's existing insurance coverage; or

(3) advertise or otherwise hold out the travel retailer as a license holder or an insurance expert.

(d) A travel retailer that complies with this subchapter may receive compensation for offering and disseminating travel insurance on behalf of a supervising entity on or after the date the retailer registers with the insurer under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 5, eff. September 1, 2013.

Sec. 4055.157. ENFORCEMENT. A supervising entity and a travel retailer registered with the supervising entity are subject to Chapters 82 and 83 and Subtitle C, Title 5.

Added by Acts 2013, 83rd Leg., R.S., Ch. 805 (S.B. 1672), Sec. 5, eff. September 1, 2013.

Sec. 4055.158. RULEMAKING. The commissioner shall adopt rules necessary to implement this subchapter. Section 2001.0045, Government Code, does not apply to rules adopted under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1000 (H.B. 2587), Sec. 5, eff. September 1, 2019.

SUBCHAPTER E. SELF-SERVICE STORAGE FACILITY LICENSE

Sec. 4055.201. DEFINITIONS. In this subchapter:

(1) "Rental agreement" means a written agreement that states the terms governing the use of storage space provided by a self-service storage facility.

(2) "Renter" means a person who obtains the use of storage space from a self-service storage facility under a rental agreement.

(3) "Self-service storage facility" means a person engaged in the business of providing leased or rented storage space to the public.

(4) "Storage space" means a room, unit, locker, or open space offered for rental to the public for temporary storage of personal belongings or light commercial goods.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.202. ISSUANCE OF LICENSE. Notwithstanding any other provision of this chapter or this code, the commissioner may issue a specialty license to a self-service storage facility or to the franchisee of a self-service storage facility that complies with this subchapter. The specialty license may be issued only for the limited purposes specified by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4055.203. AUTHORITY OF SELF-SERVICE STORAGE FACILITY OR FRANCHISEE. A self-service storage facility or franchisee licensed under this chapter may act as an agent for any authorized insurer only:

(1) in connection with the rental of storage space; and

(2) with respect to:

(A) hazard insurance coverage provided to a renter for loss of or damage to tangible personal property in storage or in transit during the rental period; or

(B) any other coverage the commissioner approves as meaningful and appropriate in connection with the rental of storage space.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER F. PORTABLE ELECTRONIC VENDOR LICENSE

Sec. 4055.251. DEFINITIONS. In this subchapter:

(1) "Customer" means a person who purchases a portable electronic device or a related service.

(2) "Portable electronic devices" means personal, self-contained, easily carried by an individual, battery-operated electronic communication, viewing, listening, recording, gaming, computing or global positioning devices, including cell or satellite phones, pagers, personal global positioning satellite units, portable computers, portable audio listening, video viewing or recording devices, digital cameras, video camcorders, portable gaming systems, docking stations, automatic answering devices, and other similar devices and their accessories.

(3) "Vendor" means a person or entity engaged in the business of leasing, selling, or providing portable electronic devices or related services to customers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 121 (H.B. 2569), Sec. 1, eff. September 1, 2009.

Sec. 4055.252. ISSUANCE OF LICENSE; LICENSE FEE. (a) Notwithstanding any other provision of this chapter or this code, the commissioner may issue a specialty license to a vendor who complies with this subchapter. The specialty license may be issued only for the limited purposes specified by this subchapter.

(b) A specialty license issued to a vendor under this subchapter authorizes the vendor and any employee or authorized representative of the vendor to offer the type of coverage specified in this subchapter at each location at which the vendor engages in business.

(c) The commissioner shall impose an annual license fee for a specialty license issued under this subchapter. The commissioner shall set the license fee in an amount reasonable and necessary to cover the costs of administering this subchapter, not to exceed $5,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 121 (H.B. 2569), Sec. 1, eff. September 1, 2009.

Sec. 4055.253. AUTHORITY OF VENDOR OF PORTABLE ELECTRONIC DEVICES. (a) A vendor licensed under this subchapter and the vendor's employee and authorized representative may act as an agent for an authorized insurer in connection with the sale and use of portable electronic devices and related services only with respect to:

(1) insurance coverage provided to customers that covers portable electronic devices against one or more of the following:

(A) loss;

(B) theft;

(C) mechanical failure;

(D) malfunction;

(E) damage; or

(F) other applicable perils; or

(2) the provision of any other coverage the commissioner approves as meaningful and appropriate in connection with the use of portable electronic devices or related services.

(b) A vendor licensed under this subchapter may bill a customer

for, and collect from a customer payment for, insurance coverage provided to the customer under this subchapter.

(c) An insurer issuing a policy to a licensed vendor is considered to have received a premium from a vendor's customer enrolled in coverage on the customer's payment of the premium to the vendor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 121 (H.B. 2569), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 2, eff. September 1, 2013.

Sec. 4055.254. INSURANCE POLICY; REQUIREMENTS. (a) Insurance provided under this subchapter may be issued to a licensed vendor under a master or group policy of personal or commercial inland marine insurance. A customer may be designated as an additional insured or certificate holder under the policy.

(b) A licensed vendor shall provide to each customer designated as an additional insured or certificate holder a coverage form, certificate, or other evidence of coverage in a brochure or separate document.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 121 (H.B. 2569), Sec. 1, eff. September 1, 2009.

Sec. 4055.255. REQUIRED TRAINING. (a) Notwithstanding Section 4055.012, an agent who holds a license issued under Chapter 4051 or a substantially equivalent license issued under this code and who is appointed by the insurer that insures a vendor may:

(1) provide the materials for the training program required under Section 4055.012; and

(2) conduct the applicable training.

(b) An agent described by Subsection (a) shall submit the training program materials for approval as required under Section 4055.012(c).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 121 (H.B. 2569), Sec. 1, eff. September 1, 2009.

Sec. 4055.256. REQUIRED DISCLOSURES. (a) A licensed vendor must separately itemize on a customer's bill any charge to the customer for insurance coverage provided under this subchapter that is not included in the cost associated with the purchase or lease of the covered portable electronic device or related services.

(b) If insurance coverage provided under this subchapter is included in the cost associated with the purchase or lease of a covered portable electronic device or related services, a licensed vendor shall, at the time of the purchase or lease, clearly and conspicuously disclose the inclusion of that coverage to the customer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1174 (S.B. 839), Sec. 3, eff. September 1, 2013.

CHAPTER 4056. NONRESIDENT AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4056.001. APPLICABILITY OF TITLE. This title applies to licensing of a nonresident agent under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.002. RIGHTS OF LICENSE HOLDERS. Except as otherwise specifically provided by this code, an individual who is not a resident of this state and to whom a license is issued under this chapter has the same rights and privileges as a resident license holder.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.003. RECIPROCAL LICENSING AGREEMENTS. The commissioner may enter into an agreement with the appropriate official of another state as necessary to implement reciprocal

licensing of nonresident agents.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.005. RULES. The commissioner may adopt rules as necessary to implement this subchapter and Subchapter B and to meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. NONRESIDENT AGENT LICENSE

Sec. 4056.051. APPLICATION FOR NONRESIDENT AGENT LICENSE; CRIMINAL HISTORY. (a) To apply for a license to act as a nonresident agent, a person who is not a resident of this state must submit to the department:

(1) an application on a form prescribed by the department; and

(2) the nonrefundable license application fee.

(b) An applicant who does not hold an insurance agent's license in the applicant's state of residence must, through the law enforcement agency of the state of residence, submit to the department a copy of the applicant's criminal history records. The department shall use the criminal history records to determine the applicant's eligibility for issuance of a license in accordance with this title and other laws of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.052. ISSUANCE OF LICENSE TO NONRESIDENT AGENT LICENSED IN OTHER STATE. (a) The department shall issue a license to an applicant under this chapter if:

(1) the applicant holds a license in good standing as an agent in the applicant's state of residence; and

(2) the applicant's state of residence will grant a nonresident agent license on a reciprocal basis to a resident agent of this state.

(b) The department may issue a reciprocal nonresident agent license to an applicant if the authority granted by the license

issued by the applicant's state of residence is generally comparable to the authority granted by a license issued by this state.

(c) A license issued under this section shall be automatically suspended, canceled, or revoked if the licensee's home state suspends, cancels, or revokes the licensee's corresponding resident license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 19, eff. September 1, 2021.

Sec. 4056.053. ISSUANCE OF LICENSE TO NONRESIDENT AGENT NOT LICENSED IN OTHER STATE. The department shall issue a license to an applicant under this chapter if the applicant has:

(1) passed the examination for an agent's license required under this title;

(2) met the eligibility requirements for issuance of a license after an examination of the applicant's criminal history records under Section 4056.051(b); and

(3) satisfied the requirements for a license for an individual under this code, including Subchapter C, Chapter 4001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.054. ISSUANCE OF LICENSE TO CORPORATION OR PARTNERSHIP. The department shall issue a license to an applicant under this chapter if the applicant has satisfied the requirements for a license for a corporation or partnership under Subchapter C, Chapter 4001.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.055. WAIVER OF REQUIREMENTS FOR NONRESIDENT AGENT LICENSED IN OTHER STATE OR JURISDICTION. The department may waive any license requirement for an applicant who holds a valid license from another state or jurisdiction if:

(1) that state or jurisdiction has license requirements

substantially equivalent to those of this state; or

(2) the waiver is necessary to promote reciprocal licensing of nonresident agents among a majority of the states.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.056. RESTRICTIONS ON LINE OF INSURANCE BUSINESS FOR RECIPROCAL NONRESIDENT AGENT LICENSE. A nonresident agent licensed under Section 4056.052 may not act as a nonresident agent for a line of insurance business in this state unless the agent is authorized in the agent's state of residence to act in that state as an agent for that line of insurance business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.057. CONTINUING EDUCATION. (a) The continuing education requirements imposed under Chapter 4004 do not apply to a person who:

(1) holds a license issued under this chapter; and

(2) is in compliance with the continuing education requirements of the person's state of residence.

(b) A person who holds a license issued under this chapter and who does not hold an insurance agent's license in the person's state of residence shall comply with the continuing education requirements imposed under Chapter 4004.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.058. SERVICE OF PROCESS. The commissioner is the agent for service of process in the manner provided by Subchapter C, Chapter 804, in a legal proceeding against a nonresident agent who holds a license issued under this chapter if:

(1) the nonresident agent does not appoint or maintain an agent for service in this state;

(2) an agent for service is appointed but cannot with reasonable diligence be found; or

(3) the license of the nonresident agent is revoked.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4056.059. TRANSITION TO RESIDENT AGENT LICENSE. (a) This section applies only to an individual who is a nonresident agent licensed under Section 4056.052 and who has moved from the other state that licensed the individual to this state.

(b) A nonresident agent may apply to the department for a comparable license for residents of this state. An application must include:

(1) a notification of the agent's change of address and contact information; and

(2) fingerprint forms in the format prescribed by the department, which may be electronic.

(c) If a nonresident agent submits a satisfactory application in accordance with Subsection (b), the department shall issue a comparable resident agent license to the agent and cancel the agent's nonresident agent license.

Added by Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 13, eff. September 1, 2015.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 20, eff. September 1, 2021.

SUBTITLE C. ADJUSTERS
CHAPTER 4101. INSURANCE ADJUSTERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4101.001. DEFINITIONS. (a) In this chapter:

(1) "Adjuster" means a person who:

(A) investigates or adjusts losses on behalf of an insurer as an independent contractor or as an employee of:

(i) an adjustment bureau;

(ii) an association;

(iii) a general property and casualty agent or personal lines property and casualty agent;

(iv) an independent contractor;

(v) an insurer; or

(vi) a managing general agent;

(B) supervises the handling of claims; or

(C) investigates, adjusts, supervises the handling of, or settles workers' compensation claims, including claims arising from services provided through a certified workers' compensation health care network as authorized under Chapter 1305, on behalf of an administrator, as defined by Chapter 4151, or on behalf of an insurance carrier, as defined by Section 401.011, Labor Code.

(2) "Automated claims adjudication system" means a computer program designed for the collection, data entry, calculation, and final resolution of portable consumer electronic insurance claims that a licensed independent adjuster, a licensed agent, an officer of a business entity licensed under this chapter, or a supervised individual uses as described by this chapter.

(3) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(4) "Home state," with respect to an adjuster, means:

(A) the state in which the adjuster maintains the adjuster's principal place of residence or business and is licensed to act as a resident adjuster; or

(B) if the state of the adjuster's principal place of residence or business does not license adjusters for the line of authority sought, a state in which the adjuster is licensed and in good standing and that is designated by the adjuster as the adjuster's home state.

(5) "Person" means an individual or business entity.

(b) For purposes of this chapter, "insurer" includes a self-insured.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.30, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 2.04, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 544 (H.B. 2699), Sec. 1, eff. September 1, 2011.

Sec. 4101.002. GENERAL EXEMPTIONS. (a) This chapter does not

apply to:

(1) an attorney who:

(A) adjusts insurance losses periodically and incidentally to the practice of law; and

(B) does not represent that the attorney is an adjuster;

(2) a salaried employee of an insurer who is not regularly engaged in the adjustment, investigation, or supervision of insurance claims;

(3) a person employed only to furnish technical assistance to a licensed adjuster, including:

(A) an attorney;

(B) an engineer;

(C) an estimator;

(D) a handwriting expert;

(E) a photographer; and

(F) a private detective;

(4) an agent or general agent of an authorized insurer who processes an undisputed or uncontested loss for the insurer under a policy issued by the agent or general agent;

(5) a person who performs clerical duties and does not negotiate with parties to disputed or contested claims;

(6) a person who handles claims arising under life, accident, and health insurance policies;

(7) a person:

(A) who is employed principally as:

(i) a right-of-way agent; or

(ii) a right-of-way and claims agent;

(B) whose primary responsibility is the acquisition of easements, leases, permits, or other real property rights; and

(C) who handles only claims arising out of operations under those easements, leases, permits, or other contracts or contractual obligations;

(8) an individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;

(9) a public insurance adjuster licensed under Chapter 4102;

(10) an individual who:

(A) collects claim information from, or furnishes claim

information to, an insured or claimant and enters data into an automated claims adjudication system; and

(B) is employed by a licensed independent adjuster or its affiliate under circumstances in which no more than 25 individuals performing duties described by Paragraph (A) are supervised by a single licensed independent adjuster or a single licensed agent; or

(11) an individual employed by an insurer or an affiliate of the insurer who adjusts a loss not to exceed $500, or authorizes a payment on a claim for a loss for which there is a specified coverage limit of $500 or less, arising from a first-party claim under a property and casualty insurance policy.

(b) A nonresident adjuster is not required to hold a license under this chapter to:

(1) adjust a single loss in this state;

(2) adjust losses arising out of a catastrophe common to all those losses; or

(3) act as a temporary substitute for a licensed adjuster.

(c) For purposes of Subsection (a)(6), claims arising under workers' compensation insurance policies, including claims relating to services provided through a certified workers' compensation health care network authorized under Chapter 1305, do not constitute claims arising under life, accident, or health insurance policies.

(d) A licensed agent acting as a supervisor under Subsection (a)(10) is not required to be licensed as an adjuster.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.081(a), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 2.05, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 544 (H.B. 2699), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 198 (S.B. 718), Sec. 1, eff. September 1, 2017.

Sec. 4101.003. TEMPORARY EXEMPTION. An individual who is undergoing training as an adjuster under the supervision of a

licensed adjuster may act as an adjuster for a period not to exceed 12 months without having a license issued under this chapter if, at the beginning of the period, the individual has been registered with the commissioner as a trainee.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.004. RECIPROCITY. The department may waive any license requirement imposed under this chapter for an applicant who holds a valid license from another state if the state has license requirements substantially equivalent to the requirements for a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.005. RULES. The commissioner may adopt rules necessary to implement this chapter and to meet the minimum requirements of federal law, including regulations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 4101.051. LICENSE REQUIRED. Except as otherwise provided by this chapter, a person may not act as or represent that the person is an adjuster in this state unless the person holds a license under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.052. APPLICATION. (a) An applicant for a license under this chapter must submit to the department an application on a form prescribed and provided by the department, and include as part of or in connection with the application any information that the department reasonably requires, including information about the applicant's:

(1) identity;

(2) personal history;

(3) experience; and

(4) business record.

(b) The application must be accompanied by the fee required by Section 4101.057.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.053. QUALIFICATIONS; ISSUANCE. (a) To qualify for a license under this chapter, an individual must:

(1) comply with this chapter;

(2) present evidence satisfactory to the department that the applicant:

(A) is at least 18 years of age;

(B) resides in this state or a state or country that permits a resident of this state to act as an adjuster in that state or country;

(C) has complied with all federal laws relating to employment or the transaction of business in the United States, if the applicant does not reside in the United States;

(D) is trustworthy; and

(E) has had experience, special education, or training of sufficient duration and extent regarding the handling of loss claims under insurance contracts to make the applicant competent to fulfill the responsibilities of an adjuster; and

(3) pass an examination conducted under this subchapter or present evidence that the applicant has been exempted under Section 4101.056.

(b) The commissioner shall issue a license to an applicant who meets the qualifications prescribed by this section.

(c) To qualify for a license under this chapter, a business entity must:

(1) comply with this chapter; and

(2) present evidence satisfactory to the department that the applicant:

(A) is eligible to designate this state as its home state;

(B) is trustworthy;

(C) has designated a licensed adjuster responsible for the business entity's compliance with the insurance laws of this

state;

(D) has not committed an act that is a ground for probation, suspension, revocation, or refusal of an adjuster's license under Section 4101.201; and

(E) has paid the fees prescribed under Section 4101.057.

(d) An individual who is a resident of Canada may not be licensed under this chapter or designate this state as the individual's home state unless the individual has successfully passed the adjuster examination and complied with the other applicable portions of this section, except that the individual is not required to comply with Subsection (a)(2)(B) or (C).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 544 (H.B. 2699), Sec. 3, eff. September 1, 2011.

Sec. 4101.054. EXAMINATION REQUIRED. (a) To be eligible for a license under this chapter, an applicant must personally take and pass, to the satisfaction of the commissioner, a written examination of the applicant's qualifications and competency.

(b) The department may supplement a written examination under Subsection (a) with an oral examination.

(c) The commissioner shall prescribe each examination under this section. An examination must be of sufficient scope to reasonably test the applicant's knowledge relative to the kinds of insurance that may be dealt with under the license and of:

(1) the duties of a licensed adjuster; and

(2) the laws of this state that apply to a licensed adjuster.

(d) The commissioner may require a reasonable waiting period before an applicant who fails to pass an examination is eligible to be retested on a similar examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.055. EXAMINATION PROCEDURES. (a) The department shall prepare and make available to applicants instructions

specifying in general terms the subjects that may be covered in an examination required under Section 4101.054.

(b) An examination under this subchapter shall be given at times and locations in this state necessary to reasonably serve the convenience of the department and applicants.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.056. EXEMPTION FROM EXAMINATION REQUIREMENT. (a) An applicant for a license under this chapter is not required to pass an examination under Section 4101.054 to receive the license if the applicant:

(1) had been principally engaged in the investigation, adjustment, or supervision of losses on August 27, 1973, and during the 90-day period preceding that date;

(2) is applying for a renewal license under this chapter;

(3) is licensed as an adjuster in another state with which a reciprocal agreement has been entered into by the commissioner; or

(4) has completed a course in adjusting losses as prescribed and approved by the commissioner and it is certified, by a form signed by a person described by Subsection (b)(2), to the commissioner on completion of the course that the applicant has:

(A) completed the course; and

(B) passed an examination, in a manner described by Subsection (b)(2), testing the applicant's knowledge and qualification, as prescribed by the commissioner.

(b) An applicant wishing to claim an exemption under Subsection (a)(4) must:

(1) schedule the required examination; and

(2) take the required examination in a testing environment that is controlled, supervised, and proctored by a disinterested third party approved by the commissioner to administer the examination.

(c) In this section, "disinterested third party" means an individual who:

(1) is not related to an applicant by consanguinity or affinity as a first cousin or within the third degree by consanguinity or affinity as described by Subchapter B, Chapter 573, Government Code; and

(2) is not an employee or a subordinate of the applicant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 433 (S.B. 569), Sec. 1, eff. June 14, 2013.

Sec. 4101.057. FEES. (a) Before issuing or renewing a license under this chapter, the department shall set and collect a nonrefundable license application fee in an amount not to exceed $50.

(b) An applicant for a renewal license must remit the fee required by Subsection (a) before the expiration of the license being renewed. If the applicant's license has been expired for not more than 90 days, an applicant for a renewal license must remit, in addition to the fee assessed under Subsection (a), a fee equal to one-half of the original application fee.

(c) Before administering an examination under this subchapter, the department shall set and collect a nonrefundable examination fee in an amount not to exceed $50.

(d) Before issuing a duplicate license requested by an adjuster, the department shall set and collect a duplicate license application fee.

(e) The department shall deposit a fee collected under this chapter to the credit of the Texas Department of Insurance operating account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 14, eff. September 1, 2015.

Sec. 4101.058. LICENSE FORM. (a) The commissioner shall prescribe the form of a license issued under this chapter.

(b) A license must contain:

(1) the adjuster's name;

(2) the address of the adjuster's place of business;

(3) the date of issuance and the date of expiration of the license; and

(4) the name of the firm or insurer with whom the adjuster

is employed at the time the license is issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.059. CONTINUING EDUCATION: GENERAL REQUIREMENTS. (a) To renew a license under this chapter, a licensed adjuster must participate in a continuing education program under Chapter 4004.

(b) The department may certify continuing education programs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 15, eff. September 1, 2015.

Sec. 4101.060. CONTINUING EDUCATION: EXEMPTIONS AND WAIVERS. (a) On written request of a licensed adjuster and if the department determines that the adjuster is unable to comply with continuing education requirements under this subchapter because of illness, medical disability, or another extenuating circumstance beyond the control of the adjuster, the department may:

(1) extend the time for the adjuster to comply with the continuing education requirements; or

(2) exempt the adjuster from any of the requirements for a licensing period.

(b) The commissioner by rule shall establish the criteria for an extension or exemption under Subsection (a).

(c) The department may waive any continuing education requirement imposed under this chapter for a nonresident adjuster who holds a valid license from another state if the state has continuing education requirements substantially equivalent to the requirements for a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.061. EXPIRATION; RENEWAL. Expiration and renewal of a license issued under this chapter are governed by Sections 4003.001 and 4004.055, rules adopted by the commissioner, and any applicable provision of this code or another insurance law of this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 16, eff. September 1, 2015.

Sec. 4101.062. ALTERNATIVE CONTINUING EDUCATION: CLAIMS CERTIFICATION. Notwithstanding Section 4004.051, the department shall accept as satisfaction of any continuing education requirement imposed on an adjuster under this chapter or Chapter 4004 a claims certification that the adjuster receives during a license period for which the continuing education is required if:

(1) the claims certification is issued by a national or state claims association with a certification program;

(2) the number of hours required to complete the certification program is not less than the number of hours of continuing education that an adjuster is required to complete during the license period under Sections 4004.053 and 4004.054;

(3) the content of the certification program:

(A) includes the content required under Section 4004.105; and

(B) is made available through an electronic portal maintained by the association for review and audit by the department;

(4) the association is approved by the department as a continuing education provider;

(5) the association reports the adjuster's completion of the certification program to the department through an electronic portal maintained by the department; and

(6) the association, through an electronic portal maintained by the association, provides the department access to the adjuster's transcript showing the adjuster's completion of the certification program.

Added by Acts 2019, 86th Leg., R.S., Ch. 442 (S.B. 1584), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. SPECIAL LICENSES

Sec. 4101.101. EMERGENCY LICENSE. (a) If a catastrophe or an emergency arises out of a disaster, act of God, riot, civil

commotion, conflagration, or other similar occurrence, the commissioner shall, on application, issue an emergency license to a person if the application is certified to the commissioner not later than the fifth day after the date on which the person begins work as an adjuster by:

(1) a person who holds a license under this chapter; or

(2) an insurer that maintains an office in this state and holds a certificate of authority to engage in the business of insurance in this state.

(b) The person or insurer that certifies an application under Subsection (a) is responsible for the loss or claims practices of the emergency license holder whom the person or insurer certifies.

(c) The commissioner may, after notice and hearing, revoke an emergency license on grounds specified by Section 4101.201.

(d) An emergency license is effective for a period not to exceed 90 days. The commissioner may extend the term of the emergency license for an additional period of 90 days.

(e) The commissioner shall establish a fee for an emergency license in an amount not to exceed $20. A person issued an emergency license shall remit the fee to the department not later than the 30th day after the date on which the department issues the license.

(f) The commissioner may issue an emergency license to an applicant who meets the requirements of Subsection (a) regardless of whether the applicant is:

(1) a resident of this state; or

(2) an otherwise licensed adjuster.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.102. LIMITED LICENSE. (a) If considered necessary by the commissioner, the department may issue a limited license to an applicant in the manner otherwise provided for the issuance of a license under this chapter.

(b) The license shall specifically limit the kinds of insurance that may be handled by the person.

(c) The person may not adjust claims in a kind of insurance other than that for which the adjuster is specifically licensed.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. POWERS AND DUTIES OF ADJUSTER

Sec. 4101.151. PLACE OF BUSINESS. (a) A licensed adjuster shall maintain a place of business that is:

(1) located at the place at which the adjuster principally conducts transactions under the license; and

(2) accessible to the public.

(b) A licensed adjuster shall promptly notify the commissioner if the adjuster changes the location of the adjuster's place of business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.152. REFERRAL BY INSURER. (a) An insurer may not knowingly refer a claim or loss for adjustment in this state to a person purporting to be or acting as an adjuster unless the person holds a license under this chapter.

(b) Before referring a claim or loss for adjustment, an insurer must ascertain from the commissioner whether the person performing the adjustment holds a license under this chapter. Once the insurer has ascertained that the person holds a license, the insurer may refer the claim or loss to the person and may continue to refer claims or losses to the person until the insurer has knowledge or receives information from the commissioner that the person no longer holds a license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER E. ENFORCEMENT

Sec. 4101.201. GROUNDS FOR DISCIPLINARY ACTION. (a) The commissioner may discipline an adjuster or deny an application for a license under this chapter under a department rule or any applicable insurance law of this state.

(b) Department rules may specify grounds for discipline that are comparable to grounds for discipline of other license holders under this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.202. REINSTATEMENT OR REISSUANCE OF LICENSE. The commissioner may not reinstate or reissue the license of a license holder or former license holder whose license has been suspended, revoked, or refused renewal until the commissioner determines that the cause for a suspension, revocation, or refusal of a license issued under this chapter no longer exists.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4101.203. CRIMINAL PENALTY. A person commits an offense if the person violates Section 4101.051 or 4101.102(c). An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $500;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and the confinement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER F. PROHIBITED CONDUCT

Sec. 4101.251. CERTAIN ROOFING-RELATED BUSINESS PROHIBITED. (a) An insurance adjuster licensed under this chapter may not adjust a loss related to roofing damage on behalf of an insurer if the adjuster is a roofing contractor or otherwise provides roofing services or roofing products for compensation, or is a controlling person in a roofing-related business.

(b) A roofing contractor may not act as an adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide roofing services, regardless of whether the contractor holds a license under this chapter.

(c) The commissioner shall adopt rules necessary to implement and enforce this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 903 (H.B. 1183), Sec. 1, eff. September 1, 2013.

CHAPTER 4102. PUBLIC INSURANCE ADJUSTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4102.001. DEFINITIONS. In this chapter:

(1) "License holder" means a person licensed under this chapter as a public insurance adjuster.

(2) "Person" includes an individual, firm, company, association, organization, partnership, limited liability company, or corporation.

(3) "Public insurance adjuster" means:

(A) a person who, for direct, indirect, or any other compensation:

(i) acts on behalf of an insured in negotiating for or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(ii) on behalf of any other public insurance adjuster, investigates, settles, or adjusts or advises or assists an insured with a claim or claims for loss or damage under any policy of insurance covering real or personal property; or

(B) a person who advertises, solicits business, or holds himself or herself out to the public as an adjuster of claims for loss or damage under any policy of insurance covering real or personal property.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.002. GENERAL EXEMPTIONS. This chapter does not apply to:

(1) an officer or employee of the federal or state government or of a political subdivision of the state government while the officer or employee is engaged in the performance of official duties;

(2) an attorney engaged in the performance of the attorney's professional duties;

(3) insurers admitted to do business in the state and agents licensed by this state, engaged in the performance of their duties in connection with insurance transactions;

(4) the legal owner of personal property that has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage;

(5) a salaried office employee who performs exclusively

clerical or administrative duties attendant to the disposition of the business regulated by this chapter;

(6) a photographer, estimator, appraiser, engineer, or arbitrator employed by a public insurance adjuster exclusively for the purpose of furnishing technical assistance to the licensed public insurance adjuster;

(7) a private investigator licensed under Chapter 1702, Occupations Code, while acting within the scope of that license; or

(8) a full-time salaried employee of a property owner or a property management company retained by a property owner who:

(A) does not hold the employee out as:

(i) a public insurance adjuster; or

(ii) a building, roofing, or other restoration contractor;

(B) has not been hired to handle a specific claim resulting from a fire or casualty loss; and

(C) acts at the sole discretion of the property owner or management company regarding a claim related to the owner's property.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.003. CERTAIN CONSTRUCTION REGARDING PRACTICE OF LAW PROHIBITED. This chapter may not be construed as entitling a person who is not licensed by the Supreme Court of Texas to practice law in this state.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.004. RULES. The commissioner may adopt reasonable and necessary rules to implement this chapter, including rules regarding:

(1) the qualifications of license holders, in addition to those prescribed by this chapter, that are necessary to promote and protect the public interest;

(2) the regulation of the conduct of license holders;

(3) the prescription of fees required by Section 4102.066;

and

(4) the regulation of advertisements under Section 4102.113 and the definition of "advertisement" as the term is used in that section.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.005. CODE OF ETHICS. The commissioner by rule shall adopt:

(1) a code of ethics for public insurance adjusters that fosters the education of public insurance adjusters concerning the ethical, legal, and business principles that should govern their conduct;

(2) recommendations regarding the solicitation of the adjustment of losses by public insurance adjusters; and

(3) any other principles of conduct or procedures that the commissioner considers necessary and reasonable.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.006, eff. September 1, 2011.

Sec. 4102.006. NOTICE TO LAST ADDRESS. Notice by registered mail, return receipt requested, sent to the last known address of an applicant for a license, a license holder, or another person to whom notice is required to be sent under this chapter, as reflected by the records of the department, constitutes sufficient notice under this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.007. RIGHT TO CONTRACT WITH LICENSE HOLDER. (a) Notwithstanding Sections 4001.002 and 4102.002, this section applies to a commercial or residential property insurance policy issued by an

insurer, including:

(1) a capital stock insurance company;

(2) a mutual insurance company;

(3) a county mutual insurance company;

(4) a Lloyd's plan;

(5) a reciprocal or interinsurance exchange;

(6) a farm mutual insurance company; and

(7) an eligible surplus lines insurer if this state is the insured's home state as defined by Section 981.002.

(b) An insurance policy, including any endorsement, to which this section applies may not include a provision that prohibits an insured from contracting with a public insurance adjuster for services provided under this chapter.

(c) An insured is not required to enter into a contract described by Subsection (b).

Added by Acts 2023, 88th Leg., R.S., Ch. 317 (H.B. 1706), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 4102.051. LICENSE REQUIRED; EXEMPTION. (a) A person may not act as a public insurance adjuster in this state or hold himself or herself out to be a public insurance adjuster in this state unless the person holds a license issued by the commissioner under Section 4102.053 or 4102.054.

(b) A license is not required for:

(1) an attorney licensed to practice law in this state who has complied with Section 4102.053(a)(6); or

(2) a person licensed as a general property and casualty agent or personal lines property and casualty agent under Chapter 4051 while acting for an insured concerning a loss under a policy issued by that agent.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 548 (S.B. 1263), Sec. 2.31, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1178 (S.B. 1060), Sec. 1, eff. September 1, 2015.

Sec. 4102.052. APPLICATION. (a) An application for a license under this chapter must be on a form prescribed by the commissioner.

(b) The completed application must be notarized and be accompanied by a nonrefundable license application fee, as provided by Section 4102.066, for each application submitted.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.053. ISSUANCE OF LICENSE TO RESIDENT. (a) The commissioner shall issue a public insurance adjuster license to an applicant on determining that the application meets the requirements of this chapter, the license application fee has been paid, and the applicant is an individual who:

(1) is at least 18 years of age;

(2) is a citizen of the United States or has complied with all federal laws pertaining to employment or to the transaction of business in the United States;

(3) is a resident of this state;

(4) is trustworthy and of a moral character that reasonably ensures that the applicant will conduct the business of a public insurance adjuster fairly and in good faith without detriment to the public;

(5) has not been convicted of a felony in the 10 years preceding filing an application under this chapter or, if convicted of a felony in the 10 years preceding filing an application under this chapter, has received a full pardon from that conviction and is otherwise relieved from any disabilities connected with that conviction;

(6) has sufficient experience or training relating to the assessment of:

(A) real and personal property values; and

(B) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;

(7) is sufficiently informed as to the terms and effects of the types of insurance contracts that provide coverage on real and

personal property;

(8) possesses knowledge and experience adequate to enable the applicant to engage in the business of a public insurance adjuster fairly and without injury to the public or any member of the public with whom the applicant may have business as a public insurance adjuster;

(9) has successfully passed the license examination prescribed under Section 4102.057 or is exempt from the examination requirement under this chapter;

(10) has complied with the financial responsibility requirements imposed under Section 4102.105; and

(11) has complied with any other requirements under applicable state law, including provision of a complete set of fingerprints on request, as provided by Section 4001.103.

(b) The commissioner may issue a resident public insurance adjuster license to an applicant who has been convicted of a felony 11 or more years before filing an application under this chapter if the commissioner determines that the applicant is qualified to act as a public insurance adjuster and that the circumstances surrounding the applicant's conviction do not warrant the denial of a license issued under this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.054. ISSUANCE OF LICENSE TO NONRESIDENT. (a) The commissioner may issue a nonresident license to an applicant for a public insurance adjuster license who is not a permanent resident of this state on determining that the application meets the requirements of this chapter, the nonresident license application fee has been paid, and the applicant is an individual who:

(1) is at least 18 years of age;

(2) except as provided by Section 4102.058, has passed, to the satisfaction of the commissioner, an examination approved by the commissioner and of sufficient scope as prescribed by Section 4102.057;

(3) is self-employed as a public insurance adjuster or associated with or employed by a public insurance adjusting firm or other public insurance adjuster;

(4) is trustworthy and of a moral character that reasonably ensures that the applicant will conduct the business of a public insurance adjuster fairly and in good faith without detriment to the public;

(5) has never been convicted of a felony or, if convicted of a felony, has received a full pardon from that conviction and is otherwise relieved from any disabilities connected with that conviction;

(6) has sufficient experience or training relating to the assessment of:

(A) real and personal property values; and

(B) physical loss of or damage to real or personal property that may be the subject of insurance and claims under insurance;

(7) is sufficiently informed as to the terms and effects of the types of insurance contracts that provide coverage on real and personal property;

(8) possesses knowledge and experience adequate to enable the applicant to engage in the business of a public insurance adjuster fairly and without injury to the public or any member of the public with whom the applicant may have business as a public insurance adjuster;

(9) files proof of financial responsibility in accordance with Section 4102.105; and

(10) complies with any other requirements under applicable state law, including provision of a complete set of fingerprints on request, as provided by Section 4001.103.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(8), eff. September 1, 2021.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(8), eff. September 1, 2021.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 21, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(8), eff. September 1, 2021.

Sec. 4102.055. ISSUANCE OF LICENSE TO BUSINESS ENTITY ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of this state.

(b) Rules adopted by the commissioner under Subsection (a) must:

(1) be analogous to the provisions of Chapter 4001 that relate to licensure of corporations and partnerships; and

(2) contain qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 4102.053.

(c) The commissioner may not issue a public insurance adjuster license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity, and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state, are individually licensed by the department under Section 4102.053 separately from the business entity.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.056. ISSUANCE OF LICENSE TO BUSINESS ENTITY NOT ORGANIZED IN THIS STATE. (a) The commissioner shall adopt rules necessary to issue a public insurance adjuster license to a business entity organized under the laws of another state or the United States.

(b) Rules adopted by the commissioner under Subsection (a) must:

(1) be analogous to the provisions of Chapter 4001 that relate to issuance of licenses to business entities; and

(2) contain:

(A) qualifications for the issuance of a public insurance adjuster license analogous to the qualifications described by Section 4102.054; and

(B) requirements for the performance of the duties and powers of a public insurance adjuster analogous to the requirements described by Section 4102.054.

(c) The department may not issue a public insurance adjuster

license to a business entity described by Subsection (a) unless at least one officer, active partner, or other managing individual of the business entity, and each individual performing acts of a public insurance adjuster on behalf of the business entity in this state, are individually licensed by the department under Section 4102.054 separately from the business entity.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.057. EXAMINATION REQUIRED. (a) Except as otherwise provided by this chapter, each applicant for a license as a public insurance adjuster must, before the issuance of the license, take and pass an examination to the satisfaction of the commissioner.

(b) The examination required by this section must be prescribed by the commissioner and must be of sufficient scope to reasonably test the applicant's:

(1) knowledge of basic insurance theory, essential elements of contracts, and claims ethics;

(2) technical competence in the handling of the types of claims for which the applicant is being tested; and

(3) knowledge of:

(A) Chapter 541;

(B) Subchapters A and B, Chapter 542;

(C) Chapter 547;

(D) the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code);

(E) analogous laws as specified by the commissioner;

(F) statutory provisions related to the unauthorized practice of law contained in Subchapter G, Chapter 81, Government Code; and

(G) the duties and responsibilities of public insurance adjusters under the law.

(c) The commissioner shall, within a reasonable period not to exceed 30 days after the date of the examination, transmit the results of the examination and the action taken on the application to the applicant.

(d) An examination is not required for the renewal of a license issued under this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.058. EXEMPTION FROM EXAMINATION REQUIREMENT. The examination requirement imposed by Section 4102.057 does not apply to:

(1) an applicant who is licensed as a resident public insurance adjuster in the applicant's state of residence, if the state requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of that state has been entered into by the department; or

(2) an applicant who is licensed as a nonresident public insurance adjuster in a state other than the applicant's state of residence, if the state of licensure requires the passing of a written examination in order to obtain the license and a reciprocal agreement with the appropriate official of the state of licensure has been entered into by the department.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.060. EXAMINATION FORM AND TIME. (a) The answers of an examinee to an examination required under this chapter shall be made by the examinee in writing. A written examination may be supplemented by oral examination.

(b) The examination shall be given at times and places within the state as the commissioner considers necessary to reasonably serve the convenience of both the commissioner and examinees.

(c) The commissioner may require a waiting period of reasonable duration before an examinee who fails the examination, but who is otherwise qualified, may be reexamined.

(d) The scheduling and administration of examinations required under Section 4102.057 shall be effected by persons approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.061. LICENSE FORM. The commissioner shall prescribe the form of the licenses issued under this chapter. Each license must contain:

(1) the name of the public insurance adjuster and the address of the public insurance adjuster's place of business;

(2) the date of issuance and the date of expiration of the license; and

(3) if applicable, the name of the firm with which the public insurance adjuster is employed at the time the license is issued.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.062. EXPIRATION. A license issued under this chapter expires as provided by Chapter 4003 unless suspended or revoked by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 17, eff. September 1, 2015.

Sec. 4102.063. NOTICE OF EXPIRATION. At least 30 days before the expiration of a license, the department shall send written notice of the impending license expiration to the license holder at the license holder's last known mailing address according to the records of the department.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.064. RENEWAL OF UNEXPIRED LICENSE. (a) A license holder may renew a license that has not expired and has not been suspended or revoked by filing with the department a properly completed renewal application, in the form prescribed by the commissioner, that demonstrates continued compliance with the license

requirements imposed under this chapter or adopted by rule by the commissioner. The completed renewal application must be accompanied by:

(1) a renewal application fee in the amount determined by the commissioner under Section 4102.066(b); and

(2) evidence of compliance with the continuing education requirements imposed under Section 4102.109.

(b) A license holder must submit the completed renewal application, evidence of compliance with the continuing education requirements, and the renewal application fee to the commissioner not later than the 30th day before the second anniversary date of the license.

(c) On the filing of a completed renewal application, a renewal application fee, and, if applicable, evidence of compliance with the continuing education requirements, the original license continues in force until:

(1) the department issues the renewal license;

(2) the license is not renewed under Section 4004.055; or

(3) the commissioner issues an order revoking the license.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 18, eff. September 1, 2015.

Sec. 4102.065. RENEWAL OF EXPIRED LICENSE. (a) A person whose license has been expired for 90 days or less may renew the license by:

(1) submitting to the department:

(A) a completed renewal application in the form prescribed by the commissioner; and

(B) evidence of compliance with the continuing education requirements and eligibility for renewal under Section 4004.055; and

(2) paying to the department the required renewal application fee and an additional fee that is equal to one-half of the renewal application fee for the license.

(b) Except as provided by Section 4004.055, a person whose

license has been expired for more than 90 days but less than one year may not renew the license but is entitled to a new license without taking the applicable examination if the person submits to the department:

(1) a new application;

(2) evidence of compliance with the continuing education requirements;

(3) the license application fee; and

(4) an additional fee equal to one-half of the license application fee.

(c) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by:

(1) submitting to reexamination, if examination is required for original issuance of the license;

(2) complying with the requirements and procedures for obtaining an original license; and

(3) if applicable, submitting evidence of completion of any outstanding continuing education requirement and payment of any associated fine related to the expired license.

(d) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in continual practice in the other state up to and including the date of the application. The person must pay to the department a fee that is equal to the license application fee.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 19, eff. September 1, 2015.

Sec. 4102.066. FEES. (a) The commissioner shall collect in advance the following nonrefundable fees:

(1) for a public insurance adjuster license, an application fee in an amount to be determined by rule by the commissioner;

(2) for a nonresident public insurance adjuster license, an application fee in an amount to be determined by rule by the

commissioner; and

(3) for each public insurance adjuster examination, a fee in an amount to be determined by rule by the commissioner.

(b) The amount of the fee for the renewal of a license issued under this chapter shall be determined by rule by the commissioner.

(c) The commissioner shall set the fees in amounts reasonable and necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1178 (S.B. 1060), Sec. 2, eff. September 1, 2015.

Sec. 4102.067. USE OF FEES. (a) When collected, the fees authorized by this chapter shall be deposited with the comptroller to the credit of the Texas Department of Insurance operating account.

(b) The department may use any portion of the fees collected to:

(1) enforce this chapter;

(2) employ persons as the department considers necessary to investigate and make reports regarding alleged violations of this code and misconduct on the part of public insurance adjusters; and

(3) pay the salaries and expenses of persons and office employees and other expenses necessary to enforce this chapter.

(c) A person employed by the department under this section may examine under oath any person for the purpose of gathering information and evidence and may have the information and evidence reduced to writing.

(d) All expenses incurred under this section shall be paid from the fees collected under this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.068. LICENSE NOT ASSIGNABLE. A license issued under this chapter is not assignable.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a),

eff. September 1, 2005.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 4102.101. GENERAL AUTHORITY. (a) A license issued under this chapter authorizes the adjusting of claims on behalf of insureds for fire and allied coverages, burglary, flood, and all other property claims, both real and personal, including loss of income, but only when the client is an insured under the insurance policy.

(b) This chapter does not limit or diminish the authority of a license holder to investigate or adjust a loss to less than the authority for that purpose that may be exercised by an adjuster licensed under Chapter 4101.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.102. COMPLIANCE WITH INSURANCE CONTRACT. A license holder shall prepare each claim for an insured represented by the license holder in accordance with the terms and conditions of the contract of insurance under which recovery is sought.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.103. CONTRACT FOR SERVICES REQUIRED. (a) A license holder may not, directly or indirectly, act within this state as a public insurance adjuster without having first entered into a contract, in writing, on a form approved by the commissioner, executed in duplicate by the license holder and the insured or the insured's duly authorized representative. A license holder may not use any form of contract that is not approved by the commissioner.

(b) The contract must contain a provision allowing the client to rescind the contract by written notice to the license holder within 72 hours of signature, and must include a prominently displayed notice in 12-point boldface type that states "WE REPRESENT THE INSURED ONLY." The commissioner by rule may require additional prominently displayed notice requirements in the contract as the commissioner considers necessary.

(c) One copy of the contract shall be kept on file in this state by the license holder and must be available at all times for inspection, without notice, by the commissioner or the commissioner's duly authorized representative.

(d) A license holder may not enter into a contract with an insured and collect a commission as provided by Section 4102.104 without the intent to actually perform the services customarily provided by a licensed public insurance adjuster for the insured.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1178 (S.B. 1060), Sec. 3, eff. September 1, 2015.

Sec. 4102.104. COMMISSIONS. (a) Except as provided by Subsection (b), a license holder may receive a commission for service provided under this chapter consisting of an hourly fee, a flat rate, a percentage of the total amount paid by an insurer to resolve a claim, or another method of compensation. The total commission received may not exceed 10 percent of the amount of the insurance settlement on the claim.

(b) A license holder may not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim on a claim on which the insurer, not later than 72 hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy in accordance with Section 862.053. The license holder is entitled to reasonable compensation from the insured for services provided by the license holder on behalf of the insured, based on the time spent on a claim that is subject to this subsection and expenses incurred by the license holder, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(c) Except for the payment of a commission by the insured, all persons paying any proceeds of a policy of insurance or making any payment affecting an insured's rights under a policy of insurance must:

(1) include the insured as a payee on the payment draft or check; and

(2) require the written signature and endorsement of the insured on the payment draft or check.

(d) A public insurance adjuster may not accept any payment that violates the provisions of this section.

(e) Notwithstanding any authorization the insured may have given to a public insurance adjuster, a public insurance adjuster may not sign and endorse any payment draft or check on behalf of an insured.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1178 (S.B. 1060), Sec. 4, eff. September 1, 2015.

Sec. 4102.105. FINANCIAL RESPONSIBILITY. (a) As a continuing condition of licensure, a public insurance adjuster must file proof of financial responsibility with respect to transactions with insureds under this chapter in an amount determined by the commissioner by rule. The financial responsibility must include the ability to pay sums the public insurance adjuster is obligated to pay under any judgment against the public insurance adjuster by an insured, based on an error, omission, fraud, negligent act, or unfair practice of the public insurance adjuster or any person for whose acts the public insurance adjuster is legally liable in the transaction of the public insurance adjuster's business under this code.

(b) In determining the amount of the financial responsibility requirement, the commissioner shall consider the nature of the obligation, other financial security requirements under this code, and financial security requirements adopted for public insurance adjusters in other states. In determining the types of financial responsibility required, the commissioner may consider a surety bond or a professional liability policy or similar policy or contract of professional liability coverage acceptable to the commissioner.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.106. PLACE OF BUSINESS. (a) Each license holder who is a resident of this state or a business entity organized under the laws of this state shall:

(1) maintain a place of business in this state that is accessible to the general public; and

(2) maintain in the place of business the records required by this chapter.

(b) The address of the place of business must appear on the face of the license.

(c) The license holder shall promptly notify the commissioner of any change in the address of the license holder's place of business.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.107. AGENT FOR SERVICE OF PROCESS. (a) Each nonresident license holder shall maintain an agent in this state for service of process.

(b) The name and address of the nonresident license holder's out-of-state business address and the name and address of the agent must appear on the face of the license.

(c) The nonresident license holder shall promptly notify the department of any change in the address of the license holder's place of business or in the agent for service of process.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.108. POSTING OF LICENSE. A license issued under this chapter must at all times be posted in a conspicuous place in the principal place of business of the license holder.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.109. CONTINUING EDUCATION. (a) Each license holder must complete at least 24 hours of continuing education during the

license period. The commissioner by rule shall prescribe the requirements for continuing education courses under this section.

(b) Notwithstanding Subsection (a), the commissioner may waive any continuing education requirement for a nonresident public insurance adjuster with a valid license from another state having continuing education requirements substantially equivalent to those of this state.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 20, eff. September 1, 2015.

Sec. 4102.110. RECORD MAINTENANCE. (a) A license holder shall keep a complete record in this state of each of the license holder's transactions as a public insurance adjuster. The records must include each of the following:

(1) the name of the insured;

(2) the date, location, and amount of the loss;

(3) a copy of the contract between the license holder and the insured;

(4) the name of the insurer and the amount, expiration date, and number of each policy under which the loss is covered;

(5) an itemized statement of the recoveries by the insured from the sources known to the license holder;

(6) the total compensation received for the adjustment; and

(7) an itemized statement of disbursements made by the license holder from recoveries received on behalf of the insured.

(b) Records required to be kept under this section must be:

(1) maintained in this state for at least five years after the termination of a transaction with the insured; and

(2) open to examination by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.111. FIDUCIARY CAPACITY. (a) All funds received as claim proceeds by a license holder acting as a public insurance

adjuster are received and held by the license holder in a fiduciary capacity. A license holder may not divert or appropriate fiduciary funds received or held.

(b) An applicant for a license to act as a public insurance adjuster must, as part of the application, endorse an authorization for disclosure to the commissioner of all financial records of any funds the public insurance adjuster holds as a fiduciary. The authorization continues in force and effect for as long as the license holder continues to be licensed under this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.112. RELOCATION TO ANOTHER STATE. (a) Not later than the 30th day after moving from one state to another state, a nonresident or resident public insurance adjuster licensed in this state shall file with the department:

(1) the license holder's new address; and

(2) proof of authorization to engage in the business of public insurance adjuster in the new state of residence if that state requires licensure of public insurance adjusters.

(b) The department may not charge a fee or require a license application under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.113. ADVERTISEMENTS. Each advertisement by a license holder soliciting or advertising business must display the license holder's name, address, and license number as they appear in the records of the commissioner.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.114. DUTIES OF NONRESIDENT LICENSE HOLDER. (a) A nonresident license holder shall comply with all of the requirements of this chapter in performing any of the activities of a public

insurance adjuster in this state, including the requirements on record maintenance in Section 4102.110.

(b) The failure of a nonresident license holder, as determined by the commissioner after notice and an opportunity for a hearing, to properly maintain records in accordance with this chapter and make them available to the department on request constitutes grounds for the suspension of the nonresident license issued under this chapter, in accordance with Section 4102.201.

(c) Each individual who holds a nonresident license shall comply with all other laws and rules of this state applicable to public insurance adjusters, including the law governing the collection of state sales tax as appropriate for services performed under this chapter.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(9), eff. September 1, 2021.

(e) A nonresident license holder is subject to Section 4102.208(b), relating to failure to maintain the financial responsibility requirements.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 355 (H.B. 4030), Sec. 22(9), eff. September 1, 2021.

SUBCHAPTER D. PROHIBITED CONDUCT

Sec. 4102.151. SOLICITATION PROHIBITED DURING NATURAL DISASTER. A license holder may not solicit or attempt to solicit a client for employment during the progress of a loss-producing natural disaster occurrence.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.152. SOLICITATION PROHIBITED DURING CERTAIN HOURS. (a) A license holder may not solicit or attempt to solicit business on a loss or a claim in person, by telephone, or in any other manner at any time except between the hours of 9 a.m. and 9 p.m. on a weekday or a Saturday and between noon and 9 p.m. on a Sunday.

(b) This section does not prohibit a license holder from accepting phone calls or personal visits during the prohibited hours from an insured on the insured's initiation.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.153. CERTAIN REPORTS AND DISCLOSURES PROHIBITED. A license holder may not knowingly make any false report to the license holder's employer or client and may not divulge to any other person, except as the law may require, any information obtained except at the direction of the employer or the client for whom the information is obtained.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.154. USE OF BADGE PROHIBITED. A license holder may not use a badge in connection with the official activities of the license holder's business.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.155. CERTAIN DELEGATION PROHIBITED. A license holder may not permit an employee or agent, in the employee's or agent's own name, to advertise, solicit or engage clients, furnish reports or present bills to clients, or in any manner conduct business for which a license is required under this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.156. PRACTICE OF LAW PROHIBITED. A license holder may not render services or perform acts that constitute the practice of law, including the giving of legal advice to any person in the license holder's capacity as a public insurance adjuster.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.157. CERTAIN BUSINESS PROHIBITED. A license holder may not solicit or attempt to solicit business, directly or indirectly, or act in any manner on a bodily injury loss covered by a life, health, or accident insurance policy or on any claim for which the client is not an insured under the insurance policy.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.158. CONFLICTS OF INTEREST PROHIBITED. (a) A license holder may not:

(1) participate directly or indirectly in the reconstruction, repair, or restoration of damaged property that is the subject of a claim adjusted by the license holder; or

(2) engage in any other activities that may reasonably be construed as presenting a conflict of interest, including soliciting or accepting any remuneration from, having a financial interest in, or deriving any direct or indirect financial benefit from, any salvage firm, repair firm, construction firm, or other firm that obtains business in connection with any claim the license holder has a contract or agreement to adjust.

(b) A license holder may not, without the knowledge and consent of the insured in writing, acquire an interest in salvaged property that is the subject of a claim adjusted by the license holder.

(c) A license holder may not represent an insured on a claim or charge a fee to an insured while representing the insurance carrier against which the claim is made.

(d) A license holder may not directly or indirectly solicit, as described by Chapter 38, Penal Code, employment for an attorney or enter into a contract with an insured for the primary purpose of referring an insured to an attorney and without the intent to actually perform the services customarily provided by a licensed public insurance adjuster. This section may not be construed to prohibit a license holder from recommending a particular attorney to an insured.

(e) A license holder may not act on behalf of an attorney in having an insured sign an attorney representation agreement.

(f) A license holder must become familiar with and at all times act in conformance with the criminal barratry statute set forth in Section 38.12, Penal Code.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1178 (S.B. 1060), Sec. 5, eff. September 1, 2015.

Sec. 4102.159. MISREPRESENTATION PROHIBITED. A license holder may not use any misrepresentation to solicit a contract or agreement to adjust a claim.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.160. CERTAIN PAYMENTS PROHIBITED. A license holder may not:

(1) advance money to any potential client or insured; or

(2) pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, to a person who is not a licensed public insurance adjuster a fee, commission, or other valuable consideration for the referral of an insured to the public insurance adjuster for purposes of the insured entering into a contract with that public insurance adjuster or for any other purpose.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1178 (S.B. 1060), Sec. 6, eff. September 1, 2015.

Sec. 4102.161. CERTAIN REPRESENTATIONS PROHIBITED. A license holder may not use any letterhead, advertisement, or other printed matter, or use any other means, to represent that the license holder

is an instrumentality of the federal government, of a state, or of a political subdivision of a state.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.162. USE OF DIFFERENT NAME PROHIBITED. A license holder may not use a name different from the name under which the license holder is currently licensed in an advertisement, solicitation, or contract for business unless the name is used under a valid assumed name certificate as provided by Chapter 71, Business & Commerce Code.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 836 (H.B. 2659), Sec. 1, eff. September 1, 2019.

Sec. 4102.163. CERTAIN CONTRACTOR BUSINESS PROHIBITED. (a) A contractor may not act as a public adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide contracting services, regardless of whether the contractor:

(1) holds a license under this chapter; or

(2) is authorized to act on behalf of the insured under a power of attorney or other agreement.

(b) The commissioner shall adopt rules necessary to implement and enforce this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 903 (H.B. 1183), Sec. 2, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1100 (H.B. 2103), Sec. 1, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1100 (H.B. 2103), Sec. 2, eff. September 1, 2019.

Sec. 4102.164. ACCEPTANCE OF REFERRAL PAYMENTS PROHIBITED. (a)

A licensed public insurance adjuster may not accept a fee, commission, or other valuable consideration of any nature, regardless of form or amount, in exchange for the referral by a licensed public insurance adjuster of an insured to any third-party individual or firm, including an attorney, appraiser, umpire, construction company, contractor, or salvage company.

(b) The commissioner shall adopt rules necessary to implement and enforce this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1178 (S.B. 1060), Sec. 7, eff. September 1, 2015.

SUBCHAPTER E. ENFORCEMENT

Sec. 4102.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The commissioner may deny an application for a license under this chapter or suspend or revoke a license issued under this chapter on the basis of:

(1) a violation of this chapter or of any rule adopted by the commissioner under this chapter;

(2) a cause that constitutes grounds for denial of an original license;

(3) misrepresentation or fraud in obtaining a license;

(4) failure to pass a required license examination;

(5) the misappropriation or conversion of money required to be held in a fiduciary capacity;

(6) material misrepresentation, with intent to deceive, of the terms of an insurance contract;

(7) engaging in a fraudulent transaction;

(8) demonstrated incompetence or untrustworthiness in the conduct of the license holder's affairs under the license, as determined by the commissioner;

(9) conviction of a felony by a final judgment in a court of competent jurisdiction; or

(10) material misrepresentation, with intent to deceive, of the person's status as a public insurance adjuster.

(b) If the department proposes to refuse to issue an original license under this chapter or to suspend, revoke, or refuse to renew a license under this chapter, the person affected is entitled to notice and hearing as provided by Section 4005.104.

(c) A final order entered as a result of a hearing under this section may be appealed to a court of competent jurisdiction as provided by Subchapter D, Chapter 36.

(d) An order suspending a license issued under this chapter must specify the period of the suspension not to exceed 12 months.

(e) The holder of a license that is revoked or suspended for cause shall surrender the license to the commissioner on demand.

(f) The commissioner may issue a license or reinstate a suspended or revoked license on a finding that the cause for suspension, revocation, or refusal no longer exists.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.202. APPLICATION FOR LICENSE AFTER SUSPENSION, DENIAL OF APPLICATION, OR REVOCATION OF LICENSE. (a) A person whose license is suspended under this chapter may apply for a new license only after the expiration of the period of suspension.

(b) A person whose license is revoked or whose application for a license is denied, except for a failure to submit a completed application, may not apply for a new license until the fifth anniversary of:

(1) the effective date of the denial or revocation; or

(2) if the applicant or license holder seeks judicial review of the department's action, the date of the final court order or decree affirming that action.

(c) The commissioner may deny a timely application filed under Subsection (b) if the applicant does not show good cause why the denial of the previous license application or the revocation of the license should not be considered a bar to the issuance of the new license.

(d) Subsection (c) does not apply to an applicant whose license application was denied for failure by the applicant to:

(1) pass the required written examination; or

(2) submit a properly completed license application.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.203. DISCIPLINARY PROCEEDING FOR CONDUCT COMMITTED BEFORE SURRENDER OR FORFEITURE OF LICENSE. (a) The department may institute a disciplinary proceeding against a former license holder for conduct that the license holder committed before the effective date of a voluntary surrender or automatic forfeiture of the license.

(b) In a proceeding under this section, the fact that the license holder has surrendered or forfeited the license does not affect the license holder's culpability for the conduct.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.204. ADMINISTRATIVE PENALTY. The commissioner, in lieu of suspending or revoking a license for a violation of this chapter or a rule adopted under this chapter, may impose on a license holder an administrative penalty in an amount not to exceed $2,000 per violation if the commissioner determines that that action better serves the purposes of this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.205. AUTOMATIC FINES. Section 4005.109 applies to violations of this chapter.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.206. CRIMINAL PENALTY; SANCTIONS. (a) A person commits an offense if the person violates this chapter. An offense under this subsection is a Class B misdemeanor.

(b) If conduct that constitutes an offense under Subsection (a) also constitutes an offense under any other law, the person committing the offense may be prosecuted under this section or the other law.

(c) In addition to the criminal penalties imposed under Subsection (a), a person in violation of this chapter is subject to the sanctions provided by Sections 541.108-541.110, as if the person

had violated an order under those sections.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.207. INSURED OPTION TO VOID CONTRACT. (a) Any contract for services regulated by this chapter that is entered into by an insured with a person who is in violation of Section 4102.051 may be voided at the option of the insured.

(b) If a contract is voided under this section, the insured is not liable for the payment of any past services rendered, or future services to be rendered, by the violating person under that contract or otherwise.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

Sec. 4102.208. EMERGENCY CEASE AND DESIST ORDER. (a) If the commissioner believes that a person is engaging in acts or practices in violation of Section 4102.051, the commissioner ex parte may issue an emergency cease and desist order, in accordance with Subchapter B, Chapter 83, requiring the person to immediately cease and desist from engaging further in the acts or practices.

(b) In addition to any other remedy available under this code, if the commissioner believes that a person is committing a violation by failing to maintain the financial responsibility requirements of Section 4102.105, the commissioner ex parte may issue an emergency cease and desist order and suspend the person's license, in accordance with Subchapter B, Chapter 83, requiring the person to immediately cease and desist from engaging in the activities of a public insurance adjuster.

(c) A license suspended under Subsection (b) may be reinstated on the approval of an application for reinstatement filed with the commissioner, in the form prescribed by the commissioner, with proof that the financial responsibility requirements of Section 4102.105 have been met. The commissioner may deny the application for reinstatement:

(1) for any reason that would justify a refusal to issue, or a suspension or revocation of, a license; or

(2) for the performance by the applicant of any practice for which a license under this chapter is required while the applicant is under suspension for failure to keep the financial responsibility requirements in force.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.082(a), eff. September 1, 2005.

SUBTITLE D. OTHER PROFESSIONALS
CHAPTER 4151. THIRD-PARTY ADMINISTRATORS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4151.001. DEFINITIONS. In this chapter:

(1) "Administrator" means a person who, in connection with annuities or life benefits, health benefits, accident benefits, pharmacy benefits, or workers' compensation benefits, collects premiums or contributions from or adjusts or settles claims for residents of this state. The term includes a delegated entity under Chapter 1272 and a workers' compensation health care network authorized under Chapter 1305 that administers a workers' compensation claim for an insurer, including an insurer that establishes or contracts with the network to provide health care services. The term does not include a person described by Section 4151.002.

(2) "Insurer" means a person who engages in the business of life, health, accident, or workers' compensation insurance under the law of this state. For purposes of this chapter only, the term also includes an "insurance carrier," as defined by Section 401.011(27), Labor Code, other than a governmental entity or a workers' compensation self-insurance group subject to regulation under Chapter 407A, Labor Code.

(3) "Person" means an individual, partnership, corporation, organization, government or governmental subdivision or agency, business trust, estate trust, association, or any other legal entity.

(4) "Plan" means a plan, fund, or program established, adopted, or maintained by a plan sponsor or insurer to the extent that the plan, fund, or program is established, adopted, or maintained to provide indemnification or expense reimbursement for any type of life, health, or accident benefit.

(5) "Plan sponsor" means a person, other than an insurer,

who establishes, adopts, or maintains a plan that covers residents of this state, including a plan established, adopted, or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, an association, a committee, a joint board of trustees, or any similar group of representatives who establish, adopt, or maintain a plan.

(6) "Workers' compensation benefits" means benefits provided under Title 5, Labor Code, or services provided through a certified workers' compensation health care network authorized under Chapter 1305.

(7) "Workers' compensation insurance coverage" means coverage subject to Subtitle E, Title 10. The term includes coverage described by Sections 401.011(44)(A) and (B), Labor Code.

(8) "Workers' compensation self-insurer" means a legal entity subject to regulation under Chapter 407, Labor Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.01, eff. September 1, 2007.

Sec. 4151.002. EXEMPTIONS. A person is not an administrator if the person is:

(1) an employer, other than a certified workers' compensation self-insurer, administering an employee benefit plan or the plan of an affiliated employer under common management and control;

(2) a union administering a benefit plan on behalf of its members;

(3) an insurer or a group hospital service corporation subject to Chapter 842 acting with respect to a policy lawfully issued and delivered by the insurer or corporation in and under the law of a state in which the insurer or corporation was authorized to engage in the business of insurance;

(4) a health maintenance organization that is authorized to operate in this state under Chapter 843 with respect to any activity that is specifically regulated under that chapter, Chapter 1271, 1272, or 1367, Subchapter A, Chapter 1452, or Subchapter B, Chapter 1507;

(5) an agent licensed under Subchapter B, Chapter 4051, Subchapter B, Chapter 4053, or Subchapter B, Chapter 4054, who receives commissions as an agent and is acting:

(A) under appointment on behalf of an insurer authorized to engage in the business of insurance in this state; and

(B) in the customary scope and duties of the person's authority as an agent;

(6) a creditor acting on behalf of its debtor with respect to insurance that covers a debt between the creditor and its debtor, if the creditor performs only the functions of a group policyholder or a creditor;

(7) a trust established in conformity with 29 U.S.C. Section 186 or a trustee or employee who is acting under the trust;

(8) a trust that is exempt from taxation under Section 501(a), Internal Revenue Code of 1986, or a trustee or employee acting under the trust;

(9) a custodian or a custodian's agent or employee who is acting under a custodian account that complies with Section 401(f), Internal Revenue Code of 1986;

(10) a bank, credit union, savings and loan association, or other financial institution that is subject to supervision or examination under federal or state law by a federal or state regulatory authority, if the institution is performing only those functions for which the institution holds a license under federal or state law;

(11) a company that advances and collects a premium or charge from its credit card holders on their authorization, if the company does not adjust or settle claims and acts only in the company's debtor-creditor relationship with its credit card holders;

(12) a person who adjusts or settles claims in the normal course of the person's practice or employment as a licensed attorney and who does not collect any premium or charge in connection with annuities or with life, health, accident, pharmacy, or workers' compensation benefits;

(13) an adjuster licensed under Subtitle C by the department who is engaged in the performance of the individual's powers and duties as an adjuster in the scope of the individual's license;

(14) a person who provides technical, advisory, utilization review, precertification, or consulting services to an insurer, plan,

or plan sponsor but does not make any management or discretionary decisions on behalf of the insurer, plan, or plan sponsor;

(15) an attorney in fact for a Lloyd's plan operating under Chapter 941 or for a reciprocal or interinsurance exchange operating under Chapter 942 who is acting in the capacity of attorney in fact under the applicable chapter;

(16) a joint fund, risk management pool, or self-insurance pool composed of political subdivisions of this state that participate in a fund or pool through interlocal agreements, any nonprofit administrative agency or governing body or other nonprofit entity that acts solely on behalf of a fund, pool, agency, or body, or any other fund, pool, agency, or body established under or for the purpose of implementing an interlocal governmental agreement;

(17) a self-insured political subdivision;

(18) a plan under which insurance benefits are provided exclusively by an insurer authorized to engage in the business of insurance in this state and the administrator of which is:

(A) a full-time employee of the plan's organizing or sponsoring association, trust, or other entity; or

(B) a trustee of the organizing or sponsoring trust;

(19) a parent of a wholly owned direct or indirect subsidiary insurer authorized to engage in the business of insurance in this state or a wholly owned direct or indirect subsidiary insurer that is a part of the parent's holding company system that, under an agreement regulated and approved under Chapter 823 or a similar statute of the domiciliary state if the parent or subsidiary insurer is a foreign insurer engaged in business in this state, on behalf of only itself or an affiliated insurer:

(A) collects premiums or contributions, if the parent or subsidiary insurer:

(i) prepares only billing statements and places those statements in the United States mail; and

(ii) causes all collected premiums to be deposited directly in a depository account of the particular affiliated insurer; or

(B) furnishes proof-of-loss forms, reviews claims, determines the amount of the liability for those claims, and negotiates settlements, if the parent or subsidiary insurer pays claims only from the funds of the particular subsidiary by checks or drafts of that subsidiary; or

(20) an affiliate, as described by Chapter 823.003, of a self-insurer certified under Chapter 407, Labor Code, and who:

(A) is performing the acts of an administrator on behalf of that certified self-insurer; and

(B) directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that certified self-insurer, as the term "control" is described by Section 823.005.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.074(j), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.02, eff. September 1, 2007.

Sec. 4151.0021. APPLICABILITY TO CERTAIN PROCESSING AGENTS. (a) In this section, "processing agent" means a person described by Section 413.0111, Labor Code.

(b) A processing agent is not an administrator for purposes of this chapter if the processing agent is acting as an assignee of a pharmacy and if:

(1) the assignee has a written contract with the pharmacy to:

(A) act as the provider of licensed pharmacy services in lieu of the pharmacy; and

(B) purchase the pharmacy's claims at face value, or at a value expressly stated in the contract; and

(2) the contract specifically prohibits the assignee from performing any function of an administrator, as that term is defined in this chapter, unless the assignee holds a certificate of authority under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.03, eff. September 1, 2007.

Sec. 4151.0022. NONAPPLICABILITY. This chapter does not apply to a health care sharing ministry operated under Chapter 1681.

Added by Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 4, eff. June 14, 2013.

Sec. 4151.003. APPLICABILITY OF OTHER PROVISIONS OF CODE. An administrator is subject to Section 823.457, Subchapter H of Chapter 101, Chapter 541, Subchapter A of Chapter 542, and Chapter 804.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.0031. MARKET ANALYSIS. The commissioner may conduct market analyses and examinations of an administrator under Chapter 751.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.03, eff. September 1, 2007.

Sec. 4151.004. APPLICABILITY TO CERTAIN INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS. An insurer or health maintenance organization that is not exempt under Section 4151.002(3) or (4) is subject to all provisions of this chapter other than Sections 4151.005, 4151.051-4151.054, 4151.056, and 4151.206(a)(1).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.005. ADMINISTRATOR NOT INSURANCE AGENT. (a) An administrator licensed in any state who accepts an agent's commission for coverage for a risk located in this state and disburses that commission to an agent in this state is not considered an agent for purposes of this state's laws relating to the licensing of agents.

(b) The exemption provided by this section does not authorize an administrator to perform any other act for which a license as an agent is required by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.0051. REFERRAL TO ADJUSTER BY ADMINISTRATOR. (a) An

administrator may not knowingly refer a claim or loss for adjustment in this state to an individual purporting to be or acting as an adjuster unless the individual holds a license under Chapter 4101.

(b) Before first referring a claim or loss for adjustment, an administrator must ascertain from the commissioner whether the individual selected to perform the adjustment holds a license under Chapter 4101. After receipt of information from the department that the individual does hold an adjuster license, the administrator may refer claims or losses to the individual for adjustment until the administrator has actual knowledge or receives information from the department that the individual no longer holds an adjuster license under Chapter 4101. The department shall keep an updated list of individuals who hold adjuster licenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.03, eff. September 1, 2007.

Sec. 4151.006. RULES. The commissioner may adopt, in the manner prescribed by Subchapter A, Chapter 36, rules that are fair, reasonable, and appropriate to augment and implement this chapter, including rules establishing financial standards, reporting requirements, and required contract provisions.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.04, eff. September 1, 2007.

SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Sec. 4151.051. CERTIFICATE OF AUTHORITY REQUIRED. (a) An individual, corporation, organization, trust, partnership, or other legal entity may not act as or hold itself out as an administrator unless the entity is covered by and is engaging in business under a certificate of authority issued under this chapter.

(b) An administrator is required to hold only one certificate of authority issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.052. APPLICATION. (a) An application for a certificate of authority to engage in business as an administrator must be in a form prescribed by the commissioner and must include the following:

(1) a copy of each basic organizational document of the applicant, including the articles of incorporation, bylaws, articles of association, trade name certificate, and any other similar document and a copy of any amendment to any of those documents;

(2) a description of the applicant and the applicant's services, facilities, and personnel;

(3) if the applicant is not domiciled in this state, a power of attorney executed by the applicant appointing the commissioner, the commissioner's successors in office, or the commissioner's appointed designee as the applicant's attorney in this state on whom process may be served in any legal action or proceeding based on a cause of action arising in this state against the applicant;

(4) an audited financial statement of the applicant covering the preceding three calendar years or any lesser period that the applicant and any predecessors of the applicant have been in existence, or if an audited financial statement is not available, an unaudited financial statement as of a date not earlier than the 120th day before the date the application is filed, accompanied by an affidavit or certification of the applicant that:

(A) the unaudited financial statement is true and correct, as of its date; and

(B) a material change in financial condition has not occurred from the date of the financial statement to the execution date of the affidavit or certification; and

(5) any other information the commissioner reasonably requires.

(b) An applicant for a certificate of authority or a certificate holder under this chapter shall notify the department in the manner prescribed by commissioner rule of a change of control in the applicant's or certificate holder's ownership not later than the 30th day after the effective date of the change and shall notify the department of any other fact or circumstance affecting the applicant's or certificate holder's qualifications for a certificate of authority in this state as required by commissioner rule.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.05, eff. September 1, 2007.

Sec. 4151.053. APPROVAL OF APPLICATION. The commissioner shall approve an application for a certificate of authority to engage in business in this state as an administrator if the commissioner is satisfied that:

(1) granting the application would not violate a federal or state law;

(2) the financial condition of the applicant or of each person who would operate or control the applicant is such that granting a certificate of authority would not be adverse to the public interest;

(3) the applicant has not attempted to obtain the certificate of authority through fraud or bad faith;

(4) the applicant has complied with this chapter and rules adopted by the commissioner under this chapter; and

(5) the name under which the applicant will engage in business in this state is not so similar to that of another administrator or insurer that it is likely to mislead the public.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.054. DENIAL OF APPLICATION. (a) If the commissioner is unable to approve an application for a certificate of authority, the commissioner shall:

(1) provide the applicant with written notice specifying each deficiency in the application; and

(2) offer the applicant the opportunity for a hearing to address each reason and circumstance for possible denial of the application.

(b) The commissioner must provide an opportunity for a hearing before the commissioner finally denies an application.

(c) At the hearing, the applicant has the burden to produce sufficient competent evidence on which the commissioner can make the determinations required by Section 4151.053.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.055. FIDELITY BOND REQUIRED. (a) If the commissioner approves an application for a certificate of authority, before the commissioner issues the certificate of authority, the applicant must:

(1) obtain and maintain a fidelity bond that complies with this section; and

(2) submit to the commissioner proof that the applicant has obtained the fidelity bond.

(b) The fidelity bond must protect against an act of fraud or dishonesty by the applicant in exercising the applicant's powers and duties as administrator.

(c) The fidelity bond may not be less than $10,000 and may not be more than the lesser of:

(1) 10 percent of the amount of funds handled during the preceding year or, if no funds were handled during the preceding year, 10 percent of the amount of funds reasonably estimated to be handled by the administrator during the current calendar year; or

(2) $500,000.

(d) On written request by an administrator for reduction of the amount of the fidelity bond for a particular year, the commissioner may authorize the reduction of the amount of the bond if the administrator presents evidence that the amount of funds to be handled during that year will be less than the amount handled during the preceding year.

(e) For purposes of this section, the amount of funds handled by a person in the person's capacity as administrator is either the total amount of premiums and contributions received by the administrator or the total amount of benefits paid by the administrator, whichever is greater, during the preceding calendar year in all jurisdictions in which the person acts as an administrator.

(f) Unless the administrator and the insurer or plan agree otherwise in writing, an administrator is required to obtain and maintain only one fidelity bond for all insurers and plans for which the administrator acts as administrator in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.056. DURATION OF CERTIFICATE OF AUTHORITY. A certificate of authority issued to an administrator under this chapter is effective until it is suspended, canceled, or revoked. The issuance, denial, suspension, cancellation, or revocation of a certificate of authority to act as an administrator is subject to:

(1) Subchapters B and C, Chapter 4005;

(2) Chapter 82; and

(3) Subchapter G.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.06, eff. September 1, 2007.

SUBCHAPTER C. POWERS AND DUTIES OF ADMINISTRATORS AND INSURERS

Sec. 4151.101. WRITTEN AGREEMENT WITH INSURER OR PLAN SPONSOR REQUIRED. (a) An administrator may provide services only under a written agreement with an insurer or plan sponsor.

(b) The commissioner by rule may prescribe provisions that must be included in the written agreement.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.08, eff. September 1, 2007.

Sec. 4151.102. CONTENTS OF WRITTEN AGREEMENT. (a) The written agreement must include each requirement prescribed by this subchapter except for a requirement that does not apply to any function the administrator performs.

(a-1) The written agreement must include a statement of the duties that the administrator is expected to perform on behalf of the insurer, and the lines, classes, or types of insurance that the administrator is authorized to administer. The agreement must include, as applicable, provisions regarding claims handling and other standards relating to the business underwritten by the insurer.

(b) If a policy or plan document is issued to a trustee, a copy

of the trust agreement and any amendment to that trust agreement becomes part of the written agreement.

(c) The written agreement may not contain a provision that unreasonably restricts the availability to a plan participant of an individual life, health, or accident policy or annuity through an agent selected by the plan participant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.09, eff. September 1, 2007.

Sec. 4151.103. RETENTION OF WRITTEN AGREEMENT; INSPECTION BY COMMISSIONER. (a) The administrator and the insurer, plan, or plan sponsor shall retain a copy of the written agreement as part of their official records:

(1) during the term of the agreement; and

(2) until the fifth anniversary of the date on which the agreement expires.

(b) On written request by the commissioner, the administrator shall make the written agreement available for inspection by the commissioner or the commissioner's designee.

(c) Information the commissioner or the commissioner's designee obtains from the written agreement is confidential and may not be made available to the public. An employee of the department may examine the information in exercising powers and performing duties under this chapter.

(d) The commissioner shall adopt rules to address the transfer of records from one administrator to another.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.10, eff. September 1, 2007.

Sec. 4151.104. NOTICE OF USE OF ADMINISTRATOR'S SERVICES. (a) If an insurer, plan, or plan sponsor uses the services of an administrator, the administrator shall give written notice to each insured and injured employee of the administrator's identity and the

relationship among the administrator and the insurer, plan, or plan sponsor and the insured and injured employee. The insurer, plan, or plan sponsor must approve the notice before the notice is distributed.

(b) An administrator administering workers' compensation claims may satisfy the requirements of Subsection (a) by including the notice as part of, or in conjunction with, the notice required under Section 406.005(c), Labor Code.

(c) An administrator who fails to provide notice as required by Subsection (a) is subject to an administrative penalty in the manner provided by Chapter 84.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.11, eff. September 1, 2007.

Sec. 4151.1041. REFERRAL BY INSURER. (a) An insurer may not knowingly refer a claim or loss for administration in this state to a person purporting to be or acting as an administrator unless the person holds a certificate of authority under this chapter.

(b) Before first referring a claim or loss for administration, an insurer must ascertain from the commissioner whether the person performing the administration holds a certificate of authority under this chapter. Once the insurer has ascertained that the person holds a certificate of authority, the insurer may refer a claim to the person for administration and may continue to refer claims to the person until the insurer has knowledge or receives information from the commissioner that the person no longer holds a certificate of authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.12, eff. September 1, 2007.

Sec. 4151.1042. RESPONSIBILITIES OF INSURER; SEMIANNUAL AUDIT. (a) If an insurer uses the services of an administrator, the insurer is responsible for determining the benefits, premium rates, reimbursement procedures, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The insurer shall

provide a copy of the written requirements relating to those matters to the administrator. The responsibilities of the administrator as to any of those matters must be set forth in the written agreement between the administrator and the insurer.

(b) An insurer shall ensure competent administration of its programs.

(c) If an administrator administers benefits for more than 100 certificate holders, injured employees, plan participants, or policyholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the administrator. At least biennially, the insurer shall conduct an on-site audit of the operations of the administrator.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.12, eff. September 1, 2007.

Sec. 4151.105. PAYMENTS TO ADMINISTRATOR. (a) If an insurer, plan, or plan sponsor uses the services of an administrator:

(1) a payment of a premium or contribution to the administrator by or on behalf of an insured or plan participant is considered to have been received by the insurer, plan, or plan sponsor; and

(2) a payment of a return premium, contribution, or claim to the administrator by the insurer, plan, or plan sponsor is not considered payment to the insured, plan participant, or claimant until the insured, plan participant, or claimant receives the payment.

(b) This section does not limit a right of an insurer, plan, or plan sponsor against the administrator resulting from the administrator's failure to make a payment to an insured, plan participant, or claimant.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.106. CERTAIN FUNDS COLLECTED OR RECEIVED BY ADMINISTRATOR. (a) An administrator who collects funds must identify and state separately in writing the amount of any premium or contribution specified by the insurer, plan, or plan sponsor for the coverage and provide the information to any person who pays to the

administrator a premium or contribution.

(b) An administrator holds in a fiduciary capacity:

(1) a premium or contribution the administrator collects on behalf of an insurer, plan, or plan sponsor; and

(2) a return premium the administrator receives from an insurer, plan, or plan sponsor.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.107. DELIVERY OR DEPOSIT OF CERTAIN FUNDS RECEIVED BY ADMINISTRATOR. (a) On receiving a premium, contribution, or return premium, an administrator shall:

(1) timely deliver the funds to the person entitled to the funds according to terms of the written agreement; or

(2) promptly deposit the funds in a fiduciary bank account established and maintained by the administrator.

(b) If premiums or contributions deposited in a fiduciary bank account were collected on behalf of more than one insurer, plan, or plan sponsor, the administrator shall:

(1) maintain records that clearly record separately the deposits to and withdrawals from the account on behalf of each insurer, plan, or plan sponsor; and

(2) on request of an insurer, plan, or plan sponsor, provide to the insurer, plan, or plan sponsor a copy of the records relating to deposits and withdrawals on behalf of that insurer or plan.

(c) The requirements of Subsection (b):

(1) are in addition to requirements of any other federal or state law; and

(2) do not authorize the commingling of funds if otherwise prohibited by law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.108. WITHDRAWALS FROM FIDUCIARY ACCOUNT. A withdrawal from a fiduciary bank account established under Section 4151.107 may be made only as provided in the written agreement for any of the following purposes:

(1) delivery to an insurer, plan, or plan sponsor entitled

to payment;

(2) deposit in an account controlled and maintained in the name of the insurer, plan, or plan sponsor;

(3) transfer to and deposit in a claims payment account for payment of a claim as provided by Section 4151.111;

(4) payment to a group policyholder for delivery to the insurer entitled to payment;

(5) payment to the administrator of the administrator's commission, fees, or charges;

(6) delivery of a return premium to any person entitled to payment; or

(7) payment of a premium for stop-loss or excess loss insurance.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.109. PAYMENT OF CLAIMS FROM FIDUCIARY ACCOUNT PROHIBITED. An administrator may not pay a claim from a fiduciary bank account established under Section 4151.107.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.110. UNDERWRITING STANDARDS. If an administrator has the authority to accept or reject a risk, the written agreement must address underwriting or other standards of the insurer or plan.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.111. ADJUDICATION OF CLAIMS. (a) An administrator shall adjudicate a claim not later than the 60th day after the date on which the administrator receives valid proof of loss in connection with the claim.

(b) The administrator shall pay each claim on a draft authorized by the insurer, plan, or plan sponsor in the written agreement.

(c) In the event of a conflict between this section and a provision of the Labor Code relating to time periods for adjudication and payment of workers' compensation claims, the Labor Code provision

prevails.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.13, eff. September 1, 2007.

Sec. 4151.112. MAINTENANCE OF BOOKS AND RECORDS. (a) An administrator shall maintain at the administrator's principal administrative office adequate books and records of each transaction in which the administrator engages with an insurer, plan, plan sponsor, insured, or plan participant.

(b) The administrator shall maintain the books and records:

(1) until the fifth anniversary of the end of the term of the written agreement to which the books and records relate; and

(2) in accordance with prudent standards of insurance recordkeeping.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.113. ACCESS TO BOOKS AND RECORDS. (a) For the purpose of examination, audit, and inspection, the administrator shall provide to the commissioner and the commissioner's designee access to the books and records maintained as required by Section 4151.112.

(b) A trade secret, including the identity and address of a policyholder, certificate holder, or injured employee, is confidential, except the commissioner may use that information in a proceeding against the administrator.

(c) An insurer, plan, or plan sponsor is entitled to continuing access to the books and records sufficient to permit the insurer, plan, or plan sponsor to fulfill a contractual obligation to an insured or plan participant. The right provided by this subsection is subject to any restriction included in the written agreement relating to the parties' proprietary rights to the books and records.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.14, eff.

September 1, 2007.

Sec. 4151.114. DISPOSITION OF BOOKS AND RECORDS ON TERMINATION OF WRITTEN AGREEMENT. On termination of the written agreement, an administrator may fulfill the requirements of Sections 4151.112 and 4151.113 by:

(1) delivering the books and records:

(A) to a successor administrator; or

(B) if there is not a successor administrator, to the insurer, plan, or plan sponsor; and

(2) giving written notice to the commissioner of the location of the books and records.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.115. CONFIDENTIALITY OF PERSONAL INFORMATION. (a) Information that identifies an individual covered by a plan is confidential.

(b) During the time information described by Subsection (a) is in an administrator's custody or control, the administrator shall take all reasonable precautions to prevent disclosure or use of the information for a purpose unrelated to administration of the plan.

(c) The administrator shall disclose information described by Subsection (a) only:

(1) in response to a court order;

(2) for an examination conducted by the commissioner under this chapter;

(3) for an audit or investigation conducted under the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

(4) to or at the request of the insurer or plan sponsor; or

(5) with the written consent of the identified individual or the individual's legal representative.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.116. ADVERTISING. Before an administrator uses

advertising relating to business underwritten by an insurer, plan, or plan sponsor, the insurer, plan, or plan sponsor must approve use of the advertising.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.117. COMPENSATION OF ADMINISTRATOR. (a) An administrator's compensation may be determined:

(1) as a percentage of the premiums or charges the administrator collects or the amount of claims the administrator pays or processes; or

(2) except as provided by Subsection (b), on another basis as specified in the written agreement.

(b) An insurer or plan sponsor may not permit or provide compensation or another thing of value to an administrator that is based on the savings accruing to the insurer or plan sponsor because of adverse determinations regarding claims for benefits, reductions of or limitations on benefits, or other analogous actions inconsistent with this chapter, that are made or taken by the administrator.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.15, eff. September 1, 2007.

SUBCHAPTER D. PHARMACY BENEFIT PLANS

Sec. 4151.151. DEFINITION. In this subchapter, "pharmacy benefit manager" means a person, other than a pharmacy or pharmacist, who acts as an administrator in connection with pharmacy benefits.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.152. IDENTIFICATION CARDS. (a) Except as provided by rules adopted by the commissioner, an administrator for a plan that provides pharmacy benefits shall issue an identification card to each individual covered by the plan. The administrator shall issue the identification card not later than the 30th day after the date

the administrator receives notice that the individual is eligible for the benefits.

(b) The commissioner by rule shall adopt standard information to be included on the identification card. The standard form identification card must include:

(1) the name or logo of the entity administering the pharmacy benefits;

(2) the international identification number assigned by the American National Standards Institute for the entity administering the pharmacy benefits;

(3) the group number applicable to the covered individual;

(4) the effective date of the coverage evidenced by the card;

(5) a telephone number to be used to contact an appropriate person to obtain information relating to the pharmacy benefits provided under the coverage; and

(6) copayment information for generic and brand-name prescription drugs.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.153. DISCLOSURE OF CERTAIN PATIENT INFORMATION PROHIBITED. (a) A pharmacy benefit manager may not sell a list of patients that contains information through which the identity of an individual patient is disclosed.

(b) A pharmacy benefit manager shall maintain all data that identifies a patient in a confidential manner that prevents disclosure to a third party unless the disclosure is otherwise authorized by law or by the patient.

(c) This section does not prohibit:

(1) general advertising about a specific pharmaceutical product or service; or

(2) the request and receipt by a person of information regarding:

(A) a specific pharmaceutical product or service;

(B) the person's own records or claims; or

(C) the person's dependent's records or claims.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.154. DISCOUNT HEALTH CARE PROGRAMS. A pharmacy benefit manager may not require a pharmacist or pharmacy to:

(1) accept or process a claim for prescription drugs under a discount health care program as defined by Section 7001.001 unless the pharmacist or pharmacy agrees in writing to accept or process the claim;

(2) participate in a specified provider network as a condition of processing a claim for prescription drugs under a discount health care program; or

(3) participate in, or process claims under, a discount health care program as a condition of participation in a provider network.

Added by Acts 2015, 84th Leg., R.S., Ch. 573 (H.B. 3028), Sec. 2, eff. September 1, 2015.

SUBCHAPTER E. DEPARTMENT REGULATION OF ADMINISTRATORS

Sec. 4151.201. EXAMINATION OF ADMINISTRATOR. (a) The commissioner may examine an administrator with regard to its business in this state.

(b) The commissioner may designate one or more employees to perform an examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.202. CONTENTS OF EXAMINATION; ON-SITE EVALUATION. (a) An examination under Section 4151.201 must include a review of:

(1) each existing written agreement between the administrator and an insurer or plan sponsor; and

(2) the administrator's financial statements.

(b) The commissioner also may have examiners conduct an on-site evaluation of the administrator's personnel and facilities and any books and records of the administrator relating to the transaction of business by and the financial condition of the administrator.

(c) Before an examiner enters an administrator's property, the commissioner shall give notice to the administrator of the examiner's intent to conduct an on-site evaluation. The notice must:

(1) be in the form required by rule adopted by the commissioner; and

(2) include the date and estimated time that the examiner will enter the administrator's property.

(d) An examiner shall comply with operational rules of an administrator while on the administrator's property.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.203. COST OF EXAMINATION. The cost of an examination under Section 4151.201 shall be paid from the fee collected under Section 4151.206(a)(2) and with revenue from the maintenance tax levied under Chapter 259.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.204. EXAMINATION UNDER OATH. If necessary to make a complete evaluation of the activities and operations of an administrator, the commissioner may summon and examine under oath the administrator and the administrator's personnel.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4151.205. ANNUAL REPORT. (a) An administrator shall annually, not later than June 30, file with the commissioner a report on a form prescribed by the commissioner. The report must contain any information required by the commissioner and must be verified by at least two officers of the administrator.

(b) The annual report must cover the preceding calendar year.

(c) Except as provided by Subsection (f), the annual report must include an audited financial statement performed by an independent certified public accountant. An audited financial statement prepared on a consolidated basis must include a columnar consolidating or combining worksheet that shall be filed with the annual report and must comply with the following:

(1) amounts shown on the consolidated audited financial report must be shown on the worksheet;

(2) amounts for each entity must be stated separately; and

(3) explanations of consolidating and eliminating entries must be included.

(d) The annual report must include notes to the financial statement or attachments that reflect the complete name and address of each insurer in this state with which the administrator had an agreement during the preceding fiscal year.

(e) Information derived from an audited financial statement contained in an annual report under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

(f) An administrator who receives less than $10 million annually as compensation for performing administrative services and operates under written agreements subject to this chapter with insurers or plan sponsors in this state is not required to file an audited financial statement under Subsection (c), but must file a financial statement certified in the manner prescribed by commissioner rule.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.17, eff. September 1, 2007.

Sec. 4151.206. FEES. (a) The commissioner shall collect and an applicant or administrator shall pay to the commissioner fees in an amount to be determined by the commissioner as follows:

(1) a filing fee not to exceed $1,000 for processing an original application for a certificate of authority for an administrator;

(2) a fee not to exceed $500 for an examination under Section 4151.201; and

(3) a filing fee not to exceed $200 for an annual report.

(b) The commissioner shall deposit a fee collected under Subsection (a)(1) or (3) to the credit of the Texas Department of Insurance operating account.

(c) The commissioner shall deposit a fee collected under Subsection (a)(2) to the credit of the account described by Section 401.156(a).

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.074, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.074, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.18, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 659 (S.B. 1291), Sec. 6, eff. September 1, 2011.

Sec. 4151.210. EFFECT OF REVOCATION OF OTHER CERTIFICATES. An officer or a director or a shareholder with a controlling interest of an entity whose certificate of authority to engage in the business of insurance or other analogous authorization has been revoked in this state or in any other state may not act as an officer, director, member, manager, or partner, or as a shareholder with a controlling interest, of an entity that holds a certificate of authority issued under this chapter unless the commissioner determines, for good cause shown, that it is in the public interest to permit the individual to act in that capacity.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.19, eff. September 1, 2007.

Sec. 4151.211. RESTRICTIONS ON ACQUISITION OF OWNERSHIP INTEREST. (a) A person may not acquire an ownership interest in an entity that holds a certificate of authority under this chapter if the person is, or after the acquisition would be, directly or indirectly in control of the certificate holder, or otherwise acquire control of or exercise any control over the certificate holder, unless the person has filed with the department under oath:

(1) a biographical form for each person by whom or on whose behalf the acquisition of control is to be effected;

(2) a statement certifying that no person who is acquiring an ownership interest in or control of the certificate holder has been the subject of a disciplinary action taken by a financial or insurance regulator of this state, another state, or the United States;

(3) a statement certifying that, immediately on the change of control, the certificate holder will be able to satisfy the requirements for the issuance of a certificate of authority; and

(4) any additional information that the commissioner by rule may prescribe as necessary or appropriate to the public interest and the protection of the insurance consumers of this state.

(b) The department may require a partnership, syndicate, or other group that is required to file a statement under Subsection (a) to provide the information required under that subsection for each partner of the partnership, each member of the syndicate or group, and each person who controls the partner or member. If the partner, member, or person is a corporation or the person required to file the statement under Subsection (a) is a corporation, the department may require that the information required under that subsection be provided regarding:

(1) the corporation;

(2) each individual who is an executive officer or director of the corporation; and

(3) each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

(c) The department may disapprove an acquisition of control if, after notice and opportunity for hearing, the commissioner determines that:

(1) immediately on the change of control the certificate holder would not be able to satisfy the requirements for the certificate of authority;

(2) the competence, trustworthiness, experience, and integrity of the persons who would control the operation of the certificate holder are such that it would not be in the interest of the insurance consumers of this state to permit the acquisition of control; or

(3) the acquisition of control would violate this code or another law of this state, another state, or the United States.

(d) Notwithstanding Subsection (c), a change in control is considered approved if the commissioner has not proposed to deny the requested change before the 61st day after the date on which the department receives all information required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.19, eff. September 1, 2007.

Sec. 4151.212. MAINTENANCE OF QUALIFICATIONS REQUIRED. The department may, in the manner prescribed by Section 4151.056 and by Subchapter G, revoke, suspend, or refuse to renew the certificate of authority of a certificate holder who does not maintain the qualifications necessary to obtain a certificate of authority issued under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.19, eff. September 1, 2007.

SUBCHAPTER F. WORKERS' COMPENSATION BENEFIT PLANS

Sec. 4151.251. DEFINITION. For purposes of this subchapter only, "insurance carrier" means:

(1) an insurance company; or

(2) a certified self-insurer for workers' compensation insurance, other than a certified self-insurance group under Chapter 407A, Labor Code, or a governmental entity that self-insures.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.20, eff. September 1, 2007.

Sec. 4151.252. APPLICATION. (a) This subchapter applies to the administration of workers' compensation insurance coverage.

(b) This subchapter does not apply to an employer that does not elect under Subchapter A, Chapter 406, Labor Code, to obtain workers' compensation insurance coverage.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.20, eff. September 1, 2007.

Sec. 4151.253. AGREEMENTS BETWEEN ADMINISTRATORS AND CARRIERS. (a) An administrator shall enter into a contract in connection with workers' compensation benefits for collecting premium or contributions, adjusting claims, or settling claims with the insurance carrier responsible for those claims, including the insurance carrier responsible for claims arising under policies authorized under Section 2053.202(b). A contract required by this subsection may be in the form of a master services agreement.

(b) A contract required by Subsection (a) must provide that:

(1) the contract does not limit in any way the insurance carrier's authority or responsibility, including financial responsibility, to comply with each statutory or regulatory requirement; and

(2) the administrator shall comply with each statutory or regulatory requirement relating to a function assumed by or carried out by the administrator.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.20, eff. September 1, 2007.

Sec. 4151.254. AGREEMENTS BETWEEN ADMINISTRATORS AND EMPLOYERS. (a) In addition to the contract required by Section 4151.253, an administrator may also enter into a contract with an employer in connection with workers' compensation benefits for collecting premium or contributions, adjusting claims, or settling claims, including an employer purchasing a policy authorized under Section 2053.202(b).

(b) A contract entered into under Subsection (a) must provide that:

(1) the contract does not limit or modify in any way:

(A) the insurance carrier's authority or responsibility, including financial responsibility, to comply with each statutory or regulatory requirement; and

(B) the provisions of the contract entered into between the administrator and the insurance carrier under Section 4151.253; and

(2) the administrator shall comply with each statutory or regulatory requirement relating to a function assumed by or carried out by the administrator.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.20, eff. September 1, 2007.

Sec. 4151.255. ADMINISTRATOR COMPENSATION. Except as provided by Section 4151.117, an administrator may accept compensation of any kind for the performance of administrative services in connection with workers' compensation claims from:

(1) an insurance carrier responsible for those claims;

(2) an employer with whom the administrator has entered into a contract; or

(3) both the insurance carrier and the employer.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.20, eff. September 1, 2007.

Sec. 4151.256. LARGE DEDUCTIBLE POLICIES. An employer who enters into a contract with an insurance carrier under Section 2053.202(b) may not use or contract with an administrator to perform administrative services in connection with workers' compensation benefits unless the administrator has entered into a written agreement with the insurance carrier that:

(1) complies with all the provisions of this chapter; and

(2) provides that the insurance carrier is responsible for:

(A) setting standards used in the handling of claims; and

(B) arranging for the payment of claims.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.20, eff. September 1, 2007.

Sec. 4151.257. RULES. The commissioner shall adopt rules to implement the requirements of this subchapter, including rules prescribing requirements for contracts and master services agreements and requirements for the payment of claims. The rules must provide for compliance with the requirements of this chapter for any contract that takes effect or has an annual anniversary date on or after January 1, 2008.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.20, eff. September 1, 2007.

SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

Sec. 4151.301. GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATE OF AUTHORITY. The department may deny an application for a certificate of authority or discipline the holder of a certificate of authority under this subchapter if the department determines that

the applicant or holder, individually, or through an officer, director, or shareholder:

(1) has wilfully violated an insurance law of this state;

(2) has intentionally made a material misstatement in the application for a certificate of authority;

(3) has obtained or attempted to obtain a certificate of authority by fraud or misrepresentation;

(4) has misappropriated, converted to the applicant's or holder's own use, or illegally withheld money belonging to:

(A) an insurance carrier, as that term is defined by Section 401.011, Labor Code;

(B) an insurer, as that term is defined by Section 4001.003;

(C) a health maintenance organization; or

(D) an insured, enrollee, injured employee, or beneficiary;

(5) has engaged in fraudulent or dishonest acts or practices;

(6) has materially misrepresented the terms and conditions of an insurance policy, certificate, evidence of coverage, or contract;

(7) has been convicted of a felony;

(8) is in a financial condition, or is operating or conducting business in a manner, that would render further transaction of business in this state hazardous or injurious to insured persons or the public;

(9) has failed to comply with any judgment rendered against the applicant or holder before the 60th day after the date on which the judgment becomes final;

(10) has wilfully violated a commissioner rule;

(11) has refused to be examined or to produce accounts, records, and files for examination as required by this chapter or commissioner rule;

(12) at any time fails to meet a qualification for which issuance of the certificate of authority could have been denied had the failure then existed and been known to the commissioner;

(13) has had a certificate of authority, license, or other authority issued by this state, another state, or the United States suspended or revoked; or

(14) has failed to timely file the annual report required

by Section 4151.205.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.21, eff. September 1, 2007.

Sec. 4151.302. REMEDIES FOR VIOLATION OF INSURANCE LAWS OR COMMISSIONER RULES. In addition to any other remedy available under Chapter 82 for a violation of this code, another insurance law of this state, or a commissioner rule, the department may:

(1) deny an application for a certificate of authority;

(2) suspend or revoke a certificate of authority;

(3) place on probation a person whose certificate of authority has been suspended;

(4) assess an administrative penalty; or

(5) reprimand a certificate of authority holder.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.21, eff. September 1, 2007.

Sec. 4151.303. PROBATED SUSPENSION. If the suspension of a certificate of authority is probated, the commissioner may require the holder to:

(1) report regularly to the department on any matter that is the basis of the probation; or

(2) limit the holder's practice to the areas prescribed by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.21, eff. September 1, 2007.

Sec. 4151.304. HEARING. If the department proposes to deny an application for a certificate of authority, or to suspend or revoke a certificate of authority, the applicant or holder is entitled to notice and a hearing conducted by the State Office of Administrative Hearings as provided by Chapter 40.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.21, eff. September 1, 2007.

Sec. 4151.305. APPLICATION FOR CERTIFICATE OF AUTHORITY AFTER DENIAL OR REVOCATION. (a) A person, or officer, director, or shareholder of a person, whose application has been denied or whose certificate of authority has been revoked under this subchapter may not apply for a certificate of authority before the fifth anniversary of:

(1) the effective date of the denial or revocation; or

(2) the date of a final court order affirming the denial or revocation if judicial review was sought.

(b) An application filed after the period required by Subsection (a) may be denied by the commissioner if the applicant fails to show good cause why the denial or revocation should not be a bar to the issuance of a new certificate.

(c) Subsection (b) does not apply to an applicant whose application was denied for failure by the applicant to submit a properly completed application for a certificate of authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.21, eff. September 1, 2007.

Sec. 4151.306. DISCIPLINARY PROCEEDING FOR CONDUCT COMMITTED BEFORE SURRENDER OR FORFEITURE OF CERTIFICATE. (a) The department may institute a disciplinary proceeding against a former certificate holder, or officer, director, or shareholder of a former certificate holder, for conduct committed before the effective date of a voluntary surrender or automatic forfeiture of the certificate of authority.

(b) In a proceeding under this section, the fact that the certificate holder, or officer, director, or shareholder of a certificate holder, has surrendered or forfeited the certificate does not affect the former certificate holder's, or officer, director, or shareholder of a former certificate holder's, culpability for the conduct that is the subject of the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.21, eff. September 1, 2007.

Sec. 4151.307. EMERGENCY CERTIFICATE SUSPENSION. (a) The commissioner may suspend the certificate of an administrator without notice or hearing if the commissioner determines that:

(1) the administrator is insolvent or impaired;

(2) an order for receivership, conservatorship, rehabilitation, or any other delinquency regarding the administrator has been entered in any state; or

(3) the financial condition or business practices of the administrator otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(b) On determining that grounds exist under Subsection (a) to suspend the administrator's certificate of authority, the commissioner may issue an order suspending the certificate. The commissioner shall immediately serve notice of the suspension on the holder.

(c) The notice required by Subsection (b) must:

(1) be personally served on the holder or be sent by registered or certified mail, return receipt requested, to the holder's last known address according to the department's records;

(2) state the grounds for the suspension; and

(3) inform the holder of the right to a hearing on the suspension order.

(d) An administrator whose certificate of authority is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the 10th day after the date a hearing is requested, the commissioner shall issue a notice of hearing.

(e) The hearing must be held not later than the 10th day after the date notice of hearing is issued, unless the parties agree to a later date.

(f) A hearing on a suspension order under this section is subject to Chapter 2001, Government Code, and to Subchapter A, Chapter 40. After the hearing, the administrative law judge shall recommend to the commissioner whether to uphold, vacate, or modify the suspension order.

(g) A suspension order issued under this section remains in effect until further action is taken by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.21,

eff. September 1, 2007.

Sec. 4151.308. GENERAL ADMINISTRATIVE SANCTIONS. An administrator or other person who violates this chapter is subject to the sanctions provided by Chapter 82.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005. Renumbered from Insurance Code, Section 4151.207 and amended by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.22, eff. September 1, 2007.

Sec. 4151.309. CRIMINAL PENALTY. (a) An administrator commits an offense if the administrator knowingly violates this chapter or a rule of the commissioner adopted under this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $500 or more than $5,000.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005. Renumbered from Insurance Code, Section 4151.208 and amended by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 1.23, eff. September 1, 2007.

CHAPTER 4152. REINSURANCE INTERMEDIARIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4152.001. DEFINITIONS. In this chapter:

(1) "Actuary" means a member in good standing of the American Academy of Actuaries.

(2) "Broker" means a person, other than an officer or employee of an insurer, who solicits, negotiates, or places reinsurance business on behalf of an insurer and who may not exercise the authority to bind reinsurance on behalf of that insurer.

(3) "Control" has the meaning described by Sections 823.005 and 823.151.

(4) "Insurer" means a commercially domiciled insurer or other person legally organized in this state to engage in the business of insurance as an insurance company, including:

(A) a capital stock insurance company;

(B) a mutual insurance company;

(C) a title insurance company;
(D) a fraternal benefit society;
(E) a local mutual aid association;
(F) a statewide mutual assessment company;
(G) a county mutual insurance company;
(H) a Lloyd's plan;
(I) a reciprocal or interinsurance exchange;
(J) a stipulated premium company;
(K) a group hospital service corporation;
(L) a farm mutual insurance company; and
(M) a risk retention group.

(5) "Manager" means a person who has the authority to bind reinsurance or who manages all or part of the reinsurance business of an insurer, including the management of a separate division, department, or underwriting office, and who acts as an agent for that insurer. The term does not include:

(A) an employee of the insurer;

(B) a manager of the United States branch of an alien insurer;

(C) an underwriting manager who, under a contract, manages all of the reinsurance operations of an insurer, who is under common control with the insurer under Chapter 823, and whose compensation is not based on the volume of premiums written; or

(D) a manager of a group, association, pool, or other organization of insurers who engages in joint underwriting or joint reinsurance and who is subject to examination by the insurance commissioner or other appropriate officer of the state in which the manager's principal business office is located.

(6) "Person" means an individual or a corporation, partnership, association, or other private legal entity.

(7) "Qualified United States financial institution" means an institution that is:

(A) organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or a state; and

(B) regulated, supervised, and examined by United States federal or state authorities who have regulatory authority over banks and trust companies.

(8) "Reinsurance" means a written contract that for consideration transfers an insurance risk of loss between insurers

and indemnifies a ceding insurer against all or part of the loss that the ceding insurer may sustain under an insurance policy the ceding insurer has issued or assumed. The term does not include a contract for the bulk sale, transfer, and assumption of direct insurance policy liability to the insureds.

(9) "Reinsurance intermediary" means a broker or manager.

(10) "Reinsurer" means an insurer who has the authority to assume reinsurance, including retrocessions. The term includes a retrocessionaire.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.002. CLASSIFICATION AS COMMERCIALLY DOMICILED INSURER. (a) For purposes of this chapter, a foreign or alien insurer authorized to engage in the business of insurance in this state is a commercially domiciled insurer if during the period described by Subsection (b) the average of the gross premiums written by the insurer in this state is:

(1) more than the average of the gross premiums written by the insurer in the insurer's state of domicile; and

(2) 20 percent or more of the total gross premiums written by the insurer in the United States, as reported in the insurer's three most recent annual statements.

(b) The period applicable to Subsection (a) is:

(1) the three most recent fiscal years of the insurer that precede the fiscal year in which the determination under this section is made; or

(2) if the insurer has been authorized to engage in the business of insurance in this state for less than the period described by Subdivision (1), the period for which the insurer has been authorized to engage in the business of insurance in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.003. RIGHTS OF THIRD PARTIES NOT AFFECTED. This chapter does not restrict the rights of or confer any additional rights on a policyholder, claimant, creditor, or other third party.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.004. RULES. The commissioner may adopt reasonable rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 4152.051. LICENSE REQUIRED. (a) A person may not act as a broker or manager in this state for an insurer engaged in the business of insurance or reinsurance in this state unless the person holds an appropriate license under this chapter.

(b) A person who holds a manager license is not required to obtain a broker license but must comply with Subchapter D to act as a broker.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.052. QUALIFICATIONS. The commissioner may establish qualifications for a reinsurance intermediary license as reasonably necessary to fulfill the requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.053. APPLICATION. (a) An application for a reinsurance intermediary license may not be accepted unless the application shows on its face that the applicant has been engaged in the business of insurance or reinsurance for at least three years.

(b) Each person authorized under Section 4152.057 to act as a reinsurance intermediary under a reinsurance intermediary license issued to an entity must be named in the application and any supplement to the application.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.054. SERVICE OF NOTICE, ORDERS, AND PROCESS. (a) An applicant for a reinsurance intermediary license who is not a

resident of this state must:

(1) designate the commissioner as agent for service of process in the manner, and with the same legal effect, as provided by Chapter 804 for service of process on unauthorized insurers; and

(2) provide the commissioner with the name and address of a resident of this state on whom a notice or order of the commissioner or process affecting the applicant may be served.

(b) A license holder who is a nonresident shall notify the commissioner in writing of each change in the license holder's designated agent under Subsection (a)(2) not later than the 30th day after the date on which the license holder makes the change. The change does not take effect until acknowledged by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.055. FEES. (a) The department shall collect a nonrefundable licensing fee from each reinsurance intermediary who applies for an original or renewal license in this state.

(b) The commissioner shall set the fees for original, renewal, and reciprocal licenses in amounts that are reasonable and necessary to cover the costs of the licensing program.

(c) The fees shall be deposited to the credit of the Texas Department of Insurance operating account. Money deposited in the account under this subsection may be used by the department only to enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.056. LICENSE ISSUANCE. The commissioner shall issue a reinsurance intermediary license to a person who complies with this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.057. PERSONS AUTHORIZED TO ACT UNDER LICENSE. (a) A reinsurance intermediary license issued to a firm or association authorizes each member of the firm or association and any designated employee to act as a reinsurance intermediary under the license.

(b) A reinsurance intermediary license issued to a corporation authorizes each officer and any designated employee or director of the corporation to act as a reinsurance intermediary under the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.058. BOND OR ERRORS AND OMISSIONS POLICY. (a) The commissioner may require a reinsurance intermediary to:

(1) file a bond with the commissioner for the protection of all insurers represented; or

(2) maintain an errors and omissions policy.

(b) The issuer of the bond or the errors and omissions policy must be acceptable to the commissioner. The bond or the policy must be in an amount determined by the commissioner to be customary and adequate under the circumstances.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.059. LICENSE EXPIRATION AND RENEWAL. (a) A reinsurance intermediary license is valid for two years from the date of issuance and may be renewed for two-year terms.

(b) The commissioner may adopt standards for the renewal of a reinsurance intermediary license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. EXAMINATION OF REINSURANCE INTERMEDIARIES

Sec. 4152.101. EXAMINATION BY COMMISSIONER. (a) A reinsurance intermediary is subject to examination by the commissioner of the reinsurance intermediary's:

(1) financial condition; and

(2) compliance with the laws of this state affecting the conduct of the reinsurance intermediary's business.

(b) A manager may be examined as if the manager were an insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.102. ACCESS TO AND MAINTENANCE OF BOOKS, BANK ACCOUNTS, AND RECORDS. (a) The commissioner is entitled to access to all books, bank accounts, and records of a reinsurance intermediary.

(b) A reinsurance intermediary shall maintain books, bank accounts, and records in a form usable by the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.103. CONDUCT OF EXAMINATION. The commissioner, one or more commissioned examiners, a certified public accountant, or another person qualified to perform the examination shall conduct an examination under this subchapter as the commissioner considers necessary.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.104. EXAMINATION EXPENSE. (a) A reinsurance intermediary who is examined under this subchapter shall pay an amount for the expense of the examination that the commissioner certifies as just and reasonable.

(b) Expenses relating to an examination conducted under this subchapter may be charged to the person examined in accordance with Sections 401.151, 401.152, 401.155, and 401.156.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2J.005, eff. April 1, 2009.

SUBCHAPTER D. REQUIREMENTS RELATING TO BROKERS

Sec. 4152.151. CONTRACT BETWEEN BROKER AND INSURER. (a) A broker and an insurer represented by the broker may enter into a transaction only under a written contract that:

(1) is executed by a responsible officer of both the broker and the insurer; and

(2) specifies the responsibilities of each party.

(b) At a minimum, a contract entered into under this section must:

(1) authorize the insurer to terminate the broker's authority in writing at any time;

(2) require the broker to:

(A) provide accounts to the insurer at least quarterly that accurately detail all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the broker;

(B) pay all money due the insurer not later than the 30th day after the date of receipt;

(C) hold all money collected for the insurer's account in a fiduciary capacity in a bank that is a qualified United States financial institution; and

(D) if premiums or contributions are collected on behalf of or for more than one insurer:

(i) maintain records to identify the ownership interest of each insurer in money held in a fiduciary capacity; and

(ii) provide to each insurer on request a copy of the records relating to deposits and withdrawals on behalf of or for that insurer;

(3) state that the broker will:

(A) comply with:

(i) Section 4152.153; and

(ii) the written standards established by the insurer for the cession or retrocession of risks ceded;

(B) disclose to the insurer any relationship with a reinsurer to which business will be ceded or retroceded; and

(C) provide annually to each insurer with whom the broker transacts business an audited statement of the broker's financial condition prepared by a certified public accountant;

(4) identify:

(A) the name and address of the insurer;

(B) the kinds of insurance to be reinsured or retroceded;

(C) the type of reinsurance or retrocessions; and

(D) the limits of coverage; and

(5) state the effective date and expiration date of the contract.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.152. PLACEMENT OF REINSURANCE WITH UNAUTHORIZED REINSURER. Unless the ceding insurer releases the broker in writing from the broker's obligations under this section, a broker who places reinsurance on behalf of an authorized ceding insurer with a reinsurer that is not authorized, accredited, or trusteed in this state under Chapter 493 shall:

(1) exercise due diligence in inquiring into the financial condition of the reinsurer;

(2) disclose to the ceding insurer the broker's findings in connection with the inquiry under Subdivision (1); and

(3) make available to the ceding insurer a copy of the current financial statement of the reinsurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2J.006, eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.14, eff. September 1, 2017.

Sec. 4152.153. TRANSACTION RECORDS. (a) For at least 10 years after the expiration of each contract of reinsurance transacted by a broker, the broker shall maintain a complete record for each transaction that contains:

(1) the type of contract, limits, underwriting restrictions, classes of risks, and territory;

(2) the period of coverage, including effective and expiration dates, cancellation provisions, and notice requirements regarding cancellation;

(3) reporting and settlement requirements regarding balances;

(4) the rate used to compute the reinsurance premium;

(5) the name and address of each ceding or assuming insurer;

(6) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the broker;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the broker, including the identity and address of each retrocessionaire and the respective percentage of each contract assumed or ceded;

(10) financial records, including premium and loss accounts; and

(11) if the broker procures a reinsurance contract on behalf of an authorized ceding insurer:

(A) written evidence that the assuming insurer has agreed to assume the risk if the contract is procured directly from an assuming insurer; or

(B) written evidence that the reinsurer has delegated binding authority to the representative who has agreed to assume the risk and that the representative is qualified to act as a manager under this chapter if the contract is procured through a representative of the assuming insurer, other than an employee.

(b) Each insurer subject to a contract of reinsurance transacted by a broker is entitled to access to the information maintained by the broker under Subsection (a) and may copy and audit all accounts and records maintained by the broker related to the insurer's business. The broker shall maintain the information in a form usable by the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.154. EMPLOYMENT OF PERSON BY INSURER AND BROKER. A person may not be employed by an insurer and a broker with whom the insurer transacts business unless the broker is:

(1) under common control with the insurer; and

(2) subject to Chapter 823.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER E. REQUIREMENTS RELATING TO MANAGERS

Sec. 4152.201. CONTRACT BETWEEN MANAGER AND INSURER. (a) A manager and an insurer represented by the manager may enter into a transaction only under a written contract that:

(1) is executed by a responsible officer of both the

manager and the insurer;

(2) is approved by the insurer's board of directors or attorney in fact;

(3) specifies the responsibilities of each party;

(4) identifies the rate, terms, and purpose of each commission, charge, or other fee the manager may assess the insurer; and

(5) at a minimum, incorporates the requirements of Sections 4152.202-4152.214.

(b) Not later than the 30th day before the date the insurer assumes or cedes business through the manager, a copy of the executed contract must be filed with the commissioner for approval.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.202. TERMINATION OF CONTRACT. An insurer may:

(1) terminate a contract entered into under Section 4152.201 for cause on written notice to the manager by certified mail, return receipt requested; and

(2) suspend the authority of the manager to assume or cede business during any dispute regarding the cause for termination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.203. ACCOUNTING FOR TRANSACTIONS. A manager who enters into a contract with an insurer under Section 4152.201 shall provide accounts to the insurer at least quarterly that accurately detail all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the manager.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.204. MANAGEMENT OF MONEY. (a) A manager shall pay an insurer at least monthly all money due the insurer under a contract entered into under Section 4152.201.

(b) The manager must hold all money collected for the insurer's account in a fiduciary capacity in a bank that is a qualified United

States financial institution. The manager may not retain more than three months of estimated claims payments and allocated loss adjustment expenses.

(c) If premiums or contributions are collected on behalf of or for more than one insurer, the manager shall:

(1) keep a separate account for each insurer;

(2) maintain a copy of the records for each account; and

(3) provide to each insurer on request a copy of the records relating to deposits and withdrawals on behalf of or for that insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.205. TRANSACTION RECORDS. (a) For at least 10 years after the expiration of each reinsurance contract transacted by a manager, the manager shall maintain a complete record for each transaction that contains:

(1) the type of contract, limits, underwriting restrictions, classes of risks, and territory;

(2) the period of coverage, including effective and expiration dates, cancellation provisions and notice requirements regarding cancellation, and disposition of outstanding reserves on covered risks;

(3) reporting and settlement requirements regarding balances;

(4) the rate used to compute the reinsurance premium;

(5) the name and address of each ceding or assuming insurer;

(6) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the manager;

(7) related correspondence and memoranda;

(8) proof of placement;

(9) details regarding retrocessions handled by the manager, as permitted by Section 4152.254, including the identity and address of each retrocessionaire and the respective percentage of each contract assumed;

(10) financial records, including premium and loss accounts; and

(11) if the manager procures a reinsurance contract on

behalf of a ceding insurer:

(A) written evidence that the assuming insurer has agreed to assume the risk if the contract is procured directly from an assuming insurer; or

(B) written evidence that the reinsurer has delegated binding authority to the representative who has agreed to assume the risk and that the representative is qualified to act as a manager under this chapter if the contract is procured through a representative of the assuming insurer, other than an employee.

(b) Each insurer is entitled to access to the information maintained by the manager and may copy all accounts and records maintained by the manager related to the insurer's business. The manager shall maintain the information in a form usable by the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.206. CONTRACT ASSIGNMENT PROHIBITED. A manager may not assign in whole or in part a contract entered into under Section 4152.201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.207. COMPLIANCE WITH UNDERWRITING AND RATING STANDARDS OF INSURER. A manager shall comply with the written underwriting and rating standards established by an insurer with whom the manager has entered into a contract under Section 4152.201 for the acceptance, rejection, or cession of all risks.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.208. SETTLEMENT OF CLAIMS. (a) This section applies only to a contract entered into under Section 4152.201 that permits a manager to settle claims on behalf of an insurer.

(b) All claims must be reported to the insurer at least quarterly.

(c) The manager shall send a copy of the claim file to the insurer at the insurer's request or as soon as it is known that the

claim:

(1) has the potential to exceed the lesser of:

(A) an amount determined by the commissioner; or

(B) the limit set by the insurer;

(2) involves a coverage dispute;

(3) may exceed the manager's claims settlement authority;

(4) has been open for more than six months; or

(5) has been closed by payment of the lesser of:

(A) an amount determined by the commissioner; or

(B) the limit set by the insurer.

(d) A claim file is the joint property of the insurer and manager, except that on an order of liquidation of the insurer the file becomes the sole property of the insurer or the insurer's estate. The manager is entitled to reasonable access to the claim file and may copy the file on a timely basis.

(e) Any settlement authority granted to the manager may be terminated for cause on the insurer's written notice by certified mail, return receipt requested, to the manager or on the termination of the contract. The insurer may suspend the settlement authority during any dispute regarding the cause of termination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.209. PAYMENT OF INTERIM PROFITS. If a contract entered into under Section 4152.201 provides for the sharing of interim profits by the manager, interim profits may not be paid until:

(1) the first anniversary of the end of each underwriting period for property business, the fifth anniversary of the end of each underwriting period for casualty business, or the expiration of the period set by the executive director for those or other specified kinds of insurance; and

(2) the adequacy of reserves on remaining claims has been verified under Section 4152.213.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.210. AUDITED STATEMENT OF MANAGER'S FINANCIAL CONDITION. (a) A manager shall provide annually to each insurer and

reinsurer with whom the manager transacts business an audited statement of the manager's financial condition.

(b) The statement must be prepared by an independent certified public accountant in a form acceptable to the commissioner.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.211. DISCLOSURE OF RELATIONSHIPS WITH OTHER INSURERS. Before ceding or assuming any business on behalf of an insurer under a contract entered into under Section 4152.201, a manager shall disclose to the insurer any relationship the manager has with another insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.212. ACTS OF MANAGER CONSIDERED ACTS OF INSURER. The acts of a manager are considered to be the acts of the insurer on whose behalf the manager is acting.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.213. ACTUARY'S OPINION ON ADEQUACY OF LOSS RESERVES. In addition to any other required loss reserve certification, a manager who establishes loss reserves shall provide annually, or more frequently as required by other law, an opinion from an actuary attesting to the adequacy of the loss reserves established for losses incurred and outstanding on business produced by the manager.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.214. PLACEMENT OF REINSURANCE WITH UNAUTHORIZED REINSURER. (a) Unless the ceding insurer releases the manager in writing from the manager's obligations under this section, a manager who places reinsurance on behalf of an authorized ceding insurer with a reinsurer that is not authorized, accredited, or trusteed in this state under Chapter 493 shall:

(1) exercise due diligence in inquiring into the financial

condition of the reinsurer;

(2) disclose to the ceding insurer the manager's findings in connection with the inquiry under Subdivision (1); and

(3) make available to the ceding insurer a copy of the current financial statement of the reinsurer.

(b) A ceding insurer that releases a manager from the manager's obligations under Subsection (a) assumes those obligations.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2J.007, eff. April 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 594 (S.B. 1070), Sec. 3.15, eff. September 1, 2017.

Sec. 4152.215. PROHIBITIONS. (a) A reinsurance intermediary acting as a manager may not:

(1) bind retrocessions on behalf of an insurer, except that the manager may bind facultative retrocessions under obligatory retrocessional agreements if the contract entered into with the insurer under Section 4152.201 contains reinsurance underwriting guidelines for those retrocessions that include:

(A) a list of reinsurers with whom those automatic agreements are in effect; and

(B) for each reinsurer:

(i) the coverages and amounts or percentages that may be reinsured; and

(ii) commission schedules;

(2) commit an insurer to participate in a reinsurance syndicate;

(3) appoint or contract with a broker without ensuring that the broker is qualified to act as a manager under this chapter;

(4) without prior approval of the insurer, pay or commit an insurer to pay a claim that exceeds the lesser of:

(A) an amount specified by the insurer; or

(B) one percent of the insurer's policyholders' surplus as of December 31 of the last complete calendar year; or

(5) collect a payment from a retrocessionaire or commit an insurer to a claim settlement with a retrocessionaire without prior

approval of the insurer.

(b) If prior approval is given as provided by Subsection (a)(5), a report must be forwarded to the reinsurer as provided by Section 4152.203.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.216. EMPLOYMENT OF PERSON BY INSURER AND MANAGER. A person may not be employed by an insurer and a manager with whom the insurer transacts business unless the manager is:

(1) under common control with the insurer; and

(2) subject to Chapter 823.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER F. REQUIREMENTS RELATING TO INSURERS

Sec. 4152.251. ENGAGEMENT OF SERVICES OF UNLICENSED BROKER OR MANAGER. (a) Except as provided by Subsection (b), an insurer may not engage the services of a person to act as a broker or manager on the insurer's behalf unless the person holds a license if required by Section 4152.051.

(b) An insurer, or an employee, attorney, or actuary of an insurer, may negotiate and obtain reinsurance for that insurer without holding a broker or manager license or without using the services of a broker or manager if that insurer, employee, attorney, or actuary does not otherwise hold the person out as a broker or manager or perform the duties or provide the services of a broker or manager.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.252. AUDITED STATEMENT OF MANAGER'S FINANCIAL CONDITION. An insurer shall obtain annually an audited statement as provided by Section 4152.210 of the financial condition of each manager with whom the insurer transacts business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.253. REVIEW OF UNDERWRITING AND CLAIMS PROCESSING OPERATIONS. An insurer shall conduct at least semiannually an on-site review of the underwriting and claims processing operations of a manager with whom the insurer enters into a contract under Section 4152.201.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.254. AUTHORITY FOR RETROCESSIONAL CONTRACTS OR PARTICIPATION IN REINSURANCE SYNDICATES. Binding authority for all retrocessional contracts or participation in reinsurance syndicates rests with an officer of the insurer. That officer may not be affiliated with a manager acting for the insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.255. NOTIFICATION OF TERMINATION OF MANAGER'S CONTRACT. (a) Not later than the 30th day after the date an insurer terminates a manager's contract, the insurer shall provide written notice to the commissioner of the termination, including the reasons for termination.

(b) The notice is a privileged communication and is not subject to public disclosure or admission into evidence in any proceeding.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.256. APPOINTMENT OF CERTAIN PERSONS TO BOARD OF DIRECTORS PROHIBITED. (a) This section does not apply to a relationship governed by Chapter 823.

(b) An insurer may not appoint to the insurer's board of directors an officer, director, employee, controlling shareholder, or submanager of a manager acting for that insurer.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER G. DISCIPLINE AND ENFORCEMENT

Sec. 4152.301. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY

ACTION. The department may deny an application for a license or discipline a license holder under Subchapter C, Chapter 4005, if the department determines that the applicant or license holder, or a person who would be authorized to act on behalf of the applicant or license holder under Section 4152.057, has:

(1) wilfully violated or participated in the violation of this chapter or another insurance law of this state;

(2) intentionally made a material misstatement in the license application;

(3) obtained or attempted to obtain the license by fraud or misrepresentation;

(4) misappropriated, converted to the person's own use, or illegally withheld money required to be held in a fiduciary capacity;

(5) materially misrepresented the terms or effect of any contract of insurance or reinsurance, or engaged in any fraudulent transaction; or

(6) been convicted of a felony or of a misdemeanor of which criminal fraud is an essential element.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4152.302. IMPOSITION OF SANCTIONS. (a) The commissioner may impose or seek any sanction authorized by law, including the penalties authorized by Chapters 82 and 83, against a reinsurance intermediary, insurer, or reinsurer who the commissioner determines, after notice and hearing as provided by this code, has violated this chapter.

(b) The commissioner may impose or seek any sanction authorized by law, including the penalties authorized by Chapter 101, against a nonlicensed reinsurance intermediary who violates this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

CHAPTER 4153. RISK MANAGERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4153.001. DEFINITION. In this chapter, "risk manager" means a person who:

(1) represents to the public that the person is a risk manager; and

(2) for compensation examines or evaluates risks for and provides advice regarding reduction of risks to a person seeking to obtain or renew property and casualty insurance coverage in this state.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.002. EXEMPTIONS. This chapter does not apply to a person who is employed as a risk manager by:

(1) a liability insurance company authorized to engage in business in this state;

(2) a single employer; or

(3) a public self-insurance pool.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.003. RULES. The commissioner may adopt rules necessary to carry out this chapter and to regulate risk managers.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 4153.051. LICENSE REQUIRED. A person may not act as or represent that the person is a risk manager in this state unless the person:

(1) meets the requirements prescribed by this chapter and department rules; and

(2) holds a license issued by the department.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.052. APPLICATION. (a) To obtain a license to act as a risk manager in this state, an applicant must submit to the department an application on forms prescribed by the commissioner and provided by the department.

(b) An application must be accompanied by the license fee required by Section 4153.057 and include:

(1) information the department requires relating to the applicant's identity, personal history, experience, and business record; and

(2) any other information the department requires.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.053. QUALIFICATIONS. To qualify for a risk manager's license, an applicant must:

(1) be at least 18 years of age;

(2) maintain a place of business in this state;

(3) meet the application requirements prescribed by this chapter and department rules;

(4) take and pass the examination required by this chapter; and

(5) pay the examination and license fees.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.054. EXAMINATION. (a) Except as provided by Sections 4153.055 and 4153.058, an applicant for a risk manager's license must personally take and pass an examination to the satisfaction of the commissioner under this chapter and department rules.

(b) The commissioner shall prescribe the examination for a risk manager's license. The examination must:

(1) be designed to test the qualifications and competency of the applicant to be a risk manager; and

(2) be of sufficient scope to reasonably test the applicant's knowledge of risk management and the duties and responsibilities of a risk manager under the laws of this state and department rules.

(c) The department shall:

(1) determine the times and places for examinations; and

(2) give reasonable public notice of the examinations in the manner provided by department rules.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.055. EXEMPTIONS FROM EXAMINATION AND CONTINUING EDUCATION REQUIREMENT. (a) An applicant is not required to take an examination to obtain a risk manager's license if the applicant holds the designation of:

(1) chartered property casualty underwriter (CPCU) from the American Institute for Chartered Property Casualty Underwriters;

(2) certified insurance counselor (CIC) from the national Society of Certified Insurance Counselors;

(3) associate in risk management (ARM) from the Insurance Institute of America; or

(4) Certified Risk Manager (CRM) from The National Alliance for Insurance Education & Research.

(b) A license holder who has held a designation described by Subsection (a)(2), (3), or (4) for a period of not less than 30 years is exempt from continuing education requirements established under this title.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1172 (S.B. 876), Sec. 21, eff. September 1, 2015.

Sec. 4153.056. REEXAMINATION. (a) An applicant who fails the examination may retake the examination on payment of an additional examination fee.

(b) The commissioner may require the applicant to wait for a reasonable period determined by the commissioner before the applicant may retake the examination.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.057. FEES. (a) The commissioner shall set and collect in advance a nonrefundable fee, in an amount not to exceed $50, for:

(1) an examination required by this chapter if the department administers the examination;

(2) a risk manager's license; and

(3) the renewal of a risk manager's license.

(b) A fee collected under this section shall be deposited to

the credit of the Texas Department of Insurance operating account.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.058. RECIPROCAL LICENSE. On submission of an application and the license fee required by Section 4153.057, a person may receive a risk manager's license without examination if the person is licensed as a risk manager by another state, the licensing requirements of which were, on the date the license was issued, substantially equivalent to the requirements prescribed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.059. LICENSE EXPIRATION. Except as otherwise provided by a staggered renewal system adopted under Section 4003.002, a risk manager's license expires on the second anniversary of the date the license was issued.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.060. LICENSE RENEWAL. (a) A license holder may renew an unexpired license by:

(1) filing with the department a completed renewal application; and

(2) paying the nonrefundable renewal fee.

(b) The commissioner shall issue a renewal certificate to the license holder if the commissioner determines the license holder continues to be eligible for the license.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER C. POWERS AND DUTIES OF RISK MANAGERS

Sec. 4153.101. PLACE OF BUSINESS. A license holder shall maintain a place of business in this state that is:

(1) accessible to the public; and

(2) located at the place at which the license holder

principally conducts business.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.102. NOTIFICATION OF CHANGE OF PLACE OF BUSINESS. A license holder who changes the address of the license holder's place of business from the address that appears on the license shall notify the department of that change as provided by department rules.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

SUBCHAPTER D. DISCIPLINARY ACTION

Sec. 4153.151. GROUNDS FOR DISCIPLINARY ACTION. The department may discipline a license holder or deny an applicant a license under Subchapter C, Chapter 4005:

(1) for any cause for which, if known by the department, issuance of the license could have been refused; or

(2) if the license holder or applicant:

(A) wilfully or knowingly violates this chapter, an insurance law of this state, or a department rule;

(B) obtains or attempts to obtain a license through wilful misrepresentation or fraud;

(C) fails the examination required by this chapter; or

(D) is convicted on final judgment of a felony.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.152. LICENSE SUSPENSION. (a) An order suspending a license must specify the duration of the suspension period. The department may not suspend a license for a period of more than 12 months.

(b) A license holder whose license is revoked or suspended shall surrender the license to the commissioner at the commissioner's request.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

Sec. 4153.153. REINSTATEMENT OR REISSUANCE OF LICENSE. The commissioner may not reinstate the license of or reissue a license to a person whose license is suspended or revoked or to whom the department refuses to issue a renewal certificate until the first anniversary of the date of the suspension, revocation, or refusal to renew.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 7, eff. April 1, 2005.

TITLE 14. UTILIZATION REVIEW AND INDEPENDENT REVIEW
CHAPTER 4201. UTILIZATION REVIEW AGENTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4201.001. PURPOSE. The purpose of this chapter is to:

(1) promote the delivery of quality health care in a cost-effective manner;

(2) ensure that a utilization review agent adheres to reasonable standards for conducting utilization review;

(3) foster greater coordination and cooperation between a health care provider and utilization review agent;

(4) improve communications and knowledge of benefits among all parties concerned before an expense is incurred; and

(5) ensure that a utilization review agent maintains the confidentiality of medical records in accordance with applicable law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.002. DEFINITIONS. In this chapter:

(1) "Adverse determination" means a determination by a utilization review agent that health care services provided or proposed to be provided to a patient are not medically necessary or are experimental or investigational.

(2) "Emergency care" means health care services provided in a hospital emergency facility or comparable facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the individual's condition, sickness, or injury is of such a nature that failure to get immediate medical care could:

(A) place the individual's health in serious jeopardy;

(B) result in serious impairment to bodily functions;

(C) result in serious dysfunction of a bodily organ or part;

(D) result in serious disfigurement; or

(E) for a pregnant woman, result in serious jeopardy to the health of the fetus.

(3) "Enrollee" means an individual covered by a health insurance policy or health benefit plan. The term includes an individual who is covered as an eligible dependent of another individual.

(4) "Health benefit plan" means a plan of benefits, other than a health insurance policy, that:

(A) defines the coverage provisions for health care for enrollees; and

(B) is offered or provided by a public or private organization.

(5) "Health care provider" means a person, corporation, facility, or institution that is:

(A) licensed by a state to provide or is otherwise lawfully providing health care services; and

(B) eligible for independent reimbursement for those health care services.

(6) "Health insurance policy" means an insurance policy, including a policy written by a corporation subject to Chapter 842, that provides coverage for medical or surgical expenses incurred as a result of accident or sickness.

(7) "Life-threatening" means a disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(8) "Nurse" means a professional or registered nurse, a licensed vocational nurse, or a licensed practical nurse.

(9) "Patient" means the enrollee or an eligible dependent of the enrollee under a health benefit plan or health insurance policy.

(10) "Payor" means:

(A) an insurer that writes health insurance policies;

(B) a preferred provider organization, health maintenance organization, or self-insurance plan; or

(C) any other person or entity that provides, offers to

provide, or administers hospital, outpatient, medical, or other health benefits to a person treated by a health care provider in this state under a policy, plan, or contract.

(11) "Physician" means a licensed doctor of medicine or a doctor of osteopathy.

(12) "Provider of record" means the physician or other health care provider with primary responsibility for the health care services provided to or requested on behalf of an enrollee or the physician or other health care provider that has provided or has been requested to provide the health care services to the enrollee. The term includes a health care facility where the health care services are provided on an inpatient or outpatient basis.

(13) "Utilization review" includes a system for prospective, concurrent, or retrospective review of the medical necessity and appropriateness of health care services and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services. The term does not include a review in response to an elective request for clarification of coverage.

(14) "Utilization review agent" means an entity that conducts utilization review for:

(A) an employer with employees in this state who are covered under a health benefit plan or health insurance policy;

(B) a payor; or

(C) an administrator holding a certificate of authority under Chapter 4151.

(15) "Utilization review plan" means the screening criteria and utilization review procedures of a utilization review agent.

(16) "Working day" means a weekday that is not a legal holiday.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 7, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.01, eff. September 1, 2019.

Sec. 4201.003. RULES. (a) The commissioner may adopt rules to implement this chapter.

(b) A rule adopted under this chapter relates only to a person or entity subject to this chapter.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec. 2.008(11), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec. 2.008(11), eff. September 1, 2011.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.008(11), eff. September 1, 2011.

Sec. 4201.004. TELEPHONE ACCESS. (a) A utilization review agent shall:

(1) have appropriate personnel reasonably available, by toll-free telephone at least 40 hours per week during normal business hours in this state, to discuss patients' care and allow response to telephone review requests;

(2) have a telephone system capable, during hours other than normal business hours, of accepting or recording incoming telephone calls or of providing instructions to a caller; and

(3) respond to a call made during hours other than normal business hours not later than the second working day after the later of:

(A) the date the call was received; or

(B) the date the details necessary to respond have been received from the caller.

(b) A utilization review agent must provide to the commissioner a written description of the procedures to be used when responding with respect to poststabilization care subsequent to emergency treatment as requested by a treating physician or other health care provider.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER B. APPLICABILITY OF CHAPTER

Sec. 4201.051. PERSONS PROVIDING INFORMATION ABOUT SCOPE OF COVERAGE OR BENEFITS. This chapter does not apply to a person who:

(1) provides information to an enrollee about scope of coverage or benefits provided under a health insurance policy or health benefit plan; and

(2) does not determine whether a particular health care service provided or to be provided to an enrollee is:

(A) medically necessary or appropriate; or

(B) experimental or investigational.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 8, eff. September 1, 2009.

Sec. 4201.052. CERTAIN CONTRACTS WITH FEDERAL GOVERNMENT. This chapter does not apply to a contract with the federal government to provide utilization review with respect to a patient who is eligible for services under Title XVIII or XIX of the Social Security Act (42 U.S.C. Section 1395 et seq. or Section 1396 et seq.).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.053. MEDICAID AND OTHER STATE HEALTH OR MENTAL HEALTH PROGRAMS. (a) Except as provided by Section 4201.057, this chapter does not apply to:

(1) the state Medicaid program;

(2) the services program for children with special health care needs under Chapter 35, Health and Safety Code;

(3) a program administered under Title 2, Human Resources Code;

(4) a program of the Department of State Health Services relating to mental health services;

(5) a program of the Department of Aging and Disability Services relating to intellectual disability services; or

(6) a program of the Texas Department of Criminal Justice.

Text of subsection effective until April 1, 2025

(b) Sections 4201.303(c), 4201.304(b), 4201.357(a-1), and 4201.3601 do not apply to:

(1) the child health program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code;

(2) the Employees Retirement System of Texas or another entity issuing or administering a coverage plan under Chapter 1551;

(3) the Teacher Retirement System of Texas or another entity issuing or administering a plan under Chapter 1575 or 1579;

(4) The Texas A&M University System or The University of Texas System or another entity issuing or administering coverage under Chapter 1601; and

(5) a managed care organization providing a Medicaid managed care plan under Chapter 533, Government Code.

Text of subsection effective on April 1, 2025

(b) Sections 4201.303(c), 4201.304(b), 4201.357(a-1), and 4201.3601 do not apply to:

(1) the child health program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code;

(2) the Employees Retirement System of Texas or another entity issuing or administering a coverage plan under Chapter 1551;

(3) the Teacher Retirement System of Texas or another entity issuing or administering a plan under Chapter 1575 or 1579;

(4) The Texas A&M University System or The University of Texas System or another entity issuing or administering coverage under Chapter 1601; and

(5) a managed care organization providing a Medicaid managed care plan under Chapter 540 or 540A, Government Code, as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 1, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.139, eff. April 1, 2025.

Sec. 4201.054. WORKERS' COMPENSATION BENEFITS. (a) Except as provided by this section, this chapter applies to utilization review of a health care service provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. The commissioner of workers' compensation shall regulate as provided by this chapter a person who performs utilization review of a medical benefit provided under Title 5, Labor Code.

(b) Sections 4201.303(c), 4201.304(b), 4201.357(a-1), and 4201.3601 do not apply to utilization review of a health care service provided to a person eligible for workers' compensation benefits under Title 5, Labor Code.

(c) Title 5, Labor Code, prevails in the event of a conflict between this chapter and Title 5, Labor Code.

(d) The commissioner of workers' compensation may adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 7(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 7(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.075(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.075(b), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.075(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.075(b), eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 2, eff. September 1, 2015.

Sec. 4201.055. HEALTH CARE SERVICE PROVIDED UNDER AUTOMOBILE INSURANCE POLICY. This chapter does not apply to utilization review of a health care service provided under an automobile insurance policy or contract that is authorized under Chapter 2301 or Article 5.13-2 or that is issued under Chapter 981.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.056. EMPLOYEE WELFARE BENEFIT PLANS. This chapter does not apply to the terms or benefits of an employee welfare benefit plan defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.057. HEALTH MAINTENANCE ORGANIZATIONS. (a) In this section, "health maintenance organization" includes a health maintenance organization that contracts with the Health and Human Services Commission or with an agency operating part of the state Medicaid managed care program to provide health care services to recipients of medical assistance under Chapter 32, Human Resources Code.

(b) This chapter applies to a health maintenance organization except as expressly provided by this section.

(c) As a condition of holding a certificate of authority to engage in the business of a health maintenance organization, a health maintenance organization that performs utilization review must:

(1) comply with this chapter, except Subchapter C; and

(2) submit to assessment of a maintenance tax under Chapter 258 to cover the costs of administering compliance with this subsection.

(d) The commissioner shall adopt rules for appropriate verification and enforcement of compliance with Subsection (c).

(e) Notwithstanding Subsection (c)(1), a health maintenance organization that performs utilization review for a person or entity subject to this chapter, other than a person or entity for which the health maintenance organization is the payor, must obtain a certificate of registration under Subchapter C and shall comply with all of the provisions of this chapter.

(f) This chapter does not prohibit or limit the distribution of a portion of the savings from the reduction or elimination of unnecessary medical services, treatment, supplies, confinements, or

days of confinement in a health care facility through profit sharing, bonus, or withholding arrangements to a participating physician or participating health care provider for providing health care services to an enrollee.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.058. INSURERS. (a) This chapter applies to an insurer subject to this code that delivers or issues for delivery a health insurance policy in this state except as expressly provided by this section. As a condition of holding a certificate of authority to engage in the business of insurance, an insurer that performs utilization review shall comply with this chapter, except Subchapter C. The insurer is subject to assessment of a maintenance tax under Chapter 257 to cover the costs of administering compliance with this subsection.

(b) The commissioner shall adopt rules for appropriate verification and enforcement of compliance with Subsection (a).

(c) Notwithstanding Subsection (a), an insurer subject to this code that performs utilization review for a person or entity subject to this chapter, other than a person or entity for which the insurer is the payor, must obtain a certificate of registration under Subchapter C and shall comply with all of the provisions of this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER C. CERTIFICATION

Sec. 4201.101. CERTIFICATE OF REGISTRATION REQUIRED. A utilization review agent may not conduct utilization review unless the commissioner issues a certificate of registration to the agent under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.102. REQUIREMENTS FOR CERTIFICATION. (a) The commissioner may issue a certificate of registration only to an applicant who has met all the requirements of this chapter and all applicable rules adopted by the commissioner.

(b) As a condition of holding a certificate of registration or renewal of a certificate, a utilization review agent must maintain compliance with Subchapters D, E, and F.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.103. CERTIFICATE RENEWAL. Certification may be renewed biennially by filing, not later than March 1, a renewal form with the commissioner accompanied by a fee in an amount set by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.104. CERTIFICATION AND RENEWAL FORMS. (a) The commissioner shall promulgate forms to be filed under this subchapter for initial certification and for a renewal certificate of registration. The form for initial certification must require:

(1) the utilization review agent's name, address, telephone number, and normal business hours;

(2) the name and address of an agent for service of process in this state;

(3) a summary of the utilization review plan;

(4) information concerning the categories of personnel who will perform utilization review for the agent;

(5) a copy of the procedures established under Subchapter H for the appeal of an adverse determination;

(6) a certification that the agent will comply with this chapter; and

(7) a copy of the procedures for resolving oral or written complaints initiated by enrollees, patients, or health care providers as required by Section 4201.204.

(b) The commissioner may not require that the summary of the utilization review plan include proprietary details.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.105. FEES. The commissioner shall establish, administer, and enforce the fees for initial certification and certification renewal in amounts that do not exceed the amounts necessary to cover the cost of administering this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.106. CERTIFICATE NOT TRANSFERABLE. A certificate of registration is not transferable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.107. REPORTING MATERIAL CHANGES. A utilization review agent shall report any material change to the information disclosed in a form filed under this subchapter not later than the 30th day after the date the change takes effect.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.108. LIST OF UTILIZATION REVIEW AGENTS. (a) The commissioner shall maintain and update monthly a list of each utilization review agent to whom a certificate of registration has been issued and the renewal date of the certificate.

(b) The commissioner shall provide the list at cost to each individual or organization requesting the list.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER D. UTILIZATION REVIEW: GENERAL STANDARDS

Sec. 4201.151. UTILIZATION REVIEW PLAN. A utilization review agent's utilization review plan, including reconsideration and appeal requirements, must be reviewed by a physician licensed to practice medicine in this state and conducted in accordance with standards developed with input from appropriate health care providers and approved by a physician licensed to practice medicine in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.02, eff. September 1, 2019.

Sec. 4201.152. UTILIZATION REVIEW UNDER PHYSICIAN. A utilization review agent shall conduct utilization review under the direction of a physician licensed to practice medicine in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.02, eff. September 1, 2019.

Sec. 4201.153. SCREENING CRITERIA AND REVIEW PROCEDURES. (a) A utilization review agent shall use written medically acceptable screening criteria and review procedures that are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, dentists, and other health care providers.

(b) A utilization review determination shall be made in accordance with currently accepted medical or health care practices, taking into account special circumstances of the case that may require deviation from the norm stated in the screening criteria.

(c) Screening criteria must be:

(1) objective;

(2) clinically valid;

(3) compatible with established principles of health care; and

(4) flexible enough to allow a deviation from the norm when

justified on a case-by-case basis.

(d) Screening criteria must be used to determine only whether to approve the requested treatment. A denial of requested treatment must be referred to an appropriate physician, dentist, or other health care provider to determine medical necessity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.154. REVIEW AND INSPECTION OF SCREENING CRITERIA AND REVIEW PROCEDURES. (a) A utilization review agent's written screening criteria and review procedures shall be made available for:

(1) review and inspection to determine appropriateness and compliance as considered necessary by the commissioner; and

(2) copying as necessary for the commissioner to accomplish the commissioner's duties under this code.

(b) Any information obtained or acquired under the authority of this section, Section 4201.153, and this chapter is confidential and privileged and is not subject to Chapter 552, Government Code, or to subpoena except to the extent necessary for the commissioner to enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.155. LIMITATION ON NOTICE REQUIREMENTS AND REVIEW PROCEDURES. (a) A utilization review agent may not establish or impose a notice requirement or other review procedure that is contrary to the requirements of the health insurance policy or health benefit plan.

(b) This section may not be construed to release a health insurance policy or health benefit plan from full compliance with this chapter or other applicable law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.03, eff. September 1, 2019.

SUBCHAPTER E. UTILIZATION REVIEW: RELATIONS WITH PATIENTS AND HEALTH CARE PROVIDERS

Sec. 4201.201. REPETITIVE CONTACTS WITH HEALTH CARE PROVIDER OR PATIENT; FREQUENCY OF REVIEWS. A utilization review agent:

(1) may not engage in unnecessary or unreasonable repetitive contacts with a health care provider or patient; and

(2) shall base the frequency of contacts or reviews on the severity or complexity of the patient's condition or on necessary treatment and discharge planning activity.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.202. OBSERVING OR PARTICIPATING IN PATIENT'S CARE. (a) Unless approved for an individual patient by the provider of record or modified by contract, a utilization review agent shall be prohibited from observing, participating in, or otherwise being present during a patient's examination, treatment, procedure, or therapy.

(b) This subchapter, Subchapters D and F, and Section 4201.102(b) may not be construed to otherwise limit or deny contact with a patient for purposes of conducting utilization review unless otherwise specifically prohibited by law.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.203. MENTAL HEALTH THERAPY. (a) A utilization review agent may not require, as a condition of treatment approval or for any other reason, the observation of a psychotherapy session or the submission or review of a mental health therapist's process or progress notes.

(b) Notwithstanding this section, a utilization review agent may require submission of a patient's medical record summary.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.204. COMPLAINT SYSTEM. (a) A utilization review agent shall establish and maintain a complaint system that provides reasonable procedures for the resolution of oral or written complaints initiated by enrollees, patients, or health care providers concerning the utilization review.

(b) The complaint procedure must include a requirement that the utilization review agent provide a written response to the complainant within 30 days.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 42 , Sec. 3.01(7), eff. September 1, 2015.

(d) A utilization review agent shall maintain a record of each complaint until the third anniversary of the date the complainant filed the complaint.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 42 (S.B. 784), Sec. 3.01(7), eff. September 1, 2015.

Sec. 4201.205. DESIGNATED INITIAL CONTACT. (a) A health care provider may designate one or more individuals as the initial contact or contacts for a utilization review agent seeking routine information or data.

(b) A designation made under this section may not preclude a utilization review agent or medical advisor from contacting a health care provider or the provider's employees who are not designated under this section under circumstances in which:

(1) a review might otherwise be unreasonably delayed; or

(2) the designated individual is unable to provide the necessary data or information that the agent requests.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.206. OPPORTUNITY TO DISCUSS TREATMENT BEFORE ADVERSE DETERMINATION. (a) Subject to Subsection (b) and the notice

requirements of Subchapter G, before an adverse determination is issued by a utilization review agent who questions the medical necessity, the appropriateness, or the experimental or investigational nature of a health care service, the agent shall provide the health care provider who ordered, requested, provided, or is to provide the service a reasonable opportunity to discuss with a physician licensed to practice medicine in this state the patient's treatment plan and the clinical basis for the agent's determination.

(b) If the health care service described by Subsection (a) was ordered, requested, or provided, or is to be provided by a physician, the opportunity described by that subsection must be with a physician licensed to practice medicine in this state and who has the same or similar specialty as the physician.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 9, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.03, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 4, eff. September 1, 2021.

Sec. 4201.207. CHARGES BY HEALTH CARE PROVIDER FOR PROVIDING MEDICAL INFORMATION. (a) Unless precluded or modified by contract, a utilization review agent shall reimburse a health care provider for the reasonable costs of providing medical information in writing, including the costs of copying and transmitting requested patient records or other documents.

(b) A health care provider's charges for providing medical information to a utilization review agent may not:

(1) exceed the cost of copying records regarding a workers' compensation claim as set by rules adopted by the commissioner of workers' compensation; or

(2) include any costs otherwise recouped as part of the charges for health care.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 8(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 3B.076(a), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 9.076(a), eff. September 1, 2007.

SUBCHAPTER F. UTILIZATION REVIEW: PERSONNEL

Sec. 4201.251. DELEGATION OF UTILIZATION REVIEW. A utilization review agent may delegate utilization review to qualified personnel in the hospital or other health care facility in which the health care services to be reviewed were or are to be provided. The delegation does not release the agent from the full responsibility for compliance with this chapter or other applicable law, including the conduct of those to whom utilization review has been delegated.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.03, eff. September 1, 2019.

Sec. 4201.252. PERSONNEL. (a) Personnel employed by or under contract with a utilization review agent to perform utilization review must be appropriately trained and qualified and meet the requirements of this chapter and other applicable law, including applicable licensing requirements.

(b) Personnel, other than a physician licensed to practice medicine, who obtain oral or written information directly from a patient's physician or other health care provider regarding the patient's specific medical condition, diagnosis, or treatment options or protocols must be a nurse, physician assistant, or other health care provider qualified to provide the requested service.

(c) This section may not be interpreted to require personnel who perform clerical or administrative tasks to have the qualifications prescribed by this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April

1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.04, eff. September 1, 2019.

Sec. 4201.253. PROHIBITED BASES FOR EMPLOYMENT, COMPENSATION, EVALUATIONS, OR PERFORMANCE STANDARDS. A utilization review agent may not permit or provide compensation or another thing of value to an employee or agent of the utilization review agent, condition employment of the agent's employees or agent evaluations, or set employee or agent performance standards, based on the amount of volume of adverse determinations, reductions of or limitations on lengths of stay, benefits, services, or charges, or the number or frequency of telephone calls or other contacts with health care providers or patients, that are inconsistent with this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER G. NOTICE OF DETERMINATIONS

Sec. 4201.301. GENERAL DUTY TO NOTIFY. A utilization review agent shall provide notice of a determination made in a utilization review to:

(1) the enrollee's provider of record; and

(2) the enrollee or a person acting on the enrollee's behalf.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.302. GENERAL TIME FOR NOTICE. A utilization review agent must mail or otherwise transmit the notice required by this subchapter not later than the second working day after the date of the request for utilization review and the agent receives all information necessary to complete the review.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.303. ADVERSE DETERMINATION: CONTENTS OF NOTICE. (a) Notice of an adverse determination must include:

(1) the principal reasons for the adverse determination;

(2) the clinical basis for the adverse determination;

(3) a description of or the source of the screening criteria used as guidelines in making the adverse determination; and

(4) a description of the procedure for the complaint and appeal process, including notice to the enrollee of the enrollee's right to appeal an adverse determination to an independent review organization and of the procedures to obtain that review.

(b) For an enrollee who has a life-threatening condition, the notice required by Subsection (a)(4) must include a description of the enrollee's right to an immediate review by an independent review organization and of the procedures to obtain that review.

(c) For an enrollee who is denied the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy, the notice required by Subsection (a)(4) must include a description of the enrollee's right to an immediate review by an independent review organization and of the procedures to obtain that review.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 3, eff. September 1, 2015.

Sec. 4201.304. TIME FOR NOTICE OF ADVERSE DETERMINATION. (a) Subject to Subsection (b), a utilization review agent shall provide notice of an adverse determination required by this subchapter as follows:

(1) with respect to a patient who is hospitalized at the time of the adverse determination, within one working day by either telephone or electronic transmission to the provider of record, followed by a letter within three working days notifying the patient and the provider of record of the adverse determination;

(2) with respect to a patient who is not hospitalized at

the time of the adverse determination, within three working days in writing to the provider of record and the patient; or

(3) within the time appropriate to the circumstances relating to the delivery of the services to the patient and to the patient's condition, provided that when denying poststabilization care subsequent to emergency treatment as requested by a treating physician or other health care provider, the agent shall provide the notice to the treating physician or other health care provider not later than one hour after the time of the request.

(b) A utilization review agent shall provide notice of an adverse determination for a concurrent review of the provision of prescription drugs or intravenous infusions for which the patient is receiving health benefits under the health insurance policy not later than the 30th day before the date on which the provision of prescription drugs or intravenous infusions will be discontinued.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 4, eff. September 1, 2015.

Sec. 4201.305. NOTICE OF ADVERSE DETERMINATION FOR RETROSPECTIVE UTILIZATION REVIEW. (a) Notwithstanding Sections 4201.302 and 4201.304, if a retrospective utilization review is conducted, the utilization review agent shall provide notice of an adverse determination under the retrospective utilization review in writing to the provider of record and the patient within a reasonable period, but not later than 30 days after the date on which the claim is received.

(b) The period under Subsection (a) may be extended once by the utilization review agent for a period not to exceed 15 days, if the utilization review agent:

(1) determines that an extension is necessary due to matters beyond the utilization review agent's control; and

(2) notifies the provider of record and the patient before the expiration of the initial 30-day period of the circumstances requiring the extension and the date by which the utilization review agent expects to make a determination.

(c) If the extension under Subsection (b) is required because of the failure of the provider of record or the patient to submit information necessary to reach a determination on the request, the notice of extension must:

(1) specifically describe the required information necessary to complete the request; and

(2) give the provider of record and the patient at least 45 days from the date of receipt of the notice of extension to provide the specified information.

(d) If the period for making the determination under this section is extended because of the failure of the provider of record or the patient to submit the information necessary to make the determination, the period for making the determination is tolled from the date on which the utilization review agent sends the notification of the extension to the provider of record or the patient until the earlier of:

(1) the date on which the provider of record or the patient responds to the request for additional information; or

(2) the date by which the specified information was to have been submitted.

(e) If the periods for retrospective utilization review provided by this section conflict with the time limits concerning or related to payment of claims established under Subchapter J, Chapter 843, the time limits established under Subchapter J, Chapter 843, control.

(f) If the periods for retrospective utilization review provided by this section conflict with the time limits concerning or related to payment of claims established under Subchapters C and C-1, Chapter 1301, the time limits established under Subchapters C and C-1, Chapter 1301, control.

(g) If the periods for retrospective utilization review provided by this section conflict with the time limits concerning or related to payment of claims established under Section 408.027, Labor Code, the time limits established under Section 408.027, Labor Code, control.

Added by Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 10, eff. September 1, 2009.

SUBCHAPTER H. APPEAL OF ADVERSE DETERMINATION

Sec. 4201.351. COMPLAINT AS APPEAL. For purposes of this subchapter, a complaint filed concerning dissatisfaction or disagreement with an adverse determination constitutes an appeal of that adverse determination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.352. WRITTEN DESCRIPTION OF APPEAL PROCEDURES. A utilization review agent shall maintain and make available a written description of the procedures for appealing an adverse determination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.353. APPEAL PROCEDURES MUST BE REASONABLE. The procedures for appealing an adverse determination must be reasonable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.354. PERSONS OR ENTITIES WHO MAY APPEAL. The procedures for appealing an adverse determination must provide that the adverse determination may be appealed orally or in writing by:

(1) an enrollee;

(2) a person acting on the enrollee's behalf; or

(3) the enrollee's physician or other health care provider.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.355. ACKNOWLEDGMENT OF APPEAL. (a) The procedures for appealing an adverse determination must provide that, within five working days from the date the utilization review agent receives the appeal, the agent shall send to the appealing party a letter acknowledging the date of receipt.

(b) The letter must also include a list of:

(1) the procedures required by this subchapter; and

(2) the documents that the appealing party must submit for review.

(c) When a utilization review agent receives an oral appeal of an adverse determination, the agent shall send a one-page appeal form to the appealing party.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.356. DECISION BY PHYSICIAN REQUIRED; SPECIALTY REVIEW. (a) The procedures for appealing an adverse determination must provide that a physician licensed to practice medicine makes the decision on the appeal, except as provided by Subsection (b).

(b) If not later than the 10th working day after the date an appeal is requested or denied the enrollee's health care provider requests a particular type of specialty provider review the case, a health care provider who is of the same or a similar specialty as the health care provider who would typically manage the medical or dental condition, procedure, or treatment under consideration for review shall review the denial or the decision denying the appeal. The specialty review must be completed within 15 working days of the date the health care provider's request for specialty review is received.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.05, eff. September 1, 2019.

Sec. 4201.357. EXPEDITED APPEAL FOR DENIAL OF EMERGENCY CARE, CONTINUED HOSPITALIZATION, PRESCRIPTION DRUGS OR INTRAVENOUS INFUSIONS. (a) The procedures for appealing an adverse determination must include, in addition to the written appeal, a procedure for an expedited appeal of a denial of emergency care, a denial of continued hospitalization, or a denial of another service if the requesting health care provider includes a written statement with supporting documentation that the service is necessary to treat

a life-threatening condition or prevent serious harm to the patient. That procedure must include a review by a health care provider who:

(1) has not previously reviewed the case; and

(2) is of the same or a similar specialty as the health care provider who would typically manage the medical or dental condition, procedure, or treatment under review in the appeal.

(a-1) The procedures for appealing an adverse determination must include, in addition to the written appeal and the appeal described by Subsection (a), a procedure for an expedited appeal of a denial of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy. That procedure must include a review by a health care provider who:

(1) has not previously reviewed the case; and

(2) is of the same or a similar specialty as the health care provider who would typically manage the medical or dental condition, procedure, or treatment under review in the appeal.

(a-2) An adverse determination under Section 1369.0546 is entitled to an expedited appeal. The physician or, if appropriate, other health care provider deciding the appeal must consider atypical diagnoses and the needs of atypical patient populations.

(b) The time for resolution of an expedited appeal under this section shall be based on the medical or dental immediacy of the condition, procedure, or treatment under review, provided that the resolution of the appeal may not exceed one working day from the date all information necessary to complete the appeal is received.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 103 (S.B. 680), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.06, eff. September 1, 2019.

Sec. 4201.358. RESPONSE LETTER TO INTERESTED PERSONS. The

procedures for appealing an adverse determination must provide that, after the utilization review agent has sought review of the appeal, the agent shall issue a response letter explaining the resolution of the appeal to:

(1) the patient or a person acting on the patient's behalf; and

(2) the patient's physician or other health care provider.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.359. NOTICE OF APPEAL. (a) The procedures for appealing an adverse determination must require written notice to the appealing party of the determination of the appeal as soon as practicable, but not later than the 30th calendar day, after the date the utilization review agent receives the appeal.

(b) If the appeal is denied, the notice must include a clear and concise statement of:

(1) the clinical basis for the denial;

(2) the specialty of the physician or other health care provider making the denial; and

(3) the appealing party's right to seek review of the denial by an independent review organization under Subchapter I and the procedures for obtaining that review.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.360. IMMEDIATE APPEAL TO INDEPENDENT REVIEW ORGANIZATION IN LIFE-THREATENING CIRCUMSTANCES. Notwithstanding any other law, in a circumstance involving an enrollee's life-threatening condition, the enrollee is:

(1) entitled to an immediate appeal to an independent review organization as provided by Subchapter I; and

(2) not required to comply with procedures for an internal review of the utilization review agent's adverse determination.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.3601. IMMEDIATE APPEAL TO INDEPENDENT REVIEW ORGANIZATION FOR DENIAL OF PRESCRIPTION DRUGS OR INTRAVENOUS INFUSIONS. Notwithstanding any other law, in a circumstance involving the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy, the enrollee is:

(1) entitled to an immediate appeal to an independent review organization as provided by Subchapter I; and

(2) not required to comply with procedures for an internal review of the utilization review agent's adverse determination.

Added by Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 7, eff. September 1, 2015.

SUBCHAPTER I. INDEPENDENT REVIEW OF ADVERSE DETERMINATION

Sec. 4201.401. REVIEW BY INDEPENDENT REVIEW ORGANIZATION; COMPLIANCE WITH INDEPENDENT DETERMINATION. (a) A utilization review agent shall allow any party whose appeal of an adverse determination is denied by the agent to seek review of that determination by an independent review organization assigned to the appeal in accordance with Chapter 4202.

(b) The utilization review agent shall comply with the independent review organization's determination regarding the medical necessity or appropriateness of health care items and services for an enrollee.

(c) The utilization review agent shall comply with the independent review organization's determination regarding the experimental or investigational nature of health care items and services for an enrollee.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 11, eff. September 1, 2009.

Sec. 4201.402. INFORMATION PROVIDED TO INDEPENDENT REVIEW

ORGANIZATION. (a) Not later than the third business day after the date a utilization review agent receives a request for independent review, the agent shall provide to the appropriate independent review organization:

(1) a copy of:

(A) any medical records of the enrollee that are relevant to the review;

(B) any documents used by the plan in making the determination to be reviewed;

(C) the written notification described by Section 4201.359; and

(D) any documents and other written information submitted to the agent in support of the appeal; and

(2) a list of each physician or other health care provider who:

(A) has provided care to the enrollee; and

(B) may have medical records relevant to the appeal.

(b) A utilization review agent may provide confidential information in the custody of the agent to an independent review organization, subject to rules and standards adopted by the commissioner under Chapter 4202.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.403. PAYMENT FOR INDEPENDENT REVIEW. A utilization review agent shall pay for an independent review conducted under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER J. SPECIALTY UTILIZATION REVIEW AGENTS

Sec. 4201.451. DEFINITION. For purposes of this subchapter, "specialty utilization review agent" means a utilization review agent who conducts utilization review for a specialty health care service, including dentistry, chiropractic services, or physical therapy.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April

1, 2007.

Sec. 4201.452. INAPPLICABILITY OF CERTAIN OTHER LAW. A specialty utilization review agent is not subject to Section 4201.151, 4201.152, 4201.206, 4201.252, or 4201.356.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.453. UTILIZATION REVIEW PLAN. A specialty utilization review agent's utilization review plan, including reconsideration and appeal requirements, must be:

(1) reviewed by a health care provider of the appropriate specialty who is licensed or otherwise authorized to provide the specialty health care service in this state; and

(2) conducted in accordance with standards developed with input from a health care provider of the appropriate specialty who is licensed or otherwise authorized to provide the specialty health care service in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.07, eff. September 1, 2019.

Sec. 4201.454. UTILIZATION REVIEW UNDER DIRECTION OF PROVIDER OF SAME SPECIALTY. A specialty utilization review agent shall conduct utilization review under the direction of a health care provider who is of the same specialty as the agent and who is licensed or otherwise authorized to provide the specialty health care service in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.07, eff. September 1, 2019.

Sec. 4201.455. PERSONNEL. (a) Personnel who are employed by or under contract with a specialty utilization review agent to perform utilization review must be appropriately trained and qualified and meet the requirements of this chapter and other applicable law of this state, including applicable licensing laws.

(b) Personnel who obtain oral or written information directly from a physician or other health care provider must be a nurse, physician assistant, or other health care provider of the same specialty as the agent and who are licensed or otherwise authorized to provide the specialty health care service by a state licensing agency in the United States.

(c) This section does not require personnel who perform only clerical or administrative tasks to have the qualifications prescribed by this section.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.08, eff. September 1, 2019.

Sec. 4201.456. OPPORTUNITY TO DISCUSS TREATMENT BEFORE ADVERSE DETERMINATION. Subject to the notice requirements of Subchapter G, before an adverse determination is issued by a specialty utilization review agent who questions the medical necessity, the appropriateness, or the experimental or investigational nature of a health care service, the agent shall provide the health care provider who ordered, requested, or is to provide the service a reasonable opportunity to discuss the patient's treatment plan and the clinical basis for the agent's determination with a health care provider who is of the same specialty as the agent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 12, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.09, eff.

September 1, 2019.

Sec. 4201.457. APPEAL DECISIONS. A specialty utilization review agent shall comply with the requirement that a physician or other health care provider who makes the decision in an appeal of an adverse determination must be of the same or a similar specialty as the health care provider who would typically manage the specialty condition, procedure, or treatment under review in the appeal.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER L. CONFIDENTIALITY OF INFORMATION; ACCESS TO OTHER INFORMATION

Sec. 4201.551. GENERAL CONFIDENTIALITY REQUIREMENT. (a) A utilization review agent shall preserve the confidentiality of individual medical records to the extent required by law.

(b) This chapter does not authorize a utilization review agent to take any action that violates a state or federal law or regulation concerning confidentiality of patient records.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.552. CONSENT REQUIREMENTS. (a) A utilization review agent may not disclose individual medical records, personal information, or other confidential information about a patient obtained in the performance of utilization review without the patient's prior written consent or except as otherwise required by law.

(b) If the prior written consent is submitted by anyone other than the patient who is the subject of the personal or confidential information requested, the consent must:

(1) be dated; and

(2) contain the patient's signature.

(c) The patient's signature for purposes of Subsection (b)(2) must have been obtained one year or less before the date the disclosure is sought or the consent is invalid.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.553. PROVIDING INFORMATION TO AFFILIATED ENTITIES. A utilization review agent may provide confidential information to a third party under contract with or affiliated with the agent solely to perform or assist with utilization review. Information provided to a third party under this section remains confidential.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.554. PROVIDING INFORMATION TO COMMISSIONER. Notwithstanding this subchapter, a utilization review agent shall provide to the commissioner on request individual medical records or other confidential information to enable the commissioner to determine compliance with this chapter. The information is confidential and privileged and is not subject to Chapter 552, Government Code, or to subpoena, except to the extent necessary to enable the commissioner to enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.555. ACCESS TO RECORDED PERSONAL INFORMATION. (a) If an individual submits a written request to a utilization review agent for access to recorded personal information concerning the individual, the agent shall, within 10 business days from the date the agent receives the request:

(1) inform the requesting individual in writing of the nature and substance of the recorded personal information; and

(2) allow the individual, at the individual's discretion, to:

(A) view and copy, in person, the recorded personal information concerning the individual; or

(B) obtain a copy of the information by mail.

(b) If the information requested under this section is in coded form, the utilization review agent shall provide in writing an

accurate translation of the information in plain language.

(c) A utilization review agent's charges for providing a copy of information requested under this section shall be reasonable, as determined by rule adopted by the commissioner. The charges may not include any costs otherwise recouped as part of the charges for utilization review.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.556. PUBLISHING INFORMATION IDENTIFIABLE TO HEALTH CARE PROVIDER. (a) A utilization review agent may not publish data that identifies a particular physician or other health care provider, including data in a quality review study or performance tracking data, without providing prior written notice to the physician or other provider.

(b) The prohibition under this section does not apply to internal systems or reports used by the utilization review agent.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.557. REQUIREMENT TO MAINTAIN DATA IN CONFIDENTIAL MANNER. A utilization review agent shall maintain all data concerning a patient or physician or other health care provider in a confidential manner that prevents unauthorized disclosure to a third party.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.558. DESTRUCTION OF CERTAIN CONFIDENTIAL DOCUMENTS. When a utilization review agent determines a document in the custody of the agent that contains confidential patient information or confidential physician or other health care provider financial data is no longer needed, the document shall be destroyed by a method that ensures the complete destruction of the information.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER M. ENFORCEMENT

Sec. 4201.601. NOTICE OF SUSPECTED VIOLATION; COMPELLING PRODUCTION OF INFORMATION. If the commissioner believes that a person or entity conducting utilization review is in violation of this chapter or applicable rules, the commissioner:

(1) shall notify the utilization review agent, health maintenance organization, or insurer of the alleged violation; and

(2) may compel the production of documents or other information as necessary to determine whether a violation has occurred.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.602. ENFORCEMENT PROCEEDING. (a) The commissioner may initiate a proceeding under this subchapter.

(b) A proceeding under this chapter is a contested case for purposes of Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4201.603. REMEDIES AND PENALTIES FOR VIOLATION. If the commissioner determines that a utilization review agent, health maintenance organization, insurer, or other person or entity conducting utilization review has violated or is violating this chapter, the commissioner may:

(1) impose a sanction under Chapter 82;

(2) issue a cease and desist order under Chapter 83; or

(3) assess an administrative penalty under Chapter 84.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

SUBCHAPTER N. EXEMPTION FROM PREAUTHORIZATION REQUIREMENTS FOR PHYSICIANS AND PROVIDERS PROVIDING CERTAIN HEALTH CARE SERVICES

Sec. 4201.651. DEFINITIONS. (a) In this subchapter, "preauthorization" means a determination by a health maintenance organization, insurer, or person contracting with a health maintenance organization or insurer that health care services proposed to be provided to a patient are medically necessary and appropriate.

(b) In this subchapter, terms defined by Section 843.002, including "health care services," "physician," and "provider," have the meanings assigned by that section.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Text of section effective until April 1, 2025

Sec. 4201.652. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

(1) a health benefit plan offered by a health maintenance organization operating under Chapter 843, except that this subchapter does not apply to:

(A) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(B) the state Medicaid program, including the Medicaid managed care program operated under Chapter 533, Government Code;

(2) a preferred provider benefit plan or exclusive provider benefit plan offered by an insurer under Chapter 1301; and

(3) a person who contracts with a health maintenance organization or insurer to issue preauthorization determinations or perform the functions described in this subchapter for a health benefit plan to which this subchapter applies.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.140, eff. April 1, 2025.

Text of section effective on April 1, 2025

Sec. 4201.652. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

(1) a health benefit plan offered by a health maintenance organization operating under Chapter 843, except that this subchapter does not apply to:

(A) the child health plan program under Chapter 62, Health and Safety Code, or the health benefits plan for children under Chapter 63, Health and Safety Code; or

(B) the state Medicaid program, including the Medicaid managed care program operated under Chapter 540 or 540A, Government Code, as applicable;

(2) a preferred provider benefit plan or exclusive provider benefit plan offered by an insurer under Chapter 1301; and

(3) a person who contracts with a health maintenance organization or insurer to issue preauthorization determinations or perform the functions described in this subchapter for a health benefit plan to which this subchapter applies.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.140, eff. April 1, 2025.

Sec. 4201.653. EXEMPTION FROM PREAUTHORIZATION REQUIREMENTS FOR PHYSICIANS AND PROVIDERS PROVIDING CERTAIN HEALTH CARE SERVICES. (a) A health maintenance organization or an insurer that uses a preauthorization process for health care services may not require a physician or provider to obtain preauthorization for a particular health care service if, in the most recent six-month evaluation period, as described by Subsection (b), the health maintenance organization or insurer has approved or would have approved not less than 90 percent of the preauthorization requests submitted by the physician or provider for the particular health care service.

(b) Except as provided by Subsection (c), a health maintenance organization or insurer shall evaluate whether a physician or provider qualifies for an exemption from preauthorization requirements under Subsection (a) once every six months.

(c) A health maintenance organization or insurer may continue an exemption under Subsection (a) without evaluating whether the physician or provider qualifies for the exemption under Subsection (a) for a particular evaluation period.

(d) A physician or provider is not required to request an exemption under Subsection (a) to qualify for the exemption.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Sec. 4201.654. DURATION OF PREAUTHORIZATION EXEMPTION. (a) A physician's or provider's exemption from preauthorization requirements under Section 4201.653 remains in effect until:

(1) the 30th day after the date the health maintenance organization or insurer notifies the physician or provider of the health maintenance organization's or insurer's determination to rescind the exemption under Section 4201.655, if the physician or provider does not appeal the health maintenance organization's or insurer's determination; or

(2) if the physician or provider appeals the determination, the fifth day after the date the independent review organization affirms the health maintenance organization's or insurer's determination to rescind the exemption.

(b) If a health maintenance organization or insurer does not finalize a rescission determination as specified in Subsection (a), then the physician or provider is considered to have met the criteria under Section 4201.653 to continue to qualify for the exemption.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Sec. 4201.655. DENIAL OR RESCISSION OF PREAUTHORIZATION EXEMPTION. (a) A health maintenance organization or insurer may rescind an exemption from preauthorization requirements under Section 4201.653 only:

(1) during January or June of each year;

(2) if the health maintenance organization or insurer makes a determination, on the basis of a retrospective review of a random sample of not fewer than five and no more than 20 claims submitted by

the physician or provider during the most recent evaluation period described by Section 4201.653(b), that less than 90 percent of the claims for the particular health care service met the medical necessity criteria that would have been used by the health maintenance organization or insurer when conducting preauthorization review for the particular health care service during the relevant evaluation period; and

(3) if the health maintenance organization or insurer complies with other applicable requirements specified in this section, including:

(A) notifying the physician or provider not less than 25 days before the proposed rescission is to take effect; and

(B) providing with the notice under Paragraph (A):

(i) the sample information used to make the determination under Subdivision (2); and

(ii) a plain language explanation of how the physician or provider may appeal and seek an independent review of the determination.

(b) A determination made under Subsection (a)(2) must be made by an individual licensed to practice medicine in this state. For a determination made under Subsection (a)(2) with respect to a physician, the determination must be made by an individual licensed to practice medicine in this state who has the same or similar specialty as that physician.

(c) A health maintenance organization or insurer may deny an exemption from preauthorization requirements under Section 4201.653 only if:

(1) the physician or provider does not have the exemption at the time of the relevant evaluation period; and

(2) the health maintenance organization or insurer provides the physician or provider with actual statistics and data for the relevant preauthorization request evaluation period and detailed information sufficient to demonstrate that the physician or provider does not meet the criteria for an exemption from preauthorization requirements for the particular health care service under Section 4201.653.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Sec. 4201.656. INDEPENDENT REVIEW OF EXEMPTION DETERMINATION. (a) A physician or provider has a right to a review of an adverse determination regarding a preauthorization exemption be conducted by an independent review organization. A health maintenance organization or insurer may not require a physician or provider to engage in an internal appeal process before requesting a review by an independent review organization under this section.

(b) A health maintenance organization or insurer shall pay:

(1) for any appeal or independent review of an adverse determination regarding a preauthorization exemption requested under this section; and

(2) a reasonable fee determined by the Texas Medical Board for any copies of medical records or other documents requested from a physician or provider during an exemption rescission review requested under this section.

(c) An independent review organization must complete an expedited review of an adverse determination regarding a preauthorization exemption not later than the 30th day after the date a physician or provider files the request for a review under this section.

(d) A physician or provider may request that the independent review organization consider another random sample of not less than five and no more than 20 claims submitted to the health maintenance organization or insurer by the physician or provider during the relevant evaluation period for the relevant health care service as part of its review. If the physician or provider makes a request under this subsection, the independent review organization shall base its determination on the medical necessity of claims reviewed by the health maintenance organization or insurer under Section 4201.655 and reviewed under this subsection.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Sec. 4201.657. EFFECT OF APPEAL OR INDEPENDENT REVIEW DETERMINATION. (a) A health maintenance organization or insurer is bound by an appeal or independent review determination that does not affirm the determination made by the health maintenance organization or insurer to rescind a preauthorization exemption.

(b) A health maintenance organization or insurer may not retroactively deny a health care service on the basis of a rescission of an exemption, even if the health maintenance organization's or insurer's determination to rescind the preauthorization exemption is affirmed by an independent review organization.

(c) If a determination of a preauthorization exemption made by the health maintenance organization or insurer is overturned on review by an independent review organization, the health maintenance organization or insurer:

(1) may not attempt to rescind the exemption before the end of the next evaluation period that occurs; and

(2) may only rescind the exemption after if the health maintenance organization or insurer complies with Sections 4201.655 and 4201.656.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Sec. 4201.658. ELIGIBILITY FOR PREAUTHORIZATION EXEMPTION FOLLOWING FINALIZED EXEMPTION RESCISSION OR DENIAL. After a final determination or review affirming the rescission or denial of an exemption for a specific health care service under Section 4201.653, a physician or provider is eligible for consideration of an exemption for the same health care service after the six-month evaluation period that follows the evaluation period which formed the basis of the rescission or denial of an exemption.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

Sec. 4201.659. EFFECT OF PREAUTHORIZATION EXEMPTION. (a) A health maintenance organization or insurer may not deny or reduce payment to a physician or provider for a health care service for which the physician or provider has qualified for an exemption from preauthorization requirements under Section 4201.653 based on medical necessity or appropriateness of care unless the physician or provider:

(1) knowingly and materially misrepresented the health care service in a request for payment submitted to the health maintenance

organization or insurer with the specific intent to deceive and obtain an unlawful payment from the health maintenance organization or insurer; or

(2) failed to substantially perform the health care service.

(b) A health maintenance organization or an insurer may not conduct a retrospective review of a health care service subject to an exemption except:

(1) to determine if the physician or provider still qualifies for an exemption under this subchapter; or

(2) if the health maintenance organization or insurer has a reasonable cause to suspect a basis for denial exists under Subsection (a).

(c) For a retrospective review described by Subsection (b)(2), nothing in this subchapter may be construed to modify or otherwise affect:

(1) the requirements under or application of Section 4201.305, including any timeframes specified by that section; or

(2) any other applicable law, except to prescribe the only circumstances under which:

(A) a retrospective utilization review may occur as specified by Subsection (b)(2); or

(B) payment may be denied or reduced as specified by Subsection (a).

(d) Not later than five days after qualifying for an exemption from preauthorization requirements under Section 4201.653, a health maintenance organization or insurer must provide to a physician or provider a notice that includes:

(1) a statement that the physician or provider qualifies for an exemption from preauthorization requirements under Section 4201.653;

(2) a list of the health care services and health benefit plans to which the exemption applies; and

(3) a statement of the duration of the exemption.

(e) If a physician or provider submits a preauthorization request for a health care service for which the physician or provider qualifies for an exemption from preauthorization requirements under Section 4201.653, the health maintenance organization or insurer must promptly provide a notice to the physician or provider that includes:

(1) the information described by Subsection (d); and

(2) a notification of the health maintenance organization's or insurer's payment requirements.

(f) Nothing in this subchapter may be construed to:

(1) authorize a physician or provider to provide a health care service outside the scope of the provider's applicable license issued under Title 3, Occupations Code; or

(2) require a health maintenance organization or insurer to pay for a health care service described by Subdivision (1) that is performed in violation of the laws of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 1018 (H.B. 3459), Sec. 5, eff. September 1, 2021.

CHAPTER 4202. INDEPENDENT REVIEW ORGANIZATIONS

Sec. 4202.001. DEFINITION. In this chapter, "payor" has the meaning assigned by Section 4201.002.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.002. ADOPTION OF STANDARDS FOR INDEPENDENT REVIEW ORGANIZATIONS. (a) The commissioner shall adopt standards and rules for:

(1) the certification, selection, and operation of independent review organizations to perform independent review described by Subchapter I, Chapter 4201; and

(2) the suspension and revocation of the certification.

(b) The standards adopted under this section must ensure:

(1) the timely response of an independent review organization selected under this chapter;

(2) the confidentiality of medical records transmitted to an independent review organization for use in conducting an independent review;

(3) the qualifications and independence of each physician or other health care provider making a review determination for an independent review organization;

(4) the fairness of the procedures used by an independent review organization in making review determinations; and

(5) the timely notice to an enrollee of the results of an

independent review, including the clinical basis for the review determination.

(c) In addition to the standards described by Subsection (b), the commissioner shall adopt standards and rules that:

(1) prohibit:

(A) more than one independent review organization from operating out of the same office or other facility;

(B) an individual or entity from owning more than one independent review organization;

(C) an individual from owning stock in or serving on the board of more than one independent review organization;

(D) an individual who has served on the board of an independent review organization whose certification was revoked for cause from serving on the board of another independent review organization before the fifth anniversary of the date on which the revocation occurred;

(E) an individual who serves as an officer, director, manager, executive, or supervisor of an independent review organization from serving as an officer, director, manager, executive, supervisor, employee, agent, or independent contractor of another independent review organization; and

(F) an independent review organization from:

(i) publicly disclosing patient information protected by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.); or

(ii) transmitting the information to a subcontractor involved in the independent review process that has not signed an agreement similar to the business associate agreement required by regulations adopted under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.); and

(2) require:

(A) an independent review organization to:

(i) maintain a physical address and a mailing address in this state;

(ii) be incorporated in this state;

(iii) be in good standing with the comptroller; and

(iv) be based and certified in this state and to locate the organization's primary offices in this state;

(B) an independent review organization to surrender the

organization's certification as part of an agreed order; and

(C) an independent review organization to:

(i) notify the department of an agreement to sell the organization or shares in the organization;

(ii) not later than the 60th day before the date of the sale, submit the name of the purchaser and a complete and legible set of fingerprints for each officer of the purchaser and for each owner or shareholder of the purchaser or, if the purchaser is publicly held, each owner or shareholder described by Section 4202.004(a)(1), and any additional information necessary to comply with Section 4202.004(d); and

(iii) complete the transfer of ownership after the department has sent written confirmation in accordance with Subsection (d) that the requirements of this chapter have been satisfied.

(d) The department shall send the written confirmation required by Subsection (c)(2)(C)(iii) not later than the expiration of the fourth week after the date the department determines the requirements are satisfied.

(e) Standards to ensure the confidentiality of medical records transmitted to an independent review organization under Subsection (b)(2) must require organizations and utilization review agents to transmit and store records in compliance with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and the regulations and standards adopted under that Act.

(f) The commissioner shall adopt standards requiring that:

(1) on application for certification, an officer of the organization attest that the office is located at a physical address;

(2) the office be equipped with a computer system capable of:

(A) processing requests for independent review; and

(B) accessing all electronic records related to the review and the independent review process;

(3) all records be maintained electronically and made available to the department on request; and

(4) in the case of an office located in a residence, the working office be located in a room set aside for independent review business purposes and in a manner to ensure confidentiality in accordance with Subsection (e).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1332 (H.B. 4519), Sec. 1, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 1, eff. September 1, 2013.

Sec. 4202.003. REQUIREMENTS REGARDING TIMELINESS OF DETERMINATION. The standards adopted under Section 4202.002 must require each independent review organization to make the organization's determination:

(1) for a life-threatening condition as defined by Section 4201.002, the provision of prescription drugs or intravenous infusions for which the patient is receiving benefits under the health insurance policy, or a review of a step therapy protocol exception request under Section 1369.0546, not later than the earlier of the third day after the date the organization receives the information necessary to make the determination or, with respect to:

(A) a review of a health care service provided to a person with a life-threatening condition eligible for workers' compensation medical benefits, the eighth day after the date the organization receives the request that the determination be made; or

(B) a review of a health care service other than a service described by Paragraph (A), the third day after the date the organization receives the request that the determination be made; or

(2) for a situation other than a situation described by Subdivision (1), not later than the earlier of:

(A) the 15th day after the date the organization receives the information necessary to make the determination; or

(B) the 20th day after the date the organization receives the request that the determination be made.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 2, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1037 (H.B. 1621), Sec. 8, eff.

September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 103 (S.B. 680), Sec. 4, eff. September 1, 2017.

Sec. 4202.004. CERTIFICATION. (a) To be certified as an independent review organization under this chapter, an organization must submit to the commissioner an application in the form required by the commissioner. The application must include:

(1) for an applicant that is publicly held, the name of each shareholder or owner of more than five percent of any of the applicant's stock or options;

(2) the name of any holder of the applicant's bonds or notes that exceed $100,000;

(3) the name and type of business of each corporation or other organization described by Subdivision (4) that the applicant controls or is affiliated with and the nature and extent of the control or affiliation;

(4) the name and a biographical sketch of each director, officer, and executive of the applicant and of any entity listed under Subdivision (3) and a description of any relationship the applicant or the named individual has with:

(A) a health benefit plan;

(B) a health maintenance organization;

(C) an insurer;

(D) a utilization review agent;

(E) a nonprofit health corporation;

(F) a payor;

(G) a health care provider;

(H) a group representing any of the entities described by Paragraphs (A) through (G); or

(I) any other independent review organization in the state;

(5) the percentage of the applicant's revenues that are anticipated to be derived from independent reviews conducted under Subchapter I, Chapter 4201;

(6) a description of:

(A) the areas of expertise of the physicians or other health care providers making review determinations for the applicant;

(B) the procedures used by the applicant to verify

physician and provider credentials, including the computer processes, electronic databases, and records, if any, used; and

(C) the software used by the credentialing manager for managing the processes, databases, and records described by Paragraph (B);

(7) the procedures to be used by the applicant in making independent review determinations under Subchapter I, Chapter 4201; and

(8) a description of the applicant's use of communications, records, and computer processes to manage the independent review process.

(b) The commissioner shall establish certifications for independent review of health care services provided to persons eligible for workers' compensation medical benefits and other health care services after considering accreditation, if any, by a nationally recognized accrediting organization that imposes requirements for accreditation that are the same as, substantially similar to, or more stringent than the department's requirements for accreditation.

(c) The department shall make available to applicants applications for certification to review health care services provided to persons eligible for workers' compensation medical benefits and other health care services.

(d) The commissioner shall require that each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by Subsection (a)(1) submit a complete and legible set of fingerprints to the department for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The department shall conduct a criminal history check of each applicant using information:

(1) provided under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(e) An application for certification for review of health care services must require an organization that is accredited by an organization described by Subsection (b) to provide the department evidence of the accreditation. The commissioner shall consider the evidence if the accrediting organization published and made available

to the commissioner the organization's requirements for and methods used in the accreditation process. An independent review organization that is accredited by an organization described by Subsection (b) may request that the department expedite the application process.

(f) A certified independent review organization that becomes accredited by an organization described by Subsection (b) may provide evidence of that accreditation to the department that shall be maintained in the department's file related to the independent review organization's certification.

(g) Certification must be renewed biennially.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 3, eff. September 1, 2013.

Sec. 4202.005. PERIODIC REPORTING OF INFORMATION; BIENNIAL DESIGNATION; UPDATES AND INSPECTION. (a) An independent review organization shall biennially submit the information required in an application for certification under Section 4202.004. Anytime there is a material change in the information the organization included in the application, the organization shall submit updated information to the commissioner.

(b) The commissioner shall designate biennially each organization that meets the standards for an independent review organization adopted under Section 4202.002.

(c) Information regarding a material change must be submitted on a form adopted by the commissioner not later than the 30th day after the date the material change occurs. If the material change is a relocation of the organization:

(1) the organization must inform the department that the location is available for inspection before the date of the relocation by the department; and

(2) on request of the department, an officer shall attend the inspection.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 4, eff. September 1, 2013.

Sec. 4202.006. PAYORS FEES. The commissioner shall charge payors fees in accordance with this chapter as necessary to fund the operations of independent review organizations.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.007. OVERSIGHT. The commissioner shall provide ongoing oversight of the independent review organizations to ensure continued compliance with this chapter and the standards and rules adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.008. PROHIBITED OWNERSHIP OR CONTROL OF INDEPENDENT REVIEW ORGANIZATION. An independent review organization may not be a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.009. CONFIDENTIAL INFORMATION. Information that reveals the identity of a physician or other individual health care provider who makes a review determination for an independent review organization is confidential.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.010. IMMUNITY FROM LIABILITY. (a) An independent

review organization conducting an independent review under Subchapter I, Chapter 4201, is not liable for damages arising from the review determination made by the organization.

(b) This section does not apply to an act or omission of the independent review organization that is made in bad faith or that involves gross negligence.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4202.012. REFERRAL. The commissioner by rule shall require referral by random assignment of adverse determinations under Subchapter I, Chapter 4201, to independent review organizations. On referral of a determination, the commissioner shall notify:

(1) the utilization review agent;

(2) the payor;

(3) the independent review organization;

(4) the patient, as defined by Section 4201.002, or the patient's representative; and

(5) the provider of record as defined by Section 4201.002.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 5, eff. September 1, 2013.

Sec. 4202.013. PRIMARY OFFICE IN THIS STATE REQUIRED. An independent review organization operating under this chapter must maintain the organization's primary office in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 5, eff. September 1, 2013.

Sec. 4202.014. PREEMPTION. The commissioner shall suspend enforcement of any provision of this chapter that the commissioner determines to be preempted by 42 U.S.C. Section 300gg-19.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1024 (H.B. 2645), Sec. 5, eff. September 1, 2013.

CHAPTER 4203. PROHIBITED CONSULTANT ACTIVITIES

Sec. 4203.001. DEFINITION. In this chapter, "consultant" means a person who, for compensation and at the request of an insurer, business, individual, or utilization review agent:

(1) reviews, assesses, or evaluates a claim, charge, or service of another chiropractor to determine whether the claim, charge, or service is:

(A) medically necessary, reasonable, or appropriate; or

(B) recommended for payment or nonpayment; or

(2) advises an insurer or utilization review agent regarding a chiropractic charge or service or recommends to that insurer or agent guidelines for a chiropractic charge or service.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

Sec. 4203.002. PROHIBITED CONSULTANT ACTIVITIES. A member or employee of the Texas Board of Chiropractic Examiners may not act as a consultant or perform any consultant activities for an insurer or business, individual, or utilization review agent that audits chiropractic claims, charges, or services.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 4, eff. April 1, 2007.

TITLE 15. INTERSTATE INSURANCE COMPACTS

CHAPTER 5001. INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Sec. 5001.001. ADOPTION OF COMPACT; REPRESENTATIVE TO COMMISSION. Pursuant to the terms and conditions of this chapter, the state joins with other states that have adopted the Interstate Insurance Product Regulation Compact to establish and become a member of the Interstate Insurance Product Regulation Commission. The commissioner is the state's representative to that commission.

Added by Acts 2005, 79th Leg., Ch. 1132 (H.B. 2613), Sec. 1, eff. September 1, 2005.

Sec. 5001.002. TERMS OF COMPACT.

ARTICLE I. PURPOSES

The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

2. To develop uniform standards for insurance products covered under the Compact;

3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more Compacting States;

4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;

6. To create the Interstate Insurance Product Regulation Commission; and

7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

ARTICLE II. DEFINITIONS

For purposes of this Compact:

1. "Advertisement" means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.

2. "Bylaws" mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.

3. "Compacting State" means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

4. "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact.

5. "Commissioner" means the chief insurance regulatory

official of a State including, but not limited to commissioner, superintendent, director or administrator.

6. "Domiciliary State" means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.

7. "Insurer" means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.

8. "Member" means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.

9. "Non-compacting State" means any State which is not at the time a Compacting State.

10. "Operating Procedures" mean procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact.

11. "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.

12. "Rule" means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.

13. "State" means any state, district or territory of the United States of America.

14. "Third-Party Filer" means an entity that submits a Product filing to the Commission on behalf of an Insurer.

15. "Uniform Standard" means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements in aggregate; provided, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; provided, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.

2. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.

3. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

4. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a Court of competent jurisdiction where the principal office of the Commission is located.

ARTICLE IV. POWERS OF THE COMMISSION

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, provided, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, provided further, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation,

respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;

3. To receive and review in an expeditious manner Products filed with the Commission, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;

4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of Commission as provided in this section shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in the Compact;

5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission;

6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;

7. To bring and prosecute legal proceedings or actions in its name as the Commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

9. To establish and maintain offices;

10. To purchase and maintain insurance and bonds;

11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;

12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules or Operating Procedures;

17. To enforce compliance by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

18. To provide for dispute resolution among Compacting States;

19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;

20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;

21. To establish a budget and make expenditures;

22. To borrow money;

23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be

designated in the Bylaws;

24. To provide and receive information from, and to cooperate with law enforcement agencies;

25. To adopt and use a corporate seal; and

26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

ARTICLE V. ORGANIZATION OF THE COMMISSION

1. Membership, Voting and Bylaws

a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner.

b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.

c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:

i. Establishing the fiscal year of the Commission;

ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;

iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consist of a majority of Commission members, ensuring reasonable advance notice of each such

meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;

v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.

d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.

2. Management Committee, Officers and Personnel

a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:

i. One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in

the Bylaws; and

iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:

i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;

ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; provided that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;

iii. Overseeing the offices of the Commission; and

iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.

c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.

d. The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

3. Legislative and Advisory Committees

a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; provided that the manner of selection and term of any

legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee.

b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

4. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the Bylaws.

5. Qualified Immunity, Defense and Indemnification

a. The Members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

ARTICLE VI. MEETINGS AND ACTS
OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.

3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

ARTICLE VII. RULES AND OPERATING PROCEDURES:
RULEMAKING FUNCTIONS OF THE COMMISSION
AND OPTING OUT OF UNIFORM STANDARDS

1. Rulemaking Authority. The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to

adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.

3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commission or such later date as the Commission may determine; provided, however, that a Compacting State may opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as any action by a Compacting State to decline to adopt or participate in a promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.

4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this Compact, prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer

or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing Uniform Standards involving long-term care insurance products and those subsequently promulgated.

5. Effect of Opt Out. If a Compacting State elects to opt out of a Uniform Standard, the Uniform Standard shall remain applicable in the Compacting State electing to opt out until such time the opt out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

6. Stay of Uniform Standard. If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending, the Compacting State may petition the Commission, at least fifteen (15) days before the effective date of the Uniform Standard, to stay the effectiveness of the Uniform Standard in that State. The Commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the Commission; provided, a stay may not be permitted to remain in effect for more than one (1) year unless the Compacting State can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the Compacting State from opting out. A stay may be terminated by the Commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated, any person may file a petition for judicial review of the Rule or Operating Procedure; provided, that the filing of such a petition shall not stay or otherwise prevent the Rule or

Operating Procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule or Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission's authority.

ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

1. The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional Rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; provided, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided, that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Commissioner.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws, Rules or Operating Procedures. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.

4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee

the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:

a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

ARTICLE IX. DISPUTE RESOLUTION

The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, or between Compacting States and Non-compacting States, and the Commission shall promulgate an Operating Procedure providing for resolution of such disputes.

ARTICLE X. PRODUCT FILING AND APPROVAL

1. Insurers and Third-Party Filers seeking to have a Product approved by the Commission shall file the Product with, and pay applicable filing fees to, the Commission. Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its Product with the insurance department in any State wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the States where filed.

2. The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the

Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.

3. Any Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business.

ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

ARTICLE XII. FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.

2. The Commission shall collect a filing fee from each Insurer and Third Party Filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact.

4. The Commission shall be exempt from all taxation in and by the Compacting States.

5. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner of any Compacting State upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

7. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.

2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; provided, the Commission shall become effective for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval of, Products filed with the Commission that satisfy applicable Uniform Standards only after twenty-six (26) States are Compacting States or, alternatively, by States representing greater than forty percent (40%) of the premium volume for life insurance,

annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.

3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

1. Withdrawal

a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.

c. The Commissioner of the Withdrawing State shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.

e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission's approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of

products or advertisement previously approved under state law.

f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

a. If the Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this article.

c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

3. Dissolution of Compact

a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

ARTICLE XV. SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

1. Other Laws

a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in Paragraph b of this section.

b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For Advertisement that is subject to the Commission's authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

c. All insurance products filed with individual States shall be subject to the laws of those States.

2. Binding Effect of this Compact

a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.

b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.

c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

d. In the event any provision of this Compact exceeds the

constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

Added by Acts 2005, 79th Leg., Ch. 1132 (H.B. 2613), Sec. 1, eff. September 1, 2005.

CHAPTER 5002. INTERSTATE HEALTH CARE COMPACT

Sec. 5002.001. EXECUTION OF COMPACT. This state enacts the Interstate Health Care Compact and enters into the compact with all other states legally joining in the compact in substantially the following form:

Whereas, the separation of powers, both between the branches of the Federal government and between Federal and State authority, is essential to the preservation of individual liberty;

Whereas, the Constitution creates a Federal government of limited and enumerated powers, and reserves to the States or to the people those powers not granted to the Federal government;

Whereas, the Federal government has enacted many laws that have preempted State laws with respect to Health Care, and placed increasing strain on State budgets, impairing other responsibilities such as education, infrastructure, and public safety;

Whereas, the Member States seek to protect individual liberty and personal control over Health Care decisions, and believe the best method to achieve these ends is by vesting regulatory authority over Health Care in the States;

Whereas, by acting in concert, the Member States may express and inspire confidence in the ability of each Member State to govern Health Care effectively; and

Whereas, the Member States recognize that consent of Congress may be more easily secured if the Member States collectively seek consent through an interstate compact;

NOW THEREFORE, the Member States hereto resolve, and by the adoption into law under their respective State Constitutions of this Health Care Compact, agree, as follows:

Sec. 1. Definitions. As used in this Compact, unless the context clearly indicates otherwise:

"Commission" means the Interstate Advisory Health Care Commission.

"Effective Date" means the date upon which this Compact shall become effective for purposes of the operation of State and Federal law in a Member State, which shall be the later of:

a) the date upon which this Compact shall be adopted under the laws of the Member State, and

b) the date upon which this Compact receives the consent of Congress pursuant to Article I, Section 10, of the United States Constitution, after at least two Member States adopt this Compact.

"Health Care" means care, services, supplies, or plans related to the health of an individual and includes but is not limited to:

(a) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service, assessment, or procedure with respect to the physical or mental condition or functional status of an individual or that affects the structure or function of the body, and

(b) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription, and

(c) an individual or group plan that provides, or pays the cost of, care, services, or supplies related to the health of an individual, except any care, services, supplies, or plans provided by the United

States Department of Defense and United States Department of Veterans Affairs, or provided to Native Americans.

"Member State" means a State that is signatory to this Compact and has adopted it under the laws of that State.

"Member State Base Funding Level" means a number equal to the total Federal spending on Health Care in the Member State during Federal fiscal year 2010. On or before the Effective Date, each Member State shall determine the Member State Base Funding Level for its State, and that number shall be binding upon that Member State.

"Member State Current Year Funding Level" means the Member State Base Funding Level multiplied by the Member State Current Year Population Adjustment Factor multiplied by the Current Year Inflation Adjustment Factor.

"Member State Current Year Population Adjustment Factor" means the average population of the Member State in the current year less the average population of the Member State in Federal fiscal year 2010, divided by the average population of the Member State in Federal fiscal year 2010, plus 1. Average population in a Member State shall be determined by the United States Census Bureau.

"Current Year Inflation Adjustment Factor" means the Total Gross Domestic Product Deflator in the current year divided by the Total Gross Domestic Product Deflator in Federal fiscal year 2010. Total Gross Domestic Product Deflator shall be determined by the Bureau of Economic Analysis of the United States Department of Commerce.

Sec. 2. Pledge. The Member States shall take joint and separate action to secure the consent of the United States Congress to this Compact in order to return the authority to regulate Health Care to the Member States consistent with the goals and principles articulated in this Compact. The Member States shall improve Health Care policy within their respective jurisdictions and according to the judgment and discretion of each Member State.

Sec. 3. Legislative Power. The legislatures of the Member States have the primary responsibility to regulate Health Care in their

respective States.

Sec. 4. State Control. Each Member State, within its State, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding Health Care that are inconsistent with the laws and regulations adopted by the Member State pursuant to this Compact. Federal and State laws, rules, regulations, and orders regarding Health Care will remain in effect unless a Member State expressly suspends them pursuant to its authority under this Compact. For any federal law, rule, regulation, or order that remains in effect in a Member State after the Effective Date, that Member State shall be responsible for the associated funding obligations in its State.

Sec. 5. Funding.

(a) Each Federal fiscal year, each Member State shall have the right to Federal monies up to an amount equal to its Member State Current Year Funding Level for that Federal fiscal year, funded by Congress as mandatory spending and not subject to annual appropriation, to support the exercise of Member State authority under this Compact. This funding shall not be conditional on any action of or regulation, policy, law, or rule being adopted by the Member State.

(b) By the start of each Federal fiscal year, Congress shall establish an initial Member State Current Year Funding Level for each Member State, based upon reasonable estimates. The final Member State Current Year Funding Level shall be calculated, and funding shall be reconciled by the United States Congress based upon information provided by each Member State and audited by the United States Government Accountability Office.

Sec. 6. Interstate Advisory Health Care Commission.

(a) The Interstate Advisory Health Care Commission is established. The Commission consists of members appointed by each Member State through a process to be determined by each Member State. A Member State may not appoint more than two members to the Commission and may withdraw membership from the Commission at any time. Each Commission member is entitled to one vote. The Commission shall not act unless

a majority of the members are present, and no action shall be binding unless approved by a majority of the Commission's total membership.

(b) The Commission may elect from among its membership a Chairperson. The Commission may adopt and publish bylaws and policies that are not inconsistent with this Compact. The Commission shall meet at least once a year, and may meet more frequently.

(c) The Commission may study issues of Health Care regulation that are of particular concern to the Member States. The Commission may make non-binding recommendations to the Member States. The legislatures of the Member States may consider these recommendations in determining the appropriate Health Care policies in their respective States.

(d) The Commission shall collect information and data to assist the Member States in their regulation of Health Care, including assessing the performance of various State Health Care programs and compiling information on the prices of Health Care. The Commission shall make this information and data available to the legislatures of the Member States. Notwithstanding any other provision in this Compact, no Member State shall disclose to the Commission the health information of any individual, nor shall the Commission disclose the health information of any individual.

(e) The Commission shall be funded by the Member States as agreed to by the Member States. The Commission shall have the responsibilities and duties as may be conferred upon it by subsequent action of the respective legislatures of the Member States in accordance with the terms of this Compact.

(f) The Commission shall not take any action within a Member State that contravenes any State law of that Member State.

Sec. 7. Congressional Consent. This Compact shall be effective on its adoption by at least two Member States and consent of the United States Congress. This Compact shall be effective unless the United States Congress, in consenting to this Compact, alters the fundamental purposes of this Compact, which are:

(a) To secure the right of the Member States to regulate Health Care in their respective States pursuant to this Compact and to suspend the operation of any conflicting federal laws, rules, regulations, and orders within their States; and

(b) To secure Federal funding for Member States that choose to invoke their authority under this Compact, as prescribed by Section 5 above.

Sec. 8. Amendments. The Member States, by unanimous agreement, may amend this Compact from time to time without the prior consent or approval of Congress and any amendment shall be effective unless, within one year, the Congress disapproves that amendment. Any State may join this Compact after the date on which Congress consents to the Compact by adoption into law under its State Constitution.

Sec. 9. Withdrawal; Dissolution. Any Member State may withdraw from this Compact by adopting a law to that effect, but no such withdrawal shall take effect until six months after the Governor of the withdrawing Member State has given notice of the withdrawal to the other Member States. A withdrawing State shall be liable for any obligations that it may have incurred prior to the date on which its withdrawal becomes effective. This Compact shall be dissolved upon the withdrawal of all but one of the Member States.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 12.01, eff. September 28, 2011.

TITLE 20. REGULATION OF OTHER OCCUPATIONS
CHAPTER 6001. FIRE EXTINGUISHER SERVICE AND INSTALLATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6001.001. PURPOSE. The purpose of this chapter is to safeguard lives and property by:

(1) regulating:

(A) the leasing, selling, installing, and servicing of portable fire extinguishers; and

(B) the planning, certifying, installing, and servicing of fixed fire extinguisher systems; and

(2) prohibiting portable fire extinguishers, fixed fire

extinguisher systems, or extinguisher equipment that is not listed by a testing laboratory approved by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 2, eff. September 1, 2013.

Sec. 6001.002. DEFINITIONS. In this chapter:

(1) "Firm" means an individual, partnership, corporation, or association.

(2) "Fixed fire extinguisher system" means an assembly of piping, conduits, or containers that convey liquid, powder, or gases to dispersal openings or devices protecting one or more hazards by suppressing or extinguishing fires.

(3) "Hydrostatic testing" means pressure testing by hydrostatic methods.

(4) "Insurance agent" means:

(A) an individual, firm, or corporation licensed under:

(i) Subchapter E, Chapter 981; or

(ii) Subchapter A, B, C, D, E, or G, Chapter 4051; or

(B) an individual authorized to represent an insurance fund or pool created by a municipality, county, or other political subdivision of this state under Chapter 791, Government Code.

(5) "Portable fire extinguisher" means any device that contains liquid, powder, or gases for suppressing or extinguishing fires.

(5-a) "Portable fire extinguisher inspection" means a monthly inspection to ensure that a portable fire extinguisher:

(A) is in the extinguisher's designated location;

(B) has not been actuated or subject to tampering; and

(C) does not have any obvious physical damage or another condition that may prevent proper operation of the extinguisher.

(6) "Registered firm" means a firm that holds a registration certificate.

(7) "Service" and "servicing" mean servicing a portable

fire extinguisher or a fixed fire extinguisher system by charging, filling, maintaining, recharging, refilling, repairing, or testing.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 450 (S.B. 1598), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER, DEPARTMENT, AND STATE FIRE MARSHAL

Sec. 6001.051. ADMINISTRATION OF CHAPTER. (a) The department shall administer this chapter.

(b) The commissioner may issue rules the commissioner considers necessary to administer this chapter through the state fire marshal.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.052. ADOPTION OF RULES. (a) In adopting necessary rules, the commissioner may use recognized standards, including standards:

(1) published by the National Fire Protection Association;

(2) recognized by federal law or regulation;

(3) published by any nationally recognized standards-making organization; or

(4) contained in the manufacturer's installation manuals.

(b) The commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding:

(1) registration of firms engaged in the business of:

(A) installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems; or

(B) hydrostatic testing of fire extinguisher cylinders;

(2) the examination and licensing of individuals to:

(A) install or service portable fire extinguishers; and

(B) plan, certify, install, or service fixed fire extinguisher systems; and

(3) requirements for:

(A) installing or servicing portable fire extinguishers; and

(B) planning, certifying, installing, or servicing fixed fire extinguisher systems.

(c) The commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commissioner may not adopt rules restricting advertising or competitive bidding by the holder of a license, permit, certificate, or approval issued under this chapter except to prohibit false, misleading, or deceptive practices.

(b) In the commissioner's rules to prohibit false, misleading, or deceptive practices, the commissioner may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license, permit, certificate, or approval holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license, permit, certificate, or approval holder; or

(4) restricts the license, permit, certificate, or approval holder's advertisement under a trade name.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.054. GENERAL POWERS AND DUTIES OF DEPARTMENT. (a) The department shall evaluate the qualifications of a firm:

(1) applying for a registration certificate to engage in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems; or

(2) seeking approval as a testing laboratory.

(b) The department shall issue:

(1) registration certificates for firms that qualify under

commissioner rules to engage in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems; and

(2) licenses, apprentice permits, and authorizations to perform hydrostatic testing to firms or individuals that qualify.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.055. FEES. (a) The commissioner shall set the fee for:

(1) an initial firm registration certificate in an amount not to exceed $450;

(2) the renewal of a firm registration certificate in an amount not to exceed $300 annually;

(3) an initial branch office registration certificate in an amount not to exceed $100;

(4) the renewal of a branch office registration certificate in an amount not to exceed $100 annually;

(5) an initial registration certificate to perform hydrostatic testing of fire extinguishers manufactured in accordance with the specifications and procedures of the United States Department of Transportation in an amount not to exceed $250;

(6) the renewal of a registration certificate to perform hydrostatic testing of fire extinguishers manufactured in accordance with the specifications and procedures of the United States Department of Transportation in an amount not to exceed $150 annually;

(7) an initial employee license fee in an amount not to exceed $70;

(8) the annual renewal of an employee license in an amount not to exceed $50; and

(9) an apprentice permit in an amount not to exceed $30.

(b) Unless the examination or reexamination for an employee license is administered by a testing service, the commissioner shall set a nonrefundable fee for:

(1) the initial examination in an amount not to exceed $30; and

(2) each reexamination in an amount not to exceed $20.

(c) The commissioner shall set a fee in an amount not to exceed $20 for:

(1) a duplicate registration certificate, license, or apprentice permit issued under this chapter; or

(2) any request requiring changes to a registration certificate, license, or permit.

(d) On a change of ownership of a registered firm, the department shall issue a new registration certificate with a new number for a fee set by the commissioner in an amount not to exceed $450. On a change of ownership of a branch office, the commissioner shall charge a fee in an amount not to exceed $100.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.056. DEPOSIT IN OPERATING ACCOUNT. All money collected under this chapter, other than penalties and monetary forfeitures, shall be paid to the department and deposited in the state treasury to the credit of the Texas Department of Insurance operating account for use in administering this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER D. REGISTRATION, LICENSE, AND PERMIT REQUIREMENTS

Sec. 6001.151. FIRM REGISTRATION CERTIFICATE REQUIRED. Unless the firm holds a registration certificate issued by the department, a firm may not engage in the business of:

(1) installing or servicing portable fire extinguishers; or

(2) planning, certifying, installing, or servicing fixed fire extinguisher systems.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.152. BRANCH OFFICE REGISTRATION CERTIFICATE REQUIRED. (a) Each separate office location of a firm holding a registration certificate, other than the location identified on the firm's

certificate, must have a branch office registration certificate issued by the department.

(b) Before issuing a branch office registration certificate, the department must determine that the branch office location is part of a registered firm.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.153. HYDROSTATIC TESTING; REGISTRATION CERTIFICATE REQUIRED. (a) A firm may not perform hydrostatic testing of fire extinguishers manufactured in accordance with the specifications and procedures of the United States Department of Transportation unless the firm:

(1) complies with the procedures specified by that department for compressed gas cylinders; and

(2) holds a registration certificate issued by the state fire marshal authorizing hydrostatic testing.

(b) The license of an individual qualified to do work described by Subsection (a) must indicate the authority of the individual to perform that work.

(c) Hydrostatic testing of fire extinguishers that is not performed under the specifications of the United States Department of Transportation must be performed in the manner recommended by the National Fire Protection Association.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.154. REQUIRED INSURANCE COVERAGE FOR REGISTRATION CERTIFICATE. (a) The department may not issue a registration certificate under this chapter unless the applicant files with the department evidence of a general liability insurance policy that includes products and completed operations coverage. The policy must be conditioned to pay on behalf of the insured those amounts that the insured becomes legally obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's officer, agent, or employee in the conduct of any activity that requires a registration certificate or license

under this chapter.

(b) Unless the commissioner, after notice and an opportunity for a hearing, increases or decreases the limits, the limits of insurance coverage required by Subsection (a) must be at least:

(1) $100,000 combined single limits for bodily injury and property damage for each occurrence; and

(2) $300,000 aggregate for all occurrences for each policy year.

(c) The evidence of insurance required by this section must be in the form of a certificate of insurance executed by an insurer authorized to engage in the business of insurance in this state and countersigned by an insurance agent licensed in this state. A certificate of insurance for surplus lines coverage procured in compliance with Chapter 981 through a surplus lines agent that is licensed under Subchapter E, Chapter 981, and resident in this state may be filed with the department as evidence of the coverage required by this section.

(d) An insurance certificate executed and filed with the department under this section remains in force until the insurer has terminated future liability by the notice required by the department.

(e) Failure to maintain the liability insurance required by this section constitutes grounds for the denial, suspension, or revocation, after notice and opportunity for hearing, of a registration certificate issued under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.155. EMPLOYEE LICENSE REQUIRED. (a) Except as provided by Section 6001.156, an individual, other than an apprentice, must hold a license issued by the department before:

(1) installing or servicing portable fire extinguishers;

(2) installing, servicing, or certifying preengineered fixed fire extinguisher systems; or

(3) planning, supervising, servicing, or certifying the installation of fixed fire extinguisher systems other than preengineered systems.

(b) An individual who holds a license to install or service portable fire extinguishers or install and service fixed fire

extinguisher systems must be an employee or agent of a registered firm.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.156. ACTIVITIES NOT REGULATED BY CHAPTER. (a) The licensing provisions of this chapter do not apply to:

(1) the filling or charging of a portable fire extinguisher by the manufacturer before initial sale of the fire extinguisher;

(2) the servicing by a firm of the firm's portable fire extinguishers or fixed systems by the firm's personnel who are specially trained for that servicing;

(2-a) the inspection of a firm's portable fire extinguisher by a person who is:

(A) specially trained to perform portable fire extinguisher inspections; and

(B) under contract with the firm for that purpose;

(3) the installation of portable fire extinguishers in a building by the building owner, the owner's managing agent, or an employee of the building owner or the owner's managing agent;

(4) the installation or servicing of water sprinkler systems installed in compliance with the National Fire Protection Association's Standards for the Installation of Sprinkler Systems;

(5) a firm that is engaged in the retail or wholesale sale of portable fire extinguishers that carry the listing of a testing laboratory approved by the department, but that is not engaged in the installation or servicing of those extinguishers;

(6) a fire department that services portable fire extinguishers as a public service without charge, if the members of the fire department are trained in the proper servicing of the fire extinguishers;

(7) a firm that is a party to a contract under which:

(A) the installation of portable fire extinguishers or a fixed fire extinguisher system is performed under the direct supervision of and certified by a firm appropriately registered to install and certify portable extinguishers or fixed systems; and

(B) the registered firm assumes full responsibility for the installation; or

(8) an engineer licensed under Chapter 1001, Occupations Code, while acting solely in the engineer's professional capacity.

(b) Except as provided by Subsection (a), only the holder of a license or an apprentice permit issued under this chapter may:

(1) install or service portable fire extinguishers; or

(2) install and maintain fixed fire extinguisher systems.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 450 (S.B. 1598), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1004 (H.B. 2447), Sec. 3, eff. September 1, 2013.

Sec. 6001.157. LICENSE EXAMINATION. (a) The state fire marshal shall:

(1) establish the scope and type of an examination required by this chapter; and

(2) examine each applicant for a license under this chapter.

(b) The state fire marshal may administer the examination or may enter into an agreement with a testing service.

(c) If a testing service is used, the state fire marshal may contract with the testing service regarding requirements for the examination, including:

(1) examination development;

(2) scheduling;

(3) site arrangements;

(4) grading;

(5) reporting;

(6) analysis; or

(7) other administrative duties.

(d) The state fire marshal may require the testing service to:

(1) correspond directly with a license applicant regarding the administration of the examination;

(2) collect a reasonable fee from an applicant for administering the examination; or

(3) administer the examination at a specific location or

time.

(e) The state fire marshal shall adopt rules as necessary to implement examination requirements under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.158. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which a licensing examination is administered under this chapter, the state fire marshal shall send notice to each examinee of the results of the examination.

(b) If an examination is conducted, graded, or reviewed by a testing service, the state fire marshal shall send notice to the examinees of the results of the examination not later than the 14th day after the date on which the state fire marshal receives the results from the testing service.

(c) If the notice of the examination results will be delayed for more than 90 days after the examination date, the state fire marshal, before the 90th day, shall send notice to the examinee of the reason for the delay.

(d) The state fire marshal may require a testing service to notify an examinee of the results of the examinee's examination under Subsections (a) and (b).

(e) If requested in writing by an individual who fails the licensing examination administered under this chapter, the state fire marshal shall send to the individual an analysis of the individual's performance on the examination.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.159. CONTINUING EDUCATION REQUIREMENTS. (a) The commissioner may adopt procedures for certifying and may certify continuing education programs for individuals licensed under this chapter.

(b) Participation in the continuing education programs is voluntary.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001,

eff. April 1, 2009.

Sec. 6001.160. RECIPROCAL LICENSE.The department may waive any license requirement for an applicant who holds a license issued by another state that has license requirements substantially equivalent to the license requirements of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.161. APPRENTICE PERMIT REQUIRED. (a) An individual may not install or service portable fire extinguishers or fixed fire extinguisher systems as an apprentice unless the individual holds an apprentice permit issued by the department.

(b) An apprentice may perform a service described by Subsection (a) only under the direct supervision of an individual who holds a license issued under this chapter and who works for the same firm as the apprentice.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.162. NOT TRANSFERABLE. A registration certificate, license, or permit issued under this chapter is not transferable.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER E. RENEWAL OF REGISTRATION, LICENSE, OR PERMIT

Sec. 6001.201. RENEWAL REQUIRED; FEE. (a) A renewal of a registration certificate or license issued under this chapter is valid for a period of two years. The license or registration fee for each year of the two-year period is payable on renewal.

(b) An apprentice permit expires on the first anniversary of the date of issuance.

(c) The commissioner by rule may adopt a system under which registration certificates, licenses, and permits expire on various

dates during the year. For the year in which an expiration date of a registration certificate, license, or permit is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate, license, or permit pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate, license, or permit is valid. On each subsequent renewal, the total renewal fee is payable.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.202. NOTICE OF EXPIRATION. At least 30 days before the expiration date of a registration certificate or license, the state fire marshal shall send written notice of the impending expiration to the holder of the registration certificate or license at the holder's last known address.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.203. RENEWAL PROCEDURES. (a) The holder of an unexpired registration certificate or license may renew the certificate or license by paying the required renewal fee to the department before the expiration date of the certificate or license.

(b) A firm or individual whose registration certificate or license has been expired for 90 days or less may renew the certificate or license by paying to the department:

(1) the required renewal fee; and

(2) a fee equal to one-half of the initial fee for the certificate or license.

(c) A firm or individual whose registration certificate or license has been expired for more than 90 days but less than two years may renew the certificate or license by paying to the department:

(1) all unpaid renewal fees; and

(2) a fee that is equal to the initial fee for the certificate or license.

(d) A firm or individual whose registration certificate or

license has been expired for two years or longer may not renew the certificate or license. The firm or individual may obtain a new registration certificate or license by complying with the requirements and procedures for obtaining an initial registration certificate or license.

(e) This section may not be construed to prevent the department from denying or refusing to renew a license under applicable law or commissioner rules.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER F. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 6001.251. PROHIBITED PRACTICES. (a) An individual or firm may not:

(1) engage in the business of installing or servicing portable fire extinguishers without holding a registration certificate;

(2) engage in the business of planning, certifying, installing, or servicing fixed fire extinguisher systems without holding a registration certificate;

(3) install, service, or certify the servicing of portable fire extinguishers or plan, certify, service, or install fixed fire extinguisher systems without holding a license;

(4) perform hydrostatic testing of fire extinguisher cylinders manufactured in accordance with the specifications and requirements of the United States Department of Transportation without holding a hydrostatic testing registration certificate;

(5) obtain or attempt to obtain a registration certificate or license by fraudulent representation;

(6) install or service portable fire extinguishers or plan, certify, service, or install fixed fire extinguisher systems in violation of this chapter or the rules adopted and administered under this chapter;

(7) except as provided by Subsection (b), install, service, or hydrostatically test a fire extinguisher that does not have the proper identifying labels;

(8) sell, install, service, or recharge a carbon

tetrachloride fire extinguisher; or

(9) except as provided by Subsection (b), lease, sell, service, or install a portable fire extinguisher, a fixed fire extinguisher system, or extinguisher equipment unless it carries an approval label or listing label issued by a testing laboratory approved by the department.

(b) The commissioner by rule shall permit an individual or firm to service a portable fire extinguisher regardless of whether the extinguisher carries a label described by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.252. DISCIPLINARY ACTIONS. (a) The state fire marshal may suspend, revoke, or refuse to issue or renew a registration certificate, license, or permit if, after notice and hearing, the state fire marshal finds that the applicant, registrant, license holder, or permit holder has engaged in acts that:

(1) violate this chapter;

(2) violate rules or standards adopted under this chapter; or

(3) constitute misrepresentation made in connection with:

(A) the sale of products; or

(B) services rendered.

(b) Subject to Section 6001.253, the commissioner may suspend, revoke, or refuse to issue or renew a certificate, license, permit, or approval.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.253. DISCIPLINARY HEARING. (a) If the state fire marshal proposes to suspend, revoke, or refuse to renew a license, permit, certificate, or approval issued under this chapter, the holder of the license, permit, certificate, or approval is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Proceedings for a disciplinary action are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the commissioner applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.254. REAPPLICATION REQUIREMENTS. (a) An applicant or holder of a registration certificate, license, or permit whose certificate, license, or permit has been refused or revoked under this chapter, other than for failure to pass a required written examination, may not file another application for a registration certificate, license, or permit before the first anniversary of the effective date of the refusal or revocation.

(b) After the first anniversary of the effective date of the refusal or revocation, the applicant may:

(1) reapply; and

(2) in a public hearing, show good cause why the issuance of the registration certificate, license, or permit is not against the public safety and welfare.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6001.255. REEXAMINATION AFTER REVOCATION. An individual whose license to service portable fire extinguishers or to install or service fixed fire extinguisher systems has been revoked must retake and pass the required written examination before a new license may be issued.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER G. CRIMINAL PENALTY

Sec. 6001.301. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 6001.251(a).

(b) An offense under this section is a Class B misdemeanor.

(c) Venue for an offense under this section is in Travis County

or the county in which the offense is committed.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

CHAPTER 6002. FIRE DETECTION AND ALARM DEVICE INSTALLATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6002.001. PURPOSE. The purpose of this chapter is to safeguard lives and property by:

(1) regulating the planning, certifying, leasing, selling, servicing, installing, monitoring, and maintaining of fire detection and fire alarm devices and systems; and

(2) except as provided by rules adopted under Section 6002.051 or 6002.052, prohibiting fire detection and fire alarm devices, equipment, and systems not labeled or listed by a nationally recognized testing laboratory.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.002. DEFINITIONS. Except as otherwise provided by this chapter, in this chapter:

(1) "Fire alarm device" means any device capable, through audible or visible means, of warning that fire or combustion has occurred or is occurring.

(2) "Fire alarm planning superintendent" means a licensed individual designated by a registered firm to:

(A) plan a fire alarm or detection system that conforms to applicable adopted National Fire Protection Association standards or other adopted standards; and

(B) certify that each fire alarm or detection system as planned meets the standards as provided by law.

(3) "Fire alarm technician" means a licensed individual designated by a registered firm to:

(A) inspect and certify that each fire alarm or detection system as installed meets the standards provided by law; or

(B) perform or directly supervise the servicing or maintaining of a previously installed fire alarm device or system and certify that service or maintenance.

(4) "Fire detection device" means any arrangement of materials, the sole function of which is to indicate the existence of fire, smoke, or combustion in its incipient stages.

(5) "Individual" means a natural person, including an owner, manager, officer, employee, occupant, or other individual.

(6) "Installation" means:

(A) the initial placement of equipment; or

(B) the extension, modification, or alteration of equipment already in place.

(7) "Insurance agent" means:

(A) an individual, firm, or corporation licensed under:

(i) Subchapter E, Chapter 981; or

(ii) Subchapter A, B, C, D, E, or G, Chapter 4051; or

(B) an individual authorized to represent an insurance fund or pool created by a municipality, county, or other political subdivision of this state under Chapter 791, Government Code.

(8) "Maintenance" means the maintenance of a fire alarm device or a fire detection device in a condition of repair that provides performance as originally designed or intended.

(9) "Monitoring" means the receipt of fire alarm and supervisory signals or communication of those signals to a fire service communications center in this state or serving property in this state.

(10) "Organization" means a corporation, a government or a governmental subdivision or agency, a business trust, an estate, a trust, a partnership, a firm or association, two or more individuals with a joint or common interest, or any other legal or commercial entity.

(11) "Registered firm" means an individual or organization that holds a registration certificate.

(12) "Residential fire alarm superintendent" means a licensed individual designated by a registered firm to:

(A) plan a residential single-family or two-family fire alarm or detection system that conforms to applicable adopted National Fire Protection Association standards or other adopted standards; and

(B) certify that each fire alarm or detection system as planned meets the standards as provided by law.

(12-a) "Residential fire alarm technician" means a licensed

individual who is designated by a registered firm to install, service, inspect, and certify residential single-family or two-family fire alarm or detection systems.

(13) "Sale" means the sale or offer for sale, lease, or rent of any merchandise, equipment, or service at wholesale or retail, to the public or any individual, for an agreed sum of money or other consideration.

(14) "Service" or "servicing" means inspection, maintenance, repair, or testing of a fire alarm device or a fire detection device.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(a), eff. September 1, 2009.

Sec. 6002.003. EFFECT ON LOCAL REGULATION. (a) This chapter and the rules adopted under this chapter have uniform force and effect throughout this state. A municipality or county may not enact an ordinance or rule inconsistent with this chapter or rules adopted under this chapter. An inconsistent ordinance or rule is void and has no effect.

(b) Notwithstanding Subsection (a), a municipality or county may:

(1) mandate that a fire alarm or detection system be installed in certain facilities, if the installation conforms to applicable state law;

(2) require a better type of alarm or detection system or otherwise safer condition than the minimum required by state law; and

(3) require regular inspections by local officials of smoke detectors in dwelling units, as that term is defined by Section 92.251, Property Code, and require the smoke detectors to be operational at the time of inspection.

(c) A municipality, county, or other political subdivision of this state may not require, as a condition of engaging in business or performing any activity authorized under this chapter, that a registered firm, a license holder, or an employee of a license holder:

(1) obtain a registration, franchise, or license from the political subdivision;

(2) pay any fee or franchise tax to the political subdivision; or

(3) post a bond.

(d) Notwithstanding any other provision of this section or Section 6002.155, a municipality or county may require a registered firm to obtain a permit and pay a permit fee for the installation of a fire alarm or fire detection device or system and require that the installation of such a system be in conformance with the building code or other construction requirements of the municipality or county and state law.

(e) Notwithstanding Subsection (d), a municipality or county may not impose qualification or financial responsibility requirements other than proof of a registration certificate.

(f) A political subdivision may not require a registered firm, a license holder, or an employee of a registered firm to maintain a business location or residency within that political subdivision to engage in a business or perform any activity authorized under this chapter.

(g) A municipality or county may by ordinance require a registered firm to make a telephone call to a monitored property before the firm notifies the municipality or county of an alarm signal received by the firm from a fire detection device.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(b), eff. September 1, 2009.

Sec. 6002.004. PROVISION OF CERTAIN SERVICES BY POLITICAL SUBDIVISION. (a) In this section, "monitoring" means the receipt of fire alarm or supervisory signals or retransmission or communication of those signals to a fire service communications center that is located in this state or serves property in this state.

(b) Except as provided by Subsection (c), a political subdivision may not offer alarm system sales, service, installation, or monitoring unless the political subdivision has been providing

monitoring services within the boundaries of the political subdivision as of September 1, 1999. Any fee charged by the political subdivision under this subsection may not exceed the cost of the monitoring.

(c) A political subdivision may:

(1) offer service, installation, or monitoring for property owned by the political subdivision or another political subdivision;

(2) allow for the response to an alarm or detection device by:

(A) a law enforcement agency or fire department; or

(B) a law enforcement officer or firefighter acting in an official capacity; or

(3) offer monitoring to a financial institution, as defined by Section 59.301, Finance Code, that requests, in writing, that the political subdivision provide monitoring service to the financial institution.

(d) Subsection (b) does not apply to a political subdivision:

(1) in a county with a population of less than 80,000; or

(2) in which monitoring is not otherwise provided or available.

(e) This section is not intended to require a political subdivision to hold a license under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(c), eff. September 1, 2009.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER, DEPARTMENT, AND STATE FIRE MARSHAL

Sec. 6002.051. ADMINISTRATION OF CHAPTER; RULES. (a) The department shall administer this chapter.

(b) The commissioner may adopt rules as necessary to administer this chapter, including rules the commissioner considers necessary to administer this chapter through the state fire marshal.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.052. ADOPTION OF RULES; STANDARDS. (a) In adopting necessary rules, the commissioner may use:

(1) recognized standards, such as, but not limited to:

(A) standards of the National Fire Protection Association;

(B) standards recognized by federal law or regulation; or

(C) standards published by a nationally recognized standards-making organization;

(2) the National Electrical Code; or

(3) information provided by individual manufacturers.

(b) Under rules adopted under Section 6002.051, the department may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems. The rules must establish appropriate training and qualification standards for each kind of license and certificate.

(c) The commissioner shall also adopt standards applicable to fire alarm devices, equipment, or systems regulated under this chapter. In adopting standards under this subsection, the commissioner may allow the operation of a fire alarm monitoring station that relies on fire alarm devices or equipment approved or listed by a nationally recognized testing laboratory without regard to whether the monitoring station is approved or listed by a nationally recognized testing laboratory if the operator of the station demonstrates that the station operating standards are substantially equivalent to those required to be approved or listed.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commissioner may not adopt rules restricting advertising or competitive bidding by the holder of a license or registration certificate issued under this chapter except to prohibit false, misleading, or deceptive practices.

(b) In the commissioner's rules to prohibit false, misleading, or deceptive practices, the commissioner may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license or registration certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license or registration certificate holder; or

(4) restricts the license or registration certificate holder's advertisement under a trade name.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.0531. RULES REQUIRING FINANCIAL RESPONSIBILITY. The commissioner may not adopt a rule to administer this chapter that requires a person who holds a license under this chapter to obtain additional certification that imposes a financial responsibility on the license holder.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(i), eff. September 1, 2009.

Sec. 6002.054. FEES. (a) The commissioner shall set the fee for:

(1) an initial registration certificate in an amount not to exceed $500;

(2) the renewal of a registration certificate for each year in an amount not to exceed $500;

(3) the renewal of a registration certificate for an individual or organization engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining exclusively single station devices in an amount not to exceed $250 annually;

(4) an initial branch office registration certificate in an amount not to exceed $150;

(5) the renewal of a branch office registration certificate for each year in an amount not to exceed $150;

(6) an initial or renewal training school approval in an amount not to exceed $500 annually;

(7) an initial or renewal of a training school instructor

approval in an amount not to exceed $50 annually;

(8) an initial license in an amount not to exceed $120, except as provided by Subdivision (10);

(9) the renewal of a license for each year in an amount not to exceed $100, except as provided by Subdivision (10); and

(10) an initial license fee, in an amount not to exceed $50, and an annual renewal fee, in an amount not to exceed $50, for a residential fire alarm technician license.

(b) Unless the examination or reexamination for a license is administered by a testing service, the commissioner shall set a nonrefundable fee for:

(1) the initial examination in an amount not to exceed $30; and

(2) each reexamination in an amount not to exceed $20.

(c) The commissioner shall set a fee in an amount not to exceed $20 for:

(1) a duplicate registration certificate or license issued under this chapter; and

(2) any request requiring changes to a registration certificate or license.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(d), eff. September 1, 2009.

Sec. 6002.055. DEPOSIT IN OPERATING ACCOUNT. The fees collected under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Insurance operating account.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.056. DEPARTMENT RECORDS. Records maintained by the department under this chapter on the home address, home telephone number, driver's license number, or social security number of an applicant or a license or registration holder are confidential and

are not subject to mandatory disclosure under Chapter 552, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(j), eff. September 1, 2009.

SUBCHAPTER D. REGISTRATION, LICENSE, AND APPROVAL REQUIREMENTS

Sec. 6002.151. FIRM REGISTRATION CERTIFICATE REQUIRED; LIMITED CERTIFICATE. (a) An individual or organization may not engage in the business of planning, certifying, leasing, selling, installing, servicing, monitoring, or maintaining fire alarm or fire detection devices or systems unless the individual or organization holds a registration certificate issued by the department.

(b) The department may issue a limited registration certificate to an individual or organization whose business is restricted to monitoring.

(c) Applications for registration certificates and qualifications for those certificates are subject to rules adopted by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.152. BRANCH OFFICE REGISTRATION CERTIFICATE REQUIRED. (a) Except as provided by Subsection (c), each separate office location of a registered firm, other than the location identified on the firm's registration certificate, must have a branch office registration certificate issued by the department.

(b) Before issuing a branch office registration certificate, the department must determine that the branch office location is part of a registered firm.

(c) A registered firm that is engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining exclusively single station devices is not required to apply for or obtain a branch office registration certificate for a separate office or location of the firm.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.153. REQUIRED INSURANCE COVERAGE FOR REGISTRATION CERTIFICATE. (a) The department may not issue a registration certificate under this chapter unless the applicant files with the department evidence of a general liability insurance policy that includes products and completed operations coverage. The policy must be conditioned to pay on behalf of the insured those amounts that the insured becomes legally obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's officer, agent, or employee in the conduct of any business that requires a registration certificate or license under this chapter.

(b) Unless the commissioner increases or decreases the limits under rules adopted under Section 6002.051(b), the limits of insurance coverage required by Subsection (a) must be at least:

(1) $100,000 combined single limits for bodily injury and property damage for each occurrence; and

(2) $300,000 aggregate for all occurrences for each policy year.

(c) The evidence of insurance required by this section must be in the form of a certificate of insurance executed by an insurer authorized to engage in the business of insurance in this state and countersigned by an insurance agent licensed in this state. A certificate of insurance for surplus lines coverage procured in compliance with Chapter 981 through a surplus lines agent that is licensed under Subchapter E, Chapter 981, and resident in this state may be filed with the department as evidence of the coverage required by this section.

(d) An insurance certificate executed and filed with the department under this section remains in force until the insurer has terminated future liability by the notice required by the department.

(e) Failure to maintain the liability insurance required by this section constitutes grounds for the denial, suspension, or revocation, after notice and opportunity for hearing, of a registration certificate issued under this chapter.

(f) For an individual or organization licensed to install or service burglar alarms under Chapter 1702, Occupations Code, compliance with the insurance requirements of that chapter constitutes compliance with the insurance requirements of this

section if the insurance held by the individual or organization complies with the requirements of this section in amounts and types of coverage.

(g) This section does not affect the rights of the insured to negotiate or contract for limitations of liability with a third party, including a customer of the insured.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.154. FIRE ALARM TECHNICIAN, RESIDENTIAL FIRE ALARM SUPERINTENDENT, AND FIRE ALARM PLANNING SUPERINTENDENT. (a) Each registered firm, including a firm engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining exclusively single station devices, must employ at least one employee who is a fire alarm technician, residential fire alarm superintendent, or fire alarm planning superintendent.

(b) A fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or fire alarm planning superintendent must hold a license issued by the department, conditioned on the successful completion of a written license examination.

(c) To engage in the activity for which the license is granted, an individual licensed under this chapter must be an employee or agent of an individual or entity that holds a registration certificate.

(d) A fire alarm technician may perform or supervise monitoring. A fire alarm planning superintendent may act as a fire alarm technician or a residential fire alarm superintendent. A residential fire alarm superintendent may act as a fire alarm technician.

(d-1) A residential fire alarm technician may only provide direct on-site supervision to an employee of a registered firm for work performed under this chapter in a single-family or two-family dwelling.

(d-2) An applicant for a residential fire alarm technician license must provide with the required license application evidence of the applicant's successful completion of the required instruction

from a training school approved by the state fire marshal in accordance with Section 6002.158.

(e) Applications for licenses and qualifications for those licenses are subject to rules adopted by the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(e), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(g), eff. September 1, 2009.

Sec. 6002.155. ACTIVITIES NOT REGULATED BY CHAPTER. The licensing provisions of this chapter do not apply to:

(1) an individual or organization in the business of building construction that installs electrical wiring and devices that may include, in part, the installation of a fire alarm or detection system if:

(A) the individual or organization is a party to a contract that provides that:

(i) the installation will be performed under the direct supervision of and certified by a licensed employee or agent of a firm registered to install and certify such an alarm or detection device; and

(ii) the registered firm assumes full responsibility for the installation of the alarm or detection device; and

(B) the individual or organization does not plan, certify, lease, sell, service, or maintain fire alarms or detection devices or systems;

(2) an individual or organization that:

(A) owns and installs a fire detection or fire alarm device on the individual's or organization's own property; or

(B) if the individual or organization does not charge for the device or its installation, installs the device for the protection of the individual's or organization's personal property located on another's property and does not install the device as a normal business practice on the property of another;

(3) an individual who holds a license or other authority issued by a municipality to practice as an electrician and who installs fire or smoke detection and alarm devices only in a single family or multifamily residence if:

(A) the devices installed are:

(i) single station detectors; or

(ii) multiple station detectors capable of being connected in a manner that actuation of one detector causes all integral or separate alarms to operate if the detectors are not connected to a control panel or to an outside alarm, do not transmit a signal off the premises, and do not use more than 120 volts; and

(B) all installations comply with the adopted edition of National Fire Protection Association Standard No. 72;

(4) an individual or organization that:

(A) sells fire detection or fire alarm devices exclusively over-the-counter or by mail order; and

(B) does not plan, certify, install, service, or maintain the devices;

(5) a law enforcement agency or fire department or a law enforcement officer or firefighter acting in an official capacity that responds to a fire alarm or detection device;

(6) an engineer licensed under Chapter 1001, Occupations Code, acting solely in the engineer's professional capacity;

(7) an individual or organization that provides and installs at no charge to the property owners or residents a battery-powered smoke detector in a single-family or two-family residence if:

(A) the smoke detector bears a label of listing or approval by a testing laboratory approved by the department;

(B) the installation complies with the adopted edition of National Fire Protection Association Standard No. 72;

(C) the installers are knowledgeable in fire protection and the proper use of smoke detectors; and

(D) the detector is a single station installation and not a part of or connected to any other detection device or system;

(8) an employee of a registered firm who is under the direct on-site supervision of a license holder;

(9) a building owner, the owner's managing agent, or an employee of the owner or agent who installs battery-operated single station smoke detectors or monitor fire alarm or fire detection devices or systems in the owner's building, and in which the

monitoring:

(A) is performed at the owner's property at no charge to the occupants of the building;

(B) complies with applicable standards of the National Fire Protection Association as may be adopted by rule under this chapter; and

(C) uses equipment approved by a testing laboratory approved by the department for fire alarm monitoring;

(10) an individual employed by a registered firm that sells and installs a smoke or heat detector in a single-family or two-family residence if:

(A) the detector bears a label of listing or approval by a testing laboratory approved by the department;

(B) the installation complies with the adopted edition of National Fire Protection Association Standard No. 72;

(C) the installers are knowledgeable in fire protection and the proper use and placement of detectors; and

(D) the detector is a single station installation and not a part of or connected to any other detection device or system; or

(11) an individual or organization licensed to install or service burglar alarms under Chapter 1702, Occupations Code, that provides and installs in a single-family or two-family residence a combination keypad that includes a panic button to initiate a fire alarm signal if the fire alarm signal:

(A) is monitored by a fire alarm firm registered under this chapter; and

(B) is not initiated by a fire or smoke detection device.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(f), eff. September 1, 2009.

Sec. 6002.156. LICENSE EXAMINATION. (a) The state fire marshal shall establish the scope and type of an examination required by this chapter. The examination must cover this chapter and

commissioner rules and include specific testing of all license categories.

(b) The state fire marshal may administer the examination or may enter into an agreement with a testing service.

(c) If a testing service is used, the state fire marshal may contract with the testing service regarding requirements for the examination, including:

(1) examination development;

(2) scheduling;

(3) site arrangements;

(4) grading;

(5) reporting;

(6) analysis; or

(7) other administrative duties.

(d) The state fire marshal may require the testing service to:

(1) correspond directly with an applicant regarding the administration of the examination;

(2) collect a reasonable fee from an applicant for administering the examination; or

(3) administer the examination at a specific location or time.

(e) Approval for a testing service is valid for one year.

(f) The state fire marshal shall adopt rules as necessary to implement examination requirements under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.157. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which an examination is administered under this chapter, the state fire marshal shall send notice to each examinee of the results of the examination.

(b) If an examination is conducted, graded, or reviewed by a testing service, the state fire marshal shall send notice to each examinee of the results of the examination within two weeks after the date on which the state fire marshal receives the results from the testing service.

(c) If the notice of the examination results will be delayed for more than 90 days after the examination date, the state fire

marshal shall send notice to the examinee of the reason for the delay before the 90th day.

(d) The state fire marshal may require a testing service to notify an examinee of the results of the examinee's examination under this section.

(e) If requested in writing by an individual who fails the examination administered under this chapter, the state fire marshal shall send to the individual an analysis of the individual's performance on the examination.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.158. TRAINING SCHOOLS AND INSTRUCTORS; APPROVAL. (a) An applicant for approval as a training school must submit an application to the state fire marshal, accompanied by the applicant's complete course or testing curriculum. A registered firm, or an affiliate of a registered firm, is not eligible for approval as a training school.

(b) The state fire marshal shall review the materials submitted for course approval and shall approve or deny approval in a letter provided not later than the 60th day after the date of receipt of the application. A denial of approval must disclose specific reasons for the denial. An applicant whose approval is denied may reapply at any time.

(c) Training school instructors must be approved by the state fire marshal. To be eligible for approval, an instructor must:

(1) hold a fire alarm planning superintendent license, a residential fire alarm superintendent license, or a fire alarm technician license; and

(2) have at least three years of experience in fire alarm installation, service, or monitoring.

(d) Approval for a training school or instructor is valid for one year.

(e) The curriculum for a residential fire alarm technician course must consist of at least seven hours of instruction on installing, servicing, and maintaining single-family and two-family residential fire alarm systems as defined by National Fire Protection Standard No. 72 and an examination on National Fire Protection

Standard No. 72 for which at least one hour is allocated for completion. The examination must consist of at least 25 questions, and an applicant must accurately answer at least 80 percent of the questions to pass the examination.

(f) After approval, each training school must annually conduct, within 125 miles of each county with a population greater than 500,000, at least two classes that are open to the public.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(h), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 15.001, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 172 (H.B. 458), Sec. 1, eff. September 1, 2013.

Sec. 6002.159. CONTINUING EDUCATION PROGRAMS. (a) The commissioner may adopt procedures for certifying and may certify continuing education programs.

(b) Participation in the continuing education programs is voluntary.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.160. RECIPROCAL LICENSE. The department may waive any license requirement for an applicant who holds a license issued by another state that has license requirements substantially equivalent to the license requirements of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.161. NOT TRANSFERABLE. A registration certificate or license issued under this chapter is not transferable.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER E. RENEWAL OF REGISTRATION CERTIFICATE OR LICENSE

Sec. 6002.201. RENEWAL REQUIRED; FEE. (a) A renewal of a registration certificate or license issued under this chapter is valid for a period of two years. The license or registration renewal fee for each year of the two-year period is payable on renewal.

(b) The commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year. For the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid. The total renewal fee is payable on renewal on the new expiration date.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.202. NOTICE OF EXPIRATION. At least 30 days before the expiration date of a registration certificate or license, the state fire marshal shall send written notice of the impending expiration to the holder of the registration certificate or license at the holder's last known address.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.203. RENEWAL PROCEDURES. (a) The holder of an unexpired registration certificate or license may renew the certificate or license by paying the required renewal fee to the department before the expiration date of the certificate or license.

(b) An individual or organization whose registration certificate or license has been expired for 90 days or less may renew the certificate or license by paying to the department:

(1) the required renewal fee; and

(2) a fee that does not exceed one-fourth of the initial fee for the certificate or license.

(c) An individual or organization whose registration certificate or license has been expired for more than 90 days but less than two years may renew the certificate or license by paying to the department:

(1) all unpaid renewal fees; and

(2) a fee that does not exceed the initial fee for the certificate or license.

(d) An individual or organization whose registration certificate or license has been expired for two years or longer may not renew the certificate or license. The individual or organization may obtain a new registration certificate or license by complying with the requirements and procedures for obtaining an initial registration certificate or license.

(e) This section may not be construed to prevent the department from denying or refusing to renew a license under applicable law or commissioner rules.

(f) A license or registration certificate issued under this chapter expires at midnight on the date printed on the license or certificate. A renewal application and fee for the license or registration certificate must be postmarked on or before the expiration date to be accepted as timely.

(g) If a renewal application is not complete but there has been no lapse in the required insurance, the applicant is entitled to 30 days from the date that the applicant is notified by the department of the deficiencies in the renewal application to comply with any additional requirement. If an applicant fails to respond and correct all deficiencies in the renewal application within the 30-day period, the department may charge a late fee.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.204. RENEWAL OF CERTAIN LICENSES. A license holder with an unexpired license who is not employed by a registered firm at the time of the license renewal may renew that license, but the license holder may not engage in any activity for which the license

was granted until the license holder is employed by a registered firm.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER F. SELLING OR LEASING OF FIRE ALARM OR FIRE DETECTION DEVICES

Sec. 6002.251. REQUIRED LABEL; EXCEPTIONS. (a) Except as provided by Subsections (b) and (c), a detection or alarm device, alarm system, or item of monitoring equipment, a purpose of which is to detect or give alarm of fire, may not be sold, offered for sale, leased, installed, or used to monitor property in this state unless the device, system, or item of equipment carries a label of approval or listing of a testing laboratory approved by the department.

(b) Except as provided by Subsection (c), a detection or alarm device, alarm system, or item of monitoring equipment in a one-family or two-family residence, a purpose of which is to detect or give alarm of fire, may not be sold, offered for sale, leased, installed, or used to monitor property in this state after April 14, 1989, unless the device, system, or equipment carries a label of approval or listing of a testing laboratory approved by the department.

(c) Subsections (a) and (b) do not prohibit the continued use or monitoring of equipment in place if the equipment:

(1) complied with the law applicable on the date of the equipment's original placement; and

(2) has not been extended, modified, or altered.

(d) Fire alarm devices that are not required by this chapter or rules adopted under this chapter and that do not impair the operation of fire alarm or fire detection devices required by this chapter or the rules adopted under this chapter are exempt from the label and listing requirements described by Subsections (a) and (b) if the devices are approved by the local authority with jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.252. REQUIRED PURCHASE AND INSTALLATION INFORMATION. A fire detection or fire alarm device may not be sold or installed in

this state unless the device is accompanied by printed information that:

(1) is supplied to the owner by the supplier or installing contractor; and

(2) concerns:

(A) instructions describing the installation, operation, testing, and proper maintenance of the device;

(B) information to aid in establishing an emergency evacuation plan for the protected premises;

(C) the telephone number and location, including notification procedures, of the nearest fire department; and

(D) information that will aid in reducing the number of false alarms.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(k), eff. September 1, 2009.

Sec. 6002.253. TRAINING AND SUPERVISION OF CERTAIN EXEMPT EMPLOYEES. Each registered firm that employs an individual who is exempt from the licensing requirements of this chapter under Section 6002.155(10) shall appropriately train and supervise the individual to ensure that:

(1) each installation complies with the adopted provisions of National Fire Protection Association Standard No. 72 or other adopted standards;

(2) each smoke or heat detector installed or sold carries a label or listing of approval by a testing laboratory approved by the department; and

(3) the individual is knowledgeable in fire protection and the proper use and placement of detectors.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 14.018(l), eff. September 1, 2009.

SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 6002.301. PROHIBITED PRACTICES. An individual or organization may not:

(1) plan, certify, lease, sell, service, install, monitor, or maintain a fire alarm or fire detection device or system without a license or registration certificate;

(2) obtain or attempt to obtain a registration certificate or license by fraudulent representation; or

(3) plan, certify, lease, sell, service, install, monitor, or maintain a fire alarm or fire detection device or system in violation of this chapter or the rules adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.302. DISCIPLINARY ACTIONS. (a) The state fire marshal may suspend, revoke, or refuse to issue or renew a registration certificate or license if, after notice and hearing, the state fire marshal finds that the applicant, registrant, or license holder has engaged in acts that:

(1) violate this chapter;

(2) violate rules or standards adopted under this chapter; or

(3) constitute misrepresentation made in connection with the sale of products or services rendered.

(b) An original or renewal registration certificate, license, or testing laboratory approval may be denied, suspended, or revoked, if after notice and public hearing the commissioner, through the state fire marshal, determines from the evidence presented at the hearing that this chapter or a rule adopted under this chapter has been violated.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.303. DISCIPLINARY HEARING. (a) If the state fire marshal proposes to suspend, revoke, or refuse to renew a license or registration certificate issued under this chapter, the holder of the license or certificate is entitled to a hearing conducted by the

State Office of Administrative Hearings.

(b) Proceedings for a disciplinary action are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the commissioner applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6002.304. REAPPLICATION REQUIREMENTS. (a) A holder of a registration certificate, license, or testing laboratory approval that has been revoked under this chapter may not file another application for a registration certificate, license, or approval before the first anniversary of the effective date of the revocation.

(b) An individual or organization reapplying under this section must request a public hearing to show cause why the issuance of a new registration certificate, license, or approval should not be denied.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER H. CRIMINAL PENALTY

Sec. 6002.351. CRIMINAL PENALTY. (a) An individual or organization commits an offense if the individual or organization violates Section 6002.151, 6002.152, or 6002.154.

(b) An offense under this section is a Class B misdemeanor.

(c) Venue for an offense under this section is in Travis County or the county in which the offense is committed.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

CHAPTER 6003. FIRE PROTECTION SPRINKLER SYSTEM SERVICE AND INSTALLATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 6003.001. DEFINITIONS. In this chapter:

(1) "Fire protection sprinkler system" means an assembly of

underground or overhead piping or conduits that conveys water with or without other agents to dispersal openings or devices to:

(A) extinguish, control, or contain fire; and

(B) provide protection from exposure to fire or the products of combustion.

(2) "Fire protection sprinkler system contractor" means an individual or organization that offers to undertake, represents itself as being able to undertake, or undertakes the plan, sale, installation, maintenance, or servicing of:

(A) a fire protection sprinkler system; or

(B) any part of a fire protection sprinkler system.

(3) "Individual" means a natural person, including an owner, manager, officer, employee, or occupant.

(4) "Installation" means:

(A) the initial placement of equipment; or

(B) the extension, modification, or alteration of equipment after initial placement.

(5) "Insurance agent" means:

(A) an individual, firm, or corporation licensed under:

(i) Subchapter E, Chapter 981; or

(ii) Subchapter A, B, C, D, E, or G, Chapter 4051; or

(B) an individual authorized to represent an insurance fund or pool created by a municipality, county, or other political subdivision of this state under Chapter 791, Government Code.

(6) "License" means the document issued to a responsible managing employee authorizing the employee to engage in the fire protection sprinkler system business in this state.

(7) "Maintenance" means the maintenance of a fire protection sprinkler system or any part of a fire protection sprinkler system in the condition of repair that provides performance as originally planned.

(8) "Organization" means a corporation, a partnership or other business association, a governmental entity, or any other legal or commercial entity.

(9) "Registration certificate" means the document issued to a fire protection sprinkler system contractor authorizing the contractor to engage in business in this state.

(10) "Responsible managing employee" means an individual designated by a company that plans, sells, installs, maintains, or

services fire protection sprinkler systems to ensure that each fire protection sprinkler system, as installed, maintained, or serviced, meets the standards for the system as provided by law.

(11) "Service" means maintenance, repair, or testing.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.002. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to:

(1) an employee of the United States, this state, or any political subdivision of this state who acts as a fire protection sprinkler system contractor for the employing governmental entity;

(2) the plan, sale, installation, maintenance, or servicing of a fire protection sprinkler system in any property owned by the United States or this state;

(3) an individual or organization acting under court order as authorization;

(4) an individual or organization that sells or supplies products or materials to a registered fire protection sprinkler system contractor;

(5) an installation, maintenance, or service project for which the total contract price for labor, materials, and all other services is less than $100, if:

(A) the project is not a part of a complete or more costly project, whether the complete project is to be undertaken by one or more fire protection sprinkler system contractors; or

(B) the project is not divided into contracts of less than $100 for the purpose of evading this chapter;

(6) an engineer licensed under Chapter 1001, Occupations Code, acting solely in the engineer's professional capacity;

(7) a regular employee of a registered fire protection sprinkler system contractor; or

(8) an owner or lessee of property that:

(A) installs a fire protection sprinkler system on the owned or leased property for the owner's or lessee's own use or for family members' use; and

(B) does not offer the property for sale or lease before the first anniversary of the date of installation of the fire

protection sprinkler system.

(b) This chapter does not authorize an individual or organization to practice professional engineering other than in compliance with Chapter 1001, Occupations Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.003. EFFECT ON LOCAL REGULATION. (a) This chapter and the rules adopted under this chapter have uniform force and effect throughout this state. A municipality or county may not enact an order, ordinance, or rule requiring a fire protection sprinkler system contractor to obtain a registration certificate from the municipality or county. A municipality or county may not impose on a fire protection sprinkler system contractor qualification or financial responsibility requirements other than proof of a registration certificate.

(b) Notwithstanding any other provision of this chapter, a municipality or county may require a fire protection sprinkler system contractor to obtain a permit and pay a permit fee for the installation of a fire protection sprinkler system and require the installation of a fire protection sprinkler system to conform to the building code or other construction requirements of the municipality or county.

(c) A municipal or county order, ordinance, or rule in effect on September 1, 1983, is not invalidated because of any provision of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONER, DEPARTMENT, AND STATE FIRE MARSHAL

Sec. 6003.051. ADMINISTRATION OF CHAPTER. (a) The department shall administer this chapter.

(b) The commissioner may issue rules necessary to administer this chapter through the state fire marshal.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001,

eff. April 1, 2009.

Sec. 6003.052. ADOPTION OF RULES. (a) In adopting necessary rules, the commissioner may use recognized standards, including standards:

(1) adopted by federal law or regulation;

(2) published by a nationally recognized standards-making organization; or

(3) developed by individual manufacturers.

(b) Under rules adopted under Section 6003.051(b), the department may create a specialized licensing or registration program for fire protection sprinkler system contractors.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commissioner may not adopt rules restricting advertising or competitive bidding by the holder of a license or registration certificate issued under this chapter except to prohibit false, misleading, or deceptive practices.

(b) In the commissioner's rules to prohibit false, misleading, or deceptive practices, the commissioner may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license or registration certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license or registration certificate holder; or

(4) restricts the license or registration certificate holder's advertisement under a trade name.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.054. GENERAL POWERS AND DUTIES OF COMMISSIONER, STATE FIRE MARSHAL, AND DEPARTMENT. (a) The commissioner may delegate authority to exercise all or part of the commissioner's functions,

powers, and duties under this chapter, including the issuance of licenses and registration certificates, to the state fire marshal. The state fire marshal shall implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling:

(1) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and

(2) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by:

(A) determining the criteria and qualifications for registration certificate and license holders;

(B) evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems;

(C) conducting examinations and evaluating the qualifications of a license applicant; and

(D) issuing registration certificates and licenses to qualified applicants.

(b) The commissioner shall establish a procedure for reporting and processing complaints relating to the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.055. FEES. (a) The commissioner shall set the fee for:

(1) a registration certificate application in an amount not to exceed $100;

(2) an initial or renewal registration certificate in an amount not to exceed $1,200 annually; and

(3) an initial or renewal responsible managing employee license fee in an amount not to exceed $200 annually.

(b) Unless the examination for a responsible managing employee license is administered by a testing service, the commissioner shall set a nonrefundable fee for each examination in an amount not to

exceed $100.

(c) The commissioner shall set a fee in an amount not to exceed $70 for:

(1) a duplicate registration certificate or license issued under this chapter; or

(2) any request requiring changes to a registration certificate or license.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.056. DEPOSIT IN OPERATING ACCOUNT. All fees collected under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Insurance operating account for use in administering this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER D. REGISTRATION AND LICENSE REQUIREMENTS

Sec. 6003.151. FIRE PROTECTION SPRINKLER SYSTEM CONTRACTOR; REGISTRATION CERTIFICATE REQUIRED. (a) Unless the individual or organization holds a registration certificate issued by the department, an individual or organization may not plan, sell, install, maintain, or service a fire protection sprinkler system.

(b) An applicant for a registration certificate must apply to the department on a form prescribed by the commissioner.

(c) An organization that is a partnership or joint venture is not required to register under the name of the organization if each partner or joint venturer holds a registration certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.152. REQUIRED INSURANCE COVERAGE FOR REGISTRATION CERTIFICATE. (a) The department may not issue a registration certificate under this chapter unless the applicant files with the department evidence of a general liability insurance policy that

includes products and completed operations coverage. The policy must be conditioned to pay on behalf of the insured those amounts that the insured becomes legally obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's officer, agent, or employee in the conduct of any activity that requires a registration certificate or license under this chapter.

(b) Unless the commissioner, after notice and an opportunity for a hearing, increases or decreases the limits, the limits of insurance coverage required by Subsection (a) must be at least:

(1) $100,000 combined single limits for bodily injury and property damage for each occurrence; and

(2) $300,000 aggregate for all occurrences for each policy year.

(c) The evidence of insurance required by this section must be in the form of a certificate of insurance executed by an insurer authorized to engage in the business of insurance in this state and countersigned by an insurance agent licensed in this state. A certificate of insurance for surplus lines coverage procured in compliance with Chapter 981 through a surplus lines agent that is licensed under Subchapter E, Chapter 981, and resident in this state may be filed with the department as evidence of the coverage required by this section.

(d) An insurance certificate executed and filed with the department under this section remains in force until the insurer has terminated future liability by the notice required by the department.

(e) Failure to maintain the liability insurance required by this section constitutes grounds for the denial, suspension, or revocation, after notice and opportunity for hearing, of a registration certificate issued under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.153. RESPONSIBLE MANAGING EMPLOYEE: LICENSE REQUIRED. (a) Each fire protection sprinkler system contractor must employ at least one licensed responsible managing employee on a full-time basis.

(b) A person may not act as a responsible managing employee

unless the person holds a license issued by the department, conditioned on the successful completion of the license examination and compliance with the requirements of the rules adopted under this chapter.

(c) Notwithstanding Subsection (a), an individual or organization with a current registration certificate may act as a fire protection sprinkler system contractor for 30 days after the death or dissociation of its licensed responsible managing employee or for a longer period approved by the commissioner under the rules adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.154. POSTING OF LICENSE OR CERTIFICATE REQUIRED. Each registration certificate and license issued under this chapter must be posted in a conspicuous place in the fire protection sprinkler system contractor's place of business.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.155. DISPLAY OF REGISTRATION CERTIFICATE NUMBER ON CERTAIN DOCUMENTS REQUIRED. Each bid, proposal, offer, and installation drawing for a fire protection sprinkler system must prominently display the registration certificate number of the fire protection sprinkler system contractor.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.156. LICENSE EXAMINATION. (a) The state fire marshal shall establish the scope and type of an examination required by this chapter.

(b) The state fire marshal may administer the examination or may enter into an agreement with a testing service.

(c) If a testing service is used, the state fire marshal may contract with the testing service regarding requirements for the

examination, including:

(1) examination development;

(2) scheduling;

(3) site arrangements;

(4) grading;

(5) reporting;

(6) analysis; or

(7) other administrative duties.

(d) The state fire marshal may require the testing service to:

(1) correspond directly with an applicant regarding the administration of the examination;

(2) collect a reasonable fee from an applicant for administering the examination; or

(3) administer the examination at a specific location or time.

(e) The state fire marshal shall adopt rules as necessary to implement examination requirements under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.157. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which an examination is administered under this chapter, the state fire marshal shall send notice to each examinee of the results of the examination.

(b) If an examination is graded or reviewed by a testing service, the state fire marshal shall send notice to each examinee of the results of the examination not later than the 14th day after the date on which the state fire marshal receives the results from the testing service.

(c) If the notice of the examination results will be delayed for more than 90 days after the examination date, the state fire marshal, before the 90th day, shall send notice to the examinee of the reason for the delay.

(d) The state fire marshal may require a testing service to notify an examinee of the results of the examinee's examination.

(e) If requested in writing by an individual who fails the examination administered under this chapter, the state fire marshal shall send to the individual an analysis of the individual's

performance on the examination.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.158. CONTINUING EDUCATION REQUIREMENTS. (a) The commissioner may adopt procedures for certifying and may certify continuing education programs.

(b) Participation in the continuing education programs is voluntary.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.159. RECIPROCAL LICENSE.The department may waive any license requirement for an applicant who holds a license issued by another state that has license requirements substantially equivalent to the license requirements of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.160. NOT TRANSFERABLE. A registration certificate or license issued under this chapter is not transferable.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER E. RENEWAL OF REGISTRATION CERTIFICATE OR LICENSE

Sec. 6003.201. RENEWAL REQUIRED; FEE. (a) Except as otherwise provided by this subsection, an initial registration certificate or license is valid for a period of one year from the date of issue and is renewable on payment of the renewal fee. An initial registration certificate or license issued on or after September 1, 1983, may be issued for a period of less than one year and the renewal fee shall be prorated proportionally.

(b) A renewal of a registration certificate or license issued

under this chapter is valid for a period of two years. The license or registration fee for each year of the two-year period is payable on renewal.

(c) The commissioner by rule may adopt a system under which registration certificates and licenses expire on various dates during the year. For the year in which an expiration date of a registration certificate or license is less than one year from its issuance or anniversary date, the fee shall be prorated on a monthly basis so that each holder of a registration certificate or license pays only that portion of the renewal fee that is allocable to the number of months during which the registration certificate or license is valid. On renewal on the new expiration date, the total renewal fee is payable.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.202. NOTICE OF EXPIRATION. At least 30 days before the expiration date of a registration certificate or license, the department shall send written notice of the impending expiration to the holder of the registration certificate or license at the holder's last known address.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.203. RENEWAL PROCEDURES. (a) The holder of an unexpired registration certificate or license may renew the certificate or license by paying the required renewal fee to the department before the expiration date of the certificate or license.

(b) An individual or organization whose registration certificate or license has been expired for 90 days or less may renew the certificate or license by paying to the department:

(1) the required renewal fee; and

(2) a fee equal to one-half of the initial fee for the certificate or license.

(c) An individual or organization whose registration certificate or license has been expired for more than 90 days but less than two years may renew the certificate or license by paying to

the department:

(1) all unpaid renewal fees; and

(2) a fee that is equal to the initial fee for the certificate or license.

(d) An individual or organization whose registration certificate or license has been expired for two years or longer may not renew the certificate or license. The individual or organization may obtain a new registration certificate or license by complying with the requirements and procedures for obtaining an initial registration certificate or license.

(e) This section may not be construed to prevent the department from denying or refusing to renew a license under applicable law or commissioner rules.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER F. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 6003.251. PROHIBITED PRACTICES. An individual or organization may not:

(1) obtain or attempt to obtain a registration certificate or license by fraudulent representation; or

(2) plan, sell, install, maintain, or service a fire protection sprinkler system in violation of this chapter or the rules adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.252. DISCIPLINARY ACTIONS. The state fire marshal may suspend, revoke, or refuse to issue or renew a registration certificate or license if, after notice and hearing, the state fire marshal finds that the applicant, registrant, or license holder has engaged in acts that:

(1) violate this chapter;

(2) violate rules or standards adopted under this chapter; or

(3) constitute misrepresentation made in connection with:

(A) the sale of products; or
(B) services rendered.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.253. DISCIPLINARY HEARING. (a) If the state fire marshal proposes to suspend, revoke, or refuse to renew a license or registration certificate issued under this chapter, the holder of the license or certificate is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Rules of practice adopted by the commissioner applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.254. APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT. Proceedings for the denial, suspension, or revocation of a registration certificate or license, appeals from those proceedings, and any other proceedings for a disciplinary action are governed by Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

Sec. 6003.255. REAPPLICATION REQUIREMENTS. (a) An applicant or holder of a registration certificate or license whose certificate or license has been denied, refused, or revoked under this chapter, other than for failure to pass a required written examination, may not file another application for a registration certificate or license before:

(1) the first anniversary of the effective date of the denial, refusal, or revocation; or

(2) if judicial review of the denial, refusal, or revocation is sought, before the first anniversary of the date of the final court order or decree affirming the action.

(b) The commissioner may deny an application described by Subsection (a) unless the applicant shows good cause why the denial, refusal, or revocation of the registration certificate or license should not be considered a bar to the issuance of a new registration certificate or license.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

SUBCHAPTER G. CRIMINAL PENALTY

Sec. 6003.301. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 6003.151(a), 6003.153, or 6003.251.

(b) An offense under this section is a Class B misdemeanor.

(c) Venue for an offense under this section is in Travis County or the county in which the offense is committed.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1J.001, eff. April 1, 2009.

TITLE 21. DISCOUNT HEALTH CARE PROGRAMS

CHAPTER 7001. REGISTRATION OF DISCOUNT HEALTH CARE PROGRAM OPERATORS

Sec. 7001.001. DEFINITIONS. In this chapter:

(1) "Discount health care program" means a business arrangement or contract in which an entity, in exchange for fees, dues, charges, or other consideration, offers its members access to discounts on health care services provided by health care providers. The term does not include an insurance policy, certificate of coverage, or other product otherwise regulated by the department or a self-funded or self-insured employee benefit plan.

(2) "Discount health care program operator" means a person who, in exchange for fees, dues, charges, or other consideration, operates a discount health care program and contracts with providers, provider networks, or other discount health care program operators to offer access to health care services at a discount and determines the charge to members.

(3) "Health care services" includes physician care, inpatient care, hospital surgical services, emergency services,

ambulance services, laboratory services, audiology services, dental services, vision services, mental health services, substance abuse services, chiropractic services, and podiatry services, and the provision of medical equipment and supplies, including prescription drugs.

(4) "Marketer" means a person who sells or distributes, or offers to sell or distribute, a discount health care program, including a private label entity that places its name on and markets or distributes a discount health care program, but does not operate a discount health care program.

(5) "Member" means a person who pays fees, dues, charges, or other consideration for the right to participate in a discount health care program.

(6) "Program operator" means a discount health plan program operator.

(7) "Provider" means a person who is licensed or otherwise authorized to provide health care services in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

Sec. 7001.002. EXEMPTION. This chapter does not apply to a program operator who is an insurer and who holds a certificate of authority under Title 6, or a health care sharing ministry operated under Chapter 1681.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 5, eff. June 14, 2013.

Sec. 7001.003. RULES. The commissioner shall adopt rules in the manner prescribed by Subchapter A, Chapter 36, as necessary to implement this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

Sec. 7001.004. REGISTRATION REQUIRED. A discount health care program operator may not offer a discount health care program in this state unless the program operator is registered with the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

Sec. 7001.005. APPLICATION FOR REGISTRATION AND RENEWAL OF REGISTRATION. (a) An applicant for registration under this chapter or an applicant for renewal of registration under this chapter whose information has changed shall submit:

(1) a completed registration application on the form prescribed by the department indicating the program operator's name, physical address, and mailing address and its agent for service of process;

(2) a list of names, addresses, official positions, and biographical information of:

(A) the individuals responsible for conducting the program operator's affairs, including:

(i) each member of the board of directors, board of trustees, executive committee, or other governing board or committee;

(ii) the officers of the program operator; and

(iii) any contracted management company personnel; and

(B) any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator;

(3) a statement generally describing the applicant, its facilities and personnel, and the health care services or products for which a discount will be made available under its discount health care programs;

(4) a list of the marketers authorized to sell or distribute the program operator's programs under the program operator's name, a list of the marketing entities authorized to private label the program operator's programs, and other information about the marketers and marketing entities considered necessary by the commissioner; and

(5) a copy of the form of all contracts made or to be made between the program operator and any providers or provider networks regarding the provision of health care services or products to

members.

(b) After the initial registration, if the form of a contract described by Subsection (a)(5) changes, the program operator must file the modified contract form with the department before it may be used.

(c) As part of the registration required under Subsection (a), and annually thereafter, the program operator shall certify in writing to the department that its programs comply with the requirements of this chapter and Chapter 562.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

Sec. 7001.006. FEES. A discount health care program operator shall pay the department an initial registration fee of $1,000 and an annual renewal fee in the amount set by the commissioner not to exceed $500.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

Sec. 7001.007. DEPOSIT IN OPERATING ACCOUNT. All fees collected by the department under this chapter shall be deposited to the credit of the Texas Department of Insurance operating account.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

Sec. 7001.008. CRIMINAL BACKGROUND CHECK. The department may conduct a criminal background check on:

(1) the individuals responsible for conducting the program operator's affairs;

(2) each member of the board of directors, board of trustees, executive committee, or other governing board or committee;

(3) the officers of the program operator;

(4) any contracted management company personnel; and

(5) any person owning or having the right to acquire 10 percent or more of the voting securities of the program operator.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

Sec. 7001.009. ENFORCEMENT. (a) The department may deny a registration application or take any action authorized under Chapters 82, 83, and 84 if the department determines that the applicant or registered discount health care program operator, individually or through an officer, director, or shareholder:

(1) has wilfully violated a provision of this code or an order or rule of the commissioner;

(2) has intentionally made a material misstatement in the registration application;

(3) has obtained or attempted to obtain a registration by fraud or misrepresentation;

(4) has misappropriated, converted to the applicant's or registration holder's own use, or illegally withheld money belonging to a member of a discount health care program;

(5) has engaged in fraudulent or dishonest acts or practices; or

(6) has been convicted of a felony.

(b) Chapter 2001, Government Code, applies to an action taken under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1331 (H.B. 4341), Sec. 2, eff. September 1, 2009.

CHAPTER 7002. SUPPLEMENTAL PROVISIONS RELATING TO DISCOUNT HEALTH CARE OPERATORS

Sec. 7002.001. DEFINITION. For purposes of Chapters 562 and 7001, Insurance Code, consideration provided to a discount health care program or a discount health care program operator includes patient information or patient prescription drug history provided by members, if the entity engages in the transfer or sale of such patient information, patient prescription drug history, or drug manufacturer rebates.

Added by Acts 2009, 81st Leg., R.S., Ch. 1245 (S.B. 2423), Sec. 3, eff. September 1, 2009.

Sec. 7002.002. REQUIRED DISCLOSURE. If a discount health care program operator engages in the transfer or sale of a member's patient information or patient prescription drug history, the program operator shall, before enrollment, provide each prospective member disclosure materials describing the program operator's practices regarding such transfer or sale.

Added by Acts 2009, 81st Leg., R.S., Ch. 1245 (S.B. 2423), Sec. 3, eff. September 1, 2009.

Sec. 7002.003. VIOLATION; PENALTIES. A violation of this chapter may be enforced in the same manner as a violation of Chapter 562 or 7001.

Added by Acts 2009, 81st Leg., R.S., Ch. 1245 (S.B. 2423), Sec. 3, eff. September 1, 2009.

Sec. 7002.004. EXEMPTION. This chapter does not apply to a health care sharing ministry operated under Chapter 1681.

Added by Acts 2013, 83rd Leg., R.S., Ch. 455 (S.B. 874), Sec. 6, eff. June 14, 2013.

LABOR CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable, by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 1.004. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 1.005. PREEMPTION. (a) Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code.

(b) For purposes of Subsection (a), a field occupied by a provision of this code includes employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for employers other than a municipality or county.

Added by Acts 2023, 88th Leg., R.S., Ch. 899 (H.B. 2127), Sec. 10, eff. September 1, 2023.

TITLE 2. PROTECTION OF LABORERS
SUBTITLE A. EMPLOYMENT DISCRIMINATION
CHAPTER 21. EMPLOYMENT DISCRIMINATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. PURPOSES. The general purposes of this chapter are to:

(1) provide for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments (42 U.S.C. Section 2000e et seq.);

(2) identify and create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633;

(3) provide for the execution of the policies embodied in Title I of the Americans with Disabilities Act of 1990 and its

subsequent amendments (42 U.S.C. Section 12101 et seq.);

(4) secure for persons in this state, including persons with disabilities, freedom from discrimination in certain employment transactions, in order to protect their personal dignity;

(5) make available to the state the full productive capacities of persons in this state;

(6) avoid domestic strife and unrest in this state;

(7) preserve the public safety, health, and general welfare; and

(8) promote the interests, rights, and privileges of persons in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.01(a), eff. Sept. 1, 1995.

Sec. 21.0015. TEXAS WORKFORCE COMMISSION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission. A reference in this chapter to the "commission" means the Texas Workforce Commission.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 1.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 9, eff. September 1, 2015.

Sec. 21.002. DEFINITIONS. In this chapter:

(1) "Auxiliary aids and services" includes:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) services and actions similar to those described by Paragraphs (A)-(C).

(2) "Bona fide occupational qualification" means a

qualification:

(A) reasonably related to the satisfactory performance of the duties of a job; and

(B) for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.

(3) Repealed by Acts 2003, 78th Leg., ch. 302, Sec. 4(2).

(4) "Complainant" means an individual who brings an action or proceeding under this chapter.

(5) "Demonstrates" means meets the burdens of production and persuasion.

(6) "Disability" means, with respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such an impairment, or being regarded as having such an impairment. The term does not include:

(A) a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or

(B) a currently communicable disease or infection as defined in Section 81.003, Health and Safety Code, or required to be reported under Section 81.041, Health and Safety Code, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

(7) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state, except that the term does not include an individual elected to public office in this state or a political subdivision of this state.

(8) "Employer" means:

(A) a person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year;

(B) an agent of a person described by Paragraph (A);

(C) an individual elected to public office in this state or a political subdivision of this state; or

(D) a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.

(9) "Employment agency" means a person or an agent of the person who regularly undertakes, with or without compensation, to procure:

(A) employees for an employer; or

(B) the opportunity for employees to work for an employer.

(10) "Labor organization" means a labor organization engaged in an industry affecting commerce. The term includes:

(A) an organization, an agency, or an employee representation committee, group, association, or plan engaged in an industry affecting commerce in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) a conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(11) "Local commission" means a commission on human relations created by one or more political subdivisions.

(11-a) "Major life activity" includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The term also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(12) "Political subdivision" means a county or municipality.

(12-a) "Regarded as having such an impairment" means subjected to an action prohibited under Subchapter B or C because of an actual or perceived physical or mental impairment, other than an impairment that is minor and is expected to last or actually lasts less than six months, regardless of whether the impairment limits or is perceived to limit a major life activity.

(13) "Respondent" means the person charged in a complaint filed under this chapter and may include an employer, employment agency, labor organization, or joint labor-management committee that

controls an apprenticeship or other training or retraining program, including an on-the-job training program.

(14) "State agency" means:

(A) a board, commission, committee, council, department, institution, office, or agency in the executive branch of state government having statewide jurisdiction;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction; or

(C) an institution of higher education as defined by Section 61.003, Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 834, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 872, Sec. 10, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 302, Sec. 4(a).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 1, eff. September 1, 2009.

Sec. 21.0021. CONSTRUCTION OF CERTAIN DEFINITIONS. (a) The term "disability":

(1) shall be construed in favor of broad coverage of individuals under Subchapters B and C, to the maximum extent allowed under those subchapters; and

(2) includes an impairment that is episodic or in remission that substantially limits a major life activity when active.

(b) The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures, including:

(1) medication, medical supplies, medical equipment, medical appliances, prosthetic limbs and devices, hearing aids, cochlear implants and other implantable hearing devices, mobility devices, and oxygen therapy equipment;

(2) devices that magnify, enhance, or otherwise augment a visual image, other than eyeglasses and contact lenses that are intended to fully correct visual acuity or eliminate refractive error;

(3) the use of assistive technology;

(4) reasonable accommodations and auxiliary aids or services; and

(5) learned behavioral or adaptive neurological modifications.

Added by Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 2, eff. September 1, 2009.

Sec. 21.0022. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 1, eff. September 1, 2015.

Sec. 21.003. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission may:

(1) promote the creation of local commissions on human rights by cooperating or contracting with individuals or state, local, or other agencies, public or private, including agencies of the federal government and of other states;

(2) receive, investigate, seek to conciliate, and pass on complaints alleging violations of this chapter;

(3) file civil actions to effectuate the purposes of this chapter;

(4) request and, if necessary, compel by subpoena:

(A) the attendance of necessary witnesses for

examination under oath; and

(B) the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this chapter;

(5) furnish technical assistance requested by a person subject to this chapter to further compliance with this chapter or with a rule or order issued under this chapter;

(6) recommend in its annual report legislation or other action to carry out the purposes and policies of this chapter;

(7) adopt procedural rules to carry out the purposes and policies of this chapter; and

(8) provide educational and outreach activities to individuals who have historically been victims of employment discrimination.

(b) The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in Subsection (a)(4) on behalf of the commission.

(c) The commission biennially shall develop an inventory of equal employment opportunity policies and programs adopted and implemented by the various state agencies.

(d) The commission at least annually shall make a comprehensive written report on the commission's activities to the governor and to the legislature.

(e) The commission shall conduct a study of the policies and programs of a selected state agency if the commission is directed to conduct the study by legislative resolution or by executive order of the governor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.03(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 872, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 77, eff. September 1, 2013.

Sec. 21.0035. CIVILIAN WORKFORCE COMPOSITION. (a) The commission by rule shall biennially determine:

(1) the percentage of the statewide civilian workforce composed of:

(A) Caucasian Americans;
(B) African Americans;
(C) Hispanic Americans;
(D) females; and
(E) males; and

(2) the percentage of the statewide civilian workforce of the groups listed in Subdivision (1) according to the following job categories:

(A) state agency administration;
(B) professional;
(C) technical;
(D) protective services;
(E) paraprofessional;
(F) administrative support;
(G) skilled craft; and
(H) service and maintenance.

(b) The commission shall report the percentages of the statewide civilian workforce as determined under this section to the governor and the legislature not later than the fifth day of each regular session of the legislature.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 12, eff. Sept. 1, 1999.

Sec. 21.004. CRIMINAL OFFENSE OF INTERFERENCE; PENALTY. (a) A person commits an offense if the person wilfully resists, prevents, impedes, or interferes with the performance of a duty under or the exercise of a power provided by this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.005. CONSTRUCTION WITH OTHER LAWS. (a) This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment as required under another provision of the state or federal constitutions or laws.

(b) This chapter does not affect the standards for determining eligibility for benefits under Title 5 or under a state or federal disability benefit program.

(c) Nothing in this chapter may be construed as the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of a disability.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 3, eff. September 1, 2009.

Sec. 21.006. CONFORMITY WITH FEDERAL STATUTES. If a provision of this chapter is held by the Equal Employment Opportunity Commission to disqualify the commission as a deferral agency or for the receipt of federal funds, the commission shall administer this chapter to qualify for deferral status or the receipt of those funds until the legislature meets in its next session and has an opportunity to amend this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.007. PRIVILEGED COMMUNICATION; IMMUNITY. An oral or written statement made to a commissioner or an employee of the commission in connection with the discharge of the commissioner's or employee's duties under this chapter may not be the basis for an action for defamation of character.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.08(a), eff. Sept. 1, 1995.

Sec. 21.008. LIMITED SEVERABILITY. (a) If any clause, sentence, subsection, section, or other provision of this chapter or the application of such a provision to any person or circumstances is held invalid or unconstitutional, that invalidity shall not affect the other clauses, sentences, subsections, sections, or provisions or applications of this chapter that may be given effect without the invalid clause, sentence, subsection, section, or provision or application and shall not affect, invalidate, impair, or nullify the remainder of this chapter. The effect of the determination of

invalidity shall be confined to the clause, sentence, subsection, section, or provision or application so adjudicated to be invalid or unconstitutional, and to that end the provisions of this chapter are declared to be severable.

(b) If any limit on damages prescribed by Section 21.2585 is invalidated by a method other than by legislative means, the amount of civil liability for all past and future noneconomic losses, including past and future pain and suffering, mental anguish and suffering, and any other nonpecuniary damage, is limited to an amount not to exceed $150,000.

(c) If a limit on damages prescribed by Section 21.2585 is invalidated by a method other than by legislative means and if the alternative civil liability limits contained in Subsection (b) are also invalidated by a method other than by legislative means, Section 21.2585 is void.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.08(a), eff. Sept. 1, 1995.

Sec. 21.009. JOINDER OF COMMISSION. (a) In any civil action in which the validity of a provision of this chapter or Chapter 461, Government Code, a rule adopted under this chapter or Chapter 461, Government Code, or the application of the provision or rule is challenged as void, unconstitutional, or unenforceable, the commission shall be made a party to the proceedings, and, on the motion of the commission, venue of the cause may be transferred to the district courts of Travis County.

(b) An order restraining the commission or invalidating a provision of this chapter or Chapter 461, Government Code, or a commission rule adopted under this chapter or Chapter 461, Government Code, may not be enforced and may not take effect until the commission has answered and appeared in the action and has exhausted all avenues of appeal and any judgment is final and enforceable.

(c) Notwithstanding any other provision of state law, including this chapter, only the commission, if a prevailing party, may recover costs and attorney's fees in such a declaratory proceeding under this section.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.08(a), eff. Sept. 1, 1995.

Sec. 21.010. EMPLOYMENT DISCRIMINATION TRAINING FOR STATE EMPLOYEES. (a) Each state agency shall provide to employees of the agency an employment discrimination training program that complies with this section.

(b) The training program must provide the employee with information regarding the agency's policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment.

(c) Each employee of a state agency shall attend the training program required by this section not later than the 30th day after the date the employee is hired by the agency and shall attend supplemental training every two years.

(d) The commission shall develop materials for use by state agencies in providing employment discrimination training as required by this section.

(e) Each state agency shall require an employee of the agency who attends a training program required by this section to sign a statement verifying the employee's attendance at the training program. The agency shall file the statement in the employee's personnel file.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 14, eff. Sept. 1, 1999.

SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An employment agency commits an unlawful employment practice if the employment agency:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual because of race, color, disability, religion, sex, national origin, or age; or

(2) classifies or refers an individual for employment on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor organization commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the labor organization:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership or classifies or fails or refuses to refer for employment an individual in a manner that would:

(A) deprive or tend to deprive an individual of any employment opportunity;

(B) limit an employment opportunity or adversely affect in any other manner the status of an employee or of an applicant for employment; or

(C) cause or attempt to cause an employer to violate this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.054. ADMISSION OR PARTICIPATION IN TRAINING PROGRAM. (a) Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color,

disability, religion, sex, national origin, or age in admission to or participation in the program.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 257 (H.B. 1074), Sec. 2, eff. September 1, 2019.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 257 (H.B. 1074), Sec. 2, eff. September 1, 2019.

Sec. 21.055. RETALIATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.056. AIDING OR ABETTING DISCRIMINATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency aids, abets, incites, or coerces a person to engage in a discriminatory practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.057. INTERFERENCE WITH COMMISSION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency wilfully interferes with the performance of a duty or the exercise of a power under this chapter or Chapter 461, Government Code, by the commission, the commission's staff, or the commission's representative.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.058. PREVENTION OF COMPLIANCE. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency wilfully obstructs or prevents a person from complying with this chapter or a rule adopted or order issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.059. DISCRIMINATORY NOTICE OR ADVERTISEMENT. (a) An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(2) concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

(b) This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.0595. DISCRIMINATORY LEAVE POLICY AFFECTING EMPLOYEE'S ENTITLEMENT TO PERSONAL LEAVE TO CARE FOR SICK FOSTER CHILD. An employer commits an unlawful employment practice if:

(1) the employer administers a leave policy under which an employee is entitled to personal leave to care for or otherwise assist the employee's sick child; and

(2) the leave policy described by Subdivision (1) does not treat in the same manner as an employee's biological or adopted minor child any foster child of the employee who:

(A) resides in the same household as the employee; and

(B) is under the conservatorship of the Department of Family and Protective Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 113 (H.B. 88), Sec. 1, eff. September 1, 2017.

Sec. 21.060. VIOLATION OF CONCILIATION AGREEMENT. A party to a conciliation agreement made under this chapter commits an unlawful employment practice if the party violates the terms of the conciliation agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.061. INSUFFICIENT EVIDENCE OF UNLAWFUL PRACTICE. In the absence of other evidence of an unlawful employment practice, evidence of the employment of one person in place of another is not sufficient to establish an unlawful employment practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. APPLICATION; EXCEPTIONS

Sec. 21.101. AGE DISCRIMINATION LIMITED TO INDIVIDUALS OF CERTAIN AGE. The provisions of this chapter referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 257 (H.B. 1074), Sec. 1, eff. September 1, 2019.

Sec. 21.102. BONA FIDE EMPLOYEE BENEFIT PLAN; PRODUCTION MEASUREMENT SYSTEM. (a) Except as provided by Subsections (b) and (c), an employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under:

(1) a bona fide seniority system, merit system, or an

employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade this chapter; or

(2) a system that measures earnings by quantity or quality of production.

(b) An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Section 21.103.

(c) This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.103. COMPULSORY RETIREMENT PERMITTED FOR CERTAIN EMPLOYEES. This chapter does not prohibit the compulsory retirement of an employee who is:

(1) at least 65 years of age;

(2) employed in a bona fide executive or high policy-making position for the two years preceding retirement; and

(3) entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan or a combination of plans of the employee's employer that equals, in the aggregate, at least $27,000.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.104. AGE REQUIREMENT FOR PEACE OFFICERS OR FIRE FIGHTERS. An employer does not commit an unlawful employment practice by imposing a minimum or maximum age requirement for peace officers or fire fighters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.105. DISCRIMINATION BASED ON DISABILITY. A provision in this subchapter or Subchapter B referring to discrimination because of disability or on the basis of disability applies only to

discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.106. SEX DISCRIMINATION. (a) A provision in this chapter referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition.

(b) A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.1065. SEXUAL HARASSMENT PROTECTIONS FOR UNPAID INTERNS. (a) In this section, "sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

(1) submission to the advance, request, or conduct is made a term or condition of an individual's internship, either explicitly or implicitly;

(2) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's internship;

(3) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance at the individual's internship; or

(4) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

(b) An employer commits an unlawful employment practice if sexual harassment of an unpaid intern occurs and the employer or the employer's agents or supervisors:

(1) know or should have known that the conduct constituting sexual harassment was occurring; and

(2) fail to take immediate and appropriate corrective action.

(c) In this section, an individual is considered to be an unpaid intern of an employer if:

(1) the individual's internship, even though it includes engagement in the employer's operations or the performance of productive work for the employer, is similar to training that would be given in an educational environment;

(2) the individual's internship experience is for the individual's benefit;

(3) the individual does not displace the employer's regular employees but works under close supervision of the employer's existing staff;

(4) the employer does not derive any immediate advantage from the individual's internship activities and on occasion the employer's operations may be impeded by those activities;

(5) the individual is not entitled to a job at the conclusion of the internship; and

(6) the individual is not entitled to wages for the time spent in the internship.

Added by Acts 2015, 84th Leg., R.S., Ch. 1019 (H.B. 1151), Sec. 1, eff. September 1, 2015.

Sec. 21.107. EFFECT ON ABORTION BENEFITS. This chapter does not:

(1) require an employer to pay for health insurance benefits for abortion unless the life of the mother would be endangered if the fetus were carried to term;

(2) preclude an employer from providing abortion benefits; or

(3) affect a bargaining agreement relating to abortion.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.108. DISCRIMINATION BASED ON RELIGION. A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief,

unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.109. EMPLOYMENT BY RELIGIOUS ORGANIZATION. (a) A religious corporation, association, society, or educational institution or an educational organization operated, supervised, or controlled in whole or in substantial part by a religious corporation, association, or society does not commit an unlawful employment practice by limiting employment or giving a preference to members of the same religion.

(b) Subchapter B does not apply to the employment of an individual of a particular religion by a religious corporation, association, or society to perform work connected with the performance of religious activities by the corporation, association, or society.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.1095. RACIAL DISCRIMINATION BASED ON HAIR TEXTURE OR PROTECTIVE HAIRSTYLE. (a) In this section, "protective hairstyle" includes braids, locks, and twists.

(b) A provision in this chapter referring to discrimination because of race or on the basis of race includes discrimination because of or on the basis of an employee's hair texture or protective hairstyle commonly or historically associated with race.

(c) An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency adopts or enforces a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race.

Added by Acts 2023, 88th Leg., R.S., Ch. 223 (H.B. 567), Sec. 3, eff. September 1, 2023.

Sec. 21.110. DISCRIMINATION BASED ON NATIONAL ORIGIN. A provision in this chapter referring to discrimination because of national origin or on the basis of national origin includes discrimination because of or on the basis of the national origin of an ancestor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.111. PERSON EMPLOYED OUT OF STATE. This chapter does not apply to an employer with respect to the employment of a person outside this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer does not commit an unlawful employment practice by applying to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment that are not discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.113. IMBALANCE PLAN NOT REQUIRED. This chapter does not require a person subject to this chapter to grant preferential treatment to an individual or a group on the basis of race, color, disability, religion, sex, national origin, or age because of an imbalance between:

(1) the total number or percentage of persons of that individual's or group's race, color, disability, religion, sex, national origin, or age:

(A) employed by an employer;

(B) referred or classified for employment by an employment agency or labor organization;

(C) admitted to membership or classified by a labor organization; or

(D) admitted to or employed in an apprenticeship, on-the-job training, or other training or retraining program; and

(2) the total number or percentage of persons of that race, color, disability, religion, sex, national origin, or age in:

(A) a community, this state, a region, or other area; or

(B) the available work force in a community, this state, a region, or other area.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.114. PLAN TO END DISCRIMINATORY SCHOOL PRACTICES. A public school official does not commit an unlawful employment practice by adopting or implementing a plan reasonably designed to end discriminatory school practices.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.115. BUSINESS NECESSITY. (a) Subject to Subsection (b), an employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by this chapter if the employer establishes that the practice:

(1) is not intentionally devised or operated to contravene the prohibitions of this chapter; and

(2) is justified by business necessity.

(b) An employer may not use a qualification standard, employment test, or other selection criterion based on an individual's uncorrected vision unless the standard, test, or criterion is consistent with business necessity and job-related for the position to which the standard, test, or criterion applies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 4, eff. September 1, 2009.

Sec. 21.116. RELIANCE ON COMMISSION INTERPRETATION OR OPINION. (a) A person is not liable for an unlawful employment practice performed in good faith and in conformity with and in reliance on a

written interpretation or opinion of the commission.

(b) In a proceeding alleging an unlawful employment practice, the respondent has the burden of pleading and proving the defense provided by this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.117. EMPLOYMENT OF FAMILY MEMBER. Subchapter B does not apply to the employment of an individual by the individual's parent, spouse, or child.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.118. STATEWIDE HOMETOWN PLAN. Subchapter B does not apply to a labor union, firm, association, or individual participating on September 23, 1983, in a statewide hometown plan approved by the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.119. BONA FIDE OCCUPATIONAL QUALIFICATION. If disability, religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise, performing any of the following practices on the basis of disability, religion, sex, national origin, or age of an employee, member, or other individual is not an unlawful employment practice:

(1) an employer hiring and employing an employee;

(2) an employment agency classifying or referring an individual for employment;

(3) a labor organization classifying its members or classifying or referring an individual for employment; or

(4) an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.120. USE OR POSSESSION OF CONTROLLED SUBSTANCE. (a) An employer does not commit an unlawful employment practice by adopting a policy prohibiting the employment of an individual who currently uses or possesses a controlled substance as defined in Schedules I and II of Section 202, Controlled Substances Act, and their subsequent amendments (21 U.S.C. Section 801 et seq.), other than the use or possession of a drug taken under the supervision of a licensed health care professional or any other use or possession authorized by the Controlled Substances Act or any other federal or state law.

(b) Subsection (a) does not apply to a policy adopted or applied with the intent to discriminate because of race, color, sex, national origin, religion, age, or disability.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.04(a), eff. Sept. 1, 1995.

Sec. 21.121. WORK FORCE DIVERSITY PROGRAMS. An employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate work force diversity programs.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.04(a), eff. Sept. 1, 1995.

Sec. 21.122. BURDEN OF PROOF IN DISPARATE IMPACT CASES. (a) An unlawful employment practice based on disparate impact is established under this chapter only if:

(1) a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, or disability and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or

(2) the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent

refuses to adopt such an alternative employment practice.

(b) To determine the availability of and burden of proof applicable to a disparate impact case involving age discrimination, the court shall apply the judicial interpretation of the Age Discrimination in Employment Act of 1967 and its subsequent amendments (29 U.S.C. Section 621 et seq.).

(c) To demonstrate that a particular employment practice causes a disparate impact, the complainant must demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complainant demonstrates to the satisfaction of the court that the elements of a respondent's decision-making process are not capable of separation for analysis, that decision-making process may be analyzed as one employment practice.

(d) If the respondent demonstrates that a specific practice does not cause a disparate impact, the respondent may not be required to demonstrate that the practice is consistent with business necessity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.123. SCOPE OF DEFENSE. A demonstration that an employment practice is consistent with business necessity may not be used as a defense under this chapter against a complaint of intentional discrimination.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES. It is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, sex, national origin, religion, age, or disability.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE, OR DISABILITY IN EMPLOYMENT PRACTICES. (a) Except as otherwise provided by this chapter, an unlawful employment practice is established when the complainant demonstrates that race, color, sex, national origin, religion, age, or disability was a motivating factor for an employment practice, even if other factors also motivated the practice, unless race, color, sex, national origin, religion, age, or disability is combined with objective job-related factors to attain diversity in the employer's work force.

(b) In a complaint in which a complainant proves a violation under Subsection (a) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court may grant declaratory relief, injunctive relief except as otherwise provided by this subsection, and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a complaint under Subsection (a), but may not award damages or issue an order requiring an admission, reinstatement, hiring, promotion, or back pay.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1126, Sec. 1, eff. Sept. 1, 1997.

Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful employment practice for a person elected to public office in this state or a political subdivision of this state to discriminate because of race, color, sex, national origin, religion, age, or disability against an individual who is an employee or applicant for employment to:

(1) serve on the elected official's personal staff;

(2) serve the elected official on a policy-making level; or

(3) serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.127. EXPANSION OF RIGHTS TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS. With respect to a seniority system adopted for an intentionally discriminatory purpose in violation of this chapter, whether that discriminatory purpose is apparent on the face of the seniority provision, an unlawful employment practice occurs when:

(1) the seniority system is adopted;

(2) an individual becomes subject to the system; or

(3) an individual is injured by the application of the system or a provision of the system.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.128. REASONABLE ACCOMMODATION; GOOD FAITH EFFORT. (a) It is an unlawful employment practice for a respondent covered under this chapter to fail or refuse to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment, unless the respondent demonstrates that the accommodation would impose an undue hardship on the operation of the business of the respondent.

(b) A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an otherwise qualified individual with a disability. In considering a complaint based on a disability, the commission shall consider the reasonableness of the cost of any necessary workplace accommodation and the availability of alternatives or other appropriate relief.

(c) In a complaint in which a discriminatory employment practice involves the provision of a reasonable workplace accommodation under this chapter, damages may not be awarded under Subchapter F if the respondent demonstrates good faith efforts, in consultation with the otherwise qualified individual with a disability who has informed the respondent that accommodation is needed, to identify and make a reasonable workplace accommodation that would provide the individual with an equally effective

opportunity and would not cause an undue hardship on the operation of the business.

(d) A respondent is not obligated to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual under Subsection (a) if the individual's disability is based solely on being regarded as having an impairment that substantially limits at least one major life activity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 5, eff. September 1, 2009.

Sec. 21.129. COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION AGREEMENTS, AND CONCILIATION AGREEMENTS NOT AFFECTED. This chapter does not affect a court-ordered remedy, affirmative action agreement, or conciliation agreement made in accordance with law.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

SUBCHAPTER C-1. SEXUAL HARASSMENT

Sec. 21.141. DEFINITIONS. In this subchapter:

(1) "Employer" means a person who:

(A) employs one or more employees; or

(B) acts directly in the interests of an employer in relation to an employee.

(2) "Sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

(A) submission to the advance, request, or conduct is made a term or condition of an individual's employment, either explicitly or implicitly;

(B) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;

(C) the advance, request, or conduct has the purpose or

effect of unreasonably interfering with an individual's work performance; or

(D) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

Added by Acts 2021, 87th Leg., R.S., Ch. 172 (S.B. 45), Sec. 1, eff. September 1, 2021.

Sec. 21.142. UNLAWFUL EMPLOYMENT PRACTICE. An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors:

(1) know or should have known that the conduct constituting sexual harassment was occurring; and

(2) fail to take immediate and appropriate corrective action.

Added by Acts 2021, 87th Leg., R.S., Ch. 172 (S.B. 45), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. LOCAL ENFORCEMENT

Sec. 21.151. ENFORCEMENT BY ORDINANCE. A political subdivision may adopt and enforce an order or ordinance that prohibits a practice that is unlawful under this chapter, another state law, or federal law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.152. CREATION OF LOCAL COMMISSION. (a) A political subdivision or two or more political subdivisions acting jointly may create a local commission to:

(1) promote the purposes of this chapter; and

(2) secure for all individuals in the jurisdiction of each political subdivision freedom from discrimination because of race, color, disability, religion, sex, national origin, or age.

(b) The political subdivision creating a local commission may appropriate funds for the expenses of the local commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.153. GENERAL POWERS AND DUTIES OF LOCAL COMMISSION. (a) A local commission may:

(1) employ an executive director and other employees and agents and set their compensation;

(2) cooperate or contract with a person, including an agency of the federal government or of another state or municipality; and

(3) accept a public grant or private gift, bequest, or other payment.

(b) A local commission shall prepare at least annually a report and furnish a copy of the report to the Commission on Human Rights.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.154. INVESTIGATORY AND CONCILIATORY POWERS OF LOCAL COMMISSION. (a) If the federal government or the Commission on Human Rights refers a complaint alleging a violation of this chapter to a local commission or defers jurisdiction over the subject matter of the complaint to a local commission, the local commission may receive, investigate, conciliate, or rule on the complaint and may file a civil action to carry out the purposes of this chapter.

(b) The local commission may request, and as necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; or

(2) the production for inspection or copying of a record, document, or other evidence relevant to the investigation of an alleged violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.155. REFERRAL TO LOCAL COMMISSION AND ACTION ON COMPLAINTS. (a) The Commission on Human Rights shall refer a complaint concerning discrimination in employment because of race, color, disability, religion, sex, national origin, or age that is filed with that commission to a local commission with the necessary

investigatory and conciliatory powers if:

(1) the complaint has been referred to the Commission on Human Rights by the federal government; or

(2) jurisdiction over the subject matter of the complaint has been deferred to the Commission on Human Rights by the federal government.

(b) The local commission shall take appropriate action to remedy the practice alleged as discriminatory in the referred complaint.

(c) If the local commission does not act on the complaint within 60 days or a longer time that is reasonable, the Commission on Human Rights shall reassume responsibility for the complaint and take appropriate action on the complaint.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.156. REFERRAL BY LOCAL COMMISSION TO STATE COMMISSION. A local commission may refer a matter under its jurisdiction to the Commission on Human Rights.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. ADMINISTRATIVE REVIEW

Sec. 21.201. FILING OF COMPLAINT; FORM AND CONTENT; SERVICE. (a) A person claiming to be aggrieved by an unlawful employment practice or the person's agent may file a complaint with the commission.

(b) The complaint must be in writing and made under oath.

(c) The complaint must state:

(1) that an unlawful employment practice has been committed;

(2) the facts on which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(3) facts sufficient to enable the commission to identify the respondent.

(d) The executive director or the executive director's designee shall serve the respondent with a copy of the perfected complaint not later than the 10th day after the date the complaint is filed.

(e) A complaint may be amended to cure technical defects or omissions, including a failure to verify the complaint or to clarify and amplify an allegation made in the complaint.

(f) An amendment to a complaint alleging additional facts that constitute unlawful employment practices relating to or arising from the subject matter of the original complaint relates back to the date the complaint was first received by the commission.

(g) If a perfected complaint is not received by the commission within 180 days of the alleged unlawful employment practice or, for a complaint alleging sexual harassment, within 300 days of the alleged sexual harassment, the commission shall notify the respondent that a complaint has been filed and that the process of perfecting the complaint is in progress.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.06(a), eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 443 (H.B. 21), Sec. 1, eff. September 1, 2021.

Sec. 21.202. STATUTE OF LIMITATIONS. (a) Except as provided by Subsection (a-1), a complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred.

(a-1) A complaint under this subchapter alleging sexual harassment must be filed not later than the 300th day after the date the alleged sexual harassment occurred.

(b) The commission shall dismiss an untimely complaint.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1993.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 443 (H.B. 21), Sec. 2, eff. September 1, 2021.

Sec. 21.203. ALTERNATIVE DISPUTE RESOLUTION; OFFICE. (a) The use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter. The settlement of a disputed claim under

this chapter that results from the use of traditional or alternative means of dispute resolution is binding on the parties to the claim.

(b) The commission shall establish an office of alternative dispute resolution. At any time after a complaint is received under Section 21.201, at the request of a party or at the direction of the commission the matter may be referred to the office of alternative dispute resolution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.06(b), eff. Sept. 1, 1995.

Sec. 21.204. INVESTIGATION BY COMMISSION. (a) The executive director or a staff member of the commission designated by the executive director shall investigate a complaint and determine if there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in the complaint.

(b) If the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the executive director or the executive director's designee shall promptly investigate the allegations stated in the complaint.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.205. LACK OF REASONABLE CAUSE; DISMISSAL OF COMPLAINT. (a) If after investigation the executive director or the executive director's designee determines that reasonable cause does not exist to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive director's designee shall issue a written determination, incorporating the finding that the evidence does not support the complaint and dismissing the complaint.

(b) The executive director or the executive director's designee shall serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.206. DETERMINATION OF REASONABLE CAUSE; REVIEW BY COMMISSION. (a) If after investigation the executive director or the executive director's designee determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive director's designee shall review with the commission members the evidence in the record.

(b) If after the review at least two of the three commission members determine that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice, the executive director shall:

(1) issue a written determination incorporating the executive director's finding that the evidence supports the complaint; and

(2) serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 10, eff. September 1, 2015.

Sec. 21.207. RESOLUTION BY INFORMAL METHODS. (a) If a determination of reasonable cause is made under Section 21.206, the commission shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

(b) Without the written consent of the complainant and respondent, the commission, its executive director, or its other officers or employees may not disclose to the public information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, conciliation, or persuasion, regardless of whether there is a determination of reasonable cause.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.208. NOTICE OF DISMISSAL OR UNRESOLVED COMPLAINT. If the commission dismisses a complaint filed under Section 21.201 or does not resolve the complaint before the 181st day after the date

the complaint was filed, the commission shall inform the complainant of the dismissal or failure to resolve the complaint in writing by certified mail.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.210. TEMPORARY INJUNCTIVE RELIEF. (a) If the commission concludes from a preliminary investigation of an unlawful employment practice alleged in a complaint that prompt judicial action is necessary to carry out the purpose of this chapter, the commission shall file a petition seeking appropriate temporary relief against the respondent pending final determination of a proceeding under this chapter.

(b) The petition shall be filed in a district court in a county in which:

(1) the alleged unlawful employment practice that is the subject of the complaint occurred; or

(2) the respondent resides.

(c) A court may not issue temporary injunctive relief unless the commission shows:

(1) a substantial likelihood of success on the merits; and

(2) irreparable harm to the complainant in the absence of the preliminary relief pending final determination on the merits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.211. ELECTION OF REMEDIES. A person who has initiated an action in a court of competent jurisdiction or who has an action pending before an administrative agency under other law or an order or ordinance of a political subdivision of this state based on an act that would be an unlawful employment practice under this chapter may not file a complaint under this subchapter for the same grievance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. JUDICIAL ENFORCEMENT

Sec. 21.251. CIVIL ACTION BY COMMISSION. (a) The commission may bring a civil action against a respondent if:

(1) the commission determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice;

(2) the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful; and

(3) a majority of the commissioners determines that the civil action may achieve the purposes of this chapter.

(b) The complainant may intervene in a civil action brought by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.252. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION. (a) A complainant who receives notice under Section 21.208 that the complaint is not dismissed or resolved is entitled to request from the commission a written notice of the complainant's right to file a civil action.

(b) The complainant must request the notice in writing.

(c) The executive director may issue the notice.

(d) Failure to issue the notice of a complainant's right to file a civil action does not affect the complainant's right under this subchapter to bring a civil action against the respondent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.253. EXPEDITED NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION. (a) On receipt of a written request by a complainant, the commission shall issue before the 181st day after the date the complaint was filed a notice of the right to file a civil action if:

(1) the complainant alleges an unlawful employment practice based on the complainant's status as an individual with a life-threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state; or

(2) the executive director certifies that administrative processing of the complaint cannot be completed before the 181st day after the date the complaint was filed.

(b) The commission shall issue the expedited notice by certified mail not later than the fifth business day after the date

the commission receives the written request.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.254. CIVIL ACTION BY COMPLAINANT. Within 60 days after the date a notice of the right to file a civil action is received, the complainant may bring a civil action against the respondent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.255. COMMISSION'S INTERVENTION IN CIVIL ACTION BY COMPLAINANT. After receipt of a timely application, a court may permit the commission to intervene in a civil action filed under Section 21.254 if:

(1) the commission certifies that the case is of general public importance; and

(2) before commencement of the action the commission issued a determination of reasonable cause to believe that this chapter was violated.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.256. STATUTE OF LIMITATIONS. A civil action may not be brought under this subchapter later than the second anniversary of the date the complaint relating to the action is filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.07(a), eff. Sept. 1, 1995.

Sec. 21.257. ASSIGNMENT TO EARLY HEARING. The court shall set an action brought under this subchapter for hearing at the earliest practicable date to expedite the action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.258. INJUNCTION; EQUITABLE RELIEF. (a) On finding

that a respondent engaged in an unlawful employment practice as alleged in a complaint, a court may:

(1) prohibit by injunction the respondent from engaging in an unlawful employment practice; and

(2) order additional equitable relief as may be appropriate.

(b) Additional equitable relief may include:

(1) hiring or reinstating with or without back pay;

(2) upgrading an employee with or without pay;

(3) admitting to or restoring union membership;

(4) admitting to or participating in a guidance program, apprenticeship, or on-the-job training or other training or retraining program, using objective job-related criteria in admitting an individual to a program;

(5) reporting on the manner of compliance with the terms of a final order issued under this chapter; and

(6) paying court costs.

(c) Liability under a back pay award may not accrue for a date more than two years before the date a complaint is filed with the commission. Interim earnings, workers' compensation benefits, and unemployment compensation benefits received operate to reduce the back pay otherwise allowable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.2585. COMPENSATORY AND PUNITIVE DAMAGES. (a) On finding that a respondent engaged in an unlawful intentional employment practice as alleged in a complaint, a court may, as provided by this section, award:

(1) compensatory damages; and

(2) punitive damages.

(b) A complainant may recover punitive damages against a respondent, other than a respondent that is a governmental entity, if the complainant demonstrates that the respondent engaged in a discriminatory practice with malice or with reckless indifference to the state-protected rights of an aggrieved individual.

(c) Compensatory damages awarded under this section may not include:

(1) back pay;

(2) interest on back pay; or

(3) other relief authorized under Section 21.258(b).

(d) The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed, for each complainant:

(1) $50,000 in the case of a respondent that has fewer than 101 employees;

(2) $100,000 in the case of a respondent that has more than 100 and fewer than 201 employees;

(3) $200,000 in the case of a respondent that has more than 200 and fewer than 501 employees; and

(4) $300,000 in the case of a respondent that has more than 500 employees.

(e) For the purposes of Subsection (d), in determining the number of employees of a respondent, the requisite number of employees must be employed by the respondent for each of 20 or more calendar weeks in the current or preceding calendar year.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.07(b), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 872, Sec. 13, eff. Sept. 1, 1999.

Sec. 21.259. ATTORNEY'S FEES; COSTS. (a) In a proceeding under this chapter, a court may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs.

(b) The state, a state agency, or a political subdivision is liable for costs, including attorney's fees, to the same extent as a private person.

(c) In awarding costs and attorney's fees in an action or a proceeding under this chapter, the court, in its discretion, may include reasonable expert fees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.07(c), eff. Sept. 1, 1995.

Sec. 21.260. RELIEF FOR DISABLED EMPLOYEE OR APPLICANT. If the

affected employee or applicant for employment has a disability, a court shall consider the undue hardship defense, including the reasonableness of the cost of necessary workplace accommodation and the availability of alternatives or other appropriate relief.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.261. COMPELLED COMPLIANCE. If an employer, employment agency, or labor organization fails to comply with a court order issued under this subchapter, a party to the action or the commission, on the written request of a person aggrieved by the failure, may commence proceedings to compel compliance with the order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.262. TRIAL DE NOVO. (a) A judicial proceeding under this chapter is by trial de novo.

(b) A commission finding, recommendation, determination, or other action is not binding on a court.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. RECORDS

Sec. 21.301. RECORDKEEPING; REPORTS. A person under investigation in connection with a charge filed under this chapter and who is subject to this chapter shall:

(1) make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed;

(2) preserve the records for the period required by commission rule or court order; and

(3) make reports from the records as prescribed by commission rule or court order as reasonable, necessary, or appropriate for the enforcement of this chapter or a rule or order issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.302. RECORDS; TRAINING PROGRAM. The commission by rule shall require that a person subject to this chapter who controls an apprenticeship, on-the-job training, or other training or retraining program:

(1) keep all records reasonably necessary to carry out the purposes of this chapter, including a list of applicants for participation in the program and a record of the chronological order in which applications for the program were received; and

(2) furnish to the commission on request a detailed description of the manner in which individuals are selected to participate in the program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.303. CONFORMITY TO FEDERAL LAW. A report or record required by the commission under this subchapter must conform to a similar record or report required under 42 U.S.C. Section 2000e-8(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.304. CONFIDENTIALITY OF RECORDS. An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except in compliance with Section 21.305 and as necessary to the conduct of a proceeding under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1012 (H.B. 2463), Sec. 1, eff. September 1, 2011.

Sec. 21.305. ACCESS TO COMMISSION RECORDS. (a) Except as provided by Subsection (c), the commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Except as provided by Subsection (c), unless the complaint

is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

(c) Notwithstanding Section 552.023, Government Code, the following information is not considered public information for the purposes of Chapter 552, Government Code, and may not be disclosed to a party to a complaint filed under Section 21.201:

(1) identifying information of persons other than the parties and witnesses to the complaint;

(2) identifying information about confidential witnesses, including any confidential statement given by the witness;

(3) sensitive medical information about the charging party or a witness to the complaint that is:

(A) provided by a person other than the person requesting the information; and

(B) not relevant to issues raised in the complaint, including information that identifies injuries, impairments, pregnancies, disabilities, or other medical conditions that are not obviously apparent or visible;

(4) identifying information about a person other than the charging party that is found in sensitive medical information regardless of whether the information is relevant to the complaint;

(5) nonsensitive medical information that is relevant to the complaint if the disclosure would result in an invasion of personal privacy, unless the information is generally known or has been previously reported to the public;

(6) identifying information about other respondents or employers not a party to the complaint;

(7) information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes; and

(8) identifying information about a person on whose behalf a complaint was filed if the person has requested that the person's identity as a complaining party remain confidential.

(d) In this section, "identifying information" has the meaning assigned by Section 32.51, Penal Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1012 (H.B. 2463), Sec. 2, eff. September 1, 2011.

Sec. 21.306. SUBPOENA OF RECORD OR REPORT. (a) If a person fails to permit access, examination, photographing, or copying or fails to make, keep, or preserve a record or make a report in accordance with this subchapter, the commission may issue a subpoena requiring compliance.

(b) On a failure to comply with a subpoena of the commission, the commission shall apply for an order directing compliance to the district court of the county in which the person is found, resides, or transacts business.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. DISCRIMINATORY USE OF GENETIC INFORMATION

Sec. 21.401. DEFINITIONS. In this subchapter:

(1) "DNA" means deoxyribonucleic acid.

(2) "Family health history" means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.

(3) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

(i) predispose an individual to a disease, disorder, or syndrome; or

(ii) be associated with a statistically significant increased risk of developing a disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date the genetic information is obtained regarding the individual.

(4) "Genetic information" means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on, or a family health history obtained from, an individual.

(5) "Genetic test" means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition, or alteration that is associated with the individual's having a statistically increased risk of:

(i) developing a clinically recognized disease, disorder, or syndrome; or

(ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

(6) "RNA" means ribonucleic acid.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(a), eff. Sept. 1, 2003.

Sec. 21.402. DISCRIMINATORY USE OF GENETIC INFORMATION PROHIBITED. (a) An employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to compensation or the terms, conditions, or privileges of employment:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(b) A labor organization commits an unlawful employment practice if the labor organization excludes or expels from membership or otherwise discriminates against an individual:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(c) An employment agency commits an unlawful employment practice if the employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(d) An employer, labor organization, or employment agency commits an unlawful employment practice if the employer, labor organization, or employment agency limits, segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive or tend to deprive the employee, member, or applicant of employment opportunities or otherwise adversely affect the status of the employee, member, or applicant:

(1) on the basis of genetic information concerning the employee, member, or applicant; or

(2) because of the refusal of the employee, member, or applicant to submit to a genetic test.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997.

Sec. 21.403. CONFIDENTIALITY OF GENETIC INFORMATION. (a) Except as provided by Section 21.4031, genetic information is confidential and privileged regardless of the source of the information.

(b) A person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 21.4032.

(c) This section applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

(d) Redesignated as V.T.C.A., Labor Code Sec. 21.4031 by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(d).

(e) A person who discloses genetic information in violation of this section is liable for a civil penalty of not more than $10,000.

The attorney general may bring an action in the name of the state to recover the penalty, plus reasonable attorney's fees and court costs.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 965, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(b) to (e), eff. Sept. 1, 2003.

Sec. 21.4031. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization required under Section 21.4032 if the disclosure is:

(1) authorized under a state or federal criminal law relating to:

(A) the identification of individuals; or

(B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;

(2) required under a specific order of a state or federal court;

(3) for the purpose of establishing paternity as authorized under a state or federal law;

(4) made to provide genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or

(5) made to identify a decedent.

(b) Genetic information may be disclosed without an authorization under Section 21.4032 if:

(1) the disclosure is for information from a research study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;

(2) the information does not identify a specific individual; and

(3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Redesignated from Labor Code Sec. 21.403(c), (d) and amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(d), eff. Sept. 1, 2003.

Sec. 21.4032. AUTHORIZED DISCLOSURE. An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Redesignated from Labor Code Sec. 21.403(b) and amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(e), eff. Sept. 1, 2003.

Sec. 21.404. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED. An individual who submits to a genetic test has the right to know the results of the test. On the written request by the individual, the entity that performed the test shall disclose the test results to:

(1) the individual; or

(2) a physician designated by the individual.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(f), eff. Sept. 1, 2003.

Sec. 21.405. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

(1) the sample is retained under a court order;

(2) the individual authorizes retention of the sample for medical treatment or scientific research;

(3) the sample was obtained for research that is cleared by an institutional review board and retention of the sample is:

(A) under a requirement the institutional review board imposes on a specific research project; or

(B) authorized by the research participant with institutional review board approval under federal law; or

(4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or a laboratory approved by that department.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(g), eff. Sept. 1, 2003.

SUBCHAPTER I. PERSONNEL POLICIES AND PROCEDURES

Sec. 21.451. DEFINITION. In this subchapter, "state agency" does not include a public junior college as defined by Section 61.003, Education Code.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.452. DEVELOPMENT AND IMPLEMENTATION OF PERSONNEL POLICIES AND PROCEDURES. Each state agency shall develop and implement personnel policies and procedures that comply with this chapter, including personnel selection procedures that incorporate a workforce diversity program.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.453. REVIEW. (a) Except as provided by Subsection (a-1), the commission shall review the personnel policies and procedures of each state agency on a six-year cycle to determine whether the policies and procedures comply with this chapter.

(a-1) The commission by rule shall develop risk-assessment criteria for determining the circumstances under which the commission may conduct a review of the personnel policies and procedures of a state agency more frequently than required by Subsection (a). The risk-assessment criteria must include:

(1) data on complaints against a state agency;

(2) previous review findings; and

(3) any other related information collected and maintained by the commission.

(b) The commission by rule shall establish a system to stagger

the reviews of state agency personnel policies and procedures required under this section.

(c) If the commission determines that the personnel policies and procedures of a state agency do not comply with this chapter, the commission shall recommend appropriate revisions to the personnel policies and procedures.

(d) The state agency shall take these recommendations into consideration and determine whether to revise the personnel policies and procedures.

(e) The review of a state agency's personnel policies and procedures shall be completed within one year.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 11, eff. September 1, 2015.

Sec. 21.454. COMPLIANCE REPORT. Not later than 60 days after the commission completes the review of a state agency's personnel policies and procedures as required by Section 21.453 and provides its review and any recommendations to the agency, the agency shall submit to the commission, the governor, the legislature, and the Legislative Budget Board a report detailing:

(1) whether the agency implemented the recommendations of the commission; and

(2) if the agency did not implement all of the commission's recommendations, the reasons for rejecting those recommendations.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.455. REIMBURSEMENT; AUDIT. (a) A state agency shall reimburse the commission through interagency contract for the reasonable and necessary expenses incurred by the commission in conducting a review under Section 21.453.

(b) The commission shall maintain a record of the time expended and the actual costs and travel expenses incurred by the commission in conducting a review under Section 21.453.

(c) The amount of reimbursement paid by a state agency under Subsection (a) and the record maintained by the commission under

Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(d) Annually, the commission shall:

(1) review the reimbursements received by the commission under this section to ensure that the commission recovers the expenses described by Subsection (a); and

(2) adjust the reimbursement rate if, as a result of the most recent annual review, the commission determines that the reimbursement rate is higher or lower than the rate required to recover those expenses.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 785, Sec. 61, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 12, eff. September 1, 2015.

Sec. 21.456. FAILURE TO COMPLY WITH SUBCHAPTER; ADMINISTRATIVE PENALTY. (a) If the commission determines that a state agency has failed to comply with this subchapter, the commission shall certify that determination to the comptroller.

(b) On receipt of a certification by the commission under Subsection (a), the comptroller shall notify the state agency that is the subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of $5,000 as provided by this section unless, not later than the 30th day after the date the agency receives notice from the comptroller under this subsection, the agency submits to the comptroller proof that the agency has complied with this subchapter. If the agency fails to submit to the comptroller the proof required by this subsection, the comptroller shall:

(1) if the state agency failed to develop or implement personnel policies and procedures as required by Section 21.452:

(A) reduce the funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter by the amount of $5,000; or

(B) if all funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter

have been distributed to the agency, reduce the funds appropriated to the agency during the next fiscal year by the amount of $5,000; or

(2) if the state agency failed to reimburse the commission as required by Section 21.455:

(A) transfer the amount of the reimbursement from the agency to the commission's appropriations and reduce the funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter by an amount that equals the difference between the amount of the reimbursement and $5,000; or

(B) if all funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter have been distributed to the agency:

(i) during the next fiscal year, transfer the amount of the reimbursement from the funds appropriated to the agency for that fiscal year to the commission's appropriations; and

(ii) reduce the funds appropriated to the agency during the next fiscal year by an amount that equals the difference between the amount of the reimbursement and $5,000.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

SUBCHAPTER J. HIRING PRACTICES

Sec. 21.501. WORKFORCE ANALYSIS. Each state fiscal biennium, each state agency shall analyze its current workforce and compare the number of African Americans, Hispanic Americans, and females employed by the agency in each job category to the available African Americans, Hispanic Americans, and females in the statewide civilian workforce to determine the percentage of exclusion or underutilization by each job category.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.502. RECRUITMENT PLAN. Based upon a workforce availability analysis under Section 21.501 that demonstrates the exclusion or underutilization of African Americans, Hispanic Americans, and females, or court-ordered remedies, or supervised conciliations or settlement agreements, each state agency, other than a public junior college as defined by Section 61.003, Education Code, shall develop and implement a plan to recruit qualified African

Americans, Hispanic Americans, and females. The plan must comply with this chapter. The commission shall monitor state agencies to determine compliance with this section.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.503. EFFECT ON REMEDIES UNDER OTHER LAWS. This subchapter does not affect a remedy, agreement, settlement, or affirmative action plan that has been ordered or approved by a court or that has been adopted in accordance with other law.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.504. ANNUAL REPORT. Not later than November 1 of each calendar year, each state agency shall report to the commission the total number of African Americans, Hispanic Americans, females, and other persons hired for each job category by the agency during the preceding state fiscal year. The commission shall compile this information and submit a report based on the information to the governor and the Legislative Budget Board not later than January 1 of the subsequent calendar year.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

SUBCHAPTER K. EQUAL EMPLOYMENT OPPORTUNITY REPORTS

Sec. 21.551. DEFINITION. In this subchapter, "racial and ethnic group" means Caucasian American, African American, or Hispanic American.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.552. EQUAL EMPLOYMENT OPPORTUNITY REPORT REQUIRED. (a) Not later than November 1 of each year, each state agency shall report equal employment opportunity information for the preceding fiscal year to the commission as required by this subchapter. The report must be made in the form prescribed by the commission and include information compiled on a monthly basis.

(b) Each year the commission shall compile equal employment opportunity information reported to the commission by a state agency. The information must include:

(1) the total number of employees of the agency and the total number of new employees hired since the date of the last report made by the agency;

(2) the total number of employees of the agency listed by racial and ethnic group and the percentage of the total number of agency employees for each racial and ethnic group, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency;

(3) the total number of male employees and the total number of female employees of the agency, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency;

(4) the total number of male employees and the total number of female employees of the agency for each racial and ethnic group, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency; and

(5) the total number of employees of the agency listed by job classification and the total number of employees for each sex and racial and ethnic group listed by job classification, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1301 (H.B. 2716), Sec. 2, eff. June 18, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 78, eff. September 1, 2013.

Sec. 21.553. COOPERATION WITH COMPTROLLER AND UNIFORM STATEWIDE ACCOUNTING SYSTEM; REPORT. (a) The commission shall compile the information reported to the commission under this subchapter with the

assistance of the comptroller and the uniform statewide accounting system.

(b) The commission shall conduct an analysis of the information reported to the commission under this subchapter and report the results of that analysis to the legislature, the Legislative Budget Board, and the governor not later than January 1 of each odd-numbered year. The report required under this subsection must be written in plain language.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 79, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 80, eff. September 1, 2013.

Sec. 21.554. FORM. Not later than December 15 of each year, the commission shall notify each state agency of the form to be used to make a report under this subchapter for the following year.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.555. FAILURE TO FILE REQUIRED REPORT; ADMINISTRATIVE PENALTY. (a) If the commission determines that a state agency has failed to file a report required under this subchapter, the commission shall certify that determination to the comptroller.

(b) On receipt of a certification by the commission under Subsection (a), the comptroller shall notify the state agency that is the subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of $2,000 as provided by this section unless, not later than the 30th day after the date the agency receives notice from the comptroller under this subsection, the agency submits to the comptroller proof that the agency filed the report required under this subchapter. If the agency fails to submit to the comptroller the proof required by this subsection, the comptroller shall:

(1) reduce the funds appropriated to the agency for the fiscal year in which the agency fails to file the report required under this subchapter by the amount of $2,000; or

(2) if all funds appropriated to the agency for the fiscal year in which the agency fails to file the report required under this subchapter have been distributed to the agency, reduce the funds appropriated to the agency during the next fiscal year by the amount of $2,000.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.556. REQUIRED COMPLIANCE TRAINING FOR STATE AGENCIES. (a) A state agency that receives three or more complaints of employment discrimination in a fiscal year, other than complaints determined to be without merit, shall provide a comprehensive equal employment opportunity training program to appropriate supervisory and managerial employees.

(b) The training may be provided by the commission or by another entity or person approved by the commission, including a state agency.

(c) The state agency shall provide documentation of the training to the commission if the training is not conducted by the commission. The documentation shall include the dates the training was provided, the names of the persons attending the training, an agenda for the training program, and the name of the entity or person providing the training.

(d) The commission by rule shall adopt minimum standards for a training program described by Subsection (a) and shall approve an entity or person to provide a training program if the program complies with the minimum standards adopted by the commission under this subsection.

(e) An agency required to participate in a program under this section shall pay the cost of attending the program or shall reimburse the commission or state agency providing the program through interagency contract. The cost of providing the program shall be determined and approved by the commission or state agency. The state auditor may audit the commission's expenditure of fees collected under this section based on a risk assessment performed by the state auditor and subject to the approval by the legislative audit committee of including the audit in the audit plan under Section 321.013, Government Code.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Amended by Acts 2003, 78th Leg., ch. 785, Sec. 62, eff. Sept. 1, 2003.

CHAPTER 22. EMPLOYMENT DISCRIMINATION FOR PARTICIPATING IN EMERGENCY EVACUATION

Sec. 22.001. DEFINITIONS. In this chapter:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property that results from a natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action, or an energy emergency.

(2) "Emergency evacuation order" means an official statement issued by the governing body of this state or a political subdivision of this state to recommend the evacuation of all or part of the population of an area stricken or threatened with a disaster. The term includes a declaration of local disaster under Section 418.108, Government Code.

(3) "Emergency services personnel" includes fire fighters, police officers and other peace officers, emergency medical technicians, and other individuals who are required, in the course and scope of their employment, to provide services for the benefit of the general public during emergency situations.

(4) "Employee" means an individual who is employed by an employer for compensation.

(5) "Employer" means a person who employs one or more employees.

(6) "Political subdivision" means a county, municipality, special district, or authority of this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

Sec. 22.002. DISCRIMINATION PROHIBITED. An employer may not discharge or in any other manner discriminate against an employee who leaves the employee's place of employment to participate in a general

public evacuation ordered under an emergency evacuation order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

Sec. 22.003. LIABILITY; REINSTATEMENT. (a) An employer who violates Section 22.002 is liable for any loss of wages and employer-provided benefits incurred by the employee as a result of the violation.

(b) A person discharged in violation of Section 22.002 is entitled to reinstatement in the same or an equivalent position of employment with commensurate pay.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

Sec. 22.004. EXEMPTION; EMERGENCY SERVICES PERSONNEL. (a) Section 22.002 does not apply to individuals employed as emergency services personnel if the employer provides adequate emergency shelter for those individuals.

(b) This chapter does not apply to a person who is necessary to provide for the safety and well-being of the general public, including a person necessary for the restoration of vital services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

CHAPTER 23. VOLUNTARY VETERAN'S EMPLOYMENT PREFERENCE FOR PRIVATE EMPLOYERS

Sec. 23.001. DEFINITION. In this chapter, "veteran" means an individual who:

(1) has served on active duty in the armed forces of the United States; and

(2) was honorably discharged from military service.

Added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1, eff.

September 1, 2015.

Sec. 23.002. VOLUNTARY PREFERENCE POLICY. (a) A private employer may adopt a policy under which the employer may give a preference in employment decisions regarding hiring, promotion, or retention to a veteran over another qualified applicant or employee.

(b) A policy adopted under this section must be in writing.

(c) A private employer may provide notice to the Texas Workforce Commission or the Texas Veterans Commission that the employer has adopted a policy under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 387 (S.B. 588), Sec. 2, eff. September 1, 2017.

Sec. 23.003. APPLICATION OF POLICY. (a) A private employer shall apply any policy adopted under this chapter reasonably and in good faith in employment decisions regarding hiring, promotion, or retention during a reduction in the employer's workforce.

(b) A private employer may require appropriate documentation from a veteran for the veteran to be eligible for the preference under a policy adopted under this chapter.

(c) Granting a preference in accordance with a policy adopted under this chapter does not violate Chapter 21.

Added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 11.001, eff. September 1, 2017.

SUBTITLE B. RESTRICTIONS ON LABOR

CHAPTER 51. EMPLOYMENT OF CHILDREN
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. PURPOSE. The purpose of this chapter is to ensure that a child is not employed in an occupation or manner that is detrimental to the child's safety, health, or well-being.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.002. DEFINITIONS. In this chapter:

(1) "Child" means an individual under 18 years of age.

(2) "Commission" means the Texas Workforce Commission.

(3) "Delivery of newspapers" means the distribution of newspapers on or the maintenance of a newspaper route. The term does not include direct sales of newspapers to the general public.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 648 (H.B. 2930), Sec. 1, eff. September 1, 2005.

Sec. 51.003. GENERAL EXEMPTIONS. (a) This chapter does not apply to employment of a child:

(1) employed:

(A) in a nonhazardous occupation;

(B) under the direct supervision of the child's parent or an adult having custody of the child; and

(C) in a business or enterprise owned or operated by the parent or custodian;

(2) 11 years or older engaged in delivery of newspapers to the consumer;

(3) participating in a school-supervised and school-administered work-study program approved by the commission;

(4) employed in agriculture during a period when the child is not legally required to be attending school;

(5) employed through a rehabilitation program supervised by a county judge;

(6) engaged in nonhazardous casual employment that will not endanger the safety, health, or well-being of the child and to which the parent or adult having custody of the child has consented; or

(7) 16 years or older engaged in the direct sale of newspapers to the general public.

(b) In this section, "employment in agriculture" means engaged in producing crops or livestock and includes:

(1) cultivating and tilling the soil;

(2) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity;

(3) dairying; and

(4) raising livestock, bees, fur-bearing animals, or poultry.

(c) For the purposes of Subsection (a)(6), the commission by rule may define nonhazardous casual employment that the commission determines is dangerous to the safety, health, or well-being of a child.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 648 (H.B. 2930), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1184 (H.B. 581), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. RESTRICTIONS ON EMPLOYMENT

Sec. 51.011. MINIMUM AGE. Except as provided by this chapter, a person commits an offense if the person employs a child under 14 years of age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.012. PERFORMER EXEMPTION. The commission by rule may authorize the employment of children under 14 years of age as performers in a motion picture or a theatrical, radio, or television production.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.013. HOURS OF EMPLOYMENT; HARDSHIP EXEMPTION. (a) A person commits an offense if the person permits a child who is 14 or

15 years of age and who is employed by the person to work more than:

(1) eight hours in one day; or

(2) 48 hours in one week.

(b) A person commits an offense if the person permits a child who is 14 or 15 years of age, is employed by the person, and is enrolled in a term of a public or private school to work:

(1) between the hours of 10 p.m. and 5 a.m. on a day that is followed by a school day; or

(2) between the hours of midnight and 5 a.m. on a day that is not followed by a school day.

(c) A person commits an offense if the person permits a child who is 14 or 15 years of age, is employed by the person, and is not enrolled in summer school to work between the hours of midnight and 5 a.m. on any day during the time that school is recessed for the summer.

(d) The commission may adopt rules for determining whether hardships exist. If, on the application of a child, the commission determines that a hardship exists for that child, this section does not apply to that child.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.014. HAZARDOUS OCCUPATIONS. (a) The commission by rule shall declare an occupation to be hazardous if:

(1) the occupation has been declared to be hazardous by an agency of the federal government; and

(2) the commission determines that the occupation is particularly hazardous for the employment of children.

(b) The commission by rule may restrict the employment of children 14 years of age or older in hazardous occupations.

(c) A person commits an offense if the person employs a child in violation of a rule adopted under this section.

(d) In addition to any occupation determined to be hazardous under Subsection (a), the employment of a child to sell items or services for or solicit donations for any person other than an exempt organization or a business owned or operated by a parent, conservator, guardian, or other person who has possession of the child under a court order is a hazardous occupation for purposes of this chapter if the child is:

(1) younger than 14 years of age; and

(2) unaccompanied by a parent, conservator, guardian, or other person who has possession of the child under a court order.

(e) For purposes of this section, "exempt organization" means:

(1) a charitable organization, as that term is defined under Section 84.003, Civil Practice and Remedies Code;

(2) an organization regulated under Title 15, Election Code; or

(3) a club, organization, or other group engaged in a fund-raising activity for the club, organization, or group if the activity is sponsored by a public or private primary or secondary school.

(f) Subsection (d) does not apply to a child younger than 14 years of age selling items or services as a self-employed person with the consent of a parent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 501, Sec. 1, eff. Sept. 1, 1995.

Sec. 51.0145. USE OF CHILD FOR SALES AND SOLICITATION. (a) For purposes of this section:

(1) "Exempt organization" means:

(A) a charitable organization, as defined by Section 84.003, Civil Practice and Remedies Code;

(B) an organization regulated under Title 15, Election Code; or

(C) a club, organization, or other group engaged in a fund-raising activity for the club, organization, or group if the activity is sponsored by a public or private primary or secondary school.

(2) "Solicit" means an action of a person to:

(A) sell goods or services in a setting other than a retail establishment;

(B) request donations; or

(C) distribute items, information, or advertising.

(b) The employment of a child to solicit is a hazardous occupation for purposes of this chapter.

(c) A person may not employ a child to solicit unless the person:

(1) at least seven days before the date the child begins

employment, obtains on a form approved by the commission the signed consent of a parent of the child or of a conservator, guardian, or other person who has possession of the child under a court order;

(2) provides to the individual who gives consent:

(A) a map of the route the child will follow during each solicitation trip; and

(B) the name of each individual who will be supervising each solicitation trip;

(3) provides at each location where children will be engaged to solicit at least one adult supervisor for every three children engaged in that solicitation trip; and

(4) limits each solicitation trip to:

(A) no later than 7 p.m. on a day when the child is legally required to attend school; and

(B) the hours between 10 a.m. and 7 p.m. on all other days.

(d) The commission may make additional requirements by rule for a person employing a child under this section to protect the safety, health, or well-being of the child.

(e) This section does not apply to an exempt organization or a business owned or operated by a parent, conservator, guardian, or other person who has possession of the child under a court order.

(f) A person commits an offense if the person employs a child in violation of this section or a rule adopted under this section.

Added by Acts 1999, 76th Leg., ch. 648, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.015. OPERATION OF MOTOR VEHICLE FOR CERTAIN COMMERCIAL PURPOSES. (a) An occupation that involves the operation of a motor vehicle by a child for a commercial purpose is not a hazardous occupation under this chapter if the child:

(1) has a driver's license under Chapter 521, Transportation Code;

(2) is not required to obtain a commercial driver's license under Chapter 522, Transportation Code, to perform the duties of the occupation;

(3) performs the duties of the occupation:

(A) under the direct supervision of the child's parent or an adult having custody of the child; and

(B) for a business owned or operated by the child's parent or guardian; and

(4) operates a vehicle that has no more than two axles and does not exceed a gross vehicle weight rating of 15,000 pounds.

(b) The commission shall adopt rules consistent with this section.

Added by Acts 1995, 74th Leg., ch. 903, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.213, eff. Sept. 1, 1997.

Sec. 51.016. SEXUALLY ORIENTED BUSINESSES. (a) In this section:

(1) "E-verify program" has the meaning assigned by Section 673.001, Government Code.

(2) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

(b) A sexually oriented business may not employ or enter into a contract, other than a contract described by Subsection (g), for the performance of work or the provision of a service with an individual younger than 21 years of age.

(c) A sexually oriented business shall:

(1) maintain at the business a record that contains a copy of a valid proof of identification of each employee and independent contractor working at the premises of the business; and

(2) register and participate in the E-verify program to verify information of all employees and independent contractors.

(d) A proof of identification satisfies the requirements of Subsection (c)(1) if the identification:

(1) contains a physical description and photograph consistent with the person's appearance;

(2) contains the date of birth of the person; and

(3) was issued by a government agency.

(e) The form of identification under Subsection (c)(1) may include:

(1) a driver's license issued by this state or another state;

(2) a passport; or

(3) an identification card issued by this or another state

or the federal government.

(f) A sexually oriented business shall maintain a record under this section for at least two years after the date the employee or independent contractor ends employment with or a contractual obligation to the business.

(g) The requirements of Subsections (c) and (f) do not apply with regard to an independent contractor who contracts with a sexually oriented business solely to perform repair, maintenance, or construction services at the business.

(h) The commission, the attorney general, or a law enforcement agency may inspect a record maintained under this section and request proof of E-verify program information verification if there is good reason to believe that an individual younger than 21 years of age is employed or has been employed by, or has entered into a contract, other than a contract described by Subsection (g), for the performance of work or the provision of a service with, the sexually oriented business within the five years preceding the date of the inspection.

(i) A person commits an offense if the person:

(1) fails to maintain a record as required by this section;

(2) knowingly or intentionally hinders an inspection authorized under Subsection (h); or

(3) violates Subsection (b).

(j) A person commits an offense if the person fails to register and participate in the E-verify program as required by Subsection (c)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 489 (S.B. 707), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 79 (S.B. 315), Sec. 6, eff. May 24, 2021.

Acts 2021, 87th Leg., R.S., Ch. 942 (S.B. 766), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 14.001, eff. September 1, 2023.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 51.021. INSPECTION; COLLECTION OF INFORMATION. (a) The

commission, or a person designated by the commission, may, during working hours:

(1) inspect a place where there is good reason to believe that a child is employed or has been employed within the last two years; and

(2) collect information concerning the employment of a child who works or within the last two years has worked at that place.

(b) A person commits an offense if the person knowingly or intentionally hinders an inspection or the collection of information authorized by this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 905, Sec. 1, eff. Sept. 1, 1995.

Sec. 51.022. CERTIFICATE OF AGE. (a) A child who is at least 14 years of age may apply to the commission for a certificate of age that states the date of birth of the child.

(b) The application must include documentary proof of age as required by the commission.

(c) After approval by the commission of the proof of age, the commission shall issue to the child a certificate of age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.023. RULEMAKING. The commission may adopt rules necessary to promote the purpose of this chapter but may not adopt a rule permitting the employment of a child under 14 years of age unless expressly authorized by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.024. POWERS OF COMMISSION; PENALTY. (a) The commission may require reports, conduct investigations, and take other action it considers necessary to implement this chapter.

(b) In the discharge of the duties imposed by this chapter, a member of the commission or an authorized representative of the commission may administer oaths and affirmations, take depositions,

certify official acts, and issue subpoenas to compel the attendance of witnesses who may be found within 100 miles of the relevant event and the production of books, papers, correspondence, memoranda, or other records considered necessary as evidence in the administration of this chapter. Notwithstanding Chapter 152 or 154, Local Government Code, or any other law of this state, the commission shall pay the fee of a sheriff or constable for serving a subpoena under this subsection from the administrative funds of the commission, and the comptroller shall issue a warrant for that fee as directed by the commission.

(c) In the case of contumacy or other refusal to obey a subpoena issued by a member of the commission or an authorized representative of the commission, a county court or district court within the jurisdiction of which the inquiry is conducted or the person guilty of contumacy or refusal to obey is found, resides, or transacts business has jurisdiction on application by the commission or its representative to issue to the person an order requiring the person to appear before a commissioner, the commission, or an authorized representative of the commission to produce evidence or give testimony regarding the matter under investigation. Failure to obey the court order may be punished by the court as contempt.

(d) A person commits an offense if the person, without just cause, fails or refuses to obey a commission subpoena to:

(1) attend and testify;

(2) answer any lawful inquiry; or

(3) produce books, papers, correspondence, memoranda, or other records.

(e) An offense under Subsection (d) is punishable by a fine of not less than $200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER D. PENALTY AND DEFENSE

Sec. 51.031. OFFENSE; PENALTY. (a) Except as provided by Subsection (b), an offense under this chapter is a Class B misdemeanor.

(b) An offense under Section 51.014(d), 51.0145, or

51.016(i)(3) is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.10(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 501, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 648, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 79 (S.B. 315), Sec. 7, eff. May 24, 2021.
Acts 2021, 87th Leg., R.S., Ch. 942 (S.B. 766), Sec. 7, eff. September 1, 2021.

Sec. 51.032. DEFENSE TO PROSECUTION. It is a defense to prosecution of a person employing a child who does not meet the minimum age requirement for a type of employment that the person relied in good faith on an apparently valid certificate of age presented by the child that showed the child to meet the age requirement for that type of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.033. ADMINISTRATIVE PENALTY. (a) If a child labor investigator determines that a person who employs a child, or individual restricted by Section 51.016(b), has violated this chapter or a rule adopted under this chapter, the investigator may assess an administrative penalty against that person as provided by this subchapter.
(b) The penalty for a violation may be in an amount not to exceed $10,000.
(c) The amount of the penalty shall be based on:
(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;
(2) the history of previous violations;
(3) the amount necessary to deter future violations;
(4) efforts to correct the violation; and
(5) any other matter that justice may require.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.034. PRELIMINARY DETERMINATION ORDER. (a) If, after examination of a possible violation and the facts relating to that possible violation, the child labor investigator determines that a violation has occurred, the child labor investigator shall issue a preliminary determination order to the person charged with the violation.

(b) The preliminary determination order shall state the facts on which the preliminary determination order is based, the occurrence of a violation, the fact that an administrative penalty is to be imposed, and the amount of the penalty.

(c) The preliminary determination order must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(d) The child labor investigator shall mail notice of the preliminary determination order to the person's last known address, as reflected by commission records.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0341. ESTABLISHMENT OF CHILD LABOR APPEAL TRIBUNALS. (a) The commission shall establish one or more impartial child labor appeal tribunals to hear and decide disputed preliminary determination orders if the commission determines that establishment of those tribunals is necessary to ensure prompt disposal of child labor cases on appeal.

(b) Each child labor appeal tribunal shall be composed of a salaried examiner appointed by the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0342. REDETERMINATION BY CHILD LABOR INVESTIGATOR. (a) If the child labor investigator discovers an error in connection with a preliminary determination order or discovers additional information not previously available, the child labor investigator, within the

period specified in Section 51.035, may reconsider and reissue the preliminary determination order. An investigator's reissued preliminary determination order voids and replaces the order requiring correction.

(b) A reissued preliminary determination order becomes final unless a party files an appeal from the reissued preliminary determination order within the period specified in Section 51.035. The period to request an appeal shall begin on the date the examiner mails the reissued preliminary determination order.

(c) Notwithstanding Subsection (a) of this section, if a child labor investigator mails a preliminary determination order to a person's incorrect address solely because of the child labor investigator's own error, the child labor investigator may reissue a preliminary determination order to the party's correct address at any time.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.035. REQUEST FOR HEARING ON PRELIMINARY ORDER. (a) A person may request a hearing before a child labor appeal tribunal to appeal a preliminary determination order made under Section 51.034.

(b) The request for hearing must be made in writing not later than the 21st day after the date the child labor investigator mails the notice of the preliminary determination order.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0351. PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED. If the person does not request a hearing to appeal a preliminary determination order within the period prescribed by Section 51.035, the order becomes the final order of the commission for all purposes, and the person is not entitled to judicial review of the order under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0352. PAYMENT REQUIRED IF HEARING NOT REQUESTED. A person that does not request a hearing within the period prescribed by Section 51.035 to appeal a preliminary determination order shall pay the penalty amount ordered to the commission not later than the 21st day after the date the commission mails notice of the order.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0353. NOTICE; TIME FOR HEARING. (a) A notice regarding an administrative hearing conducted under this subchapter must be mailed by the child labor appeal tribunal not later than the 21st day after the date a request for the hearing is received by the commission.

(b) As soon as practicable, but not later than the 45th day after the date a notice is mailed under Subsection (a), the tribunal shall conduct the hearing.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0354. HEARING PROCEDURES. (a) A hearing conducted under this subchapter is subject to the rules and hearings procedures used by the commission in the determination of a claim for unemployment compensation benefits.

(b) The hearing is not subject to Chapter 2001, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0355. CONSIDERATION OF PRELIMINARY DETERMINATION ORDER. The child labor appeal tribunal may modify, affirm, or rescind a preliminary determination order.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0356. ORDER AFTER HEARING. After a hearing, the child labor appeal tribunal shall enter a written order for the payment of any penalty the child labor appeal tribunal assesses.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.036. NOTICE AND FINALITY OF ORDER. (a) The child labor appeal tribunal shall mail to each party to the appeal notice of:

(1) the decision;

(2) the violation; and

(3) the amount of any penalty assessed.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

(c) The order of the child labor appeal tribunal becomes final 14 days after the date on which it is mailed unless reopened by the child labor tribunal or a party to the decision initiates a further appeal to the commission as provided by this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0361. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE CHILD LABOR APPEAL TRIBUNAL. (a) The commission by order may remove to itself or transfer to another child labor appeal tribunal the proceedings pending before a child labor appeal tribunal.

(b) The commission promptly shall mail to the parties to the proceedings a notice of the order under Subsection (a).

(c) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0362. COMMISSION REVIEW OF CHILD LABOR APPEAL TRIBUNAL ORDER. The commission may:

(1) on its own motion:

(A) affirm, modify, or set aside an order issued under Section 51.036 on the basis of the evidence previously submitted in the case; or

(B) direct the taking of additional evidence; or

(2) permit any of the parties affected by the order to initiate a further appeal before the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0363. NOTICE OF COMMISSION ACTION. (a) The commission shall mail to each party to the appeal under Section 51.0362 notice of:

(1) the commission's decision;

(2) the violation;

(3) the amount of any penalty assessed; and

(4) the person's right to judicial review of the order.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0364. FINALITY OF COMMISSION ORDER. An order of the commission becomes final 14 days after the date the order is mailed unless before that date:

(1) the commission by order reopens the appeal; or

(2) a party to the appeal files a written motion for rehearing.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.037. JUDICIAL REVIEW. (a) A person who has exhausted the person's administrative remedies under this chapter, other than a motion for rehearing, may bring a suit to appeal the order.

(b) The suit must be filed not later than the 30th day after the date the final order is mailed.

(c) The commission must be made a defendant in the suit.

(d) The suit must be brought in the county of the person's residence. If the person is not a resident of this state, the suit must be brought in the county in this state in which the person has its principal place of business.

(e) Judicial review of the order of the commission is in the manner applied to an appeal from a final decision under Subtitle A, Title 4. The standard of review is under the substantial evidence rule.

(f) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that a penalty is not owed.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.038. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW. (a) Not later than the 30th day after the date a commission order becomes final, the person required to pay a penalty shall:

(1) pay the amount to the commission; or

(2) if the person files a petition for judicial review in a court of competent jurisdiction contesting the final order, send the amount to the commission for deposit in an interest-bearing escrow account.

(b) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.0385. DEPOSIT OF PENALTY. A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

Sec. 51.039. INJUNCTION: ATTORNEY GENERAL'S ACTION. The attorney general may seek injunctive relief in district court against an employer who repeatedly violates the requirements established by this chapter relating to the employment of children.

Added by Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 2, eff. September 1, 2023.

SUBCHAPTER E. COLLECTION OF PENALTY

Sec. 51.041. DEFINITION. In this subchapter, "asset" means:

(1) a credit, bank, or savings account or deposit; or

(2) any other intangible or personal property.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.042. NOTICE OF DELINQUENCY. (a) If, under a final order, a person is determined to be delinquent in the payment of any amount, including penalties, interest, or other amounts due under this chapter, the commission may notify personally or by mail any other person who:

(1) possesses or controls an asset belonging to the delinquent person; or

(2) owes a debt to the delinquent person.

(b) A notice under this section to a state officer, department, or agency must be given before the officer, department, or agency presents to the comptroller the claim of the delinquent person.

(c) A notice under this section may be given at any time after the amount due under this chapter becomes delinquent. The notice must state the amount of wages, penalties, interest, or other amounts due, and any additional amount that will accrue by operation of law in a period not to exceed 30 days after the date on which the notice

is given and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.043. DUTIES OF NOTICE RECIPIENT. (a) On receipt of a notice under Section 51.042, the person receiving the notice:

(1) shall advise the commission not later than the 20th day after the date on which the notice is received of each asset belonging to the delinquent person that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person; and

(2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person receiving the notice on the date the person received the notice during the 60-day period after the date of receipt of the notice.

(b) A notice under Section 51.042 that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is effective if it is delivered or mailed to the principal or any branch office of the bank, including the office of the bank at which the deposit is carried or the credit or property is held.

(c) A person who receives a notice under this subchapter and who transfers or disposes of an asset or debt in a manner that violates Subsection (a)(2) is liable to the commission for the amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given, to the extent of the value of the affected asset or debt.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.044. LEVY. (a) At any time during the 60-day period provided by Section 51.043(a)(2), the commission may levy on the asset or debt by delivery of a notice of levy.

(b) On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent person.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.045. NOTICE EFFECT. A notice delivered under this subchapter is effective:

(1) at the time of delivery against all property, rights to property, credits, and debts involving the delinquent person that are not, as of the date of the notice, subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process; and

(2) against all property, rights to property, credits, or debts involving the delinquent person that come into the possession or control of the person served with the notice during the 60-day period provided by Section 51.043(a)(2).

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.046. DISCHARGE OF LIABILITY. A person acting in accordance with the terms of a notice issued by the commission under this subchapter is discharged from any obligation or liability to the delinquent person with respect to the affected property, rights to property, credits, and debts of the person affected by compliance with the notice of freeze or levy.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

CHAPTER 52. MISCELLANEOUS RESTRICTIONS

SUBCHAPTER A. RESTRICTIONS ON CERTAIN CONSECUTIVE PERIODS OF EMPLOYMENT

Sec. 52.001. RETAIL EMPLOYER. (a) A person who is an employer may not require an employee to work seven consecutive days in an establishment, the business of which is selling merchandise at retail.

(b) The person may not deny an employee at least one period of 24 consecutive hours of time off for rest or worship in each seven-day period. The time off must be in addition to the regular periods of rest allowed during each day worked.

(c) The person shall accommodate the religious beliefs and practices of an employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of the

employer's business. In addition, the person may not require an employee to work during a period that the employee requests to be off to attend one regular worship service a week of the employee's religion.

(d) This section does not apply to employment of a part-time employee whose total work hours for one employer during a calendar week do not exceed 30 hours.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 52.002. EMPLOYER FORMERLY SUBJECT TO SATURDAY/SUNDAY CLOSING LAW. An employer whose establishment was closed on Saturday or Sunday to comply with Chapter 15, Acts of the 57th Legislature, 1st Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), before that Act was repealed effective September 1, 1985, may not require an employee who has been continuously employed by that employer since August 31, 1985, to work on whichever of those days the establishment was closed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 52.003. OFFENSE; PENALTY; DEFENSE. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a Class C misdemeanor.

(c) It is an affirmative defense to prosecution under this section that the employee volunteered for work on the seventh consecutive day and that the employee signed a written statement stating that the employee volunteered. The statement must also contain a provision, signed by the employer or the employer's agent, that the employer did not require the work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. RESTRICTION ON WORK BY FOREIGN CREW

Sec. 52.011. PROHIBITION OF CERTAIN WORK BY FOREIGN CREW; PENALTY. (a) A person commits an offense if the person:

(1) is an officer or member of a crew of a foreign seagoing vessel; and

(2) works on a wharf or levee of a port beyond the end of the vessel's tackle.

(b) An offense under this section is punishable by:

(1) a fine of not less than $10 and not more than $100;

(2) confinement in jail for a term of not less than 10 days and not more than 30 days; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. RESTRICTIONS ON LENGTH OF HOES

Sec. 52.021. MINIMUM LENGTH OF HOE HANDLES. (a) An employer of agricultural laborers may not require an employee to use a hoe that has a handle shorter than four feet while performing agricultural labor in a commercial farming operation.

(b) This section does not apply to an employer engaged in the operation of a greenhouse or nursery.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 52.022. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 52.021.

(b) An offense under this section is a Class C misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. RESTRICTIONS ON BLACKLISTING

Sec. 52.031. BLACKLISTING OFFENSE; PENALTY. (a) In this section, "blacklist" means to place on a book or list or publish the name of an employee of an individual, firm, company, or corporation who was discharged or who voluntarily left that employment, intending to prevent the employee from engaging in or securing employment of any kind with any other person, in either a public or a private capacity.

(b) A person commits an offense if the person:

(1) blacklists or causes to be blacklisted an employee; or

(2) conspires or contrives by correspondence or any other manner to prevent an employee discharged by a corporation, company,

or individual from procuring employment.

(c) An offense under this section is punishable by:

(1) a fine of not less than $50 or more than $250;

(2) imprisonment in jail for not less than 30 days or more than 90 days; or

(3) both the fine and imprisonment.

(d) This section may not be held to prohibit a corporation, company, or individual from giving, on application from a discharged employee or a person desiring to employ the employee, a written truthful statement of the reason for the discharge. The written statement may not be used as the cause for a civil or criminal action for libel against the person who furnishes the statement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. RESTRICTIONS ON COERCION OF EMPLOYEE TRADE

Sec. 52.041. COERCION OF EMPLOYEE TRADE; PENALTY. (a) A person, firm, or corporation commits an offense if the person, firm, or corporation requires or attempts to require by coercion an employee to:

(1) deal with a person, association, corporation, or company; or

(2) purchase an article of food, clothing, or other merchandise at a place or store.

(b) A person, firm, or corporation commits an offense if the person, firm, or corporation excludes from work, punishes, or blacklists an employee for failure to:

(1) deal with the person, firm, or corporation; or

(2) purchase an article of food, clothing, or other merchandise at a place or store.

(c) An offense under this section is punishable by a fine of not less than $50 or more than $200.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. RESTRICTIONS ON PENALIZING EMPLOYEE FOR COMPLIANCE WITH SUBPOENA

Sec. 52.051. PENALIZING EMPLOYEE FOR COMPLIANCE WITH SUBPOENA. (a) An employer may not discharge, discipline, or penalize in any

manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding.

(b) If the subpoena to which a violation of Subsection (a) applies is issued by a court, the employer violating Subsection (a) may be found in contempt by the court issuing the subpoena.

(c) If the subpoena to which a violation of Subsection (a) applies is issued by a legislative committee or a state agency, the employer violating Subsection (a) is subject to the authority of the committee or agency to impose a monetary penalty, not to exceed $500, on a person who violates an order of the committee or agency.

(d) An employee discharged in violation of this section is entitled to return to the same employment that the employee had at the time the employee was subpoenaed if the employee, as soon as practical after release from compliance with the subpoena, gives the employer actual notice that the employee intends to return.

(e) An employee injured because of the violation of this section by an employer may recover:

(1) damages in an amount that does not exceed six months' compensation at the rate at which the employee was compensated when the subpoena was issued; and

(2) reasonable attorney's fees.

(f) It is a defense to an action by an employee under this section for reemployment that reemployment is impossible or unreasonable because of a change in the employer's circumstances while the employee complied with the subpoena.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. RESTRICTIONS ON PROHIBITING EMPLOYEE TRANSPORTATION OR STORAGE OF CERTAIN FIREARMS OR AMMUNITION

Sec. 52.061. RESTRICTION ON PROHIBITING EMPLOYEE ACCESS TO OR STORAGE OF FIREARM OR AMMUNITION. A public or private employer may not prohibit an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the

employer provides for employees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 30, eff. January 1, 2016.

Sec. 52.062. EXCEPTIONS. (a) Section 52.061 does not:

(1) authorize a person who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law; or

(2) apply to:

(A) a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties;

(B) a school district;

(C) an open-enrollment charter school, as defined by Section 5.001, Education Code;

(D) a private school, as defined by Section 22.081, Education Code;

(E) property owned or controlled by a person, other than the employer, that is subject to a valid, unexpired oil, gas, or other mineral lease that contains a provision prohibiting the possession of firearms on the property; or

(F) property owned or leased by a chemical manufacturer or oil and gas refiner with an air authorization under Chapter 382, Health and Safety Code, and on which the primary business conducted is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials, except in regard to an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, and who stores a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area

the employer provides for employees that is outside of a secured and restricted area:

(i) that contains the physical plant;

(ii) that is not open to the public; and

(iii) the ingress into which is constantly monitored by security personnel.

(b) Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, or who otherwise lawfully possesses a firearm, from possessing a firearm the employee is otherwise authorized by law to possess on the premises of the employer's business. In this subsection, "premises" has the meaning assigned by Section 46.03, Penal Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 30, eff. January 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 15, eff. September 1, 2021.

Sec. 52.063. IMMUNITY FROM CIVIL LIABILITY. (a) Except in cases of gross negligence, a public or private employer, or the employer's principal, officer, director, employee, or agent, is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer's property under this subchapter.

(b) The presence of a firearm or ammunition on an employer's property under the authority of this subchapter does not by itself constitute a failure by the employer to provide a safe workplace.

(c) For purposes of this section, a public or private employer, or the employer's principal, officer, director, employee, or agent, does not have a duty:

(1) to patrol, inspect, or secure:

(A) any parking lot, parking garage, or other parking area the employer provides for employees; or

(B) any privately owned motor vehicle located in a

parking lot, parking garage, or other parking area described by Paragraph (A); or

(2) to investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.

Sec. 52.064. CONSTRUCTION OF PROVISION RELATING TO IMMUNITY FROM CIVIL LIABILITY. Section 52.063 does not limit or alter the personal liability of:

(1) an individual who causes harm or injury by using a firearm or ammunition;

(2) an individual who aids, assists, or encourages another individual to cause harm or injury by using a firearm or ammunition; or

(3) an employee who transports or stores a firearm or ammunition on the property of the employee's employer but who fails to comply with the requirements of Section 52.061.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.

SUBTITLE C. WAGES

CHAPTER 61. PAYMENT OF WAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Day" means a calendar day.

(3) "Employee" means an individual who is employed by an employer for compensation. The term does not include:

(A) a person related to the employer or the employer's spouse within the first or second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; or

(B) an independent contractor.

(4) "Employer" means a person who:

(A) employs one or more employees; or

(B) acts directly or indirectly in the interests of an employer in relation to an employee.

(5) "Employment" means any service, including service in interstate commerce, that is performed for wages or under a contract of hire, whether written or oral or express or implied. The term does not include any service performed by an individual for wages if it is shown that the individual is free from control or direction in the performance of the service, both under any contract of service and in fact.

(6) "Mail" means to deposit for mailing with the United States Postal Service.

(6-a) "Payroll card account" means an account that is directly or indirectly established by an employer into which each participating employee's wages, salary, or other form of compensation is deposited on a recurring basis and for which the employee receives a payroll card to access the funds in the account.

(7) "Wages" means compensation owed by an employer for:

(A) labor or services rendered by an employee, whether computed on a time, task, piece, commission, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay owed to an employee under a written agreement with the employer or under a written policy of the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), 9.12(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 1, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 284 (H.B. 2240), Sec. 1, eff. September 1, 2019.

Sec. 61.002. COMMISSION DUTIES. (a) The commission shall:

(1) administer this chapter; and

(2) adopt rules as necessary to implement this chapter.

(b) The commission may require reports, conduct investigations, and take other action as it considers necessary to implement this chapter.

(c) In the discharge of the duties imposed by this chapter, any authorized representative or member of the commission may:

(1) administer an oath or affirmation;

(2) take a deposition;

(3) certify to an official act; and

(4) issue a subpoena to compel the attendance of a witness and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in the administration of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.13(a), eff. Sept. 1, 1995.

Sec. 61.003. GOVERNMENTAL ENTITIES EXCLUDED. This chapter does not apply to the United States, this state, or a political subdivision of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.0031. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 2, eff. September 1, 2015.

Sec. 61.004. PAYMENT OF CERTAIN FEES FOR SERVICE OF PROCESS.

Notwithstanding Chapter 152 or 154, Local Government Code, or any other law of this state, the fees assessed by a sheriff or constable for service of a subpoena under Section 61.002 shall be paid by the commission out of the administrative funds of the commission, and the comptroller shall issue warrants for those fees as directed by the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.13(b), eff. Sept. 1, 1995.

Sec. 61.005. EFFECT OF REFUSAL TO OBEY COMMISSION SUBPOENA; CRIMINAL PENALTY. (a) In the case of contumacy or other refusal by a person to obey a subpoena issued by the commission or an authorized representative of the commission to that person, any county or district court of this state in the jurisdiction of which the inquiry is carried on or in the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business has jurisdiction, on application by the commission or its representative, to issue to the person an order requiring the person to appear before the commission or its authorized representative to:

(1) produce evidence if so ordered; or

(2) testify regarding the matter under investigation or in question.

(b) The court may punish as contempt a failure to obey a court order issued under Subsection (a).

(c) A person commits an offense if the person, without just cause, fails or refuses to obey a commission subpoena to:

(1) attend and testify;

(2) answer any lawful inquiry; or

(3) produce books, papers, correspondence, memoranda, or other records.

(d) An offense under Subsection (c) is punishable by a fine of not less than $200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.13(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 10.11, eff. Sept. 1, 2003.

Sec. 61.006. NOTICE LANGUAGES. The commission shall:

(1) make available any notice the commission is required to provide to an employee under this chapter in the two languages that are most commonly spoken in this state; and

(2) ensure that employees are notified of an employee's ability to request from the commission notice in either language described by Subdivision (1).

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 13, eff. September 1, 2015.

SUBCHAPTER B. PAYMENT OF WAGES

Sec. 61.011. PAYDAYS. (a) An employer shall pay wages to each employee who is exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) at least once a month.

(b) An employer shall pay wages to an employee other than an employee covered by Subsection (a) at least twice a month.

(c) If wages are paid twice a month, each pay period must consist as nearly as possible of an equal number of days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.012. DESIGNATION OF PAYDAYS; NOTICE. (a) An employer shall designate paydays in accordance with Section 61.011.

(b) If an employer fails to designate paydays, the employer's paydays are the first and 15th day of each month.

(c) An employer shall post, in conspicuous places in the workplace, notices indicating the paydays.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.013. PAYMENT OTHER THAN ON PAYDAY. An employer shall pay an employee who is not paid on a payday for any reason, including the employee's absence on a payday, on another regular business day on the employee's request.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.014. PAYMENT AFTER TERMINATION OF EMPLOYMENT. (a) An employer shall pay in full an employee who is discharged from employment not later than the sixth day after the date the employee is discharged.

(b) An employer shall pay in full an employee who leaves employment other than by discharge not later than the next regularly scheduled payday.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.015. PAYMENT OF COMMISSIONS AND BONUSES. (a) Wages paid on commission and bonuses are due according to the terms of:

(1) an agreement between the employee and employer; or

(2) an applicable collective bargaining agreement.

(b) An employer shall pay wages paid on commission and bonuses to an employee in a timely manner as required for the payment of other wages under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.016. FORM OF PAYMENT. (a) An employer shall pay wages to an employee:

(1) in United States currency;

(2) by a written instrument issued by the employer that is negotiable on demand at full face value for United States currency; or

(3) by the electronic transfer of funds to:

(A) a financial institution account designated by the employee; or

(B) a payroll card account established by the employer.

(b) An employee may agree in writing to receive part or all of the wages in kind or in another form.

(c) Payment by a written instrument that is not negotiable or for which payment is refused for any reason attributable to the employer does not constitute payment of wages for the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 284 (H.B. 2240), Sec. 2, eff. September 1, 2019.

Sec. 61.017. DELIVERY OF PAYMENT. (a) An employer shall pay wages through a means authorized by this section.

(b) An employer may pay wages by:

(1) delivering them to the employee at the employee's regular place of employment during regular employment hours;

(2) delivering them to the employee at a time and place agreed on by the employer and employee;

(3) sending them to the employee by registered mail, to be received by the employee not later than payday;

(4) delivering them in a manner similar to a manner specified by Subdivision (1), (2), or (3) to a person designated by the employee in writing; or

(5) delivering them to the employee by any reasonable means authorized by the employee in writing.

(c) An employer may elect to pay wages to an employee who maintains at a financial institution an account that qualifies for electronic funds transfer through a direct deposit plan that uses electronic funds transfer to deposit the wages in the employee's account. An employer who desires to pay wages through a direct deposit plan shall:

(1) notify each affected employee in writing, at least 60 days before the date on which the direct deposit payroll system is scheduled to begin, that the employer is adopting a direct deposit payroll system; and

(2) obtain from the employee any information required by the financial institution in which the employee maintains the account that is necessary to implement the electronic funds transfer.

(d) An employer may elect to pay wages to an employee through a payroll card account plan that is linked to a federally insured financial institution and uses electronic funds transfer to deposit wages in the employee's payroll card account. An employer who elects to pay wages through a payroll card account shall:

(1) not later than the 60th day before the date of the first electronic funds transfer to the payroll card account of an

affected employee or, for an employee hired after the date the employer adopts the plan, not later than the employee's first day of work:

(A) notify the employee in writing regarding the employer's adoption of a payroll card account plan; and

(B) provide to the employee:

(i) a complete list of all fees associated with the employee's payroll card account in English, or, if the employer offers a payroll card account to an employee in a language other than English, in that other language; and

(ii) a form the employee may use to request an alternate form of payment if the employee elects to opt out of the payroll card account plan; and

(2) obtain from the employee any information required by the payroll card account issuer that is necessary to implement the electronic funds transfer.

(e) If an employee requests an alternate form of payment under Subsection (d)(1)(B)(ii), the employer shall pay the employee's wages in the alternate form as soon as practicable, but not later than the first payday occurring after the 30th day after the employee requests the alternate form of payment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 316, Sec. 1, eff. June 18, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 284 (H.B. 2240), Sec. 3, eff. September 1, 2019.

Sec. 61.018. DEDUCTION FROM WAGES. An employer may not withhold or divert any part of an employee's wages unless the employer:

(1) is ordered to do so by a court of competent jurisdiction;

(2) is authorized to do so by state or federal law; or

(3) has written authorization from the employee to deduct part of the wages for a lawful purpose.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.019. FAILURE TO PAY WAGES; CRIMINAL PENALTY. (a) An employer commits an offense if:

(1) at the time of hiring an employee, the employer intends to avoid payment of wages owed to the employee; and

(2) the employer fails after demand to pay those wages.

(b) An employer commits an offense if the employer:

(1) intends to avoid payment of wages owed to an employee;

(2) intends to continue to employ the employee; and

(3) fails after demand to pay those wages.

(c) An employer commits a separate offense under Subsection (b) for each pay period during which the employee earns wages that the employer fails to pay.

(d) An offense under this section is a felony of the third degree.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1158, Sec. 1, eff. Sept. 1, 1997.

Sec. 61.020. FAILURE TO PAY WAGES; ATTORNEY GENERAL ACTION. The attorney general may seek injunctive relief in district court against an employer who repeatedly fails to pay wages as required by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. SECURITY FOR WAGE PAYMENTS

Sec. 61.031. BOND. (a) The commission may require an employer to deposit a bond if:

(1) the employer is convicted of two violations of this chapter; or

(2) a final order of the commission against an employer for nonpayment of wages remains unsatisfied after the 10th day after the date on which the time to appeal from that final order has expired and an appeal is not pending.

(b) The bond must be:

(1) in an amount approved and considered by the commission as adequate under the circumstances;

(2) payable to the state;

(3) conditioned that the employer, for a period not to

exceed 36 months, pay the employees in accordance with this chapter; and

(4) conditioned that the employer pay any sum recovered against the employer under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.032. SUIT TO ENFORCE BOND REQUIREMENT. (a) If an employer fails to deposit a bond required under Section 61.031 before the 11th day after the date on which demand is made for the bond, the attorney general may bring a suit in the name of the state against the employer to furnish the bond or to cease doing business until the employer furnishes the bond.

(b) If the court finds just cause for requiring the bond and that the bond is reasonably necessary and proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with this chapter, the court may enjoin the employer from doing business until the requirement is met. The injunction may also apply to any other person concerned with or in any way participating in the failure to pay wages resulting in the conviction or in a final order of the commission. The court may make any other order appropriate and necessary to compel compliance with the requirement.

(c) In an action under this section, the employer has the burden of proving that the bond is unnecessary or that the amount demanded by the commission is excessive.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.033. FAILURE OF SURETY COMPANY TO PAY VERIFIED CLAIM FOR WAGES; CIVIL PENALTY. (a) A surety company that issues a bond to secure the payment of wages under this chapter and that wilfully fails to pay a verified claim for wages found to be due and payable is subject to a civil penalty in the amount of $1,000 for each failure to pay each employee.

(b) A subsequent violation is subject to a civil penalty in the amount of $1,000 for each failure to pay each employee plus 25 percent of the amount unlawfully withheld.

(c) The attorney general shall recover a penalty imposed by

this section in an action brought in the name of the state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. WAGE CLAIMS

Sec. 61.051. FILING WAGE CLAIM. (a) An employee who is not paid wages as prescribed by this chapter may file a wage claim with the commission in accordance with this subchapter.

(b) A wage claim must be filed in a manner and on a form prescribed by the commission and must be verified by the employee.

(c) A wage claim must be filed not later than the 180th day after the date the wages claimed became due for payment. The 180-day deadline is a matter of jurisdiction.

(d) The employee may file the wage claim:

(1) in person at an office of the commission;

(2) by mailing the claim to an address designated by the commission;

(3) by faxing the claim to a fax number designated by the commission;

(4) electronically in a manner designated by the commission by rule; or

(5) by any other means adopted by the commission by rule.

(e) The commission shall ensure that employees are notified of an employee's ability to request from the commission a wage claim form in either language described by Section 61.006.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 21 (S.B. 741), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 97 (H.B. 762), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 14, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 479 (H.B. 2443), Sec. 1, eff. September 1, 2017.

Sec. 61.052. PRELIMINARY WAGE DETERMINATION ORDER. (a) An examiner employed by the commission shall analyze each wage claim

filed under Section 61.051 and, if the claim alleges facts actionable under this chapter, shall investigate the claim and issue a preliminary wage determination order:

(1) dismissing the wage claim; or

(2) ordering payment of wages determined to be due and unpaid.

(b) If a commission examiner imposes an administrative penalty under Section 61.053, the preliminary wage determination order must include an order for payment of the penalty.

(b-1) If a wage claim is filed later than the date described by Section 61.051(c), the examiner shall dismiss the wage claim for lack of jurisdiction.

(c) The commission examiner shall mail notice of the preliminary wage determination order to each party at that party's last known address, as reflected by commission records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 21 (S.B. 741), Sec. 2, eff. September 1, 2009.

Sec. 61.0525. ESTABLISHMENT OF WAGE CLAIM APPEAL TRIBUNALS. (a) The commission shall establish one or more impartial wage claim appeal tribunals to hear and decide disputed wage claims if the commission determines that establishment of those tribunals is necessary to ensure prompt disposal of wage claims cases on appeal.

(b) Each wage claim appeal tribunal shall be composed of a salaried examiner appointed by the commission.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 3, eff. September 1, 2005.

Sec. 61.053. BAD FAITH; ADMINISTRATIVE PENALTY. (a) If the commission examiner, a wage claim appeal tribunal, or the commission determines that an employer acted in bad faith in not paying wages as required by this chapter, the examiner, tribunal, or commission, in addition to ordering the payment of the wages, may assess an

administrative penalty against the employer.

(b) If the commission examiner, a wage claim appeal tribunal, or the commission determines an employee acted in bad faith in bringing a wage claim, the examiner, tribunal, or commission may assess an administrative penalty against the employee.

(c) An administrative penalty assessed under this section may not exceed the lesser of:

(1) the amount of the wages in question or claimed; or

(2) $1,000.

(d) In determining the amount of an administrative penalty assessed under this section, the commission examiner, a wage claim appeal tribunal, or the commission shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation; and

(4) any other appropriate matter, including mitigating circumstances.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 4, eff. September 1, 2005.

Sec. 61.054. REQUEST FOR HEARING ON PRELIMINARY ORDER. (a) Either party may request a hearing before a wage claim appeal tribunal to appeal a preliminary wage determination order made under Section 61.052.

(b) The request for hearing must be made in writing not later than the 21st day after the date the commission examiner mails the notice of the preliminary wage determination order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 5, eff. September 1, 2005.

Sec. 61.055. PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED. If neither party requests a hearing to appeal a preliminary wage determination order within the period prescribed by Section 61.054,

the order becomes the final order of the commission for all purposes, and neither party is entitled to judicial review of the order under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 6, eff. September 1, 2005.

Sec. 61.056. PAYMENT REQUIRED IF HEARING NOT REQUESTED. (a) An employer that does not request a hearing within the period prescribed by Section 61.054 to appeal a preliminary wage determination order shall pay the amount ordered to the commission not later than the 21st day after the date the commission mails notice of the order. The payment must equal the net amount of outstanding wages after any valid deductions and must include an itemized list of those deductions.

(b) Payment to the commission constitutes payment to the employee for all purposes.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 7, eff. September 1, 2005.

Sec. 61.057. NOTICE; TIME FOR HEARING. (a) A notice regarding an administrative hearing conducted under this subchapter must be mailed by the wage claim appeal tribunal not later than the 21st day after the date a request for the hearing is received by the commission.

(b) As soon as practicable, but not later than the 45th day after the date a notice is mailed under Subsection (a), the tribunal shall conduct the hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 8, eff. September 1, 2005.

Sec. 61.058. HEARING PROCEDURES. (a) A hearing conducted under this subchapter is subject to the rules and hearings procedures used by the commission in the determination of a claim for unemployment compensation benefits.

(b) The hearing is not subject to Chapter 2001, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 61.059. CONSIDERATION OF PRELIMINARY WAGE DETERMINATION ORDER. The wage claim appeal tribunal may modify, affirm, or rescind a preliminary wage determination order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 9, eff. September 1, 2005.

Sec. 61.060. ORDER AFTER HEARING. After a hearing, the wage claim appeal tribunal shall enter a written order for the payment of wages that the tribunal determines to be due or for the payment of any penalty the tribunal assesses.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 10, eff. September 1, 2005.

Sec. 61.061. NOTICE AND FINALITY OF ORDER. (a) The wage claim appeal tribunal shall mail to each party to the appeal notice of:

(1) the decision;

(2) the amount of wages subject to the order; and

(3) the amount of any penalty assessed.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

(c) The order of the wage claim appeal tribunal becomes final 14 days after the date on which it is mailed unless a further appeal to the commission is initiated as provided by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 11, eff. September 1, 2005.

Sec. 61.0611. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE WAGE CLAIM APPEAL TRIBUNAL. (a) The commission by order may remove to itself or transfer to another wage claim appeal tribunal the proceedings on a wage claim pending before a wage claim appeal tribunal.

(b) The commission promptly shall mail to the parties to the affected wage claim a notice of the order under Subsection (a).

(c) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.0612. COMMISSION REVIEW OF WAGE CLAIM APPEAL TRIBUNAL ORDER. The commission may:

(1) on its own motion:

(A) affirm, modify, or set aside an order issued under Section 61.061 on the basis of the evidence previously submitted in the case; or

(B) direct the taking of additional evidence; or

(2) permit any of the parties affected by the order to initiate a further appeal before the commission.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.0613. NOTICE OF COMMISSION ACTION. (a) The commission shall mail to each party to the appeal under Section 61.0612 notice of:

(1) the commission's decision;
(2) the amount of wages subject to the order;
(3) the amount of any penalty assessed; and
(4) the parties' right to judicial review of the order.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.0614. FINALITY OF COMMISSION ORDER. An order of the commission becomes final 14 days after the date the order is mailed unless before that date:

(1) the commission by order reopens the appeal; or
(2) a party to the appeal files a written motion for rehearing.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.062. JUDICIAL REVIEW. (a) A party who has exhausted the party's administrative remedies under this chapter, other than a motion for rehearing, may bring a suit to appeal the order.

(b) The suit must be filed not later than the 30th day after the date the final order is mailed.

(c) The commission and any other party to the proceeding before the commission must be made defendants in the suit.

(d) The suit must be brought in the county of the claimant's residence. If the claimant is not a resident of this state, the suit must be brought in the county in this state in which the employer has its principal place of business.

(e) An appeal under this subchapter is by trial de novo with the substantial evidence rule being the standard of review in the manner as applied to an appeal from a final decision under Subtitle A, Title 4.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(b), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 13, eff. September 1, 2005.

Sec. 61.063. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW. (a) Not later than the 30th day after the date a commission order becomes final, the party required to pay wages or a penalty shall:

(1) pay the amount to the commission; or

(2) if the party files a petition for judicial review in a court of competent jurisdiction contesting the final order, send the amount to the commission for deposit in an interest-bearing escrow account.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 114 (S.B. 1500), Sec. 2, eff. May 22, 2019.

(c) If after judicial review it is determined that some or all of the wages are not owed or the penalty is reduced or is not assessed, the commission shall remit the appropriate amount to the party assessed the wage payment or penalty, plus the interest accrued on the escrowed amount. Interest under this section shall be paid for the period beginning on the date the assessed amount is paid to the commission and ending on the date the amount is remitted to the party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(c), eff. Sept. 1, 1995. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 114 (S.B. 1500), Sec. 1, eff. May 22, 2019.

Acts 2019, 86th Leg., R.S., Ch. 114 (S.B. 1500), Sec. 2, eff. May 22, 2019.

Sec. 61.064. PAYMENT TO EMPLOYEE. Not later than the 30th day after the date on which a claim is finally adjudicated or otherwise resolved, the commission shall pay to the claimant wages collected under this subchapter and any interest earned on those wages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.065. DEPOSIT OF PENALTY. The commission shall deposit

a penalty collected under this subchapter in the unemployment compensation special administration fund established under Subchapter E, Chapter 203.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.066. COMMISSION ACTION; ENFORCEMENT OF ORDER. (a) The commission, in the name of the state and the attorney general, may:

(1) bring a suit in a district court in Travis County to enforce a final order from which an appeal under this chapter has not been taken; or

(2) serve on the defaulting party a notice of assessment stating the amount due.

(b) A notice of assessment served under this section is prima facie evidence of the contents of the notice. However, the defaulting party may show the incorrectness of the notice of assessment.

(c) The notice shall be served in the manner provided by law for service of process on a defendant in a civil action in district court.

(d) A person aggrieved by the determination of the commission as stated in the notice of assessment may seek judicial review of the assessment by filing a petition for judicial review in a Travis County district court not later than the 30th day after the date on which the notice of assessment is served. A copy of the petition shall be served in the manner prescribed by law for service of process on a defendant in a civil action in district court on:

(1) a member of the commission; or

(2) a person designated by the commission for service of process.

(e) If the party on whom a notice of assessment is served does not seek judicial review as provided by this section, the assessment is final for all purposes. An assessment that is not contested or that is upheld after judicial review shall be recorded, enforced, renewed, and otherwise treated as the final judgment of a district court.

(f) Unless the adverse party prevails in the civil action or the notice of assessment is reversed by a reviewing court, the

adverse party shall pay all costs of either action, including attorney's fees, investigation costs, service costs, court costs, and other applicable costs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(d), eff. Sept. 1, 1995.

Sec. 61.067. RECIPROCAL COLLECTION ARRANGEMENTS. The commission may enter into reciprocal arrangements with appropriate authorized agencies of the United States or other states for the collection of wage claims that are final under the laws of the jurisdictions in which they were filed.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.15(a), eff. Sept. 1, 1995.

SUBCHAPTER E. ADMINISTRATIVE LIEN

Sec. 61.081. CREATION AND ATTACHMENT OF LIEN. (a) A final order of the commission against an employer indebted to the state for penalties or wages, unless timely appealed to a court, is a lien on all the property belonging to the employer.

(b) The lien for an unpaid debt attaches at the time the order of the commission becomes final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.082. ENFORCEMENT OF LIEN. (a) Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of a lien established under this subchapter.

(b) In administering and enforcing the lien, the commission has the duties imposed and the powers conferred on the comptroller for the enforcement of other liens under Subchapters A and B, Chapter 113, Tax Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.0825. PRIORITY OF LIEN. A lien established under this

subchapter is superior to any other lien on the same property, with the exception of a lien for ad valorem taxes.

Added by Acts 2001, 77th Leg., ch. 641, Sec. 1, eff. Sept. 1, 2001.

Sec. 61.083. FILING; FEE. (a) A lien under this subchapter may be recorded in the book entitled "State Tax Liens" kept by the county clerk as provided by Section 113.004, Tax Code.

(b) The commission shall pay the county clerk of the county in which a notice of the lien has been filed the usual fee for filing and recording similar instruments. The fee shall be paid by warrant drawn by the comptroller. The fee is an amount due to the commission from the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.084. RELEASE OF LIEN. (a) A lien under this subchapter may be released in the manner provided by Subchapter A, Chapter 113, Tax Code, for a state tax lien.

(b) If the liability secured by the lien is fully paid, the commission shall mail a release of lien to the employer.

(c) The employer is responsible for filing a release of lien with the appropriate county clerk and paying the county clerk's fee for recording the release.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.085. ASSIGNMENT OF LIEN. A lien securing wages due under this chapter may be assigned to the claimant, at the claimant's request.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. DELINQUENCY; LEVY

Sec. 61.091. NOTICE OF DELINQUENCY. (a) If, under a final order, a person is determined to be delinquent in the payment of wages, penalties, interest, or other amounts due under this chapter,

the commission may notify personally or by mail any person who:

(1) possesses or controls any of the delinquent person's assets, including a credit, bank, or savings account or deposit, or other intangible or personal property; or

(2) owes a debt to the delinquent person.

(b) A notice under this subchapter to a state officer, department, or agency must be provided before the officer, department, or agency presents to the comptroller the claim of the delinquent person.

(c) A notice under this subchapter may be given at any time after the wages, penalties, interest, or other amounts due under this chapter become delinquent. The notice must state the amount of wages, penalties, interest, or other amounts due and owing and any additional amount that will accrue by operation of law in a period not to exceed 30 days and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.092. DUTIES OF NOTICE RECIPIENT. (a) On receipt of a notice under this subchapter, the person receiving the notice:

(1) shall advise the commission not later than the 20th day after the date on which the notice is received of each asset belonging to the delinquent person that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person; and

(2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person on the date the person received the notice within the 60-day period after the date of receipt of the notice.

(b) A notice under this subchapter that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is effective if it is delivered or mailed to the principal office or any branch office of the bank, including any office of the bank at which the deposit is carried or the credit or property is held.

(c) A person who receives a notice under this subchapter and who violates Subsection (a)(2) is liable to the commission for the

amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given, to the extent of the value of the affected asset or debt.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.093. LEVY. (a) At any time during the 60-day period provided by Section 61.092(a)(2), the commission may levy on the asset or debt by delivery of a notice of levy.

(b) On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent person.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.094. NOTICE EFFECT. A notice delivered under this subchapter is effective:

(1) at the time of delivery against all property, rights to property, credits, or debts involving the delinquent person that are not on the date of the notice subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process; and

(2) against all property, rights to property, credits, or debts involving the delinquent person that come into the possession or control of the person served with a notice of levy during the 60-day period provided by Section 61.092(a)(2).

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.095. DISCHARGE OF LIABILITY. A person acting in accordance with the terms of the notice issued by the commission under this subchapter is discharged from any obligation or liability to the delinquent person with respect to the affected property, rights to property, credits, and debts of the person affected by compliance with the notice of freeze or levy.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

CHAPTER 62. MINIMUM WAGE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE. This chapter may be cited as the Texas Minimum Wage Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.002. DEFINITIONS. In this chapter, unless the context requires a different definition:

(1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 5.35(10), eff. September 1, 2009.

(2) "Agriculture" includes:

(A) farming in all its branches;

(B) cultivating and tilling the soil;

(C) dairying;

(D) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity, including a commodity defined as an agricultural commodity by Section 15(g), Agricultural Marketing Act (12 U.S.C. Section 1141j(g));

(E) raising livestock, bees, fur-bearing animals, or poultry; and

(F) any practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including:

(i) forestry or lumber operations;

(ii) preparation for market; and

(iii) delivery to storage, market, or a carrier for transportation to market.

(3) "Commission" means the Texas Employment Commission.

(4) "Employ" includes to permit to work.

(5) "Employee" includes any individual employed by an employer.

(6) "Employer" includes a person acting directly or indirectly in the interest of an employer in relation to an employee.

(7) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.35(10),

eff. September 1, 2009.

Sec. 62.003. EARNINGS STATEMENT. (a) At the end of each pay period, an employer shall give each employee a written earnings statement covering the pay period.

(b) An earnings statement must be signed by the employer or the employer's agent and must show:

(1) the name of the employee;

(2) the rate of pay;

(3) the total amount of pay earned by the employee during the pay period;

(4) any deduction made from the employee's pay and the purpose of the deduction;

(5) the amount of pay after all deductions are made; and

(6) the total number of:

(A) hours worked by the employee if the employee's pay is computed by the hour; or

(B) units produced by the employee during the pay period if the employee's pay is computed on a piece rate.

(c) An earnings statement may be in any form determined by the employer. The information required by Subsection (b) may be stated on a check voucher or bank draft given to an employee for the employee's wages.

(d) In this section, "pay period" means the period that an employee works for which salary or wages are regularly paid under the employee's employment agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 1, eff. Sept. 1, 2003.

Sec. 62.004. PROVISION OF INFORMATION. The commission shall provide information to the public about this chapter to ensure that both employers and employees in this state are fully aware of:

(1) their respective rights and responsibilities;

(2) the specified exemptions; and

(3) the penalties and liabilities that may be incurred for a violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.005. COLLECTIVE BARGAINING NOT IMPAIRED. This chapter does not interfere with or in any way diminish the right of employees to bargain collectively with their employer through representatives chosen by the employees to establish wages that exceed the applicable minimum wage under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.006. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 3, eff. September 1, 2015.

SUBCHAPTER B. MINIMUM WAGE

Sec. 62.051. MINIMUM WAGE. Except as provided by Section 62.057, an employer shall pay to each employee the federal minimum wage under Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 386, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 461, Sec. 2, eff. Sept. 1, 2003.

Sec. 62.0515. APPLICATION OF MINIMUM WAGE TO CERTAIN GOVERNMENTAL ENTITIES; CERTAIN AGREEMENTS WITH GOVERNMENTAL ENTITIES. (a) Except as otherwise provided by this section, the minimum wage provided by this chapter supersedes a wage established in an ordinance, order, or charter provision governing wages in private employment, other than wages under a public contract.

(b) This section does not apply to any state or federal job training or workforce development program.

(c) This section does not apply to a minimum wage established by a governmental entity that applies to a contract or agreement, including a non-annexation agreement, entered into by a governmental entity and a private entity. A private entity that enters into a contract or agreement, including a non-annexation agreement, with a governmental entity, under the terms of which the private entity agrees to comply with a minimum wage established by the governmental entity, is subject to the terms of that contract or agreement, and those terms apply to and may be enforced against a general contractor, subcontractor, developer, and other person with which the private entity contracts in order to comply with the provisions of the original contract or agreement.

(d) For purposes of this section, "governmental entity" includes a municipality, a county, a special district or authority, a junior college district, or another political subdivision of this state.

Added by Acts 2003, 78th Leg., ch. 461, Sec. 3, eff. Sept. 1, 2003.

Sec. 62.052. TIPPED EMPLOYEES. (a) In determining the wage of a tipped employee, the amount paid the employee by the employer is the amount described as paid to a tipped employee under Section 3(m), Fair Labor Standards Act of 1938 (29 U.S.C. Section 203(m)).

(b) In this section, "tipped employee" means an employee engaged in an occupation in which the employee customarily and regularly receives more than $20 a month in tips.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 386, Sec. 2, eff. Sept. 1, 2001.

Sec. 62.053. COST OF MEALS OR LODGING. In computing the wage

paid to an employee, an employer may include the reasonable cost to the employer of furnishing meals, lodging, or both to the employee if:

(1) meals or lodging customarily are furnished by the employer to employees; and

(2) the cost of the meals and lodging are separately stated and identified in the earnings statement furnished to the employee under Section 62.003.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.054. CERTAIN EMPLOYEES SUBJECT TO CALL. An employer may not be required to pay an employee who lives on the premises of a business and who is assigned certain working hours plus additional hours when the employee is subject to call for more than the number of hours the employee actually works or is on duty because of assigned working hours.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.057. PATIENTS AND CLIENTS OF DEPARTMENT OF STATE HEALTH SERVICES. (a) A person may be compensated for services rendered to the Department of State Health Services or a department facility at a percentage of the base wage adopted under this section if:

(1) the person is a patient or client of a department facility;

(2) the person's productive capacity is impaired;

(3) the person:

(A) assists in the operation of the facility as part of the person's therapy; or

(B) receives occupational training in a sheltered workshop or other program operated by the department; and

(4) the facility or department derives an economic benefit from the person's services.

(b) The percentage of the base wage paid to a person under Subsection (a) must correspond to the percentage of the person's productive capacity compared with the capacity of an employee who performs the same or similar tasks and who is not similarly impaired.

(c) The department shall adopt rules to determine the base wage

and the percentage of productive capacity of the patients and clients and other rules necessary to implement this section.

(d) Services rendered and payment provided under this section may not be construed as creating an employer-employee relationship between the department and the patient or client engaged in occupational training or therapeutic or rehabilitative services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 9.01, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 9.02, eff. September 1, 2023.

SUBCHAPTER D. EXEMPTIONS

Sec. 62.151. PERSON COVERED BY FEDERAL ACT. This chapter and a municipal ordinance or charter provision governing wages in private employment, other than wages under a public contract, do not apply to a person covered by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 4, eff. Sept. 1, 2003.

Sec. 62.152. EMPLOYMENT BY RELIGIOUS, EDUCATIONAL, CHARITABLE, OR NONPROFIT ORGANIZATION. An employer is exempt from this chapter with respect to the employment of a person who is:

(1) a member of a religious order while the person is performing a service for or at the direction of the order;

(2) a duly ordained, commissioned, or licensed minister, priest, rabbi, sexton, or Christian Science reader while the person is performing services in that capacity for a church, synagogue, or religious organization;

(3) engaged in the activities of a religious, educational, charitable, or nonprofit organization in which:

(A) the employer-employee relationship does not in fact exist; or

(B) the services are rendered to the organization gratuitously;

(4) employed by the Boy Scouts of America, the Girl Scouts of America, or a local organization affiliated with those organizations;

(5) employed by a camp of a religious, educational, charitable, or nonprofit organization; or

(6) employed with the person's spouse by a nonprofit educational institution to serve as the parents of a child:

(A) who is an orphan;

(B) one of whose natural parents is deceased; or

(C) who is enrolled in and resides in residential facilities of the institution, if the employee and the employee's spouse:

(i) reside in residential facilities of the institution; and

(ii) receive, without cost, board and lodging from the institution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.153. EMPLOYMENT OF CERTAIN PROFESSIONALS, SALESPERSONS, AND PUBLIC OFFICIALS. An employer is exempt from this chapter with respect to the employment of a person:

(1) employed in a bona fide executive, administrative, or professional capacity;

(2) employed as an outside salesperson or collector and paid a commission; or

(3) who performs services for a political subdivision as an elected official or as a member of a legislative body.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.154. DOMESTIC EMPLOYMENT. An employer is exempt from this chapter with respect to the employment of a person who:

(1) performs domestic services in or about a private home, including a person who performs the duties of baby-sitting in or out of the employer's home; or

(2) lives in or about a private home and furnishes personal care for a resident of the home.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.155. EMPLOYMENT OF CERTAIN YOUTHS AND STUDENTS. An employer is exempt from this chapter with respect to the employment of a person who:

(1) is less than 18 years of age and is not a high school graduate or a graduate of a vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate;

(2) is less than 20 years of age and is a student regularly enrolled in a high school, college, university, or vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate; or

(3) has a disability and who is:

(A) not more than 21 years of age;

(B) a client of vocational rehabilitation; and

(C) participating in a cooperative school-work program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.156. EMPLOYMENT OF INMATES. An employer is exempt from this chapter with respect to the employment of a person who performs services while imprisoned in the institutional division of the Texas Department of Criminal Justice or while confined in a local jail.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.157. EMPLOYMENT OF CERTAIN FAMILY MEMBERS. An employer is exempt from this chapter with respect to employment of the employer's brother, sister, brother-in-law, sister-in-law, child, spouse, parent, son-in-law, daughter-in-law, ward, or person in loco parentis to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.158. CERTAIN AMUSEMENT AND RECREATIONAL ESTABLISHMENTS. An employer is exempt from this chapter with respect to employment in

an amusement or recreational establishment that:

(1) does not operate for more than seven months in a calendar year; or

(2) had average receipts for any six months of the preceding calendar year of not more than 33-1/3 percent of its average receipts for the other six months of the year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.159. CERTAIN EMPLOYERS NOT CONTRIBUTING TO UNEMPLOYMENT COMPENSATION FUND; CERTIFICATE. (a) An employer that is not liable for payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, is exempt from this chapter, except with respect to employment of a person in agriculture.

(b) The commission shall furnish a certificate stating whether a specified employer is liable for the payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, to a person making a written request for a certificate. The commission may require payment of a fee not to exceed $5 for the issuance of the certificate.

(c) A certificate issued under this section is admissible in evidence in an action brought by an employee under Subchapter E. In the absence of evidence to the contrary:

(1) it is presumed that the facts stated in the certificate are true; and

(2) the certificate is conclusive as to whether the named employer is exempt from this chapter under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.16, eff. Sept. 1, 1995.

Sec. 62.160. AGRICULTURAL EXEMPTIONS. (a) An employer is exempt from this chapter with respect to employment of a person in dairy farming.

(b) Sections 62.051-62.054 do not apply to an agricultural employer with respect to an employee engaged in the production of livestock.

(c) In this section, "production of livestock" includes:

(1) any livestock operation, without regard to size or type

of location, in which the land produces forage or feedstuffs, including naturally or artificially revegetated forage or feedstuffs;

(2) breeding, feeding, watering, containing, maintaining, and caring for livestock;

(3) production of livestock in feedlots; and

(4) all other activities necessary or useful to the raising of livestock.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.34, eff. September 1, 2009.

Sec. 62.161. SHELTERED WORKSHOPS. A nonprofit charitable organization that is engaged in evaluating, training, and employment services for clients with disabilities and that complies with federal regulations covering those activities is considered to have complied with this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. CIVIL PENALTY

Sec. 62.201. CIVIL PENALTY. An employer who violates Section 62.051, 62.052, 62.053, or 62.054 or Subchapter C is liable to an affected employee in the amount of the unpaid wages plus an additional equal amount as liquidated damages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 5, eff. Sept. 1, 2003.

Sec. 62.202. LIMITATIONS. An action to recover a liability imposed by this subchapter must be brought not later than the second anniversary of the date on which the unpaid wages are due and payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.203. PLAINTIFFS. (a) An action to recover a liability under this subchapter may be brought by an employee for that employee and other similarly affected employees.

(b) An employee may not be a plaintiff to an action brought under this subchapter unless:

(1) the employee consents in writing; and

(2) the consent is filed in the court in which the action is brought.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.204. REQUIRED FINDINGS. At the trial of an action brought under this subchapter, the plaintiff recovers if the jury or the court finds from a preponderance of the evidence that:

(1) the plaintiff is or has been employed by the defendant at any time during the two years preceding the institution of the action;

(2) the original petition filed by or on behalf of the plaintiff is verified; and

(3) the defendant failed to pay the plaintiff the minimum wage under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.205. ATTORNEY'S FEES; COSTS. In addition to a judgment awarded to the plaintiff, the court shall allow reasonable attorney's fees and costs of the action to be paid by the defendant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 63. ACTION ON ASSIGNMENT OF WAGES

Sec. 63.001. ASSIGNMENT OF UNEARNED WAGES; NOTICE REQUIRED. An employee's assignment of the employee's wages or a salary is not effective against the employee's employer in any suit for wages or salaries that are unearned at the time the assignment is executed unless the employer is given written notice of the assignment immediately after the execution of the assignment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.17(a), eff. Sept. 1, 1995.

Sec. 63.002. EXEMPTION. This chapter does not affect Section 22.002, Education Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.17(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 12.01, eff. Sept. 1, 1999.

CHAPTER 64. REDEMPTION OF EMPLOYER'S EVIDENCES OF INDEBTEDNESS FOR WAGES

Sec. 64.001. DEFINITIONS. In this chapter:

(1) "Employer's evidence of indebtedness" means an instrument, other than money, used by a person to pay an employee or laborer of the person for labor or otherwise. The term includes:

(A) a coupon;

(B) a chip;

(C) scrip;

(D) a punchout; and

(E) a store order.

(2) "Holder" means an employee, laborer, or other bona fide holder who holds an employer's evidence of indebtedness.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.18(a), eff. Sept. 1, 1995.

Sec. 64.002. REDEMPTION OF EVIDENCE OF INDEBTEDNESS. (a) A person who uses an employer's evidence of indebtedness shall, on the demand for redemption and presentation of the employer's evidence of indebtedness by the holder on a regular payday, redeem the employer's evidence of indebtedness:

(1) for United States currency; and

(2) at the face value of the employer's evidence of indebtedness.

(b) The face value of an employer's evidence of indebtedness is currency equal to the cash value of the purchasing power in merchandise at the commissary or other repository of the person.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.18(a), eff. Sept. 1, 1995.

Sec. 64.003. ACTION TO ENFORCE REDEMPTION; PENALTY. (a) A holder who under Section 64.002 presents an employer's evidence of indebtedness and demands redemption is entitled, if the person using the employer's evidence of indebtedness refuses redemption, to recover from that person:

(1) the value of the employer's evidence of indebtedness;

(2) a penalty in an amount equal to 25 percent of the amount due; and

(3) costs of court and reasonable attorney's fees.

(b) The holder may bring an action under Subsection (a) in the holder's own name.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.18(a), eff. Sept. 1, 1995.

SUBTITLE D. EMPLOYEE BENEFITS

CHAPTER 81. WORK AND FAMILY POLICIES

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Work and family policies" means family-related employment policies, including:

(A) hiring and scheduling practices;

(B) employee benefits;

(C) dependent care assistance; and

(D) other terms of employment related to family.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 2, eff. May 30, 2005.

Acts 2023, 88th Leg., R.S., Ch. 846 (H.B. 2975), Sec. 1, eff. September 1, 2023.

Sec. 81.003. WORK AND FAMILY POLICIES RESOURCES. The commission shall maintain on its Internet website information and

resources for employers who are considering, selecting, or implementing work and family policies, together with an explanation that:

(1) the commission does not and may not provide legal advice; and

(2) an employer is not required by law to implement a work and family policy included on the commission's website.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 846 (H.B. 2975), Sec. 1, eff. September 1, 2023.

Sec. 81.0045. DEPENDENT CARE GRANT PROGRAM. (a) The commission may establish a grant program to provide funds to public or private persons to conduct demonstration dependent care projects.

(b) The commission shall adopt rules governing the submission and approval of grant requests and the cancellation of grants.

(c) To receive a grant, a person whose grant is approved must execute an interagency agreement or a contract with the commission. The contract must require the person receiving the grant to perform the services as stated in the approved grant request. The contract must contain appropriate provisions for program and fiscal monitoring.

Added by Acts 1995, 74th Leg., ch. 305, Sec. 4, eff. Sept. 1, 1995.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 846 (H.B. 2975), Sec. 1, eff. September 1, 2023.

Sec. 81.0046. PROMOTION OF WORK AND FAMILY POLICIES. In providing information and resources under this chapter, the commission may encourage employers to implement work and family policies by:

(1) providing examples of work and family policies or providing economic data that demonstrates the economic benefits realized by employers who implement work and family policies, including decreased absenteeism and turnover rates, greater productivity, and federal and state tax incentives;

(2) advertising the availability of federal and state tax incentives for work and family policies; and

(3) sharing other relevant information and resources provided to the commission voluntarily by employers, employees, and other stakeholders.

Added by Acts 2003, 78th Leg., ch. 1038, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 846 (H.B. 2975), Sec. 1, eff. September 1, 2023.

Sec. 81.005. SHARING MATERIALS ON WORK AND FAMILY POLICIES. The commission may share materials on work and family policies that are published by state agencies with employers, job applicants, and other interested persons.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 846 (H.B. 2975), Sec. 1, eff. September 1, 2023.

Sec. 81.007. RULES. The commission may adopt rules to implement this chapter.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 3, eff. May 30, 2005.
Acts 2023, 88th Leg., R.S., Ch. 846 (H.B. 2975), Sec. 1, eff. September 1, 2023.

Sec. 81.008. GIFTS, GRANTS, AND DONATIONS. (a) The commission may accept a gift or grant from a public or private entity to fund any activity under this chapter.

(b) The commission may accept a donation of money, services, or property only if the commission determines that the donation furthers the lawful purposes and objectives of the commission under this chapter and the donation is accepted in an open meeting by a majority

of the voting members of the commission. The donation must be reported in the public records of the commission with the name of the donor and the purpose of the donation. This subsection does not apply to information and resources voluntarily shared with the commission under Section 81.0046.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 846 (H.B. 2975), Sec. 1, eff. September 1, 2023.

CHAPTER 82. DISCHARGE OF LIABILITY UNDER CERTAIN EMPLOYEE BENEFIT PLANS

Sec. 82.001. DEFINITIONS. In this chapter:
(1) "Employee benefit plan" includes:
(A) a retirement benefits plan;
(B) a death benefits plan; and
(C) a savings plan.
(2) "Employer" includes a former employer.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

Sec. 82.002. DISCHARGE OF LIABILITY. (a) A payment or refund made by an employer or trustee under a written employee benefit plan to a person described by Subsection (b) fully discharges the employer or trustee from all adverse claims against the payment or refund unless, before making the payment, the employer or trustee receives a notice that some other person claims to be entitled to all or part of the payment or refund.
(b) Subsection (a) applies to a payment to:
(1) an employee;
(2) a former employee;
(3) an employee's or former employee's beneficiary, heir, or legatee; or
(4) a representative of an employee's or former employee's estate.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1,

1995.

Sec. 82.003. NOTICE. (a) The notice described by Section 82.002 must be received at:

(1) the employer's principal place of business in this state, if given to an employer; or

(2) the trustee's home office, if given to the trustee.

(b) The notice may be given by or on behalf of the other person.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

Sec. 82.004. CORPORATION MAY TRANSFER STOCK OWNERSHIP. A corporation, the stock of which is a part of a payment or refund that is made as provided by Section 82.002, may accept the stock for transfer as directed by the employer or trustee and treat the person to whom the stock is transferred as the owner of the stock for all purposes unless or until the corporation receives at its home office written notice by or on behalf of a person other than the person to whom the transfer is directed that the other person claims ownership of the stock or another interest in the stock.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

Sec. 82.005. LIMITED EFFECT. This chapter does not affect a claim or right to a payment or refund between persons other than:

(1) an employer or trustee that makes the payment or refund; or

(2) a corporation that accepts for transfer corporate stock that is a part of the payment or refund.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

SUBTITLE E. REGULATION OF CERTAIN OCCUPATIONS

CHAPTER 91. PROFESSIONAL EMPLOYER ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for a license or the renewal of a license under this chapter.

(2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 117, Sec. 28(1), eff. September 1, 2013.

(2-a) "Assurance organization" means an independent entity approved by the commission that:

(A) provides a national program of accreditation and financial assurance for professional employer organizations;

(B) has documented qualifications, standards, and procedures acceptable to the department; and

(C) agrees to provide information, compliance monitoring services, and financial assurance useful to the department in accomplishing the provisions of this chapter.

(3) "Client" means any person who enters into a professional employer services agreement with a license holder.

(3-a) "Coemployer" means a professional employer organization or a client that is a party to a coemployment relationship.

(3-b) "Coemployment relationship" means a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and this chapter.

(4) "Commission" means the Texas Commission of Licensing and Regulation.

(5) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 14.010(1).

(6) "Common ownership" means a direct or indirect ownership interest in excess of 33-1/3 percent. The term includes ownership through subsidiaries or affiliates.

(7) "Controlling person" means an individual who:

(A) possesses direct or indirect control of 25 percent or more of the voting securities of a business entity that offers or proposes to offer professional employer services;

(B) possesses the authority to set policy and direct management of a business entity that offers or proposes to offer

professional employer services;

(C) is employed, appointed, or authorized by a business entity that offers or proposes to offer professional employer services to enter into a professional employer services agreement with a client on behalf of the business entity; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer professional employer services.

(7-a) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client.

(8) "Department" means the Texas Department of Licensing and Regulation.

(8-a) "Executive director" means the executive director of the department.

(9) "Governmental entity" means this state, or an agency, county, or municipality of this state.

(10) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as the person desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

(11) "License holder" means a person licensed under this chapter to provide professional employer services.

(12) Repealed by Acts 2009, 81st Leg., R.S., Ch. 188, Sec. 6, eff. September 1, 2009.

(13) "Offer" means a proposal for acceptance or rejection that is made in such a form that the promises or performance to be rendered by each party are reasonably certain.

(14) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. The term does not include:

(A) temporary help;

(B) an independent contractor;

(C) the provision of services that otherwise meet the definition of "professional employer services" by one person solely to other persons who are related to the service provider by common ownership; or

(D) a temporary common worker employer as defined by Chapter 92.

(15) "Professional employer organization" means a business entity that offers professional employer services.

(16) "Temporary help" means an arrangement by which an organization hires its own employees and assigns them to a company to support or supplement the company's work force in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

(17) "Wages" means:

(A) compensation for labor or services rendered by a covered employee, whether computed on a time, task, piece, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, severance pay, bonuses, commissions, stock option grants, or deferred compensation owed to a covered employee under a written agreement.

(18) "Working capital" of an applicant means the applicant's current assets minus the applicant's current liabilities as determined by generally accepted accounting principles.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.001, 14.010(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 833, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 6, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 2, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 28(1), eff. September 1, 2013.

Sec. 91.0011. COEMPLOYMENT RELATIONSHIP. (a) A coemployment relationship is intended to be an ongoing relationship rather than a temporary or specific one, in which the rights, duties, and obligations of an employer that arise out of an employment relationship are allocated between coemployers under a professional employer services agreement. Coemployment is not a joint employment arrangement.

(b) In a coemployment relationship:

(1) the professional employer organization may enforce only those employer rights and is subject to only those obligations specifically allocated to the professional employer organization by the professional employer services agreement or this chapter;

(2) the client may enforce any right and is obligated to perform those employer obligations allocated to the client by the professional employer services agreement or this chapter; and

(3) the client may enforce any right and is obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer services agreement or this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 3, eff. September 1, 2013.

Sec. 91.0012. COVERED EMPLOYEE. (a) A covered employee must meet all the following criteria:

(1) the individual must receive written notice of the coemployment relationship with the professional employer organization; and

(2) the individual's coemployment relationship must be under a professional employer services agreement subject to this chapter.

(b) An individual who is an executive employee, as described by Section 406.097, of the client is a covered employee, except to the extent the professional employer organization and the client

expressly agree in the professional employer services agreement that the individual is not a covered employee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 3, eff. September 1, 2013.

Sec. 91.0013. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be in a coemployment relationship with:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 4, eff. September 1, 2015.

Sec. 91.002. RULES. (a) The commission shall adopt rules as necessary to administer this chapter.

(b) Each person who offers professional employer services is subject to this chapter and the rules adopted by the commission.

(c) Notwithstanding any other provision of this chapter, nothing in this chapter preempts the existing statutory or rulemaking authority of any other state agency or entity to regulate professional employer services in a manner consistent with the statutory authority of that state agency or entity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.002, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 4, eff. September 1, 2013.

Sec. 91.003. INTERAGENCY COOPERATION. (a) Each state agency that in performing duties under other law affects the regulation of professional employer services shall cooperate with the department and other state agencies as necessary to implement and enforce this chapter.

(b) In particular, the Texas Workforce Commission, the division of workers' compensation of the Texas Department of Insurance, the Department of Assistive and Rehabilitative Services, and the attorney general's office shall assist in the implementation of this chapter and shall provide information to the department on request.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 26.016, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.001, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 5, eff. September 1, 2013.

Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES. (a) This chapter does not exempt a client of a license holder, or any covered employee, from any other license requirements imposed under local, state, or federal law.

(b) A covered employee who is licensed, registered, or certified under law is considered to be an employee of the client for the purpose of that license, registration, or certification.

(c) A license holder is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer services agreement with a client and covered employees.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 4, eff. Sept.

1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client has entered into a professional employer services agreement with a license holder or uses the services of a license holder.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A certificate of insurance coverage or other evidence of coverage showing that either a license holder or a client maintains workers' compensation insurance coverage constitutes proof of workers' compensation insurance coverage for the license holder and the client with respect to all covered employees of the license holder and the client. The state and a political subdivision of the state shall accept a certificate of insurance coverage or other evidence of coverage described by this section as proof of workers' compensation coverage under Chapter 406.

(b) For a client that has employees who are not covered employees under a professional employer services agreement, the state or a political subdivision of the state may require the client to furnish separate proof of workers' compensation insurance coverage for those employees.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS. This chapter does not relieve a client of a right, obligation, or duty under:

(1) Chapter 101;

(2) the federal National Labor Relations Act (29 U.S.C. Section 151 et seq.);

(3) the federal Railway Labor Act (45 U.S.C. Section 151 et seq.); or

(4) any other law governing labor relations.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.008. APPLICABILITY OF CONTINUING EDUCATION LAW. Section 51.405, Occupations Code, does not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 14.003, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 91.011. LICENSE REQUIRED. A person may not engage in or offer professional employer services in this state unless the person holds a license issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.012. GENERAL LICENSE REQUIREMENTS. To be qualified to serve as a controlling person of a license holder under this chapter, that person must be at least 18 years of age and have educational, managerial, or business experience relevant to:

(1) operation of a business entity offering professional

employer services; or

(2) service as a controlling person of a professional employer organization.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.013. BACKGROUND INVESTIGATIONS. (a) On receipt of an original application for a license, the department shall conduct a thorough background investigation of each individual applicant and of each controlling person of each applicant to determine whether that applicant or controlling person is qualified under this chapter. The department may deny an application for the issuance of a license if the department finds that an applicant or a controlling person is not qualified under this chapter. The investigation must include:

(1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and

(2) examination by the department of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.

(b) Department background investigations are governed by this chapter, Section 411.122, Government Code, and Chapter 53, Occupations Code. Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewed license. The department shall consider criminal convictions as provided by Section 411.122, Government Code, and Chapter 53, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 6, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.815, eff. Sept. 1, 2001.

Sec. 91.014. WORKING CAPITAL REQUIREMENTS. (a) An applicant for an original or renewal license must demonstrate positive working

capital in the following amounts:

(1) $50,000 if the applicant employs fewer than 250 covered employees;

(2) $75,000 if the applicant employs at least 250 but not more than 750 covered employees; and

(3) $100,000 if the applicant employs more than 750 covered employees.

(b) The applicant shall demonstrate the applicant's working capital to the department by providing the department with the applicant's financial statement. The financial statement must be prepared in accordance with generally accepted accounting principles, be audited by an independent certified public accountant, and be without qualification as to the going concern status of the applicant. An applicant that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations must meet the financial capacity requirements required by Subsection (a) and provide the department with financial statements that have been reviewed by a certified public accountant.The applicant may satisfy any deficiencies in the working capital requirement through guarantees, letters of credit, a bond in an amount that demonstrates compliance with the amounts required under Subsection (a), or other security acceptable to the department. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty.

(c) Information submitted to or maintained by the department is subject to Chapter 552, Government Code, other than information related to:

(1) identification of clients;

(2) working capital;

(3) financial statements; or

(4) federal tax returns.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 2, eff. December 31, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 7, eff. September 1, 2013.

Sec. 91.015. LICENSE APPLICATION. (a) To receive a professional employer organization original license, a person shall file with the department a written application accompanied by the application fee.

(b) The department shall require an applicant for a license to provide information necessary to determine that the applicant meets the licensing requirements of this chapter. The department shall also require the applicant to provide information necessary to determine whether individuals affiliated with the applicant are qualified to serve as controlling persons.

(c) Before denying a license application, the department shall provide written notice to an applicant specifying the reasons for the denial. The department shall provide the applicant at least 30 days after the date of the notice to address the reasons for the denial. For good cause and on a showing of a good faith effort to remedy the reasons for the denial, the executive director may grant an additional 30 days to remedy the reasons for denial.

(d) Removal, demotion, or discharge of a controlling person in response to notice from the department of the alleged unsuitability of that controlling person is an affirmative defense to any claim by that individual based on the removal, demotion, or discharge.

(e) A controlling person who has been evaluated by the department under this chapter is not required to be reevaluated if that person changes the person's affiliation or employment from one applicant or license holder to another applicant or license holder.

(f) Following denial or revocation of a license, and prior to issuing a new license or reinstating a license, the department shall consider:

(1) the extent to which the applicant or license holder has adequately corrected any problems; and

(2) whether the applicant or license holder has demonstrated that the applicant or license holder had exercised due diligence to avoid the reason or reasons for the denial or revocation.

The applicant or license holder shall bear the burden of proof with respect to Subdivisions (1) and (2).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.017, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 8, eff. September 1, 2013.

Sec. 91.016. LICENSE ISSUANCE; TERM. (a) The department shall issue a license to an applicant who the department determines has met the requirements of this chapter. The department shall notify an applicant of any deficiency in the application not later than the 30th day after the date on which the department receives the application forms. The department shall issue the license not later than the 90th day after the date on which the completed application is filed with the department.

(b) A license issued or renewed by the department under this chapter is valid for one year from the date of the issuance or renewal. The department shall renew a license on receipt of a complete renewal application form and payment of the license renewal fee.

(c) Each applicant or license holder shall disclose to the department the addition of a new controlling person not later than the 45th day after the date on which the person assumes the duties of a controlling person. That person may serve as a controlling person while the department is conducting any necessary investigation. If the department determines not to approve the new controlling person, the department shall notify the applicant or license holder and that controlling person at least 20 days before taking action against the applicant or license holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.004, eff. Sept. 1, 2003.

Sec. 91.017. FEES. (a) Each applicant for an original or renewal professional employer organization license shall pay to the

department before the issuance of the license or license renewal a fee set by the commission by rule.

(b) The commission is authorized to charge reasonable fees for license applications and renewals, investigations, inspections, and any other administrative or enforcement responsibilities created under this chapter.

(c) Fees collected by the department under this chapter may be used only to implement this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 10, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.005, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 9, eff. September 1, 2013.

Sec. 91.018. LICENSE NOT ASSIGNABLE; CHANGE OF NAME OR LOCATION. (a) A license holder may not conduct business under any name other than that specified in the license. A license issued under this chapter is not assignable. A license holder may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another license holder that the public may be confused or misled by the name's use. A license holder may not conduct business under more than one name unless the license holder has obtained a separate license for each name.

(b) A license holder may change the license holder's licensed name at any time by notifying the department and paying a fee for each change of name. The commission by rule shall set the fee for a name change. A license holder may change the license holder's name on renewal of the license without the payment of the name change fee.

(c) A license holder must notify the department in writing of:

(1) any change in the location of the license holder's primary business office;

(2) the addition of more business offices; or

(3) a change in the location of business records maintained by the license holder.

(d) A license holder may amend the name specified in its license to add a trade name, trademark, service mark, or parent company name. An amendment made under this subsection must comply with the requirements imposed under Subsection (a). The department may charge a fee for processing of such an amendment.

(e) A license holder offering professional employer services in more than one state may advertise in this state using the name of its parent company or under a trade name, trademark, or service mark. The trade name, trademark, service mark, or parent company name must be listed on the license in addition to the licensed name used by the license holder in this state.

(f) Each written proposal provided to a prospective client and each contract between a license holder and a client or covered employee shall clearly identify the name of the license holder. A proposal or contract may also identify the trade name, trademark, service mark, or parent company name of the license holder. A license holder may use written materials including forms, benefit information, letterhead, and business cards that bear only the trade name, trademark, service mark, or parent company name of the license holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 11, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.006, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 10, eff. September 1, 2013.

Sec. 91.019. LIMITED LICENSE. (a) The commission by rule shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer services in this state.

(b) For purposes of this section, a professional employer organization is considered to be offering limited professional employer services if the professional employer organization:

(1) employs fewer than 50 covered employees in this state at any one time;

(2) does not provide covered employees to a client based or domiciled in this state; and

(3) does not maintain an office in this state or solicit clients located or domiciled in this state.

(c) A professional employer organization that offers limited professional employer services shall complete the application forms and pay the fees for a limited license as prescribed by the department. A limited license is valid for one year from the date of issuance and may be renewed annually on submission of a renewal application and payment of the required fees.

(d) The department may use information obtained from regulatory agencies in other states in evaluating an applicant for a limited license.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.007, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 11, eff. September 1, 2013.

Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The department may take disciplinary action against a license holder on any of the following grounds:

(1) engaging in professional employer services or offering to engage in the provision of professional employer services without a license;

(2) transferring or attempting to transfer a license issued under this chapter;

(3) violating this chapter or any order or rule issued by the executive director or commission under this chapter;

(4) failing after the 31st day after the date on which a felony conviction of a controlling person is final to notify the department in writing of the conviction;

(5) failing to cooperate with an investigation, examination, or audit of the license holder's records conducted by the license holder's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by law by the Texas Department of Insurance;

(6) failing after the 31st day after the effective date of

a change in ownership, principal business address, or the address of accounts and records to notify the department and the Texas Department of Insurance of the change;

(7) failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the executive director;

(8) refusing, after reasonable notice, to meet reasonable health and safety requirements within the license holder's control and made known to the license holder by a federal or state agency;

(9) being delinquent in the payment of the license holder's insurance premiums other than those subject to a legitimate dispute;

(10) being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;

(11) knowingly making a material misrepresentation to an insurance company or to the department or other governmental agency;

(12) failing to maintain the working capital required under Section 91.014; or

(13) using professional employer services to avert or avoid an existing collective bargaining agreement.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.008, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 12, eff. September 1, 2013.

Sec. 91.021. ELECTRONIC FILING AND COMPLIANCE. (a) The commission may adopt rules to permit the acceptance of electronic filings under this chapter, including the filing of applications, documents, reports, and other documents required by this chapter. The rules may provide for the acceptance of electronic filing and other assurance by an assurance organization, qualified and approved by the commission, that provides satisfactory assurance and documentation of compliance acceptable to the department that meets

or exceeds the requirements of this chapter.

(b) A professional employer organization may authorize an assurance organization that is qualified and approved by the commission to act on its behalf in complying with the licensing requirements of this chapter, including the electronic filing of information and the payment of application and licensing fees. Use of an assurance organization is optional and is not mandatory for a professional employer organization.

(c) Nothing in this section may be construed to change or affect the department's authority to issue licenses, revoke licenses, conduct investigations, or enforce any provision of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 4, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 13, eff. September 1, 2013.

SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES AGREEMENT

Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder shall establish the terms of a professional employer services agreement by a written contract between the license holder and the client.

(b) The license holder shall give written notice of the agreement as it affects covered employees to each covered employee.

(c) The written notice required by Subsection (b) must be given to each covered employee not later than the first payday after the date on which that individual becomes a covered employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 15, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 14, eff. September 1, 2013.

Sec. 91.032. CONTRACT REQUIREMENTS. (a) A professional employer services agreement between a license holder and a client must provide that the license holder:

(1) shares, as provided by Subsection (b), with the client

the right of direction and control over covered employees;

(2) assumes responsibility for the payment of wages to the covered employees without regard to payments by the client to the license holder;

(3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on covered employees;

(4) shares, as provided by Subsection (b), with the client the right to hire, fire, discipline, and reassign the covered employees; and

(5) shares, as provided by Subsection (b), with the client the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures.

(b) Notwithstanding any other provision of this chapter, a client retains sole responsibility for:

(1) the direction and control of covered employees as necessary to conduct the client's business, discharge any applicable fiduciary duty, or comply with any licensure, regulatory, or statutory requirement;

(2) goods and services produced by the client; and

(3) the acts, errors, and omissions of covered employees committed within the scope of the client's business.

(c) Notwithstanding Subsection (a)(2), a client is solely obligated to pay any wages for which:

(1) obligation to pay is created by an agreement, contract, plan, or policy between the client and the covered employee; and

(2) the professional employer organization has not contracted to pay.

(d) Each professional employer organization shall disclose the requirements of Subsection (c) in writing to each covered employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 771, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 833, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 14, eff. September 1, 2013.

SUBCHAPTER D. POWERS AND DUTIES OF LICENSE HOLDER

Sec. 91.041. EMPLOYEE BENEFIT PLANS; REQUIRED DISCLOSURE; OTHER REPORTS. (a) A client and license holder are each considered an employer under the laws of this state for purposes of sponsoring retirement and welfare benefit plans for covered employees.

(a-1) A license holder may sponsor a single welfare benefit plan under which eligible covered employees of one or more clients may elect to participate.

(a-2) A fully insured welfare benefit plan offered to the covered employees of a license holder and provided by an insurance company authorized to provide that insurance in this state or a self-funded health benefit plan sponsored by a license holder as provided by Section 91.0411 shall be treated for purposes of state law as a single employer welfare benefit plan.

(b) With respect to any insurance or benefit plan provided by a license holder for the benefit of its assigned employees, a license holder shall disclose the following information to the department, each client, and its covered employees:

(1) the type of coverage;

(2) the identity of each insurer for each type of coverage;

(3) the amount of benefits provided for each type of coverage and to whom or in whose behalf benefits are to be paid;

(4) the policy limits on each insurance policy; and

(5) whether the coverage is fully insured, partially insured, or fully self-funded.

(c) The commission by rule may require a license holder to file other reports that are reasonably necessary for the implementation of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 16, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.009, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 15, eff. September 1, 2013.

Sec. 91.0411. SELF-FUNDED HEALTH BENEFIT PLAN. (a) In this section, "commissioner" means the commissioner of insurance.

(b) A license holder may sponsor a benefit plan that is not

fully insured if the license holder meets the requirements of this section and is approved to sponsor the plan by the commissioner.

(c) The commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement the regulation of benefit plans sponsored by a license holder that are not fully insured. The commissioner may not adopt a rule that requires clients or covered employees to be members of an association or group in the same trade or industry in order to be covered by a license holder-sponsored benefit plan that is not fully insured. The rules must include all requirements that must be met by the license holder and the plan, including:

(1) initial and final approval requirements;

(2) authority to prescribe forms and items to be submitted to the commissioner by the license holder;

(3) a fidelity bond;

(4) use of an independent actuary;

(5) use of a third-party administrator;

(6) authority for the commissioner to examine an application or a plan;

(7) the minimum number of clients and covered employees covered by the plan;

(8) standards for those natural persons managing the plan;

(9) the minimum amount of gross contributions;

(10) the minimum amount of written commitment, binder, or policy for stop-loss insurance;

(11) the minimum amount of reserves; and

(12) a fee in an amount reasonable and necessary to defray the costs of administering this section to be deposited to the credit of the operating fund of the Texas Department of Insurance.

(d) Information submitted under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(e) Each license holder under this section shall appoint the commissioner as its resident agent for purposes of service of process. The fee for that service is $50, payable at the time of appointment.

(f) The commissioner may examine the affairs of any plan and shall have access to the records of the plan. The commissioner may examine under oath a manager or employee of the license holder in connection with the plan.

(g) In addition to any requirement or remedy under a law, the commissioner may suspend, revoke, or limit the authorization of a plan if the commissioner determines, after notice and hearing, that the plan does not comply with this section. The commissioner may notify the attorney general of a violation of this section, and the attorney general may apply to a district court in Travis County for leave to file suit in the nature of quo warranto or for injunctive relief or both.

(h) A plan under this section is subject to Chapters 401, 404, 441, and 443, Insurance Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 16, eff. September 1, 2013.

Sec. 91.042. WORKERS' COMPENSATION INSURANCE; ADMINISTRATIVE VIOLATION. (a) A license holder or client may elect to obtain workers' compensation insurance coverage for covered employees through an insurance company as defined under Section 401.011(28) or through self-insurance as provided under Chapter 407.

(a-1) The client and the professional employer organization shall specify in the professional employer services agreement whether the parties have elected to obtain workers' compensation insurance coverage for the covered employees and shall specify which party must maintain coverage. If the license holder maintains workers' compensation insurance coverage for the client, an individual who is an executive employee, as described by Section 406.097, of the client is eligible to be treated as an executive employee for premium calculation and classification purposes. A copy of the professional employer services agreement must be provided to the Texas Department of Insurance on request. Information obtained by the Texas Department of Insurance under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(a-2) If the client elects to maintain workers' compensation insurance coverage for the covered employees under the client's policy or other coverage, the client shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client.

(b) If a license holder maintains workers' compensation insurance coverage for covered employees, the license holder shall

pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client for the first two years the covered employees are covered under the professional employer organization's policy and as further provided by rule by the Texas Department of Insurance.

(c) For workers' compensation insurance purposes, a license holder and the license holder's client shall be coemployers. If either a license holder or a client elects to obtain workers' compensation insurance coverage for covered employees, the client and the license holder are subject to Sections 406.005, 406.034, 408.001, and 411.032.

(c-1) Notwithstanding Subsection (c), for purposes of Section 462.308(a)(2), Insurance Code, the client is considered to be the insured employer.

(d) If a license holder or a client does not elect to obtain workers' compensation insurance coverage for covered employees, both the license holder and the client are subject to Sections 406.004, 406.005, 406.033, and 411.032.

(e) After the expiration of the two-year period under Subsection (b), if the client elects to obtain workers' compensation insurance coverage for covered employees through coverage maintained by the client, or if the professional employer services agreement is terminated and the client elects to maintain, through coverage maintained by the client or through coverage maintained by a successor professional employer organization, workers' compensation insurance coverage for employees previously covered by the former professional employer organization's policy, the premium for the workers' compensation insurance coverage for the client shall be based on the lower of:

(1) the experience modifier of the client before being covered under the professional employer organization's coverage; or

(2) the experience modifier of the license holder at the time the client's coverage under the professional employer organization's coverage is terminated.

(f) On request, an insurer shall provide the necessary computations to the prospective workers' compensation insurer of the client to comply with Subsection (e).

(g) On the written request of a client, a license holder that elects to provide workers' compensation insurance for covered employees shall provide to the client a list of:

(1) claims associated with that client made against the license holder's workers' compensation policy; and

(2) payments made and reserves established on each claim.

(h) The license holder shall provide the information described by Subsection (g) in writing from the license holder's own records, if the license holder is a qualified self-insurer, or from information the license holder received from the license holder's workers' compensation insurance provider following the license holder's request under Section 2051.151, Insurance Code, not later than the 60th day after the date the license holder receives the client's written request. For purposes of this subsection, information is considered to be provided to the client on the date the information is:

(1) received by the United States Postal Service; or

(2) personally delivered to the client.

(i) A license holder that fails to comply with Subsection (g) or (h) commits a Class D administrative violation as provided by Section 415.011.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. 625), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. 625), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 17, eff. September 1, 2013.

Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL. (a) A license holder is the employer of a covered employee for purposes of Subtitle A, Title 4, and, except for wages subject to Section 91.032(c), for purposes of Chapter 61.

(a-1) A license holder may, in a calendar year during which an employee becomes a covered employee of the license holder, apply toward the maximum amount of taxable wages established in Section 201.082(1) any wages paid to the employee in that calendar year by:

(1) the client; or

(2) another license holder under a prior professional

employer services agreement with that client.

(a-2) In addition to any other reports required to be filed by law, a license holder shall report quarterly to the Texas Workforce Commission on a form prescribed by the Texas Workforce Commission the name, address, telephone number, federal income tax identification number, and classification code according to the North American Industry Classification System of each client.

(b) For purposes of Subtitle A, Title 4, in the event of the termination of a contract between a license holder and a client or the failure by a professional employer organization to submit reports or make tax payments as required by that subtitle, the contracting client shall be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 17, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 833, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1260 (H.B. 3150), Sec. 1, eff. September 1, 2015.

Sec. 91.045. POSTING REQUIREMENTS. (a) Each license holder shall post in a conspicuous place in the license holder's principal place of business in this state the license issued under this chapter.

(b) Each license holder shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the department and that any questions or complaints should be directed to the department.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is responsible for the license holder's contractual duties and

responsibilities to manage, maintain, collect, and make timely payments for:

(1) insurance premiums;

(2) benefit and welfare plans;

(3) other employee withholding; and

(4) any other expressed responsibility within the scope of the professional employer services agreement for fulfilling the duties imposed under this section and Sections 91.032, 91.047, and 91.048.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Sec. 91.047. COMPLIANCE WITH OTHER LAWS. Each license holder shall comply with all appropriate state and federal laws relating to reporting, sponsoring, filing, and maintaining benefit and welfare plans.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.048. REQUIRED INFORMATION. Each license holder shall:

(1) maintain adequate books and records regarding the license holder's duties and responsibilities;

(2) maintain and make available at all times to the executive director the following information, which shall be treated as proprietary and confidential and is exempt from disclosure to persons other than other governmental agencies having a reasonable, legitimate purpose for obtaining the information:

(A) the correct name, address, and telephone number of each client;

(B) each professional employer services agreement with a client; and

(C) a listing by classification code as described in the "Standard Industrial Classification Manual" published by the United States Office of Management and Budget, of each client;

(3) notify the department of any addition or deletion of a controlling person as listed on the license application or renewal form by providing the name of the person not later than the 45th day after the date on which the person is added or deleted as a controlling person; and

(4) provide a biographical history to the department in connection with the addition of a new controlling person.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 18, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 26.018, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Sec. 91.049. AGENT FOR SERVICE OF PROCESS. Each license holder shall maintain a registered agent for the service of process in this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For the purpose of determining tax credits, grants, and other economic incentives provided by this state or other governmental entities that are based on employment, covered employees are considered employees of the client and the client is solely entitled to the benefit of any tax credit, economic incentive, or other benefit arising from the employment of covered employees of the client. This subsection applies even if the professional employer organization is the reporting employer for federal income tax purposes.

(b) If a grant or the amount of any incentive described by Subsection (a) is based on the number of employees, each client shall be treated as employing only those employees coemployed by the client. Covered employees working for other clients of the professional employer organization may not be included in the computation.

(c) Each professional employer organization shall provide, on

the request of a client or an agency of this state, employment information reasonably required by the state agency responsible for the administration of any tax credit or economic incentive described by Subsection (a) and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

Added by Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 5, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

SUBCHAPTER E. PROHIBITED ACTS; ENFORCEMENT

Sec. 91.061. PROHIBITED ACTS. A person may not:

(1) engage in or offer professional employer services without holding a license under this chapter as a professional employer organization;

(2) use the name, title, or designation "professional employer organization," "PEO," "staff leasing company," "employee leasing company," "licensed professional employer organization," "professional employer organization services company," "professional employer organization company," or "administrative employer" or otherwise represent that the entity is licensed under this chapter unless the entity holds a license issued under this chapter;

(3) represent as the person's own the license of another person or represent that a person is licensed if the person does not hold a license;

(4) give materially false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under this chapter; or

(5) use or attempt to use a license that has expired or been revoked.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 19, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Sec. 91.062. ACTION BY ATTORNEY GENERAL. (a) The executive director may notify the attorney general of a violation of this chapter. The attorney general may apply to a district court in Travis County for permission to file for quo warranto relief, injunctive relief, or both.

(b) The attorney general may not be required to post a bond for injunctive relief under this section.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.019, eff. Sept. 1, 2003.

CHAPTER 92. TEMPORARY COMMON WORKER EMPLOYERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. PURPOSE. (a) The legislature finds that this chapter is necessary to:

(1) provide for the health, safety, and welfare of common workers throughout this state; and

(2) establish uniform standards of conduct and practice for temporary common worker employers in this state.

(b) This chapter shall be implemented in accordance with these purposes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.001, eff. September 1, 2017.

Sec. 92.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(1), eff. September 1, 2017.

(2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 16.004(1).

(3) "Common worker" means an individual who performs labor involving physical tasks that do not require:

(A) a particular skill;

(B) training in a particular occupation, craft, or trade; or

(C) practical knowledge of the principles or processes of an art, science, craft, or trade.

(4) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(1), eff. September 1, 2017.

(4-a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(1), eff. September 1, 2017.

(5) "Governmental subdivision" means a municipality, county, special district, zone, authority, or other entity that is chartered, created, or authorized by this state.

(6) "Labor hall" means a central location maintained by a temporary common worker employer where common workers assemble and are dispatched to work for a user of common workers.

(6-a) "Municipality" has the meaning assigned by Section 1.005, Local Government Code.

(7) "Temporary common worker employer" means a person who provides common workers to a user of common workers. The term includes a temporary common worker agent or temporary common worker agency.

(8) "User of common workers" means a person who uses the services of a common worker provided by a temporary common worker employer.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 16.001, 16.004(1), eff. Sept. 1, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.002, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(1), eff. September 1, 2017.

SUBCHAPTER B. AUTHORITY TO OPERATE

Sec. 92.0115. AUTHORITY TO OPERATE. Subject to Section 92.013 and unless prohibited by a governmental subdivision, a person may operate as a temporary common worker employer in this state if the person meets the requirements of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.004,

eff. September 1, 2017.

Sec. 92.012. EXEMPTIONS. This chapter does not apply to:

(1) a temporary skilled labor agency;

(2) a professional employer organization;

(3) an employment counselor;

(4) a talent agency;

(5) a labor union hiring hall;

(6) a temporary common worker employer that does not operate a labor hall;

(7) a labor bureau or employment office operated by a person for the sole purpose of employing an individual for the person's own use; or

(8) an employment service or labor training program provided by a governmental entity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.005, eff. September 1, 2017.

Sec. 92.013. EFFECT OF OTHER REGULATION. (a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(5), eff. September 1, 2017.

(b) A municipality with a population greater than one million may establish municipal requirements that impose stricter standards of conduct and practice than those imposed under Subchapter C.

(c) This chapter does not restrict the zoning authority of a municipality.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 59, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.006, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(5), eff. September 1, 2017.

SUBCHAPTER C. STANDARDS OF CONDUCT AND PRACTICE

Sec. 92.021. POWERS AND DUTIES OF EMPLOYER. (a) Each temporary common worker employer is the employer of the common workers provided by that temporary common worker employer.

(b) A temporary common worker employer may hire, reassign, control, direct, and discharge the employees of the temporary common worker employer.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.008, eff. September 1, 2017.

Sec. 92.022. REQUIRED RECORDS; CONFIDENTIALITY. (a) Each temporary common worker employer shall maintain and make available to a governmental subdivision records that show for each common worker provided by the temporary common worker employer to a user of common workers:

(1) the name and address of the worker;

(2) the hours worked;

(3) the places at which the work was performed;

(4) the wages paid to the worker; and

(5) any deductions made from those wages.

(b) The temporary common worker employer shall maintain the records at least until the second anniversary of the date on which the worker was last employed by the temporary common worker employer.

(c) Information received by the governmental subdivision under this section is privileged and confidential and is for the exclusive use of the governmental subdivision. The information may not be disclosed to any other person except on the entry of a court order requiring disclosure or on the written consent of a person under investigation who is the subject of the records.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1,

1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 16.003, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.009, eff. September 1, 2017.

Sec. 92.023. POSTING OF CERTAIN INFORMATION. (a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(8), eff. September 1, 2017.

(b) Each temporary common worker employer shall post in a conspicuous place in the premises on which the temporary common worker employer operates a notice of any charge permitted under this chapter that the temporary common worker employer may assess against a common worker for equipment, tools, transportation, or other work-related services.

(c) For purposes of this section, "conspicuous place" means a location that is in open view to the general public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.010, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.014(8), eff. September 1, 2017.

Sec. 92.024. LABOR HALL REQUIREMENTS. A temporary common worker employer that operates a labor hall as part of a premises on which the temporary common worker employer operates shall provide adequate facilities for a worker waiting for a job assignment. The facilities must include:

(1) restroom facilities for both men and women;
(2) drinking water;
(3) sufficient seating; and
(4) access to vending refreshments and food.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.011, eff. September 1, 2017.

Sec. 92.025. CERTAIN CHARGES AND DEDUCTIONS PROHIBITED. (a) A temporary common worker employer may not charge a common worker for:

(1) safety equipment, clothing, or accessories required by the nature of the work, either by law, custom, or the requirements of the user of common workers;

(2) uniforms, special clothing, or other items required as a condition of employment by the user of common workers;

(3) the cashing of a check or voucher; or

(4) the receipt by the worker of earned wages.

(b) A temporary common worker employer may not deduct or withhold any amount from the earned wages of a common worker except:

(1) a deduction required by federal or state law; or

(2) a reimbursement for a cash advance made to the worker during the same pay period.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.012, eff. September 1, 2017.

SUBCHAPTER D. ENFORCEMENT

Sec. 92.031. ENFORCEMENT. A governmental subdivision may enforce this chapter within the boundaries of the governmental subdivision.

Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 7.013, eff. September 1, 2017.

CHAPTER 93. TEMPORARY EMPLOYMENT SERVICES

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Temporary employee" means an individual hired for a temporary employment service.

(2) "Temporary employment service" means a person who employs individuals for the purpose of assigning those individuals to

the clients of the service to support or supplement the client's workforce in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

Added by Acts 1997, 75th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1997.

Sec. 93.002. PROHIBITION. A temporary employment service may not deny an application for, or placement in, a position of employment to an individual for the sole reason that the individual has not earned a high school diploma or graduate equivalency diploma unless the position of employment or the client requires that credential to perform the duties of the position.

Added by Acts 1997, 75th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1997.

Sec. 93.003. NO CAUSE OF ACTION. This chapter does not create a private cause of action for any person or class of persons.

Added by Acts 1997, 75th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1997.

Sec. 93.004. WORKERS' COMPENSATION INSURANCE COVERAGE. (a) A certificate of insurance coverage showing that a temporary employment service maintains a policy of workers' compensation insurance constitutes proof of workers' compensation insurance coverage for the temporary employment service and the client of the temporary employment service with respect to all employees of the temporary employment service assigned to the client. The state or a political subdivision of the state shall accept a certificate of insurance coverage described by this section as proof of workers' compensation coverage under Chapter 406.

(b) For workers' compensation insurance purposes, if a temporary employment service elects to obtain workers' compensation insurance, the client of the temporary employment service and the temporary employment service are subject to Sections 406.034 and 408.001.

(c) Except as provided by Subsection (d), an employee's election under Section 406.034(b) made with respect to the temporary employment service applies to any client of the temporary employment service, and the employee may not make a separate election under that section with respect to the client.

(d) If an employee elects to retain a common-law right of action under Section 406.034(b) with respect to the temporary employment service, that election does not apply to a client of that temporary employment service if the client is not subject to Section 406.034.

Added by Acts 2013, 83rd Leg., R.S., Ch. 321 (H.B. 1762), Sec. 1, eff. September 1, 2013.

TITLE 3. EMPLOYER-EMPLOYEE RELATIONS
CHAPTER 101. LABOR ORGANIZATIONS
SUBCHAPTER A. RIGHTS OF WORKING PERSONS

Sec. 101.001. RIGHT TO ORGANIZE. All persons engaged in any kind of labor may associate and form trade unions and other organizations to protect themselves in their personal labor in their respective employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.002. RIGHT TO INFLUENCE ANOTHER REGARDING EMPLOYMENT. (a) A person by peaceful and lawful means may induce or attempt to induce another to:

(1) enter or refuse to enter a particular employment; or

(2) quit a particular employment in which the other person is then engaged.

(b) A member of a trade union or other organization may not enter the premises of another without the consent of the owner of the premises.

(c) This section does not apply to an association formed, an act taken, or an agreement made:

(1) to limit the production, transportation, use, or consumption of labor's products; or

(2) that creates a trust or conspiracy in restraint of trade under the laws of this state.

(d) Subsection (c) does not interfere with the terms of a private contract between an employer and an employee with regard to the time of service or other stipulations.

(e) Subsection (c) may not be construed as repealing or affecting a statute on trusts, conspiracies against trade, pools, or monopolies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.003. RIGHT TO BARGAIN. A person's inherent right to work and to bargain freely with the person's employer, individually or collectively, for terms of the person's employment may not be denied or infringed by law or by any organization.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.004. CONTRACT FOR WITHHOLDING UNION DUES FROM EMPLOYEE'S COMPENSATION VOID WITHOUT EMPLOYEE'S CONSENT. A contract that permits or requires the retention of part of an employee's compensation to pay dues or assessments on the employee's part to a labor union is void unless the employee delivers to the employer the employee's written consent to the retention of those sums.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. RIGHT TO WORK

Sec. 101.051. DEFINITION. In this subchapter, "labor union" means an incorporated or unincorporated association, group, union, lodge, local, branch, or subordinate organization of a union of working persons organized and existing to protect those persons and to improve their working conditions, wages, or employment relationships, but does not include an organization not commonly regarded as a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.052. DENIAL OF EMPLOYMENT BASED ON LABOR UNION

MEMBERSHIP PROHIBITED. A person may not be denied employment based on membership or nonmembership in a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.053. CONTRACT REQUIRING OR PROHIBITING LABOR UNION MEMBERSHIP VOID. A contract is void if it requires that, to work for an employer, employees or applicants for employment:

(1) must be or may not be members of a labor union; or

(2) must remain or may not remain members of a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. REGULATION OF LABOR UNIONS

Sec. 101.101. DEFINITIONS. In this subchapter:

(1) "Enforcement officer" means the attorney general, district attorney, or county attorney.

(2) "Labor organizer" means a person who for a financial consideration solicits membership in a labor union or members for a labor union.

(3) "Labor union" means an incorporated or unincorporated association, group, union, lodge, local, branch, or subordinate organization of a union of working persons organized and existing to protect those persons and to improve their working conditions, wages, or employment relationships, but does not include an organization not commonly regarded as a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.102. LEGISLATIVE FINDINGS; POLICY. (a) The legislature finds that because the activities of labor unions affect the economic conditions of the country and the state by entering into almost all business and industrial enterprises, labor unions affect the public interest and are charged with a public use.

(b) Workers must be protected without regard to whether they are unionized. The right to work is the right to live.

(c) The policy of this state, in the exercise of its sovereign constitutional police power, is to regulate the activities and

affairs of labor unions and officers, agents, organizers, and representatives of labor unions, as provided by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.103. LIBERAL CONSTRUCTION. (a) This subchapter shall be liberally construed to:

(1) achieve the purposes provided by Section 101.102; and

(2) protect the rights of working persons to work and to organize for their mutual benefit in connection with their work.

(b) This subchapter may not be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing, regarding a matter affecting labor or employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.104. METHOD OF ELECTION OF OFFICERS, AGENTS, ORGANIZERS, AND REPRESENTATIVES. (a) An officer, agent, organizer, or representative of a labor union must be elected by secret ballot and by majority vote of the members present and participating, except as provided by Subsections (b) and (c) and Section 101.108.

(b) A labor union may require more than a majority vote for the election of an officer, agent, organizer, or representative.

(c) A labor union may take a vote of the entire membership for an officer, agent, organizer, or representative by mailed ballots.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.105. ANNUAL ELECTION OF OFFICERS, AGENTS, ORGANIZERS, AND REPRESENTATIVES. An election for labor union officers, agents, organizers, and representatives must be held at least once each year, except as provided by Section 101.108.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.106. NOTICE OF ELECTION. Except as provided by Section 101.108, a labor union shall give members at least seven

days' notice of an election under Section 101.105. The notice must be given in the manner most convenient to the union by:

(1) written or printed notice mailed to the member's last known address;

(2) posting notice in a place public to the membership; or

(3) announcement at a regular stated meeting of the union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.107. RESULTS OF ELECTION. The results of an election held under Section 101.105 shall be determined and declared by the president and the secretary at the time in the presence of the members or delegates participating, except as provided by Section 101.108.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.108. CERTAIN UNIONS EXCEPTED. Sections 101.104-101.107 do not apply to a union that:

(1) under its constitution, bylaws, or other organization rules, held its elections for officers and representatives every three years or every four years, for the four years ending August 10, 1943; and

(2) charged members an initiation fee of $10 or less, for the 10 years ending August 10, 1943.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.109. CERTAIN PERSONS PROHIBITED FROM HOLDING OFFICE. (a) A person may not serve as a labor union officer or as a labor organizer if the person:

(1) is an alien; or

(2) has been convicted of a felony.

(b) Subsection (a) does not apply to a person who has been convicted of a felony and whose rights of citizenship have been fully restored.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.110. LABOR ORGANIZERS; ORGANIZER'S CARD. (a) A labor organizer operating in this state must apply in writing for an organizer's card before soliciting members for the organizer's organization.

(b) An application for an organizer's card must:

(1) be filed with the secretary of state by mail or in person;

(2) state the applicant's full name and labor union affiliations, if any;

(3) describe the applicant's credentials;

(4) be accompanied by a copy of the applicant's credentials; and

(5) be signed by the applicant.

(c) On the filing of an application for an organizer's card, the secretary of state shall issue the applicant a card containing:

(1) the applicant's name;

(2) the applicant's union affiliation;

(3) a space for the applicant's signature;

(4) the designation "labor organizer"; and

(5) the secretary of state's signature, dated and attested by the state seal.

(d) A labor organizer shall:

(1) carry the card issued under Subsection (c) whenever the organizer is soliciting members; and

(2) exhibit the card on request of a person being solicited for membership.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.21(a), eff. Sept. 1, 1995.

Sec. 101.111. FEE FOR PRIVILEGE TO WORK PROHIBITED. (a) A labor union, a labor organizer, or an officer, member, agent, or representative of a labor union may not collect, receive, or demand, directly or indirectly, a fee as a work permit or as a condition for the privilege to work from a person who is not a member of the union.

(b) Subsection (a) does not prevent the collection of an initiation fee as provided by Section 101.113.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.112. EXCESSIVE FEES PROHIBITED. (a) A labor union or an officer, agent, or member of a labor union may not charge or receive initiation fees, dues, fines, or other assessments to create a fund that exceeds the reasonable requirements of the union in carrying out its lawful purposes or activities, if the fees, dues, fines, or other assessments create an undue hardship on an applicant for initiation to the union or on union members.

(b) Subsection (a) may not be construed to prevent dues or other assessments:

(1) for a purpose that is beneficial to union members according to established practice, including the maintenance or investment of funds for those beneficial purposes;

(2) if the members who contribute share in or may reasonably expect to share in the benefits, for:

(A) old age benefits;

(B) death and burial benefits;

(C) hospitalization, unemployment, health and accident, retirement, or other forms of mutual insurance;

(D) legislative representation;

(E) a grievance committee;

(F) gifts, floral offerings, or other charitable purposes; or

(G) any other legitimate purpose; or

(3) for placement in a fund to be used by the union in paying its members while they are on strike, if:

(A) initiation fees are not placed in the fund; and

(B) the fund remains under the members' control.

(c) This section shall be liberally construed to prevent excessive initiation fees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.113. ADVANCE FEES. (a) On payment in full by an applicant for labor union membership of all initiation fees or dues regularly assessed by the union, the union shall:

(1) elect the applicant to membership; or

(2) immediately return in full the money paid by the applicant.

(b) On election of an applicant to labor union membership, advance fees paid by the applicant may be used by the union for the purposes for which the fees were advanced.

(c) A labor union or an officer, agent, or member of a labor union shall collect all fees in good faith. A labor union may not elect a person to membership merely to obtain the person's initiation fee.

(d) A labor union may not collect an initiation fee from a member and then discharge or suspend the member, or cause the member's employer to discharge the member, without reasonable and just cause.

(e) A labor union that violates Subsection (d) is subject to the civil penalty provided by Section 101.121.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.114. FEE RECEIPT REQUIRED. A labor organizer or an officer, agent, or member of a labor union may not collect a fee, dues, or other sum in connection with membership in a labor union from a person without giving the person at that time a receipt that:

(1) is signed by the labor organizer, officer, agent, or member; and

(2) states that the sum of money received is to be:

(A) delivered to the labor union; and

(B) held intact until the person has been elected and has become a bona fide voting member of the union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.115. CONSTRUCTION OF FEE RESTRICTIONS. Sections 101.111, 101.113, and 101.114 may not be construed as preventing any type of bargaining agreement or limiting the bargaining power of a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.116. MEMBER IN ARMED FORCES. A union member who, because of service with the United States armed forces, has been unable to pay any dues or assessment levied by a union to which the member belonged may not be required to make the back payments as a condition to reinstatement in good standing as a member.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.117. REASONABLE TIME FOR DECISION ON MEMBERSHIP REQUIRED. A labor union may not refuse to give a person desiring membership in the union a reasonable time after obtaining the promise of employment in which to decide whether to join the union as a condition of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.118. EXPULSION OF MEMBER. (a) A labor union may not expel a union member without:

(1) good cause; and

(2) a fair and public hearing by and within the organization, after due notice and an opportunity to be heard on the specific charges alleged.

(b) On the petition of a member expelled from a labor organization, a court of competent jurisdiction shall order the reinstatement of the member if the member was expelled without good cause.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.119. RECORDS. (a) Each labor union in this state shall keep accurate books of accounts that:

(1) itemize each receipt from any source;

(2) itemize each expenditure for any purpose; and

(3) state the source of each receipt and the purpose of each expenditure.

(b) A member of a labor union is entitled to inspect the books, records, and accounts of the union at any reasonable time.

(c) The attorney general, or, subject to the attorney general's

approval, a district attorney or county attorney, is entitled to inspect on demand the books, records, and accounts of a labor union at any reasonable time.

(d) The books, records, and accounts of a labor union are open to grand juries and judicial and quasi-judicial inquiries in legal proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.120. REPORTS. A labor union required to file reports with the United States Secretary of Labor under Section 201, Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Section 431) or a successor statute shall file a copy of each report with the secretary of state not later than the 30th day after the date the report was filed with the secretary of labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.121. CIVIL PENALTY. A labor union that violates a provision of this subchapter is liable for a civil penalty not to exceed $1,000 for each violation. The civil penalty may be recovered in the name of the state, acting through an enforcement officer, in a court of competent jurisdiction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.122. ENFORCEMENT BY CIVIL PROCESS. (a) A district court has jurisdiction, on the application of the state acting through an enforcement officer, to issue a restraining order, a temporary or permanent injunction, or any other writ or process appropriate to enforce this subchapter.

(b) A proceeding under Subsection (a) shall be instituted, prosecuted, and tried in the same manner as another civil case of a similar nature in the district court.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.123. OFFENSE; PENALTY. (a) A labor union officer or a labor organizer commits an offense if the person violates a provision of this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $500;

(2) confinement in the county jail for not more than 60 days; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.124. ENFORCEMENT OFFICERS. The attorney general, and each district attorney and county attorney, within the attorney's respective jurisdiction, shall:

(1) prosecute all criminal proceedings under this subchapter; and

(2) institute and maintain all civil proceedings under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. PICKETING

Sec. 101.151. DEFINITION. In this subchapter, "picketing" includes the stationing of a person for an organization to:

(1) induce anyone not to enter the premises being picketed;

(2) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(3) follow employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.152. MASS PICKETING PROHIBITED. (a) A person may not engage in any form of picketing activity in which a picket constitutes any character of obstacle to the free ingress to and egress from an entrance to any premises, either by obstructing the

free ingress and egress with the person's body or by placing a vehicle or other physical obstruction.

(b) In this section, "picket" includes a person:

(1) stationed by or acting for an organization to:

(A) induce anyone not to enter the premises being picketed; or

(B) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(2) who follows employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.153. USE OF INSULTING, THREATENING, OR OBSCENE LANGUAGE PROHIBITED. A person may not, by use of insulting, threatening, or obscene language, interfere with or intimidate or seek to interfere with or intimidate another:

(1) in the exercise of the other person's lawful right to work or to enter on the performance of a lawful vocation; or

(2) from freely entering or leaving any premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.154. PICKETING INTENDED TO SECURE BREACH OF LABOR AGREEMENT PROHIBITED. A person may not engage in picketing the purpose of which, directly or indirectly, is to secure the disregard or breach of a valid existing labor agreement arrived at between an employer and the representatives:

(1) designated by the employees for the purpose of collective bargaining; or

(2) certified as the bargaining unit under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.155. DECLARATION OR PUBLICATION OF CONTINUATION OF ENJOINED PICKETING PROHIBITED. A person may not declare or publicize

the continued existence of actual or constructive picketing at a point or directed against a premises after a court of competent jurisdiction has enjoined the continuation of that picketing at that point or premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.156. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 101.152, 101.153, 101.154, or 101.155. Each separate act of violation constitutes a separate offense.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 nor more than $500;

(2) confinement in jail for not more than 90 days; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. SECONDARY PICKETING

Sec. 101.201. SECONDARY PICKETING PROHIBITED. (a) A person may not establish, call, participate in, or aid picketing at or near the premises of an employer with whom a labor dispute does not exist.

(b) In this section:

(1) "Employee" includes any person working for another for hire in this state, but does not include an independent contractor.

(2) "Employer" means any person who engages the services of an employee.

(3) "Labor dispute" means a controversy concerning wages, hours, or conditions of employment between an employer and employees. A controversy is not a labor dispute if the employees do not have a real and substantial economic interest in the work performed for the employer.

(4) "Picket" includes a person:

(A) stationed by or acting in behalf of an organization to:

(i) induce anyone not to enter the premises being picketed;

(ii) apprise the public by signs or other means of

the existence of a labor dispute at or near the premises being picketed; or

(iii) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(B) who follows employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.202. OFFENSE; PENALTY. (a) A person commits an offense if the person violates any provision of this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $500;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.203. CIVIL LIABILITY. (a) A person who violates any provision of this subchapter is liable to a person damaged by the violation for the damages resulting from the violation.

(b) A person damaged by a violation of this subchapter may maintain an action to redress the damage and may obtain injunctive relief.

(c) An association or labor union that represents or purports to represent a person who violates any provision of this subchapter is jointly and severally liable with the person for the damages resulting from the violation.

(d) In this section, "labor union" means any incorporated or unincorporated association, group, union, national or local, branch, or subordinate organization of a union of working persons organized and existing in part to protect those persons and to improve their working conditions, wages, or employment relationships and includes the local, state, national, and international affiliates of those organizations.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.204. ENFORCEMENT. The state, acting through the attorney general or a district attorney or county attorney, may institute a suit in district court to enjoin a person from violating this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.205. VENUE. Venue for a suit or cause of action arising under this subchapter is in:

(1) the county in which the violation is alleged to have occurred;

(2) the county in which the defendant resides; or

(3) if there are two or more defendants, a county in which any defendant resides.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. LIABILITY OF LABOR ORGANIZATION FOR DAMAGES

Sec. 101.251. DEFINITIONS. In this subchapter:

(1) "Labor organization" means any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions.

(2) "Picketing" includes the stationing of a person for an organization to:

(A) induce anyone not to enter the premises being picketed;

(B) apprise the public by signs or other means of the existence of a dispute;

(C) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(D) follow employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.252. LIABILITY OF LABOR ORGANIZATION. A labor organization whose members picket or strike against a person is liable for damages for a loss resulting to the person because of the picketing or strike if a court of competent jurisdiction holds that the picketing or strike is a breach of contract.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. INTERFERENCE WITH RIGHT TO WORK

Sec. 101.301. INTERFERENCE WITH RIGHT TO WORK; LIABILITY. (a) The right of a person to work may not be denied or abridged because of membership or nonmembership in a labor union or other labor organization.

(b) In the exercise of the right to work, each person shall be free from threats, force, intimidation, or coercion.

(c) A person who violates this subchapter is liable to a person who suffers from that violation for all resulting damages.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.22, eff. Sept. 1, 1995.

Sec. 101.302. INJUNCTIVE RELIEF. (a) The attorney general or a district or county attorney may bring an action in district court to enjoin a violation of this subchapter.

(b) The district courts shall grant injunctive relief when a violation of this subchapter is made apparent.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.22, eff. Sept. 1, 1995.

Sec. 101.303. ASSIGNMENT OF DISTRICT JUDGE. Not later than the second day after the receipt of notice of institution of a cause of action under this subchapter, a party to the cause of action may apply to the presiding judge of the administrative judicial region within which the action is brought. The presiding judge shall immediately assign a district judge from within the administrative judicial region who shall hear all proceedings in the cause of action.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.22, eff. Sept. 1, 1995.

CHAPTER 102. LABOR ARBITRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. DEFINITION. In this chapter, "board" means an arbitration board appointed under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.002. DISPUTE RESOLUTION THROUGH ARBITRATION. (a) An employer and employees may submit a dispute or grievance resulting from the employer's and employees' work relationship to a board for a hearing and determination.

(b) An arbitration may not be conducted under this chapter without the consent of all parties involved in the dispute or grievance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. SELECTION OF BOARD AND OFFICERS

Sec. 102.011. NUMBER OF BOARD MEMBERS. A board established under this chapter must be composed of five members.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1. 1993.

Sec. 102.012. EMPLOYER REPRESENTATION ON BOARD. The employer may designate two arbitrators to serve on the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.013. EMPLOYEE REPRESENTATION ON BOARD. (a) In a dispute or grievance in which the affected employees are members in good standing of a labor organization:

(1) if the organization is represented by a delegate in a central body, the central body may designate two arbitrators to serve on the board; and

(2) if the organization is not represented by a delegate in a central body, the organization may designate two arbitrators to serve on the board.

(b) In a dispute or grievance in which all of the affected employees are not represented by a labor organization, the labor organization in concurrent action with a majority of those employees not represented by a labor organization may designate two arbitrators to serve on the board.

(c) In a dispute or grievance that concerns two or more classes or grades of employees who belong to different labor organizations, the labor organizations in concurrent action may designate two arbitrators to serve on the board.

(d) If the employees concerned in the dispute or grievance are not members of a labor organization, those employees shall call a meeting to elect by majority vote two arbitrators to serve on the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.014. CHAIRMAN. (a) The four arbitrators selected under Sections 102.012 and 102.013 shall designate a fifth arbitrator who serves as the chairman of the board.

(b) If an agreement as to a fifth arbitrator cannot be reached under Subsection (a), on notice of any arbitrator a district judge of the district that has jurisdiction over the dispute or grievance shall appoint the fifth arbitrator, who serves as the chairman of the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.015. BOARD SECRETARY. The board shall select one member to act as secretary for the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.016. ARBITRATOR'S CONSENT TO ACT. (a) An arbitrator selected under this chapter must:

(1) sign a form consenting to serve as an arbitrator; and

(2) take and sign an oath administered by an officer authorized to administer oaths to faithfully and impartially discharge the duties of an arbitrator.

(b) A written copy of the consent form and oath shall be filed with the district clerk for the county in which the arbitration is conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD AND OFFICERS

Sec. 102.021. POWERS AND DUTIES OF BOARD. (a) A board may adopt and enforce rules to be followed at board hearings.

(b) The board may set a schedule of sessions and adjournments.

(c) The board shall hear and examine witnesses who are brought before the board and consider other proof given that is relevant to the matter in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.022. CHAIRMAN'S DUTIES. (a) The chairman of the board may:

(1) administer oaths; and

(2) issue subpoenas for the production of books and papers and the attendance of witnesses.

(b) The chairman of the board may exercise the powers granted under this section to the same extent as a judge of a court of record in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.023. ISSUANCE OF SUBPOENAS. (a) The board's secretary shall sign each subpoena issued under this chapter.

(b) The board may authorize a person of full age to serve a subpoena issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. PARTY CONDUCT

Sec. 102.031. EMPLOYEE TERMINATION RESTRICTED. During the period that the arbitration is pending, an employer or receiver or an agent of the employer may not discharge an employee who is a party to the arbitration except for:

(1) the employee's inefficiency, violation of law, or neglect of duty; or

(2) the employer's need for a work force reduction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.032. PROHIBITIONS AGAINST STRIKES OR BOYCOTTS. (a) During the period that arbitration is pending, a labor organization that represents employees who are parties to the arbitration may not order or aid employees in a strike or boycott against the employer or receiver.

(b) Employees who are parties to the arbitration may not engage in or aid a strike or boycott of the employer or receiver.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. FILINGS WITH BOARD; HEARINGS

Sec. 102.041. WRITTEN SUBMISSION OF DISPUTE OR GRIEVANCE. (a) The question to be decided by the board must be submitted to the board in writing, signed by:

(1) the employer or receiver; and

(2) the labor organization representing the employees or the employee or any employee or employees to be affected by the arbitration who do not belong to a labor organization.

(b) The submission must stipulate that:

(1) pending the arbitration, the status existing before the dispute, grievance, or strike may not be changed;

(2) the arbitration award shall be filed with the district clerk for the county in which the arbitration is conducted;

(3) the arbitration award is final and may not be set aside except for an error in law that is apparent on the record;

(4) the parties will faithfully execute the arbitration award;

(5) the arbitration award may be enforced in a court of

equity;

(6) an employee dissatisfied with the arbitration award may not end employment because of that dissatisfaction without giving the employer 30 days' written notice of the intention to end employment;

(7) the award continues in effect until the first anniversary of the initial date of its implementation; and

(8) a new arbitration of the same subject matter between the same parties may not be entered into during the one year period provided for in Subdivision (7).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.042. HEARING; NOTICE. (a) The board shall conduct a hearing not later than the 10th day after the agreement to arbitrate is filed.

(b) Each party to the dispute is entitled to receive notice of the time and place of the hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. COURT FILINGS AND ORDERS

Sec. 102.051. ARBITRATION PETITION. A board may submit a written petition signed by a majority of the board to a district judge in the county in which the dispute or grievance arose. The petition must:

(1) show that the board was selected according to the procedures set forth in this chapter;

(2) state the nature of the dispute or grievance that is the subject matter of the arbitration; and

(3) request the judge to issue an order establishing and approving the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.052. COURT ORDER REQUIRED. On receipt of a petition filed under Section 102.051, the judge shall issue an order establishing an arbitration board. The order shall refer the matter in dispute to the board for a hearing and determination of the matter

in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.053. FILING OF PETITION AND ORDER. The petition and the subsequent order or a copy of the petition and order shall be filed with the district clerk in the county in which the arbitration is conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. EXPENSES AND FEES

Sec. 102.061. SURETY BOND. Before a board considers a dispute or grievance, each party shall file a bond in an amount set by the board and conditioned on the payment of all expenses connected with the arbitration procedure. The bond must have two or more good and sufficient sureties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.062. BOARD MEMBER EXPENSES. A member of the board is entitled to receive:

(1) three dollars a day for each day of actual service on the board not to exceed $30; and

(2) five cents a mile for each mile traveled to and from the place where the board is in session.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.063. REIMBURSEMENT OF WITNESS. A witness called by the board is entitled to receive:

(1) 50 cents a day for each day's attendance; and

(2) five cents a mile for each mile traveled by the shortest route to and from a board hearing where the witness' attendance is required.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.064. FEES. (a) The board may charge fees and mileage paid under Sections 102.062 and 102.063 against either or both parties.

(b) Fees and mileage charged against a party under this section shall be included in the award.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. AWARD AND APPEALS

Sec. 102.071. TERMINATION OF BOARD'S POWER. Except as provided by Section 102.072, a board's power ends on the determination of the grievance or dispute by the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.072. ADDITIONAL DISPUTE OR GRIEVANCE. (a) If, at the time a board renders its determination, a similar grievance or dispute exists between the same class of persons for which a board may be created, those persons may submit the dispute or grievance to the board.

(b) The board has the same power to act and determine a dispute or grievance submitted under this section as the board would have if it had been created to determine that dispute or grievance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.073. COPIES OF AWARD; ISSUANCE. (a) The board shall issue three copies of the arbitration award.

(b) The board shall:

(1) file one copy of the award with the district clerk;

(2) issue one copy of the award to the employer or receiver; and

(3) issue one copy of the award to the employees or the employees' representative.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.074. JUDGMENT ON AWARD; EFFECTIVE DATE; EXCEPTION. (a) Judgment shall be entered on an award made under this chapter and the award takes effect, unless a timely exception is filed, on the 11th day after the date it is filed with the district clerk under Section 102.073.

(b) A party may file an exception to an award for a matter of law apparent on the record. The exception must be filed with the court not later than the 10th day after the date on which the award is filed with the district clerk under Section 102.073.

(c) If an exception is filed, judgment shall be entered on the award and the award takes effect on the 11th day after the date of the decision of the district court on the exception or on appeal from the district court's decision under Section 102.075.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.075. APPEALS. (a) Either party to an arbitration case decided by a district court may file an appeal of the district court's decision not later than the 10th day after the date on which the judgment is entered.

(b) The decision of the court of appeals under this section is final. The clerk of the court of appeals shall certify the decision and the district court shall enter the judgment.

(c) If the court of appeals sustains the exception, it shall set aside the award, but the parties may agree on a judgment to be entered disposing of the dispute. A judgment on an agreement entered into under this subsection has the same force and effect of law as a judgment entered on an award by a board of arbitration.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 103. DISCLOSURE BY EMPLOYER OF INFORMATION REGARDING CERTAIN EMPLOYEES OR FORMER EMPLOYEES

Sec. 103.001. PURPOSE; LEGISLATIVE FINDING. The legislature finds that the disclosure by an employer of truthful information regarding a current or former employee protects employment relationships and benefits the public welfare. It is the intent of

the legislature that an employer who makes a disclosure based on information obtained by the employer that any employer would reasonably believe to be true should be immune from civil liability for that disclosure.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.002. DEFINITIONS. In this chapter:

(1) "Employee" means a person who performs services for an employer, whether or not for compensation.

(2) "Employer" means a person who has one or more employees or other individuals who perform services under a contract of hire or service, whether expressed or implied, or oral or written.

(3) "Job performance" means the manner in which an employee performs a position of employment and includes an analysis of the employee's attendance at work, attitudes, effort, knowledge, behaviors, and skills.

(4) "Prospective employee" means any person who has made an application, either oral or written, or has sent a resume or other correspondence indicating an interest in employment.

(5) "Prospective employer" means an employer to whom a prospective employee has made an application, either oral or written, or sent a resume or other correspondence expressing an interest in employment.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.003. AUTHORIZED DISCLOSURE; APPLICATION TO CERTAIN EMPLOYEES. (a) An employer may disclose information about a current or former employee's job performance to a prospective employer of the current or former employee on the request of the prospective employer or the employee.

(b) An employer may not disclose information about a licensed nurse or licensed vocational nurse that relates to conduct that is protected under Section 301.352 or 303.005, Occupations Code. The employer must provide an affected nurse an opportunity to submit a statement of reasonable length to the employer to establish the application of Section 301.352 or 303.005, Occupations Code.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.818, eff. Sept. 1, 2001.

Sec. 103.004. IMMUNITY FROM CIVIL LIABILITY; EMPLOYER REPRESENTATIVES. (a) An employer who discloses information about a current or former employee under Section 103.003 is immune from civil liability for that disclosure or any damages proximately caused by that disclosure unless it is proven by clear and convincing evidence that the information disclosed was known by that employer to be false at the time the disclosure was made or that the disclosure was made with malice or in reckless disregard for the truth or falsity of the information disclosed. For purposes of this subsection, "known" means actual knowledge based on information relating to the employee, including any information maintained in a file by the employer on that employee.

(b) This chapter applies to a managerial employee or other representative of the employer who is authorized to provide and who provides information in accordance with this chapter in the same manner that it applies to an employer.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.005. EMPLOYMENT REFERENCE. This chapter does not require an employer to provide an employment reference to or about a current or former employee.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 104. INFORMATION REGARDING EARNED INCOME TAX CREDIT

Sec. 104.001. DEFINITIONS. In this chapter:

(1) "Employee" means an individual who is employed by an employer for compensation.

(2) "Employer" means a person who employs one or more employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

Sec. 104.002. REQUIRED INFORMATION. (a) Not later than March 1 of each year, each employer shall provide to the employer's employees information regarding general eligibility requirements for the federal earned income tax credit.

(b) An employer may not satisfy the requirements of Subsection (a) solely by posting information in the place of employment. The employer shall provide the required information to the employee:

(1) in person;

(2) electronically at the employee's last known e-mail address;

(3) through a flyer included, in writing or electronically, as a payroll stuffer; or

(4) by mailing the information to the employee at the employee's last known address by United States first class mail.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

Sec. 104.003. PROVISION OF ADDITIONAL INFORMATION TO EMPLOYEES.In addition to the information required by Section 104.002, an employer may provide to the employer's employees:

(1) Internal Revenue Service publications relating to the federal earned income tax credit or information prepared by the comptroller under Section 403.025, Government Code, relating to that credit; or

(2) federal income tax forms necessary to claim the federal earned income tax credit.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

Sec. 104.004. COMMISSION DUTIES; RULES. (a) The commission periodically shall notify employers regarding the requirement adopted under Section 104.002. The commission shall provide the notice as part of any other periodic notice sent to employers and shall also post the notice on the commission's Internet website.

(b) If the commission adopts rules under Section 301.067

regarding employer requirements under this chapter, each employer shall provide the information required by Section 104.002 in the manner prescribed by those rules.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

CHAPTER 104A. REPORTING WORKPLACE VIOLENCE

Sec. 104A.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Employee" means an individual who is employed by an employer for compensation.

(3) "Employer" means a person who employs one or more employees.

Added by Acts 2023, 88th Leg., R.S., Ch. 904 (H.B. 915), Sec. 1, eff. September 1, 2023.

Sec. 104A.002. NOTICE BY EMPLOYER. Each employer shall post a notice to employees of the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety. The notice must be posted:

(1) in a conspicuous place in the employer's place of business;

(2) in sufficient locations to be convenient to all employees; and

(3) in English and Spanish, as appropriate.

Added by Acts 2023, 88th Leg., R.S., Ch. 904 (H.B. 915), Sec. 1, eff. September 1, 2023.

Sec. 104A.003. RULES. The commission, in consultation with the Department of Public Safety, by rule shall prescribe the form and content of the notice required by this section. The rules must require that the notice:

(1) contain the contact information for reporting instances of workplace violence or suspicious activity to the Department of Public Safety; and

(2) inform employees of the right to make a report to the Department of Public Safety anonymously.

Added by Acts 2023, 88th Leg., R.S., Ch. 904 (H.B. 915), Sec. 1, eff. September 1, 2023.

CHAPTER 105. EMPLOYMENT TERMINATION FOR FALSIFICATION OF MILITARY RECORD IN OBTAINING EMPLOYMENT OR EMPLOYMENT BENEFITS

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Employee" means an individual who is employed by an employer for compensation.

(2) "Employer" means a person who employs one or more employees.

(3) "Military record" has the meaning assigned by Section 32.54, Penal Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 468 (S.B. 664), Sec. 2, eff. September 1, 2015.

Sec. 105.002. EMPLOYMENT TERMINATION; EMPLOYMENT CONTRACT VOID AND UNENFORCEABLE. (a) An employer may discharge an employee, regardless of whether the employee is employed under an employment contract with the employer, if the employer determines, based on a reasonable factual basis, that the employee, in obtaining the employee's employment or any benefit relating to the employee's employment, falsified or otherwise misrepresented any information regarding the employee's military record in a manner that would constitute an offense under Section 32.54, Penal Code.

(b) An employment contract entered into by an employer with an employee discharged by the employer under this section is void and unenforceable as against public policy.

Added by Acts 2015, 84th Leg., R.S., Ch. 468 (S.B. 664), Sec. 2, eff. September 1, 2015.

Sec. 105.003. SUIT TO APPEAL TERMINATION. An employee who was employed by an employer under an employment contract on the date of the employee's termination and who believes the employee was

wrongfully terminated under Section 105.002 may bring suit against the employer in a district court in the county in which the termination occurred for appropriate relief, including rehiring or reinstatement to the employee's previous job, payment of back wages, and reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been terminated.

Added by Acts 2015, 84th Leg., R.S., Ch. 468 (S.B. 664), Sec. 2, eff. September 1, 2015.

TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT
SUBTITLE A. TEXAS UNEMPLOYMENT COMPENSATION ACT
CHAPTER 201. UNEMPLOYMENT COMPENSATION ACT--GENERAL PROVISIONS
SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 201.001. SHORT TITLE. This subtitle may be cited as the Texas Unemployment Compensation Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. GENERAL DEFINITIONS

Sec. 201.011. GENERAL DEFINITIONS. In this subtitle:

(1) "Base period" means:

(A) the four consecutive completed calendar quarters, prescribed by the commission, in the five consecutive completed calendar quarters preceding the first day of an individual's benefit year; or

(B) for an individual precluded because of a medically verifiable injury or illness from working during a major part of a calendar quarter of the period that would otherwise be the individual's base period under Paragraph (A), the first four calendar quarters of the five consecutive calendar quarters preceding the calendar quarter in which the illness began or the injury occurred if the individual files an initial claim for benefits not later than 24 months after the date on which the individual's injury or illness began or occurred.

(2) "Benefit" means the money payable under this subtitle to an individual because of the individual's unemployment.

(3) "Benefit amount" means benefits an individual is

entitled to receive for one benefit period of total unemployment.

(4) "Benefit period" means the seven consecutive calendar days ending at midnight on Saturday and is the period for which entitlement to benefits is determined.

(5) "Benefit year" means the 52 consecutive calendar weeks beginning with the week for which an individual files a valid initial claim for benefits.

(6) "Calendar quarter" means a period of three consecutive calendar months ending on:

(A) March 31, June 30, September 30, or December 31; or

(B) the dates prescribed by rule of the commission.

(7) "Chargeback" means the benefits charged to an employer's account under Section 204.021.

(8) "Commission" means the Texas Workforce Commission.

(9) "Compensation fund" means the unemployment compensation fund.

(10) "Contribution" means a tax payment under this subtitle to the compensation fund.

(11) "Employing unit" means a person who, after January 1, 1936, has employed an individual to perform services for the person in this state. Effective January 1, 2020, this definition includes a common paymaster, as defined in 26 U.S.C. Section 3306(p).

(A) The commission shall adopt rules as necessary to implement the inclusion of common paymaster.

(B) The inclusion of common paymaster to the definition of "employing unit" shall not negate a person's obligations with respect to acquisitions of experience-rated employers and transfers of compensation experience pursuant to Subchapter E, Chapter 204.

(12) "Employment office" means a free public employment office operated by this state or maintained as a part of a state-controlled system of public employment offices. The term includes a branch office.

(13) "Initial claim" means a notice filed under Section 208.001(a) to establish a benefit year by an individual who does not have a benefit year in effect at the time the notice was filed.

(14) "Institution of higher education" means:

(A) a college or university in this state; or

(B) a public or other nonprofit educational institution that:

(i) admits as regular students only individuals with a certificate of graduation or equivalent credentials;

(ii) is legally authorized to provide an educational program beyond high school; and

(iii) provides an educational program:

(a) for which the institution awards a bachelor's or higher degree;

(b) that is acceptable for full credit toward a bachelor's or higher degree; or

(c) that trains a student for the gainful practice of a recognized occupation.

(15) "Mail" means the United States Postal Service or any other method approved by the commission to provide actual notice, including an electronic transfer system.

(16) "Reimbursement" means a payment made in accordance with Chapter 205.

(17) "Reimbursing employer" means an employer making payments in accordance with Chapter 205.

(18) "State" means a state of the United States, Puerto Rico, the District of Columbia, or the Virgin Islands.

(19) "Taxed employer" means an employer who pays a contribution under this subtitle.

(20) "Temporary employee" means an individual employed by a temporary help firm for the purpose of being assigned to work for the clients of a temporary help firm.

(21) "Temporary help firm" means a person who employs individuals for the purpose of assigning those individuals to work for the clients of the temporary help firm to support or supplement a client's work force during employee absences, temporary skill shortages, seasonal work loads, special assignments and projects, and other similar work situations.

(22) "United States" includes, in a geographic context, each state.

(23) "Valid claim" means a claim filed by an unemployed individual who has received the wages necessary to qualify for benefits.

(24) "Warrant" means a written payment order or an electronic payment order that is a part of an electronic fund transfer system approved by the commission.

(25) "Week" means seven consecutive calendar days as

prescribed by the commission.

(26) "Indian tribe" has the meaning assigned by Section 3306(u), Federal Unemployment Tax Act (26 U.S.C. Section 3306), as amended. A reference in this subtitle to an Indian tribe includes a tribal unit, a subdivision or subsidiary of an Indian tribe, and a business wholly owned by an Indian tribe.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.23(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 518, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 817, Sec. 10.13, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 692 (S.B. 2296), Sec. 1, eff. January 1, 2020.

Sec. 201.012. DEFINITION OF MISCONDUCT. (a) "Misconduct" means mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and the safety of employees.

(b) The term "misconduct" does not include an act in response to an unconscionable act of an employer or superior.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. DEFINITION OF EMPLOYER

Sec. 201.021. GENERAL DEFINITION OF EMPLOYER. (a) In this subtitle, "employer" means an employing unit that:

(1) paid wages of $1,500 or more during a calendar quarter in the current or preceding calendar year; or

(2) employed at least one individual in employment for a portion of at least one day during 20 or more different calendar weeks of the current or preceding calendar year.

(b) The definition provided by this section does not apply to an employing unit covered by Section 201.023 or to farm and ranch labor covered by Section 201.028.

(c) An individual who performs a service in this state for an employing unit that maintains two or more separate establishments in

this state is employed by a single employing unit for purposes of this subtitle.

(d) In this subsection, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1. The definition of employer provided by this section does not apply to a franchisor with respect to:

(1) a franchisee; or

(2) a franchisee's employees.

(e) With respect to a specific claim for relief under this subtitle made by a franchisee or a franchisee's employee, Subsection (d) does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 5, eff. September 1, 2015.

Sec. 201.022. EFFECT OF BUSINESS ACQUISITION. In this subtitle, "employer" also means an individual or employing unit that acquires or otherwise receives, through any means, all or part of the organization, trade, business, or workforce of another that was an employer subject to this subtitle at the time of the acquisition.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 1, eff. September 1, 2005.

Sec. 201.023. TAX-EXEMPT NONPROFIT ORGANIZATION. In this subtitle, "employer" also means an employing unit that:

(1) is a nonprofit organization under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));

(2) is exempt from income tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)); and

(3) employed at least four individuals in employment for a

portion of at least one day during 20 or more different calendar weeks during the current year or during the preceding calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.024. ELECTION TO BE EMPLOYER. In this subtitle, "employer" also means an employing unit that has elected to become an employer under Section 205.001, 205.002, 206.002, or 206.003.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.025. EMPLOYER UNDER FEDERAL LAW. In this subtitle, "employer" also means:

(1) an employing unit that is liable for the payment of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) for the current calendar year; or

(2) an employing unit that the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) requires to be an employer under this subtitle as a condition for approval of this subtitle for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.026. STATE; POLITICAL SUBDIVISION. In this subtitle, "employer" also means a state, a political subdivision of a state, or an instrumentality of a state or political subdivision of a state that is wholly owned by one or more states or political subdivisions of one or more states.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.027. EMPLOYER OF DOMESTIC SERVICE WORKER. (a) In this subtitle, "employer" also means an employing unit that paid cash wages of $1,000 or more during a calendar quarter in the current or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(b) An employer subject to this section who is not otherwise considered an employer under this subtitle, annually, may report quarterly wages and pay contributions. An employer who elects to report wages and pay contributions under this section must make the election not later than December 31 of the year before the first calendar year reported.

(c) Contributions paid as provided by Subsection (b) become due and are required to be reported and paid by each employer not later than January 31 with respect to wages for employment paid in the preceding calendar year. For a rate taking effect under Section 204.041(c) during the preceding calendar year, the commission shall estimate the rate, subject to a correction when a final computation is made as provided by Section 204.047(c).

(d) An employer who elects to report wages and pay contributions annually shall file, on the request of the commission, reports at other times as necessary to adjudicate a claim or to establish wage credits.

(e) With respect to an employer who reports wages and pays contributions annually under this section, any penalty or interest imposed on the employer shall be computed in the same manner as for other types of employment.

(f) An election by an employer under this section is not revocable by the employer before the second anniversary of the date of the election.

(g) An employer under this section is not an employer for wages paid for a service other than domestic service unless the employer is treated as an employer for that service under another provision of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 487, Sec. 1, eff. Sept. 1, 2001.

Sec. 201.028. EMPLOYER OF FARM AND RANCH LABORER. (a) In this subtitle, "employer" also means an employing unit that paid wages for, or employed individuals in, farm and ranch labor in accordance with this section, Section 201.047, or Section 204.009.

(b) In this section, an employer shall not be treated as an employer for wages paid for a service other than service performed by:

(1) a seasonal worker employed on a truck farm, orchard, or vineyard;

(2) a farm and ranch laborer who is a migrant worker; or

(3) a seasonal worker who:

(A) works for a farmer, ranch operator, or labor agent who employs migrant workers; and

(B) does the same work at the same time and location as the migrant workers.

(c) Subsection (b) does not apply if the employer is an employer with respect to farm and ranch labor performed under Section 201.047(a)(4).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.029. TEMPORARY HELP FIRM. For purposes of this subtitle, a temporary help firm is the employer of an individual employed by the firm as a temporary employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.23(b), eff. Sept. 1, 1995.

Sec. 201.030. PROFESSIONAL EMPLOYER ORGANIZATION. For the purposes of this subtitle, "professional employer organization" has the meaning assigned by Section 91.001.

Added by Acts 1997, 75th Leg., ch. 1379, Sec. 20, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

SUBCHAPTER D. DEFINITION OF EMPLOYMENT

Sec. 201.041. GENERAL DEFINITION OF EMPLOYMENT. In this subtitle, "employment" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.042. SERVICE OF DRIVER OR SALESMAN. In this subtitle, "employment" includes service:

(1) as an agent-driver or commission-driver who delivers a meat product, vegetable product, fruit product, bakery product, laundry, dry cleaning, or beverage except milk, if:

(A) the service is performed for remuneration;

(B) the employment contract provides that the individual personally performs substantially all of the service;

(C) the individual performing the service does not have a substantial investment in a facility used in the performance of the service, other than in a facility for transportation; and

(D) the service is part of a continuing relationship with the principal and is not a single transaction; or

(2) of a traveling or city salesman, except as provided in Section 201.070, an agent-driver, or a commission-driver, who, on a full-time basis, obtains for the individual's principal, except for sideline sales activities for another person, orders from a wholesaler, retailer, contractor, or operator of a hotel, restaurant, or similar establishment for merchandise for resale or supplies for use in the business's operation if:

(A) the employment contract provides that the individual personally performs substantially all of the service;

(B) the individual does not have a substantial investment in a facility used in the performance of the service, except a facility for transportation; and

(C) the service is part of a continuing relationship with the principal and is not a single transaction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.043. LOCATION OF SERVICE. (a) In this subtitle, "employment" includes service performed in this state or in and outside this state if:

(1) the service is localized in this state; or

(2) the service is not localized in any state and some of the service is performed in this state and:

(A) the base of operations is in this state, or there is no base of operations, but the service is directed or controlled from this state; or

(B) the base of operations or place from which service is directed or controlled is not in a state in which a part of the service is performed, and the residence of the person who performs the service is in this state.

(b) In this subtitle, "employment" includes service performed anywhere in the United States, including service performed entirely outside this state, if:

(1) the service is not localized in a state;

(2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and

(3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.

(c) In this subtitle, "employment" includes service performed entirely outside this state that is not included as employment under Subsection (b) or Section 201.045 and for which contributions are not required and paid under an unemployment compensation law of another state if:

(1) the individual performing the service is a resident of this state; and

(2) the commission approves the election of the employing unit for which the individual performs the service that the entire service of the individual is employment under this subtitle.

(d) In this subtitle, "employment" includes service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer, if:

(1) the service was not performed in a contiguous country with which the United States has an agreement relating to unemployment compensation;

(2) the service is not considered employment under Subsection (b) or (c) or Section 201.044 or 201.045 or the parallel provisions of another state's law; and

(3) the employer:

(A) has its principal place of business in the United States in this state;

(B) does not have a place of business in the United

States and is:

(i) an individual who is a resident of this state;

(ii) a corporation that is organized under the laws of this state; or

(iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state;

(C) has elected coverage in this state; or

(D) has failed to elect coverage in any state and the individual has filed a claim for benefits based on the service under the laws of this state.

(e) In this section, "American employer" means:

(1) an individual who is a resident of the United States;

(2) a partnership, if two-thirds or more of the partners are residents of the United States;

(3) a trust, if all of the trustees are residents of the United States; or

(4) a corporation organized under the laws of the United States or of a state.

(f) For the purposes of Subsection (b), service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "incidental" includes a service that is temporary or that consists of isolated transactions.

(g) If this state is the state of jurisdiction for services covered as employment under Subsection (d), the employer shall so notify its employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.044. SERVICE UNDER RECIPROCAL AGREEMENT. In this subtitle, "employment" includes service that is performed by an individual and that is covered by a reciprocal agreement under this subtitle between the commission and the agency that administers another state's or a federal unemployment compensation law if:

(1) under the agreement all service performed by the individual for an employing unit is considered to be performed entirely in this state; and

(2) the commission approves an election of the employing unit for whom the service is performed under which the entire service of the individual is considered employment subject to this subtitle during the period covered by the election.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.045. SERVICE ON VESSEL OR AIRCRAFT. In this subtitle, "employment" includes service performed on or in connection with an American vessel or aircraft if:

(1) the service is employment under Section 3306(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3306(c)); and

(2) the operating office from which the vessel or aircraft is ordinarily and regularly directed and controlled is in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.046. EMPLOYMENT TO ASSIST EMPLOYEE OR AGENT. (a) An individual employed to perform or to assist in performing the work of an employee or agent of an employing unit is employed by that employing unit for purposes of this subtitle if the employing unit has actual or constructive knowledge of the work.

(b) Subsection (a) applies without regard to whether the individual is hired or paid directly by the employing unit or by the employee or agent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.047. FARM AND RANCH LABOR AS EMPLOYMENT. (a) Farm and ranch labor is employment for the purposes of this subtitle if the labor:

(1) is performed by a seasonal worker employed on a truck farm, orchard, or vineyard;

(2) is performed by a migrant worker;

(3) is performed by a seasonal worker who:

(A) is working for a farmer, ranch operator, or labor agent who employs a migrant worker; and

(B) is doing the same work at the same time and

location as the migrant worker;

(4) performed after 1986 and the laborer is employed by an employing unit that:

(A) pays wages in cash of $6,250 or more for the labor during a calendar quarter in the calendar year in which the labor is performed or the calendar year preceding that year; or

(B) employs three or more individuals in farm and ranch labor for a portion of at least one day during at least 20 different calendar weeks of the calendar year in which the labor is performed or the calendar year preceding that year.

(b) Wages paid for services described in Subdivision (a)(1), (2), or (3) are included in determining the wages paid for the purpose of Subdivision (a)(4).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.24, eff. Sept. 1, 1995.

Sec. 201.048. SERVICE FOR INDIAN TRIBE. Except as provided by Sections 201.063 and 201.067, in this subtitle, "employment" includes service performed in the employ of an Indian tribe if the services are excluded from the definition of employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.), as amended, solely because of Section 3306(c)(7) of that Act.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 2, eff. June 11, 2001.

SUBCHAPTER E. EXCEPTIONS TO EMPLOYMENT

Sec. 201.061. SERVICE ELIGIBLE UNDER ACT OF CONGRESS. In this subtitle, "employment" does not include service for which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.062. SERVICE UNDER ARRANGEMENT WITH AGENCY. In this subtitle, "employment" does not include service under an arrangement that is between the commission and the agency that administers another state's or a federal unemployment compensation law and that

considers the service for an employing unit during the period covered by the employing unit's approved election to be performed entirely within the agency's state or under the federal law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.063. CERTAIN GOVERNMENT SERVICE. (a) In this subtitle, "employment" does not include:

(1) service in the employ of a political subdivision or of an instrumentality of a political subdivision that is wholly owned by one or more political subdivisions:

(A) as an elected official;

(B) as a member of a legislative body;

(C) as a member of the judiciary;

(D) as a temporary employee in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position that is designated under law as a major nontenured policy-making or advisory position or a policy-making or advisory position that ordinarily does not require more than eight hours of service each week; or

(F) as an election official or worker if the remuneration received by the individual during the calendar year is less than $1,000;

(2) service in the employ of a foreign government, including service as a consular or other officer or employee or as a nondiplomatic representative;

(3) service in the employ of an instrumentality wholly owned by a foreign government if:

(A) the service is similar to service performed in a foreign country by an employee of the United States government or an instrumentality of that government; and

(B) the United States secretary of state has certified to the United States secretary of the treasury that the foreign government grants an equivalent exemption for similar services performed in the foreign country by an employee of the United States government or an instrumentality of the United States government;

(4) service in the employ of the United States government or an instrumentality of the United States exempt under the United States Constitution from the contributions imposed by this subtitle;

or

(5) service described by Subdivisions (1)-(3) performed in the employ of an Indian tribe.

(b) To the extent the United States Congress permits a state to require an instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, this subtitle applies to the instrumentality and to the service performed for the instrumentality.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 518, Sec. 3, eff. June 11, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 654 (H.B. 983), Sec. 1, eff. September 1, 2013.

Sec. 201.064. DOMESTIC SERVICE. In this subtitle, "employment" does not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as performed for an employer under Section 201.027.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.065. SERVICE BY RELATIVE. In this subtitle, "employment" does not include:

(1) service of an individual in the employ of the individual's son, daughter, or spouse; or

(2) service of an individual younger than 21 years of age in the employ of the individual's father or mother.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.066. RELIGIOUS SERVICE. In this subtitle, "employment" does not include:

(1) service in the employ of:

(A) a church;

(B) a convention or association of churches; or

(C) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or

principally supported by a church or a convention or association of churches;

(2) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the individual's ministry; or

(3) service performed by a member of a religious order as required by the order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.067. REHABILITATIVE SERVICE; WORK RELIEF; EXCEPTION FOR SERVICES PERFORMED BY CERTAIN TRAINED INDIVIDUALS. (a) In this subtitle, "employment" does not include service performed:

(1) by an individual whose earning capacity is impaired by age, physical impairment, developmental disability, mental illness, or intellectual disability or injury while the individual is in training at a sheltered workshop or other facility operated by a charitable organization under a rehabilitation program that includes:

(A) an individual plan for employment as required by 29 U.S.C. Section 722, as amended by the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128);

(B) a timeline for completion of the training; and

(C) a planned employment outcome; or

(2) by an individual who receives work relief or work training as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state, a political subdivision of a state, or an Indian tribe.

(b) Notwithstanding Subsection (a)(1), in this subtitle "employment" includes service performed by an individual whose earning capacity is impaired by age, physical impairment, developmental disability, mental illness, or intellectual disability or injury, other than an individual compensated as provided by Section 62.057, and who, after training, is working for a sheltered workshop or other facility operated by a charitable organization:

(1) temporarily while awaiting placement in a position of employment in the competitive labor market; or

(2) permanently because the individual is unable to compete in the competitive labor market.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 518, Sec. 4, eff. June 11, 2001; Acts 2001, 77th Leg., ch. 996, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 11.002, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 819 (H.B. 3685), Sec. 1, eff. January 1, 2016.

Sec. 201.068. SERVICE IN HOSPITAL. In this subtitle, "employment" does not include:

(1) service as a student nurse who is:

(A) employed by a hospital or a nurses' training school; and

(B) enrolled and regularly attending classes in a nurses' training school chartered or approved under state law;

(2) service as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved under state law; or

(3) service in the employ of a hospital by a patient of the hospital.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.069. SERVICE OF STUDENT. In this subtitle, "employment" does not include:

(1) service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university;

(2) service performed by an individual who is enrolled as a student in a full-time program that combines academic instruction with work experience and that is taken for credit at a nonprofit or public educational institution normally maintaining a regular faculty and curriculum and having a regularly organized body of students in attendance at the place where its educational activities are conducted, if the service is an integral part of the program, and the institution has so certified to the employing unit, except:

(A) service performed in a program established for an employer or a group of employers;

(B) service in an apprenticeship training program; or

(C) service performed by a teaching assistant; or

(3) service by a student in the employ of an organized camp if:

(A) the camp:

(i) did not operate for more than seven months in the current calendar year and did not operate for more than seven months in the preceding calendar year; or

(ii) had average gross receipts for any six months in the preceding calendar year that were not more than 33-1/3 percent of its average gross receipts for the other six months in the preceding calendar year; and

(B) the student performed services for the camp for fewer than 13 calendar weeks in the calendar year and the student:

(i) is enrolled as a full-time student at an educational institution; or

(ii) is between academic terms or years and:

(a) the student was enrolled as a full-time student at an educational institution for the preceding academic term or year; and

(b) there is reasonable assurance that the student will be so enrolled for the next academic term or year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.070. SERVICE AS PRODUCT DEMONSTRATOR; SALESMAN. In this subtitle, "employment" does not include:

(1) service by an individual as a product demonstrator if:

(A) the service is performed under a written contract between the individual performing the service and a person whose principal business is obtaining the service of a demonstrator for a third person for product demonstration purposes; and

(B) in contract and in fact the individual:

(i) is not treated as an employee with respect to that service for federal unemployment tax purposes;

(ii) is compensated for each demonstration or is compensated based on factors that relate to the work performed;

(iii) determines the method of performing the service;

(iv) provides each vehicle used to perform the service;

(v) is responsible for the completion of a specific job and is liable for failure to complete the job;

(vi) may accept or reject a job from a product demonstrator business;

(vii) is free from control by the principal business as to where the individual works;

(viii) controls solely opportunity for profit or loss; and

(ix) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(2) service by an individual as a direct seller if:

(A) the individual is engaged in the business of:

(i) in-person sales of consumer products to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home or in a place other than, and not affiliated with, a permanent retail establishment; or

(ii) sales of consumer products in a home or in a place other than, and not affiliated with, a permanent retail establishment;

(B) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(C) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

(3) service performed by an individual at a trade market for a wholesaler or sales representative of a wholesaler or manufacturer of consumer goods under a written contract, or as a salesman for a wholesaler of consumer goods, if the wholesaler or sales representative maintains a regular or seasonal place of business at a trade market facility in a municipality with a population of more than one million.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 60, eff. September 1, 2011.

Sec. 201.071. SERVICE AS INSURANCE AGENT. In this subtitle, "employment" does not include service as an insurance agent for which the only remuneration for the service is a commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.072. SERVICE AS REAL ESTATE BROKER. In this subtitle, "employment" does not include:

(1) service performed by an individual as a real estate broker or salesperson if:

(A) the individual engages in activity described by the definition of " broker" in Section 1101.002, Occupations Code;

(B) the individual is licensed as a broker or salesperson by the Texas Real Estate Commission;

(C) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(D) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

(2) service performed by an individual as an instructor of a person licensed or seeking a license as a real estate broker or salesperson if:

(A) the individual instructs in an educational program or course approved by the Texas Real Estate Commission; and

(B) the service is performed under a written contract between the individual and the person for whom the service is performed and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.788, eff. Sept. 1, 2003.

Sec. 201.073. DELIVERY SERVICE; NEWSPAPER DELIVERY SERVICE. In this subtitle, "employment" does not include:

(1) service performed for compensation by an individual for a private for-profit delivery service if the individual:

(A) may accept or reject a job from the delivery service;

(B) is free from control by the delivery service as to when the individual works;

(C) is compensated for each delivery or is compensated based on factors relating to the work performed, including receipt of a percentage of a rate schedule;

(D) controls solely the opportunity for profit or loss;

(E) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(F) determines the method of performing the service, including selection of routes and order of deliveries;

(G) is responsible for completion of a specific job and is liable for failure to complete the job;

(H) enters into a contract that specifies the relationship of the individual to the delivery service to be that of an independent contractor and not an employee; and

(I) provides the vehicle used to perform the service; or

(2) service by an individual younger than 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any location for subsequent delivery or distribution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 705, Sec. 8, eff. Sept. 1, 1995.

Sec. 201.074. SERVICE BY INMATE. In this subtitle, "employment" does not include service performed by an inmate of a custodial or penal institution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 125, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.075. SERVICE ON FISHING VESSEL. In this subtitle, "employment" does not include service performed on a fishing vessel normally having a crew of fewer than 10 members if:

(1) the crew member's payment is a share of the catch; and

(2) the service is not employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.)

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.076. INCLUDED AND EXCLUDED SERVICE IN PAY PERIOD. (a) All of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during one-half or more of the period is employment.

(b) None of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during more than one-half of the pay period is not employment.

(c) This section does not apply to service performed in a pay period by an individual for a person employing the individual that is service that does not constitute employment under Section 201.061.

(d) In this section, "pay period" means the period, not to exceed 31 consecutive days, for which a person employing an individual ordinarily pays wages to the individual.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.077. SERVICE BY LANDMAN. In this subtitle, "employment" does not include service performed for a private for-profit person by a landman, as defined by Section 1702.324, Occupations Code, if:

(1) the compensation paid to the landman directly relates only to the performance of the service; and

(2) the service performed by the landman is performed under a written contract between the landman and the person for whom the service is performed that provides that the landman is to be treated as an independent contractor and not as an employee with respect to the service provided under the contract.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.25(a), eff. Sept. 1,

1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 37 (S.B. 529), Sec. 1, eff. May 19, 2015.

Sec. 201.078. SERVICE BY NONRESIDENT ALIEN AGRICULTURAL WORKER. In this subtitle, "employment" does not include service performed by a nonresident alien during the period that the alien is temporarily in the United States under an H2-A visa if the service is not defined as employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3306(c)(19)).

Added by Acts 2003, 78th Leg., ch. 52, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. DEFINITION OF WAGES

Sec. 201.081. GENERAL DEFINITION OF WAGES. In this subtitle, "wages" means all remuneration for personal services, including:

(1) the cash value of remuneration paid in a medium other than cash; and

(2) a gratuity received by an employee in the course of employment to the extent that the gratuity is considered wages in the computation of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.082. EXCEPTIONS TO WAGES. In this subtitle, "wages" does not include:

(1) that part of the remuneration paid by an employer to an individual for employment during a calendar year that exceeds remuneration to the individual, excluding remuneration under another subdivision of this section, by the employer, of $9,000;

(2) a payment, including an amount the employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity, that is made to or for an employee or the employee's dependent under a plan the employer established for employees generally, or a class of employees, including or excluding the employee's dependents, for:

(A) retirement;

(B) sickness or accident disability;

(C) medical or hospitalization expenses in connection with sickness or accident disability; or

(D) expenses related to death;

(3) a payment made to an individual employee for retirement, including an amount an employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity;

(4) a payment for sickness or accident disability, or medical or hospitalization expenses for sickness or accident disability, an employer makes to or for an individual employee after the expiration of six calendar months after the last calendar month the employee worked for the employer;

(5) a payment made to or for an employee or the employee's beneficiary:

(A) from or to a trust defined by Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), that is exempt from tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)), at the time of payment, unless the payment is made to an employee of the trust as remuneration for service as an employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan that, at the time of the payment, is a plan described by Section 403(a), Internal Revenue Code of 1986 (26 U.S.C. Section 403(a));

(6) a tax an employer pays, without deduction from the remuneration of the employee, that is imposed on the employee under Section 3101, Internal Revenue Code of 1986 (26 U.S.C. Section 3101);

(7) noncash remuneration paid to an employee for service not in the course of the employer's business;

(8) a payment, except vacation or sick pay, made to an employee after the month the employee is 65 years of age, if the employee did not work for the employer in the period for which the payment is made; or

(9) the part of remuneration from a single employer for services in a calendar year that exceeds the amount applicable to the year under Subdivision (1) for which contributions have been paid under a state unemployment law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1997, 75th Leg., ch. 94, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. TOTAL AND PARTIAL UNEMPLOYMENT

Sec. 201.091. TOTAL AND PARTIAL UNEMPLOYMENT. (a) An individual is totally unemployed in a benefit period during which the individual does not perform services for wages in excess of the greater of:

(1) $5; or

(2) 25 percent of the benefit amount.

(b) An individual is partially unemployed in a benefit period of less than full-time work if the individual's wages payable for that benefit period are less than the sum of:

(1) the benefit amount the individual would be entitled to receive if the individual was totally unemployed; and

(2) the greater of:

(A) $5; or

(B) 25 percent of the benefit amount.

(c) For purposes of this subtitle, an individual is considered unemployed if the individual is:

(1) totally unemployed as defined by Subsection (a); or

(2) partially unemployed as defined by Subsection (b).

(d) Notwithstanding Subsection (b), an individual is not partially unemployed for purposes of this subtitle for a benefit period in which the individual's working hours are reduced by the individual's employer as a result of misconduct connected with the work on the part of the individual. Such limitation will be effective for a maximum of four weeks from the effective date of such a reduction in hours.

(e) For purposes of this subtitle, an individual is not considered unemployed and is not eligible to receive benefits for any benefit period during which the individual works the individual's customary full-time hours, regardless of the amount of wages the individual earns during the benefit period.

(f) For purposes of this subtitle, an individual who last worked for a temporary help firm is not considered to be unemployed until three business days have passed since the date the individual's last assignment ended.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 9.26(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 83, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1184, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 592 (H.B. 1745), Sec. 1, eff. September 1, 2005.

SUBCHAPTER H. CONFORMITY WITH FEDERAL STATUTES

Sec. 201.101. CONFORMITY WITH FEDERAL STATUTES. If the United States secretary of labor holds that Section 91.044(a-1) or a provision of this subtitle does not conform with a federal statute, the commission may administer Section 91.044(a-1) or this subtitle, as applicable, to conform with the federal statute until the legislature meets in its next session and has an opportunity to amend the applicable law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1260 (H.B. 3150), Sec. 2, eff. September 1, 2015.

CHAPTER 202. TEXAS EMPLOYMENT COMMISSION
SUBCHAPTER C. AGENCY ADMINISTRATOR AND PERSONNEL

Sec. 202.044. DIVISION OF EDUCATION. (a) The division of education is a division in the commission. The division shall assist the agency administrator and commission in administering their functions under Chapter 132, Education Code.

(b) The agency administrator shall assign sufficient staff to the division to enable it to perform its functions.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 40, eff. May 30, 1995.

CHAPTER 203. FINANCING AND FUNDS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 203.001. DEFINITIONS. In this chapter:

(1) "Administration fund" means the unemployment compensation administration fund created under Section 203.151.

(2) "Federal trust fund" means the unemployment trust fund

created under Section 904, Social Security Act (42 U.S.C. Section 1104).

(3) "Special administration fund" means the unemployment compensation special administration fund created under Section 203.201.

(4) Repealed by Acts 1997, 75th Leg., ch. 1423, Sec. 12.14, eff. Sept. 1, 1997.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.14, eff. Sept. 1, 1997.

Sec. 203.002. DUTIES OF COMPTROLLER. (a) The comptroller is treasurer and custodian of the compensation fund and the special administration fund and shall administer the funds in accordance with the directions of the commission.

(b) The comptroller shall issue warrants on the compensation fund in accordance with rules adopted by the commission.

(c) The comptroller shall issue warrants on the special administration fund in accordance with the directions of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.01, eff. Sept. 1, 1997.

Sec. 203.003. COMPTROLLER'S BOND LIABILITY. The comptroller is liable on the comptroller's official bond for the faithful performance of the comptroller's duties under this subtitle in connection with the compensation fund, the administration fund, and the special administration fund. This liability is in addition to liability on any separate bond that the comptroller may give.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.02, eff. Sept. 1, 1997.

Sec. 203.004. DEPOSIT OF FUNDS; EXCEPTION. All money paid to the commission under this subtitle:

(1) shall be deposited in the treasury unless:

(A) a state or federal law prohibits deposit in the

treasury; or

(B) the deposit would result in the loss of any federal funds; and

(2) may be used only for the administration of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.005. APPLICATION OF OTHER LAW. Money in the compensation fund, the administration fund, and the special administration fund shall be deposited, administered, and disbursed in the same manner and under the same requirements as provided by law for other special funds in the state treasury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. UNEMPLOYMENT COMPENSATION FUND

Sec. 203.021. UNEMPLOYMENT COMPENSATION FUND; SEPARATE ACCOUNTS. (a) The unemployment compensation fund is a special fund.

(b) The compensation fund consists of:

(1) contributions collected under this subtitle;

(2) interest earned on money in the compensation fund;

(3) property or securities acquired through the use of money in the compensation fund;

(4) earnings of property or securities described by Subdivision (3);

(5) amounts recovered for losses sustained by the compensation fund; and

(6) other money received for the compensation fund from any other source.

(c) Money in the compensation fund shall be mingled and undivided.

(d) The comptroller shall maintain in the compensation fund:

(1) a clearing account;

(2) a federal trust fund account; and

(3) a benefit account.

(e) Money in the compensation fund may not be transferred to the:

(1) Texas Enterprise Fund created under Section 481.078,

Government Code; or

(2) Texas emerging technology fund established under Section 490.101, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.03, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1297 (H.B. 2457), Sec. 12, eff. September 1, 2011.

Sec. 203.022. COMPOSITION AND USE OF CLEARING ACCOUNT. (a) On receipt of any money payable to the compensation fund, the commission shall forward the money to the comptroller, who shall immediately deposit it in the clearing account.

(b) Except as provided by Section 203.026, money in the clearing account, after it has cleared, shall be immediately deposited with the United States secretary of the treasury to the credit of this state's account in the federal trust fund. This section prevails over any conflicting state statute relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.04, eff. Sept. 1, 1997.

Sec. 203.023. REQUISITIONS FROM FEDERAL TRUST FUND; BENEFIT ACCOUNT. (a) The commission periodically shall requisition from the federal trust fund amounts the commission considers necessary for the payment of benefits and refunds for a reasonable period. The commission may not requisition an amount exceeding the balance of this state's account in the federal trust fund.

(b) The benefit account is composed of money requisitioned from this state's account in the federal trust fund.

(c) On receipt of money requisitioned from the federal trust fund, the comptroller shall deposit it in the benefit account.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.05, eff. Sept. 1, 1997.

Sec. 203.024. DEPOSITS. (a) Except as otherwise provided by this subchapter, the comptroller, under the direction of the commission, may deposit money credited to the clearing and benefit accounts in a bank or public depository in which general funds of this state may be deposited.

(b) A public deposit insurance charge or premium may not be paid out of the compensation fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.06, eff. Sept. 1, 1997.

Sec. 203.025. USE OF REQUISITIONED MONEY. (a) The commission shall direct the administration of the compensation fund exclusively for the purposes of this subtitle.

(b) Money requisitioned from this state's account in the federal trust fund may be used only for the payment of benefits or for refunds as provided by Sections 203.023, 203.026, 203.027, and 203.203 and by Subchapter B, Chapter 210, and Subchapter E, Chapter 213 except that money credited to this state's account as provided by Section 903, Social Security Act (42 U.S.C. Section 1103), may be requisitioned and used by the commission only to the extent and under the conditions prescribed by that section.

(c) Notwithstanding Subsections (a) and (b) or any other provision of this subtitle or other law, the commission, under an agreement with or waiver by the United States secretary of labor, may use money requisitioned from this state's account in the federal trust fund to conduct demonstration projects for the reemployment of unemployed individuals in the manner prescribed by that agreement or waiver and consistent with any applicable requirements under federal law. The commission shall provide to the legislative standing committees with primary jurisdiction over the commission any evaluation reports required by the United States Department of Labor for a reemployment demonstration project.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1300 (H.B. 3005), Sec. 1, eff. June 14, 2013.

Sec. 203.026. ACCOUNTS FROM WHICH BENEFITS AND REFUNDS ARE PAID. (a) The comptroller may issue a warrant for a benefit only from the benefit account.

(b) As directed by the commission, the comptroller may issue a warrant for a refund as provided by Subchapter E, Chapter 213, from the benefit account or the clearing account.

(c) An expenditure from the benefit account or a refund from the clearing account is not subject to a law that requires itemization or other formal release by a state officer of money in the officer's custody.

(d) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.28(a), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.28(a), eff. Sept. 1, 1995.

Sec. 203.027. UNEXPENDED BALANCE OF BENEFIT ACCOUNT. Money requisitioned from the federal trust fund that remains unclaimed or unpaid in the benefit account after the end of the period for which the money was requisitioned shall be, in the commission's discretion:

(1) deducted from an estimate for the succeeding periods and used to pay benefits and refunds in those periods; or

(2) redeposited in the federal trust fund as provided by Section 203.022.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.028. SOLVENCY OF COMPENSATION FUND; RESERVE. (a) If the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the compensation fund, it shall inform the governor and legislature of its belief and when the change will become necessary and shall make recommendations for the necessary change.

(b) The commission, if possible, shall maintain in the compensation fund a reserve against the liability to pay benefits in future years in excess of current contributions. The commission shall create the reserve according to accepted actuarial principles using statistics of employment, business activity, and other relevant factors for the longest possible period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.029. REFUND OF CONTRIBUTIONS TO FEDERAL INSTRUMENTALITY. If this state is not certified for any year by the United States secretary of labor as required under Section 3304(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3304(c)), the commission shall refund from the compensation fund a payment required of an instrumentality of the federal government for that year in the same manner and within the same period as provided by Subchapter E, Chapter 213, for contributions erroneously collected.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.030. REIMBURSEMENT FROM OR TO COMPENSATION FUND UNDER RECIPROCAL ARRANGEMENT. (a) The commission may reimburse a state or federal agency from the compensation fund or receive a reimbursement from a state or federal agency for the compensation fund under an arrangement under Section 211.003.

(b) A reimbursement paid from the compensation fund under this section is a benefit for the purposes of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.031. NONLIABILITY OF STATE. Benefits are due and payable only to the extent money is available for that purpose in the compensation fund. Neither this state nor the commission is liable for any amount in excess of the amount in that fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.032. MANAGEMENT OF COMPENSATION FUND ON DISCONTINUANCE OF FEDERAL TRUST FUND. (a) To the extent that a provision of this subchapter relates to the federal trust fund, the provision is operative only as long as:

(1) the federal trust fund exists; and

(2) the United States secretary of the treasury maintains for this state a separate book account of all funds deposited in the

federal trust fund by this state for benefit purposes, with this state's proportionate share of the earnings of the federal trust fund, from which no other state is permitted to make withdrawals.

(b) If the federal trust fund ceases to exist or the secretary of the treasury ceases to maintain a separate book account for this state in the federal trust fund, all money, property, or securities in the federal trust fund that belong to the compensation fund shall be transferred to the comptroller. The comptroller shall hold, invest, transfer, deposit, and release the money, property, or securities in a manner approved by the commission in accordance with this subtitle.

(c) Money held by the comptroller under Subsection (b) shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America. The money shall be invested in such a manner that the assets of the compensation fund are readily convertible at all times into cash as needed for the payment of benefits.

(d) The comptroller may dispose of securities or other property belonging to the compensation fund only under the direction of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.07, eff. Sept. 1, 1997.

SUBCHAPTER C. ADVANCES FROM FEDERAL TRUST FUND AND OBLIGATION ASSESSMENT

Sec. 203.101. LIMIT ON APPLICATION FOR ADVANCE. In any application for an advance from the federal trust fund (Section 1201, Social Security Act (42 U.S.C. Section 1321)), the governor shall limit the amount of the application to an amount that, when added to previous advances, does not exceed the amount for which principal and interest may be paid from taxes on employers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.102. OBLIGATION TRUST FUND. (a) The obligation trust fund is a dedicated trust fund outside of the state treasury in the custody of the comptroller. The obligation trust fund is composed of:

(1) revenue received under Section 203.105; and

(2) any surplus revenue transferred from the compensation fund under Section 204.065.

(b) The commission and governor may use money in the obligation trust fund without legislative appropriation to pay:

(1) bond obligations and bond administrative expenses; and

(2) principal and interest incurred on advances from the federal trust fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 12.08, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 317, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.02, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 1, eff. May 4, 2007.

Sec. 203.104. LIMITATION ON TRANSFER FROM OBLIGATION TRUST FUND TO COMPENSATION FUND. An amount that is attributable to the portion of the unemployment obligation assessment authorized by Section 203.105(a)(2) may not be transferred to the compensation fund unless all bond obligations, including bond administrative expenses, have been fully paid and satisfied. After the obligations have been fully satisfied, the commission shall transfer the balance of the obligation trust fund to the compensation fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 3, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.03, eff. June 20, 2003.

Sec. 203.105. UNEMPLOYMENT OBLIGATION ASSESSMENT. (a) An unemployment obligation assessment shall be imposed as provided by this section if after January 1 of a year:

(1) an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or available otherwise; or

(2) bond obligations are due and the amount necessary to

pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or available otherwise.

(b) The unemployment obligation assessment rate is the total of the amounts required to make the payments necessary under Subsections (a)(1) and (2). The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of interest under Subsection (a)(1), but not exceeding two-tenths of one percent. The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of the bond obligations, including administrative expenses, and to provide an amount necessary in the commission's judgment to enhance investor acceptance of the bonds. The rate shall be based on a formula prescribed by commission rule, using the employer's experience rating from the previous year. The unemployment obligation assessment rate applies to the same wage base to which the employer's unemployment tax applies for the year.

(c) The unemployment obligation assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

(d) Revenue from the unemployment obligation assessment under this section shall be deposited to the credit of the obligation trust fund under Section 203.102.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 4, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.04, eff. June 20, 2003.

SUBCHAPTER D. ADMINISTRATION FUND

Sec. 203.151. ADMINISTRATION FUND. (a) The unemployment compensation administration fund is a special fund in the state treasury.

(b) The administration fund consists of money:

(1) appropriated to the administration fund by this state;

(2) received from the United States or any federal agency for the administration of this subtitle;

(3) collected by the commission as fees for furnishing photostatic or certified copies of commission records;

(4) collected by the commission as fees for conducting

audits under the authority granted by this subtitle;

(5) received from any federal agency or any agency of another state as compensation for services or facilities supplied to the agency;

(6) received under any surety bond or insurance policy or from other sources:

(A) for losses sustained by the administration fund; or

(B) by reason of damage to equipment or supplies purchased with money in the administration fund;

(7) received as proceeds from the sale or disposition of equipment or supplies that are no longer necessary for the proper administration of this subtitle, if the equipment or supplies were purchased with money in the administration fund; and

(8) received from any other source for the administration of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.152. USE OF ADMINISTRATION FUND. (a) Money credited to the administration fund may be used by the commission as provided by this subtitle and may not be transferred to any other fund.

(b) Money in the administration fund received from the federal government or a federal agency may be spent only for the purposes and in the amounts found necessary by the United States secretary of labor or that secretary's successor for the proper and efficient administration of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.154. REIMBURSEMENT OF ADMINISTRATION FUND. (a) If the United States secretary of labor or that secretary's successor finds that money received from the secretary or the secretary's successor under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) or any other federal money granted to the commission for the administration of this subtitle has been lost or spent for a purpose other than, or in an amount in excess of, that found necessary for the proper administration of this subtitle by the secretary or the secretary's successor, the money shall be replaced

by money appropriated for that purpose from the general funds of this state to the administration fund for expenditure as provided by Section 203.152.

(b) On receipt of notice that the secretary or the secretary's successor has made a determination described in Subsection (a), the commission shall promptly report the amount needed for reimbursement to the governor. The governor, at the earliest opportunity, shall submit to the legislature a request for the appropriation of that amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. SPECIAL ADMINISTRATION FUND

Sec. 203.201. SPECIAL ADMINISTRATION FUND. (a) The unemployment compensation special administration fund is a special fund.

(b) The special administration fund consists of:

(1) all interest and penalties collected under this subtitle, other than a penalty assessed under Section 214.003(a)(2); and

(2) any amounts received under any surety bond for losses sustained by the special administration fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 756 (S.B. 658), Sec. 1, eff. October 1, 2013.

Sec. 203.202. USE OF SPECIAL ADMINISTRATION FUND. (a) Money in the special administration fund may be spent in accordance with this subtitle and may be used:

(1) to pay the cost of reimbursing the benefit account in the compensation fund for benefits paid to former employees of this state that are based on service for this state, and the cost of construction and purchase of buildings and land necessary for that administration;

(2) in the administration of Chapters 51, 61, and 62;

(3) for payment of interest on advances from the federal trust fund;

(4) as a revolving fund to cover expenditures that are necessary and proper under this subtitle and for which federal funds have been requested but not received, subject to the charging of the expenditures against the federal funds when received;

(5) to refund a penalty as provided by Section 203.203; and

(6) subject to the provisions of Chapter 2107, Government Code, to pay persons who contract with the commission to collect delinquent unemployment taxes, penalties, and interest owed under this subtitle.

(b) Money in the special administration fund may not be spent in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would, in the absence of that money, be available to finance expenditures for the administration of this subtitle.

(c) The commission by a resolution entered in its minutes may authorize to be charged against the special administration fund any expenditure the commission considers proper in the interest of good administration of this subtitle if the resolution states that no other funds are available for the expenditure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 2, eff. Sept. 1, 1997.

Sec. 203.203. REFUND OF PENALTIES. A refund under Subchapter E, Chapter 213 of a penalty that has been erroneously collected and deposited to the credit of the special administration fund shall be made, without interest, from the special administration fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. ISSUANCE OF FINANCIAL OBLIGATIONS FOR UNEMPLOYMENT COMPENSATION FUND

Sec. 203.251. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) it is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due;

(2) at the time of the enactment of this subchapter, borrowing from the federal government was the only option available

to obtain sufficient funds to pay benefits when the balance in the compensation fund is depleted;

(3) alternative methods of replenishing the unemployment compensation fund may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state; and

(4) funds representing revenues received from the unemployment obligation assessment authorized under this subchapter and any income from the investment of those funds are not state property.

(b) The purpose of this subchapter is to provide appropriate methods through which the state may continue the unemployment compensation program at the lowest possible cost to the state and employers in the state.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.252. DEFINITIONS; GENERAL PROVISION. (a) In this subchapter:

(1) "Authority" means the Texas Public Finance Authority.

(2) "Bond" means any type of revenue obligation, including a bond, note, certificate, or other instrument, payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the obligation.

(3) "Bond administrative expenses" means expenses incurred to administer bonds issued under this subchapter, including fees for paying agents, trustees, and attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law.

(4) "Bond obligations" means the principal of a bond and any premium and interest on a bond issued under this subchapter, together with any amount owed under a related credit agreement.

(5) "Credit agreement" means a loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit, an interest rate swap agreement, an interest rate lock agreement, a currency swap agreement, a forward payment conversion agreement, an agreement to provide payments based on

levels of or changes in interest rates or currency exchange rates, an agreement to exchange cash flows or a series of payments, an option, put, or call to hedge payment, currency, interest rate, or other exposure, or another agreement that enhances the marketability, security, or creditworthiness of a bond issued under this subchapter.

(b) An amount owed by the authority under a credit agreement shall be payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the credit agreement.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.253. REQUEST FOR BOND ISSUANCE. (a) If the commission determines that the issuance of bonds is necessary to reduce or avoid the need to borrow or obtain a federal advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law, or to refinance a previous loan or advance received by the commission and that bond financing is the most cost-effective method of funding the payment of benefits, the commission may request the authority to issue bonds on its behalf. Before making a request of the authority under this subsection, the commission must by resolution determine that the issuance of bonds for the purposes established by this section will result in a savings to the state and to employers in this state as compared to the cost of borrowing or obtaining an advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law.

(b) The commission shall specify in the commission's request to the authority the maximum principal amount of the bonds, not to exceed $2 billion for any separate bond issue, and the maximum term of the bonds, not to exceed 10 years.

(c) The principal amount determined by the commission under Subsection (b) may be increased to include an amount sufficient to:

(1) pay the costs of issuance of the authority;

(2) provide a bond reserve fund; and

(3) capitalize interest for the period determined necessary by the commission, not to exceed two years.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.254. ISSUANCE OF BONDS BY AUTHORITY. (a) The authority shall issue bonds on request by the commission, in accordance with the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to bond issuance by a state agency.

(b) The authority shall determine the method of sale, type of bond, bond form, maximum interest rates, and other terms of the bonds that, in the authority's judgment, best achieve the economic goals of the commission and effect the borrowing at the lowest practicable cost.

(c) The authority may enter into a credit agreement in connection with the bonds.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.255. BOND PROCEEDS. (a) The proceeds of bonds issued by the authority under this subchapter may be deposited with a trustee selected by the authority and the commission or held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller.

(b) Bond proceeds, including investment income, shall be held in trust for the exclusive use and benefit of the commission. The commission may use the proceeds to:

(1) repay the principal and interest of previous advances from the federal trust fund;

(2) pay unemployment benefits by depositing the proceeds in the unemployment compensation fund, as defined in Subchapter B;

(3) pay the costs of issuing the bonds;

(4) provide a bond reserve; and

(5) pay capitalized interest on the bonds for the period determined necessary by the commission, not to exceed two years.

(c) Any excess money remaining after the purposes for which the bonds were issued is satisfied may be used to purchase or redeem outstanding bonds.

(d) If there are no outstanding bonds or bond interest to be paid, the remaining proceeds shall be transferred to the unemployment compensation fund.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.256. REPAYMENT OF COMMISSION'S FINANCIAL OBLIGATIONS. (a) The commission shall assess an unemployment obligation assessment annually on each employer entitled to an experience rating under Chapter 204 if any bonds issued under this subchapter are outstanding.

(b) With regard to outstanding bonds issued by the authority under this subchapter, the authority shall notify the commission of the amount of the bond obligations and the estimated amount of bond administrative expenses each year in sufficient time, as determined by the commission, to permit the commission to assess the annual rate of the unemployment obligation assessment, subject to verification by a financial advisor of the commission or as otherwise specified in the proceedings authorizing the bonds.

(c) The commission shall deposit all revenue collected from the unemployment obligation assessment into the obligation trust fund. Money deposited in the fund may be invested as permitted by general law. Money in the obligation trust fund required to be used to pay bond obligations and bond administrative expenses shall be transferred to the authority or used by the commission in the manner and at the time specified in the resolution adopted in connection with the bond issue to ensure timely payment of obligations and expenses, or as otherwise provided by the bond documents.

(d) For bonds issued by the authority for the commission, the commission shall provide for the payment of the bond obligations and the bond administrative expenses by irrevocably pledging revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund, together with any bond reserve fund, as provided in the proceedings authorizing the bonds and related credit agreements.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.257. BOND PAYMENTS. (a) Revenues received from the unemployment obligation assessment may be applied only as provided by this subchapter.

(b) The commission may pay bond obligations with other legally available funds.

(c) Bond obligations are payable only from sources provided for payment in this subchapter.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.258. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Revenue collected from the unemployment obligation assessment in any year that exceeds the amount of the bond obligations and bond administrative expenses payable in that year and interest earned on the obligation trust fund may, in the discretion of the commission, be:

(1) used to pay bond obligations payable in the subsequent year, offsetting the amount of the assessment that would otherwise have to be levied for the year under this subchapter;

(2) used to redeem or purchase outstanding bonds;

(3) deposited in the unemployment compensation fund; or

(4) used to pay principal and interest on advances from the federal trust fund.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.259. STATE DEBT NOT CREATED. (a) A bond issued under this subchapter, and any related credit agreement, is not a debt of the state or any state agency or political subdivision of the state and is not a pledge of the faith and credit of any of them. A bond or credit agreement is payable solely from revenue as provided by this subchapter.

(b) A bond, and any related credit agreement, issued under this chapter must contain on its face a statement to the effect that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bond except as provided by

this subchapter; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.260. STATE NOT TO IMPAIR BOND OBLIGATIONS. If bonds under this subchapter are outstanding, the state may not:

(1) take action to limit or restrict the rights of the commission to fulfill its responsibility to pay bond obligations; or

(2) in any way impair the rights and remedies of the bond owners until the bonds are fully discharged.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.261. EXEMPTION FROM TAXATION. A bond issued under this subchapter, any transaction relating to the bond, and profits made from the sale of the bond are exempt from taxation by this state or by a municipality or other political subdivision of this state.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.262. NO PERSONAL LIABILITY. The members of the commission, commission employees, the board of directors of the authority, and the employees of the authority are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

CHAPTER 204. CONTRIBUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 204.001. DEFINITION. In this chapter, "manual" means the North American Industrial Classification System Manual published by the United States Office of Management and Budget.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 1, eff. Sept. 1, 2001.

Sec. 204.002. CONTRIBUTION REQUIRED. (a) An employer shall pay a contribution on wages for employment paid during a calendar year or the portion of the calendar year in which the employer is subject to this subtitle.

(b) The contribution shall be paid to the commission in accordance with rules adopted by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.0025. ADDITIONAL WORKFORCE DATA REPORTING. It is the intent of the legislature that the commission, subject to the availability of federal funding or other resources for the purpose, work with employers to enhance the reporting of employment and earnings data by employers to the commission as part of an employer's routine wage filings under this subtitle or commission rule and consistent with federal law and regulations. The enhanced wage filings must include information related to occupation and other important employment information that would improve the state's labor market information.

Added by Acts 2021, 87th Leg., R.S., Ch. 933 (H.B. 3767), Sec. 3, eff. September 1, 2021.

Sec. 204.003. CONTRIBUTION NOT DEDUCTED FROM WAGES. An employer may not deduct any part of a contribution from the wages of an individual in the employer's employ.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.004. ASSIGNMENT TO MAJOR GROUP. The commission shall assign each employer to a major group in accordance with the definitions contained in the manual.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.005. ESTABLISHMENT OF MAJOR GROUP CONTRIBUTION RATE. (a) For each calendar year, the commission shall establish by industry an average contribution rate for each major group.

(b) The commission shall determine the year's contribution rate for an industry by averaging the contribution rates paid by employers in that industry during the preceding year ending on September 30, as shown by the employment records maintained by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.006. INITIAL CONTRIBUTION RATE. (a) A person's contribution rate for the calendar year in which the person becomes an employer is the greater of:

(1) the rate established for that year for the major group to which the employer is assigned under Section 204.004, less one-tenth of one percent; or

(2) two and six-tenths percent.

(b) A rate established under Subsection (a) applies to the employer until the date the experience rate computed under Section 204.041 takes effect for the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 1, eff. January 1, 2006.

Sec. 204.007. SPECIAL RATE; CERTAIN EMPLOYERS ENGAGED IN AGRICULTURE. (a) This section applies to an employer identified by the commission as classified in the manual as:

(1) Number 115114, crop preparation services for market; or

(2) Number 115111, cotton ginning.

(b) An employer subject to this section shall pay a contribution at the lowest of the following rates:

(1) five and four-tenths percent;

(2) the general tax rate applicable to that employer, with the deficit tax rate and replenishment tax rate; or

(3) any other tax rate applicable to that employer under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 864, Sec. 1, eff. Sept. 1, 2001.

Sec. 204.008. TIME BENEFITS ARE PAID. For the purpose of this chapter, benefits are paid at the time the claim for the benefits is certified by the commission to the comptroller for payment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.009. APPLICATION TO LABOR AGENT. (a) A labor agent who furnishes a farm and ranch laborer is liable for the payment of a tax under this subtitle as if the labor agent were the employer of the laborer, without regard to any factor used to determine an employer-employee relationship, including the right of control.

(b) If a labor agent does not pay the tax in accordance with this subtitle, a person who contracts with the labor agent for the services of a farm and ranch laborer is jointly and severally liable with the labor agent for payment of the tax under this subtitle as an employer.

(c) A labor agent shall notify each person with whom the labor agent contracts whether the labor agent pays the tax under this subtitle.

(d) A labor agent who pays the tax shall present evidence of payment to each person with whom the labor agent contracts.

(e) In this section, "labor agent" means a person who is a farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.010. PAYMENT OF CONTRIBUTIONS BY INDIAN TRIBES. An Indian tribe that is subject to this subtitle shall pay contributions under the same terms and conditions as any other subject employer unless the Indian tribe elects under Chapter 205 to make reimbursements for benefits instead of contributions.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 5, eff. June 11, 2001.

SUBCHAPTER B. CHARGEBACKS

Sec. 204.021. CHARGEBACKS. (a) The amount of benefits paid to a claimant for a benefit year shall be charged to the accounts of each of the claimant's employers during the claimant's base period. The chargebacks of an employer for a calendar quarter are the benefits paid to all of the employer's employees or former employees during that quarter.

(b) The chargeback of benefits of a claimant who has two or more employers during the claimant's base period is allocated among those employers according to the proportion of the total of the claimant's benefit wage credits paid during the base period by each employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.022. EXCLUSIONS FROM CHARGEBACKS. (a) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer's employment before the employee's benefit year:

(1) was required by a federal statute;

(2) was required by a statute of this state or an ordinance of a municipality of this state;

(3) would have disqualified the employee under Section 207.044, 207.045, 207.051, or 207.053 if the employment had been the employee's last work;

(4) imposes a disqualification under Section 207.044, 207.045, 207.051, or 207.053;

(5) was caused by a medically verifiable illness of the employee or the employee's minor child;

(6) was based on a natural disaster that results in a

disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), if the employee would have been entitled to unemployment assistance benefits under Section 410 of that act (42 U.S.C. Section 5177) had the employee not received state unemployment compensation benefits;

(7) was caused by a natural disaster, fire, flood, or explosion that causes employees to be separated from one employer's employment;

(8) was based on a disaster that results in a disaster declaration by the governor under Section 418.014, Government Code;

(9) resulted from the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage;

(10) was caused by the employer being called to active military service in any branch of the United States armed forces on or after January 1, 2003;

(11) resulted from the employee leaving the employee's workplace to protect the employee from family violence or stalking or the employee or a member of the employee's immediate family from violence related to a sexual assault as evidenced by:

(A) an active or recently issued protective order documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the stalking of, the employee or the potential for family violence against, or the stalking of, the employee;

(B) a police record documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the stalking of, the employee;

(C) a physician's statement or other medical documentation that describes the sexual assault of the employee or a member of the employee's immediate family or family violence against the employee that:

(i) is recorded in any form or medium that identifies the employee or member of the employee's immediate family, as applicable, as the patient; and

(ii) relates to the history, diagnosis, treatment, or prognosis of the patient; or

(D) written documentation from a family violence center or rape crisis center that describes the sexual assault of the

employee or a member of the employee's immediate family or family violence against the employee;

(12) resulted from a move from the area of the employee's employment that:

(A) was made with the employee's spouse who is a member of the armed forces of the United States; and

(B) resulted from the spouse's permanent change of station of longer than 120 days or a tour of duty of longer than one year;

(13) was caused by the employee being unable to perform the work as a result of a disability for which the employee is receiving disability insurance benefits under 42 U.S.C. Section 423;

(14) resulted from the employee leaving the employee's workplace to care for the employee's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available;

(15) was caused by the employer's reinstatement of a qualified uniformed service member with reemployment rights and benefits and other employment benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.);

(16) was caused by the employee being called to provide service in the uniformed services, as defined by 38 U.S.C. Section 4303, or in the Texas military forces, as defined by Section 437.001, Government Code, unless the employer has been found to be in violation of reemployment provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.) or Section 437.204, Government Code, with respect to the employee; or

(17) was due to a reason that:

(A) constitutes an involuntary separation under Section 207.046(a)(1); and

(B) does not constitute good cause connected with the employee's work under Section 207.045 for the employee to voluntarily leave the employment.

(a-1) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if:

(1) the employment did not constitute suitable work for the employee, as determined under Section 207.008; and

(2) the employee worked for the employer for less than four weeks.

(a-2) Benefits computed on benefit wage credits of an employee may not be charged to the account of an employer if the employee continued to work the employee's customary hours for the employer when the employee's benefit year began. This subsection does not apply to a claim for unemployment benefits made under Chapter 215.

(b) For the purpose of this section, if an employee's last separation from the employment of an employer is a separation for which the employee was determined to have been disqualified under Section 207.048, the employee's last separation from the employment of that employer is considered to be the next later separation from the employment of that employer.

(c) Except as provided by law, evidence regarding an employee described by Subsection (a)(11) may not be disclosed to any person without the consent of the employee.

(d) For purposes of Subsection (a)(11):

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Stalking" means conduct described by Section 42.072, Penal Code.

(3) "Immediate family" means an individual's parent, spouse, or child under the age of 18.

(4) "Sexual assault" means conduct described by Section 22.011 or 22.021, Penal Code.

(5) "Family violence center" has the meaning assigned by Section 51.002, Human Resources Code.

(e) Benefits may not be charged to the account of an employer, regardless of whether the liability for the chargeback arises in the employee's current benefit year or in a subsequent benefit year, if the employee's last separation from the employer's employment before the employee's benefit year was or would have been excepted from disqualification under Section 207.023(b)(2) or 207.045(j).

(f) Shared work benefits paid under Chapter 215 may not be charged to the account of an employer if the benefits are reimbursed by the federal government under the federal Layoff Prevention Act of 2012 (Pub. L. No. 112-96, Subtitle D, Title II).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 93, Sec. 1, eff. Sept. 1, 1997; Acts

2003, 78th Leg., ch. 77, Sec. 1, eff. May 15, 2003; Acts 2003, 78th Leg., ch. 526, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 7A.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 39 (S.B. 1342), Sec. 1, eff. May 9, 2005.

Acts 2005, 79th Leg., Ch. 493 (H.B. 481), Sec. 2, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 12.0015, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 10.001, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 10.002, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1180 (H.B. 550), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1180 (H.B. 550), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 26 (S.B. 439), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 13 (H.B. 2035), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 59 (H.B. 1550), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 310 (H.B. 1580), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 888 (H.B. 916), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1398 (H.B. 2034), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(39), eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 375 (S.B. 818), Sec. 1, eff. September 1, 2021.

Sec. 204.023. NOTICE SENT AT TIME BENEFITS PAID. The commission shall mail to an employer a notice of the employer's maximum potential chargebacks when benefits are first paid if:

(1) notice of an initial claim has not already been mailed to the employer under Section 208.002; and

(2) the employer's account is potentially chargeable with benefits as a result of the initial claim and payment of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.024. PROTEST OF POTENTIAL CHARGEBACKS. To protest a potential chargeback, an employer to whom notice is mailed under Section 204.023 must mail to the commission at Austin a protest not later than the 30th day after the date the notice was mailed or the right to protest the chargeback is waived. The protest must include a statement of the facts supporting the grounds of the protest.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 773, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.025. DECISION AND ADMINISTRATIVE REVIEW OF PROTEST. (a) An examiner promptly shall decide the issues involved in a timely protest filed under Section 204.024 and shall mail a notice of the decision to the protesting employer.

(b) The examiner's decision becomes final 14 days from the date the examiner mails the notice unless before that date the employer mails to the commission at Austin a written appeal from the examiner's decision.

(c) Administrative review under this section must be in accordance with the rules of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.026. JUDICIAL REVIEW OF PROTEST. (a) An employer may appeal an administrative determination made under Section 204.025 after the employer has exhausted the employer's administrative remedies, not including a motion for rehearing, before the commission. An appeal must be filed within the time prescribed by

Sections 212.153 and 212.201 for commission decisions on benefits.

(b) An appeal to a court relating to a chargeback has the same venue and jurisdiction as a suit to collect contributions and penalties under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.027. NOTICE, PROTEST, AND APPEAL--NOTICE SENT AT TIME OF CLAIM. (a) If notice of the claim was sent to an employer under Section 208.002, the commission shall mail the employer a notice of the amount of the employer's potential chargeback resulting from the claim.

(b) The employer may protest a clerical or machine error relating to the amount of the chargeback not later than the 14th day after the date the notice was mailed.

(c) The commission shall mail a decision on the protest to the employer.

(d) An employer may appeal the decision on the protest not later than the 14th day after the date notice of the decision is mailed to the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. GENERAL TAX RATE FOR EXPERIENCE-RATED EMPLOYERS

Sec. 204.041. TAX ON EXPERIENCE-RATED EMPLOYERS. (a) Each employer whose account has been chargeable with benefits throughout four or more consecutive calendar quarters shall pay contributions at the rate prescribed by the table in Section 204.042 or a table extended under Section 204.043.

(b) Except as provided by Subsection (c), a change in the rate applicable to an employer takes effect on January 1.

(c) The rate for an employer who becomes subject to contributions under Subsection (a) for the first time at the close of a calendar quarter takes effect on the first day of the next calendar quarter and continues in effect until the January 1 of the next calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.042. TAX RATE TABLE.

If the replenishment ratio is	and the employer's benefit ratio does not exceed:									
1.00	0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70	0.80	0.90
. . .										
1.20	0.00	0.08	0.16	0.25	0.33	0.41	0.50	0.58	0.66	0.75
1.21	0.00	0.08	0.16	0.24	0.33	0.41	0.49	0.57	0.66	0.74
1.22	0.00	0.08	0.16	0.24	0.32	0.40	0.49	0.57	0.65	0.73
1.23	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.65	0.73
1.24	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.25	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.26	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.63	0.71
1.27	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.62	0.70
1.28	0.00	0.07	0.15	0.23	0.31	0.39	0.46	0.54	0.62	0.70
1.29	0.00	0.07	0.15	0.23	0.31	0.38	0.46	0.54	0.62	0.69
1.30	0.00	0.07	0.15	0.23	0.30	0.38	0.46	0.53	0.61	0.69
1.31	0.00	0.07	0.15	0.22	0.30	0.38	0.45	0.53	0.61	0.68
1.32	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.68
1.33	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.67
1.34	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.52	0.59	0.67
1.35	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.51	0.59	0.66
1.36	0.00	0.07	0.14	0.22	0.29	0.36	0.44	0.51	0.58	0.66
1.37	0.00	0.07	0.14	0.21	0.29	0.36	0.43	0.51	0.58	0.65
1.38	0.00	0.07	0.14	0.21	0.28	0.36	0.43	0.50	0.57	0.65
1.39	0.00	0.07	0.14	0.21	0.28	0.35	0.43	0.50	0.57	0.64
1.40	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.50	0.57	0.64
1.41	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.42	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.43	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.44	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.45	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.46	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.47	0.54	0.62
1.47	0.00	0.06	0.13	0.20	0.27	0.34	0.40	0.47	0.54	0.61
1.48	0.00	0.06	0.13	0.20	0.27	0.33	0.40	0.47	0.54	0.60
1.49	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.50	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.51	0.00	0.06	0.13	0.19	0.26	0.33	0.39	0.46	0.52	0.59

1.52	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.46	0.52	0.59
1.53	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.45	0.52	0.58
1.54	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.55	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.56	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.44	0.51	0.57
1.57	0.00	0.06	0.12	0.19	0.25	0.31	0.38	0.44	0.50	0.57
1.58	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.59	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.60	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.43	0.50	0.56

the employer's tax rate is:

0.00	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%
%									

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.043. EXTENSION OF TAX RATE TABLE UP TO SIX PERCENT. (a) The commission shall extend the table in Section 204.042 by providing additional replenishment ratios, benefit ratios, and tax rates up to six percent.

(b) In extending the table in Section 204.042, the commission shall use the same mathematical principles used in constructing the table.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.044. BENEFIT RATIO. (a) The benefit ratio for an employer is equal to the total amounts of the employer's chargebacks for the 36 consecutive months preceding the tax rate computation date divided by the total of the employer's taxable wages for the same months.

(b) The benefit ratio of an employer whose account has been chargeable with benefits for less than 36 consecutive months but throughout each month of at least four calendar quarters is equal to the total amount of the employer's chargebacks for those months preceding the tax rate computation date divided by the total of the employer's taxable wages for those months.

(c) In computing the benefit ratio, only taxable wages on which

contributions have been paid to the commission not later than the last day of the month in which the computation date occurs may be used.

(d) In computing the benefit ratio for employers who are subject only to Section 201.027 and who have elected under that section to file reports annually, only taxable wages for which contributions have been paid to the commission on or before January 31 may be used.

(e) The benefit ratio is expressed as a percentage.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 487, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.045. REPLENISHMENT RATIO. (a) The replenishment ratio for a calendar year is computed by:

(1) dividing the numerator described in Subsection (b) by the denominator described in Subsection (c); and

(2) rounding the result to the nearest hundredth.

(b) The numerator is equal to the amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts, plus one-half of the amount of benefits paid during that period that are not effectively charged to employers' accounts. In computing the amount of the benefits charged or paid, the commission shall not include the amount of:

(1) a canceled benefit warrant;

(2) that part of a benefit that has been overpaid and been repaid;

(3) benefits paid that are repayable from a reimbursing employer, the federal government, or another governmental entity; or

(4) benefits paid and not effectively charged to an employer's account as a result of an order or proclamation by the governor declaring at least 50 percent of the counties in this state to be in a state of disaster or emergency.

(c) The denominator is the total amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts.

(d) The commission shall compute the replenishment ratio for each calendar year before the date the first contribution payment

with respect to wages for employment paid in that year is due. Once computed for the year, the replenishment ratio may not be adjusted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 7 (H.B. 7), Sec. 1, eff. May 13, 2021.

Sec. 204.046. EFFECTIVELY CHARGED BENEFITS. (a) A benefit is not effectively charged if it is:

(1) not charged to an employer's account;

(2) charged to an employer's account after the employer has reached maximum liability because of the maximum tax rate; or

(3) charged to an employer's account but considered not collectible.

(b) A benefit not described in Subsection (a) is effectively charged.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.047. TAX RATE COMPUTATION DATE FOR EXPERIENCE TAX RATE. (a) The computation date for the tax rate for the contribution under Section 204.041 is October 1 of the year preceding the calendar year in which the rate takes effect, except as provided by Subsections (b) and (c).

(b) The computation date for the tax rate for the contribution under Section 204.041(a) for an employer who becomes subject to that tax rate for the first time is the date on which the rate takes effect under Section 204.041(c).

(c) An employer who reports annually under Section 201.027 has the same computation date as other employers, but the final computation of a rate for the employer may not occur before February 1 of the year following the computation date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 487, Sec. 3, eff. Sept. 1, 2001.

Sec. 204.048. VOLUNTARY CONTRIBUTIONS. (a) Notwithstanding

any other provision of this subtitle, an employer for whom the commission has computed an experience rate as of October 1 of a calendar year that is effective for the succeeding calendar year, as provided by Section 204.047(a), may elect to make a voluntary payment of contributions to the commission.

(b) The amount of a voluntary contribution may be equal to all or part of the employer's chargebacks during the period ending September 30 that are used in computing the employer's experience rate for the succeeding calendar year. The commission shall allocate a voluntary contribution of less than the full amount of the employer's chargebacks first to the employer's most recent chargebacks.

(c) On receipt of a voluntary contribution during the period prescribed by Subsection (d), the commission shall reduce the employer's chargebacks by an amount equal to the contribution and shall recompute the experience rate applicable to that employer for the succeeding calendar year.

(d) An employer who elects to make a voluntary contribution for the recomputation of the employer's experience rate must make the contribution as prescribed by rules adopted by the commission. The employer may not revoke the contribution after the date on which the commission uses the contribution to recompute the employer's experience rate.

(e) Notwithstanding Subsection (a), the commission may not compute a new experience rate for an employer or reduce an employer's experience rate based on a voluntary contribution made by the employer after the expiration of the 120th day of the calendar year for which the rate is effective.

(f) The commission shall deposit a voluntary contribution made under this section to the credit of the compensation fund.

Added by Acts 1997, 75th Leg., ch. 383, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. ADJUSTMENTS TO TAX RATE FOR EXPERIENCE-RATED EMPLOYERS

Sec. 204.061. CEILING AND FLOOR OF COMPENSATION FUND. In computing the tax rates under this subchapter:

(1) the ceiling of the compensation fund is two percent of the total taxable wages for the four calendar quarters ending the

preceding June 30; and

(2) the floor of the compensation fund is equal to the greater of:

(A) $400 million; or

(B) one percent of the total taxable wages for the four calendar quarters ending the preceding June 30.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.062. REPLENISHMENT TAX. (a) In addition to the general tax computed under Subchapter C, an employer entitled to an experience rate shall pay a replenishment tax at the rate computed by:

(1) dividing the numerator described by Subsection (b) by the denominator described by Subsection (c);

(2) multiplying that result by 100 to obtain a percentage; and

(3) rounding that result to the nearest hundredth.

(b) The numerator is an amount equal to one-half of the amount of benefits paid by all employers during the 12 months ending the preceding September 30 that are not effectively charged.

(c) The denominator is an amount equal to the taxable wages paid by all employers during the four quarters ending the preceding June 30.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.31, eff. Sept. 1, 1995.

Sec. 204.0625. ADJUSTMENT TO REPLENISHMENT TAX RATE. On and after January 1, 2006, the replenishment tax rate computed under Section 204.062 shall be adjusted to a rate computed by subtracting one-tenth of one percent from the percentage computed under Section 204.062(a).

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 2, eff. June 18, 2005.

Sec. 204.063. DEFICIT ASSESSMENT. (a) If the amount of money

in the compensation fund on a tax rate computation date is less than the floor of the compensation fund, a deficit tax rate is added for the next calendar year to the general tax rate for each employer entitled to an experience rate for that year.

(b) The deficit tax rate for a calendar year is the lesser of:

(1) the rate computed by multiplying the deficit ratio, as computed under Section 204.064, by the sum of the employer's general tax rate, the replenishment tax rate, and the deficit tax rate for the previous calendar year; or

(2) two percent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 6, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.06, eff. June 20, 2003.

Sec. 204.064. DEFICIT RATIO. (a) The deficit ratio is computed by:

(1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and

(2) rounding that result to the nearest hundredth.

(b) The numerator is computed by subtracting the balance of the compensation fund, considering any federal advance, from the floor of the compensation fund.

(c) The denominator is the amount of contributions due under the general tax rate and the replenishment rate for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 7, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.07, eff. June 20, 2003.

Sec. 204.065. USE OF SURPLUS. (a) If the amount in the compensation fund on a tax rate computation date is more than the ceiling of the compensation fund, the commission may use all or part of that surplus to pay outstanding bond obligations as provided by this section or to provide a surplus credit or a surplus credit rate as provided by Sections 204.0651 and 204.0652 to an employer entitled to an experience rate on the computation date.

(b) If, on the tax rate computation date, there are outstanding bond obligations as described by Subchapter C, Chapter 203, including bond administrative expenses, the commission may transfer all or part of the surplus described by Subsection (a) to the obligation trust fund under Section 203.102 for payment of those obligations. The amount transferred under this subsection may not exceed any amount transferred to the unemployment compensation fund under Section 203.255(b)(2).

(c) To the extent that any portion of the surplus is not used to pay bond obligations, the commission shall use that amount to compute:

(1) a surplus credit under Section 204.0651; or

(2) an annual surplus credit rate under Section 204.0652.

(d) In determining the use of any surplus, the commission shall exercise the options that the commission determines to be in the best interests of the state's employers and workers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 2, eff. May 4, 2007.

Sec. 204.0651. SURPLUS CREDIT. (a) The commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute a surplus credit for an employer entitled to an experience rate on the computation date, to be applied beginning with contributions for the first quarter of the following year.

(b) The amount of the surplus credit is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's contributions due for the four calendar quarters ending the preceding September 30.

(c) An employer may not apply a surplus credit against delinquent contributions. A surplus credit may not be applied until the employer has paid any delinquent contributions.

Added by Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 2, eff. May 4, 2007.

Sec. 204.0652. SURPLUS CREDIT RATE. (a) If the commission does not compute a surplus credit under Section 204.0651, the commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute an annual surplus credit rate for an employer entitled to an experience rate on the computation date.

(b) The surplus credit rate is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's general and replenishment tax rates for the preceding year.

(c) The surplus credit rate shall be subtracted from the sum of the general and replenishment tax rates. The remainder may not be less than zero. The results shall be rounded to the nearest hundredth.

(d) An employer may not receive a surplus credit rate if any delinquent contributions are due on the computation date, but is eligible for a surplus credit rate beginning on the calendar quarter following the quarter in which the delinquent contributions are paid.

Added by Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 2, eff. May 4, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 536 (H.B. 1657), Sec. 1, eff. June 16, 2015.

Sec. 204.066. SURPLUS RATIO. (a) The surplus ratio is computed by:

(1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and

(2) rounding that result to the nearest hundredth.

(b) The numerator is computed by subtracting the ceiling of the compensation fund from the balance of the compensation fund and subtracting from that amount any amount used to pay bond obligations under Section 204.065(b).

(c) The denominator is the amount of contributions due for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 3, eff. May 4, 2007.

Sec. 204.067. ADJUSTMENTS TO RATE. The commission, at its own discretion, may adjust a rate under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 4, eff. May 4, 2007.

SUBCHAPTER E. ACQUISITION OF EXPERIENCE-RATED EMPLOYER

Sec. 204.081. DEFINITIONS. (a) In this subchapter:

(1) "Compensation experience" includes the period that benefit wage credits or benefits have been chargeable and any other factor under Subchapter A, B, C, or D necessary to the computation of experience rating under those subchapters.

(2) "Person" means an individual, trust, estate, partnership, association, company, or corporation.

(3) "Substantially common management or control" exists if, after the acquisition of the organization, trade, or business of an employing unit, the predecessor employing unit continues to:

(A) own or manage the organization that conducts the organization, trade, or business;

(B) own or manage the assets necessary to conduct the organization, trade, or business;

(C) control through security or lease arrangements the assets necessary to conduct the organization, trade, or business; or

(D) direct the internal affairs or conduct of the organization, trade, or business.

(4) "Substantially common ownership" exists if, on the date of an acquisition of the organization, trade, or business of an employing unit, a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employing unit, or the spouse or a person within the first degree of consanguinity or affinity, as determined under Chapter 573, Government Code, of the shareholder, officer, or other owner:

(A) is a shareholder, officer, or other owner of a legal or equitable interest in the successor employing unit; or

(B) holds an option to purchase a legal or equitable

interest in the successor employing unit.

(5) "Transfer of trade or business" includes the transfer of part or all of an employer's workforce to another employer if, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and the employer to whom the workforce is transferred performs trade or business with respect to the workforce.

(6) "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

(b) For purposes of Subsection (a)(4), following a partial acquisition of an organization, trade, or business of an employing unit, substantially common ownership does not exist solely because the predecessor employing unit has the right to repossess the part acquired by the successor employing unit in the event of the successor's failure to complete a condition of the acquisition.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 525 (H.B. 1251), Sec. 1, eff. September 1, 2015.

Sec. 204.082. EFFECTIVE DATE OF ACQUISITION. For purposes of this subchapter, an acquisition is effective on the first day of the calendar quarter in which the acquisition occurs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.083. ACQUISITION OF ALL OR PART OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS; TRANSFER OF COMPENSATION EXPERIENCE. The transfer of the predecessor employer's compensation experience to the successor employer is required if the predecessor employing unit transfers, through any means, all or part of the organization, trade, or business, to the successor employer and there is substantially common management or control or substantially common ownership of the entities.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 3, eff. September 1, 2005.

Sec. 204.084. ACQUISITION OF PART OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS: APPROVAL OF TRANSFER OF COMPENSATION EXPERIENCE WITHOUT SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP; CONTRIBUTION RATE. (a) If an employing unit acquires or otherwise receives, through any means, part of the organization, trade, or business of an employer, and transfer of compensation experience is not required by Section 204.083, the successor employing unit and the predecessor employer may jointly make a written application to the commission to transfer the compensation experience of the predecessor employer that is attributable to the part of the organization, trade, or business acquired to the successor employing unit.

(b) If the acquisition results from the death of the predecessor employer, the requirement that the predecessor employer join in the application for transfer of the compensation experience does not apply.

(c) Except as provided by Subsection (d), the commission shall approve an application if:

(1) immediately after the acquisition the successor employing unit continues operation of substantially the same part of the organization, trade, or business acquired;

(2) the predecessor employer waives in writing all rights to an experience rating computed on the compensation experience attributable to the part of the organization, trade, or business acquired by the successor employing unit, unless the acquisition results from the death of the predecessor employer;

(3) a definitely identifiable and segregable part of the predecessor employer's compensation experience is attributable to the part of the organization, trade, or business acquired;

(4) for a successor employing unit that is not an employer at the time of the acquisition, the successor employing unit elects to become an employer on the date of the acquisition or otherwise becomes an employer during the year in which the acquisition occurs;

(5) the application was filed with the commission not later than the first anniversary of the effective date of the acquisition; and

(6) the applicants have shown that:

(A) the acquired part of the organization, trade, or business is capable of operating independently and separately from the predecessor employer; and

(B) the wages attributable to the acquired part of the organization, trade, or business are solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.

(d) The commission shall deny a transfer of compensation experience under this section if the commission determines that the transfer was done primarily to qualify for a reduced compensation experience rating by either:

(1) circumventing the experience rating system; or

(2) manipulating the experience rating system by minimizing the impact of chargebacks to the predecessor's or successor's tax account.

(e) A successor employing unit that acquires compensation experience under this section and that is an experience-rated employer on the date of and during the period preceding the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor employing unit on the date of acquisition.

(f) A successor employing unit that acquires compensation experience under this section and that is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the next contribution rate computation date at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition. If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor employing unit's contribution rate must be determined under Section 204.006.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 7.01, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 5, eff. September 1, 2005.

Sec. 204.085. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP EXISTS; CERTAIN PARTIAL ACQUISITIONS. (a) Except as provided by Subsection (d), in the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, if the commission determines that the part of the organization, trade, or business transferred is definitely identifiable and segregable and that compensation experience can be specifically attributed to that part of the organization, trade, or business, the contribution rate of the successor must be computed:

(1) based on the successor employing unit's experience for the part of the organization, trade, or business that was not acquired by the transfer; and

(2) as provided by this section for the part of the organization, trade, or business acquired through the transfer.

(a-1) In the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, the predecessor employer and successor employer may jointly submit, not later than the second anniversary of the date the partial acquisition was completed, information necessary for making the determination described by Subsection (a). The period for which the information is submitted must be the lesser of:

(1) four years; or

(2) the length of time the predecessor employer was liable for the payment of a tax under this subtitle.

(b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at a rate computed by using the compensation experience transferred from the predecessor employer and that of the successor employing unit.

(c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated

employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.

(d) If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor's contribution rate must be determined under Section 204.006.

(e) The commission shall include information about the availability of a partial transfer of compensation experience under this subchapter:

(1) with the information provided by the commission to each new employer; and

(2) on any form, including in electronic format, required to be submitted by an employer to report a change of status.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 525 (H.B. 1251), Sec. 2, eff. September 1, 2015.

Sec. 204.0851. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP EXISTS; OTHER ACQUISITIONS. (a) For a transfer of compensation experience required by Section 204.083 other than a transfer described by Section 204.085(a), the contribution rate shall be computed as provided by this section.

(b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate computed by using the prior 36-month combined compensation experience of the predecessor employing unit and the successor employing unit on the date of the acquisition.

(c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition shall pay contributions from

the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition.

(d) The contribution rate for experience-rated and nonexperience-rated successor employing units shall, for the years following the year of acquisition, be computed as follows:

(1) for the first year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 24-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;

(2) for the second year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 12-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;

(3) for the third year following acquisition, compensation experience available to the successor employing unit plus the predecessor employing unit's compensation experience from September 30 preceding the year of acquisition to the date of the acquisition; and

(4) for years subsequent to the acquisition and to the transfer of compensation experience required under Section 204.083, the predecessor employing unit's contribution rate is computed without regard to any transfer of compensation experience required by that section.

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

Sec. 204.086. COLLECTION OF CONTRIBUTION, PENALTY, OR INTEREST FROM SUCCESSOR EMPLOYER. (a) An individual or employing unit that acquires the organization, trade, or business or substantially all of the assets of an organization, trade, or business of an employer who, at the time of the acquisition, is indebted to the commission for a contribution, a penalty, or interest, is liable to the commission for prompt payment of the contribution, penalty, or interest.

(b) If not paid, the commission may bring an action under Chapter 213 for the collection of a contribution, a penalty, or interest as though the contribution, penalty, or interest had been incurred by the successor employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.0861. SURPLUS CREDIT FOR SUCCESSOR EMPLOYING UNITS. (a) In this section, "surplus credit" means a credit described by Section 204.0651.

(b) A successor employing unit to which compensation experience is transferred under Section 204.083 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit.

(c) A successor employing unit to which compensation experience is transferred under Section 204.084 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit if the commission determines that the requirement described by Section 204.084(c)(3) is satisfied.

(d) If the commission determines that a transfer of compensation experience was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, a successor employing unit is not entitled to, and may not apply or receive, a surplus credit under Subsection (b) or (c).

(e) A predecessor employing unit is not entitled to, and may not apply or receive, all or any portion of a surplus credit that is based on compensation experience that is transferred to a successor employing unit under this subchapter.

(f) The commission shall adopt rules necessary to implement and enforce this section, including rules that ensure that only a successor employing unit applies or receives all or part of a surplus credit previously attributable to a predecessor employing unit.

Added by Acts 2011, 82nd Leg., R.S., Ch. 31 (S.B. 638), Sec. 1, eff. September 1, 2011.

Sec. 204.087. OFFENSE; CRIMINAL AND CIVIL PENALTIES. (a) A person commits an offense if the person recklessly, knowingly, or

intentionally defeats, evades, or circumvents a provision of this subchapter or if the person recklessly, knowingly, or intentionally attempts, aids and abets an attempt, or advises another to defeat, evade, or circumvent a provision of this subchapter.

(b) An employer who commits an offense under this section may be assessed a civil penalty in an amount equal to two percent of wages as defined in Subchapter F, Chapter 201, for the year during which the violation occurred and for the three years following that year.

(c) A person, other than the employer, who commits an offense under this section may be assessed a civil penalty of not more than $5,000 for a first offense and not more than $5,000 for each subsequent offense.

(d) A civil penalty assessed under Subsection (b) or (c) shall be deposited in the special administration fund established under Section 203.201.

(e) An offense under this section is a Class A misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

Sec. 204.088. PROCEDURES TO IDENTIFY EXPERIENCE-RATING TRANSFERS. The commission by rule shall establish procedures to identify the transfer or acquisition of a business for the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

Sec. 204.089. CONFORMITY WITH FEDERAL REGULATIONS. The commission shall administer this subchapter in conformity with any regulations prescribed by the United States Secretary of Labor relating to experience-rating transfers.

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

SUBCHAPTER F. SPECIAL CONTRIBUTIONS FOR GOVERNMENTAL EMPLOYERS

Sec. 204.101. CONTRIBUTION FROM GOVERNMENTAL EMPLOYER. A governmental employer shall pay a contribution in accordance with this subchapter and rules adopted by the commission on wages paid for employment during each year or portion of the year in which the governmental employer is subject to this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.102. CONTRIBUTION NOT DEDUCTION FROM WAGES. A contribution paid by a governmental employer may not be deducted from the wages of individuals in the employer's employ.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.103. RATE OF CONTRIBUTIONS FOR GOVERNMENTAL EMPLOYERS. (a) The rate of the contribution required under Section 204.101 for each calendar year is equal to the greater of:

(1) one-tenth of one percent; or

(2) the percentage, adjusted to the next higher one-tenth of one percent, computed by dividing the numerator described by Subsection (b) by the denominator described by Subsection (c).

(b) The numerator is the amount of all benefits paid during the preceding calendar year based on wage credits earned from employers that pay contributions under this subchapter, not including benefit payments that are reimbursable from any other source. If the amount of benefits paid during the period used for determining the rate is greater than the contributions paid by the same employers for the same period, the amount of the benefits paid in excess of the amount of contributions collected shall be added to the numerator in determining the contribution rate. If the amount of benefits paid for the period used for determining the rate is less than the contributions paid by the same employers for the same period, that amount shall be deducted from the numerator in computing the rate.

(c) The denominator is the amount of the total wages paid during the preceding calendar year by all employers that pay contributions under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.104. ACCOUNTING FOR GOVERNMENTAL EMPLOYERS. The commission shall account separately for benefits paid and contributions collected under this subchapter, and these benefits and contributions may not be used in determining contribution rates under Subchapters A, B, C, and D.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.105. PAST DUE CONTRIBUTIONS. (a) A governmental employer that fails to pay a contribution due under this subchapter on the date it is due as prescribed by the commission is subject to the same penalties as provided for other employers under Section 213.021.

(b) The provisions for collecting delinquent contributions under Chapter 213 apply to a governmental employer.

(c) The commission shall notify the comptroller in writing of the name of each governmental employer that is delinquent in payment of contributions under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.106. REPORTS AND RECORDS. (a) A governmental employer shall keep records and file reports with the commission relating to individuals in its employ as required by rules adopted by the commission.

(b) A governmental employer that does not keep the records or file the reports when due is subject to the same penalties provided for other employers under Sections 213.022, 213.023, 213.024, and 213.056.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT; FUNDS

Sec. 204.121. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT.

(a) In addition to any other taxes imposed under this subtitle, an employment and training investment assessment is imposed on or after January 1, 2006, on each employer paying contributions under this subtitle as a separate assessment of one-tenth of one percent of wages paid by the employer.

(b) The commission shall deposit the revenue from the employment and training investment assessment to the credit of the holding fund created under Section 204.122.

(c) The employment and training investment assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 3, eff. June 18, 2005.

Sec. 204.122. HOLDING FUND. (a) The employment and training investment holding fund is a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state.

(b) The comptroller shall administer the holding fund in accordance with the directions of the commission. Interest accruing on amounts in the holding fund shall be deposited quarterly to the credit of the compensation fund.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 3, eff. June 18, 2005.

Sec. 204.123. TRANSFER TO SKILLS DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION FUND. (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

(1) during any state fiscal biennium beginning on or after September 1, 2007, 100 percent to the skills development fund created under Section 303.003, except that the amount transferred under this subdivision may not exceed the amount appropriated by the legislature

to the skills development program strategies and activities in that biennium; and

(2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.

(b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the skills development fund and the training stabilization fund in the manner prescribed by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 3, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1297 (H.B. 2457), Sec. 13, eff. September 1, 2011.

CHAPTER 205. REIMBURSEMENTS

SUBCHAPTER A. ELECTION TO BECOME REIMBURSING EMPLOYER

Sec. 205.001. REIMBURSEMENTS OR CONTRIBUTIONS BY GOVERNMENTAL ENTITY. (a) A state, a political subdivision of a state, an Indian tribe, or an instrumentality of a state, political subdivision of a state, or Indian tribe may elect to pay reimbursements for benefits instead of contributions.

(b) The election must be made not later than the 45th day after the date on which notice that an employer is subject to this subtitle is mailed to the employer.

(c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.

(d) An election is effective for at least two calendar years and may be terminated after the minimum period by filing with the commission not later than December 1 a written request for termination. The termination is effective January 1 of the following year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 518, Sec. 6, eff. June 11, 2001.

Sec. 205.002. ELECTION BY NONPROFIT ORGANIZATION. (a) A nonprofit organization that is described by Section 201.023 or a group of those organizations subject to this subtitle may elect to pay reimbursements for benefits instead of contributions.

(b) An election under this section must be made not later than the 45th day after the date on which notice that the employer is subject to this subtitle is mailed to the employer.

(c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.

(d) The election is effective for at least two calendar years and may not be terminated before the expiration of that period, except as provided in Sections 205.003 and 205.031.

(e) An election may be withdrawn by written application by the employer filed with the commission not later than December 1 before the year for which the employer wishes to change the employer's method of payment. The method of payment may be changed again if a timely application is filed after a minimum of two calendar years.

(f) An election to pay reimbursements terminates at any time coverage terminates under this subtitle. An employer whose election terminates because of termination of coverage, on again becoming an employer subject to this subtitle, may reelect to pay reimbursements.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.003. COMMISSION TERMINATION OF ELECTION. (a) The commission may terminate an employer's election to make reimbursements if the employer is delinquent in making reimbursements under this chapter.

(b) A termination under this section takes effect at the beginning of the next tax year and remains in effect for that tax year and the following tax year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.004. ELECTION BY INDIAN TRIBE. (a) An Indian tribe

that elects to make reimbursements for benefits instead of contributions shall make the election under this chapter in the same manner and subject to the same conditions as the state or a political subdivision of the state.

(b) An Indian tribe that makes an election under this chapter shall determine whether the election is for the tribe as a whole, individual tribal units, or a combination of individual tribal units.

(c) An Indian tribe that makes an election under this chapter shall pay the full amount of benefits attributable to service performed in the employ of the Indian tribe on the same schedule as other employing units that have elected to make reimbursements for benefits instead of contributions.

(d) An Indian tribe that fails to make a required payment, including payment of a penalty and interest, before the 91st day after receiving notice of the payment loses the option to pay reimbursements instead of contributions for the following tax year unless the commission receives payment in full before the date contribution rates for that tax year are computed.

(e) An Indian tribe that loses the option to pay reimbursements instead of contributions due to late payments under Subsection (d) may resume that option if, after the expiration of one year following the date of losing the option, the Indian tribe has timely paid all contributions and no contributions, payments instead of contributions for benefits paid, penalties, or interest remain outstanding.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 7, eff. June 11, 2001.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 205.011. APPLICABILITY OF SUBTITLE; WAIVER BY REIMBURSING EMPLOYER. (a) A reimbursing employer is entitled to the rights and privileges and subject to the duties and responsibilities of all provisions of this subtitle other than the following provisions of Chapter 204, which do not apply to a reimbursing employer:

(1) Sections 204.001-204.008;

(2) Subchapters B, C, and D of Chapter 204; and

(3) Sections 204.081-204.085.

(b) An election to become a reimbursing employer is a waiver of the rights afforded under Chapter 204 that do not apply to a reimbursing employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.012. PAYMENT OF REIMBURSEMENT. A reimbursing employer shall pay a reimbursement to the commission in accordance with this chapter and rules adopted by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.0125. EXCEPTION FROM DUTY TO PAY REIMBURSEMENT. (a) Notwithstanding any other provision of this chapter, a reimbursing employer is not liable for paying a reimbursement for benefits paid to an individual, regardless of whether the employer was named as the individual's last work, if the individual's separation from work with the employer resulted from the individual:

(1) being discharged for misconduct; or

(2) voluntarily leaving work without good cause connected with the individual's work.

(b) A reimbursing employer may contest reimbursements billed to the employer by the commission in violation of this section using the dispute resolution procedures prescribed by Chapter 212 and rules adopted under that chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 810 (H.B. 3373), Sec. 1, eff. September 1, 2015.

Sec. 205.013. BILLING; AMOUNT OF REIMBURSEMENTS. (a) A reimbursing employer shall pay to the commission an amount equal to the regular benefits plus, except as provided by Subsection (c), one-half of the extended benefits paid during that quarter that are attributable to service in the employ of the employer.

(b) At the end of each calendar quarter the commission shall bill each reimbursing employer for the amount described under Subsection (a).

(c) A state, a political subdivision of a state, or any instrumentality of any one or more states or political subdivisions of a state that is wholly owned by one or more states or political subdivisions of a state that is a reimbursing employer shall pay 100 percent of the extended benefits paid on benefit wage credits earned

from that employer.

(d) If a reimbursing employer pays a reimbursement to the commission for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle, the employer is not entitled to a refund of, or credit for, the amount paid by the employer to the commission unless the employer has complied with the requirements of Section 208.004 with respect to the claimant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 119 (S.B. 1537), Sec. 1, eff. October 1, 2013.

Sec. 205.014. PROPORTIONATE ALLOCATION OF BENEFIT COSTS--MORE THAN ONE EMPLOYER AND AT LEAST ONE REIMBURSING EMPLOYER. If benefits to an individual are computed on benefit wage credits earned from more than one employer, at least one of whom is a reimbursing employer, the amount payable to the compensation fund by each reimbursing employer is the amount that bears the same ratio to the total benefits paid to the individual as the total base period benefit wage credits for the individual from that employer bears to the total base period benefit wage credits for the individual from all employers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.015. CONTINUED LIABILITY FOR REIMBURSEMENT. An employer who has elected reimbursement under Section 205.001 or 205.002 shall pay reimbursements for benefits that are attributable to service in the employ of the employer during the period of the election, even if the employer is no longer a reimbursing employer when the benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.016. COLLECTION OF DELINQUENT REIMBURSEMENT; EFFECT OF FAILURE TO SUBMIT CERTAIN REPORTS. A reimbursing employer who

fails to pay a reimbursement on the date on which the reimbursement is due, or who fails to submit records and reports, as prescribed by the commission, is subject to the following in the same manner as an employer who does not pay a contribution when due:

(1) Sections 213.004, 213.005, 213.006, 213.008, and 213.009;

(2) Subchapters B, C, D, and E of Chapter 213, other than Section 213.058; and

(3) Section 204.086.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.017. DELINQUENT GOVERNMENTAL EMPLOYERS. The commission shall notify the comptroller in writing of the name of a governmental employer that is delinquent in payment of reimbursements under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.018. PAYMENT OF BENEFITS FROM COMPENSATION FUND; NO EFFECT ON REPLENISHMENT RATIO. Benefits computed on wages earned from a reimbursing employer and reimbursements for the benefits may not be used in computing the replenishment ratio under Section 204.045.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.019. REIMBURSEMENT FROM NON-TREASURY FUNDS. (a) A branch, department, or other instrumentality of this state that reimburses the commission with funds that are held outside the state treasury shall reimburse the commission by writing a check to the commission for deposit into the appropriate unemployment compensation account. A deposit under this section shall be made not later than the 30th day after the date the instrumentality receives the commission's statement of amounts due.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1312, Sec. 99(28), eff. September 1, 2013.

(c) A branch, department, or other instrumentality affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate for the purpose of reimbursing the appropriate unemployment compensation account for benefits paid.

(d) The state auditor may review the reimbursement of funds for compliance by the affected entities with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.38, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 63, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(28), eff. September 1, 2013.

SUBCHAPTER C. GROUP ACCOUNT

Sec. 205.021. APPROVAL OF GROUP ACCOUNT; EFFECTIVE DATE. (a) On approval of an application submitted by two or more reimbursing employers, the commission shall establish a group account for the employers to share the cost of benefits that are attributable to service in the employ of the employers.

(b) The application must identify and authorize a group representative to act as the group's agent for the purpose of this subchapter.

(c) The group account takes effect at the beginning of the calendar quarter in which the commission received the application. The commission shall notify the group's representative of the effective date of the account.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.022. DURATION AND TERMINATION OF GROUP ACCOUNT. (a) A group account must remain in effect for not less than two years.

(b) After two years, the account may be terminated at the discretion of the commission or on application by the group. The termination is effective January 1 of the next year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.023. GROUP MEMBER'S REIMBURSEMENT AMOUNT. On establishment of a group account, each member of the group is liable for reimbursements for each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service in the employ of all members of the group as the total wages paid for service in employment in the quarter by the member bears to the total wages paid in the quarter by all members of the group.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.024. REPORTS AND RECORDS. Each member of a group shall keep accurate employment records and submit reports as required by the commission relating to persons employed by the member.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.025. COMMISSION RULES. The commission shall as necessary adopt rules on:

(1) an application for the establishment, maintenance, and termination of a group account authorized by this subchapter;

(2) the type of records to be kept and reports to be submitted by a group of employers;

(3) the addition of a new member to a group;

(4) the withdrawal of an active member from a group; and

(5) the determination of the amount of reimbursements payable under this subchapter by members of a group and the time and manner of those payments.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. BONDS AND OTHER SAFEGUARDS

Sec. 205.031. BOND. (a) The commission may require a reimbursing employer or group of reimbursing employers to execute and file with the commission a surety bond approved by the commission.

(b) The amount of the bond shall be determined in accordance with rules adopted by the commission.

(c) The commission may require adjustments to a filed bond as it considers appropriate.

(d) If a reimbursing employer covered by a bond fails to pay the full amount of reimbursements when due, together with any applicable interest and penalties required under this subtitle, the surety is liable on the bond, to the extent of the bond, as though the surety were the employer.

(e) If a reimbursing employer fails to execute and file bond when directed to do so by the commission, the commission may terminate the employer's election to make reimbursements effective at the beginning of the next tax year. The termination remains effective for that tax year and the following tax year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.032. ADDITIONAL SAFEGUARDS. The commission may provide additional safeguards as necessary to ensure that a reimbursing employer pays the reimbursements required under Subchapters B and C.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. STATE ELECTIONS

Sec. 205.041. STATE ELECTION TO BE REIMBURSING EMPLOYER. (a) This state is a reimbursing employer subject to this subtitle for all services performed in the employ of:

(1) this state;

(2) a branch or department of this state; or

(3) an instrumentality of this state that is not otherwise an employer.

(b) All services performed in the employ of this state, a branch or department of this state, or an instrumentality of this state are employment.

(c) Subsection (a) does not apply to a political subdivision of this state.

(d) The commission shall provide to each state agency an annual statement showing the benefits paid by the commission during the year that are attributable to that agency.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.042. COVERAGE OF STATE EMPLOYEES WORKING OUTSIDE STATE. If the commission is unable to execute a reciprocal agreement under Chapter 211 to cover an employee of this state who works outside this state, the employing agency shall become a reimbursing employer if permitted by the law of the state in which the employee works. If the agency is not permitted to be a reimbursing employer, the agency may pay the required contribution for that employee from funds available for that purpose.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 206. UNEMPLOYMENT INSURANCE COVERAGE

Sec. 206.001. YEARLY COVERAGE. An employing unit that is or becomes an employer in a calendar year is subject to this subtitle during that entire calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.002. ELECTION OF COVERAGE AS EMPLOYER. (a) An employing unit that is not otherwise subject to this subtitle may elect coverage as an employer for not less than two calendar years.

(b) Subsection (a) does not apply to an employing unit to which Section 205.001 or 205.002 applies.

(c) On written approval by the commission of an election under Subsection (a), the employing unit making the election becomes an employer to the same extent as all other employers beginning on the date stated in the approval.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.003. ELECTION OF COVERAGE REGARDING SERVICES NOT CONSTITUTING EMPLOYMENT. (a) An employing unit may elect for not less than two calendar years that all services that do not constitute employment and that are performed by individuals in its employ in one or more distinct establishments or places of business are to be considered employment for all purposes of this subtitle.

(b) An election under Subsection (a) must be in writing and be filed with the commission.

(c) On written approval by the commission of an election under Subsection (a), the services constitute employment during the period elected, beginning on the date stated in the approval.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.004. TERMINATION OF COVERAGE. (a) An employing unit may cease to be an employer only on January 1 of a year and only if the commission finds that:

(1) the employing unit was not an employer during the preceding year; or

(2) the employing unit has not had any individuals in employment during the preceding three calendar years.

(b) The commission may not make a finding under Subsection (a)(1) unless the employing unit files an application for termination of coverage with the commission on or after January 1 but before April 1 of the year for which termination is requested. The commission may make a finding under Subsection (a)(2) without an application having been filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.005. PREVIOUS RIGHTS LOST BY CESSATION OF COVERAGE. When an employing unit that ceased to be an employer subsequently becomes an employer, the employing unit is considered to be a new employer without regard to the rights that employing unit acquired when previously an employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 207. BENEFITS
SUBCHAPTER A. PAYMENT OF BENEFITS

Sec. 207.001. PAYMENT OF BENEFITS. Benefits are paid through the commission in accordance with rules adopted by the commission and are due and payable under this subtitle only to the extent provided by this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.002. BENEFITS FOR TOTAL UNEMPLOYMENT. (a) An eligible individual who is totally unemployed in a benefit period is entitled to benefits for the benefit period at the rate of 1/25 of the wages received by the individual from employment by employers during that quarter in the individual's base period in which wages were highest. For purposes of this subsection, the wages received by the individual from employment by employers during the individual's base period include wages ordered to be paid to the individual by a final order of the commission under Chapter 61 that:

(1) were due to be paid to the individual by an employer during the individual's base period; and

(2) will be credited to the date or dates on which the payment of those wages was due.

(a-1) The commission by rule shall determine the method of crediting wages to a particular quarter for purposes of Subsection (a).

(a-2) The rate of benefits paid under this section may not be more than the maximum weekly benefit amount computed under Subsection (b) or less than the minimum weekly benefit amount computed under Subsection (b) for each benefit period.

(b) The maximum weekly benefit amount is 47.6 percent of the average weekly wage in covered employment in this state. The minimum weekly benefit amount is 7.6 percent of the average weekly wage in covered employment in this state.

(c) The commission shall determine the average weekly wage in covered employment and compute the maximum and minimum weekly benefit amount not later than October 1 of each year based on the annual average weekly wage for the preceding year. If a benefit amount computed under this subsection includes cents, the commission shall adjust the benefit amount as follows:

(1) if the computed benefit amount includes at least one cent but not more than 49 cents, the commission shall round the benefit down to the nearest multiple of $1; and

(2) if the computed benefit amount includes at least 50 cents but not more than 99 cents, the commission shall round the benefit amount up to the nearest multiple of $1.

(c-1) An increase in the maximum weekly benefit amount may not exceed $14 in any year. An increase in the minimum weekly benefit amount may not exceed $1 in any year.

(d) An increase in maximum and minimum benefit amounts under this section takes effect on October 1.

(e) The maximum benefit amount payable to an individual for a benefit period under this section on the effective date of a valid claim is the maximum benefit amount payable to that individual until the individual establishes a new benefit year.

(f) In this section, "wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1104 (H.B. 2273), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 1, eff. June 15, 2007.

Sec. 207.003. BENEFITS FOR PARTIAL UNEMPLOYMENT. (a) An eligible individual who is partially unemployed in a benefit period is entitled to partial benefits for that benefit period.

(b) The amount of a partial benefit is computed by:

(1) adding the individual's benefit amount and the greater of $5 or 25 percent of the benefit amount; and

(2) subtracting the amount of the wages earned by the individual during the benefit period from the amount computed under Subdivision (1).

(c) In this section, "wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.004. BENEFIT WAGE CREDITS. (a) The commission shall credit as benefit wage credits during an individual's base period:

(1) wages the individual received for employment from an employer during the individual's base period; and

(2) wages ordered to be paid by a final order issued by the commission under Chapter 61 that:

(A) were due to be paid by an employer during the individual's base period; and

(B) will be credited to the date or dates on which the payment of those wages was due.

(a-1) The commission by rule shall determine the method of crediting wages to an individual's base period for purposes of Subsection (a).

(b) Wages used to qualify an individual for regular benefits under this subtitle or under any other unemployment compensation law may not be used again to qualify the individual for regular benefits.

(c) If an employer fails to report, when requested by the commission, wages that were paid to an individual during a base period, the commission may determine the amount of benefit wage credits for the individual for the base period from the best information obtained by the commission.

(d) In this section:

(1) "Benefit wage credits" means those wages used to determine an individual's right to benefits.

(2) "Wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 2, eff. June 15, 2007.

Sec. 207.005. MAXIMUM AMOUNT OF BENEFITS. The maximum amount of benefits payable to an eligible individual during a benefit year may not exceed the lesser of:

(1) 26 times the individual's benefit amount; or
(2) 27 percent of the individual's benefit wage credits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.006. ADJUSTMENT OF BENEFITS. If a benefit rate or benefit payable computed under this chapter is not a multiple of $1, the benefit rate or benefit payable is increased to the next multiple of $1.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.007. FEES LIMITATION; LEGAL REPRESENTATION; CRIMINAL OFFENSE; PENALTY. (a) An individual claiming benefits under this subtitle may not be charged a fee in a proceeding under this subtitle by:
(1) the commission or a representative of the commission; or
(2) a court or an officer of a court.
(b) An individual claiming benefits in a proceeding before the commission or a court may be represented by counsel or another authorized agent. Counsel or an agent representing an individual under this subtitle may charge and collect a fee for the counsel's or agent's services.
(c) A person who violates this section commits an offense. An offense under this section is punishable by:
(1) a fine of not less than $50 and not more than $500;
(2) imprisonment for not more than six months; or
(3) both a fine and imprisonment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 1104 (H.B. 2273), Sec. 2, eff. September 1, 2005.

Sec. 207.008. SUITABLE WORK. (a) In determining whether work is suitable for an individual, the commission shall consider:
(1) the degree of risk involved to the individual's health,

safety, and morals at the place of performance of the work;

(2) the individual's physical fitness and previous training;

(3) the individual's experience and previous earnings;

(4) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(5) the distance of the work from the individual's residence.

(b) Notwithstanding any other provision of this subtitle, work is not suitable and benefits may not be denied under this subtitle to an otherwise eligible individual for refusal to accept new work if:

(1) the position offered is vacant directly because of a strike, lockout, or other labor dispute;

(2) the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) as a condition of being employed, the individual is required to join a company union or to resign from or refrain from joining a bona fide labor organization.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.009. PAYMENT OF BENEFITS BY INDIAN TRIBE. Benefits based on service in the employ of an Indian tribe, as described by Section 201.048, are payable in the same amount, on the same terms, and subject to the same conditions as benefits paid on the basis of other service under this subtitle.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 8, eff. June 11, 2001.

SUBCHAPTER B. BENEFIT ELIGIBILITY

Sec. 207.021. BENEFIT ELIGIBILITY CONDITIONS. (a) Except as provided by Chapter 215, an unemployed individual is eligible to receive benefits for a benefit period if the individual:

(1) has registered for work at an employment office and has continued to report to the employment office as required by rules adopted by the commission;

(2) has made a claim for benefits under Section 208.001;

(3) is able to work;

(4) is available for work;

(5) is actively seeking work in accordance with rules adopted by the commission;

(6) for the individual's base period, has benefit wage credits:

(A) in at least two calendar quarters; and

(B) in an amount not less than 37 times the individual's benefit amount;

(7) after the beginning date of the individual's most recent prior benefit year, if applicable, earned wages in an amount equal to not less than six times the individual's benefit amount;

(8) has been totally or partially unemployed for a waiting period of at least seven consecutive days; and

(9) participates in reemployment services, such as a job search assistance service, if the individual has been determined, according to a profiling system established by the commission, to be likely to exhaust eligibility for regular benefits and to need those services to obtain new employment, unless:

(A) the individual has completed participation in such a service; or

(B) there is reasonable cause, as determined by the commission, for the individual's failure to participate in those services.

(b) A week may not be counted as a waiting period week for the purposes of this section:

(1) unless the individual has registered for work at an employment office in accordance with Subsection (a)(1);

(2) unless it is after the filing of an initial claim;

(3) unless the individual reports at an office of the commission and certifies that the individual has met the waiting period requirements;

(4) if benefits have been paid or are payable with respect to the week;

(5) if the individual does not meet the eligibility requirements of Subsections (a)(3) and (a)(4); and

(6) if the individual has been disqualified for benefits for the seven-day period under Section 207.044, 207.045, 207.047, or 207.048.

(b-1) An individual for whom suitable work is available only in

an occupation designated by United States Department of Labor regulation as an occupation that regularly conducts preemployment drug testing is available for work for purposes of Subsection (a)(4) only if the individual complies with the applicable requirements of the drug screening and testing program administered by the commission under Section 207.026. The commission shall adopt rules for determining the type of work that is suitable for an individual for purposes of this subsection.

(c) Notwithstanding any other provision of this section, an individual is eligible to receive benefits on the individual's waiting period claim in accordance with this subtitle if the individual has been paid benefits in the individual's current benefit year equal to or exceeding two times the individual's benefit amount and:

(1) has returned to full-time employment after being totally or partially unemployed for at least seven consecutive days; or

(2) has exhausted the individual's regular benefits for the current benefit year, other than benefits applicable to the waiting period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 759, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 107 (S.B. 920), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1141 (S.B. 21), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 220 (H.B. 931), Sec. 1, eff. September 1, 2015.

Sec. 207.0211. ELIGIBILITY OF CERTAIN DISABLED PERSONS. A permanently disabled individual is considered to be able to work under Section 207.021(a)(3) and available for work for purposes of Section 207.021(a)(4) if, as a result of the individual's disability, the individual:

(1) is unable to work full-time;

(2) has worked part-time during a substantial part of the individual's base period;

(3) is seeking part-time work consistent with the limitations imposed by the individual's disability; and

(4) is receiving disability insurance benefits under 42 U.S.C. Section 423.

Added by Acts 2005, 79th Leg., Ch. 493 (H.B. 481), Sec. 1, eff. June 17, 2005.

Sec. 207.0212. ELIGIBILITY OF CERTAIN PERSONS UNEMPLOYED BECAUSE OF DISASTER. (a) In this section, "disaster unemployment assistance benefits" means benefits authorized under Section 410, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5177), and rules adopted under that section.

(b) Notwithstanding Section 207.021, the governor, by executive order, may suspend the waiting period requirement imposed under Section 207.021(a)(8) to authorize an individual to receive benefits for that waiting period if the individual:

(1) is unemployed as a direct result of a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.);

(2) is otherwise eligible for unemployment compensation benefits under this subtitle; and

(3) is not receiving disaster unemployment assistance benefits for the period included in that waiting period.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 1.19, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 107 (S.B. 920), Sec. 2, eff. May 18, 2013.

Sec. 207.022. COMMISSION-APPROVED TRAINING. (a) An individual may not be denied benefits because the individual is in training with the approval of the commission.

(b) An individual may not be denied benefits for a benefit period in which the individual is in training with the approval of the commission because of the provisions of Section 207.021 relating to the individual's:

(1) availability for work;
(2) active search for work; or
(3) refusal to apply for or refusal to accept suitable work.

(c) Approval of training must be obtained as required by rules adopted by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.023. TRAINING UNDER THE TRADE ACT OF 1974. (a) This section applies only to training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. Section 2296(a)(1)).

(b) An otherwise eligible individual may not be denied benefits for a week:
(1) that the individual was in training;
(2) that the individual left work to enter training if the work the individual left was not suitable employment; or
(3) because of the application to the week in training of a provision of this subtitle or a federal unemployment compensation law relating to the individual's:
(A) availability for work;
(B) active search for work; or
(C) refusal to accept work.

(c) For the purposes of Subsection (b), "suitable employment" means work for an individual that:
(1) is of a skill level substantially equal to or higher than that of the individual's past adversely affected employment, as that term is used by the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.); and
(2) pays wages that are not less than 80 percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.024. CLAIM FILED OR RESIDENCE IN ANOTHER STATE OR COUNTRY. An individual's benefits may not be denied or reduced solely because at the time the individual filed the claim for unemployment compensation the individual:

(1) files a claim in another state or a contiguous country with which the United States has an agreement with respect to unemployment compensation; or

(2) resides in another state or contiguous country with which the United States has an agreement with respect to unemployment compensation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.025. PREGNANCY OR TERMINATION OF PREGNANCY. Benefits may not be denied to an individual solely because of pregnancy or termination of pregnancy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.026. DRUG SCREENING OR TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS. (a) The commission by rule shall adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this subtitle by an individual to whom Section 207.021(b-1) applies. The program must:

(1) comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug testing programs recognized by the commission; and

(2) be designed to protect the rights of benefit applicants and recipients.

(b) Under the program, each individual to whom Section 207.021(b-1) applies who files an initial claim must submit to and pass a drug screening assessment developed and administered by or on behalf of the commission for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. The assessment tool used under this subsection must consist of a written questionnaire to be completed by the individual applying for benefits and must be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481, Health and Safety Code. An individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter must submit to and pass a drug test administered by or on

behalf of the commission to establish the individual's eligibility for benefits under this subtitle. An individual who fails a drug test required under this subsection under a final determination or decision under this section is not eligible to receive benefits under this subtitle until the individual has passed a subsequent drug test administered by or on behalf of the commission not earlier than four weeks after the date the individual submitted to the failed drug test.

(c) Notwithstanding Subsection (b), an individual is not ineligible to receive benefits based on the individual's failure to pass a drug test if, on the basis of evidence presented by the individual, the commission determines that, subject to Section 207.021(a)(4):

(1) the individual is participating in a treatment program for drug abuse;

(2) the individual enrolls in and attends a treatment program for drug abuse not later than the seventh day after the date initial notice of the failed drug test is sent to the individual; or

(3) the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically necessary for the individual.

(d) The commission shall prescribe procedures for providing initial notice to an individual who fails a drug test under Subsection (b), for an appeal under Chapter 212, and for the retaking of a failed drug test by an individual under this section. The procedures must provide:

(1) for prompt initial notice by mail to an individual who fails a drug test under Subsection (b) regarding:

(A) the fact of the individual's failure of the drug test;

(B) the manner in which the individual may notify the commission that the individual has enrolled in and is attending a treatment program for drug abuse;

(C) the manner in which the individual may appeal and retake the failed drug test; and

(D) common potential causes of a false positive test result;

(2) for privacy with regard to the individual's drug test result until not later than the 14th day after the date the initial notice of the failed drug test was mailed to the individual during

which time the individual may appeal and retake the failed drug test; and

(3) that a determination or decision that an individual has failed a drug test under this section becomes final on:

(A) the 15th day after the date the initial notice of the failed drug test was mailed to the individual if the individual does not appeal and retake the individual's failed drug test as provided by this section; or

(B) the date that a retest conducted pursuant to an appeal by the individual as provided by this section confirms the positive drug test result.

(e) The commission shall administer the program under this section using existing administrative funds and any funds appropriated to the commission for the purposes of this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1141 (S.B. 21), Sec. 3, eff. September 1, 2013.

SUBCHAPTER C. EXCEPTIONS TO AND DISQUALIFICATION FOR BENEFITS

Sec. 207.041. SERVICES IN EDUCATIONAL INSTITUTIONS. (a) Benefits are not payable to an individual based on services performed in an instructional, research, or principal administrative capacity for an educational institution for a week beginning during the period between two successive academic years or terms or under an agreement providing for a similar period between two regular but not successive terms if:

(1) the individual performed the services in the first of the academic years or terms; and

(2) there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years or terms.

(b) Benefits are not payable to an individual based on services performed for an educational institution in a capacity other than a capacity described by Subsection (a) for a week that begins during a period between two successive academic years or terms if:

(1) the individual performed the services in the first of the academic years or terms; and

(2) there is a reasonable assurance that the individual will perform the services in the second of the academic years or

terms.

(c) Notwithstanding Subsection (b), if benefits are denied to an individual for any week under Subsection (b) and the individual is not offered an opportunity to perform services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week that:

(1) the individual filed a timely claim for benefits; and

(2) the benefits were denied solely because of Subsection (b).

(d) Benefits are not payable to an individual based on services performed for an educational institution for a week that begins during an established and customary vacation period or holiday recess if:

(1) the individual performed the services in the period immediately before the vacation period or holiday recess; and

(2) there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(e) Benefits are not payable as provided under this section to an individual based on services performed in an educational institution if the individual performed the services while employed by an educational service agency. For the purposes of this subsection, "educational service agency" means a governmental agency or other governmental entity that is established and operated exclusively to provide services to one or more educational institutions.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.042. ATHLETES. Benefits are not payable to an individual based on services substantially all of which consist of participating in a sport or athletic event or training or preparing to participate in a sport or athletic event for a week that begins during the period between two successive sport seasons or similar periods if:

(1) the individual performed the services in the first of the seasons or periods; and

(2) there is a reasonable assurance that the individual

will perform the services in the later of the seasons or periods.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.043. ALIENS. (a) Benefits are not payable based on services performed by an alien unless the alien:

(1) is an individual who was lawfully admitted for permanent residence at the time the services were performed;

(2) was lawfully present for purposes of performing the services; or

(3) was permanently residing in the United States under color of law at the time the services were performed, including being lawfully present in the United States as a result of the application of Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)).

(b) Information required of an individual applying for benefits to determine whether benefits are payable to the individual because of the individual's alien status shall be uniformly required from all applicants for benefits.

(c) A determination that benefits are not payable to an individual whose application for the benefits would otherwise be approved except for the individual's alien status must be made from a preponderance of the evidence.

(d) A modification of Section 3304(a)(14) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(14)) that specifies other conditions or another effective date for the denial of benefits based on services performed by aliens that must be implemented under state law as a condition for a full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) is applicable under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.044. DISCHARGE FOR MISCONDUCT. (a) An individual is disqualified for benefits if the individual was discharged for misconduct connected with the individual's last work.

(b) Disqualification under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.045. VOLUNTARILY LEAVING WORK. (a) An individual is disqualified for benefits if the individual left the individual's last work voluntarily without good cause connected with the individual's work.

(b) Except as provided by Subsection (c), a disqualification for benefits under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

(c) Disqualification for benefits under this section for an individual who left work to move with the individual's spouse from the area where the individual worked continues for not less than six benefit periods and not more than 25 benefit periods following the filing of a valid claim as determined by the commission according to the circumstances of the case.

(d) Notwithstanding any other provision of this section, an individual who is available to work may not be disqualified for benefits because the individual left work because of:

(1) a medically verified illness of the individual or the individual's minor child;

(2) injury;

(3) disability;

(4) pregnancy;

(5) an involuntary separation as described by Section 207.046; or

(6) a move from the area of the individual's employment that:

(A) was made with the individual's spouse who is a member of the armed forces of the United States; and

(B) resulted from the spouse's permanent change of station of longer than 120 days or a tour of duty of longer than one year.

(e) For the purposes of Subsection (d), a medically verified

illness of a minor child prevents disqualification only if reasonable alternative care was not available to the child and the employer refused to allow the individual a reasonable amount of time off during the illness.

(f) Military personnel who do not reenlist have not left work voluntarily without good cause connected with work.

(g) An individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits under this section.

(g-1) An individual who voluntarily leaves the individual's last work is not disqualified for benefits under this section if:

(1) at the time the last work began, the individual was receiving benefits under this subtitle;

(2) the work did not constitute suitable work for the individual, as determined under Section 207.008; and

(3) the individual was employed at the last work for less than four weeks.

(h) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this subsection unless the temporary employee has been advised:

(1) that the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(2) that unemployment benefits may be denied if the temporary employee fails to do so.

(i) A covered employee of a professional employer organization is considered to have left the covered employee's last work without good cause if the professional employer organization demonstrates that:

(1) at the time the employee's assignment to a client concluded, the professional employer organization, or the client acting on the professional employer organization's behalf, gave written notice and written instructions to the covered employee to contact the professional employer organization for a new assignment; and

(2) the covered employee did not contact the professional

employer organization regarding reassignment or continued employment; provided that the covered employee may show that good cause existed for the covered employee's failure to contact the professional employer organization.

(j) An individual is not disqualified for benefits under this section if:

(1) the individual left the individual's last work to attend commission-approved training under Section 207.022; and

(2) the individual's last work did not constitute suitable work for the individual, as determined under Section 207.008.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.33(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1379, Sec. 21, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 817, Sec. 7A.03, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 39 (S.B. 1342), Sec. 2, eff. May 9, 2005.

Acts 2005, 79th Leg., Ch. 987 (H.B. 1939), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 310 (H.B. 1580), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1398 (H.B. 2034), Sec. 2, eff. September 1, 2013.

Sec. 207.046. INVOLUNTARY SEPARATION. (a) An individual is not disqualified for benefits under this subchapter if:

(1) the work-related reason for the individual's separation from employment was urgent, compelling, and necessary so as to make the separation involuntary;

(2) the individual leaves the workplace to protect the individual from family violence or stalking or the individual or a member of the individual's immediate family from violence related to a sexual assault as evidenced by:

(A) an active or recently issued protective order documenting sexual assault of the individual or a member of the individual's immediate family or family violence against, or the

stalking of, the individual or the potential for family violence against, or the stalking of, the individual;

(B) a police record documenting sexual assault of the individual or a member of the individual's immediate family or family violence against, or the stalking of, the individual;

(C) a physician's statement or other medical documentation that describes the sexual assault of the individual or a member of the individual's immediate family or family violence against the individual that:

(i) is recorded in any form or medium that identifies the individual or member of the individual's immediate family, as applicable, as the patient; and

(ii) relates to the history, diagnosis, treatment, or prognosis of the patient; or

(D) written documentation from a family violence center or rape crisis center that describes the sexual assault of the individual or a member of the individual's immediate family or family violence against the individual;

(3) the individual leaves the workplace to care for the individual's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available; or

(4) the individual's separation from employment was caused by the individual being called to provide:

(A) service in the uniformed services, as defined by 38 U.S.C. Section 4303; or

(B) service in the Texas military forces, as defined by Section 437.001, Government Code.

(b) Except as provided by law, evidence regarding an employee described by Subsection (a)(2) may not be disclosed to any person without the consent of the employee.

(c) In this section:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Stalking" means conduct described by Section 42.072, Penal Code.

(3) "Immediate family" means an individual's parent, spouse, or child under the age of 18.

(4) "Sexual assault" means conduct described by Section 22.011 or 22.021, Penal Code.

(5) "Family violence center" has the meaning assigned by Section 51.002, Human Resources Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 7A.04, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1180 (H.B. 550), Sec. 3, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 3, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 4, eff. June 14, 2013.

Acts 2021, 87th Leg., R.S., Ch. 375 (S.B. 818), Sec. 2, eff. September 1, 2021.

Sec. 207.047. FAILURE TO APPLY FOR, ACCEPT, OR RETURN TO WORK. (a) An individual is disqualified for benefits if during the individual's current benefit year, the individual failed, without good cause, to:

(1) apply for available, suitable work when directed to do so by the commission;

(2) accept suitable work offered to the individual; or

(3) return to the individual's customary self-employment, if any, when directed to do so by the commission.

(b) Disqualification for benefits under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.048. LABOR DISPUTES. (a) An individual is disqualified for benefits for a benefit period in which the individual's total or partial unemployment is caused by:

(1) the individual's stoppage of work because of a labor dispute at the factory, establishment, or other premises where the individual is or was last employed; or

(2) a labor dispute at another place that:

(A) is owned or operated by the same employing unit that owns or operates the premises where the individual is or was last employed; and

(B) supplies material or services necessary to the continued and usual operation of the premises where the individual is or was last employed.

(b) Disqualification for benefits under this section does not apply to an individual who shows to the satisfaction of the commission that the individual:

(1) is not participating in, financing, or directly interested in the labor dispute; and

(2) does not belong to a grade or class of workers any members of which were employed at the premises of the labor dispute immediately before the beginning of the labor dispute and any of whom are participating in, financing, or directly interested in the dispute.

(c) For the purposes of Subsection (b)(1), failure or refusal to cross a picket line or refusal for any reason during the continuance of the labor dispute to accept and perform an individual's available and customary work at the factory, establishment, or other premises where the individual is or was last employed constitutes participation and interest in the labor dispute.

(d) An individual may not be disqualified for benefits under Subsection (b)(2) if the individual shows that the individual:

(1) is not, and at the time of the labor dispute, was not:

(A) a member of a labor organization that is the same as, represented by, or directly affiliated, acting in concert, or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; or

(B) acting in concert or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; and

(2) has made an unconditional offer to return to work at the premises where the individual is or was last employed.

(e) If separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department is a separate factory, establishment, or other premises.

(f) For the purposes of this section, "premises" includes a vessel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.049. RECEIPT OF REMUNERATION. (a) An individual is disqualified for benefits for a benefit period for which the individual is receiving or has received remuneration in the form of:

(1) wages in lieu of notice;

(2) severance pay; or

(3) compensation under a state worker's compensation law or a similar law of the United States for:

(A) temporary partial disability;

(B) temporary total disability; or

(C) total and permanent disability.

(b) In this section, "severance pay" means dismissal or separation income paid on termination of employment in addition to the employee's usual earnings from the employer at the time of termination. The term does not include any remuneration received by an employee under:

(1) a release of claims or settlement agreement entered into between the employee and the employer:

(A) based on an alleged violation of the Civil Rights Act of 1991 (Pub. L. No. 102-166); or

(B) pursuant to a claim or cause of action filed in connection with the employment relationship; or

(2) a written contract, including a collective bargaining agreement, negotiated with the employer before the date of separation from employment of the employee.

(c) The commission may adopt rules as necessary to administer this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 906, Sec. 1, eff. June 16, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 212 (H.B. 14), Sec. 1, eff. September 1, 2011.

Sec. 207.050. RECEIPT OF PENSION OR ANNUITY. (a) Except as provided by Subsection (b), an individual is disqualified for benefits for a benefit period for which the individual is receiving

or has received a governmental or other pension, retirement or retired pay, an annuity, or any other similar periodic payment based on the previous work of the individual and reasonably attributable to the benefit period.

(b) If a periodic payment described by Subsection (a) is received by an individual under the federal Social Security Act, the commission shall consider the individual's contribution and may not reduce the weekly benefit amount.

(c) Notwithstanding Subsection (a), if the remuneration received by an individual is less than the benefits that the individual would otherwise be eligible to receive, the individual is entitled to receive benefits for the benefit period that are reduced by the amount of the remuneration, adjusted as provided by Section 207.006.

(d) This section is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) requires that this provision be enacted in state law as of January 1, 1978, as a condition for full tax credit against the tax imposed by that Act. If Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) is amended to modify these federal requirements, the modified requirements are applicable under this section to the extent required for full tax credit rather than this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 906, Sec. 2, eff. June 16, 1995.

Sec. 207.051. SALE OF BUSINESS. (a) An individual is disqualified for benefits if the individual left the individual's last work because of the sale of:

(1) a corporation and the individual was:

(A) an officer of the corporation;

(B) a majority or controlling shareholder in the corporation; and

(C) involved in the sale of the corporation;

(2) a limited or general partnership and the individual was a limited or general partner who was involved in the sale of the partnership; or

(3) a sole proprietorship and the individual was the proprietor who sold the business.

(b) The disqualification under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 93, Sec. 2, eff. Sept. 1, 1997.

Sec. 207.053. REFUSAL TO TREAT COMMUNICABLE DISEASE. (a) An individual is disqualified for benefits if the individual:

(1) left the individual's last work voluntarily rather than provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease; or

(2) was discharged from the individual's last work because the individual refused to provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease.

(b) An individual is not disqualified under this section unless the person for whom the individual last worked made available to the individual the facilities, equipment, training, and supplies necessary to permit the individual to take reasonable precautions to preclude the infection of the individual with the communicable disease.

(c) Disqualification for benefits under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's weekly benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. PROTECTION OF BENEFIT RIGHTS

Sec. 207.071. WAIVER, RELEASE, OR COMMUTATION AGREEMENT INVALID. (a) Except for an employer's waiver under Chapter 204 and Section 205.011, an agreement by an individual to waive, release, or commute the individual's right to benefits or any other rights under this subtitle is not valid.

(b) An agreement by an individual employed by an employer to pay all or a portion of a contribution or reimbursement required to be paid by the employer under this subtitle is not valid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.072. ACCEPTANCE OR REQUIREMENT OF WAIVER PROHIBITED. An employer may not require or accept a waiver of a right of an individual employed by the employer under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.073. PROHIBITED DEDUCTION FROM WAGES. An employer may not, directly or indirectly, make, require, or accept a deduction from wages to finance a contribution or reimbursement required to be paid by the employer under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.074. CRIMINAL OFFENSE; PENALTY. An employer, or officer or agent of an employer, commits an offense if the person violates Section 207.072 or 207.073. An offense under this section is punishable by:

(1) a fine of not less than $100 and not more than $1,000;
(2) imprisonment for not more than six months; or
(3) both a fine and imprisonment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.075. ASSIGNMENT OF BENEFITS PROHIBITED; BENEFIT EXEMPTIONS. (a) An assignment, pledge, or encumbrance of a right to benefits is not valid.

(b) A right to benefits is exempt from levy, execution, attachment, or any other remedy for debt collection.

(c) Benefits received by an individual are exempt from debt collection if the benefits are not mingled with other funds of the individual except for debts incurred for necessaries furnished to the

individual or the individual's spouse or dependents during the time that the individual was unemployed.

(d) A waiver of an exemption provided by this section is not valid.

(e) Subchapter E prevails over this section to the extent of any conflict.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.076. EQUAL TREATMENT. Benefits based on services for all employers in employment are payable in the same amount, on the same terms, and subject to the same conditions, except to the extent that Section 207.041 is applicable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. CHILD SUPPORT OBLIGATIONS

Sec. 207.091. DEFINITIONS. In this subchapter:

(1) "Benefit" includes amounts payable by the commission under an agreement entered under federal law that provides for compensation, assistance, or allowances with respect to unemployment.

(2) "Child support obligation" includes only an obligation that is enforced under a plan described by Section 454 of the Social Security Act (42 U.S.C. Section 654) that has been approved by the secretary of health and human services under Subtitle IV, Part D, Social Security Act (42 U.S.C. Section 651 et seq.).

(3) "State or local child support enforcement agency" means an agency of the state or a political subdivision of the state operating under a plan described by Subdivision (2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.092. DISCLOSURE OF CHILD SUPPORT OBLIGATIONS. (a) An individual at the time of filing a new claim for benefits shall disclose whether the individual owes a child support obligation.

(b) If the individual discloses a child support obligation and the individual is determined to be eligible for benefits, the commission shall notify the state or local child support enforcement

agency enforcing the child support obligation that the individual has been determined to be eligible for benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.093. WITHHOLDING OF CHILD SUPPORT BY COMMISSION. (a) The commission shall withhold from the benefits payable to an individual that owes a child support obligation an amount equal to:

(1) any amount required to be withheld under legal process properly served on the commission;

(2) if Subdivision (1) does not apply, the amount determined under an agreement submitted to the commission under Section 454(19)(B)(i) of the Social Security Act (42 U.S.C. Section 654) by the state or local child support enforcement agency; or

(3) if neither Subdivision (1) or (2) applies, the amount the individual specifies to the commission to be withheld.

(b) The commission shall pay the amount withheld under Subsection (a) to the appropriate state or local child support enforcement agency. The amount withheld shall be treated for all purposes as if it were benefits paid to the individual and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligation.

(c) This section applies only if appropriate arrangements have been made for reimbursement to the commission by a state or local child support enforcement agency for the administrative costs incurred by the commission under this subchapter that are attributable to the enforcement of child support obligations by the state or local child support enforcement agency.

(d) In this section, "legal process" has the meaning assigned by Section 459(i)(5) of the Social Security Act (42 U.S.C. Section 659).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 63, eff. September 1, 2007.

Sec. 207.094. FEDERAL LAW REQUIREMENT. (a) This subchapter and Section 207.075(e) are enacted because Section 303(e) of the

Social Security Act (42 U.S.C. Section 503(e)) requires the enactment of these provisions into state law as a condition for federal funding of administration of the state unemployment compensation laws.

(b) If Section 303(e) of the Social Security Act (42 U.S.C. Section 503(e)) is repealed, this subchapter and Section 207.075(e) are repealed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. TAX WITHHOLDING

Sec. 207.101. WITHHOLDING FROM BENEFITS FOR FEDERAL INCOME TAX. (a) An eligible individual may elect to have federal income tax withheld from benefits. The commission shall withhold federal income taxes from the benefits of an individual who elects the withholding as provided by the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) and Section 303, Social Security Act (42 U.S.C. Section 503).

(b) The commission may not withhold federal income tax from benefits as provided by this section until January 1, 1997.

Added by Acts 1995, 74th Leg., ch. 1033, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1104 (H.B. 2273), Sec. 3, eff. September 1, 2005.

SUBCHAPTER G. WITHHOLDING FROM UNEMPLOYMENT BENEFITS FOR UNCOLLECTED OVERISSUANCES OF FOOD STAMPS

Sec. 207.111. DEFINITIONS. In this subchapter:

(1) "State agency" has the meaning assigned by Section 3(n), Food Stamp Act of 1977 (7 U.S.C. Section 2012(n)).

(2) "Uncollected overissuance" has the meaning assigned by Section 13(c)(1), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(1)).

(3) "Unemployment benefits" means benefits payable under this subtitle and any other amounts payable by the commission under an agreement entered into under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

Sec. 207.112. APPLICATION. This subchapter applies only if arrangements have been made for reimbursement by the state agency for the administrative costs incurred by the commission under this subchapter that are attributable to the repayment of uncollected overissuances to the state agency.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

Sec. 207.113. REQUIRED DISCLOSURE; NOTICE TO FOOD STAMP AGENCY. (a) An individual who files a new claim for unemployment benefits shall disclose, at the time of filing of that claim, whether the individual owes an uncollected overissuance.

(b) If an individual who discloses under Subsection (a) that the individual does owe an uncollected overissuance is found eligible for unemployment benefits, the commission shall notify the state agency of the identity of that individual.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

Sec. 207.114. WITHHOLDING. (a) The commission shall deduct and withhold from unemployment benefits payable to an individual who owes an uncollected overissuance:

(1) the amount the individual specifies to the commission to be deducted and withheld under this section;

(2) the amount determined under an agreement submitted to the state agency under Section 13(c)(3)(A), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(3)(A)); or

(3) any amount otherwise required to be deducted and withheld from unemployment benefits under Section 13(c)(3)(B), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(3)(B)).

(b) The commission shall pay any amount deducted and withheld under this section to the state agency in this state.

(c) An amount deducted and withheld under this section shall be treated for all purposes as if it were paid to the individual as unemployment benefits and submitted by that individual to the state agency as repayment of the individual's uncollected overissuance.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

CHAPTER 208. BENEFIT CLAIMS
SUBCHAPTER A. FILING OF CLAIM

Sec. 208.001. FILING; INFORMATION NOTICES. (a) Claims for benefits shall be made in accordance with rules adopted by the commission. An unemployed individual who does not have a current benefit year may file an initial claim in accordance with commission rules.

(b) The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.34, eff. Sept. 1, 1995.

Sec. 208.002. INITIAL CLAIM; LAST WORK. (a) When used in connection with an initial claim, "last work" and "person for whom the claimant last worked" refer to:

(1) the last person for whom the claimant actually worked, if the claimant worked for that person for at least 30 hours during a week; or

(2) the employer, as defined by Subchapter C, Chapter 201, or by the unemployment law of any other state, for whom the claimant last worked.

(b) The commission shall mail a notice of the filing of an initial claim to the person for whom the claimant last worked before the effective date of the initial claim. If the person for whom the claimant last worked has more than one branch or division operating at different locations, the commission shall mail the notice to the branch or division at which the claimant last worked.

(c) Mailing of a notice under this section to the correct address of the person, branch, or division for which the claimant last worked constitutes notice of the claim to the person.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 12 (S.B. 458), Sec. 1, eff. September 1, 2011.

Sec. 208.003. NOTICE TO EMPLOYER. (a) An employer may designate in writing to the commission an address for mail service.

(b) If an employer designates a mailing address under Subsection (a), mailing of notice of claims, determinations, or other decisions to that address constitutes notice to the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 3, eff. Sept. 1, 1997.

Sec. 208.004. NOTIFICATION OF ADVERSE FACTS AFFECTING CLAIM; WAIVER. (a) A person to whom notice is mailed under Section 208.002 shall notify the commission promptly of any facts known to the person that may:

(1) adversely affect the claimant's right to benefits; or

(2) affect a charge to the person's account.

(a-1) A notification provided by a person under Subsection (a), including an initial response to a notice mailed to the person under Section 208.002, must include sufficient factual information to allow the commission to make a determination regarding the claimant's entitlement to benefits under this subtitle.

(b) A person who does not mail or otherwise deliver that notification to the commission within 14 days after the date notice of a claim was mailed to the person by the commission waives all rights in connection with the claim, including rights the person may have under Subchapter B, Chapter 204, other than rights relating to a clerical or machine error as to the amount of the person's chargeback or maximum potential chargeback in connection with the claim for benefits.

(c) Notwithstanding Subchapter B, Chapter 204, benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle shall be charged to the account of a person if:

(1) the person, or the person's agent, without good cause, fails to provide adequate or timely notification under this section; and

(2) the commission determines that the person, or the person's agent, has failed to provide timely or adequate notification under this section on at least two prior occasions.

(d) For purposes of Subsection (c), a notification is not adequate if the notification merely alleges that a claimant is not entitled to benefits without providing sufficient factual information, other than a general statement of the law, to support the allegation.

(e) For purposes of Subsection (c), good cause is established only by showing that a person, or the person's agent, was prevented from complying with this section due to compelling circumstances that were beyond the person's control.

(f) The commission may adopt rules as necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 119 (S.B. 1537), Sec. 2, eff. October 1, 2013.

Sec. 208.005. CLAIM STATUS INFORMATION. (a) The commission shall ensure that a person who files a claim for benefits is able to check the status of the person's claim through one or more convenient telephonic or electronic methods. Each method must provide the person with an option to submit the person's contact information to the commission and receive a return phone call or e-mail response from the commission within a reasonable time regarding the status of the person's claim.

(b) The commission shall include in a prominent location on the commission's Internet website detailed information regarding the methods available to a claimant for checking the status of a claim for benefits.

Added by Acts 2021, 87th Leg., R.S., Ch. 416 (S.B. 2099), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. CLAIM DETERMINATION

Sec. 208.021. INITIAL CLAIM DETERMINATION. (a) The commission

shall determine whether an initial claim is valid.

(b) For each valid initial claim, the commission shall determine:

(1) the claimant's benefit year;

(2) the benefit amount for total unemployment; and

(3) the duration of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 208.022. NOTICE OF INITIAL CLAIM DETERMINATION. The commission shall mail a notice of the determination of an initial claim to the claimant's last known address as shown by the commission's records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 208.023. REQUEST FOR REDETERMINATION OR APPEAL BY CLAIMANT. A claimant, within 14 days after the date the commission mailed notice of the commission's determination to the claimant under Section 208.022, may request a redetermination of or may appeal the commission's determination of the validity of an initial claim in the manner provided by Chapter 212.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.35, eff. Sept. 1, 1995.

CHAPTER 209. EXTENDED BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 209.001. DEFINITIONS. In this chapter:

(1) "Eligibility period" means the period consisting of the benefit periods in an individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within the extended benefit period, any subsequent benefit periods that begin in the extended benefit period.

(2) "Extended benefit" means a benefit payable to an individual under this chapter for a benefit period of unemployment in the individual's eligibility period, including a benefit payable to a federal civilian employee or to an ex-servicemember under 5 U.S.C.

Chapter 85.

(3) "Regular benefit" means a benefit, other than an extended benefit, payable to an individual under this subtitle or another state unemployment compensation law, including a benefit payable to a federal civilian employee or an ex-servicemember under 5 U.S.C. Chapter 85.

(4) "Secretary" means the United States secretary of labor.

(5) "State unemployment compensation law" means the unemployment compensation law of a state if the law is approved by the secretary under Section 3304 of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304).

(6) "Employment service" has the meaning assigned by Section 301.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.09, eff. Sept. 1, 1995.

Sec. 209.002. APPLICATION OF PROVISIONS RELATING TO REGULAR BENEFITS. A provision of this subtitle or a commission rule applicable to a claim for or the payment of regular benefits applies to a claim for or the payment of extended benefits unless the result of the application of the provision or rule is inconsistent with this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.003. FINDINGS. (a) The commission shall make findings as necessary to determine an extended benefit period, compute the rate of insured unemployment, and determine the eligibility or ineligibility or disqualification of an individual for extended benefits.

(b) A finding of an extended benefit period and a computation of the rate of insured unemployment shall be made in accordance with the rules of the secretary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. DETERMINATION OF EXTENDED BENEFIT PERIOD

Sec. 209.021. BEGINNING AND ENDING DATES FOR EXTENDED BENEFIT PERIOD. (a) Except as provided by Subsection (b), an extended benefit period begins with the third week after a week with a state "on" indicator.

(b) An extended benefit period may not begin before the 14th week after the end of a previous extended benefit period in effect for this state.

(c) An extended benefit period ends with the later of:

(1) the third week after the first week with a state "off" indicator; or

(2) the 13th consecutive week of the period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.022. STATE "ON" AND "OFF" INDICATOR WEEKS. (a) Except for a week to which Subsection (b) applies, a week is a state "on" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks:

(1) is five percent or more; and

(2) equalled or exceeded 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(b) If the determination that the week is a state "on" indicator week would begin an extended benefit period, the week is a state "on" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is six percent or more.

(c) Except for a week to which Subsection (d) applies, a week is a state "off" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than:

(1) five percent; or

(2) 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(d) If the determination that a week is a state "off" indicator week would end an extended benefit period, the week is a state "off" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than six

percent.

(e) Notwithstanding Subsection (d), any week that would otherwise be a state "on" indicator week under Subsection (a) may not be a state "off" indicator week.

(f) The rate of insured unemployment as used in this section is not to be seasonally adjusted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.023. RATE OF INSURED UNEMPLOYMENT. For the purpose of Section 209.022, the rate of insured unemployment is computed by:

(1) dividing:

(A) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the commission from the commission's reports to the secretary; by

(B) the average monthly employment covered under this subtitle for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period; and

(2) multiplying the quotient by 100 to determine a percentage rate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.024. PUBLIC ANNOUNCEMENT OF EXTENDED BENEFIT PERIOD. The commission shall publicly announce, in accordance with commission rule, the beginning of each extended benefit period and the termination of each extended benefit period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.025. FEDERAL FUNDING OF EXTENDED BENEFITS. Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 163 (H.B. 2831), Sec. 1, eff. May 28, 2011.

SUBCHAPTER C. ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS

Sec. 209.041. ELIGIBILITY FOR EXTENDED BENEFITS. An individual is eligible to receive extended benefits for a benefit period of unemployment in the individual's eligibility period if, with respect to the benefit period, the individual:

(1) has exhausted all regular benefits;

(2) satisfies the requirements of this subtitle for the receipt of regular benefits that are applicable to an individual claiming extended benefits, including not being disqualified for the receipt of benefits; and

(3) has within the individual's base period received benefit wage credits for employment by employers in an amount not less than:

(A) 40 times the individual's weekly benefit amount; or

(B) 1-1/2 times the individual's high-quarter benefit wage credits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 760, Sec. 1, eff. June 16, 1995.

Sec. 209.042. EXHAUSTION OF REGULAR BENEFITS. (a) An individual has exhausted regular benefits with respect to a benefit period of unemployment in the individual's eligibility period if the individual:

(1) before that period:

(A) has received all of the regular benefits available to the individual in the individual's current benefit year that includes the benefit period; or

(B) had a benefit year expire and does not have benefit wage credits sufficient to establish a new benefit year that would include the benefit period;

(2) is not entitled to unemployment benefits or allowances under the Railroad Unemployment Insurance Act (45 U.S.C. Section 351 et seq.) or other federal law as specified in regulations issued by

the secretary; and

(3) has not received unemployment benefits under the unemployment compensation law of Canada and is not seeking those benefits, or has sought those benefits and the appropriate agency finally determines that the individual is not entitled to benefits under that law.

(b) For the purposes of Subsection (a)(1)(A), an individual is considered to have received all of the regular benefits available to the individual even if, as a result of a pending appeal with respect to benefit wage credits not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.043. REQUIREMENT TO SEEK WORK. (a) An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to actively seek work.

(b) For purposes of Subsection (a), an individual is actively seeking work during a benefit period if the individual:

(1) engages in a systematic and sustained effort to obtain work during the benefit period; and

(2) furnishes tangible evidence of that effort.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.044. REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK. An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to:

(1) accept an offer of suitable work; or

(2) apply for suitable work to which the individual was referred by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.045. EMPLOYMENT SERVICE REFERRALS TO SUITABLE WORK.

The employment service shall refer a claimant entitled to extended benefits to suitable work that meets the standards prescribed in Sections 209.046, 209.047(a), and 209.047(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.046. EXCEPTIONS TO REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK. An individual may not be denied extended benefits for failure to accept a job offer of suitable work or apply for suitable work if:

(1) the work was not offered to the individual in writing and was not listed with the employment service; or

(2) failure to accept or apply for the work would not result in a denial of benefits under the applicable suitable work requirements for a regular benefit claimant in Section 207.008, to the extent that the standards of suitability in that section are not inconsistent with Section 209.047.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.047. SUITABLE WORK. (a) For the purposes of this subchapter, and subject to Subsections (b) and (c), suitable work for an individual is work:

(1) within the individual's capabilities;

(2) for which the gross average weekly remuneration payable exceeds the sum of:

(A) the individual's weekly extended benefit amount computed under Section 209.061; and

(B) the amount, if any, of supplemental unemployment compensation benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(17)(D)), payable to the individual for that week; and

(3) that pays wages not less than the greater of:

(A) the minimum wage under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 206(a)(1)), without regard to any exemption; or

(B) the applicable state or local minimum wage.

(b) If an individual furnishes satisfactory evidence to the commission that the individual's prospects for obtaining work in the

individual's customary occupation within a reasonably short period are good, the determination of whether work is suitable for that individual shall be made in accordance with the provisions of Section 207.008 applicable to suitable work for a claimant for regular benefits, without regard to the standards of suitability in Section 209.046 and this section.

(c) Work that does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304(a)(5)) is not suitable work for an individual.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.048. DURATION OF INELIGIBILITY; WORK REQUIREMENTS. An individual ineligible for extended benefits under Section 209.043 or 209.044 is ineligible for benefits for a period:

(1) beginning with the first day of the week following the week in which the individual is ineligible under those sections; and

(2) ending when the individual has been employed in each of four subsequent weeks, consecutive or nonconsecutive, and has earned remuneration in an amount not less than four times the weekly extended benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.049. INELIGIBILITY DUE TO DISQUALIFICATION. (a) Except as provided by Subsection (b), an individual is ineligible to receive extended benefits for a benefit period in the individual's eligibility period if the individual has been disqualified for regular or extended benefits under this subtitle because the individual:

(1) voluntarily left work;

(2) was discharged for misconduct; or

(3) failed to accept an offer of or apply for suitable work.

(b) Subsection (a) does not apply if the disqualification is terminated in accordance with specific conditions established under this subtitle requiring the individual to perform service for remuneration after the date of the disqualification.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.050. INTERSTATE CLAIM. (a) An individual is ineligible for extended benefits payable for a benefit period under an interstate claim filed in any state under an interstate benefit payment plan if an extended benefit period is not in effect for the benefit period in that state.

(b) Subsection (a) does not apply to the first two benefit periods for which extended benefits are payable under an interstate claim filed under an interstate benefit payment plan, regardless of whether an extended benefit period is in effect for the state, to the individual from the extended benefit account established for the individual with respect to the benefit year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. AMOUNT OF EXTENDED BENEFITS

Sec. 209.061. WEEKLY EXTENDED BENEFIT AMOUNT. The weekly extended benefit amount payable to an individual for a benefit period of total unemployment in the individual's eligibility period is equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.062. MAXIMUM TOTAL EXTENDED BENEFIT AMOUNT. The total extended benefit amount payable to an eligible individual for the individual's eligibility period is 50 percent of the total amount of regular benefits that were payable to the individual under this subtitle in the individual's applicable benefit year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.063. EFFECT OF TRADE READJUSTMENT ALLOWANCES. (a) Notwithstanding any other provision of this subtitle, the remaining balance of extended benefits that an individual would otherwise be entitled to receive in an extended benefit period for benefit periods

beginning after the end of a benefit year is reduced as provided by Subsections (b) and (c) if:

(1) the benefit year of the individual ends within an extended benefit period; and

(2) the individual receives trade readjustment allowances under the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.) within that benefit year.

(b) The balance is reduced by an amount equal to the product of:

(1) the number of benefit periods for which the individual received trade readjustment allowances within that benefit year; and

(2) the individual's weekly benefit amount for extended benefits.

(c) The balance may not be reduced to less than zero.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. FINANCING OF EXTENDED BENEFITS

Sec. 209.081. UNEMPLOYMENT COMPENSATION FUND. (a) Extended benefits shall be paid from the compensation fund.

(b) Payments made by the federal government for its share of extended benefits shall be deposited in the compensation fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.082. CHARGES TO REIMBURSING EMPLOYER. Fifty percent of the extended benefit payments based on benefit wage credits from a reimbursing employer shall be charged to the employer's account and reimbursed by the employer in the same manner as a regular benefit payment. Those payments may not be used in determining the replenishment ratio in Section 204.045.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.083. CHARGES TO TAXED EMPLOYER. (a) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer are chargebacks and must be used in determining the employer's benefit ratio unless regular benefits paid to the

individual were determined not to be charged back against the employer's account.

(b) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer, regardless of whether charged to an employer, shall be used in the numerator of the replenishment ratio in Section 204.045(b). Chargebacks resulting from the payment of extended benefits shall be used in the denominator of the replenishment ratio in Section 204.045.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.084. CHARGES TO GOVERNMENTAL EMPLOYER. The total amount of extended benefit payments shall be charged to the employer if the payments are based on benefit wage credits earned from:

(1) a state;

(2) any political subdivision of a state; or

(3) any instrumentality of any one or more states or political subdivisions that is wholly owned by one or more states or political subdivisions.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.0845. CHARGES TO INDIAN TRIBE. The total amount of extended benefit payments that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be charged to the Indian tribe.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 9, eff. June 11, 2001.

Sec. 209.085. NOTICE TO TAXED BASE PERIOD EMPLOYER. (a) The notice to a taxed base period employer of a claim for benefits under Section 204.023 or 204.027 must state that if the claim results in the payment of extended benefits, the maximum potential chargeback may be increased by as much as 25 percent. Further notice to the employer of the potential chargeback is not required when the extended benefits are paid.

(b) A taxed employer subject to Section 209.084 is entitled to receive notice that its maximum potential chargeback may be increased

by as much as 50 percent rather than 25 percent as provided for other employers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 210. BACK PAY AWARDS; LOST OR MISPLACED WARRANTS

SUBCHAPTER A. BACK PAY AWARDS

Sec. 210.001. NOTICE OF BACK PAY AWARD REDUCTION. If a back pay award to a claimant is reduced because of the receipt of unemployment compensation benefits by the claimant, the employer against whom the back pay award was made shall notify the commission of the back pay award in writing not later than the 12th day after the date on which the employer learns about the reduction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 210.002. REIMBURSEMENT BY EMPLOYER FOR REDUCTION OF BACK PAY AWARD. (a) Subject to Subsection (b), an employer who is assessed a back pay award that is reduced because of the receipt of unemployment compensation benefits by the claimant shall reimburse the compensation fund for benefits paid from the compensation fund in an amount equal to the amount of the reduction in the back pay award.

(b) An employer is not liable under this section to pay more than the amount that the commission determines the claimant was overpaid unemployment compensation benefits because of the back pay award.

(c) An employer shall reimburse the compensation fund as provided by rules adopted by the commission.

(d) The commission shall credit the payment of reimbursement by an employer against the overpayment of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 210.003. EMPLOYEE'S LIABILITY; SOLE LIABILITY OF EMPLOYER. A claimant is not liable for an overpayment of benefits that results from a back pay award and for which the employer against whom the award is made is required under Section 210.002 to reimburse the compensation fund, and the employer's liability is the only

liability because of the overpayment. This section prevails over any conflicting provision of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. LOST OR MISPLACED WARRANTS

Sec. 210.011. REPLACEMENT FOR LOST OR MISPLACED WARRANT. (a) The comptroller may issue to a claimant a replacement warrant for a warrant issued in payment of benefits under this subtitle if the claimant who was entitled to receive the original warrant:

(1) loses or for any reason fails to receive the warrant; and

(2) furnishes satisfactory proof to the comptroller of the loss or failure to receive the warrant.

(b) Subject to Section 210.013, the replacement warrant shall be issued as provided by Section 403.054, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.36(a), eff. Sept. 1, 1995.

Sec. 210.012. DEADLINE FOR PAYMENT OF WARRANT. The comptroller may not pay a warrant issued for benefits unless the warrant is presented for payment before the first anniversary of the date on which the warrant was issued.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.36(b), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 12.11, eff. Sept. 1, 1997.

Sec. 210.013. DEADLINE FOR ISSUANCE OF REPLACEMENT WARRANT. A replacement warrant may not be issued under this chapter after the first anniversary of the date of the original warrant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.36(c), eff. Sept. 1, 1995.

CHAPTER 211. RECIPROCAL ARRANGEMENTS

Sec. 211.001. LOCATION OF SERVICE FOR UNEMPLOYMENT INSURANCE PURPOSES. The commission may enter into arrangements with an appropriate agency of another state or a federal agency under which an individual performing services in this and one or more other states for an employing unit is considered to be engaged in employment entirely in:

(1) this state;

(2) one of the other states in which the individual performs some of the services;

(3) the state of the individual's residence; or

(4) the state in which the employing unit maintains a place of business.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.002. LOCATION OF SERVICE OF STATE EMPLOYEES. (a) The commission may enter into a reciprocal arrangement with the appropriate agency of another state under which a state employee who performs services in the state that is not the employing state is considered to be engaged in employment performed entirely in the employing state.

(b) The commission shall enter the arrangement on request of an agency of this state that has an employee performing a service in another state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.003. COMBINATION OF WAGES AND EMPLOYMENT. The commission shall participate in an arrangement for the payment of benefits determined by combining an individual's wages and employment covered under this subtitle and the wages and employment covered under the unemployment compensation laws of another state or the United States, or both, if the arrangement is approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to ensure the prompt and full payment of benefits. The arrangement must provide for:

(1) applying the base period of one unemployment compensation law to a claim that combines an individual's wages and employment covered under two or more unemployment compensation laws;

and

(2) avoiding the duplicate use of wages and employment because of the combination.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.004. OFFSET FOR OVERPAYMENT OF UNEMPLOYMENT BENEFITS. (a) Notwithstanding any other provision of this subtitle, the commission may enter into a reciprocal arrangement with an appropriate state or federal agency, or both, that provides:

(1) an overpayment of benefits under this subtitle is recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state or of the United States; and

(2) an overpayment of unemployment benefits under the unemployment compensation law of the other state or the United States are recovered by offset from benefits payable under this subtitle.

(b) A procedure for notice and opportunity for a hearing that applies to the recovery of an overpayment of unemployment benefits paid under this subtitle applies to an offset of those benefits under this section.

(c) In this section, "unemployment benefits" means unemployment compensation benefits, trade adjustment allowances, and other unemployment assistance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.005. INTERSTATE OR FOREIGN COMMERCE. The commission may enter into a reciprocal arrangement with the appropriate agency of another state or federal agency, or both, under which service on a vessel or aircraft engaged in interstate or foreign commerce for a single employer is considered to be performed in this state or in another state, regardless of where the service is performed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.006. RECIPROCAL TREATMENT BY FEDERAL AGENCY. (a) The commission may enter into an agreement with the proper agency under

an Act of Congress establishing an unemployment compensation system to provide reciprocal treatment to an individual:

(1) who has acquired a right to unemployment compensation under the Act of Congress after acquiring a potential right to benefits under this subtitle; or

(2) who has acquired a right to benefits under this subtitle after acquiring a potential right to unemployment compensation under the Act of Congress.

(b) An agreement under this section takes effect 10 days after the date on which the agreement is published in the manner provided for a rule.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 212. DISPUTE RESOLUTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 212.001. PROCEDURES. The manner in which disputed claims are presented, the reports on disputed claims required from claimants, employers, or other persons, and the conduct of hearings and appeals must be in accordance with rules adopted by the commission for determining the rights of parties to disputed claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.002. RECORD. (a) A complete record shall be kept of proceedings in connection with a disputed claim.

(b) Testimony at any hearing on a disputed claim shall be recorded.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.003. WITNESS FEES. (a) A witness subpoenaed under this chapter is entitled to a fee at a rate set by the commission.

(b) The witness fee is an expense of administering this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.004. PAYMENT OF BENEFITS PENDING APPEAL. (a) Except as otherwise provided by this section, benefits shall be paid in accordance with a final determination.

(b) Benefits shall be paid promptly in accordance with:

(1) a determination or redetermination of an examiner;

(2) a decision of an appeal tribunal;

(3) a decision of the commission; or

(4) a decision of a reviewing court.

(c) Subsection (b) applies without regard to:

(1) any provision of this subtitle under which benefits may be paid or denied; or

(2) the pendency of:

(A) a period to:

(i) apply for reconsideration;

(ii) file an appeal; or

(iii) petition for judicial review;

(B) an application for reconsideration;

(C) an appeal; or

(D) a petition for judicial review.

(d) Benefits paid under a determination, redetermination, or decision continue until the determination, redetermination, or decision is modified or reversed by a subsequent redetermination or decision, and shall be paid or denied in accordance with the modifying or reversing redetermination or decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.005. CHARGEBACK ON REVERSAL OF DETERMINATION OR DECISION ALLOWING BENEFITS PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), a chargeback may not be made to an employer's account because of payments having been made under a determination or decision to the claimant for any benefit period with regard to which the claimant is finally denied benefits by a modification or reversal of the determination or decision.

(b) A chargeback shall be made to an employer's account for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle if the benefits were paid due to the failure of the employer, or the employer's agents, to comply with Section 208.004.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 119 (S.B. 1537), Sec. 3, eff. October 1, 2013.

Sec. 212.006. RECOVERY OF BENEFITS PAID. (a) Benefits paid to a claimant that are not in accordance with the final decision shall be:

(1) refunded by the claimant to the commission; or

(2) in the discretion of the commission, deducted from future benefits payable to the claimant under this subtitle.

(b) Benefits paid that are not in accordance with the final decision are also collectible in the manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

(c) The commission shall accept payment for benefits refunded by a claimant under Subsection (a)(1) by personal check, cashier's check, money order, debit card, electronic check, or electronic funds transfer. The commission shall accept payment through the mail and by Internet, as applicable. The commission may adopt rules to accept forms of payment not listed in this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.37, eff. Sept. 1, 1995.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 409 (S.B. 1801), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. EXAMINERS

Sec. 212.051. DETERMINATION BY EXAMINER ON NOTIFICATION. (a) If the person for which a claimant last worked files a notification with the commission as provided by Section 208.004, an examiner shall determine:

(1) whether the claimant is disqualified from receiving benefits under Sections 207.044-207.053;

(2) the resolution of any other issue affecting the claimant's right to receive benefits that arises under any other provision of this subtitle; and

(3) whether, if benefits are to be paid to the claimant, a chargeback is to be made to the person's account.

(b) The examiner shall mail a copy of the determination to the claimant and:

(1) the person for which the claimant last worked;

(2) the branch or division for which the claimant last worked; or

(3) the address for mail service designated by a governmental employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.052. DETERMINATION BY EXAMINER ON EXAMINER'S OWN MOTION. (a) If a notification as provided by Section 208.004 from the person for which a claimant last worked is not filed, and information on the claim or other information secured raises an issue affecting the claimant's right to benefits under this subtitle, an examiner shall determine whether the claimant is to receive benefits.

(b) The examiner shall mail a copy of the determination to the claimant at the claimant's last known address.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.053. DETERMINATION FINAL; APPEAL. An examiner's determination is final for all purposes unless:

(1) the claimant or the person or branch for which the claimant last worked and to whom the copy of the determination is mailed files an appeal from the determination not later than the 14th calendar day after the date on which the copy of the determination is mailed to the last known address of the claimant, person, or branch as shown by commission records;

(2) an examiner files an appeal from the determination within the period specified in Subdivision (1); or

(3) an examiner makes a redetermination as provided by Section 212.054.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.054. REDETERMINATION BY EXAMINER. (a) Except as otherwise provided by this subsection, if an examiner discovers an error in connection with a determination or discovers additional information not previously available, the examiner, within the period specified in Section 212.053(1), may reconsider and redetermine the determination. An examiner may issue a redetermination to correct a clerical or machine error at any time during a claimant's benefit year.

(b) An examiner's redetermination replaces the original determination and becomes final unless the claimant or the person for which the claimant last worked files an appeal from the redetermination not later than the 14th calendar day after the date on which a copy of the redetermination is mailed to the claimant's or person's last known address as shown by commission records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 5, eff. Sept. 1, 1997.

SUBCHAPTER C. APPEAL TRIBUNALS

Sec. 212.101. ESTABLISHMENT OF APPEAL TRIBUNALS. (a) The commission shall establish one or more impartial appeal tribunals to hear and decide disputed claims if the establishment of those appeal tribunals is necessary to ensure prompt disposal of cases on appeal.

(b) An appeal tribunal is composed of a salaried examiner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.102. ACTION BY APPEAL TRIBUNAL. Unless the appeal is withdrawn, an appeal tribunal shall affirm or modify the determination of the examiner after giving the parties reasonable opportunity for fair hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.103. NOTICE OF APPEAL TRIBUNAL ACTION. The parties to an appeal shall be notified of the appeal tribunal's decision and the reasons for the decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.104. DECISION CONSIDERED FINAL COMMISSION DECISION. The decision of an appeal tribunal is the final decision of the commission unless further appeal is initiated as provided by Section 212.151 not later than the 14th day after the date the decision is mailed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.105. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE APPEAL TRIBUNAL. (a) The commission may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal.

(b) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).

(c) The commission promptly shall mail to the parties before it a copy of its findings and decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.106. RULES REGARDING HEARINGS CONDUCTED BY TELEPHONE CONFERENCE. The commission by rule shall develop procedures to ensure that an appeal tribunal makes every effort in a hearing conducted by telephone conference under this subchapter to obtain all relevant facts and evidence from the parties to the appeal.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 7A.02, eff. Sept. 1, 2003.

SUBCHAPTER D. COMMISSION REVIEW

Sec. 212.151. REVIEW OF APPEAL TRIBUNAL DECISION. The commission may:

(1) on its own motion:

(A) affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in the case; or

(B) direct the taking of additional evidence; or

(2) permit any of the parties to the decision to initiate a further appeal before the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.152. NOTICE OF COMMISSION ACTION. The commission promptly shall mail to the parties before it a copy of its findings and decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.153. FINALITY OF COMMISSION DECISION. A decision of the commission becomes final 14 days after the date the decision is mailed unless before that date:

(1) the commission by order reopens the appeal; or

(2) a party to the appeal files a written motion for rehearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. JUDICIAL REVIEW OF COMMISSION DECISION

Sec. 212.201. COMMENCEMENT OF JUDICIAL REVIEW; DEFENDANTS. (a) A party aggrieved by a final decision of the commission may obtain judicial review of the decision by bringing an action in a court of competent jurisdiction for review of the decision against the commission on or after the date on which the decision is final, and not later than the 14th day after that date.

(b) Each other party to the proceeding before the commission must be made a defendant in an action under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.202. STANDARD OF JUDICIAL REVIEW; EXCEPTIONS NOT NECESSARY. (a) Judicial review under this subchapter is by trial de novo based on the substantial evidence rule.

(b) It is not necessary in a judicial proceeding under this

subchapter to enter exceptions to the rulings of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1208, Sec. 1, eff. June 20, 2003.

Sec. 212.203. EXHAUSTION OF REMEDIES. (a) A party claiming to be aggrieved by a final decision of the commission may not obtain judicial review of the decision unless the party has exhausted the party's remedies before the commission as provided by this subtitle.

(b) The exhaustion of those remedies does not include a motion for rehearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.204. FILING OF ACTION. An action under this subchapter must be filed:

(1) in the county of the claimant's residence; or

(2) if the claimant is not a resident of this state, in:

(A) Travis County;

(B) the county in this state in which the claimant's last employer has its principal place of business; or

(C) the county of the claimant's last residence in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.205. PETITION; SUPERSEDEAS. (a) A petition in an action under this subchapter must state the grounds on which review is sought.

(b) A petition for judicial review does not act as a supersedeas.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.206. COMMISSION CONSIDERED PARTY TO JUDICIAL REVIEW; NOTICE OF PETITION. (a) The commission is considered a party to any judicial action involving a final decision of the commission.

(b) A petition to bring an action under this subchapter must be served on:

(1) a member of the commission; or

(2) a person designated by the commission.

(c) As many copies of the petition as there are defendants must be left with the party served under Subsection (b). The commission immediately shall mail one copy of the petition to each defendant.

(d) Service in compliance with this section constitutes completed service on all defendants.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.207. REPRESENTATION OF COMMISSION. The commission may be represented in any judicial action involving a final decision of the commission by any qualified attorney who:

(1) is a regular salaried employee of the commission; and

(2) has been appointed for that purpose by the attorney general.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.208. PRECEDENCE OVER OTHER CIVIL ACTIONS. An action under this subchapter shall be given precedence over all other civil cases except cases arising under the workers' compensation laws of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.210. APPEAL BOND NOT REQUIRED. An appeal bond is not required in an appeal from a decision of a trial court in an action under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 213. ENFORCEMENT OF TEXAS UNEMPLOYMENT COMPENSATION ACT

SUBCHAPTER A. GENERAL ENFORCEMENT PROVISIONS

Sec. 213.001. REPRESENTATION IN COURT. (a) The attorney

general shall designate an assistant attorney general to represent the commission and the state in a civil action to enforce this subtitle and to perform legal duties as the commission requires.

(b) The assistant attorney general shall institute in the name of the state and the attorney general any civil action requested by the commission.

(c) The commission shall pay the assistant attorney general for a service performed by the assistant attorney general solely for the commission.

(d) A qualified attorney who is regularly employed by the commission may assist the assistant attorney general.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.002. PROSECUTION OF CRIMINAL ACTIONS. The prosecuting attorney for a county in which a criminal violation of this subtitle or a rule adopted under this subtitle is alleged to have occurred shall prosecute the criminal action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.003. ADMISSIBILITY OF CERTIFIED COPY OF COMMISSION RECORD. In a civil or criminal proceeding brought under this subtitle, a certified copy of a document from commission records is admissible in evidence instead of the original document.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.004. ADMISSIBILITY OF REPORT OR AUDIT; PRIMA FACIE EVIDENCE. (a) In a judicial proceeding in which the establishment or collection of a contribution, penalty, or interest is sought because an employer does not pay a contribution, a penalty, or interest within the time and in the manner required by this subtitle or by a rule adopted under this subtitle, the following are admissible:

(1) a report filed in an office of the commission by the employer or the employer's representative that shows the amount of wages paid by the employer or the employer's representative for which

a contribution, a penalty, or interest has not been paid;

(2) a copy of a report described in Subdivision (1) that is certified by a member of the commission or by an employee designated for that purpose by the commission; and

(3) an audit made by the commission or its representative from the books of the employer that is signed and sworn to by the representative as being made from the records of the employer.

(b) A report or audit admissible under this section is prima facie evidence of the truth of its contents. The incorrectness of the report or audit may be shown.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.005. COSTS ADJUDGED AGAINST STATE OR COMMISSION. The commission shall pay from the administration fund established under Subchapter D, Chapter 203, costs adjudged against the state or the commission in a suit instituted on behalf or at the request of the commission under this chapter or Section 204.086.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.006. PRIORITY OF CLAIM FOR CONTRIBUTION. If an employer's assets are distributed under a court order issued under the laws of this state, including a receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, a contribution due at the time of distribution or that becomes due after the distribution has the same priority as other tax claims under the laws of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.007. COLLATERAL ESTOPPEL DOCTRINE INAPPLICABLE. A finding of fact, conclusion of law, judgment, or final order made under this subtitle is not binding and may not be used as evidence in an action or proceeding, other than an action or proceeding brought under this subtitle, even if the action or proceeding is between the same or related parties or involves the same facts.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 6, eff. Sept. 1, 1997.

Sec. 213.008. ELECTION OF COLLECTION REMEDIES. An action taken under this chapter is not an election by the commission to pursue a particular remedy or action under this chapter to the exclusion of another remedy or action under this subtitle or under another law of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.009. COMMISSION ENFORCEMENT OF OUT-OF-STATE JUDGMENT. (a) A qualified attorney who is a regular salaried employee of the commission may represent an employment security agency of another state in a proceeding in a court in this state to collect a contribution, a penalty, interest, or a court cost for which liability has been incurred by an employing unit under an unemployment compensation law or unemployment insurance law of the other state, if:

(1) the liability has been reduced to judgment in a court of record in the state of the requesting agency; and

(2) the unemployment compensation law or unemployment insurance law of the requesting state provides for a similar action on behalf of the commission by the requesting state agency.

(b) The venue for a proceeding under this section is the same as the venue for an action to collect an overdue contribution, penalty, or interest due under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.010. NOTICE TO INDIAN TRIBES. A notice of payment or notice of delinquency provided to an Indian tribe under this chapter must inform the Indian tribe that failure to make full payment within the required time:

(1) will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.), as amended;

(2) will cause the Indian tribe to lose the option to pay

reimbursements for benefits instead of contributions; and

(3) may cause the Indian tribe to no longer be considered an employer and services for the Indian tribe to no longer be considered employment for purposes of Section 201.048.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 10, eff. June 11, 2001.

Sec. 213.011. EFFECT OF PREVIOUS EMPLOYMENT DETERMINATION. (a) Subject to Subsection (c), it is reasonable for an employer to rely on a court ruling or commission determination that, for the purposes of this subtitle, service performed by an individual, including service in interstate commerce, is not employment under this subtitle if:

(1) the ruling is:

(A) a judicial decision or precedent, including a published opinion, from a court in this state; or

(B) a commission decision involving the employer as a party or a subject; and

(2) the ruling or determination has not been reversed or otherwise invalidated.

(b) The commission shall relieve an employer that reasonably relies on a ruling or determination described by Subsection (a) from penalties, interest, or sanctions under this chapter or Chapter 214 that result from a subsequent ruling or determination that the service in question is employment. An employer who receives relief under this subsection is not indebted to the state for the penalties, interest, or sanctions from which the employer is relieved and may not be considered delinquent on the payment of taxes, to the extent of the amount from which the employer is relieved.

(c) An employer may reasonably rely on a ruling or determination under Subsection (a) until the earlier of:

(1) the effective date of the subsequent ruling or determination invalidating the ruling or determination on which the employer reasonably relied; or

(2) the third anniversary of the due date of a contribution based on the service in question.

(d) This section applies only if the commission determines that the nature of the business and the service in question are substantially unchanged from the time the initial ruling was issued

or the initial determination was made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 534 (H.B. 2579), Sec. 1, eff. September 1, 2011.

Sec. 213.012. RESTRICTIONS OR CONDITIONS ON PAYMENTS PROHIBITED. (a) In this section, "payment instrument" has the meaning assigned by Section 152.003, Finance Code.

(b) A person may not place on a payment instrument remitted to the commission any restriction or condition purporting to limit the amount of contributions, penalties, or interest owed to the commission by an employer.

(c) A restriction or condition in violation of this section is void.

Added by Acts 2017, 85th Leg., R.S., Ch. 210 (H.B. 1432), Sec. 1, eff. May 28, 2017.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 277 (S.B. 895), Sec. 2.05, eff. September 1, 2023.

SUBCHAPTER B. EMPLOYER PENALTIES AND INTEREST

Sec. 213.021. INTEREST ON PAST DUE CONTRIBUTION. (a) An employer who does not pay a contribution on or before the date prescribed by the commission is liable to the state for interest of one and one-half percent of the contribution for each month or portion of a month that the contribution and interest payments are not paid in full. The total interest applied may not exceed 37-1/2 percent of the amount of contribution due at the due date.

(b) Liability for interest under Subsection (a) does not apply to an employer who:

(1) failed to pay a contribution because of the bona fide belief that all or some of its employees were covered under the unemployment insurance law of another state; and

(2) paid when due a contribution on all the wages of those employees under that law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.38(a), eff. Sept. 1, 1995.

Sec. 213.022. PENALTY FOR FAILURE TO FILE REPORT. An employer who does not file a report of wages paid or contributions due as required by this subtitle or commission rule shall pay to the commission a penalty in the amount equal to:

(1) $15, if the completed report is filed not later than the 15th day after the report's due date;

(2) $30 plus one-twentieth of one percent of wages that the employer failed to report, if the completed report is filed after the 15th day after the report's due date but during the first month after the report's due date;

(3) the sum of the amount computed under Subdivision (2) and the amount equal to $30 plus one-tenth of one percent of wages that the employer failed to report, if the completed report is filed during the second month after the report's due date; or

(4) the sum of the amount computed under Subdivision (3) and the amount equal to $30 plus one-fifth of one percent of wages that the employer failed to report, if the completed report is filed during the third month after the report's due date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.023. PENALTY FOR OTHER VIOLATION. An employing unit shall pay a penalty of $30 if a civil penalty is not otherwise provided by this subtitle and the employing unit:

(1) does not keep records required under this subtitle or commission rule;

(2) makes a false report to the commission; or

(3) violates this subtitle or a commission rule adopted under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.024. PENALTY FOR CONTINUING VIOLATION. (a) In addition to the penalty imposed under Section 213.023, an employing unit shall pay a penalty of $30 for each consecutive day that a violation of this subtitle or of a rule adopted under this subtitle continues after notice is given as provided by Subsection (b).

(b) The penalty is imposed and becomes cumulative on the 10th day after the date written notice is given or mailed to the employing unit by the commission or its authorized representative.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.025. ADDITIONAL INTEREST ON JUDGMENT OR FINAL ASSESSMENT FOR PAST DUE CONTRIBUTION. For a judgment or final assessment that grants recovery of the amount of a contribution and the amount of interest computed at the maximum rate permitted under Section 213.021(a), the part of the judgment or final assessment for the amount of the contribution earns additional interest at the rate of one percent for each month or part of a month it remains unpaid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.38(b), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 398, Sec. 3, eff. Sept. 1, 2001.

SUBCHAPTER C. COLLECTION OF CONTRIBUTION BY CIVIL SUIT OR NOTICE OF ASSESSMENT

Sec. 213.031. COLLECTION REQUIRED; METHODS. If after notice an employer does not pay a contribution or a penalty or interest on a contribution, the commission shall collect the amount due by:

(1) bringing a civil action in the name of the state and the attorney general in a district court in Travis County; or

(2) serving a notice of assessment on the defaulting employer, stating the amount of the contribution, penalty, and interest outstanding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.032. SERVICE OF NOTICE OF ASSESSMENT; CONTENTS AS PRIMA FACIE EVIDENCE; JUDICIAL REVIEW; EFFECT. (a) A notice of assessment shall be served on a defaulting employer:

(1) by personal delivery;

(2) by registered or certified mail, return receipt requested, or similar common carrier method to the employer's address as shown by commission records; or

(3) if an attempt to serve a notice of the assessment in a manner described by Subdivision (1) or (2) has been unsuccessful, in another manner that is reasonably calculated to give the employer notice of the assessment.

(b) A notice of assessment is prima facie evidence of the truth of contents of the notice. The incorrectness of the notice may be shown.

(c) An employer aggrieved by the determination of the commission as stated in a notice of assessment may file a petition for judicial review of the assessment with a Travis County district court not later than the 30th day after the date on which the notice of assessment is served. A copy of the petition must be served on a member of the commission or on a person designated by the commission in the manner provided by law for service of process on a defendant in a civil action in a district court.

(d) If an employer does not seek judicial review under Subsection (c), a commission assessment is final for all purposes.

(e) An assessment that is not contested by the employer or that is upheld after judicial review has the effect of a final judgment of a district court and shall be recorded, enforced, and renewed in the same manner. An assessment described by this subsection is a final assessment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 298 (S.B. 695), Sec. 1, eff. September 1, 2021.

Sec. 213.033. LIMITATIONS. (a) The commission may not begin a civil action in court or make an assessment under this subchapter to collect a contribution, a penalty, or interest from an employer after the third anniversary after the due date of the contribution.

(b) The following actions suspend the running of the limitations period prescribed under Subsection (a):

(1) an administrative hearing to redetermine the liability for a contribution, a penalty, or interest pending before the commission; and

(2) a bankruptcy case begun under Title 11 of the United

States Code pending before the court.

(c) After a hearing or case described by Subsection (b) is closed, the running of the limitations period prescribed under Subsection (a) resumes.

(d) In the case of a wilful attempt to evade the provisions of this subtitle or a commission rule adopted under this subtitle, the action or assessment may be begun or made at any time.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 398, Sec. 5, eff. Sept. 1, 2001.

Sec. 213.034. STATEMENT AS EVIDENCE IN CIVIL ACTION; DENIAL. (a) If a civil action filed under this subchapter is supported by a statement, report, or audit issued by the commission and the commission certifies that the contribution, penalty, and interest shown to be due by the statement, report, or audit are delinquent and that all offsets, payments, and credits have been allowed, the statement, report, or audit is prima facie evidence of the truth of its contents unless before an announcement of ready for trial the defendant files an affidavit that:

(1) denies that all or part of the contribution, penalty, or interest is due; and

(2) states the details relating to any part of the contribution, penalty, or interest claimed not due.

(b) If the defendant files an affidavit described by Subsection (a) on the day of the trial, the court at the request of the plaintiff shall postpone the cause for a reasonable time.

(c) A defendant who does not file an affidavit in accordance with this section may not deny the claim for the contribution, penalty, or interest or an item of the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.035. COSTS. Unless the employer prevails in a civil action brought under this subchapter or the notice of assessment is reversed by a reviewing court, the employer shall pay all costs of either action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.036. ABSTRACT OF JUDGMENT; ABSTRACT OF ASSESSMENT; FEE; RELEASE. (a) The commission shall pay the fee for filing and recording an abstract of a judgment or an abstract of an assessment against an employer for a contribution, a penalty, or interest by warrant drawn by the comptroller to the county clerk of each county in which the abstract is recorded.

(b) The amount of the fee paid under Subsection (a) shall be added to the amount due under the judgment or assessment.

(c) When the liability secured by the lien is paid, the commission shall mail a release of the lien to the employer. The employer is responsible for filing the release with the appropriate county clerk and for paying the county clerk's fee for recording the release.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 8, eff. Sept. 1, 1997.

SUBCHAPTER D. OTHER ENFORCEMENT REMEDIES AGAINST EMPLOYER

Sec. 213.051. FORFEITURE OF RIGHT TO EMPLOY INDIVIDUALS IN THIS STATE; BOND. (a) After a judgment is entered against an employer for a contribution, a penalty, or interest or an assessment against an employer under this chapter is final and execution returned unsatisfied, an employer liable for the unpaid judgment or final assessment may not employ an individual in this state until the employer furnishes a surety bond.

(b) The amount of the bond may not exceed twice the amount due at the time the bond is furnished plus contributions estimated by the commission to become due from the employer during the succeeding calendar year. The bond must be conditioned on payment of the contribution, penalty, interest, and court costs due from the employer not later than January 30 of the succeeding calendar year. The bond must be approved by the commission.

(c) If the employer does not furnish the bond or pay the contribution, penalty, and interest due, the commission may apply to the court that entered the judgment for an injunction to prohibit the employer from employing a person in this state without first

furnishing a bond as required by this section. After reasonable notice of not less than 10 days by the court, the court may grant a temporary injunction. The temporary injunction may be made permanent on final hearing and remains in effect until the requirements of this chapter are satisfied.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 6, eff. Sept. 1, 2001.

Sec. 213.052. INJUNCTION RESTRAINING CERTAIN VIOLATIONS. (a) If an individual or employing unit appears to be violating or threatening to violate this subtitle or any rule or order of the commission adopted under this subtitle relating to the collection of a contribution, a penalty, or interest or to the filing of a report relating to employment, the commission shall bring suit against the individual or employing unit to restrain the violation. The court may grant a temporary or permanent, prohibitory or mandatory injunction, including a temporary restraining order, as warranted by the facts.

(b) A suit under this section must be brought through the attorney general in the name of the state in a court of competent jurisdiction in Travis County.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.053. VIOLATION OF INJUNCTION; RECEIVER. (a) If an individual or an employing unit violates an injunction granted under this subtitle, the court on its own motion or the commission's motion in the name of the state, after notice and hearing, may appoint a receiver. The receiver may exercise the powers that, in the judgment of the court, are necessary to provide compliance with the injunction, including taking charge of the property of the individual or employing unit.

(b) The power to appoint a receiver under this section is in addition to the power to punish for contempt.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.054. OFFSET AGAINST STATE WARRANT. Any contribution, penalty, interest, or court cost owed by an employer under this subtitle is a debt owed by the employer to the state under Section 403.055, Government Code, only for withholding of a warrant for:

(1) the refund of taxes, fees, assessments, or other deposits required under the law of this state; or

(2) compensation for goods and services, other than a warrant for:

(A) payment for services performed as an elected or appointed employee of this state; or

(B) reimbursement of expenses incurred in the performance of employment as an elected or appointed employee of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 9, eff. Sept. 1, 1997.

Sec. 213.055. AUDIT OF EMPLOYER. (a) The commission may employ an auditor or other person to determine the amount of a contribution due and prepare a report due from an employer who does not properly pay a contribution or make a report as required by this subtitle or a rule adopted under this subtitle.

(b) An employer who has not paid the correct amount or made a correct report shall pay, as an additional penalty, the reasonable expenses incurred in the investigation under Subsection (a). The commission may collect this penalty in accordance with this chapter.

(c) This section does not prevent the commission from using other available funds as necessary for the purpose of auditing an employer or preparing or assisting in preparing a report of an employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.056. ESTIMATED TAXABLE WAGES IF REPORT NOT FILED. (a) If an employer does not make a report to the commission that is required by this subtitle or by commission rule, the commission may estimate the taxable wages paid by the employer during the period to have been covered by the report. In making this estimate, the commission may use any available source of information.

(b) The commission may collect contributions and penalties using an estimate made under this section as if the estimated wages had been properly reported by the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.057. TAX LIEN. (a) The amount due from an employing unit under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.

(b) The lien attaches at the time the contribution, penalty, interest, or other charge becomes overdue.

(c) The lien may be recorded in a "State Tax Liens" book kept by a county clerk under Section 113.004, Tax Code.

(d) The lien may be released in the manner provided for other state tax liens under Chapter 113, Tax Code.

(e) The commission shall pay by warrant drawn by the comptroller to the county clerk of the county in which the notice of lien is filed the fee for filing and recording similar instruments. The fee shall be added to the amount due from the employer.

(f) When the liability secured by the lien is fully paid, the commission shall mail to the employer a release of the lien. The employer is responsible for filing the release with the appropriate county clerk and to pay the county clerk's fee for recording the release.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.058. ADDITIONAL TAX LIEN ENFORCED BY COMMISSION. (a) The amount due from an employing unit to the commission under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.

(b) The lien attaches at the time a contribution, a penalty, interest, or another charge becomes overdue.

(c) Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of a lien under this section. In administering and enforcing a lien created under this section, the commission has the powers and duties imposed and conferred on the comptroller for the enforcement of other liens under those subchapters.

(d) A lien under this section is cumulative of the lien created

under Section 213.057.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.059. DELINQUENCY; NOTICE OF LEVY. (a) If a person is delinquent in the payment of any amount, including contributions, penalties, and interest due under this subtitle, the commission may notify personally or by mail any other person who:

(1) possesses or controls an asset belonging to the delinquent person; or

(2) owes a debt to the delinquent person.

(b) A notice under this section to a state officer, department, or agency must be given before the officer, department, or agency presents to the comptroller the claim of the delinquent person.

(c) A notice under this section may be given at any time after the amount due under this subtitle becomes delinquent. The notice must state the amount of contributions, penalties, interest, or other amounts due, and any additional amount that will accrue by operation of law in a period not to exceed 30 days after the date on which the notice is given, and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.

(d) On receipt of a notice under this section, the person receiving the notice:

(1) shall advise the commission not later than the 20th day after the date the notice is received of each asset belonging to the delinquent person that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person; and

(2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person receiving the notice as of the time the person received the notice during the 60-day period after the date of receipt of the notice.

(e) A notice under this section that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is effective if it is delivered or mailed to the principal or any branch office of the bank, including any office of the bank at which the deposit is carried or the credit or property is held.

(f) A person who has received a notice under this section and

who transfers or disposes of an asset or debt in a manner that violates Subsection (d) is liable to the commission for the amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given to the extent of the value of that asset or debt.

(g) At any time during the 60-day period described by Subsection (d), the commission may levy on the asset or debt by delivery of a notice of levy. On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent person.

(h) A notice delivered under this section is effective:

(1) at the time of delivery against all property, rights to property, credits, and debts involving the delinquent person that are not, as of the date of the notice, subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process; and

(2) against all property, rights to property, credits, and debts involving the delinquent party that come into the possession or control of the person served with the notice within the 60-day period described by Subsection (d).

(i) A person acting in accordance with the terms of the notice of freeze or levy issued by the commission is discharged from any obligation or liability to the delinquent person with respect to the affected property, rights to property, credits, and debts of the person affected by compliance with the notice of freeze or levy.

(j) In this section, "asset" means:

(1) a credit, bank, or savings account or deposit; or

(2) any other intangible or personal property.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.39(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 10, eff. Sept. 1, 1997.

Sec. 213.060. ENFORCEMENT AGAINST INDIAN TRIBE. (a) Services performed for an Indian tribe that fails to make a required payment, including payment of a penalty and interest, are not considered, after the exhaustion of all necessary collection activities by the commission, to be employment for purposes of Section 201.048.

(b) Services for an Indian tribe that loses coverage under Subsection (a) may be considered to be employment for purposes of Section 201.048 if the Indian tribe has paid all contributions, payments instead of contributions for benefits paid, penalties, and interest owed by the Indian tribe.

(c) The commission shall notify the Internal Revenue Service and the United States Department of Labor of an Indian tribe that fails to make required payments.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 11, eff. June 11, 2001.

SUBCHAPTER E. ADJUSTMENT OR REFUND FOR EMPLOYER'S OVERPAYMENT

Sec. 213.071. CREDIT OR REFUND OF OVERPAYMENT. (a) The commission shall allow the employing unit on application under Section 213.072 to adjust its contribution payments then due for a contribution or penalty erroneously collected from the employer.

(b) If an adjustment cannot be made under Subsection (a), the commission shall refund the amount erroneously collected.

(c) The commission may not approve an application for adjustment or refund if making the adjustment or refund would require removing or disregarding benefit wages that became benefit wage credits or that were charged as benefit wages more than three years before the date on which the application was filed. For the purpose of this subsection, removing or disregarding benefit wages does not include transferring compensation experience described in Subchapter E, Chapter 204.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.072. APPLICATION. (a) An employing unit that pays the commission a contribution or penalty that is allegedly due and that later is determined not due, in whole or in part, may apply to the commission for:

(1) an adjustment for a contribution payment then due; or

(2) a refund of the overpaid amount if an adjustment cannot be made.

(b) An application for adjustment or refund must be filed before the third anniversary of the date on which the contribution or penalty was allegedly due.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.073. APPEAL OF COMMISSION DETERMINATION. (a) If the commission denies a timely application made under this subchapter, the employing unit may bring an action in a court of competent jurisdiction in Travis County against the commission for review of the commission's refusal to allow an adjustment or a refund.

(b) An action under this section must be filed before the first anniversary of the date on which notice of the denial was mailed to the employing unit.

(c) Trial of an action filed under this section is by trial de novo.

(d) The employing unit may not bring an action for the refund under any other law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.074. INTEREST NOT ALLOWED. Interest is not allowed on an adjustment or refund made under this subchapter or a recovery made in a court action filed under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.075. ADJUSTMENT OR REFUND ON COMMISSION INITIATIVE. The commission may make an adjustment or refund on its own initiative under this subchapter within the period prescribed by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 214. OFFENSES, PENALTIES, AND SANCTIONS

Sec. 214.001. FRAUDULENTLY OBTAINING BENEFITS OR OTHER PAYMENT. (a) A person commits an offense if, to obtain or increase a benefit or other payment, either for the person or another person, under this subtitle, the unemployment compensation law of another state, or any act or program of the United States that is administered by the commission, the person:

(1) makes a false statement or representation, knowing it to be false; or

(2) knowingly fails to disclose a material fact.

(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.002. LIABILITY FOR IMPROPERLY OBTAINING BENEFITS. (a) A person who has received improper benefits is liable for the amount of the improper benefits. The commission may recover improper benefits by:

(1) deducting the amount of the improper benefits from any future benefits payable to the person;

(2) collecting a refund from a claimant; or

(3) collecting the amount of the improper benefits for the compensation fund in the same manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

(b) In this section, "improper benefit" means the benefit obtained by a person:

(1) because of the nondisclosure or misrepresentation by the person or by another of a material fact, without regard to whether the nondisclosure or misrepresentation was known or fraudulent; and

(2) while:

(A) any condition imposed by this subtitle for the person's qualifying for the benefit was not fulfilled in the person's case; or

(B) the person was disqualified from receiving benefits.

(c) The commission shall accept payment for benefits refunded by a claimant under Subsection (a)(2) by personal check, cashier's check, money order, debit card, electronic check, or electronic funds transfer. The commission shall accept payment through the mail and by Internet, as applicable. The commission may adopt rules to accept forms of payment not listed in this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 409 (S.B. 1801), Sec. 2, eff.

September 1, 2021.

Sec. 214.003. FORFEITURE OR CANCELLATION OF BENEFITS PAID AND REMAINING BENEFITS; PENALTY. (a) If, by wilful nondisclosure or misrepresentation of a material fact, whether the nondisclosure or misrepresentation is made by the person or for the person by another, a person receives a benefit when a condition imposed by this subtitle for the person's qualifying for the benefit is not fulfilled or the person is disqualified from receiving the benefit:

(1) the person forfeits the:

(A) benefit received; and

(B) rights to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred; and

(2) the commission shall require the person to pay a penalty in an amount equal to 15 percent of the amount forfeited under Subdivision (1)(A).

(b) If a person attempts to obtain or increase benefits by a nondisclosure or misrepresentation as provided by Subsection (a), the commission may cancel the person's right to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred.

(c) A forfeiture, cancellation, or penalty imposed under this section is effective only after the person has been afforded an opportunity for a fair hearing before the commission or its duly designated representative.

(d) A person who is assessed a penalty by the commission under Subsection (a)(2) is liable for the amount of the penalty. The commission may collect the penalty in the same manner as provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past-due contributions. The commission shall deposit a penalty assessed under Subsection (a)(2) in the unemployment compensation fund established under Section 203.021.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 756 (S.B. 658), Sec. 2, eff. October 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 756 (S.B. 658), Sec. 3, eff. October 1, 2013.

Sec. 214.004. FRAUDULENTLY AVOIDING CONTRIBUTION OR PAYMENT OF BENEFITS. (a) A person commits an offense if the person makes a false representation, knowing it to be false, or knowingly fails to disclose a material fact, to:

(1) prevent or reduce the payment of benefits to an individual entitled to the benefits;

(2) avoid becoming or remaining subject to this subtitle; or

(3) avoid or reduce any contribution or other payment required from an employing unit under this subtitle.

(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.005. FAILURE OR REFUSAL TO MAKE CONTRIBUTION OR OTHER PAYMENT. (a) A person commits an offense if the person wilfully fails or refuses to make a contribution or other payment required from an employing unit under this subtitle.

(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.006. OFFENSES REGARDING REPORTS AND RECORDS. (a) A person commits an offense if the person wilfully fails or refuses to:

(1) furnish a report required under this subtitle; or

(2) produce or permit the inspection or copying of records as required under this subtitle.

(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.007. GENERAL OFFENSE. (a) A person commits an offense if the person wilfully violates a provision of this subtitle or a rule adopted under this subtitle:

(1) the violation of which is made unlawful or the observance of which is required under this subtitle; and

(2) for which a penalty is not otherwise provided by this subtitle or any other applicable statute.

(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.008. MISCLASSIFICATION OF CERTAIN WORKERS; PENALTY. (a) A person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code, shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the person directly retains and compensates for services performed in connection with the contract.

(b) In this subsection, "subcontractor" means a person directly retained and compensated by a person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code. A subcontractor shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the subcontractor directly retains and compensates for services performed in connection with the contract for which the subcontractor is retained.

(c) A person who fails to properly classify an individual as required by Subsection (a) or (b) shall pay to the commission a penalty equal to $200 for each individual that the person has not properly classified.

(d) The commission may not take action to collect a penalty under this section from a person after the third anniversary of the date on which the violation occurred.

Added by Acts 2013, 83rd Leg., R.S., Ch. 335 (H.B. 2015), Sec. 1, eff. January 1, 2014.

Sec. 214.009. RECOVERY OF COVERED UNEMPLOYMENT COMPENSATION DEBT THROUGH FEDERAL TREASURY OFFSET PROGRAM. (a) In this section, "program" means the federal Treasury Offset Program authorized by 26 U.S.C. Section 6402(f).

(b) The commission may collect the following covered unemployment compensation debt through the program:

(1) a past-due debt for erroneous payment of benefits due

to fraud that has become final under law and remains uncollected;

(2) a past-due debt for erroneous payment of benefits due to a person's failure to report earnings, even if non-fraudulent, that has become final under law and remains uncollected;

(3) a past-due employer contribution owed to the compensation fund for which the commission has determined the person to be liable and that remains uncollected; and

(4) any penalties and interest assessed by the commission on a debt described by Subdivision (1), (2), or (3).

(c) Before submitting covered unemployment compensation debt for recovery under the program, the commission must:

(1) notify the debtor by regular United States mail that the commission plans to recover the debt through the offset of any federal tax refund;

(2) provide the debtor at least 60 days following the date the notice is provided under Subdivision (1) to present to the commission evidence that all or part of the debt is not:

(A) legally enforceable;

(B) due to fraud or unreported earnings; or

(C) a contribution owed to the compensation fund; and

(3) consider any evidence presented by the debtor to determine the amount of debt that is legally enforceable and owed.

(d) In considering evidence presented by a debtor under Subsection (c), the commission may determine only whether the debtor has demonstrated that the debt is not subject to recovery through the program so that the commission is able to minimize erroneous offsets. The commission may not review the initial determination establishing the debtor's liability.

(e) The commission shall assess against the debtor the cost of any administrative fee charged by the United States Department of the Treasury for each offset. The commission may add the assessed amount to the covered unemployment compensation debt that is offset under the program.

Added by Acts 2015, 84th Leg., R.S., Ch. 414 (H.B. 2732), Sec. 1, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 15, eff. September 1, 2015.

CHAPTER 215. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 215.001. DEFINITIONS. In this chapter:

(1) "Affected unit" means a unit of two or more employees, including a department or shift, designated by an employer to participate in a shared work plan.

(2) "Fringe benefit" means health insurance, a retirement benefit received under a defined benefit plan, as defined by 26 U.S.C. Section 414(j), or under a defined contribution plan, as defined by 26 U.S.C. Section 414(i), a paid vacation day, a paid holiday, sick leave, or any other similar employee benefit provided by an employer.

(3) "Normal weekly hours of work" means the number of hours in a week that an employee ordinarily works for a participating employer or an average of 40 hours per week over a two-week pay period, whichever is less.

(4) "Participating employee" means an employee who works a reduced number of hours under an approved shared work plan.

(5) "Participating employer" means an employer who has a shared work plan in effect.

(6) "Shared work benefit" means an unemployment compensation benefit that is payable to a participating employee.

(7) "Shared work plan" means a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

(8) "Shared work program" means the shared work unemployment compensation program.

(9) "Training" means commission-approved voluntary training sponsored by an employer or funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) that is designed to enhance a participant's job skills.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 42 (H.B. 1637), Sec. 1, eff. May 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 13 (H.B. 2035), Sec. 2, eff. September 1, 2013.

Sec. 215.002. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM. (a) The commission, under a voluntary shared work unemployment compensation program designed to reduce unemployment and stabilize the work force, shall allow participating employees shared work benefits.

(b) The commission may adopt rules and establish procedures necessary to administer the shared work program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. SHARED WORK PLAN

Sec. 215.021. APPROVAL REQUIRED FOR EMPLOYER PLAN. (a) Before an employer may participate in the shared work program, the commission must approve the employer's shared work plan. The plan must be submitted in writing to the commission.

(b) If an employee who participates in a shared work plan is covered by a collective bargaining agreement, the collective bargaining agent must approve the plan in writing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.022. REQUIREMENTS OF SHARED WORK PLAN. (a) The commission may approve a shared work plan if:

(1) the plan:

(A) applies to and identifies a specific affected unit;

(B) identifies the employees in the affected unit by name and social security number and describes how the employees will be notified in advance of the plan, if feasible;

(C) provides an estimate of the number of employees who would be laid off if the employer does not participate in the shared work plan;

(D) reduces the normal weekly hours of work for an employee in the affected unit by at least 10 percent but not more than 40 percent;

(E) applies to at least 10 percent of the employees in the affected unit; and

(F) permits eligible employees to participate in training;

(2) the employer certifies that the implementation of a

shared work plan and the resulting reduction in work hours is in lieu of layoffs that would:

(A) affect at least 10 percent of the employees in the affected unit; and

(B) result in an equivalent reduction in work hours;

(3) the employer certifies that:

(A) if the employer currently provides fringe benefits, the fringe benefits continue for employees in the affected unit unless those benefits are not continued for employees not participating in the shared work plan; and

(B) participation in the shared work plan is consistent with the employer's obligations under state and federal law; and

(4) the employer agrees to furnish the commission reports relating to the operation of the plan as requested by the commission and any other information the United States secretary of labor determines is appropriate.

(b) A shared work plan may not be implemented to subsidize a seasonal employer during the off-season.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 13 (H.B. 2035), Sec. 3, eff. September 1, 2013.

Sec. 215.023. APPROVAL OR DENIAL OF SHARED WORK PLAN; NOTICE. (a) The commission shall approve or deny a shared work plan in writing not later than the 30th day after the date the commission receives the plan.

(b) If the commission denies the plan, the commission shall give the employer the reasons for denial.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.024. EFFECTIVE DATE OF SHARED WORK PLAN; EXPIRATION OR TERMINATION. (a) A shared work plan takes effect on the date the commission approves the plan.

(b) A shared work plan expires on the last day of the 12th calendar month beginning after the effective date of the plan.

(c) The commission may terminate a shared work plan for good

cause if the plan is not being executed according to the terms and intent of the shared work program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.025. MODIFICATION OF SHARED WORK PLAN. (a) An employer may modify a shared work plan to meet changed conditions if the modification conforms to the basic provisions of the plan as approved by the commission.

(b) Before implementing a proposed change, the employer must report the change in writing to the commission.

(c) The commission shall reevaluate a plan that is proposed to be substantially modified.

(d) If a proposed plan modification is substantial, the commission may approve the modified plan according to the requirements of Sections 215.022(a)(1) and (2) or shall deny the modification subject to Section 215.023.

(e) Approval of a modified plan does not affect the plan's original expiration date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.026. PARTICIPATING EMPLOYER'S REPORT ON PLAN OPERATION. A participating employer shall:

(1) monitor and evaluate the operation of its established shared work plan as requested by the commission; and

(2) report the findings to the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. SHARED WORK BENEFITS

Sec. 215.041. EMPLOYEE'S ELIGIBILITY FOR SHARED WORK BENEFITS. (a) Notwithstanding any other provision of this subtitle, an individual is unemployed for the purposes of this subtitle in a week in which the individual works under an approved shared work plan in effect for that week for less than the individual's normal weekly hours of work.

(b) An individual is eligible to receive shared work benefits

for a week in which:

(1) the individual is employed as a member of an affected unit subject to a shared work plan that was approved before that week and is in effect for that week;

(2) the individual is able to work and is available for additional hours of work or for full-time work with the participating employer; and

(3) the individual's normal weekly hours of work have been reduced by at least 10 percent but not more than 40 percent, with a corresponding reduction in wages.

(c) The commission may not deny shared work benefits for a week to an otherwise eligible individual because of a provision of this subtitle that relates to:

(1) availability for work;

(2) active search for work; or

(3) refusal to apply for or to accept work with an employer other than the participating employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.042. SHARED WORK BENEFITS FORMULA. (a) The commission shall pay an individual who is eligible for shared work benefits a weekly shared work benefit in an amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's wages under the employer's shared work plan.

(b) The commission shall round to the next highest dollar a shared work benefit that is not a multiple of one dollar.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.043. LIMITATIONS ON BENEFITS. (a) An individual is not entitled to receive shared work benefits and regular unemployment compensation benefits that exceed the maximum total benefits payable to the individual in a benefit year as provided by Section 207.005.

(b) An individual who receives shared work benefits is not entitled to receive benefits for partial unemployment under Section 207.003 for any week in which the individual works as a participating employee.

(c) The commission may not pay an individual shared work benefits for a week in which the individual performs paid work for the participating employer that exceeds the reduced hours established under a shared work plan.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.044. EXTENDED BENEFITS. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an individual who has exhausted regular benefits under Section 209.042 and is entitled to receive extended benefits under Chapter 209 if the individual is otherwise eligible under that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBTITLE B. TEXAS WORKFORCE COMMISSION; WORKFORCE DEVELOPMENT; EMPLOYMENT SERVICES

CHAPTER 301. TEXAS WORKFORCE COMMISSION

SUBCHAPTER A. ORGANIZATION OF COMMISSION

Sec. 301.001. PURPOSE; AGENCY GOALS; DEFINITIONS. (a) The Texas Workforce Commission is a state agency established to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related educational programs available in this state, and to administer the unemployment compensation insurance program in this state.

(b) The commission shall meet the needs of:

(1) the businesses of this state for the development of a highly skilled and productive workforce;

(2) the workers of this state for education, skills training, and labor market information to enhance their employability, earnings, and standard of living and for an efficient unemployment compensation system;

(3) the people of this state who are making a transition into the workforce, particularly persons receiving public assistance, displaced homemakers, and students making the transition from school to work;

(4) the communities of this state to provide economic

incentive programs for job creation, attraction, and expansion; and

(5) the taxpayers of this state to ensure that tax revenues for workforce development are spent efficiently and effectively.

(c) A reference in this code or another law to the Texas Employment Commission means the Texas Workforce Commission.

(d) In this title:

(1) "Chair" means the chair of the commission.

(2) "Commission" means the Texas Workforce Commission.

(3) "Council" means the Texas Workforce Investment Council.

(4) "Employment service" means the commission or the entity designated by the commission to implement duties imposed under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.).

(5) "Executive director" means the executive director of the commission.

(6) "Local workforce development board" means an entity formed under Chapter 2308, Government Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 6.09, eff. Sept. 1, 2003.

Sec. 301.0015. GUIDELINES REGARDING FUNCTIONS OF COMMISSION AND STAFF. (a) In administering its functions under this title or another law, the commission shall limit its activities to:

(1) setting commission policies, including policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and commission staff;

(2) giving general direction to the executive director regarding the implementation of the commission's policies, and holding the executive director accountable for implementing the policies;

(3) approving the commission's budget recommendation to the legislature;

(4) reviewing under Subchapter D, Chapter 212, the decision of an appeal tribunal regarding unemployment compensation;

(5) reviewing under Subchapter D, Chapter 61, the decision of a wage claim appeal tribunal regarding a wage claim;

(6) adopting rules necessary to administer the commission's

policies, including rules necessary for the administration of this title and rules governing required reports, procedures, and orders;

(7) responding to questions and comments that are directed to the commission by the executive director and that relate to setting or clarifying commission policies or relate to other matters of general interest to the commission;

(8) requesting information from commission staff; and

(9) reviewing under Subchapter D, Chapter 51, the decision of a child labor appeal tribunal regarding a child labor violation and/or an administrative penalty.

(b) Except as provided by Subsection (c), the commission may conduct the activities listed in Subsection (a) only when acting as a governmental body.

(c) The commission, acting as a governmental body, or an individual member of the commission may conduct the activities listed in Subsections (a)(7) and (8).

(d) In administering its functions under this title or another law, the commission, acting as a governmental body, or an individual member of the commission may not:

(1) direct the day-to-day operations of the executive director or other commission staff; or

(2) establish the details for the implementation of commission policies or direct the executive director or other commission staff about those details.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 1.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 14, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 3, eff. September 1, 2023.

Sec. 301.002. MEMBERSHIP REQUIREMENTS. (a) The commission is composed of three members:

(1) one member who is a representative of labor;

(2) one member who is a representative of employers; and

(3) one member who is a representative of the public.

(b) The governor shall appoint the members and make the

appointments without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.001 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 301.003. MEMBER RESTRICTIONS. (a) In this section:

(1) "Business" does not mean personal investment in real property, financial instruments or tangible assets, or the provision of personal services, other than workforce services in the State of Texas, as an independent contractor.

(2) "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A member of the commission or the member's spouse may not be employed by any business or other organization receiving money from the commission during the member's term on the commission.

(c) A person may not be a member of the commission or an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of labor, business, workforce development, child care, or career schools and colleges; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of labor, business, workforce development, child care, or career schools and colleges.

(d) A person may not serve as a member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a career school or college or a business entity or other organization receiving money from the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a career school or college or a business entity or other organization receiving money from the commission; or

(3) is registered, certified, licensed, permitted, or otherwise authorized by the commission; for purposes of this subdivision, "registered, certified, licensed, permitted, or otherwise authorized by the commission" does not include the following:

(A) the commission's role under Subtitle A; or

(B) employment of domestic service workers under Section 201.027.

(e) If a member of the commission or the member's spouse is engaged in any other employment, the member of the commission shall refrain from voting on or participating in any commission decision that involves the other employment.

(f) A member of the commission or the member's spouse may not enter into a contract, either directly with a local workforce development board or with an entity that contracts with a local workforce development board, under which the member or the member's spouse receives compensation for services provided by the member or the member's spouse.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.002 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.02, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 118 (S.B. 1309), Sec. 1, eff. May 20, 2005.

Sec. 301.004. EFFECT OF LOBBYING ACTIVITY. A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission. If the person ceases to engage in lobbying activity and files a notice of termination as prescribed by Section 305.008, Government Code, the person may serve as a member of the commission or act as the general counsel to the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.003 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.03, eff. Sept. 1, 2003.

Sec. 301.005. TERMS; VACANCY. (a) Members of the commission are appointed for staggered six-year terms, with one member's term expiring on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy shall hold office for the remainder of that term.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.004 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.006. CHAIR. (a) The governor shall designate the chair of the commission from among the members of the commission. The chair shall serve in that capacity at the pleasure of the governor for a two-year term. The governor may redesignate the same member to serve consecutive terms.

(b) Notwithstanding Subsection (a), the member of the commission who represents the public shall serve as chair:

(1) when the commission acts under:

(A) Chapter 21;

(B) Subchapter D, Chapter 61;

(C) Subchapter D, Chapter 212;

(D) Chapter 301, Property Code; or

(E) Subchapter D, Chapter 51; and

(2) in commission hearings involving unemployment insurance issues regarding tax coverage, contributions, or reimbursements.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.005 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.04, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 15, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 16, eff.

September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 720 (H.B. 2459), Sec. 4, eff. September 1, 2023.

Sec. 301.007. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission that a member:

(1) during any 60-day period, is absent from each commission meeting for which the member received at least 48 hours' notice;

(2) does not have at the time of taking office the qualifications required by Section 301.002;

(3) does not maintain during service as a member of the commission the qualifications required by Section 301.002;

(4) is ineligible for membership on the commission under Section 301.003 or 301.004;

(5) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(6) is absent from more than half of the regularly scheduled meetings of the members that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the members.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for the removal of a member of the commission existed.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chair of the potential ground. The chair shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chair, the executive director shall notify the next highest ranking member, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.006 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.05, eff. Sept. 1, 2003.

Sec. 301.0075. MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the members until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws;

(8) civil rights laws relevant to employment programs offered by the commission; and

(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed as a member of the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 2.06, eff. Sept. 1, 2003.

Sec. 301.008. APPLICATION OF SUNSET ACT. The Texas Workforce Commission is subject to Chapter 325, Government Code (Texas Sunset

Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2027.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1169, Sec. 2.08, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 817, Sec. 1.01, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.02, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.22, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 17, eff. September 1, 2015.

Sec. 301.009. COMMISSION DIVISIONS. (a) The commission shall have:
(1) a division of workforce development;
(2) a division of unemployment compensation; and
(3) a civil rights division.
(b) In addition to the divisions listed in Subsection (a), the executive director may establish additional divisions within the commission for effective administration and performance of commission functions.
(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 18, eff. September 1, 2015.

SUBCHAPTER B. COMMISSION ADMINISTRATION

Sec. 301.021. DONATIONS. (a) The commission may accept a donation of services, money, or property that the commission determines furthers the lawful objectives of the commission. The donation must be accepted in an open meeting by a majority of the

voting members of the commission and must be reported in the public records of the commission with the name of the donor and the purpose of the donation.

(b) The commission may not accept a donation from a person who is a party to an administrative proceeding pending before the commission until the 30th day after the date the commission's final order is issued. The commission may not accept a donation from a person who is a party to a suit in which the commission is also a party.

(c) The commission may not accept a donation from a for-profit entity that has a contract with the commission or has submitted a bid in response to a pending request for proposal issued by the commission for services or products having a value of not less than $50,000. This subsection does not apply to a contract or bid that relates only to providing child-care services.

(d) A for-profit entity may not enter into a contract with the commission or submit a bid in response to a request for proposal issued by the commission before the first anniversary of the date of making a donation to the commission unless the contract or bid relates only to providing child-care services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.021 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 361, Sec. 1, eff. Sept. 1, 1997.

Sec. 301.022. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.022 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.023. COMPLAINTS AGAINST COMMISSION. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Acts 1993, 73rd Leg., ch. 655, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.023 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.01, eff. Sept. 1, 2003.

Sec. 301.024. OFFICIAL SEAL; USE OF FACSIMILES. (a) The commission has an official seal. A court shall take judicial notice of the seal.

(b) The commission may execute, certify, authenticate, or sign, with a facsimile signature and seal, any instrument authorized under this subtitle to be issued by the commission or by an authorized representative of the commission, including a claim, statement, or audit report relating to the establishment or collection of delinquent contributions or penalties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.024 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

SUBCHAPTER C. EXECUTIVE DIRECTOR; AGENCY PERSONNEL

Sec. 301.041. EXECUTIVE DIRECTOR; AGENCY PERSONNEL. (a) The

commission shall appoint an executive director to administer the daily operations of the commission in compliance with federal law.

(b) A reference in this code or another law to the "agency administrator" of the commission means the executive director.

(c) The executive director may:

(1) appoint and prescribe the powers and duties of all commission staff, including officers, accountants, attorneys, experts, and other persons as necessary in the performance of the commission's duties;

(2) delegate authority to a person appointed under this section as the executive director considers reasonable and proper for the effective administration of this title;

(3) employ and terminate the employment of commission staff members; and

(4) bond any person that handles money or signs checks under this title.

(d) The executive director or a person designated by the executive director shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

Acts 1993, 73rd Leg., ch. 265, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(48), eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 202.041 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.042. ACCESS TO CERTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) The commission may request an applicant for a security sensitive position to provide either a complete set of fingerprints or the applicant's complete name, driver's license number, and social security number. The executive director may deny employment in a security sensitive position to an applicant who fails to provide the requested fingerprints or information.

(b) The executive director may use information obtained under this section only to evaluate an applicant for employment in a security sensitive position. A security sensitive position must be so identified in the job description and in the announcement of the position.

(c) In this section, "security sensitive position" means a position of employment that requires as an incident of the employment:

(1) the performance of duties in:

(A) the automated data processing, controller, or fiscal department; or

(B) a position designated to handle receipts or disbursements of cash in a local or regional office;

(2) access to a computer terminal, if the information available from the terminal is required by law to be confidential;

(3) access to a master key for access to the premises other than during regular working hours; or

(4) the performance of duties considered to be security sensitive by the state auditor or the Inspector General of the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(48), eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 202.042 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.043. STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to the members of the commission and employees of the commission, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.043 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.02, eff. Sept. 1, 2003.

Sec. 301.044. CAREER LADDER. The executive director shall develop an intra-agency career ladder program for employees of the commission. The program shall require the intra-agency posting of all nonentry-level positions concurrently with any public posting.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.045. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(a-1) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(b) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (a-1)(1); and

(3) be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.03, eff. Sept. 1, 2003.

Sec. 301.047. COMMISSION EMPLOYEES ACCOUNTABLE TO EXECUTIVE DIRECTOR. In performing functions required or authorized by law, employees of the commission are directly accountable to the executive director.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.04, eff. Sept. 1, 2003.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR

Sec. 301.061. GENERAL POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR. (a) The commission shall provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the commission.

(b) The executive director shall:

(1) administer this title as provided by rules adopted by the commission;

(2) oversee and manage:

(A) the daily operation and administrative affairs of the commission; and

(B) the implementation of commission policies set by the commission;

(3) coordinate the activities of the commission staff and hold commission staff accountable for the staff's performance of its duties;

(4) determine the organization of the agency and methods of procedure of the agency in accordance with this title; and

(5) make expenditures necessary for the operation of this title.

(c) Repealed by Acts 2003, 78th Leg., ch. 817, Sec. 9.01(6).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.061 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.05, 3.06, 9.01(c), eff. Sept. 1, 2003.

Sec. 301.0611. COORDINATION OF CERTAIN AWARDS AND INCENTIVES. The commission, in cooperation with the Texas Education Agency, the comptroller, and the Texas Higher Education Coordinating Board, shall prepare and make available to the public a list of all awards and incentives available for business participation in:

(1) a school district's career and technology education program under Subchapter F, Chapter 29, Education Code; or

(2) any other career and technology education training.

Added by Acts 2003, 78th Leg., ch. 61, Sec. 9, eff. Sept. 1, 2003.

Sec. 301.0615. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a) Except as otherwise provided by this title, a hearing conducted under this title is not subject to:

(1) Section 2001.038, Government Code; or

(2) Subchapters C-H, Chapter 2001, Government Code.

(b) A commission order or decision that results from a hearing conducted under this title is not subject to the requirements imposed under:

(1) Section 2001.004(3), Government Code; or

(2) Section 2001.005, Government Code.

Added by Acts 1997, 75th Leg., ch. 631, Sec. 1, eff. Sept. 1, 1997.

Sec. 301.062. FINDINGS. Both the commission and the executive director may make findings and determine issues under this title as necessary to administer this title.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.062 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.063. STATE AND FEDERAL COOPERATION. (a) The commission is designated as the agency of this state for implementation in this state of:

(1) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.); and

(2) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(b) In administering this title the commission and executive director shall:

(1) cooperate with the secretary under the Social Security Act (42 U.S.C. Section 301 et seq.) to the fullest extent consistent with this title;

(2) make reports in the form and containing information required by the secretary and comply with provisions the secretary finds necessary to ensure that the reports are correct and verified;

(3) comply with the regulations prescribed by the secretary governing the expenditures of funds allotted and paid to the state under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) to assist in the administration of this title; and

(4) cooperate with any official or agency of the United States having powers or duties under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) and take all actions necessary to secure to this state the benefits of that Act and necessary to perform the commission's duties under Chapter 307.

(c) The commission may provide reasonable cooperation to each agency of the United States charged with the administration of any unemployment insurance law.

(d) On request, the commission shall furnish to an agency of the United States responsible for the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits, including each nonrecipient parent as defined by Section 31.0021, Human Resources Code, who is receiving benefits, and shall inform the agency of the recipient's right to further benefits under Subtitle A.

(e) In this section, "secretary" means the United States secretary of labor.

(f) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.063 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 13.11, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.09, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 8, eff. June 15, 2007.

Sec. 301.064. INTERPRETER SERVICES; BILINGUAL FORMS. (a) The

executive director shall provide language interpreters for agency programs through a comprehensive language services program for persons whose primary language is Spanish and may provide language interpreters through the program for agency programs for persons whose primary language is other than Spanish or English.

(b) The language services program must provide services, including translation services, both to employers and to employees or prospective employees.

(c) The executive director shall print essential agency forms and instructional information in both English and Spanish. A form shall be written in Spanish only when revised or when new or additional forms are printed or prepared.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.064 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.065. ANNUAL REPORT. (a) As soon as practicable after the close of each fiscal year, the commission shall submit to the governor and the legislature a report on the administration and operation of the commission's activities under this title during the preceding fiscal year, including each recommendation of the commission for amendments to this title.

(b) The annual report must include:

(1) a balance sheet of the money in the compensation fund;

(2) the commission's long-term and short-term objectives; and

(3) any other information requested by the legislature or the Legislative Budget Board.

(c) At the time the commission submits the annual report under this section, the commission shall submit to the governor and the legislature a separate supplemental annual report consisting of any information required by other law to be included in the supplemental annual report.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.065 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 266 (S.B. 1413), Sec. 2, eff.

September 1, 2019.

Sec. 301.066. PUBLICATIONS. (a) The executive director shall print:

(1) the text of Subtitle A;

(2) the commission's rules; and

(3) the commission's annual report to the governor and the legislature.

(b) The executive director shall prepare information describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission.

(c) The executive director shall make the information required to be printed or prepared under this section and any other material that the executive director determines to be relevant and suitable for distribution available to the public and appropriate state agencies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.066 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.067. TAX ASSISTANCE; INFORMATION ON EARNED INCOME TAX CREDIT. (a) The commission may work in conjunction with the Internal Revenue Service to make certain offices of the commission volunteer income tax assistance sites during the two months preceding the date federal income taxes are due.

(b) In conjunction with the comptroller's office, the commission may use existing resources to distribute information and educational materials on the federal earned income tax credit provided by the comptroller under Section 403.025, Government Code, to local workforce development boards and workforce development centers for use in providing federal income tax assistance to persons who participate in workforce development programs.

(c) In addition to providing information under Subsection (b) to a person who participates in a workforce development program, the commission may provide the information to any other person who uses services provided through the commission.

(d) The commission may adopt rules as necessary to implement

this section, including rules regarding the information that employers must provide under Chapter 104 regarding employee eligibility for the federal earned income tax credit.

Added by Acts 1997, 75th Leg., ch. 1321, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(33), eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 2, eff. September 1, 2009.

Sec. 301.0671. FEDERAL WORK OPPORTUNITY TAX CREDIT AND STATE TAX REFUND FOR CERTAIN EMPLOYERS. (a) The commission is the lead agency in promoting awareness of the federal work opportunity tax credit program and the state tax refund for employers under Subchapter H.

(b) The commission, in coordination with the comptroller's office and the Texas Department of Human Services, shall develop and distribute educational materials designed to increase awareness of the tax credit and tax refund described by Subsection (a) to encourage employers to hire recipients of the financial assistance program for persons with dependent children under Chapter 31, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 228, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Labor Code Sec. 301.067 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(81), eff. Sept. 1, 1999.

Sec. 301.0675. VOCATIONAL REHABILITATION AND CERTAIN OTHER SERVICES FOR PERSONS WITH DISABILITIES. Subject to federal approval, if required, to administer vocational rehabilitation services and other services and programs to persons with disabilities under Subtitle C, Title 4, the commission has primary responsibility for providing those services and programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 19, eff. September 1, 2016.

Sec. 301.0681. POLICY ON TECHNOLOGICAL SOLUTIONS. The commission shall develop and implement a policy requiring the executive director and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. The technological solutions must:

(1) ensure that:

(A) the public is able to easily find information about the commission on the Internet; and

(B) persons who want to use the commission's services are able to:

(i) interact with the commission through the Internet; and

(ii) access any service that can be provided effectively through the Internet;

(2) be cost-effective; and

(3) be developed through the commission's planning processes.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.07, eff. Sept. 1, 2003.

Sec. 301.0682. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of the commission's rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction, other than proceedings conducted by the commission under Title 2 and this title of this code that are not subject to Subchapters C-H, Chapter 2001, Government Code.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy developed under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.07, eff. Sept. 1, 2003.

Sec. 301.069. PARTNERSHIP WITH BUSINESS COMMUNITY. To meet the needs of businesses in this state and to equip workers and job seekers with the skills required to compete for jobs in this state, the commission shall:

(1) partner with the business community to:

(A) identify:

(i) skills required by the business community;

(ii) key industry sectors in the business community that are likely to benefit from skill development services and programs offered by the commission; and

(iii) employment opportunities offered by the business community; and

(B) develop services and programs that are designed to equip workers and job seekers with the skills required by the business community; and

(2) support business and community economic development activities of local workforce development boards and the state.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.07, eff. Sept. 1, 2003.

Sec. 301.070. INFORMATION REGARDING VETERAN'S EMPLOYMENT PREFERENCE POLICIES. The commission shall make available on its website a list of each private employer who has provided notice under Section 23.002(c) regarding a veteran's employment preference policy.

Added by Acts 2017, 85th Leg., R.S., Ch. 387 (S.B. 588), Sec. 3, eff. September 1, 2017.

SUBCHAPTER E. INVESTIGATIVE AND SUBPOENA POWERS

Sec. 301.071. INVESTIGATIVE AND SUBPOENA POWERS. (a) In discharging duties imposed under this title, an appeal tribunal established under this title, an examiner or other hearings officer employed or appointed by the commission or the executive director, a member of the commission, or a representative authorized by the commission may:

(1) administer oaths;

(2) take depositions;

(3) certify to official acts; and

(4) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a disputed claim or the administration of this title.

(b) The commission's authority to conduct an investigation, assemble information, or require the submission of documentary or oral testimony is limited to the power necessary to properly administer this title.

(c) Notwithstanding Section 154.004, Local Government Code, or any other law, the executive director shall pay the fee of a sheriff or constable who serves a subpoena under this section. The fee shall be paid from the commission's administrative funds, and the comptroller shall issue a warrant for the fee as directed by the executive director.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.071 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 631, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.072. ENFORCEMENT OF SUBPOENA; OFFENSE; PENALTIES. (a) If a person is guilty of contumacy or refuses to obey a subpoena issued by a member of the commission or an authorized representative of the commission, a county or district court, on application by the commission or its authorized representative, may order the person to appear before a member of the commission, the commission, or its authorized representative to produce evidence or give testimony regarding the matter under investigation or in question. Only a court within the jurisdiction where the commission conducts the

inquiry or where the person is found, resides, or transacts business may issue the order.

(b) Failure to obey a court order issued under Subsection (a) is punishable as contempt.

(c) A person commits an offense if the person, without just cause, does not obey a subpoena of the commission. An offense under this subsection is punishable by a fine of not less than $200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.072 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.073. SELF-INCRIMINATION. (a) In any cause or proceeding before the commission, a person is not excused from attending and testifying, from producing books, papers, correspondence, memoranda, and other records, or from obeying a subpoena of the commission, a member of the commission, or a representative of the commission on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a penalty or forfeiture.

(b) A person may not be prosecuted or subjected to penalty or forfeiture for or because of a transaction or thing for which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination except for perjury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.073 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.074. DEFAMATION. An oral or written statement made to the commission or to an employee of the commission in connection with the discharge of the commission's or the employee's duties under Subtitle A may not be the basis for an action for defamation of character.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.074 and amended by Acts 1995,

74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

SUBCHAPTER F. RECORDS

Sec. 301.081. EMPLOYEE RECORDS OF EMPLOYING UNIT; OFFENSE; PENALTY. (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

(c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

(d) A person commits an offense if the person violates any provision of this section. An offense under this subsection is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.091 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1333 (S.B. 1619), Sec. 1, eff. September 1, 2007.

Sec. 301.082. COPIES OF RECORDS. (a) The executive director may furnish a photostatic or certified copy of a record in the commission's possession to a person entitled to receive a copy of the record on application by the person.

(b) The executive director shall charge a reasonable fee in an amount set by the commission for a copy of a record furnished under

this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.092 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.083. ACCESS TO RECORDS BY RAILROAD RETIREMENT BOARD. (a) The executive director may make state records relating to the administration of Subtitle A available to the Railroad Retirement Board.

(b) The executive director may furnish the Railroad Retirement Board with copies of the records requested by the board at the board's expense.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.093 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.084. DESTRUCTION OF RECORDS. The executive director may destroy any of the records of the agency under safeguards that protect the confidential nature of the records if the executive director:

(1) determines that the records no longer serve a legal, administrative, or other useful purpose; or

(2) has made an authentic reproduction of the records to be destroyed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.094 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.085. UNEMPLOYMENT COMPENSATION AND JOB MATCHING SERVICES INFORMATION; OFFENSE; PENALTY. (a) In this section:

(1) "Job matching services information" means information in the records of the commission that pertains to the commission's job matching services provided to employers and job seekers through the Internet, workforce centers, or other means.

(2) "Unemployment compensation information" means

information in the records of the commission that pertains to the administration of Subtitle A, including any information collected, received, developed, or maintained in the administration of unemployment compensation benefits or the unemployment compensation tax system.

(b) Consistent with federal law, the commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of unemployment compensation information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in unemployment compensation information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.

(b-1) The commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.

(c) Unemployment compensation information and job matching services information are not public information for purposes of Chapter 552, Government Code.

(d) Unless permitted by this subchapter or commission rule, a person commits an offense if the person solicits, discloses, receives, or uses, or authorizes, permits, participates in, or acquiesces in another person's use of, unemployment compensation information or job matching services information that reveals:

(1) identifying information regarding any individual or past or present employer or employing unit; or

(2) information that foreseeably could be combined with other publicly available information to reveal identifying information regarding any individual or past or present employer or employing unit.

(e) An offense under Subsection (d) is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 4, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1333 (S.B. 1619), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1225 (S.B. 563), Sec. 2, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1225 (S.B. 563), Sec. 3, eff. September 1, 2011.

Sec. 301.086. PROVISION OF CERTAIN INFORMATION TO COMPTROLLER. (a) Not later than June 1 of every fifth year, the commission shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each person about whom the commission has such information in its records.

(b) Information provided to the comptroller under this section is confidential and may not be disclosed to the public.

(c) The commission shall provide the information in the format prescribed by rule of the comptroller.

Added by Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 8, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 47.03, eff. September 28, 2011.

SUBCHAPTER H. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

Sec. 301.101. DEFINITION. In this subchapter, "wages" has the meaning assigned by Sections 51(c)(1), (2), and (3), Internal Revenue Code of 1986 (26 U.S.C. Section 51).

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994.
Redesignated from Human Resources Code Sec. 31.071 by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.102. TAX REFUND VOUCHER. (a) The commission shall issue a tax refund voucher in the amount allowed by this subchapter and subject to the restrictions imposed by this subchapter to a person that meets the eligibility requirements under this subchapter.

(b) A person issued a tax refund voucher may, subject to the provisions of this subchapter, apply for the amount of the refund of a tax that is paid by the person to this state if the tax is administered by the comptroller and deposited to the credit of the general revenue fund without dedication.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.072 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.103. AMOUNT OF REFUND; LIMITATION. (a) The amount of the refund allowed under this subchapter is equal to 20 percent of the total wages, up to a maximum of $10,000 in wages for each employee, paid or incurred by a person for services rendered by an employee of the person during the period beginning with the date the employee begins work for the person and ending on the first anniversary of that date.

(b) The refund claimed for a calendar year may not exceed the amount of net tax paid by the person to this state, after any other applicable tax credits, in that calendar year.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.073 by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.104. ELIGIBILITY. A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only if:

(1) the wages paid or incurred by the person are for services of an employee who is:

(A) a resident of this state; and

(B) a recipient of:

(i) financial assistance and services in accordance with Chapter 31, Human Resources Code; or

(ii) medical assistance in accordance with Chapter

32, Human Resources Code;

(2) the person satisfies the certification requirements under Section 301.105; and

(3) the person, under an arrangement under Section 32.0422, Human Resources Code, provides and pays for the benefit of the employee a part of the cost of coverage under:

(A) a health plan provided by a health maintenance organization established under Chapter 843, Insurance Code;

(B) a health benefit plan approved by the commissioner of insurance;

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); or

(D) a medical savings account or other health reimbursement arrangement authorized by law.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.074 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 1165, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 817, Sec. 3A.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.535, eff. Sept. 1, 2003.

Sec. 301.105. CERTIFICATION. A person is not eligible for the refund for wages paid or incurred by the person unless the person has received a written certification from the commission that the employee is a recipient of medical assistance or financial assistance and services on or before the day the employee begins employment with the person.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.075 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3A.02, eff. Sept. 1, 2003.

Sec. 301.106. APPLICATION FOR REFUND; ISSUANCE. (a) A person may apply for a tax refund voucher for wages paid an employee in a calendar year only on or after January 1 and before April 1 of the

following calendar year.

(b) The commission shall promulgate a form for the application for the tax refund voucher. A person must use this form in applying for the refund.

(c) On issuance of the tax refund voucher to the person by the commission, the person may apply the voucher against a tax paid by the person to this state only for the calendar year for which the voucher is issued.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.076 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.107. RULES. (a) The commission shall adopt rules as necessary to carry out its powers and duties under this subchapter.

(b) The Texas Department of Human Services shall provide to the commission information as necessary to enable the commission to determine whether a person is eligible for the tax refund authorized by this subchapter.

Added by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.108. LIMITATION ON CONVEYANCE, ASSIGNMENT, OR TRANSFER OF REFUND. A person may convey, assign, or transfer a refund under this subchapter to another person only if:

(1) the employing unit is sold, conveyed, assigned, or transferred, in the same transaction or in a related transaction, to the person to whom the refund is conveyed, assigned, or transferred; or

(2) the person to whom the refund is conveyed, assigned, or transferred:

(A) is subject to a tax administered by the comptroller and deposited to the credit of the general revenue fund without dedication; and

(B) directly or indirectly owns, controls, or otherwise directs, in whole or in part, an interest in the person from whom the refund is conveyed, assigned, or transferred.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3A.02, eff. Sept. 1,

2003.

SUBCHAPTER I. CIVIL RIGHTS DIVISION

Sec. 301.151. DEFINITIONS. In this subchapter:

(1) "Director" means the director of the division.

(2) "Division" means the civil rights division of the commission.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1138 , Sec. 30(7), eff. September 1, 2015.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 30(7), eff. September 1, 2015.

Sec. 301.153. GOVERNANCE; AUTHORITY. (a) The commission shall establish policies for the division and the executive director shall supervise the director in administering the activities of the division.

(b) The commission is the state authority established as a fair employment practice agency and is authorized, with respect to an unlawful employment practice, to:

(1) grant relief from the practice;

(2) seek relief from the practice; or

(3) institute criminal proceedings.

(c) The commission shall administer Chapter 21 of this code and Chapter 301, Property Code, including the powers and duties formerly exercised by the former Commission on Human Rights under those laws.

(d) A reference in Chapter 21 of this code, Chapter 301, Property Code, or any other law to the former Commission on Human Rights means the commission.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 20, eff. September 1, 2015.

Sec. 301.154. DIRECTOR. (a) The director shall be appointed

by the executive director to administer the powers and duties of the division.

(b) To be eligible for appointment, the director must have relevant experience in the area of civil rights, specifically in working to prevent the types of discrimination the division is charged with preventing. The director must demonstrate a commitment to equal opportunity for minorities, women, and the disabled. The director should also have relevant experience with housing and employment discrimination claims.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 21, eff. September 1, 2015.

Sec. 301.155. INVESTIGATOR TRAINING PROGRAM; PROCEDURES MANUAL. (a) A person who is employed under this chapter by the division as an investigator may not conduct an investigation until the person completes a comprehensive training and education program for investigators that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the requirements relating to employment adopted under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.) and its subsequent amendments, with a special emphasis on requirements regarding reasonable accommodations;

(2) various types of disabilities and accommodations appropriate in an employment setting for each type of disability; and

(3) fair employment and housing practices.

(c) Each investigator shall annually complete a continuing education program designed to provide investigators with the most recent information available regarding the issues described by Subsection (b), including legislative and judicial changes in the law.

(d) The director shall develop and biennially update an investigation procedures manual. The manual must include investigation procedures and information and may include information regarding the Equal Employment Opportunity Commission and the United

States Department of Housing and Urban Development.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.

Sec. 301.156. ANALYSIS OF DISCRIMINATION COMPLAINTS; REPORT. (a) The division shall collect and report statewide information relating to employment and housing discrimination complaints as required by this section.

(b) Each state fiscal year, the division shall collect and analyze information regarding employment and housing discrimination complaints filed with the division, the Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and local commissions in this state. The information must include:

(1) an analysis of employment complaints filed by the basis of the complaint, including:

(A) sex, race, color, age, disability, national origin, religion, and genetic information; and

(B) retaliatory actions against the complainant;

(2) an analysis of housing complaints filed by the basis of the complaint, including sex, race, color, disability, national origin, religion, and familial status;

(3) an analysis of employment complaints filed by issue, including discharge, terms and conditions, sexual harassment, promotion, hiring, demotion, and layoff;

(4) an analysis of housing complaints filed by issue, including terms and conditions, refusal to rent or sell, discriminatory financing or advertising, and false representation;

(5) an analysis of employment and housing cases closed by the reason the case was closed, including findings or determinations of cause or no cause, successful conciliation, right to sue issued, complaint withdrawn after resolution, no-fault settlement, failure to cooperate by the complainant, and lack of jurisdiction; and

(6) the average processing time for complaints resolved by the division in each state fiscal year, regardless of whether the complaint was filed in the same fiscal year in which the complaint was resolved.

(c) The results of an analysis required under this section shall be included in the commission's annual report to the governor

and legislature.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.

Sec. 301.157. ANALYSIS OF STATE AGENCY DISCRIMINATION COMPLAINTS; REPORT. (a) Each state fiscal year, the division shall collect and analyze information regarding employment discrimination complaints, other than complaints determined to be without merit, filed with the division against a state agency. The information must include:

(1) an analysis of the complaints, both by number and by type; and

(2) key findings or trends the division identifies during the division's review of state agency personnel policies and procedures under Section 21.453.

(b) The commission shall include the results of the division's analysis under this section in the commission's annual report to the governor and the legislature. The division shall exclude from the report any identifying information of a complainant or a state agency complaint as necessary to maintain confidentiality required by the commission's contract with the federal Equal Employment Opportunity Commission or by other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 22, eff. September 1, 2015.

SUBCHAPTER J. ADULT EDUCATION AND LITERACY

Sec. 301.171. COOPERATION WITH TEXAS EDUCATION AGENCY TO IMPROVE ADULT EDUCATION AND LITERACY SERVICES. The commission shall collaborate with the Texas Education Agency to improve the coordination and implementation of adult education and literacy services in this state.

Acts 2003, 78th Leg., ch. 817, Sec. 5.01, eff. Sept. 1, 2003. Renumbered from Labor Code, Section 301.151 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(63), eff. September 1, 2005.

SUBCHAPTER K. DETECTION AND PREVENTION OF CHILD-CARE FRAUD, WASTE,

AND ABUSE

Sec. 301.191. PREVENTION AND DETECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall develop risk assessment protocols to identify and assess possible instances of fraud, waste, and abuse in child-care programs, including:

(1) the use of unemployment insurance wage records to identify:

(A) potential ineligible parents due to a change in income or underreporting of income;

(B) relative child-care providers who are engaged in other employment; and

(C) parents who do not have the required work history; and

(2) the identification of parents who apply for or receive child-care services in multiple workforce areas simultaneously.

(b) The commission shall ensure that local workforce development boards implement procedures to prevent and detect fraud, waste, and abuse in child-care programs.

(c) The commission may use a motor vehicle record, including a photographic image and signature, to prevent and detect fraud, waste, and abuse in child-care programs.

(d) The commission may use the information under Subsection (c) otherwise for enforcement under this title.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 2, eff. September 1, 2011.

Sec. 301.192. CORRECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall ensure that corrective action is initiated against a child-care provider who commits fraud, including:

(1) temporarily or permanently withholding payments to the provider for child-care services already delivered;

(2) recovering money paid for child care from the child-care provider;

(3) stopping the provision of authorized child care at the provider's facility or location; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(b) The commission shall ensure that corrective action is initiated against a parent who commits fraud, including:

(1) recovering money paid for child care from the parent;

(2) declaring the parent ineligible for future child care under a commission program;

(3) limiting the enrollment of the parent's child to a regulated child-care provider; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(c) If the commission proposes to take a corrective action under Subsection (a) or (b), the provider or parent is entitled to appeal the proposed corrective action in accordance with procedures adopted by the commission by rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 2, eff. September 1, 2011.

CHAPTER 302. DIVISION OF WORKFORCE DEVELOPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Career education and training program" has the meaning assigned by Section 2308A.001, Government Code.

(1-a) "Director" means the director of the division.

(2) "Division" means the division of workforce development of the commission.

(3) "Nonrecipient parent" has the meaning assigned by Section 31.0021, Human Resources Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 9, eff. June 15, 2007.

Acts 2023, 88th Leg., R.S., Ch. 494 (H.B. 1703), Sec. 1, eff. September 1, 2023.

Sec. 302.002. GENERAL WORKFORCE DEVELOPMENT POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR. (a) The executive director

shall:

(1) to the extent feasible under federal law, consolidate the administrative and programmatic functions of the programs under the authority of the commission to achieve efficient and effective delivery of services;

(2) administer each program and implement corresponding federal and state legislation consolidated under the authority of the commission under this chapter and other applicable state law;

(3) determine the organization and methods of procedure of the division in accordance with applicable state and federal legislation;

(4) appoint and prescribe the duties of all officers, administrators, accountants, attorneys, experts, and other employees as necessary in the performance of the division's duties;

(5) delegate authority to persons appointed under this section as the executive director considers reasonable and proper for the effective administration of the division;

(6) bond any person who handles money or signs checks for the division;

(7) implement workforce training and services policies and programs, consistent with recommendations from the council and as approved by the governor;

(8) serve as an advocate at the state and federal levels for local workforce development boards;

(9) contract with local workforce development boards for program planning and service delivery;

(10) provide training and professional development services for division staff, local workforce development boards, and the staff of those boards;

(11) support research and demonstration projects designed to develop new programs and approaches to service delivery;

(12) provide technical assistance and support to local workforce development boards;

(13) prepare an annual agency performance report for submission to the governor, the legislature, the commission, and the council;

(14) design and administer a statewide comprehensive labor market information system;

(15) serve as the chair of the State Occupational Information Coordinating Committee; and

(16) perform other functions and duties as may be required by law or assigned by the commission.

(b) The executive director may make expenditures, enter into contracts with public, private, and nonprofit organizations, require reports, conduct investigations, and take other action the executive director or commission considers necessary or suitable to fulfill the division's administrative duties.

(c) The executive director may enter interagency contracts and memoranda of understanding with other state agencies for the performance of administrative functions of the agency.

(d) The commission shall adopt rules in accordance with Chapter 2001, Government Code, as necessary for the proper administration of the division.

(e) The executive director may obligate funds from the skills development fund in a manner consistent with the rules adopted by the commission for that program. The executive director shall report to the governor, the legislature, the commission, and the council on a quarterly basis regarding actions taken under this subsection.

(f) In addition to the services provided under Subsection (a)(12), the executive director may enter into contracts with local workforce development boards or other entities to establish service level agreements for technology assistance and support. The executive director may charge fees for services based on the service level options selected by those entities. All fees collected under this subsection may be used only by the commission to pay costs incurred in providing those services.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1021, Sec. 1, eff. Sept. 1, 1999.

Sec. 302.0025. EMPLOYMENT PLAN AND POSTEMPLOYMENT STRATEGIES. (a) The commission shall ensure that an individual employment plan developed for a recipient of financial assistance or a nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code, includes specific postemployment strategies to assist the recipient or the nonrecipient parent in making a transition to stable employment at a wage that enables the person and the person's family to maintain self-sufficiency.

(b) The individual employment plan must:

(1) consider the person's individual circumstances and needs in determining the person's initial job placement;

(2) identify a target wage that enables the person and the person's family to maintain self-sufficiency;

(3) provide specific postemployment goals and include methods and time frames by which the person is to achieve those goals; and

(4) refer the person to additional educational and training opportunities.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 10, eff. June 15, 2007.

Sec. 302.0026. EMPLOYMENT SERVICES REFERRAL PROGRAM. (a) The commission and local workforce development boards shall develop an employment services referral program for recipients of financial assistance and nonrecipient parents who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients or nonrecipient parents, higher levels of barriers to employment. The referral program must be designed to provide to a recipient or a nonrecipient parent referrals to preemployment and postemployment services offered by community-based organizations.

(b) In developing the referral program, the commission and local workforce development boards shall, subject to the availability of funds, coordinate partnerships and contract with community-based organizations that provide employment services specifically for persons with high levels of barriers to employment.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 11, eff. June 15, 2007.

Sec. 302.0027. FINANCIAL LITERACY TRAINING. (a) The commission and local workforce development boards shall ensure that each workforce development program offered in this state includes training in financial literacy.

(b) The division shall develop materials and information to be included in the training required by Subsection (a).

(c) The commission may accept a donation of services, money, or property that the commission determines furthers the financial literacy training program. The donation must be accepted in an open meeting by a majority of the voting members of the commission and must be reported in the public records of the commission along with the name of the donor and the purpose of the donation.

Added by Acts 2005, 79th Leg., Ch. 1214 (H.B. 900), Sec. 1, eff. June 18, 2005.

Sec. 302.003. JOB RETENTION AND REEMPLOYMENT ASSISTANCE. The division may provide ongoing job retention and reemployment assistance for a recipient of public assistance or nonrecipient parent who has participated in a job training program.

Added by Acts 1997, 75th Leg., ch. 828, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 12, eff. June 15, 2007.

Sec. 302.0031. COLLEGE CREDIT FOR HEROES PROGRAM. (a) In this section:

(1) "Career school or college" has the meaning assigned by Section 132.001, Education Code.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) The commission shall establish and administer the College Credit for Heroes program to identify, develop, and support methods to maximize academic or workforce education credit awarded by institutions of higher education to veterans and military servicemembers for military experience, education, and training obtained during military service in order to expedite the entry of veterans and military servicemembers into the workforce.

(c) The commission shall work cooperatively with other state agencies, including the Texas Higher Education Coordinating Board, public junior colleges, and other institutions of higher education, to accomplish the purposes of this section.

(d) The commission may award grants to state, local, or private entities that perform activities related to the purposes of this section.

(e) The commission shall administer the program using money previously appropriated to the commission or received from federal or other sources.

(f) The commission may adopt rules as necessary for the administration of this section.

(g) The commission, after consultation with the Texas Higher Education Coordinating Board, shall include in the commission's supplemental annual report to the legislature and the governor under Section 301.065(c):

(1) the results of any grants awarded under this section;

(2) the best practices for veterans and military servicemembers to achieve maximum academic or workforce education credit at institutions of higher education for military experience, education, and training obtained during military service;

(3) measures needed to facilitate the award of academic or workforce education credit by institutions of higher education for military experience, education, and training obtained during military service;

(4) other related measures needed to facilitate the entry of trained, qualified veterans and military servicemembers into the workforce;

(5) the number of academic or workforce education semester credit hours awarded under the program and applied toward a degree or certification program at an institution of higher education during the most recent academic year, disaggregated by the subject area for which the credit hours are awarded; and

(6) the number of transfer credit hours awarded under the program and applied toward a degree or certification program at an institution of higher education during the most recent academic year.

(h) For purposes of Section 33.007(b)(11), Education Code, the commission, in cooperation with the Texas Higher Education Coordinating Board, shall develop and annually make available to each school district and each open-enrollment charter school that offers a

high school program informational materials regarding the availability of college credit awarded by institutions of higher education to veterans and military servicemembers for military experience, education, and training obtained during military service, including information regarding the program under this section.

(i) Under the program, the commission shall identify, develop, and support methods to facilitate the award of course time credit by career schools or colleges or other private or nonprofit entities providing programs of study or courses of instruction leading to industry certifications or other workforce credentials to veterans and military servicemembers for military experience, education, or training obtained during military service for programs of study or courses of instruction offered by those schools, colleges, or other entities for which skills obtained through military experience, education, and training align.

Added by Acts 2011, 82nd Leg., R.S., Ch. 931 (S.B. 1736), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1164 (S.B. 806), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 238 (H.B. 493), Sec. 1, eff. January 1, 2018.

Acts 2019, 86th Leg., R.S., Ch. 37 (H.B. 114), Sec. 2, eff. May 16, 2019.

Acts 2019, 86th Leg., R.S., Ch. 266 (S.B. 1413), Sec. 3, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 133 (H.B. 33), Sec. 5, eff. September 1, 2021.

Sec. 302.0032. TEXAS FAST START PROGRAM. (a) In this section:

(1) "Fast start program" means a career and technical education program designed to help students earn postsecondary certificates and degrees and enter into the workforce quickly.

(2) "Public junior college," "public state college," and "public technical institute" have the meanings assigned by Section 61.003, Education Code.

(b) The commission, in partnership with the Texas Higher Education Coordinating Board, shall establish and administer the

Texas Fast Start Program to identify and develop methods to support, and shall provide support for, competency-based, rapid-deployment education delivery models for use by public junior colleges, public state colleges, and public technical institutes. The models must be designed to assist students in maximizing academic or workforce education program credit from public junior colleges, public state colleges, and public technical institutes to expedite the entry of those students into the workforce.

(c) The commission shall work collaboratively with the Texas Higher Education Coordinating Board, public junior colleges, public state colleges, and public technical institutes to accomplish the purposes of this section.

(d) A public junior college, public state college, or public technical institute may use the competency-based, rapid-deployment education delivery models described by Subsection (b) in developing or expanding a fast start program at the college or institute.

(e) A fast start program offered by a public junior college, public state college, or public technical institute must:

(1) focus on the current and future needs of employers in this state;

(2) enable students to obtain postsecondary certificates and degrees at an accelerated pace in high-demand fields or occupations, as identified by local employers;

(3) incorporate competency-based learning techniques;

(4) feature a variety of access channels that are uniquely designed to maximize job preparedness for identified groups such as veterans, high school graduates, and current workforce members seeking retraining; and

(5) be designed for rapid deployment statewide.

(f) Through the collaboration, the commission may award grants to public junior colleges, public state colleges, and public technical institutes for:

(1) the expansion of existing fast start programs;

(2) the development of new fast start programs; and

(3) any other activities related to the purposes of this section.

(g) A grant received under this section may be used only to:

(1) support a course or program that prepares students for career employment in fields or occupations that are identified as high-demand by local employers;

(2) finance the initial costs of developing a fast start program, including the costs of constructing or renovating facilities, purchasing equipment, and other associated expenses;

(3) finance the development or expansion of a fast start program leading to a postsecondary certificate or degree; or

(4) offer a new or expanded dual credit fast start program jointly with a public high school.

(h) The commission and the Texas Higher Education Coordinating Board shall administer the program using money appropriated to the commission or board, money received from federal or other sources, or money from holding accounts that may be used by the commission for the purpose of skills development.

(i) The commission and the Texas Higher Education Coordinating Board may adopt rules as necessary for the administration of this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 216 (S.B. 441), Sec. 1, eff. June 10, 2013.

Sec. 302.0033. OPERATION WELCOME HOME PROGRAM. (a) The commission shall establish and administer the Operation Welcome Home program to expedite the entry of veterans and military service members into the workforce through the use of enhanced employment services. In establishing the program, the commission shall build partnerships between military transition centers and local workforce development boards to ensure the availability of employment services, including services related to:

(1) education;

(2) career technical training; and

(3) entrepreneurship.

(b) The commission may award grants to state, local, or private entities that perform activities related to the purposes of this section.

(c) The commission shall administer the program using money previously appropriated to the commission or received from federal or other sources.

(d) The commission may adopt rules as necessary for the administration of this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 741 (H.B. 696), Sec. 1, eff.

June 10, 2019.

Sec. 302.00335. TEXAS VETERANS LEADERSHIP PROGRAM. (a) The commission, in consultation with the Texas Veterans Commission, shall establish a Texas Veterans Leadership Program.

(b) The mission of the program is to serve as a resource and referral network connecting veterans with the resources and tools they need to lead productive lives and enjoy the full benefits of the society they have willingly served.

(c) The program shall collaborate with local workforce development boards to provide services to veterans under this section. The program may collaborate with other federal, state, county, municipal, and private agencies to provide services to veterans under this section.

(d) The program shall employ veterans to serve as veteran resource and referral specialists. A veteran resource and referral specialist shall:

(1) seek out veterans in need of services;

(2) serve as a resource and referral agent, directing veterans to resources tailored to veterans' needs;

(3) make referrals and coordinate with other programs of the commission, the Texas Veterans Commission, and other federal, state, county, municipal, and private agencies that provide services for veterans relating to:

(A) employment;

(B) education and training;

(C) medical care;

(D) mental health and counseling; and

(E) veterans benefits; and

(4) coordinate the services of volunteer veterans familiar with the obstacles faced by veterans to assist in mentoring and serving veterans.

Added by Acts 2019, 86th Leg., R.S., Ch. 741 (H.B. 696), Sec. 1, eff. June 10, 2019.

Sec. 302.0034. EMPLOYMENT ASSISTANCE PROGRAM FOR CERTAIN FAMILIES OF MILITARY PERSONNEL. (a) The commission shall provide

employment assistance services, including job placement and other employment-related services, to the spouses and dependents of military personnel who are assigned to duty in this state.

(b) The commission shall provide the services described by Subsection (a) in cooperation with the local workforce development boards in areas of the state having a defense community, as that term is defined by Section 481.501, Government Code.

(c) The commission may accept and apply for gifts, grants, donations, and appropriations from public and private sources to fund the commission's duties under this section. The commission may use money from job training funds and other money appropriated by the legislature to implement the requirements of this section.

Added by Acts 2005, 79th Leg., Ch. 682 (S.B. 212), Sec. 1, eff. June 17, 2005.

Sec. 302.00341. GRANTS TO FACILITATE PARTICIPATION IN APPRENTICESHIP TRAINING PROGRAMS BY CERTAIN VETERANS AND MILITARY PERSONNEL. (a) In this section:

(1) "Apprenticeship training program" has the meaning assigned by Section 133.001, Education Code.

(2) "Nonprofit organization" means an organization exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code.

(b) The commission shall develop and administer a program under which the commission may award grants to one or more nonprofit organizations that facilitate the participation in apprenticeship training programs of veterans and active duty military service members who are transitioning into civilian employment.

(c) A grant awarded under this section may be used only to recruit or assist veterans or active duty military service members who are transitioning into civilian employment to participate in an apprenticeship training program in this state.

(d) The commission shall adopt rules for the administration of this section, including rules for verifying that state funds awarded to a nonprofit organization under this section are being used appropriately.

Added by Acts 2021, 87th Leg., R.S., Ch. 176 (S.B. 337), Sec. 1, eff.

September 1, 2021.

Sec. 302.0035. EMPLOYMENT ASSISTANCE PROGRAM FOR CERTAIN PARENTS. The commission shall provide employment assistance services, including skills training, job placement, and employment-related services, to a person referred to the commission by:

(1) the Title IV-D agency under Chapter 231, Family Code; or

(2) a court under Section 157.211, Family Code.

Added by Acts 1999, 76th Leg., ch. 1072, Sec. 7, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 311, Sec. 4, eff. Sept. 1, 2001.

Sec. 302.0036. TRANSPORTATION ASSISTANCE. (a) To the extent funds are available, the commission and local workforce development boards shall provide transportation assistance to recipients of financial assistance and nonrecipient parents participating in employment programs under Chapter 31, Human Resources Code, that enables the recipients and nonrecipient parents to maintain a stable work history and attain financial stability and self-sufficiency.

(b) The commission and local workforce development boards may provide the assistance described by Subsection (a) by implementing new initiatives or expanding existing initiatives that provide transportation assistance to recipients of financial assistance or nonrecipient parents for whom transportation is a barrier to employment.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 13, eff. June 15, 2007.

Sec. 302.0037. MAXIMIZING FEDERAL FUNDS FOR TRANSPORTATION ASSISTANCE. (a) The commission and local workforce development boards shall maximize the state's receipt of federal funds available to provide transportation assistance to recipients of financial assistance and nonrecipient parents participating in employment

programs under Chapter 31, Human Resources Code.

(b) The commission and local workforce development boards may, within any applicable appropriation limits, take any action required by federal law to receive federal funds to provide transportation assistance.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 14, eff. June 15, 2007.

Sec. 302.0038. HOUSING RESOURCES FOR CERTAIN RECIPIENTS OF FINANCIAL ASSISTANCE AND CERTAIN NONRECIPIENT PARENTS. (a) The commission, in cooperation with local workforce development boards, shall, for a recipient of financial assistance or nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code:

(1) identify unmet housing needs and assess whether those needs are barriers to the person's full participation in the workforce and attainment of financial stability and self-sufficiency; and

(2) develop a service plan that takes into consideration the person's unmet housing needs.

(b) The commission by rule shall develop and implement a program through which a recipient or a nonrecipient parent identified under Subsection (a) as having unmet housing needs is referred by the commission or local workforce development board to agencies and organizations providing housing programs and services and connected to other housing resources. To provide those referrals and connections, the commission shall establish collaborative partnerships between:

(1) the commission;

(2) local workforce development boards;

(3) municipal, county, and regional housing authorities; and

(4) sponsors of local housing programs and services.

(c) The commission shall ensure that commission and local workforce development board staff members receive training regarding

the programs and services offered by agencies and organizations with which the commission establishes partnerships under Subsection (b) and other available housing resources.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 15, eff. June 15, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 16, eff. June 15, 2007.

Sec. 302.004. FUNDS FOR JOB TRAINING, EMPLOYMENT SERVICES, ADULT EDUCATION AND LITERACY ACTIVITIES, AND CHILD CARE. In providing job training, employment services, adult education and literacy services, and child care to eligible persons, the commission, notwithstanding the provisions in this chapter or other law, may establish a need-based formula to allocate funds available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) and the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) for job training, employment services, adult education and literacy activities, and child care to local workforce development areas so as to:

(1) ensure compliance with federal participation rates and requirements and full utilization of the funding; and

(2) achieve integrated education and training.

Added by Acts 1997, 75th Leg., ch. 828, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.02, eff. September 1, 2013.

Sec. 302.0041. CHILD-CARE DEMONSTRATION PROJECT GRANTS. (a) The commission may make grants available on a one-time basis to local workforce development boards to enable the boards to design and implement child-care demonstration projects.

(b) A local workforce development board that receives a grant under this section shall use the grant to design and implement a demonstration project that:

(1) expands child-care services in underserved rural local workforce development areas, including:

(A) home-based child-care services;

(B) child-care services at nontraditional times, including services that accommodate the child-care needs of parents who work shift-schedules, evenings, and weekends; or

(C) services to link child-care programs, prekindergarten programs under Subchapter E, Chapter 29, Education Code, and the federal Head Start program;

(2) creates or expands existing pilot programs, based on demonstration models from other states, that provide strategies for successfully recruiting and retaining child-care providers;

(3) creates pilot programs designed to assist low-income, at-risk parents receiving child-care services provided by the commission for extended periods who may benefit from career counseling and employment location services that promote the potential for career advancement; or

(4) develops initiatives that foster school readiness in young children and encourage pre-reading and problem-solving skills in those children.

(c) To be eligible for a grant under this section, a local workforce development board must:

(1) conduct the demonstration project for which the grant is made in a manner that allows replication of the project in whole or part by other local workforce development boards to address similar child-care service needs in underserved local workforce development areas; and

(2) use the grant to develop direct child-care services that, at the conclusion of the demonstration project, may be funded.

(d) Child-care services that may continue to be funded under Subsection (c)(2) at the conclusion of the demonstration project may be funded through existing local workforce development board resources for child-care services or other local resources.

Added by Acts 2001, 77th Leg., ch. 495, Sec. 1, eff. June 11, 2001.

Sec. 302.0042. EVALUATION OF ALLOCATION FORMULAS FOR CHILD CARE DEVELOPMENT FUNDS. (a) The commission shall annually evaluate the formulas used by the commission to distribute federal child care

development funds to local workforce development boards in order to ensure that the formulas address the child care needs of each local workforce development board.

(b) The commission's evaluation must assess:

(1) the use of current federal child care funds by each local workforce development board;

(2) the ability of each local workforce development board to meet child care performance measures;

(3) the average cost of child care in each local workforce development area;

(4) the average monthly price charged by child care providers for full-day child care in each local workforce development area as stated in the market rate survey conducted under 45 C.F.R. Section 98.45(c);

(5) the average monthly price charged by quality child care providers for full-day child care in each local workforce development area;

(6) the poverty rate of each local workforce development area compared to the state's poverty rate;

(7) the number of children on waiting lists for child care in each local workforce development area;

(8) the number of places that are reserved by each local workforce development board in contracts authorized under Section 302.0461 for participants in the child-care subsidy program out of the total number of children enrolled with a provider on a full-time basis categorized by age of the child for each provider in each local workforce development area that is certified as a 2-star, 3-star, or 4-star provider in the Texas Rising Star Program or that does not participate in the Texas Rising Star Program;

(9) the total number of child care providers participating in the Texas Rising Star Program in each local workforce development area and the number of 2-star, 3-star, and 4-star rated child care providers in the local workforce development area;

(10) the number of child care providers participating in the Texas Rising Star Program in each local workforce development area as a percentage of the total number of both subsidized child care providers and all child care providers in the local workforce development area;

(11) the number of 2-star, 3-star, and 4-star rated child care providers in the local workforce development area as a

percentage of the total number of both subsidized child care providers and all child care providers in the local workforce development area;

(12) the total number of children enrolled in subsidized child care providers participating in the Texas Rising Star Program in each local workforce development area and the number of subsidized children enrolled in 2-star, 3-star, and 4-star rated child care providers in the local workforce development area;

(13) the number of subsidized children enrolled in child care providers participating in the Texas Rising Star Program in each local workforce development area as a percentage of the total number of subsidized children enrolled in child care providers in the local workforce development area and the number of subsidized children enrolled in 2-star, 3-star, and 4-star rated child care providers in the local workforce development area as a percentage of the total number of subsidized children enrolled in child care providers in the local workforce development area; and

(14) the number of 3-star and 4-star rated child care providers participating in partnerships with public school districts and public charter schools based on data provided by the Texas Education Agency, as necessary.

(c) For the purposes of evaluation under this section, the commission shall annually update the information described by Subsections (b)(7)-(14).

(d) In this section, "quality child care provider" means a child care provider that:

(1) participates in the commission's Texas Rising Star Program; or

(2) is accredited by the National Early Childhood Program Accreditation Commission or the National Association for the Education of Young Children, or holds any other accreditation the commission determines meets the quality standards of the Texas Rising Star Program.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1038 (H.B. 680), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1031 (H.B. 2607), Sec. 2, eff.

September 1, 2021.

Sec. 302.0043. EVALUATION OF EFFECTIVENESS OF SUBSIDIZED CHILD CARE PROGRAM. (a) To evaluate the effectiveness of the commission's child care program in helping parents who receive subsidized child care to maintain employment, the commission shall compile, regarding each parent receiving subsidized child care from the commission's child care program, the following information regarding the wage and employment status of the parent:

(1) if the parent receives both financial assistance under Chapter 31, Human Resources Code, and subsidized child care, whether the parent:

(A) finds employment; and

(B) maintains the parent's employment after one year;

(2) if the parent receives only subsidized child care, whether the parent:

(A) maintains the parent's employment; and

(B) experiences a change in the parent's earnings after one year of employment; and

(3) if the parent leaves the child care program:

(A) the parent's reason for leaving the program; and

(B) whether the parent returns to financial assistance under Chapter 31, Human Resources Code, or becomes a recipient of financial assistance under that chapter for the first time.

(b) The commission may use the wage and employment records of the parents to determine the employment outcome of the parents.

(c) The commission shall also measure and evaluate the effectiveness of the commission's child care program in:

(1) improving the training of child care professionals; and

(2) facilitating collaboration with Head Start, the Texas Education Agency, the Department of Protective and Regulatory Services, and the Health and Human Services Commission.

(c-1) The commission shall measure and evaluate the progress of the commission's child care program regarding:

(1) coordination by the commission with the Texas Education Agency to assign a Public Education Information Management System (PEIMS) number to children younger than six years of age enrolled in the commission's child care program;

(2) coordination with the Texas Education Agency, school districts, and open-enrollment charter schools on any prekindergarten quality improvement efforts;

(3) efforts to increase coordination between participating providers in the commission's child care program, school districts, and open-enrollment charter schools;

(4) facilitation of child care provider enrollment in the Texas Rising Star Program and progression of providers to the highest rating level in the program; and

(5) development and implementation of rates and payments, as determined by local workforce development boards, to:

(A) allow participating providers to provide high-quality child care; and

(B) ensure that the commission meets performance measures established by the legislature for the average number of children served by the commission's child-care program per day.

(d) The commission shall periodically analyze the information collected by the commission under this section and shall compile its findings regarding the effectiveness of the commission's child care program.

(e) The commission shall make the information collected by the commission and the commission's findings available to local workforce development boards, school districts, open-enrollment charter schools, and the public.

(f) Not later than January 15 of each odd-numbered year, the commission shall report to the legislature regarding the commission's findings regarding the effectiveness of the commission's child care program. The report must:

(1) include employment outcome information, disaggregated by local workforce development area, regarding parents receiving subsidized care under the program;

(2) identify multiyear trends in the information collected and analyzed by the commission under this section, including trends in the information for at least the five state fiscal years preceding the date of the report;

(3) include information described by Sections 302.0042(b)(9)-(13);

(4) include a summary of the input obtained under Section 302.00435; and

(5) include any recommendations for legislation or

regulation, including regulatory recommendations for governmental bodies other than the commission, regarding the input obtained under Section 302.00435.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 23, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1038 (H.B. 680), Sec. 3, eff. September 1, 2019.

Sec. 302.00435. SUBSIDIZED CHILD CARE PROGRAM; INPUT POLICY. (a) The commission shall develop a policy for obtaining, through appropriate methods, input from interested parties regarding its subsidized child care program and for using that input in administering that program.

(b) The policy developed under Subsection (a) must include methods for obtaining input from the Texas Education Agency, school districts, open-enrollment charter schools, subsidized child care providers, relevant businesses, and the public, regarding:

(1) improving coordination between the subsidized child care program and prekindergarten programs;

(2) increasing the quality of and access to the subsidized child care program;

(3) existing health and safety rules and regulations that could be more efficient or less costly without reducing health and safety outcomes; and

(4) the burdens relating to complying with existing regulations that could be mitigated, reduced, or eliminated while maintaining the intent, objective, or purpose of the underlying regulation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 24, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1038 (H.B. 680), Sec. 4, eff. September 1, 2019.

Sec. 302.00436. SUBSIDIZED CHILD CARE PROGRAM: INFORMATION FOR PUBLIC SCHOOLS. Each local workforce development board shall inform the local school districts and open-enrollment charter schools in the workforce development area regarding opportunities to partner with child-care providers in the board's area to expand access to and provide facilities for prekindergarten programs.

Added by Acts 2021, 87th Leg., R.S., Ch. 1031 (H.B. 2607), Sec. 3, eff. September 1, 2021.

Sec. 302.0044. WAGE TRACKING OF TANF CHOICES PROGRAM RECIPIENTS. (a) The commission, in consultation with local workforce development boards, shall compile the following information with regard to each recipient of employment services under the Temporary Assistance for Needy Families (TANF) CHOICES program:

(1) whether the recipient is placed in employment paying wages equal to or exceeding 200 percent of the federal poverty level for a family that is the size of the recipient's family; and

(2) if the recipient is placed in employment earning wages equal to or exceeding the amount described by Subdivision (1), whether the recipient has earned that amount before the first anniversary of the date of the recipient's initial date of employment.

(b) Not later than December 15 of each year, the commission shall report to the legislature the percentage of recipients of employment services under the Temporary Assistance for Needy Families (TANF) CHOICES program who meet the wage criteria described by Subsections (a)(1) and (2).

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Sec. 302.0045. QUALITY INITIATIVES BY COMMISSION. (a) The commission shall collect state and local information relating to the effectiveness of the use of four percent quality dollars by local workforce development boards. The commission shall produce a report that highlights promising practices in expanding quality early education.

(b) In performing its duties under this section, the commission

shall report to the legislature and other interested persons on local programs and services that show promise in expanding access to quality early education.

Added by Acts 2001, 77th Leg., ch. 547, Sec. 1, eff. Sept. 1, 2001.

Sec. 302.0046. NOTICE REGARDING TERMINATION OF CERTAIN CHILD-CARE SERVICES. (a) The commission shall direct each local workforce development board to notify a working poor subsidy recipient who resides in that board's local workforce development area and who receives child-care services from a child-care services program financed through state or federal funds of any termination of the subsidy for any reason other than involuntary termination resulting from the recipient's actions or failure to act.

(b) Except as otherwise provided by this subsection, the local workforce development board shall provide the notice in writing to the recipient not later than the 30th day before the scheduled date of termination of the affected child-care services subsidy. The notice must include information regarding other child-care services programs under which the recipient may be eligible for services. If providing notice on or before the deadline specified by this subsection would interfere with the ability of the local workforce development board to comply with its duties regarding the number of children to be served or would require the expenditure of funds in excess of the amount appropriated to the board, the board may provide the notice on the earliest date on which it is practicable for the board to provide notice.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Sec. 302.0047. ELECTRONIC VALIDATION OF CHILD-CARE SERVICES AND ATTENDANCE. If feasible, the commission shall use an electronic validation system to ensure that parents verify that a provider of relative child care is providing care and that the child for whom the care is provided is in attendance during the period for which the child-care provider is being reimbursed for services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 4, eff.

September 1, 2011.

Sec. 302.005. CHILD-CARE TRAINING CENTER PILOT PROGRAMS. (a) The commission shall establish four pilot programs in which the division shall certify day-care facilities licensed under Chapter 42, Human Resources Code, as training centers that offer training and certification for recipients of public assistance in basic skills, child care, child-care vendor entrepreneurial training, and early childhood education. The commission shall determine the pilot sites, with at least one site in an urban area and at least one site in a rural area.

(b) The commission shall cooperate with the Department of Protective and Regulatory Services in the adoption of rules under this section. The commission may not adopt a rule under this section that conflicts with a rule of the Department of Protective and Regulatory Services.

(c) The commission shall award a contract to a child-care facility to act as a training center based on:

(1) the level of training of the facility's staff; and

(2) the history of the facility in delivering high-quality care.

(d) The child-care subsidy for a person who participates in training through a pilot program and who qualifies for a subsidy for the person's child shall be paid directly to the facility. The facility may not count such a person in the facility's child-to-staff ratio.

(e) A person who is a recipient of financial assistance under Chapter 31, Human Resources Code, may qualify to participate in training through a pilot program by applying to the commission and:

(1) providing proof of possession of a high school diploma or the equivalent or enrollment in a program leading to a high school diploma or the equivalent;

(2) demonstrating possession of general skills and competence, as determined by commission rule; and

(3) demonstrating, to the satisfaction of the commission, a long-term commitment to the early childhood care profession.

(f) Funding for a person who participates in training through a pilot program shall be provided through a work supplement program for 12 months. The commission may provide additional funding for the

person to participate in training through the pilot program for an additional 12 months.

(g) The commission may also provide funding for a person who participates in training through a pilot program to:

(1) complete the person's Child Development Associate national credential, Certified Child-Care Professional Credential, or other child-care certification, as determined by the commission;

(2) participate in ongoing interactive training; and

(3) provide start-up grants and loans to establish the person's own child-care business.

(h) A facility that provides training through a pilot program shall maintain a mentor relationship with each person who participates in training through the program at the facility. A person who participates in training at a facility may be required to participate in additional training programs after the date the person completes the pilot program.

(i) The child of a person who participates in training through a pilot program is entitled to the same discounted rate for child-care services at the facility in which the person is participating in training that the facility offers to the facility's employees. The child-care subsidy provided for the person's child shall be paid to the facility in which the person is participating in training at the rate that the facility offers to the facility's employees. The money saved by the commission under this subsection may be used by the commission to administer the pilot program established under this section.

(j) The commission shall adopt rules that establish eligibility criteria for a facility to participate in a pilot program and provide requirements for implementation of the pilot program.

(k) Repealed by Acts 2003, 78th Leg., ch. 817, Sec. 9.01(7).

(l) In this section, "work supplement program" means a program under which the state reserves all or part of the amounts that would be payable as benefits to welfare recipients and uses those amounts to provide and subsidize jobs for the recipients.

Added by Acts 1997, 75th Leg., ch. 684, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 302.003 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(83), eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 9.01(7), eff. Sept. 1, 2003.

Sec. 302.0051. PREKINDERGARTEN PARTNERSHIP PROGRAM. (a) The commission shall establish and administer a prekindergarten partnership program to assist child-care providers who meet the definition of an eligible private provider under Section 29.171, Education Code, in partnering with local school districts and open-enrollment charter schools to provide the prekindergarten classes required under Section 29.153, Education Code.

(b) Using existing funds, the commission shall coordinate with the Texas Education Agency to develop joint strategies to expand the availability of prekindergarten partnership programs.

Added by Acts 2023, 88th Leg., R.S., Ch. 413 (H.B. 1615), Sec. 1, eff. September 1, 2023.

Sec. 302.006. PROFESSIONAL CHILD-CARE TRAINING SCHOLARSHIPS, BONUSES, AND WAGE SUPPLEMENTATION. (a) The commission may develop and administer a program under which the commission awards scholarships in the amount of $1,000 each for professional child-care training to eligible recipients.

(b) A recipient may use a scholarship awarded under this section only to pay expenses associated with obtaining:

(1) Child Development Associate (CDA) national credentials;

(2) Certified Child-Care Professional (CCP) credentials; or

(3) a level one certificate or associate's degree in the area of child development or early childhood education from a public or private institution of higher education.

(c) To be eligible to receive a scholarship awarded under this section, a person must:

(1) be employed in a child-care facility, as defined by Section 42.002, Human Resources Code;

(2) intend to obtain a credential, certificate, or degree specified in Subsection (b);

(3) agree to work for at least 18 additional months in a child-care facility, as defined by Section 42.002, Human Resources Code, that accepts federal Child Care and Development Fund subsidies and that, at the time the person begins to fulfill the work requirement imposed by this subdivision, is located:

(A) within the attendance zone of a public school

campus considered low-performing under Chapter 39A, Education Code; or

(B) in an economically disadvantaged community, as determined by the commission; and

(4) satisfy any other requirements adopted by the commission.

(d) A person may not receive more than one scholarship awarded under this section.

(e) In addition, the commission may provide for payment of a bonus or wage supplementation to a scholarship recipient who for 18 months after the date of receiving the scholarship provides care for children younger than six years of age while remaining in the employment of the child-care facility that employed the person when the scholarship was awarded and that meets the requirements of Subsection (c)(3). Any bonus or wage supplementation provided under this subsection shall be paid in equal shares by the scholarship recipient's employer and the commission. The commission shall determine the amount of any bonus and the amount and duration of any wage supplementation provided under this subsection.

(f) The commission shall fund scholarships and any bonuses or wage supplementation provided under this section through federal Child Care Development funds or other funding sources available to the commission. Total funding may not exceed $2 million per state biennium.

(g) The commission shall adopt rules necessary to implement this section. The rules must include provisions that:

(1) address the computation of the 18-month service requirement prescribed by Subsection (c); and

(2) ensure that the commission may recover scholarship money from a recipient who fails to comply with that service requirement or any other requirement imposed by the commission.

Added by Acts 1999, 76th Leg., ch. 1433, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 494, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 342, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 4.05, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 65, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 21.003(32),

eff. September 1, 2017.

Sec. 302.0062. STRATEGIC PLAN TO SUPPORT CHILD-CARE WORKFORCE. (a) The commission shall prepare a strategic plan for improving the quality of the infant, toddler, preschool, and school-age child-care workforce in this state. The strategic plan must include:

(1) recommendations for local workforce development boards to improve, sustain, and support the child-care workforce;

(2) recommendations for increasing compensation for and reducing turnover of child-care workers;

(3) recommendations for eliminating pay disparities in the child-care workforce;

(4) recommendations for increasing paid opportunities for professional development and education for child-care workers, including apprenticeships;

(5) best practices from local workforce development boards in this state and other programs designed to support child-care workers;

(6) recommendations for increasing participation in the Texas Early Childhood Professional Development System;

(7) recommendations for public and private institutions of higher education to:

(A) increase the use of articulation agreements with school districts and open-enrollment charter schools; and

(B) assist in the education and training of child-care workers;

(8) specific recommendations for improving the infant and toddler child-care workforce; and

(9) a timeline and benchmarks for the commission and local workforce development boards to implement recommendations from the strategic plan.

(b) The commission shall convene a workgroup to assist the commission in developing the plan. The workgroup shall include:

(1) child-care providers;

(2) community stakeholders; and

(3) child-care workers.

(c) The commission shall use the following information in creating the plan:

(1) demographic data of child-care workers in this state,

including:

(A) the race, ethnicity, gender, and educational attainment of child-care workers; and

(B) the ages of the children the worker serves;

(2) compensation data for child-care workers disaggregated by race, ethnicity, gender, and educational attainment;

(3) the information described by Subdivisions (1) and (2) for a representative sample set of child-care facilities in the state; and

(4) information provided by the workgroup established under Subsection (b).

(d) The commission shall provide the strategic plan prepared under this section to the governor, the lieutenant governor, and the speaker of the house of representatives.

(e) The commission shall update the strategic plan prepared under this section every three years.

Added by Acts 2021, 87th Leg., R.S., Ch. 479 (H.B. 619), Sec. 1, eff. September 1, 2021.

Sec. 302.0063. CHILD-CARE PROFESSIONAL DEVELOPMENT SCHOLARSHIP PROGRAM. (a) In this section, "program" means the professional development scholarship program established under this section.

(b) From funds appropriated for the purpose, the commission shall establish and administer a professional development scholarship program for current and prospective child-care workers.

(c) A scholarship under the program may be used to pay an individual's costs related to:

(1) earning:

(A) a Child Development Associate (CDA) credential; or

(B) an associate's degree or bachelor's degree in early childhood education or another related field from a public or private institution of higher education; and

(2) participation in a registered child-care apprenticeship program.

(d) The program may be used to pay for other ancillary costs for child-care workers who are enrolled in an educational program or apprenticeship program described by Subsection (c), including:

(1) books and supplies;

(2) release time or stipends to attend classes;

(3) costs related to the examination for the Child Development Associate (CDA) credential;

(4) travel to attend classes or attend a hands-on practicum training; and

(5) stipends for mentors or master teachers who provide hands-on training at a child-care program.

Added by Acts 2023, 88th Leg., R.S., Ch. 413 (H.B. 1615), Sec. 1, eff. September 1, 2023.

Sec. 302.007. REPORT ON TRADE ADJUSTMENT PROGRAMS. (a) The commission shall include in the commission's supplemental annual report to the governor and the legislature under Section 301.065(c) a report on the effectiveness of federal programs designed to provide trade adjustment assistance to persons in this state.

(b) The report shall include the following information regarding persons who have participated in a program described by Subsection (a):

(1) the number of persons who enter employment;

(2) the occupations in which the persons are placed;

(3) the wages earned by persons before and after participation in the program;

(4) whether a person who enters employment after completion of a program retains that employment for at least six months;

(5) the number of persons participating in integrated vocational and language training programs; and

(6) whether a participant has acquired basic skills to enhance employability in the participant's local labor market.

Added by Acts 1999, 76th Leg., ch. 482, Sec. 1, eff. Sept. 1, 1999.
Renumbered from Sec. 302.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(82), eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 266 (S.B. 1413), Sec. 4, eff. September 1, 2019.

Sec. 302.008. STATEWIDE TECHNOLOGY WORKFORCE CAMPAIGN. The commission shall develop an information and marketing campaign

designed to encourage residents of the state to enter the technology workforce. The campaign shall target populations that are traditionally economically disadvantaged and underrepresented in the technology workforce.

Added by Acts 1999, 76th Leg., ch. 540, Sec. 1, eff. June 18, 1999.

Sec. 302.009. JOB PLACEMENT INCENTIVE PROGRAM. (a) The commission by rule shall develop a job placement incentive program under which persons with whom local workforce development boards contract for employment services under Chapter 2308, Government Code, are provided incentives for placing recipients of financial assistance and nonrecipient parents participating in employment programs under Chapter 31, Human Resources Code, in higher-wage jobs, as determined by the commission.

(b) In developing guidelines for the job placement incentive program, the commission shall:

(1) define measures for higher-wage jobs based on:

(A) locally appropriate indicators of the wages necessary to lift recipients of employment services out of poverty and into self-sufficiency; and

(B) the self-sufficiency wage developed for each local workforce development board under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.); and

(2) involve representatives of local workforce development boards in developing guidelines for the program and the measures for higher-wage jobs.

(c) The commission shall administer the job placement incentive program through the local workforce development boards.

(d) A local workforce development board that provides a monetary incentive under the job placement incentive program to a person with whom the board contracts for employment services shall require the person to use the money for expenses relating to education, training, and support services necessary to prepare, place, and maintain recipients of financial assistance and nonrecipient parents in jobs paying wages that allow those persons to attain self-sufficiency.

Added by Acts 2001, 77th Leg., ch. 466, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 17, eff. June 15, 2007.

Sec. 302.010. POSTEMPLOYMENT SERVICES GUIDELINES. (a) The commission by rule shall develop guidelines under which local workforce development boards provide postemployment services to a recipient of financial assistance or nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code.

(b) In developing the guidelines, the commission must consider the difficulties the recipient or nonrecipient parent is likely to encounter in acquiring additional education and training after becoming employed.

(c) The commission shall assist local workforce development boards in meeting the guidelines by providing information about model programs and best practices, including employer involvement in past employment services.

(d) The commission shall involve representatives of local workforce development boards and other appropriate organizations in developing the guidelines and identifying model programs and best practices.

Added by Acts 2001, 77th Leg., ch. 466, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 18, eff. June 15, 2007.

Sec. 302.011. POSTEMPLOYMENT CASE MANAGEMENT AND MENTORING. The commission shall encourage local workforce development boards to provide postemployment case management services for and use mentoring techniques to assist recipients of financial assistance and nonrecipient parents who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients and nonrecipient parents, higher levels of barriers to employment. The case management services and mentoring techniques must be designed to increase the person's potential for wage growth and development of a stable employment history.

Added by Acts 2001, 77th Leg., ch. 466, Sec. 1, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.94, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 19, eff. June 15, 2007.

Sec. 302.012. MONITORING OF EMPLOYMENT HISTORY OF CERTAIN FORMER RECIPIENTS OF PUBLIC ASSISTANCE. (a) The division shall develop and implement a system to monitor the long-term employment history of persons who are former recipients of assistance under employment programs operated by the division under:

(1) Chapter 31, Human Resources Code; and

(2) 7 U.S.C. Section 2015(d).

(b) In designing the system, the division shall cooperate with the Texas Department of Human Services.

(c) For each former recipient of assistance, the system must be designed to:

(1) establish a baseline earnings measure based on the recipient's earnings on leaving the employment program;

(2) track the wage and employment outcomes of the recipient for a period of up to but not more than three years;

(3) provide, to the extent possible, information regarding the recipient's household composition and earnings;

(4) provide, to the extent possible, information regarding additional training or education received by the recipient;

(5) compute:

(A) the recipient's individual earnings as a percentage of the federal poverty level; and

(B) if data is available, the recipient's household earnings as a percentage of the federal poverty level; and

(C) if data is available, the recipient's income as a percentage of the federal poverty level adjusted for the total value of any public assistance utilized by the recipient's household, including, but not limited to, medical assistance, food stamps, child care, transportation assistance, the federal earned income tax credit, and job training activities; and

(6) compare the recipient's individual earnings to a self-sufficiency standard similar to that required under 20 C.F.R. Section 663.230.

(d) The commission shall report to the legislature not later than January 1 of each odd-numbered year regarding the information obtained from the system developed under Subsection (a). The report required under this subsection may be made separately or as a part of any other required report submitted to the legislature by the commission.

Added by Acts 2001, 77th Leg., ch. 837, Sec. 1, eff. Sept. 1, 2001. Renumbered from Labor Code Sec. 302.009 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(102), eff. Sept. 1, 2003.

Sec. 302.013. LOCAL WORKFORCE DEVELOPMENT BOARD ADVISORY COMMITTEE. (a) In this section, "advisory committee" means the local workforce development board advisory committee created under this section.

(b) The organization composed of a member of and the staff director of each local workforce development board in this state shall establish a local workforce development board advisory committee composed of nine members appointed by the executive officers of that organization.

(c) The advisory committee shall be composed of:

(1) six members of local workforce development boards who serve as members of the organization described by Subsection (b); and

(2) three staff directors of local workforce development boards who serve as members of the organization described by Subsection (b).

(d) The members of the advisory committee must represent different geographic areas of the state.

(e) The advisory committee shall:

(1) meet at least quarterly;

(2) report to the commission at least annually; and

(3) advise the commission and commission staff regarding the programs, policies, and rules of the commission that affect the operations of local workforce development boards and the local workforce delivery system.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Sec. 302.014. EMPLOYMENT INFORMATION FOR SECONDARY SCHOOL STUDENTS. (a) The commission shall provide the Texas Education Agency with information at least each quarter, disaggregated by county or other appropriate region, regarding:

(1) current and projected employment opportunities in this state;

(2) career and technical education partnership opportunities with business and industry; and

(3) professional development opportunities for teachers and learning opportunities for students through industry mentorships, internships, summer programs, after-school programs, and career-based student leadership opportunities.

(b) The Texas Education Agency shall provide the information obtained under Subsection (a) to school districts for use in local planning and implementation of career and technical education and training programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 212 (H.B. 809), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 49 (S.B. 2105), Sec. 1, eff. September 1, 2017.

Sec. 302.015. PROVISION OF EMPLOYMENT SERVICES TO CERTAIN NONRECIPIENT PARENTS. The commission shall provide employment services, including needs assessment, job training, postemployment, and related support services, to nonrecipient parents to the same extent the services are provided to recipients of financial assistance under Chapter 31, Human Resources Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 20, eff. June 15, 2007.

Sec. 302.016. RULES REGARDING PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS. The commission shall adopt rules necessary to implement Section 497.0596(a)(4), Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1282 (H.B. 1914), Sec. 19, eff. June 19, 2009.

Sec. 302.017. PEACE OFFICER EMPLOYMENT OPPORTUNITY INTERNET WEBSITE. (a) In this section, "peace officer" has the meaning assigned by Section 1701.001, Occupations Code.

(b) The commission shall develop, maintain, and promote a statewide employment opportunity Internet website to facilitate:

(1) public awareness of peace officer employment opportunities with state and local law enforcement agencies; and

(2) an exchange of information between individuals seeking employment as peace officers in this state and state and local law enforcement agencies seeking applicants for employment as peace officers.

(c) The Internet website must:

(1) be accessible to members of the public; and

(2) provide to individuals seeking employment as peace officers and state and local law enforcement agencies that have posted employment opportunities on the website an organized means of exchanging information.

(d) The commission shall contract with the Texas Commission on Law Enforcement to develop a license verification interface to verify whether an applicant for employment as a peace officer:

(1) holds a current license issued by the Texas Commission on Law Enforcement under Chapter 1701, Occupations Code, and, if so, the level of that license; and

(2) has had the applicant's license revoked or suspended by the Texas Commission on Law Enforcement.

(e) The Texas Commission on Law Enforcement shall provide the commission with technical assistance in the development and testing of the license verification interface under Subsection (d).

(f) If the development and operation of the Internet website and the associated license verification interface is not possible due to a lack of available funding, the commission shall:

(1) enter into a memorandum of understanding with the Texas Commission on Law Enforcement to integrate a peace officer job matching database for individuals seeking employment as peace officers in this state and state and local law enforcement agencies seeking applicants for employment as peace officers into the commission's existing Labor Exchange System; and

(2) ensure that:

(A) the commission registers an Internet domain name that is unique and that identifies on its face the purpose of the peace officer job matching database; and

(B) the registered domain name and associated link directs users of the Internet to a web page that instructs users on how to use the Labor Exchange System and includes a link to enter that system.

Added by Acts 2009, 81st Leg., R.S., Ch. 460 (H.B. 2580), Sec. 1, eff. June 19, 2009.
Redesignated from Labor Code, Section 302.016 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(42), eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.45, eff. May 18, 2013.

Sec. 302.019. OCCUPATIONAL SHORTAGE STUDY; REPORT. (a) The commission shall gather and study information relating to existing and projected shortages in high-wage, high-demand occupations in this state. The study conducted by the commission under this section must include information on existing and projected shortages in high-wage, high-demand occupations in industrial job sectors, including:

(1) construction;
(2) manufacturing;
(3) agriculture;
(4) forestry;
(5) health care and social services;
(6) education;
(7) transportation and warehousing;
(8) mining, quarrying, and oil and gas extraction;
(9) utilities;
(10) wholesale trade;
(11) retail trade;
(12) finance and insurance;
(13) professional, scientific, and technical services; and
(14) hospitality and food services.

(b) Not later than January 1 of each year, the commission shall submit to the governor, the lieutenant governor, the speaker of the

house of representatives, and the presiding officer of each standing committee or subcommittee of the legislature with primary jurisdiction over workforce development matters a detailed report summarizing the results of the commission's study under this section for the most recent state fiscal year and any suggestions and recommendations for legislative action the commission considers appropriate resulting from that study.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1009 (H.B. 2478), Sec. 1, eff. June 14, 2013.

Sec. 302.0191. REPORT ON AVAILABLE APPRENTICESHIPS. (a) In this section:

(1) "Apprenticeship program" includes:

(A) an industry-recognized training program, as defined by Section 302.252; and

(B) an apprenticeship training program, as defined by Section 133.001, Education Code.

(2) "Emerging and high-demand industry" means an industry or occupation described by the report required under Section 302.019.

(b) Not later than September 1 of each year, the commission shall, in consultation with each local workforce development board, prepare and submit to the legislature a report on available apprenticeship programs in this state and make recommendations to expand the availability of apprenticeship programs in emerging and high-demand industries. The report must:

(1) include data on:

(A) the total number of active apprenticeship programs, categorized by the industries included in the North American Industry Classification System;

(B) the total number of active apprentices, categorized by the industries included in the North American Industry Classification System; and

(C) the total occupational demand for each industry, categorized by each occupation in the industry for which an apprenticeship program may be established; and

(2) make recommendations to expand available apprenticeship programs for emerging and high-demand industries with higher employment demand relative to the total number of active apprentices

and apprenticeship programs.

(c) The commission may collaborate and consult with the council or the Apprenticeship and Training Advisory Committee, as designated by the council, to develop recommendations for the report under Subsection (b).

(d) The commission shall provide a copy of the report to the council or the Apprenticeship and Training Advisory Committee, as designated by the council, at the same time as the report required under Section 133.006(b), Education Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 628 (H.B. 4451), Sec. 1, eff. September 1, 2023.

Sec. 302.020. REPORT ON TRANSITION FROM MILITARY SERVICE TO EMPLOYMENT. Not later than September 1 of each year, the commission, in consultation with the Texas Coordinating Council for Veterans Services, shall submit to the governor, lieutenant governor, speaker of the house of representatives, and chairs of the legislative committees with appropriate jurisdiction a report that:

(1) identifies:

(A) the five most common military occupational specialties of servicemembers who are transitioning from military service to employment;

(B) the five occupations for which the military occupational specialties identified in Paragraph (A) best offer transferable skills that meet the needs of employers; and

(C) any industry-based certifications that align with the military occupational specialties identified in Paragraph (A); and

(2) includes any other data or other information identified by the commission in administering the College Credit for Heroes program under Section 302.0031 as useful for supporting the transition of servicemembers and veterans into the occupations identified under Subdivision (1)(B).

Added by Acts 2017, 85th Leg., R.S., Ch. 115 (H.B. 257), Sec. 1, eff. September 1, 2017.

For expiration of this section, see Subsection (f).

Sec. 302.0201. WORKFORCE DEVELOPMENT CAREER EDUCATION AND TRAINING EVALUATION PILOT PROGRAM. (a) The commission shall establish and administer a pilot program in the Borderplex workforce development area under which the local workforce development board serving that area is required to collect and evaluate cross-sectional data and longitudinal supplemental data regarding career education and training programs administered in that area for the purposes of identifying:

(1) successful program components; and

(2) any gaps in data used to follow up on career education and training program participants following program completion maintained by the commission, the Texas Education Agency, or the Texas Higher Education Coordinating Board under the Tri-Agency Workforce Initiative established under Chapter 2308A, Government Code.

(b) Under the pilot program, the commission shall ensure that the local workforce development board serving the workforce development area maintains the following information for each career education and training program participant following program completion, disaggregated by race, ethnicity, sex, income, and location:

(1) the evaluation data described by Section 302.082(b); and

(2) data regarding the attainment of employment paying a self-sufficient wage, as determined under Section 2308A.012, Government Code.

(c) On completion of the pilot program, the local workforce development board serving the workforce development area, in coordination with the commission, shall issue an analysis, by occupation and by provider, of the job placement performance of each career education and training program. The analysis must include:

(1) an analysis of the attainment of employment paying a self-sufficient wage, as determined under Section 2308A.012, Government Code, following program completion; and

(2) detailed information on the services provided with each offered program.

(d) The commission may share individual-level outcome information resulting from the pilot program with state agencies represented on the council through secure means that may be accessed

only by authorized employees of those agencies.

(e) Not later than December 1, 2028, the commission shall submit to the legislature a written report on the results of the pilot program. The report must include the commission's recommendation on whether the pilot program should be continued on a statewide basis.

(f) This section expires September 1, 2029.

Added by Acts 2023, 88th Leg., R.S., Ch. 494 (H.B. 1703), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. JURISDICTION OF DIVISION OF WORKFORCE DEVELOPMENT

Sec. 302.021. CONSOLIDATION OF WORKFORCE DEVELOPMENT PROGRAMS. (a) The following job-training, employment, and employment-related educational programs and functions are consolidated under the authority of the commission:

(1) career school and college programs under Chapter 132, Education Code;

(2) apprenticeship programs under Chapter 133, Education Code;

(3) postsecondary vocational and technical job-training programs that are not a part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 130, and 135, Education Code, Subchapter E, Chapter 88, Education Code, and Subchapter E, Chapter 96, Education Code;

(4) employment programs under Chapter 31, Human Resources Code;

(5) the senior citizens employment program under Chapter 101, Human Resources Code;

(6) the work and family policies program under Chapter 81;

(7) job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);

(8) the job counseling program for displaced homemakers under Chapter 304;

(9) the reintegration of offenders program under Chapter 306;

(10) the inmate employment counseling program;

(11) the continuity of care program under Section 501.095, Government Code;

(12) a literacy program from state, local, federal, and private funds available to the state for that purpose;

(13) the employment service;

(14) [Blank];

(15) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(16) education, employment, employment support, training services, activities and programs funded under Temporary Assistance for Needy Families (42 U.S.C. Section 601 et seq.);

(17) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d); and

(18) the functions of the State Occupational Information Coordinating Committee.

(b) In addition to the programs consolidated under the authority of the commission under Subsection (a), the commission shall administer:

(1) child-care services provided under Chapter 44, Human Resources Code; and

(2) programs established in this state through federal funding to conduct full service career development centers and school-to-work transition services.

(c) To the extent permitted under federal law, the commission shall administer the programs funded through the education coordination funds under Section 123, Job Training Partnership Act (29 U.S.C. Section 1533).

(d) To the extent permitted under federal law, the commission shall promote and monitor services provided to persons with disabilities, including persons referred from the Texas Rehabilitation Commission.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.67, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 393, Sec. 24, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 489, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 110, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 656, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 5.02, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1294 (H.B. 2604), Sec. 2, eff. September 1, 2005.

Sec. 302.022. CLIENT ACCESSIBILITY. The director shall develop a uniform, statewide client application and enrollment process to determine an applicant's eligibility for workforce training and services funded through the division.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Sec. 302.023. DELEGATION OF FUNCTIONS. The executive director shall delegate all or part of the administration of a program listed under Section 302.021 that is eligible for block grant funding under Section 302.062 to a local workforce development board in an area in which a board has been certified and a local plan approved by the governor, or to another appropriate state or local entity in an area in which a local workforce development board has not been certified and a local plan approved by the governor.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

SUBCHAPTER C. STATE-LOCAL PLANNING; LOCAL WORKFORCE DEVELOPMENT BOARDS

Sec. 302.041. STATE-LOCAL PLANNING PROCESS. The director shall design and implement a state-local planning process for workforce training and services provided through the programs under the jurisdiction of the division.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Sec. 302.042. REVIEW OF LOCAL PLANS; RECOMMENDATIONS. The commission shall review the local plans developed under Section 2308.304, Government Code, and shall make recommendations to the council regarding the implementation of those plans.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1,

1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 22.02, eff. Sept. 1, 1997.

Sec. 302.043. TRAINING FOR LOCAL WORKFORCE DEVELOPMENT BOARD MEMBERS. (a) The division shall provide management and board development training for all members of local workforce development boards that includes information regarding client eligibility determination, early childhood education, vendor management, the importance of high-quality workforces, and the complexity of managing multiple state and federal child-care funding sources and that encourages board members to be advocates in their communities for effective and efficient workforce development programs and for the improvement of child-care quality. If a member of a local workforce development board does not receive training under this section before the 91st day after the date on which the member begins service on the board, the person is ineligible to continue serving on the board unless the training required under this subsection was requested by the member but not provided by the division.

(b) Training may be provided directly by the division or by a third party that has demonstrated experience in providing training to local workforce development or similar boards.

(c) The division shall ensure that a local workforce development board receives training under Subsection (a) before the board begins to manage the delivery of child-care services.

(d) The training under this section must include training for local workforce development board members and board employees regarding the collection and analysis of data in the commission's reporting and information system for performance reports.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 251, Sec. 1, 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 650, Sec. 1, eff. Sept. 1, 2001.

Sec. 302.044. OUTREACH ACTIVITIES. The commission shall require that local workforce development boards participate in outreach activities provided by the commission that are designed by the commission to allow board members and employees to become more

proficient in the administration and operation of local workforce development activities. The commission shall adopt policies establishing the number of outreach activities in which a board is required to participate.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 2, eff. Sept. 1, 2001.

Sec. 302.045. SANCTIONS PLAN. The commission shall adopt a detailed and understandable plan to be used by local workforce development boards in the implementation of the sanction process. The plan adopted under this section must include:

(1) a requirement that the commission provide technical assistance to the boards in avoiding or responding to sanctions; and

(2) specific provisions regarding the time in which a board is to be allowed to address concerns and improve the board's performance.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 2, eff. Sept. 1, 2001.

Sec. 302.046. PLAN REGARDING LACK OF SERVICE PROVIDERS. (a) The commission shall adopt a plan to address the lack of service providers in specific local workforce development areas.

(b) The plan adopted under this section must include provisions:

(1) for offering incentives to attract exceptional service providers and to encourage those providers to cooperate and assist in improving the practices of other providers;

(2) relating to the imposition of sanctions by a board against a service provider; and

(3) requiring, under certain circumstances, the commission to assist in providing services until a provider is designated.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 2, eff. Sept. 1, 2001.

Sec. 302.0461. CHILD CARE PROVIDER CONTRACT AGREEMENTS. (a) A local workforce development board may contract with child care providers operating in the board's area to provide subsidized child care services. The local workforce development board shall determine

the number of places that the board reserves in the contract with a child care provider participating in the commission's subsidized child care program.

(b) To be eligible for a contract under Subsection (a), a child care provider must:

(1) be a Texas Rising Star Program provider with a three-star rating or higher; and

(2) meet one of the following priorities of the commission:

(A) be located in:

(i) an area where the number of children younger than six years of age who have working parents is at least three times greater than the capacity of licensed child care providers in the area; or

(ii) an area determined by the commission to be underserved with respect to child care providers;

(B) have a partnership with a school district to provide a prekindergarten program;

(C) have a partnership with the Early Head Start or Head Start Program;

(D) increase the number of places reserved for infants and toddlers by high-quality child care providers; or

(E) satisfy a requirement in the local workforce development board's strategic plan.

(c) Not later than six months after a local workforce development board enters into a contract under Subsection (a), the board shall submit a report to the commission evaluating the contract to determine its effect on:

(1) the financial stability of the child care provider participating in the contract;

(2) the availability of high-quality child care options for participants in the commission's subsidized child care program in the workforce development area;

(3) the number of high-quality child care providers in any part of the workforce development area with a high concentration of families with a need for child care; and

(4) the percentage of children participating in the commission's subsidized child care program at each Texas Rising Star Program provider in the local workforce development area.

(d) The commission shall determine the information that must be included in the report required by Subsection (c). A local workforce

development board shall update the report required by Subsection (c) every 12 months from the date the board submits its initial report to the commission.

Added by Acts 2019, 86th Leg., R.S., Ch. 1038 (H.B. 680), Sec. 5, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 1031 (H.B. 2607), Sec. 4, eff. September 1, 2021.

Sec. 302.047. FLEXIBILITY RATING SYSTEM FOR COMMISSION DIRECTIVES. (a) The commission shall develop and implement a flexibility rating system for directives sent by the commission to local workforce development boards. A rating assigned to a directive under the system shall indicate the degree of flexibility that a local workforce development board has in implementing the directive. The commission shall provide an explanation of the ratings assigned under the system to each local workforce development board.

(b) The commission shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2001. Renumbered from Labor Code Sec. 302.044 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(103), eff. Sept. 1, 2003.

Sec. 302.048. ASSESSMENT OF LOCAL WORKFORCE DEVELOPMENT BOARD'S CAPACITY TO OVERSEE AND MANAGE LOCAL FUNDS AND DELIVERY OF SERVICES. (a) In consultation with local workforce development boards, the commission by rule shall establish criteria to be used by the commission to evaluate each local workforce development board's overall capacity to oversee and manage local funds and the delivery of local workforce services.

(b) The criteria established under Subsection (a) must address a local workforce development board's ability to:

(1) develop, maintain, and upgrade comprehensive fiscal management systems;

(2) hire, train, and retain qualified staff to carry out the board's oversight activities;

(3) select and oversee local contractors to improve the

delivery of workforce services;

(4) oversee and improve the operations of local career development centers in the area served by the board;

(5) manage the contractors' performance across multiple board programs; and

(6) identify and resolve long-standing oversight problems of the board and performance problems of contract providers.

(c) Based on the criteria prescribed under this section, the commission shall develop performance measures to be used by the commission to evaluate each local workforce development board.

(d) The commission shall post the results of the commission's evaluation of each local workforce development board on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

(e) The commission annually shall compile information provided to the commission by local workforce development boards that aggregates existing performance measure data on each local career development center in a consistent format demonstrating overall performance across multiple programs.

(f) The commission shall post the information compiled by the commission under Subsection (e) on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.07, eff. Sept. 1, 2003.

SUBCHAPTER D. ALLOCATION OF FUNDS; BLOCK GRANT PROGRAM

Sec. 302.061. ADMINISTRATION FUNDING. Unless superseded by federal law, the commission may use an amount not to exceed 20 percent of the amount of funds available to the commission for workforce training and services to implement state-level responsibilities, including administration, research and planning, system design and development, and training and technical assistance.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Sec. 302.062. BLOCK GRANTS TO LOCAL WORKFORCE DEVELOPMENT

AREAS. (a) Effective July 1, 1996, the commission shall provide to the local workforce development areas in which local workforce development boards have been certified and local plans approved by the governor, through a block grant process, funds available to the commission for workforce training and employment services, unless superseded by federal law. Administrative costs under this subsection may not exceed five percent of the total amount of funds available to the commission for block grants for workforce training and services.

(b) In the case of funds that are allocated to this state or regions of this state through the application of established formulas, the commission shall allocate amounts across the state using the same formula that was used to provide the funds to the state or that region.

(c) In the case of funds that are not allocated by formula to this state or regions of this state, the commission shall develop a need-based formula that will equitably allocate funds among local workforce development areas throughout this state.

(d) Contingent on the availability of funds, in any state fiscal biennium, the commission may not allocate to a local workforce development area less than 90 percent or more than 125 percent of the amount received by that area during the preceding state fiscal biennium.

(e) In each area of the state not yet designated as a local workforce development area or that has been so designated but in which a local workforce development board has not been certified and a local plan approved by the governor, the executive director shall:

(1) provide workforce training and services in that area to the extent allowed by federal law; and

(2) specify an entity, which may be the commission, for the performance of employment services in that area.

(f) At least 80 percent of the funds available to the commission for workforce training and services in an area shall be provided to the local workforce development board under Subsection (a) or, in an area in which a local workforce development board has not been certified and a local plan approved by the governor, to the entity specified by the executive director under Subsection (e). If a local workforce development board has been certified and a local plan approved by the governor, the funds shall be provided through the block grant process described by this section. Unless superseded

by federal law, total administrative costs for local workforce training and services may not exceed 15 percent of the funds allocated under this subsection, whether the training and services are provided through a local workforce development board or through the commission or other entity specified under Subsection (e).

(g) Block grant funding under this section does not apply to:

(1) the work and family policies program under Chapter 81;

(2) a program under the skills development fund created under Chapter 303;

(3) the job counseling program for displaced homemakers under Chapter 304;

(4) the Communities In Schools program under Subchapter E, Chapter 33, Education Code, to the extent that funds are available to the commission for that program;

(5) the reintegration of offenders program under Chapter 306;

(6) apprenticeship programs under Chapter 133, Education Code;

(7) the continuity of care program under Section 501.095, Government Code;

(8) employment programs under Chapter 31, Human Resources Code;

(9) the senior citizens employment program under Chapter 101, Human Resources Code;

(10) the programs described by Section 302.021(b)(2);

(11) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

(12) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(13) the programs to enhance the employment opportunities of veterans;

(14) the functions of the State Occupational Information Coordinating Committee; and

(15) the adult education and literacy programs under Chapter 315.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.68, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 489, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.118(b), eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 1205, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1294 (H.B. 2604), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.03, eff. September 1, 2013.

Sec. 302.063. WAIVERS. The commission shall develop objective criteria for the granting of waivers allowed under this chapter.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Sec. 302.064. COLLABORATION WITH LOCAL BOARDS. (a) The commission shall collaborate with local workforce development boards when determining the use of funds at the local level.

(b) The commission shall develop funding guidelines and strategies allowing boards to exercise flexibility in identifying and addressing the needs of persons who live in remote areas or who face other barriers to employment.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 3, eff. Sept. 1, 2001.

Sec. 302.065. INTEGRATION OF BLOCK GRANT PROGRAMS AND WORKFORCE SERVICES. (a) To streamline the delivery of services provided in local career development centers, the commission and local workforce boards shall integrate the administration of the following federal block grant programs and the caseworker functions associated with those programs as provided by this section:

(1) Temporary Assistance for Needy Families (TANF) CHOICES training and employment programs under Chapters 31 and 34, Human Resources Code;

(2) child care programs under Chapter 44, Human Resources Code;

(3) employment and training programs under Title I of the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) or any subsequent applicable federal legislation; and

(4) the food stamp employment and training program

authorized under 7 U.S.C. Section 2015(d).

(b) The commission, in consultation with local workforce development boards, shall ensure that state-level performance measures, rules, policies, procedures, and organizational structures support the integration of the federal block grant programs described by Subsection (a) and the caseworker functions associated with those programs at the local level.

(c) Each local career development center that provides services through the federal block grant programs described by Subsection (a) shall provide:

(1) integrated services across the programs;

(2) an integrated determination through a single point of contact of a customer's eligibility for services under more than one program; and

(3) integrated case management through a single point of contact for a customer receiving services under more than one program.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.08, eff. Sept. 1, 2003.

SUBCHAPTER E. WORKFORCE DEVELOPMENT EVALUATION SYSTEM

Sec. 302.081. MAINTENANCE AND OPERATION OF WORKFORCE DEVELOPMENT EVALUATION SYSTEM. (a) The commission shall maintain and operate an automated follow-up and evaluation system derived from appropriate available information, including:

(1) unemployment insurance wage records maintained by the commission; and

(2) student follow-up information available through the Texas Higher Education Coordinating Board.

(b) The agencies represented on the council shall fund the maintenance and operation of the evaluation system by using funds available to the agencies for evaluation of each agency's workforce development programs.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.082. INFORMATION AND DATA FOR EVALUATION SYSTEM. (a)

Each state agency represented on the council shall provide information to support the commission's follow-up and evaluation system as requested.

(b) Evaluation data in the system must include the following information disaggregated by race, ethnicity, sex, income, and location:

(1) placement rates;

(2) wages paid;

(3) retention in employment statistics;

(4) the number of education and training-related placements; and

(5) other appropriate factors, including public welfare dependency and the pursuit of additional education.

(c) The commission may develop a method for collecting occupational information to supplement wage record information collected by the commission under Section 204.0025. The commission may request employers, providers, and other appropriate sources to provide placement, employment, and earnings information to the commission.

(d) The commission shall ensure that:

(1) the system includes with the evaluation data a hyperlink to an Internet website where self-sufficient wage data as determined under Section 2308A.012, Government Code, is posted; and

(2) following any modernization of the evaluation system by the commission on or after September 1, 2023, the evaluation data in the system includes a comparison of self-sufficient wage data with program earnings outcomes at the first, third, and fifth anniversary of the date of program completion.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 494 (H.B. 1703), Sec. 3, eff. September 1, 2023.

Sec. 302.083. ANALYSIS. (a) At least annually, the commission shall issue an analysis, by occupation and by the provider of the job placement performance, of each workforce development program for the previous one-year, three-year, and five-year periods to:

(1) each provider of workforce education or workforce training and services;

(2) the Texas Higher Education Coordinating Board for each provider of workforce education approved and administered by the coordinating board;

(3) each local workforce development board for each provider of workforce training and services in the workforce development area; and

(4) the division.

(a-1) Following any modernization of the evaluation system by the commission on or after September 1, 2023, an analysis issued under Subsection (a) must include:

(1) an analysis regarding the attainment of employment paying a self-sufficient wage, as determined under Section 2308A.012, Government Code, following completion of a career education and training program; and

(2) detailed information on the services provided with each offered program.

(b) The commission shall post each analysis issued under Subsection (a) on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 494 (H.B. 1703), Sec. 4, eff. September 1, 2023.

Sec. 302.084. USE BY TEXAS HIGHER EDUCATION COORDINATING BOARD. The Texas Higher Education Coordinating Board shall use the job placement information received under this subchapter and other information to:

(1) evaluate the effectiveness of workforce education;

(2) determine whether a public or private workforce education program is effective in placing persons who successfully complete the program in jobs related to the persons' training; and

(3) determine whether to continue, expand, or terminate a program established under Section 61.051, Education Code.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.085. USE BY COUNCIL AND WORKFORCE DEVELOPMENT BOARD. The council and each local workforce development board shall use the information developed under this subchapter and other information to determine whether a specific workforce training and services program administered by or funded by the local board is effective and whether to continue the training and services program.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.086. USE OF EVALUATION SYSTEM. The follow-up and evaluation system shall be used to assist the commission, the council, local workforce development boards, institution boards, the Texas Higher Education Coordinating Board, the Texas Education Agency, and other agencies in evaluating the labor market success and effectiveness of workforce development in this state.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

SUBCHAPTER F. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT

Sec. 302.101. TRAINING STABILIZATION FUND. (a) The training stabilization fund is established as a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state. The fund is composed of:

(1) money deposited to the fund under Section 204.123; and

(2) any other money received for deposit in the fund.

(b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment holding fund are insufficient to meet the legislative appropriation for that fiscal year for the skills development program strategies and activities.

(c) Money in the training stabilization fund shall be transferred to the skills development fund under Subsection (b) not

later than September 30. The amount transferred from the training stabilization fund may not exceed the amounts appropriated to the skills development program strategies and activities in the fiscal year in which the transfer is made.

(d) Interest that accrues on the money in the training stabilization fund shall be deposited quarterly to the credit of the compensation fund.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 4, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1297 (H.B. 2457), Sec. 14, eff. September 1, 2011.

SUBCHAPTER G. PRIORITY OF SERVICE IN JOB TRAINING AND EMPLOYMENT ASSISTANCE PROGRAMS

Sec. 302.151. DEFINITIONS. In this subchapter:

(1) "Active military, naval, or air service" has the meaning assigned by 38 U.S.C. Section 101(24).

(2) "Covered person" has the meaning assigned by 38 U.S.C. Section 4215(a). The term includes the spouse of any member of the armed forces who died while serving on active military, naval, or air service.

(3) "Veteran" has the meaning assigned by 38 U.S.C. Section 101(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

Sec. 302.152. PRIORITY OF SERVICE REQUIRED. (a) A covered person is entitled to priority in obtaining services or resources under this subchapter. In the implementation of this section, a covered person may take precedence in obtaining services or resources under this subchapter over persons who are not covered persons.

(b) For purposes of Subsection (a), "taking precedence" may mean that:

(1) the covered person receives access to a service or resource before a person who is not a covered person; or

(2) if the service or resource is limited, the covered

person receives access to the service or resource instead of a person who is not a covered person.

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

Sec. 302.153. PARTICIPATION IN STATE-FUNDED PROGRAMS. In selecting applicants to receive training or assistance under a job training or employment assistance program or service that is funded wholly or partly with state money, priority of service must be given to a covered person who meets the minimum eligibility requirements to participate or enroll in the program or receive the service.

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

Sec. 302.154. PARTICIPATION IN TEXAS VETERANS COMMISSION PROGRAMS. (a) The Texas Veterans Commission shall operate programs funded under 38 U.S.C. Chapters 41 and 42. The commission may provide services to enhance the employment and training opportunities of veterans, covered persons, active duty service members, spouses of active duty service members, and members of the Texas National Guard. The services provided under this section must be provided by state employees.

(b) The Texas Veterans Commission may adopt rules necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

SUBCHAPTER I. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS GRANT PROGRAM

Sec. 302.251. PURPOSE. The purpose of the Texas Industry-Recognized Apprenticeship Programs Grant Program is to address the immediate industrial workforce needs of this state resulting from the impact of Hurricane Harvey and overall workforce shortages.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1,

eff. September 1, 2019.

Sec. 302.252. DEFINITIONS. In this subchapter:

(1) "Industry-recognized apprenticeship program" means a training program that:

(A) provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in an occupation that has been recognized as an apprenticeable occupation by the Office of Apprenticeship of the United States Department of Labor; or

(B) is certified as an industry-recognized apprenticeship program by a third-party certifier that has received from the United States Department of Labor a favorable determination of qualification to award that certification.

(2) "Person" does not include a governmental entity.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1, eff. September 1, 2019.

Sec. 302.253. PROGRAM. The commission shall establish and administer the Texas Industry-Recognized Apprenticeship Programs Grant Program to encourage the private sector to develop specialized industry-recognized apprenticeship programs in this state. Under the program, the commission shall award grants to persons who meet the requirements of Section 302.255.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1, eff. September 1, 2019.

Sec. 302.254. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP FUND. (a) The Texas industry-recognized apprenticeship fund is a dedicated account in the general revenue fund.

(b) The following amounts shall be deposited in the fund:

(1) money appropriated by the legislature for the fund for purposes described by this subchapter;

(2) interest earned on the investment of money in the fund; and

(3) gifts, grants, and other donations received for the

fund.

(c) The fund may be used only for an apprenticeship program that meets the requirements of Section 302.255.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1, eff. September 1, 2019.

Sec. 302.255. APPLICATION; ELIGIBILITY FOR GRANT. The commission shall establish eligibility criteria for a person to receive a grant under this subchapter. The eligibility criteria must include the requirement that the person:

(1) apply to the commission in the form and manner prescribed by commission rule;

(2) if the person is an entity, be in good standing under the laws of the state in which the person was formed or organized, as evidenced by a certificate issued by the secretary of state or the state official of another state having custody of the records pertaining to a person formed or organized under the laws of that state;

(3) not owe delinquent taxes to a taxing unit of this state; and

(4) operate an industry-recognized apprenticeship program that:

(A) provides on-the-job training under an industry-recognized, accredited training curriculum;

(B) guarantees employment for participants during and on successful completion of the training period;

(C) pays each participant a wage and provides eligibility for participants to receive full-time employee benefits during and on successful completion of the training period;

(D) requires participants to advance their skills, at a minimum, to a credentialed, performance-verified mid-level status in a field related to the industry-recognized apprenticeship program;

(E) has a duration of not more than 26 weeks; and

(F) gives preference to training and hiring:

(i) unemployed Texans who have filed with the commission;

(ii) veterans of the United States armed forces;

(iii) formerly incarcerated individuals; and

(iv) underemployed individuals who are working without industry-recognized certifications or other credentials.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1, eff. September 1, 2019.

Sec. 302.256. GRANT AWARD; GRANT AMOUNT. (a) The commission may award grants under this subchapter only to reimburse an eligible person for the cost of training industry-recognized apprenticeship program participants who:

(1) complete a program operated by the person that meets the requirements of Section 302.255(4) having achieved the skills level required by Section 302.255(4)(D); and

(2) maintain suitable employment for at least 12 consecutive months immediately following completion of the program.

(b) Grant funds awarded to an eligible person under this subchapter must be awarded on a per industry-recognized apprenticeship program participant basis. The amount of a grant awarded to an eligible person for training a participant described by Subsection (a) may not exceed the lesser of:

(1) the total cost to the person for training the participant, excluding wages and benefits; or

(2) $10,000.

(c) In determining the amount of a grant awarded under this subchapter for an industry-recognized apprenticeship program participant, the commission may consider the increased economic value to the state resulting from or reasonably anticipated to result from the participant's completion of the program, including by considering any increase or anticipated increase in the amount of tax revenue generated by the participant, and any decrease in the participant's use of a state-funded benefit, attributable to the participant's job placement and earning projections. The commission by rule may establish guidelines or formulas for determining an increase in economic value to the state attributable to a participant's program completion for purposes of this subsection.

(d) The commission by rule may establish limitations on the total amount of grant funds that a person may be awarded under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1,

eff. September 1, 2019.

Sec. 302.257. PROGRAM RULES. (a) The commission shall adopt rules to administer and enforce this subchapter.

(b) The commission shall post the rules on its Internet website.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1, eff. September 1, 2019.

Sec. 302.258. ANNUAL REPORT. (a) Not later than December 1 of each year, the commission shall submit to the lieutenant governor, the speaker of the house of representatives, and the members of the legislature a report on grants made under this subchapter that states:

(1) the number of direct jobs each grant recipient created in this state in each job category of the federal Equal Employment Opportunity Commission's job classification guide;

(2) the median wage of the jobs each grant recipient created in this state;

(3) the total amount of each grant awarded to a grant recipient;

(4) the number and categorization of industry-recognized apprenticeship program participants trained and employed by each grant recipient under Section 302.255(4)(F);

(5) a determination of whether the grant program administered under this subchapter has resulted in a positive return on investment to the state and an explanation of the methods used by the commission in making that determination; and

(6) if the commission considers it appropriate and feasible, a list of recommendations for legislative or other changes to the grant program administered under this subchapter to increase the return on investment to the state.

(b) The report may not include information that is made confidential by law.

(c) The commission may require a grant recipient under this subchapter to submit, on a form provided by the commission, information required to complete the report.

(d) The commission shall post the annual report on its Internet website.

Added by Acts 2019, 86th Leg., R.S., Ch. 1142 (H.B. 2784), Sec. 1, eff. September 1, 2019.

CHAPTER 303. SKILLS DEVELOPMENT FUND

Sec. 303.001. PURPOSE; DEFINITIONS. (a) The purpose of this chapter is to remove administrative barriers that impede the response of public community and technical colleges, community-based organizations, local workforce development boards, and the Texas A&M Engineering Extension Service to industry and workforce training needs and to develop incentives for public community and technical colleges, community-based organizations, local workforce development boards, and the Texas A&M Engineering Extension Service to provide customized assessment and training in a timely and efficient manner.

(b) For purposes of this chapter:

(1) "Assessment" means the evaluation of an employer's workforce needs and requirements.

(2) "Community-based organization" means a private nonprofit organization, including a development corporation and faith-based organization, that:

(A) provides for education, vocational education, rehabilitation, job training, or internship services or programs; and

(B) is exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under Section 501(c)(3) of that code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 1, eff. May 20, 1997; Acts 1999, 76th Leg., ch. 1120, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1041 (H.B. 700), Sec. 1, eff. September 1, 2019.

Sec. 303.002. WAIVER. (a) The commission may review and recommend to the legislature the waiver of any requirements set forth

in Title 3, Education Code, as they may apply to public community and technical colleges, that impede the ability of such a college to develop in a timely manner customized training for demand occupations in particular industries, including statutes or regulations limiting costs that may be recovered by a public community or technical college from state funds.

(b) A public community or technical college or the Texas A&M Engineering Extension Service may recover customized assessment and training costs incurred by the institution if:

(1) there is an actual or projected labor shortage in the occupation in which training is provided that is not being met by an existing institution or program in the area; and

(2) the wages at the time of job placement for individuals who successfully complete customized training at the public community or technical college or the Texas A&M Engineering Extension Service are equal to the prevailing wage for that occupation in the local labor market area.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 2, eff. May 20, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1041 (H.B. 700), Sec. 2, eff. September 1, 2019.

Sec. 303.003. SKILLS DEVELOPMENT FUND. (a) To achieve the purposes of this chapter, the skills development fund is created. The fund is composed of:

(1) money transferred into the fund under Section 204.123; and

(2) any amounts appropriated by the legislature for the purpose of this chapter from the general revenue fund.

(b) The skills development fund may be used by public community and technical colleges, community-based organizations, local workforce development boards, and the Texas A&M Engineering Extension Service as start-up or emergency funds for the following job-training purposes:

(1) developing customized training programs for businesses and trade unions; and

(2) sponsoring small and medium-sized business networks and consortiums.

(b-1) The commission by rule may establish and develop additional job incentive programs that use the skills development fund to create incentives for public community and technical colleges in partnership with one or more employers, including prospective employers who commit to establishing a place of business in this state, to provide workforce training in an effort to create and retain employment opportunities in this state. Under a program established under this subsection, the commission may commit money to a prospective employer described by this subsection contingent on the employer's establishment of a place of business in this state.

(b-2) In addition to the purposes described by Subsections (b) and (b-1), in each state fiscal biennium, an amount of money from the skills development fund not to exceed five percent of the amount of general revenue appropriated to the skills development fund for that biennium may be used as provided by this subsection. Funds available to the commission from other sources may also be used as provided by this subsection. Funds may be awarded under this subsection to a lower-division institution of higher education to be used under an agreement with a school district, or to a school district to be used under an agreement with a lower-division institution of higher education, to support courses offered for joint high school and college-level credit or offered under a college credit career or technical education program that leads to an industry-recognized license, credential, or certificate. Appropriate uses of funds awarded under this subsection include purchasing or repairing necessary equipment for a course and developing a course curriculum. A course or program supported under this subsection must:

(1) have the endorsement of, or a letter of support from, at least one employer in this state; and

(2) be targeted to address the needs of high-demand fields or occupations, as identified by the applicable local workforce development board.

(c) Money from the skills development fund may not be used to pay the training costs and other related costs of an employer who relocates the employer's worksite from one location in this state to another in-state location.

(d) The executive director, or a person appointed by the executive director who is knowledgeable in the administration of

grants, is responsible for the distribution of money from the skills development fund.

(e) It is the intent of the legislature that, to the greatest extent practicable, money from the skills development fund shall be spent in all areas of this state.

(f) The Texas A&M Engineering Extension Service shall focus the service's training activities under this chapter on programs that:

(1) are statewide in nature; or

(2) are not available from a local junior college district, a local technical college, or a consortium of junior college districts.

(g) This section does not prohibit the Texas A&M Engineering Extension Service from participating in a consortium of junior college districts or with a technical college that provides training under this chapter.

(h) A community-based organization may apply for money to participate in a training program only in partnership with a community and technical college or the Texas A&M Engineering Extension Service. A community-based organization providing services regulated by the state shall provide evidence of any certification, license, or registration required by law.

(i) In this section, "lower-division institution of higher education" means a public junior college, public state college, or public technical institute.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 3, eff. May 20, 1997; Acts 1999, 76th Leg., ch. 1120, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1485, Sec. 2.01, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1289 (H.B. 2169), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1047 (H.B. 3028), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 988 (H.B. 18), Sec. 8, eff. June 19, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1041 (H.B. 700), Sec. 3, eff. September 1, 2019.

Sec. 303.0031. USE OF SKILLS DEVELOPMENT FUND TO RECRUIT CERTAIN EMPLOYERS. (a) In this section, "public junior college" and "public technical institute" have the meanings assigned by Section 61.003, Education Code.

(b) In addition to the purposes described by Section 303.001, the commission may use the skills development fund to provide an intensive and rapid response to, and support services for, employers expanding in or relocating their operations to this state, with a focus on recruiting employers who will provide complex or high-skilled employment opportunities in this state.

(c) The commission may use funds available for the purpose of this section to:

(1) provide leadership and direction to, and linkage among, out-of-state employers, economic development organizations, local workforce development boards, public junior colleges, and public technical institutes to address the employers' needs for recruitment and hiring for complex or high-skilled employment positions as necessary to facilitate employers' relocation to or expansion of operations in this state; and

(2) award grants to a public junior college or public technical institute providing workforce training and related support services to employers who commit to establishing a place of business in this state.

(d) A grant awarded under this section may be used only for:

(1) developing:

(A) customized workforce training programs for an employer's specific business needs;

(B) fast-track curriculum;

(C) workforce training-related support services for employers; or

(D) instructor certification necessary to provide workforce training; and

(2) acquiring training equipment necessary for instructor certification and employment.

(e) The executive director, or a person appointed by the executive director who is knowledgeable in the administration of grants, is responsible for the distribution of grant money under this section.

(f) The commission may solicit and accept gifts, grants, and donations from any public or private source for the purpose of this

section.

(g) The commission may require, as a condition of receiving money under this section, that a recipient agree to repay the amount received and any related interest if the commission determines that the money was not used for the purposes for which the money was awarded.

(h) Money may not be used under this section to pay any training costs or other related costs of an employer to relocate the employer's worksite from one location in this state to another location in this state.

(i) The commission may adopt rules as necessary to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 325 (H.B. 108), Sec. 1, eff. September 1, 2017.

Sec. 303.0035. USE OF MONEY IN HOLDING FUND (GENERAL REVENUE ACCOUNT 5069) FOR SKILLS DEVELOPMENT. Money in the holding fund (general revenue account 5069) may be used only for the purposes for which the money in the skills development fund created under Section 303.003 may be used.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 5, eff. June 18, 2005.

Sec. 303.004. FUND REVIEW; REPORT BY CERTAIN WORKFORCE TRAINING PROVIDERS REQUIRED. (a) The Texas Higher Education Coordinating Board shall review all customized training programs biennially to verify that state funds are being used appropriately by public community and technical colleges and the Texas A&M Engineering Extension Service under this chapter.

(b) Not later than October 1 of each even-numbered year, the Texas A&M Engineering Extension Service and each public community or technical college that provides workforce training under this chapter shall:

(1) conduct a review of the service's or college's training programs to:

(A) determine the effectiveness of the programs in improving the wages of participants who complete the programs; and

(B) identify strategies for improving the delivery of workforce training in order to more effectively impact economic development in this state; and

(2) submit to the commission a detailed written report summarizing the results of the review for inclusion by the executive director in the report to the governor and the legislature required by Section 303.006(c).

(c) If the Texas A&M Engineering Extension Service or a public community or technical college fails to submit a report required by Subsection (b)(2):

(1) the service or college must refund to the comptroller any unexpended state funds received by the service or college under this chapter for the state fiscal biennium in which the report was due; and

(2) the commission may not award any additional grant to the service or college under this chapter until the service or college has complied with that reporting requirement.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 4, eff. May 20, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 911 (H.B. 1297), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 566 (S.B. 634), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 566 (S.B. 634), Sec. 2, eff. September 1, 2017.

Sec. 303.005. PARTICIPATION IN ADDITIONAL PROGRAMS; APPLICATION REQUIREMENTS; PRIORITY. (a) An employer may not apply both to a public community or technical college for customized training and assessment from the college through a grant issued to the college under the skills development fund program established under this chapter and for a grant under the Texas Enterprise Fund program established under Subchapter E, Chapter 481, Government Code, unless the employer and the college file an application for concurrent participation in both programs that complies with any rules adopted by the Texas Workforce Commission on concurrent participation.

(b) In awarding any grant under this chapter, the commission shall consider giving priority to training incentives for small businesses.

Added by Acts 1999, 76th Leg., ch. 1485, Sec. 2.02, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 6, eff. June 18, 2005.

Sec. 303.006. REPORTING REQUIREMENTS. (a) In this section:

(1) "Employee" means an individual who performs services for another under a contract of hire, whether express or implied, or oral or written.

(2) "Employer" means a person that employs one or more employees.

(3) "Existing employer" means an employer that:

(A) has been liable to pay contributions under Subtitle A, Title 4, for more than one year;

(B) has employees; and

(C) is in compliance with the reporting and payment requirements of Subtitle A, Title 4, as determined by the Texas Workforce Commission.

(4) "In-kind contribution" means a noncash contribution of goods and services provided by an employer as all or part of the employer's matching share of a grant or project.

(5) "Job" means employment on a basis customarily considered full-time for the applicable occupation and industry.

(6) "Large employer" means a business entity that employs at least 500 employees.

(7) "Medium employer" means a business entity that employs more than 99 but fewer than 500 employees.

(8) "Micro-employer" means a business entity that employs not more than 20 employees.

(9) "Program" means the skills development fund program created under this chapter.

(10) "Small employer" means a business entity that employs more than 20 but fewer than 100 employees.

(11) "Trainee" means a participant in a project funded

under this chapter.

(12) "Wages" means all forms of compensation or remuneration, excluding benefits, payable for a specific period to an employee for personal services rendered by that employee.

(b) In implementing provisions under this section regarding the classification of this state into regions, the executive director shall use the uniform service regions established by the comptroller under Section 120, Article V, Chapter 19, Acts of the 72nd Legislature, 1st Called Session, 1991 (the General Appropriations Act).

(c) The commission shall include in the commission's supplemental annual report to the governor and the legislature under Section 301.065(c) a report on the status of the program established under this chapter.

(d) The annual report must include for that fiscal year:

(1) the total number of applications submitted, the total number of applications approved, and the total number of applications rejected by region of the state;

(2) the average and median weekly wage levels of trainees under this chapter entering or returning to the workforce, broken down by:

(A) current employees undergoing retraining;

(B) new hires; and

(C) region of the state;

(3) the average and median weekly wage levels of trainees under this chapter entering or returning to the workforce, broken down by region of the state;

(4) the number and percentage of trainees covered by health care insurance coverage, workers' compensation insurance coverage, and other analogous benefit programs;

(5) the total amount of money awarded in each region of the state and the percentage that amount represents of the total amount of money awarded on a statewide basis;

(6) a comparison of the percentage of total dollars awarded to each region versus each region's percentage of:

(A) the state's population;

(B) the civilian labor force;

(C) the number of unemployed persons; and

(D) the number of qualified grant applications submitted to the commission by public community and technical

colleges;

(7) the total amount of money awarded to micro-employers, small employers, medium employers, and large employers, reported by region of the state; and

(8) the total number of jobs created or persons retrained under the program:

(A) by region of the state;

(B) by occupation classified by the two-digit standard industrial classification;

(C) by wage level; and

(D) whether attributable to:

(i) relocation of businesses to this state; or

(ii) training or retraining of employees of existing employers.

Added by Acts 1999, 76th Leg., ch. 1485, Sec. 2.02, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 266 (S.B. 1413), Sec. 5, eff. September 1, 2019.

CHAPTER 304. COUNSELING FOR DISPLACED HOMEMAKERS OR WORKERS

Sec. 304.001. DEFINITION. In this chapter, "displaced homemaker" means a person who:

(1) has worked without pay as a homemaker for the person's family;

(2) is not gainfully employed;

(3) has had, or would have, difficulty in obtaining employment; and

(4) has depended on:

(A) the income of a family member for financial support and has lost that income; or

(B) government assistance as the parent of dependent children and is no longer eligible for that assistance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 302.001 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.002. JOB COUNSELING PROGRAM. (a) The commission, through a special assistance job counseling program, shall:

(1) provide counseling for displaced homemakers;

(2) assist displaced homemakers in obtaining training and education; and

(3) place displaced homemakers in suitable employment.

(b) The counseling must:

(1) consider and build on the skills and experiences of the homemaker; and

(2) prepare the person, through employment counseling, to reenter the paid work force and develop and improve job skills.

(c) The commission shall design the program specifically for persons reentering the paid work force after a number of years as homemakers to enable them to assume or resume a valuable role in the paid work force commensurate with the homemakers' talents and abilities.

(d) The commission may not charge a fee for participation in the program by a displaced homemaker.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 302.002 by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.003. PERSONNEL; OFFICE. The commission shall use its personnel, services, facilities, and equipment to operate the job counseling program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 302.003 by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.004. COOPERATION BY STATE AGENCIES AND POLITICAL SUBDIVISIONS. State agencies and political subdivisions of the state shall cooperate with the commission in obtaining suitable employment for displaced homemakers counseled by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 302.004 by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.005. HOME OWNERSHIP COUNSELING FOR DISPLACED WORKERS. (a) The commission shall provide written notice in English and in Spanish of eligibility for home ownership counseling under federal law to each worker residing in this state who is eligible for home ownership counseling under 12 U.S.C. Section 1701x, as amended, and who:

(1) is covered by a certification of eligibility for adjustment assistance under 19 U.S.C. Section 2331, as amended; or

(2) is threatened to become totally or partially separated, or has become totally or partially separated, from a firm that is certified eligible for adjustment assistance under 19 U.S.C. Section 2341, as amended.

(b) The notice must contain:

(1) a list of home ownership counseling organizations that:

(A) receive assistance under 12 U.S.C. Section 1701x, as amended; and

(B) serve the area in which the worker's home is located; or

(2) any toll-free telephone number through which the worker can obtain the list prescribed by Subdivision (1).

(c) A firm located in this state that has requested a certification of eligibility for adjustment assistance under 19 U.S.C. Section 2341, as amended, shall notify the commission of that request.

(d) In this section, "firm" has the meaning assigned by 19 U.S.C. Section 2351, as amended.

Added by Acts 1999, 76th Leg., ch. 289, Sec. 2, eff. Sept. 1, 1999.

CHAPTER 305. TEXAS CAREER OPPORTUNITY GRANT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 305.001. PURPOSE. The purpose of the Texas Career Opportunity Grant Program is to help ensure a qualified workforce to meet the needs of this state by reducing the financial barriers to postsecondary career education and training for economically disadvantaged Texans.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Coordinating board" means the Texas Higher Education Coordinating Board.

(3) "Eligible institution" means a career school or college in this state that:

(A) holds a certificate of approval under Chapter 132, Education Code; and

(B) is approved by the commission under Section 305.023 for its students to participate in the grant program established under this chapter.

(4) "Public technical institute" has the meaning assigned by Section 61.003, Education Code.

(5) "Qualified education program" means a postsecondary education program that meets the requirements provided by Section 305.024.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 364, Sec. 2.29, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 8.43, eff. Sept. 1, 2003.

Sec. 305.003. MEMORANDUM OF UNDERSTANDING. The commission and the coordinating board shall enter into a memorandum of understanding for the coordination and administration of the grant program established under Subchapter B. Functions assigned to the commission under this chapter may be assigned to the coordinating board pursuant to the memorandum of understanding.

Added by Acts 2009, 81st Leg., R.S., Ch. 197 (H.B. 3519), Sec. 1, eff. May 27, 2009.

SUBCHAPTER B. GRANT PROGRAM

Sec. 305.021. TUITION ASSISTANCE GRANT; AMOUNT OF GRANT. (a) The commission may provide tuition assistance grants to Texas residents enrolled in a qualified education program at an eligible institution.

(b) In selecting applicants to receive grants under this

chapter and the amount of the grant for each applicant, the commission may consider:

(1) the financial need and resources of an applicant;

(2) the state's need for workforce development in the applicant's proposed career field;

(3) the efficient use of the money available for grants;

(4) the fair allocation of grants to promote workforce development in different career fields;

(5) the opportunity of applicants from all regions of this state to receive financial assistance under this chapter; and

(6) any other factor the commission considers appropriate to further the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.022. LIMITATIONS ON GRANT AMOUNT. (a) The amount of a grant under this chapter may not exceed the lower of:

(1) the maximum grant amount, if any, specified by the legislature in an appropriation act; or

(2) the amount by which the tuition and required fees at the eligible institution attended exceeds the average amount of tuition and required fees that would be charged at a public technical institute, as determined by the commission based on information provided by the coordinating board.

(b) The total amount of grants paid under this chapter on behalf of a student during a state fiscal year may not exceed an amount equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at a public technical institute, as determined by the coordinating board and certified to the commission.

(c) The amount of a grant to a part-time student shall be made on a pro rata basis in relation to the amount of the grant the person would be entitled to receive if enrolled as a full-time student.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.023. APPROVAL OF INSTITUTIONS. The commission shall approve a career school or college for its students to participate in

the grant program established under this chapter if the school or college:

(1) has been accredited for not less than five years by an accrediting agency recognized by the United States Department of Education and maintains that accreditation;

(2) has held a certificate of approval under Chapter 132, Education Code, for at least five years; and

(3) offers one or more qualified education programs.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 364, Sec. 2.30, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 8.44, eff. Sept. 1, 2003.

Sec. 305.024. QUALIFIED EDUCATION PROGRAMS. For purposes of this chapter, a qualified education program is a postsecondary course of instruction in a specific career field that:

(1) is at least one academic year in length as defined by the United States Department of Education; and

(2) leads to a certificate, certification, degree, or diploma in the career field.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.025. NONDISCRIMINATION. The commission in administering this chapter shall ensure compliance with Title VI, Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as amended, in regard to nondiscrimination under any program or activity receiving federal financial assistance.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.026. APPLICATION; ELIGIBILITY FOR GRANT. (a) To receive a grant under this chapter, a person must apply to the eligible institution in which the person enrolls in the manner provided by commission rule.

(b) To be eligible to receive a grant under this chapter, an applicant must:

(1) be a Texas resident and meet the requirements to

qualify as a Texas resident under Subchapter B, Chapter 54, Education Code, and the rules of the coordinating board for the payment of resident tuition at a public institution of higher education;

(2) be enrolled in a qualified education program at an eligible institution for at least one-half of a full course load;

(3) be required to pay more tuition and required fees than the amount required at a public technical institute and be charged not less than the regular tuition and required fees paid by other students enrolled at the eligible institution the person attends;

(4) establish financial need and eligibility for student financial assistance in accordance with procedures and regulations of the United States Department of Education for financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.), as amended;

(5) not be in default on a loan made under the Federal Perkins Loan Program, Federal Family Education Loan Program, or William D. Ford Federal Direct Loan Program;

(6) not owe a refund on a grant received under the federal Pell Grant program or the federal Supplemental Education Opportunity Grant program; and

(7) comply with any other requirements adopted by the commission under this chapter.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.027. PAYMENT OF GRANT. (a) On receipt of an enrollment report for a student awarded a grant under this chapter and certification of the amount of the student's financial need from the approved institution, the commission shall certify the amount of the grant awarded to the student.

(b) The grant shall be paid to the student through the eligible institution in which the student is enrolled.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.028. ADOPTION AND DISTRIBUTION OF RULES. (a) The commission may adopt reasonable rules to administer and enforce this chapter.

(b) The commission shall distribute a copy of the rules to each

eligible institution.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.029. ANNUAL REPORT. The commission shall include in the commission's supplemental annual report to the governor and the legislature under Section 301.065(c) a report regarding the grant program established under this chapter. The report shall include for the period covered by the report:

(1) the number of students who received grants under this chapter; and

(2) the number of those students who attended each eligible institution, including information on the race or ethnicity of those students attending each institution.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 266 (S.B. 1413), Sec. 6, eff. September 1, 2019.

CHAPTER 306. PROJECT RIO (REINTEGRATION OF OFFENDERS)

Sec. 306.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Criminal Justice.

(2) "Correctional institutions division" means the correctional institutions division of the department.

(3) "Project RIO" means the project for reintegration of offenders.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 321, Sec. 3.016, eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 217.001 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 4, eff. September 1, 2005.

Sec. 306.002. PROJECT RIO. The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons sentenced to the correctional institutions division or committed to the Texas Juvenile Justice Department.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 321, Sec. 3.016, eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 217.002 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 5, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 132, eff. September 1, 2015.

Sec. 306.003. ADMINISTRATION. The department, the Texas Juvenile Justice Department, and the commission shall cooperate to maximize the effectiveness of Project RIO. For that purpose, the commission shall administer the project.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996. Renumbered from Labor Code Sec. 217.003 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 133, eff. September 1, 2015.

Sec. 306.004. MEMORANDUM OF UNDERSTANDING--ADOPTION. (a) The department, the commission, and the Texas Juvenile Justice Department shall each adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the department.

(b) The commission shall coordinate the development of the memoranda of understanding. The department and the Texas Juvenile Justice Department shall adopt rules as necessary to implement their respective memoranda and may amend the memorandum and those rules as

necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996. Renumbered from Labor Code Sec. 217.004 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 134, eff. September 1, 2015.

Sec. 306.005. MEMORANDUM OF UNDERSTANDING--CONTENTS. (a) The memorandum of understanding between the department and the commission must establish the role of:

(1) the correctional institutions division in ascertaining and encouraging an inmate's chances for employment by:

(A) providing vocational and educational assessment for the person while incarcerated;

(B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental, educational, and private entities, using available public or private financial resources authorized by statute; and

(C) referring the person on release to the project through the person's parole officer or supervision officer;

(2) the community justice assistance division and the parole division of the department in:

(A) encouraging and referring persons to the project; and

(B) ensuring that those persons participate in the project and avail themselves of its services; and

(3) the commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by project participants and in helping those participants to secure employment.

(b) The memorandum of understanding between the Texas Juvenile Justice Department and the commission must establish the roles of the institutional and community services division in the Texas Juvenile Justice Department and the role of the commission in the same manner the roles of the department and commission are established under Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 321, Sec. 3.018, eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 217.005 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 22.03, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 135, eff. September 1, 2015.

Sec. 306.006. PROJECT DIRECTOR. (a) The executive director shall designate the director of Project RIO to coordinate the efforts of the affected state agencies and expedite the delivery of services to participants in the project, including prospective employers.

(b) The project director shall:

(1) propose, for adoption by the commission, standards and guidelines for the operation of the project;

(2) obtain information from appropriate state agencies and offices affiliated with the project to determine any necessary changes in the project;

(3) disseminate information statewide about the project; and

(4) train commission staff to assist in the operation of affiliated services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996. Renumbered from Labor Code Sec. 217.006 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.

Sec. 306.007. PROVISION OF INFORMATION ON STATE SERVICES FOR EX-OFFENDERS AND EMPLOYERS. (a) To assist in the reintegration into the labor force of persons formerly sentenced to the correctional institutions division or committed to the Texas Juvenile Justice Department, the commission through Project RIO shall provide:

(1) to those persons:

(A) information from local workforce development boards on job training and employment referral services;

(B) information from the Department of State Health Services on substance abuse treatment services;

(C) information from the Texas Department of Housing and Community Affairs on housing services;

(D) information from the Texas Veterans Commission on services for veterans; and

(E) information on tax refund voucher programs under Subchapter H, Chapter 301; and

(2) to the employers and potential employers of those persons:

(A) information from the Texas Economic Development and Tourism Office on the enterprise zone program; and

(B) information from local workforce development boards on services listed in Section 2308.304, Government Code.

(b) The commission shall adopt a memorandum of understanding with each of the following agencies that establishes the respective responsibilities of the commission and the agencies in providing information described by Subsection (a) to persons formerly sentenced to the institutional division or the state jail division of the Texas Department of Criminal Justice, to employers or potential employers of those persons, and to local workforce development boards:

(1) the Department of State Health Services;

(2) the Texas Department of Housing and Community Affairs;

(3) the Texas Veterans Commission; and

(4) the Health and Human Services Commission.

Added by Acts 1995, 74th Leg., ch. 611, Sec. 2, eff. Aug. 28, 1995. Renumbered from Labor Code Sec. 217.007 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 22.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 817, Sec. 10.14, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 818, Sec. 6.10, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 7, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 136, eff. September 1, 2015.

Sec. 306.008. DATA SHARING. (a) To assist in the reintegration into the labor force of persons formerly sentenced to the correctional institutions division or committed to the Texas Juvenile Justice Department, the commission, the Texas Juvenile Justice Department, and the department shall establish a data interface that, at a minimum, provides to the commission:

(1) detailed information about persons released from a correctional facility who might benefit from post-release Project RIO services, including:

(A) demographic and identifying information;

(B) the person's address on release;

(C) a comprehensive state offense history, including the date of release from the correctional facility, sentence discharge date, and conditions of parole;

(D) assessment information;

(E) educational and work history;

(F) information related to participation in the work against recidivism program operated by the department's manufacturing and logistics division under the Texas Correctional Industries office; and

(G) other services provided under this title before release from the correctional facility; and

(2) referral information from the department and the Texas Juvenile Justice Department necessary to implement the provision of post-release employment services.

(b) The data interface established under Subsection (a) must be designed to provide to a person's supervising officer on release information about the person's participation in employment services and entry into the workforce.

(c) Information received from the Texas Juvenile Justice Department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 8, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 137, eff. September 1, 2015.

CHAPTER 307. EMPLOYMENT SERVICE

Sec. 307.001. EMPLOYMENT SERVICE. The commission is the agency of this state designated to cooperate with the United States Employment Service as necessary to perform the duties of this state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) required to establish and maintain free public employment offices.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.081 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.07, eff. Sept. 1, 1995.

Sec. 307.002. EMPLOYMENT SERVICES AGREEMENTS. (a) To ensure the establishment and maintenance of public employment offices under this chapter, the executive director may enter into an agreement with any political subdivision of the state or with a private or nonprofit organization, including a local workforce development board, and, as a part of the agreement, accept money, services, or quarters as a contribution to the employment service account.

(b) Except as provided by Subsection (c), to establish and maintain, or assist in the establishment and maintenance of, public employment offices within a county or other political subdivision of this state, the commissioners court of the county or the governing body of the other political subdivision may enter into agreements with the employment service on terms and conditions agreed to by the commissioners court or other governing body and the employment service. The county or other political subdivision may employ means and appropriate and spend funds as necessary to establish and operate the public employment offices, and may provide, as part of the agreement, payment for:

(1) the rent of premises;

(2) services rendered;

(3) the purchase of equipment; and

(4) any other purpose considered advisable by the commissioners court or other governing body.

(c) In an area in which a local workforce development board has been certified and a local plan approved by the governor, that board shall provide employment services in its local workforce development area, and a person employed by the commission to provide employment services on the day before the approved local plan takes effect shall

be given preference in employment at a career development center administered by that board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.082 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.07, eff. Sept. 1, 1995.

Sec. 307.003. EMPLOYMENT SERVICE FINANCING. Money received by the state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) shall be deposited to the credit of the employment service account in the general revenue fund. The money in the account may be used by the commission as provided by this chapter and the Wagner-Peyser Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 203.153 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.08, eff. Sept. 1, 1995.

CHAPTER 308. TEXANS WORK PROGRAM

Sec. 308.001. LEGISLATIVE INTENT. It is the intent of the legislature that this chapter is enacted to enlist employers in a partnership with this state to assist recipients of public assistance in developing marketable work skills and obtaining employment.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.002. DEFINITIONS. In this chapter:

(1) "Division" means the division of workforce development of the commission.

(2) "Employer" has the meaning assigned by Section 61.001.

(3) "JOBS training program" means the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(4) "Local workforce development board" means a board created under Subchapter F, Chapter 2308, Government Code.

(5) "Program" means the Texans Work program established under this chapter.

(6) "Trainee" means a recipient of food stamps under the food stamp program administered under Chapter 33, Human Resources

Code, and financial assistance under Chapter 31, Human Resources Code, who:

(A) is eligible to participate in the JOBS training program; and

(B) receives on-the-job training through a training course offered under the program.

(7) "Training course" means a course for the development of practical employment skills that is:

(A) offered to trainees by an employer who participates in the program; and

(B) approved as required by this chapter.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.003. TEXANS WORK PROGRAM. (a) The Texans Work program is created as an integrated system of on-the-job training for certain persons who receive food stamps under the food stamp program administered under Chapter 33, Human Resources Code, and financial assistance under Chapter 31, Human Resources Code, and are eligible to participate in the JOBS training program. The program shall be considered a means-tested program and shall be operated through courses conducted by participating employers and shall offer direct work experience and skills training.

(b) The program shall be offered in each area of this state in which an employer is located who elects to participate and whose participation is approved by the local workforce development board or, if a local workforce development board does not exist in the employer's area, by the division.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.004. TRAINING COURSES; APPROVAL. (a) Each training course shall be designed by a local participating employer to meet the needs of that employer. The training course must instruct the trainee in a prearranged curriculum of skills that uses systems specific to and produced by the employer's industry.

(b) The length of a training course may not be less than six months or more than 12 months unless an exception is approved by the division. The duration of a course shall be based on specific

training needs.

(c) An employer whose participation is approved under Section 308.003 shall submit to the division in the manner prescribed by the commission a description of the employer's proposed training course. The employer shall work with the division and the Texas Skill Standards Board to develop a training course that incorporates instruction in the skill standards applicable to that industry. A training course may not be used by an employer participating in the plan until the course is approved by the commission.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.005. POWERS AND DUTIES OF COMMISSION AND DIVISION; GUIDELINES FOR TRAINING COURSE APPROVAL. (a) The commission shall adopt rules as necessary to implement the program, including establishing the criteria for determining which persons described by Section 308.003(a) may be required to participate in the program.

(b) With the cooperation of the Texas Skill Standards Board, the commission shall develop guidelines for the approval of employer training courses.

(c) In developing guidelines under Subsection (b), the commission shall condition approval on the expectation that a participating employer will develop job descriptions that are relevant to regular paid positions in the employer's workplace or that are available in the community in which the employer is located. In determining whether to approve a particular training course, the commission shall specifically consider:

(1) the administrative burden imposed by participation in the program by the participating employer;

(2) whether the proposed training reasonably may be expected to enhance the employability of individual trainees;

(3) whether the proposed training produces a realistic and usable level of skills;

(4) whether the proposed training is composed of a greater ratio of training-to-work than regular employees receive under analogous conditions;

(5) whether the employer has any intention of retaining successful trainees as regular employees;

(6) the extent to which the proposed training includes

nonspecific work skills; and

(7) if the employer has previously participated in the program, the prior performance of the employer in meeting the guidelines described by this subsection.

(d) The commission may develop incentives for employers who have completed a training course offered through the program to hire as a regular employee for a period of at least one year a trainee who has successfully completed the training course.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.006. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HUMAN SERVICES. The Texas Department of Human Services shall provide to the commission and a local workforce development board information and technical assistance as necessary to implement the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.007. RIGHTS AND DUTIES OF PARTICIPATING EMPLOYER. (a) Each employer who participates in the program shall provide a work-training position for trainees under a contract entered into with the local workforce development board or with the commission.

(b) The employer shall interview and select the employer's trainees from a list of eligible clients that is provided to the employer by the local workforce development board or the commission.

(c) In the operation of a training course, a participating employer may use training methods selected by the employer as long as those methods instruct the trainees in the applicable skill at the applicable standards.

(d) An employer who participates in the program is not liable for the payment of payroll taxes or contributions to the unemployment compensation system for a trainee and is not obligated to provide health insurance coverage or retirement or pension benefits for the trainee. An employer is responsible to the JOBS training program only for quality training, skills certification, and reporting of attendance.

(e) During the training course, the employer shall pay $300 per month for each trainee to the commission in the manner prescribed by the commission. The commission shall deposit the amount in the

general revenue fund to the credit of the Texas employment and training account.

(f) A trainee is considered an employee of the employer for purposes of Section 401.012.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.008. RIGHTS OF REGULAR EMPLOYEES. (a) Except as provided by Subsection (b), not more than 20 percent of an employer's workforce may consist of trainees under the program.

(b) Subsection (a) does not apply to an employer who has fewer than 50 employees.

(c) As a condition of participation in the program, an employer whose regular employees are subject to a collective bargaining agreement shall notify the applicable collective bargaining agent of the employer's intent to participate in the program. The employer shall provide the notice required under this subsection before accepting trainees at the employer's workplace.

(d) A participating employer may not accept a trainee for participation in a training course conducted under the program if that participation will:

(1) result in:

(A) the displacement or partial displacement of a regular employee from an existing position;

(B) the elimination of a vacant position created by the laying off of a regular employee during the 90 days preceding the employer's participation in the program;

(C) the elimination of a position that would otherwise constitute a promotion for a regular employee; or

(D) a hiring freeze implemented by the employer; or

(2) impair a collective bargaining agreement in effect on the date that the employer proposes to begin participation in the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.009. RIGHTS AND DUTIES OF PARTICIPATING TRAINEES. (a) Each trainee who participates in the program shall work during the training course not less than the minimum number of hours required

under applicable federal law for work participation for recipients of public assistance.

(b) Each trainee is entitled to:

(1) the rights provided under Chapters 21 and 101 as if the trainee were a regular employee; and

(2) participation in an administrative dispute resolution procedure conducted by the commission to resolve grievances involving participation in the program.

(c) Each trainee shall receive a skill standards certification on successful completion of a training course offered under the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.010. ACCOUNT. (a) The Texas employment and training account is established as a special account in the general revenue fund. The account is composed of:

(1) employer contributions paid under Section 308.007; and

(2) state matching funds obtained through the block grant received by this state under the JOBS training program.

(b) Money in the account may be used only for the payment of training stipends and for other training activities authorized under the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.011. TRAINING STIPEND. (a) The state shall pay to each trainee who demonstrates satisfactory participation in a training program approved under this chapter a monthly training stipend in the manner prescribed by Subsection (c).

(b) The training stipend is composed of $600 paid to the trainee from the Texas employment and training account. In addition to the stipend, the trainee shall continue to receive the amount of benefits that the trainee is eligible to receive under the program of financial assistance under Chapter 31, Human Resources Code, and the food stamp program administered under Chapter 33, Human Resources Code.

(c) The state may transfer the monthly training stipend to a trainee by electronic benefits transfer (EBT) to an account if that

method is determined by the Texas Department of Human Services to be cost-effective.

(d) The training stipend does not constitute income to the trainee for purposes of determining eligibility for and the amount of benefits received under Chapter 31, Human Resources Code. A trainee who participates in a training program in a satisfactory manner is entitled to full JOBS benefits and benefits under the financial assistance program and food stamp program during the training program. A trainee who terminates participation in the training program before the conclusion of the training loses eligibility for the training stipend and the JOBS benefits but remains eligible to receive benefits under the financial assistance program and food stamp program.

(e) Excessive unexcused absences from participation subjects a trainee to a reduction in the training stipend in an amount set by the commission.

(f) The training stipend shall be paid on the first workday of each month following the month in which the trainee participates in the training program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.012. REPORT; RECORDS. (a) The commission shall collect information and maintain records regarding:

(1) the operation and outcome of the program;

(2) impediments identified by the commission that affect the successful operation of the program; and

(3) complaints or other comments regarding the program received by the commission from employers, trainees, regular employees, and local workforce development boards.

(b) Information maintained by the commission under Subsection (a) is a public record.

(c) Expired.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 309. SELF-SUFFICIENCY FUND

Sec. 309.001. DEFINITIONS. In this chapter:

(1) "Community-based organization" means a private

nonprofit organization that is representative of a community or a significant segment of a community and that provides education, vocational education or rehabilitation, job training, or internship services or programs. The term includes a neighborhood group or organization, community action agency, community development corporation, union-related organization, employer-related organization, faith-based organization, tribal government, or organization serving Native Americans.

(2) "Fund" means the self-sufficiency fund created under Section 309.002.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.

Sec. 309.002. SELF-SUFFICIENCY FUND. (a) Subject to the availability of funds, the self-sufficiency fund is created as an account in the general revenue fund for use by public community and technical colleges, community-based organizations, and state extension agencies to develop job-training programs in which individuals who are identified by the commission as being low-income or at risk of becoming dependent on public assistance benefits are provided job training by:

(1) an entity that develops a job-training program under this section;

(2) a small or medium-sized business or trade union; or

(3) an informal partnership between an entity that develops a job-training program under this section and a small or medium-sized business network or consortium.

(b) Money from the fund may also be used for support services as necessary for participants to prepare for and participate in training activities and to make the transition from training activities to employment.

(c) The commission shall administer the fund. The executive director, or a person appointed by the executive director who is knowledgeable in the administration of grants, is responsible for the distribution of money from the fund.

(d) To the greatest extent practicable, money from the fund shall be spent in all areas of the state.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 88 (S.B. 770), Sec. 1, eff. September 1, 2021.

Sec. 309.003. JOB-TRAINING PROGRAMS. (a) A job-training program financed by the fund:

(1) must be specifically designed to:

(A) ensure that participants meet applicable state and federal work requirements;

(B) enable participants to find and apply for existing jobs; and

(C) include the involvement of employers who provide assistance in setting curricula and standards for job-training programs developed with money from the fund and are committed to hiring graduates of the programs; and

(2) is considered a work or employment activity for purposes of Section 31.012, Human Resources Code.

(b) An entity that receives money from the fund for a job-training program shall work in conjunction with employers to place participants who successfully complete the program in positions of employment in which the participants will earn wages sufficient to enable the participants to become independent of or avoid becoming dependent on benefits under the financial assistance program established under Chapter 31, Human Resources Code, and if applicable, benefits provided under the supplemental nutrition assistance program established under Chapter 33, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 88 (S.B. 770), Sec. 2, eff. September 1, 2021.

Sec. 309.004. RULEMAKING AUTHORITY. The commission shall adopt rules to implement this chapter, including rules to:

(1) identify individuals who are low-income or at risk of becoming dependent on public assistance benefits; and

(2) determine which individuals identified under Subdivision (1) are eligible to participate in job-training programs

developed with money from the fund.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 88 (S.B. 770), Sec. 3, eff. September 1, 2021.

CHAPTER 310. CHILD-CARE RESOURCE AND REFERRAL NETWORK

Sec. 310.001. DEFINITIONS. In this chapter:

(1) "Member" means a member of the child-care resource and referral network that provides child-care resource and referral services in this state.

(2) "Network" means the child-care resource and referral network administered by a nonprofit public or private organization that contracts with the commission to provide child-care resource and referral services in this state.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.002. CHILD-CARE RESOURCE AND REFERRAL NETWORK. (a) The commission, through funds allocated to the commission as the agency designated to administer the grant under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.), as amended, and specifically appropriated to the commission for that purpose, shall:

(1) contract with a child-care resource and referral network to provide child-care resource and referral services in this state; and

(2) require the network to be administered in compliance with the requirements of the block grant program.

(b) The commission shall use a system of competitive procurement to award a contract to a child-care resource and referral network that has proven experience in providing child-care resource and referral services.

(c) To the extent funds from the block grant program are available for that purpose, the commission shall award the contract under this section in a manner that will allow for the provision of child-care resource and referral services throughout this state.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.003. STATEWIDE CHILD-CARE NEEDS ASSESSMENT. (a) The network shall conduct a needs assessment to determine the supply of and demand for child-care services in this state and to identify discrepancies between that supply and demand.

(b) Based on the needs assessment, the network shall make recommendations to the commission regarding collaborative solutions to address the identified child-care supply and demand discrepancies. The recommended solutions must involve collaboration between:

(1) local workforce development boards;

(2) community-based social services agencies;

(3) employers;

(4) child-care providers; and

(5) parents who are consumers of child-care services.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.004. RESOURCE SERVICES. The network, through its members, shall provide and continually update resource information regarding:

(1) child-care and early childhood education services in this state; and

(2) assistance in becoming a child-care provider, including information about:

(A) the general requirements for applying for and maintaining a license, listing, or registration under Chapter 42, Human Resources Code; and

(B) the availability of financial resources and educational, technical, and other training opportunities, including management skills training and continuing education programs for operators and employees of child-care facilities, regardless of whether the network or another person provides those opportunities.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.005. REFERRAL SERVICES. (a) The network, through its members, shall provide referral services to:

(1) a person who is seeking child-care and early childhood education services; and

(2) an employer seeking child-care assistance for the employer or an employee through:

(A) a consultation regarding the availability of child-care and early childhood education services; or

(B) specialized services for the employer or its employees.

Text of subsection effective until April 1, 2025

(b) In addition to providing referrals to child-care and early childhood education services, the network, through its members, shall provide:

(1) referrals to available support services, including:

(A) parenting education classes; and

(B) services for parents or children offered by health and human services agencies, as defined by Section 531.001, Government Code, or otherwise available in the community; and

(2) information for consumers of child-care and early childhood education services, including:

(A) information regarding early childhood development;

(B) criteria for identifying quality child-care and early childhood education services that support the healthy development of children; and

(C) other information that will assist consumers in making informed and effective choices regarding child-care and early childhood education services.

Text of subsection effective on April 1, 2025

(b) In addition to providing referrals to child-care and early childhood education services, the network, through its members, shall provide:

(1) referrals to available support services, including:

(A) parenting education classes; and

(B) services for parents or children offered by health and human services agencies, as defined by Section 521.0001, Government Code, or otherwise available in the community; and

(2) information for consumers of child-care and early childhood education services, including:

(A) information regarding early childhood development;

(B) criteria for identifying quality child-care and

early childhood education services that support the healthy development of children; and

(C) other information that will assist consumers in making informed and effective choices regarding child-care and early childhood education services.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.141, eff. April 1, 2025.

Sec. 310.006. ADVERTISEMENT OF SERVICES. (a) The network, through its members, shall inform parents, child-care consumers, child-care providers, and employers located in the member's service area of:

(1) the resource and referral services available from the network; and

(2) the methods by which a person may contact the member to access resource and referral services.

(b) A member may provide the information under Subsection (a) through the media and alternative means, including:

(1) state and local community, job, and health fairs;

(2) public service announcements and advertisements;

(3) career development centers;

(4) offices of health and human services agencies;

(5) Texas workforce centers that comprise the Texas Workforce Network; and

(6) direct contacts with employers and child-care providers.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.007. COLLECTION OF CHILD-CARE DATA. (a) The network, through its members, shall:

(1) collect and continuously update statewide data regarding the supply of and demand for child-care and early childhood education services in this state;

(2) report the data to the commission each calendar quarter; and

(3) make the information available statewide.

(b) The data required by this section must include a comprehensive compilation of all available child-care and early childhood education services in this state and information concerning unmet needs of consumers with respect to those services.

(c) The commission and the Department of Protective and Regulatory Services shall provide assistance to the network and members of the network in collecting, aggregating, and updating the data required by this section.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.008. RULES. The commission may adopt rules necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 311. VOLUNTARY WORKFORCE TRAINING FOR CERTAIN STUDENTS

Sec. 311.001. DEFINITIONS. In this chapter:

(1) "Agency" means the Texas Education Agency.

(2) "Certified program" means a career and technology secondary and postsecondary education program conducted under an agreement as described by Section 311.003 or a voluntary program certified by the agency in conjunction with the commission as meeting the standards prescribed by Section 311.002, and that:

(A) integrates a secondary school academic curriculum with private sector workplace training and a postsecondary curriculum;

(B) places students in job internships;

(C) is designed to continue into postsecondary education and lead to the participant earning an associate's degree or a bachelor's degree;

(D) will result in teaching new skills and adding value to the wage-earning potential of participants and increasing a participant's long-term employability in this state; and

(E) meets recognized or accepted industry standards.

(3) "Participant" means a person at least 16 years of age who is enrolled in a public or private secondary or postsecondary school, or an equivalent program, and who began to voluntarily

participate in a certified voluntary workforce training program as part of secondary school education.

(4) "Sponsor" means any person operating a certified program and in whose name the program is registered.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.002. CERTIFICATION STANDARDS. To be eligible for certification by the agency under this chapter, a program must:

(1) be conducted under an organized, written plan embodying the terms and conditions of employment, job training, classroom instruction, and supervision of participants and be subscribed to by a sponsor who has undertaken to carry out the program;

(2) comply with all state and federal laws, including laws pertaining to fair labor standards and workplace health and safety;

(3) comply with recognized industry standards applicable to the program in which the participant is engaged; and

(4) include an agreement by the employer to assign an employee to serve as a mentor for the participant.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.003. CERTIFIED PROGRAM AGREEMENTS. (a) A certified program must be conducted under a signed written agreement between each participant and the employer. The agreement may include the following:

(1) the name and signature of the participant, the sponsor, and the employer, and a parent or guardian of the participant if the participant is under 18 years of age;

(2) a description of the career field in which the participant is to be trained, the academic and technical skills to be attained, and the beginning date and duration of the broad-based training; and

(3) the employer's agreement to provide paid employment, at a base wage not less than the minimum wage, for the participant during the participant's junior and senior years in high school and after the participant's first year of postsecondary education.

(b) A participant's time spent in a program under Subsection (a) may not exceed 15 hours a week, without regard to whether the

participant is paid for the time.

(c) A participant may, but is not required to, enter into a postsecondary education agreement with the participant's employer. An agreement under this subsection must include:

(1) the participant's agreement to pay half of the participant's wages to be held in trust to be applied toward the participant's postsecondary education and the employer's agreement to pay into the trust an additional amount equal to the amount paid by the participant;

(2) the participant's agreement to work for the employer for at least two years following the date of completion of the participant's postsecondary education;

(3) the employer's agreement to pay the participant during the period described by Subdivision (2) at least the prevailing wage for employees having a similar education or license and performing similar work and to provide other employee benefits to which employees performing similar work are entitled; and

(4) the participant's agreement to reimburse the employer if the participant fails to perform the two years of employment described by Subdivision (2) for the employer's contribution to the trust established under Subdivision (1), plus interest at the prime interest rate at the time the participant defaults on the agreement.

(d) If a participant decides not to continue in the program before beginning the participant's postsecondary education, the participant and employer each shall be refunded, not later than the 30th day after the last date of participation in the program, their respective contributions to the trust established under Subsection (c)(1) and a pro rata share of the interest earned on the money in the trust.

(e) The money held in trust under Subsection (c)(1) must be held in trust for the benefit of the participant under rules adopted by the agency. Payment into a trust approved under 29 U.S.C. Section 1103 for the benefit of the participant satisfies the requirement of this subsection. The fund must be specified in the agreement.

(f) An employer who enters into an agreement under this section may not retain participants solely to replace the employer's current employees.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.004. RULEMAKING. (a) The agency and commission shall adopt rules as necessary to administer each entity's duties under this chapter. To the extent possible, the agency and commission shall cooperate with each other in adopting rules so that all rules adopted under this chapter are consistent and easily administered.

(b) Rules adopted under this section must include a requirement that participation in a certified program under this chapter is voluntary.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.005. COMMISSION DUTIES; LOCAL WORKFORCE DEVELOPMENT BOARDS. (a) The commission shall:

(1) administer its responsibilities under this chapter as part of the commission's workforce development system;

(2) cooperate with other state agencies as appropriate; and

(3) provide information and technical assistance to the agency, secondary and postsecondary schools, employers, local workforce development boards, and other entities.

(b) A local workforce development board, working in partnership with other local and regional entities, shall provide to secondary and postsecondary schools and employers in the area in which the board is established information and technical assistance as necessary to implement this chapter.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 312. INDUSTRY-BASED CERTIFICATION ADVISORY COUNCIL

Sec. 312.001. DEFINITION. In this chapter, "advisory council" means the industry-based certification advisory council established under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 731 (H.B. 3938), Sec. 1, eff. June 15, 2021.

Sec. 312.002. ADVISORY COUNCIL. (a) The industry-based certification advisory council is established to advise the

commission regarding the alignment of public high school career and technology education programs with current and future workforce needs in communities, regions, and the state.

(b) The advisory council is composed of the following nine members:

(1) three members representing industry in this state, one each appointed by the governor, the lieutenant governor, and the speaker of the house of representatives;

(2) three members representing public school teachers who teach career and technology education courses or public school administrators, one each appointed by the governor, the lieutenant governor, and the speaker of the house of representatives; and

(3) three members representing a public junior college, public state college, or public technical institute, as those terms are defined by Section 61.003, Education Code, one each appointed by the governor, the lieutenant governor, and the speaker of the house of representatives.

(c) The members of the advisory council serve staggered four-year terms, with the terms of either four or five members expiring February 1 of each odd-numbered year.

(c-1) Notwithstanding Subsection (c), the initial members appointed shall determine by lot which four of the nine initial members will serve terms that expire February 1, 2023, and which five of the nine initial members will serve terms that expire February 1, 2025. This subsection expires January 1, 2026.

(d) A vacancy on the advisory council shall be filled in the same manner as the original appointment for that position.

(e) A member of the advisory council is not entitled to compensation for service as a member of the advisory council but is entitled to reimbursement for actual and necessary travel expenses incurred in performing functions as a member of the advisory council, as provided in the General Appropriations Act.

(f) Using existing resources, the commission shall provide administrative and staff support for the advisory council.

Added by Acts 2021, 87th Leg., R.S., Ch. 731 (H.B. 3938), Sec. 1, eff. June 15, 2021.

Sec. 312.003. INVENTORY OF CREDENTIALS AND CERTIFICATES. (a)

The advisory council shall develop an inventory of industry-recognized credentials and certificates that may be earned by a public high school student through a career and technology education program and that:

(1) are aligned to state and regional workforce needs; and

(2) serve as an entry point to middle- and high-wage jobs.

(b) The inventory must include for each credential or certificate:

(1) the associated career cluster;

(2) the awarding entity;

(3) the level of education required and any additional requirements for the credential or certificate;

(4) any fees for obtaining the credential or certificate; and

(5) the average wage or salary for jobs that require or prefer the credential or certificate.

(c) In developing the inventory, the advisory council may consult with local workforce boards, the Texas Workforce Investment Council, the Texas Economic Development and Tourism Office, and the Texas Higher Education Coordinating Board.

(d) The advisory council shall establish a process for developing the inventory, including the criteria for the inclusion of a credential or certificate in the inventory.

(e) The advisory council shall annually review and revise the inventory.

(f) Each year, the commission shall:

(1) adopt and, if necessary, review the inventory; and

(2) provide a copy of the inventory to the Texas Education Agency and to each school district and public institution of higher education that offers a career and technology education program to public high school students.

Added by Acts 2017, 85th Leg., R.S., Ch. 494 (H.B. 2729), Sec. 1, eff. June 9, 2017.
Transferred, redesignated and amended from Education Code, Section 29.189 by Acts 2021, 87th Leg., R.S., Ch. 731 (H.B. 3938), Sec. 2, eff. June 15, 2021.

CHAPTER 313. REQUIREMENTS FOR PROVIDERS OF RELATIVE CHILD CARE

Sec. 313.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Relative child care" means child care that is:

(A) funded wholly or partly from money received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.); and

(B) provided by a provider who:

(i) is at least 18 years of age;

(ii) complies with any federal or state requirements regarding subsidized child care that apply to the provider;

(iii) provides child-care services for less than 24 hours a day to a child who is, by marriage, blood relationship, or court decree:

(a) the grandchild of the provider;

(b) the great-grandchild of the provider;

(c) the sibling of the provider, and the child resides in a separate residence from the provider; or

(d) the niece or nephew of the provider; and

(iv) operates a listed family home under Chapter 42, Human Resources Code, that provides care for one or more children related to the provider and does not hold any other license or permit to provide child care under Chapter 42, Human Resources Code.

(3) "Teen parent" means an individual 18 years of age or younger, or 19 years of age and fully enrolled in a secondary school in a program leading toward a high school diploma, who is the parent of a child.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.002. LOCATION OF CARE. (a) Except as provided by Subsections (b) and (c), relative child care must be provided in the child-care provider's home.

(b) The commission shall allow relative child care in the child's home:

(1) for a disabled child and the child's siblings;

(2) for a child under 18 months of age and the child's

siblings;

(3) for a child of a teen parent; and

(4) when the parent's work schedule necessitates child–care services during the evening, overnight, or on the weekend and taking the child outside of the child's home would be disruptive to the child.

(c) The commission may allow relative child care in the child's home if the commission determines that other child-care provider arrangements are not available in the community.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.003. LISTING AS FAMILY HOME. A relative child-care provider must list the provider's home with the department as a family home.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.004. NOTICE OF BACKGROUND AND CRIMINAL HISTORY CHECKS. The commission must provide notice of the background and criminal history check requirement to the parent or guardian of the child who will receive care through a relative child-care provider before the parent or guardian selects the provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.005. MEMORANDUM OF UNDERSTANDING. The commission and the department shall adopt a memorandum of understanding regarding the administration and payment of costs of listing a relative child-care provider as required by this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

CHAPTER 314. TEXAS BACK TO WORK PROGRAM

Sec. 314.001. DEFINITION. In this chapter, "qualified applicant" means a person who made less than $40 per hour at the person's last employment before becoming unemployed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 35.02, eff. September 28, 2011.

Sec. 314.002. INITIATIVE ESTABLISHED. (a) The Texas Back to Work Program is established within the commission.

(b) The purpose of the program is to establish public-private partnerships with employers to transition residents of this state from receiving unemployment compensation to becoming employed as members of the workforce.

(c) An employer that participates in the initiative may receive a wage subsidy for hiring one or more qualified applicants who are unemployed at the time of hire.

(d) The commission, for the purposes of this section, may use:

(1) money appropriated to the commission; and

(2) money that is transferred to the commission from trusteed programs within the office of the governor, including:

(A) appropriated money from the Texas Enterprise Fund;

(B) available federal funds; and

(C) money from other appropriate, statutorily authorized funding sources.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 35.02, eff. September 28, 2011.

Sec. 314.003. RULES. The commission may adopt rules as necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 35.02, eff. September 28, 2011.

CHAPTER 315. ADULT EDUCATION AND LITERACY PROGRAMS

Sec. 315.001. DEFINITIONS. In this chapter:

(1) "Adult" means any individual who is over the age of

compulsory school attendance prescribed by Section 25.085, Education Code.

(2) "Adult education" means services and instruction provided below the college level for adults by public school districts, public junior colleges, regional education service centers, nonprofit agencies, or community-based organizations.

(3) "Community-based organization" has the meaning assigned by 20 U.S.C. Section 7801.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.002. COMMISSION DUTIES. (a) The commission shall:

(1) provide adequate staffing, including by hiring a director, to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;

(2) develop the mechanism and guidelines for the coordination of comprehensive adult education and related skill training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;

(3) administer all state and federal funds for adult education and related skill training services in this state, other than funds that another entity is specifically authorized to administer under other law;

(4) prescribe and administer standards and accrediting policies for adult education;

(5) prescribe and administer rules for teacher certification for adult education;

(6) accept and administer grants, gifts, services, and funds from available sources for use in adult education;

(7) adopt or develop and administer a standardized assessment mechanism for assessing all adult education program participants who need literacy instruction, adult basic education, or secondary education leading to an adult high school diploma or the equivalent;

(8) monitor and evaluate educational and employment outcomes of students who participate in the commission's adult

education and literacy programs; and

(9) provide, within the context of administering adult education and literacy programs, training opportunities for parents regarding how to be the primary teachers for their children and full partners in their children's education.

(b) The assessment mechanism prescribed by Subsection (a)(7) must include an initial basic skills screening instrument and must provide comprehensive information concerning baseline student skills before and student progress after participation in an adult education program.

(b-1) To the extent permitted under federal law, the commission by rule shall establish:

(1) annual performance requirements that each entity that receives money appropriated under this chapter must satisfy to qualify for a continuing award of funds under this chapter, which must include the achievement of enrollment targets and performance benchmarks that are comparable to those provided by Section 315.007(c); and

(2) a process for giving priority in awarding funds under this chapter to entities that consistently satisfy the annual performance requirements established under Subdivision (1).

(c) Not later than December 1 of each even-numbered year, the commission shall report to the legislature regarding the educational and employment outcomes of students who participate in the commission's adult education and literacy programs.

(d) The commission may adopt rules for the administration of this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 226 (H.B. 1602), Sec. 1, eff. September 1, 2023.

Sec. 315.003. PROVISION OF ADULT EDUCATION PROGRAMS. Adult education programs must be provided by public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations approved in accordance with state statutes and rules adopted by the commission. The

programs must be designed to meet the education and training needs of adults to the extent possible using available public and private resources. Bilingual education may be used to instruct students who do not function satisfactorily in English whenever it is appropriate for those students' optimum development.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.004. ADULT EDUCATION ASSESSMENT. The commission shall, in consultation with the Texas Higher Education Coordinating Board and the Texas Education Agency, review the standardized assessment mechanism required under Section 315.002(a)(7) and recommend any changes necessary to align the assessment with the assessments designated under Section 51.334, Education Code, to allow for the proper placement of a student in an adult basic education course or to provide the student with the proper developmental or English as a second language coursework, as appropriate.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 842 (H.B. 2223), Sec. 2.10, eff. June 15, 2017.

Sec. 315.005. ADULT EDUCATION AND LITERACY ADVISORY COMMITTEE. (a) In this section, "advisory committee" means the adult education and literacy advisory committee created under this section.

(b) The commission shall establish an adult education and literacy advisory committee composed of not more than nine members appointed by the commission. Members of the advisory committee must have expertise in the field of adult education and literacy and may include adult educators, providers, advocates, current or former adult education and literacy program students, and leaders in the nonprofit community engaged in literacy promotion efforts. The advisory committee's membership must include at least one representative of the business community and at least one representative of a local workforce development board.

(c) The advisory committee shall:

(1) meet at least quarterly;
(2) report to the commission at least annually; and
(3) advise the commission on:
(A) the development of:
(i) policies and program priorities that support the development of an educated and skilled workforce in this state;
(ii) statewide curriculum guidelines and standards for adult education and literacy services that ensure a balance of education and workplace skill development;
(iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and
(iv) a centralized system for collecting and tracking comprehensive data on adult basic education and literacy program performance outcomes;
(B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and
(C) any other issue the commission considers appropriate.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.006. STATE FUNDING. (a) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in this state and to implement and support a statewide program to meet the total range of adult needs for adult education and related skill training. The commission shall ensure that public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations have direct and equitable access to those funds.

(b) In addition to any amount appropriated under Subsection (a), the legislature may appropriate an additional amount to the commission for the purpose of skill training in direct support of

industrial expansion and new business development in locations, industries, and occupations designated by the commission, if the training supports the basic purposes of this chapter. To support the basic purposes of this chapter, the legislature may also appropriate an additional amount to the commission for skill training that is conducted to support the expansion of civilian employment opportunities on United States military reservations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.007. PERFORMANCE INCENTIVE FUNDING. (a) The commission by rule shall develop and establish a performance-based process for annually awarding funds to entities that deliver adult education and literacy services under this chapter. The process must be designed to reward those entities demonstrating exemplary performance in the delivery of services.

(b) In developing the process for awarding funds under this section, the commission shall prescribe:

(1) criteria, including fiscal and programmatic performance criteria, to be used to evaluate the performance by the entities described by Subsection (a); and

(2) procedures for taking corrective action, including contract termination or the discontinuation of an award of funds, against an entity for the entity's failure to satisfy the performance criteria prescribed under Subdivision (1).

(c) The criteria prescribed under Subsection (b)(1) for the award of funds to entities described by Subsection (a) based on performance during a program year must include the achievement by an entity of the following enrollment target and performance benchmarks:

(1) the enrollment in a high school equivalency program or a postsecondary ability to benefit program of at least 25 percent of all students receiving adult education and literacy services from the entity during that program year; and

(2) the achievement by the end of that program year of a high school equivalency certificate or a postsecondary certificate by at least 70 percent of those students who exit the entity's adult education program during that program year and who are enrolled in a high school equivalency program or a postsecondary ability to benefit

program.

(d) The process developed under this section must require the members of the commission to approve the award of any funds under this chapter.

(e) In this section, "postsecondary ability to benefit program" means a postsecondary certificate program in which a person who does not have a high school diploma or equivalency certificate and who both qualifies for federal student financial aid and demonstrates on an assessment instrument that the person can pass college-level courses with some support may enroll.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1091 (H.B. 1949), Sec. 1, eff. September 1, 2019.

Sec. 315.008. SERVICE PROVIDER CONTRACTS: COMPETITIVE PROCUREMENT REQUIREMENT. The commission shall use a competitive procurement process to award a contract to a service provider of an adult education program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

CHAPTER 316. VETERANS REEMPLOYMENT EDUCATION AND TRAINING COURSES

Sec. 316.001. EDUCATION AND TRAINING COURSES. (a) The commission shall develop or approve education and training courses for the veterans reemployment program under Subchapter H-1, Chapter 42A, Code of Criminal Procedure, to assist eligible veterans in obtaining workforce skills and becoming gainfully employed.

(b) The education and training courses must provide instruction in workforce skills appropriate for veterans with disabilities.

Added by Acts 2019, 86th Leg., R.S., Ch. 361 (H.B. 714), Sec. 3, eff. June 2, 2019.

For expiration of this chapter, see Section 317.010.

CHAPTER 317. WORKFORCE DIPLOMA PILOT PROGRAM

Sec. 317.001. DEFINITIONS. In this chapter:

(1) "Adult" means any individual who is over the age of compulsory school attendance prescribed by Section 25.085, Education Code.

(2) "Program" means the workforce diploma pilot program established under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.002. PROGRAM ESTABLISHMENT AND ADMINISTRATION; PURPOSE. The commission, in consultation with the Texas Education Agency, shall establish and administer a workforce diploma pilot program under which eligible high school diploma-granting entities participating in the program may be reimbursed for successfully assisting adult students to obtain a high school diploma and develop technical career readiness skills and employability.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.003. REQUEST FOR PROGRAM PROVIDER QUALIFICATIONS. Not later than October 15 of each year, the commission shall publish a request for qualifications for providers to participate in the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.004. PROVIDER ELIGIBILITY. To be eligible to participate as a provider under the program, a provider must:

(1) apply to the commission in the manner prescribed by commission rule;

(2) be a public, nonprofit, or private entity that is:

(A) authorized under the Education Code or other state law to grant a high school diploma; or

(B) accredited by a regional accrediting body and working in partnership with an entity described by Paragraph (A);

(3) have at least two years of experience providing dropout reengagement services to adult students, including recruitment, learning plan development, and proactive coaching and mentoring, leading to the obtainment of a high school diploma;

(4) be equipped to:

(A) provide:

(i) academic skill intake assessment and transcript evaluations;

(ii) remediation coursework in literacy and numeracy;

(iii) a research-validated academic resiliency assessment and intervention;

(iv) employability skills development aligned to employer needs;

(v) career pathways coursework;

(vi) preparation for the attainment of industry-recognized credentials; and

(vii) career placement services; and

(B) develop a learning plan that integrates academic requirements and career goals; and

(5) offer a course catalog that includes all courses necessary to meet high school graduation requirements in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 137 (H.B. 2575), Sec. 1, eff. September 1, 2023.

Sec. 317.005. PROVIDER APPROVAL; LIST OF APPROVED PROVIDERS. (a) Not later than November 15 of each year, the commission shall publish a list of providers approved by the commission to participate in the program during the next calendar year.

(b) An approved provider maintains approval to participate in the program during a subsequent calendar year without reapplying to the commission unless the provider is removed from the approved provider list as provided by Section 317.008.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.006. REIMBURSEMENT OF PROGRAM PROVIDERS FOR STUDENT ACHIEVEMENT. (a) To the extent money is available for that purpose, the commission shall reimburse each approved provider participating in the program for the achievement of the following milestones by students receiving services from the provider:

(1) $250 for the completion of a half credit;

(2) $250 for the completion of an employability skills certification program equal to at least one credit or the equivalent;

(3) $250 for the attainment of an industry-recognized credential requiring not more than 50 hours of training;

(4) $500 for the attainment of an industry-recognized credential requiring at least 50 but not more than 100 hours of training;

(5) $750 for the attainment of an industry-recognized credential requiring more than 100 hours of training; and

(6) $1,000 for the obtainment of a high school diploma.

(b) Not later than the 10th calendar day of each month, an approved provider participating in the program shall submit to the commission an invoice for the milestones achieved by the provider's students during the previous calendar month.

(c) The commission shall reimburse approved program providers in the order in which invoices are received by the commission until all funds available for the program are exhausted.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.007. ANNUAL REPORT. Not later than January 15 of each year, each approved provider that participated in the program during the previous calendar year shall report to the commission the following data regarding the provider's students for that year:

(1) the number of students for which the provider received reimbursement under the program;

(2) the total number of credits earned by the students;

(3) the total number of employability skills certification

programs completed by the students;

(4) the total number of industry-recognized credentials attained by the students in each of the funding tiers described by Sections 317.006(a)(3), (4), and (5); and

(5) the number of students who obtained a high school diploma.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.008. PROVIDER PERFORMANCE REVIEW. (a) The commission by rule shall prescribe minimum performance standards for providers participating in the program. The minimum performance standards must include:

(1) a graduation rate of at least 50 percent; and

(2) a program cost per graduate of $7,000 or less.

(b) For purposes of Subsections (a)(1) and (2), the commission by rule shall develop formulas to make the appropriate calculations. The graduation rate must be calculated one cohort year in arrears.

(c) The commission shall review data from each participating approved provider annually to ensure that the services offered by the provider are meeting the minimum performance standards. If the commission determines that an approved provider did not meet the minimum performance standards in the previous calendar year, the commission shall place the provider on probationary status for the remainder of the current calendar year.

(d) The commission shall remove from the approved provider list published under Section 317.005 any provider that does not meet the minimum performance standards for two consecutive calendar years.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.009. REPORT. Not later than December 1 of each even-numbered year, the commission shall submit to the legislature a report on the effectiveness of the program. The commission shall include in the report a recommendation regarding whether the program should be continued, expanded, or terminated.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.

Sec. 317.010. EXPIRATION. This chapter expires September 1, 2027.

Added by Acts 2019, 86th Leg., R.S., Ch. 110 (S.B. 1055), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 137 (H.B. 2575), Sec. 1, eff. September 1, 2023.

For expiration of this chapter, see Section 319.006.

CHAPTER 319. TASK FORCE ON CONSOLIDATION OF WORKFORCE AND SOCIAL SERVICES

Sec. 319.001. DEFINITION. In this chapter, "task force" means the task force established under this chapter to develop a plan for the consolidation of workforce development and social services programs in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 973 (S.B. 2315), Sec. 2, eff. September 1, 2023.

Sec. 319.002. TASK FORCE MEMBERSHIP; COMPENSATION. (a) The task force consists of:

(1) three members appointed by the governor;

(2) three members appointed by the lieutenant governor; and

(3) three members appointed by the speaker of the house of representatives.

(b) A vacancy on the task force must be filled in the same manner as the original appointment.

(c) Members of the task force serve without compensation or reimbursement for expenses.

Added by Acts 2023, 88th Leg., R.S., Ch. 973 (S.B. 2315), Sec. 2, eff. September 1, 2023.

Sec. 319.003. TASK FORCE DUTIES. (a) The task force shall:

(1) develop a plan for best courses of action and a regulatory framework for the consolidation of workforce development programs administered by the commission and social services programs administered by the Health and Human Services Commission; and

(2) make recommendations to the legislature regarding the consolidation of programs described by Subdivision (1).

(b) The consolidation plan developed by the task force must:

(1) examine all state resources, including financial, manpower, and technology resources, to determine if those resources are being used effectively and efficiently to achieve the desired outcomes for recipients of the workforce development and social services programs and for the purposes of the programs' intended goals;

(2) identify opportunities for cost savings or reallocations of resources to improve the effectiveness of the programs by streamlining essential functions and eliminating duplicative efforts;

(3) identify potential improvements to child-care data systems in order to streamline child-care data collection as necessary to evaluate the need for and availability of subsidized and unsubsidized child care for recipients of program services;

(4) be designed to improve the delivery of the programs by ensuring that applicants for and recipients of the services provided are better served by having access to a single point of contact case manager for all services sought or received; and

(5) identify the changes to federal law that would be necessary to implement the consolidation plan.

Added by Acts 2023, 88th Leg., R.S., Ch. 973 (S.B. 2315), Sec. 2, eff. September 1, 2023.

Sec. 319.004. ADMINISTRATIVE SUPPORT. The commission and the Health and Human Services Commission shall provide staff and administrative support as necessary to enable the task force to carry out its duties under this chapter, including by providing:

(1) meeting space;

(2) staff to assist the task force in conducting research and drafting the consolidation plan and related materials; and

(3) funding available from existing resources appropriated to the commission or the Health and Human Services Commission to pay for costs associated with the task force's functions.

Added by Acts 2023, 88th Leg., R.S., Ch. 973 (S.B. 2315), Sec. 2, eff. September 1, 2023.

Sec. 319.005. REPORT TO LEGISLATURE. Not later than December 31, 2024, the task force shall prepare and submit to the legislature a report that includes:

(1) a description of the activities of the task force;

(2) the consolidation plan developed by the task force; and

(3) the findings and recommendations of the task force.

Added by Acts 2023, 88th Leg., R.S., Ch. 973 (S.B. 2315), Sec. 2, eff. September 1, 2023.

Sec. 319.006. EXPIRATION. The task force is abolished and this chapter expires September 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 973 (S.B. 2315), Sec. 2, eff. September 1, 2023.

SUBTITLE C. VOCATIONAL REHABILITATION AND CERTAIN OTHER SERVICES FOR PERSONS WITH DISABILITIES

CHAPTER 351. GENERAL PROVISIONS; RESPONSIBILITY FOR ADMINISTRATION OF SERVICES

Sec. 351.001. DEFINITIONS. In this subtitle:

(1) "Department" means the Department of Assistive and Rehabilitative Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 351.002. RESPONSIBILITY FOR ADMINISTRATION OF SERVICES AND

PROGRAMS. (a) Notwithstanding any other provision of this subtitle, the department shall administer the services and programs under this subtitle until September 1, 2016. On that date, the department shall cease administering the services and programs and the commission shall begin administering the services and programs, subject to receipt of any required federal approval.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 351.003. DESIGNATED STATE UNIT FOR VOCATIONAL REHABILITATION SERVICES. In accordance with the requirements of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.), the commission shall establish a designated state unit within the commission that:

(1) is an organizational unit designated to be primarily responsible for and concerned with vocational rehabilitation of individuals with disabilities;

(2) has a full-time director;

(3) has a staff employed on the rehabilitation work of the organizational unit, all or substantially all of whom are employed full-time on such work; and

(4) is located at an organizational level and has an organizational status within the commission comparable to that of other major organizational units of the commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 351.005. MEANING OF CERTAIN REFERENCES IN LAW. Until the administration of this subtitle is transferred from the department to the commission, a reference to the commission or the executive director in this subtitle means the department, commissioner of assistive and rehabilitative services, or executive commissioner, as applicable.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

CHAPTER 352. VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 352.001. DEFINITIONS. In this chapter:

(1) "Direct services" means services provided to a client by a commission employee, including counseling, facilitating the purchase of services from a source other than the commission, and purchasing equipment and other items and providing other services necessary for the client to successfully complete a commission program.

(2) "Direct services program" means a program operated by the commission through which direct services are provided.

(3) "Individual with a disability" means an individual who has a physical impairment, including a visual impairment, or mental impairment that constitutes a substantial impediment to employment, but that is of a nature that rehabilitation services may be expected to enable the individual to engage in a gainful occupation.

(4) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(5) "Occupational license" means a license, permit, or other written authorization required by a governmental entity as a condition for engaging in an occupation.

(6) "Physical restoration" means medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a substantial impediment to employment of an individual with a disability within a reasonable period of time. The term includes medical, surgical, dental, and psychiatric treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances. The term excludes treatment to cure acute or transitory conditions.

(7) "Prosthetic appliance" means an artificial device necessary to support or replace a part of the body or to increase the acuity of a sensory organ.

(8) "Rehabilitation training" means all necessary training provided to an individual with a disability to compensate for a substantial impediment to employment. The term includes manual, preconditioning, prevocational, vocational, and supplementary training and training to achieve broader and more lucrative skills and capacities.

(9) "Substantial impediment to employment" means a physical or mental condition that obstructs or impairs, or if not corrected

will probably obstruct or impair, an individual's performance in an occupation.

(10) "Vocational rehabilitation" or "vocational rehabilitation services" means services that are provided directly by the commission or through a public or private agency and that the commission determines are necessary to compensate an individual with a disability for a substantial impediment to employment so that the individual may engage in a remunerative occupation. The terms include:

(A) medical and vocational diagnosis;

(B) vocational guidance, counseling, and placement;

(C) rehabilitation training;

(D) physical restoration;

(E) transportation;

(F) occupational licenses;

(G) customary occupational tools and equipment;

(H) maintenance;

(I) training books and materials; and

(J) other goods and services for which the commission receives financial support under federal law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.002. PURPOSE. It is the policy of this state to provide vocational rehabilitation services to eligible individuals with disabilities so that those individuals may prepare for and engage in a gainful occupation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.003. REHABILITATION COUNCIL OF TEXAS. (a) The Rehabilitation Council of Texas operates in accordance with the federal Rehabilitation Act Amendments of 1992, Pub. L. No. 102-569, and the federal Rehabilitation Act Amendments of 1998, Pub. L. No. 105-220.

(b) The Rehabilitation Council of Texas shall report to and advise the commission on the council's activities and the results of

the council's work. For the purpose of performing its advisory functions, the council shall work with the commission, the executive director, and other commission staff.

(c) The commission shall adopt rules for the administration of the council.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.004. RECEIPT AND DISBURSEMENT OF STATE AND FEDERAL FUNDS. (a) The comptroller is custodian of federal funds received by the state to implement federal law relating to vocational rehabilitation.

(b) The commission shall certify for disbursement funds available for the vocational rehabilitation program in accordance with regulations.

(c) The comptroller shall disburse state and federal vocational rehabilitation funds on certification by the commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.005. GIFTS, DONATIONS, AND OTHER MONEY. (a) The commission shall deposit all money paid to the commission under this chapter in the state treasury. The money may be used only for the administration of this chapter.

(b) The commission may receive and use gifts and donations for carrying out the purposes of this chapter. A person may not receive payment for solicitation of any funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.006. MISUSE OF INFORMATION. Except for purposes directly connected with the administration of the vocational rehabilitation program and according to commission rules, no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient

of vocational rehabilitation services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of the person's official duties.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.007. CRIMINAL HISTORY RECORD INFORMATION. (a) The commission may obtain criminal history record information from the Texas Department of Criminal Justice and the Texas Department of Public Safety if the criminal history records relate to:

(1) an applicant selected for employment with the commission whose potential duties include direct contact with clients to provide vocational rehabilitation services or other services under this subtitle;

(2) an applicant for vocational rehabilitation services or other services under this subtitle from the commission; or

(3) a client receiving vocational rehabilitation services or other services under this subtitle.

(b) The Texas Department of Criminal Justice and the Texas Department of Public Safety on request shall supply to the commission criminal history record information relating to applicants selected for employment with the commission whose potential duties include direct contact with clients to provide vocational rehabilitation services, applicants for vocational rehabilitation services from the commission, or vocational rehabilitation clients of the commission. The commission shall treat all criminal history record information as privileged and confidential and for commission use only.

(c) The commission by rule shall establish criteria for denying a person's application for employment with the commission to provide vocational rehabilitation services based on criminal history record information obtained as authorized by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.008. HEARINGS. An applicant for or recipient of vocational rehabilitation services who is aggrieved by an action or inaction under this chapter is entitled to a hearing by the

commission in accordance with law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 352.051. VOCATIONAL REHABILITATION PROGRAM FOR INDIVIDUALS WITH DISABILITIES. (a) The commission shall conduct a program to provide vocational rehabilitation services to eligible individuals with disabilities.

(b) To achieve the purposes of the program, the commission may:

(1) cooperate with other public and private agencies in studying the problems involved in providing vocational rehabilitation and in establishing, developing, and providing necessary or desirable facilities and services;

(2) enter into reciprocal agreements with other states to provide vocational rehabilitation for the residents of the states concerned; and

(3) conduct research and compile statistics relating to the vocational rehabilitation of individuals with disabilities.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.052. COOPERATION WITH FEDERAL GOVERNMENT; OBTAINING FEDERAL FUNDS. (a) The commission shall cooperate with the federal government to accomplish the purposes of federal laws relating to vocational rehabilitation for individuals with disabilities and closely related activities.

(b) The commission shall negotiate agreements or plans with the federal government and shall use efficient methods of administration and comply with other conditions required to secure the full benefits of the federal laws. If the commission determines that a provision of state law precludes conformity with a federal requirement and limits federal financial support, the commission may waive or modify the state law to the extent necessary to obtain the full benefits of the federal law.

(c) The commission may comply with any requirements necessary to obtain federal funds to be used for vocational rehabilitation

services in the maximum amount and most advantageous proportion possible.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.053. CONTRACTS FOR SERVICE. (a) The commission shall include in its contracts with service providers under this chapter provisions relating to:

(1) clearly defined and measurable program performance standards that directly relate to the service provided;

(2) clearly defined penalties for nonperformance of a contract term; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) The commission shall monitor a service provider's performance under a contract for service under this chapter. In monitoring performance, the commission shall:

(1) use a risk-assessment methodology to institute statewide monitoring of contract compliance of service providers; and

(2) evaluate service providers based on clearly defined and measurable program performance objectives.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.054. RATES FOR MEDICAL SERVICES. (a) The commission by rule shall adopt standards governing the determination of rates paid for medical services provided under this chapter. The rules must provide for an annual reevaluation of the rates.

(b) The commission shall establish a schedule of rates based on the standards adopted under Subsection (a). In adopting the rate schedule, the commission shall:

(1) compare the proposed rate schedule to other cost-based and resource-based rates for medical services, including rates paid under Medicaid and the Medicare program; and

(2) for any rate adopted that exceeds the Medicaid or Medicare rate for the same or a similar service, document the reasons why the adopted rate reflects consideration of the best value,

provider availability, and consumer choice.

(c) The commission shall provide notice to interested persons and allow those persons to present comments before adopting the standards and schedule of rates under Subsections (a) and (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.055. CONTRACT PAYMENT. The commission shall base payment under a contract for vocational rehabilitation services on outcome-based performance standards defined in the contract.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.056. CONTRACTS FOR ADAPTIVE TECHNOLOGY. The commission shall include in a contract under this chapter with a supplier of adaptive technology equipment provisions that require the supplier to provide training for clients receiving the adaptive technology equipment.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.057. LOANS FOR VISUAL AIDS. (a) The commission may establish a program to make loans to finance the purchase of technological aids for individuals with visual impairments. Interest on the loans may not exceed 10 percent per year.

(b) The commission may adopt rules to administer the loan program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.058. SUBROGATION. (a) By providing a person rehabilitation services, including medical care services, under this subchapter, the commission is subrogated to the person's right of

recovery from:

(1) personal insurance;

(2) another person for personal injury caused by the other person's negligence or wrongdoing; or

(3) any other source.

(b) The commission's right of subrogation is limited to the cost of the services provided.

(c) The commission may totally or partially waive the commission's right of subrogation when the commission finds that enforcement would tend to defeat the purpose of rehabilitation.

(d) The commission may adopt rules for the enforcement of the commission's right of subrogation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.059. WORK INCENTIVES AND SUPPLEMENTAL SECURITY INCOME (SSI). The commission shall employ a person at the commission's central office to:

(1) train counselors to understand and use work incentives; and

(2) review cases to ensure that commission clients are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

SUBCHAPTER C. PROVISION OF AND ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES

Sec. 352.102. ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES. The commission shall provide vocational rehabilitation services to individuals with disabilities eligible for those services under federal law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.103. PROVISION OF VOCATIONAL REHABILITATION SERVICES. (a) The commission by rule shall establish and maintain guidelines for providing vocational rehabilitation services that are consistent with state and federal laws and that include:

(1) a system of organization for the delivery of vocational rehabilitation services statewide;

(2) eligibility requirements for vocational rehabilitation services;

(3) requirements for the rehabilitation planning process;

(4) the types of services that may be provided to a client through a vocational rehabilitation program; and

(5) requirements for client participation in the costs of vocational rehabilitation services, including documentation that a client has sought benefits for which the client is eligible from sources other than the commission and that may assist the client in obtaining vocational rehabilitation goods or services.

(b) The commission shall annually assess the effectiveness of the state's vocational rehabilitation program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.104. TRAINING AND SUPERVISION OF COUNSELORS. (a) The commission shall provide specific guidance to vocational rehabilitation counselors in:

(1) selecting vocational objectives according to a client's skills, experience, and knowledge;

(2) documenting a client's impediment to employment;

(3) selecting rehabilitation services that are reasonable and necessary to achieve a client's vocational objective;

(4) measuring client progress toward the vocational objective, including the documented, periodic evaluation of the client's rehabilitation and participation; and

(5) determining eligibility of employed and unemployed applicants for rehabilitation services using criteria defined by commission rule to document whether a client is substantially underemployed or at risk of losing employment.

(b) The commission by rule shall require monitoring and oversight of vocational rehabilitation counselor performance and

decision making in accordance with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.105. SPECIALIZED TRAINING FOR CERTAIN EMPLOYEES. (a) The commission shall establish and require employee participation in a specialized training program for certain employees, including vocational rehabilitation transition specialists and transition counselors, whose duties involve assisting youth with disabilities to transition to post-schooling activities, services for adults, or community living.

Text of subsection effective until April 1, 2025

(b) The training program must provide employees with information regarding:

(1) supports and services available from health and human services agencies, as defined by Section 531.001, Government Code, for:

(A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living; and

(B) adults with disabilities;

(2) community resources available to improve the quality of life for:

(A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living; and

(B) adults with disabilities; and

(3) other available resources that may remove transitional barriers for youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living.

Text of subsection effective on April 1, 2025

(b) The training program must provide employees with information regarding:

(1) supports and services available from health and human services agencies, as defined by Section 521.0001, Government Code, for:

(A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living;

and

(B) adults with disabilities;

(2) community resources available to improve the quality of life for:

(A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living; and

(B) adults with disabilities; and

(3) other available resources that may remove transitional barriers for youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living.

Text of subsection effective until April 1, 2025

(c) In developing the training program required by this section, the commission shall collaborate with health and human services agencies, as defined by Section 531.001, Government Code, as necessary.

Text of subsection effective on April 1, 2025

(c) In developing the training program required by this section, the commission shall collaborate with health and human services agencies, as defined by Section 521.0001, Government Code, as necessary.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.142, eff. April 1, 2025.

Sec. 352.106. PAYMENT OF SHIFT DIFFERENTIALS. The commission by rule may develop and implement policies allowing shift differentials to be paid to employees in the vocational rehabilitation program under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.107. CLIENT ORIENTATION MATERIALS. The commission shall develop and distribute at intake client orientation materials

for the vocational rehabilitation program that include information on the commission's decision-making criteria.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.108. COORDINATION WITH TEXAS EDUCATION AGENCY. (a) For purposes of this section, "transition services" means services provided to students with disabilities to assist the students in making the transition from secondary school to postsecondary education programs or competitive integrated employment.

(b) The commission and the Texas Education Agency shall collaborate to develop a mechanism to identify the areas of the state with the greatest needs for transition services for students with disabilities. The mechanism must account for the commission's limited resources and a school district's needs, including:

(1) the school district's resources for special education;

(2) the number of students with disabilities in the school district; and

(3) other factors that the commission and the Texas Education Agency consider important.

(c) The commission and the Texas Education Agency shall update the mechanism developed under Subsection (b) on a periodic basis.

(d) The commission shall develop uniform, statewide policies for transition services that include:

(1) the goal that a transition counselor initiate contact with a student approximately three years before the student is expected to graduate from high school;

(2) the minimum level of services to be provided to a student at the time that a transition counselor initiates contact with the student;

(3) standards, based on the mechanism developed under Subsection (b), for assigning a transition counselor to a school that ensure consistency among regions but that are not too restrictive;

(4) expectations for transition counselors to develop relationships with school personnel, including the employee designated to serve as the school district's designee on transition and employment services under Section 29.011(b), Education Code; and

(5) expectations for regional commission staff to work with

education service center representatives on a regular basis to identify areas of greatest need and to discuss local strategies for coordination between transition counselors and schools.

(e) The commission and the Texas Education Agency shall enter into a memorandum of understanding to comply with the policies under this section and to improve coordination between the agencies. The memorandum of understanding must include:

(1) strategies to better inform transition clients, clients' families, and school personnel regarding the commission's available services and contact information for commission transition counselors; and

(2) a process to be used by the commission and the Texas Education Agency to develop and update the mechanism used to identify students who may need services.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

CHAPTER 355. VENDING FACILITIES OPERATED BY BLIND PERSONS

Sec. 355.001. DEFINITIONS. In this chapter:

(1) "Blind person" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(2) "Vending facility" means a facility in which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are sold regularly. The term excludes facilities consisting solely of vending machines that do not compete directly or indirectly with a facility that is or could be operated by a person with a disability.

(3) "State property" means land and buildings owned, leased, or otherwise controlled by the state.

(4) "Agency" means the state agency in charge of state property.

(5) "Disability" means a physical or mental condition that the commission determines to constitute a substantial vocational disadvantage.

Transferred, redesignated and amended from Human Resources Code,

Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.002. LICENSE OR PERMIT REQUIRED. (a) No person may operate a vending facility or a facility with vending machines or other coin-operated devices on state property unless the person is licensed to do so by the commission or is authorized to do so by an agency granted a permit to arrange for vending facilities.

(b) Subsection (a) does not apply to a building in which the Texas Facilities Commission leases space to a private tenant under Subchapter E, Chapter 2165, Government Code.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.003. LICENSING PROCEDURE. (a) On its own initiative or at the request of an agency that controls state property, the commission shall survey the property, or blueprints and other available information concerning the property, to determine whether the installation of a vending facility is feasible and consonant with the commission's vocational rehabilitation objectives.

(b) If the installation of the facility is feasible, the commission shall either license a blind person to operate a facility to be installed by the commission or install a facility to be operated by a person with a disability who is not blind according to rules and procedures adopted by the commission.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.004. LOCATION OF VENDING FACILITIES. (a) With the concurrence of the agency in charge of state property, the commission shall designate the location of vending facilities that have been requested by the agency.

(b) The agency responsible for state property shall alter the property to make it suitable for the proper operation of the vending

facilities. To this end, the agency in charge of constructing new state property shall consult with the commission during the planning stage on the construction.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.005. ISSUANCE OF LICENSES; ELIGIBILITY. (a) The commission may issue a license to operate its vending facilities on state property to blind citizens of the state who are capable of operating the facilities in a manner that is reasonably satisfactory to all parties concerned.

(b) Before issuing a license to a person, the commission shall determine whether the person has the physical, psychological, and personal traits and abilities required to operate a vending facility in a satisfactory manner.

(c) The commission shall maintain a roster of the names of each person who has been certified as suitable for licensing. If two or more equally qualified persons are listed on the roster and apply for a license to operate an available vending facility, the commission shall issue the license to the person who is most in need of employment.

(d) The granting of a license does not vest the licensee with property or other rights which may constitute the basis of a cause of action, at law or in equity, against the state or its officers or employees.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.006. EXPIRATION, RENEWAL, AND REVOCATION OF LICENSES. (a) A license or general permit to operate a vending facility on state property is valid for a period of three years from the date it is issued.

(b) The commission shall review each license or permit prior to its expiration and shall issue a new or different license or permit as the circumstances warrant.

(c) The commission and the agency may consent mutually to revoke a general permit prior to its expiration if changed circumstances warrant that action.

(d) A blind person's wilful failure to comply with the commission's rules or the provisions of this chapter constitutes grounds for the automatic revocation of the person's license.

(e) The commission shall adopt substantive and procedural rules governing the revocation of licenses.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.007. OPERATION OF VENDING FACILITIES BY CERTAIN PERSONS WHO ARE NOT BLIND. If the commission determines that a blind person could not properly operate a vending facility at a particular location, the commission may survey the property to determine whether a person with a disability that is not of a visual nature could operate the facility in a proper manner.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.008. CLOSING CERTAIN FACILITIES PROHIBITED. Neither a vending facility operated by an individual with a disability, nor a vending facility location surveyed by the commission, may be closed as a result of the transfer of state property from one agency to another, the alteration of a state building, or the reorganization of a state agency unless the commission agrees to the closing.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.009. EMPLOYMENT OF ASSISTANTS. (a) If an individual licensed to operate a vending facility on state property requires an assistant, a qualified person with a disability of a visual nature

must be given preference for employment. If the commission determines that a person with a disability of a visual nature could not perform the labor for which an assistant is required, or if a person with a disability of a visual nature is not available, a person with a disability that is not of a visual nature must be given preference for employment.

(b) An assistant employed by a blind person licensed by the commission must be approved by the commission, and the deliberate refusal of a blind licensee to comply with this section constitutes grounds for the revocation of the person's license.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.010. COMPETING VENDING MACHINES. (a) If the commission and an agency agree to the installation and operation of an additional vending facility or vending machine on property that already has a commission-sponsored vending facility, no additional permit or license is required. However, the installation of a competing vending facility consisting of vending machines or other coin-operated devices must be authorized by the commission. The commission's authorization must be made with a view toward providing the greatest economic benefits for blind persons consonant with supplying the additional services required at the building.

(b) State agencies shall cooperate and negotiate in good faith to accomplish the purposes of this chapter.

(c) Individuals with disabilities who operate vending facilities on state property are entitled to receive all commissions from vending machines installed on the same property. If two or more vending facilities are operated by individuals with disabilities in a building in which vending machines are installed, the commission shall divide the commissions from the vending machines among the operators with disabilities in a manner that will achieve equity and equality in the incomes of those operators. If the commission has decided not to locate a vending facility in a building, the agency to whom a general permit has been issued shall determine the assignment of the commissions from vending machines installed in the building.

Transferred, redesignated and amended from Human Resources Code,

Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.011. VENDING FACILITY EQUIPMENT AND STOCK. (a) The commission may supply a blind vending facility operator with equipment and initial stock necessary for the operator to begin business.

(b) The commission shall collect and set aside from the proceeds of the operation of its vending facilities enough money:

(1) to insure a sufficient amount of initial stock for the facilities and for their proper maintenance;

(2) to pay the costs of supervision and other expenses incidental to the operation of the facilities; and

(3) to pay other program costs to the extent necessary to assure fair and equal treatment of the blind persons licensed to operate the facilities and to the extent allowed under federal programs that provide financial support to the commission.

(c) Except for purchasing and installing original equipment, the operation of commission-sponsored vending facilities must be as self-supporting and self-sustaining as possible. To achieve this end, the commission shall periodically review and, when necessary, revise its schedules for collecting and setting aside money from the proceeds of its vending facilities.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.012. DUTIES AND PRIVILEGES OF PARTIES. (a) The commission may promulgate rules and initiate procedures necessary to implement this chapter.

(b) A blind person licensed to operate a vending facility on state property shall operate the facility in accordance with law and the commission's rules and policies.

(c) The agency in charge of state property shall cooperate with the commission and its blind licensees to accomplish the purposes of this chapter. The agency shall also furnish all necessary utility service, including connections and outlets required for the

installation of the facility, janitorial and garbage disposal services where feasible, and other related assistance.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.013. TRAINING PROGRAMS. The commission may establish training or experimentation locations necessary to train blind persons who desire to be licensed to operate vending facilities and to develop techniques which will allow blind persons to operate the facilities or related types of small businesses more efficiently and productively.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.014. CONFORMITY WITH FEDERAL STATUTES. (a) This chapter shall be construed in a manner consistent with the requirements of federal programs that provide financial assistance to the commission.

(b) If a provision of this chapter conflicts with a federal program requirement, the commission may waive or modify the provision to the extent necessary to secure the full benefits of the federal program.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.015. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) property over which the federal government maintains partial or complete control;

(2) property maintained and operated by state-supported institutions of higher education; provided, however, that the commission may enter into agreements with state institutions of

higher education concerning the use of blind labor in vending facilities at the institutions; or

(3) property purchased by the state or an agency of the state, property to which title is transferred from one state agency to another, or property control of which is transferred from one state agency to another, if:

(A) at the time of purchase or transfer of title or control, a vending facility is being operated on the property under lease, license, or contract; and

(B) prior to the time of purchase or transfer of title or control, the provisions of this chapter were rendered inapplicable to such property by this section or other law.

(b) This chapter does not apply to vending facilities operated by an institution for persons with mental illness or intellectual disabilities that is under the control of the Department of State Health Services, the Department of Aging and Disability Services, or a successor to one of those departments, if the vending facilities are operated without profit for the benefit of the patients at the institution.

(c) This chapter does not prohibit the commission from selecting blind persons to operate other suitable types of vending facilities or business enterprises, and the chapter does not prohibit the installation of automated vending facilities serviced by blind persons.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.016. BUSINESS ENTERPRISES PROGRAM. (a) The commission is authorized to administer the Business Enterprises Program in accordance with the provisions of the Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.).

(b) The commission is authorized to administer a retirement program for individuals licensed to operate vending facilities in accordance with applicable state and federal laws.

(c) A trust fund for a retirement program for individuals licensed to operate vending facilities under the Business Enterprises Program is established with the comptroller. This trust fund will be

set up in the state treasury.

(d) All federal vending machine income shall be credited to this Business Enterprises Program trust fund. Vending machine income, as defined by 34 C.F.R. Section 395.1(z), means receipts (other than those of a blind vendor) from vending machine operations on federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs) in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(e) All expenditures authorized by the Randolph-Sheppard Act from federal vending revenue funds shall be paid from the Business Enterprises Program trust fund.

(f) The commission may contract with a professional management service to administer the Business Enterprises Program trust fund. In administering the trust fund, the professional management service may acquire, exchange, sell, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain under the circumstances, taking into consideration the investment of all the assets of the trust fund.

(g) With the approval of the comptroller, the commission may select a commercial bank, depository trust company, or other entity to serve as a custodian of the Business Enterprises Program trust fund's securities, and money realized from those securities, pending completion of an investment transaction. Money realized from those securities must be:

(1) reinvested not later than one business day after the date it is received; or

(2) deposited in the treasury not later than the fifth business day after the date it is received.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

TITLE 5. WORKERS' COMPENSATION
SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT
CHAPTER 401. GENERAL PROVISIONS
SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 401.001. SHORT TITLE. This subtitle may be cited as the Texas Workers' Compensation Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.003. ACTIVITIES OF THE STATE AUDITOR. (a) The division is subject to audit by the state auditor in accordance with Chapter 321, Government Code. The state auditor may audit:

(1) the structure and internal controls of the division;

(2) the level and quality of service provided by the division to employers, injured employees, insurance carriers, self-insured governmental entities, and other participants;

(3) the implementation of statutory mandates by the division;

(4) employee turnover;

(5) information management systems, including public access to nonconfidential information;

(6) the adoption and implementation of administrative rules by the commissioner; and

(7) assessment of administrative violations and the penalties for those violations.

(b) Nothing in this section limits the authority of the state auditor under Chapter 321, Government Code.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 7.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.002, eff. September 1, 2005.

SUBCHAPTER B. DEFINITIONS

Sec. 401.011. GENERAL DEFINITIONS. In this subtitle:

(1) "Adjuster" means a person licensed under Chapter 4101, Insurance Code.

(2) "Administrative violation" means a violation of this

subtitle, a rule adopted under this subtitle, or an order or decision of the commissioner that is subject to penalties and sanctions as provided by this subtitle.

(3) "Agreement" means the resolution by the parties to a dispute under this subtitle of one or more issues regarding an injury, death, coverage, compensability, or compensation. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States.

(5) "Benefit" means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury.

(5-a) "Case management" means a collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes.

(6) "Certified self-insurer" means a private employer granted a certificate of authority to self-insure, as authorized by this subtitle, for the payment of compensation.

(7) "Child" means a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee.

(8) "Commissioner" means the commissioner of workers' compensation.

(9) "Commute" means to pay in a lump sum.

(10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.

(11) "Compensation" means payment of a benefit.

(12) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of the transportation are under the

control of the employer; or

(iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

(12-a) "Credentialing" has the meaning assigned by Chapter 1305, Insurance Code.

(13) "Death benefit" means a payment made under this subtitle to a legal beneficiary because of the death of an employee.

(13-a) "Department" means the Texas Department of Insurance.

(14) "Dependent" means an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is eligible for distribution of benefits under Chapter 408.

(15) "Designated doctor" means a doctor appointed by mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.

(16) "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

(16-a) "Division" means the division of workers' compensation of the department.

(17) "Doctor" means a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) "Employer" means, unless otherwise specified, a person who makes a contract of hire, employs one or more employees, and has workers' compensation insurance coverage. The term includes a governmental entity that self-insures, either individually or collectively.

(18-a) "Evidence-based medicine" means the use of current best quality scientific and medical evidence formulated from credible

scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

(19) "Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy; and

(F) a medical or surgical supply, appliance, brace, artificial member, or prosthetic or orthotic device, including the fitting of, change or repair to, or training in the use of the appliance, brace, member, or device.

(20) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(21) "Health care practitioner" means:

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(22) "Health care provider" means a health care facility or health care practitioner.

(22-a) "Health care reasonably required" means health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with:

(A) evidence-based medicine; or

(B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

(23) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that

results from a compensable injury and is reasonably presumed to be permanent.

(24) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

(25) "Income benefit" means a payment made to an employee for a compensable injury. The term does not include a medical benefit, death benefit, or burial benefit.

(25-a) "Independent review organization" has the same meaning as in Section 1305.004(a)(11), Insurance Code.

(26) "Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

(27) "Insurance carrier" means:

(A) an insurance company;

(B) a certified self-insurer for workers' compensation insurance;

(C) a certified self-insurance group under Chapter 407A; or

(D) a governmental entity that self-insures, either individually or collectively.

(28) "Insurance company" means a person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(29) "Legal beneficiary" means a person entitled to receive a death benefit under this subtitle.

(30) "Maximum medical improvement" means the earlier of:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or

(C) the date determined as provided by Section 408.104.

(31) "Medical benefit" means payment for health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after

the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment.

(31-a) "Network" or "workers' compensation health care network" means an organization that is:

(A) formed as a health care provider network to provide health care services to injured employees;

(B) certified in accordance with Chapter 1305, Insurance Code, and rules of the commissioner of insurance; and

(C) established by, or operates under contract with, an insurance carrier.

(32) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests, or signs confirmable by physical examination.

(33) "Objective clinical or laboratory finding" means a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(34) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

(34-a) "Orthotic device" means a custom-fitted or custom-fabricated medical device that is applied to a part of the human body to correct a deformity, improve function, or relieve symptoms related to a compensable injury or occupational disease.

(35) "Penalty" means a fine established by this subtitle.

(35-a) "Prosthetic device" means an artificial device designed to replace, wholly or partly, an arm or leg.

(36) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(37) "Representative" means a person, including an attorney, authorized by the commissioner to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation.

(38) "Research center" means the research functions of the Texas Department of Insurance required under Chapter 405.

(38-a) "Retrospective review" means the utilization review process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(39) "Sanction" means a penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this subtitle or a rule, order, or decision of the commissioner.

(40) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this subtitle.

(41) "Subjective" means perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(42) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(42-a) "Utilization review" has the meaning assigned by Chapter 4201, Insurance Code.

(42-b) "Utilization review agent" has the meaning assigned by Chapter 4201, Insurance Code.

(42-c) "Violation" means an administrative violation subject to penalties and sanctions as provided by this subtitle.

(43) "Wages" includes all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.

(44) "Workers' compensation insurance coverage" means:

(A) an approved insurance policy to secure the payment of compensation;

(B) coverage to secure the payment of compensation through self-insurance as provided by this subtitle; or

(C) coverage provided by a governmental entity to

secure the payment of compensation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 275, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.003, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 133 (H.B. 1003), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 147 (S.B. 458), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 13, eff. September 1, 2009.

Sec. 401.012. DEFINITION OF EMPLOYEE. (a) In this subtitle, "employee" means each person in the service of another under a contract of hire, whether express or implied, or oral or written.

(b) The term "employee" includes:

(1) an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business;

(2) a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer; and

(3) a person who is a trainee under the Texans Work program established under Chapter 308.

(c) The term "employee" does not include:

(1) a master of or a seaman on a vessel engaged in interstate or foreign commerce; or

(2) a person whose employment is not in the usual course and scope of the employer's business.

(d) A person who is an employee for the purposes of this subtitle and engaged in work that otherwise may be legally performed is an employee despite:

(1) a license, permit, or certificate violation arising under state law or municipal ordinance; or

(2) a violation of a law regulating wages, hours, or work on Sunday.

(e) This section may not be construed to relieve from fine or imprisonment any individual, firm, or corporation employing or performing work or a service prohibited by a statute of this state or a municipal ordinance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 456, Sec. 6, eff. Sept. 1, 1997.

Sec. 401.013. DEFINITION OF INTOXICATION. (a) In this subtitle, "intoxication" means the state of:

(1) having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code; or

(2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code;

(C) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(D) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(E) any similar substance, the use of which is regulated under state law.

(b) The term "intoxication" does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance:

(1) taken under and in accordance with a prescription written for the employee by the employee's doctor; or

(2) listed under Subsection (a) by inhalation or absorption incidental to the employee's work.

(c) On the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B), based on a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and does not have the normal use of mental or physical

faculties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.48, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.004, eff. September 1, 2005.

Sec. 401.014. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this subtitle, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this subtitle made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 6, eff. September 1, 2015.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 401.021. APPLICATION OF OTHER ACTS. Except as otherwise provided by this subtitle:

(1) a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by the following subchapters and sections of Chapter 2001, Government Code:

(A) Subchapters A, B, D, E, G, and H, excluding Sections 2001.004(3) and 2001.005;

(B) Sections 2001.051, 2001.052, and 2001.053;

(C) Sections 2001.056 through 2001.062; and

(D) Section 2001.141(c);

(2) a proceeding, hearing, judicial review, or enforcement

of a commissioner order, decision, or rule is governed by Subchapters A and B, Chapter 2002, Government Code, excluding Sections 2002.001(3) and 2002.023;

(3) Chapter 551, Government Code, applies to a proceeding under this subtitle, other than:

(A) a benefit review conference;

(B) a contested case hearing;

(C) a proceeding of the appeals panel;

(D) arbitration; or

(E) another proceeding involving a determination on a workers' compensation claim; and

(4) Chapter 552, Government Code, applies to a workers' compensation record of the division, the department, or the office of injured employee counsel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.92, 5.95(82), (88), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.005, eff. September 1, 2005.

Sec. 401.022. DISCRIMINATION PROHIBITED. (a) This subtitle may not be applied to discriminate because of race, sex, national origin, or religion.

(b) This section does not prohibit consideration of an anatomical difference in application of the impairment guidelines under Chapter 408 in rating an injury or a disease such as, but not limited to, breast cancer or an inguinal hernia. If an impairment rating assigns different values to the same injury for males and females, the higher value shall be applied.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.023. INTEREST OR DISCOUNT RATE. (a) Interest or a discount under this subtitle shall be computed at the rate provided by this section.

(b) The division shall compute and publish the interest and discount rate quarterly, using the treasury constant maturity rate

for one-year treasury bills issued by the United States government, as published by the Federal Reserve Board on the 15th day preceding the first day of the calendar quarter for which the rate is to be effective, plus 3.5 percent. For this purpose, calendar quarters begin January 1, April 1, July 1, and October 1.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 2, eff. Oct. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 15.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.006, eff. September 1, 2005.

Sec. 401.024. TRANSMISSION OF INFORMATION. (a) In this section, "electronic transmission" means the transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method.

(b) Notwithstanding another provision of this subtitle that specifies the form, manner, or procedure for the transmission of specified information, the commissioner by rule may permit or require the use of an electronic transmission instead of the specified form, manner, or procedure. If the electronic transmission of information is not authorized or permitted by rule, the transmission of that information is governed by any applicable statute or rule that prescribes the form, manner, or procedure for the transmission, including standards adopted by the Department of Information Resources.

(c) The commissioner may designate and contract with one or more data collection agents to fulfill the data collection requirements of this subtitle. To qualify as a data collection agent, an organization must demonstrate at least five years of experience in data collection, data maintenance, data quality control, accounting, and related areas.

(d) The commissioner may prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability.

(e) A data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees

necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier.

(f) A reporting insurance carrier, other than a governmental entity, shall pay the fee to the data collection agent for the data collection services provided by the data collection agent.

(g) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 954, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.007, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 410 (S.B. 800), Sec. 1, eff. June 17, 2011.

Sec. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE DIRECTOR. (a) A reference in this code or other law to the Texas Workers' Compensation Commission or the executive director of that commission means the division or the commissioner as consistent with the respective duties of the commissioner and the division under this code and other workers' compensation laws of this state.

(b) A reference in this code or other law to the executive director of the Texas Workers' Compensation Commission means the commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.008, eff. September 1, 2005.

Sec. 401.026. APPLICABILITY TO CERTAIN EMERGENCY RESPONSE PERSONNEL. For purposes of this subtitle, the travel of a firefighter, peace officer, or emergency medical personnel en route to an emergency call is considered to be in the course and scope of the firefighter's, peace officer's, or emergency medical personnel's employment.

Added by Acts 2015, 84th Leg., R.S., Ch. 365 (H.B. 2771), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 852 (H.B. 3335), Sec. 1, eff.

June 13, 2023.

Sec. 401.027. APPLICABILITY TO CERTAIN MEMBERS OF TEXAS MILITARY FORCES. (a) In this section, "state active duty," "state training and other duty," and "Texas military forces" have the meanings assigned by Section 437.001, Government Code.

(b) For purposes of this subtitle, the travel of a member of the Texas military forces to or from the member's duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member's employment.

Added by Acts 2023, 88th Leg., R.S., Ch. 660 (H.B. 90), Sec. 7, eff. September 1, 2023.

CHAPTER 402. OPERATION AND ADMINISTRATION OF WORKERS' COMPENSATION SYSTEM

SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM; WORKERS' COMPENSATION DIVISION

Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF INSURANCE; WORKERS' COMPENSATION DIVISION. (a) Except as provided by Section 402.002, the Texas Department of Insurance is the state agency designated to oversee the workers' compensation system of this state.

(b) The division of workers' compensation is established as a division within the Texas Department of Insurance to administer and operate the workers' compensation system of this state as provided by this title.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.02, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.003, eff. September 1, 2005.

Sec. 402.00111. RELATIONSHIP BETWEEN COMMISSIONER OF INSURANCE AND COMMISSIONER OF WORKERS' COMPENSATION; SEPARATION OF AUTHORITY; RULEMAKING. (a) The division is administered by the commissioner of

workers' compensation as provided by this subchapter. Except as otherwise provided by this title, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under this title.

(b) The commissioner of insurance may delegate to the commissioner of workers' compensation or to that person's designee and may redact any delegation, and the commissioner of workers' compensation may delegate to the commissioner of insurance or to that person's designee, any power or duty regarding workers' compensation imposed on the commissioner of insurance or the commissioner of workers' compensation under this title, including the authority to make final orders or decisions. A delegation made under this subsection must be made in writing.

(c) The commissioner of insurance shall develop and implement policies that clearly separate the respective responsibilities of the department and the division.

(d) The commissioner of insurance may provide advice, research, and comment regarding the adoption of rules by the commissioner of workers' compensation under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00112. INVESTIGATION OF DIVISION. The department shall investigate the conduct of the work of the division. For that purpose, the department shall have access at any time to all division books and records and may require an officer or employee of the division to furnish written or oral information.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00113. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT. (a) The division of workers' compensation is administratively attached to the department.

(b) The department shall provide the staff and facilities necessary to enable the division to perform the duties of the division under this title, including:

(1) administrative assistance and services to the division,

including budget planning and purchasing;

(2) personnel and financial services; and

(3) computer equipment and support.

(c) The commissioner of workers' compensation and the commissioner of insurance may enter into agreements as necessary to implement this title.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00114. DUTIES OF DIVISION; SINGLE POINT OF CONTACT. (a) In addition to other duties required under this title, the division shall:

(1) regulate and administer the business of workers' compensation in this state; and

(2) ensure that this title and other laws regarding workers' compensation are executed.

(b) To the extent determined feasible by the commissioner, the division shall establish a single point of contact for injured employees receiving services from the division.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00115. COMPOSITION OF DIVISION. The division is composed of the commissioner of workers' compensation and other officers and employees as required to efficiently implement:

(1) this title;

(2) other workers' compensation laws of this state; and

(3) other laws granting jurisdiction or applicable to the division or the commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00116. CHIEF EXECUTIVE. (a) The commissioner of workers' compensation is the division's chief executive and administrative officer. The commissioner shall administer and

enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner. Except as otherwise specifically provided by this title, a reference in this title to the "commissioner" means the commissioner of workers' compensation.

(b) The commissioner has the powers and duties vested in the division by this title and other workers' compensation laws of this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00117. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the commissioner. The commissioner serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the commissioner without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00118. QUALIFICATIONS. The commissioner must:

(1) be a competent and experienced administrator;

(2) be well-informed and qualified in the field of workers' compensation; and

(3) have at least five years of experience as an executive in the administration of business or government or as a practicing attorney, physician, or certified public accountant.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00119. INELIGIBILITY FOR PUBLIC OFFICE. The commissioner is ineligible to be a candidate for a public elective office in this state unless the commissioner has resigned and the governor has accepted the resignation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00120. COMPENSATION. The commissioner is entitled to compensation as provided by the General Appropriations Act.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00121. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office that the commissioner:

(1) does not have at the time of appointment the qualifications required by Section 402.00118;

(2) does not maintain during service as commissioner the qualifications required by Section 402.00118;

(3) violates a prohibition established by Section 402.00122, 402.00124, 402.00125, or 402.00126; or

(4) cannot because of illness or incapacity discharge the commissioner's duties for a substantial part of the commissioner's term.

(b) The validity of an action of the commissioner or the division is not affected by the fact that it is taken when a ground for removal of the commissioner exists.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00122. PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION. (a) The commissioner or an employee of the division may not accept a gift, a gratuity, or entertainment from a person having an interest in a matter or proceeding pending before the division.

(b) A violation of Subsection (a) is an administrative violation and constitutes a ground for removal from office or termination of employment.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00123. CIVIL LIABILITY OF COMMISSIONER. The commissioner is not liable in a civil action for an act performed in good faith in the execution of duties as commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00124. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be the commissioner and may not be a division employee employed in a "bona fide executive, administrative, or professional capacity" as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of workers' compensation; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00125. PROHIBITION ON CERTAIN EMPLOYMENT OR REPRESENTATION. (a) A former commissioner or former employee of the division involved in hearing cases under this title may not:

(1) be employed by an insurance carrier that was subject to the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the division; or

(2) represent a person before the division or a court in a matter:

(A) in which the commissioner or employee was personally involved while associated with the division; or

(B) that was within the commissioner's or employee's official responsibilities while the commissioner or employee was associated with the division.

(b) The prohibition under Subsection (a)(1) applies until the:

(1) second anniversary of the date the commissioner ceases to serve as the commissioner; and

(2) first anniversary of the date the employee's employment with the division ceases.

(c) The prohibition under Subsection (a)(2) applies to a current commissioner or employee of the division while the commissioner or employee is involved in hearing cases under this title and at any time thereafter.

(d) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00126. LOBBYING ACTIVITIES. A person may not serve as commissioner or act as general counsel to the commissioner if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the division.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00127. TRAINING PROGRAM FOR COMMISSIONER. (a) Not later than the 90th day after the date on which the commissioner takes office, the commissioner shall complete a training program that complies with this section.

(b) The training program must provide the commissioner with information regarding:

(1) the legislation that created the division;

(2) the programs operated by the division;

(3) the role and functions of the division;

(4) the rules of the commissioner of insurance relating to the division, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the division;

(6) the results of the most recent formal audit of the division;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the division or the Texas Ethics Commission.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00128. GENERAL POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall conduct the daily operations of the division and otherwise implement division policy.

(b) The commissioner or the commissioner's designee may:

(1) investigate misconduct;

(2) hold hearings;

(3) issue subpoenas to compel the attendance of witnesses and the production of documents;

(4) administer oaths;

(5) take testimony directly or by deposition or interrogatory;

(6) assess and enforce penalties established under this title;

(7) enter appropriate orders as authorized by this title;

(8) institute an action in the division's name to enjoin the violation of this title;

(9) initiate an action under Section 410.254 to intervene in a judicial proceeding;

(10) prescribe the form, manner, and procedure for the transmission of information to the division;

(11) correct clerical errors in the entry of orders; and

(12) exercise other powers and perform other duties as necessary to implement and enforce this title.

(c) The commissioner is the agent for service of process on out-of-state employers.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.002. ADMINISTRATION OF SYSTEM: OFFICE OF INJURED EMPLOYEE COUNSEL. The office of injured employee counsel established under Chapter 404 shall perform the functions regarding the provision of workers' compensation benefits in this state designated by this subtitle as under the authority of that office.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 47.01, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.005, eff. September 1, 2005.

SUBCHAPTER B. SYSTEM GOALS; GENERAL ADMINISTRATION OF SYSTEM

Sec. 402.021. GOALS; LEGISLATIVE INTENT; GENERAL WORKERS' COMPENSATION MISSION OF DEPARTMENT. (a) The basic goals of the workers' compensation system of this state are as follows:

(1) each employee shall be treated with dignity and respect when injured on the job;

(2) each injured employee shall have access to a fair and accessible dispute resolution process;

(3) each injured employee shall have access to prompt, high-quality medical care within the framework established by this subtitle; and

(4) each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider.

(b) It is the intent of the legislature that, in implementing the goals described by Subsection (a), the workers' compensation system of this state must:

(1) promote safe and healthy workplaces through appropriate

incentives, education, and other actions;

(2) encourage the safe and timely return of injured employees to productive roles in the workplace;

(3) provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective;

(4) provide timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity;

(5) minimize the likelihood of disputes and resolve them promptly and fairly when identified;

(6) promote compliance with this subtitle and rules adopted under this subtitle through performance-based incentives;

(7) promptly detect and appropriately address acts or practices of noncompliance with this subtitle and rules adopted under this subtitle;

(8) effectively educate and clearly inform each person who participates in the system as a claimant, employer, insurance carrier, health care provider, or other participant of the person's rights and responsibilities under the system and how to appropriately interact within the system; and

(9) take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

(c) This section may not be construed as:

(1) creating a cause of action; or

(2) establishing an entitlement to benefits to which a claimant is not otherwise entitled by this subtitle.

(d) As provided by this subtitle, the division shall work to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 7, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.0065, eff. September 1, 2005.

Sec. 402.0215. REFERENCE TO COMMISSION DIVISIONS. A reference in this title or any other law to the division of workers' health and

safety, the division of medical review, the division of compliance and practices, the division of hearings, and the division of self-insurance regulation of the former Texas Workers' Compensation Commission means the division of workers' compensation of the Texas Department of Insurance.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.001, eff. September 1, 2005.

Sec. 402.022. PUBLIC INTEREST INFORMATION. (a) The commissioner shall prepare information of public interest describing the functions of the division and the procedures by which complaints are filed with and resolved by the division.

(b) The commissioner shall make the information available to the public and appropriate state agencies.

(c) The commissioner by rule shall ensure that each division form, standard letter, and brochure under this subtitle:

(1) is written in plain language;

(2) is in a readable and understandable format; and

(3) complies with all applicable requirements relating to minimum readability requirements.

(d) The division shall make informational materials described by this section available in English and Spanish.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.002, eff. September 1, 2005.

Sec. 402.023. COMPLAINT INFORMATION. (a) The commissioner shall:

(1) adopt rules regarding the filing of a complaint under this subtitle against an individual or entity subject to regulation under this subtitle; and

(2) ensure that information regarding the complaint process is available on the division's Internet website.

(b) The rules adopted under this section must, at a minimum:

(1) ensure that the division clearly defines in rule the method for filing a complaint; and

(2) define what constitutes a frivolous complaint under this subtitle.

(c) The division shall develop and post on the division's Internet website:

(1) a simple standardized form for filing complaints under this subtitle; and

(2) information regarding the complaint filing process.

(c-1) The division shall adopt a policy outlining the division's complaint process from receipt of the initial complaint to the complaint's disposition.

(d) The division shall keep an information file about each written complaint filed with the division under this subtitle that is unrelated to a specific workers' compensation claim, including a complaint regarding the administration of the workers' compensation system. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the division took no action, an explanation of the reason the complaint was closed without action.

(e) For each written complaint that is unrelated to a specific workers' compensation claim that the division has authority to resolve, the division shall provide to the person filing the complaint and the person about whom the complaint is made information about the division's policies and procedures under this subtitle relating to complaint investigation and resolution. The division, at least quarterly and until final disposition of the complaint, shall notify those persons about the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.08, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.003, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 6, eff.

September 1, 2011.

Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS. (a) The division shall develop procedures to formally document and analyze complaints received by the division.

(b) The division shall compile detailed statistics on all complaints received and analyze complaint information trends, including:

(1) the number of complaints;

(2) the source of each complaint;

(3) the types of complaints;

(4) the length of time from the receipt of the complaint to its disposition; and

(5) the disposition of complaints.

(c) The division shall further analyze the information compiled under Subsection (b) by field office and by program.

(d) The division shall report the information compiled and analyzed under Subsections (b) and (c) to the commissioner at regular intervals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 7, eff. September 1, 2011.

Sec. 402.0235. PRIORITIES FOR COMPLAINT INVESTIGATIONS. (a) The division shall assign priorities to complaint investigations under this subtitle based on risk. In developing priorities under this section, the division shall develop a formal, risk-based complaint investigation system that considers:

(1) the severity of the alleged violation;

(2) whether the alleged violator showed continued or wilful noncompliance; and

(3) whether a commissioner order has been violated.

(b) The commissioner may develop additional risk-based criteria as determined necessary.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.003, eff. September 1, 2005.

Sec. 402.024. PUBLIC PARTICIPATION. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the division and to speak on issues under the general jurisdiction of the division.

(b) The division shall comply with federal and state laws related to program and facility accessibility.

(c) In addition to compliance with Subsection (a), the commissioner shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the division's programs and services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.09, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.004, eff. September 1, 2005.

SUBCHAPTER C. PERSONNEL

Sec. 402.041. APPOINTMENTS. (a) Subject to the General Appropriations Act or other law, the commissioner shall appoint deputies, assistants, and other personnel as necessary to carry out the powers and duties of the commissioner and the division under this title, other workers' compensation laws of this state, and other laws granting jurisdiction or applicable to the division or the commissioner.

(b) A person appointed under this section must have the professional, administrative, and workers' compensation experience necessary to qualify the person for the position to which the person is appointed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.10, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.042. DIVISION OF RESPONSIBILITIES. The commissioner shall develop and implement policies that clearly define the respective responsibilities of the commissioner and the staff of the

division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.043. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the division. The program shall require intra-agency postings of all positions concurrently with any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for division employees must be based on the system established under this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.044. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21;

(2) a comprehensive analysis of the division work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the division work force of all persons for

whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under this section must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the civil rights division of the Texas Workforce Commission for compliance with Subsection (a)(1); and

(4) be filed with the Texas Workforce Commission.

(c) The Texas Workforce Commission shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.11, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DIVISION AND COMMISSIONER

Sec. 402.061. ADOPTION OF RULES. The commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.006, eff. September 1, 2005.

Sec. 402.062. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS. (a) The division may accept gifts, grants, or donations as provided by rules adopted by the commissioner.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(15), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 4, eff. Sept. 1, 1999; Acts

2001, 77th Leg., ch. 1195, Sec. 2.08, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.007, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(15), eff. September 1, 2005.

Sec. 402.064. FEES. In addition to fees established by this subtitle, the commissioner shall set reasonable fees for services provided to persons requesting services from the division, including services provided under Subchapter E.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.008, eff. September 1, 2005.

Sec. 402.065. EMPLOYMENT OF COUNSEL. Notwithstanding Article 1.09-1, Insurance Code, or any other law, the commissioner may employ counsel to represent the division in any legal action the division is authorized to initiate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.009, eff. September 1, 2005.

Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. (a) The commissioner shall consider and recommend to the legislature changes to this subtitle.
(b) The commissioner shall forward the recommended changes to the legislature not later than December 1 of each even-numbered year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.010, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 1, eff.

June 9, 2017.

Sec. 402.0665. LEGISLATIVE OVERSIGHT. The legislature may adopt requirements relating to legislative oversight of the division and the workers' compensation system of this state. The division shall comply with any requirements adopted by the legislature under this section.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.13, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.011, eff. September 1, 2005.

Sec. 402.067. ADVISORY COMMITTEES. The commissioner may appoint advisory committees as the commissioner considers necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.012, eff. September 1, 2005.

Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES. Except as expressly provided by this subtitle, the division may not delegate rights and duties imposed on it by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.14, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.013, eff. September 1, 2005.

Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commissioner or the commissioner's designee shall provide to division employees, as often as necessary, information regarding their:

(1) qualifications for office or employment under this

subtitle; and

(2) responsibilities under applicable law relating to standards of conduct for state officers or employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.15, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.014, eff. September 1, 2005.

Sec. 402.071. REPRESENTATIVES. (a) The commissioner shall establish qualifications for a representative and shall adopt rules establishing procedures for authorization of representatives.

(b) A representative may receive a fee for providing representation under this subtitle only if the representative is:

(1) an adjuster representing an insurance carrier; or

(2) licensed to practice law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.015, eff. September 1, 2005.

Sec. 402.073. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding governing administrative procedure law hearings under this subtitle conducted by the State Office of Administrative Hearings in the manner provided for a contested case hearing under Chapter 2001, Government Code. The memorandum of understanding must address the payment of costs by parties to a medical fee dispute under Section 413.0312.

(b) In a case in which a hearing is conducted by the State Office of Administrative Hearings under Section 413.031 or 413.055, the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall enter the final decision in the case after completion of the hearing.

(c) In a case in which a hearing is conducted in conjunction with Section 402.072, 407.046, 408.023, or 415.034, and in other

cases under this subtitle that are not subject to Subsection (b), the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall propose a decision to the commissioner for final consideration and decision by the commissioner.

(d) The notice of the commissioner's order must include a statement of the right of the person to judicial review of the order.

(e) In issuing an order under this section, the commissioner shall comply with the requirements applicable to a state agency under Section 2001.058, Government Code.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.17, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.017, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 8, eff. September 1, 2011.

Sec. 402.075. INCENTIVES; PERFORMANCE-BASED OVERSIGHT. (a) The commissioner by rule shall adopt requirements that:

(1) provide incentives for overall compliance in the workers' compensation system of this state; and

(2) emphasize performance-based oversight linked to regulatory outcomes.

(b) The commissioner shall develop key regulatory goals to be used in assessing the performance of insurance carriers and health care providers. The goals adopted under this subsection must align with the general regulatory goals of the division under this subtitle, such as improving workplace safety and return-to-work outcomes, in addition to goals that support timely payment of benefits and increased communication.

(c) At least biennially, the division shall assess the performance of insurance carriers and health care providers in meeting the key regulatory goals. The division shall examine overall compliance records and dispute resolution and complaint resolution

practices to identify insurance carriers and health care providers who adversely impact the workers' compensation system and who may require enhanced regulatory oversight. The division shall conduct the assessment through analysis of data maintained by the division and through self-reporting by insurance carriers and health care providers.

(d) Based on the performance assessment, the division shall develop regulatory tiers that distinguish among insurance carriers and health care providers who are poor performers, who generally are average performers, and who are consistently high performers. The division shall focus its regulatory oversight on insurance carriers and health care providers identified as poor performers.

(e) The commissioner by rule shall develop incentives within each tier under Subsection (d) that promote greater overall compliance and performance. The regulatory incentives may include modified penalties, self-audits, or flexibility based on performance.

(f) The division shall:

(1) ensure that high-performing entities are publicly recognized; and

(2) allow those entities to use that designation as a marketing tool.

(g) In conjunction with the division's accident prevention services under Subchapter E, Chapter 411, the division shall conduct audits of accident prevention services offered by insurance carriers based on the comprehensive risk assessment. The division shall periodically review those services, but may provide incentives for less regulation of carriers based on performance.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.076. GENERAL DUTIES; FUNDING. (a) The division shall perform the workforce education and safety functions of the workers' compensation system of this state.

(b) The operations of the division under this section are funded through the maintenance tax assessed under Section 403.002.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.077. EDUCATIONAL PROGRAMS. (a) The division shall provide education on best practices for return-to-work programs and workplace safety.

(b) The division shall evaluate and develop the most efficient, cost-effective procedures for implementing this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.078. REGIONAL OFFICES. The department shall operate regional offices throughout this state as necessary to implement the duties of the division and the department under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

SUBCHAPTER E. RECORDS AND EMPLOYEE INFORMATION

Sec. 402.081. DIVISION RECORDS. (a) The commissioner is the custodian of the division's records and shall perform the duties of a custodian required by law, including providing copies and the certification of records.

(b) The division shall comply with records retention schedules as provided by Chapter 441.185, Government Code.

(c) A record maintained by the division may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library and Archives Commission under that chapter.

(d) The division may charge a reasonable fee for making available for inspection any of its information that contains confidential information that must be redacted before the information is made available. However, when a request for information is for the inspection of 10 or fewer pages, and a copy of the information is not requested, the division may charge only the cost of making a copy of the page from which confidential information must be redacted. The fee for access to information under Chapter 552, Government Code, shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1270, Sec. 1 eff. June 20, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.019, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 329 (S.B. 727), Sec. 13, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. 452), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 10.003, eff. September 1, 2007.

Sec. 402.082. INJURY INFORMATION MAINTAINED BY DIVISION. (a) The division shall maintain information on every compensable injury as to the:

(1) race, ethnicity, and sex of the claimant;

(2) classification of the injury;

(3) identification of whether the claimant is receiving medical care through a workers' compensation health care network certified under Chapter 1305, Insurance Code;

(4) amount of wages earned by the claimant before the injury; and

(5) amount of compensation received by the claimant.

(b) On request from the office of injured employee counsel, the division shall provide to the office the identity, claim number, and contact information of claimants receiving assistance from the office.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.020, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 5, eff. September 1, 2011.

Sec. 402.083. CONFIDENTIALITY OF INJURY INFORMATION. (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division except as

provided by this subtitle or other law.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 is not confidential.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.42, 14.49, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.021, eff. September 1, 2005.

Sec. 402.084. RECORD CHECK; RELEASE OF INFORMATION. (a) The division shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division;

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the division for this purpose and provides all required information.

(b) Information on a claim may be released as provided by Subsection (a) to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association established under Subchapter G, Chapter 407, if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company;

(7) a third-party litigant in a lawsuit in which the cause

of action arises from the incident that gave rise to the injury; or

(8) with regard to information described by Subsection (c-3), an insurance carrier that has adopted an antifraud plan under Subchapter B, Chapter 704, Insurance Code, or the authorized representative of such an insurance carrier.

(c) The requirements of Subsection (a)(1) do not apply to a request from a third-party litigant described by Subsection (b)(7).

(c-1) For purposes of this section only, "insurance carrier" means:

(1) a certified self-insurer; or

(2) an entity authorized under the Insurance Code or another insurance law of this state that provides health insurance coverage or health benefits in this state, including:

(A) an insurance company, including an insurance company that holds a certificate of authority issued by the commissioner of insurance to engage in the business of workers' compensation insurance in this state;

(B) a group hospital service corporation under Chapter 842, Insurance Code;

(C) a health maintenance organization under Chapter 843, Insurance Code;

(D) a stipulated premium company under Chapter 884, Insurance Code;

(E) a fully self-insured plan, as described by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(F) a governmental plan, as defined by Section 3(32), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(32));

(G) an employee welfare benefit plan, as defined by Section 3(1), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)); and

(H) an insurer authorized by the Texas Department of Insurance to offer disability insurance in this state.

(c-2) An insurance carrier is not required to demonstrate that a subclaim exists in order to obtain information under Subsection (b)(8).

(c-3) An insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may submit to the commission on a monthly basis a written request for claims

information. The request must contain a list of the names of persons about whom claims information is requested. The insurance carrier must certify in the carrier's request that each person listed is, or has been, an insured under the carrier's insurance program. The commission shall examine the commission's records to identify all claims related to the listed persons. If a claims record exists for a listed person, the commission promptly shall provide information on each workers' compensation claim filed by that person to the carrier or the carrier's representative in an electronic format. The information provided under this subsection must include, if available:

(1) the full name of the workers' compensation claimant;

(2) the social security number of the workers' compensation claimant;

(3) the date of birth of the workers' compensation claimant;

(4) the name of the employer of the workers' compensation claimant;

(5) the date of the injury;

(6) a description of the type of injury or the body part affected, including the workers' compensation claimant's description of how the injury occurred;

(7) the name of the treating doctor;

(8) the name, address, and claim number of the insurance carrier handling the claim;

(9) the name of the insurance adjustor handling the claim; and

(10) the identifying number assigned to the claim by the commission and the commission field office handling the claim.

(c-4) A potential subclaim identified by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may form the basis for the identification and filing of a subclaim against an insurance carrier under this subtitle.

(c-5) Information received under this section by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier remains subject to confidentiality requirements of this subtitle while in the possession of the insurance carrier or representative. However, the following laws do not prohibit the commission from disclosing full information

regarding a claim as necessary to determine if a valid subclaim exists:

(1) Chapter 552, Government Code;

(2) Chapter 159, Occupations Code; or

(3) any other analogous law restricting disclosure of health care information.

(c-6) The commission may not redact claims records produced in an electronic data format under a request made under this section.

(c-7) An insurance carrier and its authorized representative may request full claims data under Subsection (b)(8), and the records shall be produced once each month. For purposes of this subsection, "full claims data" means an electronic download or tape in an electronic data format of the information listed in Subsection (c-3) on all cases relating to the workers' compensation claimants listed as insureds of the requesting insurance carrier.

(d) The commissioner by rule may establish a reasonable fee, not to exceed five cents for each claimant listed in an information request, for all information requested by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier in an electronic data format. The commissioner shall adopt rules under Section 401.024(d) to establish:

(1) reasonable security parameters for all transfers of information requested under this section in electronic data format; and

(2) requirements regarding the maintenance of electronic data in the possession of an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier.

(e) The insurance carrier or the carrier's authorized representative must execute a written agreement with the commission before submitting the carrier's first request under Subsection (c-3). The agreement must contain a provision by which the carrier and the representative agree to comply with the commission's rules governing security parameters applicable to the transfer of information under Subsection (d)(1) and the maintenance of electronic data under Subsection (d)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1033, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.022, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.132, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1190 (H.B. 251), Sec. 1, eff. June 18, 2005.

Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The division shall release information on a claim to:

(1) the Texas Department of Insurance for any statutory or regulatory purpose, including a research purpose under Chapter 405;

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.084(b), if the request for assistance is provided to the division;

(4) the attorney general or another entity that provides child support services under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), relating to:

(A) establishing, modifying, or enforcing a child support, medical support, or dental support obligation; or

(B) locating an absent parent; or

(5) the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office as provided by Section 404.111(a).

(b) The division may release information on a claim to a governmental agency, political subdivision, or regulatory body to use to:

(1) investigate an allegation of a criminal offense or licensing or regulatory violation;

(2) provide:

(A) unemployment compensation benefits;

(B) crime victims compensation benefits;

(C) vocational rehabilitation services; or

(D) health care benefits;

(3) investigate occupational safety or health violations;

(4) verify income on an application for benefits under an income-based state or federal assistance program; or

(5) assess financial resources in an action, including an

administrative action, to:

(A) establish, modify, or enforce a child support, medical support, or dental support obligation;

(B) establish paternity;

(C) locate an absent parent; or

(D) cooperate with another state in an action authorized under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), or Chapter 231, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.43(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.023, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 71, eff. September 1, 2018.

Sec. 402.086. TRANSFER OF CONFIDENTIALITY. (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

(b) This section does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment, if that information was lawfully acquired by the employer releasing the information.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 402.087. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) A prospective employer who has workers' compensation insurance coverage and who complies with this subchapter is entitled to obtain information on the prior injuries of an applicant for employment if the employer obtains written authorization from the applicant before making the request.

(b) The employer must make the request by telephone or file the request in writing not later than the 14th day after the date on

which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) If the request is made in writing, the authorization must be filed simultaneously. If the request is made by telephone, the employer must file the authorization not later than the 10th day after the date on which the request is made.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 402.088. REPORT OF PRIOR INJURY. (a) On receipt of a valid request made under and complying with Section 402.087, the division shall review its records.

(b) If the division finds that the applicant has made two or more general injury claims in the preceding five years, the division shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) If the employer requests information on three or more applicants at the same time, the division may refuse to release information until it receives the written authorization from each applicant.

(e) In this section, "general injury" means an injury other than an injury limited to one or more of the following:

(1) an injury to a digit, limb, or member;

(2) an inguinal hernia; or

(3) vision or hearing loss.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.024, eff. September 1, 2005.

Sec. 402.089. FAILURE TO FILE AUTHORIZATION. An employer who receives information by telephone from the division under Section 402.088 and who fails to file the necessary authorization in accordance with Section 402.087 commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.025, eff. September 1, 2005.

Sec. 402.090. STATISTICAL INFORMATION. The division, the Texas Department of Insurance, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.026, eff. September 1, 2005.

Sec. 402.091. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE; PENALTY. (a) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this subchapter to a person not authorized to receive the information directly from the division.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this subchapter and that the person is not authorized to receive.

(c) An offense under this section is a Class A misdemeanor.

(d) An offense under this section may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed.

(e) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.18, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.027, eff. September 1, 2005.

Sec. 402.092. INVESTIGATION FILES CONFIDENTIAL; DISCLOSURE OF

CERTAIN INFORMATION. (a) In this section, "investigation file" means any information compiled or maintained by the division with respect to a division investigation authorized under this subtitle or other workers' compensation law. The term does not include information or material acquired by the division that is relevant to an investigation by the insurance fraud unit and subject to Section 701.151, Insurance Code.

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except:

(1) in a criminal proceeding;

(2) in a hearing conducted by the division;

(3) on a judicial determination of good cause;

(4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States; or

(5) to an insurance carrier if the investigation file relates directly to a felony regarding workers' compensation or to a claim in which restitution is required to be paid to the insurance carrier.

(c) Division investigation files are not open records for purposes of Chapter 552, Government Code.

(d) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

(e) The division, upon request, shall disclose the identity of a complainant under this section if the division finds:

(1) the complaint was groundless or made in bad faith;

(2) the complaint lacks any basis in fact or evidence;

(3) the complaint is frivolous; or

(4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation in which the division determines a complaint is described by Subsection (e), the division shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.19, eff. Sept. 1, 1995.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.028, eff. September 1, 2005.

SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL

Sec. 402.251. COOPERATION; FACILITIES. (a) The department and the division shall cooperate with the office of injured employee counsel in providing services to claimants under this subtitle.

(b) The department shall provide facilities to the office of injured employee counsel in each regional office operated to administer the duties of the division under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.029, eff. September 1, 2005.

CHAPTER 403. DIVISION FINANCING

Sec. 403.001. FUNDS. (a) Except as provided by Sections 403.006, 403.007, and 403.008, or as otherwise provided by law, money collected under this subtitle, including advance deposits for purchase of services, shall be deposited in the general revenue fund of the state treasury to the credit of the Texas Department of Insurance operating account.

(b) The money may be spent as authorized by legislative appropriation on warrants issued by the comptroller under requisitions made by the commissioner of insurance.

(c) Money deposited in the general revenue fund under this section may be used to satisfy the requirements of Section 201.052, Insurance Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.44(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.010, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 9, eff. September 1, 2011.

Sec. 403.002. MAINTENANCE TAXES. (a) Each insurance carrier,

other than a governmental entity, shall pay an annual maintenance tax to pay the costs of administering this subtitle and to support the prosecution of workers' compensation insurance fraud in this state.

(b) The assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Article 5.55C, Insurance Code. The rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

(c) A workers' compensation insurance company is taxed at the rate established under Section 403.003. The tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Chapter 255, Insurance Code.

(d) Each certified self-insurer shall pay a fee and maintenance taxes as provided by Subchapter F, Chapter 407.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1274, Sec. 21, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.134, eff. September 1, 2005.

Sec. 403.003. RATE OF ASSESSMENT. (a) The commissioner of insurance shall set and certify to the comptroller the rate of maintenance tax assessment taking into account:

(1) any expenditure projected as necessary for the division and the office of injured employee counsel to:

(A) administer this subtitle during the fiscal year for which the rate of assessment is set; and

(B) reimburse the general revenue fund as provided by Section 201.052, Insurance Code;

(2) projected employee benefits paid from general revenues;

(3) a surplus or deficit produced by the tax in the preceding year;

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties

recovered under this subtitle; and

(5) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud.

(b) In setting the rate of assessment, the commissioner of insurance may not consider revenue or expenditures related to:

(1) the State Office of Risk Management;

(2) the workers' compensation research functions of the department under Chapter 405; or

(3) any other revenue or expenditure excluded from consideration by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.45(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1098, Sec. 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1443, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.011, eff. September 1, 2005.

Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM BUSINESS. The commissioner or the commissioner of insurance immediately shall proceed to collect taxes due under this chapter from an insurance carrier that withdraws from business in this state, using legal process as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.012, eff. September 1, 2005.

Sec. 403.005. TAX RATE. The commissioner of insurance shall annually adjust the rate of assessment of the maintenance tax imposed under Section 403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner of insurance determines is necessary to pay the expenses of administering this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.013, eff. September 1, 2005.

Sec. 403.006. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is a dedicated account in the general revenue fund. Money in the account may be appropriated only for the purposes of this section or as provided by other law. Section 403.095, Government Code, does not apply to the subsequent injury fund.

(b) The subsequent injury fund is liable for:

(1) the payment of compensation as provided by Section 408.162;

(2) reimbursement of insurance carrier claims of overpayment of benefits made under an interlocutory order or decision of the commissioner as provided by this subtitle, consistent with the priorities established by rule by the commissioner;

(3) reimbursement of insurance carrier claims as provided by Sections 408.042 and 413.0141, consistent with the priorities established by rule by the commissioner; and

(4) the reimbursement of an insurance carrier as provided by Section 408.0041(f-1).

(c) The commissioner shall appoint an administrator for the subsequent injury fund.

(d) Based on an actuarial assessment of the funding available under Section 403.007(e), the commissioner may make partial payment of insurance carrier claims under Subsection (b)(3).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.01, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 211, Sec. 2.01, eff. June 16, 2003; Acts 2003, 78th Leg., ch. 1296, Sec. 5(a), eff. June 20, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.014, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 3, eff. September 1, 2007.

Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a compensable death occurs and no legal beneficiary survives or a claim

for death benefits is not timely made, the insurance carrier shall pay to the division for deposit to the credit of the subsequent injury fund an amount equal to 364 weeks of the death benefits otherwise payable.

(b) The insurance carrier may elect or the commissioner may order that death benefits payable to the fund be commuted on written approval of the commissioner. The commutation may be discounted for present payment at the rate established in Section 401.023, compounded annually.

(c) If a claim for death benefits is not filed with the division by a legal beneficiary on or before the first anniversary of the date of the death of the employee, it is presumed, for purposes of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom a guardian has not been appointed.

(d) If the insurance carrier makes payment to the subsequent injury fund and it is later determined by a final award of the commissioner or the final judgment of a court of competent jurisdiction that a legal beneficiary is entitled to the death benefits, the commissioner shall order the fund to reimburse the insurance carrier for the amount overpaid to the fund.

(e) If the commissioner determines that the funding under Subsection (a) is not adequate to meet the expected obligations of the subsequent injury fund established under Section 403.006, the fund shall be supplemented by the collection of a maintenance tax paid by insurance carriers, other than a governmental entity, as provided by Sections 403.002 and 403.003. The rate of assessment must be adequate to provide 120 percent of the projected unfunded liabilities of the fund for the next biennium as certified by an independent actuary or financial advisor.

(f) The commissioner's actuary or financial advisor shall report biannually to the department on the financial condition and projected assets and liabilities of the subsequent injury fund. The commissioner shall make the reports available to members of the legislature and the public. The division may purchase annuities to provide for payments due to claimants under this subtitle if the commissioner determines that the purchase of annuities is financially prudent for the administration of the fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.02, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.015, eff. September 1, 2005.

Sec. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES. Administrative penalties collected under this subtitle shall be deposited in the general revenue fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 10, eff. September 1, 2011.

CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

Sec. 404.001. DEFINITIONS. In this chapter:

(1) "Office" means the office of injured employee counsel.

(2) "Public counsel" means the injured employee public counsel.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION. (a) The office of injured employee counsel is established to represent the interests of workers' compensation claimants in this state.

(b) The office is administratively attached to the department but is independent of direction by the commissioner, the commissioner of insurance, and the department.

(c) The department shall provide the staff and facilities necessary to enable the office to perform the duties of the office under this subtitle, including:

(1) administrative assistance and services to the office, including budget planning and purchasing;

(2) personnel services; and

(3) computer equipment and support.

(d) The public counsel may enter into interagency contracts and

other agreements with the commissioner of workers' compensation and the commissioner of insurance as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.003. SUNSET PROVISION. The office of injured employee counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2029.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.10, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 4.03, eff. June 14, 2013.
Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 2.06, eff. June 10, 2019.
Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 2.03, eff. June 16, 2021.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 1.15, eff. June 18, 2023.

Sec. 404.004. PUBLIC INTEREST INFORMATION. (a) The office shall prepare information of public interest describing the functions of the office.
(b) The office shall make the information available to the public and appropriate state agencies.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The office shall prepare and maintain a written plan that describes how a

person who does not speak English can be provided reasonable access to the office's programs.

(b) The office shall comply with federal and state laws for program and facility accessibility.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.006. RULEMAKING. (a) The public counsel shall adopt rules as necessary to implement this chapter.

(b) Rulemaking under this section is subject to Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.007. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The office shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The office shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The office's alternative dispute resolution policy does not affect the manner in which the office participates in the division's administrative dispute resolution process or the department's alternative dispute resolution process through the office's

administrative attachment to the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 2, eff. September 1, 2011.

Sec. 404.008. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 2, eff. September 1, 2011.

SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

Sec. 404.051. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the injured employee public counsel. The public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the public counsel without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Section 401.011(16) does not apply to the use of the term "disability" in this subchapter.

(c) If a vacancy occurs during a term, the governor shall fill the vacancy for the unexpired term.

(d) In appointing the public counsel, the governor may consider recommendations made by groups that represent wage earners.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.052. QUALIFICATIONS. To be eligible to serve as public counsel, a person must:

(1) be a resident of Texas;
(2) be licensed to practice law in this state;
(3) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the working public;
(4) have management experience;
(5) possess knowledge and experience with the workers' compensation system; and
(6) have experience with legislative procedures and administrative law.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. A person is not eligible for appointment as public counsel if the person or the person's spouse:
(1) is employed by or participates in the management of a business entity or other organization that holds a license, certificate of authority, or other authorization from the department or division or that receives funds from the department or division;
(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the department, division, or the office; or
(3) uses or receives a substantial amount of tangible goods or funds from the department, division, or the office, other than compensation or reimbursement authorized by law.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve as public counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department, the division, or the office.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office that the public counsel:

(1) does not have at the time of appointment or maintain during service as public counsel the qualifications required by Section 404.052;

(2) violates a prohibition established by Section 404.053, 404.054, 404.056, or 404.057; or

(3) cannot, because of illness or disability, discharge the public counsel's duties for a substantial part of the public counsel's term.

(b) The validity of an action of the public counsel or the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. (a) A former public counsel may not make any communication to or appearance before the division, the department, the commissioner, the commissioner of insurance, or an employee of the division or the department before the second anniversary of the date the person ceases to serve as public counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence a commissioner or commissioner of insurance decision or action, unless the person is acting on the person's own behalf and without remuneration.

(b) A former public counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the division or the department before the second anniversary of the date the person ceases to serve as public counsel.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

(d) A former employee of the office may not:

(1) be employed by an insurance carrier regarding a matter that was in the scope of the employee's official responsibility while

the employee was associated with the office; or

(2) represent a person before the division or the department or a court in a matter:

(A) in which the employee was personally involved while associated with the office; or

(B) that was within the employee's official responsibility while the employee was associated with the office.

(e) The prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f) The prohibition of Subsection (d)(2) applies to a current employee of the office while the employee is associated with the office and at any time after.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as public counsel if the person has been, within the previous two years:

(1) an officer, employee, or paid consultant of a trade association in the field of workers' compensation; or

(2) the spouse of an officer, manager, or paid consultant of a trade association in the field of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

Sec. 404.101. GENERAL DUTIES. (a) The office shall, as provided by this subtitle:

(1) provide assistance to workers' compensation claimants;

(2) advocate on behalf of injured employees as a class regarding rulemaking by the commissioner and commissioner of

insurance relating to workers' compensation;

(3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and

(4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate.

(b) The office:

(1) may assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state; and

(2) shall, as provided by this subtitle:

(A) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees;

(B) assist injured employees, through the ombudsman program, with the resolution of complaints pending at the division or department;

(C) assist injured employees, through the ombudsman program, in the division's administrative dispute resolution system; and

(D) advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of injured employees.

(b-1) The office may seek and accept grant funding to enable the office to perform its duties under this subtitle. This subsection does not authorize the office to seek or accept payment from an injured employee.

(c) The office may not appear or intervene, as a party or otherwise, before the commissioner, commissioner of insurance, division, or department on behalf of an individual injured employee, except through the ombudsman program.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 3, eff. September 1, 2011.

Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES.

(a) The public counsel may refuse to provide or may terminate the services of the office to any claimant who:

(1) is abusive or violent to or who threatens any employee of the office;

(2) requests assistance in claiming benefits not provided by law; or

(3) commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.

(b) If the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division.

(c) The office shall notify and cooperate with the appropriate law enforcement authority and the Department of Insurance, Fraud Unit, if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a criminal act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 1, eff. September 1, 2009.

Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL. The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. (a) The office shall operate the ombudsman program under Subchapter D.

(b) The public counsel shall assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings.

(c) The office shall coordinate services provided by the ombudsman program with services provided by the Department of

Assistive and Rehabilitative Services.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner, commissioner of insurance, division, or department on behalf of injured employees as a class in matters involving rules, agency policies, and forms affecting the workers' compensation system that the commissioner or the commissioner of insurance adopts or approves;

(2) may intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; and

(4) may appear or intervene before the commissioner, commissioner of insurance, division, or department, as a party or otherwise, on behalf of injured employees as a class in a matter involving rates, rules, agency policies, or forms affecting injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) The office, through the ombudsman program, may appear before the commissioner, division, or State Office of Administrative Hearings to provide assistance to an individual injured employee during:

(1) a workers' compensation administrative dispute

resolution process; or

(2) an enforcement action by the department or division against an employee for a violation of the Texas Workers' Compensation Act.

(b) This chapter may not be construed as requiring or allowing legal representation for an individual injured employee by an office attorney or ombudsman in any proceeding.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 2, eff. September 1, 2009.

Sec. 404.106. LEGISLATIVE REPORT. (a) The office shall report to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the legislative committees with appropriate jurisdiction not later than January 1 of each odd-numbered year. The report must include:

(1) a description of the activities of the office;

(2) identification of any problems in the workers' compensation system from the perspective of injured employees as a class, as considered by the public counsel, with recommendations for regulatory and legislative action; and

(3) an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

(b) The office shall coordinate with the workers' compensation research and evaluation group to obtain needed information and data to make the evaluations required for the report.

(c) The office shall publish and disseminate the legislative report to interested persons, and may charge a fee for the publication as necessary to achieve optimal dissemination.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 7, eff. September 1, 2011.

Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL. The public counsel:

(1) is entitled to the same access as a party, other than division staff or department staff, to division or department records available in a proceeding before the commissioner, commissioner of insurance, division, or department under the authority granted to the public counsel by this chapter; and

(2) is entitled to obtain discovery under Chapter 2001, Government Code, of any nonprivileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner, commissioner of insurance, division, or department as authorized by this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. The public counsel may recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees as a class.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public counsel shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers' compensation, a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or commissioner of insurance rules. A right or responsibility adopted under this section must be consistent with the requirements of this subtitle and division rules. This section may not be construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 3, eff.

September 1, 2009.

Sec. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF CONFIDENTIALITY REQUIREMENTS. (a) Confidentiality requirements applicable to examination reports and to the commissioner of insurance under Sections 401.058, 401.105, 401.106, 441.201, and 501.158, Insurance Code, as applicable, and Section 404.111, apply to the public counsel.

(b) An employee of the office may not be compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim. This subsection does not prohibit or alter the office's duty to notify and cooperate with appropriate law enforcement authorities under Section 404.1015(c).

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 4, eff. September 1, 2009.

Sec. 404.111. ACCESS TO INFORMATION. (a) When assisting an injured employee, the office is entitled to the same access to information related to the employee's injury and workers' compensation claim as the employee or any other party to the claim.

(b) The office may not access information under Subsection (a) that is an attorney-client communication or an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) In furtherance of assisting an employee under Section 404.105(a)(2), the office may not access information under Section 404.111(a) to which the employee is not otherwise entitled. If the office possesses any information made confidential by the Texas Workers' Compensation Act or any other laws of this state to which the employee is not otherwise entitled, that information may not be disclosed to the employee or any other party assisting an employee under Section 404.105(a)(2). Nothing in this subsection prohibits or alters the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 8, eff. September 1, 2011.

(e) The office may not make public any confidential information provided to the office under this chapter. Except as provided by Subsection (c), the office may disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. The office may not release, and an individual or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a health care provider or an injured employee;

(2) reveals the zip code of an injured employee's primary residence;

(3) discloses a health care provider discount or a differential between a payment and a billed charge; or

(4) relates to an actual payment made by a payer to an identified health care provider.

(f) Information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of Section 402.091.

(g) Information on health care providers and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies providers and injured employees is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

(h) Notwithstanding Subsection (e)(2), the office may use zip code information to analyze information on a geographical basis.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 8, eff. September 1, 2011.

SUBCHAPTER D. OMBUDSMAN PROGRAM

Sec. 404.151. OMBUDSMAN PROGRAM. (a) The office shall maintain an ombudsman program as provided by this subchapter to assist injured employees and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

(1) meet with or otherwise provide information to injured employees;

(2) investigate complaints;

(3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees;

(4) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and

(5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995. Redesignated from Labor Code, Section 409.041 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005.

Sec. 404.152. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. (a) At least one specially qualified employee in each division office shall be an ombudsman designated by the office of injured employee counsel, who shall perform the duties under this subchapter as the person's primary responsibility.

(b) To be eligible for designation as an ombudsman, a person must:

(1) demonstrate satisfactory knowledge of the requirements of:

(A) this subtitle and the provisions of Subtitle C that relate to claims management;

(B) other laws relating to workers' compensation; and

(C) rules adopted under this subtitle and the laws described under Subdivision (1)(B);

(2) have demonstrated experience in handling and resolving

problems for the general public; and

(3) possess strong interpersonal skills.

(c) The public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen. Training provided under this subsection must:

(1) include education regarding this subtitle, rules adopted under this subtitle, and decisions of the appeals panel, with emphasis on benefits and the dispute resolution process;

(2) require an ombudsman undergoing training to be observed and monitored by an experienced ombudsman during daily activities conducted under this subchapter; and

(3) incorporate the requirements of Section 404.103(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Redesignated from Labor Code Sec. 409.041(c) and amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 8, eff. Sept. 1, 1997. Redesignated from Labor Code, Section 409.042 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1056 (H.B. 2060), Sec. 1, eff. June 15, 2017.

Sec. 404.1525. FIRST RESPONDER LIAISON. (a) In this section, "first responder" has the meaning assigned by Section 504.055.

(b) The public counsel shall designate an employee of the office to act as first responder liaison.

(c) The first responder liaison shall assist an injured first responder and, if applicable, the ombudsman assigned to the first responder's case, during a workers' compensation administrative dispute resolution process.

(d) The first responder liaison:

(1) must meet the qualifications for designation as an ombudsman under this subchapter; and

(2) is subject to the training and education requirements for an ombudsman under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 465 (H.B. 2082), Sec. 1, eff. September 1, 2017.

Sec. 404.153. EMPLOYER NOTIFICATION; ADMINISTRATIVE VIOLATION. (a) Each employer shall notify its employees of the ombudsman program in the manner prescribed by the office.

(a-1) An employer that employs first responders or supervises volunteer first responders shall notify the first responders of the first responder liaison in the manner prescribed by the office. In this subsection, "first responder" has the meaning assigned by Section 504.055.

(b) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Redesignated from Labor Code Sec. 409.041(d) and amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995.
Redesignated from Labor Code, Section 409.043 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 465 (H.B. 2082), Sec. 2, eff. September 1, 2017.

Sec. 404.154. PUBLIC INFORMATION. The office shall widely disseminate information about the ombudsman program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 409.042 by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995.
Redesignated from Labor Code, Section 409.044 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005.

Sec. 404.155. COST FOR CERTAIN COPIES OF MEDICAL RECORDS; ADMINISTRATIVE VIOLATION. (a) At the written request of an ombudsman designated under this subchapter who is assisting a specific injured employee, a health care provider shall provide copies of the injured employee's medical records to the ombudsman at no cost to the ombudsman or the office.

(b) The workers' compensation insurance carrier is liable to the health care provider for the cost of providing copies of the employee's medical records under this section. The insurance carrier may not deduct that cost from any benefit to which the employee is

entitled.

(c) The amount charged for providing copies of an injured employee's medical records under this section is the amount prescribed by rules adopted by the commissioner for copying medical records.

(d) A health care provider may not require payment for the cost of providing copies of an injured employee's medical records under this section before providing the copies to the ombudsman.

(e) The public counsel may adopt rules regarding a time frame for the provision of copies of an injured employee's medical records under this section and any other matter relating to provision of those copies.

(f) A health care provider or insurance carrier that fails to comply with the requirements of this section or rules adopted under this section commits an administrative violation. The commissioner shall enforce a violation under this subsection in accordance with Chapter 415.

Added by Acts 2007, 80th Leg., R.S., Ch. 1009 (H.B. 888), Sec. 1, eff. June 15, 2007.

CHAPTER 405. WORKERS' COMPENSATION RESEARCH

Sec. 405.001. DEFINITION. In this chapter, "group" means the workers' compensation research and evaluation group.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.018, eff. September 1, 2005.

Sec. 405.002. WORKERS' COMPENSATION RESEARCH DUTIES OF DEPARTMENT. (a) The workers' compensation research and evaluation group is located within the department and serves as a resource for the commissioner of insurance on workers' compensation issues.

(b) The department may apply for and spend grant funds to implement this chapter.

(c) The department shall ensure that all research reports prepared under this chapter or by the former Research and Oversight

Council on Workers' Compensation are accessible to the public through the Internet to the extent practicable.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.019, eff. September 1, 2005.

Sec. 405.0025. RESEARCH DUTIES OF GROUP. (a) The group shall conduct professional studies and research related to:
(1) the delivery of benefits;
(2) litigation and controversy related to workers' compensation;
(3) insurance rates and ratemaking procedures;
(4) rehabilitation and reemployment of injured employees;
(5) the quality and cost of medical benefits;
(6) employer participation in the workers' compensation system;
(7) employment health and safety issues; and
(8) other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.
(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 670 (H.B. 1753), Sec. 3(3), eff. June 15, 2021, and Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(12), eff. September 1, 2021.
(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 670 (H.B. 1753), Sec. 3(3), eff. June 15, 2021, and Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(12), eff. September 1, 2021.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.020, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 670 (H.B. 1753), Sec. 3(3), eff. June 15, 2021.
Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(12), eff. September 1, 2021.

Sec. 405.0026. RESEARCH AGENDA. (a) The group shall prepare and publish annually in the Texas Register a proposed workers'

compensation research agenda for the commissioner of insurance review and approval.

(b) The commissioner of insurance shall:

(1) accept public comments on the research agenda; and

(2) hold a public hearing on the proposed research agenda if a hearing is requested by interested persons.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.020, eff. September 1, 2005.

Sec. 405.003. FUNDING; MAINTENANCE TAX. (a) The group's duties under this chapter are funded through the assessment of a maintenance tax collected annually from all insurance carriers, and self-insurance groups that hold certificates of approval under Chapter 407A, except governmental entities.

(b) The department shall set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations. The tax rate for insurance companies may not exceed one-tenth of one percent of the correctly reported gross workers' compensation insurance premiums. The tax rate for certified self-insurers may not exceed one-tenth of one percent of the total tax base of all certified self-insurers, as computed under Section 407.103(b). The tax rate for self-insurance groups described by Subsection (a) may not exceed one-tenth of one percent of the group's gross premium for the group's retention, excluding premium collected by the group for excess insurance.

(c) The tax imposed under Subsection (a) is in addition to all other taxes imposed on those insurance carriers for workers' compensation purposes.

(d) The tax on insurance companies and on self-insurance groups described by Subsection (a) shall be assessed, collected, and paid in the same manner and at the same time as the maintenance tax established for the support of the department under Chapter 255, Insurance Code. The tax on certified self-insurers shall be assessed, collected, and paid in the same manner and at the same time as the self-insurer maintenance tax collected under Section 407.104.

(e) Amounts received under this section shall be deposited in the general revenue fund in accordance with Section 251.004, Insurance Code, to be used:

(1) for the operation of the group's duties under this chapter; and

(2) to reimburse the general revenue fund in accordance with Section 201.052, Insurance Code.

(f) Section 403.095, Government Code, does not apply in relation to amounts received under this section or to any special account into which the amounts are deposited.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.021, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.136, eff. September 1, 2005.

Sec. 405.004. COORDINATION WITH OTHER STATE AGENCIES; CONFIDENTIALITY. (a) As required to fulfill the group's objectives under this chapter, the group is entitled to access to the files and records of:

(1) the division;

(2) the Texas Workforce Commission;

(3) the Department of Assistive and Rehabilitative Services;

(4) the office of injured employee counsel;

(5) the State Office of Risk Management; and

(6) other appropriate state agencies.

(b) A state agency shall assist and cooperate in providing information to the group.

(c) Information that is confidential under state law is accessible to the department under rules of confidentiality and remains confidential.

(d) Except as provided by this subsection, the identity of an individual or entity selected to participate in a survey conducted by the group or who participates in such a survey is confidential and is not subject to public disclosure under Chapter 552, Government Code. This subsection does not prohibit the identification of a workers' compensation health care network in a report card issued under Section 1305.502, Insurance Code, provided that the report card may

not identify any injured employee or other individual.

(e) A working paper, including all documentary or other information, prepared or maintained by the group in performing the group's duties under this chapter or other law to conduct an evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021, Government Code.

(f) A record held by another entity that is considered to be confidential by law and that the group receives in connection with the performance of the group's functions under this chapter or another law remains confidential and is excepted from the public disclosure requirements of Section 552.021, Government Code.

(g) The commissioner of insurance shall adopt rules as necessary to establish data reporting requirements to support the research duties under this chapter. This section may not be construed as requiring additional reporting requirements on nonsubscribing employers.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.022, eff. September 1, 2005.

CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE

SUBCHAPTER A. COVERAGE ELECTION; SECURITY PROCEDURES

Sec. 406.001. DEFINITION. In this subchapter, "employer" means a person who employs one or more employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.002. COVERAGE GENERALLY ELECTIVE. (a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage.

(b) An employer who elects to obtain coverage is subject to this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.003. METHODS OF OBTAINING COVERAGE. An employer may obtain workers' compensation insurance coverage through a licensed insurance company or through self-insurance as provided by this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.004. EMPLOYER NOTICE TO DIVISION. (a) An employer who does not obtain workers' compensation insurance coverage shall notify the division in writing, in the time and as prescribed by commissioner rule, that the employer elects not to obtain coverage.

(b) The commissioner shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the division about the employer's business.

(c) The division may contract with the Texas Workforce Commission or the comptroller for assistance in collecting the notification required under this section. Those agencies shall cooperate with the division in enforcing this section.

(d) The employer notification filing required under this section shall be filed with the division in accordance with Section 406.009.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.47(a), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.023, eff. September 1, 2005.

Sec. 406.005. EMPLOYER NOTICE TO EMPLOYEES; ADMINISTRATIVE VIOLATION. (a) An employer shall notify each employee as provided by this section whether or not the employer has workers' compensation insurance coverage.

(b) The employer shall notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired.

(c) Each employer shall post a notice of whether the employer has workers' compensation insurance coverage at conspicuous locations

at the employer's place of business as necessary to provide reasonable notice to the employees. The commissioner may adopt rules relating to the form and content of the notice. The employer shall revise the notice when the information contained in the notice is changed.

(d) An employer who obtains workers' compensation insurance coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage, or the termination or cancellation of the coverage, takes effect.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.024, eff. September 1, 2005.

Sec. 406.006. INSURANCE COVERAGE AND CLAIM ADMINISTRATION REPORTING REQUIREMENTS; ADMINISTRATIVE VIOLATION. (a) An insurance company from which an employer has obtained workers' compensation insurance coverage, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, and a political subdivision shall file notice of the coverage and claim administration contact information with the division not later than the 10th day after the date on which the coverage or claim administration agreement takes effect, unless the commissioner adopts a rule establishing a later date for filing. Coverage takes effect on the date on which a binder is issued, a later date and time agreed to by the parties, on the date provided by the certificate of self-insurance, or on the date provided in an interlocal agreement that provides for self-insurance. The commissioner may adopt rules that establish the coverage and claim administration contact information required under this subsection.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

(c) An insurance company, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, or a political

subdivision commits an administrative violation if the person fails to file notice with the division as provided by this section.

(d) In this section, "political subdivision" has the meaning assigned by Section 504.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.48(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 2.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.025, eff. September 1, 2005.

Sec. 406.007. TERMINATION OF COVERAGE BY EMPLOYER; NOTICE. (a) An employer who terminates workers' compensation insurance coverage obtained under this subtitle shall file a written notice with the division not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 406.005.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

(c) Termination of coverage takes effect on the later of:

(1) the 30th day after the date of filing of notice with the division under Subsection (a); or

(2) the cancellation date of the policy.

(d) The coverage shall be extended until the date on which the termination of coverage takes effect, and the employer is obligated for premiums due for that period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.49(a), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.026, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 2, eff. June 9, 2017.

Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY

INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal to the division, and by certified mail, in person, or by electronic means in accordance with Chapter 35, Insurance Code, to the employer, not later than:

(1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or

(2) the 10th day before the date on which the cancellation or nonrenewal takes effect if the insurance company cancels or does not renew because of:

(A) fraud in obtaining coverage;

(B) misrepresentation of the amount of payroll for purposes of premium calculation;

(C) failure to pay a premium when due;

(D) an increase in the hazard for which the employer seeks coverage that results from an act or omission of the employer and that would produce an increase in the rate, including an increase because of a failure to comply with:

(i) reasonable recommendations for loss control; or

(ii) recommendations designed to reduce a hazard under the employer's control within a reasonable period; or

(E) a determination made by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interest of subscribers, creditors, or the general public.

(b) The notice required under this section shall be filed with the division.

(c) Failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.50(a), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.027, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 3, eff. June 9, 2017.

Sec. 406.009. COLLECTING AND MAINTAINING INFORMATION; MONITORING AND ENFORCING COMPLIANCE. (a) The division shall collect and maintain the information required under this subchapter and shall monitor compliance with the requirements of this subchapter.

(b) The commissioner may adopt rules as necessary to enforce this subchapter.

(c) The commissioner may designate a data collection agent, implement an electronic reporting and public information access program, and adopt rules as necessary to implement the data collection requirements of this subchapter. The commissioner may establish the form, manner, and procedure for the transmission of information to the division. A data collection agent designated under this subsection must be qualified and may collect fees in the manner described by Section 401.024.

(d) The division may require an employer or insurance carrier subject to this subtitle to identify or confirm an employer's coverage status and claim administration contact information as necessary to achieve the purposes of this subtitle.

(e) An employer or insurance carrier commits an administrative violation if that person fails to comply with Subsection (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.51(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.028, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 410 (S.B. 800), Sec. 2, eff. June 17, 2011.

Sec. 406.010. CLAIMS SERVICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall provide claims service:

(1) through offices of the insurance carrier located in this state; or

(2) by other resident representatives with full power to act for the insurance carrier.

(b) Each insurance carrier shall designate persons to provide claims service in sufficient numbers and at appropriate locations to reasonably service policies written by the carrier. If an insurance

carrier uses the services of a person required to hold a certificate of authority under Chapter 4151, Insurance Code, the carrier must comply with the requirements of that chapter.

(c) The commissioner by rule shall further specify the requirements of this section.

(d) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.029, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.01, eff. September 1, 2007.

Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION. (a) The commissioner by rule may require an insurance carrier to designate a representative in Austin to act as the insurance carrier's agent before the division in Austin. Notice to the designated agent constitutes notice to the insurance carrier.

(b) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.030, eff. September 1, 2005.

Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. The commission shall enforce the administrative penalties established under this subchapter in accordance with Chapter 415.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. COVERAGE REQUIREMENTS

Sec. 406.031. LIABILITY FOR COMPENSATION. (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

(1) at the time of injury, the employee is subject to this subtitle; and

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.032. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the injury:

(A) occurred while the employee was in a state of intoxication;

(B) was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person;

(C) arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;

(D) arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; or

(E) arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public; or

(2) the employee's horseplay was a producing cause of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.033. COMMON-LAW DEFENSES; BURDEN OF PROOF. (a) In an action against an employer by or on behalf of an employee who is not covered by workers' compensation insurance obtained in the manner authorized by Section 406.003 to recover damages for personal injuries or death sustained by an employee in the course and scope of

the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of defenses at common law, including the defenses described by Subsection (a).

(c) The employer may defend the action on the ground that the injury was caused:

(1) by an act of the employee intended to bring about the injury; or

(2) while the employee was in a state of intoxication.

(d) In an action described by Subsection (a), the plaintiff must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment.

(e) A cause of action described in Subsection (a) may not be waived by an employee before the employee's injury or death. Any agreement by an employee to waive a cause of action or any right described in Subsection (a) before the employee's injury or death is void and unenforceable.

(f) A cause of action described by Subsection (a) may not be waived by an employee after the employee's injury unless:

(1) the employee voluntarily enters into the waiver with knowledge of the waiver's effect;

(2) the waiver is entered into not earlier than the 10th business day after the date of the initial report of injury;

(3) the employee, before signing the waiver, has received a medical evaluation from a nonemergency care doctor; and

(4) the waiver is in a writing under which the true intent of the parties is specifically stated in the document.

(g) The waiver provisions required under Subsection (f) must be conspicuous and appear on the face of the agreement. To be conspicuous, the waiver provisions must appear in a type larger than the type contained in the body of the agreement or in contrasting colors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 16.01, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.031, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1108 (S.B. 1714), Sec. 1, eff. September 1, 2011.

Sec. 406.034. EMPLOYEE ELECTION. (a) Except as otherwise provided by law, unless the employee gives notice as provided by Subsection (b), an employee of an employer waives the employee's right of action at common law or under a statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee waives coverage under this subtitle and retains all rights of action under common law. The employee must notify the employer not later than the fifth day after the date on which the employee:

(1) begins the employment; or

(2) receives written notice from the employer that the employer has obtained workers' compensation insurance coverage if the employer is not a covered employer at the time of the employment but later obtains the coverage.

(c) An employer may not require an employee to retain common-law rights under this section as a condition of employment.

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage in connection with an agreement with the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1108 (S.B. 1714), Sec. 2, eff. September 1, 2011.

Sec. 406.035. WAIVER OF COMPENSATION PROHIBITED. Except as provided by this subtitle, an agreement by an employee to waive the employee's right to compensation is void.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. COVERAGE THROUGH COMMERCIAL INSURANCE

Sec. 406.051. SECURITY BY COMMERCIAL INSURANCE. (a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers' compensation insurance policy under this subchapter.

(b) The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance.

(c) The employer may not transfer:

(1) the obligation to accept a report of injury under Section 409.001;

(2) the obligation to maintain records of injuries under Section 409.006;

(3) the obligation to report injuries to the insurance carrier under Section 409.005;

(4) liability for a violation of Section 415.006 or 415.008 or of Chapter 451; or

(5) the obligation to comply with a commissioner order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.032, eff. September 1, 2005.

Sec. 406.052. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered into to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this subtitle is void unless the contract also covers liability for payment of compensation under this subtitle.

(b) This section does not prohibit an employer who is not required to have workers' compensation insurance coverage and who has elected not to obtain workers' compensation insurance coverage from obtaining insurance coverage on the employer's employees if the

insurance is not represented to any person as providing workers' compensation insurance coverage authorized under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.053. ALL STATES COVERAGE. The Texas Department of Insurance shall coordinate with the appropriate agencies of other states to:

(1) share information regarding an employer who obtains all states coverage; and

(2) ensure that the department has knowledge of an employer who obtains all states coverage in another state but fails to file notice with the department.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. EXTRATERRITORIAL COVERAGE

Sec. 406.071. EXTRATERRITORIAL COVERAGE. (a) An employee who is injured while working in another jurisdiction or the employee's legal beneficiary is entitled to all rights and remedies under this subtitle if:

(1) the injury would be compensable if it had occurred in this state; and

(2) the employee has significant contacts with this state or the employment is principally located in this state.

(b) An employee has significant contacts with this state if the employee was hired or recruited in this state and the employee:

(1) was injured not later than one year after the date of hire; or

(2) has worked in this state for at least 10 working days during the 12 months preceding the date of injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.072. PRINCIPAL LOCATION. The principal location of a person's employment is where:

(1) the employer has a place of business at or from which the employee regularly works; or

(2) the employee resides and spends a substantial part of the employee's working time.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.073. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION. (a) An employee whose work requires regular travel between this state and at least one other jurisdiction may agree in writing with the employer on the principal location of the employment.

(b) The employer shall file the agreement with the division on request.

(c) A person commits an administrative violation if the person violates Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.033, eff. September 1, 2005.

Sec. 406.074. INTERJURISDICTIONAL AGREEMENTS. (a) The commissioner may enter into an agreement with an appropriate agency of another jurisdiction with respect to:

(1) conflicts of jurisdiction;

(2) assumption of jurisdiction in a case in which the contract of employment arises in one state and the injury is incurred in another;

(3) procedures for proceeding against a foreign employer who fails to comply with this subtitle; and

(4) procedures for the appropriate agency to use to proceed against an employer of this state who fails to comply with the workers' compensation laws of the other jurisdiction.

(b) An executed agreement that has been adopted as a rule by the commissioner binds all subject employers and employees.

(c) In this section, "appropriate agency" means an agency of another jurisdiction that administers the workers' compensation laws of that jurisdiction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.034, eff. September 1, 2005.

Sec. 406.075. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTION. (a) An injured employee who elects to pursue the employee's remedy under the workers' compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under this subtitle.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the benefits that the employee would have received had the claim been made under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. APPLICATION OF COVERAGE TO CERTAIN EMPLOYEES

Sec. 406.091. EXEMPT EMPLOYEES; VOLUNTARY COVERAGE. (a) The following employees are not subject to this subtitle:

(1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;

(2) a person covered by a method of compensation established under federal law; or

(3) except as provided by Subchapter H, a farm or ranch employee.

(b) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees exempted from coverage under Subsection (a)(1) or (a)(3). Obtaining that coverage constitutes acceptance by the employer of the rights and responsibilities imposed under this subtitle as of the effective date of the coverage for as long as the coverage remains in effect.

(c) An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses described by Section 406.033, but this section does not reinstate or otherwise affect the availability of those or other defenses at common law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.092. ALIEN EMPLOYEES AND BENEFICIARIES. (a) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this subtitle.

(b) A nonresident alien employee or legal beneficiary, at the election of the employee or legal beneficiary, may be represented officially by a consular officer of the country of which the employee or legal beneficiary is a citizen. That officer may receive benefit payments for distribution to the employee or legal beneficiary. The receipt of the payments constitutes full discharge of the insurance carrier's liability for those payments.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.093. LEGALLY INCOMPETENT EMPLOYEES. (a) The guardian of an injured employee who is a minor or is otherwise legally incompetent may exercise on the employee's behalf the rights and privileges granted to the employee under this subtitle.

(b) The commissioner by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.035, eff. September 1, 2005.

Sec. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION. (a) An employer who elects to provide workers' compensation insurance coverage may include in the coverage a real estate salesperson or broker who is:

(1) licensed under Chapter 1101, Occupations Code; and

(2) compensated solely by commissions.

(b) If coverage is elected by the employer, the insurance policy must specifically name the salesperson or broker. The coverage continues while the policy is in effect and the named salesperson or broker is endorsed on the policy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.788, eff. Sept. 1, 2003.

Sec. 406.095. CERTAIN PROFESSIONAL ATHLETES. (a) A professional athlete employed under a contract for hire or a collective bargaining agreement who is entitled to benefits for medical care and weekly benefits that are equal to or greater than the benefits provided under this subtitle may not receive benefits under this subtitle and the equivalent benefits under the contract or collective bargaining agreement. An athlete covered by such a contract or agreement who sustains an injury in the course and scope of the athlete's employment shall elect to receive either the benefits available under this subtitle or the benefits under the contract or agreement.

(b) The commissioner by rule shall establish the procedures and requirements for an election under this section.

(c) In this section, "professional athlete" means a person employed as a professional athlete by a franchise of:

(1) the National Football League;

(2) the National Basketball Association;

(3) the American League of Professional Baseball Clubs;

(4) the National League of Professional Baseball Clubs;

(5) the International Hockey League;

(6) the National Hockey League; or

(7) the Central Hockey League.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.036, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 815 (S.B. 742), Sec. 1, eff. September 1, 2005.

Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS. (a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.

(b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees

to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.

(c) A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

(1) "Building or construction" includes:

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.097. EXECUTIVE EMPLOYEES OF CERTAIN BUSINESS ENTITIES. (a) A sole proprietor, partner, or corporate executive officer of a business entity that elects to provide workers' compensation insurance coverage is entitled to benefits under that coverage as an employee unless the sole proprietor, partner, or corporate executive officer is specifically excluded from coverage through an endorsement to the insurance policy or certificate of authority to self-insure.

(b) The dual capacity doctrine does not apply to a corporate executive officer with an equity ownership in the covered business entity of at least 25 percent and will not invalidate the exclusion of such a corporate executive officer from coverage under Subsection (a).

(c) A sole proprietor or partner of a covered business entity or a corporate officer with an equity ownership in a covered business entity of at least 25 percent may be excluded from coverage under this section notwithstanding Section 406.096.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.20, eff. Sept. 1, 1995.

Sec. 406.098. VOLUNTEER EMERGENCY SERVICE MEMBERS AND PERSONNEL. (a) An emergency service organization which is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal functions of the organization. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law.

(b) In this section, unless a different meaning is plainly required by law:

(1) "Emergency service organization" means any organization established to provide for the general public:

(A) fire prevention and suppression;

(B) hazardous materials response operations; or

(C) emergency medical services.

(2) "Volunteer members" means individuals who are carried on the membership list of the organization as active participants and who receive no remuneration for their services.

(3) "Normal functions" means any response to, participation in, or departure from an incident scene; training; meetings; performance of equipment maintenance; or organizational functions.

(4) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center established under Subchapter A, Chapter 534, Health and Safety Code, or any other legally constituted political subdivision of the state.

(c) The commissioner of insurance shall adopt rules governing the method of calculating premiums for workers' compensation insurance coverage for volunteer members who are covered pursuant to this section.

Added by Acts 1995, 74th Leg., ch. 849, Sec. 1, eff. Aug. 28, 1995.
Renumbered from Labor Code Sec. 406.097 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(63), eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.037, eff.

September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 9.03, eff. September 1, 2023.

SUBCHAPTER F. COVERAGE OF CERTAIN INDEPENDENT CONTRACTORS

Sec. 406.121. DEFINITIONS. In this subchapter:

(1) "General contractor" means a person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or other analogous term. The term does not include a motor carrier that provides a transportation service through the use of an owner operator.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(3) "Motor carrier" means a person who operates a motor vehicle over a public highway in this state to provide a transportation service or who contracts to provide that service.

(4) "Owner operator" means a person who provides transportation services under contract for a motor carrier. An owner operator is an independent contractor.

(5) "Subcontractor" means a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle, with a driver under contract, to transport passengers or

property.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.122. STATUS AS EMPLOYEE. (a) For purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor or motor carrier who is an employer under this subtitle is an employee of that general contractor or motor carrier, unless the person is:

(1) operating as an independent contractor; or

(2) hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(b) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this subtitle if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(c) An owner operator and the owner operator's employees are not employees of a motor carrier for the purposes of this subtitle if the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.123. ELECTION TO PROVIDE COVERAGE; ADMINISTRATIVE VIOLATION. (a) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor.

(b) If a general contractor has workers' compensation insurance to protect the general contractor's employees and if, in the course and scope of the general contractor's business, the general contractor enters into a contract with a subcontractor who does not have employees, the general contractor shall be treated as the

employer of the subcontractor for the purposes of this subtitle and may enter into an agreement for the deduction of premiums paid in accordance with Subsection (d).

(c) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator.

(d) If a general contractor or a motor carrier elects to provide coverage under Subsection (a) or (c), then, notwithstanding Section 415.006, the actual premiums, based on payroll, that are paid or incurred by the general contractor or motor carrier for the coverage may be deducted from the contract price or other amount owed to the subcontractor or owner operator by the general contractor or motor carrier.

(e) An agreement under this section makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state.

(f) A general contractor shall file a copy of an agreement entered into under this section with the general contractor's workers' compensation insurance carrier not later than the 10th day after the date on which the contract is executed. If the general contractor is a certified self-insurer, the copy must be filed with the division.

(g) A general contractor who enters into an agreement with a subcontractor under this section commits an administrative violation if the contractor fails to file a copy of the agreement as required by Subsection (f).

(h) Notwithstanding Subsection (b), a person who performs work or provides a service for an oil or gas well operator and who is an independent contractor that has no employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the general contractor's workers' compensation insurance policy unless the independent contractor and the general contractor enter into an agreement under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 88, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.038, eff.

September 1, 2005.

Sec. 406.124. CAUSE OF ACTION. If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the intent to avoid liability as an employer under this subtitle, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall have a separate right of action against the subcontractor. The right of action against the subcontractor does not affect the employee's right to compensation under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.125. RESTRICTION OF UNSAFE WORK PRACTICES UNAFFECTED. This subchapter does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to stop or change an unsafe work practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.126. EXEMPTION. This subchapter does not apply to farm or ranch employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.127. EFFECT OF CERTAIN CONTRACTS OF HIRE. An insurance company may not demand an insurance premium from an employer for coverage of an independent contractor or an employee of an independent contractor if the independent contractor is under a contract of hire with the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. COVERAGE OF CERTAIN BUILDING AND CONSTRUCTION WORKERS

Sec. 406.141. DEFINITIONS. In this subchapter:

(1) "Hiring contractor" means a general contractor or subcontractor who, in the course of regular business, subcontracts all or part of the work to be performed to other persons.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job and not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as desired and may determine the pay of each helper; and

(C) is free to, while under contract to the hiring contractor, work for other contractors or is free to send helpers to work for other contractors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.142. APPLICATION. This subchapter applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing:

(1) a residential structure;

(2) a commercial structure that does not exceed three stories in height or 20,000 square feet in area; or

(3) an appurtenance to a structure described by Subdivision (1) or (2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.143. PROVISION OF WORKERS' COMPENSATION INSURANCE; INDEPENDENT CONTRACTOR WITHOUT EMPLOYEES. (a) Unless the independent contractor and hiring contractor enter into an agreement under Section 406.144, the independent contractor is responsible for any workers' compensation insurance coverage provided to an employee of the independent contractor, and the independent contractor's employees are not entitled to workers' compensation insurance coverage from the hiring contractor.

(b) An independent contractor without employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the hiring

contractor's workers' compensation insurance policy unless the independent contractor and hiring contractor enter into an agreement under Section 406.144.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.144. ELECTION TO PROVIDE COVERAGE; AGREEMENT. (a) Except as provided by this section, a hiring contractor is not responsible for providing workers' compensation insurance coverage for an independent contractor or the independent contractor's employee, helper, or subcontractor. An independent contractor and a hiring contractor may enter into a written agreement under which the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance coverage from the contract price and that, for the purpose of providing workers' compensation insurance coverage, the hiring contractor is the employer of the independent contractor and the independent contractor's employees.

(b) A hiring contractor and independent contractor may enter into an agreement under Subsection (a) even if the independent contractor does not have an employee.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 11(2), eff. June 9, 2017.

(d) The hiring contractor shall send a copy of an agreement under this section to:

(1) the hiring contractor's workers' compensation insurance carrier; and

(2) the division, on the division's request.

(e) An agreement under this section makes the hiring contractor the employer of the independent contractor and the independent contractor's employees only for the purposes of the workers' compensation laws of this state.

(f) The deduction of the cost of the workers' compensation insurance coverage from the independent contractor's contract price is permitted notwithstanding Section 415.006.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.039, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 4, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 11(2), eff. June 9, 2017.

Sec. 406.145. JOINT AGREEMENT. (a) A hiring contractor and an independent subcontractor may make a joint agreement declaring that the subcontractor is an independent contractor as defined in Section 406.141(2) and that the subcontractor is not the employee of the hiring contractor. If the joint agreement is signed by both the hiring contractor and the subcontractor and filed with the division, the subcontractor, as a matter of law, is an independent contractor and not an employee, and is not entitled to workers' compensation insurance coverage through the hiring contractor unless an agreement is entered into under Section 406.144 to provide workers' compensation insurance coverage. The commissioner shall prescribe forms for the joint agreement.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 11(3), eff. June 9, 2017.

(c) The hiring contractor shall send a copy of a joint agreement signed under this section to:

(1) the hiring contractor's workers' compensation insurance carrier; and

(2) the division, on the division's request.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 11(3), eff. June 9, 2017.

(e) A joint agreement signed under this section applies to each hiring agreement between the hiring contractor and the independent contractor until the first anniversary of its filing date, unless a subsequent hiring agreement expressly states that the joint agreement does not apply.

(f) If a subsequent hiring agreement is made to which the joint agreement does not apply, the hiring contractor and independent contractor shall notify in writing:

(1) the hiring contractor's workers' compensation insurance carrier; and

(2) the division, on the division's request.

(g) If a hiring contractor and an independent contractor have filed a joint agreement under this section, an insurance company may

not require the payment of an insurance premium by a hiring contractor for coverage of an independent contractor or an independent contractor's employee, helper, or subcontractor other than under an agreement entered into in compliance with Section 406.144.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.040, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 5, eff. June 9, 2017.
Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 11(3), eff. June 9, 2017.
Acts 2019, 86th Leg., R.S., Ch. 129 (H.B. 1665), Sec. 1, eff. May 23, 2019.

Sec. 406.146. WRONGFUL INDUCEMENT PROHIBITED. (a) A hiring contractor may not:

(1) wrongfully induce an employee to enter into a joint agreement under Section 406.145 stating that the employee is an independent contractor; or

(2) exert controls over an independent contractor or an employee of an independent contractor sufficient to make that person an employee under common-law tests.

(b) A hiring contractor does not exert employer-like controls over an independent contractor or an independent contractor's employee solely because of:

(1) controlling the hours of labor, if that control is exercised only to:

(A) establish the deadline for the completion of the work called for by the contract;

(B) schedule work to occur in a logical sequence and to avoid delays or interference with the work of other contractors; or

(C) schedule work to avoid disturbing neighbors during night or early morning hours or at other times when the independent contractor's activities would unreasonably disturb activities in the neighborhood; or

(2) stopping or directing work solely to prevent or correct

an unsafe work practice or condition or to control work to ensure that the end product is in compliance with the contracted for result.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. COVERAGE OF FARM AND RANCH EMPLOYEES

Sec. 406.161. DEFINITIONS. In this subchapter:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who work for the benefit of a third party.

(4) "Migrant worker" means an individual who is:

(A) employed in agricultural labor of a seasonal or temporary nature; and

(B) required to be absent overnight from the worker's permanent place of residence.

(5) "Seasonal worker" means an individual who is:

(A) employed in agricultural or ranch labor of a seasonal or temporary nature; and

(B) not required to be absent overnight from the worker's permanent place of residence.

(6) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.162. SCOPE. (a) This subtitle applies to an action to recover damages for personal injuries or death sustained by a farm

or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker:

(A) employed on a truck farm, orchard, or vineyard;

(B) employed by a person with a gross annual payroll for the preceding year in an amount not less than the greater of the required payroll for the year preceding that year, adjusted for inflation, or $25,000; or

(C) working for a farmer, ranch operator, or labor agent who employs a migrant worker and doing the same work at the same time and location as the migrant worker; or

(3) an employee, other than a migrant or seasonal worker:

(A) for years before 1991, employed by a person with a gross annual payroll for the preceding year of at least $50,000; and

(B) for 1991 and subsequent years, employed by a person:

(i) with a gross annual payroll in an amount required for coverage of seasonal workers under Subdivision (2)(B); or

(ii) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(b) The comptroller shall prepare a consumer price index for this state and shall certify the applicable index factor to the division before October 1 of each year. The division shall adjust the gross annual payroll requirement under Subsection (a)(2)(B) accordingly.

(c) For the purposes of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for the agent's services and for the services of migrant or seasonal workers but does not include wages paid to:

(1) the person or a member of the person's family, if the person is a sole proprietor;

(2) a partner in a partnership or a member of the partner's family; or

(3) a shareholder of a corporation in which all shareholders are family members or a member of the shareholder's family.

(d) This subchapter does not affect the application or interpretation of this subtitle as it relates to persons engaged in activities determined before January 1, 1985, not to be farm or ranch

labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.041, eff. September 1, 2005.

Sec. 406.163. LIABILITY OF LABOR AGENT; JOINT AND SEVERAL LIABILITY. (a) A labor agent who furnishes a migrant or seasonal worker is liable under this subtitle as if the labor agent were the employer of the worker, without regard to the right of control or other factors used to determine an employer-employee relationship.

(b) If the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal worker is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by the migrant or seasonal worker as provided by this subtitle, and, for that purpose, the migrant or seasonal worker is considered the employee of the person with whom the labor agent contracts and that person may obtain workers' compensation insurance coverage for that worker as provided by this subtitle. If a migrant or seasonal worker is covered by workers' compensation insurance coverage, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this subtitle.

(c) A labor agent shall notify each person with whom the agent contracts of whether the agent has workers' compensation insurance coverage. If the agent does have workers' compensation insurance coverage, the agent shall present evidence of the coverage to each person with whom the agent contracts.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.164. ELECTIVE COVERAGE OF EMPLOYER AND FAMILY MEMBERS. (a) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover the person, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered.

(b) The elective coverage continues while the policy is in

effect and the named individual is endorsed on the policy.

(c) A member of an employer's family is exempt from coverage under the policy unless an election for that coverage is made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.165. NOT APPLICABLE TO INDEPENDENT CONTRACTORS. (a) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this subchapter is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of an independent contractor.

(b) In this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of the employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 407. SELF-INSURANCE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407.001. DEFINITIONS. In this chapter:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(17), eff. September 1, 2005.

(3) "Impaired employer" means a certified self-insurer:

(A) who has suspended payment of compensation as determined by the division;

(B) who has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(4) "Incurred liabilities for compensation" means the amount equal to the sum of:

(A) the estimated amount of the liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported; and

(B) the estimated amount necessary to provide for the administration of those claims, including legal costs.

(5) "Qualified claims servicing contractor" means a person who provides claims service for a certified self-insurer, who is a separate business entity from the affected certified self-insurer, and who holds a certificate of authority under Chapter 4151.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.042, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(17), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.137, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.02, eff. September 1, 2007.

SUBCHAPTER B. DIVISION OF SELF-INSURANCE REGULATION

Sec. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSIONER. The commissioner shall:

(1) approve or deny the issuance or revocation of a certificate of authority to self-insure; and

(2) certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0421, eff. September 1, 2005.

Sec. 407.024. CLAIM OR SUIT. (a) A claim or suit brought by a claimant or a certified self-insurer shall be styled "in re: [name of employee] and [name of certified self-insurer]."

(b) The commissioner is the agent for service of process for a claim or suit brought by a workers' compensation claimant against the qualified claims servicing contractor of a certified self-insurer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0422, eff. September 1, 2005.

SUBCHAPTER C. CERTIFICATE OF AUTHORITY TO SELF-INSURE

Sec. 407.041. APPLICATION. (a) An employer who desires to self-insure under this chapter must submit an application to the division for a certificate of authority to self-insure.

(b) The application must be:

(1) submitted on a form adopted by the commissioner; and

(2) accompanied by a nonrefundable $1,000 application fee.

(c) Not later than the 60th day after the date on which the application is received, the commissioner shall approve or deny the application.

(d) During the pendency of the approval or denial of the application, the applicant may not operate as a self-insurer under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.043, eff. September 1, 2005.

Sec. 407.042. ISSUANCE OF CERTIFICATE. With the approval of the Texas Certified Self-Insurer Guaranty Association, the commissioner shall issue a certificate of authority to self-insure to an applicant who meets the certification requirements under this chapter and pays the required fee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.044, eff. September 1, 2005.

Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If the commissioner determines that an applicant for a certificate of authority to self-insure does not meet the certification requirements, the division shall notify the applicant in writing of the commissioner's determination, stating the specific reasons for the denial and the conditions to be met before approval may be granted.

(b) The applicant is entitled to a reasonable period, as determined by the commissioner, to meet the conditions for approval before the application is considered rejected for purposes of appeal.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.045, eff. September 1, 2005.

Sec. 407.044. TERM OF CERTIFICATE OF AUTHORITY; RENEWAL. (a) A certificate of authority to self-insure is valid for one year after the date of issuance and may be renewed under procedures prescribed by the commissioner.

(b) The commissioner may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.046, eff. September 1, 2005.

Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. (a) A certified self-insurer may withdraw from self-insurance at any time with the approval of the commissioner. The commissioner shall approve the withdrawal if the certified self-insurer shows to the satisfaction of

the commissioner that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer.

(a-1) For purposes of Subsection (a), an adequate program includes a program in which the certified self-insurer has insured or reinsured all workers' compensation obligations incurred by the self-insurer with an authorized insurer under an agreement that is filed with and approved in writing by the commissioner. The obligations incurred include:

(1) all known claims and expenses associated with those claims; and

(2) all incurred but not reported claims and expenses associated with those claims.

(b) A certified self-insurer who withdraws from self-insurance shall surrender to the division the certificate of authority to self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.047, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1054 (H.B. 1989), Sec. 1, eff. September 1, 2017.

Sec. 407.046. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The commissioner may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with requirements or conditions established by this chapter or a rule adopted by the commissioner under this chapter.

(b) If the commissioner believes that a ground exists to revoke a certificate of authority to self-insure, the commissioner shall refer the matter to the State Office of Administrative Hearings. That office shall hold a hearing to determine if the certificate should be revoked. The hearing shall be conducted in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall notify

the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date.

(d) If the certified self-insurer fails to show cause why the certificate should not be revoked, the commissioner immediately shall revoke the certificate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.21, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.048, eff. September 1, 2005.

Sec. 407.047. EFFECT OF REVOCATION. (a) A certified self-insurer whose certificate of authority to self-insure is revoked is not relieved of the obligation for compensation to an employee for an accidental injury or occupational disease that occurred during the period of self-insurance.

(b) The security required under Sections 407.064 and 407.065 shall be maintained with the division or under the division's control until each claim for workers' compensation benefits is paid, is settled, or lapses under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.049, eff. September 1, 2005.

SUBCHAPTER D. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

Sec. 407.061. GENERAL REQUIREMENTS. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the commissioner and the association of sufficient financial strength and liquidity, under standards adopted by the commissioner, to ensure that all workers' compensation obligations incurred by the applicant under this chapter are met promptly.

(b) The applicant must:

(1) be a business entity, or one of the consolidated subsidiaries of the entity, that is required to register under the

Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and furnish financial information prepared in accordance with the requirements for those business entities; or

(2) annually furnish audited financial statements comparable in form and manner of preparation to those filed by a business entity required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(c) The applicant must present a plan for claims administration that:

(1) is acceptable to the commissioner;

(2) designates a qualified claims servicing contractor; and

(3) complies with Chapter 4151, Insurance Code.

(d) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(e) The applicant must provide to the commissioner a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services if the provider of those services is not an employee of the applicant. The contract must be acceptable to the commissioner and must be submitted in a standard form adopted by the commissioner, if the commissioner adopts such a form.

(f) The commissioner shall adopt rules for the requirements for the financial statements required by Subsection (b)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.050, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.03, eff. September 1, 2007.

Sec. 407.062. FINANCIAL STRENGTH AND LIQUIDITY REQUIREMENTS. In assessing the financial strength and liquidity of an applicant, the commissioner shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the commissioner finds appropriate; and

(8) any other information considered appropriate by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.051, eff. September 1, 2005.

Sec. 407.063. PREMIUM REQUIREMENTS. (a) In addition to meeting the other certification requirements imposed under this chapter, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the commissioner of a total unmodified workers' compensation insurance premium in this state in the calendar year of application of at least $500,000.

(b) Instead of the state premium required under this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least $10 million.

(c) Expired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.052, eff. September 1, 2005.

Sec. 407.064. GENERAL SECURITY REQUIREMENTS. (a) Each applicant shall provide security for incurred liabilities for compensation through a deposit with the division, in a combination and from institutions approved by the commissioner, of the following security:

(1) cash or negotiable securities of the United States or of this state;

(2) a surety bond that names the commissioner as payee; or

(3) an irrevocable letter of credit that names the

commissioner as payee.

(b) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant shall notify the division in writing not later than the 60th day before the effective date of the cancellation of the original letter of credit.

(c) An estimate of the applicant's incurred liabilities for compensation must be signed and sworn to by an accredited casualty actuary and submitted with the application.

(d) The sum of the deposited securities must be at least equal to the greater of:

(1) $300,000; or

(2) 125 percent of the applicant's incurred liabilities for compensation.

(e) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under this section while the cash or securities are on deposit with the division shall be paid to the applicant quarterly.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.053, eff. September 1, 2005.

Sec. 407.065. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or terminated excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or document indicating issuance of an irrevocable letter of credit must be in a form approved by the commissioner and must be issued by an institution acceptable to the commissioner. The instrument may be released only according to its terms but may not be released by the deposit of additional security.

(c) The certified self-insurer shall deposit the security with the comptroller on behalf of the division. The comptroller may accept securities for deposit or withdrawal only on the written order of the commissioner.

(d) On receipt by the division of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets in favor of the commissioner to the extent of any then unsecured portion of the self-insurer's incurred liabilities for compensation. That perfected security interest transfers to cash or securities deposited by the self-insurer with the division after the date of the request and may be released only on:

(1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the division.

(e) The certified self-insurer loses all right to, title to, interest in, and control of the assets or obligations submitted or deposited as security. The commissioner may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) If the commissioner determines that a security deposit is not immediately available for the payment of compensation, the commissioner shall determine the appropriate method of payment and claims administration, which may include payment by the surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.12, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.054, eff. September 1, 2005.

Sec. 407.066. EFFECT OF DISPUTE. (a) The commissioner, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) an issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) an issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(b) A party aggrieved by a decision of the commissioner is entitled to judicial review. Venue for an appeal is in Travis County.

(c) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination staying the payment of claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.055, eff. September 1, 2005.

Sec. 407.067. EXCESS INSURANCE; REINSURANCE; ADMINISTRATIVE VIOLATION. (a) Each applicant shall obtain excess insurance or reinsurance to cover liability for losses not paid by the self-insurer in an amount not less than the amount required by the commissioner.

(b) The commissioner shall require excess insurance or reinsurance in at least the amount of $5 million per occurrence.

(c) A certified self-insurer shall notify the division not later than the 10th day after the date on which the certified self-insurer has notice of the cancellation or termination of excess insurance or reinsurance coverage required under this section.

(d) A person commits an administrative violation if the person violates Subsection (c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.056, eff. September 1, 2005.

Sec. 407.068. GUARANTEE BY PARENT ORGANIZATION. If an applicant for a certificate of authority to self-insure is a subsidiary, the parent organization of the applicant must guarantee the obligations imposed by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. POWERS AND DUTIES OF CERTIFIED SELF-INSURER

Sec. 407.081. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the division. The commissioner shall prescribe the form of the report and shall furnish blank forms for the preparation of the report to each certified self-insurer.

(b) The report must:

(1) include payroll information, in the form prescribed by this chapter and the commissioner;

(2) state the number of injuries sustained in the three preceding calendar years; and

(3) indicate separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries.

(c) Each certified self-insurer shall file with the division as part of the annual report annual independent financial statements that reflect the financial condition of the self-insurer. The division shall make a financial statement filed under this subsection available for public review.

(d) The division may require that the report include additional financial and statistical information.

(e) The certified self-insurer shall present evidence in the report of sufficient financial ability to meet all obligations under this chapter.

(f) The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the commissioner.

(g) If the commissioner considers it necessary, the commissioner may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section more often than annually.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.057, eff. September 1, 2005.

Sec. 407.082. EXAMINATION OF RECORDS; ADMINISTRATIVE VIOLATION. (a) Each certified self-insurer shall maintain the books, records, and payroll information necessary to compile the annual report required under Section 407.081 and any other information reasonably required by the commissioner.

(b) The certified self-insurer may maintain the books, records, and payroll information in locations outside this state.

(c) The material maintained by the certified self-insurer shall be open to examination by an authorized agent or representative of the division at reasonable times to ascertain the correctness of the information.

(d) The examination may be conducted at any location, including the division's Austin offices, or, at the certified self-insurer's option, in the offices of the certified self-insurer. The certified self-insurer shall pay the reasonable expenses, including travel expenses, of an inspector who conducts an inspection at its offices.

(e) An unreasonable refusal on the part of a certified self-insurer to make available for inspection the books, records, payroll information, or other required information constitutes grounds for the revocation of the certificate of authority to self-insure and is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.058, eff. September 1, 2005.

Sec. 407.083. PAYMENT OF INSURANCE AGENT'S COMMISSION. This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. FINANCING OF SELF-INSURANCE PROGRAM

Sec. 407.101. FUND. (a) The workers' compensation self-insurance fund is a fund in the state treasury. The fund may be used only for the regulation of certified self-insurers.

(b) The department shall deposit the application fee for a certificate of authority to self-insure in the Texas Department of Insurance operating account to the credit of the division.

(c) Any amount remaining in the fund at the end of a fiscal year shall be used to reduce the regulatory fee assessed under Section 407.102 in the succeeding fiscal year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.059, eff. September 1, 2005.

Sec. 407.102. REGULATORY FEE. (a) Each certified self-insurer shall pay an annual fee to cover the administrative costs incurred by the division in implementing this chapter.

(b) The division shall base the fee on the total amount of income benefit payments made in the preceding calendar year. The division shall assess each certified self-insurer a pro rata share based on the ratio that the total amount of income benefit payments made by that certified self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.060, eff. September 1, 2005.

Sec. 407.103. SELF-INSURER MAINTENANCE TAX; EFFECT ON GENERAL MAINTENANCE TAX. (a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the division and the office of injured employee counsel and to support the prosecution of workers' compensation insurance fraud in this state. Not more than two percent of the total tax base of all certified self-insurers, as computed under Subsection (b), may be assessed for a maintenance tax under this section.

(b) To determine the tax base of a certified self-insurer for

purposes of this chapter, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02.

(c) The tax liability of a certified self-insurer under this section is the tax base computed under Subsection (b) multiplied by the rate assessed workers' compensation insurance companies under Sections 403.002 and 403.003.

(d) In setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.22, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1443, Sec. 6, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.061, eff. September 1, 2005.

Sec. 407.104. COLLECTION OF TAXES AND FEES; ADMINISTRATIVE VIOLATION. (a) The regulatory fee imposed by Section 407.102 and the taxes imposed by Section 407.103 are due on the 60th day after the issuance of a certificate of authority to self-insure and on the 60th day after each annual renewal date.

(b) The department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fees shall be remitted to the division.

(c) The regulatory fee imposed under Section 407.102 shall be deposited in the Texas Department of Insurance operating account to the credit of the division. The self-insurer maintenance tax shall be deposited in the Texas Department of Insurance operating account to the credit of the division.

(d) A certified self-insurer commits an administrative violation if the self-insurer does not pay the taxes and fee imposed under Sections 407.102 and 407.103 in a timely manner.

(e) If the certificate of authority to self-insure of a

certified self-insurer is terminated, the commissioner or the commissioner of insurance shall proceed immediately to collect taxes due under this subtitle, using legal process as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.062, eff. September 1, 2005.

SUBCHAPTER G. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION

Sec. 407.121. GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association provides for the payment of workers' compensation insurance benefits for the injured employees of an impaired employer.

(b) Each employer who desires to become a certified self-insurer must be a member of the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.122. BOARD OF DIRECTORS. (a) The members of the association shall elect a board of directors.

(b) The board of directors is composed of the following voting members:

(1) three certified self-insurers;

(2) one member designated by the commissioner; and

(3) the public counsel of the office of public insurance counsel.

(c) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(19), eff. September 1, 2005.

(d) A member of the board of directors or a member of the staff of the board of directors is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.23, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.063, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(19), eff. September 1, 2005.

Sec. 407.123. BOARD RULES. (a) The board of directors may adopt rules for the operation of the association.

(b) Rules adopted by the board are subject to the approval of the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.064, eff. September 1, 2005.

Sec. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS. (a) On determination by the division that a certified self-insurer has become an impaired employer, the commissioner shall secure release of the security deposit required by this chapter and shall promptly estimate:

(1) the amount of additional funds needed to supplement the security deposit;

(2) the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation; and

(3) the funds maintained by the association for the emergency payment of compensation liabilities.

(b) The commissioner shall advise the board of directors of the association of the estimate of necessary additional funds, and the board shall promptly assess each certified self-insurer to collect the required funds. An assessment against a certified self-insurer shall be made in proportion to the ratio that the total paid income benefit payment for the preceding reported calendar year for that self-insurer bears to the total paid income benefit payment by all certified self-insurers, except impaired employers, in this state in that calendar year.

(c) A certified self-insurer designated as an impaired employer is exempt from assessments beginning on the date of the designation until the division determines that the employer is no longer impaired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.065, eff. September 1, 2005.

Sec. 407.125. PAYMENT OF ASSESSMENTS. Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through suit. Venue is in Travis County.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.126. TRUST FUND; FEE; SCHEDULE. (a) Each member of the association shall be assessed an annual fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to maintain a Texas certified self-insurer guaranty trust fund of at least $2 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed three percent of the combined value of the security deposits of all certified self-insurers.

(b) The board of directors shall submit to the commissioner for approval a recommended balance of the trust fund. On approval by the commissioner of the recommended balance, the board of directors shall adopt a year-by-year schedule of assessments to meet the funding goal of the fund.

(c) The assessment for the first year after an employer is issued a certificate of authority to self-insure shall be based on the income benefit payments paid by the employer's insurance carrier on the employer's policy in the year before the certificate was issued.

(d) The board of directors shall administer the trust fund in accordance with rules adopted by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.24, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.066, eff.

September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1055 (H.B. 1990), Sec. 1, eff. September 1, 2017.

Sec. 407.127. PAYMENT OF BENEFITS THROUGH ASSOCIATION. (a) If the commissioner determines that the payment of benefits and claims administration shall be made through the association, the association assumes the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director.

(b) The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association.

(c) Notwithstanding Subsection (a), the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(a), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.067, eff. September 1, 2005.

Sec. 407.128. POSSESSION OF SECURITY BY ASSOCIATION. On the assumption of obligations by the association under the commissioner's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of an irrevocable letter of credit shall deliver the security to the association with any accrued interest.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.068, eff. September 1, 2005.

Sec. 407.129. RELEASE OF CLAIM INFORMATION TO ASSOCIATION. Information on a workers' compensation claim may be released to the association as provided by Section 402.084(a), if the association has

assumed the obligations of an impaired employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.130. ASSOCIATION AS PARTY IN INTEREST. (a) The association is a party in interest in a proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association.

(b) The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, or appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and

(3) investigate, handle, or deny a claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.131. PREFERENCE. The benefit payments made by the association or the surety under this chapter are entitled to the same preference over other debts of the impaired employer or the impaired employer's estate as provided by law to benefit payments owed by the employer or employer's estate to the person entitled to the benefits.

Acts 1993, 73rd Leg., ch. 269 , Sec. 1, eff. Sept. 1, 1993.

Sec. 407.132. SPECIAL FUND. Funds advanced by the association under this subchapter do not become assets of the impaired employer but are a special fund advanced to the commissioner, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the costs of claims administration and legal costs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.069, eff. September 1, 2005.

Sec. 407.133. SUSPENSION OR REVOCATION OF CERTIFICATE FOR FAILURE TO PAY ASSESSMENT. (a) The commissioner may suspend or revoke the certificate of authority to self-insure of a certified self-insurer who fails to pay an assessment. The association promptly shall report such a failure to the director.

(b) A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(c) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.070, eff. September 1, 2005.

CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407A.001. DEFINITIONS. (a) In this chapter:

(1) "Administrator" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(2) "Commissioner" means the commissioner of insurance.

(3) "Department" means the Texas Department of Insurance.

(4) "Estimated premium subject to experience modifier" means the premium derived from applying the filed rates to estimated payrolls and before the adjustment of the premium by experience modifiers, schedule rating plan factors, deductible credits, minimum premiums, and premium discounts.

(5) "Group" means a workers' compensation self-insurance group that holds a certificate of approval under this chapter.

(5-a) "Managing company" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(6) "Modified schedule rating premium" means premium

derived from applying filed rates to estimated payrolls and then adjusted by the experience modifier and any schedule rating plan factors.

(7) "Same or similar" means, with regard to members of a group, that:

(A) the governing classification code of the members of the group is the same; or

(B) the members of the group are engaged in similar operations.

(8) "Service company" means a person that provides services to the group other than services provided by the managing company, including:

(A) claims adjustment;

(B) safety engineering;

(C) compilation of statistics and the preparation of premium, loss, and tax reports;

(D) preparation of other required self-insurance reports;

(E) development of members' assessments and fees; and

(F) administration of a claim fund.

(b) For purposes of this chapter, when used as a modifier of "benefits," "liabilities," or "obligations," the term "workers' compensation" includes both workers' compensation and employers' liability.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.04, eff. September 1, 2007.

Sec. 407A.002. APPLICATION OF CHAPTER; ESTABLISHMENT OF PRIVATE GROUP. (a) An unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under this chapter if the employers:

(1) are engaged in the same or a similar type of business;

(2) are members of a bona fide trade or professional association that has been in existence in this state for purposes other than insurance for at least five years before the establishment

of the group; and

(3) enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in this state.

(b) This chapter does not apply to public employees or governmental entities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.003. MERGER OF GROUPS. (a) Subject to the approval of the commissioner, a group may merge with another group engaged in the same or a similar type of business if the resulting group assumes in full all obligations of the merging groups.

(b) The commissioner may conduct a hearing on a proposed merger and shall conduct a hearing if any party, including a member of either group, requests a hearing.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.004. GROUP NOT INSURER. A group issued a certificate of approval by the commissioner under this chapter is not:

(1) an insurer based on that certificate; and

(2) subject to the insurance laws and rules of this state except as otherwise provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.005. CERTIFICATE OF APPROVAL REQUIRED. An association of employers may not act as a workers' compensation self-insurance group unless it has been issued a certificate of approval by the commissioner under this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.006. SERVICE OF PROCESS. (a) Each group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against the group in this state.

(b) The appointment of the commissioner is irrevocable, binds any successor in interest, and remains in effect as long as any obligation or liability of the group for workers' compensation benefits exists in this state.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.007. HEARINGS. A hearing required under this chapter shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.008. RULES. The commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR CERTAIN ADMINISTRATORS AND SERVICE COMPANIES. (a) An administrator or service company under this chapter that performs the acts of an administrator as defined in Chapter 4151, Insurance Code, must hold a certificate of authority under that chapter.

(b) An entity is required to hold only one certificate of authority under Chapter 4151, Insurance Code, if:

(1) the entity acts as an administrator and a service company as defined in this chapter; and

(2) performs the acts of an administrator as that term is defined in Chapter 4151, Insurance Code.

(c) Exemptions in Chapter 4151, Insurance Code, as provided in Sections 4151.002(18), (19), and (20), apply to an administrator or service company under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.05, eff. September 1, 2007.

SUBCHAPTER B. APPLICATION REQUIREMENTS FOR CERTIFICATE OF APPROVAL FOR SELF-INSURANCE GROUP

Sec. 407A.051. APPLICATION FOR INITIAL CERTIFICATE OF APPROVAL; APPROVAL REQUIREMENTS. (a) An association of employers that proposes to organize as a workers' compensation self-insurance group shall file with the department an application for a certificate of approval.

(b) The application must be in the form prescribed by the commissioner and must include:

(1) the name of the group;

(2) the location of the group's principal office;

(3) the date of organization of the group;

(4) the name and address of each employer that is a member of the group;

(5) the name, mailing address, and telephone number of the trade or professional association to which each group member belongs as required by Section 407A.002(a)(2);

(6) the governing classification code of the group or a description of the operations of each member of the group showing that the members of the group are engaged in similar operations; and

(7) any other information reasonably required by the commissioner.

(c) The application must be accompanied by:

(1) a nonrefundable $1,000 filing fee;

(2) proof of compliance with the financial requirements under Section 407A.053;

(3) proof of compliance with the excess insurance requirements under Section 407A.054;

(4) a copy of the articles of association or declaration of trust of the group, if any;

(5) a copy of any agreements entered into with an administrator or a service company;

(6) a copy of the bylaws of the proposed group;

(7) a copy of the agreement between the group and each employer who is a member of the group that:

(A) secures the payment of workers' compensation benefits; and

(B) includes provisions for payment of assessments as provided by Section 407A.355;

(8) designation of the initial board of trustees and

administrator of the group;

(9) the address in this state where the books and records of the group will be maintained at all times;

(10) a pro forma financial statement, in a form acceptable to the commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the employers who are members of the group;

(11) proof of one of the following:

(A) payment to the group, or a bona fide promise to pay on approval of the group, by each employer who is a member of the group of not less than 25 percent of that member's first year estimated modified schedule rating premium on a date prescribed by the commissioner, which shall be considered part of the first year premium payment of each member; or

(B) if the group is formed from a trust existing on September 1, 2003, that the assets of the trust are sufficient to cover the workers' compensation obligations of the trust;

(12) a $250,000 fidelity bond for the administrator in the form prescribed by the commissioner;

(13) a $250,000 fidelity bond for the service company in the form prescribed by the commissioner; and

(14) an indemnity agreement that meets the requirements of Section 407A.056.

(d) Not later than the 30th day after the effective date of the change, a group shall notify the commissioner of any change in:

(1) the information required to be filed under Subsection (c); or

(2) the manner of the group's compliance with Subsection (c).

(e) The commissioner shall evaluate the financial information provided with the application as necessary to ensure that:

(1) the funding is sufficient to cover expected losses and expenses; and

(2) the funds necessary to pay workers' compensation benefits will be available on a timely basis.

(f) Except as otherwise provided by this subsection, the commissioner shall act on a complete application for a certificate of approval not later than the 90th day after the date on which the application is filed with the department. If, because of the number of applications, the commissioner is unable to act on an application

in a timely manner, the commissioner may extend the period for an additional 30 days.

(g) Fees collected under this section shall be deposited in the department's operating account.

(h) In lieu of the bonds required under Subsections (c)(12) and (c)(13), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 2, eff. September 1, 2005.

Sec. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL; REFUSAL. (a) The commissioner shall issue a certificate of approval to a proposed group on finding that the group has met the requirements of this subchapter.

(b) If the commissioner determines that a proposed group has not satisfied the requirements under this subchapter for a certificate of approval, the commissioner shall issue an order refusing the certificate. The order must set forth the reasons for the refusal.

(c) On issuance of the certificate of approval, the group is authorized to provide workers' compensation benefits.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.053. FINANCIAL REQUIREMENTS. (a) To obtain a certificate of approval, each group shall comply with the financial requirements adopted under this section.

(b) The combined net worth of all employers who are members of the group must be at least $2 million. A member of the group may not be required to submit an audited financial statement to establish the $2 million combined net worth, but the group must file a report compiled by a certified public accountant and based on financial statements or tax returns to support the existence of a combined net worth of at least $2 million for the initial group. In the case of a

group composed of a trust existing on September 1, 2003, the trust may satisfy the financial requirements of this section by showing that the trust has participant surplus, including accrued participant dividends of at least $2 million, in lieu of the requirement of the $2 million combined net worth of its members. Discounted reserves may not be considered in determining whether a trust existing on September 1, 2003, has a surplus of at least $2 million.

(c) The group must post security in the form and amount prescribed by the commissioner, equal to the greater of $300,000 or 25 percent of the group's total incurred liabilities for workers' compensation. The security may be provided by a surety bond, security deposit, or any combination of those securities. If a surety bond is used to meet the security requirement, the surety bond must be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, the following are acceptable securities:

(1) a bond or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America or by an agency or instrumentality of the United States of America;

(2) certificates of deposit in a federally insured bank;

(3) shares or savings deposits in a federally insured savings and loan association or credit union;

(4) a bond or security issued by a state and backed by the full faith and credit of that state;

(5) public securities described by Subsection (f); and

(6) commercial paper payable in United States currency that is rated in one of the two highest credit rating categories by each rating agency.

(d) Any securities posted must be deposited in the state treasury and must be assigned to and made negotiable by the commissioner of workers' compensation under a trust document acceptable to the commissioner of insurance. Interest accruing on a negotiable security deposited under this subsection shall be collected and transmitted to the depositor if the depositor is not in default.

(e) A bond or security deposit must be:

(1) made for the benefit of the state, to be used solely to pay claims and associated expenses; and

(2) payable on the failure of the group to pay workers' compensation benefits that it is legally obligated to pay.

(f) Public securities may be used as security under this section if the public securities bear interest or are sold at a discount and are issued by any corporation, denominated in United States dollars.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.071, eff. September 1, 2005.

Sec. 407A.054. EXCESS INSURANCE REQUIREMENTS. (a) To obtain an initial certificate of approval and to be eligible to renew its certificate of approval, each group must comply with the excess insurance requirements adopted under this section.

(b) Each group shall obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the commissioner. The commissioner may establish minimum requirements for the amount of specific excess insurance based on differences among groups in size, types of employment, years in existence, and other relevant factors.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.055. PREMIUM REQUIREMENTS. Each group must have an estimated premium subject to experience modifier of at least $250,000 during the group's first year of operation. Thereafter, the annual standard premium must be at least $500,000.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS. (a) An indemnity agreement filed under Section 407A.051 must jointly and severally bind the group and each employer who is a member of the group to meet the workers' compensation obligations of each member.

(b) The indemnity agreement must be in the form prescribed by the commissioner and must include minimum uniform substantive provisions as prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions necessary

because of that group's particular circumstances.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS. (a) In addition to the requirements under Section 407A.051, the commissioner may require a service company providing claim services to furnish a performance bond of $250,000 in the form prescribed by the commissioner.

(b) In lieu of a performance bond under Subsection (a), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 3, eff. September 1, 2005.

SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL

Sec. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION. (a) A certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner.

(b) The commissioner may not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. For purposes of this subsection, those obligations include:

(1) known claims and expenses associated with those claims; and

(2) incurred but not reported claims and expenses associated with those claims.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. BOARD OF TRUSTEES

Sec. 407A.151. BOARD MEMBERSHIP. (a) Each group shall be

operated by a board of trustees composed of at least five persons whom the members of the group elect for stated terms of office. The trustees must be employees, officers, or directors of employers who are members of the group. Each board member shall be a resident of this state or an officer of a corporation authorized to do business in this state.

(b) An administrator or service company of the group, or owner, officer, employee of, or any other person affiliated with the administrator or service company, may not serve on the board of trustees.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. The board of trustees shall:

(1) maintain minutes of its meetings and make the minutes available to the commissioner;

(2) designate an administrator and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; and

(3) retain an independent certified public accountant to audit the financial statements required by Section 407A.251.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.153. PROHIBITED ACTIVITIES. The board of trustees may not:

(1) extend credit to individual members for payment of a premium, except under payment plans approved by the commissioner; or

(2) without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner, borrow any money from the group or in the name of the group except in the ordinary course of business.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.154. GROUP FUNDS. The board of trustees shall maintain responsibility for all money collected or disbursed from the

group.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY

Sec. 407A.201. ADMISSION OF EMPLOYER AS MEMBER. (a) An employer who joins an approved workers' compensation self-insurance group shall:

(1) submit an application for membership to the board of trustees or its administrator; and

(2) enter into the indemnity agreement as required by Section 407A.056.

(b) The board of trustees shall maintain as a permanent record the employer's application for membership and the approval of the application.

(c) The membership of an individual member of a group is subject to cancellation by the group as provided by the bylaws of the group. An individual member may also elect to terminate participation in the group. The group shall notify the commissioner and the commissioner of workers' compensation of the cancellation or termination of a membership not later than the 10th day after the date on which the cancellation or termination takes effect and shall maintain coverage of each canceled or terminated member until the 30th day after the date of the notice, at the terminating member's expense, unless before that date the commissioner of workers' compensation notifies the group that the canceled or terminated member has:

(1) obtained workers' compensation insurance coverage;

(2) become a certified self-insurer; or

(3) become a member of another group.

(d) The group shall pay each workers' compensation claim for which a member of the group incurs liability during the period of membership. A member who elects to terminate membership or whose membership is canceled by the group remains jointly and severally liable for the workers' compensation obligations of the group and its members incurred during the canceled or terminated member's period of membership.

(e) A member of a group is not relieved of workers' compensation liabilities incurred during its period of membership

except through payment by the group or the member of required workers' compensation benefits.

(f) The insolvency or bankruptcy of a member does not relieve a group or any other member of the group of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.072, eff. September 1, 2005.

SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND OTHER REPORTS

Sec. 407A.251. FINANCIAL STATEMENT. (a) Each group shall submit to the commissioner financial statements audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year.

(b) The financial statement must include a balance sheet, income statement, and statement of cash flow and must be prepared on the basis of accounting principles generally accepted in the United States.

(c) Loss reserves may be discounted subject to generally accepted accounting principles. The discounting must be documented in the notes accompanying the financial statement. Notwithstanding this subsection, dividends paid to members of the group must be based on undiscounted loss reserves.

(d) The audited financial statements required by this section must be accompanied by an actuarial opinion on the adequacy of the group's loss reserves, including the reasonableness of any reserve discount. The actuarial opinion must be given by a member in good standing of the American Academy of Actuaries and the Casualty Actuarial Society.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.252. EXAMINATION. (a) The commissioner shall examine the financial condition of each group to determine the group's ability to meet the group's obligations under this subtitle. An examination under this section is subject to Article 1.15,

Insurance Code, except that, to the extent of a conflict between this chapter and that article, this chapter prevails. The commissioner may examine a group annually for the first three years of the group's operation. Beginning with the fourth year of operation, the commissioner may not examine a group more frequently than once every three years unless the commissioner determines that the group:

(1) is in an impaired financial condition; or

(2) otherwise may not be able to continue to meet the group's obligations under this subtitle.

(b) The commissioner has full access to the records, officers, agents, and employees of a group as necessary to complete an examination under this section. The commissioner may recover the expenses of the examination under Article 1.16, Insurance Code, to the extent the maintenance tax under Section 407A.302 does not cover those expenses.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS

Sec. 407A.301. MAINTENANCE TAX FOR DIVISION AND RESEARCH FUNCTIONS OF DEPARTMENT. (a) Each group shall pay a self-insurance group maintenance tax under this section for:

(1) the administration of the division of workers' compensation of the department;

(2) the prosecution of workers' compensation insurance fraud in this state;

(3) the research functions of the department under Chapter 405; and

(4) the administration of the office of injured employee counsel under Chapter 404.

(b) The tax liability of a group under Subsections (a)(1) and (2) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Sections 403.002 and 403.003.

(c) The tax liability of a group under Subsection (a)(3) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Section 405.003.

(d) The tax under this section does not apply to premium collected by the group for excess insurance.

(e) The tax under this section shall be collected by the comptroller as provided by Section 201.051 and Chapter 255, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.073, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.074, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.138, eff. September 1, 2005.

Sec. 407A.302. MAINTENANCE TAX FOR DEPARTMENT. (a) Subject to Subsection (b), each group shall pay the maintenance tax imposed under Chapter 255, Insurance Code, for the administrative costs incurred by the department in implementing this chapter.
(b) The tax liability of a group under this section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance.
(c) The maintenance tax assessed under this section is subject to Chapter 255, Insurance Code, and shall be collected by the comptroller in the manner provided by that chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.139, eff. September 1, 2005.

Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The group shall remit the taxes for deposit in the Texas Department of Insurance operating account to the credit of the division.
(b) A group commits an administrative violation if the group does not pay the taxes imposed under Sections 407A.301 and 407A.302 in a timely manner.
(c) If the certificate of approval of a group is terminated, the commissioner or the commissioner of insurance shall immediately notify the comptroller to collect taxes as directed under Sections 407A.301 and 407A.302.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.075, eff. September 1, 2005.

Sec. 407A.304. PREMIUM TAX. (a) Each group shall pay to the comptroller a premium tax on gross premiums for the group's retention. The premium tax assessed under this subsection does not apply to premium collected for excess insurance.

(b) The rate for the premium tax under this section is the rate assessed under Chapter 221, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.140, eff. September 1, 2005.

SUBCHAPTER H. RATES; REFUNDS; PREMIUM PAYMENTS; RESERVES; DEFICITS

Sec. 407A.351. RATES.

(a) Except as provided by Subsection (b), each group shall use the uniform classification system and experience rating plan of the department.

(b) A group may file rates with the department, including any reasonable and supporting information required by the commissioner.

(c) As approved by the commissioner, a group may use rating debits or credits and optional rating plans.

(d) Rates of the group may not be excessive, inadequate, or unfairly discriminatory.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 558 (S.B. 1336), Sec. 5, eff. September 1, 2019.

Sec. 407A.352. AUDITS. Each member of a group shall be audited annually by the administrator or by an auditor acceptable to the

commissioner to verify proper classifications, experience rating, payroll, and rates. The group shall maintain a record of the audit as part of the group's records that are available to the commissioner during an examination conducted under Section 407A.252. The audit shall be performed at the expense of the group.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.353. REFUNDS. (a) The board of trustees may declare refundable any money for a fund year in excess of the amount necessary to fund all obligations.

(b) The board of trustees shall give each member a written description of the group's refund plan at the time of application for membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.354. PREMIUM PAYMENT PLAN; RESERVES. (a) Until the assets of a group reach a level sufficient to cover the group's liabilities, each group shall establish to the satisfaction of the commissioner a premium payment plan.

(b) As long as the assets of the group remain sufficient to cover the group's liabilities, the group may determine its own premium plan if the premium plan is disclosed to each member at the time of application and is filed with the commissioner.

(c) Each group shall establish and maintain actuarially appropriate loss reserves, which must include reserves for:

(1) known claims and expenses associated with those claims; and

(2) claims incurred but not reported and expenses associated with those claims.

(d) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or of other groups composed of similar employer members.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.355. DEFICITS; INSOLVENCIES. (a) For purposes of

this section, "insolvent" means:

(1) the inability of a group to pay the group's outstanding lawful obligations as they mature in the regular course of business; or

(2) that the group's liabilities exceed the group's assets, determined without reducing liabilities by any reserve discount.

(b) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required under this chapter, the group shall make up the deficiency or levy an assessment on its members for the amount needed to make up the deficiency.

(c) In the event of a deficiency in any fund year, the deficiency shall be made up immediately from:

(1) surplus from a fund year other than the current fund year;

(2) administrative funds;

(3) assessments of the membership, if ordered by the group; or

(4) any alternate method that the commissioner approves or directs.

(d) The commissioner shall be notified before any transfer of surplus funds from one fund year to another under Subsection (c).

(e) If the group fails to assess its members or to otherwise make up a deficit, the commissioner shall order the group to do so. If the commissioner determines that the group is in a hazardous financial condition, the commissioner may take action as provided by Article 21.28-A, Insurance Code, and may order the group to rectify the condition through an alternate method under Subsection (c)(4). The group is considered an insurer only for purposes of Article 21.28-A, Insurance Code. Otherwise, to the extent of a conflict between this chapter and that article, this chapter prevails.

(f) If the group fails to make the required assessment of its members after the commissioner's order under Subsection (e), or if the deficiency is not fully made up, the group shall be deemed to be insolvent.

(g) If a group is liquidated, the commissioner shall secure release of the security deposit and levy an assessment on the members of the group in an amount determined necessary by the commissioner to discharge all liabilities of the group, including the reasonable cost of liquidation.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES

Sec. 407A.401. PROHIBITED SOLICITATION. In connection with the solicitation of membership in a group, a person may not make an untrue statement of a material fact, or omit to state a material fact necessary to make the statement made, in light of the circumstances under which it is made, not misleading.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.402. FINES. After notice and an opportunity for a hearing, the commissioner may impose a fine on any person or group found to be in violation of this chapter or a rule adopted under this chapter. A fine assessed under this section may not exceed $1,000 for each act or violation and may not exceed $10,000 in the aggregate. The amount of any fine assessed under this section shall be paid to the commissioner and deposited in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.403. CEASE AND DESIST ORDERS. (a) After notice and an opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of this chapter or a rule adopted under this chapter.

(b) On a finding, after notice and opportunity for a hearing, that a person or group has violated a cease and desist order issued under this section, the commissioner may:

(1) impose a fine not to exceed $1,000 for each violation of the order, not to exceed an aggregate fine of $100,000;

(2) revoke the group's certificate of approval or any license held by the person issued under the Insurance Code; or

(3) impose the fine and revoke the certificate or license.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.404. REVOCATION OF CERTIFICATE OF APPROVAL. (a) After notice and an opportunity for a hearing, the commissioner may revoke a group's certificate of approval if the group:

(1) is found to be insolvent;

(2) fails to pay a tax, assessment, or special fund contribution imposed on the group; or

(3) fails to comply in a timely manner with this chapter, a rule adopted under this chapter, or an order of the commissioner.

(b) In addition, the commissioner may revoke a group's certificate of approval if, after notice and an opportunity for hearing, the commissioner determines that:

(1) a certificate of approval issued to the group was obtained by fraud;

(2) there was a material misrepresentation in the application for the certificate of approval; or

(3) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay on proper demand any money that belongs to a member, an employee of a member, or a person otherwise entitled to the money and that has been entrusted to the group or its administrator in their fiduciary capacities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND

Sec. 407A.451. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the guaranty fund.

(2) "Guaranty fund" means the Texas self-insurance group guaranty fund.

(3) "Trust fund" means the trust fund established under Section 407A.457.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.452. GUARANTY FUND. (a) The Texas self-insurance group guaranty fund is a nonprofit association established to provide for the payment of workers' compensation insurance benefits for injured employees covered by a group declared insolvent under Section

407A.355.

(b) Each group that desires to be certified under this chapter must participate as a member of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.453. BOARD OF DIRECTORS. (a) The guaranty fund is managed by a board of directors.

(b) The board is composed of the following voting members:

(1) three members elected as provided by Subsection (c), each of whom represents a different group certified under this chapter;

(2) one member to represent wage earners designated by the commission;

(3) one member designated by the commissioner; and

(4) the public counsel of the office of public insurance counsel.

(c) Representatives of each group certified under this chapter may participate equally in the election of the three members of the board elected under Subsection (b)(1). A person elected under Subsection (b)(1) must be approved by the commissioner before the person may serve on the board.

(d) Notwithstanding Subsection (c), the commissioner shall appoint the initial board members representing groups. A person appointed as an initial board member under this subsection is eligible to serve additional terms on election by the members of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.454. IMMUNITY. A board member or a member of the staff of the board is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.455. BOARD GENERAL POWERS AND DUTIES. (a) The board shall:

(1) create and maintain a trust fund for payment of the workers' compensation liabilities of an insolvent group;

(2) hire staff as necessary;

(3) provide recommendations to the commissioner regarding rules or guidelines applicable to groups;

(4) receive reports from the department on the financial condition of groups, including examination and audit reports;

(5) engage consulting experts as necessary to review information provided by or filed with the department to ensure financial solvency of groups under this chapter;

(6) provide advisory recommendations to the commissioner as necessary regarding an applicant's compliance with Subchapter B relating to application requirements for certification; and

(7) take action, in response to a finding by the commissioner that a group is insolvent, to use the trust fund's resources to ensure the payment of the group's valid workers' compensation claims and related administrative expenses.

(b) The board shall control all amounts in the trust fund, including investment of those amounts.

(c) The guaranty fund may not disclose confidential information received from the department in a financial report under Subsection (a)(4), including an examination or audit report. Information received from the department remains confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The board may make recommendations under Subsection (a)(6) outside of regular board meetings.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.456. PLAN OF OPERATION. (a) The board shall adopt a plan of operation governing the board's activities and the operation of the guaranty fund and the trust fund.

(b) The plan of operation adopted by the board is subject to approval by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.457. TRUST FUND; SCHEDULE. (a) Each group shall contribute an amount, based on the total amount of income benefit payments made in this state for the preceding reported calendar year, to create, over a period of 10 years beginning January 1, 2006, a trust fund of at least $1 million for:

(1) the emergency payment of the compensation liabilities of an insolvent group; and

(2) the administrative expenses of the guaranty fund.

(b) The board may adopt provisions in the plan of operation that provide for the indexing of the amount of the trust fund to a risk analysis.

(c) At least annually, the board shall adopt a year-by-year schedule of assessments to meet the funding goal of the trust fund.

(d) The board may:

(1) defer assessments if the fund equals or exceeds $2 million; and

(2) allow the trust fund to accrete based on its investment earnings.

(e) The contribution required for the first year after a group is issued a certificate of approval under this chapter shall be based on the group's estimated income benefit payments for the group's first year of operation.

(f) Each group certified under this chapter shall make contributions under this section to the trust fund, and the board shall provide a mechanism in the plan of operation to ensure that all groups contribute equitably to the trust fund.

(g) The board shall administer the trust fund in accordance with the plan of operation adopted by the board and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.458. EFFECT OF INSOLVENCY OF GROUP. (a) On determining that a group has become insolvent, the commissioner shall

secure release of the surety bond or security deposit required under Section 407A.053 and shall promptly estimate:

(1) the amount of additional funds needed to supplement the bond or security deposit; and

(2) the assets of the insolvent group available to pay all incurred compensation liabilities.

(b) If the bond or security deposit and the available assets of the insolvent group are insufficient to cover all of the group's incurred compensation liabilities, the commissioner shall direct the insolvent group to immediately assess its members to cover all incurred liabilities under a schedule approved by the commissioner.

(c) If the assessments under Subsection (b) will be insufficient to cover the incurred liabilities, the commissioner shall estimate the additional funds necessary to cover the incurred liabilities for benefit compensation and related administration expenses for the insolvent group. On receipt of the commissioner's estimate, the board shall provide from the trust fund the additional funds needed for benefit compensation and related administrative expenses for the insolvent group.

(d) Disbursements from the trust fund under Subsection (c) shall be replenished:

(1) if within the 10-year funding period of the trust fund, by adjusting the next year's schedule of assessments from groups; or

(2) if beyond the initial 10-year funding period, by assessment of all groups.

(e) If, after application of Subsections (b)-(d), the amount available in the trust fund is still insufficient, the board shall assess all groups for the remaining deficiency.

(f) The commissioner may exempt a group from assessment under this section on a determination that the payment of the assessment would render the group insolvent.

(g) The commissioner may, on a finding of insolvency, commence a delinquency proceeding for the purpose of liquidating, rehabilitating, reorganizing, or conserving a group. Such a group shall be considered an insurer for purposes of Article 21.28, Insurance Code, and an insurance company for purposes of 11 U.S.C. Section 109. The conservator, receiver, or other statutory successor of a group shall coordinate with the board in the furtherance of the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. (a) Each member of an insolvent group shall pay the amount of its assessment under this chapter to the commissioner not later than the 30th day after the date on which the commissioner notifies the member of the assessment. The commissioner shall collect assessments and costs from the members of the insolvent group.

(b) The joint and several liability of the members of a group under Section 407A.056 continues and is not terminated by payment of benefits through the guaranty fund.

(c) If the guaranty fund assumes payment of benefits for compensation liabilities on behalf of an insolvent group, the guaranty fund may collect delinquent assessments and costs through suit. Venue for a suit under this subsection is in Travis County.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND. (a) If the commissioner determines that the payment of benefits and claims administration shall be made through the guaranty fund, the guaranty fund assumes the workers' compensation obligations on behalf of the insolvent group and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the commissioner.

(b) The guaranty fund shall make payments to claimants whose entitlement to benefits can be ascertained by the guaranty fund.

(c) Notwithstanding Subsection (a), the guaranty fund is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND. On the

assumption of obligations on behalf of an insolvent group by the guaranty fund under the commissioner's determination, the guaranty fund is entitled to immediate possession of any assets of the insolvent group and any security deposited or the proceeds of any surety bond deposited by the insolvent group, along with all interest on the security. All assessments from members of the insolvent group shall be paid to the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.462. RELEASE OF CLAIM INFORMATION TO GUARANTY FUND. If the guaranty fund has assumed compensation obligations on behalf of an insolvent group, information on a workers' compensation claim may be released to the guaranty fund as provided by Section 402.084(a).

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.463. GUARANTY FUND AS PARTY IN INTEREST. (a) The guaranty fund is a party in interest in a proceeding involving a workers' compensation claim against an insolvent group whose compensation obligations have been paid or assumed by the guaranty fund.

(b) The guaranty fund has the same rights and defenses as the insolvent group, including the right to:

(1) appear, defend, or appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and

(3) investigate, handle, or deny a claim.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.464. PREFERENCES. (a) Benefit payments made by the guaranty fund under this subchapter are entitled to the same preference over other debts of the insolvent group as provided by law

to benefit payments owed by the insolvent group to the person entitled to the benefits.

(b) The guaranty fund has the priority status provided by Section 8, Article 21.28, Insurance Code.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.465. SPECIAL FUND. Monies advanced by the association under this chapter do not become assets of the insolvent group but constitute a special fund advanced to the commissioner, receiver, or other statutory successor only for the payment of compensation liabilities, including the costs of claim administration and legal costs.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

CHAPTER 408. WORKERS' COMPENSATION BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 408.001. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer for the death of or a work-related injury sustained by the employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence.

(c) In this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

(d) A determination under Section 406.032, 409.002, or 409.004 that a work-related injury is noncompensable does not adversely affect the exclusive remedy provisions under Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.077, eff.

September 1, 2005.

Sec. 408.002. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1991.

Sec. 408.003. REIMBURSABLE EMPLOYER PAYMENTS; SALARY CONTINUATION; OFFSET AGAINST INCOME BENEFITS; LIMITS. (a) After an injury, an employer may:

(1) initiate benefit payments, including medical benefits; or

(2) on the written request or agreement of the employee, supplement income benefits paid by the insurance carrier by an amount that does not exceed the amount computed by subtracting the amount of the income benefit payments from the employee's net preinjury wages.

(b) If an injury is found to be compensable and an insurance carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of benefits paid by the employer to which the employee was entitled under this subtitle. Payments that are not reimbursed or reimbursable under this section may be reimbursed under Section 408.127.

(c) The employer shall notify the division and the insurance carrier on forms prescribed by the commissioner of the initiation of and amount of payments made under this section.

(d) Employer payments made under this section:

(1) may not be construed as an admission of compensability; and

(2) do not affect the payment of benefits from another source.

(e) If an employer does not notify the insurance carrier of the injury in compliance with Section 409.005, the employer waives the right to reimbursement under this section.

(f) Salary continuation payments made by an employer for an employee's disability resulting from a compensable injury shall be considered payment of income benefits for the purpose of determining the accrual date of any subsequent income benefits under this

subtitle.

(g) If an employer is subject to a contractual obligation with an employee or group of employees, such as a collective bargaining agreement or a written agreement or policy, under which the employer is required to make salary continuation payments, the employer is not eligible for reimbursement under this section for those payments.

(h) Payments made as salary continuation or salary supplementation do not affect the exclusive remedy provisions of Section 408.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1003, Sec. 1, 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.078, eff. September 1, 2005.

Sec. 408.004. REQUIRED MEDICAL EXAMINATIONS; ADMINISTRATIVE VIOLATION. (a) The commissioner may require an employee to submit to medical examinations to resolve any question about the appropriateness of the health care received by the employee.

(a-1) A doctor, other than a chiropractor, who performs a required medical examination under this section is subject to Section 408.0043. A chiropractor who performs a required medical examination under this section is subject to Section 408.0045.

(b) The commissioner may require an employee to submit to a medical examination at the request of the insurance carrier, but only after the insurance carrier has attempted and failed to receive the permission and concurrence of the employee for the examination. Except as otherwise provided by this subsection, the insurance carrier is entitled to the examination only once in a 180-day period. The commissioner may adopt rules that require an employee to submit to not more than three medical examinations in a 180-day period under specified circumstances, including to determine whether there has been a change in the employee's condition and whether it is necessary to change the employee's diagnosis. The commissioner by rule shall adopt a system for monitoring requests made under this subsection by insurance carriers. That system must ensure that good cause exists for any additional medical examination allowed under this subsection

that is not requested by the employee. A subsequent examination must be performed by the same doctor unless otherwise approved by the commissioner.

(c) The insurance carrier shall pay for:

(1) an examination required under Subsection (a) or (b); and

(2) the reasonable expenses incident to the employee in submitting to the examination.

(d) An injured employee is entitled to have a doctor of the employee's choice present at an examination required by the division at the request of an insurance carrier. The insurance carrier shall pay a fee set by the commissioner to the doctor selected by the employee.

(e) An employee who, without good cause as determined by the commissioner, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (b) commits an administrative violation. The commissioner by rule shall ensure that an employee receives reasonable notice of an examination and that the employee is provided a reasonable opportunity to reschedule an examination missed by the employee for good cause.

(f) This section does not apply to health care provided through a workers' compensation health care network established under Chapter 1305, Insurance Code.

(g) An insurance carrier who makes a frivolous request for a medical examination under Subsection (b), as determined by the commissioner, commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1133, Sec. 1, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1426, Sec. 8, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1456, Sec. 5.01, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.079, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 2, eff. September 1, 2007.

Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) At the request of an insurance carrier or an employee, or on the

commissioner's own order, the commissioner may order a medical examination to resolve any question about:

(1) the impairment caused by the compensable injury;

(2) the attainment of maximum medical improvement;

(3) the extent of the employee's compensable injury;

(4) whether the injured employee's disability is a direct result of the work-related injury;

(5) the ability of the employee to return to work; or

(6) issues similar to those described by Subdivisions (1)-(5).

(b) Except as provided by Section 408.1225(f), a medical examination requested under Subsection (a) shall be performed by the next available doctor on the division's list of certified designated doctors whose credentials are appropriate for the area of the body affected by the injury and the injured employee's diagnosis as determined by commissioner rule. The division shall assign a designated doctor not later than the 10th day after the date on which the request under Subsection (a) is approved, and the examination must be conducted not later than the 21st day after the date on which the commissioner issues the order under Subsection (a). An examination under this section may not be conducted more frequently than every 60 days, unless good cause for more frequent examinations exists, as defined by commissioner rules.

(b-1) A designated doctor, other than a chiropractor, is subject to Section 408.0043. A designated doctor who is a chiropractor is subject to Section 408.0045. To the extent of a conflict between this section and Section 408.0043 or 408.0045, this section controls.

(c) The treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated by the designated doctor that are in their possession. The treating doctor and insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(d) To avoid undue influence on a person selected as a

designated doctor under this section, and except as provided by Subsection (c), only the injured employee or an appropriate member of the division's staff may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate division staff members. The designated doctor may initiate communication with any doctor or health care provider who has previously treated or examined the injured employee for the work-related injury or with peer reviewers identified by the insurance carrier.

(e) The designated doctor shall report to the division. The report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. An employer may make a bona fide offer of employment subject to Sections 408.103(e) and 408.144(c) based on the designated doctor's report.

(f) Unless otherwise ordered by the commissioner, the insurance carrier shall pay benefits based on the opinion of the designated doctor during the pendency of any dispute. If an insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the insurance carrier may request the commissioner to order an employee to attend an examination by a doctor selected by the insurance carrier.

(f-1) The subsequent injury fund shall reimburse an insurance carrier for any overpayment of benefits made by the insurance carrier under Subsection (f) based on an opinion rendered by a designated doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing reimbursement at least annually.

(f-2) An employee required to be examined by a designated doctor may request a medical examination to determine maximum medical improvement and the employee's impairment rating from the treating doctor or from another doctor to whom the employee is referred by the treating doctor if:

(1) the designated doctor's opinion is the employee's first evaluation of maximum medical improvement and impairment rating; and

(2) the employee is not satisfied with the designated

doctor's opinion.

(f-3) The commissioner shall provide the insurance carrier and the employee with reasonable time to obtain and present the opinion of a doctor selected under Subsection (f) or (f-2) before the commissioner makes a decision on the merits of the issue.

(f-4) The commissioner by rule shall adopt guidelines prescribing the circumstances under which an examination by the employee's treating doctor or another doctor to whom the employee is referred by the treating doctor to determine any issue under Subsection (a), other than an examination under Subsection (f-2), may be appropriate.

(g) Except as otherwise provided by this subsection, an injured employee is entitled to have a doctor of the employee's choice present at an examination requested by an insurance carrier under Subsection (f). The insurance carrier shall pay a fee set by the commissioner to the doctor selected by the employee. If the injured employee is subject to a workers' compensation health care network under Chapter 1305, Insurance Code, the doctor must be the employee's treating doctor.

(h) The insurance carrier shall pay for:

(1) an examination required under Subsection (a), (f), or (f-2), unless otherwise prohibited by this subtitle or by an order or rule of the commissioner; and

(2) the reasonable expenses incident to the employee in submitting to the examination.

(i) An employee who, without good cause as determined by the commissioner, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (f) commits an administrative violation. An injured employee may not be fined more than $10,000 for a violation of this subsection.

(j) An employee is not entitled to temporary income benefits, or to lifetime income benefits under Section 408.1615, if applicable to the employee, and an insurance carrier is authorized to suspend the payment of those benefits, during and for a period in which the employee fails to submit to an examination required by Subsection (a) or (f) or, if applicable, Section 408.1615(h), unless the commissioner determines that the employee had good cause for the failure to submit to the examination. The commissioner may order temporary income benefits or lifetime income benefits under Section 408.1615, as applicable, to be paid for the period for which the

commissioner determined that the employee had good cause. The commissioner by rule shall ensure that:

(1) an employee receives reasonable notice of an examination and the insurance carrier's basis for suspension; and

(2) the employee is provided a reasonable opportunity to reschedule an examination for good cause.

(k) If the report of a designated doctor indicates that an employee has reached maximum medical improvement or is otherwise able to return to work immediately, the insurance carrier may suspend or reduce the payment of temporary income benefits immediately.

(k-1) If the report of a designated doctor indicates that an employee receiving lifetime income benefits under Section 408.1615 is no longer entitled to those benefits, the insurance carrier may suspend the payment of lifetime income benefits as provided by that section.

(l) A person who makes a frivolous request for a medical examination under Subsection (a) or (f), as determined by the commissioner, commits an administrative violation.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 5.02, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.080, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 11, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 721 (H.B. 2468), Sec. 1, eff. September 1, 2023.

Sec. 408.0042. MEDICAL EXAMINATION BY TREATING DOCTOR TO DEFINE COMPENSABLE INJURY. (a) The division shall require an injured employee to submit to a single medical examination to define the compensable injury on request by the insurance carrier.

(b) A medical examination under this section shall be performed by the employee's treating doctor. The insurance carrier shall pay

the costs of the examination.

(c) After the medical examination is performed, the treating doctor shall submit to the insurance carrier a report that details all injuries and diagnoses related to the compensable injury, on receipt of which the insurance carrier shall:

(1) accept all injuries and diagnoses as related to the compensable injury; or

(2) dispute the determination of specific injuries and diagnoses.

(d) Any treatment for an injury or diagnosis that is not accepted by the insurance carrier under Subsection (c) as compensable at the time of the medical examination under Subsection (a) must be preauthorized before treatment is rendered. If the insurance carrier denies preauthorization because the treatment is for an injury or diagnosis unrelated to the compensable injury, the injured employee or affected health care provider may file an extent of injury dispute.

(e) Any treatment for an injury or diagnosis that is accepted by the insurance carrier under Subsection (c) as compensable at the time of the medical examination under Subsection (a) may not be reviewed for compensability, but may be reviewed for medical necessity.

(f) The commissioner may adopt rules relating to requirements for a report under this section, including requirements regarding the contents of a report.

(g) This section does not limit an injured employee or insurance carrier's ability to request an examination under Section 408.004 or 408.0041, as provided by those sections.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0805, eff. September 1, 2005.

Sec. 408.0043. PROFESSIONAL SPECIALTY CERTIFICATION REQUIRED FOR CERTAIN REVIEW. (a) This section applies to a person, other than a chiropractor or a dentist, who performs health care services under this title as:

(1) a doctor performing peer review;

(2) a doctor performing a utilization review of a health care service provided to an injured employee;

(3) a doctor performing an independent review of a health care service provided to an injured employee;

(4) a designated doctor;

(5) a doctor performing a required medical examination; or

(6) a doctor serving as a member of the medical quality review panel.

(b) A person described by Subsection (a) who reviews a specific workers' compensation case must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving.

(c) Notwithstanding Subsection (b), if a health care service is requested, ordered, provided, or to be provided by a physician, a person described by Subsection (a)(1), (2), or (3) who reviews the service with respect to a specific workers' compensation case must be of the same or a similar specialty as that physician.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 14, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.10, eff. September 1, 2019.

Sec. 408.0044. REVIEW OF DENTAL SERVICES. (a) This section applies to a dentist who performs dental services under this title as:

(1) a doctor performing peer review of dental services;

(2) a doctor performing a utilization review of a dental service provided to an injured employee;

(3) a doctor performing an independent review of a dental service provided to an injured employee; or

(4) a doctor performing a required dental examination.

(b) A person described by Subsection (a) who reviews a dental service provided in conjunction with a specific workers' compensation case must be licensed to practice dentistry.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 15, eff. September 1, 2009.

Sec. 408.0045. REVIEW OF CHIROPRACTIC SERVICES. (a) This section applies to a chiropractor who performs chiropractic services under this title as:

(1) a doctor performing peer review of chiropractic services;

(2) a doctor performing a utilization review of a chiropractic service provided to an injured employee;

(3) a doctor performing an independent review of a chiropractic service provided to an injured employee;

(4) a designated doctor providing chiropractic services;

(5) a doctor performing a required medical examination; or

(6) a chiropractor serving as a member of the medical quality review panel.

(b) A person described by Subsection (a) who reviews a chiropractic service provided in conjunction with a specific workers' compensation case must be licensed to engage in the practice of chiropractic.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 16, eff. September 1, 2009.

Sec. 408.0046. RULES. The commissioner may adopt rules as necessary to determine which professional health practitioner specialties are appropriate for treatment of certain compensable injuries. The rules adopted under this section must require an entity requesting a peer review to obtain and provide to the doctor providing peer review services all relevant and updated medical records.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.

Sec. 408.005. SETTLEMENTS AND AGREEMENTS. (a) A settlement may not provide for payment of benefits in a lump sum except as provided by Section 408.128.

(b) An employee's right to medical benefits as provided by Section 408.021 may not be limited or terminated.

(c) A settlement or agreement resolving an issue of impairment:

(1) may not be made before the employee reaches maximum medical improvement; and

(2) must adopt an impairment rating using the impairment rating guidelines described by Section 408.124.

(d) A settlement must be signed by the commissioner and all parties to the dispute.

(e) The commissioner shall approve a settlement if the commissioner is satisfied that:

(1) the settlement accurately reflects the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law and the policies of the division; and

(3) under the law and facts, the settlement is in the best interest of the claimant.

(f) A settlement that is not approved or rejected before the 16th day after the date the settlement is submitted to the commissioner is considered to be approved by the commissioner on that date.

(g) A settlement takes effect on the date it is approved by the commissioner.

(h) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.081, eff. September 1, 2005.

Sec. 408.006. MENTAL TRAUMA INJURIES. (a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.

(b) Notwithstanding Section 504.019, a mental or emotional

injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 353 (H.B. 1983), Sec. 2, eff. September 1, 2017.

Sec. 408.007. DATE OF INJURY FOR OCCUPATIONAL DISEASE. For purposes of this subtitle, the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.008. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this subtitle only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of the employee's employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. MEDICAL BENEFITS

Sec. 408.021. ENTITLEMENT TO MEDICAL BENEFITS. (a) An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

(1) cures or relieves the effects naturally resulting from

the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) Medical benefits are payable from the date of the compensable injury.

(c) Except in an emergency, all health care must be approved or recommended by the employee's treating doctor.

(d) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.022. SELECTION OF DOCTOR. (a) Except in an emergency, the division shall require an employee to receive medical treatment from a doctor chosen from a list of doctors approved by the commissioner. A doctor may perform only those procedures that are within the scope of the practice for which the doctor is licensed. The employee is entitled to the employee's initial choice of a doctor from the division's list.

(b) If an employee is dissatisfied with the initial choice of a doctor from the division's list, the employee may notify the division and request authority to select an alternate doctor. The notification must be in writing stating the reasons for the change, except notification may be by telephone when a medical necessity exists for immediate change.

(c) The commissioner shall prescribe criteria to be used by the division in granting the employee authority to select an alternate doctor. The criteria may include:

(1) whether treatment by the current doctor is medically inappropriate;

(2) the professional reputation of the doctor;

(3) whether the employee is receiving appropriate medical care to reach maximum medical improvement; and

(4) whether a conflict exists between the employee and the doctor to the extent that the doctor-patient relationship is jeopardized or impaired.

(d) A change of doctor may not be made to secure a new impairment rating or medical report.

(e) For purposes of this section, the following is not a selection of an alternate doctor:

(1) a referral made by the doctor chosen by the employee if the referral is medically reasonable and necessary;

(2) the receipt of services ancillary to surgery;

(3) the obtaining of a second or subsequent opinion only on the appropriateness of the diagnosis or treatment;

(4) the selection of a doctor because the original doctor:

(A) dies;

(B) retires; or

(C) becomes unavailable or unable to provide medical care to the employee; or

(5) a change of doctors required because of a change of residence by the employee.

(f) This section does not apply to requirements regarding the selection of a doctor under a workers' compensation health care network established under Chapter 1305, Insurance Code, except as provided by that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.082, eff. September 1, 2005.

Sec. 408.0221. REQUEST FOR DESCRIPTION OF EMPLOYMENT. (a) This section applies only to an employee of an employer who has 10 or more employees.

(b) To facilitate an injured employee's return to employment as soon as it is considered safe and appropriate by the injured employee's treating doctor, the treating doctor may request that the injured employee's employer provide the treating doctor with the information described by Subsection (d) on the form adopted under that subsection.

(c) Information provided to a treating doctor under Subsection (b) does not constitute:

(1) a request by the employer that the injured employee return to the employment;

(2) an offer of employment by the employer for the injured employee to return to employment; or

(3) an admission of the compensability of the injury of the employee.

(d) The commissioner shall prescribe a form to provide information from an employer to a treating doctor concerning the functions and physical responsibilities of an injured employee's job. To the extent possible, the form prescribed under this subsection shall be one page, use a check box format as appropriate, and be compatible with electronic mail. The form must include:

(1) the name and address of the employer and the contact information and availability of the individual representing the employer who has knowledge of the injured employee's job;

(2) the scope of the injured employee's employment, including any specific tasks, job duties, or work activities that the injured employee was required to perform at the time the employee sustained the injury; and

(3) an area for additional comments or information by the employer or individual representing the employer concerning:

(A) the injured employee's job; or

(B) the availability, if any, of other jobs that the employer may have that the employer would like the treating doctor to consider in determining whether an injured employee is able to return to work.

(e) The commissioner may adopt rules as necessary to implement this section and to facilitate communication between the employer and the treating doctor regarding return-to-work opportunities.

Added by Acts 2009, 81st Leg., R.S., Ch. 456 (H.B. 2547), Sec. 1, eff. September 1, 2009.

Sec. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING DOCTORS. (a) The division shall develop a list of doctors licensed in this state who are approved to provide health care services under this subtitle. A doctor is eligible to be included on the division's list of approved doctors if the doctor:

(1) registers with the division in the manner prescribed by commissioner rules; and

(2) complies with the requirements adopted by the commissioner under this section.

(b) The commissioner by rule shall establish reasonable

requirements for training for doctors as a prerequisite for inclusion on the list. Except as otherwise provided by this section, the requirements adopted under this subsection apply to doctors and other health care providers who:

(1) provide health care services as treating doctors;

(2) provide health care services as authorized by this chapter;

(3) perform medical peer review under this subtitle;

(4) perform utilization review of medical benefits provided under this subtitle; or

(5) provide health care services on referral from a treating doctor, as provided by commissioner rule.

(c) The division shall issue to a doctor who is approved by the commissioner a certificate of registration. In determining whether to issue a certificate of registration, the commissioner may consider and condition approval on any practice restrictions applicable to the applicant that are relevant to services provided under this subtitle. The commissioner may also consider the practice restrictions of an applicant when determining appropriate sanctions under Section 408.0231.

(d) A certificate of registration issued under this section is valid, unless revoked, suspended, or revised, for the period provided by commissioner rule and may be renewed on application to the division. The division shall provide notice to each doctor on the approved doctor list of the pending expiration of the doctor's certificate of registration not later than the 60th day before the date of expiration of the certificate.

(e) Notwithstanding other provisions of this section, a doctor not licensed in this state but licensed in another state or jurisdiction who treats employees or performs utilization review of health care for an insurance carrier may apply for a certificate of registration under this section to be included on the division's list of approved doctors.

(f) Except in an emergency or for immediate post-injury medical care as defined by commissioner rule, or as provided by Subsection (h), (i), or (j), each doctor who performs functions under this subtitle, including examinations under this chapter, must hold a certificate of registration and be on the division's list of approved doctors in order to perform services or receive payment for those services.

(g) The commissioner by rule shall modify registration and training requirements for doctors who infrequently provide health care or who perform utilization review or peer review functions for insurance carriers as necessary to ensure that those doctors are informed of the regulations that affect health care benefit delivery under this subtitle.

(h) A utilization review agent or an insurance carrier that uses doctors to perform reviews of health care services provided under this subtitle, including utilization review, may only use doctors licensed to practice in this state.

(i) The commissioner may grant exceptions to the requirement imposed under Subsection (f) as necessary to ensure that:

(1) employees have access to health care; and

(2) insurance carriers have access to evaluations of an employee's health care and income benefit eligibility as provided by this subtitle.

(j) A doctor who contracts with a workers' compensation health care network certified under Chapter 1305, Insurance Code, is not subject to the registration requirements of Subsections (a)-(i) for the purpose of providing health care services under that network contract. The doctor is subject to the requirements of Subsections (l)-(p), and Subsection (q) applies to health care services and functions provided by a doctor who contracts with a certified workers' compensation health care network.

(k) The requirements of Subsections (a)-(g) and Subsection (i) expire September 1, 2007. Before that date, the commissioner may waive the application of the provisions of Subsections (a)-(g) and Subsection (i) that require doctors to hold a certificate of registration and to be on the list of approved doctors if the commissioner determines that:

(1) injured employees have adequate access to health care providers who are willing to treat injured employees for compensable injuries through workers' compensation health care networks certified under Chapter 1305, Insurance Code; or

(2) injured employees who are not covered by a workers' compensation health care network certified under Chapter 1305, Insurance Code, do not have adequate access to health care providers who are willing to treat injured employees for compensable injuries.

(l) The injured employee's treating doctor is responsible for the efficient management of medical care as required by Section

408.025(c) and commissioner rules. The division shall collect information regarding:

(1) return-to-work outcomes;

(2) patient satisfaction; and

(3) cost and utilization of health care provided or authorized by a treating doctor on the list of approved doctors.

(m) The commissioner may adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor.

(n) The commissioner by rule shall establish reasonable requirements for doctors, and health care providers financially related to those doctors, regarding training, impairment rating testing, and disclosure of financial interests as required by Section 413.041, and for monitoring of those doctors and health care providers as provided by Sections 408.0231, 413.0511, and 413.0512.

(o) A doctor, including a doctor who contracts with a workers' compensation health care network, shall:

(1) comply with the requirements established by commissioner rule under Subsections (l) and (m) and with Section 413.041 regarding the disclosure of financial interests; and

(2) if the doctor intends to provide certifications of maximum medical improvement or assign impairment ratings, comply with the impairment rating training and testing requirements established by commissioner rule under Subsection (n).

(p) A person required to comply with Subsection (o), including a doctor who contracts with a workers' compensation health care network, who does not comply with that section commits an administrative violation.

(q) An insurance carrier may not use, for the purpose of suspending temporary income benefits or computing impairment income benefits, a certification of maximum medical improvement or an impairment rating assigned by a doctor, including a doctor who contracts with a workers' compensation health care network certified under Chapter 1305, Insurance Code, who fails to comply with Subsection (o)(2).

(r) Notwithstanding the waiver or expiration of Subsections (a)-(g) and (i), there may be no direct or indirect provision of health care under this subtitle and rules adopted under this subtitle, and no direct or indirect receipt of remuneration under this subtitle and rules adopted under this subtitle by a doctor who:

(1) before September 1, 2007:

(A) was removed or deleted from the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor;

(B) was not admitted to the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor;

(C) was suspended from the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor; or

(D) had the doctor's license to practice suspended by the appropriate licensing agency, including a suspension that was stayed, deferred, or probated, or voluntarily relinquished the license to practice; and

(2) was not reinstated or restored by the Texas Workers' Compensation Commission or the division to the list of approved doctors before September 1, 2007.

(s) The waiver or expiration of Subsections (a)-(g) and (i) do not limit the division's ability to impose sanctions as provided by this subtitle and commissioner rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.25, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 1.01, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.083, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 17, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.13, eff. September 1, 2019.

Sec. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS; SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE. (a) The commissioner shall delete from the list of approved doctors a doctor:

(1) who fails to register with the division as provided by this chapter and commissioner rules;

(2) who is deceased;

(3) whose license to practice in this state is revoked, suspended, or not renewed by the appropriate licensing authority; or

(4) who requests to be removed from the list.

(b) The commissioner by rule shall establish criteria for:

(1) deleting or suspending a doctor from the list of approved doctors;

(2) imposing sanctions on a doctor or an insurance carrier as provided by this section;

(3) monitoring of utilization review agents, as provided by a memorandum of understanding between the division and the Texas Department of Insurance; and

(4) authorizing increased or reduced utilization review and preauthorization controls on a doctor.

(c) Rules adopted under Subsection (b) are in addition to, and do not affect, the rules adopted under Section 415.023(b). The criteria for deleting a doctor from the list or for recommending or imposing sanctions may include anything the commissioner considers relevant, including:

(1) a sanction of the doctor by the commissioner for a violation of Chapter 413 or Chapter 415;

(2) a sanction by the Medicare or Medicaid program for:

(A) substandard medical care;

(B) overcharging;

(C) overutilization of medical services; or

(D) any other substantive noncompliance with requirements of those programs regarding professional practice or billing;

(3) evidence from the division's medical records that the applicable insurance carrier's utilization review practices or the doctor's charges, fees, diagnoses, treatments, evaluations, or impairment ratings are substantially different from those the commissioner finds to be fair and reasonable based on either a single determination or a pattern of practice;

(4) a suspension or other relevant practice restriction of the doctor's license by an appropriate licensing authority;

(5) professional failure to practice medicine or provide health care, including chiropractic care, in an acceptable manner consistent with the public health, safety, and welfare;

(6) findings of fact and conclusions of law made by a

court, an administrative law judge of the State Office of Administrative Hearings, or a licensing or regulatory authority; or

(7) a criminal conviction.

(d) The commissioner by rule shall establish procedures under which a doctor may apply for:

(1) reinstatement to the list of approved doctors; or

(2) restoration of doctor practice privileges removed by the commissioner based on sanctions imposed under this section.

(e) The commissioner shall act on a recommendation by the medical advisor selected under Section 413.0511 and, after notice and the opportunity for a hearing, may impose sanctions under this section on a doctor or an insurance carrier or may recommend action regarding a utilization review agent. The commissioner and the commissioner of insurance shall enter into a memorandum of understanding to coordinate the regulation of insurance carriers and utilization review agents as necessary to ensure:

(1) compliance with applicable regulations; and

(2) that appropriate health care decisions are reached under this subtitle and under Chapter 4201, Insurance Code.

(f) The sanctions the commissioner may recommend or impose under this section include:

(1) reduction of allowable reimbursement;

(2) mandatory preauthorization of all or certain health care services;

(3) required peer review monitoring, reporting, and audit;

(4) deletion or suspension from the approved doctor list and the designated doctor list;

(5) restrictions on appointment under this chapter;

(6) conditions or restrictions on an insurance carrier regarding actions by insurance carriers under this subtitle in accordance with the memorandum of understanding adopted under Subsection (e); and

(7) mandatory participation in training classes or other courses as established or certified by the division.

(g) The commissioner shall adopt rules regarding doctors who perform peer review functions for insurance carriers. Those rules may include standards for peer review, imposition of sanctions on doctors performing peer review functions, including restriction, suspension, or removal of the doctor's ability to perform peer review on behalf of insurance carriers in the workers' compensation system,

and other issues important to the quality of peer review, as determined by the commissioner. A doctor who performs peer review under this subtitle must hold the appropriate professional license issued by this state. A doctor, other than a chiropractor or a dentist, who performs peer review is subject to Section 408.0043. A dentist who performs a peer review of a dental service provided to an injured employee is subject to Section 408.0044. A chiropractor who performs a peer review of a chiropractic service provided to an injured employee is subject to Section 408.0045.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.084, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 3, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 4, eff. September 1, 2007.

Sec. 408.024. NONCOMPLIANCE WITH SELECTION REQUIREMENTS. Except as otherwise provided, and after notice and an opportunity for hearing, the commissioner may relieve an insurance carrier of liability for health care that is furnished by a health care provider or another person selected in a manner inconsistent with the requirements of this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.085, eff. September 1, 2005.

Sec. 408.025. REPORTS AND RECORDS REQUIRED FROM HEALTH CARE PROVIDERS. (a) The commissioner by rule shall adopt requirements for reports and records that are required to be filed with the division or provided to the injured employee, the employee's attorney, or the insurance carrier by a health care provider.

(a-1) A treating doctor may delegate to a physician assistant who is licensed to practice in this state under Chapter 204,

Occupations Code, or an advanced practice registered nurse who is licensed to practice in this state under Chapter 301, Occupations Code, the authority to complete and sign a work status report regarding an injured employee's ability to return to work. The delegating treating doctor is responsible for the acts of the physician assistant or advanced practice registered nurse under this subsection.

(b) The commissioner by rule shall adopt requirements for reports and records that are to be made available by a health care provider to another health care provider to prevent unnecessary duplication of tests and examinations.

(c) The treating doctor is responsible for maintaining efficient utilization of health care.

(d) On the request of an injured employee, the employee's attorney, or the insurance carrier, a health care provider shall furnish records relating to treatment or hospitalization for which compensation is being sought. The division may regulate the charge for furnishing a report or record, but the charge may not be less than the fair and reasonable charge for furnishing the report or record. A health care provider may disclose to the insurance carrier of an affected employer records relating to the diagnosis or treatment of the injured employee without the authorization of the injured employee to determine the amount of payment or the entitlement to payment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 9, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.086, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 483 (H.B. 2546), Sec. 1, eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 723 (H.B. 387), Sec. 1, eff. September 1, 2019.

Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. (a) The commissioner, by rule and in cooperation with the commissioner of insurance, shall adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance

carriers.

(b) Insurance carriers shall accept medical bills submitted electronically by health care providers in accordance with commissioner rule.

(c) The commissioner shall by rule establish criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically.

(d) On or after January 1, 2008, the commissioner may adopt rules regarding the electronic payment of medical bills by insurance carriers to health care providers.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.087, eff. September 1, 2005.

Sec. 408.0252. UNDERSERVED AREAS. The commissioner by rule may identify areas of this state in which access to health care providers is less available and may adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.087, eff. September 1, 2005.

Sec. 408.026. SPINAL SURGERY. Except in a medical emergency, an insurance carrier is liable for medical costs related to spinal surgery only as provided by Section 413.014 and commissioner rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 4.01, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.088, eff. September 1, 2005.

Sec. 408.027. PAYMENT OF HEALTH CARE PROVIDER. (a) A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for

that claim for payment.

(b) The insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the carrier of the provider's claim. The carrier may request additional documentation necessary to clarify the provider's charges at any time during the 45-day period. If the insurance carrier requests additional documentation under this subsection, the health care provider must provide the requested documentation not later than the 15th day after the date of receipt of the carrier's request. If the insurance carrier elects to audit the claim, the carrier must complete the audit not later than the 160th day after the date of receipt by the carrier of the health care provider's claim, and, not later than the 160th day after the receipt of the claim, must make a determination regarding the relationship of the health care services provided to the compensable injury, the extent of the injury, and the medical necessity of the services provided. If the insurance carrier chooses to audit the claim, the insurance carrier must pay to the health care provider not later than the 45th day after the date of receipt by the carrier of the provider's claim 85 percent of:

(1) the amount for the health care service established under the fee guidelines authorized under this subtitle if the health care service is not provided through a workers' compensation health care network under Chapter 1305, Insurance Code; or

(2) the amount of the contracted rate for that health care service if the health care service is provided through a workers' compensation health care network under Chapter 1305, Insurance Code.

(c) If the health care services provided are determined to be appropriate, the insurance carrier shall pay the health care provider the remaining 15 percent of the claim not later than the 160th day after the date of receipt by the carrier of the health care provider's documentation of the claim. An insurance carrier commits an administrative violation if the carrier, in violation of Subsection (b), fails to:

(1) pay, reduce, deny, or notify the health care provider of the intent to audit the claim by the 45th day after the date of receipt by the carrier of the health care provider's claim; or

(2) pay, reduce, or deny an audited claim by the 160th day after the date of receipt of the claim.

(d) If an insurance carrier contests the compensability of an

injury and the injury is determined not to be compensable, the carrier may recover the amounts paid for health care services from the employee's accident or health benefit plan, or any other person who may be obligated for the cost of the health care services. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which a workers' compensation insurance carrier denies compensability, and the injury is later determined to be compensable, the accident or health insurance carrier or other person may recover the amounts paid for such services from the workers' compensation insurance carrier. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which the workers' compensation insurance carrier or the employer has not disputed compensability, the accident or health insurance carrier or other person may recover reimbursement from the insurance carrier in the manner described by Section 409.009 or 409.0091, as applicable.

(e) If an insurance carrier disputes the amount of payment or the health care provider's entitlement to payment, the insurance carrier shall send to the division, the health care provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial of payment for health care services provided to the employee. The insurance carrier is entitled to a hearing as provided by Section 413.031(d).

(f) Except as provided by Section 408.0281 or 408.0284, any payment made by an insurance carrier under this section shall be in accordance with the fee guidelines authorized under this subtitle if the health care service is not provided through a workers' compensation health care network under Chapter 1305, Insurance Code, or at a contracted rate for that health care service if the health care service is provided through a workers' compensation health care network under Chapter 1305, Insurance Code.

(g) Notwithstanding any other provision in this subtitle or Chapter 1305, Insurance Code, this section and Section 408.0271 apply to health care provided through a workers' compensation health care network established under Chapter 1305, Insurance Code. The commissioner shall adopt rules as necessary to implement the provisions of this section and Section 408.0271.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 10, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.089, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 1, eff. September 1, 2013.

Sec. 408.0271. REIMBURSEMENT BY HEALTH CARE PROVIDER. (a) If the health care services provided to an injured employee are determined by the insurance carrier to be inappropriate, the insurance carrier shall:

(1) notify the health care provider in writing of the carrier's decision; and

(2) demand a refund by the health care provider of the portion of payment on the claim that was received by the health care provider for the inappropriate services.

(b) The health care provider may appeal the insurance carrier's determination under Subsection (a). The health care provider must file an appeal under this subsection with the insurance carrier not later than the 45th day after the date of the insurance carrier's request for the refund. The insurance carrier must act on the appeal not later than the 45th day after the date on which the provider files the appeal.

(c) A health care provider shall reimburse the insurance carrier for payments received by the provider for inappropriate charges not later than the 45th day after the date of the carrier's notice. The failure by the health care provider to timely remit payment to the carrier constitutes an administrative violation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0895, eff. September 1, 2005.

Sec. 408.0272. CERTAIN EXCEPTIONS FOR UNTIMELY SUBMISSION OF

CLAIM. (a) In this section:

(1) "Group accident and health insurance" has the meaning assigned by Chapter 1251, Insurance Code.

(2) "Health maintenance organization" has the meaning assigned by Chapter 843, Insurance Code.

(b) Notwithstanding Section 408.027, a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if:

(1) the provider submits proof satisfactory to the commissioner that the provider, within the period prescribed by Section 408.027(a), erroneously filed for reimbursement with:

(A) an insurer that issues a policy of group accident and health insurance under which the injured employee is a covered insured;

(B) a health maintenance organization that issues an evidence of coverage under which the injured employee is a covered enrollee; or

(C) a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title; or

(2) the commissioner determines that the failure resulted from a catastrophic event that substantially interfered with the normal business operations of the provider.

(c) Notwithstanding Subsection (b), a health care provider who erroneously submits a claim for payment to an entity described by Subdivision (1) of that subsection forfeits the provider's right to reimbursement for that claim if the provider fails to submit the claim to the correct workers' compensation insurance carrier within 95 days after the date the provider is notified of the provider's erroneous submission of the claim.

(d) Notwithstanding any other provision of this section or Section 408.027, the period for submitting a claim for payment may be extended by agreement of the parties.

Added by Acts 2007, 80th Leg., R.S., Ch. 459 (H.B. 1005), Sec. 1, eff. September 1, 2007.

Sec. 408.028. PHARMACEUTICAL SERVICES. (a) A physician providing care to an employee under this subchapter shall prescribe for the employee any necessary prescription drugs, and order over-the-counter alternatives to prescription medications as clinically appropriate and applicable, in accordance with applicable state law and as provided by Subsection (b). A doctor providing care may order over-the-counter alternatives to prescription medications, when clinically appropriate, in accordance with applicable state law and as provided by Subsection (b).

(b) The commissioner by rule shall require the use of generic pharmaceutical medications and clinically appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor, in accordance with applicable state law. The commissioner by rule shall adopt a closed formulary under Section 413.011. Rules adopted by the commissioner shall allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee's compensable injury.

(c) Except as otherwise provided by this subtitle, an insurance carrier may not require an employee to use pharmaceutical services designated by the carrier.

(d) The commissioner shall adopt rules to allow an employee to purchase over-the-counter alternatives to prescription medications prescribed or ordered under Subsection (a) or (b) and to obtain reimbursement from the insurance carrier for those medications.

(e) Notwithstanding Subsection (b), the commissioner by rule shall allow an employee to purchase a brand name drug rather than a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. The employee shall be responsible for paying the difference between the cost of the brand name drug and the cost of the generic pharmaceutical medication or of an over-the-counter alternative to a prescription medication. The employee may not seek reimbursement for the difference in cost from an insurance carrier and is not entitled to use the medical dispute resolution provisions of Chapter 413 with regard to the prescription. A payment described by this subsection by an employee to a health care provider does not violate Section 413.042. This subsection does not affect the duty of a health care provider to comply with the requirements of

Subsection (b) when prescribing medications or ordering over-the-counter alternatives to prescription medications.

(f) Notwithstanding any other provision of this title, the commissioner by rule shall adopt a fee schedule for pharmacy and pharmaceutical services that will:

(1) provide reimbursement rates that are fair and reasonable;

(2) assure adequate access to medications and services for injured workers;

(3) minimize costs to employees and insurance carriers; and

(4) take into consideration the increased security of payment afforded by this subtitle.

(g) Section 413.011(d) and the rules adopted to implement that subsection do not apply to the fee schedule adopted by the commissioner under Subsection (f).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.01, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 468, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.090, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 2, eff. June 17, 2011.

Sec. 408.0281. REIMBURSEMENT FOR PHARMACEUTICAL SERVICES; ADMINISTRATIVE VIOLATION. (a) In this section:

(1) "Informal network" means a network that:

(A) is established under a contract between an insurance carrier or an insurance carrier's authorized agent and a health care provider for the provision of pharmaceutical services; and

(B) includes a specific fee schedule.

(2) "Voluntary network" means a voluntary workers' compensation health care delivery network established under former Section 408.0223, as that section existed before repeal by Chapter 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005, by an insurance carrier for the provision of pharmaceutical services.

(b) Notwithstanding any provision of Chapter 1305, Insurance

Code, or Section 504.053 of this code, prescription medication or services, as defined by Section 401.011(19)(E):

(1) may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a contract rate in accordance with this section; and

(2) may not be delivered through:

(A) a workers' compensation health care network under Chapter 1305, Insurance Code; or

(B) a contract described by Section 504.053(b)(2).

(c) Notwithstanding any other provision of this title, including Section 408.028(f), or any provision of Chapter 1305, Insurance Code, an insurance carrier may pay a health care provider fees for pharmaceutical services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier has a contract with the health care provider and that contract includes a specific fee schedule. An insurance carrier or the carrier's authorized agent may use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the commissioner for pharmaceutical services. If a carrier or the carrier's authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between:

(1) the carrier or authorized agent and the informal or voluntary network that authorizes the network to contract with health care providers for pharmaceutical services on the carrier's behalf; and

(2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements of this section.

(d) An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall, at least quarterly, notify each health care provider of any person, other than an injured employee, to which the network's contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed. Notice to each health care provider:

(1) must include:

(A) the contact information for the network, including the name, physical address, and toll-free telephone number at which a health care provider with which the network has a contract may

contact the network; and

(B) in the body of the notice:

(i) the name, physical address, and telephone number of any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(ii) the start date and any end date of the period during which any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(2) may be provided:

(A) in an electronic format, if a paper version is available on request by the division; and

(B) through an Internet website link, but only if the website:

(i) contains the information described by Subdivision (1); and

(ii) is updated at least monthly with current and correct information.

(e) An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall document the delivery of the notice required under Subsection (d), including the method of delivery, to whom the notice was delivered, and the date of delivery. For purposes of Subsection (d), a notice is considered to be delivered on, as applicable:

(1) the fifth day after the date the notice is mailed via United States Postal Service; or

(2) the date the notice is faxed or electronically delivered.

(f) An insurance carrier, or the carrier's authorized agent or an informal or voluntary network at the carrier's request, shall provide copies of each contract described by Subsection (c) to the division on the request of the division. Information included in a contract under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. Notwithstanding Subsection (c), the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if:

(1) the contract:

(A) is not provided to the division on the division's request;

(B) does not include a specific fee schedule consistent with Subsection (c); or

(C) does not clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the carrier's authorized agent; or

(2) the carrier or the carrier's authorized agent does not comply with the notice requirements under Subsection (d).

(g) Failure to provide documentation described by Subsection (e) to the division on the request of the division or failure to provide notice as required under Subsection (d) creates a rebuttable presumption in an enforcement action under this subtitle and in a medical fee dispute under Chapter 413 that a health care provider did not receive the notice.

(h) An insurance carrier or the carrier's authorized agent commits an administrative violation if the carrier or agent violates any provision of this section. Any administrative penalty assessed under this subsection shall be assessed against the carrier, regardless of whether the carrier or agent committed the violation.

(i) Notwithstanding Section 1305.003(b), Insurance Code, in the event of a conflict between this section and Section 413.016 or any other provision of Chapter 413 of this code or Chapter 1305, Insurance Code, this section prevails.

Added by Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 3, eff. June 17, 2011.

Sec. 408.0282. REQUIREMENTS FOR CERTAIN INFORMAL OR VOLUNTARY NETWORKS. (a) Each informal or voluntary network described by Section 408.0281 or 408.0284 shall, not later than the 30th day after the date the network is established, report the following information to the division:

(1) the name of the informal or voluntary network and federal employer identification number;

(2) an executive contact for official correspondence for the informal or voluntary network;

(3) a toll-free telephone number by which a health care provider may contact the informal or voluntary network;

(4) a list of each insurance carrier with whom the informal or voluntary network contracts, including the carrier's federal

employer identification number; and

(5) a list of, and contact information for, each entity with which the informal or voluntary network has a contract or other business relationship that benefits or is entered into on behalf of an insurance carrier, including an insurance carrier's authorized agent or a subsidiary or other affiliate of the network.

(b) Each informal or voluntary network shall report any changes to the information provided under Subsection (a) to the division not later than the 30th day after the effective date of the change.

(c) An informal or voluntary network shall submit a report required under this section, including a report of changes required under Subsection (b), to the division through the division's online reporting system available through the division's Internet website.

(d) An informal or voluntary network commits an administrative violation if the informal or voluntary network violates any provision of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 3, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 2, eff. September 1, 2013.

Sec. 408.0284. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND HOME HEALTH CARE SERVICES; ADMINISTRATIVE VIOLATION. (a) In this section:

(1) "Durable medical equipment" includes prosthetics and orthotic devices and related medical equipment and supplies. The term does not include:

(A) an object or device that is surgically implanted, embedded, inserted, or otherwise applied;

(B) related equipment necessary to operate, program, or recharge the object or device described by Paragraph (A); or

(C) an intrathecal pump.

(2) "Informal network" means a network that:

(A) is established under a contract between an insurance carrier or an insurance carrier's authorized agent and a health care provider for the provision of durable medical equipment or home health care services; and

(B) includes a specific fee schedule.

(3) "Voluntary network" means a voluntary workers' compensation health care delivery network established under former Section 408.0223, as that section existed before repeal by Chapter 265 (House Bill No. 7), Acts of the 79th Legislature, Regular Session, 2005, by an insurance carrier for the provision of durable medical equipment or home health care services.

(b) Notwithstanding any provision of Chapter 1305, Insurance Code, or Section 504.053 of this code, durable medical equipment and home health care services may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a voluntarily negotiated contract rate in accordance with this section.

(c) Notwithstanding any other provision of this title or any provision of Chapter 1305, Insurance Code, an insurance carrier may pay a health care provider fees for durable medical equipment or home health care services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier or the carrier's authorized agent has a contract with the health care provider and that contract includes a specific fee schedule. An insurance carrier or the carrier's authorized agent may use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the commissioner for durable medical equipment or home health care services. If a carrier or the carrier's authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between:

(1) the carrier or authorized agent and the informal or voluntary network that authorizes the network to contract with health care providers for durable medical equipment or home health care services on the carrier's behalf; and

(2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements of this section.

(d) An informal or voluntary network, or the carrier or the carrier's authorized agent shall, at least quarterly, notify each health care provider of any person, other than an injured employee, to which the network's contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed. Notice to each health care provider:

(1) must include:

(A) the contact information for the network, including the name, physical address, and toll-free telephone number at which a health care provider with which the network has a contract may contact the network; and

(B) in the body of the notice:

(i) the name, physical address, and telephone number of any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(ii) the start date and any end date of the period during which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(2) may be provided:

(A) in an electronic format, if a paper version is available on request by the division; and

(B) through an Internet website link, but only if the website:

(i) contains the information described by Subdivision (1); and

(ii) is updated at least monthly with current and correct information.

(e) An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall document the delivery of the notice required under Subsection (d), including the method of delivery, to whom the notice was delivered, and the date of delivery. For purposes of Subsection (d), a notice is considered to be delivered on, as applicable:

(1) the fifth day after the date the notice is mailed via United States Postal Service; or

(2) the date the notice is faxed or electronically delivered.

(f) An insurance carrier, or the carrier's authorized agent or an informal or voluntary network at the carrier's request, shall provide copies of each contract described by Subsection (c) to the division on the request of the division. Information included in a contract under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. Notwithstanding Subsection (c), the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if:

(1) the contract:

(A) is not provided to the division on the division's request;

(B) does not include a specific fee schedule consistent with Subsection (c); or

(C) does not clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the carrier's authorized agent; or

(2) the carrier or the carrier's authorized agent does not comply with the notice requirements under Subsection (d).

(g) Failure to provide documentation described by Subsection (e) to the division on the request of the division or failure to provide notice as required under Subsection (d) creates a rebuttable presumption in an enforcement action under this subtitle and in a medical fee dispute under Chapter 413 that a health care provider did not receive the notice.

(h) An insurance carrier or the carrier's authorized agent commits an administrative violation if the carrier or agent violates any provision of this section. Any administrative penalty assessed under this subsection shall be assessed against the carrier, regardless of whether the carrier or agent committed the violation.

(i) Notwithstanding Section 1305.003(b), Insurance Code, in the event of a conflict between this section and Section 413.016 or any other provision of Chapter 413 of this code or Chapter 1305, Insurance Code, this section prevails.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 3, eff. September 1, 2013.

Sec. 408.029. NURSE FIRST ASSISTANT SERVICES. An insurance carrier may not refuse to reimburse a health care practitioner solely because that practitioner is a nurse first assistant, as defined by Section 301.1525, Occupations Code, for a covered service that a physician providing health care services under this subtitle has requested the nurse first assistant to perform.

Added by Acts 2001, 77th Leg., ch. 812, Sec. 9, eff. Sept. 1, 2001.

Sec. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS. (a) Notwithstanding any other provision of this chapter, an injured

employee may receive benefits under a workers' compensation health care network established under Chapter 1305, Insurance Code, in the manner provided by that chapter.

(b) In the event of a conflict between this title and Chapter 1305, Insurance Code, as to the provision of medical benefits for injured employees, the establishment and regulation of fees for medical treatments and services, the time frames for payment of medical bills, the operation and regulation of workers' compensation health care networks, the regulation of the health care providers who contract with those networks, or the resolution of disputes regarding medical benefits provided through those networks, Chapter 1305, Insurance Code, prevails.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.092, eff. September 1, 2005.

SUBCHAPTER C. COMPUTATION OF AVERAGE WEEKLY WAGE

Sec. 408.041. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this subtitle, the average weekly wage of an employee who has worked for the employer for at least the 13 consecutive weeks immediately preceding an injury is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13.

(b) The average weekly wage of an employee whose wage at the time of injury has not been fixed or cannot be determined or who has worked for the employer for less than the 13 weeks immediately preceding the injury equals:

(1) the usual wage that the employer pays a similar employee for similar services; or

(2) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services provided for remuneration.

(c) If Subsection (a) or (b) cannot reasonably be applied because the employee's employment has been irregular or because the employee has lost time from work during the 13-week period immediately preceding the injury because of illness, weather, or another cause beyond the control of the employee, the commissioner may determine the employee's average weekly wage by any method that the commissioner considers fair, just, and reasonable to all parties

and consistent with the methods established under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.094, eff. September 1, 2005.

Sec. 408.042. AVERAGE WEEKLY WAGE FOR PART-TIME EMPLOYEE OR EMPLOYEE WITH MULTIPLE EMPLOYMENT. (a) The average weekly wage of a part-time employee who limits the employee's work to less than a full-time workweek as a regular course of that employee's conduct is computed as provided by Section 408.041.

(b) For part-time employees not covered by Subsection (a), the average weekly wage:

(1) for determining temporary income benefits is computed as provided by Section 408.041; and

(2) for determining impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits is computed as follows:

(A) if the employee has worked for the employer for at least the 13 weeks immediately preceding the date of the injury, the average weekly wage is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13 and adjusting that amount to the weekly wage level the employee would have attained by working a full-time workweek at the same rate of pay; or

(B) if the employee has worked for the employer for less than 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(i) the weekly wage that the employer pays a similar employee for similar services based on a full-time workweek; or

(ii) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services based on a full-time workweek.

(c) For employees with multiple employment, the average weekly wage for determining temporary income benefits, impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits, is computed as follows:

(1) the average weekly wage for an employee with multiple employment is equal to the sum of the average weekly wages computed under Subdivisions (2) and (3);

(2) for each of the employers for whom the employee has worked for at least the 13 weeks immediately preceding the date of injury, the average weekly wage is equal to the sum of the wages paid by that employer to the employee in the 13 weeks immediately preceding the injury divided by 13;

(3) for each of the employers for whom the employee has worked for less than the 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(A) the weekly wage that employer pays similar employees for similar services; or

(B) if a similar employee does not exist, the usual weekly wage paid in that vicinity for the same or similar services; and

(4) the average weekly wage of an employee with multiple employment who limits the employee's work to less than a full-time workweek, but does not do so as a regular course of that employee's conduct, is adjusted to the weekly wage level the employee would have attained by working a full-time workweek at the employee's average rate of pay.

(d) The commissioner shall:

(1) prescribe a form to collect information regarding the wages of employees with multiple employment; and

(2) by rule, determine the manner by which the division collects and distributes wage information to implement this section.

(e) For an employee with multiple employment, only the employee's wages that are reportable for federal income tax purposes may be considered. The employee shall document and verify wage payments subject to this section.

(f) If the commissioner determines that computing the average weekly wage for an employee as provided by Subsection (c) is impractical or unreasonable, the commissioner shall set the average weekly wage in a manner that more fairly reflects the employee's average weekly wage and that is fair and just to both parties or is in the manner agreed to by the parties. The commissioner by rule may define methods to determine a fair and just average weekly wage consistent with this section.

(g) An insurance carrier is entitled to apply for and receive

reimbursement at least annually from the subsequent injury fund for the amount of income and death benefits paid to a worker under this section that are based on employment other than the employment during which the compensable injury occurred. The commissioner may adopt rules that govern the documentation, application process, and other administrative requirements necessary to implement this subsection.

(h) In this section:

(1) "Employee with multiple employment" means an employee who has more than one employer.

(2) "Full-time workweek" means a 40-hour workweek.

(3) "Part-time employee" means an employee who, at the time of the injury, was working less than a full-time workweek for the employer for whom the employee was working when the compensable injury occurred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.095, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 2, eff. September 1, 2007.

Sec. 408.043. AVERAGE WEEKLY WAGE FOR SEASONAL EMPLOYEE. (a) For determining the amount of temporary income benefits of a seasonal employee, the average weekly wage of the employee is computed as provided by Section 408.041 and is adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period that temporary income benefits are paid.

(b) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a seasonal employee, the average weekly wage of the employee is computed by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

(c) If, for good reason, the commissioner determines that computing the average weekly wage for a seasonal employee as provided by this section is impractical, the commissioner shall compute the average weekly wage as of the time of the injury in a manner that is

fair and just to both parties.

(d) In this section, "seasonal employee" means an employee who, as a regular course of the employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.096, eff. September 1, 2005.

Sec. 408.044. AVERAGE WEEKLY WAGE FOR MINOR, APPRENTICE, TRAINEE, OR STUDENT. (a) For computing impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits, the average weekly wage of an employee shall be adjusted to reflect the level of expected wages during the period that the benefits are payable if:

(1) the employee is a minor, apprentice, trainee, or student at the time of the injury;

(2) the employee's employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages; and

(3) the employee's wages would reasonably be expected to change because of a change of employment during that period.

(b) An adjustment under Subsection (a) may not consider expected wage levels for a period occurring after the third anniversary of the date of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.0445. AVERAGE WEEKLY WAGE FOR MEMBERS OF STATE MILITARY FORCES, TEXAS TASK FORCE 1, INTRASTATE FIRE MUTUAL AID SYSTEM TEAMS, AND REGIONAL INCIDENT MANAGEMENT TEAMS. (a) For purposes of computing income benefits or death benefits under Section 437.227, Government Code, the average weekly wage of a member of the state military forces as defined by Section 437.001, Government Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment the

member holds in addition to serving as a member of the state military forces, disregarding any period during which the member is not fully compensated for that employment because the member is engaged in authorized military training or duty, and the member's regular weekly wage as a member of the state military forces, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047.

(b) For purposes of computing income benefits or death benefits under Section 88.303, Education Code, the average weekly wage of a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment, including self-employment, that the member holds in addition to serving as a member of Texas Task Force 1, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047. A member for whom an average weekly wage cannot be computed shall be paid the minimum weekly benefit established by the division.

(c) For purposes of computing income benefits or death benefits under Section 88.126, Education Code, the average weekly wage of an intrastate fire mutual aid system team member or a regional incident management team member, as defined by Section 88.126, Education Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment, including self-employment, that the member holds in addition to serving as a member of an intrastate fire mutual aid system team or a regional incident management team, as applicable, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047. A member for whom an average weekly wage cannot be computed shall be paid the minimum weekly benefit established by the division.

Added by Acts 1999, 76th Leg., ch. 1205, Sec. 4, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 644, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.097, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.14, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 991 (H.B. 919), Sec. 2, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 991 (H.B. 919), Sec. 3, eff. September 1, 2017.

Sec. 408.0446. AVERAGE WEEKLY WAGE; SCHOOL DISTRICT EMPLOYEE. (a) For determining the amount of temporary income benefits of a school district employee under Chapter 504, the average weekly wage is computed on the basis of wages earned in a week rather than on the basis of wages paid in a week. The wages earned in any given week are equal to the amount that would be deducted from an employee's salary if the employee were absent from work for one week and the employee did not have personal leave available to compensate the employee for lost wages for that week.

(b) An insurance carrier may adjust a school district employee's average weekly wage as often as necessary to reflect the wages the employee reasonably could expect to earn during the period for which temporary income benefits are paid. In adjusting a school district employee's average weekly wage under this subsection, the insurance carrier may consider any evidence of the employee's reasonable expectation of earnings.

(c) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a school district employee under Chapter 504, the average weekly wage of the employee is computed by dividing the total amount of wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

(d) If the commissioner determines that computing the average weekly wage of a school district employee as provided by this section is impractical because the employee did not earn wages during the 12 months immediately preceding the date of the injury, the commissioner shall compute the average weekly wage in a manner that is fair and just to both parties.

(e) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 10.04, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.098, eff.

September 1, 2005.

Sec. 408.045. NONPECUNIARY WAGES. The division may not include nonpecuniary wages in computing an employee's average weekly wage during a period in which the employer continues to provide the nonpecuniary wages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.099, eff. September 1, 2005.

Sec. 408.046. SIMILAR EMPLOYEES, SERVICES, OR EMPLOYMENT. For purposes of this subchapter and Subchapter D, the determination as to whether employees, services, or employment are the same or similar must include consideration of:

(1) the training and experience of the employees;
(2) the nature of the work; and
(3) the number of hours normally worked.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) On and after October 1, 2006, the state average weekly wage is equal to 88 percent of the average weekly wage in covered employment computed by the Texas Workforce Commission under Section 207.002(c).

(c) Notwithstanding Subsection (a), the commissioner by rule may increase the state average weekly wage to an amount not to exceed 100 percent of the average weekly wage in covered employment computed by the Texas Workforce Commission under Section 207.002(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 6, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.100, eff. September 1, 2005.

SUBCHAPTER D. COMPUTATION OF BENEFITS

Sec. 408.061. MAXIMUM WEEKLY BENEFIT. (a) A weekly temporary income benefit may not exceed 100 percent of the state average weekly wage under Section 408.047 rounded to the nearest whole dollar.

(b) A weekly impairment income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(c) A weekly supplemental income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(d) A weekly death benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(e) A weekly lifetime income benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(f) The division shall compute the maximum weekly income benefits for each state fiscal year not later than October 1 of each year.

(g) The maximum weekly income benefit in effect on the date of injury is applicable for the entire time that the benefit is payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.101, eff. September 1, 2005.

Sec. 408.062. MINIMUM WEEKLY INCOME BENEFIT. (a) The minimum weekly income benefit is 15 percent of the state average weekly wage as determined under Section 408.047, rounded to the nearest whole dollar.

(b) The division shall compute the minimum weekly income benefit for each state fiscal year not later than October 1 of each year.

(c) The minimum weekly income benefit in effect on the date of injury is applicable for the entire time that income benefits are payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.102, eff. September 1, 2005.

Sec. 408.063. WAGE PRESUMPTIONS; ADMINISTRATIVE VIOLATION. (a) To expedite the payment of income benefits, the commissioner may by rule establish reasonable presumptions relating to the wages earned by an employee, including the presumption that an employee's last paycheck accurately reflects the employee's usual wage.

(b) Not later than the 30th day after the date the employer receives notice of an injury to the employee, the employer shall file a wage statement showing the amount of all wages paid to the employee.

(c) An employer who fails to file a wage statement in accordance with Subsection (b) commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.103, eff. September 1, 2005.

Sec. 408.064. INTEREST ON ACCRUED BENEFITS. (a) An order to pay income or death benefits accrued but unpaid must include interest on the amount of compensation due at the rate provided by Section 401.023.

(b) Accrued but unpaid compensation and interest shall be paid in a lump sum.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. INCOME BENEFITS IN GENERAL

Sec. 408.081. INCOME BENEFITS. (a) An employee is entitled to timely and accurate income benefits as provided in this chapter.

(b) Except as otherwise provided by this section or this subtitle, income benefits shall be paid weekly as and when they accrue without order from the commissioner. Interest on accrued but unpaid benefits shall be paid, without order of the commissioner, at the time the accrued benefits are paid.

(c) The commissioner by rule shall establish requirements for agreements under which income benefits may be paid monthly. Income benefits may be paid monthly only:

(1) on the request of the employee and the agreement of the employee and the insurance carrier; and

(2) in compliance with the requirements adopted by the commissioner.

(d) An employee's entitlement to income benefits under this chapter terminates on the death of the employee. An interest in future income benefits does not survive after the employee's death.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 11, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.104, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1153 (H.B. 2089), Sec. 1, eff. September 1, 2011.

Sec. 408.0815. RESOLUTION OF OVERPAYMENT OR UNDERPAYMENT OF INCOME BENEFITS. (a) The commissioner by rule shall establish a procedure by which an insurance carrier:

(1) may recoup an overpayment of income benefits from future income benefit payments that are not reimbursable under Section 410.209; and

(2) shall pay an underpayment of income benefits, including interest on accrued but unpaid benefits, in accordance with this subtitle.

(b) The procedure under Subsection (a) must include:

(1) a process by which an injured employee may notify the insurance carrier of an underpayment;

(2) the time frame and methodology by which an insurance carrier shall pay to an injured employee an underpayment;

(3) a process by which an insurance carrier shall notify an injured employee of an overpayment of income benefits;

(4) the time frame and methodology by which an insurance carrier may recoup an overpayment through the reduction of a future income benefit payment; and

(5) a method for coordinating overpayments that may be recouped from future income benefits and reimbursements described by Section 410.209.

(c) The procedure for recouping overpayments under Subsection

(a)(1) must take into consideration the cause of the overpayment and minimize the financial hardship to the injured employee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1153 (H.B. 2089), Sec. 2, eff. September 1, 2011.

Sec. 408.082. ACCRUAL OF RIGHT TO INCOME BENEFITS. (a) Income benefits may not be paid under this subtitle for an injury that does not result in disability for at least one week.

(b) If the disability continues for longer than one week, weekly income benefits begin to accrue on the eighth day after the date of the injury. If the disability does not begin at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits accrue on the eighth day after the date on which the disability began.

(c) If the disability continues for two weeks or longer after the date it begins, compensation shall be computed from the date the disability begins.

(d) This section does not preclude the recovery of medical benefits as provided by Subchapter B.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.105, eff. September 1, 2005.

Sec. 408.083. TERMINATION OF RIGHT TO TEMPORARY INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS. (a) Except as provided by Subsection (b), an employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates on the expiration of 401 weeks after the date of injury.

(b) If an employee incurs an occupational disease, the employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates on the expiration of 401 weeks after the date on which benefits began to accrue.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1995, 74th Leg., ch. 980, Sec. 1.26, eff. Sept. 1, 1995.

Sec. 408.084. CONTRIBUTING INJURY. (a) At the request of the insurance carrier, the commissioner may order that impairment income benefits and supplemental income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries.

(b) The commissioner shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of the compensable injuries results in an injury compensable under Section 408.161, the benefits for that injury shall be paid as provided by Section 408.162.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.106, eff. September 1, 2005.

Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. (a) If there is a likelihood that income benefits will be paid, the commissioner may grant an employee suffering financial hardship advances as provided by this subtitle against the amount of income benefits to which the employee may be entitled. An advance may be ordered before or after the employee attains maximum medical improvement. An insurance carrier shall pay the advance ordered.

(b) An employee must apply to the division for an advance on a form prescribed by the commissioner. The application must describe the hardship that is the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the maximum weekly benefit for temporary income benefits as computed in Section 408.061. The commissioner may not grant more than three advances to a particular employee based on the same injury.

(d) The commissioner may not grant an advance to an employee who is receiving, on the date of the application under Subsection (b), at least 90 percent of the employee's net preinjury wages under Section 408.003 or 408.129.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.107, eff. September 1, 2005.

SUBCHAPTER F. TEMPORARY INCOME BENEFITS

Sec. 408.101. TEMPORARY INCOME BENEFITS. (a) An employee is entitled to temporary income benefits if the employee has a disability and has not attained maximum medical improvement.

(b) On the initiation of compensation as provided by Section 409.021, the insurance carrier shall pay temporary income benefits as provided by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.102. DURATION OF TEMPORARY INCOME BENEFITS. (a) Temporary income benefits continue until the employee reaches maximum medical improvement.

(b) The commissioner by rule shall establish a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.109, eff. September 1, 2005.

Sec. 408.103. AMOUNT OF TEMPORARY INCOME BENEFITS. (a) Subject to Sections 408.061 and 408.062, the amount of a temporary income benefit is equal to:

(1) 70 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage; or

(2) for the first 26 weeks, 75 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage if the employee earns less than $10 an hour.

(b) A temporary income benefit under Subsection (a)(2) may not

exceed the employee's actual earnings for the previous year. It is presumed that the employee's actual earnings for the previous year are equal to:

(1) the sum of the employee's wages as reported in the most recent four quarterly wage reports to the Texas Workforce Commission divided by 52;

(2) the employee's wages in the single quarter of the most recent four quarters in which the employee's earnings were highest, divided by 13, if the commissioner finds that the employee's most recent four quarters' earnings reported in the Texas Workforce Commission wage reports are not representative of the employee's usual earnings; or

(3) the amount the commissioner determines from other credible evidence to be the actual earnings for the previous year if the Texas Workforce Commission does not have a wage report reflecting at least one quarter's earnings because the employee worked outside the state during the previous year.

(c) A presumption under Subsection (b) may be rebutted by other credible evidence of the employee's actual earnings.

(d) The Texas Employment Commission shall provide information required under this section in the manner most efficient for transferring the information.

(e) For purposes of Subsection (a), if an employee is offered a bona fide position of employment that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly earnings after the injury are equal to the weekly wage for the position offered to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.110, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 54 (S.B. 901), Sec. 1, eff. September 1, 2015.

Sec. 408.104. MAXIMUM MEDICAL IMPROVEMENT AFTER SPINAL SURGERY. (a) On application by either the employee or the insurance carrier, the commissioner by order may extend the 104-week period described by

Section 401.011(30)(B) if the employee has had spinal surgery, or has been approved for spinal surgery under Section 408.026 and commissioner rules, within 12 weeks before the expiration of the 104-week period. If an order is issued under this section, the order shall extend the statutory period for maximum medical improvement to a date certain, based on medical evidence presented to the commissioner.

(b) Either the employee or the insurance carrier may dispute an application for extension made under this section. A dispute under this subsection is subject to Chapter 410.

(c) The commissioner shall adopt rules to implement this section, including rules establishing procedures for requesting and disputing an extension.

Added by Acts 1997, 75th Leg., ch. 1443, Sec. 5, eff. Jan. 1, 1998.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.111, eff. September 1, 2005.

Sec. 408.105. SALARY CONTINUATION IN LIEU OF TEMPORARY INCOME BENEFITS. (a) In lieu of payment of temporary income benefits under this subchapter, an employer may continue to pay the salary of an employee who sustains a compensable injury under a contractual obligation between the employer and employee, such as a collective bargaining agreement, written agreement, or policy.

(b) Salary continuation may include wage supplementation if:

(1) employer reimbursement is not sought from the carrier as provided by Section 408.127; and

(2) the supplementation does not affect the employee's eligibility for any future income benefits.

Added by Acts 1999, 76th Leg., ch. 1003, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER G. IMPAIRMENT INCOME BENEFITS

Sec. 408.121. IMPAIRMENT INCOME BENEFITS. (a) An employee's entitlement to impairment income benefits begins on the day after the date the employee reaches maximum medical improvement and ends on the earlier of:

(1) the date of expiration of a period computed at the rate

of three weeks for each percentage point of impairment; or

(2) the date of the employee's death.

(b) The insurance carrier shall begin to pay impairment income benefits not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying maximum medical improvement. Impairment income benefits shall be paid for a period based on the impairment rating, unless that rating is disputed under Subsection (c).

(c) If the insurance carrier disputes the impairment rating used under Subsection (a), the carrier shall pay the employee impairment income benefits for a period based on the carrier's reasonable assessment of the correct rating.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS. A claimant may not recover impairment income benefits unless evidence of impairment based on an objective clinical or laboratory finding exists. If the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, a designated doctor or a doctor selected by the insurance carrier must be able to confirm the objective clinical or laboratory finding on which the finding of impairment is based.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.27, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 5.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.112, eff. September 1, 2005.

Sec. 408.1225. DESIGNATED DOCTOR. (a) To be eligible to serve as a designated doctor, a doctor must maintain an active certification by the division.

(a-1) The commissioner by rule shall develop a process for the certification of a designated doctor.

(a-2) The rules adopted by the commissioner under Subsection (a-1) must:

(1) require the division to evaluate the qualification of

designated doctors for certification using eligibility requirements, including:

(A) educational experience;

(B) previous training; and

(C) demonstrated ability to perform the specific designated doctor duties described by Section 408.0041; and

(2) require standard training and testing to be completed in accordance with policies and guidelines developed by the division.

(a-3) The division shall develop guidelines for certification training programs for certification of a designated doctor under Subsection (a-1) to ensure a designated doctor's competency and continued competency in providing assessments, including:

(1) a standard curriculum;

(2) standard course materials; and

(3) testing criteria.

(a-4) The division shall develop and implement a procedure to periodically review and update the guidelines developed under Subsection (a-3).

(a-5) The division may authorize an independent training and testing provider to conduct the certification program for the division under the guidelines developed under Subsection (a-3).

(b) The commissioner shall ensure the quality of designated doctor decisions and reviews through active monitoring of the decisions and reviews, and may take action as necessary to:

(1) restrict the participation of a designated doctor;

(2) deny renewal of a designated doctor's certification; or

(3) revoke a designated doctor's certification under Section 413.044.

(c) The report of the designated doctor has presumptive weight, and the division shall base its determination of whether the employee has reached maximum medical improvement on the report unless the preponderance of the other medical evidence is to the contrary.

(d) The commissioner shall develop rules to ensure that a designated doctor called on to conduct an examination under Section 408.0041 has no conflict of interest in serving as a designated doctor in performing any examination.

(e) A designated doctor, other than a chiropractor, is subject to Section 408.0043. A designated doctor who is a chiropractor is subject to Section 408.0045. To the extent of a conflict between this section and Section 408.0043 or 408.0045, this section controls.

(f) A designated doctor shall continue providing services related to a case assigned to the designated doctor, including performing subsequent examinations or acting as a resource for division disputes, unless the division authorizes the designated doctor to discontinue providing services. The commissioner by rule shall prescribe the circumstances under which a designated doctor is permitted to discontinue providing services, including:

(1) the doctor decides to stop practicing in the workers' compensation system; or

(2) the doctor relocates the doctor's residence or practice.

(g) On request of the division, a designated doctor shall provide the division with a copy of any contract that is:

(1) between the designated doctor and an authorized agent of the doctor; and

(2) for services provided by the agent related to the designated doctor's duties, including scheduling, billing, and organizing medical records.

(h) A contract provided to the division under Subsection (g) is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.112, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 12, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 158 (H.B. 2056), Sec. 1, eff. September 1, 2017.

Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating using the impairment rating guidelines described by Section 408.124. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation shall be submitted

to the treating doctor, and the treating doctor shall indicate agreement or disagreement with the certification and evaluation.

(b) A certifying doctor shall issue a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and providing any other information required by the commissioner to:

(1) the division;

(2) the employee; and

(3) the insurance carrier.

(c) The commissioner shall adopt a rule that provides that, at the conclusion of any examination in which maximum medical improvement is certified and any impairment rating is assigned by the treating doctor, written notice shall be given to the employee that the employee may dispute the certification of maximum medical improvement and assigned impairment rating. The notice to the employee must state how to dispute the certification of maximum medical improvement and impairment rating.

(d) If an employee is not certified as having reached maximum medical improvement before the expiration of 102 weeks after the date income benefits begin to accrue, the division shall notify the treating doctor of the requirements of this subchapter.

(e) Except as otherwise provided by this section, an employee's first valid certification of maximum medical improvement and first valid assignment of an impairment rating is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means.

(f) An employee's first certification of maximum medical improvement or assignment of an impairment rating may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the impairment rating;

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or

(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid; or

(2) other compelling circumstances exist as prescribed by

commissioner rule.

(g) If an employee has not been certified as having reached maximum medical improvement before the expiration of 104 weeks after the date income benefits begin to accrue or the expiration date of any extension of benefits under Section 408.104, the impairment rating assigned after the expiration of either of those periods is final if the impairment rating is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (f).

(h) If an employee's disputed certification of maximum medical improvement or assignment of impairment rating is finally modified, overturned, or withdrawn, the first certification or assignment made after the date of the modification, overturning, or withdrawal becomes final if the certification or assignment is not disputed before the 91st day after the date notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (f).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 278, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1190, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1323, Sec. 2, eff. June 21, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.113, eff. September 1, 2005.

Sec. 408.124. IMPAIRMENT RATING GUIDELINES. (a) An award of an impairment income benefit, whether by the commissioner or a court, must be based on an impairment rating determined using the impairment rating guidelines described by this section.

(b) For determining the existence and degree of an employee's impairment, the division shall use "Guides to the Evaluation of Permanent Impairment," third edition, second printing, dated February 1989, published by the American Medical Association.

(c) Notwithstanding Subsection (b), the commissioner by rule may adopt the fourth edition of the "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association,

or a subsequent edition of those guides, for determining the existence and degree of an employee's impairment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 12, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.114, eff. September 1, 2005.

Sec. 408.125. DISPUTE AS TO IMPAIRMENT RATING. (a) If an impairment rating is disputed, the commissioner shall direct the employee to the next available doctor on the division's list of designated doctors, as provided by Section 408.0041.

(b) The designated doctor shall report in writing to the division.

(c) The report of the designated doctor shall have presumptive weight, and the division shall base the impairment rating on that report unless the preponderance of the other medical evidence is to the contrary. If the preponderance of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the division, the division shall adopt the impairment rating of one of the other doctors.

(d) To avoid undue influence on a person selected as a designated doctor under this section, only the injured employee or an appropriate member of the staff of the division may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate division staff members. The designated doctor may initiate communication with any doctor who has previously treated or examined the injured employee for the work-related injury.

(e) Notwithstanding Subsection (d), the treating doctor and the insurance carrier are both responsible for sending to the designated doctor all the injured employee's medical records that are in their possession and that relate to the issue to be evaluated by the designated doctor. The treating doctor and the insurance carrier may send the records without a signed release from the employee. The

designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and the insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(f) A violation of Subsection (d) is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.28, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 5.04, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.115, eff. September 1, 2005.

Sec. 408.126. AMOUNT OF IMPAIRMENT INCOME BENEFITS. Subject to Sections 408.061 and 408.062, an impairment income benefit is equal to 70 percent of the employee's average weekly wage.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.127. REDUCTION OF IMPAIRMENT INCOME BENEFITS. (a) An insurance carrier shall reduce impairment income benefits to an employee by an amount equal to employer payments made under Section 408.003 that are not reimbursed or reimbursable under that section.

(b) The insurance carrier shall remit the amount of a reduction under this section to the employer who made the payments.

(c) The commissioner shall adopt rules and forms to ensure the full reporting and the accuracy of reductions and reimbursements made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.116, eff. September 1, 2005.

Sec. 408.128. COMMUTATION OF IMPAIRMENT INCOME BENEFITS. (a) An employee may elect to commute the remainder of the impairment

income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage.

(b) An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.129. ACCELERATION OF IMPAIRMENT INCOME BENEFITS. (a) On approval by the commissioner of a written request received from an employee, an insurance carrier shall accelerate the payment of impairment income benefits to the employee. The accelerated payment may not exceed a rate of payment equal to that of the employee's net preinjury wage.

(b) The commissioner shall approve the request and order the acceleration of the benefits if the commissioner determines that the acceleration is:

(1) required to relieve hardship; and

(2) in the overall best interest of the employee.

(c) The duration of the impairment income benefits to which the employee is entitled shall be reduced to offset the increased payments caused by the acceleration taking into consideration the discount for present payment computed at the rate provided under Section 401.023.

(d) The commissioner may prescribe forms necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.117, eff. September 1, 2005.

SUBCHAPTER H. SUPPLEMENTAL INCOME BENEFITS

Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An award of a supplemental income benefit, whether by the commissioner or a court, shall be made in accordance with this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.118, eff. September 1, 2005.

Sec. 408.1415. WORK SEARCH COMPLIANCE STANDARDS. (a) The commissioner by rule shall adopt compliance standards for supplemental income benefit recipients that require each recipient to demonstrate an active effort to obtain employment. To be eligible to receive supplemental income benefits under this chapter, a recipient must provide evidence satisfactory to the division of:

(1) active participation in a vocational rehabilitation program conducted by the Department of Assistive and Rehabilitative Services or a private vocational rehabilitation provider;

(2) active participation in work search efforts conducted through the Texas Workforce Commission; or

(3) active work search efforts documented by job applications submitted by the recipient.

(b) In adopting rules under this section, the commissioner shall:

(1) establish the level of activity that a recipient should have with the Texas Workforce Commission and the Department of Assistive and Rehabilitative Services;

(2) define the number of job applications required to be submitted by a recipient to satisfy the work search requirements; and

(3) consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors.

(c) The commissioner may consult with the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and other appropriate entities in adopting rules under this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.119, eff. September 1, 2005.

Sec. 408.142. SUPPLEMENTAL INCOME BENEFITS. (a) An employee is entitled to supplemental income benefits if on the expiration of the impairment income benefit period computed under Section

408.121(a)(1) the employee:

(1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;

(2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(3) has not elected to commute a portion of the impairment income benefit under Section 408.128; and

(4) has complied with the requirements adopted under Section 408.1415.

(b) If an employee is not entitled to supplemental income benefits at the time of payment of the final impairment income benefit because the employee is earning at least 80 percent of the employee's average weekly wage, the employee may become entitled to supplemental income benefits at any time within one year after the date the impairment income benefit period ends if:

(1) the employee earns wages for at least 90 days that are less than 80 percent of the employee's average weekly wage;

(2) the employee meets the requirements of Subsections (a)(1), (3), and (4); and

(3) the decrease in earnings is a direct result of the employee's impairment from the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.1195, eff. September 1, 2005.

Sec. 408.143. EMPLOYEE STATEMENT. (a) After the commissioner's initial determination of supplemental income benefits, the employee must file a statement with the insurance carrier stating:

(1) that the employee has earned less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(2) the amount of wages the employee earned in the filing period provided by Subsection (b); and

(3) that the employee has complied with the requirements adopted under Section 408.1415.

(b) The statement required under this section must be filed quarterly on a form and in the manner provided by the commissioner. The commissioner may modify the filing period as appropriate to an individual case.

(c) Failure to file a statement under this section relieves the insurance carrier of liability for supplemental income benefits for the period during which a statement is not filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.120, eff. September 1, 2005.

Sec. 408.144. COMPUTATION OF SUPPLEMENTAL INCOME BENEFITS. (a) Supplemental income benefits are calculated quarterly and paid monthly.

(b) Subject to Section 408.061, the amount of a supplemental income benefit for a week is equal to 80 percent of the amount computed by subtracting the weekly wage the employee earned during the reporting period provided by Section 408.143(b) from 80 percent of the employee's average weekly wage determined under Section 408.041, 408.042, 408.043, 408.044, 408.0445, or 408.0446.

(c) For the purposes of this subchapter, if an employee is offered a bona fide position of employment that the employee is capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly wages are considered to be equal to the weekly wages for the position offered to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.1205, eff. September 1, 2005.

Sec. 408.145. PAYMENT OF SUPPLEMENTAL INCOME BENEFITS. An insurance carrier shall pay supplemental income benefits beginning not later than the seventh day after the expiration date of the employee's impairment income benefit period and shall continue to pay the benefits in a timely manner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.146. TERMINATION OF SUPPLEMENTAL INCOME BENEFITS; REINITIATION. (a) If an employee earns wages that are at least 80 percent of the employee's average weekly wage for at least 90 days during a time that the employee receives supplemental income benefits, the employee ceases to be entitled to supplemental income benefits for the filing period.

(b) Supplemental income benefits terminated under this section shall be reinitiated when the employee:

(1) satisfies the conditions of Section 408.142(b); and

(2) files the statement required under Section 408.143.

(c) Notwithstanding any other provision of this section, an employee who is not entitled to supplemental income benefits for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.147. CONTEST OF SUPPLEMENTAL INCOME BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES. (a) An insurance carrier may request a benefit review conference to contest an employee's entitlement to supplemental income benefits or the amount of supplemental income benefits.

(b) If an insurance carrier fails to make a request for a benefit review conference within 10 days after the date of the expiration of the impairment income benefit period or within 10 days after receipt of the employee's statement, the insurance carrier waives the right to contest entitlement to supplemental income benefits and the amount of supplemental income benefits for that period of supplemental income benefits.

(c) If an insurance carrier disputes the commissioner's determination that an employee is entitled to supplemental income benefits or the amount of supplemental income benefits due and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for supplemental income benefits accrued but not paid and interest on

that amount, according to Section 408.064. Attorney's fees awarded under this subsection are not subject to Sections 408.221(b), (f), and (i).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.53, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 8.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.121, eff. September 1, 2005.

Sec. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION. The commissioner may reinstate supplemental income benefits to an employee who is discharged within 12 months of the date of losing entitlement to supplemental income benefits under Section 408.146(c) if the commissioner finds that the employee was discharged at that time with the intent to deprive the employee of supplemental income benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.122, eff. September 1, 2005.

Sec. 408.149. STATUS REVIEW; BENEFIT REVIEW CONFERENCE. (a) Not more than once in each period of 12 calendar months, an employee and an insurance carrier each may request the commissioner to review the status of the employee and determine whether the employee's unemployment or underemployment is a direct result of impairment from the compensable injury.

(b) Either party may request a benefit review conference to contest a determination of the commissioner at any time, subject only to the limits placed on the insurance carrier by Section 408.147.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.123, eff. September 1, 2005.

Sec. 408.150. VOCATIONAL REHABILITATION. (a) The division shall refer an employee to the Texas Workforce Commission with a recommendation for appropriate services if the division determines that an employee could be materially assisted by vocational rehabilitation or training in returning to employment or returning to employment more nearly approximating the employee's preinjury employment. The insurance carrier may provide vocational rehabilitation or training services through a private provider of vocational rehabilitation services.

(b) An employee who refuses services or refuses to cooperate with services provided under this section by the Texas Workforce Commission or a private provider loses entitlement to supplemental income benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1426, Sec. 13, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.124, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 6, eff. June 9, 2017.

Sec. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME BENEFITS. (a) On or after the second anniversary of the date the commissioner makes the initial award of supplemental income benefits, an insurance carrier may not require an employee who is receiving supplemental income benefits to submit to a medical examination more than annually if, in the preceding year, the employee's medical condition resulting from the compensable injury has not improved sufficiently to allow the employee to return to work.

(b) If a dispute exists as to whether the employee's medical condition has improved sufficiently to allow the employee to return to work, the commissioner shall direct the employee to be examined by a designated doctor chosen by the division. The designated doctor shall report to the division. The report of the designated doctor has presumptive weight, and the division shall base its determination of whether the employee's medical condition has improved sufficiently to allow the employee to return to work on that report unless the

preponderance of the other medical evidence is to the contrary.

Added by Acts 1999, 76th Leg., ch. 850, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.125, eff. September 1, 2005.

SUBCHAPTER I. LIFETIME INCOME BENEFITS

Sec. 408.161. LIFETIME INCOME BENEFITS. (a) Lifetime income benefits are paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;

(2) loss of both feet at or above the ankle;

(3) loss of both hands at or above the wrist;

(4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;

(6) a physically traumatic injury to the brain that, as determined using evidence-based medicine, results in a permanent major neurocognitive disorder:

(A) for which the employee requires occasional supervision in the performance of routine daily tasks of self-care; and

(B) that renders the employee permanently unemployable; or

(7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of:

(A) both hands;

(B) one hand and one foot; or

(C) one hand or one foot and the face.

(b) For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part.

(c) Subject to Section 408.061, the amount of lifetime income benefits is equal to 75 percent of the employee's average weekly wage. Benefits being paid shall be increased at a rate of three percent a year notwithstanding Section 408.061.

(d) An insurance carrier may pay lifetime income benefits through an annuity if the annuity agreement meets the terms and

conditions for annuity agreements adopted by the commissioner by rule. The establishment of an annuity under this subsection does not relieve the insurance carrier of the liability under this title for ensuring that the lifetime income benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1426, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 9.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.126, eff. September 1, 2005.
Acts 2023, 88th Leg., R.S., Ch. 721 (H.B. 2468), Sec. 2, eff. September 1, 2023.

Sec. 408.1615. LIFETIME INCOME BENEFITS FOR CERTAIN FIRST RESPONDERS. (a) In this section:
(1) "First responder" means an individual who is:
(A) a peace officer under Article 2.12, Code of Criminal Procedure;
(B) certified under Chapter 773, Health and Safety Code, as an emergency care attendant, advanced emergency medical technician, emergency medical technician-paramedic or a licensed paramedic;
(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are aircraft crash and rescue or fire fighting; or
(D) an individual covered under Section 504.012 who is providing volunteer services as:
(i) a volunteer firefighter, regardless of whether the individual is certified under Chapter 419, Government Code; or
(ii) an emergency medical services volunteer, as defined by Section 773.003, Health and Safety Code.
(2) "Serious bodily injury" has the meaning assigned by Section 1.07, Penal Code.
(b) This section applies only to an employee who sustains a serious bodily injury, other than an injury described by Section 408.161, in the course and scope of the employee's employment or

volunteer service as a first responder that renders the employee permanently unemployable.

(c) Except as otherwise provided by this section, an employee to which this section applies is entitled to receive lifetime income benefits paid until the employee's death for the employee's injury. Sections 408.161(c) and (d) apply to the payment of lifetime income benefits under this section.

(d) The division shall accelerate any dispute, including a contested case hearing or appeal requested by the employee, regarding an employee's continuing entitlement to lifetime income benefits under this section. The employee shall provide notice to the division that the dispute involves a first responder.

(e) An employee receiving lifetime income benefits under this section shall annually certify to the insurance carrier, in the form and manner prescribed by the division, that the employee was not employed in any capacity during the preceding year.

(f) Notwithstanding Sections 410.169 and 410.205, an insurance carrier may periodically review an employee's continuing entitlement to lifetime income benefits under this section, but not more than once during any five-year period.

(g) Notwithstanding Subsection (f), an insurance carrier may review an employee's continuing entitlement to lifetime income benefits under this section regardless of the date on which the insurance carrier most recently reviewed the employee's continuing entitlement, if:

(1) the employee certifies to the insurance carrier under Subsection (e) that the employee was not employed in any capacity during the preceding year;

(2) the insurance carrier provides evidence to the commissioner that the certification provided by the employee under Subsection (e) is not accurate; and

(3) the commissioner notifies the insurance carrier that the commissioner has determined that the evidence provided by the insurance carrier is sufficient to show that the certification provided by the employee under Subsection (e) may not be accurate.

(h) An insurance carrier reviewing an employee's continuing entitlement under Subsection (f) or (g) shall request the commissioner to order a medical examination conducted by a designated doctor under Section 408.0041. Except as otherwise provided by this section, the requirements of Section 408.0041 apply to an examination

ordered under this subsection to the same extent as if the examination were ordered under Section 408.0041(a).

(i) An employee is not entitled to lifetime income benefits under this section, and an insurance carrier is authorized to suspend the payment of lifetime income benefits, during and for a period in which the employee fails to complete the annual certification required by Subsection (e), the employee is employed in any capacity, or as provided under Section 408.0041(j) or (k-1), unless the commissioner determines that there is good cause. The commissioner by rule shall ensure that an employee receives reasonable notice of the insurance carrier's basis for the suspension and is provided a reasonable opportunity to complete the annual certification under Subsection (e) or otherwise respond to the notice.

(j) The commissioner shall adopt rules necessary to implement this section, including rules:

(1) prescribing the deadline for the submission and the form and the manner of the submission of the annual certification required by Subsection (e); and

(2) establishing procedures for:

(A) the review of an employee's continuing entitlement to lifetime income benefits under this section;

(B) the suspension and reinstatement of lifetime income benefits under this section; and

(C) the termination of lifetime income benefits under this section on a final determination that an employee is no longer entitled to the benefits.

Added by Acts 2023, 88th Leg., R.S., Ch. 721 (H.B. 2468), Sec. 3, eff. September 1, 2023.

Sec. 408.162. SUBSEQUENT INJURY FUND BENEFITS. (a) If a subsequent compensable injury, with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed.

(b) The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the

employee is entitled.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER J. DEATH AND BURIAL BENEFITS

Sec. 408.181. DEATH BENEFITS. (a) An insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death.

(b) Subject to Section 408.061, the amount of a death benefit is equal to 75 percent of the employee's average weekly wage.

(c) The commissioner by rule shall establish requirements for agreements under which death benefits may be paid monthly. Death benefits may be paid monthly only:

(1) on the request of the legal beneficiary and the agreement of the legal beneficiary and the insurance carrier; and

(2) in compliance with the requirements adopted by the commissioner.

(d) An insurance carrier may pay death benefits through an annuity if the annuity agreement meets the terms and conditions for annuity agreements adopted by the commissioner by rule. The establishment of an annuity under this subsection does not relieve the insurance carrier of the liability under this title for ensuring that the death benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 15, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.127, eff. September 1, 2005.

Sec. 408.182. DISTRIBUTION OF DEATH BENEFITS. (a) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If an eligible child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(b) If there is an eligible spouse and no eligible child or grandchild, all the death benefits shall be paid to the eligible

spouse.

(c) If there is an eligible child or grandchild and no eligible spouse, the death benefits shall be paid to the eligible children or grandchildren.

(d) If there is no eligible spouse, no eligible child, and no eligible grandchild, the death benefits shall be paid in equal shares to surviving dependents of the deceased employee who are parents, stepparents, siblings, or grandparents of the deceased.

(d-1) If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. A payment of death benefits made under this subsection may not exceed one payment per household. Total payments under this section may not exceed 104 weeks regardless of the number of surviving eligible parents.

(d-2) Except as otherwise provided by this subsection, to be eligible to receive death benefits under Subsection (d-1), an eligible parent must file with the division or insurance carrier a claim for those benefits not later than the first anniversary of the date of the injured employee's death from the compensable injury. The claim must designate all eligible parents and necessary information for payment to the eligible parents. The insurance carrier is not liable for payment to any eligible parent not designated on the claim. Failure to file a claim in the time required bars the claim unless good cause exists for the failure to file a claim under this section.

(e) If an employee is not survived by legal beneficiaries or eligible parents, the death benefits shall be paid to the subsequent injury fund under Section 403.007.

(f) In this section:

(1) "Eligible child" means a child of a deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or

(C) a dependent of the deceased employee at the time of the employee's death.

(2) "Eligible grandchild" means a grandchild of a deceased employee who is a dependent of the deceased employee and whose parent

is not an eligible child.

(3) "Eligible spouse" means the surviving spouse of a deceased employee unless the spouse abandoned the employee for longer than the year immediately preceding the death without good cause, as determined by the division.

(4) "Eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent. The term does not include a parent whose parental rights have been terminated.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.128, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 344 (H.B. 1058), Sec. 1, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 502 (H.B. 2314), Sec. 1, eff. June 10, 2023.

Sec. 408.183. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of an employee's death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.

(b-1) Notwithstanding Subsection (b), an eligible spouse who remarried is eligible for death benefits for life if the employee was a first responder, as defined by Section 504.055, or an individual described by Section 615.003(1), Government Code, or Section 501.001(5)(F), who suffered death in the course and scope of employment or while providing services as a volunteer. This subsection applies regardless of the date on which the death of the first responder or other individual occurred.

(c) A child who is eligible for death benefits because the

child is a minor on the date of the employee's death is entitled to receive benefits until the child attains the age of 18.

(d) A child eligible for death benefits under Subsection (c) who at age 18 is enrolled as a full-time student in an accredited educational institution or a child who is eligible for death benefits because on the date of the employee's death the child is enrolled as a full-time student in an accredited educational institution is entitled to receive or to continue to receive, as appropriate, benefits until the earliest of:

(1) the date the child ceases, for a second consecutive semester, to be enrolled as a full-time student in an accredited educational institution;

(2) the date the child attains the age of 25; or

(3) the date the child dies.

(e) A child who is eligible for death benefits because the child is a dependent of the deceased employee on the date of the employee's death is entitled to receive benefits until the earlier of:

(1) the date the child dies; or

(2) if the child is dependent:

(A) because the child is an individual with a physical or mental disability, the date the child no longer has the disability; or

(B) because of a reason other than a physical or mental disability, the date of the expiration of 364 weeks of death benefit payments.

(f) An eligible grandchild is entitled to receive death benefits until the earlier of:

(1) the date the grandchild dies; or

(2) if the grandchild is:

(A) a minor at the time of the employee's death, the date the grandchild ceases to be a minor; or

(B) not a minor at the time of the employee's death, the date of the expiration of 364 weeks of death benefit payments.

(f-1) An eligible parent who is not a surviving dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the date the eligible parent dies; or

(2) the date of the expiration of 104 weeks of death benefit payments.

(g) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the date the person dies; or

(2) the date of the expiration of 364 weeks of death benefit payments.

(h) Section 401.011(16) does not apply to the use of the term "disability" in this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.129, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1018 (H.B. 1094), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 468 (H.B. 2119), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 821 (H.B. 2503), Sec. 1, eff. September 1, 2019.

Sec. 408.184. REDISTRIBUTION OF DEATH BENEFITS. (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries as provided by Sections 408.182 and 408.183.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries remain constant for 104 weeks. After the 104th week, the spouse's share of benefits shall be redistributed as provided by Sections 408.182 and 408.183.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 364 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay to the subsequent injury fund an amount computed by subtracting the total amount paid from the amount that would be paid for 364 weeks of death benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.185. EFFECT OF BENEFICIARY DISPUTE; ATTORNEY'S FEES. On settlement of a case in which the insurance carrier admits liability for death benefits but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by law, with a reasonable attorney's fee not to exceed 25 percent of the settlement, paid periodically, and based on time and expenses.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.186. BURIAL BENEFITS. (a) If the death of an employee results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $10,000.

(b) If the employee died away from the employee's usual place of employment, the insurance carrier shall pay the reasonable cost of transporting the body, not to exceed the cost of transporting the body to the employee's usual place of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 16, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 192 (S.B. 653), Sec. 1, eff. September 1, 2015.

Sec. 408.187. AUTOPSY. (a) If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy.

(b) A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section.

(c) The commissioner shall require the insurance carrier to pay the costs of a procedure ordered under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.130, eff. September 1, 2005.

SUBCHAPTER K. PROTECTION OF RIGHTS TO BENEFITS

Sec. 408.201. BENEFITS EXEMPT FROM LEGAL PROCESS. Benefits are exempt from:

(1) garnishment;
(2) attachment;
(3) judgment; and
(4) other actions or claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not assignable, except a legal beneficiary may, with the commissioner's approval, assign the right to death benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.131, eff. September 1, 2005.

Sec. 408.203. ALLOWABLE LIENS. (a) An income or death benefit is subject only to the following lien or claim, to the extent the benefit is unpaid on the date the insurance carrier receives written notice of the lien or claim, in the following order of priority:

(1) an attorney's fee for representing an employee or legal beneficiary in a matter arising under this subtitle;
(2) court-ordered child support; or
(3) a subrogation interest established under this subtitle.

(b) A benefit that is subject to a lien or claim for payment of court-ordered child support shall be paid as required by an order or writ of income withholding under Chapter 158, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.53, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 22, eff. Sept. 1, 2003.

SUBCHAPTER L. ATTORNEY'S FEES IN WORKERS' COMPENSATION BENEFIT MATTERS

Sec. 408.221. ATTORNEY'S FEES PAID TO CLAIMANT'S COUNSEL. (a) An attorney's fee, including a contingency fee, for representing a claimant before the division or court under this subtitle must be approved by the commissioner or court.

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the division or court. Except as provided by Subsection (c) or Section 408.147(c), the attorney's fee shall be paid from the claimant's recovery.

(c) An insurance carrier that seeks judicial review under Subchapter G, Chapter 410, of a final decision of the appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits is liable for reasonable and necessary attorney's fees as provided by Subsection (d) incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues contained in Section 410.302. If the carrier appeals multiple issues and the claimant prevails on some, but not all, of the issues appealed, the court shall apportion and award fees to the claimant's attorney only for the issues on which the claimant prevails. In making that apportionment, the court shall consider the factors prescribed by Subsection (d). This subsection does not apply to attorney's fees for which an insurance carrier may be liable under Section 408.147. An award of attorney's fees under this subsection is not subject to commissioner rules adopted under Subsection (f).

(d) In approving an attorney's fee under this section, the commissioner or court shall consider:

(1) the time and labor required;

(2) the novelty and difficulty of the questions involved;

(3) the skill required to perform the legal services properly;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved in the controversy;

(6) the benefits to the claimant that the attorney is

responsible for securing; and

(7) the experience and ability of the attorney performing the services.

(e) The commissioner by rule or the court may provide for the commutation of an attorney's fee, except that the attorney's fee shall be paid in periodic payments in a claim involving death benefits if the only dispute is as to the proper beneficiary or beneficiaries.

(f) The commissioner by rule shall provide guidelines for maximum attorney's fees for specific services in accordance with this section.

(g) An attorney's fee may not be allowed in a case involving a fatal injury or lifetime income benefit if the insurance carrier admits liability on all issues and tenders payment of maximum benefits in writing under this subtitle while the claim is pending before the division.

(h) An attorney's fee shall be paid to the attorney by separate draft.

(i) Except as provided by Subsection (c) or Section 408.147(c), an attorney's fee may not exceed 25 percent of the claimant's recovery.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 8.01, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.132, eff. September 1, 2005.

Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. (a) The amount of an attorney's fee for defending an insurance carrier in a workers' compensation action brought under this subtitle must be approved by the division or court and determined by the division or court to be reasonable and necessary.

(b) In determining whether a fee is reasonable under this section, the division or court shall consider issues analogous to those listed under Section 408.221(d). The defense counsel shall present written evidence to the division or court relating to:

(1) the time spent and expenses incurred in defending the case; and

(2) other evidence considered necessary by the division or court in making a determination under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 8.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.133, eff. September 1, 2005.

CHAPTER 409. COMPENSATION PROCEDURES

SUBCHAPTER A. INJURY REPORTS, CLAIMS, AND RECORDS

Sec. 409.001. NOTICE OF INJURY TO EMPLOYER. (a) An employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which:

(1) the injury occurs; or

(2) if the injury is an occupational disease, the employee knew or should have known that the injury may be related to the employment.

(b) The notice required under Subsection (a) may be given to:

(1) the employer; or

(2) an employee of the employer who holds a supervisory or management position.

(c) If the injury is an occupational disease, for purposes of this section, the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

(1) the employer, a person eligible to receive notice under Section 409.001(b), or the employer's insurance carrier has actual knowledge of the employee's injury;

(2) the division determines that good cause exists for failure to provide notice in a timely manner; or

(3) the employer or the employer's insurance carrier does

not contest the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.134, eff. September 1, 2005.

Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a person acting on the employee's behalf shall file with the division a claim for compensation for an injury not later than one year after the date on which:

(1) the injury occurred; or

(2) if the injury is an occupational disease, the employee knew or should have known that the disease was related to the employee's employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.135, eff. September 1, 2005.

Sec. 409.004. EFFECT OF FAILURE TO FILE CLAIM FOR COMPENSATION. Failure to file a claim for compensation with the division as required under Section 409.003 relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

(1) good cause exists for failure to file a claim in a timely manner; or

(2) the employer or the employer's insurance carrier does not contest the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.136, eff. September 1, 2005.

Sec. 409.005. REPORT OF INJURY; MODIFIED DUTY PROGRAM NOTICE; ADMINISTRATIVE VIOLATION. (a) An employer shall report to the employer's insurance carrier if:

(1) an injury results in the absence of an employee of that employer from work for more than one day; or

(2) an employee of the employer notifies that employer of an occupational disease under Section 409.001.

(b) The report under Subsection (a) must be made not later than the eighth day after:

(1) the employee's absence from work for more than one day due to an injury; or

(2) the day on which the employer receives notice under Section 409.001 that the employee has contracted an occupational disease.

(c) The employer shall deliver a written copy of the report under Subsection (a) to the injured employee at the time that the report is made to the insurance carrier.

(d) The insurance carrier shall file the report of the injury on behalf of the policyholder. Except as provided by Subsection (e), the insurance carrier must electronically file the report with the division not later than the seventh day after the date on which the carrier receives the report from the employer.

(e) The commissioner may waive the electronic filing requirement under Subsection (d) and allow an insurance carrier to mail or deliver the report to the division not later than the seventh day after the date on which the carrier receives the report from the employer.

(f) A report required under this section may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the division or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

(g) In addition to any information required under Subsection (h), the report provided to the injured employee under Subsection (c) must contain a summary written in plain language of the employee's statutory rights and responsibilities under this subtitle.

(h) The commissioner may adopt rules relating to:

(1) the information that must be contained in a report required under this section, including the summary of rights and responsibilities required under Subsection (g); and

(2) the development and implementation of an electronic filing system for injury reports under this section.

(i) An employer and insurance carrier shall file subsequent

reports as required by commissioner rule.

(j) The employer shall, on the written request of the employee, a doctor, the insurance carrier, or the division, notify the employee, the employee's treating doctor if known to the employer, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. If those opportunities or that program exists, the employer shall identify the employer's contact person and provide other information to assist the doctor, the employee, and the insurance carrier to assess modified duty or return-to-work options.

(k) This section does not prohibit the commissioner from imposing requirements relating to return-to-work under other authority granted to the division in this subtitle.

(l) A person commits an administrative violation if the person fails to comply with this section unless good cause exists.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.29, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 3.01, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.137, eff. September 1, 2005.

Sec. 409.006. RECORD OF INJURIES; ADMINISTRATIVE VIOLATION. (a) An employer shall maintain a record of each employee injury as reported by an employee or otherwise made known to the employer.

(b) The record shall be available to the division at reasonable times and under conditions prescribed by the commissioner.

(c) The commissioner may adopt rules relating to the information that must be contained in an employer record under this section.

(d) Information contained in a record maintained under this section is not an admission by the employer that:

(1) the injury did in fact occur; or

(2) a fact maintained in the record is true.

(e) A person commits an administrative violation if the person fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.138, eff. September 1, 2005.

Sec. 409.007. DEATH BENEFIT CLAIMS. (a) A person must file a claim for death benefits with the division or insurance carrier not later than the first anniversary of the date of the employee's death.

(b) Failure to file in the time required by Subsection (a) bars the claim unless:

(1) the person is a minor or incompetent; or

(2) good cause exists for the failure to file a claim under this section.

(c) A separate claim must be filed for each legal beneficiary unless the claim expressly includes or is made on behalf of another person.

(d) If a person files a claim for death benefits with an insurance carrier, at the time the carrier receives the claim the carrier shall, in the form and manner prescribed by the division:

(1) create and maintain a record documenting receipt of the claim; and

(2) provide written notice to the division that the person filed the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.139, eff. September 1, 2005.
Acts 2023, 88th Leg., R.S., Ch. 502 (H.B. 2314), Sec. 2, eff. June 10, 2023.

Sec. 409.008. FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED. If an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report

required under Section 409.005 has been furnished.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 409.009. SUBCLAIMS. A person may file a written claim with the division as a subclaimant if the person has:

(1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and

(2) sought and been refused reimbursement from the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.140, eff. September 1, 2005.

Sec. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES. (a) In this section, "health care insurer" means an insurance carrier and an authorized representative of an insurance carrier, as described by Section 402.084(c-1).

(b) This section applies only to a request for reimbursement by a health care insurer.

(c) Health care paid by a health care insurer may be reimbursable as a medical benefit.

(d) Except as provided by Subsection (e), this section does not prohibit or limit a substantive defense by a workers' compensation insurance carrier that the health care paid for by the health care insurer was not a medical benefit or not a correct payment. A subclaimant may not be reimbursed for payment for any health care that was previously denied by a workers' compensation insurance carrier under:

(1) a preauthorization review of the specific service or medical procedure; or

(2) a medical necessity review that determined the service was not medically necessary for the treatment of a compensable injury.

(e) It is not a defense to a subclaim by a health care insurer that:

(1) the subclaimant has not sought reimbursement from a health care provider or the subclaimant's insured;

(2) the subclaimant or the health care provider did not request preauthorization under Section 413.014 or rules adopted under that section; or

(3) the health care provider did not bill the workers' compensation insurance carrier, as provided by Section 408.027, before the 95th day after the date the health care for which the subclaimant paid was provided.

(f) Subject to the time limits under Subsection (n), the health care insurer shall provide, with any reimbursement request, the tax identification number of the health care insurer and the following to the workers' compensation insurance carrier, in a form prescribed by the division:

(1) information identifying the workers' compensation case, including:

(A) the division claim number;

(B) the name of the patient or claimant;

(C) the social security number of the patient or claimant; and

(D) the date of the injury; and

(2) information describing the health care paid by the health care insurer, including:

(A) the name of the health care provider;

(B) the tax identification number of the health care provider;

(C) the date of service;

(D) the place of service;

(E) the ICD-9 code;

(F) the CPT, HCPCS, NDC, or revenue code;

(G) the amount charged by the health care provider; and

(H) the amount paid by the health care insurer.

(g) The workers' compensation insurance carrier shall reduce the amount of the reimbursable subclaim by any payments the workers' compensation insurance carrier previously made to the same health care provider for the provision of the same health care on the same dates of service. In making such a reduction in reimbursement to the subclaimant, the workers' compensation insurance carrier shall provide evidence of the previous payments made to the provider.

(h) For each medical benefit paid, the workers' compensation

insurance carrier shall pay to the health care insurer the lesser of the amount payable under the applicable fee guideline as of the date of service or the actual amount paid by the health care insurer. In the absence of a fee guideline for a specific service paid, the amount per service paid by the health care insurer shall be considered in determining a fair and reasonable payment under rules under this subtitle defining fair and reasonable medical reimbursement. The health care insurer may not recover interest as a part of the subclaim.

(i) On receipt of a request for reimbursement under this section, the workers' compensation insurance carrier shall respond to the request in writing not later than the 90th day after the date on which the request is received. If additional information is requested under Subsection (j), the workers' compensation insurance carrier shall respond not later than the 120th day unless the time is extended under Subsection (j).

(j) If the workers' compensation insurance carrier requires additional information from the health care insurer, the workers' compensation insurance carrier shall send notice to the health care insurer requesting the additional information. The health care insurer shall have 30 days to provide the requested information. The workers' compensation insurance carrier and the health care insurer may establish additional periods for compliance with this subsection by written mutual agreement.

(k) Unless the parties have agreed to an extension of time under Subsection (j), the health care insurer must file a written subclaim under this section not later than the 120th day after:

(1) the workers' compensation insurance carrier fails to respond to a request for reimbursement; or

(2) receipt of the workers' compensation insurance carrier's notice of denial to pay or reduction in reimbursement.

(l) Any dispute that arises from a failure to respond to or a reduction or denial of a request for reimbursement of services that form the basis of the subclaim must go through the appropriate dispute resolution process under this subtitle and division rules. The commissioner of insurance and the commissioner of workers' compensation shall modify rules under this subtitle as necessary to allow the health care insurer access as a subclaimant to the appropriate dispute resolution process. Rules adopted or amended by the commissioner of insurance and the commissioner of workers'

compensation must recognize the status of a subclaimant as a party to the dispute. Rules modified or adopted under this section should ensure that the workers' compensation insurance carrier is not penalized, including not being held responsible for costs of obtaining the additional information, if the workers' compensation insurance carrier denies payment in order to move to dispute resolution to obtain additional information to process the request.

(m) In a dispute filed under Chapter 410 that arises from a subclaim under this section, an administrative law judge may issue an order regarding compensability or eligibility for benefits and order the workers' compensation insurance carrier to reimburse health care services paid by the health care insurer as appropriate under this subtitle. Any dispute over the amount of medical benefits owed under this section, including medical necessity issues, shall be determined by medical dispute resolution under Sections 413.031 and 413.032.

(n) Except as provided by Subsection (s), a health care insurer must file a request for reimbursement with the workers' compensation insurance carrier not later than six months after the date on which the health care insurer received information under Section 402.084(c-3) and not later than 18 months after the health care insurer paid for the health care service.

(o) The commissioner and the commissioner of insurance shall amend or adopt rules to specify the process by which an employee who has paid for health care services described by Section 408.027(d) may seek reimbursement.

(p) Until September 1, 2011, a workers' compensation insurance carrier is exempt from any department and division data reporting requirements affected by a lack of information caused by reimbursement requests or subclaims under this section. If data reporting is required after that date, the requirement is prospective only and may not require any data to be reported between September 1, 2007, and the date required reporting is reinstated. The department and the division may make legislative recommendations to the 82nd Legislature for the collection of reimbursement request and subclaim data.

(q) An action or failure to act by a workers' compensation insurance carrier under this section may not serve as the basis for an examination or administrative action by the department or the division, or for any cause of action by any person, except for judicial review under this subtitle.

(r) The commissioner of insurance and the commissioner of workers' compensation may adopt additional rules to clarify the processes required by, fulfill the purpose of, or assist the parties in the proper adjudication of subclaims under this section.

(s) On or after September 1, 2007, from information provided to a health care insurer before January 1, 2007, under Section 402.084(c-3), the health care insurer may file not later than March 1, 2008:

(1) a subclaim with the division under Subsection (l) if a request for reimbursement has been presented and denied by a workers' compensation insurance carrier; or

(2) a request for reimbursement under Subsection (f) if a request for reimbursement has not previously been presented and denied by the workers' compensation insurance carrier.

Added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8, eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 2, eff. September 1, 2017.

Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL BENEFICIARY. Immediately on receiving notice of an injury or death from any person, the division shall send to the employee or legal beneficiary a clear and concise description of:

(1) the services provided by:

(A) the division; and

(B) the office of injured employee counsel, including the services of the ombudsman program;

(2) the division's procedures; and

(3) the person's rights and responsibilities under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.141, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 7, eff. June 9, 2017.

Sec. 409.011. INFORMATION PROVIDED TO EMPLOYER; EMPLOYER'S RIGHTS. (a) Immediately on receiving notice of an injury or death from any person, the division shall send to the employer a description of:

(1) the services provided by the division and the office of injured employee counsel;

(2) the division's procedures; and

(3) the employer's rights and responsibilities under this subtitle.

(b) The information must include a clear statement of the following rights of the employer:

(1) the right to be present at all administrative proceedings relating to an employee's claim;

(2) the right to present relevant evidence relating to an employee's claim at any proceeding;

(3) the right to report suspected fraud;

(4) the right to contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits;

(5) the right to receive notice, after making a written request to the insurance carrier, of:

(A) a proposal to settle a claim; or

(B) an administrative or a judicial proceeding relating to the resolution of a claim; and

(6) the right to contest the failure of the insurance carrier to provide accident prevention services under Subchapter E, Chapter 411.

(c) The division is not required to provide the information to an employer more than once during a calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.142, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 8, eff. June 9, 2017.

Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION. (a) The division shall analyze each report of injury received from an employer under this chapter to determine whether the injured employee

would be assisted by vocational rehabilitation.

(b) If the division determines that an injured employee would be assisted by vocational rehabilitation, the division shall notify:

(1) the injured employee in writing of the services and facilities available through the Texas Workforce Commission and private providers of vocational rehabilitation; and

(2) the Texas Workforce Commission that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(c) The division shall cooperate with the office of injured employee counsel, the Texas Workforce Commission, and private providers of vocational rehabilitation in the provision of services and facilities to employees by the Texas Workforce Commission.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 11(6), eff. June 9, 2017.

(e) The commissioner by rule may require that a private provider of vocational rehabilitation services maintain certain credentials and qualifications in order to provide services in connection with a workers' compensation insurance claim.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(127), eff. June 17, 2011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.143, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(127), eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 9, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 11(6), eff. June 9, 2017.

Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF INJURED EMPLOYEE. (a) The division shall develop information for public dissemination about the benefit process and the compensation procedures established under this chapter. The information must be written in plain language and must be available in English and

Spanish.

(b) On receipt of a report under Section 409.005, the division shall:

(1) contact the affected employee; and

(2) provide the information required under Subsection (a) to that employee, together with any other information that may be prepared by the office of injured employee counsel or the division for public dissemination that relates to the employee's situation, such as information relating to back injuries or occupational diseases.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.30, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.144, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 10, eff. June 9, 2017.

SUBCHAPTER B. PAYMENT OF BENEFITS

Sec. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall initiate compensation under this subtitle promptly. Not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall:

(1) begin the payment of benefits as required by this subtitle; or

(2) notify the division and the employee in writing of its refusal to pay and advise the employee of:

(A) the right to request a benefit review conference; and

(B) the means to obtain additional information from the division.

(a-1) An insurance carrier that fails to comply with Subsection (a) does not waive the carrier's right to contest the compensability of the injury as provided by Subsection (c) but commits an administrative violation subject to Subsection (e).

(a-2) An insurance carrier is not required to comply with Subsection (a) if the insurance carrier has accepted the claim as a

compensable injury and income or death benefits have not yet accrued but will be paid by the insurance carrier when the benefits accrue and are due.

(a-3) An insurance carrier is not required to comply with Subsection (a) if the claim results from an employee's disability or death for which a presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, and, not later than the 15th day after the date on which the insurance carrier received written notice of the injury, the insurance carrier has provided the employee and the division with a notice that describes all steps taken by the insurance carrier to investigate the injury before the notice was given and the evidence the carrier reasonably believes is necessary to complete its investigation of the compensability of the injury. The commissioner shall adopt rules as necessary to implement this subsection.

(b) An insurance carrier shall notify the division in writing of the initiation of income or death benefit payments in the manner prescribed by commissioner rules.

(c) If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.

(d) An insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

(e) An insurance carrier commits an administrative violation if the insurance carrier does not initiate payments or file a notice of refusal as required by this section.

Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 939, Sec. 1

(f) For purposes of this section, "written notice" to a certified self-insurer occurs only on written notice to the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c).

Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 1100, Sec. 1

(f) For purposes of this section:

(1) a certified self-insurer receives notice on the date the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c) receives notice; and

(2) a political subdivision that self-insures under Section 504.011, either individually or through an interlocal agreement with other political subdivisions, receives notice on the date the intergovernmental risk pool or other entity responsible for administering the claim for the political subdivision receives notice.

(j) Each insurance carrier shall establish a single point of contact in the carrier's office for an injured employee for whom the carrier receives a notice of injury.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 939, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1100, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.145, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 13, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 701 (S.B. 2551), Sec. 3, eff. June 10, 2019.

Sec. 409.022. REFUSAL TO PAY BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier's notice of refusal to pay benefits under Section 409.021 must specify the grounds for the refusal.

(b) The grounds for the refusal specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date.

(c) An insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commissioner.

(d) In this subsection, the terms "custodial officer," "detention officer," "emergency medical technician," "firefighter," and "peace officer" have the meanings assigned by Section 607.051,

Government Code. In addition to the other requirements of this section, if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from a custodial officer's, a detention officer's, an emergency medical technician's, a firefighter's, or a peace officer's disability or death for which a presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, the notice must include a statement by the carrier that:

(1) explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and

(2) describes the evidence that the carrier reviewed in making the determination described by Subdivision (1).

(d-1) An insurance carrier has not committed an administrative violation under Section 409.021 if the carrier has sent notice to the employee as required by Subsection (d) of this section or Section 409.021(a-3).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.146, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 224 (H.B. 1388), Sec. 2, eff. May 29, 2015.

Acts 2019, 86th Leg., R.S., Ch. 701 (S.B. 2551), Sec. 4, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 993 (S.B. 1582), Sec. 9, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 505 (S.B. 22), Sec. 9, eff. June 14, 2021.

Sec. 409.023. PAYMENT OF BENEFITS; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall continue to pay benefits promptly as and when the benefits accrue without a final decision, order, or other action of the commissioner, except as otherwise provided.

(b) Benefits shall be paid solely to the order of the employee or the employee's legal beneficiary.

(c) An insurance carrier commits an administrative violation if the insurance carrier fails to comply with this section.

(d) An insurance carrier that commits multiple violations of

this section commits an additional administrative violation and is subject to:

(1) the sanctions provided under Section 415.023; and

(2) revocation of the right to do business under the workers' compensation laws of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.147, eff. September 1, 2005.

Sec. 409.0231. PAYMENT BY ELECTRONIC FUNDS TRANSFER. (a) An insurance carrier shall offer employees entitled to the payment of benefits for a period of sufficient duration the option of receiving the payments by electronic funds transfer. The insurance carrier shall provide the necessary forms to an employee who requests that benefits be paid by electronic funds transfer.

(b) The commissioner shall adopt rules in consultation with the Texas Department of Information Resources as necessary to implement this section, including rules prescribing a period of benefits that is of sufficient duration to allow payment by electronic funds transfer.

Added by Acts 1999, 76th Leg., ch. 690, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.148, eff. September 1, 2005.

Sec. 409.0232. TIMELINESS OF PAYMENTS. An insurance carrier is considered to have paid benefits in a timely manner if a payment:

(1) is made by electronic funds transfer and is deposited in the employee's account on or before the benefit payment due date;

(2) is made by mail and is mailed in time for the payment to be postmarked on or before the benefit payment due date; or

(3) is to be picked up by the employee and the payment is made available to the employee during regular business hours not later than the opening of business on the benefit payment due date.

Added by Acts 1999, 76th Leg., ch. 690, Sec. 1, eff. June 18, 1999.

Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file with the division a notice of termination or reduction of benefits, including the reasons for the termination or reduction, not later than the 10th day after the date on which benefits are terminated or reduced.

(b) An insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds to terminate or reduce benefits, as determined by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.149, eff. September 1, 2005.

CHAPTER 410. ADJUDICATION OF DISPUTES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A proceeding before the division to determine the liability of an insurance carrier for compensation for an injury or death under this subtitle is governed by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.150, eff. September 1, 2005.

Sec. 410.003. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Except as otherwise provided by this chapter, Chapter 2001, Government Code does not apply to a proceeding under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 410.005. CONDUCTING ADMINISTRATIVE PROCEEDINGS. (a)

Unless the division determines that good cause exists for the selection of a different location, a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(b) Unless the assigned arbitrator determines that good cause exists for the selection of a different location, arbitration may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(c) All appeals panel proceedings shall be conducted in Travis County.

(d) The division may conduct a benefit review conference:

(1) telephonically;

(2) by videoconference; or

(3) in person, on showing of good cause as determined by the division.

(e) Unless the division determines that good cause exists for the selection of a different location, a benefit review conference conducted in person under Subsection (d)(3) may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.151, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 261 (H.B. 1752), Sec. 1, eff. June 4, 2021.

Acts 2021, 87th Leg., R.S., Ch. 261 (H.B. 1752), Sec. 2, eff. June 4, 2021.

Sec. 410.006. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS. (a) A claimant may be represented at a benefit review conference, a contested case hearing, or arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee:

(1) is a relative of the claimant; and

(2) does not receive a fee.

(b) An insurance carrier may be represented by an attorney or

adjuster.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.007. INFORMATION LIST. (a) The division shall determine the type of information that is most useful to parties to help resolve disputes regarding income benefits. That information may include:

(1) reports regarding the compensable injury;

(2) medical information regarding the injured employee; and

(3) wage records.

(b) The division shall publish a list developed from the information described under Subsection (a) in appropriate media, including the division's Internet website, to provide guidance to a party to a dispute regarding the type of information the party should have available at a benefit review conference or a contested case hearing.

(c) At the time a benefit review conference or contested case hearing is scheduled, the division shall make available a copy of the list developed under Subsection (b) to each party to the dispute.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.152, eff. September 1, 2005.

SUBCHAPTER B. BENEFIT REVIEW CONFERENCE

Sec. 410.021. PURPOSE. A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and

(3) mediate and resolve disputed issues by agreement of the parties in accordance with this subtitle and the policies of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.153, eff. September 1, 2005.

Sec. 410.022. BENEFIT REVIEW OFFICERS; QUALIFICATIONS. (a) A benefit review officer shall conduct a benefit review conference.

(b) A benefit review officer must:

(1) be an employee of the division;

(2) be trained in the principles and procedures of dispute mediation; and

(3) have documentation satisfactory to the commissioner that evidences the completion by the officer of at least 40 classroom hours of training in dispute resolution techniques from an alternative dispute resolution organization recognized by the commissioner.

(c) The division shall institute and maintain an education and training program for benefit review officers and shall consult or contract with the Federal Mediation and Conciliation Service or other appropriate organizations for this purpose.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.154, eff. September 1, 2005.

Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. (a) On receipt of a request from a party or on its own motion, the division may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) The division shall require the party requesting the benefit review conference to provide documentation of efforts made to resolve the disputed issues before the request was submitted.

(c) The commissioner by rule shall:

(1) adopt guidelines regarding the type of information necessary to satisfy the requirements of Subsection (b); and

(2) establish a process through which the division evaluates the sufficiency of the documentation provided under Subsection (b).

(d) The division may deny a request for a benefit review conference if the party requesting the benefit review conference does not provide the documentation required under Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.155, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 14, eff. September 1, 2011.

Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO FURTHER PROCEEDINGS ON CERTAIN CLAIMS. (a) Except as otherwise provided by law or commissioner rule, the parties to a disputed compensation claim are not entitled to a contested case hearing or arbitration on the claim unless a benefit review conference is conducted as provided by this subchapter.
(b) The commissioner by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing or arbitration.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.156, eff. September 1, 2005.

Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE; NOTICE. (a) The commissioner by rule shall prescribe the time within which a benefit review conference must be scheduled.
(b) The division shall schedule a contested case hearing to be held not later than the 60th day after the date of the benefit review conference if the disputed issues are not resolved at the benefit review conference.
(c) The division shall send written notice of the benefit review conference to the parties to the claim and the employer.
(d) The commissioner by rule shall provide for expedited proceedings in cases in which compensability or liability for essential medical treatment is in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.157, eff. September 1, 2005.

Sec. 410.026. POWERS AND DUTIES OF BENEFIT REVIEW OFFICER. (a) A benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with this subtitle and the policies of the division;

(2) thoroughly inform all parties of their rights and responsibilities under this subtitle, especially in a case in which the employee is not represented by an attorney or other representative;

(3) ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in a case in which the employee is not represented by an attorney or other representative; and

(4) prepare a written report that details each issue that is not resolved at the benefit review conference, as required under Section 410.031, including any issue raised for the first time at the conclusion of an additional benefit review conference conducted under Subsection (b).

(b) A benefit review officer may schedule an additional benefit review conference if:

(1) the benefit review officer determines that any available information pertinent to the resolution of disputed issues was not produced at the initial benefit review conference; and

(2) a second benefit review conference has not already been conducted.

(c) A benefit review officer may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(d) A benefit review officer may not make a formal record.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.158, eff. September 1, 2005.

Sec. 410.027. RULES. (a) The commissioner shall adopt rules for conducting benefit review conferences.

(b) A benefit review conference is not subject to common law or statutory rules of evidence or procedure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.159, eff. September 1, 2005.

Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION. (a) A scheduled benefit review conference shall be conducted even though a party fails to attend unless the benefit review officer determines that good cause, as defined by commissioner rule, exists to reschedule the conference.

(b) If a party to a benefit review conference under Section 410.023 requests that the benefit review conference be rescheduled under this section, the party must submit a request in the same manner as an initial request under Section 410.023. The division shall evaluate a request for a rescheduled benefit review conference received under this section in the same manner as an initial request received under Section 410.023.

(c) If a party fails to request that a benefit review conference be rescheduled in the time required by commissioner rule or fails to attend a benefit review conference without good cause as defined by commissioner rule, the party forfeits the party's entitlement to attend a benefit review conference on the issue in dispute, unless a benefit review officer is authorized to schedule an additional benefit review conference under Section 410.026(b).

(d) The commissioner shall adopt rules necessary to implement and enforce this section, including rules that:

(1) define good cause; and

(2) establish deadlines for requesting that a benefit review conference be rescheduled under Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.160, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 15, eff. September 1, 2011.

Sec. 410.029. RESOLUTION AT BENEFIT REVIEW CONFERENCE; WRITTEN AGREEMENT. (a) A dispute may be resolved either in whole or in part at a benefit review conference.

(b) If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer shall reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement.

(c) A settlement takes effect on the date it is approved by the director in accordance with Section 408.005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.030. BINDING EFFECT OF AGREEMENT. (a) An agreement signed in accordance with Section 410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless the division or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement.

(b) The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, the agreement is binding on the claimant through the conclusion of all matters relating to the claim while the claim is pending before the division, unless the commissioner for good cause relieves the claimant of the effect of the agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.161, eff. September 1, 2005.

Sec. 410.031. INCOMPLETE RESOLUTION; REPORT. (a) If a dispute is not entirely resolved at a benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not resolved at the conference.

(b) The report must also include:

(1) a statement of each resolved issue;

(2) a statement of each issue raised but not resolved;

(3) a statement of the position of the parties regarding each unresolved issue;

(4) a statement of the procedures required to request a contested case hearing or arbitration and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings; and

(5) the date of the contested case hearing scheduled in accordance with Section 410.025(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.162, eff. September 1, 2005.

Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 1

For text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 4, see other Sec. 410.032.

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. (a) The benefit review officer who presides at the benefit review conference shall consider a request for an interlocutory order and shall give the opposing party the opportunity to respond before issuing an interlocutory order.

(b) The interlocutory order may address the payment or suspension of accrued benefits, future benefits, or both accrued benefits and future benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.162, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 1, eff. September 1, 2007.

Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 4

For text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 1, see other Sec. 410.032.

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. (a) The benefit review officer who presides at the benefit review conference shall:

(1) consider a written or verbal request for an interlocutory order for the payment of benefits; and

(2) if the benefit review officer determines that issuance of an interlocutory order is appropriate, issue the interlocutory order not later than the third day after the date of receipt of the request under Subdivision (1).

(b) The interlocutory order may address accrued benefits, future benefits, or both accrued benefits and future benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.162, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 4, eff. September 1, 2007.

Sec. 410.033. MULTIPLE CARRIERS. (a) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the commissioner may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share is computed by dividing the compensation due by the number of insurance carriers involved.

(b) On final determination of liability, an insurance carrier determined to be not liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any

insurance carrier determined to be liable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.163, eff. September 1, 2005.

Sec. 410.034. FILING OF AGREEMENT AND REPORT. (a) The benefit review officer shall file the signed agreement and the report with the division.

(b) The commissioner by rule shall prescribe the times within which the agreement and report must be filed.

(c) The division shall furnish a copy of the file-stamped report to:

(1) the claimant;

(2) the employer; and

(3) the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.164, eff. September 1, 2005.

SUBCHAPTER C. ARBITRATION

Sec. 410.101. PURPOSE. The purpose of arbitration is to:

(1) enter into formal, binding stipulations on issues on which the parties agree;

(2) resolve issues on which the parties disagree; and

(3) render a final award with respect to all issues in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An arbitrator must be an employee of the division, except that the division may contract with qualified arbitrators on a determination of special need.

(b) An arbitrator must:

(1) be a member of the National Academy of Arbitrators;

(2) be on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service; or

(3) meet qualifications established by the commissioner by rule.

(c) The division shall require that each arbitrator have appropriate training in the workers' compensation laws of this state. The commissioner shall establish procedures to carry out this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.165, eff. September 1, 2005.

Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

(1) protect the interests of all parties;

(2) ensure that all relevant evidence has been disclosed to the arbitrator and to all parties; and

(3) render an award consistent with this subtitle and the policies of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.166, eff. September 1, 2005.

Sec. 410.104. ELECTION OF ARBITRATION; EFFECT. (a) If issues remain unresolved after a benefit review conference, the parties, by agreement, may elect to engage in arbitration in the manner provided by this subchapter. Arbitration may be used only to resolve disputed benefit issues and is an alternative to a contested case hearing. A contested case hearing scheduled under Section 410.025(b) is canceled by an election under this subchapter.

(b) To elect arbitration, the parties must file the election with the division not later than the 20th day after the last day of the benefit review conference. The commissioner shall prescribe a form for that purpose.

(c) An election to engage in arbitration under this subchapter

is irrevocable and binding on all parties for the resolution of all disputes arising out of the claims that are under the jurisdiction of the division.

(d) An agreement to elect arbitration binds the parties to the provisions of Chapter 408 relating to benefits, and any award, agreement, or settlement after arbitration is elected must comply with that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.167, eff. September 1, 2005.

Sec. 410.105. LISTS OF ARBITRATORS. (a) The division shall establish regional lists of arbitrators who meet the qualifications prescribed under Sections 410.102(a) and (b). Each regional list shall be initially prepared in a random name order, and subsequent additions to a list shall be added chronologically.

(b) The commissioner shall review the lists of arbitrators annually and determine if each arbitrator is fair and impartial and makes awards that are consistent with and in accordance with this subtitle and the rules of the commissioner. The commissioner shall remove an arbitrator if, after the review, the commissioner determines that the arbitrator is not fair and impartial or does not make awards consistent with this subtitle and commissioner rules.

(c) The division's lists are confidential and are not subject to disclosure under Chapter 552, Government Code. The lists may not be revealed by any division employee to any person who is not a division employee. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a violation of the requirements of this section or Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that the violation is relevant to the issues in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.168, eff. September 1, 2005.

Sec. 410.106. SELECTION OF ARBITRATOR. The division shall assign the arbitrator for a particular case by selecting the next name after the previous case's selection in consecutive order. The division may not change the order of names once the order is established under this subchapter, except that once each arbitrator on the list has been assigned to a case, the names shall be randomly reordered.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.169, eff. September 1, 2005.

Sec. 410.107. ASSIGNMENT OF ARBITRATOR. (a) The division shall assign an arbitrator to a pending case not later than the 30th day after the date on which the election for arbitration is filed with the division.

(b) When an arbitrator has been assigned to a case under Subsection (a), the parties shall be notified immediately.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.170, eff. September 1, 2005.

Sec. 410.108. REJECTION OF ARBITRATOR. (a) Each party is entitled, in its sole discretion, to one rejection of the arbitrator in each case. If a party rejects the arbitrator, the division shall assign another arbitrator as provided by Section 410.106.

(b) A rejection must be made not later than the third day after the date of notification of the arbitrator's assignment.

(c) When all parties have exercised their right of rejection or if no rejection is registered, the assignment is final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.171, eff. September 1, 2005.

Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The arbitrator shall schedule arbitration to be held not later than the 30th day after the date of the arbitrator's assignment and shall notify the parties and the division of the scheduled date.

(b) If an arbitrator is unable to schedule arbitration in accordance with Subsection (a), the division shall appoint the next arbitrator on the applicable list. Each party is entitled to reject the arbitrator appointed under this subsection in the manner provided under Section 410.108.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.172, eff. September 1, 2005.

Sec. 410.110. CONTINUANCE. (a) A request by a party for a continuance of the arbitration to another date must be directed to the director. The director may grant a continuance only if the director determines, giving due regard to the availability of the arbitrator, that good cause for the continuance exists.

(b) If the director grants a continuance under this section, the rescheduled date may not be later than the 30th day after the original date of the arbitration.

(c) Without regard to whether good cause exists, the director may not grant more than one continuance to each party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.111. RULES. The commissioner shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.173, eff. September 1, 2005.

Sec. 410.112. EXCHANGE AND FILING OF INFORMATION;

ADMINISTRATIVE VIOLATION. (a) Not later than the seventh day before the first day of arbitration, the parties shall exchange and file with the arbitrator:

(1) all medical reports and other documentary evidence not previously exchanged or filed that are pertinent to the resolution of the claim; and

(2) information relating to their proposed resolution of the disputed issues.

(b) A party commits an administrative violation if the party, without good cause as determined by the arbitrator, fails to comply with Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.174, eff. September 1, 2005.

Sec. 410.113. DUTIES OF PARTIES AT ARBITRATION; ATTENDANCE; ADMINISTRATIVE VIOLATION. (a) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues on which it is prepared to stipulate.

(b) A party commits an administrative violation if the party does not attend the arbitration unless the arbitrator determines that the party had good cause not to attend.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.175, eff. September 1, 2005.

Sec. 410.114. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by a party.

(b) The division shall make an electronic recording of the proceeding.

(c) An official stenographic record is not required, but any party may at the party's expense make a stenographic record of the proceeding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.176, eff. September 1, 2005.

Sec. 410.115. EVIDENCE. (a) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to an understanding and determination of the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not required.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.116. CLOSING STATEMENTS; BRIEFS. The parties may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.117. EX PARTE CONTACTS PROHIBITED. A party and an arbitrator may not communicate outside the arbitration unless the communication is in writing with copies provided to all parties or relates to procedural matters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.118. AWARD. (a) The arbitrator shall enter the arbitrator's award not later than the seventh day after the last day of arbitration.

(b) The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(c) The award must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(d) The arbitrator shall file a copy of the award as part of the permanent claim file at the division and shall notify the parties in writing of the decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.177, eff. September 1, 2005.

Sec. 410.119. EFFECT OF AWARD. (a) An arbitrator's award is final and binding on all parties. Except as provided by Section 410.121, there is no right to appeal.

(b) An arbitrator's award is a final order of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.178, eff. September 1, 2005.

Sec. 410.120. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.121. COURT VACATING AWARD. (a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

(1) the award was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary and capricious; or

(3) the award was outside the jurisdiction of the division.

(b) If an award is vacated, the case shall be remanded to the division for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the

30th day after:

(1) the date of the award; or

(2) the date the appealing party knew or should have known of a basis for suit under this section, but in no event later than 12 months after an order denying compensation or after the expiration of the income or death benefit period.

(d) Venue for a suit to vacate an award is in the county in which the arbitration was conducted.

(e) In a suit to vacate an arbitrator's award, only the court may make determinations, including findings of fact or conclusions of law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.179, eff. September 1, 2005.

SUBCHAPTER D. CONTESTED CASE HEARING

Sec. 410.151. CONTESTED CASE HEARING; SCOPE. (a) If arbitration is not elected under Section 410.104, a party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 410.024 is entitled to a contested case hearing.

(b) An issue that was not raised at a benefit review conference or that was resolved at a benefit review conference may not be considered unless:

(1) the parties consent; or

(2) if the issue was not raised, the commissioner determines that good cause existed for not raising the issue at the conference.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.180, eff. September 1, 2005.

Sec. 410.152. ADMINISTRATIVE LAW JUDGES; QUALIFICATIONS. (a) An administrative law judge shall conduct a contested case hearing.

(b) An administrative law judge must be licensed to practice

law in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 3, eff. September 1, 2017.

Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Chapter 2001, Government Code, applies to a contested case hearing to the extent that the commissioner finds appropriate, except that the following do not apply:

(1) Section 2001.054;

(2) Sections 2001.061 and 2001.062;

(3) Section 2001.202; and

(4) Subchapters F, G, I, and Z, except for Section 2001.141(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.93, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.181, eff. September 1, 2005.

Sec. 410.154. SCHEDULING OF HEARING. The division shall schedule a contested case hearing in accordance with Section 410.024 or 410.025(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.182, eff. September 1, 2005.

Sec. 410.155. CONTINUANCE. (a) A written request by a party for a continuance of a contested case hearing to another date must be directed to the division.

(b) The division may grant a continuance only if the division determines that there is good cause for the continuance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.183, eff. September 1, 2005.

Sec. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION. (a) Each party shall attend a contested case hearing.

(b) A party commits an administrative violation if the party, without good cause as determined by the administrative law judge, does not attend a contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.184, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 4, eff. September 1, 2017.

Sec. 410.157. RULES. The commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.185, eff. September 1, 2005.

Sec. 410.158. DISCOVERY. (a) Except as provided by Section 410.162, discovery is limited to:

(1) depositions on written questions to any health care provider;

(2) depositions of other witnesses as permitted by the administrative law judge for good cause shown; and

(3) interrogatories as prescribed by the commissioner.

(b) Discovery under Subsection (a) may not seek information that may readily be derived from documentary evidence described in Section 410.160. Answers to discovery under Subsection (a) need not duplicate information that may readily be derived from documentary

evidence described in Section 410.160.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.186, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 5, eff. September 1, 2017.

Sec. 410.159. STANDARD INTERROGATORIES. (a) The commissioner by rule shall prescribe standard form sets of interrogatories to elicit information from claimants and insurance carriers.

(b) Standard interrogatories shall be answered by each party and served on the opposing party within the time prescribed by commissioner rule, unless the parties agree otherwise.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.187, eff. September 1, 2005.

Sec. 410.160. EXCHANGE OF INFORMATION. Within the time prescribed by commissioner rule, the parties shall exchange:

(1) all medical reports and reports of expert witnesses who will be called to testify at the hearing;

(2) all medical records;

(3) any witness statements;

(4) the identity and location of any witness known to the parties to have knowledge of relevant facts; and

(5) all photographs or other documents that a party intends to offer into evidence at the hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.188, eff. September 1, 2005.

Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who

fails to disclose information known to the party or documents that are in the party's possession, custody, or control at the time disclosure is required by Sections 410.158-410.160 may not introduce the evidence at any subsequent proceeding before the division or in court on the claim unless good cause is shown for not having disclosed the information or documents under those sections.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.189, eff. September 1, 2005.

Sec. 410.162. ADDITIONAL DISCOVERY. For good cause shown, a party may obtain permission from the administrative law judge to conduct additional discovery as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 6, eff. September 1, 2017.

Sec. 410.163. POWERS AND DUTIES OF ADMINISTRATIVE LAW JUDGE.
(a) At a contested case hearing the administrative law judge shall:
(1) swear witnesses;
(2) receive testimony;
(3) allow examination and cross-examination of witnesses;
(4) accept documents and other tangible evidence; and
(5) allow the presentation of evidence by affidavit.
(b) An administrative law judge shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. An administrative law judge may permit the use of summary procedures, if appropriate, including witness statements, summaries, and similar measures to expedite the proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 7, eff. September 1, 2017.

Sec. 410.164. RECORD. (a) The proceedings of a contested case hearing shall be recorded electronically. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(b) A party may request that the proceedings of the contested case hearing be recorded by a court reporter. The party making the request shall bear the cost.

(c) At each contested case hearing, as applicable, the insurance carrier shall file with the administrative law judge and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 11.01, eff. June 17, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 8, eff. September 1, 2017.

Sec. 410.165. EVIDENCE. (a) The administrative law judge is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Conformity to legal rules of evidence is not necessary.

(b) An administrative law judge may accept a written statement signed by a witness and shall accept all written reports signed by a health care provider.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 9, eff. September 1, 2017.

Sec. 410.166. STIPULATIONS. A written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.167. EX PARTE CONTACTS PROHIBITED. A party and an administrative law judge may not communicate outside the contested case hearing unless the communication is in writing with copies provided to all parties or relates to procedural matters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 10, eff. September 1, 2017.

Sec. 410.168. DECISION. (a) The administrative law judge shall issue a written decision that includes:

(1) findings of fact and conclusions of law;

(2) a determination of whether benefits are due; and

(3) an award of benefits due.

(b) The decision may address accrued benefits, future benefits, or both accrued benefits and future benefits.

(c) The administrative law judge may enter an interlocutory order for the payment of all or part of medical benefits or income benefits. The order may address accrued benefits, future benefits, or both accrued benefits and future benefits. The order is binding during the pendency of an appeal to the appeals panel.

(d) On a form that the commissioner by rule prescribes, the administrative law judge shall issue a separate written decision regarding attorney's fees and any matter related to attorney's fees. The decision regarding attorney's fees and the form may not be made known to a jury in a judicial review of an award, including an appeal.

(e) The commissioner by rule shall prescribe the times within which the administrative law judge must file the decisions with the division.

(f) The division shall send a copy of the decision to each party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.190, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 11, eff. September 1, 2017.

Sec. 410.169. EFFECT OF DECISION. A decision of an administrative law judge regarding benefits is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal to the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 12, eff. September 1, 2017.

SUBCHAPTER E. APPEALS PANEL

Sec. 410.201. APPEALS JUDGES; QUALIFICATIONS. (a) Appeals judges, in a three-member panel, shall conduct administrative appeals proceedings.

(b) An appeals judge must be licensed to practice law in this state.

(c) An appeals judge may not conduct a benefit review conference or a contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.191, eff. September 1, 2005.

Sec. 410.202. REQUEST FOR APPEAL; RESPONSE. (a) To appeal the decision of an administrative law judge, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the administrative law judge is received from the division and shall on the same date serve a copy of the request for appeal on the other party.

(b) The respondent shall file a written response with the appeals panel not later than the 15th day after the date on which the copy of the request for appeal is served and shall on the same date

serve a copy of the response on the appellant.

(c) A request for appeal or a response must clearly and concisely rebut or support the decision of the administrative law judge on each issue on which review is sought.

(d) Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 12.01, eff. June 17, 2001. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 13, eff. September 1, 2017.

Sec. 410.203. POWERS AND DUTIES OF APPEALS PANEL; PRIORITY OF HEARING ON REMAND. (a) The appeals panel shall consider:

(1) the record developed at the contested case hearing; and

(2) the written request for appeal and response filed with the appeals panel.

(b) The appeals panel may:

(1) reverse the decision of the administrative law judge and render a new decision;

(2) reverse the decision of the administrative law judge and remand the case to the administrative law judge for further consideration and development of evidence; or

(3) affirm the decision of the administrative law judge in a case described by Section 410.204(a-1).

(c) The appeals panel may not remand a case under Subsection (b)(2) more than once.

(d) A hearing on remand shall be accelerated and the commissioner shall adopt rules to give priority to the hearing over other proceedings.

(e) The appeals panel shall issue and maintain a precedent manual. The precedent manual shall be composed of precedent-establishing decisions and may include other information as identified by the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.192, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 16, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 14, eff. September 1, 2017.

Sec. 410.204. DECISION. (a) The appeals panel shall review each request and issue a written decision on each reversed or remanded case. The appeals panel may issue a written decision on an affirmed case as described by Subsection (a-1). The decision must be in writing and shall be issued not later than the 45th day after the date on which the written response to the request for appeal is filed. The appeals panel shall file a copy of the decision with the commissioner.

(a-1) An appeals panel may only issue a written decision in a case in which the panel affirms the decision of an administrative law judge if the case:

(1) is a case of first impression;

(2) involves a recent change in law; or

(3) involves errors at the contested case hearing that require correction but do not affect the outcome of the hearing, including:

(A) findings of fact for which insufficient evidence exists;

(B) incorrect conclusions of law;

(C) findings of fact or conclusions of law regarding matters that were not properly before the administrative law judge; and

(D) legal errors not otherwise described by this subdivision.

(b) A copy of the decision of the appeals panel shall be sent to each party not later than the seventh day after the date the decision is filed with the division.

(c) If the appeals panel does not issue a decision in accordance with this section, the decision of the administrative law judge becomes final and is the final decision of the appeals panel.

(d) Each final decision of the appeals panel shall conclude with a separate paragraph stating: "The true corporate name of the

insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)."

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 11.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.193, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 17, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 15, eff. September 1, 2017.

Sec. 410.205. EFFECT OF DECISION. (a) A decision of the appeals panel regarding benefits is final in the absence of a timely appeal for judicial review.
(b) The decision of the appeals panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 4, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.194, eff. September 1, 2005.

Sec. 410.206. CLERICAL ERROR. The division may revise a decision in a contested case hearing on a finding of clerical error.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.195, eff. September 1, 2005.

Sec. 410.207. CONTINUATION OF DIVISION JURISDICTION. During judicial review of the appeals panel decision on any disputed issue relating to a workers' compensation claim, the division retains jurisdiction of all other issues related to the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.196, eff. September 1, 2005.

Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION; ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to comply with an interlocutory order, final order, or decision of the commissioner, the division may bring suit in Travis County to enforce the order or decision.

(b) If an insurance carrier refuses or fails to comply with an interlocutory order, a final order, or a decision of the commissioner, the claimant may bring suit in the county of the claimant's residence at the time of the injury, or death if the employee is deceased, or, in the case of an occupational disease, in the county in which the employee resided on the date disability began or any county agreed to by the parties.

(c) If the division brings suit to enforce an interlocutory order, final order, or decision of the commissioner, the division is entitled to reasonable attorney's fees and costs for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision and any other remedy provided by law.

(d) A claimant who brings suit to enforce an interlocutory order, final order, or decision of the commissioner is entitled to a penalty equal to 12 percent of the amount of benefits recovered in the judgment, interest, and reasonable attorney's fees for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision.

(e) A person commits an administrative violation if the person fails or refuses to comply with an interlocutory order, final order, or decision of the commissioner within 20 days after the date the order or decision becomes final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 397, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.197, eff. September 1, 2005.

Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an interlocutory order or decision if that order or decision is reversed or modified by final arbitration, order, or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually.

Added by Acts 1999, 76th Leg., ch. 955, Sec. 5, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.198, eff. September 1, 2005.

SUBCHAPTER F. JUDICIAL REVIEW--GENERAL PROVISIONS

Sec. 410.251. EXHAUSTION OF REMEDIES. A party that has exhausted its administrative remedies under this subtitle and that is aggrieved by a final decision of the appeals panel may seek judicial review under this subchapter and Subchapter G, if applicable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.252. TIME FOR FILING PETITION; VENUE. (a) A party may seek judicial review by filing suit not later than the 45th day after the date on which the division mailed the party the decision of the appeals panel. For purposes of this section, the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed with the division.

(b) The party bringing suit to appeal the decision must file a petition with the appropriate court in:

(1) the county where the employee resided at the time of the injury or death, if the employee is deceased; or

(2) in the case of an occupational disease, in the county where the employee resided on the date disability began or any county agreed to by the parties.

(c) If a suit under this section is filed in a county other than the county described by Subsection (b), the court, on determining that it does not have jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in a county described by Subsection (b). Notice of the transfer of a

suit shall be given to the parties. A suit transferred under this subsection shall be considered for all purposes the same as if originally filed in the court to which it is transferred.

(d) If a suit is initially filed within the 45-day period in Subsection (a), and is transferred under Subsection (c), the suit is considered to be timely filed in the court to which it is transferred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 663, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1200 (H.B. 4545), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 1, eff. September 1, 2011.

Sec. 410.253. SERVICE. (a) A party seeking judicial review shall simultaneously:

(1) file a copy of the party's petition with the court;

(2) serve any opposing party to the suit; and

(3) provide a copy of the party's petition to the division.

(b) A party may not seek judicial review under Section 410.251 unless the party has provided the copy of the petition to the division under Subsection (a)(3).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 397, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.199, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 271 (H.B. 2061), Sec. 1, eff. September 1, 2017.

Sec. 410.254. INTERVENTION. On timely motion initiated by the commissioner, the division shall be permitted to intervene in any judicial proceeding under this subchapter or Subchapter G.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.200, eff. September 1, 2005.

Sec. 410.255. JUDICIAL REVIEW OF ISSUES OTHER THAN COMPENSABILITY OR INCOME OR DEATH BENEFITS. (a) For all issues other than those covered under Section 410.301(a), judicial review shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code.

(b) Judicial review conducted under this section is governed by the substantial evidence rule.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), eff. Sept. 1, 1995.

Sec. 410.256. COURT APPROVAL OF SETTLEMENT. (a) A claim or issue may not be settled contrary to the provisions of the appeals panel decision issued on the claim or issue unless a party to the proceeding has filed for judicial review under this subchapter or Subchapter G. The trial court must approve a settlement made by the parties after judicial review of an award is sought and before the court enters judgment.

(b) The court may not approve a settlement except on a finding that:

(1) the settlement accurately reflects the agreement between the parties;

(2) the settlement adheres to all appropriate provisions of the law; and

(3) under the law and facts, the settlement is in the best interest of the claimant.

(c) A settlement may not provide for:

(1) payment of any benefits in a lump sum except as provided by Section 408.128; or

(2) limitation or termination of the claimant's right to medical benefits under Section 408.021.

(d) A settlement or agreement that resolves an issue of impairment may not be made before the claimant reaches maximum medical improvement and must adopt one of the impairment ratings under Subchapter G, Chapter 408.

(e) A party proposing a settlement before judgment is entered by the trial court may petition the court orally or in writing for approval of the settlement.

(f) Settlement of a claim or issue under this section does not constitute a modification or reversal of the decision awarding benefits for the purpose of Section 410.209.

(g) Settlement of a claim or issue must be in compliance with all appropriate provisions of the law, including this section and Section 410.258 of this subchapter. A settlement which on its face does not comply with this section is void.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1267, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 397, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2001, eff. September 1, 2005.

Sec. 410.257. JUDGMENT AFTER JUDICIAL REVIEW. (a) A judgment entered by a court on judicial review of the appeals panel decision under this subchapter or Subchapter G must comply with all appropriate provisions of the law.

(b) A judgment under this section may not provide for:

(1) payment of benefits in a lump sum except as provided by Section 408.128; or

(2) the limitation or termination of the claimant's right to medical benefits under Section 408.021.

(c) A judgment that resolves an issue of impairment may not be entered before the date the claimant reaches maximum medical improvement. The judgment must adopt an impairment rating under Subchapter G, Chapter 408, except to the extent Section 410.307 applies.

(d) A judgment under this section may not order reimbursement from the subsequent injury fund.

(e) A judgment under this section based on default or on an agreement of the parties does not constitute a modification or reversal of a decision awarding benefits for the purpose of Section 410. 209.

(f) A judgment that on its face does not comply with this

section is void.

Added by Acts 1997, 75th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 397, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2002, eff. September 1, 2005.

Sec. 410.258. NOTIFICATION OF DIVISION OF PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE. (a) The party who initiated a proceeding under this subchapter or Subchapter G must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

(a-1) If the terms of the proposed settlement or proposed agreed judgment, including all payments to be made, are not described in the proposed settlement or proposed agreed judgment, the party must also file with the division at the time of filing the proposed settlement or proposed agreed judgment a separate document that fully describes the terms of the proposed settlement or proposed agreed judgment.

(a-2) The proposed settlement or proposed agreed judgment and any separate document described by Subsection (a-1) must be mailed to the division by certified mail, return receipt requested.

(a-3) The separate document filed with the division under Subsection (a-1) is not subject to disclosure under Chapter 552, Government Code.

(b) The division may intervene in a proceeding under Subsection (a) not later than the 30th day after the date of receipt of the proposed judgment or settlement.

(c) The commissioner shall review the proposed judgment or settlement to determine compliance with all appropriate provisions of the law. If the commissioner determines that the proposal is not in compliance with the law, the division may intervene as a matter of right in the proceeding not later than the 30th day after the date of receipt of the proposed judgment or settlement. The court may limit the extent of the division's intervention to providing the information described by Subsection (e).

(d) If the division does not intervene before the 31st day after the date of receipt of the proposed judgment or settlement, the court shall enter the judgment or approve the settlement if the court determines that the proposed judgment or settlement is in compliance with all appropriate provisions of the law.

(e) If the division intervenes in the proceeding, the commissioner shall inform the court of each reason the commissioner believes the proposed judgment or settlement is not in compliance with the law. The court shall give full consideration to the information provided by the commissioner before entering a judgment or approving a settlement.

(f) A judgment entered or settlement approved without complying with the requirements of this section is void.

Added by Acts 1997, 75th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.201, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.202, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 271 (H.B. 2061), Sec. 2, eff. September 1, 2017.

SUBCHAPTER G. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS

Sec. 410.301. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS. (a) Judicial review of a final decision of the appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this subchapter.

(b) A determination of benefits before a court shall be in accordance with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.203, eff. September 1, 2005.

Sec. 410.302. ADMISSIBILITY OF RECORDS; LIMITATION OF ISSUES.

(a) The records of a contested case hearing conducted under this chapter are admissible in a trial under this subchapter in accordance with the Texas Rules of Evidence.

(b) A trial under this subchapter is limited to issues decided by the appeals panel and on which judicial review is sought. The pleadings must specifically set forth the determinations of the appeals panel by which the party is aggrieved.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.204, eff. September 1, 2005.

Sec. 410.303. BURDEN OF PROOF. The party appealing the decision on an issue described in Section 410.301(a) has the burden of proof by a preponderance of the evidence.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION. (a) In a jury trial, the court, before submitting the case to the jury, shall inform the jury in the court's instructions, charge, or questions to the jury of the appeals panel decision on each disputed issue described by Section 410.301(a) that is submitted to the jury.

(b) In a trial to the court without a jury, the court in rendering its judgment on an issue described by Section 410.301(a) shall consider the decision of the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.205, eff. September 1, 2005.

Sec. 410.305. CONFLICT WITH RULES OF CIVIL PROCEDURE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Procedure or any other rules adopted by the supreme court, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, or any

other law, the supreme court may not adopt rules in conflict with or inconsistent with this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.306. EVIDENCE. (a) Evidence shall be adduced as in other civil trials.

(b) The division on payment of a reasonable fee shall make available to the parties a certified copy of the division's record. All facts and evidence the record contains are admissible to the extent allowed under the Texas Rules of Evidence.

(c) Except as provided by Section 410.307, evidence of extent of impairment shall be limited to that presented to the division. The court or jury, in its determination of the extent of impairment, shall adopt one of the impairment ratings under Subchapter G, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.206, eff. September 1, 2005.

Sec. 410.307. SUBSTANTIAL CHANGE OF CONDITION. (a) Evidence of the extent of impairment is not limited to that presented to the division if the court, after a hearing, finds that there is a substantial change of condition. The court's finding of a substantial change of condition may be based only on:

(1) medical evidence from the same doctor or doctors whose testimony or opinion was presented to the division;

(2) evidence that has come to the party's knowledge since the contested case hearing;

(3) evidence that could not have been discovered earlier with due diligence by the party; and

(4) evidence that would probably produce a different result if it is admitted into evidence at the trial.

(b) If substantial change of condition is disputed, the court shall require the designated doctor in the case to verify the substantial change of condition, if any. The findings of the designated doctor shall be presumed to be correct, and the court

shall base its finding on the medical evidence presented by the designated doctor in regard to substantial change of condition unless the preponderance of the other medical evidence is to the contrary.

(c) The substantial change of condition must be confirmable by recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(d) If the court finds a substantial change of condition under this section, new medical evidence of the extent of impairment must be from and is limited to the same doctor or doctors who made impairment ratings before the division under Section 408.123.

(e) The court's finding of a substantial change of condition may not be made known to the jury.

(f) The court or jury in its determination of the extent of impairment shall adopt one of the impairment ratings made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.207, eff. September 1, 2005.

Sec. 410.308. CERTIFIED COPY OF NOTICE SECURING COMPENSATION. (a) The division shall furnish any interested party in the claim with a certified copy of the notice of the employer securing compensation with the insurance carrier, filed with the division.

(b) The certified copy of the notice is admissible in evidence on trial of the claim pending and is prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.208, eff. September 1, 2005.

CHAPTER 411. WORKERS' HEALTH AND SAFETY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 411.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec.

7.01(23), eff. September 1, 2005.

(2) "Employer" means a person who makes a contract of hire.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(23), eff. September 1, 2005.

Sec. 411.002. APPLICATION. (a) An employer who obtains workers' compensation insurance coverage is subject to this chapter.

(b) An employer is subject to this chapter if the employer:

(1) is not required to and does not obtain workers' compensation insurance coverage; and

(2) employs five or more employees not exempt from workers' compensation insurance coverage.

(c) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(b), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(b), eff. Sept. 1, 1995.

Sec. 411.003. IMMUNITY FROM CERTAIN LIABILITY. (a) An insurance company, the agent, servant, or employee of the insurance company, or a safety consultant who performs a safety consultation under this chapter has no liability for an accident, injury, or occupational disease based on an allegation that the accident, injury, or occupational disease was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance company for the prevention of accidents in connection with operations of the employer.

(b) The immunity provided by Subsection (a) does not affect the liability of an insurance carrier for compensation or as otherwise provided in this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 957, Sec. 1.01, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2085, eff. September 1, 2005.

Sec. 411.004. EXCLUSIVE REMEDY. Except as specifically provided by Subchapter F, this chapter does not create an independent cause of action at law or in equity. This chapter provides the sole remedy for violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.005. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 7, eff. September 1, 2015.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF DIVISION

Sec. 411.011. COORDINATION AND ENFORCEMENT OF STATE LAWS AND RULES. The division shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.012. COLLECTION AND ANALYSIS OF INFORMATION. (a) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall

analyze and use that information to:

(1) identify and assign priorities to safety needs; and

(2) better coordinate the safety services provided by public or private organizations, including insurance carriers.

(b) The division shall coordinate or supervise the collection by state or federal entities of information relating to job safety, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. The division may:

(1) enter into contracts with the federal government to perform occupational safety projects; and

(2) apply for federal funds through any federal program relating to occupational safety.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.209, eff. September 1, 2005.

Sec. 411.014. EDUCATIONAL PROGRAMS; COOPERATION WITH OTHER ENTITIES. (a) The division shall promote workers' health and safety through educational and other innovative programs developed by the department, the division, or other state agencies.

(b) The division shall cooperate with other entities in the development and approval of safety courses, safety plans, and safety programs.

(c) The division shall cooperate with business and industry trade associations, labor organizations, and other entities to develop means and methods of educating employees and employers concerning workplace safety.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2095, eff.

September 1, 2005.

Sec. 411.015. EDUCATIONAL PUBLICATIONS. (a) The division shall publish or procure and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material.

(b) Specific educational material shall be directed to high-risk industries and employments and must specifically address means and methods of avoiding high frequency, but preventable, workers' injuries.

(c) Other educational material shall be directed to business and industry generally and must specifically address means and methods of avoiding common workers' injuries.

(d) The division shall make specific decisions regarding the issues and problems to be addressed by the educational materials after assigning appropriate priorities based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations.

(e) The educational materials provided under this section must include specific references to:

(1) the requirements of state and federal laws and regulations;

(2) recommendations and practices of business, industry, and trade associations; and

(3) if needed, recommended work practices based on recommendations made by the division for the prevention of injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.016. PEER REVIEW SAFETY PROGRAM. The division shall certify safe employers to provide peer review safety programs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.017. ADVISORY SERVICE TO INSURANCE CARRIERS. The division shall advise insurance carrier loss control service organizations of safety needs and priorities developed by the division and of:

(1) hazard classifications, specific employers, industries, occupations, or geographic regions to which loss control services should be directed; or

(2) the identity and types of injuries or occupational diseases and means and methods for prevention of those injuries or diseases to which loss control services should be directed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.018. FEDERAL OSHA COMPLIANCE. In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Section 656), the division shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. JOB SAFETY INFORMATION SYSTEM

Sec. 411.031. JOB SAFETY INFORMATION SYSTEM; COOPERATION WITH OTHER AGENCIES. (a) The division shall maintain a job safety information system.

(b) The division shall obtain from any appropriate state agency, including the Texas Workforce Commission, the Department of State Health Services, and the Department of Assistive and Rehabilitative Services, data and statistics, including data and statistics compiled for rate-making purposes.

(c) The division shall consult with the Texas Workforce Commission in the design of data information and retrieval systems to accomplish the mutual purposes of the division and the Texas Workforce Commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.210, eff. September 1, 2005.

Sec. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE REPORT; ADMINISTRATIVE VIOLATION. (a) An employer shall file with the division a report of each:

(1) on-the-job injury that results in the employee's absence from work for more than one day; and

(2) occupational disease of which the employer has knowledge.

(b) The commissioner shall adopt rules and prescribe the form and manner of reports filed under this section.

(c) An employer commits an administrative violation if the employer fails to report to the division as required under Subsection (a) unless good cause exists, as determined by the commissioner, for the failure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.32, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.211, eff. September 1, 2005.

Sec. 411.033. JOB SAFETY DATA BASE. The job safety information system must include a comprehensive data base that incorporates all pertinent information relating to each injury reported under Section 411.032, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) the reported cause of the injury;

(4) the part of the body affected;

(5) any equipment involved in the injury;

(6) the number of prior workers' compensation claims by the employee;

(7) the prior loss history of the employer;

(8) the standard industrial classification code of the employer;

(9) the classification code of the employer; and

(10) any other information considered useful for statistical analysis.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.034. CONFIDENTIALITY REQUIREMENT; OFFENSE; PENALTY. (a) The identity of an employee in a report filed under Section 411.032 is confidential and may not be disclosed as part of the job safety information system.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this section to a person not authorized to receive the information.

(c) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this section and that the person is not authorized to receive.

(d) An offense under this section is a Class A misdemeanor.

(e) An offense under this section may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed.

(f) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.33, eff. Sept. 1, 1995.

Sec. 411.035. USE OF INJURY REPORT. A report made under Section 411.032 may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the division or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.212, eff. September 1, 2005.

SUBCHAPTER E. ACCIDENT PREVENTION SERVICES

Sec. 411.061. ACCIDENT PREVENTION SERVICES; PREREQUISITE FOR LICENSE. (a) As a prerequisite for writing workers' compensation

insurance in this state, an insurance company must maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations.

(b) To implement a program of accident prevention services, a facility must include:

(1) surveys;

(2) recommendations;

(3) training programs;

(4) consultations;

(5) analyses of accident causes;

(6) industrial hygiene; and

(7) industrial health services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 172, Sec. 4, eff. Sept. 1, 2001.

Sec. 411.063. ACCIDENT PREVENTION PERSONNEL. (a) To provide qualified accident prevention personnel and services, an insurance company may:

(1) employ qualified personnel;

(2) retain qualified independent contractors;

(3) contract with the policyholder to provide the personnel and services; or

(4) use a combination of the methods provided by this subsection.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(26), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(26), eff. September 1, 2005.

Sec. 411.064. INSPECTIONS. (a) The division may conduct inspections to determine the adequacy of the accident prevention services required by Section 411.061 for each insurance company writing workers' compensation insurance in this state.

(b) If, after an inspection under Subsection (a), an insurance

company's accident prevention services are determined to be inadequate, the division shall reinspect the accident prevention services of the insurance company not earlier than the 180th day or later than the 270th day after the date the accident prevention services were determined by the division to be inadequate.

(c) The insurance company shall reimburse the division for the reasonable cost of the reinspection, including a reasonable allocation of the division's administrative costs incurred in conducting the inspections.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 957, Sec. 3.01, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.213, eff. September 1, 2005.

Sec. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE COMPANY. (a) Each insurance company writing workers' compensation insurance in this state shall submit to the division at least once a year detailed information on the type of accident prevention facilities offered to that insurance company's policyholders.

(b) The information must include:

(1) the amount of money spent by the insurance company on accident prevention services;

(2) the number of site inspections performed;

(3) accident prevention services for which the insurance company contracts;

(4) a breakdown of the premium size of the risks to which services were provided;

(5) evidence of the effectiveness of and accomplishments in accident prevention; and

(6) any additional information required by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.214, eff. September 1, 2005.

Sec. 411.066. NOTICE TO POLICYHOLDERS. Notice that accident prevention services are available to the policyholder from the insurance company must appear in at least 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.067. DIVISION PERSONNEL. (a) The division shall employ the personnel necessary to enforce this subchapter, including at least 10 safety inspectors to perform inspections at a job site and at an insurance company to determine the adequacy of the accident prevention services provided by the insurance company.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(27), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.215, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.216, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(27), eff. September 1, 2005.

Sec. 411.068. ADMINISTRATIVE VIOLATION. (a) An insurance company commits a violation if the insurance company does not:

(1) maintain or provide the accident prevention services required by this subchapter; or

(2) use the services in a reasonable manner to prevent injury to employees of its policyholders.

(b) A violation under Subsection (a) is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.217, eff. September 1, 2005.

SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL MATERIALS

Sec. 411.081. TELEPHONE HOTLINE. (a) The division shall maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law.

(b) Each employer shall notify its employees of this service in a manner prescribed by the commissioner. The commissioner shall, by rule, require the notice to be posted in English and Spanish, as appropriate.

(c) The commissioner shall adopt rules requiring that the notice required by Subsection (b) be posted:

(1) in a conspicuous place in the employer's place of business; and

(2) in sufficient locations to be convenient to all employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.219, eff. September 1, 2005.

Sec. 411.082. EMPLOYER RETALIATION PROHIBITED. An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for using the telephone service to report in good faith an alleged violation of an occupational health or safety law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.083. JUDICIAL RELIEF FOR EMPLOYER RETALIATION. (a) An employee whose employment is terminated or suspended in violation of Section 411.082 is entitled to:

(1) reinstatement to the employee's former position;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of any fringe benefits or seniority rights lost because of the suspension or termination.

(b) An employee seeking relief under this section must file suit not later than the 90th day after the alleged conduct of the employer occurred or was discovered or discoverable by the employee

through reasonable diligence.

(c) An employee who prevails in a suit under this section is entitled to recover court costs and reasonable attorney's fees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.084. EDUCATIONAL PUBLICATIONS. (a) The division shall provide to employers and employees educational material, including books, pamphlets, brochures, films, videotapes, or other informational material.

(b) Educational material shall be provided to employees in English and Spanish.

(c) The department shall adopt minimum content requirements for the educational material required under this section, including:

(1) information on an employee's right to report an unsafe working environment;

(2) instructions on how to report unsafe working conditions and safety violations; and

(3) information on state laws regarding retaliation by employers.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.220, eff. September 1, 2005.

SUBCHAPTER H. GENERAL REQUIREMENTS RELATING TO OCCUPATIONAL HEALTH AND SAFETY

Sec. 411.101. LEGISLATIVE POLICY; PURPOSE. It is the policy of this state to protect the health and welfare of its people and to reduce and, to every reasonable extent, eliminate the causes of loss of production, reduction of work hours, temporary and permanent incapacity of workers, and increases in certain insurance rates by:

(1) promoting the adoption, application, and implementation of safety measures in industry and enterprise;

(2) protecting workers against unsafe and hazardous working conditions; and

(3) encouraging correction of any unsafe and hazardous working conditions in industry and enterprise.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1,

1995.

Sec. 411.102. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(28), eff. September 1, 2005.

(2) "Employee" means an individual who works for an employer for compensation. The term does not include an individual employed to perform domestic services in a private residence.

(3) "Employer" means a person who has control or custody of any employment, place of employment, or employee. The term does not include a carrier, as that term is used in Title 49, United States Code, that is regulated by the Interstate Commerce Commission, except that the term includes a railroad.

(4) "Place of employment" means a location, other than a private residence where domestic service is performed, where:

(A) a trade, industry, or business is temporarily or permanently conducted; or

(B) an employee is directly or indirectly employed by another for direct or indirect gain.

(5) "Safe" as applied to employment or places of employment means freedom from occupational injury for employees to the extent reasonably permitted by the nature of the employment.

(6) "Safeguard" means any practicable method of mitigating or preventing occupational injury.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(28), eff. September 1, 2005.

Sec. 411.103. DUTY OF EMPLOYER TO PROVIDE SAFE WORKPLACE. Each employer shall:

(1) provide and maintain employment and a place of employment that is reasonably safe and healthful for employees;

(2) install, maintain, and use methods, processes, devices, and safeguards, including methods of sanitation and hygiene, that are reasonably necessary to protect the life, health, and safety of the

employer's employees; and

(3) take all other actions reasonably necessary to make the employment and place of employment safe.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Sec. 411.104. DIVISION DUTIES. (a) The division shall administer this subchapter.

(b) In addition to the duties specified in this chapter, the division shall perform other duties as required by the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Sec. 411.105. CONFIDENTIAL INFORMATION; PENALTY. (a) The division and its employees may not disclose at a public hearing or otherwise information relating to secret processes, methods of manufacture, or products.

(b) The commissioner or an employee of the division commits an offense if the commissioner or employee wilfully discloses or conspires to disclose information made confidential under this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $1,000 and by forfeiture of the person's appointment as commissioner or as an employee of the division.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.221, eff. September 1, 2005.

Sec. 411.106. SAFETY CLASSIFICATION. (a) To establish a safety classification for employers, the division shall:

(1) obtain medical and compensation cost information regularly compiled by the department in performing rate-making duties and functions regarding employer liability and workers' compensation

insurance; and

(2) collect and compile information relating to:

(A) the frequency rate of accidents;

(B) the existence and implementation of private safety programs;

(C) the number of work-hour losses because of injuries; and

(D) other facts showing accident experience.

(b) From the information obtained under Subsection (a), the division shall classify employers as appropriate to implement this subchapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.222, eff. September 1, 2005.

Sec. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS. The division may endeavor to eliminate an impediment to occupational or industrial safety that is reported to the division by an affected employer. In attempting to eliminate an impediment the division may advise and consult with an employer, or a representative of an employer, who is directly involved.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.223, eff. September 1, 2005.

Sec. 411.108. ACCIDENT REPORTS. The division may require an employer and any other appropriate person to report accidents, personal injuries, fatalities, or other statistics and information relating to accidents on forms prescribed by and covering periods designated by the commissioner.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.224, eff. September 1, 2005.

Sec. 411.109. EFFECT ON OTHER LAW. This subchapter and Chapters 341 and 755, Health and Safety Code, to the extent possible shall all be given effect.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Sec. 411.110. LABOR DISPUTES. (a) It is the intent of the legislature that this subchapter, or an act performed under this subchapter, may not be:

(1) used as an issue involved in a labor dispute; or

(2) used or asserted to advantage in collective bargaining by employers, employees, or their respective representatives.

(b) Notwithstanding any other provision of this subchapter, this subchapter does not apply to a place of employment while that place of employment is subject to picketing or to a strike, slowdown, or other work stoppage.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

CHAPTER 412. STATE OFFICE OF RISK MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 412.001. DEFINITIONS. In this chapter:

(1) "Board" means the risk management board.

(2) "Director" means the executive director of the office.

(3) "Office" means the State Office of Risk Management.

(4) "State agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state.

Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. OFFICE

Sec. 412.011. POWERS AND DUTIES OF OFFICE. (a) The State Office of Risk Management shall administer insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs.

(b) The office shall:

(1) operate as a full-service risk manager and insurance manager for state agencies as provided by Subsection (c);

(2) maintain and review records of property, casualty, or liability insurance coverages purchased by or for a state agency;

(3) administer the program for the purchase of surety bonds for state officers and employees as provided by Chapter 653, Government Code;

(4) administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses;

(5) review, verify, monitor, and approve risk management programs adopted by state agencies;

(6) assist a state agency that has not implemented an effective risk management program to implement a comprehensive program that meets the guidelines established by the board;

(7) administer the workers' compensation insurance program for state employees established under Chapter 501; and

(8) provide risk management services for employees of community supervision and corrections departments established under Chapter 76, Government Code, as if the employees were employees of a state agency.

(c) The office shall:

(1) perform risk management for each state agency subject to this chapter, except to any extent limited by Subsection (j); and

(2) purchase insurance coverage under any line of insurance other than health or life insurance, including liability insurance authorized under Chapter 612, Government Code, for a state agency subject to Chapter 501, except for:

(A) an institution subject to Section 501.022; or

(B) the Texas State University System or a component institution of that system.

(d) The board by rule shall develop an implementation schedule for the purchase under this section of insurance for state agencies by the office. The board shall phase in, by line of insurance, the requirement that a state agency purchase coverage only through the office.

(e) A state agency subject to Chapter 501, except for an institution subject to Section 501.022 or the Texas State University System or a component institution of that system, may not purchase property, casualty, or liability insurance coverage without the approval of the board.

(f) The office shall work with each state agency to develop an agency-level continuity of operations plan under Section 412.054.

(g) The office shall make available to each agency subject to Section 412.054 guidelines and models for each element listed in Section 412.054. The office shall assist the agency as necessary to ensure that:

(1) agency staff understands each element of the continuity of operations plan developed under Section 412.054; and

(2) each agency provides training and conducts testing and exercises that prepare the agency for implementing the plan.

(h) The office and the Texas Building and Procurement Commission shall adopt a memorandum of understanding that:

(1) includes the type, amount, and frequency of safety-related information that may be shared between the office and the commission; and

(2) designates points of contact within the office and the commission to coordinate the sharing of information.

(i) The office shall:

(1) maintain a system to promptly and efficiently act on complaints filed with the office;

(2) maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and disposition of the complaint;

(3) make information available describing the office's procedures for complaint investigation and resolution; and

(4) periodically notify the complaint parties of the status

of the complaint until final disposition.

(j) The Texas State University System or a component institution of that system shall perform risk management services related to insurance coverage purchased by the system or institution without board approval.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.01, eff. Sept. 1, 2002; Acts 2003, 78th Leg., ch. 527, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 509 (H.B. 796), Sec. 1, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 1, eff. June 19, 2015.

Sec. 412.0111. AFFILIATION WITH OFFICE OF ATTORNEY GENERAL. The office is administratively attached to the office of the attorney general and the office of the attorney general shall provide the facilities for the office, but the office shall be independent of the office of the attorney general's direction.

Added by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002. Redesignated from Labor Code Sec. 412.011(c).

Text of section as amended by Acts 2001, 77th Leg., ch. 559, Sec. 1 and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.012. FUNDING. The office shall be administered through money appropriated by the legislature and through the allocation program for the financing of state workers' compensation benefits and risk management costs.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

Sec. 412.012. FUNDING. The office shall be administered through money appropriated by the legislature and through:

(1) interagency contracts for purchase of insurance coverage and the operation of the risk management program; and

(2) the allocation program for the financing of state workers' compensation benefits.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1 and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.0121. INTERAGENCY CONTRACTS. (a) Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

(b) Costs payable under the contract include the cost of:

(1) services of office employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(c) The costs of risk management services provided by a state agency under the interagency contract shall be allocated in the same proportion and determined in the same manner as the costs of workers' compensation.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(b) by Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

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(b) Costs payable under the contract include the cost of:

(1) services of office employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(c) The amount of the costs to be paid by a state agency under the interagency contract is based on:

(1) the number of employees of the agency compared with the total number of employees of all state agencies to which this chapter applies;

(2) the dollar value of the agency's property and asset and liability exposure compared to that of all state agencies to which this chapter applies; and

(3) the number and aggregate cost of claims and losses incurred by the state agency compared to those incurred by all state agencies to which this chapter applies.

(d) The board may by rule establish the formula for allocating the cost of this chapter in an interagency contract in a manner that gives consideration to the factors in Subsection (c) and any other factors it deems relevant, including an agency's risk management expenditures, unique risks, and established programs.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1, and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION. The state is self-insuring with respect to an employee's compensable injury.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001,

77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION. (a) The state is self-insuring with respect to an employee's compensable injury.

(b) The legislature shall appropriate the amount designated by the appropriation structure for the payment of state workers' compensation claims costs to the office. This section does not affect the reimbursement of claims costs by funds other than general revenue funds, as provided by the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as added by Acts 2001, 77th Leg., ch. 559, Sec. 1, and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.0123. ALLOCATION OF WORKERS' COMPENSATION AND RISK MANAGEMENT COSTS; RISK REWARD PROGRAM.

Text of subsec. (a) as added by Acts 2001, 77th Leg., ch. 559, Sec. 1

(a) The office shall establish an allocation program for the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

Text of subsec. (a) as added by Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

(a) The office shall establish a risk reward for the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

(b) The office shall establish a formula for allocating the state's workers' compensation costs among covered agencies based on the claims experience of each agency, the current and projected size of each agency's workforce, each agency's payroll, the related costs

incurred in administering claims, and other factors that the office determines to be relevant. The agency may provide modifiers to the formula to promote the effective implementation of risk management programs by state agencies.

(c) The board has final authority to determine the assessments to be paid by the covered agencies.

Added by 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(d) by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

Sec. 412.0123. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES. (a) All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

(b) Funds deposited under this section may be used for the payment of workers' compensation benefits to state employees.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(d) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Sec. 412.0124. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES. All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(d) and amended by Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001; Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001.

Sec. 412.0125. RETURN-TO-WORK COORDINATION SERVICES; CASE MANAGEMENT. (a) The office shall provide each state agency with return-to-work coordination services as necessary to facilitate an

injured employee's return to employment. The office shall notify each state agency of the availability of return-to-work coordination services.

(b) As part of return-to-work coordination services under this section, the office shall:

(1) establish a time frame for case management of an injured employee that ensures services are provided to the injured employee as soon as practicable to improve the employee's chance of returning to work as quickly as possible;

(2) provide guidance to each state agency to identify appropriate services for an injured employee;

(3) adopt rules that set standards and provide guidance to a state agency interacting with an injured employee; and

(4) implement any other services provided under Section 413.021 that will facilitate the reintegration of an injured employee.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.

Sec. 412.0126. ANALYSIS. (a) The board shall adopt rules as necessary to collect data on lost time and return-to-work outcomes of each state agency to allow full evaluations of successes and of barriers to achieving timely return to work after an injury.

(b) The office shall:

(1) collect and analyze data from each state agency regarding lost time, including sick leave and annual leave used by an injured employee;

(2) identify state agencies that need additional training or case management services related to return-to-work services;

(3) modify as necessary the office's assessment computation to encourage state agencies to effectively reduce workers' compensation costs;

(4) incorporate as necessary return-to-work goals developed by the division of workers' compensation under Section 413.025;

(5) work with the workers' compensation research and evaluation group to develop analytical tools to assist the office with its duties under this section;

(6) require state agencies to report information in a

standardized format;

(7) monitor the information reported by each state agency; and

(8) evaluate the information provided under this section to determine outcomes over time for each state agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.

Sec. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER. (a) Notwithstanding Section 403.016, Government Code, and except as provided by Subsection (b), the office shall pay an employee entitled to an indemnity benefit payment using the same payment method as the method by which the employee receives the employee's wages.

(b) The office shall adopt rules to facilitate the use of electronic funds transfer as the preferred method of payment under this section.

(c) The office may issue an indemnity benefit payment by check on request or if electronic funds transfer is not feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.

Sec. 412.0128. CONFIDENTIALITY OF INFORMATION. (a) Information in or derived from a workers' compensation claim file regarding an employee, and information in or derived from a risk management review related to facility security or continuity of operations, is confidential and is exempt from disclosure under Chapter 552, Government Code, and may not be disclosed by the office except as provided by Subsection (b), other provisions of this subchapter, or other law. Classified or sensitive information specifically preempted from disclosure by federal law retains the confidentiality protection provided by this section for all purposes, including disclosure to the office.

(b) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under Section 412.054 are public information subject to disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.11, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 2, eff. June 19, 2015.

Sec. 412.013. REVIEW AND UPDATE OF RISK MANAGEMENT PROGRAM GUIDELINES. (a) In administering the guidelines for a comprehensive risk management program under Section 412.011(b)(4), the office must:

(1) at least biennially review the guidelines to determine whether they are appropriate and current; and

(2) at least every five years, update the guidelines to be consistent with up-to-date industry best practices and current law.

(b) In updating the guidelines under Subsection (a)(2), the office must solicit feedback from state entities concerning topics for inclusion in the guidelines and ways for making the guidelines more user-friendly.

Added by Acts 2019, 86th Leg., R.S., Ch. 19 (S.B. 612), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. BOARD

Sec. 412.021. RISK MANAGEMENT BOARD. (a) The office is governed by the risk management board. Members of the board must have demonstrated experience in the fields of:

(1) insurance and insurance regulation;

(2) workers' compensation; and

(3) risk management administration.

(a-1) A person may not be a member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the office;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the office; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the office other than compensation or reimbursement authorized by law for risk management board membership, attendance, or expenses.

(b) The board is composed of five members appointed by the governor.

(c) Members of the board hold office for staggered terms of six years with one or two members' terms expiring February 1 of each odd-numbered year. A member appointed to fill a vacancy shall hold office for the remainder of that term.

(d) The governor shall designate one member of the board as presiding officer. The presiding officer shall serve in that capacity at the pleasure of the governor.

(e) The board is subject to Chapters 552 and 2001, Government Code.

(f) The risk management board and the office are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this section expires September 1, 2031.

(g) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(h) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the director and the staff of the risk management office.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.03, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1481, Sec. 3.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 40.01, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 3, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 19 (S.B. 612), Sec. 2, eff. September 1, 2019.

Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of

the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the board member with information regarding:

(1) the law governing the office's operations;

(2) the programs, functions, rules, and budget of the office;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the results of the most recent formal audit of the office;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(6) any applicable ethics policies adopted by the office or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The director of the office shall create a training manual that includes the information required by Subsection (b). The director shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.04, eff. Sept. 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 4, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 19 (S.B. 612), Sec. 3, eff. September 1, 2019.

Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of insurance or health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of insurance or health care.

(c) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 5, eff. September 1, 2007.

Sec. 412.024. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of taking office the qualifications required by Section 412.021;

(2) does not maintain during service on the board the qualifications required by Section 412.021;

(3) is ineligible for membership under Section 412.021 or 412.023;

(4) cannot because of illness or incapacity discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(a-1) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(b) If the director knows that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest officer of the board, who shall notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 6, eff. September 1, 2007.

Sec. 412.027. USE OF TECHNOLOGY. The board shall implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. The policy must ensure that the public is able to interact with the office on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 7, eff. September 1, 2007.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD

Sec. 412.031. RULEMAKING AUTHORITY. The board shall adopt rules as necessary to implement this chapter and Chapter 501, including rules relating to reporting requirements for a state agency.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

Sec. 412.032. BOARD'S REPORT TO LEGISLATURE. (a) Based on the recommendations of the director, the board shall report to each legislature relating to:

(1) methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses;

(2) the operation, financing, and management of those risks;

(3) the handling of claims brought against the state;

(4) return-to-work outcomes under Section 412.0126 for each state agency; and

(5) the continuity of operations plan developed by state agencies under Section 412.054.

(b) The report must include:

(1) the frequency, severity, and aggregate amount of open and closed claims in the preceding biennium by category of risk, including final judgments;

(2) the identification of each state agency that has not complied with the risk management guidelines and reporting requirements of this chapter;

(3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes;

(4) a report of outcomes by state agency of lost time due to employee injury and return-to-work programs based on the information collected and analyzed by the office in Section 412.0126; and

(5) an evaluation of continuity of operations plans developed by state agencies under Section 412.054 for completeness and viability.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 8, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 3, eff. June 19, 2015.

Sec. 412.033. HIRING DIRECTOR. The board shall hire a qualified person to serve as director of the office. The director serves at the pleasure of the board.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

Sec. 412.034. PUBLIC HEARING. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the office.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 9, eff. September 1, 2007.

Sec. 412.035. DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the office.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 10, eff. September 1, 2007.

SUBCHAPTER E. DIRECTOR

Sec. 412.041. DIRECTOR DUTIES. (a) The director serves as the state risk manager.

(b) The director shall supervise the development and administration of systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses, including workers' compensation; and

(4) reduce the property and liability losses, including workers' compensation, incurred by each state agency.

(c) In addition to other duties provided by this chapter, by Chapter 501, and by the board, the director shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501;

(4) hire staff as necessary to accomplish the objectives of the board and may delegate powers and duties to members of that staff as necessary;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant; and

(7) handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(d) If necessary to the administration of this chapter and Chapter 501, the director, with the approval of the board, may secure and provide for services that are necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(e) The director also serves as the administrator of the government employees workers' compensation insurance program.

(f) In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury before September 1, 1995, the director shall act in the capacity of employer and insurer. In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury on or after September 1, 1995, the director shall act in the capacity of insurer.

(g) The director shall act as an adversary before the division and courts and present the legal defenses and positions of the state as an employer and insurer, as appropriate.

(h) For the purposes of Subsection (f) and Chapter 501, the director is entitled to the legal counsel of the attorney general.

(i) In administering Chapter 501, the director is subject to the rules, orders, and decisions of the commissioner in the same manner as a private employer, insurer, or association.

(j) The director shall:

(1) prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501; and

(2) prepare for adoption by the board and enforce reasonable rules for the prevention of accidents and injuries.

(k) The director shall hold hearings on all proposed rules and provide reasonable opportunity for the officers of state agencies to testify at hearings on all proposed rules under this chapter and Chapter 501.

(l) The director shall furnish copies of all rules to:

(1) the commissioner of insurance;

(2) the commissioner; and

(3) the administrative heads of all state agencies affected by this chapter and Chapter 501.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.05, eff. Sept. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.225, eff. September 1, 2005.

Sec. 412.042. REPORTS TO THE LEGISLATURE. (a) The director shall report to the legislature at the beginning of each regular

session regarding the services provided by the office to a state agency subject to Chapter 501.

The report required under this subsection shall be dated January 1 of the year in which the regular session is held and must include:

(1) a summary of administrative expenses;

(2) a statement:

(A) showing the amount of the money appropriated by the preceding legislature that remains unexpended on the date of the report; and

(B) estimating the amount of that balance necessary to administer Chapter 501 for the remainder of that fiscal year; and

(3) an estimate, based on experience factors, of the amount of money that will be required to administer Chapter 501 and pay for the compensation and services provided under Chapter 501 during the next succeeding biennium.

(b) In addition to the report required under Subsection (a), the director shall report to the legislature not later than February 1 of each odd-numbered year regarding insurance coverage purchased for state agencies, premium dollars spent to obtain that coverage, and losses incurred under that coverage.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 9.01(a)(11), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 953, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1017, Sec. 1.06, eff. Sept. 1, 2002.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 9.01(a)(11), eff. September 1, 2011.

SUBCHAPTER F. STATE AGENCIES

Sec. 412.051. DUTIES OF STATE AGENCIES; INSURANCE NOTIFICATION REQUIREMENTS. (a) Each state agency shall actively manage the risks of that agency by:

(1) developing, implementing, and maintaining programs designed to assist employees who sustain compensable injuries to return to work; and

(2) cooperating with the office and the Texas Department of Insurance in the purchase of property, casualty, and liability lines

of insurance coverage.

(b) Subject to Section 412.011, each state agency that intends to purchase property, casualty, or liability insurance coverage in a manner other than through the services provided by the office shall notify the office of the intended purchase in the manner prescribed by the office. The state agency shall notify the office of the intended purchase not later than the 30th day before the date on which the purchase of the coverage is scheduled to occur. The office may require a state agency to submit copies of insurance forms, policies, and other relevant information.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.07, eff. Sept. 1, 2002.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 81, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 82, eff. September 1, 2013.

Sec. 412.052. EXEMPTION OF CERTAIN STATE AGENCIES. This chapter does not apply to a state agency that had medical malpractice insurance coverage, workers' compensation insurance coverage, or other self-insurance coverage with associated risk management programs before January 1, 1989.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

Sec. 412.053. ANNUAL REPORT BY STATE AGENCY. (a) Each state agency shall report to the director for each fiscal year:

(1) the location, timing, frequency, severity, and aggregate amounts of losses by category of risk, including open and closed claims and final judgments;

(2) loss information obtained by the state agency in the course of its administration of the workers' compensation program;

(3) detailed information on existing and potential exposure to loss, including property location and values, descriptions of agency operations, and estimates of maximum probable and maximum possible losses by category of risk;

(4) estimates by category of risk of losses incurred but not reported;

(5) information the director determines necessary to prepare a Texas Workers' Compensation Unit Statistical Report; and

(6) additional information that the director determines to be necessary.

(b) The information shall be reported not later than the 60th day after the last day of each fiscal year.

(c) This section does not apply to an institution of higher education or university system. In this subsection, "institution of higher education" and "university system" have the meanings assigned by Section 61.003, Education Code.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.08, eff. Sept. 1, 2002.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.13, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 19 (S.B. 612), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.40, eff. September 1, 2019.

Sec. 412.054. CONTINUITY OF OPERATIONS PLAN. (a) Each state agency shall work with the office to develop an agency-level continuity of operations plan that outlines procedures to keep the agency operational in case of disruptions to production, finance, administration, or other essential operations. The plan must include detailed information regarding resumption of essential services after a catastrophe, including:

(1) coordination with public authorities;

(2) management of media;

(3) customer service delivery;

(4) assessing immediate financial and operational needs; and

(5) other services as determined by the office.

(b) A continuity of operations plan that meets the requirements of this section must be submitted by each state agency that is:

(1) involved in the delivery of emergency services as a member of the governor's Emergency Management Council;

(2) part of the State Data Center program; or

(3) subject to this chapter or Chapter 501.

(c) Except as otherwise provided by this section, the following information is confidential and is exempt from disclosure under Chapter 552, Government Code:

(1) a continuity of operations plan developed under this section; and

(2) any records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plan under this section.

(d) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under this section are public information subject to disclosure under Chapter 552, Government Code.

(e) A state agency may disclose or make available information that is confidential under this section to another state agency, a governmental body, or a federal agency.

(f) Disclosing information to another state agency, a governmental body, or a federal agency under this section does not waive or affect the confidentiality of that information.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 11, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 4, eff. June 19, 2015.

CHAPTER 413. MEDICAL REVIEW

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 413.002. MEDICAL REVIEW. (a) The division shall monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commissioner relating to health care, including medical policies and fee guidelines.

(b) In monitoring health care providers who serve as designated

doctors under Chapter 408 and independent review organizations who provide services described by this chapter, the division shall evaluate:

(1) compliance with this subtitle and with rules adopted by the commissioner relating to medical policies, fee guidelines, treatment guidelines, return-to-work guidelines, and impairment ratings; and

(2) the quality and timeliness of decisions made under Section 408.0041, 408.122, 408.151, or 413.031.

(c) The division shall report the results of the monitoring of independent review organizations under Subsection (b) to the department on at least a quarterly basis.

(d) If the commissioner determines that an independent review organization is in violation of this chapter, rules adopted by the commissioner under this chapter, applicable provisions of this code or rules adopted under this code, or applicable provisions of the Insurance Code or rules adopted under that code, the commissioner or a designated representative shall notify the independent review organization of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.42, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.227, eff. September 1, 2005.

Sec. 413.003. AUTHORITY TO CONTRACT. The division may contract with a private or public entity to perform a duty or function of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.228, eff. September 1, 2005.

Sec. 413.004. COORDINATION WITH PROVIDERS. The division shall coordinate its activities with health care providers as necessary to

perform its duties under this chapter. The coordination may include:

(1) conducting educational seminars on commissioner rules and procedures; or

(2) providing information to and requesting assistance from professional peer review organizations.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.229, eff. September 1, 2005.

Sec. 413.006. ADVISORY COMMITTEES. The commissioner may appoint advisory committees as the commissioner considers necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.230, eff. September 1, 2005.

Sec. 413.007. INFORMATION MAINTAINED BY DIVISION. (a) The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by:

(1) the commissioner in adopting the medical policies and fee guidelines; and

(2) the division in administering the medical policies, fee guidelines, or rules.

(b) The division shall ensure that the data base:

(1) contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols; and

(2) can be used in a meaningful way to allow the commission to control medical costs as provided by this subtitle.

(c) The division shall ensure that the data base is available for public access for a reasonable fee established by the commissioner. The identities of injured workers and beneficiaries may not be disclosed.

(d) The division shall take appropriate action to be aware of and to maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers'

compensation cases.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.231, eff. September 1, 2005.

Sec. 413.008. INFORMATION FROM INSURANCE CARRIERS; ADMINISTRATIVE VIOLATION. (a) On request from the division for specific information, an insurance carrier shall provide to the division any information in the carrier's possession, custody, or control that reasonably relates to the division's duties under this subtitle and to health care:

(1) treatment;
(2) services;
(3) fees; and
(4) charges.

(b) The division shall keep confidential information that is confidential by law.

(c) An insurance carrier commits an administrative violation if the insurance carrier fails or refuses to comply with a request or violates a rule adopted to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.232, eff. September 1, 2005.

SUBCHAPTER B. MEDICAL SERVICES AND FEES

Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES; TREATMENT GUIDELINES AND PROTOCOLS. (a) The commissioner shall adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve standardization, the commissioner shall adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing,

and reporting, and may modify documentation requirements as necessary to meet the requirements of Section 413.053.

(b) In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d). The commissioner shall also provide for reasonable fees for the evaluation and management of care as required by Section 408.025(c) and commissioner rules. This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services.

(c) This section may not be interpreted in a manner that would discriminate in the amount or method of payment or reimbursement for services in a manner prohibited by Section 1451.104, Insurance Code, or as restricting the ability of chiropractors to serve as treating doctors as authorized by this subtitle. The commissioner shall also develop guidelines relating to fees charged or paid for providing expert testimony relating to an issue arising under this subtitle.

(d) Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commissioner shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.

(d-4) Notwithstanding this section or any other provision of this title, an insurance carrier, an insurance carrier's authorized agent, or a network certified under Chapter 1305, Insurance Code, arranging for non-network services or out-of-network services under Section 1305.006, Insurance Code, may continue to contract with a health care provider to secure health care for an injured employee for fees that exceed the fees adopted by the division under this section.

(d-5) The commissioner and the commissioner of insurance may adopt rules as necessary to implement this section.

(e) The commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and may adopt individual treatment protocols. Treatment guidelines and protocols must be evidence-

based, scientifically valid, and outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Treatment may not be denied solely on the basis that the treatment for the compensable injury in question is not specifically addressed by the treatment guidelines.

(f) In addition to complying with the requirements of Subsection (e), medical policies or guidelines adopted by the commissioner must be:

(1) designed to ensure the quality of medical care and to achieve effective medical cost control;

(2) designed to enhance a timely and appropriate return to work; and

(3) consistent with Sections 413.013, 413.020, 413.052, and 413.053.

(g) The commissioner may adopt rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. The commissioner by rule may identify claims in which application of disability management activities is required and prescribe at what point in the claim process a treatment plan is required. The determination may be based on any factor considered relevant by the commissioner. Rules adopted under this subsection do not apply to claims subject to workers' compensation health care networks under Chapter 1305, Insurance Code.

(h) A dispute involving a treatment plan required under Subsection (g) may be appealed to an independent review organization in the manner described by Section 413.031.

(i) The division shall examine whether injured employees have reasonable access to surgically implanted, inserted, or otherwise applied devices or tissues and investigate whether reimbursement rates or any other barriers exist that reduce the ability of an injured employee to access those medical needs. The division shall recommend to the legislature any statutory changes necessary to ensure appropriate access to those medical needs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 962, Sec. 1, 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.233, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 2, eff. January 1, 2011.

Sec. 413.0111. PROCESSING AGENTS. The rules adopted by the commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on the behalf of the pharmacies under terms and conditions agreed on by the pharmacies.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.234, eff. September 1, 2005.

Sec. 413.0112. REIMBURSEMENT OF FEDERAL MILITARY TREATMENT FACILITY. (a) In this section, "federal military treatment facility" means a medical facility that operates as part of the Military Health System of the United States Department of Defense.

(b) The reimbursement rates for medical services provided to an injured employee by a federal military treatment facility must be the amount charged by the facility as determined under 32 C.F.R. Part 220.

(c) Chapter 1305, Insurance Code, and the following sections of this code do not apply to the reimbursement of a federal military treatment facility's charges for medical services provided to an injured employee:

(1) Sections 408.027(a) and (f);

(2) Section 408.0271;

(3) Section 408.0272;

(4) Section 408.028;

(5) Section 408.0281;

(6) Section 413.011;

(7) Section 413.014;

(8) Section 413.031, as that section relates to medical fee disputes;

(9) Section 413.041; and

(10) Section 504.053.

(d) The commissioner shall adopt rules necessary to implement this section, including rules establishing:

(1) requirements for processing medical bills for services provided to an injured employee by a federal military treatment facility; and

(2) a separate medical dispute resolution process to resolve disputes over charges billed directly to an injured employee by a federal military treatment facility.

Added by Acts 2019, 86th Leg., R.S., Ch. 427 (S.B. 935), Sec. 1, eff. September 1, 2019.

Sec. 413.0115. REQUIREMENTS FOR CERTAIN VOLUNTARY OR INFORMAL NETWORKS. (a) In this section:

(1) "Informal network" means a health care provider network described by Section 413.011(d-1) that:

(A) is established under a contract between an insurance carrier and health care providers; and

(B) includes a specific fee schedule.

(2) "Voluntary network" means a voluntary workers' compensation health care delivery network established by an insurance carrier under former Section 408.0223, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session, 2005.

(b) Not later than January 1, 2011, each informal network or voluntary network must be certified as a workers' compensation health care network under Chapter 1305, Insurance Code.

(c) Effective September 1, 2007, each informal network and voluntary network must provide the following information to the division:

(1) an executive contact for official correspondence for the network;

(2) a toll-free telephone number by which a health care provider may contact the informal network or voluntary network;

(3) a list of each insurance carrier with whom the network contracts; and

(4) a list of each entity associated with the network

working on behalf of the insurance carrier, including contact information for each entity.

(d) Each informal network and voluntary network shall report any changes to the information provided under Subsection (c) to the division not later than the 30th day after the effective date of the change.

Added by Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 3, eff. September 1, 2007.

Sec. 413.012. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED. The medical policies and fee guidelines shall be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable or necessary at the time the review and revision is conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 413.013. PROGRAMS. The commissioner by rule shall establish:

(1) a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services;

(2) a program for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review under the medical policies of the division to ensure that the medical policies or guidelines are not exceeded;

(3) a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the division; and

(4) a program to increase the intensity of review for compliance with the medical policies or fee guidelines for any health care provider that has established a practice or pattern in charges and treatments inconsistent with the medical policies and fee guidelines.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.235, eff. September 1, 2005.

Sec. 413.014. PREAUTHORIZATION REQUIREMENTS; CONCURRENT REVIEW AND CERTIFICATION OF HEALTH CARE. (a) In this section, "investigational or experimental service or device" means a health care treatment, service, or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care.

(b) The commissioner by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Treatments and services for a medical emergency do not require express preauthorization.

(c) The commissioner's rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for:

(1) spinal surgery, as provided by Section 408.026;

(2) work-hardening or work-conditioning services;

(3) inpatient hospitalization, including any procedure and length of stay;

(4) physical and occupational therapy;

(5) outpatient or ambulatory surgical services, as defined by commissioner rule; and

(6) any investigational or experimental services or devices.

(c-1) Notwithstanding Subsection (c)(2), the commissioner by rule may exempt from preauthorization and concurrent review work-hardening or work-conditioning services provided by a health care facility that is credentialed by an organization designated by commissioner rule.

(d) The insurance carrier is not liable for those specified treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner.

(e) If a specified health care treatment or service is

preauthorized as provided by this section, that treatment or service is not subject to retrospective review of the medical necessity of the treatment or service.

(f) The division may not prohibit an insurance carrier and a health care provider from voluntarily discussing health care treatment and treatment plans and pharmaceutical services, either prospectively or concurrently, and may not prohibit an insurance carrier from certifying or agreeing to pay for health care consistent with those agreements. The insurance carrier is liable for health care treatment and treatment plans and pharmaceutical services that are voluntarily preauthorized and may not dispute the certified or agreed-on preauthorized health care treatment and treatment plans and pharmaceutical services at a later date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 4.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 980, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.236, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 73 (S.B. 1494), Sec. 1, eff. September 1, 2017.

Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. The commissioner may by rule provide that an insurance carrier shall provide for payment of specified pharmaceutical services sufficient for the first seven days following the date of injury if the health care provider requests and receives verification of insurance coverage and a verbal confirmation of an injury from the employer or from the insurance carrier as provided by Section 413.014. The rules adopted by the commissioner shall provide that an insurance carrier is eligible for reimbursement for pharmaceutical services paid under this section from the subsequent injury fund in the event the injury is determined not to be compensable.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 4.03, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.237, eff. September 1, 2005.

Sec. 413.015. PAYMENT BY INSURANCE CARRIERS; AUDIT AND REVIEW. (a) Insurance carriers shall make appropriate payment of charges for medical services provided under this subtitle. An insurance carrier may contract with a separate entity to forward payments for medical services. Any payment due the insurance carrier from the separate entity must be made in accordance with the contract. The separate entity is subject to the direction of the insurance carrier, and the insurance carrier is responsible for the actions of the separate entity under this subsection.

(b) The commissioner shall provide by rule for the review and audit of the payment by insurance carriers of charges for medical services provided under this subtitle to ensure compliance of health care providers and insurance carriers with the medical policies and fee guidelines adopted by the commissioner.

(c) The rules must require the insurance carrier to pay the expenses of the review and audit.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.238, eff. September 1, 2005.

Sec. 413.016. PAYMENTS IN VIOLATION OF MEDICAL POLICIES AND FEE GUIDELINES. (a) The division shall order a refund of charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines. The division shall also refer the health care provider alleged to have violated this subtitle to the division of compliance and practices.

(b) If the division determines that an insurance carrier has paid medical charges that are inconsistent with the medical policies or fee guidelines adopted by the commissioner, the division shall investigate the potential violation. If the insurance carrier reduced a charge of a health care provider that was within the guidelines, the insurance carrier shall be directed to submit the difference to the provider unless the reduction is in accordance with an agreement between the health care provider and the insurance

carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.239, eff. September 1, 2005.

Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following medical services are presumed reasonable:

(1) medical services consistent with the medical policies and fee guidelines adopted by the commissioner; and

(2) medical services that are provided subject to prospective, concurrent, or retrospective review as required by the medical policies of the division and that are authorized by an insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.240, eff. September 1, 2005.

Sec. 413.018. REVIEW OF MEDICAL CARE IF GUIDELINES EXCEEDED. (a) The commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded.

(b) The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided.

(c) The division shall implement a program to encourage employers and treating doctors to discuss the availability of modified duty to encourage the safe and more timely return to work of injured employees. The division may require a treating or examining doctor, on the request of the employer, insurance carrier, or division, to provide a functional capacity evaluation of an injured employee and to determine the employee's ability to engage in physical activities found in the workplace or in activities that are required in a modified duty setting.

(d) The division shall provide through the division's health and safety information and medical review outreach programs

information to employers regarding effective return to work programs. This section does not require an employer to provide modified duty or an employee to accept a modified duty assignment. An employee who does not accept an employer's offer of modified duty determined by the division to be a bona fide job offer is subject to Section 408.103(e).

(e) The commissioner may adopt rules and forms as necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.241, eff. September 1, 2005.

Sec. 413.019. INTEREST EARNED FOR DELAYED PAYMENT, REFUND, OR OVERPAYMENT. (a) Interest on an unpaid fee or charge that is consistent with the fee guidelines accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the health care provider submits the bill to an insurance carrier until the date the bill is paid.

(b) Interest on a refund from a health care provider accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the provider receives notice of alleged overpayment from the insurance carrier until the date the refund is paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 413.020. DIVISION CHARGES. The commissioner by rule shall establish procedures to enable the division to charge:

(1) an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges under this subtitle; and

(2) a health care provider who exceeds a fee or utilization guideline established under this subtitle or an insurance carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline established under this subtitle a reasonable fee for review of health care treatment, fees, or charges under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.242, eff. September 1, 2005.

Sec. 413.021. RETURN-TO-WORK COORDINATION SERVICES. (a) An insurance carrier shall, with the agreement of a participating employer, provide the employer with return-to-work coordination services on an ongoing basis as necessary to facilitate an employee's return to employment, including on receipt of a notice that an injured employee is eligible to receive temporary income benefits. The insurance carrier shall notify the employer of the availability of the return-to-work reimbursement program under Section 413.022. The insurance carrier shall evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as practicable to determine if skilled case management is necessary for the injured employee's case. As necessary, case managers who are appropriately certified shall be used to perform these evaluations. A claims adjuster may not be used as a case manager. These services may be offered by insurance carriers in conjunction with the accident prevention services provided under Section 411.061. Nothing in this section supersedes the provisions of a collective bargaining agreement between an employer and the employer's employees, and nothing in this section authorizes or requires an employer to engage in conduct that would otherwise be a violation of the employer's obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

(b) Return-to-work coordination services under this section may include:

(1) job analysis to identify the physical demands of a job;

(2) job modification and restructuring assessments as necessary to match job requirements with the functional capacity of an employee; and

(3) medical or vocational case management to coordinate the efforts of the employer, the treating doctor, and the injured employee to achieve timely return to work.

(c) An insurance carrier is not required to provide physical workplace modifications under this section and is not liable for the cost of modifications made under this section to facilitate an

employee's return to employment.

(d) The division shall use certified rehabilitation counselors or other appropriately trained or credentialed specialists to provide training to division staff regarding the coordination of return-to-work services under this section.

(e) The commissioner shall adopt rules necessary to collect data on return-to-work outcomes to allow full evaluations of successes and of barriers to achieving timely return to work after an injury.

(f) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.02(a).

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 3.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.02(a), eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.243, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 1, eff. June 19, 2009.

Sec. 413.022. RETURN-TO-WORK REIMBURSEMENT PROGRAM FOR EMPLOYERS; FUND. (a) In this section:

(1) "Account" means the workers' compensation return-to-work account.

(2) "Eligible employer" means any employer, other than this state or a political subdivision subject to Subtitle C, who has workers' compensation insurance coverage and who:

(A) employed at least two but not more than 50 employees on each business day during the preceding calendar year; or

(B) is a type of employer designated as eligible to participate in the program by the commissioner.

(3) "Program" means the return-to-work reimbursement program established under this section.

(b) The commissioner shall establish by rule a return-to-work reimbursement program designed to promote the early and sustained return to work of an injured employee who sustains a compensable injury. The commissioner, by rule, may expand eligibility to participate in the program to types of employers who are not

described by Subsection (a)(2)(A).

(c) The program shall reimburse from the account an eligible employer for expenses incurred by the employer to make workplace modifications necessary to accommodate an injured employee's return to modified or alternative work. Reimbursement under this section to an eligible employer may not exceed $5,000. The expenses must be incurred to allow the employee to perform modified or alternative work within doctor-imposed work restrictions. Allowable expenses may include:

(1) physical modifications to the worksite;

(2) equipment, devices, furniture, or tools; and

(3) other costs necessary for reasonable accommodation of the employee's restrictions.

(c-1) The commissioner by rule shall establish an optional preauthorization plan for eligible employers who participate in the program. To participate in the preauthorization plan, an employer must submit a proposal to the division, in the manner prescribed by the division, that describes the workplace modifications and other changes that the employer proposes to make to accommodate an injured employee's return to work. If the division approves the employer's proposal, the division shall guarantee reimbursement of the expenses incurred by the employer in implementing the modifications and changes from the account unless the division determines that the modifications and changes differ materially from the employer's proposal. If determined to be a public purpose by the commissioner, and in accordance with rules adopted by the commissioner, the division may provide the employer an advance of funds under this subsection. Reimbursement or an advance of funds under this subsection is subject to the limit imposed under Subsection (c).

(d) The account is established as a special account in the general revenue fund. From administrative penalties received by the division under this subtitle, the commissioner shall deposit in the account an amount not to exceed $100,000 annually. Money in the account may be spent by the division, on appropriation by the legislature, only for the purposes of implementing this section.

(e) An employer who wilfully applies for or receives reimbursement from the account under this section knowing that the employer is not an eligible employer commits a violation.

(f) Notwithstanding Subsections (a)-(e), this section may be implemented only to the extent funds are available.

(g) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 106 (H.B. 886), Sec. 1, eff. May 17, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 2, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 3, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 4, eff. June 19, 2009.

Sec. 413.023. INFORMATION TO EMPLOYERS. (a) The division shall provide employers with information on methods to enhance the ability of an injured employee to return to work. The information may include access to available research and best practice information regarding return-to-work programs for employers.

(b) The division shall augment return-to-work program information provided to employers to include information regarding methods for an employer to appropriately assist an injured employee to obtain access to doctors who:

(1) provide high-quality care; and

(2) use effective occupational medicine treatment practices that lead to returning employees to productive work.

(c) The information provided to employers under this section must help to foster:

(1) effective working relationships with local doctors and with insurance carriers or workers' compensation health care networks certified under Chapter 1305, Insurance Code, to improve return-to-work communication; and

(2) access to return-to-work coordination services provided by insurance carriers.

(d) The division shall develop and make available the information described by this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.

Sec. 413.024. INFORMATION TO EMPLOYEES. The division shall provide injured employees with information regarding the benefits of early return to work. The information must include information on how to receive assistance in accessing high-quality medical care through the workers' compensation system.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.

Sec. 413.025. RETURN-TO-WORK GOALS AND ASSISTANCE. (a) The division shall assist recipients of income benefits to return to the workforce. The division shall develop improved data sharing, within the standards of federal privacy requirements, with all appropriate state agencies and workforce programs to inform the division of changes needed to assist income benefit recipients to successfully reenter the workforce.

(b) The division shall train staff dealing with income benefits to respond to questions and assist injured employees in their effort to return to the workforce. If the division determines that an injured employee is unable to ever return to the workforce, the division shall inform the employee of possible eligibility for other forms of benefits, such as social security disability income benefits.

(c) As necessary to implement the requirements of this section, the division shall:

(1) attempt to remove any barriers to successful employment that are identified at the division, the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and private vocational rehabilitation programs;

(2) ensure that data is tracked among the division, the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and insurance carriers, including outcome data;

(3) establish a mechanism to refer income benefit recipients to the Texas Workforce Commission and local workforce development centers for employment opportunities; and

(4) develop a mechanism to promote employment success that

includes post-referral contacts by the division with income benefit recipients.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.

SUBCHAPTER C. DISPUTE RESOLUTION

Sec. 413.031. MEDICAL DISPUTE RESOLUTION. (a) A party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought if a health care provider is:

(1) denied payment or paid a reduced amount for the medical service rendered;

(2) denied authorization for the payment for the service requested or performed if authorization is required or allowed by this subtitle or commissioner rules;

(3) ordered by the commissioner to refund a payment received; or

(4) ordered to make a payment that was refused or reduced for a medical service rendered.

(b) A health care provider who submits a charge in excess of the fee guidelines or treatment policies is entitled to a review of the medical service to determine if reasonable medical justification exists for the deviation. A claimant is entitled to a review of a medical service for which preauthorization is sought by the health care provider and denied by the insurance carrier. The commissioner shall adopt rules to notify claimants of their rights under this subsection.

(c) In resolving disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment given the relevant statutory provisions and commissioner rules. The division shall publish on its Internet website the division's medical dispute decisions, including decisions of independent review organizations, and any subsequent decisions by the State Office of Administrative Hearings. Before publication, the division shall redact only that information necessary to prevent identification of the injured worker.

(d) A review of the medical necessity of a health care service

requiring preauthorization under Section 413.014 or commissioner rules under that section or Section 413.011(g) shall be conducted by an independent review organization under Chapter 4202, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e) Except as provided by Subsections (d), (f), and (m), a review of the medical necessity of a health care service provided under this chapter or Chapter 408 shall be conducted by an independent review organization under Chapter 4202, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e-1) In performing a review of medical necessity under Subsection (d) or (e), the independent review organization shall consider the division's health care reimbursement policies and guidelines adopted under Section 413.011. If the independent review organization's decision is contrary to the division's policies or guidelines adopted under Section 413.011, the independent review organization must indicate in the decision the specific basis for its divergence in the review of medical necessity.

(e-2) An independent review organization that uses doctors to perform reviews of health care services provided under this title may only use doctors licensed to practice in this state.

(e-3) Notwithstanding Subsections (d) and (e) of this section or Chapters 4201 and 4202, Insurance Code, a doctor, other than a dentist or a chiropractor, who performs a utilization review or an independent review of a health care service provided to an injured employee is subject to Section 408.0043. A dentist who performs a utilization review or an independent review of a dental service provided to an injured employee is subject to Section 408.0044. A chiropractor who performs a utilization review or an independent review of a chiropractic service provided to an injured employee is subject to Section 408.0045.

(f) The commissioner by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement.

(g) In performing a review of medical necessity under

Subsection (d) or (e), an independent review organization may request that the commissioner order an examination by a designated doctor under Chapter 408.

(h) The insurance carrier shall pay the cost of the review if the dispute arises in connection with:

(1) a request for health care services that require preauthorization under Section 413.014 or commissioner rules under that section; or

(2) a treatment plan under Section 413.011(g) or commissioner rules under that section.

(i) Except as provided by Subsection (h), the cost of the review shall be paid by the nonprevailing party.

(j) Notwithstanding Subsections (h) and (i), an employee may not be required to pay any portion of the cost of a review.

(k) A party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing under Section 413.0311 or 413.0312, as applicable.

(k-1) A party who has exhausted all administrative remedies described by Subsection (k) and who is aggrieved by a final decision of the division or the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that in the case of a medical fee dispute the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the decision. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings.

(k-2) The division and the department are not considered to be parties to the medical dispute for purposes of Subsections (k) and (k-1).

(l) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(1), eff. September 1, 2011.

(m) The decision of an independent review organization under Subsection (d) is binding during the pendency of a dispute.

(n) The commissioner by rule may prescribe an alternate dispute resolution process to resolve disputes regarding medical services costing less than the cost of a review of the medical necessity of a

health care service by an independent review organization. The cost of a review under the alternate dispute resolution process shall be paid by the nonprevailing party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.43, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 6.04, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 980, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1323, Sec. 1, eff. June 21, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.245, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 133 (H.B. 1003), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 18, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(1), eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1218 (S.B. 1742), Sec. 3.14, eff. September 1, 2019.

Sec. 413.0311. REVIEW OF MEDICAL NECESSITY DISPUTES; CONTESTED CASE HEARING. (a) This section applies only to an appeal of an independent review organization decision regarding determination of the medical necessity for a health care service.

(b) A party to a medical dispute described by Subsection (a) is entitled to a contested case hearing. A contested case hearing under this section shall be conducted by an administrative law judge in the manner provided for contested case hearings under Subchapter D, Chapter 410. Notwithstanding Section 410.024, a benefit review

conference is not a prerequisite to a contested case hearing under this section.

(c) The decision of an administrative law judge under this section is final in the absence of a timely appeal by a party for judicial review under Subsection (d).

(d) A party who has exhausted all administrative remedies under Section 413.031 and this section and who is aggrieved by a final decision of the administrative law judge under Subsection (c) may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the division mailed the party the decision of the administrative law judge. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision of the administrative law judge was filed with the division.

(e) The division and the department are not considered to be parties to the medical dispute for purposes of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 19, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 20, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 16, eff. September 1, 2017.

Sec. 413.0312. REVIEW OF MEDICAL FEE DISPUTES; BENEFIT REVIEW CONFERENCE. (a) This section applies only to a medical fee dispute that remains unresolved after any applicable review under Sections 413.031(b) through (i).

(b) Subject to Subsection (e), a party to a medical fee dispute described by Subsection (a) must adjudicate the dispute in the manner required by Subchapter B, Chapter 410.

(c) At a benefit review conference conducted under this section, the parties to the dispute may not resolve the dispute by negotiating fees that are inconsistent with any applicable fee guidelines adopted by the commissioner.

(d) If issues remain unresolved after a benefit review conference, the parties may elect to engage in arbitration as provided by Section 410.104.

(e) If arbitration is not elected as described by Subsection (d), a party to a medical fee dispute described by Subsection (a) is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

(f) The commissioner or the division may participate in a contested case hearing conducted under Subsection (e) if the hearing involves the interpretation of fee guidelines adopted by the commissioner. The division and the department are not considered to be parties to the medical fee dispute for purposes of this section.

(g) Except as otherwise provided by this subsection, the nonprevailing party shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. If the injured employee is the nonprevailing party, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. The party required to reimburse the division under this subsection shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(h) The State Office of Administrative Hearings shall timely notify the division if a dispute is dismissed before issuance of a decision under this section. In the event of a dismissal, the party requesting the hearing, other than the injured employee, shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties. If the injured employee requested the hearing, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties. The responsible party shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(i) The State Office of Administrative Hearings shall identify the nonprevailing party and any costs for services provided by the office under this section in its final decision. Money collected by the division under this section shall be deposited in the general revenue fund to the credit of the Texas Department of Insurance operating account.

(j) Interest on the amount of reimbursement required by this section that remains unpaid accrues at a rate provided by Section 401.023 beginning on the 45th day after the date the division submits the bill or statement to a party until the date the reimbursement is paid. Failure to pay the division as required by this section is an administrative violation under this subtitle.

(k) The commissioner by rule shall establish procedures to enable the division to charge a party to a medical fee dispute, other than an injured employee, for the costs of services provided by the State Office of Administrative Hearings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 21, eff. September 1, 2011.

Sec. 413.032. INDEPENDENT REVIEW ORGANIZATION DECISION; APPEAL. (a) An independent review organization that conducts a review under this chapter shall specify the elements on which the decision of the organization is based. At a minimum, the decision must include:

(1) a list of all medical records and other documents reviewed by the organization;

(2) a description and the source of the screening criteria or clinical basis used in making the decision;

(3) an analysis of and explanation for the decision, including the findings and conclusions used to support the decision; and

(4) a description of the qualifications of each physician or other health care provider who reviews the decision.

(b) The independent review organization shall certify that each physician or other health care provider who reviews the decision certifies that no known conflicts of interest exist between that provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health

care providers who reviewed the case for decision before referral to the independent review organization.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.247, eff. September 1, 2005.

SUBCHAPTER D. HEALTH CARE PROVIDERS

Sec. 413.041. DISCLOSURE. (a) Each health care practitioner shall disclose to the division the identity of any health care provider in which the health care practitioner, or the health care provider that employs the health care practitioner, has a financial interest. The health care practitioner shall make the disclosure in the manner provided by commissioner rule.

(b) The commissioner shall require by rule that a doctor disclose financial interests in other health care providers as a condition of registration for the approved doctor list established under Section 408.023 and shall define "financial interest" for purposes of this section as provided by analogous federal regulations. The commissioner by rule shall adopt the federal standards that prohibit the payment or acceptance of payment in exchange for health care referrals relating to fraud, abuse, and antikickbacks.

(c) A health care provider that fails to comply with this section is subject to penalties and sanctions as provided by this subtitle, including forfeiture of the right to reimbursement for services rendered during the period of noncompliance.

(d) The division shall publish all final disclosure enforcement orders issued under this section on the division's Internet website.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.05, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.246, eff. September 1, 2005.

Sec. 413.042. PRIVATE CLAIMS; ADMINISTRATIVE VIOLATION. (a) A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the cost of a health care service provided to the claimant by the provider unless:

(1) the injury is finally adjudicated not compensable under this subtitle; or

(2) the employee violates Section 408.022 relating to the selection of a doctor and the doctor did not know of the violation at the time the services were rendered.

(b) A health care provider commits an administrative violation if the provider violates Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.248, eff. September 1, 2005.

Sec. 413.043. OVERCHARGING PROHIBITED; OFFENSE. (a) A health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. (a) In addition to or in lieu of an administrative penalty under Section 415.021 or a sanction imposed under Section 415.023, the commissioner may impose sanctions against a person who serves as a designated doctor under Chapter 408 who, after an evaluation conducted under Section 413.002(b), is determined by the division to be out of compliance with this subtitle or with rules adopted by the commissioner relating to:

(1) medical policies, fee guidelines, and impairment ratings; or

(2) the quality of decisions made under Section 408.0041 or Section 408.122.

(b) Sanctions imposed under Subsection (a) may include:

(1) revocation of certification for a designated doctor on the division list of designated doctors; or

(2) restrictions on the reviews made by the person as a designated doctor.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.44, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.249, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 22, eff. September 1, 2011.

SUBCHAPTER E. IMPLEMENTATION OF COMMISSION POWERS AND DUTIES

Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS. (a) In this section, "health care provider professional review organization" includes an independent review organization.

(b) The division may contract with a health care provider, health care provider professional review organization, or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines.

(c) For purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the division may contract with a health care provider, health care provider professional review organization, or other entity that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

(d) The division may contract with a health care provider, health care provider professional review organization, or other entity for medical consultant services, including:

(1) independent medical examinations;

(2) medical case reviews; or

(3) establishment of medical policies and fee guidelines.

(e) The commissioner shall establish standards for contracts under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.250, eff. September 1, 2005.

Sec. 413.0511. MEDICAL ADVISOR. (a) The division shall employ or contract with a medical advisor, who must be a doctor as that term is defined by Section 401.011.

(b) The medical advisor shall make recommendations regarding the adoption of rules and policies to:

(1) develop, maintain, and review guidelines as provided by Section 413.011, including rules regarding impairment ratings;

(2) review compliance with those guidelines;

(3) regulate or perform other acts related to medical benefits as required by the commissioner;

(4) impose sanctions or delete doctors from the division's list of approved doctors under Section 408.023 for:

(A) any reason described by Section 408.0231; or

(B) noncompliance with commissioner rules;

(5) impose conditions or restrictions as authorized by Section 408.0231(f);

(6) receive, and share with the medical quality review panel established under Section 413.0512, confidential information, and other information to which access is otherwise restricted by law, as provided by Sections 413.0512, 413.0513, and 413.0514 from the Texas State Board of Medical Examiners, the Texas Board of Chiropractic Examiners, or other occupational licensing boards regarding a physician, chiropractor, or other type of doctor who applies for registration or is registered with the division on the list of approved doctors;

(7) determine minimal modifications to the reimbursement methodology and model used by the Medicare system as necessary to meet occupational injury requirements; and

(8) monitor the quality and timeliness of decisions made by designated doctors and independent review organizations, and the imposition of sanctions regarding those decisions.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.251, eff. September 1, 2005.

Sec. 413.05115. MEDICAL QUALITY REVIEW PROCESS. (a) The division shall develop, and the commissioner shall adopt, criteria concerning the medical case review process under this subchapter. In developing the criteria, and before adopting the criteria, the division and the commissioner, as applicable, must consult with the medical advisor and seek input from potentially affected parties, including health care providers and insurance carriers.

(b) The criteria developed and adopted under this section must establish a clear process or processes:

(1) for handling complaint-based medical case reviews; and

(2) through which the division selects health care providers or other entities for a compliance audit or review.

(c) The division shall make the criteria developed and adopted under this section available on the Internet website maintained by the division.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 24, eff. September 1, 2011.

Sec. 413.0512. MEDICAL QUALITY REVIEW PANEL. (a) The medical advisor shall establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties required under Section 413.0511. The panel is not subject to Chapter 2110, Government Code.

(b) The agencies that regulate health professionals who are licensed or otherwise authorized to practice a health profession under Title 3, Occupations Code, and who are involved in the provision of health care as part of the workers' compensation system in this state shall develop lists of health care providers licensed or otherwise regulated by those agencies who have demonstrated experience in workers' compensation or utilization review. The medical advisor shall consider appointing some of the members of the medical quality review panel from the names on those lists and, when appointing members of the medical quality review panel, shall select specialists from various health care specialty fields to serve on the panel to ensure that the membership of the panel has expertise in a wide variety of health care specialty fields. The medical advisor

shall also consider nominations for the panel made by labor, business, and insurance organizations.

(c) The medical quality review panel shall recommend to the medical advisor:

(1) appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations;

(2) the addition or deletion of doctors from the list of approved doctors under Section 408.023; and

(3) the certification, revocation of certification, or denial of renewal of certification of a designated doctor under Section 408.1225.

(d) A person who serves on the medical quality review panel is immune from suit and from civil liability for an act performed, or a recommendation made, within the scope of the person's functions as a member of the panel if the person acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that person. In the event of a civil action brought against a member of the panel that arises from the person's participation on the panel, the person is entitled to the same protections afforded the commissioner under Section 402.00123.

(e) The actions of a person serving on the medical quality review panel do not constitute utilization review and are not subject to Chapter 4201, Insurance Code.

(f) A member of the medical quality review panel who reviews a specific workers' compensation case is subject to Section 408.0043, 408.0044, or 408.0045, as applicable.

(g) The medical advisor shall notify the division if the medical advisor determines that:

(1) it is no longer necessary for the medical quality review panel to include a member that practices in a particular health care specialty field; or

(2) there is a need for the panel to include a member that practices in a particular health care specialty field not represented on the panel.

(h) If the division receives notice from the medical advisor under Subsection (g)(2), the division may enter into agreements with other state agencies to access, as necessary, expertise in that health care specialty field.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 2, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.252, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 7, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 23, eff. September 1, 2011.

Sec. 413.05121. QUALITY ASSURANCE PANEL. (a) The medical advisor shall establish the quality assurance panel within the medical quality review panel to:

(1) provide an additional level of evaluation in medical case reviews; and

(2) assist the medical advisor in performing the advisor's duties under Section 413.0511(b)(6) and the medical quality review panel in performing that panel's duties under Section 413.0512.

(b) Members of the quality assurance panel shall evaluate medical care and recommend enforcement actions to the medical advisor.

(c) The quality assurance panel shall meet periodically to discuss issues and otherwise offer assistance to the medical advisor and the medical quality review panel under Subsection (a)(2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 24, eff. September 1, 2011.

Sec. 413.05122. MEDICAL QUALITY REVIEW PANEL: RULES; TRAINING. (a) The commissioner, after consultation with the medical advisor, shall adopt rules concerning the operation of the medical quality review panel, including rules that establish:

(1) the qualifications necessary for a health care provider to serve on the medical quality review panel;

(2) the composition of the medical quality review panel, including the number of members to be included on the panel and the health care specialty fields required to be represented by the

members of the panel;

(3) the maximum length of time a health care provider may serve on the medical quality review panel;

(4) a policy defining situations that constitute a conflict of interest for a member of the medical quality review panel;

(5) procedures and grounds for removing a member of the medical quality review panel from the panel, including as a ground for removal that a member is repeatedly delinquent in conducting case reviews; and

(6) a procedure through which members of the medical quality review panel are notified concerning the status and enforcement outcomes of cases resulting from the medical quality review process.

(b) In addition to the rules required under Subsection (a), the commissioner shall adopt rules concerning the training requirements for members of the medical quality review panel. The rules adopted under this subsection must ensure that panel members are fully aware of any requirements imposed by this subtitle concerning the medical quality review process and the division's goals concerning the process. The rules adopted under this subsection may require members to receive training on any topic determined by the division or the commissioner to be relevant to the operations of the panel and must require members of the panel to receive training concerning:

(1) administrative violations that affect the delivery of appropriate medical care;

(2) the confidentiality requirements described by Section 413.0513 and the immunity from liability provided to members of the panel under Section 413.054; and

(3) the medical quality review criteria adopted under Section 413.05115.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 24, eff. September 1, 2011.

Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a) Information collected, assembled, or maintained by or on behalf of the division under Section 413.0511 or 413.0512 constitutes an investigation file for purposes of Section 402.092 and may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section.

(b) Confidential information, and other information to which access is restricted by law, developed by or on behalf of the division under Section 413.0511 or 413.0512 is not subject to discovery or court subpoena in any action other than:

(1) an action to enforce this subtitle brought by the division, an appropriate licensing or regulatory agency, or an appropriate enforcement authority; or

(2) a criminal proceeding.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.253, eff. September 1, 2005.

Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL LICENSING BOARDS. (a) This section applies only to information held by or for the division, the Texas State Board of Medical Examiners, and Texas Board of Chiropractic Examiners that relates to a person who is licensed or otherwise regulated by any of those state agencies.

(b) The division and the Texas State Board of Medical Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The division and the Texas State Board of Medical Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that the sending agency determines is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect. Furnishing information by the Texas State Board of Medical Examiners to the division or by the division to the Texas State Board of Medical Examiners under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(c) Information that is received by the division from the Texas State Board of Medical Examiners or by the Texas State Board of Medical Examiners from the division remains confidential, may not be

disclosed by the division except as necessary to further the investigation, and shall be exempt from disclosure under Sections 402.092 and 413.0513.

(d) The division and the Texas Board of Chiropractic Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The division and the Texas Board of Chiropractic Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. Furnishing information by the Texas Board of Chiropractic Examiners to the division or by the division to the Texas Board of Chiropractic Examiners under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(e) Information that is received by the division from the Texas Board of Chiropractic Examiners or by the Texas Board of Chiropractic Examiners from the division remains confidential and may not be disclosed by the division except as necessary to further the investigation unless the agency sharing the information and the agency receiving the information agree to use of the information by the receiving agency for enforcement purposes.

(f) The division and the Texas State Board of Medical Examiners shall provide information to each other on all disciplinary actions taken.

(g) The division and the Texas Board of Chiropractic Examiners shall provide information to each other on all disciplinary actions taken.

Added by Acts 2003, 78th Leg., ch. 963, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.254, eff. September 1, 2005.

Sec. 413.0515. REPORTS OF CHIROPRACTOR VIOLATIONS. (a)

Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(14), eff. September 1, 2021.

(b) If the division or the Texas Board of Chiropractic Examiners discovers an act or omission by a chiropractor that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the discovering agency shall report in a widely used electronic format that act or omission to the other agency.

Added by Acts 2003, 78th Leg., ch. 963, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.255, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.41, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 22, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(14), eff. September 1, 2021.

Sec. 413.052. PRODUCTION OF DOCUMENTS. The commissioner by rule shall establish procedures to enable the division to compel the production of documents.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.256, eff. September 1, 2005.

Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The commissioner by rule shall establish standards of reporting and billing governing both form and content.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.257, eff. September 1, 2005.

Sec. 413.054. IMMUNITY FROM LIABILITY. (a) A person who performs services for the division as a designated doctor, an independent medical examiner, a doctor performing a medical case review, or a member of a peer review panel has the same immunity from liability as the commissioner under Section 402.00123.

(b) Immunity from liability under this section does not apply to a person providing medical treatment to an injured employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.258, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 25, eff. September 1, 2011.

Sec. 413.055. INTERLOCUTORY ORDERS; REIMBURSEMENT. (a) The commissioner may enter an interlocutory order for the payment of all or part of medical benefits. The order may address accrued benefits, future benefits, or both accrued benefits and future benefits.

(b) The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an order entered under Subsection (a) if the order is reversed or modified by final arbitration, order, or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually.

(c) A party that disputes an order entered under Subsection (a) is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code. The order is binding during the pendency of the appeal.

Added by Acts 1999, 76th Leg., ch. 955, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.259, eff. September 1, 2005.

CHAPTER 414. ENFORCEMENT OF COMPLIANCE AND PRACTICE REQUIREMENTS

Sec. 414.002. MONITORING DUTIES. (a) The division shall monitor for compliance with commissioner rules, this subtitle, and other laws relating to workers' compensation the conduct of persons subject to this subtitle. Persons to be monitored include:

(1) persons claiming benefits under this subtitle;

(2) employers;

(3) insurance carriers;

(4) attorneys and other representatives of parties; and

(5) health care providers.

(b) The division shall monitor conduct described by Sections 415.001, 415.002, and 415.003 and refer persons engaging in that conduct to the division of hearings.

(c) The division shall monitor payments made to health care providers on behalf of workers' compensation claimants who receive medical services to ensure that the payments are made on time as required by Section 408.027.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.260, eff. September 1, 2005.

Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this chapter that:

(1) violate this subtitle, commissioner rules, or a commissioner order or decision; or

(2) otherwise adversely affect the workers' compensation system of this state.

(b) The commissioner shall use the information compiled under this section to impose appropriate penalties and other sanctions under Chapters 415 and 416.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.261, eff. September 1, 2005.

Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS. (a) The division shall review regularly the workers' compensation records of insurance carriers as required to ensure compliance with this subtitle.

(b) Each insurance carrier, the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under this subtitle shall:

(1) cooperate with the division;

(2) make available to the division any records or other necessary information; and

(3) allow the division access to the information at reasonable times at the person's offices.

(c) The insurance carrier, other than a governmental entity, shall pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the office of the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 414.005. INVESTIGATION UNIT. (a) The division shall maintain an investigation unit to conduct investigations relating to:

(1) alleged violations of this subtitle, commissioner rules, or a commissioner order or decision, with particular emphasis on violations of Chapters 415 and 416; and

(2) alleged offenses under this subtitle, with particular emphasis on offenses under Chapter 418.

(b) As often as the commissioner considers necessary, the commissioner or the investigation unit may review the operations of a person regulated by the division, including an agent of the person performing functions regulated by the division, to determine compliance with this subtitle.

(c) The review described by Subsection (b) may include on-site visits to the person's premises. The commissioner is not required to announce an on-site visit in advance.

(d) During an on-site visit, a person regulated by the division shall make available to the division all records relating to the person's participation in the workers' compensation system.

(e) The commissioner by rule shall prescribe the procedures to be used for both announced and unannounced on-site visits authorized

under this section, including specifying the types of records subject to inspection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.262, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 26, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 463 (H.B. 2053), Sec. 1, eff. June 9, 2017.

Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. (a) For further investigation or the institution of appropriate proceedings, the division may refer the persons involved in a case subject to an investigation to other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general.
(b) The division may provide technical or litigation assistance regarding the investigation referred under Subsection (a) to the appropriate authority.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.263, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 463 (H.B. 2053), Sec. 2, eff. June 9, 2017.

Sec. 414.007. MEDICAL REVIEW. The division shall review information concerning alleged violations of this subtitle regarding the provision of medical benefits, commissioner rules, or a commissioner order or decision, and, under Sections 414.005 and 414.006 and Chapters 415 and 416, may conduct investigations, make referrals to other authorities, and initiate administrative violation proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.264, eff.

September 1, 2005.

CHAPTER 415. ADMINISTRATIVE VIOLATIONS
SUBCHAPTER A. PROHIBITED ACTS

Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee or legal beneficiary commits an administrative violation if the person:

(1) fails without good cause to attend a dispute resolution proceeding within the division;

(2) attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate an agreement or settlement;

(3) commits an act of barratry under Section 38.12, Penal Code;

(4) withholds from the employee's or legal beneficiary's weekly benefits or from advances amounts not authorized to be withheld by the division;

(5) enters into a settlement or agreement without the knowledge, consent, and signature of the employee or legal beneficiary;

(6) takes a fee or withholds expenses in excess of the amounts authorized by the division;

(7) refuses or fails to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;

(8) violates the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas;

(9) misrepresents the provisions of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(10) violates a commissioner rule; or

(11) fails to comply with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.265, eff. September 1, 2005.

Sec. 415.002. ADMINISTRATIVE VIOLATION BY INSURANCE CARRIER. (a) An insurance carrier or its representative commits an administrative violation if that person:

(1) misrepresents a provision of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(2) terminates or reduces benefits without substantiating evidence that the action is reasonable and authorized by law;

(3) instructs an employer not to file a document required to be filed with the division;

(4) instructs or encourages an employer to violate a claimant's right to medical benefits under this subtitle;

(5) fails to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the insurance carrier;

(6) allows an employer, other than a self-insured employer, to dictate the methods by which and the terms on which a claim is handled and settled;

(7) fails to confirm medical benefits coverage to a person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the insurance carrier;

(8) fails, without good cause, to attend a dispute resolution proceeding within the division;

(9) attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate agreement or settlement;

(10) adjusts a workers' compensation claim in a manner contrary to license requirements for an insurance adjuster, including the requirements of Chapter 4101, Insurance Code, or the rules of the commissioner of insurance;

(11) fails to process claims promptly in a reasonable and prudent manner;

(12) fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(13) misrepresents the reason for not paying benefits or terminating or reducing the payment of benefits;

(14) dates documents to misrepresent the actual date of the initiation of benefits;

(15) makes a notation on a draft or other instrument

indicating that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the division;

(16) fails or refuses to pay benefits from week to week as and when due directly to the person entitled to the benefits;

(17) fails to pay an order awarding benefits;

(18) controverts a claim if the evidence clearly indicates liability;

(19) unreasonably disputes the reasonableness and necessity of health care;

(20) violates a commissioner rule;

(21) makes a statement denying all future medical care for a compensable injury; or

(22) fails to comply with a provision of this subtitle.

(b) An insurance carrier or its representative does not commit an administrative violation under Subsection (a)(6) by allowing an employer to:

(1) freely discuss a claim;

(2) assist in the investigation and evaluation of a claim; or

(3) attend a proceeding of the division and participate at the proceeding in accordance with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.266, eff. September 1, 2005.

Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE PROVIDER. A health care provider commits an administrative violation if the person:

(1) submits a charge for health care that was not furnished;

(2) administers improper, unreasonable, or medically unnecessary treatment or services;

(3) makes an unnecessary referral;

(4) violates the division's fee and treatment guidelines;

(5) violates a commissioner rule; or

(6) fails to comply with a provision of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.267, eff. September 1, 2005.

Sec. 415.0035. ADDITIONAL VIOLATIONS BY INSURANCE CARRIER OR HEALTH CARE PROVIDER. (a) An insurance carrier or its representative commits an administrative violation if that person:

(1) fails to submit to the division a settlement or agreement of the parties;

(2) fails to timely notify the division of the termination or reduction of benefits and the reason for that action; or

(3) denies preauthorization in a manner that is not in accordance with rules adopted by the commissioner under Section 413.014.

(b) A health care provider commits an administrative violation if that person:

(1) fails or refuses to timely file required reports or records; or

(2) fails to file with the division the annual disclosure statement required by Section 413.041.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

(e) A person regulated by the division under this title commits an administrative violation if the person violates this subtitle or a rule, order, or decision of the commissioner.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.06, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.268, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 27, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(2), eff. September 1, 2011.

Sec. 415.0036. ADMINISTRATIVE VIOLATION BY PERSON PERFORMING CERTAIN CLAIM SERVICES. (a) This section applies to an insurance adjuster, case manager, or other person who has authority under this title to request the performance of a service affecting the delivery of benefits to an injured employee or who actually performs such a service, including peer reviews, performance of required medical examinations, or case management.

(b) A person described by Subsection (a) commits an administrative violation if the person offers to pay, pays, solicits, or receives an improper inducement relating to the delivery of benefits to an injured employee or improperly attempts to influence the delivery of benefits to an injured employee, including through the making of improper threats. This section applies to each person described by Subsection (a) who is a participant in the workers' compensation system of this state and to an agent of such a person.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(3), eff. September 1, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 198 (H.B. 34), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(3), eff. September 1, 2011.

Sec. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS PROHIBITED; ADMINISTRATIVE VIOLATION. (a) A health care provider commits a violation if the person charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) A violation under this section is an administrative violation. A health care provider may be liable for an administrative penalty regardless of whether a criminal action is

initiated under Section 413.043.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.269, eff. September 1, 2005.

Sec. 415.006. EMPLOYER CHARGEBACKS PROHIBITED; ADMINISTRATIVE VIOLATION. (a) An employer may not collect from an employee, directly or indirectly, a premium or other fee paid by the employer to obtain workers' compensation insurance coverage, except as provided by Sections 406.123 and 406.144.

(b) An employee or legal beneficiary of an employee has a right of action to recover damages against an employer who violates Subsection (a).

(c) A person commits an administrative violation if the person violates Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.270, eff. September 1, 2005.

Sec. 415.007. LOANS BY ATTORNEYS PROHIBITED. (a) An attorney who represents a claimant before the division may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable for the credit extended to the claimant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.271, eff. September 1, 2005.

Sec. 415.008. FRAUDULENTLY OBTAINING OR DENYING BENEFITS; ADMINISTRATIVE VIOLATION. (a) A person commits an administrative violation if the person, to obtain or deny a payment of a workers'

compensation benefit or the provision of a benefit for the person or another, knowingly or intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act described by Subdivision (1), (2), or (3).

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(5), eff. September 1, 2011.

(c) A person who has obtained an excess payment in violation of this section is liable for full repayment plus interest computed at the rate prescribed by Section 401.023. If the person is an employee or person claiming death benefits, the repayment may be redeemed from future income or death benefits to which the person is otherwise entitled.

(d) An employer who has committed an act described by Subsection (a) that results in denial of payments is liable for the past benefit payments that would otherwise have been payable by the insurance carrier during the period of denial, plus interest computed at the rate prescribed by Section 401.023. The insurance carrier is not liable for benefit payments during the period of denial.

(e) If an administrative violation proceeding is pending under this section against an employee or person claiming death benefits, the division may not take final action on the person's benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.272, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 28, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(5), eff. September 1, 2011.

Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION. A person commits an administrative violation if the person brings, prosecutes, or defends an action for benefits under this subtitle or requests initiation of an administrative violation proceeding that

does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.273, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 29, eff. September 1, 2011.

Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION. A party to an agreement approved by the division commits an administrative violation if the person breaches a provision of the agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.274, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 29, eff. September 1, 2011.

Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION WORKERS' COMPENSATION CLAIM AND PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION. (a) In this section, "license holder" has the meaning assigned by Section 91.001.

(a-1) Except as provided by Subsection (c), a license holder commits a violation if the license holder fails to provide the information required by Sections 91.042(g) and (h).

(b) A violation under Subsection (a) is an administrative violation.

(c) A license holder does not commit an administrative violation under this section if the license holder requested the information required by Sections 91.042(g) and (h) from the license holder's workers' compensation insurance provider and the provider does not provide the information to the license holder within the required time. A license holder shall notify the Texas Department of Insurance of a provider's failure to comply with the requirements of

Section 2051.151, Insurance Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. 625), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 20, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 21, eff. September 1, 2013.

SUBCHAPTER B. SANCTIONS

Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES. (a) In addition to any other provisions in this subtitle relating to violations, a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this subtitle or a rule, order, or decision of the commissioner, including an emergency cease and desist order issued under Section 415.0211. In addition to any sanctions, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation. The administrative penalty shall not exceed $25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation. The commissioner's authority under this chapter is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.

(b) The commissioner may enter a cease and desist order against a person who:

(1) commits repeated administrative violations;

(2) allows, as a business practice, the commission of repeated administrative violations; or

(3) violates an order or decision of the commissioner.

(c) In assessing an administrative penalty:

(1) the commissioner shall consider:

(A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(B) the history and extent of previous administrative violations;

(C) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(D) the penalty necessary to deter future violations;

(E) whether the administrative violation has negative impact on the delivery of benefits to an injured employee;

(F) the history of compliance with electronic data interchange requirements; and

(G) other matters that justice may require; and

(2) the commissioner shall, to the extent reasonable, consider the economic benefit resulting from the prohibited act.

(c-1) The commissioner shall adopt rules that require the division, in the assessment of an administrative penalty against a person, to communicate to the person information about the penalty, including:

(1) the relevant statute or rule violated;

(2) the conduct that gave rise to the violation; and

(3) the factors considered in determining the penalty.

(c-2) In determining whether to assess an administrative penalty involving a claim in which the insurance carrier provided notice under Section 409.021(a-3), the commissioner shall consider whether:

(1) the employee cooperated with the insurance carrier's investigation of the claim;

(2) the employee timely authorized access to the applicable medical records before the insurance carrier's deadline to:

(A) begin payment of benefits; or

(B) notify the division and the employee of the insurance carrier's refusal to pay benefits; and

(3) the insurance carrier conducted an investigation of the claim, applied the statutory presumptions under Subchapter B, Chapter 607, Government Code, and expedited medical benefits under Section 504.055.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter C.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.07, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.275, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 31, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 185 (S.B. 1895), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 701 (S.B. 2551), Sec. 5, eff. June 10, 2019.

Sec. 415.0211. EMERGENCY CEASE AND DESIST ORDER. (a) The commissioner ex parte may issue an emergency cease and desist order if:

(1) the commissioner believes a person regulated by the division under this title is engaging in conduct violating a law, rule, or order; and

(2) the commissioner believes that the alleged conduct under Subdivision (1) will result in harm to the health, safety, or welfare of another person.

(b) On issuance of an order under Subsection (a), the commissioner shall serve on the affected person an order that contains a statement of the charges and requires the person immediately to cease and desist from the acts, methods, or practices stated in the order. The commissioner shall serve the order by registered or certified mail, return receipt requested, to the affected person's last known address. The order is final on the 31st day after the date the affected person receives the order, unless the affected person requests a hearing under Subsection (c).

(c) A person affected by an order is entitled to request a hearing to contest the order. The affected person must request the hearing not later than the 30th day after the date the person receives the order required by Subsection (b). A request to contest an order must:

(1) be in writing;

(2) be directed to the commissioner; and

(3) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the commissioner shall serve notice of the time and place of the hearing. The hearing is subject to the procedures for a contested case under Chapter 2001,

Government Code. The hearing shall be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date. At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed. Following receipt of the proposal for decision from the State Office of Administrative Hearings regarding the hearing, the commissioner shall wholly or partly affirm, modify, or set aside the order.

(e) Pending a hearing under this section, an order continues in effect unless the order is stayed by the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 32, eff. September 1, 2011.

Sec. 415.0215. SANCTIONS. (a) The division may impose sanctions against any person regulated by the division under this subtitle.

(b) Only the commissioner may impose:

(1) a sanction that deprives a person of the right to practice before the division or of the right to receive remuneration under this subtitle for a period exceeding 30 days; or

(2) another sanction suspending for more than 30 days or revoking a license, certification, or permit required for practice in the field of workers' compensation.

(c) A sanction imposed by the division is binding pending appeal.

Transferred and redesignated from Labor Code, Section 402.072 by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 33, eff. September 1, 2011.

Sec. 415.023. COMMISSION OF WRONGFUL ACT AS MATTER OF PRACTICE; ADMINISTRATIVE VIOLATION. (a) A person who commits an administrative violation under Section 415.001, 415.002, 415.003, or 415.0035 as a matter of practice is subject to an applicable rule adopted under Subsection (b) in addition to the penalty assessed for the violation.

(b) The commissioner may adopt rules providing for:

(1) a reduction or denial of fees;

(2) public or private reprimand by the commissioner;

(3) suspension from practice before the division;

(4) restriction, suspension, or revocation of the right to receive reimbursement under this subtitle; or

(5) referral and petition to the appropriate licensing authority for appropriate disciplinary action, including the restriction, suspension, or revocation of the person's license.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.08, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.276, eff. September 1, 2005.

Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT; ADMINISTRATIVE VIOLATION. A material and substantial breach of a settlement agreement that establishes a compliance plan is an administrative violation. In determining the amount of the penalty, the commissioner shall consider the total volume of claims handled by the insurance carrier.

Added by Acts 1997, 75th Leg., ch. 1443, Sec. 9, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.277, eff. September 1, 2005.

Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR PENALTY. A reference in this code or other law, or in rules of the former Texas Workers' Compensation Commission or the commissioner, to a particular class of violation, administrative violation, or penalty shall be construed as a reference to an administrative penalty. An administrative penalty may not exceed $25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.278, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

SUBCHAPTER C. PROCEDURES

Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS. Any person may request the initiation of administrative violation proceedings by filing a written allegation with the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.279, eff. September 1, 2005.

Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. (a) If investigation by the division indicates that an administrative violation has occurred, the division shall notify the person alleged to have committed the violation in writing of:

(1) the charge;

(2) the proposed sanction;

(3) the right to consent to the charge and the sanction; and

(4) the right to request a hearing.

(b) Not later than the 20th day after the date on which notice is received, the charged party shall:

(1) remit the amount of the sanction to the division or otherwise consent to the imposed sanction; or

(2) submit to the division a written request for a hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.280, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a charged party fails to respond as required under Section 415.032, the division shall initiate enforcement proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.281, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

Sec. 415.034. HEARING PROCEDURES. On the request of the charged party or the commissioner, the State Office of Administrative Hearings shall set a hearing. The hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code (the administrative procedure law).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.46, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.282, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

Sec. 415.035. JUDICIAL REVIEW. A decision under Section 415.034 is subject to judicial review in the manner provided for judicial review under Chapter 2001, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.283, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 140 (H.B. 1456), Sec. 1, eff. May 26, 2017.

Sec. 415.036. STANDARD OF JUDICIAL REVIEW OF COMMISSIONER'S ORDER. An order of the commissioner is subject to judicial review under the substantial evidence rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 35, eff. September 1, 2011.

CHAPTER 416. ACTIONS AGAINST INSURANCE CARRIER FOR BREACH OF DUTY

Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An action taken by an insurance carrier under an order of the commissioner or recommendations of a benefit review officer under Section 410.031, 410.032, or 410.033 may not be the basis of a cause of action against the insurance carrier for a breach of the duty of good faith and fair dealing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.284, eff. September 1, 2005.

Sec. 416.002. EXEMPLARY DAMAGES. (a) In an action against an insurance carrier for a breach of the duty of good faith and fair dealing, recovery of exemplary damages is limited to the greater of:

(1) four times the amount of actual damages; or

(2) $250,000.

(b) An action against a governmental entity or unit or an employee of a governmental entity or unit for a breach of the duty of good faith and fair dealing is governed by Chapters 101 and 104, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 417. THIRD-PARTY LIABILITY

Sec. 417.001. THIRD-PARTY LIABILITY. (a) An employee or legal beneficiary may seek damages from a third party who is or becomes liable to pay damages for an injury or death that is compensable under this subtitle and may also pursue a claim for workers' compensation benefits under this subtitle.

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal

beneficiary. The insurance carrier's subrogation interest is limited to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. If the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest, the insurance carrier shall:

(1) reimburse itself and pay the costs from the amount recovered; and

(2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.

(c) If a claimant receives benefits from the subsequent injury fund, the division is:

(1) considered to be the insurance carrier under this section for purposes of those benefits;

(2) subrogated to the rights of the claimant; and

(3) entitled to reimbursement in the same manner as the insurance carrier.

(d) The division shall remit money recovered under this section to the comptroller for deposit to the credit of the subsequent injury fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 204, Sec. 4.09, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.285, eff. September 1, 2005.

Sec. 417.002. RECOVERY IN THIRD-PARTY ACTION. (a) The net amount recovered by a claimant in a third-party action shall be used to reimburse the insurance carrier for benefits, including medical benefits, that have been paid for the compensable injury.

(b) Any amount recovered that exceeds the amount of the reimbursement required under Subsection (a) shall be treated as an advance against future benefits, including medical benefits, that the claimant is entitled to receive under this subtitle.

(c) If the advance under Subsection (b) is adequate to cover

all future benefits, the insurance carrier is not required to resume the payment of benefits. If the advance is insufficient, the insurance carrier shall resume the payment of benefits when the advance is exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 417.003. ATTORNEY'S FEE FOR REPRESENTATION OF INSURANCE CARRIER'S INTEREST. (a) An insurance carrier whose interest is not actively represented by an attorney in a third-party action shall pay a fee to an attorney representing the claimant in the amount agreed on between the attorney and the insurance carrier. In the absence of an agreement, the court shall award to the attorney payable out of the insurance carrier's recovery:

(1) a reasonable fee for recovery of the insurance carrier's interest that may not exceed one-third of the insurance carrier's recovery; and

(2) a proportionate share of expenses.

(b) An attorney who represents the claimant and is also to represent the subrogated insurance carrier shall make a full written disclosure to the claimant before employment as an attorney by the insurance carrier. The claimant must acknowledge the disclosure and consent to the representation. A signed copy of the disclosure shall be furnished to all concerned parties and made a part of the division file. A copy of the disclosure with the claimant's consent shall be filed with the claimant's pleading before a judgment is entered and approved by the court. The claimant's attorney may not receive a fee under this section to which the attorney is otherwise entitled under an agreement with the insurance carrier unless the attorney complies with the requirements of this subsection.

(c) If an attorney actively representing the insurance carrier's interest actively participates in obtaining a recovery, the court shall award and apportion between the claimant's and the insurance carrier's attorneys a fee payable out of the insurance carrier's subrogation recovery. In apportioning the award, the court shall consider the benefit accruing to the insurance carrier as a result of each attorney's service. The total attorney's fees may not exceed one-third of the insurance carrier's recovery.

(d) For purposes of determining the amount of an attorney's fee

under this section, only the amount recovered for benefits, including medical benefits, that have been paid by the insurance carrier may be considered.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.286, eff. September 1, 2005.

Sec. 417.004. EMPLOYER LIABILITY TO THIRD PARTY. In an action for damages brought by an injured employee, a legal beneficiary, or an insurance carrier against a third party liable to pay damages for the injury or death under this chapter that results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury or death occurred, a written agreement with the third party to assume the liability.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 418. CRIMINAL INVESTIGATIONS AND PENALTIES

Sec. 418.001. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) A person commits an offense if the person, with the intent to obtain or deny payment of benefits, including medical benefits, under this subtitle or Subtitle C, for himself or another, knowingly or intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact; or

(3) fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the value of the benefits is less than $2,500; and

(2) a state jail felony if the value of the benefits is $2,500 or more.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.47, eff. Sept. 1, 1995.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 463 (H.B. 2053), Sec. 4, eff. June 9, 2017.

Sec. 418.002. PENALTY FOR FRAUDULENTLY OBTAINING WORKERS' COMPENSATION INSURANCE COVERAGE. (a) A person commits an offense if the person, with the intent to obtain workers' compensation insurance coverage under the workers' compensation insurance laws of this state or to avoid payment of premiums due for that coverage, for himself or another, knowingly or intentionally:

(1) makes a false statement;

(2) misrepresents or conceals a material fact; or

(3) makes a false entry in, fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the amount of premium avoided is less than $2,500; and

(2) a state jail felony if the amount of the premium avoided is $2,500 or more.

(c) The court may order a person to pay restitution to an insurance company, including the Texas Mutual Insurance Company, if the person commits an offense under this section.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.47, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1195, Sec. 2.12, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 463 (H.B. 2053), Sec. 5, eff. June 9, 2017.

Sec. 418.003. ELECTION OF PROSECUTION. A person who commits an offense under this chapter may be prosecuted under this chapter or any other law of this state under which the person may be prosecuted.

Added by Acts 2007, 80th Leg., R.S., Ch. 429 (S.B. 1627), Sec. 1, eff. June 15, 2007.

Sec. 418.004. SUBPOENA AUTHORITY. (a) The commissioner may

issue a subpoena to compel the attendance and testimony of a witness or the production of materials relevant to an investigation of an offense under this chapter.

(b) The commissioner may issue a subpoena under Subsection (a) regarding a witness or materials located in this state or in another state.

Added by Acts 2017, 85th Leg., R.S., Ch. 463 (H.B. 2053), Sec. 6, eff. June 9, 2017.

CHAPTER 419. MISUSE OF DIVISION NAME

Sec. 419.001. DEFINITIONS. (a) In this chapter:

(1) "Representation of the division's logo" includes a nonexact representation that is deceptively similar to the logo used by the division.

(2) "Representation of the state seal" has the meaning assigned by Section 17.08(a)(2), Business & Commerce Code.

(b) A term or representation is "deceptively similar" for purposes of this chapter if:

(1) a reasonable person would believe that the term or representation is in any manner approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the circumstances under which the term is used could mislead a reasonable person as to its identity.

(c) For purposes of this chapter, a person acts in a "deceptive manner" if the person knows or should know that the person's actions would convey, or could reasonably be interpreted or construed as conveying, the false impression that:

(1) an item is approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the person represents, speaks for, or has an authorization from the division, the department, this state, or an agency of this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 743 (S.B. 381), Sec. 1, eff.

September 1, 2013.

Sec. 419.002. MISUSE OF DIVISION'S NAME OR SYMBOLS PROHIBITED. (a) Except as authorized by law, a person, in connection with any impersonation, advertisement, solicitation, business name, business activity, business document, product, or service made or offered by the person regarding workers' compensation coverage or benefits, may not knowingly use or cause to be used in a deceptive manner:

(1) the words "Texas Department of Insurance," "Department of Insurance," "Texas Workers' Compensation," or "division of workers' compensation";

(2) any term using both "Texas" and "Workers' Compensation" or any term using both "Texas" and "Workers' Comp";

(3) the initials "T.D.I."; or

(4) any combination or variation of the words or initials, or any term deceptively similar to the words or initials, described by Subdivisions (1)-(3).

(b) A person subject to Subsection (a) may not knowingly use or cause to be used in a deceptive manner a word, term, or initials described by Subsection (a) alone or in conjunction with:

(1) the state seal or a representation of the state seal;

(2) a picture or map of this state; or

(3) the official logo of the department or the division or a representation of the department's or division's logo.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 743 (S.B. 381), Sec. 2, eff. September 1, 2013.

Sec. 419.003. RULES. The commissioner may adopt rules relating to the regulation of the use of the division's name and other rules as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.004. CIVIL PENALTY. (a) A person who violates Section 419.002 or a rule adopted under this chapter is liable for a civil penalty not to exceed $5,000 for each violation.

(b) The attorney general, at the request of the commissioner, shall bring an action to collect a civil penalty under this section in a district court in Travis County.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.005. ADMINISTRATIVE PENALTY. (a) The division may assess an administrative penalty against a person who violates Section 419.002 or a rule adopted under this chapter.

(b) An administrative penalty imposed under this section is subject to the procedural requirements adopted for administrative penalties imposed under Section 415.021.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.006. INJUNCTIVE RELIEF. (a) At the request of the commissioner, the attorney general or a district attorney may bring an action in district court in Travis County to enjoin or restrain a violation or threatened violation of this chapter on a showing that a violation has occurred or is likely to occur.

(b) The division may recover the costs of investigating an alleged violation of this chapter if an injunction is issued.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.007. REMEDIES NOT EXCLUSIVE. The remedies provided by this chapter are not exclusive and may be sought in any combination determined by the commissioner as necessary to enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

SUBTITLE B. DISCRIMINATION ISSUES
CHAPTER 451. DISCRIMINATION PROHIBITED

Sec. 451.001. DISCRIMINATION AGAINST EMPLOYEES PROHIBITED. A person may not discharge or in any other manner discriminate against an employee because the employee has:

(1) filed a workers' compensation claim in good faith;

(2) hired a lawyer to represent the employee in a claim;

(3) instituted or caused to be instituted in good faith a proceeding under Subtitle A; or

(4) testified or is about to testify in a proceeding under Subtitle A.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 451.002. REMEDIES; BURDEN OF PROOF. (a) A person who violates Section 451.001 is liable for reasonable damages incurred by the employee as a result of the violation.

(b) An employee discharged in violation of Section 451.001 is entitled to reinstatement in the former position of employment.

(c) The burden of proof in a proceeding under this section is on the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 451.0025. WAIVER OF IMMUNITY; PERMISSION FOR FIRST RESPONDER TO SUE. (a) In this section, "first responder" has the meaning assigned by Section 421.095, Government Code.

(b) A first responder who alleges a violation of Section 451.001 by a state or local governmental entity that employs the first responder may sue the governmental entity for the relief provided by this chapter. Sovereign or governmental immunity from suit is waived and abolished to the extent of liability created by this chapter.

(c) To the extent a person has official or individual immunity from a claim for damages, this section does not affect that immunity.

Added by Acts 2017, 85th Leg., R.S., Ch. 810 (H.B. 451), Sec. 1, eff. September 1, 2017.

Sec. 451.003. INJUNCTION. A district court may restrain, for cause shown, a violation of Section 451.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBTITLE C. WORKERS' COMPENSATION INSURANCE COVERAGE FOR CERTAIN GOVERNMENT EMPLOYEES

CHAPTER 501. WORKERS' COMPENSATION INSURANCE COVERAGE FOR STATE EMPLOYEES, INCLUDING EMPLOYEES UNDER THE DIRECTION OR CONTROL OF THE BOARD OF REGENTS OF TEXAS TECH UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Compensable injury" has the meaning assigned to that term under Subtitle A.

(3) "Director" means the director of the State Office of Risk Management.

(4) "Office" means the State Office of Risk Management.

Text of subdivision effective until January 1, 2025

(5) "Employee" means a person who is:

(A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;

(B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state;

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:

(i) Article 2.12, Code of Criminal Procedure; or

(ii) Articles 14.03(d) and (g), Code of Criminal Procedure;

(D) a member of the state military forces, as defined by Section 437.001, Government Code, who is engaged in authorized training or duty;

(E) a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by Texas Task Force 1; or

(F) an intrastate fire mutual aid system team member or a regional incident management team member, as defined by Section 88.126, Education Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by the Texas Division of Emergency Management on behalf of an intrastate fire mutual aid system team or a regional incident management team, as applicable.

Text of subdivision effective on January 1, 2025

(5) "Employee" means a person who is:

(A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;

(B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state;

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:

(i) Article 2A.001, Code of Criminal Procedure; or

(ii) Articles 14.03(d) and (g), Code of Criminal Procedure;

(D) a member of the state military forces, as defined by Section 437.001, Government Code, who is engaged in authorized training or duty;

(E) a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by Texas Task Force 1; or

(F) an intrastate fire mutual aid system team member or a regional incident management team member, as defined by Section 88.126, Education Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by the Texas Division of Emergency Management on behalf of an intrastate fire mutual aid system team or a regional incident management team, as applicable.

(5-a) "Post-traumatic stress disorder" has the meaning assigned by Section 504.019.

(6) "State agency" includes a department, board, commission, or institution of this state.

(6-a) "State active duty" and "Texas military forces" have the meanings assigned by Section 437.001, Government Code.

(7) "Board" means the risk management board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1205, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 14.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 644, Sec. 3, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.288, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 2B.09, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.15, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 991 (H.B. 919), Sec. 4, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 660 (H.B. 90), Sec. 8, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.130, eff. January 1, 2025.

Sec. 501.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:
(1) Chapter 401, other than Section 401.012 defining "employee";
(2) Chapter 402;
(3) Chapter 403, other than Sections 403.001-403.005;
(4) Chapters 404 and 405;
(5) Subchapters B and D through H, Chapter 406, other than Sections 406.071(a), 406.073, and 406.075;
(6) Chapter 408, other than Sections 408.001(b) and (c);
(7) Chapters 409 and 410;
(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;
(9) Chapters 412-417; and
(10) Chapter 451.
(b) For the purposes of this chapter and Chapter 451, the

individual state agency shall be considered the employer.

(c) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "insurer" or "employer" means "state," "office," "director," or "state agency," as applicable.

(d) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the state, a state agency, or an employee of the state beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

(e) For the purposes of this chapter and Chapter 451, the adjutant general is considered the employer of a member of the state military forces while engaged in authorized training or duty.

(f) For purposes of this chapter and Subchapter D, Chapter 88, Education Code, the Texas Engineering Extension Service of The Texas A&M University System shall perform all duties of an employer in relation to a Texas Task Force 1 member who is injured and receives benefits under this chapter.

(g) For purposes of this chapter and Section 88.126, Education Code, the Texas A&M Forest Service shall perform all duties of an employer in relation to an intrastate fire mutual aid system team member or a regional incident management team member who is injured and receives benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 2.01, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1098, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1205, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 644, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.289, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 991 (H.B. 919), Sec. 5, eff. September 1, 2017.

Sec. 501.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) The provisions of this chapter and the rules of the board affecting an employee also apply to the legal beneficiary of a deceased employee.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1997, 75th Leg., ch. 1098, Sec. 4, eff. Sept. 1, 1997.

SUBCHAPTER B. COVERAGE

Sec. 501.021. WORKERS' COMPENSATION COVERAGE FOR EMPLOYEES. An employee with a compensable injury is entitled to compensation by the director as provided by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.022. EMPLOYEES OF COMPONENT INSTITUTIONS OR SYSTEM ADMINISTRATION OF TEXAS TECH UNIVERSITY SYSTEM. (a) An eligible employee of Texas Tech University, Texas Tech University Health Sciences Center, Angelo State University, Texas Tech University System Administration, Texas Tech University Health Sciences Center at El Paso, Midwestern State University, or another agency under the direction and control of the board of regents of the Texas Tech University System is entitled to participate in the workers' compensation program for state employees provided under this chapter.

(b) For purposes of this chapter, Texas Tech University is a state agency and shall act in the capacity of employer.

(c) For purposes of this chapter, Texas Tech University Health Sciences Center is a state agency and shall act in the capacity of employer.

(d) For purposes of this chapter, Angelo State University is a state agency and shall act in the capacity of employer.

(e) For purposes of this chapter, Texas Tech University System Administration is a state agency and shall act in the capacity of employer.

(f) For purposes of this chapter, Texas Tech University Health Sciences Center at El Paso is a state agency and shall act in the capacity of employer.

(g) For purposes of this chapter, Midwestern State University is a state agency and shall act in the capacity of employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 2.02, eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 179 (H.B. 3564), Sec. 12, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1173 (S.B. 907), Sec. 11, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1173 (S.B. 907), Sec. 12, eff. June 19, 2015.

Acts 2021, 87th Leg., R.S., Ch. 417 (H.B. 1522), Sec. 16, eff. September 1, 2021.

Sec. 501.024. EXCLUSIONS FROM COVERAGE. The following persons are excluded from coverage as an employee under this chapter:

(1) a person performing personal services for the state as an independent contractor or volunteer;

(2) a person who at the time of injury was performing services for the federal government and who is covered by some form of federal workers' compensation insurance;

(3) a prisoner or inmate of a prison or correctional institution, other than a work program participant participating in a Texas Correctional Industries contract described by Section 497.006, Government Code;

(4) a client or patient of a state agency;

(5) a person employed by the Texas Department of Transportation who is covered under Chapter 505;

(6) a person employed by The University of Texas System who is covered by Chapter 503; and

(7) a person employed by The Texas A&M University System who is covered by Chapter 502.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1188, Sec. 1.45, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1205, Sec. 7, eff. Sept. 1, 1999.

Sec. 501.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside the state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.026. COVERAGE FOR CERTAIN SERVICES PROVIDED BY VOLUNTEERS. (a) In this section, "disaster" means an occurrence in which the governor has issued a declaration of a state of disaster under Chapter 418, Government Code, or another occurrence that initiates the state emergency management plan.

(b) A person not otherwise covered by workers' compensation insurance for the services performed under this section who performs volunteer services for the state in a disaster or in scheduled emergency response training under the direction of an officer or employee of the state is entitled to medical benefits under this chapter for an injury sustained by the person in the course of providing those services. For purposes of this subsection, an injury is not sustained in the course of providing services in a disaster unless the injury occurs while the state of disaster may reasonably be considered to be in existence.

(c) A person employed by a political subdivision who is injured in the course of providing services described by Subsection (b) is entitled to benefits as provided by that subsection only if the services are performed outside the jurisdiction of the political subdivision by which the person is employed.

(d) A person entitled to benefits under this section may receive the benefits only if the person seeks medical attention from a doctor for the injury not later than 48 hours after the occurrence of the injury or after the date the person knew or should have known the injury occurred. The person shall comply with the requirements of Section 409.001 by providing notice of the injury to the division or the state agency with which the officer or employee under Subsection (b) is associated.

Added by Acts 1999, 76th Leg., ch. 985, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.290, eff. September 1, 2005.

Sec. 501.027. COVERAGE FOR POST-TRAUMATIC STRESS DISORDER FOR MEMBERS OF TEXAS MILITARY FORCES. (a) Post-traumatic stress disorder suffered by a member of the Texas military forces on state active duty is a compensable injury under this subtitle only if it is based on a diagnosis that:

(1) the disorder is caused by one or more events occurring in the course and scope of the member's state active duty; and

(2) the preponderance of evidence indicates that the event or events were a producing cause of the disorder.

(b) For purposes of this subtitle, the date of injury for post-traumatic stress disorder suffered by a member of the Texas military forces is the date on which the member knew or should have known that the disorder may be related to the member's state active duty.

Added by Acts 2023, 88th Leg., R.S., Ch. 660 (H.B. 90), Sec. 9, eff. September 1, 2023.

Sec. 501.028. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY CERTAIN MEMBERS OF TEXAS MILITARY FORCES ON STATE ACTIVE DUTY. (a) This section applies only to a member of the Texas military forces who sustains a serious bodily injury, as defined by Section 1.07, Penal Code, on state active duty.

(b) An insurance carrier shall accelerate and give priority to a claim for medical benefits by a member of the Texas military forces to which this section applies, including all health care required to cure or relieve the effects naturally resulting from a compensable injury described by Subsection (a).

(c) The division shall accelerate, under rules adopted by the commissioner of workers' compensation, a contested case hearing requested by or an appeal submitted by a member of the Texas military forces to which this section applies regarding the denial of a claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable injury described by Subsection (a). The member shall provide notice to the division and independent review organization that the contested case or appeal involves a member of the Texas military forces.

Added by Acts 2023, 88th Leg., R.S., Ch. 660 (H.B. 90), Sec. 9, eff. September 1, 2023.

Sec. 501.029. INTENT OF EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY CERTAIN MEMBERS OF TEXAS MILITARY FORCES. The purpose of Section 501.028 is to ensure that a claim for medical benefits by an injured member of the Texas military forces to which this section applies is accelerated by an insurance carrier to the full extent authorized by current law.

Added by Acts 2023, 88th Leg., R.S., Ch. 660 (H.B. 90), Sec. 9, eff. September 1, 2023.

SUBCHAPTER C. ADMINISTRATION

Sec. 501.0431. COMPILATION OF STATISTICS RELATING TO FRAUD. The director shall maintain statistics on the number, type, and disposition of fraudulent claims for medical benefits under this chapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 6.02(b), eff. Sept. 1, 1997.

Sec. 501.044. EFFECT OF SICK LEAVE; ANNUAL LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 2, eff. Sept. 1, 1999.

Sec. 501.045. EFFECT OF EMERGENCY LEAVE. (a) Payments for emergency leave authorized by the administrative head of a state agency in accordance with the General Appropriations Act for an employee receiving income benefits under this chapter may not:

(1) exceed for a month the amount computed by subtracting

the amount of income benefits received for the month from the basic monthly wage of the employee; and

(2) be paid for a period longer than six months after the date on which benefits begin.

(b) The administrative head authorizing the emergency leave payments shall review the merits of each case individually.

(c) If payment for emergency leave is authorized, the state agency shall attach a statement of the reasons for the authorization to its duplicate payroll voucher for the first payroll period affected by the leave.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.046. REPORTS OF TERMINATION OR CONTINUATION OF INJURIES. In addition to other reports required by the board, the director shall file a subsequent report not later than the 10th day after the date of the termination of the injured employee's incapacity. If the employee's incapacity extends beyond 60 days, the director shall file a subsequent report before the 70th day after the date the employee's incapacity began.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 5, eff. Sept. 1, 1997.

Sec. 501.048. STATE AGENCY SUMMARY IN BUDGET REQUESTS. Each state agency shall submit in the administrative statement of its biennial budget request a summary containing:

(1) the number of first reports of injury filed by the agency during the preceding biennium;

(2) the amount of workers' compensation indemnity and medical benefits paid to or for employees during the preceding biennium;

(3) the number of on-the-job injuries per 100 of its employees during each year of the preceding biennium; and

(4) a description of the efforts made by the agency to increase job safety and to reduce job injuries, including the participation of the head of the agency and the executive staff of the agency in training programs offered by the division and others.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.050. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.291, eff. September 1, 2005.

Sec. 501.051. PAYMENT OF MEDICAL AND INDEMNITY BENEFITS. Medical benefit and income benefit payments made by the office are subject to this subtitle and are exempt from Chapter 2251, Government Code.

Added by Acts 1999, 76th Leg., ch. 953, Sec. 3, eff. Sept. 1, 1999.

CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF THE TEXAS A&M UNIVERSITY SYSTEM AND EMPLOYEES OF INSTITUTIONS OF THE TEXAS A&M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. DEFINITIONS. In this chapter:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means a person employed in the service of an institution whose name appears on the institution's payroll.

(3) "Institution" means an institution of higher education or agency under the direction or governance of the board of regents of The Texas A&M University System.

(4) "System" has the meaning assigned by Section 85.01(1), Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.293, eff. September 1, 2005.

Sec. 502.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and

(9) Chapters 412-417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution," and "system" means the insurance carrier under Section 502.022.

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.294, eff. September 1, 2005.

Sec. 502.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. COVERAGE

Sec. 502.021. WORKERS' COMPENSATION COVERAGE FOR INSTITUTION EMPLOYEES. (a) The system shall pay benefits as provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.295, eff. September 1, 2005.

Sec. 502.022. AUTHORITY TO SELF-INSURE. An institution may self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.023. INSURANCE REQUIREMENT. (a) The board of regents

of the system may require each employee, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board.

(b) This section does not apply to an employee who is paid on a piece-work basis or on any basis other than by the hour, day, week, month, or year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.024. PREEXISTING DISQUALIFYING CONDITION. (a) An institution may certify as an employee a person who indicates a preexisting disqualifying physical condition in a medical history obtained under Section 502.064 or who is found to have a preexisting disqualifying medical condition in a physical examination under Section 502.064 on the condition that the person execute in writing a waiver of coverage under this chapter for the preexisting disqualifying physical condition before becoming an employee of the institution.

(b) A waiver under Subsection (a) is valid and binding on the employee who executes the waiver. Compensation or death benefits may not be paid to the employee or the employee's beneficiaries for an injury or death of the employee that is attributable to the condition for which coverage was waived.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 4.02, eff. June 20,

2003.

SUBCHAPTER C. OFFSETS

Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.296, eff. September 1, 2005.

SUBCHAPTER D. ADMINISTRATION

Sec. 502.061. ADMINISTRATION AND RULES. (a) The system shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The system may:

(1) adopt and publish rules and prescribe and furnish forms necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.297, eff. September 1, 2005.

Sec. 502.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) An institution may set aside from its available appropriations, other than itemized

salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.063. CERTIFIED COPIES OF DIVISION DOCUMENTS. (a) The division shall furnish a certified copy of an order, award, decision, or paper on file in the division's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) The system or an institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division for making a copy under Subsection (a) that exceeds the fee charged for the copy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.298, eff. September 1, 2005.

Sec. 502.064. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS; INSTITUTION RECORDS. (a) An institution may obtain and record on a form prescribed by the institution the medical history of a person to be employed by the institution.

(b) The institution may require that an individual may not be certified as an employee of the institution under this chapter until the individual:

(1) submits to a physical examination as provided by this

section; and

(2) is certified by the examining physician or chiropractor to be physically fit to perform the duties and services to which the individual is to be assigned.

(c) The institution may designate a convenient number of licensed practicing physicians and chiropractors to perform physical examinations under this section.

(d) A physician or chiropractor designated under Subsection (c) who conducts an examination shall file with the institution a complete transcript of the examination. The transcript must be sworn to on a form provided by the institution.

(e) The institution shall maintain all reports and medical histories filed with the institution under this section as part of the institution's permanent records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.065. REPORTS OF INJURIES. (a) In addition to a report of an injury filed with the division under Section 409.005(a), an institution shall file a supplemental report that contains:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) The institution shall file the supplemental report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.299, eff. September 1, 2005.

Sec. 502.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. (a) The division may require an

employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) On the request of an employee or the system, the employee, the institution, or the system is entitled to have a physician or chiropractor selected by the employee, the institution, or the system, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(d) The system or the institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician or chiropractor selected by the system or the institution. The system or the institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician or chiropractor selected by the employee present to participate in an examination under this subsection.

(e) The system or the institution shall pay the fee set by the division for the services of a physician or chiropractor selected by the employee under Subsection (b) or (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.300, eff. September 1, 2005.

Sec. 502.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. (a) The commissioner of workers' compensation may order or direct the system or the institution to reduce or suspend the compensation of an injured employee who:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, chiropractic, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this

section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.301, eff. September 1, 2005.

Sec. 502.068. POSTPONEMENT OF HEARING. If an injured employee is receiving benefits under this chapter and the system or the institution is providing hospitalization, medical treatment, or chiropractic care to the employee, the division may postpone the hearing on the employee's claim. An appeal may not be taken from a division order under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.302, eff. September 1, 2005.

Sec. 502.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor

punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.303, eff. September 1, 2005.

Sec. 502.070. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE. The attorney general is the institution's legal representative and may bring and defend all suits and hearings necessary to carry out the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND EMPLOYEES OF INSTITUTIONS OF THE UNIVERSITY OF TEXAS SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 503.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of workers' compensation.

(1-a) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means a person employed in the service of the system under an appointment or oral or written express contract for hire whose name appears on the system's payroll.

(3) "Institution" means an institution of higher education or agency under the direction of the board of regents of The University of Texas System.

(4) "System" has the meaning assigned by Section 65.01(1), Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.305, eff. September 1, 2005.

Sec. 503.002. APPLICATION OF GENERAL WORKERS' COMPENSATION

LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and

(9) Chapters 412-417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution," and "system" means the insurance carrier under Section 503.022.

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.306, eff. September 1, 2005.

Sec. 503.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. COVERAGE

Sec. 503.021. WORKERS' COMPENSATION COVERAGE FOR SYSTEM AND INSTITUTION EMPLOYEES. (a) The system shall pay benefits as

provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.307, eff. September 1, 2005.

Sec. 503.022. AUTHORITY TO SELF-INSURE. An institution may self-insure as part of a system insurance plan.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.308, eff. September 1, 2005.

Sec. 503.023. INSURANCE REQUIREMENT. The board of regents of the system may require each person employed by the system or an institution other than by appointment or express contract for hire, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.024. WAIVER OF RIGHTS. An agreement by an employee to waive the employee's rights under this chapter is valid if made in writing by the employee before becoming an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 4.03, eff. June 20, 2003.

SUBCHAPTER C. OFFSETS

Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.309, eff. September 1, 2005.

SUBCHAPTER D. ADMINISTRATION

Sec. 503.061. ADMINISTRATION AND RULES. (a) The system shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The system may:

(1) adopt and publish rules and prescribe and furnish forms

necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.310, eff. September 1, 2005.

Sec. 503.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) An institution may set aside from its available appropriations, other than itemized salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.063. CERTIFIED COPIES OF DIVISION DOCUMENTS. (a) The division shall furnish a certified copy of an order, award, decision, or paper on file in the division's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) The system or the institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division for making a copy under Subsection (a) that exceeds the fee charged for the copy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.311, eff. September 1, 2005.

Sec. 503.064. EXAMINING PHYSICIANS. (a) The institution shall designate a convenient number of licensed practicing physicians to perform physical examinations of individuals employed or to be employed by the institution to determine if an individual is physically fit to be classified as an employee.

(b) A physician designated under Subsection (a) who conducts an examination shall file with the institution a complete transcript of the examination. The transcript must be sworn to on a form provided by the institution.

(c) The institution shall maintain all reports under this section as part of the institution's permanent records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.065. REPORTS OF INJURIES. (a) In addition to a report of an injury filed with the division under Section 409.005(a), an institution shall file a supplemental report that contains:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) The institution shall file the supplemental report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.312, eff. September 1, 2005.

Sec. 503.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. (a) The division may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) On the request of an employee, the system, or the institution, the employee, the system, or the institution is entitled to have a physician selected by the employee, the system, or the institution, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(d) The system or the institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the system or the institution. The system or the institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician selected by the employee present to participate in an examination under this subsection.

(e) The system or the institution shall pay the fee, as set by the division, of a physician selected by the employee under Subsection (b) or (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.313, eff. September 1, 2005.

Sec. 503.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. (a) The commissioner may order or direct the system or the institution to reduce or suspend the compensation of an injured employee who:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.314, eff. September 1, 2005.

Sec. 503.068. POSTPONEMENT OF HEARING. If an injured employee is receiving benefits under this chapter and the system or the institution is providing hospitalization or medical treatment to the employee, the division may postpone the hearing on the employee's claim. An appeal may not be taken from a commissioner order under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.315, eff. September 1, 2005.

Sec. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section

commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.316, eff. September 1, 2005.

Sec. 503.070. VENUE FOR JUDICIAL REVIEW. (a) A party who does not consent to abide by the final decision of the commissioner shall file notice with the division as required by Section 410.253 and bring suit in the county in which the injury occurred to set aside the final decision of the commissioner.

(b) If a suit under this section is filed in a county other than the county in which the injury occurred, the court, on determining that it does not have jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in the county in which the injury occurred.

(c) Notice of the transfer of a suit under Subsection (b) shall be given to the parties. A suit transferred under Subsection (b) shall be considered for all purposes the same as if originally filed in the court to which it is transferred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.317, eff. September 1, 2005.

Sec. 503.071. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE. The attorney general is the institution's legal representative and may bring and defend all suits and hearings necessary to carry out the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 504. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITIONS. In this chapter, unless a different meaning is plainly required by the context:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means:

(A) a person in the service of a political subdivision who has been employed as provided by law; or

(B) a person for whom optional coverage is provided under Section 504.012 or 504.013.

(3) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center established under Subchapter A, Chapter 534, Health and Safety Code, or any other legally constituted political subdivision of the state.

(4) "Pool" means two or more political subdivisions collectively self-insuring under an interlocal contract under Chapter 791, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.318, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 9.04, eff. September 1, 2023.

Sec. 504.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.011(18) defining "employer" and Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.006-406.009 and Subchapters B and D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035, 406.091, and 406.096;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409-412;

(8) Chapter 413, except as provided by Section 504.053;

(9) Chapters 414-417; and

(10) Chapter 451, subject to the limitations of Subsection (a-1).

(a-1) The liability of a political subdivision under Chapter 451 is limited to money damages in a maximum amount of $100,000 for each person aggrieved by and $300,000 for each single occurrence of a violation of that chapter. For purposes of this subsection, a single occurrence is considered to be a single employment policy or employment action that results in discrimination against or discharge of one or more employees concurrently.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "political subdivision."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against a political subdivision or an employee of a political subdivision beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

(d) For the purpose of applying the provisions listed by Subsection (a), "written notice" to a political subdivision that self-insures, either individually or collectively through an interlocal agreement as described by Section 504.011, occurs only on written notice to the intergovernmental risk pool or other entity responsible for administering the claim.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 939, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.319, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 810 (H.B. 451), Sec. 2, eff. September 1, 2017.

Sec. 504.003. ELECTION OF REMEDIES. A person may not bring an action for wrongful discharge under both Chapter 451 and Chapter 554, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(77), eff. Sept. 1, 1995.

SUBCHAPTER B. COVERAGE

Sec. 504.011. METHOD OF PROVIDING COVERAGE. A political subdivision shall extend workers' compensation benefits to its employees by:

(1) becoming a self-insurer;

(2) providing insurance under a workers' compensation insurance policy; or

(3) entering into an interlocal agreement with other political subdivisions providing for self-insurance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.012. OPTIONAL COVERAGES. (a) A political subdivision may cover volunteer fire fighters, police officers, emergency medical personnel, and other volunteers that are specifically named. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law. Notwithstanding any other law, the governing body of the political subdivision may elect to provide compensation payments to a person covered under this subsection that are greater than the minimum benefits provided under this title.

(b) By majority vote of the members of the governing body of a political subdivision, the political subdivision may cover as employees:

(1) an elected official;

(2) persons paid for jury service; or

(3) persons paid for service in the conduct of an election.

(c) A political subdivision may cover a child who is in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution under Section 54.041(b), Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 18, eff. Sept. 1, 1999.

Sec. 504.013. COVERAGE FOR TRUSTEES AND STAFF OF SELF-INSURANCE FUND. By majority vote of the board of trustees of a self-insurance

fund created under this chapter, the fund may cover:

(1) members of the board of trustees;

(2) staff of the fund, including persons with whom the fund has contracted to perform staff functions; or

(3) any other self-insurance fund created under Chapter 791, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.014. EXCLUSIONS. A person is not an employee and is not entitled to compensation under this chapter if the person:

(1) is in the service of a political subdivision and is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year;

(2) is a patient or client of a political subdivision involved in vocational training;

(3) is a prisoner incarcerated by a political subdivision; or

(4) performs services that may benefit a political subdivision, or is employed by or under contract with a performer providing those services, but does not receive payment from the political subdivision for the performance of the services, if the services are performed in connection with the operation or production of:

(A) a stock show;

(B) a rodeo;

(C) a carnival;

(D) a circus;

(E) a musical, vocal, or theatrical performance;

(F) a professional baseball league or game;

(G) a professional hockey league or game;

(H) a wrestling event or match;

(I) a vehicle or motorcycle event; or

(J) another entertainment event.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 841, Sec. 1, eff. Sept. 1, 2003.

Sec. 504.015. MUNICIPAL UTILITIES. (a) This section applies

to a municipal utility operated by a board of trustees established under Section 1502.070, Government Code, or a similar law.

(b) The board of trustees of a utility has the authority of the governing body of the municipality under this chapter to:

(1) adopt a self-insurance program or take out a policy of workers' compensation insurance; and

(2) adopt resolutions, give notices, and do all things concerning workers' compensation regarding the utility's employees that the governing body of the municipality would be authorized to do regarding other municipal employees or groups of employees.

(c) Funds set aside or spent for the purpose of workers' compensation insurance are considered operating expenses of the utility. Funds set aside or paid by the board of trustees for self-insurance or for premiums on insurance policies shall be paid out of utility revenues. A provision for self-insurance or an obligation incurred under an insurance policy is not a general liability of the municipality but is payable only out of utility revenues.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.282, eff. Sept. 1, 2001.

Sec. 504.016. JOINT INSURANCE FUND. (a) Two or more political subdivisions may establish a joint insurance fund as provided by this section.

(b) A political subdivision may pay into the fund its proportionate part as due and may contract for the fund, by and through its directors, to make the payments due under this chapter to employees of the political subdivision.

(c) The fund may be operated under the rules and bylaws established by the participating political subdivisions.

(d) A joint insurance fund created under this section may provide to the Texas Department of Insurance loss data in the same manner as an insurance company writing workers' compensation insurance. The State Board of Insurance shall use the loss data as provided by Subchapter D, Chapter 5, Insurance Code.

(e) Except as provided by Subsection (d), a joint insurance fund created under this section is not considered insurance for purposes of any state statute and is not subject to State Board of Insurance rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES. An entity is eligible to participate under Section 504.016 or Chapter 791 or 2259, Government Code, if the entity provides transportation subsidized in whole or in part by and provided to clients of:

(1) the Department of Assistive and Rehabilitative Services;

(2) the Department of State Health Services;

(3) the Cancer Prevention and Research Institute of Texas;

(4) the Texas Department of Housing and Community Affairs;

(5) the Health and Human Services Commission;

(6) the Department of Aging and Disability Services; or

(7) the Texas Juvenile Justice Department.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 5, eff. November 6, 2007.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 138, eff. September 1, 2015.

Sec. 504.018. NOTICE TO DIVISION AND EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY. (a) A political subdivision shall notify the division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

(b) A political subdivision shall notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. Employees of a political subdivision are conclusively considered to have accepted the compensation provisions instead of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries received in the course of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.320, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.321, eff.

September 1, 2005.

Sec. 504.019. COVERAGE FOR POST-TRAUMATIC STRESS DISORDER FOR CERTAIN FIRST RESPONDERS. (a) In this section:

Text of subdivision effective until January 1, 2025

(1) "First responder" means an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2.12, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue.

Text of subdivision effective on January 1, 2025

(1) "First responder" means an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2A.001, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue.

(2) "Post-traumatic stress disorder" means a disorder that meets the diagnostic criteria for post-traumatic stress disorder specified by the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition, or a later edition adopted by the commissioner of workers' compensation.

(b) Post-traumatic stress disorder suffered by a first responder is a compensable injury under this subtitle only if it is based on a diagnosis that:

(1) the disorder is caused by one or more events occurring in the course and scope of the first responder's employment; and

(2) the preponderance of the evidence indicates that the event or events were a producing cause of the disorder.

(c) For purposes of this subtitle, the date of injury for post-traumatic stress disorder suffered by a first responder is the date on which the first responder first knew or should have known that the disorder may be related to the first responder's employment.

Added by Acts 2017, 85th Leg., R.S., Ch. 353 (H.B. 1983), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1101 (H.B. 2143), Sec. 1, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.131, eff. January 1, 2025.

SUBCHAPTER C. BENEFITS AND OFFSETS

Sec. 504.051. OFFSET AGAINST PAYMENTS FOR INCAPACITY. (a) Benefits provided under this chapter shall be offset:

(1) to the extent applicable, by any amount for incapacity received as provided by:

(A) Chapter 143 or 177A, Local Government Code; or

(B) any other statute in effect on June 19, 1975, that provides for the payment for incapacity to work because of injury on the job that is also covered by this chapter; and

(2) by any amount paid under Article III, Section 52e, of the Texas Constitution, as added in 1967.

(b) If benefits are offset, the employer may not withhold the offset portion of the employee's wages until the time that benefits under this chapter are received.

(c) If an employee's wages are offset, the employee and employer shall contribute to the pension fund on the amount of money by which the employee's wages were offset. An employee's pension benefit may not be reduced as a result of the employee's injuries or any compensation received under this chapter unless the reduction results from a pension revision passed by a majority vote of the affected members of a pension system.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 665 (H.B. 471), Sec. 2, eff. June 12, 2023.

Sec. 504.052. SICK LEAVE BENEFITS. (a) The governing body of a political subdivision, by majority vote, may provide that while an employee of the political subdivision is receiving benefits under this chapter, the employee may elect to receive previously accrued sick leave benefits, whether statutory or contractual, in an amount equal to the difference between the benefits under this chapter and the weekly compensation that the employee was receiving before the injury that resulted in the claim.

(b) Sick leave benefits received under Subsection (a) shall be deducted proportionately from the employee's sick leave balance.

(c) This section does not limit the medical benefits to be paid to the employee. A sick leave plan may not require an employee to take sick leave benefits before receiving benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.053. ELECTION. (a) A political subdivision that self-insures either individually or collectively shall provide workers' compensation medical benefits to the injured employees of the political subdivision through a workers' compensation health care network certified under Chapter 1305, Insurance Code, if the governing body of the political subdivision determines that provision of those benefits through a network is available to the employees and practical for the political subdivision. A political subdivision may enter into interlocal agreements and other agreements with other political subdivisions to establish or contract with networks under this section.

(b) If a political subdivision or a pool determines that a workers' compensation health care network certified under Chapter 1305, Insurance Code, is not available or practical for the political subdivision or pool, the political subdivision or pool may provide medical benefits to its injured employees or to the injured employees of the members of the pool:

(1) in the manner provided by Chapter 408, other than Sections 408.001(b) and (c) and Section 408.002, and by Subchapters B and C, Chapter 413; or

(2) by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government Code.

(c) If the political subdivision or pool provides medical benefits in the manner authorized under Subsection (b)(2), the following do not apply:

(1) Sections 408.004 and 408.0041, unless use of a required medical examination or designated doctor is necessary to resolve an issue relating to the entitlement to or amount of income benefits under this title;

(2) Subchapter B, Chapter 408, except for Section 408.021;

(3) Chapter 413, except for Section 413.042; and

(4) Chapter 1305, Insurance Code, except for Sections 1305.501, 1305.502, and 1305.503.

(d) If the political subdivision or pool provides medical benefits in the manner authorized under Subsection (b)(2), the following standards apply:

(1) the political subdivision or pool must ensure that workers' compensation medical benefits are reasonably available to all injured workers of the political subdivision or the injured workers of the members of the pool within a designed service area;

(2) the political subdivision or pool must ensure that all necessary health care services are provided in a manner that will ensure the availability of and accessibility to adequate health care providers, specialty care, and facilities;

(3) the political subdivision or pool must have an internal review process for resolving complaints relating to the manner of providing medical benefits, including an appeal to the governing body or its designee and appeal to an independent review organization;

(4) the political subdivision or pool must establish reasonable procedures for the transition of injured workers to contract providers and for the continuity of treatment, including notice of impending termination of providers and a current list of contract providers;

(5) the political subdivision or pool shall provide for emergency care if an injured worker cannot reasonably reach a contract provider and the care is for medical screening or other

evaluation that is necessary to determine whether a medical emergency condition exists, necessary emergency care services including treatment and stabilization, and services originating in a hospital emergency facility following treatment or stabilization of an emergency medical condition;

(6) prospective or concurrent review of the medical necessity and appropriateness of health care services must comply with Article 21.58A, Insurance Code;

(7) the political subdivision or pool shall continue to report data to the appropriate agency as required by Title 5 of this code and Chapter 1305, Insurance Code; and

(8) a political subdivision or pool is subject to the requirements under Sections 1305.501, 1305.502, and 1305.503, Insurance Code.

(e) Nothing in this chapter waives sovereign immunity or creates a new cause of action, except that a political subdivision that self-insures either individually or collectively is liable for:

(1) sanctions, administrative penalties, and other remedies authorized under Chapter 415;

(2) attorney's fees as provided by Section 408.221(c); and

(3) attorney's fees as provided by Section 417.003.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.322, eff. September 1, 2005.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 310 (S.B. 877), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 701 (S.B. 2551), Sec. 6, eff. June 10, 2019.

Sec. 504.054. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute that remains unresolved after the review described by Section 504.053(d)(3) is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the division in the same manner as a hearing conducted under Section 413.0311.

(b) The administrative law judge conducting the contested case hearing under Subsection (a) shall consider any treatment guidelines adopted by the political subdivision or pool that provides medical

benefits under Section 504.053(b)(2) if those guidelines meet the standards provided by Section 413.011(e).

(c) A party that has exhausted all administrative remedies under Subsection (a) and is aggrieved by a final decision of the division may seek judicial review of the decision.

(d) Judicial review under Subsection (c) shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, and is governed by the substantial evidence rule.

(e) A decision of the independent review organization is binding during the pendency of a dispute.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 36, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 839 (H.B. 2111), Sec. 17, eff. September 1, 2017.

Sec. 504.055. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT.

Text of subsection effective until January 1, 2025

(a) In this section, "first responder" means:

(1) an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2.12, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue; or

(2) an individual covered under Section 504.012(a) who is providing volunteer services to a political subdivision of this state as:

(A) a volunteer firefighter, without regard to whether the volunteer firefighter is certified under Subchapter D, Chapter 419, Government Code; or

(B) an emergency medical services volunteer, as defined by Section 773.003, Health and Safety Code.

Text of subsection effective on January 1, 2025

(a) In this section, "first responder" means:

(1) an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2A.001, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue; or

(2) an individual covered under Section 504.012(a) who is providing volunteer services to a political subdivision of this state as:

(A) a volunteer firefighter, without regard to whether the volunteer firefighter is certified under Subchapter D, Chapter 419, Government Code; or

(B) an emergency medical services volunteer, as defined by Section 773.003, Health and Safety Code.

(b) This section applies only to a first responder who sustains a serious bodily injury, as defined by Section 1.07, Penal Code, in the course and scope of employment. For purposes of this section, an injury sustained in the course and scope of employment includes an injury sustained by a first responder providing services on a volunteer basis.

(c) The political subdivision, division, and insurance carrier shall accelerate and give priority to an injured first responder's claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable injury described by Subsection (b).

(d) The division shall accelerate, under rules adopted by the commissioner of workers' compensation, a contested case hearing

requested by or an appeal submitted by a first responder regarding the denial of a claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable injury described by Subsection (b). The first responder shall provide notice to the division and independent review organization that the contested case or appeal involves a first responder.

(e) Except as otherwise provided by this section, a first responder is entitled to review of a medical dispute in the manner provided by Section 504.054.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 36, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.132, eff. January 1, 2025.

Sec. 504.056. INTENT OF EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT. The purpose of Section 504.055 is to ensure that an injured first responder's claim for medical benefits is accelerated by a political subdivision, insurance carrier, and the division to the full extent authorized by current law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 36, eff. September 1, 2011.

SUBCHAPTER D. ADMINISTRATION

Sec. 504.071. RULES; FORMS. A political subdivision may:

(1) adopt and publish rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.072. APPROPRIATIONS FOR DISBURSEMENTS; ACCOUNT; REPORT. (a) A political subdivision may set aside from available

appropriations, other than itemized salary appropriations, an amount sufficient to pay all costs, administrative expenses, benefits, insurance, and attorney's fees authorized by this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the political subdivision's records showing the disbursements authorized by this chapter. A statement of the amount set aside for disbursements from the account shall be included in an annual report made to the political subdivision's governing body and its treasurer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.073. REPRESENTATION IN LEGAL PROCEEDINGS. (a) Except as provided by Subsection (b), in a proceeding in connection with workers' compensation benefits provided by a political subdivision as a self-insurer, the political subdivision may be represented by:

(1) the political subdivision's attorney or that attorney's assistants; or

(2) outside counsel.

(b) In a proceeding involving workers' compensation for employees of a municipal utility operated by a board of trustees established under Section 1502.070, Government Code, or a similar law, if the board of trustees is a self-insurer, the municipality shall be represented by the regularly employed attorney or outside counsel of the board of trustees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.284, eff. Sept. 1, 2001.

Sec. 504.074. SELF-INSURANCE ACCOUNT FOR DEATH BENEFITS AND LIFETIME INCOME BENEFITS. (a) A pool or a political subdivision that self-insures may establish an account for the payment of death benefits and lifetime income benefits under Chapter 408.

(b) An account established under this section may accumulate assets in an amount that the pool or political subdivision, in its sole discretion, determines is necessary in order to pay death benefits and lifetime income benefits. The establishment of an account under this section or the amount of assets accumulated in the account does not affect the liability of a pool or political

subdivision for the payment of death benefits and lifetime income benefits.

(c) Chapter 2256, Government Code, does not apply to the investment of assets in an account established under this section. A pool or political subdivision investing or reinvesting the assets of an account shall discharge its duties solely in the interest of current and future beneficiaries:

(1) for the exclusive purposes of:

(A) providing death benefits and lifetime income benefits to current and future beneficiaries; and

(B) defraying reasonable expenses of administering the account;

(2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

(3) by diversifying the investments of the account to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the account to the extent that the documents and instruments are consistent with this section.

(d) In choosing and contracting for professional investment management services for an account established under this section and in continuing the use of an investment manager, the pool or political subdivision must act prudently and in the interest of the current and future beneficiaries of the account.

Added by Acts 2019, 86th Leg., R.S., Ch. 701 (S.B. 2551), Sec. 7, eff. June 10, 2019.

CHAPTER 505. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF TEXAS DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 505.001. DEFINITIONS. (a) In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(32), eff. September 1, 2005.

(2) "Department" means the Texas Department of Transportation.

(3) "Employee" means a person in the service of the department under an appointment or express contract of hire and whose name appears on the department's payroll.

(4) "Legal beneficiary" has the meaning assigned to that term under Section 401.011.

(b) A reference in this chapter to an employee who has been injured includes the employee's legal beneficiary if the injured employee is dead.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(32), eff. September 1, 2005.

Sec. 505.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012, defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Subchapters B, D, E, and H, Chapter 406, other than Sections 406.071-406.073, and 406.075;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;

(9) Chapters 412-417; and

(10) Chapter 451.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "department."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the department or an employee of the department beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.323, eff. September 1, 2005.

SUBCHAPTER B. COVERAGE

Sec. 505.011. WORKERS' COMPENSATION COVERAGE FOR DEPARTMENT EMPLOYEES. The department shall pay benefits as provided by this chapter to an employee with a compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.012. AUTHORITY TO SELF-INSURE. The department may self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.013. INDIVIDUALS EMPLOYED BY SUBCONTRACTORS. (a) Except as provided by Subsection (b), an individual employed by a subcontractor performing work under contract with the department is not considered an employee for purposes of this chapter.

(b) The department shall treat a person leasing a tractor, a truck, mowing or cutting machinery, or other equipment to the department and using the equipment to perform work under a contract with the department:

(1) as an independent contractor, and the department shall require the person, while performing the contract, to provide life, health and accident, and disability insurance for the person and any individual employed by the person to perform the contract in an amount and with coverage approved by the Texas Department of Insurance as substantially the same as provided for under workers' compensation insurance;

(2) as an employee of the state for workers' compensation purposes, and the department shall require the person to provide workers' compensation insurance for each individual employed by the person to perform the contract, in which case this chapter applies to the person and the individuals employed by the person without regard to the number of individuals employed; or

(3) as an employee of the state for workers' compensation purposes, and each individual employed by that person to perform the

contract as an employee of the state for workers' compensation purposes.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. ADMINISTRATION

Sec. 505.051. ADMINISTRATION; RULES; FORMS. (a) The department shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The department may:

(1) adopt rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.052. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) The department may set aside from its available appropriations, other than itemized appropriations, an amount not exceeding three and one-half percent of the department's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the department's records. The balance of the account at any time may not exceed an amount equal to three and one-half percent of the department's annual payroll.

(c) The account shall show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.053. CERTIFIED COPIES OF DIVISION DOCUMENTS. (a) The division of workers' compensation shall furnish a certified copy of an order, award, decision, or paper on file with the division to a

person entitled to the copy on written request and payment of the fee for the copy. The fee shall be the same as that charged for similar services by the secretary of state's office.

(b) The department may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division of workers' compensation for making the copies that exceeds the fee charged for the copies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.324, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.325, eff. September 1, 2005.

Sec. 505.054. PREEMPLOYMENT PHYSICAL; EXAMINING PHYSICIANS. (a) The department may require that an individual may not be certified as an employee of the department under this chapter until the individual:

(1) submits to a physical examination as provided by this section; and

(2) is certified by the examining physician to be physically fit to perform the duties and services to which the individual is to be assigned.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 395 (S.B. 1323), Sec. 3, eff. June 7, 2021.

(c) The department may designate a convenient number of regularly licensed practicing physicians to make physical examinations of individuals to determine if the individuals are physically fit for employment with the department.

(d) A physician designated under Subsection (c) who conducts an examination shall file with the department a complete transcript of the examination on a form furnished by the department. The department shall maintain all reports under this subsection as part of the department's permanent records. A report under this subsection is admissible in evidence before the division of workers' compensation and in an appeal from a final award or ruling of the commissioner of workers' compensation in which the individual named

in the examination is a claimant for compensation under this chapter. A report under this subsection that is admitted is prima facie evidence of the facts stated in the report.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.326, eff. September 1, 2005.
Acts 2021, 87th Leg., R.S., Ch. 395 (S.B. 1323), Sec. 1, eff. June 7, 2021.
Acts 2021, 87th Leg., R.S., Ch. 395 (S.B. 1323), Sec. 2, eff. June 7, 2021.
Acts 2021, 87th Leg., R.S., Ch. 395 (S.B. 1323), Sec. 3, eff. June 7, 2021.

Sec. 505.055. REPORTS OF INJURIES. (a) A report of an injury filed with the division of workers' compensation under Section 409.005, in addition to the information required by commissioner of workers' compensation rules, must contain:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) In addition to subsequent reports of an injury filed with the division of workers' compensation under Section 409.005(e), the department shall file a subsequent report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.327, eff. September 1, 2005.

Sec. 505.056. REQUIRED EXAMINATION OF INJURED EMPLOYEE;

REFUSAL TO SUBMIT TO EXAMINATION. (a) The division of workers' compensation may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(c) The department may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the department. The department shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination.

(d) On the request of an employee or the department, the employee or the department is entitled to have a physician selected by the employee or the department present to participate in an examination under Subsection (a) or Section 408.004. The employee is entitled to have a physician selected by the employee present to participate in an examination under Subsection (c). The department shall pay the fee set by the commissioner of workers' compensation of a physician selected by the employee under this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.328, eff. September 1, 2005.

Sec. 505.057. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. (a) The commissioner of workers' compensation may order or direct the department to reduce or suspend the compensation of an injured employee if the employee:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity

to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.329, eff. September 1, 2005.

Sec. 505.058. POSTPONEMENT OF HEARING. If an injured employee is receiving benefits under this chapter and the department is providing hospitalization or medical treatment to the employee, the division of workers' compensation may postpone the hearing of the employee's claim. An appeal may not be taken from an order of the commissioner of workers' compensation under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.330, eff. September 1, 2005.

Sec. 505.059. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division of workers' compensation to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.331, eff. September 1, 2005.

Sec. 505.060. EFFECT OF SICK LEAVE; ANNUAL LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Added by Acts 2001, 77th Leg., ch. 706, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1017, Sec. 2.01, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1456, Sec. 14.03, eff. June 17, 2001.

CHAPTER 506. MISCELLANEOUS PROVISIONS APPLICABLE TO GOVERNMENT EMPLOYEES

Sec. 506.001. LATE PAYMENT OF JUDGMENT BY THE STATE. (a) In a workers' compensation case in which a claimant is awarded a judgment against the state or a political subdivision of the state under Chapter 501, 502, 503, 504, or 505, the state or political subdivision shall comply with the judgment not later than the 30th day after the judgment is entered.

(b) If the state or a political subdivision of the state fails or refuses to comply with a judgment as provided under Subsection (a) and the claimant secures a mandamus order against the state or political subdivision to force compliance with the judgment, the claimant is also entitled to an award of:

(1) a penalty of 12 percent of the amount of compensation recovered in the judgment; and

(2) reasonable attorney's fees for prosecution of the mandamus action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 506.002. REIMBURSEMENT FROM NON-TREASURY FUNDS. (a) An agency or other instrumentality of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers' compensation payments made out of the general revenue fund to former or current employees of the agency or other instrumentality shall reimburse the general revenue fund by writing a check to the comptroller:

(1) for deposit into the appropriate account in the general revenue fund; and

(2) not later than 30 days after receiving the statement of amounts due.

(b) The workers' compensation division of the office of the attorney general shall send to the comptroller a copy of each statement of amounts due from an agency or other instrumentality of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers' compensation payments made out of the general revenue fund.

(c) An agency or other instrumentality of state government affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate for the purpose of reimbursing the general revenue fund for the workers' compensation payments made to its current or former employees.

(d) The state auditor may review affected entities for compliance with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.40, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 64, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 83, eff. September 1, 2013.

LOCAL GOVERNMENT CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Chapter 323 of the Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable, by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311 of the Government Code) applies to the construction of each provision in this code except as otherwise expressly provided by this code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 1.004. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 1.005. DEFINITIONS. In this code:

(1) "General-law municipality" means a municipality designated by Chapter 5 as a Type A general-law municipality, Type B general-law municipality, or Type C general-law municipality.

(2) "Home-rule municipality" means a municipality designated by Chapter 5 as a home-rule municipality.

(3) "Municipality" means a general-law municipality, home-rule municipality, or special-law municipality.

(4) "Special-law municipality" means a municipality designated by Chapter 5 as a special-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

TITLE 2. ORGANIZATION OF MUNICIPAL GOVERNMENT
SUBTITLE A. TYPES OF MUNICIPALITIES
CHAPTER 5. TYPES OF MUNICIPALITIES IN GENERAL
SUBCHAPTER A. TYPES OF MUNICIPALITIES

Sec. 5.001. TYPE A GENERAL-LAW MUNICIPALITY. A municipality is a Type A general-law municipality if it:

(1) has incorporated as a Type A general-law municipality under Subchapter A of Chapter 6 and has not acted to change to another type of municipality;

(2) has changed to a Type A general-law municipality under Subchapter B of Chapter 6 and has not acted to change to another type of municipality; or

(3) operated, immediately preceding September 1, 1987, under Chapters 1-10, Title 28, Revised Statutes, and has not acted to change to another type of municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 5.002. TYPE B GENERAL-LAW MUNICIPALITY. A municipality is a Type B general-law municipality if it:

(1) has incorporated as a Type B general-law municipality under Chapter 7 and has not acted to change to another type of municipality; or

(2) operated, immediately preceding September 1, 1987, under Chapter 11, Title 28, Revised Statutes, and has not acted to change to another type of municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 5.003. TYPE C GENERAL-LAW MUNICIPALITY. A municipality is a Type C general-law municipality if it:

(1) has incorporated as a Type C general-law municipality under Subchapter A of Chapter 8 and has not acted to change to another type of municipality;

(2) has changed to a Type C general-law municipality under Subchapter B of Chapter 8 and has not acted to change to another type of municipality; or

(3) operated, immediately preceding September 1, 1987, under Chapter 12, Title 28, Revised Statutes, and has not acted to change to another type of municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 5.004. HOME-RULE MUNICIPALITY. A municipality is a home-rule municipality if it operates under a municipal charter that has been adopted or amended as authorized by Article XI, Section 5, of the Texas Constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 5.005. SPECIAL-LAW MUNICIPALITY. (a) A municipality is a special-law municipality if it operates under a municipal charter granted by a local law enacted by the Congress of the Republic of

Texas or by the legislature.

(b) A special-law municipality that has amended its municipal charter as authorized by Article XI, Section 5, of the Texas Constitution is also a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS AFFECTING TYPES OF MUNICIPALITIES

Sec. 5.901. TERRITORIAL REQUIREMENTS FOR INCORPORATION AS GENERAL-LAW MUNICIPALITY. A community may not incorporate as a general-law municipality unless it meets the following territorial requirements:

(1) a community with fewer than 2,000 inhabitants must have not more than two square miles of surface area;

(2) a community with 2,001 to 4,999 inhabitants must have not more than four square miles of surface area; and

(3) a community with 5,001 to 9,999 inhabitants must have not more than nine square miles of surface area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 5.902. CHANGE IN DESIGNATION FROM TOWN TO CITY. (a) The governing body of a Type A general-law municipality that was designated as a "town" may change by ordinance its designation to a "city."

(b) A change in designation does not affect the municipality's corporate existence or powers.

(c) Bonds that are voted by a municipality and are unissued before the municipality changes its designation may be issued in the new name of the municipality as designated in the ordinance changing the designation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 5.903. CHARTER AMENDMENTS BY SPECIAL-LAW MUNICIPALITY INCORPORATED BEFORE JUNE 30, 1881. (a) A special-law municipality that was incorporated as a town or village before June 30, 1881, by

the Congress of the Republic of Texas or by the legislature may amend its charter in any regard that does not conflict with the law of this state if the amendment is approved by a resolution of the governing body of the town or village and by at least a two-thirds vote at an election held to ratify the amendment.

(b) An amendment to a charter under Subsection (a) is not effective until:

(1) the governing body of the town or village adopts a resolution stating the amendment; and

(2) a certified copy of the amendment is approved by the attorney general and recorded with the secretary of state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 5.904. MUNICIPALITY NOT GOVERNED BY CORPORATE LAW. (a) A municipality may not be considered a corporation under a state statute governing corporations unless the statute extends its application to a municipality by express use of the term "municipal corporation," "municipality," "city," "town," or "village."

(b) It is the intent of the legislature that the limitation provided by this section apply regardless of whether the municipality is acting in a governmental or proprietary function.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 2(a), eff. Aug. 28, 1989.

CHAPTER 6. TYPE A GENERAL-LAW MUNICIPALITY

SUBCHAPTER A. INCORPORATION AS TYPE A GENERAL-LAW MUNICIPALITY

Sec. 6.001. AUTHORITY TO INCORPORATE AS TYPE A GENERAL-LAW MUNICIPALITY. A community may incorporate under this subchapter as a Type A general-law municipality if it:

(1) constitutes an unincorporated city or town;

(2) contains 600 or more inhabitants; and

(3) meets the territorial requirements prescribed by Section 5.901.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 6.002. INCORPORATION PROCEDURE. The procedure for

incorporating as a Type A general-law municipality is the same as that prescribed for incorporating as a Type B general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.01, eff. Sept. 1, 1999.

Sec. 6.003. EFFECTIVE DATE OF INCORPORATION. The incorporation of the community as a municipality is effective on the date the county judge makes the entry, under Section 7.007, in the records of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. CHANGE FROM ANOTHER MUNICIPAL TYPE TO TYPE A GENERAL-LAW MUNICIPALITY

Sec. 6.011. AUTHORITY TO CHANGE TO TYPE A GENERAL-LAW MUNICIPALITY. (a) A municipality incorporated in any manner other than as a Type A general-law municipality may change to a Type A general-law municipality if the municipality:

(1) has 600 or more inhabitants;

(2) contains one or more manufacturing establishments within its corporate limits; or

(3) is incorporated under any law of the Republic of Texas.

(b) A municipality that makes the change shall operate under the law applying to a Type A general-law municipality instead of operating under any charter or law that previously governed the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 6.012. PROCEDURE FOR CHANGE. If a municipality wishes to change to a Type A general-law municipality:

(1) at least two-thirds of the governing body of the municipality at a regular meeting must vote to make the change and the vote must be recorded in the journal of the governing body's proceedings;

(2) a copy of the record of the proceedings must be signed

by the mayor;

(3) a copy of the record of the proceedings must be attested by the municipality's clerk or secretary under the corporate seal; and

(4) a copy of the record of the proceedings must be filed and recorded in the office of the county clerk of the county in which the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 6.013. REPEAL OF LOCAL LAW AFTER CHANGE. Any local law that incorporated a municipality that changes to a Type A general-law municipality under this subchapter is repealed on the date on which the copy of the record of the proceedings is filed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 6.014. CHANGE DOES NOT AFFECT PRIOR NAME OR STATUS AS BODY CORPORATE. A municipality that changes to a Type A general-law municipality retains the prior name by which it was known and continues to be a body corporate with perpetual succession.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 7. TYPE B GENERAL-LAW MUNICIPALITY

Sec. 7.001. AUTHORITY TO INCORPORATE AS TYPE B GENERAL-LAW MUNICIPALITY. A community may incorporate under this chapter as a Type B general-law municipality if it:

(1) constitutes an unincorporated town or village;

(2) contains 201 to 9,999 inhabitants; and

(3) meets the territorial requirements prescribed by Section 5.901.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 7.002. APPLICATION TO INCORPORATE. (a) The residents of a community may initiate an attempt to incorporate the community

under this chapter by filing with the county judge of the county in which the community is located an application to incorporate signed by at least 50 qualified voters who are residents of the community.

(b) The application must state the proposed boundaries and name of the municipality, and it must be accompanied by a plat of the proposed municipality that contains only the territory to be used strictly for municipal purposes.

(c) If a community is located in two counties, the application to incorporate may be filed with the county judge of either county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 65, Sec. 1, eff. Sept. 1, 1989.

Sec. 7.003. ELECTION ORDER. If satisfactory proof is made that a community that has filed an application to incorporate under this chapter contains the requisite number of inhabitants, the county judge shall order an incorporation election to be held on a specified date and at a designated place in the community.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 7.004. ELECTION OFFICERS. The county judge shall appoint an officer to preside at an incorporation election under this chapter. The presiding officer shall appoint two election judges and two election clerks to assist in conducting the election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 7.005. NOTICE OF ELECTION. An incorporation election under this chapter may not be held until notice of the election has been posted at three public places in the community for the 10 days preceding the date of the election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 7.006. QUALIFIED VOTERS. Each qualified voter who resides within the boundaries of the proposed municipality may vote at the

election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 7.007. ORDER OF INCORPORATION. (a) Within 20 days after the date the county judge receives the returns of an incorporation election, the judge shall, if a majority of the votes cast are for incorporation, make an entry in the records of the commissioners court that the community is incorporated. The judge shall include the boundaries of the municipality in the entry. The incorporation of the community as a municipality is effective on the date the entry is made.

(b) A certified copy of the entry and a plat of the municipality shall be recorded in the deed records of the county in which the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 7.008. INTERVAL BETWEEN ELECTIONS. A county judge may not order an incorporation election under this chapter to be held earlier than three years after the date of the most recent incorporation election under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 792, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 8. TYPE C GENERAL-LAW MUNICIPALITY

SUBCHAPTER A. INCORPORATION AS TYPE C GENERAL-LAW MUNICIPALITY

Sec. 8.001. AUTHORITY TO INCORPORATE AS TYPE C GENERAL-LAW MUNICIPALITY. (a) A community may incorporate under this subchapter as a Type C general-law municipality if it:

(1) constitutes an unincorporated city, town, or village;

(2) contains 201 to 4,999 inhabitants; and

(3) meets the territorial requirements prescribed by Section 5.901.

(b) A community incorporating as a Type C general-law municipality adopts the commission form of government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.002. PETITION TO INCORPORATE. The residents of a community may initiate an attempt to incorporate under this subchapter by filing with the county judge a written petition signed by at least 10 percent of the qualified voters of the community. The petition must request the county judge to order an election to determine whether the community will incorporate as a Type C general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.003. ELECTION ORDER. If a county judge receives the petition and if satisfactory proof is made that the community contains the requisite number of inhabitants, the judge shall order an incorporation election to be held on a specified date and at a designated place in the community.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.004. ELECTION OFFICERS. The county judge shall appoint two election judges and two election clerks to conduct the incorporation election under this subchapter. The county judge shall designate one of the election judges to be the presiding judge.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.005. NOTICE OF ELECTION. Notice of an incorporation election under this subchapter must be published in a newspaper in the community before the 30th day before the date of the election, or if there is no newspaper in the community, the notice must be posted at three public places in the community for the 30 days preceding the date of the election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.006. ORDER OF INCORPORATION. If a majority of the votes cast in an election under this subchapter are for incorporation, the county judge shall enter an order in the minutes of the commissioners court that the community is incorporated. The incorporation is effective on the date the order is entered.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. CHANGE FROM ANOTHER MUNICIPAL TYPE TO TYPE C GENERAL-LAW MUNICIPALITY

Sec. 8.021. AUTHORITY TO CHANGE TO TYPE C GENERAL-LAW MUNICIPALITY. (a) A Type A general-law municipality containing 501 to 4,999 inhabitants or a Type B general-law municipality containing 501 to 999 inhabitants may change to a Type C general-law municipality.

(b) A municipality changing to a Type C general-law municipality adopts the commission form of government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.022. PETITION TO CHANGE. The residents of a municipality may initiate an attempt to make the change under this subchapter by filing with the mayor of the municipality a written petition signed by at least 10 percent of the qualified voters of the municipality. The petition must request the mayor to order an election to determine whether the municipality will change to a Type C general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.023. ELECTION ORDER. If the mayor receives the petition, the mayor shall order an election on the question of the change to be held in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.024. ELECTION OFFICERS. The mayor shall appoint two

election judges and two election clerks to conduct the election under this subchapter. The mayor shall designate one of the election judges to be the presiding judge.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.025. NOTICE OF ELECTION. In addition to the notice required by Chapter 4, Election Code, notice of an election under this subchapter must be published in a newspaper in the municipality before the 30th day before the date of the election, or if there is no newspaper in the municipality, the notice must be posted at three public places in the municipality for the 30 days preceding the date of the election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 8.026. ORDER OF CHANGE. If a majority of the votes cast in an election under this subchapter are for the change, the mayor shall enter an order in the minutes of the municipality's governing body that the municipality is changed. The change is effective from the time the order is entered.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 9. HOME-RULE MUNICIPALITY

Sec. 9.001. ADOPTION OR AMENDMENT OF HOME-RULE CHARTER. This chapter applies to the adoption or amendment of a municipal charter by a municipality authorized to do so by Article XI, Section 5, of the Texas Constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 9.0015. DEFINITION. In this chapter, "climate charter" means a charter provision or charter amendment establishing a comprehensive rule or policy statement that purports to address climate change or the municipality's environmental impact, including water and energy use and air pollution.

Added by Acts 2023, 88th Leg., R.S., Ch. 360 (S.B. 1860), Sec. 1, eff. September 1, 2023.

Sec. 9.002. SELECTION OF CHARTER COMMISSION. (a) The governing body of the municipality may, by an ordinance adopted by at least a two-thirds vote of its membership, order an election by the voters of the municipality on the question: "Shall a commission be chosen to frame a new charter?" The governing body shall by ordinance order the election if presented with a petition signed by at least 10 percent of the qualified voters of the municipality.

(b) The election ordinance shall provide for the election to be held on the date of the municipality's next general election scheduled after the 30th day but on or before the 90th day after the date the ordinance is adopted. However, if no general election is scheduled during that period that allows sufficient time to comply with other requirements of law, the election shall be ordered for the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs after the 30th day after the date the ordinance is adopted and published in a newspaper published in the municipality.

(c) The ballot at the election on the question prescribed by Subsection (a) shall also provide for the election from the municipality at large of a charter commission to draft a charter if a majority of the qualified voters voting on the question of choosing a charter commission approve the question. The commission must consist of at least 15 members, but if it has more than 15 members it may not have more than one member for each 3,000 inhabitants of the municipality. The ballot may not contain any party designation.

(d) The provisions of Subsections (a), (b), and (c) regarding the selection of a charter commission do not apply to the first charter election in a municipality if:

(1)(A) the governing body of the municipality selects a charter commission;

(B) a charter commission is selected at a mass meeting; or

(C) the mayor of the municipality appoints a charter commission; and

(2) the charter commission has proceeded with the formation

of a charter for the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 9.003. VOTE ON CHARTER. (a) Except as provided by Section 9.0045, the charter prepared by the charter commission shall be submitted to the qualified voters of the municipality at an election to be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs on or after the 40th day after the date the charter commission completes its work. The governing body of the municipality shall provide for the submission of the charter at the election to the extent that the provisions for submission are not prescribed by general law.

(b) Before the 30th day before the date of the election, the governing body of the municipality shall order the municipal clerk or the municipal secretary to mail a copy of the proposed charter to each registered voter of the municipality.

(c) The charter commission shall prepare the charter so that to the extent practicable each subject may be voted on separately.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(b), eff. Aug. 28, 1989. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 360 (S.B. 1860), Sec. 2, eff. September 1, 2023.

Sec. 9.004. CHARTER AMENDMENTS. (a) Except as provided by Section 9.0045, the governing body of a municipality on its own motion may submit a proposed charter amendment to the municipality's qualified voters for their approval at an election. The governing body shall submit a proposed charter amendment to the voters for their approval at an election if the submission is supported by a petition signed by a number of qualified voters of the municipality equal to at least five percent of the number of qualified voters of the municipality or 20,000, whichever number is the smaller.

(b) The ordinance ordering the election shall provide for the election to be held on the first authorized uniform election date prescribed by the Election Code or on the earlier of the date of the

next municipal general election or presidential general election. The election date must allow sufficient time to comply with other requirements of law and must occur on or after the 30th day after the date the ordinance is adopted.

(c) Notice of the election shall be published in a newspaper of general circulation published in the municipality. The notice must:

(1) include a substantial copy of the proposed amendment;

(2) include an estimate of the anticipated fiscal impact to the municipality if the proposed amendment is approved at the election; and

(3) be published on the same day in each of two successive weeks, with the first publication occurring before the 14th day before the date of the election.

(d) An amendment may not contain more than one subject.

(e) The ballot shall be prepared so that a voter may approve or disapprove any one or more amendments without having to approve or disapprove all of the amendments.

(f) The requirement imposed by Subsection (c)(2) does not waive governmental immunity for any purpose and a person may not seek injunctive relief or any other judicial remedy to enforce the estimate of the anticipated fiscal impact on the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1219, Sec. 5, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1349, Sec. 76, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 414 (S.B. 1086), Sec. 1, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 360 (S.B. 1860), Sec. 3, eff. September 1, 2023.

Sec. 9.0045. APPROVAL OF CLIMATE CHARTER OR AMENDMENT TO CHARTER BY LEGISLATURE REQUIRED. A municipality may not hold an election for voter approval of a proposed climate charter unless the legislature adopts a resolution approving the proposed climate charter.

Added by Acts 2023, 88th Leg., R.S., Ch. 360 (S.B. 1860), Sec. 4, eff. September 1, 2023.

Sec. 9.005. ADOPTION OF CHARTER OR AMENDMENT. (a) A proposed charter for a municipality or a proposed amendment to a municipality's charter is adopted if it is approved by a majority of the qualified voters of the municipality who vote at an election held for that purpose.

(b) A charter or an amendment does not take effect until the governing body of the municipality enters an order in the records of the municipality declaring that the charter or amendment is adopted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 9.006. CONCURRENT ELECTIONS. This chapter does not prevent the voters at an election to adopt a charter or an amendment to a charter from electing at the same election persons to hold office under the charter or amendment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 9.007. CERTIFICATION OF CHARTER OR AMENDMENT. (a) As soon as practicable after a municipality adopts a charter or charter amendment, the mayor or chief executive officer of the municipality shall certify to the secretary of state an authenticated copy of the charter or amendment under the municipality's seal showing the approval by the voters of the municipality.

(b) The secretary of state shall file and record the certification in his office in a book kept for that purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 9.008. REGISTRATION OF CHARTER OR AMENDMENT; EFFECT. (a) The secretary or other officer of a municipality performing functions similar to those of a secretary shall record in the secretary's or other officer's office a charter or charter amendment adopted by the voters of the municipality. If a charter or amendment is not recorded on microfilm, as may be permitted under another law, it shall be recorded in a book kept for that purpose.

(b) Recorded charters or amendments are public acts. Courts shall take judicial notice of them, and no proof is required of their

provisions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBTITLE B. MUNICIPAL FORM OF GOVERNMENT
CHAPTER 21. GENERAL PROVISIONS AFFECTING GOVERNING BODY OF MUNICIPALITY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. ELECTION OF ALDERMEN BY PLACE SYSTEM IN GENERAL-LAW MUNICIPALITY. (a) The governing body of a general-law municipality that is not divided into wards and that elects its aldermen at large may provide by ordinance for the election of aldermen under a place system.

(b) The ordinance must be enacted before the 60th day before the date of the first regular municipal election of aldermen under a place system.

(c) As soon as possible after the place system ordinance is enacted, the governing body shall assign place numbers to each alderman's office.

(d) When incumbent aldermen's terms of office expire, any candidate for the office of alderman shall file an application for a specific place on the governing body, such as "Alderman, Place No. 1."

(e) The ballot for an election under the place system must show each office of alderman as a separate office designated by place number.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 21.002. REFERENCES TO MUNICIPAL GOVERNING BODY AND TO MEMBERS OF MUNICIPAL GOVERNING BODY. A reference in this code or another statute:

(1) to a member of the governing body of a municipality includes each member of that body regardless of the name, including alderman, commissioner, or council member, used by a statute, municipal charter, or municipal ordinance to refer to the member; or

(2) to the governing body of a municipality includes a municipal governing body regardless of the name, including board of aldermen, city commission, or city council, used by a statute,

municipal charter, or municipal ordinance to refer to the governing body.

Added by Acts 2001, 77th Leg., ch. 402, Sec. 1(b), eff. Sept. 1, 2001.

Sec. 21.003. MEMBERS OF MUNICIPAL GOVERNING BODIES MAY VOLUNTEER. A member of the governing body of a municipality may serve as a volunteer for an organization that protects the health, safety, or welfare of the municipality regardless of whether the organization is funded or supported in whole or part by the municipality if the governing body adopts a resolution allowing members of the governing body to perform service of that nature.

Added by Acts 2001, 77th Leg., ch. 42, Sec. 2, eff. May 3, 2001. Renumbered from Local Government Code Sec. 21.002 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(104), eff. Sept. 1, 2003.

Sec. 21.005. CHOICE OF UNIFORM ELECTION DATE FOR NEWLY INCORPORATED MUNICIPALITY. Not later than the first anniversary of the date of its incorporation, a newly incorporated municipality shall select a uniform election date under Section 41.001, Election Code, to use for the general election of the members of the municipality's governing body.

Added by Acts 2011, 82nd Leg., R.S., Ch. 519 (H.B. 2144), Sec. 3, eff. September 1, 2011.

Sec. 21.006. ELECTION OF ENTIRE GOVERNING BODY UPON APPORTIONMENT. (a) A municipality that is divided into districts, wards, or other areas from which members of its governing body are elected shall elect all members of the municipality's governing body following each apportionment on the first uniform election date that allows sufficient time to comply with any requirements of law.

(b) If members of the governing body of a municipality described by Subsection (a) serve staggered terms, the municipality shall adopt an equitable process to determine which members of the governing body serve shorter terms to accommodate an election

following apportionment that accounts for the remaining time in each member's term and whether the term of any member elected from a particular district, ward, or area was previously shortened under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1124 (H.B. 3613), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. JUDICIAL REMOVAL OF MEMBER OF GOVERNING BODY OF GENERAL-LAW MUNICIPALITY

Sec. 21.021. APPLICABILITY. This subchapter applies only to a general-law municipality.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.022. DEFINITIONS. In this subchapter:

(1) "District attorney" includes a criminal district attorney.

(2) "Incompetency" means:

(A) gross ignorance of official duties;

(B) gross carelessness in the discharge of official duties; or

(C) inability or unfitness to promptly and properly discharge official duties because of a serious mental or physical defect that did not exist at the time of the officer's election.

(3) "Officer" means the mayor or another member of the governing body of a municipality.

(4) "Official misconduct" means intentional unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.023. REMOVAL FROM OFFICE. The district judge may remove an officer of the municipality from office as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.024. NO REMOVAL BEFORE ACTION. An officer may not be removed under this subchapter for an act the officer committed before election to office if the act was a matter of public record or otherwise known to the voters.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 402, Sec. 2, eff. Sept. 1, 2001.

Sec. 21.025. GENERAL GROUNDS FOR REMOVAL. (a) An officer may be removed from office for:

(1) incompetency;

(2) official misconduct; or

(3) intoxication on or off duty caused by drinking an alcoholic beverage.

(b) Intoxication is not a ground for removal if it appears at the trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in this state.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.026. PETITION FOR REMOVAL. (a) A proceeding for the removal of an officer is begun by filing a written petition for removal in a district court of the county in which the officer resides.

(b) Any resident of the municipality who has lived for at least six months in the municipality and who is not currently under indictment in the county in which the municipality is located may file the petition. At least one of the parties who files the petition must swear to it at or before the filing.

(c) The petition must be addressed to the district judge of the court in which it is filed. The petition must specify the grounds alleged for the removal of the officer in plain and intelligible language and must cite the time and place of the occurrence of each act alleged as a ground for removal with as much certainty as the nature of the case permits.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.027. CITATION OF OFFICER. (a) After a petition for removal is filed, the person filing the petition shall apply to the district judge in writing for an order requiring a citation and a certified copy of the petition to be served on the officer.

(b) If the application for the order is made during the term of the court, action may not be taken on the petition until the order is granted and entered in the minutes of the court. If the application is made to the judge during the vacation of the court, the judge shall indicate on the petition the action taken and shall have the action entered in the minutes of the court at the next term.

(c) If the judge refuses to issue the order for citation, the petition shall be dismissed at the cost of the person filing the petition. The person may not take an appeal from the judge's decision or apply for a writ of mandamus. If the judge grants the order for citation, the clerk shall issue the citation with a certified copy of the petition. The judge shall require the person filing the petition to post security for costs in the manner provided for other cases.

(d) The citation shall order the officer to appear and answer the petition on a date, fixed by the judge, after the fifth day after the date the citation is served. The time is computed as it is in other suits. Disposition of this action by the district court shall take precedence over other civil matters on the court's docket.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.028. BOND. (a) The judge shall require the person filing the petition to execute a bond, with at least two good and sufficient sureties, in an amount fixed by the judge and conditioned as required by the judge. The bond shall be used to pay damages and costs to the officer if the grounds for removal are found at trial to be insufficient or untrue. The officer must serve written notice on the person who filed the petition and that person's bondsman not later than the 90th day after the date the bond is executed, stating that the officer intends to hold them liable on the bond and stating the grounds for that liability.

(b) If the final judgment establishes the officer's right to the office, the person filing the petition shall pay the officer an amount determined by the judge as appropriate to compensate the officer for the damages suffered as a result of the removal action.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.029. TRIAL. (a) An officer shall have the right to trial by jury.

(b) The trial for the removal of an officer and the proceedings connected with the trial shall be conducted as much as possible in accordance with the rules and practice of the court in other civil cases, in the name of the State of Texas, and on the relation of the person filing the petition.

(c) In a removal case, the judge may not submit special issues to the jury. Under a proper charge applicable to the facts of the case, the judge shall instruct the jury to find from the evidence whether the grounds for removal alleged in the petition are true. If the petition alleges more than one ground for removal, the jury shall indicate in the verdict which grounds are sustained by the evidence and which are not sustained.

(d) The district attorney shall represent the state in a proceeding for the removal of an officer.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.030. APPEAL. (a) Either party to a removal action may appeal the final judgment to the court of appeals in the manner provided for other civil cases. The officer is not required to post an appeal bond but may be required to post a bond for costs.

(b) An appeal of a removal action takes precedence over the ordinary business of the court of appeals and shall be decided with all convenient dispatch. If the trial court judgment is not set aside or suspended, the court of appeals shall issue its mandate in the case not later than the fifth day after the date the court renders its judgment.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

Sec. 21.031. REMOVAL BY CRIMINAL CONVICTION. (a) The conviction of an officer for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office.

(b) The court rendering judgment in the case shall include in the judgment an order removing the officer.

(c) If the removed officer appeals the judgment, other than for an offense to which Section 180.010 applies, the appeal supersedes the order of removal unless the court that renders the judgment finds that it is in the public interest to suspend the removed officer pending the appeal. If the court finds that the public interest requires suspension, the court shall suspend the removed officer as provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 402, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1048 (S.B. 232), Sec. 2, eff. September 1, 2023.

Sec. 21.032. REELECTION PROHIBITED FOR CERTAIN PERIOD. An officer removed under this subchapter is not eligible for reelection to the same office before the second anniversary of the date of the removal.

Added by Acts 1999, 76th Leg., ch. 1567, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER C. REMOVAL OF MEMBER OF GOVERNING BODY OF CERTAIN GENERAL-LAW MUNICIPALITIES FOLLOWING ELECTION

Sec. 21.101. REMOVAL BY RECALL ELECTION AUTHORIZED. A member of the governing body of a general-law municipality with a population of less than 3,000 located in a county that borders the United Mexican States and contains a municipality with a population of more than 500,000 may be removed from office through a recall election initiated by petition as provided by this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 701 (H.B. 3015), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 119, eff. September 1, 2023.

Sec. 21.102. PETITION. (a) Before circulating a petition, a notice of intent to circulate a petition must be filed with the municipal clerk. A notice of intent to circulate a petition may not be filed before the 180th day after the date the officer whose removal is sought:

(1) was elected; or

(2) was subject to an unsuccessful recall election.

(b) After notice is filed under Subsection (a), a petition may be circulated. Each page of the petition must legibly and conspicuously:

(1) be titled "Recall Petition";

(2) state that the petition seeks to initiate a recall election to remove a member of the governing body;

(3) state the full name and title of the member whose removal is sought; and

(4) state the reasons for seeking removal.

(c) For a signature to be valid, it must:

(1) comply with the requirements of Section 277.002, Election Code; and

(2) be the signature of a registered voter in the territory that elected the member whose removal is sought.

(d) At least one signer of the petition must swear before a notary public or other person authorized to administer oaths that each signature on the petition was made by the person whose signature it purports to be, and that oath must be memorialized on the petition.

(e) A petition is valid if:

(1) the petition complies with the requirements of Subsections (a), (b), (c), and (d) of this section and Chapter 277, Election Code;

(2) the total number of valid signatures on the petition equals at least 50 percent of the total number of votes cast in the most recent election of the member whose removal is sought that was not a runoff election; and

(3) the petition is filed with the municipal clerk not later than the 30th day after the date of the filing of notice under

Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 701 (H.B. 3015), Sec. 1, eff. June 14, 2013.

Sec. 21.103. REVIEW OF PETITION. (a) Not later than the 10th day after the date a petition is filed, the municipal clerk shall review the petition and determine whether the petition is valid.

(b) If the municipal clerk determines the petition is valid, the clerk shall attach a certificate to the petition stating that the petition is valid and submit the petition and certificate to the governing body of the municipality as soon as practicable. If the clerk determines that the petition is not valid:

(1) the clerk shall attach a certificate to the petition stating the facts supporting the determination that the petition is not valid;

(2) the clerk shall notify the person who filed the petition of the clerk's determination;

(3) the petition may be amended or supplemented and resubmitted not later than the 10th day after the date of the certification under Subdivision (1); and

(4) the clerk shall return the petition to the person who filed it.

(c) The municipal clerk shall determine the validity of a petition resubmitted under Subsection (b)(3) in the same manner as the original submission except that if the clerk determines the petition is not valid the petition may not be further amended or supplemented and the recall election is not held.

Added by Acts 2013, 83rd Leg., R.S., Ch. 701 (H.B. 3015), Sec. 1, eff. June 14, 2013.

Sec. 21.104. ELECTION. (a) Unless the member who is the target of the petition resigns before the sixth day after the date a petition and certificate are delivered to the governing body of the municipality, the governing body shall order that a recall election be held on the first uniform election date that occurs 78 days after the date of the order.

(b) The ballot for a recall election shall be printed to permit

voting for or against the proposition: "The removal of (name of the member of the governing body) from the governing body of (name of the municipality)".

(c) If less than a majority of the votes received at the recall election are in favor of removal of the member of the governing body named on the ballot, the member remains in office. If a majority of the votes received are in favor of the removal of the member, the governing body shall immediately declare the member's office vacant and the vacancy shall be filled in the manner prescribed by law for filling a vacancy on the governing body. A member removed by recall may not be appointed to fill the vacancy and may not be a candidate in any election called to fill the vacancy.

Added by Acts 2013, 83rd Leg., R.S., Ch. 701 (H.B. 3015), Sec. 1, eff. June 14, 2013.

Sec. 21.105. CLERK. In this subchapter, a municipal clerk includes a municipal secretary or any other officer of the municipality who performs the duties of a municipal clerk or secretary.

Added by Acts 2013, 83rd Leg., R.S., Ch. 701 (H.B. 3015), Sec. 1, eff. June 14, 2013.

CHAPTER 22. ALDERMANIC FORM OF GOVERNMENT IN TYPE A GENERAL-LAW MUNICIPALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 22.001. CHAPTER APPLICABLE TO TYPE A GENERAL-LAW MUNICIPALITY. This chapter applies only to a Type A general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.002. CONTINUATION OF OFFICES IN MUNICIPALITY CHANGING TO TYPE A GENERAL-LAW MUNICIPALITY. If a municipality changes to a Type A general-law municipality under Subchapter B of Chapter 6, the officers serving in the municipality on the date of the change shall continue in office until their offices are superseded in conformity

to the law applying to Type A general-law municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.003. DATE OF MUNICIPAL ELECTION. An election for officers of the municipality shall be held annually, except as otherwise provided by law, in each ward of the municipality on an authorized uniform election date as provided by Chapter 41, Election Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.004. PLURALITY VOTE REQUIRED FOR ELECTION OF MUNICIPAL OFFICER. To be elected to an office of the municipality, a person must receive more votes than any other person for the office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.005. OATH FOR ELECTED OR APPOINTED OFFICER. (a) A person who is elected or appointed to a municipal office under this code must take and sign the official oath of office before beginning to perform the duties of the office.

(b) The governing body of the municipality by ordinance may require a municipal officer to take any additional oath that the governing body considers best calculated to secure the faithful performance of the officer's duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.006. DATE ON WHICH OFFICERS BEGIN TO PERFORM DUTIES. A newly elected municipal officer may exercise the duties of office beginning on the fifth day after the date of the election, excluding Sundays.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.007. VACANCY CREATED ON FAILURE TO QUALIFY. If a municipal officer-elect fails to qualify for office within 30 days after the date of the officer's election, the office is considered vacant.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.008. DISQUALIFICATION FROM OFFICE. (a) An officer who is entrusted with the collection or custody of funds belonging to the municipality and who is in default to the municipality may not hold any municipal office until the amount of the default, plus 10 percent interest, is paid to the municipality.

(b) If a member of the governing body changes the member's place of residence to a location outside the corporate boundaries of the municipality, the member is automatically disqualified from holding the member's office and the office is considered vacant.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1096 (H.B. 3727), Sec. 1, eff. September 1, 2017.

Sec. 22.009. REMOVAL FROM OFFICE FOR MISAPPROPRIATION OF SPECIAL FUNDS. A municipal officer who misappropriates money in a special fund created by the municipality under Section 101.004 is guilty of malfeasance in office. On the complaint of a person who has an interest in the affected funds, the officer shall be removed from office and is ineligible to hold any office in that municipality after removal.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.010. FILLING VACANCY ON GOVERNING BODY OR IN OTHER MUNICIPAL OFFICE. (a) If for any reason a single vacancy exists on the governing body of the municipality, a majority of the remaining members who are present and voting, excluding the mayor, may fill the vacancy by appointment unless an election to fill the vacancy is required by Section 11, Article XI, Texas Constitution. The mayor

may vote on the appointment only if there is a tie.

(a-1) A person serving as a member of the governing body is not, because of that service, ineligible to be appointed to fill a vacancy in the office of mayor of the municipality, but the person may not vote on the person's own appointment.

(b) The person appointed to fill the vacancy serves until the next regular municipal election.

(c) In lieu of appointing a person to fill a vacancy on the governing body, a special election may be ordered to elect a person to fill the vacancy.

(d) If two or more vacancies on the governing body exist at the same time, a special election shall be ordered to fill the vacancies.

(d-1) A member of the governing body is ineligible to vote to fill a vacancy on the governing body by special election after resigning from the governing body.

(e) If a vacancy exists in any other municipal office, the mayor or acting mayor shall appoint a person to fill the vacancy, subject to confirmation by the governing body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 513 (S.B. 653), Sec. 1, eff. June 16, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1096 (H.B. 3727), Sec. 2, eff. September 1, 2017.

Sec. 22.011. FILLING VACANCY IN MUNICIPAL OFFICE UNDER SPECIAL CIRCUMSTANCES. If a vacancy occurs in a municipal office by a resignation or in another manner and if the vacancy cannot be filled as provided by other law, the commissioners court of the county in which the municipality is located shall order an election to fill the vacancy if the court is petitioned to do so by at least 26 taxpaying voters residing in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.012. RESIGNATION OF ELECTED OR APPOINTED MUNICIPAL OFFICER. A municipal officer elected or appointed under this chapter may resign by submitting the resignation in writing to the governing

body of the municipality. The resignation is subject to the approval and acceptance of the governing body. However, a person who is appointed by the mayor may submit the written resignation to the mayor for the mayor's action.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. GOVERNING BODY

Sec. 22.031. COMPOSITION OF GOVERNING BODY; WARD SYSTEM OPTIONAL. (a) If the municipality is divided into wards, the governing body of the municipality consists of a mayor who is elected by the qualified voters of the municipality and of two aldermen from each ward who are elected by the qualified voters of the ward.

(b) If the municipality is not divided into wards, the governing body consists of a mayor and five aldermen who are elected by the qualified voters of the municipality, and the provisions of this subchapter relating to proceedings in a ward apply to the whole municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.032. QUALIFICATIONS OF MEMBERS OF GOVERNING BODY. (a) To be eligible for the office of mayor of the municipality, a person must be a registered voter and must have resided within the municipal limits for at least the 12 months preceding the election day. For purposes of this subsection, residency in an area while the area was not within the municipal limits is considered as residency within the limits if the area is a part of the municipality on election day.

(b) To be eligible for the office of alderman of the municipality, a person must be a registered voter and must reside on election day in the ward from which the person may be elected.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.033. GOVERNING BODY TO JUDGE ELECTION AND QUALIFICATION OF MEMBERS. The governing body of the municipality is the judge of the election and qualifications of its members.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.034. INITIAL ELECTION AND TERM OF OFFICE. (a) If the municipality is divided into wards, at the initial election for officers of the municipality, the mayor and the two aldermen from each ward shall be elected. The aldermen for each ward are the candidates from that ward who receive the highest and second highest number of votes at the initial election.

(b) The two aldermen elected from each ward shall draw lots at the first regular meeting of the governing body of the municipality to determine which alderman serves for one year and which alderman serves for two years after the initial election. At each following annual election, one alderman shall be elected from each ward for the regular term.

(c) If the municipality is not divided into wards, the governing body by ordinance may determine the number and the manner of deciding which aldermen elected at the initial election for officers serve for one year and which serve for two years.

(d) If the aldermen of the governing body of a municipality are not serving staggered terms of office as provided by Subsection (c), the governing body by majority vote may establish staggered terms by requiring the aldermen to draw lots.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 405 (H.B. 1434), Sec. 1, eff. June 9, 2023.

Sec. 22.035. REGULAR TERM OF OFFICE. The mayor and aldermen of the municipality are elected for a term of two years unless a longer term is established under Article XI, Section 11, of the Texas Constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.036. INSTALLATION OF GOVERNING BODY. On the fifth day after the date of the election, excluding Sundays, or as soon as possible after that fifth day, the newly elected governing body of

the municipality shall meet at the usual meeting place and shall be installed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.037. MAYOR AS PRESIDING OFFICER; PRESIDENT PRO TEMPORE. (a) The mayor shall preside at all meetings of the governing body of the municipality and, except in elections, may vote only if there is a tie.

(b) At each new governing body's first meeting or as soon as practicable, the governing body shall elect one alderman to serve as president pro tempore for a term of one year.

(c) If the mayor fails, is unable, or refuses to act, the president pro tempore shall perform the mayor's duties and is entitled to receive the fees and compensation prescribed for the mayor.

(d) If the mayor and the president pro tempore are absent, any alderman may be appointed to preside at the meeting.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.038. MEETINGS. (a) The governing body of the municipality shall meet at the time and place determined by a resolution adopted by the governing body.

(b) The mayor may call a special meeting on the mayor's own motion and shall call a special meeting on the application of three aldermen. Each member of the governing body, the secretary, and the municipal attorney must be notified of the special meeting. The notice may be given personally or left at the person's usual place of residence.

(c) The governing body shall determine the rules of its proceedings and may compel the attendance of absent members and punish them for disorderly conduct.

(d) An alderman shall be fined $3 for each meeting that the alderman fails to attend unless the absence is caused by the alderman's illness or the illness of a family member.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 947 (H.B. 1734), Sec. 1, eff. June 14, 2013.

Sec. 22.039. QUORUM. A majority of the number of aldermen established by Section 22.031 for the municipality constitutes a quorum. However, at a called meeting or at a meeting to consider the imposition of taxes, two-thirds of the number of aldermen established by that section constitutes a quorum unless provided otherwise.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.040. CHANGE OF WARDS. (a) The governing body of the municipality may divide the municipality into as many wards as it considers necessary for the good of the residents and may change ward boundaries. The wards must contain an equal number of voters as far as practicable.

(b) The governing body may not change the number of wards or boundaries of a ward during the three-month period preceding the date of a municipal election.

(c) The wards of a municipality that changes to a Type A general-law municipality under Subchapter B, Chapter 6, are not affected by that action.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.041. VACANCY ON GOVERNING BODY IS CREATED. (a) If an alderman moves from the ward from which the alderman is elected, the alderman's office is considered vacant.

(b) If a member of the governing body is absent for three regular consecutive meetings, the member's office is considered vacant unless the member is sick or has first obtained a leave of absence at a regular meeting.

(c) In addition to an absence described by Subsection (b), a member of a governing body is also considered absent for the purposes of that subsection if the member is not present at the adjournment of a meeting at which a quorum is established, unless the member is first allowed to withdraw by the unanimous vote of the members present. This subsection applies only to a municipality that is

located in a county that borders the United Mexican States and contains a municipality with a population of 500,000 or more.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 995 (H.B. 2259), Sec. 1, eff. June 14, 2013.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 120, eff. September 1, 2023.

Sec. 22.042. POWERS AND DUTIES OF MAYOR. (a) The mayor is the chief executive officer of the municipality. The mayor shall at all times actively ensure that the laws and ordinances of the municipality are properly carried out. The mayor shall perform the duties and exercise the powers prescribed by the governing body of the municipality.

(b) The mayor shall inspect the conduct of each subordinate municipal officer and shall cause any negligence, carelessness, or other violation of duty to be prosecuted and punished.

(c) The mayor shall give to the governing body any information, and shall recommend to the governing body any measure, that relates to improving the finances, police, health, security, cleanliness, comfort, ornament, or good government of the municipality.

(d) The mayor may administer oaths of office.

(e) In the event of a riot or unlawful assembly or to preserve the peace and good order in the municipality, the mayor may order and enforce the closing of a theater, ballroom, or other place of recreation or entertainment, or a public room or building and may order the arrest of a person who violates a state law or a municipal ordinance in the presence of the mayor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.043. PETITIONS AND REMONSTRANCES PRESENTED TO GOVERNING BODY. Petitions and remonstrances may be presented to the governing body of the municipality and must be in writing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. OTHER MUNICIPAL OFFICERS

Sec. 22.071. OTHER MUNICIPAL OFFICERS. (a) In addition to the members of the governing body of the municipality, the other officers of the municipality are the secretary, treasurer, assessor and collector, municipal attorney, marshal, municipal engineer, and any other officers or agents authorized by the governing body.

(b) The governing body by ordinance shall provide for the election or appointment of the officers provided by this section.

(c) The governing body may confer on other municipal officers the powers and duties of an officer provided for by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.072. POWERS AND DUTIES OF MUNICIPAL OFFICERS; BOND. (a) The governing body of the municipality may require a municipal officer whose duties are prescribed by this code to perform additional duties.

(b) The governing body may prescribe the powers and duties of a municipal officer appointed or elected to an office under this code whose duties are not specified by this code.

(c) The governing body may require a municipal officer to execute a bond payable to the municipality and conditioned that the officer will faithfully perform the duties of the office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.073. POWERS AND DUTIES OF SECRETARY. (a) The secretary of the municipality shall attend each meeting of the governing body of the municipality and shall keep, in a record provided for that purpose, accurate minutes of the governing body's proceedings.

(b) The secretary shall:

(1) engross and enroll all laws, resolutions, and ordinances of the governing body;

(2) keep the corporate seal;

(3) take charge of, arrange, and maintain the records of the governing body;

(4) countersign all commissions issued to municipal officers and all licenses issued by the mayor, and keep a record of

those commissions and licenses; and

(5) prepare all notices required under any regulation or ordinance of the municipality.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1324, Sec. 5(2), eff. June 17, 2011.

(d) The secretary shall draw all the warrants on the treasurer, countersign the warrants, and keep, in a record provided for that purpose, an accurate account of the warrants.

(e) The secretary serves as the general accountant of the municipality and shall keep regular accounts of the municipal receipts and disbursements. The secretary shall keep each cause of receipt and disbursement separately and under proper headings. The secretary shall also keep separate accounts with each person, including each officer, who has monetary transactions with the municipality. The secretary shall credit accounts allowed by proper authority and shall specify the particular transaction to which each entry applies. The secretary shall keep records of the accounts and other information covered by this subsection.

(f) The secretary shall keep a register of bonds and bills issued by the municipality and all evidence of debt due and payable to the municipality, noting the relevant particulars and facts as they occur.

(g) The secretary shall carefully keep all contracts made by the governing body.

(h) The secretary shall perform all other duties required by law, ordinance, resolution, or order of the governing body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 47, eff. Sept. 1, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1184 (H.B. 3475), Sec. 3(2), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1324 (S.B. 480), Sec. 5(2), eff. June 17, 2011.

Sec. 22.074. CERTIFICATION OF SECRETARIES. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) A person may be certified to practice as a municipal

secretary in this state. The person shall be granted a certificate on completion of a program of instruction for municipal secretaries conducted at an institution of higher education.

(c) A private association of secretaries of municipalities may contract with an institution of higher education to use the facilities of the institution to provide a program of instruction for municipal secretaries. The association shall develop the program with the assistance of the institution. The institution shall approve a program that meets qualifications for approval developed by the institution. The association shall conduct the program at the institution.

(d) A private association of secretaries that establishes a program of instruction under this section shall pay the costs of the program, including the payment of a reasonable fee to the institution that houses the program for the use of the institution's facilities. State funds may not be appropriated to finance a certification program established under this section.

(e) A private association of secretaries that establishes a program of instruction under this section shall issue a certificate to each person who successfully completes the program. A person who holds a certificate issued under this section must renew the certificate not later than five years after the date on which the original certificate was issued. The person may renew the certificate on completion of a supplementary program of instruction conducted at the institution of higher education.

(f) This section does not require a person to be certified as a municipal secretary in order to practice in that capacity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.075. BOND AND DUTIES OF TREASURER. (a) The treasurer of the municipality shall execute a bond. The bond must:

(1) be in favor of the municipality;

(2) be in the form and amount required by the governing body of the municipality;

(3) have security approved as sufficient by the governing body; and

(4) be conditioned that the treasurer will faithfully discharge the duties of the office.

(b) The treasurer shall receive and securely keep all money belonging to the municipality. The treasurer shall make all payments on the order of the mayor, attested by the secretary of the municipality under the seal of the municipality. The treasurer may not pay an order unless the face of the order shows that the governing body directed the issuance of the order and shows the purpose for which it is issued.

(c) The treasurer shall render to the governing body a full statement of the receipts and payments. The statement must be rendered at the governing body's first regular meeting in every quarter and at other times as required by the governing body.

(d) The treasurer shall perform other acts and duties as the governing body requires.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.076. BOND OF MARSHAL; ABOLITION OF OFFICE. (a) The marshal of the municipality shall execute a bond. The bond must be conditioned that the marshal will faithfully perform the official duties as the governing body of the municipality may require.

(b) The governing body of a municipality with a population of less than 5,000 by ordinance may abolish the office of marshal and, at the same time in the ordinance, confer the duties of the office on a municipal police officer appointed as the governing body directs or on any other peace officer of the county. However, an elected marshal may not be removed from office under this subsection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 22.077. REMOVAL OF MUNICIPAL OFFICERS. (a) The governing body of the municipality may remove a municipal officer for incompetency, corruption, misconduct, or malfeasance in office after providing the officer with due notice and an opportunity to be heard.

(b) If the governing body lacks confidence in a municipal officer appointed by the governing body, the governing body may remove the officer at any time. The removal is effective only if two-thirds of the elected aldermen vote in favor of a resolution declaring the lack of confidence.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 4, eff. Sept. 1, 2001.

CHAPTER 23. ALDERMANIC FORM OF GOVERNMENT IN TYPE B GENERAL-LAW MUNICIPALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 23.001. CHAPTER APPLICABLE TO TYPE B GENERAL-LAW MUNICIPALITY. This chapter applies only to a Type B general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.002. FILLING VACANCY IN MUNICIPAL OFFICE. (a) The aldermen on the governing body of the municipality shall fill any vacancy that occurs in an office created by this chapter or created under this chapter by the governing body unless an election to fill the vacancy is required by Article XI, Section 11, of the Texas Constitution. The vacant office shall be filled for the unexpired term only.

(b) A person serving as a member of the governing body is not, because of that service, ineligible to be appointed to fill a vacancy in the office of mayor of the municipality, but the person may not vote on the person's own appointment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 513 (S.B. 653), Sec. 2, eff. June 16, 2007.

SUBCHAPTER B. GOVERNING BODY AND MARSHAL

Sec. 23.021. INITIAL ELECTION OF GOVERNING BODY AND MARSHAL. Immediately after the municipality has incorporated, the county judge of the county in which the municipality is located shall order an election for a mayor, five aldermen, and a marshal.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.022. INITIAL MAYOR. Immediately after election returns for the initial election for municipal officers have been made, the county judge shall commission the candidate who received the highest number of votes for the office of mayor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.023. REGULAR ANNUAL ELECTION. (a) After the initial election, the election for the mayor, aldermen, and marshal shall be held annually, except as otherwise provided by law, on an authorized uniform election date as provided by Chapter 41, Election Code.

(b) The mayor, or any two aldermen if the mayor is unable or refuses to act, shall order the election.

(c) In addition to the notice required by Chapter 4, Election Code, the authority ordering the election shall post notice for at least the 20 days preceding election day in at least three public places within the municipal limits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.024. QUALIFICATIONS OF GOVERNING BODY AND MARSHAL; BOND FOR MARSHAL. (a) To be eligible for the office of mayor, alderman, or marshal of the municipality, a person must be a qualified voter in the municipality and must have resided within the municipal limits for at least the six months preceding election day.

(b) The governing body shall prescribe the bond and security that the marshal must execute. The bond must be executed within five days after the date the marshal is elected or appointed, must be approved by the mayor before the marshal begins to perform the duties of the office, and must be payable to the municipality. If the marshal does not execute the bond within the required period, the governing body may appoint another person to the office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.025. INITIAL TERM OF OFFICE. The mayor, aldermen, and marshal elected at the initial election under Section 23.021 hold office until their successors have been duly elected at the following

annual municipal election and have qualified.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.026. REGULAR TERM OF OFFICE. (a) The mayor, aldermen, and marshal of the municipality are elected for a term of one year unless a longer term is established under Subsection (b) or under Article XI, Section 11, of the Texas Constitution.

(b) In lieu of one-year terms of office, the governing body may provide by ordinance for two-year staggered terms of office for the mayor and aldermen. If the governing body adopts the ordinance, the mayor and two aldermen serve for a term of two years. The two aldermen who serve two-year terms are determined by drawing lots at the first meeting of the governing body following the annual municipal election held after the ordinance is adopted. The remaining aldermen hold office for an initial term of one year. Thereafter, all members of the governing body serve for a term of two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.027. PRESIDENT; PRESIDENT PRO TEMPORE. (a) The mayor is the president of the governing body of the municipality.

(b) At the first meeting of each new governing body or as soon as practicable, the governing body shall elect one alderman to serve as president pro tempore for a term of one year. The president pro tempore performs the duties of the mayor if the mayor fails, is unable, or refuses to act.

(c) If the mayor and president pro tempore are absent from a meeting, the aldermen present at the meeting may appoint any alderman to act as the presiding officer if a quorum is present.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.028. QUORUM. (a) The mayor and three aldermen constitute a quorum.

(b) If the mayor is absent, four aldermen constitute a quorum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.029. ABOLITION OF OFFICE OF MARSHAL. The governing body of a municipality with a population of less than 5,000 by ordinance may abolish the office of marshal and, by the same ordinance, confer the duties of the office on a municipal police officer appointed as the governing body directs or on any other peace officer of the county. However, an elected marshal may not be removed from office under this section.

Added by Acts 1995, 74th Leg., ch. 573, Sec. 1, eff. Aug. 28, 1995.

SUBCHAPTER C. OTHER MUNICIPAL OFFICERS

Sec. 23.051. OTHER MUNICIPAL OFFICERS. The governing body of the municipality may appoint officers, other than the mayor, aldermen, or marshal, as necessary to carry out the municipality's functions under this code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.052. DUTIES OF MUNICIPAL OFFICERS; BOND. (a) The governing body of the municipality may prescribe the duties of the officers it appoints under this subchapter.

(b) The governing body shall prescribe the bonds and security that an appointed municipal officer must execute. The bond must be executed within five days after the date the officer is appointed, must be approved by the mayor before the officer begins to perform the duties of the office, and must be payable to the municipality. If the officer does not execute the bond within the required period, the governing body may appoint another person to the office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 23.053. REMOVAL OF MUNICIPAL OFFICERS. The governing body of the municipality may dismiss at any time the officers that it appoints under this subchapter and may appoint others in their places.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 24. COMMISSION FORM OF GOVERNMENT IN GENERAL-LAW MUNICIPALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 24.001. CHAPTER APPLICABLE TO TYPE C GENERAL-LAW MUNICIPALITY. This chapter applies only to a Type C general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. GOVERNING BODY

Sec. 24.021. INITIAL ELECTION OF GOVERNING BODY OF COMMUNITY INCORPORATING AS TYPE C GENERAL-LAW MUNICIPALITY; INITIAL TERM. (a) At the election at which a community votes to incorporate as a Type C general-law municipality, a mayor and two commissioners must be elected.

(b) The officers elected under this section serve until the date of the first regular election for municipal officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.022. INITIAL ELECTION OF GOVERNING BODY OF MUNICIPALITY CHANGING TO TYPE C GENERAL-LAW MUNICIPALITY; INITIAL TERM. (a) The mayor of a municipality that votes to change to a Type C general-law municipality continues to hold office for the term for which the mayor was elected.

(b) At the election at which a municipality votes to change to a Type C general-law municipality, two commissioners shall be elected. The commissioners serve until the date of the first regular election for municipal officers.

(c) After the initial commissioners elected under Subsection (b) have qualified for office, the offices of the former governing body of the municipality are abolished and the mayor and the commissioners constitute the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.023. REGULAR TERM OF OFFICE; REGULAR ELECTION DATE. (a) The mayor and commissioners of the municipality serve for a term of two years unless a longer term is established under Article XI, Section 11, of the Texas Constitution.

(b) The election for mayor and commissioners shall be held on an authorized uniform election date as provided by Chapter 41, Election Code.

(c) The first regular election must be on an authorized uniform election date occurring:

(1) in the case of a community incorporating as a Type C general-law municipality, within one year after the expiration of the month in which the incorporation election is held; or

(2) in the case of a municipality changing to a Type C general-law municipality, within one year after the month in which the election on the change is held.

(d) In a city incorporated under this chapter with a population of over 10,000 residents, the governing body may adopt an ordinance to determine if commissioners may be elected in alternate years or in the same election year. Elections under this subsection shall be held on an authorized uniform election date as provided by Chapter 41, Election Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 555 (H.B. 2920), Sec. 1, eff. September 1, 2011.

Sec. 24.024. BOND OF MAYOR AND COMMISSIONERS. (a) The mayor and each commissioner of the municipality must execute a bond. The bond must be:

(1) in the amount of $3,000;

(2) conditioned that the mayor or commissioner will faithfully perform the duties of the office;

(3) payable to the municipality for its use and benefit; and

(4) approved by the governing body.

(b) The bonds of the initial commissioners must be approved by the governing body within 20 days after the date the county judge or the mayor enters the order under Section 8.006 or 8.026.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.025. MEETINGS. (a) The governing body of the municipality shall hold at least one regular monthly meeting.

(b) The mayor or two commissioners may call special meetings as necessary to attend to municipal business.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.026. FILLING VACANCY ON GOVERNING BODY. (a) If the mayor or commissioner of a municipality dies or resigns, the other members of the governing body of the municipality shall appoint a person to fill the vacancy. A person serving as a member of the governing body is not, because of that service, ineligible to be appointed to fill a vacancy in the office of mayor of the municipality, but the person may not vote on the person's own appointment.

(b) If, because of death, resignation, failure to qualify, or other reason, vacancies exist in the offices of mayor and commissioner at the same time or in the offices of two commissioners at the same time, the county judge shall order a special election to fill the vacancies. The election is governed by the provisions applicable to an election under Subchapter A, Chapter 8.

(c) The county judge shall certify the results of the election to the clerk of the governing body and the clerk shall enter the results in the minutes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 513 (S.B. 653), Sec. 3, eff. June 16, 2007.

SUBCHAPTER C. OTHER MUNICIPAL OFFICERS

Sec. 24.051. OTHER MUNICIPAL OFFICERS; DUTIES. (a) The governing body of the municipality may appoint a municipal attorney and other officers that the governing body considers necessary.

(b) The governing body may define the duties of the officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.052. CLERK AND TAX ASSESSOR-COLLECTOR; BOND; POWERS AND DUTIES. (a) The governing body of the municipality shall appoint a competent person as clerk of the municipality. The clerk is also the tax assessor-collector of the municipality.

(b) Before beginning to perform the duties of the office, the clerk must execute a good and sufficient bond with a surety company authorized to do business in this state. The bond must be:

(1) in an amount determined by the governing body to be sufficient to protect the funds of the municipality, but not less than twice the largest amount collected at any one time in the preceding fiscal or calendar year;

(2) approved by the governing body; and

(3) filed and recorded in the minutes of the governing body.

(c) The clerk has the same powers and duties that are imposed by the general laws on the clerk, treasurer, and tax assessor-collector of a Type A or Type B general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.053. ABOLITION OF MUNICIPAL OFFICE; DISCHARGE OF OFFICER OR EMPLOYEE. At any time, the governing body of the municipality may abolish an office that it creates and may discharge an officer, clerk, or employee that it appoints.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. CHANGE FROM COMMISSION FORM OF GOVERNMENT TO ANOTHER FORM

Sec. 24.071. CHANGE FROM COMMISSION FORM OF GOVERNMENT TO ANOTHER FORM. (a) A Type C general-law municipality operating under the commission form of government may adopt the aldermanic form of government provided by Chapter 22 or may adopt any other lawful form of government by majority vote at an election ordered and held for that purpose.

(b) An election to consider changing from the commission form

of government to another form of government must be ordered and held as provided by the provisions of Subchapter B, Chapter 8, relating to an election to change to a Type C general-law municipality.

(c) If a Type C general-law municipality adopts the aldermanic form of government, the mayor and two commissioners holding office immediately before the election continue to hold office as mayor and aldermen for the remainder of their terms.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 25. CITY MANAGER FORM OF GOVERNMENT IN GENERAL-LAW MUNICIPALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 25.001. CHAPTER APPLICABLE TO GENERAL-LAW MUNICIPALITY WITH POPULATION OF LESS THAN 5,000. This chapter applies only to a general-law municipality with a population of less than 5,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. CITY MANAGER

Sec. 25.021. ADOPTION OF CITY MANAGER FORM OF GOVERNMENT. The municipality, by first holding an election on the question, may adopt the city manager form of government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.022. PETITION. (a) The residents of the municipality may file a petition with the clerk of the municipality requesting the mayor to call a special election to determine whether the municipality shall adopt the city manager form of government.

(b) The petition must be signed by a number of qualified voters equal to at least 20 percent of the total number of qualified voters who voted for mayor at the most recent municipal election at which the office of mayor was to be filled.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.023. PROCLAMATION ORDERING ELECTION. (a) Within 10 days after the date a petition is filed, the mayor of the municipality shall issue a proclamation ordering a special election.

(b) The proclamation must state that the election is ordered to determine whether the municipality will adopt the city manager form of government and must be signed by the mayor and attested by the clerk of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.024. NOTICE OF ELECTION. A copy of the proclamation must be posted in at least five conspicuous places in the municipality for at least the 10 days preceding election day.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.025. ELECTION; ADOPTION. (a) After a petition is filed, an election to consider the adoption of the city manager form of government must be held on the first authorized uniform election date prescribed by the Election Code that occurs after the date the petition is filed under Section 25.022 and that affords enough time to hold the election in the manner required by law. Each qualified voter in the municipality is entitled to vote in the election.

(b) The ballots at an election under this subchapter shall be printed to provide for voting for or against the proposition: The governing body of the municipality of _____ (name of the municipality) appointing a city manager and setting by ordinance the salary of the manager.

(c) A municipality holding an election under this subchapter shall operate under the city manager form of government if a majority of the votes cast at the election are for its adoption.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.026. APPOINTMENT OF CITY MANAGER. If the city manager form of government is adopted, the governing body of the municipality shall appoint a city manager within 60 days after the election day and by ordinance shall set the manager's salary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.027. QUALIFICATIONS OF CITY MANAGER. (a) The governing body of the municipality shall appoint the city manager solely on the basis of the person's administrative ability.

(b) The city manager is not required to meet any residency qualifications.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.028. TERM OF OFFICE. The city manager is appointed by and serves at the will of the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.029. POWERS AND DUTIES OF CITY MANAGER; BOND. (a) The city manager shall administer the municipal business and the governing body of the municipality shall ensure that the administration is efficient.

(b) The governing body by ordinance may delegate to the city manager any additional powers or duties the governing body considers proper for the efficient administration of municipal affairs.

(c) The city manager must execute a bond. The bond must be conditioned that the manager will faithfully perform the duties of manager and must be in an amount prescribed by ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. OTHER MUNICIPAL OFFICERS

Sec. 25.051. OTHER MUNICIPAL OFFICERS. (a) After a municipality adopts the city manager form of government under this chapter, all municipal officers, except members of the governing body of the municipality, shall be appointed as provided by ordinance. However, an elected officer serving at the time of the adoption of the city manager form of government may continue to serve until the expiration of the officer's term.

(b) This chapter does not limit the authority of the governing

body of a general-law municipality to appoint and prescribe the powers and duties of a municipal officer or employee under Chapter 22, 23, or 24.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 1185, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1206, Sec. 2, eff. June 20, 2003.

SUBCHAPTER D. ABANDONING CITY MANAGER FORM OF GOVERNMENT

Sec. 25.071. ABANDONING CITY MANAGER FORM OF GOVERNMENT. (a) A municipality may abandon the city manager form of government at any time as provided by this section.

(b) A petition requesting the mayor of the municipality to order a special election to abandon the city manager form of government must be filed with the clerk of the municipality and signed by a number of qualified voters equal to at least 20 percent of the total number of qualified voters who voted for mayor at the most recent municipal election at which the office of mayor was to be filled.

(c) Within 10 days after the date a petition is filed under Subsection (b), the mayor shall issue a proclamation ordering the special election. The proclamation must state that the election is ordered to determine whether the municipality will abandon the city manager form of government and notice of the election must be as for an election to consider the adoption of the city manager form of government.

(d) The election must be held on the first authorized uniform election date prescribed by the Election Code that occurs after the date the petition is filed under Subsection (b) and that affords enough time to hold the election in the manner required by law.

(e) The ballots at the election shall be printed to provide for voting for or against the proposition: Abandoning the city manager form of government in the municipality of _____ (name of the municipality).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 25.072. DUTIES OF GOVERNING BODY IF CITY MANAGER FORM IS ABANDONED. (a) If a majority of votes cast at an election under

this subchapter are for abandoning the city manager form of government, the governing body of the municipality shall discharge the city manager within 60 days after the election day.

(b) When the city manager is discharged, the governing body shall assume the powers and duties given to the governing body by law as if the city manager form of government had never been adopted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 26. FORM OF GOVERNMENT IN HOME-RULE MUNICIPALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 26.001. CHAPTER APPLICABLE TO HOME-RULE MUNICIPALITY. This chapter applies only to a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. FORM OF GOVERNMENT

Sec. 26.021. FORM OF GOVERNMENT. The municipality may adopt and operate under any form of government, including the aldermanic or commission form.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. MUNICIPAL OFFICERS

Sec. 26.041. CREATION OF MUNICIPAL OFFICES. The municipality may:

(1) create offices;

(2) determine the method for selecting officers; and

(3) prescribe the qualifications, duties, and tenure of office for officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.042. DATE FOR ELECTION OF OFFICERS. The governing body of the municipality may set the date of election for municipal officers in accordance with applicable provisions of the Election Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.043. FILLING VACANCY IN ELECTIVE OFFICE IN MUNICIPALITY WITH POPULATION OF 384,000 OR MORE. (a) If a vacancy occurs in an elective office of a municipality with a population of 384,000 or more and if the charter of the municipality does not provide for the filling of the vacancy, the governing body of the municipality, by majority vote, shall appoint an individual to fill the vacated office for the unexpired term. Pending that appointment, the governing body may appoint a person on a temporary basis to serve for a period not to exceed 60 days.

(b) A person appointed under Subsection (a) must possess the qualifications required of the elected official.

(c) If the municipality holds an election to vote on proposed amendments to its charter, it shall at that time submit a proposed charter amendment to provide a method for filling vacancies in elective offices.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.044. ELECTION FROM SINGLE-MEMBER AND AT-LARGE DISTRICTS; LIMITATION ON YEARS OF SERVICE. (a) The governing body of a municipality with a population of 1.5 million or more must consist of one mayor elected at large, 16 members elected from single-member districts, and six members elected at large. Each member representing a single-member district must reside in the district.

(b) This section supersedes any charter provision or ordinance adopted before January 1, 1992. The municipality may adopt a different composition or organization of its governing body in a manner provided by its charter on or after January 1, 1992.

(c) The municipality may provide for the members of the governing body to serve staggered terms.

(d) After each redistricting, the terms of the members of the governing body representing single-member districts expire, and an election shall be held in each new district to fill the position for that district.

(e) The districts must be compact and contiguous and as equal

as practicable in population.

(f) A municipality having the population provided by Subsection (a) according to the 1980 federal decennial census and covered by Subsection (a) under the 1990 federal decennial census must comply with Subsection (a) not later than May 1, 1992. Before that date, the governing body of the municipality may implement the transition to a governing body that complies with Subsection (a) as it determines appropriate.

(g) A municipality to which this section applies for the first time under the 1990 or a subsequent federal decennial census must comply with Subsection (a) before the next January 1 that occurs at least one year after the date the official census data for the municipality is made public by the United States Bureau of the Census.

(h) Subsections (a) through (f) apply to a municipality having the population described by Subsection (a) under the 1980 and 1990 federal decennial censuses only if a finding is made that representation of the citizens of the municipality requires that the governing body consist of members as required by Subsection (a). The finding must be made by the voters of the municipality voting at an election on the question. The mayor of the municipality shall order an election on the question for the November 1991 uniform election date. The mayor shall order the ballot for the election to be printed to provide for voting for or against the proposition: "Representation of the citizens of the municipality of (name of the municipality) requires that the governing body of the municipality consist of (a description of the requirements of Subsection (a))." If a majority of the votes cast at the election favor the proposition, the finding required by this subsection is considered to have been made, and this section shall be implemented in the municipality. If a majority of the votes cast are not in favor of the proposition, this section has no effect in the municipality.

(i) If this section takes effect on or before July 1, 1991, the election as required by Subsection (h) shall be held on August 10, 1991, as required by Section 41.001, Election Code, instead of on the November 1991 uniform election date.

(j) Repealed by Acts 1993, 73rd Leg., ch. 919, Sec. 2, eff. Aug. 30, 1993.

Added by Acts 1991, 72nd Leg., ch. 666, Sec. 1, eff. June 16, 1991.

Amended by Acts 1993, 73rd Leg., ch. 919, Sec. 2, eff. Aug. 30, 1993.

Sec. 26.045. FILLING VACANCY ON GOVERNING BODY OF MUNICIPALITY WITH POPULATION OF 1.5 MILLION OR MORE. (a) Except as provided by Subsection (b), if a vacancy occurs on the governing body of a municipality with a population of 1.5 million or more and more than 270 days remain before the date of the next general election of members of the governing body, the governing body shall order a special election in the district in which the vacancy occurred, or in the entire municipality if the vacancy occurred in an at-large position, to fill the vacancy. The special election shall be held on an authorized uniform election date prescribed by the Election Code that occurs before the general election and that allows enough time to hold the election in the manner required by law and shall be conducted in the same manner as the municipality's general election except as provided by provisions of the Election Code applicable to special elections to fill vacancies.

(b) This section does not apply to a municipality that has provided by charter or charter amendment a different procedure to fill a vacancy on its governing body for which the unexpired term is 12 months or less.

Added by Acts 1993, 73rd Leg., ch. 919, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1394 (H.B. 1372), Sec. 1, eff. November 5, 2013.

Sec. 26.046. SIZE OF GOVERNING BODY: CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 1.1 million or more that elects each member of its governing body other than the mayor from fewer than 14 single-member districts.

(b) Notwithstanding a charter provision to the contrary, the municipality may provide by ordinance for the number of districts used to elect members to the municipality's governing body. The ordinance may not provide for more than 14 districts.

(c) This section does not affect a mayor who, under a charter provision, is elected in a municipality at large.

Added by Acts 2001, 77th Leg., ch. 1179, Sec. 1, eff. June 15, 2001.

Sec. 26.047. FILLING VACANCY IN OFFICE OF MAYOR. Unless otherwise provided by the charter of the municipality or this chapter, a person serving as a member of the governing body of the municipality is not, because of that service, ineligible to be appointed to fill a vacancy in the office of mayor of the municipality, but the person may not vote on the person's own appointment.

Added by Acts 2007, 80th Leg., R.S., Ch. 513 (S.B. 653), Sec. 4, eff. June 16, 2007.

SUBTITLE C. MUNICIPAL BOUNDARIES AND ANNEXATION

CHAPTER 41. MUNICIPAL BOUNDARIES

Sec. 41.001. MAP OF MUNICIPAL BOUNDARIES AND EXTRATERRITORIAL JURISDICTION. (a) Each municipality shall prepare a map that shows the boundaries of the municipality and of its extraterritorial jurisdiction. The municipality shall maintain a copy of the map in a location that is easily accessible to the public, including:

(1) in the office of the secretary or clerk of the municipality;

(2) if the municipality has a municipal engineer, in the office of the engineer; and

(3) if the municipality maintains an Internet website, on the municipality's website.

(a-1) A municipality shall make a copy of a map required under Subsection (a) available without charge.

(b) If the municipality annexes territory, the map shall be immediately corrected to include the annexed territory. The map shall be annotated to indicate:

(1) the date of annexation;

(2) the number of the annexation ordinance, if any; and

(3) a reference to the minutes or municipal ordinance records in which the ordinance is recorded in full.

(c) If the municipality's extraterritorial jurisdiction is expanded or reduced, the map shall be immediately corrected to indicate the change in the municipality's extraterritorial jurisdiction. The map shall be annotated to indicate:

(1) the date the municipality's extraterritorial jurisdiction was changed;

(2) the number of the ordinance or resolution, if any, by which the change was made; and

(3) a reference to the minutes or municipal ordinance or resolution records in which the ordinance or resolution is recorded in full.

(d) In addition to the requirements of this section, a home-rule municipality shall create, or contract for the creation of, and make publicly available a digital map that complies with this section. A digital map required under this subsection must be made available without charge and in a format widely used by common geographic information system software. If the municipality maintains an Internet website, the municipality shall make the digital map available on the municipality's website.

(e) A home-rule municipality that does not have common geographic information system software shall make the digital map available in any other widely used electronic format in accordance with Subsection (d).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 970, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1217 (S.B. 1303), Sec. 1, eff. September 1, 2019.

Sec. 41.0015. NOTICE OF MUNICIPAL BOUNDARY CHANGE. (a) If an area is annexed to or disannexed from a municipality, the mayor or other presiding officer of the governing body of the municipality shall, within 30 days after the date of preclearance under Section 5, Federal Voting Rights Act (42 U.S.C. Sec. 1973c), of the annexation or disannexation, send to the county clerk of each county in which the municipality is located a certified copy of documents showing the change in boundaries.

(b) The county shall promptly correct to reflect the change in municipal boundaries any official county map kept by the county that would be affected by the change.

Added by Acts 1989, 71st Leg., ch. 1160, Sec. 1, eff. Aug. 28, 1989.

Sec. 41.002. BOUNDARY SURVEY IN GENERAL-LAW MUNICIPALITIES. (a) Immediately after the members of the governing body of a newly incorporated general-law municipality qualify for office, the governing body shall adopt an ordinance requiring a survey of the boundaries of the municipality to be made.

(b) The survey must be based on the boundaries designated in the petition for incorporation. The field notes of the survey must be recorded in the minutes of the municipality and in the deed records of the county in which the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 41.003. INCLUSION OF AREA RECEIVING LONGSTANDING TREATMENT AS PART OF MUNICIPALITY. (a) The governing body of a municipality may adopt an ordinance to declare an area that is adjacent to the municipality and that meets the requirements of Subsection (b) to be a part of the municipality. The adoption of the ordinance creates an irrebuttable presumption that the area is a part of the municipality for all purposes. The presumption may not be contested for any cause after the effective date of the ordinance.

(b) An area qualifies for inclusion in a municipality under this section only if, on the date of the adoption of the ordinance:

(1) the records of the municipality indicate that the area has been a part of the municipality for at least the preceding 20 years;

(2) the municipality has provided municipal services, including police protection, to the area and has otherwise treated the area as a part of the municipality during the preceding 20 years;

(3) there has not been a final judicial determination during the preceding 20 years that the area is outside the boundaries of the municipality; and

(4) there is no pending lawsuit that challenges the inclusion of the area as part of the municipality.

(c) The date on which an area that is made a part of a municipality under this section is considered to be a part of the municipality is retroactive to the date on which the municipality began its continuous treatment of the area as part of the municipality. That date shall be used for all relevant purposes, including a determination of whether territory allegedly annexed by

the municipality was adjacent to the municipality at the time of the purported annexation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 41.004. BOUNDARIES NOT AFFECTED BY CHANGE TO TYPE A GENERAL-LAW MUNICIPALITY. If a municipality changes to a Type A general-law municipality under Subchapter B of Chapter 6, the boundaries of the municipality remain the same as they existed under the law governing the municipality before the change. After the change, the boundaries are subject to the law governing Type A general-law municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 42. EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE OF EXTRATERRITORIAL JURISDICTION. The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. DETERMINATION OF EXTRATERRITORIAL JURISDICTION

Sec. 42.021. EXTENT OF EXTRATERRITORIAL JURISDICTION. (a) The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

(1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;

(2) within one mile of those boundaries, in the case of a municipality with 5,000 to 24,999 inhabitants;

(3) within two miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;

(4) within 3-1/2 miles of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or

(5) within five miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.

(b) Regardless of Subsection (a), the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

(1) within five miles of those boundaries on a barrier island; or

(2) within one-half mile of those boundaries off a barrier island.

(c) Subsection (b) applies to a municipality that has:

(1) a population of 2,000 or more; and

(2) territory located:

(A) entirely on a barrier island in the Gulf of Mexico; and

(B) within 30 miles of an international border.

(d) Regardless of Subsection (a), the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located within three miles of those boundaries if the municipality:

(1) has a population of not less than 25,000 or more than 27,000; and

(2) is located in a county that has a population of 45,000 or more and borders the Trinity River.

(e) An annexation commenced after January 1, 2023, does not expand the extraterritorial jurisdiction of a municipality unless contemporaneously with the annexation the owner or owners of the area that would be included in the municipality's extraterritorial jurisdiction as a result of the annexation request that the area be included in the municipality's extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 761 (H.B. 3325), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 215 (H.B. 91), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 612 (S.B. 508), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(33), eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 121, eff. September 1, 2023.

Sec. 42.022. EXPANSION OF EXTRATERRITORIAL JURISDICTION. (a) When a municipality annexes an area, the extraterritorial jurisdiction of the municipality expands with the annexation to comprise, consistent with Section 42.021, the area around the new municipal boundaries.

(b) The extraterritorial jurisdiction of a municipality may expand beyond the distance limitations imposed by Section 42.021 to include an area contiguous to the otherwise existing extraterritorial jurisdiction of the municipality if the owners of the area request the expansion.

(c) The expansion of the extraterritorial jurisdiction of a municipality through annexation, request, or increase in the number of inhabitants may not include any area in the existing extraterritorial jurisdiction of another municipality, except as provided by Subsection (d).

(d) The extraterritorial jurisdiction of a municipality may be expanded through annexation to include area that on the date of annexation is located in the extraterritorial jurisdiction of another municipality if a written agreement between the municipalities in effect on the date of annexation allocates the area to the extraterritorial jurisdiction of the annexing municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 1, eff. June 17, 2011.

Sec. 42.0225. EXTRATERRITORIAL JURISDICTION AROUND CERTAIN MUNICIPALLY OWNED PROPERTY. (a) This section applies only to an area owned by a municipality that is:

(1) annexed by the municipality; and

(2) not contiguous to other territory of the municipality.

(b) Notwithstanding Section 42.021, the annexation of an area described by Subsection (a) does not expand the extraterritorial jurisdiction of the municipality.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 1, eff. Sept. 1, 1999.

Sec. 42.023. REDUCTION OF EXTRATERRITORIAL JURISDICTION. The extraterritorial jurisdiction of a municipality may not be reduced unless the governing body of the municipality gives its written consent by ordinance or resolution, except:

(1) in cases of judicial apportionment of overlapping extraterritorial jurisdictions under Section 42.901;

(2) in accordance with an agreement under Section 42.022(d); or

(3) as necessary to comply with Section 42.0235.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 2, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 941 (H.B. 4059), Sec. 1, eff. June 18, 2015.

Sec. 42.0235. LIMITATION ON EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) Notwithstanding Section 42.021, and except as provided by Subsection (d), the extraterritorial jurisdiction of a municipality with a population of more than 175,000 located in a county that contains an international border and borders the Gulf of Mexico terminates two miles from the extraterritorial jurisdiction of a neighboring municipality if extension of the extraterritorial jurisdiction beyond that limit would:

(1) completely surround the corporate boundaries or extraterritorial jurisdiction of the neighboring municipality; and

(2) limit the growth of the neighboring municipality by precluding the expansion of the neighboring municipality's extraterritorial jurisdiction.

(b) A municipality shall release extraterritorial jurisdiction as necessary to comply with Subsection (a).

(c) Notwithstanding any other law, a municipality that owns an electric system and that releases extraterritorial jurisdiction under Subsection (b) may provide electric service in the released area to the same extent that the service would have been provided if the municipality had annexed the area.

(d) Extraterritorial jurisdiction for a municipality subject to this section is determined under Section 42.021 if the governing body of the municipality and the governing body of the neighboring municipality each adopt, on or after June 1, 2017, resolutions stating that the determination of extraterritorial jurisdiction under Section 42.0235(a) is not in the best interest of the municipality.

Added by Acts 2015, 84th Leg., R.S., Ch. 941 (H.B. 4059), Sec. 2, eff. June 18, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 447 (S.B. 468), Sec. 1, eff. September 1, 2017.

Sec. 42.024. TRANSFER OF EXTRATERRITORIAL JURISDICTION BETWEEN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Adopting municipality" means a home-rule municipality with a population of less than 25,000 that purchases and appropriates raw water for its water utility through a transbasin diversion permit from one or two river authorities in which the municipality has territory.

(2) "Releasing municipality" means a home-rule municipality with a population of more than 450,000 that owns an electric utility, that has a charter provision allowing for limited-purpose annexation, and that has annexed territory for a limited purpose.

(b) The governing body of an adopting municipality may by resolution include in its extraterritorial jurisdiction an area that is in the extraterritorial jurisdiction of a releasing municipality if:

(1) the releasing municipality does not provide water, sewer services, and electricity to the released area;

(2) the owners of a majority of the land within the released area request that the adopting municipality include in its extraterritorial jurisdiction the released area;

(3) the released area is:

(A) adjacent to the territory of the adopting municipality;

(B) wholly within a county in which both municipalities have territory; and

(C) located in one or more school districts, each of which has the majority of its territory outside the territory of the releasing municipality;

(4) the adopting municipality adopts ordinances or regulations within the released area for water quality standards relating to the control or abatement of water pollution that are in conformity with those of the Texas Natural Resource Conservation Commission applicable to the released area on January 1, 1995;

(5) the adopting municipality has adopted a service plan to provide water and sewer service to the area acceptable to the owners of a majority of the land within the released area; and

(6) the size of the released area does not exceed the difference between the total area within the extraterritorial jurisdiction of the adopting municipality, exclusive of the extraterritorial jurisdiction of the releasing municipality, on the date the resolution was adopted under this subsection, as determined by Section 42.021, and the total area within the adopting municipality's extraterritorial jurisdiction on the date of the resolution.

(c)(1) The service plan under Subsection (b)(5) shall include an assessment of the availability and feasibility of participation in any regional facility permitted by the Texas Natural Resource Conservation Commission in which the releasing municipality is a participant and had plans to provide service to the released area. The plan for regional service shall include:

(A) proposed dates for providing sewer service through the regional facility;

(B) terms of financial participation to provide sewer service to the released area, including rates proposed for service sufficient to reimburse the regional participants over a reasonable time for any expenditures associated with that portion of the regional facility designed or constructed to serve the released area as of January 1, 1993; and

(C) participation by the adopting municipality in governance of the regional facility based on the percentage of land to be served by the regional facility in the released area compared

to the total land area to be served by the regional facility.

(2) The adopting municipality shall deliver a copy of the service plan to the releasing municipality and any other participant in any regional facility described in this subsection at least 30 days before the resolution to assume extraterritorial jurisdiction. The releasing municipality and any other participant in any regional facility described in this subsection by resolution shall, within 30 days of delivery of the service plan, either accept that portion of the service plan related to participation by the adopting municipality in the regional facility or propose alternative terms of participation.

(3) If the adopting municipality, the releasing municipality, and any other participant in any regional facility described in this subsection fail to reach agreement on the service plan within 60 days after the service plan is delivered, any municipality that is a participant in the regional facility or any owner of land within the area to be released may appeal the matter to the Texas Natural Resource Conservation Commission. The Texas Natural Resource Conservation Commission shall, in its resolution of any differences between proposals submitted for review in this subsection, use a cost-of-service allocation methodology which treats each service unit in the regional facility equally, with any variance in rates to be based only on differences in costs based on the time service is provided to an area served by the regional facility. The Texas Natural Resource Conservation Commission may allow the adopting municipality, the releasing municipality, or any other participant in any regional facility described in this subsection to withdraw from participation in the regional facility on a showing of undue financial hardship.

(4) A decision by the Texas Natural Resource Conservation Commission under this subsection is not subject to judicial review, and any costs associated with the commission's review shall be assessed to the parties to the decision in proportion to the percentage of land served by the regional facility subject to review in the jurisdiction of each party.

(5) The releasing municipality shall not, prior to January 1, 1997, discontinue or terminate any interlocal agreement, contract, or commitment relating to water or sewer service that it has as of January 1, 1995, with the adopting municipality without the consent of the adopting municipality.

(d) On the date the adopting municipality delivers a copy of the resolution under Subsection (b) to the municipal clerk of the releasing municipality, the released area shall be included in the extraterritorial jurisdiction of the adopting municipality and excluded from the extraterritorial jurisdiction of the releasing municipality.

(e) If any part of a tract of land, owned either in fee simple or under common control or undivided ownership, was or becomes split, before or after the dedication or deed of a portion of the land for a public purpose, between the extraterritorial jurisdiction of a releasing municipality and the jurisdiction of another municipality, or is land described in Subsection (b)(3)(C), the authority to act under Chapter 212 and the authority to regulate development and building with respect to the tract of land is, on the request of the owner to the municipality, with the municipality selected by the owner of the tract of land. The municipality selected under this subsection may also provide or authorize another person or entity to provide municipal services to land subject to this subsection.

(f) Nothing in this section requires the releasing municipality to continue to participate in a regional wastewater treatment plant providing service, or to provide new services, to any territory within the released area.

(g) This section controls over any conflicting provision of this subchapter.

Added by Acts 1995, 74th Leg., ch. 766, Sec. 1, eff. Aug. 28, 1995.

Sec. 42.025. RELEASE OF EXTRATERRITORIAL JURISDICTION BY CERTAIN MUNICIPALITIES. (a) In this section, "eligible property" means any portion of a contiguous tract of land:

(1) that is located in the extraterritorial jurisdiction of a municipality within one-half mile of the territory of a proposed municipal airport;

(2) for which a contract for land acquisition services was awarded by the municipality; and

(3) that has not been acquired through the contract described by Subdivision (2) for the proposed municipal airport.

(b) The owner of eligible property may petition the municipality to release the property from the municipality's

extraterritorial jurisdiction not later than June 1, 1996. The petition must be filed with the secretary or clerk of the municipality.

(c) Not later than the 10th day after the date the secretary or clerk receives a petition under Subsection (b), the municipality by resolution shall release the eligible property from the extraterritorial jurisdiction of the municipality.

(d) Eligible property that is released from the extraterritorial jurisdiction of a municipality under Subsection (c) may be included in the extraterritorial jurisdiction of another municipality if:

(1) any part of the other municipality is located in the same county as the property; and

(2) the other municipality and the owner agree to the inclusion of the property in the extraterritorial jurisdiction.

Added by Acts 1995, 74th Leg., ch. 788, Sec. 1, eff. June 16, 1995.
Renumbered from Local Government Code Sec. 42.024 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(64), eff. Sept. 1, 1997.

Sec. 42.0251. RELEASE OF EXTRATERRITORIAL JURISDICTION BY CERTAIN GENERAL-LAW MUNICIPALITIES. (a) This section applies only to a general-law municipality:

(1) that has a population of less than 4,000;

(2) that is located in a county with a population of more than 800,000 that is adjacent to a county with a population of more than four million; and

(3) in which at least two-thirds of the residents reside within a gated community.

(b) A municipality shall release an area from its extraterritorial jurisdiction not later than the 10th day after the date the municipality receives a petition requesting that the area be released that is signed by at least 80 percent of the owners of real property located in the area requesting release.

Added by Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 3, eff. June 17, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 122, eff. September 1, 2023.

Sec. 42.026. LIMITATION ON EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) In this section, "navigable stream" has the meaning assigned by Section 21.001, Natural Resources Code.

(b) This section applies only to an area that is:

(1) located in the extraterritorial jurisdiction of a home-rule municipality that has a population of 60,000 or less and is located in whole or in part in a county with a population of 240,000 or less;

(2) located outside the county in which a majority of the land area of the municipality is located; and

(3) separated from the municipality's corporate boundaries by a navigable stream.

(c) A municipality that, on August 31, 1999, includes that area in its extraterritorial jurisdiction shall, before January 1, 2000:

(1) adopt an ordinance removing that area from the municipality's extraterritorial jurisdiction; or

(2) enter into an agreement with a municipality located in the county in which that area is located to transfer that area to the extraterritorial jurisdiction of that municipality.

(d) If the municipality that is required to act under Subsection (c) does not do so as provided by that subsection, the area is automatically removed from the extraterritorial jurisdiction of that municipality on January 1, 2000.

(e) Section 42.021 does not apply to a transfer of extraterritorial jurisdiction under Subsection (c)(2).

Added by Acts 1999, 76th Leg., ch. 1494, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER C. CREATION OR EXPANSION OF GOVERNMENTAL ENTITIES IN EXTRATERRITORIAL JURISDICTION

Sec. 42.041. MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION GENERALLY. (a) A municipality may not be incorporated in the extraterritorial jurisdiction of an existing municipality unless the governing body of the existing municipality gives its written consent by ordinance or resolution.

(b) If the governing body of the existing municipality refuses to give its consent, a majority of the qualified voters of the area

of the proposed municipality and the owners of at least 50 percent of the land in the proposed municipality may petition the governing body to annex the area. If the governing body fails or refuses to annex the area within six months after the date it receives the petition, that failure or refusal constitutes the governing body's consent to the incorporation of the proposed municipality.

(c) The consent to the incorporation of the proposed municipality is only an authorization to initiate incorporation proceedings as provided by law.

(d) If the consent to initiate incorporation proceedings is obtained, the incorporation must be initiated within six months after the date of the consent and must be finally completed within 18 months after the date of the consent. Failure to comply with either time requirement terminates the consent.

(e) This section applies only to the proposed municipality's area located in the extraterritorial jurisdiction of the existing municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 287 (H.B. 585), Sec. 1, eff. June 16, 2005.

For expiration of Subsections (c) and (d), see Subsections (c) and (d).

Sec. 42.0411. MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to:

(1) an area located north and east of Interstate Highway 10 that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years; or

(2) an area located north and east of Interstate Highway 10:

(A) that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has

operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years;

(B) that has not been included in the municipality's annexation plan described by Section 43.052 before the 180th day before the date consent for incorporation is requested under Section 42.041(a); and

(C) for which the municipality refused to give its consent to incorporation under Section 42.041(a).

(b) The residents of the area described by Subsection (a)(2) may initiate an attempt to incorporate as a municipality by filing a written petition signed by at least 10 percent of the registered voters of the area of the proposed municipality with the county judge of the county in which the proposed municipality is located. The petition must request the county judge to order an election to determine whether the area of the proposed municipality will incorporate. An incorporation election under this section shall be conducted in the same manner as an incorporation election under Subchapter A, Chapter 8. The consent of the municipality that previously refused to give consent is not required for the incorporation.

(c) In this subsection, "deferred annexation area" means an area that has entered into an agreement with a municipality under which the municipality defers annexation of the area for at least 10 years. An area described by Subsection (a)(1) that is located within 1-1/2 miles of a municipality's deferred annexation area or adjacent to the corporate boundaries of the municipality may not be annexed for limited or full purposes during the period provided under the agreement. During the period provided under the agreement, the residents of the area may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.

(d) This subsection applies only to an area that is described by Subsection (a)(1) and removed from a municipality's annexation plan under Section 43.052(e) two times or more. The residents of the area and any adjacent territory that is located within the extraterritorial jurisdiction of the municipality or located within

an area annexed for limited purposes by the municipality and that is adjacent to the corporate boundaries of the municipality may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.

Added by Acts 2005, 79th Leg., Ch. 287 (H.B. 585), Sec. 2, eff. June 16, 2005.

Sec. 42.042. CREATION OF POLITICAL SUBDIVISION TO SUPPLY WATER OR SEWER SERVICES, ROADWAYS, OR DRAINAGE FACILITIES IN EXTRATERRITORIAL JURISDICTION. (a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not be created in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this subsection and the Water Code. In giving its consent, the municipality may not place any conditions or other restrictions on the creation of the political subdivision other than those expressly permitted by Sections 54.016(e) and (i), Water Code.

(b) If the governing body fails or refuses to give its consent for the creation of the political subdivision, including a water district previously created by an act of the legislature, on mutually agreeable terms within 90 days after the date the governing body receives a written request for the consent, a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision may petition the governing body to make available to the area the water, sanitary sewer services, or both that would be provided by the political subdivision.

(c) If, within 120 days after the date the governing body receives the petition, the governing body fails to make a contract with a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision to provide the services,

that failure constitutes the governing body's consent to the creation of the proposed political subdivision.

(d) The consent to the creation of the political subdivision is only an authorization to initiate proceedings to create the political subdivision as provided by law.

(e) Repealed by Acts 1997, 75th Leg., ch. 1070, Sec. 55, eff. Sept. 1, 1997.

(f) If the municipality fails or refuses to give its consent to the creation of the political subdivision, including a water district previously created by an act of the legislature, or fails or refuses to execute a contract providing for the water or sanitary sewer services requested within the time limits prescribed by this section, the applicant may petition the Texas Commission on Environmental Quality for the creation of the political subdivision or the inclusion of the land in a political subdivision. The commission shall allow creation or confirmation of the creation of the political subdivision or inclusion of the land in a proposed political subdivision on finding that the municipality either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. The commitment must provide that construction of the facilities necessary to serve the land will begin within two years and will be substantially completed within 4-1/2 years after the date the petition was filed with the municipality.

(g) On an appeal taken to the district court from the ruling of the Texas Commission on Environmental Quality, all parties to the commission hearing must be made parties to the appeal. The court shall hear the appeal within 120 days after the date the appeal is filed. If the case is continued or appealed to a higher court beyond the 120-day period, the court shall require the appealing party or party requesting the continuance to post a bond or other adequate security in the amount of damages that may be incurred by any party as a result of the appeal or delay from the commission action. The amount of the bond or other security shall be determined by the court after notice and hearing. On final disposition, a court may award damages, including any damages for delays, attorney's fees, and costs of court to the prevailing party.

(h) A municipality may not unilaterally extend the time limits prescribed by this section through the adoption of preapplication

periods or by passage of any rules, resolutions, ordinances, or charter provisions. However, the municipality and the petitioner may jointly petition the Texas Commission on Environmental Quality to request an extension of the time limits.

(i) Repealed by Acts 1989, 71st Leg., ch. 1058, Sec. 1, eff. Sept. 1, 1989.

(j) The consent requirements of this section do not apply to the creation of a special utility district under Chapter 65, Water Code. If a special utility district is to be converted to a district with taxing authority that provides utility services, this section applies to the conversion.

(k) This section, except Subsection (i), applies only to the proposed political subdivision's area located in the extraterritorial jurisdiction of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1058, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.254, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1098 (H.B. 3378), Sec. 1, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1128 (H.B. 2590), Sec. 1, eff. September 1, 2019.

Sec. 42.0425. ADDITION OF LAND IN EXTRATERRITORIAL JURISDICTION OF MUNICIPALITY TO CERTAIN POLITICAL SUBDIVISIONS. (a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not add land that is located in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this section and the Water Code. In giving its consent, the municipality may not place any conditions or other restrictions on the expansion of the political subdivision other than those expressly permitted by Section 54.016(e), Water Code.

(b) The procedures under Section 42.042 governing a municipality's refusal to consent to the creation of a political

subdivision apply to a municipality that refuses to consent to the addition of land to a political subdivision under this section.

(c) An owner of land in the area proposed to be added to the political subdivision may not unreasonably refuse to enter into a contract for water or sanitary sewer services with the municipality under Section 42.042(c).

(d) This section does not apply to a political subdivision created by Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993.

Added by Acts 2007, 80th Leg., R.S., Ch. 703 (H.B. 2091), Sec. 2, eff. June 15, 2007.

Sec. 42.043. REQUIREMENTS APPLYING TO PETITION. (a) A petition under Section 42.041 or 42.042 must:

(1) be written;

(2) request that the area be annexed or that the services be made available, as appropriate;

(3) be signed in ink or indelible pencil by the appropriate voters and landowners;

(4) be signed, in the case of a person signing as a voter, as the person's name appears on the most recent official list of registered voters;

(5) contain, in the case of a person signing as a voter, a note made by the person stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate;

(6) contain, in the case of a person signing as a landowner, a note made by the person opposite the person's name stating the approximate total acreage that the person owns in the area to be annexed or serviced;

(7) describe the area to be annexed or serviced and have a plat of the area attached; and

(8) be presented to the secretary or clerk of the municipality.

(b) The signatures to the petition need not be appended to one paper.

(c) Before the petition is circulated among the voters and landowners, notice of the petition must be given by posting a copy of

the petition for 10 days in three public places in the area to be annexed or serviced and by publishing the notice once, in a newspaper of general circulation serving the area, before the 15th day before the date the petition is first circulated. Proof of posting and publication must be made by attaching to the petition presented to the secretary or clerk:

(1) the affidavit of any voter who signed the petition, stating the places and dates of the posting;

(2) the affidavit of the publisher of the newspaper in which the notice was published, stating the name of the newspaper and the issue and date of publication; and

(3) the affidavit of at least three voters who signed the petition, if there are that many, stating the total number of voters residing in the area and the approximate total acreage in the area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.044. CREATION OF INDUSTRIAL DISTRICT IN EXTRATERRITORIAL JURISDICTION. (a) In this section, "industrial district" has the meaning customarily given to the term but also includes any area in which tourist-related businesses and facilities are located.

(b) The governing body of a municipality may designate any part of its extraterritorial jurisdiction as an industrial district and may treat the designated area in a manner considered by the governing body to be in the best interests of the municipality.

(c) The governing body may make written contracts with owners of land in the industrial district:

(1) to guarantee the continuation of the extraterritorial status of the district and its immunity from annexation by the municipality for a period not to exceed 15 years; and

(2) with other lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities.

(d) The parties to a contract may renew or extend it for successive periods not to exceed 15 years each. In the event any owner of land in an industrial district is offered an opportunity to renew or extend a contract, then all owners of land in that industrial district must be offered an opportunity to renew or extend

a contract subject to the provisions of Subsection (c).

(e) A municipality may provide for adequate fire-fighting services in the industrial district by:

(1) directly furnishing fire-fighting services that are to be paid for by the property owners of the district;

(2) contracting for fire-fighting services, whether or not all or a part of the services are to be paid for by the property owners of the district; or

(3) contracting with the property owners of the district to have them provide for their own fire-fighting services.

(f) A property owner who provides for his own fire-fighting services under this section may not be required to pay any part of the cost of the fire-fighting services provided by the municipality to other property owners in the district.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 975, Sec. 1, eff. Aug. 30, 1993.

Sec. 42.045. CREATION OF POLITICAL SUBDIVISION IN INDUSTRIAL DISTRICT. (a) A political subdivision, one purpose of which is to provide services of a governmental or proprietary nature, may not be created in an industrial district designated under Section 42.044 by a municipality unless the municipality gives its written consent by ordinance or resolution. The municipality shall give or deny consent within 60 days after the date the municipality receives a written request for consent. Failure to give or deny consent in the allotted period constitutes the municipality's consent to the initiation of the creation proceedings.

(b) If the consent is obtained, the creation proceedings must be initiated within six months after the date of the consent and must be finally completed within 18 months after the date of the consent. Failure to comply with either time requirement terminates the consent for the proceedings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.046. DESIGNATION OF A PLANNED UNIT DEVELOPMENT DISTRICT IN EXTRATERRITORIAL JURISDICTION. (a) The governing body of a municipality that has disannexed territory previously annexed for

limited purposes may designate an area within its extraterritorial jurisdiction as a planned unit development district by written agreement with the owner of the land under Subsection (b). The agreement shall be recorded in the deed records of the county or counties in which the land is located. A planned unit development district designated under this section shall contain no less than 250 acres. If there are more than four owners of land to be designated as a single planned unit development, each owner shall appoint a single person to negotiate with the municipality and authorize that person to bind each owner for purposes of this section.

(b) An agreement governing the creation, development, and existence of a planned unit development district established under this section shall be between the governing body of the municipality and the owner of the land subject to the agreement. The agreement shall not be effective until signed by both parties and by any other person with an interest in the land, as that interest is evidenced by an instrument recorded in the deed records of the county or counties in which the land is located. The parties may agree:

(1) to guarantee continuation of the extraterritorial status of the planned unit development district and its immunity from annexation by the municipality for a period not to exceed 15 years after the effective date of the agreement;

(2) to authorize certain land uses and development within the planned unit development;

(3) to authorize enforcement by the municipality of certain municipal land use and development regulations within the planned unit development district, in the same manner such regulations are enforced within the municipality's boundaries, as may be agreed by the landowner and the municipality;

(4) to vary any watershed protection regulations;

(5) to authorize or restrict the creation of political subdivisions within the planned unit development district; and

(6) to such other terms and considerations the parties consider appropriate.

(c) The agreement between the governing body of the municipality and the owner of the land within the planned unit development district shall be binding upon all subsequent governing bodies of the municipality and subsequent owners of the land within the planned unit development district for the term of the agreement.

(d) An agreement or a decision made under this section and an

action taken under the agreement by the parties to the agreement are not subject to an approval or an appeal brought under Section 26.177, Water Code.

Added by Acts 1989, 71st Leg., ch. 822, Sec. 5, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 891, Sec. 1, eff. June 8, 1991.

Sec. 42.047. CREATION OF A POLITICAL SUBDIVISION IN AN AREA PROPOSED FOR A PLANNED UNIT DEVELOPMENT DISTRICT. If the governing body of a municipality that has disannexed territory previously annexed for limited purposes refuses to designate a planned unit development district under Section 42.046 no later than 180 days after the date a request for the designation is filed with the municipality by the owner of the land to be included in the planned unit development district, the municipality shall be considered to have given the consent required by Section 42.041 to the incorporation of a proposed municipality including within its boundaries all or some of such land. If consent to incorporation is granted by this subsection, the consenting municipality waives all rights to challenge the proposed incorporation in any court.

Added by Acts 1989, 71st Leg., ch. 822, Sec. 5, eff. Sept. 1, 1989.

Sec. 42.049. AUTHORITY OF WELLS BRANCH MUNICIPAL UTILITY DISTRICT. (a) Wells Branch Municipal Utility district is authorized to contract with a municipality:

(1) to provide for payments to be made to the municipality for purposes that the governing body of the district determines will further regional cooperation between the district and the municipality; and

(2) to provide other lawful terms and considerations that the district and the municipality agree are reasonable and appropriate.

(b) A contract entered into under this section may be for a term that is mutually agreeable to the parties. The parties to such a contract may renew or extend the contract.

(c) A municipality may contract with the district to accomplish the purposes set forth in Subsection (a) of this section. In a contract entered into under this section, a municipality may agree

that the district will remain in existence and be exempt from annexation by the municipality for the term of the contract.

(d) A contract entered into under this section will be binding on all subsequent governing bodies of the district and of the municipality for the term of the contract.

(e) The district may make annual appropriations from its operations and maintenance tax or other revenues lawfully available to the district to make payments to a municipality under a contract entered into under this section.

Added by Acts 1999, 76th Leg., ch. 926, Sec. 4, eff. June 18, 1999.

SUBCHAPTER D. RELEASE OF AREA BY PETITION OF LANDOWNER OR RESIDENT FROM EXTRATERRITORIAL JURISDICTION

Sec. 42.101. APPLICABILITY. This subchapter does not apply to an area located:

(1) within five miles of the boundary of a military base, as defined by Section 43.0117, at which an active training program is conducted;

(2) in an area that was voluntarily annexed into the extraterritorial jurisdiction that is located in a county:

(A) in which the population grew by more than 50 percent from the previous federal decennial census in the federal decennial census conducted in 2020; and

(B) that has a population greater than 240,000;

(3) within the portion of the extraterritorial jurisdiction of a municipality with a population of more than 1.4 million that is:

(A) within 15 miles of the boundary of a military base, as defined by Section 43.0117, at which an active training program is conducted; and

(B) in a county with a population of more than two million;

(4) in an area designated as an industrial district under Section 42.044; or

(5) in an area subject to a strategic partnership agreement entered into under Section 43.0751.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.102. AUTHORITY TO FILE PETITION FOR RELEASE. (a) A resident of an area in a municipality's extraterritorial jurisdiction may file a petition with the municipality in accordance with this subchapter for the area to be released from the extraterritorial jurisdiction.

(b) The owner or owners of the majority in value of an area consisting of one or more parcels of land in a municipality's extraterritorial jurisdiction may file a petition with the municipality in accordance with this subchapter for the area to be released from the extraterritorial jurisdiction.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.103. APPLICABILITY OF OTHER LAW. Chapter 277, Election Code, applies to a petition requesting removal under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.104. PETITION REQUIREMENTS. (a) A petition requesting release under this subchapter must be signed by:

(1) more than 50 percent of the registered voters of the area described by the petition as of the date of the preceding uniform election date; or

(2) a majority in value of the holders of title of land in the area described by the petition, as indicated by the tax rolls of the applicable central appraisal district.

(b) A person filing a petition under this subchapter must satisfy the signature requirement described by Subsection (a) not later than the 180th day after the date the first signature for the petition is obtained.

(c) A signature collected under this section must be in writing.

(d) The petition must include a map of the land to be released and describe the boundaries of the land to be released by:

(1) metes and bounds; or

(2) lot and block number, if there is a recorded map or plat.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.105. RESULTS OF PETITION. (a) A petition requesting removal under this subchapter shall be verified by the municipal secretary or other person responsible for verifying signatures.

(b) The municipality shall notify the residents and landowners of the area described by the petition of the results of the petition. The municipality may satisfy this requirement by notifying the person who filed the petition under Section 42.102.

(c) If a resident or landowner obtains the number of signatures on the petition required under Section 42.104 to release the area from the municipality's extraterritorial jurisdiction, the municipality shall immediately release the area from the municipality's extraterritorial jurisdiction.

(d) If a municipality fails to take action to release the area under Subsection (c) by the later of the 45th day after the date the municipality receives the petition or the next meeting of the municipality's governing body that occurs after the 30th day after the date the municipality receives the petition, the area is released by operation of law.

(e) Notwithstanding any other law, an area released from a municipality's extraterritorial jurisdiction under this section may not be included in the extraterritorial jurisdiction or the corporate boundaries of a municipality, unless the owner or owners of the area subsequently request that the area be included in the municipality's extraterritorial jurisdiction or corporate boundaries.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

SUBCHAPTER E. RELEASE OF AREA BY ELECTION FROM EXTRATERRITORIAL JURISDICTION

Sec. 42.151. APPLICABILITY. This subchapter does not apply to an area located:

(1) within five miles of the boundary of a military base, as defined by Section 43.0117, at which an active training program is conducted;

(2) in an area that was voluntarily annexed into the extraterritorial jurisdiction that is located in a county:

(A) in which the population grew by more than 50 percent from the previous federal decennial census in the federal decennial census conducted in 2020; and

(B) that has a population greater than 240,000;

(3) within the portion of the extraterritorial jurisdiction of a municipality with a population of more than 1.4 million that is:

(A) within 15 miles of the boundary of a military base, as defined by Section 43.0117, at which an active training program is conducted; and

(B) in a county with a population of more than two million;

(4) in an area designated as an industrial district under Section 42.044; or

(5) in an area subject to a strategic partnership agreement entered into under Section 43.0751.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.152. AUTHORITY TO REQUEST ELECTION FOR RELEASE. (a) A resident of an area in a municipality's extraterritorial jurisdiction may request the municipality to hold an election in accordance with this subchapter to vote on the question of whether to release the area from the municipality's extraterritorial jurisdiction by filing with the municipality a petition that includes the signatures of at least five percent of the registered voters residing in the area as of the date of the preceding uniform election date.

(b) A resident may not request another election on the question of releasing the same or substantially same area from the municipality's extraterritorial jurisdiction before the second anniversary of the date the municipality receives a petition filed under Subsection (a).

(c) The petition must include a map of the land to be released and describe the boundaries of the land to be released by:

(1) metes and bounds; or

(2) lot and block number, if there is a recorded map or plat.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.153. ELECTION. (a) Except as provided by Section 42.156, a municipality shall order an election on the question of whether to release an area from the municipality's extraterritorial jurisdiction to be held on the first uniform election date that falls on or after the 90th day after the date the municipality receives a petition that complies with Section 42.152.

(b) The municipality shall hold the election ordered under this section in the area described by the petition at which the qualified voters of the area described by the petition may vote on the question of the release.

(c) An election ordered under this section must be held in the same manner as general elections of the municipality. The municipality shall pay for the costs of holding the election.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.154. RESULTS OF ELECTION. (a) The governing body of a municipality shall canvass the election returns for an election held under this subchapter in accordance with Chapter 67, Election Code.

(b) Not later than 48 hours after the canvass of an election held under this subchapter, the municipality shall notify the residents of the area proposed to be released from the municipality's extraterritorial jurisdiction of the results of the election. The municipality may satisfy this requirement by notifying the person who filed the petition under Section 42.152.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.155. RELEASE OF AREA AS RESULT OF ELECTION. (a) If at the election held under this subchapter a majority of qualified voters of the area to be released approve the proposed release, the municipality shall immediately release the area from the municipality's extraterritorial jurisdiction.

(b) If the municipality fails to take action to release the area under Subsection (a) by the later of the next meeting of the municipality's governing body or the 15th day after the canvass date for the election, the area is released by operation of law.

(c) Notwithstanding any other law, an area released from a municipality's extraterritorial jurisdiction under this section may not be included in the extraterritorial jurisdiction or the corporate boundaries of a municipality, unless the owner or owners of the area subsequently request that the area be included in the municipality's extraterritorial jurisdiction or corporate boundaries.

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

Sec. 42.156. VOLUNTARY RELEASE. Instead of holding an election under Section 42.153, the municipality may voluntarily release the area for which the election is to be held from the municipality's extraterritorial jurisdiction before the date on which the election would have been held under Section 42.153(a).

Added by Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 1, eff. September 1, 2023.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 42.901. APPORTIONMENT OF EXTRATERRITORIAL JURISDICTIONS THAT OVERLAPPED ON AUGUST 23, 1963. (a) If, on August 23, 1963, the extraterritorial jurisdiction of a municipality overlapped the extraterritorial jurisdiction of one or more other municipalities, the governing bodies of the affected municipalities may apportion the overlapped area by a written agreement approved by an ordinance or a resolution adopted by the governing bodies.

(b) A municipality having a claim of extraterritorial jurisdiction to the overlapping area may bring an action as plaintiff in the district court of the judicial district in which the largest municipality having a claim to the area is located. The plaintiff municipality must name as a defendant each municipality having a claim of extraterritorial jurisdiction to the area and must request the court to apportion the area among the affected municipalities. In apportioning the area, the court shall consider population

densities, patterns of growth, transportation, topography, and land use in the municipalities and the overlapping area. The area must be apportioned among the municipalities:

(1) so that each municipality's part is contiguous to the extraterritorial jurisdiction of the municipality or, if the extraterritorial jurisdiction of the municipality is totally overlapped, is contiguous to the boundaries of the municipality;

(2) so that each municipality's part is in a substantially compact shape; and

(3) in the same ratio, to one decimal, that the respective populations of the municipalities bear to each other, but with each municipality receiving at least one-tenth of the area.

(c) An apportionment under this section must consider existing property lines. A tract of land or adjoining tracts of land that were under one ownership on August 23, 1963, and that do not exceed 160 acres may not be apportioned so as to be in the extraterritorial jurisdiction of more than one municipality unless the landowner gives written consent to that apportionment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.902. RESTRICTION AGAINST IMPOSING TAX IN EXTRATERRITORIAL JURISDICTION. The inclusion of an area in the extraterritorial jurisdiction of a municipality does not by itself authorize the municipality to impose a tax in the area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.9025. RESTRICTION ON IMPOSING FINE OR FEE IN CERTAIN AREAS IN EXTRATERRITORIAL JURISDICTION. (a) This section applies only to an area that is located in a municipality's extraterritorial jurisdiction and:

(1) that has been disannexed from the municipality under Subchapter G, Chapter 43; or

(2) for which the municipality has attempted and failed to obtain consent for annexation under Subchapter C-4 or C-5, Chapter 43.

(b) Notwithstanding any other law, a municipality may not impose under a municipal ordinance a fine or fee on a person on the

basis of:

(1) an activity that occurs wholly in an area described by Subsection (a); or

(2) the management or ownership of property located wholly in an area described by Subsection (a).

(c) This section does not limit a municipality, including a municipally owned retail water, wastewater, or drainage utility, from imposing in an area described by Subsection (a) a fine or fee, including through the adoption and enforcement of rates, for water, sewer, drainage, or other related utility services.

(d) This section does not apply to development or redevelopment in an area in which an election was held under Section 43.0117.

Added by Acts 2021, 87th Leg., R.S., Ch. 386 (S.B. 1168), Sec. 1, eff. June 7, 2021.

Sec. 42.903. EXTRATERRITORIAL JURISDICTION OF CERTAIN TYPE B OR C GENERAL-LAW MUNICIPALITIES. (a) This section applies only to a Type B or C general-law municipality:

(1) that has more than 200 inhabitants;

(2) that is wholly surrounded, at the time of incorporation, by the extraterritorial jurisdiction of another municipality; and

(3) part of which was located, at any time before incorporation, in an area annexed for limited purposes by another municipality.

(b) The governing body of the municipality by resolution or ordinance may adopt an extraterritorial jurisdiction for all or part of the unincorporated area contiguous to the corporate boundaries of the municipality and located within one mile of those boundaries. The authority granted by this section is subject to the limitation provided by Section 26.178, Water Code.

(c) Within 90 days after the date the municipality adopts the resolution or ordinance, an owner of real property in the extraterritorial jurisdiction may petition the municipality to release the owner's property from the extraterritorial jurisdiction. On the presentation of the petition, the property:

(1) is automatically released from the extraterritorial jurisdiction of the municipality and becomes part of the

extraterritorial jurisdiction or limited purpose area of the municipality whose jurisdiction surrounded, on May 31, 1989, the municipality from whose jurisdiction the property is released; and

(2) becomes subject to any existing zoning or other land use approval provisions that applied to the property before the property was included in the municipality's extraterritorial jurisdiction under Subsection (b).

(d) The municipality may exercise in its extraterritorial jurisdiction the powers granted under state law to other municipalities in their extraterritorial jurisdiction, including the power to ensure its water supply and to carry out other public purposes.

(e) To the extent of any conflict, this section controls over other laws relating to the creation of extraterritorial jurisdiction.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.01(a), eff. Aug. 26, 1991.

Sec. 42.904. EXTRATERRITORIAL JURISDICTION AND VOTING RIGHTS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that has disannexed territory under Section 43.133 that it had previously annexed for limited purposes and that has extended rules to its extraterritorial jurisdiction under Section 212.003.

(b) The municipality shall allow all qualified voters residing in the municipality's extraterritorial jurisdiction to vote on any proposition that is submitted to the voters of the municipality and that involves:

(1) an adoption of or change to an ordinance or charter provision that would apply to the municipality's extraterritorial jurisdiction; or

(2) a nonbinding referendum that, if binding, would apply to the municipality's extraterritorial jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 172, Sec. 1, eff. May 17, 1993.

CHAPTER 43. MUNICIPAL ANNEXATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 43.001. DEFINITIONS. In this chapter:

(1) "Extraterritorial jurisdiction" means extraterritorial

jurisdiction as determined under Chapter 42.

(2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

(3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

(4) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

(5) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 1, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

Sec. 43.002. CONTINUATION OF LAND USE. (a) A municipality may not, after annexing an area, prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances; or

(7) a regulation relating to the sale and use of fireworks.

(d) A regulation relating to the discharge of firearms or other weapons is subject to the restrictions in Section 229.002.

(e) Notwithstanding Subsection (c) and until the 20th anniversary of the date of the annexation of an area that includes a permanent retail structure, a municipality may not prohibit a person from continuing to use the structure for the indoor seasonal sale of retail goods if the structure:

(1) is more than 5,000 square feet; and

(2) was authorized under the laws of this state to be used for the indoor seasonal sale of retail goods on the effective date of the annexation.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 18 (S.B. 734), Sec. 3, eff. May 3, 2005.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 2, eff. December 1, 2017.

Sec. 43.003. AUTHORITY OF HOME-RULE MUNICIPALITY TO ANNEX AREA AND TAKE OTHER ACTIONS REGARDING BOUNDARIES. A home-rule municipality may take the following actions according to rules as may be provided by the charter of the municipality and not inconsistent with the requirements prescribed by this chapter:

(1) fix the boundaries of the municipality;

(2) extend the boundaries of the municipality and annex area adjacent to the municipality; and

(3) exchange area with other municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Transferred, redesignated and amended from Local Government Code, Section 43.021 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 3, eff. December 1, 2017.

Sec. 43.004. ANNEXATION BY DEFUNDING MUNICIPALITY PROHIBITED; EXCEPTION. (a) In this section, "defunding municipality" means a home-rule municipality that is considered to be a defunding municipality under Chapter 109.

(b) Except as provided by Subsection (c), a defunding municipality may not annex an area during the period beginning on the date that the criminal justice division of the governor's office issues the written determination that the municipality is a defunding municipality and ending on the 10th anniversary of the date on which the criminal justice division of the governor's office issues a written determination in accordance with Section 109.005 finding that the defunding municipality has reversed the reduction described by Section 109.003(1).

(c) This section does not apply to a defunding municipality annexing all or part of an area under Section 43.0116 that was designated an industrial district under Section 42.044(b) or the subject of an agreement under Section 42.044(c) as of January 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 2.01, eff. September 1, 2021.

Sec. 43.005. REQUIRED DISCLOSURE BEFORE ANNEXATION AGREEMENT. (a) At the time a municipality makes an offer to a landowner to enter into an agreement in which the landowner consents to annexation, the municipality must provide the landowner with the written disclosure described by Section 212.172(b-1).

(b) An annexation agreement for which a disclosure is not provided in accordance with Subsection (a) is void.

Added by Acts 2021, 87th Leg., R.S., Ch. 103 (S.B. 1338), Sec. 1, eff. September 1, 2021.
Redesignated from Local Government Code, Section 43.004 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(28), eff. September 1, 2023.

SUBCHAPTER A-1. GENERAL AUTHORITY TO ANNEX

Sec. 43.0115. AUTHORITY OF CERTAIN MUNICIPALITIES TO ANNEX ENCLAVES. (a) This section applies only to a municipality that:

(1) is wholly or partly located in a county in which a majority of the population of two or more municipalities, each with a population of 300,000 or more, are located; and

(2) proposes to annex an area that:

(A) is wholly surrounded by a municipality and within the municipality's extraterritorial jurisdiction; and

(B) has fewer than 100 dwelling units.

(b) Notwithstanding any other law, the governing body of a municipality by ordinance may annex an area without the consent of any of the residents of, voters of, or owners of land in the area under the procedures prescribed by Subchapter C-1.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 4, eff. December 1, 2017.

Sec. 43.0116. AUTHORITY OF MUNICIPALITY TO ANNEX INDUSTRIAL DISTRICTS. (a) Notwithstanding any other law and subject to Subsection (b), a municipality may annex all or part of the area located in an industrial district designated by the governing body of the municipality under Section 42.044 under the procedures prescribed by Subchapter C-1.

(b) A municipality that proposes to annex an area located in an industrial district subject to a contract described by Section 42.044(c) may initiate the annexation only:

(1) on or after the date the contract expires, including any period renewing or extending the contract; or

(2) as provided by the contract.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 4, eff. December 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.02, eff. May 24, 2019.

Sec. 43.0117. AUTHORITY OF MUNICIPALITY TO ANNEX AREA NEAR MILITARY BASE. (a) In this section, "military base" means a presently functioning federally owned or operated military installation or facility.

(b) A municipality may annex for full or limited purposes, under the annexation provisions applicable to that municipality under this chapter, any part of the area located within five miles of the boundary of a military base in which an active training program is conducted. The annexation proposition shall be stated to allow the voters of the area to be annexed to choose between either annexation or providing the municipality with the authority to adopt and enforce an ordinance regulating the land use in the area in the manner recommended by the most recent joint land use study.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 4, eff. December 1, 2017.

Sec. 43.012. AUTHORITY OF TYPE A GENERAL-LAW MUNICIPALITY TO ANNEX AREA IT OWNS. The governing body of a Type A general-law municipality by ordinance may annex area that the municipality owns under the procedures prescribed by Subchapter C-1. The ordinance must describe the area by metes and bounds and must be entered in the minutes of the governing body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Transferred, redesignated and amended from Local Government Code, Section 43.026 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 5, eff. December 1, 2017.

Sec. 43.013. AUTHORITY OF MUNICIPALITY TO ANNEX NAVIGABLE STREAM. The governing body of a municipality by ordinance may annex any navigable stream adjacent to the municipality and within the municipality's extraterritorial jurisdiction under the procedures prescribed by Subchapter C-1.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Transferred, redesignated and amended from Local Government Code, Section 43.027 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 6, eff. December 1, 2017.

Sec. 43.014. AUTHORITY TO ANNEX LIMITED TO EXTRATERRITORIAL JURISDICTION. A municipality may annex area only in its extraterritorial jurisdiction unless the municipality owns the area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Transferred and redesignated from Local Government Code, Section 43.051 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 7, eff. December 1, 2017.

Sec. 43.015. AUTHORITY OF ADJACENT MUNICIPALITIES TO CHANGE BOUNDARIES BY AGREEMENT. Adjacent municipalities may make mutually agreeable changes in their boundaries of areas that are less than 1,000 feet in width.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(c), eff. Aug. 28, 1989. Transferred and redesignated from Local Government Code, Section 43.031 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 8, eff. December 1, 2017.

Sec. 43.016. AUTHORITY OF MUNICIPALITY TO ANNEX AREA QUALIFIED FOR AGRICULTURAL OR WILDLIFE MANAGEMENT USE OR AS TIMBER LAND. (a) This section applies only to an area:

(1) eligible to be the subject of a development agreement under Subchapter G, Chapter 212; and

(2) appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code, or as timber land under Subchapter E of that chapter.

(b) A municipality may not annex an area to which this section applies unless:

(1) the municipality offers to make a development agreement with the landowner under Section 212.172 that would:

(A) guarantee the continuation of the extraterritorial status of the area; and

(B) authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the

use of the area for agriculture, wildlife management, or timber; and

(2) the landowner declines to make the agreement described by Subdivision (1).

(c) For purposes of Section 43.003(2) or another law, including a municipal charter or ordinance, relating to municipal authority to annex an area adjacent to the municipality, an area adjacent or contiguous to an area that is the subject of a development agreement described by Subsection (b)(1) is considered adjacent or contiguous to the municipality.

(d) A provision of a development agreement described by Subsection (b)(1) that restricts or otherwise limits the annexation of all or part of the area that is the subject of the agreement is void if the landowner files any type of subdivision plat or related development document for the area with a governmental entity that has jurisdiction over the area, regardless of how the area is appraised for ad valorem tax purposes.

(e) A development agreement described by Subsection (b)(1) is not a permit for purposes of Chapter 245.

Added by Acts 2007, 80th Leg., R.S., Ch. 225 (H.B. 1472), Sec. 1, eff. May 25, 2007.
Transferred, redesignated and amended from Local Government Code, Section 43.035 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 9, eff. December 1, 2017.

Sec. 43.017. PROHIBITION AGAINST ANNEXATION TO SURROUND MUNICIPALITY IN CERTAIN COUNTIES. A municipality with a population of more than 175,000 located in a county that contains an international border and borders the Gulf of Mexico may not annex an area that would cause another municipality to be entirely surrounded by the corporate limits or extraterritorial jurisdiction of the annexing municipality.

Added by Acts 2015, 84th Leg., R.S., Ch. 941 (H.B. 4059), Sec. 3, eff. June 18, 2015.
Transferred and redesignated from Local Government Code, Section 43.037 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 10, eff. December 1, 2017.

SUBCHAPTER C. LIMITATIONS AND REQUIREMENTS REGARDING ANNEXATIONS EXEMPTED FROM CONSENT ANNEXATION PROCEDURES

Sec. 43.0505. APPLICABILITY. (a) This subchapter applies only to an annexation under Subchapter C-1.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01(4), eff. May 24, 2019.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 14, eff. December 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.04, eff. May 24, 2019.

Without reference to the amendment of this section, this section was repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

Sec. 43.052. MUNICIPAL ANNEXATION PLAN REQUIRED.

(f-1) In addition to the notice provided under Subsection (f), a home-rule municipality, before the 90th day after the date the municipality adopts or amends an annexation plan under this section, shall give written notice as provided by this subsection to each property owner in any area that would be newly included in the municipality's extraterritorial jurisdiction as a result of the proposed annexation. For purposes of this subsection, a property owner is the owner as indicated by the appraisal records furnished by the appraisal district for each county in which the area that would be newly included in the municipality's extraterritorial jurisdiction is located. The notice must include:

(1) a description of the area that has been included in the municipality's annexation plan;

(2) a statement that the completed annexation of that area will expand the municipality's extraterritorial jurisdiction to include all or part of the property owner's property;

(3) a statement of the purpose of extraterritorial jurisdiction designation as provided by Section 42.001; and

(4) a brief description of each municipal ordinance that

would be applicable, as authorized by Section 212.003, in the area that would be newly included in the municipality's extraterritorial jurisdiction.

(f-2) In addition to the notice requirements under Subsection (f), a home-rule municipality, before the 90th day after the date the municipality adopts or amends an annexation plan under this section, shall create, or contract for the creation of, and make publicly available a digital map that identifies the area proposed for annexation and any area that would be newly included in the municipality's extraterritorial jurisdiction as a result of the proposed annexation. A digital map required under this subsection must be made available without charge and in a format widely used by common geographic information system software or in any other widely used electronic format if the municipality does not have common geographic information system software. If the municipality maintains an Internet website, the municipality shall make the digital map available on the municipality's website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1167, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1185 (H.B. 610), Sec. 1, eff. June 15, 2007.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 15, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1217 (S.B. 1303), Sec. 2, eff. September 1, 2019.

Sec. 43.054. WIDTH REQUIREMENTS. (a) A municipality may not annex a publicly or privately owned area, including a strip of area following the course of a road, highway, river, stream, or creek, unless the width of the area at its narrowest point is at least 1,000 feet.

(b) The prohibition established by Subsection (a) does not apply if:

(1) the boundaries of the municipality are contiguous to the area on at least two sides;

(2) the annexation is initiated on the written petition of the owners or of a majority of the qualified voters of the area; or

(3) the area abuts or is contiguous to another jurisdictional boundary.

(c) Notwithstanding Subsection (a), a municipality with a population of 21,000 or more located in a county with a population of 100,000 or more may annex a publicly owned strip or similar area following the course of a road or highway for the purpose of annexing territory contiguous to the strip or area if the territory contiguous to the strip or area was formerly used or was to be used in connection with or by a superconducting super collider high-energy research facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(d), eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 1167, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 768, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 16, eff. December 1, 2017.

Sec. 43.0545. ANNEXATION OF CERTAIN ADJACENT AREAS. (a) A municipality may not annex an area that is located in the extraterritorial jurisdiction of the municipality only because the area is contiguous to municipal territory that is less than 1,000 feet in width at its narrowest point.

(b) A municipality may not annex an area that is located in the extraterritorial jurisdiction of the municipality only because the area is contiguous to municipal territory that:

(1) was annexed before September 1, 1999; and

(2) was in the extraterritorial jurisdiction of the municipality at the time of annexation only because the territory was contiguous to municipal territory that was less than 1,000 feet in width at its narrowest point.

(c) Subsections (a) and (b) do not apply to an area:

(1) completely surrounded by incorporated territory of one or more municipalities;

(2) for which the owners of the area have requested annexation by the municipality;

(3) that is owned by the municipality; or

(4) that is the subject of an industrial district contract

under Section 42.044.

(d) Subsection (b) does not apply if the minimum width of the narrow territory described by Subsection (b)(2), following subsequent annexation, is no longer less than 1,000 feet in width at its narrowest point.

(e) For purposes of this section, roads, highways, rivers, lakes, or other bodies of water are not included in computing the 1,000-foot distance unless the area being annexed includes land in addition to a road, highway, river, lake, or other body of water.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 6, eff. Sept. 1, 1999.

Sec. 43.055. MAXIMUM AMOUNT OF ANNEXATION EACH YEAR. (a) In a calendar year, a municipality may not annex a total area greater than 10 percent of the incorporated area of the municipality as of January 1 of that year, plus any amount of area carried over to that year under Subsection (b). In determining the total area annexed in a calendar year, an area annexed for limited purposes is included, but an annexed area is not included if it is:

(1) annexed at the request of a majority of the qualified voters of the area and the owners of at least 50 percent of the land in the area;

(2) owned by the municipality, a county, the state, or the federal government and used for a public purpose;

(3) annexed at the request of at least a majority of the qualified voters of the area; or

(4) annexed at the request of the owners of the area.

(b) If a municipality fails to annex in a calendar year the entire 10 percent amount permitted under Subsection (a), the municipality may carry over the unused allocation for use in subsequent calendar years.

(c) A municipality carrying over an allocation may not annex in a calendar year a total area greater than 30 percent of the incorporated area of the municipality as of January 1 of that year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(e), eff. Aug. 28, 1989.

Sec. 43.056. PROVISION OF SERVICES TO ANNEXED AREA. (a) This

section applies to a service plan under Section 43.065.

(b) The service plan, which must be completed before the annexation, must include a program under which the municipality will provide full municipal services in the annexed area no later than 2-1/2 years after the effective date of the annexation, in accordance with Subsection (e), unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule for providing those services, and must include a list of all services required by this section to be provided under the plan. If the municipality proposes a schedule to extend the period for providing certain services, the schedule must provide for the provision of full municipal services no later than 4-1/2 years after the effective date of the annexation. However, under the program if the municipality provides any of the following services within the corporate boundaries of the municipality before annexation, the municipality must provide those services in the area proposed for annexation on the effective date of the annexation of the area:

(1) police protection;

(2) fire protection;

(3) emergency medical services;

(4) solid waste collection, except as provided by Subsection (o);

(5) operation and maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;

(6) operation and maintenance of roads and streets, including road and street lighting;

(7) operation and maintenance of parks, playgrounds, and swimming pools; and

(8) operation and maintenance of any other publicly owned facility, building, or service.

(c) For purposes of this section, "full municipal services" means services provided by the annexing municipality within its full-purpose boundaries, including water and wastewater services and excluding gas or electrical service.

(d) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(a), eff. December 1, 2017.

(e) The service plan must also include a program under which the municipality will initiate after the effective date of the annexation the acquisition or construction of capital improvements

necessary for providing municipal services adequate to serve the area. The construction shall be substantially completed within the period provided in the service plan. The service plan may be amended to extend the period for construction if the construction is proceeding with all deliberate speed. The acquisition or construction of the facilities shall be accomplished by purchase, lease, or other contract or by the municipality succeeding to the powers, duties, assets, and obligations of a conservation and reclamation district as authorized or required by law. The construction of the facilities shall be accomplished in a continuous process and shall be completed as soon as reasonably possible, consistent with generally accepted local engineering and architectural standards and practices. However, the municipality does not violate this subsection if the construction process is interrupted for any reason by circumstances beyond the direct control of the municipality. The requirement that construction of capital improvements must be substantially completed within the period provided in the service plan does not apply to a development project or proposed development project within an annexed area if the annexation of the area was initiated by petition or request of the owners of land in the annexed area and the municipality and the landowners have subsequently agreed in writing that the development project within that area, because of its size or projected manner of development by the developer, is not reasonably expected to be completed within that period.

(f) A service plan may not:

(1) require the creation of another political subdivision;

(2) require a landowner in the area to fund the capital improvements necessary to provide municipal services in a manner inconsistent with Chapter 395 unless otherwise agreed to by the landowner;

(3) provide services in the area in a manner that would have the effect of reducing by more than a negligible amount the level of fire and police protection and emergency medical services provided within the corporate boundaries of the municipality before annexation;

(4) provide services in the area in a manner that would have the effect of reducing by more than a negligible amount the level of fire and police protection and emergency medical services provided within the area before annexation; or

(5) cause a reduction in fire and police protection and

emergency medical services within the area to be annexed below that of areas within the corporate boundaries of the municipality with similar topography, land use, and population density.

(g) If the annexed area had a lower level of services, infrastructure, and infrastructure maintenance than the level of services, infrastructure, and infrastructure maintenance provided within the corporate boundaries of the municipality before annexation, a service plan must provide the annexed area with a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance available in other parts of the municipality with topography, land use, and population density similar to those reasonably contemplated or projected in the area. If the annexed area had a level of services, infrastructure, and infrastructure maintenance equal to the level of services, infrastructure, and infrastructure maintenance provided within the corporate boundaries of the municipality before annexation, a service plan must maintain that same level of services, infrastructure, and infrastructure maintenance. Except as provided by this subsection, if the annexed area had a level of services superior to the level of services provided within the corporate boundaries of the municipality before annexation, a service plan must provide the annexed area with a level of services that is comparable to the level of services available in other parts of the municipality with topography, land use, and population density similar to those reasonably contemplated or projected in the area. If the annexed area had a level of services for operating and maintaining the infrastructure of the area, including the facilities described by Subsections (b)(5)-(8), superior to the level of services provided within the corporate boundaries of the municipality before annexation, a service plan must provide for the operation and maintenance of the infrastructure of the annexed area at a level of services that is equal or superior to that level of services.

(h) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(a), eff. December 1, 2017.

(i) If only a part of the area to be annexed is actually annexed, the governing body shall direct the department to prepare a revised service plan for that part.

(j) The proposed service plan must be made available for public inspection and explained to the inhabitants of the area at the public

hearings held under Section 43.063. The plan may be amended through negotiation at the hearings, but the provision of any service may not be deleted. On completion of the public hearings, the service plan shall be attached to the ordinance annexing the area and approved as part of the ordinance.

(k) On approval by the governing body, the service plan is a contractual obligation that is not subject to amendment or repeal except that if the governing body determines at the public hearings required by this subsection that changed conditions or subsequent occurrences make the service plan unworkable or obsolete, the governing body may amend the service plan to conform to the changed conditions or subsequent occurrences. An amended service plan must provide for services that are comparable to or better than those established in the service plan before amendment. Before any amendment is adopted, the governing body must provide an opportunity for interested persons to be heard at public hearings called and held in the manner provided by Section 43.063.

(l) A service plan is valid for 10 years. Renewal of the service plan is at the discretion of the municipality. A person residing or owning land in an annexed area may enforce a service plan by applying for a writ of mandamus not later than the second anniversary of the date the person knew or should have known that the municipality was not complying with the service plan. If a writ of mandamus is applied for, the municipality has the burden of proving that the services have been provided in accordance with the service plan in question. If a court issues a writ under this subsection, the court:

(1) must provide the municipality the option of disannexing the area within a reasonable period specified by the court;

(2) may require the municipality to comply with the service plan in question before a reasonable date specified by the court if the municipality does not disannex the area within the period prescribed by the court under Subdivision (1);

(3) may require the municipality to refund to the landowners of the annexed area money collected by the municipality from those landowners for services to the area that were not provided;

(4) may assess a civil penalty against the municipality, to be paid to the state in an amount as justice may require, for the period in which the municipality is not in compliance with the

service plan;

(5) may require the parties to participate in mediation; and

(6) may require the municipality to pay the person's costs and reasonable attorney's fees in bringing the action for the writ.

(m) This section does not require that a uniform level of full municipal services be provided to each area of the municipality if different characteristics of topography, land use, and population density constitute a sufficient basis for providing different levels of service. Any disputes regarding the level of services provided under this subsection are resolved in the same manner provided by Subsection (l). Nothing in this subsection modifies the requirement under Subsection (g) for a service plan to provide a level of services in an annexed area that is equal or superior to the level of services provided within the corporate boundaries of the municipality before annexation. To the extent of any conflict between this subsection and Subsection (g), Subsection (g) prevails.

(n) Before the second anniversary of the date an area is included within the corporate boundaries of a municipality by annexation, the municipality may not:

(1) prohibit the collection of solid waste in the area by a privately owned solid waste management service provider; or

(2) offer solid waste management services in the area unless a privately owned solid waste management service provider is unavailable.

(o) A municipality is not required to provide solid waste collection services under Subsection (b) to a person who continues to use the services of a privately owned solid waste management service provider as provided by Subsection (n).

(p) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(b), eff. December 1, 2017.

(q) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(f), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 822, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.011, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 969, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 1062, Sec. 1, eff. June 17, 1995; Acts 1999, 76th

Leg., ch. 1167, Sec. 7, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1185 (H.B. 610), Sec. 2, eff. June 15, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1363 (S.B. 1596), Sec. 3, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 952 (S.B. 1878), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 17, eff. December 1, 2017.
Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(a), eff. December 1, 2017.
Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(b), eff. December 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01(7), eff. May 24, 2019.
Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.05, eff. May 24, 2019.

Without reference to the amendment of this section, this section was repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01, eff. May 24, 2019.

Sec. 43.0561. ANNEXATION HEARING REQUIREMENTS.
(c) The municipality must:
(1) post notice of the hearings on the municipality's Internet website if the municipality has an Internet website; and
(2) publish notice of the hearings in a newspaper of general circulation:
(A) in the municipality;
(B) in the area proposed for annexation; and
(C) if the municipality is a home-rule municipality, in any area that would be newly included in the municipality's extraterritorial jurisdiction by the expansion of the municipality's extraterritorial jurisdiction resulting from the proposed annexation.
(d) The notice for each hearing must be published at least once on or after the 20th day but before the 10th day before the date of the hearing. The notice for each hearing must be posted on the municipality's Internet website on or after the 20th day but before

the 10th day before the date of the hearing and must remain posted until the date of the hearing.

(e) This subsection applies only to a home-rule municipality. If applicable, the notice for each hearing must include:

(1) a statement that the completed annexation of the area will expand the municipality's extraterritorial jurisdiction;

(2) a description of the area that would be newly included in the municipality's extraterritorial jurisdiction;

(3) a statement of the purpose of extraterritorial jurisdiction designation as provided by Section 42.001; and

(4) a brief description of each municipal ordinance that would be applicable, as authorized by Section 212.003, in the area that would be newly included in the municipality's extraterritorial jurisdiction.

(f) In addition to the notice required by Subsection (c), the municipality must give notice by certified mail to:

(1) each public entity, as defined by Section 43.053, and utility service provider that provides services in the area proposed for annexation; and

(2) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1217 (S.B. 1303), Sec. 3, eff. September 1, 2019.

Sec. 43.0565. ACCESS TO SERVICES BY CERTAIN MUNICIPALITIES IN ANNEXED AREA. (a) A municipality with a population of 350,000 or less shall provide access to services provided to an annexed area under a service plan described by Section 43.056 that is identical or substantially similar to access to those services in the municipality.

(b) A person residing in an annexed area subject to a service plan may apply for a writ of mandamus against a municipality that fails to provide access to services in accordance with Subsection (a). In the action for the writ:

(1) the court may order the parties to participate in

mediation;

(2) the municipality has the burden of proving that the municipality complied with Subsection (a);

(3) the person may provide evidence that the costs for the person to access the services are disproportionate to the costs incurred by a municipal resident to access those services; and

(4) if the person prevails:

(A) the municipality shall:

(i) disannex the property that is the subject of the suit within a reasonable period specified by the court; or

(ii) comply with Subsection (a); and

(B) the court shall award the person's attorney's fees and costs incurred in bringing the action for the writ.

(c) A municipality's governmental immunity to suit and from liability is waived and abolished to the extent of liability created under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 429 (S.B. 1024), Sec. 1, eff. September 1, 2019.

Sec. 43.057. ANNEXATION THAT SURROUNDS AREA: FINDINGS REQUIRED. If a proposed annexation would cause an area to be entirely surrounded by the annexing municipality but would not include the area within the municipality, the governing body of the municipality must find, before completing the annexation, that surrounding the area is in the public interest.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C-1. ANNEXATION PROCEDURE FOR AREAS EXEMPTED FROM CONSENT ANNEXATION PROCEDURES

Sec. 43.061. APPLICABILITY. (a) Unless otherwise specifically provided by this chapter or another law, this subchapter applies only to an annexation under:

(1) Section 43.0115 (Enclave);

(2) Section 43.0116 (Industrial District);

(3) Section 43.012 (Area Owned by Type-A Municipality);

(4) Section 43.013 (Navigable Stream);

(5) Section 43.0751(h) (Strategic Partnership);

(6) Section 43.101 (Municipally Owned Reservoir);
(7) Section 43.102 (Municipally Owned Airport); and
(8) Section 43.1055 (Road and Right-of-Way).

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01(12), eff. May 24, 2019.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 9, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 21, eff. December 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01(12), eff. May 24, 2019.
Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.07, eff. May 24, 2019.

Sec. 43.062. PROCEDURES APPLICABLE. (a) Sections 43.054, 43.0545, 43.055, and 43.057 apply to the annexation of an area to which this subchapter applies.

(b) This subsection applies only to an area that contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract. Before the 30th day before the date of the first hearing required under Section 43.063, a municipality shall give written notice of its intent to annex the area to:

(1) each property owner in an area proposed for annexation, as indicated by the appraisal records furnished by the appraisal district for each county in which the area is located;

(2) each public entity or private entity that provides services in the area proposed for annexation, including each:

(A) municipality, county, fire protection service provider, including a volunteer fire department, and emergency medical services provider, including a volunteer emergency medical services provider; and

(B) municipal utility district, water control and improvement district, or other district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution; and

(3) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 22, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.08, eff. May 24, 2019.

Sec. 43.063. ANNEXATION HEARING REQUIREMENTS. (a) Before a municipality may institute annexation proceedings, the governing body of the municipality must conduct two public hearings at which persons interested in the annexation are given the opportunity to be heard. The hearings must be conducted on or after the 40th day but before the 20th day before the date of the institution of the proceedings.

(b) At least one of the hearings must be held in the area proposed for annexation if a suitable site is reasonably available and more than 10 percent of the adults who are permanent residents of the area file a written protest of the annexation with the secretary of the municipality within 10 days after the date of the publication of the notice required by this section. The protest must state the name, address, and age of each protester who signs.

(c) The municipality must:

(1) post notice of the hearings on the municipality's Internet website if the municipality has an Internet website; and

(2) publish notice of the hearings in a newspaper of general circulation:

(A) in the municipality;

(B) in the area proposed for annexation; and

(C) if the municipality is a home-rule municipality, in any area that would be newly included in the municipality's extraterritorial jurisdiction by the expansion of the municipality's extraterritorial jurisdiction resulting from the proposed annexation.

(d) The notice for each hearing must be published at least once on or after the 20th day but before the 10th day before the date of the hearing. The notice for each hearing must be posted on the municipality's Internet website on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until the date of the hearing.

(e) This subsection applies only to a home-rule municipality. If applicable, the notice for each hearing must include:

(1) a statement that the completed annexation of the area will expand the municipality's extraterritorial jurisdiction;

(2) a description of the area that would be newly included in the municipality's extraterritorial jurisdiction;

(3) a statement of the purpose of extraterritorial jurisdiction designation as provided by Section 42.001; and

(4) a brief description of each municipal ordinance that would be applicable, as authorized by Section 212.003, in the area that would be newly included in the municipality's extraterritorial jurisdiction.

(f) In addition to the notice required by Subsection (c), the municipality must give notice by certified mail to each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1217 (S.B. 1303), Sec. 4, eff. September 1, 2019.

Sec. 43.0635. MAP REQUIREMENT FOR PROPOSED ANNEXATION. In addition to the notice requirements under Section 43.063, a home-rule municipality, before the municipality may institute annexation proceedings, shall create, or contract for the creation of, and make publicly available a digital map that identifies the area proposed for annexation and any area that would be newly included in the municipality's extraterritorial jurisdiction as a result of the proposed annexation. A digital map required under this section must be made available without charge and in a format widely used by common geographic information system software or in any other widely used electronic format if the municipality does not have common geographic information system software. If the municipality maintains an Internet website, the municipality shall make the digital map available on the municipality's website.

Added by Acts 2019, 86th Leg., R.S., Ch. 1217 (S.B. 1303), Sec. 5, eff. September 1, 2019.

Sec. 43.064. PERIOD FOR COMPLETION OF ANNEXATION. The annexation of an area must be completed within 90 days after the date the governing body institutes the annexation proceedings or those proceedings are void. Any period during which the municipality is restrained or enjoined by a court from annexing the area is not included in computing the 90-day period.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 9, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 23, eff. December 1, 2017.

Sec. 43.065. PROVISION OF SERVICES TO ANNEXED AREA. (a) Before the publication of the notice of the first hearing required under Section 43.063, the governing body of the municipality proposing the annexation shall direct its planning department or other appropriate municipal department to prepare a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality.

(b) Sections 43.056(b)-(o) apply to the annexation of an area to which this subchapter applies.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 9, eff. Sept. 1, 1999.

SUBCHAPTER C-2. GENERAL ANNEXATION AUTHORITY AND PROCEDURES REGARDING CONSENT ANNEXATIONS

Sec. 43.0661. PROVISION OF CERTAIN SERVICES TO ANNEXED AREA. (a) This section applies only to a municipality that includes solid waste collection services in the list of services that will be provided in the area proposed for annexation on or before the second anniversary of the effective date of the annexation of the area under a written agreement under Section 43.0672 or a resolution under Section 43.0682 or 43.0692.

(b) A municipality is not required to provide solid waste collection services to a person who continues to use the services of a privately owned solid waste management service provider as provided by Subsection (c).

(c) Before the second anniversary of the effective date of the annexation of an area, a municipality may not:

(1) prohibit the collection of solid waste in the area by a privately owned solid waste management service provider; or

(2) offer solid waste management services in the area unless a privately owned solid waste management service provider is unavailable.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 24, eff. December 1, 2017.

Sec. 43.0662. AUTHORITY OF MUNICIPALITY WITH POPULATION OF 74,000 TO 99,700 IN URBAN COUNTY TO ANNEX SMALL, SURROUNDED GENERAL-LAW MUNICIPALITY. (a) Notwithstanding Subchapter C-4 or C-5, a municipality that has a population of 74,000 to 99,700, that is located wholly or partly in a county with a population of more than 1.8 million, and that completely surrounds and is contiguous to a general-law municipality with a population of less than 600, may annex the general-law municipality as provided by this section.

(b) The governing body of the smaller municipality may adopt an ordinance ordering an election on the question of consenting to the annexation of the smaller municipality by the larger municipality. The governing body of the smaller municipality shall adopt the ordinance if it receives a petition to do so signed by a number of qualified voters of the municipality equal to at least 10 percent of the number of voters of the municipality who voted in the most recent general election. If the ordinance ordering the election is to be adopted as a result of a petition, the ordinance shall be adopted within 30 days after the date the petition is received.

(c) The ordinance ordering the election must provide for the submission of the question at an election to be held on the first uniform election date prescribed by Chapter 41, Election Code, that occurs after the 30th day after the date the ordinance is adopted and that affords enough time to hold the election in the manner required by law.

(d) Within 10 days after the date on which the election is held, the governing body of the smaller municipality shall canvass the election returns and by resolution shall declare the results of the election. If a majority of the votes received is in favor of the

annexation, the secretary of the smaller municipality or other appropriate municipal official shall forward by certified mail to the secretary of the larger municipality a certified copy of the resolution.

(e) The larger municipality, within 90 days after the date the resolution is received, must complete the annexation by ordinance in accordance with its municipal charter or the general laws of the state. If the annexation is not completed within the 90-day period, any annexation proceeding is void and the larger municipality may not annex the smaller municipality under this section. However, the failure to complete the annexation as provided by this subsection does not prevent the smaller municipality from holding a new election on the question to enable the larger municipality to annex the smaller municipality as provided by this section.

(f) If the larger municipality completes the annexation within the prescribed period, the incorporation of the smaller municipality is abolished. The records, public property, public buildings, money on hand, credit accounts, and other assets of the smaller municipality become the property of the larger municipality and shall be turned over to the officers of that municipality. The offices in the smaller municipality are abolished and the persons holding those offices are not entitled to further remuneration or compensation. All outstanding liabilities of the smaller municipality are assumed by the larger municipality.

(g) In the annexation ordinance, the larger municipality shall adopt, for application in the area zoned by the smaller municipality, the identical comprehensive zoning ordinance that the smaller municipality applied to the area at the time of the election. Any attempted annexation of the smaller municipality that does not include the adoption of that comprehensive zoning ordinance is void. That comprehensive zoning ordinance may not be repealed or amended for a period of 10 years unless the written consent of the landowners who own at least two-thirds of the surface land of the annexed smaller municipality is obtained.

(h) If the annexed smaller municipality has on hand any bond funds for public improvements that are not appropriated or contracted for, the funds shall be kept in a separate special fund to be used only for public improvements in the area for which the bonds were voted.

(i) On the annexation, all claims, fines, debts, or taxes due

and payable to the smaller municipality become due and payable to the larger municipality and shall be collected by it. If taxes for the year in which the annexation occurs have been assessed in the smaller municipality before the annexation, the amounts assessed remain as the amounts due and payable from the inhabitants of the smaller municipality for that year.

(j) This section does not affect a charter provision of a home-rule municipality. This section grants additional power to the municipality and is cumulative of the municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 80, eff. Sept. 1, 1991. Transferred, redesignated and amended from Local Government Code, Section 43.030 by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 25, eff. December 1, 2017.

Sec. 43.0663. EFFECT ON OTHER LAW. Subchapters C-3 through C-5 do not affect the procedures described by Section 397.005 or 397.006 applicable to a defense community as defined by Section 397.001.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 24, eff. December 1, 2017.

SUBCHAPTER C-3. ANNEXATION OF AREA ON REQUEST OF OWNERS

Sec. 43.0671. AUTHORITY TO ANNEX AREA ON REQUEST OF OWNERS. Notwithstanding Subchapter C-4 or C-5, a municipality may annex an area if each owner of land in the area requests the annexation.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0672. WRITTEN AGREEMENT REGARDING SERVICES. (a) The governing body of the municipality that elects to annex an area under this subchapter must first negotiate and enter into a written agreement with the owners of land in the area for the provision of services in the area.

(b) The agreement must include:

(1) a list of each service the municipality will provide on

the effective date of the annexation; and

(2) a schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation.

(c) The municipality is not required to provide a service that is not included in the agreement.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0673. PUBLIC HEARING. (a) Before a municipality may adopt an ordinance annexing an area under this subchapter, the governing body of the municipality must conduct one public hearing.

(c) During the public hearing, the governing body:

(1) must provide persons interested in the annexation the opportunity to be heard; and

(2) may adopt an ordinance annexing the area.

(d) The municipality must post notice of the hearing on the municipality's Internet website if the municipality has an Internet website and publish notice of the hearing in a newspaper of general circulation in the municipality and in the area proposed for annexation. The notice for the hearing must be:

(1) published at least once on or after the 20th day but before the 10th day before the date of the hearing; and

(2) posted on the municipality's Internet website on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until the date of the hearing.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 3.01, eff. May 24, 2019.

SUBCHAPTER C-4. ANNEXATION OF AREAS WITH POPULATION OF LESS THAN 200 BY PETITION

Sec. 43.0681. AUTHORITY TO ANNEX. A municipality may annex an area with a population of less than 200 only if the following conditions are met, as applicable:

(1) the municipality obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area; and

(2) if the registered voters of the area do not own more than 50 percent of the land in the area, the petition described by Subdivision (1) is signed by more than 50 percent of the owners of land in the area.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0682. RESOLUTION. The governing body of the municipality that proposes to annex an area under this subchapter must adopt a resolution that includes:

(1) a statement of the municipality's intent to annex the area;

(2) a detailed description and map of the area;

(3) a description of each service to be provided by the municipality in the area on or after the effective date of the annexation, including, as applicable:

(A) police protection;

(B) fire protection;

(C) emergency medical services;

(D) solid waste collection;

(E) operation and maintenance of water and wastewater facilities in the annexed area;

(F) operation and maintenance of roads and streets, including road and street lighting;

(G) operation and maintenance of parks, playgrounds, and swimming pools; and

(H) operation and maintenance of any other publicly owned facility, building, or service;

(4) a list of each service the municipality will provide on the effective date of the annexation; and

(5) a schedule that includes the period within which the municipality will provide each service that is not provided on the effective date of the annexation.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0683. NOTICE OF PROPOSED ANNEXATION. Not later than the seventh day after the date the governing body of the municipality adopts the resolution under Section 43.0682, the municipality must mail to each resident and property owner in the area proposed to be annexed notification of the proposed annexation that includes:

(1) notice of the public hearing required by Section 43.0684;

(2) an explanation of the 180-day petition period described by Section 43.0685; and

(3) a description, list, and schedule of services to be provided by the municipality in the area on or after annexation as provided by Section 43.0682.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0684. PUBLIC HEARING. The governing body of a municipality must conduct at least one public hearing not earlier than the 21st day and not later than the 30th day after the date the governing body adopts the resolution under Section 43.0682.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0685. PETITION. (a) Except as provided by Subsection (a-1), the petition required by Section 43.0681 may be signed only by a registered voter of the area proposed to be annexed.

(a-1) If the registered voters of the area proposed to be annexed do not own more than 50 percent of the land in the area, the petition required by Section 43.0681 may also be signed by the owners of land in the area that are not registered voters. Notwithstanding Subsection (e), the municipality may provide for an owner of land in the area that is not a resident of the area to sign the petition electronically.

(a-2) The petition must clearly indicate that the person is signing as a registered voter of the area, an owner of land in the area, or both.

(b) The municipality may collect signatures on the petition only during the period beginning on the 31st day after the date the governing body of the municipality adopts the resolution under Section 43.0682 and ending on the 180th day after the date the resolution is adopted.

(c) The petition must clearly state that a person signing the petition is consenting to the proposed annexation.

(d) The petition must include a map of and describe the area proposed to be annexed.

(e) Signatures collected on the petition must be in writing.

(f) Chapter 277, Election Code, applies to a petition under this section.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0686. RESULTS OF PETITION. (a) When the petition period prescribed by Section 43.0685 ends, the petition shall be verified by the municipal secretary or other person responsible for verifying signatures. The municipality must notify the residents and property owners of the area proposed to be annexed of the results of the petition.

(b) If the municipality does not obtain the number of signatures on the petition required to annex the area, the municipality may not annex the area and may not adopt another resolution under Section 43.0682 to annex the area until the first anniversary of the date the petition period ended.

(c) If the municipality obtains the number of signatures on the petition required to annex the area, the municipality may annex the area after:

(1) providing notice under Subsection (a);

(2) holding a public hearing at which members of the public are given an opportunity to be heard; and

(3) holding a final public hearing not earlier than the 10th day after the date of the public hearing under Subdivision (2) at which the ordinance annexing the area may be adopted.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0687. VOTER APPROVAL BY MUNICIPAL RESIDENTS ON PETITION. If a petition protesting the annexation of an area under this subchapter is signed by a number of registered voters of the municipality proposing the annexation equal to at least 50 percent of the number of voters who voted in the most recent municipal election and is received by the secretary of the municipality before the date the petition period prescribed by Section 43.0685 ends, the municipality may not complete the annexation of the area without approval of a majority of the voters of the municipality voting at an election called and held for that purpose.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0688. RETALIATION FOR ANNEXATION DISAPPROVAL PROHIBITED. (a) The disapproval of the proposed annexation of an area under this subchapter does not affect any existing legal obligation of the municipality proposing the annexation to continue to provide governmental services in the area, including water or wastewater services, regardless of whether the municipality holds a certificate of convenience and necessity to serve the area.

(b) The municipality may not initiate a rate proceeding solely because of the disapproval of a proposed annexation of an area under this subchapter.

(c) A municipality that makes a wholesale sale of water to a special district operating under Chapter 36 or Title 4, Water Code, may not charge rates for the water that are higher than rates charged in other similarly situated areas solely because the district is wholly or partly located in an area that disapproved of a proposed annexation under this subchapter.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 922 (H.B. 4257), Sec. 1, eff. June 10, 2019.

SUBCHAPTER C-5. ANNEXATION OF AREAS WITH POPULATION OF AT LEAST 200 BY ELECTION

Sec. 43.0691. AUTHORITY TO ANNEX. A municipality may annex an area with a population of 200 or more only if the following conditions are met, as applicable:

(1) the municipality holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and

(2) if the registered voters of the area do not own more than 50 percent of the land in the area, the municipality obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0692. RESOLUTION. The governing body of the municipality that proposes to annex an area under this subchapter must adopt a resolution that includes:

(1) a statement of the municipality's intent to annex the area;

(2) a detailed description and map of the area;

(3) a description of each service to be provided by the municipality in the area on or after the effective date of the annexation, including, as applicable:

(A) police protection;

(B) fire protection;

(C) emergency medical services;

(D) solid waste collection;

(E) operation and maintenance of water and wastewater facilities in the annexed area;

(F) operation and maintenance of roads and streets, including road and street lighting;

(G) operation and maintenance of parks, playgrounds, and swimming pools; and

(H) operation and maintenance of any other publicly owned facility, building, or service;

(4) a list of each service the municipality will provide on the effective date of the annexation; and

(5) a schedule that includes the period within which the

municipality will provide each service that is not provided on the effective date of the annexation.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0693. NOTICE OF PROPOSED ANNEXATION. Not later than the seventh day after the date the governing body of the municipality adopts the resolution under Section 43.0692, the municipality must mail to each property owner in the area proposed to be annexed notification of the proposed annexation that includes:

(1) notice of the public hearings required by Section 43.0694;

(2) notice that an election on the question of annexing the area will be held; and

(3) a description, list, and schedule of services to be provided by the municipality in the area on or after annexation as provided by Section 43.0692.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0694. PUBLIC HEARINGS. (a) The governing body of a municipality must conduct an initial public hearing not earlier than the 21st day and not later than the 30th day after the date the governing body adopts the resolution under Section 43.0692.

(b) The governing body must conduct at least one additional public hearing not earlier than the 31st day and not later than the 90th day after the date the governing body adopts a resolution under Section 43.0692.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0695. PROPERTY OWNER CONSENT REQUIRED FOR CERTAIN AREAS. (a) If the registered voters in the area proposed to be annexed do not own more than 50 percent of the land in the area, the municipality must obtain consent to the annexation through a petition

signed by more than 50 percent of the owners of land in the area in addition to the election required by this subchapter.

(b) The municipality must obtain the consent required by this section through the petition process prescribed by Sections 43.0685(b)-(e), and the petition must be verified in the manner provided by Section 43.0686(a).

(c) Notwithstanding Section 43.0685(e), the municipality may provide for an owner of land in the area that is not a resident of the area to sign the petition electronically.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0696. ELECTION. (a) A municipality shall order an election on the question of annexing an area to be held on the first uniform election date that falls on or after:

(1) the 90th day after the date the governing body of the municipality adopts the resolution under Section 43.0692; or

(2) if the consent of the owners of land in the area is required under Section 43.0695, the 78th day after the date the petition period to obtain that consent ends.

(b) An election under this section shall be held in the same manner as general elections of the municipality. The municipality shall pay for the costs of holding the election.

(c) A municipality that holds an election under this section may not hold another election on the question of annexation before the corresponding uniform election date of the following year.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0697. RESULTS OF ELECTION AND PETITION. (a) Following an election held under this subchapter, the municipality must notify the residents of the area proposed to be annexed of the results of the election and, if applicable, of the petition required by Section 43.0695.

(b) If at the election held under this subchapter a majority of qualified voters do not approve the proposed annexation, or if the municipality is required to petition owners of land in the area under

Section 43.0695 and does not obtain the required number of signatures, the municipality may not annex the area and may not adopt another resolution under Section 43.0692 to annex the area until the first anniversary of the date of the adoption of the resolution.

(c) If at the election held under this subchapter a majority of qualified voters approve the proposed annexation, and if the municipality, as applicable, obtains the required number of petition signatures under Section 43.0695, the municipality may annex the area after:

(1) providing notice under Subsection (a);

(2) holding a public hearing at which members of the public are given an opportunity to be heard; and

(3) holding a final public hearing not earlier than the 10th day after the date of the public hearing under Subdivision (2) at which the ordinance annexing the area may be adopted.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0698. VOTER APPROVAL BY MUNICIPAL RESIDENTS ON PETITION. If a petition protesting the annexation of an area under this subchapter is signed by a number of registered voters of the municipality proposing the annexation equal to at least 50 percent of the number of voters who voted in the most recent municipal election and is received by the secretary of the municipality before the date the election required by this subchapter is held, the municipality may not complete the annexation of the area without approval of a majority of the voters of the municipality voting at a separate election called and held for that purpose.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.

Sec. 43.0699. RETALIATION FOR ANNEXATION DISAPPROVAL PROHIBITED. (a) The disapproval of the proposed annexation of an area under this subchapter does not affect any existing legal obligation of the municipality proposing the annexation to continue to provide governmental services in the area, including water or wastewater services, regardless of whether the municipality holds a

certificate of convenience and necessity to serve the area.

(b) The municipality may not initiate a rate proceeding solely because of the disapproval of a proposed annexation of an area under this subchapter.

(c) A municipality that makes a wholesale sale of water to a special district operating under Chapter 36 or Title 4, Water Code, may not charge rates for the water that are higher than rates charged in other similarly situated areas solely because the district is wholly or partly located in an area that disapproved of a proposed annexation under this subchapter.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 26, eff. December 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 922 (H.B. 4257), Sec. 2, eff. June 10, 2019.

SUBCHAPTER D. ANNEXATION PROVISIONS RELATING TO SPECIAL DISTRICTS

Sec. 43.071. AUTHORITY TO ANNEX WATER OR SEWER DISTRICT. (a) In this section, "water or sewer district" means a district or authority created under Article III, Section 52, Subsections (b)(1) and (2), or under Article XVI, Section 59, of the Texas Constitution that provides or proposes to provide, as its principal function, water services or sewer services or both to household users. The term does not include a district or authority the primary function of which is the wholesale distribution of water.

(b) A municipality may not annex area in a water or sewer district unless it annexes the entire part of the district that is outside the municipality's boundaries. This restriction does not apply to the annexation of area in a water or sewer district if the district is wholly or partly in the extraterritorial jurisdiction of more than one municipality.

(c) An annexation subject to Subsection (b) is exempt from the provisions of this chapter that limit annexation authority to a municipality's extraterritorial jurisdiction if:

(1) immediately before the annexation, at least one-half of the area of the water or sewer district is in the municipality or its extraterritorial jurisdiction; and

(2) the municipality does not annex in the annexation

proceeding any area outside its extraterritorial jurisdiction except the part of the district that is outside its extraterritorial jurisdiction.

(d) Area annexed under Subsection (b) is included in computing the amount of area that a municipality may annex under Section 43.055 in a calendar year. If the area to be annexed exceeds the amount of area the municipality would otherwise be able to annex, the municipality may annex the area but may not annex additional area during the remainder of that calendar year, except area subject to Subsection (b) and area that is excluded from the computation under Section 43.055.

(e) Subsections (b)-(d) do not apply to the annexation of:

(1) an area within a water or sewer district if:

(A) the governing body of the district consents to the annexation;

(B) the owners in fee simple of the area to be annexed consent to the annexation; and

(C) the annexed area does not exceed 525 feet in width at its widest point;

(2) a water or sewer district that has a noncontiguous part that is not within the extraterritorial jurisdiction of the municipality;

(3) a part of a special utility district created or operating under Chapter 65, Water Code; or

(4) a property by a municipality with a population of less than 3,000 if the governing body of a water or sewer district the boundaries of which include the property consents to the annexation.

(f) To annex the entire part of a water or sewer district that is outside the municipality's boundaries, a general-law municipality incorporated after 1983 that is, after incorporation of the district, incorporated over all or any part of the district may annex territory by ordinance without the consent of the inhabitants or property owners of the territory.

(g) For an annexation of an area in a water or sewer district that is wholly or partly in the overlapping extraterritorial jurisdiction of two or more municipalities, any one of those municipalities is not required to obtain under Section 42.023 the written consent of any of the other municipalities in order to annex the area if:

(1) the area contains less than 100 acres;

(2) the annexing municipality, before June 1, 2005, annexed more than 50 percent of the territory of the water or sewer district, as the district existed on the date of its creation; and

(3) the entire water or sewer district would be contained in the annexing municipality after completion of the annexation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 4(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1058, Sec. 3, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1178 (H.B. 536), Sec. 1, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 605 (H.B. 3514), Sec. 1, eff. September 1, 2023.

Sec. 43.0712. INVALIDATION OF ANNEXATION OF SPECIAL DISTRICT; REIMBURSEMENT OF DEVELOPER. (a) If a municipality enacts an ordinance to annex a special district and assumes control and operation of utilities within the district, and the annexation is invalidated by a final judgment of a court after all appeals have been exhausted, the municipality is deemed, by enactment of its annexation ordinance, to have acquired title to utilities owned by a developer within the special district and is obligated to pay the developer all amounts related to the utilities as provided in Section 43.0715.

(b) Upon resumption of the functions of the special district:

(1) the municipality shall succeed to the contractual rights of the developer to be reimbursed by the special district for the utilities the municipality acquires from the developer; and

(2) the special district shall resume the use of the utilities acquired and paid for by the municipality and shall thereafter acquire the utilities from the municipality and reimburse the municipality for amounts the municipality paid the developer. The payment to the municipality shall be governed by the requirements of the Texas Natural Resource Conservation Commission.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 10, eff. Sept. 1, 1999.

Sec. 43.0715. ANNEXATION OF WATER-RELATED SPECIAL DISTRICT:

REIMBURSEMENT OF LANDOWNER OR DEVELOPER; CONTINUATION OF DISTRICT AND TAXING AUTHORITY. (a) In this section:

(1) "Special district" means a political subdivision one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services or drainage.

(2) "Delinquent sum" means the sum a municipality has failed to timely pay to a landowner or developer under Subsection (b).

(b) If a municipality with a population of less than 1.5 million annexes a special district for full or limited purposes and the annexation precludes or impairs the ability of the district to issue bonds, the municipality shall, prior to the effective date of the annexation, pay in cash to the landowner or developer of the district a sum equal to all actual costs and expenses incurred by the landowner or developer in connection with the district that the district has, in writing, agreed to pay and that would otherwise have been eligible for reimbursement from bond proceeds under the rules and requirements of the Texas Commission on Environmental Quality as such rules and requirements exist on the date of annexation.

(c) At the time notice of the municipality's intent to annex the land within the district is first given in accordance with Section 43.0683 or 43.0693, as applicable, the municipality shall proceed to initiate and complete a report for each developer conducted in accordance with the format approved by the Texas Commission on Environmental Quality for audits. In the event the municipality is unable to complete the report prior to the effective date of the annexation as a result of the developer's failure to provide information to the municipality which cannot be obtained from other sources, the municipality shall obtain from the district the estimated costs of each project previously undertaken by a developer which are eligible for reimbursement. The amount of such costs, as estimated by the district, shall be escrowed by the municipality for the benefit of the persons entitled to receive payment in an insured interest-bearing account with a financial institution authorized to do business in the state. To compensate the developer for the municipality's use of the infrastructure facilities pending the determination of the reimbursement amount, all interest accrued on the escrowed funds shall be paid to the developer whether or not the annexation is valid. Upon placement of the funds in the escrow account, the annexation may become effective. In the event a

municipality timely escrows all estimated reimbursable amounts as required by this subsection and all such amounts, determined to be owed, including interest, are subsequently disbursed to the developer within five days of final determination in immediately available funds as required by this section, no penalties or interest shall accrue during the pendency of the escrow. Either the municipality or developer may, by written notice to the other party, require disputes regarding the amount owed under this section to be subject to nonbinding arbitration in accordance with the rules of the American Arbitration Association.

(d) A delinquent sum incurs a penalty of six percent of the amount of the sum for the first calendar month it is delinquent plus one percent for each additional month or portion of a month the sum remains unpaid. For an annexation occurring prior to the effective date of the changes in law made by this Act in amending Subsection (b), a delinquent sum begins incurring a penalty on the first day of the eighth month following the month in which the municipality enacted its annexation ordinance. For an annexation occurring after the effective date of this Act, a delinquent sum begins incurring a penalty on the first day after the date the municipality enacts its annexation ordinance.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(g), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 17, Sec. 1(2), eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1058, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 81, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.255, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 544, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 27, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.09, eff. May 24, 2019.

Sec. 43.072. AUTHORITY TO ANNEX MUNICIPAL UTILITY DISTRICT BY HOME-RULE MUNICIPALITY. (a) This section applies to a municipal utility district that is located entirely in the extraterritorial jurisdiction of a single general-law municipality and that has a common boundary with at least one home-rule municipality.

(b) A home-rule municipality having a common boundary with a district subject to this section may annex the area of the district if:

(1) the annexation is approved by a majority of the qualified voters who vote on the question at an election held under this section;

(2) the annexation is completed before the date that is one year after the date of the election; and

(3) all the area of the district is annexed.

(c) Area annexed under Subsection (b) is included in computing the amount of area that a municipality may annex under Section 43.055 in a calendar year. If the area to be annexed exceeds the amount of area the municipality would otherwise be able to annex, the municipality may annex the area but may not annex additional area during the remainder of that calendar year, except area subject to Subsection (b) and area that is excluded from the computation under Section 43.055.

(d) Annexation of area under this section is exempt from the provisions of this chapter that prohibit:

(1) a municipality from annexing area outside its extraterritorial jurisdiction;

(2) annexation of area narrower than the minimum width prescribed by Section 43.054; or

(3) reduction of the extraterritorial jurisdiction of a municipality without the written consent of the municipality's governing body.

(e) If the district is composed of two or more tracts, at least one of which is not contiguous to the home-rule municipality, the fact that the annexation will result in one or more parts of the home-rule municipality being not contiguous to the rest of the municipality does not affect the municipality's authority to annex the district.

(f) The extraterritorial jurisdiction of a home-rule municipality is not expanded by the annexation of area under this section.

(g) The board of directors of the district may order an election under this section. The board shall conduct the election in the area composed of the district and the general-law municipality. A person who is qualified to vote in the general-law municipality or the district is eligible to vote in the election.

(h) The board of directors shall set the date of the election for the first uniform election date that falls on or after the 30th day after the date of the order. If a state law prescribing uniform election dates is not in effect on the date of the order, the board shall set the election for a date that falls on or after the 30th day but before the 60th day after the date of the order.

(i) The board of directors shall give notice of the election in the manner provided for an election of the members of the board. The ballot for the election shall be printed to provide for voting for or against the proposition: "Authorizing the municipality of (name of the home-rule municipality) to annex the unincorporated area of the (name of the district)."

(j) Promptly after the board of directors declares the result of the election:

(1) the board shall mail or deliver a certified copy of the resolution declaring the result of the election to the mayor and the secretary of each of the two affected municipalities; and

(2) if the election authorizes annexation of the district by the home-rule municipality, the board shall file a certified copy of the resolution in the deed records of each county in which the district is located.

(k) During the time that an election under this section is pending, the general-law municipality may not annex area in the district. For the purposes of this requirement, an election is pending during the period that begins on the date the board of directors adopts the election order and ends on the date the board declares the result of the election. If, on the date the election order is adopted, the general-law municipality has instituted but not completed proceedings to annex area in the district, the general-law municipality may complete the annexation while the election is pending. If proceedings are completed while the election is pending, the annexation, to the extent that it includes area in the district, takes effect only if the election results in the defeat of the question and, in that case, it takes effect on the date the result of the election is officially declared.

(l) If the question is approved, the period during which the general-law municipality is prohibited from annexing area in the district is extended to the date that is one year after the date of the election.

(m) If a district holds an election under this section, the

district may not hold another election under this section before the date that is one year after the date of the earlier election, except that if an election is held on a uniform election date prescribed by law, the subsequent election may be held on the corresponding uniform election date of the following year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(h), eff. Aug. 28, 1989.

Sec. 43.073. ABOLITION OF, OR DIVISION OF FUNCTIONS OF, LEVEE IMPROVEMENT DISTRICT ANNEXED BY MUNICIPALITY WITH POPULATION OF MORE THAN 500,000. (a) This section applies to a municipality with a population of more than 500,000 that annexes all or part of the area in a levee improvement district organized under the laws of this state.

(b) If the municipality annexes all the area in the district, the municipality:

(1) shall take over the property and other assets of the district;

(2) assumes all the debts, liabilities, and obligations of the district; and

(3) shall perform all the functions of the district, including the provision of services.

(c) The district is abolished on the annexation of all of its area by the municipality. The abolition of the district does not impair or otherwise affect a contract between the district and a flood control district or other governmental agency for the operation or maintenance of levees or other flood control works, but the municipality assumes the rights and obligations of the district under the contract. On the annexation of all of the area of the district, the municipality may refund, in whole or in part, any outstanding bonded indebtedness and may provide for a sufficient sinking fund to meet any refunding bonds issued.

(d) If the municipality annexes only part of the area in the district, the governing bodies of the municipality and the district may make contracts relating to the division and allocation between themselves of their duplicate and overlapping powers, duties, and other functions and relating to the use, management, control, purchase, conveyance, assumption, and disposition of the property and

other assets, debts, liabilities, and obligations of the district. The amount of taxes levied by the district against a parcel of real estate subsequently annexed by the municipality shall be credited against any property taxes levied against the parcel by the municipality.

(e) If the municipality annexes only part of the area in the district, the district may contract with the municipality for the municipal operation of the district's utility systems and other property and for the transfer, conveyance, or sale of those systems and that property, regardless of kind or location inside or outside municipal boundaries, to the municipality on terms to which the governing bodies of the district and municipality agree. That operating contract may extend for a period, not to exceed 30 years, stipulated in the contract and is subject to amendment, renewal, or termination by the mutual consent of the governing bodies. The contract may not impair the obligation of another contract of the municipality or district. In the absence of such a contract, the district may continue to exercise, unaffected by the annexation, the powers, duties, and other functions granted or imposed on the district by law. The municipality may not be required to perform any drainage functions in the district. The municipality may, with the consent of the district, construct and maintain drainage facilities in the district that are consistent with the reclamation plan of the district. The municipality may perform all other municipal functions that the municipality is authorized to perform and that the district is not engaged in performing nor authorized to perform.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 82, eff. Sept. 1, 1991.

Sec. 43.074. ABOLITION OF WATER-RELATED SPECIAL DISTRICT CREATED WHOLLY IN MUNICIPALITY. (a) A water control and improvement district, fresh water supply district, or municipal utility district created from area that, at the time of the district's creation, is located wholly in a municipality may be abolished as provided by this section.

(b) On a vote of at least two-thirds of the entire membership of the governing body of the municipality, the governing body may adopt an ordinance abolishing the district if the governing body

finds:

(1) that:

(A) the district is no longer needed; or

(B) the services furnished and functions performed by the district can be furnished and performed by the municipality; and

(2) that the abolition of the district is in the best interests of the residents and property in the municipality and the district.

(c) If before the effective date of the ordinance or if within 30 days after the effective date or the date of the publication of the ordinance, a petition that is signed and verified by a number of qualified voters of the municipality equal to at least 10 percent of the total votes cast at the most recent election for municipal officers is filed with the secretary of the municipality protesting the enactment or enforcement of the ordinance, the ordinance is suspended and any action taken under the ordinance is void. Immediately after the filing of the petition, the secretary shall present it to the governing body. Immediately after the presentation of the petition, the governing body shall reconsider the ordinance. If the governing body does not repeal the ordinance, the governing body shall submit it to a popular vote at the next municipal election or at a special election the governing body may order for that purpose. The ordinance does not take effect unless a majority of the votes received in the election favor the ordinance.

(d) On the adoption of the ordinance, the district is abolished, the property and other assets of the district vest in the municipality, and the municipality assumes and becomes liable for the bonds and other obligations of the district. The municipality shall perform the services and other functions that were performed by the district.

(e) If a district bond, warrant, or other obligation payable in whole or in part from property taxes is assumed by the municipality, the governing body shall levy and collect taxes on all taxable property in the municipality in an amount sufficient to pay the principal of and interest on the bond, warrant, or other obligation as it becomes due and payable.

(f) The municipality may issue refunding bonds in its own name to refund bonds, warrants, or other obligations, including unpaid accrued interest on an obligation, that is assumed by the municipality. The refunding bonds must be issued in the manner

provided by Chapter 1207, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 35, eff. Sept. 1, 1999.

Sec. 43.075. ABOLITION OF, OR DIVISION OF FUNCTIONS OF, WATER-RELATED SPECIAL DISTRICT THAT BECOMES PART OF NOT MORE THAN ONE MUNICIPALITY. (a) This section applies to:

(1) a municipality that annexes all or part of the area in a water control and improvement district, fresh water supply district, or municipal utility district organized for the primary purpose of providing municipal functions such as the supplying of fresh water for domestic or commercial uses or the furnishing of sanitary sewer service or drainage service; or

(2) a municipality:

(A) that, by incorporation of the municipality, includes in the municipality all or part of the area in a district described by Subdivision (1); and

(B) the governing body of which adopts, by a vote of at least two-thirds of its entire membership, an ordinance making this section applicable to the municipality.

(b) This section does not apply if the district includes area located in more than one municipality.

(c) The municipality succeeds to the powers, duties, assets, and obligations of the district as provided by this section. This section does not prohibit the municipality from continuing to operate utility facilities in the district that are owned and operated by the municipality on the date the area becomes a part of the municipality.

(d) If all the area in the district becomes a part of the municipality, the municipality:

(1) shall take over all the property and other assets of the district;

(2) assumes all the debts, liabilities, and obligations of the district; and

(3) shall perform all the functions of the district, including the provision of services.

(e) The governing body of the municipality by ordinance shall designate the date on which the duties and the assumption under Subsection (d) take effect. The date must be set for a day within 90

days after the date the area becomes a part of the municipality. If the governing body fails to adopt the ordinance, the duties and the assumption automatically take effect on the 91st day after the date the area becomes a part of the municipality. The district is abolished on the date the duties and assumption take effect.

(f) If only part of the area in the district becomes a part of the municipality, the governing bodies of the municipality and the district may make contracts relating to the division and allocation between themselves of their duplicate and overlapping powers, duties, and other functions and relating to the use, management, control, purchase, conveyance, assumption, and disposition of the property and other assets, debts, liabilities, and obligations of the district.

(g) If only part of the area in the district becomes a part of the municipality, the district may contract with the municipality for the municipal operation of the district's utility systems and other property and for the transfer, conveyance, or sale of those systems and that property, regardless of kind or location inside or outside municipal boundaries, to the municipality on terms to which the governing bodies of the district and municipality agree. That operating contract may extend for a period, not to exceed 30 years, stipulated in the contract and is subject to amendment, renewal, or termination by the mutual consent of the governing bodies. The contract may not impair the obligation of another contract of the municipality or district. In the absence of such a contract, the district may continue to exercise the powers and other functions that it was authorized to exercise before the area became a part of the municipality, and the municipality may not, without the district's consent, duplicate the services rendered by the district in the district. However, the municipality may perform in the district all other municipal functions in which the district is not engaged.

(h) If a district bond, warrant, or other obligation payable in whole or in part from property taxes is assumed under this section by the municipality, the governing body shall levy and collect taxes on all taxable property in the municipality in an amount sufficient to pay the principal of and interest on the bond, warrant, or other obligation as it becomes due and payable. The municipality may issue refunding bonds or warrants to refund bonds, warrants, or other obligations, including unpaid earned interest on them, that is assumed by the municipality. The refunding bonds or warrants must be issued in the manner provided by Chapter 1207, Government Code. A

refunding bond must bear interest at the same rate or at a lower rate than that borne by the refunded obligation unless it is shown mathematically that a different rate results in a savings in the total amount of interest to be paid.

(i) If all the area in the district becomes a part of the municipality and if the district has outstanding bonds, warrants, or other obligations payable solely from the net revenues from the operation of any utility system or property, the municipality shall take over and operate the system or property and shall apply the net revenues from the operation to the payment of the outstanding revenue bonds, warrants, or other obligations as if the district had not been abolished. The municipality may combine the district system or property with the municipality's similar system or property if:

(1) the municipality has no outstanding revenue bonds, warrants, or other obligations payable from and secured by a pledge of the net revenue of its own utility system or property; or

(2) the municipality:

(A) has outstanding obligations payable from and secured by a pledge of net revenues sufficient to meet the outstanding obligations; and

(B) those revenues have produced, during the five-year period before May 30, 1959, an annual surplus in an amount sufficient to meet the annual obligations for which the district revenues are pledged.

(j) If the municipality combines the systems or property as provided by Subsection (i), it shall levy on all property subject to taxation by the municipality an annual property tax at a rate that, when combined with other available municipal funds and revenues, is sufficient to pay the principal of and interest on the outstanding obligations.

(k) If all the area in the district becomes a part of the municipality, the municipality, unless the refunding authorized by Subsection (l) has been accomplished, shall separately operate the district and municipal systems and property and may not commingle revenue if the municipality has outstanding bonds, warrants, or other bonded obligations payable from and secured by a pledge of the net revenue of its own utility system or property and does not have an amount annually accruing to its surplus revenue fund that exceeds the amount of the fund pledged to the payment of outstanding municipal obligations and that is sufficient to meet the annual obligations for

which the district revenues are pledged. The municipality shall perform the duties and other functions imposed by law or contract on the governing body of the district relating to the district's outstanding bonds, warrants, or other obligations and shall separately perform the duties and other functions relating to the bonds, warrants, and other obligations of the municipal system. The municipality may allocate overhead expenses between any two or more systems in direct proportion to the gross income of each system.

(l) The municipality may issue revenue refunding bonds in its own name for the purpose of refunding outstanding district revenue bonds, warrants, or other obligations, including unpaid accrued interest on them, that are assumed by the municipality under this section. The municipality may combine different issues of district and municipal revenue bonds, warrants, or other obligations into one series of revenue refunding bonds and may pledge the net revenues of the utility systems or property to the payment of the refunding bonds as the governing body considers proper. Except as otherwise provided by this section, Chapter 1502, Government Code, applies to the revenue refunding bonds, but an election for the issuance of the bonds is not required. Refunding bonds must bear interest at the same rate or at a lower rate than that borne by the refunded obligations unless it is shown mathematically that a different rate results in a savings in the total amount of interest to be paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 36, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.285, eff. Sept. 1, 2001.

Sec. 43.0751. STRATEGIC PARTNERSHIPS FOR CONTINUATION OF CERTAIN DISTRICTS. (a) In this section:

(1) "District" means a conservation and reclamation district operating under Chapter 49, Water Code. The term does not include a groundwater conservation district operating under Chapter 36, Water Code, or a special utility district operating under Chapter 65, Water Code.

(2) "Limited district" means a district that, pursuant to a strategic partnership agreement, continues to exist after full-purpose annexation by a municipality in accordance with the terms of a strategic partnership agreement.

(3) "Strategic partnership agreement" means a written agreement described by this section between a municipality and a district.

(b) The governing bodies of a municipality and a district may negotiate and enter into a written strategic partnership agreement for the district by mutual consent.

(c) A strategic partnership agreement shall not be effective until adopted by the governing bodies of the municipality and the district. The agreement shall be recorded in the deed records of the county or counties in which the land included within the district is located and shall bind each owner and each future owner of land included within the district's boundaries on the date the agreement becomes effective.

(d) Before the governing body of a municipality or a district adopts a strategic partnership agreement, it shall conduct two public hearings at which members of the public who wish to present testimony or evidence regarding the proposed agreement shall be given the opportunity to do so. Notice of public hearings conducted by the governing body of a municipality under this subsection shall be published in a newspaper of general circulation in the municipality and in the district. The notice must be in the format prescribed by Section 43.123(b) and must be published at least once on or after the 20th day before each date. Notice of public hearings conducted by the governing body of a district under this subsection shall be given in accordance with the district's notification procedures for other matters of public importance. Any notice of a public hearing conducted under this subsection shall contain a statement of the purpose of the hearing, the date, time, and place of the hearing, and the location where copies of the proposed agreement may be obtained prior to the hearing. The governing bodies of a municipality and a district may conduct joint public hearings under this subsection, provided that at least one public hearing is conducted within the district.

(e) The governing body of a municipality may not annex a district for limited purposes under this section or under the provisions of Subchapter F until it has adopted a strategic partnership agreement with the district. The governing body of a municipality may not adopt a strategic partnership agreement before the agreement has been adopted by the governing body of the affected district.

(f) A strategic partnership agreement may provide for the following:

(1) limited-purpose annexation of the district on terms acceptable to the municipality and the district provided that the district shall continue in existence during the period of limited-purpose annexation;

(2) limited-purpose annexation of a district located in a county with a population of more than 3.3 million:

(A) only if the municipality does not require services, permits, or inspections or impose fees for services, permits, or inspections within the district; and

(B) provided that this subsection does not prevent the municipality from providing services within the district if:

(i) the provision of services is specified and agreed to in the agreement;

(ii) the provision of services is not solely the result of a regulatory plan adopted by the municipality in connection with the limited-purpose annexation of the district; and

(iii) the district has obtained the authorization of the governmental entity currently providing the service;

(3) payments by the municipality to the district for services provided by the district;

(4) annexation of any commercial property in a district for full purposes by the municipality, notwithstanding any other provision of this code or the Water Code, except for the obligation of the municipality to provide, directly or through agreement with other units of government, full provision of municipal services to annexed territory, in lieu of any annexation of residential property or payment of any fee on residential property in lieu of annexation of residential property in the district authorized by this subsection;

(5) a full-purpose annexation provision on terms acceptable to the municipality and the district;

(6) conversion of the district to a limited district including some or all of the land included within the boundaries of the district, which conversion shall be effective on the full-purpose annexation conversion date established under Subdivision (5);

(7) agreements existing between districts and governmental bodies and private providers of municipal services in existence on the date a municipality evidences its intention by adopting a

resolution to negotiate for a strategic partnership agreement with the district shall be continued and provision made for modifications to such existing agreements; and

(8) such other lawful terms that the parties consider appropriate.

(g) A strategic partnership agreement that provides for the creation of a limited district under Subsection (f)(6) shall include provisions setting forth the following:

(1) the boundaries of the limited district;

(2) the functions of the limited district and the term during which the limited district shall exist after full-purpose annexation, which term may be renewed successively by the governing body of the municipality, provided that no such original or renewed term shall exceed 10 years;

(3) the name by which the limited district shall be known; and

(4) the procedure by which the limited district may be dissolved prior to the expiration of any term established under Subdivision (2).

(h) On the full-purpose annexation conversion date set forth in the strategic partnership agreement pursuant to Subsection (f)(5), the land included within the boundaries of the district shall be deemed to be within the full-purpose boundary limits of the municipality without the need for further action by the governing body of the municipality. The full-purpose annexation conversion date established by a strategic partnership agreement may be altered only by mutual agreement of the district and the municipality. However, nothing herein shall prevent the municipality from terminating the agreement and instituting proceedings to annex the district, on request by the governing body of the district, on any date prior to the full-purpose annexation conversion date established by the strategic partnership agreement under the procedures prescribed by Subchapter C-1. Land annexed for limited or full purposes under this section shall not be included in calculations prescribed by Section 43.055(a).

(i) A strategic partnership agreement may provide that the district shall not incur additional debt, liabilities, or obligations, to construct additional utility facilities, or sell or otherwise transfer property without prior approval of the municipality.

(j) Except as limited by this section or the terms of a strategic partnership agreement, a district that has been annexed for limited purposes by a municipality and a limited district shall have and may exercise all functions, powers, and authority otherwise vested in a district.

(k) A municipality that has annexed all or part of a district for limited purposes under this section may impose a sales and use tax within the boundaries of the part of the district that is annexed for limited purposes. Except to the extent it is inconsistent with this section, Chapter 321, Tax Code, governs the imposition, computation, administration, governance, and abolition of the sales and use tax.

(l) An agreement or a decision made under this section and an action taken under the agreement by the parties to the agreement are not subject to approval or an appeal brought under the Water Code unless it is an appeal of a utility rate charged by a municipality to customers outside the corporate boundaries of the municipality.

(m) A municipality that may annex a district for limited purposes to implement a strategic partnership agreement under this section shall not annex for full purposes any territory within a district created pursuant to a consent agreement with that municipality executed before August 27, 1979. The prohibition on annexation established by this subsection shall expire on September 1, 1997, or on the date on or before which the municipality and any district may have separately agreed that annexation would not take place whichever is later.

(n) This subsection applies only to a municipality any portion of which is located in a county that has a population of not less than 315,000 and not more than 351,000 and that borders the Gulf of Mexico and is adjacent to a county with a population of more than 3.3 million. A municipality may impose within the boundaries of a district a municipal sales and use tax authorized by Chapter 321, Tax Code, or a municipal hotel occupancy tax authorized by Chapter 351, Tax Code, that is imposed in the municipality if:

(1) the municipality has annexed the district for limited purposes under this section; or

(2) following two public hearings on the matter, the municipality and the district enter a written agreement providing for the imposition of the tax or taxes.

(n-1) At the conclusion of the term of an agreement between a

municipality and a district under Subsection (n), the district and the municipality may extend the agreement for a period not to exceed 10 years. An agreement may be extended only once under this subsection.

(o) Repealed by Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01(17), eff. May 24, 2019.

(p) An agreement under this section:

(1) may not require the district to provide revenue to the municipality solely for the purpose of obtaining an agreement with the municipality to forgo annexation of the district; and

(2) must provide benefits to each party, including revenue, services, and regulatory benefits, that must be reasonable and equitable with regard to the benefits provided by the other party.

(q) Except for Sections 43.130(a) and (b), Subchapter F does not apply to a limited-purpose annexation under a strategic partnership agreement.

(r) A district or the area of a district annexed for limited purposes under this section must be:

(1) in the municipality's extraterritorial jurisdiction; and

(2) contiguous to the corporate boundaries of the municipality or an area annexed by the municipality for limited purposes, unless the district consents to noncontiguous annexation under a strategic partnership agreement with the municipality.

(s) Notwithstanding any other law other than Section 43.083, the procedures prescribed by Subchapters C-3, C-4, and C-5 do not apply to the annexation of an area under this section. Except as provided by Subsection (h), a municipality shall follow the procedures established under the strategic partnership agreement for full-purpose annexation of an area under this section.

Added by Acts 1995, 74th Leg., ch. 787, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 29, Sec. 1, eff. May 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 13.12, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1167, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 44, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1263, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 248, Sec. 2, 3, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 297, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 774 (H.B. 3723), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1076 (S.B. 1082), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1076 (S.B. 1082), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 62, eff. September 1, 2011.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 28, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.01(17), eff. May 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.10, eff. May 24, 2019.

Acts 2019, 86th Leg., R.S., Ch. 632 (S.B. 1468), Sec. 1, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 123, eff. September 1, 2023.

Sec. 43.07515. REGULATION OF FIREWORKS UNDER STRATEGIC PARTNERSHIP AGREEMENT LAW. (a) A municipality may not regulate under Section 43.0751 the sale, use, storage, or transportation of fireworks outside of the municipality's boundaries.

(b) To the extent of a conflict with any other law, this section controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1076 (S.B. 1082), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.11, eff. May 24, 2019.

Sec. 43.0753. REGIONAL DEVELOPMENT AGREEMENTS. (a) In this section:

(1) "District" means a conservation and reclamation district that is created or operating under Chapters 49 and 54, Water Code, and that is located entirely within the boundaries of a planned community and entirely within the extraterritorial jurisdiction of a

municipality.

(2) "Municipality" means a municipality with a population of 1.6 million or more.

(3) "Planned community" means a planned community of 10,000 acres or more that is subject in whole or in part to a restrictive covenant that contains an ad valorem-based assessment on real property used or to be used, in any part, to fund governmental or quasi-governmental services and facilities within and for the planned community.

(4) "Regional development agreement" means a contract or agreement entered into under this section or in anticipation of the enactment of this section and any amendment, modification, supplement, addition, renewal, or extension to or of the contract or agreement or any proceeding relating to the contract or agreement.

(b) Notwithstanding any contrary law or municipal charter provision, the governing body of a municipality and the governing body of one or more districts may enter into a regional development agreement to further regional cooperation between the municipality and the district.

(c) A regional development agreement may allow:

(1) any type of annexation of any part of the land in the district to be deferred for a mutually agreeable period of time;

(2) facilities or services to be provided to the land within the district by any party to the agreement or by any other person, including optional, backup, emergency, mutual aid, or supplementary facilities or services;

(3) payments to be made by the municipality to the district or another person or by the district or another person to the municipality for services provided to the district or municipality;

(4) standards for requesting and receiving any form of required consent or approval from the municipality;

(5) a district to issue bonds, notes, refunding bonds, or other forms of indebtedness;

(6) the coordination of local, regional, and areawide planning;

(7) remedies for breach of the agreement;

(8) the modification, amendment, renewal, extension, or termination of the agreement;

(9) any other district to join the agreement at any time;

(10) third-party beneficiaries to be specifically

designated and conferred rights or remedies under the agreement; and

(11) any other term to which the parties agree.

(d) A regional development agreement must be:

(1) in writing;

(2) approved by the governing body of the municipality and the district; and

(3) recorded:

(A) in the real property records of any county in which any part of a district that is party to the agreement is located; and

(B) in any manner that complies with Subchapter J, Chapter 49, Water Code.

(e) Subject to compliance with Subsection (d)(1) and (3), another district may join or become a party to a regional development agreement in the manner authorized in the agreement.

(f) A regional development agreement does not need to describe the land contained within the boundaries of a district that is a party to the agreement. The agreement must be recorded in the deed records of any county in which any land in the district is located.

(g) A regional development agreement binds each party to the agreement and each owner and future owner of land that is subject to the agreement. If a party or landowner is excluded or removed from an agreement, the removal or exclusion is effective on the recordation requirement of Subsection (d)(3).

(h) A regional development agreement may not require a district to provide public services and facilities to a person to whom the district is not otherwise authorized to provide services or facilities or to make payments from any source from which the district is not otherwise authorized to make payments.

(i) A district may contract with any person for services or facilities to be provided at no cost to the district or for the payment of funds by the person in support of a regional development agreement.

(j) A regional development agreement and any action taken under the agreement is not subject to any method of approval under the Water Code or any method of appeal under the Water Code.

(k) Notwithstanding any defect, ambiguity, discrepancy, invalidity, or unenforceability of a regional development agreement that has been voluntarily entered into and fully executed by the parties thereto, or any contrary law, common law doctrine, or

municipal charter provision, and for the duration of any annexation deferral period established in the regional development agreement during which a district continues to perform its obligations under the regional development agreement:

(1) Sections 42.023 and 42.041(b)-(e) do not apply to any land or owner of land within a district that is a party to the regional development agreement; and

(2) the governing body of the municipality may not include the area covered by the regional development agreement in a municipal annexation plan and may not initiate or continue an annexation proceeding relating to that area after the effective date of this section.

(l) This section shall be liberally construed so as to give effect to its legislative purposes and to sustain the validity of a regional development agreement if the agreement was entered into under or in anticipation of this section.

Added by Acts 1999, 76th Leg., ch. 293, Sec. 2, eff. May 29, 1999. Renumbered from Sec. 43.0752 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(83), eff. Sept. 1, 2001.

Sec. 43.0754. REGIONAL PARTICIPATION AGREEMENTS. (a) In this section:

(1) "District" means a political subdivision created by general or special law that has the powers of a municipal management district under Chapter 375 and a conservation and reclamation district under Chapters 49 and 54, Water Code, a majority by area of the territory of which is located within a planned community and within the extraterritorial jurisdiction of one or more municipalities.

(2) "Eligible municipality" means a municipality:

(A) that has a population of 1.5 million or more and that includes in its extraterritorial jurisdiction at least 90 percent by area of the territory of a district;

(B) that includes in its extraterritorial jurisdiction not more than 10 percent of the territory of a district that has entered into a regional participation agreement under this section with another eligible municipality described by Paragraph (A); or

(C) with corporate boundaries contiguous to the

boundaries of a district that has entered into a regional participation agreement under this section with another eligible municipality described by Paragraph (A).

(3) "Party" means a district, eligible municipality, or person that is a party to a regional participation agreement approved and entered into under this section.

(4) "Planned community" means a planned community of 20 square miles or more with a population of 50,000 or more that is subject in whole or in part to a restrictive covenant that contains an ad valorem-based assessment on real property used or to be used, in any part, to fund governmental or quasi-governmental services and facilities within and for the planned community.

(5) "Regional participation agreement" means a contract or agreement entered into under this section or in anticipation of the enactment of this section and any amendment, modification, supplement, addition, renewal, or extension to or of the contract or agreement or any proceeding relating to the contract or agreement.

(b) Notwithstanding any contrary law or municipal charter provision, the governing body of an eligible municipality, the governing body of a district, and, if applicable, a person may approve and authorize execution and performance of a regional participation agreement to further regional participation in the funding of eligible programs or projects. A regional participation agreement must include as parties at least one eligible municipality and one district and may include as parties other eligible municipalities, districts, or persons.

(c) A regional participation agreement may provide or allow for:

(1) the establishment, administration, use, investment, and application of a regional participation fund, which shall be a special fund or escrow account to be used solely for funding the costs and expenses of eligible programs or projects;

(2) payments to be made by a party into the regional participation fund for application, currently or in the future, toward eligible programs or projects;

(3) the methods and procedures by which eligible programs or projects are prioritized, identified, and selected for implementation and are planned, designed, bid, constructed, administered, inspected, and completed;

(4) the methods and procedures for accounting for amounts

on deposit in, to the credit of, or expended from the regional participation fund, as well as any related investment income or amounts due and owing to or from any party to the fund;

(5) credits against payments otherwise due by any party under the agreement resulting from taxes, charges, fees, assessments, tolls, or other payments in support of or related to the usage or costs of eligible programs or projects that are levied or imposed upon, assessed against, or made applicable to a party or its citizens, ratepayers, taxpayers, or constituents after the effective date of the agreement;

(6) any type of annexation of any part of the territory of a district to be deferred by an eligible municipality that is a party for a mutually agreeable period;

(7) the release of territory from the extraterritorial jurisdiction of an eligible municipality that is a party at a specified time or upon the occurrence of specified events;

(8) the consent of an eligible municipality that is a party to the incorporation of, or the adoption of an alternate form of government by, all or part of the territory of a district at a specified time or upon the occurrence of specified events;

(9) remedies for breach of the agreement;

(10) the modification, amendment, renewal, extension, or termination of the agreement;

(11) other districts, eligible municipalities, or persons to join the agreement as a party at any time;

(12) third-party beneficiaries to be specifically designated and conferred rights or remedies under the agreement;

(13) the duration of the agreement, including an unlimited term;

(14) the creation and administration of a nonprofit corporation, joint powers agency, local government corporation, or other agency for the purpose of administration and management of a regional participation fund, program, or project under the agreement; and

(15) any other provision or term to which the parties agree.

(d) A regional participation agreement may provide for the funding of any program or project, whether individual, intermittent, or continuing and whether located or conducted within or outside the boundaries of a party, for the planning, design, construction,

acquisition, lease, rental, installment purchase, improvement, provision of furnishings or equipment, rehabilitation, repair, reconstruction, relocation, preservation, beautification, use, execution, administration, management, operation, or maintenance of any works, improvements, or facilities, or for providing any functions or services, whether provided to, for, by, or on behalf of a party, that provide a material benefit to each party in the accomplishment of the purposes of each party, related to:

(1) mobility or transportation, including mass transportation, traffic circulation, or ground, air, rail, water, or other means of transportation or movement of people, freight, goods, or materials;

(2) health care treatment, research, teaching, or education facilities or infrastructure;

(3) parks or recreation, open space, and scenic, wildlife, wetlands, or wilderness areas;

(4) public assembly or shelter, including halls, arenas, stadiums or similar facilities for sporting events, exhibitions, conventions, or other mass assembly purposes;

(5) environmental preservation or enhancement, including air or water quality protection, improvement, preservation, or enhancement, and noise abatement;

(6) the supply, conservation, transportation, treatment, disposal, or reuse of water or wastewater;

(7) drainage, stormwater management or detention, and flood control or prevention;

(8) solid waste collection, transfer, processing, reuse, resale, disposal, and management; or

(9) public safety and security, including law enforcement, firefighting and fire prevention, emergency services and facilities, and homeland security.

(e) A regional participation agreement must be:

(1) in writing;

(2) approved by the governing body of each eligible municipality or district that is or that becomes a party to the agreement; and

(3) must be recorded in the deed records of any county in which is located any territory of a district that is or that becomes a party to the agreement.

(f) A district, eligible municipality, or person may join or

become a party to a regional participation agreement in the manner authorized in the agreement.

(g) A regional participation agreement is not required to describe the land contained within the boundaries of a party to the agreement, but any territory to be released from the extraterritorial jurisdiction of an eligible municipality that is a party under an agreement must be described in sufficient detail to convey title to land and the description must be made a part of the agreement.

(h) A regional participation agreement binds each party and its legal successor, including a municipality or other form of local government, to the agreement for the term specified in the agreement and each owner and future owner of land that is subject to the agreement during any annexation deferral period established in the agreement. If a party, land, or landowner is excluded or removed from an agreement, the removal or exclusion is effective on the recordation of the amendment, supplement, modification, or restatement of the agreement implementing the removal or exclusion.

(i) A regional participation agreement may not require a party to make payments from any funds that are restricted, encumbered, or pledged for the payment of contractual obligations or indebtedness of the party. Otherwise, any party may commit or pledge or may issue bonds payable from or secured by a pledge of any available source of funds, including unencumbered sales and use taxes, to make payments due or to become due under an agreement.

(j) Notwithstanding any other law, a program or project to be funded and any bonds to be issued by a district to make payments under a regional participation agreement are not subject to review or approval by the Texas Commission on Environmental Quality.

(k) A regional participation agreement and any action taken under the agreement are not subject to any method of approval or appeal under the Water Code.

(l) After due authorization, execution, delivery, and recordation as provided by this section, a regional participation agreement, including any related amendment, supplement, modification, or restatement, and a pledge of funds to make payments under an agreement shall be final and incontestable in any court of this state.

(m) Notwithstanding any defect, ambiguity, discrepancy, invalidity, or unenforceability of a regional participation agreement that has been voluntarily entered into and fully executed by the

parties, or any contrary law, common law doctrine, or municipal charter provision, and for the duration of any annexation deferral period established in the agreement during which a district continues to perform its obligations under the agreement:

(1) Section 42.023 and any other law or municipal charter provision relating to the reduction of the extraterritorial jurisdiction of an eligible municipality that is a party do not apply, and Sections 42.041(b)-(e) do not apply to any land or owner of land within a district that is a party;

(2) the governing body of an eligible municipality that is a party may not initiate or continue an annexation proceeding relating to that area but may include the area covered by the agreement in a municipal annexation plan; and

(3) any area that is to be released from the extraterritorial jurisdiction of an eligible municipality that is a party under an agreement, or that is to be incorporated or included within an alternate form of government with the consent of a municipality that is a party under an agreement, shall, by operation of law and without further action by a party or its governing body, be released from the extraterritorial jurisdiction, or consent of the municipality to the incorporation or adoption of an alternate form of government by the district shall be deemed to have been given, as appropriate under the agreement, at the time or upon the occurrence of the events specified in the agreement.

(n) Notwithstanding the provisions of any municipal charter or other law, a district or an eligible municipality is not required to hold an election to authorize a regional participation agreement. As long as such funds remain restricted for use under an agreement, payments to or income from a regional participation fund shall not be deemed revenues to an eligible municipality for purposes of any law or municipal charter provision relating to revenue or property tax caps or limits.

(o) This section is cumulative of all other authority to make, enter into, and perform a regional participation agreement. In case of any conflict or ambiguity between this section and any other law or municipal charter provision, this section shall prevail and control.

(p) This section shall be liberally construed so as to give effect to its legislative purposes and to sustain the validity of a regional participation agreement if the agreement was entered into

under or in anticipation of enactment of this section.

(q) For purposes of Subchapter I, Chapter 271:

(1) a district or eligible municipality is a "local governmental entity" within the meaning of Section 271.151(3); and

(2) a regional participation agreement is a "contract subject to this subchapter" within the meaning of Section 271.151(2), without regard to whether the agreement is for providing goods or services.

Added by Acts 2007, 80th Leg., R.S., Ch. 88 (S.B. 1012), Sec. 1, eff. May 14, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 692 (H.B. 2726), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 692 (H.B. 2726), Sec. 2, eff. September 1, 2009.

Sec. 43.0755. PROCEDURES FOR INCORPORATION OR ESTABLISHMENT OF ANOTHER FORM OF LOCAL GOVERNMENT FOR CERTAIN AREAS SUBJECT TO REGIONAL PARTICIPATION AGREEMENT. (a) In this section, "district," "eligible municipality," and "regional participation agreement" have the meanings assigned by Section 43.0754.

(b) This section applies only to a district and an eligible municipality that have entered into a regional participation agreement under Section 43.0754 that authorizes any of the actions described by Section 43.0754(c)(6), (7), or (8).

(c) Notwithstanding any other law, including laws prescribing population or territorial requirements for incorporation under Section 5.901, 6.001, 7.001, or 8.001, the governing body of a district may order an election as provided by this subsection to be held on a uniform election date prescribed by Section 41.001, Election Code. An election under this subsection may, consistent with the regional participation agreement, be ordered for the purpose of:

(1) submitting to the qualified voters of the district the question of whether the territory of the district should be incorporated as a municipality;

(2) submitting to the qualified voters of a designated area of the district the question of whether that designated area should

be incorporated as a municipality;

(3) submitting to the qualified voters of the district the question of whether the territory of the district should adopt a specific alternate form of local government other than a municipality; or

(4) submitting to the qualified voters of a designated area of the district the question of whether that designated area should adopt a specific alternate form of local government other than a municipality.

(d) Notwithstanding any other law:

(1) the authority of the governing body of a district to order an election under Subsection (c) is separate and independent and is the exclusive means of ordering any such election;

(2) all or any part of the territory of a district may be incorporated as a Type A, Type B, or Type C municipality, as determined by the governing body of the district ordering the incorporation election under Subsection (c)(1) or (2); and

(3) the requirements of Sections 7.002 and 8.002 do not apply to an election ordered under Subsection (c)(1) or (2).

(e) In an election ordered under Subsection (c)(2) or (4), the governing body of the district may order elections in multiple designated areas on the same date or order elections in designated areas periodically on a uniform election date.

(f) In any election ordered under Subsection (c), the governing body of the district shall also submit for confirmation to the voters voting in the election the proposed initial property tax rate determined for the municipality or alternate form of government, as applicable, which may not exceed the maximum rate authorized by law. The ballot in an election held under Subsection (c) shall be printed to permit voting for or against the proposition: "Authorizing the (specify the incorporation of or the adoption of an alternate form of local government for) (insert name of local government) and the adoption of an initial property tax rate of not more than (specify the maximum rate determined)."

(g) In any election ordered under Subsection (c), the governing body of the district may also submit to the voters voting in the election any other measure the governing body considers necessary and convenient to effectuate the transition to a municipal or alternate form of local government, including a measure on the question of whether, on incorporation as a municipality or establishment of an

alternate form of local government, any rights, powers, privileges, duties, purposes, functions, or responsibilities of the district or the district's authority to issue bonds and impose a tax is transferred to the municipality or alternate form of local government.

(h) If a majority of the voters voting in an election under Subsection (c)(2) or (4) approve the proposition submitted on the form of local government, the county judge of the county in which the municipality or alternate form of local government is located shall order an election for the governing body of the municipality or alternate form of local government to be held on a date that complies with the provisions of the Election Code, except that Section 41.001(a), Election Code, does not apply. A municipality or alternate form of local government resulting from an election described by this subsection is incorporated or established on the date a majority of the members of the governing body qualify and take office.

(i) If a majority of the voters voting in an election under Subsection (c)(1) or (3) approve the proposition submitted on the form of local government, the district is dissolved and the governing body of the district will serve as the temporary governing body of the municipality or alternate form of local government until a permanent governing body is elected as provided by Subsection (j).

(j) The temporary governing body under Subsection (i) shall order an election to elect the permanent governing body of the municipality or alternate form of local government to occur on a date that complies with the provisions of the Election Code, except that Section 41.001(a), Election Code, does not apply.

(k) An election ordered under Subsection (h) or (j) to elect members of the governing body of a municipality must be held under the applicable provisions of Chapter 22, 23, or 24, to the extent consistent with this section. An election for members of the governing body of an alternate form of government must be held under the law applicable to that form of government, to the extent consistent with this section.

(l) If a majority of the voters voting in an election under Subsection (c)(1) or (3) approve the proposition submitted on the form of local government for the territory of the district, the assets, liabilities, and obligations of the district are transferred to the form of government approved at the election.

(m) If a majority of the voters voting in an election under Subsection (c)(2) or (4) approve the proposition submitted on the form of local government in a designated area of the district and if, on the date of the election approving the form of local government, the district owes any debts, by bond or otherwise, the designated area is not released from its pro rata share of the indebtedness.

(n) For purposes of determining the initial tax rate of a municipality or an alternate form of local government, the tax rate of the district when the territory incorporated or established as an alternate form of government was part of the district is not considered for purposes of the calculations required by Section 26.04(c), Tax Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 593 (S.B. 1015), Sec. 1, eff. June 9, 2017.

Sec. 43.076. ABOLITION OF WATER-RELATED SPECIAL DISTRICT THAT BECOMES PART OF MORE THAN ONE MUNICIPALITY. (a) This section applies to a municipality that contains, as a result of the annexation by or the incorporation of the municipality, any part of the area in a water control and improvement district, fresh water supply district, or municipal utility district organized for the primary purpose of providing municipal functions such as the supplying of fresh water for domestic or commercial uses or the furnishing of sanitary sewer service, if:

(1) the balance of the area in the district is located in one or more other municipalities;

(2) the district is not created by a special act of the legislature and the balance of the area is located in one or more other municipalities and in an unincorporated area; or

(3) the district is a conservation and reclamation district of more than 10,000 acres which provides water and sanitary sewer service to households and parts of which are located in two or more municipalities, one of which has a population of more than 1.6 million.

(b) The municipality succeeds to the powers, duties, assets, and obligations of the district as provided by this section. This section does not prohibit the municipality from continuing to operate utility facilities in the district that are owned and operated by the

municipality on the date the part of the district area becomes a part of the municipality.

(c) If the district is located wholly in two or more municipalities, the district may be abolished by agreement among the district and the municipalities in which the district is located. Subject to Subsection (f), the agreement must provide for the distribution among the municipalities of the property and other assets of the district and for the pro rata assumption by the municipalities of all the debts, liabilities, and obligations of the district. The assumption by each municipality must be based on the ratio that the value of the property and other assets distributed to that municipality bears to the total value of all the property and other assets of the district. The determination of value may be made on an original cost basis, a reproduction cost basis, a fair market value basis, or by any other valuation method agreed on by the parties that reasonably reflects the value of the property and other assets, debts, liabilities, and obligations of the district. The agreement must specify the date on which the district is abolished.

(d) If the district is located wholly in two or more municipalities and in unincorporated area, the district may be abolished by agreement among the district and all of the municipalities in which parts of the district are located. The abolition agreement must provide for the distribution of assets and liabilities as provided by Subsection (c). The agreement must also provide for the distribution among one or more of the municipalities of the pro rata assets and liabilities located in the unincorporated area and must provide for service to customers in unincorporated areas in the service area of the abolished district. The municipality that provides the service in the unincorporated area may charge its usual and customary fees and assessments to the customers in that area.

(e) An agreement made under Subsection (c) or (d) must be approved by an ordinance adopted by the governing body of each municipality and by an order or resolution adopted by the governing board of the district before the date specified in the agreement for the abolition, distribution, and assumption.

(f) If the abolished district has outstanding bonds, warrants, or other obligations payable in whole or in part from the net revenue from the operation of the district utility system or property, the affected municipalities shall take over and operate the system or

property through a board of trustees as provided by this section. The municipalities shall apply the net revenue from the operation of the system or property to the payment of outstanding revenue bonds, warrants, or other obligations as if the district had not been abolished. The system or property shall be operated in that manner until all the revenue bonds, warrants, or obligations are retired in full by payment or by the refunding of the bonds, warrants, or other obligations into municipal obligations. The board of trustees must be composed of not more than five members appointed by the governing bodies of the municipalities. The trustees are appointed for the terms and shall perform the duties as provided by the agreement made under Subsection (c) or (d). The board also shall perform the duties and other functions that are imposed by law or by contract on the abolished district and its governing board and that relate to the outstanding revenue bonds. The board shall charge and collect sufficient rates for the services of the system or property and shall apply the revenue to comply with each covenant or agreement contained in the proceedings relating to the revenue bonds, warrants, or other obligations with respect to the payment of principal and interest and the maintenance of reserves and other funds. When all the revenue bonds, warrants, and other obligations are retired in full, the property and other assets of the district shall be distributed among the municipalities as provided by Subsection (c) or (d). On the distribution, the board is abolished.

(g) When the pro rata share of any district bonds, warrants, or other obligations payable in whole or in part from property taxes has been assumed by the municipality, the governing body of the municipality shall levy and collect taxes on all taxable property in the municipality to pay the principal of and interest on its share as the principal and interest become due and payable.

(h) The municipality may issue general obligation refunding bonds in its own name to refund in whole or in part its pro rata share of any outstanding district bonds, warrants, or other obligations, including unpaid earned interest on them, that are assumed by the municipality and that are payable in whole or in part from property taxes. The refunding bonds must be issued in the manner provided by Chapter 1207, Government Code. Refunding bonds must bear interest at the same rate or at a lower rate than that borne by the refunded obligations unless it is shown mathematically that a different rate results in a savings in the total amount of

interest to be paid.

(i) The municipality may issue revenue refunding bonds or general obligation refunding bonds in its own name to refund in whole or in part its pro rata share of any outstanding district bonds, warrants, or other obligations, including unpaid earned interest on them, that are assumed by the municipality and that are payable solely from net revenues. The municipality may combine the different issues or the bonds of different issues of both district and municipal revenue bonds, warrants, or other obligations into one or more series of revenue refunding bonds. The municipality may pledge the net revenues of the district utility system or property to the payment of those bonds, warrants, or other obligations. The municipality may also combine the different issues or the bonds of the different issues into one or more series of general obligation refunding bonds. An originally issued municipal revenue bond may not be refunded into municipal general obligation refunding bonds. Except as otherwise provided by this section, Subchapter B, Chapter 1502, Government Code, applies to the revenue refunding bonds, but an election for the issuance of the bonds is not required. Revenue refunding bonds or general obligation refunding bonds must be issued in the manner provided by Chapter 1207, Government Code. The revenue refunding bonds and the general obligation refunding bonds must bear interest at the same rate or at a lower rate than that borne by the refunded obligations unless it is shown mathematically that a different rate results in a savings in the total amount of interest to be paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1339, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1064, Sec. 37, eff. Sept. 1, 1999.

Sec. 43.0761. PROVISION OF WATER AND SANITARY SEWER UTILITY SERVICE. (a) A district existing on September 1, 1997, that, within 10 years after the date of its creation, has not provided water and sanitary sewer utility service from its facilities to all household users in its territory shall:

(1) provide water and sanitary sewer utility service from its facilities to all household users in its territory not later than September 1, 1998; or

(2) for that part of the district for which the district does not provide water and sanitary sewer utility service, and for which a municipality does provide those services, provide for periodic payments, as described by Subsection (b), by the district to the municipality that provides the services.

(b) Payments made under Subsection (a)(2) are operation and maintenance expenses of the district and shall be made at least every three months. The total annual amount of the payments may not exceed the lesser of:

(1) the total annual cost to the municipality of providing the water and sanitary sewer utility service, including both capital and operation and maintenance costs and expenses; or

(2) the total annual amount of maintenance and operation taxes and debt service or bond taxes paid to the district by the owners of taxable property within the district that receives water and sanitary sewer utility service from the municipality.

(c) For purposes of Subsection (b)(2), the value of taxable property that receives the utility service shall be determined by the most recent certified tax roll provided by the central appraisal district in which the property is located. The amount of the taxes shall be determined using rates from the district's most recent tax levies.

(d) A district that on January 1, 1997, was providing water and sanitary sewer utility service to households outside the territory of the district may not discontinue that service and shall continue to provide that service on the basis of rates established by the district in accordance with Chapter 13, Water Code.

(e) In this section, "district" means a conservation and reclamation district of more than 10,000 acres that provides water and sanitary sewer utility service to households and parts of which are located in two or more municipalities, one of which has a population of more than 1.6 million.

Added by Acts 1997, 75th Leg., ch. 1339, Sec. 2, eff. Sept. 1, 1997.

Sec. 43.079. CONSENT REQUIREMENT FOR ANNEXATION OF AREA IN CERTAIN CONSERVATION AND RECLAMATION DISTRICTS. (a) This section applies only to a conservation and reclamation district, including a municipal utility district, that:

(1) is located wholly in more than one municipality, but on April 1, 1971, was not wholly in more than one municipality;

(2) was created or exists under Section 59, Article XVI, Texas Constitution;

(3) provides or has provided a fresh water supply, sanitary sewer services, and drainage services; and

(4) was not, on April 1, 1971, a party to a contract providing for a federal grant for research and development under 33 U.S.C. Sections 1155(a)(2) and (d).

(b) A municipality that has annexed area in the district is not required to obtain the consent of any municipality to annex additional area located wholly in the district other than the consent of the other municipalities that have annexed area in the district and have extraterritorial jurisdiction over the area proposed to be annexed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.102, eff. Sept. 1, 2001.

Sec. 43.080. MUNICIPAL BONDS USED TO CARRY OUT PURPOSES OF ABOLISHED CONSERVATION AND RECLAMATION DISTRICT. (a) This section applies only to each municipality that under any other law, including Section 43.075, abolishes a conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution, including a water control and improvement district, fresh water supply district, or municipal utility district.

(b) If, before its abolition, the district voted to issue bonds to provide waterworks, sanitary sewer facilities, or drainage facilities and if some or all of the bonds were not issued, sold, and delivered before the abolition, the governing body of the municipality may issue and sell municipal bonds in an amount not to exceed the amount of the unissued district bonds to carry out the purposes for which the district bonds were voted.

(c) The bonds must be authorized by ordinance of the governing body of the municipality. The ordinance must provide for the levy of taxes on all taxable property in the municipality to pay the principal of and interest on the bonds when due. The bonds must be sold at not less than par value and accrued interest, and must mature, bear interest, and be subject to approval by the attorney

general and to registration by the comptroller of public accounts as provided by law for other general obligation bonds of the municipality.

(d) A bond that is approved, registered, and sold as provided by this section is incontestable.

(e) This section repeals a municipal charter provision to the extent of a conflict with this section. This section does not affect the authority of a municipality to issue bonds for other purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.081. CONTINUATION OF CERTAIN MUNICIPAL WATER BOARDS ON ANNEXATION OF WATER CONTROL AND IMPROVEMENT DISTRICT. (a) A municipal water board that was created by Section 6, Chapter 134, Acts of the 52nd Legislature, Regular Session, 1951, and that continues to exist to preserve a vested right created under that law, remains in existence with full power after the municipality annexes all the area of the water control and improvement district whose functions the municipality assumed and delegated to the water board, so long as the land located in the board's jurisdiction is used for farming, ranching, or orchard purposes.

(b) The municipal water board shall select and designate one or more depositories for the proceeds of the maintenance and water charges and other charges levied by the water control and improvement district and for any other income or other funds of the district. The water board may select a depository regardless of the fact that one or more members of the board are members of the board of directors or are stockholders of the depository.

(c) The funds of the water control and improvement district may be kept in one or more separate accounts in the depository if the funds deposited in each separate account are to be used for a different designated purpose from the funds deposited in any other separate account. The funds deposited in the depository must be insured by an official agency of the United States and must be at least as well insured and protected as funds deposited in the official municipal depository of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.082. ANNEXATION BY CERTAIN MUNICIPALITIES OF LAND OWNED BY NAVIGATION DISTRICT. A municipality with a population of less than 30,000, that is in a county that borders the Gulf of Mexico and that is adjacent to a county with a population of one million or more, and that seeks to annex land owned by a navigation district operating under Section 59, Article XVI, Texas Constitution, must have the consent of the district to annex the land.

Added by Acts 2007, 80th Leg., R.S., Ch. 175 (H.B. 1312), Sec. 1, eff. May 23, 2007.

Sec. 43.083. ANNEXATION BY CERTAIN MUNICIPALITIES THAT OPERATE MUNICIPALLY OWNED WATER UTILITY. (a) This section applies only to a municipality that:

(1) operates a municipally owned water utility; and

(2) is a party to a strategic partnership agreement:

(A) with a municipal utility district; and

(B) under which the municipality contemplates annexing 400 or more water or wastewater connections that are not located in the district.

(b) A municipality authorized or required to annex a district for full purposes under a strategic partnership agreement under Section 43.0751:

(1) may not annex the district without also annexing all of the unincorporated area served by the district that is located in the municipality's extraterritorial jurisdiction; and

(2) must receive approval for the annexations under the agreement and Subdivision (1) as required by Subchapter C-3, C-4, or C-5, as applicable, before annexation.

Added by Acts 2019, 86th Leg., R.S., Ch. 632 (S.B. 1468), Sec. 2, eff. June 10, 2019.

SUBCHAPTER E. ANNEXATION PROVISIONS RELATING TO RESERVOIRS, AIRPORTS, STREETS, AND CERTAIN OTHER AREAS

Sec. 43.101. ANNEXATION OF MUNICIPALLY OWNED RESERVOIR. (a) A general-law municipality may annex:

(1) a reservoir owned by the municipality and used to supply water to the municipality;

(2) any land contiguous to the reservoir and subject to an easement for flood control purposes in favor of the municipality; and

(3) the right-of-way of any public road or highway connecting the reservoir to the municipality by the most direct route.

(b) The municipality may annex the area if:

(1) none of the area is more than five miles from the municipality's boundaries;

(2) none of the area is in another municipality's extraterritorial jurisdiction; and

(3) the area, excluding road or highway right-of-way, is less than 600 acres.

(c) A municipality may annex the area described by this section without the consent of any owners or residents of the area under the procedures prescribed by Subchapter C-1 if there are no owners other than the municipality or residents of the area.

(d) The municipality may annex the area even if part of the area is outside the municipality's extraterritorial jurisdiction or is narrower than the minimum width prescribed by Section 43.054. Section 43.055, which relates to the amount of area a municipality may annex in a calendar year, does not apply to the annexation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(i), eff. Aug. 28, 1989. Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 29, eff. December 1, 2017.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 30, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.12, eff. May 24, 2019.

Sec. 43.102. ANNEXATION OF MUNICIPALLY OWNED AIRPORT. (a) A municipality may annex:

(1) an airport owned by the municipality; and

(2) the right-of-way of any public road or highway connecting the airport to the municipality by the most direct route.

(b) The municipality may annex the area if:

(1) none of the area is more than eight miles from the municipality's boundaries; and

(2) each municipality in whose extraterritorial jurisdiction the airport is located agrees to the annexation.

(c) A municipality may annex the area described by this section without the consent of any owners or residents of the area under the procedures prescribed by Subchapter C-1 if there are no owners other than the municipality or residents of the area.

(d) The municipality may annex the area even if the area is outside the municipality's extraterritorial jurisdiction, is in another municipality's extraterritorial jurisdiction, or is narrower than the minimum width prescribed by Section 43.054. Section 43.055, which relates to the amount of area a municipality may annex in a calendar year, does not apply to the annexation.

(e) The annexation under this section of area outside the extraterritorial jurisdiction of the annexing municipality does not expand the extraterritorial jurisdiction of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(j), eff. Aug. 28, 1989. Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 31, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.13, eff. May 24, 2019.

Sec. 43.1025. ANNEXATION OF NONCONTIGUOUS MUNICIPALLY OWNED AIRPORT BY CERTAIN MUNICIPALITIES. (a) This section applies only to a home-rule municipality that has a population of less than 13,000 and is located primarily in a county with a population of more than 3.3 million.

(b) The municipality may annex the unincorporated area of an airport owned by the municipality that is noncontiguous to the boundaries of the municipality regardless of whether the airport is located in the municipality's extraterritorial jurisdiction. The annexation may include any unincorporated area located in the proximity of the airport.

(c) The area described by Subsection (b) may be annexed under the requirements prescribed by Subchapter C-3, C-4, or C-5, as

applicable, but the annexation may not occur unless each municipality in whose extraterritorial jurisdiction the area may be located:

(1) consents to the annexation; and

(2) reduces its extraterritorial jurisdiction over the area as provided by Section 42.023.

(d) If the area proposed for annexation is completely surrounded by territory under the jurisdiction of another municipality, regardless of whether that jurisdiction is full-purpose, limited-purpose, or extraterritorial, that municipality must find that the annexation is in the public interest.

(e) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(a), eff. December 1, 2017.

(f) The annexation of area under this section outside the extraterritorial jurisdiction of the annexing municipality does not expand the extraterritorial jurisdiction of the municipality.

(g) Repealed by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(a), eff. December 1, 2017.

Added by Acts 2007, 80th Leg., R.S., Ch. 423 (S.B. 1349), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 63, eff. September 1, 2011.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 32, eff. December 1, 2017.

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 55(a), eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.06, eff. May 24, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 124, eff. September 1, 2023.

Sec. 43.1055. ANNEXATION OF ROAD RIGHTS-OF-WAY ON REQUEST OR WITHOUT OBJECTION OF OWNER OR MAINTAINING POLITICAL SUBDIVISION. (a) Notwithstanding any other law, a municipality may by ordinance annex under the procedures prescribed by Subchapter C-1:

(1) a road right-of-way on request of the owner of the right-of-way or the governing body of the political subdivision that maintains the right-of-way; or

(2) a road right-of-way described by Subsection (b).

(b) A municipality may annex a road right-of-way provided that the right-of-way:

(1) is contiguous to the municipality's boundary or to an area being simultaneously annexed by the municipality;

(2) either:

(A) is parallel to the boundary of the municipality or to an area being simultaneously annexed by the municipality; or

(B) connects the boundary of the municipality to an area being simultaneously annexed by the municipality or to another point on the boundary of the municipality; and

(3) does not result in the municipality's boundaries surrounding any area that was not already in the municipality's extraterritorial jurisdiction immediately before the annexation of the right-of-way.

(c) A municipality may annex a right-of-way under this section only if:

(1) the owner of the right-of-way or the governing body of the political subdivision that maintains the right-of-way requests the annexation of the right-of-way in writing; or

(2) both:

(A) the municipality provides written notice of the annexation to the owner of the right-of-way or the governing body of the political subdivision that maintains the right-of-way not later than the 61st day before the date of the proposed annexation; and

(B) the owner of the right-of-way or the governing body of the political subdivision that maintains the right-of-way does not submit a written objection to the municipality before the date of the proposed annexation.

(d) If a right-of-way proposed to be annexed under this section is owned or maintained by a governmental body, then that governmental body may specify, by notifying the municipality in writing, the location at which a municipality must deliver notice under Subsection (c).

(e) Section 43.054 does not apply to the annexation of a right-of-way under this section.

(f) Notwithstanding Section 42.021, the annexation of a road right-of-way described by Subsection (b)(2)(B) does not expand the annexing municipality's extraterritorial jurisdiction.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 36, eff. December 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.14, eff. May 24, 2019.
Acts 2021, 87th Leg., R.S., Ch. 560 (S.B. 374), Sec. 1, eff. June 14, 2021.
Acts 2023, 88th Leg., R.S., Ch. 121 (H.B. 586), Sec. 1, eff. May 23, 2023.

Sec. 43.1056. ANNEXATION OF CONTIGUOUS OR CONNECTING RIGHTS-OF-WAY. (a) Notwithstanding any other law, a municipality that is annexing an area under Subchapter C-3, C-4, C-5, or D may also annex with the area the right-of-way of a street, highway, alley, or other public way or of a railway line, spur, or roadbed, that is:

(1) contiguous and runs parallel to the municipality's boundaries; and

(2) contiguous to the area being annexed under Subchapter C-3, C-4, C-5, or D.

(b) A municipality may annex a right-of-way under this section only if:

(1) the municipality provides written notice of the annexation to the owner of the right-of-way, through the owner's registered agent, if applicable, not later than the 61st day before the date of the proposed annexation; and

(2) the owner of the right-of-way does not submit a written objection to the municipality before the date of the proposed annexation.

(c) If the owner of a right-of-way proposed to be annexed under this section is a governmental entity, the entity may specify the location at which a municipality must deliver notice under Subsection (b).

(d) Section 43.054 does not apply to the annexation of a right-of-way under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 560 (S.B. 374), Sec. 2, eff. June 14, 2021.

Sec. 43.106. ANNEXATION OF COUNTY ROADS REQUIRED IN CERTAIN CIRCUMSTANCES. (a) A municipality that proposes to annex any portion of a county road or territory that abuts a county road must also annex the entire width of the county road and the adjacent right-of-way on both sides of the county road.

(b) If a road annexed under Subsection (a) is a gravel road, the county retains control of granting access to the road and its right-of-way from property that:

(1) is not located in the boundaries of the annexing municipality; and

(2) is adjacent to the road and right-of-way.

Added by Acts 2001, 77th Leg., ch. 393, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1052 (H.B. 1949), Sec. 2, eff. September 1, 2015.

SUBCHAPTER F. LIMITED PURPOSE ANNEXATION

Sec. 43.121. AUTHORITY OF POPULOUS HOME-RULE MUNICIPALITIES TO ANNEX FOR LIMITED PURPOSES; OTHER AUTHORITY NOT AFFECTED. (a) Subject to Section 43.1211, the governing body of a home-rule municipality with more than 225,000 inhabitants by ordinance may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area.

(b) To be annexed for limited purposes, an area must be:

(1) within the municipality's extraterritorial jurisdiction; and

(2) contiguous to the corporate boundaries of the municipality, unless the owner of the area consents to noncontiguous annexation.

(c) The provisions of this subchapter, other than Sections 43.1211 and 43.136, do not affect the authority of a municipality to annex an area for limited purposes under Section 43.136 or any other statute granting the authority to annex for limited purposes.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.
Amended by Acts 1989, 71st Leg., ch. 822, Sec. 2, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 1167, Sec. 13, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 37, eff.

December 1, 2017.

Sec. 43.1211. USE OF CONSENT PROCEDURES TO ANNEX FOR LIMITED PURPOSES. Except as provided by Section 43.0751, beginning December 1, 2017, a municipality described by Section 43.121(a) may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area using the procedures under Subchapter C-3, C-4, or C-5, as applicable.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 38, eff. December 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 1.07, eff. May 24, 2019.

Sec. 43.122. CERTAIN STRIP ANNEXATIONS PROHIBITED. A municipality may not annex for limited purposes any strip of territory, including a strip following the course of a road, highway, river, stream, or creek, that is, at its narrowest point, less than 1,000 feet in width and is located farther than three miles from the preexisting boundaries of the municipality, unless the area is annexed under Section 43.129.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.
Amended by Acts 1989, 71st Leg., ch. 822, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.123. REPORT REGARDING PLANNING STUDY AND REGULATORY PLAN. (a) Before the 10th day before the date the first hearing required by Section 43.124 is held, the municipality must prepare a report regarding the proposed annexation of an area for limited purposes and make the report available to the public. The report must contain the results of the planning study conducted for the area in accordance with Subsection (c) and must contain the regulatory plan prepared for the area in accordance with Subsection (d).

(b) Notice of the availability of the report shall be published at least twice in a newspaper of general circulation in the area proposed to be annexed. The notice may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the

headline on the notice must be in 18-point or larger type.

(c) The planning study must:

(1) project the kinds and levels of development that will occur in the area in the next 10 years if the area is not annexed for limited purposes and also if the area is annexed for limited purposes;

(2) describe the issues the municipality considers to give rise to the need for the annexation of the area for limited purposes and the public benefits to result from the limited-purpose annexation;

(3) analyze the economic, environmental, and other impacts the annexation of the area for limited purposes will have on the residents, landowners, and businesses in the area; and

(4) identify the proposed zoning of the area on annexation and inform the public that any comments regarding the proposed zoning will be considered at the public hearings for the proposed limited-purpose annexation.

(d) The regulatory plan must:

(1) identify the kinds of land use and other regulations that will be imposed in the area if it is annexed for limited purposes; and

(2) state the date on or before which the municipality shall annex the area for full purposes, which date must be within three years after the date the area is annexed for limited purposes.

(e) The deadline imposed by Subsection (d)(2) does not apply to an area that:

(1) is owned by the United States, this state, or a political subdivision of this state;

(2) is located outside the boundaries of a water control and improvement district or a municipal utility district; and

(3) is annexed for limited purposes in connection with a strategic partnership agreement under Section 43.0751.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.
Amended by Acts 2003, 78th Leg., ch. 248, Sec. 4, eff. June 18, 2003.

Sec. 43.124. PUBLIC HEARINGS. (a) Before instituting proceedings for annexing an area for limited purposes, the governing body of the municipality must hold two public hearings on the

proposed annexation. Each member of the public who wishes to present testimony or evidence regarding the proposed limited-purpose annexation must be given the opportunity to do so. At the hearing, the municipality shall hear and consider the appropriateness of the application of rural and urban ordinances in the area to be annexed for limited purposes.

(b) The hearings must be held on or after the 40th day but before the 20th day before the date the annexation proceedings are instituted. A notice of the hearings must be published in a newspaper of general circulation in the municipality and in the area proposed for annexation. The notice must be in the format prescribed by Section 43.123(b). Before the date of each hearing, the notice must be published at least once on or after the 20th day before the hearing date and must contain:

(1) a statement of the purpose of the hearing;

(2) a statement of the date, time, and place of the hearing; and

(3) a general description of the location of the area proposed to be annexed for limited purposes.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.

Sec. 43.125. ADOPTION OF REGULATORY PLAN. (a) At the time the governing body of the municipality adopts an ordinance annexing an area for limited purposes, the governing body must also adopt by ordinance a regulatory plan for the area.

(b) The adopted regulatory plan must be the same as the regulatory plan prepared under Section 43.123 unless the governing body finds and states in the ordinance the reasons for the adoption of a different regulatory plan.

(c) The governing body by ordinance may change a regulatory plan adopted under Subsection (b) if, in the ordinance making the change, the governing body finds and states the reasons for the adoption of the change.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.

Sec. 43.126. PERIOD FOR COMPLETION OF ANNEXATION. The annexation of an area for limited purposes must be completed within

90 days after the date the governing body institutes the annexation proceedings.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.

Sec. 43.127. ANNEXATION FOR FULL PURPOSES. (a) Except as provided by Section 43.123(e), on or before the date prescribed by the regulatory plan under Section 43.123(d)(2), the municipality must annex the area for full purposes. This requirement may be waived and the date for full-purpose annexation postponed by written agreement between the municipality and a majority of the affected landowners. A written agreement to waive the municipality's obligation to annex the area for full purposes binds all future owners of land annexed for limited purposes pursuant to that waiver.

(b) In each of the three years for which an area may be annexed for limited purposes, the municipality must take the steps prescribed by this subsection toward the full-purpose annexation of the area. By the end of the first year after the date an area is annexed for limited purposes, the municipality must develop a land use and intensity plan as a basis for services and capital improvements projects planning. By the end of the second year after that date, the municipality must include the area in the municipality's long-range financial forecast and in the municipality's program to identify future capital improvements projects. By the end of the third year after that date, the municipality must include in its adopted capital improvements program the projects intended to serve the area and must identify potential sources of funding for capital improvements.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 822, Sec. 2, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 248, Sec. 5, eff. June 18, 2003.

Sec. 43.128. JUDICIAL REMEDIES: FORCED ANNEXATION OR DISANNEXATION. (a) If the municipality fails to annex the area for full purposes as required by Section 43.127(a), any affected person may petition the district court to compel the annexation of the area for full purposes or the disannexation of the area. On finding that the municipality has failed to annex the area as required by Section

43.127(a), the court shall enter an order requiring the municipality to annex the area for full purposes or to disannex the area. If an area is disannexed, the area may not be annexed again by the municipality for five years.

(b) If the municipality fails to take the steps required by Section 43.127(b), any affected person may petition the district court to compel the annexation of a particular area for full purposes or the disannexation of the area. On finding that the municipality has failed to take the steps required by Section 43.127(b), the court shall enter an order requiring the municipality to annex the area for full purposes or to disannex the area.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.

Sec. 43.129. CONSENSUAL ANNEXATION. The municipality may annex for limited purposes any land for which the landowner requests annexation and provides to the municipality before the effective date of the annexation the landowner's written consent to annexation for limited purposes. With respect to any larger parcels of property, consent of the owners of at least 51 percent of the total affected territory must be evidenced by appropriate signatures on the limited-purpose annexation request. A landowner's written consent to limited-purpose annexation is binding on all future owners of land in the area annexed for limited purposes pursuant to the consent.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.
Amended by Acts 1989, 71st Leg., ch. 822, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.130. EFFECT OF ANNEXATION ON VOTING RIGHTS, ELIGIBILITY FOR OFFICE, AND TAXING AUTHORITY. (a) The qualified voters of an area annexed for limited purposes are entitled to vote in municipal elections regarding the election or recall of members of the governing body of the municipality, the election or recall of the controller, if the office of controller is an elective position of the municipality, and the amendment of the municipal charter. The voters may not vote in any bond election. On or after the 15th day but before the fifth day before the date of the first election held in which the residents of an area annexed for limited purposes are entitled to vote, the municipality shall publish notice in the form

of a quarter-page advertisement in a newspaper of general circulation in the municipality notifying the residents that they are eligible to vote in the election and stating the location of all polling places for the residents.

(b) A resident of an area annexed for limited purposes is not eligible to be a candidate for or to be elected to a municipal office.

(c) The municipality may not impose a tax on any property in an area annexed for limited purposes or on any resident of the area for an activity occurring in the area. The municipality may impose reasonable charges, such as building inspection and permit fees, on residents or landowners for actions or procedures performed by the municipality in connection with the limited purposes for which the area is annexed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.
Amended by Acts 2003, 78th Leg., ch. 664, Sec. 1, eff. Sept. 1, 2003.

Sec. 43.131. EFFECT OF ANNEXATION ON EXTRATERRITORIAL JURISDICTION. The annexation of an area for limited purposes does not extend the municipality's extraterritorial jurisdiction.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.

Sec. 43.132. MUNICIPAL INCORPORATION IN ANNEXED AREA. A municipality may not be incorporated in an area annexed for limited purposes unless the annexing municipality gives its consent.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.

Sec. 43.136. AUTHORITY OF SPECIAL-LAW MUNICIPALITY TO ANNEX FOR LIMITED PURPOSES ALONG NAVIGABLE STREAM. (a) The governing body of a special-law municipality located along or on a navigable stream may extend the boundaries of the municipality to include the area designated by Subsection (b) only to:

(1) improve navigation on the stream by the United States, the municipality, or a navigation or other improvement district; and

(2) establish and maintain wharves, docks, railway

terminals, side tracks, warehouses, or other facilities or aids relating to navigation or wharves.

(b) The municipality by ordinance may extend the boundaries to include an area composed of the navigable stream and the land on each side of the stream. The area may not exceed 2,500 feet in width on either side of the stream as measured from the thread of the stream and may not exceed 20 miles in length as measured in a direct line from the ordinary municipal boundaries, either above or below the boundaries, or both. Consequently, the area subject to the boundary extension is a strip 5,000 feet wide and 20 miles in length, or as much of that strip as the governing body considers advisable to add to the municipality. The boundaries are extended on the adoption of the ordinance.

(c) The governing body may acquire land in the added area by purchase, condemnation, or gift. If condemnation is used, the municipality shall follow the condemnation procedure applying to the condemnation of land by the municipality for the purchase of streets.

(d) This section does not authorize the municipality to extend its boundaries to include area that is part of or belongs to another municipality.

(e) A municipality may not tax the property over which the boundaries are extended under this section unless the property is within the general municipal boundaries.

(f) After the adoption of the ordinance extending the municipal boundaries, the municipality may fully regulate navigation, wharfage, including wharfage rates, and all facilities, conveniences, and aids to navigation or wharfage. The municipality may adopt ordinances, including those imposing criminal penalties, and may otherwise police navigation on the stream and the use of the wharves or other facilities and aids to navigation or wharfage.

(g) The municipality may designate all or part of the added area as an industrial district, as the term is customarily used, and may treat the designated area in a manner considered by the governing body to be in the best interest of the municipality. The governing body may make written contracts or agreements with the owners of land in the industrial district, to guarantee the continuation of the limited purpose annexation status of the district and its immunity from general purpose annexation for a period not to exceed 10 years. The contract or agreement may contain other terms considered appropriate by the parties. The governing body and landowners may

renew or extend the contract for successive periods not to exceed 10 years each.

(h) Notwithstanding any other law, including a municipal ordinance or charter provision, the governing body by ordinance may change the status of an area previously annexed for general purposes to limited purpose annexation status governed by this section if:

(1) the area previously annexed at any time was eligible to be included within the municipal boundaries under Subsection (b);

(2) the owners of the area petition the governing body for the change in status; and

(3) the governing body includes the area in an industrial district designated as provided by Subsection (g) or any other law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 3(k), eff. Aug. 28, 1989.
Amended by Acts 1997, 75th Leg., ch. 816, Sec. 1, eff. June 17, 1997.

SUBCHAPTER G. DISANNEXATION

Sec. 43.141. DISANNEXATION FOR FAILURE TO PROVIDE SERVICES. (a) A majority of the qualified voters of an annexed area may petition the governing body of the municipality to disannex the area if the municipality fails or refuses to provide services or to cause services to be provided to the area:

(1) if the area was annexed under Subchapter C-1, within the period specified by Section 43.056 or by the service plan prepared for the area under that section; or

(2) if the area was annexed under Subchapter C-3, C-4, or C-5, within the period specified by the written agreement under Section 43.0672 or the resolution under Section 43.0682 or 43.0692, as applicable.

(b) If the governing body fails or refuses to disannex the area within 60 days after the date of the receipt of the petition, any one or more of the signers of the petition may bring a cause of action in a district court of the county in which the area is principally located to request that the area be disannexed. On the filing of an answer by the governing body, and on application of either party, the case shall be advanced and heard without further delay in accordance with the Texas Rules of Civil Procedure. The district court shall enter an order disannexing the area if the court finds that a valid petition was filed with the municipality and that the municipality

failed to:

(1) perform its obligations in accordance with:

(A) the service plan under Section 43.056;

(B) the written agreement entered into under Section 43.0672; or

(C) the resolution adopted under Section 43.0682 or 43.0692, as applicable; or

(2) perform in good faith.

(c) If the area is disannexed under this section, it may not be annexed again within 10 years after the date of the disannexation.

(d) The petition for disannexation must:

(1) be written;

(2) request the disannexation;

(3) be signed in ink or indelible pencil by the appropriate voters;

(4) be signed by each voter as that person's name appears on the most recent official list of registered voters;

(5) contain a note made by each voter stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate;

(6) describe the area to be disannexed and have a plat or other likeness of the area attached; and

(7) be presented to the secretary of the municipality.

(e) The signatures to the petition need not be appended to one paper.

(f) Before the petition is circulated among the voters, notice of the petition must be given by posting a copy of the petition for 10 days in three public places in the annexed area and by publishing a copy of the petition once in a newspaper of general circulation serving the area before the 15th day before the date the petition is first circulated. Proof of the posting and publication must be made by attaching to the petition presented to the secretary:

(1) the sworn affidavit of any voter who signed the petition, stating the places and dates of the posting; and

(2) the sworn affidavit of the publisher of the newspaper in which the notice was published, stating the name of the newspaper and the issue and date of publication.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1167, Sec. 14, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 39, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.15, eff. May 24, 2019.

Sec. 43.142. DISANNEXATION ACCORDING TO MUNICIPAL CHARTER IN HOME-RULE MUNICIPALITY. A home-rule municipality may disannex an area in the municipality according to rules as may be provided by the charter of the municipality and not inconsistent with the procedural rules prescribed by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.143. DISANNEXATION BY PETITION AND ELECTION IN GENERAL-LAW MUNICIPALITY. (a) When at least 50 qualified voters of an area located in a general-law municipality sign and present a petition to the mayor of the municipality that describes the area by metes and bounds and requests that the area be declared no longer part of the municipality, the mayor shall order an election on the question in the municipality. The election shall be held on the first uniform election date prescribed by Chapter 41, Election Code, that occurs after the date on which the petition is filed and that affords enough time to hold the election in the manner required by law.

(b) When a majority of the votes received in the election favor discontinuing the area as part of the municipality, the mayor shall declare that the area is no longer a part of the municipality and shall enter an order to that effect in the minutes or records of the governing body of the municipality. The area ceases to be a part of the municipality on the date of the order. However, the area may not be discontinued as part of the municipality if the discontinuation would result in the municipality having less area than one square mile or one mile in diameter around the center of the original municipal boundaries.

(c) If the area withdraws from a municipality as provided by this section and if, at the time of the withdrawal, the municipality owes any debts, by bond or otherwise, the area is not released from its pro rata share of that indebtedness. The governing body shall

continue to levy a property tax each year on the property in the area at the same rate that is levied on other property in the municipality until the taxes collected from the area equal its pro rata share of the indebtedness. Those taxes may be charged only with the cost of levying and collecting the taxes, and the taxes shall be applied exclusively to the payment of the pro rata share of the indebtedness. This subsection does not prevent the inhabitants of the area from paying in full at any time their pro rata share of the indebtedness.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.144. DISANNEXATION OF SPARSELY POPULATED AREA IN GENERAL-LAW MUNICIPALITY. (a) The mayor and governing body of a general-law municipality by ordinance may discontinue an area as a part of the municipality if:

(1) the area consists of at least 10 acres contiguous to the municipality; and

(2) the area:

(A) is uninhabited; or

(B) contains fewer than one occupied residence or business structure for every two acres and fewer than three occupied residences or business structures on any one acre.

(b) On adoption of the ordinance, the mayor shall enter in the minutes or records of the governing body an order discontinuing the area. The area ceases to be a part of the municipality on the date of the entry of the order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.145. DISANNEXATION OF UNIMPROVED AREA OR NONTAXABLE AREA IN CERTAIN MUNICIPALITIES. (a) The governing body of a municipality by ordinance may discontinue an area as a part of the municipality if:

(1) the municipality has a population of 4,000 or more and is located in a county with a population of more than 205,000, and the area is composed of at least three contiguous acres that are unimproved and adjoining the municipal boundaries; or

(2) the municipality has a population of 596,000 or more, and the area is an improved area that is not taxable by the

municipality and is contiguous to the municipal boundary.

(b) On adoption of the ordinance, the governing body shall enter in the minutes or records of the municipality an order discontinuing the area. The area ceases to be a part of the municipality on the date of the entry of the order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.146. DISANNEXATION OF LAND IN A MUNICIPAL UTILITY DISTRICT. Notwithstanding any provision of any other law related to the annexation or disannexation of territory, including but not limited to the requirement that the minimum width of any territory annexed be at least 1,000 feet in width, a municipality that has exercised limited purpose annexation may disannex any land located within a municipal utility district. Such disannexation shall not affect the validity of the annexation of other territory. Such municipality may refund any taxes paid or waive any taxes due to the municipality by the owners of the property disannexed pursuant to the provisions of this section.

Added by Acts 1989, 71st Leg., ch. 1058, Sec. 5, eff. Sept. 1, 1989.

Sec. 43.1463. DISANNEXATION OF AREAS ANNEXED DURING TRANSITION FROM NONCONSENT TO CONSENT ANNEXATION MODEL. (a) This section applies only to an area:

(1) for which an annexation was:

(A) initiated by a municipality with a population of 500,000 or more; and

(B) finalized for full purposes between March 3, 2015, and December 1, 2017; and

(2) that had a population of greater than zero on the date the area was annexed.

(b) This section does not apply to a municipality:

(1) whose extraterritorial jurisdiction is adjacent to or includes all or part of a federal military installation in active use as of May 1, 2023; or

(2) in which all or part of a federal military installation in active use as of May 1, 2023, is located.

(c) A municipality shall hold an election in an area described

by Subsection (a) on the question of disannexing the area from the municipality. The municipality:

(1) may not use public money on promotional campaigns or advocacy related to the election; and

(2) shall ensure that the ballot proposition for the election:

(A) describes the area to be disannexed;

(B) identifies the area by the commonly used name of the area, if applicable;

(C) identifies the entities that will provide law enforcement, fire, and emergency services after disannexation;

(D) describes the effect of disannexation on ad valorem taxes and fees in the area; and

(E) describes the effect of disannexation on special districts located in the area.

(d) A municipality shall disannex an area described by Subsection (a), including residential and commercial property in the area, if the voters approve the disannexation in the election held under Subsection (c).

(e) A municipality shall retain ownership of any infrastructure, including a water treatment and storage facility, transferred to the municipality from a special district as part of the annexation of an area disannexed under this section.

(f) After an area is disannexed under this section:

(1) a special district located in and serving the area may be dissolved only if the members of the governing body of the district elect to dissolve the district after the disannexation; and

(2) an emergency services district located in or adjacent to the area shall provide services to the area.

(g) A disannexation under this section does not authorize the impairment of a municipal debt obligation and, to the extent applicable, the area is not released from its pro rata share of that indebtedness. The municipality shall continue to impose a property tax each year on the property in the area at the same rate that is imposed on other property in the municipality until the taxes collected from the area equal its pro rata share of the indebtedness. Those taxes may be charged only with the cost of imposing and collecting the taxes, and the taxes shall be applied exclusively to the payment of the pro rata share of the indebtedness. This subsection does not prevent the inhabitants of the area from paying

in full at any time their pro rata share of the indebtedness.

(h) Section 43.148 does not apply to an area disannexed under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 521 (H.B. 3053), Sec. 1, eff. September 1, 2023.

Sec. 43.1465. DISANNEXATION FROM DEFUNDING MUNICIPALITY. (a) In this section, "defunding municipality" means a home-rule municipality that is considered to be a defunding municipality under Chapter 109.

(b) On the next uniform election date that occurs after the date on which the criminal justice division of the governor's office issues a written determination that a municipality is a defunding municipality and the time required by Section 3.005, Election Code, the defunding municipality shall hold a separate election in each area annexed in the preceding 30 years by the defunding municipality on the question of disannexing the area.

(c) The defunding municipality shall immediately by ordinance disannex an area for which a majority of the votes received in the election held under Subsection (b) favor disannexation.

(d) If an area is disannexed under Subsection (c), the defunding municipality may not attempt to annex the area before the 10th anniversary of the date on which the criminal justice division of the governor's office issues a written determination in accordance with Section 109.005 finding that the defunding municipality has reversed the reduction described by Section 109.003(1).

(e) A defunding municipality holding an election under Subsection (b) may not use public funds on informational campaigns relating to the election.

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 2.02, eff. September 1, 2021.

Sec. 43.147. WIDTH REQUIREMENT FOR DISANNEXATION. (a) A municipality disannexing a road or highway shall also disannex a strip of area that is equal in size to the minimum area that the municipality is required to annex in order to comply with the width requirements of Section 43.054 unless such disannexation is

undertaken with the mutual agreement of the county government and the municipality.

(b) The strip of area to be disannexed must:

(1) be adjacent to either side of the road or highway; and

(2) follow the course of the road or highway.

Added by Acts 1995, 74th Leg., ch. 513, Sec. 1, eff. Sept. 1, 1995.

Sec. 43.148. REFUND OF TAXES AND FEES. (a) If an area is disannexed, the municipality disannexing the area shall refund to the landowners of the area the amount of money collected by the municipality in property taxes and fees from those landowners during the period that the area was a part of the municipality less the amount of money that the municipality spent for the direct benefit of the area during that period.

(b) A municipality shall proportionately refund the amount under Subsection (a) to the landowners according to a method to be developed by the municipality that identifies each landowner's approximate pro rata payment of the taxes and fees being refunded.

(c) A municipality required to refund money under this section shall refund the money to current landowners in the area not later than the 180th day after the date the area is disannexed. Money that is not refunded within the period prescribed by this subsection accrues interest at the rate of:

(1) six percent each year after the 180th day and until the 210th day after the date the area is disannexed; and

(2) one percent each month after the 210th day after the date the area is disannexed.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 15, eff. Sept. 1, 1999.

SUBCHAPTER H. ALTERATION OF ANNEXATION STATUS

Sec. 43.201. DEFINITIONS. In this subchapter:

(1) "Consent agreement" means an agreement between a district and a municipality under Section 42.042.

(2) "Limited-purpose annexation" means annexation authorized under Section 43.121.

Added by Acts 1995, 74th Leg., ch. 787, Sec. 2, eff. Sept. 1, 1995.

Sec. 43.202. APPLICABILITY. This subchapter applies to:

(1) a municipal utility district operating under Chapter 54, Water Code, that:

(A) was annexed for full purposes by a municipality as a condition of the municipality granting consent to the creation of the district;

(B) was annexed by the municipality on the same date as at least five other districts; and

(C) has not had on the eighth anniversary of the district's annexation by the municipality more than 10 percent of the housing units or commercial square footage authorized in its consent agreement constructed; and

(2) a municipality that has:

(A) annexed territory for limited purposes;

(B) disannexed territory that previously was annexed for limited purposes; and

(C) previously disannexed territory in a municipal utility district originally annexed for full purposes on the same date as a district to which this section applies.

Added by Acts 1995, 74th Leg., ch. 787, Sec. 2, eff. Sept. 1, 1995.

Sec. 43.203. ALTERATION OF ANNEXATION STATUS. (a) Notwithstanding any other law, the governing body of a district by resolution may petition a municipality to alter the annexation status of land in the district from full-purpose annexation to limited-purpose annexation.

(b) On receipt of the district's petition, the governing body of the municipality shall enter into negotiations with the district for an agreement to alter the status of annexation that must:

(1) specify the period, which may not be less than 10 years beginning on January 1 of the year following the date of the agreement, in which limited-purpose annexation is in effect;

(2) provide that, at the expiration of the period, the district's annexation status will automatically revert to full-purpose annexation without following procedures provided by Section 43.014 or any procedural requirement for annexation not in effect on

January 1, 1995; and

(3) specify the financial obligations of the district during and after the period of limited-purpose annexation for:

(A) facilities constructed by the municipality that are in or that serve the district;

(B) debt incurred by the district for water and sewer infrastructure that will be assumed by the municipality at the end of the period of limited-purpose annexation; and

(C) use of the municipal sales taxes collected by the municipality for facilities or services in the district.

(c) If an agreement is not reached within 90 days after the date the municipality receives a petition submitted by a district:

(1) the district's status is automatically altered from full-purpose annexation to limited-purpose annexation for a period of not less than 10 years, beginning January 1 of the year following the date of the submission of a petition, unless the voters of the district have approved the dissolution of the district through an election authorized by this section; and

(2) on the expiration of the 10-year period of Subdivision (1), notwithstanding any other provision of law, the district may be restored to full-purpose annexation at the option of the municipality, provided that the municipality assumes all obligations otherwise assigned by law to a municipality that annexes a district; and

(3) the municipality may collect a waste and wastewater surcharge for customers in the district after restoration of full-purpose annexation provided that:

(A) notice of such proposed surcharge is provided to the board of a district six months prior to restoration of full-purpose annexation;

(B) the surcharge does not exceed the cost of a post-annexation surcharge to any other district annexed by the municipality; and

(C) the surcharge is in effect only during the period in which bonds issued by the district or refunded by the municipality are not fully retired.

(d) Upon the request of any residents of a district subject to this section the municipality may conduct an election on a uniform election date at which election voters who are residents of the district may vote for or against a ballot proposal to dissolve the

district. If more than one district was created on the same date and the districts are contiguous, the election shall be a combined election of all such districts, with a majority of votes cast by all residents of the districts combined required for dissolution of the districts. If a majority of votes are in favor of dissolution, the date of dissolution shall be December 31 of the same year in which the election is held. Upon dissolution of the district, all property and obligations of a dissolved district become the responsibility of the municipality.

(e) The municipality shall have no responsibility to reimburse the developer of the district or its successors for more than reasonable and actual engineering and construction costs to design and build internal water treatment and distribution facilities, wastewater treatment and collection facilities, or drainage facilities, whether temporary or permanent, installed after September 1, 1995. Any obligation to reimburse the developer may be paid in installments over a three-year period.

(f) During the period of limited-purpose annexation:

(1) the district may not use bond proceeds to pay for impact fees but must comply with other items in its consent agreement with the municipality;

(2) the municipality:

(A) must continue to provide wholesale water and sewer service as provided by the consent agreement; and

(B) is relieved of service obligations in the district that are not provided to other territory annexed for limited purposes or required by the annexation alteration agreement between the municipality and the district; and

(3) retail sales in the boundaries of the district will be treated for municipal sales tax purposes as if the district were annexed by the municipality for full purposes.

(g) This section does not allow a change in annexation status for land or facilities in a district to which the municipality granted a property tax abatement before September 1, 1995.

Added by Acts 1995, 74th Leg., ch. 787, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 40, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.16, eff.

May 24, 2019.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 43.901. CIRCUMSTANCES IN WHICH CONSENT TO BOUNDARIES OR ANNEXATION IS PRESUMED. A municipal ordinance defining boundaries of or annexing area to a municipality is conclusively presumed to have been adopted with the consent of all appropriate persons, except another municipality, if:

(1) two years have expired after the date of the adoption of the ordinance; and

(2) an action to annul or review the adoption of the ordinance has not been initiated in that two-year period.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 401, Sec. 1, eff. Sept. 1, 2001.

Sec. 43.902. ANNEXATION, EXTRATERRITORIAL JURISDICTION, AND EMINENT DOMAIN ON INACCESSIBLE GULF ISLAND. (a) Land on an island bordering the Gulf of Mexico that is not accessible by a public road or common carrier ferry facility may not be annexed by a municipality without the consent of the owners of the land.

(b) The extraterritorial jurisdiction of a municipality does not include land on the island unless the owners of the land consent.

(c) A municipality may not take property on the island through eminent domain.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.903. EFFECT OF ANNEXATION ON RAILROAD SWITCHING LIMITS OR RATES. An annexation by a municipality does not change or otherwise affect the switching limits of a railroad or any rates of a railroad.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 43.905. EFFECT OF ANNEXATION ON OPERATION OF SCHOOL DISTRICT. (a) A municipality that proposes to annex an area shall

provide written notice of the proposed annexation to each public school district located in the area proposed for annexation within the period prescribed for providing the notice of, as applicable:

(1) the hearing under Section 43.0673; or

(2) the first hearing under Section 43.063, 43.0683, or 43.0693.

(b) A notice to a public school district shall contain a description of:

(1) the area within the district proposed for annexation;

(2) any financial impact on the district resulting from the annexation, including any changes in utility costs; and

(3) any proposal the municipality has to abate, reduce, or limit any financial impact on the district.

(c) The municipality may not proceed with the annexation unless the municipality provides the required notice.

(d) A municipality that has annexed any portion of an area after December 1, 1996, and before September 1, 1999, in which a school district has a facility shall grant a variance from the municipality's building code for that facility if the facility does not comply with the code.

(e) A municipality that, as a result of the annexation, provides utility services to a school district facility may charge the district for utility services at:

(1) the same rate that the district was paying before the annexation; or

(2) a lower municipal rate.

(f) A rate set under Subsection (e) is effective until the first day of the school district's fiscal year that begins after the 90th day after the effective date of the annexation.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 16, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 41, eff. December 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.17, eff. May 24, 2019.

Sec. 43.9051. EFFECT OF ANNEXATION ON PUBLIC ENTITIES OR POLITICAL SUBDIVISIONS. (a) In this section, "public entity"

includes a county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or special district described by Section 43.062(b)(2)(B).

(b) A municipality that proposes to annex an area shall provide to each public entity that is located in or provides services to the area proposed for annexation written notice of the proposed annexation within the period prescribed for providing the notice of, as applicable:

(1) the hearing under Section 43.0673; or

(2) the first hearing under Section 43.063, 43.0683, or 43.0693.

(c) A municipality that proposes to enter into a strategic partnership agreement under Section 43.0751 shall provide written notice of the proposed agreement within the period prescribed for providing the notice of the first hearing under Section 43.0751 to each political subdivision that is located in or provides services to the area subject to the proposed agreement.

(d) A notice to a public entity or political subdivision shall contain a description of:

(1) the area proposed for annexation;

(2) any financial impact on the public entity or political subdivision resulting from the annexation, including any changes in the public entity's or political subdivision's revenues or maintenance and operation costs; and

(3) any proposal the municipality has to abate, reduce, or limit any financial impact on the public entity or political subdivision.

(e) The municipality may not proceed with the annexation unless the municipality provides the required notice under this section.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 42, eff. December 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.18, eff. May 24, 2019.

Sec. 43.907. EFFECT OF ANNEXATION ON COLONIAS. (a) In this section, "colonia" means a geographic area that consists of 11 or

more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood and that:

(1) has a majority population composed of individuals and families of low income and very low income, as defined by Section 2306.004, Government Code, and based on the federal Office of Management and Budget poverty index, and that meets the qualifications of an economically distressed area under Section 17.921, Water Code; or

(2) has the physical and economic characteristics of a colonia, as determined by the Texas Department of Housing and Community Affairs.

(b) A colonia that is annexed by a municipality remains eligible for five years after the effective date of the annexation to receive any form of assistance for which the colonia would be eligible if the annexation had not occurred.

Added by Acts 1999, 76th Leg., ch. 218, Sec. 1, eff. Sept. 1, 1999.
Renumbered from Sec. 43.905 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(84), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 18, eff. June 15, 2007.

Sec. 43.908. ENFORCEMENT OF CHAPTER. (a) This chapter may be enforced only through mandamus or declaratory or injunctive relief.

(b) A political subdivision's immunity from suit is waived in regard to an action under this chapter.

(c) A court may award court costs and reasonable and necessary attorney's fees to the prevailing party in an action under this chapter.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 6 (S.B. 6), Sec. 43, eff. December 1, 2017.

SUBTITLE D. GENERAL POWERS OF MUNICIPALITIES
CHAPTER 51. GENERAL POWERS OF MUNICIPALITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. ORDINANCE, RULE, OR REGULATION NECESSARY TO CARRY

OUT OTHER POWERS. The governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that:

(1) is for the good government, peace, or order of the municipality or for the trade and commerce of the municipality; and

(2) is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.002. ORDINANCE OR RULES INCONSISTENT WITH STATE LAW PROHIBITED. Notwithstanding Section 51.001, the governing body of a municipality may adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 899 (H.B. 2127), Sec. 11, eff. September 1, 2023.

Sec. 51.003. MUNICIPAL ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a municipality is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) an incorporation or attempted incorporation of a municipality, or an annexation or attempted annexation of territory by a municipality, within the incorporated boundaries or extraterritorial jurisdiction of another municipality that occurred

without the consent of the other municipality in violation of Chapter 42 or 43;

(4) an ordinance that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(5) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

Added by Acts 1999, 76th Leg., ch. 1338, Sec. 1, eff. June 19, 1999.

SUBCHAPTER B. PROVISIONS APPLICABLE TO TYPE A GENERAL-LAW MUNICIPALITY

Sec. 51.011. SUBCHAPTER APPLICABLE TO TYPE A GENERAL-LAW MUNICIPALITY. This subchapter applies only to a Type A general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.012. ORDINANCES AND REGULATIONS. The municipality may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.013. AUTHORITY RELATING TO LAWSUITS. The municipality may sue and be sued, implead and be impleaded, and answer and be answered in any matter in any court or other place.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.014. AUTHORITY TO CONTRACT. The municipality may contract with other persons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.015. AUTHORITY TO HOLD, PURCHASE, LEASE, OR CONVEY PROPERTY. (a) To carry out a municipal purpose, the municipality may take, hold, purchase, lease, grant, or convey property located in or outside the municipality.

(b) The governing body of the municipality may manage and control the property belonging to the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.016. ADOPTION AND USE OF SEAL. The municipality may adopt a corporate seal for the use of the municipality. The municipality may change and renew the seal.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.017. CONTINUATION OF POWERS, DUTIES, PENALTIES, AND SUITS AFTER CHANGE TO TYPE A GENERAL-LAW MUNICIPALITY. (a) This section applies only to a Type A general-law municipality that:

(1) changed to that type under Subchapter B of Chapter 6; or

(2) changed its municipal type under the predecessor statutes to Subchapter B of Chapter 6.

(b) The municipality continues to have the powers, rights, immunities, privileges, and franchises possessed at the time the municipality changed to a Type A general-law municipality and continues to be subject to the duties it had at the time of the change.

(c) A right, action, fine, penalty, or forfeiture that, under the laws in effect before the municipality changed to a Type A general-law municipality, accrued in favor of the municipality in a suit or in any other manner continues to be vested in and shall be prosecuted by the municipality after the change.

(d) A suit pending against the municipality before the municipality changed to a Type A general-law municipality is not affected by the change. After the change, the municipality shall, as appropriate, prosecute or defend the suit.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.018. OWNERSHIP AND SALE OF PROPERTY AFTER CHANGE TO TYPE A GENERAL-LAW MUNICIPALITY. (a) This section applies only to a Type A general-law municipality described by Section 51.017(a).

(b) The property belonging to the municipality before it changed to a Type A general-law municipality continues to belong to the municipality after the change.

(c) If, before changing to a Type A general-law municipality, the municipality was incorporated under a law of the Republic of Texas, the governing body of the municipality may sell the property and appropriate the proceeds of the sale for the acquisition, construction, maintenance, or operation of a water, sewer, gas, or electric light or power system in or outside the municipality or for any other public improvement in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. PROVISIONS APPLICABLE TO TYPE B GENERAL-LAW MUNICIPALITY

Sec. 51.031. SUBCHAPTER APPLICABLE TO TYPE B GENERAL-LAW MUNICIPALITY. This subchapter applies only to a Type B general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.032. ORDINANCES AND BYLAWS. (a) The governing body of the municipality may adopt an ordinance or bylaw, not inconsistent with state law, that the governing body considers proper for the government of the municipal corporation.

(b) The governing body may take any other action necessary to carry out a provision of this code applicable to the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.033. AUTHORITY RELATING TO LAWSUITS. The municipality may sue and be sued and may plead and be impleaded.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.034. AUTHORITY TO HOLD AND DISPOSE OF PROPERTY. The municipality may hold and dispose of:

(1) personal property; and

(2) real property located within the municipal boundaries.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.035. AUTHORITY, DUTIES, PRIVILEGES. A Type B general-law municipality has the same authority, duties, and privileges as a Type A general-law municipality, unless the Type B general-law municipality in exercising the authority or privilege or performing the duty would be in conflict with another provision of this code or other state law that relates specifically to Type B general-law municipalities.

Added by Acts 1991, 72nd Leg., ch. 753, Sec. 1, eff. June 16, 1991.

SUBCHAPTER D. PROVISIONS APPLICABLE TO TYPE C GENERAL-LAW MUNICIPALITY

Sec. 51.051. GENERAL POWERS OF TYPE C GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type C general-law municipality with 501 to 4,999 inhabitants has the same authority and is subject to the same duties as a Type A general-law municipality unless the authority or duties conflict with a provision of this code relating specifically to a Type C general-law municipality.

(b) The governing body of a Type C general-law municipality with 201 to 500 inhabitants has the same authority as a Type B general-law municipality unless the authority conflicts with a provision of this code relating specifically to a Type C general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(c), eff. Aug. 28, 1989.

Sec. 51.052. ALTERNATIVE GENERAL POWERS FOR CERTAIN TYPE C

GENERAL-LAW MUNICIPALITIES. (a) A municipality that is incorporated as a Type C general-law municipality and that has $500,000 or more of assessed valuation for taxable purposes, according to its most recently approved tax rolls, may adopt the powers of a Type A general-law municipality regardless of any limitation prescribed by Section 51.051. On adoption of the powers, the municipality has the same rights, powers, privileges, immunities, and franchises as a Type A general-law municipality.

(b) For a municipality to adopt the powers:

(1) at least two-thirds of the governing body of the municipality at a regular meeting must vote to make the change and the vote must be recorded in the journal of the governing body's proceedings;

(2) a copy of the record of the proceedings must be signed by the mayor;

(3) a copy of the record of the proceedings must be attested by the municipality's clerk or secretary under the corporate seal; and

(4) a copy of the record of the proceedings must be filed and recorded in the office of the county clerk of the county in which the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. PROVISIONS APPLICABLE TO HOME-RULE MUNICIPALITY

Sec. 51.071. SUBCHAPTER APPLICABLE TO HOME-RULE MUNICIPALITY. This subchapter applies only to a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.072. AUTHORITY OF LOCAL SELF-GOVERNMENT. (a) The municipality has full power of local self-government.

(b) The grant of powers to the municipality by this code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.073. ADOPTION OF CHARTER DOES NOT AFFECT RIGHTS AND CLAIMS. The adoption or amendment of the municipality's charter does not affect any previously existing property, action, right of action, claim, or demand involving the municipality. A right of action, claim, or demand may be asserted as fully as though the adoption or amendment of the charter had not occurred.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.074. PERPETUAL SUCCESSION. The municipality may act in perpetual succession as a body politic.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.075. AUTHORITY RELATING TO LAWSUITS. The municipality may plead and be impleaded in any court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.076. AUTHORITY RELATING TO PROPERTY. (a) The municipality may hold property, including any charitable or trust fund, that it receives by gift, deed, devise, or other manner.

(b) The municipality may provide that any property owned or held by the municipality is not subject to any kind of execution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.077. LIABILITY FOR DAMAGES. The municipality may adopt rules, as it considers advisable, governing the municipality's liability for damages caused to a person or property. The municipality may provide for its exemption from liability.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.078. PRESERVATION OF CERTAIN POWERS GRANTED BEFORE 1913. Powers granted before July 1, 1913, to a municipality by

general law or special law continue to be powers of the municipality after it adopts a home-rule charter if the powers are made a part of the charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 51.079. RESTRICTIONS APPLYING TO NONBINDING REFERENDUM. (a) A nonbinding referendum held by the municipality as a result of a petition by the voters of the municipality must be held on the same date of an election called by the governing body of the municipality on another question or for the election of one or more municipal officers.

(b) The referendum may be held on a date other than one described by Subsection (a) if:

(1) one or more of the persons signing the petition agrees in a writing filed with the governing body of the municipality to pay, before the 60th day after the date of the referendum, all costs incurred by the municipality in holding the referendum; and

(2) the persons agreeing to pay the costs execute a bond complying with Subsection (c).

(c) The bond must be:

(1) payable to, approved by, and filed with the governing body of the municipality;

(2) executed with a corporate surety authorized to do business in this state;

(3) in an amount the governing body estimates is necessary to cover the costs the municipality will incur in holding the referendum; and

(4) conditioned that the persons executing the bond will pay, before the 60th day after the date of the referendum, all costs incurred by the municipality in holding the referendum.

(d) This section does not apply to a referendum that is expressly authorized by the state constitution or a statute.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 6(a), eff. Aug. 28, 1989.

CHAPTER 52. ADOPTION OF MUNICIPAL ORDINANCES

SUBCHAPTER A. GENERAL PROVISIONS APPLICABLE TO TYPE A GENERAL-LAW MUNICIPALITIES

Sec. 52.001. SUBCHAPTER APPLICABLE TO TYPE A GENERAL-LAW MUNICIPALITY. This subchapter applies only to a Type A general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 52.002. STYLE. (a) The style of an ordinance of the municipality must be: "Be it ordained by the _____ (insert the name by which the governing body of the municipality is known, such as city council, board of aldermen, or city commission) of the _____ (insert the type of entity that the municipality is known as, such as city, town, or village) of (insert the name of the municipality)."

(b) The style may be omitted when the ordinance is published in a book or pamphlet.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 7, eff. Sept. 1, 2001.

Sec. 52.003. APPROVAL BY MAYOR AND RELATED CONDITIONS FOR ORDINANCE TO TAKE EFFECT. (a) Before an ordinance or resolution adopted by the governing body of the municipality may take effect, the ordinance or resolution must be placed in the office of the secretary of the municipality. The mayor shall sign the ordinances and resolutions that the mayor approves.

(b) If the mayor does not sign an ordinance or resolution before the fourth day after the date it is placed in the secretary's office and does not return the ordinance or resolution under Subsection (c), the ordinance or resolution takes effect as provided by law.

(c) If the mayor returns an ordinance or resolution to the governing body with a statement of objections before the fourth day after the date the ordinance or resolution is placed in the secretary's office, the governing body shall, on the return, reconsider the vote by which the ordinance or resolution was adopted. If a majority of the total number of members of the governing body, excluding the mayor, approve the ordinance or resolution on reconsideration and enter the votes in the journal of the governing body's proceedings, the ordinance or resolution may take effect.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 52.004. OFFICIAL NEWSPAPER. (a) As soon as practicable after the beginning of each municipal year, the governing body of the municipality shall contract, as determined by ordinance or resolution, with a public newspaper of the municipality to be the municipality's official newspaper until another newspaper is selected.

(b) The governing body shall publish in the municipality's official newspaper each ordinance, notice, or other matter required by law or ordinance to be published.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. PUBLICATION OF ORDINANCES

Sec. 52.011. TYPE A GENERAL-LAW MUNICIPALITY. (a) If a Type A general-law municipality adopts an ordinance that imposes a penalty, fine, or forfeiture, the ordinance, or a caption that summarizes the purpose of the ordinance and the penalty for violating the ordinance, shall be published in:

(1) every issue of the official newspaper for two days; or

(2) one issue of the newspaper if the official newspaper is a weekly paper.

(b) An affidavit by the printer or publisher of the official newspaper verifying the publication shall be filed in the office of the secretary of the municipality. In the courts of this state, the affidavit is prima facie evidence of the adoption of the ordinance and of the required publication.

(c) An ordinance required to be published by this section takes effect when the publication requirement is satisfied unless the ordinance provides otherwise. An ordinance that is not required to be published by this section takes effect when adopted unless the ordinance provides otherwise.

(d) If a Type A general-law municipality publishes its ordinances in pamphlet or book form, the publication in the official newspaper of an ordinance included in the pamphlet or book is not required if the ordinance was published previously in the official newspaper. A court shall admit without further proof an ordinance of

a Type A general-law municipality that is published in pamphlet or book form as authorized by the governing body if the ordinance was published previously in the official newspaper.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 194, Sec. 1, eff. Aug. 28, 1989.

Sec. 52.012. TYPE B GENERAL-LAW MUNICIPALITY. (a) Before an ordinance or a bylaw of a Type B general-law municipality may be enforced, the ordinance or bylaw, or a caption that summarizes the purpose of the ordinance or bylaw and the penalty for violating the ordinance or bylaw must be posted in three public places in the municipality or published in a newspaper that is published in the municipality. If no newspaper is published in the municipality, the ordinance, bylaw, or summary may be published in a newspaper with general circulation in the municipality.

(b) Unless the publication is in a weekly newspaper, the governing body must post or publish the ordinance, bylaw, or summary for at least two days. If the publication is in a weekly newspaper, the governing body shall publish the ordinance, bylaw, or summary in one issue.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 194, Sec. 2, eff. Aug. 28, 1989.

Sec. 52.013. HOME-RULE MUNICIPALITIES. (a) The governing body of a home-rule municipality may publish a caption of an adopted ordinance that summarizes the purpose of the ordinance and any penalty for violating the ordinance in lieu of a requirement in the municipality's charter that the text of the ordinance be published.

(b) If the charter of a home-rule municipality does not provide for the method of publication of an ordinance, the full text of the ordinance or a caption that summarizes the purpose of the ordinance and the penalty for violating the ordinance may be published at least twice in the municipality's official newspaper.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 53. CODE OF MUNICIPAL ORDINANCES

Sec. 53.001. ADOPTION OF CODE. (a) A municipality may adopt by ordinance a codification of its civil and criminal ordinances, together with appropriate penalties for the violation of the ordinances.

(b) On the adoption of the code, the secretary of the municipality shall record the code in the municipality's ordinance records.

(c) The code is effective on its adoption.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 53.002. PUBLICATION OF ADOPTION ORDINANCE. (a) Except as provided by Subsection (b), the ordinance adopting a code of municipal ordinances shall be published in the official publication of the municipality or in a newspaper published in the municipality or county as provided by law.

(b) If the municipality is a special-law municipality and its charter provides for the publication of both civil and criminal ordinances, the municipality shall publish the ordinance in compliance with its charter.

(c) It is not necessary to publish the code itself.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(d), eff. Aug. 28, 1989.

Sec. 53.003. SUBDIVISION OF CODE. A code of municipal ordinances may be subdivided into chapters, titles, articles, or sections at the discretion of the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 53.004. CHANGE OR REPEAL OF ORDINANCE. If a change in a municipality's form of government and designation of offices and officers necessitates the change or repeal of an ordinance or part of an ordinance being codified, the municipality may amend, omit, or repeal the ordinance in the codification to conform it to the municipality's present form of government without separately

reenacting, repealing, or amending the source ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 53.005. EFFECT OF CODIFICATION. (a) A municipal code of ordinances has the force and effect of an ordinance regularly adopted in accordance with law.

(b) The record of the code in the municipality's ordinance records is a record of the codified ordinances and establishes the content of those ordinances.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 53.006. PRINTED CODE AS EVIDENCE. (a) A municipality may have printed, under the direction of the governing body of the municipality, a copy of the code that is authenticated and approved by the mayor's signature and attested by the secretary of the municipality.

(b) In a court, the printed code is prima facie evidence of the existence and regular enactment of the ordinance adopting the code. A court shall admit the printed code in evidence without further proof.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 54. ENFORCEMENT OF MUNICIPAL ORDINANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 54.001. GENERAL ENFORCEMENT AUTHORITY OF MUNICIPALITIES; PENALTY. (a) The governing body of a municipality may enforce each rule, ordinance, or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation.

(b) A fine or penalty for the violation of a rule, ordinance, or police regulation may not exceed $500 except that:

(1) a fine or penalty for the violation of a rule, ordinance, or police regulation that governs fire safety, zoning, or public health and sanitation, other than the dumping of refuse, may not exceed $2,000; and

(2) a fine or penalty for the violation of a rule,

ordinance, or police regulation that governs the dumping of refuse may not exceed $4,000.

(c) This section applies to a municipality regardless of any contrary provision in a municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 7(a), 87(e), eff. Aug. 28, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 680 (H.B. 274), Sec. 1, eff. September 1, 2015.

Sec. 54.002. IMPOSITION OF FINE IN TYPE B GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type B general-law municipality may prescribe the fine for the violation of a municipal bylaw or ordinance.

(b) If a defendant in a Type B general-law municipality demands a jury trial, the fine may be imposed only on the verdict of a jury.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.003. REMISSION OF FINE BY TYPE A GENERAL-LAW MUNICIPALITY. On a two-thirds vote of the members present, the governing body of a Type A general-law municipality may remit a fine or a penalty, or a part of a fine or penalty, imposed or incurred under law or under an ordinance or resolution adopted in accordance with law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.004. PRESERVATION OF HEALTH, PROPERTY, GOOD GOVERNMENT, AND ORDER IN HOME-RULE MUNICIPALITY. A home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.005. NOTICES TO CERTAIN PROPERTY OWNERS. (a) A governmental entity that is required by statute, rule, regulation, or ordinance to send a notice to an owner of real property for the purpose of enforcing a municipal ordinance may include the following statement in the notice: "According to the real property records of _____ County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not." The notice must be delivered in person or by certified mail, return receipt requested.

(b) If a governmental entity sends a notice to the owner of the property to which the notice relates, as shown on or after the 10th day before the date notice is sent by the real property records of the county in which the property is located, and the record owner no longer owns the property, the record owner shall execute an affidavit provided with the notice by the governmental entity stating:

(1) that the record owner no longer owns the property; and

(2) the name and last known address of the person who acquired the property from the record owner.

(c) The record owner shall deliver the affidavit in person or by certified mail, return receipt requested, to the governmental entity not later than the 20th day after the date the record owner receives the notice.

(d) If the governmental entity receives an affidavit under Subsection (c), the governmental entity shall send the appropriate notice to the person named in the affidavit as having acquired the property. A notice sent under this subsection must include the statement authorized by Subsection (a).

(e) A governmental entity that receives an affidavit under Subsection (c) shall:

(1) maintain the affidavit on file for at least two years after the date the entity receives the affidavit; and

(2) deliver a copy of the affidavit to the chief appraiser of the appraisal district in which the property is located.

(f) A governmental entity is considered to have provided notice

to a property owner if the entity complies with the statute, rule, regulation, or ordinance under which the notice is sent and if it:

(1) complies with Subsection (a) and does not receive an affidavit from the record owner; or

(2) complies with Subsection (d) and does not receive an affidavit from the person to whom the notice was sent under Subsection (d).

(g) If a governmental entity complies with this section and does not receive an affidavit under Subsection (c), the record owner is presumed to be the owner of the property for all purposes to which the notice relates.

(h) For purposes of this section, "real property" does not include a mineral interest or royalty interest.

Added by Acts 1991, 72nd Leg., ch. 486, Sec. 1, eff. Aug. 26, 1991.

Sec. 54.006. NONSEVERABILITY OF CERTAIN CONSOLIDATED OFFENSES. Section 3.04(a), Penal Code, does not apply to two or more offenses consolidated or joined for trial under Section 3.02, Penal Code, if each of the offenses is:

(1) for the violation of an ordinance described by Section 54.012;

(2) punishable by fine only; and

(3) tried in a municipal court, regardless of whether the court is a municipal court of record.

Added by Acts 2001, 77th Leg., ch. 413, Sec. 4, eff. Sept. 1, 2001.

SUBCHAPTER B. MUNICIPAL HEALTH AND SAFETY ORDINANCES

Sec. 54.012. CIVIL ACTION. A municipality may bring a civil action for the enforcement of an ordinance:

(1) for the preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

(2) relating to the preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or

design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) for zoning that provides for the use of land or classifies a parcel of land according to the municipality's district classification scheme;

(4) establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

(5) implementing civil penalties under this subchapter for conduct classified by statute as a Class C misdemeanor;

(6) relating to dangerously damaged or deteriorated structures or improvements;

(7) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

(8) relating to the interior configuration, design, illumination, or visibility of business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification;

(9) relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality;

(10) relating to floodplain control and administration, including an ordinance regulating the placement of a structure, fill, or other materials in a designated floodplain;

(11) relating to animal care and control; or

(12) relating to water conservation measures, including watering restrictions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 343, Sec. 1, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 753, Sec. 3, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 472, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 135 (S.B. 654), Sec. 1, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1396 (H.B. 1554), Sec. 1, eff. September 1, 2013.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 12.001, eff. September 1, 2015.

Sec. 54.013. JURISDICTION; VENUE. Jurisdiction and venue of an action under this subchapter are in the district court or the county court at law of the county in which the municipality bringing the action is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.014. PREFERENTIAL SETTING. If the municipality submits to the court a verified motion that includes facts that demonstrate that a delay will unreasonably endanger persons or property, the court shall give a preference to the action brought by the municipality when setting cases filed under this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.015. PROCEDURE. (a) The only allegations required to be pleaded in an action brought under this subchapter are:

(1) the identification of the real property involved in the violation;

(2) the relationship of the defendant to the real property or activity involved in the violation;

(3) a citation to the applicable ordinance;

(4) a description of the violation; and

(5) a statement that this subchapter applies to the ordinance.

(b) The standard of proof is the same as for other suits for extraordinary relief.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.0155. EXPEDITED PROCEEDINGS FOR CERTAIN CIVIL ACTIONS.

(a) A court shall expedite any proceeding, including an appeal in accordance with Subsection (b), related to a suit brought under this subchapter for the enforcement of an ordinance adopted by a municipality with a population of 500,000 or more relating to dangerously damaged or deteriorated structures or improvements as described by Section 54.012(6).

(b) An appeal of a suit described by Subsection (a) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

Added by Acts 2019, 86th Leg., R.S., Ch. 1273 (H.B. 36), Sec. 2, eff. June 14, 2019.

Sec. 54.016. INJUNCTION. (a) On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the municipality may obtain against the owner or owner's representative with control over the premises an injunction that:

(1) prohibits specific conduct that violates the ordinance; and

(2) requires specific conduct that is necessary for compliance with the ordinance.

(b) It is not necessary for the municipality to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.017. CIVIL PENALTY. (a) In a suit against the owner or the owner's representative with control over the premises, the municipality may recover a civil penalty if it proves that:

(1) the defendant was actually notified of the provisions of the ordinance; and

(2) after the defendant received notice of the ordinance provisions, the defendant committed acts in violation of the ordinance or failed to take action necessary for compliance with the ordinance.

(b) A civil penalty under this section may not exceed $1,000 a day for a violation of an ordinance, except that a civil penalty under this section may not exceed $5,000 a day for a violation of an ordinance relating to point source effluent limitations or the discharge of a pollutant, other than from a non-point source, into a sewer system, including a sanitary or storm water sewer system, owned or controlled by the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 472, Sec. 2, eff. Sept. 1, 1993.

Sec. 54.018. ACTION FOR REPAIR OR DEMOLITION OF STRUCTURE. (a) The municipality may bring an action to compel the repair or demolition of a structure or to obtain approval to remove the structure and recover removal costs.

(b) In an action under this section, the municipality may also bring:

(1) a claim for civil penalties under Section 54.017; and

(2) an action in rem against the structure that may result in a judgment against the structure as well as a judgment against the defendant.

(c) The municipality may file a notice of lis pendens in the office of the county clerk. If the municipality files the notice, a subsequent purchaser or mortgagee who acquires an interest in the property takes the property subject to the enforcement proceeding and subsequent orders of the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1054 (S.B. 173), Sec. 1, eff. September 1, 2011.

Sec. 54.019. IMPRISONMENT; CONTEMPT. (a) A person is not subject to personal attachment or imprisonment for the failure to pay a civil penalty assessed under this subchapter.

(b) This subchapter does not affect the power of a court to imprison a person for contempt of valid court orders or the availability of remedies or procedures for the collection of a judgment assessing civil penalties. The remedies under Section

31.002, Civil Practice and Remedies Code, are preserved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 54.020. ABATEMENT OF FLOODPLAIN VIOLATION IN MUNICIPALITIES; LIEN. (a) In addition to any necessary and reasonable actions authorized by law, a municipality may abate a violation of a floodplain management ordinance by causing the work necessary to bring real property into compliance with the ordinance, including the repair, removal, or demolition of a structure, fill, or other material illegally placed in the area designated as a floodplain, if:

(1) the municipality gives the owner reasonable notice and opportunity to comply with the ordinance; and

(2) the owner of the property fails to comply with the ordinance.

(b) The municipality may assess the costs incurred by the municipality under Subsection (a) against the property. The municipality has a lien on the property for the costs incurred and for interest accruing at the annual rate of 10 percent on the amount due until the municipality is paid.

(c) The municipality may perfect the lien by filing written notice of the lien with the county clerk of the county in which the property is located. The notice of lien must be in recordable form and must state the name of each property owner, if known, the legal description of the property, and the amount due.

(d) The municipality's lien is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the municipality's lien attaches, if the mortgage lien was filed for record before the date the municipality files the notice of lien with the county clerk. The municipality's lien is superior to all other previously recorded judgment liens.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1396 (H.B. 1554), Sec. 2, eff. September 1, 2013.

SUBCHAPTER C. QUASI-JUDICIAL ENFORCEMENT OF HEALTH AND SAFETY ORDINANCES

Sec. 54.031. SUBCHAPTER APPLICABLE TO CERTAIN MUNICIPALITIES.

This subchapter applies to a municipality that by ordinance implements the subchapter.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1991, 72nd Leg., ch. 753, Sec. 5, eff. June 16, 1991.

Sec. 54.032. ORDINANCES SUBJECT TO QUASI-JUDICIAL ENFORCEMENT. This subchapter applies only to ordinances:

(1) for the preservation of public safety, relating to the materials or methods used to construct a building or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

(2) relating to the fire safety of a building or improvement, including provisions relating to materials, types of construction or design, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) relating to dangerously damaged or deteriorated buildings or improvements;

(4) relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents;

(5) relating to a building code or to the condition, use, or appearance of property in a municipality;

(6) relating to animal care and control; or

(7) relating to water conservation measures, including watering restrictions.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1997, 75th Leg., ch. 582, Sec. 1, eff. June 2, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 135 (S.B. 654), Sec. 2, eff. September 1, 2013.

Sec. 54.033. BUILDING AND STANDARDS COMMISSION. (a) The governing body of the municipality may provide for the appointment of a building and standards commission to hear and determine cases concerning alleged violations of ordinances.

(b) A commission appointed for the purpose of hearing cases

under this subchapter shall consist of one or more panels, each composed of at least five members, to be appointed for terms of two years.

(c) The appointing authority may remove a commission member for cause on a written charge. Before a decision regarding removal is made, the appointing authority must hold a public hearing on the matter if requested by the commission member subject to the removal action.

(d) A vacancy shall be filled for the unexpired term.

(e) The governing body, by charter or ordinance, may provide for the appointment of eight or more alternate members of the commission who shall serve in the absence of one or more regular members when requested to do so by the mayor or city manager. The alternate members serve for the same period and are subject to removal in the same manner as the regular members. A vacancy is filled in the same manner as a vacancy among the regular members.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 3, eff. Sept. 1, 2001.

Sec. 54.034. PROCEEDINGS OF COMMISSION PANELS. (a) All cases to be heard by the commission may be heard by any panel of the commission. A majority of the members of a panel must hear a case.

(b) A majority of the entire commission shall adopt rules for the entire commission in accordance with any ordinances adopted pursuant to this subchapter. The rules shall establish procedures for use in hearings, providing ample opportunity for presentation of evidence and testimony by respondents or persons opposing charges brought by the municipality or its building officials relating to alleged violations of ordinances.

(c) The governing body of the municipality by ordinance shall designate the appropriate official of the municipality who shall present all cases before the commission panels.

(d) Meetings of the commission panels shall be held at the call of the chairman of each panel and at other times as determined by the commission. All meetings of the commission and its panels shall be open to the public. Each chairman of a panel, or in the chairman's absence each acting chairman, may administer oaths and compel the

attendance of witnesses.

(e) Each commission panel shall keep minutes of its proceedings showing the vote of each member on each question or the fact that a member is absent or fails to vote. Each commission panel shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the office of the commission as public records.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 2, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 5, eff. Sept. 1, 2001.

Sec. 54.035. NOTICE. (a) Except as provided by Subsections (a-1) and (a-2), notice of all proceedings before the commission panels must be given:

(1) by personal delivery, by certified mail with return receipt requested, or by delivery by the United States Postal Service using signature confirmation service, to the record owners of the affected property, and each holder of a recorded lien against the affected property, as shown by the records in the office of the county clerk of the county in which the affected property is located if the address of the lienholder can be ascertained from the deed of trust establishing the lien or other applicable instruments on file in the office of the county clerk; and

(2) to all unknown owners, by posting a copy of the notice on the front door of each improvement situated on the affected property or as close to the front door as practicable.

(a-1) Notice to a condominium association of a proceeding before a commission panel relating to a condominium, as defined by Section 81.002 or 82.003, Property Code, located wholly or partly in a municipality with a population of more than 1.9 million must be served by personal service, by certified mail, return receipt requested, or by the United States Postal Service using signature confirmation service, to the registered agent of the unit owners' association.

(a-2) Notice to an owner of a unit of a condominium, as defined by Section 81.002 or 82.003, Property Code, located wholly or partly in a municipality with a population of more than 1.9 million must be given in accordance with Section 82.118, Property Code.

(b) The notice must be posted and either personally delivered or mailed on or before the 10th day before the date of the hearing before the commission panel and must state the date, time, and place of the hearing. In addition, the notice must be published in a newspaper of general circulation in the municipality on one occasion on or before the 10th day before the date fixed for the hearing.

(c) The commission may file notice of a proceeding before a commission panel in the Official Public Records of Real Property in the county in which the affected property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the county clerk, a legal description of the affected property, and a description of the proceeding. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the proceeding on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice.

(d) A municipality must exercise due diligence to determine the identity and address of a property owner, lienholder, or registered agent to whom the municipality is required to give notice.

(e) A municipality exercises due diligence in determining the identity and address of a property owner, lienholder, or registered agent when it follows the procedures for service under Section 82.118, Property Code, or searches the following records:

(1) county real property records of the county in which the property is located;

(2) appraisal district records of the appraisal district in which the property is located;

(3) records of the secretary of state, if the property owner, lienholder, or registered agent is a corporation, partnership, or other business association;

(4) assumed name records of the county in which the property is located;

(5) tax records of the municipality; and

(6) utility records of the municipality.

(f) When a municipality mails a notice in accordance with this section to a property owner, lienholder, or registered agent and the United States Postal Service returns the notice as "refused" or

"unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 3, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 6, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 370 (S.B. 352), Sec. 1, eff. June 15, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 4, eff. September 1, 2009.

Sec. 54.036. FUNCTIONS. A commission panel may:

(1) order the repair, within a fixed period, of buildings found to be in violation of an ordinance;

(2) declare a building substandard in accordance with the powers granted by this subchapter;

(3) order, in an appropriate case, the immediate removal of persons or property found on private property, enter on private property to secure the removal if it is determined that conditions exist on the property that constitute a violation of an ordinance, and order action to be taken as necessary to remedy, alleviate, or remove any substandard building found to exist;

(4) issue orders or directives to any peace officer of the state, including a sheriff or constable or the chief of police of the municipality, to enforce and carry out the lawful orders or directives of the commission panel;

(5) determine the amount and duration of the civil penalty the municipality may recover as provided by Section 54.017.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 4, eff. Sept. 1, 1993.

Sec. 54.037. CIVIL PENALTY. (a) A determination made under Section 54.036(5) is final and binding and constitutes prima facie evidence of the penalty in any court of competent jurisdiction in a civil suit brought by the municipality for final judgment in accordance with the established penalty.

(b) To enforce any civil penalty under this subchapter, the

municipal secretary or clerk must file with the district clerk of the county in which the municipality is located, a certified copy of the order of the commission panel establishing the amount and duration of the penalty. No other proof is required for a district court to enter final judgment on the penalty.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 5, eff. Sept. 1, 1993.

Sec. 54.038. VOTE. A majority vote of the members voting on a matter is necessary to take any action under this subchapter and any ordinance adopted by the municipality in accordance with this subchapter.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 6, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 7, eff. Sept. 1, 2001.

Sec. 54.039. JUDICIAL REVIEW. (a) Any owner, lienholder, or mortgagee of record jointly or severally aggrieved by any decision of a commission panel may present a petition to a district court, duly verified, setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be presented to the court within 30 calendar days after the date a copy of the final decision of the commission panel is personally delivered, mailed by first class mail with certified return receipt requested, or delivered by the United States Postal Service using signature confirmation service, to all persons to whom notice is required to be sent under Section 54.035. The commission panel shall deliver or mail that copy promptly after the decision becomes final. In addition, an abbreviated copy of the order shall be published one time in a newspaper of general circulation in the municipality within 10 calendar days after the date of the delivery or mailing of the copy as provided by this subsection, including the street address or legal description of the property; the date of the hearing, a brief statement indicating the results of the order, and instructions stating where a complete copy of the order may be obtained, and, except in a municipality with a population of 1.9 million or more, a copy shall be filed in the office of the municipal secretary or

clerk.

(b) On presentation of the petition, the court may allow a writ of certiorari directed to the commission panel to review the decision of the commission panel and shall prescribe in the writ the time, which may not be less than 10 days, within which a return on the writ must be made and served on the relator or the relator's attorney.

(c) The commission panel may not be required to return the original papers acted on by it. It is sufficient for the commission panel to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ.

(d) The return must concisely set forth other facts as may be pertinent and material to show the grounds for the decision appealed from and shall be verified.

(e) The allowance of the writ does not stay proceedings on the decision appealed from.

(f) The district court's review shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

(g) Costs may not be allowed against the commission panel.

(h) If the decision of the commission panel is affirmed or not substantially reversed but only modified, the district court shall allow to the municipality all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners as well as all persons found to be in occupation of the property subject to the proceedings before the commission panel.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 7, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 413, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 701, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 370 (S.B. 352), Sec. 2, eff. June 15, 2007.

Sec. 54.040. LIEN; ABSTRACT. (a) An order issued under Section 54.036, including any civil penalties assessed under Section 54.036(5), is enforceable in the same manner as provided in Sections

214.001(k), (m), (n), and (o). An abstract of judgment shall be ordered against all parties found to be the owners of the subject property or in possession of that property.

(b) A lienholder does not have standing to bring a proceeding under Section 54.039 on the ground that the lienholder was not notified of the proceedings before the commission panel or was unaware of the condition of the property, unless the lienholder had first appeared before the commission panel and entered an appearance in opposition to the proceedings.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 8, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1141 (H.B. 2647), Sec. 1, eff. September 1, 2009.

Sec. 54.041. COMMISSION PANEL DECISION FINAL. If no appeals are taken from the decision of the commission panel within the required period, the decision of the commission panel is, in all things, final and binding.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 836, Sec. 9, eff. Sept. 1, 1993.

Sec. 54.042. MUNICIPAL COURT PROCEEDING NOT AFFECTED. This subchapter does not affect the ability of a municipality to proceed under the jurisdiction of the municipal court.

Added by Acts 1989, 71st Leg., ch. 1113, Sec. 1, eff. Aug. 28, 1989.

Sec. 54.043. ALTERNATIVE ADJUDICATION PROCESSES. A municipality by ordinance may adopt a civil adjudication process, as an alternative to the enforcement process prescribed by the other provisions of this subchapter, for the enforcement of ordinances described by Section 54.032. The alternative process must contain provisions relating to notice, the conduct of proceedings, permissible orders, penalties, and judicial review that are similar to the provisions of this subchapter.

Added by Acts 1997, 75th Leg., ch. 582, Sec. 2, eff. June 2, 1997.

Sec. 54.044. ALTERNATIVE PROCEDURE FOR ADMINISTRATIVE HEARING. (a) As an alternative to the enforcement processes described by this subchapter, a municipality by ordinance may adopt a procedure for an administrative adjudication hearing under which an administrative penalty may be imposed for the enforcement of an ordinance described by Section 54.032 or adopted under Section 214.001(a)(1).

(b) A procedure adopted under this section must entitle the person charged with violating an ordinance to a hearing and must provide for:

(1) the period during which a hearing shall be held;

(2) the appointment of a hearing officer with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents; and

(3) the amount and disposition of administrative penalties, costs, and fees.

(c) A municipal court may enforce an order of a hearing officer compelling the attendance of a witness or the production of a document.

(d) A citation or summons issued as part of a procedure adopted under this section must:

(1) notify the person charged with violating the ordinance that the person has the right to a hearing; and

(2) provide information as to the time and place of the hearing.

(e) The original or a copy of the summons or citation shall be kept as a record in the ordinary course of business of the municipality and is rebuttable proof of the facts it states.

(f) The person who issued the citation or summons is not required to attend a hearing under this section.

(g) A person charged with violating an ordinance who fails to appear at a hearing authorized under this section is considered to admit liability for the violation charged.

(h) At a hearing under this section, the hearing officer shall issue an order stating:

(1) whether the person charged with violating an ordinance is liable for the violation; and

(2) the amount of a penalty, cost, or fee assessed against

the person.

(i) An order issued under this section may be filed with the clerk or secretary of the municipality. The clerk or secretary shall keep the order in a separate index and file. The order may be recorded using microfilm, microfiche, or data processing techniques.

(j) An order issued under this section against a person charged with an ordinance violation may be enforced by:

(1) filing a civil suit for the collection of a penalty assessed against the person; and

(2) obtaining an injunction that:

(A) prohibits specific conduct that violates the ordinance; or

(B) requires specific conduct necessary for compliance with the ordinance.

(k) A person who is found by a hearing officer to have violated an ordinance may appeal the determination by filing a petition in municipal court before the 31st day after the date the hearing officer's determination is filed. An appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond with an agency designated for that purpose by the municipality.

Added by Acts 2001, 77th Leg., ch. 413, Sec. 9, eff. Sept. 1, 2001.

SUBTITLE E. CONSOLIDATION AND ABOLITION OF MUNICIPALITIES

CHAPTER 61. CONSOLIDATION OF MUNICIPALITIES

Sec. 61.001. AUTHORITY TO CONSOLIDATE. The following municipalities may consolidate under one government in the manner provided by this chapter:

(1) two or more contiguous municipalities in the same county; or

(2) two noncontiguous municipalities located in the same county if:

(A) the distance between the municipalities is less than 2.5 miles; and

(B) each municipality is located within one mile of an international boundary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 473 (H.B. 2212), Sec. 1, eff. June 16, 2007.

Sec. 61.002. CONSOLIDATION ELECTION. A consolidation of municipalities under this chapter must be approved at an election ordered and held for that purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 61.003. PETITIONS TO CONSOLIDATE; ELECTION ORDERS. (a) If at least 100 qualified voters of each of two or more municipalities petition the governing bodies of their respective municipalities to order a consolidation election, the governing body of each municipality may order an election on the proposition in the sequence prescribed by Section 61.004. However, if a petition is signed by the number of qualified voters that equals 15 percent or more of the total vote cast at the most recent general election for municipal officials in a municipality, the governing body of the municipality shall order an election on the proposition, except as otherwise provided by this chapter.

(b) An election under this section shall be held at the municipality's regular polling places.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 61.004. SEQUENCE OF ELECTIONS; ELECTION DATES. (a) The municipality having the smallest population among the municipalities voting on the consolidation issue shall hold the first consolidation election. The governing body of a municipality holding an election shall order the election within 45 days after the date the petition is filed.

(b) If a majority of the votes received in an election are in favor of consolidation, each larger municipality in turn, in inverse order of their size of population, may or shall, as provided by Section 61.003, order a consolidation election. The governing body of a municipality holding an election shall order the election within 45 days after the date the election returns from the next smaller municipality are canvassed.

(c) If a majority of the votes received in a consolidation election in any municipality are not in favor of consolidation, a larger municipality that has not held an election on the consolidation issue may not order a consolidation election.

(d) If an election contest is timely filed in a consolidation election, the governing body of each larger municipality that has not held its consolidation election may delay holding the election until the election contest is finally determined.

(e) In the alternative to the procedures provided in Subsections (a)-(d), the governing body of each municipality holding a consolidation election may order the election to be held on the same election date.

(f) A consolidation election shall be held on the first authorized uniform election date prescribed by the Election Code that occurs after the period required by Section 3.005, Election Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 630 (H.B. 629), Sec. 1, eff. June 15, 2007.

Sec. 61.005. CONDUCT OF ELECTION. A consolidation election shall be conducted under the ordinances of the municipality holding the election and in conformity with the laws of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 61.006. APPROVAL AND REGISTRATION OF CONSOLIDATION. (a) If a majority of the votes received in the consolidation election in each municipality favor consolidation, the election returns shall be recorded in the records of the respective municipalities.

(b) The consolidation is effective when the election returns are recorded.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 61.007. CERTIFICATION OF CONSOLIDATION. If a majority of the votes received in each municipality favor consolidation, as soon

as practicable after the returns are made, the mayor or chief executive officer in each municipality shall certify to the secretary of state an authenticated copy of the returns under the municipality's seal showing the approval of the consolidation by the voters of the municipality. The secretary of state shall file the authenticated copy and record it in a separate book the secretary of state shall keep for the purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 61.008. EFFECT OF CONSOLIDATION. In a consolidation under this chapter, the smaller municipalities:

(1) adopt the charter, ordinances, and, unless otherwise provided at the time of the consolidation, the name of the largest municipality;

(2) are included in the territory of the largest municipality; and

(3) are subject to the laws and regulations of the largest municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 61.009. MERGER OF CONSOLIDATED MUNICIPALITIES. (a) After a consolidation is effective, the records, public property, money, credits, accounts, and all other assets of the smaller of the consolidated municipalities shall be turned over to the officers of the largest municipality, who shall remain in office for the remainder of their terms as the officials of the consolidated municipality.

(b) The offices of the smaller municipalities are abolished, and the persons holding the offices at the time the consolidation is effective are not entitled to receive further compensation.

(c) The consolidated municipality assumes all outstanding liabilities of the municipalities that are consolidated.

(d) If at the time a consolidation is effective a municipality has bond funds voted for public improvements that are not appropriated or subject to contract, the money shall be kept in a separate fund and used for public improvements in the territory for which the bonds were voted. The funds may not be diverted to any

other purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 61.010. INTERVAL BETWEEN ELECTIONS. If a majority of the votes in a consolidation election in any municipality do not favor consolidation, another consolidation election involving the same municipalities may not be held within two years after the date the consolidation proposition was defeated.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 62. ABOLITION OF MUNICIPALITIES

SUBCHAPTER A. AUTHORITY AND PROCEDURE

Sec. 62.001. ABOLITION OF CORPORATE EXISTENCE. A special-law municipality with 10,000 or fewer inhabitants or a general-law municipality may abolish its corporate existence as provided by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.002. PETITION AND ELECTION. (a) The mayor of the municipality shall order an election on the question of abolishing the municipality's corporate existence if a petition requesting that the election be held is submitted to the mayor and is signed by at least 400 qualified voters of the municipality. However, if a majority of the qualified voters of the municipality is less than 400, the petition must be signed by at least two-thirds of the qualified voters of the municipality. If the municipality has less than 400 qualified voters and has no municipal debt and does not provide services that would be otherwise provided by the county, the petition must be signed by at least one-fourth of the qualified voters in the municipality.

(b) The mayor shall order the election to be held on the same date as the next general election at which the office of mayor is to be filled.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 2001, 77th Leg., ch. 402, Sec. 8, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 329 (H.B. 2840), Sec. 1, eff. June 15, 2007.

Sec. 62.003. ELECTION ORDER; CONDUCT OF ELECTION. The election shall be ordered, conducted, and canvassed in the same manner as is required for an election to incorporate the municipality, except that the mayor of the municipality shall perform all acts that would be performed by the county judge.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.004. DECLARATION OF ABOLITION; CERTIFICATION. If a majority of the votes received in an abolition election are for abolition, the mayor of the municipality shall declare the municipality abolished and certify the abolition to the commissioners court of the county in which the municipality is located. The commissioners court shall enter the abolition order in its minutes, at which time the municipality ceases to exist.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. RECEIVERSHIPS

Sec. 62.041. APPLICATION FOR AND APPOINTMENT OF RECEIVER. (a) Any creditor of a validly incorporated municipality that abolishes its corporate existence may apply to a district judge in the district in which the municipality is located to appoint a receiver for the municipality.

(b) After an application is filed and proper notice of the application is posted, the judge hearing the application in term time or vacation may appoint a suitable person as receiver.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.042. NOTICE OF APPLICATION. Before a judge may appoint a receiver, written notice stating the substance of the application

for the appointment of the receiver and when and before whom the application will be heard must be posted at three or more public places in the county in which the municipality is located, one of which must be in the municipality itself.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.043. BOND. (a) A judge appointing a receiver shall set the receiver's bond at an amount that is at least twice the probable amount of the indebtedness or the value of the property of the municipality.

(b) The bond must be conditioned that the receiver will faithfully perform the duties of receiver and that the receiver will pay and deliver all money and property acquired as receiver to the parties entitled to the money or property.

(c) The bond must be approved by the judge who appoints the receiver.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.044. FILING AND RECORDING ORDER AND BOND. The district clerk of the county in which the abolished municipality is located shall file the receiver's bond and the order appointing the receiver with the minutes of the court, and the clerk shall record the order and the bond in the minutes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.045. DUTIES AND AUTHORITY. (a) After the receiver gives the required bond, and after the bond is filed and recorded, the receiver shall:

(1) take control of all real and personal property of the abolished municipality, including money, minute books, ordinances, and similar property, but not including property that pertains to the public schools or that is devoted exclusively to public use; and

(2) in the next term of the court in which the receivership is pending, return to the court an inventory of the property taken by the receiver.

(b) Under a court order, or an order of the judge if the court is in vacation, the receiver may bring suit against any person in possession of the property of an abolished municipality or who is indebted to it in the same manner as the municipality could if it were still incorporated.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.046. COMPENSATION. A court appointing a receiver under this subchapter may authorize compensation for the receiver.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. PAYMENT OF INDEBTEDNESS AND DISPOSITION OF ASSETS UNDER RECEIVERSHIP

Sec. 62.081. PRESENTATION OF CLAIMS. A person who has a claim against an abolished municipality must present a verified statement of the amount of the claim to the receiver within six months after the date the receiver is appointed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.082. NOTICE OF CLAIMS. (a) A receiver may not allow or approve a claim or account against an abolished municipality until notice of presentment of the claim or account is given by publication in a newspaper in the municipality in which the claim is filed or presented for four consecutive weeks or, if a newspaper is not published in the municipality, by posting the notice for four consecutive weeks at the door of the courthouse of the county in which the municipality is located.

(b) The published or posted notice must state:

(1) the name and residence address of the creditor;

(2) the amount and date of the claim and account; and

(3) the purpose for which the claim or account was incurred.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.083. APPROVAL OF CLAIMS. If the receiver of an abolished municipality determines a claim is correct, the receiver shall mark it as allowed and file it in the district court. The court shall also approve the claim at its next regular term if no protest is filed. On approval by the court, the claim is a valid debt of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.084. COMPLETE OR PARTIAL DISALLOWANCE OF CLAIM. (a) If a receiver of an abolished municipality determines that a claim is partially or completely unjust, the receiver shall endorse his finding on the claim and return it to the claimant.

(b) A claimant who accepts the findings of the receiver may file the claim with the district court. The court shall act on the part of the claim allowed in the same manner as other claims.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.085. TAXPAYER PROTEST. (a) A district court may not approve a claim against an abolished municipality until the full amount of the claim is established by the judgment of a court of competent jurisdiction if a taxpayer of the municipality:

(1) files a protest against the claim in the district court; and

(2) files a bond that is conditioned that the taxpayer will pay all costs of suit if the claimant fully establishes his claim by the judgment of a state court with jurisdiction of the claim.

(b) The taxpayer's bond must be approved by the court in which it is filed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.086. SUITS TO ESTABLISH CLAIMS. (a) A claimant may bring a suit against the receiver of an abolished municipality to establish a claim the receiver completely or partially disallowed or to establish a claim protested by a taxpayer.

(b) The receiver shall assert all applicable legal defenses

against a suit under this section.

(c) The court trying a suit under this section may hear and consider any material defense against the claim except limitation, even if the claim previously has been reduced to judgment. However, the court shall consider a prior judgment establishing the claim as prima facie evidence of the justness of the claim.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.087. ALLOWANCE AND APPROVAL OF ESTABLISHED CLAIMS. A receiver of an abolished municipality shall allow, and a district court shall approve, a claim that is established by a judgment against the receiver.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.088. LIABILITY FOR COSTS. (a) A claimant in a suit against the receiver of an abolished municipality who rejects part of the claimant's claim is liable for the costs of the suit unless the claimant establishes the claim in an amount greater than the amount allowed by the receiver.

(b) A claimant in a suit to establish his claim because of a taxpayer protest under Section 62.085 is liable for the costs of the suit unless the claimant obtains a judgment for the full amount he asked the district court to approve.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.089. LIMITATIONS. (a) Limitations do not begin to run, do not expire, and may not be pled to bar a claim against an abolished municipality until six months after the date a receiver is appointed for the municipality.

(b) A claimant may not bring a suit against the receiver of an abolished municipality on a claim that is partially or completely disallowed under Section 62.084 or against which a taxpayer files a protest under Section 62.085 after six months after the date the claim is disallowed or the protest is filed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.090. PAYMENT OF CLAIMS. The court in which the receivership of an abolished municipality is pending shall:

(1) provide for the payment of the claims legally established against the municipality;

(2) determine the priority of the claims;

(3) order the sale of all property held by the receiver that is subject to sale for the satisfaction of the municipality's indebtedness; and

(4) direct the receiver to pay the claims legally established against the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.091. ADDITIONAL TAX. (a) If the money of an abolished municipality and the proceeds from the sale of its property are insufficient to pay its indebtedness, at the request of any creditor the court in which the receivership is pending at its first regular term each year shall levy a tax on all real and personal property that is not exempt from taxation and that on the first day of January of the preceding year is located within the corporate limits of the municipality as those limits previously existed.

(b) The court shall levy a tax sufficient to discharge the municipality's indebtedness, except that the court may not set the tax at a rate that is greater than the rate allowed by law for such purposes in municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.092. ASSESSMENT AND COLLECTION OF TAX. (a) The tax assessor-collector for the county in which an abolished municipality is located shall assess and collect a tax ordered under Section 62.091.

(b) The tax assessor-collector shall pay the taxes collected to the receiver for the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.093. DELINQUENT TAXES. A receiver for an abolished municipality may bring suit against a delinquent taxpayer and enforce a lien against the taxpayer's property in the same manner as if the corporate existence of the municipality had not been abolished and the levy and assessment had been made by the municipality's governing body and assessor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.094. DISTRIBUTION OF ASSETS. (a) The compensation of the receiver, court costs, and expenses have priority over other claims against an abolished municipality and shall be paid first out of money on hand or collected.

(b) Money collected each year from taxes shall be paid pro rata on claims according to their priorities until all claims established against the municipality and all costs and expenses are paid in full.

(c) After the final settlement of the receivership, the receiver shall deliver money or other property remaining to the trustees or other officers in charge of any public school district located completely within the boundaries of the abolished municipality, and the money or property shall be used for the benefit of the school district. If there is no such public school district, the receiver shall deliver the remaining money or property to the county in which the municipality is located. The money shall be deposited in the general fund of the county, and the property shall be used for the benefit of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. SCHOOLS AND PUBLIC PROPERTY

Sec. 62.121. ADMINISTRATION OF PUBLIC SCHOOLS. If at the time a municipality is abolished under this chapter the public schools of the municipality are managed by trustees appointed or elected by the voters of the municipality or by its governing body, the trustees shall continue to manage the schools for the remainder of their appointive or elective term.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.122. TAXES. A receiver for an abolished municipality shall collect all unpaid taxes levied before the date of abolition for municipal or school purposes, together with any penalties or interest that is due. The receiver shall pay the part of the taxes levied for maintaining the public schools to the trustees of the school district, who shall use the taxes for the purpose for which they were levied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.123. PUBLIC PROPERTY. If a municipality abolished under this chapter owns public buildings, public parks, public works, or other public property on the date of abolition and the property is not sold or disposed of under this chapter, the commissioners court shall manage and control the property for the purposes for which the property was originally used and intended. In managing and controlling the property, the commissioners court may exercise the powers originally given by charter to the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. PAYMENT OF INDEBTEDNESS AND DISPOSITION OF ASSETS BY CORPORATE OFFICERS OR TRUSTEES

Sec. 62.161. SETTLEMENT BY CORPORATE OFFICERS. (a) If a municipality or de facto municipality that has indebtedness outstanding is abolished, declared void by a court of competent jurisdiction, or ceases to operate and exercise municipal functions, the municipality's officers at the time the municipality is dissolved or ceases to function shall:

(1) take control of the municipality's property;

(2) sell and dispose of the municipality's property; and

(3) settle the debts owed by the municipality.

(b) For the purpose of settling the debts of the municipality, the former municipal officers may levy and collect a tax on the residents of the municipality in the same manner as the municipality

could have done.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.162. SETTLEMENT BY TRUSTEES. (a) If a municipality's officers fail or refuse to settle its affairs under Section 62.161, on the petition of any resident taxpayer of the municipality or any holder of an evidence of its indebtedness, a court with jurisdiction and located in the county in which the municipality is located shall appoint three trustees to take control of the municipality's property, dispose of the property, and settle its debts.

(b) The trustees have the same powers that municipal officers have under this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 62.163. ACTION FOR DEBT. (a) The holder of an indebtedness against a municipality to which Section 62.161 applies may bring a suit to establish the indebtedness in any court in this state with jurisdiction in the county in which the municipality is located. The court may render judgment in the suit against the municipality as fully as if the municipality had not been abolished or its organization declared void. The status of the municipality remains the same insofar as it affects the holders of its indebtedness until the indebtedness is paid.

(b) The municipality may be served with process in the suit by serving the citation on a person who was or who acted as the mayor, the secretary, or the treasurer of the municipality at the time of the municipality's abolition.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER F. ABOLITION OF MUNICIPALITY CEASING TO HAVE RESIDENTS

Sec. 62.201. PETITION FOR ABOLITION. After the 120th day after the date a municipality ceases to have any persons residing within its boundaries, the owners of a majority of the land within the municipality may file a petition with a district court of the county in which all or a majority of the land in the municipality is located

requesting the court to abolish the municipality.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 8(a), eff. Aug. 28, 1989.

Sec. 62.202. HEARING. (a) Before the 60th day after the date the petition is filed, the district judge of the court shall hold a hearing on the petition. Members of the public who wish to give testimony on the matter of abolishing the municipality must be given the opportunity to do so at the hearing.

(b) The district judge must publish notice of the hearing in a newspaper of general circulation in the county in which all or a majority of the land in the municipality is located. The notice must be published before the 10th day before the date of the hearing. The notice must state:

(1) the date, time, and place of the hearing;

(2) the purpose of the hearing; and

(3) the name of the municipality that is the subject of the hearing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 8(a), eff. Aug. 28, 1989.

Sec. 62.203. ABOLITION ORDER. At the conclusion of the hearing or within 10 days after the date the hearing is concluded, the district judge shall issue an order declaring the municipality to be abolished if the judge finds that a valid petition was filed and no persons reside within the municipality. The municipality ceases to exist on the date the order is issued.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 8(a), eff. Aug. 28, 1989.

Sec. 62.204. NOTICE TO COMMISSIONERS COURT. On the issuance of the order abolishing the municipality, the district judge shall certify the abolition to the commissioners court of the county in which all or a majority of the land in the abolished municipality is located.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 8(a), eff. Aug. 28, 1989.

TITLE 3. ORGANIZATION OF COUNTY GOVERNMENT
SUBTITLE A. ORGANIZATION OF COUNTIES
CHAPTER 71. CREATION OF COUNTIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. CORPORATE AND POLITICAL BODY. A county is a corporate and political body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.002. PLACE FOR HOLDING TERMS OF COURTS IN NEW COUNTY BEFORE COUNTY SEAT IS DESIGNATED. Until the county seat of a new county is established, the terms of the district, county, and commissioners courts of the county shall be held at the place designated by the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. ELECTION FOR DETACHMENT OR ATTACHMENT OF COUNTY TERRITORY

Sec. 71.011. APPLICATION AND ELECTION. (a) A part of a county may not be detached from one county and attached to another county unless the proposition for the change is approved by a majority of the voters in both counties as required by Article IX, Section 1, of the Texas Constitution.

(b) On the written application of at least 50 qualified voters of a county, the county judge of the county shall order an election to consider detaching from the county a part of its territory or to consider attaching to the county a part of another county.

(c) The application must designate the part by a metes and bounds description and must show:

(1) the number of acres contained within the part;

(2) the number of acres remaining in the county from which the part is detached; and

(3) the distance on a direct line from the county seat of the county from which the part is detached to the nearest point on the boundary of the detached territory.

(d) The notice of the election must contain substantially the information included in the application and the election order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.012. ELECTION RESULTS. (a) The returns of each election shall be made to the county judge of the county in which the election is held.

(b) The county judge shall:

(1) estimate the vote;

(2) make duplicate statements of the estimate; and

(3) officially certify the statements.

(c) The county judge shall seal in an envelope one copy of the certified statement and a certified copy of the voters' application for the election. The judge shall write the judge's name across the seal of the envelope and shall endorse the envelope as "Election returns of _____ County." The judge shall send the material by mail or other safe conveyance to the speaker of the house of representatives at the State Capitol so that the material will be received as early as practicable during the next legislative session.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.013. SUBSEQUENT ELECTION. If the election is held in a county and the proposition to detach part of the county is defeated at the election, a subsequent election for the same purpose may not be ordered or held within five years after the date of the initial election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. ORGANIZATION OF COUNTIES

Sec. 71.021. ATTACHMENT OF COUNTIES. (a) Until a new county is legally organized, the territory of the new county remains subject to the county from which it is taken.

(b) A legally organized county that, for any reason, loses its county organization is attached to the organized county whose county seat is closest to that of the disorganized county. The attachment is made for judicial and surveying purposes and for the registration of a deed, mortgage, or other instrument that is required or permitted by law to be recorded. The disorganized county remains

attached until it is again legally organized.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.022. ESTABLISHMENT OF PRECINCTS. (a) If a new county is established, the commissioners court of the county from which the largest part of the territory of the new county is taken shall, not later than one month before the date of the next scheduled general election:

(1) divide the new county into convenient precincts for the election of justices of the peace and constables; and

(2) select convenient polling places in the new county.

(b) The commissioners court shall direct the county clerk to make a record of its actions under this section and shall transmit a copy of that record to the person who is elected county judge of the new county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.023. ELECTION OF COUNTY OFFICERS. (a) Before one month before the date of the next scheduled general election after a new county is established, the county judge of the county from which the new county is taken shall order an election for county officers to be held in the new county on the general election day. The order shall specify the number of precincts, the precinct boundaries, and the officers to be elected in the new county.

(b) The county judge shall appoint a presiding officer to hold the election at each designated place in the new county. Each presiding officer shall hold the election in accordance with the state election laws and shall make the returns to the county judge who ordered the election.

(c) The county judge shall open and examine the returns, issue certificates of election to the persons elected, and approve the bonds of the elected officers.

(d) If the office of county judge is vacant, any two of the county commissioners may perform the duties required of the county judge under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.024. ORGANIZATION OF ATTACHED COUNTY. On the written petition of at least 75 qualified voters who are residents of a disorganized county, the commissioners court of the county to which the disorganized county is attached for judicial or other purposes shall legally organize the county without delay in the manner provided by this subchapter for the organization of new counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.025. DELIVERY TO NEW OFFICERS. The officers of a county from which a new county has been created or to which a newly organized county has been attached and all other persons who have in their possession books, records, maps, or other property that belongs to the new county shall deliver the material to the proper officers of the new county within five days after the date on which the new officers legally qualify.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. APPORTIONMENT OF COUNTY INDEBTEDNESS

Sec. 71.031. LIABILITY OF NEW COUNTY. (a) A new county is liable for a proportionate share of the indebtedness of the county from which it was created.

(b) The new county's liability is the amount that bears the same ratio to the property value in the territory excised from the original county that the total indebtedness of the original county at the time of the creation of the new county bears to the total property value in the original county, including the value of the property in the territory excised from the original county.

(c) After organization of the new county, the commissioners court of the new county shall levy a tax on all property in the new county in order to pay the proportionate share of the indebtedness at the same tax rate as that set by the commissioners court of the original county for the payment of the debt.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.032. SUIT TO ENFORCE PAYMENT OF LIABILITY. (a) A county from which a new county has been created may sue to recover the new county's share of the original county's indebtedness. The suit may be brought in a district court of either county.

(b) If a suit is brought to enforce payment of the indebtedness created by the original county or of the excised territory's proportionate share of the indebtedness, the tax assessment rolls of the original county for the year in which the new county was created are conclusive evidence of the property remaining in the original county, the property in the excised territory, and the value of that property as of the date of the creation of the new county. However, if the new county was organized and made assessment rolls for the year in which it was created, those assessment rolls are conclusive evidence of the property in the new county and the taxable value of that property as of the date of the creation of the new county, and the assessment rolls of the original county for that year are conclusive evidence of the property remaining in the original county and the value of that property as of the date of the creation of the new county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.033. TAX TO PAY INDEBTEDNESS. (a) If the original county recovers in a suit brought under Section 71.032(a), the court that renders the judgment shall order the commissioners court of the newly created county to levy a special tax on all the property in the territory taken from the original county in an amount that is sufficient to satisfy the judgment.

(b) If the first levy is insufficient to satisfy the judgment, the commissioners court shall make annual levies until the judgment is satisfied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.034. LIABILITY OF ATTACHED TERRITORY. (a) If a part of a county is detached from a county and attached to another county, the attached territory remains liable for its proportionate share of the indebtedness of the county from which it was detached.

(b) The commissioners court of the county to which the

territory is attached shall levy a tax in the territory at a rate sufficient to pay the territory's share of the indebtedness.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 71.035. COUNTY BONDS HELD BY SCHOOL FUND. (a) The comptroller of public accounts shall apportion between a county and a new county created from territory detached from the original county the bonds, and the coupons due on those bonds, that are held by the permanent school fund if the bonds were legally issued by the original county before the new county was created. The comptroller shall apportion the bonds and coupons in the manner provided by law.

(b) The commissioners courts of the original county and the new county shall levy a tax at a rate sufficient to pay each county's proportionate share of the bond debt.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 72. COUNTY BOUNDARIES

Sec. 72.001. BOUNDARY SURVEY; APPOINTMENT OF SURVEYOR. (a) If a county court finds, or is notified by the commissioner of the General Land Office, that the boundary or part of a boundary of the county is not sufficiently definite, the county court shall appoint an experienced and competent registered professional land surveyor to conduct a survey of the boundary in question. The surveyor shall make and establish the boundary lines and corners in the manner prescribed by this chapter.

(b) In the order appointing the surveyor, the county court shall designate the boundary lines to be run and the boundary corners to be established and marked and shall conform to the law that defined the boundaries of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1091, Sec. 26, eff. Sept. 1, 1989.

Sec. 72.002. NOTICE TO ADJACENT COUNTY; APPOINTMENT OF ADDITIONAL SURVEYOR. (a) A county court that orders a boundary survey shall give notice of the survey to the county court of any

other county that has an interest in the boundary by sending a copy of the order to the county court of that county. The notice must be given before the 10th day before the date on which the notified county court meets.

(b) The order must state the time and place for the beginning of the survey. The day scheduled for the beginning of the survey must be on or before the 20th day after the day on which the notified county court meets.

(c) The notified county court shall appoint an experienced and competent registered professional land surveyor to assist in the survey of the boundary lines in question.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1091, Sec. 27, eff. Sept. 1, 1989.

Sec. 72.003. BOUNDARY MARKERS. (a) The initial corners of the survey shall be designated by boundary markers.

(b) Only a post, a stone monument, or a mound may be used as a boundary marker.

(c) A post used as a boundary marker must be of hewn cedar, cypress, or bois d'arc. The post must be at least eight inches in diameter and at least five feet in length and must be set in the ground to a depth of at least three feet.

(d) A mound used as a boundary marker must be composed of stone if the use of stone is practicable. If the use of stone is not practicable, a mound may be composed of earth. A mound must be at least two feet in height.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 72.004. DUTIES OF SURVEYOR; FIELD NOTES. (a) A surveyor appointed under this chapter shall describe the initial corners of the boundary lines on the boundary markers established at the corners. The surveyor shall supervise the establishment of additional boundary markers at one-mile intervals along the boundary line.

(b) In the field notes of the survey, the surveyor shall accurately describe all prominent natural objects that are crossed by or are adjacent to the boundary lines under survey, as well as the

corners and lines of surveys on or near the boundaries.

(c) After each boundary line in question is surveyed and marked, the surveyor promptly shall return the field notes and map of the survey to the county court that appointed the surveyor.

(d) The county clerk shall record the field notes and map and shall deliver a certified copy of the notes and map to the General Land Office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 72.005. OATH AND BOND OF SURVEYOR. (a) Before performing duties under this chapter, a surveyor must take the oath of office prescribed by the constitution for appointed officers and must execute a bond conditioned that the surveyor will faithfully perform those duties.

(b) The bond must be in the amount of $1,000, must be payable to the county judge or the judge's successors in office, and must have two or more sureties who are approved by the county judge.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 72.006. PAYMENT OF EXPENSES. (a) The counties that have an interest in the boundary lines in question shall divide the expenses incurred in making the survey and establishing the boundary markers in proportion to each county's frontage on the line.

(b) A surveyor appointed under this chapter is entitled to receive the actual expenses incurred in making the survey and any fees for surveying services agreed on by the surveyor and the counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 3, eff. Sept. 1, 1993.

Sec. 72.007. EFFECT OF FAILURE OF APPOINTED SURVEYOR TO APPEAR. If either of the surveyors appointed under Sections 72.001 and 72.002 is absent at the time and place scheduled for the beginning of the survey, the surveyor who is present shall conduct the survey alone and shall deliver the survey report to the county court that

appointed that surveyor. On approval by that court, the report shall be recorded as evidence of the boundary line in question and shall be treated as the true boundary between the counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 72.008. EFFECT OF FAILURE TO AGREE ON BOUNDARY. (a) If the surveyors appointed under Sections 72.001 and 72.002 fail to agree on the boundary line in question between their respective counties, they shall report to the commissioner of the General Land Office the facts of the disagreement, with a full statement of the questions at issue.

(b) The commissioner shall examine the disputed matter at once. From the information maintained in the General Land Office, the commissioner shall designate to the surveyors the line to be run, stating at what specific point the surveyors shall begin and to what specific point they shall run the line. In the instructions to the surveyors, the commissioner shall adhere as closely as possible to the line designated in the law that created the county line. The instructions from the commissioner constitute authority for the surveyors to run that line. After the survey based on the commissioner's instructions, that line is the true boundary between the counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 72.009. SUIT TO ESTABLISH BOUNDARIES. (a) A county may bring suit against an adjacent county to establish the common boundary line. The suit must be brought in the district court of a county in an adjoining judicial district whose boundaries are not affected by the suit and whose county seat is closest to the county seat of the county that brings the suit. The court shall try the suit in the same manner in which it tries other suits.

(b) The district court has jurisdiction to determine where the boundary line is located and may order the line to be re-marked and resurveyed. The line established by the district court shall be treated as the true boundary between the counties unless the court determines that the line in question was established under prior law. If the district court determines that the boundary line has been

established under prior law, the court shall declare that line to be the true boundary between the counties and shall have that line resurveyed and established as the boundary.

(c) The commissioner of the General Land Office may not mark a contested county line on the maps maintained by the land office until a certified copy of the final judgment is filed in the land office with a certified copy of the field notes of the boundary line established by the judgment.

(d) The remedy provided by this section is in addition to any other remedy prescribed by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 72.010. SUIT TO ESTABLISH BOUNDARIES OF AND TAXES OWED TO CERTAIN COUNTIES OR TAXING UNITS LOCATED IN THOSE COUNTIES. (a) In this section:

(1) "Like taxing units" means counties or other taxing units that are of the same type as one another and that by law may not include the same geographic territory.

(2) "Taxing unit" has the meaning assigned by Section 1.04, Tax Code.

(b) This section applies only to:

(1) a county that has a population of less than 400,000 and contains a municipality with a population of at least 300,000;

(2) a county that has a population of at least 50,000 and is adjacent to a county described by Subdivision (1); and

(3) a taxing unit other than a county that has territory in a county described by Subdivision (1) or (2).

(c) If, as a result of disputed, overlapping, or erroneously applied geographic boundaries between like taxing units, multiple like taxing units have imposed ad valorem taxes on the same property, the property owner may file suit in the supreme court to:

(1) establish the correct geographic boundary between the taxing units; and

(2) determine the amount of taxes owed on the property and the taxing unit or units to which the taxes are owed.

(d) The supreme court has original jurisdiction to hear and determine a suit filed under Subsection (c) and may issue injunctive or declaratory relief in connection with the suit.

(e) The supreme court shall enter a final order determining a suit filed under Subsection (c) not later than the 90th day after the date the suit is filed.

Added by Acts 2017, 85th Leg., R.S., Ch. 768 (S.B. 2242), Sec. 1, eff. June 12, 2017.

CHAPTER 73. LOCATION OF COUNTY SEAT

SUBCHAPTER A. COUNTY SEAT IN NEWLY ORGANIZED COUNTY

Sec. 73.001. ELECTION REQUIREMENT. If a new county is organized, the county judge who conducts the election for officers for the new county shall order an election for the location of the county seat. The election shall be conducted in the same manner as an election for county officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 73.002. VOTE REQUIRED FOR LOCATION. The location that receives the majority of votes cast in the election is the county seat. However, a county seat first established in a newly organized county may not be located more than five miles from the geographic center of the county unless at least two-thirds of the voters voting in the election on the subject vote for the site.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. RELOCATION OF COUNTY SEATS

Sec. 73.011. APPLICATION FOR RELOCATION ELECTION. (a) The county judge of a county shall order an election on the question of the relocation of the county seat of the county if an application for the relocation election is made by at least 100 resident freeholders and qualified voters of the county. However:

(1) if the county seat has been established in the same location for more than 10 years but for 40 years or less and the county has 350 or more voters, to be determined by the number of votes cast in the county in the most recent general election, at least 200 resident freeholders and qualified voters must make the application; or

(2) if the county has 150 or fewer qualified voters or if the county seat has been established in the same location for more than 40 years, a majority of the resident freeholders and qualified voters of the county, as determined by the county judge from the county assessment rolls, must make the application.

(b) If the county judge fails, refuses, or is unable to perform a duty imposed on the judge by this section, that duty may be performed by any two county commissioners of the county.

(c) An order under this section must be in writing and entered in the minutes of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 73.012. DESIGNATION OF GEOGRAPHIC CENTER OF COUNTY. (a) On notification by a county judge that a proposition to relocate the county seat has been submitted to the people of the county or that it is desirable that the center of the county be designated, before the relocation of the county seat, the commissioner of the General Land Office shall designate the geographic center of the county based on the maps, surveys, and other information on file in the General Land Office. The commissioner shall certify the center to the county judge.

(b) The county judge shall enter the commissioner's designation in the county deed records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 73.013. ELECTION REQUIREMENTS. (a) A relocation election must be held on the first election date that is authorized by Chapter 41, Election Code, and that occurs after the 30th day after the date of the order.

(b) The election shall be ordered to be held in each voting precinct in the county and shall be held, insofar as possible, in the same manner as an election for county officers. The ballot shall be printed to provide for voting for or against the proposition: "Moving the county seat from _____ (name of the place) to _____ (name of the place)."

(c) The requirements of this subsection are in addition to those imposed by Article IX, Section 2, of the Texas Constitution

relating to the number of votes that are necessary to move a county seat in certain cases. A two-thirds vote of the voters voting at the election is required to move a county seat located:

(1) more than five miles from the geographic center of the county to another site more than five miles from the center; or

(2) within five miles of the geographic center of the county to another site within five miles of the center.

(d) The geographic center of the county shall be determined by a certificate from the commissioner of the General Land Office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 73.014. ELECTION RESULTS; RELOCATION OF COUNTY SEAT. (a) Within 10 days after the date the relocation election is held, the officers who conduct the election shall bring the election returns to the county judge or the county commissioners who ordered the election.

(b) The county judge or county commissioners shall tabulate the returns and declare the result.

(c) In the records of the commissioners court, the county judge or county commissioners shall enter the result of the election, the name of the original site of the county seat, and the name of the new site if the election results in relocation.

(d) A certified copy of the entry shall be recorded in the county deed records.

(e) After the entry is made, a county seat that is changed by the election is relocated to the new site.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 73.015. SUBSEQUENT RELOCATION. After an election for the location or removal of a county seat has been held and the question settled, an application for another relocation of the county seat may not be submitted within 10 years after the date of the last election. However, an application may be submitted and a relocation election held within two years after the date of the last election to move a county seat from a site more than five miles from a railroad operating as a common carrier to a site on a railroad.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBTITLE B. COMMISSIONERS COURT AND COUNTY OFFICERS
CHAPTER 81. COMMISSIONERS COURT
SUBCHAPTER A. ORGANIZATION AND PROCEDURE

Sec. 81.001. COMPOSITION, PRESIDING OFFICER. (a) The members of the commissioners court are the county judge and the county commissioners.

(b) If present, the county judge is the presiding officer of the commissioners court. This subsection does not apply to a meeting held under Section 551.127, Government Code, if the county judge is not located at the physical space made available to the public for the meeting.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 5 (S.B. 988), Sec. 1, eff. May 10, 2017.

Sec. 81.002. OATH, BOND. (a) Before undertaking the duties of the county judge or a county commissioner, a person must take the official oath and swear in writing that the person will not be interested, directly or indirectly, in a contract with or claim against the county except:

(1) a contract or claim expressly authorized by law; or

(2) a warrant issued to the judge or commissioner as a fee of office.

(b) A commissioner must execute a bond, payable to the county treasurer, in the amount of $3,000. The bond must be approved by the county judge and must be conditioned on the faithful performance of the commissioner's official duties. The bond must also be conditioned that the commissioner:

(1) will reimburse the county for all county funds illegally paid to the commissioner; and

(2) will not vote or consent to make a payment of county funds except for a lawful purpose.

(c) Subject to the provisions of Chapter 171, the county judge or a county commissioner may serve as a member of the governing body

of or as an officer or director of an entity that does business with the county, excluding a publicly traded corporation or a subsidiary, affiliate, or subdivision of a publicly traded corporation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 475, Sec. 1, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 62, Sec. 13.02, eff. Sept. 1, 1999.

Sec. 81.0025. CONTINUING EDUCATION. (a) A county commissioner must successfully complete at least 16 hours of continuing education in the performance of the duties of county commissioners at least once in each 12-month period.

(b) Continuing education instruction required by this section must be certified by an accredited public institution of higher education. The instruction may be completed online with the approval of the commissioners court, except a county commissioner must complete the instruction in person in the first 12-month period of the commissioner's first term.

(c) To satisfy the requirement of this section, a commissioner is entitled to carry forward from one 12-month period to the next not more than eight continuing education hours that the commissioner completes in excess of the required 16 hours.

(d) For the purposes of removal under Subchapter B, Chapter 87, "incompetency" in the case of a county commissioner includes the failure to complete hours of continuing education in accordance with this section.

(e) This section does not apply to a county commissioner who:

(1) serves in a county with a population of 1.3 million or more;

(2) meets at least one of the following requirements:

(A) has served continuously for 12 years or more; or

(B) is an attorney licensed to practice law in this state for 12 years or more and has completed at least 64 hours of continuing education approved by the County Judges and Commissioners Association of Texas; and

(3) attends at least 15 hours of staff briefing on continuing education subjects in each 12-month period as approved by the County Judges and Commissioners Association of Texas.

(f) In addition to the exceptions under Subsection (e), this

section does not apply to a county commissioner who serves in a county with a population of 225,000 or more and who:

(1) has served continuously for 12 years or more; and

(2) in the 12-month period, completes at least three semester credit hours of graduate-level course work in a field of study directly related to county government with a grade of B or higher in each course completed during the period.

Added by Acts 1989, 71st Leg., ch. 413, Sec. 1, eff. Jan. 1, 1990. Amended by Acts 1991, 72nd Leg., ch. 111, Sec. 1, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 294, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1235, Sec. 1, eff. Jan. 1, 1998; Acts 2003, 78th Leg., ch. 454, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 750 (H.B. 1879), Sec. 1, eff. June 17, 2015.

Acts 2021, 87th Leg., R.S., Ch. 144 (S.B. 230), Sec. 1, eff. May 26, 2021.

Sec. 81.003. CLERK. (a) The county clerk is the clerk of the commissioners court. The clerk shall:

(1) serve the court during each of its terms;

(2) keep the court's books, papers, records, and effects; and

(3) issue the notices, writs, and process necessary for the proper execution of the court's powers and duties.

(b) The court shall require the clerk to record the proceedings of each term of the court. This record may be in a paper or electronic format. After each term the clerk shall attest to the accuracy of this record.

(c) The clerk shall record the court's authorized proceedings between terms. This record may be in a paper or electronic format. The clerk shall attest to the accuracy of the record.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 301, Sec. 4, eff. Sept. 1, 2003.

Sec. 81.004. SEAL. (a) The commissioners court shall have a seal on which is engraved:

(1) the words "Commissioners Court, (name of county) County, Texas"; and

(2) a five-pointed star or a design selected by the court and approved by the secretary of state.

(b) The clerk shall keep the seal and use it to authenticate official acts of the court or its presiding officer or clerk that require a seal for authentication.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 81.005. TERMS OF COURT, MEETINGS. (a) At the last regular term of each fiscal year of the county, the commissioners court by order shall designate a day of the week on which the court shall convene in a regular term each month during the next fiscal year. If the completion of the court's business does not require a monthly term, the court need not hold more than one term a quarter. A regular term may continue for one week but may be adjourned earlier if the court's business is completed.

(b) The county judge or three county commissioners may call a special term of the court. A special term may continue until the court's business is completed. A special term may be held at a meeting place located in the county and outside the county seat if:

(1) the commissioners court agrees to meet in that location; and

(2) the meeting place is in a building providing public access that can accommodate the number of persons expected to attend the meeting.

(c) Except as provided by Subsections (b) and (f) of this section, the term shall be held at:

(1) the county seat at the courthouse;

(2) an auxiliary courthouse, courthouse annex, or another building in the county acquired by the county under Chapter 292, 293, or 305 or another law, that houses county administration offices or county or district courts, located inside the municipal limits of the county seat;

(3) the regular meeting place of another political subdivision if:

(A) the commissioners court meets with the governing body of that political subdivision located wholly or partly within

the county; and

(B) the regular meeting place of that political subdivision is in the county;

(4) a meeting place in the county in a building owned by another political subdivision located wholly or partly in the county if:

(A) the commissioners court meets with the governing body of that political subdivision;

(B) the places where the commissioners court and the governing body of the political subdivision regularly hold their meetings are not large enough to accommodate the number of persons expected to attend the meeting; and

(C) the meeting place in the building owned by the political subdivision is large enough to accommodate the expected number of persons; or

(5) a meeting place in the county in a building owned by the county if:

(A) the place where the commissioners court regularly holds its meetings is not large enough to accommodate the number of persons expected to attend the meeting; and

(B) the meeting place in the building owned by the county is large enough to accommodate the expected number of persons.

(d) At the first regular term of each calendar year, the commissioners court may select, on no less than seven days notice, a new site at which terms are to be held during that year pursuant to Subsection (c)(2).

(e) On initial enactment of this legislation the county commissioners court may select a new site pursuant to Subsection (c)(2) on seven days notice and passage at a regular meeting of commissioners court.

(f) If the commissioners court determines that in the interest of public safety the term should be held at a site other than the site selected under Subsection (d), the commissioners court may, after notice, hold a term at a different site as determined by the commissioners court.

(g) Any business of the commissioners court that is required by law to be conducted at a regular term may also be conducted at any meeting of the court held on a day on which the court routinely and periodically meets, regardless of whether the periodic interval is weekly, monthly, quarterly, annually, or some other interval.

(h) The commissioners court may designate a day of the week on which the court shall convene in a regular term each month other than the day of the week designated under Subsection (a).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 601, Sec. 1, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(33), eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 643, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 391, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 13.13, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 593, Sec. 1, eff. June 11, 2001.

Sec. 81.006. QUORUM; VOTE REQUIRED FOR TAX LEVY. (a) Three members of the commissioners court constitute a quorum for conducting county business except the levying of a county tax.

(b) A county tax may be levied at any regularly scheduled meeting of the court when at least four members of the court are present.

(c) A county may not levy a tax unless at least three members of the court vote in favor of the levy.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 81.007. NOTICE. (a) If the commissioners court is unable to obtain publication of a notice or report as required by law, the court may post a copy of the notice or report at the courthouse door and post one copy at a public place in each commissioner's precinct. However, not more than one copy may be posted in the same municipality.

(b) Posting must continue for the 30 days preceding the date the next court term begins.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. DUTIES AND POWERS

Sec. 81.021. CHANGE IN PRECINCT BOUNDARIES. (a) A commissioners court that orders a change in the boundaries of commissioner or justice precincts may specify in its order an

effective date of the change that is not later than January 1 following the next general election. An election for precinct office occurring after the date that the order is issued but before the effective date of the change in boundaries shall be held in the precincts as they will exist on that effective date. A person who has resided in the area included in a new precinct for the period required for eligibility to hold office is not made ineligible on the ground that the precinct has not existed for that period.

(b) The term of office of a commissioner, justice of the peace, or constable who holds office at the time a change in precinct boundaries becomes effective is not affected by the change, regardless of whether the change places the officer's residence outside the precinct for which the officer was elected. The officer is entitled to serve for the remainder of the term to which the officer was elected.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 81.022. PROCESS. (a) The commissioners court shall issue the notices, citations, writs, and process necessary for the proper execution of its powers and duties and the enforcement of its jurisdiction. A notice, citation, writ, or process must:

(1) be in the name of the "State of Texas";

(2) be directed to the sheriff or a constable of a county;

(3) be dated and signed officially by the clerk; and

(4) be impressed with the court seal.

(b) Unless otherwise provided by law, process must be executed before the fifth day before its return date. The return date shall be specified in the process.

(c) A subpoena for a witness may be executed and returned immediately if necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 81.023. CONTEMPT. The commissioners court shall punish a person held in contempt by a fine of not more than $25 or by confinement for not more than 24 hours. A person fined under this section may be confined until the fine is paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 81.024 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(d), eff. Sept. 1, 1999.

Sec. 81.024. DISTRICT AND COUNTY COURT SEALS. The commissioners court shall provide the seals required by law for district and county courts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 81.025 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(d), eff. Sept. 1, 1999.

Sec. 81.025. COUNTY RISK MANAGEMENT POOL COVERAGE INSTEAD OF BONDS. (a) Instead of a bond required by law to be executed by a county officer before taking office, the commissioners court may authorize the officer to obtain coverage from a county government risk management pool created under Chapter 119.

(b) Coverage obtained under this section must:

(1) be in an amount that is at least equal to the amount of the bond that would otherwise be required by law;

(2) satisfy all other conditions applicable to the bond; and

(3) be approved, recorded, and filed in the manner required by law for the bond.

(c) An officer who obtains coverage instead of a bond under this section satisfies the bond requirements that are imposed on the individual by other law.

(d) To the extent of a conflict between this section and other law, this section controls.

(e) This section does not apply to coverage obtained under Section 43.002 or 44.002, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 439 (S.B. 1243), Sec. 1, eff. June 17, 2011.

Sec. 81.026. COMMISSIONERS COURT MEMBERSHIP ON ASSOCIATIONS AND NONPROFIT ORGANIZATIONS. A county judge or county commissioner may serve on the governing body of or any committee serving an

association of counties created or operating pursuant to the provisions of Section 89.002. A county judge or county commissioner may serve as a member of any board of trustees or board of directors or other governing body of any trust or other entity created pursuant to interlocal contract for the purpose of forming or administering any governmental pool, self-insurance pool, insurance pool, or any other fund or joint endeavor created for the benefit of member counties and political subdivisions. In addition, a county judge or county commissioner may serve as a member of the board of directors of any nonprofit corporation that is created and exists solely for the purpose of providing administrative or other services to such trust or other entity. A county judge or county commissioner, acting as a member of any such board or committee, may perform any act necessary or appropriate for the rendition of such service, including the casting of votes and deliberations concerning and execution of contracts or claims with or against any county. A county judge or commissioner may participate in deliberations concerning and cast any vote on any matter before the commissioners court affecting the execution of any contract with or the payment of claims, premiums, dues, or contributions to any such trust, association, nonprofit corporation, or entity or any related matter.

Added by Acts 1989, 71st Leg., ch. 1133, Sec. 1, eff. Aug. 28, 1989. Renumbered from Sec. 81.027 and amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(c), eff. Sept. 1, 1999.

Sec. 81.027. SUPPORT OF PAUPERS. Each commissioners court may provide for the support of paupers, residents of their county, who are unable to support themselves.

Added by Acts 1993, 73rd Leg., ch. 1042, Sec. 1, eff. Sept. 1, 1993. Renumbered from Sec. 81.028 and amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(d), 13.11(a), eff. Sept. 1, 1999.

Sec. 81.028. DELEGATION OF DUTIES OF A COUNTY JUDGE IN COUNTIES WITH POPULATION OF MORE THAN 1.5 MILLION. (a) This section applies exclusively to a county judge in a county with a population of more than 1.5 million.

(b) A county judge may file an order with the commissioners

court of the county delegating to another county officer or an employee of the county the ability to sign orders or other official documents associated with the county judge's office. The delegating order shall clearly indicate the types of orders or official documents that the officer or employee may sign on behalf of the county judge.

(b-1) A county judge may file a standing order of emergency delegation of authority that clearly indicates the types of orders or official documents that the officer or employee may sign on behalf of the county judge in the event of an emergency or disaster.

(c) An order or official document signed by a county officer or county employee acting under the delegated authority of the county judge in accordance with this section has the same effect as an order of the county judge.

(d) The county judge may at any time revoke the delegated authority or transfer it to a different county officer or county employee by filing an order with the commissioners court of the county.

Added by Acts 1995, 74th Leg., ch. 143, Sec. 1, eff. Aug. 28, 1995.
Renumbered from Sec. 81.029 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(d), eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 13, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 65, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 66, eff. September 1, 2011.

Sec. 81.029. DELEGATION OF DUTIES OF A COUNTY JUDGE IN CERTAIN COUNTIES.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 640 (H.B. 784), Sec. 1

(a) This section applies only to a county judge in a county that has a population of more than 800,000 and is located on the international border, other than a county to which Section 81.0291 applies.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 125

(a) This section applies only to a county judge in a county that is located on the international border and contains a municipality with a population of 500,000 or more.

(b) A county judge may file an order with the commissioners court of the county delegating to a county commissioner of the commissioners court the ability to sign orders or other official documents associated with the county judge's office. The delegating order must clearly indicate the types of orders or official documents that the county commissioner may sign on behalf of the county judge.

(c) A county judge may file a standing order of emergency delegation of authority that clearly indicates the types of orders or official documents that the county commissioner may sign on behalf of the county judge in the event of an emergency or disaster.

(d) An order or official document signed by the county commissioner under the delegated authority of the county judge under this section has the same effect as an order of the county judge.

(e) The county judge may at any time revoke the delegated authority or transfer the authority to a different county commissioner by filing an order with the commissioners court.

Added by Acts 2009, 81st Leg., R.S., Ch. 708 (H.B. 2835), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 67, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 640 (H.B. 784), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 125, eff. September 1, 2023.

Sec. 81.0291. DELEGATION OF CERTAIN AUTHORITY OF COUNTY JUDGE OR COMMISSIONERS COURT IN CERTAIN COUNTIES. (a) This section applies only to a county that:

(1) has a population of more than 800,000;

(2) is located on the international border; and

(3) borders another state.

(b) A county judge may file an order with the commissioners

court of a county delegating to a county commissioner of the commissioners court, a chief administrator, or another county officer or employee the ability to sign orders or other official documents associated with the county judge's office. The delegating order must clearly indicate the types of orders or official documents that the county commissioner, chief administrator, officer, or employee may sign on behalf of the county judge.

(c) A county judge may file a standing order of emergency delegation of authority that clearly indicates the types of orders or official documents that the county commissioner, chief administrator, officer, or employee may sign on behalf of the county judge in the event of an emergency or disaster.

(d) An order or official document signed by the county commissioner, chief administrator, officer, or employee under the delegated authority of the county judge under this section has the same effect as an order of the county judge.

(e) The county judge may at any time revoke the delegated authority or transfer the authority to a different county commissioner, chief administrator, officer, or employee by filing an order with the commissioners court.

(f) The commissioners court by order may delegate managerial authority of the commissioners court to a county chief administrator. The delegating order must clearly indicate the specific managerial authority delegated to the administrator. By subsequent order, the commissioners court may revoke or modify the managerial authority delegated to the administrator.

Added by Acts 2023, 88th Leg., R.S., Ch. 640 (H.B. 784), Sec. 2, eff. September 1, 2023.

Sec. 81.030. TESTIMONY BEFORE COMMISSIONERS COURT. The commissioners court may require that testimony before the court be given under oath. A person who makes a false statement under oath is subject to prosecution under Section 37.02, Penal Code.

Added by Acts 1997, 75th Leg., ch. 390, Sec. 1, eff. May 28, 1997. Renumbered from Sec. 81.031 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(d), eff. Sept. 1, 1999.

Sec. 81.032. ACCEPTANCE OF DONATIONS AND BEQUESTS. (a) The commissioners court may accept a donation of labor or services, gift, grant, donation, bequest, or devise of money or other property on behalf of the county, including a donation under Chapter 38, Government Code, for the purpose of performing a function conferred by law on the county or a county officer.

(b) The commissioners court may not accept a donation described in Subsection (a) of over $1,000 for use in administering elections without the written consent of the secretary of state.

(c) The secretary of state may grant consent under Subsection (b) only if:

(1) the secretary consults with the governor, the lieutenant governor, and the speaker of the house of representatives on the proposed donation; and

(2) the governor, the lieutenant governor, and the speaker of the house of representatives unanimously agree to the secretary's grant of consent.

Added by Acts 1999, 76th Leg., ch. 172, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 935 (H.B. 2398), Sec. 40, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(11), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1081 (H.B. 3470), Sec. 1, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 1000 (H.B. 2283), Sec. 3, eff. September 1, 2021.

Sec. 81.033. POWER OF COMMISSIONERS COURT IN COUNTY WITH NO INCORPORATED TERRITORY. (a) This section applies only to a commissioners court of a county that has a population of more than 4,500, is located within 100 miles of an international boundary, and contains no incorporated territory of a municipality.

(b) If approved at an election held in the county for that purpose, the commissioners court has, in addition to the powers given to it under this code or other law, all the powers of the governing body of a Type A general-law municipality, including the powers contained in Subtitle A, Title 7, except that:

(1) the commissioners court may not regulate an activity outside the county;

(2) the commissioners court may not regulate a tract of land that is appraised as agricultural or open-space land by the appraisal district;

(3) the commissioners court may not exercise the powers of a municipality under Chapter 211 or 213; and

(4) if this code or other law provides for a procedure by which a county exercises a power, the commissioners court must use that procedure.

(c) For an election under this section, the ballot shall be prepared to permit voting for or against the proposition: "Granting (name of county) County the authority to enact ordinances in the same manner as a general-law municipality."

(d) If a majority of the votes cast at the election favor the proposition, the commissioners court has the powers described by Subsection (b).

(e) If territory of the county becomes incorporated in a municipality:

(1) in the area outside the municipality and outside the municipality's extraterritorial jurisdiction, the authority of the commissioners court to exercise a power under this section:

(A) expires, on the date of the incorporation, with regard to a subject on which the court has not previously acted under this section; and

(B) continues with regard to a subject on which the court has previously acted under this section; and

(2) in the area in the municipality or in the extraterritorial jurisdiction of the municipality, the authority of the commissioners court to exercise a power under this section expires on the 180th day after the date of the municipal incorporation.

(f) On receipt of a petition signed by at least 10 percent of the county's registered voters, the commissioners court shall call an election on the repeal of an order or ordinance authorized by this section on the first uniform election date that occurs after the 90th day after the date the petition is filed. The order or ordinance is repealed if a majority of the votes cast at the election favor repeal. A petition requiring an election under this subsection may not be filed sooner than the fifth anniversary of the date of an

election held under this subsection.

Added by Acts 2003, 78th Leg., ch. 1029, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 1, eff. June 15, 2007.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 126, eff. September 1, 2023.

Sec. 81.034. ELIGIBILITY OF COUNTY WITH NO INCORPORATED TERRITORY TO PARTICIPATE IN MUNICIPAL ASSISTANCE PROGRAMS. A county that contains no incorporated territory of a municipality is eligible to apply on behalf of locations in the county that are census designated places as if the places were municipalities for the purpose of participating in any federal or state program that provides grants, loans, or other assistance to municipalities.

Added by Acts 2007, 80th Leg., R.S., Ch. 314 (H.B. 2095), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 331 (H.B. 807), Sec. 1, eff. September 1, 2009.

CHAPTER 82. COUNTY CLERK

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 82.001. SURETY BOND AND OATH OF COUNTY CLERK; SELF-INSURANCE. (a) The county clerk must, before beginning to perform the duties of office, execute a bond either with four or more good and sufficient sureties or with a surety company authorized to do business in the state as a surety.

(b) In lieu of the clerk obtaining the bond, the county may self-insure against losses that would have been covered by the bond.

(c) The bond must be:

(1) approved by the commissioners court;

(2) made payable to the county;

(3) conditioned that the clerk will faithfully perform the duties of office; and

(4) in an amount equal to at least 20 percent of the maximum amount of fees collected in any year during the term of

office preceding the term for which the bond is to be given, but not less than $5,000 or more than $500,000.

(d) The clerk must take and subscribe the official oath, which must be endorsed on the bond if the bond is required. The bond and oath shall be recorded in the county clerk's office and deposited in the office of the clerk of the district court.

(e) An injured party in a suit to which the county is a party may use and enter in the record in the suit a certified copy of the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 9(a), eff. Aug. 28, 1989.

Sec. 82.002. SURETY BOND ON DEPUTY CLERKS AND EMPLOYEES; SELF-INSURANCE. (a) Except as provided by Subsection (b), the county clerk shall execute one or more surety bonds in accordance with this section to cover each deputy clerk or other employee. The county clerk shall execute:

(1) an individual bond for each deputy clerk and other employee in an amount for each bond that is equal to the county clerk's bond; or

(2) a schedule surety bond or a blanket surety bond to cover all deputy clerks and all other employees in a total amount that is equal to the county clerk's bond.

(b) In lieu of a clerk obtaining a bond as required by Subsection (a), the county may self-insure against losses that would have been covered by the bond.

(c) A bond covering a deputy clerk or other employee must be conditioned in the same manner as the county clerk's bond. A bond covering a deputy clerk or other employee must be made payable to the county for the use and benefit of the county clerk.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 9(a), eff. Aug. 28, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 179 (H.B. 1494), Sec. 3, eff. September 1, 2019.

Sec. 82.003. ERRORS AND OMISSIONS INSURANCE; CONTINGENCY FUND.

(a) The county clerk shall obtain an insurance policy or similar coverage from a governmental pool operating under Chapter 119 covering the clerk and each deputy clerk against liability incurred through errors and omissions in the performance of their official duties.

(b) The policy or other coverage document must be in an amount equal to the maximum amount of fees collected in any year during the term of office preceding the term for which the policy is to be obtained. However, the policy or other coverage document must be in an amount of at least $10,000 but is not required to exceed $500,000. If the policy or other coverage document provides coverage for other county officials, the policy or other coverage document must be in an amount of at least $1 million.

(c) The commissioners court may establish a contingency fund to provide the coverage required by this section if it is determined by the county clerk that insurance coverage is unavailable at a reasonable cost.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 9(a), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 561, Sec. 3, eff. Aug. 30, 1993.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.01, eff. January 1, 2022.

Sec. 82.004. PREMIUMS. The commissioners court of a county shall pay out of the general fund of the county the premiums for a bond or insurance policy required by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 82.005. APPOINTMENT, OATH, AND POWERS OF DEPUTY CLERK. (a) An appointment by the county clerk of a deputy clerk must be in writing, be signed by the county clerk, and bear the seal of the county court. The county clerk shall record the appointment in the county clerk's office and shall deposit it in the office of the district clerk.

(b) A deputy clerk must take the official oath.

(c) A deputy clerk acts in the name of the county clerk and may

perform all official acts that the county clerk may perform.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. MISCELLANEOUS POWERS AND DUTIES

Sec. 82.051. ELECTRONIC DISPLAY OF OFFICIAL AND LEGAL NOTICES BY COUNTY CLERK. (a) In this section, "electronic display" includes a display:

(1) by the use of an electronic kiosk, electronic bulletin board, or other similar device designed to provide readily accessible information; or

(2) on a county's public Internet website.

(b) A county clerk may post an official and legal notice by electronic display instead of posting a physical document. An electronic display of information posted under this section using a device described by Subsection (a)(1) must meet the location, time, and accessibility requirements provided by law for the posting of the notice. An electronic display of information posted under this section on a county's public Internet website must meet the time requirements provided by law for the posting of the notice.

Added by Acts 2009, 81st Leg., R.S., Ch. 968 (H.B. 3601), Sec. 2, eff. June 19, 2009.

CHAPTER 83. COUNTY TREASURER

Sec. 83.001. ELECTION. The county treasurer is elected at each general election in which the office of governor is to be filled for a full term.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 83.002. BOND. (a) The county treasurer, before beginning to perform the duties of office, must execute a bond with a surety company authorized to do business in this state as a surety. The bond must be:

(1) approved by the commissioners court;

(2) made payable to the county judge in an amount established by the commissioners court not to exceed one-half of one

percent of the largest amount budgeted for general county maintenance and operations for any fiscal year of the county beginning during the term of office preceding the term for which the bond is to be given except that the amount may not be less than $5,000 or more than $500,000; and

(3) conditioned that the treasurer will faithfully execute the duties of office.

(b) The treasurer must take and subscribe the official oath, which must be endorsed on the bond. The bond and the oath shall be recorded in the county clerk's office. The commissioners court may, at any time, require the treasurer to obtain a new or additional bond if the court considers the existing bond insufficient or doubtful. The bond may not exceed the maximum amount provided by Subsection (a). The bond must be acquired within 20 days after the date notice of the requirement has been given by the commissioners court. The failure of a treasurer to obtain a bond required by this subsection subjects the treasurer to removal under Section 83.004.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 605, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1097, Sec. 2, eff. Aug. 30, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 335 (S.B. 1108), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 14, eff. September 1, 2005.

Sec. 83.003. CONTINUING EDUCATION. (a) A county treasurer must successfully complete an introductory course of instruction in the performance of the duties of county treasurer:

(1) within one year after the date on which the person is first elected if elected to a full term; or

(2) at the earliest available date after appointment or election, as applicable, if appointed by the commissioners court or elected to an unexpired term of county treasurer.

(b) After completion of the first year in office, a county treasurer must successfully complete in each 12-month period at least 20 hours of continuing education in the performance of the duties of county treasurer.

(c) The introductory course required by Subsection (a) and the continuing education required by Subsection (b) must be sponsored or cosponsored by an accredited public institution of higher education.

(d) To satisfy the requirement of Subsection (b), a county treasurer may carry forward from one 12-month period to the next not more than 10 continuing education hours that the county treasurer completes in excess of the required 20 hours.

(e) For purposes of removal under Subchapter B, Chapter 87, "incompetency" in the case of a county treasurer includes the failure to complete a course in accordance with this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 42, Sec. 1, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 313, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 875 (S.B. 1106), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 15, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 66 (S.B. 435), Sec. 2, eff. September 1, 2015.

Sec. 83.004. REMOVAL FROM OFFICE; FILLING OF VACANCY. (a) If a person elected to the office of county treasurer fails to provide an adequate bond as required by Section 83.002(a) and to take the official oath on or before assuming the office, the county judge may declare the office vacant.

(b) Repealed by Acts 2005, 79th Leg., Ch. 876, Sec. 2, eff. September 1, 2005.

(c) A vacancy in the office of county treasurer shall be filled as provided by Section 87.041. The person appointed to fill the vacancy shall, on or before entering upon the discharge of the duties of office, take the official oath and obtain the same surety bond as required by Section 83.002(a) for an elected county treasurer.

(d) A person vacating the office of county treasurer shall deliver to the successor to the office any money, securities, documents, books, and other property in the person's possession that

belong to the county as well as any documents and books in the person's possession that are for the use of the county. The person shall perform any other acts as the commissioners court may require.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 876 (S.B. 1107), Sec. 1, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 876 (S.B. 1107), Sec. 2, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 16, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 49, eff. September 1, 2005.

Sec. 83.005. APPOINTMENT OF PERSON TO ACT IN TREASURER'S PLACE. (a) In a county in which the county treasurer does not have a deputy, the county treasurer may appoint a person, subject to the approval of the commissioners court, to act in the treasurer's place. The appointed person may act in the treasurer's place only if the treasurer is absent, unavoidably detained, incapacitated, or unable to act.

(b) The treasurer shall provide the commissioners court with the details justifying an appointment under this section. The commissioners court may require proof of any detail provided by the treasurer.

(c) The appointed person may act for the treasurer only after:

(1) the commissioners court approves the appointment;

(2) the appointment is recorded in the minutes of the court; and

(3) the appointed person gives a surety bond in favor of the county and the county treasurer, as their interests may appear, in an amount determined by the commissioners court.

(d) If the treasurer appoints a person other than a regularly employed county employee, the appointed person may not receive any compensation from the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 103, Sec. 1, eff. Sept. 1, 1997.

Sec. 83.006. FUNDING OF TREASURER'S OFFICE. The commissioners court may provide funds for adequate personnel and supplies that enable the county treasurer to perform the duties of office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 83.007. STATUTORY REFERENCE: FUNCTION OF TREASURER IN COUNTY THAT HAS ABOLISHED OFFICE. In a county for which the office of county treasurer has been abolished, a reference in this code or other state statute to the county treasurer means the person who performs the powers or duties of the county treasurer in that county.

Added by Acts 2007, 80th Leg., R.S., Ch. 934 (H.B. 3439), Sec. 1, eff. September 1, 2007.

Sec. 83.008. SURETY BOND ON ASSISTANT TREASURERS, DEPUTIES, AND EMPLOYEES; SELF-INSURANCE. (a) If a county treasurer employs only one assistant or deputy, the county treasurer shall execute a surety bond to cover the assistant or deputy and shall execute a schedule surety bond or a blanket surety bond to cover all other employees of the office. If a county treasurer employs more than one assistant or deputy, the county treasurer shall execute a blanket surety bond to cover the assistants or deputies and all other employees of the office.

(b) Instead of a county treasurer obtaining a bond as required by Subsection (a), the county may self-insure against losses that would have been covered by the bond.

(c) The bond under this section must be conditioned in the same manner and must be for the same amount as the bond for the county treasurer under Section 83.002. The bond must be made payable to the county judge for the use and benefit of the county treasurer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 4, eff. September 1, 2011.

Sec. 83.009. ASSISTANT TREASURER OR TREASURY DEPUTY. (a) The appointment of an assistant treasurer or treasury deputy must be in writing, be signed by the county treasurer, and bear the seal of the

county court.

(b) A person appointed as an assistant treasurer or treasury deputy, before beginning to perform the duties of office, must take and subscribe the official oath, which, together with the certificate of the officer administering the oath, must be endorsed on the appointment. The appointment and oath shall be deposited and recorded in the county clerk's office.

(c) An assistant treasurer or treasury deputy acts in the name of the county treasurer as directed by the county treasurer and may perform all official acts that the county treasurer may perform at the discretion of the county treasurer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 4, eff. September 1, 2011.

CHAPTER 84. COUNTY AUDITOR

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 84.001. EFFECT OF REFERENCE TO "DISTRICT JUDGES"; MAJORITY VOTE REQUIRED. (a) In this chapter, a reference to district judges means the district judges having jurisdiction in the county.

(b) A majority vote of the district judges is required to perform an act required or permitted of the district judges unless the law specifically provides otherwise. If only one district judge has jurisdiction in the county, the judge may act alone.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 84.002. APPOINTMENT OF COUNTY AUDITOR. (a) In a county with a population of 10,200 or more, the district judges shall appoint a county auditor.

(b) In a county with a population of less than 10,200:

(1) the district judges may appoint a county auditor if the judges determine that the county's financial circumstances warrant the appointment; and

(2) the district judges shall appoint a county auditor if:

(A) the commissioners court finds that a county auditor is necessary to carry out county business and enters an order in its minutes stating the reason for this finding;

(B) the order is certified to the district judges; and

(C) the district judges find the reason stated by the commissioners court to be good and sufficient.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1167, Sec. 1, eff. Sept. 1, 2001.

Sec. 84.003. PROCEDURE FOR APPOINTMENT. (a) The district judges shall appoint the county auditor at a special meeting held for that purpose. If a majority of the judges cannot agree on the selection of a person as county auditor, one of the judges shall certify that fact to the governor, who shall appoint another district judge to act and vote with the district judges to select the county auditor.

(b) The clerk of the district court shall record the judges' action in the minutes of the court and certify it to the commissioners court. The commissioners court shall record in its minutes the judges' action and an order directing the payment of the auditor's salary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 84.004. TERM. The term of office of a county auditor is two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 84.005. PROCEDURE FOR APPOINTMENT AND TERM IN POPULOUS COUNTY. (a) In a county with a population of 3.3 million or more, the district judges shall hold a meeting for the purpose of appointing a county auditor. For a county auditor to be appointed, a majority of the district judges must be present at the meeting and a candidate for the office must receive at least a two-thirds vote of the district judges who are present and voting at the meeting. Each judge may nominate any number of candidates for the office.

(b) The term of office of the county auditor begins on January 1 of each odd-numbered year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 10(a), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 669, Sec. 48, eff. Sept. 1, 2001.

Sec. 84.006. QUALIFICATIONS. (a) A county auditor must be:

(1) a competent accountant with at least two years' experience in auditing and accounting;

(2) thoroughly competent in public business details; and

(3) a person of unquestionably good moral character and intelligence.

(b) Before making an appointment the district judges shall carefully investigate and consider the person's qualifications.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 11(b), eff. Aug. 28, 1989.

Sec. 84.007. BOND AND OATH. (a) Before taking office and within 20 days after the date of a county auditor's appointment, the county auditor must execute a bond. The bond must be:

(1) a good and sufficient surety bond or a bond secured by two or more good and sufficient personal sureties;

(2) in the amount of $5,000 or more;

(3) payable to the district judges;

(4) conditioned on the faithful performance of the duties of county auditor; and

(5) approved by the district judges.

(b) The county auditor must take the official oath and a written oath that lists the positions of public or private trust previously held and the length of service in each of those positions and that states:

(1) that he has the qualifications required by this chapter; and

(2) that he will not be personally interested in a contract with the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 84.008. JOINT EMPLOYMENT OF COUNTY AUDITOR. (a) Except

as provided by Section 84.005, the commissioners courts of two or more counties may agree to jointly employ and compensate a county auditor.

(b) After the commissioners courts have determined that an auditor is necessary in the disposition of county business and after the agreement is made, the commissioners court of each county shall enter in its minutes an order stating its determination of the necessity and shall certify the order to the district judges of the county. If the judges find the orders good and sufficient, they shall appoint the county auditor by an order recorded in the minutes of the district courts of all counties party to the agreement. The district clerk of each county shall certify the order to the commissioners court of that county, who shall record the order in its minutes.

(c) The county auditor is appointed for a term beginning on the day of appointment.

(d) In matters required by this section to be done by the district judges, a majority vote of the judges controls.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 541, Sec. 1, eff. May 31, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 16.001, eff. September 1, 2011.

Sec. 84.0085. CONTINUING EDUCATION. (a) During each full term of office, a county auditor must successfully complete at least 40 classroom hours of instruction in courses relating to the duties of the county auditor and accredited by the Texas State Board of Public Accountancy as continuing professional education credits for certified public accountants. On the completion of the courses and the accumulation of the continuing professional education credits, the county auditor must certify that fact to the district judges.

(b) For purposes of removal for incompetency under another law, "incompetency" in the case of a county auditor includes the failure to complete the courses in accordance with this section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 11(b), eff. Aug. 28, 1989.

Sec. 84.009. REMOVAL. (a) A county auditor may be removed from office and a successor appointed if, after due investigation by the district judges who appointed the auditor, it is proven that the auditor:

(1) has committed official misconduct; or

(2) is incompetent to faithfully discharge the duties of the office of county auditor.

(b) The district judges who appointed a county auditor under Section 84.002(b)(2) or Section 84.008 may discontinue the services of the auditor after the expiration of one year after the date of the appointment if it is clearly shown that the auditor is not necessary and the auditor's services are not commensurate with the auditor's salary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. ASSISTANTS

Sec. 84.021. ASSISTANTS. (a) From time to time the county auditor may certify to the district judges a list stating the number of assistants to be appointed, the name, duties, qualifications, and experience of each appointee, and the salary to be paid each appointee. The district judges, after careful consideration of the application for the appointment of the assistants and after inquiry concerning the appointees' qualifications, the positions sought to be filled, and the reasonableness of the requested salaries, shall prepare a list of the appointees that the judges approve and the salary to be paid each. The judges shall certify this list to the commissioners court, which shall order the salaries to be paid on the performance of services and shall appropriate an adequate amount of money for this purpose.

(b) If an emergency exists, the county auditor shall recommend the appointment of temporary assistants, and after a hearing held in accordance with Section 152.905, the district judges shall determine the number, salaries, and duration of employment of the assistants.

(c) An assistant must take the usual oath of office for faithful performance of duty. The county auditor may require an assistant to give a bond and may determine the terms of the bond. The bond must run in favor of the county and the county auditor as their interests indicate. The county shall pay for the bond.

(d) If only one assistant is appointed, the assistant, during the absence or unavoidable detention of the county auditor, may perform the duties required by law of the county auditor. If more than one assistant is appointed, the county auditor may designate the assistant to perform those duties during the absence or unavoidable detention of the county auditor.

(e) The county auditor may discharge an assistant. The district judges approving an appointment have the right annually to withdraw the approval and change the number of assistants permitted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1169, Sec. 3, eff. Aug. 28, 1989.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 84.901. SUPPLIES. A county auditor may purchase, at the county's expense and in the manner provided by law, necessary ledgers, books, records, blank forms, stationery, equipment, telephone service, and postage.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 84.902. AUDITOR TO KEEP CERTAIN HOSPITAL RECORDS IN COUNTY WITH POPULATION OF 190,001 TO 200,000. If, in a county with a population of 190,001 to 200,000, the financial records of a municipal and county hospital located in the county must be kept, the county auditor shall keep the records. If reports concerning that hospital's financial records must be made to the governing bodies of the municipality and county, the county auditor shall make the reports.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(f), eff. Aug. 28, 1989.

CHAPTER 85. SHERIFF

SUBCHAPTER A. SHERIFF AND SHERIFF'S PERSONNEL

Sec. 85.001. OATH AND BOND. (a) A person elected as sheriff, before beginning to perform the duties of office, must execute a bond with:

(1) two or more good and sufficient sureties; or

(2) a solvent surety company authorized to do business in this state.

(b) The bond must be:

(1) approved by the commissioners court of the county;

(2) made payable to the governor;

(3) in an amount established by the commissioners court, but not less than $5,000 or more than $30,000; and

(4) conditioned that the sheriff will:

(A) faithfully perform the duties of office established by law;

(B) account for and pay to the person authorized by law to receive them the fines, forfeitures, and penalties the sheriff collects for the use of the state or a county;

(C) execute and return when due the process and precepts lawfully directed to the sheriff, and pay to the person to whom they are due or to the person's attorney the funds collected by virtue of the process or precept; and

(D) pay to the county any funds illegally paid, voluntarily or otherwise, to the sheriff from county funds.

(c) The sheriff must take and subscribe the official oath, which, together with the certificate of the officer administering the oath, must be endorsed on the bond.

(d) A person elected or appointed as sheriff who has executed the bond and taken the official oath may enter at once on the duties of office, and that person's acts shall be as valid under law before the receipt of a commission as after the receipt of a commission.

(e) The bond is not void on the first recovery, but may be sued on from time to time in the name of any injured person until the entire amount of the bond is recovered.

(f) A sheriff or deputy sheriff is not liable on an official bond, and is not personally liable, for having received or confined a prisoner delivered or surrendered to the sheriff or deputy by a state ranger.

(g) Repealed by Acts 1997, 75th Leg., ch. 973, Sec. 1, eff. June 18, 1997.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 973, Sec. 1, eff. June 18, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 17, eff. September 1, 2005.

Sec. 85.0011. QUALIFICATIONS FOR SHERIFF OR CANDIDATE FOR SHERIFF. (a) In this section:

(1) "Active duty" means current full-time military service in the armed forces of the United States.

(2) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "Federal special investigator" means a person described by Article 2.122, Code of Criminal Procedure.

(4) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(b) A person is not eligible to serve as sheriff unless the person:

(1) has a high school diploma or a high school equivalency certificate; and

(2) either:

(A) holds an active permanent peace officer license under Chapter 1701, Occupations Code; or

(B) is eligible to be licensed under Sections 1701.309 and 1701.312, Occupations Code, and:

(i) has a minimum of five years of experience as a federal special investigator; or

(ii) is a military veteran with a minimum of 10 years of combined active duty or national guard service experience.

(c) A person is not eligible to be a candidate for the office of sheriff unless the person holds an active permanent peace officer license under Chapter 1701, Occupations Code, or is a person described by Subsection (b)(2)(B)(i) or (ii) and obtains a license within the time provided by Section 1701.302(a), Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 985, Sec. 3. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.819, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 201 (S.B. 1124), Sec. 1, eff. September 1, 2023.

Sec. 85.002. NEW BOND REQUIREMENT; REMOVAL. (a) If a surety of the sheriff dies, moves permanently from the state, becomes insolvent, or is released from liability in accordance with law or if the commissioners court considers the sheriff's bond insufficient, the commissioners court shall cite the sheriff to appear at a time named in the citation, after the 10th day but on or before the 30th day after the date of issuance of the citation, and require the sheriff to execute a new bond with good and sufficient security.

(b) If the sheriff neglects or refuses to appear and execute the bond on or before the designated time, that person may not exercise the functions of office and shall be removed from office by the district judge in the manner prescribed by law for the removal of county officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 85.003. DEPUTIES. (a) The appointment of a deputy sheriff must be in writing.

(b) Except as provided by Subsection (b-1), a person appointed as a deputy, before beginning to perform the duties of office, must take and subscribe the official oath, which, together with the certificate of the officer administering the oath, must be endorsed on the appointment. The appointment and oath shall be deposited and recorded in the county clerk's office. A list of the appointments shall be posted in a conspicuous place in that office.

(b-1) A person reappointed as a deputy may continue to perform the duties of office before retaking the official oath. The deputy must retake the oath as soon as possible after being reappointed.

(c) Except as provided by Subsection (f), a deputy serves at the pleasure of the sheriff. The sheriff may revoke the appointment of a deputy on the indictment of the deputy for a felony.

(d) A sheriff is responsible for the official acts of a deputy and may require that a deputy execute a bond or other security. A sheriff has the same remedies against a deputy and the deputy's sureties as any other person has against the sheriff and the sheriff's sureties.

(e) A deputy may perform the acts and duties of the deputy's

principal.

(f) A deputy who is included in the coverage of a civil service system created under Chapter 158 may be suspended or removed only for a violation of a civil service rule adopted under that system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1060 (H.B. 2283), Sec. 1, eff. June 15, 2007.

Acts 2021, 87th Leg., R.S., Ch. 234 (H.B. 1049), Sec. 1, eff. September 1, 2021.

Sec. 85.004. RESERVE DEPUTIES. (a) The commissioners court of a county may authorize the sheriff to appoint reserve deputy sheriffs. The commissioners court may limit the number of reserve deputies that may be appointed.

Text of subsection effective until January 1, 2025

(b) A reserve deputy serves at the discretion of the sheriff and may be called into service if the sheriff considers it necessary to have additional officers to preserve the peace and enforce the law. The sheriff may authorize a reserve deputy who is a peace officer as described by Article 2.12, Code of Criminal Procedure, to carry a weapon or act as a peace officer at all times, regardless of whether the reserve deputy is engaged in the actual discharge of official duties, or may limit the authority of the reserve deputy to carry a weapon or act as a peace officer to only those times during which the reserve deputy is engaged in the actual discharge of official duties. A reserve deputy who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, may act as a peace officer only during the actual discharge of official duties. A reserve deputy, regardless of whether the reserve deputy is a peace officer as described by Article 2.12, Code of Criminal Procedure, is not:

(1) eligible for participation in any program provided by the county that is normally considered a financial benefit of full-time employment or for any pension fund created by statute for the benefit of full-time paid peace officers; or

(2) exempt from Chapter 1702, Occupations Code.

Text of subsection effective on January 1, 2025

(b) A reserve deputy serves at the discretion of the sheriff and may be called into service if the sheriff considers it necessary to have additional officers to preserve the peace and enforce the law. The sheriff may authorize a reserve deputy who is a peace officer as described by Article 2A.001, Code of Criminal Procedure, to carry a weapon or act as a peace officer at all times, regardless of whether the reserve deputy is engaged in the actual discharge of official duties, or may limit the authority of the reserve deputy to carry a weapon or act as a peace officer to only those times during which the reserve deputy is engaged in the actual discharge of official duties. A reserve deputy who is not a peace officer as described by Article 2A.001, Code of Criminal Procedure, may act as a peace officer only during the actual discharge of official duties. A reserve deputy, regardless of whether the reserve deputy is a peace officer as described by Article 2A.001, Code of Criminal Procedure, is not:

(1) eligible for participation in any program provided by the county that is normally considered a financial benefit of full-time employment or for any pension fund created by statute for the benefit of full-time paid peace officers; or

(2) exempt from Chapter 1702, Occupations Code.

(c) Except as provided by Subsection (c-1) or (c-2), a reserve deputy, before beginning to perform the duties of office and at the time of appointment, must file an oath and execute and file a bond in the amount of $2,000 payable to the sheriff. The oath and bond shall be filed with the county clerk.

(c-1) If a sheriff appoints more than one reserve deputy sheriff, the sheriff may execute a blanket surety bond to cover the reserve deputy sheriffs. Instead of a reserve deputy sheriff executing an individual bond under Subsection (c) or the sheriff executing a blanket surety bond, the county may self-insure against losses that would have been covered by the bond.

(c-2) A person reappointed as a reserve deputy may continue to perform the duties of office before retaking the official oath. The reserve deputy must retake the oath as soon as possible after being reappointed.

(d) A reserve deputy on active duty at the call of the sheriff and actively engaged in assigned duties has the same rights, privileges, and duties as any other peace officer of the state.

(e) The sheriff of a county that borders the Gulf of Mexico may

organize some of the reserve deputies to serve as marine reserve deputies and lifeguards for beach and water safety purposes and other related functions as the sheriff may determine. A reserve deputy performing functions under this subsection is subject to the laws of this state that relate to reserve deputies except that they may not carry firearms in the performance of their duties.

(f) An organization formed under Subsection (e) may include both paid and unpaid deputies and reserve deputies. The organization may accept contributions and gifts from foundations, individuals, corporations, and governmental entities, including appropriations by the state on a direct or matching fund basis, to assist the county in providing water safety programs in the interest of the health, safety, and welfare of persons using the coastal water of this state.

(g) The county or sheriff is not liable, because of the appointment of a reserve deputy, if the reserve deputy incurs personal injury while serving in an official capacity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 90, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.820, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 171 (H.B. 2272), Sec. 1, eff. May 28, 2015.

Acts 2021, 87th Leg., R.S., Ch. 234 (H.B. 1049), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.133, eff. January 1, 2025.

Sec. 85.005. GUARDS; PENALTY. (a) The sheriff may, with the approval of the commissioners court or, in the case of an emergency, with the approval of the county judge, employ a sufficient number of guards to ensure the safekeeping of prisoners and the security of a jail.

(b) In case of an emergency, a guard is subject to being called to duty by the sheriff.

(c) A person charged with the responsibility of enforcing this section commits an offense if the person violates the section. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $200.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 12(a), eff. Aug. 28, 1989.

Sec. 85.006. COUNTY POLICE FORCE IN COUNTIES OF 210,000 OR MORE. (a) In a county with a population of 210,000 or more, the sheriff may appoint a county police force. The commissioners court shall determine the number, which must be at least six, of police officers to be appointed. The sheriff shall appoint one of the officers as chief of the county police. The appointments are subject to approval by the commissioners court. The sheriff may, subject to approval by the commissioners court, terminate the employment of an officer.

(b) The sheriff shall deputize each police officer appointed under this section. Each officer has the authority of a deputy sheriff, and all laws of the state applicable to deputy sheriffs apply to the officer to the same extent that they apply to deputy sheriffs unless the law conflicts with this section.

(c) A police officer appointed under this section shall patrol, by automobile or motorcycle furnished by the officer, the highways of the county located outside the corporate limits of the county seat. The officer shall devote all time spent on duty to performing that service and to matters related to that service. The officer shall perform all duties in accordance with rules adopted by the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. MISCELLANEOUS POWERS AND DUTIES

Sec. 85.021. EXECUTION OF PROCESS; PENALTY. (a) The sheriff shall execute all process and precepts directed to the sheriff by legal authority and shall return the process or precept to the proper court on or before the date the process or precept is returnable.

(b) The sheriff commits an offense if the sheriff:

(1) fails to return a process or precept as required by Subsection (a); or

(2) makes a false return.

(c) An offense under this section is punishable by the court to which the process is returnable, as for contempt, by a fine of not

more than $100. A fine collected under this section shall be deposited in the county treasury.

(d) The sheriff is liable for all damages sustained by a person by reason of an offense committed by the sheriff under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 85.022. EXECUTION OF LEGISLATIVE PROCESS; PENALTY. (a) The sheriff shall execute subpoenas and other process directed to the sheriff that are issued by the speaker of the house of representatives, the president of the senate, or the chairman of a committee of either house of the legislature.

(b) Failure to execute the subpoena or other process under Subsection (a) carries the same penalties as failure to execute process issued by a court.

(c) If the sheriff performs services under this section, the sheriff shall receive the fees prescribed by law for similar services rendered in the courts. The fee shall be paid on the certificate of the authority issuing the process.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 85.023. UNFINISHED BUSINESS. If a sheriff vacates the office for any reason, all unfinished business shall be transferred to the succeeding sheriff and completed in the same manner as if the successor had begun the business.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 85.024. SCHOOL SAFETY MEETINGS. (a) The sheriff of a county with a total population of less than 350,000 in which a public school is located shall call and conduct semiannual meetings to discuss:

(1) school safety;

(2) coordinated law enforcement response to school violence incidents;

(3) law enforcement agency capabilities;

(4) available resources;

(5) emergency radio interoperability;

(6) chain of command planning; and

(7) other related subjects proposed by a person in attendance at the meeting.

(b) The sheriff of a county to which this section applies in which more than one public school is located is only required to hold one semiannual meeting described by Subsection (a). This subsection does not require public schools located within the same county to adopt the same school safety policies.

(c) The following persons shall attend a meeting called under Subsection (a):

(1) the sheriff or the sheriff's designee;

(2) the police chief of a municipal police department in the county or the police chief's designee;

(3) each elected constable in the county or the constable's designees;

(4) each police chief of a school district's police department or school district security coordinator from each school district located in the county;

(5) a representative of the Department of Public Safety assigned to the county;

(6) a representative of each other state agency with commissioned peace officers assigned to the county;

(7) a person appointed to a command staff position at an emergency medical service in the county;

(8) a person appointed to a command staff position at a municipal emergency medical service in the county;

(9) a person appointed to a command staff position at a fire department in the county;

(10) the superintendent or the superintendent's designee of each school district located in the county;

(11) the person who serves the function of superintendent, or that person's designee, in each open-enrollment charter school located in the county; and

(12) any other person the sheriff considers appropriate.

(d) The sheriff shall invite any federal law enforcement official serving in the county to attend the meeting.

(e) As soon as practicable after a meeting under Subsection (a), the sheriff shall submit a report to the Texas School Safety Center identifying the attendees of the meeting and the subjects

discussed. The Texas School Safety Center shall maintain the report and make it publicly available on the center's Internet website. The center may not make publicly available and shall redact any parts of a report that the center determines may expose a safety vulnerability of a school district facility.

Added by Acts 2023, 88th Leg., R.S., Ch. 896 (H.B. 3), Sec. 25, eff. September 1, 2023.

CHAPTER 86. CONSTABLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 86.001. ELIGIBILITY TO SERVE AFTER BOUNDARY CHANGE. A person who has served as the constable of a precinct for 10 or more consecutive years before a change is made in the boundaries of the precinct is not ineligible for reelection in the precinct because of residence outside the precinct if the constable's residence is within the boundaries of the precinct as they existed before the change.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 86.002. OATH; BOND. (a) Before entering on the duties of office, a person who is elected to the office of constable must execute a bond with two or more good and sufficient sureties or with a solvent surety company authorized to do business in this state. The bond must be payable to the governor and the governor's successors in office and conditioned that the constable will faithfully perform the duties imposed by law. The bond must be approved by the commissioners court of the county. The commissioners court shall set the bond in an amount of not less than $500 or more than $1,500.

(b) A person who is elected constable must also take and sign the constitutional oath of office. The oath shall be endorsed on the bond, together with the certificate of the officer who administers the oath. The bond and oath must be deposited and recorded in the office of the clerk of the county court.

(c) The bond is not void on the first recovery but may be sued on from time to time in the name of an injured party until the whole amount of the bond is recovered.

(d) A person who is elected or appointed to the office of

constable and who has given the necessary bond and taken the oath of office may immediately perform the duties of the office. The acts of the constable are as valid in law as if the constable were commissioned.

(e) Repealed by Acts 1995, 74th Leg., ch. 683, Sec. 1, eff. Aug. 28, 1995.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 683, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 18, eff. September 1, 2005.

Sec. 86.0021. QUALIFICATIONS; REMOVAL.

Text of subsection effective until January 1, 2025

(a) A person is not eligible to serve as constable unless:

(1) the person is eligible to be licensed under Sections 1701.309 and 1701.312, Occupations Code, and:

(A) has at least an associate's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(B) is a special investigator under Article 2.122(a), Code of Criminal Procedure; or

(C) is an honorably retired peace officer or honorably retired federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code; or

(2) the person is an active or inactive licensed peace officer under Chapter 1701, Occupations Code.

Text of subsection effective on January 1, 2025

(a) A person is not eligible to serve as constable unless:

(1) the person is eligible to be licensed under Sections 1701.309 and 1701.312, Occupations Code, and:

(A) has at least an associate's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(B) is a special investigator under Article 2A.002(a),

Code of Criminal Procedure; or

(C) is an honorably retired peace officer or honorably retired federal criminal investigator who holds a certificate of proficiency issued under Section 1701.357, Occupations Code; or

(2) the person is an active or inactive licensed peace officer under Chapter 1701, Occupations Code.

(b) On or before the 270th day after the date a constable takes office, the constable shall provide, to the commissioners court of the county in which the constable serves, evidence that the constable has been issued a permanent peace officer license under Chapter 1701, Occupations Code. A constable who fails to provide evidence of licensure under this subsection or who fails to maintain a permanent license while serving in office forfeits the office and is subject to removal in a quo warranto proceeding under Chapter 66, Civil Practice and Remedies Code.

(c) The license requirement of Subsection (b) supersedes the license requirement of Section 1701.302, Occupations Code.

Added by Acts 1997, 75th Leg., ch. 884, Sec. 3, eff. Jan. 1, 1998.
Amended by Acts 1999, 76th Leg., ch. 877, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.821, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 954 (H.B. 1588), Sec. 1, eff. June 18, 2005.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.134, eff. January 1, 2025.

Sec. 86.003. NEW BOND; REMOVAL. (a) If any of the sureties of a constable dies, permanently moves from this state, becomes insolvent, or is released from liability as provided by law or if the commissioners court determines that the bond of the constable is insufficient, the court shall issue a citation that requires the constable to appear at a time set in the citation, after the 10th day but on or before the 30th day after the date the citation is issued, in order to execute a new bond with good and sufficient surety.

(b) If the constable neglects or refuses to appear to execute the bond at the designated time, the constable shall cease to perform the duties of the office and shall be removed from office by the judge of the district court in the manner provided by law for the

removal of county officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. DEPUTIES

Sec. 86.011. APPOINTMENT OF DEPUTY CONSTABLE. (a) An elected constable who desires to appoint a deputy must apply in writing to the commissioners court of the county and show that it is necessary to appoint a deputy in order to properly handle the business of the constable's office that originates in the constable's precinct. The application must state the name of the proposed deputy. The commissioners court shall approve and confirm the appointment of the deputy only if the commissioners court determines that the constable needs a deputy to handle the business originating in the precinct.

(b) Each deputy constable must qualify in the manner provided for deputy sheriffs under Section 85.003.

(c) The constable is responsible for the official acts of each deputy of the constable. The constable may require a deputy to post a bond or security. A constable may exercise any remedy against a deputy or the deputy's surety that a person may exercise against the constable or the constable's surety.

(d) A person commits an offense if the person:

(1) serves as a deputy constable and the person has not been appointed as provided by Subsection (a); or

(2) is a constable and issues a deputyship without the consent and approval of the commissioners court.

(e) An offense under Subsection (d) is punishable by a fine of not less than $50 or more than $1,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 234 (H.B. 1049), Sec. 3, eff. September 1, 2021.

Sec. 86.012. RESERVE DEPUTY CONSTABLES. (a) The commissioners court of a county may authorize a constable of the county to appoint reserve deputy constables. The commissioners court may limit the number of reserve deputy constables that a constable may appoint.

Text of subsection effective until January 1, 2025

(b) A reserve deputy constable serves at the discretion of the constable and may be called into service at any time that the constable considers it necessary to have additional officers to preserve the peace and enforce the law. The constable may authorize a reserve deputy constable who is a peace officer as described by Article 2.12, Code of Criminal Procedure, to carry a weapon or act as a peace officer at all times, regardless of whether the reserve deputy constable is engaged in the actual discharge of official duties, or may limit the authority of the reserve deputy constable to carry a weapon or act as a peace officer to only those times during which the reserve deputy constable is engaged in the actual discharge of official duties. A reserve deputy constable who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, may act as a peace officer only during the actual discharge of official duties. A reserve deputy constable, regardless of whether the reserve deputy constable is a peace officer as described by Article 2.12, Code of Criminal Procedure, is not:

(1) eligible for participation in any program provided by the county that is normally considered a financial benefit of full-time employment or for any pension fund created by statute for the benefit of full-time paid peace officers; or

(2) exempt from Chapter 1702, Occupations Code.

Text of subsection effective on January 1, 2025

(b) A reserve deputy constable serves at the discretion of the constable and may be called into service at any time that the constable considers it necessary to have additional officers to preserve the peace and enforce the law. The constable may authorize a reserve deputy constable who is a peace officer as described by Article 2A.001, Code of Criminal Procedure, to carry a weapon or act as a peace officer at all times, regardless of whether the reserve deputy constable is engaged in the actual discharge of official duties, or may limit the authority of the reserve deputy constable to carry a weapon or act as a peace officer to only those times during which the reserve deputy constable is engaged in the actual discharge of official duties. A reserve deputy constable who is not a peace officer as described by Article 2A.001, Code of Criminal Procedure, may act as a peace officer only during the actual discharge of official duties. A reserve deputy constable, regardless of whether the reserve deputy constable is a peace officer as described by

Article 2A.001, Code of Criminal Procedure, is not:

(1) eligible for participation in any program provided by the county that is normally considered a financial benefit of full-time employment or for any pension fund created by statute for the benefit of full-time paid peace officers; or

(2) exempt from Chapter 1702, Occupations Code.

(c) Except as provided by Subsection (c-1), a reserve deputy constable must take the official oath and must execute a bond in the amount of $2,000, payable to the constable. The oath and bond must be filed with the county clerk of the county in which the appointment is made. Except as provided by Subsection (c-2), the oath and bond must be given before the reserve deputy constable's entry on duty and simultaneously with the officer's appointment.

(c-1) If a constable appoints more than one reserve deputy constable, the constable may execute a blanket surety bond to cover the reserve deputy constables. Instead of a reserve deputy constable executing an individual bond under Subsection (c) or the constable executing a blanket surety bond, the county may self-insure against losses that would have been covered by the bond.

(c-2) A person reappointed as a reserve deputy constable may continue to perform the duties of office before retaking the official oath. The reserve deputy constable must retake the oath as soon as possible after being reappointed.

(d) While actively engaged in an assigned duty at the call of the constable, a reserve deputy constable is vested with the same rights, privileges, and duties of any other peace officer in this state.

(e) The county and the constable do not incur any liability by reason of the appointment of a reserve deputy constable if the reserve deputy constable incurs a personal injury while serving in that capacity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 90, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.822, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 261 (H.B. 1241), Sec. 1, eff. June 17, 2011.

Acts 2021, 87th Leg., R.S., Ch. 234 (H.B. 1049), Sec. 4, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.135, eff. January 1, 2025.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 86.021. GENERAL POWERS AND DUTIES. (a) A constable shall execute and return as provided by law each process, warrant, and precept that is directed to the constable and is delivered by a lawful officer. Notices required by Section 24.005, Property Code, relating to eviction actions are process for purposes of this section that may be executed by a constable.

(b) A constable may execute any civil or criminal process throughout the county in which the constable's precinct is located and in other locations as provided by the Code of Criminal Procedure or by any other law.

(c) A constable expressly authorized by statute to perform an act or service, including the service of civil or criminal process, citation, notice, warrant, subpoena, or writ, may perform the act or service anywhere in the county in which the constable's precinct is located.

(d) Regardless of the Texas Rules of Civil Procedure, all civil process may be served by a constable in the constable's county or in a county contiguous to the constable's county, except that a constable who is a party to or interested in the outcome of a suit may not serve any process related to the suit. All civil process served by a constable at any time or place is presumed to be served in the constable's official capacity if under the law the constable may serve that process in the constable's official capacity. A constable may not under any circumstances retain a fee paid for serving civil process in the constable's official capacity other than the constable's regular salary or compensation. Any fee paid to a constable for serving civil process in the constable's official capacity shall be deposited with the county treasurer of the constable's county.

(e) The constable shall attend each justice court held in the precinct.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 13(a), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 884, Sec. 1, eff. Jan. 1, 1998.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 846 (S.B. 2197), Sec. 1, eff. September 1, 2009.

Sec. 86.023. COLLECTION LIABILITY. If, for collection, a constable receives a bond, bill, note, or account from any person and the constable gives a receipt in an official capacity for the instrument or account, the constable and the constable's sureties are liable under the constable's bond for the amount collected if the constable fails to pay the amount on demand to the person for whom the constable made the collection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 86.024. FAILURE TO EXECUTE PROCESS. (a) If a constable fails or refuses to execute and return according to law a process, warrant, or precept that is lawfully directed and delivered to the constable, the constable shall be fined for contempt before the court that issued the process, warrant, or precept on the motion of the person injured by the failure or refusal. This section does not apply to actions brought under or that could have been brought under Chapter 34, Civil Practice and Remedies Code.

(b) The fine shall be set at not less than $10 or more than $100, with costs. The fine shall be for the benefit of the injured person. The constable must be given 10 days' notice of the motion.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 421 (S.B. 1269), Sec. 6, eff. September 1, 2007.

Sec. 86.025. UNFINISHED BUSINESS. If a constable vacates the office for any reason, all unfinished business shall be transferred to the succeeding constable and completed in the same manner as if the successor had begun the business.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 87. REMOVAL OF COUNTY OFFICERS FROM OFFICE; FILLING OF VACANCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 87.001. NO REMOVAL FOR PRIOR ACTION. An officer may not be removed under this chapter for an act the officer committed before election to office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. REMOVAL BY PETITION AND TRIAL

Sec. 87.011. DEFINITIONS. In this subchapter:

(1) "District attorney" includes a criminal district attorney.

(2) "Incompetency" means:

(A) gross ignorance of official duties;

(B) gross carelessness in the discharge of those duties; or

(C) unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the officer's election.

(3) "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes:

(A) an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law;

(B) a prosecuting attorney's adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law or instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law, except a policy adopted:

(i) in compliance with state law or an injunction, judgment, or other court order;

(ii) in response to a reasonable evidentiary impediment to prosecution; or

(iii) to provide for diversion or similar conditional dismissals of cases when permissible under state law; or

(C) permitting an attorney who is employed by or

otherwise under the direction or control of the prosecuting attorney to refuse to prosecute a class or type of criminal offense under state law or instruct law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law for any reason other than a reason described by Paragraph (B)(i), (ii), or (iii).

(4) "Policy" means an instruction or directive expressed in any manner.

(5) "Prosecuting attorney" means a district attorney or a county attorney with criminal jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 1, eff. September 1, 2023.

Sec. 87.012. OFFICERS SUBJECT TO REMOVAL. The district judge may, under this subchapter, remove from office:

(1) a district attorney;
(2) a county attorney;
(3) a county judge;
(4) a county commissioner;
(5) a county clerk;
(6) a district clerk;
(7) a district and county clerk;
(8) a county treasurer;
(9) a sheriff;
(10) a county surveyor;
(11) a county tax assessor-collector;
(12) a constable;
(13) a justice of the peace;
(14) a member of the board of trustees of an independent school district; and
(15) a county officer, not otherwise named by this section, whose office is created under the constitution or other law of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 37 (H.B. 328), Sec. 4, eff. May

19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 508 (S.B. 122), Sec. 1, eff. June 14, 2013.

Sec. 87.013. GENERAL GROUNDS FOR REMOVAL. (a) An officer may be removed for:

(1) incompetency;

(2) official misconduct; or

(3) intoxication on or off duty caused by drinking an alcoholic beverage.

(b) Intoxication is not a ground for removal if it appears at the trial that the intoxication was caused by drinking an alcoholic beverage on the direction and prescription of a licensed physician practicing in this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 87.0131. DEFENSE IN CERTAIN CASES. It is a defense in an action alleging a prosecuting attorney committed official misconduct described by Section 87.011(3)(C) that the prosecuting attorney took action immediately on discovering an attorney employed by or otherwise under the direction or control of the prosecuting attorney was acting as described by Section 87.011(3)(C).

Added by Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 2, eff. September 1, 2023.

Sec. 87.014. GROUNDS: FAILURE TO GIVE BOND. A county officer who is required by law to give an official bond may be removed under this subchapter if the officer:

(1) fails to execute the bond within the time prescribed by law; or

(2) does not give a new bond, or an additional bond or security, if required by law to do so.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 87.015. PETITION FOR REMOVAL. (a) A proceeding for the removal of an officer is begun by filing a written petition for removal in a district court of the county in which the officer resides. However, a proceeding for the removal of a district attorney is begun by filing a written petition in a district court of:

(1) the county in which the attorney resides; or

(2) the county where the alleged cause of removal occurred, if that county is in the attorney's judicial district.

(b) A petition for removal of an officer other than a prosecuting attorney may be filed by any resident of this state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county. At least one of the parties who files the petition must swear to it at or before the filing.

(b-1) A petition for removal of a prosecuting attorney may be filed by any resident of this state who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense in that county. At least one of the parties who files the petition must swear to it at or before the filing.

(c) A petition for removal of an officer other than a prosecuting attorney must be addressed to the district judge of the court in which it is filed. A petition for removal of a prosecuting attorney must be addressed to the presiding judge of the administrative judicial region in which the petition is filed. The petition must set forth the grounds alleged for the removal of the officer in plain and intelligible language and must cite the time and place of the occurrence of each act alleged as a ground for removal with as much certainty as the nature of the case permits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 3, eff. September 1, 2023.

Sec. 87.0151. ASSIGNMENT OF JUDGE IN CERTAIN CASES. (a) Immediately after a petition for removal of a prosecuting attorney is

filed under Section 87.015, the district clerk shall deliver a copy of the petition to the presiding judge of the administrative judicial region in which the court sits.

(b) On receiving a petition for removal of a prosecuting attorney under Subsection (a), the presiding judge of the administrative judicial region shall assign a district court judge of a judicial district that does not include the county in which the petition was filed to conduct the removal proceedings.

Added by Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 4, eff. September 1, 2023.

Sec. 87.016. CITATION OF OFFICER. (a) After a petition for removal is filed, the person filing the petition shall apply to the district judge in writing for an order requiring a citation and a certified copy of the petition to be served on the officer.

(b) If the application for the order is made during the term of the court, action may not be taken on the petition until the order is granted and entered in the minutes of the court. If the application is made to the judge during the vacation of the court, the judge shall indicate on the petition the action taken and shall have the action entered in the minutes of the court at the next term.

(c) If the judge refuses to issue the order for citation, the petition shall be dismissed at the cost of the person filing the petition. The person may not take an appeal or writ of error from the judge's decision. If the judge grants the order for citation, the clerk shall issue the citation with a certified copy of the petition. The judge shall require the person filing the petition to post security for costs in the manner provided for other cases.

(d) The citation shall order the officer to appear and answer the petition on a date, fixed by the judge, after the fifth day after the date the citation is served. The time is computed as it is in other suits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 563, Sec. 1, eff. Sept. 1, 1991.

Sec. 87.017. SUSPENSION PENDING TRIAL; TEMPORARY APPOINTEE. (a) After the issuance of the order requiring citation of the

officer, the district judge may temporarily suspend the officer and may appoint another person to perform the duties of the office.

(b) The judge may not suspend the officer until the person appointed to serve executes a bond, with at least two good and sufficient sureties, in an amount fixed by the judge and conditioned as required by the judge. The bond shall be used to pay damages and costs to the suspended officer if the grounds for removal are found at trial to be insufficient or untrue. In an action to recover on the bond it is necessary to allege and prove that the temporary appointee actively aided and instigated the filing and prosecution of the removal action. The suspended officer must also serve written notice on the temporary appointee and the appointee's bondsman, within 90 days after the date the bond is executed, stating that the officer intends to hold them liable on the bond and stating the grounds for that liability.

(c) If the final judgment establishes the officer's right to the office, the county shall pay the officer from the general fund of the county an amount equal to the compensation received by the temporary appointee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 87.018. TRIAL. (a) Officers may be removed only following a trial by jury.

(b) The trial for removal of an officer and the proceedings connected with the trial shall be conducted as much as possible in accordance with the rules and practice of the court in other civil cases, in the name of the State of Texas, and on the relation of the person filing the petition.

(c) In a removal case, the judge may not submit special issues to the jury. Under a proper charge applicable to the facts of the case, the judge shall instruct the jury to find from the evidence whether the grounds for removal alleged in the petition are true. If the petition alleges more than one ground for removal, the jury shall indicate in the verdict which grounds are sustained by the evidence and which are not sustained.

(d) The county attorney shall represent the state in a proceeding for the removal of an officer except as otherwise provided by Subsection (e) or (f).

(e) In a proceeding to remove a county attorney who is not a prosecuting attorney from office, the district attorney shall represent the state. If the county does not have a district attorney, the county attorney from an adjoining county, as selected by the commissioners court of the county in which the proceeding is pending, shall represent the state.

(f) In a proceeding to remove a prosecuting attorney from office, the presiding judge of the administrative judicial region in which the petition for removal was filed shall appoint a prosecuting attorney from another judicial district or county, as applicable, in the administrative judicial region to represent the state.

(g) In a proceeding to remove a prosecuting attorney from office, a prosecuting attorney's public statement establishing that the prosecuting attorney adopted or enforced or intends to adopt or enforce a policy described by Section 87.011(3)(B) or permitted or intends to permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to act as described by Section 87.011(3)(C) creates a rebuttable presumption that the prosecuting attorney committed official misconduct.

(h) In a trial in which a prosecuting attorney is accused of committing official misconduct under Section 87.011(3)(B) or (C), a court may award reasonable attorney's fees and costs the prosecuting attorney personally spent related to the conduct of the proceeding on finding that the prosecuting attorney did not adopt or enforce a policy described by Section 87.011(3)(B) or permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to act as described by Section 87.011(3)(C), as applicable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 563, Sec. 2, eff. Sept. 1, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 366 (H.B. 17), Sec. 5, eff. September 1, 2023.

Sec. 87.019. APPEAL. (a) Either party to a removal action may appeal the final judgment to the court of appeals in the manner provided for other civil cases. If the officer has not been suspended from office, the officer is not required to post an appeal

bond but may be required to post a bond for costs.

(b) An appeal of a removal action takes precedence over the ordinary business of the court of appeals and shall be decided with all convenient dispatch. If the trial court judgment is not set aside or suspended, the court of appeals shall issue its mandate in the case within five days after the date the court renders its judgment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. REMOVAL BY CRIMINAL CONVICTION

Sec. 87.031. IMMEDIATE REMOVAL. (a) The conviction of a county officer by a petit jury for any felony or for a misdemeanor involving official misconduct operates as an immediate removal from office of that officer.

(b) The court rendering judgment in such a case shall include an order removing the officer in the judgment.

(c) For purposes of Subsection (a), "a misdemeanor involving official misconduct" includes a misdemeanor under Section 39.07, Penal Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 4 (S.B. 4), Sec. 5.01, eff. September 1, 2017.

Sec. 87.032. APPEAL; SUSPENSION. If the officer appeals the judgment, other than for an offense to which Section 180.010 applies, the appeal supersedes the order of removal unless the court that renders the judgment finds that it is in the public interest to suspend the officer pending the appeal. If the court finds that the public interest requires suspension, the court shall suspend the officer as provided by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.001, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 1048 (S.B. 232), Sec. 3, eff.

September 1, 2023.

SUBCHAPTER D. FILLING OF VACANCIES

Sec. 87.041. VACANCIES FILLED BY APPOINTMENT OF COMMISSIONERS COURT. (a) The commissioners court of a county may fill a vacancy in the office of:

(1) county judge;
(2) county clerk;
(3) district and county clerk;
(4) sheriff;
(5) county attorney;
(6) county treasurer;
(7) county surveyor;
(8) county tax assessor-collector;
(9) justice of the peace; or
(10) constable.

(b) The commissioners court shall fill a vacancy by a majority vote of the members of the court who are present and voting.

(c) The person appointed by the commissioners court to fill the vacancy shall hold office until the next general election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 37 (H.B. 328), Sec. 5, eff. May 19, 2009.

Sec. 87.042. COUNTY COMMISSIONER VACANCY. (a) Except as provided by Subsection (b), if a vacancy occurs in the office of county commissioner, the county judge shall appoint a suitable resident of the precinct in which the vacancy exists to fill the vacancy until the next general election.

(b) This subsection applies only to a county with a population of more than 300,000. Not later than the 60th day after the date a vacancy occurs in the office of county commissioner, the county judge shall appoint a suitable resident of the precinct in which the vacancy exists to fill the vacancy until the next general election. If the county judge does not make an appointment to fill the vacancy before the 61st day after the date the vacancy occurred, the

commissioners court by majority vote shall appoint a suitable resident of the precinct in which the vacancy exists to fill the vacancy until the next general election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 791 (H.B. 1927), Sec. 1, eff. June 10, 2019.

Sec. 87.043. TEMPORARY ABSENCE IN OFFICE OF COUNTY JUDGE IN CERTAIN COUNTIES. (a) In a county with a population of less than 150,000, a temporary absence occurs in the office of county judge if:

(1) the county judge is located outside the county for 30 consecutive full days as a direct result of:

(A) being a reservist or a member of the national guard who was ordered to duty under the authority of federal law;

(B) enlisting in the armed forces or the national guard as a volunteer; or

(C) being inducted into the armed forces under federal draft laws; and

(2) the commissioners court determines in writing that the absence prevents the county judge from satisfactorily discharging the duties of the office.

(b) If a temporary absence exists in the office of county judge, before the 30th day after the date the absence begins, the absent county judge may appoint a resident of the county to fill the office until the next term of that office or until the temporary absence ends, whichever event occurs first. If the absent county judge does not appoint a resident of the county within the 30-day period, the commissioners court shall appoint a resident of the county to fill the office until the next term of that office or until the temporary absence ends, whichever event occurs first.

Added by Acts 1991, 72nd Leg., ch. 447, Sec. 1, eff. June 11, 1991.

CHAPTER 88. OFFICIAL BONDS OF COUNTY OFFICERS AND EMPLOYEES

Sec. 88.001. CERTAIN BONDS PAYABLE TO COUNTY JUDGE; CUSTODY OF BONDS. The official bond of a county officer that is required by law to be approved by the commissioners court must, except as required by

other law, be made payable to the county judge and kept and recorded by the county clerk.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 23, eff. Sept. 1, 1993.

Sec. 88.002. APPLICATION OF SURETY TO TERMINATE LIABILITY ON BOND. A surety on the official bond of a county officer may apply to the commissioners court to be relieved from the bond.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 23, eff. Sept. 1, 1993.

Sec. 88.003. NOTICE TO OFFICER OF SURETY'S APPLICATION. (a) The county clerk shall issue to the officer giving the bond a notice and a copy of a surety's application to be relieved from a bond.

(b) The sheriff or a constable of the county shall serve the notice and a copy of the application under this section on the officer.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 23, eff. Sept. 1, 1993.

Sec. 88.004. OFFICER TO STOP EXERCISING FUNCTIONS OF OFFICE. On service of notice under Section 88.003, an officer shall stop exercising the functions of the officer's office, except that:

(1) the officer shall preserve records and property in the officer's charge; and

(2) if the officer is a sheriff or constable, the officer shall:

(A) keep prisoners;

(B) preserve the peace; and

(C) execute warrants of arrest.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 23, eff. Sept. 1, 1993.

Sec. 88.005. OFFICER WHO FAILS TO GIVE NEW BOND VACATES OFFICE. An officer who does not give a new bond before the 21st day after the date the officer receives notice under Section 88.003 vacates the officer's office.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 23, eff. Sept. 1, 1993.

Sec. 88.006. NEW BOND; DISCHARGE OF FORMER SURETIES. If an officer served notice under Section 88.003 gives a new bond and the bond is approved, the former sureties are discharged from liability for misconduct of the officer after the approval of the new bond.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 23, eff. Sept. 1, 1993.

Sec. 88.007. NEW BOND REQUIRED BY COMMISSIONERS COURT. (a) A commissioners court that finds that a county officer's bond approved by the court is insufficient for any reason shall:

(1) require the officer to give a new bond or additional security; and

(2) have the officer cited to appear at a term of the court not earlier than the sixth day after the date of service and take any action the court considers best for the public interest.

(b) Action taken by the commissioners court under this section is final and may not be appealed.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 23, eff. Sept. 1, 1993.

Sec. 88.008. SELF-INSURANCE INSTEAD OF BOND. (a) Notwithstanding any other law requiring a county officer or employee to execute a bond as a condition of office or employment, a county officer or employee is not required to execute the bond and may perform the duties of office or employment if:

(1) the commissioners court by order authorizes the county to self-insure against losses that would have been covered by the bond; and

(2) the county judge approves the order adopted under Subdivision (1), if the county judge was required to approve the bond under the other law.

(b) An order adopted by the commissioners court under Subsection (a) shall be kept and recorded by the county clerk.

Added by Acts 2013, 83rd Leg., R.S., Ch. 69 (S.B. 265), Sec. 3, eff. May 18, 2013.

CHAPTER 89. GENERAL PROVISIONS RELATING TO COUNTY ADMINISTRATION

Sec. 89.001. SPECIAL COUNSEL IN POPULOUS COUNTIES. (a) The commissioners court of a county with a population of more than two million may employ an attorney as special counsel.

(b) The special counsel may be employed to:

(1) represent the county in any suit brought by or against the county;

(2) prepare necessary documents and otherwise assist the court, the county engineer, and other county employees in the acquisition of rights-of-way for the county and for state highways; or

(3) represent the county in condemnation proceedings for the acquisition of rights-of-way for highways and other purposes for which the county has the right of eminent domain.

(c) The county attorney shall select the special counsel. If the county does not have a county attorney, the district attorney or criminal district attorney shall select the special counsel. The selecting officer shall determine the terms and duration of employment of the special counsel, subject to the court's approval.

Acts 1987, 70th Leg.,ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 85, eff. Sept. 1, 1991. Renumbered from Sec. 81.023 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(b), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 19, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 20, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 127, eff. September 1, 2023.

Sec. 89.002. STATE ASSOCIATION OF COUNTIES. (a) The commissioners court may spend, in the name of the county, money from the county's general fund for membership fees and dues of a nonprofit state association of counties if:

(1) a majority of the court votes to approve membership in

the association;

(2) the association exists for the betterment of county government and the benefit of all county officials;

(3) the association is not affiliated with a labor organization;

(4) neither the association nor an employee of the association directly or indirectly influences or attempts to influence the outcome of any legislation pending before the legislature, except that this subdivision does not prevent a person from providing information for a member of the legislature or appearing before a legislative committee at the request of the committee or the member of the legislature; and

(5) neither the association nor an employee of the association directly or indirectly contributes any money, services, or other valuable thing to a political campaign or endorses a candidate or group of candidates for public office.

(b) If any association or organization supported wholly or partly by payments of tax receipts from political subdivisions engages in an activity described by Subsection (a)(4) or (5), a taxpayer of a political subdivision that pays fees or dues to the association or organization is entitled to appropriate injunctive relief to prevent any further activity described by Subsection (a)(4) or (5) or any further payments of fees or dues.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 81.026 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(b), eff. Sept. 1, 1999.

Sec. 89.003. CENTRAL MAILING SYSTEM IN COUNTIES WITH POPULATION OF MORE THAN ONE MILLION. The commissioners court of a county with a population of more than one million may establish a central mailing system to serve:

(1) district and county courts in the county, including the office of the clerk of the court;

(2) offices in the county of the judicial district in which the county is located; and

(3) offices and departments of the county.

Added by Acts 1995, 74th Leg., ch. 146, Sec. 1, eff. May 19, 1995. Renumbered from Local Government Code Sec. 81.029 by Acts 1997, 75th

Leg., ch. 165, Sec. 31.01(65), eff. Sept. 1, 1997. Renumbered from Sec. 81.030 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(b), eff. Sept. 1, 1999.

Sec. 89.004. PRESENTATION OF CLAIM. (a) Except as provided by Subsection (c), a person may not file suit on a claim against a county or an elected or appointed county official in the official's capacity as an appointed or elected official unless the person has presented the claim to the commissioners court and the commissioners court neglects or refuses to pay all or part of the claim before the 60th day after the date of the presentation of the claim.

(b) If the plaintiff in a suit against a county does not recover more than the commissioners court offered to pay on presentation of the claim, the plaintiff shall pay the costs of the suit.

(c) A person may file a suit for injunctive relief against a county. After the court's ruling on the application for temporary injunctive relief, any portion of the suit that seeks monetary damages shall be abated until the claim is presented to the commissioners court and the commissioners court neglects or refuses to pay all or part of the claim by the 60th day after the date of the presentation of the claim.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 81.041 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(b), eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1203, Sec. 1, eff. Sept. 1, 2003.

Sec. 89.0041. NOTICE OF SUIT AGAINST COUNTY. (a) A person filing suit against a county or against a county official in the official's capacity as a county official shall deliver written notice to:

(1) the county judge; and

(2) the county or district attorney having jurisdiction to defend the county in a civil suit.

(b) The written notice must be delivered by certified or registered mail by the 30th business day after suit is filed and contain:

(1) the style and cause number of the suit;
(2) the court in which the suit was filed;
(3) the date on which the suit was filed; and
(4) the name of the person filing suit.

(c) If a person does not give notice as required by this section, the court in which the suit is pending shall dismiss the suit on a motion for dismissal made by the county or the county official.

Added by Acts 2003, 78th Leg., ch. 1203, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 21, eff. September 1, 2005.

Sec. 89.005. JURORS AND WITNESSES. In a suit brought by or against a county, a resident of the county may be a juror or witness if the resident is otherwise competent.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 81.042 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(b), eff. Sept. 1, 1999.

Sec. 89.006. SATISFACTION OF JUDGMENT. The commissioners court shall settle and pay a judgment against the county in the same manner and pro rata as other similar claims are settled and paid by the court. Execution may not be issued on a judgment against a county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 81.043 by Acts 1999, 76th Leg., ch. 62, Sec. 13.03(b), eff. Sept. 1, 1999.

TITLE 4. FINANCES
SUBTITLE A. MUNICIPAL FINANCES
CHAPTER 101. GENERAL FINANCIAL PROVISIONS AFFECTING MUNICIPALITIES
SUBCHAPTER A. PROVISIONS AFFECTING TYPE A GENERAL-LAW MUNICIPALITIES

Sec. 101.001. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a Type A general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 101.002. CONTROL OF FINANCES. The governing body of the municipality may manage and control the finances of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 101.003. APPROPRIATIONS; PAYMENTS. The governing body of the municipality may appropriate money and provide for the payment of municipal debts and expenses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 101.004. SPECIAL FUNDS; DISBURSEMENT. The governing body of the municipality may provide by ordinance for the creation of special funds for special purposes and may provide that a special fund may be disbursed only for the purpose for which the fund was created.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 101.005. DEBT PAYMENTS; IMPROVEMENTS. (a) The governing body of the municipality may appropriate municipal revenues to:

(1) retire and discharge the accrued indebtedness of the municipality;

(2) improve public markets and streets; or

(3) erect and operate municipal hospitals, a city hall, waterworks, or other municipal buildings and facilities.

(b) The governing body may appropriate municipal revenues under this section in amounts and under conditions that it considers appropriate.

(c) In order to fulfill its functions under this section, the governing body may borrow money based on the credit of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 101.006. RECEIVERSHIP FOR PAYMENT OF DEBTS. (a) On the failure of the municipality to accomplish a compromise of its debts or pending the negotiation of a compromise, the municipality may apply to the district court of the county in which the municipality is located to have the court take charge of the collection and appropriation of all taxes levied and assessed by the municipality, except an amount of taxes necessary to pay the current expenses of the municipality. The application must describe the financial condition and insolvency of the municipality.

(b) After the application is made to the district court, the court shall appoint a receiver or designate the assessor and collector of the municipality as receiver to collect and pay into a named depository, for the payment of the municipal debts, all taxes levied by the municipality. The district court may not appoint a receiver except on the voluntary application of the municipality.

(c) The district court shall decide all questions of priority between conflicting claimants of the municipal funds in the depository and shall provide for the ratable and equitable distribution of the funds among all creditors entitled to the funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. PROVISIONS APPLICABLE TO HOME-RULE MUNICIPALITIES

Sec. 101.021. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 101.022. GENERAL FISCAL POWERS. The municipality may:

(1) control and manage the finances of the municipality; and

(2) prescribe its fiscal year and other fiscal arrangements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 101.0221. FISCAL YEAR FOR CERTAIN MUNICIPALITIES. Notwithstanding any fiscal year provision in the municipal charter, a

municipality with a population in excess of 500,000 which is situated in a county bordering the Republic of Mexico may prescribe its fiscal year by ordinance.

Added by Acts 1993, 73rd Leg., ch. 618, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.14, eff. Sept. 1, 1999.

Sec. 101.023. GARNISHMENT. The municipality may provide that its municipal funds are not subject to garnishment and that the municipality is not required to answer in garnishment proceedings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. PROVISIONS APPLICABLE TO GENERAL-LAW MUNICIPALITIES

Sec. 101.041. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a general-law municipality.

Added by Acts 1993, 73rd Leg., ch. 68, Sec. 1, eff. May 2, 1993.

Sec. 101.042. FISCAL YEAR. The governing body of the municipality by ordinance may prescribe the fiscal year of the municipality.

Added by Acts 1993, 73rd Leg., ch. 68, Sec. 1, eff. May 2, 1993.

CHAPTER 102. MUNICIPAL BUDGET

Sec. 102.001. BUDGET OFFICER. (a) The mayor of a municipality serves as the budget officer for the governing body of the municipality except as provided by Subsection (b).

(b) If the municipality has the city manager form of government, the city manager serves as the budget officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 102.002. ANNUAL BUDGET REQUIRED. The budget officer shall

prepare each year a municipal budget to cover the proposed expenditures of the municipal government for the succeeding year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 102.003. ITEMIZED BUDGET; CONTENTS. (a) The budget officer shall itemize the budget to allow as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes made for the preceding year. The budget must show as definitely as possible each of the projects for which expenditures are set up in the budget and the estimated amount of money carried in the budget for each project.

(b) The budget must contain a complete financial statement of the municipality that shows:

(1) the outstanding obligations of the municipality;

(2) the cash on hand to the credit of each fund;

(3) the funds received from all sources during the preceding year;

(4) the funds available from all sources during the ensuing year;

(5) the estimated revenue available to cover the proposed budget; and

(6) the estimated tax rate required to cover the proposed budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 102.004. INFORMATION FURNISHED BY MUNICIPAL OFFICERS AND BOARDS. In preparing the budget, the budget officer may require any municipal officer or board to furnish information necessary for the budget officer to properly prepare the budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 102.005. PROPOSED BUDGET FILED WITH MUNICIPAL CLERK; PUBLIC INSPECTION. (a) The budget officer shall file the proposed budget with the municipal clerk before the 30th day before the date the governing body of the municipality makes its tax levy for the

fiscal year.

(b) A proposed budget that will require raising more revenue from property taxes than in the previous year must contain a cover page with the following statement in 18-point or larger type: "This budget will raise more total property taxes than last year's budget by (insert total dollar amount of increase and percentage increase), and of that amount (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll) is tax revenue to be raised from new property added to the tax roll this year."

(c) The proposed budget shall be available for inspection by any person. If the municipality maintains an Internet website, the municipal clerk shall take action to ensure that the proposed budget is posted on the website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 1, eff. September 1, 2007.

Sec. 102.006. PUBLIC HEARING ON PROPOSED BUDGET. (a) The governing body of a municipality shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.

(b) The governing body shall set the hearing for a date occurring after the 15th day after the date the proposed budget is filed with the municipal clerk but before the date the governing body makes its tax levy.

(c) The governing body shall provide for public notice of the date, time, and location of the hearing. The notice must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 102.005(b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 2, eff. September 1, 2007.

Sec. 102.0065. SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING. (a) The governing body of a municipality shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county in which the municipality is located.

(b) Notice published under this section is in addition to notice required by other law, except that if another law requires the governing body to give notice, by publication, of a hearing on a budget this section does not apply.

(c) Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.

(d) Notice under this section must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 102.005(b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 24, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 402, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 3, eff. September 1, 2007.

Sec. 102.007. ADOPTION OF BUDGET. (a) At the conclusion of the public hearing, the governing body of the municipality shall take action on the proposed budget. A vote to adopt the budget must be a record vote.

(b) The governing body may make any changes in the budget that it considers warranted by the law or by the best interest of the municipal taxpayers.

(c) Adoption of a budget that will require raising more revenue from property taxes than in the previous year requires a separate vote of the governing body to ratify the property tax increase reflected in the budget. A vote under this subsection is in addition to and separate from the vote to adopt the budget or a vote to set the tax rate required by Chapter 26, Tax Code, or other law.

(d) An adopted budget must contain a cover page that includes:

(1) one of the following statements in 18-point or larger type that accurately describes the adopted budget:

(A) "This budget will raise more revenue from property taxes than last year's budget by an amount of (insert total dollar amount of increase), which is a (insert percentage increase) percent increase from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(B) "This budget will raise less revenue from property taxes than last year's budget by an amount of (insert total dollar amount of decrease), which is a (insert percentage decrease) percent decrease from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll)."; or

(C) "This budget will raise the same amount of revenue from property taxes as last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(2) the record vote of each member of the governing body by name voting on the adoption of the budget;

(3) the municipal property tax rates for the preceding fiscal year, and each municipal property tax rate that has been adopted or calculated for the current fiscal year, including:

(A) the property tax rate;

(B) the no-new-revenue tax rate;

(C) the no-new-revenue maintenance and operations tax rate;

(D) the voter-approval tax rate; and

(E) the debt rate; and

(4) the total amount of municipal debt obligations.

(e) In this section, "debt obligation" means an issued public security as defined by Section 1201.002, Government Code, secured by property taxes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 1, eff.

September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 79, eff. January 1, 2020.

Sec. 102.008. APPROVED BUDGET FILED WITH MUNICIPAL CLERK: POSTING ON INTERNET. (a) On final approval of the budget by the governing body of the municipality, the governing body shall:

(1) file the budget with the municipal clerk; and

(2) if the municipality maintains an Internet website, take action to ensure that:

(A) a copy of the budget, including the cover page, is posted on the website; and

(B) the record vote described by Section 102.007(d)(2) is posted on the website at least until the first anniversary of the date the budget is adopted.

(b) The governing body shall take action to ensure that the cover page of the budget is amended to include the property tax rates required by Section 102.007(d)(3) for the current fiscal year if the rates are not included on the cover page when the budget is filed with the municipal clerk. The governing body shall file an amended cover page with the municipal clerk and take action to ensure that the amended cover page is posted on the municipality's website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 5, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 2, eff. September 1, 2013.

Sec. 102.009. LEVY OF TAXES AND EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE. (a) The governing body of the municipality may levy taxes only in accordance with the budget.

(b) After final approval of the budget, the governing body may spend municipal funds only in strict compliance with the budget, except in an emergency.

(c) The governing body may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public

necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the governing body amends the original budget to meet an emergency, the governing body shall file a copy of its order or resolution amending the budget with the municipal clerk, and the clerk shall attach the copy to the original budget.

(d) After the adoption of the budget or a budget amendment, the budget officer shall provide for the filing of a true copy of the approved budget or amendment in the office of the county clerk of the county in which the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 102.010. CHANGES IN BUDGET FOR MUNICIPAL PURPOSES. This chapter does not prevent the governing body of the municipality from making changes in the budget for municipal purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 102.011. CIRCUMSTANCES UNDER WHICH CHARTER PROVISIONS CONTROL. If a municipality has already adopted charter provisions that require the preparation of an annual budget covering all municipal expenditures and if the municipality conducts a public hearing on the budget as provided by Section 102.006 and otherwise complies with the provisions of this chapter relating to property tax increases, the charter provisions control. After the budget has been finally prepared and approved, a copy of the budget and the amendments to the budget shall be filed with the county clerk, as required for other budgets under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 6, eff. September 1, 2007.

CHAPTER 103. AUDIT OF MUNICIPAL FINANCES

Sec. 103.001. ANNUAL AUDIT; FINANCIAL STATEMENT. (a) A

municipality shall have its records and accounts audited annually and shall have an annual financial statement prepared based on the audit.

(b) A municipality subject to Section 16.356, Water Code, must include in its financial statement a specific report on compliance with that section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.002. AUDITOR. A municipality whose records and accounts are not audited annually by a person prescribed by statute, by charter, or by a person in the regular employ of the municipality shall employ at its own expense a certified public accountant who is licensed in this state or a public accountant who holds a permit to practice from the Texas State Board of Public Accountancy to conduct the audit and to prepare the annual financial statement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 103.003. FILING; PUBLIC RECORD. (a) The annual financial statement, including the auditor's opinion on the statement, shall be filed in the office of the municipal secretary or clerk within 180 days after the last day of the municipality's fiscal year.

(b) The financial statement is a public record.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 862 (H.B. 1456), Sec. 1, eff. June 15, 2007.

Sec. 103.004. VALUATION OF CERTAIN BENEFIT PROGRAMS. (a) A municipality that provides a continuing organized program of service retirement benefits, disability retirement benefits, or death benefits for any of its officers or employees must include in the annual financial statement a valuation of the financial assets and liabilities of the program as shown in the most recent actuarial valuation of the program.

(b) This section does not apply to:

(1) a program for which the only funding agency is a life insurance company;

(2) a program providing only workers' compensation benefits; or

(3) a program administered by the municipality as a member of the Texas Municipal Retirement System.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 104. MUNICIPAL INVESTMENT OF TRUST FUNDS AND SPECIAL DEPOSITS

Sec. 104.001. CHAPTER APPLICABLE TO CERTAIN HOME-RULE MUNICIPALITIES. This chapter applies only to a home-rule municipality with a population of one million or more whose charter provides for an elected comptroller, auditor, or treasurer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 86, eff. Sept. 1, 1991.

Sec. 104.002. AUTHORITY TO MAKE INVESTMENTS. (a) The municipality may invest trust funds and special deposits in the custody of the municipality.

(b) The municipal official responsible for managing and conducting the municipality's fiscal affairs shall make the investments. The investments are subject to the supervision and control of the governing body, as established by ordinance.

(c) The municipality may invest the funds in amounts that are not required for immediate disbursement according to official estimates by purchasing obligations of the United States government or by placing the funds in time deposit accounts with one or more depository banks of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 104.003. EFFECT OF EARLY WITHDRAWAL. If any of the funds placed in time deposit accounts are required before maturity, they shall be made available by the depository bank, but the bank is not liable for interest earned on any amount withdrawn before maturity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 104.004. INTEREST. The municipal official responsible for managing and conducting the fiscal affairs shall receive the interest earned on the investments and shall place the interest in the municipal general fund as compensation to the municipality for holding and handling the trust funds and special deposits for the benefit of the persons ultimately entitled to receive the funds and deposits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 104.005. CUMULATIVE EFFECT WITH CHARTER PROVISIONS. This chapter is cumulative of the municipal powers of investment derived from the municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 105. DEPOSITORIES FOR MUNICIPAL FUNDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Bank" means a state bank or a national bank that has its main office or a branch office in this state.

(2) "Credit union" means a state credit union or federal credit union domiciled in this state.

(3) "Demand deposit" means a deposit of funds that may be withdrawn on the demand of the depositor.

(4) "Depository" means the bank, credit union, or savings association selected by the municipality to provide depository services.

(5) "Time deposit" means a deposit of funds subject to a contract between the depositor and the depository under which the depositor may not withdraw any of the funds by check or by another manner until the expiration of a certain period following written notice of the depositor's intent to withdraw the funds.

(6) "Depository services" means the receipt and disbursement of funds by a depository in accordance with the terms of a depository services contract.

(7) "Depository services contract" means a contract executed by a municipality and a depository containing terms and conditions relating to the depository services to be provided by the depository.

(8) "Designated officer" means the treasurer of a municipality or other officer of the municipality so designated by the governing body of a municipality.

(9) "Federal credit union" means a credit union organized under the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.).

(10) "Federal savings association" means a savings and loan association or a savings bank organized under federal law.

(11) "National bank" means a banking corporation organized under the provisions of 12 U.S.C. Section 21.

(12) "Savings association" means a savings association or savings bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state.

Text of subsec. (13) as amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.79

(13) "State bank" has the meaning assigned by Section 31.002(a), Finance Code.

Text of subsec. (13) as amended by Acts 1999, 76th Leg., ch. 344, Sec. 5.008

(13) "State bank" means a bank organized under the laws of this state or another state.

(14) "State credit union" means a credit union organized under Subtitle D, Title 3, Finance Code.

(15) "State savings association" means any savings and loan association or savings bank organized under the laws of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 9, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.79, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 5.008, eff. Sept. 1, 1999.

Sec. 105.002. FUNDS AFFECTED. This chapter applies to the funds, including school funds, of any municipality or any department or agency of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. ESTABLISHMENT OF DEPOSITORY

Sec. 105.011. DEPOSITORY AUTHORIZED. (a) Before awarding a depository services contract to a depository, the governing body of a municipality shall receive applications for the performance of depository services from one or more banks, credit unions, or savings associations.

(b) The governing body may consider the application of a bank, credit union, or savings association that is not doing business within the municipality if:

(1) the bank, credit union, or savings association maintains a place of business within the state and offers within the state the services required by the depository services contract; and

(2) the governing body, prior to giving the notice required by Section 105.012, has adopted a written policy expressly permitting the consideration of applications received by the municipality from a bank, credit union, or savings association that is not doing business within the municipality, after taking into consideration what is in the best interest of the municipality in establishing a depository.

(c) The designated officer shall request, receive, and review applications for the performance of depository services. The designated officer shall present the specifications of each application to the governing body who will then select a depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 14(a), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.012. NOTICE. (a) The designated officer shall give notice to banks, credit unions, and savings associations requesting the submission of applications for the performance of depository services.

(b) The notice must contain:

(1) the name and address of the designated officer receiving the applications;

(2) the date and time the applications are to be received

by the designated officer; and

(3) the date, time, and place the governing body of the municipality will consider the selection of one or more depositories.

(c) Notice of the request shall be published at least once no later than 21 days prior to the deadline for receipt of applications for depository services contracts (i) in a newspaper of general circulation in the municipality and (ii) in a financial publication of general circulation published within this state; provided, that the notice required by clause (ii) shall not be required if the governing body has not adopted the written policy described in Section 105.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.013. APPLICATION. The designated officer may not consider an application if it is received after the date specified in the notice for receiving applications by the designated officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.014. REVIEW OF APPLICATIONS. In reviewing the applications, the designated officer shall consider the terms and conditions for the performance of depository services, including the type and cost of services to be provided to the municipality, consistent with any policy guidelines adopted by the governing body regarding the selection of one or more depositories.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.015. SELECTION OF DEPOSITORY. (a) The governing body of a municipality may authorize the designated officer to execute on the municipality's behalf one or more depository services contracts.

(b) The governing body may reject any of the applications and readvertise if all applications are rejected.

(c) The conflict of interests provisions of Section 131.903

apply to the selection of the depositories.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.014 and amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1993, 73rd Leg., ch. 268, Sec. 25, eff. Sept. 1, 1993.

Sec. 105.016. DESIGNATION OF DEPOSITORY. (a) The governing body shall designate, by an order recorded in its minutes, the bank, credit union, or savings association to serve as a depository for the municipality's funds.

(b) If a bank, credit union, or savings association selected as a municipal depository does not provide security by the deadline prescribed by Section 105.031, the selection of the bank, credit union, or savings association as a depository is void, and the governing body may consider the application it deems to be the next most advantageous depository services application.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.015 and amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.017. TERM OF DEPOSITORY CONTRACT. A municipality may approve, execute, and deliver any depository services contract whose term does not exceed five years. The depository services contract may only contain terms and conditions approved by the governing body of the municipality.

Added by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.018. ADDITIONAL SERVICES. In addition to depository services, a municipality may contract with financial institutions, including banks, credit unions, and savings associations, for additional financial services under a separate contract if the governing body of the municipality determines that additional financial services are necessary in the administration, collection, investment, and transfer of municipal funds.

Added by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. SECURITY FOR FUNDS HELD BY DEPOSITORY

Sec. 105.031. QUALIFICATION AS DEPOSITORY. (a) The bank or savings association, to qualify as a municipal depository, must, not later than five days before the commencement of the term of the depository services contract, provide security for the municipal funds to be deposited in accordance with the terms of the depository services contract.

(b) Chapter 2257, Government Code governs the type, level, substitution, possession, release, and method of valuation of the security necessary to secure the deposit of municipal funds.

(c) Repealed by Acts 2001, 77th Leg., ch. 402, Sec. 20(a), eff. Sept. 1, 2001.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(12), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 402, Sec. 20(a), eff. Sept. 1, 2001.

Sec. 105.033. SURETY BOND. (a) One or more bonds issued and executed by one or more solvent surety companies authorized to do business in this state, payable to the municipality and filed with the secretary and the designated officer of the municipality, qualify as security under this subchapter if the bonds are approved by the governing body.

(b) After the governing body approves a surety bond, it shall be filed with the secretary and the designated officer of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.034. CONDITIONS TO ACTING AS DEPOSITORY. (a) The depository shall:

(1) keep the municipal funds covered by the depository services contract;

(2) perform all duties and obligations imposed on the

depository by law and under the depository services contract;

(3) pay on presentation all checks drawn and properly payable on a demand deposit account with the depository;

(4) pay all transfers properly payable as directed by a designated officer;

(5) provide and maintain security at the level required by the provisions of Chapter 2257, Government Code; and

(6) account for the municipal funds as required by law.

(b) Any suit brought in connection with a depository services contract must be tried in the county in which the city hall of the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(12), eff. Sept. 1, 1995.

SUBCHAPTER D. MAINTENANCE AND MODIFICATION OF SECURITY

Sec. 105.051. MAINTENANCE OF SECURITY. (a) A depository services contract shall contain terms and conditions relating to the possession, substitution, or release of security, including:

(1) requiring the depository to execute a new bond or pledge additional securities for the deposit of municipal funds;

(2) substituting one security for another;

(3) releasing securities pledged by a depository in excess of the amount required by this chapter;

(4) the time period in which such addition, substitution, or release of security by a depository may occur; and

(5) other matters relating to the possession, substitution, or release of security the municipality considers necessary for its protection.

(b) If a depository fails for any reason to comply with the requirements governing the possession, substitution, or release of security, the governing body may select a new depository in the manner provided in this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.053. SOLVENCY OF SURETY COMPANY AND ADEQUACY OF

SECURITIES. At any time the governing body of the municipality considers it necessary for the protection of the municipality, the governing body may direct the designated officer to investigate the solvency of a surety company that issues a bond on behalf of a municipal depository or investigate the value of securities pledged by a depository to secure municipal funds.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.056 and amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.054. SURRENDER OF INTEREST ON SECURITIES. Except as provided for in the collateral policies of the municipality adopted in accordance with Chapter 2257, Government Code, on request of a municipal depository, the municipality shall surrender, when due, interest coupons or other evidence of interest on securities deposited by the depository with the governing body if the securities remaining pledged by the depository are adequate to meet the requirements of this chapter and of the governing body.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 105.057 and amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(12), eff. Sept. 1, 1995.

SUBCHAPTER E. DEPOSITORY ACCOUNTS

Sec. 105.071. CHARACTER AND AMOUNT OF DEPOSITS. (a) The governing body of the municipality may determine and designate in the depository services contract the character and amount of municipal funds that will be demand deposits. However, the municipality has the right to maintain other investments of municipal funds in accordance with the investment policy adopted by the municipality.

(b) The designated officer may contract with a depository for interest on time deposits, including, without limitation, certificates of deposit, at any legal rate under federal or state law, rule, or regulation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.072. INVESTMENTS. The provisions of Chapter 810, Acts of the 66th Legislature, Regular Session, 1979 (Article 4413(34c), Vernon's Texas Civil Statutes), and Subchapter A, Chapter 2256, Government Code shall govern the investment of municipal funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(11), eff. Sept. 1, 1995.

Sec. 105.073. DEPOSIT OF FUNDS. Not later than 60 days from the date the governing body of the municipality designates a depository in accordance with the provisions of Section 105.016, the designated officer of the municipality shall transfer to the depository all the municipal funds covered by the depository services contract under the control of the designated officer. The designated officer of the municipality shall as soon as practicable also deposit in the depository to the credit of the municipality any money covered by the depository services contract received after the depository is designated.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.074. PAYMENT OF FUNDS. (a) The funds of the municipality may be paid out of a depository only at the direction of a designated officer.

(b) Except as provided in Subsection (g), a designated officer may draw a check on a depository only on a warrant signed by the mayor and attested by the secretary of the municipality.

(c) If there is sufficient money in a fund in a depository against which the proper authority has drawn a warrant, the designated officer on presentation of the warrant shall draw a check on the depository in favor of the legal holder of the warrant, retain the warrant, and charge the warrant against the fund on which it is drawn. The designated officer may not draw a warrant on a fund in a depository unless the fund has sufficient money to pay the warrant.

(d) A designated officer may not draw a check on any funds

designated in the depository services contract as time deposits until notice has been given and the notice period has expired under the terms of the contract with the depository.

(e) The mayor and secretary of the municipality may not draw a warrant on a special fund in a depository or under the control of the designated officer that was created to pay the bonded indebtedness of the municipality other than to pay the principal of or interest on the indebtedness or to invest the fund as provided by law.

(f) The designated officer may not pay or draw a check to pay money out of a special fund that was created to pay the bonded indebtedness of the municipality other than to pay the principal of or interest on the indebtedness or to invest the fund as provided by law.

(g) Notwithstanding the provisions of Subsections (b) through (f), the governing body of a municipality may adopt procedures:

(1) governing the method by which the designated officer is authorized to direct payments from the funds of the municipality on deposit with a depository;

(2) governing the method of payment of obligations of the municipality, including payment by check, draft, wire transfer, or other method of payment mutually acceptable to the municipality and the depository; and

(3) the governing body determines are necessary to ensure the safety and integrity of the payment process.

(h) If a municipality adopts procedures in accordance with Subsection (g), a copy of the adopted procedures shall be filed with the depository. The designated officer and the depository shall agree upon record-keeping safeguards and other measures necessary to ensure the safety and integrity of the payment process. The safeguards must be approved by the governing body of the municipality if the governing body finds that the safeguards are consistent with and do not contravene the procedures adopted under Subsection (g).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.075. CHECKS PAYABLE AT DEPOSITORY. Checks drawn by the treasurer of the municipality against municipal funds on deposit are payable by the depository at its place of business in the

municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

Sec. 105.076. DEBTS PAYABLE OTHER THAN AT MUNICIPAL TREASURY. The governing body of the municipality may direct the designated officer to withdraw from a depository and deposit money sufficient to pay a bond, coupon, or other indebtedness of the municipality at a place other than at the municipal treasury if by its terms the indebtedness is payable on maturity or upon redemption prior to maturity at the other location.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. LIABILITY AND REPORT OF DESIGNATED OFFICER

Sec. 105.091. LIABILITY OF DESIGNATED OFFICER. (a) The designated officer is not responsible for any loss of municipal funds through the negligence, failure, or wrongful act of a depository. This subsection does not release the designated officer from responsibility for a loss resulting from the official misconduct of the designated officer, including a misappropriation of the funds, or from responsibility for the funds until a depository is selected and the funds are deposited.

(b) A designated officer who diverts money from an interest and sinking fund or who applies money in that fund for a purpose other than as permitted by Section 105.074(f) is:

(1) subject to a penalty of not less than $500 or more than $1,000; and

(2) liable for the amount of money that is diverted.

(c) The state is entitled to recover a penalty imposed under Subsection (b)(1). The amount of diverted money that is recovered under Subsection (b)(2) shall be paid into the municipal treasury to the credit of the fund from which it was diverted.

(d) The attorney general or the district attorney of the district in which the designated officer resides, or the county attorney in a county that is not served by a district attorney, may institute suit against the designated officer and the sureties on the

designated officer's official bond to recover the amounts described by Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 227, Sec. 6, eff. Sept. 1, 1999.

Sec. 105.092. REPORT BY DESIGNATED OFFICER. In conjunction with the publication of the annual financial statement of the municipality, the designated officer shall prepare a report which shall describe in summary form:

(1) the amount of receipts and expenditures of the municipal treasury;

(2) the amount of money on hand in each fund;

(3) the amount of bonds becoming due for redemption that require action;

(4) the amount of interest to be paid during the next fiscal year; and

(5) any other information required by law to be reported by the designated officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 106. MUNICIPAL CHILD SAFETY TRUST FUND

Sec. 106.001. CREATION OF CHILD SAFETY TRUST FUND IN CERTAIN MUNICIPALITIES. A child safety trust fund shall be created in the treasury of a municipality with a population of more than 1.3 million.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.01, eff. Sept. 1, 1995.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 128, eff. September 1, 2023.

Sec. 106.002. DEPOSITS TO FUND. The following money shall be deposited in the fund:

(1) court costs collected under Article 102.014, Code of Criminal Procedure; and

(2) optional motor vehicle registration fees remitted to the municipality by the county under Section 502.403, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.01, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.214, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 12.001, eff. September 1, 2013.

Sec. 106.003. USE OF FUND. (a) Money in the fund shall be used for the purpose of providing school crossing guard services as provided by Chapter 343.

(b) After payment of the expenses of the school crossing guard services, any remaining money in the fund may be used for programs designed to enhance child safety, health, or nutrition, including child abuse intervention and prevention and drug and alcohol abuse prevention.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.01, eff. Sept. 1, 1995.

Sec. 106.004. AUDIT. (a) Money collected under this chapter is subject to audit by the comptroller.

(b) Money expended under this chapter is subject to audit in the same manner as other funds expended by a county or municipality.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.01, eff. Sept. 1, 1995.

CHAPTER 107. OBLIGATIONS FOR CERTAIN LIABILITIES TO PUBLIC PENSION FUNDS OF A MUNICIPALITY

Sec. 107.001. DEFINITIONS. In this chapter:

(1) "Obligation" includes a bond, certificate, note, or book entry obligation.

(2) "Unfunded liability" means an unfunded, accrued liability of a municipality to a public pension fund as determined by actuarial analysis.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.002. DEFINITION OF "PUBLIC PENSION FUND." In this chapter, "public pension fund":

(1) means a continuing, organized program or plan of service retirement, disability retirement, or death benefits for officers or employees of a municipality;

(2) includes a plan qualified under Section 401(a), Internal Revenue Code of 1986, as amended; and

(3) does not include:

(A) a program that provides only workers' compensation benefits;

(B) a program administered by the federal government;

(C) a plan described by Section 401(d), Internal Revenue Code of 1986, as amended;

(D) an individual retirement account consisting of an annuity contract described by Section 403(b), Internal Revenue Code of 1986, as amended;

(E) an individual retirement account as defined by Section 408(a), Internal Revenue Code of 1986, as amended;

(F) an individual retirement annuity as defined by Section 408(b), Internal Revenue Code of 1986, as amended;

(G) an eligible deferred compensation plan as defined by Section 457(b), Internal Revenue Code of 1986, as amended; or

(H) a program for which benefits are administered by a life insurance company or for which the only funding agency is a life insurance company.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.003. PENSION FUND OBLIGATIONS AUTHORIZED. (a) A municipality may issue obligations to fund all or any part of an unfunded liability.

(b) Before authorizing issuance and delivery of an obligation under this section, the governing body of the municipality must enter

into a written agreement with the governing body of the public retirement system that:

(1) has fiduciary responsibility for assets of the public pension fund or public pension funds that are to receive the net proceeds of the obligations to be issued; and

(2) has the duty to oversee the investment and expenditure of the assets of the public pension fund.

(c) The written agreement must state the amount of the unfunded liability and the date or dates on which the public pension fund will accept the net proceeds of the obligations to be issued in payment of all or a portion of the unfunded liability.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.0036. VOTER APPROVAL REQUIRED FOR CERTAIN PENSION FUND OBLIGATIONS. (a) This section applies only to a public pension fund subject to:

(1) Article 6243e.2(1), Revised Statutes;

(2) Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes); and

(3) Article 6243g-4, Revised Statutes.

(b) A municipality may issue an obligation under Section 107.003 to fund all or any part of the unfunded liability of a public pension fund subject to this section only if the issuance is approved by a majority of the qualified voters of the municipality voting at an election held for that purpose.

Added by Acts 2017, 85th Leg., R.S., Ch. 320 (S.B. 2190), Sec. 4.01, eff. July 1, 2017.

Sec. 107.004. PROCEEDS OF OBLIGATIONS ISSUED. The municipality shall deposit the net proceeds of obligations issued under Section 107.003 to the credit of the public pension fund. The amount deposited under this section becomes part of the public pension fund's assets.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.005. PAYMENT OF OBLIGATIONS. An obligation issued under Section 107.003 may be made payable by the municipality from:

(1) the fund from which compensation is paid to its officers and employees;

(2) its general fund; or

(3) taxes, revenues, both taxes and revenues, or any other source or combination of sources of money that the municipality may use under state law to secure or pay any kind of bond or obligation.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, Sept. 1, 2003.

Sec. 107.006. OBLIGATION AS REFINANCING. An obligation issued under Section 107.003 is a complete or partial refinancing of a commitment of the municipality to fund its unfunded liability.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.007. SALE OF OBLIGATIONS; MATURITY. Obligations issued under Section 107.003 may be sold at private or public sale and must mature not later than the 30th anniversary of the date of issuance.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.008. ADDITIONAL AUTHORITY; CREDIT AGREEMENTS. (a) In this section, "credit agreement" and "obligation" have the meanings assigned by Section 1371.001, Government Code.

(b) The governing body of a municipality that issues obligations under Section 107.003 may exercise any of the rights or powers of the governing body of an issuer under Chapter 1371, Government Code, and may enter into a credit agreement under that chapter. An obligation issued under Section 107.003 is an obligation under Chapter 1371, Government Code, but is not required to be rated as required by that chapter.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

Sec. 107.009. CHAPTER CONTROLLING. This chapter prevails over any conflict between this chapter and:

(1) another law respecting the issuance of obligations of a municipality; or

(2) a municipal home-rule charter.

Added by Acts 2003, 78th Leg., ch. 1271, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 108. MUNICIPAL BONDS FOR CERTAIN DEFINED AREAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 108.001. DEFINITION. In this chapter, "defined area" means a defined area created by a municipal utility district under Subchapter J, Chapter 54, Water Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

Sec. 108.002. APPLICATION OF CHAPTER. This chapter applies only to a municipality that under Section 43.075 or any other law abolishes a municipal utility district created under Section 59, Article XVI, Texas Constitution, that contains a defined area.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

Sec. 108.003. CONFLICT WITH OTHER LAWS. To the extent of a conflict between this chapter and any other law, including Subchapter A, Chapter 372, this chapter controls.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. BONDS USED TO CARRY OUT PURPOSES OF DEFINED AREA IN ABOLISHED MUNICIPAL UTILITY DISTRICT

Sec. 108.051. BONDS ORIGINALLY AUTHORIZED IN ABOLISHED MUNICIPAL UTILITY DISTRICT; PROPERTY TAXES. (a) If, before its abolition, a municipal utility district voted to issue bonds secured

by property taxes for a defined area under Section 54.806, Water Code, and if some or all of the bonds were not issued, sold, and delivered before the abolition, the governing body of the municipality that abolished the district may issue and sell municipal bonds:

(1) in an amount not to exceed the amount of the unissued district bonds approved by the voters; and

(2) for the purpose of carrying out the purposes for which the district bonds were voted.

(b) The bonds are issued under the authority under which they were voted, particularly Section 59, Article XVI, Texas Constitution. The bonds must be secured by a tax under the authority under which they were voted, particularly a tax on the property in the defined area of the abolished district.

(c) The bonds must be authorized by ordinance of the governing body of the municipality. The ordinance must provide for the levy of taxes on all taxable property in the defined area of the abolished district to pay the principal of and interest on the bonds when due.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

Sec. 108.052. BONDS AUTHORIZED UNDER PUBLIC IMPROVEMENT DISTRICT; ASSESSMENTS. (a) If, before its abolition, a municipal utility district voted to issue bonds secured by property taxes for a defined area under Section 54.806, Water Code, and if some or all of the bonds were not issued, sold, and delivered before the abolition, the governing body of the municipality that abolished the district may, on its own motion, establish a public improvement district under Subchapter A, Chapter 372, for the purpose of issuing and selling municipal bonds:

(1) in an amount not to exceed the amount of the unissued district bonds approved by the voters; and

(2) for the purpose of carrying out the purposes for which the district bonds were voted, including the cost of facilities constructed after creation of the defined area in accordance with the plan for improvements adopted by the board of directors of the abolished district.

(b) A municipality that establishes a public improvement

district under this section may:

(1) enter into agreements with developers of property in the public improvement district for the construction, acquisition, expansion, improvement, or extension of improvements in the public improvement district;

(2) reimburse a developer for the costs of the improvements through assessments payable in installments on property in the public improvement district;

(3) pledge any type of assessment, including installment assessments, levied against property in the public improvement district as security for bonds and agreements; and

(4) structure the assessments in any manner determined by the governing body of the municipality.

(c) In structuring an assessment under this section, the municipality may include in the assessment:

(1) a coverage factor;

(2) any prepayment dates;

(3) terms or amounts; and

(4) any other methodology or amounts determined necessary or convenient by the governing body of the municipality.

(d) Any bonds issued by the municipality under this section must be authorized by ordinance of the governing body of the municipality and shall provide for the collection of the assessments as authorized by Subchapter A, Chapter 372, and this chapter.

(e) The bonds may be payable in installments, as determined by the governing body of the municipality, against the property in the defined area.

(f) The municipality may use the bonds to:

(1) pay or reimburse a developer for public improvements in the public improvement district under a development or other agreement with the developer;

(2) pay the principal of and interest on the bonds when due; or

(3) pay any combination of purposes described by Subdivisions (1) and (2).

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

Sec. 108.053. PLEDGES TO SECURE BONDS. The municipality may further pledge any available funds to secure the bonds, including taxes or other revenue.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

Sec. 108.054. CHOICE OF LAWS. (a) A municipality may exercise powers under Section 108.051 or 108.052, but may not exercise powers under both sections for the same defined area.

(b) A municipality that exercises powers under Section 108.051 or 108.052 to reimburse a developer's infrastructure costs in a defined area shall not be required to provide payment to the developer under Section 43.0715.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

Sec. 108.055. CONFLICT WITH MUNICIPAL CHARTER. This subchapter prevails over a municipal charter provision to the extent of a conflict with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

Sec. 108.056. EFFECT ON OTHER MUNICIPAL BONDS. This subchapter does not affect the authority of a municipality to issue bonds for other purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 813 (S.B. 1535), Sec. 1, eff. June 15, 2007.

CHAPTER 109. DETERMINATION OF DEFUNDING MUNICIPALITIES

Sec. 109.001. DEFINITION. In this chapter, "division" means the criminal justice division of the office of the governor.

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 1.01,

eff. September 1, 2021.

Sec. 109.002. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality with a population of more than 250,000.

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 1.01, eff. September 1, 2021.

Sec. 109.003. DEFUNDING DETERMINATION. Except as provided by Section 109.004, a defunding municipality is a municipality:

(1) that adopts a budget for a fiscal year that, in comparison to the municipality's preceding fiscal year, reduces the appropriation to the municipality's police department; and

(2) for which the division issues a written determination finding that the municipality has made the reduction described by Subdivision (1).

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 1.01, eff. September 1, 2021.

Sec. 109.004. EXCEPTIONS. (a) A municipality is not considered to be a defunding municipality under Section 109.003 if:

(1) for a fiscal year in which the municipality adopts a budget that is less than the budget for the preceding fiscal year, the percentage reduction to the appropriation to the municipality's police department does not exceed the percentage reduction to the total budget; or

(2) before the adoption of a budget, the municipality applies for and is granted approval from the division for a reduction to the appropriation to the municipality's police department to account for:

(A) capital expenditures related to law enforcement during the preceding fiscal year;

(B) the municipality's response to a state of disaster declared under Section 418.014, Government Code; or

(C) another reason approved by the division.

(b) For purposes of making a determination of whether a municipality is a defunding municipality under this chapter, a

municipality's appropriation to the municipality's police department does not include:

(1) any grant money received by the municipality during any fiscal year; or

(2) any sales and use tax revenue received by the municipality for the purpose of financing a crime control and prevention district under Chapter 363.

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 1.01, eff. September 1, 2021.

Sec. 109.005. TERMINATION OF DEFUNDING DETERMINATION. A municipality's defunding determination under Section 109.003 continues until the division issues a written determination finding that the municipality has reversed the reduction, adjusted for inflation, described by Section 109.003(1).

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 1.01, eff. September 1, 2021.

Sec. 109.006. DIVISION DUTIES. (a) The division shall:

(1) compute the inflation rate used to make determinations under Section 109.005 each state fiscal year using a price index that accurately reports changes in the purchasing power of the dollar for municipalities in this state; and

(2) publish the inflation rate in the Texas Register.

(b) The division shall adopt rules establishing the criteria the division uses to approve reductions under Section 109.004(2).

Added by Acts 2021, 87th Leg., R.S., Ch. 199 (H.B. 1900), Sec. 1.01, eff. September 1, 2021.

SUBTITLE B. COUNTY FINANCES

CHAPTER 111. COUNTY BUDGET

SUBCHAPTER A. BUDGET PREPARATION IN COUNTIES WITH POPULATION OF 225,000 OR LESS

Sec. 111.001. SUBCHAPTER APPLICABLE TO COUNTIES WITH POPULATION OF 225,000 OR LESS; EXCEPTION. This subchapter applies only to a

county that has a population of 225,000 or less and that does not operate under Subchapter C.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 11(e), eff. Aug. 28, 1989.

Sec. 111.002. COUNTY JUDGE AS BUDGET OFFICER. The county judge serves as the budget officer for the commissioners court of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.003. ANNUAL BUDGET REQUIRED. (a) Not later than August 15, the county judge, assisted by the county auditor or county clerk, shall prepare a budget to cover all proposed expenditures of the county government for the succeeding fiscal year.

(b) A proposed budget that will require raising more revenue from property taxes than in the previous year must contain a cover page with the following statement in 18-point or larger type: "This budget will raise more total property taxes than last year's budget by (insert total dollar amount of increase and percentage increase), and of that amount (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll) is tax revenue to be raised from new property added to the tax roll this year."

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 117, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 7, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 612 (S.B. 1357), Sec. 1, eff. June 14, 2021.

Sec. 111.004. ITEMIZED BUDGET; CONTENTS. (a) The county judge shall itemize the budget to allow as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes that were made

for the preceding fiscal year. The budget must show as definitely as possible each of the projects for which an appropriation is established in the budget and the estimated amount of money carried in the budget for each project.

(b) The budget must contain a complete financial statement of the county that shows:

(1) the outstanding obligations of the county;

(2) the cash on hand to the credit of each fund of the county government;

(3) the funds received from all sources during the preceding fiscal year;

(4) the funds available from all sources during the ensuing fiscal year;

(5) the estimated revenues available to cover the proposed budget; and

(6) the estimated tax rate required to cover the proposed budget.

(c) In preparing the budget, the county judge shall estimate the revenue to be derived from taxes to be levied and collected in the succeeding fiscal year and shall include that revenue in the estimate of funds available to cover the proposed budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.005. INFORMATION FURNISHED BY COUNTY OFFICERS. (a) In preparing the budget, the county judge may require any county officer to furnish existing information necessary for the judge to properly prepare the budget.

(b) If a county officer fails to provide the information as required by the county judge, the county judge may request the commissioners court to issue an order:

(1) directing the county officer to produce the required information; and

(2) prescribing the form in which the county officer must produce the information.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1197, Sec. 1, eff. June 20, 1997.

Sec. 111.006. PROPOSED BUDGET FILED WITH COUNTY CLERK; PUBLIC INSPECTION. (a) Not later than August 15, the county judge shall file a copy of the proposed budget with the county clerk.

(b) The copy of the proposed budget shall be available for inspection by any person. If the county maintains an Internet website, the county clerk shall take action to ensure that the proposed budget is posted on the website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 8, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 612 (S.B. 1357), Sec. 2, eff. June 14, 2021.

Sec. 111.007. PUBLIC HEARING ON PROPOSED BUDGET. (a) The commissioners court shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.

(b) The commissioners court shall hold the hearing not later than the 25th day after the day the budget is filed under Section 111.006 but before the commissioners court adopts the county's ad valorem tax rate for the current tax year.

(c) The commissioners court shall give public notice that it will consider the proposed budget on the date of the hearing. The notice must state the date, time, and location of the hearing. The notice must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 111.003(b). The commissioners court shall give notice under this subsection:

(1) not earlier than the 30th day before the date of the hearing; and

(2) not later than the 10th day before the date of the hearing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 117, Sec. 2, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 9, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 612 (S.B. 1357), Sec. 3, eff.

June 14, 2021.

Sec. 111.0075. SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING. (a) A commissioners court shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county.

(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.

(c) This section does not apply to a commissioners court required by other law to give notice by publication of a hearing on a budget.

(d) Notice under this section must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 111.003(b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 26, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 10, eff. September 1, 2007.

Sec. 111.008. ADOPTION OF BUDGET. (a) At the conclusion of the public hearing, the commissioners court shall take action on the proposed budget. A vote to adopt the budget must be a record vote.

(b) The commissioners court may make any changes in the proposed budget that it considers warranted by the law and required by the interest of the taxpayers.

(c) Adoption of a budget that will require raising more revenue from property taxes than in the previous year requires a separate vote of the commissioners court to ratify the property tax increase reflected in the budget. A vote under this subsection is in addition to and separate from the vote to adopt the budget or a vote to set the tax rate required by Chapter 26, Tax Code, or other law.

(d) An adopted budget must contain a cover page that includes:

(1) one of the following statements in 18-point or larger type that accurately describes the adopted budget:

(A) "This budget will raise more revenue from property taxes than last year's budget by an amount of (insert total dollar amount of increase), which is a (insert percentage increase) percent increase from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(B) "This budget will raise less revenue from property taxes than last year's budget by an amount of (insert total dollar amount of decrease), which is a (insert percentage decrease) percent decrease from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll)."; or

(C) "This budget will raise the same amount of revenue from property taxes as last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(2) the record vote of each member of the commissioners court by name voting on the adoption of the budget;

(3) the county property tax rates for the preceding fiscal year, and each county property tax rate that has been adopted or calculated for the current fiscal year, including:

(A) the property tax rate;

(B) the no-new-revenue tax rate;

(C) the no-new-revenue maintenance and operations tax rate;

(D) the voter-approval tax rate; and

(E) the debt rate; and

(4) the total amount of county debt obligations.

(e) In this section, "debt obligation" means an issued public security as defined by Section 1201.002, Government Code, secured by property taxes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 11, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 3, eff.

September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 80, eff. January 1, 2020.

Sec. 111.009. APPROVED BUDGET FILED WITH COUNTY CLERK: POSTING ON INTERNET. (a) On final approval of the budget by the commissioners court, the court shall:

(1) file the budget with the county clerk; and

(2) if the county maintains an Internet website, take action to ensure that:

(A) a copy of the budget, including the cover page, is posted on the website; and

(B) the record vote described by Section 111.008(d)(2) is posted on the website at least until the first anniversary of the date the budget is adopted.

(b) The commissioners court shall take action to ensure that the cover page of the budget is amended to include the property tax rates required by Section 111.008(d)(3) for the current fiscal year if the rates are not included on the cover page when the budget is filed with the county clerk. The commissioners court shall file an amended cover page with the county clerk and take action to ensure that the amended cover page is posted on the county's website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 12, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 4, eff. September 1, 2013.

Sec. 111.010. LEVY OF TAXES AND EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER. (a) The commissioners court may levy taxes only in accordance with the budget.

(b) After final approval of the budget, the commissioners court may spend county funds only in strict compliance with the budget, except in an emergency.

(c) The commissioners court may authorize an emergency

expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk, and the clerk shall attach the copy to the original budget.

(d) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 167, Sec. 1, 2, eff. May 25, 1989.

Sec. 111.0105. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS. If a county bond issue is submitted at an election or other authorized obligations are to be issued against future revenues and a tax is to be levied for those obligations, the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations, the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 2, eff. June 20, 1997.

Sec. 111.0106. SPECIAL BUDGET FOR GRANT OR AID MONEY. The county auditor or the county judge in a county that does not have a county auditor shall certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 2, eff. June 20, 1997.

Sec. 111.0107. SPECIAL BUDGET FOR REVENUE FROM

INTERGOVERNMENTAL CONTRACTS. The county auditor or the county judge in a county that does not have a county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 2, eff. June 20, 1997.

Sec. 111.0108. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. The county auditor or the county judge in a county that does not have a county auditor shall certify to the commissioners court the receipt of revenue from a new source not anticipated before the adoption of the budget and not included in the budget for that fiscal year. On certification, the court may adopt a special budget for the limited purpose of spending the revenue for general purposes or for any of its intended purposes.

Added by Acts 2001, 77th Leg., ch. 938, Sec. 1, eff. Sept. 1, 2001.

Sec. 111.011. CHANGES IN BUDGET FOR COUNTY PURPOSES. This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.012. PENALTY. (a) An officer, employee, or official of a county government who refuses to comply with this subchapter commits an offense.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $1,000, confinement in the county jail for not less than one month or more than one year, or by both fine and confinement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.013. LIMITATION ON BUDGET OF COUNTY AUDITOR. An increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five (5) percent without approval of the commissioners court.

Added by Acts 1991, 72nd Leg., ch. 600, Sec. 3, eff. June 15, 1991; Acts 1991, 72nd Leg., ch. 739, Sec. 1, eff. Aug. 26, 1991.

Sec. 111.014. RESERVE ITEM. Notwithstanding any other provision of this subchapter, a county may establish in the budget a reserve or contingency item. The item must be included in the itemized budget under Section 111.004(a) in the same manner as a project for which an appropriation is established in the budget.

Added by Acts 2003, 78th Leg., ch. 301, Sec. 5, eff. Sept. 1, 2003.

SUBCHAPTER B. BUDGET PREPARATION IN COUNTIES WITH POPULATION OF MORE THAN 225,000

Sec. 111.031. SUBCHAPTER APPLICABLE TO COUNTIES WITH POPULATION OF MORE THAN 225,000; EXCEPTION. This subchapter applies only to a county that has a population of more than 225,000 and that does not operate under Subchapter C.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.032. COUNTY AUDITOR AS BUDGET OFFICER. The county auditor serves as budget officer for the commissioners court of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.033. ANNUAL BUDGET REQUIRED. (a) Within 30 days before the first day of each fiscal year or on or immediately after that first day, the county auditor shall prepare a budget to cover the proposed expenditures of the county government for that fiscal year.

(b) A proposed budget that will require raising more revenue from property taxes than in the previous year must contain a cover page with the following statement in 18-point or larger type: "This budget will raise more total property taxes than last year's budget by (insert total dollar amount of increase and percentage increase), and of that amount (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll) is tax revenue to be raised from new property added to the tax roll this year."

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 563 (S.B. 1510), Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 13, eff. September 1, 2007.
Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.002, eff. September 1, 2009.

Sec. 111.034. ITEMIZED BUDGET; CONTENTS. (a) The county auditor shall itemize the budget to allow as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes that were made for the preceding fiscal year. The budget must show with reasonable accuracy each project for which an appropriation is established in the budget and the estimated amount of money carried in the budget for each project.

(b) The budget must contain a complete financial statement of the county that shows:

(1) the outstanding obligations of the county;

(2) the cash on hand to the credit of each fund of the county government;

(3) the funds received from all sources during the preceding fiscal year;

(4) the funds and revenue estimated by the auditor to be received from all sources during the preceding fiscal year;

(5) the funds and revenue estimated by the auditor to be received from all sources during the ensuing fiscal year; and

(6) a statement of all accounts and contracts on which sums

are due to or owed by the county as of the last day of the preceding fiscal year, except for taxes and court costs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.035. LIMITATION ON EXPENDITURES BEFORE ADOPTION OF BUDGET. Until a budget for a fiscal year is adopted by the commissioners court, the county may not make payments during that fiscal year except for emergencies and for obligations legally incurred before the first day of the fiscal year for salaries, utilities, materials, and supplies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.036. INFORMATION FURNISHED BY OFFICERS. In preparing the budget, the county auditor may require any district, county, or precinct officer of the county to provide information necessary for the auditor to properly prepare the budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.037. PROPOSED BUDGET FILED WITH COUNTY CLERK; PUBLIC INSPECTION. (a) The county auditor shall file a copy of the proposed budget with the county clerk.

(b) The copy of the proposed budget shall be available for public inspection by any person. If the county maintains an Internet website, the county clerk shall take action to ensure that the proposed budget is posted on the website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 14, eff. September 1, 2007.

Sec. 111.038. PUBLIC HEARING ON PROPOSED BUDGET. (a) The commissioners court shall hold a public hearing on the proposed budget. Any person may attend and may participate in the hearing.

(b) The commissioners court shall hold the hearing on a day within 10 calendar days after the date the proposed budget is filed but before the last day of the first month of the fiscal year.

(c) The commissioners court shall publish notice that it will consider the proposed budget on the date of the budget hearing. The notice must be published once in a newspaper of general circulation in the county and must state the date, time, and location of the hearing.

(d) Notice under this section must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 111.033(b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 552, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 15, eff. September 1, 2007.

Sec. 111.0385. SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING. (a) A commissioners court shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county.

(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.

(c) This section does not apply to a commissioners court required by other law to give notice by publication of a hearing on a budget.

(d) Notice under this section must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 111.033(b).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 27, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 16, eff. September 1, 2007.

Sec. 111.039. ADOPTION OF BUDGET. (a) At the conclusion of the public hearing, the commissioners court shall take action on the proposed budget. A vote to adopt the budget must be a record vote.

(b) The commissioners court may make any changes in the proposed budget that it considers warranted by the facts and law and required by the interest of the taxpayers, but the amounts budgeted in a fiscal year for expenditures from the various funds of the county may not exceed the balances in those funds as of the first day of the fiscal year, plus the anticipated revenue for the fiscal year as estimated by the county auditor.

(c) Adoption of a budget that will require raising more revenue from property taxes than in the previous year requires a separate vote of the commissioners court to ratify the property tax increase reflected in the budget. A vote under this subsection is in addition to and separate from the vote to adopt the budget or a vote to set the tax rate required by Chapter 26, Tax Code, or other law.

(d) An adopted budget must contain a cover page that includes:

(1) one of the following statements in 18-point or larger type that accurately describes the adopted budget:

(A) "This budget will raise more revenue from property taxes than last year's budget by an amount of (insert total dollar amount of increase), which is a (insert percentage increase) percent increase from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(B) "This budget will raise less revenue from property taxes than last year's budget by an amount of (insert total dollar amount of decrease), which is a (insert percentage decrease) percent decrease from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll)."; or

(C) "This budget will raise the same amount of revenue from property taxes as last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(2) the record vote of each member of the commissioners court by name voting on the adoption of the budget;

(3) the county property tax rates for the preceding fiscal year, and each county property tax rate that has been adopted or calculated for the current fiscal year, including:

(A) the property tax rate;

(B) the no-new-revenue tax rate;

(C) the no-new-revenue maintenance and operations tax rate;

(D) the voter-approval tax rate; and

(E) the debt rate; and

(4) the total amount of county debt obligations.

(e) In this section, "debt obligation" means an issued public security as defined by Section 1201.002, Government Code, secured by property taxes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 17, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 5, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 81, eff. January 1, 2020.

Sec. 111.040. APPROVED BUDGET FILED WITH OFFICERS: POSTING ON INTERNET. (a) On final approval of the budget by the commissioners court, the court shall:

(1) file a copy of the budget with the county auditor and the county clerk; and

(2) if the county maintains an Internet website, take action to ensure that:

(A) a copy of the budget, including the cover page, is posted on the website; and

(B) the record vote described by Section 111.039(d)(2) is posted on the website at least until the first anniversary of the date the budget is adopted.

(b) The commissioners court shall take action to ensure that the cover page of the budget is amended to include the property tax rates required by Section 111.039(d)(3) for the current fiscal year if the rates are not included on the cover page when the budget is

filed with the county clerk. The commissioners court shall file an amended cover page with the county clerk and take action to ensure that the amended cover page is posted on the county's website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 100, eff. Sept. 1, 1989. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 18, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 6, eff. September 1, 2013.

Sec. 111.041. EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY EXPENDITURE; BUDGET TRANSFER. (a) The commissioners court may spend county funds only in strict compliance with the budget, except as provided by this section.

(b) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk, and the clerk shall attach the copy to the original budget.

(c) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1197, Sec. 3, eff. June 20, 1997.

Sec. 111.0415. CHANGES IN BUDGET FOR COUNTY PURPOSES. This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 4, eff. June 20, 1997.

Sec. 111.042. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR

OTHER OBLIGATIONS. If a county bond issue is submitted at an election or other authorized obligations are to be issued against future revenues and a tax is to be levied for those obligations, the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations, the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1197, Sec. 5, eff. June 20, 1997.

Sec. 111.043. SPECIAL BUDGET FOR GRANT OR AID MONEY. The county auditor shall certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.0431. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. The county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 6, eff. June 20, 1997.

Sec. 111.0432. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. The county auditor shall certify to the commissioners court the receipt of revenue from a new source not anticipated before the adoption of the budget and not included in the budget for that fiscal year. On certification, the court may adopt a

special budget for the limited purpose of spending the revenue for general purposes or for any of its intended purposes.

Added by Acts 2001, 77th Leg., ch. 938, Sec. 2, eff. Sept. 1, 2001.

Sec. 111.044. LIMITATION ON BUDGET OF COUNTY AUDITOR. An increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five (5) percent without approval of the commissioners court.

Added by Acts 1991, 72nd Leg., ch. 600, Sec. 4, eff. June 15, 1991; Acts 1991, 72nd Leg., ch. 739, Sec. 2, eff. Aug. 26, 1991.

Sec. 111.045. RESERVE ITEM. Notwithstanding any other provision of this subchapter, a county may establish in the budget a reserve or contingency item. The item must be included in the itemized budget under Section 111.034(a) in the same manner as a project for which an appropriation is established in the budget.

Added by Acts 2003, 78th Leg., ch. 301, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER C. ALTERNATE METHOD OF BUDGET PREPARATION IN COUNTIES WITH POPULATION OF MORE THAN 125,000

Sec. 111.061. SUBCHAPTER APPLICABLE TO COUNTIES WITH POPULATION OF MORE THAN 125,000. This subchapter applies only to a county that has a population of more than 125,000 and that chooses to operate under this subchapter instead of under Subchapter A or B.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 11(e), eff. Aug. 28, 1989.

Sec. 111.062. APPOINTMENT OF BUDGET OFFICER; ABOLITION OF OFFICE. (a) The commissioners court of the county may appoint a county budget officer to prepare a county budget for the fiscal year.

(b) A county that establishes the office of county budget officer may abolish that office only by a formal action of the

commissioners court. The court must take the action after the first day of the second month of the fiscal year and before the first day of the sixth month of the fiscal year. If the office is abolished, the duties of budget officer shall be performed by:

(1) the county judge, if the county has a population of 225,000 or less; or

(2) the county auditor, if the county has a population of more than 225,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 593, Sec. 1, eff. June 13, 1993.

Sec. 111.063. ITEMIZED BUDGET; CONTENTS. (a) The budget officer shall itemize the budget to allow as clear a comparison as practicable between expenditures included in the proposed budget and actual or estimated expenditures for the same or similar purposes that were made for the preceding fiscal year. The budget must show with reasonable accuracy each of the projects for which an appropriation is established in the budget and the estimated amount of money carried in the budget for each project.

(b) The budget officer shall obtain from the county auditor any information necessary to prepare a complete financial statement for inclusion in the budget. The financial statement must show:

(1) the outstanding obligations of the county;

(2) the cash on hand to the credit of each fund of the county government;

(3) funds received from all sources during the preceding fiscal year;

(4) the funds and revenue estimated by the auditor to be received from all sources during the preceding fiscal year;

(5) the funds and revenue estimated by the auditor to be received during the ensuing year; and

(6) a statement of all accounts and contracts on which sums are due to or owed by the county as of the last day of the preceding fiscal year, except for taxes and court costs.

(c) If actual amounts for the information described by Subsection (b)(1), (b)(2), (b)(3), or (b)(6) are not available at the time the budget officer prepares the financial statement, the budget officer may use in the preparation of the statement estimates of that

information made by the county auditor.

(d) Subsection (c) does not prevent the commissioners court from adopting a budget before the beginning of the fiscal year for which the budget is prepared.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1044, Sec. 1, eff. Sept. 1, 1989.

Sec. 111.064. LIMITATION ON EXPENDITURES BEFORE ADOPTION OF BUDGET. Until a budget for a fiscal year is adopted by the commissioners court, the county may not make payments during that fiscal year except for emergencies and for obligations legally incurred before the first day of the fiscal year for salaries, utilities, materials, and supplies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.065. INFORMATION FURNISHED BY OFFICERS. In preparing or monitoring the budget, the budget officer may require the county auditor or any other district, county, or precinct officer of the county to provide any information necessary for the budget officer to properly prepare or monitor the budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.066. PROPOSED BUDGET FILED WITH COUNTY CLERK AND COUNTY AUDITOR; PUBLIC INSPECTION. (a) The budget officer shall file a copy of the proposed budget with the county clerk and the county auditor.

(b) The copy of the proposed budget shall be available for public inspection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.067. PUBLIC HEARING ON PROPOSED BUDGET. (a) The commissioners court shall hold a public hearing on the proposed budget. Any taxpayer of the county may attend and may participate in

the hearing.

(b) The commissioners court shall hold the hearing on a day within 10 calendar days after the date the proposed budget is filed but before the last day of the first month of the fiscal year.

(c) The commissioners court shall publish notice that it will consider the proposed budget on the date of the budget hearing. The notice must be published once in a newspaper of general circulation in the county and must state the date, time, and location of the hearing.

(d) Notice under this section must include, in type of a size at least equal to the type used for other items in the notice, any statement required to be included in the proposed budget under Section 111.033(b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 552, Sec. 2, eff. June 18, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 924 (H.B. 3195), Sec. 19, eff. September 1, 2007.

Sec. 111.0675. COMMISSIONERS COURT: SPECIAL NOTICE BY PUBLICATION FOR BUDGET HEARING. (a) A commissioners court shall publish notice before a public hearing relating to a budget in at least one newspaper of general circulation in the county.

(b) Notice published under this section is in addition to notice required by other law. Notice under this section shall be published not earlier than the 30th or later than the 10th day before the date of the hearing.

(c) This section does not apply to a commissioners court required by other law to give notice by publication of a hearing on a budget.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 28, eff. Sept. 1, 1993.

Sec. 111.068. ADOPTION OF BUDGET. (a) At the conclusion of the public hearing, the commissioners court shall take action on the proposed budget. A vote to adopt the budget must be a record vote.

(b) The commissioners court may make any changes in the proposed budget that it considers warranted by the facts and law and

required by the interest of the taxpayers, but the amounts budgeted in a fiscal year for expenditures from the various funds of the county may not exceed the balances in those funds as of the first day of the fiscal year, plus the anticipated revenue for the fiscal year as estimated by the county auditor.

(c) An adopted budget must contain a cover page that includes:

(1) one of the following statements in 18-point or larger type that accurately describes the adopted budget:

(A) "This budget will raise more revenue from property taxes than last year's budget by an amount of (insert total dollar amount of increase), which is a (insert percentage increase) percent increase from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(B) "This budget will raise less revenue from property taxes than last year's budget by an amount of (insert total dollar amount of decrease), which is a (insert percentage decrease) percent decrease from last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll)."; or

(C) "This budget will raise the same amount of revenue from property taxes as last year's budget. The property tax revenue to be raised from new property added to the tax roll this year is (insert amount computed by multiplying the proposed tax rate by the value of new property added to the roll).";

(2) the record vote of each member of the commissioners court by name voting on the adoption of the budget;

(3) the county property tax rates for the preceding fiscal year, and each county property tax rate that has been adopted or calculated for the current fiscal year, including:

(A) the property tax rate;

(B) the no-new-revenue tax rate;

(C) the no-new-revenue maintenance and operations tax rate;

(D) the voter-approval tax rate; and

(E) the debt rate; and

(4) the total amount of county debt obligations.

(d) In this section, "debt obligation" means an issued public

security as defined by Section 1201.002, Government Code, secured by property taxes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 7, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 944 (S.B. 2), Sec. 82, eff. January 1, 2020.

Sec. 111.069. APPROVED BUDGET FILED WITH OFFICERS; POSTING ON INTERNET. (a) On final approval of the budget by the commissioners court, the court shall:

(1) file a copy of the budget with the county auditor and the county clerk; and

(2) if the county maintains an Internet website, take action to ensure that:

(A) a copy of the budget, including the cover page, is posted on the website; and

(B) the record vote described by Section 111.068(c)(2) is posted on the website at least until the first anniversary of the date the budget is adopted.

(b) The commissioners court shall take action to ensure that the cover page of the budget is amended to include the property tax rates required by Section 111.068(c)(3) for the current fiscal year if the rates are not included on the cover page when the budget is filed with the county clerk. The commissioners court shall file an amended cover page with the county clerk and take action to ensure that the amended cover page is posted on the county's website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 101, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 457 (S.B. 1692), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1329 (S.B. 656), Sec. 8, eff. September 1, 2013.

Sec. 111.070. EXPENDITURE OF FUNDS UNDER BUDGET; EMERGENCY

EXPENDITURE; BUDGET TRANSFER. (a) The commissioners court may spend county funds only in strict compliance with the budget, except as provided by this section.

(b) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention. If the court amends the original budget to meet an emergency, the court shall file a copy of its order amending the budget with the county clerk and the clerk shall attach the copy to the original budget.

(c) The commissioners court by order may:

(1) amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure; or

(2) designate the county budget officer or another officer or employee of the county who may, as appropriate and subject to conditions and directions provided by the court, amend the budget by transferring amounts budgeted for certain items to other budgeted items.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1197, Sec. 7, eff. June 20, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 1121 (H.B. 2458), Sec. 1, eff. June 18, 2005.

Sec. 111.0705. BUDGET FOR EXPENDITURES FROM PROCEEDS OF BONDS OR OTHER OBLIGATIONS. If a county bond issue is submitted at an election or other authorized obligations are to be issued against future revenues and a tax is to be levied for those obligations, the commissioners court shall adopt a budget of proposed expenditures. On receipt of the proceeds of the sale of the bonds or other obligations, the county may make expenditures from the proceeds in the manner provided by this subchapter for expenditures for general purposes.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 8, eff. June 20, 1997.

Sec. 111.0706. SPECIAL BUDGET FOR GRANT OR AID MONEY. The county auditor shall certify to the commissioners court the receipt of all public or private grant or aid money that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the grant or aid money for its intended purpose.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 8, eff. June 20, 1997.

Sec. 111.0707. SPECIAL BUDGET FOR REVENUE FROM INTERGOVERNMENTAL CONTRACTS. (a) The county auditor shall certify to the commissioners court the receipt of all revenue from intergovernmental contracts that is available for disbursement in a fiscal year but not included in the budget for that fiscal year. On certification, the court shall adopt a special budget for the limited purpose of spending the revenue from intergovernmental contracts for its intended purpose.

(b) The county treasurer shall notify the county auditor of the receipt of all revenue from intergovernmental contracts not previously included in a special budget or the annual budget for that fiscal year.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 8, eff. June 20, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 5, eff. September 1, 2011.

Sec. 111.07075. SPECIAL BUDGET FOR REVENUE RECEIVED AFTER START OF FISCAL YEAR. (a) The county auditor shall certify to the commissioners court the receipt of revenue from a new source not anticipated before the adoption of the budget and not included in the budget for that fiscal year. On certification, the court may adopt a special budget for the limited purpose of spending the revenue for general purposes or for any of its intended purposes.

(b) The county treasurer shall notify the county auditor of the receipt of all revenue from a new source not anticipated before the adoption of the budget and not previously included in a special budget or the annual budget for that fiscal year.

Added by Acts 2001, 77th Leg., ch. 938, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 5, eff. September 1, 2011.

Sec. 111.0708. PLEDGING REVENUE AS SECURITY FOR BONDS AND OTHER OBLIGATIONS. In preparing a county budget, a county may secure county bonds or other obligations by pledging for the term of the bonds or other obligations:

(1) any security authorized by law; or

(2) any revenue or receipts obtained by the county from the levy of a state tax if the state is required to pay the county the proceeds or receipts from the tax.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 8, eff. June 20, 1997.

Sec. 111.0709. CHANGES IN BUDGET FOR COUNTY PURPOSES. This subchapter does not prevent the commissioners court from making changes in the budget for county purposes.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 8, eff. June 20, 1997.

Sec. 111.071. BUDGET OFFICER'S ASSISTANCE TO COMMISSIONERS COURT. The budget officer may assist the commissioners court in the performance of the court's duties relating to the efficiency and effectiveness of county operations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.072. DUTIES RETAINED BY COUNTY AUDITOR. The duties given under Subchapter B to the county auditor that are not expressly conferred by this subchapter on the budget officer remain duties of the county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.073. EMPLOYMENT OF PERSONNEL. The commissioners court may employ personnel necessary to assist the budget officer in the performance of the duties of that office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.074. LIMITATION ON BUDGET OF COUNTY AUDITOR. An increase from one fiscal year to the next in the amount budgeted for expenses of the county auditor's office or the salary of an assistant auditor shall not exceed five (5) percent without approval of the commissioners court.

Added by Acts 1991, 72nd Leg., ch. 600, Sec. 5, eff. June 15, 1991; Acts 1991, 72nd Leg., ch. 739, Sec. 3, eff. Aug. 26, 1991.

Sec. 111.075. RESERVE ITEM. Notwithstanding any other provision of this subchapter, a county may establish in the budget a reserve or contingency item. The item must be included in the itemized budget under Section 111.063(a) in the same manner as a project for which an appropriation is established in the budget.

Added by Acts 2003, 78th Leg., ch. 301, Sec. 7, eff. Sept. 1, 2003.

SUBCHAPTER D. BUDGET APPROPRIATIONS

Sec. 111.091. APPROPRIATION ACCOUNTS. (a) On the adoption and certification of a general or special county budget, the county auditor shall open an appropriation account for each main budgeted or special item in the budget.

(b) The county auditor shall enter to an appropriation account each warrant drawn against that appropriation.

(c) The county auditor periodically shall inform the commissioners court of the condition of the appropriation accounts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.092. DEPARTMENTAL EXPENSES NOT TO EXCEED APPROPRIATIONS. The county auditor shall oversee the warrant process

to ensure that the expenses of any department do not exceed the budget appropriations for that department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.093. APPROPRIATIONS FOR PURCHASES, CONTRACTS, SALARIES, OR LABOR EXPENSES IN COUNTY WITH POPULATION OF MORE THAN 225,000. (a) This section applies only to a county with a population of more than 225,000.

(b) The county auditor shall charge all purchase orders, requisitions, contracts, and salary and labor allowances to the appropriation accounts.

(c) A requisition issued or a contract for work, labor, services, or materials and supplies that is entered into in the manner provided by law by a proper authority is not binding until the county auditor certifies that the budget contains an ample provision for the obligation and that funds are or will be available to pay the obligation when due.

(d) The amount allocated in the budget for a purchase order, requisition, contract, special purpose, or salary or labor account may not be allocated for any other purpose unless an unexpended balance remains in the account after full discharge of the obligation or unless the requisition, contract, or allocation is canceled in writing by the commissioners court or a county officer for a valid reason.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 111.094. ITEMIZED BUDGET. The commissioners court in preparing the county budget shall determine the amount of county funds to be spent for the juvenile probation department in the county budget.

Added by Acts 1997, 75th Leg., ch. 1197, Sec. 9, eff. June 20, 1997.

Sec. 111.095. SPECIAL FUNDS. (a) This section shall apply to all funds maintained and controlled by a county tax assessor-collector that are not included in the county budget.

(b) At least 60 days before the first day of the county's fiscal year, the county tax assessor-collector shall prepare a budget for the expenditure of the funds during that fiscal year and file a copy of that budget with the county budget officer. The county budget officer shall make a copy of the budget filed with the budget officer available to the public at all reasonable times. The budget filed with the county budget officer is not subject to approval by the commissioners court of the county, but any member of the public is entitled to speak for or against the budget during the county's budget process. Funds in the accounts under this section may be spent only in compliance with the budget filed with the county budget officer under this subsection.

(c) Funds in the accounts under this section may not be used to supplement the salary or cover the personal expenses of the county tax assessor-collector.

(d) The provisions of this section are cumulative with the provisions of other statutes pertaining to county funds.

Added by Acts 2001, 77th Leg., ch. 938, Sec. 4, eff. Sept. 1, 2001.

Sec. 111.096. BUDGETED POSITIONS FOR JUDICIARY. Notwithstanding any other law, the commissioners court in preparing the county budget for a fiscal year shall determine the number of any additional positions authorized under Section 75.401, Government Code, to be included in the budget and the maximum compensation for those positions.

Added by Acts 2017, 85th Leg., R.S., Ch. 1110 (H.B. 4104), Sec. 1, eff. September 1, 2017.

CHAPTER 112. COUNTY FINANCIAL ACCOUNTING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. ACCOUNTING SYSTEM IN COUNTY WITH COUNTY AUDITOR AND POPULATION OF LESS THAN 190,000. In a county with a population of less than 190,000, the county auditor may adopt and enforce regulations, not inconsistent with law or with a rule adopted under Section 112.003, that the auditor considers necessary for the speedy and proper collecting, checking, and accounting of the revenues and other funds and fees that belong to the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.002. ACCOUNTING SYSTEM IN COUNTY WITH COUNTY AUDITOR AND POPULATION OF 190,000 OR MORE. (a) In a county with a population of 190,000 or more, the county auditor shall prescribe the system of accounting for the county.

(b) The county auditor may adopt and enforce regulations, not inconsistent with law or with a rule adopted under Section 112.003, that the auditor considers necessary for the speedy and proper collecting, checking, and accounting of the revenues and other funds and fees that belong to the county or to a person for whom a district clerk, district attorney, county officer, or precinct officer has made a collection or for whose use or benefit the officer holds or has received funds.

(c) A regulation adopted under this section may not be inconsistent with generally accepted accounting principles as established by the Governmental Accounting Standards Board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 761, Sec. 1, eff. Aug. 30, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1224 (H.B. 2365), Sec. 3, eff. June 15, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1047 (H.B. 1930), Sec. 2, eff. June 15, 2017.

Sec. 112.003. COMPTROLLER'S AUTHORITY TO PRESCRIBE FORMS AND DETERMINE MANNER OF STATING ACCOUNTS; UNIFORM CHART OF ACCOUNTS. (a) The comptroller of public accounts shall prescribe and prepare the forms to be used by county officials in the collection of county revenue, funds, fees, and other money and in the disbursement of funds. The comptroller shall prescribe the manner of keeping and stating the accounts of the officials.

(b) A county may use the uniform chart of accounts developed and recommended by the Texas County Financial Data Advisory Committee and implemented by the comptroller in reporting financial data or other pertinent information to the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 2001, 77th Leg., ch. 676, Sec. 1, eff. Sept. 1, 2001.

Sec. 112.004. ACCOUNTS KEPT FOR OFFICERS BY COUNTY CLERK. (a) This section applies only to a county that does not have the office of county auditor.

(b) The county clerk shall keep in the county finance ledger an account for each officer of the county, district, or state who is authorized or required by law to receive or collect money or other property that is intended for the use of the county or that belongs to the county. At the top of each page in an officer's account, the clerk shall state the name of the officer and the title of the office.

(c) The clerk shall keep any other accounts necessary to carry out the purposes of this subtitle and shall conveniently index the accounts.

(d) The clerk shall enter items daily in the proper accounts.

(e) Every financial report and voucher must be filed with the clerk, who shall effectively preserve the report or voucher and note it briefly in the proper account.

(f) The clerk shall balance each account maintained under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.005. ACCOUNTS KEPT FOR OFFICERS BY COUNTY AUDITOR. (a) The county auditor shall maintain an account for each county, district, or state officer authorized or required by law to receive or collect money or other property that is intended for the use of the county or that belongs to the county.

(b) In the account, the auditor shall detail the items of indebtedness charged against that officer and the manner of discharging the indebtedness.

(c) The auditor shall require each person who receives money that belongs to the county or who has responsibility for the disposition or management of any property of the county to render statements to the auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.006. GENERAL OVERSIGHT AUTHORITY OF COUNTY AUDITOR. (a) The county auditor has general oversight of the books and records of a county, district, or state officer authorized or required by law to receive or collect money or other property that is intended for the use of the county or that belongs to the county.

(b) The county auditor shall see to the strict enforcement of the law governing county finances.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.007. COUNTY AUDITOR'S RECORDS OF COUNTY FINANCIAL TRANSACTIONS. The county auditor shall keep a general set of records to show all the transactions of the county relating to accounts, contracts, indebtedness of the county, and county receipts and disbursements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.009. COUNTY AUDITOR PERFORMING DUTIES INSTEAD OF COUNTY CLERK. If a duty imposed by this subtitle on the county auditor is the same or nearly the same as a duty imposed by law on the county clerk, the county clerk is relieved of the duty.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.010. COUNTY FISCAL YEAR. (a) The county fiscal year is the calendar year unless the commissioners court of the county adopts a different fiscal year as provided by Subsection (b) or (c).

(b) At a regular meeting, the commissioners court of a county may by order adopt as the county fiscal year a one-year period that begins on October 1 of each year.

(c) At a regular meeting, the commissioners court of a county with a population of 3.3 million or more may by order adopt as the county fiscal year a one-year period that begins on October 1 or March 1 of each year. In the order, the commissioners court may provide for the transition from one fiscal year to another by designating an interim fiscal year that may be longer or shorter than a 12-month period.

(d) The commissioners court of a county that has adopted a fiscal year under Subsection (b) or (c) may, by order adopted at a regular meeting, revert to a fiscal year that is the calendar year.

(e) If a law prescribes a certain date or month each year for an action relating to a county budget and the law is based on the assumption that the county fiscal year corresponds to the calendar year, in a county that has a fiscal year other than the calendar year the law shall be construed as prescribing a date or month that bears the same relationship to the beginning of the fiscal year that the specified date or month bears to January 1.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 49, eff. Sept. 1, 2001.

SUBCHAPTER B. TAX ACCOUNTS AND RECORDS

Sec. 112.031. ACCOUNT FOR TAX ASSESSOR-COLLECTOR. In keeping an account for the county tax assessor-collector, the county clerk must:

(1) keep a separate account for each separate fund on the tax rolls;

(2) state in each separate account the name of the tax assessor-collector, the character of the fund entered on the tax rolls, and the year for which the tax is assessed; and

(3) keep separate and distinct the taxes assessed for each year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.032. RECEIPT FOR TAX ROLLS; CREDITS. (a) When the tax rolls are ready for delivery to the tax assessor-collector, the court or officer that has control of the tax rolls shall obtain a written receipt from the tax assessor-collector for the rolls.

(b) The receipt must specify the amount assessed and due to the county as listed on the tax rolls and shall state separately the amount assessed to each fund.

(c) The court or officer shall deliver the receipt to the county clerk, who shall charge in the proper account in the county finance records the tax assessor-collector with the amount stated in the receipt. Those amounts shall be treated as debts owed to the

county by the tax assessor-collector.

(d) The tax assessor-collector shall discharge the indebtedness within the time prescribed by law by filing receipts with the county clerk for the discharged indebtedness as follows:

(1) the commission due to the tax assessor-collector;

(2) proper vouchers for any amount that the tax assessor-collector is required to pay out of money on hand; and

(3) the county treasurer's receipt for the money paid into the treasury.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.033. INDIGENT AND DELINQUENT TAX LISTS. (a) The tax assessor-collector shall make separate lists of indigent and delinquent taxpayers. Each list must show the name of the taxpayer and the amount owed.

(b) The commissioners court shall carefully examine each list and shall, by an order entered on the minutes of the court, state the names of the taxpayers and the amounts that are judged uncollectible.

(c) After the order has been made and entered, the tax assessor-collector is entitled to be credited with the amounts judged uncollectible in the proper accounts in the county finance records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.034. DELIVERY OF TAX ROLLS TO SUCCESSOR. (a) On leaving office, the outgoing tax assessor-collector shall deliver the tax rolls in that officer's possession to the successor officer. The successor officer shall give to the outgoing tax assessor-collector a written receipt for the amount of taxes owed on those rolls.

(b) The receipt must specify the amount of each fund and each year separately and must also indicate the amount due on the indigent and delinquent taxpayer lists.

(c) The outgoing tax assessor-collector shall deliver the receipts to the county clerk, who shall enter those allowed by the commissioners court to the credit of the officer who presents them. The clerk shall charge the credited amounts to the successor officer in the proper accounts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.035. OCCUPATION TAX RECORDS. (a) The tax assessor-collector shall collect all occupation taxes owed to the county without assessment. That officer shall give the person who pays the tax a written receipt that states the person's name, the occupation for which the tax is imposed, the period for which the tax payment is made, and the amounts collected for the state and for the county.

(b) On payment of the tax, the tax assessor-collector shall:

(1) issue the person a license in the name of the state, the county, or both, according to the tax that the person paid, that authorizes the person to engage in the occupation during the period for which the tax is paid; and

(2) pay into the treasury the amount of the tax collected for the county.

(c) The tax assessor-collector shall keep an occupation tax account.

(d) At the end of each month, the tax assessor-collector shall make two reports. The tax assessor-collector shall mail the first report, relating to licenses issued on taxes paid to the state, to the comptroller of public accounts. If authorized by the comptroller, the report may be submitted electronically instead of by mail. The tax assessor-collector shall file the second report, relating to licenses issued on taxes paid to the county, with a county officer designated by the commissioners court. Each report must contain the information stated in the receipt for the tax and shall be dated and signed under the tax assessor-collector's official seal.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 573 (H.B. 1471), Sec. 1, eff. September 1, 2005.

SUBCHAPTER C. OTHER SPECIFIC ACCOUNTS

Sec. 112.051. SHERIFF ACCOUNT. (a) Except as provided by Subsection (c), the county clerk shall keep an account for the county sheriff that charges the sheriff with each judgment, fine,

forfeiture, or penalty that is payable to and rendered in any court of the county and that the sheriff is charged by law to collect. The sheriff may discharge the liability by producing the county treasurer's receipt that shows payment of the judgment, fine, forfeiture, or penalty.

(b) The sheriff may also discharge the liability by showing to the satisfaction of the commissioners court that the judgment, fine, forfeiture, or penalty cannot be collected or that it has been discharged through imprisonment or labor or by escape occurring without the sheriff's fault or neglect. The sheriff must obtain an order of the commissioners court that allows the discharge.

(c) The sheriff is not liable for a judgment, fine, forfeiture, or penalty if the judgment, fine, forfeiture, or penalty is collected by:

(1) a public or private vendor under Article 103.0031, Code of Criminal Procedure; or

(2) the county treasurer or county auditor as required by Section 154.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 217, Sec. 4, eff. May 23, 1995.

Sec. 112.052. JUSTICE OF THE PEACE ACCOUNT. (a) Except as provided by Subsection (c), a fine imposed or a judgment rendered by a justice of the peace shall be charged against that justice.

(b) The justice may discharge the indebtedness by:

(1) filing with the county clerk the county treasurer's receipt for the amount of the indebtedness;

(2) showing to the satisfaction of the commissioners court that the justice has used due diligence to collect the amount without avail; or

(3) showing to the satisfaction of the commissioners court that the indebtedness has been satisfied by imprisonment or labor.

(c) The justice is not liable for a fine imposed or judgment rendered by the justice if the fine or judgment is collected by:

(1) a public or private vendor under Article 103.0031, Code of Criminal Procedure; or

(2) the county treasurer or county auditor as required by Section 154.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 217, Sec. 5, eff. May 23, 1995.

Sec. 112.053. ESTRAY ACCOUNT. (a) If a notice of an estray is filed with the county clerk, the clerk shall keep an estray account on the debit side of the county finance ledger. The estray account must show the date of the notice, the name of the person who reported the estray, and a brief description of the animal. The clerk shall leave the amount of the charge blank until the sheriff files an account of the sale of the estray.

(b) When the account of the sale is filed, the county clerk shall enter the net amount due to the county from the sale in the blank in the estray account. When the county treasurer's receipt is presented to the clerk, indicating the amount paid into the county treasury because of the sale, the clerk shall enter that amount on the credit side of the estray account, showing the date, the name of the person paying, the amount paid, and a brief description of the animal. The clerk shall then charge that amount on the debit side of the county treasurer's account.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 112.054. COUNTY TREASURER ACCOUNT. (a) The county clerk shall keep an account for the county treasurer in the county finance ledger. In that account, the clerk shall charge the treasurer separately with each amount for which the treasurer gives a receipt to the sheriff, county tax assessor-collector, or other person who pays the amount into the treasury.

(b) The clerk shall credit the treasurer with each amount paid out by the treasurer after the commissioners court has approved the treasurer's report of the payments. The clerk shall also credit the treasurer with the legal commissions of the treasurer's office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 113. MANAGEMENT OF COUNTY MONEY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.0001. DEFINITIONS. In this chapter:

(1) "Depository" means the financial institution selected under Section 116.021 for safekeeping of the county treasury.

(2) "Depository account" means an account covered by the depository agreement, including required collateral.

(3) "Money" means an item or medium of exchange such as coins, currency, checks, or other means of payment, including electronic payment.

(4) "Treasury" means the money belonging to the county held by the county treasurer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 6, eff. September 1, 2011.

Sec. 113.001. COUNTY TREASURER AS CHIEF CUSTODIAN OF MONEY. The county treasurer, as chief custodian of county funds, shall keep in a designated depository and shall account for all money belonging to the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 113.002. COUNTY TREASURER'S RECORD OF RECEIPTS AND EXPENDITURES. The county treasurer shall keep an account of the receipts and expenditures of all money that the treasurer receives by virtue of the office and of all debts due to and owed by the county. The treasurer shall keep accurate, detailed accounts of all the transactions of the treasurer's office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 113.003. RECEIPT OF MONEY BY COUNTY TREASURER. The county treasurer shall receive all money belonging to the county from whatever source it may be derived.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 113.004. CLASSES OF COUNTY FUNDS. (a) The county treasurer shall divide the funds received by the treasurer's office

into three classes. The treasurer shall appropriate the money in each class of funds to the payment of the claims registered in the corresponding class of claims.

(b) The classes of funds consist of:

(1) jury fees, money received from the sale of estrays, and occupation taxes;

(2) money received under the provisions of a road and bridge law, including penalties recovered from railroads for the failure to repair crossings, and all fines and forfeitures; and

(3) other money received by the treasurer's office that is not otherwise appropriated by this section or by the commissioners court.

(c) The commissioners court, as it considers proper, may require other accounts to be kept, creating other classes of funds. The court may require scrip to be issued against those accounts and to be registered accordingly.

(d) The commissioners court by order may transfer money on hand from one fund to another as it considers necessary, but amounts that belong to the first class of funds may not be transferred from the payment of claims registered in that class unless there is an excess amount in that class.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 113.005. LIABILITY OF COUNTY TREASURER. (a) The county treasurer is not responsible for any loss of the county funds through the failure or negligence of a depository. This subsection does not release the treasurer from responsibility for a loss resulting from the official misconduct or negligence of the treasurer, including a misappropriation of the funds, or from responsibility for funds until a depository is selected and the funds are deposited.

(b) A treasurer who diverts money from an interest and sinking fund or who applies money in that fund for a purpose other than as permitted by Section 113.041(h) is:

(1) subject to a penalty of not less than $500 or more than $1,000; and

(2) liable for the amount of money that is diverted.

(c) The state is entitled to recover a penalty imposed under Subsection (b)(1). The amount of diverted money that is recovered

under Subsection (b)(2) shall be paid into the county treasury to the credit of the fund from which it was diverted.

(d) The attorney general or the district attorney of the district in which the treasurer resides, or the county attorney in a county that is not served by a district attorney, may institute suit against the treasurer and the sureties on the treasurer's official bond to recover the amounts described by Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 227, Sec. 7, eff. Sept. 1, 1999.

Sec. 113.006. LIABILITY OF COUNTY TAX ASSESSOR-COLLECTOR. A county tax assessor-collector and any surety on the assessor-collector's bond are relieved of responsibility for safekeeping funds collected from taxes after the funds are deposited as required by law with the county depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 113.008. RECONCILIATION OF DEPOSITORY ACCOUNTS. (a) The county depository shall provide statements of all bank activity and documentation supporting a statement's transactions not less than once a month to the county treasurer.

(b) The county depository shall provide the information required by Subsection (a) to the official responsible for the account if:

(1) the checks and orders for payment are payable from funds under the direct authority of an official other than the county treasurer as provided by statute; and

(2) the official has not delegated the responsibility for reconciliation under Subsection (b-1).

(b-1) The official may request the county treasurer to be responsible for the reconciliation of the checks and orders for payment payable from the funds that are under the direct authority of the official. Except as provided by Subsection (g), an official who fails to reconcile the official's special accounts monthly shall transfer responsibility for account reconciliation to the county treasurer. Unless the official and county treasurer set another period in writing for the duration of a transfer under this section,

the transfer is effective for the duration of the term of office for the designating officer.

(c) In fulfilling the requirements of Subsections (a) and (b), the county depository shall provide, at the direction of the county treasurer and in accordance with the rules adopted by the Texas State Library and Archives Commission, originals, optical images, or electronic images of:

(1) canceled checks and orders for payment;

(2) deposit detail;

(3) debit and credit memoranda; or

(4) electronic transmission detail.

(d) The county treasurer shall:

(1) reconcile all balances and transactions for each treasury account in the county depository's statement of activity to the transactions and balances shown on the treasurer's records; and

(2) ensure all financial adjustments are made regarding the depository account as required.

(e) In this section, a reference to the county treasurer includes a person performing the duties of the county treasurer.

(f) Except as provided by Subsection (g), an official with special funds in the depository bank shall:

(1) reconcile all balances and transactions in the statement of activity to the transactions and balances shown on the official's records; and

(2) each month, ensure all financial adjustments resulting from the reconciliation are reported to the county auditor for entry in the general set of records and reflected in the cash receipts and disbursement registers of the county treasurer.

(g) Subsections (b-1) and (f)(2) do not apply to a special fund administered by an attorney representing the state under Chapter 18, 47, or 59, Code of Criminal Procedure.

Added by Acts 1997, 75th Leg., ch. 140, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 7, eff. September 1, 2011.

Sec. 113.009. CIVIL LIABILITY OF COUNTY TAX ASSESSOR-COLLECTOR; AUDIT BY COMPTROLLER. (a) Unless an audit of a county tax assessor-

collector's office is conducted under Subsection (b), a civil cause of action may not be commenced against a county tax assessor-collector later than four (4) years after the term of the tax assessor-collector ends as provided by Subsection (d).

(b) The comptroller may conduct an audit of the books, records, and accounts of a county tax assessor-collector's office that relate to the assessor-collector's administration of public funds during a term of office. The comptroller shall provide an assessor-collector with notice of an audit under this subsection not later than the first anniversary of the date the term of office that is the subject of the audit ends. An audit must be completed not later than the second anniversary of the date the term of office that is the subject of the audit ends.

(c) If an audit is conducted under Subsection (b), a civil action described by Subsection (a) may not be commenced later than four (4) years after the date the audit conducted under Subsection (b) is completed.

(d) For purposes of this section, a term of office of an assessor-collector ends on:

(1) the date the term expires under law, whether or not the assessor-collector serves during the succeeding term, for an assessor-collector who is serving at the time the term expires; or

(2) the date a successor takes office for an assessor-collector who does not continue serving until the time the term expires under law.

Added by Acts 1999, 76th Leg., ch. 661, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. DEPOSIT OF MONEY

Sec. 113.021. REQUIREMENT THAT MONEY BE DEPOSITED WITH COUNTY TREASURER; INTEREST. (a) The fees, commissions, funds, and other money belonging to a county shall be deposited with the county treasurer by the person who collects the money. The person must deposit the money in accordance with any applicable procedures prescribed by or under Section 112.001 or 112.002. However, the county tax assessor-collector must deposit the money in accordance with the procedures prescribed by or under the Tax Code and other laws.

(b) The county treasurer shall deposit the money in the county

depository in the proper fund to the credit of the person or department collecting the money.

(c) The interest accruing on the money in the fund is for the benefit of the county in accordance with other law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 8, eff. September 1, 2011.

Sec. 113.022. TIME FOR MAKING DEPOSITS. (a) A county officer or other person who receives money shall deposit the money with the county treasurer on or before the next regular business day after the date on which the money is received. If this deadline cannot be met, the officer or person must deposit the money, without exception, on or before the fifth business day after the day on which the money is received. However, in a county with fewer than 50,000 inhabitants, the commissioners court may extend the period during which funds must be deposited with the county treasurer, but the period may not exceed 15 days after the date the funds are received.

(b) A county treasurer shall deposit the money received under Subsection (a) in the county depository in accordance with Section 116.113(a). In all cases, the treasurer shall deposit the money on or before the seventh business day after the date the treasurer receives the money.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 836 (H.B. 892), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 8, eff. September 1, 2011.

Sec. 113.023. DEPOSIT WARRANTS. (a) Except as provided by Subsection (c), each deposit made in the county treasury must be made on a deposit warrant. The deposit warrant authorizes the county treasurer to receive the amount stated in the warrant. The warrant must state the purpose for which the amount is received and the fund to which it is to be applied.

(b) The county treasurer shall keep the original deposit warrant. The county treasurer shall provide the county clerk or the county auditor with duplicate deposit warrants or a written report of all deposit warrants received that contains detailed information about each warrant. On the request of a person making a deposit, the county treasurer may provide a duplicate deposit warrant to the person. If the county has a county auditor, the auditor shall enter the amount in the auditor's books, charging the amount to the county treasurer and crediting the person who deposited the amount. The treasurer may receive money only through this procedure except as provided by Subsection (c).

(c) In a county with more than 2.2 million inhabitants, the county clerk is relieved of all duties under Subsections (a) and (b). In any other county that has the office of county auditor, the commissioners court by order may relieve the county clerk of all duties under Subsections (a) and (b). If the county clerk is relieved of duties, the county treasurer shall receive all deposits that are made in the county treasury. The county treasurer shall provide the county auditor with duplicate warrants or a written report of all warrants that contains detailed information about each warrant. On the request of a person making a deposit, the county treasurer may provide a duplicate warrant to the person. The county auditor shall prescribe a system, not inconsistent with this subsection, to be used by the county treasurer for receiving and depositing money.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 50, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 934 (H.B. 3439), Sec. 2, eff. September 1, 2007.

Sec. 113.024. DEPOSIT OF MONEY DOES NOT AFFECT OWNERSHIP. The deposit of money in a county treasury does not change the ownership of the money, except to indemnify the officer and the officer's surety, or any other owner of the money, during the period of deposit with the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. DISBURSEMENT OF MONEY

Sec. 113.041. DISBURSEMENT OF MONEY BY COUNTY TREASURER; PAYMENT BY CHECK OR ELECTRONIC TRANSMISSION; LOST OR DESTROYED INSTRUMENT. (a) The county treasurer shall disburse the money belonging to the county and shall pay and apply the money as required by law and as the commissioners court may require or direct, not inconsistent with law.

(b) Except as provided by Chapter 156, a person may not spend or withdraw money from the county treasury except by a check or order for payment drawn on the county treasury, whether or not the money is in a county depository as required by law.

(c) The county treasurer may not disburse money out of the county treasury without an order for payment from an officer who is authorized by law to issue the order.

(d) If the county treasurer doubts the legality or propriety of an order presented to the treasurer for payment, the treasurer may not make the payment. The treasurer shall report the matter to the commissioners court for the court's consideration and direction. The treasurer may require that the claim supporting the order be made available and verified by an affidavit after the claim is approved for payment by the commissioners court.

(d-1) In a county without a county auditor, the county treasurer may not make a payment if the treasurer has reason to believe that the check or order for payment is not valid as a proper and budgeted item of expenditure. The treasurer shall report the matter to the commissioners court for consideration and direction.

(e) If the county treasurer is satisfied that an original check or other order drawn on the county treasury by a proper authority is lost or destroyed, the treasurer may issue a duplicate instrument in place of the original. The treasurer may not issue a duplicate until an applicant has filed an affidavit with the treasurer that states that the applicant is the true owner of the original instrument and that, to the best knowledge and belief of the applicant, the original is lost or destroyed.

(f) The treasurer may require an applicant for a duplicate instrument to execute a bond with two or more good and sufficient sureties in an amount that is double the amount of the claim. The bond must be:

(1) notarized;

(2) made payable to the county judge;

(3) conditioned that the applicant will hold the county harmless;

(4) conditioned that the applicant will return to the treasurer on demand by the treasurer the duplicate instrument or the amount of money named in the duplicate, including any costs that accrue against the county in collecting the amount; and

(5) approved by the treasurer.

(g) If, after issuance of the duplicate instrument, the county treasurer determines that the duplicate was issued improperly or that the applicant or person to whom the duplicate was issued is not the owner of the original instrument, the treasurer shall immediately stop payment or demand the return of the amount paid by the county, if the duplicate is paid. If the person fails to return the amount of the instrument, the treasurer shall institute a suit for recovery through the office of the county or district attorney. Venue for the suit lies in the county in which the treasurer serves.

(h) A county treasurer may not honor a check or order for payment on the interest and sinking fund provided for a bond of the county or pay out or divert money in that fund except to pay the principal of or interest on the bond or invest money in securities as provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 343, Sec. 1, eff. May 29, 1993; Acts 1999, 76th Leg., ch. 227, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 9, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 10, eff. September 1, 2011.

Sec. 113.042. ENDORSEMENT BY COUNTY TREASURER; OTHER REQUIREMENTS FOR ORDER FOR PAYMENT. (a) On the presentation of an order for payment, check, or voucher drawn by a proper authority, and if there are sufficient funds for payment on deposit in the account against which the instrument is drawn, the county treasurer shall endorse on the face of the instrument the order to pay the named payee and shall charge the amount in the treasurer's records to the fund on which it is drawn.

(b) The county treasurer may not issue and the county depository may not pay a check drawn on the county depository to take up an order for payment drawn by a proper authority, but the county treasurer shall, on the presentation of the order, endorse the order and deliver it to the payee, who may present it to the county depository for payment.

(c) The treasurer may not endorse an instrument designated as a time deposit until after the notice and time requirements in the depository contract that designates the funds as time deposits are met.

(d) If a bond, coupon, or other instrument is payable on its own terms at any place other than the county treasury, this section does not prevent the commissioners court from ordering the treasurer to place a sufficient sum at the location where the instrument is payable at the time and place of its maturity, as long as the payment is made in the manner prescribed by law.

(e) Each check or order for payment issued or drawn by an officer under the provisions of this section is subject to all laws and rules relating to auditing and countersigning.

(f) Each order for payment or scrip issued against the county treasurer by a judge or court must be signed and attested by the clerk or judge of the court under that officer's official seal.

(g) A justice of the peace may not issue an order for payment against the county treasury for any purpose except as may be provided by the Code of Criminal Procedure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 12, eff. September 1, 2011.

Sec. 113.043. COUNTERSIGNATURE BY COUNTY AUDITOR. In a county with a county auditor, the county treasurer and the county depository may not pay a check or order for payment unless it is countersigned by the county auditor to validate it as a proper and budgeted item of expenditure. This section does not apply to a check or order for jury service or for restitution collected on behalf of an individual

as authorized by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 13, eff. September 1, 2011.

Sec. 113.045. COMPARISON OF VOUCHERS AND REPORTS; TREASURER TO BE CREDITED. The county treasurer shall present to the commissioners court the vouchers relating to and accompanying each financial report for comparison with the report. All proper vouchers shall be allowed and the treasurer shall be credited with the amount of the vouchers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 113.046. REGISTER OF ORDERS FOR PAYMENT ISSUED BY JUDGE OR CLERK. (a) The county auditor shall maintain a register of the orders for payment issued on the county treasurer by a judge or by the district or county clerk. A register entry for an order must indicate the date of payment by the treasurer.

(b) On a form prepared by the auditor, the clerk or judge shall furnish the auditor with a daily itemized report that specifies the orders for payment issued, the number of orders, the amounts of the orders, the names of the persons to whom the orders are payable, and the purposes of the orders.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 14, eff. September 1, 2011.

Sec. 113.047. DISBURSEMENTS FOR SALARIES OR EXPENSES. After the deposit of funds in a county depository, an officer may draw checks on the county treasurer to disburse the funds as payment for a salary or expenses authorized by law or in payment to the county or to the person to whom the funds belong.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:
Acts 2019, 86th Leg., R.S., Ch. 330 (S.B. 354), Sec. 1, eff. May 31, 2019.

Sec. 113.048. DISBURSEMENT OF MONEY FOR JURY SERVICE. (a) Notwithstanding any other provision of this subchapter or other law to the contrary, a county treasurer may disburse to a person who reports for jury service and discharges the person's duty the daily amount of reimbursement for jury service expenses set by the commissioners court under Section 61.001, Government Code, by:

(1) using an electronic funds transfer system in accordance with Chapter 156;

(2) using a cash dispensing machine;

(3) issuing a debit card or a stored value card; or

(4) using any other method that the county treasurer and the commissioners court determine is secure, accurate, and cost-effective and that is convenient for persons who report for jury service.

(b) A system or method of payment adopted by a county treasurer under Subsection (a) may be implemented only if it is approved by the commissioners court and administered in accordance with the procedures established by the county auditor or by the chief financial officer of a county that does not have a county auditor.

(c) A system or method of payment authorized by this section may be used in lieu of or in addition to the issuance of checks or orders for payment authorized under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 734 (S.B. 397), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 15, eff. September 1, 2011.

SUBCHAPTER D. SPECIAL PROVISIONS RELATING TO CLAIMS

Sec. 113.061. CLAIMS REGISTER. (a) The county treasurer shall maintain a record in which the treasurer shall register each claim against the county. The treasurer shall register the claims in the order in which they are presented. If more than one claim is

presented at the same time, the treasurer shall register them in the order of their date.

(b) The county treasurer may not pay a claim, or any part of it, until the claim has been registered. An officer may not receive a claim, or any part of it, in payment of any indebtedness owed to the county until the claim has been registered.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 606, Sec. 31(b)(1), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 606, Sec. 31(b)(1), eff. September 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 606, Sec. 31(b)(1), eff. September 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 606, Sec. 31(b)(1), eff. September 1, 2011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 16, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 31(b)(1), eff. September 1, 2011.

Sec. 113.063. CLAIMS INFORMATION LIST; INDEBTEDNESS TO THE COUNTY. (a) Each officer who collects a fine, penalty, forfeiture, judgment, tax, other indebtedness, or payment obligation owed to the county shall keep a descriptive list of those claims. When the officer reports the collection, the officer shall file with the report a list that states:

(1) the party in whose favor the claim was issued;

(2) the receipt number issued in documentation of payment;

(3) the name of the party paying in the claim;

(4) the amount received; and

(5) the purpose for which the amount was received.

(b) The officer shall give the claims and the report to the county treasurer, who shall give the officer a receipt. The treasurer shall determine the time and manner of making the report.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 17, eff.

September 1, 2011.

Sec. 113.064. APPROVAL OF CLAIMS BY COUNTY AUDITOR. (a) In a county that has the office of county auditor, each claim, bill, and account against the county must be filed in sufficient time for the auditor to examine and approve it before the meeting of the commissioners court. A claim, bill, or account may not be allowed or paid until it has been examined and approved by the auditor.

(b) The auditor shall stamp each approved claim, bill, or account. If the auditor considers it necessary, the auditor may require that a claim, bill, or account be verified by an affidavit indicating its correctness.

(c) The auditor may administer oaths for the purposes of this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 113.065. REQUIREMENT FOR APPROVAL OF CLAIM. The county auditor may not audit or approve a claim unless the claim was incurred as provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 113.901. REQUIREMENTS FOR APPROVAL OF ACCOUNTS AND REQUISITIONS. (a) Except as provided by Subsection (c), a county auditor may not audit or approve an account for the purchase of supplies or materials for the use of the county or of a county officer unless a requisition, signed by the officer ordering the supplies or materials and approved by the county judge, is attached to the account. The requisition requirement is in addition to any other requirements of law.

(b) The requisition must be made, signed, and approved in triplicate. The original must be delivered to the person from whom the purchase is to be made before the purchase is made. The duplicate copy must be filed with the county auditor. The triplicate copy must remain with the officer requesting the purchase. This subsection does not apply to a county that operates an electronic

requisition system.

(c) The commissioners court of a county that has the office of county auditor may, by a written order, waive the requirement of the county judge's approval of requisitions. The order must be recorded in the minutes of the commissioners court. If the approval of the county judge is waived, all claims must be approved by the commissioners court in open court.

(d) The commissioners court of a county may establish an electronic requisition system to perform the functions required by Subsection (a). The county auditor, subject to the approval of the commissioners court, shall establish procedures for administering the system.

(e) An electronic requisition system established under this section must be able to electronically transmit data to and receive data from the county's financial system in a manner that meets professional, regulatory, and statutory requirements and standards, including those related to purchasing, auditing, and accounting.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1197, Sec. 10, eff. June 20, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 936 (H.B. 731), Sec. 1, eff. June 18, 2005.

Sec. 113.902. PROSECUTION TO COLLECT DEBT OWED TO COUNTY; RECOVERY OF ATTORNEY'S FEES AND COSTS. (a) Except as provided by Section 140.013, the county treasurer shall direct prosecution for the recovery of any debt owed to the county, as provided by law, and shall supervise the collection of the debt.

(b) In a proceeding to recover a delinquent debt owed to the county, including a delinquent account, loan, interest payment, tax, charge, fee, fine, penalty, or claim on a judgment, the county attorney may recover reasonable attorney's fees and investigative and court costs incurred on behalf of the county. The county attorney may recover the fees and costs in the same manner as provided by law for a private litigant.

(c) This section does not apply to the recovery of a delinquent ad valorem tax owed to the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 2003, 78th Leg., ch. 145, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 585 (S.B. 790), Sec. 1, eff. September 1, 2021.

Sec. 113.903. COLLECTION MADE BY ONE OFFICER ON BEHALF OF ANOTHER. (a) With the prior consent of the commissioners court and the officer to whom funds are owed, a district, county, or precinct officer authorized by law to receive or collect money or other property that belongs to the county may receive or collect, on behalf of another district, county, or precinct officer, money or property owed to the county.

(b) If the officer collects money under this section, the officer shall deposit the money in accordance with Section 113.022.

(c) When the officer reports or deposits the collection, the officer shall file with the report or deposit a statement of:

(1) the name of the party paying the money;

(2) the amount received;

(3) the purpose for which the amount was received; and

(4) the officer on whose behalf the money was collected.

(d) The county auditor, or county clerk if there is no county auditor, and the county treasurer shall attribute money or property received or collected under this section to the account of the officer on whose behalf it is received or collected.

(e) A person who accepts a payment under the terms of this section shall issue a receipt for any money received to the payer of the debt.

Added by Acts 1989, 71st Leg., ch. 58, Sec. 1, eff. Aug. 28, 1989.

CHAPTER 114. COUNTY FINANCIAL REPORTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 114.001. GENERAL REQUIREMENTS APPLICABLE TO REPORTS. (a) Each report required under this subtitle must be made in writing and must be sworn to before an officer authorized to administer oaths by the officer making the report or by a person designated by the officer to receive fees, commissions, or costs under Section 114.041(b).

(b) A monthly report must be filed within five days after the last day of each month.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 231 (S.B. 1554), Sec. 1, eff. May 27, 2009.

Sec. 114.002. COUNTY AUDITOR'S AUTHORITY TO DETERMINE TIME AND MANNER OF REPORTS MADE TO AUDITOR. The county auditor shall determine:

(1) the time and manner for making reports to the auditor; and

(2) the manner for making an annual report of:

(A) office fees collected and disbursed; and

(B) the amount of office fees refunded to the county in excess of those that the officer is permitted by law to keep.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 114.003. PENALTY FOR FAILURE TO FURNISH COUNTY AUDITOR WITH REPORT; REMOVAL. (a) A county official or other person who is required under this subtitle to provide a report, statement, or other information to the county auditor and who intentionally refuses to comply with a reasonable request of the county auditor relating to the report, statement, or information, commits an offense.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $200;

(2) removal from office; or

(3) both a fine and removal from office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. REPORTS ABOUT GENERAL FINANCIAL CONDITION OF COUNTY

Sec. 114.021. COUNTY TREASURER'S TABULAR STATEMENT TO COMMISSIONERS COURT AT REGULAR TERM. (a) In a county that does not have the office of county auditor, the county treasurer shall present

a tabular statement at each regular term of the commissioners court. The treasurer shall present the statement during the second day of the court's term.

(b) In the statement, the treasurer shall report on the condition of the county finances for the three-month period preceding the month in which the court meets in regular session. In the statement, the treasurer shall specify:

(1) the names of the creditors of the county;

(2) each item of county indebtedness with its respective date of accrual;

(3) the name of each person to whom money has been paid and the amount paid; and

(4) the name of each person from whom money has been received, the date of the receipt, and the name of the account for which it is received.

(c) The treasurer shall list separately the amount to the credit or debit of each fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 207 (H.B. 398), Sec. 1, eff. May 25, 2007.

Sec. 114.022. COUNTY ANNUAL FINANCIAL EXHIBIT. (a) The county auditor or, in a county that does not have a county auditor, the county treasurer immediately after the first regular term of the commissioners court in the year shall publish an exhibit that shows the aggregate amount paid from each fund for the four preceding quarters and the balance to the debit or credit of each fund. The exhibit must also list:

(1) the amount of the county indebtedness;

(2) the respective dates of accrual of that indebtedness;

(3) to whom the debt is owed;

(4) the reason for the debt; and

(5) the amount to the debit or credit of each officer or other person with whom an account is kept in the county finance records.

(b) The county official designated by Subsection (a) shall publish the exhibit once in a weekly newspaper that is published in

the county. The commissioners court shall order the payment of the publication costs from the general fund of the county. If no paper is published in the county, the county official shall post a copy of the exhibit in each commissioner's precinct. One must be posted at the courthouse door, and one must be posted at public places in each of the other three commissioners' precincts.

(c) A county publishing monthly financial reports under Section 114.023 that publishes its comprehensive annual financial report on its Internet website is not required to publish an exhibit under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 207 (H.B. 398), Sec. 2, eff. May 25, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 18, eff. September 1, 2011.

Sec. 114.023. COUNTY AUDITOR'S MONTHLY REPORT TO COMMISSIONERS COURT IN COUNTY WITH POPULATION OF MORE THAN 225,000. (a) In a county with a population of more than 225,000, the county auditor shall report to the commissioners court at least monthly on the financial condition of the county. The auditor shall prescribe the form of the report.

(b) In addition to information considered necessary by the auditor or required by the commissioners court, the report must contain:

(1) all of the facts of interest related to the financial condition of the county;

(2) a consolidated balance sheet;

(3) a complete statement of the balances on hand at the beginning and end of the month;

(4) a statement of the aggregate receipts and disbursements of each fund;

(5) a statement of transfers to and from each fund;

(6) a statement of the bond and order for payment indebtedness with corresponding rates of interest; and

(7) a summarized budget statement that shows:

(A) the expenses paid from the budget for each budgeted

officer, department, or institution during that month and for the period of the fiscal year inclusive of the month for which the report is made;

(B) the encumbrances against the budgets; and

(C) the amounts available for further expenditures.

(c) The county auditor shall publish a condensed copy of the report showing the condition of funds and budgets and a statement of the auditor's recommendations. The publication must be made once in a daily paper published in the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 19, eff. September 1, 2011.

Sec. 114.024. COUNTY AUDITOR'S REPORT TO COMMISSIONERS COURT AT REGULAR MEETING. At each regular meeting of the commissioners court, the county auditor shall present a tabulated report of:

(1) the county's receipts and disbursements of funds; and

(2) the accounts of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 114.025. COUNTY AUDITOR'S MONTHLY AND ANNUAL REPORTS TO COMMISSIONERS COURT AND DISTRICT JUDGES. (a) The county auditor shall make monthly and annual reports to the commissioners court and to the district judges of the county. Each report must show:

(1) the aggregate amounts received and disbursed from each county fund;

(2) the condition of each account on the books;

(3) the amount of county, district, and school funds on deposit in the county depository;

(4) the amount of county bonded indebtedness and other indebtedness; and

(5) any other fact of interest, information, or suggestion that the auditor considers proper or that the court or district judges require.

(b) The annual report must include a record of all transactions made during a calendar year. The auditor shall file the annual

report at a regular or special term of the commissioners court held during the month of April of the following year. The auditor shall file a copy of the report with the district judges of the county.

(c) At the time the annual audit is delivered to the commissioners court and the district judges, the auditor shall send to the bonding company of each district, county, and precinct officer a report indicating the condition of that person's office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 114.026. COUNTY TREASURER'S REPORT TO COMMISSIONERS COURT AT REGULAR TERM. (a) At least once a month at a regular term of the commissioners court, the county treasurer shall make a detailed report of:

(1) money received and disbursed;

(2) debts due to and owed by the county; and

(3) all other proceedings in the treasurer's office.

(b) At least once a month at a regular term of the commissioners court, the county treasurer shall exhibit the books and accounts of the treasurer's office for the inspection of the court and shall submit the vouchers relating to the books and accounts for audit and approval.

(c) After the commissioners court has compared and examined the treasurer's report and has determined that the report is correct, the court shall enter an order in its minutes approving the report. The order must separately state the amount received and paid from each fund since the county treasurer's preceding report and any balance remaining in the treasurer's custody. The court shall properly credit the treasurer's accounts.

(d) Before the adjournment of a regular term of the commissioners court, the county judge and each county commissioner shall give an affidavit stating that the requirements of Subsection (c) have been met at that term. The affidavit must state the amount of the cash and other assets that are in the custody of the county treasurer at the time of the examination. The affidavits must be filed with the county clerk and must be recorded in the minutes of the court for the term in which the affidavits are filed. The affidavits must be published once in a newspaper published in the county if there is such a newspaper or, if the county has an Internet

website, on the county's website.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 934 (H.B. 3439), Sec. 4, eff. September 1, 2007.

SUBCHAPTER C. REPORTS ABOUT MONEY COLLECTED OR RECEIVED

Sec. 114.041. STATEMENT OF FEES, COMMISSIONS, AND OTHER MONEY RECEIVED BY OFFICERS. (a) In a county with a population of 190,000 or less, a district, county, or precinct officer shall keep, as part of a record provided for the purpose, a statement of the fees earned by the officer and of the money received by the officer as deposits for costs, trust fund deposits in the registry of a court, fees of office, and commissions. The officer must make an entry in the record when the fees or commissions are earned or the deposits are made and when the money is received. The county auditor or, if the county does not have a county auditor, the commissioners court shall annually examine the records and accounts of each officer and report the findings of the examination to the next grand jury or district court.

(b) In a county with a population of more than 190,000, a district, county, or precinct officer shall keep, as part of a record provided for the purpose by the proper county authorities, a statement of the amounts earned by the officer and of the money received by the officer as fees, commissions, or costs. The officer may designate a person to receive the money as fees, commissions, or costs on behalf of the officer under this subsection. The officer or a person designated by the officer to receive the fees, commissions, or costs must make an entry in the record when the fees, commissions, or costs are earned and when they are received.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 231 (S.B. 1554), Sec. 2, eff. May 27, 2009.

Sec. 114.043. PERIODIC REPORT TO COUNTY AUDITOR BY OFFICER WHO HAS CUSTODY OF MONEY IN COUNTY WITH POPULATION OF 190,000 OR MORE.

In a county with a population of 190,000 or more, the county auditor may require a district clerk, district attorney, county officer, or precinct officer to furnish monthly reports, annual reports, or other reports regarding any money, tax, or fee received, disbursed, or remaining on hand. In connection with those reports, the auditor may count the cash in the custody of the officer or verify the amount on deposit in the bank in which the officer has deposited the cash for safekeeping.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 114.044. REPORT TO COMMISSIONERS COURT AT REGULAR TERM BY OFFICER WHO COLLECTS FINES, JUDGMENTS, OR JURY FEES. (a) Each district clerk, county clerk, county judge, county treasurer, sheriff, district attorney, county attorney, constable, or justice of the peace who collects or handles any money for the use of the county shall make a full report at least once a month at a regular term to the commissioners court on all fines imposed and collected, all judgments rendered and collected for the use of the county, and all jury fees collected by the respective courts in favor of or for the use of the county and, at the time of the report, shall present the receipts and vouchers that show the disposition of the money, fines, or judgments.

(b) Each report must fully state:

(1) the name of the person fined and the amount of the fine or the name of the person against whom judgment was rendered and the amount of the judgment;

(2) the style, number, and date of each case in which a fine was imposed or a judgment rendered; or

(3) the amount of the jury fees collected, the style and number of the case in which each jury fee was collected, and the name of the person from whom the fee was collected.

(c) The court shall carefully examine the reports, receipts, and vouchers. If the court finds them to be correct, the court shall direct the county clerk to enter the information in the county finance records. If they are found to be incorrect, the court shall summon before the court the officer making the report and shall have corrections made. The reports, receipts, and vouchers shall be filed in the county clerk's office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 934 (H.B. 3439), Sec. 5, eff. September 1, 2007.

Sec. 114.046. ANNUAL REPORT TO DISTRICT CLERK BY OFFICER ON FEE BASIS WHO COLLECTS FEES OR COMMISSIONS; REMOVAL. (a) If a county officer is compensated on a fee basis, the officer shall file an annual report in triplicate with the district court of the county. The report must be filed on or before the first day of the second month of the fiscal year, must be on a form prescribed by the comptroller, and must show:

(1) the amount of the fees, commissions, and compensation that the officer earned during the preceding fiscal year;

(2) the amount of the fees, commissions, and compensation that the officer collected during that year; and

(3) an itemized statement of the fees, commissions, and compensation that the officer earned but did not collect during that year, with the name of the party owing each item.

(b) Within 30 days after the date on which the officer files the report, the clerk of the district court shall forward a copy of the report to the comptroller and the county auditor. If the county does not have a county auditor, the clerk shall forward a copy of the report to the commissioners court.

(c) A county tax assessor-collector who files the report with the district clerk shall also file a copy of the report with the comptroller of public accounts at the time of settlement with the comptroller.

(d) An officer who fails to file the report in the time prescribed by Subsection (a) is liable for a penalty of $25 for each day after the deadline that the report remains unfiled and is subject to removal from office. The county may recover the penalty in a suit brought for that purpose.

(e) An officer shall make a final settlement before the deadline for filing the report. An officer who serves only part of the fiscal year shall file the report and make a final settlement for the part of the year that the officer served, and the officer is entitled to the part of the officer's compensation proportionate to the part of the year served.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 102, eff. Sept. 1, 1989.

SUBCHAPTER D. MISCELLANEOUS REPORTS

Sec. 114.061. COUNTY TREASURER'S MONTHLY CLAIMS REPORT TO COUNTY CLERK. (a) At the end of each month, the county treasurer shall file in the office of the county clerk a claims report that shows the total amount of claims registered by the county treasurer during the month. The treasurer shall report each class of claims separately.

(b) The county clerk shall enter the claims report in the county finance ledger under the heading of "Registered indebtedness of the county." The clerk shall keep a separate account of each class of indebtedness.

(c) From the reports made by the treasurer of disbursements, the clerk shall credit the accounts with the total amount of vouchers of each class of claims paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. COUNTY FINANCIAL DATA ADVISORY COMMITTEE

Sec. 114.081. DEFINITIONS. In this subchapter:

(1) "Committee" means the Texas County Financial Data Advisory Committee.

(2) "Comptroller" means the comptroller of public accounts.

Added by Acts 2001, 77th Leg., ch. 676, Sec. 3, eff. Sept. 1, 2001.

Sec. 114.082. COUNTY FINANCIAL DATA ADVISORY COMMITTEE; DUTIES. (a) The Texas County Financial Data Advisory Committee is established to study county financial reporting requirements and systems and make recommendations to the comptroller and the legislature on ways in which the collection and use of county financial data can be improved without resulting in additional costs to counties. The comptroller may implement the recommendations of the committee for the reporting of financial data and other pertinent information to the state.

(b) The recommendations shall address the following issues as

they relate to county financial reporting requirements:

(1) uniformity;

(2) duplicative reporting requirements;

(3) the Government Accounting Standards Board's most recent reporting standards;

(4) electronic filing; and

(5) costs associated with meeting the requirements.

(c) The committee shall develop and recommend:

(1) a consolidated uniform financial reporting procedure that does not impose a greater reporting burden on counties than current practices; and

(2) a voluntary uniform chart of accounts for counties.

Added by Acts 2001, 77th Leg., ch. 676, Sec. 3, eff. Sept. 1, 2001.

Sec. 114.083. MEMBERSHIP; OFFICERS. (a) The committee consists of the following members:

(1) one county judge or commissioner appointed by the Texas Conference of Urban Counties;

(2) one county judge or commissioner appointed by the County Judges and Commissioners Association of Texas;

(3) two county auditors appointed by the Texas Association of County Auditors;

(4) two county treasurers appointed by the Texas Association of County Treasurers;

(5) one county official, other than a county judge, commissioner, auditor, or treasurer, appointed by the executive director of the Texas Association of Counties;

(6) one county budget officer appointed by the Texas Conference of Urban Counties;

(7) the comptroller or the comptroller's designee;

(8) the executive director of the Texas Conference of Urban Counties or the executive director's designee;

(9) the executive director of the Texas Association of Counties or the executive director's designee;

(10) the general counsel of the County Judges and Commissioners Association of Texas or the general counsel's designee; and

(11) any nonvoting members the other committee members

consider appropriate.

(b) The committee shall elect, by simple majority, a presiding officer from among the committee members. The presiding officer serves in that capacity for a period not to exceed two years.

(c) Appointed members of the committee serve at the pleasure of the appointing authority. If a member of the committee holds a public office, service on the committee is an additional duty of that office.

Added by Acts 2001, 77th Leg., ch. 676, Sec. 3, eff. Sept. 1, 2001.

Sec. 114.084. MEETINGS. The committee shall meet quarterly on dates determined by the presiding officer and may hold other meetings at the call of the presiding officer.

Added by Acts 2001, 77th Leg., ch. 676, Sec. 3, eff. Sept. 1, 2001.

Sec. 114.085. PERSONNEL AND SUPPORT. (a) The comptroller, the Texas Association of Counties, and the Texas Conference of Urban Counties shall provide by agreement for the staff and other resources necessary for the operations of the committee.

(b) The committee may accept a gift, grant, or donation from any person.

(c) A member of the committee may not receive compensation but is entitled to reimbursement for travel expenses incurred by the member while conducting the business of the committee, as provided in the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 676, Sec. 3, eff. Sept. 1, 2001.

CHAPTER 115. AUDIT OF COUNTY FINANCES

SUBCHAPTER A. AUDIT AUTHORITY OF COUNTY AUDITOR

Sec. 115.001. EXAMINATION OF RECORDS. The county auditor shall have continual access to and shall examine and investigate the correctness of:

(1) the books, accounts, reports, vouchers, and other records of any officer;

(2) the orders of the commissioners court relating to

county finances; and

(3) the vouchers given by the trustees of all common school districts of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 115.002. EXAMINATION OF BOOKS AND REPORTS. (a) The county auditor shall carefully examine and report on all reports that are about the collection of money for the county and that are required to be made to the commissioners court.

(b) At least once each quarter, the county auditor shall check the books and shall examine in detail the reports of the county tax assessor-collector, the county treasurer, and all other officers. The auditor shall verify the footings and the correctness of those books and reports. The auditor shall either stamp the books and reports approved or shall note any differences, errors, or discrepancies.

(c) The auditor shall carefully examine the report made under Section 114.026 by the county treasurer, together with the canceled orders for payment that have been paid. The auditor shall verify those orders with the register of orders issued as shown on the auditor's books.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 20, eff. September 1, 2011.

Sec. 115.003. EXAMINATION OF FUNDS HELD BY COUNTY TREASURER. (a) At least once each quarter, or more often if the county auditor desires, the auditor shall, without advance notice, fully examine the condition of, or shall inspect and count, the cash held by the county treasurer or held in a bank in which the treasurer has placed the cash for safekeeping.

(b) The auditor shall make sure that all balances to the credit of the various funds are actually on hand in cash and that none of the funds are invested in any manner except as authorized by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 115.0035. EXAMINATION OF FUNDS COLLECTED BY COUNTY ENTITY OR THE DISTRICT ATTORNEY. (a) For purposes of this section, "accounts" means all public funds that are subject to the control of any precinct, county or district official, including the accounts of law enforcement agencies and the attorney for the state composed of money and proceeds of property seized and forfeited to those officials.

(b) At least once each county fiscal year, or more often if the county auditor desires, the auditor shall, without advance notice, fully examine the accounts of all precinct, county and district officials.

(c) The auditor shall verify the correctness of the accounts and report the findings of the examination to the commissioners court of the county at its next term beginning after the date the audit is completed.

(d) This section does not apply to funds received by the attorney for the state from the comptroller of public accounts pursuant to the General Appropriations Act, or to federal or state grant-in-aid funds received by precinct, county or district officials.

Added by Acts 1989, 71st Leg., ch. 1007, Sec. 1, eff. Sept. 1, 1989.

Sec. 115.0036. EXAMINATION AND AUDIT OF RECORDS OF CERTAIN SPECIAL DISTRICTS. (a) The county auditor shall have continual access to and may, at the county auditor's discretion, examine the books, accounts, reports, vouchers, and any other records of:

(1) a special district if the district's budget requires the approval of the commissioners court; and

(2) any subsidiary of a special district described by Subdivision (1) that is supported wholly or partly by public funds.

(b) The county auditor, with the approval of the commissioners court, may audit the books, accounts, reports, vouchers, and any other records of an entity described by Subsection (a) if the county auditor determines an audit is necessary after conducting an examination under Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 1207 (S.B. 1510), Sec. 1,

eff. September 1, 2015.

Sec. 115.004. AUDIT IN COUNTY WITH POPULATION OF 190,000 OR MORE. (a) This section applies only to a county with a population of 190,000 or more.

(b) At the end of the fiscal year or the accounting period fixed by law, the county auditor shall audit, adjust, and settle the accounts of the district attorney, the district clerk, and each county or precinct officer.

(c) If the county auditor is unable to obtain proper reports or an adequate accounting from any of those persons, either during or after the person's term of office, the auditor may require an accounting and may proceed at the county's expense as the auditor considers necessary to protect the interest of the county or of the person entitled to any funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. AUDIT AUTHORITY OF COMMISSIONERS COURT

Sec. 115.021. AUDIT AND SETTLEMENT OF ACCOUNTS. The commissioners court of a county shall audit and settle all accounts against the county and shall direct the payment of those accounts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 115.022. EXAMINATION OF ACCOUNTS AND REPORTS; SETTLEMENT. (a) At each regular term, the commissioners court shall examine all accounts and reports that relate to the county finances and shall compare the accounts and reports with the accompanying vouchers. The court shall see that any errors in the accounts and reports are corrected.

(b) The court shall see that all orders made by the court that relate to the accounts and reports are entered in the minutes of the court and that the orders are noted on the accounts and reports.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. INDEPENDENT AUDIT AUTHORITY GENERALLY APPLICABLE

Sec. 115.031. AUDIT BY ACCOUNTANT. (a) If considered by the commissioners court of a county to be justified by an imperative public necessity, the court may employ a disinterested, competent, and expert public accountant to audit all or part of the books, records, or accounts of:

(1) the county;

(2) a district, county, or precinct officer, agent, or employee, including the county auditor;

(3) a governmental unit of the county; or

(4) a hospital, farm, or other county institution maintained at public expense.

(b) The commissioners court may also employ the accountant to deal with any other matter relating to or affecting the fiscal affairs of the county.

(c) The resolution providing for the audit must state the reasons for the audit, such as a determination by the commissioners court:

(1) of official misconduct, intentional omission, or negligence in records or reports;

(2) of a misapplication, conversion, or retention of public funds; or

(3) of a failure to keep accounts, make reports, or account for public funds by any officer, agent, or employee of the district, the county, or a precinct, including the officer, agent, or employee of a depository, hospital, or other public institution maintained for the public benefit at the public expense.

(d) The reason stated in the audit resolution may also be a statement by the commissioners court that it considers the audit necessary for the court to determine and fix the proper appropriation and expenditure of public money or to determine and fix a proper tax levy.

(e) The commissioners court may present the audit resolution in writing at any regular or called session of the commissioners court, but it shall lie over to the next regular term of the court.

(f) The commissioners court shall publish the resolution once in a newspaper of general circulation published in the county. If there is no newspaper of general circulation published in the county, the court shall post notice of the resolution at the courthouse door and two other public places in the county for at least the 10 days

preceding the date the resolution is adopted.

(g) To be implemented, the resolution must be adopted by a majority vote of the four county commissioners and must be approved by the county judge at that next regular term of the commissioners court.

(h) A contract entered into by the commissioners court for the audit shall be made in accordance with statutes applicable to the making of contracts by the commissioners court. Payment under the contract may be made from county funds in accordance with those statutes.

(i) In addition to the emergency powers under this section, the commissioners court may provide for an independent audit of the accounts and officials if the court, by an order properly entered at any regular term, determines that the audit would best serve the public interest. A contract for that audit is subject to the requirements of Subsection (h).

(j) The authority given to county auditors under this subtitle, as well as other provisions of statutes relating to district, county, and precinct finances and accounts, is subordinate to the powers of the commissioners court under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 115.032. SPECIAL AUDIT AFTER VOTER PETITION. (a) If a number of qualified voters residing in a county equal to at least 30 percent of the voters who voted in the county in the most recent general gubernatorial election file a petition for an audit with a district judge who has jurisdiction in the county, there shall be a special audit of all county records.

(b) On the receipt of the petition, the district judge shall determine its validity. If the judge determines that the petition meets the requirements of Subsection (a), the judge shall immediately employ a person to prepare a special audit of all county records. The special auditor must have the qualifications prescribed by law for county auditors. The special auditor is entitled to receive as compensation for the services rendered a reasonable fee fixed by the district judge and to be paid out of the general fund or officers' salary fund of the county.

(c) After the preparation of the audit, it shall be filed with

the district judge.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 103, eff. Sept. 1, 1989.

Sec. 115.033. AUDIT BY FINANCE COMMITTEE. (a) On the request of the grand jury, at any term of the district court the district judge may appoint a finance committee to examine the financial condition of the county. The committee must be composed of three persons who are citizens of the county, are of good moral character and intelligence, and are experienced accountants.

(b) The committee shall examine all of the books, accounts, reports, vouchers, and orders of the commissioners court relating to county finances that have not been examined and reported on by a previous committee.

(c) The committee shall count all the money in the office of the county treasurer that belongs to the county and shall make any other examination that it considers necessary and proper to determine the true condition of the county finances.

(d) If necessary, and on the application of the committee, the district court shall send for persons and evidence to help in the investigation.

(e) On the earliest practicable day after its appointment, the committee shall make a detailed written report to the district court. The report must state whether the books and records required by law are correctly kept. The report must fully set out the financial condition of the county and the state of each officer's account and must specify any irregularity, omission, or wrongdoing that the committee discovers.

(f) The committee shall sign and swear to the report and file it in the office of the district clerk. The attention of the grand jury shall be called to the report as soon as practicable after the filing.

(g) Each member of the committee is entitled to receive compensation for services performed under this section at a rate of $3 a day. The compensation shall be paid for a period not to exceed five days and shall be paid from the county treasury on the certificate of the district judge that states the number of days the member has served.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. INDEPENDENT AUDIT AUTHORITY OF SPECIFIC COUNTIES

Sec. 115.041. INDEPENDENT AUDIT IN COUNTY WITHOUT OFFICE OF COUNTY AUDITOR. At least once every two years, the commissioners court of a county that does not have the office of county auditor shall have conducted an independent audit of the books, records, and accounts of each of the county officers, agents, and employees and of any other matter that relates to the county's fiscal affairs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 115.042. AUDIT IN COUNTIES WITH POPULATION LESS THAN 25,000. (a) The commissioners court of a county with a population of less than 25,000 may arrange with one or more other counties to jointly employ and compensate one or more special auditors for the purposes set forth in Section 115.031.

(b) The commissioners court of a county affected by this section may have an audit made of the county books, either in whole or in part, at any time regardless of whether an arrangement can be made under Subsection (a). The district judge or the grand jury of the county may also order such an audit.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 115.043. AUDIT BY ACCOUNTANT IN COUNTIES WITH POPULATION OF 40,000 TO 100,000. (a) This section applies to a county with a population of 40,000 to 100,000.

(b) On request by the grand jury, at any term of the district court the district judge of the county shall appoint an auditor to examine the condition of the county finances. The auditor must be of good moral character and intelligence and must be an experienced accountant.

(c) The auditor shall examine all of the books, accounts, reports, vouchers, and orders of the commissioners court that relate to the county finances, or a part of those items, as ordered and directed by the district judge. The auditor shall count all the money in the office of the county treasurer that belongs to the

county and shall make any other examination that the auditor considers necessary and proper to determine the true condition of the county finances or that is ordered by the district judge.

(d) If necessary, and on the application of the auditor, the district court shall summon witnesses, compel their attendance, and require them to give testimony. The district judge shall require the production of all books, records, and other evidence requested or desired by the auditor to conduct the investigation. The district judge may punish for contempt a person who violates an order of the judge or a process issued under this section.

(e) The auditor shall make a detailed written report to the district court at the earliest practicable date after appointment. The report must state:

(1) the true condition of the county finances;

(2) whether the books and records required to be kept by law are correctly maintained; and

(3) the condition of each officer's account that is included within the scope and provisions of the judge's order.

(f) The auditor shall specify in the report each irregularity, omission, and wrongdoing discovered. The auditor shall sign and swear to the report and file it in the office of the district clerk. The report must be brought to the attention of the grand jury as soon as is practicable after the filing.

(g) The auditor is entitled to receive compensation for duties performed under this section at a rate not to exceed $25 a day. The compensation shall be paid for the period that is reasonably required to perform those duties and shall be paid from the county treasury on the certificate of the district judge that states the number of days the auditor has served and the total amount due.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 115.044. BIENNIAL INDEPENDENT AUDIT IN CERTAIN COUNTIES. (a) A county with a population of 372,000 to 410,000 shall conduct a biennial independent audit of all books, records, and accounts of each district, county, and precinct officer, agent, or employee, including those of the regular county auditor, and of all governmental units of the county hospitals, farms, and other institutions. The audit must cover all matters relating to the

fiscal affairs of the county. The audit shall be conducted in each even-numbered year and must be completed before December 31 of the year.

(b) The commissioners court of the county shall employ a disinterested, competent, experienced public accountant or certified public accountant to perform the audit. The court shall enter a contract for the audit at the first regular meeting of the court in January of each even-numbered year. The consideration specified in the contract shall be paid from the general fund of the county.

(c) This section does not prevent a county from conducting an annual independent audit of the records covered by this section. If a county conducts annual independent audits and completes the audits before December 31 of each year, those audits constitute compliance with the requirements of this section.

(d) The audit required under this section is in addition to any special audit prepared under Subchapter C or to any regular or special audit report prepared by the regular county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 87, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 51, 52, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 68, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 129, eff. September 1, 2023.

Sec. 115.045. ANNUAL INDEPENDENT AUDIT IN COUNTIES WITH POPULATION OF 350,000 OR MORE. (a) A county with a population of 350,000 or more shall conduct an annual independent audit of all books, records, and accounts of each district, county, and precinct officer, agent, or employee, including the regular county auditor, and of all governmental units of the county hospitals, farms, and other institutions. The audit shall cover all matters relating to the fiscal affairs of the county.

(b) The commissioners court of the county shall employ a disinterested, competent, experienced public accountant or certified public accountant to perform the audit. The court shall contract for the audit at the regular January meeting of the court. The

consideration specified in the contract shall be paid from the general fund of the county.

(c) The audit required under this section is in addition to any special audit prepared under Subchapter C or to any regular or special audit report prepared by the regular county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 115.901. EXAMINATION OF CERTAIN RECORDS BY COUNTY AUDITOR OR COUNTY TREASURER. (a) The county auditor or, in a county that does not have the office of county auditor, the county treasurer, shall examine the accounts, dockets, and records of each clerk, justice of the peace, and constable and of the sheriff and county tax assessor-collector to determine if any money belonging to the county and in the possession of the officer has not been accounted for and paid over according to law.

(b) If the auditor or treasurer finds that such money does exist, the auditor or treasurer shall report the findings of the examination to the commissioners court of the county at its next term for the purpose of instituting a suit for the recovery of the money.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 979, Sec. 1, eff. Aug. 28, 1989.

CHAPTER 116. DEPOSITORIES FOR COUNTY PUBLIC FUNDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 116.001. DEFINITIONS. In this chapter:

(1) "Bank" means a:

(A) bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state; or

(B) savings and loan association or savings bank organized under the laws of this state, another state, or federal law that has its main office or a branch office in this state.

(2) "Demand deposit" means a deposit of funds that may be withdrawn on the demand of the depositor.

(3) "Time deposit" means a deposit of funds subject to a contract between the depositor and the depository under which the

depositor may not withdraw any of the funds by check or by another manner until the expiration of a certain period following written notice of the depositor's intent to withdraw the funds.

(4) "Subdepository bank" means an authorized bank, other than a depository, that holds demand deposits, not exceeding the Federal Deposit Insurance Corporation's limit, of a district, county, or precinct officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 527, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 234, Sec. 4, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 344, Sec. 5.009, eff. Sept. 1, 1999.

Sec. 116.002. MONEY AFFECTED. (a) This chapter applies to money collected or held by a district, county, or precinct officer in a county and by the officers of a defined district or subdivision in the county, including the funds of a municipal or quasi-municipal subdivision or corporation that has the power to select its own depository but has not done so. The money shall be deposited under this chapter, and the money shall be considered in fixing, and is protected by, a county depository's bond.

(b) Orders for payment, checks, and vouchers evidencing the money deposited in the county depository under Subsection (a) are subject to audit and countersignature as provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 21, eff. September 1, 2011.

SUBCHAPTER B. ESTABLISHMENT OF DEPOSITORY

Sec. 116.021. DEPOSITORY AND SUBDEPOSITORY CONTRACTS. (a) The commissioners court of a county shall select by the process provided by this subchapter or by Subchapter C, Chapter 262, one or more banks in the county and enter a contract with each selected bank for the deposit of the county's public funds. The county shall contract with a bank under this section for a two-year or four-year contract term. On expiration of a contract under this section, the contract may be renewed for two years under terms negotiated by the commissioners

court.

(b) If the contract is for a four-year term, the contract shall allow the county to establish, on the basis of negotiations with the bank, new interest rates and financial terms of the contract that will take effect during the final two years of the four-year contract.

(c) On the renewal of a contract, the county may negotiate new interest rates and terms with the bank for the next two years in the same way and subject to the same conditions as provided by Subsection (b).

(d) If for any reason a county depository is not selected under Subsection (a), the commissioners court, at any subsequent time after 20 days' notice, may select, by the process described by Section 116.024 or by negotiated bid, one or more depositories in the same manner as at the regular time.

(e) If the commissioners court selects a depository by the process provided by Subchapter C, Chapter 262, the depository may be selected by:

(1) competitive bidding; or

(2) another method under that subchapter that the county is qualified to use.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 527, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 65, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 899 (H.B. 2641), Sec. 1, eff. June 15, 2007.

Sec. 116.022. NOTICE. (a) Once each week for at least 20 days before the date to submit an application under Section 116.023(a), the county judge shall place over the judge's name in a newspaper of general circulation in the county a notice that the commissioners court intends to receive applications from which to select a depository bank. A notice shall also be posted at the courthouse door of the county.

(b) If a newspaper is not published in the county, the newspaper notice shall be placed in a newspaper published in the nearest county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 65, Sec. 2, eff. Aug. 28, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 899 (H.B. 2641), Sec. 2, eff. June 15, 2007.

Sec. 116.023. APPLICATIONS. (a) A bank in the county that wants to be a county depository must deliver its application to the county judge or a designated representative of the judge on or before a date set by the commissioners court that is no later than the 60th day before the date of the expiration of the existing depository contract.

(b) The application must state the amount of the bank's paid-up capital stock and permanent surplus, and the application must be accompanied by:

(1) a statement showing the financial condition of the bank on the date of the application; and

(2) a certified check or cashier's check for at least one-half percent of the county's revenue for the preceding year.

(c) The certified or cashier's check that accompanies an application is a good-faith guarantee on the part of the applicant that if accepted as a county depository it will execute the bond required under this chapter. If a bank is selected as a depository and does not provide the bond, the county shall retain the amount of the check as liquidated damages, and the county judge shall readvertise for applications, if necessary, to obtain a depository for the county.

(d) A bank in the county that wants to be a county subdepository must comply with Subsections (a) and (b)(1). The subdepository's application must include a proposal outlining its security for the county public funds to be held in addition to revenue offers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 628, Sec. 4, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 527, Sec. 3, eff. Sept. 1, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 899 (H.B. 2641), Sec. 3, eff. June 15, 2007.

Sec. 116.024. SELECTION OF DEPOSITORIES AND SUBDEPOSITORIES. (a) At the meeting at which banks are to be selected as county depositories, the commissioners court shall:

(1) enter in the minutes of the court all applications filed with the county judge;

(2) consider all applications; and

(3) select the qualified applicants that offer the most favorable terms and conditions for the handling of the county funds.

(b) The commissioners court may reject those applicants whose management or condition, in the opinion of the commissioners court, does not warrant placing county funds in their possession.

(c) After selecting one or more county depositories, the commissioners court shall immediately return the certified checks of the rejected applicants. The commissioners court shall return the check of a successful applicant when the applicant executes and files a depository bond that is approved by the commissioners court.

(d) The conflict of interests provisions of Section 131.903 apply to the selection of the depositories.

(e) After selecting one or more subdepositories, the commissioners court shall immediately notify each selected applicant of its selection. Within 15 days, the selected applicant must file a bond or other security as approved by the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 527, Sec. 4, 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 268, Sec. 29, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 899 (H.B. 2641), Sec. 4, eff. June 15, 2007.

Sec. 116.025. DESIGNATION OF DEPOSITORY OR SUBDEPOSITORY. When security is provided in accordance with Subchapter C and is approved by the commissioners court, the commissioners court shall, by an order entered in its minutes, designate the bank as a depository or subdepository for the funds of the county. The designation is effective until the end of the 60th day after the date fixed for the next selection of a depository or subdepository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 527, Sec. 6, eff. Sept. 1, 1991.

Sec. 116.026. APPLICANTS OUTSIDE COUNTY. (a) If no bank located in the county applies to be designated as the county depository, the commissioners court may advertise, in the same manner provided by Section 116.022 for advertising for a depository within the county, for applications from banks in an adjoining county or any other county in this state.

(b) If only one bank located in the county applies to be designated as the county depository, the commissioners court may reject the applicant if the applicant proposes terms that:

(1) are not in the best interest of the county;

(2) are not financially competitive with the financial market outside the county; or

(3) impose noncompetitive fees.

(c) If the commissioners court rejects the applicant under Subsection (b), the commissioners court may advertise, in the same manner provided by Section 116.022 for advertising for a depository within the county, for applications from banks in an adjoining county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1043 (S.B. 158), Sec. 1, eff. June 18, 2023.

Sec. 116.027. SELECTION OF NONAPPLICANT DEPOSITORY. (a) If no application to be a county depository is submitted, or if all of the applications are declined, the commissioners court shall deposit the funds of the county with any one or more banks in the county or in the adjoining counties in the amounts and for the periods as the commissioners court considers advisable.

(b) A bank that receives deposits under this section shall provide security in the manner and form, and subject to the same conditions, as is required for a depository of county funds. The penalty of the security must at least equal the total amount of county funds deposited with the bank.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.028. SUCCESSOR BANK AS COUNTY DEPOSITORY. (a) If a bank selected to be a county depository and holding county funds is sold to another bank in an adjoining county, the successor bank in the adjoining county may continue to serve as a county depository and apply and be selected as a county depository if the successor bank:

(1) continues to have an office in an adjoining county; and

(2) timely applies and is selected to be a county depository in a manner that ensures no lapse of service as a county depository.

(b) If a bank selected as a county depository and holding county funds closes, a branch of the bank in an adjoining county may continue to serve as a county depository and apply to be a county depository if the successor bank:

(1) continues to have an office in an adjoining county; and

(2) timely applies and is selected to be a county depository in a manner that ensures no lapse of service as a county depository.

Added by Acts 2023, 88th Leg., R.S., Ch. 1043 (S.B. 158), Sec. 2, eff. June 18, 2023.

SUBCHAPTER C. SECURITY FOR FUNDS HELD BY DEPOSITORY

Sec. 116.051. QUALIFICATION AS DEPOSITORY OR SUBDEPOSITORY. Within 15 days after the date a bank is selected as a county depository or subdepository, the bank must qualify as the depository or subdepository by providing security for the funds to be deposited by the county with the bank. The depository or subdepository may secure these funds, at the option of the commissioners court, by:

(1) personal bond; surety bond; bonds, notes, and other securities; first mortgages on real property; real property; certificates of deposit; or a combination of these methods, as provided by this subchapter; or

(2) investment securities or interests in them as provided by Chapter 726, Acts of the 67th Legislature, Regular Session, 1981 (Article 2529b-1, Vernon's Texas Civil Statutes).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1, Sec. 15(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 527, Sec. 7, eff. Sept. 1, 1991.

Sec. 116.052. PERSONAL BOND. (a) One or more personal bonds executed and filed with the commissioners court, payable to the county judge and the judge's successors in office, qualify as security under this subchapter if:

(1) the bonds are signed by at least five solvent sureties who own unencumbered real property in the state that is not exempt from execution under the constitution and other laws of this state;

(2) the unencumbered and nonexempt real property owned by the sureties has a value at least equal to the amount of the bonds; and

(3) the bonds are approved by the commissioners court.

(b) When a bond is filed for approval with the commissioners court under Subsection (a), the sureties shall also file a statement containing:

(1) a description of the unencumbered and nonexempt real property sufficient to identify it on the ground; and

(2) the value of each tract of real property listed, including the value of the improvements on the property.

(c) After the commissioners court approves a personal bond, it shall be filed in the county clerk's office with the statement of the sureties attached to the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.053. SURETY BOND. (a) One or more bonds issued and executed by one or more solvent surety companies authorized to do business in this state, payable to the county judge and the judge's successors in office and filed with the commissioners court, qualifies as security under this subchapter if the bond is approved by the commissioners court.

(b) After the commissioners court approves a surety bond, it shall be filed in the county clerk's office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.054. BONDS, NOTES, AND OTHER SECURITIES. (a) A county depository may pledge with the commissioners court as security under this subchapter:

(1) a bond, note, security of indebtedness, or other evidence of indebtedness of the United States if the evidence of indebtedness is supported by the full faith and credit of the United States or is guaranteed as to principal and interest by the United States;

(2) a bond of this state or of a county, municipality, independent school district, or common school district;

(3) a bond issued under the federal farm loan acts;

(4) a road district bond;

(5) a bond, pledge, or other security issued by the board of regents of The University of Texas System;

(6) bank acceptances of banks having a capital stock of at least $500,000;

(7) a note or bond secured by mortgages insured and debentures issued by the Federal Housing Administration;

(8) shares or share accounts of a savings and loan association organized under the laws of this state or of a federal savings and loan association domiciled in this state if the payment of the share or share accounts is insured by the Federal Savings and Loan Insurance Corporation; or

(9) a bond issued by a municipal corporation in this state.

(b) Securities provided under this section must have a total market value equal to the amount of the depository bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.055. FIRST MORTGAGES ON IMPROVED REAL PROPERTY. (a) If approved by the commissioners court, closed first mortgages on improved and unencumbered real property located in this state that are assigned to the county judge in a duly acknowledged instrument qualify as security under this subchapter.

(b) Before approving a mortgage as security, the commissioners court shall require:

(1) a written opinion by an attorney selected by the commissioners court showing that the lien is superior to any other claim to or right in the real property; and

(2) insurance approved by the county judge covering the improvements on each tract of pledged real property and providing that a loss is payable to the county judge.

(c) An insurance policy required under Subsection (b) must be issued by a stock fire insurance company or mutual fire insurance company that has a $100,000 surplus in excess of all legal reserves and other liabilities.

(d) A mortgage accepted as security under this section shall immediately be recorded in each county in which part of the real property is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.056. REAL PROPERTY. (a) If approved by the commissioners court, improved and unencumbered real property, pledged directly by deed of trust to a trustee selected by the commissioners court, with the county judge as beneficiary, qualifies as security under this subchapter.

(b) Before approving real property offered as security, the commissioners court shall require:

(1) a written opinion by an attorney selected by the commissioners court showing that the lien is superior to any other claim to or right in the real property; and

(2) insurance approved by the county judge covering the improvements on the pledged real property and providing that a loss is payable to the county judge.

(c) An insurance policy required under Subsection (b) must be issued by a stock fire insurance company or mutual fire insurance company that has a $100,000 surplus in excess of all legal reserves and other liabilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.0565. CERTIFICATE OF DEPOSIT. (a) A certificate of deposit qualifies as security under this subchapter if the certificate is:

(1) held in the custody of a Federal Reserve Bank for safekeeping and made the subject of a valid pledge agreement designating the county as the beneficiary of the pledge agreement;

(2) insured in full by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation;

(3) described in detail by a safekeeping receipt issued to the county by the Federal Reserve Bank having custody of the certificates; and

(4) issued with the county as registered owner.

(b) A person to whom presentment of a certificate of deposit pledged to secure county funds is made may not pay or otherwise accept the certificate unless the certificate or the safekeeping receipt required by this section has been endorsed by the county and the depository.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 15(b), eff. Aug. 28, 1989.

Sec. 116.057. CONDITION OF PERSONAL BOND OR CONTRACT FOR SECURITIES. (a) A personal bond provided or a contract for the pledge of securities under this subchapter must be conditioned that the depository will:

(1) faithfully keep the county funds and faithfully perform all duties and obligations imposed by law on the depository;

(2) pay all checks drawn on a demand deposit account in a depository on presentation by the county treasurer;

(3) pay all checks drawn on a time deposit account on presentation after the expiration of the required period of notice; and

(4) account for the county funds as required by law.

(b) A suit on a personal bond or a contract for securities provided or pledged under this subchapter must be tried in the county for which the depository is selected.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.058. AMOUNT OF SECURITY REQUIRED. (a) Personal or surety bonds that secure county deposits must be in an amount equal to the estimated highest daily balance of the county, as determined by the commissioners court. However, the commissioners court may not estimate the highest daily balance at an amount that is less than 75 percent of the highest daily balance of the county for the preceding year, less the amount of bond funds received and expended.

(b) Securities pledged to secure county funds on deposit in a depository must be in an amount equal to the amount of those funds. However, real property securities may not be required in an amount greater than 25 percent of the assessed value of the property in the county, as shown by the certified tax roll for the preceding year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.059. VALUATION OF REAL PROPERTY PROVIDED AS SECURITY. The commissioners court shall investigate all real property security and determine the value at which the property will be accepted. The commissioners court may not accept real property as security at a value greater than 50 percent of the reasonable market value of the property covered by a mortgage unless the mortgage is insured or guaranteed by the Federal Housing Administration.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.060. SECURITY NOT REQUIRED FOR FEDERALLY INSURED DEPOSITS. A depository is not required to provide security for the deposit of county funds to the extent the deposits are insured under 12 U.S.C.A. Sections 1811-1832.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. MAINTENANCE AND MODIFICATION OF SECURITY

Sec. 116.081. NEW BOND. (a) The commissioners court may by written order require a depository to execute a new bond whenever the commissioners court considers it advisable or considers it necessary for the protection of the county.

(b) Except for an additional bond required under Section 116.087, if a depository fails for any reason to file the required new bond within five days after the date the depository is served with a copy of the order, the commissioners court may select a new depository in the same manner as it would select a depository at the regular time.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.082. SUBSTITUTION OF SECURITIES. (a) After reasonable notice to the commissioners court, a depository is entitled to substitute one type of security for another or replace particular securities with others of the same type if the substituting or replacing security meets the requirements of law and is approved by the commissioners court. Instead of approval of each substitute or replacement security by the commissioners court, the commissioners court may:

(1) adopt a procedure for approving a substitute or replacement security under this section; and

(2) designate a county employee or official, including a county judge, to approve the substitute or replacement security under the procedure adopted under Subdivision (1).

(b) The county judge shall execute the necessary instruments to transfer to the depository or its order a lien withdrawn from real property for which another security is substituted.

(c) The commissioners court may direct the manner in which securities pledged in place of personal or surety bonds are to be deposited.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 742, Sec. 1, eff. June 20, 2003.

Sec. 116.083. RELEASE OF EXCESS SECURITY. If the securities pledged by a depository to secure county funds exceed the amount required under this chapter, the commissioners court shall permit the release of the excess.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.084. INADEQUATE SECURITY. If for any reason the county funds on deposit with the county depository exceed the amount of security pledged, the depository shall immediately pledge additional security with the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.085. SOLVENCY OF PERSONAL SURETY. (a) At least twice each year while a personal bond securing the county's deposits is in effect, the commissioners court shall investigate the solvency of each surety on the bond. The commissioners court may require the surety to make an itemized and verified financial statement correctly showing the surety's financial position and, if the bond requires the surety to own real property, identifying each tract of real property owned by the surety and stating its value.

(b) The commissioners court shall require a depository to provide a new bond meeting the requirements of this chapter if a financial statement provided under Subsection (a) indicates that:

(1) a surety is insolvent;

(2) a surety's net worth is less than the amount required by this chapter;

(3) the assets listed on the statement are depreciated or their value is in any way impaired; or

(4) real property required by the bond has been disposed of or encumbered and the value of the surety's remaining unencumbered and nonexempt real property is inadequate to meet the requirements of this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.086. SOLVENCY OF SURETY COMPANY AND ADEQUACY OF SECURITIES. Whenever the commissioners court considers it necessary for the protection of the county, the commissioners court may investigate the solvency of a surety company that issues a bond on behalf of a depository of county funds or investigate the value of securities pledged by a depository to secure county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.087. ADDITIONAL BOND. (a) If after a county establishes a depository the county or a subdivision of the county receives funds from the sale of bonds or otherwise, at the next meeting of the commissioners court, or as soon afterward as is practical, the commissioners court may make written demand on the depository to provide an additional bond in an amount equal to the amount of funds received. If county funds derived from the sale of

county securities during the term of a depository bond are deposited with the depository, the commissioners court shall require an additional bond in an amount equal to the additional county funds. The depository shall continue the additional bond in effect as long as the additional funds remain in the depository.

(b) The depository may cancel this extra or special bond and concurrently substitute a new bond for it as the additional funds are reduced. However, the additional bond must always at least equal the amount of the additional funds.

(c) If a depository does not provide an additional bond under Subsection (a) within 30 days after the date the commissioners court demands the additional bond, the commissioners court may withdraw the additional funds from the depository by the draft of the county treasurer and deposit them in a solvent national or state bank that has a combined capital stock and surplus greater than the amount of the additional funds. The commissioners court may leave the additional funds on deposit with this alternative bank until the county depository files the required additional bond with the commissioners court, after which the commissioners court shall redeposit the balance of the additional funds with the county depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.088. RELEASE OF SURETY COMPANY. (a) A surety company may be relieved of its obligations under a surety bond executed on behalf of a county depository after the 30th day after the date it gives written notice to the commissioners court requesting to be released.

(b) A surety company is not relieved under Subsection (a) of liability for a loss sustained by the county before the expiration of the bond.

(c) If a depository's surety company requests to be relieved from its obligations under Subsection (a), the depository shall provide further security acceptable to the commissioners court to secure county funds under this chapter. The depository shall provide the further security before termination of the surety's obligations under the bond. The new security shall be filed in the county clerk's office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.089. SURRENDER OF INTEREST ON SECURITIES. On the request of a county depository, the commissioners court shall surrender, when due, interest coupons or other evidence of interest on securities deposited by the depository with the commissioners court if the securities remaining pledged by a depository are adequate to meet the requirements of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. DEPOSITORY ACCOUNTS

Sec. 116.111. CHARACTER AND AMOUNT OF DEPOSITS. The commissioners court may determine and designate the character and amount of county funds that will be demand deposits and that will be time deposits. The commissioners court may contract with a depository for interest on time deposits at any legal rate under a federal law or under a rule adopted by the board of governors of the Federal Reserve System or by the board of directors of the Federal Deposit Insurance Corporation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.112. INVESTMENT OF FUNDS. (a) The commissioners court may direct the county treasurer to withdraw any county funds deposited in a county depository that are not immediately required to pay obligations of the county and invest those funds as provided by this section unless such an investment or withdrawal is prohibited by law or the withdrawal is contrary to the terms of the depository contract.

(b) The funds may be invested in accordance with Subchapter A, Chapter 2256, Government Code. In addition to the obligations, certificates, and agreements described by that Act, the funds may be invested in certificates of deposit issued by a state or federal savings and loan association domiciled in this state, the payment of which is insured in full by the Federal Savings and Loan Insurance Corporation or its successor.

(c) If a county purchases a security repurchase agreement, the

agreement must be purchased under a master contractual agreement that specifies the rights and obligations of both parties and that requires that securities involved in the transaction be held in a safekeeping account subject to the control and custody of the county.

(d) Repealed by Acts 1989, 71st Leg., ch. 754, Sec. 2, eff. June 15, 1989.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 15(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 754, Sec. 1, 2, eff. June 15, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(11), eff. Sept. 1, 1995.

Sec. 116.113. DEPOSIT OF FUNDS. (a) Immediately after the commissioners court designates a county depository, the county treasurer shall transfer to the depository all of the county's funds and the funds of any district or municipal subdivision of the county that does not select its own depository. The treasurer shall also immediately deposit with the depository to the credit of the county, district, or municipality any money received after the depository is designated.

(b) A county tax assessor-collector shall immediately deposit in the county depository taxes collected on behalf of the state, the county, or a district or municipal subdivision of the county. The taxes remain on deposit pending the preparation and settlement of the assessor-collector's report on the tax collections.

(c) If a commissioners court that controls school district funds elects to transfer the funds during a school year from a county depository to another bank, the school district may require the commissioners court to delay the transfer until the earlier of the end of the school district's current fiscal year or the next September 1.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.114. COLLECTIONS BY DEPOSITORY. A county depository shall collect all checks, drafts, and demands for money deposited with it by the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.115. CLEARINGHOUSE FOR MULTIPLE DEPOSITORIES. If the funds of a county are deposited with more than one depository, the commissioners court shall by order name one of the depositories to act as a clearinghouse for the others. All county orders for payment are finally payable at the depository named as the clearinghouse.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 22, eff. September 1, 2011.

Sec. 116.116. OBLIGATIONS PAYABLE AT COUNTY DEPOSITORY. (a) A county depository shall pay a check or order for payment drawn by the county treasurer against funds deposited with the depository on presentation of the check or order if the funds subject to the check or order are in the possession of the depository, and, in the case of a time deposit, if the agreed period of notice has expired.

(b) If the commissioners court selects a depository in another county, the depository shall file a statement with the county treasurer designating the place in the county governed by the commissioners court where, and the person by whom, deposits by the treasurer may be received and checks will be paid, or the place in another county where deposits may be made and checks may be paid. The statement must be filed within five days after the date notice is given to the depository of its selection.

(c) An order for payment or check, including an order or check issued prior to September 1, 1993, issued by the county treasurer in settlement of a claim against a county that is not presented for payment before the 366th day following the date of issuance is overdue and nonnegotiable. The sum of the overdue order or check shall be credited as revenue to the county if delivery to the payees was attempted or occurred within a reasonable time following the issuance of the order or check. No right to full settlement of a proper unpaid claim is extinguished by this subsection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 326, Sec. 1, eff. June 5, 1991; Acts 1993, 73rd Leg., ch. 931, Sec. 1, eff. Aug. 30, 1993; Acts 1997,

75th Leg., ch. 329, Sec. 1, eff. May 26, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 23, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 1043 (S.B. 158), Sec. 3, eff. June 18, 2023.

Sec. 116.117. STATEMENTS OF ACCOUNT. A depository shall make a detailed monthly statement to the commissioners court at each regular term of the court. The statement must show the daily balance credited to each of the funds on deposit.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.118. DEBTS PAYABLE OTHER THAN AT COUNTY TREASURY. The commissioners court may instruct the county treasurer to deposit money adequate to pay a bond, coupon, or other indebtedness of the county at a place other than at the county treasury if by its terms the indebtedness is payable on maturity at the other location and if the payment is otherwise made in the manner required by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.119. REQUIREMENTS FOR AUDITING AND COUNTERSIGNING UNAFFECTED. This chapter does not affect the application of a law or regulation providing for auditing and countersigning.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.120. COLLECTION OF CERTAIN OVERDUE COUNTY ORDERS FOR PAYMENT OR CHECKS. (a) This section applies only to an order for payment or check issued by a county treasurer in settlement of a claim against a county that has not been presented for payment.

(b) A person attempting to recover funds from the county for a check or order for payment issued by the county treasurer may not charge the person to whom the check or order was issued and on whose behalf the attempted recovery is made, or that person's successors or

assigns, a fee in an amount equal to more than 10 percent of the face value of the check or order.

(c) A county treasurer may collect a reasonable research fee to determine if a claim submitted under this section is valid. The treasurer may include the costs of inquiries to depository banks, research of accounting records, and other similar actions in setting the fee. A county treasurer may require the fee to be paid before a claim may be processed or researched under this section.

Added by Acts 1997, 75th Leg., ch. 142, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 24, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 25, eff. September 1, 2011.

SUBCHAPTER F. LIABILITIES

Sec. 116.151. LIABILITIES OF SURETIES ON SEPARATE BONDS. If a county depository provides separate bonds to secure county funds, each surety under a bond is liable only for that part of a loss resulting from the failure of the depository that bears to the total loss the same ratio as the amount of the bond bears to the total amount of all bonds and securities held by the county for the protection of the funds covered by the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.152. SUBROGATION OF SURETIES. If a personal surety or a surety company pays for a loss to a county under a depository bond, the surety is subrogated to the rights of the county in an amount equal to the amount of the surety's payment. However, the amount of the subrogation may not exceed the amount of the deposit secured by the surety at the time of the depository's default.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.153. PRO RATA RECOVERY BY STATE AND COUNTY. If a county depository becomes insolvent and it becomes necessary to

resort to the depository's bond or bonds to recover funds of the county and the state, the state and county are entitled to share pro rata in the recovery.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.154. LIABILITY OF DEPOSITORY PENDING COLLECTION OF DEPOSITS. A county depository that uses due diligence to collect a check, draft, or demand for money deposited by the county with the depository is not liable for the collection until the proceeds have been received by the depository. The depository shall charge the county and the county shall pay a collection expense that the depository may not pay or absorb because of a federal law or a regulation adopted by the board of governors of the Federal Reserve System or by the board of directors of the Federal Deposit Insurance Corporation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 116.155. FAILURE OF DEPOSITORY TO PAY CHECK OR ORDER FOR PAYMENT. A depository that does not pay a check or order for payment as required by Section 116.116(a) is liable for and shall pay to the holder 10 percent of the amount of the check or order for payment, and the commissioners court shall revoke the order creating the depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 26, eff. September 1, 2011.

CHAPTER 117. DEPOSITORIES FOR CERTAIN TRUST FUNDS AND COURT REGISTRY FUNDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) "Bank" means a banking corporation or association, an individual banker, or a state or federal savings and loan association or savings bank.

(2) "Clerk" means a county clerk, a district clerk, or a county and district clerk.

(3) "Registry funds" means funds tendered to the clerk for deposit into the registry of the court.

(4) "Separate account" means funds transferred from a special account into a separate interest-bearing account.

(5) "Special account" means an account in a depository in which registry funds are placed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 552, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 505, Sec. 1, eff. Sept. 1, 1997.

Sec. 117.002. TRANSFER OF UNCLAIMED FUNDS TO COMPTROLLER. Any funds deposited under this chapter, except cash bail bonds, that are presumed abandoned under Chapter 72, 73, or 75, Property Code, shall be reported and delivered by the county or district clerk to the comptroller without further action by any court. The dormancy period for funds deposited under this chapter begins on the later of:

(1) the date of entry of final judgment or order of dismissal in the action in which the funds were deposited;

(2) the 18th birthday of the minor for whom the funds were deposited; or

(3) a reasonable date established by rule by the comptroller to promote the public interest in disposing of unclaimed funds.

Added by Acts 1991, 72nd Leg., ch. 153, Sec. 26, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 329, Sec. 2, eff. May 26, 1997; Acts 1997, 75th Leg., ch. 505, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1037, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 13.01, eff. Sept. 1, 1997.

Sec. 117.003. COMPLIANCE WITH FEDERAL TAX LAW FOR FUNDS HELD UNDER THIS CHAPTER. (a) If any funds deposited under this chapter are placed into an interest-bearing account, any person with a taxable interest in funds deposited to such account must submit appropriate tax forms and provide correct information to the district or county clerk so that the interest earned on such funds can be

timely and appropriately reported to the Internal Revenue Service. The information and forms provided to the district or county clerk under this section are not subject to public disclosure except to the extent necessary to effectuate compliance with federal tax law requirements.

(b) The district or county clerk is authorized to pay any or all of the interest earned on funds deposited under this chapter, without court order, to the Internal Revenue Service to satisfy tax withholding requirements.

Added by Acts 1997, 75th Leg., ch. 505, Sec. 3, eff. Sept. 1, 1997.

SUBCHAPTER B. ESTABLISHMENT OF DEPOSITORY

Sec. 117.021. APPLICATIONS. (a) The commissioners court of a county shall select by the process provided by this subchapter or by Subchapter C, Chapter 262, a federally insured bank or banks in the county to be the depository for a special account held by the county clerk and the district clerks. The county shall enter a contract with the selected federally insured bank or banks for a two-year or four-year term. The original term can be renewed once for an additional two-year term. The contract may, on request by the clerk and approval of the commissioners court, include a provision that the funds in a special account earn interest. A request from the clerk that an account earn interest must be made, in writing, to the commissioners court not later than the 30th day before the date the county gives notice under Section 117.022 and shall be entered in the minutes of the court.

(b) If the contract is for a four-year term, the contract shall allow the county to establish, on the basis of negotiations with the bank, new interest rates and financial terms of the contract that will take effect during the final two years of the four-year contract.

(c) On the renewal of a contract, the county may negotiate new interest rates and terms with the bank for the next two years in the same way and under the same conditions as provided by Subsection (b).

(d) A bank must file its application on or before a date set by the commissioners court. The application must be accompanied by a certified check or cashier's check for at least one-half of one percent of the average daily balance of the registry funds held by

the county clerk and the district clerk during the preceding calendar year, as determined by the county clerk and the district clerk on or before the 10th day before the date the application is required to be filed. A certified check or cashier's check that complies with this section is a good-faith guarantee on the part of the applicant that if its application is accepted it will execute the bond required under this subchapter. If the bank selected as depository does not provide the bond, the county shall retain the amount of the check as liquidated damages and the county shall select another depository as provided by this subchapter.

(e) If for any reason a county depository is not selected under Subsection (a), the commissioners court, at any subsequent time after 20 days' notice, may select, by the process described by Section 117.023 or by negotiated bid, one or more depositories in the same manner as at the regular term.

(f) If the commissioners court selects a depository by the process provided by Subchapter C, Chapter 262, the depository may be selected by:

(1) competitive bidding; or

(2) another method under that subchapter that the county is qualified to use.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 326, Sec. 2, eff. June 5, 1991; Acts 1991, 72nd Leg., ch. 527, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 65, Sec. 3, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 505, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 899 (H.B. 2641), Sec. 5, eff. June 15, 2007.

Sec. 117.022. NOTICE. A county shall advertise or give notice that the county will accept applications to be the depository for registry funds held by the county clerk and the district clerk in the same manner as notice is required under Section 116.022.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 505, Sec. 5, eff. Sept. 1, 1997.

Sec. 117.023. SELECTION OF DEPOSITORY. (a) At the meeting at which banks are to be selected to serve as the depository for registry funds held by the county clerk and the district clerk, the commissioners court shall enter the applications in the minutes of the court and select a depository.

(b) After a depository is selected, the commissioners court shall return the certified checks of the applicants that were not selected. The commissioners court shall return the check of the selected applicant only after the applicant files a bond that is approved by the commissioners court.

(c) The conflict of interests provisions of Section 131.903 apply to the selection of the depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 268, Sec. 30, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 505, Sec. 6, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 899 (H.B. 2641), Sec. 6, eff. June 15, 2007.

Sec. 117.024. QUALIFICATION AS DEPOSITORY. Within 30 days after the date a bank is selected as a depository under this subchapter, the bank must qualify to serve as the depository in the same manner as is required for the qualification of county depositories under Chapter 116.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989.

Sec. 117.025. DESIGNATION OF DEPOSITORY. (a) After a bank selected to be a depository under this subchapter qualifies under Section 117.024 and is selected by the commissioners court, the commissioners court shall by an order entered in its minutes designate the bank or banks as the depository for the registry funds.

(b) A designation under Subsection (a) is effective until the designation and qualification of a successor depository or until April 15 following the expiration of the contract, whichever is earlier. If the term of a depository ends before the designation and qualification of a successor, the depository shall pay to the clerk

in whose name the account is carried all registry funds due or on deposit.

(c) A designated depository shall provide security for the funds deposited into the registry fund accounts in the same manner as Subchapter C, Chapter 116.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 899 (H.B. 2641), Sec. 7, eff. June 15, 2007.

Sec. 117.026. ADVERTISEMENT FOR AND SELECTION OF DEPOSITORY OUTSIDE THE COUNTY. (a) Subject to Sections 116.026 and 116.028, the commissioners court may select a federally insured bank or banks located outside the county to serve as the depository under this subchapter if:

(1) for any reason no bank located in the county applies to be designated as the depository;

(2) an application is not made for the entire amount of the registry funds;

(3) the commissioners court rejects all the applications submitted;

(4) a depository selected by the commissioners court fails to qualify;

(5) a depository becomes insolvent; or

(6) a new depository is selected because of the failure of the regular depository to execute a new bond under Section 117.057.

(b) Before selecting a depository under Subsection (a), the commissioners court shall advertise for applications from banks located in this state by publishing a notice of the selection once a week for two consecutive weeks in a newspaper of general circulation published in the county. If such a newspaper is not published in the county, the commissioners court shall post the notice at the courthouse for two weeks. The commissioners court may also publish the notice in any newspaper outside the county for the same length of time.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 8, eff. Sept. 1, 1997.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1043 (S.B. 158), Sec. 4, eff. June 18, 2023.

Sec. 117.027. FAILURE TO SELECT DEPOSITORY. If the commissioners court has not selected a depository under this subchapter, a clerk holding money, an evidence of debt, an instrument of writing, or any other article deposited into the registry of the court pending the result of a legal proceeding shall seal the article in a secure package and deposit the package in an iron safe or a bank vault.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 9, eff. Sept. 1, 1997.

Sec. 117.028. APPLICATION OF COUNTY DEPOSITORY LAW. Except as otherwise expressly stated, the provisions of Chapter 116 relating to county depositories also apply to a depository selected under this chapter.

Added by Acts 1997, 75th Leg., ch. 505, Sec. 10, eff. Sept. 1, 1997.

SUBCHAPTER C. DEPOSITORY ACCOUNTS

Sec. 117.052. DEPOSITS OF REGISTRY FUNDS BY COUNTY AND DISTRICT CLERKS. (a) If a depository has been selected under Subchapter B, a county clerk or a district clerk who is to have for more than three days legal custody of money deposited in the registry of the court pending the result of a legal proceeding shall deposit the money in the depository.

(b) The funds deposited shall be carried at the depository selected under this chapter as a special account in the name of the clerk making the deposit.

(c) A clerk is responsible for funds deposited into the registry fund from the following sources:

(1) funds of minors or incapacitated persons;

(2) funds tendered in an interpleader action;
(3) funds paid in satisfaction of a judgment;
(4) child support funds held for more than three days;
(5) cash bonds;
(6) cash bail bonds;
(7) funds in an eminent domain proceeding; and
(8) any other funds tendered to the clerk for deposit into the registry of the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 11, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 292, Sec. 1, eff. May 23, 2001.

Sec. 117.0521. CUSTODIANSHIP. A clerk shall act only in a custodial capacity in relation to a registry fund, a special account, or a separate account. A clerk is not a trustee for the beneficial owner and does not assume the duties, obligations, or liabilities of a trustee for a beneficial owner.

Added by Acts 1997, 75th Leg., ch. 505, Sec. 12, eff. Sept. 1, 1997.

Sec. 117.053. WITHDRAWAL OF FUNDS. (a) If a commissioners court selects a new depository under Subchapter B, when the depository qualifies, the county clerk and the district clerk shall transfer the funds in a special account from the old depository to the new depository, and the clerks may draw checks on the accounts for this purpose.

(b) Except as provided by Subsection (a), a clerk may not draw a check on special account funds held by a depository except to pay a person entitled to the funds. The payment must be made under an order of the court of proper jurisdiction in which the funds were deposited except that an appeal bond shall be paid without a written order of the court on receipt of mandate or dismissal and funds deposited under Chapter 1355, Estates Code, may be paid without a written order of the court. The clerk shall place on the check the style and number of the proceeding in which the money was deposited with the clerk.

(c) The clerk shall transfer any registry funds into a separate

account when directed to by a written order of a court of proper jurisdiction or when the clerk is required to under Chapter 1355, Estates Code. The clerk shall transfer the funds into a separate account in:

(1) interest-bearing deposits in a financial institution doing business in this state that is insured by the Federal Deposit Insurance Corporation;

(2) United States treasury bills;

(3) an eligible interlocal investment pool that meets the requirements of Sections 2256.016, 2256.017, and 2256.019, Government Code; or

(4) a no-load money market mutual fund, if the fund:

(A) is regulated by the Securities and Exchange Commission;

(B) has a dollar weighted average stated maturity of 90 days or fewer; and

(C) includes in its investment objectives the maintenance of a stable net asset value of $1 for each share.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 13, eff. Sept. 1, 1997.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.050, eff. September 1, 2017.

Sec. 117.054. COUNTY EXPENSES PAID FROM INTEREST. (a) If a special or separate account earns interest, the clerk, at the time of withdrawal, shall pay in a manner directed by a court with proper jurisdiction the original amount deposited into the registry of the court and any interest credited to the account in the manner calculated in Subsection (b).

(b) The interest earned on a special account or a separate account shall be paid in the following amounts:

(1) 10 percent of the interest shall be paid to the general fund of the county to compensate the county for the accounting and administrative expenses of maintaining the account; and

(2) 90 percent of the interest shall be credited to the special or separate account.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 505, Sec. 14, eff. Sept. 1, 1997.

Sec. 117.055. COUNTY EXPENSES PAID FROM FEES. (a) Except as provided by Subsection (a-1), to compensate the county for the accounting and administrative expenses incurred in handling the registry funds that have not earned interest, including funds in a special or separate account, the clerk shall, at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal but that may not exceed $50. Withdrawal of funds generated from a case arising under the Family Code is exempt from the fee deduction provided by this section.

(a-1) A clerk may not deduct a fee under Subsection (a) from a withdrawal of funds generated by the collection of a cash bond or cash bail bond if in the case for which the bond was taken:

(1) the defendant was found not guilty after a trial or appeal; or

(2) the complaint, information, or indictment was dismissed without a plea of guilty or nolo contendere being entered.

(a-2) On the request of a person to whom withdrawn funds generated by the collection of a cash bond or cash bail bond were disbursed, the clerk shall refund to the person the amount of the fee deducted under Subsection (a) if:

(1) subsequent to the deduction, a court makes or enters an order or ruling in the case for which the bond was taken; and

(2) had the court made or entered the order or ruling before the withdrawal of funds occurred, the deduction under Subsection (a) would have been prohibited under Subsection (a-1).

(b) A fee collected under this section shall be deposited in the general fund of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 16(a), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 119, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., 2nd C.S., Ch. 11 (S.B. 6), Sec. 19, eff. December 2, 2021.

Sec. 117.056. OBLIGATIONS PAYABLE AT COUNTY SEAT. (a) A depository selected under Subchapter B shall pay a check drawn by a county or district clerk against funds deposited in the clerk's name on presentment of the check at the county seat if the funds subject to the check are in the possession of the depository.

(b) If the depository is not located at the county seat, the depository shall file a statement with the county clerk of the county designating a place at the county seat where, and a person by whom, deposits by the clerks will be received and checks drawn on the depository will be paid. The depository shall pay a check on presentment at the designated place if the depository has sufficient funds credited to the applicable account.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989.

Sec. 117.057. NEW BOND. (a) A commissioners court may require a depository selected under Subchapter B to execute a new bond whenever the commissioners court considers it necessary for the protection of the county clerk's and the district clerk's registry funds.

(b) If a depository does not file a new bond required by an order of the commissioners court within five days after the date a copy of the order is served on the depository, the commissioners court may select another depository in the manner provided by Subchapter B.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 16, eff. Sept. 1, 1997.

Sec. 117.058. ACCOUNTING FOR AND DISBURSING REGISTRY FUNDS IN COUNTIES WITH POPULATION OF 190,000 OR MORE. (a) This section applies to a county with a population of 190,000 or more.

(b) If the commissioners court of a county provides a depository for the registry funds of the county clerk or the district clerk, those officers shall make reports under oath to the county

auditor to properly reflect all registry funds received and disbursed by the officer, including all money remaining on hand at the time of the report. The county auditor shall prescribe the form and frequency of the report.

(c) Each check issued for the disbursement of the funds must be issued in accordance with the laws providing for registry fund depositories. Each check must be signed according to procedure established by the county auditor before delivery or payment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 505, Sec. 17, eff. Sept. 1, 1997.

SUBCHAPTER D. LIABILITIES AND PENALTIES

Sec. 117.081. LIABILITY OF COUNTY AND DISTRICT CLERKS. (a) A county clerk or a district clerk is not responsible for a loss of registry funds resulting from the failure or negligence of a depository.

(b) This section does not release a county clerk or a district clerk from:

(1) liability for a loss of registry funds resulting from the clerk's official misconduct, negligence, or misappropriation of the funds; or

(2) responsibility for keeping the registry funds safe until the clerk deposits them in a depository selected under Subchapter B.

(c) After a county clerk or a district clerk deposits in a depository selected under Subchapter B the registry funds held by the clerk, the clerk is relieved of the responsibility for keeping the funds secure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 18, eff. Sept. 1, 1997.

Sec. 117.083. LOSS OF REGISTRY FUNDS. If registry funds held by a county clerk or a district clerk and deposited by the county with a depository selected under Subchapter B are lost for any reason, including a loss due to the insolvency of the depository, the county is liable to the rightful owner of the funds for the full

amount of the funds due the owner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 19, eff. Sept. 1, 1997.

Sec. 117.084. DEPOSITORY TO PAY CHECK ON PRESENTMENT. A depository selected under Subchapter B shall pay a check drawn against funds deposited with the depository in a special or separate account on presentation of the check if the funds that are subject to the check are in the possession of the depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 17(d), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 505, Sec. 20, eff. Sept. 1, 1997.

SUBCHAPTER E. SPECIAL PROVISIONS APPLYING TO FUNDS PAID INTO COURT REGISTRY IN COUNTY WITH POPULATION OF MORE THAN 1.3 MILLION

Sec. 117.111. SUBCHAPTER APPLICABLE TO COUNTY WITH POPULATION OF 1.3 MILLION OR MORE. This subchapter applies only to a county with a population of 1.3 million or more.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 477 (S.B. 490), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1183 (H.B. 3637), Sec. 2, eff. September 1, 2009.

Sec. 117.112. MONEY AFFECTED. This subchapter applies to the following kinds of money paid into the registry of any court for which a clerk is or may become responsible:

(1) funds of minors or incapacitated persons;

(2) funds tendered in connection with a bill in interpleader; or

(3) any other funds.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.

Amended by Acts 1999, 76th Leg., ch. 196, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 292, Sec. 2, eff. May 23, 2001.

Sec. 117.113. DEPOSITORY CONTRACT. The commissioners court of the county collecting the funds may contract with one or more banks in the county for the deposit of the funds in a special account to be called the "registry fund."

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.

Sec. 117.114. NOTICE. Once each week for at least three consecutive weeks before the date the contract will be awarded, the county judge shall place over the judge's name in a newspaper published in the county a notice that the commissioners court intends to make the contract. A notice shall also be posted at the courthouse door of the county.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.

Sec. 117.115. APPLICATIONS. A bank in the county that wants to be a special depository for the registry fund is subject to the same application provisions as those prescribed by Section 116.023 for the applicants for the county depository contract.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.

Sec. 117.116. SELECTION OF DEPOSITORY. At the time and place stated in the notice, the commissioners court shall select a special depository for the registry fund in accordance with the same provisions as those prescribed by Section 116.024 for the selection of a county depository.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.

Sec. 117.117. QUALIFICATION AS DEPOSITORY. A bank selected as a special depository for the registry fund must qualify as the

depository in accordance with the same provisions as those prescribed by Subchapter C, Chapter 116, for the qualification as a county depository.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.

Sec. 117.118. APPLICATION OF COUNTY DEPOSITORY LAW. Matters regarding special depositories for the registry fund are subject to the same provisions as those prescribed by Chapter 116 regarding county depositories, including Sections 116.026 and 116.028.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.
Amended by Acts 1991, 72nd Leg., ch. 752, Sec. 1, eff. Aug. 26, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1043 (S.B. 158), Sec. 5, eff. June 18, 2023.

Sec. 117.119. DEPOSIT OF FUNDS. Money paid into the registry of the court shall be deposited by a clerk into the registry fund at the special depository.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.
Amended by Acts 1991, 72nd Leg., ch. 752, Sec. 1, eff. Aug. 26, 1991; Acts 1999, 76th Leg., ch. 196, Sec. 2, eff. Aug. 30, 1999.

Sec. 117.120. CUSTODIANSHIP. A clerk shall act only in a custodial capacity regarding the registry fund, is not considered to be a trustee for the beneficial owner, and is not considered to have assumed the duties, obligations, or liabilities of a trustee for the beneficial owner.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.
Amended by Acts 1999, 76th Leg., ch. 196, Sec. 3, eff. Aug. 30, 1999.

Sec. 117.121. DISBURSEMENT OF FUNDS. (a) Money may be paid from the registry fund only on checks or drafts signed by a clerk on the written order of the court with proper jurisdiction, except that

the clerk may make a payment without court order for unpaid court costs from a cash bond deposited in connection with an appeal after the appellate court issues its mandate in the appeal if the costs remain unpaid for 45 days after the mandate is issued.

(b) All checks or drafts issued for the disbursement of the registry fund must be submitted to the county auditor for the auditor's countersignature before delivery or payment. The county auditor may countersign the checks only on written evidence of the order of the judge of the court in which the funds have been deposited, authorizing the disbursement of the funds.

(c) Notwithstanding Subsections (a) and (b), a disbursement under an order of a court in which registry funds have been deposited may be made by electronic transfer if:

(1) the designated recipient of the money submits to a clerk a written request for the transfer;

(2) the clerk gives written approval for the transfer; and

(3) a county auditor countersigns the approval.

(d) A clerk may charge a reasonable fee, subject to the approval of the recipient of the money, for an electronic transfer of a disbursement from a registry fund.

Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989. Renumbered from Sec. 117.122 by Acts 1991, 72nd Leg., ch. 752, Sec. 2, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 505, Sec. 21, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 196, Sec. 4, eff. Aug. 30, 1999.

Sec. 117.122. INTEREST. (a) The interest derived from money on deposit in the registry fund shall be paid as earned as follows:

(1) a sum equal to 10 percent of the interest shall be paid into the general fund of the county to reimburse the county for the expenses of maintaining the registry fund; and

(2) the remaining 90 percent of the interest shall be credited to the registry fund.

(b) For each withdrawal, a clerk shall pay out the original amount deposited in the registry of the court and 90 percent of the interest earned on that amount at the time and in the manner directed by the court with proper jurisdiction.

Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.

Renumbered from Sec. 117.123 and amended by Acts 1991, 72nd Leg., ch. 752, Sec. 3, eff. Aug. 26, 1991. Amended by Acts 1999, 76th Leg., ch. 196, Sec. 5, eff. Aug. 30, 1999.

Sec. 117.123. AUDIT. (a) The registry funds shall be audited at the end of each county fiscal year by the county auditor or by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability selected by the commissioners court.

(b) A written report of the audit shall be delivered to the county judge, each county commissioner, and a clerk not later than the 180th day after the last day of the fiscal year. A copy of the audit shall be kept at the clerk's office and shall be open to inspection by any interested person during normal office hours. The cost of the audit shall be paid by the county.

Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.
Renumbered from Sec. 117.124 and amended by Acts 1991, 72nd Leg., ch. 752, Sec. 4, eff. Aug. 26, 1991. Amended by Acts 1999, 76th Leg., ch. 196, Sec. 6, eff. Aug. 30, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 411 (S.B. 356), Sec. 1, eff. June 14, 2013.

Sec. 117.124. LIABILITY OF CLERK. (a) A clerk is not responsible for:

(1) a loss of funds resulting from the failure or negligence of a depository; or

(2) the safety of funds after deposit in a depository selected under this subchapter.

(b) A clerk is responsible for:

(1) a loss of funds resulting from the clerk's official misconduct, negligence, or misappropriation of the funds; and

(2) the safety of funds before deposit in a depository selected under this subchapter.

Acts 1989, 71st Leg., ch. 1, Sec. 17(b), eff. Aug. 28, 1989.
Renumbered from Sec. 117.126 and amended by Acts 1991, 72nd Leg., ch. 752, Sec. 5, eff. Aug. 26, 1991. Amended by Acts 1999, 76th Leg.,

ch. 196, Sec. 7, eff. Aug. 30, 1999.

Sec. 117.125. TRANSFER OF MONEY. (a) In the absence of a contrary order from a court having jurisdiction over the registry fund, a clerk may transfer money deposited in the fund into a separate account.

(b) A clerk shall transfer all money deposited in a registry fund under Chapter 1355, Estates Code, into a separate account.

(c) Money transferred into a separate account under this section must be:

(1) transferred into an account authorized for investment under Chapter 2256, Government Code, by a local government or investment pool; and

(2) invested according to the investment officer designated under Section 2256.005, Government Code, by the investing entity of which the county is a member.

(d) A transfer of money into a separate account under this section is exempt from the requirements prescribed by Section 117.121 for disbursements from registry funds.

(e) An investment of money transferred from a registry fund under this section is subject to the limitations, policies, and standards of care provided by Chapter 2256, Government Code.

Added by Acts 1999, 76th Leg., ch. 196, Sec. 8, eff. Aug. 30, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.051, eff. September 1, 2017.

CHAPTER 118. FEES CHARGED BY COUNTY OFFICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 118.001. DEFINITION. In this chapter, "document" includes any instrument, document, paper, or record.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.002. BILL FOR FEES. A fee under this chapter is not payable to a person until a clerk or officer produces or is ready to produce a bill in writing containing the details of the fee to the

person who owes the fee. The bill must be signed by the clerk or officer to whom the fee is due or who charges the fee or by the successor in office or legal representative of the clerk or officer.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 31, eff. Sept. 1, 1993.

SUBCHAPTER B. FEES OF COUNTY CLERK OTHER THAN COURT FEES

Sec. 118.011. FEE SCHEDULE. (a) A county clerk shall collect the following fees for services rendered to any person:

(1) Personal Property Records Filing (Sec. 118.012):

(A) for the first page $ 5.00;

(B) for each additional page or part of a page on which there are visible marks of any kind $ 4.00;

(2) Real Property Records Filing (Sec. 118.013):

(A) for the first page $ 5.00;

(B) for each additional page or part of a page on which there are visible marks of any kind $ 4.00;

(C) for all or part of each 8-1/2" X 14" attachment or rider $ 4.00;

(D) for each name in excess of five names that has to be indexed in all records in which the document must be indexed $ 0.25;

(3) Certified Papers (Sec. 118.014):

(A) for the clerk's certificate $ 5.00;

(B) printed on paper, plus a fee for each page or part of a page $ 1.00;

(C) that is a paper document converted to electronic format, for each page or part of a page $1;

(D) that is an electronic copy of an electronic document:

(i) for each document up to 10 pages in length $1;

(ii) for each page or part of a page of a document over 10 pages $0.10;

(4) Noncertified Papers (Sec. 118.0145):

(A) printed on paper, for each page or part of a page $ 1.00;

(B) that is a paper document converted to electronic format, for each page or part of a page $1;

(C) that is an electronic copy of an electronic

document:

(i) for each document up to 10 pages in length $1;

(ii) for each page or part of a page of a document over 10 pages $0.10;

(5) Birth or Death Certificate (Sec. 118.015) same as state registrar;

(6) Bond Approval (Sec. 118.016) $ 3.00;

(7) Marriage License (Sec. 118.018) $60.00;

(8) Declaration of Informal Marriage (Sec. 118.019) $25.00;

(9) Brand Registration (Sec. 118.020) $ 5.00;

(10) Oath Administration (Sec. 118.021) $ 1.00.

(b) The county clerk may set and collect the following fee from any person:

(1) Returned Check (Sec. 118.0215) . . . . . not less than $15 or more than $30

(2) Records Management and Preservation Fee (Sec. 118.0216) . . . . . not more than $10

(3) Mental Health Background Check for License to Carry a Handgun (Sec. 118.0217) . . . . . not more than $2

(4) Marriage License for Out-of-State Applicants (Sec. 118.018) $100

(c) The clerk shall charge reasonable fees for performing other duties prescribed or authorized by statute for which a fee is not prescribed by this subchapter.

(d) The county clerk may not charge the United States Immigration and Naturalization Service a fee for a copy of any document on file or of record in the clerk's office relating to an individual's criminal history, regardless of whether the document is certified.

(e) A county clerk who provides a copy in a format other than paper of a record maintained by the clerk shall provide the copy and charge a fee in accordance with Sections 552.231 and 552.262, Government Code.

(f) The county clerk of a county shall, if the commissioners court of the county adopts the fee as part of the county's annual budget, collect the following fee from any person:

(1) Records Archive Fee (Sec. 118.025) . . . . . not more than $10

(2) Records Technology and Infrastructure Fee (Sec.

118.026) $2.00

(g) The county clerk of a county shall, if the commissioners court of the county adopts the fee, collect the following fee from any person:

Real Property Records Filing (Sec. 118.0131) . . . . . not more than $10

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 18(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 587, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 451, Sec. 4, eff; Acts 1993, 73rd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd., ch. 465, Sec. 2, eff. Aug. 30, 1993; Sept. 1, 1993; Acts 1999, 76th Leg., ch. 185, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1400, Sec. 1, eff. June 19, 1999; Acts 2001, 77th Leg., ch. 794, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1155, Sec. 2, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 413, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 974, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(105), (106), 3(31), eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 804 (S.B. 526), Sec. 7, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1216 (H.B. 950), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 327 (H.B. 2685), Sec. 3, eff. September 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 927 (H.B. 1513), Sec. 1.04, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 927 (H.B. 1513), Sec. 2.04, eff. September 1, 2019.

Acts 2015, 84th Leg., R.S., Ch. 379 (H.B. 1062), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 31(a), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 32(a), eff. September 1, 2019.

Acts 2015, 84th Leg., R.S., Ch. 985 (S.B. 1964), Sec. 5, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 695 (H.B. 555), Sec. 3, eff. June 12, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1227 (S.B. 658), Sec. 5, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 16, eff. January 1, 2024.

Sec. 118.012. PERSONAL PROPERTY RECORDS FILING. (a) The fee for "Personal Property Records Filing" under Section 118.011 is for filing or filing and registering, including indexing, in the personal property, chattels, or personal records in the office of the county clerk a document that is authorized or required to be filed in those records.

(b) The fee does not apply to:

(1) notary public records;

(2) marriage records;

(3) vital statistics records;

(4) documents filed in the records of county civil or criminal courts or probate courts;

(5) documents filed and recorded in the real property records in the office of the county clerk; or

(6) instruments for which the filing fee is fixed by the Business & Commerce Code.

(c) This fee is in addition to any other specific fee provided for by other statute.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.013. REAL PROPERTY RECORDS FILING. (a) The fee for "Real Property Records Filing" under Section 118.011 is for filing and recording, including indexing, in the real property records in the office of the county clerk a document that is authorized or required to be filed in those records.

(b) A county clerk who files, registers, or records an instrument by manual copying instead of copying by photocopy, photostating, or microphotographic process may substitute for the prescribed page fee a fee of 20 cents per 100 words for each page having more than 500 words.

(c) The fee does not apply to:

(1) map records;

(2) condominium records;
(3) notary public records;
(4) marriage records;
(5) vital statistics records;
(6) documents filed in the records of county civil or criminal courts or probate courts; or
(7) personal property, chattels, and personal records in the office of the county clerk.

(d) The fee is in addition to any other specific fee provided for by other statute.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.0131. OPTIONAL RECORDING FEES FOR COURT FACILITIES: HIDALGO COUNTY AND CAMERON COUNTY. The county clerk of Hidalgo County and the county clerk of Cameron County may assess an additional fee not to exceed $10 for real property records filing to fund the construction, renovation, or improvement of court facilities, if authorized by the commissioners court of the county.

Added by Acts 2015, 84th Leg., R.S., Ch. 985 (S.B. 1964), Sec. 6, eff. June 19, 2015.

Sec. 118.0135. WAIVER OF REAL PROPERTY FILING FEES. (a) The commissioners court may direct the county clerk to waive fees for the filing of real property records under this subchapter for a person who is buying or improving the person's home with assistance from a federal or state grant or aid program that promotes home ownership or home improvement for persons of low or moderate income.

(b) The commissioners court shall specify the types of grant or aid programs that qualify a person for a fee waiver under this section and may limit the waiver to only certain programs.

Added by Acts 1999, 76th Leg., ch. 108, Sec. 1, eff. May 17, 1999.

Sec. 118.014. CERTIFIED PAPERS. (a) The fees for "Certified Papers" under Section 118.011 are for the county clerk's certificate that shall be placed on each page or part of a page, and a fee for

copying each page or part of a page, of a notice, statement, license, or document that the clerk is authorized or required to issue. The fees must be paid at the time the order is placed.

(b) The fee does not apply to:

(1) a certified document for the issuance of which this subchapter prescribes another fee;

(2) a certified copy of map records or condominium records; or

(3) a license for which the fee for issuance is specifically provided by other statute.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 451, Sec. 1, eff. Sept. 1, 1993.

Sec. 118.0145. NONCERTIFIED PAPERS. (a) The fee for "Noncertified Papers" under Section 118.011 is for issuing a noncertified copy of each page or part of a page of a document. The fee must be paid at the time the order is placed.

(b) A county clerk may waive or reduce the fee provided in Section 118.011 for issuing a noncertified copy of a page or a portion of a page of a document if the document:

(1) involves a matter relating to family law, including a divorce decree; or

(2) is the record of a judgment in a misdemeanor case.

Added by Acts 1993, 73rd Leg., ch. 554, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 764, Sec. 4, eff. Aug. 28, 1995.

Sec. 118.015. BIRTH OR DEATH CERTIFICATE. (a) The fee for "Birth or Death Certificate" under Section 118.011 is for issuing a certified copy of a birth certificate or death certificate and is the same as the fee charged under Subchapter C, Chapter 191, Health and Safety Code, by the state registrar of vital statistics and the local registrar of births and deaths.

(b) A county clerk who collects a fee under this section for a certified copy of a birth certificate shall deposit the fee into the county treasury. The state's portion of the fee shall be sent to the comptroller as provided by Subchapter B, Chapter 133.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(68), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 305, Sec. 3, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 209, Sec. 74(a), eff. Jan. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 4, eff. May 30, 2005.

Sec. 118.016. BOND APPROVAL. The fee for "Bond Approval" under Section 118.011 is for approving bonds other than notarial bonds and bonds required to be approved in a county civil or criminal court or in a probate court. The fee must be paid at the time of approval.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.018. MARRIAGE LICENSE. (a) The fee for "Marriage License" under Section 118.011 is for issuing a marriage license. The fee must be paid at the time the license is issued, except as provided by Subsection (b-1).

(b) The fee includes every service relating to issuance of the license, including preparing the application, filing health certificates, administering oaths, filing waivers and orders of the county judge, and issuing and recording all papers including the return of the license.

(b-1) The county clerk shall issue a marriage license without collecting a marriage license fee from an applicant who:

(1) completes a premarital education course described by Section 2.013, Family Code;

(2) provides to the county clerk a premarital education course completion certificate indicating completion of the premarital education course not more than one year before the date the marriage license application is filed with the clerk; and

(3) provides proof satisfactory to the county clerk that the applicant is a resident of this state.

(c) A person applying for a marriage license may make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services

Commission. A county clerk shall collect the additional voluntary contribution under this section.

(d) If neither applicant for a marriage license provides proof satisfactory to the county clerk that the applicant is a resident of this state, the county clerk may collect an additional fee of $100 for issuing the marriage license.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 185, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 209, Sec. 75(a), eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 327 (H.B. 2685), Sec. 4, eff. September 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 327 (H.B. 2685), Sec. 6, eff. September 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 820 (S.B. 1836), Sec. 4, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 695 (H.B. 555), Sec. 5, eff. June 12, 2017.

Sec. 118.019. DECLARATION OF INFORMAL MARRIAGE. The fee for "Declaration of Informal Marriage" under Section 118.011 is for all services rendered in connection with the execution of a declaration of informal marriage under Section 1.92, Family Code. The fee shall be collected at the time the service is rendered.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.020. BRAND REGISTRATION. The fee for "Brand Registration" under Section 118.011 is for registering a brand, including indexing, searching the records, and issuing the certificate.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.021. OATH ADMINISTRATION. (a) The fee for "Oath Administration" under Section 118.011 is for administering an oath with or without the seal of the clerk.

(b) The fee does not apply to oaths required to be administered in performing a duty as clerk of county civil or criminal courts or as clerk of a probate court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.0215. RETURNED CHECK. The fee for "Returned Check" under Section 118.011 is for a check that is presented to the county clerk in payment of taxes or any other item the person owes to the county and is returned by the depository bank or any other financial institution because of:

(1) insufficient funds to cover the check;

(2) a closed account;

(3) an unauthorized signature;

(4) a check drawn on uncollected funds; or

(5) any other reason considered to be the fault of the drawer.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 18(c), eff. Aug. 28, 1989.

Sec. 118.0216. RECORDS MANAGEMENT AND PRESERVATION. (a) The fee for "Records Management and Preservation" under Section 118.011 is for the records management and preservation services performed by the county clerk after the filing and recording of a document in the records of the office of the clerk.

(b) The fee must be paid at the time of the filing of the document.

(c) The fee shall be deposited in a separate records management and preservation account in the general fund of the county.

(d) The fee may be used only to provide funds for specific records management and preservation, including for automation purposes.

(e) All expenditures from the records management and preservation account shall comply with Subchapter C, Chapter 262.

Added by Acts 1991, 72nd Leg., ch. 587, Sec. 2, eff. Sept. 1, 1991.
Amended by Acts 2001, 77th Leg., ch. 794, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 540 (S.B. 1574), Sec. 1, eff.

June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 330 (H.B. 2716), Sec. 1, eff. June 17, 2011.

Sec. 118.0217. MENTAL HEALTH BACKGROUND CHECK. (a) The fee for a "mental health background check for license to carry a handgun" is for a check, conducted by the county clerk at the request of the Texas Department of Public Safety, of the county records involving the mental condition of a person who applies for a license to carry a handgun under Subchapter H, Chapter 411, Government Code. The fee, not to exceed $2, will be paid from the application fee submitted to the Department of Public Safety according to Section 411.174(a)(6), Government Code.

(b) This section and Section 118.011(b)(3) do not affect the procedures for access to court records prescribed by Section 571.015, Health and Safety Code.

Added by Acts 1999, 76th Leg., ch. 1400, Sec. 2, eff. June 19, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 33, eff. January 1, 2016.

Sec. 118.022. DISPOSITION OF MARRIAGE LICENSE AND DECLARATION FEES. (a) If the county clerk collects a fee for issuing a marriage license, the county clerk shall deposit, as provided by Subchapter B, Chapter 133:

(1) $20 of each fee collected for issuing a marriage license or $12.50 of each fee for recording a declaration of informal marriage to be sent to the comptroller and deposited as provided by Subsection (b);

(2) $10 of each fee collected for issuing a marriage license to be sent to the comptroller and deposited as provided by Subsection (c); and

(3) if applicable, the $5 voluntary contribution collected to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission to be sent to the comptroller and deposited as provided by Subsection (d).

(b) The comptroller shall deposit the money received under Subsection (a)(1) to the credit of the child abuse and neglect prevention trust fund account established under Section 137.054, Human Resources Code.

(c) The comptroller shall deposit the money received under Subsection (a)(2) to the credit of the family trust fund account established under Section 2.014, Family Code.

Text of subsection effective until April 1, 2025

(d) The comptroller shall deposit the money received under Subsection (a)(3) in the Texas Home Visiting Program trust fund under Section 531.287, Government Code.

Text of subsection effective on April 1, 2025

(d) The comptroller shall deposit the money received under Subsection (a)(3) in the Texas Home Visiting Program trust fund under Section 523.0306, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 957, Sec. 7, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 76(a), eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 327 (H.B. 2685), Sec. 5, eff. September 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 820 (S.B. 1836), Sec. 5, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.143, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1033 (S.B. 24), Sec. 15, eff. September 1, 2023.

Sec. 118.023. FEES FOR EX OFFICIO SERVICES. (a) If the county clerk receives fees for ex officio services or for other public services not otherwise provided for, the commissioners court shall set the fees. The fees shall be paid quarterly out of the county treasury on the order of the commissioners court.

(b) A county clerk may not be compelled to file or record any instrument or writing authorized or required to be recorded until payment for all fees has been tendered. This provision does not apply to papers or instruments filed or recorded in suits pending in county court.

(c) In this section, "ex officio services" includes services in relation to roads, bridges, and ferries; issuing and taking receipts for jury scrip or county orders for payment; services in habeas corpus cases; making out bar dockets; keeping records of trust funds; filing and docketing all papers for the commissioners court; keeping road overseers' books and lists of hands; recording all collection returns of delinquent insolvents; recording county treasurer's reports; recording reports of justices of the peace; recording reports of animals slaughtered; and services in connection with elections.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 27, eff. September 1, 2011.

Sec. 118.024. FREE ACCESS TO RECORDS. (a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.

(b) A person may exercise the right provided by this section without paying any charge under the reasonable rules of the county clerk at all reasonable times during the hours in which the clerk's office is open to the public.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.025. COUNTY CLERK'S RECORDS ARCHIVE. (a) In this section:

(1) "Deterioration" means any naturally occurring process or a natural disaster that results in the destruction or partial destruction of a public document.

(2) "Preservation" means any process that:

(A) suspends or reduces the deterioration of public documents; or

(B) provides public access to the public documents in a manner that reduces the risk of deterioration, excluding providing public access to public documents indexed geographically.

(3) "Public document" means any instrument, document, paper, or other record that the county clerk is authorized to accept for filing or maintaining.

(4) Repealed by Acts 2005, 79th Leg., Ch. 804, Sec. 7, eff. June 17, 2005.

(5) "Restoration" means any process that permits the visual enhancement of a public document, including making the document more legible.

(b) The commissioners court of a county may adopt a records archive fee under Section 118.011(f) as part of the county's annual budget. The fee must be set and itemized in the county's budget as part of the budget preparation process. The fee for "Records Archive" under Section 118.011(f) is for the preservation and restoration services performed by the county clerk in connection with maintaining a county clerk's records archive.

(c) The fee must be paid at the time a person, excluding a state agency, presents a public document to the county clerk for recording or filing.

(d) The fee shall be deposited in a separate records archive account in the general fund of the county. Any interest accrued remains with the account.

(e) The funds generated from the collection of a fee under this section may be expended only for the preservation and restoration of the county clerk's records archive. The county clerk shall designate the public documents that are part of the records archive for purposes of this section. The designation of public documents by the county clerk under this subsection is subject to approval by the commissioners court in a public meeting during the budget process.

(f) The funds may not be used to purchase, lease, or develop computer software to geographically index public records, excluding indexing public records by lot and block description as provided by Section 193.009(b)(4).

(g) Before collecting the fee under this section, the county clerk shall prepare an annual written plan for funding the preservation and restoration of the county clerk's records archive. The commissioners court shall publish notice of a public hearing on the plan in a newspaper of general circulation in the county not later than the 15th day before the date of the hearing. After the public hearing, the plan shall be considered for approval by the commissioners court. Funds from the records archive account may be

expended only as provided by the plan. All expenditures from the records archive account shall comply with Subchapter C, Chapter 262. The hearing may be held during the budget process. After establishing the fee, the plan may be approved annually during the budget process.

(h) If a county charges a fee under this section, a notice shall be posted in a conspicuous place in the county clerk's office. The notice must state the amount of the fee in the following form: "THE COMMISSIONERS COURT OF _____ COUNTY HAS DETERMINED THAT A RECORDS ARCHIVE FEE OF $_____ IS NEEDED TO PRESERVE AND RESTORE COUNTY RECORDS."

(i) The fee is subject to approval by the commissioners court in a public meeting during the budget process.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 330, Sec. 3, eff. June 17, 2011.

(k) Repealed by Acts 2005, 79th Leg., Ch. 804, Sec. 7, eff. June 17, 2005.

Added by Acts 2001, 77th Leg., ch. 794, Sec. 4, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 974, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 3(32), eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 804 (S.B. 526), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 804 (S.B. 526), Sec. 7, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 330 (H.B. 2716), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 330 (H.B. 2716), Sec. 3, eff. June 17, 2011.

Sec. 118.026. FEE FOR COUNTY RECORDS TECHNOLOGY AND INFRASTRUCTURE IN CERTAIN COUNTIES. (a) The commissioners court of a county that borders the United Mexican States and the Gulf of Mexico may adopt a records technology and infrastructure fee as part of the county's annual budget. The fee must be set and itemized in the county's budget as part of the budget preparation process.

(b) The fee must be paid at the time a person pays a fee under Section 118.0216 or, if applicable, Section 118.025.

(c) The fee shall be deposited in a separate records technology and infrastructure account in the general fund of the county. Any interest accrued remains with the account.

(d) The funds generated from the collection of a fee under this section may be used only for technology and infrastructure for the maintenance of county records and the operation of the county records system.

(e) The fee is subject to approval by the commissioners court in a public meeting during the budget process.

Added by Acts 2015, 84th Leg., R.S., Ch. 379 (H.B. 1062), Sec. 3, eff. September 1, 2015.

SUBCHAPTER C. FEES OF CLERK OF COUNTY COURT

Sec. 118.051. CLERICAL DUTIES. The fees listed in this subchapter for county civil court dockets under Section 118.052(1) and county probate court dockets under Section 118.052(2) are fees for all clerical duties performed in connection with the docket, including:

(1) filing, registering or recording, docketing, and taxing costs for an application, will, complaint, petition, return, document, or proceeding;

(2) issuing and recording the return of a citation, notice, subpoena, commission to take depositions, execution while the docket is still open (civil docket), garnishment before judgment (civil docket), order, writ, process, or any other document authorized or required to be issued by the clerk on which a return must be recorded;

(3) attendances in court as clerk of the court;

(4) impaneling a jury (civil docket);

(5) swearing witnesses;

(6) approving bonds involved in court action; and

(7) administering oaths.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 96 (H.B. 1295), Sec. 1, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.02, eff. January 1, 2022.

Sec. 118.052. FEE SCHEDULE. Each clerk of a county court shall collect the following fees for services rendered to any person:

(1) CIVIL COURT ACTIONS

(A) Preparation of the clerk's record of transfer under Sections 33.105 and 1023.006, Estates Code, Section 155.207, Family Code, and Sections 51.3071 and 51.403, Government Code:

(i) for the clerk's transfer certificate and index $5;

(ii) for each page or part of a page of a case record up to 10 pages in length $1.00;

(iii) for each page or part of a page of a case record over 10 pages $0.10;

(B) Services Rendered After Judgment in Original Action (Sec. 118.0545):

(i) Abstract of judgment . . . $ 8.00;

(ii) Execution, order of sale, writ, or other process . . . $ 8.00;

(2) PROBATE COURT ACTIONS

(A) Services in Pending Probate Action (Sec. 118.056):

(i) Filing an inventory and appraisement as provided by Section 118.056(d) . . . $25.00;

(ii) Approving and recording bond . . . $ 5.00;

(iii) Administering oath . . . $ 2.00;

(iv) Filing annual or final account of estate . . . $25.00;

(v) Filing application for sale of real or personal property . . . $25.00;

(vi) Filing annual or final report of guardian of a person . . . $10.00;

(vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages . . . $25.00;

(B) Claim Against Estate (Sec. 118.058) . . . $10.00;

(C) Preparation of the clerk's record of transfer under Sections 33.105 and 1023.006, Estates Code, Section 155.207, Family Code, and Sections 51.3071 and 51.403, Government Code:

(i) for the clerk's transfer certificate and index $5;

(ii) for each page or part of a page of a case record up to 10 pages in length $1.00;

(iii) for each page or part of a page of a case record over 10 pages $0.10;

(3) OTHER FEES

(A) Issuing Document (Sec. 118.059):

(i) original document and one copy . . . $ 8.00;

(ii) each additional set of an original and one copy . . . $ 8.00;

(B) Certified Papers (Sec. 118.060):

(i) for the clerk's certificate . . . $ 5.00;

(ii) printed on paper, plus a fee per page or part of a page of . . . $ 1.00;

(iii) that is a paper document converted to electronic format, for each page or part of a page $1;

(iv) that is an electronic copy of an electronic document:

(a) for each document up to 10 pages in length $1;

(b) for each page or part of a page of a document over 10 pages $0.10;

(C) Noncertified Papers (Sec. 118.0605):

(i) printed on paper, for each page or part of a page . . . $ 1.00;

(ii) that is a paper converted to electronic format, for each page or part of a page . . . $ 1.00;

(iii) that is an electronic copy of an electronic document:

(a) for each document up to 10 pages in length . . . $ 1.00;

(b) for each page or part of a page of a document over 10 pages . . . $ 0.10;

(D) Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (Sec. 118.061) . . . $ 2.00;

(E) Deposit and Safekeeping of Wills (Sec. 118.062) . . . $ 5.00;

(F) Mail Service of Process (Sec. 118.063) . . . same

as sheriff;

(G) Searching files or records to locate a cause when the docket number is not provided . . . $ 5.00;

(H) Records Technology and Infrastructure Fee if authorized by the commissioners court of the county (Sec. 118.026) . . . $ 2.00;

(I) Preparation of the clerk's record for appeal, per page or part of a page . . . $1.00.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 19(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1080, Sec. 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 587, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 554, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 675, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 764, Sec. 3, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 1001, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1233 (H.B. 1404), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 96 (H.B. 1295), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 399 (S.B. 819), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 671 (H.B. 1755), Sec. 4, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 379 (H.B. 1062), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 654 (H.B. 2182), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 701 (H.B. 2207), Sec. 12, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.02, eff. January 1, 2022.

Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 17, eff. January 1, 2024.

Sec. 118.0525. INCREASED FEE FOR NONCOMPLIANCE WITH DOCUMENT SPECIFICATIONS. If a legal paper presented to a county clerk for

filing or for recording does not comply with the specifications prescribed by Section 191.007, the filing fee or recording fee for the paper is increased as provided by that section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 20(b), eff. Aug. 28, 1989.

Sec. 118.0526. COPIES OF COURT RECORDS PRESERVED ONLY ON MICROFILM OR BY ELECTRONIC METHOD. (a) On the written request of a party in an action, the clerk of a county court shall provide the court with a copy of a motion, order, or other pleading in the action that is preserved only on microfilm or by other electronic means. The request must specify the document sought and the approximate date that the document was filed.

(b) The county clerk may not charge a fee for a copy made under this section.

Added by Acts 1999, 76th Leg., ch. 1356, Sec. 1, eff. Sept. 1, 1999.

Sec. 118.0545. SERVICES RENDERED AFTER JUDGMENT IN ORIGINAL ACTION. (a) The fees for "Services Rendered After Judgment in Original Action" under Section 118.052(1) are for services rendered after judgment in an original action filed in a county civil court.

(b) The fee for an "Abstract of judgment" under Section 118.052(1) is for issuing an abstract of judgment.

(b-1) The fee for "Preparation of the clerk's record for appeal" under Section 118.052(1) is for preparation of the clerk's record for appeal.

(c) The fee for an "Execution, order of sale, writ, or other process" under Section 118.052(1) is for issuing and recording the return on any of those documents. The fee applies only to a writ or process for the issuance of which another fee is not provided by this subchapter.

(d) The fee is charged of the party requesting the service and is due at the time the service is requested.

(e) In this section, "original action" includes an appeal from a justice of the peace or a corporation court and a transfer of an action from another jurisdiction.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 19(a), eff. Aug. 28, 1989.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.03, eff. January 1, 2022.

Text of section as amended by Acts 1999, 76th Leg., ch. 66, Sec. 1

Sec. 118.056. SERVICES IN PENDING PROBATE ACTION. (a) Except as provided by Subsection (d), the fees for "Services in Pending Probate Action" under Section 118.052(2) are for services in an action in an open probate docket rendered after the filing of an order approving the inventory and appraisement or after the 120th day after the date of the initial filing of the action, whichever occurs first.

(b) The fee for filing a document also applies to each page or part of a page for the filing of a document or exhibit filed by a movant after the filing of an original answer or response, after the filing of an order approving the inventory and appraisement, or after the 120th day after the date of the initial filing of the action, whichever occurs first, and before the filing of an adverse action, contest, suit, or pleading seeking affirmative relief.

(c) Each fee shall be paid at the time of the filing or the rendering of the service and is in addition to other fees prescribed by Section 118.052.

(d) The fee for filing an inventory and appraisement under Section 118.052(2)(B)(i) applies only if the instrument is filed after the 90th day after the date the personal representative has qualified to serve or, if the court grants an extension under Section 309.051, Estates Code, after the date of the extended deadline specified by the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 66, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 399 (S.B. 819), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 20.021, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.04, eff. January 1, 2022.

Sec. 118.058. CLAIM AGAINST ESTATE. (a) The fee for "Claim Against Estate" under Section 118.052(2) is for clerical duties in connection with filing and entering a claim against an estate.

(b) The fee must be paid by the claimant at the time the claim is filed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.059. ISSUING DOCUMENT. (a) The fee for "Issuing Document" under Section 118.052(3) is for issuing an original document and one copy and includes recording the return of the document.

(b) The fee for issuing for the same action at the same time more than one set of an original and one copy of the same document includes recording the return of the document. The fee must be paid at the time the order is placed.

(c) In this section, "document" includes a subpoena, citation, notice, commission to take depositions, execution, order, writ, process, or other instrument or paper authorized or required to be issued by the clerk.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 451, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.05, eff. January 1, 2022.

Sec. 118.060. CERTIFIED PAPERS, NO RETURN REQUIRED. (a) The fees for "Certified Papers" under Section 118.052(3) are for the county clerk's certificate that shall be placed on each page or part of a page, and a fee for copying each page or part of a page, of a notice, statement, transcript, or other document authorized or required to be issued by the clerk.

(b) The fee must be paid at the time the order is placed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 451, Sec. 3, eff. Sept. 1, 1993.

Sec. 118.0605. NONCERTIFIED PAPERS. (a) The fee for "Noncertified Papers" under Section 118.052(3) is for issuing a noncertified copy of each page or part of a page of a document.

(b) The fee must be paid at the time the order is placed.

Added by Acts 1993, 73rd Leg., ch. 554, Sec. 4, eff. Sept. 1, 1993.

Sec. 118.061. LETTERS AND ABSTRACTS. The fee for "Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment" under Section 118.052(3) is for the issuing of any of those documents.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.062. DEPOSIT AND SAFEKEEPING OF WILLS. The fee for "Deposit and Safekeeping of Wills" under Section 118.052(3) is for receiving and keeping wills deposited for safekeeping. The fee must be paid at the time the will is deposited with the county clerk.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 701 (H.B. 2207), Sec. 13, eff. September 1, 2017.

Sec. 118.063. MAIL SERVICE OF PROCESS. The fee for "Mail Service of Process" under Section 118.052(3) is for the clerk's service of process by certified or registered mail. The fee is the same amount that sheriffs and constables are authorized to charge under Section 118.131.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.065. FREE ACCESS TO RECORDS. (a) This subchapter does not limit or deny any person full and free access to any document referred to in this subchapter. A person is entitled to read, examine, and copy from those documents or from any microfilm or other photographic image of the documents.

(b) A person may, without paying any charge, exercise the right provided by this section under the reasonable rules of the county clerk at all reasonable times during the hours in which the clerk's office is open to the public.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.066. PROHIBITED FEES. A county clerk is not entitled to a fee for:

(1) the examination of a paper or record in the clerk's office;

(2) filing any process or document the clerk issues that is returned to court;

(3) a motion or judgment on a motion for security for costs; or

(4) taking or approving a bond for costs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 32, eff. Sept. 1, 1993.

Sec. 118.070. FEE FOR SEARCH OF RECORDS. The clerk of a county court may collect a fee for searching files or records to locate a cause when the docket number is not provided.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.06, eff. January 1, 2022.

SUBCHAPTER D. FEES OF COUNTY JUDGE

Sec. 118.101. FEE SCHEDULE. The county judge shall collect the following fees in probate matters:

(1) Probate of a will $2.00

(2) Granting letters testamentary, letter of guardianship, or letter of administration $2.00

(3) Order of sale $2.00

(4) Approval and confirmation of sale $2.00

(5) Decree refusing order of sale or confirmation of sale $2.00

(6) Decree of partition and distribution $2.00

(7) Decree approving or setting aside the report of a

commissioner of partition and distribution $2.00

(8) Decree removing an executor, administrator or guardian (with the fee to be paid by that executor, administrator, or guardian) $1.00

(9) Fiat or certificate $2.00

(10) Continuance $0.10

(11) Orders for which another fee is not prescribed $2.00

(12) Administering oath or affirmation with certificate and seal $2.00

(13) Administering oath or affirmation without certificate and seal $0.25

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1080, Sec. 8, eff. Sept. 1, 1989. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 379 (H.B. 1062), Sec. 6, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.07, eff. January 1, 2022.

SUBCHAPTER E. FEES OF JUSTICE OF THE PEACE

Sec. 118.121. FEE SCHEDULE. A justice of the peace shall collect the following fees for services rendered after judgment (Sec. 118.123):

(1) Transcript $10.00

(2) Abstract of judgment $5.00

(3) Execution, order of sale, writ of restitution, or other writ or process $5.00 per page

Certified copy of court papers $2.00 for first page

$0.25 for each additional page

Issuing other document

(no return required) $1.00 for first page

$0.25 for each additional page

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 19(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1080, Sec. 9, eff. Sept. 1, 1989; Acts 1997,

75th Leg., ch. 977, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 552 (S.B. 1412), Sec. 2, eff. September 1, 2007.
Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.08, eff. January 1, 2022.

Sec. 118.123. FEES AFTER ENTRY OF JUDGMENT. (a) The fee for "Services rendered after judgment" under Section 118.121(2) applies to a civil matter in a justice court or small claims court.

(b) The fee for a "Transcript" under Section 118.121(2) is for making and certifying a transcript of the entries on a docket and, in the case of an appeal or certiorari, for filing the transcript with the original papers of the case in the proper court.

(c) The fee for an "Abstract of judgment" under Section 118.121(2) is for issuing an abstract of judgment.

(d) The fee for an "Execution, order of sale, writ of restitution, or other writ or process" under Section 118.121(2) is for issuing and recording the return on any of those documents. The fee applies only to a writ or process for the issuance of which another fee is not provided by this subchapter.

(e) The fee for "Issuing other document (no return required)" under Section 118.121(2) is for issuing a certificate, notice, statement, or any other document, except for a certified copy of court papers, that a justice of the peace is authorized or required to issue on which a return is not to be recorded. The fee must be paid at the time the order is placed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 19(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1080, Sec. 9, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(99), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 977, Sec. 2, eff. Sept. 1, 1997.

Sec. 118.1235. FEE FOR CERTIFIED COPY. The fee for "Certified copy of court papers" under Section 118.121(2) is for issuing a certified copy of a paper filed in a justice court or a small claims court. The fee must be paid at the time the order is placed.

Added by Acts 1997, 75th Leg., ch. 977, Sec. 3, eff. Sept. 1, 1997.

Sec. 118.124. PROHIBITED FEES. A justice of the peace is not entitled to a fee for:

(1) the examination of a paper or record in the justice's office;

(2) filing any process or document the justice issues that is returned to court;

(3) a motion or judgment on a motion for security for costs;

(4) taking or approving a bond for costs; or

(5) the first copy of a document in a criminal case issued to:

(A) a criminal defendant in the case;

(B) an attorney representing a criminal defendant in the case; or

(C) a prosecuting attorney.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 33, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 205 (S.B. 409), Sec. 1, eff. May 27, 2009.

SUBCHAPTER F. FEES OF SHERIFF AND CONSTABLE

Sec. 118.131. FEES SET BY COMMISSIONERS COURT. (a) The commissioners court of a county may set reasonable fees to be charged for service of process, including service of writs, by the offices of the sheriff and constables.

(b) The commissioners court may not set fees higher than is necessary to pay the expenses of providing the services.

(c) The commissioners court may not set fees under this section more than once during any one-year period.

(d) The commissioners court must set the fees before October 1 of each year to be effective January 1 of the following year.

(e) A notice setting out the fees shall be posted in the same manner in which notices are posted under Section 81.007 and shall be posted in the offices of the county officials who are authorized to charge the fees.

(f) On or before October 15 of the year in which the fees are initially set, the commissioners court shall provide written notice of the amounts of the fees to the comptroller. If the commissioners court changes the amount of a fee set under this section, the commissioners court shall provide to the comptroller, on or before October 15 of the year in which the amount is changed, a written notice of the change in the amount of the fee. Before December 15 of each year, the comptroller shall compile the fee information provided by counties and send the compilation to:

(1) the commissioners court of each county in this state;

(2) any statewide association of counties or of officers of counties that requests in writing before December 15 to be informed; and

(3) the State Bar of Texas.

(g) A commissioners court that receives a notice under Subsection (f)(1) shall furnish the notice to its district clerk, county clerk, justices of the peace, sheriff, and constables.

(h) If the commissioners court does not set fees under this section, the fees for services by the offices of the sheriff and constables are those fees provided by law in effect for the preceding fiscal year.

(i) The commissioners court may not assess an applicant a fee in connection with the filing, serving, or entering of a protective order. A fee may not be charged to an applicant to dismiss, modify, or withdraw a protective order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 21(a), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 326, Sec. 1, eff. May 29, 1993; Acts 1995, 74th Leg., ch. 144, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 1024, Sec. 19, eff. Sept. 1, 1995.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 92 (H.B. 145), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 18, eff. January 1, 2024.

Sec. 118.132. SERVICE OF PROCESS FOR APPELLATE COURT. A sheriff shall collect the same fee for service of process issued by

the supreme court or a court of appeals as the fee provided for service of process issued by a district court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.133. SHERIFF'S AND CONSTABLE'S RESPONSE TO FALSE ALARM IN POPULOUS COUNTY. (a) The commissioners court of a county with a population of more than 3.3 million by order may adopt a system by which the county charges a fee if the sheriff's or constable's office of the county responds to a security alarm and the emergency for which the alarm device was designed to give notice does not exist.

(b) The fee shall be charged to a person exercising control of the property on which the alarm device is installed.

(c) The commissioners court shall set the amount of the fee. The court may set a single fee that is charged for each response to a false alarm or may establish a fee structure under which different fees are charged according to the differing circumstances of each false alarm. However, the amount of a fee may not exceed the amount of the actual costs incurred by the sheriff's or constable's office in responding to the alarm.

(d) Fees collected under this Act shall be deposited in the county treasury to the credit of the general fund of the county.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 22(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 53, 54, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1296 (H.B. 2626), Sec. 1, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1296 (H.B. 2626), Sec. 2, eff. June 18, 2005.

Sec. 118.134. PAYMENT OF COSTS INCURRED FOR CARE OF CERTAIN PROPERTY. (a) A sheriff or constable may keep possession of property legally acquired until the party seeking to replevy the property pays the officer's costs incurred for the storage, security, or management of the property.

(b) Subsection (a) of this section does not apply to costs incurred on property seized in conjunction with an offense alleged

under the Penal Code, Code of Criminal Procedure, or Title 116, Vernon's Texas Civil Statutes, when the owner of the property is subsequently found to be not guilty of an offense or other proscribed activity described in those statutes, or if other charges whether criminal or civil are dropped.

Added by Acts 1991, 72nd Leg., ch. 749, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER G. FEES OF COUNTY TREASURER

Sec. 118.141. FEE SCHEDULE. (a) The county treasurer, or another officer who receives revenue in place of the county treasurer, may collect the following fees for services rendered to any person:

(1) Returned check (Sec. 118.142) not less than $15.00 or more than $30.00

(2) copy of check or other record (Sec. 118.144) $ 1.00

(b) The county treasurer or another officer who receives revenue in place of the county treasurer may collect, from a person to whom the county issues a check, a fee for a stop-payment order as described by Section 118.143:

(1) in an amount equal to the stop-payment fee charged to the county by the county depositary bank; or

(2) in an amount not to exceed $20.00.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 30, Sec. 1, eff. Oct. 20, 1987; Acts 1995, 74th Leg., ch. 340, Sec. 1, eff. Sept. 1, 1995.

Sec. 118.142. RETURNED CHECK. The fee for "Returned check" under Section 118.141 is for a check that is presented to a county in payment of any service, fee, claim, registration, fine, or other cost of the county and is returned by the depository bank or another bank for any reason considered to be the fault of the drawer, including:

(1) insufficient funds to cover the check;

(2) closed account;

(3) unauthorized signature; or

(4) drawn on uncollected funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.143. STOP-PAYMENT ORDER. The fee for a "Stop-payment order" under Section 118.141 is for placement of a stop-payment order on a check issued by a county for which the county will be directly or indirectly charged by the depository bank or another bank.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.144. COPY OF CHECK OR OTHER RECORD. The fee for "Copy of check or other record" under Section 118.141 is for each copy made of a page or part of a page of records, orders, checks, or other papers on file or of record in the treasurer's office. The fee applies to both certified and uncertified copies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 118.145. DISPOSITION OF FEES COLLECTED. The fees collected under this subchapter shall be deposited in the general fund of the county to the credit of the county treasurer fees of office account.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER H. FEES OF COUNTY SURVEYOR

Sec. 118.161. FEE SCHEDULE. A county surveyor shall collect the following fees:

(1) for recording the field notes and plat of a survey for a tract of land, providing copies of field notes, plats, or other papers or records, and certifying any copies, the same amount collected by the county clerk of the county as a filing fee;

(2) for surveying a tract of land or designating a homestead:

(A) the actual expenses incurred, including all expenses of making the survey, preparing a survey report, field notes, plat, and other documents required by law, and filing those documents in the records of the county surveyor or the General Land

Office; and

(B) any fees for surveying services agreed on by the county surveyor and the person seeking the services; and

(3) for filing an application to purchase or lease a vacancy or for surveying a vacancy, the amounts provided by Subchapter E, Chapter 51, Natural Resources Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 2, eff. Sept. 1, 1993.

SUBCHAPTER I. FEES OF COUNTY TAX ASSESSOR-COLLECTOR

Sec. 118.171. RETURNED CHECK. The county tax assessor-collector has the same authority to set and collect a fee for a check returned to the tax assessor-collector that the county clerk has under Sections 118.011 and 118.0215.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 18(d), eff. Aug. 28, 1989.

SUBCHAPTER Y. PENALTIES

Sec. 118.801. OVERCHARGING OF FEES; PENALTY. (a) An officer named in this chapter who, in bad faith, demands and receives a higher fee than authorized under this chapter or a fee that is not authorized under this chapter is liable to the aggrieved person for four times the amount unlawfully demanded and received.

(b) An officer who, in good faith, demands and receives a higher fee than authorized or a fee not authorized under this chapter is liable to the aggrieved person for the difference between the amount demanded and received and the amount of the fee authorized under this chapter.

(c) The demand for and receipt of a fee authorized by the legislature that is later determined by a court of competent jurisdiction to be unlawful is considered to be a good faith action by the officer.

(d) In this section, "bad faith" includes a demand that an officer makes with the knowledge that a fee is not authorized by law.

(e) The provisions of this section shall not affect the right of any party to recover attorney's fees, interest, or costs of court as provided by other law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 34, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 142, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 119. COUNTY GOVERNMENT LIABILITY INSURANCE POOL

Sec. 119.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of the county government risk management pool.

(2) "Fund" means the county government risk management fund.

(3) "Plan" means the plan of operation of the county government risk management pool.

(4) "Pool" means the County Government Risk Management Pool created under this chapter.

(5) "Volunteer fire department" means a fire department that is operated on a not-for-profit basis.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 1056, Sec. 1, eff. Aug. 28, 1995.

Sec. 119.002. CREATION OF RISK MANAGEMENT POOL. (a) On the adoption of a resolution by the commissioners courts of at least 10 counties in this state, the County Government Risk Management Pool is created to insure each county in this state that purchases coverage in the pool against liability for the acts or omissions of that county and the officials and employees of that county under the law.

(b) Any county in this state that meets the criteria established by the pool in its plan of operation may purchase coverage from the pool. The county may use county funds to pay any fees, contributions, or premiums required to be a part of the pool and to obtain coverage through the pool.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 561, Sec. 4, eff. Aug. 30, 1993.

Sec. 119.003. ORGANIZATION OF POOL; TEMPORARY BOARD. On the creation of the pool, each commissioners court adopting a resolution to create the pool shall select one representative to meet with the representatives of the other counties adopting creation resolutions.

At the meeting, the representatives shall adopt guidelines for developing an organizational plan for the pool and shall select nine persons from their number to serve as a temporary board of trustees for the pool.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 119.004. PLAN OF OPERATION. (a) Within 30 days after the date the temporary board is selected, the members of the temporary board shall meet and begin to prepare a detailed plan of operation for the pool. The plan may include any matters relating to the organization and operation of the pool and its finances but must include:

(1) the organizational structure of the pool, including the number, method of selection, and method of procedure and operation of the regular board of trustees for the pool;

(2) a summary of the method for managing and operating the pool;

(3) a description of the fees, contributions, or financial arrangements necessary to cover the initial expenses of the pool, with estimates supported by statistical data of the amounts of those fees, contributions, or other financial arrangements;

(4) underwriting standards and procedures for the evaluation of risks, which must provide that any county that applies shall be provided coverage for an initial period of at least one year, regardless of that county's loss history;

(5) procedures for the purchase of reinsurance;

(6) procedures for the processing and payment of claims;

(7) methods, procedures, and guidelines for:

(A) the establishment of premium rates;

(B) the limits of coverage available through the pool; and

(C) the management and investment of the county government risk management fund; and

(8) methods and procedures for defraying losses and expenses of the pool.

(b) The temporary board shall complete the plan within 90 days after the date the temporary board is appointed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 119.005. BOARD OF TRUSTEES. (a) The board of trustees shall govern, administer, and operate the pool and the fund.

(b) Within 15 days after the date the plan is completed by the temporary board, the initial regular board must be selected and take office as provided by the plan. A person serving on the board who is a county officer or employee performs board duties as additional duties of the person's original office or employment. A member or employee of the board is not liable with respect to any claims for which coverage is provided by the pool or brought against any county covered by the pool.

(c) Each member and each employee of the board who has authority over money in the fund or over money collected or invested by the pool must execute a bond in an amount determined by the board, payable to the pool, and conditioned that the person will faithfully perform the person's duties. The cost of the bond shall be paid by the pool.

(d) The board shall determine premium rates and coverage limits to ensure that the pool and the fund are actuarially sound.

(e) The board may purchase reinsurance for any risks covered by the pool.

(f) The board may employ a fund manager and other persons necessary to carry out this chapter and the plan. The board may employ or contract with insurance carriers or other persons for underwriting, accounting, claims, and other services.

(g) The board may adopt any rules, exercise any powers, and enter into any contracts necessary to carry out this chapter and the plan.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 119.006. RISK MANAGEMENT FUND. (a) On taking office, the initial regular board shall create the county government risk management fund.

(b) The board shall credit to the fund:

(1) fees, contributions, and premiums collected by the pool;

(2) investments of money in the fund;

(3) interest earned on investments made by the pool; and

(4) any other income received by the pool from any sources.

(c) The board shall manage and invest the money in the fund in the manner provided by the plan. The money in the fund shall be used to pay liability claims and judgments against participating counties up to the limits of the coverage provided by the pool. Money in the fund also may be used to pay the administrative and management costs of the pool and the fund up to the limits provided by the plan.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 119.007. CERTAIN REQUIREMENTS FOR INITIAL COVERAGE; SURCHARGE. (a) To obtain coverage during the initial coverage period, the standards included in the plan may require a county to participate in a risk management appraisal and to adhere to the recommendations made in the appraisal. If the recommended risk management techniques do not sufficiently reduce losses to meet the pool's underwriting criteria within the initial coverage period, the county may be denied subsequent coverage by the pool.

(b) A surcharge may be applied to any risk covered during the initial period if the risk does not meet the basic underwriting criteria established by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 119.008. NOT INSURANCE; BOARD OF INSURANCE LACKS JURISDICTION. (a) The pool created under this chapter is not insurance for purposes of the Insurance Code and other laws of this state.

(b) The State Board of Insurance has no jurisdiction over the pool or over any other governmental insurance pool created under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 119.009. PARTICIPATION BY OTHER POLITICAL SUBDIVISIONS. (a) A political subdivision other than a county may participate in

the County Government Risk Management Pool established under this chapter.

(b) A political subdivision participating in the pool under this section is entitled to the same coverage provided to a county and may participate under the same terms and conditions as a county.

Added by Acts 1993, 73rd Leg., ch. 561, Sec. 5, eff. Aug. 30, 1993.

Sec. 119.010. CERTAIN COVERAGE AUTHORIZED; DISTRICT JUDGES. The pool may provide coverage against liability for the acts or omissions of a district judge whose judicial district is located, in whole or in part, within the geographic boundaries of a county participating in the pool that arise in the course and scope of the judge's official duties as a judge. A county participating in the pool, a district judge from personal funds, or both the county and the judge, may pay the additional cost of this coverage.

Added by Acts 1995, 74th Leg., ch. 1056, Sec. 2, eff. Aug. 28, 1995.

Sec. 119.011. CERTAIN COVERAGE AUTHORIZED; VOLUNTEER FIRE DEPARTMENTS. The pool may provide coverage against liability for the acts or omissions of:

(1) a volunteer fire department that contracts with a county participating in the pool for the provision of fire protection or fire-fighting equipment under Subchapter A, Chapter 352;

(2) a volunteer for a fire department described by Subdivision (1), to the extent the acts or omissions arise in the course and scope of the volunteer's activities as a volunteer for the fire department; and

(3) a person described by Section 352.004(b).

Added by Acts 1995, 74th Leg., ch. 1056, Sec. 2, eff. Aug. 28, 1995.

Sec. 119.012. NOTICE OF CANCELLATION OR CHANGE OF COVERAGE. (a) Except as provided by Subsection (b), cancellation of coverage for liability provided through the pool under this chapter other than cancellation for nonpayment of contribution, or any change to the terms or conditions of the coverage, may not take effect before the

60th day after the earlier of the date that written notice of the change is:

(1) delivered to the county judge or presiding officer of the governing body of each affected county or other political subdivision; or

(2) mailed, by certified mail, to the county judge or presiding officer of the governing body of each affected county or other political subdivision.

(b) Notice is not required for cancellation or a change to the terms or conditions of the coverage made:

(1) at the request of the affected county or other political subdivision; or

(2) by mutual agreement of the governing body, or authorized agent, of the affected county or other political subdivision and the pool if:

(A) the mutual agreement is evidenced by a writing; and

(B) not later than the 72nd hour before the governing body takes formal action with respect to the agreement, the writing described by Paragraph (A) is provided, electronically or by certified mail, to the county judge or presiding officer of the governing body of the political subdivision.

(c) The notice must be printed in at least 12-point bold-faced type and must specify the reasons for the cancellation or change.

(d) In the case of cancellation of the coverage, the notice must state that, on request of the affected county or other political subdivision, the pool shall refund to the county or political subdivision the pro rata unearned paid contribution of the county or political subdivision. This subsection does not apply if the refund is paid at the time the notice is made.

Added by Acts 1997, 75th Leg., ch. 1419, Sec. 1, eff. Sept. 1, 1997.

Sec. 119.013. QUALIFICATIONS OF ADMINISTRATOR. The individual responsible for administration of the pool, whether employed by the pool or any other entity:

(1) must hold at least a bachelor's degree in a field relating to insurance, finance, business management, or law or hold the professional designation of:

(A) Chartered Property Casualty Underwriter granted by the American Institute for Property and Liability Underwriters;

(B) Certified Insurance Counselor granted by the Society of Certified Insurance Counselors; or

(C) Associate in Risk Management granted by the Insurance Institute of America;

(2) must have at least five years experience in administration of risk pools, commercial insurance production or management, or risk management; and

(3) during each calendar year, shall participate in a minimum of 20 hours of continuing education that:

(A) is acceptable to the board; and

(B) relates to the types of coverage provided by the pool, risk management, or administration of risk pools.

Added by Acts 1997, 75th Leg., ch. 1419, Sec. 1, eff. Sept. 1, 1997.

Sec. 119.014. APPLICATION REQUIREMENTS. The requirements of Section 119.012 shall apply to cancellation of, or any change to the terms or conditions of, a contractual obligation to indemnify for liability for the acts or omissions of a county or its officers and employees provided to any county through any intergovernmental risk-sharing pool or insurance coverage.

Added by Acts 1997, 75th Leg., ch. 1419, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 120. ELECTION FOR REDUCTION OF FUNDING OR RESOURCES FOR CERTAIN PRIMARY LAW ENFORCEMENT AGENCIES

Sec. 120.001. APPLICABILITY. This chapter applies only to a county with a population of more than 1.2 million.

Added by Acts 2021, 87th Leg., R.S., Ch. 201 (S.B. 23), Sec. 1, eff. January 1, 2022.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 130, eff. September 1, 2023.

Sec. 120.002. ELECTION REQUIRED. (a) Except as provided by

Section 120.003, a county shall hold an election in accordance with this chapter if the county adopts a budget for a fiscal year that, compared to the budget adopted by the county for the preceding fiscal year:

(1) reduces for a law enforcement agency, excluding a 9-1-1 call center, with primary responsibility for policing, criminal investigation, and answering calls for service:

(A) for a fiscal year in which the overall amount of the budget is equal to or greater than the amount for the preceding fiscal year, the appropriation to the agency;

(B) for a fiscal year in which the overall amount of the budget is less than the amount for the preceding fiscal year, the appropriation to the agency as a percentage of the total budget;

(C) as applicable:

(i) if the county has not declined in population since the preceding fiscal year, the number of peace officer positions, excluding detention officer positions; or

(ii) if the county has declined in population since the preceding fiscal year, the number of peace officer positions, excluding detention officer positions, the law enforcement agency is authorized to employ per 1,000 county residents; or

(D) the amount of funding per peace officer for the recruitment and training of new peace officers to fill vacant and new peace officer positions in the agency; or

(2) reallocates funding or resources to another law enforcement agency.

(b) A county may not implement a proposed reduction or reallocation described by Subsection (a) until the county receives voter approval for the proposed reduction or reallocation at an election held for that purpose. The county may, at any time, order the election to be held on the 30th day after the date the county orders the election. Section 41.001, Election Code, does not apply to an election under this subsection.

(c) For purposes of this section, a county budget does not include:

(1) a one-time extraordinary expense, as determined by the comptroller, that is outside the normal costs of operating a law enforcement agency, including purchasing a fleet of law enforcement vehicles or constructing an additional training academy;

(2) revenues used to repay voter-approved bonded

indebtedness incurred for a law enforcement purpose;

(3) detention officer compensation; or

(4) a donation or state or federal grant to the county's law enforcement agency.

Added by Acts 2021, 87th Leg., R.S., Ch. 201 (S.B. 23), Sec. 1, eff. January 1, 2022.

Sec. 120.003. DISASTER EXCEPTION. Section 120.002 does not apply to a county budget adopted for a fiscal year in which, or the two fiscal years following the fiscal year in which, a significant budget reduction from the preceding fiscal year was caused by a disaster, including a tornado, hurricane, flood, wildfire, or other calamity, but not including a drought, epidemic, or pandemic, in an area of the county that was the subject of a disaster declaration by the governor under Chapter 418, Government Code, or by the president of the United States.

Added by Acts 2021, 87th Leg., R.S., Ch. 201 (S.B. 23), Sec. 1, eff. January 1, 2022.

Sec. 120.004. BALLOT PROPOSITION REQUIREMENTS. A county holding an election under this chapter shall ensure that the ballot proposition for the election includes, as applicable:

(1) a detailed explanation of each proposed reduction;

(2) the amount of each proposed reduction;

(3) the recipient of reallocated funding or resources;

(4) the impact on the local tax rate, if any; and

(5) the expected length of time that the proposed reduction or reallocation will remain in effect.

Added by Acts 2021, 87th Leg., R.S., Ch. 201 (S.B. 23), Sec. 1, eff. January 1, 2022.

Sec. 120.005. USE OF PUBLIC MONEY FOR CAMPAIGN PROHIBITED. A county holding an election under this chapter may not use public money on promotional campaigns or advocacy related to the proposed reduction or reallocation. This section may not be construed to

prevent a county official or employee from communicating factual information about a proposed budget or the reasoning behind a proposed budget to the voters in the county.

Added by Acts 2021, 87th Leg., R.S., Ch. 201 (S.B. 23), Sec. 1, eff. January 1, 2022.

Sec. 120.006. COMPLAINT. (a) A person who believes that a county has implemented a proposed reduction or reallocation described by Section 120.002(a) without the required voter approval and who resides in the county may file a complaint with the criminal justice division of the office of the governor.

(b) The criminal justice division of the office of the governor shall determine whether a complaint filed under Subsection (a) is potentially valid or frivolous or false.

(c) The criminal justice division of the office of the governor shall provide written notice of a potentially valid complaint filed under Subsection (a) to the county that is the subject of the complaint. The division shall provide the county an opportunity to correct the action that is the subject of the complaint before referring the complaint to the comptroller.

Added by Acts 2021, 87th Leg., R.S., Ch. 201 (S.B. 23), Sec. 1, eff. January 1, 2022.

Sec. 120.007. COMPTROLLER INVESTIGATION; TAX RATE LIMITATION. (a) On request by the criminal justice division of the office of the governor, the comptroller shall determine whether a county has implemented a proposed reduction or reallocation described by Section 120.002(a) without the required voter approval. The comptroller shall issue a written determination to the governor, lieutenant governor, speaker of the house of representatives, and governing body of the county.

(b) The comptroller may require a county to submit information for the current or preceding fiscal year to assist the comptroller's investigation under this section.

(c) Notwithstanding any other law, if the comptroller determines that a county implemented a proposed reduction or reallocation described by Section 120.002(a) without the required

voter approval, the county may not adopt an ad valorem tax rate that exceeds the county's no-new-revenue tax rate until the earlier of:

(1) the date the comptroller issues a written determination that the county has, as applicable:

(A) reversed each funding reduction, adjusted for inflation, and personnel reduction that was a subject of the determination; or

(B) restored all reallocated funding and resources that were subjects of the determination to the original law enforcement agency; or

(2) the date on which each reduction and reallocation that was a subject of the determination has been approved in an election held in accordance with this chapter.

(d) For purposes of making the calculation required under Section 26.013, Tax Code, in a tax year the comptroller determines that a county implemented a proposed reduction or reallocation described by Section 120.002(a) without the required voter approval, the difference between the actual tax rate and voter-approval tax rate is considered to be zero.

Added by Acts 2021, 87th Leg., R.S., Ch. 201 (S.B. 23), Sec. 1, eff. January 1, 2022.

CHAPTER 130. MISCELLANEOUS FINANCIAL PROVISIONS AFFECTING COUNTIES

SUBCHAPTER A. PAYMENT OF FEES AND TAXES BY CHECK, CREDIT CARD, OR ELECTRONIC MEANS

Sec. 130.001. DEFINITIONS. In this subchapter:

(1) "Check" means an instrument signed by the maker, containing an unconditional promise or order to pay a sum certain in money, containing no other promise, order, obligation, or power given by the maker, payable on demand, and drawn on a bank.

(2) "Credit card invoice" means the document authorized by the holder of a credit card to be used to provide payment of an amount from the holder's credit card account.

(3) "Maker" means the drawer of a check or the holder of a credit card who authorizes a credit card invoice.

(4) "Payment by electronic means" means payment by telephone or computer but does not include payment in person or by mail.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 148, Sec. 2, eff. Sept. 1, 1997.

Sec. 130.002. ACCEPTANCE OF CHECK OR CREDIT CARD PAYMENT OF CERTAIN FEES AND TAXES. A county tax assessor-collector may accept a check or credit card invoice for the payment of:

(1) motor vehicle registration fees under Chapter 502, Transportation Code;

(2) motor vehicle sales taxes imposed by Chapter 152, Tax Code;

(3) occupation taxes paid to the assessor-collector under Chapter 191, Tax Code;

(4) motor vehicle title transfer fees under Chapter 501, Transportation Code;

(5) license or permit fees under the Alcoholic Beverage Code; and

(6) property taxes.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 165, Sec. 30.215, eff. Sept. 1, 1997.

Sec. 130.003. PAYMENT CONDITIONAL. (a) The acceptance of a check or credit card invoice for the payment of a fee or tax does not constitute payment of the fee or tax. The fee or tax is not considered paid until the check is honored by the bank on which the check is drawn or the credit card invoice is honored by the issuer.

(b) This section does not prohibit a county tax assessor-collector from issuing receipts, license plates, certificates, or other instruments on the receipt of a check or credit card invoice, but the issuance is conditional on the payment of the check by the drawee bank or the honoring of the credit card invoice by the credit card issuer.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989.

Sec. 130.004. IDENTIFICATION REQUIRED. When a county tax assessor-collector receives a check or credit card invoice as conditional payment of a fee or tax, the assessor-collector shall require adequate identification of the maker and note on the check or invoice or otherwise record the type of identification of the maker and information from the identification to assist in locating the maker in the event the check or invoice is not honored.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989.

Sec. 130.0045. CREDIT CARD PAYMENT PROCESSING FEE. (a) If a county tax assessor-collector accepts a credit card invoice as conditional payment of a fee or tax, the assessor-collector may collect a fee for processing the invoice.

(b) The assessor-collector shall set a fee collected under Subsection (a) in an amount that is reasonably related to the expense incurred in processing the credit card invoice, not to exceed five percent of the amount of the fee or tax. The processing fee is in addition to the amount of the fee or tax, and may be paid conditionally by including the amount of the processing fee on the credit card invoice.

Added by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 529, Sec. 1, eff. June 11, 2001.

Sec. 130.0046. FEE FOR PAYMENT BY ELECTRONIC MEANS. A county tax assessor-collector that accepts payment by electronic means as conditional payment of a county or state fee or tax may collect a handling fee for processing the payment. The handling fee is in addition to the amount of the fee or tax and may be paid conditionally by electronic means at the same time the tax or fee is paid.

Added by Acts 1997, 75th Leg., ch. 148, Sec. 3, eff. Sept. 1, 1997.

Sec. 130.005. LIABILITY OF ASSESSOR-COLLECTOR AND BONDSMAN. Except as provided by Section 130.008, a county tax assessor-collector and the assessor-collector's bondsman are not liable for the amount of any fee or tax for which the assessor-collector has accepted a check that is not honored by the drawee bank or credit card invoice that is not honored by the credit card issuer if the assessor-collector complied with the requirements of Section 130.004 and if the assessor-collector did not know or should not reasonably have known that the check was not properly drawn, that the credit card payment was not properly made, or that the check or credit card invoice would not be honored.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989.

Sec. 130.006. PROCEDURES FOR COLLECTION OF DISHONORED CHECKS AND INVOICES. (a) A county tax assessor-collector may establish procedures for the collection of dishonored checks and credit card invoices. The procedures may include:

(1) official notification to the maker that the check or invoice has not been honored and that the receipt, registration, certificate, or other instrument issued on the receipt of the check or invoice is not valid until payment of the fee or tax is made;

(2) notification of the sheriff or other law enforcement officers that a check or credit card invoice has not been honored and that the receipt, registration, certificate, or other instrument held by the maker is not valid;

(3) notification to the Texas Department of Motor Vehicles, the comptroller of public accounts, or the Department of Public Safety that the receipt, registration, certificate, or other instrument held by the maker is not valid; and

(4) referral of a dishonored check or credit card invoice to a private collection agency.

(b) If the county tax assessor-collector refers a dishonored check or credit card invoice to a private collection agency under Subsection (a)(4), the private collection agency may charge a fee to the person responsible for the check or invoice in an amount equal to any amount authorized for a returned check under Section 118.011.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 165, Sec. 22(46), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3H.01, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 2 (S.B. 492), Sec. 1, eff. May 4, 2017.

Sec. 130.007. REMISSION TO STATE NOT REQUIRED; STATE ASSISTANCE IN COLLECTION. (a) If a fee or tax is required to be remitted to the comptroller or the Texas Department of Motor Vehicles and if payment was made to the county tax assessor-collector by a check that was not honored by the drawee bank or by a credit card invoice that was not honored by the credit card issuer, the amount of the fee or tax is not required to be remitted, but the assessor-collector shall notify the appropriate department of:

(1) the amount of the fee or tax;
(2) the type of fee or tax involved; and
(3) the name and address of the maker.

(b) The Texas Department of Motor Vehicles and the comptroller shall assist the county tax assessor-collector in collecting the fee or tax and may cancel or revoke any receipt, registration, certificate, or other instrument issued in the name of the state conditioned on the payment of the fee or tax.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 165, Sec. 22(46), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3H.02, eff. September 1, 2009.

Sec. 130.008. LIABILITY OF TAX COLLECTOR FOR VIOLATIONS OF SUBCHAPTER. If the comptroller or the Texas Department of Motor Vehicles determines that the county tax assessor-collector has

accepted payment for fees and taxes to be remitted to that department in violation of Section 130.004 or that more than two percent of the fees and taxes to be received from the assessor-collector are not remitted because of the acceptance of checks that are not honored by the drawee bank or of credit card invoices that are not honored by the credit card issuer, the department may notify the assessor-collector that the assessor-collector may not accept a check or credit card invoice for the payment of any fee or tax to be remitted to that department. A county tax assessor-collector who accepts a check or credit card invoice for the payment of a fee or tax, after notice that the assessor-collector may not receive a check or credit card invoice for the payment of fees or taxes to be remitted to a department, is liable to the state for the amount of the check or credit card invoice accepted.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 165, Sec. 22(46), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3H.03, eff. September 1, 2009.

Sec. 130.009. STATE RULES. The comptroller and the Texas Department of Motor Vehicles may make rules concerning the acceptance of checks or credit card invoices by a county tax assessor-collector and for the collection of dishonored checks or credit card invoices.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(3), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 737, Sec. 3, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 165, Sec. 22(46), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3H.04, eff. September 1, 2009.

SUBCHAPTER Z. OTHER MISCELLANEOUS PROVISIONS

Sec. 130.901. SALE OF RIGHTS TO JUDGMENT PROCEEDS. (a) The commissioners court of a county may sell the rights of the county to

any judgment proceeds belonging to the county if the principal and sureties on the judgment are insolvent so that under any existing process of law the judgment cannot be collected, either in whole or in part. The court may advertise the sale to the extent that it considers necessary and in the best interest of the county.

(b) If the amount bid for the rights to the judgment proceeds at the public sale is not considered sufficient, the commissioners court shall refuse to accept the bid and shall dispose of the rights in the manner considered most advantageous to the county's interest.

(c) If the court sells the rights to the judgment proceeds, the court shall properly assign the rights to the purchaser.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 130.001 by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(1), eff. Aug. 28, 1989.

Sec. 130.902. CHANGE FUND IN COUNTIES. (a) The commissioners court of a county may set aside from the general fund of the county an amount approved by the county auditor for use as a change fund by any county or district official who collects public funds. The fund may be used only to make change in connection with collections that are due and payable to the county, the state, or another political subdivision of the state that are often made by the official.

(b) The bond of that official who receives such a change fund must cover the official's responsibility for the correct accounting and disposition of the change fund.

(c) A change fund may not be used to make loans or advances or to cash checks or orders for payment of any kind.

(d) On the recommendation of the county auditor, the commissioners court may increase or decrease the change fund at any time.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 130.002 by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(1), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 727, Sec. 1, eff. Aug. 28, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 28, eff. September 1, 2011.

Sec. 130.904. SHERIFF'S PETTY CASH FUND. (a) The commissioners court of a county may establish a petty cash fund for the sheriff's department in an amount set by the commissioners court. The court shall appropriate the amount from the general fund of the county.

(b) Unless otherwise authorized by a resolution of the commissioners court, the petty cash fund may be used only to advance funds to an officer or employee of the sheriff's department who is required to travel outside the county to conduct an investigation or to obtain custody of a prisoner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 130.004 by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(1), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 578, Sec. 4, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 88, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 123, Sec. 1, eff. May 11, 1993.

Sec. 130.905. PETTY CASH FUND FOR COUNTY WELFARE DEPARTMENT IN POPULOUS COUNTY. (a) The commissioners court of a county with a population of 1.3 million or more, for the support of paupers through a county welfare department, may authorize the disbursement of an amount not to exceed $2,500 to the head of the county welfare department for use as a petty cash fund in order that cash is immediately available for transportation and other expenses of the paupers. The petty cash fund must be established under a system provided and installed by the county auditor with reports to be made to the auditor, as the auditor may require, by the head of the county welfare department.

(b) In making payments to support the paupers that the county is required to support, the commissioners court, with the concurrence of the county auditor, may make one payment to the head of the county welfare department. The head of the county welfare department may disburse the money to the paupers on orders for payment designed by the county auditor. The orders are subject to audit by the county auditor at any time. The disbursements must be reported on forms and at times prescribed by the auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 130.005 by Acts 1989, 71st Leg., ch. 1, Sec.

23(a)(1), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 55, 56, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 29, eff. September 1, 2011.

Sec. 130.906. NATIONAL FOREST RECEIPTS ALLOCATED FOR SCHOOL DISTRICTS AND ROADS. The commissioners court of a county in which a national forest is located and that receives funds from the federal government under 16 U.S.C. Section 500 shall allocate 50 percent of the funds to the school districts of the county in proportion to the area encompassed by each district and shall either allocate the remaining 50 percent for the benefit of the public roads in the county or transfer that amount to the school districts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 130.006 by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(1), eff. Aug. 28, 1989.

Sec. 130.907. AID TO STATE AND FEDERAL AGENCIES IN COUNTY WITH POPULATION OF 22,050 TO 23,000. In each county with a population of 22,050 to 23,000, the commissioners court may provide financial aid and facilities, as the court considers necessary, to a state or federal governmental agency or bureau that conducts activities or maintains projects within the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 130.007 by Acts 1989, 71st Leg., ch. 1, Sec. 23(a)(1), eff. Aug. 28, 1989.

Sec. 130.908. APPROVAL OF SPENDING BY CERTAIN COUNTY AND PRECINCT OFFICERS. If an incumbent county or precinct officer is not renominated or is not reelected to the county or precinct office of a county, during the time following the date the results of the official canvass of the primary or election returns are announced, the commissioners court must approve any expenditure by the incumbent county or precinct officer who was not renominated or reelected that is over an amount set by the commissioners court.

Added by Acts 1991, 72nd Leg., ch. 793, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 2003, 78th Leg., ch. 592, Sec. 1, eff. Sept. 1, 2003.

Sec. 130.909. PETTY CASH FUNDS FOR CERTAIN OFFICIALS. (a) The commissioners court of a county may set aside from the general fund of the county, for the establishment of a petty cash fund for any county or district official or department head approved by the commissioners court, an amount approved by:

(1) the county auditor, for a county with a population of 3.3 million or more; or

(2) the commissioners court, for a county with a population of less than 3.3 million.

(a-1) The petty cash fund must be established under a system provided and installed by the county auditor and, in a county with a population of 3.3 million or more, the county purchasing agent. Reports relating to the petty cash fund must be made to the auditor and, if applicable, the purchasing agent as the auditor or purchasing agent requires.

(a-2) Falsifying documents or reports relating to the petty cash fund is an offense according to Section 32.21 or 37.10, Penal Code.

(b) The bond of that county or district official or department head who receives such a petty cash fund must cover the official's responsibility for the correct accounting and disposition of the petty cash fund.

(c) The petty cash fund may not be used to make loans or advances or to cash checks or orders for payment of any kind.

(d) On the recommendation of the county auditor, the commissioners court may increase or decrease the petty cash fund at any time.

Added by Acts 1995, 74th Leg., ch. 60, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 57, 58, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 830 (S.B. 829), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 830 (S.B. 829), Sec. 2, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 606 (S.B. 373), Sec. 30, eff. September 1, 2011.

Sec. 130.910. AID TO DISASTER VICTIMS. (a) Subject to Subsection (b), the commissioners court of a county may provide money from the general fund of the county to individual residents of the county who are adversely affected by a disaster for which the county judge declared a local state of disaster under Section 418.108, Government Code.

(b) A county may not provide assistance to an individual under this section until the commissioners court of the county:

(1) has implemented policies and procedures to ensure that money granted under this section is used for the public purpose of providing disaster relief for emergency food, shelter, transportation, or other items or services necessary for public health and safety; and

(2) has determined that financial assistance from other sources, including this state and the federal government, is unavailable or inadequate.

Added by Acts 2009, 81st Leg., R.S., Ch. 784 (S.B. 1112), Sec. 1, eff. June 19, 2009.

Sec. 130.911. RURAL SHERIFF'S OFFICE SALARY ASSISTANCE GRANT PROGRAM. (a) In this section:

(1) "Grant" means a grant authorized to be awarded by the comptroller under the rural sheriff's office salary assistance grant program established by this section.

(2) "Qualified county" means a county with a population of 300,000 or less.

(b) The comptroller shall establish and administer the rural sheriff's office salary assistance grant program to support the state purpose of ensuring professional law enforcement throughout the state by providing financial assistance to sheriff's offices in qualified counties.

(c) Not later than the 30th day after the first day of a qualified county's fiscal year, the county may submit an application for a grant to the comptroller. A county may submit only one

application each fiscal year.

(d) The comptroller shall award a grant to a qualified county that applies for the grant using money appropriated to the comptroller for that purpose. The grant must be in the following applicable amount:

(1) $250,000 if the county has a population of less than 10,000;

(2) $350,000 if the county has a population of 10,000 or more and less than 50,000; or

(3) $500,000 if the county has a population of 50,000 or more and 300,000 or less.

(e) A county that is awarded a grant shall use or authorize the use of the grant money only:

(1) to provide a minimum annual salary of at least:

(A) $75,000 for the county sheriff;

(B) $45,000 for each deputy who makes motor vehicle stops in the routine performance of their duties; and

(C) $40,000 for each jailer whose duties include the safekeeping of prisoners and the security of a jail operated by the county;

(2) to increase the salary of a person described by Subdivision (1);

(3) to hire additional deputies or staff for the sheriff's office; or

(4) to purchase vehicles, firearms, and safety equipment for the sheriff's office.

(f) A county that is awarded a grant may not use or authorize the use of the grant money for a purpose other than to meet the minimum salary requirements prescribed by Subsection (e)(1) until those requirements are satisfied.

(g) A county may not reduce the amount of funds provided to the sheriff's office because of grant funds provided under this section.

(h) The comptroller shall adopt rules necessary to implement this section, including rules that establish:

(1) a standardized application process, including the form to be used to apply for a grant and the manner of submitting the form;

(2) deadlines for:

(A) applying for the grant;

(B) disbursement of grant money; and

(C) spending grant money; and

(3) procedures for:

(A) monitoring the disbursement of grant money to ensure compliance with this section; and

(B) the return of grant money that was not used by a county for a purpose authorized by this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 370 (S.B. 22), Sec. 1, eff. September 1, 2023.

Sec. 130.912. RURAL CONSTABLE'S OFFICE SALARY ASSISTANCE GRANT PROGRAM. (a) In this section:

(1) "Grant" means a grant authorized to be awarded by the comptroller under the rural constable's office salary assistance grant program established by this section.

(2) "Qualified constable" means a constable elected to an office created on or before January 1, 2023, who primarily makes motor vehicle stops in the routine performance of the constable's duties.

(3) "Qualified county" means a county with a population of 300,000 or less.

(b) The comptroller shall establish and administer the rural constable's office salary assistance grant program to support the state purpose of ensuring professional law enforcement throughout the state by providing financial assistance to constable's offices in qualified counties.

(c) Not later than the 30th day after the first day of a qualified county's fiscal year, the county may submit an application for a grant to the comptroller. A county may submit only one application each fiscal year.

(d) The comptroller shall award a grant to a qualified county that applies for the grant using money appropriated to the comptroller for that purpose. The comptroller may only award a grant to a county if the county agrees in writing to contribute at least 75 percent of the money required to meet the minimum annual salary requirement established under Subsection (e) for each qualified constable for which the county will also use grant money to provide that salary.

(e) Subject to Subsection (d), a county that is awarded a grant

shall use or authorize the use of the grant money only to provide a minimum annual salary of $45,000 to a qualified constable.

(f) A county may not reduce the amount of funds provided to the constable's office because of grant funds provided under this section.

(g) The comptroller shall adopt rules necessary to implement this section, including rules that establish:

(1) a standardized application process, including the form to be used to apply for a grant and the manner of submitting the form;

(2) deadlines for:

(A) applying for the grant;

(B) disbursement of grant money; and

(C) spending grant money;

(3) procedures for:

(A) monitoring the disbursement of grant money to ensure compliance with this section; and

(B) the return of grant money that was not used by a county for a purpose authorized by this section; and

(4) standards to determine if a constable is a qualified constable.

Added by Acts 2023, 88th Leg., R.S., Ch. 370 (S.B. 22), Sec. 1, eff. September 1, 2023.

Sec. 130.913. RURAL PROSECUTOR'S OFFICE SALARY ASSISTANCE GRANT PROGRAM. (a) In this section:

(1) "Grant" means a grant authorized to be awarded by the comptroller under the rural prosecutor's office salary assistance grant program established by this section.

(2) "Qualified prosecutor's office" means, in a jurisdiction with a population of 300,000 or less, the office of a district attorney, criminal district attorney, or county attorney with criminal prosecution duties.

(b) The comptroller shall establish and administer the rural prosecutor's office salary assistance grant program to support the state purpose of ensuring professional legal representation of the people's interests throughout the state by providing financial assistance to qualified prosecutor's offices.

(c) Not later than the 30th day after the first day of a qualified prosecutor's office's fiscal year, the prosecutor's office may submit an application for a grant to the comptroller. A prosecutor's office may submit only one application each fiscal year.

(d) The comptroller shall award a grant to a qualified prosecutor's office that applies for the grant using money appropriated to the comptroller for that purpose. The grant must be in the following applicable amount:

(1) $100,000 if the prosecutor's office's jurisdiction has a population of less than 10,000;

(2) $175,000 if the prosecutor's office's jurisdiction has a population of 10,000 or more and less than 50,000; or

(3) $275,000 if the prosecutor's office's jurisdiction has a population of 50,000 or more and 300,000 or less.

(e) A prosecutor's office that is awarded a grant shall use or authorize the use of the grant money only:

(1) to increase the salary of an assistant attorney, an investigator, or a victim assistance coordinator employed at the office; or

(2) to hire additional staff for the office.

(f) A county may not reduce the amount of funds provided to a prosecutor's office because of grant funds provided under this section.

(g) The comptroller shall adopt rules necessary to implement this section, including rules that establish:

(1) a standardized application process, including the form to be used to apply for a grant and the manner of submitting the form;

(2) deadlines for:

(A) applying for the grant;

(B) disbursement of grant money; and

(C) spending grant money; and

(3) procedures for:

(A) monitoring the disbursement of grant money to ensure compliance with this section; and

(B) the return of grant money that was not used by a qualified prosecutor's office for a purpose authorized by this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 370 (S.B. 22), Sec. 1, eff.

September 1, 2023.

SUBTITLE C. FINANCIAL PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 131. DEPOSITORY PROVISIONS AFFECTING FUNDS OF MUNICIPALITIES, COUNTIES, AND OTHER LOCAL GOVERNMENTS

SUBCHAPTER A. SPECIAL DEPOSITORY

Sec. 131.001. SPECIAL DEPOSITORY AUTHORIZED. If a financial institution that is a depository under state law for the public funds of a county, municipality, or district suspends business or is taken charge of by a state or federal bank regulatory agency, the local government authority authorized to select the original depository may select by contract a special depository for the public funds in the suspended financial institution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 5.010, eff. Sept. 1, 1999.

Sec. 131.002. DUTIES OF SPECIAL DEPOSITORY. The special depository shall assume the payment of the amount of public funds due by the suspended bank on the date of its suspension, including interest to that date, and shall pay that amount to the designated local government authority in accordance with the contract entered into by the special depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 131.003. SPECIAL DEPOSITORY CONTRACT. (a) The contract must require the payment of the deposit in installments as agreed to by the parties. The last installment must be paid not later than three years from the date of the contract.

(b) The parties may contract for the installments or the amount due to be evidenced by negotiable certificates of deposit or cashier's checks, payable at specified dates.

(c) The contract must set the rate of interest applicable to the funds placed in the special depository under this subchapter unless the parties agree that the funds are not to bear interest.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 131.004. BOND. (a) To secure the performance of a special depository contract, the special depository shall execute a bond, or bonds in the case of installments, with the same character of sureties required for regular depository bonds.

(b) The local government authority authorized by law to approve a bond of a regularly selected depository must approve a bond of a special depository.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 131.005. STATE FUNDS. (a) The comptroller shall determine the amount of state funds held by a county depository that suspends business or is taken charge of by a state or federal bank regulatory agency. The comptroller may:

(1) contract with a special depository selected by the county authorities as provided by this subchapter for the custody and payment of those funds; and

(2) approve a bond for the deposit contract.

(b) State funds placed in a special depository as provided by Subsection (a) shall bear the average rate of interest received by the state on state funds placed with regularly selected state depositories.

(c) The comptroller may proceed with available legal remedies against a suspended bank that is a depository for state funds if the comptroller considers that action to be in the best interest of the public.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 35, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 5.011, eff. Sept. 1, 1999.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 131.901. OUT-OF-STATE DEPOSITORY PROHIBITED. (a) The governing body of a political subdivision, including a county, municipality, school district, or other district, may not designate a financial institution located outside the state as a depository for

funds under the governing body's jurisdiction. An out-of-state financial institution is not considered to be located outside this state to the extent the governing body designates a branch office of such institution that is located in this state.

(b) An institution selected as a paying agent or trustee for specific bonds or obligations or an institution selected by the governing body to provide safekeeping services is not considered a depository for purposes of this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 234, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 344, Sec. 5.012, eff. Sept. 1, 1999.

Sec. 131.902. PURSUIT OF LEGAL REMEDIES AGAINST SUSPENDED BANK. A county, municipality, or district authority may proceed with available legal remedies against a suspended bank that is a depository for public funds of the authority if the authority considers that action to be in the best interest of the public.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 131.903. CONFLICT OF INTEREST. (a) A bank is not disqualified from serving as a depository for funds of a political subdivision if:

(1) an officer or employee of the political subdivision who does not have the duty to select the political subdivision's depository is an officer, director, or shareholder of the bank; or

(2) one or more officers or employees of the political subdivision who have the duty to select the political subdivision's depository are officers or directors of the bank or own or have a beneficial interest, individually or collectively, in 10 percent or less of the outstanding capital stock of the bank, if:

(A) a majority of the members of the board, commission, or other body of the political subdivision vote to select the bank as a depository; and

(B) the interested officer or employee does not vote or take part in the proceedings.

(b) This section may not be construed as changing or superseding a conflicting provision in the charter of a home-rule

municipality.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 36, eff. Sept. 1, 1993.

CHAPTER 132. PAYMENT OF FEES AND OTHER COSTS BY CREDIT CARD OR ELECTRONIC MEANS IN MUNICIPALITIES AND COUNTIES

Sec. 132.001. DEFINITIONS. In this chapter:

(1) "Credit card" means a card, plate, or similar device used to make purchases on credit or to borrow money.

(2) "Payment by electronic means" means payment by telephone or computer but does not include payment in person or by mail.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 148, Sec. 5, eff. Sept. 1, 1997.

Sec. 132.002. PAYMENT OF FEES OR COSTS BY CREDIT CARD OR ELECTRONIC MEANS. (a) The commissioners court of a county may authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by credit card, the electronic processing of checks, or other electronic means of a fee, fine, court costs, or other charge. The commissioners court may also authorize a county or precinct officer to collect and retain a reimbursement fee for processing the payment by credit card, the electronic processing of checks, or other electronic means.

(b) The governing body of a municipality may authorize a municipal official who collects fees, fines, court costs, or other charges to:

(1) accept payment by credit card of a fee, fine, court cost, or other charge; and

(2) collect a reimbursement fee for processing the payment by credit card.

(c) The governing body of a municipality may authorize the acceptance of payment by credit card without requiring collection of a reimbursement fee.

(d) The commissioners court may authorize a county or precinct officer who collects fees, fines, court costs, or other charges on behalf of the county or the state to accept payment by electronic

means of a fee, fine, court costs, or other charge. The commissioners court may also authorize a county or precinct officer to collect and retain a reimbursement fee for processing the payment by electronic means.

(e) A commissioners court may authorize the acceptance of payment by credit card or by electronic means without requiring collection of a reimbursement fee.

(f) The director of a community supervision and corrections department, with the approval of the judges described by Section 76.002, Government Code, may authorize a community supervision official who collects fees, fines, court costs, and other charges to:

(1) accept payment by debit card or credit card of a fee, fine, court cost, or other charge; and

(2) collect a reimbursement fee for processing the payment by debit card or credit card.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 148, Sec. 6, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 569, Sec. 1, eff. June 11, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1205 (H.B. 1678), Sec. 9, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1022 (H.B. 2717), Sec. 4, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 17, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 12.002, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.52, eff. January 1, 2020.

Sec. 132.003. REIMBURSEMENT FEE FOR PROCESSING CERTAIN PAYMENTS. (a) The commissioners court shall set a reimbursement fee in an amount that is reasonably related to the expense incurred by the county or precinct officer in processing the payment by credit card. However, the court may not set the fee authorized by this subsection in an amount that exceeds five percent of the amount of the fee, court cost, or other charge being paid.

(b) The governing body of a municipality shall set the

reimbursement fee in an amount that is reasonably related to the expense incurred by the municipal official in processing the payment by credit card. However, the governing body may not set the fee authorized by this subsection in an amount that exceeds five percent of the amount of the fee, fine, court cost, or other charge being paid.

(c) If the commissioners court authorizes collection of a reimbursement fee for processing a payment by electronic means under Section 132.002(d), the reimbursement fee shall be set:

(1) at a flat rate that does not exceed $5 for each payment transaction; or

(2) at a rate that is reasonably related to the expense incurred by the county or precinct officer in processing a payment by electronic means and that does not exceed five percent of the amount of the fee, court cost, or other charge being paid.

(d) In addition to the reimbursement fee set under Subsection (a), the commissioners court of a county may authorize a county or precinct officer to collect on behalf of the county from a person making payment by credit card a reimbursement fee in an amount equal to the amount of any transaction fee charged to the county by a vendor providing services in connection with payments made by credit card. The limitation prescribed by Subsection (a) on the amount of a reimbursement fee under that subsection does not apply to a reimbursement fee collected under this subsection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 148, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 126, Sec. 1, eff. May 15, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.53, eff. January 1, 2020.

Sec. 132.004. SERVICE CHARGE. If, for any reason, a payment by credit card is not honored by the credit card company on which the funds are drawn, the county or municipality may collect a service charge from the person who owes the fee, fine, court cost, or other charge. The service charge is in addition to the original fee, fine, court cost, or other charge and is for the collection of that original amount. The amount of the service charge is the same amount

as the fee charged for the collection of a check drawn on an account with insufficient funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 132.005. ENCUMBRANCE OF CREDIT CARDS; FEE. A county or municipality may contract with a company that issues credit cards to collect and seize credit cards issued by the company that are outdated or otherwise unauthorized. The county or municipality may charge the company a fee for the return of the credit cards.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 132.006. DISPOSITION OF FEES AND CHARGES. (a) The county or precinct officer collecting a fee or charge under this chapter shall deposit the fee or charge in the general fund of the county.

(b) The municipal official collecting a fee or charge under this chapter shall deposit the fee or charge in the general fund of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 132.007. INFORMATION, SERVICES, AND PAYMENT THROUGH THE INTERNET. (a) A county or municipality may provide through the Internet:

(1) access to information;

(2) collection of payments for taxes, fines, fees, court costs, or other charges; or

(3) other county and municipal services authorized by law.

(b) A county or municipality may charge a reasonable fee for providing access, collecting payments, or providing services authorized by this section.

(c) A county or municipality that provides access to information or provides services through the Internet under Subsection (a)(1) or (3):

(1) may only charge a fee for the access or service if the fee is designed to recover the costs directly and reasonably incurred in providing the access or service; and

(2) may charge the fee only if the governing body of the county or municipality determines that providing access to the information or providing the service through the Internet would not be feasible without the imposition of the charge.

(d) A county or municipality may contract with a vendor to provide access, collect payments, or provide services authorized by Subsection (a). A vendor must promptly submit to the county or municipality all payments collected on behalf of the county or municipality under this section. The county or municipality must approve any fee charged by a vendor under a contract authorized by this subsection.

Added by Acts 2001, 77th Leg., ch. 94, Sec. 1, eff. May 11, 2001.
Amended by Acts 2003, 78th Leg., ch. 1304, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 133. CRIMINAL AND CIVIL FEES PAYABLE TO THE COMPTROLLER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 133.001. PURPOSE. The purpose of this chapter is to consolidate and standardize:

(1) collection of fees payable to the comptroller in criminal and civil matters by:

(A) an officer of a court for deposit in a county or municipal treasury; or

(B) an officer of a county or municipality for deposit in the county or municipal treasury, as appropriate;

(2) remittance of those fees to the comptroller as required by this chapter and other law; and

(3) distribution of those fees by the comptroller to the proper accounts and funds in the state treasury.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.01, eff. January 1, 2020.

Sec. 133.002. DEFINITIONS. In this chapter:

(1) "Fee" means:

(A) a criminal fee listed under Section 133.003; and
(B) a civil fee listed under Section 133.004.
(2) "Indigent" means an individual who earns not more than 125 percent of the income standard established by applicable federal poverty guidelines.
(3) "Treasurer" means the custodian of money in a municipal or county treasury, as appropriate.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Sec. 133.003. CRIMINAL FEES. This chapter applies to the following criminal fees:
(1) the consolidated fee imposed under Section 133.102;
(2) fees for services of peace officers employed by the state imposed under Article 102.011, Code of Criminal Procedure, and forwarded to the comptroller as provided by Section 133.104 of this code; and
(3) fines on conviction imposed under Section 621.506(g), Transportation Code.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 1360 (S.B. 1704), Sec. 7, eff. September 1, 2005.
Acts 2005, 79th Leg., 2nd C.S., Ch. 3 (H.B. 11), Sec. 10, eff. December 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1014 (H.B. 1267), Sec. 5, eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.02, eff. January 1, 2020.

Sec. 133.004. CIVIL FEES. This chapter applies to the following civil fees:
(1) the consolidated fee imposed under Section 133.151;
(2) fees collected under Section 118.015;
(3) marriage license fees for the family trust fund collected under Section 118.018; and

(4) marriage license or declaration of informal marriage fees for the child abuse and neglect prevention trust fund account collected under Section 118.022.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.
Amended by:
Acts 2005, 79th Leg., 2nd C.S., Ch. 3 (H.B. 11), Sec. 11, eff. December 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 718 (H.B. 2359), Sec. 6, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1027 (H.B. 1623), Sec. 13, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1149 (S.B. 1119), Sec. 4, eff. September 1, 2007.
Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 372 (H.B. 1631), Sec. 5, eff. June 2, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.01, eff. January 1, 2022.

SUBCHAPTER B. REPORTING, COLLECTION, AND REMITTANCE OF FEES

Sec. 133.051. COLLECTION AND REMITTANCE OF FEES. (a) A municipality or county shall collect, record, account for, and remit to the comptroller all fees in the manner provided by this subchapter, except fees paid under Section 133.151 using the electronic filing system established under Section 72.031, Government Code.

(b) Fees paid under Section 133.151 using the electronic filing system established under Section 72.031, Government Code, shall be remitted directly to the treasury by the Office of Court Administration of the Texas Judicial System for disbursement and deposit as provided by that section.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.09, eff. January 1, 2022.

Sec. 133.052. DEPOSIT OF FEES. (a) An officer collecting a fee in a case in municipal court shall deposit the money in the municipal treasury.

(b) An officer collecting a fee in a justice, county, or district court shall deposit the money in the county treasury.

(c) A municipal or county clerk collecting a fee shall deposit the money in the municipal or county treasury, as appropriate.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Sec. 133.053. INTEREST-BEARING ACCOUNT. (a) The treasurer may deposit fees in an interest-bearing account.

(b) The municipality or county may retain any interest accrued on the money the treasurer deposited in the treasury if the treasurer remits the funds to the comptroller within the period prescribed by Section 133.055(a).

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Sec. 133.054. RECORDS. (a) An officer or clerk collecting a fee shall keep a record of the money collected.

(b) The treasurer shall keep a record of the money collected and on deposit in the treasury.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Sec. 133.055. QUARTERLY REMITTANCE OF FEES TO THE COMPTROLLER. (a) For fees paid to an officer of a court and not using the electronic filing system established under Section 72.031, Government Code, on or before the last day of the month following each calendar quarter, the treasurer shall:

(1) remit to the comptroller the money from all fees collected during the preceding quarter, except as provided by Section 133.058; and

(2) submit to the comptroller the report required under

Section 133.056 for criminal fees and Section 133.057 for civil fees.

(b) If the treasurer does not collect any fees during a calendar quarter, the treasurer shall file the report required for the quarter in the regular manner. The report must state that no fees were collected. This subsection does not apply to reimbursement or other fees or fines collected under Article 42A.303, Code of Criminal Procedure, or under Section 76.013, Government Code.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.74, eff. January 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 4.34, eff. January 1, 2020.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.10, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 919 (S.B. 1923), Sec. 7, eff. September 1, 2021.

Sec. 133.056. QUARTERLY REPORT FOR CRIMINAL FEES. (a) On the last day of the month following a calendar quarter, the treasurer shall report the criminal fees collected for the preceding calendar quarter.

(b) For fees collected for convictions of offenses committed on or after January 1, 2004, a municipality or county shall report the fees collected for a calendar quarter categorized according to the class of offense.

(c) For fees collected for convictions of offenses committed before January 1, 2004, a municipality or county shall report the total of fees collected for a calendar quarter.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Sec. 133.057. QUARTERLY REPORT FOR CIVIL FEES. On the last day of the month following a calendar quarter, the treasurer shall report the civil fees collected for the preceding calendar quarter.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Sec. 133.058. PORTION OF FEE RETAINED. (a) Except as otherwise provided by this section, a municipality or county may retain 10 percent of the money collected from fees as a service fee for the collection if the municipality or county remits the remainder of the fees to the comptroller within the period prescribed by Section 133.055(a).

(b) A municipality or county may retain an amount greater than 10 percent of the money collected from fees if retention of the greater amount is authorized by law.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(g)(5), eff. January 1, 2022.

Text of subsection as amended by Acts 2021, 87th Leg., R.S., Ch. 919 (S.B. 1923), Sec. 8

(d) A county may not retain a service fee on the collection of a reimbursement or other fee or fine:

(1) for the judicial fund;

(2) under Article 42A.303 or 42A.653, Code of Criminal Procedure;

(3) under Section 51.851, Government Code; or

(4) under Section 51.971, Government Code.

Text of subsection as amended by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.11

(d) A county may not retain a service fee on the collection of a fee or fine:

(1) for the judicial fund;

(2) under Article 42A.303 or 42A.653, Code of Criminal Procedure;

(3) under Section 51.851, Government Code; or

(4) for any state consolidated filing fee under Section 133.151.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 15.04(1), eff. September 1, 2019.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 10.02, eff. August 29, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1171 (H.B. 2949), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 41.02, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 460 (S.B. 967), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1290 (H.B. 2302), Sec. 17, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.75, eff. January 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 190 (S.B. 42), Sec. 23, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 606 (S.B. 891), Sec. 15.04(1), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 4.35, eff. January 1, 2020.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.11, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(g)(5), eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 919 (S.B. 1923), Sec. 8, eff. September 1, 2021.

Sec. 133.059. AUDIT. (a) The comptroller may audit the records of a county or municipality relating to fees collected under this chapter.

(b) Money spent from fees collected under this chapter is subject to audit by the state auditor.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

SUBCHAPTER C. CRIMINAL FEES

Sec. 133.101. MEANING OF CONVICTION. In this subchapter, a person is considered to have been convicted in a case if:

(1) a judgment, a sentence, or both a judgment and a

sentence are imposed on the person;

(2) the person receives community supervision, deferred adjudication, or deferred disposition; or

(3) the court defers final disposition of the case or imposition of the judgment and sentence.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Sec. 133.102. CONSOLIDATED FEES ON CONVICTION. (a) A person convicted of an offense shall pay as a court cost, in addition to all other costs:

(1) $185 on conviction of a felony;

(2) $147 on conviction of a Class A or Class B misdemeanor; or

(3) $62 on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle.

(b) The court costs under Subsection (a) shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The money collected under this section as court costs imposed on offenses committed on or after January 1, 2020, shall be allocated according to the percentages provided in Subsection (e).

(d) The money collected as court costs imposed on offenses committed before January 1, 2004, shall be distributed using historical data so that each account or fund receives the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately. The money collected as court costs imposed on offenses committed on or after January 1, 2004, but before January 1, 2020, shall be allocated according to the percentages provided in Subsection (e), as that subsection existed and was applied on December 31, 2019.

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been

collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) crime stoppers assistance account 0.2427 percent;

(2) breath alcohol testing account 0.3900 percent;

(3) Bill Blackwood Law Enforcement Management Institute account 1.4741 percent;

(4) Texas Commission on Law Enforcement account 3.4418 percent;

(5) law enforcement and custodial officer supplement retirement trust fund 7.2674 percent;

(6) criminal justice planning account 8.5748 percent;

(7) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University 0.8540 percent;

(8) compensation to victims of crime account 24.6704 percent;

(9) emergency radio infrastructure account 3.6913 percent;

(10) judicial and court personnel training account 3.3224 percent;

(11) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center account 0.8522 percent;

(12) fair defense account 17.8857 percent;

(13) judicial fund 12.2667 percent;

(14) DNA testing account 0.1394 percent;

(15) specialty court account 1.0377 percent;

(16) statewide electronic filing system account

0.5485 percent;

(17) jury service fund 6.4090 percent;

(18) youth diversion account 2.5956 percent; and

(19) transportation administrative fee account 4.3363 percent.

(f) Of each dollar credited to the Texas Commission on Law Enforcement account under Subsection (e)(4):

(1) 33.3 cents may be used only to pay administrative expenses; and

(2) the remainder may be used only to pay expenses related to continuing education for persons licensed under Chapter 1701, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 701 (H.B. 442), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1249 (S.B. 1664), Sec. 13(b), eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 966 (S.B. 2053), Sec. 1, eff. June 15, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.03, eff. January 1, 2020.

Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. 3186), Sec. 14, eff. January 1, 2024.

Sec. 133.104. FEES FOR SERVICES OF PEACE OFFICERS EMPLOYED BY THE STATE. (a) Fees imposed under Article 102.011, Code of Criminal Procedure, for services performed by peace officers employed by the state shall be forwarded to the comptroller after deducting four-fifths of the amount of each fee received for a service performed under Subsection (a)(1) or (a)(2) of that article, in a manner directed by the comptroller.

(b) The comptroller shall credit fees received under Subsection (a) to the general revenue fund.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1,

2004.

SUBCHAPTER C-1. ALLOCATION AND USE OF CERTAIN CRIMINAL FEES

Sec. 133.121. ALLOCATION OF FEES TO SPECIALTY COURT ACCOUNT. (a) The specialty court account is an account in the general revenue fund. The account consists of money allocated to the account under Section 133.102(e). Money in the account may be used only to fund specialty court programs established under Subtitle K, Title 2, Government Code.

(b) The legislature may appropriate money from the specialty court account only to the criminal justice division of the governor's office for distribution to specialty court programs that apply for the money.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.04, eff. January 1, 2020.

Sec. 133.122. ALLOCATION OF FEES TO JURY SERVICE FUND. (a) The jury service fund is created in the state treasury. The fund consists of money allocated to the fund under Section 133.102(e). Money in the fund may be appropriated only to provide juror reimbursements to counties.

(b) If, at any time, the unexpended balance of the jury service fund exceeds $10 million, the comptroller shall transfer the amount in excess of $10 million to the fair defense account.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.04, eff. January 1, 2020.

Sec. 133.123. ALLOCATION OF FEES TO DNA TESTING ACCOUNT. The DNA testing account is an account in the general revenue fund. The account consists of money allocated to the account under Section 133.102(e). Money in the account may be appropriated only to the Department of Public Safety to help defray the cost of collecting or analyzing DNA samples provided by defendants who are required to pay a court cost under Section 133.102.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.04,

eff. January 1, 2020.

Sec. 133.124. ALLOCATION OF FEES TO TRANSPORTATION ADMINISTRATIVE FEE ACCOUNT. The transportation administrative fee account is an account in the general revenue fund. The account consists of money allocated to the account under Section 133.102(e). Money in the account may be appropriated only to the Department of Public Safety to defray the administrative costs associated with implementing Chapter 706, Transportation Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.04, eff. January 1, 2020.

Sec. 133.125. ALLOCATION OF FEES TO YOUTH DIVERSION ACCOUNT. (a) The youth diversion account is a dedicated account in the general revenue fund. The account consists of money allocated to the account under Section 133.102(e).

(b) The legislature may appropriate money from the youth diversion account only to the criminal justice division of the governor's office for distribution to local governmental entities for youth diversion services.

(c) A local governmental entity may request funds from the criminal justice division of the governor's office for providing youth diversion services. The division may award the requested funds based on the availability of appropriated funds and subject to the application procedure and eligibility requirements specified by division rule.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1213 (S.B. 1419), Sec. 2, eff. September 1, 2013.
Transferred, redesignated and amended from Code of Criminal Procedure, Art/Sec 102.015 by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.06, eff. January 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. 3186), Sec. 15, eff. January 1, 2024.

SUBCHAPTER D. CIVIL FEES

Sec. 133.151. STATE CONSOLIDATED CIVIL FEE ON FILING A CIVIL CASE. (a) The clerk of a district court, statutory county court, statutory probate court, or county court shall collect:

(1) a fee in the amount of $137 on the filing of any civil, probate, guardianship, or mental health case; and

(2) a fee in the amount of $45 on any action other than an original action subject to Subdivision (1), including any counterclaim, cross-action, intervention, contempt action, adverse probate action, interpleader, motion for new trial, motion to reinstate, or third-party action.

(a-1) The clerk of a justice court shall collect a fee in the amount of $21 on the filing of any civil case and on any action other than an original action for the civil case, including an appeal and any counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, motion to reinstate, or third-party action.

(b) The fees under this section shall be collected and remitted either:

(1) directly to the treasury by the Office of Court Administration of the Texas Judicial System for fees paid using the electronic filing system established under Section 72.031, Government Code; or

(2) to the comptroller in the manner provided by Subchapter B for fees paid to an officer of a court.

(c) The comptroller shall allocate the fees received under Subsection (a)(1) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the judicial fund to be used for court-related purposes for the support of the judiciary 59.854 percent;

(2) the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent 14.5985 percent;

(3) the statewide electronic filing system fund 21.8978 percent; and

(4) the judicial and court personnel training fund 3.6497 percent.

(d) The comptroller shall allocate the fees received under Subsection (a)(2) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic legal services to an indigent 22.2222 percent;

(2) the statewide electronic filing system fund 66.6667 percent; and

(3) the judicial and court personnel training fund 11.1111 percent.

(e) The comptroller shall allocate the fees received under Subsection (a-1) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the basic civil legal services account of the judicial fund for use in programs approved by the supreme court that provide basic civil legal services to an indigent 28.5714 percent;

(2) the statewide electronic filing system fund 47.6191 percent; and

(3) the judicial and court personnel training fund 23.8095 percent.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 62(a), eff. Jan. 1, 2004.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.02, eff. January 1, 2022.

Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 19, eff. January 1, 2024.

CHAPTER 134. CRIMINAL FEES PAYABLE TO LOCAL GOVERNMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001. PURPOSE. The purpose of this chapter is to consolidate and standardize collection of fees payable to a local government in criminal matters by:

(1) an officer of a court for deposit in a county or municipal treasury; or

(2) an officer of a county or municipality for deposit in the county or municipal treasury, as appropriate.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Sec. 134.002. DEFINITIONS. (a) In this chapter:

(1) "Fee" means a criminal fee listed under Section 134.003.

(2) "Treasurer" means the custodian of money in a municipal or county treasury, as appropriate.

(b) In this chapter, a person is considered to have been convicted in a case if:

(1) a judgment, a sentence, or both a judgment and a sentence are imposed on the person;

(2) the person receives community supervision, deferred adjudication, or deferred disposition; or

(3) the court defers final disposition of the case or imposition of the judgment and sentence.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Sec. 134.003. CRIMINAL FEES. This chapter applies to the criminal fees imposed under Sections 134.101, 134.102, and 134.103.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

SUBCHAPTER B. COLLECTION AND REMITTANCE OF LOCAL CRIMINAL FEES

Sec. 134.051. COLLECTION, REMITTANCE, AND DEPOSIT OF FEES. (a) A court clerk shall collect and remit to the county or municipal treasurer, as applicable, all fees in the manner provided by this

section.

(b) An officer collecting a fee in a case in municipal court shall remit the money to the municipal treasurer for deposit in the municipal treasury.

(c) An officer collecting a fee in a justice, county, or district court shall remit the money to the county treasurer for deposit in the county treasury.

(d) A court clerk collecting a fee shall remit the money to the municipal or county treasurer, as applicable, for deposit in the municipal or county treasury, as appropriate.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Sec. 134.052. ALLOCATION OF DEPOSITED FEES. (a) Money collected under Subchapter C as court costs imposed on offenses committed on or after January 1, 2020, shall be allocated according to the percentages provided by Sections 134.101, 134.102, and 134.103, as applicable.

(b) Money collected under Subchapter C as court costs imposed on offenses committed before January 1, 2020, shall be distributed using historical data so that each account or fund receives the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

SUBCHAPTER C. LOCAL CRIMINAL FEES

Sec. 134.101. LOCAL CONSOLIDATED FEE ON CONVICTION OF FELONY. (a) A person convicted of a felony shall pay $105 as a court cost, in addition to all other costs, on conviction.

(b) The treasurer shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund

may not receive less than the following percentages:

(1) the clerk of the court account 38.0953 percent;

(2) the clerks records management and preservation fund 23.8095 percent;

(3) the county jury fund 0.9524 percent;

(4) the courthouse security fund 9.5238 percent;

(5) the county and district court technology fund 3.8095 percent; and

(6) the county specialty court account 23.8095 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 20, eff. January 1, 2024.

Sec. 134.102. LOCAL CONSOLIDATED FEE ON CONVICTION OF CLASS A OR B MISDEMEANOR. (a) A person convicted of a Class A or Class B misdemeanor shall pay $123 as a court cost, in addition to all other costs, on conviction.

(b) The treasurer shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the clerk of the court account 32.5203 percent;

(2) the clerks records management and preservation fund 20.3252 percent;

(3) the account for prosecutor's fees 16.2602 percent;

(4) the county jury fund 0.8130 percent;

(5) the courthouse security fund 8.1301 percent;

(6) the county and district court technology fund 3.2520 percent;

(7) the court reporter service fund 2.4390 percent; and

(8) the county specialty court account 16.2602 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 21, eff. January 1, 2024.

Sec. 134.103. LOCAL CONSOLIDATED FEE ON CONVICTION OF NONJAILABLE MISDEMEANOR. (a) A person convicted of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, shall pay $14 as a court cost, in addition to all other costs, on conviction.

(b) The treasurer shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the courthouse security fund or municipal court building security fund, as appropriate
35 percent;

(2) the local youth diversion fund
35.7143 percent;

(3) the justice court technology fund or municipal court technology fund, as appropriate
28.5714 percent; and

(4) the county or municipal jury fund, as appropriate
0.7143 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. 3186), Sec. 16, eff. January 1, 2024.

SUBCHAPTER D. ALLOCATION AND USE OF CERTAIN CRIMINAL FEES

Sec. 134.151. MAINTENANCE OF FUNDS AND ACCOUNTS. (a) A county or municipal treasurer, as applicable, shall maintain in the county or municipal treasury a fund or account to which money is allocated under Section 134.101, 134.102, or 134.103, to the extent that the

fund or account is not required by other law. Money in an account maintained under this section may be used only for the purposes provided by this subchapter.

(b) An account or fund maintained under this section in a county treasury may be administered by or at the direction of the county commissioners court.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Sec. 134.152. CLERK OF THE COURT ACCOUNT. Money allocated under Section 134.101 or 134.102 to the clerk of the court account maintained in the county treasury as required by Section 134.151 may be used by a county only to defray costs of services provided by a county or district clerk.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Sec. 134.153. COUNTY SPECIALTY COURT ACCOUNT. Money allocated under Section 134.101 or 134.102 to the county specialty court account maintained in the county treasury as required by Section 134.151 may be used by a county only to fund specialty court programs established under Subtitle K, Title 2, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Sec. 134.154. COUNTY OR MUNICIPAL JURY FUND. Money allocated under Section 134.101, 134.102, or 134.103 to the county or municipal jury fund maintained in the county or municipal treasury, as applicable, and as required by Section 134.151 may be used by a county or municipality only to fund juror reimbursements and otherwise finance jury services.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

Sec. 134.155. CLERKS RECORDS MANAGEMENT AND PRESERVATION FUND. Money allocated under Section 134.101 or 134.102 to the clerks records management and preservation fund maintained in the county treasury as required by Section 134.151 may be used by a clerk only to fund records management and preservation services performed by the clerk who collects the fee.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 22, eff. January 1, 2024.

Sec. 134.156. LOCAL YOUTH DIVERSION FUND. (a) In a county or municipality that employs or contracts with a juvenile case manager under Article 45.056, Code of Criminal Procedure, money allocated under Section 134.103 to the local youth diversion fund maintained in the county or municipal treasury as required by Section 134.151 may be used by a county or municipality to finance the salary, benefits, training, travel expenses, office supplies, and other necessary expenses relating to the position of a juvenile case manager. If there is money in the fund after those costs are paid, subject to the direction of the governing body of the county or municipality and on approval by the employing court, a juvenile case manager may direct the remaining money to be used to implement programs directly related to the duties of the juvenile case manager, including juvenile alcohol and substance abuse programs, educational and leadership programs, and any other projects designed to prevent or reduce the number of juvenile referrals to the court.

(a-1) In a county or municipality that does not employ or contract with a juvenile case manager, the governing body of the county or municipality, in consultation with the court, may direct money described by Subsection (a) to be used for the support of a local mental health authority, juvenile alcohol and substance abuse programs, educational and leadership programs, teen court programs, and any other project designed to prevent or reduce the number of juvenile referrals to the court.

(b) Money in the fund may not be used to supplement the income of an employee whose primary role is not that of a juvenile case

manager.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. 3186), Sec. 17, eff. January 1, 2024.
Acts 2023, 88th Leg., R.S., Ch. 525 (H.B. 3186), Sec. 18, eff. January 1, 2024.
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.136, eff. January 1, 2025.

Sec. 134.157. ACCOUNT FOR PROSECUTOR'S FEES. Money allocated under Section 134.102 to the account for prosecutor's fees maintained in the county treasury as required by Section 134.151 may be used by a county only to defray the costs of services provided by a prosecutor.

Added by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 1.05, eff. January 1, 2020.

CHAPTER 135. CIVIL FEES PAYABLE TO LOCAL GOVERNMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 135.001. PURPOSE. The purpose of this chapter is to consolidate and standardize collection of fees payable to a local government in civil cases by:

(1) an officer of a court for deposit in a county treasury; or

(2) an officer of a county for deposit in the county treasury.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.002. DEFINITIONS. In this chapter:

(1) "Fee" means a civil fee listed under Section 135.003.

(2) "County treasurer" means the custodian of money in a county treasury.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.003. CIVIL FEES. This chapter applies to the civil fees imposed under Sections 135.101, 135.102, and 135.103 on civil, probate, guardianship, and mental health cases.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

SUBCHAPTER B. COLLECTION AND REMITTANCE OF LOCAL CIVIL FEES

Sec. 135.051. COLLECTION, REMITTANCE, AND DEPOSIT OF FEES. (a) A court clerk shall collect and remit to the county treasurer all fees in the manner provided by this section.

(b) An officer collecting a fee in a justice, county, or district court shall remit the money to the county treasurer for deposit in the county treasury.

(c) A court clerk collecting a fee shall remit the money to the county treasurer for deposit in the county treasury.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.052. ALLOCATION OF DEPOSITED FEES. (a) Money collected under Subchapter C as civil fees imposed on or after January 1, 2022, shall be allocated according to the percentages provided by Sections 135.101, 135.102, and 135.103, as applicable.

(b) Money collected under Subchapter C as civil fees before January 1, 2022, shall be distributed utilizing historical data so that each account or fund receives the same amount of money the account or fund would have received if the fee for the accounts and funds had been collected and reported separately. This subsection expires September 1, 2025.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

SUBCHAPTER C. LOCAL CIVIL FEES

Sec. 135.101. LOCAL CONSOLIDATED CIVIL FEE FOR CERTAIN CIVIL CASES IN DISTRICT COURT, STATUTORY COUNTY COURT, OR COUNTY COURT. (a) A person shall pay in a district court, statutory county court, or county court in addition to all other fees and court costs a local consolidated filing fee of:

(1) $213 on filing any civil case except a probate, guardianship, or mental health case; and

(2) $35 on any action other than an original action for a case subject to Subdivision (1), including an appeal and any counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, motion to reinstate, or third-party action.

(b) The county treasurer shall allocate the fees received under Subsection (a)(1) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the appellate judicial system fund 2.3474 percent;

(2) the court facility fee fund 9.3897 percent;

(3) the clerk of the court account 23.4742 percent;

(4) the clerks records management and preservation account 14.0845 percent;

(5) the court reporter service fund 11.7371 percent;

(6) the county law library fund 16.4319 percent;

(7) the courthouse security fund 9.3897 percent;

(8) the language access fund 1.4085 percent;

(9) the county jury fund 4.6948 percent; and

(10) the county dispute resolution fund 7.0423 percent.

(c) The county treasurer shall allocate the fees received under Subsection (a)(2) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the clerk of the court account 42.8571 percent; and

(2) the clerks records management and preservation account

57.1429 percent.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 23, eff. January 1, 2024.

Sec. 135.102. LOCAL CIVIL FEE FOR PROBATE, GUARDIANSHIP, AND MENTAL HEALTH CASES IN STATUTORY COUNTY COURT, STATUTORY PROBATE COURT, OR COUNTY COURT. (a) A person shall pay in a statutory county court, statutory probate court, or county court in addition to all other fees and court costs a fee of:

(1) $223 on filing any probate, guardianship, or mental health case; and

(2) $75 on any action other than an original action for a case subject to Subdivision (1), including an adverse probate action, contest, or suit in a probate court, other than the filing of a claim against an estate, in which the movant or applicant filing the intervention pleading seeks any affirmative relief.

(b) The county treasurer shall allocate the fees received under Subsection (a)(1) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the appellate judicial system fund 2.2422 percent;

(2) the court facility fee fund 8.9686 percent;

(3) the clerk of the court account 17.9372 percent;

(4) the clerks records management and preservation account 6.7265 percent;

(5) the court reporter service fund 11.2108 percent;

(6) the county law library fund 15.6951 percent;

(7) the courthouse security fund 8.9686 percent;

(8) the language access fund 1.3453 percent;

(9) the county jury fund 4.4841 percent;

(10) the county dispute resolution fund 6.7265 percent;

(11) the court-initiated guardianship fund 8.9686 percent;

(12) the judicial education and support fund 2.2422 percent; and

(13) the public probate administrator fund 4.4843 percent.

(c) The county treasurer shall allocate the fees received under Subsection (a)(2) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the clerk of the court account 53.3333 percent;

(2) the clerks records management and preservation account 6.6667 percent;

(3) the court-initiated guardianship fund 26.6667 percent; and

(4) the public probate administrator fund 13.3333 percent.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 24, eff. January 1, 2024.

Sec. 135.103. LOCAL CONSOLIDATED CIVIL FEE FOR JUSTICE COURT. (a) In addition to all other fees and court costs, a person shall pay a local consolidated filing fee of $33 on filing of any civil case in a justice court and on any action other than an original action for a civil case, including an appeal and any counterclaim, cross-action, intervention, contempt action, interpleader, motion for new trial, motion to reinstate, or third-party action.

(b) The county treasurer shall allocate the fees received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the fees for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) the justice court support fund 75.7576 percent;

(2) the county dispute resolution fund 15.1515 percent;

and

(3) the language access fund 9.0909 percent.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 25, eff. January 1, 2024.

SUBCHAPTER D. ALLOCATION AND USE OF CERTAIN CIVIL FEES

Sec. 135.151. MAINTENANCE OF FUNDS AND ACCOUNTS. (a) A county treasurer shall maintain in the county treasury a fund or account to which money is allocated under Section 135.101, 135.102, or 135.103, to the extent that the fund or account is not required by other law. Money in an account maintained under this section may be used only for the purposes provided by this subchapter.

(b) An account or fund maintained under this section in a county treasury may be administered by or at the direction of the county commissioners court.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.152. COURT FACILITY FEE FUND. Money allocated under Section 135.101 or 135.102 to the court facility fee fund maintained in the county treasury as required by Section 135.151 may be used by a county only to fund the construction, renovation, or improvement of facilities that house the courts or to pay the principal of, interest on, and costs of issuance of bonds, including refunding bonds, issued for the construction, renovation, or improvement of the facilities.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.153. CLERK OF THE COURT ACCOUNT. Money allocated under Section 135.101 or 135.102 to the clerk of the court account maintained in the county treasury as required by Section 135.151 may be used by a county only to defray costs of services provided by a

county or district clerk.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.154. CLERKS RECORDS MANAGEMENT AND PRESERVATION ACCOUNT. Money allocated under Section 135.101 or 135.102 to the clerks records management and preservation account maintained in the county treasury as required by Section 135.151 may be used by a clerk only to fund records management and preservation services, including automation, performed by the clerk who collects the fee on approval by the commissioners court of a budget as provided by Chapter 111. An expenditure from the fund must comply with Subchapter C, Chapter 262.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 256 (S.B. 1612), Sec. 26, eff. January 1, 2024.

Sec. 135.155. LANGUAGE ACCESS FUND. Money allocated under Section 135.101, 135.102, or 135.103 to the language access fund maintained in the county treasury as required by Section 135.151 may be used by a county only to provide language access services for individuals appearing before the court or receiving court services.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.156. COUNTY JURY FUND. Money allocated under Section 135.101 or 135.102 to the county jury fund maintained in the county treasury as required by Section 135.151 may be used by a county only to fund juror reimbursements and otherwise finance jury services.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.157. COUNTY DISPUTE RESOLUTION FUND. (a) Money allocated under Section 135.101, 135.102, or 135.103 to the county dispute resolution fund maintained in the county treasury as required by Section 135.151 may be used by a county only to establish and maintain an alternative dispute resolution system in accordance with Chapter 152, Civil Practice and Remedies Code. The fund shall be administered by the commissioners court and may be used by the county only to establish and maintain the system. The system shall be operated at one or more convenient and accessible places in the county.

(b) If a county has not established an alternative dispute resolution system under Chapter 152, Civil Practice and Remedies Code, the money allocated under Subsection (a) shall be remitted to the comptroller and the comptroller shall allocate the money to the statewide electronic filing system fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.158. COURT-INITIATED GUARDIANSHIP FUND. Money allocated under Section 135.102 to the court-initiated guardianship fund maintained in the county treasury as required by Section 135.151 may be used by a county only to supplement other available funds to:

(1) pay the compensation of a guardian ad litem appointed by a court under Section 1102.001, Estates Code;

(2) pay the compensation of an attorney ad litem appointed by a court to represent a proposed ward in a guardianship proceeding initiated under Chapter 1102, Estates Code; and

(3) fund local guardianship programs that provide guardians for indigent incapacitated persons who do not have family members suitable and willing to serve as guardians.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.159. JUDICIAL EDUCATION AND SUPPORT FUND. Money allocated under Section 135.102 to the judicial education and support fund maintained in the county treasury as required by Section 135.151 may be used by a county only to pay:

(1) the continuing education of the judge and staff of the probate court, including the payment of travel and related expenses in attending a continuing judicial education activity of an organization accredited by the supreme court for continuing judicial education; or

(2) the county's contribution to fund the compensation required by Section 25.0022, Government Code, for the presiding judge of the statutory probate court.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.160. PUBLIC PROBATE ADMINISTRATOR FUND. Money allocated under Section 135.102 to the public probate administrator fund maintained in the county treasury as required by Section 135.151 may be used by a county only to support the office of public probate administrator established under Chapter 455, Estates Code. A county that does not appoint a public probate administrator subject to Chapter 455, Estates Code, shall deposit the money to the court-initiated guardianship fund.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

Sec. 135.161. JUSTICE COURT SUPPORT FUND. Money allocated under Section 135.103 to the justice court support fund maintained in the county treasury as required by Section 135.151 may be used by a county only to defray the costs of services provided by a justice court.

Added by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 1.03, eff. January 1, 2022.

CHAPTER 140. MISCELLANEOUS FINANCIAL PROVISIONS AFFECTING MUNICIPALITIES, COUNTIES, AND OTHER LOCAL GOVERNMENTS

Sec. 140.001. RELIEF UNDER FEDERAL BANKRUPTCY LAWS FOR MUNICIPALITY, TAXING DISTRICT, OR OTHER POLITICAL SUBDIVISION. (a) A municipality, taxing district, or other political subdivision that

is subject to this section may proceed under all federal bankruptcy laws intended to relieve municipal indebtedness.

(b) A municipality is subject to this section if it has the power to incur indebtedness through the action of its governing body. A taxing district or other political subdivision is subject to this section if it has the power to incur indebtedness either through the action of its governing body or through that of the county or municipality in which it is located.

(c) The officials and governing body of the municipality, taxing district, or other political subdivision may adopt all proceedings and take any action necessary or convenient to fully avail the entity of the federal bankruptcy laws.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 140.002. INVESTMENTS BY POLITICAL SUBDIVISION IN DEFENSE BONDS AND OTHER FEDERAL OBLIGATIONS. A political subdivision that has a balance remaining in any of its accounts at the end of a fiscal year may invest the balance in defense bonds or other obligations of the United States. If those funds are needed, the political subdivision shall sell or redeem the federal obligations in which the funds are invested and shall deposit the proceeds of the obligations in the account from which they were originally drawn.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 140.003. PURCHASING AND FINANCIAL ACCOUNTING FOR DISTRICT ATTORNEYS, JUVENILE BOARDS, AND PROBATION DEPARTMENTS. (a) In this section, "specialized local entity" means:

(1) a district or criminal district attorney;

(2) a juvenile board, juvenile probation office, or juvenile department established for one or more counties; or

(3) an adult probation office or department established for a judicial district.

(b) A specialized local entity shall purchase items in accordance with the same procedures and subject to the same requirements applicable to a county under Subchapter C, Chapter 262. For the purposes of this section, a specialized local entity is treated as if it were a county. A specialized local entity may make

a contract with a county under which the county performs purchasing functions for the entity.

(c) Within 30 days after the date the fiscal year of a district or criminal district attorney's office begins, the attorney shall:

(1) file with the commissioners court of each county in which the attorney has jurisdiction a complete financial statement of the office covering the preceding fiscal year; and

(2) prepare a budget for the current fiscal year and file it with each commissioners court.

(d) If a district or criminal district attorney's office regularly prepares its budget at a time different from the time prescribed by Subsection (c), the attorney shall prepare the budget at the regular time and file it with the commissioners court within 10 days after the date of its adoption.

(e) The financial statement required by Subsection (c) must contain any information considered appropriate by the district or criminal district attorney and any information required by the commissioners court of each county in which the attorney has jurisdiction.

(f) Each specialized local entity shall deposit in the county treasury of the county in which the entity has jurisdiction the funds the entity receives. The county shall hold, deposit, disburse, invest, and otherwise care for the funds on behalf of the specialized local entity as the entity directs. If a specialized local entity has jurisdiction in more than one county, the district judges having jurisdiction in those counties, by a majority vote, shall designate from among those counties the county responsible for managing the entity's funds.

(g) The county auditor, if any, of the county that manages a specialized local entity's funds has the same authority to audit the funds of the entity that the auditor has with regard to county funds.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 600, Sec. 2, eff. June 15, 1991.

Sec. 140.004. BUDGETS OF CERTAIN JUVENILE BOARDS AND COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS. (a) This section applies only to:

(1) a juvenile board, juvenile probation office, or

juvenile department established for one or more counties; and

(2) a community supervision and corrections department established for a judicial district.

(b) Before the 45th day before the first day of the fiscal year of a county, a juvenile board and a community supervision and corrections department that each have jurisdiction in the county shall:

(1) prepare a budget for the board's or department's next fiscal year; and

(2) hold a meeting to finalize the budget.

(c) Before the 14th day before the juvenile board or community supervision and corrections department has a meeting to finalize its budget, the board or department shall file with the commissioners court:

(1) a copy of the proposed budget; and

(2) a statement containing the date of the board's or department's meeting to finalize its budget.

(d) Before the later of the 90th day after the last day of the juvenile board's or community supervision and corrections department's fiscal year, or the date the county auditor's annual report is made to the commissioners court, the board or department shall file with the commissioners court a complete financial statement of the board or department covering the board's or department's preceding fiscal year.

(e) The financial statement required by Subsection (d) must contain any information considered appropriate by the juvenile board or community supervision and corrections department and any information required by the commissioners court of each county in which the board or department has jurisdiction.

(f) The budget for a juvenile board or community supervision and corrections department may not include an automobile allowance for a member of the governing body of the board or department if the member holds another state, county, or municipal office. The budget may include reimbursement of actual travel expenses, including mileage for automobile travel, incurred while the member is engaged in the official business of the board or department.

Added by Acts 1991, 72nd Leg., ch. 600, Sec. 1, eff. June 15, 1991.
Amended by Acts 1995, 74th Leg., ch. 713, Sec. 1, eff. Sept. 1, 1995.

Sec. 140.0045. ITEMIZATION OF CERTAIN EXPENDITURES REQUIRED IN CERTAIN POLITICAL SUBDIVISION BUDGETS. (a) Except as provided by Subsection (b), the proposed budget of a political subdivision must include, in a manner allowing for as clear a comparison as practicable between those expenditures in the proposed budget and actual expenditures for the same purpose in the preceding year, a line item indicating expenditures for:

(1) notices required by law to be published in a newspaper by the political subdivision or a representative of the political subdivision; and

(2) directly or indirectly influencing or attempting to influence the outcome of legislation or administrative action, as those terms are defined in Section 305.002, Government Code.

(b) Subsection (a)(1) does not apply to a junior college district.

Added by Acts 2017, 85th Leg., R.S., Ch. 563 (S.B. 622), Sec. 1, eff. June 9, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1070 (H.B. 1495), Sec. 3, eff. June 14, 2019.

Sec. 140.005. ANNUAL FINANCIAL STATEMENT OF SCHOOL, ROAD, OR OTHER DISTRICT. The governing body of a school district, open-enrollment charter school, junior college district, or a district or authority organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, shall prepare an annual financial statement showing for each fund subject to the authority of the governing body during the fiscal year:

(1) the total receipts of the fund, itemized by source of revenue, including taxes, assessments, service charges, grants of state money, gifts, or other general sources from which funds are derived;

(2) the total disbursements of the fund, itemized by the nature of the expenditure; and

(3) the balance in the fund at the close of the fiscal year.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 37, eff. Sept. 1. 1993.
Amended by Acts 2001, 77th Leg., ch. 1504, Sec. 34, eff. Sept. 1,

2001.

Sec. 140.006. PUBLICATION OF ANNUAL FINANCIAL STATEMENT BY SCHOOL, ROAD, OR OTHER DISTRICT. (a) Except as provided by Subsections (c) and (e), the presiding officer of a governing body shall submit a financial statement prepared under Section 140.005 to a newspaper in each county in which the district or any part of the district is located.

(b) If a district is located in more than one county, the financial statement may be published in a newspaper that has general circulation in the district. If a newspaper is not published in the county, the financial statement may be published in a newspaper in an adjoining county.

(c) The presiding officer of a school district shall submit a financial statement prepared under Section 140.005 to a daily, weekly, or biweekly newspaper published within the boundaries of the district. If a daily, weekly, or biweekly newspaper is not published within the boundaries of the school district, the financial statement shall be published in the manner provided by Subsections (a) and (b). The governing body of an open-enrollment charter school shall take action to ensure that the school's financial statement is made available in the manner provided by Chapter 552, Government Code, and is posted continuously on the school's Internet website.

(d) A statement shall be published not later than two months after the date the fiscal year ends, except that a school district's statement shall be published not later than the 150th day after the date the fiscal year ends and in accordance with the accounting method required by the Texas Education Agency.

(e) This section does not apply to an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 37, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 50, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1504, Sec. 35, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 41 (H.B. 978), Sec. 1, eff. May 8, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1140 (S.B. 2), Sec. 46, eff.

September 1, 2013.

Sec. 140.007. LEAST COST REVIEW PROGRAM. (a) To assist counties, the comptroller of public accounts may develop, promulgate, and widely distribute forms, with instruction, for cost accounting for public improvements. The comptroller shall consult with large and small governmental entities and the construction industry prior to the promulgation of the forms and instructions.

(b) The cost accounting forms shall be simple and concise and capable of being completed by the counties at a minimum cost. The form shall provide a simple comparison of the cost of public improvements constructed by a county's personnel, equipment, or facilities and a competitive bid submitted by the private sector.

(c) The forms and instructions promulgated and distributed shall provide for cost comparisons by all governmental entities, including but not limited to counties, municipalities, special districts, and any other such entities that construct public improvements in-house. The cost comparison forms, with instruction, shall be promulgated and distributed by May 21, 1994.

Added by Acts 1993, 73rd Leg., ch. 1042, Sec. 2, eff. Sept. 1, 1993. Renumbered from Local Government Code Sec. 140.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(37), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 65, eff. Sept. 1, 2003.

Sec. 140.008. ANNUAL REPORT OF CERTAIN FINANCIAL INFORMATION. (a) In this section:

(1) "Debt obligation" means an issued public security, as defined by Section 1201.002, Government Code.

(2) "Political subdivision" means a county, municipality, school district, junior college district, other special district, or other subdivision of state government. The term does not include a special purpose district described by Section 403.0241(b), Government Code.

(b) A political subdivision shall annually compile and report the following financial information in the manner prescribed by this section:

(1) as of the last day of the preceding fiscal year, debt

obligation information for the political subdivision that must state:

(A) the amount of all authorized debt obligations;

(B) the principal of all outstanding debt obligations;

(C) the principal of each outstanding debt obligation;

(D) the combined principal and interest required to pay all outstanding debt obligations on time and in full;

(E) the combined principal and interest required to pay each outstanding debt obligation on time and in full;

(F) the amounts required by Paragraphs (A)-(E) limited to authorized and outstanding debt obligations secured by ad valorem taxation, expressed as a total amount and, if the political subdivision is a municipality, county, or school district, as a per capita amount; and

(G) the following for each debt obligation:

(i) the issued and unissued amount;

(ii) the spent and unspent amount;

(iii) the maturity date; and

(iv) the stated purpose for which the debt obligation was authorized;

(2) the current credit rating given by any nationally recognized credit rating organization to debt obligations of the political subdivision; and

(3) any other information that the political subdivision considers relevant or necessary to explain the values required by Subdivisions (1)(A)-(F), including:

(A) an amount required by Subdivision (1)(F) stated as a per capita amount if the political subdivision is not required to provide the amount under that paragraph;

(B) an explanation of the payment sources for the different types of debt; and

(C) a projected per capita amount of an amount required by Subdivision (1)(F), as of the last day of the maximum term of the most recent debt obligation issued by the political subdivision.

(c) Instead of replicating in the annual report information required by Subsection (b) that is posted separately on the political subdivision's Internet website, the political subdivision may provide in the report a direct link to, or a clear statement describing the location of, the separately posted information.

(d) As an alternative to providing an annual report under Subsection (f), a political subdivision may provide to the

comptroller the information described by Subsection (b) and any other related information required by the comptroller in the form and in the manner prescribed by the comptroller. The comptroller shall post the information provided by the political subdivision and any other information the comptroller considers relevant or necessary on the comptroller's Internet website. The comptroller may post the information in the format that the comptroller determines appropriate, provided that the information for each political subdivision is easily located by searching the name of the political subdivision on the Internet. If the political subdivision maintains an Internet website, the political subdivision shall provide a link from the website to the location on the comptroller's website where the political subdivision's financial information may be viewed. The comptroller shall adopt rules necessary to implement this subsection.

(e) This subsection applies only to a municipality with a population of less than 15,000 or a county with a population of less than 35,000. As an alternative to providing an annual report under Subsection (f), a municipality or county may provide to the comptroller, in the form and in the manner prescribed by the comptroller, a document that includes the information described by Subsection (b). The comptroller shall post the information from the document submitted under this subsection on the comptroller's Internet website on a web page that is easily located by searching the name of the municipality or county on the Internet. If the municipality or county maintains or causes to be maintained an Internet website, the municipality or county shall provide a link from the website to the web page on the comptroller's website where the information may be viewed. The comptroller shall adopt rules necessary to implement this subsection.

(f) Except as provided by Subsection (d) or (e), the governing body of a political subdivision shall take action to ensure that:

(1) the political subdivision's annual report is made available for inspection by any person and is posted continuously on the political subdivision's Internet website until the political subdivision posts the next annual report; and

(2) the contact information for the main office of the political subdivision is continuously posted on the website, including the physical address, the mailing address, the main telephone number, and an e-mail address.

(g) Notwithstanding any other provision of this section, a

district, as defined by Section 49.001, Water Code, satisfies the requirements of this section if, on an annual basis, the district:

(1) complies with the requirements of Subchapter G, Chapter 49, Water Code, regarding audit reports, affidavits of financial dormancy, and annual financial reports; and

(2) either:

(A) submits the financial documents described by Subchapter G, Chapter 49, Water Code, to the comptroller in the form and manner prescribed by the comptroller; or

(B) takes action to ensure that the financial documents described by Subchapter G, Chapter 49, Water Code, are made available at a regular office of the district for inspection by any person and, if the district maintains an Internet website, are posted continuously for public viewing on the district's Internet website.

(h) The comptroller shall post the documents submitted to the comptroller under Subsection (g) and any other information the comptroller considers relevant or necessary on the comptroller's Internet website, to the extent that the documents as submitted to the comptroller are in a form that facilitates compliance with applicable technical accessibility standards and specifications established in the electronic and information resources accessibility policy adopted by the comptroller under other law. The comptroller shall adopt rules necessary to implement this subsection and Subsection (g).

(i) If information required to be posted by the comptroller under this section is posted separately on an Internet website that a state agency, the comptroller, or a political subdivision, including a district as defined by Section 49.001, Water Code, maintains or causes to be maintained, the comptroller may post on the comptroller's Internet website a direct link to, or a clear statement describing the location of, the separately posted information instead of or in addition to reproducing the required information on the comptroller's website.

Added by Acts 2015, 84th Leg., R.S., Ch. 923 (H.B. 1378), Sec. 1, eff. January 1, 2016.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 868 (H.B. 3001), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 868 (H.B. 3001), Sec. 3, eff.

September 1, 2019.

Sec. 140.009. CONTRACT FOR COLLECTION OF AMOUNTS IN CIVIL CASES. (a) The governing body of a municipality or the commissioners court of a county may contract with a private attorney or public or private vendor for the collection of an amount owed to the municipality or county relating to a civil case, including an unpaid fine, fee, or court cost, if the amount is more than 60 days overdue.

(b) A municipality or county contracting with an attorney or a vendor under Subsection (a) may authorize the addition of a collection fee of 30 percent of the amount referred. The collection fee may be used only to compensate the attorney or vendor who collects the debt.

(c) This section does not apply to the collection of commercial bail bonds.

Added by Acts 2013, 83rd Leg., R.S., Ch. 677 (H.B. 2021), Sec. 1, eff. June 14, 2013.

Sec. 140.011. LOCAL GOVERNMENTS DISPROPORTIONATELY AFFECTED BY PROPERTY TAX RELIEF FOR DISABLED VETERANS. (a) In this section:

(1) "General fund revenue" means revenue generated by a local government from the following sources during a fiscal year and deposited in the dedicated general operating fund of the local government during that fiscal year:

(A) ad valorem taxes;

(B) sales and use taxes;

(C) franchise taxes, fees, or assessments charged for use of the local government's right-of-way;

(D) building and development fees, including permit and inspection fees;

(E) court fines and fees;

(F) other fees, assessments, and charges; and

(G) interest earned by the local government.

(2) "Local government" means:

(A) a municipality adjacent to a United States military installation; and

(B) a county in which a United States military installation is wholly or partly located.

(3) "Qualified local government" means a local government entitled to a disabled veteran assistance payment under this section.

(b) To serve the state purpose of ensuring that the cost of providing ad valorem tax relief to disabled veterans is shared equitably among the residents of this state, a local government is entitled to a disabled veteran assistance payment from the state for each fiscal year that the local government is a qualified local government. A local government is a qualified local government for a fiscal year if the amount of lost ad valorem tax revenue calculated under Subsection (c) for that fiscal year is equal to or greater than two percent of the local government's general fund revenue for that fiscal year.

(c) For the purposes of this section, the amount of a local government's lost ad valorem tax revenue for a fiscal year is calculated by multiplying the ad valorem tax rate adopted by the local government under Section 26.05, Tax Code, for the tax year in which the fiscal year begins by the total appraised value of all property located in the local government that is granted an exemption from taxation under Section 11.131, Tax Code, for that tax year.

(d) A disabled veteran assistance payment made to a qualified local government for a fiscal year is calculated by subtracting from the local government's lost ad valorem tax revenue calculated under Subsection (c) for that fiscal year an amount equal to one percent of the local government's general fund revenue for that fiscal year.

(e) Not later than April 1 of the first year following the end of a fiscal year for which a qualified local government is entitled to a disabled veteran assistance payment, a qualified local government may submit an application to the comptroller to receive a disabled veteran assistance payment for that fiscal year. The application must be made on a form prescribed by the comptroller. The comptroller may require the qualified local government to submit an independent audit otherwise required by law to be prepared for the local government for the fiscal year for which a qualified local government is entitled to the payment.

(f) A qualified local government that does not submit an application to the comptroller by the date prescribed by Subsection (e) is not entitled to a disabled veteran assistance payment for the fiscal year for which that deadline applies.

(g) The comptroller shall review each application by a local government to determine whether the local government is entitled to a disabled veteran assistance payment. If the comptroller determines that the local government is entitled to the payment, the comptroller shall remit the payment from available funds to the qualified local government not later than the 30th day after the date the application for the payment is made.

(h) The comptroller shall transfer funds to a newly created account in the state treasury for the purpose of reimbursement of local governments under this section.

(i) The comptroller shall adopt rules necessary to implement this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 25, eff. September 1, 2015.

Sec. 140.012. FISCAL YEAR OF CERTAIN POLITICAL SUBDIVISIONS CREATED ON OR AFTER SEPTEMBER 1, 2019. (a) This section does not apply to a political subdivision that is a special district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(b) A political subdivision that is created on or after September 1, 2019, and that has authority to impose a tax must have the same fiscal year as the county in which the political subdivision is wholly or primarily located.

Added by Acts 2019, 86th Leg., R.S., Ch. 831 (H.B. 2617), Sec. 1, eff. September 1, 2019.

Sec. 140.013. BALANCE BILLING FOR COUNTY AND MUNICIPAL AMBULANCE SERVICES. (a) "Balance billing" means the practice of charging an enrollee in a health benefit plan to recover from the enrollee the balance of a health care provider's fee for a service received by the enrollee from the health care provider that is not fully reimbursed by the enrollee's health benefit plan.

(b) A county or municipality may elect to consider a health benefit plan payment towards a claim for air or ground ambulance services provided by the county or municipality as payment in full for those services regardless of the amount the county or

municipality charged for those services.

(c) A county or municipality may not practice balance billing for a claim for which the county or municipality makes an election under Subsection (b).

Added by Acts 2021, 87th Leg., R.S., Ch. 585 (S.B. 790), Sec. 2, eff. September 1, 2021.

TITLE 5. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES
SUBTITLE A. MUNICIPAL OFFICERS AND EMPLOYEES
CHAPTER 141. COMPENSATION AND EXPENSES OF MUNICIPAL OFFICERS AND EMPLOYEES
SUBCHAPTER A. COMPENSATION, EXPENSES, AND PAYROLL DEDUCTIONS

Sec. 141.001. ELECTED AND APPOINTED OFFICERS IN TYPE A GENERAL-LAW MUNICIPALITIES. (a) On or before January 1 preceding a regular municipal election, the governing body of a Type A general-law municipality shall set:

(1) the salary and any fees of office of the mayor to be elected at that election, if the office of mayor is to be filled at the election;

(2) the compensation of each other elected officer to be elected at that election; and

(3) the compensation of each officer appointed by the governing body.

(b) An officer's compensation set under this section may not be changed during the term for which the officer is elected or appointed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.002. APPOINTED OFFICERS IN TYPE B GENERAL-LAW MUNICIPALITIES. The governing body of a Type B general-law municipality may set the amount of compensation of officers appointed by the governing body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.003. GOVERNING BODY IN TYPE C GENERAL-LAW

MUNICIPALITIES. (a) In a Type C general-law municipality, the mayor and each member of the governing body are entitled to receive $5 a day for each regular meeting and $3 a day for each special meeting of the governing body.

(b) The mayor or a member of the governing body may not be paid for more than five special meetings in a single month.

(c) In a municipality with a population of 2,000 or more, in lieu of per diem compensation under Subsection (a), the governing body may set the salary of the mayor and each member of the governing body. The amount of salary set for the mayor may not exceed $1,200 a year and the amount of salary set for each member of the governing body may not exceed $600 a year.

(d) In a municipality with a population of less than 2,000, in lieu of per diem compensation under Subsection (a), the governing body may set the mayor's salary at an amount not to exceed $600 a year.

(e) The governing body may set the amount of salary or other compensation to be paid to the municipal clerk, the municipal attorney, the members of the police force, and other officers appointed by the governing body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.004. OFFICERS IN HOME-RULE MUNICIPALITIES. The governing body of a home-rule municipality may set the amount of compensation for each officer of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.005. ELECTED OFFICERS IN POPULOUS MUNICIPALITIES. (a) In a municipality with a population of 1.9 million or more, the governing body may set the amount of salary and expenses to be paid to elected officers by ordinance adopted in accordance with this section.

(b) The salary of a state district court judge of the county in which the municipality is located is the comparative salary for the ordinance. In the ordinance:

(1) the salary of the municipal comptroller may not exceed the comparative salary;

(2) the salary of a member of the governing body may not exceed 40 percent of the comparative salary; and

(3) the salary of the mayor may not exceed 150 percent of the comparative salary.

(c) The governing body shall publish notice of the proposed ordinance in a newspaper of general circulation in the municipality for two consecutive weeks immediately preceding the week in which the meeting is to be held at which the proposed ordinance is to be considered. The notice must include:

(1) a general description of the proposed ordinance;

(2) a statement that a public hearing will be held before the ordinance is adopted;

(3) a statement of the time and place of the public hearing; and

(4) a statement that any interested person may appear and testify at the hearing.

(d) The governing body must hold a public hearing before considering the adoption of the proposed ordinance. The ordinance must be approved by a majority vote of the membership of the governing body.

(e) A certified copy of an ordinance adopted under this section must be filed with the municipal secretary within 10 days after the date the ordinance is enacted. The ordinance takes effect on the first day of the next term of office for the officer to whom the ordinance applies, unless the ordinance prescribes a later effective date.

(f) The governing body may submit an ordinance proposed under this section to the voters for their approval in the same manner that charter amendments are submitted under Chapter 9. When an election is held under this subsection, another election on the same proposition may not be called until two years have elapsed after the date of the election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 59, 60, eff. Sept. 1, 2001.

Sec. 141.006. POLICE OFFICERS IN TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality shall set the compensation, including any fees of

office, for the municipal police officers and watchmen.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.007. POLICE RESERVE FORCE. The governing body of a municipality may provide for the uniform compensation of members of the municipal police reserve force. If a member of the reserve force is compensated, the compensation must be based only on the time served by the member in training for, or in the performance of, official duties. Members of the reserve force may serve without compensation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.008. PAYROLL DEDUCTIONS IN CERTAIN MUNICIPALITIES. (a) The governing body of a municipality with a population of more than 10,000 may deduct from a municipal employee's monthly salary or wages an amount requested in writing by the employee in payment of membership dues to a bona fide employees' association named by the employee.

(a-1) The governing body shall make the payroll deduction described by Subsection (a) if requested in writing by employees who are fire protection personnel as defined by Section 419.021, Government Code, if the municipality receives revenue from the state, and if the municipality permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which the municipality is required by law to permit a deduction.

Text of subsection effective until January 1, 2025

(a-2) The governing body shall make the payroll deduction described by Subsection (a) if:

(1) requested in writing by employees who:

(A) are peace officers as defined by Article 2.12, Code of Criminal Procedure; and

(B) are not members of a police department covered by a collective bargaining agreement or meet-and-confer agreement entered into under this code; and

(2) the municipality permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which

the municipality is required by law to permit a deduction.

Text of subsection effective on January 1, 2025

(a-2) The governing body shall make the payroll deduction described by Subsection (a) if:

(1) requested in writing by employees who:

(A) are peace officers as defined by Article 2A.001, Code of Criminal Procedure; and

(B) are not members of a police department covered by a collective bargaining agreement or meet-and-confer agreement entered into under this code; and

(2) the municipality permits deductions for purposes other than charity, health insurance, taxes, or other purposes for which the municipality is required by law to permit a deduction.

(b) Participation in the payroll deduction program by a municipal employee who is on active full-time duty is voluntary.

(c) An employee's written request must:

(1) be set out in a form prescribed and provided by the municipal treasurer or comptroller;

(2) state the amount to be deducted each month; and

(3) direct the municipal treasurer or comptroller to transfer the deducted funds to the designated employees' association.

(d) The amount deducted each month may not exceed the amount stated in the written request. However, the governing body of a municipality having a program under this section may impose and collect an administrative fee from each participating employee in addition to the membership dues that are withheld. The fee must be a reasonable amount to reimburse the municipality for the administrative costs of collecting, accounting for, and disbursing the membership dues.

(e) A request under this section remains in effect until the municipal treasurer or comptroller receives a written notice of revocation in a form prescribed and provided by the treasurer or comptroller and filed by the employee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 76A, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 813 (S.B. 716), Sec. 1, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.137, eff.

January 1, 2025.

Sec. 141.009. DEFINITIONS. (a) In this chapter, "member of the fire department" means an employee of the fire department who is defined as "fire protection personnel" by Section 419.021, Government Code.

(b) In this chapter, "member of the police department" means an employee of the police department who has been licensed as a peace officer by the Texas Commission on Law Enforcement.

Added by Acts 1989, 71st Leg., ch. 92, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.1031, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.47, eff. May 18, 2013.

Sec. 141.010. MUNICIPAL EMPLOYEES IN TYPE A AND B GENERAL-LAW MUNICIPALITIES. To the extent consistent with Subchapter B of this chapter and Chapters 142 and 143, the governing body of a Type A or B general-law municipality may consider longevity and cost of living in setting the salary of a municipal employee.

Added by Acts 2009, 81st Leg., R.S., Ch. 922 (H.B. 3001), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. COMPENSATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN CERTAIN MUNICIPALITIES

Sec. 141.031. BASE SALARY. (a) In a municipality with a population of 10,000 to 40,000, each member of the fire or police department is entitled to receive a salary of at least $165 a month.

(b) In a municipality with a population of 40,001 to 100,000, each member of the fire or police department is entitled to receive a salary of at least $195 a month.

(c) In a municipality with a population of 100,001 to 175,000, each member of the fire or police department is entitled to receive a salary of at least $210 a month.

(d) In a municipality with a population of more than 175,000,

each member of the fire or police department is entitled to receive a salary of at least $220 a month.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 10, eff. Sept. 1, 2001.

Sec. 141.032. LONGEVITY PAY. In a municipality with a population of 10,000 or more, each member of the fire or police department is entitled to receive, in addition to all other money paid for services rendered in the department, longevity pay of $4 a month for each year of service in the department, not to exceed 25 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.033. CLASSIFICATION OF POSITIONS; SALARY SCHEDULE. (a) Each municipality affected by this subchapter shall classify all positions in its fire and police departments and shall specify the duties and prescribe the salary for each classification.

(b) A member of the fire or police department who is required to perform the duties of a particular classification is entitled to be paid the salary prescribed for that position during the time the member performs those duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.034. PETITION TO INCREASE SALARIES. (a) The qualified voters of a municipality with a population of more than 10,000, may petition the governing body of the municipality in accordance with this section to increase the minimum salary of each member of the fire or police department.

(b) A petition under this section must:

(1) state the amount of the proposed minimum salary for each rank, pay grade, or classification;

(2) state the effective date of the proposed salary increase;

(3) designate five qualified voters to act as a committee of petitioners authorized to negotiate with the governing body of the

municipality under Subsection (g); and

(4) be signed by a number of qualified voters equal to at least 25 percent of the voters who voted in the most recent municipal election.

(c) When a petition is filed under this section, the governing body shall:

(1) adopt the proposed minimum salary stated in the petition;

(2) offer an alternative minimum salary proposal under Subsection (g); or

(3) call an election on the proposed minimum salary as provided by this section.

(d) If the governing body chooses to call an election, the only issue that may be submitted is whether the proposed minimum salary should be adopted. The election shall be held on the first authorized uniform election date under Chapter 41, Election Code, that occurs after the 65th day after the date the petition was filed.

(e) The ballot for the election shall be printed to provide for voting for or against the proposition: "Adoption of the proposed minimum salaries of _____ applicable to _____." The proposed salary for each rank, pay grade, or classification, the affected department, and effective date of the proposed minimum salary as stated in the petition must be inserted in the blank spaces.

(f) If a majority of the votes cast at the election favor the adoption of the proposed minimum salary, the governing body of the municipality shall cause the minimum salary to take effect not later than the date specified in the petition as the effective date.

(g) If the governing body chooses to offer an alternative minimum salary proposal, the governing body shall confer with the committee of petitioners designated in the petition and offer the alternative salary proposal. If the committee accepts the alternative salary proposal, the governing body is not required to call an election.

(h) When an election has been held or an alternative salary proposal has been accepted under this section, a petition for another election under this section may not be filed until one year has elapsed after the date the election was held or the alternative salary proposal was accepted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 141.035. PENALTY. (a) A person who is a municipal official in a municipality with a population of 10,000 or more and who is in charge of the fire or police department or is responsible for setting the compensation provided by this subchapter commits an offense if the person violates this subchapter.

(b) An offense under this section is punishable by a fine of not less than $10 or more than $100.

(c) Each day on which the municipal official causes or permits a violation of this subchapter to occur is a separate offense.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 142. ASSISTANCE, BENEFITS, AND WORKING CONDITIONS OF MUNICIPAL OFFICERS AND EMPLOYEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 142.001. GENERAL PROVISIONS RELATING TO HOURS OF LABOR AND VACATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN MUNICIPALITIES. (a) In Sections 142.0013, 142.0015, and 142.0017, "work cycle" means the period in a posted work schedule starting at the time the cycle begins and ending at the time the cycle begins to repeat itself. The cycle may span any number of days or weeks or a part of a day or week.

(b) A provision of Section 142.0013, 142.0015, or 142.0017 does not apply if it is inconsistent with a collective bargaining agreement that was in effect on August 31, 1987, and was made in accordance with The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes).

(c) Sections 142.0013 and 142.0015 do not prohibit the chief or head of a police department from assigning a police officer under the chief's or head's jurisdiction or supervision to work periods of uncompensated duty as prescribed by Section 143.055. A period of uncompensated duty may not be considered or otherwise taken into account in determining compliance with Section 142.0013 or 142.0015, and Section 142.0013 and Sections 142.0015(f), (g), (h), and (j) do not apply to or include periods of uncompensated duty to which a police officer is assigned.

(d) Sections 142.0013, 142.0015, and 142.0017 do not prevent a fire fighter or police officer from working extra hours when exchanging hours of work with another fire fighter or police officer with the consent of the department head.

(e) A municipal official having charge of a fire department or police department commits an offense if the official violates Section 142.0013, 142.0015, or 142.0017. An offense under this subsection is punishable by a fine of not less than $10 or more than $100. Each day on which the municipal official causes or permits the section to be violated constitutes a separate offense.

Amended by Acts 1989, 71st Leg., ch. 1, Sec. 24(a), eff. Aug. 28, 1989.

Sec. 142.0013. HOURS OF LABOR AND VACATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN CERTAIN MUNICIPALITIES. (a) A member of a fire or police department in a municipality with a population of more than 25,000 may not, except in an emergency, be required to be on duty more than six days in a week.

(b) A member of a fire or police department in a municipality with a population of more than 30,000 is entitled to 15 vacation days each year with pay if the member has been regularly employed in the department or departments for at least one year. The municipal officials supervising the fire and police departments shall designate the days of the week during which a member of a fire department or police department is not required to be on duty and the days during which the member is allowed to be on vacation.

(c) A fire fighter shall be granted the same number of vacation days and holidays, or days in lieu of vacation days or holidays, granted to other municipal employees, at least one of which shall be designated as September 11th.

(d) A police officer shall be granted the same number of vacation days and holidays, or days in lieu of vacation days or holidays, granted to other municipal employees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 24(a), eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1287 (H.B. 2113), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1287 (H.B. 2113), Sec. 2, eff.

September 1, 2009.

Sec. 142.0015. HOURS OF LABOR AND VACATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN MUNICIPALITY WITH POPULATION OF MORE THAN 10,000. (a) This section applies only in a municipality with a population of more than 10,000.

(b) A fire fighter or a member of a fire department who provides emergency medical services, other than the fire chief or the assistant chief or an equivalent classification, and who is required or permitted to work more than the number of hours that bears the same ratio to 212 hours as the number of days in the work period bears to 28 days is considered to have worked overtime. The person is entitled to be compensated for the overtime as provided by Subsection (e).

(c) A member of a fire department who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, and maintenance worker, other than the fire chief or the assistant chief or an equivalent classification, and who is required or permitted to average more hours in a week than the number of hours in a normal work week of the majority of the employees of the municipality other than fire fighters, emergency medical service personnel, and police officers, is considered to have worked overtime. The person is entitled to be compensated for the overtime as provided by Subsection (e).

(d) In computing the hours worked in a work week or the average number of hours worked in a work week during a work cycle of a fire fighter or other member of a fire department covered by this section, all hours are counted during which the fire fighter or other member of a fire department is required to remain on call on the employer's premises or so close to the employer's premises that the person cannot use those hours effectively for that person's own purposes. Hours in which the fire fighter or other member of a fire department is required only to leave a telephone number at which that person may be reached or to remain accessible by radio or pager are not counted. In computing the hours in a work week or the average number of hours in a work week during a work cycle of a fire fighter or a member of a fire department who provides emergency medical services, vacation, sick time, holidays, time in lieu of holidays, or compensatory time

may be excluded as hours worked.

(e) A fire fighter or other member of a fire department may be required or permitted to work overtime. A fire fighter or other member of a fire department, other than the fire chief or the assistant chief or an equivalent classification, who is required or permitted to work overtime as provided by Subsections (b) and (c) is entitled to be paid overtime for the excess hours worked without regard to the number of hours worked in any one week of the work cycle. Overtime hours are paid at a rate equal to 1-1/2 times the compensation paid to the fire fighter or member of the fire department for regular hours.

(e-1) Notwithstanding Subsection (d), in a municipality with a population of one million or more that has not adopted Chapter 143, for purposes of determining hours worked, including determining hours worked for calculation of overtime under Subsection (e), all hours are counted as hours worked during which the fire fighter or member of the fire department:

(1) is required to remain available for immediate call to duty by continuously remaining in contact with the fire department office by telephone, pager, or radio; or

(2) is taking any authorized leave, including attendance incentive leave, vacation leave, holiday leave, compensatory time off, jury duty, military leave, or leave because of a death in the family.

(f) Except as provided by Subsection (g) or (j), a police officer may not be required to work:

(1) more than 40 hours during a calendar week in a municipality that:

(A) has a population of more than one million;

(B) is not subject to Section 142.0017; and

(C) has not adopted Chapter 174; or

(2) in a municipality not described by Subdivision (1), more hours during a calendar week than the number of hours in the normal work week of the majority of the employees of the municipality other than fire fighters and police officers.

(f-1) In determining whether a police officer is considered to have been required to work overtime for purposes of Subsection (f)(1), all hours are counted during which the police officer:

(1) is required to remain available for immediate call to duty by continuously remaining in contact with a police department

office by telephone or by radio;

(2) is taking any authorized leave, including attendance incentive leave, vacation leave, holiday leave, compensatory time off, jury duty, military leave, or leave because of a death in the family; and

(3) is considered to have worked under Subsection (h).

(g) In the event of an emergency, a police officer may be required to work more hours than permitted by Subsection (f). An emergency is an unexpected happening or event or an unforeseen situation or crisis that calls for immediate action and requires the chief or head of the police department to order a police officer to work overtime.

(h) An officer required to work overtime in an emergency is entitled to be compensated for the overtime at a rate equal to 1-1/2 times the compensation paid to the officer for regular hours unless the officer elects, with the approval of the governing body of the municipality, to accept compensatory time equal to 1-1/2 times the number of overtime hours. For purposes of this subsection, compensable hours of work include all hours during which a police officer is:

(1) on duty on the premises of the municipality or at a prescribed workplace or required or permitted to work for the municipality, including preshift and postshift activities that are:

(A) an integral part of the officer's principal activity; or

(B) closely related to the performance of the principal activity; and

(2) away from the premises of the municipality under conditions that are so circumscribed that the officer is restricted from effectively using the time for personal pursuits.

(i) Bona fide meal periods are not counted as hours worked. For a bona fide meal period, which does not include coffee breaks or time for snacks, a police officer must be completely relieved from duty. Ordinarily, 30 minutes or more is long enough for a bona fide meal period. A period shorter than 30 minutes may be long enough for a bona fide meal period under special conditions. A police officer is not relieved from duty if the officer is required to perform any duties, whether active or inactive, during the meal period.

(j) If a majority of police officers working for a municipality sign a written waiver of the prohibition in Subsection (f), the

municipality may adopt a work schedule for police officers requiring a police officer to work more hours than permitted by Subsection (f). The officer is entitled to overtime pay if the officer works more hours during a calendar month than the number of hours in the normal work month of the majority of the employees of the municipality other than fire fighters and police officers.

(k) For purposes of this subsection, "police dispatcher" means an operator or dispatcher employed by a municipal police department who provides communication support services for the police department by responding to requests for assistance. If a majority of police dispatchers for a municipal police department vote in favor of an alternate work schedule, the municipality may adopt an alternate work schedule for the department's dispatchers. A dispatcher working under an alternate work schedule adopted under this subsection is entitled to overtime pay if the dispatcher works more hours during a calendar month than the number of hours in the normal work month of the majority of the employees of the municipality other than fire fighters and police officers.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 24(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 756, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 80 (H.B. 1562), Sec. 1, eff. May 14, 2007.

Acts 2007, 80th Leg., R.S., Ch. 229 (H.B. 1768), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1269 (H.B. 1146), Sec. 1, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 796 (H.B. 792), Sec. 1, eff. September 1, 2021.

Sec. 142.0016. USE OF COMPENSATORY TIME BY MEMBERS OF FIRE AND POLICE DEPARTMENTS IN MUNICIPALITY WITH POPULATION OF MORE THAN 10,000. (a) This section applies only in a municipality with a population of less than 1.5 million that is eligible to adopt civil service under Chapter 143.

(b) A fire fighter or police officer may, with the approval of the governing body of the municipality, accept instead of overtime pay compensatory time at a rate equal to 1-1/2 times the number of

overtime hours.

(c) A fire fighter or police officer may use compensatory time only when both the fire fighter or police officer and the municipality agree the time may be used.

(d) A municipality may at any time pay a fire fighter or police officer for all or part of the person's accumulated compensatory time if both the fire fighter or police officer and the municipality agree the time may be paid.

(e) If full payment for a fire fighter's or police officer's accumulated compensatory time would exceed 10 percent of the person's annual salary, the municipality may at its option defer payment of the amount in excess of 10 percent until the first pay period of the next fiscal year.

(f) A municipality shall pay for accumulated compensatory time at a rate equal to the fire fighter's or police officer's salary at the time the payment is made or at the time the payment was requested, whichever is greater.

(g) If a fire fighter or police officer dies or terminates employment for any reason, the municipality shall pay to the fire fighter or police officer or to his estate the total value of all the fire fighter's or police officer's accumulated compensatory time.

Added by Acts 1989, 71st Leg., ch. 37, Sec. 1, eff. Sept. 1, 1989.

Sec. 142.0017. HOURS OF LABOR AND VACATION OF MEMBERS OF FIRE AND POLICE DEPARTMENTS IN MUNICIPALITY WITH POPULATION OF MORE THAN 1.5 MILLION. (a) This section applies only in a municipality with a population of more than 1.5 million.

(b) A fire fighter or fire fighter emergency medical personnel may not be required or permitted to work more than an average of 46.7 hours a week during a 72-day work cycle designated by the department head. If the fire fighter or fire fighter emergency medical services employee is required to work more than an average of 46.7 hours a week during a 72-day work cycle designated by the department head, the person is entitled to be compensated for the overtime as provided by Subsection (f).

(c) A member of a fire department who does not fight fires or provide emergency medical services, including a mechanic, clerk, investigator, inspector, fire marshal, fire alarm dispatcher, and

maintenance worker, may not, except as provided by Subsection (d) or (f):

(1) average more hours in a week than the number of hours in a normal work week of the majority of the employees of the municipality other than fire fighters, fire fighter emergency medical personnel, and police officers; or

(2) be on duty for more days in a work week or average more days on duty a week in a work cycle than the number of days on duty during the work week of the majority of the employees of the municipality other than fire fighters, fire fighter emergency medical personnel, and police officers.

(d) If a majority of the members of the fire department working as fire alarm dispatchers sign a written agreement with the municipality that allows the municipality to require or permit fire alarm dispatchers to average a specified number of hours of work a week that is more than the number of hours allowed under Subsection (c) but not more than an average of 46.7 hours a week during a 72-day work cycle designated by the department head, the municipality may adopt a work schedule for the members of the fire department working as fire alarm dispatchers in accordance with the agreement. If under Subsection (f) a member of a fire department working as a fire alarm dispatcher is required to work more than the number of hours allowed under the agreement, the person is entitled to be compensated for the overtime as provided by Subsection (f). Each agreement adopted under this subsection expires as provided by the agreement, but not later than the first anniversary of the date that the agreement takes effect. Subsection (c) applies when an agreement adopted under this subsection is not in effect.

(e) In computing the hours in a work week or the average number of hours in a work week during a work cycle of a fire fighter or other member of a fire department as provided by Subsections (b)-(d), all hours are counted:

(1) during which the fire fighter or other member of the fire department is required to remain available for immediate call to duty by continuously remaining in contact with a fire department office by telephone or by radio; and

(2) that are sick time, vacation time, meal time, holidays, compensatory time, death in the family leave, or any other authorized leave.

(f) A fire fighter or other member of a fire department may be

required in an emergency to work more hours in a work week or work cycle than permitted under Subsection (b), (c), or (d). The fire fighter or other member of a fire department is entitled to be paid overtime for the excess hours worked without regard to the number of hours worked in any one week of the work cycle. Overtime hours are paid at a rate equal to 1-1/2 times the compensation paid to the fire fighter or other member of the fire department for regular hours.

(g) A police officer may not, except as provided by Subsections (h) and (j), be required or permitted to work more hours during a calendar week than the number of hours in the normal work week of the majority of the employees of the municipality other than fire fighters and police officers.

(h) In the event of an emergency, a police officer may be required to work more hours than permitted by Subsection (g). An emergency is an unexpected happening or event or an unforeseen situation or crisis that calls for immediate action and requires the chief or head of the police department to order a police officer to work overtime.

(i) A police officer required to work overtime in an emergency is entitled to be compensated for the overtime at a rate equal to 1-1/2 times the compensation paid to the officer for regular hours unless the officer elects, with the approval of the governing body of the municipality, to accept compensatory time equal to 1-1/2 times the number of overtime hours. In computing the hours in a work week or the average number of hours in a work week during a work cycle of a police officer, all hours are counted:

(1) during which the police officer is required to remain on call on the employer's premises or so close to those premises that the officer cannot use the time effectively for the officer's own purposes; and

(2) that are sick time, vacation time, meal time, holidays, compensatory time, death in the family leave, or any other authorized leave.

(j) If a majority of police officers working for a municipality sign a written waiver of the prohibition in Subsection (g), the municipality may adopt a work schedule for police officers requiring a police officer to work more hours than permitted by Subsection (g). The officer is entitled to overtime pay if the officer works more hours during a calendar month than the number of hours in the normal work month of the majority of the employees of the municipality other

than fire fighters and police officers.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 24(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 854, Sec. 1, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 782, Sec. 1, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 386, Sec. 1, eff. May 28, 1997.

Sec. 142.002. TWO PLATOON FIRE SYSTEM AND HOURS OF LABOR IN CERTAIN MUNICIPALITIES. (a) A municipality that maintains an organized, paid fire department shall establish and maintain a two platoon fire system if the municipality:

(1) has a population of 100,001 to 119,999 and is in a county containing more than 900 square miles; or

(2) has a population of 265,000 or more and is in a county containing more than 1,500 square miles.

(b) An employee of a fire department in a municipality covered by Subsection (a) may not be required to be on duty more than 10 consecutive hours during the daytime or more than 14 consecutive hours during the nighttime. The employee may not be required to be on duty more than 14 hours in a period of 24 consecutive hours, except as provided by Subsection (c).

(c) The head or chief officer of a fire department or company in a municipality covered by Subsection (a) shall arrange the working hours of the employees of the department or company so that the employees work, as nearly as practicable, an equal number of hours each month. The working hours of the two platoons may be arranged so that each works 24 hours on duty and has 24 hours off duty. The head or chief officer of the department, or an aide or assistant to the head or chief officer, may require an employee to continue on duty during an emergency for a longer period than specified by Subsection (b).

(d) A person commits an offense if the person violates this section or causes this section to be violated. An offense under this subsection is a misdemeanor and is punishable by a fine of not less than $10 or more than $100. Each employee required or permitted to work in violation of this section and each day the section is violated constitute a separate offense.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.003. HOSPITAL AND MEDICAL ASSISTANCE FOR POLICE RESERVE FORCE. (a) The governing body of a municipality may provide hospital and medical assistance to a member of the police reserve force who sustains injury in the course of performing official duties in the same manner as provided by the governing body for a full-time police officer.

(b) A police reserve officer is eligible for death benefits as provided by Chapter 615, Government Code.

(c) This section does not authorize a member of a police reserve force to become eligible for participation in a pension fund created under state statute of which a regular officer may become a member by payroll deductions or otherwise.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(33), eff. Sept. 1, 1995.

Sec. 142.004. PAYMENT OF HOSPITALIZATION COSTS FOR PEACE OFFICERS AND FIRE FIGHTERS.

Text of subsection effective until January 1, 2025

(a) In this section, "peace officer" means a peace officer as defined by Article 2.12, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(a) In this section, "peace officer" means a peace officer as defined by Article 2A.001, Code of Criminal Procedure.

(b) If a peace officer or fire fighter employed by a municipality sustains an injury in the performance of the person's duties that results in permanent incapacity for work and requires constant confinement in a hospital or other institution providing medical treatment, the municipality may pay all costs of the confinement in excess of amounts that are paid under a policy of insurance or by another governmental entity.

(c) To the extent this section permits payments, the municipality is subrogated to the rights of the peace officer or fire fighter in a suit against a third party because of the injury.

(d) To receive funds under this section, a peace officer or fire fighter must furnish the governing body of the municipality:

(1) proof that the injury was sustained in the performance of the person's duties resulting in permanent incapacity for work and

requiring constant confinement for medical treatment;

(2) proof of the part of the cost of confinement not paid under a policy of insurance or by another governmental entity; and

(3) any other information or evidence required by the governing body.

(e) This section does not permit payment of costs of constant confinement for medical treatment incurred before August 27, 1973.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.138, eff. January 1, 2025.

Sec. 142.005. LIABILITY INSURANCE FOR FIRE AND POLICE DEPARTMENT OFFICERS AND EMPLOYEES DRIVING EMERGENCY VEHICLES. (a) A municipality may insure the officers and employees of its fire and police departments and other municipal employees who drive emergency vehicles against liability to third persons arising from the use and operation of a motor vehicle used as a municipal emergency medical, fire, or police vehicle in the line of duty by procuring a policy for that purpose from an insurance company authorized to do business in this state.

(b) Insurance taken out by a municipality must be on forms approved by the State Board of Insurance.

(c) A municipality may not purchase liability insurance in excess of $20,000 because of bodily injury to or death of one person in any one accident, $100,000 because of bodily injury to or death of two or more persons in any one accident, and $15,000 because of injury to or destruction of property of others in any one accident.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 11, eff. Sept. 1, 2001.

Sec. 142.006. MOTOR VEHICLE LIABILITY INSURANCE FOR PEACE OFFICERS AND FIRE FIGHTERS. (a) This section does not apply to a municipality covered by Section 142.007.

(b) A municipality shall provide for insuring each peace officer and fire fighter in its employ against liability to third persons arising out of the operation, maintenance, or use of a motor

vehicle owned or leased by the municipality.

(c) The liability coverage provided under this section must be in amounts not less than those required by Chapter 601, Transportation Code, to provide proof of financial responsibility.

(d) The municipality may elect to be self-insured or to reimburse the actual cost of extended automobile liability insurance endorsements obtained by a peace officer and fire fighter on an individually owned automobile liability insurance policy. The extended endorsements must:

(1) be in the amount required by Subsection (c); and

(2) extend the coverage to include the operation and use of vehicles by a peace officer or fire fighter in the scope of the officer's or fire fighter's employment.

(e) If the reimbursement method is used, the municipality may require that a peace officer or fire fighter who operates and uses a motor vehicle present proof that an extended coverage endorsement has been purchased and is in effect for the period of reimbursement.

(f) In this section, "motor vehicle" means any motor vehicle for which motor vehicle automobile insurance may be written under Subchapter A, Chapter 5, Insurance Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 268, Sec. 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 30.216, eff. Sept. 1, 1997.

Sec. 142.007. MOTOR VEHICLE LIABILITY INSURANCE FOR FIRE AND POLICE DEPARTMENT OFFICERS AND EMPLOYEES IN MUNICIPALITY OF 1,550,000 OR MORE. (a) A municipality with a population of 1,550,000 or more shall insure the officers and employees of its fire and police departments against liability to third persons arising out of the operation, maintenance, or use of a motor vehicle owned or leased by the municipality.

(b) The municipality may elect to be self-insured or may purchase insurance from an insurance company authorized to do business in this state.

(c) Insurance purchased by the municipality must be on forms approved by the State Board of Insurance.

(d) The municipality may not purchase liability insurance in excess of $100,000 because of bodily injury to or death of one person

in any one accident, $300,000 because of bodily injury to or death of two or more persons in any one accident, and $10,000 because of injury to or destruction of property of others in any one accident.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.008. SALARY CONTINUATION PAYMENTS; SUBROGATION. (a) If a municipality pays benefits to a municipal employee under a salary continuation program when the employee is injured, the municipality is subrogated to the employee's right of recovery for personal injuries caused by the tortious conduct of a third party other than another employee of the same municipality.

(b) The subrogation extends only to payments made by the municipality.

(c) A municipality may not deny benefits under a salary continuation program because a municipal employee has a cause of action against a third party for personal injuries.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 142.009. PAYMENT FOR APPEARANCES OF FIRE FIGHTERS AND POLICE OFFICERS IN COURT OR ADMINISTRATIVE PROCEEDINGS. (a) A municipality shall pay a fire fighter or police officer for an appearance as a witness in a criminal suit, a civil suit, or an administrative proceeding in which the municipality or other political subdivision or government agency is a party in interest if the appearance:

(1) is required;

(2) is made on time off; and

(3) is made by the fire fighter or police officer in the capacity of a fire fighter or police officer.

(b) Payment under this section is at the fire fighter's or police officer's regular rate of pay.

(c) Payment under this section may be taxed as court costs in civil suits.

(d) This section does not reduce or prohibit compensation paid in excess of the regular rate of pay.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 412 (H.B. 1960), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 412 (H.B. 1960), Sec. 2, eff. June 19, 2009.

Sec. 142.010. DEFINITIONS. (a) In this chapter, "member of the fire department" means an employee of the fire department who is defined as "fire protection personnel" by Section 419.021, Government Code.

(b) In this chapter, "member of the police department" means an employee of the police department who has been licensed as a peace officer by the Commission on Law Enforcement Standards and Education.

Added by Acts 1989, 71st Leg., ch. 92, Sec. 2, eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.1032, eff. Sept. 1, 2001.

Sec. 142.011. EDUCATIONAL LEAVE. (a) On written application by a member of the police department, a municipality may grant the person a leave of absence to enable the person to enroll full-time in college to pursue a course of study related to law enforcement or public safety.

(b) The person is entitled to continue receiving employee benefits, including health and life insurance and accumulation of retirement credit, while on leave under Subsection (a) if the person pays both the person's and the municipality's share of the cost of the benefits.

(c) On reinstatement, the person shall receive full seniority credit for the time spent on leave under Subsection (a).

Added by Acts 1993, 73rd Leg., ch. 853, Sec. 1, eff. Sept. 1, 1993.

Sec. 142.012. OVERTIME COMPENSATION FOR CERTAIN POLICE DEPARTMENT OFFICERS AND CIVILIAN EMPLOYEES. (a) This section applies only to a municipality with a population of one million or more that has not adopted Chapter 143.

(b) Subject to the federal Fair Labor Standards Act of 1938 (29

U.S.C. Section 201 et seq.), a municipality may but is not required to establish a system under which compensation is paid or compensatory time off is allowed for overtime worked by the following officers and employees of the municipality's police department:

(1) a police officer who has a rank above the rank of captain and whose appointment to the officer's current rank was not based at least in part on the officer's performance on a competitive examination; or

(2) a civilian who receives a salary greater than the lowest base salary that the municipality pays a captain and whose appointment to the civilian's current position was not based at least in part on the civilian's performance on a competitive examination.

Added by Acts 2001, 77th Leg., ch. 928, Sec. 1, eff. Sept. 1, 2001.

Sec. 142.013. BUSINESS LEAVE TIME ACCOUNT FOR POLICE OFFICERS IN CERTAIN MUNICIPALITIES. (a) This section applies only to police officers employed by a municipality with a population of one million or more that has not adopted Chapter 174 and to which Section 143.1261 does not apply.

(b) In this section:

(1) "Business leave" means leave taken for the purpose of attending to the business of an employee organization.

(2) "Employee organization" includes:

(A) the Texas Peace Officers Association;

(B) the Dallas Police Association;

(C) the Dallas Fraternal Order of Police;

(D) the Latino Peace Officers Association; and

(E) the Black Police Association of Greater Dallas.

(c) If the constitution and bylaws of an employee organization authorize the employee organization to participate in the establishment and maintenance of a business leave time account as provided by this section, a police officer may donate not more than two hours for each month of accumulated vacation or compensatory time to the business leave time account of the employee organization. The municipality shall establish and maintain a business leave time account for each employee organization.

(d) Donations to the business leave time account of an employee organization by its members may be authorized in one of the following

ways:

(1) if the majority of the membership of the employee organization has not affirmatively voted to require contributions by the employee organization's members to its business leave time account:

(A) a police officer must authorize the donation in writing on a form provided by the employee organization and approved by the municipality; and

(B) after receiving the signed authorization on an approved form, the municipality shall transfer donated time to the account monthly until the municipality receives the police officer's written revocation of the authorization; or

(2) if the majority of the membership of the employee organization has affirmatively voted to require contributions by the employee organization's members to its business leave time account:

(A) except as provided by Paragraph (C), the municipality shall transfer donated time to the employee organization's business leave time account from the accumulated vacation or compensatory time of each police officer who is a member of the employee organization in the amount approved by vote of the employee organization not to exceed the amount allowed under Subsection (c);

(B) the municipality shall transfer the donated time to the account monthly beginning with the first calendar month that begins after the date of the employee organization vote requiring contributions; and

(C) each year, during the period beginning on the 60th day before the anniversary of the first day of the first calendar month in which donations were first transferred to the business leave time account of the employee organization under Paragraph (B) and ending on the 30th day before that anniversary, a police officer who is a member of the employee organization may inform the municipality in writing on a form provided by the employee organization and approved by the municipality that the police officer chooses to not donate time to the account during the 12-month period beginning with that anniversary.

(e) Only a police officer who is a member of an employee organization may use for business leave purposes the time donated to the account of that employee organization. A police officer may use for business leave purposes the time donated under this section

without receiving a reduction in salary and without reimbursing the municipality.

(f) A request to use for business leave purposes the time in an employee organization's time account must be in writing and submitted to the municipality by the president or the equivalent officer of the employee organization or by that officer's designee.

(g) The municipality shall grant a request for business leave that complies with Subsection (f) unless:

(1) denial of the request is necessary because of an emergency; or

(2) a grant of the request will result in having an insufficient number of police officers to carry out the normal functions of the municipality.

(h) The municipality shall account for the time donated to the account and used from the account. The municipality shall credit and debit the account on an hour-for-hour basis regardless of the cash value of the time donated or used.

(i) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1011, Sec. 2, eff. September 1, 2013.

(j) The use of business leave by a police officer under this section is not a break in service for any purpose and is treated as any other paid leave.

Added by Acts 2003, 78th Leg., ch. 447, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 734 (H.B. 1057), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1011 (H.B. 2509), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1011 (H.B. 2509), Sec. 2, eff. September 1, 2013.

Sec. 142.014. BUSINESS LEAVE TIME ACCOUNT FOR FIREFIGHTERS IN CERTAIN MUNICIPALITIES. (a) This section applies only to firefighters employed by a municipality with a population of one million or more that has not adopted Chapter 174 and to which Chapter 143 does not apply.

(b) In this section:

(1) "Business leave" means leave taken for the purpose of

attending to the business of an employee organization.

(2) "Employee organization" includes:

(A) the Dallas Fire Fighters Association;

(B) the Dallas Black Fire Fighters Association; and

(C) the Dallas Hispanic Firefighters Association.

(c) If the constitution and bylaws of an employee organization authorize the employee organization to participate in the establishment and maintenance of a business leave time account as provided by this section, a firefighter who is a member of an employee organization may donate not more than one hour of accumulated vacation or compensatory time for each calendar quarter to the business leave time account of the employee organization to which the firefighter belongs. The municipality shall establish and maintain a separate business leave time account for each employee organization that has approved or ratified the use of business leave time by its members under this section and has a specific provision in the constitution and bylaws of that employee organization.

(c-1) Donations to the business leave time account of an employee organization by its members may be authorized in one of the following ways:

(1) if the majority of the membership of the employee organization has not affirmatively voted to require contributions by the employee organization's members to its business leave time account:

(A) a firefighter must authorize the donation in writing on a form provided by the employee organization and approved by the municipality; and

(B) after receiving the signed authorization on an approved form, the municipality shall transfer donated time to the account monthly until the municipality receives the firefighter's written revocation of the authorization; or

(2) if the majority of the membership of the employee organization has affirmatively voted to require contributions by the employee organization's members to its business leave time account:

(A) except as provided by Paragraph (C), the municipality shall transfer donated time to the employee organization's business leave time account from the accumulated vacation or compensatory time of each firefighter who is a member of the employee organization in the amount approved by vote of the employee organization not to exceed the amount allowed under

Subsection (c);

(B) the municipality shall transfer the donated time to the account monthly beginning with the first calendar month that begins after the date of the employee organization vote requiring contributions;

(C) each year, during the period beginning on the 60th day before the anniversary of the first day of the first calendar month in which donations were first transferred to the business leave time account of the employee organization under Paragraph (B) and ending on the 30th day before that anniversary, a firefighter who is a member of the employee organization may inform the municipality in writing on a form provided by the employee organization and approved by the municipality that the firefighter chooses to not donate time to the account during the 12-month period beginning with that anniversary; and

(D) the employee organization shall make up for the costs which incurred during the business leave by payment to the municipality in the amount equal to the overtime, pension and healthcare costs associated with replacing the firefighter on business leave.

(d) Only a firefighter who is a member of an employee organization may use for business leave purposes the time donated to the account of the employee organization. A firefighter may use for business leave purposes the time donated under this section without receiving a reduction in salary and without reimbursing the municipality.

(e) A request to use for business leave purposes the time in an employee organization's time account must be in writing and be submitted to the municipality by the president or the equivalent officer of the employee organization or by that officer's designee.

(f) The municipality shall grant a request for business leave that complies with Subsection (e) unless:

(1) denial of the request is necessary because of an emergency; or

(2) a grant of the request will result in having an insufficient number of firefighters to carry out the normal functions of the municipality.

(g) The municipality shall account for the time donated to each account and used from each account. The municipality shall credit and debit an account on an hour-for-hour basis regardless of the cash

value of the time donated or used.

(h) Repealed by Acts 2023, 88th Leg., R.S., Ch. 751 (H.B. 3980), Sec. 2, eff. September 1, 2023.

(i) The use of business leave by a firefighter under this section is not a break in service for any purpose and is treated as any other paid leave.

Added by Acts 2011, 82nd Leg., R.S., Ch. 734 (H.B. 1057), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 751 (H.B. 3980), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 751 (H.B. 3980), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. LOCAL CONTROL OF POLICE OFFICER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 142.051. APPLICABILITY. (a) Except as provided by Subsection (b), this subchapter applies only to:

(1) a municipality, and a police officer in a municipality, with a population of 50,000 or more;

(2) a municipality, and a police officer in a municipality, that has adopted Chapter 143; or

(3) a police officer not covered by a collective bargaining agreement adopted under Chapter 174 in a municipality that has adopted Chapter 174 for police officers in the police department, and the municipality that appoints or employs such a police officer.

(b) This subchapter does not apply to:

(1) a police officer who is covered by a collective bargaining agreement adopted under Chapter 174;

(2) a police officer who is covered by an agreement adopted under Subchapter H, I, or J, Chapter 143;

(3) a municipality that has a population of one million or more and has not adopted Chapter 143; or

(4) a municipality that has adopted Subchapter I, Chapter 143, in an election authorized by Section 143.3015.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1305 (S.B. 772), Sec. 1, eff. September 1, 2007.

Sec. 142.052. DEFINITIONS. In this subchapter:

Text of subdivision effective until January 1, 2025

(1) "Police officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure, or other law, and who is employed by a municipality.

Text of subdivision effective on January 1, 2025

(1) "Police officer" means a person who is a peace officer under Article 2A.001, Code of Criminal Procedure, or other law, and who is employed by a municipality.

(2) "Police officers association" means an employee organization in which police officers employed by a municipality participate that exists for the purpose, in whole or in part, of dealing with the municipality or public employer concerning grievances, labor disputes, wages, rates of pay, hours of work, or conditions of work affecting police officers.

(3) "Public employer" means a municipality or a law enforcement agency of the municipality that is required to establish the wages, salaries, rates of pay, hours of work, working conditions, and other terms and conditions of employment of police officers employed by the municipality.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.139, eff. January 1, 2025.

Sec. 142.053. PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY. (a) Not later than the 30th day after the date the governing body of a municipality receives from a police officers association a petition signed by the majority of all police officers, excluding the head of the law enforcement agency for the municipality and excluding the employees exempt under Section 142.058(b), that requests recognition of the association as the sole and exclusive bargaining agent for all the police officers employed by the

municipality, excluding the head of the law enforcement agency for the municipality and excluding the exempt employees, the governing body shall:

(1) grant recognition of the association as requested in the petition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.055;

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 142.055 regarding whether a public employer may meet and confer under this subchapter; or

(3) order a certification election under Section 142.054 to determine whether the association represents a majority of the affected police officers.

(b) If the governing body of a municipality orders a certification election under Subsection (a)(3) and the association named in the petition is certified to represent a majority of the affected police officers of the municipality, the governing body shall, not later than the 30th day after the date that results of that election are certified:

(1) grant recognition of the association as requested in the petition for recognition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.055; or

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 142.055 regarding whether a public employer may meet and confer under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.054. CERTIFICATION ELECTION. (a) Except as provided by Subsection (b), a certification election ordered under Section 142.053(a)(3) to determine whether a police officers association represents a majority of the covered police officers shall be conducted according to procedures agreeable to the parties.

(b) If the parties are unable to agree on procedures for the

certification election, either party may request the American Arbitration Association to conduct the election and to certify the results of the election.

(c) Certification of the results of an election under this section resolves the question concerning representation.

(d) The association is liable for the expenses of the certification election, except that if two or more associations seeking recognition as the sole and exclusive bargaining agent submit a petition signed by at least 30 percent of the police officers eligible to sign the petition for recognition, all the associations named in any petition shall share equally the costs of the election.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.055. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER. (a) The governing body of a municipality that receives a petition for recognition under Section 142.053 may order an election to determine whether a public employer may meet and confer under this subchapter.

(b) An election ordered under this section must be held as part of the next regularly scheduled general election for municipal officials that is held after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(c) The ballot for an election ordered under this section shall be printed to permit voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal police officers as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(d) An election called under this section must be held and the returns prepared and canvassed in conformity with the Election Code.

(e) If an election authorized under this section is held, the municipality may operate under the other provisions of this subchapter only if a majority of the votes cast at the election favor the proposition.

(f) If an election authorized under this section is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 142.053 before the second anniversary of the date of the election.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.056. CHANGE OR MODIFICATION OF RECOGNITION. (a) The police officers may modify or change the recognition of the association granted under this subchapter by filing with the governing body of the municipality a petition signed by a majority of all covered police officers.

(b) The governing body of the municipality may:

(1) recognize the change or modification as provided by the petition; or

(2) order a certification election in accordance with Section 142.054 regarding whether to do so.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.057. STRIKES PROHIBITED. (a) A police officer employed by a municipality may not engage in a strike or organized work stoppage against this state or the municipality.

(b) A police officer who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the police officer may have as a result of the officer's employment or prior employment with the municipality.

(c) This section does not affect the right of a person to cease work if the person is not acting in concert with others in an organized work stoppage.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.058. RECOGNITION OF POLICE OFFICERS ASSOCIATION. (a) A public employer in a municipality that chooses to meet and confer

under this subchapter shall recognize an association that is recognized under Section 142.053 or 142.054 as the sole and exclusive bargaining agent for the covered police officers described in the petition for recognition, excluding the head of the law enforcement agency and excluding the employees exempt under Subsection (b), in accordance with this subchapter and the petition.

(b) For the purposes of Subsection (a), exempt employees are the employees appointed by the head of the law enforcement agency of the municipality under Section 143.014 or that are exempt by the mutual agreement of the recognized police officers association and the public employer.

(c) The public employer shall recognize the police officers association until recognition of the association is withdrawn, in accordance with Section 142.056, by a majority of the police officers eligible to sign a petition for recognition.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.059. GENERAL PROVISIONS RELATING TO AGREEMENTS. (a) A municipality acting under this subchapter may not be denied local control over the wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent the public employer and the police officers association recognized as the sole and exclusive bargaining agent under this subchapter agree as provided by this subchapter, if the agreement is ratified and not withdrawn in accordance with this subchapter. Applicable statutes and applicable local orders, ordinances, and civil service rules apply to an issue not governed by the meet and confer agreement.

(b) A meet and confer agreement under this subchapter must be written.

(c) This subchapter does not require a public employer or a recognized police officers association to meet and confer on any issue or reach an agreement.

(d) A public employer and the recognized police officers association may meet and confer only if the association does not advocate an illegal strike by public employees.

(e) While a meet and confer agreement under this subchapter between the public employer and the recognized police officers

association is in effect, the public employer may not accept a petition, with regard to the police officers of the municipality requesting an election to adopt:

(1) municipal civil service under Chapter 143; or

(2) collective bargaining under Chapter 174.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.060. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. (a) The public employer's chief executive officer or the chief executive officer's designee shall select one or more persons to represent the public employer as its sole and exclusive bargaining agent to meet and confer on issues related to the wages, hours of employment, and other terms and conditions of employment of police officers by the municipality.

(b) A police officers association may designate one or more persons to negotiate or bargain on the association's behalf.

(c) A municipality's bargaining unit is composed of all the police officers of the municipality who are not the head of the law enforcement agency or exempt under Section 142.058(b).

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.061. PROTECTED RIGHTS OF POLICE OFFICER. (a) For any disciplinary appeal, a member of the municipality's bargaining unit may be represented by the police officers association or by any person the member selects.

(b) A meet and confer agreement ratified under this subchapter may not interfere with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.062. OPEN RECORDS. (a) A proposed meet and confer agreement and a document prepared and used by the municipality, including a public employer, in connection with the proposed agreement are available to the public under Chapter 552, Government Code, only after the agreement is ready to be ratified by the governing body of the municipality.

(b) This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used in connection with the agreement.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.063. OPEN DELIBERATIONS. (a) Deliberations relating to a meet and confer agreement or proposed agreement under this subchapter between representatives of the public employer and representatives of the police officers association elected by a majority vote of the officers to be the sole and exclusive bargaining agent of the covered officers must be open to the public and comply with state law.

(b) Subsection (a) may not be construed to prohibit the representatives of the public employer or the representatives of the police officers association from conducting private caucuses that are not open to the public during meet and confer negotiations.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.064. RATIFICATION AND ENFORCEABILITY OF AGREEMENT. (a) An agreement under this subchapter is enforceable and binding on the public employer, the recognized police officers association, and the police officers covered by the meet and confer agreement only if:

(1) the governing body of the municipality ratified the agreement by a majority vote; and

(2) the recognized police officers association ratified the agreement by conducting a secret ballot election at which the majority of the police officers who would be covered by the agreement

favored ratifying the agreement.

(b) A meet and confer agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on a question involving interpretation of the agreement.

(c) A state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified meet and confer agreement on the application of a party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.065. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a municipality that granted recognition of a police officers association under Section 142.053 without conducting an election under Section 142.055 may withdraw recognition of the association by providing to the association not less than 90 days' written notice that:

(1) the governing body is withdrawing recognition of the association; and

(2) any agreement between the governing body and the association will not be renewed.

(b) The governing body of a municipality that granted recognition of a police officers association after conducting an election under Section 142.055 may order an election to determine whether a public employer may continue to meet and confer under this subchapter. The governing body may not order an election under this subsection until the second anniversary of the date of the election under Section 142.055.

(c) An election ordered under Subsection (b) must be held as part of the next regularly scheduled general election for municipal

officers that occurs after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(d) The ballot for an election ordered under Subsection (b) shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of the municipality) to continue to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal police officers as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(e) An election ordered under Subsection (b) must be held and the returns prepared and canvassed in conformity with the Election Code.

(f) If an election ordered under Subsection (b) is held, the municipality may continue to operate under this subchapter only if a majority of the votes cast at the election favor the proposition.

(g) If an election ordered under Subsection (b) is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 142.053 before the second anniversary of the date of the election.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.066. ELECTION TO REPEAL AGREEMENT. (a) Not later than the 60th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the recognized police officers association, a petition calling for the repeal of the agreement signed by a number of registered voters residing in the municipality equal to at least 10 percent of the votes cast at the most recent general election held in the municipality may be presented to the person charged with ordering an election under Section 3.004, Election Code.

(b) If a petition is presented under Subsection (a), the governing body of the municipality shall:

(1) repeal the meet and confer agreement; or

(2) certify that it is not repealing the agreement and call an election to determine whether to repeal the agreement.

(c) An election called under Subsection (b)(2) may be held as part of the next regularly scheduled general election for the municipality. The ballot shall be printed to provide for voting for or against the proposition: "Repeal the meet and confer agreement ratified on _____ (date agreement was ratified) by the _____ (name of the governing body of the municipality) and the police officers employed by the City of _____ (name of municipality) concerning wages, salaries, rates of pay, hours of work, and other terms of employment."

(d) If a majority of the votes cast at the election favor the repeal of the agreement, the agreement is void.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.067. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. A written meet and confer agreement ratified under this subchapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the head of the law enforcement agency or municipality or by a division or agent of the municipality, such as a personnel board or a civil service commission.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

Sec. 142.068. EFFECT ON EXISTING BENEFITS AND RIGHTS. (a) This subchapter may not be construed as repealing any existing benefit provided by statute or ordinance concerning police officers' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments, except as expressly provided in a ratified meet and confer agreement. This subchapter is in addition to the benefits provided by existing statutes and ordinances.

(b) This subchapter may not be construed to interfere with a police officer's constitutionally protected rights of freedom of speech, freedom of association, and freedom to endorse or dissent from any agreement.

Added by Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 2, eff. September 1, 2005.

SUBCHAPTER C. LOCAL CONTROL OF FIREFIGHTER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 142.101. APPLICABILITY. (a) Except as provided by Subsection (b), this subchapter applies only to a municipality:

(1) with a population of 50,000 or more; or

(2) that has adopted Chapter 143.

(b) This subchapter does not apply to a municipality that:

(1) has adopted Chapter 174;

(2) is covered by Subchapter H, I, or J, Chapter 143; or

(3) has a population of one million or more and has not adopted Chapter 143.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.102. DEFINITIONS. In this subchapter:

(1) "Firefighter" means a person who is defined as fire protection personnel under Section 419.021, Government Code, and who is employed by a municipality.

(2) "Firefighters association" means an employee organization in which firefighters employed by a municipality participate that exists for the purpose, in whole or in part, of dealing with the municipality or public employer concerning grievances, labor disputes, wages, rates of pay, hours of work, or conditions of work affecting firefighters.

(3) "Public employer" means a municipality or the fire department of the municipality that is required to establish the wages, salaries, rates of pay, hours of work, working conditions, and other terms and conditions of employment of firefighters employed by the municipality.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.103. PETITION FOR RECOGNITION: ELECTION OR ACTION BY

GOVERNING BODY. (a) Not later than the 30th day after the date the governing body of a municipality receives from a firefighters association a petition signed by the majority of all firefighters, excluding the head of the fire department for the municipality and excluding the employees exempt under Section 142.108(b), that requests recognition of the association as the sole and exclusive bargaining agent for all the firefighters employed by the municipality, excluding the head of the fire department for the municipality and excluding the exempt employees, the governing body shall:

(1) grant recognition of the association as requested in the petition and determine by majority vote regarding whether a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.105;

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 142.105 regarding whether a public employer may meet and confer under this subchapter; or

(3) order a certification election under Section 142.104 to determine whether the association represents a majority of the affected firefighters.

(b) If the governing body of a municipality orders a certification election under Subsection (a)(3) and the association named in the petition is certified to represent a majority of the affected firefighters of the municipality, the governing body shall, not later than the 30th day after the date that results of that election are certified:

(1) grant recognition of the association as requested in the petition for recognition and determine by majority vote that a public employer may meet and confer under this subchapter without conducting an election by the voters in the municipality under Section 142.105; or

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 142.105 regarding whether a public employer may meet and confer under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.104. CERTIFICATION ELECTION. (a) Except as provided by Subsection (b), a certification election ordered under Section 142.103(a)(3) to determine whether a firefighters association represents a majority of the covered firefighters shall be conducted according to procedures agreeable to the parties.

(b) If the parties are unable to agree on procedures for the certification election, either party may request the American Arbitration Association to conduct the election and to certify the results of the election.

(c) Certification of the results of an election under this section resolves the question concerning representation.

(d) The association is liable for the expenses of the certification election, except that if two or more associations seeking recognition as the sole and exclusive bargaining agent submit a petition signed by at least 30 percent of the firefighters eligible to sign the petition for recognition, all the associations named in any petition shall share equally the costs of the election.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.105. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER. (a) The governing body of a municipality that receives a petition for recognition under Section 142.103 may order an election to determine whether a public employer may meet and confer under this subchapter.

(b) An election ordered under this section must be held as part of the next regularly scheduled general election for municipal officials that is held after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(c) The ballot for an election ordered under this section shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal firefighters as provided by state law, preserving the prohibition against strikes

and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(d) An election called under this section must be held and the returns prepared and canvassed in conformity with the Election Code.

(e) If an election authorized under this section is held, the municipality may operate under the other provisions of this subchapter only if a majority of the votes cast at the election favor the proposition.

(f) If an election authorized under this section is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 142.103 before the second anniversary of the date of the election.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.106. CHANGE OR MODIFICATION OF RECOGNITION. (a) The firefighters may modify or change the recognition of the association granted under this subchapter by filing with the governing body of the municipality a petition signed by a majority of all covered firefighters.

(b) The governing body of the municipality may:

(1) recognize the change or modification as provided by the petition; or

(2) order a certification election in accordance with Section 142.104 regarding whether to do so.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.107. STRIKES PROHIBITED. (a) A firefighter employed by a municipality may not engage in a strike or organized work stoppage against this state or the municipality.

(b) A firefighter who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the firefighter may have as a result of the person's employment or prior employment with the municipality.

(c) This section does not affect the right of a person to cease work if the person is not acting in concert with others in an

organized work stoppage.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.108. RECOGNITION OF FIREFIGHTERS ASSOCIATION. (a) A public employer in a municipality that chooses to meet and confer under this subchapter shall recognize an association that is recognized under Section 142.103 or 142.104 as the sole and exclusive bargaining agent for the covered firefighters described in the petition for recognition, excluding the head of the fire department and excluding the employees exempt under Subsection (b), in accordance with this subchapter and the petition.

(b) For the purposes of Subsection (a), exempt employees are the employees appointed by the head of the fire department of the municipality under Section 143.014 or that are exempt by the mutual agreement of the recognized firefighters association and the public employer.

(c) The public employer shall recognize the firefighters association until recognition of the association is withdrawn, in accordance with Section 142.106, by a majority of the firefighters eligible to sign a petition for recognition.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.109. GENERAL PROVISIONS RELATING TO AGREEMENTS. (a) A municipality acting under this subchapter may not be denied local control over the wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent the public employer and the firefighters association recognized as the sole and exclusive bargaining agent under this subchapter agree as provided by this subchapter, if the agreement is ratified and not withdrawn in accordance with this subchapter. Applicable statutes and applicable local orders, ordinances, and civil service rules apply to an issue not governed by the meet and confer agreement.

(b) A meet and confer agreement under this subchapter must be written.

(c) This subchapter does not require a public employer or a

recognized firefighters association to meet and confer on any issue or reach an agreement.

(d) A public employer and the recognized firefighters association may meet and confer only if the association does not advocate an illegal strike by public employees.

(e) While a meet and confer agreement under this subchapter between the public employer and the recognized firefighters association is in effect, the public employer may not accept a petition, with regard to the firefighters of the municipality requesting an election to adopt:

(1) municipal civil service under Chapter 143; or

(2) collective bargaining under Chapter 174.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.110. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. (a) The public employer's chief executive officer or the chief executive officer's designee shall select one or more persons to represent the public employer as its sole and exclusive bargaining agent to meet and confer on issues related to the wages, hours of employment, and other terms and conditions of employment of firefighters by the municipality.

(b) A firefighters association may designate one or more persons to negotiate or bargain on the association's behalf.

(c) A municipality's bargaining unit is composed of all the firefighters of the municipality who are not the head of the fire department or exempt under Section 142.108(b).

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.111. PROTECTED RIGHTS OF FIREFIGHTER. (a) For any disciplinary appeal, a member of the municipality's bargaining unit may be represented by the firefighters association or by any person the member selects.

(b) A meet and confer agreement ratified under this subchapter may not interfere with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color,

national origin, religion, age, sex, or disability with the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.112. OPEN RECORDS. (a) A proposed meet and confer agreement and a document prepared and used by the municipality, including a public employer, in connection with the proposed agreement are available to the public under Chapter 552, Government Code, only after the agreement is ready to be ratified by the governing body of the municipality.

(b) This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used in connection with the agreement.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.113. OPEN DELIBERATIONS. (a) A deliberation relating to meeting and conferring between a public employer and a firefighters association, a deliberation relating to an agreement or proposed agreement under this subchapter by a quorum of a firefighters association authorized to meet and confer, or a deliberation by a quorum of the sole and exclusive bargaining agent of the public employer authorized to meet and confer must be open to the public and comply with state law.

(b) Subsection (a) may not be construed to prohibit the representative of the public employer or the representatives of the firefighters association from conducting private caucuses that are not open to the public during meet and confer negotiations.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.114. RATIFICATION AND ENFORCEABILITY OF AGREEMENT.

(a) An agreement under this subchapter is enforceable and binding on the public employer, the recognized firefighters association, and the firefighters covered by the meet and confer agreement only if:

(1) the governing body of the municipality ratified the agreement by a majority vote; and

(2) the recognized firefighters association ratified the agreement by conducting a secret ballot election at which only the firefighters of the municipality in the association were eligible to vote, and a majority of the votes cast at the election favored ratifying the agreement.

(b) A meet and confer agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on a question involving interpretation of the agreement.

(c) A state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified meet and confer agreement on the application of a party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.115. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a municipality that granted recognition of a firefighters association under Section 142.103 without conducting an election under Section 142.105 may withdraw recognition of the association by providing to the association not less than 90 days' written notice that:

(1) the governing body is withdrawing recognition of the association; and

(2) any agreement between the governing body and the association will not be renewed.

(b) The governing body of a municipality that granted

recognition of a firefighters association after conducting an election under Section 142.105 may order an election to determine whether a public employer may continue to meet and confer under this subchapter. The governing body may not order an election under this subsection until the second anniversary of the date of the election under Section 142.105.

(c) An election ordered under Subsection (b) must be held as part of the next regularly scheduled general election for municipal officers that occurs after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(d) The ballot for an election ordered under Subsection (b) shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of municipality) to continue to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal firefighters as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(e) An election ordered under Subsection (b) must be held and the returns prepared and canvassed in conformity with the Election Code.

(f) If an election ordered under Subsection (b) is held, the municipality may continue to operate under this subchapter only if a majority of the votes cast at the election favor the proposition.

(g) If an election ordered under Subsection (b) is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 142.103 before the second anniversary of the date of the election.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.116. ELECTION TO REPEAL AGREEMENT. (a) Not later than the 60th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the recognized firefighters association, a petition calling for the repeal of the agreement signed by a number of registered voters residing in the municipality equal to at least 10 percent of the votes cast at the

most recent general election held in the municipality may be presented to the person charged with ordering an election under Section 3.004, Election Code.

(b) If a petition is presented under Subsection (a), the governing body of the municipality shall:

(1) repeal the meet and confer agreement; or

(2) certify that it is not repealing the agreement and call an election to determine whether to repeal the agreement.

(c) An election called under Subsection (b)(2) may be held as part of the next regularly scheduled general election for the municipality. The ballot shall be printed to provide for voting for or against the proposition: "Repeal the meet and confer agreement ratified on _____ (date agreement was ratified) by the _____ (name of the governing body of the municipality) and the firefighters employed by the City of _____ (name of municipality) concerning wages, salaries, rates of pay, hours of work, and other terms of employment."

(d) If a majority of the votes cast at the election favor the repeal of the agreement, the agreement is void.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.117. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. A written meet and confer agreement ratified under this subchapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by the head of the fire department or municipality or by a division or agent of the municipality, such as a personnel board or a civil service commission.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.118. PREEMPTION OF OTHER LAW. (a) This subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by a municipality.

(b) Section 617.002, Government Code, does not apply to an

agreement made or an action taken under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

Sec. 142.119. EFFECT ON EXISTING BENEFITS. This subchapter may not be construed as repealing any existing benefit provided by statute or ordinance concerning firefighters' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments, except as expressly provided in a ratified meet and confer agreement. This subchapter is in addition to the benefits provided by existing statutes and ordinances.

Added by Acts 2005, 79th Leg., Ch. 262 (H.B. 2892), Sec. 2, eff. September 1, 2005.

SUBCHAPTER D. LOCAL CONTROL OF EMERGENCY MEDICAL SERVICES PERSONNEL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 142.151. APPLICABILITY. This subchapter applies only to a municipality:

(1) with a population of 460,000 or more that operates under a city manager form of government; and

(2) that employs emergency medical services personnel in a municipal department other than the fire department.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.152. DEFINITIONS. In this subchapter:

(1) "Association" means an organization in which emergency medical services personnel participate and that exists for the purpose, wholly or partly, of dealing with one or more public or private employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment affecting public employees.

(2) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code. The term applies only to an individual certified under Chapter 773, Health and

Safety Code.

(3) "Public employer" means a municipality or an agency, board, commission, or political subdivision controlled by a municipality that is required to establish the wages, salaries, rates of pay, hours of employment, working conditions, and other terms and conditions of employment of public employees. The term, under appropriate circumstances, may include a mayor, manager, municipal administrator, municipal governing body, director of personnel, personnel board, or one or more other officials, regardless of the name by which an official is designated.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.153. GENERAL PROVISIONS RELATING TO AGREEMENTS. (a) A municipality may not be denied local control over wages, salaries, rates of pay, hours of employment, other terms and conditions of employment, or other personnel issues on which the public employer and an association that is recognized as the sole and exclusive bargaining agent under Section 142.155 for all emergency medical services personnel in the municipality agree. The applicable statutes, local ordinances, and civil service rules govern a term or condition of employment on which the public employer and the association do not agree.

(b) An agreement under this subchapter must be written.

(c) This subchapter does not require the public employer and an association to meet and confer or reach an agreement on any issue.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.154. STRIKES PROHIBITED. (a) A public employer and an association recognized as the sole and exclusive bargaining agent under Section 142.155 may meet and confer only if the association does not advocate the illegal right to strike by public employees.

(b) Emergency medical services personnel of a municipality may not engage in a strike or organized work stoppage against this state or a political subdivision of this state.

(c) Emergency medical services personnel who participate in a

strike forfeit all civil service rights, reemployment rights, and other rights, benefits, or privileges enjoyed as a result of employment or previous employment with the municipality.

(d) This section does not affect the right of a person to cease employment if the person is not acting in concert with other emergency medical services personnel.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.155. RECOGNITION OF EMERGENCY MEDICAL SERVICES PERSONNEL ASSOCIATION. (a) The governing body of a municipality may recognize an association that submits a petition signed by a majority of the emergency medical services personnel in the municipality, excluding the head of the emergency medical services department and any person who is exempt under Subsection (b), as the sole and exclusive bargaining agent for all of the covered emergency medical services personnel until recognition of the association is withdrawn by a majority of the covered emergency medical services personnel.

(b) For purposes of Subsection (a), exempt employees are assistant department heads in the rank or classification immediately below that of the department head and any other employees who are designated as exempt or whose job titles are designated as exempt by the mutual agreement of the recognized association and the public employer.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.003, eff. September 1, 2009.

Sec. 142.156. ELECTION. (a) Whether an association represents a majority of the covered emergency medical services personnel shall be resolved by a fair election, conducted according to procedures agreed on by the parties, at which only a person eligible to sign a petition under Section 142.155 may vote.

(b) If the parties are unable to agree on election procedures under Subsection (a), a party may request the American Arbitration

Association to conduct the election and to certify the results. Certification of the results of an election under this subsection resolves the question concerning representation.

(c) The association shall pay the costs of an election under this section, except that if two or more associations seeking recognition as the bargaining agent submit petitions signed by a majority of the covered emergency medical services personnel, the associations shall share equally the costs of the election.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.1565. ELECTION TO AUTHORIZE OPERATING UNDER THIS SUBCHAPTER. (a) If the governing body of a municipality does not recognize an association that submits a petition under Section 142.155 and that has been determined by the governing body or under Section 142.156 to represent a majority of the covered emergency medical services personnel, the governing body shall order an election to determine whether a public employer may meet and confer under this subchapter.

(b) An election ordered under this section must be held as part of the next regularly scheduled general election for municipal officers that occurs after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(c) The ballot for an election ordered under this section shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal emergency medical services personnel as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(d) An election ordered under this section must be held and the returns prepared and canvassed in conformity with the Election Code.

(e) If an election under this section is held, the municipality may operate under the other provisions of this subchapter only if a majority of the votes cast at the election favor the proposition.

(f) If an election under this section is held, an association

may not submit a petition for recognition to the governing body of the municipality under Section 142.155 before the second anniversary of the date of the election.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.157. SELECTION OF BARGAINING AGENTS. The public employer's manager or chief executive, as appropriate, and the head of the emergency medical services department shall designate a group of persons to represent the public employer as its sole and exclusive bargaining agent.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.158. OPEN RECORDS REQUIRED. (a) A proposed agreement and any document prepared and used by the municipality in connection with a proposed agreement are available to the public under the public information law, Chapter 552, Government Code, only after the agreement is ratified by the municipality's governing body.

(b) This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used by the municipality in connection with the agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.159. RATIFICATION AND ENFORCEABILITY OF AGREEMENT. (a) An agreement made under this subchapter between a public employer and an association is binding on the public employer, the association, and the emergency medical services personnel covered by the agreement if:

(1) the municipality's governing body ratifies the agreement by a majority vote; and

(2) the association recognized under Section 142.155 ratifies the agreement by a majority vote of its members voting in an election by secret ballot at which only members of the association

who are eligible to sign a petition under Section 142.155 may vote.

(b) An agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on interpretation of the agreement.

(c) The state district court of the judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified agreement on the application of a party to the agreement aggrieved by an act or omission of the other party. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including a contempt order, that is appropriate to enforce the agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.160. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) An agreement under this subchapter supersedes a previous statute concerning wages, salaries, rates of pay, hours of employment, or other terms and conditions of employment to the extent of any conflict with the statute.

(b) An agreement under this subchapter preempts any contrary executive order, local ordinance, or rule adopted by this state or a political subdivision or agent of this state, including a personnel board, a civil service commission, or a municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under this chapter or other law unless approved by a majority vote by secret ballot of the members of the association recognized under Section 142.155 at which only members of the association who are eligible to sign a petition under Section 142.155 may vote.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.1605. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS SUBCHAPTER. (a) The governing body of a municipality that granted recognition of an association under Section

142.155 without conducting an election under Section 142.1565 may withdraw recognition of the association by providing to the association not less than 90 days' written notice that:

(1) the governing body is withdrawing recognition of the association; and

(2) any agreement between the governing body and the association will not be renewed.

(b) The governing body of a municipality that granted recognition of an association after conducting an election under Section 142.1565 may order an election to determine whether a public employer may continue to meet and confer under this subchapter. The governing body may not order an election under this subsection until the second anniversary of the date of the election under Section 142.1565.

(c) An election ordered under Subsection (b) must be held as part of the next regularly scheduled general election for municipal officers that occurs after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(d) The ballot for an election ordered under Subsection (b) shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of the municipality) to continue to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal emergency medical services personnel as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(e) An election ordered under Subsection (b) must be held and the returns prepared and canvassed in conformity with the Election Code.

(f) If an election ordered under Subsection (b) is held, the municipality may continue to operate under this subchapter only if a majority of the votes cast at the election favor the proposition.

(g) If an election ordered under Subsection (b) is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 142.155 before the second anniversary of the date of the election.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff.

May 23, 2007.

Sec. 142.161. REPEAL OF AGREEMENT BY ELECTORATE. (a) Not later than the 45th day after the date an agreement is ratified by both the municipality and the association, a petition signed by at least 10 percent of the qualified voters of the municipality may be presented to the municipal secretary calling for an election to repeal the agreement.

(b) On receipt by the municipal secretary of a petition described by Subsection (a), the governing body of the municipality shall reconsider the agreement and either repeal the agreement or call an election of the qualified voters of the municipality to determine if the voters favor repealing the agreement. The election shall be called for the next election held in the municipality that allows sufficient time to comply with applicable provisions of law or at a special election called by the governing body for that purpose.

(c) If at the election a majority of the votes cast favor repeal of the adoption of the agreement, the agreement is void.

(d) The ballot for an election under this section shall be printed to permit voting for or against the proposition: "Repeal of the adoption of the agreement ratified by the municipality and the emergency medical services personnel association concerning wages, salaries, rates of pay, hours of employment, and other terms and conditions of employment."

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.162. PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES. (a) For the purpose of any disciplinary appeal, a member of the association may choose to be represented by any person of the member's choice or by the association.

(b) An agreement may not interfere with the right of a member of the association to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the civil rights division of the Texas Workforce Commission or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

Sec. 142.163. BINDING INTEREST ARBITRATION. (a) A municipality may be required to submit to binding interest arbitration only if approved by a majority of those voting in a public referendum conducted in accordance with the municipality's charter.

(b) Subsection (a) does not affect any disciplinary arbitration or arbitration provision in a ratified agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 187 (S.B. 1104), Sec. 1, eff. May 23, 2007.

CHAPTER 143. MUNICIPAL CIVIL SERVICE FOR FIREFIGHTERS AND POLICE OFFICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 143.001. PURPOSE. (a) The purpose of this chapter is to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.

(b) The members of the Fire Fighters' and Police Officers' Civil Service Commission shall administer this chapter in accordance with this purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.002. MUNICIPALITIES COVERED BY CHAPTER. (a) This chapter applies only to a municipality:

(1) that:

(A) has a population of 10,000 or more;

(B) has a paid fire department or police department; and

(C) has voted to adopt this chapter or the law codified by this chapter; or

(2) whose election to adopt this chapter and whose acts subsequent to that election were validated by the law enacted by House Bill 822, Acts of the 73rd Legislature, Regular Session, 1993.

(b) Population under Subsection (a)(1) is determined by the most recent:

(1) federal decennial census; or

(2) annual population estimate provided by the state demographer under Chapter 468, Government Code, if that estimate is more recent than the most recent federal decennial census.

(c) If this chapter applies to a municipality as provided by Subsection (a), the application of this chapter to the municipality is not affected if the municipality's population changes and the municipality no longer meets the population requirement of Subsection (a)(1).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 576, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 212 (H.B. 1913), Sec. 1, eff. May 27, 2005.

Acts 2005, 79th Leg., Ch. 1163 (H.B. 3409), Sec. 1, eff. June 18, 2005.

Sec. 143.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Fire Fighters' and Police Officers' Civil Service Commission.

(2) "Department head" means the chief or head of a fire or police department or that person's equivalent, regardless of the name or title used.

(3) "Director" means the director of fire fighters' and police officers' civil service.

(4) "Fire fighter" means a member of a fire department who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005 or 143.084. The term:

(A) applies only to an employee of a fire department whose position requires substantial knowledge of fire fighting and who has met the requirements for certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, including an employee who performs:

(i) fire suppression;

(ii) fire prevention;

(iii) fire training;
(iv) fire safety education;
(v) fire maintenance;
(vi) fire communications;
(vii) fire medical emergency technology;
(viii) fire photography;
(ix) fire administration; or
(x) fire arson investigation; and

(B) does not apply to a secretary, clerk, budget analyst, custodial engineer, or other administrative employee.

(5) "Police officer" means a member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status under Section 143.005, 143.084, or 143.103.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 498, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 738 (H.B. 2640), Sec. 1, eff. September 1, 2005.

Sec. 143.004. ELECTION TO ADOPT OR REPEAL CHAPTER. (a) A municipality may hold an election to adopt or repeal this chapter as provided by this section.

(b) If the governing body of the municipality receives a petition requesting an election that is signed by a number of qualified voters of the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal election, the governing body shall order an election submitting to the voters the question of whether this chapter should be adopted. The election must be held on the first authorized uniform election date prescribed by Chapter 41, Election Code, that occurs after the petition is filed and that allows sufficient time to comply with other requirements of law.

(c) The ballot shall be printed to provide for voting for or against the proposition: "Adoption of the fire fighters' and police officers' civil service law." However, this chapter may be adopted to apply only to the fire or police department, and in that case, the ballot shall be printed to reflect the department that would be

covered by this chapter. If a majority of the votes received in the election are in favor of adoption of this chapter, the governing body shall implement this chapter.

(d) If an election is held under Subsection (b), a petition for a subsequent election to be held under that subsection may not be filed for at least one year after the date the previous election was held. To be valid, a petition for a subsequent election must contain the signatures of a number of qualified voters of the municipality equal to at least 20 percent of the number of voters who voted in the most recent municipal election. Any subsequent election must be held at the next general municipal election that occurs after the petition is filed.

(e) If the governing body of a municipality with a population of less than 950,000 that has operated under this chapter for at least one year receives a petition requesting an election to repeal this chapter that is signed by at least 10 percent of the qualified voters of the municipality, the governing body shall order an election submitting to the voters the question on whether this chapter should be repealed. If a majority of the qualified voters vote to repeal this chapter, this chapter is void in that municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 874 (H.B. 4227), Sec. 1, eff. September 1, 2023.

Sec. 143.005. STATUS OF EMPLOYEES IF CHAPTER ADOPTED. (a) Each fire fighter or police officer serving in a municipality that adopts this chapter and who has been in the service of the municipality for more than six months at the time this chapter is adopted and who is entitled to civil service classification has the status of a civil service employee and is not required to take a competitive examination to remain in the position the person occupies at the time of the adoption.

(b) In a municipality that adopts this chapter, an employee of the fire department whose primary duties are to provide emergency medical services for the municipality is considered to be a fire fighter who is a member of the fire department performing fire

medical emergency technology, entitled to civil service protection, and covered by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 1034 (H.B. 1126), Sec. 7, eff. September 1, 2005.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 129 (H.B. 263), Sec. 1

For text of section as added by Acts 2005, 79th Leg., Ch. 869 (S.B. 1050), Sec. 1, see other Sec. 143.0051.

Sec. 143.0051. STATUS OF EMPLOYEES IN CERTAIN FIRE DEPARTMENTS. (a) This section applies only to a fire department employee employed by a municipality with a population of 220,000 or more. This section does not apply to a fire department employee employed by a municipality:

(1) that has adopted Chapter 174; or

(2) to which Subchapter H or I applies.

(b) Notwithstanding any other provision of this chapter, a previously non-classified fire department employee who serves in a position described by Section 143.003(4)(B), (D), (G), or (J) has the status of a civil service employee and is not required to take a competitive examination to remain in the employee's position if:

(1) the employee was appointed to that position on or before May 1, 2005, and was serving in that position on the date described by Subsection (c); and

(2) the municipality's governing body by ordinance amends the municipality's existing classification of fire department employees to include the employee's position as provided by Section 143.021.

(c) The civil service status of an employee to which Subsection (b) applies is effective on the date that the ordinance amending the municipality's classification system to include the employee's position takes effect.

(d) A fire department employee who has civil service status under Subsection (b) may be promoted only:

(1) by competitive examination in accordance with the competitive civil service procedures prescribed in this chapter; and

(2) within the employee's existing division.

(e) A fire department employee who has civil service status under Subsection (b) may not:

(1) supervise or evaluate classified civil service personnel assigned to fire suppression or emergency medical operations; or

(2) laterally transfer to fire suppression or emergency medical operations.

(f) If a fire department employee who has civil service status under Subsection (b) leaves the employee's position for any reason, a person selected to fill that position must be selected in accordance with the competitive civil service procedures prescribed in this chapter.

Added by Acts 2005, 79th Leg., Ch. 129 (H.B. 263), Sec. 1, eff. May 24, 2005.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 869 (S.B. 1050), Sec. 1

For text of section as added by Acts 2005, 79th Leg., Ch. 129 (H.B. 263), Sec. 1, see other Sec. 143.0051.

Sec. 143.0051. STATUS OF EMPLOYEES IN CERTAIN FIRE DEPARTMENTS. (a) This section applies only to a fire department employee employed by a municipality with a population of 150,000 or more and with a governing body of five or fewer members.

(b) Notwithstanding any other provision of this chapter, a previously nonclassified fire department employee who serves in a position described by Section 143.003(4)(B), (D), (G), or (J) has the status of a civil service employee and is not required to take a competitive examination to remain in the employee's position if:

(1) the employee was appointed to that position on or before May 1, 2005, and was serving in that position on the date described by Subsection (c); and

(2) the municipality's governing body by ordinance amends the municipality's existing classification of fire department employees to include the employee's position as provided by Section 143.021.

(c) The civil service status of an employee to which Subsection (b) applies is effective on the date that the ordinance amending the

municipality's classification system to include the employee's position takes effect.

(d) A fire department employee who has civil service status under Subsection (b) may be promoted only:

(1) by competitive examination in accordance with the competitive civil service procedures prescribed in this chapter; and

(2) within the employee's existing division.

(e) A fire department employee who has civil service status under Subsection (b) may not:

(1) supervise or evaluate classified civil service personnel assigned to fire suppression or emergency medical operations; or

(2) laterally transfer to fire suppression or emergency medical operations.

(f) If a fire department employee who has civil service status under Subsection (b) leaves the employee's position for any reason, a person selected to fill that position must be selected in accordance with the competitive civil service procedures prescribed in this chapter.

Added by Acts 2005, 79th Leg., Ch. 869 (S.B. 1050), Sec. 1, eff. September 1, 2005.

Sec. 143.0052. FEE FOR EMERGENCY MEDICAL SERVICES. (a) This section applies only to a municipality that:

(1) has a population of more than 220,000 and less than 275,000;

(2) is located in a county in which another municipality that has a population of more than one million is predominately located; and

(3) whose emergency medical services are administered by a fire department.

(b) By resolution of its governing body, a municipality may establish a monthly fee for the costs of emergency medical services, including salary and overtime related to medical personnel. This fee is applicable to each and every customer served by a municipal water account and may be collected in conjunction with the bill for water services.

(c) A municipality acting under this section supersedes any

authority established under Chapter 286, Health and Safety Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1415 (S.B. 1896), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 69, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 131, eff. September 1, 2023.

Sec. 143.006. IMPLEMENTATION: COMMISSION. (a) On adoption of this chapter, the Fire Fighters' and Police Officers' Civil Service Commission is established in the municipality. The chief executive of the municipality shall appoint the members of the commission within 60 days after the date this chapter is adopted. Within 30 days after the date the municipality's first full fiscal year begins after the date of the adoption election, the governing body of the municipality shall implement this chapter.

(b) The commission consists of three members appointed by the municipality's chief executive and confirmed by the governing body of the municipality. Members serve staggered three-year terms with the term of one member expiring each year. If a vacancy occurs or if an appointee fails to qualify within 10 days after the date of appointment, the chief executive shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(c) A person appointed to the commission must:

(1) be of good moral character;

(2) be a United States citizen;

(3) be a resident of the municipality who has resided in the municipality for more than three years;

(4) be over 25 years of age; and

(5) not have held a public office within the preceding three years.

(c-1) Notwithstanding Subsection (c)(5), the municipality's chief executive may reappoint a commission member to consecutive terms. A commission member may not be reappointed to more than a third consecutive term unless the member's reappointment to a fourth or subsequent consecutive term is confirmed by a two-thirds majority

of all the members of the municipality's governing body.

(c-2) Subsection (c)(5) does not prohibit the municipality's chief executive from appointing a former commission member to the commission if the only public office held by the former member within the preceding three years is membership on:

(1) the commission; or

(2) the commission and the municipality's civil service board for employees other than police officers and firefighters through a joint appointment to the commission and board.

(c-3) Subsections (c-1) and (c-2) do not apply to a municipality with a population of 1.5 million or more.

(d) In making initial appointments, the chief executive shall designate one member to serve a one-year term, one member to serve a two-year term, and one member to serve a three-year term. If a municipality has a civil service commission immediately before this chapter takes effect in that municipality, that civil service commission shall continue as the commission established by this section and shall administer the civil service system as prescribed by this chapter. As the terms of the members of the previously existing commission expire, the chief executive shall appoint members as prescribed by this section. If necessary to create staggered terms as prescribed by this section, the chief executive shall appoint the initial members, required to be appointed under this chapter, to serve terms of less than three years.

(e) Initial members shall elect a chairman and a vice-chairman within 10 days after the date all members have qualified. Each January, the members shall elect a chairman and a vice-chairman.

(f) The governing body of the municipality shall provide to the commission adequate and suitable office space in which to conduct business.

(g) The chief executive of a municipality commits an offense if the chief executive knowingly or intentionally fails to appoint the initial members of the commission within the 60-day period prescribed by Subsection (a). An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 or more than $200. Each day after the 60-day period that the chief executive knowingly or intentionally fails to make a required appointment constitutes a separate offense.

(h) The chief executive of a municipality or a municipal official commits an offense if the person knowingly or intentionally

refuses to implement this chapter or attempts to obstruct the enforcement of this chapter. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 or more than $200.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 475 (H.B. 150), Sec. 1, eff. June 17, 2005.

Sec. 143.007. REMOVAL OF COMMISSION MEMBER. (a) If at a meeting held for that purpose the governing body of the municipality finds that a commission member is guilty of misconduct in office, the governing body may remove the member. The member may request that the meeting be held as an open hearing in accordance with Chapter 551, Government Code.

(b) If a commission member is indicted or charged by information with a criminal offense involving moral turpitude, the member shall be automatically suspended from office until the disposition of the charge. Unless the member pleads guilty or is found to be guilty, the member shall resume office at the time of disposition of the charge.

(c) The governing body may appoint a substitute commission member during a period of suspension. If a member pleads guilty to or is found to be guilty of a criminal offense involving moral turpitude, the governing body shall appoint a replacement commission member to serve the remainder of the disqualified member's term of office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 143.008. ADOPTION AND PUBLICATION OF RULES. (a) A commission shall adopt rules necessary for the proper conduct of commission business.

(b) The commission may not adopt a rule permitting the appointment or employment of a person who is:

(1) without good moral character;

(2) physically or mentally unfit; or

(3) incompetent to discharge the duties of the appointment or employment.

(c) The commission shall adopt rules that prescribe cause for removal or suspension of a fire fighter or police officer. The rules must comply with the grounds for removal prescribed by Section 143.051.

(d) The commission shall publish each rule it adopts and each classification and seniority list for the fire and police departments. The rules and lists shall be made available on demand. A rule is considered to be adopted and sufficiently published if the commission adopts the rule by majority vote and causes the rule to be written, typewritten, or printed. Publication in a newspaper is not required and the governing body of the municipality is not required to act on the rule.

(e) A rule is not valid and binding on the commission until the commission:

(1) mails a copy of the rule to the commissioner, if the municipality has an elected commissioner, and to department heads of the fire and police departments;

(2) posts a copy of the rule for a seven-day period at a conspicuous place in the central fire and police stations; and

(3) mails a copy of the rule to each branch fire station.

(f) The director shall keep copies of all rules for free distribution to members of the fire and police departments who request copies and for inspection by any interested person.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.009. COMMISSION INVESTIGATIONS AND INSPECTIONS. (a) The commission or a commission member designated by the commission may investigate and report on all matters relating to the enforcement and effect of this chapter and any rules adopted under this chapter and shall determine if the chapter and rules are being obeyed.

(b) During an investigation, the commission or the commission member may:

(1) administer oaths;

(2) issue subpoenas to compel the attendance of witnesses and the production of books, papers, documents, and accounts relating to the investigation; and

(3) cause the deposition of witnesses residing inside or outside the state.

(c) A deposition taken in connection with an investigation under this section must be taken in the manner prescribed by law for taking a similar deposition in a civil action in federal district court.

(d) An oath administered or a subpoena issued under this section has the same force and effect as an oath administered by a magistrate in the magistrate's judicial capacity.

(e) A person who fails to respond to a subpoena issued under this section commits an offense punishable as prescribed by Section 143.016.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.010. COMMISSION APPEAL PROCEDURE. (a) Except as otherwise provided by this chapter, if a fire fighter or police officer wants to appeal to the commission from an action for which an appeal or review is provided by this chapter, the fire fighter or police officer need only file an appeal with the commission within 10 days after the date the action occurred.

(b) The appeal must include the basis for the appeal and a request for a commission hearing. The appeal must also contain a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of the charge, a statement alleging that the recommended action does not fit the offense or alleged offense, or a combination of these statements.

(c) In each hearing, appeal, or review of any kind in which the commission performs an adjudicatory function, the affected fire fighter or police officer is entitled to be represented by counsel or a person the fire fighter or police officer chooses. Each commission proceeding shall be held in public.

(d) The commission may issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material.

(e) The affected fire fighter or police officer may request the commission to subpoena any books, records, documents, papers, accounts, or witnesses that the fire fighter or police officer considers pertinent to the case. The fire fighter or police officer

must make the request before the 10th day before the date the commission hearing will be held. If the commission does not subpoena the material, the commission shall, before the third day before the date the hearing will be held, make a written report to the fire fighter or police officer stating the reason it will not subpoena the requested material. This report shall be read into the public record of the commission hearing.

(f) Witnesses may be placed under the rule at the commission hearing.

(g) The commission shall conduct the hearing fairly and impartially as prescribed by this chapter and shall render a just and fair decision. The commission may consider only the evidence submitted at the hearing.

(h) The commission shall maintain a public record of each proceeding with copies available at cost.

(i) In addition to the requirements prescribed by this section, an appeal to the commission in a municipality with a population of 1.5 million or more must meet the requirements prescribed by Section 143.1015.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 25(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1248, Sec. 48, eff. Sept. 1, 1989.

Sec. 143.011. DECISIONS AND RECORDS. (a) Each concurring commission member shall sign a decision issued by the commission.

(b) The commission shall keep records of each hearing or case that comes before the commission.

(c) Each rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record that the commission shall retain on file.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.012. DIRECTOR. (a) On adoption of this chapter, the office of Director of Fire Fighters' and Police Officers' Civil Service is established in the municipality. The commission shall appoint the director. The director shall serve as secretary to the commission and perform work incidental to the civil service system as

required by the commission. The commission may remove the director at any time.

(b) A person appointed as director must meet each requirement for appointment to the commission prescribed by Section 143.006(c), except that in a municipality with a population of less than 1.5 million, the person is not required to meet the local residency requirement.

(c) A person appointed as director may be a commission member, a municipal employee, or some other person.

(d) The municipality's governing body shall determine the salary, if any, to be paid to the director.

(e) If, immediately before this chapter takes effect in a municipality, the municipality has a duly and legally constituted director of civil service, regardless of title, that director shall continue in office as the director established by this section and shall administer the civil service system as prescribed by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 355, Sec. 1, eff. Sept. 1, 1999.

Sec. 143.013. APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD. (a) Unless elected, each department head is:

(1) appointed by the municipality's chief executive and confirmed by the municipality's governing body; or

(2) in a municipality having an elected fire or police commissioner, appointed by the fire or police commissioner in whose department the vacancy exists and confirmed by the municipality's governing body.

(b) A person appointed as head of a fire department must be eligible for certification by the Texas Commission on Fire Protection at the intermediate level or its equivalent as determined by that commission and must have served as a fully paid fire fighter for at least five years. A person appointed as head of a police department must be eligible for certification by the Texas Commission on Law Enforcement at the intermediate level or its equivalent as determined by that commission and must have served as a bona fide law enforcement officer for at least five years.

(c) Except as provided by Subsection (d), if a person is

removed from the position of department head, the person shall be reinstated in the department and placed in a position with a rank not lower than that held by the person immediately before appointment as department head. The person retains all rights of seniority in the department.

(d) If a person serving as department head is charged with an offense in violation of civil service rules and is dismissed from the civil service or discharged from his position as department head, the person has the same rights and privileges of a hearing before the commission and in the same manner and under the same conditions as a classified employee. If the commission finds that the charges are untrue or unfounded, the person shall immediately be restored to the same classification that the person held before appointment as department head. The person has all the rights and privileges of the prior position according to seniority and shall be paid his full salary for the time of suspension.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.48, eff. May 18, 2013.

Sec. 143.014. APPOINTMENT AND REMOVAL OF PERSON CLASSIFIED IMMEDIATELY BELOW DEPARTMENT HEAD. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If approved by the governing body of the municipality by resolution or ordinance, the head of a fire or police department in the municipality in which at least four classifications exist below the classification of department head may appoint each person occupying an authorized position in the classification immediately below that of department head, as prescribed by this section. The classification immediately below that of department head may include a person who has a different title but has the same pay grade.

(c) In a police department, the total number of persons appointed to the classification immediately below that of department head may not exceed the total number of persons, plus one, serving in that classification on January 1, 1983. In a fire department in a municipality having fewer than 300 certified fire fighters, the department head may appoint not more than one person to the

classification immediately below that of department head. If a municipality has 300 to 600 certified fire fighters, the department head may appoint two persons to the classification. If a municipality has more than 600 certified fire fighters, the department head may appoint three persons to the classification. This subsection does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes) unless the municipality specifically adopts the appointment procedure prescribed by this subsection through the collective bargaining process.

(d) A person appointed to a position in the classification immediately below that of the head of the police department must:

(1) be employed by the municipality's police department as a sworn police officer;

(2) have at least two years' continuous service in that department as a sworn police officer; and

(3) meet the requirements for appointment as head of a police department prescribed by Section 143.013(b).

(e) A person appointed to a position in the classification immediately below that of the head of the fire department must:

(1) be employed by the municipality's fire department;

(2) have a permanent classification in at least an officer level; and

(3) meet the requirements for appointment as head of a fire department prescribed by Section 143.013(b).

(f) The department head shall make each appointment under this section within 90 days after the date a vacancy occurs in the position.

(g) A person appointed under this section serves at the pleasure of the department head. A person who is removed from the position by the department head shall be reinstated in the department and placed in the same classification, or its equivalent, that the person held before appointment. The person retains all rights of seniority in the department.

(h) If a person appointed under this section is charged with an offense in violation of civil service rules and indefinitely suspended by the department head, the person has the same rights and privileges of a hearing before the commission in the same manner and under the same conditions as a classified employee. If the commission, a hearing examiner, or a court of competent jurisdiction

finds the charges to be untrue or unfounded, the person shall immediately be restored to the same classification, or its equivalent, that the person held before appointment. The person has all the rights and privileges of the prior position according to seniority, and shall be repaid for any lost wages.

(i) A person serving under permanent appointment in a position in the classification immediately below that of the department head on September 1, 1983, is not required to meet the requirements of this section or to be appointed or reappointed as a condition of tenure or continued employment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.015. APPEAL OF COMMISSION DECISION TO DISTRICT COURT. (a) If a fire fighter or police officer is dissatisfied with any commission decision, the fire fighter or police officer may file a petition in district court asking that the decision be set aside. The petition must be filed within 10 days after the date the final commission decision:

(1) is sent to the fire fighter or police officer by certified mail; or

(2) is personally received by the fire fighter or police officer or by that person's designee.

(b) An appeal under this section is by trial de novo. The district court may grant the appropriate legal or equitable relief necessary to carry out the purposes of this chapter. The relief may include reinstatement or promotion with back pay if an order of suspension, dismissal, or demotion is set aside.

(c) The court may award reasonable attorney's fees to the prevailing party and assess court costs against the nonprevailing party.

(d) If the court finds for the fire fighter or police officer, the court shall order the municipality to pay lost wages to the fire fighter or police officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.016. PENALTY FOR VIOLATION OF CHAPTER. (a) A fire fighter or police officer commits an offense if the person violates

this chapter.

(b) An offense under this section or Section 143.009 is a misdemeanor punishable by a fine of not less than $10 or more than $100, confinement in the county jail for not more than 30 days, or both fine and confinement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. CLASSIFICATION AND APPOINTMENT

Sec. 143.021. CLASSIFICATION; EXAMINATION REQUIREMENT. (a) The commission shall provide for the classification of all fire fighters and police officers. The municipality's governing body shall establish the classifications by ordinance. The governing body by ordinance shall prescribe the number of positions in each classification.

(b) Except for the department head and a person the department head appoints in accordance with Section 143.014 or 143.102, each fire fighter and police officer is classified as prescribed by this subchapter and has civil service protection. The failure of the governing body to establish a position by ordinance does not result in the loss of civil service benefits by a person entitled to civil service protection or appointed to the position in substantial compliance with this chapter.

(c) Except as provided by Sections 143.013, 143.014, 143.0251, 143.102, and 143.1251, an existing position or classification or a position or classification created in the future either by name or by increase in salary may be filled only from an eligibility list that results from an examination held in accordance with this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 64, Sec. 1, eff. Sept. 1, 1995.

Sec. 143.022. PHYSICAL REQUIREMENTS AND EXAMINATIONS. (a) The commission shall set the age and physical requirements for applicants for beginning and promotional positions in accordance with this chapter. The requirements must be the same for all applicants.

(b) The commission shall require each applicant for a beginning or a promotional position to take an appropriate physical examination. The commission may require each applicant for a

beginning position to take a mental examination. The examination shall be administered by a physician, psychiatrist, or psychologist, as appropriate, appointed by the commission. The municipality shall pay for each examination.

(c) If an applicant is rejected by the physician, psychiatrist, or psychologist, as appropriate, the applicant may request another examination by a board of three physicians, psychiatrists, or psychologists, as appropriate, appointed by the commission. The applicant must pay for the board examination. The board's decision is final.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(b), eff. Aug. 28, 1989.

Sec. 143.023. ELIGIBILITY FOR BEGINNING POSITION. (a) A person may not take an entrance examination for a beginning position in the police department unless the person is at least 18 years of age. A person may not take an entrance examination for a beginning position in the fire department unless the person is at least 18 years of age but not 36 years of age or older.

(b) A person may not be certified as eligible for a beginning position in a fire department if the person is 36 years of age or older.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 418 (H.B. 1661), Sec. 1, eff. September 1, 2023.

(d) An applicant may not be certified as eligible for a beginning position with a fire department unless the applicant meets all legal requirements necessary to become eligible for future certification by the Commission on Fire Protection Personnel Standards and Education.

(e) An applicant may not be certified as eligible for a beginning position with a police department unless the applicant meets all legal requirements necessary to become eligible for future licensing by the Texas Commission on Law Enforcement.

(f) Each police officer and fire fighter affected by this chapter must be able to read and write English.

(g) In addition to meeting the requirements prescribed by this section, an applicant for a beginning position in a police department in a municipality with a population of 1.5 million or more must meet

the requirements prescribed by Section 143.105.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 380 (S.B. 1421), Sec. 1, eff. June 17, 2005.
Acts 2009, 81st Leg., R.S., Ch. 273 (S.B. 461), Sec. 1, eff. May 30, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.49, eff. May 18, 2013.
Acts 2023, 88th Leg., R.S., Ch. 418 (H.B. 1661), Sec. 1, eff. September 1, 2023.

Sec. 143.024. ENTRANCE EXAMINATION NOTICE. (a) Before the 10th day before the date an entrance examination is held, the commission shall cause a notice of the examination to be posted in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The notice must show the position to be filled or for which the examination is to be held, and the date, time, and place of the examination.
(b) The notice required by Subsection (a) must also state the period during which the eligibility list created as a result of the examination will be effective.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.025. ENTRANCE EXAMINATIONS. (a) The commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions in the fire and police departments. The examinations are open to each person who makes a proper application and meets the requirements prescribed by this chapter.
(b) An eligibility list for a beginning position in the fire or police department may be created only as a result of a competitive examination held in the presence of each applicant for the position, except as provided by Subsections (d), (e), and (l). The examination must be based on the person's general knowledge and aptitude and must inquire into the applicant's general education and mental ability. A person may not be appointed to the fire or police department except

as a result of the examination.

(c) An applicant may not take an examination unless at least one other applicant taking the examination is present.

(d) Examinations for beginning positions in the fire department may be held at different locations if each applicant takes the same examination and is examined in the presence of other applicants.

(e) This subsection applies only in a municipality to which Subchapter J does not apply. An examination for beginning positions in the police department must be held at one or more locations in the municipality in which the police department is located and may be held at additional locations outside the municipality. An examination held at multiple locations must be administered on the same day and at the same time at each location at which it is given. Only one eligibility list for a police department may be created from that examination, and only one eligibility list may be in effect at a given time. Each applicant who takes the examination for the eligibility list shall:

(1) take the same examination; and

(2) be examined in the presence of other applicants for that eligibility list.

(f) An additional five points shall be added to the examination grade of an applicant who served in the United States armed forces, received an honorable discharge, and made a passing grade on the examination.

(g) An applicant may not take the examination for a particular eligibility list more than once.

(h) The commission shall keep each eligibility list for a beginning position in effect for a period of not less than six months or more than 12 months, unless the names of all applicants on the list have been referred to the appropriate department. The commission shall determine the length of the period. The commission shall give new examinations at times the commission considers necessary to provide required staffing for scheduled fire or police training academies.

(i) The grade to be placed on the eligibility list for each applicant shall be computed by adding an applicant's points under Subsection (f), if any, to the applicant's grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 percent and is determined entirely by the correctness of the applicant's answers to the questions. The

minimum passing grade on the examination is 70 percent. An applicant must pass the examination to be placed on an eligibility list.

(j) Notwithstanding Subsection (i), each applicant who is either a natural-born or adopted child of a fire fighter who previously suffered a line-of-duty death while covered by this chapter shall be ranked at the top of any eligibility list in which said applicant receives a minimum passing grade on that respective eligibility exam. The deceased fire fighter's applicant child must otherwise satisfy all of the requirements for eligibility for a beginning position in a fire department contained in this chapter. This commission shall promulgate rules to identify and verify each applicant's eligibility for applicability of this subsection.

(k) This section does not apply to a police department located in a municipality with a population of 1.5 million or more.

(l) In a municipality with a population of more than 1.4 million and less than 2 million, an examination for a beginning position in the fire department may include testing instruments to be used in addition to the written examination in the establishment of the initial eligibility list.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 756, Sec. 1, 2, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 19, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 628, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 380 (S.B. 1421), Sec. 2, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 27 (S.B. 339), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 503 (H.B. 1488), Sec. 1, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 132, eff. September 1, 2023.

Sec. 143.0251. REAPPOINTMENT AFTER RESIGNATION. The commission may adopt rules to allow a police officer who voluntarily resigns from the department to be reappointed to the department without taking another departmental entrance examination.

Added by Acts 1995, 74th Leg., ch. 64, Sec. 2, eff. Sept. 1, 1995.

Sec. 143.026. PROCEDURE FOR FILLING BEGINNING POSITIONS. (a) When a vacancy occurs in a beginning position in a fire or police department, the department head shall request in writing from the commission the names of suitable persons from the eligibility list. The director shall certify to the municipality's chief executive the names of the three persons having the highest grades on the eligibility list.

(b) From the three names certified, the chief executive shall appoint the person having the highest grade unless there is a valid reason why the person having the second or third highest grade should be appointed.

(c) If the chief executive does not appoint the person having the highest grade, the chief executive shall clearly set forth in writing the good and sufficient reason why the person having the highest grade was not appointed.

(d) The reason required by Subsection (c) shall be filed with the commission and a copy provided to the person having the highest grade. If the chief executive appoints the person having the third highest grade, a copy of the report shall also be furnished to the person having the second highest grade.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.027. PROBATIONARY PERIOD. (a) A person appointed to a beginning position in the fire or police department must serve a probationary period of one year beginning on that person's date of employment as a fire fighter, police officer, or academy trainee. In a municipality with a population of less than 1.9 million, the commission by rule may extend the probationary period by not more than six months for a person who:

(1) is not employed by a department in which a collective bargaining agreement or a meet-and-confer agreement currently exists or previously existed; and

(2) is required to attend a basic training academy for initial certification by the Texas Commission on Fire Protection or the Texas Commission on Law Enforcement.

(b) During a fire fighter's or police officer's probationary

period, the department head shall discharge the person and remove the person from the payroll if the person's appointment was not regular or was not made in accordance with this chapter or the commission rules.

(c) During a fire fighter's or police officer's probationary period, the person may not be prohibited from joining or required to join an employee organization. Joining or not joining an employee organization is not a ground for retaining or not retaining a fire fighter or police officer serving a probationary period.

(d) A fire fighter or police officer who was appointed in substantial compliance with this chapter and who serves the entire probationary period automatically becomes a full-fledged civil service employee and has full civil service protection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 869 (S.B. 1050), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 909 (H.B. 148), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 11.001, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.50, eff. May 18, 2013.

Sec. 143.028. ELIGIBILITY FOR PROMOTION. (a) Except as provided by Sections 143.013 and 143.102, a fire fighter is not eligible for promotion unless the person has served in that fire department in the next lower position or other positions specified by the commission for at least two years at any time before the date the promotional examination is held. A fire fighter is not eligible for promotion to the rank of captain or its equivalent unless the person has at least four years' actual service in that fire department.

(b) Except as provided by Sections 143.013 and 143.102, a police officer is not eligible for promotion unless the person has served in that police department in the next lower position or other positions specified by the commission for at least two years immediately before the date the promotional examination is held. A police officer is not eligible for promotion to the rank of captain

or its equivalent unless the person has at least four years' actual service in that police department.

(c) If a person is recalled on active military duty for not more than 60 months, the two-year service requirements prescribed by Subsections (a) and (b) do not apply and the person is entitled to have time spent on active military duty considered as duty in the respective fire or police department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 833 (S.B. 863), Sec. 2, eff. June 17, 2005.

Sec. 143.029. PROMOTIONAL EXAMINATION NOTICE. (a) Before the 90th day before the date a promotional examination is held, the commission shall post a notice that lists the sources from which the examination questions will be taken.

(b) Before the 30th day before the date a promotional examination is held, the commission shall post a notice of the examination in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The notice must show the position to be filled or for which the examination is to be held, and the date, time, and place of the examination. The commission shall also furnish sufficient copies of the notice for posting in the stations or subdepartments in which the position will be filled.

(c) The notice required by Subsection (b) may also include the name of each source used for the examination, the number of questions taken from each source, and the chapter used in each source.

(d) In addition to the notice prescribed by this section, a municipality with a population of 1.5 million or more must post the notice prescribed by Section 143.107.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.030. ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL EXAMINATION. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) Each promotional examination is open to each fire fighter

who at any time has continuously held for at least two years a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(c) If the department has adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, each promotional examination is open to each fire fighter who has continuously held for at least two years a position at the next lower pay grade, if it exists, in the classification for which the examination is to be held.

(d) If there are not enough fire fighters in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission may open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may open the examination to persons with at least two years' experience in the second lower position, in salary, to the position for which the examination is to be held.

(e) If a fire fighter had previously terminated the fire fighter's employment with the department and is subsequently reemployed by the same department, the fire fighter must again meet the two-year service requirement for eligibility to take a promotional examination. In determining if a fire fighter has met the two-year service requirement, a fire department may not consider service in another fire department.

(f) This section does not prohibit lateral crossover between classes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.031. ELIGIBILITY FOR POLICE DEPARTMENT PROMOTIONAL EXAMINATION. (a) Each promotional examination is open to each police officer who for at least two years immediately before the examination date has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(b) If the department has adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, each promotional examination is open to each police officer who has continuously held for at least two years immediately

before the examination date a position at the next lower pay grade, if it exists, in the classification for which the examination is to be held.

(c) If there are not sufficient police officers in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission shall open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may open the examination to persons in the second lower position, in salary, to the position for which the examination is to be held.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.032. PROMOTIONAL EXAMINATION PROCEDURE. (a) The commission shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the fire and police departments. Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the examinations shall be held substantially as prescribed by this section.

(b)(1) Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates, except that an eligible promotional candidate who is serving on active military duty outside of this state or in a location that is not within reasonable geographic proximity to the location where the examination is being administered is entitled to take the examination outside of the presence of and at a different time than the other candidates and may be allowed to take an examination that is not identical to the examination administered to the other candidates.

(2) The commission may adopt rules under Subsection (a) providing for the efficient administration of promotional examinations to eligible promotional candidates who are members of the armed forces serving on active military duty. In adopting the rules, the commission shall ensure that the administration of the examination will not result in unnecessary interference with any ongoing military effort. The rules shall require that:

(A) at the discretion of the administering entity, an

examination that is not identical to the examination administered to other eligible promotional candidates may be administered to an eligible promotional candidate who is serving on active military duty; and

(B) if a candidate serving on active military duty takes a promotional examination outside the presence of other candidates and passes the examination, the candidate's name shall be included in the eligibility list of names of promotional candidates who took and passed the examination nearest in time to the time at which the candidate on active military duty took the examination.

(c) The examination must be entirely in writing and may not in any part consist of an oral interview.

(d) The examination questions must test the knowledge of the eligible promotional candidates about information and facts and must be based on:

(1) the duties of the position for which the examination is held;

(2) material that is of reasonably current publication and that has been made reasonably available to each member of the fire or police department involved in the examination; and

(3) any study course given by the departmental schools of instruction.

(e) The examination questions must be taken from the sources posted as prescribed by Section 143.029(a). Fire fighters or police officers may suggest source materials for the examinations.

(f) The examination questions must be prepared and composed so that the grading of the examination can be promptly completed immediately after the examination is over.

(g) The director is responsible for the preparation and security of each promotional examination. The fairness of the competitive promotional examination is the responsibility of the commission, the director, and each municipal employee involved in the preparation or administration of the examination.

(h) A person commits an offense if the person knowingly or intentionally:

(1) reveals a part of a promotional examination to an unauthorized person; or

(2) receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage.

(i) An offense under Subsection (h) is a misdemeanor punishable by a fine of not less than $1,000, confinement in the county jail for not more than one year, or both the fine and the confinement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(c), eff. Aug. 28, 1989. Amended by:

Acts 2005, 79th Leg., Ch. 833 (S.B. 863), Sec. 1, eff. June 17, 2005.

Sec. 143.033. PROMOTIONAL EXAMINATION GRADES. (a) The grading of each promotional examination shall begin when one eligible promotional candidate completes the examination. As the eligible promotional candidates finish the examination, the examinations shall be graded at the examination location and in the presence of any candidate who wants to remain during the grading.

(b) Each police officer is entitled to receive one point for each year of seniority as a classified police officer in that department, with a maximum of 10 points. Each fire fighter is entitled to receive one point for each year of seniority in that department, with a maximum of 10 points.

(c) Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the grade that must be placed on the eligibility list for each police officer or fire fighter shall be computed by adding the applicant's points for seniority to the applicant's grade on the written examination, but for a fire fighter applicant only if the applicant scores a passing grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the applicant's answers to the questions. The passing grade in a municipality with a population of 1.5 million or more is prescribed by Section 143.108. In a municipality with a population of less than 1.5 million, all police officer applicants who receive a grade of at least 70 points shall be determined to have passed the examination and all fire fighter applicants who receive a grade on the written examination of at least 70 points shall be determined to have passed the examination. If a tie score occurs, the commission shall determine a method to break the tie.

(d) Within 24 hours after a promotional examination is held, the commission shall post the individual raw test scores on a bulletin board located in the main lobby of the city hall.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 713, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 869 (S.B. 1050), Sec. 3, eff. September 1, 2005.

Sec. 143.034. REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION. (a) On request, each eligible promotional candidate from the fire or police department is entitled to examine the person's promotional examination and answers, the examination grading, and the source material for the examination. If dissatisfied, the candidate may appeal, within five business days, to the commission for review in accordance with this chapter. In computing this period, a Saturday, Sunday, or legal holiday is not considered a business day.
(b) The eligible promotional candidate may not remove the examination or copy a question used in the examination.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(e), eff. Aug. 28, 1989.

Sec. 143.035. ALTERNATE PROMOTIONAL SYSTEM IN POLICE DEPARTMENT. (a) This section does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes).
(b) On the recommendation of the head of the police department and a majority vote of the sworn police officers in the department, the commission may adopt an alternate promotional system to select persons to occupy nonentry level positions other than positions that are filled by appointment by the department head. The promotional system must comply with the requirements prescribed by this section.
(c) The commission shall order the director to conduct an election and to submit the revised promotional system either to all sworn police officers within the rank immediately below the classification for which the promotional examination is to be

administered or to all sworn police officers in the department.

(d) The director shall hold the election on or after the 30th day after the date notice of the election is posted at the department. The election shall be conducted throughout each regular work shift at an accessible location within the department during a 24-hour period.

(e) The ballot shall contain the specific amendment to the promotional procedure. Each sworn police officer shall be given the opportunity to vote by secret ballot "for" or "against" the amendment.

(f) The revised promotional system must be approved by a majority vote of the sworn police officers voting. A defeated promotional system amendment may not be placed on a ballot for a vote by the sworn police officers for at least 12 months after the date the prior election was held, but this provision does not apply if the head of the department recommends a different proposal to the commission.

(g) The commission shall canvass the votes within 30 days after the date the election is held. An appeal alleging election irregularity must be filed with the commission within five working days after the date the election closes. If approved by the sworn police officers, the promotional system amendment becomes effective after all election disputes have been ruled on and the election votes have been canvassed by the commission.

(h) At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, the department head may petition the commission to terminate the alternate system, and the commission shall terminate the alternate system.

(i) At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, a petition signed by at least 35 percent of the sworn police officers may be submitted to the commission asking that the alternate promotional system be reconsidered. If a petition is submitted, the commission shall, within 60 days after the date the petition is filed, hold an election as prescribed by this section. If a majority of those voting vote to terminate, the commission shall terminate the alternate promotional system.

(j) If the alternate system is terminated, an additional list may not be created under the alternate system.

(k) A promotional list may not be created if an election under this section is pending. An existing eligibility list, whether created under the system prescribed by this chapter or created under an alternate system adopted under this section, may not be terminated before or extended beyond its expiration date. A person promoted under an alternate system has the same rights and the same status as a person promoted under this chapter even if the alternate system is later terminated.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 1018, Sec. 1, eff. Aug. 30, 1993.

Sec. 143.036. PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS. (a) When a vacancy occurs in a nonentry position that is not appointed by the department head as provided by Sections 143.014 and 143.102, the vacancy shall be filled as prescribed by this section and Section 143.108, as applicable. A vacancy in a fire fighter position described by this subsection occurs on the date the position is vacated by:

(1) resignation;

(2) retirement;

(3) death;

(4) promotion; or

(5) issuance of an indefinite suspension in accordance with Section 143.052(b).

(b) If an eligibility list for the position to be filled exists on the date the vacancy occurs, the director, on request by the department head, shall certify to the department head the names of the three persons having the highest grades on that eligibility list. The commission shall certify the names within 10 days after the date the commission is notified of the vacancy. If fewer than three names remain on the eligibility list or if only one or two eligible promotional candidates passed the promotional examination, each name on the list must be submitted to the department head.

(c) In a municipality with a population of less than 1.5 million, the commission shall submit names from an existing eligibility list to the department head until the vacancy is filled or the list is exhausted.

(d) If an eligibility list does not exist on the date a vacancy

occurs or a new position is created, the commission shall hold an examination to create a new eligibility list within 90 days after the date the vacancy occurs or a new position is created.

(e) If an eligibility list exists on the date a vacancy occurs, the department head shall fill the vacancy by permanent appointment from the eligibility list furnished by the commission within 60 days after the date the vacancy occurs. If an eligibility list does not exist, the department head shall fill the vacancy by permanent appointment from an eligibility list that the commission shall provide within 90 days after the date the vacancy occurs. This subsection does not apply in a municipality with a population of 1.5 million or more.

(f) Unless the department head has a valid reason for not appointing the person, the department head shall appoint the eligible promotional candidate having the highest grade on the eligibility list. If the department head has a valid reason for not appointing the eligible promotional candidate having the highest grade, the department head shall personally discuss the reason with the person being bypassed before appointing another person. The department head shall also file the reason in writing with the commission and shall provide the person with a copy of the written notice. On application of the bypassed eligible promotional candidate, the reason the department head did not appoint that person is subject to review by the commission or, on the written request of the person being bypassed, by an independent third party hearing examiner under Section 143.057.

(g) If a person is bypassed, the person's name is returned to its place on the eligibility list and shall be resubmitted to the department head if a vacancy occurs. If the department head refuses three times to appoint a person, files the reasons for the refusals in writing with the commission, and the commission does not set aside the refusals, the person's name shall be removed from the eligibility list.

(h) Each promotional eligibility list remains in existence for one year after the date on which the written examination is given, unless exhausted. At the expiration of the one-year period, the eligibility list expires and a new examination may be held.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(f), eff. Aug. 28, 1989.

Amended by:

Acts 2005, 79th Leg., Ch. 869 (S.B. 1050), Sec. 4, eff. September 1, 2005.

Sec. 143.037. RECORD OF CERTIFICATION AND APPOINTMENT. (a) When a person is certified and appointed to a position in the fire or police department, the director shall forward the appointed person's record to the proper department head. The director shall also forward a copy of the record to the chief executive and shall retain a copy in the civil service files.

(b) The record must contain:

(1) the date notice of examination for the position was posted;

(2) the date on which the appointed person took the examination;

(3) the name of each person who conducted the examination;

(4) the relative position of the appointed person on the eligibility list;

(5) the date the appointed person took the physical examination, the name of the examining physician, and whether the person was accepted or rejected;

(6) the date the request to fill the vacancy was made;

(7) the date the appointed person was notified to report for duty; and

(8) the date the appointed person's pay is to start.

(c) If the director intentionally fails to comply with this section, the commission shall immediately remove the director from office.

(d) The director's failure to comply with this section does not affect the civil service status of an employee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.038. TEMPORARY DUTIES IN HIGHER CLASSIFICATION. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The department head may designate a person from the next lower classification to temporarily fill a position in a higher

classification. The designated person is entitled to the base salary of the higher position plus the person's own longevity or seniority pay, educational incentive pay, and certification pay during the time the person performs the duties.

(c) The temporary performance of the duties of a higher position by a person who has not been promoted as prescribed by this chapter may not be construed as a promotion.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. COMPENSATION

Sec. 143.041. SALARY. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) Except as provided by Section 143.038, all fire fighters or police officers in the same classification are entitled to the same base salary.

(c) In addition to the base salary, each fire fighter or police officer is entitled to each of the following types of pay, if applicable:

(1) longevity or seniority pay;

(2) educational incentive pay as authorized by Section 143.044;

(3) assignment pay as authorized by Sections 143.042 and 143.043;

(4) certification pay as authorized by Section 143.044;

(5) shift differential pay as authorized by Section 143.047; and

(6) fitness incentive pay as authorized by Section 143.044.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1172, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2005, 79th Leg., Ch. 552 (H.B. 1213), Sec. 1, eff. September 1, 2005.

Sec. 143.042. ASSIGNMENT PAY. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The governing body of a municipality may authorize assignment pay for fire fighters and police officers who perform

specialized functions in their respective departments.

(c) The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department.

(d) If the ordinance applies equally to each person who meets the criteria established by the ordinance, the ordinance may provide for payment to each fire fighter and police officer who meets training or education criteria for an assignment or the ordinance may set criteria that provide for payment only to a fire fighter or police officer in a special assignment.

(e) The head of the fire or police department is not eligible for the assignment pay authorized by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.043. FIELD TRAINING OFFICER ASSIGNMENT PAY. (a) In this section, "field training officer" means a member of the police department who is assigned to and performs the duties and responsibilities of the field training officers program.

(b) The governing body of a municipality may authorize assignment pay for field training officers. The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the police department.

(c) The department head is not eligible for the assignment pay authorized by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.044. CERTIFICATION, EDUCATIONAL INCENTIVE, AND FITNESS INCENTIVE PAY. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If each fire fighter or police officer in a municipality is afforded an opportunity to qualify for certification, the municipality's governing body may authorize certification pay to those fire fighters who meet the requirements for certification set by the Texas Commission on Fire Protection or for those police officers who meet the requirements for certification set by the Texas Commission on Law Enforcement.

(c) If the criteria for educational incentive pay are clearly established, are in writing, and are applied equally to each fire fighter or police officer in a municipality who meets the criteria, the municipality's governing body may authorize educational incentive pay for each fire fighter or police officer who has successfully completed courses at an accredited college or university.

(d) If the criteria for fitness incentive pay are clearly established, are in writing, and are applied equally to each fire fighter or police officer in a municipality who meets the criteria, the municipality's governing body may authorize fitness incentive pay for each fire fighter or police officer who successfully meets the criteria.

(e) The certification pay, educational incentive pay, and fitness incentive pay are in addition to a fire fighter's or police officer's regular pay.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 552 (H.B. 1213), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 552 (H.B. 1213), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.51, eff. May 18, 2013.

Sec. 143.045. ACCUMULATION AND PAYMENT OF SICK LEAVE. (a) A permanent or temporary fire fighter or police officer is allowed sick leave with pay accumulated at the rate of 1-1/4 full working days for each full month employed in a calendar year, so as to total 15 working days to a person's credit each 12 months.

(b) A fire fighter or police officer may accumulate sick leave without limit and may use the leave if unable to work because of a bona fide illness. If an ill fire fighter or police officer exhausts the sick leave and can conclusively prove that the illness was incurred in the performance of duties, an extension of sick leave shall be granted.

(c) Except as otherwise provided by Section 143.116, a fire fighter or police officer who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount

of the person's salary for accumulated sick leave if the person has accumulated not more than 90 days of sick leave. If a fire fighter or police officer has accumulated more than 90 working days of sick leave, the person's employer may limit payment to the amount that the person would have received if the person had been allowed to use 90 days of accumulated sick leave during the last six months of employment. The lump-sum payment is computed by compensating the fire fighter or police officer for the accumulated time at the highest permanent pay classification for which the person was eligible during the last six months of employment. The fire fighter or police officer is paid for the same period for which the person would have been paid if the person had taken the sick leave but does not include additional holidays and any sick leave or vacation time that the person might have accrued during the 90 days.

(d) To facilitate the settlement of the accounts of deceased fire fighters and police officers, all unpaid compensation, including all accumulated sick leave, due at the time of death to an active fire fighter or police officer who dies as a result of a line-of-duty injury or illness, shall be paid to the persons in the first applicable category of the following prioritized list:

(1) to the beneficiary or beneficiaries the fire fighter or police officer designated in writing to receive the compensation and filed with the commission before the person's death;

(2) to the fire fighter's or police officer's widow or widower;

(3) to the fire fighter's or police officer's child or children and to the descendants of a deceased child, by representation;

(4) to the fire fighter's or police officer's parents or to their survivors; or

(5) to the properly appointed legal representative of the fire fighter's or police officer's estate, or in the absence of a representative, to the person determined to be entitled to the payment under the state law of descent and distribution.

(e) Payment of compensation to a person in accordance with Subsection (d) is a bar to recovery by another person.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.046. VACATIONS. (a) Each fire fighter or police officer is entitled to earn a minimum of 15 working days' vacation leave with pay in each year.

(b) In computing the length of time a fire fighter or police officer may be absent from work on vacation leave, only those calendar days during which the person would be required to work if not on vacation may be counted as vacation days.

(c) Unless approved by the municipality's governing body, a fire fighter or police officer may not accumulate vacation leave from year to year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.047. SHIFT DIFFERENTIAL PAY. (a) The governing body of a municipality may authorize shift differential pay for fire fighters and police officers who work a shift in which more than 50 percent of the time worked is after 6 p.m. and before 6 a.m.

(b) The shift differential pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department.

Added by Acts 1989, 71st Leg., ch. 1172, Sec. 3, eff. Aug. 28, 1989.

SUBCHAPTER D. DISCIPLINARY ACTIONS

Sec. 143.051. CAUSE FOR REMOVAL OR SUSPENSION. A commission rule prescribing cause for removal or suspension of a fire fighter or police officer is not valid unless it involves one or more of the following grounds:

(1) conviction of a felony or other crime involving moral turpitude;

(2) violations of a municipal charter provision;

(3) acts of incompetency;

(4) neglect of duty;

(5) discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;

(6) acts showing lack of good moral character;

(7) drinking intoxicants while on duty or intoxication while off duty;

(8) conduct prejudicial to good order;

(9) refusal or neglect to pay just debts;

(10) absence without leave;

(11) shirking duty or cowardice at fires, if applicable; or

(12) violation of an applicable fire or police department rule or special order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.052. DISCIPLINARY SUSPENSIONS. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The head of the fire or police department may suspend a fire fighter or police officer under the department head's supervision or jurisdiction for the violation of a civil service rule. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period. An indefinite suspension is equivalent to dismissal from the department.

(c) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the hour of suspension, file a written statement with the commission giving the reasons for the suspension. The department head shall immediately deliver a copy of the statement in person to the suspended fire fighter or police officer.

(d) The copy of the written statement must inform the suspended fire fighter or police officer that if the person wants to appeal to the commission, the person must file a written appeal with the commission within 10 days after the date the person receives the copy of the statement.

(e) The written statement filed by the department head with the commission must point out each civil service rule alleged to have been violated by the suspended fire fighter or police officer and must describe the alleged acts of the person that the department head contends are in violation of the civil service rules. It is not sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated.

(f) If the department head does not specifically point out in the written statement the act or acts of the fire fighter or police officer that allegedly violated the civil service rules, the commission shall promptly reinstate the person.

(g) If offered by the department head, the fire fighter or police officer may agree in writing to voluntarily accept, with no right of appeal, a suspension of 16 to 90 calendar days for the violation of a civil service rule. The fire fighter or police officer must accept the offer within five working days after the date the offer is made. If the person refuses the offer and wants to appeal to the commission, the person must file a written appeal with the commission within 15 days after the date the person receives the copy of the written statement of suspension.

(h) In the original written statement and charges and in any hearing conducted under this chapter, the department head may not complain of an act that occurred earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the fire fighter or police officer is subject to a criminal penalty, the department head may not complain of an act that is discovered earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. The department head must allege that the act complained of is related to criminal activity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(g), eff. Aug. 28, 1989.

Sec. 143.053. APPEAL OF DISCIPLINARY SUSPENSION. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If a suspended fire fighter or police officer appeals the suspension to the commission, the commission shall hold a hearing and render a decision in writing within 30 days after the date it receives notice of appeal. The suspended person and the commission may agree to postpone the hearing for a definite period.

(c) In a hearing conducted under this section, the department head is restricted to the department head's original written statement and charges, which may not be amended.

(d) The commission may deliberate the decision in closed session but may not consider evidence that was not presented at the hearing. The commission shall vote in open session.

(e) In its decision, the commission shall state whether the suspended fire fighter or police officer is:

(1) permanently dismissed from the fire or police department;

(2) temporarily suspended from the department; or

(3) restored to the person's former position or status in the department's classified service.

(f) If the commission finds that the period of disciplinary suspension should be reduced, the commission may order a reduction in the period of suspension. If the suspended fire fighter or police officer is restored to the position or class of service from which the person was suspended, the fire fighter or police officer is entitled to:

(1) full compensation for the actual time lost as a result of the suspension at the rate of pay provided for the position or class of service from which the person was suspended; and

(2) restoration of or credit for any other benefits lost as a result of the suspension, including sick leave, vacation leave, and service credit in a retirement system. Standard payroll deductions, if any, for retirement and other benefits restored shall be made from the compensation paid, and the municipality shall make its standard corresponding contributions, if any, to the retirement system or other applicable benefit systems.

(g) The commission may suspend or dismiss a fire fighter or police officer only for violation of civil service rules and only after a finding by the commission of the truth of specific charges against the fire fighter or police officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 740, Sec. 1, eff. Sept. 1, 1999.

Sec. 143.054. DEMOTIONS. (a) If the head of the fire or police department wants a fire fighter or police officer under his supervision or jurisdiction to be involuntarily demoted, the department head may recommend in writing to the commission that the commission demote the fire fighter or police officer.

(b) The department head must include in the recommendation for demotion the reasons the department head recommends the demotion and a request that the commission order the demotion. The department

head must immediately furnish a copy of the recommendation in person to the affected fire fighter or police officer.

(c) The commission may refuse to grant the request for demotion. If the commission believes that probable cause exists for ordering the demotion, the commission shall give the fire fighter or police officer written notice to appear before the commission for a public hearing at a time and place specified in the notice. The commission shall give the notice before the 10th day before the date the hearing will be held.

(d) The fire fighter or police officer is entitled to a full and complete public hearing, and the commission may not demote a fire fighter or police officer without that public hearing.

(e) A voluntary demotion in which the fire fighter or police officer has accepted the terms of the demotion in writing is not subject to this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.055. UNCOMPENSATED DUTY OF POLICE OFFICERS. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) In this section, "uncompensated duty" means days of police work without pay that are in addition to regular or normal work days.

(c) The head of the police department may assign a police officer under his jurisdiction or supervision to uncompensated duty. The department head may not impose uncompensated duty unless the police officer agrees to accept the duty. If the police officer agrees to accept uncompensated duty, the department head shall give the person a written statement that specifies the date or dates on which the person will perform uncompensated duty.

(d) Uncompensated duty may be in place of or in combination with a period of disciplinary suspension without pay. If uncompensated duty is combined with a disciplinary suspension, the total number of uncompensated days may not exceed 15.

(e) A police officer may not earn or accrue any wage, salary, or benefit arising from length of service while the person is suspended or performing uncompensated duty. The days on which a police officer performs assigned uncompensated duty may not be taken into consideration in determining eligibility for a promotional

examination. A disciplinary suspension does not constitute a break in a continuous position or in service in the department in determining eligibility for a promotional examination.

(f) Except as provided by this section, a police officer who performs assigned uncompensated duty retains all rights and privileges of the person's position in the police department and of the person's employment by the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.056. PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT. (a) If a fire fighter or police officer is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the department head may temporarily suspend the person with or without pay for a period not to exceed 30 days after the date of final disposition of the specified felony indictment or misdemeanor complaint.

(b) The department head shall notify the suspended fire fighter or police officer in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

(c) If the action directly related to the felony indictment or misdemeanor complaint occurred or was discovered on or after the 180th day before the date of the indictment or complaint, the department head may, within 30 days after the date of final disposition of the indictment or complaint, bring a charge against the fire fighter or police officer for a violation of civil service rules.

(d) A fire fighter or police officer indicted for a felony or officially charged with the commission of a Class A or B misdemeanor who has also been charged by the department head with civil service violations directly related to the indictment or complaint may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

(e) If the department head temporarily suspends a fire fighter or police officer under this section and the fire fighter or police officer is not found guilty of the indictment or complaint in a court of competent jurisdiction, the fire fighter or police officer may

appeal to the commission or to a hearing examiner for recovery of back pay. The commission or hearing examiner may award all or part of the back pay or reject the appeal.

(f) Acquittal or dismissal of an indictment or a complaint does not mean that a fire fighter or police officer has not violated civil service rules and does not negate the charges that may have been or may be brought against the fire fighter or police officer by the department head.

(g) Conviction of a felony is cause for dismissal, and conviction of a Class A or B misdemeanor may be cause for disciplinary action or indefinite suspension.

(h) The department head may order an indefinite suspension based on an act classified as a felony or a Class A or B misdemeanor after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the department head intends to order an indefinite suspension after the 180-day period, the department head must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.057. HEARING EXAMINERS. (a) In addition to the other notice requirements prescribed by this chapter, the written notice for a promotional bypass or the letter of disciplinary action, as applicable, issued to a fire fighter or police officer must state that in an appeal of an indefinite suspension, a suspension, a promotional bypass, or a recommended demotion, the appealing fire fighter or police officer may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the fire fighter or police officer elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as provided by Subsection (j).

(b) To exercise the choice of appealing to a hearing examiner, the appealing fire fighter or police officer must submit to the director a written request as part of the original notice of appeal required under this chapter stating the person's decision to appeal

to an independent third party hearing examiner.

(c) The hearing examiner's decision is final and binding on all parties. If the fire fighter or police officer decides to appeal to an independent third party hearing examiner, the person automatically waives all rights to appeal to a district court except as provided by Subsection (j).

(d) If the appealing fire fighter or police officer chooses to appeal to a hearing examiner, the fire fighter or police officer and the department head, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, the director shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The fire fighter or police officer and the department head, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after the date they received the list, each party or the party's designee shall alternate striking a name from the list and the name remaining is the hearing examiner. The parties or their designees shall agree on a date for the hearing.

(e) The appeal hearing shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the fire fighter or police officer may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure prescribed by Subsection (d).

(f) In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas.

(g) In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the date the hearing ended.

(h) In an appeal that does not involve an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. The hearing examiner's

inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

(i) The hearing examiner's fees and expenses are shared equally by the appealing fire fighter or police officer and by the department. The costs of a witness are paid by the party who calls the witness.

(j) A district court may hear an appeal of a hearing examiner's award only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the district court having jurisdiction in the municipality in which the fire or police department is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 869 (S.B. 1050), Sec. 5, eff. September 1, 2005.

SUBCHAPTER E. LEAVES

Sec. 143.071. LEAVES OF ABSENCE; RESTRICTION PROHIBITED. (a) If a sufficient number of fire fighters or police officers are available to carry out the normal functions of the fire or police department, a fire fighter or police officer may not be refused a reasonable leave of absence without pay to attend a fire or police school, convention, or meeting if the purpose of the school, convention, or meeting is to secure a more efficient department and better working conditions for department personnel.

(b) A rule that affects a fire fighter's or police officer's constitutional right to appear before or to petition the legislature may not be adopted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.072. MILITARY LEAVE OF ABSENCE. (a) On written application of a fire fighter or police officer, the commission shall grant the person a military leave of absence without pay, subject to Section 143.075, to enable the person to enter a branch of the United States military service. The leave of absence may not exceed the

period of compulsory military service or the basic minimum enlistment period for the branch of service the fire fighter or police officer enters.

(b) The commission shall grant to a fire fighter or police officer a leave of absence for initial training or annual duty in the military reserves or the national guard.

(c) While a fire fighter or police officer who received a military leave of absence serves in the military, the commission shall fill the person's position in the department in accordance with this chapter.

(d) On termination of active military service, a fire fighter or police officer who received a military leave of absence under this section is entitled to be reinstated to the position that the person held in the department at the time the leave of absence was granted if the person:

(1) receives an honorable discharge;

(2) remains physically and mentally fit to discharge the duties of that position; and

(3) makes an application for reinstatement within 90 days after the date the person is discharged from military service.

(e) On reinstatement, the fire fighter or police officer shall receive full seniority credit for the time spent in the military service.

(f) If the reinstatement of a fire fighter or police officer who received a military leave of absence causes a surplus in the rank to which the fire fighter or police officer was reinstated, the fire fighter or police officer who has the least seniority in the position shall be returned to the position immediately below the position to which the returning fire fighter or police officer was reinstated. If a fire fighter or police officer is returned to a lower position in grade or compensation under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a position reinstatement list in order of seniority. Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the reinstatement list may not be appointed to a position to which the list applies until the list is exhausted.

(g) If a fire fighter or police officer employed by a municipality is called to active military duty for any period, the employing municipality must continue to maintain any health, dental,

or life insurance coverage and any health or dental benefits coverage that the fire fighter or police officer received through the municipality on the date the fire fighter or police officer was called to active military duty until the municipality receives written instructions from the fire fighter or police officer to change or discontinue the coverage.

(h) In addition to other procedures prescribed by this section, a fire fighter or police officer may, without restriction as to the amount of time, voluntarily substitute for a fire fighter or police officer described by Sections 143.075(b)(1) and (2) who has been called to active federal military duty for a period expected to last 12 months or longer. A fire fighter or police officer who voluntarily substitutes under this subsection must be qualified to perform the duties of the absent fire fighter or police officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 287, Sec. 1, eff. June 18, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 704 (H.B. 2806), Sec. 1, eff. September 1, 2009.

Sec. 143.073. LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE. (a) A municipality shall provide to a fire fighter or police officer a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year.

(b) At the end of the one-year period, the municipality's governing body may extend the line of duty illness or injury leave at full or reduced pay. If the fire fighter's or police officer's leave is not extended or the person's salary is reduced below 60 percent of the person's regular monthly salary, and the person is a member of a pension fund, the person may retire on pension until able to return to duty.

(c) If pension benefits are not available to a fire fighter or police officer who is temporarily disabled by a line of duty injury or illness and if the year at full pay and any extensions granted by the governing body have expired, the fire fighter or police officer may use accumulated sick leave, vacation time, and other accrued

benefits before the person is placed on temporary leave.

(d) If a fire fighter or police officer is temporarily disabled by an injury or illness that is not related to the person's line of duty, the person may:

(1) use all sick leave, vacation time, and other accumulated time before the person is placed on temporary leave; or

(2) have another fire fighter or police officer volunteer to do the person's work while the person is temporarily disabled by the injury or illness.

(e) After recovery from a temporary disability, a fire fighter or police officer shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another fire fighter or police officer may voluntarily do the work of an injured fire fighter or police officer until the person returns to duty.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 683, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 399 (H.B. 1790), Sec. 1, eff. September 1, 2015.

Sec. 143.074. REAPPOINTMENT AFTER RECOVERY FROM DISABILITY. With the commission's approval and if otherwise qualified, a fire fighter or police officer who has been certified by a physician selected by a pension fund as having recovered from a disability for which the person has been receiving a monthly disability pension is eligible for reappointment to the classified position that the person held on the date the person qualified for the monthly disability pension.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 683, Sec. 2, eff. Sept. 1, 2001.

Sec. 143.075. MILITARY LEAVE TIME ACCOUNTS. (a) A municipality shall maintain military leave time accounts for the fire and police departments and must maintain a separate military leave time account for each department.

(b) A military leave time account shall benefit a fire fighter

or police officer who:

(1) is a member of the Texas National Guard or the armed forces reserves of the United States;

(2) was called to active federal military duty while serving as a fire fighter or police officer for the municipality; and

(3) has served on active duty for a period of 3 continuous months or longer.

(c) A fire fighter or police officer may donate any amount of accumulated vacation, holiday, sick, or compensatory leave time to the military leave time account in that fire fighter's or police officer's department to help provide salary continuation for fire fighters or police officers who qualify as eligible beneficiaries of the account under Subsection (b). A fire fighter or police officer who wishes to donate time to an account under this section must authorize the donation in writing on a form provided by the fire or police department and approved by the municipality.

(d) A municipality shall equally distribute the leave time donated to a military leave time account among all fire fighters or police officers who are eligible beneficiaries of that account. The municipality shall credit and debit the applicable military leave time account on an hourly basis regardless of the cash value of the time donated or used.

Added by Acts 2003, 78th Leg., ch. 287, Sec. 2, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1041 (H.B. 2924), Sec. 1, eff. June 14, 2013.

SUBCHAPTER F. MISCELLANEOUS PROVISIONS

Sec. 143.081. DETERMINATION OF PHYSICAL AND MENTAL FITNESS. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) If a question arises as to whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties, the fire fighter or police officer shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

(c) If the commission, the department head, or the fire fighter or police officer questions the report, the commission shall appoint

a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the commission, the department head, and the person.

(d) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the fire fighter's or police officer's personal physician, psychiatrist, or psychologist, as appropriate, the commission shall appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the fire fighter or police officer. The board's findings as to the person's fitness for duty shall determine the issue.

(e) The fire fighter or police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(h), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 890, Sec. 1, eff. Aug. 28, 1989.

Sec. 143.082. EFFICIENCY REPORTS. (a) The commission may develop proper procedures and rules for semiannual efficiency reports and grades for each fire fighter or police officer.

(b) If the commission collects efficiency reports on fire fighters or police officers, the commission shall provide each person with a copy of that person's report.

(c) Within 10 calendar days after the date a fire fighter or police officer receives the copy of the person's efficiency report, the person may make a statement in writing concerning the efficiency report. The statement shall be placed in the person's personnel file with the efficiency report.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(i), eff. Aug. 28, 1989.

Sec. 143.083. EMERGENCY APPOINTMENT OF TEMPORARY FIRE FIGHTERS. (a) If a municipality is unable to recruit qualified fire fighters because of the maximum age limit prescribed by Section 143.023 and the municipality's governing body finds that this inability creates

an emergency, the commission shall recommend to the governing body additional rules governing the temporary employment of persons who are 36 years of age or older.

(b) A person employed under this section:

(1) is designated as a temporary employee;

(2) is not eligible for pension benefits;

(3) is not eligible for appointment or promotion if a permanent applicant or employee is available;

(4) is not eligible to become a full-fledged civil service employee; and

(5) must be dismissed before a permanent civil service employee may be dismissed under Section 143.085.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 418 (H.B. 1661), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 418 (H.B. 1661), Sec. 3, eff. September 1, 2023.

Sec. 143.084. CIVIL SERVICE STATUS AND PENSION BENEFITS FOR CERTAIN FIRE FIGHTERS. (a) Each fire fighter who, since December 31, 1969, has been continuously employed as a temporary employee under the provision codified as Section 143.083 has the full status of a civil service employee with all the rights and privileges granted by Section 143.005.

(b) A fire fighter covered by Subsection (a) is eligible to participate in earned pension benefits. The person may buy back service credits in the pension fund in which the permanent fire fighters in the department have participated since that person's employment. The credits may be bought at a rate determined by the actuary of the affected pension fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 418 (H.B. 1661), Sec. 4, eff. September 1, 2023.

Sec. 143.085. FORCE REDUCTION AND REINSTATEMENT LIST. (a) If

a municipality's governing body adopts an ordinance that vacates or abolishes a fire or police department position, the fire fighter or police officer who holds that position shall be demoted to the position immediately below the vacated or abolished position. If one or more positions of equal rank are vacated or abolished, the fire fighters or police officers who have the least seniority in a position shall be demoted to the position immediately below the vacated or abolished position. If a fire fighter or police officer is demoted under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a position reinstatement list in order of seniority. If the vacated or abolished position is filled or re-created within one year after the date it was vacated or abolished, the position must be filled from the reinstatement list. Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the list may not be appointed to the position during the one-year period until the reinstatement list is exhausted.

(b) If a position in the lowest classification is abolished or vacated and a fire fighter or police officer must be dismissed from the department, the fire fighter or police officer with the least seniority shall be dismissed. If a fire fighter or police officer is dismissed under this subsection without charges being filed against the person for violation of civil service rules, the fire fighter or police officer shall be placed on a reinstatement list in order of seniority. Appointments from the reinstatement list shall be made in order of seniority. Until the reinstatement list is exhausted, a person may not be appointed from an eligibility list. When a person has been on a reinstatement list for three years, the person shall be dropped from the list but shall be restored to the list at the request of the commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.086. POLITICAL ACTIVITIES. (a) While in uniform or on active duty, a fire fighter or police officer may not take an active part in another person's political campaign for an elective position of the municipality.

(b) For the purposes of this section, a person takes an active

part in a political campaign if the person:

(1) makes a political speech;

(2) distributes a card or other political literature;

(3) writes a letter;

(4) signs a petition;

(5) actively and openly solicits votes; or

(6) makes public derogatory remarks about a candidate for an elective position of the municipality.

(c) A fire fighter or police officer may not be required to contribute to a political fund or to render a political service to a person or party. A fire fighter or police officer may not be removed, reduced in classification or salary, or otherwise prejudiced for refusing to contribute to a political fund or to render a political service.

(d) A municipal official who attempts to violate Subsection (c) violates this chapter.

(e) Except as expressly provided by this section, the commission or the municipality's governing body may not restrict a fire fighter's or police officer's right to engage in a political activity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.087. STRIKE PROHIBITION. (a) A fire fighter or police officer may not engage in a strike against the governmental agency that employs the fire fighter or police officer.

(b) In addition to the penalty prescribed by Section 143.016, if a fire fighter or police officer is convicted of an offense for violating this section, the person shall be automatically released and discharged from the fire or police department. After the person is discharged from the department, the person may not receive any pay or compensation from public funds used to support the fire or police department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.088. UNLAWFUL RESIGNATION OR RETIREMENT. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) A person commits an offense if the person accepts money or anything of value from another person in return for retiring or resigning from the person's civil service position.

(c) A person commits an offense if the person gives money or anything of value to another person in return for the other person's retirement or resignation from the person's civil service position.

(d) An offense under this section is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.089. PERSONNEL FILE. (a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

(d) If a negative letter, memorandum, document, or other

notation of negative impact is included in a fire fighter's or police officer's personnel file, the director or the director's designee shall, within 30 days after the date of the inclusion, notify the affected fire fighter or police officer. The fire fighter or police officer may, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation.

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use. Except as provided by Subsection (h), the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

(h) As provided by Section 1701.451, Occupations Code, a law enforcement agency hiring a police officer is entitled to view the contents of the officer's personnel file maintained under Subsection (g).

Added by Acts 1989, 71st Leg., ch. 1, Sec. 25(c), eff. Aug. 28, 1989.
Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 84, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 834 (S.B. 24), Sec. 1, eff. September 1, 2021.

Sec. 143.090. RELEASE OF PHOTOGRAPHS OF POLICE OFFICERS. A department, commission, or municipality may not release a photograph

that depicts a police officer unless:

(1) the officer has been charged with an offense by indictment or by information;

(2) the officer is a party in a civil service hearing or a case before a hearing examiner or in arbitration;

(3) the photograph is introduced as evidence in a judicial proceeding; or

(4) the officer gives written consent to the release of the photograph.

Added by Acts 2011, 82nd Leg., R.S., Ch. 300 (H.B. 2006), Sec. 1, eff. September 1, 2011.

SUBCHAPTER G. PROVISIONS APPLICABLE TO MUNICIPALITY WITH POPULATION OF 1.5 MILLION OR MORE AND CERTAIN OTHER MUNICIPALITIES

Sec. 143.101. SUBCHAPTER APPLICABLE PRIMARILY TO MUNICIPALITY WITH POPULATION OF 1.5 MILLION OR MORE; APPLICATION OF OTHER SUBCHAPTERS. (a) Except as otherwise provided, this subchapter applies only to a municipality with a population of 1.5 million or more.

(b) Except as otherwise provided, the provisions of Subchapters A-F apply to each municipality covered under this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.1014. NOTICE REQUIREMENT FOR CERTAIN MEETINGS OR HEARINGS. (a) The department shall provide to a fire fighter or police officer notice of the time and location of a meeting or hearing not later than the 48th hour before the hour on which the meeting or hearing is held if the meeting or hearing is:

(1) related to an internal departmental or other municipal investigation of the fire fighter or police officer at which the fire fighter or police officer is required or entitled to be present, including an interrogation;

(2) related to a grievance filed by the fire fighter or police officer under Sections 143.127 through 143.134; or

(3) an opportunity to respond to charges against the fire fighter or police officer before the department terminates the fire fighter's or police officer's employment.

(b) A fire fighter or police officer may waive the notice prescribed by this section.

Added by Acts 1989, 71st Leg., ch. 140, Sec. 1, eff. May 25, 1989. Renumbered from 143.1016 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(19), eff. Sept. 6, 1990.

Sec. 143.1015. COMMISSION APPEAL PROCEDURE; SUBPOENA REQUEST. (a) An appeal by a fire fighter or police officer to the commission from an action for which an appeal or review is provided by this chapter is sufficient if the fire fighter or police officer files it with the commission within 15 days after the date the action occurred. In an appeal provided by this chapter the commission shall render a decision in writing within 60 days after it received the notice of appeal, unless the provisions of Section 143.1017(d) have been invoked by the fire fighter or police officer. If the commission does not render a decision in writing within 60 days after the date it receives notice of the appeal, the commission shall sustain the fire fighter's or police officer's appeal.

(b) On or before the 15th day before the date the appeal hearing will be held, the commission shall notify the fire fighter or police officer of the date on which the commission will hold the hearing.

(c) The commission may not restrict the fire fighter's or police officer's ability to subpoena relevant witnesses.

(d) Within three days after the date the fire fighter or police officer receives the commission's written refusal to subpoena materials, the fire fighter or police officer may request in writing that the commission hold a hearing relating to the reasons for that person's subpoena request.

(e) The hearing relating to the reasons for the fire fighter's or police officer's subpoena request shall be held on the date set for the original appeal hearing. If the commission overrules the subpoena request at the hearing:

(1) the commission may hear the fire fighter's or police officer's appeal on that date; or

(2) if the commission finds that justice is served by a continuance, the commission shall:

(A) reschedule the hearing to the commission's next

regularly scheduled meeting; and

(B) give the fire fighter or police officer 15 days notice of that date.

(f) If the commission sustains the fire fighter's or police officer's subpoena request at the hearing, the commission shall:

(1) reschedule the appeal hearing date to the commission's next regularly scheduled meeting; and

(2) give the fire fighter or police officer 15 days notice of that date.

(g) If the commission reschedules a hearing under this section in an appeal relating to an indefinite suspension, the commission shall render a decision in writing within 60 days after the date it receives notice of appeal.

(h) If the commission does not hold a hearing on the fire fighter's or police officer's subpoena request as prescribed by this section, the commission shall sustain the fire fighter's or police officer's appeal.

(i) A municipal employee who is subpoenaed to appear in any appeal of a disciplinary decision is entitled to applicable pay for the time the employee is required to be present at the hearing. Witnesses whose testimony relates primarily to the character or reputation of the employee shall be limited by the hearing examiner or commission if the testimony is repetitious or unduly prolongs the hearing. If the hearing examiner or commission limits the number of character or reputation witnesses, additional witness statements may be presented by affidavit. The character witnesses are not entitled to applicable pay for the time they are required to be present at the hearing.

(j) In any hearing relating to the appeal or review of an action of the department head that affects a fire fighter or police officer, the department head shall have the burden of proof. The department head is required to prove the allegations contained in the written statement, and the department head is restricted to the written statement and charges, which may not be amended.

(k) In an appeal to a hearing examiner, the director may, within five working days after the date the hearing examiner is chosen, send to the hearing examiner the following:

(1) the name of the fire fighter or police officer who is appealing;

(2) the written reasons filed by the department head with

the commission in the case of a promotional passover or a recommended demotion;

(3) the specific provisions of the rules alleged to have been violated in the case of a suspension; and

(4) the date and place of the alleged civil service violation.

The director may not send the hearing examiner the department head's original written statement. The department head shall submit the written statement and charges to the hearing examiner at the hearing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 25(d), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 854, Sec. 3, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 906, Sec. 1, eff. Aug. 28, 1989.

Sec. 143.1016. HEARING EXAMINERS. (a) In addition to the other notice requirements prescribed by this chapter, the letter of disciplinary action issued to a fire fighter or police officer must state that in an appeal of an indefinite suspension, a suspension, a promotional pass over, or a recommended demotion, the appealing fire fighter or police officer may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the fire fighter or police officer elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court except as provided by Subsection (j).

(b) To exercise the choice of appealing to a hearing examiner, the appealing fire fighter or police officer must submit to the director a written request as part of the original notice of appeal required under this chapter stating the person's decision to appeal to an independent third party hearing examiner.

(c) The hearing examiner's decision is final and binding on all parties. If the fire fighter or police officer decides to appeal to an independent third party hearing examiner, the person automatically waives all rights to appeal to a district court except as provided by Subsection (j).

(d) If the appealing fire fighter or police officer chooses to appeal to a hearing examiner, the fire fighter or police officer and the department head or their designees shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do

not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed and no motion to consolidate is filed under Subsection (k) of this section, the director shall on the next work day following notice that the parties have failed to agree on a selection of a hearing examiner request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. The fire fighter or police officer and the department head or their designees may agree on one of the seven neutral arbitrators on the list. If they do not agree within 25 days after the date the appeal was filed, each party or the party's designee shall on the 25th day after the appeal was filed alternate striking a name from the list and the name remaining is the hearing examiner. In the event that the 25th day falls on a Saturday, Sunday, or a legal holiday, then the parties shall strike the list the next work day. The parties or their designees shall agree on a date for the hearing that is within the time period prescribed by Subsection (e). In the event that the director does not request the list of seven qualified neutral arbitrators within the time prescribed by this subsection or the department head or his designee fails to strike the list within the time prescribed by this subsection, the fire fighter or police officer or his designee shall select the arbitrator from the list provided. In the event that the fire fighter or police officer or his designee fails to strike the list within the time prescribed by this subsection, the department head or his designee shall select the arbitrator from the list provided.

(e) The appeal hearing must begin within 60 days after the date the appeal is filed and shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the fire fighter or police officer may, within two days after learning of that fact, call for the selection of a new hearing examiner using the procedure prescribed by Subsection (d). If the appeal hearing is not begun within 60 days after the date the appeal is filed, the indefinite suspension, suspension, promotional pass over, or recommended demotion is upheld and the appeal is withdrawn if the fire fighter or police officer is not ready to proceed, and the appeal is sustained if the department head is not ready to proceed. In computing the 60-day period, a period of delay not to exceed 30 calendar days because

of a continuance granted at the request of the department head or his representative or the fire fighter or police officer or his representative on good cause being shown, or because of the unavoidable unavailability of the hearing examiner on the date of the hearing, or because of the pendency of a motion to consolidate with another hearing as provided in Subsection (k) of this section is excluded. In no event may a hearing examiner grant a continuance beyond 30 days in an indefinite suspension. A hearing examiner may grant a continuance beyond the 30-day period upon good cause being shown in a disciplinary suspension unless the fire fighter or police officer has another disciplinary action pending.

(f) In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas.

(g) In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the date the hearing closed.

(h) In an appeal that does not involve an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. The hearing examiner's inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

(i) The hearing examiner's fees and expenses are shared equally by the appealing fire fighter or police officer and by the department. The costs of a witness are paid by the party who calls the witness.

(j) A district court may hear an appeal of a hearing examiner's award only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. If the basis for the appeal of the hearing examiner's award is based on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, the petition must be filed in district court within 10 days of the hearing examiner's decision. An appeal must be brought in the district court having jurisdiction in the municipality in which the fire or police department is located. In

the event the municipality is located in more than one county then the suit must be brought in the county having the majority of the population of the municipality.

(k) In an appeal of an indefinite suspension, a suspension, a promotional pass over, or a recommended demotion, each appealing fire fighter or police officer or the appealing fire fighter's or police officer's representative shall be entitled to the selection of a hearing examiner pursuant to Subsection (d) of this section to hear the case. The fire fighter, police officer, department head, or a representative of any of those may, within 10 days of the date they received notice of the appeal, file a motion with a copy to the opposing side to consolidate the case with that of one or more other fire fighters or police officers where the charges arise out of the same incident. The motion to consolidate may be agreed to in writing and filed with the director. If a motion to consolidate the cases is filed and not agreed to, a hearing examiner shall be chosen pursuant to the provisions of Subsection (d) of this section to hear the motion. The decision of the hearing examiner shall be final and binding as to the issue of consolidation. The hearing examiner chosen to hear the motion to consolidate shall not hear the case, and the provisions of Subsection (d) of this section shall be used to choose the hearing examiner with the day the decision is rendered being the equivalent of the date the appeal was filed.

Added by Acts 1989, 71st Leg., ch. 854, Sec. 4, eff. June 14, 1989.

Sec. 143.1017. PROCEDURES AFTER FELONY INDICTMENT OR OTHER CRIME OF MORAL TURPITUDE. (a) If a fire fighter or police officer is indicted for a felony or officially charged with the commission of any other crime involving moral turpitude, the department head may temporarily suspend the person with or without pay for a period not to exceed 30 days after the date the fire fighter or police officer gives notice of final disposition of the specified felony indictment or any other crime involving moral turpitude.

(b) The department head shall notify the suspended fire fighter or police officer in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

(c) If the action directly related to the felony indictment or misdemeanor complaint occurred or was discovered on or after the 180th day before the date of the indictment or complaint, the department head may, within 60 days after the date of final disposition of the indictment or complaint, bring a charge against the fire fighter or police officer for a violation of civil service rules.

(d) A fire fighter or police officer indicted for a felony or officially charged with the commission of any other crime involving moral turpitude who has also been charged by the department head with civil service violations directly related to the indictment or complaint may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

(e) If the department head temporarily suspends a fire fighter or police officer under this section and the fire fighter or police officer is not found guilty of the indictment or complaint in a court of competent jurisdiction, the fire fighter or police officer may appeal to the commission or to a hearing examiner for recovery of back pay. The commission or hearing examiner may award all or part of the back pay or reject the appeal.

(f) Acquittal or dismissal of an indictment or a complaint does not mean that a fire fighter or police officer has not violated civil service rules and does not negate the charges that may have been or may be brought against the fire fighter or police officer by the department head.

(g) Final conviction of a felony shall be the basis for dismissal without notice or further proceedings under this Act, and conviction of any other crime involving moral turpitude may be cause for disciplinary action or indefinite suspension.

(h) The department head may order an indefinite suspension based on an act classified as a felony or any other crime involving moral turpitude after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the department head intends to order an indefinite suspension after the 180-day period, the department head must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred.

Added by Acts 1989, 71st Leg., ch. 854, Sec. 2, eff. June 14, 1989.

Sec. 143.1018. EX PARTE COMMUNICATIONS. (a) While any matter subject to a hearing under this chapter is pending, a person may not, except in giving sworn testimony at the hearing or as otherwise provided by law, communicate with the commission, a hearing examiner, or a grievance examiner regarding the facts of the matter under consideration unless the other party or their representative is present. Notwithstanding the provisions of this subsection, it shall not be a violation for either party to file written briefs or written motions in the case if copies were served on the opposing party.

(b) If the commission, hearing examiner, grievance examiner, or a court of competent jurisdiction determines that a person has violated Subsection (a) on behalf of and with the knowledge of the fire fighter or police officer who filed the appeal, request for a review, or grievance, a ruling shall be entered that dismisses the appeal, review, or grievance. If the commission, hearing examiner, grievance examiner, or a court of competent jurisdiction determines that a person violated Subsection (a) on behalf of or in favor of the department head or the department head's representative or on behalf of and with the knowledge of a person against whom a grievance was filed, a ruling shall be entered that upholds the position of the fire fighter or police officer that filed the appeal, request for a review, or grievance.

(c) While any matter subject to a hearing under the grievance procedure of Section 143.130 is pending, the director shall only send the name of the parties to the grievance, the original grievance, the written responses to the grievance, and any documents filed in the case by either party if copies were served upon the opposing party.

Added by Acts 1989, 71st Leg., ch. 906, Sec. 2, eff. Aug. 28, 1989.

Sec. 143.102. APPOINTMENT OF ASSISTANT CHIEF. (a) The head of the fire or police department may appoint a person to a command staff position at the rank of assistant chief as prescribed by this section.

(b) The heads of the fire and police departments shall establish required qualifying criteria for persons appointed to

command staff positions at the rank of assistant chief in their respective departments. The required qualifying criteria used to select an assistant chief of the fire department must include criteria relating to management experience, educational and training background, special experience, and a performance evaluation. The required qualifying criteria must be approved by a vote of two-thirds of the municipality's governing body present and voting. The head of the police or fire department may not make an appointment until the required qualifying criteria are established and approved as prescribed by this subsection.

(c) To be eligible for appointment to a position at the rank of assistant chief of a police department, a person must:

(1) be a member of the classified service;

(2) have served for at least five years in the department as a sworn police officer; and

(3) meet the additional qualifying criteria established and approved as prescribed by Subsection (b).

(d) To be eligible for appointment to a position at the rank of assistant chief of a fire department, a person must:

(1) be a member of the classified service;

(2) have served for at least five years in the department as a certified fire fighter; and

(3) meet the additional qualifying criteria established and approved as prescribed by Subsection (b).

(e) The department head may remove without cause a person appointed under this section. If a person is removed without cause, the person shall be restored to that person's highest rank earned by competitive examination.

(f) If a person appointed under this section is temporarily or indefinitely suspended for cause from the appointed position, the suspension is subject to the procedures for disciplinary action prescribed by this chapter. If a person is indefinitely suspended for cause, the person does not have a right to reinstatement to the highest rank earned by competitive examination except to the extent that the indefinite suspension is reversed or modified by order of the commission or a hearing examiner.

(g) A person occupying a position in the rank of assistant chief of the fire or police department on September 1, 1985, may not be removed except for cause in accordance with the procedures for disciplinary action or demotion prescribed by this chapter.

(h) A person occupying a position in the rank of assistant chief of a fire or police department may voluntarily demote himself to the highest rank the person earned by competitive examination.

(i) A person may remove himself from consideration for appointment under this section.

(j) A person appointed under this section may take any promotional examination for which the person would have been eligible under this chapter.

(k) A person appointed under this section is subject to confirmation by the municipality's governing body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 27(a), eff. Aug. 28, 1989.

Sec. 143.103. SPECIALIZED POLICE DIVISIONS. (a) A peace officer employed by a municipal department in which the peace officer performs duties in a specialized police division, including a person employed as a park police officer, airport police officer, or municipal marshal, is entitled to civil service status under this chapter. The governing body of the municipality employing a peace officer in a specialized police division shall classify the officer in accordance with Section 143.021 and the duties performed by the peace officer.

(b) Except for positions classified in the communication or technical class, the governing body of the municipality employing a peace officer in a specialized police division shall classify a position in the division in the same class as a police officer position that is not in a specialized police division. A member of a particular division is eligible for promotion or lateral crossover to a position outside that division. The head of the police department, assistant chiefs of police, and deputy chiefs of police, or their equivalent, regardless of name or title, may exercise the full sanctions, powers, and duties of their respective offices in the supervision, management, and control of the members of those classes and divisions, subject to the decisions of the department head regarding the chain of command in the department.

(c) In departments in which a collective bargaining agreement or a meet-and-confer agreement exists, Subsection (b) must be approved by the collective bargaining agent, meet-and-confer agent,

or entity representing the sworn officers of the department. This subsection does not apply to the transfer of police officers.

(d) Each applicable provision of this chapter, including the provisions relating to eligibility lists, examinations, promotions, appointments, educational incentive pay, longevity or seniority pay, certification pay, assignment pay, salary, vacation leave, and disciplinary appeals, applies to a peace officer employed by the municipality in a specialized police division as provided by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1195, Sec. 1, eff. Sept. 1, 1997.

Sec. 143.104. EXAMINATION PROCEDURE. The commission shall adopt rules to standardize the procedures for entrance and promotional examinations. The rules must provide:

(1) that each applicant have adequate space in which to take the examination;

(2) that each applicant be provided with a desk;

(3) that the room in which the examination is held have a public address system; and

(4) the maximum number of times an applicant may leave the room during the examination and the procedure each applicant must follow when leaving or entering the room during the examination.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.1041. ENTRANCE EXAMINATION FOR BEGINNING PEACE OFFICER POSITION IN POLICE DEPARTMENT. (a) In this section, "police officer training academy" means a police officer training academy operated or sponsored by a municipality to which this section applies.

(b) The commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning peace officer positions in the police department. The examinations are open to each person who:

(1) makes a proper application;

(2) has been admitted to or is enrolled in a police officer training academy as an academy trainee; and

(3) meets the requirements prescribed by this chapter.

(c) The entrance examination may be administered to examinees only after the examinees are admitted to a police officer training academy and before the examinees graduate from the academy.

(d) An eligibility list for a beginning peace officer position in the police department may be created only as a result of the examination. Except as provided by Subsection (f), the examination must be held in the presence of each examinee. The examination must be based on the examinee's general knowledge and aptitude and must inquire into the examinee's general education and mental ability. A person may not be appointed to the police department except as a result of the examination.

(e) An examinee may not take an examination unless at least one other examinee taking the examination is present.

(f) An entrance examination for beginning peace officer positions in the police department must be held at one or more locations in the municipality in which the police department is located and may be held at additional locations outside the municipality. An examination held at multiple locations must be administered on the same day and at the same time at each location at which it is given. To create one eligibility list, each member of a police officer training academy class shall take the examination at the same time and each examinee who takes that examination shall:

(1) take the same examination; and

(2) be examined in the presence of other examinees.

(g) An additional five points shall be added to the examination grade of an examinee who:

(1) served in the United States armed forces;

(2) received an honorable discharge from that service; and

(3) made a passing grade on the examination.

(h) The grade to be placed on the eligibility list for each examinee shall be computed by adding an examinee's points under Subsection (g), if any, to the examinee's grade on the written examination. Each examinee's grade on the written examination is based on a maximum grade of 100 percent and is determined entirely by the correctness of the examinee's answers to the questions. The minimum passing grade on the examination is 70 percent. An examinee must pass the examination to be placed on an eligibility list.

Added by Acts 2007, 80th Leg., R.S., Ch. 27 (S.B. 339), Sec. 2, eff. September 1, 2007.

Sec. 143.105. ELIGIBILITY FOR BEGINNING POSITION IN POLICE DEPARTMENT. In addition to meeting the eligibility requirements prescribed by Section 143.023, to be certified as eligible for a beginning position with a police department, a person must be at least 21 years of age at the end of the probationary period and have:

(1) served in the United States armed forces and received an honorable discharge;

(2) earned at least 60 hours' credit in any area of study at an accredited college or university, of which not more than 12 hours' credit may be earned for training at the police officer training academy operated or sponsored by the municipality; or

(3) been employed full-time for at least five years as a peace officer licensed by:

(A) the Texas Commission on Law Enforcement; or

(B) an acceptable licensing entity in another state that has law enforcement officer licensing requirements substantially equivalent to those of Chapter 1701, Occupations Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 84 (S.B. 342), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 611 (H.B. 780), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.52, eff. May 18, 2013.

Sec. 143.1051. ELIGIBILITY FOR BEGINNING POSITION IN FIRE DEPARTMENT. In addition to meeting the eligibility requirements prescribed by Section 143.023, to be certified as eligible for a beginning position with a fire department a person must:

(1) have served in the United States Armed Forces and received an honorable discharge; or

(2) have earned at least 15 hours of credit in any area of study at an accredited college or university.

Added by Acts 1991, 72nd Leg., ch. 841, Sec. 1, eff. Sept. 1, 1991.

Sec. 143.1055. APPLICANT FOR BEGINNING POSITION IN POLICE DEPARTMENT WITH PREVIOUS EXPERIENCE. Notwithstanding any other requirement of this chapter, for any applicant for a beginning position in the police department who has previous experience as a police officer with another police department, the police department may:

(1) modify the police officer training academy requirements for the applicant; and

(2) allow the applicant to take the entrance examination before completing the academy training.

Added by Acts 2005, 79th Leg., Ch. 629 (H.B. 2457), Sec. 1, eff. June 17, 2005.

Sec. 143.106. ELIGIBILITY FOR FIRE DEPARTMENT PROMOTIONAL EXAMINATION. (a) Each promotional examination is open to each fire fighter who at any time has continuously held for at least two years a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

(b) If the department has adopted a classification plan that classifies positions on the basis of similarity in duties and responsibilities, each promotional examination is open to each fire fighter who has continuously held for at least two years a position at the next lower pay grade, if it exists, in the class for which the examination is to be held.

(c) If there are not enough fire fighters in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission may open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may open the examination to persons with at least two years' experience in the second lower position, in salary, to the position for which the examination is to be held.

(d) Repealed by Acts 1993, 73rd Leg., ch. 676, Sec. 4, eff. Sept. 1, 1993.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 676, Sec. 4, eff. Sept. 1, 1993.

Sec. 143.107. PROMOTIONAL EXAMINATION NOTICE. (a) Notwithstanding Subsection (b), Section 143.029, before the 90th day before the date a promotional examination in a fire department is held, the commission shall post a notice of the examination in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The notice must show the position to be filled or for which the examination is to be held and the date, time, and place of the examination. The commission shall also furnish sufficient copies of the notice for posting in the stations or subdepartments in which the position will be filled.

(b) Before the 30th day before the date a promotional examination is held, the municipality shall post a notice of the number of newly created positions. The notice must be posted in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The municipality shall also distribute the notice to all stations and subdepartments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 263, Sec. 1, eff. Aug. 26, 1991.

Sec. 143.108. PROMOTIONAL EXAMINATION GRADES; PROMOTIONAL APPOINTMENTS. (a) Each eligible promotional candidate from the fire or police department who receives a grade of at least 70 points on a promotional examination is considered to have passed that examination.

(b) If an eligibility list exists on the date a vacancy occurs, the vacancy shall be filled by permanent appointment from the eligibility list furnished by the commission within 60 days after the date the vacancy occurs. If an eligibility list does not exist, the vacancy shall be filled within 95 days after the date the vacancy occurs from an eligibility list that the commission shall provide within 90 days after the date the vacancy occurs.

(c) If a fire or police department fails to fill a vacancy by an appointment within the time required by Subsection (b), the fire fighter or police officer who is appointed to fill the vacancy is entitled to receive in a lump-sum payment the difference between the pay that the fire fighter or police officer received during the time that the position was unlawfully vacant and the pay that the fire fighter or police officer would have received if the fire fighter or

police officer had been appointed to the position on the latest day provided for the appointment by Subsection (b). The fire fighter's or police officer's seniority rights in the new position also date to the latest day provided for the appointment by Subsection (b).

(d) If the municipality refuses to pay a fire fighter or to grant a fire fighter seniority rights as provided by Subsection (c), a fire fighter may bring an action to recover the pay and seniority rights in a court of competent jurisdiction. A fire fighter who prevails in a suit brought under this subsection is entitled to recover three times the amount to which the fire fighter is entitled under Subsection (c), seniority rights, costs of court, and reasonable attorney fees.

(e) If the municipality refuses to pay a police officer or to grant a police officer seniority rights as provided by Subsection (c), the police officer may bring an action to recover the pay and seniority rights in a court of competent jurisdiction.

(f) Notwithstanding Subsection (h), Section 143.036, each promotional eligibility list in the fire department remains in existence for two years after the date on which the written examination is given, unless exhausted. At the expiration of the two-year period, the eligibility list expires and a new examination may be held.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 26(j), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 263, Sec. 2, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 870, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(18), eff. Nov. 12, 1991; Acts 1993, 73rd Leg., ch. 676, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 150, Sec. 1, eff. Sept. 1, 1997.

Sec. 143.109. CROSSOVER PROMOTIONS IN POLICE DEPARTMENT. (a) In this section:

(1) "Communications class" includes each person who performs the technical operation of police radio communications.

(2) "Technical class" includes each person who performs criminal laboratory analysis and interpretations or the technical aspects of criminal identification and photography.

(b) Each person employed by the police department who is a

member of the technical or communications class is eligible for a promotion within that class.

(c) A member of the technical, communications, or uniformed and detective class is not eligible for promotion to a position outside that class, and lateral crossover by promotion is prohibited. A person may change classes only by qualifying for and entering the new class at the lowest entry level of that class.

(d) The department head, assistant chiefs, and deputy chiefs, or their equivalent, regardless of name or title, may exercise the full sanctions, powers, and duties of their respective offices in the supervision, management, and control of the members of the technical, communications, and uniformed and detective classes.

(e) Each provision of this chapter relating to eligibility lists, examinations, appointments, and promotions applies to the appointment or promotion of members of the technical, communications, and uniformed and detective classes within the members' respective class.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.1095. TRANSFERS IN POSITION IN SAME CLASSIFICATION IN FIRE DEPARTMENT. (a) The head of the fire department may transfer a fire fighter from one position to another position in the same classification in the fire department if the transfer is:

(1) a promotion or demotion of the fire fighter;

(2) required to balance the work force;

(3) for disciplinary reasons;

(4) based on the seniority of the fire fighter;

(5) a result of a mutual agreement between the department head and the fire fighter; or

(6) for any other specified reason the department head considers necessary.

(b) If the department head transfers a fire fighter under this section, the department head shall designate in a written statement the basis for the transfer.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 28(a), eff. Aug. 28, 1989.

Sec. 143.110. SALARY. (a) Except as provided by Subsection

(c) and Section 143.111, all fire fighters or police officers in the same classification are entitled to the same base salary.

(b) In addition to the base salary, each fire fighter or police officer is entitled to each of the following types of pay, if applicable:

(1) longevity pay;

(2) seniority pay;

(3) educational incentive pay as authorized by Section 143.112;

(4) assignment pay as authorized by Section 143.113; and

(5) shift differential pay as authorized by Section 143.047.

(c) In computing longevity pay and base pay under this section for a police officer who has completed the department's academy training requirements, the police department may include the number of years, not to exceed five, that the police officer served in another police department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1172, Sec. 2, eff. Aug. 28, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 629 (H.B. 2457), Sec. 2, eff. June 17, 2005.

Sec. 143.111. TEMPORARY DUTIES IN HIGHER CLASSIFICATION. (a) The department head may designate a person from the next lower classification to temporarily fill a position in a higher classification. The designated person is entitled to the base salary of the higher position plus the person's own longevity pay during the time the person performs the duties. Any person who is required to act in a position of higher classification in an emergency situation shall be paid the base salary of the higher position plus the person's own longevity pay for the entire shift without respect to whether an emergency occurs on any particular shift of duty.

(b) The temporary performance of the duties of a higher position by a person who has not been promoted as prescribed by this chapter may not be construed as a promotion of the person.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 854, Sec. 12, eff. June 14, 1989.

Sec. 143.1115. DETERMINATION OF PHYSICAL AND MENTAL FITNESS. (a) This section provides the exclusive procedure for determining whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties or assignment.

(b) On receiving a written order by the department head, a fire fighter or police officer shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

(c) If the commission, the department head, or the fire fighter or police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the fire fighter or police officer and to submit a report to the commission, the department head, and the person.

(d) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the fire fighter's or police officer's personal physician, psychiatrist, or psychologist, as appropriate, the commission shall appoint an independent three-member board composed of a physician, a psychiatrist, and a psychologist or any combination, as appropriate, to examine the fire fighter or police officer. The board shall submit to the commission a written report of its finding regarding whether the fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties or assignment. The commission, at its next regularly scheduled meeting after the date it receives the report of the board, shall determine whether the fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties or assignment. The commission shall base its determination exclusively on the report of the board.

(e) The fire fighter or police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs.

(f) The commission may not appoint a person to serve on a board appointed under Subsection (d) if the person receives any compensation from the municipality, other than compensation for the person's services as a board member.

Added by Acts 1989, 71st Leg., ch. 890, Sec. 2, eff. Aug. 28, 1989.

Sec. 143.112. EDUCATIONAL INCENTIVE PAY. (a) In this section:

(1) "Accredited college or university" means a college or university that is:

(A) accredited by a nationally recognized accrediting agency and by the state board of education in the state in which the college or university is located; and

(B) approved or certified by:

(i) the Texas Commission on Law Enforcement as teaching the core curriculum or its equivalent in law enforcement; or

(ii) the Texas Commission on Fire Protection.

(2) "Core curriculum in law enforcement" means those courses in law enforcement education approved by the Coordinating Board, Texas College and University System, and the Texas Commission on Law Enforcement.

(b) The governing body of a municipality may authorize educational incentive pay for:

(1) each fire fighter within each classification who has successfully completed courses at an accredited college or university that are applicable toward a degree in fire science; or

(2) each police officer within each classification who has successfully completed courses at an accredited college or university that are applicable toward a degree in law enforcement--police science and include the core curriculum in law enforcement.

(c) The educational incentive pay is in addition to the regular pay received by a fire fighter or police officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.53, eff. May 18, 2013.

Sec. 143.113. ASSIGNMENT PAY. (a) In this section:

(1) "Bilingual personnel" means a member of the fire or police department who in the performance of the member's duties is capable of effectively translating orally a language other than English into English, and when necessary, effectively translating the language into written English.

(2) "Emergency ambulance attendant" means a member of the fire department who provides emergency medical care and emergency transportation for members of the public.

(3) "Field training officer" means a member of the fire department who is assigned to and performs the duties and responsibilities of the field training officers program.

(4) "Hazardous materials response team personnel" means a member of the fire department who is assigned to a hazardous materials response team and stabilizes or participates in the stabilization of hazardous materials in an emergency.

(b) The municipality's governing body may authorize assignment pay for emergency ambulance attendants, field training officers, and hazardous materials response team personnel. The municipality's governing body may authorize assignment pay for fire fighters or police officers who perform specialized functions in their respective departments, including but not limited to career patrol officers. The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire department. The head of the fire department or police department is not eligible for the assignment pay authorized by this subsection.

(c) The municipality's governing body may authorize assignment pay for bilingual personnel performing specialized functions as interpreters or translators in their respective departments. The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department. If the ordinance applies equally to each person who meets the criteria established by the ordinance, the ordinance may provide for payment to each fire fighter or police officer who meets testing or other certification criteria for an assignment, or the ordinance may set criteria that will determine the foreign languages in which a person must be fluent or other criteria for eligibility. The ordinance may provide for different rates of pay according to a person's capability and may allow more pay to those persons who are capable of translating orally and into written English. The heads of the fire and police departments are not eligible for the assignment pay authorized by this subsection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 854, Sec. 5, eff. June 14, 1989.

Sec. 143.114. ASSIGNMENT PAY IN MUNICIPALITY WITH POPULATION OF 1.5 MILLION OR MORE. (a) In this section:

(1) "Bomb squad personnel" means a member of the police department who is assigned to the bomb squad and participates in the detection, handling, or disarming of explosive devices or materials.

(2) "Helicopter personnel" means a member of the police department who pilots a helicopter or rides as an observer in a helicopter.

(3) "Special weapons and tactics personnel" means a member of the police department who is assigned to and performs the duties and responsibilities of the special weapons and tactics squad.

(4) "Motorcycle personnel" means a member of the police department who is assigned to and performs the duties of the motorcycle patrol detail.

(5) "Dive team personnel" means a member of the police department who is assigned to and performs underwater search and rescue work.

(b) In a municipality with a population of 1.5 million or more, the municipality's governing body may authorize assignment pay for:

(1) helicopter personnel;

(2) bomb squad personnel;

(3) special weapons and tactics personnel;

(4) motorcycle personnel;

(5) dive team personnel; and

(6) police officers who perform specialized functions in their respective departments, including but not limited to career patrol officers.

(c) The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the police department. The head of the police department is not eligible for the assignment pay authorized by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 35, Sec. 1, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 289, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 669, Sec. 61, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 133, eff. September 1, 2023.

Sec. 143.115. PAYMENT OF ACCUMULATED VACATION LEAVE IN POPULOUS MUNICIPALITY. (a) This section applies only to a municipality with a population of 1.1 million or more.

(b) A fire fighter or police officer who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of the person's salary for the period of the person's accumulated vacation leave up to a maximum of 60 working days.

(c) A fire fighter or police officer who leaves the classified service or dies as the result of a line of duty injury or illness or the beneficiaries of that fire fighter or police officer are entitled to the full amount of the fire fighter's or police officer's salary for the total accumulated vacation leave.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 62, 63, eff. Sept. 1, 2001.

Sec. 143.1155. ACCUMULATED VACATION AND HOLIDAY LEAVE. A fire fighter or police officer who leaves the classified service due to disability or the beneficiary of a fire fighter or police officer who dies is entitled to receive a lump-sum payment of the full amount of the fire fighter's or police officer's accumulated vacation and holiday leave.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 2, eff. Sept. 1, 1993.

Sec. 143.116. PAYMENT OF SICK LEAVE ON TERMINATION OF SERVICE. (a) A fire fighter or police officer who leaves the classified service for any reason or the beneficiaries of a fire fighter or police officer who dies as a result of a line of duty injury or illness are entitled to receive in a lump-sum payment the full amount of the fire fighter's or police officer's accumulated sick leave as provided by Subsections (b)-(e).

(b) A fire fighter or police officer hired before September 1, 1985, is entitled to have sick leave accumulated without limit. Sick leave accumulated before September 1, 1985, is valued at the amount

of the fire fighter's or police officer's salary on August 31, 1985. Sick leave accumulated after September 1, 1985, is valued at the fire fighter's or police officer's average salary in the fiscal year in which the sick leave was accumulated.

(c) Each day or part of a day of sick leave used by a fire fighter or police officer is charged to that person's earliest acquired unused accumulated day of sick leave, in the same manner as is used in the "first in, first out" accounting principle.

(d) Each fire fighter or police officer hired before September 1, 1985, may select coverage under the municipal ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this chapter. This option is a onetime only option that expires on December 31 of the year in which this section takes effect in that municipality.

(e) The sick leave of a fire fighter or police officer who becomes a member of the fire or police department on or after September 1, 1985, is covered by the municipal ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this chapter.

(f) The municipality shall provide in its annual budget a sum reasonably calculated to provide funding for sick leave benefits for the fiscal year covered by that budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.117. DISCIPLINARY SUSPENSIONS. (a) The head of the fire or police department may suspend a fire fighter or police officer under the department head's supervision or jurisdiction for disciplinary reasons for a reasonable period not to exceed 15 days.

(b) The department head may suspend a fire fighter or police officer under this section only if the person violates a civil service rule. However, the department head may not suspend a fire fighter or police officer later than the 180th day after the date the department discovers or becomes aware of the civil service rule violation. If, during an investigation of an alleged civil service rule violation, it is alleged that the fire fighter or police officer under investigation committed another violation of a civil service rule connected with the first alleged violation, the 180-day period prescribed by this subsection does not begin again for purposes of a

suspension of the fire fighter or police officer if the second violation in question does not involve untruthfulness or refusal to obey a valid order to make a statement, and therefore the department head may not suspend a fire fighter or police officer for the second violation later than the 180th day after the date the department discovers or becomes aware of the original violation.

(c) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the fire fighter or police officer is notified of the suspension, file a written statement of action with the commission.

(d) The suspension is void and the fire fighter or police officer is entitled to the person's full pay if:

(1) the department head fails to file the statement during the required time; or

(2) the suspension is imposed later than the 180th day after the date the department discovers or becomes aware of the violation that resulted in the suspension.

(e) A fire fighter or police officer may appeal a disciplinary suspension as prescribed by Sections 143.010 and 143.1015.

(f) The provisions of Subsections (d) and (e) of Section 143.119 of this chapter apply to this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 25(e), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 409, Sec. 1, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 854, Sec. 6, eff. June 14, 1989.

Sec. 143.118. APPEAL OF DISCIPLINARY SUSPENSION. (a) If a suspended fire fighter or police officer appeals a disciplinary suspension to the commission, the commission shall determine if just cause exists for the suspension.

(b) If the commission finds that the period of disciplinary suspension should be reduced, the commission may order a reduction in the period of suspension. The commission may reverse the department head's decision and instruct the department head to immediately restore the fire fighter or police officer to the person's prior position and to repay the person for any lost wages.

(c) If the department head refuses to obey a commission order, the provisions of Section 143.120 relating to the department head's

refusal apply.

(d) The provisions of Subsections (b) and (e) of Section 143.120 of this chapter apply to this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 854, Sec. 7, eff. June 14, 1989.

Sec. 143.119. INDEFINITE SUSPENSIONS. (a) The head of the fire or police department may indefinitely suspend a fire fighter or police officer under the department head's supervision or jurisdiction for the violation of a civil service rule.

(b) If the department head suspends a fire fighter or police officer, the department head shall, within 120 hours after the hour of suspension, file a written statement with the commission giving the reasons for the suspension. The department head shall immediately deliver a copy of the statement in person to the suspended fire fighter or police officer.

(c) The copy of the written statement must inform the suspended fire fighter or police officer that if the person wants to appeal to the commission, the person must file a written appeal with the commission within 10 days after the date the person receives the copy of the statement.

(d) The written statement filed by the department head with the commission must point out the civil service rule alleged to have been violated by the suspended fire fighter or police officer and must describe the alleged acts of the person that the department head contends are in violation of the civil service rules. It is not sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated.

(e) If the department head does not specifically point out in the written statement the act or acts of the fire fighter or police officer that allegedly violated civil service rules, the commission shall promptly reinstate the person.

(f) If the department head offers a suspension of 16 to 90 calendar days for violation of civil service rules, the fire fighter or police officer may agree in writing to voluntarily accept the suspension, with no right of appeal. The fire fighter or police officer must accept the offer within five working days after the date the offer is made. If the person refuses the offer and wants to

appeal to the commission, the person must file a written appeal with the commission within 15 days after the date the person receives the copy of the written statement of suspension.

(g) In the original written statement and charges and in any hearing conducted under this chapter, the department head may not complain of an act that did not occur within the six-month period preceding the date on which the department head suspends the fire fighter or police officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.120. APPEAL OF INDEFINITE SUSPENSION. (a) Except as provided by Section 143.1015(g), if a suspended fire fighter or police officer appeals an indefinite suspension to the commission, the commission shall hold a hearing and render a decision in writing within 30 days after the date it receives notice of appeal.

(b) In a hearing conducted under this section, the department head is restricted to the department head's original written statement and charges, which may not be amended.

(c) In its decision, the commission shall state whether the suspended fire fighter or police officer is:

(1) permanently dismissed from the fire or police department;

(2) temporarily suspended from the department; or

(3) restored to the person's former position or status in the department's classified service.

(c-1) A temporary suspension of a firefighter under Subsection (c)(2) may not exceed 90 calendar days.

(d) If the suspended fire fighter or police officer is restored to the position or class of service from which the person was suspended, the department head shall immediately reinstate the person as ordered, and the person is entitled to full compensation at the rate of pay provided for the position or class of service from which the person was suspended for the actual time lost as a result of the suspension, as provided by Section 143.1215. If the department head fails to reinstate the fire fighter or police officer, the person is entitled to the person's salary as if the person had been regularly reinstated.

(e) The commission may suspend or dismiss a fire fighter or

police officer only for violation of civil service rules and only after a finding by the commission of the truth of specific charges against the fire fighter or police officer.

(f) If the department head intentionally refuses, for at least 10 days, to obey an order to reinstate a fire fighter or police officer, the municipality's chief executive or governing body shall discharge the department head from employment with the municipality.

(g) If a department head intentionally refuses to obey a lawful commission order of reinstatement, the commission may punish the department head for contempt. The commission has the same authority to punish for contempt as has a justice of the peace.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 25(f), 29(b), eff. Aug. 28, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1161 (H.B. 2516), Sec. 1, eff. June 17, 2011.

Sec. 143.121. APPEAL TO DISTRICT COURT. Each appeal of an indefinite suspension to a district court shall be advanced on the district court docket and given a preference setting over all other cases.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.1214. RECORDS RELATED TO DISCIPLINARY ACTIONS OR CHARGES OF MISCONDUCT. (a) The human resources director for the department promptly shall order that the records of a disciplinary action that was taken against a fire fighter or police officer be expunged from each file maintained on the fire fighter or police officer by the department if the disciplinary action was entirely overturned on appeal by the commission, an independent third-party hearing examiner, or a court of competent jurisdiction. Documents that must be expunged under this subsection include all documents that indicate disciplinary action was recommended or taken against the fire fighter or police officer, such as the recommendations of a disciplinary committee or a letter of suspension. This subsection does not apply if the fire fighter or police officer is charged with

using excessive force that results in a death or injury and the charge is being investigated by a law enforcement or criminal justice agency other than the department. This subsection does not require that records of an internal affairs division or other similar internal investigative division be expunged.

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

(1) to another law enforcement agency or fire department;

(2) to the office of a district or United States attorney; or

(3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to disciplinary action against a fire fighter or police officer to the director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) only if:

(1) disciplinary action was actually taken against the fire fighter or police officer;

(2) the document shows the disciplinary action taken; and

(3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

(d) The legal division of the municipality, or its designee, shall provide legal representation in any action related to the release of a file or part of a file.

(e) The requirements of this section are in addition to the requirements of Section 143.089. This section does not prevent a fire fighter or police officer from obtaining access to any personnel file maintained by the director or the department, other than a file maintained by an internal affairs division or other similar internal investigative division, on the fire fighter or police officer under Section 143.089.

Added by Acts 1993, 73rd Leg., ch. 220, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 2001, 77th Leg., ch. 748, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 300 (H.B. 2006), Sec. 2, eff. September 1, 2011.

Sec. 143.1215. REINSTATEMENT. (a) If the commission, a hearing examiner, or a district court orders that a fire fighter or police officer suspended without pay be reinstated, the municipality shall, before the end of the second full pay period after the date the person is reinstated, repay to the person all wages lost as a result of the suspension.

(b) If the municipality does not fully repay all lost wages to the fire fighter or police officer as provided by this section, the municipality shall pay the person an amount equal to the lost wages plus accrued interest.

(c) Interest under Subsection (b) accrues beginning on the date of the fire fighter's or police officer's reinstatement at a rate equal to three percent plus the rate for court judgments under Chapter 304, Finance Code, that is in effect on the date of the person's reinstatement.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 29(c), eff. Aug. 28, 1989.
Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 36, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.80, eff. Sept. 1, 1999.

Sec. 143.1216. CERTAIN NONDISCIPLINARY ACTIONS. (a) The department may use a supervisory intervention procedure or a policy and procedure inquiry to modify a police officer's behavior through:

(1) positive encouragement;
(2) counseling;
(3) job skills training;
(4) repeat task performances, classes, or exercises; or
(5) reeducation efforts, including a review of:
(A) general department orders;
(B) standard operating procedures; or
(C) lesson plans from a police officer training academy.

(b) A supervisory intervention procedure or a policy and

procedure inquiry regarding a police officer is not considered a disciplinary action for any purpose.

(c) A police officer who is the subject of a supervisory intervention procedure or a policy and procedure inquiry may not file an appeal or grievance regarding the action taken by the department.

(d) The department may not include a record of a supervisory intervention procedure or a policy and procedure inquiry regarding a police officer in the police officer's personnel file maintained under Section 143.089 or in the department file maintained under Section 143.089(g).

(e) The department may include a record of a supervisory intervention procedure or a policy and procedure inquiry regarding a police officer in a file maintained by the division of the department in which the police officer is employed. The record in the division file may be considered in a periodic performance evaluation of the police officer's performance only if the supervisory intervention procedure or policy and procedure inquiry occurred during the performance period that is the subject of the performance evaluation.

(f) The department may maintain an electronic record of supervisory intervention procedures or policy and procedure inquiries that may be used only by the department for tracking and statistical purposes.

Added by Acts 2001, 77th Leg., ch. 748, Sec. 2, eff. Sept. 1, 2001.

Sec. 143.122. UNCOMPENSATED DUTY. (a) In this section, "uncompensated duty" means days of work without pay in a fire or police department and does not include a regular or normal work day.

(b) The head of the fire or police department may assign a fire fighter or police officer under the department head's jurisdiction or supervision to uncompensated duty. The department head may not impose uncompensated duty unless the fire fighter or police officer agrees to the duty.

(c) If the fire fighter or police officer agrees in writing to accept uncompensated duty, the department head shall give the person a written statement that specifies the date or dates on which the person will perform the duty. A fire fighter or police officer who agrees to accept the duty does not have a right to an administrative or judicial review.

(d) The uncompensated duty may be in place of or in combination with a period of disciplinary suspension without pay. If uncompensated duty is combined with a disciplinary suspension, the total number of uncompensated duty days may not exceed 15.

(e) A fire fighter or police officer may not earn or accrue a benefit arising from length of service or any wage or salary while the person is suspended or performing uncompensated duty.

(f) A disciplinary suspension does not constitute a break in a continuous position or in service in the department in determining eligibility for a promotional examination.

(g) Except as provided by this section, a fire fighter or police officer performing assigned uncompensated duty retains all rights and privileges of the person's position in the department and of the person's employment by the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.123. INVESTIGATION OF FIRE FIGHTERS AND POLICE OFFICERS. (a) In this section:

(1) "Complainant" means a person claiming to be the victim of misconduct by a fire fighter or police officer.

(2) "Investigation" means an administrative investigation, conducted by the municipality, of alleged misconduct by a fire fighter or police officer that could result in punitive action against that person.

(3) "Investigator" means an agent or employee of the municipality who is assigned to conduct an investigation.

(4) "Punitive action" means a disciplinary suspension, indefinite suspension, demotion in rank, reprimand, or any combination of those actions.

(5) "Normally assigned working hours" includes those hours during which a fire fighter or police officer is actually at work or at the person's assigned place of work, but does not include any time when the person is off duty on authorized leave, including sick leave.

(b) An investigator may interrogate a fire fighter or police officer who is the subject of an investigation only during the fire fighter's or police officer's normally assigned working hours unless:

(1) the seriousness of the investigation, as determined by

the fire fighter's or police officer's department head or the department head's designee, requires interrogation at another time; and

(2) the fire fighter or police officer is compensated for the interrogation time on an overtime basis.

(c) The department head may not consider work time missed from regular duties by a fire fighter or police officer due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.

(d) An investigator may not interrogate a fire fighter or police officer who is the subject of an investigation or conduct any part of the investigation at that person's home without that person's permission.

(e) A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decisionmaker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct. A fire fighter or police officer who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identities of each investigator participating in an interrogation of the fire fighter or police officer. Not later than the 30th day after the date that a complaint is received by an investigator, the investigator must inform the fire fighter in writing of the nature of the investigation and the name of each person who complained about the fire fighter, if known, concerning the matters under investigation unless:

(1) a criminal investigation has been initiated as a result of the complaint; or

(2) the disclosure of information concerning the name of the complainant or the matters under investigation would hinder a criminal investigation.

(f) Before an investigator may interrogate a fire fighter or police officer who is the subject of an investigation, the investigator must inform the fire fighter or police officer in writing of the nature of the investigation and the name of each person who complained about the fire fighter or police officer concerning the matters under investigation. An investigator may not conduct an interrogation of a fire fighter or police officer based on a complaint by a complainant who is not a peace officer unless the complainant verifies the complaint in writing before a public officer

who is authorized by law to take statements under oath. In an investigation authorized under this subsection, an investigator may interrogate a fire fighter or police officer about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. Not later than the 48th hour before the hour on which an investigator begins to interrogate a fire fighter or police officer regarding an allegation based on a complaint, affidavit, or statement, the investigator shall give the fire fighter or police officer a copy of the affidavit, complaint, or statement. An interrogation may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous. This subsection does not apply to an on-the-scene investigation that occurs immediately after an incident being investigated if the limitations of this subsection would unreasonably hinder the essential purpose of the investigation or interrogation. If the limitation would hinder the investigation or interrogation, the fire fighter or police officer under investigation must be furnished, as soon as practicable, a written statement of the nature of the investigation, the name of each complaining party, and the complaint, affidavit, or statement.

(g) An interrogation session of a fire fighter or police officer who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the fire fighter or police officer to attend to personal physical necessities.

(h) An investigator may not threaten a fire fighter or police officer who is the subject of an investigation with punitive action during an interrogation. However, an investigator may inform a fire fighter or police officer that failure to truthfully answer reasonable questions directly related to the investigation or to fully cooperate in the conduct of the investigation may result in punitive action.

(i) If prior notification of intent to record an interrogation is given to the other party, either the investigator or the fire fighter or police officer who is the subject of an interrogation may record the interrogation.

(j) If an investigation does not result in punitive action against a fire fighter or police officer but does result in a

reprimand recorded in writing or an adverse finding or determination regarding that person, the reprimand, finding, or determination may not be placed in that person's personnel file unless the fire fighter or police officer is first given an opportunity to read and sign the document. If the fire fighter or police officer refuses to sign the reprimand, finding, or determination, it may be placed in the personnel file with a notation that the person refused to sign it. A fire fighter or police officer may respond in writing to a reprimand, finding, or determination that is placed in the person's personnel file under this subsection by submitting a written response to the department head within 10 days after the date the fire fighter or police officer is asked to sign the document. The response shall be placed in the personnel file. A fire fighter or police officer who receives a punitive action and who elects not to appeal the action may file a written response as prescribed by this subsection within 10 days after the date the person is given written notice of the punitive action from the department head.

(k) If the department head or any investigator violates any of the provisions of this section while conducting an investigation, the municipality shall reverse any punitive action taken pursuant to the investigation including a reprimand, and any information obtained during the investigation shall be specifically excluded from introduction into evidence in any proceeding against the fire fighter or police officer.

(l) Deleted by Acts 1989, 71st Leg., ch. 1, Sec. 25(h), eff. Aug. 28, 1989.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 25(g), (h), 30(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 140, Sec. 2 to 4, eff. May 25, 1989; Acts 1989, 71st Leg., ch. 854, Sec. 8, eff. June 14, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 678 (H.B. 1561), Sec. 1, eff. June 15, 2007.

Sec. 143.124. POLYGRAPH EXAMINATIONS. (a) A fire fighter employed by the municipality may not be required to submit to a polygraph examination as part of an internal investigation regarding the conduct of the fire fighter unless:

(1) the complainant submits to and passes a polygraph examination and, if applicable, the fire department has complied with Subsection (c); or

(2) the fire fighter is ordered to take an examination under Subsection (f).

(b) Subsection (a)(1) does not apply if the complainant is physically or mentally incapable of being polygraphed.

(c) The fire department shall, on the written request of a fire fighter, provide to the fire fighter the complainant's polygraph examination results within 48 hours after the request.

(d) For the purposes of this section, a fire fighter passes a polygraph examination if, in the opinion of the polygraph examiner, no deception is indicated regarding matters critical to the subject matter under investigation.

(e) The results of a polygraph examination that relate to the complaint under investigation are not admissible in a proceeding before the commission or a hearing examiner.

(f) The fire department head may order a fire fighter to submit to a polygraph examination if the fire department head considers the circumstances to be extraordinary and the fire department head believes that the integrity of a fire fighter or the fire department is in question.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 31(a), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1303, Sec. 2, eff. June 20, 1997.

Sec. 143.125. POLICE DEPARTMENT PROBATIONARY PERIOD AFTER REAPPOINTMENT IN POPULOUS MUNICIPALITY. (a) This section applies only to a municipality with a population of 1.5 million or more.

(b) A person who ends service with the police department for any reason and is later reappointed to the department must serve a probationary period of six months from the date of reappointment.

(c) The reappointed officer is not entitled to full civil service protection until the officer has served the full probationary period.

(d) In determining classification, pay status, and eligibility for promotion, the probationary period is counted as if the reappointed officer were not on probation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 64, 65, eff. Sept. 1, 2001.

Sec. 143.1251. REAPPOINTMENT AFTER RESIGNATION. The commission may adopt rules to allow a police officer who voluntarily resigns from the department to be reappointed to the department without taking another departmental entrance examination.

Added by Acts 1995, 74th Leg., ch. 64, Sec. 3, eff. Sept. 1, 1995.

Sec. 143.126. LEGISLATIVE LEAVE. (a) A fire fighter or police officer is entitled to legislative leave without pay to appear before or to petition a governmental body during a regular or special session of that body as prescribed by this section.

(b) To be eligible for legislative leave, a fire fighter or police officer must submit a written application to the municipality on or before the 30th day before the date the fire fighter or police officer intends to begin the legislative leave. The application must indicate the length of the requested leave and state that the fire fighter or police officer is willing to reimburse the municipality for any wages, pension, or other costs the municipality will incur as a result of the leave. The length of the requested leave may not exceed the length of the session.

(c) Within 30 days after the date the municipality receives the application, the municipality shall notify the fire fighter or police officer in writing of the actual amount of money required to offset the costs the municipality will incur. The municipality may require the fire fighter or police officer to post the money before granting the leave.

(d) The municipality shall grant legislative leave to a fire fighter or police officer who submits an application as prescribed by this section and who complies with any requirement relating to payment of costs unless an emergency exists or unless granting the leave will result in an insufficient number of employees to carry out the normal functions of the fire or police department.

(e) If the head of the fire or police department determines that granting a legislative leave will result in an insufficient number of employees to carry out the normal functions of the

department, another fire fighter or police officer may volunteer to work in the applicant's place on an exchange of time basis as long as no overtime results. If a fire fighter or police officer volunteers to work in the applicant's place and no overtime will result, the department head shall allow the volunteer to work for the applicant. If the volunteer work will solve the problem of having an insufficient number of employees, the municipality shall grant the legislative leave.

(f) Legislative leave may not be construed as a break in service for any purpose, including the determination of seniority, promotions, sick leave, vacations, or retirement.

(g) Legislative leave granted under this section to a fire fighter or police officer to attend a session of the Congress of the United States shall be granted for a period not to exceed 30 percent of the applicant's total annual working days during each year in which leave is requested.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 32(a), eff. Aug. 28, 1989.

Sec. 143.1261. LEGISLATIVE LEAVE ACCOUNT. (a) A fire fighter or police officer may donate not more than one hour for each month of accumulated vacation or compensatory time to an employee organization. The municipality shall establish and maintain a legislative leave time account for each employee organization.

(b) The fire fighter or police officer must authorize the donation in writing on a form provided by the employee organization and approved by the municipality. After receiving the signed authorization on an approved form, the municipality shall transfer donated time to the account monthly until the municipality receives the fire fighter's or police officer's written revocation of the authorization.

(c) Only a fire fighter or police officer who is a member of an employee organization may use for legislative leave purposes the time donated to that employee organization. A fire fighter or police officer may use for legislative leave purposes the time donated under this section in lieu of reimbursing the municipality under Section 143.126.

(d) A request to use for legislative leave purposes the time in

an employee organization's time account must be in writing and submitted to the municipality by the president or the equivalent officer of the employee organization or by that officer's designee.

(e) The municipality shall account for the time donated to the account and used from the account. The municipality may:

(1) determine and credit the actual cash value of the donated time in the account and determine and deduct the actual cash value of time used from the account for legislative leave purposes; or

(2) credit and debit an account on an hour-for-hour basis regardless of the cash value of the time donated or used.

(f) An employee organization may not use for legislative leave purposes more than 4,000 hours from its time account under this section in a calendar year. If more than one employee organization requests to use legislative leave, each employee organization may use a proportional share of the 4,000 hours based on the total amount of hours donated to the employee organization for its exclusive use before January 2 of the calendar year in which the legislative leave is requested. This section does not prevent an employee organization from accumulating more than 4,000 hours. This subsection only limits the total number of donated hours that one or more employee organizations may use in any calendar year.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 2, eff. Sept. 1, 1997.

Sec. 143.127. GRIEVANCE PROCEDURE. (a) Except as otherwise provided by this subsection, a fire fighter or police officer may file a grievance as provided by this subchapter that relates to any aspect of the fire fighter's or police officer's employment covered by this chapter. The fire fighter or police officer may not file a grievance relating to:

(1) a disciplinary suspension, indefinite suspension, promotional pass over, or demotion or other action or decision for which a hearing, review, or appeal is otherwise provided by this chapter; or

(2) an allegation of discrimination based, in whole or in part, on race, color, religion, sex, or national origin.

(b) The director shall monitor and assist the operation of the grievance procedure. The director's duties include:

(1) aiding the departments and departmental grievance counselors;

(2) notifying the parties of meetings;

(3) docketing cases before the grievance examiner; and

(4) ensuring that the grievance procedure operates timely and effectively.

(c) The department head shall appoint from among the members of the department a grievance counselor whose duties include:

(1) providing appropriate grievance forms to a fire fighter or police officer;

(2) accepting, on behalf of the department head, a step I or II grievance;

(3) assisting the fire fighter or police officer in handling the grievance;

(4) forwarding a copy of a step I or II grievance form to the director and notifying the department head;

(5) arranging a meeting between the fire fighter or police officer and that person's immediate supervisor as prescribed by Section 143.128(b);

(6) arranging the meeting of the fire fighter or police officer and that person's department head or the department head's designated representative as prescribed by Section 143.129(b); and

(7) performing duties that the department head may assign.

(d) The grievance procedure consists of four steps. In any step of the grievance process in which the aggrieved fire fighter's or police officer's immediate supervisor is included, the department head or the departmental grievance counselor may add an appropriate supervisor who is not the fire fighter's or police officer's immediate supervisor or may designate that supervisor to replace the person's immediate supervisor, if the department head or grievance counselor determines that the other supervisor has the authority to resolve the person's grievance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 33(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 854, Sec. 9, eff. June 14, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1415 (S.B. 1896), Sec. 2, eff. September 1, 2009.

Sec. 143.128. STEP I GRIEVANCE PROCEDURE. (a) To begin a grievance action, a fire fighter or police officer must file a completed written step I grievance form with the person's department head or departmental grievance counselor within 30 days after the date the fire fighter or police officer knew or should have known of the action or inaction for which the person feels aggrieved occurred. A step I grievance form may be obtained from the departmental grievance counselor. If the form is not timely filed, the grievance is waived.

(b) If the form is filed, the departmental grievance counselor shall arrange a meeting of the fire fighter or police officer, that person's immediate supervisor or other appropriate supervisor or both, and the person or persons against whom the grievance is lodged. The departmental grievance counselor shall schedule the step I meeting within 30 calendar days after the date the grievance is filed. If the grievance is lodged against the department head, the department head may send a representative.

(c) The fire fighter's or police officer's immediate supervisor or other appropriate supervisor, or both, shall fully, candidly, and openly discuss the grievance with the fire fighter or police officer in a sincere attempt to resolve it.

(d) Regardless of the outcome of the meeting, the fire fighter's or police officer's immediate supervisor or other appropriate supervisor, or both, shall provide a written response to the fire fighter or police officer, with a copy to the grievance counselor, within 15 calendar days after the date the meeting occurs. The response must include the supervisor's evaluation and proposed solution. The response shall either be personally delivered to the fire fighter or police officer or be mailed by certified mail, return receipt requested, to the last home address provided by that person.

(e) If the proposed solution is not acceptable, the fire fighter or police officer may file a step II grievance form with the department head or the departmental grievance counselor in accordance with Section 143.129. If the aggrieved fire fighter or police officer fails to timely file a step II grievance form, the solution is considered accepted.

(f) If the supervisor does not provide the response required by Subsection (d) before the 16th day after the date the meeting occurs, the department head shall sustain the fire fighter's or police officer's grievance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 33(c), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 353, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1415 (S.B. 1896), Sec. 3, eff. September 1, 2009.

Sec. 143.129. STEP II GRIEVANCE PROCEDURE. (a) To continue the grievance procedure, the fire fighter or police officer must complete a step II grievance form and file it with the department head or the departmental grievance counselor within 15 calendar days after the date the fire fighter or police officer receives the supervisor's response under Section 143.128.

(b) The departmental grievance counselor shall arrange a meeting of the fire fighter or police officer, that person's immediate supervisor or other appropriate supervisor or both, and the department head or the department head's representative who must have a rank of at least assistant chief or the equivalent. The meeting shall be held within 15 calendar days after the date the step II grievance form is filed under Subsection (a).

(c) Regardless of the outcome of the meeting, the department head or the department head's representative shall provide a written response to the fire fighter or police officer within 15 calendar days after the date the meeting occurs. The response shall either be personally delivered to the fire fighter or police officer or be mailed by certified mail, return receipt requested, to the last home address provided by that person.

(d) If the proposed solution is not acceptable, the fire fighter or police officer may either submit a written request stating the person's decision to appeal to an independent third party hearing examiner pursuant to the provisions of Section 143.057 or file a step III grievance form with the director in accordance with Section 143.130. If the fire fighter or police officer fails to timely file a step III grievance form or a written request to appeal to a hearing examiner, the solution is considered accepted. Notwithstanding Section 143.057(i), if the fire fighter or police officer prevails and the hearing examiner upholds the grievance in its entirety, the department shall bear the cost of the appeal to the hearing examiner. If the fire fighter or police officer fails to prevail and the

hearing examiner denies the grievance in its entirety, the fire fighter or police officer shall bear the cost of the appeal to the hearing examiner. If neither party entirely prevails and the hearing examiner upholds part of the grievance and denies part of it, the hearing examiner's fees and expenses shall be shared equally by the fire fighter or police officer and the department.

(e) If the department head or the department head's representative does not provide the response required by Subsection (c) before the 16th day after the date the meeting occurs, the department head shall sustain the fire fighter's or police officer's grievance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 33(d), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 855, Sec. 1, eff. June 14, 1989; Acts 1995, 74th Leg., ch. 353, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1415 (S.B. 1896), Sec. 4, eff. September 1, 2009.

Sec. 143.130. STEP III GRIEVANCE PROCEDURE. (a) To continue the grievance procedure, the fire fighter or police officer must complete a step III grievance form and file it with the director within 15 calendar days after the date the fire fighter or police officer receives the department head's response under Section 143.129.

(b) The director shall arrange a hearing of the fire fighter or police officer and a grievance examiner to be appointed by the commission under Section 143.132. The hearing shall be held within 15 of the aggrieved fire fighter's or police officer's working days after the date the step III grievance form is filed under Subsection (a).

(c) A hearing shall be conducted as an informal administrative procedure. Grievances arising out of the same or similar fact situations may be heard at the same hearing. A court reporter shall record the hearing. All witnesses shall be examined under oath. The fire fighter or police officer, that person's immediate supervisor or other appropriate supervisor or both, the department head or the department head's designated representative or both, and each person

specifically named in the grievance are parties to the hearing. The burden of proof is on the aggrieved fire fighter or police officer.

(d) The grievance examiner shall make written findings and a recommendation for solution of the grievance within 15 calendar days after the date the hearing ends. The findings and recommendation shall be given to the commission and copies mailed to the fire fighter or police officer by certified mail, return receipt requested, at the last home address provided by that person, and to the department head.

(e) If the proposed solution is not acceptable to either the fire fighter or police officer or the department head, either party may file a step IV grievance form with the director in accordance with Section 143.131. If the fire fighter or police officer or the department head fails to timely file a step IV grievance form, the solution is considered accepted by that person.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 33(e), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 353, Sec. 3, eff. Sept. 1, 1995.

Sec. 143.131. STEP IV GRIEVANCE PROCEDURE. (a) If the department head or the fire fighter or police officer rejects the proposed solution under Section 143.130, the department head, the department head's designated representative, or the fire fighter or police officer must complete a step IV grievance form and file it with the director within 15 calendar days after the date the person receives the grievance examiner's recommendation.

(b) The commission shall review the grievance examiner's findings and recommendation and consider the transcript of the step III hearing at the commission's next regularly scheduled meeting or as soon as practicable. The transcript shall be filed within 30 days of the step IV grievance being filed. The commission may for good cause shown grant a reasonable delay not to exceed 30 days to file the transcript. In no event may the commission render a decision later than 30 days after the transcript is filed. If the commission does not render a decision within 30 days after the date the transcript is filed, the commission shall sustain the fire fighter's or police officer's grievance.

(c) The commission shall base its decision solely on the

transcript and demonstrative evidence offered and accepted at the step III hearing. The commission shall furnish a written copy of the order containing its decision to the fire fighter or police officer, the department head, and the grievance examiner. The copy to the fire fighter or police officer shall be mailed by certified mail, return receipt requested, to the last home address provided by that person. The commission decision is final.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 33(f), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 854, Sec. 11, eff. June 14, 1989; Acts 1995, 74th Leg., ch. 353, Sec. 4, eff. Sept. 1, 1995.

Sec. 143.132. GRIEVANCE EXAMINER. (a) The commission shall appoint a grievance examiner by a majority vote. The commission may appoint more than one grievance examiner if necessary. The commission may appoint a different grievance examiner for each grievance. An examiner may not be affiliated with any other municipal department and is responsible only to the commission. The commission shall pay an examiner from a special budget established for this purpose, and the director shall provide an examiner sufficient office space and clerical support.

(b) The grievance examiner may:

(1) impose a reasonable limit on the time allowed each party and the number of witnesses to be heard;

(2) administer oaths;

(3) examine a witness under oath;

(4) subpoena and require the attendance or production of witnesses, documents, books, or other pertinent material; and

(5) accept affidavits instead of or in addition to live testimony.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.133. SPECIAL PROVISIONS FOR STEPS I AND II. (a) If the aggrieved fire fighter's or police officer's immediate supervisor is the department head, the steps prescribed by Sections 143.128 and 143.129 are combined. The department head shall meet with the aggrieved fire fighter or police officer and may not appoint a

representative.

(b) A department head, with the approval of the commission, may change the procedure prescribed by Sections 143.128 and 143.129 to reflect a change in a department's chain of command.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 143.134. MISCELLANEOUS GRIEVANCE PROVISIONS. (a) A fire fighter or police officer may represent himself or obtain a representative at any time during the grievance procedure. The municipality is not obligated to provide or pay the costs of providing representation. The representative:

(1) is not required to be an attorney;

(2) is entitled to be present to advise the fire fighter or police officer;

(3) is entitled to present any evidence or information for the fire fighter or police officer; and

(4) may not be prevented from fully participating in any of the grievance proceedings.

(b) A fire fighter or police officer may take reasonable time off from a job assignment to file a grievance and attend a meeting or hearing. Time taken to pursue a grievance may not be charged against that person. The fire fighter or police officer shall be compensated on an overtime basis for the time that person spends at a grievance meeting or hearing if:

(1) the meeting or hearing is scheduled at a time other than that person's normally assigned working hours; and

(2) that person prevails in the grievance.

(c) If notice that a grievance meeting or hearing is to be recorded is provided to all persons present at the meeting or hearing, the fire fighter or police officer, the department head, or the department head's designee may record the meeting or hearing.

(d) The director shall provide a suitable notice explaining the grievance procedure prescribed by this subchapter and furnish copies to each department. Each department head shall cause the notices to be posted in a prominent place or places within the department work areas to give reasonable notice of the grievance procedure to each member of the department.

(e) At the request of the department head of a fire fighter or

police officer who has filed a grievance under this subchapter, the municipality's legal department or the director shall assist in resolving the grievance.

(f) The director is the official final custodian of all records involving grievances. A depository for closed files regarding grievances shall be maintained in the civil service department.

(g) A fire fighter or police officer who files a grievance pursuant to Sections 143.127 through and including Section 143.134 is entitled to 48 hours notice of any meeting or hearing scheduled under Section 143.128(b), 143.129(b), 143.130(b), or 143.131(b). In the event that the fire fighter or police officer is not given 48 hours advance notice, the fire fighter's or police officer's grievance shall be automatically sustained and no further action may be had on the grievance.

(h) If the decision of the commission under Section 143.131 or the decision of a hearing examiner under Section 143.129 that has become final is favorable to a fire fighter, the department head shall implement the relief granted to the fire fighter not later than the 10th day after the date on which the decision was issued. If the department head intentionally fails to implement the relief within the 10-day period, the municipality shall pay the fire fighter $1,000 for each day after the 10-day period that the decision is not yet implemented.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 25(i), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 854, Sec. 10, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 676, Sec. 3, eff. Sept. 1, 1993.

Sec. 143.135. MEDIATION. (a) In this section, "mediation" has the meaning assigned by Section 154.023, Civil Practice and Remedies Code.

(b) The head of the police department may develop and implement an alternative dispute resolution program to refer certain disputes regarding police officers to mediation.

(c) If a dispute is referred to mediation under this section, the time limitations and deadlines under Sections 143.1015, 143.1016, 143.117, 143.118, 143.119, 143.120, and 143.127-143.134 are tolled until the earliest of:

(1) the date the parties reach a settlement and execute a written agreement disposing of the dispute;

(2) the date the mediator refers the dispute to another appeals or grievance procedure under this subchapter; or

(3) the 60th day after the date the dispute was referred to mediation.

(d) The conduct and demeanor of the mediator and the parties to the dispute during the course of the mediation are confidential. A letter, memorandum, document, note, or other oral or written communication that is relevant to the dispute and made between the mediator and the parties to the dispute or between the parties to the dispute during the course of the mediation procedure:

(1) is confidential and may not be disclosed unless all of the parties to the mediation agree to the disclosure in writing; and

(2) is admissible and discoverable in a separate proceeding only if the letter, memorandum, document, note, or other communication is admissible and discoverable independent of the mediation.

(e) A mediator may not be required to testify in a proceeding concerning information relating to or arising out of the mediation.

(f) Subsection (d) does not apply to a final written agreement to which the police department or municipality is a signatory that is reached as a result of a mediation procedure conducted under this section. Information in the final written agreement is subject to required disclosure, is excepted from required disclosure, or is confidential in accordance with Chapter 552, Government Code, and other law.

(g) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to a district court for a judicial district in which the majority of the territory of the municipality is located to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

(h) Except to the extent of any conflict with this section, Chapter 154, Civil Practice and Remedies Code, and police department rules apply to a mediation conducted under this section.

(i) Except to the extent of any conflict with this section, Section 2009.054, Government Code, applies to the communications,

records, conduct, and demeanor of the mediator and the parties.

(j) Section 143.1014 does not apply to a meeting or hearing conducted under this section.

Added by Acts 2003, 78th Leg., ch. 517, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER H. LOCAL CONTROL OF FIRE FIGHTER EMPLOYMENT MATTERS IN MUNICIPALITIES WITH POPULATION OF 1.5 MILLION OR MORE

Sec. 143.201. POPULATION. This subchapter applies only to a municipality with a population of 1.5 million or more, but does not apply to a municipality that has adopted The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes).

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.

Sec. 143.202. DEFINITIONS. In this subchapter:

(1) "Fire fighters association" means an organization in which fire fighters participate and which exists for the purpose, in whole or in part, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees.

(2) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a municipality which is required to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of public employees. The term may include, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, personnel board, or one or more other officials, regardless of the name by which they are designated.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.

Sec. 143.203. GENERAL PROVISIONS RELATING TO AGREEMENTS, RECOGNITION, AND STRIKES. (a) A municipality may not be denied local control over the wages, salaries, rates of pay, hours of work, and other terms and conditions of employment, or other state-mandated

personnel issues, if the public employer and the fire fighters association recognized as the sole and exclusive bargaining agent for all officers covered by this subchapter come to a mutual agreement on any of the terms listed above. If no agreement is reached, the existing state laws, local ordinances, and civil service rules remain unaffected. All agreements shall be reduced to writing. Nothing in this subchapter shall require either party to meet and confer on any issue or reach an agreement.

(b) A public employer may only meet and confer if the fire fighters association recognized under this subchapter as the sole and exclusive bargaining agent does not advocate the illegal right to strike by public employees.

(c) Fire fighters of a municipality may not engage in strikes or organized work stoppages against this state or a political subdivision of this state. A fire fighter who participates in a strike forfeits all civil service rights, reemployment rights, and any other rights, benefits, or privileges the fire fighter enjoys as a result of employment or prior employment, except that the right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.

Sec. 143.204. RECOGNITION OF FIRE FIGHTER ASSOCIATION. (a) A fire fighters association submitting a petition signed by a majority of the paid fire fighters in the municipality, excluding the head of the department and assistant department heads in the rank or classification immediately below that of the department head, may be recognized by the public employer as the sole and exclusive bargaining agent for all of the covered fire fighters unless and until recognition of the association is withdrawn by a majority of those fire fighters.

(b) In the event of a question about whether a fire fighters association represents a majority of the covered fire fighters, the question shall be resolved by a fair election conducted according to procedures agreeable to the parties. If the parties are unable to agree on such procedures, either party may request the American Arbitration Association to conduct the election and to certify the results. Certification of the results of an election resolves the

question concerning representation. The fire fighters association is liable for the expenses of the election, except that if two or more associations seeking recognition as the bargaining agent submit petitions signed by a majority of the covered fire fighters, the associations shall share equally the costs of the election.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.

Sec. 143.205. OPEN RECORDS REQUIRED. All documents relating to an agreement between a fire fighters association and a public employer shall be available to the public pursuant to state statutes.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.

Sec. 143.206. ENFORCEABILITY OF AGREEMENT. (a) A written agreement made under this subchapter between a public employer and a fire fighters association recognized as the sole and exclusive bargaining agent is enforceable and binding upon the public employer, the fire fighters association recognized as the sole and exclusive bargaining agent, and fire fighters covered by the agreement if:

(1) the municipality's governing body ratified the agreement by a majority vote; and

(2) the fire fighters association ratified the agreement by a majority of the votes received in a referendum of its members by secret ballot.

(b) The state district court of the judicial district in which the municipality is located has full authority and jurisdiction on the application of either party aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by any written agreement ratified by both the public employer and the fire fighters association. The court may issue proper restraining orders, temporary and permanent injunctions, and any other writ, order, or process, including contempt orders, that are appropriate to enforcing any written agreement ratified by both the public employer and the fire fighters association.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 373, Sec. 1, eff. May 28, 1997.

Sec. 143.207. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) A written agreement under this subchapter between a public employer and the fire fighters association recognized as the sole and exclusive bargaining agent supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment to the extent of any conflict with the previous statute.

(b) A written agreement under this subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or a political subdivision or agent of the state, such as a personnel board, a civil service commission, or a home-rule municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under this chapter or other law unless approved by a majority of the votes received in a secret ballot referendum of the members of the fire fighters association recognized as the sole and exclusive bargaining agent.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 373, Sec. 2, eff. May 28, 1997.

Sec. 143.208. REPEAL OF AGREEMENT BY ELECTORATE. Within 45 days after an agreement is ratified and signed by both the municipality and the fire fighters association recognized as the sole and exclusive bargaining agent, a petition signed by a number of registered voters equal to 10 percent of the votes cast at the most recent mayoral general election may be presented to the municipal secretary calling an election for the repeal of the agreement. Thereupon, the governing body shall reconsider the agreement and, if it does not repeal the agreement, shall call an election of the qualified voters to determine if they desire to repeal the agreement. The election shall be called for the next municipal election or a special election called by the governing body for that purpose. If at the election a majority of the votes are cast in favor of the repeal of the adoption of the agreement, then the agreement shall become null and void. The ballot shall be printed to provide for

voting FOR or AGAINST the proposition:

"Repeal of the adoption of the agreement ratified by the municipality and the fire fighters association concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment."

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.15, eff. Sept. 1, 1999.

Sec. 143.209. PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES. (a) For the purpose of any disciplinary appeal to either the civil service commission or a hearing examiner, all members of the bargaining unit shall have the right to choose to be represented by any person of their choice or the fire fighters association.

(b) No agreement shall interfere in the right of members of the fire fighters association to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Commission on Human Rights or the Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Added by Acts 1993, 73rd Leg., ch. 676, Sec. 5, eff. Sept. 1, 1993.

SUBCHAPTER I. FIRE FIGHTER AND POLICE OFFICER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 143.301. MUNICIPALITIES COVERED BY SUBCHAPTER. This subchapter applies only to a municipality with a population of 460,000 or more that operates under a city manager form of government. This subchapter does not apply to a municipality:

(1) that has adopted Chapter 174 (The Fire and Police Employee Relations Act); or

(2) to which Subchapter H applies.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.3015. LIMITATION ON MUNICIPALITIES COVERED BY SUBCHAPTER: VOTER APPROVAL. (a) The governing body of a

municipality with a population less than 560,000 that has not recognized an association as the sole and exclusive bargaining agent as provided by Section 143.304 before September 1, 2001, must receive voter approval under this section before operating under the other provisions of this subchapter.

(b) The governing body shall call an election if:

(1) a majority of the members of the governing body vote to hold the election; or

(2) the voters submit a petition requesting the election as required by this section.

(c) A petition for election must:

(1) be signed by a number of qualified voters of the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal election for mayor; and

(2) comply with Chapter 277, Election Code.

(d) Not later than the 40th working day after the date a petition is presented to the governing body, the municipal secretary shall certify to the governing body the number and percentage of registered voters signing the petition.

(e) Upon receiving a petition in compliance with this subchapter, the governing body shall order an election submitting to the voters the question of whether this subchapter should be adopted for firefighters, police officers, or both. The election must be held on the first authorized uniform election date prescribed by Chapter 41, Election Code, that occurs after the petition is filed and that allows sufficient time to comply with other requirements of law.

(f) The ballot for an election called under this section shall be printed to permit voting for or against the proposition: "Authorizing (name of the governing body of the municipality) to recognize an employee association as a sole and exclusive bargaining agent for the municipal (insert firefighters, police officers, or both, as applicable,) and authorizing the (name of the governing body of the municipality) to make agreements with the employee association as provided by state law."

(g) An election authorized by this section shall be held and the returns shall be prepared and canvassed in conformity with the Election Code.

(h) The municipality may operate under the other provisions of this subchapter only if a majority of the votes cast at the election

favor the proposition.

(i) Notwithstanding Subsections (a) and (h), a municipality with a population of less than 560,000 that has not recognized an association as the sole and exclusive bargaining agent as provided by Section 143.304 before September 1, 2005, may adopt rules for police officers converting vacation and sick leave days to hours that supersede the provisions of Section 142.0013, Section 143.045, and Section 143.046 provided that:

(1) A police officer is entitled to earn 120 hours of vacation leave each year with pay, as a minimum, if the officer has been regularly employed in the department or departments for at least one year.

(2) In computing the length of time a police officer may be absent from work on vacation leave, only those hours that the person would have been required to work if not on vacation may be counted as vacation leave.

(3) A police officer shall be granted the same number of vacation hours and holiday hours, or hours in lieu of vacation hours or holiday hours, granted to other municipal employees who work the same number of hours in a regular work day and have worked for the municipality for the same number of years.

(4) A police officer shall be granted sick leave with pay accumulated at the rate of 10 hours for each full month employed in a calendar year, so as to total 120 hours to the person's credit each 12 months.

(5) A police officer who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of the person's salary for accumulated sick leave if the person has accumulated not more than 720 hours of sick leave, the person's employer may limit payment to the amount that the person would have received if the person had been allowed to use 720 hours of accumulated sick leave during the last six months of employment. The lump-sum payment is computed by compensating the police officer for the accumulated time at the highest permanent pay classification for which the person was eligible during the last six months of employment. The police officer is paid for the same period for which the person had taken the sick leave but does not include additional holidays and any sick leave or vacation time that the person might have accrued during the 720 hours.

Added by Acts 2001, 77th Leg., ch. 425, Sec. 1, eff. May 28, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1193 (H.B. 304), Sec. 3, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 145 (S.B. 189), Sec. 1, eff. May 21, 2007.

Sec. 143.302. DEFINITIONS. In this subchapter:

(1) "Association" means an organization in which fire fighters or police officers participate and that exists for the purpose, in whole or in part, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees.

(2) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a municipality that is required to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of public employees. The term may include, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, or personnel board or one or more other officials, regardless of the name by which they are designated.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.303. GENERAL PROVISIONS RELATING TO AGREEMENTS, RECOGNITION, AND STRIKES. (a) A municipality may not be denied local control over wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other personnel issues on which the public employer and an association that is recognized as the sole and exclusive bargaining agent for all fire fighters or police officers in the municipality agree. A term or condition on which the public employer and the association do not agree is governed by the applicable statutes, local ordinances, and civil service rules. An agreement must be reduced to writing. This subchapter does not require the public employer and the association to meet and confer or reach an agreement on any issue.

(b) A public employer and an association recognized under this subchapter as a sole and exclusive bargaining agent may meet and confer only if the association does not advocate the illegal right to strike by public employees.

(c) A fire fighter or police officer of a municipality may not engage in a strike or organized work stoppage against this state or a political subdivision of this state. A fire fighter or police officer who participates in a strike forfeits all civil service rights, reemployment rights, and other rights, benefits, or privileges the fire fighter or police officer enjoys as a result of the person's employment or previous employment with the municipality. This subsection does not affect the right of a person to cease employment if the person is not acting in concert with other fire fighters or police officers.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.304. RECOGNITION OF FIRE FIGHTERS OR POLICE OFFICERS ASSOCIATION. (a) The public employer may recognize an association that submits a petition signed by a majority of the paid fire fighters or police officers in the municipality, excluding the head of the department and assistant department heads in the rank or classification immediately below that of the department head, as the sole and exclusive bargaining agent for all of the covered fire fighters or police officers unless recognition of the association is withdrawn by a majority of the covered fire fighters or police officers.

(b) A question of whether an association is the majority representative of the covered fire fighters or police officers shall be resolved by a fair election conducted according to procedures agreed on by the parties. If the parties are unable to agree on election procedures, either party may request the American Arbitration Association to conduct the election and to certify the results. Certification of the results of an election under this subsection resolves the question concerning representation. The association shall pay the costs of the election, except that if two or more associations seeking recognition as the bargaining agent submit petitions signed by a majority of the covered fire fighters or police officers, the associations shall share equally the costs of

the election.

(c) The public employer's manager or chief executive and the police chief or fire chief, as appropriate, shall designate a team to represent the public employer as its sole and exclusive bargaining agent for issues related to the fire department and a separate team to represent the public employer as its sole and exclusive bargaining agent for issues related to the police department.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.305. OPEN RECORDS REQUIRED. An agreement made under this subchapter is a public record for purposes of Chapter 552, Government Code. The agreement and any document prepared and used by the municipality in connection with the agreement are available to the public under the open records law, Chapter 552, Government Code, only after the agreement is ratified by the municipality's governing body. This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used by the municipality in connection with the agreement.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.306. ENFORCEABILITY OF AGREEMENT. (a) A written agreement made under this subchapter between a public employer and an association is binding on the public employer, the association, and fire fighters or police officers covered by the agreement if:

(1) the municipality's governing body ratifies the agreement by a majority vote; and

(2) the applicable association ratifies the agreement by a majority vote of its members by secret ballot.

(b) An agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided by the agreement, including binding arbitration on interpretation of the agreement.

(c) The district court of the judicial district in which the municipality is located has full authority and jurisdiction on the application of either party aggrieved by an act or omission of the other party related to a right, duty, or obligation provided by a written agreement ratified as described by Subsection (a). The court

may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including a contempt order, that is appropriate to enforce the agreement.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.307. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) An agreement under this subchapter supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, or other terms and conditions of employment to the extent of any conflict with the statute.

(b) An agreement under this subchapter preempts any contrary statute, executive order, local ordinance, or rule adopted by the state or a political subdivision or agent of the state, including a personnel board, a civil service commission, or a home-rule municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under this chapter or other law unless approved by a majority vote by secret ballot of the members of the association recognized as a sole and exclusive bargaining agent.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.308. REPEAL OF AGREEMENT BY ELECTORATE. Not later than the 45th day after the date an agreement is ratified by both the municipality and the association, a petition signed by at least 10 percent of the qualified voters of the municipality may be presented to the municipal secretary calling an election for the repeal of the agreement. On receipt of the petition by the municipal secretary, the governing body shall reconsider the agreement and either repeal the agreement or call an election of the qualified voters to determine if they desire to repeal the agreement. The election shall be called for the next municipal election or a special election called by the governing body for that purpose. If at the election a majority of the votes are cast in favor of the repeal of the adoption of the agreement, the agreement is void. The ballot shall be printed to permit voting for or against the proposition: "Repeal of the adoption of the agreement ratified by the municipality and the

_____ (fire fighters or police officers, as appropriate) association concerning wages, salaries, rates of pay, hours of work, and other terms and conditions of employment."

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.309. PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES. (a) For the purpose of any disciplinary appeal to the civil service commission or to a hearing examiner, a member of the bargaining unit may choose to be represented by any person of the member's choice or by the association.

(b) An agreement may not interfere with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Commission on Human Rights or the Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.310. BINDING INTEREST ARBITRATION. A municipality may be required to submit to binding interest arbitration only if approved by a majority of those voting in a public referendum conducted in accordance with the municipality's charter. This subsection does not affect any disciplinary arbitration or arbitration provision in a ratified agreement.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.311. APPOINTMENTS TO CLASSIFICATION IMMEDIATELY BELOW DEPARTMENT HEAD. Section 143.014(c) does not apply to a municipality to which this subchapter applies.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.312. INVESTIGATION OF FIRE FIGHTERS AND POLICE OFFICERS. (a) This section does not apply to a municipality to

which Section 143.123 applies.

(b) In this section:

(1) "Complainant" means a person claiming to be the victim of misconduct by a fire fighter or police officer.

(2) "Investigation" means an administrative investigation, conducted by the municipality, of alleged misconduct by a fire fighter or police officer that could result in punitive action against that person.

(3) "Investigator" means an agent or employee of the municipality who is assigned to conduct an investigation.

(4) "Normally assigned working hours" includes those hours during which a fire fighter or police officer is actually at work or at the person's assigned place of work, but does not include any time when the person is off duty on authorized leave, including sick leave.

(5) "Punitive action" means a disciplinary suspension, indefinite suspension, demotion in rank, written reprimand, or any combination of those actions.

(c) An investigator may interrogate a fire fighter or police officer who is the subject of an investigation only during the fire fighter's or police officer's normally assigned working hours unless:

(1) the seriousness of the investigation, as determined by the fire fighter's or police officer's department head or the department head's designee, requires interrogation at another time; and

(2) the fire fighter or police officer is compensated for the interrogation time on an overtime basis.

(d) The department head may not consider work time missed from regular duties by a fire fighter or police officer due to participation in the conduct of an investigation in determining whether to impose a punitive action or in determining the severity of a punitive action.

(e) An investigator may not interrogate a fire fighter or police officer who is the subject of an investigation or conduct any part of the investigation at that person's home without that person's permission.

(f) A person may not be assigned to conduct an investigation if the person is the complainant, the ultimate decision-maker regarding disciplinary action, or a person who has any personal involvement regarding the alleged misconduct. A fire fighter or police officer

who is the subject of an investigation has the right to inquire and, on inquiry, to be informed of the identities of each investigator participating in an interrogation of the fire fighter or police officer.

(g) Not less than 48 hours before an investigator begins the initial interrogation of a fire fighter or police officer who is the subject of an investigation, the investigator must inform the fire fighter or police officer in writing of the allegations in the complaint. An investigator may not interrogate a fire fighter or police officer based on a complaint by a complainant who is not a fire fighter or police officer unless the complainant verifies the complaint in writing before a public officer who is authorized by law to take statements under oath. In an investigation under this subsection, an investigator may interrogate a fire fighter or police officer about events or conduct reported by a witness who is not a complainant without disclosing the name of the witness. An interrogation may be based on a complaint from an anonymous complainant if the departmental employee receiving the anonymous complaint certifies in writing, under oath, that the complaint was anonymous. This subsection does not apply to an on-the-scene investigation that occurs immediately after an incident being investigated, except that the fire fighter or police officer under investigation must be furnished, as soon as practicable, a written statement of the allegations in the complaint.

(h) An interrogation session of a fire fighter or police officer who is the subject of an investigation may not be unreasonably long. In determining reasonableness, the gravity and complexity of the investigation must be considered. The investigators shall allow reasonable interruptions to permit the fire fighter or police officer to attend to personal physical necessities.

(i) An investigator may not threaten a fire fighter or police officer who is the subject of an investigation with punitive action during an interrogation. An investigator may inform a fire fighter or police officer that failure to answer truthfully reasonable questions directly related to the investigation or to cooperate fully in the conduct of the investigation may result in punitive action.

(j) If prior notification of intent to record an interrogation is given to the other party, either the investigator or the fire fighter or police officer who is the subject of an interrogation may record the interrogation.

(k) If an investigation does not result in punitive action against a fire fighter or police officer but does result in a written reprimand or an adverse finding or determination regarding that person, the reprimand, finding, or determination may not be placed in that person's personnel file unless the fire fighter or police officer is first given an opportunity to read and sign the document. If the fire fighter or police officer refuses to sign the reprimand, finding, or determination, it may be placed in the personnel file with a notation that the person refused to sign it. A fire fighter or police officer may respond in writing to a reprimand, finding, or determination that is placed in the person's personnel file under this subsection by submitting a written response to the department head not later than the 10th day after the date the fire fighter or police officer is asked to sign the document. The response shall be placed in the personnel file. A fire fighter or police officer who receives a punitive action and who elects not to appeal the action may file a written response as prescribed by this subsection not later than the 10th day after the date the person is given written notice of the punitive action from the department head.

(l) A violation of this section may be considered by the commission or hearing examiner during a disciplinary appeal hearing if the violation substantially impaired the fire fighter's or police officer's ability to defend against the allegations of misconduct.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995.

Sec. 143.313. POLYGRAPH EXAMINATIONS. (a) This section does not apply to a municipality to which Section 143.124 applies.

(b) A fire fighter employed by the municipality may not be required to submit to a polygraph examination as part of an internal investigation regarding the conduct of the fire fighter unless:

(1) the complainant submits to and passes a polygraph examination; or

(2) the fire fighter is ordered to take an examination under Subsection (f).

(c) Subsection (b) does not apply if the complainant is physically or mentally incapable of being polygraphed.

(d) For the purposes of this section, a fire fighter passes a polygraph examination if, in the opinion of the polygraph examiner,

no deception is indicated in the examination regarding matters critical to the subject matter under investigation.

(e) The results of a polygraph examination that relate to the complaint under investigation are not admissible in a proceeding before the commission or a hearing examiner.

(f) The head of the fire department may order a fire fighter to submit to a polygraph examination if the fire department head:

(1) considers the circumstances to be extraordinary; or

(2) believes that the integrity of a fire fighter or the fire department is in question.

Added by Acts 1995, 74th Leg., ch. 1003, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 1303, Sec. 3, eff. June 20, 1997.

SUBCHAPTER J. LOCAL CONTROL OF POLICE OFFICER EMPLOYMENT MATTERS IN MUNICIPALITIES WITH POPULATION OF 1.5 MILLION OR MORE

Sec. 143.351. APPLICABILITY. This subchapter applies only to a municipality with a population of 1.5 million or more but does not apply to a municipality that has adopted Chapter 174.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997.

Sec. 143.352. DEFINITIONS. In this subchapter:

(1) "Bargaining agent" means the police employee group selected under Section 143.354 to represent all police officers employed by the municipality, excluding the department head and assistant department heads, during negotiations with the public employer.

(2) "Police employee group" means an organization:

(A) in which at least three percent of the police officers of the municipality participate and pay dues via automatic payroll deduction; and

(B) which exists for the purpose, in whole or part, of dealing with the municipality concerning grievances, labor disputes, wages, rates of pay, benefits other than pension benefits, hours of employment, or conditions of work affecting police officers.

(3) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a

municipality that is required to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of police officers. The term includes, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, personnel board, or one or more other officials, regardless of the name by which they are designated.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 1, eff. Sept. 1, 2001.

Sec. 143.353. GENERAL PROVISIONS RELATING TO AGREEMENTS, RECOGNITION, AND STRIKES. (a) A municipality may not be denied local control over the wages, salaries, rates of pay, hours of work, and other terms of employment, or other state-mandated personnel issues, if the public employer and the bargaining agent come to a mutual agreement on any of the terms of employment. If an agreement is not reached, the state laws, local ordinances, and civil service rules remain unaffected. All agreements shall be written. Nothing in this subchapter requires either party to meet and confer on any issue or reach an agreement.

(b) A public employer may only meet and confer if the bargaining agent does not advocate the illegal right to strike by public employees.

(c) Police officers of a municipality may not engage in strikes or organized work stoppages against this state or a political subdivision of this state. A police officer who participates in a strike or work stoppage forfeits all civil service rights, reemployment rights, and any other rights, benefits, or privileges the police officer enjoys as a result of employment or prior employment.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 2, eff. Sept. 1, 2001.

Sec. 143.354. RECOGNITION OF POLICE EMPLOYEE GROUP. (a) The public employer in accordance with this section may recognize a

police employee group as the sole and exclusive bargaining agent for all of the police officers in the municipality, excluding the department head and assistant department heads, unless recognition of the police employee group is withdrawn by a majority of those police officers, if the employee group submits a petition signed by 40 percent of:

(1) the number of police officers in the municipality who voted in the last election held under Section 143.360 before the petition is submitted, excluding the head of the department and assistant department heads in the rank or classification immediately below that of the department head; or

(2) the paid police officers in the municipality, excluding the head of the department and assistant department heads in the rank or classification immediately below that of the department head, if an election under Section 143.360 has not been held in the municipality.

(b) A petition submitted under Subsection (a) must clearly show on each page the name of the police employee group circulating the petition. A police officer who signs a petition submitted under Subsection (a) may not be counted towards the 40 percent requirement under that subsection unless that officer's printed name and payroll number and the date of the signature are included on the petition. The petition must be submitted to the municipal secretary not later than the 60th day after the first date on which a police officer signs the petition.

(c) Within the 30 days after the date the petition is submitted, the municipal secretary shall verify the signatures on the petition and, if the petition complies with this section, call for the election. The election shall be conducted within 45 days after the date on which the municipal secretary calls for the election.

(d) An election required by this section shall be conducted according to procedures agreed on by the parties. If the parties are unable to agree on election procedures, either party may request the American Arbitration Association to conduct the election and to certify the results. Certification of the results of an election under this subsection resolves the question concerning representation. The police employee group shall pay the costs of the election, except that if two or more police employee groups seeking recognition as the bargaining agent submit petitions signed by a majority of the police officers eligible to sign the petition, the

police employee groups shall share equally the costs of the election. A police employee group must make payments required by this subsection not later than the 10th day before the date of the election.

(e) The public employer's chief executive officer shall designate a team to represent the public employer as its sole and exclusive bargaining agent for issues related to the police department.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 3, eff. Sept. 1, 2001.

Sec. 143.358. OPEN RECORDS REQUIRED. All documents relating to an agreement between a bargaining agent and a public employer shall be available to the public in accordance with state statutes.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 5, eff. Sept. 1, 2001.

Sec. 143.359. ENFORCEABILITY OF AGREEMENT. (a) A written agreement made under this subchapter between a public employer and a bargaining agent is enforceable and binding on the public employer, the bargaining agent, police employee groups, and the police officers covered by the agreement if:

(1) the municipality's governing body ratified the agreement by a majority vote; and

(2) the agreement is ratified under Section 143.360.

(b) A state district court of the judicial district in which a majority of the population of the municipality is located has full authority and jurisdiction on the application of either party aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by any written agreement ratified as required by this subchapter. The court may issue proper restraining orders, temporary and permanent injunctions, and any other writ, order, or process, including contempt orders, that are appropriate to enforcing any written agreement ratified as required by this subchapter.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 6, eff. Sept. 1, 2001.

Sec. 143.360. ELECTION TO RATIFY AGREEMENT. (a) The bargaining agent shall call an election to ratify any agreement reached with the public employer.

(b) All police officers of the municipality, other than the department head and assistant department heads, are eligible to vote in the election.

(c) The bargaining agent shall establish procedures for the election.

(d) A majority of all votes cast is required to ratify an agreement.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 7, eff. Sept. 1, 2001.

Sec. 143.361. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. (a) A written agreement ratified under this subchapter between a public employer and the bargaining agent supersedes a previous statute concerning wages, salaries, rates of pay, hours of work, and other terms of employment other than pension benefits to the extent of any conflict with the previous statute.

(b) A written agreement ratified under this subchapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or a political subdivision or agent of the state, such as a personnel board, a civil service commission, or a home-rule municipality.

(c) An agreement under this subchapter may not diminish or qualify any right, benefit, or privilege of an employee under this chapter or other law unless approved by a majority of the votes cast at the secret ballot election held by the bargaining agent to ratify the agreement.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 8, eff. Sept. 1, 2001.

Sec. 143.362. REPEAL OF AGREEMENT BY ELECTORATE. Within 45 days after the date an agreement is ratified and signed by the municipality and the bargaining agent, a petition signed by a number of registered voters equal to 10 percent of the votes cast at the most recent mayoral general election in the municipality may be presented to the municipal secretary calling an election for the repeal of the agreement, in which event the governing body shall reconsider the agreement, and, if it does not repeal the agreement, it shall call an election of the qualified voters to determine if they desire to repeal the agreement. The election shall be held as part of the next regularly scheduled municipal election or at a special election called by the governing body for that purpose. If at the election a majority of the votes are cast in favor of the repeal of the adoption of the agreement, the agreement becomes void. The ballot shall be printed to provide for voting for or against the proposition:

"Repeal of the adoption of the agreement ratified by the municipality and the police officers of the municipality concerning wages, salaries, rates of pay, certain benefits, hours of work, and other terms of employment."

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 9, eff. Sept. 1, 2001.

Sec. 143.363. PROTECTED RIGHTS OF INDIVIDUAL EMPLOYEES. (a) For the purpose of any disciplinary appeal to either the civil service commission or a hearing examiner, all police officers have the right to choose to be represented by any person of their choice or by the police employee group selected as the bargaining agent.

(b) An agreement may not interfere with the right of a member of a police employee group to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Commission on Human Rights or the Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Added by Acts 1997, 75th Leg., ch. 1195, Sec. 3, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 1464, Sec. 10, eff. Sept. 1, 2001.

SUBCHAPTER K. CIVIL SERVICE STATUS OF EMERGENCY MEDICAL SERVICES PERSONNEL IN CERTAIN MUNICIPALITIES

Sec. 143.401. APPLICABILITY. (a) This subchapter applies only to a municipality:

(1) with a population of 460,000 or more that operates under a city manager form of government; and

(2) that employs emergency medical services personnel in a municipal department other than the fire department.

(b) In this subchapter, "emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code. The term applies only to an individual certified under Chapter 773, Health and Safety Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 708 (H.B. 554), Sec. 1, eff. June 17, 2011.

Sec. 143.402. ELECTION TO ADOPT OR REPEAL SUBCHAPTER. (a) A municipality may hold an election to adopt or repeal this subchapter as provided by this section.

(b) If the governing body of the municipality receives a petition requesting an election that is signed by a number of registered voters who reside in the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal general election, the governing body shall order an election submitting to the voters the question of whether this subchapter should be adopted. The election must be held on the first authorized uniform election date prescribed by Chapter 41, Election Code, that occurs after the petition is filed and that allows sufficient time to comply with other requirements of law.

(c) The ballot shall be printed to provide for voting for or against the proposition: "Adoption of the emergency medical services personnel civil service law." If a majority of the votes received in the election favor adoption of this subchapter, the governing body shall implement this subchapter.

(d) A petition for a subsequent election to be held under

Subsection (b) may not be filed for at least one year after the date of a previous election under that subsection. To be valid, a petition for a subsequent election must contain the signatures of a number of registered voters who reside in the municipality equal to at least 20 percent of the number of voters who voted in the most recent municipal general election. Any subsequent election must be held at the next municipal general election that occurs after the petition is filed.

(e) If the governing body of a municipality that has operated under this subchapter for at least one year receives a petition requesting an election to repeal this subchapter that is signed by at least 10 percent of the registered voters who reside in the municipality, the governing body shall order an election submitting to the voters the question of whether this subchapter should be repealed. If a majority of the votes received favor repeal of this subchapter, this subchapter is void in that municipality.

Added by Acts 2011, 82nd Leg., R.S., Ch. 708 (H.B. 554), Sec. 1, eff. June 17, 2011.

Sec. 143.403. STATUS OF EMPLOYEES IF SUBCHAPTER ADOPTED. (a) Each person who is employed for more than six months as emergency medical services personnel serving in a municipality at the time this subchapter is adopted in the municipality and who is entitled to civil service classification has the status of a civil service employee and is not required to take a competitive examination to remain in the position the person occupies at the time of the adoption.

(b) On adoption of this subchapter, the governing body of the municipality employing emergency medical services personnel shall classify the personnel in accordance with Section 143.021 and the duties performed by the personnel.

(c) To the extent it can be made applicable, each provision of this chapter, including the provisions relating to eligibility lists, examinations, promotions, appointments, educational incentive pay, longevity or seniority pay, certification pay, assignment pay, salary, vacation leave, and disciplinary appeals, applies to emergency medical services personnel covered by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 708 (H.B. 554), Sec. 1, eff.

June 17, 2011.

CHAPTER 144. ELECTRONIC FUNDS TRANSFER OF COMPENSATION AND REIMBURSEMENT OF MUNICIPAL OFFICERS AND EMPLOYEES

Sec. 144.001. TRANSFER SYSTEM AUTHORIZED. (a) A municipality may establish and operate an electronic funds transfer system to transfer the following items directly into officers' and employees' accounts in financial institutions only:

(1) the net pay of the officers and employees;

(2) payments for the travel and subsistence of the officers and employees; and

(3) all other forms of compensation, payment, or reimbursement paid to the officers and employees.

(b) The authority granted by this chapter may not be restricted by a municipal charter.

Added by Acts 1989, 71st Leg., ch. 1047, Sec. 1, eff. Aug. 28, 1989.

Sec. 144.002. PAYEE REQUEST. An authorized payee must request in writing to participate in any electronic funds transfer system established and operated by the municipality.

Added by Acts 1989, 71st Leg., ch. 1047, Sec. 1, eff. Aug. 28, 1989.

Sec. 144.003. ADMINISTRATION OF SYSTEM. The municipal treasurer, with the approval of the governing body of the municipality, shall establish the procedures for administering the system and may use the services of financial institutions, automated clearinghouses, and the federal government.

Added by Acts 1989, 71st Leg., ch. 1047, Sec. 1, eff. Aug. 28, 1989.

Sec. 144.004. TRANSFER TO MULTIPLE PAYEES. A single transfer may contain payments to multiple payees without the necessity of issuing individual warrants for each payee.

Added by Acts 1989, 71st Leg., ch. 1047, Sec. 1, eff. Aug. 28, 1989.

Sec. 144.005. NO ADDITIONAL RIGHTS CREATED. The use of an electronic funds transfer means of payment does not create any rights that would not have been created if an individual warrant had been used as a means of payment.

Added by Acts 1989, 71st Leg., ch. 1047, Sec. 1, eff. Aug. 28, 1989.

CHAPTER 145. FINANCIAL DISCLOSURE BY AND STANDARDS OF CONDUCT FOR LOCAL GOVERNMENT OFFICERS

Sec. 145.001. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality with a population of 100,000 or more.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.

Sec. 145.002. DEFINITIONS. In this chapter:

(1) "Deliver" means transmitting by mail, personal delivery, or e-mail or any other means of electronic transfer.

(2) "Municipal officer" means the mayor, a member of the governing body, the municipal attorney, or the city manager of a municipality.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 223 (H.B. 1246), Sec. 1, eff. September 1, 2015.

Sec. 145.003. FINANCIAL STATEMENT REQUIRED. (a) A municipal officer or a candidate for a municipal office filled by election shall file a financial statement as required by this chapter.

(b) The statement must:

(1) be filed with the clerk or secretary of the municipality in which the officer or candidate resides; and

(2) comply with Sections 572.022 and 572.023, Government Code.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.

Sec. 145.004. FILING DATES; TIMELINESS OF FILING. (a) A municipal officer shall file the financial statement required by this chapter within the time prescribed by Section 572.026(a), Government Code.

(b) A person who is appointed to a municipal office shall file the financial statement required by this chapter within the time prescribed by Section 572.026(c), Government Code.

(c) A candidate for a municipal office filled by election shall file the financial statement required by this chapter not later than the earlier of:

(1) the 20th day after the deadline for filing an application for a place on the ballot in the election; or

(2) the fifth day before the date of the election.

(d) Except as provided in Subsection (g), the timeliness of the filing is governed by Section 572.029, Government Code.

(e) A municipal officer or a person who is appointed to a municipal office may request the clerk or secretary of the municipality to grant an extension of not more than 60 days for filing the statement. The clerk or secretary shall grant the request if it is received before the filing deadline or if the officer's physical or mental incapacity prevents the officer from filing the statement or requesting an extension before the filing deadline. The clerk or secretary may not grant more than one extension to a person in one year except for good cause shown.

(f) The clerk or secretary may not grant an extension to a candidate for a municipal office filled by election.

(g) A person is considered to have timely filed a financial statement under this chapter if:

(1) the statement is personally delivered not later than 5 p.m. of the last day for filing the statement; or

(2) the clerk or secretary of the municipality with whom the statement is required to be filed has adopted rules and procedures to provide for the electronic filing of the statement and the statement is electronically filed in accordance with those rules and procedures not later than midnight of the last day for filing the statement.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 894 (H.B. 1035), Sec. 2, eff. September 1, 2013.

Sec. 145.005. FORM OF STATEMENT. (a) The clerk or secretary of the municipality shall require that the form designed by the Texas Ethics Commission under Chapter 572, Government Code, be used for filing the financial statement.

(b) The clerk or secretary shall deliver at least one copy of the form to each municipal officer or person who is appointed to a municipal office who is required to file under this chapter within the time prescribed by Section 572.030(c)(1), Government Code. The clerk or secretary shall deliver a copy of the form to each candidate for a municipal office filled by election who is required to file under this chapter not later than the 10th day before the deadline for filing the statement under Section 145.004(c). The clerk or secretary may choose one or more methods to deliver the form.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 223 (H.B. 1246), Sec. 2, eff. September 1, 2015.

Sec. 145.006. DUPLICATE OR SUPPLEMENTAL STATEMENTS. If a person has filed a financial statement under one provision of this chapter covering the preceding calendar year, the person is not required to file a financial statement required under another provision of this chapter covering that same year if, before the deadline for filing the statement under the other provision, the person notifies the clerk or secretary of the municipality in writing that the person has already filed a financial statement under this chapter covering that year.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.

Sec. 145.007. PUBLIC ACCESS TO STATEMENTS. (a) Financial statements filed under this chapter are public records. The clerk or secretary of the municipality shall maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours.

(b) Until the first anniversary of the date a financial statement is filed, each time a person, other than the clerk or secretary of the municipality or an employee of the clerk or secretary who is acting on official business, requests to see the financial statement, the clerk or secretary shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The clerk or secretary shall retain that statement in the file until the first anniversary of the date the requested financial statement is filed.

(c) The clerk or secretary of the municipality may, and on notification from a former officer or candidate shall, destroy any financial statements filed by the officer or candidate after the second anniversary of the date the person ceases to be an officer or candidate, as applicable.

(d) On the written request of a municipal court judge of the municipality or a candidate for municipal court judge, the clerk or secretary of the municipality shall remove or redact the residence address of the municipal court judge, municipal court judge's family member, or candidate for the office of municipal court judge, from a financial statement filed under this chapter before the financial statement is made available to a member of the public.

(e) In this section, "family member" has the meaning assigned by Section 31.006, Finance Code.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 518 (S.B. 489), Sec. 3, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 383 (S.B. 1134), Sec. 11, eff. September 1, 2021.

Sec. 145.008. NOTIFICATION TO PROSECUTING ATTORNEY. The clerk or secretary of each municipality shall maintain a list of the

municipal officers and candidates for municipal office required to file a financial statement under this chapter. Not later than the 10th day after each applicable filing deadline, the municipal clerk shall provide to the municipal attorney a copy of the list showing for each municipal officer and candidate for municipal office:

(1) whether the officer or candidate timely filed a financial statement as required by this chapter;

(2) whether the officer or candidate timely requested and was granted an extension of time to file as provided for by Section 145.004 and the new due date for each such officer or candidate; or

(3) whether the officer or candidate did not timely file a financial statement or receive an extension of time.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.

Sec. 145.009. CRIMINAL PENALTY. (a) A municipal officer or a candidate for a municipal office filled by election commits an offense if the officer or candidate knowingly fails to file a financial statement as required by this chapter.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the officer or candidate did not receive copies of the financial statement form required to be delivered to the officer or candidate by this chapter.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 223 (H.B. 1246), Sec. 3, eff. September 1, 2015.

Sec. 145.010. CIVIL PENALTY. (a) A person who determines that a person required to file a financial statement under this chapter has failed to do so may notify in writing the municipal attorney of the municipality.

(b) On receipt of a written notice under Subsection (a), the municipal attorney shall determine from any available evidence whether the person to whom the notice relates has failed to file a

statement. On making that determination, the municipal attorney shall immediately mail by certified mail a notice of the determination to the person responsible for filing the statement.

(c) If the person responsible for filing the statement fails to file the statement before the 30th day after the date the person receives the notice under Subsection (b), the person is civilly liable to the municipality for an amount not to exceed $1,000.

(d) A penalty paid under this section shall be deposited to the credit of the general fund of the municipality.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.01, eff. Sept. 1, 2003.

CHAPTER 146. LOCAL CONTROL OF MUNICIPAL EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES

Sec. 146.001. APPLICABILITY. (a) This chapter applies only to a municipality with a population of 1.5 million or more.

(b) This chapter does not apply to:

(1) firefighters or police officers who are covered by Subchapter H, I, or J of Chapter 143 or by Chapter 174; or

(2) an employee association in which those employees participate.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.002. DEFINITIONS. In this chapter:

(1) "Covered employee" means an employee of a municipality, other than a department head or a firefighter or police officer who is covered by Subchapter H, I, or J of Chapter 143 or by Chapter 174.

(2) "Employee association" means an organization in which municipal employees participate and that exists for the purpose, wholly or partly, of dealing with one or more employers, whether public or private, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work affecting public employees and whose members pay dues by means of an automatic payroll deduction.

(3) "Public employer" means any municipality or agency, board, commission, or political subdivision controlled by a

municipality that is required to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of public employees. The term may include, under appropriate circumstances, a mayor, manager, administrator of a municipality, municipal governing body, director of personnel, personnel board, or one or more other officials regardless of the name by which they are designated.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.003. GENERAL PROVISIONS RELATING TO AGREEMENTS AND RECOGNITION. (a) A municipality may not be denied local control over the wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other state-mandated personnel issues. A public employer may enter into a mutual agreement governing these issues with an employee association recognized under this chapter as the sole and exclusive bargaining agent for all covered employees that does not advocate the illegal right to strike by municipal employees. The applicable statutes, local ordinances, and civil service rules govern a term or condition of employment on which the public employer and the association do not agree.

(b) An agreement under this chapter must be written.

(c) This chapter does not require the public employer and the recognized employee association to meet and confer or reach an agreement on any issue.

(d) This chapter does not authorize an agreement regarding pension or pension-related matters governed by Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, Vernon's Texas Civil Statutes), or a successor statute.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 16.002, eff. September 1, 2011.

Sec. 146.004. PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY. (a) Not later than the 30th day after the date the

governing body of a municipality receives from an employee association a petition signed by the majority of all covered employees that requests recognition of the association as the sole and exclusive bargaining agent for all the covered employees, the governing body shall:

(1) grant recognition of the association as requested in the petition and find that a public employer may meet and confer under this chapter without conducting an election by the voters in the municipality under Section 146.006;

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 146.006 regarding whether a public employer may meet and confer under this chapter; or

(3) order a certification election under Section 146.005 to determine whether the association represents a majority of the covered employees.

(b) If the governing body of a municipality orders a certification election under Subsection (a)(3) and the association named in the petition is certified to represent a majority of the covered employees, the governing body shall, not later than the 30th day after the date that results of that election are certified:

(1) grant recognition of the association as requested in the petition for recognition and find that a public employer may meet and confer under this chapter without conducting an election by the voters in the municipality under Section 146.006; or

(2) defer granting recognition of the association and order an election by the voters in the municipality under Section 146.006 regarding whether a public employer may meet and confer under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.005. CERTIFICATION ELECTION. (a) Except as provided by Subsection (b), a certification election ordered under Section 146.004(a)(3) to determine whether an employee association represents a majority of the covered employees shall be conducted according to procedures agreeable to the parties.

(b) If the parties are unable to agree on procedures for the

certification election, either party may request the American Arbitration Association to conduct the election and to certify the results of the election.

(c) Certification of the results of an election under this section resolves the question concerning representation.

(d) The association is liable for the expenses of the certification election, except that if two or more associations seeking recognition as the sole and exclusive bargaining agent submit a petition signed by at least 30 percent of the employees eligible to sign the petition for recognition, all the associations named in any petition shall share equally the costs of the election.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.006. ELECTION TO AUTHORIZE OPERATING UNDER THIS CHAPTER. (a) The governing body of a municipality that receives a petition for recognition under Section 146.004 may order an election to determine whether a public employer may meet and confer under this chapter.

(b) An election ordered under this section must be held as part of the next regularly scheduled general election for municipal officials that is held after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(c) The ballot for an election ordered under this section shall be printed to permit voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal employees as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(d) An election called under this section must be held and the returns prepared and canvassed in conformity with the Election Code.

(e) If an election authorized under this section is held, the municipality may operate under the other provisions of this chapter only if a majority of the votes cast at the election favor the proposition.

(f) If an election authorized under this section is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 146.004 before the second anniversary of the date of the election.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.007. CHANGE OR MODIFICATION OF RECOGNITION. (a) The municipal employees may modify or change the recognition of the employee association granted under this chapter by filing with the governing body of the municipality a petition signed by a majority of all covered employees.

(b) The governing body of the municipality may:

(1) recognize the change or modification as provided by the petition; or

(2) order a certification election in accordance with Section 146.005 regarding whether to do so.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.008. STRIKES PROHIBITED. (a) A municipal employee may not engage in a strike or organized work stoppage against this state or the municipality.

(b) A municipal employee who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the employee may have as a result of the employee's employment or prior employment with the municipality.

(c) This section does not affect the right of a person to cease work if the person is not acting in concert with others in an organized work stoppage.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.009. RECOGNITION OF EMPLOYEE ASSOCIATION. (a) A public employer in a municipality that chooses to meet and confer

under this chapter shall recognize an association that is recognized under Section 146.004 or 146.005 as the sole and exclusive bargaining agent for the covered employees.

(b) The public employer shall recognize the employee association until recognition of the association is withdrawn, in accordance with Section 146.007, by a majority of the municipal employees eligible to sign a petition for recognition.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.010. SELECTION OF BARGAINING AGENT; BARGAINING UNIT. (a) The public employer's chief executive officer or the chief executive officer's designee shall select one or more persons to represent the public employer as its sole and exclusive bargaining agent to meet and confer on issues related to the wages, hours of employment, and other terms and conditions of employment of municipal employees.

(b) An employee association may designate one or more persons to negotiate or bargain on the association's behalf.

(c) A municipality's bargaining unit is composed of all the covered employees.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.011. PROTECTED RIGHTS OF EMPLOYEES. A meet and confer agreement ratified under this chapter may not interfere with the right of a member of a bargaining unit to pursue allegations of discrimination based on race, creed, color, national origin, religion, age, sex, or disability with the Texas Workforce Commission civil rights division or the federal Equal Employment Opportunity Commission or to pursue affirmative action litigation.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.012. OPEN RECORDS. (a) A proposed meet and confer

agreement and a document prepared and used by the municipality, including a public employer, in connection with the proposed agreement are available to the public under Chapter 552, Government Code, only after the agreement is ready to be ratified by the governing body of the municipality.

(b) This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used in connection with the agreement.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.013. OPEN DELIBERATIONS. (a) Deliberations relating to a meet and confer agreement or proposed agreement under this chapter between representatives of the public employer and representatives of the employee association recognized under this chapter as the sole and exclusive bargaining agent for the covered employees must be open to the public and comply with state law.

(b) Subsection (a) may not be construed to prohibit the representatives of the public employer or the representatives of the recognized employee association from conducting private caucuses that are not open to the public during meet and confer negotiations.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.014. RATIFICATION AND ENFORCEABILITY OF AGREEMENT. (a) An agreement under this chapter is enforceable and binding on the public employer, the recognized employee association, and the employees covered by the meet and confer agreement only if:

(1) the governing body of the municipality ratified the agreement by a majority vote; and

(2) the recognized employee association ratified the agreement by conducting a secret ballot election at which the majority of the covered employees who are members of the association favored ratifying the agreement.

(b) A meet and confer agreement ratified as described by Subsection (a) may establish a procedure by which the parties agree to resolve disputes related to a right, duty, or obligation provided

by the agreement, including binding arbitration on a question involving interpretation of the agreement.

(c) A state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under the ratified meet and confer agreement on the application of a party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.015. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS CHAPTER. (a) The governing body of a municipality that granted recognition of an employee association under Section 146.004 without conducting an election under Section 146.006 may withdraw recognition of the association by providing to the association not less than 90 days' written notice that:

(1) the governing body is withdrawing recognition of the association; and

(2) any agreement between the governing body and the association will not be renewed.

(b) The governing body of a municipality that granted recognition of an employee association after conducting an election under Section 146.006 may order an election to determine whether a public employer may continue to meet and confer under this chapter. The governing body may not order an election under this subsection until the second anniversary of the date of the election under Section 146.006.

(c) An election ordered under Subsection (b) must be held as part of the next regularly scheduled general election for municipal officers that occurs after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(d) The ballot for an election ordered under Subsection (b) shall be printed to allow voting for or against the proposition:

"Authorizing _____ (name of the municipality) to continue to operate under the state law allowing a municipality to meet and confer and make agreements with the association representing municipal employees as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(e) An election ordered under Subsection (b) must be held and the returns prepared and canvassed in conformity with the Election Code.

(f) If an election ordered under Subsection (b) is held, the municipality may continue to operate under this chapter only if a majority of the votes cast at the election favor the proposition.

(g) If an election ordered under Subsection (b) is held, an association may not submit a petition for recognition to the governing body of the municipality under Section 146.004 before the second anniversary of the date of the election.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.016. ELECTION TO REPEAL AGREEMENT. (a) Not later than the 45th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the recognized employee association, a petition calling for the repeal of the agreement signed by at least 10 percent of the qualified voters residing in the municipality may be presented to the person charged with ordering an election under Section 3.004, Election Code.

(b) If a petition is presented under Subsection (a), the governing body of the municipality shall:

(1) repeal the meet and confer agreement; or

(2) certify that it is not repealing the agreement and call an election to determine whether to repeal the agreement.

(c) An election called under Subsection (b)(2) may be held as part of the next regularly scheduled general election for the municipality or a special election called by the governing body for that purpose. The ballot shall be printed to provide for voting for or against the proposition: "Repeal the meet and confer agreement ratified on _____ (date agreement was ratified) by the _____ (name of the governing body of the municipality) and the _____

(recognized municipal employee association) concerning wages, salaries, rates of pay, hours of work, and other terms of employment."

(d) If a majority of the votes cast at the election favor the repeal of the agreement, the agreement is void.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

Sec. 146.017. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. A written meet and confer agreement ratified under this chapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes, local ordinances, executive orders, civil service provisions, or rules adopted by this state or a political subdivision or agent of this state, including a personnel board, civil service commission, or home-rule municipality, other than a statute, ordinance, executive order, civil service provision, or rule regarding pensions or pension-related matters.

Added by Acts 2005, 79th Leg., Ch. 1144 (H.B. 2866), Sec. 2, eff. September 1, 2005.

CHAPTER 147. LOCAL CONTROL OF FIREFIGHTER AND POLICE OFFICER EMPLOYMENT MATTERS IN CERTAIN MUNICIPALITIES WITH POPULATION OF ONE MILLION OR MORE

Sec. 147.001. APPLICABILITY. This chapter applies only to a municipality with a population of one million or more, but does not apply to a municipality that has adopted Chapter 143 or 174.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.002. DEFINITIONS. In this chapter:

(1) "Firefighter" means a firefighter employed by the municipality who is covered by the municipality's fire pension plan and is classified by the municipality as nonexempt. The term does not include a firefighter with a rank that is above that of battalion chief or section chief.

(2) "Firefighter employee group" means an organization:

(A) in which, on or before September 1, 2007, firefighters of the municipality have participated and paid dues via automatic payroll deduction; and

(B) that exists for the purpose, in whole or in part, of dealing with the municipality concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment affecting firefighters.

(3) "Police officer" means a sworn police officer employed by the municipality who is covered by the municipality's police pension plan and is classified by the municipality as nonexempt. The term does not include a police officer with a rank above that of captain, a civilian, or a municipal marshal.

(4) "Police officer employee group" means an organization:

(A) in which, on or before September 1, 2007, at least three percent of the police officers of the municipality have participated and paid dues via automatic payroll deduction; and

(B) that exists for the purpose, in whole or in part, of dealing with the municipality concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment affecting police officers.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1293 (H.B. 2307), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1415 (S.B. 1896), Sec. 5, eff. September 1, 2009.

Sec. 147.003. MEET AND CONFER TEAM; NEGOTIATIONS. (a) A meet and confer team is created under this section and consists of the following members:

(1) members representing the firefighter employee groups in the municipality, provided each group may appoint only one firefighter of the municipality to serve as a member of the team; and

(2) members representing the police officer employee groups in the municipality, provided each group may appoint only one police officer of the municipality to serve as a member of the team.

(b) The meet and confer team represents all firefighters and police officers in the municipality and shall negotiate with the municipality in an effort to reach an agreement on concerns shared by the firefighters and police officers regarding terms of employment, including concerns relating to wages, benefits, and other working conditions but excluding concerns relating to pensions. Only the meet and confer team created under this section may represent the firefighters or police officers of the municipality in the capacity described by this subsection, except that the team may be accompanied by legal counsel.

(c) Concerns relating to affirmative action, employment discrimination, hiring, and promotions may be discussed by individual firefighter and police officer associations independent of the meet and confer team.

(d) Expenses associated with the meet and confer team must be divided pro rata among each firefighter employee group and police officer employee group based on the number of sworn fire or police department members represented by each group.

(e) A municipality may designate one or more persons to meet and confer on the municipality's behalf.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.0031. PETITION FOR RECOGNITION: ELECTION OR ACTION BY GOVERNING BODY. (a) Not later than the 30th day after the date the governing body of a municipality receives from the meet and confer team a petition signed by a majority of all police officers and a majority of all firefighters, excluding the head of the police department, the head of the fire department, and other excluded employees as described by Section 147.0035(b), that requests recognition of the meet and confer team as the sole and exclusive bargaining agent for all the police officers and firefighters employed by the municipality, excluding the head of the police department, the head of the fire department, and other excluded employees as described by Section 147.0035(b), the governing body shall:

(1) grant recognition of the meet and confer team as requested in the petition and determine by majority vote that the

municipality may meet and confer under this chapter without conducting an election by the voters in the municipality under Section 147.0033;

(2) defer granting recognition of the meet and confer team and order an election by the voters in the municipality under Section 147.0033 regarding whether the municipality may meet and confer under this chapter; or

(3) order a certification election under Section 147.0032 to determine whether the employee groups in the meet and confer team represent a majority of the covered police officers and a majority of the covered firefighters.

(b) If the governing body of a municipality orders a certification election under Subsection (a)(3) and the employee groups that are part of the meet and confer team are certified to represent a majority of the covered police officers and a majority of the covered firefighters, the governing body shall, not later than the 30th day after the date that results of that election are certified:

(1) grant recognition of the meet and confer team as requested in the petition for recognition and determine by majority vote that the municipality may meet and confer under this chapter without conducting an election by the voters in the municipality under Section 147.0033; or

(2) defer granting recognition of the meet and confer team and order an election by the voters in the municipality under Section 147.0033 regarding whether a public employer may meet and confer under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.0032. CERTIFICATION ELECTION. (a) Except as provided by Subsection (b), a certification election ordered under Section 147.0031(a)(3) to determine whether the employee groups in the meet and confer team represent a majority of the covered police officers and a majority of the covered firefighters shall be conducted according to procedures agreeable to the parties.

(b) If the parties are unable to agree on procedures for the certification election, either party may request the American

Arbitration Association to conduct the election and to certify the results of the election.

(c) Certification of the results of an election under this section resolves the question concerning representation.

(d) Each employee group in the meet and confer team is liable for the expenses of the certification election for the employees the group represents.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.0033. ELECTION TO AUTHORIZE OPERATING UNDER THIS CHAPTER. (a) The governing body of a municipality that receives a petition for recognition under Section 147.0031 may order an election to determine whether a public employer may meet and confer under this chapter.

(b) An election ordered under this section must be held as part of the next regularly scheduled general election for municipal officials that is held after the date the governing body of the municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(c) The ballot for an election ordered under this section shall be printed to permit voting for or against the proposition: "Authorizing _____ (name of the municipality) to operate under the state law allowing a municipality to meet and confer and make agreements with the meet and confer team representing municipal police officers and firefighters as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(d) An election called under this section must be held and the returns prepared and canvassed in conformity with the Election Code.

(e) If an election authorized under this section is held, the municipality may operate under the other provisions of this chapter only if a majority of the votes cast at the election favor the proposition.

(f) If an election authorized under this section is held, a meet and confer team may not submit a petition for recognition to the governing body of the municipality under Section 147.0031 before the second anniversary of the date of the election.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.0034. WITHDRAWAL OF RECOGNITION. (a) The police officers and firefighters may withdraw the recognition of the meet and confer team granted under this chapter by filing with the governing body of the municipality a petition signed by a majority of all covered police officers and a majority of all covered firefighters.

(b) The governing body of the municipality may:

(1) withdraw recognition as provided by the petition; or

(2) order a certification election in accordance with Section 147.0032 regarding whether to do so.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.0035. RECOGNITION OF MEET AND CONFER TEAM. (a) A public employer in a municipality that chooses to meet and confer under this chapter shall recognize the meet and confer team that is recognized under Section 147.0031 or 147.0033 as the sole and exclusive bargaining agent for the police officers and firefighters, excluding the head of the police department, head of the fire department, and the employees exempt under Subsection (b), in accordance with this chapter and the petition.

(b) For the purposes of Subsection (a), exempt employees are employees appointed by the head of the police department or fire department in the classification immediately below that of department head or that are exempt by the mutual agreement of the meet and confer team and the municipality.

(c) The municipality shall recognize the meet and confer team until recognition of the meet and confer team is withdrawn in accordance with Section 147.0034 by a majority of the police officers and a majority of the firefighters who are eligible to sign a petition for recognition.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.004. GENERAL PROVISIONS RELATING TO AGREEMENTS, RECOGNITION, AND STRIKES. (a) A municipality may not be denied local control over the wages, salaries, rates of pay, hours of work, and other terms of employment, or other state-mandated personnel issues, if the municipality and the meet and confer team recognized under Section 147.0031 or 147.0033 as the sole and exclusive bargaining agent for the covered police officers and firefighters come to a mutual agreement on any of the terms of employment. If an agreement is not reached, the state laws, local ordinances, and civil service rules remain unaffected. All agreements shall be written. Nothing in this chapter requires either party to meet and confer on any issue or reach an agreement.

(b) A municipality may meet and confer only if the meet and confer team does not advocate the illegal right to strike by public employees.

(c) Firefighters and police officers of a municipality may not engage in strikes against this state or a political subdivision of this state. A firefighter or police officer who participates in a strike forfeits all civil service rights, reemployment rights, and any other rights, benefits, or privileges the firefighter or police officer enjoys as a result of employment or prior employment.

(d) In this section, "strike" means failing to report for duty in concerted action with others, wilfully being absent from an assigned position, stopping work, abstaining from the full, faithful, and proper performance of the duties of employment, or interfering with the operation of a municipality. However, this section does not prohibit a firefighter or police officer from conferring with members of the municipal governing body about conditions, compensation, rights, privileges, or obligations of employment.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.005. PAYROLL DUES DEDUCTIONS. The municipality may not prevent automatic payroll deductions for dues paid to a firefighter employee group or police officer employee group.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.006. RECORDS AND MEETINGS. (a) An agreement made under this chapter is public information for purposes of Chapter 552, Government Code. The agreement and any document prepared and used by the municipality in connection with the agreement, except for materials created during a municipality's caucuses and notes that are otherwise privileged by law, are available to the public in accordance with Chapter 552, Government Code, only after the agreement is ratified by both parties.

(b) This section does not affect the application of Subchapter C, Chapter 552, Government Code, to a document prepared and used by the municipality in connection with the agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.007. ENFORCEABILITY OF AGREEMENT. (a) A written agreement made under this chapter between a municipality and the meet and confer team is enforceable and binding on the municipality, the meet and confer team, firefighter employee groups, police officer employee groups, and the firefighters and police officers covered by the agreement if:

(1) the municipality's governing body ratified the agreement by a majority vote; and

(2) the agreement is ratified under Section 147.008.

(b) A state district court of the judicial district in which a majority of the population of the municipality is located has full authority and jurisdiction on the application of either party aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by any written agreement ratified as required by this chapter. The court may issue proper restraining orders, temporary and permanent injunctions, and any other writ, order, or process, including contempt orders, that are appropriate to enforcing any written agreement ratified as required by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.008. ELECTION TO RATIFY AGREEMENT. (a) The meet and

confer team shall call an election to ratify any agreement reached with the municipality if the agreement has been approved by five-sevenths of the members of the meet and confer team.

(b) All firefighters and police officers of the municipality are eligible to vote in the election.

(c) An agreement may be ratified under this section only if at least 65 percent of the votes cast in the election favor the ratification.

(d) A firefighter or police officer who is not a member of a firefighter employee group or a police officer employee group may be assessed a fee for any cost associated with casting the firefighter's or police officer's vote.

(e) The meet and confer team shall establish procedures for the election by unanimous consensus.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.009. ACTION OR ELECTION TO REPEAL AUTHORIZATION TO OPERATE UNDER THIS CHAPTER. (a) The governing body of a municipality that granted recognition of a meet and confer team under Section 147.0031 without conducting an election under Section 147.0033 may withdraw recognition of the meet and confer team by providing to the meet and confer team not less than 90 days' written notice that:

(1) the governing body is withdrawing recognition of the meet and confer team; and

(2) any agreement between the governing body and the meet and confer team will not be renewed.

(b) The governing body of a municipality that granted recognition of a meet and confer team after conducting an election under Section 147.0033 may order an election to determine whether a public employer may continue to meet and confer under this chapter. The governing body may not order an election under this subsection until the second anniversary of the date of the election under Section 147.0033.

(c) An election ordered under Subsection (b) must be held as part of the next regularly scheduled general election for municipal officers that occurs after the date the governing body of the

municipality orders the election and that allows sufficient time to prepare the ballot in compliance with other requirements of law.

(d) The ballot for an election ordered under Subsection (b) shall be printed to allow voting for or against the proposition: "Authorizing _____ (name of the municipality) to continue to operate under the state law allowing a municipality to meet and confer and make agreements with the meet and confer team representing municipal police officers and firefighters as provided by state law, preserving the prohibition against strikes and organized work stoppages, and providing penalties for strikes and organized work stoppages."

(e) An election ordered under Subsection (b) must be held and the returns prepared and canvassed in conformity with the Election Code.

(f) If an election ordered under Subsection (b) is held, the municipality may continue to operate under this chapter only if a majority of the votes cast at the election favor the proposition.

(g) If an election ordered under Subsection (b) is held, a meet and confer team may not submit a petition for recognition to the governing body of the municipality under Section 147.0031 before the second anniversary of the date of the election.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.010. ELECTION TO REPEAL AGREEMENT. (a) Not later than the 60th day after the date a meet and confer agreement is ratified by the governing body of the municipality and the firefighters and police officers under Section 147.008, a petition calling for the repeal of the agreement signed by a number of registered voters residing in the municipality equal to at least 10 percent of the votes cast at the most recent general election held in the municipality may be presented to the person charged with ordering an election under Section 3.004, Election Code.

(b) If a petition is presented under Subsection (a), the governing body of the municipality shall:

(1) repeal the meet and confer agreement; or

(2) certify that the governing body is not repealing the agreement and call an election to determine whether to repeal the

agreement.

(c) An election called under Subsection (b)(2) may be held as part of the next regularly scheduled general election for the municipality. The ballot shall be printed to provide for voting for or against the proposition: "Repeal the meet and confer agreement ratified on _____ (date agreement was ratified) by the _____ (name of the governing body of the municipality) and the police officers and firefighters employed by the City of _____ (name of municipality) concerning wages, salaries, rates of pay, hours of work, and other terms of employment."

(d) If a majority of the votes cast at the election favor the repeal of the agreement, the agreement is void.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

Sec. 147.011. EFFECT ON EXISTING BENEFITS AND RIGHTS. (a) This chapter may not be construed to repeal any existing benefit provided by statute or ordinance concerning police officers' or firefighters' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments except as expressly provided in a ratified meet and confer agreement. This chapter is in addition to the benefits provided by existing statutes and ordinances.

(b) This chapter may not be construed to interfere with the free speech right, guaranteed by the First Amendment to the United States Constitution, of an individual firefighter or a police officer to endorse or dissent from any agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 835 (H.B. 866), Sec. 1, eff. September 1, 2007.

CHAPTER 150. MISCELLANEOUS PROVISIONS AFFECTING MUNICIPAL OFFICERS AND EMPLOYEES

SUBCHAPTER A. INVOLVEMENT OF FIRE FIGHTERS AND POLICE OFFICERS IN POLITICAL ACTIVITIES

Sec. 150.001. APPLICATION OF SUBCHAPTER TO CERTAIN MUNICIPALITIES WITH POPULATION OF 10,000 OR MORE. This subchapter applies only to a municipality with a population of 10,000 or more,

but does not apply to a municipality in which Chapter 143 applies.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 34(a), eff. Aug. 28, 1989.

Sec. 150.002. POLITICAL ACTIVITIES. (a) While in uniform or on active duty, an employee of the fire or police department of the municipality may not engage in a political activity relating to a campaign for an elective office.

(b) For the purposes of this section, a person engages in a political activity if the person:

(1) makes a public political speech supporting or opposing a candidate;

(2) distributes a card or other political literature relating to the campaign of a candidate;

(3) wears a campaign button;

(4) circulates or signs a petition for a candidate;

(5) solicits votes for a candidate; or

(6) solicits campaign contributions for a candidate.

(c) While out of uniform and not on active duty, an employee of the fire or police department may engage in a political activity relating to a campaign for an elective office, including each activity listed by Subsection (b), except that the person may not solicit campaign contributions for a candidate other than from members of an employee organization to which that person belongs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 34(a), eff. Aug. 28, 1989.

Sec. 150.003. RESTRICTION PROHIBITED. The municipality may not restrict the right of an employee of the fire or police department to engage in a political activity permitted by this subchapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 34(a), eff. Aug. 28, 1989.

SUBCHAPTER B. RESIDENCY REQUIREMENTS

Sec. 150.021. RESIDENCY REQUIREMENTS FOR MUNICIPAL EMPLOYEES. (a) A municipality may not require residency within the municipal limits as a condition of employment with the municipality. A municipality may require residency within the United States as a

condition of employment.

(b) The prohibition under Subsection (a) does not apply to residency requirements for:

(1) candidates for or holders of a municipal office, including a position on the governing body of the municipality; or

(2) municipal department heads appointed by the mayor or governing body of the municipality.

(c) The governing body of a municipality may prescribe reasonable standards with respect to the time within which municipal employees who reside outside the municipal limits must respond to a civil emergency. The standards may not be imposed retroactively on any person in the employ of the municipality at the time the standards are adopted.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 35(a), eff. Aug. 28, 1989.

SUBCHAPTER C. EMPLOYEES AS CANDIDATES FOR OFFICE

Sec. 150.041. PROHIBITED MUNICIPAL ACTIONS. (a) In this section, "candidate" has the meaning assigned by Section 251.001(1), Election Code.

(b) A municipality may not prohibit a municipal employee from becoming a candidate for public office.

(c) A municipality may not take disciplinary action against a municipal employee, including terminating the employment of the employee, solely because the employee becomes a candidate for public office. However, the employee is still expected to fulfill all the duties and responsibilities associated with their municipal employment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1104 (H.B. 3739), Sec. 2, eff. June 14, 2013.

SUBTITLE B. COUNTY OFFICERS AND EMPLOYEES

CHAPTER 151. COUNTY EMPLOYMENT AUTHORITY

SUBCHAPTER A. GENERAL EMPLOYMENT AUTHORITY

Sec. 151.001. OFFICER APPLIES TO COMMISSIONERS COURT FOR AUTHORITY TO APPOINT EMPLOYEES. (a) A district, county, or precinct officer who requires the services of deputies, assistants, or clerks in the performance of the officer's duties shall apply to the

commissioners court of the county in which the officer serves for the authority to appoint the employees. If the county has a population of more than 190,000, the officer shall apply for the authority to appoint any other kinds of employees.

(b) The application must be sworn and must state:

(1) the number of employees required;

(2) the title of the positions to be filled; and

(3) the amounts to be paid the employees.

(c) If the application is made in a county with a population of more than 190,000, it must also describe the duties to be performed by the employees.

(d) The application must be accompanied by a statement of the probable receipts from fees, commissions, and compensation to be collected by the office during the fiscal year and the probable disbursements, including salaries and expenses, of the office.

(e) This section does not apply to a district attorney or criminal district attorney in a county with a population of more than 190,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 151.002. COMMISSIONERS COURT ADOPTS ORDER AUTHORIZING APPOINTMENT OF EMPLOYEES. After the receipt of an application under this subchapter, the commissioners court by order shall determine the number of employees that may be appointed and shall authorize their appointment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 151.003. OFFICERS MAKE APPOINTMENTS. After the entry of the commissioners court's order, the officer applying for the employees may appoint them.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 151.004. COMMISSIONERS COURT MAY NOT INFLUENCE APPOINTMENT. The commissioners court or a member of the court may not attempt to influence the appointment of any person to an employee

position authorized by the court under this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 151.901. EMPLOYMENT OF SECRETARIAL PERSONNEL. The commissioners court of a county may enter an order to employ and provide compensation for secretarial personnel for a district, county, or precinct officer if the court determines that the financial condition of the county and the staff needs of the officer justify doing so.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 151.903. PERSONNEL AND PAYROLL RECORDS IN COUNTY WITH POPULATION OF 500,000 OR MORE. (a) In a county with a population of 500,000 or more, the officer employing a person shall, in addition to other requirements of law, file a personnel record about the person if the person is paid in whole or in part from funds of the county or of a flood control district located entirely in the county and the person is employed as:

(1) a deputy, an assistant, or any other employee of the county, or of the flood control district, who works under the commissioners court or its appointee; or

(2) a deputy or an assistant appointed under Subchapter A by a county or district officer.

(b) The personnel record shall be filed when the person is employed and must contain the following information: date of employment, rate of compensation, nature of employment, business or personal history, education, race, sex, age, place and date of birth, previous experience, and any other information essential to the keeping of proper personnel records.

(c) Each county officer or department head under whom the persons described by Subsection (a) are employed shall file a signed and sworn payroll at the close of the month, or more often if authorized or required by law. The payroll must state the name of each employee and show the employee's dates and hours of work, rate of compensation, and amount due for the current pay period. In the case of engineers and employees in the field engaged in road, flood

control, or construction work, a signed report must accompany the payroll stating the nature, dates, and location of the work performed and containing any other information that may be needed for statistical or accounting purposes.

(d) The county auditor shall prescribe the forms and systems, including a system of personnel and equipment records, necessary to carry out this section. The county auditor may enforce any rules adopted under this section. If a person fails to file records or furnish essential information as required under this section, the county auditor or the county treasurer may withhold the payment of salaries until the records are filed or information is furnished as required. In addition, the county auditor may assemble statistics and make recommendations that may be included in the county auditor's annual report required by law.

(e) A form adopted under this section is subject to the approval of the county auditor.

(f) In a county with a chief personnel officer, the commissioners court may designate the chief personnel officer or the county auditor to approve personnel forms.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 328, Sec. 1, eff. May 26, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 934 (H.B. 3439), Sec. 6, eff. September 1, 2007.

CHAPTER 152. AMOUNT OF COMPENSATION, EXPENSES, AND ALLOWANCES OF COUNTY OFFICERS AND EMPLOYEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. FUNDS FROM WHICH AMOUNTS ARE PAID. Unless otherwise provided by law, the compensation, expenses, and allowances set under this code for a district, county, or precinct officer or employee may be paid from the general fund of the county in which the officer or employee serves or from any other funds that are available for that purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.002. SALARY DONATION TO COUNTY. The county may accept

from an elected county or precinct officer a gift or donation of all or part of the salary paid by the county to the officer. The county treasurer shall deposit a gift or donation accepted under this section in the general fund of the county.

Added by Acts 1989, 71st Leg., ch. 1259, Sec. 1, eff. June 18, 1989.

SUBCHAPTER B. AMOUNT OF COMPENSATION, EXPENSES, AND ALLOWANCES GENERALLY APPLICABLE

Sec. 152.011. AMOUNT SET BY COMMISSIONERS COURT. The commissioners court of a county shall set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.012. MINIMUM AMOUNT OF SALARY. The commissioners court may not set the salary of an officer or employee at an amount less than the amount of the salary in effect on January 1, 1972. The court may not set the salary of a justice of the peace at an amount less than the amount of the salary in effect on May 25, 1973.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.013. PROCEDURE FOR SETTING AMOUNTS FOR ELECTED OFFICERS. (a) Each year the commissioners court shall set the salary, expenses, and other allowances of elected county or precinct officers. The commissioners court shall set the items at a regular meeting of the court during the regular budget hearing and adoption proceedings.

(b) Before the 10th day before the date of the meeting, the commissioners court must publish in a newspaper of general circulation in the county a notice of:

(1) any salaries, expenses, or allowances that are proposed to be increased; and

(2) the amount of the proposed increases.

(c) Before filing the annual budget with the county clerk, the

commissioners court shall give written notice to each elected county and precinct officer of the officer's salary and personal expenses to be included in the budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.014. SALARY GRIEVANCE COMMITTEE. (a) In each county there is a salary grievance committee composed of the county judge and:

(1) the sheriff, county tax assessor-collector, county treasurer, county clerk, district clerk, county attorney or criminal district attorney, and the number of public members necessary to provide nine voting members; or

(2) nine public members, if the commissioners court votes to have nine public members.

(b) The county judge is chairman of the committee, but is not entitled to vote.

(c) Public members must be residents of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 326, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 131, Sec. 1, eff. Jan. 1, 2004.

Sec. 152.015. SELECTION AND TERM OF PUBLIC MEMBERS ON GRIEVANCE COMMITTEE. (a) The public members of the salary grievance committee shall be selected as provided by Subsection (b) or (b-1) at a meeting of the commissioners court at any time during the year, but not later than the 15th day after the date a request for a hearing is received under Section 152.016(a). If a request for a public hearing is not received, the commissioners court is not required to select public members.

(b) Except as provided by Subsection (b-1), before the meeting required by Subsection (a), the county clerk shall place on a separate slip the name of each person who served on a grand jury in the county during the preceding calendar year. At the meeting the slips shall be folded, placed in an appropriate container, and mixed. The county judge shall draw at random a number of slips equal to the number of public members needed for the committee and shall announce the names on the slips. At the meeting the county judge may repeat

this process and make a list of alternates.

(b-1) As an alternative to the process prescribed by Subsection (b), the commissioners court may direct the county clerk to use a computer to generate a randomized list of the names of all persons who served on a grand jury in the county during the preceding calendar year. At the meeting required by Subsection (a), the commissioners court shall:

(1) adopt the randomized list;

(2) enter the list into the minutes of the meeting; and

(3) select, in the order of the list, the necessary number of public members and alternates.

(b-2) A person whose name is selected under this section becomes a member of the committee or an alternate on submitting written acceptance of the selection to the clerk. If a person refuses or is unable to serve on the committee, a replacement shall be appointed from the list of alternates. If the list of alternates is exhausted or does not exist, a replacement shall be selected from the remaining names not already selected, in the same manner as the replaced member, at the next regular or called commissioners court meeting. This process shall be repeated until the required number of public members have accepted the selection.

(c) A public member serves until the later of:

(1) the end of the fiscal year in which the public member is appointed; or

(2) the time the committee takes a final vote on the last of the grievances for which the committee held a public hearing.

(d) A vacancy in a public member position shall be filled for the unexpired part of the term by appointment from the list of alternates. If the list of alternates is exhausted or does not exist, a replacement shall be selected from the remaining names not already selected, in the same manner as the vacating member, at a meeting of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 326, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 131, Sec. 2, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1021, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 212 (H.B. 840), Sec. 1, eff. September 1, 2021.

Sec. 152.016. FUNCTIONS OF GRIEVANCE COMMITTEE IN RELATION TO ELECTED OFFICERS. (a) An elected county or precinct officer who is aggrieved by the setting of the officer's salary or personal expenses may request a hearing before the salary grievance committee before the approval of the county's annual budget. The request must:

(1) be in writing;

(2) be delivered to the committee chairman within five days after the date the officer receives notice of the salary or personal expenses; and

(3) state the desired change in salary or personal expenses.

(b) The committee shall hold a public hearing not later than the later of the 10th day after:

(1) the date the request is received; or

(2) the date the commissioners court selects the public members of the committee.

(b-1) The chairman shall announce the time and place of the hearing.

(c) If, after the hearing, six or more of the members vote to recommend an increase in the officer's salary or personal expenses, the committee shall submit its recommendation to the commissioners court in writing. If six to eight members vote to recommend the increase, the commissioners court shall consider the recommendation at its next meeting. If nine members vote to recommend the increase and sign the recommendation, the commissioners court shall include the increase in the budget before the budget is filed and the increase takes effect in the next budget year.

(d) The committee's authority is limited to the consideration of increases in the salaries or personal expenses of county and precinct officers. The committee may not set policy of the county or add new items to a proposed county budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 326, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 131, Sec. 3, eff. Jan. 1, 2004.

Sec. 152.0165. EXHAUSTION OF REMEDIES BEFORE FILING SUIT

REGARDING GRIEVANCE. (a) An elected county or precinct officer may not file suit regarding the officer's salary or personal expenses unless a hearing has been requested and held under Section 152.016.

(b) This section does not affect a defense, immunity, or jurisdictional bar available to a county or a county official or employee that is sued by a county or precinct officer based on the officer's salary, office and travel expenses, or other allowances.

Added by Acts 2003, 78th Leg., ch. 439, Sec. 1, eff. Sept. 1, 2003.

Sec. 152.017. EXCEPTIONS. This subchapter does not apply to:

(1) a judge of a court of record;

(2) a presiding judge of a commissioners court in a county with a population of 3.3 million or more;

(3) a district attorney paid wholly by state funds or the district attorney's assistants, investigators, or other employees;

(4) a county auditor, county purchasing agent, or the auditor's or purchasing agent's assistants or other employees; or

(5) a person employed under Section 76.004, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 89, eff. Sept. 1, 1991. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 70, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.76, eff. January 1, 2017.

Sec. 152.018. FORMER PROCEDURES NOT AFFECTED. This subchapter does not affect a lawful procedure or delegation of authority established before January 1, 1972, for setting the salary of a county or precinct employee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. AMOUNT OF COMPENSATION AND EXPENSES OF COUNTY AUDITOR AND ASSISTANTS

Sec. 152.031. COUNTY AUDITOR'S SALARY. (a) At a hearing held in accordance with Section 152.905, the district judges appointing the county auditor shall set, by a majority vote, the auditor's annual salary as compensation for services and the auditor's travel expenses and other allowances. The action of the district judges must be taken by order and must be recorded as prescribed by Section 152.905 and in the minutes of the district court.

(b) The district clerk shall certify the order to the commissioners court of the county for its observance. The commissioners court shall cause the order to be recorded in its minutes.

(c) The salary shall be paid to the county auditor by monthly payments or by any other distribution at the option of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 11(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1169, Sec. 2, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 874, Sec. 1, eff. June 16, 1991.

Sec. 152.032. LIMITATIONS ON COUNTY AUDITOR'S COMPENSATION AND ALLOWANCES. (a) Except as provided by Subsections (b), (d), and (e), the amount of the compensation and allowances of a county auditor may not exceed the amount of the compensation and allowances received from all sources by the highest paid elected county officer, other than a judge of a statutory county court, whose salary and allowances are set by the commissioners court.

(b) This subsection applies only to a county that employs an arena venue project manager hired as of March 7, 2001, and that has a population of less than 2.1 million in which a municipality with a population of more than one million is located. The amount of the compensation and allowances of a county auditor in a county subject to this subsection may not exceed the amount of the compensation and allowances received from all sources by the county budget officer. If the county hires a county budget officer at a salary lower than the salary of the previous county budget officer, the county auditor's salary may not be reduced on that basis.

(c) A county auditor who was in office on August 31, 1987, is entitled to be paid an annual salary not less than the annual salary the auditor was being paid on that date.

(d) The amount of the compensation and allowances of a county auditor in a county subject to this subsection may be set in an amount that exceeds the limit established by Subsection (a) if the compensation and allowances are approved by the commissioners court of the county. This subsection applies only to:

(1) a county with a population of 120,000 or more, excluding a county subject to Subsection (b);

(2) a county with a population of more than 1,000 and less than 23,000 that borders the Gulf of Mexico;

(3) a county with a population of more than 11,000 and less than 11,350; and

(4) a county that:

(A) borders a county with a population of more than one million; and

(B) has a population of more than 44,500 and less than 46,500.

(e) This subsection applies only to a county with a population of more than 1.2 million that uses an automated system to enhance internal controls of county finances through the use of automated edit checks of its automated purchasing system and its comprehensive automated payroll system. The amount of the compensation and allowances of a county auditor in a county governed by this subsection may exceed the limit imposed by Subsection (a) if the compensation and allowances are approved by the commissioners court. If a county is governed by this subsection and Subsection (b), the amount of compensation and allowances received by the county auditor may not exceed the limit imposed by Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 11(c), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 665, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 581, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1225, Sec. 2, eff. July 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(64), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.002(11), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 401 (S.B. 833), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 430 (S.B. 1630), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1260 (H.B. 2917), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.004, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 623 (H.B. 1230), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 71, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 213 (S.B. 871), Sec. 1, eff. May 29, 2015.

Acts 2017, 85th Leg., R.S., Ch. 649 (S.B. 1780), Sec. 1, eff. June 12, 2017.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 134, eff. September 1, 2023.

Sec. 152.034. SALARIES OF ASSISTANTS TO COUNTY AUDITOR. The salaries of assistants to the county auditor are set in the manner prescribed by Section 84.021.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.035. REIMBURSEMENT FOR MILEAGE EXPENSES. (a) The commissioners court of a county may reimburse the county auditor for expenses incurred in traveling to and from the county seat in the auditor's personal automobile to perform official duties and to attend conferences and seminars relating to the performance of official duties. However, the commissioners court may not reimburse the auditor for expenses incurred in traveling between the auditor's personal residence and county office or for expenses incurred in any other travel of a personal nature.

(b) The commissioners court of a county with a population of 3.3 million or more may reimburse an assistant of a county auditor for the assistant's expenses that are the same kind as those for which the county auditor may be reimbursed under Subsection (a).

(c) The commissioners court by order shall set the reimbursement at a reasonable rate.

(d) Reimbursement shall be paid monthly on submission of a sworn expense report by the person seeking the reimbursement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 66, eff. Sept. 1, 2001.

SUBCHAPTER D. WITHHOLDING COMPENSATION OF OFFICER WHO ELECTS NOT TO BE PAID

Sec. 152.051. DEFINITION. In this subchapter, "county payroll officer" means the county auditor or other appropriate county officer who issues paychecks to county or precinct personnel.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1259, Sec. 2, eff. June 18, 1989.

Sec. 152.052. DECISION TO REDUCE COMPENSATION OR NOT TO BE PAID. (a) Within five days after the date an elected county or precinct officer takes office, the officer shall file an affidavit with the county payroll officer stating that the officer elects not to be paid for the officer's services if, during the person's campaign for election to the county or precinct office, the person publicly advocated the abolition of the office. The affidavit must include a statement by the officer describing the method by which the officer intends to seek to obtain the abolition of the office for which the officer was elected and the date by which it is proposed to be accomplished.

(b) An elected county or precinct officer may, at any time, reduce the amount of compensation set for that office by filing with the county payroll officer an affidavit stating that the officer elects to reduce the amount of compensation paid for the officer's service to a specified amount. The reduction is effective on the date the affidavit is filed, and the county payroll officer shall issue any subsequent paychecks for the officer accordingly.

(c) If an officer covered by Subsection (a) or any other elected county or precinct officer files an affidavit with the county payroll officer stating that the officer elects not to be paid for the officer's services, the county payroll officer may not issue a paycheck to the officer.

(d) After an affidavit under Subsection (a) of this section is

filed, the county payroll officer shall take measures to stop payment of a paycheck that was issued to the officer before the affidavit was filed and that has not been presented for payment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1259, Sec. 3, eff. June 18, 1989.

Sec. 152.053. RECORD OF NONPAYMENT. The county payroll officer shall make an entry in the payroll records of the county to show each pay period for which the officer is not paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.054. RECOVERY OF PAYROLL TAXES. The county payroll officer shall seek to recover for the county any payroll taxes paid on the officer's compensation that is not paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. SPECIAL PROVISIONS APPLYING TO SHERIFFS DEPARTMENT

Sec. 152.071. CLASSIFICATION OF POSITIONS; SALARY SCHEDULE. (a) In a county with a population of more than 75,000, the county government shall classify all positions in its sheriff's department and shall specify the duties and prescribe the salary for each classification.

(a-1) A county government in a county that has a population of more than 7,500, is located on an international boundary, and contains no incorporated territory of a municipality may classify all positions in its sheriff's department and may specify the duties and prescribe the salary for each classification.

(b) A member of the sheriff's department who is required to perform the duties of a particular classification is entitled to be paid the salary prescribed for that position during the time the member performs those duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 1225, Sec. 3, eff. July 1, 2003.

Sec. 152.072. PETITION TO INCREASE SALARIES. (a) The qualified voters of a county with a population of more than 25,000 may petition the commissioners court of the county to increase the minimum salary of each member of the sheriff's department.

(a-1) The qualified voters of a county that has a population of more than 7,500, is located on an international boundary, and contains no incorporated territory of a municipality may petition the commissioners court of the county to increase the minimum salary of each member of the sheriff's department.

(b) A petition under this section must:

(1) state the amount of the proposed minimum salary for each rank, pay grade, or classification;

(2) state the effective date of the proposed salary increase;

(3) designate five qualified voters to act as a committee of petitioners authorized to negotiate with the commissioners court under Subsection (g); and

(4) be signed by a number of qualified voters equal to at least 25 percent of the number of voters who voted in the most recent countywide election for county officers.

(c) When a petition is filed under this section, the commissioners court shall:

(1) adopt the proposed minimum salary stated in the petition;

(2) offer an alternative minimum salary proposal under Subsection (g); or

(3) call an election on the proposed minimum salary as provided by this section.

(d) If the commissioners court chooses to call an election, the only issue that may be submitted regarding the salaries of members of the sheriff's department is whether the proposed minimum salary should be adopted. The election shall be held on the first authorized uniform election date under Chapter 41, Election Code:

(1) that occurs after the 65th day after the date the petition was filed; and

(2) on which an election is scheduled to be held throughout the county for other purposes.

(e) The ballot for the election shall be printed to provide for voting for or against the proposition: "Adoption of the proposed minimum salaries of _____ for members of the Sheriff's

Department at an annual cost of _____, which may or may not cause an increase in the county ad valorem property tax." The proposed salary for each rank, pay grade, or classification as stated in the petition and the total annual cost of the increases must be inserted in the blank spaces.

(f) If a majority of the votes cast at the election favor the adoption of the proposed minimum salary, the minimum salary shall take effect on or before the date specified in the petition as the effective date. If the date on which the results of the official canvass of the election returns are announced is after the date specified in the petition as the effective date, the minimum salary shall take effect beginning with the first full pay period that begins after the date on which the election results are canvassed.

(g) If the commissioners court chooses to offer an alternative minimum salary proposal, the commissioners court shall confer with the committee of petitioners designated in the petition and offer the alternative salary proposal. If the committee accepts the alternative salary proposal, the commissioners court is not required to call an election.

(h) When an election has been held or an alternative salary proposal has been accepted under this section, a petition for another election under this section may not be filed until one year has elapsed after the date the election was held or the alternative salary proposal was accepted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 808, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 272, Sec. 1, eff. May 26, 1997; Acts 2003, 78th Leg., ch. 1225, Sec. 4, eff. July 1, 2003.

Sec. 152.073. PENALTY. (a) A person who is a county official and who is in charge of the sheriff's department or is responsible for setting the compensation provided by Sections 152.071 and 152.072 commits an offense if the person violates Section 152.071 or 152.072.

(b) An offense under this section is punishable by a fine of not less than $10 or more than $100.

(c) Each day on which the county official causes or permits a violation of this section to occur is a separate offense.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1995, 74th Leg., ch. 808, Sec. 2, eff. Aug. 28, 1995.

Sec. 152.074. LONGEVITY PAY FOR COMMISSIONED DEPUTIES AND COUNTY JAILERS. (a) In a county with a population of 150,000 or more, the commissioners court of a county shall provide to each commissioned deputy of the sheriff's department longevity pay in an amount not less than $5 a month for each year of service in the department, up to and including 25 years. Each commissioned deputy is entitled to the longevity pay in addition to the deputy's regular compensation.

(a-1) In a county with a population of 150,000 or more, the commissioners court may provide to each county jailer of the sheriff's department longevity pay in the amount provided to a commissioned deputy under Subsection (a).

(a-2) A county government in a county that has a population of more than 7,500, is located on an international boundary, and contains no incorporated territory of a municipality may provide longevity pay for each commissioned deputy of the sheriff's department of not less than $5 a month for each year of service in the department, up to and including 25 years. If longevity pay is provided for, each commissioned deputy is entitled to the longevity pay in addition to the deputy's regular compensation.

(b) The commissioners court shall begin providing the longevity pay at the beginning of the first fiscal year after the date this section becomes applicable to the county.

(c) In this section, "county jailer" has the meaning assigned by Section 1701.001, Occupations Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 505, Sec. 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1225, Sec. 5, eff. July. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(65), eff. September 1, 2005.

Sec. 152.075. COMPENSATION FOR RESERVE DEPUTY SHERIFFS. (a) The commissioners court of a county may compensate a reserve deputy sheriff as provided by law for the compensation of a deputy sheriff.

(b) The commissioners court may reimburse a reserve deputy sheriff for reasonable and necessary expenses incurred in the performance of official duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 152.901. TRAVEL EXPENSES FOR CERTAIN COUNTY AGENTS AND BOARD MEMBERS. (a) The commissioners court of a county may authorize the payment of reasonable travel expenses incurred by a person who:

(1) is an agent of the county, or is a board or committee member appointed by the commissioners court; and

(2) is not a county or precinct officer or employee whose travel expenses may be set under Section 152.011.

(b) The travel expenses must be incurred by the person while performing county business authorized by the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.902. COMPENSATION FOR RESERVE DEPUTY CONSTABLES. (a) The commissioners court of a county may compensate a reserve deputy constable as provided by law for the compensation of a deputy constable.

(b) The commissioners court may reimburse a reserve deputy constable for reasonable and necessary expenses incurred in the performance of official duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 152.903. COMPENSATION FOR INTERPRETERS EMPLOYED BY DISTRICT COURTS. (a) Except as provided by Subsection (d), the commissioners court of a county may set the compensation of interpreters employed by the district courts in the county.

(b) The salary of an interpreter shall be paid on warrants issued by the district court or the clerk of the court in favor of the interpreter.

(c) The salary of an interpreter appointed under Subchapter B,

Chapter 21, Civil Practice and Remedies Code, is payable in equal monthly payments or by any other distribution at the option of the county.

(d) This section does not apply to interpreters for deaf or deaf-mute persons appointed under Subchapter A, Chapter 21, Civil Practice and Remedies Code, or Article 38.31, Code of Criminal Procedure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 874, Sec. 2, eff. June 16, 1991.

Sec. 152.904. COMPENSATION OF COUNTY JUDGE IN CERTAIN COUNTIES. (a) The county judge of Gregg County is entitled to receive an annual salary set by the commissioners court at an amount that does not exceed 90 percent of the total annual salary paid to any district judge in the county.

(b) The county judge of El Paso County is entitled to receive an annual salary in an amount not to exceed 90 percent of the total annual salary, including supplements, paid to any district judge in the county.

(c) The commissioners court of a county with a population of 315,000 to 351,000 shall set the annual salary of the county judge at an amount equal to or greater than 90 percent of the salary, including supplements, of any district judge in Galveston County. However, the salary may not be set at an amount less than the salary paid the county judge on May 2, 1962.

(d) The county judge of Webb County is entitled to receive a salary set by the commissioners court at at least $20,000, but not more than the salary, including any supplements, paid to a district judge in the county. The salary shall be paid out of the county treasury by order of the commissioners court and shall be paid monthly in equal installments or by any other distribution at the option of the county.

(e) The Commissioners Court of Harris County shall set the annual salary of the county judge at an amount that is not less than $1,000 more than the total annual salary received by county criminal court at law judges in the county. The salary shall be paid in equal biweekly installments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 2, Sec. 8.11(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 90, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 874, Sec. 3, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 67, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 72, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 194 (S.B. 560), Sec. 5, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 135, eff. September 1, 2023.

Sec. 152.905. PROCEDURES FOR SETTING COMPENSATION BY DISTRICT JUDGES. (a) This section applies only to the compensation of the county auditor, assistant auditors, and court reporters.

(b) Before setting the amount of annual compensation of the county auditor, assistant auditors, and court reporters, the district judge or judges shall hold a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard.

(c) Not earlier than the 30th or later than the 10th day before the date of the hearing, notice of the time, place, and subject of the hearing must be published in a newspaper of general circulation in the county.

(d) At the hearing, the district judge or judges shall set the amount of compensation of the county auditor, assistant auditors, and court reporters considered at the hearing. The vote must be recorded, transcribed, and maintained as a public record.

Added by Acts 1989, 71st Leg., ch. 1169, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 2003, 78th Leg., ch. 1225, Sec. 1, eff. July 1, 2003.

Sec. 152.906. LONGEVITY PAY FOR DEPUTY CONSTABLES. In a county with a population of 190,000 or more, the commissioners court may provide for each county employee or classification of county employee, including, but not limited to, deputy constables, longevity pay, in addition to regular compensation, of $5 a month, or any other amount determined by the commissioners court, for each year of service in the county, up to and including 30 years.

Added by Acts 1991, 72nd Leg., ch. 773, Sec. 1, eff. Aug. 26, 1991.

Sec. 152.907. CONTINUING EDUCATION EXPENSES FOR COUNTY AND PRECINCT OFFICERS. The commissioners court of a county may authorize payment of reasonable continuing education expenses incurred by a county or precinct officer if the expenses are related to the officer's official duties, including expenses incurred by the officer between the general election at which the officer is elected and the beginning of the officer's term of office.

Added by Acts 1999, 76th Leg., ch. 980, Sec. 1, eff. June 18, 1999.

CHAPTER 153. COMPENSATION OF COUNTY OFFICERS ON FEE BASIS

Sec. 153.001. COUNTY TREASURER'S COMMISSION FOR RECEIVING OR PAYING OUT MONEY. (a) In a county in which the county treasurer is compensated on a fee basis, the treasurer is entitled to the following commissions for receiving and paying out money for the county:

(1) for money other than school funds, a percentage set by order of the commissioners court not to exceed 2-1/2 percent of the money received and a percentage set by order of the court not to exceed 2-1/2 percent of the money paid out; and

(2) for school funds, one-half percent of the money received and one-half percent of the money paid out.

(b) A commission earned under Subsection (a)(2) is payable from the available school fund of the county.

(c) A county treasurer may not receive a commission under this section for money received from the treasurer's predecessor or money paid to the treasurer's successor. A county treasurer may not receive a commission under Subsection (a)(2) for transferring money.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 153.002. FEE FOR KEEPING LEDGER AND MAKING STATEMENTS. In a county that does not have the office of county auditor and in which the county treasurer is compensated on a fee basis, the treasurer is entitled to annual compensation for keeping the county finance ledger and for making the statements required by Section 114.021. The

compensation is in an amount that equals $5 for each $1,000 tax assessed and due to the county, but the amount may not be less than $100 or more than $250. Compensation under this section is paid on the order of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 207 (H.B. 398), Sec. 3, eff. May 25, 2007.

Sec. 153.003. MONTHLY STATEMENT OF EXPENSES OF OFFICERS. (a) At the end of each month, a county officer who is compensated on a fee basis shall prepare an itemized and sworn statement of the actual and necessary expenses incurred by the officer in the conduct of the office. The statement shall be made a part of the fees statement required by Section 114.041 and must contain:

(1) the name of the case, if any, in connection with which an expense is incurred; and

(2) the name and position of, and the amount of the salary actually paid to, each assistant or deputy of the officer.

(b) For the purposes of this section, actual and necessary expenses include expenses for:

(1) travel, stationery, stamps, and telephone service; and

(2) premiums on officials' bonds, including surety bonds for deputies, and premiums on fire, burglary, theft, and robbery insurance to protect public funds.

(c) The salaries paid to the officer's assistants, deputies, and clerks and the incurred expenses shall be paid from fees earned by the officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 154. COMPENSATION OF DISTRICT, COUNTY, AND PRECINCT OFFICERS ON SALARY BASIS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 154.001. DEFINITION. In this chapter, "precinct officer" means a justice of the peace or a constable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.002. SALARY PAID IN LIEU OF FEES AND COMMISSIONS. A district, county, or precinct officer who is paid on a salary basis receives the salary instead of all fees, commissions, and other compensation the officer would otherwise be authorized to keep, except as otherwise provided by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.003. COLLECTION AND DISPOSITION OF FEES AND COMMISSIONS OF SALARIED OFFICER. A district, county, or precinct officer who is paid an annual salary shall charge and collect in the manner authorized by law all fees, commissions, and other compensation permitted for official services performed by the officer. The officer shall dispose of the collected money as provided by Subchapter B, Chapter 113.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.004. STATE AND COUNTY PROHIBITED FROM PAYING FEES OR COMMISSIONS TO SALARIED OFFICER. (a) The state may not pay a district officer a fee or commission for the performance of a service by the officer.

(b) If a county officer is paid an annual salary, the state or any county may not pay a fee or commission to the officer for the performance of a service by the officer.

(c) The state or any county may not pay a fee or commission to a precinct officer for the performance of a service by the officer.

(d) The prohibitions established by this section do not affect:

(1) fees and commissions the county tax assessor-collector is authorized by law to collect;

(2) the payment of costs in a civil case or eminent domain proceeding by the state; or

(3) the payment of fees and commissions by the state or a county for services performed by county officers relating to the acquisition of rights-of-way for public roads and highways.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.005. FEES AND COMMISSIONS CERTAIN SALARIED OFFICERS MAY RECEIVE IN ADDITION TO SALARY. (a) A justice of the peace may receive, in addition to a salary, all fees, commissions, or payments for performing marriage ceremonies, for acting as registrar for the Bureau of Vital Statistics, and for acting as ex officio notary public.

(b) A county judge may receive, in addition to a salary, all fees, commissions, or payments for performing marriage ceremonies.

(c) A sheriff or constable may receive, in addition to a salary, any reward for the apprehension of a criminal fugitive from justice or for the recovery of stolen property.

(d) A constable may receive, in addition to Subsection (c), all fees, commissions, or payments for delivering notices required by Section 24.005, Property Code, relating to eviction actions. Notices may only be delivered when not in conflict with the official duties and responsibilities of the constable. A constable delivering said notices must not be wearing upon his or her person a uniform or any insignia which would usually be associated with the position of constable nor may the constable use a county vehicle or county equipment while delivering said notices. For purposes of collecting fees for serving said notices, a constable is considered a private process server.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 884, Sec. 2, eff. Jan. 1, 1998.

Sec. 154.006. INSUFFICIENT SALARY FUND SUPPLEMENTED BY TRANSFER FROM GENERAL FUND. If a salary fund created under this chapter does not contain enough money to pay the claims against it, the commissioners court shall transfer to the salary fund from the general fund of the county an amount of money necessary to pay those claims.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.007. USE OF GENERAL FUND INSTEAD OF SALARY FUND. (a) At its first regular meeting in the first month of each fiscal year,

the commissioners court may direct, by order entered in its minutes, that all money that otherwise would be deposited in a salary fund created under this chapter shall be deposited in the general fund of the county.

(b) In a county in which the order is adopted, a reference in this chapter to a salary fund means the general fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.008. LEGISLATIVE APPROPRIATION FOR OFFICERS COMPENSATED ON SALARY BASIS. (a) The comptroller of public accounts shall apportion and pay to counties in which county officers are compensated on a salary basis the money the legislature appropriates for the year for that purpose.

(b) The comptroller shall apportion the money on the basis of population. The annual apportionment may not exceed 14 cents a person, except that in a county that had a population of less than 60,000 according to the 1930 federal census and in which the ad valorem valuation for all purposes according to the most recently approved tax roll exceeds the valuation for 1930 by 50 percent or more, the annual apportionment may not exceed 25 cents a person.

(c) The comptroller shall make the payment each year in four installments on the first day of January, April, July, and October. However, if a commissioners court orders that county officers who were previously compensated by fees are to be compensated by salary, the comptroller shall pay the first installment to that county within 15 days after the date the comptroller receives notice of the commissioners court's order.

(d) The comptroller shall mail or electronically transmit a warrant for the payment to the county treasurer. The warrant must be:

(1) drawn on the state treasury;

(2) payable to the county treasurer; and

(3) registered by the comptroller.

(e) The payment shall be deposited in the salary fund of the county. If a county has more than one salary fund, the commissioners court shall apportion the payment among the salary funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 13.02, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 934 (H.B. 3439), Sec. 7, eff. September 1, 2007.

Sec. 154.009. EFFECT OF FAILURE TO COLLECT FEE OR COMMISSION. (a) If, following a hearing, the commissioners court finds that a district, county, or precinct officer has, through neglect, failed to collect a fee or commission that the officer is required by law to collect, the commissioners court shall deduct the amount of the fee or commission from the officer's salary. Before the 10th day before the date of the hearing, the commissioners court shall provide the officer with notice of the time and place of the hearing and an itemized statement of the uncollected fees to be charged against the officer's salary.

(b) This section does not apply to a district, county, or precinct officer if the county treasurer or county auditor is required to collect the fee or commission under Section 154.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 217, Sec. 6, eff. May 23, 1995.

Sec. 154.010. AUTHORITY TO PURCHASE LIABILITY INSURANCE FOR COUNTY OFFICERS AND EMPLOYEES. (a) A warrant may be drawn on either the general fund or salary fund to pay any insurance premium or self-insurance pool contribution for the purpose of providing insurance or other coverage for the liabilities of an official or employee of the county, a district attorney who has all or part of the county within the district attorney's jurisdiction, or an official of any special purpose district located, in whole or in part, in the county arising from the performance of an official duty or a duty of employment as authorized by Section 157.041 or Chapter 119 or by Chapter 791 or 2259, Government Code.

(b) Subdivision (a) is applicable regardless of whether the commissioners court adopts an order in accordance with Section 154.007, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 351, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 561, Sec. 6, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 8.286, eff. Sept. 1, 2001.

Sec. 154.011. COLLECTIONS BY COUNTY TREASURER OR COUNTY AUDITOR. (a) If a district, county, or precinct officer consents, the commissioners court of a county with a population of 2.8 million or more may designate the county treasurer, if the county treasurer consents, or the county auditor, if the county auditor consents, to collect a fee, commission, judgment, fine, forfeiture, or penalty on behalf of the district, county, or precinct officer who is required by law to collect the fee, commission, judgment, fine, forfeiture, or penalty.

(b) The official designated shall report the collection of a fee, commission, judgment, fine, forfeiture, or penalty to the district, county, or precinct officer.

(c) The official designated is solely liable for collecting the fee, commission, judgment, fine, forfeiture, or penalty.

(d) The official designated may discharge liability under this section in the same manner provided for a district, county, or precinct officer.

(e) In this section, "county treasurer" includes a person performing the duties of the county treasurer and "county auditor" includes a person performing the duties of the county auditor.

Added by Acts 1995, 74th Leg., ch. 217, Sec. 7, eff. May 23, 1995.

SUBCHAPTER B. PROVISIONS APPLICABLE IN COUNTY WITH POPULATION OF 190,000 OR LESS

Sec. 154.021. COUNTIES COVERED BY SUBCHAPTER. This subchapter applies to a county with a population of 190,000 or less, except as otherwise provided by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.022. OPTION TO PAY COMPENSATION ON FEE BASIS OR SALARY BASIS IN COUNTY WITH POPULATION OF LESS THAN 20,000. (a) In a county with a population of less than 20,000, the commissioners court shall determine, by order entered in the record at its first regular meeting in the first month of each fiscal year, whether county officers are to be compensated for the fiscal year by an annual

salary or by fees earned from the performance of official duties. This subsection does not apply to a county surveyor, registrar of vital statistics, or notary public or to a county officer required to be compensated on a salary basis.

(b) Before the expiration of the first month of the fiscal year, the county clerk shall deliver to the comptroller of public accounts a certified copy of the commissioners court's order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.023. SALARY FUND. (a) A salary fund shall be created in the county to be known as the "officers' salary fund of _____ County, Texas." The following items shall be paid from the fund:

(1) salaries of district, county, and precinct officers;

(2) salaries of the officers' deputies, assistants, and clerks; and

(3) the authorized expenses of the offices of those officers.

(b) The salary fund shall be:

(1) deposited in the county depository;

(2) kept separate from other county funds; and

(3) protected to the same extent as other county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.0235. PROCEDURES REGARDING PAYMENT OF OFFICE EXPENSES AND EMPLOYEE SALARIES. (a) A district, county, or precinct officer may issue a warrant against the salary fund to pay authorized expenses of the office or the salary of an employee whose salary may be paid from the fund.

(b) A payment may not be made from the salary fund to an employee for a service performed before the person has taken the constitutional oath of office, if applicable, and the person's authorized appointment and oath, if any, have been filed for record with the county clerk and the county auditor, if the county has a county auditor.

Added by Acts 2019, 86th Leg., R.S., Ch. 330 (S.B. 354), Sec. 2, eff. May 31, 2019.

Sec. 154.024. MONTHLY REPORT OF EXPENSES OF OFFICERS. At the end of each month, an officer who is compensated on a salary basis shall prepare a report of the officer's expenses. The report must:

(1) contain an itemized and sworn statement of all approved expenses incurred by the officer and charged to the officer's county;

(2) contain the name of the case, if any, in connection with which an expense is incurred; and

(3) be accompanied by invoices covering any purchases and requisitions issued by the officer and included in the report.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.025. DISBURSEMENTS TO PERSONS WITH OUTSTANDING DEBT PROHIBITED. (a) In this section, "debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the county. The term includes delinquent property taxes whether reduced to judgment or not.

(b) If notice of indebtedness has been filed with the county auditor and county treasurer evidencing the indebtedness of a person to the state, the county, or a salary fund, a warrant may not be drawn on a county fund in favor of a person, or an agent or assignee of a person, until:

(1) the county treasurer, or the county auditor in a county without a county treasurer, notifies in writing the person owing the debt that the debt is outstanding; and

(2) the debt is paid.

(c) A county may apply any funds the county owes a person to the outstanding balance of debt for which notice is made under Subsection (b)(1), if the notice includes a statement that the amount owed by the county to the person may be applied to reduce the outstanding debt.

(d) A county may include a notice in its forms, bonds, or other agreements stating that the county may offset payments to a person in accordance with this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 54, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 139, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 120 (S.B. 1106), Sec. 3, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 414 (S.B. 382), Sec. 1, eff. June 14, 2013.

Sec. 154.026. TRANSFER OF SALARY FUND SURPLUS TO GENERAL FUND. After the end of a fiscal year, the commissioners court by order may transfer to the general fund of the county any money remaining in a salary fund if all claims against the salary fund incurred for the fiscal year have been paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. PROVISIONS APPLICABLE IN COUNTY WITH POPULATION OF MORE THAN 190,000

Sec. 154.041. COUNTIES COVERED BY SUBCHAPTER. This subchapter applies to a county with a population of more than 190,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.042. SALARY FUND. (a) A salary fund shall be created in the county for each district, county, and precinct officer to be known as the "(officer's title) salary fund of (name of county) County, Texas." The purpose of the fund is to pay:

(1) the salary of the officer;

(2) the salaries of the officer's deputies, assistants, clerks, stenographers, and investigators; and

(3) authorized and approved expenses of the office of the officer.

(b) The salary fund shall be:

(1) deposited in the county depository;

(2) kept separate from other county funds; and

(3) protected to the same extent and draw the same interest as other county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.043. PROCEDURES REGARDING PAYMENT OF EMPLOYEE SALARIES. (a) A district, county, or precinct officer may issue a warrant against the salary fund to pay the salary of an employee whose salary may be paid from the fund.

(b) A payment may not be made from the salary fund to an employee for a service performed before the person has taken the constitutional oath of office, if applicable, and the person's authorized appointment and oath, if any, have been filed for record with the county clerk and the county auditor, if the county has a county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.044. MONTHLY REPORT OF FEES, COMMISSIONS, AND EXPENSES OF OFFICERS. (a) On or before the fifth day of each month, a district, county, or precinct officer shall file with the county auditor a report, on a form prescribed by the county auditor, that contains:

(1) a detailed and itemized statement of all fees, commissions, and other compensation that the officer collected during the preceding month;

(2) an itemized and sworn statement of all expense claims paid during the preceding month; and

(3) the amount paid during the preceding month to each employee of the officer and the name and position of the employee.

(b) An officer who serves only part of the fiscal year shall file a report and make final settlement for the part of the fiscal year that the officer served. The officer is entitled to the part of the officer's compensation proportionate to the part of the year served.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 154.045. DISBURSEMENTS TO PERSON WITH OUTSTANDING DEBT PROHIBITED. (a) In this section, "debt" includes delinquent taxes, fines, fees, and indebtedness arising from written agreements with the county. The term includes delinquent property taxes whether reduced to judgment or not.

(b) If a notice of indebtedness has been filed with the county

auditor or county treasurer evidencing the indebtedness of a person to the state, the county, or a salary fund, a warrant may not be drawn on a county fund in favor of the person, or an agent or assignee of the person, until:

(1) the county treasurer, or the county auditor in a county without a county treasurer, notifies in writing the person owing the debt that the debt is outstanding; and

(2) the debt is paid.

(c) A county may apply any funds the county owes a person to the outstanding balance of debt for which notice is made under Subsection (b)(1), if the notice includes a statement that the amount owed by the county to the person may be applied to reduce the outstanding debt.

(d) A county may include a notice in its forms, bonds, or other agreements stating that the county may offset payments to a person in accordance with this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1155, Sec. 1, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 139, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 120 (S.B. 1106), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 414 (S.B. 382), Sec. 2, eff. June 14, 2013.

Sec. 154.046. TRANSFER OF SALARY FUND SURPLUS TO GENERAL FUND. After the end of a fiscal year, the commissioners court by order shall transfer to the general fund of the county, by warrant issued by the county clerk, any money remaining in a salary fund when all claims against the fund incurred for the fiscal year have been paid and the officer's accounts have been audited and approved by the county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 155. DEDUCTIONS FROM COMPENSATION OF COUNTY EMPLOYEES

SUBCHAPTER A. AUTHORIZED DEDUCTIONS FOR COUNTIES

Sec. 155.001. DEDUCTIONS AUTHORIZED IN COUNTIES; PURPOSES.

(a) The commissioners court, on the request of a county employee, may authorize a payroll deduction to be made from the employee's wages or salary for:

(1) payment to a credit union;

(2) payment of membership dues in a labor union or a bona fide employees association;

(3) payment of fees for parking in a county-owned facility;

(4) payment to a charitable organization; or

(5) payment relating to an item not listed in this subsection if the commissioners court determines that the payment serves a public purpose.

(b) In this section, "charitable organization" has the meaning assigned by Section 659.131, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 433, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 817, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 13.04, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 185, Sec. 1, eff. May 18, 2001; Acts 2003, 78th Leg., ch. 1123, Sec. 1, eff. June 20, 2003.

Sec. 155.002. EMPLOYEE'S REQUEST. (a) A request for a payroll deduction must:

(1) be in writing;

(2) be submitted to the county auditor; and

(3) state the amount to be deducted and the entity to which the amount is to be transferred.

(b) A request remains in effect until the county auditor receives a written notice of revocation signed by the employee.

(c) A payroll deduction may not exceed the amount stated in the request.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 155.003. PAYMENT OF ADMINISTRATIVE COSTS. (a) Public funds may not be used to pay the administrative costs of making a deduction, except for a deduction relating to the payment of parking fees in a county-owned facility.

(b) The credit union, labor union, or employees association for

whose benefit a deduction is made shall pay any administrative costs for making the deduction. The commissioners court shall determine the amount of the administrative costs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 155.004. OTHER STATUTE NOT AFFECTED. This chapter does not affect Chapter 617, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(16), eff. Sept. 1, 1995.

SUBCHAPTER B. CERTAIN DEDUCTIONS MADE BY COUNTY TREASURER OR OTHER OFFICER

Sec. 155.021. DEDUCTIONS ENUMERATED. The county treasurer or, if another officer is specified by law, that other officer shall make the deductions from, or take other similar actions with regard to, the compensation of county employees as required:

(1) for employee contributions for coverage under the federal social security program in accordance with Chapter 606, Government Code;

(2) for the purchase of annuities or for contributions to investments for employees in accordance with Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes);

(3) for the purchase of United States savings bonds for employees in accordance with Chapter 608, Government Code;

(4) for employee participation in a deferred compensation plan in accordance with Chapter 609, Government Code; or

(5) for employee contributions to a retirement system in accordance with Section 845.403, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 179, Sec. 2(j), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 268, Sec. 39, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 16.003, eff. September 1, 2011.

SUBCHAPTER C. CAFETERIA PLAN SALARY REDUCTIONS

Sec. 155.041. DEFINITION. In this subchapter, "county employee" means a person who receives compensation for service performed, other than as an independent contractor, for a county, for a precinct or other unit of a county, or for a county officer acting in an official capacity.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 36, eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 51, Sec. 1, eff. May 7, 2001.

Sec. 155.042. BENEFIT PROGRAM. The commissioners court of a county by order or resolution may establish a program to provide benefits that qualify for a cafeteria plan or a bona fide compensation reduction arrangement under the federal Internal Revenue Code of 1986 and regulations adopted under that code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 36, eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 51, Sec. 1, eff. May 7, 2001.

Sec. 155.043. SALARY REDUCTION AGREEMENTS. (a) If the commissioners court establishes a program under this subchapter, the court shall authorize county employees to enter into voluntary agreements with the county to reduce the periodic compensation paid the employees by the county by amounts to be used to finance benefit options provided under the program. An authorization under this section must be made available to all employees of the county.

(b) Amounts by which a county employee's compensation is reduced under an agreement under this section are excluded from the computation of contributions and other payments governed by federal law to the extent authorized by federal law, including withholding payments for federal income taxes and contributions to the federal old age and survivors insurance program, but are not excluded in the computation of contributions to and benefits from the Texas County and District Retirement System and other retirement programs governed by state law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 36, eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 51, Sec. 1, eff. May 7, 2001.

Sec. 155.044. RULES. The commissioners court may adopt rules, consistent with this subchapter and federal requirements, for participation in and administration of the program authorized by this subchapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 36, eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 51, Sec. 1, eff. May 7, 2001.

SUBCHAPTER D. INSURANCE DEDUCTIONS IN COUNTIES

Sec. 155.061. DEDUCTIONS AUTHORIZED. (a) The commissioners court of a county, on the request of a county official or employee, may authorize a payroll deduction to be made from the official's or employee's wages or salary for the payment of premiums on an individual insurance policy, including a health, accident, dental, accidental death and dismemberment, disability, cancer or other catastrophic illness or disease, hospital, surgical, medical expense, or whole or term life insurance policy, that insures the official or employee or the dependents of the official or employee.

(b) If the commissioners court authorized a payroll deduction under this section, the commissioners court may not pay any part of the premiums on the policy.

Added by Acts 1991, 72nd Leg., ch. 302, Sec. 1, eff. Aug. 26, 1991.

Sec. 155.062. REQUEST FOR DEDUCTION. (a) A request for an insurance deduction must:

(1) be submitted to the county officer authorized by the commissioners court to administer payroll deductions; and

(2) state the amount to be deducted and the entity to which the amount is to be transferred.

(b) A request remains in effect until the county officer authorized to administer the insurance deductions receives a notice of change.

(c) An insurance deduction may not exceed the amount stated in the request plus the amount of any change in applicable insurance premiums imposed after the date the request for deduction is submitted.

(d) If the amount of an applicable insurance premium is changed after the date the request for deduction is submitted, the county

officer authorized to administer insurance deductions shall provide written notice of the change to each affected employee. The notice must be provided before the change takes effect.

Added by Acts 1991, 72nd Leg., ch. 302, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1997, 75th Leg., ch. 96, Sec. 1, eff. Sept. 1, 1997.

Sec. 155.063. ADMINISTRATION OF DEDUCTIONS. (a) The commissioners court may authorize:

(1) a county officer to administer the insurance deductions and to transfer an insurance deduction to the appropriate entity; and

(2) the county officer to charge the appropriate entity the costs of administering an insurance deduction.

(b) The commissioners court may require an entity that will receive a transferred deduction under this section to submit to the commissioners court information required by the court to determine the stability and financial solvency of the insurance company and of the availability of benefits under the insurance policy.

(c) The commissioners court may require the submission of other information the commissioners court determines necessary to justify an insurance deduction.

(d) The payment by the county of administrative costs of making an insurance deduction may not be considered as evidence of a contract of the insured's employment with the county.

Added by Acts 1991, 72nd Leg., ch. 302, Sec. 1, eff. Aug. 26, 1991.

CHAPTER 156. ELECTRONIC FUNDS TRANSFER OF COMPENSATION AND REIMBURSEMENT OF COUNTY OFFICERS AND EMPLOYEES

Sec. 156.001. TRANSFER SYSTEM AUTHORIZED. The county treasurer may establish and operate an electronic funds transfer system to make any authorized transfer from the county treasury.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 343, Sec. 2, eff. May 29, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 934 (H.B. 3439), Sec. 8, eff. September 1, 2007.

Sec. 156.003. ADMINISTRATION OF SYSTEM. The county auditor or, if the county does not have a county auditor, the chief financial officer of the county, with the approval of the commissioners court, shall establish the procedures for administering the system and may use the services of financial institutions, automated clearinghouses, and the federal government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 156.004. TRANSFER TO MULTIPLE PAYEES. A single transfer may contain payments to multiple payees without the necessity of issuing individual warrants for each payee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 156.005. NO ADDITIONAL RIGHTS CREATED. The use of an electronic funds transfer means of payment does not create any rights that would not have been created if an individual warrant had been used as a means of payment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 157. ASSISTANCE, BENEFITS, AND WORKING CONDITIONS OF COUNTY OFFICERS AND EMPLOYEES

SUBCHAPTER A. MEDICAL CARE, HOSPITALIZATION, AND INSURANCE

Sec. 157.001. HOSPITALIZATION INSURANCE. The commissioners court of a county may provide hospitalization insurance to a county official, deputy, assistant, or other county employee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 157.002. MEDICAL CARE, HOSPITALIZATION, AND INSURANCE IN COUNTIES. (a) The commissioners court by rule may provide for medical care and hospitalization and may provide for compensation, accident, hospital, and disability insurance for the following

persons if their salaries are paid from the funds of the county or funds of a flood control district located entirely in the county, or funds of a hospital district described by Section 281.0475, Health and Safety Code, located entirely in the county, or if they are employees of another governmental entity for which the county is obligated to provide benefits:

(1) deputies, assistants, and other employees of the county, or of the flood control district, or of the hospital district, who work under the commissioners court or its appointees;

(2) county and district officers and their deputies and assistants appointed under Subchapter A, Chapter 151;

(3) employees appointed under Section 76.004(b), Government Code;

(4) any retired person formerly holding any status listed above; and

(5) the dependents of any person listed above.

(b) The commissioners court may contract with a county-operated hospital or a hospital operated jointly by a municipality and county to provide medical care and hospitalization under this section. The commissioners court may, if circumstances warrant, provide for medical care and hospitalization in a private hospital.

(c) A rule adopted under this section relating to a person's medical care, hospitalization, or insurance coverage must be included in the person's employment contract.

(d) A rule adopted under this section is subject to the approval of the county auditor.

(e) Before adopting a rule under this section, the commissioners court must give notice of a hearing about the proposed adoption. The notice must be published in a newspaper that is published in the county. The publication must be made at least once a week for two consecutive weeks. The first notice must appear before the 15th day before the date of the hearing. The notice must provide a brief summary of the rule as well as the time and day of the hearing. On adoption, the rule must be entered in the minutes of the hearing and it takes effect on the date set out in the rule. At the hearing, an employee or taxpayer of the county is entitled to appear and protest the adoption of a rule.

(f) A county providing coverage under this section shall reinsure its potential liability or purchase stop-loss coverage for any amount of potential liability that is in excess of 125 percent of

projected paid losses and may reinsure its potential liability or purchase stop-loss coverage for any amount of potential liability that is 125 percent or less of projected paid losses. A county must reinsure the liability or purchase stop-loss coverage from an insurance company admitted to do business in this state that has a certificate of authority from the State Board of Insurance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(h), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 872, Sec. 1, 2, eff. June 14, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 22, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.77, eff. January 1, 2017.

Sec. 157.003. HOSPITAL AND INSURANCE FUND. (a) In a county that adopts rules under Section 157.002, the commissioners court may require persons participating in the health plan to contribute toward the payment of the plan. The commissioners court may establish a fund to be known as the "Hospital and Insurance Fund--County Employees" to pay for the medical care or hospitalization or the insurance.

(b) A person who elects to participate in the health plan must authorize contributions to the fund by salary deduction. The authorization must be in writing and must be given at the time of the person's employment or on the effective date of the rules. The county and any participating flood control district or hospital district shall also contribute to the fund. A person who does not contribute to the plan may not receive hospitalization or insurance benefits.

(c) The fund may be used only for the purposes stated in Subsection (a). Employees who are discharged or who end their employment voluntarily have no vested right to contributions made to the fund. The fund shall continue to be used for the benefit of the remaining employees.

(d) Claims shall be paid from the fund in the same manner as provided by law for the payment of other claims of the county or flood control district.

(e) If a plan established under this section is terminated by the commissioners court, the remaining funds shall be transferred to the county and to any participating flood control district in proportion to the total contributions made by them.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 23, eff. September 1, 2005.

Sec. 157.004. DISABILITY COMPENSATION IN COUNTIES OF 290,000 TO 500,000. (a) The commissioners court of a county with a population of 290,000 to 500,000 shall provide for the payment of a county employee who is made totally unfit to continue employment because of a physical injury occurring in the actual and active discharge of a duty. The payment may not cover more than six months of disability. The payment must be in the following amounts:

(1) full salary for each month, or part of a month, of total disability during the first three months of the disability; and

(2) one-half salary for each month, or part of a month, of total disability during the second three months of the disability.

(b) The commissioners court, before making an award for disability under this section, shall conduct a hearing to determine the merits of the claim and may subpoena and examine witnesses to assist in the determination. The commissioners court may grant or refuse an award.

(c) The employee making a claim under this section may appeal a decision of the commissioners court within 10 days after the date of the decision. Appeal is by trial de novo before the court that has jurisdiction of the amount involved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 157.005. SUBROGATION. (a) A county that has paid medical expenses, doctor bills, hospital bills, or salary for a sheriff, deputy sheriff, constable, deputy constable, or other county or precinct law enforcement official under Article III, Section 52e, of the Texas Constitution, as adopted in 1967, is subrogated to the law

enforcement official's right of recovery for personal injuries caused by another to the extent of the payments made by the county.

(b) A county may not refuse to pay medical expenses, doctor bills, or hospital bills on the ground that the law enforcement official has a claim for damages for personal injury.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 157.006. PAYMENTS FOR CERTAIN HEALTH INSURANCE COVERAGE. (a) A hospital district created under Article IX of the Texas Constitution or a county may purchase and pay the premiums for a conversion policy or other health insurance coverage for a person who is diagnosed as having HIV or AIDS, or defined by Section 81.101, Health and Safety Code, or other terminal or chronic illness, who is unemployed, and whose income level is less than 200 percent of the federal poverty level, based on the federal Office of Management and Budget poverty index in effect at the time coverage is provided, even though that person may be eligible for benefits under Chapter 32, Human Resources Code, or a medical assistance program of the county or hospital district.

(b) Health insurance coverage for which premiums may be paid under this section includes coverage purchased from an insurance company authorized to do business in this state, a group hospital services corporation operating under Chapter 842, Insurance Code, a health maintenance organization operating under Chapter 843, Insurance Code, or an insurance pool created by the federal or state government or a political subdivision of the state.

(c) The county or hospital district may provide for payment of premiums from unencumbered money available to it for that purpose.

(d) A county or hospital by order may adopt necessary rules, criteria, and plans and may enter into necessary contracts to carry out this section.

Added by Acts 1989, 71st Leg., ch. 1041, Sec. 6, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(10), eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.537, eff. Sept. 1, 2003.

Sec. 157.007. APPLICABILITY OF SUBCHAPTER. (a) A county that

chooses to provide medical or related benefits may operate under this subchapter or Subchapter F.

(b) A county operating under this subchapter that previously created a fund under Section 157.102 may continue the fund or may terminate the fund and create a fund as provided by Section 157.003.

Added by Acts 2003, 78th Leg., ch. 630, Sec. 2, eff. Sept. 1, 2003.

Sec. 157.008. INSURANCE POOL OR INSURANCE COMPANY NOT CREATED. If a county provides for medical care and hospitalization or provides for compensation, accident, hospital, and disability insurance to persons listed under Section 157.002(a)(1), the county:

(1) has not created an insurance pool with a flood control district, hospital district, or other governmental entity, unless the county enters into a contract under Chapter 172; and

(2) is not an insurance company subject to the Insurance Code or to regulation by the Texas Department of Insurance as an insurance company.

Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 24, eff. September 1, 2005.

SUBCHAPTER B. HOURS OF WORK

Sec. 157.021. HOURS OF WORK OF COUNTY EMPLOYEES. (a) In a county with a population of 355,000 or more, the commissioners court may adopt and enforce uniform rules on the hours of work of department heads, assistants, deputies, and other employees whose compensation is set or approved by the court.

(b) The commissioners court of any county may adopt and enforce uniform rules on overtime and compensatory time for department heads, assistants, deputies, and other employees whose compensation is set or approved by the commissioners court. The rules may:

(1) prohibit unbudgeted overtime, except when the commissioners court or an elected county or district officer declares an emergency; and

(2) require that emergency overtime be reported to the county auditor and the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1995, 74th Leg., ch. 713, Sec. 2, eff. Sept. 1, 1995.

Sec. 157.022. HOURS OF WORK OF PEACE OFFICERS IN COUNTIES OF MORE THAN ONE MILLION. (a) A peace officer employed by a county with a population of more than one million may not be required to work more hours during a calendar week than the number of hours in the normal work week of the majority of other county employees.

(b) A sheriff or constable may require a peace officer to work more hours than allowed by Subsection (a) if the sheriff or constable determines an emergency exists that requires the officer to work extra hours.

(c) A peace officer who elects to work extra hours during a calendar week shall be compensated on a basis consistent with overtime provisions of the county personnel policy.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 91, eff. Sept. 1, 1991.

SUBCHAPTER C. LIABILITY INSURANCE

Sec. 157.041. GENERAL LIABILITY INSURANCE. (a) The commissioners court of a county may obtain insurance or similar coverage from a governmental pool operating under Chapter 119 or a self-insurance fund or risk retention group operating under Chapter 2259, Government Code, for an official or employee of the county including county and precinct peace officers designated by the commissioners court, a district attorney who has all or part of the county within the district attorney's jurisdiction, or an official of any special purpose district located, in whole or in part, in the county against liability arising from the performance of official duties or duties of employment.

(b) Insurance provided under this section must be purchased from an insurance company authorized to do business in this state and must be on forms approved by the commissioner of insurance.

(c) The commissioner of insurance shall adopt rules and set rates to implement this section.

(d) Coverage obtained from a pool operating under Chapter 119 or a self-insurance fund or risk retention group operating under Chapter 2259, Government Code, is not insurance and, except as

provided by Subsections (b) and (c), is not subject to regulation by the commissioner of insurance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 561, Sec. 7, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 8.287, eff. Sept. 1, 2001.

Sec. 157.042. MOTOR VEHICLE LIABILITY INSURANCE FOR PEACE OFFICERS IN CERTAIN COUNTIES. (a) A county that has a population of more than 1.3 million and in which a municipality with a population of more than one million is primarily located shall insure its sheriff, constables, and full-time deputies of those officers against liability to third persons arising from the operation or maintenance of:

(1) county-owned or county-leased motor vehicles; and

(2) privately owned motor vehicles to the extent used for the performance of county business or law enforcement duties.

(b) A county may satisfy the requirement of Subsection (a) by requiring that the person to be covered purchase an extended coverage endorsement to an individually owned liability insurance policy and by reimbursing the person for the cost of the extended coverage endorsement. The extended coverage endorsement must be in an amount equal to or greater than that required by Subsection (d) and must extend coverage to include the operation of vehicles in the scope of the person's employment. The county may require a person insured in this manner to provide proof of coverage.

(c) A county may elect to comply with the requirements of this section by self-insuring in accordance with Section 601.124, Transportation Code.

(d) Liability coverage required under this section must be in amounts equal to or greater than the amounts required by Chapter 601, Transportation Code.

(e) In this section, "motor vehicle" means a vehicle for which motor vehicle insurance is written under Subchapter A, Chapter 5, Insurance Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.217, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 644, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 68, eff. Sept. 1, 2001.

Sec. 157.043. GENERAL LIABILITY INSURANCE FOR COUNTY OFFICIALS. (a) In this section, "county officer or employee" includes a county or precinct peace officer, the district attorney, or an officer of a special purpose district located in whole or in part in the county.

(b) The commissioners court of a county may obtain insurance or similar coverage from a governmental pool operating under Chapter 119 or a self-insurance fund or risk retention group operating under Chapter 2259, Government Code, for a county officer or employee, insuring the officer or employee from liability for losses arising from the performance of official duties by the officer or duties of employment by the employee, including losses resulting from errors or omissions of the officer or employee or from crime, dishonesty, or theft.

(c) An insurance policy purchased under Subsection (b) may be a blanket insurance policy covering some or all county officers or employees. The commissioners court may self-insure for part or all of any deductible required under a blanket insurance policy. A blanket insurance policy purchased under this subsection may be used to satisfy any requirement for insurance required of a county officer by any law.

(d) This section is cumulative of other statutory, common law, or constitutional provisions.

Added by Acts 1999, 76th Leg., ch. 92, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.288, eff. Sept. 1, 2001.

SUBCHAPTER D. CHILD CARE SERVICES

Sec. 157.061. DEFINITIONS. In this subchapter:

(1) "Child care services" means the care, training, education, custody, treatment, and supervision of children for all or part of a day.

(2) "County juror" means a juror in a justice, county, or district court in a county.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

Sec. 157.062. AUTHORITY TO ESTABLISH PROGRAM. The commissioners court of a county with a population of 500,000 or more may establish a program by which the county provides child care services to benefit county employees, county jurors, and their children.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

Sec. 157.063. ELIGIBLE CHILDREN. Any child of a county employee or county juror, including a stepchild, foster child, or other child in the possession of the employee or juror under a court order, is eligible to participate in the child care program subject to the limitations imposed under Section 157.065.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

Sec. 157.064. SPACE FOR PROGRAM. The commissioners court may set aside space in an existing county facility or may acquire by lease or purchase additional space for the child care program.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

Sec. 157.065. SCOPE OF PROGRAM. (a) The commissioners court may determine its own guidelines about the scope of the child care program. The guidelines must include provisions relating to fees for participation in the program, ages of children who may participate, services to be available, times services are available, and related matters.

(b) The commissioners court shall appoint a board of county employees to review the program and guidelines and to make recommendations to the court about the program.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

Sec. 157.066. STAFF. (a) The commissioners court may employ a child care administrator to supervise the administration of the program and, with the approval of the court, to employ the necessary

staff to administer the program.

(b) Instead of exercising the authority under Subsection (a), the commissioners court may contract for the child care services.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

Sec. 157.067. FEES. (a) The commissioners court may set fees to be charged for the child care services. A fee may be set at any amount not to exceed the actual cost of providing the service. If the amount of a fee is less than the cost of providing the service, the difference between the two amounts is considered to be part of the compensation of the county employee or county juror.

(b) Fees collected under this section shall be deposited in the general fund of the county.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

SUBCHAPTER E. POOLING OF SICK LEAVE BY COUNTY EMPLOYEES

Sec. 157.071. DEFINITIONS. In this subchapter:

(1) "Administrator" means the person designated by the commissioners court of a county to administer the county's sick leave pool program.

(2) "Employee" means a district, county, or precinct employee with 12 or more months of continuous employment with the district, county, or precinct who is paid from the general fund of the county, from a special fund of the county, or from special grants paid through the county.

Added by Acts 1993, 73rd Leg., ch. 613, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1997, 75th Leg., ch. 612, Sec. 1, eff. Sept. 1, 1997.

Sec. 157.072. AUTHORITY TO ESTABLISH PROGRAM FOR SICK LEAVE POOL. (a) The commissioners court of a county may establish a program within the county to allow an employee to voluntarily transfer sick leave time earned by the employee to a county sick leave pool.

(b) The commissioners court of a county with a population of 800,000 or more may allow an employee to voluntarily transfer

vacation leave time earned by the employee to a county sick leave pool.

Added by Acts 1993, 73rd Leg., ch. 613, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1995, 74th Leg., ch. 711, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 216 (H.B. 180), Sec. 1, eff. June 4, 2021.

Sec. 157.073. ADMINISTRATION OF SICK LEAVE POOL PROGRAM. (a) The commissioners court may adopt rules and prescribe procedures and forms relating to the operation of the county sick leave pool program. The commissioners court by rule may require an employee to:

(1) enroll in the county sick leave pool as a condition for eligibility under Section 157.075(a); and

(2) transfer at least one day of accrued sick leave time or, if allowed under Section 157.072(b), accrued vacation leave time earned by the employee as a condition of enrollment.

(b) The commissioners court shall designate a person to administer the county sick leave pool program.

(c) The commissioners court shall determine which injuries and illnesses are classified as catastrophic for purposes of this subchapter. The court shall provide to the administrator a written statement of that classification.

Added by Acts 1993, 73rd Leg., ch. 613, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 2001, 77th Leg., ch. 493, Sec. 1, eff. June 11, 2001.

Sec. 157.074. EMPLOYEE CONTRIBUTION TO SICK LEAVE POOL. (a) To contribute time to the county sick leave pool, an employee must submit an application to the administrator in the form prescribed by the commissioners court.

(b) On approval by the administrator, in a fiscal year the employee may transfer to the county sick leave pool not less than one day or more than five days of accrued sick leave time, or accrued vacation leave time in a county operating under Section 157.072(b), earned by the employee. The administrator shall credit the pool with the amount of time contributed by the employee and shall deduct the same amount of time from the amount to which the employee is

entitled, as if the employee had used the time for personal purposes.

(c) An employee who is terminated or who resigns or retires may donate not more than 10 days of accrued sick leave time or, if allowed under Section 157.072(b), accrued vacation leave time earned by the employee to take effect immediately before the effective date of termination, resignation, or retirement.

Added by Acts 1993, 73rd Leg., ch. 613, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 711, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 612, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 493, Sec. 2, eff. June 11, 2001.

Sec. 157.075. EMPLOYEE WITHDRAWAL FROM SICK LEAVE POOL. (a) An employee is eligible to use time contributed to the county sick leave pool if:

(1) because of a catastrophic injury or illness, the employee has exhausted all the accrued paid leave and compensatory time to which the employee is otherwise entitled; and

(2) the employee is enrolled in the county sick leave pool, if the commissioners court requires enrollment under Section 157.073(a).

(b) An eligible employee must apply to the administrator for permission to use time in the county sick leave pool. If the administrator determines that the employee is eligible, the administrator shall approve the transfer of time from the pool to the employee. The administrator shall credit the time to the employee, and the employee may use the time in the same manner as sick leave earned by the employee in the course of employment.

(c) An eligible employee may not use time in the county sick leave pool in an amount that exceeds the lesser of one-third of the total amount of time in the pool or 180 days. The administrator shall determine the exact amount that an eligible employee may use.

(d) An employee absent on sick leave assigned from the county sick leave pool is treated for all purposes as if the employee were absent on earned sick leave.

(e) The estate of a deceased employee is not entitled to payment for unused sick leave acquired by that employee from the county sick leave pool.

Added by Acts 1993, 73rd Leg., ch. 613, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1997, 75th Leg., ch. 612, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 493, Sec. 3, eff. June 11, 2001; Acts 2001, 77th Leg., ch. 554, Sec. 1, eff. June 11, 2001.

SUBCHAPTER F. GROUP HEALTH AND RELATED BENEFITS

Sec. 157.101. GROUP HEALTH AND RELATED BENEFITS. (a) A commissioners court by rule, including through an intergovernmental risk pool organized under Chapter 172, may provide for group health and related benefits, including medical care, surgical care, hospitalization, and pharmaceutical, life, accident, disability, long-term care, vision, dental, mental health, and substance abuse benefits, for the following persons if their salaries are paid from the funds of the county or funds of a flood control district located entirely in the county, or funds of a hospital district described by Section 281.0475, Health and Safety Code, located entirely in the county, or if they are employees of another governmental entity for which the county is obligated to provide benefits:

(1) deputies, assistants, and other employees of the county, or of the flood control district, or of the hospital district, who work under the commissioners court or its appointees;

(2) county and district officers and their deputies and assistants appointed under Subchapter A, Chapter 151;

(3) employees of a community supervision and corrections department established under Chapter 76, Government Code;

(4) a retired person formerly holding a status listed in Subdivisions (1)-(3); and

(5) the dependents of a person listed in Subdivisions (1)-(4).

(b) The commissioners court may provide the benefits under Subsection (a) through insurance, self-insurance, or a contract with a county-operated hospital, a hospital operated jointly by a municipality and county, or a private hospital.

(c) A rule adopted under this section relating to a person's group health or related benefits coverage must be included in the person's employment contract or otherwise communicated in writing to the person.

(d) A rule adopted under this section may be subject to the approval of the county auditor.

(e) Before adopting a rule under this section, the

commissioners court must provide notice of a hearing about the proposed adoption in accordance with Chapter 551, Government Code. At the hearing, an employee or taxpayer of the county is entitled to appear and protest the adoption of a rule.

(f) A county providing coverage under this section may reinsure its potential liability or purchase stop-loss coverage for any amount of potential liability that is in excess of projected paid losses. A county that reinsures its potential liability or purchases stop-loss coverage for any amount of potential liability must do so from an insurance company admitted to do business in this state that holds a certificate of authority from the Texas Department of Insurance or an intergovernmental risk pool organized under Chapter 172.

Added by Acts 2003, 78th Leg., ch. 630, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 25, eff. September 1, 2005.

Sec. 157.102. GROUP HEALTH AND RELATED BENEFITS FUND. (a) The commissioners court of a county that adopts rules under Section 157.101 may require persons participating in the group health and related benefits plan to contribute toward the payment of the plan. The commissioners court may establish a fund to pay for the group health and related benefits. The fund may take the form of a single nonprofit trust as described by Section 222.002(c)(5)(A), Insurance Code.

(b) A person who elects to participate in any aspect of the group health and related benefits plan and is required to make contributions toward the payment of the plan must authorize contributions to the fund by salary deduction. The authorization must be submitted in writing to the county officer authorized by the commissioners court to administer payroll deductions. The authorization remains in effect as long as the person is required to make contributions toward the payment of the plan. If the amount of the person's required contributions changes after the date the request for deduction is submitted, the county shall notify the person of the change before the change takes effect. The county and any participating flood control district or hospital district may also contribute to the fund.

(c) The fund may be used only for the purposes stated in Subsection (a). Employees who are discharged or who end their employment voluntarily have no vested right to contributions made to the fund. The fund shall continue to be used for the benefit of the remaining employees.

(d) Claims shall be paid from the fund in the same manner as provided by law for the payment of other claims of the county or flood control district.

(e) If a plan established under this section is terminated by the commissioners court, the remaining funds shall be transferred to the county and to any participating flood control district in proportion to the total contributions made by them.

Added by Acts 2003, 78th Leg., ch. 630, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.145, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 26, eff. September 1, 2005.

Sec. 157.103. SUBROGATION. (a) A county that has paid group health and related benefits for a sheriff, deputy sheriff, constable, deputy constable, or other county or precinct law enforcement official is subrogated to the law enforcement official's right of recovery for personal injuries caused by another to the extent of the payments made by the county.

(b) A county may not refuse to pay group health and related benefits on the ground that the law enforcement official has a claim for damages for personal injury.

Added by Acts 2003, 78th Leg., ch. 630, Sec. 1, eff. Sept. 1, 2003.

Sec. 157.104. PAYMENTS FOR CERTAIN HEALTH COVERAGE. A county may purchase and pay premiums for coverages as described by Section 157.006.

Added by Acts 2003, 78th Leg., ch. 630, Sec. 1, eff. Sept. 1, 2003.

Sec. 157.105. APPLICABILITY OF SUBCHAPTER. (a) A county that chooses to provide medical or related benefits may operate under this subchapter or Subchapter A.

(b) A county operating under this subchapter that previously created a fund under Section 157.003 may continue the fund or may terminate the fund and create a fund as provided by Section 157.102.

Added by Acts 2003, 78th Leg., ch. 630, Sec. 1, eff. Sept. 1, 2003.

Sec. 157.106. INSURANCE POOL OR INSURANCE COMPANY NOT CREATED. If a county provides for group health and related benefits, including medical care, surgical care, hospitalization, and pharmaceutical, life, accident, disability, long-term care, vision, dental, mental health, and substance abuse benefits, to persons listed under Section 157.101(a)(1), the county:

(1) has not created an insurance pool with a flood control district, hospital district, or other governmental entity, unless the county enters into a contract under Chapter 172; and

(2) is not an insurance company subject to the Insurance Code or to regulation by the Texas Department of Insurance as an insurance company.

Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 27, eff. September 1, 2005.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 157.901. LEGAL DEFENSE OF EMPLOYEES. (a) A county official or employee sued by any entity, other than the county with which the official or employee serves, for an action arising from the performance of public duty is entitled to be represented by the district attorney of the district in which the county is located, the county attorney, or both.

(b) If additional counsel is necessary or proper in the case of an official or employee provided legal counsel under Subsection (a) or if it reasonably appears that the act complained of may form the basis for the filing of a criminal charge against the official or employee, the official or employee is entitled to have the commissioners court of the county employ and pay private counsel.

(c) A county official or employee is not required to accept the

legal counsel provided in this section.

(d) Repealed by Acts 1989, 71st Leg., ch. 509, Sec. 2, eff. June 14, 1989.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 157.061 and amended by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), (b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 509, Sec. 1, 2, eff. June 14, 1989.

Sec. 157.9015. REPRESENTATION PERMITTED WITHOUT CONFLICT OF INTEREST. (a) It is not a conflict of interest for a district or county attorney under Section 157.901 to defend a county or a county official or employee sued by another county official or employee and also to advise or represent the opposing party on a separate matter arising from the performance of a public duty, regardless of whether the attorney gives the advice or representation to the opposing party before the suit began or while the suit is pending.

(b) If practicable, the district or county attorney shall assign a different attorney to defend the county or a county official or employee under this section than the attorney assigned to advise or represent the opposing party on a separate matter.

(c) This section does not require a district or county attorney to represent a county official or employee who brings a suit against the county or another county official or employee for an action arising from the performance of a public duty.

Added by Acts 1999, 76th Leg., ch. 338, Sec. 1, eff. May 29, 1999.

Sec. 157.902. PERSONNEL RULES APPLYING TO JUVENILE AND PROBATION OFFICERS, COURT REPORTERS, AND COUNTY AUDITOR'S OFFICE IN COUNTIES OF 500,000 OR MORE. (a) This section applies only to counties with a population of 500,000 or more.

(b) The district judges in the county may, by a majority vote at a meeting of which each judge has notice, apply to all juvenile and probation officers appointed under Title 82, Revised Statutes, all court reporters, and the county auditor and all the auditor's assistants in the county the rules that:

(1) are adopted by the commissioners court in the county for other county and district employees; and

(2) relate to hours of work; vacations; holidays; sick leave; deductions for absences; retirement; medical care; hospitalization; and compensation, accident, hospital, and disability insurance.

(c) The district judges must uniformly apply the rules as far as practicable.

(d) If the district judges do not exercise their authority under Subsection (b):

(1) the juvenile board of the county may, to the extent the board determines, apply the rules to the juvenile and probation officers;

(2) the district judges may, to the extent the judges determine by vote of a majority present, apply the rules to the court reporters; and

(3) the county auditor may, to the extent the auditor determines and with the approval of a majority of the district judges, apply the rules to the county auditor and the auditor's assistants.

(e) A decision of the district judges under Subsection (d)(2), must be evidenced by an order entered in the minutes of each judge's court. A certified copy of the order must be given to the commissioners court of the county.

(f) If a juvenile or probation officer, a county auditor, or an assistant to the auditor is jointly employed by two or more subdivisions of government, the rules that are applied to that person may be changed accordingly. To achieve uniform application of the rules, the person may be considered to be employed and paid by only one subdivision, but the expenses of administration and contributions may be prorated to the different employing subdivisions.

(g) This section does not affect any other law that applies to the time, method, and manner of appointment or discharge of a juvenile or probation officer, a court reporter, or the county auditor or an assistant to the auditor or that applies to the number or salaries of those persons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 157.062 by Acts 1989, 71st Leg., ch. 1, Sec. 37(a), eff. Aug. 28, 1989.

Sec. 157.903. AUTHORITY TO INDEMNIFY ELECTED AND APPOINTED COUNTY OFFICERS. The commissioners court of a county by order may provide for the indemnification of an elected or appointed county officer against personal liability for the loss of county funds, or loss of or damage to personal property, incurred by the officer in the performance of official duties if the loss was not the result of the officer's negligence or criminal action.

Added by Acts 1989, 71st Leg., ch. 253, Sec. 1, eff. Aug. 28, 1989.

Sec. 157.9031. AUTHORITY TO REQUIRE REIMBURSEMENT FOR CERTAIN COVERAGE. A self-insuring county or the intergovernmental pool operating under Chapter 119, under policies concerning the provision of coverages adopted by the county's commissioners court or the pool's governing body, may require reimbursement for the provision of punitive damage coverage from a person to whom the county or intergovernmental pool provides coverage.

Added by Acts 2011, 82nd Leg., R.S., Ch. 439 (S.B. 1243), Sec. 2, eff. June 17, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 18, eff. June 17, 2011.

Sec. 157.904. PERSONNEL RECORDS OF CERTAIN SHERIFF'S DEPARTMENTS. (a) This section applies only to a sheriff's department in a county with a population of 3.3 million or more.

(b) In this section, "employee record" means any letter, memorandum, or document maintained by the department that relates to a department employee.

(c) The sheriff or the sheriff's designee shall maintain a permanent personnel file on each department employee. An employee's permanent personnel file must contain any employee record relating to:

(1) a commendation, congratulation, or honor bestowed on the employee by a member of the public or by the department for an action, duty, or activity that relates to the employee's official duties;

(2) any misconduct by the employee if the employee record is made by the department and if the misconduct resulted in

disciplinary action by the department; and

(3) the periodic evaluation of the employee by a supervisor.

(d) An employee record relating to alleged misconduct by an employee may not be placed in the employee's permanent personnel file if the department determines that there is insufficient evidence to sustain the charge of misconduct.

(e) An employee record relating to disciplinary action taken against an employee or to alleged misconduct by the employee that is placed in the employee's permanent personnel file shall be removed from the file if a court or an administrative body of competent jurisdiction, including the sheriff's department civil service commission, determines that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

(f) If a negative record of employee misconduct or other notation of negative impact is included in an employee's permanent personnel file, the sheriff or the sheriff's designee, not later than the 30th day after the date the record is included, shall notify the affected employee that the record has been included in the file. The employee may, not later than the 15th day after the date of receipt of the notification, file a written response to the negative employee record. The sheriff or the sheriff's designee shall place the response in the employee's permanent personnel file with the negative record.

(g) An employee is entitled, on request, to a copy of any employee record placed in the employee's permanent personnel file. The department may charge the employee a reasonable fee not to exceed actual cost for copies provided under this subsection.

(h) The sheriff or the sheriff's designee may not release an employee record or other information contained in an employee's permanent personnel file without first obtaining the employee's written permission, unless the release of the record or information is required by law.

Added by Acts 1991, 72nd Leg., ch. 875, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 69, eff. Sept. 1, 2001.

Sec. 157.906. PAYMENT FOR APPEARANCES OF PEACE OFFICERS EMPLOYED BY COUNTY IN COURT OR ADMINISTRATIVE PROCEEDINGS. (a) A county shall pay a peace officer employed by the county for an appearance as a witness in a criminal suit, a civil suit, or an administrative proceeding in which the county or other political subdivision or government agency is a party in interest if the appearance:

(1) is required;

(2) is made on time off; and

(3) is made by the peace officer in the capacity of a peace officer.

(b) Payment under this section is at the peace officer's regular rate of pay.

(c) Payment under this section may be taxed as court costs in civil suits.

(d) This section does not reduce or prohibit compensation paid in excess of the regular rate of pay.

Added by Acts 2009, 81st Leg., R.S., Ch. 412 (H.B. 1960), Sec. 3, eff. June 19, 2009.

CHAPTER 158. COUNTY CIVIL SERVICE

SUBCHAPTER A. COUNTY CIVIL SERVICE SYSTEM

Sec. 158.001. DEFINITIONS. In this subchapter:

(1) "Commission" means a county civil service commission.

(2) "Employee" means a person who obtains a position by appointment and who is not authorized by statute to perform governmental functions involving an exercise of discretion in the person's own right, unless the person is included by a local civil service rule adopted under the procedures outlined in Section 158.009; or a person included in the coverage of a county civil service system as the result of an election held under Section 158.007. The term does not include a person who holds an office the term of which is limited by the constitution of this state.

(3) "Department" means a county, district, or precinct office or officer, agency, or board that has jurisdiction and control of the performance of employees' official duties. The term includes

a sheriff's department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 881, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 833 (H.B. 831), Sec. 1, eff. June 15, 2007.

Sec. 158.002. ELIGIBLE COUNTIES. A county with a population of 190,000 or more may, in accordance with this subchapter, create a county civil service system to include all the employees of the county who are not exempted from the system by the express terms or judicial interpretations of this subchapter or by the operation of Subchapter B.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 833 (H.B. 831), Sec. 2, eff. June 15, 2007.

Sec. 158.0025. CREATION OF SHERIFF'S DEPARTMENT CIVIL SERVICE SYSTEM IN CERTAIN COUNTIES NOT COVERED BY SUBCHAPTER B. (a) This section applies only to a county with a population of 190,000 or more, other than:

(1) a county that has created a civil service system under this subchapter to include those employees of the county described by Section 158.002; or

(2) a county in which the sheriff's department is eligible to create a civil service system under Subchapter B.

(b) Notwithstanding any other provision of this subchapter, the commissioners court of a county to which this section applies may create a civil service system under this section to include only the employees of the sheriff's department of the county.

(c) A sheriff's department civil service system may be created under this section by an order in accordance with Section 158.003 or by an election in accordance with Section 158.004.

(d) Notwithstanding Section 158.005(b), if an election is ordered under Section 158.004 on the question of the creation of a sheriff's department civil service system under this section, the

commissioners court shall order the ballot at the election to be printed to provide voting for or against the proposition: "Creation of a civil service system for the sheriff's department of the county."

(e) Notwithstanding Section 158.014(c), if an election is called to determine whether a sheriff's department civil service system created under this section will be dissolved under that section, the commissioners court shall order the ballot at the election to be printed to provide voting for or against the proposition: "Dissolution of the civil service system for the sheriff's department of the county."

(f) Sections 158.0065 and 158.007 do not apply to a sheriff's department civil service system created under this section.

(g) Except as otherwise provided by this section, the provisions of this subchapter that would govern the operation of a civil service system created for all employees of a county under this chapter apply to the operation of a civil service system created for the employees of the sheriff's department of a county under this section.

Added by Acts 2005, 79th Leg., Ch. 414 (S.B. 1673), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 833 (H.B. 831), Sec. 3, eff. June 15, 2007.

Sec. 158.003. CREATION BY ORDER. (a) A county civil service system may be created by an order adopted by a majority of the members of the commissioners court of the county.

(b) A copy of an order adopted under this section shall be placed in the minutes of the court's proceedings. The copy of the order is public information.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.004. CREATION BY ELECTION. (a) A county civil service system may be created by approval of the system by a majority of the qualified voters of the county voting at an election called for that purpose.

(b) The commissioners court by order may call an election on the question of the creation of a county civil service system.

(c) The commissioners court shall hold the election called under this section on the first authorized uniform election date prescribed by Chapter 41, Election Code, that allows sufficient time for publication of the notice required by Subsection (e) and for compliance with any other requirements established by law.

(d) The order calling the election must specify the date, time, and place of the election, the form of the ballots, and the name of the presiding judge for each voting place.

(e) In addition to the notice required by Chapter 4, Election Code, the commissioners court must publish in a newspaper of general circulation in the county a substantial copy of the order calling the election. The first publication must be made on or before the 15th day before the date of the election and continue once a week for two consecutive weeks.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.005. BALLOTS AND VOTING AT ELECTION TO CREATE SYSTEM. (a) Each qualified voter of the county is entitled to vote at the election.

(b) The commissioners court shall order the ballot at the election to be printed to provide for voting for or against the proposition: "Creation of a county civil service system."

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.006. RESULT OF ELECTION TO CREATE SYSTEM. (a) The presiding judge of each voting place shall supervise the counting of votes cast at the election.

(b) Within 24 hours after the election, each judge shall certify to the commissioners court the results of the election at the voting place.

(c) A copy of the results of the election shall be filed with the county clerk. The copy on file with the county clerk is a public record.

(d) If the proposition is approved, the commissioners court shall declare the result and by order create the county civil service

system. A copy of the order creating the system shall be placed in the minutes of the court's proceedings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.0065. PETITION TO CREATE BY ORDER OR ELECTION. (a) This section applies only in a county with a population of 290,000 or more that would not be eligible to expand or dissolve the system under Section 158.007.

(b) The commissioners court of a county that receives a petition signed by at least 50 percent of the county's employees requesting the creation of a county civil service system shall vote not later than the 30th day after the date that the court receives the petition whether to create a system by adopting an order under Section 158.003. If the court does not create a system as provided by Section 158.003, the court shall call an election to decide the question as provided by Sections 158.004-158.006.

Added by Acts 1991, 72nd Leg., ch. 548, Sec. 1, eff. June 15, 1991.

Sec. 158.007. EXPANDED COVERAGE OR DISSOLUTION OF SYSTEM IN POPULOUS COUNTIES. (a) In a county that has a population of more than 1.3 million and a civil service system created under this subchapter, the qualified voters of the county, voting at an election called for that purpose, may determine whether the system will be dissolved or expanded to cover the employees, except licensed attorneys, of the office of district or criminal district attorney, the adult and juvenile probation officers and their assistants, personnel in the county auditor's office including all assistant county auditors, and all other employees of the county not included in the coverage of the system and not specifically exempted by Section 158.013 or Subchapter B.

(b) The commissioners court of an eligible county by order may call an election on the question of the expansion or dissolution of a county civil service system as provided by Subsection (a).

(c) Except as otherwise provided by this section, the election must be held in the manner provided for an election to create a county civil service system.

(d) The election must be held on the date of the general

election for state and county officers.

(e) Each qualified voter of the county is entitled to vote at the election.

(f) The commissioners court shall order the ballot at the election to be printed to provide for voting for or against the proposition: "Keeping and expanding the county civil service system."

(g) The commissioners court shall declare the results and, if the proposition is approved by a majority of the qualified voters voting at the election, by order expand the coverage of the system as provided by Subsection (a). If the proposition is not so approved, the commissioners court by order shall dissolve the county civil service system. A copy of the order expanding or dissolving the system shall be placed in the minutes of the court's proceedings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 70, eff. Sept. 1, 2001.

Sec. 158.008. APPOINTMENT OF COMMISSION. (a) If a civil service system is created under this subchapter, the commissioners court shall appoint three persons to serve as the members of the civil service commission that administers the system. The commissioners court shall designate one of the members as chairman of the commission.

(b) Each member of the commission is appointed for a term of two years.

(c) The commissioners court shall fill a vacancy on the commission by appointing a person to serve the unexpired part of the term of the member whose position is vacant.

(d) To be eligible for appointment to the commission, a person must:

(1) be at least 25 years old; and

(2) have resided in the county for the three years immediately preceding the date on which the person's term will begin.

(e) A member of the commissioners court of a county with a population of 2.5 million or more is not prohibited from being appointed to the civil service commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 830, Sec. 1, eff. June 14, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 73, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 136, eff. September 1, 2023.

Sec. 158.009. POWERS OF THE COMMISSION. (a) Except as provided by Section 158.010, the commission shall adopt, publish, and enforce rules regarding:

(1) the definition of a county employee;

(2) selection and classification of county employees;

(3) competitive examinations;

(4) promotions, seniority, and tenure;

(5) layoffs and dismissals;

(6) disciplinary actions;

(7) grievance procedures; and

(8) other matters relating to the selection of county employees and the procedural and substantive rights, advancement, benefits, and working conditions of county employees.

(b) The commission may adopt or use as a guide any civil service law or rule of the United States, this state, or a political subdivision in this state to the extent that the law or rule promotes the purposes of this subchapter and serves the needs of the county.

(c) The commission may not adopt or enforce a rule requiring a county employee to retire because of age. The commission may adopt a rule requiring a county employee, on reaching an age set by the commission, to submit annually to the commission an affidavit from a physician stating that the employee is physically and mentally capable of continuing employment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 881, Sec. 2, eff. Sept. 1, 1989.

Sec. 158.0095. AUTHORITY TO ISSUE SUBPOENAS AND ADMINISTER OATHS. (a) In a proceeding before the commission under this subchapter, the chairman of the commission shall, on request of a person described by Subsection (b):

(1) administer oaths; and

(2) issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material.

(b) The affected employee, the county attorney, or a designee of the employee or county attorney may request the chairman of the commission to subpoena any books, records, documents, papers, accounts, or witnesses that the requestor considers relevant to the case. The request must be made before the 15th day before the date a commission proceeding will be held.

(c) An oath administered under this section has the same force and effect as an oath administered by a magistrate in the magistrate's judicial capacity.

(d) A response to a subpoena duces tecum under this section is considered to have been made under oath.

(e) A person who is subpoenaed commits an offense if the person fails to appear as required by the subpoena. An offense under this section is a misdemeanor punishable by a fine up to $1,000, confinement in the county jail for not more than 30 days, or both the fine and confinement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 851 (H.B. 3788), Sec. 1, eff. June 17, 2011.

Sec. 158.010. EMPLOYMENT BY DEPARTMENTS. (a) The head of each department included in the coverage of a county civil service system may assume responsibility for selecting all persons who are to be employees of that department.

(b) A person employed by a department whose head has assumed responsibility as provided by Subsection (a) serves as a probationary employee during the first six months after selection and may not be included in the coverage of the county civil service system during that six-month period. At the end of the six-month period the person's employment may be terminated or the person may be made a permanent employee by the head of the department.

(c) On becoming a permanent employee, a person comes under the coverage of the county civil service system and is fully entitled to all benefits of and subject to all obligations imposed by the system.

(d) This section does not affect the status of any person who is an employee of a department under a county civil service system on

the date the head of the department assumes responsibility for selecting persons who are to be employees of that department.

(e) The rules adopted by the commission under Section 158.009 relating to the selection and classification of county employees and to competitive examinations for selection apply to the initial hiring of personnel under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 881, Sec. 3, eff. Sept. 1, 1989.

Sec. 158.011. COMPENSATION AND STAFF. The members of the commission serve without compensation, but the commissioners court shall reimburse each member for all necessary expenses incurred in performing the member's duties. The commissioners court shall provide the commission with adequate office space and sufficient funds to employ an adequate staff and to purchase necessary supplies and equipment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.012. APPEALS. (a) A county employee who, on a final decision by the commission, is demoted, suspended, or removed from the employee's position may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(b) An appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(c) If the district court renders judgment for the petitioner, the court may order reinstatement of the employee, payment of back pay, or other appropriate relief.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 68, Sec. 1, eff. Sept. 1, 1997.

Sec. 158.0121. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. In an appeal under Section 158.012, the district court may not substitute its judgment for the judgment of the commission on the weight of the

evidence on questions committed to the commission's discretion but:

(1) may affirm the commission's decision in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the petitioner have been prejudiced because the commission's findings, inferences, conclusions, or decisions are:

(A) in violation of a constitutional or statutory provision;

(B) in excess of the commission's authority;

(C) made through unlawful procedure;

(D) affected by other error of law;

(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) arbitrary or capricious, characterized by abuse of discretion, or clearly an unwarranted exercise of discretion.

Added by Acts 1997, 75th Leg., ch. 68, Sec. 2, eff. Sept. 1, 1997.

Sec. 158.0122. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. (a) After service of the petition on the commission and within the time permitted for filing an answer or within additional time allowed by the court, the commission shall send to the reviewing court the original or a certified copy of the entire record of the proceeding under review. The record shall be filed with the clerk of the court. The record may be shortened by stipulation of all parties to the review proceedings. The court may assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party pays all costs of record preparation. The court may require or permit later corrections or additions to the record.

(b) A party may apply to the court to present additional evidence. If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the commission, the court may order that the additional evidence be taken before the commission on conditions determined by the court. The commission may change its findings and decisions by reason of the additional evidence and shall file the

additional evidence and any changes, new findings, or decisions with the reviewing court.

(c) The party seeking judicial review shall offer, and the reviewing court shall admit, the commission record into evidence as an exhibit.

(d) The court shall conduct the review sitting without a jury and is confined to the commission record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the commission that are not reflected in the record.

Added by Acts 1997, 75th Leg., ch. 68, Sec. 2, eff. Sept. 1, 1997.

Sec. 158.0123. COST OF PREPARING COMMISSION RECORD. (a) The commission may require a party who appeals a final decision under Section 158.012 to pay one-half of the cost of preparation of the original or a certified copy of the record of the commission proceeding that is required to be sent to the reviewing court.

(b) A charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Added by Acts 1997, 75th Leg., ch. 68, Sec. 2, eff. Sept. 1, 1997.

Sec. 158.013. EXEMPTIONS. (a) A person who on August 30, 1971, was an employee of an eligible county under this subchapter may not be required to take a competitive examination or perform any other act to maintain the position held on that date.

(b) This subchapter does not apply to:

(1) assistant district attorneys, investigators, or other employees of a district or criminal district attorney, except as provided by Section 158.007;

(2) the official shorthand reporter of a court; or

(3) an elected or appointed officer under the constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.014. DISSOLUTION OF SYSTEM. (a) If, after a civil service system under this subchapter has been in effect for at least

one year, 10 percent of the qualified voters of the county petition the commissioners court to dissolve the system, the commissioners court shall call an election to determine whether the system will be dissolved.

(b) An election under this section must be held in the manner provided for an election to create a county civil service system.

(c) The ballot for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the county civil service system."

(d) If the proposition is approved by a majority of the qualified voters voting at the election, the commissioners court shall declare the result and by order dissolve the civil service system. A copy of the order dissolving the system shall be placed in the minutes of the court's proceedings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.015. LIMITATION ON ELECTIONS. The commissioners court may not call an election under Section 158.004 or 158.014 for at least two years after the date of any previous election under either of those sections.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. SHERIFF'S DEPARTMENT CIVIL SERVICE SYSTEM IN CERTAIN COUNTIES

Sec. 158.031. DEFINITIONS. In this subchapter:

(1) "Commission" means a sheriff's department civil service commission.

(2) "Department" means a sheriff's department.

(3) "Employee" means an employee of a sheriff's department. The term includes a deputy sheriff.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.032. ELIGIBLE DEPARTMENTS. A sheriff's department in a county with a population of more than 500,000 may, in accordance with this subchapter, create a civil service system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 127, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 92, eff. Sept. 1, 1991.

Sec. 158.033. PETITION AND ELECTION. (a) If at least 20 percent of the employees of an eligible department under this subchapter sign a petition requesting an election under this section and present the petition to the county judge of the employing county, the judge shall order a departmental election on the question of the creation of a sheriff's department civil service system.

(b) The county judge shall hold the election after the 15th day but on or before the 45th day after the date the petition is submitted. The election must be by secret ballot and each employee is entitled to vote at the election.

(c) The ballots for the election shall be printed to provide for voting for or against the proposition: "Creation of a sheriff's department civil service system."

(d) The county judge shall canvass the votes and declare the result.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.034. APPOINTMENT OF COMMISSION. (a) In a county with a population of less than 2.8 million, if a majority of the employees voting at the election approve the creation of a sheriff's department civil service system, the sheriff, commissioners court, and district attorney shall each appoint one person to serve as a member of the civil service commission that administers the system. In a county with a population of 2.8 million or more, if a majority of the employees voting at the election approve the creation of a sheriff's department civil service system, the sheriff, commissioners court, and district attorney shall each appoint two persons to serve as members of the civil service commission that administers the system, and the three appointing authorities shall appoint one member by joint action requiring the affirmative vote of each of the authorities.

(b) The sheriff shall designate one of the members as chairman of the commission.

(c) Each member of the commission is appointed for a term of two years. However, the initial members of the commission in a county with a population of less than 2.8 million shall determine by lot which two of them will serve a term of two years and which one of them will serve a term of one year. In a county with a population of 2.8 million or more:

(1) the initial member appointed jointly under Subsection (a) serves a term of two years; and

(2) the initial members appointed by each individual appointing authority shall determine by lot which one of the two initial members appointed by the appointing authority will serve a term of two years and which initial member appointed by that authority will serve a term of one year.

(d) The entity that appointed a member of the commission whose position becomes vacant shall appoint a person to serve the unexpired part of the member's term.

(e) To be eligible for appointment to the commission, a person must:

(1) be at least 25 years old; and

(2) have resided in the county for the three years immediately preceding the date on which the person's term will begin.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 534, Sec. 1, eff. May 31, 1997.

Sec. 158.035. POWERS OF COMMISSION. (a) The commission shall adopt, publish, and enforce rules regarding:

(1) selection and classification of employees;

(2) competitive examinations;

(3) promotions, seniority, and tenure;

(4) layoffs and dismissals;

(5) disciplinary actions;

(6) grievance procedures;

(7) the rights of employees during an internal investigation; and

(8) other matters relating to the selection of employees and the procedural and substantive rights, advancement, benefits, and working conditions of employees.

(b) The commission may adopt or use as a guide any civil

service law or rule of the United States, this state, or a political subdivision in this state to the extent that the law or rule promotes the purposes of this subchapter and is consistent with the needs and circumstances of the department.

(c) In a county with a population of 2.8 million or more, a panel of three commissioners shall preside at the hearing and vote on the commission's final decision in any case involving termination, demotion, or recovery of back pay. A panel's decision is the final decision of the commission for purposes of Sections 158.0351 and 158.037. The commission shall adopt rules prescribing the commission's procedures for assigning members to a panel. A panel may not include more than one member who was appointed to the commission by the same individual appointing authority.

(d) In rendering a final decision regarding a disciplinary action by the department, the commission may only sustain, overturn, or reduce the disciplinary action. The commission may not enhance a disciplinary action by the department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 218, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 893, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 534, Sec. 2, eff. May 31, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 432 (H.B. 2168), Sec. 1, eff. September 1, 2009.

Sec. 158.0351. PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT. (a) This section applies only to a county with a population of 2.8 million or more.

(b) If an employee is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the sheriff may temporarily suspend the person with or without pay for a period not to exceed 30 days after the date of final disposition of the specified felony indictment or misdemeanor complaint.

(c) The sheriff shall notify the suspended employee in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

(d) An employee indicted for a felony or officially charged

with the commission of a Class A or B misdemeanor who has also been charged by the sheriff with a civil service rule violation directly related to the indictment or complaint may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

(e) If the sheriff temporarily suspends an employee under this section and the employee is not found guilty as charged in the indictment or complaint in a court of competent jurisdiction, the employee may appeal to the commission for recovery of back pay. The commission may:

(1) award all or part of the back pay, even if the employee is a deputy sheriff whose appointment as a deputy was revoked under Section 85.003(c); or

(2) modify or uphold the decision by the sheriff.

(f) Acquittal or dismissal of an indictment or a complaint does not mean that an employee has not violated a civil service rule and does not negate the charges that may have been or may be brought against the employee by the sheriff.

(g) Conviction of a felony is cause for dismissal, and conviction of a Class A or B misdemeanor may be cause for disciplinary action or dismissal.

Added by Acts 1993, 73rd Leg., ch. 893, Sec. 2, eff. Sept. 1, 1993.

Sec. 158.0355. AUTHORITY TO ISSUE SUBPOENAS AND ADMINISTER OATHS. (a) In a proceeding before the commission under this subchapter, the chairman of the commission shall, on request of a person described by Subsection (b):

(1) administer oaths; and

(2) issue subpoenas and subpoenas duces tecum for the attendance of witnesses and for the production of documentary material.

(b) The affected employee, the county attorney, or a designee of the employee or the county attorney may request the chairman of the commission to subpoena any books, records, documents, papers, accounts, or witnesses that the requestor considers relevant to the case. The request must be made before the 10th day before the date a commission proceeding will be held.

(c) An oath administered under this section has the same force

and effect as an oath administered by a magistrate in the magistrate's judicial capacity.

(d) A response to a subpoena duces tecum under this section is considered to have been made under oath.

(e) A person who is subpoenaed commits an offense if the person fails to appear as required by the subpoena. An offense under this section is a misdemeanor punishable by a fine up to $1,000, confinement in the county jail for not more than 30 days, or both the fine and confinement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 851 (H.B. 3788), Sec. 2, eff. June 17, 2011.

Sec. 158.036. COMPENSATION AND STAFF. The members of the commission serve without compensation, but the commissioners court shall reimburse each member for actual and necessary expenses incurred in performing the member's duties. The commissioners court shall provide the commission with adequate office space and sufficient funds to employ an adequate staff and to purchase necessary supplies and equipment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.037. APPEALS. (a) An employee who, on a final decision by the commission, is demoted, suspended, or removed from a position may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(b) An appeal under this section is under the substantial evidence rule, and the judgment of the district court is appealable as in other civil cases.

(c) If the district court renders judgment for the petitioner, the court may order reinstatement of the employee, payment of back pay, or other appropriate relief.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 68, Sec. 3, eff. Sept. 1, 1997.

Sec. 158.0371. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE. (a)

The same standards described by Section 158.0121 apply to an appeal under Section 158.037.

(b) The procedures for review under Section 158.037 are the same as provided by Section 158.0122.

(c) The commission may require a party who appeals a decision under Section 158.037 to pay the cost of preparing the commission record in the same manner provided by Section 158.0123.

Added by Acts 1997, 75th Leg., ch. 68, Sec. 4, eff. Sept. 1, 1997.

Sec. 158.038. EXEMPTIONS. (a) A person who is an employee of a department on the date that a civil service system is adopted under this subchapter in the department may not be required to take a competitive examination or perform any other act under this subchapter to maintain the person's employment.

(b) The sheriff of a county with a population of 3.3 million or less may designate as exempt from the civil service system:

(1) the position of chief deputy;

(2) four positions of major deputy;

(3) one or more positions in the office of departmental legal counsel; and

(4) additional positions in the department; provided, however, that the sheriff may not designate as exempt a total of more than 10 positions.

(c) The sheriff of a county with a population of more than 3.3 million may designate as exempt from the civil service system:

(1) the position of chief deputy;

(2) one or more positions in the office of departmental legal counsel; and

(3) additional positions in the department, not to exceed 25 in number, that have been determined by the civil service commission to be administrative or supervisory positions; provided, however, that the sheriff may not designate as exempt any position in the deputy classifications of captain or below. The designation of any such additional exempt position by the sheriff shall not diminish the number of positions within the deputy classifications of captain or below.

(d) At the time a new sheriff takes office, an employee holding an exempt position may be transferred to the nonexempt position held

by the employee immediately before being promoted to an exempt position. A person who was not an officer in the department when appointed to an exempt position may be transferred only to an entry level position in accordance with the system's civil service rules.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 810, Sec. 1, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 71, eff. Sept. 1, 2001.

Sec. 158.039. DISSOLUTION OF SYSTEM. (a) If, after a civil service system under this subchapter has been in effect in a department for at least one year, 20 percent of the employees of the department petition the county judge to dissolve the system, the judge shall order a departmental election on the question of the dissolution of the department's civil service system.

(b) The county judge shall hold the election after the 15th day but on or before the 45th day after the date the petition is submitted. The election must be by secret ballot and each employee is entitled to vote at the election.

(c) The ballots for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the sheriff's department civil service system."

(d) The county judge shall canvass the votes and declare the result.

(e) If the proposition is approved by a majority of the employees voting at the election, the county judge shall declare the sheriff's department civil service system dissolved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.040. EXCLUSIVITY. A civil service system created under this subchapter and in effect applies to the department to the exclusion of a civil service system in that county created under Subchapter A or another law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 158.041. ILLNESS OR INJURY LEAVE OF ABSENCE. (a) A

county shall provide to an employee a leave of absence for an illness or injury related to the employee's activities performed in the line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the leave shall continue for at least one year.

(b) At the end of the one-year period, the commissioners court of the county may extend the line of duty illness or injury leave at full or reduced pay. If the employee's leave is not extended or the employee's salary is reduced below 60 percent of the employee's regular monthly salary, and the employee is a member of a pension fund, the employee may retire on pension until the employee is able to return to duty.

(c) If pension benefits are not available to an employee who is temporarily disabled by a line of duty injury or illness and if the year at full pay and any extensions granted by the commissioners court have expired, the employee may use accumulated sick leave, vacation time, and other accumulated time before the employee is placed on temporary leave.

(d) If an employee is temporarily disabled by an injury or illness that is not related to activities performed in the employee's line of duty, the employee may use all sick leave, vacation time, and other accumulated time before the employee is placed on temporary leave.

(e) After recovery from a temporary disability, an employee shall be reinstated at the same rank and with the same seniority the employee had before going on temporary leave.

(f) While an employee who is temporarily disabled is on leave, another employee may voluntarily do the work of the employee who is temporarily disabled or donate leave time to maintain the salary for the employee who is temporarily disabled until the temporarily disabled employee returns to duty.

Added by Acts 2023, 88th Leg., R.S., Ch. 488 (H.B. 995), Sec. 1, eff. June 10, 2023.

Sec. 158.042. REAPPOINTMENT AFTER RECOVERY FROM DISABILITY. With the commission's approval and if otherwise qualified, an employee who has been certified by a physician selected by a pension fund as having recovered from a disability for which the employee has

been receiving a monthly disability pension is eligible for reappointment to the classified position that the employee held on the date the employee qualified for the monthly disability pension.

Added by Acts 2023, 88th Leg., R.S., Ch. 488 (H.B. 995), Sec. 1, eff. June 10, 2023.

CHAPTER 159. FINANCIAL DISCLOSURE BY COUNTY OFFICERS AND EMPLOYEES

SUBCHAPTER A. FINANCIAL DISCLOSURE BY CERTAIN COUNTY OFFICERS

Sec. 159.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to:

(1) a county officer or candidate for a county office of a county with a population of 100,000 or more; or

(2) a justice of the peace or a candidate for the office of justice of the peace of a county with a population of 125,000 or more.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 480 (H.B. 2468), Sec. 1, eff. September 1, 2007.

Sec. 159.002. DEFINITION. In this subchapter, "county officer" means a county judge, county commissioner, or county attorney.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.

Sec. 159.003. FINANCIAL STATEMENT REQUIRED. (a) A county officer, candidate for a county office, justice of the peace, or candidate for the office of justice of the peace shall file a financial statement as required by this subchapter.

(b) The statement must:

(1) be filed with the county clerk of the county in which the officer, justice, or candidate resides; and

(2) comply with Sections 572.022 and 572.023, Government Code, and with any order of the commissioners court of the county

requiring additional disclosures.

(c) The statement may be filed with the county clerk by electronic mail. The county clerk may prescribe the manner and format for filing by electronic mail.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 480 (H.B. 2468), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 76.08, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1172 (S.B. 692), Sec. 1, eff. September 1, 2013.

Sec. 159.004. FILING DATES; TIMELINESS OF FILING. (a) A county officer or justice of the peace shall file the financial statement required by this subchapter within the time prescribed by Section 572.026, Government Code. A candidate for office as a county officer or justice of the peace shall file the financial statement required by this subchapter within the time prescribed by Section 572.027, Government Code.

(b) Except as provided in Subsection (e), the timeliness of the filing is governed by Section 572.029, Government Code.

(c) A county officer or justice of the peace may request the county clerk to grant an extension of time of not more than 60 days for filing the statement. The county clerk shall grant the request if it is received before the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. The county clerk may not grant more than one extension to a person in one year except for good cause shown.

(d) The county clerk may not grant an extension to a candidate for office as a county officer or justice of the peace.

(e) A person is considered to have timely filed a financial statement under this subchapter if:

(1) the statement is personally delivered not later than 5 p.m. of the last day for filing the statement; or

(2) the county clerk with whom the statement is required to be filed has adopted rules and procedures to provide for the

electronic filing of the statement and the statement is electronically filed in accordance with those rules and procedures not later than midnight of the last day for filing the statement.

(f) A county clerk may adopt rules and procedures under this section relating only to the manner in which a person must electronically file a financial statement and the required format of an electronically filed statement.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 480 (H.B. 2468), Sec. 3, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 894 (H.B. 1035), Sec. 3, eff. September 1, 2013.

Sec. 159.005. PREPARATION OF FORMS. (a) The county clerk may:

(1) design a form to be used for filing the financial statement required by this subchapter; or

(2) require that a form designed by the Texas Ethics Commission under Chapter 572, Government Code, be used for filing the financial statement.

(b) The county clerk shall mail or, at the request of the person required to file under this subchapter, send by electronic mail, the form to each person required to file under this subchapter within the time prescribed by Section 572.030(c), Government Code.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 969 (H.B. 3602), Sec. 1, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1172 (S.B. 692), Sec. 2, eff. September 1, 2013.

Sec. 159.006. DUPLICATE STATEMENTS. If a person has filed a financial statement under one provision of this subchapter covering the preceding calendar year, the person is not required to file a financial statement required under another provision of this

subchapter to cover that same year if, before the deadline for filing the statement under the other provision, the person notifies the county clerk in writing that the person has already filed a financial statement under this subchapter to cover that year.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.

Sec. 159.007. PUBLIC ACCESS TO STATEMENTS. (a) Financial statements filed under this subchapter are public records. The county clerk shall maintain the statements in separate alphabetical files and in a manner that is accessible to the public during regular office hours.

(b) During the one-year period following the date of filing of a financial statement, each time a person, other than the county clerk or an employee of the county clerk who is acting on official business, requests to see the financial statement, the county clerk shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The county clerk shall retain that statement in the file for one year after the date the requested financial statement is filed.

(c) The county clerk may, and on notification from a former county officer, justice of the peace, or candidate shall, destroy any financial statements filed by the officer, justice, or candidate two years after the date the person ceases to be an officer, justice, or candidate, as applicable.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 480 (H.B. 2468), Sec. 4, eff. September 1, 2007.

Sec. 159.0071. NOTIFICATION TO PROSECUTING ATTORNEY. The county clerk of each county in which a person is required to file a financial statement under this chapter shall maintain a list of the county officers, candidates for county office, justices of the peace, and candidates for the office of justice of the peace required to file the financial statement. Not later than the 10th day after each

applicable filing deadline, the county clerk shall provide to the county attorney or criminal district attorney a copy of the list showing for each county officer, candidate for county office, justice of the peace, and candidate for justice of the peace:

(1) whether the officer, justice, or candidate timely filed a financial statement as required by this subchapter;

(2) whether the officer, justice, or candidate timely requested and was granted an extension of time to file as provided for by Section 159.004 and the new due date for each such officer, justice, or candidate; or

(3) whether the officer, justice, or candidate did not timely file a financial statement or receive an extension of time.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.02, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 480 (H.B. 2468), Sec. 5, eff. September 1, 2007.

Sec. 159.008. CRIMINAL PENALTY. (a) A county officer, candidate for county office, justice of the peace, or candidate for the office of justice of the peace commits an offense if the officer, justice, or candidate knowingly fails to file a financial statement as required by this subchapter.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the officer, justice, or candidate did not receive copies of the financial statement form required to be mailed to the officer, justice, or candidate by this subchapter.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 480 (H.B. 2468), Sec. 6, eff. September 1, 2007.

Sec. 159.009. VENUE. An offense under this subchapter, including perjury, may be prosecuted in any county in which it may be prosecuted under the Code of Criminal Procedure.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.

Sec. 159.010. CIVIL PENALTY. (a) A person who determines that a person required to file a financial statement under this subchapter has failed to do so may notify in writing:

(1) the county attorney or criminal district attorney; or

(2) the district attorney, if the person required to file the statement is the county attorney.

(b) On receipt of a written notice under Subsection (a), the county attorney, district attorney, or criminal district attorney shall determine from any available evidence whether the person to whom the notice relates has failed to file a statement. On making that determination, the county attorney, district attorney, or criminal district attorney shall immediately mail by certified mail a notice of the determination to the person responsible for filing the statement.

(c) If the person responsible for filing the statement fails to file the statement before the 30th day after the person receives the notice under Subsection (b), the person is civilly liable to the county for an amount not to exceed $1,000.

(d) A penalty paid under this section shall be deposited to the credit of the general fund of the county.

(e) This section is cumulative of any other available sanctions for late filings of statements.

Amended by Acts 1997, 75th Leg., ch. 1134, Sec. 18, eff. Sept. 1, 1997.

SUBCHAPTER B. FINANCIAL DISCLOSURE BY OTHER COUNTY OFFICERS AND EMPLOYEES

Sec. 159.031. COUNTY COVERED BY SUBCHAPTER. This subchapter applies only to a county with a population of 125,000 or more.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 38(a), eff. Aug. 28, 1989. Renumbered from Sec. 159.001 and amended by Acts 1991, 72nd Leg., ch. 304, Sec. 7.01, eff. Jan. 1, 1992.

Sec. 159.032. DEFINITIONS. In this subchapter:

(1) "County officer" means a sheriff, county tax assessor-collector, county clerk, district clerk, county treasurer, county auditor, or county purchasing agent. The term does not include a county officer as defined by Section 159.002.

(2) "Precinct officer" means a constable.

(3) "County judicial officer" means a justice of the peace or a master, magistrate, or referee appointed by a justice of the peace.

(4) "County employee" does not include a person covered by Subdivision (1), (2), or (3).

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989. Renumbered from Sec. 159.002 and amended by Acts 1991, 72nd Leg., ch. 304, Sec. 7.01, eff. Jan. 1, 1992. Amended by Acts 1995, 74th Leg., ch. 763, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 13.05, eff. Sept. 1, 1999.

Sec. 159.033. FINANCIAL DISCLOSURE REPORTING SYSTEM. (a) The commissioners court of the county may adopt by order a financial disclosure reporting system for county officers, precinct officers, county judicial officers, candidates for those offices, and county employees.

(b) The commissioners court shall prescribe the items required to be reported and the times the report is due.

(c) If reporting is required, the commissioners court may restrict the reporting requirement to a limited part of county employees if all employees with similar jobs are required to report.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989. Renumbered from Sec. 159.003 and amended by Acts 1991, 72nd Leg., ch. 304, Sec. 7.01, eff. Jan. 1, 1992.

Sec. 159.034. FILING REQUIREMENT. (a) The commissioners court may require the report to be filed with the clerk of the commissioners court, the county auditor, or any other county officer. However, the commissioners court may require the report to be filed with the county clerk or other elected county officer only if the county clerk or elected county officer consents to the imposition of

that duty.

(b) The commissioners court may not require records filed under this subchapter to be maintained for more than one year and may require the authority with whom the records are filed to destroy the records after one year.

(c) A person required by order of the commissioners court to file a report under this subchapter is considered to have complied with the order if the person files with the authority prescribed by the commissioners court a report that complies with the requirements of Chapter 572, Government Code.

(d) A report filed under this subchapter may be filed by electronic mail. The authority with whom the report is filed may prescribe the manner and format for filing by electronic mail.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989. Renumbered from Sec. 159.004 and amended by Acts 1991, 72nd Leg., ch. 304, Sec. 7.01, eff. Jan. 1, 1992. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(38), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 568 (S.B. 2072), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1172 (S.B. 692), Sec. 3, eff. September 1, 2013.

Sec. 159.0341. TIMELINESS OF FILING. (a) A person is considered to have timely filed a report under this subchapter if:

(1) the report is filed in accordance with Section 572.029, Government Code;

(2) the report is personally delivered not later than 5 p.m. of the last day for filing the report; or

(3) the officer with whom the report is required to be filed has adopted rules and procedures to provide for the electronic filing of the report and the report is electronically filed in accordance with those rules and procedures not later than midnight of the last day for filing the report.

(b) An officer with whom a report is required to be filed under this subchapter may adopt rules and procedures under this section relating only to the manner in which a person must electronically file a report and the required format of an electronically filed

report.

Added by Acts 2013, 83rd Leg., R.S., Ch. 894 (H.B. 1035), Sec. 4, eff. September 1, 2013.

Sec. 159.035. CIVIL PENALTY. (a) If a report is determined to be late, the person responsible for filing the report is civilly liable to the county for $100. The county attorney or the district or criminal district attorney with civil jurisdiction may not initiate suit for the penalty until the 10th day after the date a notice concerning the late report is mailed to the person. If the report is filed and the penalty is paid before the 10th day after the date of the mailing, the authority with whom the report is filed shall notify the county attorney or the district or criminal district attorney, and the civil suit under this section may not be initiated.

(b) A penalty paid under this section shall be deposited to the credit of the general fund of the county.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989. Renumbered from Sec. 159.005 and amended by Acts 1991, 72nd Leg., ch. 304, Sec. 7.01, eff. Jan. 1, 1992.

Sec. 159.036. CRIMINAL PENALTY. (a) An officer, candidate, or employee required to file a report by an order adopted under this subchapter commits an offense if the person knowingly fails to file the report as required by the order.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the person has filed the required report and paid a civil penalty as provided by this subchapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989. Renumbered from Sec. 159.006 and amended by Acts 1991, 72nd Leg., ch. 304, Sec. 7.01, eff. Jan. 1, 1992.

SUBCHAPTER C. FINANCIAL DISCLOSURE BY COUNTY JUDICIAL OFFICERS

Sec. 159.051. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Ethics Commission.

(2) "County judicial officer" means the judge of a statutory county court or statutory probate court.

Added by Acts 1995, 74th Leg., ch. 763, Sec. 7, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1154, Sec. 1, eff. Sept. 1, 1997.

Sec. 159.052. FILING REQUIREMENT. (a) A county judicial officer or a candidate for office as a county judicial officer shall file with the county clerk or the commission a financial statement that complies with Sections 572.022 and 572.023, Government Code.

(b) A county judicial officer or candidate who files a financial statement with the commission shall file with the county clerk a document stating that the officer or candidate is filing the financial statement with the commission. The document must be filed by the deadline for filing the financial statement.

(c) A financial statement filed with the county clerk may be filed by electronic mail. The county clerk may prescribe the manner and format for filing by electronic mail under this subsection.

Added by Acts 1995, 74th Leg., ch. 763, Sec. 7, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1154, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1172 (S.B. 692), Sec. 4, eff. September 1, 2013.

Sec. 159.053. FILING DATES; TIMELINESS OF FILING. (a) A county judicial officer shall file the financial statement required by this subchapter within the time prescribed by Section 572.026, Government Code. A candidate for office as a county judicial officer shall file the financial statement required by this subchapter within the time prescribed by Section 572.027, Government Code.

(b) Except as provided in Subsection (c), the timeliness of the filing is governed by Section 572.029, Government Code.

(c) A person is considered to have timely filed a financial statement under this subchapter if:

(1) the statement is personally delivered not later than 5 p.m. of the last day for filing the statement; or

(2) the county clerk with whom the statement is required to be filed has adopted rules and procedures to provide for the electronic filing of the statement and the statement is electronically filed in accordance with those rules and procedures not later than midnight of the last day for filing the statement.

Added by Acts 1995, 74th Leg., ch. 763, Sec. 7, eff. Sept. 1, 1995.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 894 (H.B. 1035), Sec. 5, eff. September 1, 2013.

Sec. 159.054. PREPARATION OF FORMS. (a) The county clerk may:

(1) design a form to be used for filing the financial statement required by this subchapter; or

(2) require that a form designed by the commission under Chapter 572, Government Code, be used for filing the financial statement.

(b) The county clerk shall make paper and electronic copies of the form available to each person required to file under this subchapter within the time prescribed by Section 572.030(c), Government Code.

Added by Acts 1995, 74th Leg., ch. 763, Sec. 7, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1154, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1172 (S.B. 692), Sec. 5, eff. September 1, 2013.

Sec. 159.055. PUBLIC ACCESS TO STATEMENTS AND RELATED RECORDS. (a) Except as provided by Subsection (b), a financial statement filed under this subchapter or a document filed under Section 159.052(b) is a public record. The county clerk or the commission shall maintain the financial statements or documents in a manner that is accessible to the public during regular business hours.

(b) The county clerk or the commission shall remove the officer's or candidate's home address and the names of the officer's or candidate's dependent children from the officer's or candidate's financial statement and any county or commission record derived from

the financial statement before the statement or record is made available to a member of the public.

(c) Until the first anniversary of the date a financial statement is filed, each time a person requests to see the financial statement, excluding the county clerk or an employee of the county clerk or the commission, acting on official business, the county clerk or the commission shall place in the file a statement of the person's name and address, whom the person represents, and the date of the request. The county clerk or the commission shall maintain that statement in the file until the first anniversary of the date the financial statement is filed.

(d) After the second anniversary of the date a person ceases to be a county judicial officer, the county clerk or the commission may and on notification from the former officer shall destroy each financial statement filed by the officer.

Added by Acts 1995, 74th Leg., ch. 763, Sec. 7, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1154, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 137 (H.B. 1872), Sec. 1, eff. May 23, 2019.

Acts 2019, 86th Leg., R.S., Ch. 137 (H.B. 1872), Sec. 2, eff. May 23, 2019.

Sec. 159.056. FAILURE TO FILE; CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) is a county judicial officer or a candidate for office as a county judicial officer; and

(2) knowingly fails to file a financial statement as required by this subchapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 763, Sec. 7, eff. Sept. 1, 1995.

SUBCHAPTER D. PROTECTION FOR JUDICIAL OFFICERS

Sec. 159.071. OMISSION OF ADDRESS. (a) In this section:

(1) "County attorney" means a county attorney whose jurisdiction includes any criminal law or child protective services

matter.

(2) "Family member" has the meaning assigned by Section 31.006, Finance Code.

(3) "State judge" has the meaning assigned by Section 1.005, Election Code.

(b) On receiving notice from the Office of Court Administration of the Texas Judicial System of a county attorney's or state judge's qualifications for office or on receipt of a written request from a county attorney, state judge, spouse of a county attorney, family member of a state judge, or candidate for the office of county attorney or state judge, the county clerk shall remove or redact the residence address of the county attorney, state judge, spouse of a county attorney, family member of a state judge, or candidate for the office of county attorney or state judge from any report filed under this chapter by the county attorney, state judge, or candidate before the statement is made available to a member of the public.

Added by Acts 2019, 86th Leg., R.S., Ch. 518 (S.B. 489), Sec. 4, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 383 (S.B. 1134), Sec. 12, eff. September 1, 2021.

CHAPTER 160. GRIEVANCE PROCEDURE FOR COUNTY EMPLOYEES

Sec. 160.001. POLICY. The purpose of this chapter is to provide reasonable, standardized grievance procedures for certain counties and their employees because:

(1) it is the policy of this state that the right of public employees to present, individually or through a representative that does not claim the right to strike, grievances concerning their wages, hours of work, or conditions of work should continue unimpaired; and

(2) the application of that policy creates a need for reasonable, standardized procedures for certain populous counties and their employees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989.

Sec. 160.002. COUNTIES AND EMPLOYEES AFFECTED. This chapter

applies only to a county with a population of more than 3.3 million and its employees, including but not limited to the employees of road and bridge districts, flood control districts, and juvenile probation departments in the county. However, this chapter does not apply to the employees of a sheriff's department.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989.
Amended by Acts 2003, 78th Leg., ch. 632, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 74, eff. September 1, 2011.

Sec. 160.003. DEFINITION. In this chapter, "grievance" means a claim by an employee that the employee was adversely affected by a violation, misinterpretation, misapplication, or disparity in the application of a specific law, ordinance, resolution, written or unwritten policy, or rule regarding wages, hours of work, or conditions of work.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989.

Sec. 160.004. PROCEDURE IN GENERAL. A grievance must be presented and adjusted in accordance with the grievance procedures prescribed by this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989.

Sec. 160.005. STANDARDIZED GRIEVANCE PROCEDURE. (a) The commissioners court of the county shall enact orders to provide for:

(1) filing of written grievances;

(2) written responses to the grievance allegations;

(3) procedures for appeal to an appointed county grievance resolutions committee;

(4) further appeal to the commissioners court;

(5) presentation of grievances by an employee's requested representative;

(6) reasonable leave with pay for the presentation of grievances; and

(7) other necessary procedures to permit effective implementation of this chapter.

(b) The orders and procedures shall apply equally to all employees of the county, including employees of independent elected officials, and shall provide for reasonable timetables for filing and responding to grievances.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989.

Sec. 160.006. NO RETALIATION OR REPRISAL. (a) An employee may not be made subject to retaliation, reprisal, or discrimination on account of having exercised any right or participated in any procedure established by this chapter. A supervisor or management official may not be made subject to retaliation, reprisal, or discrimination because of any grievance adjustment offered under this chapter to an employee with a grievance or because of testifying on any employee's behalf during a grievance procedure under this chapter.

(b) A district court of appropriate venue may enjoin a violation of this section. The court may order, in addition to other relief, the mandatory reinstatement and the payment of back pay for individuals discharged, suspended, or demoted in violation of this section.

(c) An individual suffering retaliation, reprisal, or discrimination in violation of this section is entitled to reasonable attorney's fees as a result of successful court action regarding the retaliation, reprisal, or discrimination.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989.

Sec. 160.007. PROSPECTIVE APPLICATION OF CHAPTER AND AMENDED ORDER. (a) This Act applies only to a grievance based on events that occur on or after June 20, 1987.

(b) If the commissioners court amends an order adopted under this chapter, the amended order does not apply to a grievance alleged to have occurred before the date of the amended order.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 39(a), eff. Aug. 28, 1989.

CHAPTER 161. COUNTY ETHICS COMMISSION IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. APPLICABILITY OF CHAPTER. This chapter applies only to:

(1) a county that:

(A) contains a municipality that has a population of 500,000 or more;

(B) is located on the international border; and

(C) before September 1, 2009, had a county ethics board appointed by the commissioners court;

(2) a county that:

(A) has a population of 425,000 or more;

(B) is adjacent to a county with a population of 3.3 million or more; and

(C) contains a portion of the San Jacinto River; and

(3) a county that has a population of less than 50,000 that is adjacent to a county with a population of more than 3.3 million.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 75, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1070 (H.B. 1495), Sec. 4, eff. June 14, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 137, eff. September 1, 2023.

Sec. 161.002. DEFINITIONS. In this chapter:

(1) "Commission" means a county ethics commission created under this chapter.

(2) "Commission staff" means county employees assigned to provide administrative support to the commission.

(3) "Communicates directly with" has the meaning assigned by Section 305.002, Government Code.

(4) "County affiliate" means a person described and determined by order of the commissioners court on recommendation of the commission. As determined by the commissioners court, the term includes:

(A) any person whose goods and services are purchased under the terms of a purchase order or contractual agreement with the county; and

(B) as determined by the county, any other persons doing business with the county.

(5) "County employee" means a person employed by the county or a county officer and includes a person employed in the judicial branch of the county government who is not subject to the Code of Judicial Conduct. The term does not include a county officer.

(6) "County office" means a position held by a county officer.

(7) "County officer" means a county judge, county commissioner, county attorney, sheriff, county tax assessor-collector, county clerk, district clerk, county treasurer, county auditor, county purchasing agent, and constable.

(8) "County public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for or assumed the duties of office:

(A) a county officer or county employee;

(B) a person appointed by the commissioners court or a county officer to a position on one of the following, whether the position is compensated or not:

(i) an authority, board, bureau, commission, committee, council, department, district, division, or office of the county; or

(ii) a multi-jurisdictional board;

(C) an attorney at law or notary public when participating in the performance of a governmental function;

(D) a candidate for nomination or election to an elected county office; or

(E) a person who is performing a governmental function under a claim of right although the person is not legally qualified or authorized to do so.

(9) "Lobbyist" means a person who, for compensation in excess of an amount established by the commission, communicates directly with a county officer or county employee to influence official action. The term does not include an attorney who communicates directly with a county officer or county employee to the extent that such communication relates to the attorney's

representation of a party in a civil or criminal proceeding.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.003. CONFLICT WITH CIVIL SERVICE AGREEMENT. (a) This chapter may not be construed to affect:

(1) the terms of an agreement authorized by Chapter 174 between the county and county employees; or

(2) any provision of a civil service statute applicable to a county employee.

(b) If an agreement authorized by Chapter 174 or a civil service statute applicable to a county employee conflicts with this chapter or an ethics code adopted or enforced under this chapter, the agreement or civil service statute prevails.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. CREATION OF COMMISSION; APPOINTMENT OF COMMISSION MEMBERS

Sec. 161.051. CREATION OF COMMISSION BY ORDER. (a) The commissioners court of a county, by an order adopted by a majority of the court's full membership, may create a county ethics commission.

(b) A copy of an order adopted under this section shall be placed in the minutes of the court's proceedings. The copy of the order is public information.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.052. CREATION OF COMMISSION BY ELECTION. (a) A county ethics commission may be created by approval of the system by a majority of the qualified voters of the county voting at an election called for that purpose.

(b) The commissioners court by order may call an election on the question of the creation of a county ethics commission.

(c) The commissioners court shall hold the election called

under this section on the first authorized uniform election date prescribed by Chapter 41, Election Code, that allows sufficient time for publication of the notice required by Subsection (d) and for compliance with any other requirements established by law.

(d) In addition to the notice required by Chapter 4, Election Code, the commissioners court must publish in a newspaper of general circulation in the county, and on the home page of the county's Internet website, a substantial copy of the order calling the election. The first newspaper publication must be made on or before the 15th day before the date of the election and continue once a week for two consecutive weeks, and the notice on the county's Internet website shall remain on the home page each day beginning not later than the 16th day before the election and ending on the date of the election.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.053. BALLOT. The commissioners court shall order the ballot at the election to be printed to provide for voting for or against the proposition: "Creation of a county ethics commission."

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.054. RESULT OF ELECTION. If the proposition is approved, the commissioners court shall declare the result and by order create the county ethics commission. A copy of the order creating the commission shall be placed in the minutes of the court's proceedings.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.055. APPOINTMENT OF COMMISSION. (a) The commission is composed of:

(1) five members, each of whom is appointed by the county judge or a county commissioner; and

(2) five members appointed by the commissioners court, with one member appointed from a list of nominees submitted by each of the following entities:

(A) the county civil service commission;

(B) a bar association in the county;

(C) the sheriff's civil service commission;

(D) a dispute resolution center in the county that is affiliated with a council of governments; and

(E) a human resources management association in the county.

(a-1) The commissioners court shall designate the entities described by Subsections (a)(2)(B), (D), and (E) that may submit nominees for membership on the commission. If a designated entity does not wish to submit nominees, the commissioners court shall select a similar entity that has experience with grievance or mediation structures or processes.

(b) Not later than the 60th day after the date of the order creating the commission as provided in Section 161.051 or Section 161.054:

(1) the county judge and each county commissioner shall each appoint one member of the commission; and

(2) each entity described by Subsection (a)(2) or alternate entity designated under Subsection (a-1) shall deliver to the commissioners court the entity's nominees for membership on the commission.

(c) The commissioners court shall set the date for the first meeting of the initial members. The first meeting must be set not earlier than the 60th day after the date of the order creating the commission and not later than the 90th day after the date of that order.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.056. ELIGIBILITY. (a) To be eligible for appointment to the commission, a person must:

(1) be at least 18 years old;

(2) be a property taxpayer in the county; and

(3) have resided in the county for the two years

immediately preceding the date on which the person's term will begin.

(b) A person is not eligible for appointment to the commission if the person is:

(1) an elected officer;

(2) a county employee;

(3) a county affiliate;

(4) a person employed as a lobbyist;

(5) a person convicted of a misdemeanor involving moral turpitude or a felony; or

(6) a person who is delinquent in payment of local, state, or federal taxes.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.057. TERMS. (a) Members of the commission serve terms of two years. Members appointed as provided by Section 161.055(a)(1) serve terms beginning on February 1 of each odd-numbered year. Members appointed as provided by Section 161.055(a)(2) serve terms beginning on February 1 of each even-numbered year.

(b) A member may serve more than one term.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 1, eff. September 1, 2011.

Sec. 161.058. VACANCIES. (a) A vacancy on the commission shall be filled for the remainder of the unexpired term as follows:

(1) if the vacancy involves a member appointed by the county judge or a county commissioner, the vacancy is filled, except as provided by Subsection (b), by appointment of that officer or the officer's successor in office; or

(2) if the vacancy involves a member appointed under Section 161.055(a)(2), the vacancy is filled as provided by that section for an appointment to a full term.

(b) If the county judge or county commissioner, as applicable,

does not fill the vacancy before the 60th day after the date the position becomes vacant, the commission may fill the vacancy by a majority vote of the remaining members.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.059. MEETINGS. (a) The commission shall meet on a regular basis.

(b) The commission is a governmental body for purposes of Chapter 551, Government Code.

(c) Except as otherwise provided by this chapter, a majority of the commission constitutes a quorum.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.0591. CHAIR. (a) The position of chair is selected from the commission members by a majority vote of the commission members. The chair serves a term of six months.

(b) The member serving as chair may not vote on a matter before the commission except to break a tie vote.

(c) A commission member may decline to serve as chair.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 2, eff. September 1, 2011.

Sec. 161.060. REMOVAL OF COMMISSION MEMBER. A member of the commission is a county officer described by Section 87.012(15) and may be removed as provided by Chapter 87 if, after a trial, the jury finds good cause for removal, including:

(1) failure to pay local, state, or federal taxes when due;
(2) violation of the ethics code adopted by the commission;
(3) conviction of a felony or misdemeanor;
(4) excessive absenteeism as determined by the commission;

and

(5) official misconduct.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.061. LEGAL REPRESENTATION. The county attorney, or district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the commission in all legal matters.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

SUBCHAPTER C. POWERS

Sec. 161.101. GENERAL POWERS. (a) The commission shall adopt, publish, and enforce an ethics code governing county public servants.

(b) The commission may adopt or use as a guide any ethics law or rule of the United States, this state, or a political subdivision in this state to the extent that the law or rule promotes the purposes of this chapter and serves the needs of the county. For purposes of Section 161.002(9), in determining the applicable amount of compensation of a person who communicates directly with a county officer or employee to influence official action and engages in such communication as part of the person's regular employment, the commission shall adopt rules that are substantially similar to the rules or interpretations of the Texas Ethics Commission under Chapter 305, Government Code, to calculate the compensation.

(c) The commission may adopt bylaws, rules, forms, policies, or procedures to assist in the administration of the commission's duties under this chapter. The commission may be guided by Robert's Rules of Order to the extent that it does not conflict with the constitution and laws of the United States and this state or conflict with other guidelines adopted by the commission.

(d) The commission shall be assigned staff by the county and provided access to county resources to assist in its duties.

(e) The commission shall develop and implement policies that provide the public with information on the commission and the ethics code.

(f) The commission shall enforce the provisions of the ethics code by issuing appropriate orders or recommendations or by imposing appropriate penalties.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.102. ADVISORY OPINIONS. On the request of any person covered by the ethics code adopted by the commission, the commission may issue a written ethics advisory opinion regarding the application of the ethics code to a specified existing or hypothetical factual situation. The commission may not issue an opinion that includes the name of any person who may be affected by the opinion. The name of the person requesting the opinion shall be deemed confidential.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.103. PUBLIC INTEREST INFORMATION. (a) The commission shall develop plain-language materials as described by this section. The commission shall post the information on the county's Internet website and make the information otherwise available to the public.

(b) The materials must include:

(1) a description of:

(A) the commission's responsibilities;

(B) the types of conduct that constitute a violation of the ethics code adopted by the commission;

(C) the types of sanctions the commission may impose;

(D) the commission's policies and procedures relating to complaint investigation and resolution; and

(E) the duties of a person filing a complaint with the commission; and

(2) a diagram showing the basic steps in the commission's procedures relating to complaint investigation and resolution.

(c) The commission shall provide the materials described by this section to each complainant and respondent.

(d) The commission shall adopt a policy to effectively distribute materials as required by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.104. COMMISSION MEMBER EDUCATION AND TRAINING. (a) Not later than the 30th day after the date a person is appointed to the commission, the person must complete training on the following matters:

(1) the legislation that created the commission;

(2) the role and functions of the commission; and

(3) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code; and

(C) other laws relating to public officials, including conflict-of-interest laws.

(b) A member of the commission must complete subsequent training programs on the following matters:

(1) the ethics code adopted by the commission; and

(2) the procedural rules adopted by the commission.

(c) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission after the 30th day after the date the person is appointed to the commission unless the person has completed a training program as required by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 3, eff. September 1, 2011.

Sec. 161.105. EDUCATION AND TRAINING FOR PERSONS COVERED BY ETHICS CODE. (a) The commission and commission staff shall make available periodic training for persons covered by the ethics code adopted by the commission.

(b) The training program must provide information regarding:

(1) the ethics code;

(2) the role and functions of the commission; and

(3) plain-language materials as further described by Section 161.103.

(c) In addition to the qualifications under Subchapter C, Chapter 262, before submitting a bid, responding to a request for qualifications or proposals, or otherwise contracting with the county, an officer, principal, or other person with the authority to bind the vendor shall complete training on the ethics code.

(d) A lobbyist intending to meet with a person covered by the ethics code shall complete training on the ethics code.

(e) A person covered by the ethics code or a lobbyist or vendor required by this section to complete training must complete the training as determined by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 4, eff. September 1, 2011.

Sec. 161.106. CERTAIN DISCUSSIONS OF PENDING COMPLAINTS PROHIBITED. Until a sworn complaint alleging a violation of the ethics code is resolved, a member of the commission may not discuss the complaint with a member of the commissioners court.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.107. DISCLOSURE OF CERTAIN CONTRACTS. (a) The commission shall prominently display on the county's Internet website the following regarding contracts for services executed by the county that would require a person to register as a lobbyist under Chapter 305, Government Code:

(1) the execution dates;

(2) the contract duration terms, including any extension options;

(3) the effective dates;

(4) the final amount of money the county paid in the

previous fiscal year;

(5) the identity of all parties to the contract;

(6) the identity of all subcontractors in the contract; and

(7) the legislative agenda of the county.

(b) In lieu of displaying the items described by Subsections (a)(1)-(6) regarding a contract for services that would require a person to register as a lobbyist under Chapter 305, Government Code, the commission may post on the county's Internet website the contract executed by the county for those services.

(c) Information required to be displayed on a county's Internet website under this section is public information subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1070 (H.B. 1495), Sec. 5, eff. June 14, 2019.

SUBCHAPTER D. COMPLAINT PROCEDURES AND HEARINGS

Sec. 161.151. DEFINITIONS. In this subchapter:

(1) "Category One violation" means a violation of the ethics code adopted by the commission as to which it is generally not difficult to ascertain whether the violation occurred or did not occur, including:

(A) the failure by a person required to file a statement or report required under the ethics code to:

(i) file the statement or report in a manner that complies with applicable requirements; or

(ii) file the statement or report in a timely manner;

(B) a misrepresentation in a report required under the ethics code; or

(C) a failure to respond in a timely manner to a written notice under Section 161.156(b).

(2) "Category Two violation" means a violation of the ethics code adopted by the commission that is not a Category One violation.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.152. COMPLAINT PROCEDURES AND HEARINGS. The commission shall adopt the complaint procedures and hearings set forth in this subchapter. The commission may adopt additional procedures not in conflict with this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.153. HEARINGS AND SETTLEMENT. (a) The commission may:

(1) hold a hearing on a sworn complaint and render a decision on a complaint or report of a violation as provided by this chapter; and

(2) agree to the settlement of issues.

(b) The commission may not:

(1) consider a complaint or vote to investigate a matter outside the commission's jurisdiction; or

(2) investigate any matter except in response to a sworn complaint.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.154. CATEGORIZATION OF VIOLATIONS. An allegation of a violation listed as a Category One violation shall be treated as a Category Two violation if the commission at any time determines that:

(1) the allegation arises out of the same set of facts as those that give rise to an allegation of a Category Two violation, and the interests of justice or efficiency require resolution of the allegations together; or

(2) the facts and law related to a particular allegation or a defense to the allegation present a level of complexity that prevents resolution through the preliminary review procedures for Category One violations prescribed by Section 161.159(a).

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.155. FILING OF COMPLAINT; CONTENTS. (a) An individual may file with the commission a sworn complaint, on a form prescribed by the commission, alleging that a person subject to the ethics code has violated the ethics code. The commission shall make the complaint form available on the county website.

(b) A complaint filed under this section must be in writing and under oath and must set forth in simple, concise, and direct statements:

(1) the name of the complainant;

(2) the street or mailing address of the complainant;

(3) the name of each respondent;

(4) the position or title of each respondent;

(5) the nature of the alleged violation, including if possible the specific rule or provision of the ethics code alleged to have been violated;

(6) a statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred; and

(7) all documents or other material available to the complainant that are relevant to the allegation, a list of all documents or other material within the knowledge of the complainant and available to the complainant that are relevant to the allegation but that are not in the possession of the complainant, including the location of the documents, if known, and a list of all documents or other material within the knowledge of the complainant that are unavailable to the complainant and that are relevant to the complaint, including the location of the documents, if known.

(c) The complaint must be accompanied by an affidavit stating either that the information contained in the complaint is correct or that the complainant has good reason to believe and does believe that the violation occurred. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant may swear to the facts by oath before a notary public or other authorized official.

(d) The complaint must state on its face an allegation that, if true, constitutes a violation of the ethics code.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.1551. STANDING PRELIMINARY REVIEW COMMITTEE. (a) The standing preliminary review committee shall perform the actions prescribed by this subchapter in conducting a preliminary review of each sworn complaint filed with the commission.

(b) The standing preliminary review committee consists of three persons, as follows:

(1) two members of the commission, determined as provided by Subsection (c); and

(2) a review officer selected and retained by the commission.

(c) The initial standing preliminary review committee consists of one commission member, chosen by lot, from the members of the commission appointed under Section 161.055(a)(1), and one commission member, chosen by lot, from the members appointed under Section 161.055(a)(2).

(d) A commission member serves on the standing preliminary review committee for six months. After the end of a commission member term on the standing preliminary review committee, service on the committee rotates so that each position on the commission serves on the committee, beginning with the initial members of the standing preliminary review committee chosen under Subsection (c) and succeeded by the next member on the list as described below:

(1) for the rotation of members appointed under Section 161.055(a)(1), the order of service is the member appointed by the county judge, followed by the members appointed by the county commissioners in order of precinct number; and

(2) for the rotation of members appointed under Section 161.055(a)(2), the order of service is the order listed by that section.

(e) The review officer must be a practicing attorney or former judge. A commission member may serve as the review officer.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 75 (S.B. 334), Sec. 1, eff. May 18, 2013.

Sec. 161.156. PROCESSING OF COMPLAINT. (a) The standing preliminary review committee shall determine whether a sworn complaint filed with the commission complies with the form requirements of Section 161.155.

(b) Not later than the 14th day after the date a complaint is filed, the standing preliminary review committee shall send written notice to the complainant and the respondent. The notice must state whether the complaint complies with the form requirements of Section 161.155 and include the information required by Section 161.158(c).

(c) If the standing preliminary review committee determines that the complaint does not comply with the form requirements, the committee shall send the complaint to the complainant with the written notice, a statement explaining how the complaint fails to comply, and a copy of the rules for filing sworn complaints. The complainant may resubmit the complaint not later than the 14th day after the date the notice under Subsection (b) is mailed. If the standing preliminary review committee determines that the complaint is not resubmitted within the 14-day period, the committee shall:

(1) dismiss the complaint; and

(2) not later than the 14th day after the date of the dismissal, send written notice to the complainant and the respondent of the dismissal and the grounds for dismissal.

(d) If the standing preliminary review committee determines that a complaint is resubmitted under Subsection (c) within the 14-day period but is not in proper form, the committee shall send the notice required under Subsection (c), and the complainant may resubmit the complaint under that subsection.

(e) If the standing preliminary review committee determines that a complaint returned to the complainant under Subsection (c) or (d) is resubmitted within the 14-day period and that the complaint complies with the form requirements, the committee shall send the written notice under Subsection (b).

(f) If a complaint filed with the commission is within the jurisdiction of the commission but may also be brought under the provisions of a collective bargaining agreement authorized by Chapter 174, a civil service rule under Section 158.0025, or a rule of the sheriff's department, the commission shall defer jurisdiction over the complaint to the sheriff for disposition. The sheriff may return a complaint deferred under this subsection to the commission for additional proceedings as the commission determines appropriate if

the sheriff determines that the conduct alleged in the complaint is not within the scope of the collective bargaining agreement, civil service rule, or sheriff's department rule. The sheriff may not return a complaint deferred under this section if:

(1) the sheriff disciplines the employee under the collective bargaining agreement, civil service rule, or sheriff's department rule for the conduct alleged in the sworn complaint; or

(2) the sheriff determines that the employee did not commit the conduct alleged in the sworn complaint.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 6, eff. September 1, 2011.

Sec. 161.157. RETALIATION AGAINST COUNTY EMPLOYEE REPORTING VIOLATION OF ETHICS CODE PROHIBITED. (a) A county public servant may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith files a complaint or otherwise reports to the commission, commission staff, or another law enforcement authority a violation of the ethics code by a person subject to the ethics code.

(b) A county public servant may not suspend or terminate the employment of or take other adverse action against a county employee who in good faith participates in the complaint processing, preliminary review, hearing, or any other aspect of the investigation and resolution by the commission of an alleged violation of the ethics code by a person subject to the ethics code.

(c) A commission created by a county under this chapter is a part of the "local governmental entity" for purposes of Section 554.002, Government Code.

(d) An ethics code adopted by a commission pursuant to this chapter is a "law" as defined by Section 554.001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 7, eff. September 1, 2011.

Sec. 161.158. PRELIMINARY REVIEW: INITIATION. (a) The standing preliminary review committee shall promptly conduct a preliminary review on receipt of a written complaint that is in compliance with the form requirements of Section 161.155.

(b) The standing preliminary review committee shall determine in writing whether the commission has jurisdiction over the violation of the ethics code provision alleged in a sworn complaint processed under Section 161.156.

(c) If the standing preliminary review committee determines that the commission has jurisdiction, the committee shall issue a notice under Section 161.156(b) that must include:

(1) a statement that the commission has jurisdiction over the violation alleged in the complaint;

(2) a statement of whether the complaint will be processed as a Category One violation or a Category Two violation, subject to reconsideration as provided for by Section 161.154;

(3) the date by which the respondent is required to respond to the notice;

(4) a copy of the complaint and the rules of procedure of the commission;

(5) a statement of the rights of the respondent;

(6) a statement inviting the respondent to provide to the commission any information relevant to the complaint; and

(7) a statement that a failure to timely respond to the notice will be treated as a separate violation.

(d) If the standing preliminary review committee determines that the commission does not have jurisdiction over the violation alleged in the complaint, the committee shall:

(1) dismiss the complaint; and

(2) not later than the 14th day after the date of the dismissal, send to the complainant and the respondent written notice of the dismissal and the grounds for the dismissal.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 8, eff. September 1, 2011.

Sec. 161.159. PRELIMINARY REVIEW: RESPONSE BY RESPONDENT. (a) If the alleged violation is a Category One violation:

(1) the respondent must respond to the notice required by Section 161.156(b) not later than the 14th day after the date the respondent receives the notice; and

(2) if the matter is not resolved by agreement between the standing preliminary review committee and the respondent before the 30th day after the date the committee receives the respondent's response to the notice given under Section 161.156(b), the committee shall set the matter for a preliminary review hearing to be held at the next committee meeting.

(b) If the alleged violation is a Category Two violation:

(1) the respondent must respond to the notice required by Section 161.156(b) not later than the 14th day after the date the respondent receives the notice under Section 161.156(b); and

(2) if the matter is not resolved by agreement between the standing preliminary review committee and the respondent before the 30th day after the date the committee receives the respondent's response to the notice given under Section 161.156(b), the committee shall set the matter for a preliminary review hearing to be held at the next committee meeting.

(c) A respondent's failure to timely respond as required by Subsection (a)(1) or (b)(1) is a Category One violation.

(d) The response required by Subsection (a) or (b) must include any challenge the respondent seeks to raise to the commission's exercise of jurisdiction. In addition, the respondent may:

(1) acknowledge the occurrence or commission of a violation;

(2) deny the allegations contained in the complaint and provide evidence supporting the denial; or

(3) agree to enter into an assurance of voluntary compliance or other agreed order, which may include an agreement to immediately cease and desist.

(e) If the standing preliminary review committee sets the matter for a preliminary review hearing, the committee shall promptly send to the complainant and the respondent written notice of the date, time, and place of the preliminary review hearing.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 9, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 75 (S.B. 334), Sec. 2, eff. May 18, 2013.

Sec. 161.160. PRELIMINARY REVIEW: WRITTEN QUESTIONS. During a preliminary review, the commission staff may submit to the complainant or respondent written questions reasonably intended to lead to the discovery of matters relevant to the investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.161. PRELIMINARY REVIEW AND PRELIMINARY REVIEW PROCEDURES. The commission shall adopt procedures for the conduct of preliminary reviews and preliminary review hearings. The procedures must include:

(1) a reasonable time for responding to questions submitted by the commission and commission staff and subpoenas issued by the commission; and

(2) the tolling or extension of otherwise applicable deadlines where:

(A) the commission issues a subpoena and the standing preliminary review committee's meeting schedule makes it impossible both to provide a reasonable time for response and to comply with the otherwise applicable deadlines; or

(B) the commission determines that, despite the standing preliminary review committee's diligence and the reasonable cooperation of the respondent, a matter is too complex to resolve within the otherwise applicable deadlines without compromising either the committee's investigation or the rights of the respondent.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.162. PRELIMINARY REVIEW HEARING: PROCEDURE. (a) The standing preliminary review committee shall conduct a preliminary review hearing if:

(1) following the preliminary review, the standing preliminary review committee and the respondent cannot agree to the disposition of the complaint; or

(2) the respondent in writing requests a hearing.

(b) The standing preliminary review committee shall provide written notice to the complainant and the respondent of the date, time, and place the committee will conduct the preliminary review hearing.

(c) At or after the time the standing preliminary review committee provides notice of a preliminary review hearing, the committee may submit to the complainant and the respondent written questions and require those questions to be answered under oath within a reasonable time. After receiving answers to any questions submitted to the complainant under this subsection and before the preliminary review hearing, the committee shall provide the respondent both the questions and the answers to the questions submitted by the complainant. This subsection may not be construed to require a person to give evidence that violates the person's right against self-incrimination under the United States Constitution or the Texas Constitution.

(d) On the request of the respondent, the standing preliminary review committee shall request that any information in the possession or control of the complainant, including exculpatory information, that is directly related to the complaint be provided the respondent and the committee.

(e) During a preliminary review hearing, the standing preliminary review committee:

(1) may consider all submitted evidence related to the complaint;

(2) may review any documents or material related to the complaint; and

(3) shall determine whether there is credible evidence that provides cause for the committee to conclude that a violation within the jurisdiction of the commission has occurred.

(f) During a preliminary review hearing, the respondent may appear before the standing preliminary review committee with the assistance of counsel, if desired by the respondent, and present any

relevant evidence, including a written statement.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.163. PRELIMINARY REVIEW HEARING: RESOLUTION. (a) As soon as practicable after the completion of a preliminary review hearing, the standing preliminary review committee by vote shall issue a decision stating:

(1) whether there is credible evidence for the committee to determine that a violation within the jurisdiction of the commission has occurred and whether the violation is technical or de minimis; or

(2) that there is insufficient evidence for the committee to determine whether a violation within the jurisdiction of the commission has occurred.

(b) If the standing preliminary review committee determines that there is credible evidence for the committee to determine that a violation has occurred, the committee shall resolve and settle the complaint to the extent possible. If the committee successfully resolves and settles the complaint, not later than the 14th day after the date of the final resolution of the complaint, the committee shall send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the resolution and the terms of the resolution. If the committee is unsuccessful in resolving and settling the complaint, the committee shall:

(1) order a formal hearing to be held in accordance with Sections 161.164-161.167; and

(2) not later than the 14th day after the date of the order, send to the complainant and the respondent:

(A) a copy of the order;

(B) written notice of the date, time, and place of the formal hearing;

(C) a statement of the nature of the alleged violation;

(D) a description of the evidence of the alleged violation;

(E) a copy of the complaint;

(F) a copy of the commission's rules of procedure; and

(G) a statement of the rights of the respondent.

(c) If the standing preliminary review committee determines that there is credible evidence for the committee to determine that a violation within the jurisdiction of the commission has not occurred, the committee shall:

(1) dismiss the complaint; and

(2) not later than the 10th day after the date of the dismissal, send to the complainant and the respondent a copy of the order stating the committee's determination and written notice of the dismissal and the grounds for dismissal.

(d) If the standing preliminary review committee determines that there is insufficient credible evidence for the committee to determine that a violation within the jurisdiction of the commission has occurred, the commission may dismiss the complaint or order a formal hearing under Sections 161.164-161.167. Not later than the 10th day after the date of the committee's determination under this subsection, the committee shall send to the complainant and the respondent a copy of the decision stating the committee's determination and written notice of the grounds for the determination.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 10, eff. September 1, 2011.

Sec. 161.164. FORMAL HEARING: STANDARD OF EVIDENCE. During a formal hearing, the commission shall determine by a preponderance of the evidence whether a violation within the jurisdiction of the commission has occurred.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.165. FORMAL HEARING: SUBPOENAS AND WITNESSES. (a) A subpoena or other request to testify shall be served sufficiently in advance of the scheduled appearance at a formal hearing to allow a reasonable period, as determined by the commission, for the person subpoenaed to prepare for the hearing and to employ counsel if

desired.

(b) Except as provided by Section 161.166(a)(1), the commission may order that a person may not, except as specifically authorized by the presiding officer, make public the name of a witness subpoenaed by the commission before the date of that witness's scheduled appearance.

(c) A witness may read a written statement or present a brief oral opening statement at a formal hearing, subject to the rules of evidence applicable to a contested case under Section 2001.081, Government Code.

(d) A person whose name is mentioned or who is identified or referred to in testimony or in statements made by a commission member, commission staff member, or witness and who reasonably believes that the statement tends to adversely affect the person's reputation may:

(1) request to appear personally before the commission to testify in the person's own behalf; or

(2) file a sworn statement of facts relevant to the testimony or statement that the person believes adversely affects the person's reputation.

(e) A witness who testifies at a formal hearing must be sworn.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.166. FORMAL HEARING: PROCEDURE. (a) Not later than the 10th day before the date of a scheduled formal hearing or on the granting of a motion for discovery by the respondent, the commission shall provide to the respondent:

(1) a list of proposed witnesses to be called at the hearing;

(2) copies of all documents expected to be introduced as exhibits at the hearing; and

(3) a brief statement as to the nature of the testimony expected to be given by each witness to be called at the hearing.

(b) The respondent may not be compelled to give evidence or testimony that violates the respondent's right against self-incrimination under the United States Constitution or the Texas Constitution.

(c) The commission shall adopt rules governing discovery, hearings, and related procedures consistent with this chapter and Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 11, eff. September 1, 2011.

Sec. 161.167. FORMAL HEARING: RESOLUTION. (a) At the conclusion of the formal hearing or not later than the 40th day after the date of the formal hearing, the commission may convene a meeting and by motion shall issue:

(1) a final decision stating the resolution of the formal hearing; and

(2) a written report stating the commission's findings of fact, conclusions of law, and recommendation of imposition of a civil penalty, if any.

(b) Six members of the commission are required for a quorum at a formal hearing.

(c) Not later than the 14th day after the date the commission issues the final decision and written report, the commission shall:

(1) send a copy of the decision and report to the complainant and to the respondent; and

(2) make a copy of the decision and report available to the public during reasonable business hours.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 12, eff. September 1, 2011.

Sec. 161.168. STATUS OF COMPLAINT. (a) The commission shall keep an information file about each sworn or other complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) In addition to the notice required by Sections 161.156 and 161.167, the commission, at least quarterly until final disposition of a complaint, shall notify the person who filed the complaint and each person who is a subject of the complaint of the status of the sworn complaint.

(d) The commission shall resolve a complaint within three months of its receipt unless it makes a determination that additional time is required to resolve the matter. On a determination that additional time is required, the commission may extend the investigation in three-month increments. Each extension requires separate approval by the commission.

(e) If the commission does not resolve the matter within three months or within an authorized extension, the complaint shall be deemed to have been dismissed without prejudice.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 13, eff. September 1, 2011.

Sec. 161.169. EXTENSION OF DEADLINE. The commission may, on its own motion or on the reasonable request of a respondent, extend any deadline for action relating to a sworn complaint, preliminary review hearing, or formal hearing.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.170. SUBPOENA. (a) In connection with a formal hearing, the commission, as authorized by this chapter, may subpoena and examine witnesses and documents that directly relate to a sworn complaint.

(b) In connection with a preliminary review, the commission, for good cause and as authorized by this chapter, may subpoena documents and witnesses on application by the commission staff and a motion adopted by a vote of at least five members of the commission, for the purpose of attempting to obtain from the documents or witnesses specifically identified information, if the commission reasonably believes that the specifically identified information:

(1) is likely to be determinative as to whether the subject of an investigation has violated a provision of the ethics code;

(2) can be determined from the documents or is known by the witnesses; and

(3) is not reasonably available through a less intrusive means.

(c) The commission shall adopt procedures for the issuance of subpoenas under this section.

(d) Section 2001.089, Government Code, applies to a subpoena issued under this subchapter. On the request of the respondent, the commission shall subpoena any information in the possession or control of any person identified in the request, including exculpatory information, that is directly related to the complaint and provide the information to the respondent.

(e) A copy of a subpoena issued under this section must be delivered to the respondent.

(f) At the written request of at least five members of the commission, a peace officer shall serve a subpoena of the commission in the manner prescribed for service of a district court subpoena.

(g) If a person to whom a subpoena is directed refuses to appear, refuses to answer inquiries, or fails or refuses to produce books, records, or other documents that were under the person's control when the demand was made, the commission shall report that fact to a district court in the county. The district court shall enforce the subpoena by attachment proceedings for contempt in the same manner as the court enforces a subpoena issued by the court.

(h) A respondent has the right to quash a subpoena in a

district court in the county as provided by law.

(i) A subpoenaed witness who attends a commission hearing is entitled to the same mileage and per diem payments as a witness who appears before a grand jury. A person who provides subpoenaed documents to the commission is entitled to reimbursement from the commission for the person's reasonable cost of producing the documents.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.171. STATUS OF COMPLAINANT. The complainant is not a party to a preliminary review, preliminary review hearing, or formal hearing under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.172. APPLICABILITY OF OTHER ACTS. (a) Except as provided by Section 161.173(b), Chapter 552, Government Code, does not apply to documents or any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint.

(b) Chapter 551, Government Code, does not apply to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint, but does apply to the conduct of a formal hearing under Sections 161.164-161.167. Chapter 551, Government Code, does not apply to the deliberation by the commission regarding a contested complaint following the conclusion of a formal hearing, but does apply to the meeting at which the commission issues a final decision stating the resolution of the final hearing.

(c) Subchapters C-H, Chapter 2001, Government Code, apply only to a formal hearing under this subchapter, the resolution of a formal hearing, and the appeal of a final order of the commission, and only to the extent consistent with this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 14, eff. September 1, 2011.

Sec. 161.173. CONFIDENTIALITY; OFFENSE. (a) Except as provided by Subsection (b), (c), or (m), proceedings at a preliminary review hearing performed by the standing preliminary review committee, a sworn complaint, and documents and any additional evidence relating to the processing, preliminary review, preliminary review hearing, or resolution of a sworn complaint are confidential and may not be disclosed unless entered into the record of a formal hearing or a judicial proceeding, except that a document or statement that was previously public information remains public information.

(b) An order issued by the standing preliminary review committee after the completion of a preliminary review or hearing determining that a violation other than a technical or de minimis violation has occurred is not confidential.

(c) Commission staff may, for the purpose of investigating a sworn complaint, disclose to the complainant, the respondent, or a witness information that is otherwise confidential and relates to the sworn complaint if:

(1) the employee makes a good faith determination that the disclosure is necessary to conduct the investigation;

(2) the employee's determination under Subdivision (1) is objectively reasonable;

(3) the commission specifically authorizes the disclosure; and

(4) the employee discloses only the information necessary to conduct the investigation.

(d) A person commits an offense if the person intentionally:

(1) destroys, mutilates, or alters information obtained under this chapter; or

(2) removes information obtained under this chapter without permission as provided by this chapter.

(e) An offense under Subsection (d) is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $4,000;

(2) confinement in the county jail for not less than three days or more than three months; or

(3) both the fine and confinement.

(f) A person commits an offense if the person distributes information considered confidential under the terms of this chapter.

(g) A person who obtains access to confidential information under this chapter commits an offense if that person knowingly:

(1) uses the confidential information for a purpose other than the purpose for which the information was received or for a purpose unrelated to this chapter, including solicitation of political contributions or solicitation of clients;

(2) permits inspection of the confidential information by a person who is not authorized to inspect the information; or

(3) discloses the confidential information to a person who is not authorized to receive the information.

(h) An offense under Subsection (f) or (g) is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

(i) If conduct that constitutes an offense under this section also constitutes an offense under the Penal Code, including under Section 37.10 or 39.06 of that code, the person may be prosecuted under this section or the Penal Code, as applicable.

(j) A violation under this section constitutes official misconduct.

(k) In addition to other penalties, the respondent may commence a civil action for damages on the respondent's own behalf against any person who is alleged to have disclosed information made confidential by this subchapter. Any action under this chapter must be brought in a district court in the county. The court may award costs and attorney's fees.

(l) A county employee is subject to discipline, including termination of employment, for disclosing confidential information under this chapter.

(m) The commission may disclose confidential information in making a referral to a prosecuting attorney concerning an offense under this section.

(n) A county employee who discloses confidential information in compliance with Subsection (c) or (m) is not subject to Subsections (d)-(l).

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 160 (H.B. 2002), Sec. 15, eff. September 1, 2011.

Sec. 161.174. AVAILABILITY OF COMMISSION ORDERS ON INTERNET. (a) As soon as practicable following a preliminary review, preliminary review hearing, or formal hearing at which the commission determines that a person has committed a violation within the commission's jurisdiction, the commission shall make available on the Internet:

(1) a copy of the commission's order stating the determination; or

(2) a summary of the commission's order.

(b) This section does not apply to a determination of a violation that is technical or de minimis.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

SUBCHAPTER E. ENFORCEMENT

Sec. 161.201. ORDER. The commission may:

(1) issue and enforce a cease and desist order to stop a violation;

(2) issue an affirmative order to require compliance with the laws administered and enforced by the commission; and

(3) issue an order of public censure with or without a civil penalty imposed under Section 161.202.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.202. CIVIL PENALTY FOR DELAY OR VIOLATION. (a) The commission may impose a civil penalty of not more than $500 for each delay in complying with a commission order.

(b) The commission may impose a civil penalty of not more than $4,000 for a violation of the ethics code adopted by the commission.

(c) A penalty paid under this section shall be deposited to the credit of the general fund of the county.

(d) This section is cumulative of any other available sanctions under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.203. WAIVER OR REDUCTION OF PENALTY. (a) A person may request the waiver or reduction of a civil penalty by submitting an affidavit to the commission that states the filer's reasons for requesting a waiver or reduction.

(b) The commission may waive or reduce a civil penalty if the commission finds that a waiver or reduction is in the public interest and in the interest of justice. The commission shall consider the following before acting to waive or reduce a civil penalty:

(1) the facts and circumstances supporting the person's request for a waiver or reduction;

(2) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation, and the amount of the penalty;

(3) any history of previous violations by the person;

(4) the demonstrated good faith of the person, including actions taken to rectify the consequences of the violation;

(5) the penalty necessary to deter future violations; and

(6) any other matter that justice may require.

(c) After hearing the waiver request, the commission may affirm, reduce, or waive the civil penalty.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.204. NOTIFICATION OF REGULATORY OR SUPERVISORY ENTITY. The commission may notify the appropriate regulatory or supervisory entity, including any agency, the State Commission on Judicial Conduct, or the State Bar of Texas, of a violation of the ethics code adopted by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff.

September 1, 2009.

Sec. 161.205. CIVIL PENALTY FOR FRIVOLOUS OR BAD-FAITH COMPLAINT. (a) The commission may impose a civil penalty of not more than $4,000 for the filing of a frivolous or bad-faith complaint. In this subsection, "frivolous complaint" means a complaint that is groundless and brought in bad faith or is groundless and brought for the purpose of harassment.

(b) In addition to other penalties, the respondent may commence a civil action on the respondent's own behalf against any person who filed a frivolous complaint against the respondent. Any action under this chapter shall be brought in a district court in the county. The court may award costs and attorney's fees.

(c) A person may file a sworn complaint with the commission, in accordance with Section 161.155, alleging that a complaint relating to that person filed with the commission is frivolous or brought in bad faith. A complaint may be filed under this subsection without regard to whether the complaint alleged to be frivolous or brought in bad faith is pending before the commission or has been resolved. The commission shall act on a complaint made under this subsection as provided by Subchapter D.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.206. FACTORS CONSIDERED FOR ASSESSMENT OF SANCTION. The commission shall consider the following factors in assessing a sanction:

(1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the violation;

(2) the history and extent of previous violations;

(3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the violation;

(4) the penalty necessary to deter future violations; and

(5) any other matters that justice may require.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.207. APPEALS. (a) A respondent may appeal the decision by filing a petition in a district court in the county within 30 days after the date of the decision.

(b) An appeal brought under this section is not limited to questions of law, and the substantial evidence rule does not apply. The action shall be determined by trial de novo. The reviewing court shall try all issues of fact and law in the manner applicable to other civil suits in this state but may not admit in evidence the fact of prior action by the commission or the nature of that action, except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court. A party is entitled, on demand, to a jury determination of any issue of fact on which a jury determination is available in other civil suits in this state.

(c) If the district court renders judgment for the petitioner, and the petitioner is a county employee, the court may order reinstatement of the county employee, payment of back pay, or other appropriate relief.

(d) If the district court renders judgment for the petitioner, the court may order appropriate relief, including costs and attorney's fees.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.208. DELIVERY OF RECORD TO REVIEWING COURT. (a) After service of the petition on the commission and within the time permitted for filing an answer or within additional time allowed by the court, the commission shall send to the reviewing court the original or a certified copy of the entire record of the proceeding under review.

(b) The record shall be filed with the clerk of the court. The record may be shortened by stipulation of all parties to the review proceedings. The court may assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party pays all costs of record preparation.

(c) The court may require or permit later corrections or additions to the record.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff.

September 1, 2009.

Sec. 161.209. COST OF PREPARING COMMISSION RECORD. (a) The commission may require a party who appeals a final decision under Section 161.207 to pay one-half of the cost of preparation of the original or a certified copy of the record of the commission proceeding that is required to be sent to the reviewing court.

(b) A charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.210. COLLECTIONS. The county attorney may collect a fine or other penalty imposed by the commission under this chapter in the same manner as provided for the collection of a debt owed to the county.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

SUBCHAPTER F. DISSOLUTION OF COMMISSION

Sec. 161.301. PETITION FOR DISSOLUTION OF COMMISSION. If, after an ethics commission created pursuant to Section 161.052 has been in effect for at least one year, 10 percent of the qualified voters of the county petition the commissioners court to dissolve the commission, the commissioners court shall call an election to determine whether the commission will be dissolved.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.302. DISSOLUTION ELECTION. (a) An election under this subchapter must be held in the manner provided for an election to create a county ethics commission.

(b) The ballot for the election shall be printed to provide for

voting for or against the proposition: "Dissolution of the county ethics commission."

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.303. DISSOLUTION OF COMMISSION. If the proposition is approved by a majority of the qualified voters voting at the election, the commissioners court shall declare the result and by order dissolve the ethics commission. A copy of the order dissolving the commission shall be placed in the minutes of the court's proceedings.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

Sec. 161.304. SAVING PROVISIONS. The dissolution of a county ethics commission under this subchapter does not affect:

(1) the prior operation of the ethics code adopted by the commission or any prior action taken under it; or

(2) any penalty, forfeiture, or punishment incurred for a violation of the ethics code before the effective date of the dissolution.

Added by Acts 2009, 81st Leg., R.S., Ch. 799 (S.B. 1368), Sec. 1, eff. September 1, 2009.

CHAPTER 170. MISCELLANEOUS PROVISIONS AFFECTING COUNTY OFFICERS AND EMPLOYEES

Sec. 170.001. REGULATION OF CERTAIN USE OF PRIVATELY OWNED VEHICLES. (a) The commissioners court of a county may adopt rules prohibiting or regulating the use of a privately owned motor vehicle for the performance of county business or law enforcement duties by a sheriff or constable or a deputy of a sheriff or constable.

(b) This section does not authorize a commissioners court to adopt rules relating to the private use of a privately owned motor vehicle.

Added by Acts 1999, 76th Leg., ch. 644, Sec. 2, eff. Sept. 1, 1999. Redesignated from Local Government Code Sec. 240.096 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.001.

Sec. 170.002. CODE OF ETHICS FOR CERTAIN COMMISSIONERS COURTS. (a) This section applies to a county that has a population of less than 50,000 that is adjacent to a county with a population of more than 3.3 million.

(b) The commissioners court of a county subject to this section may adopt by order a code of ethics that provides standards of conduct for members of the commissioners court.

(c) If a commissioners court of a county subject to this section adopts a code of ethics under this section, the code of ethics must require each member of the commissioners court to file a conflicts disclosure statement that is in addition to the statement required by Section 176.003.

Added by Acts 2019, 86th Leg., R.S., Ch. 1070 (H.B. 1495), Sec. 6, eff. June 14, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 138, eff. September 1, 2023.

SUBTITLE C. MATTERS AFFECTING PUBLIC OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 171. REGULATION OF CONFLICTS OF INTEREST OF OFFICERS OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 171.001. DEFINITIONS. In this chapter:

(1) "Local public official" means a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities beyond those that are advisory in nature.

(2) "Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 171.002. SUBSTANTIAL INTEREST IN BUSINESS ENTITY. (a) For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or $15,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10 percent of the person's gross income for the previous year.

(b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

(c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 561, Sec. 37, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 849, Sec. 1, eff. Sept. 1, 1997.

Sec. 171.0025. APPLICATION OF CHAPTER TO MEMBER OF HIGHER EDUCATION AUTHORITY. This chapter does not apply to a board member of a higher education authority created under Chapter 53, Education Code, unless a vote, act, or other participation by the board member in the affairs of the higher education authority would provide a financial benefit to a financial institution, school, college, or university that is:

(1) a source of income to the board member; or

(2) a business entity in which the board member has an interest distinguishable from a financial benefit available to any other similar financial institution or other school, college, or university whose students are eligible for a student loan available under Chapter 53, Education Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 41(a), eff. Aug. 28, 1989.

Sec. 171.003. PROHIBITED ACTS; PENALTY. (a) A local public official commits an offense if the official knowingly:

(1) violates Section 171.004;

(2) acts as surety for a business entity that has work, business, or a contract with the governmental entity; or

(3) acts as surety on any official bond required of an officer of the governmental entity.

(b) An offense under this section is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.004. AFFIDAVIT AND ABSTENTION FROM VOTING REQUIRED. (a) If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) The affidavit must be filed with the official record keeper of the governmental entity.

(c) If a local public official is required to file and does file an affidavit under Subsection (a), the official is not required to abstain from further participation in the matter requiring the affidavit if a majority of the members of the governmental entity of which the official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.005. VOTING ON BUDGET. (a) The governing body of a governmental entity shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body has a substantial interest.

(b) Except as provided by Section 171.004(c), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 171.006 and amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.006. EFFECT OF VIOLATION OF CHAPTER. The finding by a court of a violation under this chapter does not render an action of the governing body voidable unless the measure that was the subject of an action involving a conflict of interest would not have passed the governing body without the vote of the person who violated the chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 171.008 by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.007. COMMON LAW PREEMPTED; CUMULATIVE OF MUNICIPAL PROVISIONS. (a) This chapter preempts the common law of conflict of interests as applied to local public officials.

(b) This chapter is cumulative of municipal charter provisions and municipal ordinances defining and prohibiting conflicts of interests.

Amended by Acts 1989, 71st Leg., ch. 1, Sec. 40(a), eff. Aug. 28, 1989.

Sec. 171.009. SERVICE ON BOARD OF CORPORATION FOR NO COMPENSATION. It shall be lawful for a local public official to serve as a member of the board of directors of private, nonprofit corporations when such officials receive no compensation or other remuneration from the nonprofit corporation or other nonprofit entity.

Added by Acts 1989, 71st Leg., ch. 475, Sec. 2, eff. Aug. 28, 1989.

Sec. 171.010. PRACTICE OF LAW. (a) For purposes of this chapter, a county judge or county commissioner engaged in the private practice of law has a substantial interest in a business entity if the official has entered a court appearance or signed court pleadings in a matter relating to that business entity.

(b) A county judge or county commissioner that has a substantial interest in a business entity as described by Subsection (a) must comply with this chapter.

(c) A judge of a constitutional county court may not enter a court appearance or sign court pleadings as an attorney in any matter before:

(1) the court over which the judge presides; or

(2) any court in this state over which the judge's court exercises appellate jurisdiction.

(d) Upon compliance with this chapter, a county judge or commissioner may practice law in the courts located in the county where the county judge or commissioner serves.

Added by Acts 2003, 78th Leg., ch. 227, Sec. 21, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1206, Sec. 3, eff. June 20, 2003.

CHAPTER 172. TEXAS POLITICAL SUBDIVISIONS UNIFORM GROUP BENEFITS PROGRAM

Sec. 172.001. SHORT TITLE. This chapter may be cited as the Texas Political Subdivision Employees Uniform Group Benefits Act.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.

Sec. 172.002. PURPOSE. The purpose of this chapter is to:

(1) provide uniformity in benefits including accident, health, dental, and long-term disability coverage to employees of political subdivisions;

(2) enable the political subdivisions to attract and retain competent and able employees by providing them with accident and health benefits coverages at least equal to those commonly provided in private industry;

(3) foster, promote, and encourage employment by and service to political subdivisions as a career profession for persons of high standards of competence and ability;

(4) recognize and protect the political subdivisions' investment in each permanent employee by promoting and preserving economic security and good health among those employees;

(5) foster and develop high standards of employer-employee relationships between each political subdivision and its employees;

(6) recognize the service to political subdivisions by elected officials and employees of affiliated service contractors by extending to them the same accident and health benefits coverages as are provided for political subdivision employees; and

(7) recognize the long and faithful service and dedication of employees of political subdivisions and to encourage them to remain in service of their respective political subdivisions until eligible for retirement by providing health benefits to those employees.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 491, Sec. 1, eff. Sept. 1, 2001.

Sec. 172.003. DEFINITIONS. In this chapter:

(1) "Affiliated service contractor" means an organization qualified for exemption under Section 501(c), Internal Revenue Code (26 U.S.C. Section 501(c)), as amended, that provides governmental or quasi-governmental services on behalf of a political subdivision and derives more than 25 percent of its gross revenues from grants or funding from the political subdivision.

(2) "Employee" means a person who works at least 20 hours a week for a political subdivision.

(3) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing

authority, or other political subdivision of this state or any other state.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 491, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 28, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 5, eff. June 19, 2009.

Sec. 172.004. BENEFITS CONTRACT. (a) A political subdivision or a group of political subdivisions pursuant to The Interlocal Cooperation Act (Chapter 791, Government Code) directly or through a risk pool may provide health and accident coverage for political subdivision officials, employees, and retirees or any class of officials, employees, or retirees, and employees of affiliated service contractors.

(b) The types of coverage that may be provided include group health and accident, group dental, accidental death and dismemberment, and hospital, surgical, and medical expense.

(c) A political subdivision also may include under the coverage dependents of the officers, employees, and retirees and of employees of affiliated service contractors.

(d) A pool's board of trustees may provide coverage for the trustees and the pool's staff, including persons with whom the pool has contracted to perform staff functions, on approval of the members of the pool.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 491, Sec. 3, eff. Sept. 1, 2001.

Sec. 172.005. RISK POOL. (a) A political subdivision may establish a risk pool or may enter into an interlocal agreement under The Interlocal Cooperation Act (Chapter 791, Government Code) with other political subdivisions to establish a risk pool to provide health and accident coverage for officials, employees, retirees, employees of affiliated service contractors, and their dependents.

(b) Contributions paid by a political subdivision's officials,

employees, and retirees and employees of affiliated service contractors for coverage shall be deposited to the credit of the risk pool's fund and used as provided by rules of the risk pool.

(c) A pool by contract may purchase insurance coverage for persons who are covered by the pool from an insurance company authorized to do business in this state.

(d) A pool or its agents may not represent to persons who apply for coverage or who are covered by the pool that the coverage being provided is insurance unless the coverage is by contract purchased from an insurance company authorized to do business in this state.

(e) A risk pool organized under this section is a legal entity that may contract with an insurer licensed to do business in Texas to assume any excess of loss of a benefit contract authorized under Section 172.004. Notwithstanding any provision of the Insurance Code or any other law governing insurance in this state, an insurer authorized to do business in Texas may assume the excess of loss of the benefit contract under Section 172.004.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 611, Sec. 1, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 491, Sec. 4, eff. Sept. 1, 2001.

Sec. 172.006. SUPERVISION AND ADMINISTRATION OF POOL. (a) A political subdivision or a group of political subdivisions that create a risk pool shall select trustees to supervise the operation of the pool.

(b) A pool may be administered by a staff employed by the pool, an entity created by the political subdivision or group of political subdivisions participating in the pool, a staff or entity that administers another pool established under this chapter, or a third party administrator.

(c) Before entering into a contract with a person to be a third party administrator of the pool, the trustees shall require that person to submit information necessary for the trustees to evaluate the background, experience, and financial qualifications and solvency of that person. The information submitted by a prospective administrator other than an insurance company must disclose:

(1) any ownership interest that the prospective administrator has in an insurance company, group hospital service

corporation, health maintenance organization, or other provider of health care indemnity; and

(2) any commission or other benefit that the prospective administrator will receive for purchasing services or coverage for the pool.

(d) An attorney employed by a third party administrator, provider of excess loss coverage, or reinsurer may not be simultaneously employed by the pool unless, before the attorney is employed by the pool, the third party administrator, provider of excess loss coverage, reinsurer, or attorney discloses to the pool's board of trustees that the attorney is employed by the administrator, provider, or reinsurer.

(e) If the state enacts a law providing for the licensing or registration of third party administrators, a risk pool in contracting for administrative services may only contract for services of a third party administrator licensed or registered under that law. This subsection does not apply to a nonprofit corporation that is acting solely on behalf of the risk pool or other pools or administrative agencies established under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 988, Sec. 1, eff. Sept. 1, 1999.

Sec. 172.007. TRUSTEE TRAINING. (a) Trustees who act as fiduciaries for a risk pool must have at least 16 hours of combined professional instruction with four hours of instruction in each of the following areas:

(1) law governing the establishment and operation of risk pools by political subdivisions;

(2) principles of self-insurance and risk pools, including actuarial and underwriting principles and investment principles;

(3) principles relating to reading and understanding financial statements; and

(4) the general fiduciary duties of trustees.

(b) Not later than the 180th day after the date of selection as trustee, or after the effective date of this chapter, whichever is the later date, a trustee must complete the training required by Subsection (a).

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.

Sec. 172.008. EXCESS LOSS COVERAGE AND REINSURANCE. (a) A risk pool may purchase excess loss coverage or reinsurance to insure a pool against financial losses that the pool determines might place the solvency of the pool in financial jeopardy.

(b) If a risk pool does not purchase excess loss coverage or reinsurance, the administrator shall give written notice to each person who applies for coverage from the pool that the pool does not maintain excess loss coverage or reinsurance. The administrator shall provide the notice before coverage is issued to an applicant and shall give the applicant the opportunity to decline the coverage.

(c) If a risk pool cancels or does not renew excess loss coverage or reinsurance, the administrator shall give notice to each person covered by the pool that the coverage has been canceled or has not been renewed and shall give each an opportunity to cancel his coverage. The administrator must give the notice and opportunity to cancel coverage not later than the 30th day after the date on which the pool cancels or does not renew the excess loss coverage or reinsurance.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.

Sec. 172.009. INVESTMENTS. (a) The trustees of a risk pool shall invest the pool's money in accordance with Subchapter A, Chapter 2256, Government Code to the extent that law can be made applicable.

(b) In addition to investments authorized under Subchapter A, Chapter 2256, Government Code, the trustees of a pool may invest the pool's money in any investment authorized by the Texas Trust Code (Subtitle B, Title 9, Property Code).

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(11), eff. Sept. 1, 1995.

Sec. 172.010. AUDITS. (a) The trustees of the pool shall have the fiscal accounts and records of the risk pool audited annually by

an independent auditor.

(b) The person who performs the audit must be a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy.

(c) The independent audit shall cover a pool's fiscal year.

(d) The trustees of the pool shall file annually with the State Board of Insurance a copy of the audit report. The State Board of Insurance shall maintain the copies of the audit reports at a convenient location and shall make the copies of the audit reports available for public inspection during regular business hours. A person may request the State Board of Insurance to provide copies of any item included in an audit report on payment of the cost of providing the copies. The State Board of Insurance may adopt rules governing the time and manner for filing audit reports under this subsection and the procedures for filing, inspecting, and obtaining copies of audit reports.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 599, Sec. 15, eff. Sept. 1, 1991.

Sec. 172.011. INSOLVENCY. (a) The trustees of a risk pool shall declare the pool insolvent if the trustees determine that the pool is unable to pay valid claims within 60 days after the date the claims are verified.

(b) If a pool is declared insolvent by the trustees, the pool shall cease operation on the day of the declaration, and the trustees shall provide for the disposition of the pool's assets, debts, obligations, losses, and other liabilities.

(c) A person who has coverage under a risk pool may institute proceedings to have the pool declared insolvent by petitioning a district court in Travis County to declare the pool insolvent. If the district court, after notice and hearing, determines that the pool is insolvent, the court shall appoint a receiver to take charge of and dispose of the pool's assets, debts, obligations, losses, and other liabilities. Except as provided by this chapter, a receivership under this section is governed by Chapter 64, Civil Practice and Remedies Code, to the extent that chapter can be made applicable.

(d) After a receiver takes charge of the assets and determines outstanding debts, obligations, losses, and other liabilities, the receiver shall give notice of his determination to any person, including a political subdivision that is a participant in the pool.

(e) If the receiver determines that money is owed to the pool by a political subdivision that is a participant in the pool, the political subdivision may protest the determination by filing with the court a protest statement not later than the 15th day after the date the notice of the receiver's determination is mailed.

(f) If a court in which a protest statement is filed determines after a hearing that an amount is owed by the political subdivision filing the protest statement, the political subdivision shall pay that amount to the receiver not later than the 30th day after the date on which the court's determination becomes final. A determination by a court on a protest statement is interlocutory.

(g) If a protest statement is not filed with the court, the political subdivision shall pay to the receiver the amount determined to be owed not later than the 30th day after the date on which the receiver mails the notice under Subsection (d).

(h) The court that appoints a receiver may direct that a reasonable fee be paid to the receiver as compensation for performance of responsibilities and duties and may assess each political subdivision that is a participant in the pool under the receiver's control an amount necessary to compensate the receiver.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.

Sec. 172.012. LIMITATION OF RISK POOLS. (a) Except as provided by Subsection (b), a county may not provide health and accident coverage through a risk pool under this chapter, except:

(1) as authorized by Subchapter A, Chapter 157; or

(2) through an interlocal contract entered under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes) with other political subdivisions of this state if the aggregate annual contributions to the pool will exceed $1 million based on an actuarial estimate by an actuary who is a member of the American Academy of Actuaries.

(b) A county with a population of fewer than 500,000 may create and provide coverage through a pool if the aggregate annual claims,

contributions, or both claims and contributions to the pool will exceed $300,000 based on an actuarial estimate by an actuary who is a member of the American Academy of Actuaries.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 649, Sec. 1, eff. Aug. 26, 1991.

Sec. 172.013. PAYMENT OF CONTRIBUTIONS AND PREMIUMS. (a) A political subdivision may pay all or part of the contributions for coverage under this chapter from local funds, including federal grant or contract pass-through funds, that are not dedicated by law to some other purpose.

(b) A political subdivision also may pay all or part of the contributions for coverage for officers, employees, retirees, and dependents, but may not pay any part of the contributions for coverage for employees of affiliated service contractors or their dependents.

(c) On written approval of an officer or employee, a political subdivision may deduct from the officer's or employee's compensation an amount necessary to pay that person's and his dependents' contributions. A retiree may authorize in writing the person who pays his retirement benefits to deduct from those benefits an amount sufficient to pay the retiree's and his dependents' contributions.

(d) State funds, except federal grant or contract funds passed through the state to its political subdivisions, may not be used to purchase coverage or to pay contributions under this chapter.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 2001, 77th Leg., ch. 491, Sec. 5, eff. Sept. 1, 2001.

Sec. 172.014. APPLICATION OF CERTAIN LAWS. A risk pool created under this chapter is not insurance or an insurer under the Insurance Code and other laws of this state, and the State Board of Insurance does not have jurisdiction over a pool created under this chapter.

Added by Acts 1989, 71st Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1989.

Sec. 172.016. STATUS OF AFFILIATED SERVICE CONTRACTORS.

Inclusion of the employees of affiliated service contractors in the uniform group benefits program authorized by this chapter does not, for any purpose:

(1) make an affiliated service contractor a political subdivision or a division of a political subdivision; or

(2) make an employee of an affiliated service contractor an employee of a political subdivision or a division of a political subdivision.

Added by Acts 2001, 77th Leg., ch. 491, Sec. 6, eff. Sept. 1, 2001.

CHAPTER 173. TEMPORARY SALARY PAYMENTS FOR MUNICIPAL AND COUNTY EMPLOYEES CALLED TO ACTIVE DUTY

Sec. 173.001. EMPLOYEES SUBJECT TO CHAPTER. (a) This chapter applies to a municipal or county employee who is a member of a reserve component of the armed forces of the United States, including any appropriate part of the state military forces, and who by virtue of that membership is called to active duty in the armed forces of the United States by federal authority without the person's consent before, on, or after the effective date of this chapter as part of a partial or total mobilization of the reserve components of the armed forces.

(b) This chapter does not apply to a person who:

(1) ceases to be employed by a municipality or county because the person resigns or is terminated for a reason that is not a direct consequence of the person's call to active duty as described under Subsection (a); or

(2) commits a voluntary act that extends the person's original assigned service to active duty.

Added by Acts 2003, 78th Leg., ch. 671, Sec. 1, eff. June 20, 2003.

Sec. 173.002. SALARY CONTINUATION. (a) Notwithstanding any other law, if a person to whom this chapter applies exhausts all military leave to which the person is entitled under state law, the municipality or county may continue the person's municipal or county salary payments under this chapter in an amount determined by the governing body of the municipality or the commissioners court, as applicable, until the person is no longer required to serve on active

duty under the circumstances described by Section 173.001(a).

(b) The salary payments authorized by Subsection (a) are payable:

(1) from the general fund of the municipality or county or other funds available for that purpose on the date the person is called to active duty; and

(2) only for a municipal or county pay period that began on or after September 1, 2002.

Added by Acts 2003, 78th Leg., ch. 671, Sec. 1, eff. June 20, 2003.

Sec. 173.003. MANNER OF PAYMENT. Salary payments under this chapter may be paid in the manner directed by the person, subject to the approval of the governing body of a municipality or the commissioners court of a county, as applicable, except as provided by other law.

Added by Acts 2003, 78th Leg., ch. 671, Sec. 1, eff. June 20, 2003.

Sec. 173.004. RULES. The governing body of a municipality and the commissioners court of a county may adopt rules to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 671, Sec. 1, eff. June 20, 2003.

Sec. 173.005. OTHER BENEFITS UNAFFECTED. This chapter authorizes the continuation of municipal or county salary payments only as provided by Sections 173.001-173.004.

Added by Acts 2003, 78th Leg., ch. 671, Sec. 1, eff. June 20, 2003.

CHAPTER 174. FIRE AND POLICE EMPLOYEE RELATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 174.001. SHORT TITLE. This chapter may be cited as The Fire and Police Employee Relations Act.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.002. POLICY. (a) The policy of this state is that a political subdivision shall provide its fire fighters and police officers with compensation and other conditions of employment that are substantially the same as compensation and conditions of employment prevailing in comparable private sector employment.

(b) The policy of this state is that fire fighters and police officers, like employees in the private sector, should have the right to organize for collective bargaining, as collective bargaining is a fair and practical method for determining compensation and other conditions of employment. Denying fire fighters and police officers the right to organize and bargain collectively would lead to strife and unrest, consequently injuring the health, safety, and welfare of the public.

(c) The health, safety, and welfare of the public demands that strikes, lockouts, and work stoppages and slowdowns of fire fighters and police officers be prohibited, and therefore it is the state's duty to make available reasonable alternatives to strikes by fire fighters and police officers.

(d) Because of the essential and emergency nature of the public service performed by fire fighters and police officers, a reasonable alternative to strikes is a system of arbitration conducted under adequate legislative standards. Another reasonable alternative, if the parties fail to agree to arbitrate, is judicial enforcement of the requirements of this chapter regarding compensation and conditions of employment applicable to fire fighters and police officers.

(e) With the right to strike prohibited, to maintain the high morale of fire fighters and police officers and the efficient operation of the departments in which they serve, alternative procedures must be expeditious, effective, and binding.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.003. DEFINITIONS. In this chapter:

(1) "Association" means any type of organization, including an agency or employee representation committee or plan, in which fire fighters, police officers, or both, participate and that exists, in

whole or in part, to deal with one or more public or private employers concerning grievances, labor disputes, or conditions of employment affecting fire fighters, police officers, or both.

(2) "Fire fighter" means a permanent, paid employee of the fire department of a political subdivision. The term does not include:

(A) the chief of the department; or

(B) a volunteer fire fighter.

(3) "Police officer" means a paid employee who is sworn, certified, and full-time, and who regularly serves in a professional law enforcement capacity in the police department of a political subdivision. The term does not include the chief of the department.

(4) "Political subdivision" includes a municipality.

(5) "Public employer" means the official or group of officials of a political subdivision whose duty is to establish the compensation, hours, and other conditions of employment of fire fighters, police officers, or both, and may include the mayor, city manager, town manager, town administrator, municipal governing body, director of personnel, personnel board, commissioners, or another official or combination of those persons.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.16, eff. Sept. 1, 1999.

Sec. 174.004. LIBERAL CONSTRUCTION. This chapter shall be liberally construed.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.005. PREEMPTION OF OTHER LAW. This chapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.006. EFFECT ON CIVIL SERVICE PROVISIONS. (a) A state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise.

(b) A civil service provision may not be repealed or modified by arbitration or judicial action but may be interpreted or enforced by an arbitrator or court.

(c) This chapter does not limit the authority of a municipal fire chief or police chief under Chapter 143 except as modified by the parties through collective bargaining.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.007. EFFECT ON EXISTING BENEFITS. This chapter may not be construed as repealing any existing benefit provided by statute or ordinance concerning fire fighters' or police officers' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments. This chapter is in addition to the benefits provided by existing statutes and ordinances.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.008. WAIVER OF IMMUNITY. This chapter is binding and enforceable against the employing public employer, and sovereign or governmental immunity from suit and liability is waived only to the extent necessary to enforce this chapter against that employer.

Added by Acts 2007, 80th Leg., R.S., Ch. 1200 (H.B. 1473), Sec. 2, eff. June 15, 2007.

SUBCHAPTER B. CONDITIONS OF EMPLOYMENT AND RIGHT TO ORGANIZE

Sec. 174.021. PREVAILING WAGE AND WORKING CONDITIONS REQUIRED. A political subdivision that employs fire fighters, police officers, or both, shall provide those employees with compensation and other conditions of employment that are:

(1) substantially equal to compensation and other conditions of employment that prevail in comparable employment in the private sector; and

(2) based on prevailing private sector compensation and conditions of employment in the labor market area in other jobs that require the same or similar skills, ability, and training and may be performed under the same or similar conditions.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.022. CERTAIN PUBLIC EMPLOYERS CONSIDERED TO BE IN COMPLIANCE. (a) A public employer that has reached an agreement with an association on compensation or other conditions of employment as provided by this chapter is considered to be in compliance with the requirements of Section 174.021 as to the conditions of employment for the duration of the agreement.

(b) If an arbitration award is rendered as provided by Subchapter E, the public employer involved is considered to be in compliance with the requirements of Section 174.021 as to the conditions of employment provided by the award for the duration of the collective bargaining period to which the award applies.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.023. RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY. On adoption of this chapter or the law codified by this chapter by a political subdivision to which this chapter applies, fire fighters, police officers, or both are entitled to organize and bargain collectively with their public employer regarding compensation, hours, and other conditions of employment.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

SUBCHAPTER C. ADOPTION AND REPEAL OF COLLECTIVE BARGAINING PROVISIONS

Sec. 174.051. ADOPTION ELECTION. (a) The governing body of a political subdivision to which this chapter applies shall order an election for the adoption of this chapter on receiving a petition signed by qualified voters of the political subdivision in a number equal to or greater than the lesser of:

(1) 20,000; or

(2) five percent of the number of qualified voters voting

in the political subdivision in the preceding general election for state and county officers.

(b) The governing body shall hold the election on the first authorized uniform election date prescribed by Chapter 41, Election Code, that allows sufficient time for compliance with any requirements established by law.

(c) The ballot in the election shall be printed to provide for voting for or against the proposition: "Adoption of the state law applicable to (fire fighters, police officers, or both, as applicable) that establishes collective bargaining if a majority of the affected employees favor representation by an employees association, preserves the prohibition against strikes and lockouts, and provides penalties for strikes and lockouts."

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.052. EFFECT OF SUCCESSFUL ADOPTION ELECTION. If a majority of the votes cast in an election under Section 174.051 favor adoption of this chapter, the governing body shall place this chapter in effect not later than the 30th day after the beginning of the first fiscal year of the political subdivision after the election.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.053. REPEAL ELECTION. (a) The governing body of a political subdivision in which the collective bargaining provisions of this chapter have been in effect for at least one year shall order an election for the repeal of the adoption of this chapter on receiving a petition signed by qualified voters of the political subdivision in a number equal to or greater than the lesser of:

(1) 20,000; or

(2) five percent of the number of qualified voters voting in the political subdivision in the preceding general election for state and county officers.

(b) The ballot in the election shall be printed to provide for voting for or against the proposition: "Repeal of the adoption of the state law applicable to (fire fighters, police officers, or both, as applicable) that establishes collective bargaining if a majority of the affected employees favor representation by an employees

association, preserves the prohibition against strikes and lockouts, and provides penalties for strikes and lockouts."

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.054. EFFECT OF SUCCESSFUL REPEAL ELECTION. If a majority of the votes cast in an election under Section 174.053 favor repeal of the adoption of this chapter, the collective bargaining provisions of this chapter are void as to the political subdivision.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.055. FREQUENCY OF ELECTIONS. If an election for the adoption or the repeal of the adoption of this chapter is held under this subchapter, a like petition for a subsequent election may not be submitted before the first anniversary of the date of the preceding election.

Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

SUBCHAPTER D. COLLECTIVE BARGAINING

Sec. 174.101. RECOGNITION OF BARGAINING AGENT FOR FIRE FIGHTERS. A public employer shall recognize an association selected by a majority of the fire fighters of the fire department of a political subdivision as the exclusive bargaining agent for the fire fighters of that department unless a majority of the fire fighters withdraw the recognition.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.102. RECOGNITION OF BARGAINING AGENT FOR POLICE OFFICERS. A public employer shall recognize an association selected by a majority of the police officers of the police department of a political subdivision as the exclusive bargaining agent for the police officers of that department unless a majority of the police officers withdraw the recognition.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.103. SINGLE BARGAINING AGENT FOR FIRE FIGHTERS AND POLICE OFFICERS. (a) Except as provided by Subsection (b), the fire and police departments of a political subdivision are separate collective bargaining units under this chapter.

(b) Associations that represent employees in the fire and police departments of a political subdivision may voluntarily join together for collective bargaining with the public employer.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.104. QUESTION REGARDING REPRESENTATION. (a) A question of whether an association is the majority representative of the employees of a department under Sections 174.101-174.103 shall be resolved by a fair election conducted according to procedures agreed on by the parties.

(b) If the parties are unable to agree on election procedures under Subsection (a), either party may request the American Arbitration Association to conduct the election and certify the results. Certification of the results of an election under this section shall resolve the question regarding representation. The public employer shall pay the expenses of the election, except that if two or more associations seek recognition as the bargaining agent, the associations shall pay the costs of the election equally.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.105. DUTY TO BARGAIN COLLECTIVELY IN GOOD FAITH. (a) If the fire fighters, police officers, or both of a political subdivision are represented by an association as provided by Sections 174.101-174.104, the public employer and the association shall bargain collectively.

(b) For purposes of this section, the duty to bargain collectively means a public employer and an association shall:

(1) meet at reasonable times;

(2) confer in good faith regarding compensation, hours, and other conditions of employment or the negotiation of an agreement or

a question arising under an agreement; and

(3) execute a written contract incorporating any agreement reached, if either party requests a written contract.

(c) This section does not require a public employer or an association to:

(1) agree to a proposal; or

(2) make a concession.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.106. DESIGNATION OF NEGOTIATOR. A public employer or an association may designate one or more persons to negotiate or bargain on its behalf.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.107. NOTICE TO PUBLIC EMPLOYER REGARDING CERTAIN ISSUES. If compensation or another matter that requires an appropriation of money by any governing body is included for collective bargaining under this chapter, an association shall serve on the public employer a written notice of its request for collective bargaining at least 120 days before the date on which the public employer's current fiscal operating budget ends.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.108. OPEN DELIBERATIONS. A deliberation relating to collective bargaining between a public employer and an association, a deliberation by a quorum of an association authorized to bargain collectively, or a deliberation by a member of a public employer authorized to bargain collectively shall be open to the public and comply with state law.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.109. EFFECT OF AGREEMENT. An agreement under this chapter is binding and enforceable against a public employer, an

association, and a fire fighter or police officer covered by the agreement.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

SUBCHAPTER E. MEDIATION; ARBITRATION

Sec. 174.151. MEDIATION. (a) A public employer and an association that is a bargaining agent may use mediation to assist them in reaching an agreement.

(b) If a mediator is used, then a mediator may be appointed by agreement of the parties or by an appropriate state agency.

(c) A mediator may:

(1) hold separate or joint conferences as the mediator considers expedient to settle issues voluntarily, amicably, and expeditiously; and

(2) notwithstanding Subsection (d), recommend or suggest to the parties any proposal or procedure that in the mediator's judgment might lead to settlement.

(d) A mediator may not:

(1) make a public recommendation on any negotiation issue in connection with the mediator's service; or

(2) make a public statement or report that evaluates the relative merits of the parties' positions.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.152. IMPASSE. (a) For purposes of this subchapter, an impasse in the collective bargaining process is considered to have occurred if the parties do not settle in writing each issue in dispute before the 61st day after the date on which the collective bargaining process begins.

(b) The period specified in Subsection (a) may be extended by written agreement of the parties. An extension must be for a definite period not to exceed 15 days.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.153. REQUEST FOR ARBITRATION; AGREEMENT TO ARBITRATE.

(a) Except as provided by Section 174.1535, a public employer or an association that is a bargaining agent may request the appointment of an arbitration board if:

(1) the parties:

(A) reach an impasse in collective bargaining; or

(B) are unable to settle after the appropriate lawmaking body fails to approve a contract reached through collective bargaining;

(2) the parties made every reasonable effort, including mediation, to settle the dispute through good-faith collective bargaining; and

(3) the public employer or association gives written notice to the other party, specifying the issue in dispute.

(b) A request for arbitration must be made not later than the fifth day after:

(1) the date an impasse was reached under Section 174.152; or

(2) the expiration of an extension period under Section 174.152.

(c) An election by both parties to arbitrate must:

(1) be made not later than the fifth day after the date arbitration is requested; and

(2) be a written agreement to arbitrate.

(d) A party may not request arbitration more than once in a fiscal year.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 342 (S.B. 736), Sec. 1, eff. June 2, 2023.

Sec. 174.1535. MANDATORY ARBITRATION. (a) This section applies only to:

(1) a fire department that serves a municipality with a population of 1.9 million or more; and

(2) an association that is a bargaining agent for the employees of a fire department described by Subdivision (1).

(b) A public employer and an association that is a bargaining agent shall submit to binding interest arbitration if the parties:

(1) reach an impasse in collective bargaining; or

(2) are unable to settle after the 61st day after the date the appropriate lawmaking body fails to approve a contract reached through collective bargaining.

(c) Each party shall send to the other party a written notice specifying each issue in dispute for purposes of binding arbitration not later than the fifth day after:

(1) the date an impasse was reached under Section 174.152;

(2) the expiration of an extension period under Section 174.152; or

(3) the expiration of the period described by Subsection (b)(2).

(d) A notice under Subsection (c) is considered sent on the date the notice is placed in the mail, personally delivered, or transmitted by e-mail or any other means of electronic transfer.

Added by Acts 2023, 88th Leg., R.S., Ch. 342 (S.B. 736), Sec. 2, eff. June 2, 2023.

Sec. 174.154. ARBITRATION BOARD. (a) Not later than the fifth day after the date an agreement to arbitrate is executed, each party shall:

(1) select one arbitrator; and

(2) immediately notify the other party in writing of the name and address of the arbitrator selected.

(b) Not later than the 10th day after the date an agreement to arbitrate is executed, the arbitrators named under Subsection (a) shall attempt to select a third (neutral) arbitrator. If the arbitrators are unable to agree on a third arbitrator, either party may request the American Arbitration Association to select the third arbitrator, and the American Arbitration Association may appoint the third arbitrator according to its fair and regular procedures. Unless both parties consent, the third arbitrator may not be the same individual who served as a mediator under Section 174.151.

(c) The arbitrator selected under Subsection (b) presides over the arbitration board.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.155. ARBITRATION HEARING. (a) A presiding arbitrator shall:

(1) call a hearing to be held not later than the 10th day after the date on which the presiding arbitrator is appointed; and

(2) notify the other arbitrators, the public employer, and the association in writing of the time and place of the hearing, not later than the eighth day before the hearing.

(b) An arbitration hearing shall end not later than the 20th day after the date the hearing begins.

(c) An arbitration hearing shall be informal.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.156. SCOPE OF ARBITRATION. (a) The issues to be arbitrated are all matters the parties are unable to resolve through collective bargaining and mediation procedures required by this chapter.

(b) An arbitration board shall render an award in accordance with the requirements of Section 174.021. In settling disputes relating to compensation, hours, and other conditions of employment, the board shall consider:

(1) hazards of employment;

(2) physical qualifications;

(3) educational qualifications;

(4) mental qualifications;

(5) job training;

(6) skills; and

(7) other factors.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.157. EVIDENCE; OATH; SUBPOENA. (a) The rules of evidence applicable to judicial proceedings are not binding in an arbitration hearing.

(b) An arbitration board may:

(1) receive in evidence any documentary evidence or other information the board considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the board for determination.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.158. ARBITRATION AWARD. (a) Not later than the 10th day after the end of the hearing, an arbitration board shall:

(1) make written findings; and

(2) render a written award on the issues presented to the board.

(b) A copy of the findings and award shall be mailed or delivered to the public employer and the association.

(c) An increase in compensation awarded by an arbitration board under this subchapter may take effect only at the beginning of the next fiscal year after the date of the award.

(d) If a new fiscal year begins after the initiation of arbitration procedures under this subchapter, Subsection (c) does not apply and an increase in compensation may be retroactive to the beginning of the fiscal year.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.159. EFFECT OF AWARD. If a majority decision of an arbitration board is supported by competent, material, and substantial evidence on the whole record, the decision:

(1) is final and binding on the parties; and

(2) may be enforced by either party or the arbitration board in a district court for the judicial district in which a majority of the affected employees reside.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.160. AMENDMENT OF AWARD. The parties to an arbitration award may amend the award by written agreement at any time.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.161. BEGINNING OF NEW FISCAL YEAR. If a new fiscal year begins after the initiation of arbitration procedures under this subchapter but before an award is rendered or enforced:

(1) the dispute is not moot;

(2) the jurisdiction of the arbitration board is not impaired; and

(3) the arbitration award is not impaired.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.162. EXTENSION OF PERIOD. A period specified by Section 174.155 or 174.158 may be extended:

(1) by the written agreement of the parties for a reasonable period; or

(2) by the arbitration board for good cause for one or more periods that in the aggregate do not exceed 20 days.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.163. COMPULSORY ARBITRATION NOT REQUIRED. This chapter does not require compulsory arbitration.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.164. COMPENSATION OF ARBITRATORS; EXPENSES OF ARBITRATION. (a) The compensation of an arbitrator selected by a public employer shall be paid by the public employer.

(b) The compensation, if any, of an arbitrator selected by fire fighters, police officers, or both shall be paid by the association representing the employees.

(c) The public employer and the association representing the employees shall jointly pay in even proportions:

(1) the compensation of the neutral arbitrator; and

(2) the stenographic and other expenses incurred by the arbitration board in connection with the arbitration proceedings.

(d) If a party to arbitration requires a transcript of the arbitration proceedings, the party shall pay the cost of the transcript.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

SUBCHAPTER F. STRIKES; LOCKOUTS

Sec. 174.201. DEFINITION. In this subchapter, "strike" means failing to report for duty in concerted action with others, wilfully being absent from one's position, stopping work, abstaining from the full, faithful, and proper performance of the duties of employment, or interfering with the operation of a municipality in any manner, to induce, influence, or coerce a change in the conditions, compensation, rights, privileges, or obligations of employment.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.202. STRIKES, SLOWDOWNS, AND LOCKOUTS PROHIBITED. (a) A fire fighter or police officer may not engage in a strike or slowdown.

(b) A lockout of fire fighters or police officers is prohibited.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.203. LOCKOUT BY MUNICIPALITY; INJUNCTION; PENALTY. If a municipality or its designated agent or a department or agency head engages in a lockout of fire fighters or police officers, a court shall:

(1) prohibit the lockout;

(2) impose a fine not to exceed $2,000 on any individual violator; or

(3) both prohibit the lockout and impose the fine.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.204. STRIKE; PENALTY AGAINST ASSOCIATION. (a) A

district court for the judicial district in which a municipality is located that finds that an association has called, ordered, aided, or abetted a strike by fire fighters or police officers shall:

(1) impose a fine on the association for each day of the strike equal to 1/26 of the total of the association's annual membership dues, but not less than $2,500 nor more than $20,000; and

(2) order the forfeiture of any membership dues checkoff for a specified period not to exceed 12 months.

(b) If the court finds that the municipality or its representative engaged in acts of extreme provocation that detract substantially from the association's responsibility for the strike, the court may reduce the amount of the fine.

(c) An association that appeals a fine under Subsection (b) is not required to pay the fine until the appeal is finally determined.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.205. STRIKE; PENALTY AGAINST INDIVIDUAL. If a fire fighter or police officer engages in a strike, interferes with the municipality, prevents the municipality from engaging in its duty, directs any employee of the municipality to decline to work or to stop or slow down work, causes another to fail or refuse to deliver goods or services to the municipality, pickets for any of those unlawful acts, or conspires to perform any of those acts:

(1) the fire fighter's or police officer's compensation in any form may not increase in any manner until after the first anniversary of the date the individual resumes normal working duties; and

(2) the fire fighter or police officer shall be on probation for two years regarding civil service status, tenure of employment, or contract of employment to which the individual was previously entitled.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

SUBCHAPTER G. JUDICIAL ENFORCEMENT AND REVIEW

Sec. 174.251. JUDICIAL ENFORCEMENT GENERALLY. A district court for the judicial district in which a municipality is located, on the application of a party aggrieved by an act or omission of the other

party that relates to the rights or duties under this chapter, may issue a restraining order, temporary or permanent injunction, contempt order, or other writ, order, or process appropriate to enforce this chapter.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.252. JUDICIAL ENFORCEMENT WHEN PUBLIC EMPLOYER DECLINES ARBITRATION. (a) If an association requests arbitration as provided by Subchapter E and a public employer refuses to engage in arbitration, on the application of the association, a district court for the judicial district in which a majority of affected employees reside may enforce the requirements of Section 174.021 as to any unsettled issue relating to compensation or other conditions of employment of fire fighters, police officers, or both.

(b) If the court finds that the public employer has violated Section 174.021, the court shall:

(1) order the public employer to make the affected employees whole as to the employees' past losses;

(2) declare the compensation or other conditions of employment required by Section 174.021 for the period, not to exceed one year, as to which the parties are bargaining; and

(3) award the association reasonable attorney's fees.

(c) The court costs of an action under this section, including costs for a master if one is appointed, shall be taxed to the public employer.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

Sec. 174.253. JUDICIAL REVIEW OF ARBITRATION AWARD. (a) An award of an arbitration board may be reviewed by a district court for the judicial district in which the municipality is located only on the grounds that:

(1) the arbitration board was without jurisdiction;

(2) the arbitration board exceeded its jurisdiction;

(3) the order is not supported by competent, material, and substantial evidence on the whole record; or

(4) the order was obtained by fraud, collusion, or similar unlawful means.

(b) The pendency of a review proceeding does not automatically stay enforcement of the arbitration board's order.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 4, eff. Sept. 1, 1993.

CHAPTER 175. RIGHT OF EMPLOYEES OF CERTAIN POLITICAL SUBDIVISIONS TO PURCHASE CONTINUED HEALTH COVERAGE AT RETIREMENT

Sec. 175.001. APPLICABILITY. (a) In this section, "township" means a special district with territory that only includes a census designated place, as designated by the United States Bureau of the Census.

(b) This chapter applies to a person who:

(1) retires from:

(A) county employment in a county with a population of 75,000 or more;

(B) employment by an appraisal district in a county with a population of 75,000 or more;

(C) municipal employment in a municipality with a population of 25,000 or more;

(D) employment as a firefighter or emergency medical services provider by an emergency services district located wholly or partly in a county with a population of 150,000 or more; or

(E) employment as a firefighter, police officer, or emergency medical services provider by a township with a population of 110,000 or more; and

(2) is entitled to receive retirement benefits from a county, appraisal district, or municipal retirement plan, emergency services district, or township.

Added by Acts 1993, 73rd Leg., ch. 663, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Local Government Code Sec. 174.001 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(38), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 2, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 337 (H.B. 2171), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 787 (H.B. 5344), Sec. 1, eff. September 1, 2023.

Sec. 175.002. RIGHT TO PURCHASE CONTINUED COVERAGE. (a) A person to whom this chapter applies is entitled to purchase continued health benefits coverage for the person and the person's dependents as provided by this chapter unless the person is eligible for group health benefits coverage through another employer. The coverage shall be provided under the group health insurance plan or group health coverage plan provided by or through the employing political subdivision to its employees.

(b) To receive continued coverage under this chapter, the person must inform the employing political subdivision, not later than the day on which the person retires from the political subdivision, that the person elects to continue coverage.

(c) If the person elects to continue coverage for the person and on any subsequent date elects to discontinue such coverage, the person is no longer eligible for coverage under this chapter.

(d) If the person elects to continue coverage for any dependent and on any subsequent date elects to discontinue such coverage, the dependent is no longer eligible for coverage under this chapter.

Added by Acts 1993, 73rd Leg., ch. 663, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Local Government Code Sec. 174.002 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(38), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 3, eff. June 19, 2009.

Sec. 175.003. LEVEL OF COVERAGE. (a) The person may elect to cover the same persons who were covered under the political subdivision's group health insurance plan or group health coverage plan through the person at the time the person left employment with the political subdivision, or the person may elect to discontinue coverage for one or more persons. A person who was not covered under the plan at the time the person to whom this chapter applies left employment with the political subdivision is not eligible for coverage under this chapter.

(b) Except as provided by Subsections (c) and (d), the level of coverage provided under this chapter at any given time is the same level of coverage provided to current employees of the political subdivision at that time.

(c) A political subdivision may substitute Medicare supplement health benefits coverage as the coverage provided for a person who receives health benefits coverage under this chapter, including a dependent, after the date that the person becomes eligible for federal Medicare benefits.

(d) The person may elect to continue coverage at a reduced level, if offered by the political subdivision.

Added by Acts 1993, 73rd Leg., ch. 663, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Local Government Code Sec. 174.003 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(38), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 4, eff. June 19, 2009.

Sec. 175.004. PAYMENT FOR COVERAGE. A person who is entitled to continued coverage under this chapter is entitled to make payments for the coverage at the same time and to the same entity that payments for the coverage are made by current employees of the political subdivision.

Added by Acts 1993, 73rd Leg., ch. 663, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Local Government Code Sec. 174.004 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(38), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 4, eff. June 19, 2009.

Sec. 175.005. DUTY TO INFORM RETIREE OF RIGHTS. A political subdivision shall provide written notice to a person to whom this chapter may apply of the person's rights under this chapter not later than the date the person retires from the political subdivision. A political subdivision may fulfill its requirements under this section by placing the written notice required by this section in a personnel manual or employee handbook that is available to all employees.

Added by Acts 1993, 73rd Leg., ch. 663, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Local Government Code Sec. 174.005 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(38), eff. Sept. 1, 1995.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 4, eff. June 19, 2009.

Sec. 175.006. CERTAIN MATTERS NOT AFFECTED. This chapter does not:

(1) prohibit a political subdivision from uniformly changing the group health insurance plan or group health coverage plan provided for its employees and retirees;

(2) affect the definition of a dependent or the eligibility requirements for a dependent under a plan;

(3) prohibit a political subdivision from agreeing with a person to deduct the cost of coverage provided under this chapter from a pension check;

(4) prohibit a political subdivision from agreeing with a person to pay for the coverage provided under this chapter provided the person reimburses the political subdivision for the actual cost of the coverage;

(5) prohibit a political subdivision or a pool established under Chapter 172 from increasing the cost of group health coverage to its employees and to persons covered under this chapter to reflect the increased cost, if any, attributable to compliance with this chapter;

(6) affect the right of a political subdivision to provide coverage under Chapter 172; or

(7) affect the right of a political subdivision or a pool established under Chapter 172 to offer the coverage at the same rate that is available to active employees or to offer the coverage at a reasonable or actual rate established for retirees that may be greater than the rate offered to active employees.

Added by Acts 1993, 73rd Leg., ch. 663, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Local Government Code Sec. 174.006 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(38), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 4, eff. June 19, 2009.

Sec. 175.007. EXEMPTIONS. (a) A political subdivision that does not provide health benefits coverage through a self-insured plan or a plan authorized under Chapter 172 is not required to provide coverage under this chapter if the political subdivision makes a good faith effort to purchase insurance coverage that includes coverage required by this chapter from an insurance company authorized to do business in this state and from pools established under Chapter 172 but is unable to find a provider for the coverage.

(b) A political subdivision that is providing coverage substantially similar to or better than the coverage required by this chapter is exempt from this chapter.

Added by Acts 1993, 73rd Leg., ch. 663, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Local Government Code Sec. 174.007 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(38), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1363 (S.B. 654), Sec. 4, eff. June 19, 2009.

CHAPTER 176. DISCLOSURE OF CERTAIN RELATIONSHIPS WITH LOCAL GOVERNMENT OFFICERS; PROVIDING PUBLIC ACCESS TO CERTAIN INFORMATION

Sec. 176.001. DEFINITIONS. In this chapter:

(1) "Agent" means a third party who undertakes to transact some business or manage some affair for another person by the authority or on account of the other person. The term includes an employee.

(1-a) "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

(A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;

(B) a transaction conducted at a price and subject to terms available to the public; or

(C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

(1-b) "Charter school" means an open-enrollment charter school operating under Subchapter D, Chapter 12, Education Code.

(1-c) "Commission" means the Texas Ethics Commission.

(1-d) "Contract" means a written agreement for the sale or purchase of real property, goods, or services.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.

(2-a) "Family relationship" means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Government Code.

(2-b) "Gift" means a benefit offered by a person, including food, lodging, transportation, and entertainment accepted as a guest. The term does not include a benefit offered on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

(2-c) "Goods" means personal property.

(2-d) "Investment income" means dividends, capital gains, or interest income generated from:

(A) a personal or business:

(i) checking or savings account;

(ii) share draft or share account; or

(iii) other similar account;

(B) a personal or business investment; or

(C) a personal or business loan.

(3) "Local governmental entity" means a county, municipality, school district, charter school, junior college district, water district created under Subchapter B, Chapter 49, Water Code, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity;

(B) a director, superintendent, administrator,

president, or other person designated as the executive officer of a local governmental entity; or

(C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity or another person designated by the local governmental entity to maintain statements and questionnaires filed under this chapter and perform related functions.

(6) "Services" means skilled or unskilled labor or professional services, as defined by Section 2254.002, Government Code.

(7) "Vendor" means a person who enters or seeks to enter into a contract with a local governmental entity. The term includes an agent of a vendor. The term includes an officer or employee of a state agency when that individual is acting in a private capacity to enter into a contract. The term does not include a state agency except for Texas Correctional Industries.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 1, eff. May 25, 2007.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 1, eff. September 1, 2015.

Sec. 176.002. APPLICABILITY TO VENDORS AND OTHER PERSONS. (a) This chapter applies to a person who is:

(1) a vendor; or

(2) a local government officer of a local governmental entity.

(b) A person is not subject to the disclosure requirements of this chapter if the person is:

(1) a state, a political subdivision of a state, the federal government, or a foreign government; or

(2) an employee or agent of an entity described by

Subdivision (1), acting in the employee's or agent's official capacity.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 2, eff. May 25, 2007.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 2, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 3, eff. September 1, 2015.

Sec. 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED. (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

(1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds $2,500 during the 12-month period preceding the date that the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than $100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor; or

(C) has a family relationship with the local government

officer.

(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:

(1) a political contribution as defined by Title 15, Election Code; or

(2) food accepted as a guest.

(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.

(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(1), eff. September 1, 2015.

(e) The commission shall adopt the conflicts disclosure statement for local government officers for use under this section. The conflicts disclosure statement must include:

(1) a requirement that each local government officer disclose:

(A) an employment or other business relationship described by Subsection (a)(2)(A), including the nature and extent of the relationship; and

(B) gifts accepted by the local government officer and any family member of the officer from a vendor during the 12-month period described by Subsection (a)(2)(B) if the aggregate value of the gifts accepted by the officer or a family member from that vendor exceeds $100;

(2) an acknowledgment from the local government officer that:

(A) the disclosure applies to each family member of the officer; and

(B) the statement covers the 12-month period described by Subsection (a)(2)(B); and

(3) the signature of the local government officer

acknowledging that the statement is made under oath under penalty of perjury.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 3, eff. May 25, 2007.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 4, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 5, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 9(1), eff. September 1, 2015.

Sec. 176.006. DISCLOSURE REQUIREMENTS FOR VENDORS AND OTHER PERSONS; QUESTIONNAIRE. (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire:

(1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity;

(2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income, other than investment income, from the vendor;

(3) identify each employment or business relationship described by Subdivision (1) with respect to which the vendor receives, or is likely to receive, taxable income, other than investment income, that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity; and

(4) describe each employment or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of one percent or more.

(d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person who is both a local government officer and a

vendor of a local governmental entity is required to file the questionnaire required by Subsection (a)(1) only if the person:

(1) enters or seeks to enter into a contract with the local governmental entity; or

(2) is an agent of a person who enters or seeks to enter into a contract with the local governmental entity.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(h) Repealed by Acts 2015, 84th Leg., R.S., Ch. 989 , Sec. 9(3), eff. September 1, 2015.

(i) The validity of a contract between a vendor and a local governmental entity is not affected solely because the vendor fails to comply with this section.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 6, eff. May 25, 2007.

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 9, eff. May 25, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.005, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 9(3), eff. September 1, 2015.

Sec. 176.0065. MAINTENANCE OF RECORDS. A records administrator shall:

(1) maintain a list of local government officers of the local governmental entity and shall make that list available to the public and any vendor who may be required to file a conflict of interest questionnaire under Section 176.006; and

(2) maintain the statements and questionnaires that are required to be filed under this chapter in accordance with the local governmental entity's records retention schedule.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 8, eff. May 25, 2007.
Redesignated and amended from Local Government Code, Section 176.011 by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 7, eff. September 1, 2015.

Sec. 176.008. ELECTRONIC FILING. The requirements of this chapter, including signature requirements, may be satisfied by electronic filing in a form approved by the commission.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Sec. 176.009. POSTING ON INTERNET. (a) A local governmental entity that maintains an Internet website shall provide access to the statements and to questionnaires required to be filed under this chapter on that website. This subsection does not require a local governmental entity to maintain an Internet website.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 847, Sec. 3(b), eff. January 1, 2014.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 7, eff. May 25, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 76, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 847 (H.B. 195), Sec. 3(b), eff. January 1, 2014.

Sec. 176.010. REQUIREMENTS CUMULATIVE. The requirements of this chapter are in addition to any other disclosure required by law.

Added by Acts 2005, 79th Leg., Ch. 1014 (H.B. 914), Sec. 1, eff. June 18, 2005.

Sec. 176.012. APPLICATION OF PUBLIC INFORMATION LAW. This chapter does not require a local governmental entity to disclose any information that is excepted from disclosure by Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 226 (H.B. 1491), Sec. 8, eff. May 25, 2007.

Sec. 176.013. ENFORCEMENT. (a) A local government officer commits an offense under this chapter if the officer:

(1) is required to file a conflicts disclosure statement under Section 176.003; and

(2) knowingly fails to file the required conflicts disclosure statement with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement.

(b) A vendor commits an offense under this chapter if the vendor:

(1) is required to file a conflict of interest questionnaire under Section 176.006; and

(2) either:

(A) knowingly fails to file the required questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of the facts that require the filing of the questionnaire; or

(B) knowingly fails to file an updated questionnaire with the appropriate records administrator not later than 5 p.m. on the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in a questionnaire previously filed by the vendor incomplete or inaccurate.

(c) An offense under this chapter is:

(1) a Class C misdemeanor if the contract amount is less than $1 million or if there is no contract amount for the contract;

(2) a Class B misdemeanor if the contract amount is at least $1 million but less than $5 million; or

(3) a Class A misdemeanor if the contract amount is at least $5 million.

(d) A local governmental entity may reprimand, suspend, or

terminate the employment of an employee who knowingly fails to comply with a requirement adopted under this chapter.

(e) The governing body of a local governmental entity may, at its discretion, declare a contract void if the governing body determines that a vendor failed to file a conflict of interest questionnaire required by Section 176.006.

(f) It is an exception to the application of Subsection (a) that the local government officer filed the required conflicts disclosure statement not later than the seventh business day after the date the officer received notice from the local governmental entity of the alleged violation.

(g) It is an exception to the application of Subsection (b) that the vendor filed the required questionnaire not later than the seventh business day after the date the vendor received notice from the local governmental entity of the alleged violation.

Added by Acts 2015, 84th Leg., R.S., Ch. 989 (H.B. 23), Sec. 8, eff. September 1, 2015.

CHAPTER 177. LIFE, HEALTH, AND ACCIDENT INSURANCE FOR OFFICIALS, EMPLOYEES, AND RETIREES OF POLITICAL SUBDIVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 177.001. CERTAIN COVERAGE AUTHORIZED. (a) A county or other political subdivision of this state may procure contracts insuring the political subdivision's officials, employees, and retirees or any class of the political subdivision's officials, employees, and retirees under a policy of group life, group health, accident, accidental death and dismemberment, or hospital, surgical, or medical expense insurance.

(b) The dependents of those officials, employees, and retirees may be insured under a group policy that provides:

(1) health insurance; or

(2) hospital, surgical, or medical expense insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1K.002, eff. April 1, 2009.

Sec. 177.002. PAYMENT OF PREMIUMS. (a) A county or other political subdivision of this state that is authorized to procure a

contract insuring the political subdivision's officials, employees, and retirees or any class of the political subdivision's officials, employees, and retirees under a policy of group insurance that covers one or more risks may pay from the local funds of the political subdivision all or any portion of the premiums for the policy. The political subdivision may also pay all or any portion of the premiums on group health, hospital, surgical, or medical expense insurance for dependents of the political subdivision's officials, employees, and retirees.

(b) If authorized by the official, employee, or retiree in writing to make the deduction, the county or other political subdivision may deduct from the person's salary an amount equal to any required contribution by the person to the premiums for the insurance issued under Section 177.001 to the political subdivision as the policyholder.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1K.002, eff. April 1, 2009.

Sec. 177.003. USE OF STATE FUNDS. State funds may not be used to procure a contract under this subchapter or pay premiums under that contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1K.002, eff. April 1, 2009.

SUBCHAPTER B. HEALTH AND INSURANCE FUND

Sec. 177.051. FUND AUTHORIZED. (a) A county or other political subdivision of this state may establish a fund to provide insurance authorized by Subchapter A.

(b) A fund established under Subsection (a) shall be known as the "health and insurance fund--employees and dependents."

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1K.002, eff. April 1, 2009.

Sec. 177.052. PAYMENT OF MONEY INTO FUND. There shall be credited to a fund established under this subchapter:

(1) any salary deduction to which an official, employee, or retiree agrees in writing; and

(2) contributions from the county or other political subdivision.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1K.002, eff. April 1, 2009.

Sec. 177.053. USE OF MONEY IN FUND. Payment from a fund established under this subchapter:

(1) is authorized only for the payment of premiums on life, group health, accident, accidental death and dismemberment, or hospital, surgical, or medical expense insurance for officials, employees, retirees, and their dependents; and

(2) must be made in accordance with rules adopted by the county or other political subdivision establishing the fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1K.002, eff. April 1, 2009.

Sec. 177.054. PAYMENT OF CLAIMS FROM FUND. A claim against a fund established under this subchapter shall be payable in the same manner as other claims of the county or other political subdivision.

Added by Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 1K.002, eff. April 1, 2009.

CHAPTER 177A. ILLNESS OR INJURY LEAVE OF ABSENCE FOR FIREFIGHTERS, POLICE OFFICERS, AND EMERGENCY MEDICAL SERVICES PERSONNEL OF POLITICAL SUBDIVISION

Sec. 177A.001. DEFINITIONS. In this chapter:

(1) "Emergency medical services personnel" means a person described by Section 773.003, Health and Safety Code, who is a paid employee of a political subdivision.

(2) "Firefighter" means a firefighter who is a permanent, paid employee of the fire department of a political subdivision. The term includes the chief of the department. The term does not include a volunteer firefighter.

(3) "Police officer" means a paid employee who is full-time, holds an officer license issued under Chapter 1701, Occupations Code, and regularly serves in a professional law enforcement capacity in the police department of a political subdivision. The term includes the chief of the department.

Added by Acts 2023, 88th Leg., R.S., Ch. 665 (H.B. 471), Sec. 1, eff. June 12, 2023.

Sec. 177A.002. EFFECT ON LABOR AGREEMENTS. Notwithstanding any other law, including Section 142.067, 142.117, 143.207, 143.307, 143.361, 147.004, or 174.005, a collective bargaining, meet and confer, or other similar agreement that provides a benefit for an ill or injured employee must provide a benefit that, at a minimum, complies with this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 665 (H.B. 471), Sec. 1, eff. June 12, 2023.

Sec. 177A.003. LINE OF DUTY ILLNESS OR INJURY LEAVE OF ABSENCE. (a) A political subdivision shall provide to a firefighter, police officer, or emergency medical services personnel a leave of absence for an illness or injury related to the person's line of duty. The leave is with full pay for a period commensurate with the nature of the line of duty illness or injury. If necessary, the political subdivision shall continue the leave for at least one year.

(b) At the end of the leave of absence under Subsection (a), the governing body of the political subdivision may extend the leave of absence at full or reduced pay.

(c) If the firefighter, police officer, or emergency medical services personnel is temporarily disabled by a line of duty injury or illness and the leave of absence and any extension granted by the governing body has expired, the person may use accumulated sick leave, vacation time, and other accrued benefits before the person is placed on temporary leave.

(d) If the leave of absence and any extension granted by the governing body has expired, a firefighter, police officer, or emergency medical services personnel who requires additional leave described by this section shall be placed on temporary leave.

Added by Acts 2023, 88th Leg., R.S., Ch. 665 (H.B. 471), Sec. 1, eff. June 12, 2023.

Sec. 177A.004. RETURN TO DUTY. (a) If able, a firefighter, police officer, or emergency medical services personnel may return to light duty while recovering from a temporary disability. If medically necessary, the light duty assignment may continue for at least one year.

(b) After recovery from a temporary disability, a firefighter, police officer, or emergency medical services personnel shall be reinstated at the same rank and with the same seniority the person had before going on temporary leave. Another firefighter, police officer, or emergency medical services personnel may voluntarily do the work of the injured firefighter, police officer, or emergency medical services personnel until the person returns to duty.

Added by Acts 2023, 88th Leg., R.S., Ch. 665 (H.B. 471), Sec. 1, eff. June 12, 2023.

CHAPTER 178. REMOVAL OF SPECIAL DISTRICT BOARD MEMBERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 178.001. DEFINITIONS. In this chapter:

(1) "Board" means the governing body of a special district.

(2) "Director" means a board member.

(3) "Misconduct" means intentionally or knowingly:

(A) violating a law relating to the office of director; or

(B) misapplying any thing of value belonging to a special district that has come into the custody or possession of a director by virtue of the director's office.

(4) "Special district" means a political subdivision of this state with a limited geographic area created by local law or under general law for a special purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 985 (S.B. 1207), Sec. 1, eff. June 15, 2007.
Renumbered from Local Government Code, Section 177.001 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(65), eff. September 1, 2009.

SUBCHAPTER B. REMOVAL OF APPOINTED BOARD MEMBERS FOR MISCONDUCT

Sec. 178.051. APPLICABILITY. This subchapter applies to any type of special district with a board that is wholly or partly appointed, including:

(1) agricultural development districts;
(2) appraisal districts;
(3) athletic stadium authorities;
(4) civic center authorities;
(5) coastal water authorities;
(6) coordinated county transportation authorities;
(7) conservation and reclamation districts;
(8) county development districts;
(9) county health care funding districts;
(10) county hospital authorities;
(11) county mass transit authorities;
(12) crime control and prevention districts;
(13) defense adjustment management authorities;
(14) defense base development authorities;
(15) districts governing groundwater;
(16) drainage districts;
(17) emergency communication districts;
(18) emergency services districts;
(19) fire control, prevention, and emergency medical services districts;
(20) freight rail districts;
(21) fresh water supply districts;
(22) groundwater conservation districts;
(23) health care funding districts;
(24) health services districts;
(25) higher education facility authorities;
(26) hospital districts;
(27) improvement districts;
(28) indigent health care districts;
(29) intermunicipal commuter rail districts;
(30) irrigation districts;
(31) jail districts;
(32) levee improvement districts;
(33) library districts;

(34) metropolitan rapid transit authorities;
(35) multi-jurisdictional library districts;
(36) municipal development districts;
(37) municipal hospital authorities;
(38) municipal management districts;
(39) municipal utility districts;
(40) navigation districts;
(41) noxious weed control districts;
(42) park and recreation districts;
(43) parks and recreational facilities districts;
(44) port authorities;
(45) public improvement districts;
(46) rail districts;
(47) rapid transit authorities;
(48) regional districts;
(49) regional transportation authorities;
(50) river authorities;
(51) road districts;
(52) road utility districts;
(53) rural rail transportation districts;
(54) rural transit districts;
(55) school districts;
(56) seawall commissions;
(57) solid waste management districts;
(58) soil and water conservation districts;
(59) special utility districts;
(60) sports and community venue districts;
(61) sports facility districts;
(62) stormwater control districts;
(63) subsidence districts;
(64) urban transit districts;
(65) water control and improvement districts;
(66) water control and preservation districts;
(67) water districts;
(68) water import authorities; and
(69) water improvement districts.

Added by Acts 2007, 80th Leg., R.S., Ch. 985 (S.B. 1207), Sec. 1, eff. June 15, 2007.
Renumbered from Local Government Code, Section 177.051 by Acts 2009,

81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(65), eff. September 1, 2009.

Sec. 178.052. EXEMPTIONS. (a) This subchapter does not apply to a regional planning commission under Chapter 391.

(b) This subchapter does not apply to a director who is a county officer under Section 24, Article V, Texas Constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 985 (S.B. 1207), Sec. 1, eff. June 15, 2007.
Renumbered from Local Government Code, Section 177.052 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(65), eff. September 1, 2009.

Sec. 178.053. REMOVAL OF DIRECTOR BY COMMISSIONERS COURT FOR MISCONDUCT. (a) The commissioners court of a county may remove for misconduct a director who:

(1) serves as a director of a special district located wholly or partly in the county; and

(2) was appointed by the commissioners court.

(b) To the extent of a conflict, this section prevails over any conflicting law.

Added by Acts 2007, 80th Leg., R.S., Ch. 985 (S.B. 1207), Sec. 1, eff. June 15, 2007.
Renumbered from Local Government Code, Section 177.053 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(65), eff. September 1, 2009.

Sec. 178.054. HEARING. (a) A commissioners court that desires to remove a director for misconduct shall hold a hearing on the director's removal.

(b) The director and any interested person is entitled to appear at the hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 985 (S.B. 1207), Sec. 1, eff. June 15, 2007.
Renumbered from Local Government Code, Section 177.054 by Acts 2009,

81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(65), eff. September 1, 2009.

Sec. 178.055. ORDER REMOVING DIRECTOR. (a) To remove a director of a special district located wholly in one county, the commissioners court of the county must:

(1) find after the hearing that the director engaged in misconduct; and

(2) issue an order removing the director.

(b) To remove a director of a special district located in more than one county:

(1) a commissioners court that appointed the director on its sole authority must find after the hearing that the director engaged in misconduct and issue an order removing the director; or

(2) for a director appointed other than on the sole authority of a single commissioners court, the commissioners court of each county in which the district is located must find after the hearing held by that court that the director engaged in misconduct and issue an order removing the director.

Added by Acts 2007, 80th Leg., R.S., Ch. 985 (S.B. 1207), Sec. 1, eff. June 15, 2007.
Renumbered from Local Government Code, Section 177.055 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(65), eff. September 1, 2009.

Sec. 178.056. VACANCY. (a) If a general or special law that governs the special district does not provide a method for filling a vacancy, the commissioners court that removed the director by order may appoint a director to serve the remainder of the removed director's term.

(b) If the special district is located wholly or partly in more than one county and if the action of more than one commissioners court was needed under Section 178.055(b)(2) to remove the director, the commissioners court of each of those counties must agree on the appointment.

Added by Acts 2007, 80th Leg., R.S., Ch. 985 (S.B. 1207), Sec. 1, eff. June 15, 2007.

Renumbered from Local Government Code, Section 177.056 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(65), eff. September 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(14), eff. September 1, 2009.

CHAPTER 179. AUTHORITY OF CERTAIN FIRST RESPONDERS TO CARRY HANDGUN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 179.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Public Safety of the State of Texas.

(2) "First responder" has the meaning assigned by Section 46.01, Penal Code.

(3) "Handgun" has the meaning assigned by Section 46.01, Penal Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.

Sec. 179.002. APPLICABILITY OF CHAPTER. This chapter applies only to:

(1) a municipality with a population of 30,000 or less that has not adopted Chapter 174; and

(2) a county with a population of 250,000 or less that has not adopted Chapter 174.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.

Sec. 179.003. CONSTRUCTION OF CHAPTER. (a) This chapter does not create a cause of action or liability.

(b) This chapter may not be construed to waive, under Chapter 101, Civil Practice and Remedies Code, or any other law, a municipality's or county's governmental immunity from suit or to liability.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4,

eff. September 1, 2021.

SUBCHAPTER B. AUTHORITY AND REQUIREMENTS TO CARRY HANDGUN

Sec. 179.051. AUTHORITY OF MUNICIPALITY OR COUNTY TO PROHIBIT OR REGULATE CARRYING HANDGUN. (a) A municipality or county to which this chapter applies and that employs or supervises first responders may not adopt or enforce an ordinance, order, or other measure that generally prohibits a first responder who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, an unexpired certificate of completion from the department under Section 411.1883(d), Government Code, and the required liability policy under Section 179.053 from:

(1) carrying a concealed or holstered handgun while on duty; or

(2) storing a handgun on the premises of or in a vehicle owned or leased by the municipality or county if the handgun is secured with a device approved by the department under Section 411.1883(f), Government Code.

(b) This section does not prohibit a municipality or county from adopting an ordinance, order, or other measure that:

(1) prohibits a first responder from carrying a handgun while on duty based on the conduct of the first responder; or

(2) limits the carrying of a handgun only to the extent necessary to ensure that carrying the handgun does not interfere with the first responder's duties.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(14), eff. September 1, 2023.

Sec. 179.052. AUTHORITY OF EMPLOYERS AND SUPERVISORS. (a) A municipal or county department or private entity that employs or supervises first responders providing services for a municipality or county to which this chapter applies may adopt a policy authorizing a first responder who is employed or supervised by the municipal or county department or private entity and who holds a license to carry

a handgun under Subchapter H, Chapter 411, Government Code, an unexpired certificate of completion from the department under Section 411.1883(d), Government Code, and the required liability policy under Section 179.053 to:

(1) carry a concealed or holstered handgun while on duty; or

(2) store a handgun on the premises of or in a vehicle owned or leased by the applicable municipality or county, or by the private entity if the handgun is secured with a device approved by the department under Section 411.1883(f), Government Code.

(b) A first responder employed or supervised by a municipal or county department or private entity may not engage in conduct described by Subsection (a)(1) or (2) unless the municipal or county department or private entity has adopted a policy under Subsection (a) that authorizes that conduct.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(15), eff. September 1, 2023.

Sec. 179.053. LIABILITY INSURANCE REQUIRED. A first responder shall maintain liability insurance coverage in an amount of at least $1 million if:

(1) the first responder carries a handgun while on duty; and

(2) the handgun is not an essential part of the first responder's duties.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.

Sec. 179.054. STORAGE OF HANDGUN. (a) A first responder who enters a location where carrying a handgun is prohibited by federal law or otherwise shall use a device approved by the department under Section 411.1883(f), Government Code, to secure and store the handgun.

(b) A first responder is responsible for procuring the device

approved by the department under Section 411.1883(f), Government Code, or for reimbursing the first responder's employer or supervisor for the use of a device provided by the employer or supervisor.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(16), eff. September 1, 2023.

Sec. 179.055. DISCHARGE OF HANDGUN. A first responder may discharge a handgun while on duty only in self-defense.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.

Sec. 179.056. LIMITED LIABILITY. (a) A municipality or county that employs or supervises first responders is not liable in a civil action arising from the discharge of a handgun by a first responder who is licensed to carry the handgun under Subchapter H, Chapter 411, Government Code.

(b) The discharge of a handgun by a first responder who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, is outside the course and scope of the first responder's duties.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.

Sec. 179.057. COMPLAINTS. A member of the public may submit a complaint to the municipality or county employing or supervising the first responder using the municipality's or county's existing complaint procedure. One or more complaints received with respect to a specific first responder are grounds for prohibiting or limiting that first responder's carrying a handgun while on duty.

Added by Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 4, eff. September 1, 2021.

CHAPTER 180. MISCELLANEOUS PROVISIONS AFFECTING OFFICERS AND EMPLOYEES OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT

Sec. 180.001. COERCION OF POLICE OFFICER OR FIRE FIGHTER IN CONNECTION WITH POLITICAL CAMPAIGN. (a) An individual commits an offense if the individual coerces a police officer or a fire fighter to participate or to refrain from participating in a political campaign.

(b) An offense under this section is a misdemeanor and is punishable by a fine of not less than $500 or more than $2,000, confinement in the county jail for not more than two years, or both a fine and confinement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 180.002. DEFENSE OF CIVIL SUITS AGAINST PEACE OFFICERS, FIRE FIGHTERS, AND EMERGENCY MEDICAL PERSONNEL.

Text of subsection effective until January 1, 2025

(a) In this section, "peace officer" has the meaning assigned by Article 2.12, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(a) In this section, "peace officer" has the meaning assigned by Article 2A.001, Code of Criminal Procedure.

(b) A municipality or a school district or other special purpose district shall provide a municipal or district employee who is a peace officer, fire fighter, or emergency medical services employee with legal counsel without cost to the employee to defend the employee against a suit for damages by a party other than a governmental entity if:

(1) legal counsel is requested by the employee; and

(2) the suit involves an official act of the employee within the scope of the employee's authority.

(c) To defend the employee against the suit, the municipality or district may provide counsel already employed by it or may employ private counsel.

(d) An employee may recover from a municipality or district that fails to provide counsel as required by Subsection (b) the

reasonable attorney's fees incurred in defending the suit if the trier of fact finds:

(1) that the fees were incurred in defending a suit covered by Subsection (b); and

(2) that the employee is without fault or that the employee acted with a reasonable good faith belief that the employee's actions were proper.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 42(a), eff. Aug. 28, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 56 (H.B. 1016), Sec. 1, eff. May 18, 2013.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.140, eff. January 1, 2025.

Sec. 180.003. MAXIMUM DUTY HOURS OF PEACE OFFICERS. (a) In a county with a population of 372,000 to 400,000, a sheriff, deputy, constable, or other peace officer of the county or a municipality located in the county may not be required to be on duty more than 48 hours a week unless the peace officer is called on by a superior officer to serve during an emergency as determined by the superior officer.

(b) Hours of duty over 48 hours a week, compiled by a peace officer under Subsection (a), may be treated as overtime and may be deducted from future required hours of duty if:

(1) the overtime is used within one year after it is compiled; and

(2) the peace officer obtains the permission of the superior officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 93, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 72, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 77, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 139, eff. September 1, 2023.

Sec. 180.004. WORKING CONDITIONS FOR PREGNANT EMPLOYEES. (a) In this section, "office" means a municipal or county office, department, division, program, commission, bureau, board, committee, or similar entity.

(b) A municipality or a county shall make a reasonable effort to accommodate an employee of the municipality or county who is determined by a physician to be partially physically restricted by a pregnancy.

(c) If the physician of a municipal or county employee certifies that the employee is unable to perform the duties of the employee's permanent work assignment as a result of the employee's pregnancy and if a temporary work assignment that the employee may perform is available in the same office, the office supervisor who is responsible for personnel decisions shall assign the employee to the temporary work assignment.

Added by Acts 2001, 77th Leg., ch. 533, Sec. 1, eff. Sept. 1, 2001.

Sec. 180.005. APPOINTMENTS TO LOCAL GOVERNING BODIES. (a) In this section, "local government" means a county, municipality, or other political subdivision of this state.

(b) An appointment to the governing body of a local government shall be made as required by the law applicable to that local government and may be made with the intent to ensure that the governing body is representative of the constituency served by the governing body.

(c) A local government that chooses to implement Subsection (b) shall adopt procedures for the implementation.

Added by Acts 2003, 78th Leg., ch. 301, Sec. 8, eff. Sept. 1, 2003.

Sec. 180.006. SOVEREIGN OR GOVERNMENTAL IMMUNITY WAIVED FOR CERTAIN CLAIMS. (a) This section applies only to a firefighter or police officer covered by:

(1) Chapter 141, 142, or 143 or this chapter;

(2) a municipal charter provision conferring civil service benefits of a municipality that has not adopted Chapter 143; or

(3) a municipal ordinance enacted under Chapter 142 or 143.

(b) A firefighter or police officer described by Subsection (a)

who alleges the employing municipality's denial of monetary benefits associated with the recovery of back pay authorized under a provision listed in Subsection (a) or a firefighter described by Subsection (a) who alleges the denial of monetary civil penalties associated with recovery of back pay owed under Section 143.134(h) may seek judicial review of such denial only as provided in Subsections (e) and (f), provided that if there is no applicable grievance, administrative or contractual appeal procedure available under Subsection (e), the firefighter or police officer may file suit against the employing municipality directly in district court under the preponderance of the evidence standard of review.

(c) Sovereign and governmental immunity of the employing municipality from suit and liability is waived only to the extent of liability for the monetary benefits or monetary civil penalties described by Subsection (b). This section does not waive sovereign or governmental immunity from suit or liability for any other claim, including a claim involving negligence, an intentional tort, or a contract unless otherwise provided by the statute.

(d) This section does not:

(1) grant immunity from suit to a local governmental entity;

(2) waive a defense or a limitation on damages, attorney's fees, or costs available to a party to a suit under this chapter or another statute, including a statute listed in Subsection (a)(1); or

(3) modify an agreement under Chapter 142, 143, or 174.

(e) Before seeking judicial review as provided by Subsection (b), a firefighter or police officer must initiate action pursuant to any applicable grievance or administrative appeal procedures prescribed by state statute or agreement and must exhaust the grievance or administrative appeal procedure.

(f) If judicial review is authorized under statute, judicial review of the grievance or administrative appeal decision is under the substantial evidence rule, unless a different standard of review is provided by the provision establishing the grievance or administrative appeal procedure.

(g) This section does not apply to an action asserting a right or claim based wholly or partly, or directly or indirectly, on a referendum election held before January 1, 1980, or an ordinance or resolution implementing the referendum.

Added by Acts 2007, 80th Leg., R.S., Ch. 1200 (H.B. 1473), Sec. 1, eff. June 15, 2007.

Sec. 180.007. PAYMENTS IN EXCESS OF CONTRACTUAL AMOUNT. (a) A political subdivision may not pay an employee or former employee more than an amount owed under a contract with the employee unless the political subdivision holds at least one public hearing under this section.

(b) Notice must be given of the hearing in accordance with notice of a public meeting under Subchapter C, Chapter 551, Government Code.

(c) The governing body of the political subdivision must state the following at the public hearing:

(1) the reason the payment in excess of the contractual amount is being offered to the employee or former employee, including the public purpose that will be served by making the excess payment; and

(2) the exact amount of the excess payment, the source of the payment, and the terms for the distribution of the payment that effect and maintain the public purpose to be served by making the excess payment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 862 (H.B. 483), Sec. 1, eff. June 14, 2013.

Sec. 180.008. PROHIBITION ON USE OF PUBLIC MONEY TO SETTLE OR PAY SEXUAL HARASSMENT CLAIMS. (a) In this section, "political subdivision" means a county, municipality, school district, other special district, or other subdivision of state government.

(b) A political subdivision may not use public money to settle or otherwise pay a sexual harassment claim made against a person who is:

(1) an elected or appointed member of the governing body of the political subdivision; or

(2) an officer or employee of the political subdivision.

Added by Acts 2021, 87th Leg., R.S., Ch. 551 (S.B. 282), Sec. 2, eff. September 1, 2021.

Sec. 180.009. PAID QUARANTINE LEAVE FOR FIRE FIGHTERS, PEACE OFFICERS, DETENTION OFFICERS, AND EMERGENCY MEDICAL TECHNICIANS. (a) In this section:

(1) "Detention officer" means an individual appointed or employed by a political subdivision as a county jailer or other individual responsible for the care and custody of individuals incarcerated in a county or municipal jail.

(2) "Emergency medical technician" means an individual who is:

(A) certified as an emergency medical technician under Chapter 773, Health and Safety Code; and

(B) employed by a political subdivision.

(3) "Fire fighter" means a paid employee of a municipal fire department or emergency services district who:

(A) holds a position that requires substantial knowledge of fire fighting;

(B) has met the requirements for certification by the Texas Commission on Fire Protection under Chapter 419, Government Code; and

(C) performs a function listed in Section 143.003(4)(A).

(4) "Health authority" has the meaning assigned by Section 121.021, Health and Safety Code.

Text of subdivision effective until January 1, 2025

(5) "Peace officer" means an individual described by Article 2.12, Code of Criminal Procedure, who is elected for, employed by, or appointed by a political subdivision.

Text of subdivision effective on January 1, 2025

(5) "Peace officer" means an individual described by Article 2A.001, Code of Criminal Procedure, who is elected for, employed by, or appointed by a political subdivision.

(b) The governing body of a political subdivision shall develop and implement a paid quarantine leave policy for fire fighters, peace officers, detention officers, and emergency medical technicians who are employed by, appointed by, or elected for the political subdivision and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

(c) A paid quarantine leave policy must:

(1) provide that a fire fighter, peace officer, detention

officer, or emergency medical technician on paid quarantine leave receive:

(A) all employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and

(B) reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and

(2) require that the leave be ordered by the person's supervisor or the political subdivision's health authority.

(d) A political subdivision may not reduce a fire fighter's, peace officer's, detention officer's, or emergency medical technician's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with a policy adopted under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 685 (H.B. 2073), Sec. 2, eff. June 15, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.141, eff. January 1, 2025.
Redesignated from Local Government Code, Section 180.008 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(29), eff. September 1, 2023.

Sec. 180.010. REMOVAL FOR CERTAIN CRIMINAL OFFENSES. (a) In this section, "qualifying offense" means a criminal offense involving:

(1) bribery;

(2) theft of public money;

(3) perjury;

(4) coercion of public servant or voter;

(5) tampering with governmental record;

(6) misuse of official information;

(7) abuse of official capacity; or

(8) conspiracy or the attempt to commit any of the offenses described by this subsection.

(b) A person who holds an elected or appointed office of a political subdivision is automatically removed from and vacates the

office on the earlier of the date the person:

(1) enters a plea of guilty or nolo contendere to a qualifying offense;

(2) receives deferred adjudication for a qualifying offense; or

(3) is convicted of a qualifying offense.

(c) The governing body of a political subdivision shall at the first regularly scheduled meeting of the governing body for which notice is required under Chapter 551, Government Code, following the date an officer of the political subdivision is removed from office under this section:

(1) order an election on the question of filling the vacancy to be held on the first day that allows sufficient time to comply with other requirements of law, if an election is required to fill the vacancy; or

(2) fill the vacancy in the manner provided by law, if an election is not required.

Added by Acts 2023, 88th Leg., R.S., Ch. 1048 (S.B. 232), Sec. 1, eff. September 1, 2023.

TITLE 6. RECORDS
SUBTITLE B. COUNTY RECORDS
CHAPTER 191. GENERAL RECORDS PROVISIONS AFFECTING COUNTIES

Sec. 191.001. COUNTY RECORDER; SEAL; GENERAL DUTIES. (a) As provided by Article V, Section 20, of the Texas Constitution, the county clerk of a county serves as the county recorder.

(b) The county clerk shall use the county court seal to authenticate all of the clerk's official acts as county recorder. The clerk may affix the seal on an original document by stamp, electronic means, facsimile, or other means that legibly reproduces all of the required elements of the seal for the purposes of reproduction.

(c) The county clerk shall record, exactly, without delay, and in the manner provided by this subtitle, the contents of each instrument that is filed for recording and that the clerk is authorized to record.

(d) The county clerk shall keep the records properly indexed and arranged as provided by this subtitle.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1248, Sec. 49, eff. Sept. 1, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 946 (H.B. 1728), Sec. 4, eff. June 14, 2013.

Sec. 191.002. RECORDS TO BE KEPT IN WELL-BOUND BOOKS OR ON MICROFILM OR OTHER MEDIA. When the county clerk records an instrument, the clerk shall do so in a suitable well-bound book. However, this requirement does not apply to an instrument recorded and maintained on microfilm or other medium as provided by Chapters 204 and 205 and rules adopted under those chapters.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 50, eff. Sept. 1, 1989.

Sec. 191.003. EFFECTIVE DATE OF RECORDING. An instrument filed with a county clerk for recording is considered recorded from the time that the instrument is filed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 191.004. ATTESTED COPIES. (a) On demand, the county clerk shall give an attested copy of any instrument that is recorded in the clerk's office.

(b) The fee provided by law for an attested copy shall be paid to the clerk.

(c) Subsection (a) does not apply to birth and death records maintained under the vital statistics laws of this state as provided by Title 3, Health and Safety Code. The county clerk shall allow access to and give attested copies of those records only as provided by the vital statistics laws, rules adopted under those laws, and Chapter 552, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 43(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 920, Sec. 2, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 1192, Sec. 2, eff. Sept. 1, 2003.

Sec. 191.005. EFFECT OF COPY. If made and recorded as provided by law, a transcribed record, a translation of a Spanish archive, a rerecorded deed, any other instrument required by law to be recorded, or a certified copy of such a record has the same effect as the original record.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 191.006. PUBLIC ACCESS TO RECORDS. All records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times. A member of the public may make a copy of any of the records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 51, eff. Sept. 1, 1989.

Sec. 191.007. SPECIFICATIONS FOR LEGAL PAPERS; INCREASED FEES. (a) A legal paper presented to a county clerk for filing or for recording in any county must meet the requirements prescribed by Subsections (b) through (g). Except as provided by this section, a county clerk may not impose additional requirements or fees for filing or recording a legal paper.

(b) A page is considered to be one side of a sheet of paper. A page must:

(1) be no wider than 8-1/2 inches and no longer than 14 inches;

(2) have a sufficient weight and substance so that printing, typing, or handwriting on it will not smear or bleed through; and

(3) be printed in type not smaller than eight-point type and be suitable otherwise for reproducing from it a readable record by a photocopy or photostatic or microphotographic process used in the office of the county clerk.

(c) Except as provided by Section 11.008(c), Property Code, a clearly identifying heading, similar to the headings on most commercially supplied printed forms, must be placed at the top of the first page to identify the type or kind of legal paper.

(d) Printing, typing, and handwriting must be clearly legible.

(e) Names must be legibly typed or printed immediately under each signature.

(f) All photostats, photocopies, and other types of reproduction must have black printing, typing, or handwriting on a white background, commonly known as positive prints.

(g) Riders and attachments must comply with the size requirement prescribed by Subsection (b) and shall not be larger than the size of the page. Only one rider or attachment may be included in or attached to a page.

(h) The filing fee or recording fee for each page of a legal paper that is presented for filing or recording to a county clerk and fails to meet one or more of the requirements prescribed by Subsections (b) through (g) is equal to twice the regular filing fee or recording fee provided by statute for that page. However, the failure of a page to meet the following requirements does not result in a fee increase under this subsection:

(1) the requirement prescribed by Subsection (b)(3) relating to type size; and

(2) provided that the legal paper complies with Section 11.008(c), Property Code, the requirement prescribed by Subsection (c) that a legal paper have a clearly identifying heading.

(i) If a page of a legal paper has more riders or attachments than one, the filing fee or recording fee for each rider or attachment in excess of one is twice the regular filing fee or recording fee provided by statute.

(j) If a page of a legal paper has one or more riders or attachments larger than the permitted size, the filing fee or recording fee for each oversized rider or attachment is twice the regular filing fee or recording fee provided by statute for the rider or attachment.

(k) This section does not authorize a county clerk to refuse to record a legal paper for the reason that it fails to meet one or more of the requirements prescribed by Subsections (b) through (g). Failure to comply with these requirements shall not in any manner alter, amend, impair, or invalidate any document or legal instrument of any type or character and upon recordation by the county clerk the document or legal instrument shall be deemed and considered as fully complying with the provisions of law dealing with the recordation of documents or legal instruments of every type and character.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 20(c), eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 555, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 45 (S.B. 461), Sec. 2, eff. May 13, 2005.

Acts 2005, 79th Leg., Ch. 1036 (H.B. 1140), Sec. 1, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.006, eff. September 1, 2009.

Sec. 191.008. AUTHORITY TO ESTABLISH COMPUTERIZED ELECTRONIC INFORMATION SYSTEM. (a) The commissioners court of a county by order may provide for the establishment and operation of a computerized electronic information system through which it may provide on a contractual basis direct access to information that relates to all or some county and precinct records and records of the district courts and courts of appeals having jurisdiction in the county, that is public information, and that is stored or processed in the system. The commissioners court may make records available through the system only if the custodian of the records agrees in writing to allow public access under this section to the records.

(b) The commissioners court may:

(1) provide procedures for the establishment, maintenance, and operation of the information system;

(2) establish eligibility criteria for users;

(3) delineate the public information to be available through the system;

(4) set a reasonable fee, charged under a contract, for use of the system; and

(5) consolidate billing and collection of fees and payments under one county department or office.

(c) The commissioners court may contract with a person or other governmental agency for the development, acquisition, maintenance, or operation of:

(1) the information system or any component of the information system, including telecommunication services necessary for access to the system; and

(2) billing and collection services for the system.

Added by Acts 1991, 72nd Leg., ch. 86, Sec. 1, eff. May 15, 1991.

Sec. 191.009. ELECTRONIC FILING AND RECORDING. (a) A county clerk may accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195.

(b) An electronic document or other instrument that is filed electronically in compliance with the rules adopted under Chapter 195 is considered to have been filed in compliance with any law relating to the filing of instruments with a county clerk.

(c) For purposes of this section:

(1) an instrument is an electronic record, as defined by Section 322.002, Business & Commerce Code; and

(2) "electronic document" has the meaning assigned by Section 15.002, Property Code.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 1, eff. May 10, 1999.
Amended by Acts 2001, 77th Leg., ch. 702, Sec. 2, eff. January 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.23, eff. April 1, 2009.

Sec. 191.010. AUTHORITY TO REQUIRE PHOTO IDENTIFICATION TO FILE CERTAIN DOCUMENTS IN CERTAIN COUNTIES. (a) In this section, "photo identification" means one of the following forms of photo identification:

(1) a driver's license, election identification certificate, or personal identification card issued to the person by any state or territory of the United States that has not expired or that expired no earlier than 60 days before the date of presentation;

(2) a United States military identification card that contains the person's photograph that has not expired or that expired no earlier than 60 days before the date of presentation;

(3) a United States citizenship certificate issued to the person that contains the person's photograph;

(4) a United States Permanent Resident Card that has not expired or that expired no earlier than 60 days before the date of presentation;

(5) an identification card issued by a municipality intended to serve as a general identification card for the holder that has not expired or that expired no earlier than 60 days before the date of presentation;

(6) a federally recognized tribal enrollment card or other form of tribal identification that has not expired or that expired no earlier than 60 days before the date of presentation;

(7) a United States passport or a passport issued by a foreign government recognized by the United States issued to the person that has not expired or that expired no earlier than 60 days before the date of presentation; or

(8) a license to carry a concealed handgun issued to the person by the Department of Public Safety that has not expired or that expired no earlier than 60 days before the date of presentation.

(b) A county clerk in a county that allows for electronic filing of documents in the real property records of the county may require a person presenting a document in person for filing in the real property records to present a photo identification to the clerk. The clerk may copy the photo identification or record information from the photo identification. The clerk may not charge a person a fee to copy or record the information from a photo identification.

(c) Information copied or recorded from the photo identification is confidential.

(d) A document filed with a county clerk is not invalid solely because the county clerk did not copy a photo identification or record the information from the photo identification.

Added by Acts 2015, 84th Leg., R.S., Ch. 1040 (H.B. 1681), Sec. 1, eff. June 19, 2015.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 714 (H.B. 3415), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 398 (H.B. 1195), Sec. 1, eff. June 9, 2023.

Sec. 191.011. AUTHORITY OF CLERKS TO OBTAIN AND RETAIN IDENTIFYING INFORMATION IN CERTAIN COUNTIES. (a) In this section:

(1) "Biometric information" means a retina or iris scan, digital or electronic fingerprint scan, voiceprint, or record of hand or face geometry.

(2) "Electronic storage" has the meaning assigned by Section 205.001.

(3) "Ex officio service" has the meaning assigned by Section 118.023.

(4) "Identifying information" means information in any form, other than biometric information, that may be used to identify an individual. The term includes information derived from:

(A) a driver's license, personal identification card, or other document, regardless of the intended use of the document;

(B) a photograph;

(C) a recording of the individual's image or voice, including a video or audio recording; or

(D) any other physical or electronic source.

(5) "Public service" means a service related to an official governmental power, duty, program, or activity. The term does not include an incidental service provided only as a courtesy to a member of the public.

(b) A county clerk or district clerk in a county that allows for electronic filing or recording of documents or other instruments may require an individual to present photo identification and copy or record identifying information, including a document on which the information is viewable, if the individual:

(1) presents a document or other instrument for filing or recording to the county clerk or district clerk; or

(2) requests or obtains an ex officio service or other public service provided by the county clerk or district clerk.

(b-1) A county clerk or district clerk who requires an individual to present photo identification under Subsection (b) may not accept a document or other instrument for filing or recording if the individual presents the document or other instrument in person and does not have or refuses to provide a photo identification.

(c) A county clerk or district clerk may maintain identifying information copied or recorded under this section in an electronic storage format.

(d) Except as otherwise required or authorized by law, a county

clerk or district clerk may not charge a fee to copy or record identifying information.

(e) Identifying information copied or recorded under this section is confidential except for use in a criminal investigation or prosecution or a related civil court proceeding.

Added by Acts 2017, 85th Leg., R.S., Ch. 899 (H.B. 3492), Sec. 1, eff. June 15, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 398 (H.B. 1195), Sec. 2, eff. June 9, 2023.

CHAPTER 192. INSTRUMENTS TO BE RECORDED BY COUNTIES

Sec. 192.001. GENERAL ITEMS. The county clerk shall record each deed, mortgage, or other instrument that is required or permitted by law to be recorded.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 192.0015. SUBDIVISION PLAT. In recording a plat or replat of a subdivision of real property, the county clerk and a deputy of the clerk are subject to the requirements and prohibitions established by Section 12.002, Property Code.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.07, eff. Sept. 1, 1989.

Sec. 192.002. MILITARY DISCHARGE RECORDS. (a) The county clerk shall record the official discharge of persons who after 1915 have served as members of the United States armed forces, the United States armed forces reserve, or an armed forces auxiliary.

(b) The county clerk may not charge a fee for the recording and keeping of a military discharge record.

(c)(1) This subsection applies only in relation to a military discharge record that is recorded with a county clerk under this section before September 1, 2003.

(2) The veteran who is the subject of the record or the legal guardian of the veteran may direct, in writing, that the county

clerk destroy all copies of the record that the county clerk makes readily available to the public for purposes of Section 191.006, such as paper copies of the record in the county courthouse or a courthouse annex, microfilm or microfiche copies of the record in the county courthouse or a courthouse annex, and electronic copies of the record that are available to the public. The county clerk shall comply with the direction within 15 business days after the date the direction is received. The county clerk's compliance does not violate any law of this state relating to the preservation, destruction, or alienation of public records. The direction to destroy the copies of the record, the county clerk's compliance, and any delay between the time the direction is made and the time the county clerk destroys the copies may not be used to limit or restrict the public's access to the real property records of the county.

(3) A county clerk who receives a request under Chapter 552, Government Code, for inspection or duplication of a military discharge record recorded before September 1, 2003, is only required to search for the record in places where or media in which the county clerk makes records readily available to the public for purposes of Section 191.006, such as paper records stored in the county courthouse or a courthouse annex, microfilmed or microfiched records stored in the county courthouse or a courthouse annex, and electronically stored records made available to the public. This subdivision does not apply to a request made by the veteran who is the subject of the military discharge record or the legal guardian of the veteran.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 438, Sec. 2, eff. Sept. 1, 2003.

Sec. 192.003. RECORDS OF NEW OR ENLARGED COUNTY. (a) If a new county is created in whole or in part from the territory of another county or if territory is added to an existing county from another county, the commissioners court of the new county or the enlarged county shall require the county clerk to rerecord each deed, mortgage, conveyance, encumbrance, or muniment of title that affects or relates to real property in the territory taken from the other county and that is recorded in the other county. If the territory is acquired from more than one county, the clerk shall maintain separate

sets of records for the records obtained from each county. The records shall be indexed and arranged as provided by law.

(b) After the records are legibly rerecorded, the county clerk or the clerk's deputies who rerecorded them shall compare them with the original record. The county clerk or the clerk's deputies who rerecorded the records shall certify to the correctness of the records under their official oath and shall impress the commissioners court's seal on the records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 192.005. CERTAIN PROBATE RECORDS. The commissioners court of a county may require the county clerk to record any previously unrecorded probate records if the commissioners court determines that the recording is necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 192.006. COUNTY COURT RECORDS. (a) The county clerk is the custodian of the records of the county court in civil and criminal cases and in matters of probate. The county clerk shall record each act and proceeding of the county court, record under direction of the judge each judgment of the court, and record the issuance of and return on each execution issued by the court.

(b) The county clerk shall keep the records of the county court properly indexed and arranged.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 52, eff. Sept. 1, 1989.

Sec. 192.007. RECORDS OF RELEASES AND OTHER ACTIONS. (a) To release, transfer, assign, or take another action relating to an instrument that is filed, registered, or recorded in the office of the county clerk, a person must file, register, or record another instrument relating to the action in the same manner as the original instrument was required to be filed, registered, or recorded.

(b) An entry, including a marginal entry, may not be made on a previously made record or index to indicate the new action.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 53, eff. Sept. 1, 1989.

CHAPTER 193. RECORDING AND INDEXING BY COUNTIES

Sec. 193.001. MANNER OF RECORDING. (a) The county clerk shall record instruments filed for recording in the order that they are filed. The clerk shall record each instrument with any acknowledgment, proof, affidavit, or certificate that is attached to it.

(b) The clerk shall note at the foot of the record the date and time that the instrument was filed for recording, but if the instrument was recorded electronically the clerk may note on the first page of the instrument the recording information, including the date and time.

(c) If an instrument that is filed for recording is acknowledged or proved in the manner prescribed by law for record, the clerk shall make a record of the names of the parties to the instrument in alphabetical order, the date of the instrument, the nature of the instrument, and the time that the instrument was filed. If required, the clerk shall give the person who files the instrument a receipt stating this information.

(d) The clerk shall certify under the clerk's signature and seal of office the date and time that the instrument is recorded and the specific location in the records at which the instrument is recorded. After recording the instrument, the clerk shall deliver the instrument to the person who is entitled to it.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 86 (S.B. 580), Sec. 1, eff. May 14, 2007.

Sec. 193.002. CLASSIFICATION AND INDEX OF RECORDS NOT ON MICROFILM. (a) A county clerk or clerk of a county court who does not maintain records on microfilm as provided by Chapter 204 and rules adopted under that chapter may divide the instruments received for filing, registering, or recording into the seven classes provided by Section 193.008(b) and may consolidate records in the manner provided by Section 193.008(d).

(b) Classes of records maintained as provided by this section shall be indexed and cross-indexed, to the extent practicable, as required by Sections 193.009, 193.010, and 193.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 54, eff. Sept. 1, 1989.

Sec. 193.003. INDEX TO REAL PROPERTY RECORDS. (a) The county clerk shall maintain an alphabetical index to all recorded deeds, powers of attorney, mortgages, correction instruments, findings of fact and conclusions of law entered under Section 5.0261, Property Code, and other instruments relating to real property. The index must state the specific location in the records at which the instruments are recorded.

(b) The index must be a cross-index that contains the names of the grantors and grantees in alphabetical order. If a deed is made by a sheriff, the index entry must contain the name of the sheriff and the defendant in execution. If a deed is made by an executor, administrator, or guardian, the index entry must contain the name of that person and the name of the person's testator, intestate, or ward. If a deed is made by an attorney, the index entry must contain the name of the attorney and the attorney's constituents. If a deed is made by a commissioner or trustee, the index entry must contain the name of the commissioner or trustee and the name of the person whose estate is conveyed. The index entry for a correction instrument must contain the names of the grantors and grantees as stated in the correction instrument. The index entry for a finding of fact and conclusion of law entered under Section 5.0261, Property Code, must contain the names of the grantors and grantees as stated in the subject conveyance instrument. The index entry for a paper document described by Section 12.0011(b)(3), Property Code, must contain the names of the grantors and grantees.

(c) This section does not apply to records classified and indexed in the manner required for records on microfilm by Sections 193.008 and 193.009.

(d) In this section, "correction instrument" means an instrument correcting an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property as described by Section 5.028 or 5.029, Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 55, eff. Sept. 1, 1989.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 189 (S.B. 584), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 678 (S.B. 2128), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 532 (S.B. 30), Sec. 3, eff. September 1, 2021.

Sec. 193.004. INDEX TO JUDGMENTS. (a) The county clerk shall maintain a well-bound alphabetical index to all suits filed in the county court. The index must be a cross-index that states in full and in alphabetical order the names of the parties to a filed suit. The index must state opposite each name the specific location in the records at which the judgment in the case is recorded.

(b) This section does not apply to records classified and indexed in the manner required for records on microfilm by Sections 193.008 and 193.009.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 56, eff. Sept. 1, 1989.

Sec. 193.005. INDEXES TO OTHER RECORDS. (a) In a manner similar to that by which the index to real property records is maintained, the county clerk shall maintain an alphabetical index to all recorded instruments relating to goods, chattels, and other personal property, marriage contracts, and other instruments authorized or permitted to be recorded in the clerk's office.

(b) The clerk also shall maintain a similar index of the records of official bonds. The index for official bonds must include the names of the officers appointed, the names of the obligors on the recorded bonds, and a reference to the specific location in the records where the bonds are recorded.

(c) This section does not apply to records classified and indexed in the manner required for records on microfilm by Sections 193.008 and 193.009.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1248, Sec. 57, eff. Sept. 1, 1989.

Sec. 193.007. TRANSLATION OF COUNTY RECORDS. (a) The commissioners court of a county may require the county clerk to have translated into English and recorded all or part of a county record or archive that is written in Spanish and that relates to a title to real property.

(b) The court may not contract to pay more than 15 cents for each 100 words for the translation and the recording.

(c) An English translation prepared and recorded under this section has the same effect as if the instrument were originally written in English. A person may use a certified copy of the English translation for all purposes for which the original instrument or a certified copy of the original instrument may be used.

(d) Repealed by Acts 1989, 71st Leg., ch. 1248, Sec. 85(4), eff. Sept. 1, 1989.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 85(4), eff. Sept. 1, 1989.

Sec. 193.008. CLASSIFICATION OF RECORDS ON MICROFILM. (a) If a county clerk or clerk of a county court chooses to maintain records on microfilm as provided by Chapter 204 and rules adopted under that chapter, the clerk shall divide the instruments received for filing, registering, or recording into seven classes for recording on microfilm.

(b) The seven classes of microfilm records are:

(1) records relating to real property, known as "Official Public Records of Real Property";

(2) records relating to receivables, chattels, and personal property, known as "Official Public Records of Personal Property and Chattels";

(3) records relating to probate matters, known as "Official Public Records of Probate Courts";

(4) records relating to county civil court matters, known as "Official Public Records of County Civil Courts";

(5) records relating to county criminal court matters, known as "Official Public Records of County Criminal Courts";

(6) records relating to matters in the commissioners court, known as "Official Public Records of Commissioners Court"; and

(7) records relating to an individual, a business entity, or a governmental agency, other than a property record or a court record, known as "Official Public Records of Governmental, Business, and Personal Matters."

(c) The clerk shall record each class of record on a separate series of rolls of microfilm or in a separate series of discrete groups of discrete microfilm images. Each roll of microfilm or separate series of groups of microfilm images is considered to be a bound volume or book.

(d) The clerk may consolidate the records described by Subsections (b)(1) and (7) into a single class known as "Official Public Records."

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 58, eff. Sept. 1, 1989.

Sec. 193.009. INDEXING OF RECORDS ON MICROFILM. (a) An instrument that is recorded and classified on microfilm as provided by Section 193.008 must be alphabetically indexed and cross-indexed in the indexes to that official public record under the names of the parties identified in the instrument.

(b) The index entry for an instrument recorded in the official public records of real property, personal property and chattels, or governmental, business, and personal matters must give:

(1) the names of the parties to the instrument;

(2) a brief description of the nature of the instrument;

(3) the date of filing;

(4) a brief description of the property, if any; and

(5) the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under rules adopted under Chapter 204.

(c) The index entry for an instrument recorded in the official public records of probate courts, county civil courts, county criminal courts, or the commissioners court must give information that would assist in further identifying the cause or action, including:

(1) the names of the parties to the action, except an action in the commissioners court;

(2) the nature of the cause or action;
(3) the date the cause or action was opened or taken;
(4) the court in which the cause or action lies;
(5) the docket number; and
(6) the location of the microfilm image of the instrument by roll or group number and by image number, or by another suitable method permissible under rules adopted under Chapter 204.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 58, eff. Sept. 1, 1989.

Sec. 193.010. REVISION OF INDEXES OF RECORDS ON MICROFILM. (a) The indexes must be periodically revised throughout the year to obtain a complete alphabetical index to each of the classes of official public records for each calendar year.

(b) The clerk may not make a marginal entry to a previously completed index.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 58, eff. Sept. 1, 1989.

Sec. 193.011. REGISTERS OF COURT RECORDS ON MICROFILM. (a) A current register of court docket numbers must be maintained in numerical order for each type of court record included in an official public record.

(b) An entry in a register maintained under this section must include essentially the same information as is included in the equivalent index entry under Section 193.009.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 58, eff. Sept. 1, 1989.

Sec. 193.012. RETURN OF ORIGINAL INSTRUMENTS. After an original instrument that is not involved in or related to a court matter or proceeding has been microfilmed and the microfilm has satisfied the requirements of Chapter 204 and rules adopted under that chapter, the county clerk shall return the original instrument to the person who filed it for record.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 58, eff. Sept. 1, 1989.

Sec. 193.013. COMPUTERIZED INDEX FOR CERTAIN RECORDS. An index for a record listed in Section 193.008(b) may be stored or maintained by computer if a security or backup copy of the index is created on a daily basis and stored in a climate-controlled location that is equipped with fire alarms and sprinklers. The storage location must be separate from the building in which the computer is located.

Added by Acts 1989, 71st Leg., ch. 1064, Sec. 1, eff. June 16, 1989. Renumbered from Sec. 194.0065 and amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.06(a), eff. Sept. 1, 1999.

CHAPTER 195. ELECTRONIC FILING OF RECORDS WITH AND RECORDING BY COUNTY CLERK

Sec. 195.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas State Library and Archives Commission.

(2) "Director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission.

(3) "Electronic document" has the meaning assigned by Section 15.002, Property Code.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 3, eff. September 1, 2005.

Sec. 195.002. ADOPTION OF RULES. (a) The commission shall adopt rules by which a county clerk may accept electronic documents and other instruments by electronic filing and record electronic documents and other instruments electronically under Section 191.009.

(b) The rules must provide for:

(1) the electronic filing with and recording by the county clerk of:

(A) real property records; and

(B) except for records maintained under Section 192.006, other instruments filed with and recorded by the county clerk as determined by the commission;

(2) the means by which an electronic document or other

instrument may be electronically transmitted to a county clerk for filing;

(3) the means by which a county clerk may electronically record an electronic document or other instrument filed electronically;

(4) requiring that the means adopted under Subdivision (2) or (3) be generally available, nonproprietary technology; and

(5) security standards to prevent the filing and recording of fraudulent electronic documents or other instruments or alteration of electronic documents or other instruments that were previously filed and recorded electronically.

(c) Rules adopted by the commission under this section that permit the use of digital signatures in the electronic filing of electronic documents or other instruments with the county clerk must be, to the extent practicable, consistent with rules governing digital signatures adopted by the Department of Information Resources under Section 2054.060, Government Code.

(d) Before adopting or amending a rule under this section, the commission shall consider the recommendations of the Electronic Recording Advisory Committee established under Section 195.008.

(e) Notwithstanding Sections 322.017 and 322.018, Business & Commerce Code, a county clerk may accept any filed electronic record, as defined by Section 322.002, Business & Commerce Code, or electronic document and may electronically record that electronic document or record if the filing and recording of that electronic document or record complies with rules adopted by the commission under this section.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999.
Amended by Acts 2001, 77th Leg., ch. 702, Sec. 3, eff. January 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.24, eff. April 1, 2009.

Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY. (a) The following persons may file electronic documents or other

documents electronically for recording with a county clerk that accepts electronic filing and recording under this chapter:

(1) an attorney licensed in this state;

(2) a bank, savings and loan association, savings bank, or credit union doing business under laws of the United States or this state;

(3) a federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;

(4) a person licensed to make regulated loans in this state;

(5) a title insurance company or title insurance agent licensed to do business in this state;

(6) an agency of this state; or

(7) a municipal clerk.

(a-1) In addition to persons listed under Subsection (a), a county may authorize a person to file electronic documents or other documents electronically for recording with a county clerk if the county enters into a memorandum of understanding with the person for that purpose. This subsection applies only to a county with a population of 500,000 or more.

(b) A fee may not be charged to a person authorized to file under this section, except as provided by Section 195.006 or 195.007.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1260 (H.B. 2048), Sec. 21, eff. June 18, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 793 (S.B. 1437), Sec. 1, eff. June 14, 2013.

Sec. 195.004. NOTICE OF CONFIRMATION. (a) A county clerk that accepts electronic filing and recording under this chapter shall confirm or reject an electronic filing of an electronic document or other instrument not later than the first business day after the date the electronic document or other instrument is filed. Notice under

this section must be made:

(1) by electronic means if possible; or

(2) if notice under Subdivision (1) is not possible, by telephone or electronic facsimile machine.

(b) If the county clerk fails to provide notice of rejection within the time provided by Subsection (a), the electronic document or other instrument is considered accepted for filing and may not subsequently be rejected.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 4, eff. September 1, 2005.

Sec. 195.005. TIME ELECTRONIC DOCUMENT OR OTHER INSTRUMENT CONSIDERED FILED OR RECORDED. An electronic document or other instrument that is recorded electronically under this chapter is considered to be recorded in compliance with a law relating to the recording of electronic documents or other instruments as of the county clerk's business day on which the electronic document or other instrument is filed electronically. An electronic document or other instrument filed electronically under this chapter must be recorded as timely as an instrument filed by any other means.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 4, eff. September 1, 2005.

Sec. 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or record an electronic document or other instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an electronic document or other instrument electronically under this chapter.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 4, eff. September

1, 2005.

Sec. 195.007. ACCESS TO ELECTRONIC DOCUMENT OR OTHER INSTRUMENT RECORDED ELECTRONICALLY. (a) An electronic document or other instrument filed or recorded electronically must be available for public inspection in the same manner and at the same time as an instrument filed or recorded by other means.

(b) The county clerk shall provide a requestor, as defined by Section 552.003, Government Code, of an electronic document or other instrument filed or recorded electronically under this chapter with electronic copies of the electronic document or other instrument in a form that is capable of being processed by the use of technology that is generally available and nonproprietary in nature. The county clerk shall provide the copies to the requestor at the cost of producing the copies in accordance with Section 552.262, Government Code.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 4, eff. September 1, 2005.

Sec. 195.008. ELECTRONIC RECORDING ADVISORY COMMITTEE. (a) The Electronic Recording Advisory Committee shall be appointed as required by this section to recommend to the commission initial and subsequent rules to be adopted under this chapter.

(b) The committee consists of:

(1) the following persons appointed by the director and librarian:

(A) one person who is employed by or is an officer of a title insurance agent or title insurance company;

(B) an officer or employee of a federal government-sponsored entity;

(C) a person who as a usual business practice obtains copies of recorded instruments from a county clerk to maintain an abstract or title plant; and

(D) a public representative;

(2) two persons who are county judges or county

commissioners appointed by the County Judges and Commissioners Association of Texas;

(3) four county clerks appointed by the County and District Clerks' Association of Texas;

(4) three persons who are employed by or officers of different title insurance agents or companies appointed by the Texas Land Title Association;

(5) the presiding officer of the Title Insurance Subcommittee of the Real Estate, Probate, and Trust Law section of the State Bar of Texas or the functional equivalent of that subcommittee;

(6) the attorney general or a person designated by the attorney general;

(7) the comptroller or a person designated by the comptroller;

(8) the executive director of the Texas Facilities Commission or a person designated by the executive director;

(9) the executive director of the Department of Information Resources or a person designated by the executive director; and

(10) the director and librarian or a person designated by the director and librarian, who also serves as presiding officer of the committee.

(c) A member of the committee serves a term of two years that expires on August 31 of each odd-numbered year.

(d) A vacancy in the membership of the committee is filled in the same manner as the initial appointment and is for the remainder of the unexpired term.

(e) A meeting of the committee is at the call of the presiding officer and is subject to Chapter 551, Government Code.

(f) A member of the committee is not entitled to compensation or reimbursement of expenses from the commission for serving on the committee. A member of the committee who is an employee or officer of a state agency is entitled to compensation and reimbursement of expenses for service on the committee as determined by the state agency of which the member is an officer or employee. Chapter 2110, Government Code, does not apply to the committee.

Added by Acts 1999, 76th Leg., ch. 58, Sec. 2, eff. May 10, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 123, eff.

September 1, 2019.

Sec. 195.009. FILING. For purposes of this chapter, an electronic document or other instrument is filed with the county clerk when it is received by the county clerk, unless the county clerk rejects the filing within the time and manner provided by this chapter and rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 702, Sec. 4, eff. January 1, 2002.
Amended by:
Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 4, eff. September 1, 2005.

SUBTITLE C. RECORDS PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 201. GENERAL PROVISIONS

Sec. 201.001. SHORT TITLE. This subtitle may be cited as the Local Government Records Act.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 201.002. PURPOSE. Recognizing that the citizens of the state have a right to expect, and the state has an obligation to foster, efficient and cost-effective government and recognizing the central importance of local government records in the lives of all citizens, the legislature finds that:

(1) the efficient management of local government records is necessary to the effective and economic operation of local and state government;

(2) the preservation of local government records of permanent value is necessary to provide the people of the state with resources concerning their history and to document their rights of citizenship and property;

(3) convenient access to advice and assistance based on well-established and professionally recognized records management techniques and practices is necessary to promote the establishment of sound records management programs in local governments, and the state

can provide the assistance impartially and uniformly; and

(4) the establishment of uniform standards and procedures for the maintenance, preservation, microfilming, or other disposition of local government records is necessary to fulfill these important public purposes.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 201.003. DEFINITIONS. In this subtitle:

(1) "Commission" means the Texas State Library and Archives Commission.

(2) "Custodian" means the appointed or elected public officer who by the state constitution, state law, ordinance, or administrative policy is in charge of an office that creates or receives local government records.

(3) "Designee" means an employee of the commission designated by the director and librarian as provided by Section 441.167, Government Code.

(4) "Director and librarian" means the executive and administrative officer of the Texas State Library and Archives Commission.

(5) "Essential record" means any local government record necessary to the resumption or continuation of government operations in an emergency or disaster, to the re-creation of the legal and financial status of the government, or to the protection and fulfillment of obligations to the people of the state.

(6) "Governing body" means the court, council, board, commission, or other body established or authorized by law to govern the operations of a local government. In those instances in which authority over an office or department of a local government is shared by two or more governing bodies or by a governing body and the state, the governing body, for the purposes of this subtitle only, is the governing body that provides most of the operational funding for the office or department.

(7) "Local government" means a county, including all district and precinct offices of a county, municipality, public school district, appraisal district, or any other special-purpose district or authority.

(8) "Local government record" means any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by a local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business. The term does not include:

(A) extra identical copies of documents created only for convenience of reference or research by officers or employees of the local government;

(B) notes, journals, diaries, and similar documents created by an officer or employee of the local government for the officer's or employee's personal convenience;

(C) blank forms;

(D) stocks of publications;

(E) library and museum materials acquired solely for the purposes of reference or display;

(F) copies of documents in any media furnished to members of the public to which they are entitled under Chapter 552, Government Code, or other state law; or

(G) any records, correspondence, notes, memoranda, or documents, other than a final written agreement described by Section 2009.054(c), Government Code, associated with a matter conducted under an alternative dispute resolution procedure in which personnel of a state department or institution, local government, special district, or other political subdivision of the state participated as a party, facilitated as an impartial third party, or facilitated as the administrator of a dispute resolution system or organization.

(9) "Office" means any office, department, division, program, commission, bureau, board, committee, or similar entity of a local government.

(10) "Permanent record" or "record of permanent value" means any local government record for which the retention period on a records retention schedule issued by the commission is given as permanent.

(11) "Record" means a local government record.

(12) "Records control schedule" means a document prepared by or under the authority of a records management officer listing the records maintained by a local government or an elective county

office, their retention periods, and other records disposition information that the records management program in each local government or elective county office may require.

(13) "Records management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.

(14) "Records management officer" means the person identified under Section 203.001 or designated under Section 203.025 as the records management officer.

(15) "Records retention schedule" means a document issued by the Texas State Library and Archives Commission under authority of Subchapter J, Chapter 441, Government Code, establishing mandatory retention periods for local government records.

(16) "Retention period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record, before it is eligible for destruction.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 31, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1352, Sec. 3, eff. Sept. 1, 1999.

Sec. 201.004. RECORD BOOKS. If a state law relating to the keeping of records by a local government officer or employee requires the records to be kept in a "book," "record book," or "well-bound book," or contains any similar requirement that a record be maintained in bound paper form, the record whose creation is called for in the provision may be maintained on microfilm or stored electronically in accordance with the requirements of Chapters 204 and 205 and rules adopted under those chapters unless the law

specifically prohibits those methods.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 201.005. DECLARATION OF RECORDS AS PUBLIC PROPERTY; ACCESS. (a) Local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of this subtitle and Subchapter J, Chapter 441, Government Code.

(b) A local government officer or employee does not have, by virtue of the officer's or employee's position, any personal or property right to a local government record even though the officer or employee developed or compiled it.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 201.006. RECORDS TO BE DELIVERED TO SUCCESSOR IN OFFICE. (a) A custodian of local government records shall, at the expiration of the custodian's term of office, appointment, or employment, deliver to the custodian's successor, if there is one, all local government records in custody. If there is no successor, the governing body shall determine which officer of the local government shall have custody.

(b) If the functions of an office of one local government are assumed by another local government, the governing bodies of the two local governments shall determine in which local government custody of the records of the office shall be vested.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 201.007. RECORDS OF ABOLISHED LOCAL GOVERNMENTS. (a) If a local government is abolished or declared void pursuant to state law, the records of the local government shall be dealt with according to this section.

(b) After the settlement of the outstanding indebtedness of an abolished municipality and the satisfaction of the other applicable requirements of Chapter 62, Local Government Code, the municipality's governing body at the time the municipality is abolished, or the receiver or trustees if appointed by a court, shall transfer the records of the municipality to the custody of the comptroller. A record of an abolished municipality may not be sold to satisfy an outstanding indebtedness.

(c) After the settlement of the outstanding indebtedness of an abolished special-purpose district or authority, other than a school district, and the satisfaction of the other applicable requirements of state law establishing or permitting the establishment of the district or authority or governing its abolition, the district's governing body at the time the district is abolished shall transfer the records of the district to the custody of the comptroller. A record of an abolished special-purpose district or authority may not be sold to satisfy an outstanding indebtedness.

(d) As an exception to Subsections (b) and (c), if some or all of the functions of an abolished municipality or special-purpose district or authority, other than a school district, are assumed by another local government, the records of the abolished local government relating to the assumed functions shall be transferred to the appropriate offices of the local government assuming the functions.

(e) The records of annexed, consolidated, or abolished school districts shall be transferred as provided by this subsection. The records of an annexed school district shall be transferred to the custody of the governing body of the school district to which the abolished school district has been annexed. The records of each of two or more school districts that have been consolidated shall be transferred to the custody of the governing body of the consolidated school district. The records of an abolished school district whose entire territory is annexed to another school district shall be transferred to the custody of the governing body of that school district. The commissioner of education shall determine to which governing body custody of the records of an abolished school district shall be transferred in those instances in which the territory of the abolished district is divided among two or more school districts.

(f) The cost of the transfer of records to the comptroller under this section shall be paid for out of the funds of the

abolished local government. If funds of the local government are not available for this purpose, the cost of the transfer shall be paid out of the funds of the comptroller.

(g) The records retention schedules issued by the commission shall be used, as far as practicable, as the basis for the retention and disposition of local government records transferred to the custody of the comptroller under this section.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 558, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.99, eff. September 1, 2007.

Sec. 201.008. RECORDS OF ABOLISHED OFFICES OF COUNTY SUPERINTENDENTS OF SCHOOLS. (a) Records of an office of county superintendent of schools or county superintendent of education abolished under former Section 17.95, Education Code, before September 1, 1989, that are still in the possession of a custodian of county records or a county officer shall be transferred to the custody of the commission by order of the director and librarian.

(b) The director and librarian shall determine the time and manner of the transfer of the records on a county-by-county basis. The cost of the transfer shall be paid for out of funds of the commission.

(c) The county judge of a county in which a custodian of county records has possession of the records of an abolished office of the county superintendent of schools may petition the director and librarian to allow the county to retain all or part of the records and the director and librarian may grant the petition.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 165, Sec. 6.70, eff. Sept. 1, 1997.

Sec. 201.009. ACCESS TO RECORDS. (a) Local government records are subject to Chapter 552, Government Code.

(b) Any local government record to which public access is denied under Chapter 552, Government Code, including a birth record maintained by a local registrar, is, if still in existence, open to

public inspection 75 years after it was originally created or received. However, a death record maintained by a local registrar is, if still in existence, open to public inspection 55 years after it was originally created or received. This subsection does not limit the authority of a governing body or an elected county officer to establish retention periods for records under Section 203.042.

(c) Subsection (b) does not apply to a local government record whose public disclosure is prohibited by an order of a court or by another state law.

Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 462 (S.B. 1907), Sec. 2, eff. September 1, 2011.

CHAPTER 202. DESTRUCTION AND ALIENATION OF RECORDS

Sec. 202.001. DESTRUCTION OF RECORDS. (a) A local government record may be destroyed if:

(1) the record is listed on a valid records control schedule and either its retention period has expired or it has been microfilmed or stored electronically in accordance with the requirements of Chapters 204 and 205;

(2) the record appears on a list of obsolete records as provided by Section 203.044; or

(3) the record is not listed on a records retention schedule issued by the commission and the local government provides notice to the commission at least 10 days before destroying the record as required by Section 441.169, Government Code.

(b) The following records may be destroyed without meeting the conditions of Subsection (a):

(1) records the destruction or obliteration of which is directed by an expunction order issued by a court pursuant to state law; and

(2) records defined as exempt from scheduling or filing requirements by rules adopted by the commission or listed as exempt in a records retention schedule issued by the commission.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1149 (H.B. 557), Sec. 9, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 13, eff. September 1, 2019.

Sec. 202.002. LITIGATION AND OPEN RECORDS REQUESTS. (a) Regardless of any other provision of this subtitle or rules adopted under it, a local government record the subject matter of which is known by the custodian to be in litigation may not be destroyed until the litigation is settled.

(b) Regardless of any other provision of this subtitle or rules adopted under it, a local government record subject to a request under Chapter 552, Government Code, may not be destroyed until the request is resolved.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.

Sec. 202.003. METHOD OF DESTRUCTION. (a) A local government record may be destroyed by burning, shredding, pulping, or burial in a landfill or by sale or donation for recycling purposes except as provided by Subsection (b).

(b) Records to which public access is restricted under Chapter 552, Government Code, or other state law may be destroyed only by burning, pulping, or shredding.

(c) A local government that sells or donates records for recycling purposes shall establish procedures for ensuring that the records are rendered unrecognizable as local government records by the recycler.

(d) The director and librarian may approve other methods of destruction that render the records unrecognizable as local government records.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.

Sec. 202.004. ALIENATION OF RECORDS. (a) A local government record may be sold or donated, loaned, transferred, or otherwise passed out of the custody of a local government to any public institution of higher education, public museum, public library, or other public entity with the approval of the local government's records management officer and after the expiration of the record's retention period under the local government's records control schedule.

(b) A local government record may not be sold or donated (except for the purposes of recycling), loaned, transferred, or otherwise passed out of the custody of a local government to any private college or university, private museum or library, private organization of any type, or an individual, except with the consent of the director and librarian and after the expiration of its retention period under the local government's records control schedule.

(c) A records management officer or custodian may temporarily transfer a local government record to a person for the purposes of microfilming, duplication, conversion to electronic media, restoration, or similar records management and preservation procedures.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 86, Sec. 28, eff. Sept. 1, 1995.

Sec. 202.005. RIGHT OF RECOVERY. (a) The governing body may demand and receive from any person any local government record in private possession created or received by the local government the removal of which was not authorized by law.

(b) If the person in possession of a local government record refuses to deliver the record on demand, the governing body may petition the district court of the county in which the person resides for the return of the record. If the court finds that the record is a local government record, the court shall order the return of the record.

(c) As part of the petition to the district court or at any time after its filing, the governing body may petition to have the record seized pending the determination of the court if the governing body finds the record is in danger of being destroyed, mutilated,

altered, secreted, or removed from the state.

(d) The director and librarian may demand and receive from any person any local government record of permanent value in private possession.

(e) If the person in possession of the local government record of permanent value refuses to deliver the record on demand, the director and librarian may ask the attorney general to petition for the recovery of the record as provided by this section. As part of the petition or at any time after its filing, the attorney general may petition to have the record seized pending the determination of the court if the governing body finds the record is in danger of being destroyed, mutilated, altered, secreted, or removed from the state.

(f) A local government record recovered as the result of a petition by the attorney general shall be transferred to the custody of the commission or, at the discretion of the director and librarian, be returned to the local government that originally had custody of the record.

(g) If a local government refuses to deliver custody of a record to the commission as provided by Section 201.007, 201.008, or 203.050, the director and librarian may ask the attorney general to petition for recovery of the record. If the court determines that the director and librarian has acted in accordance with Section 201.007, 201.008, or 203.050, as applicable, and with regard to Section 203.050, the court finds that the survival of the record is imperiled, the court shall order the record to be transferred to the custody of the commission.

(h) If a governing body petitions a court for the recovery of a record under Subsection (b) and prevails or if the attorney general petitions a court for the recovery of a record under Subsection (e) or (g) and prevails, the court shall award attorney's fees and court costs to the prevailing party.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 202.006. DESTRUCTION OF NONRECORD MATERIAL. (a) Material that is not included in the definition of a local government record and is described by Section 201.003(8)(A), (B), or (C) may be disposed of at the discretion of the custodian or the creator of the

document, as applicable, subject to any policies developed in each local government or elective county office regarding the destruction.

(b) Extra identical copies of a local government record to which public access is restricted under Chapter 552, Government Code, or other state law may be destroyed only by burning, pulping, or shredding.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.

Sec. 202.007. PERSONAL LIABILITY. A custodian of local government records, records management officer, or other officer or employee of a local government may not be held personally liable for the destruction of a local government record if the destruction is in compliance with this subtitle and rules adopted under it.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 202.008. PENALTY: DESTRUCTION OR ALIENATION OF RECORD. An officer or employee of a local government commits an offense if the officer or employee knowingly or intentionally violates this subtitle or rules adopted under it by destroying or alienating a local government record in contravention of this subtitle or by intentionally failing to deliver records to a successor in office as provided by Section 201.006(a). An offense under this section is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 202.009. PENALTY: POSSESSION OF RECORD BY PRIVATE ENTITY. (a) A private college or university, a private museum or library, a private organization of any other type, or an individual commits an offense if the entity knowingly or intentionally acquires or possesses a local government record. An offense under this subsection is a Class A misdemeanor.

(b) It is a defense to prosecution under this section that a private college, university, museum, or library, by agreement with

the commission under Subchapter J, Chapter 441, Government Code, provides physical housing for a local government record the title to which has been vested in the commission.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 203. MANAGEMENT AND PRESERVATION OF RECORDS

SUBCHAPTER A. ELECTIVE COUNTY OFFICES

Sec. 203.001. RECORDS MANAGEMENT OFFICER. Each elected county officer is the records management officer for the records of the officer's office.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.002. DUTIES AND RESPONSIBILITIES OF ELECTED COUNTY OFFICERS AS RECORDS MANAGEMENT OFFICERS. The elected county officer shall:

(1) develop policies and procedures for the administration of an active and continuing records management program;

(2) administer the records management program so as to reduce the costs and improve the efficiency of recordkeeping;

(3) identify and take adequate steps to preserve records that are of permanent value;

(4) identify and take adequate steps to protect the essential records of the office;

(5) ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the records management program and the requirements of this subtitle and rules adopted under it; and

(6) cooperate with the commission in its conduct of statewide records management surveys.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 14, eff. September 1, 2019.

Sec. 203.003. DUTIES OF COMMISSIONERS COURT. The commissioners court of each county shall:

(1) promote and support the efficient and economical management of records of all elective offices in the county to enable elected county officers to conform to this subtitle and rules adopted under it;

(2) facilitate the creation and maintenance of records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of each elective office and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and the persons affected by the activities of the local government;

(3) facilitate the identification and preservation of the records of elective offices that are of permanent value;

(4) facilitate the identification and protection of the essential records of elective offices;

(5) establish a county clerk records management and preservation fund for fees subject to Section 118.0216 and approve in advance any expenditures from the fund; and

(6) establish a records management and preservation account for the records management and preservation fees authorized under Sections 135.101 and 135.102, and approve in advance any expenditures from the fund, which may be spent only for records management preservation or automation purposes in the county.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 675, Sec. 4, eff. Sept. 1, 1993.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 4.36, eff. January 1, 2020.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.12, eff. January 1, 2022.

Sec. 203.004. DIRECTOR AND LIBRARIAN. The director and librarian shall provide advice and assistance to records management officers in establishing records management programs and in carrying out the other requirements of this subtitle and rules adopted under it.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.005. RECORDS MANAGEMENT PROGRAM TO BE ESTABLISHED. (a) On or before January 1, 1991, each elected county officer shall adopt a written plan establishing an active and continuing program for the efficient and economical management of the records of the elective office of which the elected officer is custodian.

(b) The plan must provide policies, methods, and procedures to fulfill the duties and responsibilities set out in Section 203.002 concerning the management and preservation of records. The plan may establish additional policies or procedures for the operation of the records management program that are consistent with the requirements of this subtitle and rules adopted under it.

(c) A copy of the plan must be filed by the elected county officer with the director and librarian within 30 days after the date of its adoption.

(d) A plan establishing or relating to a records management program adopted before September 1, 1989, must be amended if any provision of the plan is in conflict with this subtitle or a rule adopted under it. A copy of the amended plan shall be filed with the director and librarian as provided by Subsection (c).

(e) A copy of an amended plan relating to the establishment or operation of the records management plan must be filed with the director and librarian within 30 days after the date of its adoption.

(f) The director and librarian or the designee of the director and librarian shall within a reasonable time bring to the attention of the elected county officer in writing any aspect of a plan filed in the office of the director and librarian or that otherwise comes to the attention of the director and librarian that is inconsistent with requirements of this subtitle or rules adopted under it.

(g) An elected county officer is authorized, instead of or in conjunction with submitting a plan and establishing an independent records program for the elective office, to participate in a county program established as provided by Subchapter B or in one or more specific components of a county program and to authorize the records management officer of the county program to act as the records management officer for the records of the elective office.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. ALL OTHER LOCAL GOVERNMENT OFFICES

Sec. 203.021. DUTIES AND RESPONSIBILITIES OF GOVERNING BODY. The governing body of a local government, including a commissioners court with regard to nonelective county offices, shall:

(1) establish, promote, and support an active and continuing program for the efficient and economical management of all local government records;

(2) cause policies and procedures to be developed for the administration of the program under the direction of the records management officer;

(3) facilitate the creation and maintenance of local government records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the local government and designed to furnish the information necessary to protect the legal and financial rights of the local government, the state, and persons affected by the activities of the local government;

(4) facilitate the identification and preservation of local government records that are of permanent value;

(5) facilitate the identification and protection of essential local government records; and

(6) cooperate with the commission in its conduct of statewide records management surveys.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.022. DUTIES AND RESPONSIBILITIES OF CUSTODIANS. (a) Custodians of records in each local government shall:

(1) cooperate with the records management officer in carrying out the policies and procedures established by the local government for the efficient and economical management of records and in carrying out the requirements of this subtitle;

(2) adequately document the transaction of government business and the services, programs, and duties for which the custodian and the custodian's staff are responsible; and

(3) maintain the records in the custodian's care and carry out their preservation, microfilming, destruction, or other

disposition only in accordance with the policies and procedures of the local government's records management program and the requirements of this subtitle and rules adopted under it.

(b) State law relating to the duties, other responsibilities, or recordkeeping requirements of a custodian of local government records do not exempt the custodian or the records in the custodian's care from the application of this subtitle and rules adopted under it and may not be used by the custodian as a basis for refusal to participate in the records management program of the local government whose establishment is required by this chapter.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.023. DUTIES OF RECORDS MANAGEMENT OFFICER. The records management officer in each local government shall:

(1) assist in establishing and developing policies and procedures for a records management program for the local government;

(2) administer the records management program and provide assistance to custodians for the purposes of reducing the costs and improving the efficiency of recordkeeping;

(3) in cooperation with the custodians of the records, prepare the records control schedules and amended schedules required by Section 203.041 and the list of obsolete records as provided by Section 203.044;

(4) in cooperation with custodians, identify and take adequate steps to preserve local government records that are of permanent value;

(5) in cooperation with custodians, identify and take adequate steps to protect essential local government records;

(6) in cooperation with custodians, ensure that the maintenance, preservation, microfilming, destruction, or other disposition of records is carried out in accordance with the policies and procedures of the local government's records management program and the requirements of this subtitle and rules adopted under it;

(7) disseminate to the governing body and custodians information concerning state laws, administrative rules, and the policies of the government relating to local government records; and

(8) in cooperation with custodians, establish procedures to ensure that the handling of records in any context of the records

management program by the records management officer or those under the officer's authority is carried out with due regard for:

(A) the duties and responsibilities of custodians that may be imposed by law; and

(B) the confidentiality of information in records to which access is restricted by law.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 15, eff. September 1, 2019.

Sec. 203.024. DIRECTOR AND LIBRARIAN. The director and librarian shall provide advice and assistance to governing bodies, custodians, and records management officers in establishing records management programs and in carrying out the other requirements of this subtitle and rules adopted under it.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.025. DESIGNATION OF RECORDS MANAGEMENT OFFICER. (a) On or before June 1, 1990, the governing body of each local government shall designate a records management officer by:

(1) designating an individual; or

(2) designating an office or position, the holder of which shall be the records management officer.

(b) The name, office, or position of the records management officer shall be entered on the minutes of the governing body.

(c) The name or the name and office or position of the records management officer shall be filed by the records management officer with the director and librarian within 30 days after the date of the designation.

(d) The designation of a new individual or a new office or position shall be entered on the minutes and reported by the records management officer to the director and librarian in the same manner as the original designation.

(e) If the order designating a records management officer designates an office or position rather than an individual, a new holder of that office or position must file the holder's name with

the director and librarian within 30 days after the date of assuming the office or position.

(f) Through an agreement or contract under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes), a person may serve as records management officer to more than one local government if the person is employed by one of the local governments that is party to the contract or agreement or employed by an administrative agency that is created by the contract or agreement.

(g) An elected county officer may not be designated as records management officer for the nonelective offices of a county without the county officer's consent.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.026. RECORDS MANAGEMENT PROGRAM TO BE ESTABLISHED. (a) On or before January 1, 1991, each governing body by ordinance or order, as appropriate, shall establish a records management program to be administered by the records management officer.

(b) The ordinance or order must provide methods and procedures to enable the governing body, custodians, and the records management officer to fulfill the duties and responsibilities set out in Sections 203.021, 203.022, and 203.023 concerning the management and preservation of records. The ordinance or order may prescribe any policies or procedures for the operation of the records management program that are consistent with the requirements of this subtitle and rules adopted under it.

(c) A copy of the ordinance or order must be filed by the records management officer with the director and librarian within 30 days after the date of its adoption.

(d) An ordinance or order establishing or relating to a records management program adopted before September 1, 1989, must be amended if any provision of the ordinance or order is in conflict with this subtitle or a rule adopted under it. A copy of the amended ordinance or order shall be filed with the director and librarian as provided by Subsection (c).

(e) A copy of an amended ordinance or revised order relating to the establishment or operation of the records management program must be filed by the governing body with the director and librarian within 30 days after the date of its adoption.

(f) The director and librarian or the designee of the director and librarian shall within a reasonable time bring to the attention of the governing body in writing any aspect of an ordinance or order filed in the office of the director and librarian or that otherwise comes to the attention of the director and librarian that is inconsistent with the requirements of this subtitle or rules adopted under it.

(g) The governing body in a records management program established under this section may require the mandatory destruction of any record of the local government when its retention period has expired on a records control schedule developed under Section 203.041.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. RECORDS CONTROL SCHEDULES

Sec. 203.041. PREPARATION OF RECORDS CONTROL SCHEDULES. (a) On or before January 4, 1999, the records management officer shall:

(1) prepare a records control schedule listing the following records and establishing a retention period for each as provided by Section 203.042:

(A) all records created or received by the local government or elective county office;

(B) any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has not expired; and

(C) any record no longer created or received by the local government or elective county office that is still in its possession and for which the retention period on a records retention schedule issued by the commission has expired but which will not be destroyed as provided by Section 203.044; and

(2) file with the director and librarian a written certification of compliance that the local government or the elective county office has adopted records control schedules that comply with the minimum requirements established on records retention schedules issued by the commission.

(b) At the discretion of the records management officer the records control schedule may also list and provide retention periods

for material that is excluded from the definition of a local government record by Section 201.003(8) and exempted records described by Section 202.001(b) if in the officer's opinion the inclusion of the material or records is necessary to ensure the periodic destruction of the material or records in the interest of efficient records management.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(1), eff. September 1, 2019.

(d) The records management officer shall review the records control schedules of the local government or elective county office and prepare amendments to the schedules as needed to reflect new records created or received by the government or office or revisions to retention periods established in a records retention schedule issued by the commission. The records management officer shall file with the director and librarian a written certification of compliance that the local government or the elective county office has amended the records control schedules to comply with the minimum requirements established on records retention schedules issued by the commission.

(e) The governing body shall require in the ordinance or order establishing the records management program the review or approval of a records control schedule or amended schedule by the officers of the local government as it considers necessary. The records control schedule or amended schedule for an elective county office need only be approved by the elected official in charge of that office.

(f) Records control schedules may be prepared on an office-by-office basis or on a department-by-department basis within each office.

(g) A local government that intends to retain all records permanently or that destroys only those records for which no retention periods have been established in a records retention schedule established under Section 441.158, Government Code, is not required to prepare a records control schedule under this section.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(1), eff. September 1, 2019.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 86, Sec. 29, eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 16, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 17, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(1), eff. September 1, 2019.

Sec. 203.042. RETENTION PERIODS. (a) A retention period for each record on the records control schedule shall be determined by the governing body or under its direction or by the elected county officer, as applicable.

(b) A retention period may not be less than:

(1) a retention period prescribed by a state or federal law, regulation, or rule of court; or

(2) a retention period for the record established on a records retention schedule issued by the commission.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(2), eff. September 1, 2019.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(2), eff. September 1, 2019.

Sec. 203.044. INITIAL DESTRUCTION OF OBSOLETE RECORDS. (a) In preparing a records control schedule required by Section 203.041, the records management officer may list separately those obsolete records no longer created or received by the local government or elective county office whose retention periods on a records retention schedule issued by the commission have expired and that the local government or elected county officer wishes to destroy.

(b) The lists of obsolete records to be destroyed must be reviewed or approved in the same manner as records control schedules must be reviewed or approved under Section 203.041(e).

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(4), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(4), eff. September 1, 2019.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 20(b)(4), eff. September 1, 2019.

Sec. 203.046. RECORDKEEPING REQUIREMENTS. As the governing body may require, the records management officer shall keep accurate lists of records destroyed, their volume, and other information of records management activities.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.047. NEW LOCAL GOVERNMENTS. A local government established after September 1, 1989, shall fulfill the requirements of Sections 203.025, 203.026, and 203.041 within one year after the date of its establishment.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.048. CARE OF RECORDS OF PERMANENT VALUE. The commission shall adopt rules establishing standards for the proper care and storage of local government records of permanent value. The commission may require that certain local government records of permanent value be created on permanent-durable paper, the standards for which shall be established by rule. The rules must be approved as required by Section 441.165, Government Code.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.049. TRANSFER OF RECORDS OF PERMANENT VALUE. (a) The governing body or elected county officer may offer to transfer records of permanent value not needed in the day-to-day business of the local government to the custody of:

(1) the commission; or

(2) another local government that operates an archives, library, or museum that meets standards for the care and storage of permanent records established by the commission as provided by Section 203.048.

(b) Transfers of permanent records to another local government

require the prior approval of the director and librarian.

(c) In a transfer of permanent records under this section, title and control of the records and all rights pertaining to the records granted by law to the original custodian or elected county officer are vested in the commission or the local government that receives the records.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 203.050. INSPECTION OF PERMANENT RECORDS. (a) The director and librarian or the authorized representative of the director and librarian is entitled to inspect in the offices of any local government or elected county officer the condition of any permanent record to which access by the director and librarian or the representative is not restricted by law. The inspection is not a release of a record to a member of the public under Chapter 552, Government Code.

(b) The director and librarian, in writing, shall bring to the attention of the governing body or elected county officer, any aspect of the storage, handling, or use of the record that imperils its survival and state what measures must be taken to properly care for and preserve the record.

(c) If, after having been notified by the director and librarian as provided by Subsection (b), the governing body or the elected county officer fails to take required measures to preserve the record, the director and librarian may:

(1) if the record is an obsolete record whose creation is no longer required by law, demand and receive delivery of the record to the custody of the commission; or

(2) if the record is required for current use by the local government, make copies of the record for the purpose of preservation by the commission.

(d) The cost of transferring or copying records under this section shall be paid for out of funds of the commission.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.

SUBCHAPTER D. RECORDS AND INFORMATION PROVIDED TO COMPTROLLER

Sec. 203.061. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a special purpose district described by Section 403.0241(b), Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 564 (S.B. 625), Sec. 2, eff. September 1, 2017.

Sec. 203.062. PROVISION OF CERTAIN RECORDS AND OTHER INFORMATION TO COMPTROLLER. (a) A special purpose district shall transmit records and other information to the comptroller annually for purposes of providing the comptroller with information to operate and update the Special Purpose District Public Information Database under Section 403.0241, Government Code.

(b) The special purpose district may comply with Subsection (a) by affirming that records and other information previously transmitted are current.

(c) The special purpose district shall transmit the records and other information in a form and in the manner prescribed by the comptroller.

Added by Acts 2017, 85th Leg., R.S., Ch. 564 (S.B. 625), Sec. 2, eff. September 1, 2017.

Sec. 203.063. PENALTIES FOR NONCOMPLIANCE. (a) If a special purpose district does not timely comply with Section 203.062, the comptroller shall provide written notice to the special purpose district:

(1) informing the special purpose district of the violation of that section; and

(2) notifying the special purpose district that the special purpose district will be subject to a penalty of $1,000 if the special purpose district does not report the required information on or before the 30th day after the date the notice is provided.

(b) Not later than the 30th day after the date the comptroller provides notice to a special purpose district under Subsection (a), the special purpose district must report the required information.

(c) If a special purpose district does not report the required information as prescribed by Subsection (b):

(1) the special purpose district is liable to the state for a civil penalty of $1,000; and

(2) the comptroller shall provide written notice to the special purpose district:

(A) informing the special purpose district of the liability for the penalty; and

(B) notifying the special purpose district that if the special purpose district does not report the required information on or before the 30th day after the date the notice is provided:

(i) the special purpose district will be subject to an additional penalty of $1,000; and

(ii) the noncompliance will be reflected in the list maintained by the comptroller under Section 403.0242, Government Code.

(d) Not later than the 30th day after the date the comptroller provides notice to a special purpose district under Subsection (c), the special purpose district must report the required information.

(e) If a special purpose district does not report the required information as prescribed by Subsection (d):

(1) the special purpose district is liable to the state for a civil penalty of $1,000; and

(2) the comptroller shall:

(A) reflect the noncompliance in the list maintained under Section 403.0242, Government Code, until the special purpose district reports all information required under Section 203.062; and

(B) provide written notice to the special purpose district that the noncompliance will be reflected in the list until the special purpose district reports the required information.

(f) The attorney general may sue to collect a civil penalty imposed by this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 564 (S.B. 625), Sec. 2, eff. September 1, 2017.

CHAPTER 204. MICROFILMING OF RECORDS

Sec. 204.001. DEFINITIONS. In this chapter:

(1) "Microfilm" means roll microfilm, microfiche, and all other formats produced by any method of microphotography or other means of miniaturization on film.

(2) "Microfilming" means the methods, procedures, and processes used to produce roll microfilm, microfiche, or other microphotographic formats.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 204.002. AUTHORIZATION. Any local government record may be maintained on microfilm in addition to or instead of paper or other media, subject to the requirements of this chapter and rules adopted under it.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 204.003. MICROFILM PRODUCED UNDER PRIOR LAW. (a) All microfilm produced before June 1, 1990, under prior law is validated to the extent the microfilm was produced in the manner and according to the standards prescribed by prior law.

(b) In rules adopted under Section 204.004, the commission may establish procedures for the retrospective certification of uncertified or improperly certified microfilm produced before April 1, 1990, that otherwise meets the standards prescribed by prior law.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 204.004. STANDARDS AND PROCEDURES. (a) The commission shall adopt rules on or before April 1, 1990, establishing standards and procedures for the microfilming of local government records. The rules must be approved as required by Section 441.165, Government Code.

(b) The rules must prescribe:

(1) standards for film quality, resolution, density, definition, and chemical stability;

(2) tests and other methods of inspection required to establish that prescribed standards have been met;

(3) procedures for verifying that records have been filmed accurately;

(4) procedures for the certification of microfilmed records;

(5) standards for the use of editorial and technical targets on microfilm;

(6) standards for the production of use copies from and the storage of master microfilm negatives;

(7) procedures for the labeling and indexing of microfilmed records;

(8) procedures establishing the manner in which court case papers must be filmed;

(9) procedures for the expunction of criminal records on microfilm pursuant to court order;

(10) standards for computer-output microfilm; and

(11) standards for providing access by the members of the public to records on microfilm to which they are entitled under law.

(c) In rules adopted under this section, the commission may establish differing standards and procedures for the microfilming of:

(1) any permanent record;

(2) any record of a municipal, justice, county, or district court; or

(3) any record to which access is restricted under Chapter 552, Government Code, or other state law.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.

Sec. 204.005. RULES TO BE UPDATED. The director and librarian shall monitor standards relating to microfilming developed for use by federal agencies or adopted by national organizations that develop and set standards in the fields of information and records management in order to recommend to the commission any needed amendments to rules.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 204.006. INDEXING. An index to a microfilm record must show the same information that may be required by state law for an index to the same record if it is not microfilmed.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 204.007. DESTRUCTION OF ORIGINAL RECORDS. (a) The original of a record that has been microfilmed pursuant to this chapter and rules adopted under it may be destroyed before the expiration of its retention period on a records retention schedule issued by the commission.

(b) A list of the originals of microfilmed records destroyed shall be filed with the records management officer.

(c) The microfilm record must be retained until the expiration of the retention period for the original record.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 18, eff. September 1, 2019.

Sec. 204.009. MICROFILM OF PERMANENT RECORDS TO BE SUPPLIED. (a) A local government or elected county officer, at the request of the director and librarian, shall supply to the commission a copy of the microfilm of any permanent record to which access is not restricted by law.

(b) The commission shall reimburse the local government or elected county officer for the cost of the copy. If the film duplication is performed by the local government or elected county officer, the cost must be the same as that paid by state agencies to the Texas State Library for a similar microfilm copy. If the film duplication is done by a commercial microfilming service under contract with the local government or elected county officer, the cost of the copy may not exceed the cost paid by the local government or elected county officer for a copy under the contract.

(c) The director and librarian or an employee of the commission may not provide certified copies of a record on microfilm obtained under this section without the consent of the original local custodian of the record.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 204.010. COMMERCIAL MICROFILM STORAGE FACILITIES. (a)

The commission may establish a program for the certification of commercial microfilm storage facilities for the storage of the master microfilm negatives of local government records.

(b) If the commission establishes a certification program, the procedures of this subsection apply. On request by the commercial storage facility, the director and librarian or the representative of the director and librarian shall inspect the facility to determine if the facility meets the minimum standards established by the commission under Section 204.004 for the storage of the microfilm of local government records. If the commercial storage facility meets the minimum standards established by the commission, the name of the facility shall be added to a list of certified storage facilities to be prepared by the director and librarian and made available on request to a local government, elected county officer, or other interested party. The inspection and certification of commercial storage facilities shall be on a fee basis to be determined by the commission.

(c) The commission shall determine the period a certification made under this section is effective.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 204.011. EFFECTIVE AS ORIGINAL RECORD. (a) A microfilmed record created in compliance with this chapter and rules adopted under it, including microfilm validated by Section 204.003, is an original record and shall be accepted by any court or administrative agency of this state.

(b) If issued and certified by a local government recordkeeper, a copy on paper or film of a microfilmed record shall be accepted by a court or administrative agency of this state as a certified copy of an original record.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 205. ELECTRONIC STORAGE OF RECORDS

Sec. 205.001. DEFINITIONS. In this chapter:

(1) "Electronic storage" means the maintenance of local government record data in the form of digital electronic signals on a computer hard disk, magnetic tape, optical disk, or similar machine-

readable medium.

(2) "Local government record data" means the information that by law, regulation, rule of court, ordinance, or administrative procedure in a local government comprises a local government record as defined by Section 201.003.

(3) "Source document" means the local government record from which local government record data is obtained for electronic storage. The term does not include backup copies of the data in any media generated from electronic storage.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 205.002. AUTHORIZATION. Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of this chapter and rules adopted under it.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 205.003. STANDARDS AND PROCEDURES TO BE ADOPTED. (a) The commission shall adopt rules establishing standards and procedures for the electronic storage of any local government record data of permanent value and may adopt rules establishing standards and procedures for the electronic storage of any local government record data whose retention period is at least 10 years on a records retention schedule issued by the commission. The rules must be approved as required by Section 441.165, Government Code.

(b) With regard to the types of local government record data covered by Subsection (a), the rules may require or prescribe:

(1) standards and procedures for the generation of backup or preservation copies of the local government record data on paper, microfilm, electronic, or other approved media;

(2) standards and procedures for the recopying or duplication of the magnetic tape, optical disk, or similar machine-readable medium on which the local government record data are stored;

(3) standards and procedures for the physical storage and maintenance of magnetic tapes, optical disks, or similar machine-readable media;

(4) standards and procedures for providing access by

members of the public to electronically stored local government record data to which they are entitled under law; and

(5) other standards and procedures that the commission considers necessary to ensure the availability, readability, or integrity of the local government record data.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 205.004. RULES TO BE UPDATED. The director and librarian shall monitor standards and procedures relating to electronic storage developed for use by federal agencies or adopted by national organizations that develop and set standards in the fields of records and information management in order to recommend to the commission any needed amendments to rules.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 205.005. SUPREME COURT RULES. This chapter is not intended to conflict with Subchapter I, Chapter 51, Government Code, relating to the electronic filing of certain documents in district and county courts. The commission shall incorporate any rules adopted under that subchapter into its own.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 205.006. INDEX. An index to local government record data stored electronically must provide the same information that may be required by state law for an index to the source document, if applicable.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 205.008. DESTRUCTION OF SOURCE DOCUMENTS. (a) The source document, if any, for electronically stored local government record data covered by rules adopted under Section 205.003(a) may be destroyed or returned to the person who filed it for record.

(b) The magnetic tape, optical disk, or similar medium

containing the local government record data and the hardware and software necessary to provide access to it must be retained by the local government or be available to the local government until the expiration of the retention period for all source documents, subject to the rules adopted under this chapter.

(c) The source document, if any, for electronically stored local government record data not covered by rules adopted under Section 205.003(a) may be destroyed before the expiration of the retention period for the source document in a records retention schedule issued by the commission if the magnetic tape, optical disk, or similar medium and hardware and software necessary to provide access to local government record data on the media are retained for the retention period in the schedule. Conversely, the magnetic tape, optical disk, or similar medium may be erased, written over, or destroyed before the expiration of the retention period for a source document for local government record data not covered by rules adopted under Section 205.003(a), if the source document, if any, is retained until the expiration of its retention period or, if the source document has already been destroyed, paper or microfilm copies are generated from the magnetic tape, optical disk, or similar medium before destruction or erasure and retained until the expiration of the retention period for the source document.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 533 (H.B. 1962), Sec. 19, eff. September 1, 2019.

Sec. 205.009. DENIAL OF ACCESS PROHIBITED. A person under contract or agreement with a local government or elected county officer to create, file, or store local government record data electronically or to provide services, equipment, or the means for the creation, filing, or storage, may not, under any circumstances, refuse to provide local government record data to the local government in a timely manner in a format accessible and useable by the local government.

Added by Acts 1989, 71st Leg., ch. 1248, Sec. 1, eff. Sept. 1, 1989.

Sec. 205.010. SECURITY BREACH NOTIFICATION BY LOCAL GOVERNMENT. (a) In this section:

(1) "Breach of system security" has the meaning assigned by Section 521.053, Business & Commerce Code.

(2) "Sensitive personal information" has the meaning assigned by Section 521.002, Business & Commerce Code.

(b) A local government that owns, licenses, or maintains computerized data that includes sensitive personal information shall comply, in the event of a breach of system security, with the notification requirements of Section 521.053, Business & Commerce Code, to the same extent as a person who conducts business in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 6, eff. September 1, 2009.

TITLE 7. REGULATION OF LAND USE, STRUCTURES, BUSINESSES, AND RELATED ACTIVITIES

SUBTITLE A. MUNICIPAL REGULATORY AUTHORITY

CHAPTER 211. MUNICIPAL ZONING AUTHORITY

SUBCHAPTER A. GENERAL ZONING REGULATIONS

Sec. 211.001. PURPOSE. The powers granted under this subchapter are for the purpose of promoting the public health, safety, morals, or general welfare and protecting and preserving places and areas of historical, cultural, or architectural importance and significance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.002. ADOPTION OF REGULATION OR BOUNDARY INCLUDES AMENDMENT OR OTHER CHANGE. A reference in this subchapter to the adoption of a zoning regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.003. ZONING REGULATIONS GENERALLY. (a) The governing

body of a municipality may regulate:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and

(6) the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health.

(b) In the case of designated places and areas of historical, cultural, or architectural importance and significance, the governing body of a municipality may regulate the construction, reconstruction, alteration, or razing of buildings and other structures.

(c) The governing body of a home-rule municipality may also regulate the bulk of buildings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 731, Sec. 2, eff. Sept. 1, 2003.

Sec. 211.0035. ZONING REGULATIONS AND DISTRICT BOUNDARIES APPLICABLE TO PAWNSHOPS. (a) In this section, "pawnshop" has the meaning assigned by Section 371.003, Finance Code.

(b) For the purposes of zoning regulation and determination of zoning district boundaries, the governing body of a municipality shall designate pawnshops that have been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code, as a permitted use in one or more zoning classifications.

(c) The governing body of a municipality may not impose a specific use permit requirement or any requirement similar in effect to a specific use permit requirement on a pawnshop that has been licensed to transact business by the Consumer Credit Commissioner under Chapter 371, Finance Code.

Added by Acts 1991, 72nd Leg., ch. 687, Sec. 18, eff. Sept. 1, 1991.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.81, eff. Sept. 1, 1999.

Sec. 211.004. COMPLIANCE WITH COMPREHENSIVE PLAN. (a) Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

(1) lessen congestion in the streets;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population; or

(7) facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

(b) Repealed by Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 458, Sec. 1, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 459, Sec. 2, eff. Sept. 1, 1997.

Sec. 211.005. DISTRICTS. (a) The governing body of a municipality may divide the municipality into districts of a number, shape, and size the governing body considers best for carrying out this subchapter. Within each district, the governing body may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) Zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.006. PROCEDURES GOVERNING ADOPTION OF ZONING

REGULATIONS AND DISTRICT BOUNDARIES. (a) The governing body of a municipality wishing to exercise the authority relating to zoning regulations and zoning district boundaries shall establish procedures for adopting and enforcing the regulations and boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(a-1) In addition to any notice required by this section or Section 211.007, the governing body of a municipality or a zoning commission, as applicable, shall provide written notice of each public hearing regarding any proposed adoption of or change to a zoning regulation or boundary under which a current conforming use of a property is a nonconforming use if the regulation or boundary is adopted or changed. The notice must:

(1) be mailed by United States mail to each owner of real or business personal property where the proposed nonconforming use is located as indicated by the most recently approved municipal tax roll and each occupant of the property not later than the 10th day before the hearing date;

(2) contain the time and place of the hearing; and

(3) include the following text in bold 14-point type or larger:

"THE [MUNICIPALITY NAME] IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY."

(b) In addition to the notice required by Subsection (a), a general-law municipality that does not have a zoning commission shall give notice of a proposed change in a zoning classification to each property owner who would be entitled to notice under Section 211.007(c) if the municipality had a zoning commission. That notice must be given in the same manner as required for notice to property owners under Section 211.007(c). The governing body may not adopt the proposed change until after the 30th day after the date the notice required by this subsection is given.

(c) If the governing body of a home-rule municipality conducts a hearing under Subsection (a), the governing body may, by a two-

thirds vote, prescribe the type of notice to be given of the time and place of the public hearing. Notice requirements prescribed under this subsection are in addition to the publication of notice required by Subsection (a).

(d) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the governing body. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots or land covered by the proposed change; or

(2) the area of the lots or land immediately adjoining the area covered by the proposed change and extending 200 feet from that area.

(e) In computing the percentage of land area under Subsection (d), the area of streets and alleys shall be included.

(f) The governing body by ordinance may provide that the affirmative vote of at least three-fourths of all its members is required to overrule a recommendation of the municipality's zoning commission that a proposed change to a regulation or boundary be denied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 52 (S.B. 929), Sec. 1, eff. May 19, 2023.

Sec. 211.007. ZONING COMMISSION. (a) To exercise the powers authorized by this subchapter, the governing body of a home-rule municipality shall, and the governing body of a general-law municipality may, appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. If the municipality has a municipal planning commission at the time of implementation of this subchapter, the governing body may appoint that commission to serve as the zoning commission.

(b) The zoning commission shall make a preliminary report and hold at least one public hearing on that report before submitting a

final report to the governing body. The governing body may not hold a public hearing until it receives the final report of the zoning commission unless the governing body by ordinance provides that a public hearing is to be held, after the notice required by Section 211.006(a), jointly with a public hearing required to be held by the zoning commission. In either case, the governing body may not take action on the matter until it receives the final report of the zoning commission.

(c) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to each owner, as indicated by the most recently approved municipal tax roll, of real property within 200 feet of the property on which the change in classification is proposed. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail. If the property within 200 feet of the property on which the change is proposed is located in territory annexed to the municipality and is not included on the most recently approved municipal tax roll, the notice shall be given in the manner provided by Section 211.006(a).

(c-1) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification affecting residential or multifamily zoning shall be sent to each school district in which the property for which the change in classification is proposed is located. The notice may be served by its deposit in the municipality, properly addressed with postage paid, in the United States mail.

(c-2) Subsection (c-1) does not apply to a municipality the majority of which is located in a county with a population of 100,000 or less, except that such a municipality must give notice under Subsection (c-1) to a school district that has territory in the municipality and requests the notice. For purposes of this subsection, if a school district makes a request for notice under Subsection (c-1), the municipality must give notice of each public hearing held following the request unless the school district requests that no further notices under Subsection (c-1) be given to the school district.

(d) The governing body of a home-rule municipality may, by a two-thirds vote, prescribe the type of notice to be given of the time

and place of a public hearing held jointly by the governing body and the zoning commission. If notice requirements are prescribed under this subsection, the notice requirements prescribed by Subsections (b) and (c) and by Section 211.006(a) do not apply.

(e) If a general-law municipality exercises zoning authority without the appointment of a zoning commission, any reference in a law to a municipal zoning commission or planning commission means the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 640 (H.B. 674), Sec. 1, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 401 (H.B. 1381), Sec. 1, eff. September 1, 2023.

Sec. 211.0075. COMPLIANCE WITH OPEN MEETINGS LAW. A board or commission established by an ordinance or resolution adopted by the governing body of a municipality to assist the governing body in developing an initial comprehensive zoning plan or initial zoning regulations for the municipality, or a committee of the board or commission that includes one or more members of the board or commission, is subject to Chapter 551, Government Code, regardless of whether the board, commission, or committee has rulemaking or quasi-judicial powers or functions only in an advisory capacity.

Added by Acts 1993, 73rd Leg., ch. 381, Sec. 1, eff. Aug. 30, 1993.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(82), eff. Sept. 1, 1995.

Sec. 211.008. BOARD OF ADJUSTMENT. (a) The governing body of a municipality may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the governing body may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.

(b) A board of adjustment must consist of at least five members

to be appointed for terms of two years. The governing body must provide the procedure for appointment. The governing body may authorize each member of the governing body, including the mayor, to appoint one member to the board. The appointing authority may remove a board member for cause, as found by the appointing authority, on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

(d) Each case before the board of adjustment must be heard by at least 75 percent of the members.

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter and with the approval of the governing body. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(f) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

(g) The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 363, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 1, eff. September 1, 2019.

Sec. 211.009. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(b-1) In exercising its authority under Subsection (a)(3), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

(1) the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;

(2) compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

(3) compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

(4) compliance would result in the unreasonable encroachment on an adjacent property or easement; or

(5) the municipality considers the structure to be a nonconforming structure.

(c) The concurring vote of 75 percent of the members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or

(3) authorize a variation from the terms of a zoning ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 318 (H.B. 1475), Sec. 1, eff. September 1, 2021.

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(a-1) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

(1) a person who:

(A) filed the application that is the subject of the decision;

(B) is the owner or representative of the owner of the property that is the subject of the decision; or

(C) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 820 (H.B. 2497), Sec. 2, eff. September 1, 2019.

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or

(3) an officer, department, board, or bureau of the

municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.

Sec. 211.012. ENFORCEMENT; PENALTY; REMEDIES. (a) The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 211.013. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local ordinance or regulation, the regulation adopted under this subchapter controls. If the other statute or local ordinance or regulation imposes higher standards, that statute, ordinance, or regulation controls.

(b) This subchapter does not authorize the governing body of a municipality to require the removal or destruction of property that exists at the time the governing body implements this subchapter and

that is actually and necessarily used in a public service business.

(c) This subchapter does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.

(d) This subchapter applies to a privately owned building or other structure and privately owned land when leased to a state agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 476, Sec. 1, eff. June 18, 1999.

Sec. 211.014. PANEL OF BOARD OF ADJUSTMENT. (a) This section applies only to a municipality with a population of 500,000 or more.

(b) A board of adjustment shall consist of one or more panels of at least five members each to be appointed for terms of two years. If more than one panel of the board is appointed, the board consists of the regular members of all of the panels. The board may adopt rules for the assignment of appeals to a panel.

(c) If the board consists of more than one panel, only one panel may hear, handle, or render a decision in a particular case. A decision of a panel of the board on a case constitutes the decision of the board.

(d) Meetings of a panel of the board are held at the call of the presiding officer of the panel and at other times as determined by the panel or the board.

(e) A panel of a board of adjustment:

(1) has the powers and duties that a board of adjustment has under Sections 211.008, 211.009, 211.010, and 211.011; and

(2) is to be treated as a board of adjustment for purposes of the requirement imposed by Section 211.008(d).

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 73, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 24 (S.B. 177), Sec. 1, eff. May 9, 2005.

Sec. 211.015. ZONING REFERENDUM IN HOME-RULE MUNICIPALITY. (a)

Notwithstanding other requirements of this subchapter, the voters of a home-rule municipality may repeal the municipality's zoning regulations adopted under this subchapter by either:

(1) a charter election conducted under law; or

(2) on the initial adoption of zoning regulations by a municipality, the use of any referendum process that is authorized under the charter of the municipality for public protest of the adoption of an ordinance.

(b) Notwithstanding any procedural or other requirements of this chapter to the contrary, the governing body of a home-rule municipality may on its own motion submit the repeal of the municipality's zoning regulations, as adopted under this chapter, in their entirety to the electors by use of any process that is authorized under the charter of the municipality for a popular vote on the rejection or repeal of ordinances in general.

(c) The provisions of this chapter shall not be construed to prohibit the adoption or application of any charter provision of a home-rule municipality that requires a waiting period prior to the adoption of zoning regulations or the submission of the initial adoption of zoning regulations to a binding referendum election, or both, provided that all procedural requirements of this chapter for the adoption of the zoning regulation are otherwise complied with. This subsection does not apply to the adoption of airport zoning regulations under Chapter 241.

(d) Notwithstanding any charter provision to the contrary, a governing body of a municipality may adopt a zoning ordinance and condition its taking effect upon the ordinance receiving the approval of the electors at an election held for that purpose.

(e) The provisions of this section may only be utilized for the repeal of a municipality's zoning regulations in their entirety or for determinations of whether a municipality should initially adopt zoning regulations, except the governing body of a municipality may amend, modify, or repeal a zoning ordinance adopted, approved, or ratified at an election conducted pursuant to this section.

(f) The provisions of this section shall not authorize the repeal of:

(1) an ordinance approving land-use regulations adopted under the provisions of this chapter by a board of directors of a reinvestment zone under the authority of Section 311.010(c), Tax Code; or

(2) an ordinance approving airport zoning regulations adopted under Chapter 241.

Added by Acts 1993, 73rd Leg., ch. 126, Sec. 4, eff. Sept. 1, 1993.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 190 (S.B. 1360), Sec. 1, eff. May 23, 2007.

Sec. 211.016. ZONING REGULATION AFFECTING APPEARANCE OF BUILDINGS OR OPEN SPACE. (a) This section applies only to a zoning regulation that affects:

(1) the exterior appearance of a single-family house, including the type and amount of building materials; or

(2) the landscaping of a single-family residential lot, including the type and amount of plants or landscaping materials.

(b) A zoning regulation adopted after the approval of a residential subdivision plat does not apply to that subdivision until the second anniversary of the later of:

(1) the date the plat was approved; or

(2) the date the municipality accepts the subdivision improvements offered for public dedication.

(c) This section does not prevent a municipality from adopting or enforcing applicable building codes or prohibiting the use of building materials that have been proven to be inherently dangerous.

Added by Acts 2003, 78th Leg., ch. 524, Sec. 1, eff. Sept. 1, 2003.

Sec. 211.0165. DESIGNATION OF HISTORIC LANDMARK OR DISTRICT. (a) Except as provided by Subsection (b), a municipality that has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries may not designate a property as a local historic landmark or include a property within the boundaries of a local historic district unless:

(1) the owner of the property consents to the designation or inclusion; or

(2) if the owner does not consent, the designation or inclusion of the owner's property is approved by a three-fourths vote of:

(A) the governing body of the municipality; and

(B) the zoning, planning, or historical commission of the municipality, if any.

(a-1) If a municipality has more than one commission described by Subsection (a)(2)(B), the municipality shall designate one of those commissions as the entity with exclusive authority to approve the designations of properties as local historic landmarks and the inclusion of properties in a local historic district under that paragraph.

(b) If the property is owned by an organization that qualifies as a religious organization under Section 11.20, Tax Code, the municipality may designate the property as a local historic landmark or include the property in a local historic district only if the organization consents to the designation or inclusion.

(c) The municipality must provide the property owner a statement that describes the impact that a historic designation or inclusion in a local historic district of the owner's property may have on the owner and the owner's property. The municipality must provide the statement to the owner not later than the 15th day before the date of the initial hearing on the historic designation or inclusion in a local historic district of the property of:

(1) the zoning, planning, or historical commission, if any; or

(2) the governing body of the municipality.

(d) The historic designation impact statement must include lists of the:

(1) regulations that may be applied to any structure on the property after the designation;

(2) procedures for the designation;

(3) tax benefits that may be applied to the property after the designation; and

(4) rehabilitation or repair programs that the municipality offers for a property designated as historic.

(e) The municipality must allow an owner to withdraw consent at any time during the designation process.

Added by Acts 2019, 86th Leg., R.S., Ch. 231 (H.B. 2496), Sec. 1, eff. May 25, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 405 (S.B. 1585), Sec. 1, eff.

September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 405 (S.B. 1585), Sec. 2, eff. September 1, 2021.

Sec. 211.0166. EXCLUSION FROM CERTAIN CONSERVATION DISTRICTS. (a) In this section, "conservation district" means a local preservation district authorized by ordinance by a municipality described by Subsection (b) to preserve, maintain, and protect the physical elements of development and the community character and heritage of neighborhoods having distinctive characteristics and patterns of development.

(b) This subsection applies only to a property located in a municipality with a population of two million or more. Notwithstanding any other law, this subsection applies regardless of whether the municipality has established a process for designating places or areas of historical, cultural, or architectural importance and significance through the adoption of zoning regulations or zoning district boundaries. The owner of a property included within the boundaries of a conservation district authorized by ordinance may elect to exclude the property from the district by filing in the real property records for the county in which the property is located an acknowledged statement:

(1) describing the property by reference to a map or plat of the subdivision; and

(2) stating that the owner elects to have the property excluded from the district.

(c) Subsection (b) does not apply to:

(1) the designation of a property as a local historic landmark described by Section 211.0165(a); or

(2) the inclusion of a property within the boundaries of a local historic district described by Section 211.0165(a).

(d) A statement filed under Subsection (b) must be filed before the first anniversary of the date of the inclusion in a conservation district. The exclusion of a property takes effect on the filing of the statement by the owner of the property.

Added by Acts 2023, 88th Leg., R.S., Ch. 545 (H.B. 4057), Sec. 1, eff. June 10, 2023.

Sec. 211.017. CONTINUATION OF LAND USE IN NEWLY INCORPORATED AREAS. (a) A municipality incorporated after September 1, 2003, may not prohibit a person from:

(1) continuing to use land in the area in the manner in which the land was being used on the date of incorporation if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the incorporation if:

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date of incorporation.

(b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(c) This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;

(3) a regulation relating to preventing imminent destruction of property or injury to persons;

(4) a regulation relating to public nuisances;

(5) a regulation relating to flood control;

(6) a regulation relating to the storage and use of hazardous substances;

(7) a regulation relating to the sale and use of fireworks; or

(8) a regulation relating to the discharge of firearms.

(d) A municipal ordinance or rule in conflict with this section is void.

Added by Acts 2003, 78th Leg., ch. 279, Sec. 1, eff. Sept. 1, 2003. Renumbered from Local Government Code, Section 211.016 by Acts 2005,

79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(66), eff. September 1, 2005.

Sec. 211.018. CONTINUATION OF LAND USE REGARDING MANUFACTURED HOME COMMUNITIES. (a) In this section, "manufactured home," "manufactured home community," and "manufactured home lot" have the meanings assigned by Section 94.001, Property Code.

(b) The governing body of a municipality may not require a change in the nonconforming use of any manufactured home lot within the boundaries of a manufactured home community if:

(1) the nonconforming use of the land constituting the manufactured home community is authorized by law; and

(2) at least 50 percent of the manufactured home lots in the manufactured home community are physically occupied by a manufactured home used as a residence.

(c) For purposes of Subsection (b), requiring a change in the nonconforming use includes:

(1) requiring the number of manufactured home lots designated as a nonconforming use to be decreased; and

(2) declaring that the nonconforming use of the manufactured home lots has been abandoned based on a period of continuous abandonment of use as a manufactured home lot of any lot for less than 12 months.

(d) A manufactured home owner may install a new or used manufactured home, regardless of the size, or any appurtenance on a manufactured home lot located in a manufactured home community for which a nonconforming use is authorized by law, provided that the manufactured home or appurtenance and the installation of the manufactured home or appurtenance comply with:

(1) nonconforming land use standards, including standards relating to separation and setback distances and lot size, applicable on the date the nonconforming use of the land constituting the manufactured home community was authorized by law; and

(2) all applicable state and federal law and standards in effect on the date of the installation of the manufactured home or appurtenance.

(e) A municipality that prohibits the construction of new single-family residences or the construction of additions to existing single-family residences on a site located in a designated floodplain

may, notwithstanding Subsection (b), (c), or (d), prohibit the installation of a manufactured home in a manufactured home community on a manufactured home lot that is located in an equivalently designated floodplain.

Added by Acts 2017, 85th Leg., R.S., Ch. 741 (S.B. 1248), Sec. 1, eff. September 1, 2017.

Sec. 211.019. NONCONFORMING LAND USE. (a) In this section, "market value" means the price the sale of the property would bring in an arms-length transaction when offered for sale by one who wishes, but is not obliged, to sell and when bought by one who is under no necessity of buying it.

(b) A person using a property in a manner considered to be a nonconforming use as a result of the adoption of or change to a zoning regulation or boundary may continue to use the property in the same manner unless required by a municipality to stop the nonconforming use of the property.

(c) A requirement imposed by a municipality to stop a nonconforming use of a property under this section includes:

(1) an official action by the governing body of the municipality or a board, commission, department, or official of the municipality; or

(2) a determination by the municipality that a nonconforming use has an adverse effect or other necessary determination that a municipality must make before imposing a requirement to stop a nonconforming use under applicable law.

(d) If a municipality requires a property owner or lessee to stop the nonconforming use of a property as described by Subsection (b), the owner or lessee of the property is entitled to:

(1) payment from the municipality in an amount equal to the sum of:

(A) the costs incurred by the owner or lessee of the property that are directly attributable to ceasing the nonconforming use of the property, including expenses related to demolition, relocation, termination of a lease, or discharge of a mortgage; and

(B) an amount equal to the greater of, as determined by the municipality, the diminution in the market value of the property, computed by subtracting the current market value of the property

after the imposition of a requirement to stop the nonconforming use of the property from:

(i) the market value of the property on the day before the date the notice was given under Section 211.006(a-1); or

(ii) the market value of the property on the day before a person submits an application or request to the municipality to require or the municipality otherwise requires a person to stop using the property in a manner that is a nonconforming use as described by Subsection (b); or

(2) continued nonconforming use of the property until the owner or lessee recovers the amount determined under Subdivision (1) through the owner or lessee's continued business activities according to generally accepted accounting principles.

(e) Not later than the 10th day after the date a municipality imposes a requirement to stop a nonconforming use of a property under this section, the municipality shall give written notice to each owner or lessee of the property, as indicated by the most recently approved municipal tax roll, who is required to stop a nonconforming use of the property of the requirement and of the remedies which an owner or lessee of the property is entitled to under Subsection (d).

(f) The owner or lessee of a property that is subject to a requirement to stop a nonconforming use of the property under this section shall not later than the 30th day after the date the municipality gives the notice required by Subsection (e) respond in writing to the municipality indicating the remedy under Subsection (d) chosen by the owner or lessee. In the event of a conflict in the choice of remedy by the owner and a lessee of the property, the owner's choice of remedy shall control. In the event of a conflict in the choice of remedy by the owners of a property that has more than one owner, the choice of remedy made by an owner or owners holding the greater ownership interest in the property shall control. If the municipality does not receive timely notice from an owner or lessee, the municipality may choose the remedy provided under this section.

(g) A person receiving a payment under Subsection (d)(1) must stop the nonconforming use not later than the 10th day after the date of the payment.

(h) A person who continues the nonconforming use under Subsection (d)(2) must stop the nonconforming use immediately on the recovery of the amount determined under Subsection (d)(1).

(i) If more than one person seeks a payment from the municipality under Subsection (d)(1), the municipality shall apportion the payment between each person based on the market value of the person's interest in the property. A person may appeal the apportionment in the manner provided by this section.

(j) A person entitled to a remedy under this section may appeal a determination under Subsection (d)(1) or (2) to the board of adjustment of the municipality not later than the 20th day after the date the determination is made. At the hearing before the board of adjustment, the municipality has the burden of proof to establish the correctness of its determination.

(k) A municipality or a person aggrieved by the final decision of the board of adjustment under Subsection (j) may seek judicial review of the decision by filing suit as provided by Section 211.011 not later than the 20th day after the date the final decision is made. The court shall review the decision in the manner provided by Section 211.011 except that:

(1) the municipality has the burden of proving by clear and convincing evidence that its determination was correct; and

(2) the court:

(A) in reviewing the municipality's decision may not use a deferential standard in the municipality's favor; and

(B) is not limited to determining whether a decision of the board meets the requirements of this chapter or other applicable law.

(l) A person seeking to continue a nonconforming use under Subsection (d)(2) who appeals the decision of the municipality or board of adjustment may continue to use the property in the same manner pending the appeal unless an official of the body that made the decision shows cause to stay the nonconforming use by certifying in writing to the board of adjustment or court with jurisdiction over the appeal facts supporting the official's opinion that continued nonconforming use of the property would cause imminent peril to life or property. On a showing of cause the board of adjustment or court with jurisdiction over the appeal may, after notice to the official, grant a restraining order to stay continued nonconforming use of the property.

(m) If the board of adjustment or court with jurisdiction over an appeal determines that an owner or lessee is entitled to:

(1) a payment under this section in an amount different

than the amount determined by the municipality under Subsection (d)(1), the board of adjustment or court shall order, as applicable:

(A) additional payment to the owner or lessee; or

(B) the owner or lessee to reimburse the municipality; or

(2) an amount of time to operate the nonconforming use that is different than the amount of time initially received under Subsection (d)(2), the board of adjustment or court shall order the municipality to allow an owner or lessee to continue the nonconforming use for additional or less time.

(n) An owner or lessee may waive the rights and remedies provided by this section by providing to the municipality a written waiver.

(o) This section does not apply to a nonconforming use that has been intentionally abandoned for at least six months.

(p) A municipality's immunity from suit and governmental immunity from liability are waived for purposes of an action brought by a property owner or lessee to enforce the rights and remedies under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 52 (S.B. 929), Sec. 2, eff. May 19, 2023.

SUBCHAPTER B. ADDITIONAL ZONING REGULATIONS IN MUNICIPALITY WITH POPULATION OF MORE THAN 290,000

Sec. 211.021. ADDITIONAL ZONING REGULATIONS. (a) The governing body of a municipality with a population of more than 290,000 that has adopted a comprehensive zoning ordinance under Subchapter A may, by ordinance, divide the municipality into neighborhood zoning areas after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in an official newspaper or a newspaper of general circulation in the municipality.

(b) The mayor of the municipality, with the approval of the governing body, may appoint a neighborhood advisory zoning council for each of the neighborhood zoning areas. Each zoning council must be composed of five citizens who reside in the neighborhood zoning area. A zoning council member is appointed for a term of two years.

(c) Each neighborhood advisory zoning council shall provide the zoning commission with information, advice, and recommendations relating to each application filed with the zoning commission for zoning regulation changes that affect property within that neighborhood zoning area.

(d) On the filing of a zoning change application with the zoning commission, the zoning commission shall provide the appropriate neighborhood advisory zoning council with a copy of the application. The zoning council shall conduct a public hearing on the application and must publish notice of the time and place of the hearing in an official newspaper or a newspaper of general circulation in the municipality before the 10th day before the date of the hearing.

(e) At or before the zoning commission's hearing on the zoning change application, the neighborhood advisory zoning council shall submit to the zoning commission any information, advice, and recommendations relating to that application that the zoning council considers proper. The zoning commission may not overrule a recommendation of the zoning council with respect to the disposition of the application unless at least three-fourths of the members of the zoning commission who are present at the meeting vote to overrule the recommendation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 211.031. DEFINITIONS. In this subchapter, "cottage food production operation" and "home" have the meanings assigned by Section 437.001, Health and Safety Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

Sec. 211.032. CERTAIN ZONING REGULATIONS PROHIBITED. A municipal zoning ordinance may not prohibit the use of a home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

Sec. 211.033. ACTION FOR NUISANCE OR OTHER TORT. This subchapter does not affect the right of a person to bring a cause of action under other law against an individual for nuisance or another tort arising out of the individual's use of the individual's home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 7, eff. September 1, 2013.

CHAPTER 212. MUNICIPAL REGULATION OF SUBDIVISIONS AND PROPERTY DEVELOPMENT

SUBCHAPTER A. REGULATION OF SUBDIVISIONS

Sec. 212.001. DEFINITIONS. In this subchapter:

(1) "Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42, except that for a municipality that has a population of 5,000 or more and is located in a county bordering the Rio Grande River, "extraterritorial jurisdiction" means the area outside the municipal limits but within five miles of those limits.

(2) "Plat" includes a preliminary plat, final plat, and replat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 1, eff. September 1, 2023.

Sec. 212.0015. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to restrict a municipality from establishing a submittal calendar to be used by an applicant to facilitate compliance with the approval process described by Sections 212.009, 212.0091, 212.0093, and 212.0095.

Added by Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 2,

eff. September 1, 2023.

Sec. 212.002. RULES. After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality's jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.0021. SUBDIVISION REQUIREMENTS. The governing body of a municipality, by ordinance and after notice is published in a newspaper of general circulation in the municipality, may:

(1) adopt, based on the amount and kind of travel over each street or road in a subdivision, reasonable specifications relating to the construction of each street or road; and

(2) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices.

Added by Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 3, eff. September 1, 2023.

Sec. 212.0025. CHAPTER-WIDE PROVISION RELATING TO REGULATION OF PLATS AND SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION. The authority of a municipality under this chapter relating to the regulation of plats or subdivisions in the municipality's extraterritorial jurisdiction is subject to any applicable limitation prescribed by an agreement under Section 242.001.

Added by Acts 2003, 78th Leg., ch. 523, Sec. 6, eff. June 20, 2003.

Sec. 212.003. EXTENSION OF RULES TO EXTRATERRITORIAL JURISDICTION. (a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002

and other municipal ordinances relating to access to public roads or the pumping, extraction, and use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, for the purpose of preventing the use or contact with groundwater that presents an actual or potential threat to human health. However, unless otherwise authorized by state law, in its extraterritorial jurisdiction a municipality shall not regulate:

(1) the use of any building or property for business, industrial, residential, or other purposes;

(2) the bulk, height, or number of buildings constructed on a particular tract of land;

(3) the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage;

(4) the number of residential units that can be built per acre of land; or

(5) the size, type, or method of construction of a water or wastewater facility that can be constructed to serve a developed tract of land if:

(A) the facility meets the minimum standards established for water or wastewater facilities by state and federal regulatory entities; and

(B) the developed tract of land is:

(i) located in a county with a population of 2.8 million or more; and

(ii) served by:

(a) on-site septic systems constructed before September 1, 2001, that fail to provide adequate services; or

(b) on-site water wells constructed before September 1, 2001, that fail to provide an adequate supply of safe drinking water.

(b) A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction.

(c) The municipality is entitled to appropriate injunctive relief in district court to enjoin a violation of municipal ordinances or codes applicable in the extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts

1989, 71st Leg., ch. 822, Sec. 6, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 68, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 731, Sec. 3, eff. Sept. 1, 2003.

Sec. 212.004. PLAT REQUIRED. (a) The owner of a tract of land located within the limits or in the extraterritorial jurisdiction of a municipality who divides the tract in two or more parts to lay out a subdivision of the tract, including an addition to a municipality, to lay out suburban, building, or other lots, or to lay out streets, alleys, squares, parks, or other parts of the tract intended by the owner of the tract to be dedicated to public use must have a plat of the subdivision prepared. A division of a tract under this subsection includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method. A division of land under this subsection does not include a division of land into parts greater than five acres, where each part has access and no public improvement is being dedicated.

(b) To be recorded, the plat must:

(1) describe the subdivision by metes and bounds;

(2) locate the subdivision with respect to a corner of the survey or tract or an original corner of the original survey of which it is a part; and

(3) state the dimensions of the subdivision and of each street, alley, square, park, or other part of the tract intended by the owner of the tract to be dedicated to public use.

(c) The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds.

(d) The plat must be filed and recorded with the county clerk of the county in which the tract is located.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

(f) A plat is considered filed on the date the applicant submits the plat, along with a completed plat application and the application fees and other requirements prescribed by or under this subchapter, to:

(1) the governing body of the municipality; or

(2) the municipal authority responsible for approving plats.

(g) The governing body of a municipality or the municipal authority responsible for approving plats may not require an analysis, study, document, agreement, or similar requirement to be included in or as part of an application for a plat, development permit, or subdivision of land that is not explicitly allowed by state law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.02, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 1046, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 4, eff. September 1, 2023.

Sec. 212.0045. EXCEPTION TO PLAT REQUIREMENT: MUNICIPAL DETERMINATION. (a) To determine whether specific divisions of land are required to be platted, a municipality may define and classify the divisions. A municipality need not require platting for every division of land otherwise within the scope of this subchapter.

(b) In lieu of a plat contemplated by this subchapter, a municipality may require the filing of a development plat under Subchapter B if that subchapter applies to the municipality.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989.

Sec. 212.0046. EXCEPTION TO PLAT REQUIREMENT: CERTAIN PROPERTY ABUTTING AIRCRAFT RUNWAY. An owner of a tract of land is not required to prepare a plat if the land:

(1) is located wholly within a municipality with a population of 5,000 or less;

(2) is divided into parts larger than 2-1/2 acres; and

(3) abuts any part of an aircraft runway.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989.

Sec. 212.005. APPROVAL BY MUNICIPALITY REQUIRED. (a) The municipal authority responsible for approving plats must approve a plat or replat that is required to be prepared under this subchapter and that satisfies the requirements of this subchapter.

(b) This subchapter may not be construed to convey any authority to a municipality regarding the completeness of an application or the approval of a plat or replat that is not explicitly granted by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 1046, Sec. 2, eff. Aug. 30, 1993.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 5, eff. September 1, 2023.

Sec. 212.006. AUTHORITY RESPONSIBLE FOR APPROVAL GENERALLY. (a) The municipal authority responsible for approving plats under this subchapter is the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The governing body by ordinance may require the approval of the governing body in addition to that of the municipal planning commission.

(b) In a municipality with a population of more than 1.5 million, at least two members of the municipal planning commission, but not more than 25 percent of the membership of the commission, must be residents of the area outside the limits of the municipality and in which the municipality exercises its authority to approve subdivision plats.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989.

Sec. 212.0065. DELEGATION OF APPROVAL RESPONSIBILITY. (a) The governing body of a municipality or the municipal planning commission may delegate to one or more officers or employees of the municipality or of a utility owned or operated by the municipality the ability to approve, approve with conditions, or disapprove a plat.

(b) The designated person or persons may, for any reason, elect

to present the plat for approval to the municipal authority responsible for approving plats.

(c) An applicant has the right to appeal to the governing body of the municipality or the municipal planning commission if the designated person disapproves a plat.

Added by Acts 1989, 71st Leg., ch. 345, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 92, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 566, Sec. 1, eff. June 2, 1997; Acts 1999, 76th Leg., ch. 1130, Sec. 2, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 402, Sec. 13, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 316 (H.B. 2281), Sec. 1, eff. June 15, 2007.

Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 6, eff. September 1, 2023.

Sec. 212.007. AUTHORITY RESPONSIBLE FOR APPROVAL: TRACT IN EXTRATERRITORIAL JURISDICTION OF MORE THAN ONE MUNICIPALITY. (a) For a tract located in the extraterritorial jurisdiction of more than one municipality, the authority responsible for approving a plat under this subchapter is the authority in the municipality with the largest population that under Section 212.006 has approval responsibility. The governing body of that municipality may enter into an agreement with any other affected municipality or with any other municipality having area that, if unincorporated, would be in the extraterritorial jurisdiction of the governing body's municipality delegating to the other municipality the responsibility for plat approval within specified parts of the affected area.

(b) Either party to an agreement under Subsection (a) may revoke the agreement after 20 years have elapsed after the date of the agreement unless the parties agree to a shorter period.

(c) A copy of the agreement shall be filed with the county clerk.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.008. APPLICATION FOR APPROVAL. A person desiring approval of a plat must apply to and file a copy of the plat with the

municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.0081. REQUIRED APPLICATION MATERIALS. (a) Each municipality to which this subchapter applies shall adopt and make available to the public a complete, written list of all documentation and other information that the municipality requires to be submitted with a plat application. The required documentation and other information must be related to a requirement authorized under this subchapter.

(b) An application submitted to the municipal authority responsible for approving plats that contains all documents and other information on the list provided under Subsection (a) is considered complete.

(c) A municipality that operates an Internet website shall publish and continuously maintain the list described by Subsection (a) on the Internet website not later than the 30th day after the date the municipality adopts or amends the list.

(d) A municipality that does not operate an Internet website shall publish the list described by Subsection (a) on adoption of the list or an amendment to the list in:

(1) a newspaper of general circulation in the municipality; and

(2) a public place in the location in which the governing body of the municipality meets.

Added by Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 7, eff. September 1, 2023.

Sec. 212.0085. APPROVAL PROCEDURE: APPLICABILITY. The approval procedures under this subchapter apply to a municipality regardless of whether the municipality has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 2, eff. September 1, 2019.

Sec. 212.009. APPROVAL PROCEDURE: INITIAL APPROVAL. (a) The municipal authority responsible for approving plats shall approve, approve with conditions, or disapprove a plat within 30 days after the date the plat is filed. A plat is approved by the municipal authority unless it is disapproved within that period and in accordance with Section 212.0091.

(b) If an ordinance requires that a plat be approved by the governing body of the municipality in addition to the planning commission, the governing body shall approve, approve with conditions, or disapprove the plat within 30 days after the date the plat is approved by the planning commission or is approved by the inaction of the commission. A plat is approved by the governing body unless it is disapproved within that period and in accordance with Section 212.0091.

(b-1) Notwithstanding Subsection (a) or (b), if a groundwater availability certification is required under Section 212.0101, the 30-day period described by those subsections begins on the date the applicant submits the groundwater availability certification to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable.

(b-2) Notwithstanding Subsection (a) or (b), the parties shall extend the 30-day period described by those subsections for one or more periods, each not to exceed 30 days if:

(1) both:

(A) the applicant requests the extension in writing to the municipal authority responsible for approving plats or the governing body of the municipality, as applicable; and

(B) the municipal authority or governing body, as applicable, approves the extension request; or

(2) Chapter 2007, Government Code, requires the municipality to perform a takings impact assessment in connection with the plan or plat.

(c) If a plat is approved, the municipal authority giving the approval shall endorse the plat with a certificate indicating the approval. The certificate must be signed by:

(1) the authority's presiding officer and attested by the authority's secretary; or

(2) a majority of the members of the authority.

(d) If the municipal authority responsible for approving plats fails to approve, approve with conditions, or disapprove a plat within the prescribed period, the authority on the applicant's request shall issue a certificate stating the date the plat was filed and that the authority failed to act on the plat within the period. The certificate is effective in place of the endorsement required by Subsection (c).

(e) The municipal authority responsible for approving plats shall maintain a record of each application made to the authority and the authority's action taken on it. On request of an owner of an affected tract, the authority shall certify the reasons for the action taken on an application.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 4, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 8, eff. September 1, 2023.

Sec. 212.0091. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) A municipal authority or governing body that conditionally approves or disapproves a plat under this subchapter shall provide the applicant a written statement of the conditions for the conditional approval or reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

(b) Each condition or reason specified in the written statement:

(1) must:

(A) be directly related to the requirements under this subchapter; and

(B) include a citation to the law, including a statute or municipal ordinance, that is the basis for the conditional approval or disapproval, if applicable; and

(2) may not be arbitrary.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff.

September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 9, eff. September 1, 2023.

Sec. 212.0093. APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval or disapproval of a plat under Section 212.0091, the applicant may submit to the municipal authority or governing body that conditionally approved or disapproved the plat a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. The municipal authority or governing body may not establish a deadline for an applicant to submit the response.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 10, eff. September 1, 2023.

Sec. 212.0095. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A municipal authority or governing body that receives a response under Section 212.0093 shall determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plat not later than the 15th day after the date the response was submitted.

(b) A municipal authority or governing body that conditionally approves or disapproves a plat following the submission of a response under Section 212.0093:

(1) must comply with Section 212.0091; and

(2) may disapprove the plat only for a specific condition or reason provided to the applicant under Section 212.0091.

(c) A municipal authority or governing body that receives a response under Section 212.0093 shall approve a previously conditionally approved or disapproved plat if the response adequately addresses each condition of the conditional approval or each reason for the disapproval.

(d) A previously conditionally approved or disapproved plat is approved if:

(1) the applicant filed a response that meets the requirements of Subsection (c); and

(2) the municipal authority or governing body that received the response does not disapprove the plat on or before the date required by Subsection (a) and in accordance with Section 212.0091.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 10, eff. September 1, 2023.

Sec. 212.0096. APPROVAL PROCEDURE: ALTERNATIVE APPROVAL PROCESS. (a) Notwithstanding Sections 212.009, 212.0091, 212.0093, and 212.0095, an applicant may elect at any time to seek approval for a plat under an alternative approval process adopted by a municipality if the process allows for a shorter approval period than the approval process described by Sections 212.009, 212.0091, 212.0093, and 212.0095.

(b) An applicant that elects to seek approval under the alternative approval process described by Subsection (a) is not:

(1) required to satisfy the requirements of Sections 212.009, 212.0091, 212.0093, and 212.0095 before bringing an action challenging a disapproval of a plat under this subchapter; and

(2) prejudiced in any manner in bringing the action described by Subdivision (1), including satisfying a requirement to exhaust any and all remedies.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 10, eff. September 1, 2023.

Sec. 212.0097. APPROVAL PROCEDURE: WAIVER PROHIBITED. A municipal authority responsible for approving plats or the governing body of a municipality may not request or require an applicant to

waive a deadline or other approval procedure under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.

Sec. 212.0099. JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plat under this subchapter, the municipality has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 5, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 11, eff. September 1, 2023.

Sec. 212.010. STANDARDS FOR APPROVAL. (a) The municipal authority responsible for approving plats shall approve a plat if:

(1) it conforms to the general plan of the municipality and its current and future streets, alleys, parks, playgrounds, and public utility facilities;

(2) it conforms to the general plan for the extension of the municipality and its roads, streets, and public highways within the municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities;

(3) a bond required under Section 212.0106, if applicable, is filed with the municipality; and

(4) it conforms to any rules adopted under Section 212.002.

(b) However, the municipal authority responsible for approving plats may not approve a plat unless the plat and other documents have been prepared as required by Section 212.0105, if applicable.

(c) The municipal authority responsible for approving plats may not require the dedication of land within a subdivision for a future street or alley that is:

(1) not intended by the owner of the tract; and

(2) not included, funded, and approved in:

(A) a capital improvement plan adopted by the municipality; or

(B) a similar plan adopted by a county in which the municipality is located or the state.

(d) A municipal authority responsible for approving plats may not refuse to review a plat or to approve a plat for recordation for failure to identify a corridor, as defined by Section 201.619, Transportation Code, unless the corridor is part of an agreement between the Texas Department of Transportation and a county in which the municipality is located under that section.

(e) If a municipal authority responsible for approving plats fails or refuses to approve a plat that meets the requirements of this subchapter, the owner of the tract that is the subject of the plat may bring an action in a district court in a county in which the tract is located for a writ of mandamus to compel the municipal authority to approve the plat by issuing to the owner applicable approval documentation. The applicant shall recover reasonable attorney's fees and court costs in the action if the applicant prevails. The municipality may recover reasonable attorney's fees and court costs in the action if the municipality prevails and the court finds the action is frivolous.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1125 (H.B. 3699), Sec. 12, eff. September 1, 2023.

Sec. 212.0101. ADDITIONAL REQUIREMENTS: USE OF GROUNDWATER. (a) Except as provided by Subsection (a-1), a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land must have attached to it a statement that:

(1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and

(2) certifies that adequate groundwater is available for the subdivision.

(a-1) A municipal authority responsible for approving plats may waive the requirement prescribed by Subsection (a) that a plat

application have attached to it a statement described by that subsection if:

(1) based on credible evidence of groundwater availability in the vicinity of the proposed subdivision, the municipal authority determines that sufficient groundwater is available and will continue to be available to the subdivided tract of land; and

(2) either:

(A) the entire tract proposed to be subdivided by the plat will be supplied with groundwater from the Gulf Coast Aquifer or the Carrizo-Wilcox Aquifer; or

(B) the proposed subdivision divides the tract into not more than 10 parts.

(a-2) A person subject to a waiver authorized by Subsection (a-1)(2)(B) regarding a subdivided tract of land must comply with the requirements of Subsection (a) if:

(1) the tract is subsequently divided in a manner that results in the original tract being subdivided into more than 10 parts; or

(2) the municipal authority determines that the proposed subdivision is part of a series of proposed subdivisions from an original tract that collectively includes more than 10 parts.

(b) The Texas Commission on Environmental Quality by rule shall establish the appropriate form and content of a certification to be attached to a plat application under this section.

(c) The Texas Commission on Environmental Quality, in consultation with the Texas Water Development Board, by rule shall require a person who submits a plat under Subsection (a) to transmit to the Texas Water Development Board and any groundwater conservation district that includes in the district's boundaries any part of the subdivision information that would be useful in:

(1) performing groundwater conservation district activities;

(2) conducting regional water planning;

(3) maintaining the state's groundwater database; or

(4) conducting studies for the state related to groundwater.

Added by Acts 1999, 76th Leg., ch. 460, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 99, Sec. 2(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 515 (S.B. 662), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.29, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 980 (S.B. 2440), Sec. 1, eff. January 1, 2024.

Sec. 212.0105. WATER AND SEWER REQUIREMENTS IN CERTAIN COUNTIES. (a) This section applies only to a person who:

(1) is the owner of a tract of land in a county in which a political subdivision that is eligible for and has applied for financial assistance through Subchapter K, Chapter 17, Water Code;

(2) divides the tract in a manner that creates any lots that are intended for residential purposes and are five acres or less; and

(3) is required under this subchapter to have a plat prepared for the subdivision.

(b) The owner of the tract:

(1) must:

(A) include on the plat or have attached to the plat a document containing a description of the water and sewer service facilities that will be constructed or installed to service the subdivision and a statement of the date by which the facilities will be fully operable; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities described by the plat or on the document attached to the plat are in compliance with the model rules adopted under Section 16.343, Water Code; or

(2) must:

(A) include on the plat a statement that water and sewer service facilities are unnecessary for the subdivision; and

(B) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that water and sewer service facilities are unnecessary for the subdivision under the model rules adopted under Section 16.343, Water Code.

(c) The governing body of the municipality may extend, beyond the date specified on the plat or on the document attached to the

plat, the date by which the water and sewer service facilities must be fully operable if the governing body finds the extension is reasonable and not contrary to the public interest. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 422, Sec. 7, eff. Sept. 1, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 13, eff. September 1, 2005.

Sec. 212.0106. BOND REQUIREMENTS AND OTHER FINANCIAL GUARANTEES IN CERTAIN COUNTIES. (a) This section applies only to a person described by Section 212.0105(a).

(b) If the governing body of a municipality in a county described by Section 212.0105(a)(1)(A) or (B) requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative financial guarantee is provided under Subsection (c). The bond must:

(1) be payable to the presiding officer of the governing body or to the presiding officer's successors in office;

(2) be in an amount determined by the governing body to be adequate to ensure the proper construction or installation of the water and sewer service facilities to service the subdivision but not to exceed the estimated cost of the construction or installation of the facilities;

(3) be executed with sureties as may be approved by the governing body;

(4) be executed by a company authorized to do business as a surety in this state if the governing body requires a surety bond executed by a corporate surety; and

(5) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with the model rules adopted under

Section 16.343, Water Code; and

(B) within the time stated on the plat or on the document attached to the plat for the subdivision or within any extension of that time.

(c) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(d) If a letter of credit is used, it must:

(1) list as the sole beneficiary the presiding officer of the governing body; and

(2) be conditioned that the water and sewer service facilities will be constructed or installed:

(A) in compliance with the model rules adopted under Section 16.343, Water Code; and

(B) within the time stated on the plat or on the document attached to the plat for the subdivision or within any extension of that time.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

Sec. 212.011. EFFECT OF APPROVAL ON DEDICATION. (a) The approval of a plat is not considered an acceptance of any proposed dedication and does not impose on the municipality any duty regarding the maintenance or improvement of any dedicated parts until the appropriate municipal authorities make an actual appropriation of the dedicated parts by entry, use, or improvement.

(b) The disapproval of a plat is considered a refusal by the municipality of the offered dedication indicated on the plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.0115. CERTIFICATION REGARDING COMPLIANCE WITH PLAT REQUIREMENTS. (a) For the purposes of this section, land is considered to be within the jurisdiction of a municipality if the land is located within the limits or in the extraterritorial jurisdiction of the municipality.

(b) On the approval of a plat by the municipal authority responsible for approving plats, the authority shall issue to the

person applying for the approval a certificate stating that the plat has been reviewed and approved by the authority.

(c) On the written request of an owner of land, a purchaser of real property under a contract for deed, executory contract, or other executory conveyance, an entity that provides utility service, or the governing body of the municipality, the municipal authority responsible for approving plats shall make the following determinations regarding the owner's land or the land in which the entity or governing body is interested that is located within the jurisdiction of the municipality:

(1) whether a plat is required under this subchapter for the land; and

(2) if a plat is required, whether it has been prepared and whether it has been reviewed and approved by the authority.

(d) The request made under Subsection (c) must identify the land that is the subject of the request.

(e) If the municipal authority responsible for approving plats determines under Subsection (c) that a plat is not required, the authority shall issue to the requesting party a written certification of that determination. If the authority determines that a plat is required and that the plat has been prepared and has been reviewed and approved by the authority, the authority shall issue to the requesting party a written certification of that determination.

(f) The municipal authority responsible for approving plats shall make its determination within 20 days after the date it receives the request under Subsection (c) and shall issue the certificate, if appropriate, within 10 days after the date the determination is made.

(g) If both the municipal planning commission and the governing body of the municipality have authority to approve plats, only one of those entities need make the determinations and issue the certificates required by this section.

(h) The municipal authority responsible for approving plats may adopt rules it considers necessary to administer its functions under this section.

(i) The governing body of a municipality may delegate, in writing, the ability to perform any of the responsibilities under this section to one or more persons. A binding decision of the person or persons under this subsection is appealable to the municipal authority responsible for approving plats.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.03, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 567, Sec. 1, eff. June 2, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 1, eff. September 1, 2005.

Sec. 212.012. CONNECTION OF UTILITIES. (a) Except as provided by Subsection (c), (d), or (j), an entity described by Subsection (b) may not serve or connect any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115.

(b) The prohibition established by Subsection (a) applies only to:

(1) a municipality and officials of a municipality that provides water, sewer, electricity, gas, or other utility service;

(2) a municipally owned or municipally operated utility that provides any of those services;

(3) a public utility that provides any of those services;

(4) a water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides any of those services;

(5) a county that provides any of those services; and

(6) a special district or authority created by or under state law that provides any of those services.

(c) An entity described by Subsection (b) may serve or connect land with water, sewer, electricity, gas, or other utility service regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115 if:

(1) the land is covered by a development plat approved under Subchapter B or under an ordinance or rule relating to the development plat;

(2) the land was first served or connected with service by an entity described by Subsection (b)(1), (b)(2), or (b)(3) before September 1, 1987; or

(3) the land was first served or connected with service by an entity described by Subsection (b)(4), (b)(5), or (b)(6) before

September 1, 1989.

(d) In a county to which Subchapter B, Chapter 232, applies, an entity described by Subsection (b) may serve or connect land with water, sewer, electricity, gas, or other utility service that is located in the extraterritorial jurisdiction of a municipality regardless of whether the entity is presented with or otherwise holds a certificate applicable to the land issued under Section 212.0115, if the municipal authority responsible for approving plats issues a certificate stating that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider by any means of conveyance, including a contract for deed or executory contract, before:

(i) September 1, 1995, in a county defined under Section 232.022(a)(1);

(ii) September 1, 1999, in a county defined under Section 232.022(a)(1) if, on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42; or

(iii) September 1, 2005, in a county defined under Section 232.022(a)(2);

(B) has not been subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Paragraph (A);

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before:

(i) May 1, 2003, in a county defined under Section 232.022(a)(1); or

(ii) September 1, 2005, in a county defined under Section 232.022(a)(2); and

(D) has had adequate sewer services installed to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code;

(2) the subdivided land is a lot of record as defined by Section 232.021(6-a) that is located in a county defined by Section 232.022(a)(1) and has adequate sewer services installed that are fully operable to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-

site sewage facilities under Chapter 366, Health and Safety Code; or

(3) the land was not subdivided after September 1, 1995, in a county defined under Section 232.022(a)(1), or September 1, 2005, in a county defined under Section 232.022(a)(2), and:

(A) water service is available within 750 feet of the subdivided land; or

(B) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

(e) An entity described by Subsection (b) may provide utility service to land described by Subsection (d)(1), (2), or (3) only if the person requesting service:

(1) is not the land's subdivider or the subdivider's agent; and

(2) provides to the entity a certificate described by Subsection (d).

(f) A person requesting service may obtain a certificate under Subsection (d)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the municipal authority responsible for approving plats documentation containing:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider before September 1, 1995, before September 1, 1999, or before September 1, 2005, as applicable under Subsection (d);

(2) for a certificate issued under Subsection (d)(1), a notarized affidavit by the person requesting service that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before May 1, 2003, in a county defined by Section 232.022(a)(1) or September 1, 2005, in a county defined by Section 232.022(a)(2), and the request for utility connection or service is to connect or serve a residence described by Subsection (d)(1)(C);

(3) a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after September 1, 1995, September 1, 1999, or September 1, 2005, as applicable under Subsection (d); and

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Subsection (b) or the authorized agent

responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

(g) On request, the municipal authority responsible for approving plats shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the municipal authority relied in determining the legality of providing service.

(h) This section may not be construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider for a violation of a state or local law, regardless of the date on which the violation occurred.

(i) In this section:

(1) "Foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the residential structure rests.

(2) "Subdivider" has the meaning assigned by Section 232.021.

(j) Except as provided by Subsection (k), this section does not prohibit a water or sewer utility from providing in a county defined by Section 232.022(a)(1) water or sewer utility connection or service to a residential dwelling that:

(1) is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias or to residential lots located in a county described by Section 232.022(a)(1);

(2) is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate water and wastewater facilities or improvements;

(3) when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the model subdivision rules adopted under Section 16.343, Water Code; and

(4) is located in a project for which the municipality with jurisdiction over the project or the approval of plats within the project area has approved the improvement project by order, resolution, or interlocal agreement under Chapter 791, Government Code.

(k) A utility may not serve any subdivided land with water

utility connection or service under Subsection (j) unless the entity receives a determination that adequate sewer services have been installed to service the lot or dwelling from the municipal authority responsible for approving plats, an entity described by Subsection (b), or the authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.34, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1239 (S.B. 2253), Sec. 1, eff. June 19, 2009.

Sec. 212.013. VACATING PLAT. (a) The proprietors of the tract covered by a plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument declaring the plat vacated is approved and recorded in the manner prescribed for the original plat.

(b) If lots in the plat have been sold, the plat, or any part of the plat, may be vacated on the application of all the owners of lots in the plat with approval obtained in the manner prescribed for the original plat.

(c) The county clerk shall write legibly on the vacated plat the word "Vacated" and shall enter on the plat a reference to the volume and page at which the vacating instrument is recorded.

(d) On the execution and recording of the vacating instrument, the vacated plat has no effect.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.014. REPLATTING WITHOUT VACATING PRECEDING PLAT. A replat of a subdivision or part of a subdivision may be recorded and

is controlling over the preceding plat without vacation of that plat if the replat:

(1) is signed and acknowledged by only the owners of the property being replatted;

(2) is approved by the municipal authority responsible for approving plats; and

(3) does not attempt to amend or remove any covenants or restrictions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1242 (H.B. 3314), Sec. 1, eff. September 1, 2019.

Sec. 212.0145. REPLATTING WITHOUT VACATING PRECEDING PLAT: CERTAIN SUBDIVISIONS. (a) A replat of a part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if the replat:

(1) is signed and acknowledged by only the owners of the property being replatted; and

(2) involves only property:

(A) of less than one acre that fronts an existing street; and

(B) that is owned and used by a nonprofit corporation established to assist children in at-risk situations through volunteer and individualized attention.

(b) An existing covenant or restriction for property that is replatted under this section does not have to be amended or removed if:

(1) the covenant or restriction was recorded more than 50 years before the date of the replat; and

(2) the replatted property has been continuously used by the nonprofit corporation for at least 10 years before the date of the replat.

(c) Sections 212.014 and 212.015 do not apply to a replat under this section.

Added by Acts 1999, 76th Leg., ch. 1130, Sec. 1, eff. June 18, 1999.

Sec. 212.0146. REPLATTING WITHOUT VACATING PRECEDING PLAT: CERTAIN MUNICIPALITIES. (a) This section applies only to a replat of a subdivision or a part of a subdivision located in a municipality or the extraterritorial jurisdiction of a municipality with a population of 1.4 million or more.

(b) A replat of a subdivision or part of a subdivision may be recorded and is controlling over the preceding plat without vacation of that plat if:

(1) the replat is signed and acknowledged by each owner and only the owners of the property being replatted;

(2) the municipal authority responsible for approving plats holds a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard;

(3) the replat does not amend, remove, or violate, or have the effect of amending, removing, or violating, any covenants or restrictions that are contained or referenced in a dedicatory instrument recorded in the real property records separately from the preceding plat or replat;

(4) the replat does not attempt to amend, remove, or violate, or have the effect of amending, removing, or violating, any existing public utility easements without the consent of the affected utility companies; and

(5) the municipal authority responsible for approving plats approves the replat after determining that the replat complies with this subchapter and rules adopted under Section 212.002 and this section in effect at the time the application for the replat is filed.

(c) The governing body of a municipality may adopt rules governing replats, including rules that establish criteria under which covenants, restrictions, or plat notations that are contained only in the preceding plat or replat without reference in any dedicatory instrument recorded in the real property records separately from the preceding plat or replat may be amended or removed.

Added by Acts 2007, 80th Leg., R.S., Ch. 654 (H.B. 1067), Sec. 1, eff. June 15, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 60 (H.B. 1553), Sec. 1, eff. May 18, 2013.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 140, eff. September 1, 2023.

Sec. 212.015. ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS. (a) In addition to compliance with Section 212.014, a replat without vacation of the preceding plat must conform to the requirements of this section if:

(1) during the preceding five years, any of the area to be replatted was limited by an interim or permanent zoning classification to residential use for not more than two residential units per lot; or

(2) any lot in the preceding plat was limited by deed restrictions to residential use for not more than two residential units per lot.

(a-1) If a proposed replat described by Subsection (a) requires a variance or exception, a public hearing must be held by the municipal planning commission or the governing body of the municipality.

(b) Notice of the hearing required under Subsection (a-1) shall be given before the 15th day before the date of the hearing by:

(1) publication in an official newspaper or a newspaper of general circulation in the county in which the municipality is located; and

(2) by written notice, with a copy of Subsection (c) attached, forwarded by the municipal authority responsible for approving plats to the owners of lots that are in the original subdivision and that are within 200 feet of the lots to be replatted, as indicated on the most recently approved municipal tax roll or in the case of a subdivision within the extraterritorial jurisdiction, the most recently approved county tax roll of the property upon which the replat is requested. The written notice may be delivered by depositing the notice, properly addressed with postage prepaid, in a post office or postal depository within the boundaries of the municipality.

(c) If the proposed replat requires a variance and is protested in accordance with this subsection, the proposed replat must receive, in order to be approved, the affirmative vote of at least three-

fourths of the members present of the municipal planning commission or governing body, or both. For a legal protest, written instruments signed by the owners of at least 20 percent of the area of the lots or land immediately adjoining the area covered by the proposed replat and extending 200 feet from that area, but within the original subdivision, must be filed with the municipal planning commission or governing body, or both, prior to the close of the public hearing.

(d) In computing the percentage of land area under Subsection (c), the area of streets and alleys shall be included.

(e) Compliance with Subsections (c) and (d) is not required for approval of a replat of part of a preceding plat if the area to be replatted was designated or reserved for other than single or duplex family residential use by notation on the last legally recorded plat or in the legally recorded restrictions applicable to the plat.

(f) If a proposed replat described by Subsection (a) does not require a variance or exception, the municipality shall, not later than the 15th day after the date the replat is approved, provide written notice by mail of the approval of the replat to each owner of a lot in the original subdivision that is within 200 feet of the lots to be replatted according to the most recent municipality or county tax roll. This subsection does not apply to a proposed replat if the municipal planning commission or the governing body of the municipality holds a public hearing and gives notice of the hearing in the manner provided by Subsection (b).

(g) The notice of a replat approval required by Subsection (f) must include:

(1) the zoning designation of the property after the replat; and

(2) a telephone number and e-mail address an owner of a lot may use to contact the municipality about the replat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 345, Sec. 2 to 5, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 1046, Sec. 3, eff. Aug. 30, 1993.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 7, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1242 (H.B. 3314), Sec. 2, eff. September 1, 2019.

Sec. 212.0155. ADDITIONAL REQUIREMENTS FOR CERTAIN REPLATS AFFECTING A SUBDIVISION GOLF COURSE. (a) This section applies to land located wholly or partly:

(1) in the corporate boundaries of a municipality if the municipality:

(A) has a population of more than 50,000; and

(B) is located wholly or partly in:

(i) a county with a population of more than three million;

(ii) a county with a population of more than 400,000 that is adjacent to a county with a population of more than three million; or

(iii) a county with a population of more than 1.4 million:

(a) in which two or more municipalities with a population of 300,000 or more are primarily located; and

(b) that is adjacent to a county with a population of more than two million; or

(2) in the corporate boundaries or extraterritorial jurisdiction of a municipality with a population of 1.9 million or more.

(b) In this section:

(1) "Management certificate" means a certificate described by Section 209.004, Property Code.

(2) "New plat" means a development plat, replat, amending plat, or vacating plat that would change the existing plat or the current use of the land that is the subject of the new plat.

(3) "Property owners' association" and "restrictive covenant" have the meanings assigned by Section 202.001, Property Code.

(4) "Restrictions," "subdivision," and "owner" have the meanings assigned by Section 201.003, Property Code.

(5) "Subdivision golf course" means an area of land:

(A) that was originally developed as a golf course or a country club within a common scheme of development for a predominantly residential single-family development project;

(B) that was at any time in the seven years preceding the date on which a new plat for the land is filed:

(i) used as a golf course or a country club;

(ii) zoned as a community facility;

(iii) benefited from restrictive covenants on adjoining homeowners; or

(iv) designated on a recorded plat as a golf course or a country club; and

(C) that is not separated entirely from the predominantly residential single-family development project by a public street.

(c) In addition to any other requirement of this chapter, a new plat must conform to the requirements of this section if any of the area subject to the new plat is a subdivision golf course. The exception in Section 212.004(a) excluding divisions of land into parts greater than five acres for platting requirements does not apply to a subdivision golf course.

(d) A new plat that is subject to this section may not be approved until each municipal authority reviewing the new plat conducts a public hearing on the matter at which the parties in interest and citizens have an adequate opportunity to be heard, present evidence, and submit statements or petitions for consideration by the municipal authority. The number, location, and procedure for the public hearings may be designated by the municipal authority for a particular hearing. The municipal authority may abate, continue, or reschedule, as the municipal authority considers appropriate, any public hearing in order to receive a full and complete record on which to make a decision. If the new plat would otherwise be administratively approved, the municipal planning commission is the approving body for the purposes of this section.

(e) The municipal authority may not approve the new plat without adequate consideration of testimony and the record from the public hearings and making the findings required by Subsection (k). Not later than the 30th day after the date on which all proceedings necessary for the public hearings have concluded, the municipal authority shall take action on the application for the new plat. Sections 212.009(a) and (b) do not apply to the approval of plats under this section.

(f) The municipality may provide notice of the initial hearing required by Subsection (d) only after the requirements of Subsections (m) and (n) are met. The notice shall be given before the 15th day before the date of the hearing by:

(1) publishing notice in an official newspaper or a newspaper of general circulation in the county in which the

municipality is located;

(2) providing written notice, with a copy of this section attached, by the municipal authority responsible for approving plats to:

(A) each property owners' association for each neighborhood benefited by the subdivision golf course, as indicated in the most recently filed management certificates; and

(B) the owners of lots that are within 200 feet of the area subject to the new plat, as indicated:

(i) on the most recently approved municipal tax roll; and

(ii) in the most recent online records of the central appraisal district of the county in which the lots are located; and

(3) any other manner determined by the municipal authority to be necessary to ensure that full and fair notice is provided to all owners of residential single-family lots in the general vicinity of the subdivision golf course.

(g) The written notice required by Subsection (f)(2) may be delivered by depositing the notice, properly addressed with postage prepaid, in the United States mail.

(h) The cost of providing the notices under Subsection (f) shall be paid by the plat applicant.

(i) If written instruments protesting the proposed new plat are signed by the owners of at least 20 percent of the area of the lots or land immediately adjacent to the area covered by a proposed new plat and extending 200 feet from that area and are filed with the municipal planning commission or the municipality's governing body before the conclusion of the public hearings, the proposed new plat must receive, to be approved, the affirmative vote of at least three-fifths of the members of the municipal planning commission or governing body.

(j) In computing the percentage of land area under Subsection (i), the area of streets and alleys is included.

(k) The municipal planning commission or the municipality's governing body may not approve a new plat under this section unless it determines that:

(1) there is adequate existing or planned infrastructure to support the future development of the subdivision golf course;

(2) based on existing or planned facilities, the

development of the subdivision golf course will not have a materially adverse effect on:

(A) traffic, parking, drainage, water, sewer, or other utilities;

(B) the health, safety, or general welfare of persons in the municipality; or

(C) safe, orderly, and healthful development of the municipality;

(3) the development of the subdivision golf course will not have a materially adverse effect on existing single-family property values;

(4) the new plat is consistent with all applicable land use regulations and restrictive covenants and the municipality's land use policies as described by the municipality's comprehensive plan or other appropriate public policy documents; and

(5) if any portion of a previous plat reflected a restriction on the subdivision golf course whether:

(A) that restriction is an implied covenant or easement benefiting adjacent residential properties; or

(B) the restriction, covenant, or easement has been legally released or has expired.

(l) The municipal authority may adopt rules to govern the platting of a subdivision golf course that do not conflict with this section, including rules that require more detailed information than is required by Subsection (n) for plans for development and new plat applications.

(m) The application for a new plat under this section is not complete and may not be submitted for review for administrative completeness unless the tax certificates required by Section 12.002(e), Property Code, are attached, notwithstanding that the application is for a type of plat other than a plat specified in that section.

(n) A plan for development or a new plat application for a subdivision golf course is not considered to provide fair notice of the project and nature of the permit sought unless it contains the following information, complete in all material respects:

(1) street layout;

(2) lot and block layout;

(3) number of residential units;

(4) location of nonresidential development, by type of

development;

(5) drainage, detention, and retention plans;

(6) screening plan for adjacent residential properties, including landscaping or fencing; and

(7) an analysis of the effect of the project on values in the adjacent residential neighborhoods.

(o) A municipal authority with authority over platting may require as a condition for approval of a plat for a golf course that:

(1) the area be platted as a restricted reserve for the proposed use; and

(2) the plat be incorporated into the plat for any adjacent residential lots.

(p) An owner of a lot that is within 200 feet of a subdivision golf course may seek declaratory or injunctive relief from a district court to enforce the provisions in this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1092 (H.B. 3232), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 635 (H.B. 1473), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 675 (S.B. 1789), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 78, eff. September 1, 2011.

Sec. 212.016. AMENDING PLAT. (a) The municipal authority responsible for approving plats may approve and issue an amending plat, which may be recorded and is controlling over the preceding plat without vacation of that plat, if the amending plat is signed by the applicants only and is solely for one or more of the following purposes:

(1) to correct an error in a course or distance shown on the preceding plat;

(2) to add a course or distance that was omitted on the preceding plat;

(3) to correct an error in a real property description shown on the preceding plat;

(4) to indicate monuments set after the death, disability,

or retirement from practice of the engineer or surveyor responsible for setting monuments;

(5) to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;

(6) to correct any other type of scrivener or clerical error or omission previously approved by the municipal authority responsible for approving plats, including lot numbers, acreage, street names, and identification of adjacent recorded plats;

(7) to correct an error in courses and distances of lot lines between two adjacent lots if:

(A) both lot owners join in the application for amending the plat;

(B) neither lot is abolished;

(C) the amendment does not attempt to remove recorded covenants or restrictions; and

(D) the amendment does not have a material adverse effect on the property rights of the other owners in the plat;

(8) to relocate a lot line to eliminate an inadvertent encroachment of a building or other improvement on a lot line or easement;

(9) to relocate one or more lot lines between one or more adjacent lots if:

(A) the owners of all those lots join in the application for amending the plat;

(B) the amendment does not attempt to remove recorded covenants or restrictions; and

(C) the amendment does not increase the number of lots;

(10) to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:

(A) the changes do not affect applicable zoning and other regulations of the municipality;

(B) the changes do not attempt to amend or remove any covenants or restrictions; and

(C) the area covered by the changes is located in an area that the municipal planning commission or other appropriate governing body of the municipality has approved, after a public hearing, as a residential improvement area; or

(11) to replat one or more lots fronting on an existing street if:

(A) the owners of all those lots join in the application for amending the plat;

(B) the amendment does not attempt to remove recorded covenants or restrictions;

(C) the amendment does not increase the number of lots; and

(D) the amendment does not create or require the creation of a new street or make necessary the extension of municipal facilities.

(b) Notice, a hearing, and the approval of other lot owners are not required for the approval and issuance of an amending plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 92, Sec. 2, eff. Aug. 28, 1995.

Sec. 212.017. CONFLICT OF INTEREST; PENALTY. (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more;

(2) acts as a developer of the tract;

(3) owns 10 percent or more of the voting stock or shares of or owns either 10 percent or more or $5,000 or more of the fair market value of a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity, as determined under Chapter 573,

Government Code, to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the municipal authority responsible for approving plats has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the municipal secretary or clerk.

(e) A member of the municipal authority responsible for approving plats commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the municipal authority responsible for approving plats unless the measure would not have passed the municipal authority without the vote of the member who violated this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 561, Sec. 38, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 212.0175. ENFORCEMENT IN CERTAIN COUNTIES; PENALTY. (a) The attorney general may take any action necessary to enforce a requirement imposed by or under Section 212.0105 or 212.0106 or to ensure that water and sewer service facilities are constructed or installed to service a subdivision in compliance with the model rules adopted under Section 16.343, Water Code.

(b) A person who violates Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities that the person described on the plat or on the document attached to the plat, as required by Section 212.0105, is subject to a civil penalty of not less than $500 nor more than $1,000 plus court costs and attorney's fees.

(c) An owner of a tract of land commits an offense if the owner knowingly or intentionally violates a requirement imposed by or under Section 212.0105 or 212.0106 or fails to timely provide for the construction or installation of water or sewer service facilities

that the person described on a plat or on a document attached to a plat, as required by Section 212.0105. An offense under this subsection is a Class B misdemeanor.

(d) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

Sec. 212.018. ENFORCEMENT IN GENERAL. (a) At the request of the governing body of the municipality, the municipal attorney or any other attorney representing the municipality may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation by the owner of a tract of land of a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter; or

(2) recover damages from the owner of a tract of land in an amount adequate for the municipality to undertake any construction or other activity necessary to bring about compliance with a requirement regarding the tract and established by, or adopted by the governing body under, this subchapter.

(b) A reference in this section to an "owner of a tract of land" does not include the owner of an individual lot in a subdivided tract of land.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 46(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.01, eff. Sept. 1, 1989.

SUBCHAPTER B. REGULATION OF PROPERTY DEVELOPMENT

Sec. 212.041. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a municipality whose governing body chooses by ordinance to be covered by this subchapter or chose by ordinance to be covered by the law codified by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 125, Sec. 1, eff. May 11, 1993; Acts

1993, 73rd Leg., ch. 1046, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 10.04, eff. Sept. 1, 1995.

Sec. 212.042. APPLICATION OF SUBCHAPTER A. The provisions of Subchapter A that do not conflict with this subchapter apply to development plats.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.043. DEFINITIONS. In this subchapter:

(1) "Development" means the new construction or the enlargement of any exterior dimension of any building, structure, or improvement.

(2) "Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.044. PLANS, RULES, AND ORDINANCES. After a public hearing on the matter, the municipality may adopt general plans, rules, or ordinances governing development plats of land within the limits and in the extraterritorial jurisdiction of the municipality to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.045. DEVELOPMENT PLAT REQUIRED. (a) Any person who proposes the development of a tract of land located within the limits or in the extraterritorial jurisdiction of the municipality must have a development plat of the tract prepared in accordance with this subchapter and the applicable plans, rules, or ordinances of the municipality.

(b) A development plat must be prepared by a registered professional land surveyor as a boundary survey showing:

(1) each existing or proposed building, structure, or

improvement or proposed modification of the external configuration of the building, structure, or improvement involving a change of the building, structure, or improvement;

(2) each easement and right-of-way within or abutting the boundary of the surveyed property; and

(3) the dimensions of each street, sidewalk, alley, square, park, or other part of the property intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, sidewalk, alley, square, park, or other part.

(c) New development may not begin on the property until the development plat is filed with and approved by the municipality in accordance with Section 212.047.

(d) If a person is required under Subchapter A or an ordinance of the municipality to file a subdivision plat, a development plat is not required in addition to the subdivision plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1091, Sec. 28, eff. Sept. 1, 1989.

Sec. 212.046. RESTRICTION ON ISSUANCE OF BUILDING AND OTHER PERMITS BY MUNICIPALITY, COUNTY, OR OFFICIAL OF OTHER GOVERNMENTAL ENTITY. The municipality, a county, or an official of another governmental entity may not issue a building permit or any other type of permit for development on lots or tracts subject to this subchapter until a development plat is filed with and approved by the municipality in accordance with Section 212.047.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.047. APPROVAL OF DEVELOPMENT PLAT. The municipality shall endorse approval on a development plat filed with it if the plat conforms to:

(1) the general plans, rules, and ordinances of the municipality concerning its current and future streets, sidewalks, alleys, parks, playgrounds, and public utility facilities;

(2) the general plans, rules, and ordinances for the extension of the municipality or the extension, improvement, or widening of its roads, streets, and public highways within the

municipality and in its extraterritorial jurisdiction, taking into account access to and extension of sewer and water mains and the instrumentalities of public utilities; and

(3) any general plans, rules, or ordinances adopted under Section 212.044.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.048. EFFECT OF APPROVAL ON DEDICATION. The approval of a development plat is not considered an acceptance of any proposed dedication for public use or use by persons other than the owner of the property covered by the plat and does not impose on the municipality any duty regarding the maintenance or improvement of any purportedly dedicated parts until the municipality's governing body makes an actual appropriation of the dedicated parts by formal acceptance, entry, use, or improvement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.049. BUILDING PERMITS IN EXTRATERRITORIAL JURISDICTION. This subchapter does not authorize the municipality to require municipal building permits or otherwise enforce the municipality's building code in its extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 212.050. ENFORCEMENT; PENALTY. (a) If it appears that a violation or threat of a violation of this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter exists, the municipality is entitled to appropriate injunctive relief against the person who committed, is committing, or is threatening to commit the violation.

(b) A suit for injunctive relief may be brought in the county in which the defendant resides, the county in which the violation or threat of violation occurs, or any county in which the municipality is wholly or partly located.

(c) In a suit to enjoin a violation or threat of a violation of this subchapter or a plan, rule, ordinance, or other order adopted

under this subchapter, the court may grant the municipality any prohibitory or mandatory injunction warranted by the facts including a temporary restraining order, temporary injunction, or permanent injunction.

(d) A person commits an offense if the person violates this subchapter or a plan, rule, or ordinance adopted under this subchapter or consistent with this subchapter within the limits of the municipality. An offense under this subsection is a Class C misdemeanor. Each day the violation continues constitutes a separate offense.

(e) A suit under this section shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(f) It is no defense to a criminal or civil suit under this section that an agency of government other than the municipality issued a license or permit authorizing the construction, repair, or alteration of any building, structure, or improvement. It also is no defense that the defendant had no knowledge of this subchapter or of an applicable plan, rule, or ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. DEVELOPER PARTICIPATION IN CONTRACT FOR PUBLIC IMPROVEMENTS

Sec. 212.071. DEVELOPER PARTICIPATION CONTRACT. Without complying with the competitive sealed bidding procedure of Chapter 252, a municipality with 5,000 or more inhabitants may make a contract with a developer of a subdivision or land in the municipality to construct public improvements, not including a building, related to the development. If the contract does not meet the requirements of this subchapter, Chapter 252 applies to the contract if the contract would otherwise be governed by that chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1999, 76th Leg., ch. 1547, Sec. 1, eff. Sept. 1, 1999.

Sec. 212.072. DUTIES OF PARTIES UNDER CONTRACT. (a) Under the contract, the developer shall construct the improvements and the

municipality shall participate in their cost.

(b) The contract:

(1) must establish the limit of participation by the municipality at a level not to exceed 30 percent of the total contract price, if the municipality has a population of less than 1.8 million; or

(2) may allow participation by a municipality at a level not to exceed 70 percent of the total contract price, if the municipality has a population of 1.8 million or more.

(b-1) In addition, if the municipality has a population of 1.8 million or more, the municipality may participate at a level not to exceed 100 percent of the total contract price for all required drainage improvements related to the development and construction of affordable housing. Under this subsection, affordable housing is defined as housing which is equal to or less than the median sales price, as determined by the Real Estate Center at Texas A&M University, of a home in the Metropolitan Statistical Area (MSA) in which the municipality is located.

(c) In addition, the contract may also allow participation by the municipality at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the municipality, including but not limited to increased capacity of improvements to anticipate other future development in the area.

(d) The municipality is liable only for the agreed payment of its share of the contract, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by municipal ordinance.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989.
Amended by Acts 1999, 76th Leg., ch. 1526, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1075 (H.B. 1606), Sec. 1, eff. June 18, 2005.

Sec. 212.073. PERFORMANCE BOND. The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 212.074. ADDITIONAL SAFEGUARDS; INSPECTION OF RECORDS. (a) In the ordinance adopted by the municipality under Section 212.072(b), the municipality may include additional safeguards against undue loading of cost, collusion, or fraud.

(b) All of the developer's books and other records related to the project shall be available for inspection by the municipality.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 47(b), eff. Aug. 28, 1989.

SUBCHAPTER D. REGULATION OF PROPERTY DEVELOPMENT PROHIBITED IN CERTAIN CIRCUMSTANCES

Sec. 212.101. APPLICATION OF SUBCHAPTER TO CERTAIN HOME-RULE MUNICIPALITY. This subchapter applies only to a home-rule municipality that:

(1) has a charter provision allowing for limited-purpose annexation; and

(2) has annexed territory for a limited purpose.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

Sec. 212.102. DEFINITIONS. In this subchapter:

(1) "Affected area" means an area that is:

(A) in a municipality or a municipality's extraterritorial jurisdiction;

(B) in a county other than the county in which a majority of the territory of the municipality is located;

(C) within the boundaries of one or more school districts other than the school district in which a majority of the territory of the municipality is located; and

(D) within the area of or within 1,500 feet of the boundary of an assessment road district in which there are two state highways.

(2) "Assessment road district" means a road district that

has issued refunding bonds and that has imposed assessments on each parcel of land under Subchapter C, Chapter 1471, Government Code.

(3) "State highway" means a highway that is part of the state highway system under Section 221.001, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.289, eff. Sept. 1, 2001.

Sec. 212.103. TRAFFIC OR TRAFFIC OPERATIONS. (a) A municipality may not deny, limit, delay, or condition the use or development of land, any part of which is within an affected area, because of:

(1) traffic or traffic operations that would result from the proposed use or development of the land; or

(2) the effect that the proposed use or development of the land would have on traffic or traffic operations.

(b) In this section, an action to deny, limit, delay, or condition the use or development of land includes a decision or other action by the governing body of the municipality or by a commission, board, department, agency, office, or employee of the municipality related to zoning, subdivision, site planning, the construction or building permit process, or any other municipal process, approval, or permit.

(c) This subchapter does not prevent a municipality from exercising its authority to require the dedication of right-of-way.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

Sec. 212.104. PROVISION NOT ENFORCEABLE. A provision in a covenant or agreement relating to land in an affected area that would have the effect of denying, limiting, delaying, or conditioning the use or development of the land because of its effect on traffic or traffic operations may not be enforced by a municipality.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

Sec. 212.105. SUBCHAPTER CONTROLS. This subchapter controls over any other law relating to municipal regulation of land use or development based on traffic.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.02(a), eff. Sept. 1, 1997.

SUBCHAPTER E. MORATORIUM ON PROPERTY DEVELOPMENT IN CERTAIN CIRCUMSTANCES

Sec. 212.131. DEFINITIONS. In this subchapter:

(1) "Essential public facilities" means water, sewer, or storm drainage facilities or street improvements provided by a municipality or private utility.

(2) "Residential property" means property zoned for or otherwise authorized for single-family or multi-family use.

(3) "Property development" means the construction, reconstruction, or other alteration or improvement of residential or commercial buildings or the subdivision or replatting of a subdivision of residential or commercial property.

(4) "Commercial property" means property zoned for or otherwise authorized for use other than single-family use, multifamily use, heavy industrial use, or use as a quarry.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 1, eff. September 1, 2005.

Sec. 212.132. APPLICABILITY. This subchapter applies only to a moratorium imposed on property development affecting only residential property, commercial property, or both residential and commercial property.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.133. PROCEDURE FOR ADOPTING MORATORIUM. A municipality may not adopt a moratorium on property development unless the municipality:

(1) complies with the notice and hearing procedures prescribed by Section 212.134; and

(2) makes written findings as provided by Section 212.135, 212.1351, or 212.1352, as applicable.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.134. NOTICE AND PUBLIC HEARING REQUIREMENTS. (a) Before a moratorium on property development may be imposed, a municipality must conduct public hearings as provided by this section.

(b) A public hearing must provide municipal residents and affected parties an opportunity to be heard. The municipality must publish notice of the time and place of a hearing in a newspaper of general circulation in the municipality on the fourth day before the date of the hearing.

(c) Beginning on the fifth business day after the date a notice is published under Subsection (b), a temporary moratorium takes effect. During the period of the temporary moratorium, a municipality may stop accepting permits, authorizations, and approvals necessary for the subdivision of, site planning of, or construction on real property.

(d) One public hearing must be held before the governing body of the municipality. Another public hearing must be held before the municipal zoning commission, if the municipality has a zoning commission.

(e) If a general-law municipality does not have a zoning commission, two public hearings separated by at least four days must be held before the governing body of the municipality.

(f) Within 12 days after the date of the first public hearing, the municipality shall make a final determination on the imposition of a moratorium. Before an ordinance adopting a moratorium may be imposed, the ordinance must be given at least two readings by the

governing body of the municipality. The readings must be separated by at least four days. If the municipality fails to adopt an ordinance imposing a moratorium within the period prescribed by this subsection, an ordinance imposing a moratorium may not be adopted, and the temporary moratorium imposed under Subsection (c) expires.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Sec. 212.135. JUSTIFICATION FOR MORATORIUM: SHORTAGE OF ESSENTIAL PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED. (a) If a municipality adopts a moratorium on property development, the moratorium is justified by demonstrating a need to prevent a shortage of essential public facilities. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating the extent of need beyond the estimated capacity of existing essential public facilities that is expected to result from new property development, including identifying:

(A) any essential public facilities currently operating near, at, or beyond capacity;

(B) the portion of that capacity committed to the development subject to the moratorium; and

(C) the impact fee revenue allocated to address the facility need; and

(2) evidence demonstrating that the moratorium is reasonably limited to:

(A) areas of the municipality where a shortage of essential public facilities would otherwise occur; and

(B) property that has not been approved for development because of the insufficiency of existing essential public facilities.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.1351. JUSTIFICATION FOR MORATORIUM: SIGNIFICANT NEED FOR PUBLIC FACILITIES; WRITTEN FINDINGS REQUIRED. (a) Except as

provided by Section 212.1352, a moratorium that is not based on a shortage of essential public facilities is justified only by demonstrating a significant need for other public facilities, including police and fire facilities. For purposes of this subsection, a significant need for public facilities is established if the failure to provide those public facilities would result in an overcapacity of public facilities or would be detrimental to the health, safety, and welfare of the residents of the municipality. The municipality must issue written findings based on reasonably available information.

(b) The written findings must include a summary of:

(1) evidence demonstrating that applying existing development ordinances or regulations and other applicable laws is inadequate to prevent the new development from causing the overcapacity of municipal infrastructure or being detrimental to the public health, safety, and welfare in an affected geographical area;

(2) evidence demonstrating that alternative methods of achieving the objectives of the moratorium are unsatisfactory; and

(3) evidence demonstrating that the municipality has approved a working plan and time schedule for achieving the objectives of the moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.1352. JUSTIFICATION FOR COMMERCIAL MORATORIUM IN CERTAIN CIRCUMSTANCES; WRITTEN FINDINGS REQUIRED. (a) If a municipality adopts a moratorium on commercial property development that is not based on a demonstrated shortage of essential public facilities, the municipality must issue written findings based on reasonably available information that the moratorium is justified by demonstrating that applying existing commercial development ordinances or regulations and other applicable laws is inadequate to prevent the new development from being detrimental to the public health, safety, or welfare of the residents of the municipality.

(b) The written findings must include a summary of:

(1) evidence demonstrating the need to adopt new ordinances or regulations or to amend existing ordinances, including identification of the harm to the public health, safety, or welfare

that will occur if a moratorium is not adopted;

(2) the geographical boundaries in which the moratorium will apply;

(3) the specific types of commercial property to which the moratorium will apply; and

(4) the objectives or goals to be achieved by adopting new ordinances or regulations or amending existing ordinances or regulations during the period the moratorium is in effect.

Added by Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.136. EXPIRATION OF MORATORIUM; EXTENSION. A moratorium adopted under Section 212.135 or 212.1351 expires on the 120th day after the date the moratorium is adopted unless the municipality extends the moratorium by:

(1) holding a public hearing on the proposed extension of the moratorium; and

(2) adopting written findings that:

(A) identify the problem requiring the need for extending the moratorium;

(B) describe the reasonable progress made to alleviate the problem; and

(C) specify a definite duration for the renewal period of the moratorium.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.1361. NOTICE FOR EXTENSION REQUIRED. A municipality proposing an extension of a moratorium under this subchapter must publish notice in a newspaper of general circulation in the municipality not later than the 15th day before the date of the hearing required by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.1362. EXPIRATION OF MORATORIUM ON COMMERCIAL PROPERTY IN CERTAIN CIRCUMSTANCES; EXTENSION. (a) A moratorium on commercial property adopted under Section 212.1352 expires on the 90th day after the date the moratorium is adopted unless the municipality extends the moratorium by:

(1) holding a public hearing on the proposed extension of the moratorium; and

(2) adopting written findings that:

(A) identify the problem requiring the need for extending the moratorium;

(B) describe the reasonable progress made to alleviate the problem;

(C) specify a definite duration for the renewal period of the moratorium; and

(D) include a summary of evidence demonstrating that the problem will be resolved within the extended duration of the moratorium.

(b) A municipality may not adopt a moratorium on commercial property under Section 212.1352 that exceeds an aggregate of 180 days. A municipality may not adopt a moratorium on commercial property under Section 212.1352 before the second anniversary of the expiration date of a previous moratorium if the subsequent moratorium addresses the same harm, affects the same type of commercial property, or affects the same geographical area identified by the previous moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.137. WAIVER PROCEDURES REQUIRED. (a) A moratorium adopted under this subchapter must allow a permit applicant to apply for a waiver from the moratorium relating to the property subject to the permit by:

(1) claiming a right obtained under a development agreement; or

(2) providing the public facilities that are the subject of the moratorium at the landowner's cost.

(b) The permit applicant must submit the reasons for the request to the governing body of the municipality in writing. The governing body of the municipality must vote on whether to grant the waiver request within 10 days after the date of receiving the written request.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

Sec. 212.138. EFFECT ON OTHER LAW. A moratorium adopted under this subchapter does not affect the rights acquired under Chapter 245 or common law.

Added by Acts 2001, 77th Leg., ch. 441, Sec. 1, eff. Sept. 1, 2001.

Sec. 212.139. LIMITATION ON MORATORIUM. (a) A moratorium adopted under this subchapter does not affect an application for a project in progress under Chapter 245.

(b) A municipality may not adopt a moratorium under this subchapter that:

(1) prohibits a person from filing or processing an application for a project in progress under Chapter 245; or

(2) prohibits or delays the processing of an application for zoning filed before the effective date of the moratorium.

Added by Acts 2005, 79th Leg., Ch. 1321 (H.B. 3461), Sec. 2, eff. September 1, 2005.

SUBCHAPTER F. ENFORCEMENT OF LAND USE RESTRICTIONS CONTAINED IN PLATS AND OTHER INSTRUMENTS

Sec. 212.151. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a municipality:

(1) with a population of 1.5 million or more that passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents;

(2) with a population of less than 4,500 that:

(A) is located in two counties, one of which has a population greater than 45,000; and

(B) borders Lake Lyndon B. Johnson; or

(3) that does not have zoning ordinances and passes an ordinance that requires uniform application and enforcement of this subchapter with regard to all property and residents.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 893, Sec. 1, eff. Sept. 1, 1991. Renumbered from Local Government Code Sec. 230.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.131 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 475 (S.B. 1090), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 141, eff. September 1, 2023.

Sec. 212.152. DEFINITION. In this subchapter, "restriction" means a land-use regulation that:

(1) affects the character of the use to which real property, including residential and rental property, may be put;

(2) fixes the distance that a structure must be set back from property lines, street lines, or lot lines;

(3) affects the size of a lot or the size, type, and number of structures that may be built on the lot;

(4) regulates or restricts the type of activities that may take place on the property, including commercial activities, sweepstakes activities, keeping of animals, use of fire, nuisance activities, vehicle storage, and parking;

(5) regulates architectural features of a structure, construction of fences, landscaping, garbage disposal, or noise levels; or

(6) specifies the type of maintenance that must be performed on a lot or structure, including maintenance of a yard or fence.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Sec. 230.002 by Acts 2001,

77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1044, Sec. 1, eff. Sept. 1, 2003. Renumbered from Local Government Code, Sec. 212.132 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.153. SUIT TO ENFORCE RESTRICTIONS. (a) Except as provided by Subsection (b), the municipality may sue in any court of competent jurisdiction to enjoin or abate a violation of a restriction contained or incorporated by reference in a properly recorded plan, plat, or other instrument that affects a subdivision located inside the boundaries of the municipality.

(b) The municipality may not initiate or maintain a suit to enjoin or abate a violation of a restriction if a property owners' association with the authority to enforce the restriction files suit to enforce the restriction.

(c) In a suit by a property owners' association to enforce a restriction, the association may not submit into evidence or otherwise use the work product of the municipality's legal counsel.

(d) In a suit filed under this section alleging that any of the following activities violates a restriction limiting property to residential use, it is not a defense that the activity is incidental to the residential use of the property:

(1) storing a tow truck, crane, moving van or truck, dump truck, cement mixer, earth-moving device, or trailer longer than 20 feet; or

(2) repairing or offering for sale more than two motor vehicles in a 12-month period.

(e) A municipality may not enforce a deed restriction which purports to regulate or restrict the rights granted to public utilities to install, operate, maintain, replace, and remove facilities within easements and private or public rights-of-way.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Sec. 230.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1044, Sec. 2, eff. Sept 1, 2003. Renumbered from Local Government Code, Sec. 212.133 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.1535. FORECLOSURE BY PROPERTY OWNERS' ASSOCIATION. (a) A municipality may not participate in a suit or other proceeding to foreclose a property owners' association's lien on real property.

(b) In a suit or other proceeding to foreclose a property owners' association's lien on real property in the subdivision, the association may not submit into evidence or otherwise use the work product of the municipality's legal counsel.

Added by Acts 2003, 78th Leg., ch. 1044, Sec. 4, eff. Sept. 1, 2003. Renumbered from Local Government Code, Section 212.1335 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(53), eff. September 1, 2007

Sec. 212.154. LIMITATION ON ENFORCEMENT. A restriction contained in a plan, plat, or other instrument that was properly recorded before August 30, 1965, may be enforced as provided by Section 212.153, but a violation of a restriction that occurred before that date may not be enjoined or abated by the municipality as long as the nature of the violation remains unchanged.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code Sec. 230.004 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.134 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), 3(33), eff. Sept. 1, 2003.

Sec. 212.155. NOTICE TO PURCHASERS. (a) The governing body of the municipality may require, in the manner prescribed by law for official action of the municipality, any person who sells or conveys restricted property located inside the boundaries of the municipality to first give to the purchaser written notice of the restrictions and notice of the municipality's right to enforce compliance.

(b) If the municipality elects under this section to require that notice be given, the notice to the purchaser shall contain the following information:

(1) the name of each purchaser;

(2) the name of each seller;

(3) a legal description of the property;

(4) the street address of the property;

(5) a statement that the property is subject to deed restrictions and the municipality is authorized to enforce the restrictions;

(6) a reference to the volume and page, clerk's file number, or film code number where the restrictions are recorded; and

(7) a statement that provisions that restrict the sale, rental, or use of the real property on the basis of race, color, religion, sex, or national origin are unenforceable.

(c) If the municipality elects under this section to require that notice be given, the following procedure shall be followed to ensure the delivery and recordation of the notice:

(1) the notice shall be given to the purchaser at or before the final closing of the sale and purchase;

(2) the seller and purchaser shall sign and acknowledge the notice; and

(3) following the execution, acknowledgment, and closing of the sale and purchase, the notice shall be recorded in the real property records of the county in which the property is located.

(d) If the municipality elects under this section to require that notice be given:

(1) the municipality shall file in the real property records of the county clerk's office in each county in which the municipality is located a copy of the form of notice, with its effective date, that is prescribed for use by any person who sells or conveys restricted property located inside the boundaries of the municipality;

(2) all sellers and all persons completing the prescribed notice on the seller's behalf are entitled to rely on the currently effective form filed by the municipality;

(3) the municipality may prescribe a penalty against a seller, not to exceed $500, for the failure of the seller to obtain the execution and recordation of the notice; and

(4) an action may not be maintained by the municipality against a seller to collect a penalty for the failure to obtain the execution and recordation of the notice if the municipality has not filed for record the form of notice with the county clerk of the appropriate county.

(e) This section does not limit the seller's right to recover a penalty, or any part of a penalty, imposed pursuant to Subsection

(d)(3) from a third party for the negligent failure to obtain the execution or proper recordation of the notice.

(f) The failure of the seller to comply with the requirements of this section and the implementing municipal regulation does not affect the validity or enforceability of the sale or conveyance of restricted property or the validity or enforceability of restrictions covering the property.

(g) For the purposes of this section, an executory contract of purchase and sale having a performance period of more than six months is considered a sale under Subsection (a).

(h) For the purposes of the disclosure required by this section, restrictions may not include provisions that restrict the sale, rental, or use of property on the basis of race, color, religion, sex, or national origin and may not include any restrictions that by their express provisions have terminated.

Added by Acts 1989, 71st Leg., ch. 446, Sec. 1, eff. June 14, 1989. Renumbered from Local Government Code Sec. 230.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.135 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.156. ENFORCEMENT BY ORDINANCE; CIVIL PENALTY. (a) The governing body of the municipality by ordinance may require compliance with a restriction contained or incorporated by reference in a properly recorded plan, plat, or other instrument that affects a subdivision located inside the boundaries of the municipality.

(b) The municipality may bring a civil action to recover a civil penalty for a violation of the restriction. The municipality may bring an action and recover the penalty in the same manner as a municipality may bring an action and recover a penalty under Subchapter B, Chapter 54.

(c) For the purposes of an ordinance adopted under this section, restrictions do not include provisions that restrict the sale, rental, or use of property on the basis of race, color, religion, sex, or national origin and do not include any restrictions that by their express provisions have terminated.

Added by Acts 1991, 72nd Leg., ch. 893, Sec. 2, eff. Sept. 1, 1991. Renumbered from Local Government Code Sec. 230.006 by Acts 2001, 77th

Leg., ch. 1420, Sec. 12.002(1), eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 212.136 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(107), eff. Sept. 1, 2003.

Sec. 212.157. GOVERNMENTAL FUNCTION. An action filed by a municipality under this subchapter to enforce a land use restriction is a governmental function of the municipality.

Added by Acts 2001, 77th Leg., ch. 1399, Sec. 2, eff. June 16, 2001. Renumbered from Local Government Code, Section 230.007 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(56), eff. September 1, 2007

Sec. 212.158. EFFECT ON OTHER LAW. This subchapter does not prohibit the exhibition, play, or necessary incidental action thereto of a sweepstakes not prohibited by Chapter 622, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1044, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.25, eff. April 1, 2009.
Renumbered from Local Government Code, Section 212.138 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(54), eff. September 1, 2007.

SUBCHAPTER G. AGREEMENT GOVERNING CERTAIN LAND IN A MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION

Sec. 212.171. APPLICABILITY. This subchapter does not apply to land located in the extraterritorial jurisdiction of a municipality with a population of 1.9 million or more.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.

Sec. 212.172. DEVELOPMENT AGREEMENT. (a) In this subchapter:

(1) "Adjudication" of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and

includes the bringing of an authorized arbitration proceeding and prosecution to final resolution in accordance with any mandatory procedures established in the contract agreement for the arbitration proceedings.

(2) "Contract" means a contract for a development agreement authorized by this subchapter.

(3) "Extraterritorial jurisdiction" means a municipality's extraterritorial jurisdiction as determined under Chapter 42.

(b) The governing body of a municipality may make a written contract with an owner of land that is located in the extraterritorial jurisdiction of the municipality to:

(1) guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the municipality;

(2) extend the municipality's planning authority over the land by providing for a development plan to be prepared by the landowner and approved by the municipality under which certain general uses and development of the land are authorized;

(3) authorize enforcement by the municipality of certain municipal land use and development regulations in the same manner the regulations are enforced within the municipality's boundaries;

(4) authorize enforcement by the municipality of land use and development regulations other than those that apply within the municipality's boundaries, as may be agreed to by the landowner and the municipality;

(5) provide for infrastructure for the land, including:

(A) streets and roads;

(B) street and road drainage;

(C) land drainage; and

(D) water, wastewater, and other utility systems;

(6) authorize enforcement of environmental regulations;

(7) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties;

(8) specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties; or

(9) include other lawful terms and considerations the parties consider appropriate.

(b-1) At the time a municipality makes an offer to a landowner to enter into an agreement under this subchapter, the municipality

must provide the landowner with a written disclosure that includes:

(1) a statement that the landowner is not required to enter into the agreement;

(2) the authority under which the municipality may annex the land with references to relevant law;

(3) a plain-language description of the annexation procedures applicable to the land;

(4) whether the procedures require the landowner's consent; and

(5) a statement regarding the municipality's waiver of immunity to suit.

(b-2) An agreement for which a disclosure is not provided in accordance with Subsection (b-1) is void.

(c) A contract must:

(1) be in writing;

(2) contain an adequate legal description of the land;

(3) be approved by the governing body of the municipality and the landowner; and

(4) be recorded in the real property records of each county in which any part of the land that is subject to the contract is located.

(d) The total duration of the contract and any successive renewals or extensions may not exceed 45 years.

(e) A municipality in an affected county, as defined by Section 16.341, Water Code, may not enter into a contract that is inconsistent with the model rules adopted under Section 16.343, Water Code.

(f) The contract between the governing body of the municipality and the landowner is binding on the municipality and the landowner and on their respective successors and assigns for the term of the contract. The contract is not binding on, and does not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the development, except for land use and development regulations that may apply to a specific lot. Annexation by a municipality of land subject to a contract does not invalidate the enforceability of the contract or infringe on the rights of a party to adjudicate a claim arising under the contract.

(g) A contract:

(1) constitutes a permit under Chapter 245; and

(2) is a program authorized by the legislature under

Section 52-a, Article III, Texas Constitution.

(h) A contract between a municipality and a landowner entered into prior to the effective date of this section, or any amendment to this section, and that complies with this section is validated, enforceable, and may be adjudicated subject to the terms and conditions of this subchapter, as amended.

(i) A municipality that enters into a contract waives immunity from suit for the purpose of adjudicating a claim for breach of the contract.

(j) Except as provided by Subsection (k), actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a municipality for breach of a contract. The total amount of money awarded in an adjudication brought against a municipality for breach of a contract is limited to the following:

(1) the balance due and owed by the municipality under the contract as it may have been amended;

(2) any amount owed by the landowner as a result of the municipality's failure to perform under the contract, including compensation for the increased cost of infrastructure as a result of delays or accelerations caused by the municipality;

(3) reasonable attorney's fees; and

(4) interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.

(k) Damages awarded in an adjudication brought against a municipality for breach of a contract may not include:

(1) consequential damages, except as expressly allowed under Subsection (j)(2); or

(2) exemplary damages.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 281 (H.B. 1643), Sec. 1, eff. June 17, 2011.

Acts 2021, 87th Leg., R.S., Ch. 103 (S.B. 1338), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 678 (H.B. 1929), Sec. 1, eff. September 1, 2021.

Sec. 212.173. CERTAIN COASTAL AREAS. This subchapter does not

apply to, limit, or otherwise affect any ordinance, order, rule, plan, or standard adopted by this state or a state agency, county, municipality, or other political subdivision of this state under the federal Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), and its subsequent amendments, or Subtitle E, Title 2, Natural Resources Code.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.

Sec. 212.174. MUNICIPAL UTILITIES. A municipality may not require a contract as a condition for providing water, sewer, electricity, gas, or other utility service from a municipally owned or municipally operated utility that provides any of those services.

Added by Acts 2003, 78th Leg., ch. 522, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 678 (H.B. 1929), Sec. 2, eff. September 1, 2021.

SUBCHAPTER H. MULTIFAMILY, HOTEL, AND MOTEL PARKLAND DEDICATION: MUNICIPALITIES WITH POPULATION OF MORE THAN 800,000

Sec. 212.201. DEFINITIONS. In this subchapter:

(1) "Affordable dwelling unit" means a residential unit offered at a below market rate for rent or sale under a municipal, county, state, or federal program.

(2) "Consumer price index" means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published by the Bureau of Labor Statistics of the United States Department of Labor or its successor in function.

(3) "Improvement" and "market value" have the meanings assigned by Section 1.04, Tax Code.

(4) "Land value" means the market value of land per acre, not including an improvement to the land.

(5) "Median family income" means the United States Census Bureau's most recent American Community Survey's five-year estimate of median family income for all families within the applicable municipality.

(6) "Multifamily unit" means a residential unit other than a detached single-family or two-family dwelling.

(7) "Parkland" means an area that is designated as a park for the purpose of recreational activity. The term includes an open space, a recreational facility, and a trail.

(8) "Parkland dedication" means the fee simple transfer of land or the dedication of an easement to a municipality for nonexclusive use as parkland.

(9) "Parkland dedication fee" means a fee imposed by a municipality on a landowner for the acquisition, development, repair, and maintenance of parkland.

(10) "Plan" means a subdivision development plan, subdivision plan, site plan, land development plan, and site development plan each proposing the development of multifamily, hotel, or motel units.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.202. APPLICABILITY. This subchapter applies only to a municipality with a population of more than 800,000.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.203. CONSTRUCTION. This subchapter may not be construed to prohibit a municipality from requiring by ordinance a landowner to dedicate a portion of the landowner's property for parkland use, impose a parkland dedication fee, or both require the dedication and impose the fee for the development of single-family or two-family uses.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.204. EXCLUSIVE AUTHORITY; LIMITATION. (a) Notwithstanding any other law, a municipality has exclusive authority within its boundaries to require the dedication of parkland, impose a parkland dedication fee, or both require the dedication and impose the fee. A municipality may not delegate that authority to another

political subdivision.

(b) A municipality may only exercise its authority under this section through a plan application in accordance with this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.205. PARKLAND DEDICATION, FEE, OR COMBINATION. (a) A municipality may require a landowner to dedicate a portion of the landowner's property for parkland use, impose a parkland dedication fee, or both require the dedication and impose the fee under a plan application filed under this subchapter by:

(1) paying a fee set in accordance with Section 212.210(b) or 212.211(b), as applicable; or

(2) dedicating a portion up to the maximum size authorized under Section 212.208 and paying a reduced fee set in accordance with Section 212.210(d) or 212.211(c), as applicable.

(b) A municipality may allow a landowner to elect a parkland dedication, a parkland dedication fee, or a dedication and fee under Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.206. REQUEST FOR PARKLAND DEDICATION DETERMINATION. (a) A landowner may, at the landowner's sole discretion, make a written request to a municipality that the municipality make a timely determination of the dedication amount the municipality will impose under the municipality's parkland dedication requirements as applied to the landowner's property being considered for development.

(b) A municipality may make a reasonable written request to the landowner for additional information that is:

(1) publicly and readily available; and

(2) necessary to provide a determination under this section.

(c) A municipality shall respond in writing to a request made under Subsection (a) not later than the 30th day after the date the municipality receives a completed request. If the municipality fails

to respond in accordance with this subsection, the municipality may not require a parkland dedication as a condition of approval of a proposed plan or application for property that is the subject of the request.

(d) A parkland dedication determination issued under this section:

(1) is a legally binding determination of the amount of the landowner's parkland dedication for the property that is the subject of the determination; and

(2) is applicable to the property that is the subject of the determination for a period that is the lesser of:

(A) two years; or

(B) the time between the date the determination is issued and the date a plan application is filed that uses or relies on the determination.

(e) A landowner may release in writing a municipality from a determination made under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.207. PARKLAND DEDICATION AUTHORITY. (a) A municipality may not require a parkland dedication, impose a parkland dedication fee, or both require the dedication and impose the fee for any commercial use. For the purpose of this section, a commercial use does not include a multifamily, hotel, or motel use.

(b) If a plan application submitted to a municipality proposes development of the land subject to the application that includes both multifamily, hotel, or motel and commercial uses, the municipality shall determine the amount of a parkland dedication based only on the pro rata portion of the land proposed for multifamily, hotel, or motel use.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.208. LIMITATION ON PARKLAND DEDICATION AMOUNT. A municipality may not require a landowner to dedicate as parkland under this subchapter more than 10 percent, without adjustment or

disqualification for impairment, of the gross site area of the land subject to a plan application.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.209. INITIAL REQUIREMENTS FOR DETERMINING FEES. (a) For purposes of determining the amount of a fee imposed under this section, the governing body of a municipality, after providing at least 30 days' public notice and holding a public hearing, shall by official action designate all territory within its municipal boundaries as a suburban area, urban area, or central business district area. The governing body may use the same designation for multiple areas in the municipality. The governing body may amend a designation only during the adoption or amendment of a municipal comprehensive plan under Chapter 213.

(b) Not later than the 10th day after the date the municipality designates its territory under Subsection (a), the municipality shall notify each appraisal district in which the municipality is wholly or partly located of the designation.

(c) Once every 10 years, each appraisal district in which the municipality is wholly or partly located shall calculate and provide to the municipality the average land value for each area or portion of an area designated by the municipality under Subsection (a) that is located in the district.

(d) If multiple appraisal districts calculate an average land value for different portions of an area designated under Subsection (a), the municipality shall determine the area's total average land value by:

(1) multiplying each district's calculated value for the portion located in the district by the percentage, expressed as a fraction, that the portion is to the total area; and

(2) adding the resulting amounts.

(e) In each year other than the year in which an appraisal district calculates average land values under Subsection (c), a municipality shall calculate the average land value for each area designated under Subsection (a) by multiplying the previous year's average land value for the area by one plus the average consumer price index for each month of the previous year.

(f) A municipality shall set the municipality's dwelling unit factor, which reflects the number of parkland acres for each dwelling unit proposed by a plan application. The factor may not be more than:

(1).005 for multifamily units; and

(2).004 for rooms in a hotel or motel ordinarily used for sleeping.

(g) A municipality shall set the municipality's density factor, which reflects the diminishing expectation of parkland acres per dwelling unit in increasingly dense urban environments, for each area designated by the municipality under Subsection (a). The density factor may not be less than:

(1) one for the suburban area;

(2) four for the urban area; and

(3) 40 for the central business district area.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.210. GENERAL REQUIREMENTS FOR CALCULATION OF FEES. (a) This section applies only to a municipality to which Section 212.211 does not apply.

(b) A municipality shall determine the amount of a fee imposed under Section 212.205(a)(1) for land subject to a plan application by:

(1) adding, as appropriate:

(A) the product of the number of multifamily units proposed by the plan by the dwelling unit factor prescribed by Section 212.209(f)(1); and

(B) the product of the number of hotel and motel rooms ordinarily used for sleeping proposed by the plan by the dwelling unit factor prescribed by Section 212.209(f)(2);

(2) multiplying the sum calculated under Subdivision (1) by the average land value for the area in which the land is located; and

(3) dividing the product calculated under Subdivision (2) by the applicable density factor.

(c) For purposes of Subsection (b)(1), a municipality shall exclude from a plan application the number of affordable dwelling units proposed by the plan.

(d) A municipality shall determine the amount of a fee imposed

under Section 212.205(a)(2) for land subject to a plan application by:

(1) calculating the amount of the fee for the land under Subsection (b); and

(2) subtracting from the amount calculated under Subdivision (1) the product of the land value applicable to the land and the number of acres dedicated.

(e) If a calculation made under Subsection (d) results in a negative number, the applicable landowner is entitled to receive from the applicable municipality the amount equal to the positive difference between the calculated amount and zero. The municipality shall pay that amount to the landowner at the time of transfer of fee simple title or the recording of the easement.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.211. REQUIREMENTS CALCULATION OF FEES FOR MUNICIPALITIES WITH LOW FEES. (a) This section applies only to a municipality that after August 31, 2023, requires a parkland dedication fee for a multifamily, hotel, or motel development in an amount, calculated on a per dwelling unit basis, not greater than two percent of the median family income.

(b) A municipality to which this section applies may set a parkland dedication fee. If the municipality elects to set the fee in an amount greater than two percent of the municipality's median family income:

(1) this section no longer applies to the municipality; and

(2) the municipality must set the fee in accordance with Section 212.210.

(c) A municipality shall determine the amount of a fee imposed under Section 212.205(a)(2) for land subject to a plan application by subtracting from the amount of the fee set under Subsection (b) the product of the land value applicable to the land and the number of acres dedicated.

(d) If a calculation made under Subsection (c) results in a negative number, the applicable landowner is entitled to receive from the applicable municipality the amount equal to the positive difference between the calculated amount and zero. The municipality

shall pay that amount to the landowner at the time of transfer of fee simple title or the recording of the easement.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.212. COLLECTION OF FEES. A municipality shall provide a landowner a written determination of fees owed under this subchapter before approving a plan application but may only collect a fee authorized under this subchapter as a precondition to the issuance of a final certificate of occupancy.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

Sec. 212.213. APPEAL. (a) A landowner may appeal a determination made by a municipal department, board, or commission regarding any element of a parkland dedication requirement, including amount, orientation, or suitability, as that element applies to the landowner's property, to the municipal planning commission or, if the municipality has no planning commission, the governing body of the municipality. The appeal must include a requested adjudication of the issue in controversy.

(b) A landowner may appeal a municipal planning commission's determination under Subsection (a) to the governing body of the municipality.

(c) In an appeal under this section, a municipal planning commission or governing body of a municipality may uphold, reverse, or modify a parkland dedication requirement as applied to the landowner making the appeal.

(d) A municipal planning commission or governing body of a municipality shall uphold, reverse, or modify a parkland dedication requirement that is the subject of an appeal not later than the 60th day after the date the appeal is filed with the commission or governing body. If the commission or governing body fails to act in accordance with this subsection, the parkland dedication requirement is considered resolved in favor of the landowner's requested adjudication.

Added by Acts 2023, 88th Leg., R.S., Ch. 493 (H.B. 1526), Sec. 1, eff. June 10, 2023.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 212.901. DEVELOPER REQUIRED TO PROVIDE SURETY. (a) To ensure that it will not incur liabilities, a municipality may require, before it gives approval of the plans for a development, that the owner of the development provide sufficient surety to guarantee that claims against the development will be satisfied if a default occurs.

(b) This section does not preclude a claimant from seeking recovery by other means.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 48(a), eff. Aug. 28, 1989.

Sec. 212.902. SCHOOL DISTRICT AND OPEN-ENROLLMENT CHARTER SCHOOL LAND DEVELOPMENT STANDARDS. (a) This section applies to an agreement between a school district or open-enrollment charter school and a municipality which has annexed territory for limited purposes.

(b) On request by a school district or open-enrollment charter school, a municipality shall enter an agreement with the board of trustees of the school district or the governing body of the open-enrollment charter school to establish review fees, review periods, and land development standards ordinances and to provide alternative water pollution control methodologies for school buildings constructed by the school district or open-enrollment charter school. The agreement shall include a provision exempting the district or charter school from all land development ordinances in cases where the district or charter school is adding temporary classroom buildings on an existing school campus.

(c) If the municipality and the school district or open-enrollment charter school do not reach an agreement on or before the 120th day after the date on which the municipality receives the district's or charter school's request for an agreement, proposed agreements by the district or charter school and the municipality shall be submitted to an independent arbitrator appointed by the presiding district judge whose jurisdiction includes the district or charter school. The arbitrator shall, after a hearing at which both

the district or charter school and the municipality make presentations on their proposed agreements, prepare an agreement resolving any differences between the proposals. The agreement prepared by the arbitrator will be final and binding upon both the district or charter school and the municipality. The cost of the arbitration proceeding shall be borne equally by the district or charter school and the municipality.

(d) A school district or open-enrollment charter school that requests an agreement under this section, at the time the district or charter school makes the request, shall send a copy of the request to the commissioner of education. At the end of the 120-day period, the requesting district or charter school shall report to the commissioner the status or result of negotiations with the municipality. A municipality may send a separate status report to the commissioner. The district or charter school shall send to the commissioner a copy of each agreement between the district or charter school and a municipality under this section.

(e) An agreement between a municipality and an open-enrollment charter school under Subsection (b) may require that:

(1) any revised land development standards may apply only while the property is used for purposes of the charter school; and

(2) any property in use subject to land development standards established only for an open-enrollment charter school must be brought into compliance with all development regulations applicable to non-school related commercial developments by the property owner after closure or relocation of the charter school.

(f) In this section:

(1) "Land development standards" includes impervious cover limitations, building setbacks, floor to area ratios, building heights and coverage, water quality controls, landscaping, development setbacks, compatibility standards, traffic analyses, including traffic impact analyses, parking requirements, signage requirements, and driveway cuts, if applicable.

(2) "Open-enrollment charter school" means a school granted a charter under Subchapter C, D, or E, Chapter 12, Education Code.

(g) Nothing in this section shall be construed to limit the applicability of or waive fees for fire, safety, health, or building code ordinances of the municipality prior to or during construction of school buildings, nor shall any agreement waive any fee or modify any ordinance of a municipality for an administration, service, or

athletic facility proposed for construction by a school district or open-enrollment charter school.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 1, Sec. 3.18, eff. Sept. 1, 1990.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 699 (H.B. 1707), Sec. 2, eff. June 12, 2023.

Sec. 212.903. CONSTRUCTION AND RENOVATION WORK ON COUNTY-OWNED BUILDINGS OR FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of 250,000 or more.

(b) A municipality is not authorized to require a county to notify the municipality or obtain a building permit for any new construction or renovation work performed within the limits of the municipality by the county's personnel or by county personnel acting as general contractor on county-owned buildings or facilities. Such construction or renovation work shall be inspected by a registered professional engineer or architect licensed in this state in accordance with any other applicable law. A municipality may require a building permit for construction or renovation work performed on county-owned buildings or facilities by private general contractors.

(c) This section does not exempt a county from complying with a municipality's building code standards when performing construction or renovation work.

Added by Acts 1997, 75th Leg., ch. 271, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 368, Sec. 1, eff. Aug. 30, 1999.

Sec. 212.904. APPORTIONMENT OF MUNICIPAL INFRASTRUCTURE COSTS. (a) If a municipality requires, including under an agreement under Chapter 242, as a condition of approval for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer's portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is

retained by the municipality. The municipality's determination shall be completed within thirty days following the submission of the developer's application for determination under this subsection.

(b) A developer who disputes the determination made under Subsection (a) may appeal to the governing body of the municipality. At the appeal, the developer may present evidence and testimony under procedures adopted by the governing body. After hearing any testimony and reviewing the evidence, the governing body shall make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

(c) A developer may appeal the determination of the governing body to a county or district court of the county in which the development project is located within 30 days of the final determination by the governing body.

(d) A municipality may not require a developer to waive the right of appeal authorized by this section as a condition of approval for a development project.

(e) A developer who prevails in an appeal under this section is entitled to applicable costs and to reasonable attorney's fees, including expert witness fees.

(f) This section does not diminish the authority or modify the procedures specified by Chapter 395.

Added by Acts 2005, 79th Leg., Ch. 982 (H.B. 1835), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 635 (S.B. 1510), Sec. 1, eff. June 10, 2019.

Sec. 212.905. REGULATION OF TREE REMOVAL. (a) In this section:

(1) "Residential structure" means:

(A) a manufactured home as that term is defined by Section 1201.003, Occupations Code;

(B) a detached one-family or two-family dwelling, including the accessory structures of the dwelling;

(C) a multiple single-family dwelling that is not more than three stories in height with a separate means of entry for each dwelling, including the accessory structures of the dwelling; or

(D) any other multifamily structure.

(2) "Tree mitigation fee" means a fee or charge imposed by a municipality in connection with the removal of a tree from private property.

(b) A municipality may not require a person to pay a tree mitigation fee for the removed tree if the tree:

(1) is located on a property that is an existing one-family or two-family dwelling that is the person's residence; and

(2) is less than 10 inches in diameter at the point on the trunk 4.5 feet above the ground.

(c) A municipality that imposes a tree mitigation fee for tree removal on a person's property must allow that person to apply for a credit for tree planting under this section to offset the amount of the fee.

(d) An application for a credit under Subsection (c) must be in the form and manner prescribed by the municipality. To qualify for a credit under this section, a tree must be:

(1) planted on property:

(A) for which the tree mitigation fee was assessed; or

(B) mutually agreed upon by the municipality and the person; and

(2) at least two inches in diameter at the point on the trunk 4.5 feet above ground.

(e) For purposes of Subsection (d)(1)(B), the municipality and the person may consult with an academic organization, state agency, or nonprofit organization to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the municipality.

(f) The amount of a credit provided to a person under this section must be applied in the same manner as the tree mitigation fee assessed against the person and:

(1) equal to the amount of the tree mitigation fee assessed against the person if the property is an existing one-family or two-family dwelling that is the person's residence;

(2) at least 50 percent of the amount of the tree mitigation fee assessed against the person if:

(A) the property is a residential structure or pertains to the development, construction, or renovation of a residential structure; and

(B) the person is developing, constructing, or

renovating the property not for use as the person's residence; or

(3) at least 40 percent of the amount of the tree mitigation fee assessed against the person if:

(A) the property is not a residential structure; or

(B) the person is constructing or intends to construct a structure on the property that is not a residential structure.

(g) As long as the municipality meets the requirement to provide a person a credit under Subsection (c), this section does not affect the ability of or require a municipality to determine:

(1) the type of trees that must be planted to receive a credit under this section, except as provided by Subsection (d);

(2) the requirements for tree removal and corresponding tree mitigation fees, if applicable;

(3) the requirements for tree-planting methods and best management practices to ensure that the tree grows to the anticipated height at maturity; or

(4) the amount of a tree mitigation fee.

(h) A municipality may not prohibit the removal of or impose a tree mitigation fee for the removal of a tree that:

(1) is diseased or dead; or

(2) poses an imminent or immediate threat to persons or property.

(i) This section does not apply to property within five miles of a federal military base in active use as of December 1, 2017.

Added by Acts 2017, 85th Leg., 1st C.S., Ch. 7 (H.B. 7), Sec. 1, eff. December 1, 2017.

Sec. 212.906. CERTAIN VALUE-BASED FEES AND DISCLOSURE OF CERTAIN INFORMATION PROHIBITED. (a) This section applies only to an application, review, engineering, inspection, acceptance, administrative, or other fee imposed by a municipality related to the acceptance, review, or processing of engineering or construction plans or for the inspection of improvements for construction of a subdivision or lot or a related improvement associated with or required in conjunction with that construction.

(b) A municipality may not consider the cost of constructing or improving the public infrastructure for a subdivision, lot, or related property development in determining the amount of a fee

subject to this section. The municipality shall determine the fee by considering the municipality's actual cost to, as applicable, review and process the engineering or construction plan or to inspect the public infrastructure improvement.

(c) In determining the municipality's actual cost for reviewing and processing an engineering or construction plan or inspecting a public infrastructure improvement under Subsection (b), a municipality may consider:

(1) the fee that would be charged by a qualified, independent third-party entity for those services;

(2) the hourly rate for the estimated actual direct time of the municipality's employees performing those services; or

(3) the actual costs assessed to the municipality by a third-party entity that provides those services to the municipality.

(d) A municipality may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling or the public infrastructure improvements for a subdivision, lot, or related property development as a condition of obtaining approval for subdivision construction or for the acceptance of those public infrastructure improvements except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

(e) A municipality that imposes a fee for reviewing or processing an engineering or construction plan or inspecting a public infrastructure improvement shall annually publish the fee and the hourly rate and estimated direct time incurred by municipal employees for a fee calculated under Subsection (c)(2). The municipality must publish the information:

(1) on the municipality's Internet website; or

(2) if the municipality does not maintain an Internet website, in a newspaper of general circulation in the county in which the municipality is primarily located.

Added by Acts 2023, 88th Leg., R.S., Ch. 534 (H.B. 3492), Sec. 1, eff. September 1, 2023.

CHAPTER 213. MUNICIPAL COMPREHENSIVE PLANS

Sec. 213.001. PURPOSE. The powers granted under this chapter are for the purpose of promoting sound development of municipalities

and promoting public health, safety, and welfare.

Added by Acts 1997, 75th Leg., ch. 459, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 219.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(2), eff. Sept. 1, 2001.

Sec. 213.002. COMPREHENSIVE PLAN. (a) The governing body of a municipality may adopt a comprehensive plan for the long-range development of the municipality. A municipality may define the content and design of a comprehensive plan.

(b) A comprehensive plan may:

(1) include but is not limited to provisions on land use, transportation, and public facilities;

(2) consist of a single plan or a coordinated set of plans organized by subject and geographic area; and

(3) be used to coordinate and guide the establishment of development regulations.

(c) A municipality may define, in its charter or by ordinance, the relationship between a comprehensive plan and development regulations and may provide standards for determining the consistency required between a plan and development regulations.

(d) Land use assumptions adopted in a manner that complies with Subchapter C, Chapter 395, may be incorporated in a comprehensive plan.

Added by Acts 1997, 75th Leg., ch. 459, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 219.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(2), eff. Sept. 1, 2001.

Sec. 213.003. ADOPTION OR AMENDMENT OF COMPREHENSIVE PLAN. (a) A comprehensive plan may be adopted or amended by ordinance following:

(1) a hearing at which the public is given the opportunity to give testimony and present written evidence; and

(2) review by the municipality's planning commission or department, if one exists.

(b) A municipality may establish, in its charter or by ordinance, procedures for adopting and amending a comprehensive plan.

Added by Acts 1997, 75th Leg., ch. 459, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.07, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(2), eff. Sept. 1, 2001.

Sec. 213.004. EFFECT ON OTHER MUNICIPAL PLANS. This chapter does not limit the ability of a municipality to prepare other plans, policies, or strategies as required.

Added by Acts 1997, 75th Leg., ch. 459, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 219.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(2), eff. Sept. 1, 2001.

Sec. 213.005. NOTATION ON MAP OF COMPREHENSIVE PLAN. A map of a comprehensive plan illustrating future land use shall contain the following clearly visible statement: "A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries."

Added by Acts 1997, 75th Leg., ch. 459, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 219.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(2), eff. Sept. 1, 2001.

CHAPTER 214. MUNICIPAL REGULATION OF HOUSING AND OTHER STRUCTURES

SUBCHAPTER A. DANGEROUS STRUCTURES

Sec. 214.001. AUTHORITY REGARDING SUBSTANDARD BUILDING. (a) A municipality may, by ordinance, require the vacation, relocation of occupants, securing, repair, removal, or demolition of a building that is:

(1) dilapidated, substandard, or unfit for human habitation and a hazard to the public health, safety, and welfare;

(2) regardless of its structural condition, unoccupied by its owners, lessees, or other invitees and is unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or

(3) boarded up, fenced, or otherwise secured in any manner if:

(A) the building constitutes a danger to the public even though secured from entry; or

(B) the means used to secure the building are inadequate to prevent unauthorized entry or use of the building in the manner described by Subdivision (2).

(b) The ordinance must:

(1) establish minimum standards for the continued use and occupancy of all buildings regardless of the date of their construction;

(2) provide for giving proper notice, subject to Subsection (b-1), to the owner of a building; and

(3) provide for a public hearing to determine whether a building complies with the standards set out in the ordinance.

(b-1) For a condominium, as defined by Section 81.002 or 82.003, Property Code, located wholly or partly in a municipality with a population of more than 1.9 million, notice to a unit owner in accordance with Section 82.118, Property Code, and notice to the registered agent for the unit owners' association in the manner provided for service of process to a condominium association under Section 54.035(a-1) satisfy the notice requirements under this section.

(c) A notice of a hearing sent to an owner, lienholder, or mortgagee under this section must include a statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

(d) After the public hearing, if a building is found in violation of standards set out in the ordinance, the municipality may order that the building be vacated, secured, repaired, removed, or demolished by the owner within a reasonable time as provided by this section. The municipality also may order that the occupants be relocated within a reasonable time. If the owner does not take the ordered action within the allotted time, the municipality shall make a diligent effort to discover each mortgagee and lienholder having an interest in the building or in the property on which the building is located. The municipality shall personally deliver, send by certified mail with return receipt requested, or deliver by the United States Postal Service using signature confirmation service, to each identified mortgagee and lienholder a notice containing:

(1) an identification, which is not required to be a legal description, of the building and the property on which it is located;

(2) a description of the violation of municipal standards that is present at the building; and

(3) a statement that the municipality will vacate, secure, remove, or demolish the building or relocate the occupants of the building if the ordered action is not taken within a reasonable time.

(e) As an alternative to the procedure prescribed by Subsection (d), the municipality may make a diligent effort to discover each mortgagee and lienholder before conducting the public hearing and may give them a notice of and an opportunity to comment at the hearing. In addition, the municipality may file notice of the hearing in the Official Public Records of Real Property in the county in which the property is located. The notice must contain the name and address of the owner of the affected property if that information can be determined, a legal description of the affected property, and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the filing of the notice, and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquires such interest after the filing of the notice. If the municipality operates under this subsection, the order issued by the municipality may specify a reasonable time as provided by this section for the building to be vacated, secured, repaired, removed, or demolished by the owner or for the occupants to be relocated by the owner and an additional reasonable time as provided by this section for the ordered action to be taken by any of the mortgagees or lienholders in the event the owner fails to comply with the order within the time provided for action by the owner. Under this subsection, the municipality is not required to furnish any notice to a mortgagee or lienholder other than a copy of the order in the event the owner fails to timely take the ordered action.

(f) Within 10 days after the date that the order is issued, the municipality shall:

(1) file a copy of the order in the office of the municipal secretary or clerk, if the municipality has a population of 1.9 million or less; and

(2) publish in a newspaper of general circulation in the municipality in which the building is located a notice containing:

(A) the street address or legal description of the property;

(B) the date of the hearing;

(C) a brief statement indicating the results of the order; and

(D) instructions stating where a complete copy of the order may be obtained.

(g) After the hearing, the municipality shall promptly mail by certified mail with return receipt requested, deliver by the United States Postal Service using signature confirmation service, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The municipality shall use its best efforts to determine the identity and address of any owner, lienholder, or mortgagee of the building.

(h) In conducting a hearing authorized under this section, the municipality shall require the owner, lienholder, or mortgagee of the building to within 30 days:

(1) secure the building from unauthorized entry; or

(2) repair, remove, or demolish the building, unless the owner or lienholder establishes at the hearing that the work cannot reasonably be performed within 30 days.

(i) If the municipality allows the owner, lienholder, or mortgagee more than 30 days to repair, remove, or demolish the building, the municipality shall establish specific time schedules for the commencement and performance of the work and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed, as determined by the hearing official.

(j) A municipality may not allow the owner, lienholder, or mortgagee more than 90 days to repair, remove, or demolish the building or fully perform all work required to comply with the order unless the owner, lienholder, or mortgagee:

(1) submits a detailed plan and time schedule for the work at the hearing; and

(2) establishes at the hearing that the work cannot reasonably be completed within 90 days because of the scope and complexity of the work.

(k) If the municipality allows the owner, lienholder, or mortgagee more than 90 days to complete any part of the work required to repair, remove, or demolish the building, the municipality shall

require the owner, lienholder, or mortgagee to regularly submit progress reports to the municipality to demonstrate compliance with the time schedules established for commencement and performance of the work. The order may require that the owner, lienholder, or mortgagee appear before the hearing official or the hearing official's designee to demonstrate compliance with the time schedules. If the owner, lienholder, or mortgagee owns property, including structures or improvements on property, within the municipal boundaries that exceeds $100,000 in total value, the municipality may require the owner, lienholder, or mortgagee to post a cash or surety bond in an amount adequate to cover the cost of repairing, removing, or demolishing a building under this subsection. In lieu of a bond, the municipality may require the owner, lienholder, or mortgagee to provide a letter of credit from a financial institution or a guaranty from a third party approved by the municipality. The bond must be posted, or the letter of credit or third party guaranty provided, not later than the 30th day after the date the municipality issues the order.

(l) In a public hearing to determine whether a building complies with the standards set out in an ordinance adopted under this section, the owner, lienholder, or mortgagee has the burden of proof to demonstrate the scope of any work that may be required to comply with the ordinance and the time it will take to reasonably perform the work.

(m) If the building is not vacated, secured, repaired, removed, or demolished, or the occupants are not relocated within the allotted time, the municipality may vacate, secure, remove, or demolish the building or relocate the occupants at its own expense. This subsection does not limit the ability of a municipality to collect on a bond or other financial guaranty that may be required by Subsection (k).

(n) If a municipality incurs expenses under Subsection (m), the municipality may assess the expenses on, and the municipality has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the building was located. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the municipality for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property

is located. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building was located, the amount of expenses incurred by the municipality, and the balance due.

(o) If the notice is given and the opportunity to relocate the tenants of the building or to repair, remove, or demolish the building is afforded to each mortgagee and lienholder as authorized by Subsection (d), (e), or (g), the lien is a privileged lien subordinate only to tax liens.

(p) A hearing under this section may be held by a civil municipal court.

(q) A municipality satisfies the requirements of this section to make a diligent effort, to use its best efforts, or to make a reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee if the municipality searches the following records:

(1) county real property records of the county in which the building is located;

(2) appraisal district records of the appraisal district in which the building is located;

(3) records of the secretary of state;

(4) assumed name records of the county in which the building is located;

(5) tax records of the municipality; and

(6) utility records of the municipality.

(r) When a municipality mails a notice in accordance with this section to a property owner, lienholder, mortgagee, or registered agent and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

(s) A court shall expedite any proceeding, including an appeal in accordance with Section 214.0012, related to a substandard building determination under this section by a municipality with a population of 500,000 or more.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(j), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 743, Sec. 1, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 836, Sec. 10, eff. Sept. 1, 1993; Acts 1995, 74th

Leg., ch. 359, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 362, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 357, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 413, Sec. 10, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 701, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 370 (S.B. 352), Sec. 3, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 5, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1273 (H.B. 36), Sec. 3, eff. June 14, 2019.

Sec. 214.0011. ADDITIONAL AUTHORITY TO SECURE SUBSTANDARD BUILDING. (a) A municipality by ordinance may establish minimum standards for the use and occupancy of buildings in the municipality regardless of the date of their construction and may adopt other ordinances as necessary to carry out this section.

(b) The municipality may secure a building the municipality determines:

(1) violates the minimum standards; and

(2) is unoccupied or is occupied only by persons who do not have a right of possession to the building.

(c) Before the 11th day after the date the building is secured, the municipality shall give notice to the owner by:

(1) personally serving the owner with written notice;

(2) depositing the notice in the United States mail addressed to the owner at the owner's post office address;

(3) publishing the notice at least twice within a 10-day period in a newspaper of general circulation in the county in which the building is located if personal service cannot be obtained and the owner's post office address is unknown; or

(4) posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.

(d) The notice must contain:

(1) an identification, which is not required to be a legal description, of the building and the property on which it is located;

(2) a description of the violation of the municipal

standards that is present at the building;

(3) a statement that the municipality will secure or has secured, as the case may be, the building; and

(4) an explanation of the owner's entitlement to request a hearing about any matter relating to the municipality's securing of the building.

(e) The municipality shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the municipality's securing of the building if, within 30 days after the date the municipality secures the building, the owner files with the municipality a written request for the hearing. The municipality shall conduct the hearing within 20 days after the date the request is filed.

(f) A municipality has the same authority to assess expenses under this section as it has to assess expenses under Section 214.001(n). A lien is created under this section in the same manner that a lien is created under Section 214.001(n) and is subject to the same conditions as a lien created under that section.

(g) The authority granted by this section is in addition to that granted by Section 214.001.

Added by Acts 1991, 72nd Leg., ch. 13, Sec. 1, eff. April 2, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.104, eff. Sept. 1, 2001.

Sec. 214.00111. ADDITIONAL AUTHORITY TO PRESERVE SUBSTANDARD BUILDING AS HISTORIC PROPERTY. (a) This section applies only to a municipality that is designated as a certified local government by the state historic preservation officer as provided by 16 U.S.C.A. Section 470 et seq.

(b) This section does not apply to an owner-occupied, single-family dwelling.

(c) Before a notice is sent or a hearing is conducted under Section 214.001, the historic preservation board of a municipality may review a building described by Section 214.001(a) to determine whether the building can be rehabilitated and designated:

(1) on the National Register of Historic Places;

(2) as a Recorded Texas Historic Landmark; or

(3) as historic property through a municipal historic

designation.

(d) If a municipal historic preservation board reviews a building, the board shall submit a written report to the municipality indicating the results of the review conducted under this section before a public hearing is conducted under Section 214.001.

(e) If the municipal historic preservation board report determines that the building may not be rehabilitated and designated as historic property, the municipality may proceed as provided by Section 214.001.

(f) If the municipal historic preservation board report determines that the building may be rehabilitated and designated as historic property, the municipality may not permit the building to be demolished for at least 90 days after the date the report is submitted. During this 90-day period, the municipality shall notify the owner and attempt to identify a feasible alternative use for the building or locate an alternative purchaser to rehabilitate and maintain the building. If the municipality is not able to locate the owner or if the owner does not respond within the 90-day period, the municipality may appoint a receiver as provided by Section 214.003.

(g) The municipality may require the building to be demolished as provided by Section 214.001 after the expiration of the 90-day period if the municipality is not able to:

(1) identify a feasible alternative use for the building;

(2) locate an alternative purchaser to rehabilitate and maintain the building; or

(3) appoint a receiver for the building as provided by Section 214.003.

(h) An owner of a building described by Section 214.001(a) is not liable for penalties related to the building that accrue during the 90-day period provided for disposition of historic property under this section.

Added by Acts 1995, 74th Leg., ch. 158, Sec. 1, eff. Aug. 28, 1995.

Sec. 214.0012. JUDICIAL REVIEW. (a) Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an order of a municipality issued under Section 214.001 may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the

illegality. The petition must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the final decision of the municipality is personally delivered to them, mailed to them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such decision shall become final as to each of them upon the expiration of each such 30 calendar day period.

(b) On the filing of the petition, the court may issue a writ of certiorari directed to the municipality to review the order of the municipality and shall prescribe in the writ the time within which a return on the writ must be made, which must be longer than 10 days, and served on the relator or the relator's attorney.

(c) The municipality may not be required to return the original papers acted on by it, but it is sufficient for the municipality to return certified or sworn copies of the papers or of parts of the papers as may be called for by the writ.

(d) The return must concisely set forth other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(e) The issuance of the writ does not stay proceedings on the decision appealed from.

(f) Appeal in the district court shall be limited to a hearing under the substantial evidence rule. The court may reverse or affirm, in whole or in part, or may modify the decision brought up for review.

(g) Costs may not be allowed against the municipality.

(h) If the decision of the municipality is affirmed or not substantially reversed but only modified, the district court shall allow to the municipality all attorney's fees and other costs and expenses incurred by it and shall enter a judgment for those items, which may be entered against the property owners, lienholders, or mortgagees as well as all persons subject to the proceedings before the municipality.

(i) An appeal under this section for an action in which a municipality with a population of 500,000 or more is a party is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The district court shall render its final order or judgment with the least possible delay.

Added by Acts 1993, 73rd Leg., ch. 836, Sec. 11, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 413, Sec. 12, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 370 (S.B. 352), Sec. 4, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1273 (H.B. 36), Sec. 4, eff. June 14, 2019.

Sec. 214.0015. ADDITIONAL AUTHORITY REGARDING SUBSTANDARD BUILDING. (a) This section applies only to a municipality that has adopted an ordinance under Section 214.001.

(b) In addition to the authority granted to the municipality by Section 214.001, after the expiration of the time allotted under Section 214.001(d) or (e) for the repair, removal, or demolition of a building, the municipality may:

(1) repair the building at the expense of the municipality and assess the expenses on the land on which the building stands or to which it is attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the repair expenses; or

(2) assess a civil penalty against the property owner for failure to repair, remove, or demolish the building and provide for that assessment, the mode and manner of giving notice, and the means of recovering the assessment.

(c) The municipality may repair a building under Subsection (b) only to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with 10 or fewer dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum housing standards.

(d) The municipality shall impose a lien against the land on which the building stands or stood, unless it is a homestead as protected by the Texas Constitution, to secure the payment of the repair, removal, or demolition expenses or the civil penalty. Promptly after the imposition of the lien, the municipality must file for record, in recordable form in the office of the county clerk of the county in which the land is located, a written notice of the imposition of the lien. The notice must contain a legal description

of the land.

(e) Except as provided by Section 214.001, the municipality's lien to secure the payment of a civil penalty or the costs of repairs, removal, or demolition is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the municipality's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the real property is located before the date the civil penalty is assessed or the repair, removal, or demolition is begun by the municipality. The municipality's lien is superior to all other previously recorded judgment liens.

(f) Any civil penalty or other assessment imposed under this section accrues interest at the rate of 10 percent a year from the date of the assessment until paid in full.

(g) The municipality's right to the assessment lien may not be transferred to third parties.

(h) In any judicial proceeding regarding enforcement of municipal rights under this section, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.

(i) A lien acquired under this section by a municipality for repair expenses may not be foreclosed if the property on which the repairs were made is occupied as a residential homestead by a person 65 years of age or older.

(j) The municipality by order may assess and recover a civil penalty against a property owner at the time of an administrative hearing on violations of an ordinance, in an amount not to exceed $1,000 a day for each violation or, if the owner shows that the property is the owner's lawful homestead, in an amount not to exceed $10 a day for each violation, if the municipality proves:

(1) the property owner was notified of the requirements of the ordinance and the owner's need to comply with the requirements; and

(2) after notification, the property owner committed an act in violation of the ordinance or failed to take an action necessary for compliance with the ordinance.

(k) An assessment of a civil penalty under Subsection (j) is final and binding and constitutes prima facie evidence of the penalty in any suit brought by a municipality in a court of competent jurisdiction for a final judgment in accordance with the assessed penalty.

(l) To enforce a civil penalty under this subchapter, the clerk or secretary of the municipality must file with the district clerk of the county in which the municipality is located a certified copy of an order issued under Subsection (j) stating the amount and duration of the penalty. No other proof is required for a district court to enter a final judgment on the penalty.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 49(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 743, Sec. 2, 3, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 359, Sec. 2, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 12.105, eff. Sept. 1, 2001.

Sec. 214.002. REQUIRING REPAIR, REMOVAL, OR DEMOLITION OF BUILDING OR OTHER STRUCTURE. (a) If the governing body of a municipality finds that a building, bulkhead or other method of shoreline protection, fence, shed, awning, or other structure, or part of a structure, is likely to endanger persons or property, the governing body may:

(1) order the owner of the structure, the owner's agent, or the owner or occupant of the property on which the structure is located to repair, remove, or demolish the structure, or the part of the structure, within a specified time; or

(2) repair, remove, or demolish the structure, or the part of the structure, at the expense of the municipality, on behalf of the owner of the structure or the owner of the property on which the structure is located, and assess the repair, removal, or demolition expenses on the property on which the structure was located.

(b) The governing body shall provide by ordinance for:

(1) the assessment of repair, removal, or demolition expenses incurred under Subsection (a)(2);

(2) a method of giving notice of the assessment; and

(3) a method of recovering the expenses.

(c) The governing body may punish by a fine, confinement in jail, or both a person who does not comply with an order issued under Subsection (a)(1).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 743, Sec. 4, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 219, Sec. 1, eff. Aug. 30, 1993.

Sec. 214.003. RECEIVER. (a) A home-rule municipality may bring an action in district court against an owner of property that is not in substantial compliance with:

(1) the municipal ordinances regarding:

(A) fire protection;

(B) structural integrity;

(C) zoning; or

(D) disposal of refuse; or

(2) a municipal ordinance described by Section 54.012(1), (2), (5), (6), (7), or (9).

(b) Except as provided by Subsections (b-1) and (c), the court may appoint as a receiver for the property a nonprofit organization or an individual with a demonstrated record of rehabilitating properties if the court finds that:

(1) the structures on the property are in violation of the standards set forth in Section 214.001(b) and an ordinance described by Subsection (a);

(2) notice of violation was given to the record owner of the property; and

(3) a public hearing as required by Section 214.001(b) has been conducted.

(b-1) This subsection applies only to a municipality wholly or partly located in a county that is located along the international border and contains a municipality with a population of 500,000 or more. The court may appoint as a receiver under Subsection (b) an individual without a demonstrated record of rehabilitating properties if the municipality demonstrates that:

(1) no individual with a demonstrated record of rehabilitating properties is available; and

(2) the individual being appointed is competent and able to fulfill the duties of a receiver.

(c) A receiver appointed under Subsection (b) may act as a receiver for any property, including historic property subject to Section 214.00111.

(d) For the purposes of this section, if the record owner does not appear at the hearing required by Section 214.001(b), the hearing shall be conducted as if the owner had personally appeared.

(e) In the action, the record owners and any lienholders of record of the property shall be served with personal notice of the proceedings or, if not available after due diligence, may be served

by publication. Actual service or service by publication on the record owners or lienholders constitutes notice to all unrecorded owners or lienholders.

(f) The court may issue, on a showing of imminent risk of injury to any person occupying the property or a person in the community, any mandatory or prohibitory temporary restraining orders and temporary injunctions necessary to protect the public health and safety.

(g) A receiver appointed by the court may:

(1) take control of the property;

(2) collect rents due on the property;

(3) make or have made any repairs necessary to bring the property into compliance with:

(A) minimum standards in local ordinances; or

(B) guidelines for rehabilitating historic properties established by the secretary of the interior under 16 U.S.C.A. Section 470 et seq. or the municipal historic preservation board, if the property is considered historic property under Section 214.00111;

(4) make payments necessary for the maintenance or restoration of utilities to the properties;

(5) purchase materials necessary to accomplish repairs;

(6) renew existing rental contracts and leases;

(7) enter into new rental contracts and leases;

(8) affirm, renew, or enter into a new contract providing for insurance coverage on the property; and

(9) exercise all other authority that an owner of the property would have except for the authority to sell the property.

(h) On the completion of the restoration of the property to the minimum code standards of the municipality or guidelines for rehabilitating historic property, or before petitioning a court for termination of the receivership under Subsection (l):

(1) the receiver shall file with the court a full accounting of all costs and expenses incurred in the repairs, including reasonable costs for labor and supervision, all income received from the property, and, at the receiver's discretion, a receivership fee of 10 percent of those costs and expenses;

(2) if the income exceeds the total of the cost and expense of rehabilitation and any receivership fee, the rehabilitated property shall be restored to the owners and any net income shall be returned to the owners; and

(3) if the total of the costs and expenses and any receivership fee exceeds the income received during the receivership, the receiver may maintain control of the property until the time all rehabilitation and maintenance costs and any receivership fee are recovered, or until the receivership is terminated.

(h-1) A receiver shall have a lien on the property under receivership for all of the receiver's unreimbursed costs and expenses and any receivership fee.

(i) Any record lienholder may, after initiation of an action by a municipality:

(1) intervene in the action; and

(2) request appointment as a receiver:

(A) under the same conditions as the nonprofit organization or individual; and

(B) on a demonstration to the court of an ability and willingness to rehabilitate the property.

(j) For the purposes of this section, the interests and rights of an unrecorded lienholder or unrecorded property owner are, in all respects, inferior to the rights of a duly appointed receiver.

(k) The court may not appoint a receiver for any property that is an owner-occupied, single-family residence.

(l) A receiver appointed by a district court under this section, or the home-rule municipality that filed the action under which the receiver was appointed, may petition the court to terminate the receivership and order the sale of the property after the receiver has been in control of the property for more than one year, if an owner has been served with notice but has failed to assume control or repay all rehabilitation and maintenance costs and any receivership fee of the receiver.

(m) In the action, the record owners and any lienholders of record of the property shall be served with personal notice of the proceedings or, if not found after due diligence, may be served by publication. Actual service or service by publication on all record owners and lienholders of record constitutes notice to all unrecorded owners and lienholders.

(n) The court may order the sale of the property if the court finds that:

(1) notice was given to each record owner of the property and each lienholder of record;

(2) the receiver has been in control of the property for

more than one year and an owner has failed to repay all rehabilitation and maintenance costs and any receivership fee of the receiver; and

(3) no lienholder of record has intervened in the action and offered to repay the costs and any receivership fee of the receiver and assume control of the property.

(o) The court shall order the sale to be conducted by the petitioner in the same manner that a sale is conducted under Chapter 51, Property Code. If the record owners and lienholders are identified, notice of the date and time of the sale must be sent in the same manner as provided by Chapter 51, Property Code. If the owner cannot be located after due diligence, the owner may be served notice by publication. The receiver may bid on the property at the sale and may use a lien granted under Subsection (h-1) as credit toward the purchase. The petitioner shall make a report of the sale to the court.

(p) The court shall confirm the sale and order a distribution of the proceeds of the sale in the following order:

(1) court costs;

(2) costs and expenses of the receiver, and any lien held by the receiver; and

(3) other valid liens.

(q) Any remaining sums must be paid to the owner. If the owner is not identified or cannot be located, the court shall order the remaining sums to be deposited in an interest-bearing account with the district clerk's office in the district in which the action is pending, and the clerk shall hold the funds as provided by other law.

(r) After the proceeds are distributed, the court shall award fee title to the purchaser subject to any recorded bona fide liens that were not paid by the proceeds of the sale.

Added by Acts 1989, 71st Leg., ch. 389, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 49, Sec. 1, eff. April 29, 1991; Acts 1995, 74th Leg., ch. 158, Sec. 2, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 12.106, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 29, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 16.004, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1054 (S.B. 173), Sec. 2, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 69 (S.B. 254), Sec. 1, eff. May 20, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 142, eff. September 1, 2023.

Sec. 214.0031. ADDITIONAL AUTHORITY TO APPOINT RECEIVER FOR HAZARDOUS PROPERTIES. (a) In this section:

(1) "Eligible nonprofit housing organization" means a nonprofit housing organization that is certified by a home-rule municipality to bring an action under this section.

(2) "Multifamily residential property" means any residential dwelling complex consisting of four or more units.

(b) A home-rule municipality may annually certify one or more nonprofit housing organizations to bring an action under this section after making the following findings:

(1) the nonprofit housing organization has a record of community involvement; and

(2) the certification will further the home-rule municipality's goal to rehabilitate hazardous properties.

(c) A home-rule municipality or an eligible nonprofit housing organization may bring an action under this section in district court against an owner of property that is not in substantial compliance with one or more municipal ordinances regarding:

(1) the prevention of substantial risk of injury to any person; or

(2) the prevention of an adverse health impact to any person.

(d) A municipality that grants authority to an eligible nonprofit housing organization to initiate an action under this section has standing to intervene in the proceedings at any time as a matter of right.

(e) The court may appoint a receiver if the court finds that:

(1) the property is in violation of one or more ordinances of the municipality described by Subsection (c);

(2) the condition of the property constitutes a serious and imminent public health or safety hazard; and

(3) the property is not an owner-occupied, single-family

residence.

(f) The following are eligible to serve as court-appointed receivers:

(1) an entity with, as determined by the court, sufficient capacity and experience rehabilitating properties; and

(2) an individual with, as determined by the court, sufficient resources and experience rehabilitating properties.

(g) Notwithstanding Subsection (f), an entity is ineligible to serve as a receiver for a multifamily residential property if the nonprofit housing organization that brought the action under this section has an ownership interest or a right to income in the entity.

(h) The home-rule municipality or eligible nonprofit housing organization must send by certified mail notice of any ordinance violation alleged to exist on the property on or before the 30th day before the date an action is filed under this section to:

(1) the physical address of the property; and

(2) the address as indicated on the most recently approved municipal tax roll for the property owner or the property owner's agent.

(i) In an action under this section, each record owner and each lienholder of record of the property shall be served with notice of the proceedings or, if not available after due diligence, may be served by alternative means, including publication, as prescribed by the Texas Rules of Civil Procedure. Actual service or service by publication on a record owner or lienholder constitutes notice to each unrecorded owner or lienholder.

(j) On a showing of imminent risk of injury to a person occupying the property or present in the community, the court may issue a mandatory or prohibitory temporary restraining order or temporary injunction as necessary to protect the public health or safety.

(k) Unless inconsistent with this section or other law, the rules of equity govern all matters relating to a court action under this section.

(l) Subject to control of the court, a court-appointed receiver has all powers necessary and customary to the powers of a receiver under the laws of equity and may:

(1) take possession and control of the property;

(2) operate and manage the property;

(3) establish and collect rents and income on the property;

(4) lease the property;

(5) make any repairs and improvements necessary to bring the property into compliance with local codes and ordinances and state laws, including:

(A) performing and entering into contracts for the performance of work and the furnishing of materials for repairs and improvements; and

(B) entering into loan and grant agreements for repairs and improvements to the property;

(6) pay expenses, including paying for utilities and paying taxes and assessments, insurance premiums, and reasonable compensation to a property management agent;

(7) enter into contracts for operating and maintaining the property;

(8) exercise all other authority of an owner of the property other than the authority to sell the property unless authorized by the court under Subsection (n); and

(9) perform other acts regarding the property as authorized by the court.

(m) A court-appointed receiver may demolish a single-family structure on the property under this section on authorization by the court and only if the court finds:

(1) it is not economically feasible to bring the structure into compliance with local codes and ordinances and state laws; and

(2) the structure is:

(A) unfit for human habitation or is a hazard to the public health or safety;

(B) regardless of its structural condition:

(i) unoccupied by its owners or lessees or other invitees; and

(ii) unsecured from unauthorized entry to the extent that it could be entered or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; or

(C) boarded, fenced, or otherwise secured, but:

(i) the structure constitutes a danger to the public even though secured from entry; or

(ii) the means used to secure the structure are inadequate to prevent unauthorized entry or use of the structure in the manner described by Paragraph (B)(ii).

(n) On demolition of the structure, the court may authorize the receiver to sell the property to an individual or organization that will bring the property into productive use.

(o) On completing the repairs or demolishing the structure or before petitioning a court for termination of the receivership, the receiver shall file with the court a full accounting of all costs and expenses incurred in the repairs or demolition, including reasonable costs for labor and supervision, all income received from the property, and, at the receiver's discretion, a receivership fee of 10 percent of those costs and expenses. If the property was sold under Subsection (n) and the revenue exceeds the total of the costs and expenses incurred by the receiver plus any receivership fee, any net income shall be returned to the owner. If the property is not sold and the income produced exceeds the total of the costs and expenses incurred by the receiver plus any receivership fee, the rehabilitated property shall be restored to the owner and any net income shall be returned to the owner. If the total of the costs and expenses incurred by the receiver plus any receivership fee exceeds the income produced during the receivership, the receiver may maintain control of the property until all rehabilitation and maintenance costs plus any receivership fee are recovered or until the receivership is terminated.

(p) A receiver shall have a lien on the property for all of the receiver's unreimbursed costs and expenses, plus any receivership fee.

(q) Any lienholder of record may, after initiation of an action under this section:

(1) intervene in the action; and

(2) request appointment as a receiver under this section if the lienholder demonstrates to the court an ability and willingness to rehabilitate the property.

(r) A receiver appointed under this section or the home-rule municipality or eligible nonprofit housing organization that filed the action under which the receiver was appointed may petition the court to terminate the receivership and order the sale of the property if an owner has been served with notice but has failed to repay all of the receiver's outstanding costs and expenses plus any receivership fee on or before the 180th day after the date the notice was served.

(s) The court may order the sale of the property if the court

finds that:

(1) notice was given to each record owner of the property and each lienholder of record;

(2) the receiver has been in control of the property and the owner has failed to repay all the receiver's outstanding costs and expenses of rehabilitation plus any receivership fee within the period prescribed by Subsection (r); and

(3) no lienholder of record has intervened in the action and tendered the receiver's costs and expenses, plus any receivership fee, and assumed control of the property.

(t) The court may order the property sold:

(1) to a land bank or other party as the court may direct, excluding, for multifamily residential properties, an eligible nonprofit housing organization that initiated the action under this section; or

(2) at public auction.

(u) The receiver, if an entity not excluded under Subsection (t), may bid on the property at the sale described by Subsection (t)(2) and may use a lien granted under Subsection (p) as credit toward the purchase.

(v) The court shall confirm a sale under this section and order a distribution of the proceeds of the sale in the following order:

(1) court costs;

(2) costs and expenses, plus a receivership fee, and any lien held by the receiver; and

(3) other valid liens.

(w) Any remaining amount shall be paid to the owner. If the owner cannot be identified or located, the court shall order the remaining amount to be deposited in an interest-bearing account with the district clerk's office in the district court in which the action is pending. The district clerk shall hold the funds as provided by other law.

(x) After the proceeds are distributed, the court shall award fee title to the purchaser. If the proceeds of the sale are insufficient to pay all liens, claims, and encumbrances on the property, the court shall extinguish all unpaid liens, claims, and encumbrances on the property and award title to the purchaser free and clear.

(y) This section does not foreclose any right or remedy that may be available under Section 214.003, other state law, or the laws

of equity.

Added by Acts 2009, 81st Leg., R.S., Ch. 1414 (S.B. 1449), Sec. 1, eff. September 1, 2009.

Sec. 214.004. SEIZURE AND SALE OF PROPERTY TO RECOVER EXPENSES. A Type A general-law municipality or home-rule municipality may foreclose a lien on property under this subchapter:

(1) in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code; or

(2) in a judicial proceeding, if:

(A) a building or other structure on the property has been demolished;

(B) a lien for the cost of the demolition of the building or other structure on the property has been created and that cost has not been paid more than 180 days after the date the lien was filed; and

(C) ad valorem taxes are delinquent on all or part of the property.

Added by Acts 1995, 74th Leg., ch. 1017, Sec. 5, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 470, Sec. 1, eff. May 30, 1997.

Sec. 214.005. PROPERTY BID OFF TO MUNICIPALITY. A municipality may adopt an ordinance under Section 214.001(a) that applies to property that has been bid off to the municipality under Section 34.01(j), Tax Code.

Added by Acts 2001, 77th Leg., ch. 413, Sec. 11, eff. Sept. 1, 2001.

SUBCHAPTER B. PLUMBING AND SEWERS

Sec. 214.011. PLUMBING INSPECTOR. (a) If a municipality does not have a special charter that provides for an inspector of plumbing, the governing body of the municipality may appoint an inspector of plumbing for a term fixed by the governing body.

(b) The same individual may serve as plumbing inspector and municipal engineer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(k), eff. Aug. 28, 1989.

Sec. 214.012. SEWERS AND PLUMBING. A municipality that has underground sewers or cesspools shall regulate by ordinance:

(1) the tapping of the sewers and cesspools; and

(2) house draining and plumbing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 214.013. SEWER CONNECTIONS. (a) A municipality may:

(1) provide for a sanitary sewer system; and

(2) require property owners to connect to the sewer system.

(b) If an owner does not connect to the sewer system, the municipality may:

(1) fix a lien against the owner's property;

(2) charge the cost of the connection to the owner as a personal liability; and

(3) impose a penalty on the owner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 51, Sec. 1, eff. Aug. 30, 1993.

Sec. 214.014. DRAINS, SINKS, AND PRIVIES. (a) The governing body of a Type A general-law municipality may, by resolution or ordinance, order the owner of a private drain, sink, or privy to fill up, clean, drain, alter, relay, repair, or improve the drain, sink, or privy.

(b) If the order cannot be served on a person in the municipality, the municipality may have the work done on behalf of the owner. The municipality may fix a lien on the owner's property for expenses incurred in having the work done. The lien is created when the mayor of the municipality files and records a memorandum, under the seal of the municipality, with the clerk of the district court.

(c) The municipality may enforce the lien and may obtain in any court having jurisdiction a judgment against the owner for the amount of the expenses.

(d) The governing body may punish by a fine a person who does not comply with an order adopted under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 214.015. SEIZURE AND SALE OF PROPERTY TO RECOVER EXPENSES. A home-rule municipality or Type A general-law municipality may foreclose a lien on property under this subchapter in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Added by Acts 1995, 74th Leg., ch. 1017, Sec. 6, eff. Aug. 28, 1995.

SUBCHAPTER C. SWIMMING POOLS AND SPAS

Sec. 214.101. AUTHORITY REGARDING SWIMMING POOL ENCLOSURES. (a) A municipality may by ordinance establish minimum standards for swimming pool fences and enclosures and may adopt other ordinances as necessary to carry out this subchapter. A municipal ordinance containing standards for a pool yard enclosure as defined by Chapter 757, Health and Safety Code, as added by Section 2, Chapter 517, Acts of the 73rd Legislature, 1993, must contain the same standards for that enclosure as are required or permitted by that chapter of the Health and Safety Code.

(b) A municipality that adopts an ordinance under this subchapter may repair, replace, secure, or otherwise remedy an enclosure or fence that is damaged, deteriorated, substandard, dilapidated, or otherwise in a state that poses a hazard to the public health, safety, and welfare.

(c) A municipality may require the owner of the property on which the swimming pool or enclosure or fence is situated, after notice and hearing as provided in Sections 214.001(d) and (e), to repair, replace, secure, or otherwise remedy an enclosure or fence of a swimming pool that the municipality or an appropriate municipal official, agent, or employee determines violates the minimum standards adopted under this subchapter.

(d) If the enclosure or fence is on unoccupied property or is on property occupied only by persons who do not have a right of possession to the property, the municipality shall give notice to the owner, in accordance with the procedures set out in Sections

214.0011(c) and (d), of the municipality's action to repair, replace, secure, or otherwise remedy an enclosure or fence of a swimming pool.

(e) If a municipality incurs expenses under this subchapter, the municipality may assess the expenses on, and the municipality has a lien against, unless it is a homestead as protected by the Texas Constitution, the property on which the swimming pool or the enclosure or fence is situated. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the municipality for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded in the office of the county clerk in the county in which the property is situated. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the swimming pool or the enclosure or fence is situated, the amount of expenses incurred by the municipality, and the balance due. The lien is a privileged lien subordinate only to tax liens and all previously recorded bona fide mortgage liens attached to the real property to which the municipality's lien attaches.

(f) An ordinance adopted under this subchapter may provide for a penalty, not to exceed $1,000, for a violation of the ordinance. The ordinance may provide that each day a violation occurs constitutes a separate offense.

(g) A municipal official, agent, or employee, acting under the authority granted by this subchapter or any ordinance adopted under this subchapter, may enter any unoccupied premises at a reasonable time to inspect, investigate, or enforce the powers granted under this subchapter or any ordinance adopted pursuant to this subchapter. After providing a minimum of 24 hours notice to the occupant, a municipal official, agent, or employee, acting under the authority granted by this subchapter or any ordinance adopted under this subchapter, may enter any occupied premises to inspect, investigate, or enforce the powers granted under this subchapter or any ordinance adopted pursuant to this subchapter. A municipality and its officials, agents, or employees shall be immune from liability for any acts or omissions not knowingly done that are associated with actions taken in an effort to eliminate the dangerous conditions posed by an enclosure or fence that is damaged, deteriorated, substandard, dilapidated, or otherwise in a state that poses a hazard

to the public health, safety, and welfare and for any previous or subsequent conditions on the property.

(h) The authority granted by this subchapter is in addition to that granted by any other law.

Added by Acts 1993, 73rd Leg., ch. 517, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 577, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 12.107, eff. Sept. 1, 2001.

Sec. 214.102. SEIZURE AND SALE OF PROPERTY TO RECOVER EXPENSES. A municipality may foreclose a lien on property under this subchapter in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Added by Acts 1995, 74th Leg., ch. 1017, Sec. 7, eff. Aug. 28, 1995.

Sec. 214.103. INTERNATIONAL SWIMMING POOL AND SPA CODE. (a) In this section, "International Swimming Pool and Spa Code" means the International Swimming Pool and Spa Code promulgated by the International Code Council.

(b) To protect the public health, safety, and welfare, the International Swimming Pool and Spa Code, as it existed on May 1, 2019, is adopted as the municipal swimming pool and spa code in this state. A municipality may adopt a more recent version of the International Swimming Pool and Spa Code to apply in the municipality.

(b-1) To the extent a provision of a code adopted by a municipality under Subsection (b) conflicts with a law of this state or a regulation on pool operation and management, water quality, safety standards unrelated to design and construction, signage, or enclosures, the law or regulation controls.

(c) The International Swimming Pool and Spa Code applies to all construction, alteration, remodeling, enlargement, and repair of swimming pools and spas in a municipality that elects to regulate pools or spas, including under Section 214.101.

(d) A municipality may establish procedures for:

(1) the adoption of local amendments to the International Swimming Pool and Spa Code; and

(2) the administration and enforcement of the International

Swimming Pool and Spa Code.

(e) A municipality may review and adopt amendments made by the International Code Council to the International Swimming Pool and Spa Code after May 1, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 1145 (H.B. 2858), Sec. 2, eff. September 1, 2020.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 1013 (H.B. 2205), Sec. 2, eff. September 1, 2021.

SUBCHAPTER D. BUILDING LINES

Sec. 214.131. DEFINITIONS. In this subchapter:

(1) "Street" means a public highway, boulevard, parkway, square, or street, or a part or side of any of these.

(2) "Structure" means a building or other structure, or a part of a building or other structure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 213.001 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(4), eff. Sept. 1, 2001.

Sec. 214.132. BUILDING LINES AUTHORIZED. The governing body of a municipality may, by resolution or ordinance, establish a building line on a street in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 213.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(4), eff. Sept. 1, 2001.

Sec. 214.133. ACTIVITY PROHIBITED WITHIN BUILDING LINE. In the area between a street and a building line established under this subchapter for the street, the erection, re-erection, reconstruction, or substantial repair of a structure is prohibited.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 213.003 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(4), eff. Sept. 1, 2001.

Sec. 214.134. RESOLUTION OR ORDINANCE. (a) In adopting a resolution or ordinance that establishes a building line, a municipality must follow the same procedure that it is authorized by law to use to acquire land for the opening of streets.

(b) The resolution or ordinance must:

(1) describe the street affected and the location of the building line; and

(2) provide a period, not to exceed 25 years after the date on which the line is established, during which structures extending into the area between the street and the building line must be brought into conformance with the line.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 213.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(4), eff. Sept. 1, 2001.

Sec. 214.135. CONDEMNATION OF EASEMENTS AND INTERESTS; ASSESSMENTS. (a) A municipality must follow the same procedure that it is authorized by law to use to open streets when the municipality:

(1) institutes and conducts a condemnation proceeding to condemn an easement or interest necessary to establish a building line; or

(2) imposes and collects an assessment based on the benefits arising out of the establishment of a building line against the property owner and property abutting or in the vicinity of the building line.

(b) If, in the condemnation of a tract, the ownership of the tract or the interests in the tract are in controversy or unknown, an award for the tract may be made in bulk and paid into court for the use of the parties owning or interested in the tract as their ownership or interest appears.

(c) When the award and findings of the special commissioners, who are appointed under Chapter 21, Property Code, are filed with the court having jurisdiction over the condemnation proceedings, the award and findings are final and shall be made the judgment of the court. Compensation is due and payable on rendition of the judgment by the court adopting the award.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 213.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(4), eff. Sept. 1, 2001.

Sec. 214.136. CONDEMNATION OF PROPERTY. (a) Before or after expiration of the period for conformance set under Section 214.134(b)(2), a municipality, following the same procedure that it is authorized by law to use to institute condemnation proceedings, may:

(1) remove a structure and condemn property in the area between a street and a building line; and

(2) impose an assessment against property owners and property that is benefitted by the establishment of the building line to the extent of the benefit.

(b) The municipality must provide notice and a hearing to the owner of affected property for the determination of:

(1) additional damages sustained by the removal of a structure or the taking of land in the area between a street and a building line; or

(2) the assessment to be imposed against a property owner and the property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 213.006 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(4), eff. Sept. 1, 2001.

SUBCHAPTER E. COMMERCIAL BUILDING PERMITS IN CERTAIN POPULOUS MUNICIPALITIES

Sec. 214.161. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a municipality with a population of more than 1.18 million located primarily in a county with a population of 2.5 million or more.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 94, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 74, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 79, eff.

September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 143, eff. September 1, 2023.

Sec. 214.162. DEFINITIONS. In this subchapter:

(1) "Commercial building" means a building that is not a single family residence.

(2) "Permit department" means the municipal agency that is authorized to issue commercial building permits.

(3) "Subdivider" means a person who divides a tract of real property under circumstances to which Subchapter A, Chapter 212 applies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 230.012 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.

Sec. 214.163. PERMIT APPLICATION REQUIREMENTS; ISSUANCE OF PERMIT. (a) A person who desires to obtain a commercial building permit must file with the permit application a certified copy of any instrument that contains a restriction on the use of or on construction on the affected property and must also include a certified copy of any amendment, judgment, or other document that affects the use of the property.

(b) The permit department shall issue a permit for construction or repair that conforms to all restrictions relating to the use of the property described in the application if the applicant for the permit has complied with this subchapter and with local ordinances relating to commercial building permits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 230.013 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.

Sec. 214.164. FILING OF PLAT AND RESTRICTIONS; EFFECT ON PERMIT. (a) At the time that a subdivider files a plat of a proposed subdivision for recording, the subdivider shall file with the permit department two copies of the subdivision plat and of any

restrictions relating to the property included in the plat.

(b) The permit department shall securely keep one copy of the plat and restrictions as a permanent record.

(c) A person who desires to obtain a commercial building permit for property that is included in a plat or restrictions on file with the permit department is not required to file a copy of the plat and the restrictions with the permit application.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 230.014 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.

Sec. 214.165. REPAIRS; CONVERSIONS. (a) A person who proposes to substantially repair or remodel a commercial building located within a subdivision or to convert a single family residence into a commercial building must obtain a commercial building permit from the permit department.

(b) This section does not apply to a violation of a restrictive covenant that occurred before May 18, 1965, if the violation retains the status existing on that date.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 230.015 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.

Sec. 214.166. INJUNCTION. (a) A person who, without obtaining a permit, attempts to construct or repair any structure for which a commercial building permit is required may be enjoined from any further construction activity until the person complies with this subchapter.

(b) The municipality may join with an interested property owner in a suit to enjoin further construction activity by a person who does not have a permit issued in compliance with this subchapter if the structure or proposed structure violates a restriction contained in the deed or other instrument.

(c) A municipality may join with an interested property owner in a suit to enjoin the maintenance of a commercial building by a person who does not have a permit in compliance with this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 230.016 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.

Sec. 214.167. REVIEW OF REFUSAL TO ISSUE PERMIT. (a) An administrative refusal to issue a commercial building permit based on a violation of restrictions contained in a deed or other instrument is reviewable by a court of competent jurisdiction if, during the 90-day period after the day on which the permit is refused, the person contesting the refusal gives notice to the permit department that the suit has been filed.

(b) If conditions in a subdivision change or if other legally sufficient reasons to modify the restrictions occur, a person who has been refused a commercial building permit may petition a court of competent jurisdiction to alter the restrictions to better conform to present conditions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 230.017 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.

Sec. 214.168. VOID PERMITS. A commercial permit obtained without full compliance with this subchapter is void.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 230.018 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(5), eff. Sept. 1, 2001.

SUBCHAPTER F. BURGLAR ALARM SYSTEMS IN CERTAIN MUNICIPALITIES WHOLLY LOCATED IN CERTAIN COUNTIES

Sec. 214.191. DEFINITIONS. In this subchapter:

(1) "Alarm system" means a device or system that transmits a signal intended to summon police of a municipality in response to a burglary. The term includes an alarm that emits an audible signal on the exterior of a structure. The term does not include an alarm installed on a vehicle, unless the vehicle is used for a habitation at a permanent site, or an alarm designed to alert only the inhabitants within the premises.

(2) "Permit" means a certificate, license, permit, or other form of permission that authorizes a person to engage in an action.

Added by Acts 1991, 72nd Leg., ch. 550, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 218.001 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept. 1, 2001.

Sec. 214.1915. APPLICABILITY. This subchapter applies only to a municipality with a population of less than 100,000 that is located wholly in a county with a population of less than 500,000.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 2, eff. September 1, 2015.

Sec. 214.192. CATEGORIES OF ALARM SYSTEMS. The category of alarm system to be regulated is burglary.

Added by Acts 1991, 72nd Leg., ch. 550, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 218.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept. 1, 2001.

Sec. 214.193. DURATION OF MUNICIPAL PERMIT. (a) If a municipality adopts an ordinance that requires a person to obtain a permit from the municipality before a person may use an alarm system in the municipality, the ordinance must provide that the permit is valid for at least one year.

(b) This requirement does not affect the authority of the municipality to:

(1) revoke, suspend, or otherwise affect the duration of a permit for disciplinary reasons at any time during the period for which the permit is issued; or

(2) make a permit valid for a period of less than one year if necessary to conform the permit to the termination schedule established by the municipality for permits.

Added by Acts 1991, 72nd Leg., ch. 550, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 218.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept 1, 2001.

Sec. 214.194. MUNICIPAL PERMIT FEE GENERALLY. (a) If a municipality adopts an ordinance that requires a person to pay an annual fee to obtain a permit from the municipality before the person may use an alarm system in the municipality, the fee shall be used for the general administration of this subchapter, including the provision of responses generally required to implement this subchapter other than specific responses to false alarms.

(b) A municipal permit fee imposed under this section may not exceed the rate of $50 a year for a residential location.

Added by Acts 1991, 72nd Leg., ch. 550, Sec. 1, eff. Sept. 1, 1991.
Renumbered from Sec. 218.004 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 1, eff. September 1, 2005.

Sec. 214.195. NONRENEWAL OR REVOCATION OF PERMIT AND TERMINATION OF MUNICIPAL RESPONSE; DISCRIMINATION PROHIBITED. (a) Except as provided in Subsection (d), a municipality may not terminate its law enforcement response to a residential permit holder because of excess false alarms if the false alarm fees are paid in full.

(b) In permitting free false alarm responses and in setting false alarm fees, a municipality must administer any ordinance on a fair and equitable basis as determined by the governing body.

(c) A municipality may not terminate an alarm permit for nonrenewal without providing at least 30 days' notice.

(d) A municipality may revoke or refuse to renew the permit of an alarm system that has had eight or more false alarms during the preceding 12-month period.

Added by Acts 1991, 72nd Leg., ch. 550, Sec. 1, eff. Sept. 1, 1991.
Renumbered from Sec. 218.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 3, eff. September 1, 2005.

Sec. 214.1955. MULTIUNIT HOUSING FACILITIES. (a) A municipality may not refuse to issue an alarm system permit for a residential location solely because the residential location is an individual residential unit located in a multiunit housing facility.

(b) In issuing an alarm system permit for an alarm installed in an individual residential unit of a multiunit housing facility, the municipality shall issue the permit to the person occupying the individual residential unit.

(c) A municipality may impose a penalty under Section 214.197 for the signaling of a false alarm on the premises of a multiunit housing facility for a facility other than an individual residential unit only if the permit holder is notified of:

(1) the date of the signaling of the false alarm;

(2) the address of the multiunit housing facility where the signaling of the false alarm occurred; and

(3) the identification of the individual facility, if applicable, located on the multiunit housing facility premises where the signaling of the false alarm occurred.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 4, eff. September 1, 2005.

Sec. 214.196. ON-SITE INSPECTION REQUIRED. A municipality may not consider a false alarm to have occurred unless a response is made by an agency of the municipality within 30 minutes of the alarm notification and the agency determines from an inspection of the interior or exterior of the premises that the alarm was false.

Added by Acts 1991, 72nd Leg., ch. 550, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 218.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept. 1, 2001.

Sec. 214.197. PENALTIES FOR FALSE ALARMS. A municipality may impose a penalty for the signaling of a false alarm by a burglar alarm system if at least three other false alarms have occurred

during the preceding 12-month period. The amount of the penalty for the signaling of a false alarm as described by Section 214.196 may not exceed:

(1) $50, if the location has had more than three but fewer than six other false alarms in the preceding 12-month period;

(2) $75, if the location has had more than five but fewer than eight other false alarms in the preceding 12-month period; or

(3) $100, if the location has had eight or more other false alarms in the preceding 12-month period.

Added by Acts 1991, 72nd Leg., ch. 550, Sec. 1, eff. Sept. 1, 1991.
Renumbered from Sec. 218.007 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 5, eff. September 1, 2005.

Sec. 214.198. VERIFICATION. A municipality may require an alarm systems monitor to attempt to contact the occupant of the alarm system location twice before the municipality responds to the alarm signal.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 6, eff. September 1, 2005.

Sec. 214.199. EXCEPTION OF MUNICIPALITY FROM ALARM SYSTEM RESPONSE. (a) The governing body of a municipality may not adopt an ordinance providing that law enforcement personnel of the municipality will not respond to any alarm signal indicated by an alarm system in the municipality unless, before adopting the ordinance, the governing body of the municipality:

(1) makes reasonable efforts to notify permit holders of its intention to adopt the ordinance; and

(2) conducts a public hearing at which persons interested in the response of the municipality to alarm systems are given the opportunity to be heard.

(b) A municipality that adopts an ordinance under this section may not impose or collect any fine, fee, or penalty otherwise authorized by this subchapter.

(c) A municipality that adopts or proposes to adopt an ordinance under this section may notify permit holders that a permit holder may contract with a security services provider licensed by the Texas Private Security Board under Chapter 1702, Occupations Code, to respond to an alarm. The notice, if given, must include the board's telephone number and Internet website address.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 6, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 232 (H.B. 1784), Sec. 1, eff. September 1, 2007.

Sec. 214.200. PRIORITY OR LEVEL OF RESPONSE NOT AFFECTED; LIABILITY OF MUNICIPALITY FOR NONRESPONSE. (a) Nothing in this subchapter:

(1) affects the priority or level of response provided by a municipality to a permitted location; or

(2) waives the governmental immunity provided by law for a municipality.

(b) A municipality that does not respond to an alarm signal is not liable for damages that may occur relating to the cause of the alarm signal.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 6, eff. September 1, 2005.

SUBCHAPTER F-1. BURGLAR ALARM SYSTEMS IN LARGE MUNICIPALITIES AND MUNICIPALITIES WHOLLY OR PARTLY LOCATED IN LARGE COUNTIES

Sec. 214.201. DEFINITIONS. In this subchapter:

(1) "Alarm system" and "permit" have the meanings assigned by Section 214.191.

(2) "Alarm systems monitor" means a person who acts as an alarm systems company under Section 1702.105, Occupations Code.

(3) "False alarm" means a notification of possible criminal activity reported to law enforcement:

(A) that is based solely on electronic information remotely received by an alarm systems monitor;

(B) that is uncorroborated by eyewitness, video, or

photographic evidence that an emergency exists; and

(C) concerning which an agency of the municipality has verified that no emergency exists after an on-site inspection of the location from which the notification originated.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.2015. APPLICABILITY. This subchapter does not apply to a municipality to which Subchapter F applies.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.202. CATEGORIES OF ALARM SYSTEMS. The category of alarm system to be regulated is burglary.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.203. DURATION OF MUNICIPAL PERMIT. (a) If a municipality adopts an ordinance that requires a person to obtain a permit from the municipality before a person may use an alarm system in the municipality, the ordinance must provide that the permit is valid for at least one year.

(b) This requirement does not affect the authority of the municipality to:

(1) revoke, suspend, or otherwise affect the duration of a permit for disciplinary reasons at any time during the period for which the permit is issued; or

(2) make a permit valid for a period of less than one year if necessary to conform the permit to the termination schedule established by the municipality for permits.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.204. MUNICIPAL PERMIT FEE GENERALLY. (a) If a municipality adopts an ordinance that requires a person to pay an annual fee to obtain a permit from the municipality before the person may use an alarm system in the municipality, the fee shall be used for the general administration of this subchapter, including the provision of responses generally required to implement this subchapter other than specific responses to false alarms.

(b) A municipal permit fee imposed under this section for an alarm system may not exceed the rate of:

(1) $50 a year for a residential location; and

(2) $250 a year for other alarm system locations.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.205. NONRENEWAL OR REVOCATION OF PERMIT; TERMINATION OF MUNICIPAL RESPONSE; DISCRIMINATION PROHIBITED. (a) Except as provided by Subsection (d), a municipality may not terminate its law enforcement response to a residential permit holder because of excess false alarms if the false alarm fees are paid in full.

(b) In permitting free false alarm responses and in setting false alarm fees, a municipality must administer any ordinance on a fair and equitable basis as determined by the governing body.

(c) A municipality may not terminate an alarm permit for nonrenewal without providing at least 30 days' notice.

(d) A municipality may revoke or refuse to renew the permit of an alarm system that has had eight or more false alarms during the preceding 12-month period.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.2055. MULTIUNIT HOUSING FACILITIES. (a) A municipality may not refuse to issue an alarm system permit for a residential location solely because the residential location is an individual residential unit located in a multiunit housing facility.

(b) In issuing an alarm system permit for an alarm installed in an individual residential unit of a multiunit housing facility, the municipality shall issue the permit to the person occupying the

individual residential unit.

(c) A municipality may impose a penalty under Section 214.207 for the signaling of a false alarm on the premises of a multiunit housing facility for a facility other than an individual residential unit only if the permit holder is notified of:

(1) the date of the signaling of the false alarm;

(2) the address of the multiunit housing facility where the signaling of the false alarm occurred; and

(3) the identification of the individual facility, if applicable, located on the multiunit housing facility premises where the signaling of the false alarm occurred.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.206. ON-SITE INSPECTION REQUIRED. A municipality may not consider a false alarm to have occurred unless a response is made by an agency of the municipality within a reasonable time and the agency determines from an inspection of the interior or exterior of the premises that the alarm report by an alarm systems monitor was false.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.207. PENALTIES FOR FALSE ALARMS. (a) A municipality may impose a penalty on a person who uses an alarm system in the municipality for the report of a false alarm by an alarm systems monitor if at least three other false alarms have occurred at that location during the preceding 12-month period. The amount of the penalty for the report of a false alarm as described by Section 214.206 may not exceed:

(1) $50, if the location has had more than three but fewer than six other false alarms in the preceding 12-month period;

(2) $75, if the location has had more than five but fewer than eight other false alarms in the preceding 12-month period; or

(3) $100, if the location has had eight or more other false alarms in the preceding 12-month period.

(b) A municipality may not impose a penalty authorized under

Subsection (a) if reasonable visual proof of possible criminal activity recorded by an alarm systems monitor is provided to the municipality before the inspection of the premises by an agency of the municipality.

(c) A municipality that adopts an ordinance requiring a person to obtain a permit from the municipality before the person may use an alarm system in the municipality may impose a penalty, not to exceed $250, for the report of a false alarm by an alarm systems monitor on a person who has not obtained a permit for the alarm system as required by the municipal ordinance.

(d) A municipality:

(1) may impose a penalty, not to exceed $250, for the report of a false alarm on a person not licensed under Chapter 1702, Occupations Code, that to any extent is reported or facilitated by the unlicensed person; and

(2) may not impose a penalty for the report of a false alarm on a person licensed under Chapter 1702, Occupations Code.

(e) A municipality may not impose or collect any fine, fee, or penalty, other than collection fees, related to a false alarm or alarm system unless the fine, fee, or penalty is defined in the ordinance in accordance with this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.208. PROCEDURES FOR REDUCING FALSE ALARMS. A municipality may require an alarm systems monitor to attempt to contact the occupant of the alarm system location twice before the municipality responds to the alarm signal.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.209. EXCEPTION OF MUNICIPALITY FROM ALARM SYSTEM RESPONSE. (a) The governing body of a municipality may not adopt an ordinance providing that law enforcement personnel of the municipality will not respond to any alarm signal indicated by an alarm system in the municipality unless, before adopting the ordinance, the governing body of the municipality:

(1) makes reasonable efforts to notify permit holders of its intention to adopt the ordinance; and

(2) conducts a public hearing at which persons interested in the response of the municipality to alarm systems are given the opportunity to be heard.

(b) A municipality that adopts an ordinance under this section may not impose or collect any fine, fee, or penalty otherwise authorized by this subchapter.

(c) A municipality that adopts or proposes to adopt an ordinance under this section may notify permit holders that a permit holder may contract with a security services provider licensed by the Texas Private Security Board under Chapter 1702, Occupations Code, to respond to an alarm. The notice, if given, must include the board's telephone number and Internet website address.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.210. PRIORITY OR LEVEL OF RESPONSE NOT AFFECTED; LIABILITY OF MUNICIPALITY FOR NONRESPONSE. (a) Nothing in this subchapter:

(1) affects the priority or level of response provided by a municipality to a permitted location; or

(2) waives the governmental immunity provided by law for a municipality.

(b) A municipality that does not respond to an alarm system signal is not liable for damages that may occur relating to the cause of the alarm system signal.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

Sec. 214.2105. EXCLUSION OF CERTAIN ALARM SYSTEMS BY OWNER. (a) A property owner or an agent of the property owner authorized to make decisions regarding the use of the property may elect to exclude the municipality from receiving an alarm signal by an alarm system located on the owner's property. A municipality may adopt an ordinance that specifies the requirements a property owner must satisfy for an election to be made under this section.

(b) If an election is made under Subsection (a), the municipality:

(1) may not impose a fee to obtain a permit to use the alarm system;

(2) may impose a fee on the property owner, not to exceed $250, for each law enforcement response to a signal from the alarm system requested by an alarm systems monitor; and

(3) may not impose or collect any other fine, penalty, or fee, other than a collection fee, related to the alarm system.

Added by Acts 2015, 84th Leg., R.S., Ch. 930 (H.B. 2162), Sec. 3, eff. September 1, 2015.

SUBCHAPTER G. BUILDING AND REHABILITATION CODES

Sec. 214.211. DEFINITIONS. In this subchapter:

(1) "International Residential Code" means the International Residential Code for One- and Two-Family Dwellings promulgated by the International Code Council.

(2) "National Electrical Code" means the electrical code published by the National Fire Protection Association.

(3) "Residential" means having the character of a detached one-family or two-family dwelling or a multiple single-family dwelling that is not more than three stories high with separate means of egress, including the accessory structures of the dwelling, and that does not have the character of a facility used for the accommodation of transient guests or a structure in which medical, rehabilitative, or assisted living services are provided in connection with the occupancy of the structure.

(4) "International Building Code" means the International Building Code promulgated by the International Code Council.

(5) "Commercial" means a building for the use or occupation of people for:

(A) a public purpose or economic gain; or

(B) a residence if the building is a multifamily residence that is not defined as residential by this section.

Added by Acts 2001, 77th Leg., ch. 120, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 389 (S.B. 1458), Sec. 1, eff. January 1, 2006.

Sec. 214.212. INTERNATIONAL RESIDENTIAL CODE. (a) To protect the public health, safety, and welfare, the International Residential Code, as it existed on May 1, 2012, is adopted as a municipal residential building code in this state.

(b) The International Residential Code applies to all construction, alteration, remodeling, enlargement, and repair of residential structures in a municipality.

(c) Subject to Subsection (e), a municipality may establish procedures:

(1) to adopt local amendments to the International Residential Code that may add, modify, or remove requirements set by the code; and

(2) for the administration and enforcement of the International Residential Code.

(d) A municipality may review and consider amendments made by the International Code Council to the International Residential Code after May 1, 2012.

(e) A municipality may not adopt a local amendment under Subsection (c) unless the municipality:

(1) holds a public hearing on the local amendment before adopting the local amendment; and

(2) adopts the local amendment by ordinance.

Added by Acts 2001, 77th Leg., ch. 120, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 315 (H.B. 738), Sec. 1, eff. January 1, 2022.

Sec. 214.213. EXCEPTIONS. (a) The International Residential Code and the International Building Code do not apply to the installation and maintenance of electrical wiring and related components.

(b) A municipality is not required to review and consider adoption of amendments to the International Residential Code or the International Building Code regarding electrical provisions.

Added by Acts 2001, 77th Leg., ch. 120, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 389 (S.B. 1458), Sec. 2, eff. January 1, 2006.

Sec. 214.214. NATIONAL ELECTRICAL CODE. (a) Except as provided by Subsection (c), the National Electrical Code, as it existed on May 1, 2001, is adopted as the municipal electrical construction code in this state and applies to all residential and commercial electrical construction applications.

(b) A municipality may establish procedures:

(1) to adopt local amendments to the National Electrical Code; and

(2) for the administration and enforcement of the National Electrical Code.

(c) The National Electrical Code applies to all commercial buildings in a municipality for which construction begins on or after January 1, 2006, and to any alteration, remodeling, enlargement, or repair of those commercial buildings.

Added by Acts 2001, 77th Leg., ch. 120, Sec. 1, eff. Jan. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 389 (S.B. 1458), Sec. 3, eff. January 1, 2006.

Sec. 214.215. ADOPTION OF REHABILITATION CODES OR PROVISIONS. (a) In this section, "rehabilitation" means the alteration, remodeling, enlargement, or repair of an existing structure.

(b) A municipality that adopts a building code, other than the International Residential Code adopted under Section 214.212, shall adopt one of the following:

(1) prescriptive provisions for rehabilitation as part of the municipality's building code; or

(2) the rehabilitation code that accompanies the building code adopted by the municipality.

(c) The rehabilitation code or prescriptive provisions do not apply to the rehabilitation of a structure to which the International Residential Code applies or to the construction of a new structure.

(d) A municipality may:

(1) adopt the rehabilitation code or prescriptive

provisions for rehabilitation recommended by the Texas Board of Architectural Examiners; or

(2) amend its rehabilitation code or prescriptive provisions for rehabilitation.

(e) A municipality shall enforce the prescriptive provisions for rehabilitation or the rehabilitation code in a manner consistent with the enforcement of the municipality's building code.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 6.02, eff. Sept. 1, 2003.

Sec. 214.216. INTERNATIONAL BUILDING CODE. (a) To protect the public health, safety, and welfare, the International Building Code, as it existed on May 1, 2012, is adopted as a municipal commercial building code in this state.

(b) The International Building Code applies to all commercial buildings in a municipality and to any alteration, remodeling, enlargement, or repair of those commercial buildings.

(c) Subject to Subsection (f), a municipality may establish procedures:

(1) to adopt local amendments to the International Building Code that may add, modify, or remove requirements set by the code; and

(2) for the administration and enforcement of the International Building Code.

(d) A municipality may review and consider amendments made by the International Code Council to the International Building Code after May 1, 2012.

(e) A municipality that has adopted a more stringent commercial building code than a commercial building code required by this section is not required to repeal that code and may adopt future editions of that code.

(f) A municipality may not adopt a local amendment under Subsection (c) unless the municipality:

(1) holds a public hearing on the local amendment before adopting the local amendment; and

(2) adopts the local amendment by ordinance.

Added by Acts 2005, 79th Leg., Ch. 389 (S.B. 1458), Sec. 4, eff. January 1, 2006.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 315 (H.B. 738), Sec. 2, eff. January 1, 2022.

Sec. 214.217. NOTICE REGARDING MODEL CODE ADOPTION OR AMENDMENT IN CERTAIN MUNICIPALITIES. (a) In this section, "national model code" means a publication that is developed, promulgated, and periodically updated at a national level by organizations consisting of industry and government fire and building safety officials through a legislative or consensus process and that is intended for consideration by units of government as local law. National model codes include the International Residential Code, the National Electrical Code, and the International Building Code.

(b) This section applies only to a municipality with a population of more than 100,000.

(c) On or before the 21st day before the date the governing body of a municipality takes action to consider, review, and recommend the adoption of or amendment to a national model code governing the construction, renovation, use, or maintenance of buildings and building systems in the municipality, the governing body shall publish notice of the proposed action conspicuously on the municipality's Internet website.

(d) The governing body of the municipality shall make a reasonable effort to encourage public comment from persons affected by the proposed adoption of or amendment to a national model code under this section.

(e) On the written request from five or more persons or if required by Section 214.212(e) or 214.216(f), the governing body of the municipality shall hold a public hearing open to public comment on the proposed adoption of or amendment to a national model code under this section. The hearing must be held on or before the 14th day before the date the governing body adopts the ordinance that adopts or amends a national model code under this section.

(f) If the governing body of a municipality has established an advisory board or substantially similar entity for the purpose of obtaining public comment on the proposed adoption of or amendment to a national model code, this section does not apply.

Added by Acts 2009, 81st Leg., R.S., Ch. 130 (S.B. 820), Sec. 1, eff.

May 23, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 315 (H.B. 738), Sec. 3, eff. January 1, 2022.

Sec. 214.218. IMMEDIATE EFFECT OF CERTAIN CODES OR PROVISIONS DELAYED. (a) In this section, "national model code" has the meaning assigned by Section 214.217.

(b) Except as provided by Subsection (c), the governing body of a municipality with a population of more than 100,000 that adopts an ordinance or national model code provision that is intended to govern the construction, renovation, use, or maintenance of buildings and building systems in the municipality shall delay implementing and enforcing the ordinance or code provision for at least 30 days after final adoption to permit persons affected to comply with the ordinance or code provision.

(c) If a delay in implementing or enforcing the ordinance or code provision would cause imminent harm to the health or safety of the public, the municipality may enforce the ordinance or code provision immediately on the effective date of the ordinance or code provision.

Added by Acts 2009, 81st Leg., R.S., Ch. 130 (S.B. 820), Sec. 1, eff. May 23, 2009.

Sec. 214.219. MINIMUM HABITABILITY STANDARDS FOR MULTI-FAMILY RENTAL BUILDINGS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 1.7 million or more. This section does not affect the authority of a municipality to which this section does not apply to enact or enforce laws relating to multi-family rental buildings.

(b) In this section:

(1) "Multi-family rental building" means a building that has three or more single-family residential units.

(2) "Unit" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(c) A municipality shall adopt an ordinance to establish minimum habitability standards for multi-family rental buildings,

including requiring maintenance of proper operating conditions.

(d) A municipality may establish other standards as necessary to reduce material risks to the physical health or safety of tenants of multi-family rental buildings.

(e) A municipality shall establish a program for the inspection of multi-family rental buildings to determine if the buildings meet the minimum required habitability standards. The program shall include inspections under the direction of:

(1) the municipality's building official, as defined by the International Building Code or by a local amendment to the code under Section 214.216;

(2) the chief executive of the municipality's fire department; and

(3) the municipality's health authority, as defined by Section 121.021, Health and Safety Code.

(f) A municipality may not order the closure of a multi-family rental building due to a violation of an ordinance adopted by the municipality relating to habitability unless the municipality makes a good faith effort to locate housing with comparable rental rates in the same school district for the residents displaced by the closure.

(g) The owner of a multi-family rental building commits an offense if the owner violates an ordinance adopted under this section. An offense under this subsection is a Class C misdemeanor. Each day the violation continues constitutes a separate offense.

(h) A municipality may impose a civil penalty under Section 54.017 for a violation of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1127 (H.B. 1819), Sec. 1, eff. June 19, 2009.

Sec. 214.220. INSPECTION DURING DECLARED DISASTER. (a) In an area of a municipality that is subject to a declaration of disaster by the governor under Chapter 418, Government Code, or a declaration of local disaster under that chapter, a building inspection for compliance with this subchapter or related municipal regulations may, while the declaration is in effect, be performed by a person:

(1) other than:

(A) the owner of the building; or

(B) a person whose work is the subject of the

inspection; and

(2) who is:

(A) certified to inspect buildings by the International Code Council;

(B) employed as a building inspector by the municipality in which the building is located;

(C) employed as a building inspector by any political subdivision, if the municipality in which the building is located has approved the person to perform inspections during a disaster; or

(D) an engineer licensed under Chapter 1001, Occupations Code.

(b) A municipality may not collect an additional inspection fee related to the inspection of a building performed under Subsection (a).

(c) A person who performs an inspection under this section must:

(1) comply with the municipality's building inspection regulations and policies; and

(2) not later than the 30th day after the date of the inspection, provide notice to the municipality of the inspection.

(d) The municipality may prescribe a reasonable format for the notice provided under Subsection (c)(2).

Added by Acts 2021, 87th Leg., R.S., Ch. 427 (S.B. 877), Sec. 1, eff. June 8, 2021.

Sec. 214.221. REGULATION OF SOLAR PERGOLAS. A municipality may not apply a municipal building code to the construction of a solar pergola.

Added by Acts 2023, 88th Leg., R.S., Ch. 332 (H.B. 3526), Sec. 1, eff. September 1, 2023.

SUBCHAPTER H. REGISTRATION OF VACANT BUILDINGS

Sec. 214.231. DEFINITIONS. In this subchapter:

(1) "Building" means any enclosed structure designed for use as a habitation or for a commercial use, including engaging in trade or manufacture.

(2) "Owner" means the person that owns the real property on

which a building is situated, according to:

(A) the real property records of the county in which the property is located; or

(B) the records of the appraisal district in which the property is located.

(3) "Unit" means an enclosed area designed:

(A) for habitation by a single family; or

(B) for a commercial use, including engaging in trade or manufacture, by a tenant.

Added by Acts 2009, 81st Leg., R.S., Ch. 1157 (H.B. 3065), Sec. 1, eff. January 1, 2010.

Sec. 214.232. PRESUMPTION OF VACANCY. A building is presumed to be vacant under this subchapter if:

(1) all lawful residential, commercial, recreational, charitable, or construction activity at the building has ceased, or reasonably appears to have ceased, for more than 150 days; or

(2) the building contains more than three units, 75 percent or more of which have not been used lawfully, or reasonably appear not to have been used lawfully, for more than 150 days.

Added by Acts 2009, 81st Leg., R.S., Ch. 1157 (H.B. 3065), Sec. 1, eff. January 1, 2010.

Sec. 214.233. REGISTRATION. (a) A municipality located in a county with a population of 2.5 million or more may adopt an ordinance requiring owners of vacant buildings to register their buildings by filing a registration form with a designated municipal official.

(b) A municipality, in an ordinance adopted under this subchapter, may exempt certain classifications of buildings as determined reasonable and appropriate by the governing body of the municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 1157 (H.B. 3065), Sec. 1, eff. January 1, 2010.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 80, eff.

September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 144, eff. September 1, 2023.

Sec. 214.234. FORM. An ordinance adopted under this subchapter may require a designated municipal official to adopt a form for registration. The form adopted may require the disclosure of information reasonably necessary for the municipality to minimize the threat to health, safety, and welfare that a vacant building may present to the public.

Added by Acts 2009, 81st Leg., R.S., Ch. 1157 (H.B. 3065), Sec. 1, eff. January 1, 2010.

SUBCHAPTER Z. MISCELLANEOUS POWERS AND DUTIES

Sec. 214.901. ENERGY CONSERVATION. A home-rule municipality may require that the construction of buildings comply with the energy conservation standards in the municipal building code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 214.902. RENT CONTROL. (a) The governing body of a municipality may, by ordinance, establish rent control if:

(1) the governing body finds that a housing emergency exists due to a disaster as defined by Section 418.004, Government Code; and

(2) the governor approves the ordinance.

(b) The governing body shall continue or discontinue rent control in the same manner that the governor continues or discontinues a state of disaster under Section 418.014, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.108, eff. Sept. 1, 2001.

Sec. 214.903. FAIR HOUSING ORDINANCES. (a) The governing body of a municipality may adopt fair housing ordinances that provide fair

housing rights, compliance duties, and remedies that are substantially equivalent to those granted under federal law. Enforcement procedures and remedies in fair housing ordinances may vary from state or federal fair housing law.

(b) Fair housing ordinances that were in existence on January 1, 1991, and are more restrictive than federal fair housing law shall remain in effect.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 22, eff. Sept. 1, 1993. Renumbered from Sec. 51.002 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(84), eff. Sept. 1, 1999. Renumbered from Sec. 215.005 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(6), eff. Sept. 1, 2001.

Sec. 214.904. TIME FOR ISSUANCE OF MUNICIPAL BUILDING PERMIT. (a) This section applies only to a permit required by a municipality to erect or improve a building or other structure in the municipality or its extraterritorial jurisdiction.

(b) Not later than the 45th day after the date an application for a permit is submitted, the municipality must:

(1) grant or deny the permit;

(2) provide written notice to the applicant stating the reasons why the municipality has been unable to grant or deny the permit application; or

(3) reach a written agreement with the applicant providing for a deadline for granting or denying the permit.

(c) For a permit application for which notice is provided under Subsection (b)(2), the municipality must grant or deny the permit not later than the 30th day after the date the notice is received.

(d) If a municipality fails to grant or deny a permit application in the time required by Subsection (c) or by an agreement under Subsection (b)(3), the municipality:

(1) may not collect any permit fees associated with the application; and

(2) shall refund to the applicant any permit fees associated with the application that have been collected.

Added by Acts 2005, 79th Leg., Ch. 917 (H.B. 265), Sec. 1, eff. September 1, 2005.

Sec. 214.905. PROHIBITION OF CERTAIN MUNICIPAL REQUIREMENTS REGARDING SALES OF HOUSING UNITS OR RESIDENTIAL LOTS. (a) A municipality may not adopt a requirement in any form, including through an ordinance or regulation or as a condition for granting a building permit, that establishes a maximum sales price for a privately produced housing unit or residential building lot.

(b) This section does not affect any authority of a municipality to:

(1) create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to increase the supply of moderate or lower-cost housing units; or

(2) adopt a requirement applicable to an area served under the provisions of Chapter 373A, Local Government Code, which authorizes homestead preservation districts, if such chapter is created by an act of the legislature.

(c) This section does not apply to a requirement adopted by a municipality for an area as a part of a development agreement entered into before September 1, 2005.

(d) This section does not apply to property that is part of an urban land bank program.

Added by Acts 2005, 79th Leg., Ch. 1103 (H.B. 2266), Sec. 1, eff. September 1, 2005.
Renumbered from Local Government Code, Section 214.904 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(55), eff. September 1, 2007.

Sec. 214.906. REGULATION OF MANUFACTURED HOME COMMUNITIES. (a) "Manufactured home" has the meaning assigned by Section 1201.003, Occupations Code.

(b) Notwithstanding any other law, the governing body of a municipality may not regulate a tract or parcel of land as a manufactured home community, park, or subdivision unless the tract or parcel contains at least four spaces offered for lease for installing and occupying manufactured homes.

Added by Acts 2017, 85th Leg., R.S., Ch. 741 (S.B. 1248), Sec. 2, eff. September 1, 2017.

Sec. 214.907. PROHIBITION ON CERTAIN VALUE-BASED BUILDING PERMIT AND INSPECTION FEES. (a) In determining the amount of a building permit or inspection fee required in connection with the construction or improvement of a residential dwelling, a municipality may not consider:

(1) the value of the dwelling; or

(2) the cost of constructing or improving the dwelling.

(b) A municipality may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling as a condition of obtaining a building permit except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

Added by Acts 2019, 86th Leg., R.S., Ch. 93 (H.B. 852), Sec. 1, eff. May 21, 2019.

Sec. 214.908. REAUTHORIZATION OF BUILDING PERMIT FEES. (a) In this section, "building permit fee" means a fee charged by a municipality as a condition to constructing, renovating, or remodeling a structure.

(b) A building permit fee is abolished on the 10th anniversary after the date the fee is adopted or most recently reauthorized under this section unless the governing body of the municipality that adopted or reauthorized the fee:

(1) holds a public hearing on the reauthorization of the fee; and

(2) reauthorizes the fee by vote of the governing body.

Added by Acts 2023, 88th Leg., R.S., Ch. 183 (H.B. 1922), Sec. 1, eff. January 1, 2024.

CHAPTER 215. MUNICIPAL REGULATION OF BUSINESSES AND OCCUPATIONS

SUBCHAPTER A. REGULATION BY MUNICIPALITIES IN GENERAL

Sec. 215.002. MOTOR VEHICLES AND ACCESSORIES. (a) A municipality by ordinance may license and otherwise regulate persons engaged primarily or incidentally in the sale or exchange of motor vehicles or motor vehicle parts or accessories within the limits of the municipality.

(b) A municipality may prescribe penalties for the violation of the ordinance.

(c) Any money collected under the ordinance may be used by the municipality only for the enforcement of the ordinance and any other laws regulating the sale, exchange, or theft of motor vehicles or motor vehicle parts or accessories.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(l), eff. Aug. 28, 1989.

Sec. 215.003. RENDERING PLANTS. To protect residents of a municipality from health hazards related to unsanitary conditions that may exist in connection with rendering plants, the municipality by ordinance may regulate the equipment and manner of operation of rendering plants located within the limits of the municipality or within one mile of the limits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.004. TAXICABS AND LIMOUSINES. (a) To protect the public health, safety, and welfare, a municipality by ordinance:

(1) shall license, control, and otherwise regulate each private passenger vehicle, regardless of how it is propelled, that provides passenger taxicab transportation services for compensation and is designed for carrying no more than eight passengers; and

(2) may license, control, and otherwise regulate each private passenger vehicle, regardless of how it is propelled, that provides passenger limousine transportation services for compensation and is designed for carrying no more than 15 passengers.

(a-1) Subsection (a) applies to a taxicab or limousine service that is operated:

(1) within the jurisdiction of the municipality;

(2) on property owned by the municipality, singly or jointly with one or more other municipalities or public agencies;

(3) on property in which the municipality possesses an ownership interest; or

(4) by transporting from the municipality, municipal property, or property in which the municipality has an interest and returning to it.

(b) The ordinance may include:

(1) regulation of the entry into the business of providing passenger taxicab or limousine transportation services, including controls, limits, or other restrictions on the total number of persons providing the services;

(2) regulation of the rates charged for the provision of the services;

(3) establishment of safety and insurance requirements; and

(4) any other requirement adopted to ensure safe and reliable passenger transportation service.

(c) In regulating passenger taxicab or limousine transportation services under this section, a municipality is performing a governmental function. A municipality may carry out the provisions of this section to the extent the governing body of the municipality considers it necessary or appropriate.

(d) The provisions of this section relating to the regulation of limousine transportation services apply only to a municipality with a population of more than 1.9 million.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 50(a), eff. Aug. 28, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 476 (H.B. 2338), Sec. 1, eff. September 1, 2007.

Sec. 215.006. CHURCH PROVIDING OVERNIGHT SHELTER. (a) In this section:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "Religious organization" means an organization that meets the standards for qualification as a religious organization under Section 11.20, Tax Code.

(b) A municipality may not adopt an ordinance, or enforce an existing ordinance, that prohibits a church from providing overnight shelter for children 17 years of age and younger.

(c) A municipal ordinance or regulation that relates to the safe and sanitary operation of a homeless shelter for children applies to a church that provides overnight shelter for children.

(d) A municipality may adopt or enforce an ordinance establishing limits on the number of nights a child may use an

overnight shelter provided by a church or on the number of children that can be housed in the shelter per night.

Added by Acts 2015, 84th Leg., R.S., Ch. 533 (H.B. 1558), Sec. 1, eff. September 1, 2015.

SUBCHAPTER B. REGULATION BY TYPE A GENERAL-LAW MUNICIPALITY

Sec. 215.021. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a Type A general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.022. BREAD. The governing body of the municipality may regulate the weight and quality of bread to be sold or used within the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.023. BUTCHERS. The governing body of the municipality may adopt any rules relating to butchers that the governing body considers necessary and proper.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.024. TANNERIES; STABLES; SLAUGHTERHOUSES; OTHER BUSINESSES. (a) As necessary for the health, comfort, and convenience of the residents of the municipality, the governing body of the municipality may compel the owner or occupant to clean, abate, or remove:

(1) a grocery;
(2) a soap, tallow, or chandler establishment;
(3) a blacksmith shop;
(4) a tannery;
(5) a stable;
(6) a slaughterhouse;
(7) a sewer;
(8) a privy;

(9) a hide house; or

(10) any other unwholesome or nauseous house or place.

(b) The governing body may direct the location of:

(1) businesses;

(2) tanneries;

(3) blacksmith shops;

(4) foundries;

(5) livery stables; and

(6) manufacturing establishments.

(c) Within the limits of a municipality, the governing body may restrain, abate, prohibit, direct the location of, or regulate the management or construction of:

(1) slaughtering establishments;

(2) hide houses;

(3) establishments for making soap;

(4) establishments for steaming or rendering lard, tallow, offal, or any other substances that may be rendered; and

(5) any other establishments or places at which any nauseous, offensive, or unwholesome business may be conducted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.025. ANIMAL DRIVES. The governing body of the municipality may prohibit or otherwise regulate the driving of cattle, horses, or other animals in the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.026. ANIMALS AT LARGE. (a) The governing body of the municipality may establish and regulate public pounds.

(b) The governing body may prohibit or otherwise regulate the running at large of horses, mules, cattle, sheep, swine, or goats.

(c) If an animal is at large in violation of an ordinance adopted under this section, the governing body may authorize:

(1) the capture and impounding of the animal;

(2) the sale of the animal for the costs of the sale proceedings and any penalties imposed;

(3) the destruction of the animal if the animal cannot be sold; and

(4) the imposition of a penalty on the owner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.027. BREEDING ANIMALS. The governing body of the municipality by ordinance may prohibit a person from keeping a jack, bull, or stallion in the municipality for breeding purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.028. MARKETS. (a) The governing body of the municipality may establish or erect markets or market houses.

(b) The governing body may designate and regulate market places and privileges and may inspect and determine the manner of inspecting meat, fish, vegetables and other produce, and any other article brought for sale at a market.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.029. DRIVERS; PORTERS. (a) The governing body of the municipality may license, tax, or otherwise regulate:

(1) cabdrivers;

(2) draymen;

(3) bus drivers;

(4) baggage wagon drivers;

(5) porters; and

(6) any other persons pursuing similar occupations with or without vehicles.

(b) The governing body may prescribe the compensation of persons subject to Subsection (a).

(c) The governing body may provide for the protection of persons subject to Subsection (a) and may make the attempt to defraud those persons of any legal charge for services rendered a misdemeanor offense.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.030. MESSENGERS. The governing body of the municipality may license, restrain, or otherwise regulate messengers for railroads, stages, or public houses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.031. HAWKERS; PEDDLERS; PAWNBROKERS. The governing body of the municipality may license, tax, suppress, prevent, or otherwise regulate:

(1) hawkers;
(2) peddlers; and
(3) pawnbrokers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.032. EXHIBITIONS; SHOWS; AMUSEMENTS. (a) The governing body of the municipality may license, tax, suppress, prevent, or otherwise regulate keepers of theatrical or other exhibitions, shows, or amusements.

(b) The governing body may license, tax, or otherwise regulate:

(1) theaters;
(2) circuses;
(3) exhibitions of common showmen;
(4) shows of any kind;
(5) exhibitions of natural or artificial curiosities;
(6) caravans;
(7) menageries; and
(8) musical exhibitions or performances.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.033. LICENSES; FEES. (a) The governing body of the municipality may authorize the proper municipal officer to grant and issue licenses, direct the manner of issuing and registering licenses, and set the fees to be paid for licenses.

(b) A license may not be issued for a period of more than one year.

(c) A license may not be assigned except as permitted by the

governing body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.034. SUSPENSION OR REVOCATION OF OCCUPATION LICENSE. (a) A judge of the municipal court, in addition to imposing a fine, may institute proceedings to suspend or revoke the license of a person if:

(1) the person is required, by law or by a municipal ordinance adopted under a law, to obtain the license from the municipality for an occupation, business, or avocation; and

(2) the judge finds the person guilty of violating a municipal ordinance relating to the occupation, business, or avocation or finds that the person has been convicted of barratry under Section 38.12, Penal Code.

(b) For the purpose of this section, a person is convicted of barratry if a court of competent jurisdiction enters an adjudication of guilt against the person regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from probation;

(2) the accusation, complaint, information, or indictment is dismissed following probation; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 723, Sec. 6, eff. Sept. 1, 1993.

SUBCHAPTER C. REGULATION BY TYPE B GENERAL-LAW MUNICIPALITY

Sec. 215.051. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a Type B general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.052. MARKETS. The governing body of the municipality may establish markets.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. REGULATION BY HOME-RULE MUNICIPALITY

Sec. 215.071. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.072. DAIRIES; SLAUGHTERHOUSES. The municipality may inspect dairies, slaughterhouses, or slaughter pens, in or outside the municipal limits, from which milk or meat is furnished to the residents of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.073. VEHICLES FOR HIRE. The municipality may license, fix the charges or fares made by, or otherwise regulate any person who owns, operates, or controls any type of vehicle used on the public streets or alleys of the municipality for carrying passengers or freight for compensation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.0735. OPERATORS OF VEHICLES. The municipality may prescribe the qualifications of an operator of a vehicle that uses the public streets in the municipality.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 3, eff. Sept. 1, 1995. Renumbered from Government Code Sec. 215.0735 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(32), eff. Sept. 1, 1997.

Sec. 215.074. THEATERS; SHOWS; AMUSEMENTS. The municipality may regulate the location and conduct of:

(1) theaters;
(2) movie theaters;
(3) bowling alleys; and
(4) other places of public amusements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 215.075. POLICE POWER. The municipality may license any lawful business or occupation that is subject to the police power of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 216. REGULATION OF SIGNS BY MUNICIPALITIES

SUBCHAPTER A. RELOCATION, RECONSTRUCTION, OR REMOVAL OF SIGN

Sec. 216.001. LEGISLATIVE INTENT. (a) This subchapter is not intended to require a municipality to provide for the relocation, reconstruction, or removal of any sign in the municipality, nor is it intended to prohibit a municipality from requiring the relocation, reconstruction, or removal of any sign. This subchapter is intended only to authorize a municipality to take that action and to establish the procedure by which the municipality may do so.

(b) This subchapter is not intended to require a municipality to make a cash payment to compensate the owner of a sign that the municipality requires to be relocated, reconstructed, or removed. Cash payment is established as only one of several methods from which a municipality may choose in compensating the owner of a sign.

(c) This subchapter is not intended to affect any eminent domain proceeding in which the taking of a sign is only an incidental part of the exercise of the eminent domain power.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.002. DEFINITIONS. In this subchapter:

(1) "Sign" means an outdoor structure, sign, display, light device, figure, painting, drawing, message, plaque, poster, billboard, or other thing that is designed, intended, or used to advertise or inform.

(2) "On-premise sign" means a freestanding sign identifying or advertising a business, person, or activity, and installed and maintained on the same premises as the business, person, or activity.

(3) "Off-premise sign" means a sign displaying advertising copy that pertains to a business, person, organization, activity,

event, place, service, or product not principally located or primarily manufactured or sold on the premises on which the sign is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.003. MUNICIPAL REGULATION. (a) Subject to the requirements of this subchapter, a municipality may require the relocation, reconstruction, or removal of any sign within its corporate limits or extraterritorial jurisdiction.

(b) Except as provided by Subsection (e), the owner of a sign that is required to be relocated, reconstructed, or removed is entitled to be compensated by the municipality for costs associated with the relocation, reconstruction, or removal.

(c) If application of a municipal regulation would require reconstruction of a sign in a manner that would make the sign ineffective for its intended purpose, such as by substantially impairing the sign's visibility, application of the regulation is treated as the required removal of the sign for purposes of this subchapter.

(d) In lieu of paying compensation, a municipality may exempt from required relocation, reconstruction, or removal those signs lawfully in place on the effective date of the requirement.

(e) A municipality that exercises authority under this subchapter may, without paying compensation as provided by this subchapter, require the removal of an on-premise sign or sign structure not sooner than the first anniversary of the date the business, person, or activity that the sign or sign structure identifies or advertises ceases to operate on the premises on which the sign or sign structure is located. If the premises containing the sign or sign structure is leased, a municipality may not require removal under this subsection sooner than the second anniversary after the date the most recent tenant ceases to operate on the premises. The removal of a sign or sign structure as described by this subsection does not require the appointment of a board under Section 216.004.

(f) A municipality acting under Subsection (e) may agree with the owner of the sign or sign structure to remove only a portion of the sign or sign structure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(m), eff. Aug. 28, 1989; Acts 2003, 78th Leg., ch. 865, Sec. 1, eff. Sept. 1, 2003.

Sec. 216.0035. REGULATORY AUTHORITY NOT APPLICABLE TO ON-PREMISES SIGNS UNDER CERTAIN CIRCUMSTANCES. The authority granted to a municipality by this subchapter to require the relocation, reconstruction, or removal of signs does not apply to:

(1) on-premises signs in the extraterritorial jurisdiction of municipalities in a county described by Section 394.063, Transportation Code, if the circumstances described by that section occur; and

(2) on-premises signs in a municipality's extraterritorial jurisdiction in a county that borders a county described by that law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 54(e), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 482, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 30.218, eff. Sept. 1, 1997.

Sec. 216.004. MUNICIPAL BOARD. (a) If a municipality requires the relocation, reconstruction, or removal of a sign within its corporate limits or extraterritorial jurisdiction, the presiding officer of the governing body of the municipality shall appoint a municipal board on sign control. The board must be composed of:

(1) two real estate appraisers, each of whom must be a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program;

(2) one person engaged in the sign business in the municipality;

(3) one employee of the Texas Department of Transportation who is familiar with real estate valuations in eminent domain proceedings; and

(4) one architect or landscape architect licensed by this state.

(b) A member of the board is appointed for a term of two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 951, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 165, Sec. 22(47), eff. Sept. 1, 1995.

Sec. 216.005. DETERMINATION OF AMOUNT OF COMPENSATION. (a) The municipal board on sign control shall determine the amount of the compensation to which the owner of a sign that is required to be relocated, reconstructed, or removed is entitled. The determination shall be made after the owner of the sign is given the opportunity for a hearing before the board about the issues involved in the matter.

(b) In any court proceeding in which the reasonableness of compensation is at issue and the compensation is to be provided over a period longer than one year, the court shall consider whether the duration of the period is reasonable under the circumstances.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.006. COMPENSATION FOR RELOCATED SIGN. The compensable costs for a sign that is required to be relocated include the expenses of dismantling the sign, transporting it to another site, and reerecting it. The board shall determine the compensable costs according to the standards applicable in a proceeding under Chapter 21, Property Code. In addition, the municipality shall issue to the owner of the sign an appropriate permit or other authority to operate a substitute sign of the same type at an alternative site of substantially equivalent value. Whether an alternative site is of substantially equivalent value is determined by standards generally accepted in the outdoor advertising industry, including visibility, traffic count, and demographic factors. The municipality shall compensate the owner for any increased operating costs, including increased rent, at the new location. The owner is responsible for designating an alternative site where the erection of the sign would be in compliance with the sign ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.007. COMPENSATION FOR RECONSTRUCTED SIGN. The compensable costs for a sign that is required to be reconstructed

include expenses of labor and materials and any loss in the value of the sign due to the reconstruction in excess of 15 percent of that value. The board shall determine the compensable costs according to standards applicable in a proceeding under Chapter 21, Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.008. COMPENSATION FOR REMOVAL OF OFF-PREMISE SIGN. (a) For an off-premise sign that is required to be removed, the compensable cost is an amount computed by determining the average annual gross revenue received by the owner from the sign during the two years preceding September 1, 1985, or the two years preceding the month in which the removal date of the sign occurs, whichever is less, and by multiplying that amount by three. If the sign has not been in existence for all of either two-year period, the average annual gross revenue for that period, for the purpose of this computation, is an amount computed by dividing 12 by the number of months that the sign has been in existence, and multiplying that result by the total amount of the gross revenue received for the period that the sign has been in existence. However, if the sign did not generate revenue for at least one month preceding September 1, 1985, this computation of compensable costs is to be made using only the average annual gross revenue received during the two years preceding the month in which the removal date of the sign occurs, and by multiplying that amount by three. In determining the amounts under this paragraph, a sign is treated as if it were in existence for the entire month if it was in existence for more than 15 days of the month and is treated as if it were not in existence for any part of the month if it was in existence for 15 or fewer days of the month.

(b) The owner of the real property on which the sign was located is entitled to be compensated for any decrease in the value of the real property. The compensable cost is to be determined by the board according to standards applicable in a proceeding under Chapter 21, Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.009. COMPENSATION FOR REMOVAL OF ON-PREMISE SIGN. For

an on-premise sign that is required to be removed, the compensable cost is an amount computed by determining a reasonable balance between the original cost of the sign, less depreciation, and the current replacement cost of the sign, less an adjustment for the present age and condition of the sign.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.010. METHOD OF COMPENSATION. (a) To pay the compensable costs required under this subchapter, the governing body of a municipality may use only a method, or a combination of the methods, prescribed by this section.

(b) If any sign is required to be relocated or reconstructed, or an on-premise sign is required to be removed, the municipality, acting pursuant to the Property Redevelopment and Tax Abatement Act (Chapter 312, Tax Code), may abate municipal property taxes that otherwise would be owed by the owner of the sign. The abated taxes may be on any real or personal property owned by the owner of the sign except residential property. The right to the abatement of taxes is assignable by the holder, and the assignee may use the right to abatement with respect to taxes on any nonresidential property in the same taxing jurisdiction. In a municipality where tax abatement is used to pay compensable costs, the costs include reasonable interest and the abatement period may not exceed five years.

(c) The municipality may allocate to a special fund in the municipal treasury, to be known as the sign abatement and community beautification fund, all or any part of the municipal property taxes paid on signs, on the real property on which the signs are located, or on other real or personal property owned by the owner of the sign. The municipality may make payments from that fund to reimburse compensable costs to owners of signs required to be relocated, reconstructed, or removed.

(d) The municipality may provide for the issuance of sign abatement revenue bonds and use the proceeds to make payments to reimburse costs to the owners of signs within the corporate limits of such municipality that are required to be relocated, reconstructed, or removed.

(e) The municipality may pay compensable costs in cash.

(f) Except as prohibited by federal law, a municipality with a

population of more than 1.9 million may pay the compensable costs to the owner of an on-premise sign by allowing the sign to remain in place for a period sufficient to recover the compensable cost of the sign as determined under Section 216.009, based on a determination by the municipal board of the average annual gross revenue as determined under Section 216.008 that would be generated by the sign in its specific location if the sign were used as an off-premise sign rather than an on-premise sign. During the period in which a sign remains in place under this subsection, the owner of the sign shall maintain the sign in compliance with all other regulations applicable to the sign, including structural regulations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 51(a), eff. Aug. 28, 1989; Acts 2003, 78th Leg., ch. 865, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 742 (H.B. 2945), Sec. 1, eff. September 1, 2007.

Sec. 216.011. TAX APPRAISAL OF PROPERTY WITH NONCONFORMING SIGN. For each nonconforming sign, the board shall file with the appropriate property tax appraisal office the board's compensable costs value appraisal of the sign. The appraisal office shall consider the board's appraisal when the office, for property tax purposes, determines the appraised value of the real property to which the sign is attached.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.012. SPECIAL PROVISIONS FOR SIGNS UNDER SIGN ORDINANCE IN EFFECT ON JUNE 1, 1985. (a) This section applies to compensation for the required relocation, reconstruction, or removal of a sign under a municipal ordinance in effect on June 1, 1985, that provided for compensation to the sign owner under an amortization plan.

(b) For a nonconforming sign erected after September 1, 1985, or for a sign in place on that date that later is made nonconforming by an extension of or strengthening of an ordinance that was in effect on June 1, 1985, and that provided an amortization plan, the amortization period is the entire useful life of the sign. If it has

not already done so, the board shall determine the entire useful life of signs by type or category, such as mono-pole signs, metal signs, and wood signs. The useful life may not be solely determined by the natural life expectancy of a sign.

(c) Compensation for the relocation, reconstruction, or removal of a sign that, on September 1, 1985, was not in compliance with the sign ordinance shall be made in accordance with the applicable procedures of Section 6, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (Article 1015o, Vernon's Texas Civil Statutes), and that law is continued in effect for this purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.013. EXCEPTIONS. (a) The requirements of this subchapter do not apply to a sign that was erected in violation of local ordinances, laws, or regulations applicable at the time of its erection.

(b) The requirements of this subchapter do not apply to a sign that, having been permitted to remain in place as a nonconforming use, is required to be removed by a municipality because the sign, or a substantial part of it, is blown down or otherwise destroyed or dismantled for any purpose other than maintenance operations or for changing the letters, symbols, or other matter on the sign.

(c) For purposes of Subsection (b), a sign or substantial part of it is considered to have been destroyed only if the cost of repairing the sign is more than 60 percent of the cost of erecting a new sign of the same type at the same location.

(d) This subchapter does not limit or restrict the compensation provisions of the highway beautification provisions contained in Chapter 391, Transportation Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(82), eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 30.219, eff. Sept. 1, 1997.

Sec. 216.014. APPEAL. (a) Any person aggrieved by a decision of the board may file in district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed

within 20 days after the date the decision is rendered by the board.

(b) On the filing of the petition, the court may issue a writ of certiorari directed to the board to review the decision of the board and shall prescribe in the writ the time within which a return must be made, which must be longer than 10 days and may be extended by the court.

(c) The board is not required to return the original papers acted on by it, but it shall be sufficient to return certified or sworn copies of the papers. The return must concisely set forth all other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

(d) The court may reverse or affirm, wholly or partly, or modify the decision brought up for review.

(e) Costs may not be allowed against the board unless it appears to the court that the board acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.015. EFFECT OF PARTIAL INVALIDITY. (a) The legislature declares that it would not have enacted the following without the inclusion of Section 216.010(a), to the extent that provision excludes methods of compensation not specifically authorized by that provision:

(1) this subchapter;

(2) Section 216.902;

(3) Article 2, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985 (codified as Chapter 394, Transportation Code); and

(4) the amendments made to Section 3, Property Redevelopment and Tax Abatement Act (codified as Chapter 312, Tax Code) by Article 4, Chapter 221, Acts of the 69th Legislature, Regular Session, 1985.

(b) If that exclusion of alternative methods of compensation is held invalid for any reason by a final judgment of a court of competent jurisdiction, the enactments described by Subsection (a) are void.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.220, eff. Sept. 1, 1997.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 216.901. REGULATION OF SIGNS BY HOME-RULE MUNICIPALITY. (a) A home-rule municipality may license, regulate, control, or prohibit the erection of signs or billboards by charter or ordinance.

(b) Subsection (a) does not authorize a municipality to regulate the relocation, reconstruction, or removal of a sign in violation of Subchapter A.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 216.902. REGULATION OF OUTDOOR SIGNS IN MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION. (a) A municipality may extend the provisions of its outdoor sign regulatory ordinance and enforce the ordinance within its area of extraterritorial jurisdiction as defined by Chapter 42. However, any municipality, in lieu of the regulatory ordinances, may allow the Texas Transportation Commission to regulate outdoor signs in the municipality's extraterritorial jurisdiction by filing a written notice with the commission.

(b) If a municipality extends its outdoor sign ordinance within its area of extraterritorial jurisdiction, the municipal ordinance supersedes the regulations imposed by or adopted under Chapter 394, Transportation Code.

(c) The authority granted to a municipality by this section to extend its outdoor sign ordinance does not apply to:

(1) on-premises signs in the extraterritorial jurisdiction of municipalities in a county described by Section 394.063, Transportation Code, if the circumstances described by that section occur;

(2) on-premises signs in a municipality's extraterritorial jurisdiction in a county that borders a county described by that law; and

(3) on-premises signs in the extraterritorial jurisdiction of a municipality with a population of 1.5 million or more that are located in a county that is adjacent to the county in which the majority of the land of the municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(f), eff. Aug. 28, 1989; Acts

1993, 73rd Leg., ch. 482, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(48), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.221, eff. Sept. 1, 1997.

CHAPTER 217. MUNICIPAL REGULATION OF NUISANCES AND DISORDERLY CONDUCT

SUBCHAPTER A. REGULATION BY TYPE A GENERAL-LAW MUNICIPALITY

Sec. 217.001. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a Type A general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 217.002. NUISANCE. The governing body of the municipality may:

(1) abate and remove a nuisance and punish by fine the person responsible for the nuisance;

(2) define and declare what constitutes a nuisance and authorize and direct the summary abatement of the nuisance; and

(3) abate in any manner the governing body considers expedient any nuisance that may injure or affect the public health or comfort.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 217.003. DISORDERLY CONDUCT. (a) The governing body of the municipality may prevent and may punish a person engaging in:

(1) trespass or breach of the peace;

(2) assault, battery, fighting, or quarreling;

(3) use of abusive, obscene, profane, or insulting language; or

(4) other disorderly conduct.

(b) The governing body may suppress or prevent any riot, affray, noise, disturbance, or disorderly assembly in any public or private place in the municipality.

(c) The governing body may restrain or prohibit the firing of firecrackers or guns, the use of a bicycle or similar conveyance, the use of a firework or similar material, or any other amusement or practice tending to annoy persons passing on a street or sidewalk.

(d) The governing body may restrain or prohibit the ringing of

bells, blowing of horns, hawking of goods, or any other noise, practice, or performance directed to persons on a street or sidewalk by an auctioneer or other person for the purpose of business, amusement, or otherwise.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. REGULATION BY TYPE B GENERAL-LAW MUNICIPALITY

Sec. 217.021. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a Type B general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 217.022. NUISANCE. The governing body of the municipality shall prevent to the extent practicable any nuisance within the limits of the municipality and shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. REGULATION BY HOME-RULE MUNICIPALITY

Sec. 217.041. MUNICIPALITY COVERED BY SUBCHAPTER. This subchapter applies only to a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 217.042. NUISANCE. (a) Except as provided by Subsection (c), the municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits.

(b) The municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.

(c) The municipality may not define and prohibit as a nuisance the sale of fireworks or similar materials outside the limits of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1212 (S.B. 1593), Sec. 1, eff. September 1, 2015.

CHAPTER 229. MISCELLANEOUS REGULATORY AUTHORITY OF MUNICIPALITIES

SUBCHAPTER A. REGULATION OF FIREARMS, KNIVES, AND EXPLOSIVES

Sec. 229.001. FIREARMS; AIR GUNS; KNIVES; EXPLOSIVES. (a) Notwithstanding any other law, including Section 43.002 of this code and Chapter 251, Agriculture Code, a municipality may not adopt or enforce regulations that:

(1) relate to:

(A) the transfer, possession, wearing, carrying, ownership, storage, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories;

(B) commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or

(C) the discharge of a firearm or air gun at a sport shooting range; or

(2) require an owner of a firearm to obtain liability insurance coverage for damages resulting from negligent or wilful acts involving the use of the firearm.

(a-1) An ordinance, resolution, rule, or policy adopted or enforced by a municipality, or an official action, including in any legislative, police power, or proprietary capacity, taken by an employee or agent of a municipality in violation of this section is void.

(b) Subsection (a) does not affect the authority a municipality has under another law to:

(1) require residents or public employees to be armed for personal or national defense, law enforcement, or another lawful purpose;

(2) regulate the discharge of firearms or air guns within the limits of the municipality, other than at a sport shooting range;

(3) except as provided by Subsection (b-1), adopt or enforce a generally applicable zoning ordinance, land use regulation, fire code, or business ordinance;

(4) regulate the storage or transportation of explosives to protect public health and safety, except that 25 pounds or less of

black powder for each private residence and 50 pounds or less of black powder for each retail dealer are not subject to regulation;

(5) regulate the carrying of an air gun or firearm, other than a handgun carried by a person not otherwise prohibited by law from carrying a handgun, at a:

(A) public park;

(B) public meeting of a municipality, county, or other governmental body;

(C) political rally, parade, or official political meeting; or

(D) nonfirearms-related school, college, or professional athletic event;

(6) regulate the carrying of a firearm by a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, in accordance with Section 411.209, Government Code;

(7) regulate the hours of operation of a sport shooting range, except that the hours of operation may not be more limited than the least limited hours of operation of any other business in the municipality other than a business permitted or licensed to sell or serve alcoholic beverages for on-premises consumption;

(8) regulate the carrying of an air gun by a minor on:

(A) public property; or

(B) private property without consent of the property owner; or

(9) except as provided by Subsection (d-1), regulate or prohibit an employee's carrying or possession of a firearm, firearm accessory, or ammunition in the course of the employee's official duties.

(b-1) The exception provided by Subsection (b)(3) does not apply if the ordinance or regulation is designed or enforced to effectively restrict or prohibit the manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition that is otherwise lawful in this state.

(c) The exception provided by Subsection (b)(5) does not apply if the firearm or air gun is in or is carried to or from an area designated for use in a lawful hunting, fishing, or other sporting event and the firearm or air gun is of the type commonly used in the activity.

(d) Nothing in this section may be construed to authorize the seizure or confiscation of any firearm, air gun, knife, ammunition,

or firearm or air gun supplies or accessories from an individual who is lawfully carrying or possessing the firearm, air gun, knife, ammunition, or firearm or air gun supplies or accessories.

(d-1) The exception provided by Subsection (b)(9) does not authorize a municipality to regulate an employee's carrying or possession of a firearm in violation of Subchapter G, Chapter 52, Labor Code.

(e) In this section:

(1) "Air gun" means any gun that discharges a pellet, BB, or paintball by means of compressed air, gas propellant, or a spring.

(2) "Ammunition" means fixed cartridge ammunition, shotgun shells, individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzle-loading firearms, or any propellant used in firearms or ammunition.

(3) "Firearm or air gun accessory" means a device specifically designed or adapted to:

(A) enable the wearing or carrying by a person, or the storage or mounting in or on a conveyance, of a firearm or air gun; or

(B) be inserted into or affixed to a firearm or air gun to enable, alter, or improve the functioning or capabilities of the firearm.

(4) "Knife" has the meaning assigned by Section 46.01, Penal Code.

(5) "Sport shooting range" has the meaning assigned by Section 250.001.

(f) The attorney general may bring an action in the name of the state to obtain a temporary or permanent injunction against a municipality adopting a regulation in violation of this section. The attorney general may recover reasonable expenses incurred in obtaining an injunction under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(g) This section does not limit the enforceability of any state or federal law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 229, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 10.07, eff. Sept. 1, 1997. Renumbered from Sec. 215.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(10),

eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 18 (S.B. 112), Sec. 5, eff. April 27, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 624 (S.B. 766), Sec. 5, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 598 (S.B. 987), Sec. 1, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1210 (S.B. 1400), Sec. 1, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 34, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 700 (H.B. 905), Sec. 2, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 700 (H.B. 905), Sec. 3, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1164 (H.B. 3231), Sec. 1, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 16, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 998 (H.B. 1500), Sec. 5, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 595 (H.B. 3137), Sec. 1, eff. September 1, 2023.

Sec. 229.002. REGULATION OF DISCHARGE OF WEAPON. A municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality after September 1, 1981, if the firearm or other weapon is:

(1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

(A) on a tract of land of 10 acres or more and more than 150 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(2) a center fire or rim fire rifle or pistol of any caliber discharged:

(A) on a tract of land of 50 acres or more and more than 300 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract.

Added by Acts 2005, 79th Leg., Ch. 18 (S.B. 734), Sec. 4, eff. May 3, 2005.

Sec. 229.003. REGULATION OF DISCHARGE OF WEAPON BY CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality located wholly or partly in a county:

(1) with a population of one million or more;

(2) in which all or part of a municipality with a population of one million or more is located; and

(3) that is located adjacent to a county with a population of 2.5 million or more.

(b) Notwithstanding Section 229.002, a municipality may not apply a regulation relating to the discharge of firearms or other weapons in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality after September 1, 1981, if the firearm or other weapon is:

(1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

(A) on a tract of land of 10 acres or more and:

(i) more than 1,000 feet from:

(a) the property line of a public tract of land, generally accessible by the public, that is routinely used for organized sporting or recreational activities or that has permanent recreational facilities or equipment; and

(b) the property line of a school, hospital, or commercial day-care facility;

(ii) more than 600 feet from:

(a) the property line of a residential subdivision; and

(b) the property line of a multifamily residential complex; and

(iii) more than 150 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract;

(2) a center fire or rim fire rifle or pistol of any caliber discharged:

(A) on a tract of land of 50 acres or more and:

(i) more than 1,000 feet from:

(a) the property line of a public tract of land, generally accessible by the public, that is routinely used for organized sporting or recreational activities or that has permanent recreational facilities or equipment; and

(b) the property line of a school, hospital, or commercial day-care facility;

(ii) more than 600 feet from:

(a) the property line of a residential subdivision; and

(b) the property line of a multifamily residential complex; and

(iii) more than 300 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(3) discharged at a sport shooting range, as defined by Section 250.001, in a manner not reasonably expected to cause a projectile to cross the boundary of a tract of land.

Added by Acts 2009, 81st Leg., R.S., Ch. 1230 (S.B. 1742), Sec. 1, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 81, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 145, eff. September 1, 2023.

Sec. 229.004. REGULATION OF DISCHARGE OF WEAPON BY CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality located in a county in which the majority of the population of two or more municipalities with a population of 300,000 or more are located.

(b) Notwithstanding Section 229.002, a municipality may not apply a regulation relating to the discharge of firearms or other

weapons in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality on or before September 1, 1981, if the firearm or other weapon is:

(1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

(A) on a tract of land of 100 acres or more and more than 150 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract; or

(2) a center fire or rim fire rifle or pistol of any caliber discharged:

(A) on a tract of land of 100 acres or more and more than 300 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 306 (H.B. 2127), Sec. 1, eff. June 17, 2011.

SUBCHAPTER B. REGULATION OF OUTDOOR LIGHTING

Sec. 229.051. DEFINITIONS. In this subchapter, "major astronomical observatory" and "outdoor lighting" have the meanings assigned by Section 240.031.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 1, eff. January 1, 2012.

Sec. 229.052. APPLICABILITY. (a) This subchapter applies to a municipality located in a county any part of which is located within 57 miles of a major astronomical observatory at the McDonald Observatory.

(b) This subchapter does not apply to:

(1) outdoor lighting in existence or under construction on January 1, 2012; or

(2) the installation, maintenance, repair, or replacement of outdoor lighting owned or operated by an electric utility as defined by Section 31.002, Utilities Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 1, eff. January 1, 2012.

Sec. 229.053. REGULATION OF OUTDOOR LIGHTING. (a) The governing body of a municipality by ordinance shall regulate the installation and use of outdoor lighting.

(b) An ordinance adopted under this section must be designed to protect against the use of outdoor lighting in a way that interferes with scientific astronomical research of an observatory.

(c) In the ordinance, the governing body may:

(1) require that a permit be obtained from the municipality before the installation and use of certain types of outdoor lighting in a regulated area;

(2) establish a fee in an amount to cover the costs of administrating the issuance of the permit;

(3) prohibit the use of a type of outdoor lighting that is incompatible with the effective use of an observatory;

(4) establish requirements for the shielding of outdoor lighting; and

(5) regulate the times during which certain types of outdoor lighting may be used.

(d) The governing body may apply more stringent standards for areas in which the use of outdoor lighting has a greater impact on observatory activities.

(e) The governing body may adopt an ordinance under this section only after conducting a public hearing on the proposed ordinance. The governing body shall give at least two weeks' public notice of the hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 1, eff. January 1, 2012.

Sec. 229.054. REGULATION OF SUBDIVISIONS. (a) The governing body of a municipality by ordinance shall establish standards relating to proposed subdivisions to minimize the interference with observatory activities caused by outdoor lighting.

(b) The governing body may not approve a subdivision plat unless the plat provides that outdoor lighting will comply with

standards adopted under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 1, eff. January 1, 2012.

Sec. 229.055. ENFORCEMENT; PENALTY. (a) A municipality may sue in any court to enjoin a violation of this subchapter.

(b) A person who violates an ordinance adopted under this subchapter commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 1, eff. January 1, 2012.

SUBCHAPTER C. REGULATION OF SOLAR ENERGY DEVICES

Sec. 229.101. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section:

(1) "Municipally owned utility" has the meaning assigned by Section 11.003, Utilities Code.

(2) "Small commercial customer" has the meaning assigned by Section 39.202(o), Utilities Code.

(3) "Solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) A municipality may not prohibit or restrict the installation of a solar energy device by a residential or small commercial customer except to the extent:

(1) a property owner's association may prohibit the installation under Sections 202.010(d)(1) through (7), Property Code; or

(2) the interconnection guidelines and interconnection agreement of a municipally owned utility serving the customer's service area, the rules of the Public Utility Commission of Texas, or the protocols of an independent organization certified under Section 39.151, Utilities Code, limit the installation of solar energy devices due to reliability, power quality, or safety of the distribution system.

Added by Acts 2021, 87th Leg., R.S., Ch. 561 (S.B. 398), Sec. 2, eff. September 1, 2021.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 229.901. AUTHORITY TO REGULATE ANIMAL BUSINESSES. (a) A municipality may not adopt, enforce, or maintain an ordinance or rule that restricts, regulates, limits, or otherwise impedes a business involving the breeding, care, treatment, or sale of animals or animal products, including a veterinary practice, or the business's transactions if the person operating that business holds a license for the business that is issued by the federal government or a state.

(b) Except as provided by this subsection, a municipality may not adopt, enforce, or maintain an ordinance or rule that restricts, regulates, limits, or otherwise impedes the retail sale of dogs or cats. A municipality may enforce or maintain an ordinance or rule adopted before April 1, 2023, that restricts, regulates, limits, or otherwise impedes the retail sale of dogs or cats until the state adopts statewide regulation for the retail sale of dogs or cats, as applicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 899 (H.B. 2127), Sec. 12, eff. September 1, 2023.

SUBTITLE B. COUNTY REGULATORY AUTHORITY

CHAPTER 231. COUNTY ZONING AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 231.001. ADOPTION OF REGULATION OR BOUNDARY INCLUDES AMENDMENT OR OTHER CHANGE. A reference in this chapter to the adoption of a zoning or other regulation or a zoning district boundary includes the amendment, repeal, or other change of a regulation or boundary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. ZONING ON PADRE ISLAND

Sec. 231.011. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the part of Padre Island located in Cameron and Willacy counties is frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern to the entire state; and

(3) buildings on islands frequented as resort areas tend to become congested and to be used in ways that interfere, to the detriment of the public health, safety, morals, and general welfare, with the proper use of the areas as places of recreation.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging the recreational use of county parks in Cameron and Willacy counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.012. AREAS SUBJECT TO REGULATION. This subchapter applies to the areas of Padre Island located in Cameron or Willacy County and located:

(1) outside a municipality but within two miles of a publicly owned park or recreational development; or

(2) within two miles of a beach, wharf, or bathhouse used by at least 500 persons annually.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.013. ZONING REGULATIONS GENERALLY. The commissioners court of Cameron County or of Willacy County may, for the areas subject to this subchapter in its respective county, regulate:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and

(6) the placement of water and sewage facilities, parks, and other public requirements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.014. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

(1) lessen congestion in the streets and roads;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population;

(7) facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements; and

(8) assist in developing the island into parks, playgrounds, and recreational areas for the residents of this state and other states and nations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.015. DISTRICTS. (a) The commissioners court may divide the area in its county that is subject to this subchapter into districts of a number, shape, and size the court considers best for carrying out this subchapter. Within each district, the commissioners court may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) The zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the island.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.016. PROCEDURES GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) The commissioners courts shall establish procedures for adopting and enforcing zoning regulations and zoning district boundaries. A regulation or boundary is not effective until after a public hearing on the matter at which parties in interest and

citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, notice of the time and place of the hearing must be published in a newspaper of general circulation in the county.

(b) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots covered by the proposed change; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed change and extending 200 feet from those lots, or from the street frontage of the opposite lots.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.017. ZONING COMMISSION. (a) To exercise the powers authorized by this subchapter, the commissioners court shall appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. The commission must consist of seven members, each of whom must be a resident of the county. If the county has a board of park commissioners, the commissioners court may appoint the board to serve as the zoning commission.

(b) The commission shall choose a chairman who must be a commission member. The chairman serves in that capacity for a term set by the commission. The commission may at any time choose for a particular meeting or occasion an acting chairman as necessary from among its members. The commission may employ a secretary and acting secretary and other technical or clerical personnel.

(c) A member of the commission is not entitled to compensation for service on the commission but may be entitled to expenses actually incurred while serving on the commission as provided by order of the commissioners court.

(d) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the commissioners court. The commissioners court may not hold a

public hearing or take action until it receives the final report of the zoning commission.

(e) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to:

(1) each owner of affected property or to the person who renders the property for county taxes; and

(2) each owner of property that is located within 200 feet of property affected by the change or to the person who renders the property for county taxes.

(f) The notice may be served by depositing it, postage paid and properly addressed, in the United States mail.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.018. BOARD OF ADJUSTMENT. (a) The commissioners court may provide for the appointment of a board of adjustment. In the zoning regulations adopted under this subchapter, the commissioners court may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning regulations that are consistent with the general purpose and intent of the regulations and in accordance with any applicable rules contained in the regulations.

(b) A board of adjustment must consist of five members to be appointed for terms of two years. The appointing authority may remove a board member for cause on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The board shall adopt rules in accordance with any order adopted under this subchapter. Meetings of the board are held at the call of the chairman and at other times as determined by the board. The chairman or acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(d) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records

shall be filed immediately in the board's office and are public records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.019. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or a zoning regulation;

(2) hear and decide special exceptions to the terms of a zoning regulation when the regulation requires the board to do so; and

(3) authorize in specific cases a variance from the terms of a zoning regulation if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the regulation would result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(c) The concurring vote of four members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning regulation; or

(3) authorize a variation in a zoning regulation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.020. APPEAL TO BOARD. (a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the county or of a municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may only be stayed by a restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.021. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a court of record a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or

(3) an officer, department, board, or bureau of the county or of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time within which the board's return must be made and served on the petitioner's attorney, which

must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.022. ENFORCEMENT; PENALTY; REMEDIES. (a) The commissioners court may adopt orders to enforce this subchapter, any order adopted under this subchapter, or a zoning regulation.

(b) A person commits an offense if the person violates this subchapter, an order adopted under this subchapter, or a zoning regulation. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the commissioners court. The commissioners court may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter, an order adopted under this subchapter, or a zoning regulation, the appropriate county authority, in addition to other

remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.023. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

(b) This subchapter does not authorize the commissioners court to require the removal or destruction of property that exists at the time the court implements this subchapter.

(c) This subchapter, an order adopted under this subchapter, or a zoning regulation does not apply to the location, construction, maintenance, or use of central office buildings used by a person engaging in providing telephone service to the public or equipment used in connection with those buildings or as part of the telephone system, as necessary to furnish telephone service to the public.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. ZONING NEAR AMISTAD RECREATION AREA

Sec. 231.031. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the part of Val Verde County that surrounds Amistad Recreation Area is frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern

to the entire state; and

(3) buildings in the area that are frequented for resort or recreational purposes tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging the recreational use of county land.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.032. AREAS SUBJECT TO REGULATION. This subchapter applies to that part of Val Verde County on the lakeward side of the boundaries described by Section 2, Chapter 250, Acts of the 62nd Legislature, Regular Session, 1971. That description is continued in effect for the purpose of the reference made by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.033. ZONING REGULATIONS GENERALLY. The commissioners court of Val Verde County may regulate in areas subject to this subchapter:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and

(6) the placement of water and sewage facilities, parks, and other public requirements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.034. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning regulations must be adopted in accordance with a comprehensive plan

and must be designed to:

(1) lessen congestion in the streets and roads;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population;

(7) facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements; and

(8) assist in developing the area into parks, playgrounds, and recreational areas for the residents of this state and other states and nations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.035. DISTRICTS. (a) The commissioners court may divide the area in the county that is subject to this subchapter into districts of a number, shape, and size the court considers best for carrying out this subchapter. Within each district, the commissioners court may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) The zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.036. ZONING COMMISSION. (a) The commissioners court shall appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. The commission must consist of an ex officio chairman and four additional members.

(b) The commissioners court shall appoint a chairman who must be a public official in Val Verde County. The chairman serves a two-

year term of office. The other members serve four-year terms. In making the initial appointments of the other members, the commissioners court shall designate the members for staggered terms of one, two, three, and four years. In the event of resignation, end of term, or a vacancy, the court shall appoint new members. The court shall fill a vacancy in the office of chairman by appointment. A person is not eligible for appointment to, or service on, the commission after the person's 70th birthday. The zoning commission may employ a secretary, an acting secretary, and other technical or clerical personnel.

(c) A member of the commission is entitled to compensation in the amount of $10 a month except that the chairman of the zoning commission is not entitled to compensation under this section if the chairman receives compensation in the chairman's capacity as a public official in the county. A member of the commission may also be entitled to expenses actually incurred while serving on the commission as provided by order of the commissioners court.

(d) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the commissioners court. The commissioners court may not take action or hold a public hearing until it has received the final report of the commission.

(e) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to:

(1) each owner of affected property or to the person who renders the property for county taxes; and

(2) each owner of property that is located within 200 feet of property affected by the change or to the person who renders the property for county taxes.

(f) The notice may be served by depositing it, postage paid and properly addressed, in the United States mail.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.037. PROCEDURE GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) A zoning regulation or zoning district boundary proposed by the zoning commission is not effective until it is adopted by the commissioners court after a public hearing. Before

the 15th day before the date of the hearing, the commissioners court must publish notice of the hearing in a newspaper of general circulation in the county.

(b) The commissioners court by a majority vote may amend or reject a regulation or boundary proposed by the zoning commission.

(c) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the lots covered by the proposed change; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed change and extending 200 feet from those lots, or from the street frontage of the opposite lots.

(d) After the commissioners court receives the protest, the court shall hold a public hearing. The court shall publish notice in the manner provided by Subsection (a).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.038. SPECIAL EXCEPTION. (a) Any of the following persons may petition the commissioners court for a special exception to a zoning regulation adopted by the commissioners court:

(1) a person aggrieved by the regulation; or

(2) any officer, department, board, or bureau of the county or of a municipality in the county.

(b) The commissioners court shall hold a public hearing on the petition and shall publish notice of the hearing before the 15th day before the date of the hearing in a newspaper of general circulation in the county.

(c) Except as provided by Subsection (d), the commissioners court may grant a petition for a special exception by majority vote.

(d) If a proposed special exception to a zoning regulation is protested in accordance with this subsection, the proposed special exception must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be presented at the hearing and signed by the owners of at least 20 percent of:

(1) the lots covered by the proposed exception; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed exception extending 200 feet from those lots, or from the street frontage of the opposite lots.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.039. ENFORCEMENT; PENALTY; REMEDIES. (a) The commissioners court may adopt orders to enforce this subchapter, any order adopted under this subchapter, or a zoning regulation.

(b) A person commits an offense if the person violates this subchapter or a zoning regulation. An offense under this subsection is a misdemeanor punishable by a fine of not less than $500 or more than $1,000. Each day that a violation occurs constitutes a separate offense. Trial shall be in the district court.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter, an order adopted under this subchapter, or a zoning regulation, the appropriate county authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful action or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, other structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.040. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of a lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes higher standards, that statute, order, or

regulation controls.

(b) This subchapter does not authorize the commissioners court to require the removal or destruction of property that exists at the time the court implements this subchapter or to restrict the right of a landowner, acting in the owner's behalf, to construct improvements for agricultural purposes or to otherwise use the land for agricultural purposes except the commissioners court may take those actions to restrict or prohibit any commercial agricultural enterprise such as a feed lot.

(c) This subchapter, an order adopted under this subchapter, or a zoning regulation does not apply to the location, construction, maintenance, or use of central office buildings or equipment used by a person engaged in providing telephone service to the public.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. MILITARY ZONES

Sec. 231.051. DEFINITION. In this subchapter, "military establishment" means a base, camp, station, yard, or section base of the United States Navy or the United States Coast Guard.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.052. ESTABLISHMENT OF MILITARY ZONE. (a) The commissioners court of a county in which a military establishment is located may create a restricted military zone adjacent to the military establishment. The court shall set forth the boundaries of the zone in its minutes. A military zone may not extend more than one mile from the boundary line of the military establishment.

(b) Appropriate signs must be posted along each road or way leading into the zone to indicate that the zone is a restricted area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.053. REGULATIONS. (a) The commissioners court may adopt regulations relating to the speed and parking of motor vehicles and the taking of photographs in the zone.

(b) The court may authorize the civilian or military guards at

a military establishment to enforce the regulations for the zone for that military establishment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.054. PENALTY. A person commits an offense if the person violates a regulation adopted under this subchapter. An offense under this section is a misdemeanor punishable by a fine of not less than $100 or by confinement in county jail for a term of not less than 10 days or more than two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. ZONING AROUND CERTAIN LAKES

Sec. 231.071. PURPOSE. The powers granted under this subchapter are for the purpose of protecting the public health, safety, welfare, and morals.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.072. DEFINITIONS. In this subchapter:

(1) "Lake" means an inland body of standing water, including a reservoir formed by impounding the water of a river or creek but not including an impoundment of salt water or brackish water, that:

(A) has a storage capacity of more than one million acre-feet; and

(B) is owned in whole or part by a political subdivision of this state, including a special-purpose district or authority.

(2) "Lake area" means the area within 5,000 feet of where the shoreline of a lake would be if the lake were filled to its storage capacity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.073. LAKE COVERED BY SUBCHAPTER. This subchapter

applies only to a lake that has a construction completion date after June 12, 1985.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.074. ZONING AND BUILDING CONSTRUCTION ORDINANCES. (a) The commissioners court of a county may adopt ordinances, not inconsistent with state law, that apply only to the lake area in the county and that regulate:

(1) the height, number of stories, or size of buildings;

(2) the percentage of a lot that may be occupied;

(3) the size of yards and other spaces;

(4) population density;

(5) the location and use of buildings and land for commercial, industrial, residential, or other purposes; and

(6) building construction standards.

(b) The commissioners court may not regulate the use, design, or placement of public utility buildings, land, or facilities.

(c) The commissioners court may not regulate for siting or zoning purposes new manufactured or industrialized housing that is constructed to preemptive state or federal building standards in any manner that is different from regulation of site-built housing.

(d) The commissioners court shall adopt rules as necessary to carry out this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.075. LOCAL OPTION ELECTION. (a) This subchapter applies only to a county in which a majority of the voters voting on the question approve this subchapter's grant of authority to the county. The commissioners court shall order and hold an election if the court is petitioned to do so under Section 231.076. The commissioners court may not order and hold the election on its own motion.

(b) If an election is held, the ballot shall be printed to provide for voting for or against the proposition: "Granting authority to the county to adopt zoning and building construction ordinances for the areas around lakes."

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.076. PETITION; VERIFICATION. (a) A petition for the local option election must include a statement worded substantially as provided by this subsection and located on each page of the petition preceding the space reserved for signatures: "This petition is to request that an election be held in (name of county) to authorize the county to adopt zoning and building construction ordinances for the areas around lakes."

(b) To be valid, a petition must be signed by registered voters of the county in a number equal to at least 10 percent of the number of votes received by all candidates for governor in the county in the most recent gubernatorial general election. The petition must also include each signer's current voter registration number, printed name, and residence address, including zip code.

(c) Each signer must enter beside the signature the date on which the petition is signed. A signature may not be counted if the signer fails to include the date or if the date of signing is before the 90th day before the date the petition is submitted to the commissioners court.

(d) Within five days after the date a petition is received in the office of the commissioners court, the commissioners court shall submit the petition for verification to the county clerk, who shall determine whether the petition meets the requirements imposed by this section. Within 30 days after the date the petition is submitted to the county clerk for verification, the county clerk shall certify in writing to the commissioners court whether the petition is valid. If the county clerk determines that the petition is invalid, the clerk shall state the reasons for that determination.

(e) If the county clerk certifies that a petition is valid, the commissioners court shall order the election to be held on the first uniform election date authorized by Section 41.001, Election Code, that occurs after the 35th day after the date the court receives the county clerk's certification.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.077. LAKE PLANNING COMMISSION. (a) A lake planning

commission is established for each lake area in a county subject to this subchapter and is composed of:

(1) three residents of the county who own land in the county, appointed by the county judge;

(2) one resident of each commissioners precinct in the county, appointed by the county commissioner for that precinct; and

(3) the mayor of each municipality that includes any part of that lake area in the county.

(b) Except for the initial appointed members, the appointed members of a commission are appointed for terms of two years expiring on February 1 of each odd-numbered year. The initial appointed members are appointed for terms expiring on the first February 1 of an odd-numbered year occurring after the date of their appointment.

(c) A commission annually shall elect a chairman and vice-chairman from its members. The commissioners court shall employ staff for the use of the commission in performing its functions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.078. COMMISSION DUTIES; RULES. (a) The commissioners court may assign a lake planning commission any duties that the court considers appropriate and that are not inconsistent with this subchapter.

(b) The commissioners court shall adopt rules governing the operations of the commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.079. COMMISSION STUDIES; REPORTS; HEARINGS. (a) At the request of the commissioners court, a lake planning commission shall, or on its own initiative a commission may, conduct studies of the lake area over which it has jurisdiction and prepare reports to advise the commissioners court about the boundaries of the original zoned districts, other regulations for the lake area, and changes to those districts or regulations.

(b) Before the commission may prepare a report, it must hold a public hearing at which members of the public may present testimony about any subject to be included in the commission's report. The commission shall give notice of the hearing as required by the

commissioners court.

(c) If a report will advise the commissioners court about proposed action regarding the zoning classification of a parcel of land, the commission shall send written notice to each landowner, as listed on the county tax rolls, whose land is directly affected by the proposed action or whose land is located within 200 feet of land directly affected. The notice must inform the landowner of the time and place of the public hearing at which the landowner may present testimony to the commission about the proposed action and must be deposited in the United States mail before the 10th day before the date of the hearing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.080. ADOPTION OF ORDINANCE AFTER RECEIPT OF REPORT. The commissioners court may adopt a proposed ordinance only after the court receives a lake planning commission's report prepared under Section 231.079 relating to the proposed ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.081. SPECIAL EXCEPTIONS. (a) The commissioners court may grant a special exception to an ordinance adopted under this subchapter if the court finds that the grant of the special exception will not be contrary to the public interest and that a literal enforcement of the ordinance would result in an unnecessary hardship.

(b) The commissioners court shall adopt procedures governing applications, notice, hearings, and other matters relating to the grant of a special exception.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.082. CONFLICT WITH OTHER ACTION. If an ordinance adopted under this subchapter conflicts with an action of a special-purpose district or authority that owns the lake or reservoir or an action of a municipality that applies to a lake area in the county, the municipal or special-purpose district action controls to the extent of the conflict.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 231.083. ENFORCEMENT. (a) The county attorney or other prosecuting attorney representing the county in the district court may file an action to enjoin the violation or threatened violation of an ordinance adopted under this subchapter. The court may grant appropriate relief.

(b) If an ordinance adopted under this subchapter defines an offense, an offense under that order is a Class C misdemeanor. The offense shall be prosecuted in the same manner as an offense defined by state law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER F. ZONING AROUND LAKE TAWAKONI AND LAKE RAY ROBERTS

Sec. 231.101. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) those parts of a county that surround Lake Tawakoni and Lake Ray Roberts will be frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern to the entire state; and

(3) buildings in the area that will be frequented for resort or recreational purposes will tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging recreation.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.102. DEFINITION. In this subchapter "lake area" means the area within 5,000 feet of the project boundary line for Lake Tawakoni or Lake Ray Roberts, which is defined as the 447 foot elevation take line for Lake Tawakoni and the 645 foot elevation take line for Lake Ray Roberts.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52 (a), eff. Aug. 28, 1989.

Sec. 231.103. LAKES COVERED BY SUBCHAPTER. This subchapter applies only to Lake Tawakoni and Lake Ray Roberts.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.104. ZONING AND BUILDING CONSTRUCTION ORDINANCES. (a) The commissioners court of a county may adopt ordinances, not inconsistent with state law, that apply only to the lake area in the county and that regulate:

(1) the height, number of stories, or size of buildings in the area;

(2) the percentage of a lot that may be occupied;

(3) the size of yards and other spaces;

(4) population density;

(5) the location and use of buildings and land for commercial, industrial, residential, or other purposes; and

(6) building construction standards.

(b) The commissioners court may not adopt an ordinance in conflict with Chapter 2154, Occupations Code, or with any rule adopted under that chapter. An ordinance adopted in conflict with that chapter is void.

(c) This Act does not authorize a commissioners court to issue any order or regulation in conflict with a municipal ordinance or state agency rule pertaining to the regulation of billboards or outdoor advertising. An order or regulation issued in conflict with a municipal ordinance or state agency rule is void.

(d) The commissioners court may not regulate for siting or zoning purposes new manufactured or industrialized housing that is constructed to preemptive state or federal building standards in any manner that is different from regulation of site-built housing.

(e) The commissioners court shall adopt rules as necessary to carry out this subchapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.823, eff. Sept. 1, 2001.

Sec. 231.105. LOCAL OPTION ELECTION. (a) This subchapter applies only to a county in which a majority of the voters voting on the question approve this subchapter's grant of authority to the county. The commissioners court shall order and hold an election if the court is petitioned to do so under Section 231.106. The commissioners court may not order and hold the election on its own motion.

(b) If an election is held, the ballot shall be printed to provide for voting for or against the proposition: "Granting authority to the county to adopt zoning and building construction ordinances for the areas in the county around (name of the appropriate lake)." Each qualified voter of each affected precinct is entitled to vote in the election.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.106. PETITION; VERIFICATION. (a) A petition for a local option election must include a statement worded substantially as follows and located on each page of the petition preceding the space reserved for signatures: "This petition is to request that an election be held in (name of county) to authorize the county to adopt zoning and building construction ordinances for the areas in the county around (name of the appropriate lake)."

(b) To be valid, a petition must be signed by registered voters of the county in a number equal to at least 10 percent of the number of votes received by all candidates for governor in each affected precinct in the most recent gubernatorial general election. The petition must also include each signer's current voter registration number, printed name, and residence address, including zip code.

(c) Each signer must enter beside the signature the date on which the petition is signed. A signature may not be counted if the signer fails to include the date or if the date of signing is before the 90th day before the date the petition is submitted to the commissioners court.

(d) Within five days after the date a petition is received in the office of the commissioners court, the commissioners court shall submit the petition for verification to the county clerk, who shall

determine whether the petition meets the requirements imposed by this section. Within 30 days after the date the petition is submitted to the county clerk for verification, the county clerk shall certify in writing to the commissioners court whether the petition is valid. If the county clerk determines that the petition is invalid, the clerk shall state the reasons for that determination.

(e) If the county clerk certifies that a petition is valid, the commissioners court shall order the election to be held on the first uniform election date authorized by Section 41.001, Election Code, that occurs after the date the court receives the county clerk's certification and that allows for compliance with the time requirements prescribed by Chapter 3, Election Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.107. LAKE PLANNING COMMISSION. (a) A lake planning commission is established for the lake area in the county and is composed of:

(1) three residents of the affected precincts who own land in the county, appointed by the county judge of the county;

(2) one resident of each commissioners precinct that is affected, appointed by the county commissioner for that precinct, and if only one precinct is affected, the commissioner shall appoint two; and

(3) the mayor of each municipality the territory or extraterritorial jurisdiction of which includes any part of the lake area in the county.

(b) Except for the initial appointed members, the appointed members of the commission are appointed for terms of two years expiring on February 1 of each odd-numbered year. The initial appointed members are appointed for terms expiring on the first February 1 of an odd-numbered year occurring after the date of their appointment.

(c) The commission annually shall elect a chairman and vice-chairman from its members. The commissioners court shall employ staff for the use of the commission in performing its functions.

(d) A mayor serving on the commission may designate another person to serve in place of the mayor at one or more commission meetings.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.
Amended by Acts 1997, 75th Leg., ch. 6, Sec. 1, eff. Sept. 1, 1997.

Sec. 231.108. COMMISSION DUTIES; RULES. (a) The commissioners court may assign the lake planning commission any duties that the court considers appropriate and that are not inconsistent with this subchapter.

(b) The commissioners court shall adopt rules governing the operations of the commission.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.109. COMMISSION STUDIES; REPORTS; HEARINGS. (a) At the request of the commissioners court, the lake planning commission shall, or on its own initiative the commission may, conduct studies of the lake area in the county and prepare reports to advise the commissioners court about the boundaries of the original zoned districts, other regulations for the lake area, and changes to those districts or regulations.

(b) Before the commission may prepare a report, it must hold a public hearing at which members of the public may present testimony about any subject to be included in the commission's report. The commission shall give notice of the hearing as required by the commissioners court.

(c) If a report will advise the commissioners court about proposed action regarding the zoning classification of a parcel of land, the commission shall send written notice to each landowner, as listed on the county tax rolls, whose land is directly affected by the proposed action or whose land is located within 200 feet of land directly affected. The notice must inform the landowner of the time and place of the public hearing at which the landowner may present testimony to the commission about the proposed action and must be deposited in the United States mail before the 10th day before the date of the hearing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.110. ADOPTION OF ORDINANCE AFTER RECEIPT OF REPORT.

The commissioners court may adopt a proposed ordinance only after the court receives the lake planning commission's report prepared under Section 231.109 relating to the proposed ordinance.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.111. SPECIAL EXCEPTIONS. (a) The lake planning commission may recommend, subject to approval by the commissioners court, a special exception to an ordinance adopted under this subchapter if the commission finds that the grant of the special exception will not be contrary to the public interest and that a literal enforcement of the ordinance would result in an unnecessary hardship.

(b) The commission shall adopt procedures governing applications, notice, hearings, and other matters relating to the grant of a special exception.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.112. CONFLICT BETWEEN ORDINANCES. If an ordinance adopted under this subchapter conflicts with an action of a municipality that applies to any part of the lake area located in the county and the municipality, the municipal action controls to the extent of the conflict.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

Sec. 231.113. ENFORCEMENT. (a) The county attorney or other prosecuting attorney representing the county in the district court is entitled to appropriate injunctive relief to prevent a violation or threatened violation of an ordinance adopted under this subchapter from continuing or occurring.

(b) If an ordinance adopted under this subchapter defines an offense, the offense is a Class C misdemeanor. The offense shall be prosecuted in the same manner as an offense defined by state law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 52(a), eff. Aug. 28, 1989.

SUBCHAPTER G. ZONING AROUND LAKE ALAN HENRY, LAKE COOPER, LAKE RALPH HALL, POST LAKE, AND LOWER BOIS D'ARC CREEK RESERVOIR

Sec. 231.131. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the areas that surround Lake Alan Henry, Lake Cooper, Lake Ralph Hall, Post Lake, and Lower Bois d'Arc Creek Reservoir are or will be frequented for recreational purposes by residents from every part of the state;

(2) development in the area, including the construction of on-site water treatment systems or other sources of contamination, may impact the water quality in the lakes and the reservoir;

(3) orderly development and use of the area is of concern to the entire state; and

(4) buildings in the area that will be frequented for resort or recreational purposes will tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging recreation.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.
Amended by Acts 1991, 72nd Leg., ch. 63, Sec. 2, eff. May 8, 1991; Acts 2003, 78th Leg., ch. 977, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 13 (S.B. 525), Sec. 2, eff. April 29, 2011.

Sec. 231.132. AREAS SUBJECT TO REGULATION. (a) This subchapter applies to:

(1) those parts of Garza County located within three miles of the high water marks established for Lake Alan Henry and Post Lake except land located in Garza County and owned by the White River Municipal Water District;

(2) those parts of Kent County located within three miles of the high water marks established for Lake Alan Henry;

(3) the area within 10,000 feet of where the shoreline of Lake Cooper would be if the lake were filled to its storage capacity;

(4) the area within 5,000 feet of where the shoreline of Lake Ralph Hall would be if the lake were filled to its storage capacity; and

(5) the area within 5,000 feet of where the shoreline of the Lower Bois d'Arc Creek Reservoir would be if the reservoir were filled to its storage capacity.

(b) The areas described by Subsection (a) are subject to regulation under this subchapter regardless of whether the construction of an affected lake or reservoir is complete.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 13, Sec. 4, eff. April 29, 2011.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 63, Sec. 3, eff. May 8, 1991; Acts 2001, 77th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 997, Sec. 3, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1309, Sec. 2.01, eff. June 21, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 13 (S.B. 525), Sec. 3, eff. April 29, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 13 (S.B. 525), Sec. 4, eff. April 29, 2011.

Sec. 231.133. ZONING REGULATIONS GENERALLY. (a) The commissioners court of a county in which an area subject to this subchapter is located may regulate in that area:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and

(6) the placement of water and sewage facilities, parks, and other public requirements.

(b) The commissioners court may not regulate for siting or zoning purposes new manufactured or industrialized housing, constructed to preemptive state or federal building standards, in any

manner that is different from regulation of site-built housing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.
Amended by Acts 1991, 72nd Leg., ch. 63, Sec. 4, eff. May 8, 1991.

Sec. 231.134. COMPLIANCE WITH COMPREHENSIVE PLAN. Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:

(1) lessen congestion in the streets and roads;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population;

(7) facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements; or

(8) assist in developing the area into parks, playgrounds, and recreational areas for the residents of this state and other states and nations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.

Sec. 231.135. DISTRICTS. (a) The commissioners court may divide the area in the county that is subject to this subchapter into districts of a number, shape, and size the court considers best for carrying out this subchapter. Within each district, the commissioners court may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) The zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the area.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.

Sec. 231.136. ZONING COMMISSION. (a) The commissioners court shall appoint a zoning commission. The commission shall recommend boundaries for the original zoning districts and appropriate zoning regulations for each district. The commission must consist of an ex officio chairman and four additional members.

(b) The commissioners court shall appoint a chairman who must be a public official in the county. The chairman serves a two-year term of office. The other members serve four-year terms. In making the initial appointments of the other members, the commissioners court shall designate the members for staggered terms of one, two, three, and four years. In the event of resignation, end of term, or a vacancy, the court shall appoint new members. The court shall fill a vacancy in the office of chairman by appointment. The zoning commission may employ a secretary, an acting secretary, and other technical or clerical personnel.

(c) A member of the commission is entitled to compensation in the amount of $10 a month except that the chairman of the zoning commission is not entitled to compensation under this section if the chairman receives compensation in the chairman's capacity as a public official in the county. A member of the commission may also be entitled to expenses actually incurred while serving on the commission as provided by order of the commissioners court.

(d) The zoning commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the commissioners court. The commissioners court may not take action or hold a public hearing until it has received the final report of the commission.

(e) Before the 10th day before the hearing date, written notice of each public hearing before the zoning commission on a proposed change in a zoning classification shall be sent to:

(1) each owner of affected property or to the person who renders the property for county taxes; and

(2) each owner of property that is located within 200 feet of property affected by the change or to the person who renders the property for county taxes.

(f) The notice may be served by depositing it, postage paid and properly addressed, in the United States mail.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.
Amended by Acts 1991, 72nd Leg., ch. 63, Sec. 5, eff. May 8, 1991.

Sec. 231.137. PROCEDURE GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) A zoning regulation or zoning district boundary proposed by the zoning commission is not effective until it is adopted by the commissioners court after a public hearing. Before the 15th day before the date of the hearing, the commissioners court must publish notice of the hearing in a newspaper of general circulation in the county.

(b) The commissioners court by a majority vote may amend or reject a regulation or boundary proposed by the zoning commission.

(c) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the lots covered by the proposed change; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed change and extending 200 feet from those lots or from the street frontage of the opposite lots.

(d) After the commissioners court receives the protest, the court shall hold a public hearing. The court shall publish notice in the manner provided by Subsection (a).

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.

Sec. 231.138. SPECIAL EXCEPTION. (a) Any of the following persons may petition the commissioners court for a special exception to a zoning regulation adopted by the commissioners court:

(1) a person aggrieved by the regulation; or

(2) any officer, department, board, or bureau of the county or of a municipality in the county.

(b) The commissioners court shall hold a public hearing on the petition and shall publish notice of the hearing before the 15th day before the date of the hearing in a newspaper of general circulation in the county.

(c) Except as provided by Subsection (d), the commissioners court may grant a petition for a special exception by majority vote.

(d) If a proposed special exception to a zoning regulation is protested in accordance with this subsection, the proposed special exception must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be presented at the hearing and signed by the owners of at least 20 percent of:

(1) the lots covered by the proposed exception; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed exception extending 200 feet from those lots or from the street frontage of the opposite lots.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.

Sec. 231.139. ENFORCEMENT; PENALTY; REMEDIES. (a) The commissioners court may adopt orders to enforce this subchapter, any order adopted under this subchapter, or a zoning regulation.

(b) A person commits an offense if the person violates this subchapter or a zoning regulation. An offense under this subsection is a misdemeanor punishable by a fine of not less than $500 or more than $1,000. Each day that a violation occurs constitutes a separate offense. Trial shall be in the district court.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter, an order adopted under this subchapter, or a zoning regulation, the appropriate county authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful action or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, other structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.

Sec. 231.140. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower

building height or fewer number of stories for a building, requires a greater percentage of a lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

(b) This subchapter does not authorize the commissioners court to require the removal or destruction of property that exists at the time the court implements this subchapter or restrict the right of a landowner, acting in the owner's behalf, to construct improvements for agriculture and ranching operations or to otherwise use the land for agriculture and ranching operations. Agriculture and ranching operations include cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture; viticulture; horticulture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure. The commissioners court may take those actions to restrict or prohibit any commercial agricultural enterprise, such as a commercial feed lot, that are reasonably necessary to protect the public health, safety, peace, morals, and general welfare from the dangers of explosion, flooding, vermin, insects, physical injury, contagious disease, contamination of water supplies, radiation, storage of toxic materials, or other hazards.

(c) This subchapter, an order adopted under this subchapter, or a zoning regulation does not apply to the location, construction, maintenance, or use of central office buildings or equipment used by a person engaged in providing telephone service to the public.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 53(a), eff. Aug. 28, 1989.

Sec. 231.141. REGULATION OF SAM WAHL RECREATION AREA. (a) The Commissioners Court of Garza County may zone for commercial or residential development the area adjacent to Lake Alan Henry known as the Sam Wahl Recreation Area.

(b) Notwithstanding this chapter, Chapter 253, or other law, a municipality owning property in the Sam Wahl Recreation Area may develop, change the use of, or dispose of the property.

Added by Acts 1999, 76th Leg., ch. 109, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. ZONING AND OTHER REGULATION IN EL PASO MISSION TRAIL HISTORICAL AREA

Sec. 231.171. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the El Paso Mission Trail Historical Area will be frequented for recreational and educational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern to the entire state; and

(3) buildings in the area that will be frequented for recreational, cultural, or educational purposes will tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation, education, and historic preservation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare, protecting and preserving places and areas of historical, cultural, or architectural importance and significance, and encouraging recreation and education.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.172. AREA SUBJECT TO REGULATION. This subchapter applies to the area of land in El Paso County, to be known as the El Paso Mission Trail Historical Area, described by Section 2, House Bill No. 2561, Acts of the 72nd Legislature, Regular Session, 1991.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.173. ZONING AND OTHER REGULATIONS GENERALLY. The commissioners court of El Paso County may regulate in the El Paso Mission Trail Historical Area:

(1) the height, number of stories, and size of buildings or other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes;

(6) the construction, reconstruction, alteration, or razing of buildings or other structures of historical, cultural, or architectural significance;

(7) the placement of water and sewage facilities, parks, and other public requirements;

(8) the style of and construction standards applying to buildings and other structures; and

(9) the location, size, style, and other characteristics of signs.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.174. COMPLIANCE WITH COMPREHENSIVE PLAN. The regulations must be adopted in accordance with a comprehensive plan and must be designed to:

(1) lessen congestion in the streets and roads;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population;

(7) facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements; or

(8) assist in developing the area into parks, playgrounds, recreational areas, and educational areas and in preserving areas of historical, cultural, or architectural importance or significance for the residents of this state and other states and nations.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.175. DISTRICTS. (a) The commissioners court may divide the El Paso Mission Trail Historical Area into districts of a number, shape, and size the court considers best for carrying out this subchapter. Within each district, the commissioners court may regulate the erection, construction, reconstruction, removal,

alteration, repair, or use of buildings, other structures, or land.

(b) The regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings, protecting historic landmarks and structures, and encouraging the most appropriate use of land throughout the area.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.176. COMMISSION. (a) To exercise the powers authorized by this subchapter, the commissioners court shall appoint a commission. If the county has a planning commission or historic commission, the commissioners court may designate either of those commissions to serve as the commission required by this section. The commission shall recommend boundaries for the original districts and appropriate regulations for each district.

(b) The commission shall elect a chairman from its members. The chairman serves in that capacity for a term set by the commission. The commission may at any time choose for a particular meeting or occasion an acting chairman as necessary from its members. In the event of resignation, end of term, or a vacancy, the commissioners court shall appoint new members. The commission shall fill a vacancy in the office of chairman by election. The commission may employ a secretary, an acting secretary, and other technical or clerical personnel.

(c) A member of the commission is not entitled to compensation but is entitled to expenses actually incurred while serving on the commission as provided by order of the commissioners court.

(d) The commission shall make a preliminary report and hold public hearings on that report before submitting a final report to the commissioners court. The commissioners court may not take final action or hold a public hearing until it has received the final report of the commission.

(e) Before the 10th day before the hearing date, written notice of each public hearing before the commission on a proposed change in a classification in the district shall be sent to:

(1) each owner of affected property or to the person who renders the property for county taxes; and

(2) each owner of property that is located within 200 feet of property affected by the change or to the person who renders the property for county taxes.

(f) The notice may be served by depositing it, postage paid and properly addressed, in the United States mail.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.177. PROCEDURES GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) The commissioners court shall establish procedures for adopting and enforcing regulations and district boundaries. A regulation or district boundary is not effective until it is adopted by the commissioners court after a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard. Before the 15th day before the date of the hearing, the commissioners court must publish notice of the hearing in a newspaper of general circulation in the county.

(b) The commissioners court by a majority vote may amend or reject a regulation or boundary proposed by the commission.

(c) If a proposed change to a regulation or boundary is protested in accordance with this subsection, the proposed change must receive, in order to take effect, the affirmative vote of at least three-fourths of all members of the commissioners court. The protest must be written and signed by the owners of at least 20 percent of either:

(1) the area of the lots covered by the proposed change; or

(2) the lots immediately adjacent to the rear of the lots covered by the proposed change and extending 200 feet from those lots or from the street frontage of the opposite lots.

(d) After the commissioners court receives the protest, the court shall hold a public hearing. The court shall publish notice in the manner provided by Subsection (a).

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.178. BOARD OF ADJUSTMENT. (a) The commissioners

court may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the commissioners court may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the regulations that are consistent with the general purpose and intent of the regulations and in accordance with any applicable rules contained in the regulations.

(b) A board of adjustment must consist of five members to be appointed for staggered terms of two years. The appointing authority may remove a board member for cause on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The board shall adopt rules in accordance with any order adopted under this subchapter. Meetings of the board are held at the call of the chairman and at other times as determined by the board. The chairman or acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(d) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or indicate that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.179. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or a regulation adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a regulation adopted under this subchapter when the regulation requires the board to do so; and

(3) authorize in specific cases a variance from the terms of a regulation adopted under this subchapter if the variance is not contrary to the public interest and, due to special conditions, a

literal enforcement of the regulation would result in unnecessary hardship, and so that the spirit of the regulation is observed and substantial justice is done.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative official.

(c) The concurring vote of four members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a regulation adopted under this subchapter; or

(3) authorize a variation in a regulation adopted under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.180. APPEAL TO BOARD. (a) Any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the county or of a municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by board rule. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a

restraining order granted by the board or a court of record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.181. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a court of record a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(1) a person aggrieved by a decision of the board;

(2) a taxpayer; or

(3) an officer, department, board, or bureau of the county or of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time within which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's

findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. The court may not assess costs against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.182. ENFORCEMENT; PENALTY; REMEDIES. (a) The commissioners court may adopt orders to enforce this subchapter or an order or a regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an order or a regulation adopted under this subchapter. An offense under this subsection is a Class B misdemeanor. Each day that a violation occurs constitutes a separate offense. Trial shall be in a county court.

(c) A person who violates this subchapter or an order or a regulation adopted under this subchapter is liable to the county for a civil penalty in an amount not to exceed $1,000 for each day the violation exists. The appropriate attorney representing the county in civil actions may file a civil action in a court of competent jurisdiction to recover the civil penalty. If the appropriate attorney for the county prevails in the civil action, the person shall reimburse the attorney for the costs of the civil action, including court costs and attorney's fees. In determining the amount of the penalty, the court shall consider the seriousness of the violation. A penalty recovered under this subsection shall be deposited in the county treasury to the credit of the general fund.

(d) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, razed, or maintained or if a building, other structure, or land is used in violation of this subchapter or an order or a regulation adopted under this subchapter, the appropriate county authority, in addition to other remedies, may institute appropriate action to:

(1) prevent or remove the unlawful action or use, including an unlawful erection, construction, reconstruction, alteration,

repair, conversion, razing, or maintenance;

(2) enjoin, restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

Sec. 231.183. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of a lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes higher standards, that statute, order, or regulation controls.

(b) The commissioners court may require the removal, destruction, or change of any structure or use of any property that does not conform to an order or a regulation adopted under this subchapter only if:

(1) the court permits the owner's investment in the structure or property to be amortized over a period of time determined by the court; or

(2) the court determines the nonconforming structure or property has been permanently abandoned.

(c) This subchapter or an order or a regulation adopted under this subchapter does not apply to the location, construction, maintenance, or use of central office buildings or equipment used by a person engaged in providing telephone service to the public.

(d) This subchapter does not authorize the commissioners court to require the removal or destruction of property that exists at the time the court implements this subchapter or restrict the right of a landowner, acting in the owner's behalf, to construct improvements for agriculture and ranching operations or to otherwise use the land for agriculture and ranching operations. Agriculture and ranching operations include cultivating the soil; producing crops for human food, animal feed, planting seed, or fiber; floriculture;

viticulture; horticulture; raising or keeping livestock or poultry; and planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure. The commissioners court may take those actions to restrict or prohibit any commercial agricultural enterprise, such as a commercial feed lot, that are reasonably necessary to protect the public health, safety, peace, morals, and general welfare from the dangers of explosion, flooding, vermin, insects, physical injury, contagious disease, contamination of water supplies, radiation, storage of toxic materials, or other hazards.

Added by Acts 1991, 72nd Leg., ch. 755, Sec. 1, eff. June 16, 1991.

SUBCHAPTER J. ZONING AROUND LAKE SOMERVILLE

Sec. 231.201. DEFINITIONS. In this subchapter:

(1) "Affected county" means Burleson, Milam, Lee, or Washington County.

(2) "Lake area" means the area within 5,000 feet of the project boundary line for Lake Somerville.

Added by Acts 1997, 75th Leg., ch. 1450, Sec. 1, eff. Sept. 1, 1997.

Sec. 231.202. LAKE SOMERVILLE PLANNING COMMISSION. (a) A lake planning commission is established for the lake area in Burleson, Milam, Lee, and Washington counties and is composed of:

(1) one resident of each affected county, appointed by the county judge of that county; and

(2) the presiding officer of the commission appointed by the county judge of Burleson County.

(b) Except for the initial appointed members, the appointed members of the commission are appointed for terms of two years expiring on February 1 of each odd-numbered year. The initial appointed members are appointed for terms expiring on the first February 1 of an odd-numbered year occurring after the date of their appointment.

(c) The commissioners courts of the affected counties may employ staff for the use of the commission in performing its functions.

Added by Acts 1997, 75th Leg., ch. 1450, Sec. 1, eff. Sept. 1, 1997.

Sec. 231.203. COMMISSION STUDIES; REPORTS; HEARINGS. (a) At the request of the commissioners court of an affected county, the lake planning commission shall, or on its own initiative the commission may, conduct studies of the lake area in that county and prepare reports to advise the commissioners court about matters affecting the lake area in that county, including the need for zoning regulations in the lake area in that county.

(b) Before the commission may prepare a report, it must hold a public hearing at which members of the public may present testimony about any subject to be included in the commission's report. The commission shall give notice of the hearing as required by the commissioners court of the affected county.

Added by Acts 1997, 75th Leg., ch. 1450, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER K. DEVELOPMENT REGULATIONS IN HOOD COUNTY

Sec. 231.221. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) all of Hood County is located within the watershed that drains into Lake Granbury and the Brazos River;

(2) the area that surrounds Lake Granbury and the Brazos River in Hood County is or will be frequented for recreational purposes by residents from every part of the state;

(3) orderly development of the area and the watershed is of concern to the entire state; and

(4) without adequate development regulations, the area and the watershed will be developed in ways that endanger and interfere with the proper use of that area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of:

(1) promoting the public health, safety, peace, morals, and general welfare;

(2) encouraging recreation; and

(3) safeguarding and preventing the pollution of the state's rivers and lakes.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.222. AREAS SUBJECT TO REGULATION. This subchapter applies only to the unincorporated areas of Hood County.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.223. DEVELOPMENT REGULATIONS GENERALLY. The Commissioners Court of Hood County may regulate:

(1) the percentage of a lot that may be occupied or developed;

(2) population density;

(3) the size of buildings;

(4) the location, design, construction, extension, and size of streets and roads;

(5) the location, design, construction, extension, size, and installation of water and wastewater facilities, including the requirements for connecting to a centralized water or wastewater system;

(6) the location, design, construction, extension, size, and installation of drainage facilities and other required public facilities;

(7) the location, design, and construction of parks, playgrounds, and recreational areas; and

(8) the abatement of harm resulting from inadequate water or wastewater facilities.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.224. COMPLIANCE WITH COUNTY PLAN. Development regulations must be:

(1) adopted in accordance with a county plan for growth and development of the county; and

(2) coordinated with the comprehensive plans of municipalities located in the county.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.225. DISTRICTS. (a) The commissioners court may divide the unincorporated area of the county into districts of a number, shape, and size the court considers best for carrying out this subchapter.

(b) Development regulations may vary from district to district.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.226. PROCEDURE GOVERNING ADOPTION OF REGULATIONS AND DISTRICT BOUNDARIES. (a) A development regulation adopted under this subchapter is not effective until it is adopted by the commissioners court after a public hearing. Before the 15th day before the date of the hearing, the commissioners court must publish notice of the hearing in a newspaper of general circulation in the county.

(b) The commissioners court may establish or amend a development regulation only by an order passed by a majority vote of the full membership of the court.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.227. DEVELOPMENT COMMISSION. (a) The commissioners court may appoint a development commission to assist in the implementation and enforcement of development regulations adopted under this subchapter.

(b) The development commission must consist of an ex officio chairman who must be a public official in Hood County and four additional members.

(c) The development commission is advisory only and may recommend appropriate development regulations for the county.

(d) The members of the development commission are subject to the same requirements relating to conflicts of interest that are applicable to the commissioners court under Chapter 171.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.228. SPECIAL EXCEPTION. (a) A person aggrieved by a development regulation adopted under this subchapter may petition the

commissioners court or the development commission, if the commissioners court has established a development commission, for a special exception to a development regulation adopted by the commissioners court.

(b) The commissioners court shall adopt procedures governing applications, notice, hearings, and other matters relating to the grant of a special exception.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.229. ENFORCEMENT; PENALTY. (a) The commissioners court may adopt orders to enforce this subchapter or an order or development regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an order or development regulation adopted under this subchapter. An offense under this subsection is a misdemeanor punishable by a fine of not less than $500 or more than $1,000. Each day that a violation occurs constitutes a separate offense. Trial shall be in the justice court.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 958 (H.B. 3464), Sec. 1, eff. September 1, 2009.

Sec. 231.230. COOPERATION WITH MUNICIPALITIES. The commissioners court by order may enter into agreements with any municipality located in the county to assist in the implementation and enforcement of development regulations adopted under this subchapter.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

Sec. 231.231. CONFLICT WITH OTHER LAWS. If a development regulation adopted under this subchapter imposes higher standards than those required under another statute or local order or regulation, the regulation adopted under this subchapter controls. If the other statute or local order or regulation imposes higher

standards, that statute, order, or regulation controls.

Added by Acts 1999, 76th Leg., ch. 1227, Sec. 1, eff. June 18, 1999.

SUBCHAPTER L. ZONING AROUND FALCON LAKE

Sec. 231.251. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the area that surrounds Falcon Lake in Zapata County is frequented for recreational purposes by residents from every part of the state;

(2) orderly development and use of the area is of concern to the entire state; and

(3) buildings in the area that are frequented for resort or recreational purposes tend to become congested and to be used in ways that interfere with the proper use of the area as a place of recreation to the detriment of the public health, safety, morals, and general welfare.

(b) The powers granted under this subchapter are for the purpose of promoting the public health, safety, peace, morals, and general welfare and encouraging the recreational use of county land.

Added by Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 2, eff. June 15, 2007.

Sec. 231.252. AREAS SUBJECT TO REGULATION. This subchapter applies only to the unincorporated area of counties exercising the powers of a Type A municipality located within 25,000 feet of:

(1) the project boundary line for Falcon Lake;

(2) the Rio Grande River; and

(3) tributaries and arroyos leading to Falcon Lake or to the Rio Grande River.

Added by Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 2, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1054 (H.B. 4607), Sec. 1, eff. September 1, 2009.

Sec. 231.253. FALCON LAKE PLANNING COMMISSION. (a) A lake planning commission is established for the area subject to this subchapter. The commission is comprised of:

(1) four residents of Zapata County, with one resident from each of the county commissioner precincts, appointed by that precinct's commissioner; and

(2) a person, who shall serve as the commission's presiding officer, appointed by the county judge of Zapata County.

(b) Except as provided by Subsection (c), the members of the commission shall be appointed for two-year terms that expire February 1 of each odd-numbered year.

(c) The terms of the initial members of the commission expire on February 1st of the first February in an odd-numbered year following their appointment.

(d) The commissioners court of Zapata County may employ staff for the commission to use in performing the commission's functions.

Added by Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 2, eff. June 15, 2007.

Sec. 231.254. COMMISSION STUDY AND REPORT; HEARING. (a) At the request of the commissioners court of Zapata County, the lake planning commission shall, or on the commission's own initiative, the commission may, conduct studies of the area subject to this subchapter and prepare reports to advise the commissioners court about matters affecting that area, including any need for zoning regulations in that area.

(b) Before the commission may prepare a report, the commission must hold a public hearing in which members of the public may offer testimony regarding any subject to be included in the commission's report. The commission shall provide notice of the hearing as required by the commissioners court.

Added by Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 2, eff. June 15, 2007.

Sec. 231.255. ZONING REGULATIONS. After receiving a report from the lake planning commission under Section 231.254, the commissioners court of Zapata County may adopt zoning regulations for

the area subject to this subchapter and in accordance with the report that regulate:

(1) the height, number of stories, and size of buildings and other structures;

(2) the percentage of a lot that may be occupied;

(3) the size of yards, courts, and other open spaces;

(4) population density;

(5) the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes; and

(6) the placement of water and sewage facilities, parks, and other public requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 2, eff. June 15, 2007.

Sec. 231.256. DISTRICTS. (a) The commissioners court may divide the area in the county that is subject to this subchapter into districts of a number, shape, and size the court considers best for carrying out this subchapter. Within each district, the commissioners court may regulate the erection, construction, reconstruction, alteration, repair, or use of buildings, other structures, or land.

(b) The zoning regulations must be uniform for each class or kind of building in a district, but the regulations may vary from district to district. The regulations shall be adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for particular uses, with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the area.

Added by Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 2, eff. June 15, 2007.

Sec. 231.257. ENFORCEMENT; PENALTY; REMEDIES. (a) The commissioners court may adopt orders to enforce this subchapter, any order adopted under this subchapter, or a zoning regulation.

(b) A person commits an offense if the person violates this subchapter, an order adopted under this subchapter, or a zoning

regulation. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the commissioners court. The commissioners court may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter, an order adopted under this subchapter, or a zoning regulation, the appropriate county authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Added by Acts 2007, 80th Leg., R.S., Ch. 797 (S.B. 63), Sec. 2, eff. June 15, 2007.

SUBCHAPTER M. REGULATION OF COTTAGE FOOD PRODUCTION OPERATIONS

Sec. 231.281. DEFINITIONS. In this subchapter, "cottage food production operation" and "home" have the meanings assigned by Section 437.001, Health and Safety Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 8, eff. September 1, 2013.

Sec. 231.282. CERTAIN ZONING REGULATIONS PROHIBITED. A county zoning ordinance may not prohibit the use of a home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 8, eff. September 1, 2013.

Sec. 231.283. ACTION FOR NUISANCE OR OTHER TORT. This subchapter does not affect the right of a person to bring a cause of

action under other law against an individual for nuisance or another tort arising out of the individual's use of the individual's home for cottage food production operations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 653 (H.B. 970), Sec. 8, eff. September 1, 2013.

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS

SUBCHAPTER A. SUBDIVISION PLATTING REQUIREMENTS IN GENERAL

Sec. 232.001. PLAT REQUIRED. (a) The owner of a tract of land located outside the limits of a municipality must have a plat of the subdivision prepared if the owner divides the tract into two or more parts to lay out:

(1) a subdivision of the tract, including an addition;

(2) lots; or

(3) streets, alleys, squares, parks, or other parts of the tract intended by the owner of the tract to be dedicated to public use.

(a-1) A division of a tract under Subsection (a) includes a division regardless of whether it is made by using a metes and bounds description in a deed of conveyance or in a contract for a deed, by using a contract of sale or other executory contract to convey, or by using any other method.

(b) To be recorded, the plat must:

(1) describe the subdivision by metes and bounds;

(2) locate the subdivision with respect to an original corner of the original survey of which it is a part; and

(3) state the dimensions of the subdivision and of each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the street, alley, square, park, or other part.

(c) The owner or proprietor of the tract or the owner's or proprietor's agent must acknowledge the plat in the manner required for the acknowledgment of deeds.

(d) The plat must be filed and recorded with the county clerk of the county in which the tract is located.

(e) The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

(f) The commissioners court may require a plat application submitted for approval to include a digital map that is compatible with other mapping systems used by the county and that georeferences the subdivision plat and related public infrastructure using the Texas Coordinate Systems adopted under Section 21.071, Natural Resources Code. A digital map required under this subsection may be required only in a format widely used by common geographic information system software. A requirement adopted under this subsection must provide for an exemption from the requirement if the owner of the tract submits with the plat application an acknowledged statement indicating that the digital mapping technology necessary to submit a map that complies with this subsection was not reasonably accessible.

(g) A plat is considered filed on the date the applicant submits the plat, along with a completed plat application and the application fees and other requirements prescribed by or under this subchapter, to:

(1) the commissioners court; or

(2) the county authority responsible for approving plats.

(h) The commissioners court or the county authority responsible for approving plats may not require an analysis, study, document, agreement, or similar requirement to be included in or as part of an application for a plat, development permit, or subdivision of land that is not explicitly required by state law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.05, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 422, Sec. 8, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 979, Sec. 29, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 129, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 550 (H.B. 2033), Sec. 1, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 1, eff. September 1, 2023.

Sec. 232.0012. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to restrict a county from establishing a submittal calendar to be used by an applicant to facilitate compliance with the

approval process described by Sections 232.0025, 232.0026, 232.0027, and 232.0028.

Added by Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 2, eff. September 1, 2023.

Sec. 232.0013. CHAPTER-WIDE PROVISION RELATING TO REGULATION OF PLATS AND SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION. The authority of a county under this chapter relating to the regulation of plats or subdivisions in the extraterritorial jurisdiction of a municipality is subject to any applicable limitation prescribed by an agreement under Section 242.001 or by Section 242.002.

Added by Acts 2003, 78th Leg., ch. 523, Sec. 7, eff. June 20, 2003.

Sec. 232.0015. EXCEPTIONS TO PLAT REQUIREMENT. (a) To determine whether specific divisions of land are required to be platted, a county may define and classify the divisions. A county need not require platting for every division of land otherwise within the scope of this subchapter.

(b) Except as provided by Section 232.0013, this subchapter does not apply to a subdivision of land to which Subchapter B applies.

(c) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

(1) the owner does not lay out a part of the tract described by Section 232.001(a)(3); and

(2) the land is to be used primarily for agricultural use, as defined by Section 1-d, Article VIII, Texas Constitution, or for farm, ranch, wildlife management, or timber production use within the meaning of Section 1-d-1, Article VIII, Texas Constitution.

(d) If a tract described by Subsection (c) ceases to be used primarily for agricultural use or for farm, ranch, wildlife management, or timber production use, the platting requirements of this subchapter apply.

(e) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into four or fewer parts and does not lay out a part of the tract

described by Section 232.001(a)(3) to have a plat of the subdivision prepared if each of the lots is to be sold, given, or otherwise transferred to an individual who is related to the owner within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code. If any lot is sold, given, or otherwise transferred to an individual who is not related to the owner within the third degree by consanguinity or affinity, the platting requirements of this subchapter apply.

(f) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

(1) all of the lots of the subdivision are more than 10 acres in area; and

(2) the owner does not lay out a part of the tract described by Section 232.001(a)(3).

(g) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts and does not lay out a part of the tract described by Section 232.001(a)(3) to have a plat of the subdivision prepared if all the lots are sold to veterans through the Veterans' Land Board program.

(h) The provisions of this subchapter shall not apply to a subdivision of any tract of land belonging to the state or any state agency, board, or commission or owned by the permanent school fund or any other dedicated funds of the state unless the subdivision lays out a part of the tract described by Section 232.001(a)(3).

(i) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

(1) the owner of the land is a political subdivision of the state;

(2) the land is situated in a floodplain; and

(3) the lots are sold to adjoining landowners.

(j) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two parts to have a plat of the subdivision prepared if:

(1) the owner does not lay out a part of the tract described by Section 232.001(a)(3); and

(2) one new part is to be retained by the owner, and the other new part is to be transferred to another person who will

further subdivide the tract subject to the plat approval requirements of this chapter.

(k) A county may not require the owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to have a plat of the subdivision prepared if:

(1) the owner does not lay out a part of the tract described by Section 232.001(a)(3); and

(2) all parts are transferred to persons who owned an undivided interest in the original tract and a plat is filed before any further development of any part of the tract.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.04, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 979, Sec. 3, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 129, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 523, Sec. 8, eff. June 20, 2003.

Sec. 232.002. APPROVAL BY COUNTY REQUIRED. (a) The commissioners court of the county in which the land is located must approve, by an order entered in the minutes of the court, a plat required by Section 232.001. The commissioners court may refuse to approve a plat if it does not meet the requirements prescribed by or under this chapter or if any bond required under this chapter is not filed with the county.

(b) The commissioners court may not approve a plat unless the plat and other documents have been prepared as required by Section 232.0035, if applicable.

(c) If no portion of the land subdivided under a plat approved under this section is sold or transferred before January 1 of the 51st year after the year in which the plat was approved, the approval of the plat expires, and the owner must resubmit a plat of the subdivision for approval. A plat resubmitted for approval under this subsection is subject to the requirements prescribed by this chapter at the time the plat is resubmitted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.04, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 884, Sec. 1, eff. June 14, 2001.

Sec. 232.0021. PLAT APPLICATION FEE. (a) The commissioners

court may impose an application fee to cover the cost of the county's review of a subdivision plat and inspection of street, road, and drainage improvements described by the plat.

(b) The fee may vary based on the number of proposed lots in the subdivision, the acreage described by the plat, the type or extent of proposed street and drainage improvements, or any other reasonable criteria as determined by the commissioners court.

(c) The owner of the tract to be subdivided must pay the fee at the time directed by the county before the county conducts a review of the plat.

(d) The fee is subject to refund under Section 232.0025(i).

Added by Acts 2003, 78th Leg., ch. 301, Sec. 9, eff. Sept. 1, 2003.

Sec. 232.0022. DELEGATION OF APPROVAL RESPONSIBILITY. (a) The commissioners court of a county or the court's designee may designate to one or more officers or employees of the county the authority to approve, approve with conditions, or disapprove a plat.

(b) An applicant has the right to appeal to the commissioners court or the court's designee if the designated person or persons disapprove a plat.

Added by Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 2, eff. September 1, 2023.

Sec. 232.0023. APPROVAL PROCEDURE: APPLICABILITY. The plat application approval procedures under this subchapter apply to a county regardless of whether the county has entered into an interlocal agreement, including an interlocal agreement between a municipality and county under Section 242.001(d).

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 8, eff. September 1, 2019.

Sec. 232.0025. APPROVAL PROCEDURE: TIMELY APPROVAL OF PLATS. (a) The commissioners court of a county or a person designated by the commissioners court shall issue a written list of all documentation and other information that must be submitted with a

plat application. The documentation or other information must relate to a requirement authorized under this section or other applicable law. An application submitted to the commissioners court or the person designated by the commissioners court that contains all documents and other information on the written list is considered complete. The commissioners court shall post and continuously maintain the most current version of the list on the county's Internet website.

(b) If a person submits a plat application to the commissioners court that does not include all of the documentation or other information required by Subsection (a), the commissioners court or the county authority responsible for approving plats shall, not later than the 10th business day after the date the commissioners court receives the application, notify the applicant of the missing documents or other information. The commissioners court shall allow an applicant to timely submit the missing documents or other information.

(c) An application is considered complete when all documentation or other information required by Subsection (a) is received. Acceptance by the commissioners court or the county authority responsible for approving plats of a completed plat application with the documentation or other information required by Subsection (a) shall not be construed as approval of the documentation or other information.

(d) Except as provided by Subsection (f), the commissioners court or the county authority responsible for approving plats shall approve, approve with conditions, or disapprove a plat application not later than the 30th day after the date the completed application is received by the commissioners court or the county authority. An application is approved by the commissioners court or the county authority unless the application is disapproved within that period and in accordance with Section 232.0026.

(d-1) Repealed by Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 8, eff. September 1, 2023.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 12, eff. September 1, 2019.

(f) The 30-day period under Subsection (d):

(1) for a purpose related to Chapter 2007, Government Code, may be extended for a period not to exceed 30 days, if:

(A) requested and agreed to in writing by the applicant

and approved by the commissioners court or the county authority responsible for approving plats; or

(B) Chapter 2007, Government Code, requires the county to perform a takings impact assessment in connection with the plat application; or

(2) for a purpose unrelated to Chapter 2007, Government Code, may be extended for one or more periods, not to exceed 30 days, if requested and agreed to in writing by the applicant and approved by the commissioners court or the county authority.

(f-1) The 30-day period under Subsection (d) applies only to a decision wholly within the control of the commissioners court or the county authority responsible for approving plats.

(g) The commissioners court or the county authority responsible for approving plats shall make the determination under Subsection (f)(1) of whether the 30-day period will be extended not later than the 20th day after the date a completed plat application is received by the commissioners court or the county authority.

(h) The commissioners court or the county authority responsible for approving plats may not require an applicant to waive the time limits or approval procedure contained in this subchapter.

(i) If the commissioners court or the county authority responsible for approving plats fails to approve, approve with conditions, or disapprove a plat application as required by this subchapter:

(1) the commissioners court shall refund the greater of the unexpended portion of any application fee or deposit or 50 percent of an application fee or deposit that has been paid;

(2) the application is granted by operation of law;

(3) the applicant may apply to a district court in the county where the tract of land is located for a writ of mandamus to compel the commissioners court to issue documents recognizing the plat application's approval;

(4) the applicant shall recover reasonable attorney's fees and court costs incurred in bringing an action under Subdivision (3) if the applicant prevails; and

(5) the county may recover reasonable attorney's fees and court costs incurred in an action brought under Subdivision (3) if the county prevails and the court finds the action is frivolous.

Added by Acts 1999, 76th Leg., ch. 129, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 12, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 8, eff. September 1, 2023.

Sec. 232.0026. APPROVAL PROCEDURE: CONDITIONAL APPROVAL OR DISAPPROVAL REQUIREMENTS. (a) A commissioners court or county authority responsible for approving plats that conditionally approves or disapproves of a plat application under this subchapter shall provide the applicant a written statement of the conditions for the conditional approval or the reasons for disapproval that clearly articulates each specific condition for the conditional approval or reason for disapproval.

(b) Each condition or reason specified in the written statement:

(1) must:

(A) be directly related to the requirements of this subchapter; and

(B) include a citation to the law, including a statute or order, that is the basis for the conditional approval or disapproval, if applicable; and

(2) may not be arbitrary.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 11, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 5, eff. September 1, 2023.

Sec. 232.0027. APPROVAL PROCEDURE: APPLICANT RESPONSE TO CONDITIONAL APPROVAL OR DISAPPROVAL. After the conditional approval

or disapproval of a plat application under Section 232.0026, the applicant may submit to the commissioners court or county authority responsible for approving plats that conditionally approved or disapproved the application a written response that satisfies each condition for the conditional approval or remedies each reason for disapproval provided. The commissioners court or county authority may not establish a deadline for an applicant to submit the response.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 11, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 6, eff. September 1, 2023.

Sec. 232.0028. APPROVAL PROCEDURE: APPROVAL OR DISAPPROVAL OF RESPONSE. (a) A commissioners court or county authority responsible for approving plats that receives a response under Section 232.0027 shall determine whether to approve or disapprove the applicant's previously conditionally approved or disapproved plat application not later than the 15th day after the date the response was submitted under Section 232.0027.

(b) A commissioners court or county authority responsible for approving plats that conditionally approves or disapproves a plat application following the submission of a response under Section 232.0027:

(1) must comply with Section 232.0026; and

(2) may disapprove the application only for a specific condition or reason provided to the applicant for the original application under Section 232.0026.

(c) A commissioners court or county authority responsible for approving plats that receives a response under Section 232.0027 shall approve a previously conditionally approved or disapproved plat application if the applicant's response adequately addresses each condition for the conditional approval or each reason for the disapproval.

(d) A previously conditionally approved or disapproved plat application is approved if:

(1) the applicant filed a response that meets the requirements of Subsection (c); and

(2) the commissioners court or county authority responsible for approving plats that received the response does not disapprove the application on or before the date required by Subsection (a) and in accordance with Section 232.0026.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 11, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 6, eff. September 1, 2023.

Sec. 232.00285. DEVELOPMENT PLAN REVIEW. (a) In this section, "development plan" includes a preliminary plat, preliminary subdivision plan, subdivision construction plan, site plan, general plan, land development application, or site development plan.

(b) Unless explicitly authorized by another law of this state, a county may not require a person to submit a development plan during the plat approval process required by this subchapter. If a county is authorized under another law of this state to require approval of a development plan, the county must comply with the approval procedures under this subchapter during the approval process.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 11, eff. September 1, 2019.

Sec. 232.0029. JUDICIAL REVIEW OF DISAPPROVAL. In a legal action challenging a disapproval of a plat application under this subchapter, the county has the burden of proving by clear and convincing evidence that the disapproval meets the requirements of this subchapter or any applicable case law. The court may not use a deferential standard.

Added by Acts 2019, 86th Leg., R.S., Ch. 951 (H.B. 3167), Sec. 11, eff. September 1, 2019.

Sec. 232.003. SUBDIVISION REQUIREMENTS. By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the

county, the commissioners court may:

(1) require a right-of-way on a street or road that functions as a main artery in a subdivision, of a width of not less than 50 feet or more than 100 feet;

(2) require a right-of-way on any other street or road in a subdivision of not less than 40 feet or more than 70 feet;

(3) require that the shoulder-to-shoulder width on collectors or main arteries within the right-of-way be not less than 32 feet or more than 56 feet, and that the shoulder-to-shoulder width on any other street or road be not less than 25 feet or more than 35 feet;

(4) adopt, based on the amount and kind of travel over each street or road in a subdivision, reasonable specifications relating to the construction of each street or road;

(5) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices;

(6) require that each purchase contract made between a subdivider and a purchaser of land in the subdivision contain a statement describing the extent to which water will be made available to the subdivision and, if it will be made available, how and when;

(7) require that the owner of the tract to be subdivided execute a good and sufficient bond in the manner provided by Section 232.004;

(8) adopt reasonable specifications that provide for drainage in the subdivision to:

(A) efficiently manage the flow of stormwater runoff in the subdivision; and

(B) coordinate subdivision drainage with the general storm drainage pattern for the area; and

(9) require lot and block monumentation to be set by a registered professional surveyor before recordation of the plat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.04, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 129, Sec. 4, eff. Sept. 1, 1999.

Sec. 232.0031. STANDARD FOR ROADS IN SUBDIVISION. A county may

not impose under Section 232.003 a higher standard for streets or roads in a subdivision than the county imposes on itself for the construction of streets or roads with a similar type and amount of traffic.

Added by Acts 1999, 76th Leg., ch. 129, Sec. 5, eff. Sept. 1, 1999.

Sec. 232.0032. ADDITIONAL REQUIREMENTS: USE OF GROUNDWATER. (a) Except as provided by Subsection (a-1), a plat application for the subdivision of a tract of land for which the source of the water supply intended for the subdivision is groundwater under that land must have attached to it a statement that:

(1) is prepared by an engineer licensed to practice in this state or a geoscientist licensed to practice in this state; and

(2) certifies that adequate groundwater is available for the subdivision.

(a-1) A commissioners court may waive the requirement prescribed by Subsection (a) that a plat application have attached to it a statement described by that subsection if:

(1) based on credible evidence of groundwater availability in the vicinity of the proposed subdivision, the commissioners court determines that sufficient groundwater is available and will continue to be available to the subdivided tract of land; and

(2) either:

(A) the entire tract proposed to be subdivided by the plat will be supplied with groundwater from the Gulf Coast Aquifer or the Carrizo-Wilcox Aquifer; or

(B) the proposed subdivision divides the tract into not more than 10 parts.

(a-2) A person subject to a waiver authorized by Subsection (a-1)(2)(B) regarding a subdivided tract of land must comply with the requirements of Subsection (a) if:

(1) the tract is subsequently divided in a manner that results in the original tract being subdivided into more than 10 parts; or

(2) the commissioners court determines that the proposed subdivision is part of a series of proposed subdivisions from an original tract that collectively includes more than 10 parts.

(b) The Texas Commission on Environmental Quality by rule shall

establish the appropriate form and content of a certification to be attached to a plat application under this section.

(c) The Texas Commission on Environmental Quality, in consultation with the Texas Water Development Board, by rule shall require a person who submits a plat under Subsection (a) to transmit to the Texas Water Development Board and any groundwater conservation district that includes in the district's boundaries any part of the subdivision information that would be useful in:

(1) performing groundwater conservation district activities;

(2) conducting regional water planning;

(3) maintaining the state's groundwater database; or

(4) conducting studies for the state related to groundwater.

Added by Acts 1999, 76th Leg., ch. 460, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 99, Sec. 2(b), eff. Sept. 1, 2001. Renumbered from Sec. 232.0031 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(85), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 515 (S.B. 662), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.30, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 980 (S.B. 2440), Sec. 2, eff. January 1, 2024.

Sec. 232.0033. ADDITIONAL REQUIREMENTS: FUTURE TRANSPORTATION CORRIDORS. (a) This section applies to each county in the state. The requirements provided by this section are in addition to the other requirements of this chapter.

(b) If all or part of a subdivision for which a plat is required under this chapter is located within a future transportation corridor identified in an agreement under Section 201.619, Transportation Code:

(1) the commissioners court of a county in which the land is located:

(A) may refuse to approve the plat for recordation unless the plat states that the subdivision is located within the

area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor; and

(B) may refuse to approve the plat for recordation if all or part of the subdivision is located within the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor; and

(2) each purchase contract or lease between the subdivider and a purchaser or lessee of land in the subdivision must contain a conspicuous statement that the land is located within the area of the alignment of a transportation project as shown in the final environmental decision document that is applicable to the future transportation corridor.

(c) The commissioners court of a county or the court's designee may not refuse to review a plat application or refuse to approve a plat for recordation for failure to identify a corridor, as defined by Section 201.619, Transportation Code, unless the corridor is part of an agreement between the Texas Department of Transportation and the county under that section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1040 (H.B. 1857), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 866 (H.B. 3697), Sec. 7, eff. September 1, 2023.

Sec. 232.0034. ADDITIONAL REQUIREMENTS: ACCESS BY EMERGENCY VEHICLES. (a) This section applies only to a residential subdivision that is subdivided into 1,000 or more lots in the unincorporated area of a county.

(b) The commissioners court shall adopt infrastructure standards requiring at least two means of ingress and egress in the subdivision to provide for sufficient routes of travel for use by emergency vehicles and for use during evacuations resulting from fire or other natural disasters.

(c) This section does not limit the authority of a commissioners court under other existing laws, as applicable, to adopt infrastructure standards that are more stringent than standards

required by this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 400 (S.B. 194), Sec. 1, eff. September 1, 2013.

Sec. 232.004. BOND REQUIREMENTS. If the commissioners court requires the owner of the tract to execute a bond, the owner must do so before subdividing the tract unless an alternative financial guarantee is provided under Section 232.0045. The bond must:

(1) be payable to the county judge of the county in which the subdivision will be located or to the judge's successors in office;

(2) be in an amount determined by the commissioners court to be adequate to ensure proper construction of the roads and streets in and drainage requirements for the subdivision, but not to exceed the estimated cost of construction of the roads, streets, and drainage requirements;

(3) be executed with sureties as may be approved by the court;

(4) be executed by a company authorized to do business as a surety in this state if the court requires a surety bond executed by a corporate surety; and

(5) be conditioned that the roads and streets and the drainage requirements for the subdivision will be constructed:

(A) in accordance with the specifications adopted by the court; and

(B) within a reasonable time set by the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(b), eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 129, Sec. 6, eff. Sept. 1, 1999.

Sec. 232.0045. FINANCIAL GUARANTEE IN LIEU OF BOND. (a) In lieu of the bond an owner may deposit cash, a letter of credit issued by a federally insured financial institution, or other acceptable financial guarantee.

(b) If a letter of credit is used, it must:

(1) list as the sole beneficiary the county judge of the county in which the subdivision is located; and

(2) be conditioned that the owner of the tract of land to be subdivided will construct any roads or streets in the subdivision:

(A) in accordance with the specifications adopted by the commissioners court; and

(B) within a reasonable time set by the court.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 54(b), eff. Aug. 28, 1989.

Sec. 232.0048. CONFLICT OF INTEREST; PENALTY. (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has a substantial interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more;

(2) acts as a developer of the tract;

(3) owns 10 percent or more of the voting stock or shares of or owns either 10 percent or more or $5,000 or more of the fair market value of a business entity that:

(A) has an equitable or legal ownership interest in the tract with a fair market value of $2,500 or more; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year funds from a business entity described by Subdivision (3) that exceed 10 percent of the person's gross income for the previous year.

(c) A person also is considered to have a substantial interest in a subdivided tract if the person is related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to another person who, under Subsection (b), has a substantial interest in the tract.

(d) If a member of the commissioners court of a county has a substantial interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the county clerk.

(e) A member of the commissioners court of a county commits an offense if the member violates Subsection (d). An offense under this

subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court without the vote of the member who violated this section.

Added by Acts 1989, 71st Leg., ch. 624, Sec. 3.04, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 39, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 232.005. ENFORCEMENT IN GENERAL; PENALTY. (a) At the request of the commissioners court, the county attorney or other prosecuting attorney for the county may file an action in a court of competent jurisdiction to:

(1) enjoin the violation or threatened violation of a requirement established by, or adopted by the commissioners court under a preceding section of this chapter; or

(2) recover damages in an amount adequate for the county to undertake any construction or other activity necessary to bring about compliance with a requirement established by, or adopted by the commissioners court under a preceding section of this chapter.

(b) A person commits an offense if the person knowingly or intentionally violates a requirement established by, or adopted by the commissioners court under a preceding section of this chapter. An offense under this subsection is a Class B misdemeanor. This subsection does not apply to a violation for which a criminal penalty is prescribed by Section 232.0048.

(c) A requirement that was established by or adopted under Chapter 436, Acts of the 55th Legislature, Regular Session, 1957 (Article 6626a, Vernon's Texas Civil Statutes), or Chapter 151, Acts of the 52nd Legislature, Regular Session, 1951 (Article 2372k, Vernon's Texas Civil Statutes), before September 1, 1983, and that, after that date, continues to apply to a subdivision of land is enforceable under Subsection (a). A knowing or intentional violation of the requirement is an offense under Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 624, Sec. 3.04, eff. Sept. 1, 1989.

Sec. 232.006. EXCEPTIONS FOR POPULOUS COUNTIES OR CONTIGUOUS COUNTIES. (a) This section applies to a county:

(1) that has a population of more than 3.3 million or is contiguous with a county that has a population of more than 3.3 million; and

(2) in which the commissioners court by order elects to operate under this section.

(b) If a county elects to operate under this section, Section 232.005 does not apply to the county. The sections of this chapter preceding Section 232.005 do apply to the county in the same manner that they apply to other counties except that:

(1) they apply only to tracts of land located outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42;

(2) the commissioners court of the county, instead of having the powers granted by Sections 232.003(2) and (3), may:

(A) require a right-of-way on a street or road that does not function as a main artery in the subdivision of not less than 40 feet or more than 50 feet; and

(B) require that the street cut on a main artery within the right-of-way be not less than 30 feet or more than 45 feet, and that the street cut on any other street or road within the right-of-way be not less than 25 feet or more than 35 feet; and

(3) Section 232.004(5)(B) does not apply to the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 624, Sec. 3.06, eff. Sept. 1, 1989; Acts 2001, 77th Leg., ch. 669, Sec. 76, eff. Sept. 1, 2001.

Sec. 232.007. MANUFACTURED HOME RENTAL COMMUNITIES. (a) In this section:

(1) "Manufactured home rental community" means a plot or tract of land that is separated into two or more spaces or lots that are rented, leased, or offered for rent or lease, for a term of less than 60 months without a purchase option, for the installation of manufactured homes for use and occupancy as residences.

(2) "Business day" means a day other than a Saturday,

Sunday, or holiday recognized by this state.

(b) A manufactured home rental community is not a subdivision, and Sections 232.001-232.006 do not apply to the community.

(c) After a public hearing and after notice is published in a newspaper of general circulation in the county, the commissioners court of a county, by order adopted and entered in the minutes of the commissioners court, may establish minimum infrastructure standards for manufactured home rental communities located in the county outside the limits of a municipality. The minimum standards may include only:

(1) reasonable specifications to provide adequate drainage in accordance with standard engineering practices, including specifying necessary drainage culverts and identifying areas included in the 100-year flood plain;

(2) reasonable specifications for providing an adequate public or community water supply, including specifying the location of supply lines, in accordance with Subchapter C, Chapter 341, Health and Safety Code;

(3) reasonable requirements for providing access to sanitary sewer lines, including specifying the location of sanitary sewer lines, or providing adequate on-site sewage facilities in accordance with Chapter 366, Health and Safety Code;

(4) a requirement for the preparation of a survey identifying the proposed manufactured home rental community boundaries and any significant features of the community, including the proposed location of manufactured home rental community spaces, utility easements, and dedications of rights-of-way; and

(5) reasonable specifications for streets or roads in the manufactured rental home community to provide ingress and egress access for fire and emergency vehicles.

(d) The commissioners court may not adopt minimum infrastructure standards that are more stringent than requirements adopted by the commissioners court for subdivisions. The commissioners court may only adopt minimum infrastructure standards for ingress and egress access by fire and emergency vehicles that are reasonably necessary.

(e) If the commissioners court adopts minimum infrastructure standards for manufactured home rental communities, the owner of land located outside the limits of a municipality who intends to use the land for a manufactured home rental community must have an

infrastructure development plan prepared that complies with the minimum infrastructure standards adopted by the commissioners court under Subsection (c).

(f) Not later than the 60th day after the date the owner of a proposed manufactured home rental community submits an infrastructure development plan for approval, the county engineer or another person designated by the commissioners court shall approve or reject the plan in writing. If the plan is rejected, the written rejection must specify the reasons for the rejection and the actions required for approval of the plan. The failure to reject a plan within the period prescribed by this subsection constitutes approval of the plan.

(g) Construction of a proposed manufactured home rental community may not begin before the date the county engineer or another person designated by the commissioners court approves the infrastructure development plan. The commissioners court may require inspection of the infrastructure during or on completion of its construction. If a final inspection is required, the final inspection must be completed not later than the second business day after the date the commissioners court or the person designated by the commissioners court receives a written confirmation from the owner that the construction of the infrastructure is complete. If the inspector determines that the infrastructure complies with the infrastructure development plan, the commissioners court shall issue a certificate of compliance not later than the fifth business day after the date the final inspection is completed. If a final inspection is not required, the commissioners court shall issue a certificate of compliance not later than the fifth business day after the date the commissioners court or the person designated by the commissioners court receives written certification from the owner that construction of the infrastructure has been completed in compliance with the infrastructure development plan.

(h) A utility may not provide utility services, including water, sewer, gas, and electric services, to a manufactured home rental community subject to an infrastructure development plan or to a manufactured home in the community unless the owner provides the utility with a copy of the certificate of compliance issued under Subsection (g). This subsection applies only to:

(1) a municipality that provides utility services;

(2) a municipally owned or municipally operated utility that provides utility services;

(3) a public utility that provides utility services;

(4) a nonprofit water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides utility services;

(5) a county that provides utility services; and

(6) a special district or authority created by state law that provides utility services.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 153, Sec. 1, eff. Aug. 30, 1999.

Sec. 232.008. CANCELLATION OF SUBDIVISION. (a) This section applies only to real property located outside municipalities and the extraterritorial jurisdiction of municipalities, as determined under Chapter 42.

(b) A person owning real property in this state that has been subdivided into lots and blocks or into small subdivisions may apply to the commissioners court of the county in which the property is located for permission to cancel all or part of the subdivision, including a dedicated easement or roadway, to reestablish the property as acreage tracts as it existed before the subdivision. If, on the application, it is shown that the cancellation of all or part of the subdivision does not interfere with the established rights of any purchaser who owns any part of the subdivision, or it is shown that the purchaser agrees to the cancellation, the commissioners court by order shall authorize the owner of the subdivision to file an instrument canceling the subdivision in whole or in part. The instrument must describe the subdivision or the part of it that is canceled. The court shall enter the order in its minutes. After the cancellation instrument is filed and recorded in the deed records of the county, the county tax assessor-collector shall assess the property as if it had never been subdivided.

(c) The commissioners court shall publish notice of an application for cancellation. The notice must be published in a newspaper, published in the English language, in the county for at least three weeks before the date on which action is taken on the application. The court shall take action on an application at a regular term. The published notice must direct any person who is interested in the property and who wishes to protest the proposed

cancellation to appear at the time specified in the notice.

(d) If delinquent taxes are owed on the subdivided tract for any preceding year, and if the application to cancel the subdivision is granted as provided by this section, the owner of the tract may pay the delinquent taxes on an acreage basis as if the tract had not been subdivided. For the purpose of assessing the tract for a preceding year, the county tax assessor-collector shall back assess the tract on an acreage basis.

(e) On application for cancellation of a subdivision or any phase or identifiable part of a subdivision, including a dedicated easement or roadway, by the owners of 75 percent of the property included in the subdivision, phase, or identifiable part, the commissioners court by order shall authorize the cancellation in the manner and after notice and a hearing as provided by Subsections (b) and (c). However, if the owners of at least 10 percent of the property affected by the proposed cancellation file written objections to the cancellation with the court, the grant of an order of cancellation is at the discretion of the court.

(f) To maintain an action to enjoin the cancellation or closing of a roadway or easement in a subdivision, a person must own a lot or part of the subdivision that:

(1) abuts directly on the part of the roadway or easement to be canceled or closed; or

(2) is connected by the part of the roadway or easement to be canceled or closed, by the most direct feasible route, to:

(A) the nearest remaining public highway, county road, or access road to the public highway or county road; or

(B) any uncanceled common amenity of the subdivision.

(g) A person who appears before the commissioners court to protest the cancellation of all or part of a subdivision may maintain an action for damages against the person applying for the cancellation and may recover as damages an amount not to exceed the amount of the person's original purchase price for property in the canceled subdivision or part of the subdivision. The person must bring the action within one year after the date of the entry of the commissioners court's order granting the cancellation.

(h) Regardless of the date land is subdivided or a plat is filed for a subdivision, the commissioners court may deny a cancellation under this section if the commissioners court determines the cancellation will prevent the proposed interconnection of

infrastructure to pending or existing development as defined by Section 232.0085.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 129, Sec. 7, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 829 (H.B. 3096), Sec. 1, eff. June 17, 2011.

Sec. 232.0083. CANCELLATION OF CERTAIN SUBDIVISION PLATS IF EXISTING PLAT OBSOLETE. (a) This section applies only to a subdivision for which:

(1) a plat has been filed for 75 years or more;

(2) the most recent plat describes at least a portion of the property as acreage tracts;

(3) a previous plat described at least a portion of the property as lots and blocks; and

(4) the county tax assessor-collector lists the property in the subdivision on the tax rolls based on the description in the previous plat and assesses taxes on the basis of that description.

(b) A person owning real property in the subdivision may apply to the commissioners court of the county in which the property is located for permission to cancel an existing subdivision plat in whole or part and to reestablish the property using lots and blocks descriptions that, to the extent practicable, are consistent with the previous subdivision plat.

(c) After notice and hearing, the commissioners court may order the cancellation of the existing subdivision plat and the reestablishment of the property in accordance with the application submitted under Subsection (b) if the court finds that:

(1) the cancellation and reestablishment does not interfere with the established rights of:

(A) any owner of a part of the subdivision; or

(B) a utility company with a right to use a public easement in the subdivision; or

(2) each owner or utility whose rights may be interfered with has agreed to the cancellation and reestablishment.

(d) The commissioners court shall publish notice of an application for the cancellation and reestablishment. The notice

must be published at least three weeks before the date on which action is taken on the application and must direct any person who is interested in the property and who wishes to protest the proposed cancellation and reestablishment to appear at the time specified in the notice. The notice must be published in a newspaper that has general circulation in the county.

(e) If the commissioners court authorizes the cancellation and reestablishment, the court by order shall authorize the person making the application under this section to record an instrument showing the cancellation and reestablishment. The court shall enter the order in its minutes.

Added by Acts 2007, 80th Leg., R.S., Ch. 460 (H.B. 1100), Sec. 1, eff. June 16, 2007.

Sec. 232.0085. CANCELLATION OF CERTAIN SUBDIVISIONS IF LAND REMAINS UNDEVELOPED. (a) This section applies only to real property that:

(1) is located in the unincorporated area of an affected county, as defined by Section 16.341, Water Code, that:

(A) has adopted the model rules developed under Section 16.343, Water Code; and

(B) is located along an international border; and

(2) if the area is located in the extraterritorial jurisdiction of a municipality, is not subject to a written agreement under Section 242.001 that authorizes the municipality to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction.

(b) The commissioners court of a county may cancel, after notice and a hearing as required by this section, a subdivision for which the plat was filed and approved before September 1, 1989, if:

(1) the development of or the making of improvements in the subdivision was not begun before the effective date of this section; and

(2) the commissioners court by resolution has made a finding that the land in question is likely to be developed as a colonia.

(c) The commissioners court must publish notice of a proposal to cancel a subdivision under this section and the time and place of

the required hearing in a newspaper of general circulation in the county for at least 21 days immediately before the date a cancellation order is adopted under this section. The county tax assessor-collector shall, not later than the 14th day before the date of the hearing, deposit with the United States Postal Service a similar notice addressed to each owner of land in the subdivision, as determined by the most recent county tax roll.

(d) At the hearing, the commissioners court shall permit any interested person to be heard. At the conclusion of the hearing, the court shall adopt an order on whether to cancel the subdivision. The commissioners court may adopt an order canceling a subdivision if the court determines the cancellation is in the best interest of the public. The court may not adopt an order canceling a subdivision if:

(1) the cancellation interferes with the established rights of a person who is a nondeveloper owner and owns any part of the subdivision, unless the person agrees to the cancellation; or

(2) the owner of the entire subdivision is able to show that:

(A) the owner of the subdivision is able to comply with the minimum state standards and model political subdivision rules developed under Section 16.343, Water Code, including any bonding requirements; or

(B) the land was developed or improved within the period described by Subsection (b).

(e) The commissioners court shall file the cancellation order for recording in the deed records of the county. After the cancellation order is filed and recorded, the property shall be treated as if it had never been subdivided, and the county chief appraiser shall assess the property accordingly. Any liens against the property shall remain against the property as it was previously subdivided.

(f) In this section:

(1) "Development" means the making, installing, or constructing of buildings and improvements.

(2) "Improvements" means water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and other utility facilities. The term does not include roadway facilities.

Added by Acts 1995, 74th Leg., ch. 277, Sec. 2, eff. June 5, 1995.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 75 (S.B. 580), Sec. 1, eff. September 1, 2023.

Sec. 232.009. REVISION OF PLAT. (a) This section applies only to real property located outside municipalities and the extraterritorial jurisdiction of municipalities with a population of 1.5 million or more, as determined under Chapter 42.

(b) A person who owns real property in a tract that has been subdivided and that is subject to the subdivision controls of the county in which the property is located may apply in writing to the commissioners court of the county for permission to revise the subdivision plat that applies to the property and that is filed for record with the county clerk.

(c) Except as provided by Subsection (c-1), after the application is filed with the commissioners court, the court shall publish a notice of the application in a newspaper of general circulation in the county. The notice must include a statement of the time and place at which the court will meet to consider the application and to hear protests to the revision of the plat. The notice must be published at least three times during the period that begins on the 30th day and ends on the seventh day before the date of the meeting. Except as provided by Subsection (f), if all or part of the subdivided tract has been sold to nondeveloper owners, the court shall also give notice to each of those owners by certified or registered mail, return receipt requested, at the owner's address in the subdivided tract.

(c-1) If the commissioners court determines that the revision to the subdivision plat does not affect a public interest or public property of any type, including, but not limited to, a park, school, or road, the notice requirements under Subsection (c) do not apply to the application and the commissioners court shall:

(1) provide written notice of the application to the owners of the lots that are within 200 feet of the subdivision plat to be revised, as indicated in the most recent records of the central appraisal district of the county in which the lots are located; and

(2) if the county maintains an Internet website, post notice of the application continuously on the website for at least 30 days preceding the date of the meeting to consider the application

until the day after the meeting.

(d) During a regular term of the commissioners court, the court shall adopt an order to permit the revision of the subdivision plat if it is shown to the court that:

(1) the revision will not interfere with the established rights of any owner of a part of the subdivided land; or

(2) each owner whose rights may be interfered with has agreed to the revision.

(e) If the commissioners court permits a person to revise a subdivision plat, the person may make the revision by filing for record with the county clerk a revised plat or part of a plat that indicates the changes made to the original plat.

(f) The commissioners court is not required to give notice by mail under Subsection (c) if the plat revision only combines existing tracts.

(g) The commissioners court may impose a fee for filing an application under this section. The amount of the fee must be based on the cost of processing the application, including publishing the notices required under Subsection (c) or (c-1).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 345, Sec. 6, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 129, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 523, Sec. 9, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 430 (S.B. 552), Sec. 1, eff. June 14, 2013.

Sec. 232.0095. ALTERNATIVE PROCEDURES FOR PLAT REVISION. (a) This section applies only to real property located outside municipalities and outside the extraterritorial jurisdiction, as determined under Chapter 42, of municipalities with a population of 1.5 million or more.

(b) As an alternative to the provisions in Section 232.009 governing the revision of plats, a county by order may adopt the provisions in Sections 212.013, 212.014, 212.015, and 212.016 governing plat vacations, replatting, and plat amendment. A county that adopts the provisions in those sections may approve a plat vacation, a replat, and an amending plat in the same manner and under

the same conditions, including the notice and hearing requirements, as a municipal authority responsible for approving plats under those sections.

(c) Instead of the purpose described by Section 212.016(a)(10), an amended plat may be approved and issued by the county to make necessary changes to the preceding plat to create six or fewer lots in the subdivision or a part of the subdivision covered by the preceding plat if:

(1) the changes do not affect applicable county regulations, including zoning regulations if the county has authority to adopt zoning regulations; and

(2) the changes do not attempt to amend or remove any covenants or restrictions.

Added by Acts 2003, 78th Leg., ch. 523, Sec. 10, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 762 (H.B. 3410), Sec. 1, eff. June 15, 2007.

Sec. 232.010. EXCEPTION TO PLAT REQUIREMENT: COUNTY DETERMINATION. A commissioners court of the county may allow conveyance of portions of one or more previously platted lots by metes and bounds description without revising the plat.

Added by Acts 1989, 71st Leg., ch. 345, Sec. 7, eff. Aug. 28, 1989.

Sec. 232.011. AMENDING PLAT. (a) The commissioners court may approve and issue an amending plat, if the amending plat is signed by the applicants and filed for one or more of the following purposes:

(1) to correct an error in a course or distance shown on the preceding plat;

(2) to add a course or distance that was omitted on the preceding plat;

(3) to correct an error in a real property description shown on the preceding plat;

(4) to show the location or character of a monument that has been changed in location or character or that is shown incorrectly as to location or character on the preceding plat;

(5) to correct any other type of scrivener or clerical

error or omission of the previously approved plat, including lot numbers, acreage, street names, and identification of adjacent recorded plats; or

(6) to correct an error in courses and distances of lot lines between two adjacent lots if:

(A) both lot owners join in the application for amending the plat;

(B) neither lot is abolished;

(C) the amendment does not attempt to remove recorded covenants or restrictions; and

(D) the amendment does not have a material adverse effect on the property rights of the other owners of the property that is the subject of the plat.

(b) The amending plat controls over the preceding plat without the vacation, revision, or cancellation of the preceding plat.

(c) Notice, a hearing, and the approval of other lot owners are not required for the filing, recording, or approval of an amending plat.

Added by Acts 2007, 80th Leg., R.S., Ch. 1390 (S.B. 1867), Sec. 1, eff. September 1, 2007.

SUBCHAPTER B. SUBDIVISION PLATTING REQUIREMENTS IN COUNTY NEAR INTERNATIONAL BORDER

Sec. 232.021. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Water Development Board.

(2) "Common promotional plan" means any plan or scheme of operation undertaken by a single subdivider or a group of subdividers acting in concert, either personally or through an agent, to offer for sale or lease lots when the land is:

(A) contiguous or part of the same area of land; or

(B) known, designated, or advertised as a common unit or by a common name.

(3) "Executive administrator" means the executive administrator of the Texas Water Development Board.

(4) "Floodplain" means any area in the 100-year floodplain that is susceptible to being inundated by water from any source or that is identified by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001

through 4127).

(5) "Lease" includes an offer to lease.

(6) "Lot" means a parcel into which land that is intended for residential use is divided.

(6-a) "Lot of record" means:

(A) a lot, the boundaries of which were established by a plat recorded in the office of the county clerk before September 1, 1989, that has not been subdivided after September 1, 1989; or

(B) a lot, the boundaries of which were established by a metes and bounds description in a deed of conveyance, a contract of sale, or other executory contract to convey real property that has been legally executed and recorded in the office of the county clerk before September 1, 1989, that has not been subdivided after September 1, 1989.

(7) "Minimum state standards" means the minimum standards set out for:

(A) adequate drinking water by or under Section 16.343(b)(1), Water Code;

(B) adequate sewer facilities by or under Section 16.343(c)(1), Water Code; or

(C) the treatment, disposal, and management of solid waste by or under Chapters 361 and 364, Health and Safety Code.

(8) "Plat" means a map, chart, survey, plan, or replat containing a description of the subdivided land with ties to permanent landmarks or monuments.

(9) "Sell" includes an offer to sell.

(10) "Sewer," "sewer services," or "sewer facilities" means treatment works as defined by Section 17.001, Water Code, or individual, on-site, or cluster treatment systems such as septic tanks and includes drainage facilities and other improvements for proper functioning of septic tank systems.

(11) "Subdivide" means to divide the surface area of land into lots intended primarily for residential use.

(12) "Subdivider" means an individual, firm, corporation, or other legal entity that directly or indirectly subdivides land into lots for sale or lease as part of a common promotional plan in the ordinary course of business.

(13) "Subdivision" means an area of land that has been subdivided into lots for sale or lease.

(14) "Utility" means a person, including a legal entity or

political subdivision, that provides the services of:

(A) an electric utility, as defined by Section 31.002, Utilities Code;

(B) a gas utility, as defined by Section 101.003, Utilities Code; and

(C) a water and sewer utility, as defined by Section 13.002, Water Code.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.35, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 404, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1239 (S.B. 2253), Sec. 2, eff. June 19, 2009.

Sec. 232.022. APPLICABILITY. (a) This subchapter applies only to:

(1) a county any part of which is located within 50 miles of an international border; or

(2) a county:

(A) any part of which is located within 100 miles of an international border;

(B) that contains the majority of the area of a municipality with a population of more than 250,000; and

(C) to which Subdivision (1) does not apply.

(b) This subchapter applies only to land that is subdivided into two or more lots that are intended primarily for residential use in the jurisdiction of the county. A lot is presumed to be intended for residential use if the lot is five acres or less. This subchapter does not apply if the subdivision is incident to the conveyance of the land as a gift between persons related to each other within the third degree by affinity or consanguinity, as determined under Chapter 573, Government Code.

(c) Except as provided by Subsection (c-1), for purposes of this section, land is considered to be in the jurisdiction of a county if the land is located in the county and outside the corporate limits of municipalities.

(c-1) Land in a municipality's extraterritorial jurisdiction is not considered to be in the jurisdiction of a county for purposes of

this section if the municipality and the county have entered into a written agreement under Section 242.001 that authorizes the municipality to regulate subdivision plats and approve related permits in the municipality's extraterritorial jurisdiction.

(d) This subchapter does not apply if all of the lots of the subdivision are more than 10 acres.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1997, 75th Leg., ch. 376, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 737, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1364 (S.B. 1599), Sec. 2, eff. September 1, 2013.

Sec. 232.023. PLAT REQUIRED. (a) A subdivider of land must have a plat of the subdivision prepared if at least one of the lots of the subdivision is five acres or less. A commissioners court by order may require each subdivider of land to prepare a plat if none of the lots is five acres or less but at least one of the lots of a subdivision is more than five acres but not more than 10 acres.

(a-1) A subdivision of a tract under this section includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

(b) A plat required under this section must:

(1) be certified by a surveyor or engineer registered to practice in this state;

(2) define the subdivision by metes and bounds;

(3) locate the subdivision with respect to an original corner of the original survey of which it is a part;

(4) describe each lot, number each lot in progression, and give the dimensions of each lot;

(5) state the dimensions of and accurately describe each lot, street, alley, square, park, or other part of the tract intended to be dedicated to public use or for the use of purchasers or owners

of lots fronting on or adjacent to the street, alley, square, park, or other part;

(6) include or have attached a document containing a description in English and Spanish of the water and sewer facilities and roadways and easements dedicated for the provision of water and sewer facilities that will be constructed or installed to service the subdivision and a statement specifying the date by which the facilities will be fully operable;

(7) have attached a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities proposed under Subdivision (6) are in compliance with the model rules adopted under Section 16.343, Water Code, and a certified estimate of the cost to install water and sewer service facilities;

(8) provide for drainage in the subdivision to:

(A) avoid concentration of storm drainage water from each lot to adjacent lots;

(B) provide positive drainage away from all buildings; and

(C) coordinate individual lot drainage with the general storm drainage pattern for the area;

(9) include a description of the drainage requirements as provided in Subdivision (8);

(10) identify the topography of the area;

(11) include a certification by a surveyor or engineer registered to practice in this state describing any area of the subdivision that is in a floodplain or stating that no area is in a floodplain; and

(12) include certification that the subdivider has complied with the requirements of Section 232.032 and that:

(A) the water quality and connections to the lots meet, or will meet, the minimum state standards;

(B) sewer connections to the lots or septic tanks meet, or will meet, the minimum requirements of state standards;

(C) electrical connections provided to the lot meet, or will meet, the minimum state standards; and

(D) gas connections, if available, provided to the lot meet, or will meet, the minimum state standards.

(c) A subdivider may meet the requirements of Subsection (b)(12)(B) through the use of a certificate issued by the appropriate

county or state official having jurisdiction over the approval of septic systems stating that lots in the subdivision can be adequately and legally served by septic systems.

(d) The subdivider of the tract must acknowledge the plat by signing the plat and attached documents and attest to the veracity and completeness of the matters asserted in the attached documents and in the plat.

(e) The plat must be filed and recorded with the county clerk of the county in which the tract is located. The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

(f) The commissioners court may require a plat application submitted for approval to include a digital map that is compatible with other mapping systems used by the county and that georeferences the subdivision plat and related public infrastructure using the Texas Coordinate Systems adopted under Section 21.071, Natural Resources Code. A digital map required under this subsection may be required only in a format widely used by common geographic information system software. A requirement adopted under this subsection must provide for an exemption from the requirement if the subdivider of the tract submits with the plat application an acknowledged statement indicating that the digital mapping technology necessary to submit a map that complies with this subsection was not reasonably accessible.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1364 (S.B. 1599), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 550 (H.B. 2033), Sec. 2, eff. September 1, 2015.

Sec. 232.024. APPROVAL BY COUNTY REQUIRED. (a) A plat filed under Section 232.023 is not valid unless the commissioners court of the county in which the land is located approves the plat by an order entered in the minutes of the court. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under this subchapter or if any bond required under this subchapter is not filed with the county clerk.

(b) If any part of a plat applies to land intended for residential housing and any part of that land lies in a floodplain, the commissioners court shall not approve the plat unless:

(1) the subdivision is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code; and

(2) the plat evidences a restrictive covenant prohibiting the construction of residential housing in any area of the subdivision that is in a floodplain unless the housing is developed in compliance with the minimum requirements of the National Flood Insurance Program and local regulations or orders adopted under Section 16.315, Water Code.

(c) On request, the county clerk shall provide the attorney general or the Texas Water Development Board:

(1) a copy of each plat that is approved under this subchapter; or

(2) the reasons in writing and any documentation that support a variance granted under Section 232.042.

(d) The commissioners court of the county in which the land is located may establish a planning commission as provided by Subchapter D. The planning commission, including its findings and decisions, is subject to the same provisions applicable to the commissioners court under this subchapter, including Section 232.034 relating to conflicts of interest.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1239 (S.B. 2253), Sec. 3, eff. June 19, 2009.

Sec. 232.025. SUBDIVISION REQUIREMENTS. By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in English and Spanish in a newspaper of general circulation in the county, the commissioners court shall for each subdivision:

(1) require a right-of-way on a street or road that functions as a main artery in a subdivision, of a width of not less

than 50 feet or more than 100 feet;

(2) require a right-of-way on any other street or road in a subdivision of not less than 40 feet or more than 70 feet;

(3) require that the shoulder-to-shoulder width on collectors or main arteries within the right-of-way be not less than 32 feet or more than 56 feet, and that the shoulder-to-shoulder width on any other street or road be not less than 25 feet or more than 35 feet;

(4) adopt, based on the amount and kind of travel over each street or road in a subdivision, reasonable specifications relating to the construction of each street or road;

(5) adopt reasonable specifications to provide adequate drainage for each street or road in a subdivision in accordance with standard engineering practices;

(6) require that each purchase contract made between a subdivider and a purchaser of land in the subdivision contain a statement describing how and when water, sewer, electricity, and gas services will be made available to the subdivision; and

(7) require that the subdivider of the tract execute a bond in the manner provided by Section 232.027.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16 1995.

Sec. 232.026. WATER AND SEWER SERVICE EXTENSION. (a) The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the commissioners court finds the extension is reasonable and not contrary to the public interest.

(b) The commissioners court may not grant an extension under Subsection (a) if it would allow an occupied residence to be without water or sewer services.

(c) If the commissioners court provides an extension, the commissioners court shall notify the attorney general of the extension and the reason for the extension. The attorney general shall notify all other state agencies having enforcement power over subdivisions of the extension.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 8, eff. Sept. 1, 1999.

Sec. 232.027. BOND REQUIREMENTS. (a) Unless a person has completed the installation of all water and sewer service facilities required by this subchapter on the date that person applies for final approval of a plat under Section 232.024, the commissioners court shall require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter. A person may not meet the requirements of this subsection through the use of a letter of credit unless that letter of credit is irrevocable and issued by an institution guaranteed by the FDIC. The subdivider must comply with the requirement before subdividing the tract.

(b) The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.

Sec. 232.028. CERTIFICATION REGARDING COMPLIANCE WITH PLAT REQUIREMENTS. (a) On the approval of a plat by the commissioners court, the commissioners court shall issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the commissioners court.

(b) On the commissioners court's own motion or on the written request of a subdivider, an owner or resident of a lot in a subdivision, or an entity that provides a utility service, the commissioners court shall make the following determinations regarding the land in which the entity or commissioners court is interested that is located within the jurisdiction of the county:

(1) whether a plat has been prepared and whether it has been reviewed and approved by the commissioners court;

(2) whether water service facilities have been constructed or installed to service the lot or subdivision under Section 232.023 and are fully operable;

(3) whether sewer service facilities have been constructed or installed to service the lot or subdivision under Section 232.023

and are fully operable, or if septic systems are used, whether the lot is served by a permitted on-site sewage facility or lots in the subdivision can be adequately and legally served by septic systems under Section 232.023; and

(4) whether electrical and gas facilities, if available, have been constructed or installed to service the lot or subdivision under Section 232.023.

(c) The request made under Subsection (b) must identify the land that is the subject of the request.

(d) Whenever a request is made under Subsection (b), the commissioners court shall issue the requesting party a written certification of its determinations under that subsection.

(e) The commissioners court shall make its determinations within 20 days after the date it receives the request under Subsection (b) and shall issue the certificate, if appropriate, within 10 days after the date the determinations are made.

(f) The commissioners court may adopt rules it considers necessary to administer its duties under this section.

(g) The commissioners court may impose a fee for a certificate issued under this section for a subdivision which is located in the county and not within the limits of a municipality. The amount of the fee may be the greater of $30 or the amount of the fee imposed by the municipality for a subdivision that is located entirely in the extraterritorial jurisdiction of the municipality for a certificate issued under Section 212.0115. A person who obtains a certificate under this section is not required to obtain a certificate under Section 212.0115.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 129, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 779 (H.B. 3834), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 546 (S.B. 1676), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1239 (S.B. 2253), Sec. 4, eff. June 19, 2009.

Sec. 232.029. CONNECTION OF UTILITIES IN COUNTIES WITHIN 50

MILES OF INTERNATIONAL BORDER. (a) This section applies only to a county defined under Section 232.022(a)(1).

(a-1) Except as provided by Subsection (c) or Section 232.037(c), a utility may not serve or connect any subdivided land with water or sewer services unless the utility receives a certificate issued by the commissioners court under Section 232.028(a) or receives a determination from the commissioners court under Section 232.028(b)(1) that the plat has been reviewed and approved by the commissioners court.

(b) Except as provided by Subsections (c) and (k) or Section 232.037(c), a utility may not serve or connect any subdivided land with electricity or gas unless the entity receives a determination from the county commissioners court under Sections 232.028(b)(2) and (3) that adequate water and sewer services have been installed to service the lot or subdivision.

(c) An electric, gas, water, or sewer service utility may serve or connect subdivided land with water, sewer, electricity, gas, or other utility service regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.028(a) or receives a determination from the commissioners court under Section 232.028(b) if the utility is provided with a certificate issued by the commissioners court that states that:

(1) the subdivided land:

(A) was sold or conveyed by a subdivider by any means of conveyance, including a contract for deed or executory contract:

(i) before September 1, 1995; or

(ii) before September 1, 1999, if the subdivided land on August 31, 1999, was located in the extraterritorial jurisdiction of a municipality as determined by Chapter 42;

(B) has not been subdivided after September 1, 1995, or September 1, 1999, as applicable under Paragraph (A);

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before May 1, 2003; and

(D) has had adequate sewer services installed to service the lot or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code;

(2) the subdivided land is a lot of record and has adequate sewer services installed that are fully operable to service the lot

or dwelling, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code; or

(3) the land was not subdivided after September 1, 1995, and:

(A) water service is available within 750 feet of the subdivided land; or

(B) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

(d) A utility may provide utility service to subdivided land described by Subsection (c)(1), (2), or (3) only if the person requesting service:

(1) is not the land's subdivider or the subdivider's agent; and

(2) provides to the utility a certificate described by Subsection (c).

(e) A person requesting service may obtain a certificate under Subsection (c)(1), (2), or (3) only if the person is the owner or purchaser of the subdivided land and provides to the commissioners court documentation containing:

(1) a copy of the means of conveyance or other documents that show that the land was sold or conveyed by a subdivider before September 1, 1995, or before September 1, 1999, as applicable under Subsection (c);

(2) a notarized affidavit by that person requesting service under Subsection (c)(1) that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before May 1, 2003, and the request for utility connection or service is to connect or serve a residence described by Subsection (c)(1)(C);

(3) a notarized affidavit by the person requesting service that states that the subdivided land has not been further subdivided after September 1, 1995, or September 1, 1999, as applicable under Subsection (c); and

(4) evidence that adequate sewer service or facilities have been installed and are fully operable to service the lot or dwelling from an entity described by Section 232.021(14) or the authorized agent responsible for the licensing or permitting of on-site sewage

facilities under Chapter 366, Health and Safety Code.

(f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1239, Sec. 6, eff. June 19, 2009.

(g) On request, the commissioners court shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the commissioners court relied in determining the legality of providing service.

(h) This section may not be construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider for a violation of a state or local law, regardless of the date on which the violation occurred.

(i) The prohibition established by this section shall not prohibit a water, sewer, electric, or gas utility from providing water, sewer, electric, or gas utility connection or service to a lot sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider prior to July 1, 1995, or September 1, 1999, if on August 31, 1999, the subdivided land was located in the extraterritorial jurisdiction of a municipality that has adequate sewer services installed that are fully operable to service the lot, as determined by an authorized agent responsible for the licensing or permitting of on-site sewage facilities under Chapter 366, Health and Safety Code, and was subdivided by a plat approved prior to September 1, 1989.

(j) In this section, "foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the residential structure rests.

(k) Subject to Subsections (l) and (m), a utility that does not hold a certificate issued by, or has not received a determination from, the commissioners court under Section 232.028 to serve or connect subdivided property with electricity or gas may provide that service to a single-family residential dwelling on that property if:

(1) the person requesting utility service:

(A) is the owner and occupant of the residential dwelling; and

(B) on or before January 1, 2001, owned and occupied the residential dwelling;

(2) the utility previously provided the utility service on or before January 1, 2001, to the property for the person requesting

the service;

(3) the utility service provided as described by Subdivision (2) was terminated not earlier than five years before the date on which the person requesting utility service submits an application for that service; and

(4) providing the utility service will not result in:

(A) an increase in the volume of utility service provided to the property; or

(B) more than one utility connection for each single-family residential dwelling located on the property.

(l) A utility may provide service under Subsection (k) only if the person requesting the service provides to the commissioners court documentation that evidences compliance with the requirements of Subsection (k) and that is satisfactory to the commissioners court.

(m) A utility may not serve or connect subdivided property as described by Subsection (k) if, on or after September 1, 2007, any existing improvements on that property are modified.

(n) Except as provided by Subsection (o), this section does not prohibit a water or sewer utility from providing water or sewer utility connection or service to a residential dwelling that:

(1) is provided water or wastewater facilities under or in conjunction with a federal or state funding program designed to address inadequate water or wastewater facilities in colonias or to residential lots located in a county described by Section 232.022(a)(1);

(2) is an existing dwelling identified as an eligible recipient for funding by the funding agency providing adequate water and wastewater facilities or improvements;

(3) when connected, will comply with the minimum state standards for both water and sewer facilities and as prescribed by the model subdivision rules adopted under Section 16.343, Water Code; and

(4) is located in a project for which the municipality with jurisdiction over the project or the approval of plats within the project area has approved the improvement project by order, resolution, or interlocal agreement under Chapter 791, Government Code, if applicable.

(o) A utility may not serve any subdivided land with water utility connection or service under Subsection (n) unless the entity receives a determination from the county commissioners court under

Section 232.028(b)(3) that adequate sewer services have been installed to service the lot or dwelling.

(p) The commissioners court may impose a fee for a certificate issued under this section for a subdivision which is located in the county and not within the limits of a municipality. The amount of the fee may be the greater of $30 or the amount of the fee imposed by the municipality for a subdivision that is located entirely in the extraterritorial jurisdiction of the municipality for a certificate issued under Section 212.0115. A person who obtains a certificate under this section is not required to obtain a certificate under Section 212.0115.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 1062, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 9, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 684, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1047 (H.B. 2096), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 546 (S.B. 1676), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1239 (S.B. 2253), Sec. 5, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1239 (S.B. 2253), Sec. 6, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(43), eff. September 1, 2011.

Sec. 232.0291. CONNECTION OF UTILITIES IN CERTAIN COUNTIES WITHIN 100 MILES OF INTERNATIONAL BORDER. (a) This section applies only to a county defined under Section 232.022(a)(2).

(b) Except as provided by Subsection (d) or Section 232.037(c), a utility may not serve or connect any subdivided land with water or sewer services unless the utility receives a certificate issued by the commissioners court under Section 232.028(a) or receives a

determination from the commissioners court under Section 232.028(b)(1) that the plat has been reviewed and approved by the commissioners court.

(c) Except as provided by Subsection (d) or Section 232.037(c), a utility may not serve or connect any subdivided land with electricity or gas unless the entity receives a determination from the county commissioners court under Section 232.028(b)(2) that adequate water and sewer services have been installed to service the subdivision.

(d) An electric, gas, water, or sewer service utility may serve or connect subdivided land with water, sewer, electricity, gas, or other utility service regardless of whether the utility receives a certificate issued by the commissioners court under Section 232.028(a) or receives a determination from the commissioners court under Section 232.028(b) if the utility is provided with a certificate issued by the commissioners court that states that:

(1) the subdivided land:

(A) was sold or conveyed to the person requesting service by any means of conveyance, including a contract for deed or executory contract before September 1, 2005;

(B) is located in a subdivision in which the utility has previously provided service; and

(C) is the site of construction of a residence, evidenced by at least the existence of a completed foundation, that was begun on or before September 1, 2005; or

(2) the subdivided land was not subdivided after September 1, 2005, and:

(A) water service is available within 750 feet of the subdivided land; or

(B) water service is available more than 750 feet from the subdivided land and the extension of water service to the land may be feasible, subject to a final determination by the water service provider.

(e) A utility may provide utility service to subdivided land described by Subsection (d)(1) only if the person requesting service:

(1) is not the land's subdivider or the subdivider's agent; and

(2) provides to the utility a certificate described by Subsection (d)(1).

(f) A person requesting service may obtain a certificate under

Subsection (d)(1) only if the person provides to the commissioners court either:

(1) documentation containing:

(A) a copy of the means of conveyance or other documents that show that the land was sold or conveyed to the person requesting service before September 1, 2005; and

(B) a notarized affidavit by that person that states that construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before September 1, 2005; or

(2) a notarized affidavit by the person requesting service that states that:

(A) the property was sold or conveyed to that person before September 1, 2005; and

(B) construction of a residence on the land, evidenced by at least the existence of a completed foundation, was begun on or before September 1, 2005.

(g) A person requesting service may obtain a certificate under Subsection (d)(2) only if the person provides to the commissioners court an affidavit that states that the property was not sold or conveyed to that person from a subdivider or the subdivider's agent after September 1, 2005.

(h) On request, the commissioners court shall provide to the attorney general and any appropriate local, county, or state law enforcement official a copy of any document on which the commissioners court relied in determining the legality of providing service.

(i) This section may not be construed to abrogate any civil or criminal proceeding or prosecution or to waive any penalty against a subdivider for a violation of a state or local law, regardless of the date on which the violation occurred.

(j) The prohibition established by this section does not prohibit an electric or gas utility from providing electric or gas utility connection or service to a lot:

(1) sold, conveyed, or purchased through a contract for deed or executory contract or other device by a subdivider before September 1, 2005;

(2) located within a subdivision where the utility has previously established service; and

(3) subdivided by a plat approved before September 1, 1989.

(k) In this section, "foundation" means the lowest division of a residence, usually consisting of a masonry slab or a pier and beam structure, that is partly or wholly below the surface of the ground and on which the residential structure rests.

Added by Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 5, eff. September 1, 2005.

Sec. 232.030. SUBDIVISION REGULATION; COUNTY AUTHORITY. (a) The commissioners court for each county shall adopt and enforce the model rules developed under Section 16.343, Water Code.

(b) Except as provided by Section 16.350(d), Water Code, or Section 232.042 or 232.043, the commissioners court may not grant a variance or adopt regulations that waive any requirements of this subchapter.

(c) The commissioners court shall adopt regulations setting forth requirements for:

(1) potable water sufficient in quality and quantity to meet minimum state standards;

(2) solid waste disposal meeting minimum state standards and rules adopted by the county under Chapter 364, Health and Safety Code;

(3) sufficient and adequate roads that satisfy the standards adopted by the county;

(4) sewer facilities meeting minimum state standards;

(5) electric service and gas service; and

(6) standards for flood management meeting the minimum standards set forth by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Sections 4001 through 4127).

(d) In adopting regulations under Subsection (c)(2), the commissioners court may allow one or more commercial providers to provide solid waste disposal services as an alternative to having the service provided by the county.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 10, eff. Sept. 1, 1999.

Sec. 232.0305. COUNTY INSPECTOR. (a) The commissioners court may impose a fee on a subdivider of property under this subchapter for an inspection of the property to ensure compliance with the subdivision regulations adopted under this subchapter, Section 16.343, Water Code, or other law.

(b) Fees collected under this section may be used only to fund inspections conducted under this section.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 11, eff. Sept. 1, 1999.

Sec. 232.031. REQUIREMENTS PRIOR TO SALE OR LEASE. (a) Except as provided by Subsection (d), a subdivider may not sell or lease land in a subdivision first platted or replatted after July 1, 1995, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024.

(b) Not later than the 30th day after the date a lot is sold, a subdivider shall record with the county clerk all sales contracts, including the attached disclosure statement required by Section 232.033, leases, and any other documents that convey an interest in the subdivided land.

(c) A document filed under Subsection (b) is a public record.

(d) In a county defined under Section 232.022(a)(2), a subdivider may not sell or lease land in a subdivision first platted or replatted after September 1, 2005, unless the subdivision plat is approved by the commissioners court in accordance with Section 232.024.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 6, eff. September 1, 2005.

Sec. 232.0315. NOTICE OF WATER AND WASTEWATER REQUIREMENTS BY POLITICAL SUBDIVISIONS. (a) This section applies only to a county or other political subdivision located in the county that sells:

(1) under Section 34.01, Tax Code, real property presumed to be for residential use under Section 232.022; or

(2) under Section 3, Part VI, Texas Rules of Civil Procedure, and Chapter 34, Civil Practice and Remedies Code, real

property presumed to be for residential use under Section 232.022, taken by virtue of a writ of execution.

(b) A county or other political subdivision located in the county shall include in the public notice of sale of the property and the deed conveying the property a statement substantially similar to the following:

"THIS SALE IS BEING CONDUCTED PURSUANT TO STATUTORY OR JUDICIAL REQUIREMENTS. BIDDERS WILL BID ON THE RIGHTS, TITLE, AND INTERESTS, IF ANY, IN THE REAL PROPERTY OFFERED.

"THE PROPERTY IS SOLD AS IS, WHERE IS, AND WITHOUT ANY WARRANTY, EITHER EXPRESS OR IMPLIED. NEITHER THE SELLER NOR THE SHERIFF'S DEPARTMENT WARRANTS OR MAKES ANY REPRESENTATIONS ABOUT THE PROPERTY'S TITLE, CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. BUYERS ASSUME ALL RISKS.

"IN SOME SITUATIONS, A LOT OF FIVE ACRES OR LESS IS PRESUMED TO BE INTENDED FOR RESIDENTIAL USE. HOWEVER, IF THE PROPERTY LACKS WATER OR WASTEWATER SERVICE, THE PROPERTY MAY NOT QUALIFY FOR RESIDENTIAL USE. A POTENTIAL BUYER WHO WOULD LIKE MORE INFORMATION SHOULD MAKE ADDITIONAL INQUIRIES OR CONSULT WITH PRIVATE COUNSEL."

(c) The statement required by Subsection (b) must be:

(1) printed:

(A) in English and Spanish; and

(B) in 14-point boldface type or 14-point uppercase typewritten letters; and

(2) read aloud at the sale, in English and Spanish, by an agent of the county.

(d) A sale conducted in violation of this section is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1111 (S.B. 1760), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 9 (S.B. 59), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 9 (S.B. 59), Sec. 2, eff. September 1, 2023.

Sec. 232.032. SERVICES PROVIDED BY SUBDIVIDER. A subdivider having an approved plat for a subdivision shall:

(1) furnish a certified letter from the utility provider

stating that water is available to the subdivision sufficient in quality and quantity to meet minimum state standards required by Section 16.343, Water Code, and consistent with the certification in the letter, and that water of that quality and quantity will be made available to the point of delivery to all lots in the subdivision;

(2) furnish sewage treatment facilities that meet minimum state standards to fulfill the wastewater requirements of the subdivision or furnish certification by the appropriate county or state official having jurisdiction over the approval of the septic systems indicating that lots in the subdivision can be adequately and legally served by septic systems as provided under Chapter 366, Health and Safety Code;

(3) furnish roads satisfying minimum standards as adopted by the county;

(4) furnish adequate drainage meeting standard engineering practices; and

(5) make a reasonable effort to have electric utility service and gas utility service installed by a utility.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.

Sec. 232.033. ADVERTISING STANDARDS AND OTHER REQUIREMENTS BEFORE SALE; OFFENSE. (a) Brochures, publications, and advertising of any form relating to subdivided land:

(1) may not contain any misrepresentation; and

(2) except for a for-sale sign posted on the property that is no larger than three feet by three feet, must accurately describe the availability of water and sewer service facilities and electric and gas utilities.

(b) The subdivider shall provide a copy in Spanish of all written documents relating to the sale of subdivided land under an executory contract, including the contract, disclosure notice, and annual statement required by this section and a notice of default required by Subchapter D, Chapter 5, Property Code, if:

(1) negotiations that precede the execution of the executory contract are conducted primarily in Spanish; or

(2) the purchaser requests the written documents to be provided in Spanish.

(c) Before an executory contract is signed by the purchaser,

the subdivider shall provide the purchaser with a written notice, which must be attached to the executory contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the subdivider and purchaser, be acknowledged, and read substantially similar to the following:

IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.

WARNING

CONCERNING THE PROPERTY AT (street address or legal description and municipality)

THIS DOCUMENT STATES THE TRUE FACTS ABOUT THE LAND YOU ARE CONSIDERING PURCHASING.

CHECK OFF THE ITEMS THAT ARE TRUE:

___ The property is in a recorded subdivision.

___ The property has water service that provides potable water.

___ The property has sewer service or a septic system.

___ The property has electric service.

___ The property is not in a flood-prone area.

___ The roads are paved.

___ No person other than the subdivider:

(1) owns the property;

(2) has a claim of ownership to the property; or

(3) has an interest in the property.

___ No person has a lien filed against the property.

___ There are no back taxes owed on the property.

NOTICE

SELLER ADVISES PURCHASER TO:

(1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND

(2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.

_____ _____

(Date) (Signature of Subdivider)

_____ _____

(Date) (Signature of Purchaser)

(d) The subdivider shall provide any purchaser who is sold a lot under an executory contract with an annual statement in January of each year for the term of the executory contract. If the subdivider mails the statement to the purchaser, the statement must

be postmarked not later than January 31.

(e) The statement under Subsection (d) must include the following information:

(1) the amount paid under the contract;

(2) the remaining amount owed under the contract;

(3) the annual interest rate charged under the contract during the preceding 12-month period; and

(4) the number of payments remaining under the contract.

(f) If the subdivider fails to comply with Subsections (d) and (e), the purchaser may:

(1) notify the subdivider that the purchaser has not received the statement and will deduct 15 percent of each monthly payment due until the statement is received; and

(2) not earlier than the 25th day after the date the purchaser provides the subdivider notice under this subsection, deduct 15 percent of each monthly payment due until the statement is received by the purchaser.

(g) A purchaser who makes a deduction under Subsection (f) is not required to reimburse the subdivider for the amount deducted.

(h) A person who is a seller of lots in a subdivision, or a subdivider or an agent of a seller or subdivider, commits an offense if the person knowingly authorizes or assists in the publication, advertising, distribution, or circulation of any statement or representation that the person knows is false concerning any subdivided land offered for sale or lease. An offense under this section is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. July 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.17, eff. Sept. 1, 1999.

Sec. 232.034. CONFLICT OF INTEREST; PENALTY. (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided into tracts or lots. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has an interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract;

(2) acts as a developer of the tract;

(3) owns voting stock or shares of a business entity that:

(A) has an equitable or legal ownership interest in the tract; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year money or any thing of value from a business entity described by Subdivision (3).

(c) A person also is considered to have an interest in a subdivided tract if the person is related in the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who, under Subsection (b), has an interest in the tract.

(d) If a member of the commissioners court has an interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit with the county clerk stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the county clerk.

(e) A member of the commissioners court of a county commits an offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court but for the vote of the member who violated this section.

(g) A conviction under Subsection (e) constitutes official misconduct by the member and is grounds for removal from office.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.

Sec. 232.035. CIVIL PENALTIES. (a) A subdivider or an agent of a subdivider may not cause, suffer, allow, or permit a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter.

(b) Notwithstanding any other remedy at law or equity, a subdivider or an agent of a subdivider may not cause, suffer, allow, or permit any part of a subdivision over which the subdivider or an agent of the subdivider has control, or a right of ingress and egress, to become a public health nuisance as defined by Section

341.011, Health and Safety Code.

(c) A subdivider who fails to provide, in the time and manner described in the plat, for the construction or installation of water or sewer service facilities described on the plat or on the document attached to the plat or who otherwise violates this subchapter or a rule or requirement adopted by the commissioners court under this subchapter is subject to a civil penalty of not less than $500 or more than $1,000 for each violation and for each day of a continuing violation but not to exceed $5,000 each day and shall also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit.

(d) Except as provided by Subsection (e), a person who violates Subsection (a) or (b) is subject to a civil penalty of not less than $10,000 or more than $15,000 for each lot conveyed or each subdivision that becomes a nuisance. The person must also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit.

(e) A person who violates Subsection (b) is not subject to a fine under Subsection (d) if the person corrects the nuisance not later than the 30th day after the date the person receives notice from the attorney general or a local health authority of the nuisance.

(f) Venue for an action under this section is in a district court of Travis County, a district court in the county in which the defendant resides, or a district court in the county in which the violation or threat of violation occurs.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 12, eff. Sept. 1, 1999.

Sec. 232.036. CRIMINAL PENALTIES. (a) A subdivider commits an offense if the subdivider knowingly fails to file a plat required by this subchapter. An offense under this subsection is a Class A misdemeanor.

(b) A subdivider who owns a subdivision commits an offense if the subdivider knowingly fails to timely provide for the construction or installation of water or sewer service as required by Section 232.032 or fails to make a reasonable effort to have electric utility

service and gas utility service installed by a utility as required by Section 232.032. An offense under this subsection is a Class A misdemeanor.

(c) If it is shown at the trial of an offense under Subsection (a) that the defendant caused five or more residences in the subdivision to be inhabited, the offense is a state jail felony.

(d) A subdivider commits an offense if the subdivider allows the conveyance of a lot in the subdivision without the appropriate water and sewer utilities as required by Section 232.032 or without having made a reasonable effort to have electric utility service and gas utility service installed by a utility as required by Section 232.032. An offense under this section is a Class A misdemeanor. Each lot conveyed constitutes a separate offense.

(e) Venue for prosecution for a violation under this section is in the county in which any element of the violation is alleged to have occurred or in Travis County.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.

Sec. 232.037. ENFORCEMENT. (a) The attorney general, or the district attorney, criminal district attorney, county attorney with felony responsibilities, or county attorney of the county may take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents to:

(1) enjoin the violation or threatened violation of the model rules adopted under Section 16.343, Water Code;

(2) enjoin the violation or threatened violation of a requirement of this subchapter or a rule adopted by the commissioners court under this subchapter;

(3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and

(4) require platting or replatting under Section 232.040.

(b) The attorney general, at the request of the district or county attorney with jurisdiction, may conduct a criminal prosecution under Section 232.033(h) or 232.036.

(c) During the pendency of any enforcement action brought, any resident of the affected subdivision, or the attorney general, district attorney, or county attorney on behalf of a resident, may file a motion against the provider of utilities to halt termination

of pre-existing utility services. The services may not be terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to public health, safety, or welfare of the residents.

(d) This subchapter is subject to the applicable enforcement provisions prescribed by Sections 16.352, 16.353, 16.354, and 16.3545, Water Code.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 13, 14, eff. Sept. 1, 1999.

Sec. 232.038. SUIT BY PRIVATE PERSON IN ECONOMICALLY DISTRESSED AREA. (a) Except as provided by Subsection (b), a person who has purchased or is purchasing a lot after July 1, 1995, in a subdivision for residential purposes that does not have water and sewer services as required by this subchapter and is located in an economically distressed area, as defined by Section 17.921, Water Code, from a subdivider, may bring suit in the district court in which the property is located or in a district court in Travis County to:

(1) declare the sale of the property void, require the subdivider to return the purchase price of the property, and recover from the subdivider:

(A) the market value of any permanent improvements the person placed on the property;

(B) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;

(C) court costs; and

(D) reasonable attorney's fees; or

(2) enjoin a violation or threatened violation of Section 232.032, require the subdivider to plat or replat under Section 232.040, and recover from the subdivider:

(A) actual expenses incurred as a direct result of the failure to provide adequate water and sewer facilities;

(B) court costs; and

(C) reasonable attorney's fees.

(b) If the lot is located in a county defined under Section 232.022(a)(2), a person may only bring suit under Subsection (a) if the person purchased or is purchasing the lot after September 1,

2005.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 15, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 7, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1380 (S.B. 781), Sec. 1, eff. June 15, 2007.

Sec. 232.039. CANCELLATION OF SUBDIVISION. (a) A subdivider of land may apply to the commissioners court to cancel all or part of the subdivision in the manner provided by Section 232.008 after notice and hearing as provided by this section.

(b) A resident of a subdivision for which the subdivider has applied for cancellation under Subsection (a) has the same rights as a purchaser of land under Section 232.008.

(c) The notice required by Section 232.008(c) must also be published in Spanish in the newspaper of highest circulation and in a Spanish-language newspaper in the county if available.

(d) Not later than the 14th day before the date of the hearing, the county chief appraiser shall by regular and certified mail provide notice containing the information described by Section 232.008(c) to:

(1) each person who pays property taxes in the subdivision, as determined by the most recent tax roll; and

(2) each person with an interest in the property.

(e) The commissioners court may require a subdivider to provide the court with the name and last known address of each person with an interest in the property. For purposes of this subsection, a person residing on a lot purchased through an executory contract has an interest in the property.

(f) A person who fails to provide information requested under Subsection (e) before the 31st day after the date the request is made is liable to the state for a penalty of $500 for each week the person fails to provide the information.

(g) The commissioners court may cancel a subdivision only after a public hearing. At the hearing, the commissioners court shall

permit any interested person to be heard. At the conclusion of the hearing, the commissioners court shall adopt an order on whether to cancel the subdivision.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 16, eff. Sept. 1, 1999.

Sec. 232.040. REPLATTING. (a) A subdivision plat must accurately reflect the subdivision as it develops. If there is any change, either by the intentional act of the subdivider or by the forces of nature, including changes in the size or dimension of lots or the direction or condition of the roads, a plat must be revised in accordance with Section 232.041.

(b) Except as provided by Subsection (c), a lot in a subdivision may not be sold if the lot lacks water and sewer services as required by this subchapter unless the lot is platted or replatted as required by this subchapter. A subdivider or agent of a subdivider may not transfer a lot through an executory contract or other similar conveyance to evade the requirements of this subchapter. The prohibition in this subsection includes the sale of a lot:

(1) by a subdivider who regains possession of a lot previously exempt under Subsection (c) through the exercise of a remedy described in Section 5.064, Property Code; or

(2) for which it is shown at a proceeding brought in the district court in which the property is located that the sale of a lot otherwise exempt under Subsection (c) was made for the purpose of evading the requirements of this subchapter.

(c) Subsection (b) does not apply if a seller other than a subdivider or agent of a subdivider resides on the lot.

(d) The attorney general or a district or county attorney with jurisdiction may bring a proceeding under Subsection (b).

(e) Existing utility services to a subdivision that must be platted or replatted under this section may not be terminated under Section 232.029 or 232.0291.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 17, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 8, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 12.004, eff. September 1, 2013.

Sec. 232.041. REVISION OF PLAT. (a) A person who has subdivided land that is subject to the subdivision controls of the county in which the land is located may apply in writing to the commissioners court of the county for permission to revise the subdivision plat filed for record with the county clerk.

(b) Except as provided by Subsection (b-1), after the application is filed with the commissioners court, the court shall publish a notice of the application in a newspaper of general circulation in the county. The notice must include a statement of the time and place at which the court will meet to consider the application and to hear protests to the revision of the plat. The notice must be published at least three times during the period that begins on the 30th day and ends on the seventh day before the date of the meeting. If all or part of the subdivided tract has been sold to nondeveloper owners, the court shall also give notice to each of those owners by certified or registered mail, return receipt requested, at the owner's address in the subdivided tract.

(b-1) If the commissioners court determines that the revision to the subdivision plat does not affect a public interest or public property of any type, including, but not limited to, a park, school, or road, the notice requirements under Subsection (b) do not apply to the application and the commissioners court shall:

(1) provide written notice of the application to the owners of the lots that are within 200 feet of the subdivision plat to be revised, as indicated in the most recent records of the central appraisal district of the county in which the lots are located; and

(2) if the county maintains an Internet website, post notice of the application continuously on the website for at least 30 days preceding the date of the meeting to consider the application until the day after the meeting.

(c) During a regular term of the commissioners court, the court shall adopt an order to permit the revision of the subdivision plat if it is shown to the court that:

(1) the revision will not interfere with the established

rights of any owner of a part of the subdivided land; or

(2) each owner whose rights may be interfered with has agreed to the revision.

(d) If the commissioners court permits a person to revise a subdivision plat, the person may make the revision by filing for record with the county clerk a revised plat or part of a plat that indicates the changes made to the original plat.

(e) The commissioners court may impose a fee for filing an application under this section. The amount of the fee must be based on the cost of processing the application, including publishing the notices required under Subsection (b) or (b-1).

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 430 (S.B. 552), Sec. 2, eff. June 14, 2013.

Sec. 232.042. VARIANCES FROM REPLATTING REQUIREMENTS. (a) On request of a subdivider or resident purchaser, the commissioners court may grant a delay or a variance from compliance with Section 232.040 as provided by this section.

(b) The commissioners court may grant a delay of two years if the reason for the delay is to install utilities. A person may apply for one renewal of a delay under this subsection. To obtain an initial delay under this subsection, a subdivider must:

(1) identify the affected utility providers;

(2) provide the terms and conditions on which service may be provided; and

(3) provide a certified letter from each utility provider stating that it has the right to serve the area and it will serve the area.

(c) The commissioners court may grant a delay or a variance for a reason other than a reason described by Subsection (b) if it is shown that compliance would be impractical or would be contrary to the health and safety of residents of the subdivision. The commissioners court must issue written findings stating the reasons why compliance is impractical.

(d) A delay or a variance granted by the commissioners court is valid only if the commissioners court notifies the attorney general

of the delay or variance and the reasons for the delay or variance not later than the 30th day after the date the commissioners court grants the delay or variance.

(e) Until approved water and sewer services are made available to the subdivision, the subdivider of land for which a delay is granted under this section must provide at no cost to residents:

(1) 25 gallons of potable water a day for each resident and a suitable container for storing the water; and

(2) suitable temporary sanitary wastewater disposal facilities.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 4, eff. June 16, 1995.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 18, eff. Sept. 1, 1999.

Sec. 232.043. VARIANCES FROM PLATTING REQUIREMENTS. (a) On the request of a subdivider who created an unplatted subdivision or a resident purchaser of a lot in the subdivision, the commissioners court of a county may grant:

(1) a delay or variance from compliance with the subdivision requirements prescribed by Section 232.023(b)(8) or (9), 232.025(1), (2), (3), (4), or (5), or 232.030(c)(2), (3), (5), or (6); or

(2) a delay or variance for an individual lot from compliance with the requirements prescribed by the model subdivision rules adopted under Section 16.343, Water Code, for:

(A) the distance that a structure must be set back from roads or property lines; or

(B) the number of single-family, detached dwellings that may be located on a lot.

(b) If the commissioners court makes a written finding that the subdivider who created the unplatted subdivision no longer owns property in the subdivision, the commissioners court may grant a delay or variance under this section only if:

(1) a majority of the lots in the subdivision were sold before:

(A) September 1, 1995, in a county defined under Section 232.022(a)(1); or

(B) September 1, 2005, in a county defined under

Section 232.022(a)(2);

(2) a majority of the resident purchasers in the subdivision sign a petition supporting the delay or variance;

(3) the person requesting the delay or variance submits to the commissioners court:

(A) a description of the water and sewer service facilities that will be constructed or installed to service the subdivision;

(B) a statement specifying the date by which the water and sewer service facilities will be fully operational; and

(C) a statement signed by an engineer licensed in this state certifying that the plans for the water and sewer facilities meet the minimum state standards;

(4) the commissioners court finds that the unplatted subdivision at the time the delay or variance is requested is developed in a manner and to an extent that compliance with specific platting requirements is impractical or contrary to the health or safety of the residents of the subdivision; and

(5) the subdivider who created the unplatted subdivision has not violated local law, federal law, or state law, excluding this chapter, in subdividing the land for which the delay or variance is requested, if the subdivider is the person requesting the delay or variance.

(c) If the commissioners court makes a written finding that the subdivider who created the unplatted subdivision owns property in the subdivision, the commissioners court may grant a provisional delay or variance only if the requirements of Subsection (b) are satisfied. The commissioners court may issue a final grant of the delay or variance only if the commissioners court has not received objections from the attorney general before the 91st day after the date the commissioners court submits the record of its proceedings to the attorney general as prescribed by Subsection (d).

(d) If the commissioners court grants a delay or variance under this section, the commissioners court shall:

(1) make findings specifying the reason compliance with each requirement is impractical or contrary to the health or safety of residents of the subdivision;

(2) keep a record of its proceedings and include in the record documentation of the findings and the information submitted under Subsection (b); and

(3) submit a copy of the record to the attorney general.

(e) The failure of the attorney general to comment or object to a delay or variance granted under this section does not constitute a waiver of or consent to the validity of the delay or variance granted.

(f) This section does not affect a civil suit filed against, a criminal prosecution of, or the validity of a penalty imposed on a subdivider for a violation of law, regardless of the date on which the violation occurred.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 19, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 9, eff. September 1, 2005.

Sec. 232.044. AMENDING PLAT. The commissioners court may approve and issue an amending plat under this subchapter in the same manner, for the same purposes, and subject to the same related provisions as provided by Section 232.011.

Added by Acts 2007, 80th Leg., R.S., Ch. 1390 (S.B. 1867), Sec. 2, eff. September 1, 2007.

Sec. 232.045. APPLICABILITY OF INFRASTRUCTURE REQUIREMENTS TO LOTS UNDEVELOPED FOR 25 YEARS OR MORE. (a) This section applies only to a county that is adjacent to an international border and contains a municipality with a population of 500,000 or more.

(b) A commissioners court by order may implement a process:

(1) applicable to a subdivision in which 50 percent or more of the lots are undeveloped or unoccupied on or after the 25th anniversary of the date the plat for the subdivision was recorded with the county; and

(2) through which the county, to the extent practicable, may apply to the subdivision more current street, road, drainage, and other infrastructure requirements.

(c) A regulation or standard adopted by a county under this section must be no less stringent than the minimum standards and other requirements under the model rules for safe and sanitary water supply and sewer services adopted under Section 16.343, Water Code,

and any other minimum public safety standards that would otherwise be applicable to the subdivision.

(d) A regulation or standard adopted by a county under this section applies only to a lot that is owned by an individual, firm, corporation, or other legal entity that directly or indirectly offers lots for sale or lease as part of a common promotional plan in the ordinary course of business, and each regulation or standard must expressly state that limitation. For the purposes of this subsection, "common promotional plan" means a plan or scheme of operation undertaken by a person or a group acting in concert, either personally or through an agent, to offer for sale or lease more than two lots when the land is:

(1) contiguous or part of the same area of land; or

(2) known, designated, or advertised as a common unit or by a common name.

Added by Acts 2019, 86th Leg., R.S., Ch. 346 (S.B. 1402), Sec. 1, eff. January 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 146, eff. September 1, 2023.

SUBCHAPTER C. SUBDIVISION PLATTING REQUIREMENTS IN CERTAIN ECONOMICALLY DISTRESSED COUNTIES

Sec. 232.071. APPLICABILITY. This subchapter applies only to the subdivision of land located:

(1) outside the corporate limits of a municipality; and

(2) in a county:

(A) in which is located a political subdivision that is eligible for and has applied for financial assistance under Section 15.407, Water Code, or Subchapter K, Chapter 17, Water Code; and

(B) to which Subchapter B does not apply.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 21, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 927 (H.B. 467), Sec. 14, eff. September 1, 2005.

Sec. 232.072. PLAT REQUIRED. (a) The owner of a tract of land that divides the tract in any manner that creates at least one lot of five acres or less intended for residential purposes must have a plat of the subdivision prepared. A commissioners court by order may require each subdivider of land to prepare a plat if none of the lots is five acres or less but at least one of the lots of the subdivision is more than five acres but not more than 10 acres.

(a-1) A subdivision of a tract under this section includes a subdivision of real property by any method of conveyance, including a contract for deed, oral contract, contract of sale, or other type of executory contract, regardless of whether the subdivision is made by using a metes and bounds description.

(b) A plat required under this section must:

(1) include on the plat or have attached to the plat a document containing a description of the water and sewer service facilities that will be constructed or installed to service the subdivision and a statement of the date by which the facilities will be fully operable; and

(2) have attached to the plat a document prepared by an engineer registered to practice in this state certifying that the water and sewer service facilities described by the plat or the document attached to the plat are in compliance with the model rules adopted under Section 16.343, Water Code.

(c) A plat required under this section must be filed and recorded with the county clerk of the county in which the tract is located. The plat is subject to the filing and recording provisions of Section 12.002, Property Code.

(d) The commissioners court may require a plat application submitted for approval to include a digital map that is compatible with other mapping systems used by the county and that georeferences the subdivision plat and related public infrastructure using the Texas Coordinate Systems adopted under Section 21.071, Natural Resources Code. A digital map required under this subsection may be required only in a format widely used by common geographic information system software. A requirement adopted under this subsection must provide for an exemption from the requirement if the owner of the tract submits with the plat application an acknowledged statement indicating that the digital mapping technology necessary to submit a map that complies with this subsection was not reasonably accessible.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1364 (S.B. 1599), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 550 (H.B. 2033), Sec. 3, eff. September 1, 2015.

Sec. 232.073. APPROVAL BY COUNTY REQUIRED. (a) A plat filed under Section 232.072 is not valid unless the commissioners court of the county in which the land is located approves the plat by an order entered in the minutes of the court. The commissioners court shall refuse to approve a plat if it does not meet the requirements prescribed by or under this subchapter or if any bond required under this subchapter is not filed with the county clerk.

(b) The commissioners court of the county in which the land is located may establish a planning commission as provided by Subchapter D. The planning commission, including its findings and decisions, is subject to the same provisions applicable to the commissioners court under this subchapter, including Section 232.078 relating to conflicts of interest.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 404, Sec. 22, eff. Sept. 1, 1999.

Sec. 232.074. BOND REQUIREMENTS. (a) Unless a person has completed the installation of all water and sewer service facilities required by this subchapter on the date that person applies for final approval of a plat under Section 232.073, the commissioners court shall require the subdivider of the tract to execute and maintain in effect a bond or, in the alternative, a person may make a cash deposit in an amount the commissioners court determines will ensure compliance with this subchapter. A person may not meet the requirements of this subsection through the use of a letter of credit unless that letter of credit is irrevocable and issued by an institution guaranteed by the Federal Deposit Insurance Corporation. The subdivider must comply with the requirement before subdividing the tract.

(b) The bond must be conditioned on the construction or installation of water and sewer service facilities that will be in compliance with the model rules adopted under Section 16.343, Water Code.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.

Sec. 232.075. WATER AND SEWER SERVICE EXTENSION. (a) The commissioners court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the water and sewer service facilities must be fully operable if the commissioners court finds the extension is reasonable and not contrary to the public interest.

(b) The commissioners court may not grant an extension under Subsection (a) if it would allow an occupied residence to be without water or sewer services.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.

Sec. 232.076. CERTIFICATION REGARDING COMPLIANCE WITH PLAT REQUIREMENTS. (a) On the approval of a plat by the commissioners court, the commissioners court shall issue to the person applying for the approval a certificate stating that the plat has been reviewed and approved by the commissioners court.

(b) On its own motion or on the written request of a subdivider, an owner or resident of a lot in a subdivision, or an entity that provides a utility service, the commissioners court shall:

(1) determine whether a plat is required under this subchapter for an identified tract of land that is located within the jurisdiction of the county; and

(2) if a plat is required for the identified tract, determine whether a plat has been reviewed and approved by the commissioners court.

(c) The request made under Subsection (b) must adequately identify the land that is the subject of the request.

(d) Whenever a request is made under Subsection (b), the commissioners court shall issue the requesting party a written certification of its determinations.

(e) The commissioners court shall make its determinations within 20 days after the date it receives the request under Subsection (b) and shall issue the certificate, if appropriate, within 10 days after the date the determinations are made.

(f) The commissioners court may adopt rules it considers necessary to administer its duties under this section.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.

Sec. 232.077. CONNECTION OF UTILITIES IN CERTAIN COUNTIES. (a) This section applies only to a tract of land for which a plat is required under this subchapter.

(b) An entity described by Subsection (c) may not serve or connect any land with water, sewer, electricity, gas, or other utility service unless the entity has been presented with or otherwise holds a certificate applicable to the land issued under Section 232.076 stating that a plat has been reviewed and approved for the land.

(c) The prohibition established by Subsection (b) applies only to:

(1) a municipality, and officials of the municipality, that provides water, sewer, electricity, gas, or other utility service;

(2) a municipally owned or municipally operated utility that provides any of those services;

(3) a public utility that provides any of those services;

(4) a water supply or sewer service corporation organized and operating under Chapter 67, Water Code, that provides any of those services;

(5) a county that provides any of those services; and

(6) a special district or authority created by or under state law that provides any of those services.

(d) The prohibition established by Subsection (b) applies only to land that an entity described by Subsection (c) first serves or first connects with services:

(1) between September 1, 1989, and June 16, 1995; or

(2) after the effective date of this subchapter.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.36, eff. Sept. 1, 1999.

Sec. 232.0775. COUNTY INSPECTOR. (a) The commissioners court may impose a fee on a subdivider of property under this subchapter for an inspection of the property to ensure compliance with the subdivision regulations adopted under this subchapter, Section 16.343, Water Code, or other law.

(b) Fees collected under this section may be used only to fund inspections conducted under this section.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 23, eff. Sept. 1, 1999.

Sec. 232.078. CONFLICT OF INTEREST; PENALTY. (a) In this section, "subdivided tract" means a tract of land, as a whole, that is subdivided into tracts or lots. The term does not mean an individual lot in a subdivided tract of land.

(b) A person has an interest in a subdivided tract if the person:

(1) has an equitable or legal ownership interest in the tract;

(2) acts as a developer of the tract;

(3) owns voting stock or shares of a business entity that:

(A) has an equitable or legal ownership interest in the tract; or

(B) acts as a developer of the tract; or

(4) receives in a calendar year money or any thing of value from a business entity described by Subdivision (3).

(c) A person also is considered to have an interest in a subdivided tract if the person is related in the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who, under Subsection (b), has an interest in the tract.

(d) If a member of the commissioners court has an interest in a subdivided tract, the member shall file, before a vote or decision regarding the approval of a plat for the tract, an affidavit with the county clerk stating the nature and extent of the interest and shall abstain from further participation in the matter. The affidavit must be filed with the county clerk.

(e) A member of the commissioners court of a county commits an

offense if the member violates Subsection (d). An offense under this subsection is a Class A misdemeanor.

(f) The finding by a court of a violation of this section does not render voidable an action of the commissioners court unless the measure would not have passed the commissioners court but for the vote of the member who violated this section.

(g) A conviction under Subsection (e) constitutes official misconduct by the member and is grounds for removal from office.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.

Sec. 232.079. CIVIL PENALTIES. (a) A subdivider or an agent of a subdivider may not cause, suffer, allow, or permit a lot to be sold in a subdivision if the subdivision has not been platted as required by this subchapter.

(b) A subdivider who fails to provide, in the time and manner described in the plat, for the construction or installation of water or sewer service facilities described on the plat or on the document attached to the plat or who otherwise violates this subchapter or a rule or requirement adopted by the commissioners court under this subchapter is subject to a civil penalty of not less than $500 or more than $1,000 for each violation and for each day of a continuing violation but not to exceed $5,000 each day and shall also pay court costs, investigative costs, and attorney's fees for the governmental entity bringing the suit.

(c) Venue for an action under this section is in a district court of Travis County, a district court in the county in which the defendant resides, or a district court in the county in which the violation or threat of violation occurs.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997.

Sec. 232.080. ENFORCEMENT. (a) The attorney general, or the district attorney, criminal district attorney, or county attorney, may take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents to:

(1) enjoin the violation or threatened violation of applicable model rules adopted under Section 16.343, Water Code;

(2) enjoin the violation or threatened violation of a

requirement of this subchapter or a rule adopted by the commissioners court under this subchapter;

(3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs; and

(4) require platting as required by this subchapter.

(b) During the pendency of any enforcement action brought, any resident of the affected subdivision, or the attorney general, district attorney, or county attorney on behalf of a resident, may file a motion against the provider of utilities to halt termination of preexisting utility services. The services may not be terminated if the court makes an affirmative finding after hearing the motion that termination poses a threat to public health or to the health, safety, or welfare of the residents. This subsection does not prohibit a provider of utilities from terminating services under other law to a resident who has failed to timely pay for services.

(c) This subchapter is subject to the applicable enforcement provisions prescribed by Sections 16.352, 16.353, 16.354, and 16.3545, Water Code.

Added by Acts 1997, 75th Leg., ch. 377, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 404, Sec. 24, eff. Sept. 1, 1999.

Sec. 232.081. AMENDING PLAT. The commissioners court may approve and issue an amending plat under this subchapter in the same manner, for the same purposes, and subject to the same related provisions as provided by Section 232.011.

Added by Acts 2007, 80th Leg., R.S., Ch. 1390 (S.B. 1867), Sec. 3, eff. September 1, 2007.

SUBCHAPTER D. COUNTY PLANNING COMMISSION

Sec. 232.091. APPLICABILITY. This subchapter applies only to a county:

(1) authorized to establish a planning commission under Subchapter B or C; and

(2) in which the commissioners court by order elects to operate under this subchapter.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 25, eff. Sept. 1, 1999.

Sec. 232.092. ESTABLISHMENT AND ABOLITION OF PLANNING COMMISSION. (a) To promote the general public welfare, the commissioners court of a county by order may:

(1) establish a planning commission under this section; and

(2) abolish a planning commission established under this section.

(b) The commissioners court may authorize the planning commission to act on behalf of the commissioners court in matters relating to:

(1) the duties and authority of the commissioners court under Subchapter A, B, or C; and

(2) land use, health and safety, planning and development, or other enforcement provisions specifically authorized by law.

(c) If the commissioners court establishes a planning commission, the commissioners court by order shall adopt reasonable rules and procedures necessary to administer this subchapter.

(d) This subchapter does not grant a commissioners court or a planning commission the power to regulate the use of property for which a permit has been issued to engage in a federally licensed activity.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 25, eff. Sept. 1, 1999.

Sec. 232.093. APPOINTMENT OF MEMBERS OF PLANNING COMMISSION. (a) The commissioners court may appoint a planning commission consisting of five members. Members are appointed for staggered terms of two years.

(b) A person appointed as a member of the planning commission must be a citizen of the United States and reside in the county.

(c) The commissioners court shall file with the county clerk a certificate of appointment for each commission member.

(d) The commissioners court shall fill any vacancy on the commission.

(e) Before a planning commission member undertakes the duties of the office, the member must:

(1) take the official oath; and

(2) swear in writing that the member will promote the interest of the county as a whole and not only a private interest or the interest of a special group or location in the county.

(f) A member of the planning commission serves at the pleasure of the commissioners court and is subject to removal as provided by Chapter 87.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 25, eff. Sept. 1, 1999.

Sec. 232.094. FINANCIAL DISCLOSURE. (a) The commissioners court of a county may require each member of the planning commission to file a financial disclosure report in the same manner as required for county officers under Subchapter B, Chapter 159.

(b) If the commissioners court requires a financial disclosure report but has not adopted a financial disclosure reporting system under Subchapter B, Chapter 159, the planning commission member shall file a financial disclosure report in the same manner as required for county officers under Subchapter A, Chapter 159.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 25, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 985 (H.B. 2112), Sec. 1, eff. September 1, 2013.

Sec. 232.095. OFFICERS, QUORUM, AND MEETINGS. (a) At the first meeting of each calendar year, the planning commission shall elect a presiding officer and assistant presiding officer. The presiding officer presides over the meetings and executes all documentation required on behalf of the planning commission. The assistant presiding officer represents the presiding officer during the presiding officer's absence.

(b) There is no limitation on the number of terms a member may serve on the commission.

(c) Minutes of the planning commission's proceedings must be filed with the county clerk or other county officer or employee designated by the commissioners court. The minutes of the planning commission's proceedings are a public record.

(d) The planning commission is subject to Chapters 551 and 552,

Government Code.

(e) The planning commission may adopt rules necessary to administer this subchapter. Rules adopted under this subsection are subject to approval by the commissioners court.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 25, eff. Sept. 1, 1999.

Sec. 232.096. TIMELY APPROVAL OF PLATS. (a) The planning commission shall issue a written list of the documentation and other information that must be submitted with a plat application. The documentation or other information must relate to a requirement authorized by law. An application submitted to the planning commission that contains the documents and other information on the list is considered complete.

(b) If a person submits an incomplete plat application to the planning commission, the planning commission or its designee shall, not later than the 15th business day after the date the planning commission or its designee receives the application, notify the applicant of the missing documents or other information. The planning commission or its designee shall allow an applicant to timely submit the missing documents or other information.

(c) An application is considered complete on the date all documentation and other information required by Subsection (a) is received by the planning commission.

(d) If the approval of the plat is within the exclusive jurisdiction of the planning commission, the planning commission shall take final action on a plat application, including the resolution of all appeals, not later than the 60th day after the date a completed plat application is received by the planning commission.

(e) The time period prescribed by Subsection (d) may be extended for:

(1) a reasonable period if requested by the applicant; and

(2) an additional 60 days if the county is required under Chapter 2007, Government Code, to perform a takings impact assessment in connection with a plat submitted for approval.

(f) The planning commission may not compel an applicant to waive the time limits prescribed by this section.

(g) If the planning commission fails to take final action on the completed plat application as required by this section, the

applicant may apply to a district court in the county in which the land is located for a mandamus order to compel the planning commission to approve or disapprove the plat. A planning commission subject to a mandamus order under this subsection shall make a decision approving or disapproving the plat not later than the 20th business day after the date a copy of the mandamus order is served on the presiding officer of the planning commission. If the planning commission approves the plat, the planning commission, within the 20-day period prescribed by this subsection, shall:

(1) refund the greater of the unexpended portion of any plat application fee or deposit or 50 percent of a plat application fee or deposit that has been paid;

(2) determine the appropriate amount of any bond or other financial guarantee required in connection with the plat approval; and

(3) issue documents recognizing the plat's approval.

(h) Except as provided by this subsection, an approval of a plat by the planning commission is final on the 31st day after the date the planning commission votes to approve the plat. On the request of a county commissioner, the commissioners court shall review a plat approved by the planning commission not later than the 30th day after the date the planning commission votes to approve the plat. The commissioners court may disapprove the plat if the plat fails to comply with state law or rules adopted by the county or the planning commission. If the commissioners court fails to take action within the 30-day period prescribed by this subsection, the decision of the planning commission is final.

(i) In this section, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 25, eff. Sept. 1, 1999.

Sec. 232.097. REASONS FOR DISAPPROVAL OF PLAT REQUIRED. If the planning commission refuses to approve a plat, the planning commission shall provide to the person requesting approval a notice specifying the reason for the disapproval.

Added by Acts 1999, 76th Leg., ch. 404, Sec. 25, eff. Sept. 1, 1999.

SUBCHAPTER E. INFRASTRUCTURE PLANNING PROVISIONS IN CERTAIN URBAN COUNTIES

Sec. 232.101. RULES. (a) By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules governing plats and subdivisions of land within the unincorporated area of the county to promote the health, safety, morals, or general welfare of the county and the safe, orderly, and healthful development of the unincorporated area of the county.

(b) Unless otherwise authorized by state law, a commissioners court shall not regulate under this section:

(1) the use of any building or property for business, industrial, residential, or other purposes;

(2) the bulk, height, or number of buildings constructed on a particular tract of land;

(3) the size of a building that can be constructed on a particular tract of land, including without limitation and restriction on the ratio of building floor space to the land square footage;

(4) the number of residential units that can be built per acre of land;

(5) a plat or subdivision in an adjoining county; or

(6) road access to a plat or subdivision in an adjoining county.

(c) The authority granted under Subsection (a) is subject to the exemptions to plat requirements provided for in Section 232.0015.

Added by Acts 2001, 77th Leg., ch. 736, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1390 (S.B. 1867), Sec. 4, eff. September 1, 2007.

Sec. 232.102. MAJOR THOROUGHFARE PLAN. By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may:

(1) require a right-of-way on a street or road that functions as a major thoroughfare of a width of not more than 120

feet; or

(2) require a right-of-way on a street or road that functions as a major thoroughfare of a width of more than 120 feet, if such requirement is consistent with a transportation plan adopted by the metropolitan planning organization of the region.

Added by Acts 2001, 77th Leg., ch. 736, Sec. 1, eff. Sept. 1, 2001.

Sec. 232.103. LOT FRONTAGES. By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may adopt reasonable standards for minimum lot frontages on existing county roads and establish reasonable standards for the lot frontages in relation to curves in the road.

Added by Acts 2001, 77th Leg., ch. 736, Sec. 1, eff. Sept. 1, 2001.

Sec. 232.104. SET-BACKS. By an order adopted and entered in the minutes of the commissioners court and after a notice is published in a newspaper of general circulation in the county, the commissioners court may establish reasonable building and set-back lines as provided by Chapter 233 without the limitation period provided by Section 233.004(c).

Added by Acts 2001, 77th Leg., ch. 736, Sec. 1, eff. Sept. 1, 2001.

Sec. 232.105. DEVELOPER PARTICIPATION CONTRACTS. (a) Without complying with the competitive sealed bidding procedure of Chapter 262, a commissioners court may make a contract with a developer of a subdivision or land in the unincorporated area of the county to construct public improvements, not including a building, related to the development. If the contract does not meet the requirements of this subchapter, Chapter 262 applies to the contract if the contract would otherwise be governed by that chapter.

(b) Under the contract, the developer shall construct the improvements, and the county shall participate in the cost of the improvements.

(c) The contract must establish the limit of participation by

the county at a level not to exceed 30 percent of the total contract price. In addition, the contract may also allow participation by the county at a level not to exceed 100 percent of the total cost for any oversizing of improvements required by the county, including but not limited to increased capacity of improvements to anticipate other future development in the area. The county is liable only for the agreed payment of its share, which shall be determined in advance either as a lump sum or as a factor or percentage of the total actual cost as determined by an order of the commissioners court.

(d) The developer must execute a performance bond for the construction of the improvements to ensure completion of the project. The bond must be executed by a corporate surety in accordance with Chapter 2253, Government Code.

(e) In the order adopted by the commissioners court under Subsection (c), the county may include additional safeguards against undue loading of cost, collusion, or fraud.

Added by Acts 2001, 77th Leg., ch. 736, Sec. 1, eff. Sept. 1, 2001.

Sec. 232.106. CONNECTION OF UTILITIES. By an order adopted and entered in the minutes of the commissioners court, and after a notice is published in a newspaper of general circulation in the county, the commissioners court may impose the requirements of Section 232.029 or 232.0291.

Added by Acts 2001, 77th Leg., ch. 736, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 708 (S.B. 425), Sec. 10, eff. September 1, 2005.

Sec. 232.107. PROVISIONS CUMULATIVE. The authorities under this subchapter are cumulative of and in addition to the authorities granted under this chapter and all other laws to counties to regulate the subdivision of land.

Added by Acts 2001, 77th Leg., ch. 736, Sec. 1, eff. Sept. 1, 2001.

Sec. 232.108. PLAT REQUIREMENTS. (a) The commissioners court,

in addition to having the authority to adopt rules under Section 232.101 and other authority granted by this chapter, may impose the plat requirements prescribed by Section 232.023. If the commissioners court imposes the plat requirements prescribed by Section 232.023, any rules adopted under Section 232.101 must be consistent with those requirements.

(b) If a county imposing the plat requirements prescribed by Section 232.023 is not described by Section 232.022(a):

(1) the document required by Section 232.023(b)(6) is not required to be in Spanish; and

(2) the plat requirements related to drainage shall be those authorized by Section 232.003(8) rather than those authorized by Section 232.023(b)(8).

Added by Acts 2007, 80th Leg., R.S., Ch. 1390 (S.B. 1867), Sec. 5, eff. September 1, 2007.

Sec. 232.109. FIRE SUPPRESSION SYSTEM. In a subdivision that is not served by fire hydrants as part of a centralized water system certified by the Texas Commission on Environmental Quality as meeting minimum standards for water utility service, the commissioners court may require a limited fire suppression system that requires a developer to construct:

(1) for a subdivision of fewer than 50 houses, 2,500 gallons of storage; or

(2) for a subdivision of 50 or more houses, 2,500 gallons of storage with a centralized water system or 5,000 gallons of storage.

Added by Acts 2007, 80th Leg., R.S., Ch. 1390 (S.B. 1867), Sec. 5, eff. September 1, 2007.

Sec. 232.110. APPORTIONMENT OF COUNTY INFRASTRUCTURE COSTS. (a) If, under any authority expressly authorized by this chapter, a county requires, including under an agreement under Chapter 242, as a condition of approval for a property development project that the developer bear a portion of the costs of county infrastructure improvements by the making of dedications, the payment of fees, or the payment of construction costs, the developer's portion of the

costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development as approved by a professional engineer who holds a license issued under Chapter 1001, Occupations Code, and is retained by the county. The county's determination shall be completed within thirty days following the submission of the developer's application for determination under this subsection.

(b) A developer who disputes the determination made under Subsection (a) may appeal to the commissioners court of the county. At the appeal, the developer may present evidence and testimony under procedures adopted by the commissioners court. After hearing any testimony and reviewing the evidence, the commissioners court shall make the applicable determination within 30 days following the final submission of any testimony or evidence by the developer.

(c) A developer may appeal the determination of the commissioners court to a county or district court of the county in which the development project is located within 30 days of the final determination by the commissioners court.

(d) A county may not require a developer to waive the right of appeal authorized by this section as a condition of approval for a development project.

(e) A developer who prevails in an appeal under this section is entitled to applicable costs and to reasonable attorney's fees, including expert witness fees.

(f) This section does not diminish the authority or modify the procedures specified by Chapter 395.

(g) This section does not increase or expand, and shall not be interpreted to increase or expand, the authority of a county to regulate plats or subdivisions under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 635 (S.B. 1510), Sec. 2, eff. June 10, 2019.

SUBCHAPTER F. ABANDONED, UNOCCUPIED, AND UNDEVELOPED PLATTED LOTS IN CERTAIN COUNTIES

Sec. 232.151. APPLICABILITY. This subchapter applies to a county that:

(1) contains a municipality with a population of more than 500,000;

(2) is adjacent to an international border; and

(3) contains more than 30,000 acres of lots that have remained substantially undeveloped for more than 25 years after the date the lots were platted.

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 147, eff. September 1, 2023.

Sec. 232.152. ADMINISTRATIVE DETERMINATION. (a) In addition to the authority granted under Section 232.045, a commissioners court may implement an expedited process to administratively determine that a platted lot is abandoned, unoccupied, and undeveloped if the lot:

(1) has remained undeveloped for 25 years or more after the date the lot was platted;

(2) is part of a subdivision in which 50 percent or more of the lots are undeveloped or unoccupied;

(3) is part of a subdivision in which 50 percent or more of the lots are 10 acres or less in size;

(4) had an assessed value of less than $1,000 as of January 1, 2021; and

(5) as of January 1, 2021, was not valued for ad valorem taxation as land for agricultural use pursuant to Subchapter C, Chapter 23, Tax Code.

(b) The county does not have an ownership interest in any lot that is administratively determined to be abandoned, unoccupied, and undeveloped or that is placed in a receivership under this subchapter, except for any existing or future legal interest established by other law.

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.

Sec. 232.153. PUBLIC HEARING. (a) Before a county may make an administrative determination that a platted lot is abandoned, unoccupied, and undeveloped, the county must:

(1) hold a public hearing on the matter; and

(2) make reasonable efforts to notify each owner and lienholder of the lot of the time and place of the hearing as provided by Section 232.154.

(b) The hearing may be held by the commissioners court of the county or an appropriate county commission or board appointed by the commissioners court. The Texas Rules of Evidence do not apply to a hearing conducted under this section.

(c) At the hearing, an owner or lienholder may provide testimony and present evidence to refute any of the five required elements for a determination under Section 232.152. It is an affirmative defense to a determination under Section 232.152 that a lot's ad valorem taxes have been paid in full for each year that the taxing authority issued a tax invoice.

(d) The county may conduct a single hearing for multiple lots and make a determination that multiple lots are abandoned, unoccupied, and undeveloped based on the same evidence.

(e) Not later than the 14th day after the date of the hearing, if a lot is determined to be abandoned, unoccupied, and undeveloped, the county shall issue an order of its determination.

(f) Not later than the 14th day after the date of the order, the county shall:

(1) post notice of the order at the county courthouse; and

(2) publish in a newspaper of general circulation in the county in which the lot is located a notice of the determination containing:

(A) a description of the lot;

(B) the date of the hearing;

(C) a brief statement of the results of the order;

(D) instructions stating where a complete copy of the order may be obtained; and

(E) notice that the order is appealable to a district court in the county within 60 calendar days of the order.

(g) In lieu of the notice required by Subsection (f), the county may:

(1) post the information required by Subsection (f)(2) on the county's Internet website; and

(2) publish a notice in a newspaper of general circulation in the county in which the lot is located stating that:

(A) the commissioners court has adopted an order under this subchapter; and

(B) the information required by Subsection (f)(2) may be found on the county's Internet website.

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.

Sec. 232.154. NOTICE OF HEARING. (a) The county shall:

(1) provide notice of the hearing to each record owner of the applicable lot and to each holder of a recorded lien against the applicable lot by:

(A) personal delivery;

(B) certified mail with return receipt requested to the last known address of each owner and lienholder; or

(C) delivery to the last known address of each owner or lienholder by the United States Postal Service using signature confirmation services;

(2) publish notice of the hearing in a newspaper of general circulation in the county on or before the 10th day before the date of the hearing and on the county's Internet website; and

(3) file in the property records of the county notice of the hearing that contains:

(A) the name and last known address of the owner of the applicable lot; and

(B) a description of the administrative determination proceeding, including notice that the administrative determination may result in the extinguishment of any and all rights and legal interests in the lot.

(b) Notice under Subsection (a)(1) must be provided to each owner and lienholder for whom an address can be reasonably ascertained from the deed of trust or other applicable instrument on file in the office of the county clerk or in the records of the office of the central appraisal district for the county. The filed notice under Subsection (a)(3) must contain the name and address of each owner to the extent that that information can be reasonably ascertained from the deed of trust or other applicable instrument on file in the office of the county clerk or in the records of the office of the central appraisal district for the county.

(c) The filing of notice under Subsection (a)(3):

(1) is binding on subsequent grantees, lienholders, or

other transferees of an interest in the platted lot who acquire that interest after the filing of the notice; and

(2) constitutes notice of the proceeding on any subsequent recipient of any interest in the platted lot who acquires that interest after the filing of the notice.

(d) An owner or lienholder is presumed to have received actual and constructive notice of the hearing if the commissioners court complies with this section, regardless of whether the commissioners court receives a response from the person.

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.

Sec. 232.155. JUDICIAL REVIEW. (a) Any owner or lienholder of record of a platted lot aggrieved by an order issued under Section 232.153 may file in a district court in the county in which the property is located a verified petition alleging that the decision is illegal, in whole or in part, and stating with specificity the grounds of the alleged illegality. The petition must be filed by an owner or lienholder of the lot within 60 calendar days of the order. If a petition is not filed within 60 calendar days of the order, the order shall become final.

(b) On the filing of a petition under Subsection (a), the court may issue a writ of certiorari directed to the county to review the order of the county and shall prescribe in the writ the time within which a return on the writ must be made and served on the relator or the relator's attorney.

(c) The county is not required to return the original papers acted on by it, but it is sufficient for the county to return certified or sworn copies of the papers or parts of the papers as may be called for by the writ.

(d) Appeal of the county's determination under this subchapter shall be conducted under the substantial evidence rule.

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.

Sec. 232.156. CIVIL ACTION FOR RECEIVERSHIP. (a) After a final determination that a platted lot is abandoned, unoccupied, and

undeveloped, the county shall bring a civil action to have the lot placed in a receivership. On a final determination that a platted lot is abandoned, unoccupied, and undeveloped as provided by this subchapter, an owner or lienholder's rights and legal interests are extinguished, subject to the provisions of this subchapter regarding any net proceeds resulting from the disposition of the property, and transferred to the receiver.

(b) The only allegations required to be pleaded in an action for receivership brought under this section are:

(1) the identification of the applicable lot;

(2) the relationship of the defendant to the real property;

(3) the notice of the administrative hearing given to the owner; and

(4) the administrative determination that the lot has been abandoned, unoccupied, and undeveloped.

(c) The court may appoint as receiver any person with a demonstrated record of knowledge of the problems created by abandoned, unoccupied, and undeveloped platted lots. In selecting a receiver, the court may also take into consideration whether the person owns property in the affected area. The court may not appoint the county, a county official or county employee, or a relative of a county official or county employee within the third degree of consanguinity or affinity as a receiver.

(d) In a civil action under this subchapter, the record owners and any lienholders of record of the lot shall be served with personal notice of the proceedings as provided by the Texas Rules of Civil Procedure. Service on the record owners or lienholders constitutes notice to all unrecorded owners or lienholders.

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.

Sec. 232.157. AUTHORITY AND DUTY OF RECEIVER. (a) Unless inconsistent with this chapter or other law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver. A receiver appointed by the court may:

(1) take control of the platted lot;

(2) make or have made any repairs or improvements to the

platted lot to make the lot developable;

(3) make provisions for the platted lot to be subject to street, road, drainage, utility, and other infrastructure requirements;

(4) aggregate the platted lot with other lots that have been similarly determined to be abandoned, unoccupied, and undeveloped;

(5) re-plat the platted lot;

(6) accept the grant or donation of any lot within the affected area to carry out the purpose of this subchapter; and

(7) exercise all other authority that an owner of the platted lot could have exercised, including the authority to sell the lot.

(b) Before a person assumes the duties of a receiver, the person must be sworn to perform the duties faithfully.

(c) The appointed receiver is an officer of the court.

(d) If a receiver dies, resigns, or becomes incapacitated, the court shall appoint a receiver to succeed the former receiver.

(e) If the donation of a lot to the receiver is not challenged before the first anniversary of the donation date, the donation is final and not revocable under any other legal proceeding.

(f) All funds that come into the hands of the receiver shall be deposited in a place in this state directed by the court. The receiver's use of the funds in connection with the receiver's duties or authority under this subchapter shall be subject to the approval of the court. All net proceeds from the disposition of a lot by the receiver shall be placed in trust and remain in trust for at least three years, unless claimed before the expiration of the trust period. The court must order additional notices to an owner or lienholder about the net proceeds as are practicable during the trust period and, on expiration of the trust period, any money remaining in the receivership shall escheat to the state. Funds escheated to the state under this subchapter are subject to disposition or recovery under Subchapters C and D, Chapter 71, Property Code.

(g) After the receiver has improved the platted lot to the degree that the lot is developable and meets all applicable standards, or before petitioning the court for termination of the receivership, the receiver shall file with the court:

(1) a summary and accounting of all costs and expenses incurred, which may, at the receiver's discretion, include a

receivership fee of up to 15 percent of the costs and expenses incurred, unless the court, for good cause shown, authorizes a different limit;

(2) a statement describing the disposition of each lot, including whether the lot was aggregated with other lots;

(3) a statement of all revenues collected by the receiver in connection with the use or disposition of the lots; and

(4) to the extent required by the court, a description of any undivided interest of an owner or lienholder, whether identified or not, in the net proceeds from the disposition of the property.

(h) The court must approve any sale of the property by the receiver.

(i) A receiver shall have a lien on the property under receivership for all of the receiver's unreimbursed costs and expenses and any receivership fee as detailed in the summary and accounting under Subsection (g)(1).

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.

Sec. 232.158. SALE OF PROPERTY. (a) A sale under this subchapter must be made by:

(1) public auction;

(2) sealed bid; or

(3) sealed proposal.

(b) Before a sale may take place under this subchapter, the receiver must publish notice of the proposed sale before the 60th day before the date the sale is to be held and again before the 30th day before the date the sale is to be held. The notice must be published in English and Spanish in a newspaper of general circulation in the county in which the real property is located. The notice must:

(1) clearly identify the property to be sold;

(2) specify the procedures and date for the public auction, sealed bid, or sealed proposal method of sale;

(3) state the minimum bid for the property, if any;

(4) state any specific financial terms of sale imposed by the receiver; and

(5) describe the restrictions, conditions, and limitations on the use of the property that the receiver has determined are

appropriate, other than the restrictions, conditions, and limitations provided by other law.

(c) In addition to the notice required by Subsection (b), to maximize the price at which the property is sold and the number of bidders, the receiver shall exercise best efforts to provide notice of the proposed sale to those persons who may have the business expertise, financial capability, and interest in developing the property, including local, state, and national trade associations whose members are development, real estate, or financial professionals.

(d) On the closing of a sale of property under this subchapter, fee simple title shall be vested in the purchaser.

(e) The receiver may reject any and all offers. If the receiver rejects all offers, the receiver may subsequently reoffer the same property for sale, reorganize the property and offer the property for sale, or combine all or part of the property with other property and offer the combined property for sale.

(f) If the procedures in this section are followed and a sale occurs, the sale price obtained for the property is conclusive as to the fair market value of the property at the time of the sale.

Added by Acts 2021, 87th Leg., R.S., Ch. 1010 (H.B. 1564), Sec. 2, eff. September 1, 2021.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 232.901. CERTAIN VALUE-BASED FEES AND DISCLOSURE OF CERTAIN INFORMATION PROHIBITED. (a) This section applies only to an application, review, engineering, inspection, acceptance, administrative, or other fee imposed by a county related to the acceptance, review, or processing of engineering or construction plans or for the inspection of improvements for construction in a subdivision or a related improvement associated with or required in conjunction with that construction.

(b) A county may not consider the cost of constructing or improving the public infrastructure for a subdivision, lot, or related property development in determining the amount of a fee subject to this section. The county shall determine the fee by considering the county's actual cost to, as applicable, review and process the engineering or construction plan or to inspect the public

infrastructure improvement.

(c) In determining the county's actual cost for reviewing and processing an engineering or construction plan or inspecting a public infrastructure improvement under Subsection (b), a county may consider:

(1) the fee that would be charged by a qualified, independent third-party entity for those services;

(2) the hourly rate for the estimated actual direct time of the county's employees performing those services; or

(3) the actual costs assessed to the county by a third-party entity that provides those services to the county.

(d) A county may not require the disclosure of information related to the value of or cost of constructing or improving a residential dwelling or the public infrastructure improvements for a subdivision, lot, or related property development as a condition of obtaining approval for subdivision construction or for the acceptance of those public infrastructure improvements except as required by the Federal Emergency Management Agency for participation in the National Flood Insurance Program.

(e) A county that imposes a fee for reviewing or processing an engineering or construction plan or inspecting a public infrastructure improvement shall annually publish the fee and the hourly rate and estimated direct time incurred by county employees for a fee calculated under Subsection (c)(2). The county must publish the information:

(1) on the county's Internet website; or

(2) if the county does not maintain an Internet website, in a newspaper of general circulation in the county.

Added by Acts 2023, 88th Leg., R.S., Ch. 534 (H.B. 3492), Sec. 2, eff. September 1, 2023.

CHAPTER 233. COUNTY REGULATION OF HOUSING AND OTHER STRUCTURES

SUBCHAPTER A. DANGEROUS SUBSTANCES

Sec. 233.001. REQUIRING REPAIR, REMOVAL, OR DEMOLITION OF BUILDING OR OTHER STRUCTURE. (a) If the commissioners court of a county that borders the Gulf of Mexico and is adjacent to a county with a population of more than 3.3 million finds that a bulkhead or other method of shoreline protection, hereafter called "structure,"

in an unincorporated area of the county is likely to endanger persons or property, the commissioners may:

(1) order the owner of the structure, the owner's agent, or the owner or occupant of the property on which the structure is located to repair, remove, or demolish the structure or the part of the structure within a specified time; or

(2) repair, remove, or demolish the structure or the part of the structure at the expense of the county on behalf of the owner of the structure or the owner of the property on which the structure is located and assess the repair, removal, or demolition expenses on the property on which the structure was located.

(b) The commissioners court shall provide by order for:

(1) the assessment of repair, removal, or demolition expenses incurred under Subsection (a)(2);

(2) a method of giving notice of the assessment; and

(3) a method of recovering the expenses.

(c) Promptly after the assessment, the county must file for record, in recordable form in the office of the county clerk in which the property is located, a written notice of the imposition of a lien, if any, that is imposed on the property. The notice must contain a legal description of the property, the amount of the assessment, and the owner if known. The lien arises and attaches to the property at the time the notice of the assessment is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice to secure the assessment is inferior to any previously recorded bona fide mortgage lien attached to the property to which the county's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the property is located before the date the notice is recorded and indexed in the office of the county clerk. The assessment lien is superior to all other previously recorded judgment liens.

(d) A person commits an offense if the person does not comply with an order issued under Subsection (a)(1). An offense under this section is a Class C misdemeanor.

(e) This section does not apply to a:

(1) residential building; or

(2) building or other structure that is owned or held in trust by the state or a political subdivision of this state; or

(3) building or structure used on or in connection with an agricultural operation.

Added by Acts 1995, 74th Leg., ch. 762, Sec. 1, eff. June 16, 1995. Renumbered from Sec. 239.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 14.002(4), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 82, eff. September 1, 2011.

SUBCHAPTER B. BUILDING AND SETBACK LINES

Sec. 233.031. AUTHORITY LIMITED TO UNINCORPORATED AREAS; CONFLICT WITH MUNICIPAL AUTHORITY. (a) The authority under this subchapter to establish building and set-back lines applies only to areas outside the corporate limits of municipalities.

(b) If the lines conflict with lines adopted by a municipality, the municipal lines prevail if they are in the extraterritorial jurisdiction of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(d), eff. Aug, 28, 1989. Renumbered from Sec. 233.001 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(3), eff. Sept. 1, 2001.

Sec. 233.032. POWERS AND DUTIES OF COMMISSIONERS COURT. (a) If the commissioners court of a county determines that the general welfare will be promoted, the court may:

(1) establish by order building or set-back lines on the public roads, including major highways and roads, in the county; and

(2) prohibit the location of a new building within those building or set-back lines.

(b) A building or set-back line established under this subchapter may not extend:

(1) more than 25 feet from the edge of the right-of-way on all public roads other than major highways and roads; or

(2) more than 50 feet from the edge of the right-of-way of major highways and roads.

(c) The commissioners court may designate the public roads that are major highways and roads.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(d), eff. Aug. 28, 1989.

Renumbered from Sec. 233.002 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.002(3), eff. Sept. 1, 2001.

Sec. 233.033. HEARING; ADOPTION OF LINES. (a) Before the establishment or change of building or set-back lines, the commissioners court must hold at least one public hearing on the establishment or change. The court shall publish notice of the time and place of the hearing in a newspaper of general circulation in the county before the 15th day before the date of the hearing. The court may adjourn the hearing from time to time.

(b) The commissioners court may establish or change a building or set-back line only by an order passed by at least a majority vote of the full membership of the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(d), eff. Aug. 28, 1989. Renumbered from Sec. 233.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(3), eff. Sept. 1, 2001.

Sec. 233.034. NOTICE; LIMITATIONS PERIOD. (a) An owner of real property that fronts along a road that has a building or set-back line established under this subchapter is charged with notice of the building or set-back line order.

(b) The commissioners court shall show in a general manner each building or set-back line established under this subchapter on a map. The map shall be filed with the county clerk.

(c) If the county does not begin the construction of the improvement or widening of a road along which a building or set-back line has been established within four years after the date the building or set-back line is established, the building or set-back line becomes void, unless the county and the affected property owners agree to extend the time period for the improvements or widening.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 54(d), eff. Aug. 28, 1989. Renumbered from Sec. 233.004 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.002(3), eff. Sept. 1, 2001.

Sec. 233.035. BOARD OF BUILDING LINE ADJUSTMENT. (a) The commissioners court may appoint a board of building line adjustment consisting of five freeholders of the county. Members must be appointed for staggered terms of two years, with two members' terms expiring in one year and three members' terms expiring the next year. However, in making the initial appointments, the commissioners court shall designate two members for one-year terms and three members for two-year terms. The court may remove a member for cause on a written charge after a public hearing. The court shall fill a vacancy on the board for the unexpired term of the member whose term becomes vacant.

(b) The board shall elect its own chairman and shall adopt rules of procedure. The meetings of the board are open to the public. The board shall keep minutes of its proceedings that shall be filed in the board's office. The minutes of board meetings constitute a public record.

(c) Subject to appropriate conditions and safeguards, the board may modify or vary the regulations affecting building or set-back lines in a case in which unnecessary hardship may result from a literal enforcement of those regulations, in order to do substantial justice and to observe the purpose of the regulations in protecting the public welfare and safety.

(d) The board shall hear and decide an appeal in a case in which, because of exceptional narrowness, shallowness, shape, topography, existing building development, or another exceptional and extraordinary situation or condition of a specific piece of property, the strict application of a building line established under this subchapter would result in peculiar and exceptional difficulties or hardships to the owner of the property. On appeal, the board may authorize a variance from the strict application of the regulation, under conditions imposed by the board, to relieve the hardship or difficulty if that relief can be granted without substantially impairing the intent and purpose of the building line or set-back line.

(e) With appropriate safeguards, the board shall authorize the construction of an improvement or a structure that may encroach on a building or set-back line. However, if the county proceeds with projected improvements of the affected road within the time provided by Section 233.034(c), the owner of the improvement or structure must remove it at no expense to the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 233.005 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.002(3), eff. Sept. 1, 2001.

Sec. 233.036. ENFORCEMENT. If a structure is erected, constructed, or reconstructed in violation of a building or set-back line established under this subchapter, the commissioners court, the district or county attorney, or an owner of real property in the county may institute an injunction, mandamus, abatement, or other appropriate action to prevent, abate, remove, or enjoin the unlawful erection, construction, or reconstruction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 233.006 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.002(3), eff. Sept. 1, 2001.

Sec. 233.037. APPEAL. (a) An owner of property who is aggrieved by an action or order adopted by the board of building line adjustment may appeal to the commissioners court. The person must bring the appeal within 30 days after the date the action or order was adopted.

(b) A property owner in the county who is aggrieved by a final order of the board or of the commissioners court may appeal to the district court or to another court with proper jurisdiction. The appellant must bring the appeal within 30 days after the date on which the final order in question was adopted. The appellant must execute an appeal bond in an amount fixed by the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 233.007 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(3), eff. Sept. 1, 2001.

SUBCHAPTER C. FIRE CODE IN UNINCORPORATED AREA

Sec. 233.061. AUTHORITY TO ADOPT AND ENFORCE FIRE CODE. (a) The commissioners court of a county with a population of over 250,000 or a county adjacent to a county with a population of over 250,000 may adopt a fire code and rules necessary to administer and enforce the fire code.

(b) The commissioners court, or any municipality in the county, may contract with one another for the administration and enforcement of the fire code.

Added by Acts 1989, 71st Leg., ch. 296, Sec. 1, eff. Jan. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 598, Sec. 1, eff. June 11, 1997. Renumbered from Sec. 235.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(4), eff. Sept. 1, 2001.

Sec. 233.0615. DEFINITIONS; SUBSTANTIAL IMPROVEMENT; CONSTRUCTION. (a) In this subchapter:

(1) "Building" includes an establishment or multifamily dwelling.

(2) "Substantial improvement" means:

(A) the repair, restoration, reconstruction, improvement, or remodeling of a building for which the cost exceeds 50 percent of the building's value according to the certified tax appraisal roll for the county for the year preceding the year in which the work was begun; or

(B) a change in occupancy classification involving a change in the purpose or level of activity in a building, including the renovation of a warehouse into a loft apartment.

(b) For purposes of this subchapter, substantial improvement begins on the date that the repair, restoration, reconstruction, improvement, or remodeling or the change in occupancy classification begins or on the date materials are first delivered for that purpose.

(c) For purposes of this subchapter, construction begins on the date that ground is broken for a building, or if no ground is broken, on the date that:

(1) the first materials are added to the original property;

(2) foundation pilings are installed on the original property; or

(3) a manufactured building or relocated structure is placed on a foundation on the original property.

Added by Acts 2005, 79th Leg., Ch. 331 (S.B. 736), Sec. 1, eff. June 17, 2005.

Sec. 233.062. APPLICATION AND CONTENT OF FIRE CODE. (a) The

fire code applies only to the following buildings constructed in an unincorporated area of the county:

(1) a commercial establishment;

(2) a public building; and

(3) a multifamily residential dwelling consisting of four or more units.

(b) The fire code does not apply to an industrial facility having a fire brigade that conforms to requirements of the Occupational Health and Safety Administration.

(c) The fire code must:

(1) conform to:

(A) the International Fire Code, as published by the International Code Council, as the code existed on May 1, 2005; or

(B) the Uniform Fire Code, as published by the National Fire Protection Association, as the code existed on May 1, 2005; or

(2) establish protective measures that exceed the standards of the codes described by Subdivision (1).

(d) The commissioners court may adopt later editions of a fire code listed in Subsection (c).

Added by Acts 1989, 71st Leg., ch. 296, Sec. 1, eff. Jan. 1, 1991.
Renumbered from Sec. 235.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(4), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 331 (S.B. 736), Sec. 2, eff. June 17, 2005.

Sec. 233.063. BUILDING PERMIT; APPLICATION. (a) A person may not construct or substantially improve a building described by Section 233.062(a) in an unincorporated area of the county unless the person obtains a building permit issued in accordance with this subchapter.

(b) A person may apply for a building permit by providing to the commissioners court:

(1) a plan of the proposed building containing information required by the commissioners court; and

(2) an application fee in an amount set by the commissioners court.

(c) Within 30 days after the date the commissioners court

receives an application and fee in accordance with Subsection (b), the commissioners court shall:

(1) issue the permit if the plan complies with the fire code; or

(2) deny the permit if the plan does not comply with the fire code.

(d) If the commissioners court receives an application and fee in accordance with Subsection (b) and the commissioners court does not issue the permit or deny the application within 30 days after receiving the application and fee, the construction or substantial improvement of the building that is the subject of the application is approved for the purposes of this subchapter.

Added by Acts 1989, 71st Leg., ch. 296, Sec. 1, eff. Jan. 1, 1991.
Renumbered from Sec. 235.003 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(4), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 331 (S.B. 736), Sec. 3, eff. June 17, 2005.

Sec. 233.064. INSPECTIONS. (a) The county shall inspect a building subject to this subchapter to determine whether the building complies with the fire code.

(b) The commissioners court may provide that a county employee or an employee of another governmental entity under intergovernmental contract may perform the inspection.

(c) A building inspector may enter and perform the inspection at a reasonable time at any stage of the building's construction or substantial improvement and after completion of the building.

(d) On or before the date that construction or substantial improvement of a building subject to this subchapter is completed, the owner of the building shall request in writing that the county inspect the building for compliance with the fire code.

(e) Except as provided by Subsection (e-1), the county shall begin the inspection of the building within five business days after the date of the receipt of the written inspection request. If an inspection is properly requested and the county does not begin the inspection within the time permitted by this subsection, the building that is the subject of the request is considered approved for the

purposes of this subchapter.

(e-1) A county with a population of more than 3.3 million shall begin the inspection of the building within 10 business days after the date of receipt of the written inspection request, except the county shall begin the inspection of an indoor retail fireworks site, as defined by Section 2154.001, Occupations Code, within five business days after the date of receipt of the written inspection request.

(f) The county shall issue a final certificate of compliance to the owner of a building inspected under this section if the inspector determines, after an inspection of the completed building, that the building complies with the fire code. For a building or complex of buildings involving phased completion or build-out, the county may issue a partial certificate of compliance for any portion of the building or complex the inspector determines is in substantial compliance with the fire code.

(g) If the inspector determines, after an inspection of the completed building, that the building does not comply with the fire code, the county may:

(1) deny the certificate of compliance; or

(2) issue a conditional or partial certificate of compliance and allow the building to be occupied.

(h) A county that issues a conditional certificate of compliance under Subsection (g) shall notify the owner of the building of the violations of the fire code and establish a reasonable time to remedy the violations. A county may revoke a conditional certificate of compliance if the owner does not remedy the violations within the time specified on the conditional certificate of compliance.

(i) A building may not be occupied until a county issues a final, conditional, or partial certificate of compliance for the building.

Added by Acts 1989, 71st Leg., ch. 296, Sec. 1, eff. Jan. 1, 1991. Renumbered from Sec. 235.004 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(4), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 331 (S.B. 736), Sec. 4, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 797 (H.B. 2266), Sec. 1, eff.

September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 984 (H.B. 2610), Sec. 1, eff. September 1, 2021.

Sec. 233.065. FEES. (a) The commissioners court may develop a fee schedule based on building type and may set and charge fees for an inspection and the issuance of a building permit and final certificate of compliance under this subchapter.

(b) The fees must be set in amounts necessary to cover the cost of administering and enforcing this subchapter.

(c) The county shall deposit fees received under this subchapter in a special fund in the county treasury, and money in that fund may be used only for the administration and enforcement of the fire code.

(d) The fee for a fire code inspection under this subchapter must be reasonable and reflect the approximate cost of the inspection personnel, materials, and administrative overhead.

Added by Acts 1989, 71st Leg., ch. 296, Sec. 1, eff. Jan. 1, 1991.
Renumbered from Sec. 235.005 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(4), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 331 (S.B. 736), Sec. 5, eff. June 17, 2005.

Sec. 233.066. INJUNCTION. The appropriate attorney representing the county in the district court may seek injunctive relief to prevent the violation or threatened violation of the fire code.

Added by Acts 1989, 71st Leg., ch. 296, Sec. 1, eff. Jan. 1, 1991.
Renumbered from Sec. 235.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(4), eff. Sept. 1, 2001.

Sec. 233.067. CIVIL PENALTY. (a) The appropriate attorney representing the county in civil cases may file a civil action in a court of competent jurisdiction to recover from a person who violates the fire code a civil penalty in an amount not to exceed $200 for

each day on which the violation exists. In determining the amount of the penalty, the court shall consider the seriousness of the violation.

(b) The county shall deposit amounts collected under this section in the fund and for the purposes described by Section 233.065(c).

Added by Acts 1989, 71st Leg., ch. 296, Sec. 1, eff. Jan. 1, 1991. Renumbered from Sec. 235.007 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(4), eff. Sept. 1, 2001.

SUBCHAPTER D. ALARM SYSTEMS

Sec. 233.091. DEFINITIONS. In this subchapter:

(1) "Alarm site" means the specific property or area of the premises on or within which an alarm system is installed or placed.

(2) "Alarm system" means an alarm signal device, burglar alarm, heat or motion sensor, or other electrical, mechanical, or electronic device used:

(A) to prevent or detect burglary, theft, pilferage, fire, or other loss of property;

(B) to prevent or detect intrusion; or

(C) primarily to detect and summon aid for other emergencies.

(3) "False alarm" means an alarm signal received by a law enforcement official that is later determined not to involve a criminal offense, attempted criminal offense, fire, or other emergency.

Added by Acts 1991, 72nd Leg., ch. 147, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 237.001 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(5), eff. Sept. 1, 2001.

Sec. 233.092. AUTHORITY TO REGULATE; ADOPTION OF RULES. (a) The commissioners court of a county by order may authorize the sheriff of a county to:

(1) propose rules to implement this subchapter;

(2) regulate the incidence of and response to false alarms in accordance with the rules proposed by the sheriff and adopted or modified by the commissioners court under this subchapter;

(3) establish procedures for application for and renewal and revocation of an alarm system permit;

(4) establish procedures that include notice to the permit holder and an opportunity for a hearing for permit revocation or suspension if the permit holder violates this subchapter or an order of the commissioners court or a rule adopted under this subchapter;

(5) establish fees in accordance with this subchapter for the issuance of the permits;

(6) require that any permit issued under this subchapter be kept at the alarm site and produced for inspection on request of the sheriff or the sheriff's representative;

(7) require that a permit must be issued and unrevoked before a sheriff or other law enforcement official may respond; and

(8) establish a number of free false alarms for each category of alarm system and impose a service response fee for any alarm in excess of the number of free responses within the preceding 12-month period.

(b) Repealed by Acts 2005, 79th Leg., Ch. 1296, Sec. 5, eff. June 18, 2005.

(c) A penalty or fee imposed for a false alarm must be established by rule based on the type and level of emergency response provided. The fee for more than five false alarms shall not exceed $75 per false alarm above the number of free responses. If there are more than nine false alarms in a one-year period, the alarm system permit may be revoked.

(d) Notwithstanding the other provisions of this section, the owner or lessee of premises on which an alarm system is installed may be charged the full costs incurred by the county when the owner or lessee or the agent or employee of the owner or lessee intentionally or knowingly activates the alarm system for any reason other than an emergency or threat of an emergency of the kind for which the alarm system was designed to give notice.

(e) The sheriff or the sheriff's representative shall provide a copy of the rules to a person and assess a fee for the copy in accordance with Chapter 552, Government Code.

Added by Acts 1991, 72nd Leg., ch. 147, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995. Renumbered from Sec. 237.002 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(5), eff. Sept. 1, 2001.

Amended by:
Acts 2005, 79th Leg., Ch. 1296 (H.B. 2626), Sec. 5, eff. June 18, 2005.

Sec. 233.093. PERMIT REQUIRED; EXCEPTIONS. (a) In a county in which the sheriff regulates alarm systems under this subchapter, a person may not use an alarm system without a permit issued in accordance with this subchapter.

(b) This subchapter does not apply to:

(1) emergency response systems managed by health care facilities licensed by the Texas Department of Health; or

(2) alarm systems installed on:

(A) a motor vehicle;

(B) premises occupied by the United States, this state, or the county; or

(C) premises located in an incorporated area within the county.

Added by Acts 1991, 72nd Leg., ch. 147, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 237.003 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(5), eff. Sept. 1, 2001.

Sec. 233.094. PERMIT FEES. (a) The sheriff of a county who regulates alarm systems under this subchapter may authorize the county auditor to assess and collect fees for the issuance or renewal of a permit under this subchapter in reasonable amounts set by the commissioners court.

(b) All fees received under this subchapter shall be remitted to the county treasurer to be deposited to the credit of the general fund of the county.

Added by Acts 1991, 72nd Leg., ch. 147, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 237.004 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(5), eff. Sept. 1, 2001.

Sec. 233.095. MUNICIPAL AUTHORITY UNAFFECTED. This subchapter does not affect the authority of a municipality in the county to enact ordinances regulating alarm systems.

Added by Acts 1991, 72nd Leg., ch. 147, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 237.005 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(5), eff. Sept. 1, 2001.

Sec. 233.096. CRIMINAL PENALTY. (a) A person who violates this subchapter, an order of the commissioners court, or a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 147, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 237.006 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(5), eff. Sept. 1, 2001.

Sec. 233.097. COUNTY LIABILITY. The county, the commissioners court, the sheriff, and the sheriff's employees or agents are not liable for an action arising out of the regulation of or failure to regulate alarm systems.

Added by Acts 1991, 72nd Leg., ch. 147, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 237.007 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(5), eff. Sept. 1, 2001.

Sec. 233.098. ENFORCED COLLECTION. The appropriate attorney representing the county may file a civil action in a court of competent jurisdiction to recover a penalty or fee imposed by a county under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1296 (H.B. 2626), Sec. 3, eff. June 18, 2005.

SUBCHAPTER F. RESIDENTIAL BUILDING CODE STANDARDS APPLICABLE TO UNINCORPORATED AREAS OF CERTAIN COUNTIES

Sec. 233.151. DEFINITIONS. (a) In this subchapter, "new residential construction" includes:

(1) residential construction of a single-family house or duplex on a vacant lot; and

(2) construction of an addition to an existing single-

family house or duplex, if the addition will increase the square footage or value of the existing residential building by more than 50 percent.

(b) The term does not include a structure that is constructed in accordance with Chapter 1201, Occupations Code, or a modular home constructed in accordance with Chapter 1202, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.152. APPLICABILITY. This subchapter applies only to a county that has adopted a resolution or order requiring the application of the provisions of this subchapter and that:

(1) is located within 50 miles of an international border; or

(2) has a population of more than 100.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.153. BUILDING CODE STANDARDS APPLICABLE. (a) New residential construction of a single-family house or duplex in the unincorporated area of a county to which this subchapter applies shall conform to the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county.

(b) Standards required under this subchapter apply only to new residential construction that begins after September 1, 2009.

(c) If a municipality located within a county to which this subchapter applies has adopted a building code in the municipality's extraterritorial jurisdiction, the building code adopted by the municipality controls and building code standards under this subchapter have no effect in the municipality's extraterritorial jurisdiction.

(d) This subchapter may not be construed to:

(1) require prior approval by the county before the beginning of new residential construction;

(2) authorize the commissioners court of a county to adopt

or enforce zoning regulations; or

(3) affect the application of the provisions of Subchapter B, Chapter 232, to land development.

(e) In the event of a conflict between this subchapter and Subchapter B, Chapter 232, the provisions of Subchapter B, Chapter 232, control.

(f) A county may not charge a fee to a person subject to standards under this subchapter to defray the costs of enforcing the standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.154. INSPECTION AND NOTICE REQUIREMENTS. (a) A person who builds new residential construction described by Section 233.153 shall have the construction inspected to ensure building code compliance in accordance with this section as follows:

(1) for new residential construction on a vacant lot, a minimum of three inspections must be performed during the construction project to ensure code compliance, as applicable, at the following stages of construction:

(A) the foundation stage, before the placement of concrete;

(B) the framing and mechanical systems stage, before covering with drywall or other interior wall covering; and

(C) on completion of construction of the residence;

(2) for new residential construction of an addition to an existing residence as described by Section 233.151(a)(2), the inspections under Subdivision (1) must be performed as necessary based on the scope of work of the construction project; and

(3) for new residential construction on a vacant lot and for construction of an addition to an existing residence, the builder:

(A) is responsible for contracting to perform the inspections required by this subsection with:

(i) a licensed engineer;

(ii) a registered architect;

(iii) a professional inspector licensed by the Texas Real Estate Commission;

(iv) a plumbing inspector employed by a municipality and licensed by the Texas State Board of Plumbing Examiners;

(v) a building inspector employed by a political subdivision; or

(vi) an individual certified as a residential combination inspector by the International Code Council; and

(B) may use the same inspector for all the required inspections or a different inspector for each required inspection.

(b) If required by a county to which this subchapter applies, before commencing new residential construction, the builder shall provide notice to the county on a form prescribed by the county of:

(1) the location of the new residential construction;

(2) the approximate date by which the new residential construction will be commenced; and

(3) the version of the International Residential Code that will be used to construct the new residential construction before commencing construction.

(c) If required by the county, not later than the 10th day after the date of the final inspection under this section, the builder shall submit notice of the inspection stating whether or not the inspection showed compliance with the building code standards applicable to that phase of construction in a form required by the county to:

(1) the county employee, department, or agency designated by the commissioners court of the county to receive the information; and

(2) the person for whom the new residential construction is being built, if different from the builder.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.155. ENFORCEMENT OF STANDARDS. (a) If proper notice is not submitted in accordance with Sections 233.154(b) and (c), the county may take any or all of the following actions:

(1) refer the inspector to the appropriate regulatory authority for discipline;

(2) in a suit brought by the appropriate attorney

representing the county in the district court, obtain appropriate injunctive relief to prevent a violation or threatened violation of a standard or notice required under this subchapter from continuing or occurring; or

(3) refer the builder for prosecution under Section 233.157.

(b) If the notice the builder provided to the county under Section 233.154(c) does not indicate that the inspection showed compliance with the applicable building code standards, the county may take either or both of the actions under Subsections (a)(2) and (3).

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 774 (H.B. 2040), Sec. 1, eff. September 1, 2017.

Sec. 233.156. EXISTING AUTHORITY UNAFFECTED. The authority granted by this subchapter does not affect the authority of a commissioners court to adopt an order under other law.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.

Sec. 233.157. PENALTY. (a) A builder commits an offense if:

(1) the builder fails to provide proper notice in accordance with Sections 233.154(b) and (c); or

(2) as provided by Section 233.155(b), the builder does not provide notice under Section 233.154(c) that indicates that the inspection showed compliance with the applicable building code standards.

(b) An offense under this section is a Class C misdemeanor.

(c) An individual who fails to provide proper notice in accordance with Sections 233.154(b) and (c) is not subject to a penalty under this subsection if:

(1) the new residential construction is built by the individual or the individual acts as the individual's own contractor; and

(2) the individual intends to use the residence as the individual's primary residence.

(d) It is an affirmative defense to prosecution for failure to submit proper notice under Section 233.154(c) if the builder's failure to submit a notice is the result of the failure of the person who performed the inspection to provide appropriate documentation to the builder for submission to the county.

Added by Acts 2009, 81st Leg., R.S., Ch. 1318 (H.B. 2833), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 774 (H.B. 2040), Sec. 2, eff. September 1, 2017.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 233.901. TIME FOR ISSUANCE OF COUNTY BUILDING PERMIT. (a) This section applies only to a permit required by a county with a population of 3.3 million or more to construct or improve a building or other structure in the county, but does not apply to a permit for an on-site sewage disposal system.

(b) Not later than the 45th day after the date an application for a permit is submitted, the county must:

(1) grant or deny the permit;

(2) provide written notice to the applicant stating the reasons why the county has been unable to act on the permit application; or

(3) reach a written agreement with the applicant providing for a deadline for granting or denying the permit.

(c) For a permit application for which notice is provided under Subsection (b)(2), the county must grant or deny the permit not later than the 30th day after the date the notice is received.

(d) If a county fails to act on a permit application in the time required by Subsection (c) or by an agreement under Subsection (b)(3), the county:

(1) may not collect any permit fees associated with the application; and

(2) shall refund to the applicant any permit fees associated with the application that have been collected.

Added by Acts 2005, 79th Leg., Ch. 918 (H.B. 266), Sec. 1, eff.

September 1, 2005.

CHAPTER 234. COUNTY REGULATION OF BUSINESSES AND OCCUPATIONS

SUBCHAPTER A. CERTAIN OUTDOOR BUSINESSES

Sec. 234.001. DEFINITIONS. In this subchapter:

(1) "Automotive wrecking and salvage yard" means a business, other than a business classified as a salvage pool operator under Chapter 2302, Occupations Code, that stores three or more wrecked vehicles outdoors for the purpose of:

(A) selling the vehicles whole; or

(B) dismantling or otherwise wrecking the vehicles to remove parts for sale or for use in an automotive repair or rebuilding business.

(2) "Demolition business" means a business that demolishes structures, including houses and other buildings, in order to salvage building materials and that stores those materials before disposing of them.

(3) "Flea market" means an outdoor market for selling secondhand articles or antiques.

(4) "Junkyard" means a business that stores, buys, or sells materials that have been discarded or sold at a nominal price by a previous owner and that keeps all or part of the materials outdoors until disposing of them.

(5) "Outdoor resale business" means a business that sells used merchandise, other than automobiles, logging equipment, or other agricultural equipment, and stores or displays the merchandise outdoors.

(6) "Recycling business" means a business that is primarily engaged in:

(A) converting ferrous or nonferrous metals or other materials into raw material products having prepared grades and having an existing or potential economic value;

(B) using raw material products of that kind in the production of new products; or

(C) obtaining or storing ferrous or nonferrous metals or other materials for a purpose described by Paragraph (A) or (B).

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 8.01(a), eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 992, Sec. 1, eff. Sept.

1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(6), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.789, eff. Sept. 1, 2003.

Sec. 234.002. AUTHORITY TO REGULATE; ADOPTION OF RULE. (a) The commissioners court of a county by order may establish visual aesthetic standards for automotive wrecking and salvage yards, junkyards, recycling businesses, flea markets, demolition businesses, and outdoor resale businesses in the unincorporated area of the county.

(b) The commissioners court may not include in an order adopted under this section a screening requirement for an automotive wrecking and salvage yard or a junkyard that is less restrictive than the screening requirement under Chapter 396, Transportation Code.

(c) An order adopted under this section must provide a reasonable period of time not to exceed 12 months for a business operating on the effective date of the order to comply with the visual aesthetic standards.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 8.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.222, eff. Sept. 1, 1997. Renumbered from Sec. 238.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(6), eff. Sept. 1, 2001.

Sec. 234.003. EXCEPTIONS. (a) A commissioners court may not regulate under this subchapter farm machinery owned or operated by the person on whose property the machinery is located and kept on that property for purposes other than sale.

(b) A business subject to a screening requirement under Subchapter E of Chapter 391, Chapter 396, or Chapter 397, Transportation Code, that was in compliance with that screening requirement on August 26, 1991, is exempt from a screening requirement adopted under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 8.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.223, eff. Sept. 1, 1997. Renumbered from Sec. 238.003 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(6), eff. Sept. 1, 2001.

Sec. 234.004. CIVIL PENALTY. (a) The appropriate attorney representing the county in civil cases may file a civil action to recover a civil penalty from a business that violates a visual aesthetic standard established under this subchapter. The penalty may not exceed $50 each day for the first 10 days of the violation, $100 each day for the next 10 days, $250 each day for the next 10 days, and $1,000 for each day thereafter. In determining the amount of the penalty, the court shall consider the seriousness of the violation.

(b) A penalty recovered under this section shall be deposited in the general fund of the county.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 8.01, eff. Aug. 30, 1993. Renumbered from Sec. 238.004 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(6), eff. Sept. 1, 2001.

SUBCHAPTER C. COUNTY INSPECTION OF DAY-CARE CENTERS AND GROUP DAY-CARE HOMES LOCATED IN MUNICIPALITIES

Sec. 234.051. DEFINITIONS. In this subchapter:

(1) "Day-care center" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Group day-care home" has the meaning assigned by Section 42.002, Human Resources Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 388 (S.B. 436), Sec. 1, eff. June 17, 2011.

Sec. 234.052. APPLICABILITY. This subchapter applies only to a county with a population of 700,000 or more.

Added by Acts 2011, 82nd Leg., R.S., Ch. 388 (S.B. 436), Sec. 1, eff. June 17, 2011.

Sec. 234.053. FACILITY INSPECTION REQUIRED BY MUNICIPALITY. A county health officer or official designated by the commissioners court may contract with a municipality for the county to conduct an inspection required by the municipality of a day-care center or group day-care home located in the municipality.

Added by Acts 2011, 82nd Leg., R.S., Ch. 388 (S.B. 436), Sec. 1, eff. June 17, 2011.

SUBCHAPTER D. MASSAGE PARLORS

Sec. 234.101. DEFINITIONS. In this subchapter:

(1) "Massage parlor" means a business establishment that purports to provide massage services and that allows:

(A) a nude person to provide massage services to a customer;

(B) a person to engage in sexual contact for compensation; or

(C) a person to provide massage services in clothing intended to arouse or gratify the sexual desire of any person.

(2) "Nude" and "sexual contact" have the meanings assigned by Section 455.202, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 932 (H.B. 3094), Sec. 1, eff. June 19, 2009.

Sec. 234.102. AUTHORITY TO REGULATE. To promote public health, safety, and welfare, the commissioners court of a county by order may prohibit or otherwise regulate massage parlors located in the unincorporated area of the county.

Added by Acts 2009, 81st Leg., R.S., Ch. 932 (H.B. 3094), Sec. 1, eff. June 19, 2009.

Sec. 234.103. INJUNCTION. If a massage parlor has previously violated a prohibition or other regulation adopted under this subchapter, a district or county attorney may bring suit to enjoin the operation of a massage parlor in violation or threatened violation of a prohibition or other regulation adopted under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 932 (H.B. 3094), Sec. 1, eff. June 19, 2009.

Sec. 234.104. CIVIL PENALTY. (a) A person who violates a prohibition or regulation adopted by the county under this subchapter is liable to the county for a civil penalty of not more than $1,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.

(b) A county may bring suit in a district court to recover a civil penalty authorized by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 932 (H.B. 3094), Sec. 1, eff. June 19, 2009.

Sec. 234.105. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly operates a massage parlor in violation of a prohibition or regulation adopted under this subchapter by the commissioners court.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 932 (H.B. 3094), Sec. 1, eff. June 19, 2009.

Sec. 234.106. CUMULATIVE EFFECT. Authority under this subchapter is cumulative of other authority that a county has to regulate massage parlors and does not limit that other authority.

Added by Acts 2009, 81st Leg., R.S., Ch. 932 (H.B. 3094), Sec. 1, eff. June 19, 2009.

Sec. 234.107. EFFECT ON OTHER LAWS. (a) This subchapter does not legalize anything prohibited under the Penal Code or other state law.

(b) A person who is subject to prosecution under this section and any other law may be prosecuted under either or both laws.

Added by Acts 2009, 81st Leg., R.S., Ch. 932 (H.B. 3094), Sec. 1, eff. June 19, 2009.

SUBCHAPTER E. GAME ROOMS

Sec. 234.131. DEFINITIONS. In this subchapter:

(1) "Amusement redemption machine" means any electronic, electromechanical, or mechanical contrivance designed, made, and adopted for bona fide amusement purposes that rewards the player exclusively with noncash merchandise, prizes, toys, or novelties, or a representation of value redeemable for those items, with a wholesale value available from a single play of the game or device in an amount not more than 10 times the amount charged to play the game or device once or $5, whichever amount is less.

(2) "Game room" means a for-profit business located in a building or place that contains six or more:

(A) amusement redemption machines; or

(B) electronic, electromechanical, or mechanical contrivances that, for consideration, afford a player the opportunity to obtain a prize or thing of value, the award of which is determined solely or partially by chance, regardless of whether the contrivance is designed, made, or adopted solely for bona fide amusement purposes.

(3) "Game room owner" means a person who:

(A) has an ownership interest in, or receives the profits from, a game room or an amusement redemption machine located in a game room;

(B) is a partner, director, or officer of a business, including a company or corporation, that has an ownership interest in a game room or in an amusement redemption machine located in a game room;

(C) is a shareholder that holds more than 10 percent of the outstanding shares of a business, including a company or corporation, that has an ownership interest in a game room or in an amusement redemption machine located in a game room;

(D) has been issued by the county clerk an assumed name certificate for a business that owns a game room or an amusement redemption machine located in a game room;

(E) signs a lease for a game room;

(F) opens an account for utilities for a game room;

(G) receives a certificate of occupancy or certificate of compliance for a game room;

(H) pays for advertising for a game room; or

(I) signs an alarm permit for a game room.

(4) "Operator" means an individual who:

(A) operates a cash register, cash drawer, or other depository on the premises of a game room or of a business where the money earned or the records of credit card transactions or other credit transactions generated in any manner by the operation of a game room or activities conducted in a game room are kept;

(B) displays, delivers, or provides to a customer of a game room merchandise, goods, entertainment, or other services offered on the premises of a game room;

(C) takes orders from a customer of a game room for merchandise, goods, entertainment, or other services offered on the premises of a game room;

(D) acts as a door attendant to regulate entry of customers or other persons into a game room; or

(E) supervises or manages other persons at a game room in the performance of an activity listed in this subdivision.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1170 (S.B. 866), Sec. 1, eff. September 1, 2015.

Sec. 234.133. AUTHORITY TO REGULATE. To promote the public health, safety, and welfare, the commissioners court of a county may regulate the operation of game rooms and may:

(1) restrict the location of game rooms to specified areas of the county, including the unincorporated area of the county;

(2) prohibit a game room location within a certain distance, prescribed by the commissioners court, of a school, regular place of religious worship, or residential neighborhood; or

(3) restrict the number of game rooms that may operate in a specified area of the county.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.

Sec. 234.134. LICENSES OR PERMITS. (a) A county may require that an owner or operator of a game room obtain a license or permit or renew a license or permit on a periodic basis to own or operate a

game room in the county. An application for a license or permit must be made in accordance with Section 234.1341 and with regulations adopted by the county.

(a-1) A county may require that a person employed by a game room, other than an owner or operator, obtain a license or permit or renew a license or permit on a periodic basis to be employed by a game room in the county. An application for a license or permit must be made in accordance with Section 234.1342 and with regulations adopted by the county.

(b) Regulations adopted under this section may provide for the denial, suspension, or revocation of a license or permit.

(c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a county.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 991 (H.B. 4446), Sec. 1, eff. September 1, 2023.

Sec. 234.1341. APPLICATION FOR OWNER OR OPERATOR LICENSE OR PERMIT. (a) A county requiring a person to obtain a license or permit to own or operate a game room in the county shall require the person to submit a completed application as provided by this section for issuance or renewal of the license or permit and an application fee of $1,000 as required by the county.

(b) An application form developed by the county under this section must require the applicant to provide the following information:

(1) the name of the business, including a copy of the assumed name certificate;

(2) the legal name, social security number, date of birth, and other relevant information concerning each person who owns at least five percent of the business or serves in a management role for the business;

(3) the name and contact information of the owner of the property where the game room is located;

(4) information concerning any other game room previously

or currently operated by the applicant;

(5) the applicant's fingerprints;

(6) a copy of the applicant's valid state-issued driver's license or personal identification card and social security card; and

(7) the applicant's consent for a criminal history record information check of the applicant.

Added by Acts 2023, 88th Leg., R.S., Ch. 991 (H.B. 4446), Sec. 2, eff. September 1, 2023.

Sec. 234.1342. APPLICATION FOR EMPLOYEE LICENSE OR PERMIT. (a) A county requiring a person to obtain a license or permit to be employed by a game room in the county shall require the person to submit a completed application as provided by this section for issuance or renewal of the license or permit and an application fee of $50 as required by the county.

(b) An application form developed by the county under this section must require the applicant to provide the following information:

(1) the person's legal name, social security number, date of birth, and other relevant information;

(2) the person's criminal history;

(3) the applicant's fingerprints;

(4) a copy of the applicant's valid state-issued driver's license or personal identification card and social security card;

(5) a recent photograph of the applicant's face and a recent photograph of the applicant's full body; and

(6) the applicant's consent for a criminal history record information check of the applicant.

(c) A county may not issue or renew a license or permit for an applicant who has been previously convicted of a Class B misdemeanor or higher criminal offense.

(d) A county shall send a copy of fingerprints obtained under this section to the Department of Public Safety to allow the department to create a permanent record of the fingerprints in the criminal justice information system.

Added by Acts 2023, 88th Leg., R.S., Ch. 991 (H.B. 4446), Sec. 2, eff. September 1, 2023.

Sec. 234.135. FEES. A county may impose a fee not to exceed $1,000 on an applicant for a license or permit or for the renewal of the license or permit required under this subchapter. The fee must be based on the cost of processing the application and investigating the applicant.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.

Sec. 234.136. INSPECTION. (a) A peace officer or county employee may inspect a business in the county to determine the number of amusement redemption machines or machines described by Section 234.131(2)(B) subject to regulation under this subchapter that are located on the premises of the business.

(b) A peace officer or county employee may inspect any business in which six or more amusement redemption machines or machines described by Section 234.131(2)(B) are located to determine whether the business is in compliance with this subchapter or regulations adopted under this subchapter.

(c) A person violates this subchapter if the person fails to allow a peace officer or county employee to conduct an inspection under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1170 (S.B. 866), Sec. 3, eff. September 1, 2015.

Sec. 234.137. INJUNCTION; CIVIL PENALTY. (a) A county may sue in district court for an injunction to prohibit the violation or threatened violation of this subchapter or a regulation adopted under Section 234.133.

(b) A person who violates this subchapter or a regulation adopted under Section 234.133 is liable to the county for a civil penalty of not more than $10,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty under this subsection. A county may bring suit in district court to recover a civil penalty authorized by

this subsection.

(c) The county is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.

Sec. 234.138. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally or knowingly operates a game room in violation of a regulation adopted under Section 234.133.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.

Sec. 234.139. CUMULATIVE EFFECT. Authority under this subchapter is cumulative of other authority that a county has to regulate game rooms and does not limit that authority.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.

Sec. 234.140. EFFECT ON OTHER LAWS. (a) This subchapter does not legalize any activity prohibited under the Penal Code or other state law.

(b) A person's compliance with this subchapter, including operating a game room under a license or permit issued under this chapter, is not a defense to prosecution for an offense under Chapter 47, Penal Code.

(c) A person who is subject to prosecution under Section 234.138 and any other law may be prosecuted under either or both laws.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1284 (H.B. 2123), Sec. 1, eff. June 14, 2013.

CHAPTER 235. COUNTY REGULATION OF MATTERS RELATING TO EXPLOSIVES AND WEAPONS

SUBCHAPTER A. EXPLOSIVES

Sec. 235.001. APPLICABILITY. (a) This subchapter applies only to a county with a population of one million or more.

(b) This subchapter does not apply to fire, police, or military personnel acting in the course of their professional duties.

(c) This subchapter does not affect the authority of a municipality in the county to enact ordinances under other law concerning explosives.

Added by Acts 1989, 71st Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 235.001 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(20), eff. Sept. 6, 1990. Amended by Acts 1997, 75th Leg., ch. 929, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 236.001 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(8), eff. Sept. 1, 2001.

Sec. 235.002. DEFINITIONS. In this subchapter:

(1) "Blaster" means a person who:

(A) detonates or otherwise effects the explosion of an explosive and is employed by a user; or

(B) personally supervises another engaged in that activity.

(2) "Blasting agent" means a material or mixture consisting of fuel and oxidizer, intended for blasting that, as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

(3) "Dealer" means a person who:

(A) buys or sells explosives, black powder, or smokeless powder; or

(B) is licensed as a dealer of destructive devices, as that term is defined by the National Firearms Act (26 U.S.C. Sec. 5801 et seq.).

(4) "Explosive" means a chemical compound mixture or a device, the primary purpose of which is to function by explosion and includes dynamite, high explosives, more than 50 pounds of black powder or smokeless powder, or any amount of pellet powder, initiating explosives, detonators, safety fuses, blasting agents,

squibs, detonating cord, igniter cord, and igniters.

(5) "Magazine" means any approved storage facility, classified under 18 U.S.C. Sec. 841 et seq., certified as adequate by the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of Treasury, and passed with a current inspection certificate.

(6) "Manufacturer-distributor" means a person who manufactures, compounds, combines, produces, or distributes an explosive.

(7) "Transfer" means to transfer an explosive actually or constructively from one person to another.

(8) "User" means a person who, as the final consumer, uses an explosive.

Added by Acts 1989, 71st Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 235.002 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(20), eff. Sept. 6, 1990. Renumbered from Sec. 236.002 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(8), eff. Sept. 1, 2001.

Sec. 235.003. AUTHORITY TO REGULATE; ADOPTION OF RULES. (a) Except as provided by Subsection (b), the commissioners court of the county by order may authorize the county fire marshal of a county to:

(1) propose rules to implement this subchapter; and

(2) in accordance with the rules proposed by the county fire marshal and adopted by the commissioners court under this subchapter:

(A) regulate the production, distribution, transport, transfer, use, and possession of an explosive in the county; and

(B) enforce standards concerning the manufacture, transportation, transfer, use, handling, and storage of explosives as necessary for the protection of the public health, welfare, or safety and of persons possessing, handling, and using explosives.

(b) The commissioners court may not adopt a rule under this chapter that:

(1) authorizes the county fire marshal to regulate the transportation of explosives if the point of origin and the destination are outside the county; or

(2) regulates a product or activity licensed or regulated

under Chapter 2154, Occupations Code, or a rule adopted under that chapter.

(c) Rules proposed by the county fire marshal, if adopted by the commissioners court, must include:

(1) the requirement that a person obtain a permit from the county fire marshal in accordance with this subchapter before the person may:

(A) produce, distribute, transport, use, or possess an explosive; or

(B) maintain a permanent storage magazine;

(2) the establishment of procedures for permit application and renewal;

(3) the establishment of procedures that include notice to the permit holder and an opportunity for a hearing, for permit revocation or suspension if the permit holder violates this subchapter or a rule adopted under this subchapter;

(4) the establishment of fees in accordance with this subchapter for the issuance of the permits;

(5) the requirement that persons who produce or transfer explosives keep records of the explosives produced or transferred; and

(6) the requirement that a label be affixed to each unit of explosive in the county stating the type, class, and serial or control number of the explosive.

(d) The rules may not conflict with generally accepted standards of safety concerning explosives and must conform to published standards of the Institute of Makers of Explosives.

(e) The county fire marshal shall provide a copy of the rules to a person on request and may assess a reasonable fee for the copy.

Added by Acts 1989, 71st Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 235.003 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(20), eff. Sept. 6, 1990. Amended by Acts 1997, 75th Leg., ch. 929, Sec. 2, eff. Sept. 1, 1997. Renumbered from Sec. 236.003 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(8), 14.824, eff. Sept. 1, 2001.

Sec. 235.004. PERMIT REQUIRED; EXCEPTION. (a) In a county in which the county fire marshal regulates explosives under this

subchapter, a person, including a common, contract, or private carrier, may not produce, distribute, transport, transfer, use, or possess an explosive without a permit issued in accordance with this subchapter.

(b) A person who is employed by and acts under the personal supervision of a blaster having a permit issued in accordance with this subchapter may, without a permit, load, unload, detonate, or otherwise effect the explosion of an explosive under the personal supervision of the blaster.

(c) Common carrier railroads subject to the provisions of the Federal Railway Safety Act of 1970, as amended, shall not be subject to the provisions of this subchapter.

Added by Acts 1989, 71st Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 235.004 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(20), eff. Sept. 6, 1990. Amended by Acts 1997, 75th Leg., ch. 929, Sec. 3, eff. Sept. 1, 1997. Renumbered from Sec. 236.004 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(8), eff. Sept. 1, 2001.

Sec. 235.005. PERMIT FEES. (a) The county fire marshal of a county who regulates explosives under this subchapter may assess the fees for the issuance or renewal of a permit under this subchapter in reasonable amounts set by the commissioners court.

(b) The county fire marshal shall remit all fees received under this subchapter to the county treasurer to be deposited to the credit of the general fund of the county.

Added by Acts 1989, 71st Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 235.005 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(20), eff. Sept. 6, 1990. Amended by Acts 1997, 75th Leg., ch. 929, Sec. 4, eff. Sept. 1, 1997. Renumbered from Sec. 236.005 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(8), eff. Sept. 1, 2001.

Sec. 235.006. CRIMINAL PENALTY. (a) A person who violates this subchapter or an order of the commissioners court or a rule adopted under this subchapter commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1264, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 235.006 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(20), eff. Sept. 6, 1990. Renumbered from Sec. 236.006 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(8), eff. Sept. 1, 2001.

SUBCHAPTER B. FIREARMS

Sec. 235.020. DEFINITION. In this subchapter, "air gun" has the meaning assigned by Section 229.001.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1210 (S.B. 1400), Sec. 2, eff. June 14, 2013.

Sec. 235.021. SUBDIVISIONS COVERED BY SUBCHAPTER. This subchapter applies only to a subdivision all or a part of which is located in the unincorporated area of a county and for which a plat is required to be prepared and filed under Chapter 232.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 55(a), eff. Aug. 28, 1989. Renumbered from Sec. 240.021 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(9), eff. Sept. 1, 2001.

Sec. 235.022. AUTHORITY TO REGULATE. To promote the public safety, the commissioners court of a county by order may prohibit or otherwise regulate the discharge of firearms and air guns on lots that are 10 acres or smaller and are located in the unincorporated area of the county in a subdivision.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 55(a), eff. Aug. 28, 1989. Renumbered from Sec. 240.022 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(9), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1210 (S.B. 1400), Sec. 3, eff. June 14, 2013.

Sec. 235.023. PROHIBITED REGULATIONS. This subchapter does not authorize the commissioners court to:

(1) regulate the transfer, ownership, possession, transportation, licensing, or registration of firearms or air guns; or

(2) require an owner of a firearm to obtain liability insurance coverage for damages resulting from negligent or wilful acts involving the use of the firearm.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 55(a), eff. Aug. 28, 1989. Renumbered from Sec. 240.023 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(9), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1210 (S.B. 1400), Sec. 4, eff. June 14, 2013.
Acts 2023, 88th Leg., R.S., Ch. 595 (H.B. 3137), Sec. 2, eff. September 1, 2023.

Sec. 235.024. INJUNCTION. Any person is entitled to appropriate injunctive relief to prevent a violation or threatened violation of a prohibition or other regulation adopted under this subchapter from continuing or occurring.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 55(a), eff. Aug. 28, 1989. Renumbered from Sec. 240.024 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(9), eff. Sept. 1, 2001.

Sec. 235.025. CRIMINAL PENALTY. A person commits an offense if the person intentionally or knowingly engages in conduct that is a violation of a regulation adopted under this subchapter by the commissioners court. An offense under this section is a Class C misdemeanor. If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 55(a), eff. Aug. 28, 1989. Renumbered from Sec. 240.025 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(9), eff. Sept. 1, 2001.

SUBCHAPTER C. BOWS AND ARROWS

Sec. 235.041. SUBDIVISIONS COVERED BY SUBCHAPTER. This subchapter applies only to a subdivision all or a part of which is located in the unincorporated area of a county and for which a plat is required to be prepared and filed under Chapter 232.

Added by Acts 1993, 73rd Leg., ch. 334, Sec. 1, eff. May 29, 1993. Renumbered from Sec. 240.041 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(10), eff. Sept. 1, 2001.

Sec. 235.042. AUTHORITY TO REGULATE. (a) To promote the public safety, the commissioners court of a county by order may prohibit or otherwise regulate hunting with bows and arrows on lots that are 10 acres or smaller and are located in the unincorporated area of the county in a subdivision.

(b) In this section, "hunting" means to hunt as defined by Section 1.101, Parks and Wildlife Code.

Added by Acts 1993, 73rd Leg., ch. 334, Sec. 1, eff. May 29, 1993. Renumbered from Sec. 240.042 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(10), eff. Sept. 1, 2001.

Sec. 235.043. PROHIBITED REGULATIONS. This subchapter does not authorize the commissioners court to regulate the transfer, ownership, possession, or transportation of bows and arrows and does not authorize the court to require the registration of bows and arrows.

Added by Acts 1993, 73rd Leg., ch. 334, Sec. 1, eff. May 29, 1993. Renumbered from Sec. 240.043 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(10), eff. Sept. 1, 2001.

Sec. 235.044. INJUNCTION. Any person is entitled to appropriate injunctive relief to prevent a violation or threatened violation of a prohibition or other regulation adopted under this subchapter from continuing or occurring.

Added by Acts 1993, 73rd Leg., ch. 334, Sec. 1, eff. May 29, 1993. Renumbered from Sec. 240.044 by Acts 2001, 77th Leg., ch. 1420, Sec.

12.003(10), eff. Sept. 1, 2001.

Sec. 235.045. CRIMINAL PENALTY. A person commits an offense if the person intentionally or knowingly engages in conduct that is a violation of a regulation adopted under this subchapter by the commissioners court. An offense under this section is a Class C misdemeanor. If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 334, Sec. 1, eff. May 29, 1993. Renumbered from Sec. 240.045 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.003(10), eff. Sept. 1, 2001.

CHAPTER 236. COUNTY REGULATION OF FIREARMS, KNIVES, AMMUNITION, FIREARM SUPPLIES, AND SPORT SHOOTING RANGES

Sec. 236.001. DEFINITIONS. In this chapter:

(1) "Air gun," "ammunition," and "firearm or air gun accessory" have the meanings assigned by Section 229.001.

(1-a) "Knife" has the meaning assigned by Section 46.01, Penal Code.

(2) "Sport shooting range" has the meaning assigned by Section 250.001.

Added by Acts 2011, 82nd Leg., R.S., Ch. 624 (S.B. 766), Sec. 6, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1210 (S.B. 1400), Sec. 5, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 700 (H.B. 905), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1164 (H.B. 3231), Sec. 2, eff. September 1, 2019.

Sec. 236.002. FIREARMS; AIR GUNS; SPORT SHOOTING RANGE. (a) Notwithstanding any other law, including Chapter 251, Agriculture Code, a county may not adopt or enforce regulations that:

(1) relate to:

(A) the transfer, possession, wearing, carrying, ownership, storage, transportation, licensing, or registration of firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories;

(B) commerce in firearms, air guns, knives, ammunition, or firearm or air gun supplies or accessories; or

(C) the discharge of a firearm or air gun at a sport shooting range; or

(2) require an owner of a firearm to obtain liability insurance coverage for damages resulting from negligent or wilful acts involving the use of the firearm.

(b) An ordinance, rule, resolution, or policy adopted or enforced by a county, or an official action, including in any legislative, police power, or proprietary capacity, taken by an employee or agent of a county in violation of this section is void.

(c) Subsection (a) does not affect the authority of a county to:

(1) require a resident or public employee to be armed for personal or national defense, law enforcement, or other purpose under other law;

(2) regulate the discharge of firearms or air guns in accordance with Section 235.022;

(3) regulate the carrying of a firearm by a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, in accordance with Section 411.209, Government Code;

(4) except as provided by Subsection (d), adopt or enforce a generally applicable land use regulation, fire code, or business regulation; or

(5) except as provided by Subsection (e), regulate or prohibit an employee's carrying or possession of a firearm, firearm accessory, or ammunition in the course of the employee's official duties.

(d) A county order or regulation designed or enforced to effectively restrict or prohibit the manufacture, sale, purchase, transfer, or display of firearms, firearm accessories, or ammunition that is otherwise lawful in this state is void.

(e) Subsection (c)(5) does not authorize a county to regulate an employee's carrying or possession of a firearm in violation of Subchapter G, Chapter 52, Labor Code.

(f) The attorney general may bring an action in the name of the

state to obtain a temporary or permanent injunction against a county adopting a regulation, other than a regulation under Section 236.003, in violation of this section. The attorney general may recover reasonable expenses incurred in obtaining an injunction under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 624 (S.B. 766), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1210 (S.B. 1400), Sec. 6, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 700 (H.B. 905), Sec. 6, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1164 (H.B. 3231), Sec. 3, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 595 (H.B. 3137), Sec. 3, eff. September 1, 2023.

Sec. 236.003. REGULATION OF OUTDOOR SPORT SHOOTING RANGE. Notwithstanding Section 236.002, a county may regulate the discharge of a firearm or air gun at an outdoor sport shooting range as provided by Subchapter B, Chapter 235.

Added by Acts 2011, 82nd Leg., R.S., Ch. 624 (S.B. 766), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1210 (S.B. 1400), Sec. 7, eff. June 14, 2013.

CHAPTER 240. MISCELLANEOUS REGULATORY AUTHORITY OF COUNTIES

SUBCHAPTER A. REGULATION OF KEEPING OF WILD ANIMALS

Sec. 240.001. DEFINITION. In this subchapter, "wild animal" means a nondomestic animal that the commissioners court of a county determines is dangerous and is in need of control in that county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 240.002. REGULATION. (a) The commissioners court of a county by order may prohibit or regulate the keeping of a wild animal in the county.

(b) The order does not apply inside the limits of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 54, Sec. 2, eff. Sept. 1, 2001.

Sec. 240.003. OFFENSE. (a) A person commits an offense if the person violates an order adopted under this subchapter and the order defines the violation as an offense.

(b) An offense under this section is prosecuted in the same manner as an offense defined under state law.

(c) An offense under this section is a Class C misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 240.004. INJUNCTION. The county attorney or an attorney representing the county may file an action in a district court to enjoin a violation or threatened violation of an order adopted under this subchapter. The court may grant appropriate relief.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. OUTDOOR LIGHTING NEAR OBSERVATORIES AND MILITARY INSTALLATIONS

Sec. 240.031. DEFINITIONS. In this subchapter:

(1) "Major astronomical observatory" means a facility that is established to conduct scientific observations of astronomical phenomena and is equipped with one or more telescopes that:

(A) have objective diameters that total 69 inches or more; and

(B) are permanently mounted in enclosed buildings.

(2) "Outdoor lighting" means any type of fixed or movable lighting equipment that is designed or used for illumination out of doors. The term includes billboard lighting, street lights, searchlights and other lighting used for advertising purposes, and

area lighting. The term does not include lighting equipment that is required by law to be installed on motor vehicles or lighting required for the safe operation of aircraft.

(3) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1166, Sec. 5, eff. January 1, 2012.

(4) "Agricultural use" has the meaning assigned by Section 23.51, Tax Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 975, Sec. 1, eff. June 15, 2001; Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(11), eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 233 (H.B. 1852), Sec. 1, eff. May 25, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 5, eff. January 1, 2012.

Sec. 240.032. COUNTY REGULATORY AUTHORITY; ADOPTION OF ORDERS. (a) The commissioners court of a county, any part of which is located within 57 miles of a major astronomical observatory at the McDonald Observatory, shall adopt orders regulating the installation and use of outdoor lighting in any unincorporated territory of the county.

(b) On the request of the director of the George Observatory or the Stephen F. Austin State University Observatory, the commissioners court of a county, any part of which is located within five miles of a major astronomical observatory at the George Observatory or the Stephen F. Austin State University Observatory, may adopt orders regulating the installation and use of outdoor lighting in any unincorporated territory of the county.

(b-1) This subsection applies only to a county with a population of more than one million that has at least five United States military bases and to any county adjacent to that county that is within five miles of a United States Army installation, base, or camp. On the request of a United States military installation, base, or camp commanding officer, the commissioners court of a county subject to this subsection may adopt orders regulating the installation and use of outdoor lighting within five miles of the installation, base, or camp in any unincorporated territory of the

county.

(c) The orders must be designed to protect against the use of outdoor lighting in a way that interferes with scientific astronomical research of the observatory or military and training activities of the military installation, base, or camp. In the orders, the commissioners court may:

(1) require that a permit be obtained from the county before the installation and use of certain types of outdoor lighting in a regulated area;

(2) establish a fee in an amount to cover the costs of administrating the order for the issuance of the permit;

(3) prohibit the use of a type of outdoor lighting that is incompatible with the effective use of the observatory or military installation, base, or camp;

(4) establish requirements for the shielding of outdoor lighting; and

(5) regulate the times during which certain types of outdoor lighting may be used.

(d) The commissioners court may apply more stringent standards for areas in which the use of outdoor lighting has a greater impact on observatory or military installation, base, or camp activities.

(e) The commissioners court may adopt an order under this subchapter only after conducting a public hearing on the proposed order. The court shall give at least two weeks' public notice of the hearing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 182, Sec. 1, eff. May 26, 1989; Acts 2001, 77th Leg., ch. 975, Sec. 2, eff. June 15, 2001; Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(11), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 233 (H.B. 1852), Sec. 3, eff. May 25, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1114 (H.B. 1013), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 2, eff. January 1, 2012.

Sec. 240.0325. EXCEPTION FOR CERTAIN OUTDOOR LIGHTING. The

commissioners court may not adopt an order under Section 240.032 regulating the installation and use of outdoor lighting that is located within five miles of a military installation, base, or camp located in the unincorporated area of a county and:

(1) was installed or used before the effective date of the order and is necessary for the operations of:

(A) an electric utility, power generation company, or transmission and distribution utility, as those terms are defined by Section 31.002, Utilities Code;

(B) an electric cooperative or a municipally owned utility, as those terms are defined by Section 11.003, Utilities Code;

(C) a gas utility, as defined by Section 101.003 or 121.001, Utilities Code;

(D) surface coal mining and reclamation operations, as defined by Section 134.004, Natural Resources Code;

(E) a telecommunications provider, as defined by Section 51.002, Utilities Code, or its affiliates; or

(F) a manufacturing facility required by Texas Commission on Environmental Quality rule to hold a permit; or

(2) is owned or maintained for the purpose of illuminating:

(A) a tract of land that is maintained as a single family residence and that is located outside the boundaries of a platted subdivision;

(B) a tract of land maintained for agricultural use;

(C) an activity that takes place on a tract of land maintained for agricultural use;

(D) structures or related improvements located on a tract of land maintained for agricultural use; or

(E) a correctional facility operated by or under a contract with the Texas Department of Criminal Justice.

Added by Acts 2007, 80th Leg., R.S., Ch. 233 (H.B. 1852), Sec. 4, eff. May 25, 2007.

Sec. 240.033. REGULATION OF SUBDIVISIONS. (a) This section applies only to real estate subdivisions subject to the plat approval authority of the commissioners court of a county.

(b) The commissioners court of a county, any part of which is

located within 57 miles of a major astronomical observatory at the McDonald Observatory, shall adopt orders establishing standards relating to proposed subdivisions to minimize the interference with observatory activities caused by outdoor lighting.

(c) The commissioners court of a county, any part of which is located within five miles of a major astronomical observatory at the George Observatory or the Stephen F. Austin State University Observatory, may adopt orders establishing standards relating to proposed subdivisions to minimize the interference with observatory activities caused by outdoor lighting.

(d) A commissioners court that adopts orders under this section may not approve a plat of a proposed subdivision that does not meet the standards established in the orders.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 182, Sec. 2, eff. May 26, 1989; Acts 2001, 77th Leg., ch. 975, Sec. 3, eff. June 15, 2001; Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(11), eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1166 (H.B. 2857), Sec. 3, eff. January 1, 2012.

Sec. 240.034. EXEMPTION. This subchapter does not apply to outdoor lighting in existence or under construction on September 1, 1975.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 234.004 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(11), eff. Sept. 1, 2001.

Sec. 240.035. ENFORCEMENT; PENALTY. (a) A county or district attorney may sue in the district court to enjoin a violation of this subchapter.

(b) A person who violates an order adopted under this subchapter commits an offense. An offense under this section is a Class C misdemeanor.

(c) Both civil and criminal enforcement may be used against the same conduct.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Sec. 234.005 and amended by Acts 2001, 77th Leg., ch; 1420, Sec. 12.003(11), eff. Sept. 1, 2001.

SUBCHAPTER C. REGULATION OF WATER WELLS IN CERTAIN COUNTIES

Sec. 240.041. DEFINITION. In this subchapter, "on-site sewage disposal system" has the meaning assigned by Section 366.002, Health and Safety Code.

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.

Sec. 240.042. AUTHORITY TO REGULATE PLACEMENT OF WATER WELLS. (a) The commissioners court of a county with a population of 2.1 million or more by order may regulate the placement of private water wells in the unincorporated area of the county to prevent:

(1) the contamination of a well from an on-site sewage disposal system;

(2) rendering an on-site sewage disposal system that was in place before the well was drilled out of compliance with applicable law because of the placement of the well; and

(3) drilling of a domestic well into a contaminated groundwater plume or aquifer.

(b) A commissioners court that decides to regulate the placement of private water wells under this subchapter by order shall adopt rules governing the placement of a water well in relation to an existing on-site sewage disposal system or drilling into a contaminated groundwater plume or aquifer and enforcement of those rules. The rules must require:

(1) a person desiring to drill a private water well, or the owner of the land on which the well is to be located, to:

(A) notify the county health officer or an official designated by the commissioners court of the intent to drill the well; and

(B) include with the notice a diagram showing the proposed location of the well and its distance from any on-site sewage disposal system that is located within 100 feet of the well; and

(2) the county health officer or an official designated by the commissioners court to:

(A) review the notice and diagram;

(B) not later than the 10th business day after the date the notice is received:

(i) approve the drilling of the well if the well will not be drilled into or through an aquifer or groundwater plume that has been confirmed as contaminated by the Texas Commission on Environmental Quality or the United States Environmental Protection Agency and placement of the well will not violate the rules adopted by the Texas Commission of Licensing and Regulation under Chapters 1901 and 1902, Occupations Code; or

(ii) disapprove the drilling of the well; and

(C) provide a written acknowledgment to the person desiring to drill the well and to the owner of the land on which the well is to be located that states:

(i) that the requirements of the rules adopted under Subdivision (1) have been satisfied; and

(ii) whether the drilling of the well has been approved or disapproved.

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 83, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 149, eff. September 1, 2023.

Sec. 240.043. NOTICE. (a) Before rules adopted under Section 240.042 may take effect, the commissioners court of the county must publish notice of the adoption of the rules in a newspaper of general circulation in the county.

(b) The notice must:

(1) include:

(A) a brief summary of the rules; and

(B) a statement that the full text of the rules is on file in the office of the county clerk; and

(2) be published on two separate dates.

(c) The rules may not take effect until after the 14th day after the date of the second publication as provided by Subsection (b)(2).

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.

Sec. 240.044. FEE. The county may impose a placement review fee in the amount of not more than $50 to be paid by the person drilling the well. Fees collected under this section shall be deposited to the county's general fund to be used only for the administration and enforcement of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.

Sec. 240.045. INSPECTION. A county health officer or an official designated by the commissioners court may inspect a proposed private water well site to ensure that it complies with the requirements of this subchapter and county rules adopted under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.

Sec. 240.046. COMPLIANCE REQUIRED. A person may not drill a private water well in a county that has chosen to regulate the placement of private water wells under this subchapter unless the placement of the well complies with this subchapter and applicable rules and has been approved by the county health officer or an official designated by the commissioners court.

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.

Sec. 240.047. OFFENSE; PENALTY. (a) A person who drills a private water well without possessing a written acknowledgment, or a

copy of a written acknowledgment, under Section 240.042 by the county health officer or an official designated by the commissioners court approving the drilling of the well commits an offense. An offense under this section is a Class C misdemeanor.

(b) The county health officer or an official designated by the commissioners court shall report a citation issued under this section to the Texas Department of Licensing and Regulation.

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.

Sec. 240.048. EXCEPTIONS. This subchapter does not apply to:

(1) a private water well drilled:

(A) on a parcel of land that:

(i) is 10 acres or more in size; or

(ii) is qualified open-space land, as defined by Section 23.51, Tax Code;

(B) within the boundaries of a groundwater conservation district;

(C) within the boundaries of a subsidence district other than the Harris-Galveston Subsidence District; or

(D) incident to the exploration, development, or production of oil, gas, or other minerals; or

(2) a public water system that has been permitted under rules adopted by the Texas Commission on Environmental Quality.

Added by Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 12.005, eff. September 1, 2013.

SUBCHAPTER E. COMMUNICATION FACILITY STRUCTURES

Sec. 240.081. DEFINITIONS. In this subchapter:

(1) "Residential subdivision" means a subdivision:

(A) for which a plat is recorded in the county real property records;

(B) in which the majority of the lots are subject to deed restrictions limiting the lots to residential use; and

(C) that includes at least five lots that have existing residential structures.

(2) "Communication facility structure" means:

(A) antenna support structures for mobile and wireless telecommunication facilities, whip antennas, panel antennas, microwave dishes, or receive-only satellite dishes;

(B) cell enhancers and related equipment for wireless transmission from a sender to one or more receivers for mobile telephones, mobile radio systems facilities, commercial radio service, or other services or receivers; or

(C) a monopole tower, a steel lattice tower, or any other communication tower supporting mobile and wireless telecommunication facilities.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.

Sec. 240.082. APPLICABILITY. (a) This subchapter applies only to real property that is located in the unincorporated area of a county with a population of 2.1 million or more.

(b) This subchapter does not apply to:

(1) existing communication facilities or other structures used for the purpose of colocation, provided the height is not increased by more than 10 feet;

(2) a communication facility structure built to replace an existing communication facility structure if:

(A) the replacement communication facility structure is constructed within 50 feet of the existing communication facility structure;

(B) the replacement communication facility structure is no higher than and constructed for the same purpose as the existing communication facility structure; and

(C) the existing communication facility structure is removed not later than the 14th day after the date the replacement communication facility begins operations; or

(3) a communications antenna, antenna facility, or antenna tower or support structure located in a residential area that is used by an amateur radio operator exclusively for amateur radio communications or public safety services.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 84, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 150, eff. September 1, 2023.

Sec. 240.083. AUTHORITY OF COUNTY TO REGULATE. (a) Subject to the restrictions in Section 240.084, the commissioners court of a county subject to this subchapter may by order regulate the location of communication facility structures in the unincorporated areas of the county.

(b) The regulations may include a requirement for a permit for the construction or expansion of the facility and may impose fees, not to exceed $50, on regulated persons to recover the cost of administering the regulations.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.

Sec. 240.084. LOCATION OF COMMUNICATION FACILITY STRUCTURE. The commissioners court of a county that is subject to this subchapter may by order prohibit the construction of a communication facility structure within 300 feet, or the height of the structure, whichever is greater, of a residential subdivision.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.

Sec. 240.085. FILING REQUIREMENTS REGARDING CONSTRUCTION. A person proposing to construct a communication facility structure in the unincorporated area of a county subject to this subchapter shall file with the county official designated by the commissioners court:

(1) a statement informing the county that the construction is proposed and providing the date on or after which the construction is proposed to begin;

(2) copies of any necessary permits from the Federal

Communications Commission or Federal Aviation Administration;

(3) a plat or map of the specific proposed location of the communication facility structure; and

(4) the correct phone number and address of the entity primarily responsible for the construction.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.

Sec. 240.086. VARIANCES. (a) A person who desires to construct or increase the height of a communication facility structure in violation of an order adopted by a county subject to this subchapter may apply to the commissioners court of the county for a variance from the regulation.

(b) The commissioners court may allow a variance from a regulation if the commissioners court finds that:

(1) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and

(2) the granting of the relief would:

(A) result in substantial justice being done;

(B) not be contrary to the public interest; and

(C) be in accordance with the spirit of the regulation and this subchapter.

(c) The commissioners court may impose any reasonable conditions on the variance that it considers necessary to accomplish the purposes of this subchapter.

(d) Before granting a request for a variance under this section, the county may require the applicant to prominently post an outdoor sign at the location stating that a communication facility structure is intended to be located on the premises and providing the name and business address of the applicant.

(e) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The county in which the communication facility structure is to be located may require the sign to be in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.

Sec. 240.087. OFFENSE. (a) A person commits an offense if the person violates an order adopted under this subchapter and the order defines the violation as an offense.

(b) An offense under this section is prosecuted in the same manner as an offense defined under state law.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.

Sec. 240.088. INJUNCTION. The county attorney or an attorney representing the county may file an action in a district court to enjoin a violation or threatened violation of an order adopted under this subchapter. The court may grant appropriate relief.

Added by Acts 2005, 79th Leg., Ch. 945 (H.B. 843), Sec. 1, eff. June 18, 2005.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 240.901. LAND USE REGULATION FOR FLOOD CONTROL IN COASTAL COUNTIES. (a) This state recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomical for the private insurance industry alone to make flood insurance available to those in need of protection on reasonable terms and conditions. Recognizing the burden on the nation's resources, congress enacted the National Flood Insurance Act of 1968, under which flood insurance can be made available through the coordinated efforts of the federal government and the private insurance industry by pooling risks and by the positive cooperation of state and local governments. The purpose of this subchapter is to evidence a positive interest in securing flood insurance coverage under the federal program, thus procuring coverage for the citizens of this state who desire to participate, to promote the public interest by providing appropriate protection against the perils of flood losses, and to encourage sound land use by minimizing exposure of property to flood losses.

(b) A county bordering on the Gulf of Mexico or on the

tidewater limits of the gulf may determine the boundaries of any flood-prone area of the county. The suitability of that determination is conclusively established when the commissioners court of the county adopts a resolution finding that the area is a flood-prone area.

(c) The commissioners court may adopt and enforce rules that regulate the management and use of land, structures, and other development in a flood-prone area of the county in order to reduce the extent of damage caused by flooding. The matters to which the rules may apply include:

(1) the floodproofing of structures located or to be constructed in the area;

(2) the minimum elevation of a structure permitted to be constructed or improved in the area;

(3) specifications for drainage;

(4) the prohibition of the connection of land with water, sewer, electricity, and gas utility service, if a structure or other development on the land is not in compliance with a rule adopted by the commissioners court; and

(5) any other action feasible to minimize flooding and rising water damage.

(d) In this section, "flood-prone area" means an area that is subject to damage from rising water or flooding from the Gulf of Mexico or its tidal waters, including lakes, bays, inlets, and lagoons.

(e) Rules and regulations adopted by counties under this section shall comply with rules and regulations promulgated by the Commissioner of the General Land Office under Sections 16.320 and 16.321, Water Code.

(f) If the commissioners court prohibits the connection of land with water, sewer, electricity, and gas utility service under Subsection (c)(4), a person may not provide utility services that connect the land with utility services without written certification from the county that the property complies with rules adopted under this section.

(g) A commissioners court may authorize procedures for filing a notice in the real property records of the county in which a property is located that identifies any condition on the property that the county determines violates the rules adopted under this section or a permit issued under this section. The notice is not a final legal

determination and is meant only to provide notice of the county's determination that a violation of the rules or a permit exists on the property. The notice must include a description legally sufficient for identification of the property and the name of the owner of the property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 40, eff. June 7, 1991; Acts 1997, 75th Leg., ch. 461, Sec. 1, eff. Sept. 1, 1997.

Sec. 240.902. CLOSING OF GULF BEACHES. (a) The commissioners court of a county in which a public beach is located may by order close a part of the beach for a maximum of three days each year to allow a nonprofit organization to hold an event on the beach to which the public is invited and to which the organization charges no more than a nominal admission fee.

(b) In this section, "public beach" means a beach located on a bay or inlet of the Gulf of Mexico to which the general public or a substantial part of the general public has free access.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 240.905. LAND USE REGULATION FOR FLOOD CONTROL IN TRINITY RIVER BASIN. (a) The commissioners court of a county located below the dam of Lake Livingston with all or part of its area within the 100-year floodplain of the Trinity River basin as described by county maps developed according to Federal Emergency Management Agency requirements may adopt and enforce rules that regulate the future construction of residences and the laying out of residential lots or the development of subdivisions in that portion of the county located in the 100-year floodplain of the Trinity River basin.

(b) Before the commissioners court may adopt and enforce the rules described in Subsection (a) of this section the commissioners court must make a determination that the rules are necessary to protect the health and safety of the public by reducing the damage caused by flooding in the 100-year floodplain.

(c) The rules described in Subsection (a) of this section apply only to development and construction commenced after the effective date of this section for:

(1) the flood-proofing of structures constructed or placed in the floodplain;

(2) the type of structures which may be constructed or placed in the floodplain;

(3) the minimum elevation of structures constructed or placed in the floodplain; and

(4) specification for drainage of residential lots or subdivisions to be laid out in the floodplain.

(d) The commissioners court may not regulate new manufactured or industrialized housing constructed to preemptive state or federal building standards for siting or zoning purposes in any manner that is different from regulation of site-built housing.

Added by Acts 1991, 72nd Leg., ch. 858, Sec. 4, eff. Sept. 1, 1991. Renumbered from Sec. 240.904 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(19), eff. Nov. 12, 1991.

Sec. 240.907. FEE FOR CUTTING COUNTY ROAD. (a) In this section, a cut of a county road means the act of excavating or cutting the surface of a county road.

(b) To provide funds for the future inspection, repair, and maintenance of a cut road, a county may impose a fee on a person or other entity for each cut of a county road during or as an incident to the installation, maintenance, or repair of any facilities or properties of the person or entity.

(c) The fee authorized by this section:

(1) may not exceed $500;

(2) may be imposed either before or after the cutting of the road; and

(3) is in addition to any other charge the county is authorized to impose to repair damage to the road because of the cut.

(d) This section does not apply in relation to a person or other entity that:

(1) has entered into an agreement with the county that provides for fees to be paid by the person or entity for the use of the county roads; or

(2) is a utility that is not required under Chapter 181, Utilities Code, to provide notice to a commissioners court of a county.

Added by Acts 2005, 79th Leg., Ch. 957 (H.B. 1610), Sec. 1, eff. June 18, 2005.

Sec. 240.909. REGULATION OF TREE CUTTING IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of 50,000 or less that borders the Gulf of Mexico and in which is located at least one state park and one national wildlife refuge.

(b) The commissioners court of a county subject to this section may prohibit or restrict the clear-cutting of live oak trees in the unincorporated area of the county.

(c) A person commits an offense if the person violates an order adopted under this section and the order defines the violation as an offense. An offense under this section is a Class C misdemeanor punishable by a fine not to exceed $500. An offense under this section is prosecuted in the same manner as an offense defined under state law.

(d) The county attorney or an attorney representing the county may file an action in district court to enjoin a violation or threatened violation of an order adopted under this section. The court may grant appropriate relief.

(e) This subchapter, or an order or zoning regulation adopted under this subchapter, does not apply to the facilities or operations of an electric utility as defined by Section 31.002, Utilities Code, or a gas utility as defined by Section 101.003 or 121.001, Utilities Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1398 (S.B. 2553), Sec. 1, eff. June 19, 2009.

Sec. 240.910. REGULATION OF LITTER AND MOSQUITO CONTROL IN CERTAIN COUNTIES. (a) This section applies only to a county located on an international border and adjacent to the Gulf of Mexico.

(b) In this section:

(1) "Illegally dumped litter" means litter dumped anywhere other than in an approved solid waste site, as defined by Section 365.011, Health and Safety Code.

(2) "Litter" has the meaning assigned by Section 365.011, Health and Safety Code.

(c) In addition to the authority granted under Section 365.017, Health and Safety Code, the commissioners court of a county may adopt and enforce orders to:

(1) control the disposal of litter and the removal of illegally dumped litter from public or private property; and

(2) regulate the storage or abandonment of property, including tires and appliances, on public or private property that creates a nuisance or habitat conducive to mosquito breeding.

(d) An order adopted under this section:

(1) applies only to the unincorporated area of the county;

(2) may require the record property owner to pay for the cost of enforcing the order on the property owner's land if the commissioners court gives the property owner 30 days' written notice of the enforcement action; and

(3) may not regulate manufactured or industrialized housing constructed to state or federal building standards in a manner that is different from regulation of site-built housing.

(e) This section does not authorize the adoption of:

(1) zoning regulations not otherwise authorized under Chapter 231; or

(2) building regulations not otherwise authorized under Chapter 233.

Added by Acts 2019, 86th Leg., R.S., Ch. 350 (H.B. 2566), Sec. 1, eff. June 2, 2019.

SUBTITLE C. REGULATORY AUTHORITY APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 241. MUNICIPAL AND COUNTY ZONING AUTHORITY AROUND AIRPORTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 241.001. SHORT TITLE. This chapter may be cited as the Airport Zoning Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.002. LEGISLATIVE FINDINGS. The legislature finds that:

(1) an airport hazard endangers the lives and property of users of the airport and of occupants of land in the vicinity of the

airport;

(2) an airport hazard that is an obstruction reduces the size of the area available for the landing, taking off, and maneuvering of aircraft, tending to destroy or impair the utility of the airport and the public investment in the airport;

(3) the creation of an airport hazard is a public nuisance and an injury to the community served by the airport affected by the hazard;

(4) it is necessary in the interest of the public health, public safety, and general welfare to prevent the creation of an airport hazard;

(5) the creation of an airport hazard should be prevented, to the extent legally possible, by the exercise of the police power without compensation; and

(6) the prevention of the creation of an airport hazard and the elimination, the removal, the alteration, the mitigation, or the marking and lighting of an airport hazard are public purposes for which a political subdivision may raise and spend public funds and acquire land or interests in land.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.003. DEFINITIONS. In this chapter:

(1) "Airport" means an area of land or water, publicly or privately owned, designed and set aside for the landing and taking off of aircraft and used or to be used in the interest of the public for that purpose. The term includes an area with installations relating to flights, including installations, facilities, and bases of operations for tracking flights or acquiring data concerning flights.

(2) "Airport hazard" means a structure or object of natural growth that obstructs the air space required for the taking off, landing, and flight of aircraft or that interferes with visual, radar, radio, or other systems for tracking, acquiring data relating to, monitoring, or controlling aircraft.

(3) "Airport hazard area" means an area of land or water on which an airport hazard could exist.

(4) "Airport zoning regulation" means an airport hazard area zoning regulation and an airport compatible land use zoning

regulation adopted under this chapter.

(5) "Centerline" means a line extending through the midpoint of each end of a runway.

(6) "Compatible land use" means a use of land adjacent to an airport that does not endanger the health, safety, or welfare of the owners, occupants, or users of the land because of levels of noise or vibrations or the risk of personal injury or property damage created by the operations of the airport, including the taking off and landing of aircraft.

(7) "Controlled compatible land use area" means an area of land located outside airport boundaries and within a rectangle bounded by lines located no farther than 1-1/2 statute miles from the centerline of an instrument or primary runway and lines located no farther than five statute miles from each end of the paved surface of an instrument or primary runway.

(8) "Instrument runway" means an existing or planned runway of at least 3,200 feet for which an instrument landing procedure published by a defense agency of the federal government or the Federal Aviation Administration exists or is planned.

(9) "Obstruction" means a structure, growth, or other object, including a mobile object, that exceeds a limiting height established by federal regulations or by an airport hazard area zoning regulation.

(10) "Political subdivision" means a municipality or county.

(11) "Primary runway" means an existing or planned paved runway, as shown in the official airport layout plan (ALP) of the airport, of at least 3,200 feet on which a majority of the approaches to and departures from the airport occur.

(12) "Runway" means a defined area of an airport prepared for the landing and taking off of aircraft along its length.

(13) "Structure" means an object constructed or installed by one or more persons and includes a building, tower, smokestack, and overhead transmission line.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.004. AIRPORT USED IN INTEREST OF PUBLIC. For the purposes of this chapter, an airport is used in the interest of the

public if:

(1) the owner of the airport, by contract, license, or otherwise, permits the airport to be used by the public to an extent that the airport fulfills an essential community purpose; or

(2) the airport is used by the state or an agency of the state or by the United States for national defense purposes or for any federal program relating to flight.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.005. ADOPTION OF REGULATION INCLUDES AMENDMENT OR OTHER CHANGE. A reference in this chapter to the adoption of an airport zoning regulation includes the amendment, repeal, or other change of a regulation. A reference to the adoption of an airport zoning regulation also includes the amendment of an airport zoning regulation existing on the date the law codified by this chapter took effect, which was September 5, 1947.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. ADOPTION OF AIRPORT ZONING REGULATIONS

Sec. 241.011. AIRPORT HAZARD AREA ZONING REGULATIONS. (a) To prevent the creation of an airport hazard, a political subdivision in which an airport hazard area is located may adopt, administer, and enforce, under its police power, airport hazard area zoning regulations for the airport hazard area.

(b) The airport hazard area zoning regulations may divide an airport hazard area into zones and for each zone:

(1) specify the land uses permitted;

(2) regulate the type of structures; and

(3) restrict the height of structures and objects of natural growth to prevent the creation of an obstruction to flight operations or air navigation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.012. AIRPORT COMPATIBLE LAND USE ZONING REGULATIONS. (a) A political subdivision may adopt, administer, and enforce,

under its police power, airport compatible land use zoning regulations for the part of a controlled compatible land use area located within the political subdivision if the airport is:

(1) used in the interest of the public to the benefit of the political subdivision; or

(2) located within the political subdivision and owned or operated by a federal defense agency or by the state.

(b) The political subdivision by ordinance or resolution may implement, in connection with airport compatible land use zoning regulations, any federal law or rules controlling the use of land located adjacent to or in the immediate vicinity of the airport.

(c) The airport compatible land use zoning regulations must include a statement that the airport fulfills an essential community purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.013. EXTRATERRITORIAL ZONING IN POLITICAL SUBDIVISIONS WITH POPULATION OF MORE THAN 45,000. (a) A political subdivision with a population of more than 45,000 in which an airport used in the interest of the public to the benefit of the political subdivision is located may adopt, administer, and enforce:

(1) airport hazard area zoning regulations applicable to an airport hazard area relating to the airport and located outside the political subdivision; and

(2) airport compatible land use zoning regulations applicable to a controlled compatible land use area relating to the airport and located outside the political subdivision.

(b) The political subdivision has the same power to adopt, administer, and enforce airport hazard area zoning regulations or airport compatible land use zoning regulations under this section as that given a political subdivision by Sections 241.011 and 241.012.

(c) The airport hazard area zoning regulations or airport compatible land use zoning regulations must include a statement that the airport fulfills an essential community purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 98, Sec. 1, 2, eff. Aug. 26, 1991.

Sec. 241.014. JOINT AIRPORT ZONING BOARD. (a) A political subdivision to whose benefit an airport is used in the interest of the public or in which an airport owned or operated by a defense agency of the federal government or the state is located may create a joint airport zoning board with another political subdivision in which an airport hazard area or a controlled compatible land use area relating to the airport is located. The political subdivisions must act by resolution or ordinance in creating the joint board.

(b) The joint airport zoning board has the same power to adopt, administer, and enforce airport hazard area zoning regulations or airport compatible land use zoning regulations under this section as that given a political subdivision by Sections 241.011 and 241.012.

(c) The joint airport zoning board must consist of two members appointed by each of the political subdivisions creating the board and, in addition, a chairman elected by a majority of the appointed members.

(d) If an agency of the state owns and operates an airport located within an airport hazard area or controlled compatible land use area governed by a joint airport zoning board, the agency is entitled to have two members on the board.

(e) The joint airport zoning board for an airport that is owned or operated by a defense agency of the federal government and that is closed by the federal government may provide that zoning regulations adopted by the board continue in effect until the fourth anniversary of the date the airport is closed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 352, Sec. 1, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1176, Sec. 1, eff. June 18, 1999.

Sec. 241.015. INCORPORATION OF AIRPORT ZONING REGULATION INTO COMPREHENSIVE ZONING ORDINANCE. A political subdivision may incorporate an airport zoning regulation in a comprehensive zoning ordinance and administer and enforce it in connection with the administration and enforcement of the comprehensive zoning ordinance if:

(1) the two zoning regulations apply, in whole or in part, to the same area; and

(2) the comprehensive zoning ordinance includes, among

other matters, a regulation on the height of buildings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.016. AIRPORT ZONING COMMISSION. (a) Before an airport zoning regulation may be adopted, a political subdivision acting unilaterally under Section 241.013 must appoint an airport zoning commission. If the political subdivision has a planning commission or comprehensive zoning commission, that commission may be designated as the airport zoning commission.

(b) The commission shall recommend the boundaries of the zones to be established and the regulations for these zones.

(c) The commission shall make a preliminary report and hold public hearings on the report before submitting a final report.

(d) Before the 15th day before the date of a hearing under Subsection (c), notice of the hearing shall be published in an official newspaper or a newspaper of general circulation in each political subdivision in which the airport hazard area or controlled compatible land use area to be zoned is located.

(e) A joint airport zoning board created under Section 241.014 is not required to appoint a commission under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 697, Sec. 1, eff. Sept. 1, 1995.

Sec. 241.017. PROCEDURAL LIMITATIONS APPLYING TO ADOPTION OF ZONING REGULATIONS. (a) The governing body of a political subdivision may not hold a public hearing or take other action concerning an airport zoning regulation until it receives the final report of the airport zoning commission.

(b) An airport zoning regulation may not be adopted except by action of the governing body of the political subdivision or a joint airport zoning board after the political subdivision or joint airport zoning board holds a public hearing on the matter at which parties in interest and citizens have an opportunity to be heard.

(c) Before the 15th day before the date of a hearing under Subsection (b), notice of the hearing must be published in an official newspaper or a newspaper of general circulation in each political subdivision in which the area to be zoned is located.

(d) A procedural requirement adopted or applied by a political subdivision, including any requirement in the charter of a home-rule municipality, that imposes a waiting period before the adoption of a zoning regulation or requires the submission of a zoning regulation to a binding referendum election does not apply to this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 697, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 190 (S.B. 1360), Sec. 2, eff. May 23, 2007.

Sec. 241.018. REASONABLENESS OF AIRPORT ZONING REGULATIONS. (a) An airport zoning regulation must be reasonable and may impose a requirement or restriction only if the requirement or restriction is reasonably necessary to achieve the purposes of this chapter.

(b) In determining which airport zoning regulations to adopt, the governing body of a political subdivision or a joint airport zoning board shall consider, among other things:

(1) the character of the flying operations expected to be conducted at the airport;

(2) the nature of the terrain within the airport hazard area;

(3) the character of the neighborhood; and

(4) the current and possible uses of the property to be zoned.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.019. NONCONFORMING USES AND STRUCTURES. Except as provided by Section 241.035, airport zoning regulations may not require:

(1) changes in nonconforming land use existing on the date of the adoption of the regulations;

(2) the removal, lowering, or other change of a structure that does not conform to the regulations on the date of their adoption, including all phases or elements of a multiphase structure, regardless of whether actual construction has commenced, that received a determination of no hazard by the Federal Aviation

Administration under 14 C.F.R., Part 77, before the regulations were adopted;

(3) the removal, lowering, or other change of an object of natural growth that does not conform to the regulations on the date of their adoption; or

(4) any other interference in the continuation of a use that does not conform to the regulations on the date of their adoption.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.020. PERMITS. (a) Airport zoning regulations may require that a permit be obtained before:

(1) a new structure is constructed;

(2) an existing structure is substantially changed or repaired;

(3) a new use is established; or

(4) an existing use is substantially changed.

(b) Airport zoning regulations must provide that a permit be obtained from the administrative agency authorized to administer and enforce the regulations before:

(1) a nonconforming structure may be replaced, rebuilt, or substantially changed or repaired; or

(2) a nonconforming object of natural growth may be replaced, substantially changed, allowed to grow higher, or replanted.

(c) A permit may not allow:

(1) the establishment of an airport hazard;

(2) a nonconforming use to be made;

(3) a nonconforming structure or object of natural growth to become higher than it was at the time of the adoption of the airport zoning regulations relating to the structure or object of natural growth or at the time of the application for the permit; or

(4) a nonconforming structure, object of natural growth, or use to become a greater hazard to air navigation than it was at the time of the adoption of the airport zoning regulations relating to the structure, object of natural growth, or use or at the time of the application for the permit.

(d) Except as provided by Subsection (c), an application for a

permit shall be granted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. ADMINISTRATIVE AGENCY AND BOARD OF ADJUSTMENT

Sec. 241.031. ADMINISTRATIVE AGENCY. (a) Airport zoning regulations must provide for the administration and enforcement of the regulations by an administrative agency. The administrative agency may be:

(1) an agency created by the regulations;

(2) an existing official, board, or agency of the political subdivision adopting the regulations; or

(3) an existing official, board, or other agency of a political subdivision that participated in the creation of a joint airport zoning board adopting the regulations, if satisfactory to that political subdivision.

(b) The administrative agency may not be the board of adjustment or include any member of the board.

(c) The administrative agency shall hear and decide all applications for permits under Section 241.020.

(d) The agency may not exercise any of the powers delegated to the board of adjustment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.032. BOARD OF ADJUSTMENT. (a) Airport zoning regulations must provide for a board of adjustment.

(b) If a zoning board of appeals or adjustment exists, it may be designated as the board of adjustment under this chapter.

(c) If a zoning board of appeals or adjustment does not exist or is not designated as the board of adjustment under this chapter, a board of adjustment must be appointed. The board must consist of five members to be appointed for terms of two years. The appointing authority may remove a board member for cause on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(d) The concurring vote of four members of the board is necessary to:

(1) reverse an order, requirement, decision, or

determination of the administrative agency;

(2) decide in favor of an applicant on a matter on which the board is required to pass under an airport zoning regulation; or

(3) make a variation in an airport zoning regulation.

(e) The board shall adopt rules in accordance with the ordinance or resolution that created it.

(f) Meetings of the board are held at the call of the chairman and at other times as determined by the board. The chairman or acting chairman may administer oaths and compel the attendance of witnesses. All hearings of the board shall be open to the public.

(g) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.033. AUTHORITY OF BOARD. The board of adjustment shall:

(1) hear and decide an appeal, as provided by Section 241.036, from an order, requirement, decision, or determination made by the administrative agency in the enforcement of an airport zoning regulation;

(2) hear and decide special exceptions to the terms of an airport zoning regulation when the regulation requires the board to do so; and

(3) hear and decide specific variances under Section 241.034.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.034. VARIANCES. (a) A person who desires to erect or increase the height of a structure, permit the growth of an object of natural growth, or otherwise use property in violation of an airport zoning regulation, may apply to the board of adjustment for a variance from the regulation.

(b) The board shall allow a variance from an airport zoning

regulation if:

(1) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and

(2) the granting of the relief would:

(A) result in substantial justice being done;

(B) not be contrary to the public interest; and

(C) be in accordance with the spirit of the regulation and this chapter.

(c) The board may impose any reasonable conditions on the variance that it considers necessary to accomplish the purposes of this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.035. HAZARD MARKING AND LIGHTING. If the administrative agency or board of adjustment considers it reasonable in the circumstances and advisable to accomplish the purposes of this chapter, the agency or board may require in a permit or a variance granted under this chapter that the owner of a structure or object of natural growth allow the political subdivision, at its own expense, to install, operate, and maintain on the structure or object of natural growth any markers and lights necessary to indicate to flyers the presence of an airport hazard.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.036. APPEAL TO BOARD. (a) A decision of the administrative agency made in its administration of an airport zoning regulation may be appealed to the board of adjustment by:

(1) a person who is aggrieved by the decision;

(2) a taxpayer who is affected by the decision; or

(3) the governing body of a political subdivision or a joint airport zoning board that believes the decision is an improper application of the airport zoning regulation.

(b) The appellant must file with the board and the administrative agency a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board. On receiving the notice, the administrative agency shall immediately transmit to the board all the

papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the administrative agency certifies in writing to the board facts supporting the agency's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by an order of the board, after notice to the administrative agency, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.

(e) The board may reverse or affirm, in whole or in part, or modify the administrative agency's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination, and for that purpose the board has the same authority as the administrative agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. JUDICIAL REVIEW AND OTHER REMEDIES

Sec. 241.041. JUDICIAL REVIEW OF BOARD DECISION. (a) A person who is aggrieved or a taxpayer who is affected by a decision of a board of adjustment, or the governing body of a political subdivision or a joint airport zoning board that believes a decision of a board of adjustment is illegal, may present to a court of record a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality. The petition must be presented within 10 days after the date the decision is filed in the board's office.

(b) On the presentation of the petition, the court may grant a writ of certiorari directed to the board of adjustment to review the board's decision. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(c) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision that is appealed. The board is not required to return the

original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as provided by the writ.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.042. TRIAL BY COURT. (a) The court, in an appeal from a decision of a board of adjustment as provided by Section 241.041, shall try and determine the case de novo on the basis of the facts adduced in the trial of the case in the court. The court shall independently rule on the facts and the law as in an ordinary civil suit.

(b) The court has exclusive jurisdiction to reverse or affirm, in whole or in part, or modify the decision that is appealed and, if necessary, may order further proceedings by the board.

(c) Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.043. EFFECT OF HOLDING OF THE COURT. If the court holds that an airport zoning regulation, although generally reasonable, interferes with the use or enjoyment of a particular structure or parcel of land to such an extent that, or is so onerous in its application to a particular structure or parcel of land that, the application of the regulation constitutes a taking or deprivation of property in violation of the state or federal constitution, the holding does not affect the application of the regulation to any other structure or parcel of land.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.044. ADDITIONAL REMEDIES. (a) A political subdivision or joint airport zoning board adopting airport zoning regulations may bring an action in a court of competent jurisdiction to prevent, restrain, correct, or abate a violation of:

(1) this chapter;

(2) an airport zoning regulation adopted by the political subdivision or board; or

(3) an order or ruling made in connection with the administration or enforcement of an airport zoning regulation adopted by the political subdivision or board.

(b) The court shall grant any relief, including an injunction which may be mandatory, as may be proper under all the facts and circumstances of the case to accomplish the purposes of this chapter and the regulations adopted and orders and rulings made under it.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 241.901. CONFLICT OF AN AIRPORT HAZARD AREA ZONING REGULATION WITH ANOTHER REGULATION. (a) If an airport hazard area zoning regulation conflicts with any other regulation applicable to the same area, the more stringent limitation or requirement controls.

(b) Subsection (a) applies to any conflict with respect to the height of a structure or object of natural growth or any other matter.

(c) Subsection (a) applies to any regulation that conflicts with an airport hazard area zoning regulation whether the regulation was adopted by the political subdivision that adopted the airport zoning regulation or by another political subdivision.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.902. CONFLICT OF AN AIRPORT COMPATIBLE LAND USE ZONING REGULATION WITH ANOTHER REGULATION. (a) If an airport compatible land use zoning regulation conflicts with any other regulation applicable to the same area, the airport compatible land use zoning regulation controls.

(b) Subsection (a) applies to any conflict with respect to the use of land or any other matter.

(c) Subsection (a) applies to any regulation that conflicts with an airport compatible land use zoning regulation, whether the regulation was adopted by the political subdivision that adopted the airport compatible land use zoning regulation or by another political subdivision.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 241.903. ACQUISITION OF AIR RIGHTS OR OTHER PROPERTY. (a) A political subdivision may acquire from a person or other political subdivision an air right, aviation easement, or other estate or interest in property or in a nonconforming structure or use if:

(1) the acquisition is necessary to accomplish the purposes of this chapter;

(2) the property or nonconforming structure or use is located within the political subdivision, the political subdivision owns the airport, or the political subdivision is served by the airport; and

(3)(A) the political subdivision desires to remove, lower, or terminate the nonconforming structure or use;

(B) airport zoning regulations are not sufficient to provide necessary approach protection because of constitutional limitations; or

(C) the acquisition of a property right is more advisable than an airport zoning regulation in providing necessary approach protection.

(b) An acquisition under this section may be by purchase, grant, or condemnation in the manner provided by Subchapter B, Chapter 21, Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 242. AUTHORITY OF MUNICIPALITY AND COUNTY TO REGULATE SUBDIVISIONS IN AND OUTSIDE MUNICIPALITY'S EXTRATERRITORIAL JURISDICTION

Sec. 242.001. REGULATION OF SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION GENERALLY. (a) This section applies only to a county operating under Sections 232.001-232.005 or Subchapter B, C, or E, Chapter 232, and a municipality that has extraterritorial jurisdiction in that county. Subsections (b)-(g) do not apply:

(1) within a county that contains extraterritorial jurisdiction of a municipality with a population of 1.9 million or more;

(2) within a county within 50 miles of an international

border, or to which Subchapter C, Chapter 232, applies; or

(3) to a tract of land subject to a development agreement under Subchapter G, Chapter 212, or other provisions of this code.

(b) For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of the governmental entity authorized under Subsection (c) or (d) to regulate subdivisions in the area.

(c) Except as provided by Subsections (d)(3) and (4), a municipality and a county may not both regulate subdivisions and approve related permits in the extraterritorial jurisdiction of a municipality after an agreement under Subsection (d) is executed. The municipality and the county shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction. For a municipality in existence on September 1, 2001, the municipality and county shall enter into a written agreement under this subsection on or before April 1, 2002. For a municipality incorporated after September 1, 2001, the municipality and county shall enter into a written agreement under this subsection not later than the 120th day after the date the municipality incorporates. On reaching an agreement, the municipality and county shall certify that the agreement complies with the requirements of this chapter. The municipality and the county shall adopt the agreement by order, ordinance, or resolution. The agreement must be amended by the municipality and the county if necessary to take into account an expansion or reduction in the extraterritorial jurisdiction of the municipality. The municipality shall notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction. Any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.009 or Chapter 232 does not affect any rights accrued under Chapter 245. The approval of the plat, any permit, a plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the municipality.

(d) An agreement under Subsection (c) may grant the authority

to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of a municipality as follows:

(1) the municipality may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities;

(2) the county may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Sections 232.001-232.005, Subchapter B or C, Chapter 232, and other statutes applicable to counties;

(3) the municipality and the county may apportion the area within the extraterritorial jurisdiction of the municipality with the municipality regulating subdivision plats and approving related permits in the area assigned to the municipality and the county regulating subdivision plats and approving related permits in the area assigned to the county; or

(4) the municipality and the county may enter into an interlocal agreement that:

(A) establishes one office that is authorized to:

(i) accept plat applications for tracts of land located in the extraterritorial jurisdiction;

(ii) collect municipal and county plat application fees in a lump-sum amount; and

(iii) provide applicants one response indicating approval or denial of the plat application; and

(B) establishes a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land as authorized by Chapter 212, Sections 232.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction.

(e) In an unincorporated area outside the extraterritorial jurisdiction of a municipality, the municipality may not regulate subdivisions or approve the filing of plats, except as provided by The Interlocal Cooperation Act, Chapter 791, Government Code.

(f) If a certified agreement between a county and municipality as required by Subsection (c) is not in effect on or before the applicable date prescribed by Section 242.0015(a), the municipality

and the county must enter into arbitration as provided by Section 242.0015. If the arbitrator or arbitration panel, as applicable, has not reached a decision in the 60-day period as provided by Section 242.0015, the arbitrator or arbitration panel, as applicable, shall issue an interim decision regarding the regulation of plats and subdivisions and approval of related permits in the extraterritorial jurisdiction of the municipality. The interim decision shall provide for a single set of regulations and authorize a single entity to regulate plats and subdivisions. The interim decision remains in effect only until the arbitrator or arbitration panel reaches a final decision.

(g) If a regulation or agreement adopted under this section relating to plats and subdivisions of land or subdivision development establishes a plan for future roads that conflicts with a proposal or plan for future roads adopted by a metropolitan planning organization, the proposal or plan of the metropolitan planning organization prevails.

(h) This subsection applies only to a county to which Subsections (b)-(g) do not apply, except that this subsection does not apply to a county subject to Section 242.002 or a county that has entered into an agreement under Section 242.003. For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a plat may not be filed with the county clerk without the approval of both the municipality and the county. If a municipal regulation and a county regulation relating to plats and subdivisions of land conflict, the more stringent regulation prevails. However, if one governmental entity requires a plat to be filed for the subdivision of a particular tract of land in the extraterritorial jurisdiction of the municipality and the other governmental entity does not require the filing of a plat for that subdivision, the authority responsible for approving plats for the governmental entity that does not require the filing shall issue on request of the subdivider a written certification stating that a plat is not required to be filed for that subdivision of the land. The certification must be attached to a plat required to be filed under this subsection.

(i) Property subject to pending approval of a preliminary or final plat application filed after September 1, 2002, that is released from the extraterritorial jurisdiction of a municipality shall be subject only to county approval of the plat application and

related permits and county regulation of that plat. This subsection does not apply to the simultaneous exchange of extraterritorial jurisdiction between two or more municipalities or an exchange of extraterritorial jurisdiction that is contingent on the subsequent approval by the releasing municipality.

(j) If an area subject to an agreement under Subsection (c) is removed from a municipality's extraterritorial jurisdiction, the agreement is terminated as to the area and the county is the political subdivision authorized to regulate subdivisions in the removed area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(c), 87(n), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1428, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 26, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 736, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1028, Sec. 1, eff. Sept. 2001; Acts 2003, 78th Leg., ch. 523, Sec. 1, 3(a), 4, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 971 (H.B. 1970), Sec. 1, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 106 (S.B. 2038), Sec. 3, eff. September 1, 2023.

Sec. 242.0015. ARBITRATION REGARDING SUBDIVISION REGULATION AGREEMENT. (a) This section applies only to a county and a municipality that are required to make an agreement as described under Section 242.001(f). If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends 3.5 miles or more from the corporate boundaries of the municipality is not in effect on or before January 1, 2004, the parties must arbitrate the disputed issues. If a certified agreement between a county and a municipality with an extraterritorial jurisdiction that extends less than 3.5 miles from the corporate boundaries of the municipality is not in effect on or before January 1, 2006, the parties must arbitrate the disputed issues. A party may not refuse to participate in arbitration requested under this section. An arbitration decision under this section is binding on the parties.

(b) The county and the municipality must agree on an individual

to serve as arbitrator. If the county and the municipality cannot agree on an individual to serve as arbitrator, the county and the municipality shall each select an arbitrator and the arbitrators selected shall select a third arbitrator.

(c) The third arbitrator selected under Subsection (b) presides over the arbitration panel.

(d) Not later than the 30th day after the date the county and the municipality are required to have an agreement in effect under Section 242.001(f), the arbitrator or arbitration panel, as applicable, must be selected.

(e) The authority of the arbitrator or arbitration panel is limited to issuing a decision relating only to the disputed issues between the county and the municipality regarding the authority of the county or municipality to regulate plats, subdivisions, or development plans.

(f) Each party is equally liable for the costs of an arbitration conducted under this section.

(g) The arbitrator or arbitration panel, as applicable, shall render a decision under this section not later than the 60th day after the date the arbitrator or arbitration panel is selected. If after a good faith effort the arbitrator or panel has not reached a decision as provided under this subsection, the arbitrator or panel shall continue to arbitrate the matter until the arbitrator or panel reaches a decision.

(h) A municipality and a county may not arbitrate the subdivision of an individual plat under this section.

Added by Acts 2003, 78th Leg., ch. 523, Sec. 5, eff. June 20, 2003.

Sec. 242.002. REGULATION OF SUBDIVISIONS IN POPULOUS COUNTIES OR CONTIGUOUS COUNTIES. (a) This section applies only to a county operating under Section 232.006.

(b) For an area in a municipality's extraterritorial jurisdiction, as defined by Section 212.001, a subdivision plat may not be filed with the county clerk without the approval of the municipality.

(c) In the extraterritorial jurisdiction of a municipality, the municipality has exclusive authority to regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to

municipalities.

(d) In an unincorporated area outside the extraterritorial jurisdiction of a municipality, the municipality may not regulate subdivisions or approve the filing of plats, except as provided by The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 46(d), 87(o), eff. Aug. 28, 1989; Acts 2001, 77th Leg., Ch. 669, Sec. 77, eff. Sept. 1, 2001.

Sec. 242.003. AUTHORITY OF CERTAIN BORDER COUNTIES AND MUNICIPALITIES TO REGULATE SUBDIVISIONS IN EXTRATERRITORIAL JURISDICTION BY AGREEMENT. (a) This section applies only to:

(1) a county that is located on the international border and contains a municipality with a population of 500,000 or more; and

(2) a municipality that has extraterritorial jurisdiction, as defined by Section 212.001, in the county described by Subdivision (1).

(b) A county and a municipality may enter into an agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of the municipality in a manner consistent with Section 242.001(d). The county and the municipality shall adopt the agreement by order, ordinance, or resolution.

(c) The agreement must be amended by the county and the municipality if necessary to take into account an expansion or reduction in the extraterritorial jurisdiction of the municipality. The municipality shall notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction. Any expansion or reduction in the municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the municipality or the county or that was previously approved under Section 212.009 or Chapter 232 does not affect any rights accrued under Chapter 245. The approval of the plat, any permit, a plat application, or an application for a related permit remains effective as provided by Chapter 245 regardless of the change in designation as extraterritorial jurisdiction of the

municipality.

(d) In an unincorporated area outside the extraterritorial jurisdiction of a municipality, the municipality may not regulate subdivisions or approve the filing of plats, except as provided by Chapter 791, Government Code.

(e) Property subject to pending approval of a preliminary or final plat is governed by Section 242.001(i).

Added by Acts 2013, 83rd Leg., R.S., Ch. 971 (H.B. 1970), Sec. 2, eff. June 14, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 151, eff. September 1, 2023.

CHAPTER 243. MUNICIPAL AND COUNTY AUTHORITY TO REGULATE SEXUALLY ORIENTED BUSINESS

Sec. 243.001. PURPOSE; EFFECT ON OTHER REGULATORY AUTHORITY. (a) The legislature finds that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. The purpose of this chapter is to provide local governments a means of remedying this problem.

(b) This chapter does not diminish the authority of a local government to regulate sexually oriented businesses with regard to any matters.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.002. DEFINITION. In this chapter, "sexually oriented business" means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 507, Sec. 4, eff. June 13, 1991.

Sec. 243.003. AUTHORITY TO REGULATE. (a) A municipality by ordinance or a county by order of the commissioners court may adopt regulations regarding sexually oriented businesses as the municipality or county considers necessary to promote the public health, safety, or welfare.

(b) A regulation adopted by a municipality applies only inside the municipality's corporate limits.

(c) A regulation adopted by a county applies only to the parts of the county outside the corporate limits of a municipality.

(d) In adopting a regulation, a municipality that has in effect a comprehensive zoning ordinance adopted under Chapter 211 must comply with all applicable procedural requirements of that chapter if the regulation is within the scope of that chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.0031. AUTHORITY TO REGULATE CERTAIN SEXUALLY ORIENTED PERFORMANCES. (a) In this section, "sexually oriented performance" has the meaning assigned by Section 43.28, Penal Code.

(b) Subject to Subsection (c), a municipality or county may regulate sexually oriented performances as the municipality or county considers necessary to promote the public health, safety, or welfare.

(c) A municipality or county may not authorize a sexually oriented performance:

(1) on public property; or

(2) in the presence of an individual younger than 18 years of age.

(d) Except as provided by Subsection (c), this section does not limit the authority of a municipality to license, tax, suppress, prevent, or otherwise regulate theatrical or other exhibitions, shows, or amusements under Section 215.032.

Added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 2, eff. September 1, 2023.

Sec. 243.004. EXEMPT BUSINESS. The following are exempt from regulation under this chapter:

(1) a bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store under Section 243.002;

(2) a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or

(3) a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.005. BUSINESS LICENSED UNDER ALCOHOLIC BEVERAGE CODE: BUSINESS HAVING COIN-OPERATED MACHINES. (a) A business is not exempt from regulation under this chapter because it holds a license or permit under the Alcoholic Beverage Code authorizing the sale or service of alcoholic beverages or because it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(b) A regulation adopted under this chapter may not discriminate against a business on the basis of whether the business holds a license or permit under the Alcoholic Beverage Code or on the basis of whether it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(c) This chapter does not affect the existing preemption by the state of the regulation of alcoholic beverages and the alcoholic beverage industry as provided by Section 1.06, Alcoholic Beverage Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.006. SCOPE OF REGULATION. (a) The location of sexually oriented businesses may be:

(1) restricted to particular areas; or

(2) prohibited within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually oriented business.

(b) A municipality or county may restrict the density of sexually oriented businesses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.007. LICENSES OR PERMITS. (a) A municipality or county may require that an owner or operator of a sexually oriented business obtain a license or other permit or renew a license or other permit on a periodic basis for the operation of a sexually oriented business. An application for a license or other permit must be made in accordance with the regulations adopted by the municipality or county.

(b) The municipal or county regulations adopted under this chapter may provide for the denial, suspension, or revocation of a license or other permit by the municipality or county.

(c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a municipality or county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 417, Sec. 1, eff. June 7, 1991.

Sec. 243.0075. NOTICE BY SIGN. (a) An applicant for a license or permit issued under Section 243.007 for a location not currently licensed or permitted shall, not later than the 60th day before the date the application is filed, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the applicant.

(b) A person who intends to operate a sexually oriented business in the jurisdiction of a municipality or county that does not require the owner or operator of a sexually oriented business to obtain a license or permit shall, not later than the 60th day before the date the person intends to begin operation of the business, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the owner and operator.

(c) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The municipality or county in which the sexually oriented business is to be located may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

Added by Acts 1999, 76th Leg., ch. 1109, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 648 (S.B. 1030), Sec. 1, eff. June 17, 2011.

Sec. 243.008. INSPECTION. A municipality or county may inspect a sexually oriented business to determine compliance with this chapter and regulations adopted under this chapter by the municipality or county.

Added by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.009. FEES. A municipality or county may impose fees on applicants for a license or other permit issued under this chapter or for the renewal of the license or other permit. The fees must be based on the cost of processing the applications and investigating the applicants.

Added by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.010. ENFORCEMENT. (a) A municipality or county may

sue in the district court for an injunction to prohibit the violation of a regulation adopted under this chapter.

(b) A person commits an offense if the person violates a municipal or county regulation adopted under this chapter. An offense under this subsection is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(p), eff. Aug. 28, 1989. Renumbered from Sec. 243.008 and amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.011. EFFECT ON OTHER LAWS. This chapter does not legalize anything prohibited under the Penal Code or other state law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 243.009 by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

CHAPTER 244. LOCATION OF CERTAIN FACILITIES AND SHELTERS

SUBCHAPTER A. CORRECTIONAL OR REHABILITATION FACILITY

Sec. 244.001. DEFINITIONS. In this subchapter:

(1) "Correctional or rehabilitation facility" means a probation or parole office or a residential facility that:

(A) is operated by an agency of the state, a political subdivision of the state, or a private vendor operating under a contract with an agency of the state or a political subdivision of the state; and

(B) houses persons convicted of misdemeanors or felonies or children found to have engaged in delinquent conduct, regardless of whether the persons are housed in the residential facility:

(i) while serving a sentence of confinement following conviction of an offense;

(ii) as a condition of probation, parole, or mandatory supervision; or

(iii) under a court order for out-of-home placement under Title 3, Family Code, other than in a foster home operated under a contract with the juvenile board of the county in which the foster home is located or under a contract with the Texas Juvenile

Justice Department.

(2) "Residential area" means:

(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal permitted land use is for private residences;

(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(C) a subdivision for which a plat is recorded in the real property records of the county and a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

Added by Acts 1997, 75th Leg., ch. 1086, Sec. 46, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1253, Sec. 4, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 139, eff. September 1, 2015.

Sec. 244.002. NOTICE OF PROPOSED LOCATION. (a) An agency of the state, a political subdivision of the state, or a private vendor operating under a contract with an agency or political subdivision of the state that proposes to construct or operate a correctional or rehabilitation facility within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship shall:

(1) provide written notice to:

(A) the commissioners court of any county with an unincorporated area that includes all or part of the land within 1,000 feet of the proposed correctional or rehabilitation facility; and

(B) the governing body of any municipality that includes within its boundaries all or part of the land within 1,000 feet of the proposed correctional or rehabilitation facility; and

(2) post the notice required by Subsection (d).

(b) An entity required to give notice under Subsection (a) shall give notice not later than the 60th day before the date the entity begins construction or operation of the correctional or rehabilitation facility, whichever date is earlier. The entity shall include in the notice:

(1) a statement of the entity's intent to construct or operate a correctional or rehabilitation facility in an area described by Subsection (a);

(2) a description of the proposed location of the facility; and

(3) a statement that this subchapter governs the procedure for notice of and consent to the facility.

(c) For purposes of this subchapter, distance is measured along the shortest straight line between the nearest property line of the correctional or rehabilitation facility and the nearest property line of the residential area, school, park, recreation area, or place of worship, as appropriate.

(d) An entity described by Subsection (a) shall prominently post an outdoor sign at the proposed location of the correctional or rehabilitation facility stating that a correctional or rehabilitation facility is intended to be located on the premises and providing the name and business address of the entity. The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The municipality or county in which the correctional or rehabilitation facility is to be located may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

Added by Acts 1997, 75th Leg., ch. 1086, Sec. 46, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1109, Sec. 4, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1253, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 119, Sec. 1, eff. Sept. 1, 2003.

Sec. 244.003. PROXIMITY OF CORRECTIONAL OR REHABILITATION FACILITY. (a) Unless local consent is denied under Section 244.004, an agency of the state, a political subdivision of the state, or a private vendor operating under a contract with an agency or political subdivision of the state may operate a correctional or rehabilitation

facility within 1,000 feet of a residential area, a primary or secondary school, property designated as a public park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship.

(b) The governing body of a church, synagogue, or other place of worship may waive the distance requirements of Section 244.002 between a correctional or rehabilitation facility and the place of worship by filing an acknowledged written statement of the waiver in the deed records of the county in which the facility is located.

Added by Acts 1997, 75th Leg., ch. 1086, Sec. 46, eff. Sept. 1, 1997.

Sec. 244.004. LOCAL CONSENT. (a) Local consent to the operation of a correctional or rehabilitation facility at a location within 1,000 feet of a residential area, a primary or secondary school, property designated as a park or public recreation area by the state or a political subdivision of the state, or a church, synagogue, or other place of worship is granted unless, not later than the 60th day after the date on which notice is received by a commissioners court or governing body of a municipality under Section 244.002(a), the commissioners court or governing body, as appropriate, determines by resolution after a public hearing that the operation of a correctional or rehabilitation facility at the proposed location is not in the best interest of the county or municipality, as appropriate.

(b) The public hearing requirement established under Subsection (a) may be met by a public meeting held under Section 508.119 or 509.010, Government Code, if:

(1) the Texas Department of Criminal Justice receives written approval from the commissioners court of a county or governing body of a municipality allowing the public meeting to satisfy the public hearing requirement of this section; and

(2) during the public meeting, a determination is made as to whether operating the facility in the proposed location would be in the best interest of the county or municipality.

(c) If the public hearing requirement established under Subsection (a) is met in the manner described by Subsection (b), the commissioners court of a county or governing body of a municipality may adopt a resolution under Subsection (a) without holding a public

hearing under that subsection. The commissioners court or governing body, as appropriate, retains the discretion to hold a separate public hearing under Subsection (a) as the commissioners court or governing body considers necessary or appropriate.

(d) A commissioners court or governing body of a municipality may rescind a resolution adopted under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 1086, Sec. 46, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 119, Sec. 2, eff. Sept. 1, 2003.

Sec. 244.006. EXEMPTIONS. This subchapter does not apply to the operation of a correctional or rehabilitation facility at a location subject to this subchapter if:

(1) on September 1, 1997, the correctional or rehabilitation facility was in operation, under construction, under contract for operation or construction, or planned for construction at the location on land owned or leased by an agency or political subdivision of the state and designated for use as a correctional or rehabilitation facility;

(2) the correctional or rehabilitation facility was in operation or under construction before the establishment of a residential area the location of which makes the facility subject to this subchapter;

(3) the correctional or rehabilitation facility is a temporary correctional or rehabilitation facility that will be operated at the location for less than one year;

(4) the correctional or rehabilitation facility is required to obtain a special use permit or a conditional use permit from the municipality in which the facility is located before beginning operation;

(5) the correctional or rehabilitation facility is an expansion of a facility operated by the correctional institutions division of the Texas Department of Criminal Justice for the imprisonment of individuals convicted of felonies other than state jail felonies or by the Texas Juvenile Justice Department;

(6) the correctional or rehabilitation facility is a county jail or a pre-adjudication or post-adjudication juvenile detention facility operated by a county or county juvenile board;

(7) the facility is:

(A) a juvenile probation office located at, and operated in conjunction with, a juvenile justice alternative education center; and

(B) used exclusively by students attending the juvenile justice alternative education center;

(8) the facility is a public or private institution of higher education or vocational training to which admission is open to the general public;

(9) the facility is operated primarily as a treatment facility for juveniles under contract with the Health and Human Services Commission, the Department of State Health Services, a local mental health authority, or a local intellectual and developmental disability authority;

(10) the facility is operated as a juvenile justice alternative education program;

(11) the facility:

(A) is not operated primarily as a correctional or rehabilitation facility; and

(B) only houses persons or children described by Section 244.001(1)(B) for a purpose related to treatment or education; or

(12) the facility is a probation or parole office located in a commercial use area.

Added by Acts 1997, 75th Leg., ch. 1086, Sec. 46, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1253, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.129, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 140, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 10.01, eff. September 1, 2023.

Sec. 244.007. CONFLICT WITH OTHER LAW. To the extent of any conflict between this subchapter and Sections 508.119 and 509.010, Government Code, this subchapter prevails.

Added by Acts 1997, 75th Leg., ch. 1086, Sec. 46, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 1253, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 119, Sec. 3, eff. Sept. 1, 2003.

SUBCHAPTER B. SHELTER FOR HOMELESS INDIVIDUALS

Sec. 244.021. DEFINITION. In this subchapter, "shelter for homeless individuals" means a supervised private facility that provides temporary living accommodations for homeless individuals.

Added by Acts 1999, 76th Leg., ch. 1253, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.022. APPLICATION OF SUBCHAPTER. This subchapter applies only to construction or operation of a shelter for homeless individuals that is located or proposed to be located within the boundaries of a municipality with a population of 1.6 million or more.

Added by Acts 1999, 76th Leg., ch. 1253, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.023. RESTRICTION. Unless municipal consent is granted under Section 244.025, a person may not construct or operate a shelter for homeless individuals within 1,000 feet of another shelter for homeless individuals or a primary or secondary school.

Added by Acts 1999, 76th Leg., ch. 1253, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.024. NOTICE. (a) A person who intends to construct or operate a shelter for homeless individuals subject to Section 244.023 shall:

(1) post notice of the proposed location of the shelter at that location; and

(2) provide notice of the proposed location of the shelter to the governing body of the municipality within the boundaries of which the shelter is proposed to be located.

(b) The person shall post and provide the notice required by Subsection (a) before the 61st day before the date the person begins construction or operation of the shelter for homeless individuals, whichever date is earlier.

Added by Acts 1999, 76th Leg., ch. 1253, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.025. MUNICIPAL CONSENT. (a) Municipal consent to the construction or operation of a shelter for homeless individuals subject to Section 244.023 is considered granted unless, before the 61st day after the date notice is received by the governing body of the municipality under Section 244.024(a)(2), the governing body determines by resolution after a public hearing that the construction or operation of a shelter at the proposed location is not in the best interest of the municipality.

(b) The governing body of the municipality may rescind a resolution adopted under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 1253, Sec. 3, eff. Sept. 1, 1999.

Sec. 244.026. DISTANCE MEASUREMENT. For purposes of this subchapter, distance is measured along the shortest straight line between the nearest property line of the shelter for homeless individuals and the nearest property line of another shelter for homeless individuals or a primary or secondary school, as appropriate.

Added by Acts 1999, 76th Leg., ch. 1253, Sec. 3, eff. Sept. 1, 1999.

CHAPTER 245. ISSUANCE OF LOCAL PERMITS

Sec. 245.001. DEFINITIONS. In this chapter:

(1) "Permit" means a license, certificate, approval, registration, consent, permit, contract or other agreement for construction related to, or provision of, service from a water or wastewater utility owned, operated, or controlled by a regulatory agency, or other form of authorization required by law, rule, regulation, order, or ordinance that a person must obtain to perform an action or initiate, continue, or complete a project for which the permit is sought.

(2) "Political subdivision" means a political subdivision of the state, including a county, a school district, or a municipality.

(3) "Project" means an endeavor over which a regulatory

agency exerts its jurisdiction and for which one or more permits are required to initiate, continue, or complete the endeavor.

(4) "Regulatory agency" means the governing body of, or a bureau, department, division, board, commission, or other agency of, a political subdivision acting in its capacity of processing, approving, or issuing a permit.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 6 (S.B. 848), Sec. 1, eff. April 27, 2005.

Sec. 245.002. UNIFORMITY OF REQUIREMENTS. (a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property or plat application is filed with a regulatory agency.

(a-1) Rights to which a permit applicant is entitled under this chapter accrue on the filing of an original application or plan for development or plat application that gives the regulatory agency fair notice of the project and the nature of the permit sought. An application or plan is considered filed on the date the applicant delivers the application or plan to the regulatory agency or deposits the application or plan with the United States Postal Service by certified mail addressed to the regulatory agency. A certified mail receipt obtained by the applicant at the time of deposit is prima facie evidence of the date the application or plan was deposited with the United States Postal Service.

(b) If a series of permits is required for a project, the orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for the completion of the project. All permits required for the project

are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project.

(c) After an application for a project is filed, a regulatory agency may not shorten the duration of any permit required for the project.

(d) Notwithstanding any provision of this chapter to the contrary, a permit holder may take advantage of recorded subdivision plat notes, recorded restrictive covenants required by a regulatory agency, or a change to the laws, rules, regulations, or ordinances of a regulatory agency that enhance or protect the project, including changes that lengthen the effective life of the permit after the date the application for the permit was made, without forfeiting any rights under this chapter.

(e) A regulatory agency may provide that a permit application expires on or after the 45th day after the date the application is filed if:

(1) the applicant fails to provide documents or other information necessary to comply with the agency's technical requirements relating to the form and content of the permit application;

(2) the agency provides to the applicant not later than the 10th business day after the date the application is filed written notice of the failure that specifies the necessary documents or other information and the date the application will expire if the documents or other information is not provided; and

(3) the applicant fails to provide the specified documents or other information within the time provided in the notice.

(f) This chapter does not prohibit a regulatory agency from requiring compliance with technical requirements relating to the form and content of an application in effect at the time the application was filed even though the application is filed after the date an applicant accrues rights under Subsection (a-1).

(g) Notwithstanding Section 245.003, the change in law made to Subsection (a) and the addition of Subsections (a-1), (e), and (f) by S.B. No. 848, Acts of the 79th Legislature, Regular Session, 2005, apply only to a project commenced on or after the effective date of that Act.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 6 (S.B. 848), Sec. 2, eff. April 27, 2005.

Sec. 245.003. APPLICABILITY OF CHAPTER. This chapter applies only to a project in progress on or commenced after September 1, 1997. For purposes of this chapter a project was in progress on September 1, 1997, if:

(1) before September 1, 1997:

(A) a regulatory agency approved or issued one or more permits for the project; or

(B) an application for a permit for the project was filed with a regulatory agency; and

(2) on or after September 1, 1997, a regulatory agency enacts, enforces, or otherwise imposes:

(A) an order, regulation, ordinance, or rule that in effect retroactively changes the duration of a permit for the project;

(B) a deadline for obtaining a permit required to continue or complete the project that was not enforced or did not apply to the project before September 1, 1997; or

(C) any requirement for the project that was not applicable to or enforced on the project before September 1, 1997.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.

Sec. 245.004. EXEMPTIONS. This chapter does not apply to:

(1) a permit that is at least two years old, is issued for the construction of a building or structure intended for human occupancy or habitation, and is issued under laws, ordinances, procedures, rules, or regulations adopting only:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; or

(B) local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons;

(2) municipal zoning regulations that do not affect landscaping or tree preservation, open space or park dedication, property classification, lot size, lot dimensions, lot coverage, or building size or that do not change development permitted by a restrictive covenant required by a municipality;

(3) regulations that specifically control only the use of land in a municipality that does not have zoning and that do not affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, or building size;

(4) regulations for sexually oriented businesses;

(5) municipal or county ordinances, rules, regulations, or other requirements affecting colonias;

(6) fees imposed in conjunction with development permits;

(7) regulations for annexation that do not affect landscaping or tree preservation or open space or park dedication;

(8) regulations for utility connections;

(9) regulations to prevent imminent destruction of property or injury to persons from flooding that are effective only within a flood plain established by a federal flood control program and enacted to prevent the flooding of buildings intended for public occupancy;

(10) construction standards for public works located on public lands or easements; or

(11) regulations to prevent the imminent destruction of property or injury to persons if the regulations do not:

(A) affect landscaping or tree preservation, open space or park dedication, lot size, lot dimensions, lot coverage, building size, residential or commercial density, or the timing of a project; or

(B) change development permitted by a restrictive covenant required by a municipality.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by Acts 2003, 78th Leg., ch. 646, Sec. 1.
Amended by:
Acts 2005, 79th Leg., Ch. 31 (S.B. 574), Sec. 1, eff. September 1, 2005.

Sec. 245.005. DORMANT PROJECTS. (a) After the first

anniversary of the effective date of this chapter, a regulatory agency may enact an ordinance, rule, or regulation that places an expiration date on a permit if as of the first anniversary of the effective date of this chapter: (i) the permit does not have an expiration date; and (ii) no progress has been made towards completion of the project. Any ordinance, rule, or regulation enacted pursuant to this subsection shall place an expiration date of no earlier than the fifth anniversary of the effective date of this chapter.

(b) A regulatory agency may enact an ordinance, rule, or regulation that places an expiration date of not less than two years on an individual permit if no progress has been made towards completion of the project. Notwithstanding any other provision of this chapter, any ordinance, rule, or regulation enacted pursuant to this section shall place an expiration date on a project of no earlier than the fifth anniversary of the date the first permit application was filed for the project if no progress has been made towards completion of the project. Nothing in this subsection shall be deemed to affect the timing of a permit issued solely under the authority of Chapter 366, Health and Safety Code, by the Texas Commission on Environmental Quality or its authorized agent.

(c) Progress towards completion of the project shall include any one of the following:

(1) an application for a final plat or plan is submitted to a regulatory agency;

(2) a good-faith attempt is made to file with a regulatory agency an application for a permit necessary to begin or continue towards completion of the project;

(3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

(4) fiscal security is posted with a regulatory agency to ensure performance of an obligation required by the regulatory agency; or

(5) utility connection fees or impact fees for the project have been paid to a regulatory agency.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 31 (S.B. 574), Sec. 1, eff. September 1, 2005.

Sec. 245.006. ENFORCEMENT OF CHAPTER. (a) This chapter may be enforced only through mandamus or declaratory or injunctive relief.

(b) A political subdivision's immunity from suit is waived in regard to an action under this chapter.

(c) A court may award court costs and reasonable and necessary attorney's fees to the prevailing party in an action under this chapter.

Added by Acts 1999, 76th Leg., ch. 73, Sec. 2, eff. May 11, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 31 (S.B. 574), Sec. 1, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 264 (H.B. 1704), Sec. 1, eff. May 29, 2017.

Sec. 245.007. CONSTRUCTION AND RENOVATION WORK ON COUNTY-OWNED BUILDINGS AND FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a building or facility that is owned by a county with a population of 3.3 million or more and is located within the boundaries of another political subdivision.

(b) A political subdivision may not require a county to notify the political subdivision or obtain a building permit for any new construction or any renovation of a building or facility owned by the county if the construction or renovation work is supervised and inspected by an engineer or architect licensed in this state.

(c) This section does not exempt a county from complying with the building standards of the political subdivision during the construction or renovation of the building or facility.

Added by Acts 2005, 79th Leg., Ch. 532 (H.B. 960), Sec. 1, eff. June 17, 2005.

CHAPTER 246. CONSTRUCTION OF CERTAIN TELECOMMUNICATIONS FACILITIES

Sec. 246.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Public Utility Commission of Texas.

(2) "Critical facility" means a central office that contains:

(A) a switching unit for a telecommunications system that provides service to the general public; and

(B) equipment and operating arrangements necessary for terminating and interconnecting:

(i) customer lines and trunks; or

(ii) trunks.

(3) "Impervious lot coverage regulation" means an ordinance, regulation, rule, or other enactment by a county, municipality, or other authority that limits the development of real property based on the amount of impervious lot coverage to be constructed. The term does not include a flood control regulation.

(4) "Regulating authority" means a county, municipality, or other political subdivision of this state that has adopted an impervious lot coverage regulation or a sedimentation, retention, or erosion regulation by ordinance, order, resolution, rule, or other enactment.

(5) "Sedimentation, retention, or erosion regulation" means an ordinance, regulation, rule, or other enactment by a county, municipality, or other authority that limits or regulates the development of real property based on the development's effect on water quality resulting from sedimentation, retention, or erosion. The term does not include a:

(A) flood control regulation; or

(B) requirement for silt fences, vegetative cover, or other similar requirement.

(6) "Telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 210, Sec. 1, eff. Sept. 1, 2001.

Sec. 246.002. APPLICABILITY. This chapter applies only to a critical facility that:

(1) existed on April 1, 2001; and

(2) is being expanded to provide space and facilities for

competing telecommunications utilities because of requirements in:

(A) the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended; or

(B) Subchapters G and H, Chapter 60, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 210, Sec. 1, eff. Sept. 1, 2001.

Sec. 246.003. REQUEST PROCESS. (a) A regulating authority that receives a written request by a telecommunications utility to expand a critical facility on real property owned, leased, or occupied by the telecommunications utility in an area governed by impervious lot coverage regulation or sedimentation, retention, or erosion regulation shall approve or deny the request not later than the 60th day after the date the request is received.

(b) The regulating authority shall approve the request unless the regulating authority finds, after a hearing, that:

(1) additional, suitable vacant land contiguous with the proposed building site that is sufficient to satisfy the impervious lot coverage regulation or sedimentation, retention, or erosion regulation is not available, except:

(A) through the use of condemnation; or

(B) at a price that exceeds the average fair market value of vacant land within a one-mile radius of the property that is the subject of the request under Subsection (a); or

(2) the telecommunications utility did not provide an affidavit containing the statement described in Subdivision (1).

(c) The regulating authority shall provide written notice of a denial. The notice must specify the findings on which the authority relied in denying the request.

(d) If a regulating authority does not make a decision before the deadline prescribed by Subsection (a):

(1) the request is approved; and

(2) the regulating authority may not apply the authority's impervious lot coverage regulations or sedimentation, retention, or erosion regulations to the expansion that is the subject of the request under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 210, Sec. 1, eff. Sept. 1, 2001.

Sec. 246.004. COMMISSION JURISDICTION. The commission has jurisdiction to enforce this chapter and to ensure that legal requirements are enforced in a competitively neutral, nondiscriminatory, and reasonable manner.

Added by Acts 2001, 77th Leg., ch. 210, Sec. 1, eff. Sept. 1, 2001.

Chapter 247, consisting of Secs. 247.001 to 247.003, was added by Acts 2023, 88th Leg., R.S., Ch. 19 (S.B. 1017), Sec. 1.

For another Chapter 247, consisting of Secs. 247.001 to 247.006, added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1, see Sec. 247.001 et seq., post.

CHAPTER 247. REGULATION OF ENERGY SOURCES AND ENGINES

Sec. 247.001. DEFINITIONS. In this chapter:

(1) "Energy source" means any fuel or power source used to power an engine.

(2) "Engine" means a machine for converting an energy source into mechanical force and motion, including a generator or an internal combustion engine.

(3) "Political subdivision" includes a county, municipality, special district, school district, junior college district, or housing authority.

(4) "Retail service station" has the meaning assigned by Section 753.001, Health and Safety Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 19 (S.B. 1017), Sec. 1, eff. September 1, 2023.

Sec. 247.002. RESTRICTION ON REGULATION OF ENERGY SOURCES. (a) A political subdivision may not adopt or enforce an ordinance, order, regulation, or similar measure that limits access to or use of an energy source or that results in the effective prohibition of infrastructure that is necessary to provide access to a specific energy source, including a wholesaler, retailer, energy producer, or related infrastructure, including a retail service station.

(b) This section does not limit the authority of a political subdivision to adopt or enforce an ordinance, order, regulation, or similar measure relating to an energy source, or infrastructure that

is necessary to provide access to a specific energy source, that:

(1) provides siting requirements, including siting requirements involving certain geographic areas;

(2) does not effectively prohibit the operation of an energy source or infrastructure that is necessary to provide access to a specific energy source; and

(3) is not preempted by state or federal law.

Added by Acts 2023, 88th Leg., R.S., Ch. 19 (S.B. 1017), Sec. 1, eff. September 1, 2023.

Sec. 247.003. RESTRICTION ON REGULATION OF ENGINES. (a) A political subdivision may not adopt or enforce an ordinance, order, regulation, or similar measure that directly prohibits or restricts the use, sale, or lease of an engine based on its fuel source.

(b) This section does not limit the authority of a political subdivision to adopt or enforce an ordinance, order, regulation, or similar measure not preempted by state or federal law that:

(1) does not effectively prohibit or restrict the use, sale, or lease of the engine;

(2) implements an agreement between the political subdivision and the Texas Commission on Environmental Quality to regulate motor vehicle idling under Section 382.019, Health and Safety Code; or

(3) only affects an engine owned or operated by the political subdivision and is included in the state implementation plan or otherwise necessary for compliance with the federal Clean Air Act (42 U.S.C. Section 7401 et seq.).

(c) This section does not limit the authority of a political subdivision to adopt an ordinance, order, regulation, resolution, policy, or other similar measure to encourage, promote, or provide rebates for engines and fuel sources from alternative sources such as electricity, hydrogen, gas, or biofuels and that does not directly or effectively ban, restrict, or prohibit the use, sale, or lease of an engine based on the engine's fuel source.

(d) Section 81.0523, Natural Resources Code, prevails to the extent of a conflict with this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 19 (S.B. 1017), Sec. 1, eff. September 1, 2023.

Chapter 247, consisting of Secs. 247.001 to 247.006, was added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1.

For another Chapter 247, consisting of Secs. 247.001 to 247.003, added by Acts 2023, 88th Leg., R.S., Ch. 19 (S.B. 1017), Sec. 1, see Sec. 247.001 et seq., post.

CHAPTER 247. THIRD-PARTY REVIEW OF DEVELOPMENT DOCUMENTS AND INSPECTION OF IMPROVEMENTS

Sec. 247.001. DEFINITIONS. In this chapter:

(1) "Development document" means a document, including an application for a plat, plan, or development permit, related to the development of or improvement to land that is required by law, ordinance, rule, or other measure to be approved by a regulatory authority in order for a person to initiate, engage in, or complete the development or improvement.

(2) "Development inspection" means the inspection of an improvement to land required by a regulatory authority as part of a project to develop the land or construct or improve an improvement to the land.

(3) "Development permit" means a permit required by a regulatory authority to develop land or construct or improve an improvement to land.

(4) "Plan" has the meaning assigned by Section 212.001.

(5) "Plat" has the meaning assigned by Section 212.001 except that the term includes a development plat under Subchapter B, Chapter 212.

(6) "Regulatory authority" means the governing body of a political subdivision, or a department, board, commission, or other entity of the political subdivision, responsible for processing or approving a development document or conducting a development inspection.

Added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1, eff. September 1, 2023.

Sec. 247.002. THIRD-PARTY REVIEW OR INSPECTION REQUIRED. (a) If a regulatory authority does not approve, conditionally approve, or disapprove a development document by the 15th day after the date

prescribed by a provision of this code for the approval, conditional approval, or disapproval of the document, any required review of the document may be performed by a person:

(1) other than:

(A) the applicant; or

(B) a person whose work is the subject of the application; and

(2) who is:

(A) employed by the regulatory authority to review development documents;

(B) employed by another political subdivision to review development documents, if the regulatory authority has approved the person to review development documents; or

(C) an engineer licensed under Chapter 1001, Occupations Code.

(b) If a regulatory authority does not conduct a required development inspection by the 15th day after the date prescribed by a provision of this code for conducting the inspection, the inspection may be conducted by a person:

(1) other than:

(A) the owner of the land or improvement to the land that is the subject of the inspection; or

(B) a person whose work is the subject of the inspection; and

(2) who is:

(A) certified to inspect buildings by the International Code Council;

(B) employed by the regulatory authority as a building inspector;

(C) employed by another political subdivision as a building inspector, if the regulatory authority has approved the person to perform inspections; or

(D) an engineer licensed under Chapter 1001, Occupations Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1, eff. September 1, 2023.

Sec. 247.003. ADDITIONAL FEE PROHIBITED. A regulatory

authority may not impose a fee related to the review of a development document or the inspection of an improvement conducted under Section 247.002.

Added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1, eff. September 1, 2023.

Sec. 247.004. THIRD-PARTY REQUIREMENTS. (a) A person who reviews a development document or conducts a development inspection under Section 247.002 shall:

(1) review the document, conduct the inspection, and take all other related actions in accordance with all applicable provisions of law; and

(2) not later than the 15th day after the date the person completes the review or inspection, provide notice to the regulatory authority of the results of the review or inspection.

(b) A regulatory authority may prescribe a reasonable format for the notice required under Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1, eff. September 1, 2023.

Sec. 247.005. WAIVER PROHIBITED. A regulatory authority may not request or require an applicant to waive a deadline or other procedure under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1, eff. September 1, 2023.

Sec. 247.006. APPEAL. (a) A person may appeal to the governing body of a political subdivision:

(1) a decision to conditionally approve or disapprove a development document made by the regulatory authority for the political subdivision or a person authorized by Section 247.002(a) to perform the review of the document; or

(2) a decision regarding a development inspection conducted by the regulatory authority or a person authorized by Section 247.002(b) to perform the inspection.

(b) A person must file an appeal under this section not later than the 15th day after the date the decision being appealed is made.

(c) If the governing body hearing the appeal does not affirm the decision being appealed by a majority vote on or before the 60th day after the date the appeal is filed:

(1) the development document that is the subject of the appeal is considered approved; or

(2) the development inspection that is the subject of the appeal is waived.

Added by Acts 2023, 88th Leg., R.S., Ch. 654 (H.B. 14), Sec. 1, eff. September 1, 2023.

CHAPTER 250. MISCELLANEOUS REGULATORY AUTHORITY

Sec. 250.001. RESTRICTION ON REGULATION OF SPORT SHOOTING RANGES. (a) In this section:

(1) "Association" or "private club" means an association or private club that operates a sport shooting range at which not fewer than 20 different individuals discharge firearms each calendar year.

(2) "Sport shooting range" means a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder, target, self-defense, or similar recreational shooting.

(b) A governmental official may not seek a civil or criminal penalty against a sport shooting range or its owner or operator based on the violation of a municipal or county ordinance, order, or rule regulating noise:

(1) if the sport shooting range is in compliance with the applicable ordinance, order, or rule; or

(2) if no applicable noise ordinance, order, or rule exists.

(c) A person may not bring a nuisance or similar cause of action against a sport shooting range based on noise:

(1) if the sport shooting range is in compliance with all applicable municipal and county ordinances, orders, and rules regulating noise; or

(2) if no applicable noise ordinance, order, or rule exists.

Added by Acts 1991, 72nd Leg., ch. 145, Sec. 1, eff. Aug. 26, 1991.

Amended by Acts 2001, 77th Leg., ch. 1050, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 624 (S.B. 766), Sec. 7, eff. September 1, 2011.

Sec. 250.002. REGULATION OF AMATEUR RADIO ANTENNAS. (a) A municipality or county may not enact or enforce an ordinance or order that does not comply with the ruling of the Federal Communications Commission in "Amateur Radio Preemption, 101 FCC 2nd 952 (1985)" or a regulation related to amateur radio service adopted under 47 C.F.R. Part 97.

(b) If a municipality or county adopts an ordinance or order involving the placement, screening, or height of an amateur radio antenna based on health, safety, or aesthetic conditions, the ordinance or order must:

(1) reasonably accommodate amateur communications; and

(2) represent the minimal practicable regulation to accomplish the municipality's or county's legitimate purpose.

(c) This section does not prohibit a municipality or county from taking any action to protect or preserve a historic, historical, or architectural district that is established by the municipality or county or under state or federal law.

Added by Acts 1999, 76th Leg., ch. 68, Sec. 1, eff. May 10, 1999.

Sec. 250.003. PERSONAL LIABILITY OF NONOWNERS. (a) An individual who is an employee of the owner of real property for which a citation for a violation of a county or municipal rule or ordinance is issued, or of a company that manages the property on behalf of the property owner, is not personally liable for criminal or civil penalties resulting from the violation if, not later than the fifth calendar day after the date the citation is issued, the individual provides the property owner's name, current street address, and telephone number to the enforcement official who issues the citation or the official's superior.

(b) This section applies only to a citation for a violation connected with real property for which a political subdivision has

issued a certificate of occupancy or a certificate of completion with respect to the construction of improvements on the property. This section does not prohibit a municipality or county from issuing to an employee or contractor of the property owner or management company a citation relating to the construction or development of the property.

Added by Acts 2005, 79th Leg., Ch. 1344 (S.B. 399), Sec. 2, eff. June 18, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 841 (S.B. 1945), Sec. 1, eff. January 1, 2010.

Sec. 250.004. AGENT FOR SERVICE; NOTICE OF CITATION. (a) The employee of the owner or management company to whom a citation described by Section 250.003 is issued is considered the owner's agent for accepting service of the citation for the violation of the county or municipal rule or ordinance. Service of the citation on the agent has the same legal effect as service on the owner for the purpose of fines against the owner or the property, including a warrant or capias.

(b) The county or municipality issuing the citation shall mail notice of the citation to the property owner at the address most recently provided to the county or municipality by the property owner or by the employee of the owner or management company under Section 250.003(a). This subsection does not require a county or municipality to mail notice using a service that provides delivery confirmation.

Added by Acts 2005, 79th Leg., Ch. 1344 (S.B. 399), Sec. 2, eff. June 18, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 841 (S.B. 1945), Sec. 2, eff. January 1, 2010.

Sec. 250.005. OTHER REMEDIES UNAFFECTED. Sections 250.003 and 250.004 do not limit the availability of remedies against a real property owner or real property otherwise provided by law, including fines, closure, injunction, and mandamus.

Added by Acts 2005, 79th Leg., Ch. 1344 (S.B. 399), Sec. 2, eff. June 18, 2005.

Sec. 250.006. GRAFFITI REMOVAL. (a) Except as provided by Subsection (h), a county by order or a municipality by ordinance may require the owner of property within the jurisdiction of the county or municipality to remove graffiti from the owner's property on receipt of notice from the county or municipality.

(b) The order or ordinance must provide that a county or municipality may not give notice to a property owner under Subsection (a) unless:

(1) the county or municipality has offered to remove the graffiti from the owner's property free of charge; and

(2) the property owner has refused the offer.

(c) The order or ordinance must require a property owner to remove the graffiti on or before the 15th day after the date the property owner receives notice under Subsection (a). If the property owner fails to remove the graffiti on or before the 15th day after the date of receipt of the notice, the county or municipality may remove the graffiti and charge the expenses of removal to the property owner in accordance with a fee schedule adopted by the county or municipality.

(d) The notice required by Subsection (a) must be given:

(1) personally to the owner in writing;

(2) by letter sent by certified mail, addressed to the property owner at the property owner's address as contained in the records of the appraisal district in which the property is located; or

(3) if service cannot be obtained under Subdivision (1) or (2):

(A) by publication at least once in a newspaper of general circulation in the county or municipality;

(B) by posting the notice on or near the front door of each building on the property to which the notice relates; or

(C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the notice relates.

(e) The county or municipality may assess expenses incurred under Subsection (c) against the property on which the work is

performed to remove the graffiti.

(f) To obtain a lien against the property for expenses incurred under Subsection (c), the governing body of the county or municipality must file a statement of expenses with the county clerk. The statement of expenses must contain:

(1) the name of the property owner, if known;

(2) the legal description of the property; and

(3) the amount of expenses incurred under Subsection (c).

(g) A lien described by Subsection (f) attaches to the property on the date on which the statement of expenses is filed in the real property records of the county in which the property is located and is subordinate to:

(1) any previously recorded lien; and

(2) the rights of a purchaser or lender for value who acquires an interest in the property subject to the lien before the statement of expenses is filed as described by Subsection (f).

(h) An order or ordinance described by this section must include an exception from the requirement that an owner of property remove graffiti from the owner's property if:

(1) the graffiti is located on transportation infrastructure; and

(2) the removal of the graffiti would create a hazard for the person performing the removal.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 29, eff. September 1, 2009.

Sec. 250.007. REGULATION OF RENTAL OR LEASING OF HOUSING ACCOMMODATIONS. (a) Except as provided by this section, a municipality or county may not adopt or enforce an ordinance or regulation that prohibits an owner, lessee, sublessee, assignee, managing agent, or other person having the right to lease, sublease, or rent a housing accommodation from refusing to lease or rent the housing accommodation to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program.

(b) This section does not affect an ordinance or regulation that prohibits the refusal to lease or rent a housing accommodation to a military veteran because of the veteran's lawful source of

income to pay rent.

(c) This section does not affect any authority of a municipality or county or decree to create or implement an incentive, contract commitment, density bonus, or other voluntary program designed to encourage the acceptance of a housing voucher directly or indirectly funded by the federal government, including a federal housing choice voucher.

Added by Acts 2015, 84th Leg., R.S., Ch. 1140 (S.B. 267), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 12.002, eff. September 1, 2017.

Sec. 250.008. LINKAGE FEES PROHIBITED. (a) A political subdivision may not adopt or enforce a charter provision, ordinance, order, or other regulation that imposes, directly or indirectly, a fee on new construction for the purposes of offsetting the cost or rent of any unit of residential housing.

(b) For purposes of this section:

(1) a fee is imposed indirectly on new construction if a charter provision, ordinance, order, or other regulation allows acceptance by the political subdivision of a fee on new construction; and

(2) new construction includes zoning, subdivisions, site plans, and building permits associated with new construction.

(c) This section does not apply to:

(1) an affordable housing and property tax abatement program:

(A) adopted under Chapter 378 or Chapter 312, Tax Code, by a municipality with a population of more than 700,000; and

(B) for which eligibility is maintained as required under Chapter 312, Tax Code, as applicable; or

(2) an ordinance, order, or other similar measure that permits the voluntary payment of a fee in lieu of other consideration to a political subdivision in connection with the issuance of a zoning waiver related to new construction that allows a multifamily residential or commercial structure to exceed height or square footage limitations.

(d) A charter provision, ordinance, order, or other regulation adopted by a political subdivision that conflicts with this section is null and void.

Added by Acts 2017, 85th Leg., R.S., Ch. 256 (H.B. 1449), Sec. 2, eff. May 29, 2017.

Sec. 250.009. CERTAIN SALES OF BEVERAGES BY CHILDREN. Notwithstanding any other law, a municipality, county, or other local public health authority may not adopt or enforce an ordinance, order, or rule that prohibits or regulates, including by requiring a license, permit, or fee, the occasional sale of lemonade or other nonalcoholic beverages from a stand on private property or in a public park by an individual younger than 18 years of age.

Added by Acts 2019, 86th Leg., R.S., Ch. 1027 (H.B. 234), Sec. 2, eff. September 1, 2019.

Sec. 250.010. BATTERY-CHARGED FENCES. (a) In this section, "alarm system" means an alarm system for which a permit may be issued under Subchapter F or F-1, Chapter 214, or Subchapter D, Chapter 233.

(b) This section applies only to a battery-charged fence that:

(1) interfaces with an alarm system in a manner that enables the fence to cause the connected alarm system to transmit a signal intended to summon law enforcement in response to a burglary;

(2) is located on property that is not designated by a municipality or county for residential use;

(3) has an energizer that is driven by a commercial storage battery that is not more than 12 volts of direct current;

(4) produces an electric charge on contact that does not exceed energizer characteristics set for electric fence energizers by the International Electrotechnical Commission as published in the commission's standards on June 29, 2018;

(5) is completely surrounded by a nonelectric perimeter fence or wall that is not less than five feet in height;

(6) is not more than the higher of:

(A) 10 feet in height; or

(B) two feet higher than the height of the nonelectric perimeter fence or wall; and

(7) is marked with conspicuous warning signs that are located on the battery-charged fence at not less than 60-foot intervals and that read: "WARNING--ELECTRIC FENCE."

(c) Notwithstanding any other law, a municipality or county may not adopt or enforce an ordinance, order, or regulation that:

(1) requires a permit for the installation or use of a battery-charged fence to which this section applies that is in addition to an alarm system permit issued by the municipality or county;

(2) imposes installation or operational requirements for:

(A) the battery-charged fence that are inconsistent with the standards set by the International Electrotechnical Commission as published on June 29, 2018; or

(B) an alarm system described by Subsection (b); or

(3) prohibits the installation or use of a battery-charged fence.

Added by Acts 2019, 86th Leg., R.S., Ch. 1176 (H.B. 3371), Sec. 1, eff. September 1, 2019.
Redesignated from Local Government Code, Section 250.009 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(60), eff. September 1, 2021.

Sec. 250.011. THIRD-PARTY FOOD DELIVERY SERVICES. (a) In this section, "third-party food delivery service" has the meaning assigned by Section 118.0001, Business & Commerce Code.

(b) Notwithstanding any other law, a municipality or county may not adopt or enforce an ordinance or regulation to the extent that the ordinance or regulation affects the terms of agreements between third-party food delivery services and restaurants that meet the requirements of Section 118.0004(a), Business & Commerce Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 305 (S.B. 911), Sec. 7, eff. January 1, 2022.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(17), eff. September 1, 2023.

Sec. 250.012. RESIDENTIAL FIRE PROTECTION SPRINKLER SYSTEMS.

(a) Notwithstanding any other law and except as provided by Subsection (c), a municipality, county, or emergency services district may not enact an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire protection sprinkler system in a new or existing one- or two-family dwelling.

(b) A municipality, county, or emergency services district may adopt an ordinance, bylaw, order, building code, or rule allowing a multipurpose residential fire protection sprinkler system specialist or other contractor to offer, for a fee, the installation of a fire protection sprinkler system in a new one- or two-family dwelling.

(c) Subsection (a) does not apply to:

(1) a municipality that has enacted an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire protection sprinkler system in a new or existing one- or two-family dwelling on or before January 1, 2009; or

(2) an emergency services district:

(A) that before February 1, 2013, has adopted a fire code, fire code amendments, or other requirements in conflict with Subsection (a); and

(B) whose territory is located:

(i) in or adjacent to a general law municipality with a population of less than 4,000 that is served by a water control and improvement district governed by Chapter 51, Water Code; and

(ii) in a county that has a population of more than 1.2 million and is adjacent to a county with a population of more than 600,000.

Added by Acts 2021, 87th Leg., R.S., Ch. 315 (H.B. 738), Sec. 4, eff. January 1, 2022.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 152, eff. September 1, 2023.

Redesignated from Local Government Code, Section 250.011 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(30), eff. September 1, 2023.

Sec. 250.013. RESIDENTIAL IMMIGRANT OR REFUGEE CHILD DETENTION FACILITIES. (a) In this section, "residential child detention facility" means a private facility other than a facility licensed by this state that operates under a contract with the United States Immigration and Customs Enforcement, the United States Department of Health and Human Services, or another federal agency to provide 24-hour custody or care to unaccompanied immigrant or refugee children.

(b) A municipality or a county may adopt and enforce an ordinance, order, or other regulation that requires a residential child detention facility to:

(1) provide adequate water, wastewater, or other utilities for the facility; and

(2) meet reasonable minimum standards that promote the health, safety, and welfare of the residents of the facility.

(c) A county may not regulate under Subsection (b) a facility that is located in the corporate boundaries of a municipality.

(d) Before entering into a contract with a federal agency to operate as a residential child detention facility, the owner or operator of the proposed residential child detention facility must:

(1) provide notice of the proposed facility:

(A) if the facility is located in a municipality, to the governing body of the municipality; or

(B) if the facility is located in the unincorporated area of a county, to the commissioners court of the county; and

(2) meet any requirements adopted by the municipality or county under Subsection (b).

Added by Acts 2021, 87th Leg., R.S., Ch. 978 (S.B. 2188), Sec. 1, eff. September 1, 2021.
Redesignated from Local Government Code, Section 250.011 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(31), eff. September 1, 2023.

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY
SUBTITLE A. MUNICIPAL ACQUISITION, SALE, OR LEASE OF PROPERTY
CHAPTER 251. MUNICIPAL RIGHT OF EMINENT DOMAIN

Sec. 251.001. RIGHT OF EMINENT DOMAIN. (a) When the governing body of a municipality considers it necessary, the municipality may exercise the right of eminent domain for a public use to acquire

public or private property, whether located inside or outside the municipality, for any of the following uses:

(1) the providing, enlarging, or improving of a municipally owned city hall; police station; jail or other law enforcement detention facility; fire station; library; school or other educational facility; academy; auditorium; hospital; sanatorium; market house; slaughterhouse; warehouse; elevator; railroad terminal; airport; ferry; ferry landing; pier; wharf; dock or other shipping facility; loading or unloading facility; alley, street, or other roadway; park, playground, or other recreational facility; square; water works system, including reservoirs, other water supply sources, watersheds, and water storage, drainage, treatment, distribution, transmission, and emptying facilities; sewage system including sewage collection, drainage, treatment, disposal, and emptying facilities; electric or gas power system; cemetery; and crematory;

(2) the determining of riparian rights relative to the municipal water works;

(3) the straightening or improving of the channel of any stream, branch, or drain;

(4) the straightening, widening, or extending of any alley, street, or other roadway; and

(5) any other municipal public use the governing body considers advisable.

(b) A municipality condemning land under this section may take a fee simple title to the property if the governing body expresses the intention to do so.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 3, eff. September 1, 2011.

Sec. 251.002. PROCEDURE. An exercise of the power of eminent domain granted by this chapter is governed by Chapter 21 of the Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 252. PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Bond funds" includes money in the treasury received from the sale of bonds and includes the proceeds of bonds that have been voted but have not been issued and delivered.

(2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(3) "Current funds" includes money in the treasury, taxes in the process of being collected in the current tax year, and all other revenue that may be anticipated with reasonable certainty in the current tax year.

(4) "High technology procurement" means the procurement of equipment, goods, or services of a highly technical nature, including:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications equipment and radio and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items.

(5) "Planning services" means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.

(6) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(7) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(8) "Time warrant" includes any warrant issued by a municipality that is not payable from current funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 207, Sec. 1, eff. May 23, 1995.

Sec. 252.002. MUNICIPAL CHARTER CONTROLS IN CASE OF CONFLICT. Any provision in the charter of a home-rule municipality that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, the manner of publicly opening bids or reading them aloud, or the manner of letting contracts and that is in conflict with this chapter controls over this chapter unless the governing body of the municipality elects to have this chapter supersede the charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 749, Sec. 5, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 7, eff. Sept. 1, 1993.

Sec. 252.003. APPLICATION OF OTHER LAW. The purchasing requirements of Section 361.426, Health and Safety Code, apply to municipal purchases made under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 17, eff. Sept. 1, 1991.

SUBCHAPTER B. COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED

Sec. 252.021. COMPETITIVE REQUIREMENTS FOR PURCHASES. (a) Before a municipality may enter into a contract that requires an expenditure of more than $50,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals;

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply with a method described by Chapter 2269, Government Code.

(b) A municipality may use the competitive sealed proposal procedure for the purchase of goods or services, including high technology items and insurance.

(c) The governing body of a municipality that is considering using a method other than competitive sealed bidding must determine before notice is given the method of purchase that provides the best value for the municipality. The governing body may delegate, as

appropriate, its authority under this subsection to a designated representative. If the competitive sealed proposals requirement applies to the contract, the municipality shall consider the criteria described by Section 252.043(b) and the discussions conducted under Section 252.042 to determine the best value for the municipality.

(d) This chapter does not apply to the expenditure of municipal funds that are derived from an appropriation, loan, or grant received by a municipality from the federal or state government for conducting a community development program established under Chapter 373 if under the program items are purchased under the request-for-proposal process described by Section 252.042. A municipality using a request-for-proposal process under this subsection shall also comply with the requirements of Section 252.0215.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 56(b), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 749, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 11, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 45, Sec. 1, eff. May 5, 1995; Acts 1997, 75th Leg., ch. 790, Sec. 1, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 571, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 115, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 436, Sec. 2, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 436, Sec. 3, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 217, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 12.003, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(20), eff. September 1, 2013.

Sec. 252.0215. COMPETITIVE BIDDING IN RELATION TO HISTORICALLY UNDERUTILIZED BUSINESS. A municipality, in making an expenditure of more than $3,000 but less than $50,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the comptroller pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.

Added by Acts 1993, 73rd Leg., ch. 749, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 17.18, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 115, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.100, eff. September 1, 2007.

Sec. 252.022. GENERAL EXEMPTIONS. (a) This chapter does not apply to an expenditure for:

(1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;

(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;

(3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;

(4) a procurement for personal, professional, or planning services;

(5) a procurement for work that is performed and paid for by the day as the work progresses;

(6) a purchase of land or a right-of-way;

(7) a procurement of items that are available from only one source, including:

(A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;

(B) films, manuscripts, or books;

(C) gas, water, and other utility services;

(D) captive replacement parts or components for equipment;

(E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and

(F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;

(8) a purchase of rare books, papers, and other library materials for a public library;

(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(D) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;

(13) services performed by blind or severely disabled persons;

(14) goods purchased by a municipality for subsequent retail sale by the municipality;

(15) electricity; or

(16) advertising, other than legal notices.

(b) This chapter does not apply to bonds or warrants issued under Subchapter A, Chapter 571.

(c) This chapter does not apply to expenditures by a municipally owned electric or gas utility or unbundled divisions of a municipally owned electric or gas utility in connection with any purchases by the municipally owned utility or divisions of a municipally owned utility made in accordance with procurement procedures adopted by a resolution of the body vested with authority for management and operation of the municipally owned utility or its divisions that sets out the public purpose to be achieved by those procedures. This subsection may not be deemed to exempt a municipally owned utility from any other applicable statute, charter provision, or ordinance.

(d) This chapter does not apply to an expenditure described by Section 252.021(a) if the governing body of a municipality determines that a method described by Chapter 2269, Government Code, provides a better value for the municipality with respect to that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that chapter with respect to that expenditure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 47(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1001, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 42, Sec. 1, eff. April 25, 1991; Acts 1993, 73rd Leg., ch. 749, Sec. 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 207, Sec. 2, eff. May 23, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 125, Sec. 1, eff. May 19, 1997; Acts 1997, 75th Leg., ch. 1370, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 405, Sec. 41, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1409, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.290, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 434 (S.B. 1765), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(3), eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(21), eff. September 1, 2013.

Sec. 252.023. EXEMPTIONS FROM REFERENDUM PROVISIONS. The referendum provisions prescribed by Section 252.045 do not apply to expenditures that are payable:

(1) from current funds;

(2) from bond funds; or

(3) by time warrants unless the amount of the time warrants issued by the municipality for all purposes during the current calendar year exceeds:

(A) $7,500 if the municipality's population is 5,000 or less;

(B) $10,000 if the municipality's population is 5,001 to 24,999;

(C) $25,000 if the municipality's population is 25,001 to 49,999; or

(D) $100,000 if the municipality's population is more than 50,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, Sec. 1, eff. Aug. 26, 1991.

Sec. 252.024. SELECTION OF INSURANCE BROKER. This chapter does not prevent a municipality from selecting a licensed insurance broker as the sole broker of record to obtain proposals and coverages for excess or surplus insurance that provides necessary coverage and adequate limits of coverage in structuring layered excess coverages in all areas of risk requiring special consideration, including public official liability, police professional liability, and airport liability. The broker may be retained only on a fee basis and may not receive any other remuneration from any other source.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. PROCEDURES

Sec. 252.041. NOTICE REQUIREMENT. (a) If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive

weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud.

(b) If the competitive sealed proposals requirement applies to the contract, notice of the request for proposals must be given in the same manner as that prescribed by Subsection (a) for the notice for competitive sealed bids.

(c) If the contract is for the purchase of machinery for the construction or maintenance of roads or streets, the notice for bids and the order for purchase must include a general specification of the machinery desired.

(d) If the governing body of the municipality intends to issue time warrants for the payment of any part of the contract, the notice must include a statement of:

(1) the governing body's intention;

(2) the maximum amount of the proposed time warrant indebtedness;

(3) the rate of interest the time warrants will bear; and

(4) the maximum maturity date of the time warrants.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 749, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 6, eff. Sept. 1, 1993.

Sec. 252.0415. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS. (a) A municipality may receive bids or proposals under this chapter through electronic transmission if the governing body of the municipality adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in

accordance with the rules adopted under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 6, eff. Sept. 1, 2001.

Sec. 252.042. REQUESTS FOR PROPOSALS FOR CERTAIN PROCUREMENTS. (a) Requests for proposals made under Section 252.021 must solicit quotations and must specify the relative importance of price and other evaluation factors.

(b) Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 56(c), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 45, Sec. 2, eff. May 5, 1995.

Sec. 252.043. AWARD OF CONTRACT. (a) If the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(b) In determining the best value for the municipality, the municipality may consider:

(1) the purchase price;

(2) the reputation of the bidder and of the bidder's goods or services;

(3) the quality of the bidder's goods or services;

(4) the extent to which the goods or services meet the municipality's needs;

(5) the bidder's past relationship with the municipality;

(6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;

(7) the total long-term cost to the municipality to acquire the bidder's goods or services; and

(8) any relevant criteria specifically listed in the request for bids or proposals.

(b-1) In addition to the considerations provided by Subsection (b), a joint board described by Section 22.074(d), Transportation Code, that awards contracts in the manner provided by this chapter may consider, in determining the best value for the board, the impact on the ability of the board to comply with laws, rules, and programs relating to contracting with small businesses, as defined by 13 C.F.R. Section 121.201.

(c) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(d) Except as provided by Subsection (d-1), the contract must be awarded to the lowest responsible bidder if the competitive sealed bidding requirement applies to the contract for construction of:

(1) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(2) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(d-1) A contract for construction of a project described by Subsection (d) that requires an expenditure of $1.5 million or less may be awarded using the competitive sealed proposal procedure prescribed by Subchapter D, Chapter 2269, Government Code.

(e) If the competitive sealed bidding requirement applies to the contract for construction of a facility, as that term is defined by Section 2269.001, Government Code, the contract must be awarded to the lowest responsible bidder or awarded under the method described by Chapter 2269, Government Code.

(f) The governing body may reject any and all bids.

(g) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(h) If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible offeror whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals.

(i) This section does not apply to a contract for professional services, as that term is defined by Section 2254.002, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1370, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1409, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 739 (H.B. 2661), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 428 (S.B. 1618), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.03, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(22), eff. September 1, 2013.

Sec. 252.0435. SAFETY RECORD OF BIDDER CONSIDERED. In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

(1) the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder;

(2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and

(3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 58(b), eff. Aug. 28, 1989.

Sec. 252.0436. CONTRACT WITH PERSON INDEBTED TO MUNICIPALITY.

(a) A municipality by ordinance may establish regulations permitting the municipality to refuse to enter into a contract or other transaction with a person indebted to the municipality.

(b) It is not a violation of this chapter for a municipality, under regulations adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the municipality.

(c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the municipality requiring approval by the governing body of the municipality.

Added by Acts 2003, 78th Leg., ch. 156, Sec. 1, eff. Sept. 1, 2003.

Sec. 252.044. CONTRACTOR'S BOND. (a) If the contract is for the construction of public works, the bidder to whom the contract is awarded must execute a good and sufficient bond. The bond must be:

(1) in the full amount of the contract price;

(2) conditioned that the contractor will faithfully perform the contract; and

(3) executed, in accordance with Chapter 2253, Government Code, by a surety company authorized to do business in the state.

(b) Repealed by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993.

(c) The governing body of a home-rule municipality by ordinance may adopt the provisions of this section and Chapter 2253, Government Code, relating to contractors' surety bonds, regardless of a conflicting provision in the municipality's charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 865, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 252.045. REFERENDUM ON ISSUANCE OF TIME WARRANTS. (a) If, by the time set for letting a contract under this chapter, a written petition with the required signatures is filed with the municipal secretary or clerk requesting the governing body of the

municipality to order a referendum on the question of whether time warrants should be issued for an expenditure under the contract, the governing body may not authorize the expenditure or finally award the contract unless the question is approved by a majority of the votes received in the referendum. The petition must be signed by at least 10 percent of the qualified voters of the municipality whose names appear as property taxpayers on the municipality's most recently approved tax rolls.

(b) If a petition is not filed, the governing body may finally award the contract and issue the time warrants. In the absence of a petition, the governing body may, at its discretion, order the referendum.

(c) The provisions of Subtitles A and C, Title 9, Government Code, relating to elections for the issuance of municipal bonds and to the issuance, approval, registration, and sale of bonds govern the referendum and the time warrants to the extent those provisions are consistent with this chapter. However, the time warrants may mature over a term exceeding 40 years only if the governing body finds that the financial condition of the municipality will not permit payment of warrants issued for a term of 40 years or less from taxes that are imposed substantially uniformly during the term of the warrants.

(d) This section does not supersede any additional rights provided by the charter of a special-law municipality and relating to a referendum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 38, eff. Sept. 1, 1999.

Sec. 252.046. CIRCUMSTANCES IN WHICH CURRENT FUNDS TO BE SET ASIDE. If an expenditure under the contract is payable by warrants on current funds, the governing body of the municipality by order shall set aside an amount of current funds that will discharge the principal and interest of the warrants. Those funds may not be used for any other purpose, and the warrants must be discharged from those funds and may not be refunded.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.047. PAYMENT METHOD FOR CERTAIN CONTRACTS. If the

contract is for the construction of public works or for the purchase of materials, equipment, and supplies, the municipality may let the contract on a lump-sum basis or unit price basis as the governing body of the municipality determines. If the contract is let on a unit price basis, the information furnished to bidders must specify the approximate quantity needed, based on the best available information, but payment to the contractor must be based on the actual quantity constructed or supplied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.048. CHANGE ORDERS. (a) If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the governing body of the municipality may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.

(c) If a change order involves a decrease or an increase of $50,000 or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders.

(c-1) If a change order for a public works contract in a municipality with a population of 240,000 or more involves a decrease or an increase of $100,000 or less, or a lesser amount as provided by ordinance, the governing body of the municipality may grant general authority to an administrative official of the municipality to approve the change order.

(d) The original contract price may not be increased under this section by more than 25 percent. The original contract price may not be decreased under this section by more than 25 percent without the consent of the contractor.

(e) This section applies only to a contract awarded through a competitive procedure as required by Section 252.021.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 706, Sec. 1, eff. Sept. 1, 1995; Acts

1995, 74th Leg., ch. 746, Sec. 2, eff. Aug. 28, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.09, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1127 (H.B. 1050), Sec. 7, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1356 (S.B. 1430), Sec. 2, eff. June 14, 2013.
Acts 2023, 88th Leg., R.S., Ch. 406 (H.B. 1440), Sec. 1, eff. September 1, 2023.

Sec. 252.049. CONFIDENTIALITY OF INFORMATION IN BIDS OR PROPOSALS. (a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.
(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 252.050. LEASE-PURCHASE OR INSTALLMENT PURCHASE OF REAL PROPERTY. (a) This section applies only to a lease-purchase or installment purchase of real property financed by the issuance of certificates of participation.
(b) The governing body of a municipality may not make an agreement under which the municipality is a lessee in a lease-purchase of real property or is a purchaser in an installment purchase of real property unless the governing body first obtains an appraisal by a qualified appraiser who is not an employee of the municipality. The purchase price may not exceed the fair market value of the real property, as shown by the appraisal.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 10, Sec. 2, eff. Oct. 18, 1989.

Sec. 252.051. APPRAISAL REQUIRED BEFORE PURCHASE OF PROPERTY WITH BOND PROCEEDS. A municipality may not purchase property wholly or partly with bond proceeds until the municipality obtains an independent appraisal of the property's market value.

Added by Acts 2011, 82nd Leg., R.S., Ch. 719 (H.B. 782), Sec. 1, eff. September 1, 2011.

SUBCHAPTER D. ENFORCEMENT

Sec. 252.061. INJUNCTION. If the contract is made without compliance with this chapter, it is void and the performance of the contract, including the payment of any money under the contract, may be enjoined by:

(1) any property tax paying resident of the municipality; or

(2) a person who submitted a bid for a contract for which the competitive sealed bidding requirement applies, regardless of residency, if the contract is for the construction of public works.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 979 (H.B. 3668), Sec. 1, eff. September 1, 2009.

Sec. 252.062. CRIMINAL PENALTIES. (a) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor.

(b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.

(c) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 3, eff. Sept. 1, 1989.

Sec. 252.063. REMOVAL; INELIGIBILITY. (a) The final conviction of a municipal officer or employee for an offense under Section 252.062(a) or (b) results in the immediate removal from office or employment of that person.

(b) For four years after the date of the final conviction, the removed officer or employee is ineligible:

(1) to be a candidate for or to be appointed or elected to a public office in this state;

(2) to be employed by the municipality with which the person served when the offense occurred; and

(3) to receive any compensation through a contract with that municipality.

(c) This section does not prohibit the payment of retirement or workers' compensation benefits to the removed officer or employee.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 4, eff. Sept. 1, 1989.

CHAPTER 253. SALE OR LEASE OF PROPERTY BY MUNICIPALITIES

Sec. 253.001. SALE OF PARK LAND, MUNICIPAL BUILDING SITE, OR ABANDONED ROADWAY. (a) Except as provided by Subsection (b), the governing body of a municipality may sell and convey land or an interest in land that the municipality owns, holds, or claims as a public square, park, or site for the city hall or other municipal building or that is an abandoned part of a street or alley. A sale under this section may include the improvements on the property.

(b) Land owned, held, or claimed as a public square or park may not be sold unless the issue of the sale is submitted to the qualified voters of the municipality at an election and is approved by a majority of the votes received at the election; provided, however, this provision shall not apply to the sale of land or right-of-way for drainage purposes to a district, county, or corporation acting on behalf of a county or district.

(c) To effect the sale, the governing body shall adopt an ordinance directing the municipality's mayor or city manager to execute the conveyance.

(d) The proceeds of the sale may be used only to acquire and improve property for the purposes for which the sold property was used. Failure to so use the proceeds, however, does not impair the title to the sold property acquired by a purchaser for a valuable consideration.

(e) Subsection (b) does not apply to a conveyance of park land that:

(1) is owned by a home-rule municipality with a population of less than 80,000 and that is located in a county bordering the Gulf of Mexico;

(2) is one acre or less;

(3) is part of a park that is 100 acres or less;

(4) is sold or is conveyed as a sale to the owner of adjoining property; and

(5) is conveyed pursuant to a resolution or an ordinance that:

(A) is adopted under this section;

(B) requires the sale to be with an owner of adjoining property for fair market value as determined by an independent appraisal obtained by the municipality; and

(C) has an effective date before December 31, 1995.

(f) The election requirements of Subsection (b) do not apply to a conveyance of a park if:

(1) the park is owned by a home-rule municipality with a population of more than one million;

(2) it is a park of two acres or less;

(3) the park is no longer usable and functional as a park;

(4) the proceeds of the sale will be used to acquire land for park purposes;

(5) a public hearing on the proposed conveyance is held by the governing body of the home-rule municipality and that body finds that the property is no longer usable and functional as a park; and

(6) the park is conveyed pursuant to an ordinance adopted by the governing body of the home-rule municipality, unless within 60 days from the date of the public hearing the governing body of the home-rule municipality is presented with a petition opposing the conveyance which contains the name, address, and date of signature of no less than 1,500 registered voters residing within the municipal limits of the municipality; then, the governing body of the home-rule municipality shall either deny the conveyance or shall approve

the conveyance subject to the election required in Subsection (b); or

(7) the conveyance involves an exchange of two existing parks, situated within a home-rule municipality with a population of more than one million, that together total 1.5 acres or less in size, that are located within 1,000 feet of each other, that are located in an industrial area, that have been found in a public hearing to no longer be usable and functional as parks, and that are conveyed pursuant to an ordinance, adopted by the governing body of that municipality, that has an effective date before December 1, 1993.

(g) A sale made under Subsection (e) or (j) is exempt from the notice and bidding requirements in Chapter 272.

(h) Expired.

(i) Subsection (b) does not apply to a conveyance of park land that is:

(1) owned by a home-rule municipality with a population of more than 625,000;

(2) less than three acres and part of a larger park that is located in a flood plain or floodway;

(3) not actively used for recreational purposes;

(4) sold or conveyed as an interest in land to the owner of an interest in the adjoining property; and

(5) conveyed pursuant to a resolution or an ordinance that has an effective date before December 31, 2004.

(j) Subsection (b) does not apply to a conveyance of park land that is:

(1) owned by a home-rule municipality with a population of less than 100,000;

(2) one-third acre or less;

(3) part of a park that is five acres or less; and

(4) sold or conveyed as a sale to the owner of adjoining property as provided by a resolution or ordinance that has an effective date before December 31, 2007.

(k) A petition for the judicial review of the sale of park land under Subsection (j) must be filed on or before the 30th day after the date the ordinance or resolution is adopted. A petition filed after the period prescribed by this subsection is barred.

(l) Subsection (b) does not apply to a conveyance of park land owned by a home-rule municipality that:

(1) is located in a county with a population of more than

three million; and

(2) has a population of more than 33,000 and less than 35,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 328, Sec. 14, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 597, Sec. 1, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 179, Sec. 1, eff. May 17, 1993; Acts 1995, 74th Leg., ch. 344, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 33, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 13.18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 754, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 633 (H.B. 680), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 577 (H.B. 3352), Sec. 1, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 153, eff. September 1, 2023.

Sec. 253.002. TRANSACTIONS CONCERNING AN ISLAND, FLAT, OR SUBMERGED LAND. (a) A municipality may sell, convey, lease, or provide an option to all or a part of an island, flat, or submerged land the municipality owns and may make development plans and contracts for these purposes, at the times and on the terms that the governing body determines are proper and in the public interest, if the state or the Republic of Texas relinquished its interest in the land to the municipality before April 23, 1953.

(b) For a home-rule municipality the charter of which authorizes a referendum on such a transaction, the governing body may make the transaction without advertising or receiving bids, but the transaction may not take effect unless either it has been approved at a referendum ordered for that purpose or the period for the submission of a petition for a referendum on the transaction has expired.

(c) This section does not grant or convey to a municipality title to oil, gas, or other minerals.

(d) This section prevails over any conflicting charter provision of a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.003. PURCHASE AND SALE OF FEDERAL PROPERTY. (a) The governing body of a municipality with fewer than 10,000 inhabitants may purchase for municipal purposes any real property, including improvements on the property, that the federal government offers for sale to the municipality.

(b) If the purpose for which property purchased under this section ceases to exist or if the property is no longer needed for the purpose, the governing body may sell and convey the property for the highest obtainable price.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.004. GRANT OR LEASE OF PROPERTY FOR JUVENILE BOARD. A home-rule municipality by grant or lease may donate to the county in which the municipality is located any unimproved land for use by a juvenile board of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.005. LEASE OF OIL, GAS, OR MINERAL LAND. (a) Except as provided by Subsection (b), a municipality may lease oil, gas, or mineral land that it owns, in the manner and on the terms that the governing body of the municipality determines, for the benefit of the municipality. A lease under this section is not a sale under the law governing the sale of municipal land.

(b) A municipality may lease under this section a street, alley, or public square in the municipality if the lease prohibits the lessee from using the surface of the land for drilling, production, or other operations. In this subsection, "public square" does not include a dedicated public park.

(c) A well may not be drilled in the thickly settled part of the municipality or within 200 feet of a private residence.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 446 (H.B. 2333), Sec. 1, eff.

June 19, 2009.

Sec. 253.006. LEASE OF MUNICIPAL HOSPITAL OR SWIMMING POOL. (a) The governing body of a municipality with a population of 65,000 or less may lease all or part of a hospital owned by the municipality, to be operated by the lessee as a public hospital.

(b) The governing body of any municipality may lease a swimming pool owned by the municipality, to be operated by the lessee as a public swimming pool.

(c) A lease under this section must:

(1) be authorized by ordinance or resolution adopted by the governing body;

(2) be executed on behalf of the municipality by the mayor and the municipal secretary or clerk;

(3) be impressed with the municipal seal; and

(4) cover a period of not more than 50 years.

(d) A lease under this section is subject to the terms agreed to by the governing body and the lessee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.007. SALE OR LEASE OF COMPUTER SOFTWARE BY CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that has a population of more than 5,000.

(b) A municipality that independently or in conjunction with any person develops automated information systems software may contract with a person for the sale, lease, marketing, or other distribution of the software. Any release of municipally developed automated information systems software must be under a contract that provides that the municipality will receive a royalty, license right, or other appropriate compensation for developing the software. The provisions of Chapter 552, Government Code, governing the cost of making copies of public records do not apply to automated information systems software subject to a contract under this section.

(c) In this section, "automated information systems software" means any procedure or software that is designed, operated, or maintained to collect, record, process, store, retrieve, display, or transmit information.

(d) Notwithstanding any other provision of this section, this section does not apply to the cost of production for public inspection or copying of public records collected, assembled, or maintained through use of the software, which cost is governed by Subchapter F, Chapter 552, Government Code, without regard to the cost of developing the software.

Added by Acts 1993, 73rd Leg., ch. 505, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1993, 73rd Leg., ch. 428, Sec. 7, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), (100), eff. Sept. 1, 1995.

Sec. 253.008. SALE OF REAL PROPERTY BY PUBLIC AUCTION. (a) The governing body of a municipality may sell real property owned by the municipality by public auction or by sealed bid under Section 272.001.

(b) To sell real property by public auction, the governing body of a municipality shall publish notice of the auction before the 20th day before the date the auction is held. The notice for sale of the real property must be published once a week for three consecutive weeks before the date the auction is held in a newspaper of general circulation in the county in which the municipality is located and, if the real property is located in another county, in a newspaper of general circulation in the county in which the real property is located. The notice must include a description of the real property, including its location, and the date, time, and location at which the auction is to be held.

Added by Acts 1993, 73rd Leg., ch. 206, Sec. 1, eff. Aug. 30, 1993. Renumbered from Local Government Code Sec. 253.007 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(39), eff. Sept. 1, 1995.

Sec. 253.009. CONVEYANCE OF ADJOINING PROPERTY TO MUNICIPAL DEVELOPMENT CORPORATION. (a) A municipality may convey to a municipally created economic development corporation, including a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12), real property that has been conveyed by gift to the municipality or conveyed to the municipality as part of a legal settlement and that is adjacent to an area designated for

development by the corporation.

(b) A municipality may convey property under Subsection (a) for any fair consideration approved by the governing body of the municipality. For a conveyance under this section to be effective, the governing body must adopt an ordinance that:

(1) describes the property to be conveyed;

(2) requires the conveyance to comply with the requirements of Section 5.022, Property Code, except a covenant of general warranty is not required; and

(3) states the consideration paid.

(c) A municipality may convey the property under this section without complying with the other notice or bidding requirements prescribed by other law, including Section 272.001.

Added by Acts 1999, 76th Leg., ch. 1186, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.17, eff. April 1, 2009.

Sec. 253.010. SALE OF REAL PROPERTY TO CERTAIN NONPROFIT OR RELIGIOUS ORGANIZATIONS. (a) Notwithstanding any other provision of law, the governing body of a municipality may provide for the manner in which any land acquired by the municipality may be sold if the land is sold to:

(1) a nonprofit organization that develops housing for low-income individuals and families as a primary activity to promote community-based revitalization of the municipality;

(2) a nonprofit corporation described by 26 U.S.C. Section 501(c)(3) that:

(A) has been incorporated in this state for at least one year;

(B) has a corporate purpose to develop affordable housing that is stated in its articles of incorporation, bylaws, or charter;

(C) has at least one-fourth of its board of directors residing in the municipality; and

(D) engages primarily in the building, repair, rental, or sale of housing for low-income individuals and families; or

(3) a religious organization that:

(A) owns other property located in the municipality that is exempt from taxation under Section 11.20, Tax Code; and

(B) has entered into a written agreement with the municipality regarding the revitalization of the land.

(b) A municipality operating under this section may by ordinance determine the individuals and families who qualify as low-income individuals and families under Subsection (a)(1) or (2). In adopting an ordinance under this subsection, the municipality shall consider median income of individuals and median family income in the area.

Added by Acts 1995, 74th Leg., ch. 550, Sec. 1, eff. June 13, 1995. Amended by Acts 1997, 75th Leg., ch. 712, Sec. 1, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 181, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 817, Sec. 3, eff. Sept. 1, 1999. Redesignated from Tax Code, Sec. 34.015 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 18.005, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1430, Sec. 33, eff. Sept. 1, 2001.

Sec. 253.011. CONVEYANCE TO NONPROFIT CORPORATION FOR PUBLIC USE. (a) In this section, "nonprofit organization" means an organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, as amended.

(b) This section does not apply to a municipality with a population of 1.9 million or more.

(c) A municipality may transfer to a nonprofit organization, for consideration described by this section, real property or an interest in real property without complying with the notice and bidding requirements of Section 272.001(a) or other law.

(d) Consideration for the transfer authorized by this section shall be in the form of an agreement between the parties that requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the municipality. If the nonprofit organization at any time fails to use the property in that manner, ownership of the property automatically reverts to the municipality.

(e) The municipality shall transfer the property by an appropriate instrument of transfer. The instrument must include a provision that:

(1) requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the municipality; and

(2) indicates that ownership of the property automatically reverts to the municipality if the nonprofit organization at any time fails to use the property in that manner.

(f) Provided, however, that if the real property to be transferred lies outside the municipality's corporate limits and outside the county where 80 percent of the municipality's residents reside, the municipality must obtain the consent of the county commissioners court in the county where the real property is located.

Added by Acts 2001, 77th Leg., ch. 784, Sec. 1, eff. Sept. 1, 2001.

Sec. 253.012. CONVEYANCE TO ECONOMIC DEVELOPMENT CORPORATION BY CERTAIN MUNICIPALITIES. (a) In this section, "economic development corporation" means a Type A corporation governed by Chapter 504 or a Type B corporation governed by Chapter 505.

(b) This section applies only to a municipality with a population of 20,000 or less.

(c) A municipality may transfer to an economic development corporation, for consideration described by this section, real property or an interest in real property without complying with the notice and bidding requirements of Section 272.001(a) or other law.

(d) Consideration for a transfer authorized by this section is in the form of an agreement between the parties that requires the economic development corporation to use the property in a manner that primarily promotes a public purpose of the municipality. If the economic development corporation at any time fails to use the property in that manner, ownership of the property automatically reverts to the municipality.

(e) The municipality shall transfer the property by an appropriate instrument of transfer. The instrument must include a provision that:

(1) requires the economic development corporation to use the property in a manner that primarily promotes a public purpose of the municipality; and

(2) indicates that ownership of the property automatically reverts to the municipality if the nonprofit organization at any time

fails to use the property in that manner.

(f) A municipality may not transfer property to an economic development corporation under this section if the municipality acquired the property through eminent domain.

Added by Acts 2009, 81st Leg., R.S., Ch. 1158 (H.B. 3072), Sec. 1, eff. June 19, 2009.

Sec. 253.0125. CONVEYANCE TO CERTAIN ENTITIES FOR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies only to an entity and a municipality that have entered into an economic development agreement authorized by Chapter 380.

(b) Notwithstanding Section 253.008 or 272.001(a) or other law and except as provided by Subsection (d), a municipality may transfer to an entity real property or an interest in real property for consideration described by this section.

(c) Consideration for a transfer authorized by this section is in the form of an agreement between the parties that requires the entity to use the property in a manner that primarily promotes a public purpose of the municipality relating to economic development. The agreement must include provisions under which the municipality is granted sufficient control to ensure that the public purpose is accomplished and the municipality receives the return benefit.

(d) A municipality may not transfer for consideration authorized by this section real property or an interest in real property the municipality owns, holds, or claims as a public square or park.

(e) Before a municipality may transfer real property or an interest in real property under an agreement as provided by this section, the municipality must provide notice to the public published in a newspaper of general circulation in the county in which the property is located or, if there is no such newspaper, by any means for the municipality to provide public notice authorized by statute or by ordinance of the municipality. The notice must:

(1) include a description of the property, including its location;

(2) be provided within 10 days before the date the property or an interest in the property is transferred; and

(3) be published for two separate days within the period

prescribed by Subdivision (2), if the notice is published in a newspaper.

(f) A municipality may not transfer real property for consideration described by this section if the property was acquired by the municipality from the previous owner by the exercise of eminent domain authority or the threat of the exercise of eminent domain authority.

(g) This section does not constitute a grant or expansion of eminent domain authority.

Added by Acts 2023, 88th Leg., R.S., Ch. 170 (S.B. 543), Sec. 1, eff. May 24, 2023.

Sec. 253.013. DONATION OF REAL PROPERTY OF NEGLIGIBLE OR NEGATIVE VALUE TO CERTAIN PRIVATE PERSONS. (a) This section applies only to:

(1) a municipality with a population greater than 150,000 and less than 200,000 that is located in three counties; and

(2) a municipality with a population greater than 78,000 and less than 88,000 that is located in a county in which part but not all of a military installation is located.

(b) The governing body of a municipality to which this section applies may determine that real property located inside the boundaries of the municipality and owned by the municipality is surplus real property of negligible or negative value if:

(1) the property is not improved, including by having a structure on it or by being paved;

(2) ownership of the property does not provide any identifiable positive benefit to the municipality in relation to the municipality's current needs;

(3) ownership of the property is not likely to provide any identifiable positive benefit to the municipality in relation to the municipality's future needs; and

(4) the cost of maintaining the property is a substantial burden to the municipality.

(c) The governing body of a municipality that makes a determination under Subsection (b) shall adopt written findings and conclusions regarding the determination made.

(d) The governing body of a municipality that makes a

determination under Subsection (b) that certain real property is surplus real property of negligible or negative value may donate that property to a private person who owns property adjacent to the surplus real property of negligible or negative value.

(e) Section 272.001 does not apply to a conveyance of property authorized by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 816 (H.B. 2584), Sec. 1, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 303 (H.B. 1427), Sec. 1, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 154, eff. September 1, 2023.

Sec. 253.014. BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY BY HOME-RULE MUNICIPALITY. (a) In this section, "broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(b) The governing body of a home-rule municipality may contract with a broker to sell a tract of real property that the municipality:

(1) owns; or

(2) holds in trust and has the authority to sell.

(c) The governing body may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(d) If a contract is made under Subsection (b) with a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service, the governing body on or after the 30th day after the date the property is listed may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker using the multiple-listing service and who submits the highest cash offer.

(e) The governing body may sell a tract of real property under this section without complying with the public auction requirements prescribed by Section 253.008 or other law or the notice and bidding requirements prescribed by Section 272.001 or other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 462 (S.B. 985), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1110 (H.B. 3244), Sec. 1, eff. June 19, 2015.

CHAPTER 254. ACQUISITION AND DEVELOPMENT OF ISLAND PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 254.001. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality located on a channel, canal, bay, inlet, or lake connected to the Gulf of Mexico.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.002. DEFINITIONS. In this chapter:

(1) "Board" means a board of trustees established under Section 254.021.

(2) "Island property" means:

(A) land located on an island in the channel, canal, bay, inlet, or lake on which the municipality is located; and

(B) facilities and improvements related to land described by Paragraph (A).

(3) "Obligation" includes a bond.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.003. AUTHORITY REGARDING ISLAND PROPERTY. A municipality may construct, acquire, lease as lessor or lessee, improve, enlarge, extend, repair, maintain, replace, develop, or operate facilities and improvements necessary or convenient for the proper administration of island property owned by the municipality.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.004. APPLICABILITY OF OTHER LAW. Except to the extent that it conflicts with this chapter, Subchapter B, Chapter 1502, Government Code, applies to revenue obligations issued under this chapter, and a municipality to which this chapter applies has, with respect to a revenue obligation issued under this chapter, each power granted by that subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

SUBCHAPTER B. MANAGEMENT AND CONTROL OF ISLAND PROPERTY; BOARD OF TRUSTEES

Sec. 254.021. MANAGEMENT AND CONTROL BY GOVERNING BODY OR BOARD OF TRUSTEES. (a) An ordinance authorizing the issuance of obligations under this chapter may provide that, while the principal of or interest on the obligations is outstanding, management and control of island property owned by the municipality and of the revenue generated by the island property is in:

(1) the governing body of the municipality; or

(2) a board of trustees named in the ordinance.

(b) A board may consist of not more than nine members.

(c) Notwithstanding Subsection (a), if the municipality is operating under a home-rule charter that requires that island property be managed or controlled by a board of trustees or commission, the charter controls and a reference in this chapter to a board of trustees is a reference to the board or commission provided in the charter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.022. ORGANIZATION AND DUTIES OF BOARD. (a) Except as otherwise provided by a charter provision described by Section 254.021(c), an ordinance under Section 254.021(a) that places management and control of island property in a board may:

(1) specify the board members' compensation;

(2) specify the members' terms of office;

(3) specify the members' powers and duties;

(4) provide for the election or appointment of the members' successors; and

(5) specify any other matter relating to the members' organization and duties.

(b) On any matter not covered by the ordinance or the municipal charter, the board is governed by the laws and rules governing the governing body of the municipality.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.023. CHARACTER OF BOARD; GENERAL POWERS. (a) A board is a body politic and corporate.

(b) The board may:

(1) manage, control, maintain, and operate the island property;

(2) employ a general manager and any other officer, employee, or representative the board considers appropriate;

(3) prepare and adopt a budget, set charges for a service or facility, authorize an expenditure, and manage and control the income and revenue of the island property;

(4) determine policies and adopt rules and procedures for the operation of the island property;

(5) acquire property or an interest in property to accomplish the purposes of this chapter and construct an improvement or facility on the property;

(6) contract in its own name, but not in the name of the municipality;

(7) sue and be sued in its own name;

(8) adopt, use, and alter a corporate seal; and

(9) establish a security force and commission as a peace officer an employee of the force who is licensed by the Texas Commission on Law Enforcement.

(c) A person commissioned as a peace officer under this chapter has each right, privilege, obligation, and duty of other peace officers in this state while on the property under control of the board or in the actual course and scope of the person's employment.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.54, eff. May 18, 2013.

Sec. 254.024. COMPETITIVE BIDDING. (a) The board may award a contract involving the expenditure of more than $15,000 only by competitive bidding.

(b) Competitive bidding is not required:

(1) for a contract for:

(A) personal or professional services;

(B) a real estate transaction;

(C) operation of an improvement or facility under a specific agreement for a limited term; or

(D) insurance; or

(2) if the board determines that the delay posed by the competitive bidding procedure would prevent or substantially impair the operation of island property.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

SUBCHAPTER C. OBLIGATIONS

Sec. 254.051. AUTHORITY OF MUNICIPALITY TO ISSUE OBLIGATIONS. The governing body of a municipality by ordinance may issue in the name of the municipality obligations payable from taxes, revenue, or both to provide money for a facility or improvement under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.052. ELECTION. (a) Obligations payable from ad valorem taxes, other than refunding obligations, may be issued only if authorized at an election held under Chapter 1251, Government Code.

(b) Notwithstanding any law or charter provision to the contrary, an election is not required to authorize the issuance under this chapter of obligations payable solely from revenue if:

(1) the obligations are not:

(A) a debt of the municipality; or

(B) a pledge of the faith and credit of the municipality; and

(2) the owner or holder of an obligation is not entitled to demand payment from money raised by taxation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.053. AUTHORITY OF BOARD TO ISSUE OBLIGATIONS. A board by resolution may issue in the name of the board, with the consent of the governing body of the municipality:

(1) obligations payable from revenue in the manner provided

by this chapter and refund previously issued obligations;

(2) expense notes drawn against the revenues of the board to pay expenses during the fiscal year of the board in which the notes are issued; and

(3) certificates of participation in contractual obligations to pay money.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.054. LIMITATION ON AGGREGATE AMOUNT OF EXPENSE NOTES. The aggregate amount of expense notes issued under Section 254.053(2) that are outstanding at any time during a fiscal year may not exceed 50 percent of the difference between:

(1) the revenue of the board budgeted for that fiscal year; and

(2) the principal of and interest on board obligations other than expense notes to be paid from the revenue of the board during that fiscal year.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.055. MATURITY OF OBLIGATION. An obligation issued under this chapter must mature not later than 40 years after its date of issuance.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.056. SIGNATURES; SEAL. (a) An obligation issued by a municipality under this chapter must be:

(1) signed by the mayor or the presiding officer of the municipality;

(2) countersigned by the municipality's secretary or clerk; and

(3) impressed with the seal of the municipality.

(b) An obligation authorized by the board under this chapter must be:

(1) signed by the presiding officer of the board;

(2) countersigned by the secretary or assistant secretary;

and

(3) impressed with the seal of the board.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.057. SALE OF OBLIGATIONS. (a) A municipality or board may sell obligations issued under this chapter at public or private sale under terms the governing body or the board determines to be the most advantageous and reasonably obtainable.

(b) Subsection (a) applies to obligations payable from revenue notwithstanding any restriction in a municipal charter to the contrary.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.058. CONTENTS OF ORDINANCE OR RESOLUTION. (a) The ordinance of the governing body or the resolution of the board authorizing the issuance of revenue obligations may:

(1) provide for the flow of funds, the establishment and maintenance of an interest and sinking fund, reserve fund, or other fund, and the depositing of money; and

(2) contain any covenant, as considered appropriate, with respect to the obligations, the pledged revenue, and the operation and maintenance of the island property.

(b) The ordinance or resolution or another proceeding may:

(1) prohibit the further issuance of obligations payable from the pledged revenue; or

(2) reserve the right to issue additional obligations to be secured by a pledge of and payable from the net revenue on a parity with, or subordinate to, the lien and pledge securing the obligations being issued, subject to any condition provided by the ordinance, resolution, or other proceeding.

(c) The ordinance, resolution, or other proceeding may:

(1) provide that surplus net revenue received from the operation of the island property may be used for the payment of the principal of and interest on any obligations payable from taxes issued by the municipality under this chapter; and

(2) contain other provisions and covenants.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.059. REVIEW AND APPROVAL OF CONTRACTS RELATING TO REVENUE OBLIGATIONS. (a) If revenue obligations issued under this chapter state that they are secured by a pledge of the proceeds from a contract, a copy of the contract and of the proceedings authorizing the contract must be submitted to the attorney general for approval.

(b) The approval by the attorney general of the obligations is approval of the contract.

(c) After approval, the contract is incontestable except for forgery or fraud.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.060. SECURITY FOR AND PAYMENT OF OBLIGATIONS PAYABLE FROM REVENUE. (a) Revenue obligations issued under this chapter may be secured solely by and paid from a pledge of the net revenue derived from the operation of island property, including revenue from leases, subleases, sales, or contracts for sale entered into by the municipality or the board of trustees with respect to the island property. For purposes of this subsection, the net revenue is an amount equal to the gross revenue derived from the operation of the island property less the reasonable expenses of maintaining and operating the island property.

(b) While the principal of or interest on obligations is outstanding, the issuer shall:

(1) impose and collect charges in an amount sufficient to pay:

(A) maintenance and operation expenses of the island property;

(B) the interest on the obligations as it accrues; and

(C) the principal of the obligations as the obligations mature; and

(2) make any other payment prescribed by the ordinance or resolution authorizing or other proceeding relating to the issuance of the obligations.

(c) In addition to the security provided by Subsection (a), obligations may be secured by a trust indenture and a mortgage or

deed of trust lien or other security interest on island property.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.061. USE OF CERTAIN PROCEEDS. From the proceeds from the sale of obligations issued under this chapter, there may be appropriated or set aside:

(1) an amount for the payment of interest expected to accrue while an island property facility or improvement is under construction;

(2) an amount necessary to pay expenses related to the issuance, sale, and delivery of the obligations; and

(3) an amount required by the ordinance or resolution authorizing the issuance of the obligations to be deposited to the credit of a reserve or other fund.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.062. LEASE OR SALE OF ISLAND PROPERTY. (a) In connection with the issuance of revenue obligations, a municipality or board may lease, sublease, or sell island property to be constructed or acquired with the proceeds of the obligations.

(b) A lease, sublease, or contract of sale may contain any provision that the municipality or board considers advantageous.

(c) A lease, sublease, or contract of sale may provide for the lessee or purchaser of the island property to make payments in amounts adequate to pay the principal of and interest and premium on the obligations when they become due.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.063. ENCUMBRANCE OF ISLAND PROPERTY IMPROVEMENTS OR FACILITIES FINANCED BY OBLIGATIONS PAYABLE FROM AD VALOREM TAXES. A municipality may not encumber an island property improvement or facility financed by obligations payable from ad valorem taxes unless authorized at the election required by Section 254.052.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

SUBCHAPTER D. REFUNDING OBLIGATIONS

Sec. 254.081. APPLICABILITY OF LAW RELATING TO ORIGINAL OBLIGATIONS. The provisions of this chapter relating to original obligations apply to refunding obligations issued under this chapter to the extent the provisions can be made to apply.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.082. AUTHORITY TO ISSUE TAX REFUNDING OBLIGATIONS. The governing body of a municipality may issue tax obligations under this chapter to refund outstanding tax obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.083. AUTHORITY TO ISSUE REVENUE REFUNDING OBLIGATIONS. The governing body of a municipality or a board with the approval of the governing body may issue revenue obligations under this chapter to refund outstanding revenue obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.084. TERMS OF ISSUANCE OF REVENUE REFUNDING OBLIGATIONS. (a) Revenue refunding obligations may:

(1) be combined with new or original revenue obligations into one series or issue;

(2) be issued to refund obligations of more than one series or issue;

(3) combine the pledges securing the obligations to be refunded to secure the revenue refunding obligations; or

(4) be secured by a pledge of other or additional net revenue.

(b) A revenue refunding obligation may bear interest at a rate higher than that of the obligation to be refunded.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.085. REGISTRATION OF REFUNDING OBLIGATIONS BY COMPTROLLER. (a) Except as provided by Subsection (b), the comptroller shall register refunding obligations on surrender and cancellation of the obligations to be refunded.

(b) The comptroller shall register refunding obligations without the surrender and cancellation of the obligations to be refunded if:

(1) the ordinance or resolution authorizing the issuance of the refunding obligations requires that:

(A) the obligations be sold at public or private sale; and

(B) the proceeds from the sale be deposited:

(i) in a place where the obligations to be refunded are payable; or

(ii) with the comptroller; and

(2) the refunding obligations are issued in an amount sufficient to pay the principal of and interest on the obligations to be refunded to the option or maturity date of the obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

Sec. 254.086. ESCROW AGREEMENT. (a) The proceeds from revenue refunding obligations that are deposited as provided by Section 254.085(b)(1)(B) shall be held under an escrow agreement so that the proceeds and interest earned on the proceeds will be available to pay the principal of and interest on the obligations to be refunded as each becomes due.

(b) The escrow agreement may provide that the proceeds may, until needed to pay principal and interest, be invested in direct obligations of the United States.

(c) Interest earned on an investment described by Subsection (b) may be:

(1) pledged to the payment of the principal of and interest on the obligations to be refunded or the refunding obligations; or

(2) considered as revenue of the island property.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 9, eff. Sept. 1, 1999.

SUBTITLE B. COUNTY ACQUISITION, SALE, OR LEASE OF PROPERTY

CHAPTER 261. COUNTY RIGHT OF EMINENT DOMAIN

Sec. 261.001. RIGHT OF EMINENT DOMAIN. (a) A county may exercise the right of eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a jail, courthouse, hospital, or library, or for another public use authorized by law.

(b) The right of eminent domain conferred by this section extends to public or private land, but not to land used for cemetery purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 4, eff. September 1, 2011.

Sec. 261.002. PROCEDURE. The condemnation proceedings must be instituted in the name of the county and under the direction of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 261.003. APPEAL. (a) An appeal from a finding and assessment of damages made as prescribed by Chapter 21, Property Code, does not suspend work by the county that relates to the land the county seeks to acquire.

(b) A county is not required to give a bond in an appealed case.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 262. PURCHASING AND CONTRACTING AUTHORITY OF COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 262.001. APPOINTMENT OF AGENT TO MAKE CONTRACTS. (a) The commissioners court of a county may appoint an agent to make a contract on behalf of the county for:

(1) erecting or repairing a county building;

(2) supervising the erecting or repairing of a county building; or

(3) any other purpose authorized by law.

(b) A contract or other act of an agent appointed under this section that is properly executed on behalf of the county and is within the agent's authority binds the county to the contract for all purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.002. AUTHORITY TO PURCHASE ROAD EQUIPMENT AND TIRES THROUGH COMPTROLLER. (a) The commissioners court of a county may purchase through the comptroller road machinery and equipment, tires, and tubes to be used by the county.

(b) The commission must purchase an item under this section on competitive bids and in accordance with any rules of the commission.

(c) A purchase under this section must be made on the requisition of the commissioners court. When the court sends the requisition to the commission, the court must include with the requisition a general description of the item desired and a certification of the funds available to pay for the item.

(d) The commission may adopt rules to carry out the purpose of this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.101, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.102, eff. September 1, 2007.

Sec. 262.003. SMALL, SOLE-SOURCE PURCHASE EXEMPT FROM COMPETITIVE BIDDING. (a) Any law that requires a county to follow a competitive procurement procedure in making a purchase requiring the expenditure of $50,000 or less does not apply to the purchase of an item available for purchase from only one supplier.

(b) If a county makes a purchase covered by Subsection (a), the county auditor or other appropriate county officer or employee may not refuse payment for the purchase because a competitive bidding procedure was not followed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 12, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 115, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 3, eff. June 19, 2009.

Sec. 262.004. CONTRACT AND OTHER INSTRUMENTS VEST RIGHTS IN COUNTY; SUIT ON CONTRACT OR OTHER INSTRUMENT. (a) A note, bond, bill, contract, covenant, agreement, or writing in which a person is bound to a county, to the court or commissioners of a county, or to another person for the payment of a debt or for the performance of a duty or another action for the county vests in the county the same right, interest, or action that would vest in any other person if the contract had been made with that other person.

(b) A suit may be initiated and prosecuted on an instrument covered by Subsection (a) in the name of a county, or in the name of the person to whom the document was made for the use of the county, in the same manner that any other person may sue on a similar document made to that person.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.005. APPLICATION OF OTHER LAW. The purchasing requirements of Section 361.426, Health and Safety Code, apply to county purchases made under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 18, eff. Sept. 1, 1991.

Sec. 262.006. LEAST COST REVIEW PROGRAM. The commissioners court of a county may establish a least cost review program for public improvements to be constructed by the use of personnel, equipment, or facilities of the county that may exceed a cost of:

(1) $100,000; or

(2) an amount less than $100,000 as determined by the commissioners court.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 13.11(f), eff. Sept. 1,

1999.

Sec. 262.007. SUIT AGAINST COUNTY ARISING UNDER CERTAIN CONTRACTS. (a) A county that is a party to a written contract for engineering, architectural, or construction services or for goods related to engineering, architectural, or construction services may sue or be sued, plead or be impleaded, or defend or be defended on a claim arising under the contract. A suit on the contract brought by a county shall be brought in the name of the county. A suit on the contract brought against a county shall identify the county by name and must be brought in a state court in that county.

(b) The total amount of money recoverable from a county on a claim for breach of the contract is limited to the following:

(1) the balance due and owed by the county under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;

(2) the amount owed for change orders or additional work required to carry out the contract;

(3) reasonable and necessary attorney's fees that are equitable and just; and

(4) interest as allowed by law.

(c) An award of damages under this section may not include:

(1) consequential damages, except as allowed under Subsection (b)(1);

(2) exemplary damages; or

(3) damages for unabsorbed home office overhead.

(d) This section does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity.

(e) This section does not waive sovereign immunity to suit in federal court.

Acts 2003, 78th Leg., ch. 1203, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER B. PURCHASING AGENTS

Sec. 262.011. PURCHASING AGENTS. (a) A board composed as provided by this subsection, by majority vote, may appoint a suitable

person to act as the county purchasing agent. In a county with a population of 150,000 or less, the board is composed of the judges of the district courts in the county and the county judge. In any other county, the board is composed of three judges of the district courts in the county and two members of the commissioners court of the county unless the county has fewer than three district court judges, in which case the board is composed of one district court judge and one member of the commissioners court. If members of the board who are district judges must be selected, the selection is made by a majority vote of all the district judges in a county having more than one district judge. If members of the board who are members of the commissioners court must be selected, the selection is made by a majority vote of the commissioners court. The term of office of the county purchasing agent is two years.

(b) The board may remove the county purchasing agent from office.

(c) A person appointed under this section must execute a bond in the amount of $5,000, payable to the county, conditioned that the individual will faithfully perform the duties of county purchasing agent.

(d) The county purchasing agent shall purchase all supplies, materials, and equipment required or used, and contract for all repairs to property used, by the county or a subdivision, officer, or employee of the county, except purchases and contracts required by law to be made on competitive bid. A person other than the county purchasing agent may not make the purchase of the supplies, materials, or equipment or make the contract for repairs.

(e) The county purchasing agent shall supervise all purchases made on competitive bid and shall see that all purchased supplies, materials, and equipment are delivered to the proper county officer or department in accordance with the purchase contract.

(f) A purchase made by the county purchasing agent shall be paid for by an electronic transfer, check, or warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. The county auditor may not draw and the county treasurer may not honor an electronic transfer, check, or warrant for a purchase unless the purchase is made by the county purchasing agent or on competitive bid as provided by law.

(g) The county purchasing agent may cooperate with the purchasing agent of a municipality in the county to purchase any item

in volume as may be necessary. The county treasurer shall honor an electronic transfer, check, or warrant drawn by the county auditor to reimburse the municipality's purchasing agent making the purchase for the county.

(h) The county purchasing agent is not required to make purchases for a municipal-county hospital or other joint undertaking of the municipality and county.

(i) On July 1 of each year, the county purchasing agent shall file with the county auditor and each of the members of the board that appoints the county purchasing agent an inventory of all the property on hand and belonging to the county and each subdivision, officer, and employee of the county. The county auditor shall carefully examine the inventory and make an accounting for all property purchased or previously inventoried and not appearing in the inventory.

(j) To prevent unnecessary purchases, the county purchasing agent, with the approval of the commissioners court, shall transfer county supplies, materials, and equipment from a subdivision, department, officer, or employee of the county that are not needed or used to another subdivision, department, officer, or employee requiring the supplies or materials or the use of the equipment. The county purchasing agent shall furnish to the county auditor a list of transferred supplies, materials, and equipment.

(k) The board that appoints the county purchasing agent shall set the salary of the agent in an amount not less than $5,000 a year, payable in equal monthly installments or by any other distribution at the option of the county. The salary shall be paid by an electronic transfer, check, or warrant drawn on funds in the county treasury.

(l) The county purchasing agent may have assistants to aid in the performance of the agent's duties. A person who is authorized by the county purchasing agent to use a county purchasing card while making a county purchase is considered an assistant of the county purchasing agent to the extent the person complies with the rules and procedures prescribed for the use of county purchasing cards as adopted by the county purchasing agent under Subsection (o). The county purchasing agent and assistants may have any help, equipment, supplies, and traveling expenses that are approved and considered advisable by the board that appointed the agent.

(m) A person, including an officer, agent, or employee of a county or of a subdivision or department of a county, commits an

offense if the person violates this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than $10 or more than $100. Each act in violation of this section is a separate offense.

(n) This section applies to all purchases of supplies, materials, and equipment for the use of the county and its officers, including purchases made by officers paid out of fees of office or otherwise, regardless of whether the purchase contract is made by the commissioners court or any other officer authorized to bind the county by contract. An officer making a purchase out of fees of office in violation of this section may not deduct the amount of the purchase from the amount of any fees of office due the county.

(o) The county purchasing agent shall adopt the rules and procedures necessary to implement the agent's duties under this section subject to approval by the commissioners court. Notwithstanding Subsection (f) or other law, rules and procedures adopted under this subsection may include rules and procedures for persons to use county purchasing cards to pay for county purchases under the direction and supervision of the county purchasing agent. Procedures for use of purchasing cards may not avoid the competitive bidding requirements of this chapter or other requirements of county financial law.

(p) During each two-year term of office, a county purchasing agent shall complete not less than 25 hours in courses relating to the duties of the county purchasing agent. The courses must be:

(1) accredited by a nationally recognized college or university;

(2) recognized by a national purchasing association, such as the National Association of Purchasing Management; or

(3) courses offered by state agencies, or by state professional associations, related to purchasing.

(q) An electronic transfer under this chapter must provide the same level of internal controls and statutory authorizations as required for a check or warrant.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(q), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 561, Sec. 1, 2, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 5, 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.02(a), (d), eff. Aug. 26, 1991; Acts 1991,

72nd Leg., ch. 874, Sec. 4, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 367, Sec. 1, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 505, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 57, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 321, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 1, eff. September 1, 2011.

Sec. 262.0115. PURCHASING AGENTS IN COUNTIES WITH POPULATION OF MORE THAN 100,000. (a) In a county with a population of more than 100,000, the commissioners court may employ a person to act as county purchasing agent. However, this section does not apply to a county that has appointed a purchasing agent under Section 262.011 and that has not abolished the position as authorized by law.

(b) A purchasing agent employed under this section serves at the pleasure of the commissioners court.

(c) The commissioners court may employ other persons necessary to assist the purchasing agent in performing the agent's functions.

(d) Under the supervision of the commissioners court, the purchasing agent shall carry out the functions prescribed by law for a purchasing agent under Section 262.011 and for any administrative function of the county auditor in regard to county purchases and contracts and shall administer the procedures prescribed by law for notice and public bidding for county purchases and contracts.

(e) A county that has established the position of county purchasing agent under this section may abolish the position at any time. On the abolition of the position, the county auditor shall assume the functions previously performed by the purchasing agent regarding the notice for and opening of competitive bids or proposals under this chapter and Chapter 271.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 11(g), eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 63, Sec. 1, eff. May 9, 1995; Acts 1999, 76th Leg., ch. 369, Sec. 1, eff. May 29, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 2, eff. September 1, 2011.

Sec. 262.012. COUNTY AUDITORS AS PURCHASING AGENTS IN CERTAIN COUNTIES. (a) The commissioners court of a county that employs a county auditor jointly with one or more counties under Section 84.008 may require the auditor to act as the purchasing agent for the county, in addition to performing the regular duties of the auditor as required by law.

(b) In a county with a population of 41,680 to 42,100, the county auditor shall act as the purchasing agent for the county in addition to performing the regular duties of the auditor as required by law.

(c) This section applies only to a county in which a county purchasing agent has not been appointed under Section 262.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 561, Sec. 3, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 204, Sec. 1, eff. Sept. 1, 1991.

SUBCHAPTER C. COMPETITIVE BIDDING IN GENERAL

Sec. 262.021. SHORT TITLE. This subchapter may be cited as the County Purchasing Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.022. DEFINITIONS. In this subchapter:

(1) "Bond funds" means money in the county treasury received from the sale of bonds, and proceeds of bonds that have been voted but that have not been issued and delivered.

(2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(3) "Current funds" means funds in the county treasury that are available in the current tax year, revenue that may be anticipated with reasonable certainty to come into the county treasury during the current tax year, and emergency funds.

(4) "High technology item" means a service, equipment, or good of a highly technical nature, including:

(A) data processing equipment and software and firmware used in conjunction with data processing equipment;

(B) telecommunications, radio, and microwave systems;

(C) electronic distributed control systems, including building energy management systems; and

(D) technical services related to those items.

(5) "Item" means any service, equipment, good, or other tangible or intangible personal property, including insurance and high technology items. The term does not include professional services as defined by Section 2254.002, Government Code.

(5-a) "Lowest and best" means a bid or offer providing the best value considering associated direct and indirect costs, including transport, maintenance, reliability, life cycle, warranties, and customer service after a sale.

(5-b) "Normal purchasing practice" means:

(A) an accepted custom, practice, or standard for government procurement in the state; or

(B) a practice recognized by a national purchasing association regarding the purchase of a particular good or service.

(6) "Purchase" means any kind of acquisition, including by a lease or revenue contract.

(7) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(8) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(9) "Time warrant" means any warrant issued by a county that is not payable out of current funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(b), eff. Aug. 28, 1989; Acts 1989, 71st. Leg., ch. 1250, Sec. 8(a), eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 3, eff. September 1, 2011.

Sec. 262.0225. ADDITIONAL COMPETITIVE PROCEDURES. (a) In the procedure for competitive bidding under this subchapter, the commissioners court of the county shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids

judged according to the same standards as set forth in the specifications.

(b) A county shall receive bids or proposals under this subchapter in a fair and confidential manner.

(c) A county may receive bids or proposals under this subchapter in hard-copy format or through electronic transmission. Except as provided by Subsection (c-1), a county shall accept any bids or proposals submitted in hard-copy format.

(c-1) The commissioners court of a county may by order require submission of bids or proposals under this subchapter through electronic transmission if the county makes available all technology necessary to submit a bid or proposal through electronic transmission to any person who submits a hard-copy bid or proposal in person.

(d) A county that complies in good faith with the competitive bidding requirements of this chapter and receives no responsive bids for an item may procure the item under Section 262.0245.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 4, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 11 (H.B. 362), Sec. 1, eff. May 15, 2021.

Sec. 262.023. COMPETITIVE REQUIREMENTS FOR CERTAIN PURCHASES. (a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding $50,000, the commissioners court of the county must:

(1) comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter;

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply with a method described by Chapter 2269, Government Code.

(b) The requirements established by Subsection (a) apply to contracts for which payment will be made from current funds or bond funds or through anticipation notes authorized by Chapter 1431, Government Code, or time warrants. Contracts for which payments will be made through certificates of obligation are governed by The

Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271).

(b-1) A county that complies with a method described by Chapter 2269, Government Code, as provided by Subsection (a)(3), to enter into a contract for which payment will be made through anticipation notes authorized by Chapter 1431, Government Code, may not issue anticipation notes for the payment of that contract in an amount that exceeds the lesser of:

(1) 20 percent of the county's budget for the fiscal year in which the county enters into the contract; or

(2) $10 million.

(c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements of this subchapter, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 57(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 9, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.02(b), eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 757, Sec. 13, 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 442, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 505, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, Sec. 4, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1063, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 12.004, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 689 (H.B. 1764), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 4.04, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(23),

eff. September 1, 2013.

Sec. 262.0235. PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS FOR ELECTRONIC BIDS OR PROPOSALS. The county purchasing agent, before receiving electronic bids or proposals, shall adopt rules in conformance with Section 262.011(o) to ensure the identification, security, and confidentiality of electronic bids or proposals.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 3, eff. Sept. 1, 2001.

Sec. 262.024. DISCRETIONARY EXEMPTIONS. (a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption:

(1) an item that must be purchased in a case of public calamity if it is necessary to make the purchase promptly to relieve the necessity of the citizens or to preserve the property of the county;

(2) an item necessary to preserve or protect the public health or safety of the residents of the county;

(3) an item necessary because of unforeseen damage to public property;

(4) a personal or professional service;

(5) any individual work performed and paid for by the day, as the work progresses, provided that no individual is compensated under this subsection for more than 20 working days in any three month period;

(6) any land or right-of-way;

(7) an item that can be obtained from only one source, including:

(A) items for which competition is precluded because of the existence of patents, copyrights, secret processes, or monopolies;

(B) films, manuscripts, or books;

(C) electric power, gas, water, and other utility services; and

(D) captive replacement parts or components for equipment;

(8) an item of food;

(9) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; or

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government;

(10) any work performed under a contract for community and economic development made by a county under Section 381.004; or

(11) vehicle and equipment repairs.

(b) The renewal or extension of a lease or of an equipment maintenance agreement is exempt from the requirement established by Section 262.023 if the commissioners court by order grants the exemption and if:

(1) the lease or agreement has gone through the competitive bidding procedure within the preceding year;

(2) the renewal or extension does not exceed one year; and

(3) the renewal or extension is the first renewal or extension of the lease or agreement.

(c) If an item exempted under Subsection (a)(7) is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

(d) The exemption granted under Subsection (a)(8) of this section shall apply only to the sealed competitive bidding requirements on food purchases. Counties shall solicit at least three bids for purchases of food items by telephone or written quotation at intervals specified by the commissioners court. Counties shall award food purchase contracts to the responsible bidder who submits the lowest and best bid or shall reject all bids and repeat the bidding process, as provided by this subsection. The purchasing officer taking telephone or written bids under this subsection shall maintain, on a form approved by the commissioners court, a record of all bids solicited and the vendors contacted. This record shall be kept in the purchasing office for a period of at least one year or until audited by the county auditor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(c), eff. Aug. 28, 1989; Acts

1989, 71st Leg., ch. 962, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1001, Sec. 2, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1060, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.03, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 442, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1065, Sec. 1, eff. June 15, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 3, eff. September 1, 2007.

Sec. 262.0241. MANDATORY EXEMPTIONS: CERTAIN RECREATIONAL SERVICES. (a) This section applies only to a county that:
(1) has a population of 20,000 or less; and
(2) owns not more than one golf course open for public use.
(b) The competitive bidding and competitive proposal procedures prescribed by this subchapter do not apply to the purchase of:
(1) management services for:
(A) a county-owned golf course; or
(B) a retail facility owned by the county and located on the premises of the golf course; and
(2) landscape maintenance services for a county-owned golf course.

Added by Acts 2001, 77th Leg., ch. 1065, Sec. 2, eff. June 15, 2001.

Sec. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county purchasing agent or, in a county without a purchasing agent, the commissioners court shall adopt procedures that provide for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item that is not subject to competitive procurement or for which the county receives no responsive bid.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.02(c), eff. Aug. 26, 1991. Renumbered from Sec. 262.0241 by Acts 2001, 77th Leg., ch. 1065, Sec. 2, eff; June 15, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 5, eff. September 1, 2011.

Sec. 262.025. COMPETITIVE BIDDING NOTICE. (a) A notice of a proposed purchase must be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county, with the first day of publication occurring at least 14 days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening. Notice published in a newspaper must include:

(1) a general statement of the proposed purchase;

(2) the name and telephone number of the purchasing agent; and

(3) the county website address, if any.

(a-1) Subsection (a) does not require more than two notices in one newspaper or limit the county from providing additional notice for longer periods or in more locations.

(b) The notice must include:

(1) the specifications describing the item to be purchased or a statement of where the specifications may be obtained;

(2) the time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;

(3) whether the bidder should use lump-sum or unit pricing;

(4) the method of payment by the county; and

(5) the type of bond required by the bidder.

(c) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

(d) In a county with a population of 3.3 million or more, the county and any district or authority created under Article XVI, Section 59, of the Texas Constitution of which the governing body is the commissioners court may require that a minimum of 25 percent of the work be performed by the bidder and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1019, Sec. 1, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 669, Sec. 78, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 6, eff. September 1, 2011.

Sec. 262.0255. ADDITIONAL NOTICE AND BOND PROVISIONS RELATING TO PURCHASE OF CERTAIN EQUIPMENT. (a) A notice of a proposed purchase of earth-moving, material-handling, road maintenance, or construction equipment under Section 262.025 may include a request for information about the costs of the repair, maintenance, or repurchase of the equipment.

(b) The commissioners court may require the bidder to furnish, to the county in a contract for the purchase of the equipment, a bond to cover the repurchase costs of the equipment.

(c) A commissioners court purchasing personal property under Section 271.083 of this code or Section 791.025, Government Code, may negotiate with a vendor awarded a cooperative contract under those sections an agreement for the vendor to purchase or accept as trade used equipment owned by the county.

Added by Acts 1991, 72nd Leg., ch. 416, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 7, eff. September 1, 2011.

Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A DISTRICT GOVERNED BY THOSE COUNTIES. (a) The commissioners court of the county or the governing body of a district or authority created under Section 59, Article XVI, Texas Constitution, if the governing body is the commissioners court of the county in which the district is located, may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders.

(b) After a conference is conducted under Subsection (a), any additional required notice for the proposed purchase may be sent by

certified mail, return receipt requested, only to prospective bidders who attended the conference. Notice under this subsection is not subject to the requirements of Section 262.025.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 8, eff. September 1, 2011.

Sec. 262.026. OPENING OF BIDS. (a) The county official who makes purchases for the county shall open the bids on the date specified in the notice. The date specified in the notice may be extended if the commissioners court determines that the extension is in the best interest of the county. All bids, including those received before an extension is made, must be opened at the same time. The commissioners court may adopt an order that delegates the authority to make extensions under this subsection to the county official who makes purchases for the county.

(b) Opened bids shall be kept on file and available for inspection by anyone desiring to see them until the first anniversary of the date of opening. Opened bids are subject to disclosure under Chapter 552, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 505, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 9, eff. September 1, 2011.

Sec. 262.027. AWARDING OF CONTRACT. (a) The officer in charge of opening the bids shall present them to the commissioners court in session. Except as provided by Subsection (e), the court shall:

(1) award the contract to the responsible bidder who submits the lowest and best bid; or

(2) reject all bids and publish a new notice.

(b) If two responsible bidders submit the lowest and best bid, the commissioners court shall decide between the two by drawing lots in a manner prescribed by the county judge.

(c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given:

(1) notice of the proposed award; and

(2) an opportunity to appear before the commissioners court and present previously unconsidered evidence concerning the lower bid as best, which may include evidence of the bidder's responsibility.

(d) In determining the lowest and best bid for a contract for the purchase of earth-moving, material-handling, road maintenance, or construction equipment, the commissioners court may consider the information submitted under Section 262.0255.

(e) In determining the lowest and best bid for a contract for the purchase of road construction material, the commissioners court may consider the pickup and delivery locations of the bidders and the cost to the county of delivering or hauling the material to be purchased. The commissioners court may award contracts for the purchase of road construction material to more than one bidder if each of the selected bidders submits the lowest and best bid for a particular location or type of material.

(f) Notwithstanding any other requirement of this section, the commissioners court may condition acceptance of a bid on compliance with a requirement for attendance at a mandatory pre-bid conference under Section 262.0256.

(g) If after the award the successful bidder fails to qualify for required bonds, or is otherwise unable to meet the requirements of the award, the commissioners court may award the contract to the next bidder in order of ranking as lowest and best bid.

(h) Before a contract is awarded, a bidder must give written notice to the officer authorized to open bids that the bidder intends to protest an award of the contract under Subsection (c). This subsection does not limit the ability of a bidder to speak at a public meeting of the commissioners court under rules established by the court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 416, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 127, Sec. 1, eff. May 11, 1993; Acts 2001, 77th Leg., ch. 255, Sec. 2, eff. May 22, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 10, eff. September 1, 2011.

Sec. 262.0271. CONSIDERATION OF HEALTH INSURANCE PROVIDED BY BIDDER. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(b) In purchasing items under this chapter through a competitive bidding process, if a county receives one or more bids from a bidder who provides reasonable health insurance coverage to its employees and requires a subcontractor the bidder intends to use to provide reasonable health insurance coverage to the subcontractor's employees and whose bid is within five percent of the lowest and best bid price received by the county from a bidder who does not provide or require reasonable health insurance coverage, the commissioners court of the county may give preference to the bidder who provides and requires reasonable health insurance coverage.

(c) This section does not prohibit a county from rejecting all bids.

Added by Acts 2005, 79th Leg., Ch. 1299 (H.B. 2695), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 24, eff. September 1, 2011.

Sec. 262.0275. SAFETY RECORD OF BIDDER CONSIDERED. In determining who is a responsible bidder, the commissioners court may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

(1) the commissioners court has adopted a written definition and criteria for accurately determining the safety record of a bidder;

(2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and

(3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 58(c), eff. Aug. 28, 1989.

Sec. 262.0276. CONTRACT WITH PERSON INDEBTED TO COUNTY. (a) By an order adopted and entered in the minutes of the commissioners court and after notice is published in a newspaper of general circulation in the county, the commissioners court may adopt rules permitting the county to refuse to enter into a contract or other transaction with a person who owes a debt to the county.

(b) It is not a violation of this subchapter for a county, under rules adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the county.

(c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the county requiring approval by the commissioners court.

(d) In this section, "debt" includes delinquent taxes, fines, fees, and delinquencies arising from written agreements with the county.

Added by Acts 2003, 78th Leg., ch. 156, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 12, eff. September 1, 2011.

Sec. 262.028. LUMP-SUM OR UNIT PRICE METHOD. A purchase may be proposed on a lump-sum or unit price basis. If the county chooses to use unit pricing in its notice, the information furnished bidders must specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based on the actual quantities purchased.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.029. TIME WARRANT ELECTION. If before the date tentatively set for the authorization of the issuance of time warrants applying to a contract covered by this subchapter or if

before that authorization a petition signed by at least five percent of the registered voters of the county is filed with the county clerk protesting the issuance of the time warrants, the county may not issue the time warrants unless the issuance is approved at an election ordered and conducted in the manner provided for county bond elections under Chapter 1251, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.291, eff. Sept. 1, 2001.

Sec. 262.0295. ALTERNATIVE MULTISTEP COMPETITIVE PROPOSAL PROCEDURE. (a) (1) If the county official who makes purchases for the county determines that it is impractical to prepare detailed specifications for an item to support the award of a purchase contract, the official shall notify the commissioners court of such determination.

(2) Upon a finding by the commissioners court that it is impractical to prepare detailed specifications for an item to support the award of a purchase contract, after a notification of such determination by the county official who makes purchases for the county, the county official who makes purchases for the county may use the multistep competitive proposal procedure provided by this section.

(3) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure, except that the notice may include a general description of the item to be purchased, instead of the specifications describing the item or a statement of where the specifications may be obtained, and may request the submission of unpriced proposals.

(c) On the date specified in the notice, the county official shall open the proposals and, within seven days after that date, solicit by mailed request priced bids from the persons who submitted proposals and who qualified under the criteria stated in the first solicitation.

(d) Within 30 days after the date the unpriced proposals are opened under Subsection (c), the county official shall present the

priced bids to the commissioners court. The award of the contract shall be made to the responsible offeror whose bid is determined to be the lowest and best evaluated offer resulting from negotiation. All proposals and bids that have been submitted shall be available and open for public inspection after the contract is awarded.

(e) As provided in the request for proposals and under rules adopted by the commissioners court, discussion may be conducted with responsible offerors who submit priced bids determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 10, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 13, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 24, eff. September 1, 2011.

Sec. 262.030. ALTERNATIVE COMPETITIVE PROPOSAL PROCEDURE FOR CERTAIN GOODS AND SERVICES. (a) Except for Subsection (d) of this section, the competitive proposal procedure provided by this section may be used for the purchase of insurance, high technology items, and the following special services:

(1) landscape maintenance;

(2) travel management; or

(3) recycling.

(b) Quotations must be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest and best evaluated offer resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

(c) If provided in the request for proposals, proposals shall

be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. All proposals that have been submitted shall be available and open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

(d) A county in which a purchasing agent has been appointed under Section 262.011 or employed under Section 262.0115 may use the competitive proposal purchasing method authorized by this section for the purchase of insurance or high technology items. In addition, the method may be used to purchase other items when the county official who makes purchases for the county determines, with the consent of the commissioners court, that it is in the best interest of the county to make a request for proposals.

(e) As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(d), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 464, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 746, Sec. 3, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(85), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 640 (H.B. 2694), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 4, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1272 (H.B. 3517), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 14, eff. September 1, 2011.

Sec. 262.0305. MODIFICATION AFTER AWARD. (a) After award of a

contract but before the contract is made, the county official who makes purchases for the county may negotiate a modification of the contract if the modification is in the best interests of the county and does not substantially change the scope of the contract or cause the contract amount to exceed the next lowest bid.

(b) For the modified contract to be effective, the commissioners court must approve the contract.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 11, eff. Sept. 1, 1989.

Sec. 262.031. CHANGES IN PLANS AND SPECIFICATIONS. (a) If it becomes necessary to make changes in plans, specifications, or proposals after a contract is made or if it becomes necessary to increase or decrease the quantity of items purchased, the commissioners court may make the changes. However, the total contract price may not be increased unless the cost of the change can be paid from available funds.

(b) If a change order involves an increase or decrease in cost of $50,000 or less, the commissioners court may grant general authority to an employee to approve the change orders. However, the original contract price may not be increased by more than 25 percent unless the change order is necessary to comply with a federal or state statute, rule, regulation, or judicial decision enacted, adopted, or rendered after the contract was made. The original contract price may not be decreased by 18 percent or more without the consent of the contractor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 104, Sec. 1, eff. May 7, 1993; Acts 1993, 73rd Leg., ch. 891, Sec. 1, eff. June 19, 1993; Acts 1995, 74th Leg., ch. 746, Sec. 4, eff. Aug. 28, 1995.

Sec. 262.032. BID OR PERFORMANCE BOND; PAYMENT UNDER CONTRACT. (a) If the contract is for the construction of public works or is under a contract exceeding $100,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the total contract price. A bid bond must be executed with a surety company authorized to do business in this state.

(b) Within 30 days after the date of the signing of a contract or issuance of a purchase order following the acceptance of a bid or proposal and prior to commencement of the actual work, the bidder or proposal offeror shall furnish a performance bond to the county, if required by the county, for the full amount of the contract if that contract exceeds $50,000. This subsection does not apply to a performance bond required to be furnished by Chapter 2253, Government Code.

(c) If the contract is for $50,000 or less, the county may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the county.

(d) A bidder or proposal offeror whose rates are subject to regulation by a state agency may not be required to furnish a performance bond or a bid bond under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 59(e), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 109, Sec. 3, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 696, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 33, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 262.033. INJUNCTION. Any property tax paying citizen of the county may enjoin performance under a contract made by a county in violation of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 262.034. CRIMINAL PENALTIES. (a) A county officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 262.023. An offense under this subsection is a Class B misdemeanor.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(c) A county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a). An

offense under this subsection is a Class C misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 12, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 15, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 24, eff. September 1, 2011.

Sec. 262.036. SELECTION AND RETENTION OF INSURANCE BROKER. (a) Notwithstanding any other provision in this chapter, a county may select an appropriately licensed insurance agent as the sole broker of record to obtain proposals and coverages for insurance that provides necessary coverage and adequate limits of coverage in all areas of risk, including public official liability, property, casualty, workers' compensation, and specific and aggregate stop-loss coverage for self-funded health care.

(b) The county may retain a broker of record selected under this section only on a fee basis paid by the county. A broker of record retained in this manner may not directly or indirectly receive any other remuneration, compensation, or other form of payment from any other source for the placement of insurance business under the broker of record contract.

(c) A broker of record retained under this section may not submit any insurance carrier proposal to the county or direct any county insurance business to an insurance carrier if the broker has a business relationship or proposed business relationship with the carrier, including an appointment, unless the broker first discloses the nature of that relationship or proposed relationship, in writing, to the county.

(d) A broker who violates this section is subject to any disciplinary remedy available under Chapter 82, Insurance Code, or Section 4005.102, Insurance Code, including license revocation and fine.

Added by Acts 2005, 79th Leg., Ch. 353 (S.B. 1214), Sec. 1, eff. June 17, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 16, eff.

September 1, 2011.

Sec. 262.037. QUALIFICATION. An officer authorized to make a purchase on behalf of a county or a county department or office may not make any purchase until providing to the county judge a signed acknowledgment that the officer has read and understands this chapter. This section does not apply in a county that has appointed a purchasing agent under Subchapter B.

Added by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 17, eff. September 1, 2011.

CHAPTER 263. SALE OR LEASE OF PROPERTY BY COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS FOR REAL PROPERTY

Sec. 263.001. SALE OR LEASE OF REAL PROPERTY. (a) The commissioners court of a county, by an order entered in its minutes, may appoint a commissioner to sell or lease real property owned by the county. The sale or lease must be made at a public auction held in accordance with this section unless this chapter provides otherwise.

(b) The appointed commissioner must publish notice of the auction before the 20th day before the date the auction is held. The notice must be published in English in a newspaper in the county in which the real property is located and in the county that owns the real property if not the same county. The notice must be published once a week for three consecutive weeks before the date the auction is held.

(c) If the real property is sold, a deed that is made on behalf of the county by the appointed commissioner in conformance with the order entered under Subsection (a) and that is properly acknowledged, proved, and recorded is sufficient to convey the county's interest in the property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.002. ABANDONED SEAWALL OR HIGHWAY PROPERTY. (a) If abandoned seawall or highway right-of-way property is no longer needed for such a purpose, the county may sell or lease the property

only according to the following priorities:

(1) to an abutting or adjoining landowner;

(2) to the person who originally granted the right-of-way to the county or the grantor's heirs or assigns;

(3) exclusively for public use to the United States, this state, or a municipality within the municipal boundaries of which the property is located; or

(4) at public auction in accordance with Section 263.001.

(b) A sale or lease to the public under this section is subject to any restrictions and prohibitions contained in the deed of conveyance under which the county originally acquired title to the property.

(c) Before the commissioners court of the county sells or leases the property to an abutting or adjoining landowner or to the original grantor or the grantor's heirs or assigns, the commissioners court, in addition to notice published in accordance with Section 263.001, shall appoint an appraiser to determine the fair market value and fair lease value of the property to be sold or leased. The appraiser shall report those values to the commissioner appointed to sell or lease the property under Section 263.001. The appointed commissioner may not sell or lease the property for an amount that is less than the reported fair market value or fair lease value, as the case may be.

(d) Before the commissioner sells or leases the property, the commissioner shall report to the commissioners court the amount of the proposed purchase or lease price. The commissioners court shall determine whether an offer of sale, purchase, or lease is reasonable and shall accept or reject the offer. The commissioners court may reject any offer it determines to be unreasonable.

(e) In addition to the sale price, a purchaser of abandoned seawall or highway right-of-way property must pay all costs of conducting the sale, including the appraisal fee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.003. SCHOOL LANDS. (a) The commissioners court of a county shall provide for the protection, preservation, and disposition of lands granted to the county for educational purposes.

(b) The commissioners court may dispose of land granted to the

county for educational purposes only as provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.004. RESTRICTIONS, CONDITIONS, AND LIMITATIONS. (a) In a conveyance of real property, the commissioners court of a county may provide for restrictions, conditions, and limitations that it determines are necessary or proper.

(b) Each conveyance of abandoned seawall right-of-way property under Section 263.002 must contain a restriction that a structure may not be placed within 50 feet, or a greater distance determined by the commissioners court, of the landward boundary of the seawall right-of-way retained by the county.

(c) In the order and notice required by Section 263.001, the commissioners court shall give a substantial statement of any restriction, condition, or limitation to which a conveyance is subject.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.005. USE BY PUBLIC UTILITY OR COMMON CARRIER. If, at the time real property, or an interest in real property, is sold, leased, or exchanged under this subchapter, a public utility or common carrier that has the right of eminent domain is using the property for right-of-way and easement purposes, the sale, lease, exchange, conveyance, and surrender of possession of the property or interest are subject to the right of and continued use by the public utility or common carrier.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.006. EXCHANGE OF REAL PROPERTY. (a) The commissioners court of a county, by an order entered in its minutes, may authorize the exchange of an interest in real property owned by the county for an interest in real property owned by an individual, private partnership or corporation, or other private entity, to be used for one or more public purposes for which a county otherwise may acquire land. The exchange transaction may include a partial cash

payment.

(b) Except as provided by Subsection (d), before the commissioners court exchanges an interest in real property under this section, notice that the county will consider offers for an exchange of the interest in real property must be published in English in a newspaper of general circulation in the county in which the real property is located and in the county that owns the interest if not the same county. The notice must be published once a week for three consecutive weeks before the date of the exchange, with the date of the first publication being before the 20th day before the date of the exchange.

(c) The county shall obtain an appraisal of the fair market value of the interest in real property owned and being exchanged by the county, and the appraisal is conclusive for purposes of this section of the value so determined. An exchange may not be made under this section for a total consideration, including cash and interest in real property, that is less than the fair market value of the interest in real property being exchanged by the county. The commissioners court may reject any and all offers made under this section.

(d) An exchange of an interest in real property originally acquired by the county for street, right-of-way, or easement purposes as consideration for the acquisition of another interest in real property for street, right-of-way, or easement purposes is not subject to the notice requirements of Subsection (b) but is subject to the appraisal required by Subsection (c), whether or not the exchange transaction includes a partial cash payment.

(e) This section does not apply to the exchange of an interest in real property owned by a county for an interest in real property owned by the United States, this state, or a municipality or other political subdivision of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.007. SALE OR LEASE OF REAL PROPERTY THROUGH SEALED-BID PROCEDURE. (a) The commissioners court of a county may adopt a procedure by which the county may sell or lease through a sealed-bid or sealed-proposal procedure any real property, including space in a building, owned by the county.

(b) The procedure must include a requirement that the county publish, before a sale or lease is made, a notice of its intent to sell or lease, as appropriate, the real property. The notice must:

(1) be published in a newspaper of general circulation in the county the commissioners court represents and, if the real property is located in another county, in a newspaper of general circulation in that other county;

(2) be published on two dates, with the date of the second publication occurring before the 14th day before the date the award of the sale or lease is made;

(3) include a description of the real property, including its location; and

(4) include a description of the procedure by which sealed bids or sealed proposals for the sale or lease may be submitted.

(c) Before selling property under this section, the commissioners court shall:

(1) obtain an appraisal of the property's fair market value; and

(2) determine a minimum bid amount, based on the appraisal.

(d) Under the procedure, the commissioners court may reject any and all bids submitted.

(e)(1) The commissioners court of a county may lease real property owned or controlled by the county that was formerly owned or controlled by the Texas Department of Mental Health and Mental Retardation to a federal, state, or local government entity for any purpose or to a nonprofit organization that is exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)), to conduct health and human service activities or such other activities which the commissioners court finds to be in the public interest, without using the sealed-bid or sealed-proposal process described in Subsection (a) and without using any other competitive bidding process which would otherwise be required by law.

(2) The commissioners court of a county with a population of 2.1 million or more that contains two or more municipalities with a population of 350,000 or more may lease real property owned or controlled by the county to a for-profit entity to conduct health and human service activities which the commissioners court finds to be in the public interest, without using the sealed-bid or sealed-proposal process described in Subsection (a) and without using any other

competitive bidding process which would otherwise be required by law.

(3) Except as provided by Subdivision (4), a commissioners court of a county that chooses to lease under this subsection shall declare its intent to do so through written notice posted in the same place and manner as the commissioners court posts its regular meeting agenda not later than 30 days prior to the beginning of the lease period. In setting the terms and conditions of the lease, including but not limited to the amount of the lease payment, the commissioners court may consider local business custom regarding leases and the reasonable market value of the leasehold, but the commissioners court is not bound thereby and may also consider the extent to which the provision of services or the other activities to be performed by the lessee will benefit the public. This subsection does not limit the ability of a commissioners court to enter into interlocal agreements, contracts, or any other arrangement permitted by law.

(4) The 30-day posting period provided by Subdivision (3) does not apply to a lease under Subdivision (1) or (2) if:

(A) the duration of the lease is 95 days or less; and

(B) the lease is to provide short-term emergency disaster relief services to persons as a result of a disaster in the county or to evacuees from another area as a result of an emergency evacuation from that area.

(f) The procedure authorized by this section is an alternative procedure to the procedure authorized by Section 272.001.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 60(a), eff. Aug. 28, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 13, Sec. 1, eff. June 14, 1990; Acts 1995, 74th Leg., ch. 145, Sec. 1, eff. May 19, 1995; Acts 1999, 76th Leg., ch. 14, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 138 (S.B. 336), Sec. 1, eff. May 18, 2007.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 155, eff. September 1, 2023.

Sec. 263.008. BROKER AGREEMENTS AND FEES FOR THE SALE OF REAL PROPERTY. (a) In this section, "broker" means a person licensed as a broker under Chapter 1101, Occupations Code.

(b) The commissioners court of a county may contract with a

broker to sell or lease a tract of real property that is owned by the county.

(c) The commissioners court of a county may pay a fee if a broker produces a ready, willing, and able buyer or lessee to purchase or lease a tract of real property.

(d) If a contract made under Subsection (b) requires a broker to list the tract of real property for sale or lease for at least 30 days with a multiple-listing service used by other brokers in the county, the commissioners court on or after the 30th day after the date the property is listed may sell or lease the tract of real property to a ready, willing, and able buyer or lessee who is produced by any broker using the multiple-listing service and who submits the highest cash offer.

(e) The commissioners court may sell or lease a tract of real property under this section without complying with the requirements for conducting a public auction, including the requirements prescribed by Section 263.001.

Added by Acts 1991, 72nd Leg., ch. 421, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1999, 76th Leg., ch. 1328, Sec. 1, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.790, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 88 (H.B. 1288), Sec. 1, eff. May 23, 2017.

SUBCHAPTER B. DISPOSITION OF CERTAIN REAL OR PERSONAL PROPERTY

Sec. 263.051. AIRPORT LAND. (a) The commissioners court of a county may lease to any person any land acquired, by a purchase or gift, by the county for an airport and may lease any facilities on that land, unless the lease is prohibited by the terms of the grant of the land to the county. The commissioners court shall determine the conditions of the lease.

(b) The commissioners court may make contracts relating to natural resources, including oil, gas, and other minerals, owned by the county by virtue of the ownership of airport land, including contracts for the exploration and development of those resources. The commissioners court may execute and deliver mineral deeds to or leases of all or part of the resources or rights to the resources.

The commissioners court shall determine the terms of and consideration for the contract, which may include oil payments, gas payments, overriding royalties, and similar payments.

(c) For the maintenance, improvement, and operation of the airport and the facilities on the airport land, the commissioners court shall use:

(1) proceeds received from the lease of the surface of the airport land or the facilities on that land for airport purposes or purposes related to the operation of the airport; and

(2) proceeds received from charges for the use of the airport for airport purposes.

(d) If at the end of the fiscal year a part of the proceeds covered by Subsection (c) remains unspent, the commissioners court may spend that amount for any lawful purpose.

(e) The commissioners court, for any lawful purpose, may spend:

(1) proceeds from the sale of minerals or mineral rights under airport land and proceeds from the execution of mineral leases, including cash bonuses, delay rentals, and royalties; and

(2) proceeds from the lease of the surface of airport land or facilities on that land for purposes other than airport purposes or purposes other than those relating to the operation of an airport.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.052. CERTAIN LAND, HOUSING, OR FACILITIES ACQUIRED FROM UNITED STATES. (a) A county may:

(1) lease or rent any land, housing, or facility acquired under Section 270.004;

(2) establish and revise the amount charged for the lease or rental;

(3) arrange or contract for the furnishing of services or facilities for, or in connection with, that land, housing, or facility or the occupants of that land, housing, or facility;

(4) sell or exchange all or part of that land or housing; and

(5) execute oil, gas, or mineral leases for all or part of that land.

(b) The commissioners court of the county shall determine the terms of an oil, gas, or mineral lease executed under this section

and the consideration for the lease, which may include oil or gas payments, overriding royalties, and similar payments.

(c) The commissioners court may execute conveyances of minerals or mineral rights and may contract for the exploration and development of minerals under all or part of the land.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.053. SALE AND SUBSEQUENT LEASE OR LICENSE OF PROPERTY IN COUNTIES WITH POPULATION OF MORE THAN 250,000. (a) This section applies only to counties with a population of more than 250,000.

(b) The commissioners court of the county may sell land, buildings, facilities, or equipment for the purpose of making contracts for the lease or rental of land, buildings, facilities, or equipment or for receiving services from others for county purposes. The commissioners court may pay regular monthly bills for utilities, such as electricity, gas, and water, for the property leased or rented or for the services received.

(c) The commissioners court of the county may enter into any for-profit or other licensing agreement with a seller of wireless communications service that may include a license to collocate wireless communications technology on property owned by the county.

(d) If a majority of the commissioners court determines that the facilities and equipment are essential for the proper administration of county government, the commissioners court may pay for the facilities and equipment and for the regular monthly bills from the general fund of the county. The commissioners court must make the payment by warrant in the manner that payments for other obligations of the county are made.

(e) A construction project initiated for a purpose authorized by this section may be awarded only by a contract that provides for the payment of the prevailing wage for all mechanics, laborers, and others employed in the construction project. The commissioners court of Tarrant County shall set the prevailing wage, which must be the same prevailing wage set by the commissioners court of that county for all construction projects involving the expenditure of county funds.

(f) On or before the expiration of a contract made under this section, the facilities may be purchased by the county and paid for

from its general fund if a majority of the commissioners court agrees that the purchase price is reasonable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 585, Sec. 1, eff. June 20, 2003.

Sec. 263.054. RELINQUISHMENT OF ABANDONED LAND. The commissioners court of a county by order may, as if there has been a failure of consideration, relinquish and convey land donated to the county for county purposes to the donor of the land or the donor's successor in title if:

(1) on the date of the order, the land has been abandoned and not used by the county for the purpose of the donation for more than 40 years; and

(2) it is shown that the donor of the land and the donor's successors in title have been in actual, continuous, open, peaceful, and adverse possession of the land for 40 years or more preceding the date of the order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.055. CONVEYANCE OF PROPERTY FROM COUNTY TO TEXAS A&I UNIVERSITY FOUNDATION, INC. (a) A county may convey surplus personal or real property of the county at a private sale to Texas A&I University Foundation, Inc., for any fair consideration approved by the commissioners court of the county.

(b) Property conveyed under this section must be used for higher education purposes in the county that conveyed the property. If at any time after the date a conveyance of real property is executed under this section the real property is used for a purpose other than a higher education purpose, ownership of the property reverts to the county that conveyed the property.

(c) For a conveyance under this section to be effective, the commissioners court must authorize the conveyance by an order entered in its minutes. The order must:

(1) describe the property to be conveyed;

(2) state the consideration to be paid; and

(3) direct the county judge of the county to execute in the name of the county a conveyance to Texas A&I University Foundation,

Inc., and to promptly make the conveyance on payment of the consideration to the appropriate officer of the county.

(d) An instrument of conveyance executed by the county judge must be in the form and contain the covenants and warranties prescribed by the commissioners court.

Added by Acts 1993, 73rd Leg., ch. 393, Sec. 1, eff. Aug. 30, 1993.

SUBCHAPTER C. LEASE OR SALE OF REAL PROPERTY FOR PRIVATELY OWNED HOTEL

Sec. 263.101. APPLICATION OF SUBCHAPTER TO POPULOUS COUNTIES. This subchapter applies only to a county with a population of more than 1.3 million.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 79, eff. Sept. 1, 2001.

Sec. 263.102. LEASE. (a) The commissioners court of the county may lease real property owned by the county and air rights above that property to an individual or a private corporation or association, and make agreements with an individual or a private corporation or association for the construction, ownership, maintenance, operation, or expansion of a privately owned hotel and related facilities that are operated in conjunction with an existing convention center owned by the county.

(b) The commissioners court may lease real property under this section regardless of the property's being encumbered by existing revenue bonds. In leasing the property, the commissioners court must comply with all applicable conditions of existing revenue bonds except those waived by the holders of the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.103. CREATION OF ENCUMBRANCE. (a) A lease or other agreement executed under this subchapter may not subject the real property to a pledge or mortgage, other than existing revenue bonds, refunding bonds, or other indentures for the release of existing revenue bonds, or to an encumbrance that did not exist on the date

the lease or agreement was executed.

(b) A lease under this subchapter must specifically provide that the real property subject to the lease is not encumbered or mortgaged by the lease or by any agreement executed in connection with the lease.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.104. LENDING CREDIT. A county executing a lease under this subchapter may not in any way lend its credit to an individual or a private corporation or association in connection with the lease.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.105. CONDITIONS OF LEASE. (a) A lease under this subchapter may initially be effective for the term of a mortgage covering the construction of the hotel and related facilities. The lease may provide to the parties constructing, owning, or operating the hotel or related facilities an option to renew the lease.

(b) The lease must be made on a competitive bid. Consideration for the lease may not be less than the fair market lease value of the property and air rights being leased.

(c) The parties to the lease mutually shall determine the other conditions of the lease.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.106. SALE. (a) The commissioners court of a county may sell land owned by the county and the air rights above the land to an individual or a private corporation or association if:

(1) all existing revenue bond obligations encumbering the land have been fully discharged as to bondholders;

(2) a hotel has been built on the land in conjunction with an existing convention center and the hotel has been operated continuously for at least five years from its inception;

(3) the parties to an existing lease of land mutually agree to the sale of the land and the air rights; and

(4) the county receives an amount for the land and air

rights that is fair under the market conditions existing at the time of the sale.

(b) The commissioners court may impose deed restrictions or reverters to preserve the use of the land for a purpose consistent with the construction, expansion, ownership, and operation of a hotel and related facilities in conjunction with a convention center.

(c) A sale of land under this subchapter may include land appurtenant to the land on which the hotel or related facilities have been built.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.107. EXPENDITURE OF TAX FUNDS. In an agreement authorized by this subchapter, the commissioners court of a county may spend tax funds consistent with state law but must limit each commitment or expenditure of tax funds associated with the agreement to an amount available from current revenues of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. DISPOSITION OF SALVAGE OR SURPLUS PROPERTY

Sec. 263.151. DEFINITIONS. In this subchapter:

(1) "Salvage property" means personal property, other than items routinely discarded as waste, that because of use, time, accident, or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended.

(2) "Surplus property" means personal property that:

(A) is not salvage property or items routinely discarded as waste;

(B) is not currently needed by its owner;

(C) is not required for the owner's foreseeable needs; and

(D) possesses some usefulness for the purpose for which it was intended.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 61(b), eff. Aug. 28, 1989.

Sec. 263.152. DISPOSITION. (a) The commissioners court of a county may:

(1) periodically sell the county's surplus or salvage property by competitive bid or auction, except that competitive bidding or an auction is not necessary if the purchaser is another county or a political subdivision within the county that is selling the surplus or salvage property;

(2) offer the property as a trade-in for new property of the same general type if the commissioners court considers that action to be in the best interests of the county;

(3) order any of the property to be destroyed or otherwise disposed of as worthless if the commissioners court undertakes to sell that property under Subdivision (1) and is unable to do so because no bids are made;

(4) dispose of the property by donating it to a civic or charitable organization located in the county if the commissioners court determines that:

(A) undertaking to sell the property under Subdivision (1) would likely result in no bids or a bid price that is less than the county's expenses required for the bid process;

(B) the donation serves a public purpose; and

(C) the organization will provide the county with adequate consideration, such as relieving the county of transportation or disposal expenses related to the property;

(5) transfer gambling equipment in the possession of the county following its forfeiture to the state to the Texas Facilities Commission for sale under Section 2175.904, Government Code; or

(6) order any vehicle retired under a program designed to encourage the use of low-emission vehicles to be crushed and recycled, if practicable, without a competitive bid or auction.

(a-1) The commissioners court shall remit money received from the Texas Facilities Commission from the sale of gambling equipment under Section 2175.904(c), Government Code, less administrative expenses incurred by the county in connection with the transfer and sale of the equipment, to the local law enforcement agency that originally seized the equipment.

(b) If the property is earth-moving, material-handling, road maintenance, or construction equipment, the commissioners court may exercise a repurchase option in a contract in disposing of property under Subsection (a)(1) or (a)(2). The repurchase price of equipment

contained in a previously accepted purchase contract is considered a bid under Subsection (a)(1) or (a)(2).

(c) Disposal under Subsection (a)(3) may be accomplished through a recycling program under which the property is collected, separated, or processed and returned to use in the form of raw materials in the production of new products.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 61(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 416, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 237, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 746, Sec. 5, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 254, Sec. 1, eff. May 28, 1999; Acts 2003, 78th Leg., ch. 43, Sec. 1, 2, eff. May 15, 2003; Acts 2003, 78th Leg., ch. 345, Sec. 1, 3, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1233 (H.B. 2462), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 931 (H.B. 3089), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 167 (H.B. 2002), Sec. 1, eff. May 28, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 124, eff. September 1, 2019.

Sec. 263.153. NOTICE. (a) The commissioners court shall publish notice of a sale of surplus or salvage property in at least one newspaper of general circulation in the county.

(b) The notice must be published on or after the 30th day but before the 10th day before the date of the sale.

(c) A county that contracts with an auctioneer licensed under Chapter 1802, Occupations Code, who uses an Internet auction site offering online bidding through the Internet to sell surplus or salvage property under this subchapter having an estimated value of not more than $500 shall satisfy the notice requirement under this section by posting the property on the site for at least 10 days unless the property is sold before the 10th day.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1150 (H.B. 2859), Sec. 1, eff. June 19, 2009.

Sec. 263.154. REJECTION OF OFFER. The commissioners court or its designated representative conducting the sale may reject any offer to purchase surplus or salvage property if the court or representative finds the rejection to be in the best interests of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.1545. BROKER AGREEMENTS FOR THE SALE OF CERTAIN SURPLUS PROPERTY BY CERTAIN COUNTIES. (a) This section applies only to surplus property that:

(1) is owned by a county with a population of more than 1.2 million and less than 1.5 million;

(2) uses a high level of technology;

(3) was used or will be used in connection with or for a highly specialized program; and

(4) was purchased by the county for more than $250,000.

(b) The commissioners court of a county may enter into a broker agreement to sell surplus property described by Subsection (a) with a broker who has the expertise necessary to negotiate the sale of the surplus property. The commissioners court may pay a fee to the broker if the broker produces a ready, willing, and able buyer to purchase the surplus property.

(c) Notwithstanding any other law, including Section 262.024, a broker agreement under this section is subject to the competitive procurement procedures for services under Subchapter C, Chapter 262, regardless of the amount of the proposed broker's fee.

(d) The commissioners court of a county may sell the surplus property to the ready, willing, and able buyer who submits the highest cash offer and is produced by the broker in accordance with the broker agreement.

(e) Notwithstanding any other law, the commissioners court of a county may sell surplus property under this section without complying with the requirements for conducting a public auction, bidding, or trade-in under other law, including the requirements under Sections

263.152 and 263.153.

Added by Acts 2017, 85th Leg., R.S., Ch. 793 (H.B. 2762), Sec. 1, eff. June 15, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 156, eff. September 1, 2023.

Sec. 263.155. RECORD. (a) The commissioners court shall keep a record of each item of surplus or salvage property sold and the sale price of each item.

(b) The commissioners court shall keep, for one year, a record of each item of surplus or salvage property destroyed or otherwise disposed of.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 61(c), eff. Aug. 28, 1989.

Sec. 263.156. PROCEEDS. Unless otherwise provided by law, the commissioners court shall deposit the proceeds from the sale of surplus or salvage property:

(1) in the county treasury to the credit of the general fund or the fund from which the property was purchased; or

(2) if the property was used for maintenance or construction of county roads and bridges, in the county treasury to the credit of the county road and bridge fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.157. TITLE. If a purchaser of surplus or salvage property at a sale held in accordance with this subchapter complies in good faith with the conditions of the sale and the applicable rules of the commissioners court, the purchaser obtains good title to the property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.158. RULES. The commissioners court may adopt rules necessary to administer this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. CONVEYANCE OF REAL PROPERTY FROM COUNTY TO UNITED STATES

Sec. 263.201. ACQUISITION AND CONVEYANCE OF LAND FOR WATER PROJECTS. (a) If a county that has a part of its boundary coincident with a part of the international boundary between the United States and Mexico, or that is contiguous to such a county, has made an agreement with the United States to acquire and, on request, convey to the United States, with or without monetary consideration, land or an interest in land desired by the United States to enable the United States or an establishment of the United States to carry out an act of the United States Congress in aid of navigation, irrigation, flood control, or improvement of water courses and to accomplish a purpose specified by Section 2204.101, Government Code, the commissioners court of the county may:

(1) on request by the United States through its proper officer for the conveyance of land, or an interest in land, that is necessary for the construction, operation, or maintenance of the water project, acquire the land or interest in land by gift or purchase or by condemnation in accordance with Chapter 21, Property Code, for ultimate conveyance to the United States; and

(2) pay for the land or interest in land from special flood control funds or other available county funds.

(b) In a condemnation by the county, the county, after the award by the special commissioners appointed under Chapter 21, Property Code, may file a declaration of taking adopted by resolution of the commissioners court and signed by the county judge.

(c) The declaration of taking must contain:

(1) a declaration that the land or interest in land described in the original petition is taken for a public use and for ultimate conveyance to the United States;

(2) a description of the land sufficient for the identification of the land;

(3) a statement of the estate or interest in the land being taken;

(4) a statement of the public use to be made of the land;

(5) a plan showing the land being taken; and

(6) a statement of the amount of damages awarded by the special commissioners, or by the jury on appeal, for the taking of the land.

(d) When the commissioners court files the declaration of taking with the county clerk, deposits money in an amount equal to the amount of the award against the county with the county clerk subject to the order of the defendant, and pays any costs awarded against the county:

(1) the land is considered to be condemned and taken for the uses specified in the declaration;

(2) the title to the estate or interest in the land specified in the declaration vests in the county; and

(3) the right to just compensation vests in the person entitled to the compensation.

(e) When title passes, the commissioners court may immediately convey the land or interest in land to the United States.

(f) An appeal from an award of the special commissioners or the service of process by publication does not suspend the vesting of title in the county. On appeal the only issue is the amount of damages due from the county to the owner of the land or interest in land for its taking.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(24), eff. Sept. 1, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 5, eff. September 1, 2011.

Sec. 263.202. CONVEYANCE FOR PUBLIC BUILDING. (a) A county that owns land used for public purposes that exceeds the amount of land needed by the county for its public purposes may sell all or part of the excess to the United States at a private sale for any fair consideration approved by the commissioners court of the county. The sale must be made under the statutes of the United States authorizing the acquisition of sites for public buildings.

(b) The commissioners court of the county is responsible for determining whether an excess of land exists and the extent to which

the excess may be sold and conveyed under this section.

(c) For a conveyance under this section to be effective, the commissioners court must authorize the conveyance by an order entered in its minutes. The order must:

(1) describe the land to be conveyed;

(2) state the consideration to be paid; and

(3) direct the county judge of the county to execute in the name of the county a conveyance to the United States and to promptly make delivery of the conveyance on payment of the consideration to the appropriate officer of the county.

(d) An instrument of conveyance executed by the county judge must be in the form, and contain the covenants and warranties, prescribed by the commissioners court. The instrument must reserve concurrent jurisdiction over the conveyed land for the service of all state criminal and civil process.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.203. CONVEYANCE FOR CIVIL WORKS PROJECT. If a county owns and controls land, or an interest in land, that is used or proposed to be used as a part of the site of a flood control, river and harbor improvement, water conservation, or other civil works project constructed or to be constructed by the United States, the county judge of the county, on order of the commissioners court or on a request of the United States that is supported by an order of the commissioners court, may convey an easement, or other interest in land, necessary for the construction, operation, and maintenance of the project to the United States or to a political subdivision, agency, or instrumentality of this state that is cooperating with the United States in the project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.204. CONVEYANCE FOR MILITARY INSTALLATION OR FACILITY. If a county owns and controls land, or an interest in land, near a federally owned or operated military installation or facility, the county judge of the county, on order of the commissioners court or on a request of the United States that is supported by an order of the commissioners court, may convey to the United States an easement, or

other interest in the land, that is necessary for the construction, operation, and maintenance of the installation or facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.205. CONSIDERATION. The commissioners court shall determine the consideration for a conveyance under Section 263.203 or 263.204 and may determine that monetary consideration is not required.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 263.206. ASSENT TO GRANT OF EASEMENT. If the county does not own the fee simple title to land described by Section 263.203 or 263.204 and if the owner of the fee simple has executed an easement to the land for the purposes for which a conveyance is authorized under Section 263.203 or 263.204, the county judge, on order of the commissioners court, may join in and assent to the easement in the instrument granting the easement or in a separate instrument.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER F. ADVERTISING SPACE

Sec. 263.251. SALE OR LEASE OF ADVERTISING SPACE. (a) The commissioners court of a county may adopt a procedure by which the county may:

(1) lease to another entity advertising space located:

(A) in or on a building or part of a building owned by the county;

(B) on personal property owned by the county;

(C) on an official county website; or

(D) on personal property leased by the county, with the property owner's consent; or

(2) sell advertising space located on correspondence distributed by the county through the United States Postal Service.

(b) The procedure must include a requirement that the county publish, before a sale or lease of advertising space is made, a notice of its intent to sell or lease the advertising space. The

notice must:

(1) be published:

(A) at least one time in a newspaper of general circulation in the county not earlier than the 30th day or later than the 14th day before the date the award of the sale or lease is made; and

(B) on the county's official website continuously for the 14 days immediately before the date the award of the sale or lease is made;

(2) include a description of the advertising space, including its location and a description of the part of any real or personal property that the advertising space occupies; and

(3) include a description of the procedure by which bids or proposals for the sale or lease may be submitted.

(c) Under the procedure, the commissioners court may reject any and all bids or proposals submitted.

Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 29, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 46 (H.B. 477), Sec. 1, eff. May 16, 2013.

Acts 2017, 85th Leg., R.S., Ch. 999 (H.B. 1170), Sec. 1, eff. June 15, 2017.

CHAPTER 270. MISCELLANEOUS PROVISIONS AFFECTING THE ACQUISITION, SALE, OR LEASE OF PROPERTY BY COUNTIES

Sec. 270.001. ACQUISITION OF REAL PROPERTY BY CONVEYANCE. A deed, grant, or conveyance that is made, is acknowledged or proven, and is recorded as other deeds of conveyance to a county, to the courts or commissioners of a county, or to another person for the use and benefit of a county vests in the county the right, title, interest, and estate that the grantor had in the property at the time the instrument was executed and that the grantor intended to convey.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 270.002. PURCHASE AND SALE OF PROPERTY AFTER JUDGMENT. If property is sold under execution or order of sale on a judgment in

favor of a county, including execution on a judgment in a case of scire facias in the name of the state, the attorney or agent representing the county, with the advice and consent of the commissioners court, may purchase and dispose of the property for the county in the same manner as an attorney or agent for the state under Article 4401, Revised Statutes. The officer selling the property shall execute and deliver to the county a deed to the property. On sale of the property by the county, the commissioners court, in the name of the county, shall execute and deliver to the purchaser a deed to the property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 270.003. ACQUISITION AND USE OF PUBLIC PLATFORM TONNAGE SCALES. (a) The commissioners court of a county may, on the presentation of a suitable written petition signed by 500 or more inhabitants of the county, purchase and install one or more public platform tonnage scales suitable and adapted for the weighing of livestock, produce, agricultural products, or other goods to facilitate the development of truck farming, cattle raising, or other trade or business in which the availability of a public scale is necessary or desirable.

(b) The commissioners court may operate a public scale. It may provide adequate personnel for this purpose or it may lease or rent, under terms and conditions it may set, the scale to a responsible private person.

(c) The commissioners court may prescribe rules concerning the use of a public scale, including the fee to be charged.

(d) A public scale provided for under this section must at all times be available for use by the public.

(e) The money that may be collected or received from the use or operation of a public scale or through a contract executed under this section shall be deposited in the general fund of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 270.004. AUTHORITY TO CONTRACT WITH FEDERAL GOVERNMENT FOR ACQUISITION OF LAND OR HOUSING. (a) The commissioners court of a county may:

(1) contract with the United States, including the General Services Administrator and the Secretary of Housing and Urban Development and their successors, for:

(A) the acquisition of land or an interest in land located in the county that is owned by the United States; or

(B) the acquisition of temporary housing on land that the United States owns or controls;

(2) acquire from the United States, by purchase, gift, or otherwise, land or housing described in Subdivision (1); and

(3) own and operate land or housing acquired under this subsection.

(b) The commissioners court may:

(1) adopt a resolution or order requesting the United States to transfer to the county the land, housing, or the interest in the land or housing that the United States is authorized to convey or transfer to the county; and

(2) bind the county to comply with all terms and conditions imposed by the United States as a prerequisite to the transfer or conveyance of the land, housing, or the interest in the land or housing.

(c) The instrument or deed conveying to the county the land, housing, or the interest in the land or housing may contain conditions, provisions, covenants, or warranties prescribed by the United States and agreed on by the commissioners court acting for the county, provided the terms are not prohibited by the Texas Constitution.

(d) The commissioners court may issue negotiable bonds and levy taxes for the interest and sinking funds of the bonds, in accordance with Subtitles A and C, Title 9, Government Code, to purchase or acquire in another manner the land or housing and to improve, enlarge, extend, or repair the land or housing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.292, eff. Sept. 1, 2001.

Sec. 270.005. CONTRACTS WITH FEDERAL GOVERNMENT FOR CONSTRUCTION IN POPULOUS COUNTY. (a) The commissioners court of a county with a population of 251,000 to 260,000 may contract with the United States government or a federal agency for:

(1) the joint construction or improvement of roads, bridges, or other county improvements; or

(2) the maintenance of a project constructed under this section.

(b) The county may pay for its part of the expense of a project constructed under this section from available county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 95, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 80, 81, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 86, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 157, eff. September 1, 2023.

Sec. 270.006. REPORT ABOUT USE OF, OR ACCIDENT INVOLVING, EQUIPMENT IN COUNTY WITH POPULATION OF 500,000 OR MORE. (a) In this section, "equipment" means equipment purchased with and operated with public funds or personal equipment for which an employee or officer is reimbursed by a county or flood control district for operation and maintenance charges.

(b) This section applies only to a county with a population of 500,000 or more.

(c) An officer or employee of a county, a district officer, or an employee of a flood control district in the county who operates equipment shall file with each payroll a report for each piece of equipment in the charge of the employee or officer, showing:

(1) the daily use of the equipment;

(2) the time and mileage run;

(3) the amount spent for repairs;

(4) the gasoline, oil, and grease purchased; and

(5) the road, bridge, or project on which work was performed.

(d) The report must be in writing and must be signed and certified by the officer or employee actually using the equipment.

(e) An officer or employee of the county, a district officer, or an employee of a flood control district in the county shall file a report of an accident involving equipment in the charge of the

employee or officer. The report must give the cause, damage, location, circumstances, and persons and equipment involved in the accident.

(f) A report under this section must be on a prescribed form and must be filed on or before the fifth day of the month succeeding the period of operation.

(g) A report under this section must disclose all facts essential to a proper analysis of maintenance and operating costs and other statistical purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 270.007. SALE OF COMPUTER SOFTWARE. (a) A county may sell or license a computer software application or software system developed by the county for use by the county. A county may sell or license a computer software application or software system developed for the county by a person under contract unless the contract specifically prohibits the county from selling or licensing the application or system.

(b) A county may exclusively contract with a person to market the application or system. If the original contract for development of the application or system under Subsection (a) does not include a provision for marketing the application or system, a contract under this subsection shall be awarded in compliance with Section 262.030, concerning the alternative competitive procedure for insurance or high technology items.

(c) The provisions of the open records law, Chapter 552, Government Code, governing the cost of making copies of public records do not apply to a software application or software system subject to this section.

(d) In this section, "computer software application or software system" includes documentation of the application or system, and does not include any hardware or equipment associated with the application or system.

(e) Notwithstanding any other provision of this section, the provisions of this section apply only to (1) the sale or licensure of a software application or software system by a county or (2) a request under Chapter 552, Government Code, for a computer software application or software system itself, and do not apply to the cost

of production for public inspection or copying of information collected, assembled, or maintained through the use of such software, including on-line instructions on computer searches or information necessary to obtain records from county computer systems, which cost shall be governed by Subchapter F, Chapter 552, Government Code, without regard to the cost of developing the software. Nothing in this section shall preclude header or record information, necessary for conversion and interpretation of electronic images, being made available for electronic images of public records.

(f) Except as provided by Subsection (b), a county may sell or license software under this section for a price negotiated between the county and the purchaser or licensee, including another governmental entity.

(g) Repealed by Acts 2003, 78th Leg., ch. 301, Sec. 12.

(h) The provisions of this section shall not authorize the development by a county of any software application or software system not otherwise authorized by law.

(i) A county may not develop a computer application or software system for the sole purpose of selling, licensing, or marketing the software application or software system.

Added by Acts 1995, 74th Leg., ch. 758, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2003, 78th Leg., ch. 301, Sec. 10, 12, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 19, eff. June 17, 2011.

Sec. 270.008. DISPOSAL OF SUPER COLLIDER PROPERTY. (a) If the United States Department of Energy returns or gives to any county any property that was used or was to be used in connection with or by a superconducting super collider high-energy research facility, the county may sell, lease, or otherwise dispose of the property by a method determined by the commissioners court of the county.

(b) A commissioners court disposing of property under this section is not required to comply with any provision of this title, including Sections 263.001 and 272.001, requiring a public auction or bidding process for the disposal of property.

Added by Acts 1997, 75th Leg., ch. 92, Sec. 1, eff. May 15, 1997.

Sec. 270.009. INTELLECTUAL PROPERTY OF COUNTY. A county may acquire, apply for, register, secure, hold, protect, and renew under the laws of this state, another state, the United States, or any other nation:

(1) a patent for the invention or discovery of:

(A) any new and useful process, machine, manufacture, composition of matter, art, or method;

(B) any new use of a known process, machine, manufacture, composition of matter, art, or method; or

(C) any new and useful improvement on a known process, machine, manufacture, composition of matter, art, or method;

(2) a copyright of an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which the work may be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(3) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the county uses to identify and distinguish the county's goods and services from other goods and services; and

(4) other evidence of protection of exclusivity issued for intellectual property.

Added by Acts 2003, 78th Leg., ch. 301, Sec. 11, eff. Sept. 1, 2003.

SUBTITLE C. ACQUISITION, SALE, OR LEASE PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 271. PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

SUBCHAPTER A. PUBLIC PROPERTY FINANCE ACT

Sec. 271.001. SHORT TITLE. This subchapter may be cited as the Public Property Finance Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.002. PURPOSE. (a) The legislature finds that the purchase or other acquisition or the use of property by governmental agencies and the financing of those activities are necessary to the

efficient and economic operation of government.

(b) This subchapter promotes a public purpose by furnishing governmental agencies with a feasible means to purchase or otherwise acquire, use, and finance public property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 752, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.003. DEFINITIONS. In this subchapter:

(1) "Conservation and reclamation district" means a district or authority organized or operating under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution.

(2) "Contract" means an agreement entered into under this subchapter but does not mean a contract solely for the construction of improvements to real property.

(3) "Governing body" means the board, council, commission, agency, court, or other body or group that is authorized by law to acquire personal property for each respective governmental agency.

(4) "Governmental agency" means a municipality, county, school district, conservation and reclamation district, hospital organization, or other political subdivision of this state.

(5) "Hospital organization" means a district, authority, board, or joint board organized under the laws of this state for hospital purposes.

(6) "Net effective interest rate" means, with reference to a contract, the interest amount considered by the governing body of a governmental agency to accrue on a contract.

(7) "Net interest cost" means the total of all interest to accrue and come due on a contract through the last date a payment is due on the contract, plus any discount or minus any premium included in the contract price or principal sum.

(8) "Personal property" includes appliances, equipment, facilities, and furnishings, or an interest in personal property, whether movable or fixed, considered by the governing body of the governmental agency to be necessary, useful, or appropriate to one or more purposes of the governmental agency. The term includes all materials and labor incident to the installation of that personal property. The term includes electricity and cloud computing services. The term does not include real property.

(9) "School district" means an independent school district, common school district, community college district, junior college district, or regional college district organized under the laws of this state.

(10) "Improvement" means a permanent building, structure, fixture, or fence that is erected on or affixed to land but does not include a transportable building or structure whether or not it is affixed to land.

(11) "Real property" means land, improvement, or an estate or interest in real property, other than a mortgage or deed of trust creating a lien on property or an interest securing payment or performance of an obligation in real property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 752, Sec. 2, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 396, Sec. 1.37, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1095 (S.B. 1393), Sec. 1, eff. June 17, 2011.

Acts 2021, 87th Leg., R.S., Ch. 211 (S.B. 58), Sec. 1, eff. June 3, 2021.

Sec. 271.004. REAL PROPERTY AND IMPROVEMENTS FOR SCHOOL DISTRICTS. (a) The board of trustees of a school district may execute, perform, and make payments under a contract under this Act for the use or purchase or other acquisition of real property or an improvement to real property. If the board proposes to enter into such a contract, the board shall publish notice of intent to enter into the contract not less than 60 days before the date set to approve execution of the contract in a newspaper with general circulation in the district. The notice must summarize the major provisions of the proposed contract. The notice shall estimate the construction and other costs, but the board shall not publish the first advertisement for bids for construction of improvements until 60 days has expired from the publication of the notice of intent to enter into the contract.

(b) If, within 60 days of the date of publication of the notice of intent required by Subsection (a), a written petition signed by at least five percent of the registered voters of the district is filed

with the board of trustees requesting that the board order a referendum on the question of whether the contract should be approved, the board may not approve the contract or publish the first advertisement for bids for construction of improvements unless the question is approved by a majority of the votes received in a referendum ordered and held on the question.

(c) Except as otherwise provided by this section, the referendum shall be held in accordance with the applicable provisions of the Election Code. The requirement that an election must be held on a uniform election date as prescribed by the Election Code does not apply to an election held under this section.

(d) The contract is a special obligation of the school district if ad valorem taxes are not pledged to the payment of the contract.

(e) If the contract provides that payments by the school district are to be made from maintenance taxes previously approved by the voters of the school district and are subject to annual appropriation or are paid from a source other than ad valorem taxes, the payments under the contract shall not be considered payment of indebtedness under Section 26.04(c), Tax Code.

(f) All or part of the obligation of the school district may be evidenced by one or more negotiable promissory notes.

(g) A lease-purchase contract entered into by the district under this section and the records relating to its execution must be submitted to the attorney general for examination as to their validity.

(h) If the attorney general finds that the contract has been authorized in accordance with the law, the attorney general shall approve them, and the comptroller of public accounts shall register the contract.

(i) Following approval and registration, the contract is incontestable and is a binding obligation according to its terms.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 752, Sec. 3, eff. Aug. 30, 1993.

Sec. 271.005. AUTHORITY TO CONTRACT FOR PERSONAL PROPERTY. (a) The governing body of a governmental agency may execute, perform, and make payments under a contract with any person for the use or the purchase or other acquisition of any personal property, or the

financing thereof. The contract is an obligation of the governmental agency. The contract may:

(1) be on the terms considered appropriate by the governing body;

(2) be in the form of a lease, a lease with an option or options to purchase, an installment purchase, or any other form considered appropriate by the governing body including that of an instrument which would be required to be approved by the attorney general under Chapter 1202, Government Code, provided that contracts in such form must be approved by the attorney general in accordance with the terms of that chapter;

(3) be for a term approved by the governing body and contain an option or options to renew or extend the term; and

(4) be made payable from a pledge of all or any part of any revenues, funds, or taxes available to the governmental agency for its public purposes.

(b) The governing body of a governmental agency may contract under this section for materials and labor incident to the installation of personal property.

(c) A contract may provide for the payment of interest on the unpaid amounts of the contract at a rate or rates and may contain prepayment provisions, termination penalties, and other provisions determined within the discretion of the governing body. The net effective interest rate on the contract may not exceed the net effective interest rate at which public securities may be issued in accordance with Chapter 1204, Government Code. Interest on the unpaid amounts of a contract shall be computed as simple interest.

(d) Subject only to applicable constitutional restrictions, the governing body may obligate taxes or revenues for the full term of a contract for the payment of the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 82, Sec. 1, eff. May 12, 1991; Acts 1993, 73rd Leg., ch. 104, Sec. 3, eff. May 7, 1993; Acts 1999, 76th Leg., ch. 396, Sec. 1.38, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.293, eff. Sept. 1, 2001.

Sec. 271.006. COMPLIANCE WITH OTHER REQUIREMENTS. (a) In entering into the contract, a municipality must comply with the

requirements of Chapter 252 and a county must comply with the requirements of Subchapter C, Chapter 262. However, the municipality or county is not required to submit to a referendum the question of entering into the contract.

(b) The purchasing requirements of Section 361.426, Health and Safety Code, apply to a purchase by a governmental agency under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 19, eff. Sept. 1, 1991.

Sec. 271.0065. ADDITIONAL COMPETITIVE PROCEDURES. (a) In any procedure for competitive bidding under this subchapter, the governing body shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.

(b) A governmental agency shall receive bids or proposals under this subchapter in a fair and confidential manner.

(c) A governmental agency may receive bids or proposals under this subchapter in hard-copy format or through electronic transmission. A governmental agency shall accept any bids or proposals submitted in hard-copy format.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 4, eff. Sept. 1, 2001.

Sec. 271.007. APPROVED AND REGISTERED CONTRACT. (a) If the governing body approves the contract and the contract provides for the payment of an aggregate amount of $100,000 or more, the governing body may submit the contract and the record relating to the contract to the attorney general for examination as to the validity of the contract. The attorney general shall approve the contract if it has been made in accordance with the constitution and other laws of this state, and the contract then shall be registered by the comptroller of public accounts.

(b) After the contract has been approved and registered as provided by this section, the contract is valid and is incontestable for any cause. The legal obligation of the lessor, vendor, or supplier of personal property or of the person installing personal property to the governmental agency is not diminished in any respect

by the approval and registration of the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 396, Sec. 1.39, eff. Sept. 1, 1999.

Sec. 271.008. AUTHORIZED INVESTMENTS. The contract is a legal and authorized investment for:

(1) banks, savings banks, trust companies, and savings and loan associations;

(2) insurance companies;

(3) fiduciaries and trustees; and

(4) the sinking funds of a county, municipality, school district, or other political subdivision or corporation of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.009. TERM OF CONTRACT. The contract may be for any term not to exceed 25 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS

Sec. 271.021. DEFINITIONS. In this subchapter:

(1) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

(2) "Governmental entity" means:

(A) a county;

(B) a common or independent school district;

(C) a hospital district or authority;

(D) a housing authority; or

(E) an agency or instrumentality of the governmental entities described by Paragraphs (A) through (D).

(3) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(4) "Sequential purchases" means purchases, made over a

period, of items that in normal purchasing practices would be purchased in one purchase.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 328, Sec. 15, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1250, Sec. 14, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 13.04, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 1370, Sec. 1, eff. Sept. 1, 1997.

Sec. 271.022. EXEMPT CONTRACT. This subchapter does not affect a contract required to be awarded under Subchapter A, Chapter 2254, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(9), eff. Sept. 1, 1995.

Sec. 271.023. CONFLICT OF LAWS. To the extent of any conflict, the provisions of Subchapter B, Chapter 44, Education Code, relating to the purchase of goods and services under contract by a school district prevail over this subchapter.

Added by Acts 1999, 76th Leg., ch. 1383, Sec. 2, eff. June 19, 1999.

Sec. 271.024. COMPETITIVE PROCUREMENT PROCEDURE APPLICABLE TO CONTRACT. If a governmental entity is required by statute to award a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property on the basis of competitive bids, and if the contract requires the expenditure of more than $50,000 from the funds of the entity, the bidding on the contract must be accomplished in the manner provided by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 749, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 14, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 115, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 6, eff.

June 19, 2009.

Sec. 271.0245. ADDITIONAL COMPETITIVE PROCEDURES. (a) In the procedure for competitive bidding under this subchapter, the governing body of the governmental entity shall provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.

(b) A governmental entity shall receive bids under this subchapter in a fair and confidential manner.

(c) A governmental entity may receive bids under this subchapter in hard-copy format or through electronic transmission. A governmental entity shall accept any bids submitted in hard-copy format.

Added by Acts 2001, 77th Leg., ch. 1063, Sec. 5, eff. Sept. 1, 2001.

Sec. 271.025. ADVERTISEMENT FOR BIDS. (a) The governmental entity must advertise for bids. The advertisement for bids must include a notice that:

(1) describes the work;

(2) states the location at which the bidding documents, plans, specifications, or other data may be examined by all bidders; and

(3) states the time and place for submitting bids and the time and place that bids will be opened.

(b) The advertisement must be published as required by law. If no legal requirement for publication exists, the advertisement must be published at least twice in one or more newspapers of general circulation in the county or counties in which the work is to be performed. The second publication must be on or before the 10th day before the first date bids may be submitted.

(c) The governmental entity must mail a notice containing the information required under Subsection (a) to any organization that:

(1) requests in advance that notices for bids be sent to it;

(2) agrees in writing to pay the actual cost of mailing the notice; and

(3) certifies that it circulates notices for bids to the construction trade in general.

(d) The governmental entity shall mail a notice required under Subsection (c) on or before the date the first newspaper advertisement under this section is published.

(e) In a county with a population of 3.3 million or more, the county and any district or authority created under Article XVI, Section 59, of the Texas Constitution of which the governing body is the commissioners court may require that a minimum of 25 percent of the work be performed by the bidder and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1019, Sec. 2, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 669, Sec. 82, eff. Sept. 1, 2001.

Sec. 271.026. OPENING OF BIDS. (a) Bids may be opened only by the governing body of the governmental entity at a public meeting or by an officer or employee of the governmental entity at or in an office of the governmental entity. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.

(b) This subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.027. AWARD OF CONTRACT. (a) The governmental entity is entitled to reject any and all bids.

(b) The contract must be awarded to the lowest responsible bidder, but the contract may not be awarded to a bidder who is not the lowest bidder unless before the award each lower bidder is given notice of the proposed award and is given an opportunity to appear before the governing body of the governmental entity or the designated representative of the governing body and present evidence concerning the bidder's responsibility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.0275. SAFETY RECORD OF BIDDER CONSIDERED. In determining who is a responsible bidder, the governmental entity may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

(1) the governing body of the governmental entity has adopted a written definition and criteria for accurately determining the safety record of a bidder;

(2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and

(3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 58(d), eff. Aug. 28, 1989.

Sec. 271.028. EFFECT OF NONCOMPLIANCE. A contract awarded in violation of this subchapter is void.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.029. CRIMINAL PENALTIES. (a) An officer or employee of a governmental entity commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of the statute that requires a contract described by Section 271.024 to be awarded on the basis of competitive bids. An offense under this subsection is a Class B misdemeanor.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(c) An officer or employee of a governmental entity commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 15, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 18, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 24, eff. September 1, 2011.

SUBCHAPTER C. CERTIFICATE OF OBLIGATION ACT

Sec. 271.041. SHORT TITLE. This subchapter may be cited as the Certificate of Obligation Act of 1971.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.042. PURPOSE; CONFLICT. (a) It is the purpose of this subchapter to provide:

(1) a procedure for certain financing that is an alternative to the more cumbersome procedure under Chapter 252 or 262; and

(2) a new class of securities to be issued and delivered within the financial capabilities of an issuer on compliance with the procedures prescribed by this subchapter.

(b) If there is a conflict between a provision of this subchapter and a provision of Chapter 252 or 262, an issuer may use either provision, and it is not necessary for the governing body to designate the law under which action is being taken.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 39, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 19, eff. September 1, 2011.

Sec. 271.043. DEFINITIONS. In this subchapter:

(1) "Bond funds" means money received from the sale of bonds by the issuer.

(2) "Certificate" means a certificate of obligation authorized to be issued under this subchapter.

(3) "Component purchases" means purchases of the component

parts of an item that in normal purchasing practices would be purchased in one purchase.

(4) "Contractual obligation" means a contract entered into by an issuer through its governing body and executed under Section 271.054 or 271.056.

(5) "Current funds" means money in the treasury of the issuer, taxes in the process of collection during the current budget year of the issuer, and all other revenues anticipated with reasonable certainty during the current budget year of the issuer.

(6) "Governing body" means the board, council, commission, court, or other body or group authorized to issue bonds for or on behalf of an issuer.

(7) "Issuer" means a municipality, county, or hospital district established under Chapter 281, Health and Safety Code.

(7-a) "Public work" for an issuer that is a municipality or county:

(A) means any of the following public improvements as authorized by law:

(i) a street, road, highway, bridge, sidewalk, or parking structure;

(ii) a landfill;

(iii) an airport;

(iv) a utility system, water supply project, water treatment plant, wastewater treatment plant, or water or wastewater conveyance facility;

(v) a wharf or dock;

(vi) a flood control and drainage project;

(vii) a public safety facility, including a police station, fire station, emergency shelter, jail, or juvenile detention facility;

(viii) a judicial facility;

(ix) an administrative office building housing the governmental functions of the municipality or county;

(x) an animal shelter;

(xi) a library; or

(xii) a park or recreation facility that is generally accessible to the public and is part of the municipal or county park system;

(B) means the rehabilitation, expansion, reconstruction, or maintenance of an existing stadium, arena, civic

center, convention center, or coliseum that is owned and operated by the municipality or county or by an entity created to act on behalf of the municipality or county; and

(C) does not include:

(i) a facility for which more than 50 percent of the average annual usage is or is intended to be for professional or semi-professional sports;

(ii) a new stadium, arena, civic center, convention center, or coliseum that is or is intended to be leased by a single for-profit tenant for more than 180 days in a single calendar year; or

(iii) a hotel.

(8) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(9) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, Sec. 17, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 47, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1126 (H.B. 4082), Sec. 2, eff. September 1, 2023.

Sec. 271.044. SUBCHAPTER AVAILABLE TO CERTAIN MUNICIPALITIES. (a) A municipality may use this subchapter only if the municipality:

(1) is incorporated under the home-rule amendment to the constitution (Article XI, Section 5, of the Texas Constitution); or

(2) is incorporated under a general or special law and the municipality has the authority to levy an ad valorem tax of not less than $1.50 on each $100 valuation of taxable property in the municipality.

(b) A home-rule municipality may use this subchapter regardless of any provision in the municipality's charter to the contrary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.045. PURPOSES FOR WHICH CERTIFICATES MAY BE AUTHORIZED. (a) The governing body of an issuer may authorize certificates to pay a contractual obligation to be incurred for the:

(1) construction of any public work;

(2) purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes; or

(3) payment of contractual obligations for professional services, including services provided by tax appraisers, engineers, architects, attorneys, map makers, auditors, financial advisors, and fiscal agents.

(b) If necessary because of change orders, certificates may be authorized in an amount not to exceed 25 percent of a contractual obligation incurred for the construction of public works, but certificates may be delivered only in the amount necessary to discharge contractual obligations.

(c) The governing body of a municipality may issue certificates of obligation to pay all or part of a municipality's obligations incurred by contract for interests in and rights to water or sewer treatment capacity in connection with a water supply and transmission project or sewer treatment or collection project to be constructed in whole or in part on behalf of the municipality by another governmental entity or political subdivision pursuant to a written agreement expressly authorized under Section 552.014 of this code or Section 791.026, Government Code.

(d) In exercising its authority to issue certificates of obligation for the purposes specified in Subsection (c), the municipality must limit the principal amount of certificates to be issued for the purpose of funding its contractual obligations to an amount equal to (i) the aggregate of the contractual payments or the total costs allocated or attributed, under generally accepted accounting principles, to the capital costs of the project, as opposed to any maintenance or operating costs to be paid under the written agreement or (ii) the total cost of the project multiplied by the percentage of the nameplate capacity of the project acquired or conveyed by the written agreement to the municipality, whichever limitation is applicable to the contractual interests or rights being conveyed or identified in the written agreement.

(e) Work that is directly attributable under generally accepted accounting principles to the costs of the project and that is

performed by employees of the issuer may be allocated or attributed to the capital costs of the project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 124, Sec. 1, eff. May 19, 1997; Acts 2001, 77th Leg., ch. 402, Sec. 14, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 554 (H.B. 1232), Sec. 1, eff. June 17, 2005.
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(4), eff. April 1, 2009.

Sec. 271.046. ADDITIONAL PURPOSES FOR CERTIFICATES. (a) Certificates may be issued for the payment of contractual obligations to be incurred in:

(1) constructing or equipping a jail;

(2) constructing, renovating, or otherwise improving a county-owned building; or

(3) constructing a bridge that is part of or connected to a county road or an approach to such a bridge.

(b) Certificates issued under this section may be sold for cash, subject to the restrictions and other conditions of Section 271.050.

(c) The provisions of this subchapter relating to advertisement for competitive bids apply to contractual obligations to be incurred for a purpose for which certificates are to be issued under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 648, Sec. 1, eff. June 14, 1989.

Sec. 271.0461. ADDITIONAL PURPOSE FOR CERTIFICATES: DEMOLITION OF DANGEROUS STRUCTURES OR RESTORATION OF HISTORIC STRUCTURES. Certificates may be issued by any municipality for the payment of contractual obligations to be incurred in demolishing dangerous structures or restoring historic structures and may be sold for cash, subject to the restrictions and other conditions of Section 271.050.

Added by Acts 1989, 71st Leg., ch. 459, Sec. 1, eff. Aug. 28, 1989.

Amended by Acts 1997, 75th Leg., ch. 1056, Sec. 1, eff. June 19, 1997.

Sec. 271.047. AUTHORIZATION OF CERTIFICATES BY ORDINANCE OR ORDER; OTHER PROVISIONS IN CERTIFICATES. (a) Certificates may be authorized by an ordinance adopted by the governing body of a municipality, or by an order adopted by the governing body of a county after compliance with the quorum requirements prescribed by Section 81.006.

(b) The governing body may:

(1) make the certificates payable at times and places determined by the governing body;

(2) issue the certificates in forms and one or more denominations, either in coupon form or registered as to principal and interest, or both;

(3) make the certificates contain options for redemption before scheduled maturity; and

(4) make the certificates contain any other provisions the governing body desires.

(c) A certificate may not mature over a period greater than 40 years from the date of the certificate and may not bear interest at a rate greater than that allowed by Chapter 1204, Government Code.

(d) Except as provided by this subsection, the governing body of an issuer may not authorize a certificate to pay a contractual obligation to be incurred if a bond proposition to authorize the issuance of bonds for the same purpose was submitted to the voters during the preceding three years and failed to be approved. A governing body may authorize a certificate that the governing body is otherwise prohibited from authorizing under this subsection:

(1) in a case described by Sections 271.056(1)-(3); and

(2) to comply with a state or federal law, rule, or regulation if the political subdivision has been officially notified of noncompliance with the law, rule, or regulation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.294, eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 923 (H.B. 1378), Sec. 2, eff. January 1, 2016.

Sec. 271.048. CLAIMS AND ACCOUNTS; FUNDING AND EXCHANGE. (a) A governing body may provide that claims and accounts may, after certificates are authorized, be incurred for authorized purposes and that the claims and accounts represent an undivided interest in the certificates simultaneously authorized. The governing body may also provide for the funding or exchange of the claims and accounts for a like total principal amount of the certificates, with any amount in excess of the principal amount of the certificates delivered at one time to be paid in cash or carried forward to a subsequent exchange of claims and accounts for certificates.

(b) The authorization of certificates and the indebtedness they evidence may occur before the execution of a contract under this subchapter.

(c) This section does not create any exception to the competitive bidding requirements of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.049. NOTICE OF INTENTION TO ISSUE CERTIFICATES; PETITION AND ELECTION. (a) Regardless of the sources of payment of certificates, certificates may not be issued unless the issuer publishes notice of its intention to issue the certificates. The notice must be published:

(1) once a week for two consecutive weeks in a newspaper, as defined by Subchapter C, Chapter 2051, Government Code, that is of general circulation in the area of the issuer, with the date of the first publication to be before the 45th day before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates; and

(2) if the issuer maintains an Internet website, continuously on the issuer's website for at least 45 days before the date tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates.

(b) The notice must state:

(1) the time and place tentatively set for the passage of the order or ordinance authorizing the issuance of the certificates;

(2) the purpose of the certificates to be authorized;

(3) the manner in which the certificates will be paid for, whether by taxes, revenues, or a combination of the two;

(4) the following:

(A) the then-current principal of all outstanding debt obligations of the issuer;

(B) the then-current combined principal and interest required to pay all outstanding debt obligations of the issuer on time and in full, which may be based on the issuer's expectations relative to the interest due on any variable rate debt obligations;

(C) the maximum principal amount of the certificates to be authorized; and

(D) the estimated combined principal and interest required to pay the certificates to be authorized on time and in full;

(5) the estimated interest rate for the certificates to be authorized or that the maximum interest rate for the certificates may not exceed the maximum legal interest rate; and

(6) the maximum maturity date of the certificates to be authorized.

(c) If before the date tentatively set for the authorization of the issuance of the certificates or if before the authorization, the municipal secretary or clerk if the issuer is a municipality, or the county clerk if the issuer is a county, receives a petition signed by at least five percent of the qualified voters of the issuer protesting the issuance of the certificates, the issuer may not authorize the issuance of the certificates unless the issuance is approved at an election ordered, held, and conducted in the manner provided for bond elections under Chapter 1251, Government Code.

(d) This section does not apply to certificates issued for the purposes described by Sections 271.056(1)-(4).

(e) In this section, "debt obligation" means a public security, as defined by Section 1201.002, Government Code, secured by and payable from ad valorem taxes. The term does not include public securities that are designated as self-supporting by the political subdivision issuing the securities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(3), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 8.295, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 402, Sec. 15, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1008 (H.B. 730), Sec. 1, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 728 (H.B. 477), Sec. 5, eff. September 1, 2019.

Sec. 271.050. SALE OF CERTIFICATES. (a) The governing body may sell for cash any certificates authorized to be issued for one or more purposes described by Section 271.056.

(b) The proceeds may be used only for the purposes for which the certificates were authorized and issued. The proceeds may be used to pay for work done by employees of the issuer that are hired for the specific purpose of performing work on the project. The proceeds may be used to pay for work done by other employees of the issuer only if the issuer incurs equivalent or greater costs to replace the normal work that would have otherwise been performed by the employees. The proceeds may not be used to reimburse the issuer for costs that are determined to be indirect costs under generally accepted accounting principles. Any accrued interest received must be deposited in the interest and sinking fund established for the payment of the certificates.

(c) A certified copy of the proceedings relating to the authorization of the certificates must be submitted to the attorney general and must be approved by the attorney general as having been authorized in accordance with this subchapter. The attorney general shall examine the proceedings relating to the authorization of the certificates. Subtitles A and C, Title 9, Government Code, and Chapter 618, Government Code, govern the execution, approval, registration, and validity of the certificates. After registration of the certificates by the comptroller, the certificates are incontestable for any cause.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.296, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 554 (H.B. 1232), Sec. 2, eff. June 17, 2005.

Sec. 271.051. CERTIFICATES AS INVESTMENTS OR AS SECURITY FOR DEPOSITS. (a) Certificates approved by the attorney general are legal and authorized investments for:

(1) banks, savings banks, trust companies, and savings and loan associations;

(2) insurance companies;

(3) fiduciaries, trustees, and guardians; and

(4) sinking funds of municipalities, counties, school districts, or other political corporations or subdivisions of the state.

(b) Certificates approved by the attorney general are eligible to secure deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The certificates are sufficient security for the deposits to the extent of the face value of the certificates, if accompanied by any appurtenant unmatured interest coupons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.052. CERTIFICATES PAYABLE FROM AND SECURED BY OTHER REVENUES. (a) The governing body, instead of or in addition to other methods of payment provided by this subchapter, may provide that certificates will be paid from and secured by other revenues if the issuer is authorized by the state constitution or other statutes to secure or pay any kind of general or special obligation by or from those revenues.

(b) The issuer may deliver certificates secured under this section in exchange for services or property in the same manner and with the same effect as otherwise provided by this subchapter or may sell the certificates for cash.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.0525. REFINANCING CERTIFICATES ISSUED BY COUNTY. (a) A county may not issue certificates to refinance or refund the debt evidenced by certificates issued by the county unless the county complies with the notice requirements of Sections 271.049(a) and (b) for the issuance of certificates.

(b) If, before the date tentatively set for the authorization

of refinancing certificates, the county clerk receives a petition that meets the requirements of Subsection (c) protesting the issuance of the refinancing certificates, the county may not authorize the issuance of the refinancing certificates unless the issuance is approved at an election ordered, held, and conducted in the manner provided for bond elections under Chapter 1251, Government Code.

(c) A petition to protest the issuance of refinancing certificates under this section must be signed by a number of qualified voters, residing in the county, equal to at least five percent of the number of votes cast in that county for governor in the most recent general election at which that office was filled.

Added by Acts 1989, 71st Leg., ch. 961, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.297, eff. Sept. 1, 2001.

Sec. 271.053. CERTIFICATES AS DEBT AND SECURITY. Certificates are debts of the issuer within the meaning of Article XI, Sections 5 and 7, of the Texas Constitution. When delivered, certificates are "security" within the meaning of Chapter 8, Business & Commerce Code, and are general obligations of the issuer within the meaning of Subchapters A and D, Chapter 1207, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.298, eff. Sept. 1, 2001.

Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before the governing body of an issuer may enter into a contract requiring an expenditure by or imposing an obligation or liability on the issuer, or on a subdivision of the issuer if the issuer is a county, of more than $50,000, the governing body must:

(1) submit the proposed contract to competitive procurement; or

(2) use an alternate method of project delivery authorized by Chapter 2269, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 15, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 675, Sec. 1, eff. June 13, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 7, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.10, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(24), eff. September 1, 2013.

Sec. 271.055. NOTICE TO BIDDERS. (a) An issuer must give notice of the time, date, and place at which the issuer will publicly open the bids on a contract for which competitive bidding is required by this subchapter and read the bids aloud. The notice must be given in accordance with Subsection (b) or in accordance with:

(1) Chapter 252, if the issuer is a municipality;

(2) the municipal charter of the issuer, if the issuer is a home-rule municipality; or

(3) the County Purchasing Act (Subchapter C, Chapter 262), if the issuer is a county.

(b) If an issuer gives notice under this subsection, the notice must:

(1) be published once a week for two consecutive weeks in a newspaper, as defined by Subchapter C, Chapter 2051, Government Code, that is of general circulation in the area of the issuer, with the date of the first publication to be before the 14th day before the date set for the public opening of the bids and the reading of the bids aloud; and

(2) state that plans and specifications for the work to be done or specifications for the machinery, supplies, equipment, or materials to be purchased are on file with a designated official of the issuer and may be examined without charge.

(c) If the contract is to be let on a unit price basis, in addition to the other information required to be in the notice, the notice must specify, based on the best available information, the approximate quantities of the items needed by the issuer that are to be bid on.

(d) An issuer may not authorize certificates unless the notice also states that:

(1) the successful bidder must accept the certificates in payment for all or part of the contract price; or

(2) the governing body has made provisions for the contractor to sell and assign the certificates and that each bidder is required, at the time of the receipt of the bids, to elect whether the bidder will:

(A) accept the certificates in payment of all or part of the contract price; or

(B) assign the certificates in accordance with the arrangements made by the governing body.

(e) In a county with a population of 3.3 million or more, the county and any district or authority created under Article XVI, Section 59, of the Texas Constitution of which the governing body is the commissioners court may require that a minimum of 25 percent of the work be performed by the bidder and, notwithstanding any other law to the contrary, may establish financial criteria for the surety companies that provide payment and performance bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1019, Sec. 3, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 749, Sec. 6, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, Sec. 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(3), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 669, Sec. 83, eff. Sept. 1, 2001.

Sec. 271.056. EXEMPTIONS FROM ADVERTISEMENT REQUIREMENT. The provisions of this subchapter relating to the advertisement for competitive bids do not apply to:

(1) a case of public calamity if it is necessary to act promptly to relieve the necessity of the residents or to preserve the property of the issuer;

(2) a case in which it is necessary to preserve or protect the public health of the residents of the issuer;

(3) a case of unforeseen damage to public machinery, equipment, or other property;

(4) a contract for personal or professional services;

(5) work done by employees of the issuer and paid for as the work progresses;

(6) the purchase of any land, building, existing utility system, or right-of-way for authorized needs and purposes;

(7) expenditures for or relating to improvements in

municipal water systems, sewer systems, streets, or drainage, if at least one-third of the cost of the improvements is to be paid by special assessments levied against properties to be benefitted by the improvements;

(8) a case in which the entire contractual obligation is to be paid from bond funds or current funds or in which an advertisement for bids has previously been published in accordance with this subchapter but the current funds or bond funds are not adequate to permit the awarding of the contract and certificates are to be awarded to provide for the deficiency;

(9) the sale of a public security, as that term is defined by Section 1204.001, Government Code;

(10) a municipal procurement of a kind that, under Chapter 252, is not required to be made in accordance with competitive bidding procedures like those prescribed by this subchapter; or

(11) a county contract that, under the County Purchasing Act (Subchapter C, Chapter 262), is not required to be made in accordance with competitive bidding procedures like those prescribed by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.298, eff. Sept. 1, 2001.

Sec. 271.0565. PRE-BID CONFERENCE. (a) The commissioners court of a county or the governing body of a district or authority created under Section 59, Article XVI, Texas Constitution, if the governing body is the commissioners court of the county in which the district is located, may require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders.

(b) After a conference is conducted under Subsection (a), any additional required notice for the proposed contract may be sent by certified mail, return receipt requested, only to prospective bidders who attended the conference. Notice under this subsection is not subject to the requirements of Section 271.055.

Added by Acts 2001, 77th Leg., ch. 255, Sec. 3, eff. May 22, 2001. Amended by Acts 2003, 78th Leg., ch. 660, Sec. 2, eff. Sept. 1, 2003.

Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 13.001, eff. September 1, 2005.

Sec. 271.057. AWARD OF CONTRACT. (a) Except as provided by Subsection (b), a contract let under this subchapter for the construction of public works or the purchase of materials, equipment, supplies, or machinery and for which competitive bidding is required by this subchapter must be let to the lowest responsible bidder and, as the governing body determines, may be let on a lump-sum basis or unit price basis.

(b) The commissioners court may condition acceptance of a bid on compliance with a requirement for attendance at a mandatory pre-bid conference under Section 271.0565.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 255, Sec. 4, eff. May 22, 2001.

Sec. 271.058. AUTHORITY TO REJECT BIDS. The governing body may reject any and all bids submitted for a contract for which competitive bidding is required by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.059. CONTRACTOR'S BONDS. If a contract is for the construction of public works and is required by this subchapter to be submitted to competitive bidding, the successful bidder must execute a good and sufficient payment bond and performance bond. The bonds must each be:

(1) in the full amount of the contract price; and

(2) executed, in accordance with Chapter 2253, Government Code, with a surety company authorized to do business in this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 271.060. CHANGE ORDERS. (a) After performance of a construction contract begins, a governing body may approve change

orders if necessary to:

(1) make changes in plans or specifications; or

(2) decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished.

(b) The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.

(c) A contract with an original contract price of $1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than $1 million increases the contract amount to $1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.

(d) A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.11, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(34), eff. September 1, 2013.

Sec. 271.061. COMPENSATION ON UNIT PRICE CONTRACTS. If a contract is let on a unit price basis, the compensation paid to the contractor must be based on the actual quantities of items constructed or supplied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.062. CERTAIN CONTRACTS NOT REQUIRED TO BE IN WRITING. A contract executed under Section 271.054 or 271.056 is not required to be in writing if the work to be performed under the contract:

(1) is legal services;

(2) is to be done by the regular salaried employees of the issuer; or

(3) is to be paid for as the work progresses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.063. UNCONSTITUTIONAL PROCEDURE CORRECTED BY RESOLUTION OF ISSUER. If a procedure used under this subchapter is held to be in violation of the state or federal constitution, an issuer by resolution may provide an alternative procedure that conforms to the constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.064. CRIMINAL PENALTIES. (a) An officer or employee of an issuer commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 271.054. An offense under this subsection is a Class B misdemeanor.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 285, Sec. 24, eff. September 1, 2011.

(c) An officer or employee of an issuer commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1989, 71st Leg., ch. 1250, Sec. 18, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 20, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 24, eff. September 1, 2011.

SUBCHAPTER D. STATE COOPERATION IN LOCAL PURCHASING PROGRAMS

Sec. 271.081. DEFINITION. In this subchapter, "local government" means a county, municipality, special district, school

district, junior college district, a local workforce development board created under Section 2308.253, Government Code, or other legally constituted political subdivision of the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1004, Sec. 4, eff. Sept. 1, 2001.

Sec. 271.082. PURCHASING PROGRAM. (a) The comptroller shall establish a program by which the comptroller performs purchasing services for local governments. The services must include:

(1) the extension of state contract prices to participating local governments when the comptroller considers it feasible;

(2) solicitation of bids on items desired by local governments if the solicitation is considered feasible by the comptroller and is desired by the local government; and

(3) provision of information and technical assistance to local governments about the purchasing program.

(b) The comptroller may charge a participating local government an amount not to exceed the actual costs incurred by the comptroller in providing purchasing services to the local government under the program.

(c) The comptroller may adopt rules and procedures necessary to administer the purchasing program. Before adopting a rule under this subsection, the comptroller must conduct a public hearing regarding the proposed rule regardless of whether the requirements of Section 2001.029(b), Government Code, are met.

(d) The comptroller may advertise in any available media or otherwise promote the purchasing program to further the purposes of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.103, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 356 (S.B. 59), Sec. 1, eff. June 7, 2021.

Sec. 271.083. LOCAL GOVERNMENT PARTICIPATION. (a) A local government may participate in the purchasing program of the

commission, including participation in purchases that use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, by filing with the commission a resolution adopted by the governing body of the local government requesting that the local government be allowed to participate on a voluntary basis, and to the extent the commission deems feasible, and stating that the local government will:

(1) designate an official to act for the local government in all matters relating to the program, including the purchase of items from the vendor under any contract, and that the governing body will direct the decisions of the representative;

(2) be responsible for:

(A) submitting requisitions to the commission under any contract; or

(B) electronically sending purchase orders directly to vendors, or complying with commission procedures governing a reverse auction purchase, and electronically sending to the commission reports on actual purchases made under this paragraph that provide the information and are sent at the times required by the commission;

(3) be responsible for making payment directly to the vendor; and

(4) be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

(b) A local government that purchases an item under a state contract or under a reverse auction procedure, as defined by Section 2155.062(d), Government Code, sponsored by the commission satisfies any state law requiring the local government to seek competitive bids for the purchase of the item.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 393, Sec. 3.07(2), eff. September 1, 2009.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 428, Sec. 1, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 746, Sec. 6, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 494, Sec. 5, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 436, Sec. 5, eff. May 28, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. 1705), Sec. 3.07(2), eff. September 1, 2009.

SUBCHAPTER E. STATE INTERCEPT TO INCREASE CREDIT RATING

Sec. 271.091. DEFINITIONS. In this subchapter:

(1) "Local government" means a municipality, county, or hospital district of the State of Texas.

(2) "Payment" means the local sales and use tax authorized by the Municipal Sales and Use Tax Act (Chapter 321, Tax Code), the County Sales and Use Tax Act (Chapter 323, Tax Code), and Subchapter E, Chapter 285, Health and Safety Code.

(3) "Paying agent" means the financial institution that is designated by a local government as its agent for the payment of the principal of and interest on the obligation.

(4) "Obligation" means bonds, notes, certificates of obligation, and other obligations authorized to be issued by the local government.

(5) "Agreement" means the document referred to in Section 271.092 and Section 271.093.

(6) "Board" means the Bond Review Board.

(7) "Comptroller" means the comptroller of public accounts.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.299, eff. Sept. 1, 2001.

Sec. 271.092. AGREEMENT WITH TEXAS BOND REVIEW BOARD AND COMPTROLLER. Prior to the issuance of any obligation, the governing body of any local government may notify the board of the proposed issuance of an obligation and enter into an agreement with the board to authorize and direct the comptroller to withhold from such local government sufficient money from any payment to which such local government may be entitled and apply so much as shall be necessary to pay the principal of and interest on such obligation then due and to continue withholding additional payments until an amount sufficient to satisfy the amount then due has been met.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.093. FORM OF AGREEMENT; CONDITIONS. (a) The agreement shall set forth the following:

(1) the proposed date of issuance of the obligation and the

name and series of the proposed obligation;

(2) each payment date with respect to the obligation and the principal of and interest on the obligation coming due on each such date; and

(3) the name and address of the financial institution serving as paying agent for the obligation to whom any payment by the comptroller should be made.

(b) This subchapter does not require or permit the state to make an appropriation to any local government and shall not be construed as creating an indebtedness of the state. Any agreement made pursuant to this subchapter shall contain a statement to that effect.

(c) The agreement terminates at the time the final payment of the principal of and interest on the obligation is made or the obligation is refunded.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.094. NOTICE, DEPOSIT OF DEBT SERVICE, AUTHORIZATION, AND TRANSMITTAL. (a) If a local government enters into an agreement with the board under Section 271.092, the board on notification from the local government, the custodian bank, or the paying agent for the local government that the local government is unable or has failed to pay amounts as required by the agreement or to pay principal of or interest on the obligation when due, shall notify the comptroller, who shall withhold sufficient money from any payment to which such local government may be entitled and apply so much thereof as shall be necessary to pay the amounts then due as provided in this section.

(b) The local government may in the agreement agree to make monthly deposits of one-sixth of the semiannual debt service requirement, or such other amount at such other times as specified in the agreement, into an interest and sinking fund in a custodian bank. If a bank agrees to serve as custodian for the interest and sinking fund, it shall be the duty of the bank to notify the board if the agreed upon amount of funds is not deposited each month or other specified time on a timely basis as specified in the agreement.

(c) On receiving notification and direction from the board, the comptroller is authorized to withhold from any payment an amount equal to the amount to have been deposited by the local government

pursuant to the agreement. The comptroller shall continue to withhold payments until the required amounts have been deposited in the interest and sinking fund with the custodian bank or with the paying agent. If the required amounts have not been deposited at the time interest on or principal of the obligation of the local government is required to be deposited pursuant to the agreement, the comptroller shall transmit, from payments withheld, the appropriate amount to the custodian bank or to the paying agent, as directed by the board.

(d) The board shall cause a copy of any notice given pursuant to this section to be promptly given to the local government.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.095. RIGHT TO PLEDGE PAYMENTS. (a) The local government may pledge payments to secure any obligation only if the amount of payments received by the local government in the fiscal year of the state preceding the proposed issuance equals or exceeds the amount required in each year to pay the sum of an amount equal to two times (i) the maximum annual principal and interest requirements for the obligation, and (ii) the maximum annual principal and interest requirements on any additional obligation for which payments have been pledged. The local government shall provide evidence that these requirements are met.

(b) A pledge of payments pursuant to this subchapter is a first priority for application of payments and the comptroller shall apply such payments as provided by this subchapter prior to applying such payments pursuant to any other authorization to withhold or intercept such payments.

(c) While obligations which are the subject of an agreement remain outstanding, the local government may not repeal the sales tax or reduce the rate of the sales tax below the rate that would provide the amount required by Subsection (a), except as provided by this subsection. If at an election duly held in accordance with law a majority of the qualified voters approve the repeal of the sales tax, the local government shall, at the earliest practicable time, refund or defease the obligations, and after such defeasance or refunding the repeal shall become effective in accordance with law. If the qualified voters vote to reduce the rate of the sales tax, if such is

provided for by law, below that which is required to provide the amount required by Subsection (a), the local government shall, at the earliest practicable time, refund or defease the obligations, and after such defeasance or refunding the reduction in rate shall become effective in accordance with law.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

Sec. 271.096. ADMINISTRATION, RULES, FEES. The board shall administer the implementation of this subchapter and may adopt rules and set fees necessary for its administration.

Added by Acts 1993, 73rd Leg., ch. 827, Sec. 1, eff. Aug. 30, 1993.

SUBCHAPTER F. COOPERATIVE PURCHASING PROGRAM

Sec. 271.101. DEFINITIONS. In this subchapter:

(1) "Local cooperative organization" means an organization of governments established to provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment.

(2) "Local government" means a county, municipality, special district, school district, junior college district, regional planning commission, or other political subdivision of the state.

Added by Acts 1995, 74th Leg., ch. 746, Sec. 7, eff. Aug. 28, 1995.

Sec. 271.102. COOPERATIVE PURCHASING PROGRAM PARTICIPATION. (a) A local government may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state.

(b) A local government that is participating in a cooperative purchasing program may sign an agreement with another participating local government or a local cooperative organization stating that the signing local government will:

(1) designate a person to act under the direction of, and on behalf of, that local government in all matters relating to the program;

(2) make payments to another participating local government or a local cooperative organization or directly to a vendor under a contract made under this subchapter, as provided in the agreement between the participating local governments or between a local government and a local cooperative organization; and

(3) be responsible for a vendor's compliance with provisions relating to the quality of items and terms of delivery, to the extent provided in the agreement between the participating local governments or between a local government and a local cooperative organization.

(c) A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

Added by Acts 1995, 74th Leg., ch. 746, Sec. 7, eff. Aug. 28, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 261 (S.B. 1281), Sec. 1, eff. May 29, 2015.

SUBCHAPTER G. PURCHASES FROM FEDERAL SCHEDULE SOURCES OF SUPPLY

Sec. 271.103. FEDERAL SUPPLY SCHEDULE SOURCES. (a) A local government may purchase goods or services available under Federal supply schedules of the United States General Services Administration to the extent permitted by federal law.

(b) A local government that purchases goods or services under this subchapter satisfies any state law requiring the local government to seek competitive bids for the purchase of the goods or services.

Added by Acts 1997, 75th Leg., ch. 826, Sec. 2, eff. June 18, 1997.

SUBCHAPTER I. ADJUDICATION OF CLAIMS ARISING UNDER WRITTEN CONTRACTS WITH LOCAL GOVERNMENTAL ENTITIES

Sec. 271.151. DEFINITIONS. In this subchapter:

(1) "Adjudication" of a claim means the bringing of a civil suit and prosecution to final judgment in county or state court and includes the bringing of an authorized arbitration proceeding and prosecution to final resolution in accordance with any mandatory

procedures established in the contract subject to this subchapter for the arbitration proceedings.

(2) "Contract subject to this subchapter" means:

(A) a written contract stating the essential terms of the agreement for providing goods or services to the local governmental entity that is properly executed on behalf of the local governmental entity; or

(B) a written contract, including a right of first refusal, regarding the sale or delivery of not less than 1,000 acre-feet of reclaimed water by a local governmental entity intended for industrial use.

(3) "Local governmental entity" means a political subdivision of this state, other than a county or a unit of state government, as that term is defined by Section 2260.001, Government Code, including a:

(A) municipality;

(B) public school district and junior college district; and

(C) special-purpose district or authority, including any levee improvement district, drainage district, irrigation district, water improvement district, water control and improvement district, water control and preservation district, freshwater supply district, navigation district, conservation and reclamation district, soil conservation district, communication district, public health district, emergency service organization, and river authority.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1138 (H.B. 3511), Sec. 2, eff. June 14, 2013.

Sec. 271.152. WAIVER OF IMMUNITY TO SUIT FOR CERTAIN CLAIMS. A local governmental entity that is authorized by statute or the constitution to enter into a contract and that enters into a contract subject to this subchapter waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff.

September 1, 2005.

Sec. 271.153. LIMITATIONS ON ADJUDICATION AWARDS. (a) Except as provided by Subsection (c), the total amount of money awarded in an adjudication brought against a local governmental entity for breach of a contract subject to this subchapter is limited to the following:

(1) the balance due and owed by the local governmental entity under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;

(2) the amount owed for change orders or additional work the contractor is directed to perform by a local governmental entity in connection with the contract;

(3) reasonable and necessary attorney's fees that are equitable and just; and

(4) interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.

(b) Damages awarded in an adjudication brought against a local governmental entity arising under a contract subject to this subchapter may not include:

(1) consequential damages, except as expressly allowed under Subsection (a)(1);

(2) exemplary damages; or

(3) damages for unabsorbed home office overhead.

(c) Actual damages, specific performance, or injunctive relief may be granted in an adjudication brought against a local governmental entity for breach of a contract described by Section 271.151(2)(B).

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 8, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 226 (H.B. 345), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1138 (H.B. 3511), Sec. 3, eff. June 14, 2013.

Sec. 271.154. CONTRACTUAL ADJUDICATION PROCEDURES ENFORCEABLE. Adjudication procedures, including requirements for serving notices or engaging in alternative dispute resolution proceedings before bringing a suit or an arbitration proceeding, that are stated in the contract subject to this subchapter or that are established by the local governmental entity and expressly incorporated into the contract or incorporated by reference are enforceable except to the extent those procedures conflict with the terms of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.155. NO WAIVER OF OTHER DEFENSES. This subchapter does not waive a defense or a limitation on damages available to a party to a contract, other than a bar against suit based on sovereign immunity.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.156. NO WAIVER OF IMMUNITY TO SUIT IN FEDERAL COURT. This subchapter does not waive sovereign immunity to suit in federal court.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.157. NO WAIVER OF IMMUNITY TO SUIT FOR TORT LIABILITY. This subchapter does not waive sovereign immunity to suit for a cause of action for a negligent or intentional tort.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.158. NO GRANT OF IMMUNITY TO SUIT. Nothing in this

subchapter shall constitute a grant of immunity to suit to a local governmental entity.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

Sec. 271.160. JOINT ENTERPRISE. A contract entered into by a local government entity is not a joint enterprise for liability purposes.

Added by Acts 2005, 79th Leg., Ch. 604 (H.B. 2039), Sec. 1, eff. September 1, 2005.

SUBCHAPTER J. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS PROJECTS

Sec. 271.181. DEFINITIONS. In this subchapter:

Without reference to the amendment of this subdivision, this subchapter was repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011

(2) "Civil works project" means:

(A) roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water distribution and wastewater conveyance facilities, desalination projects, wharves, docks, navigation channels, dredge material placement areas, airport runways and taxiways, storm drainage and flood control projects, or transit projects;

(B) types of projects or facilities related to those described by Paragraph (A) and associated with civil engineering construction; and

(C) buildings or structures that are incidental to projects or facilities that are described by Paragraphs (A) and (B) and that are primarily civil engineering construction projects.

Without reference to the amendment of this subdivision, this subchapter was repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011

(6) "Local governmental entity" means a municipality, a county, a river authority, a defense base development authority established under Chapter 379B, a board of trustees under Chapter 54,

Transportation Code, a municipally owned water utility with a separate governing board appointed by the governing body of a municipality, or any other special district or authority authorized by law to enter into a public works contract for a civil works project. The term does not include a regional tollway authority created under Chapter 366, Transportation Code, a regional mobility authority created under Chapter 370, Transportation Code, or a water district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, with a population of less than 50,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 6, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 21, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011.

Without reference to the amendment of this section, this subchapter was repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3) effective September 1, 2011

Sec. 271.182. APPLICABILITY. (a) This subchapter applies to:

(1) a local governmental entity with a population of more than 100,000 within its geographic boundaries or service area;

(2) a board of trustees under Chapter 54, Transportation Code; and

(3) a municipally owned combined electric, water, and wastewater utility situated in an economically distressed area and located within 30 miles of the Lower Texas Gulf Coast.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 2, eff. June 17, 2011

(b) For purposes of Subsection (a), "combined" means that the utilities are managed and controlled by one board whose members are appointed by the governing body of the municipality and that the financing of capital improvements is secured from the revenue of all three utilities.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 22, eff. September 1, 2011

(b) For purposes of Subsection (a)(3), "combined" means that the utilities are managed and controlled by one board whose members are appointed by the governing body of the municipality and that the financing of capital improvements is secured from the revenue of all three utilities.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 6, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 135 (S.B. 1047), Sec. 1, eff. May 23, 2009.
Acts 2009, 81st Leg., R.S., Ch. 725 (S.B. 229), Sec. 1, eff. June 19, 2009.
Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 22, eff. September 1, 2011.
Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011.

Without reference to the amendment of this section, this subchapter was repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3) effective September 1, 2011

Sec. 271.186. LIMITATION ON NUMBER OF PROJECTS.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 3

(a) During the first four years that this subchapter applies to a local governmental entity under Section 271.182:

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than three projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 or a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than two projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into a contract for not more than one civil works project in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 23

(a) During the first four years that this subchapter applies to a local governmental entity under Section 271.182:

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than three projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 and a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than two projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into a contract for not more than one civil works project in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must

approve the contracts.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 3

(b) After the period described by Subsection (a):

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 or a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than four projects in any fiscal year; and

(3) a municipally owned water utility with a separate governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 23

(b) After the period described by Subsection (a):

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than six projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 and a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than four projects in any fiscal year; and

(3) a municipally owned water utility with a separate

governing board appointed by the governing body of a municipality with a population of 500,000 or more may:

(A) independently enter into contracts for not more than two civil works projects in any fiscal year; and

(B) enter into contracts for additional civil works projects in any fiscal year, but not more than the number of civil works projects prescribed by the limit in Subdivision (1) for the municipality, provided that:

(i) the additional contracts for the civil works projects entered into by the utility under this paragraph are allocated to the number of contracts the municipality that appoints the utility's governing board may enter under Subdivision (1); and

(ii) the governing body of the municipality must approve the contracts.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 285 (H.B. 1694), Sec. 23, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1027 (H.B. 2770), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(3), eff. September 1, 2011.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 271.901. PROCEDURE FOR AWARDING CONTRACT IF MUNICIPALITY OR DISTRICT RECEIVES IDENTICAL BIDS. (a) If a municipality or district is required to accept bids on a contract and receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, the governing body of the municipality or district shall enter into a contract with only one of those bidders and must reject all other bids.

(b) If only one of the bidders submitting identical bids is a resident of the municipality or district, the municipality or district must select that bidder. If two or more of the bidders submitting identical bids are residents of the municipality or district, the municipality or district must select one of those bidders by the casting of lots. In all other cases, the municipality

or district must select from the identical bids by the casting of lots.

(c) The casting of lots must be in a manner prescribed by the mayor of the municipality or the governing body of the district and must be conducted in the presence of the governing body of the municipality or district. All qualified bidders or their legal representatives may be present at the casting of lots.

(d) This section does not prohibit a municipality or district from rejecting all bids.

(e) This section applies to all municipalities and districts required by general or special law or by municipal ordinance or charter to accept bids and award contracts on the basis of the lowest and best bid, but does not apply to bidding for contracts to act as a depository for public funds or as a depository for school funds under Subchapter G, Chapter 45, Education Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 62(a), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 165, Sec. 6.71, eff. Sept. 1, 1997.

Sec. 271.902. PROHIBITION OF CONFLICT OF INTEREST IN PURCHASE BY MUNICIPALITY OR COUNTY FROM COOPERATIVE ASSOCIATIONS. If a member of the governing body or an appointed board or commission of a municipality or county belongs to a cooperative association, the municipality or county may purchase equipment or supplies from the association only if no member of the governing body, board, or commission will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 271.903. COMMITMENT OF CURRENT REVENUE. (a) If a contract for the acquisition, including lease, of real or personal property retains to the governing body of a local government the continuing right to terminate at the expiration of each budget period of the local government during the term of the contract, is conditioned on a best efforts attempt by the governing body to obtain and appropriate funds for payment of the contract, or contains both

the continuing right to terminate and the best efforts conditions, the contract is a commitment of the local government's current revenues only.

(b) In this section, "local government" means a municipality, county, school district, special purpose district or authority, or other political subdivision of this state.

Added by Acts 1993, 73rd Leg., ch. 104, Sec. 2, eff. May 7, 1993.

Sec. 271.904. ENGINEERING OR ARCHITECTURAL SERVICES CONTRACTS: INDEMNIFICATION LIMITATIONS; DUTIES OF ENGINEER OR ARCHITECT. (a) A covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must indemnify or hold harmless the governmental agency against liability for damage, other than liability for damage to the extent that the damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the indemnitor or the indemnitor's agent, consultant under contract, or another entity over which the indemnitor exercises control.

(b) Except as provided by Subsection (c), a covenant or promise in, in connection with, or collateral to a contract for engineering or architectural services to which a governmental agency is a party is void and unenforceable if the covenant or promise provides that a licensed engineer or registered architect whose work product is the subject of the contract must defend a party, including a third party, against a claim based wholly or partly on the negligence of, fault of, or breach of contract by the governmental agency, the agency's agent, the agency's employee, or other entity, excluding the engineer or architect or that person's agent, employee, or subconsultant, over which the governmental agency exercises control. A covenant or promise may provide for the reimbursement of a governmental agency's reasonable attorney's fees in proportion to the engineer's or architect's liability.

(c) Notwithstanding Subsection (b), a governmental agency may require in a contract for engineering or architectural services to

which the governmental agency is a party that the engineer or architect name the governmental agency as an additional insured under the engineer's or architect's general liability insurance policy and provide any defense provided by the policy.

(d) A contract for engineering or architectural services to which a governmental agency is a party must require a licensed engineer or registered architect to perform services:

(1) with the professional skill and care ordinarily provided by competent engineers or architects practicing under the same or similar circumstances and professional license; and

(2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect.

(e) In a contract for engineering or architectural services to which a governmental agency is a party, a provision establishing a different standard of care than a standard described by Subsection (d) is void and unenforceable. If a contract contains a void and unenforceable provision, the standard of care described by Subsection (d) applies.

(f) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(g) Nothing in this section prohibits a governmental agency in a contract for engineering or architectural services to which the governmental agency is a party from including and enforcing conditions that relate to the scope, fees, and schedule of a project in the contract.

Added by Acts 1995, 74th Leg., ch. 746, Sec. 8, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 351, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 8, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 757 (H.B. 2049), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 879 (H.B. 3021), Sec. 2, eff. September 1, 2017.

Sec. 271.9041. APPRAISAL SERVICE CONTRACTS; INDEMNIFICATION LIMITATIONS; DUTIES OF APPRAISER. (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(b) This section applies only to a contract for appraisal services for real property entered into by a licensed appraiser and a governmental agency.

(c) A provision of a contract for appraisal services, or a promise in connection with the contract, is void and unenforceable if the provision requires a licensed appraiser to indemnify or hold harmless a governmental agency against liability for damage, other than damage to the extent the damage is caused by or results from an act of:

(1) negligence;

(2) intentional tort;

(3) intellectual property infringement; or

(4) failure to pay:

(A) a subcontractor or supplier committed by the appraiser or the appraiser's agent;

(B) a consultant under contract; or

(C) another person over which the appraiser exercises control.

(d) Except as provided by Subsection (e)(2), a provision of a contract for appraisal services, or a promise in connection with the contract, is void and unenforceable if the provision requires a licensed appraiser to defend a person against a claim based wholly or partly on the negligence or fault of, or breach of contract by:

(1) the governmental agency that is a party to the contract;

(2) an employee or agent of the governmental agency; or

(3) another person over which the governmental agency exercises control, other than the appraiser or an employee, agent, or consultant of the appraiser.

(e) A contract for appraisal services may require:

(1) the reimbursement of a governmental agency's reasonable attorney's fees in proportion to an appraiser's liability; and

(2) an appraiser to name a governmental agency as an additional insured under the appraiser's general liability insurance policy and provide any defense provided by the policy.

(f) A contract for appraisal services must require a licensed appraiser to perform services:

(1) with the professional skill and care ordinarily provided by competent appraisers under the same or similar circumstances and professional license; and

(2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent appraiser.

(g) A provision of a contract for appraisal services establishing a different standard of care than a standard described by Subsection (f) is void and unenforceable. If a contract contains a void and unenforceable provision described by this subsection, the standard of care described by Subsection (f) applies.

(h) This section does not prohibit a governmental agency from including in and enforcing a provision in a contract for appraisal services that relates to the scope, fees, and schedule of a project in the contract.

Added by Acts 2023, 88th Leg., R.S., Ch. 162 (S.B. 1766), Sec. 1, eff. September 1, 2023.

Sec. 271.905. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS. (a) In this section, "local government" means a municipality, a county, or another political subdivision authorized under this title to purchase real property or personal property that is not affixed to real property. The term does not include a school district.

(b) In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more bids from a bidder whose principal place of business is in the local government and whose bid is within three percent of the lowest bid price received by the local government from a bidder who is not a resident of the local government, the local government may enter into a contract with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government.

(c) This section does not prohibit a local government from rejecting all bids.

Added by Acts 1999, 76th Leg., ch. 996, Sec. 1, eff. Aug. 30, 1999.

Amended by Acts 2001, 77th Leg., ch. 480, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 513 (H.B. 1869), Sec. 1, eff. June 17, 2011.

Sec. 271.9051. CONSIDERATION OF LOCATION OF BIDDER'S PRINCIPAL PLACE OF BUSINESS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that is authorized under this title to purchase real property or personal property that is not affixed to real property.

(b) In purchasing under this title any real property, personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed bids from a bidder whose principal place of business is in the municipality and whose bid is within five percent of the lowest bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for construction services in an amount of less than $100,000 or a contract for other purchases in an amount of less than $500,000 with:

(1) the lowest bidder; or

(2) the bidder whose principal place of business is in the municipality if the governing body of the municipality determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality.

(c) This section does not prohibit a municipality from rejecting all bids.

(d) This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153.

Added by Acts 2005, 79th Leg., Ch. 1205 (H.B. 664), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 660 (H.B. 2082), Sec. 1, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 9, eff.

June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 513 (H.B. 1869), Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.12, eff. September 1, 2011.

Sec. 271.906. REVERSE AUCTION METHOD OF PURCHASING. (a) A local government, as defined by Section 271.081, may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, in purchasing goods and services in place of any other method of purchasing that would otherwise apply to the purchase.

(b) A local government that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the local government and fair to vendors.

Added by Acts 2001, 77th Leg., ch. 436, Sec. 6, eff. May 28, 2001.

Sec. 271.907. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS. (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.

(b) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are defined by Section 386.001, Health and Safety Code.

(c) A governmental agency procuring goods or services may:

(1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or

(2) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

(d) The preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards.

Added by Acts 2003, 78th Leg., ch. 1331, Sec. 20, eff. June 20, 2003.

Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 14.02, eff. Jan. 11, 2004; Acts 2003, 78th Leg., 3rd C.S., ch. 11, Sec. 2, eff. Oct 20, 2003.

Sec. 271.908. LOCAL GOVERNMENT CONTRACTS WITH PRIVATE ENTITIES FOR CIVIL WORKS PROJECTS AND IMPROVEMENTS TO REAL PROPERTY. (a) In this section, "civil works project" and "local governmental entity" have the meanings assigned by Section 271.181.

(b) A local governmental entity may contract with a private entity to act as the local governmental entity's agent in the design, development, financing, maintenance, operation, or construction, including oversight and inspection, of:

(1) a civil works project; or

(2) an improvement to real property.

(c) A local governmental entity contracting under this section shall:

(1) select the private entity based on the private entity's qualifications and experience; and

(2) enter into a project development agreement with the private entity.

(d) The selected private entity shall comply with:

(1) Chapters 1001 and 1051, Occupations Code;

(2) all laws relating to procurement of professional services under Chapter 2254, Government Code; and

(3) all laws relating to procurement under this chapter that apply to the local governmental entity that selected the private entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1024 (H.B. 2729), Sec. 1, eff. June 17, 2011.

CHAPTER 272. SALE OR LEASE OF PROPERTY BY MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 272.001. NOTICE OF SALE OR EXCHANGE OF LAND BY POLITICAL SUBDIVISION; EXCEPTIONS. (a) Except for the types of land and interests covered by Subsection (b), (g), (h), (i), (j), or (l), and except as provided by Section 253.008, before land owned by a political subdivision of the state may be sold or exchanged for other

land, notice to the general public of the offer of the land for sale or exchange must be published in a newspaper of general circulation in either the county in which the land is located or, if there is no such newspaper, in an adjoining county. The notice must include a description of the land, including its location, and the procedure by which sealed bids to purchase the land or offers to exchange the land may be submitted. The notice must be published on two separate dates and the sale or exchange may not be made until after the 14th day after the date of the second publication.

(b) The notice and bidding requirements of Subsection (a) do not apply to the types of land and real property interests described by this subsection and owned by a political subdivision. The land and those interests described by this subsection may not be conveyed, sold, or exchanged for less than the fair market value of the land or interest unless the conveyance, sale, or exchange is with one or more abutting property owners who own the underlying fee simple. The fair market value is determined by an appraisal obtained by the political subdivision that owns the land or interest or, in the case of land or an interest owned by a home-rule municipality, the fair market value may be determined by the price obtained by the municipality at a public auction for which notice to the general public is published in the manner described by Subsection (a). The notice of the auction must include, instead of the content required by Subsection (a), a description of the land, including its location, the date, time, and location of the auction, and the procedures to be followed at the auction. The appraisal or public auction price is conclusive of the fair market value of the land or interest, regardless of any contrary provision of a home-rule charter. This subsection applies to:

(1) narrow strips of land, or land that because of its shape, lack of access to public roads, or small area cannot be used independently under its current zoning or under applicable subdivision or other development control ordinances;

(2) streets or alleys, owned in fee or used by easement;

(3) land or a real property interest originally acquired for streets, rights-of-way, or easements that the political subdivision chooses to exchange for other land to be used for streets, rights-of-way, easements, or other public purposes, including transactions partly for cash;

(4) land that the political subdivision wants to have developed by contract with an independent foundation;

(5) a real property interest conveyed to a governmental entity that has the power of eminent domain;

(6) a municipality's land that is located in a reinvestment zone designated as provided by law and that the municipality desires to have developed under a project plan adopted by the municipality for the zone; or

(7) a property interest owned by a defense base development authority established under Chapter 378, Local Government Code, as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999.

(c) The land or interests described by Subsections (b)(1) and (2) may be sold to:

(1) abutting property owners in the same subdivision if the land has been subdivided; or

(2) abutting property owners in proportion to their abutting ownership, and the division between owners must be made in an equitable manner.

(d) This section does not require the governing body of a political subdivision to accept any bid or offer or to complete a sale or exchange.

(e) This section does not apply to land in the permanent school fund that is authorized by legislation to be exchanged for other land of at least equal value.

(f) The fair market value of land, an easement, or other real property interest in exchange for land, an easement, or other real property interest as authorized by Subsection (b)(3) is conclusively determined by an appraisal obtained by the political subdivision. The cost of any streets, utilities, or other improvements constructed on the affected land or to be constructed by an entity other than the political subdivision on the affected land may be considered in determining that fair market value.

(g) A political subdivision may acquire or assemble land or real property interest, except by condemnation, and sell, exchange, or otherwise convey the land or interests to an entity for the development of low-income or moderate-income housing. The political subdivision shall determine the terms and conditions of the transactions so as to effectuate and maintain the public purpose. If conveyance of land under this subsection serves a public purpose, the land may be conveyed for less than its fair market value. In this subsection, "entity" means an individual, corporation, partnership,

or other legal entity.

(h) A municipality, other than a municipality with a population of more than one million that is located primarily in a county with a population of 2.5 million or more, owning land within 5,000 feet of where the shoreline of a lake would be if the lake were filled to its storage capacity may, without notice or the solicitation of bids, sell the land to the person leasing the land for the fair market value of the land as determined by a certified appraiser. While land described by this subsection is under lease, the municipality owning the land may not sell the land to any person other than the person leasing the land. To protect the public health, safety, or welfare and to ensure an adequate municipal water supply, property sold by the municipality under this subsection is not eligible for and the owner is not entitled to the exemption provided by Section 11.142(a), Water Code. The instrument conveying property under this subsection must include a provision stating that the exemption does not apply to the conveyance. In this subsection, "lake" means an inland body of standing water, including a reservoir formed by impounding the water of a river or creek but not including an impoundment of salt water or brackish water, that has a storage capacity of more than 10,000 acre-feet.

(i) A political subdivision that acquires land or a real property interest with funds received for economic development purposes from the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) may lease or convey the land or interest, without the solicitation of bids, to a private, for-profit entity or a nonprofit entity that is a party to a contract with the political subdivision if the land or interest will be used by the private, for-profit entity or the nonprofit entity in carrying out the purpose of the entity's grant or contract. The land or interest may be leased or conveyed without the solicitation of bids if the political subdivision adopts a resolution stating the conditions and circumstances for the lease or conveyance and the public purpose that will be achieved by the lease or conveyance.

(j) A political subdivision may donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property to an institution of higher education, as that term is defined by Section 61.003, Education Code, to promote a public purpose related to higher education. The political subdivision shall determine the

terms and conditions of the transaction so as to effectuate and maintain the public purpose. A political subdivision may donate, exchange, convey, sell, or lease the real property interest for less than its fair market value and without complying with the notice and bidding requirements of Subsection (a).

(k) This section does not apply to sales or exchanges of land owned by a municipality operating a municipally owned electric or gas utility if the land is held or managed by the municipally owned utility, or by a division of the municipally owned electric or gas utility that constitutes the unbundled electric or gas operations of the utility, provided that the governing body of the municipally owned utility shall adopt a resolution stating the conditions and circumstances for the sale or exchange and the public purpose that will be achieved by the sale or exchange. For purposes of this subsection, "municipally owned utility" includes a river authority engaged in the generation, transmission, or distribution of electric energy to the public, and "unbundled" operations are those operations of the utility that have, in the discretion of the utility's governing body, been functionally separated.

(l) The notice and bidding requirements provided by Subsection (a) do not apply to a donation or sale made under this subsection. A political subdivision may donate or sell for less than fair market value a designated parcel of land or an interest in real property to another political subdivision if:

(1) the land or interest will be used by the political subdivision to which it is donated or sold in carrying out a purpose that benefits the public interest of the donating or selling political subdivision;

(2) the donation or sale of the land or interest is made under terms that effect and maintain the public purpose for which the donation or sale is made; and

(3) the title and right to possession of the land or interest revert to the donating or selling political subdivision if the acquiring political subdivision ceases to use the land or interest in carrying out the public purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 63(a), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1243, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 282, Sec. 1, eff. June 6, 1991; Acts 1993, 73rd Leg.,

ch. 110, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 206, Sec. 2, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 429, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 509, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 948, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 17.01(40), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 311, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 296, Sec. 1, eff. May 29, 1999; Acts 1999, 76th Leg., ch. 405, Sec. 43, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 451, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 968, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1121, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1030, Sec. 1, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 12.109(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 12.109(b), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 179, Sec. 1, eff. May 29, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 329 (H.B. 2690), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 726 (H.B. 844), Sec. 1, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 747 (H.B. 837), Sec. 1, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 158, eff. September 1, 2023.

Sec. 272.002. CONVEYANCES BY CERTAIN POLITICAL SUBDIVISIONS TO THE UNITED STATES FOR PURPOSES RELATED TO WATERWAYS. (a) This section applies to property, including land or an interest in land, that:

(1) is owned by:

(A) a county having a boundary coinciding with a part of the international boundary between the United States and Mexico;

(B) a county contiguous to a county described by Paragraph (A); or

(C) a municipal corporation, political subdivision, or district organized under the state constitution and statutes and located in a county described by Paragraph (A) or (B), including a municipality, independent school district, common school district, water improvement district, water control and improvement district,

navigation district, road district, levee district, or drainage district; and

(2) is desired by the United States to enable a department or establishment of the United States to carry out a federal law in aid of navigation, flood control, or improvement of water courses and to accomplish the purposes specified by Section 2204.101, Government Code, and is necessary for the construction, operation, and maintenance of works required for those purposes.

(b) On the request of the United States through its proper officers, an entity described by Subsection (a)(1) may convey with or without monetary consideration the title or an easement to the property to the United States or to another entity described by Subsection (a)(1) that has agreed by resolution of its governing body to acquire the property for conveyance to the United States.

(c) All rights conferred by law to the Port of Harlingen Authority to develop a navigation project and all improvements incidental, necessary, or convenient for that project are reserved for the authority. This section does not take away any right of the authority to dredge, widen, straighten, or otherwise improve the Arroyo-Colorado and all other lakes, bays, streams, or bodies of water within, or adjacent or appurtenant to, the boundaries of the authority as a navigation project or to construct turning basins, yacht basins, or port facilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(24), eff. Sept. 1, 1995.

Sec. 272.003. RENTAL OF OFFICE SPACE BY COUNTY OR MUNICIPALITY FOR UNEMPLOYMENT RELIEF ADMINISTRATION. (a) The commissioners court of a county or the governing body of a municipality may lease, rent, or provide office space to aid and cooperate with state and federal agencies engaged in the administration of relief to the unemployed or needy people of the state. The commissioners court or governing body may pay the regular monthly utility bills for the office space, including bills for electricity, gas, and water.

(b) If a majority of the commissioners court considers the office space essential to the proper administration of the state or federal agency, the court may pay for the space and the regular monthly utility bills out of the general fund of the county by

warrants as in the payment of other obligations of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 272.004. TRANSFERS OF PROPERTY BY CERTAIN POLITICAL SUBDIVISIONS. (a) In this section, "political subdivision" has the same meaning as the term "issuer" under Section 1371.001, Government Code.

(b) A political subdivision may sell, lease as a lessee or lessor, or otherwise transfer property in the same manner as the subregional board of a regional transportation authority under Sections 452.108(d) and (e), Transportation Code.

(c) A sale, lease, or other transfer of property under this section must be approved by a majority of the voters voting at an election held within the boundaries of the political subdivision if the agreement:

(1) involves the levy by the political subdivision of a tax in an amount sufficient to make payments due under the agreement; and

(2) is executed on or after September 1, 1999.

Added by Acts 1999, 76th Leg., ch. 1284, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.300, eff. Sept. 1, 2001.

Sec. 272.005. LEASE OF PROPERTY TO GOVERNMENTAL ENTITY. (a) To promote a public purpose of the political subdivision, a political subdivision may:

(1) lease property owned by the political subdivision to another political subdivision or an agency of the state or federal government; or

(2) make an agreement to provide office space in property owned by the political subdivision to the other political subdivision or agency.

(b) In acting under Subsection (a), the political subdivision:

(1) shall determine the terms of the lease or agreement so as to promote and maintain the public purpose;

(2) may provide for the lease of the property or provision of the office space at less than fair market value; and

(3) is not required to comply with any competitive purchasing procedure or any notice and publication requirement imposed by this chapter or other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 245 (H.B. 2618), Sec. 1, eff. May 25, 2007.

Sec. 272.006. SALE OR TRANSFER OF LAW ENFORCEMENT VEHICLE. (a) In this section, "political subdivision" means a county, municipality, school district, junior college district, other special district, or other subdivision of state government.

(b) A political subdivision may not sell or transfer a marked patrol car or other law enforcement motor vehicle to the public unless the political subdivision first removes any equipment or insignia that could mislead a reasonable person to believe that the vehicle is a law enforcement motor vehicle, including any police light, siren, amber warning light, spotlight, grill light, antenna, emblem, outline of an emblem, or emergency vehicle equipment.

(c) A political subdivision may not sell or transfer a marked patrol car or other political subdivision law enforcement motor vehicle to a security services contractor who is regulated by the Department of Public Safety and licensed under Chapter 1702, Occupations Code, unless each emblem or insignia that identifies the vehicle as a law enforcement motor vehicle is removed before the sale or transfer.

(d) A political subdivision that sells or transfers a marked patrol car or other law enforcement motor vehicle to the public in violation of this section is liable:

(1) for damages proximately caused by the use of that vehicle during the commission of a crime; and

(2) to this state for a civil penalty of $1,000.

(e) The attorney general may bring an action to recover the civil penalty imposed under Subsection (d)(2).

(f) Governmental immunity to suit and from liability is waived and abolished to the extent of liability created by Subsection (d).

Added by Acts 2015, 84th Leg., R.S., Ch. 274 (H.B. 473), Sec. 3, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1068 (H.B. 3223), Sec. 1, eff.

September 1, 2017.

CHAPTER 273. ACQUISITION OF PROPERTY FOR PUBLIC PURPOSES BY MUNICIPALITIES, COUNTIES, AND OTHER LOCAL GOVERNMENTS

Sec. 273.001. ACQUISITION OF PROPERTY; EXERCISE OF POLICE POWER. (a) A municipality may, in accordance with this chapter, acquire property separately or jointly with another municipality or other governmental entity by gift, dedication, or purchase, with or without condemnation.

(b) The property must be located within the county where the municipality or other governmental entity is located. The property may be located inside or outside the corporate limits of the municipality.

(c) The property must be used for the following public purposes:

(1) parks and playgrounds;

(2) hospitals;

(3) the extension, improvement, and enlargement of its water system, including riparian rights, water supply reservoirs, standpipes, watersheds, and dams;

(4) the laying, building, maintenance, and construction of water mains;

(5) the laying, erection, establishment, and maintenance of necessary appurtenances or facilities that will furnish to the inhabitants of the municipality an abundant supply of wholesome water;

(6) sewage plants and systems;

(7) rights of way for water and sewer lines;

(8) airports and landing fields;

(9) incinerators and garbage disposal plants;

(10) streets, boulevards, alleys, or other public ways; or

(11) a right of way needed in connection with property used for any of these purposes.

(d) The municipality may exercise police power within an area acquired under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 273.002. CONDEMNATION. Condemnation of property under this chapter shall be in accordance with state law relating to eminent domain, which may be Chapter 21, Property Code, or any other state law governing and relating to the condemnation of land for public use by a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 6, eff. September 1, 2011.

Sec. 273.003. NECESSARY ALTERATIONS. (a) If, in acting under this chapter, it is necessary for a municipality or other governmental entity to exercise the power of eminent domain, a police power, or any other power in order to make an alteration, including relocating, raising, lowering, rerouting, changing the grade, or altering the construction of a railroad, electric transmission, telegraph or telephone line, conduit, pole, property or facility, or pipeline outside the corporate limits of municipalities, the alteration shall be made at the sole expense of the municipality or other governmental entity.

(b) In this section, "sole expense" means the actual cost of an alteration made under Subsection (a) and of the provision of a comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 273.004. CONTROL BY A MUNICIPALITY WITHIN ITS CORPORATE LIMITS. This chapter does not affect the existing lawful rights of a municipality to control the streets, alleys, public ways, and other public grounds within its corporate limits.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 273.005. MAINTENANCE, IMPROVEMENT, AND OPERATION OF PROPERTY. (a) A municipality, or a municipality and another governmental entity, that acquires property under this chapter may

maintain, improve, operate, sell, and lease the property, and the improvements on the property.

(b) If the property is owned by two or more governmental entities, the entities may jointly manage, control, and operate the property by entering into a mutually agreeable contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 273.006. WARRANTS AND BONDS. The governing body of a municipality or the commissioners court of a county for the purpose of purchasing or condemning property under this chapter, and improving or equipping the property, may issue negotiable warrants and bonds of the municipality or of the county and levy taxes to provide for the interest and sinking funds of the warrants and bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 273.007. USE; CHARGE FOR USE. (a) A municipality or other governmental entity acquiring property or making improvements to property under this chapter may make and enforce rules governing the use of the property and improvements as the municipality or other governmental entity may determine by ordinance.

(b) A municipality acquiring property or making improvements to property under this chapter may fix a reasonable charge for the use of the property or improvements as determined by the governing body of the municipality. If the property has been jointly acquired, the charge may be fixed by mutual agreement of the governing body of the municipality and other governmental entity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 273.008. SPECIAL TAX. (a) The governing body of a municipality and the commissioners court of a county may levy and collect a special tax for the purpose of improving, operating, maintaining, and conducting the property the municipality or county acquires under this chapter and for providing all suitable structures and facilities on that property.

(b) This special tax is in addition to and exclusive of a tax

that may be levied for the interest and sinking fund of a bond issued under this chapter.

(c) A municipality acquiring property under this section may contract and expend its public funds in the joint or several operation and maintenance of a municipal function authorized by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 273.009. CUMULATIVE OF MUNICIPAL CHARTER PROVISIONS. This chapter is cumulative of municipal charter provisions relating to the same subject.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 280. MISCELLANEOUS PROVISIONS AFFECTING ACQUISITION, SALE, OR LEASE OF PROPERTY BY MUNICIPALITIES AND COUNTIES

Sec. 280.001. LAND FOR USE OF UNITED STATES. (a) A municipality or county, separately or jointly, may acquire land for the use of the United States government, either by a lease for a term of years or in fee simple title.

(b) Land acquired under this section by a county must be located within the county. Land acquired under this section by a municipality must be located within the county in which the municipality is located.

(c) For the purpose of acquiring land under this section, a municipality or county may appropriate any available funds and issue time warrants in payment. If time warrants are issued, the provisions of Chapter 252 or Subchapter C of Chapter 262 shall be followed to the extent applicable.

(d) For the purpose of acquiring land under this section, a municipality or county may condemn land. The condemnation may be for any period of years or in fee simple title. Condemnation may be in the name of the municipality or county.

(e) Prior to the filing of a petition for condemnation, the commissioners court of the county or the governing body of the municipality shall estimate an amount of money to be the just compensation for the interest in the land taken, and the petition shall state that amount.

(f) Immediately after filing a condemnation suit, the municipality or county may take possession of the land by depositing with the county clerk the amount of money estimated. After a hearing as provided by law, if the special commissioners appointed under the condemnation statutes find the just compensation to be greater than the amount fixed by the commissioners court or governing body, an additional amount shall be deposited with the county clerk by the taking authority to equal the amount found by the special commissioners.

(g) After the date of the taking, which is the date of the deposit of the money estimated by the commissioners court or governing body or the date of deposit of the amount fixed by the special commissioners if the taking is not desired until after the special commissioners have acted, the municipality or county may transfer the interest acquired by the taking to the United States government.

(h) A municipality or county may contract with the United States government obligating itself to acquire a lease-hold interest or fee simple title in land as authorized by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 40, eff. Sept. 1, 1999.

Sec. 280.002. ACQUISITION OF REAL PROPERTY PERMITTED IN CERTAIN CIRCUMSTANCES. (a) Except as provided by Subsection (d), a local government may accept ownership of property located in the jurisdiction of the local government if:

(1) the property is properly conveyed as a gift by a grantor who acquired title to the property from a debtor in default;

(2) the grantor sent to the local government by registered mail a notice of the grantor's intent to convey the property to the local government; and

(3) the conveyance instrument grants to the local government unencumbered title to the property.

(b) The notice required by Subsection (a)(2) must be delivered to the county clerk of the county or the municipal clerk or secretary of the municipality in which the property is located. The county clerk or the municipal clerk or secretary shall place the notice of the intended conveyance on the agenda for a meeting of the governing

body of the local government within 60 days. The grantor or the grantor's representative shall appear before the governing body of the local government at the meeting to answer any questions about the property. The local government shall accept or reject the proposed conveyance within 90 days of the meeting.

(c) A grantor may convey title to property to a local government under Subsection (a) immediately after the governing body of the local government approves the conveyance.

(d) A local government may not accept property conveyed under this section if:

(1) an unabated nuisance exists on the property; or

(2) ownership of the property will subject the local government to liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), Chapter 361, Health and Safety Code, or Subchapter I, Chapter 26, Water Code.

(e) A local government that accepts property under this section may retain the property or dispose of the property by any method authorized by law.

(f) In this section, "local government" means a municipality or county.

(g) This section is cumulative of other statutory provisions relating to the same subject.

Added by Acts 1995, 74th Leg., ch. 775, Sec. 1, eff. Aug. 28, 1995.

Sec. 280.003. HOSPITAL SITES IN COUNTY OR MUNICIPALITY. (a) The commissioners court of a county or the governing body of a municipality may issue bonds that are payable from ad valorem taxes and use the proceeds from the sale of the bonds to acquire by purchase, condemnation, or both, land to be used for hospital purposes.

(b) A county or municipality that has sufficient money in its general fund may use money in that fund to acquire land to be used for hospital purposes.

(c) A county or municipality that owns land suitable for hospital purposes, including land acquired under Subsection (a) or (b), may donate the land to this state or to the United States for hospital purposes if this state or the United States agrees to erect

and maintain a hospital on the land.

(d) A county or municipality may accept a nominal award as full compensation for land that is suitable for hospital purposes in a condemnation proceeding brought by this state or by the United States to acquire the land for hospital purposes.

(e) If bonds are issued under Subsection (a), the commissioners court or the governing body must impose the taxes in compliance with the applicable provisions of Subtitles A and C, Title 9, Government Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 10, eff. Sept. 1, 1999.

Sec. 280.004. REGIONAL BUSINESS CERTIFICATION PROGRAMS. (a) Any combination of counties, municipalities, special districts, or other political subdivisions, by ordinance, resolution, rule, order, or other means, may agree to establish a regional business certification program to be used in connection with the political subdivisions' purchasing procedures.

(b) A consolidated entity administering a program established under this section may adopt rules, regulations, or other provisions that are designed to streamline and centralize the certification process of qualified businesses, including small and emerging businesses, and that allow businesses, as a result of being certified by the program, to participate in the contracting and procurement process of any member entity involved in the regional business certification program.

(c) The purpose of this section is to permit participating political subdivisions the greatest possible flexibility to organize a regional business certification program most suitable to address the region's problems related to business certification.

Added by Acts 1999, 76th Leg., ch. 986, Sec. 1, eff. June 18, 1999. Renumbered from Sec. 280.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(86), eff. Sept. 1, 2001.

TITLE 9. PUBLIC BUILDINGS AND GROUNDS
SUBTITLE A. MUNICIPAL PUBLIC BUILDINGS AND GROUNDS
CHAPTER 281. MUNICIPAL CIVIC CENTER AUTHORITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 281.001. SHORT TITLE. This chapter may be cited as the Civic Center Authority Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.002. DEFINITIONS. In this chapter:

(1) "Authority" means a civic center authority created under this chapter.

(2) "Board" means the board of directors of a civic center authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. CREATION OF AUTHORITIES

Sec. 281.011. CHARACTERISTICS. (a) An authority is a governmental agency, a body politic and corporate, and a political subdivision of the state.

(b) An authority may not impose taxes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.012. COMPOSITION. (a) An authority may include the area of any county or part of a county, including municipalities and other political subdivisions.

(b) An authority may consist of noncontiguous tracts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.013. PETITION. (a) To create an authority, a petition requesting the creation must be filed with the county judge of the county in which the proposed authority is located. The petition must be accompanied by a deposit of $200.

(b) The deposit is to cover the costs of the notice required by Section 281.014(c). If the deposit exceeds the cost of the notice, the difference shall be refunded.

(c) The petition must include:

(1) the signatures of a majority of the members of the

governing body of at least:

(A) one municipality, if the county in which the proposed authority is located has only one municipality; or

(B) two municipalities, if the county in which the proposed authority is located has two or more municipalities;

(2) a description of the boundaries of the proposed authority;

(3) the names of the persons recommended for the first board of directors;

(4) a statement of the desirability of or need for the creation of the authority; and

(5) the name of the proposed authority.

(d) The boundaries of the proposed authority may be described in the petition by:

(1) metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) natural or artificial boundaries or survey lines; or

(3) if the proposed authority is composed entirely of municipalities, a statement that the authority is composed entirely of municipalities and a list of the municipalities in the proposed authority.

(e) The name of the proposed authority must consist of a word or phrase generally descriptive of the locale of the authority followed by the words "Civic Center Authority." The name may not be the same as the name of another authority in the same county.

(f) A copy of the petition shall be recorded in the county deed records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 111, Sec. 1, eff. Sept. 1, 1999.

Sec. 281.014. NOTICE. (a) When a petition is filed with the county judge, the judge shall set a date, time, and place for a hearing on the petition by the judge.

(b) The date of the hearing must be within 20 days after the date the petition is filed.

(c) The county judge shall issue a notice of the date, time, and place of the hearing that informs all persons of their right to appear and contest the form and allegations of the petition and the

desirability of or need for the creation of the proposed authority. Before the 10th day before the date of the hearing, the notice must be published at least one time in a newspaper having general circulation in the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.015. HEARING. (a) At the hearing, the county judge shall examine the petition to determine its sufficiency. The county judge may determine all issues raised regarding the sufficiency of the petition and the creation of the authority and may enter orders incidental to the issues.

(b) Any interested person may appear at the hearing, in person or by attorney, and offer testimony regarding the sufficiency of the petition and whether the creation of the authority is desirable or necessary.

(c) The county judge may adjourn the hearing from day to day.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.016. FINAL ORDER AND APPEAL. (a) The county judge shall grant the petition if the judge finds that the petition conforms to the requirements of Section 281.013 and that the creation of the authority is desirable or necessary. The judge by order shall declare the findings.

(b) If the county judge finds that the authority is neither desirable nor necessary, the judge by order shall deny the petition.

(c) Within 30 days after the date of the entry of the order, any person who signed the petition or who testified at the hearing may appeal the order to an appropriate district court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 281.021. BOARD OF DIRECTORS. (a) An authority must be governed by a board of directors composed of 5, 7, 9, or 11 directors.

(b) A majority of the directors constitute a quorum and a

concurrence of the majority is sufficient in all matters relating to the business of the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.022. QUALIFICATIONS. A director must be at least 18 years old and a citizen of the state residing within the boundaries of the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.023. TERMS OF OFFICE; APPOINTMENTS; VACANCIES. (a) Each director is appointed for a term of office of two years.

(b) The term of office of the first board begins on the date the authority is created. The county judge shall appoint successor directors with the advice and consent of, and from among persons recommended by, all the municipalities within the authority that contract with the authority under this chapter.

(c) If a vacancy occurs on the board or in any office on the board, the board shall appoint a person to fill the vacancy for the unexpired term. However, if the number of directors at any time is less than a majority of the positions on the board because of the failure or refusal of one or more directors to qualify to serve, the death or incapacitation of one or more directors, or any other reason, on the petition of a resident of the authority the county judge shall appoint persons to fill the vacancies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.024. BOND; OATHS OF OFFICE. (a) As soon as practicable after a director is appointed, the director shall execute a bond that is:

(1) in the amount of $5,000;

(2) payable to the authority; and

(3) conditioned that the director will faithfully perform the director's duties.

(b) Each director shall take the oath of office prescribed by the constitution and a written oath that the director will not have

an interest, directly or indirectly, in a contract with, or claim against, the authority except for a contract or claim expressly authorized by law or a warrant issued to the director as a fee of office.

(c) After a petition for the creation of an authority is granted, the first members of the board must execute their bonds and take the oaths. After the bonds are executed and the oaths are taken, the board shall meet and organize.

(d) The bond of a director on the first board must be approved by the county judge. The bond of a subsequent director must be approved by the board.

(e) The bond and oaths required by this section must be filed with the authority and the authority shall keep the bond and oaths in its records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.025. OFFICERS. (a) After executing the bonds and taking the oaths, the directors shall elect a president, vice-president, secretary, and any other officers the board considers necessary.

(b) The president is the chief executive officer of the authority and shall preside at each meeting of the board.

(c) The vice-president shall act as president if the president is absent or disabled. The secretary shall act as president if both the president and the vice-president are absent or disabled.

(d) The secretary shall provide for the proper keeping of the books and records of the authority. The board may appoint a director, the general manager, or any other employee as assistant or deputy secretary to assist the secretary, and that person may certify the authenticity of any record of the authority.

(e) A director of a state or national bank may serve as the authority's treasurer.

(f) The treasurer shall execute a bond, in an amount set by the board, conditioned that the treasurer will faithfully account for all money of which the treasurer assumes custody in the capacity of treasurer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.026. BYLAWS. The board may adopt bylaws to govern:

(1) the time and place of its meetings;

(2) the manner of conducting its meetings;

(3) the powers, duties, and responsibilities of its officers and employees;

(4) the disbursement of funds by checks, drafts, and warrants;

(5) the appointment and authority of director committees;

(6) the keeping of records and accounts; and

(7) other matters that the board considers appropriate.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.027. OFFICE AND MEETING PLACE. (a) The board shall designate, establish, and maintain an office and meeting place within the authority. The board may also establish a meeting place outside the authority.

(b) If the board establishes a meeting place outside the authority or changes the location of a meeting place established outside the authority, it shall file with the county clerk a copy of the order establishing or relocating the meeting place and shall publish the location in a newspaper of general circulation in the county in which the authority is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.028. MEETINGS; NOTICE. (a) The board shall hold regular meetings to conduct authority business and may hold special meetings as required by authority business.

(b) The board shall hold its meetings in one of its designated meeting places.

(c) Any interested person may attend any meeting of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.029. FEES OF OFFICE. A director is entitled to receive fees of office of not more than $25 a day for each day of service necessary to the discharge of the director's duties, but may

not receive more than $100 for any calendar month regardless of the number of days of service during that month.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 281.041. ORGANIZATIONAL EXPENSES. The board may pay costs necessarily incurred in the creation and organization of the authority, including the cost of investigating and making plans, an engineer's or architect's report, and other incidental expenses, and may reimburse any person for money advanced for those purposes. The payments may be made from money obtained from the sale of the first bonds issued by the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.042. MANAGEMENT. The board shall control and manage the affairs of the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.043. EMPLOYEES. (a) The board shall employ persons the board considers necessary to conduct the affairs of the authority, including engineers, attorneys, financial advisors, a general manager, bookkeepers, auditors, and secretaries. The board shall determine the term of office and compensation of the employees.

(b) A director may be employed as the general manager of the authority and is entitled to receive compensation in an amount fixed by the other directors. A director employed as general manager shall continue to perform the duties of director. If the general manager is not a director, the general manager shall execute a fidelity bond payable to the authority in the amount of $5,000, conditioned that the person will faithfully perform the duties of general manager.

(c) The board may remove an employee.

(d) The board may require an employee to execute a bond payable to the authority that is conditioned that the person will faithfully perform the duties of the employee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.044. FACILITIES. (a) An authority may establish, acquire, lease as lessee or lessor, purchase, construct, improve, enlarge, equip, repair, operate, or maintain all or a designated part of:

(1) a public improvement such as a civic center, civic center building, auditorium, opera house, music hall, exhibition hall, coliseum, museum, library, recreational building or facility, or other public building or related facility; or

(2) a structure, parking area, or facility located at or in the immediate vicinity of the public improvement and to be used in connection with the public improvement for off-street parking or storage of motor vehicles or other conveyances.

(b) A lease made under Subsection (a) may contain any terms the board considers appropriate.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.045. DURATION OF CERTAIN LEASES. If an authority leases to or from any person all or part of any facilities constructed or acquired, or to be constructed or acquired, by the authority, the lease may not be for a term longer than 40 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.046. CONTRACTS. (a) An authority contracts in the name of the authority.

(b) An authority may contract with the United States, this state, or a political subdivision or governmental agency of the United States or this state, for furnishing all or a part of the authority's services or facilities or for the joint ownership and operation of facilities, improvements, or equipment necessary to accomplish a purpose permitted by the authority.

(c) An authority may contract with any person in the performance of a purpose permitted by the authority. The contract must be on terms the board considers desirable, fair, and advantageous and may not be for a term longer than 40 years.

(d) A director with a financial interest in a contract shall disclose the interest to the other directors and may not vote on the acceptance of the contract or participate in discussion on the contract. If a director fails to disclose his interest in a contract, the contract is invalid.

(e) If, after a contract is awarded, an authority decides that additional work is needed or that the character or type of work or facilities should be changed, the board may authorize change orders to the contract if the increase in the total cost of the contract is not greater than 25 percent.

(f) The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 3, eff. June 17, 2011.

Sec. 281.047. CONTRACTS OVER $50,000. (a) This section applies to a contract that is for materials for, or construction of, facilities and that is for an amount greater than $50,000.

(b) The board shall advertise the letting of a contract, including the general conditions, time, and place of the opening of the sealed bids. The board shall publish the notice once a week for two consecutive weeks in one or more newspapers published in the county. The first publication must be before the 14th day before the date the sealed bids are opened.

(c) A contract under this section may cover all facilities of the authority, or the various elements of the facilities may be segregated for the purpose of receiving bids and awarding contracts. A contract may provide that the facilities will be constructed in stages over a period of years.

(d) A contract may provide for payment of a total sum that is the completed cost of the facilities or may be based on bids to cover the cost of units of the various elements entering into the work as estimated by the authority's architects or engineers, or a contract may be let and awarded in any other form and to any responsible

person that, in the board's judgment, will be most advantageous to the authority and result in the best and most economical completion of the authority's proposed facilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 10, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 11, eff. June 19, 2009.

Sec. 281.048. CONSTRUCTION BIDS; CONTRACTS; BONDS. (a) To bid on proposed construction work, a person must submit to the board a written sealed bid and a certified or cashier's check drawn on a responsible bank in the state or a bidder's bond for at least two percent of the total amount of the bid.

(b) The board shall open all the bids at the same time. The board may reject any or all bids.

(c) If the chosen bidder fails or refuses to enter into a proper contract with the authority or to furnish the bond required by Subsection (e), the bidder forfeits the amount of the check or bond that accompanied the bid.

(d) A contract for construction work must be in writing and signed by the board and the contractor. The authority shall keep the contract in its records and make the contract available for public inspection.

(e) A person to whom a contract is let must execute good and sufficient performance and payment bonds in accordance with Chapter 2253, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(17), eff. Sept. 1, 1995.

Sec. 281.049. FEES; RULES. (a) An authority may adopt and enforce necessary charges, fees, or rentals for providing facilities or services.

(b) An authority may adopt and enforce reasonable rules relating to its facilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.050. ACQUISITION OF LAND AND OTHER PROPERTY. (a) An authority may acquire land, materials, easements, rights-of-way, or other property considered necessary, incidental, or helpful to the accomplishment of a purpose stated in Section 281.044, including property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the authority's facilities. An authority may acquire the property by gift, grant, purchase, or condemnation.

(b) An authority may acquire fee simple title to, or an easement on, public or private land located in or out of the authority's boundaries. An authority may acquire title to, or an easement on, property that is not held in fee.

(c) An authority may lease property on terms the board considers advantageous to the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.051. EMINENT DOMAIN. (a) An authority may acquire land, easements, or other property within its boundaries by condemnation. The authority may condemn the fee simple title or an easement. The board shall institute condemnation proceedings in the name of the authority and shall direct the proceedings.

(b) The manner in which an authority exercises the right of eminent domain is governed by Chapter 21, Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.052. SUITS. An authority may, through its directors, sue and be sued in any court of this state in the name of the authority. Service of process may be made by serving three directors. Courts of this state shall take judicial notice of the establishment of an authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.053. COSTS, DEPOSITS, AND APPEAL BONDS. An authority is not required to give bond for appeal or for costs, or to deposit double the amount of an award, in a condemnation suit or other suit to which it is a party.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.054. COSTS OF RELOCATION. If the relocating, raising, rerouting, changing the grade, or altering the construction of a highway, railroad, electric transmission line, pipeline, or telephone or telegraph property is required by the authority's exercise of the power of eminent domain, power of relocation, or any other power, the required action shall be taken at the sole expense of the authority. "Sole expense" means the actual costs of the required action and of the provision of a comparable replacement that does not enhance the facility after deducting the net salvage value derived from the old facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.055. SURPLUS PROPERTY. (a) The board may order the sale of land or other property owned by the authority that the authority does not need. The sale may be public or private.

(b) Property owned by the authority that the authority does not need may be exchanged for other property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.056. ADDITION OF MUNICIPALITIES. (a) To add a municipality to the authority, a petition signed by a majority of the members of the governing body of the municipality must be filed with the board.

(b) If the board determines that the addition of the municipality to the authority is desirable or necessary, the board shall enter an order adding the municipality to the authority and shall file a copy of the order in the county deed records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.057. RECORDS. The preservation, microfilming, destruction, or other disposition of the records of the authority is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 59, eff. Sept. 1, 1989.

Sec. 281.058. SURETY BOND PREMIUMS. The board may pay the premiums on surety bonds required of officials or employees of the authority out of available funds of the authority, including proceeds from the sale of bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.059. DEPOSITORY. The board shall designate by order or resolution one or more banks in or out of the authority's boundaries to serve as the depository for the authority's funds. All funds of the authority shall be deposited in its depository unless an order or resolution authorizing the issuance of the authority's bonds requires a different disposition. To the extent that funds in a depository bank are not insured by the Federal Deposit Insurance Corporation, they shall be secured in the manner provided for the security of county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.060. INVESTMENTS. The board may invest and reinvest authority funds in direct or indirect obligations of the United States, an agency of the United States, the State of Texas, or a county, municipality, school district, or other political subdivision of the state. Funds of the authority may be placed in certificates of deposit of state or national banks or savings and loan associations in the state if the certificates of deposit are secured in the manner provided for the security of county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.061. FISCAL YEAR; AUDIT. (a) The fiscal year of an authority is a calendar year, unless it is changed by the board.

(b) An authority shall keep a complete system of accounts. An independent certified public accountant or a firm of independent certified public accountants shall prepare an audit of an authority's affairs each year. A signed copy of the audit report shall be delivered to each member of the board within 120 days after the last day of the fiscal year. A copy of the audit shall be kept on file at the authority office and, as a public record, is open for inspection by any interested person during normal office hours.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.062. SUPPLIES; SEAL. (a) The board may purchase materials, supplies, equipment, vehicles, and machinery needed by the authority.

(b) The board shall adopt a seal for the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. REVENUE BONDS

Sec. 281.071. ISSUANCE OF BONDS. (a) An authority may issue revenue bonds for any purpose set forth in Subchapters A through E when the issuance is authorized by a resolution adopted by the board. The bonds must be secured by a pledge of, and be payable from, all or a designated part of the authority's revenues from its facilities or any other source, including contract and lease proceeds.

(b) The bonds may mature serially or in any other manner. The bonds may not mature later than 40 years after the date of the bonds.

(c) The bonds shall bear interest at a rate that does not exceed the maximum interest rate authorized by Chapter 1204, Government Code.

(d) The bonds and the appurtenant interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code.

(e) As provided by the board, the bonds and interest coupons:

(1) may be issued registrable as to principal or as to both

principal and interest; and

(2) may be made redeemable before maturity, at the option of the board, or may contain a mandatory redemption provision.

(f) In the resolution authorizing the issuance of the bonds, the board shall designate the form and denominations of the bonds; the manner, terms, conditions, and details of issuance; and the manner of signing and executing the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.301, eff. Sept. 1, 2001.

Sec. 281.072. ADDITIONAL SECURITY. (a) At the board's discretion, the bonds of an authority may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the authority, and franchises, easements, leases, and contracts and rights relating to those properties. The trustee may operate the properties, sell the properties for payment of the bonds or interest on the bonds, and exercise all other powers and authority for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may:

(1) contain provisions prescribed by the board for the security of the bonds and as preservation of the trust estate and for the modification or amendment of those provisions;

(2) condition the right to spend authority money or sell authority property on the approval of a registered professional engineer or architect and provide for the manner of selecting the engineer or architect; and

(3) provide for the investment of funds of the authority.

(c) A purchaser under a sale under a deed of trust or mortgage lien is the absolute owner of the properties, facilities, and rights purchased and may maintain and operate the properties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.073. BOND PROVISIONS. (a) In a resolution authorizing the issuance of bonds under this chapter, including refunding bonds, the board may:

(1) provide for the flow of funds and the establishment and

maintenance of interest and sinking funds, reserve funds, and other funds;

(2) make additional covenants that the board considers appropriate with respect to the bonds, the pledged revenues, and the operation and maintenance of the facilities of which the revenues are pledged, including provisions for the operation or leasing of the facilities and the use or pledge of money derived from the operation of the facilities, contracts, and leases;

(3) prohibit the further issuance of bonds or other obligations payable from the pledged revenues;

(4) reserve the right to issue, on conditions set forth in the resolution, additional bonds to be secured by a pledge of, and payable from, the revenues on a parity with, or subordinate to, the lien and pledge in support of the bonds being issued; and

(5) state other provisions and covenants that are not prohibited by the constitution of this state or by this chapter.

(b) The board may adopt and provide for any other proceeding or instrument necessary or convenient in the issuance of authority bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.074. SALE OF BONDS. After bonds are issued, the board shall sell the bonds on the best terms and for the best possible price.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.075. APPROVAL; REGISTRATION. (a) An authority shall submit the bonds it issues to the attorney general for examination. If the attorney general finds that the bonds are authorized in accordance with law, the attorney general shall approve the bonds and the comptroller of public accounts shall register them.

(b) Bonds that are approved and registered under Subsection (a) are incontestable in a court or other forum and are valid and binding obligations in accordance with their terms.

(c) If the bonds recite that the security for the bonds includes a pledge of the proceeds of a contract or a lease to which the authority is a party, a copy of the contract or lease and of the

proceedings authorizing the contract or lease may be submitted to the attorney general with the bond records. If a contract or lease and a record of the corresponding proceedings is submitted to the attorney general, the approval of the bonds by the attorney general is also an approval of the contract or lease and the contract or lease is incontestable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.076. BOND PROCEEDS. The board may appropriate or set aside from the proceeds from the sale of bonds an amount for the payment of interest, administrative and operating expenses expected to accrue during the period of construction as provided in the bond resolutions, and expenses incurred and that will be incurred in the issuance, sale, and delivery of the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.077. REFUND OF BONDS. (a) By resolutions adopted by the board, an authority may issue bonds to refund all or any outstanding bonds, including matured but unpaid interest coupons. Refunding bonds may mature serially or in any other manner. The bonds may not mature later than 40 years after the date of the bonds. The bonds shall bear interest at a rate that does not exceed the maximum interest rate authorized by Chapter 1204, Government Code.

(b) Refunding bonds may be sold in accordance with Subsection (c) or they may be made payable from the same source as the bonds being refunded or from any additional source. The bonds must be approved by the attorney general in the same manner as original bonds and must be registered by the comptroller of public accounts on the surrender and cancellation of the bonds to be refunded.

(c) The resolution authorizing the issuance of refunding bonds may provide that the bonds be sold and the proceeds deposited where the underlying bonds are payable. If the amount deposited is sufficient to pay the interest and principal on the underlying bonds to their maturity dates, or to their option dates if the bonds have been called for payment before maturity, the authority may issue the refunding bonds before the cancellation of the bonds being refunded, and the comptroller of public accounts shall register the bonds

without the surrender and cancellation of the underlying bonds.

(d) Refunding may be accomplished in one or more installment deliveries. Refunding bonds and the appurtenant interest coupons are investment securities under Chapter 8, Business & Commerce Code, and must be issued as provided in this chapter.

(e) In lieu of the method set forth in this section, an authority may refund bonds as provided by general law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.302, eff. Sept. 1, 2001.

Sec. 281.078. BONDS AS INVESTMENTS; SECURITY. (a) Bonds issued by an authority are legal and authorized investments for a bank, a trust company, a savings and loan association, an insurance company, a fiduciary, or a trustee and for interest or sinking funds or other public funds of the state or of an agency, subdivision, or instrumentality of the state, including a county, municipality, school district, or other district, public agency, or body politic.

(b) Bonds issued by an authority may be security for deposits of public funds of the state or of an agency, subdivision, or instrumentality of the state, including a county, municipality, school district, or other district, public agency, or body politic, to the extent of the market value of the bonds and appurtenant unmatured interest coupons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.079. PAID BONDS AND COUPONS. When a bond, interest coupon, note, or warrant of the authority is paid, it shall be delivered to the authority or destroyed. If a bond, coupon, note, or warrant is destroyed, evidence of the destruction shall be furnished to the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER F. CONTRACTS WITH CIVIC CENTER AUTHORITIES

Sec. 281.091. AUTHORIZATION; PURPOSES. On terms a municipality considers desirable, fair, and advantageous and with the

approval of a majority of the governing body, a municipality may make a contract with a civic center authority under which the authority, for the benefit of the municipality, exercises its authority under Section 281.044. Under the contract, the authority may provide to the municipality all or part of its authorized services and facilities, in or out of the municipality's boundaries. The term of the contract may not be longer than 40 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 281.092. PAYMENTS. (a) A municipality shall pay the amounts prescribed by the contract from any available funds, including property taxes.

(b) To pledge property taxes as part or all of the required payments under the contract, before it enters into a contract with an authority a municipality must obtain voter approval at an election conducted substantially according to the applicable procedures in Chapter 1251, Government Code. Each qualified voter in the municipality is entitled to vote in the election. If the voters authorize the payments from property taxes, the contract may provide that the payments are payable from and are obligations against only the taxing power of the municipality or may provide that the payments are payable from taxes and other funds and revenues specified in the contract. After the election and concurrently with, or prior to, making the contract, the municipality shall provide for the annual assessment and collection of an amount that is sufficient to make the contract payments and to create a sinking fund of at least two percent.

(c) An authority or a holder of authority bonds may not demand payment of the municipality's obligation out of funds raised by taxation if the municipality has not complied with Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.303, eff. Sept. 1, 2001.

Sec. 281.093. CONFLICT WITH MUNICIPAL CHARTER. If this subchapter conflicts with the charter of a home-rule municipality contracting under this subchapter, this subchapter controls.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 282. MUNICIPAL AUTHORITY OVER PUBLIC GROUNDS

Sec. 282.001. GENERAL AUTHORITY OF HOME-RULE MUNICIPALITY. (a) A home-rule municipality has exclusive control over and under the public grounds of the municipality.

(b) The municipality may control, regulate, or remove an encroachment or obstruction on the public grounds of the municipality.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 11, eff. Sept. 1, 1995.

Sec. 282.002. GENERAL AUTHORITY OF GENERAL-LAW MUNICIPALITY. (a) A general-law municipality has exclusive control over the public grounds of the municipality.

(b) The municipality may abate or remove an encroachment or obstruction on the public grounds of the municipality.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 11, eff. Sept. 1, 1995.

Sec. 282.003. AUTHORITY OF HOME-RULE MUNICIPALITY TO GRANT FRANCHISE. (a) The governing body of a home-rule municipality by ordinance may grant to a person a franchise to use or occupy the public grounds of the municipality.

(b) The authority to grant a franchise to use or occupy the public grounds is the exclusive authority of the governing body, and the charter of the municipality may not grant the franchise.

(c) A franchise under this section:

(1) is subject to the same petition and election provisions that apply to a franchise under Subchapter D, Chapter 311, Transportation Code; and

(2) may not extend beyond the period set for its termination.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 11, eff. Sept. 1, 1995.

CHAPTER 283. MANAGEMENT OF PUBLIC RIGHT-OF-WAY USED BY

TELECOMMUNICATIONS PROVIDER IN MUNICIPALITY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 283.001. STATE POLICY; PURPOSE. (a) It is the policy of this state to:

(1) encourage competition in the provision of telecommunications services;

(2) reduce the barriers to entry for providers of services so that the number and types of services offered by providers continue to increase through competition;

(3) ensure that providers of telecommunications services do not obtain a competitive advantage or disadvantage in their ability to obtain use of a public right-of-way within a municipality; and

(4) fairly reduce the uncertainty and litigation concerning franchise fees.

(b) It is also the policy of this state that municipalities:

(1) retain the authority to manage a public right-of-way within the municipality to ensure the health, safety, and welfare of the public; and

(2) receive from certificated telecommunications providers fair and reasonable compensation for the use of a public right-of-way within the municipality.

(c) The purpose of this chapter is to establish a uniform method for compensating municipalities for the use of a public right-of-way by certificated telecommunications providers that:

(1) is administratively simple for municipalities and telecommunications providers;

(2) is consistent with state and federal law;

(3) is competitively neutral;

(4) is nondiscriminatory;

(5) is consistent with the burdens on municipalities created by the incursion of certificated telecommunications providers into a public right-of-way; and

(6) provides fair and reasonable compensation for the use of a public right-of-way.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.002. DEFINITIONS. In this chapter:

(1) "Access line":

(A) means, unless the commission adopts a different definition under Section 283.003, a unit of measurement representing:

(i) each switched transmission path of the transmission media that is physically within a public right-of-way extended to the end-use customer's premises within the municipality, that allows the delivery of local exchange telephone services within a municipality, and that is provided by means of owned facilities, unbundled network elements or leased facilities, or resale;

(ii) each termination point or points of a nonswitched telephone or other circuit consisting of transmission media located within a public right-of-way connecting specific locations identified by, and provided to, the end-use customer for delivery of nonswitched telecommunications services within the municipality; or

(iii) each switched transmission path within a public right-of-way used to provide central office-based PBX-type services for systems of any number of stations within the municipality, and in that instance, one path shall be counted for every 10 stations served; and

(B) may not be construed to include interoffice transport or other transmission media that do not terminate at an end-use customer's premises or to permit duplicate or multiple assessment of access line rates on the provision of a single service.

(2) "Certificated telecommunications provider" means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.

(3) "Commission" means the Public Utility Commission of Texas.

(4) "Consumer price index" means the annual revised consumer price index for all urban consumers for Texas, as published by the Federal Bureau of Labor Statistics.

(5) "Local exchange telephone service" has the meaning assigned by Section 51.002, Utilities Code.

(6) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which the municipality has an interest. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications.

(7) "Voice service" means voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., 2nd C.S., Ch. 2 (S.B. 5), Sec. 28, eff. September 7, 2005.

Sec. 283.003. COMMISSION REVIEW. (a) Not later than September 1, 2002, the commission shall determine whether changes in technology, facilities, or competitive or market conditions justify a modification in the commission-established categories of access lines or, if necessary, the adoption of a definition of "access line" provided by this section. The commission may not begin a review authorized by this section before March 1, 2002.

(b) As part of the proceeding described by Subsection (a), and as necessary after that proceeding, the commission by rule may modify the definition of "access line" and the categories of access lines as necessary to ensure competitive neutrality and nondiscriminatory application and to maintain consistent levels of compensation, as annually increased by growth in access lines and consumer price index, as applicable, to the municipalities.

(c) After September 1, 2002, the commission, on its own motion, shall make the determination required by this section at least once every three years.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.004. APPLICATION. This chapter applies only to municipal regulations and fees imposed on and collected from certificated telecommunications providers.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.005. INFORMATION. (a) The commission may collect and compile any information from certificated telecommunications providers and municipalities as is necessary to implement this chapter.

(b) The commission shall maintain the confidentiality of the information described by Subsection (a) in accordance with Section 52.207, Utilities Code.

(c) Information provided to municipalities under this chapter shall be governed by confidentiality procedures established by the commission in compliance with Section 52.207, Utilities Code.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.006. FEE REQUIREMENT FOR USE OF RIGHT-OF-WAY. (a) Notwithstanding any other law, a certificated telecommunications provider that does not use a public right-of-way within the municipality may not be required to pay franchise fees, right-of-way fees or any other fee or other compensation, other than a fee or compensation excluded from the "base amount" under Section 283.053(a), directly to the municipality to provide local exchange telephone service in the municipality.

(b) This section does not affect the number of access lines counted and reported to the commission under Section 283.055.

(c) The commission shall adopt rules to determine the method of payment and to ensure that access line fees are paid on a competitively neutral and non-discriminatory basis by certificated telecommunications providers that provide more access lines than they purchase from an underlying provider of resold services or unbundled network elements.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. RIGHT-OF-WAY FEES

Sec. 283.051. RIGHT-OF-WAY FEE. (a) Notwithstanding any other law, a certificated telecommunications provider that provides telecommunications services within a municipality is required to pay as compensation to a municipality for use of the public rights-of-way in the municipality only the amount determined by the commission under Section 283.055.

(b) This section does not affect the right of a municipality to initiate legal action against a certificated telecommunications provider that uses a public right-of-way to provide local exchange telephone service within a municipality and has not compensated the municipality in accordance with this chapter.

(c) Fees imposed under this chapter shall constitute "a municipal fee" or "municipal fees" within the meaning of the Utilities Code.

(d) In this subsection, "affiliated group" has the meaning assigned by Section 171.0001, Tax Code. A certificated telecommunications provider is not required to pay any compensation under Subsection (a) for a given calendar year if the provider determines that the sum of the compensation due from the provider and any member of the provider's affiliated group to all municipalities in this state under Subsection (a) is less than the sum of the fees due from the provider and any member of the provider's affiliated group to all municipalities in this state under Section 66.005, Utilities Code. The determination under this subsection for a given year must be based on amounts actually paid, or amounts that would have been paid notwithstanding this subsection, during the 12-month period ending June 30 of the immediately preceding calendar year by the provider and any member of the provider's affiliated group. In the case of a conflict between this subsection and Section 283.055, this subsection prevails.

(e) Notwithstanding the aggregate amount of compensation or fees paid in this state calculated under Subsection (d), Subsection (d) does not exempt a certificated telecommunications provider from paying compensation under Subsection (a) to a municipality if the provider is not required to pay a fee authorized by Section 66.005, Utilities Code, or another fee described in 47 U.S.C. Section 542(g), to that municipality. This subsection applies only to a municipality described in this subsection and does not limit the application of Subsection (d) to any other municipality.

(f) A certificated telecommunications provider shall file, not later than October 1 of each year, an annual written notification with each municipality in which the provider provides telecommunications services of the provider's requirement to pay compensation under Subsection (a) or exemption from the requirement to pay compensation under Subsection (d) for the following calendar year.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 980 (S.B. 1152), Sec. 1, eff. September 1, 2019.

Sec. 283.052. EFFECT OF PAYMENT OF RIGHT-OF-WAY FEES TO MUNICIPALITY. (a) Subject to the requirements of Sections 283.056 and 283.057, a certificated telecommunications provider that complies with this chapter and commission orders issued under this chapter:

(1) may erect poles or construct conduit, cable, switches, and related appurtenances and facilities and excavate within a public right-of-way to provide telecommunications service; and

(2) is not subject to municipal franchise requirements.

(b) All use of a public right-of-way is nonexclusive and subject to Section 283.056.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.053. BASE AMOUNT. (a) In determining a municipality's "base amount" under this section, pole rental fees, special assessments, and taxes of any kind, including ad valorem or sales and use taxes, or other compensation not related to the use of a public right-of-way, are not included.

(b) For purposes of determining the amount of a municipality's right-of-way fee under Section 283.055, the "base amount" for a municipality not described by another subsection is the total amount of revenue received by the municipality in franchise, license, permit, and application fees and in-kind services or facilities from certificated telecommunications providers in 1998 within the boundaries of the municipality, including all newly annexed areas. The base amount prescribed under this subsection shall include the municipal fee rate escalation provisions and the value of in-kind services or facilities received in 1998 in accordance with Subsection (f) specifically prescribed in applicable agreements or ordinances effective or adopted by January 12, 1999, unless the governing body of the municipality elects otherwise. However, that additional compensation may not become part of the base amount before it becomes effective under the existing franchise agreement or ordinance.

(c) The base amount for a municipality located in a county with a population of less than 25,000 or a municipality that either did not have an effective franchise agreement or ordinance on January 12, 1999, or was not in existence on that date shall be, at the election of the governing body of the municipality, equal to:

(1) an amount not greater than the statewide average fee per line for each category of access line of the certificated telecommunications provider with the greatest number of access lines in that municipality, multiplied by the total number of access lines in each category located within the boundaries of the municipality on December 31, 1998, for a municipality in existence on that date, or on the date of incorporation for a municipality incorporated after that date;

(2) an amount not greater than the base amount determined for a similarly sized municipality in the same or an adjacent county in which the certificated telecommunications provider with the greatest number of access lines in the municipality is the same for each municipality; or

(3) the total amount of revenue received by the municipality in franchise, license, permit, and application fees from all certificated telecommunications providers in 1998.

(d) The base amount for a municipality that was involved in litigation relating to franchise fees with one or more certificated telecommunications providers during any part of 1998 and that, not later than December 1, 1999, repeals any ordinance subject to dispute in the litigation, voluntarily dismisses with prejudice any claims in the litigation for compensation, and agrees to waive any potential claim for compensation under any franchise agreement or ordinance expired or in existence on September 1, 1999, is equal to, at the municipality's election:

(1) an amount not to exceed the state average access line rate on a per category basis for the certificated telecommunications provider with the greatest number of access lines in that municipality multiplied by the total number of access lines located within the boundaries of the municipality on December 31, 1998, including any newly annexed areas; or

(2) an amount not to exceed 21 percent of the total sales and use tax revenue received by the municipality pursuant to Chapter 321, Tax Code. The amount does not include sales and use taxes collected under:

(A) Chapter 451, 452, 453, or 454, Transportation Code, for a mass transit authority;

(B) Chapter 504 or 505;

(C) Chapters 334 and 335, Local Government Code; or

(D) Chapters 321, 322, and 323, Tax Code, for a special district, including health service, crime control, hospital, and emergency service districts.

(e) A litigating municipality electing to dismiss with prejudice its claims in the litigation and repealing any ordinance subject to dispute in the litigation does not, by making the election, waive any defenses it may have to claims by other parties to the litigation. A municipality in litigation relating to franchise fees with one or more certificated telecommunications providers during any part of 1998 that does not make an effective election under Subsection (d) shall be governed by Subsection (b).

(f) For the purpose of determining the base amount, in-kind services or facilities provided to municipalities under existing franchise agreements or ordinances by certificated telecommunications providers shall be valued at one percent of the total 1998 revenue from franchise, permit, license, and application fees paid to the municipality under all applicable telecommunications franchise agreements or ordinances, unless a municipality can establish before the commission that those services or facilities received by the municipality had a greater value in 1998.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.18, eff. April 1, 2009.

Sec. 283.054. EXISTING FRANCHISE AGREEMENTS AND ORDINANCES. (a) Except as otherwise provided by this chapter, this chapter does not affect the validity of a franchise agreement or ordinance with a certificated telecommunications provider executed before January 12, 1999. A municipality may continue to enforce a franchise agreement or ordinance and to collect franchise fees and other charges under that franchise agreement or ordinance until the date on which the agreement or ordinance expires by its own terms or is terminated in accordance with the terms of this section. A provider may elect to

terminate a franchise agreement or obligations under an existing ordinance as of the effective date of the right-of-way fee rates adopted in accordance with the commission's rules adopted under this chapter. A provider terminating a franchise agreement or obligations under an existing ordinance under this section shall become governed by this chapter on the date of termination. A termination under this subsection does not affect the calculation of the municipality's base amount under Section 283.053. A certificated telecommunications provider electing to terminate an existing franchise agreement or obligations under an ordinance under this section shall provide notice to the commission and the affected municipality not later than December 1, 1999.

(b) If a franchise agreement or obligations under an ordinance in a municipality expire or are terminated under Subsection (a) before the commission has determined the amounts to be paid to a municipality, the affected certificated telecommunications providers operating in the municipality shall continue paying at the rates required under the terms of the expired agreement or ordinance until the commission's determination and the certificated telecommunications provider's implementation of appropriate rates under this chapter.

(c) During the period in which a franchise agreement or ordinance described by Subsection (a) is in effect, a certificated telecommunications provider not subject to an existing franchise agreement or ordinance that wants to construct facilities to offer telecommunications services in the municipality shall pay right-of-way fees that are competitively neutral and non-discriminatory, consistent with the charges of the most recent agreement or ordinance between the municipality and the certificated telecommunications provider serving the largest number of access lines within the municipality. The provider shall pay those fees for the duration of that agreement or ordinance or until the right-of-way fees established by commission rule take effect. If the existing franchise agreement or ordinance contains a provision requiring in-kind services or facilities, the certificated telecommunications provider not subject to an existing franchise agreement or ordinance shall pay an amount equal to an additional one percent of its total fees under the applicable agreement or ordinance in lieu of any in-kind services or facilities, if any, that otherwise are required under the terms of the existing franchise agreement or ordinance.

However, the municipality may not require a certificated telecommunications provider to provide any services or facilities without compensation or at below-market rates for the right to use a public right-of-way or to provide telecommunications services in the municipality. On request of the certificated telecommunications provider not subject to an existing franchise agreement or ordinance, the commission shall convert the compensation under the existing franchise agreement or ordinance to a fee per access line on a competitively neutral and non-discriminatory basis, and the certificated telecommunications provider may elect to pay the municipality on a fee per access line basis rather than the manner of compensation provided under the existing franchise agreement or ordinance.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.055. DETERMINATION OF FEES BY COMMISSION. (a) Not later than November 1, 1999, the commission shall establish not more than three categories of access lines for statewide use.

(b) Not later than March 1, 2000, the commission shall establish:

(1) for each municipality, rates per access line by category for the use of the rights-of-way in that municipality; and

(2) the statewide average of those rates per access line by category for each certificated telecommunications provider, if necessary.

(c) The rates when applied to the total number of access lines by category in the municipality shall be equal to the base amount.

(d) Not later than December 1, 1999, a municipality that wants to effect an allocation of the base amount over specific access line categories to be assessed rates shall notify the commission of the desired allocation. The commission shall establish an allocation of the base amount over the categories of access lines if a municipality does not file its proposed allocation by December 1, 1999. A municipality may request a modification of the commission's allocation not more than once every 24 months by notifying the commission and all affected certificated telecommunications providers in September of that year that the municipality wants to change the allocation for the next calendar year. A municipality's allocation

shall be implemented unless, on complaint by an affected certificated telecommunications provider, the commission determines that the allocation is not just and reasonable, is not competitively neutral, or is discriminatory.

(e) Rates imposed under this section and the allocation among certificated telecommunications providers must be exercised in a competitively neutral manner, may not unduly impair competition, must be non-discriminatory, and must comply with state and federal law. The commission shall determine the applicable rates for each municipality for each category, taking into account the allocation under Subsection (d) and the type, use, and function of access lines.

(f) Certificated telecommunications providers shall pay to the municipality a quarterly amount calculated monthly based on the access line rates established by the commission under this section and the number of access lines as reflected in the reports filed under Subsection (j). The providers shall make the quarterly payment not later than 45 days after the end of the quarter.

(g) Beginning 24 months after the date the commission establishes rates per access line, the commission shall annually adjust the rates per access line for each municipality by an amount equal to one-half the annual change, if any, in the consumer price index. At that time, the commission shall provide each certificated telecommunications provider and municipality with the adjusted monthly rates for each category of access line.

(h) On an annual basis, an affected municipality may provide notice to the commission to decline all or any portion of any increase in the per category access line rates.

(i) A certificated telecommunications provider may not be required to remit a right-of-way fee to a municipality on those access lines that have been resold, leased, or otherwise provided to another certificated telecommunications provider, if the underlying certificated telecommunications provider supplying those services or facilities has been furnished with adequate proof that the provider of services to the end-use customer will directly remit to the municipality a right-of-way fee based on those access lines.

(j) On a quarterly basis, each certificated telecommunications provider shall file a report with the commission that shows the number of access lines, including access lines by category, that the provider has within each municipality at the end of each month of the quarter. The provider shall include with the report a certified

statement from an authorized officer or duly authorized representative of the provider stating that the information contained in the report is true and correct to the best of the officer's or representative's knowledge and belief after inquiry. On request and subject to the confidentiality protections of Section 283.005, each certificated telecommunications provider shall provide each affected municipality with a copy of the report required by this subsection.

(k) On request of the commission and to the extent available, the report required by Subsection (j) shall specifically identify access lines that are provided by means of resold services or unbundled facilities to another certificated telecommunications provider who is not an end-use customer and the identity of the certificated telecommunications providers obtaining the resold services or unbundled facilities to provide services to end-use customers. A provider may not include in its monthly count of access lines and is not required to remit a right-of-way fee to the municipality on access lines that are resold, leased, or otherwise provided to another certificated telecommunications provider if the provider receives adequate proof that the provider leasing or purchasing the access lines will include the access lines in its monthly count and remit payment on those access lines to the municipality.

(l) The commission may use a report required under Subsection (j) only to verify the number of access lines that serve premises within the municipality.

(m) Notwithstanding any other provision of this chapter, payment by a certificated telecommunications provider that complies with the terms of an unexpired franchise agreement or right-of-way ordinance that applies to the provider satisfies the payment attributable to the provider required by this chapter.

(n) A municipality may not demand or require from a certificated telecommunications provider services, facilities, or goods without compensation or at below-market rates.

(o) A certificated telecommunications provider shall, to the extent required, implement commission established access line rates not later than the 90th day after the date the commission establishes the access line rates under this chapter.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.056. MUNICIPAL AUTHORIZATIONS; PROHIBITION ON OTHER FEES AND CHARGES. (a) A municipality may not require a certificated telecommunications provider to:

(1) pay any compensation other than the fee authorized by Section 283.055, including an application, permit, excavation, or inspection fee, for the right to use a public right-of-way to provide telecommunications services in the municipality; or

(2) provide any services or facilities for the right to use a public right-of-way or to provide telecommunications services in the municipality.

(b) Notwithstanding any other law or any other provision of this chapter, a municipality may require the issuance of a construction permit without cost to a certificated telecommunications provider locating facilities in or on public rights-of-way within the municipality. The terms of the permit shall be consistent with construction permits issued to other persons excavating in a public right-of-way.

(c) A municipality may exercise those police power-based regulations in the management of a public right-of-way that apply to all persons within the municipality. A municipality may exercise police power-based regulations in the management of the activities of certificated telecommunications providers within a public right-of-way only to the extent that they are reasonably necessary to protect the health, safety, and welfare of the public. Police power-based regulation of certificated telecommunications providers may not include activities that are governed by this chapter or are within the sole business discretion of the certificated telecommunications provider. In addition, any police power-based regulation must be competitively neutral and may not be unreasonable or discriminatory. A municipality specifically may not impose regulations on certificated telecommunications providers that are not authorized by this chapter, including:

(1) requirements that particular business offices be located in the municipality;

(2) requirements for filing reports and documents with the municipality that are not required by state law to be filed with the municipality and that are not related to the use of a public right-of-way;

(3) inspection of a provider's business records except to the extent necessary to conduct an authorized review of the provider

to ensure compliance with the access line reporting requirements of this chapter if commenced within 90 days after the filing of a certificated telecommunications provider's report of access lines; and

(4) approval of transfers of ownership or control of a provider's business, except that a municipality may require that a provider maintain current point of contact information and provide notice of a transfer within a reasonable time.

(d) In the exercise of its lawful regulatory authority, a municipality shall promptly process each valid and administratively complete application of a certificated telecommunications provider for any permit, license, or consent to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, obtain zoning or subdivision regulation approvals, or for other similar approvals, and shall make every reasonable effort to not delay or unduly burden that provider in the timely conduct of its business.

(e) If there is an emergency necessitating response work or repair, a certificated telecommunications provider may begin that repair or emergency response work or take any action required under the circumstances, provided that the certificated telecommunications provider notifies the affected municipality as promptly as possible after beginning the work and later acquires any approval required by a municipal ordinance applicable to emergency response work.

(f) The compensation paid under this chapter is in lieu of any permit, license, approval, inspection, or other similar fee or charge, including all general business license fees customarily assessed by a municipality for the use of a public right-of-way against persons operating telecommunications-related businesses. The compensation paid under this chapter constitutes full compensation to a municipality for all of a certificated telecommunications provider's facilities located within a public right-of-way, including interoffice transport and other transmission media that do not terminate at an end-use customer's premises, even though those types of lines are not used in the calculation of the compensation. This chapter may not be construed to affect the ad valorem taxation of a certificated telecommunications provider's facilities or to permit the ad valorem taxation of a certificated telecommunication provider's occupancy of a public right-of-way.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.057. INDEMNITY. (a) Certificated telecommunications providers shall indemnify and hold the municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the certificated telecommunications provider, any agent, officer, director, representative, employee, affiliate, or subcontractor of the certificated telecommunications provider, or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality, its officers, employees, contractors, or subcontractors. If a certificated telecommunications provider and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the municipality and certificated telecommunications provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(b) A certificated telecommunications provider or municipality shall promptly advise the other in writing of any known claim or demand against the certificated telecommunications provider or the municipality related to or arising out of the certificated telecommunications provider's activities in a public right-of-way.

(c) Municipalities with franchise agreements or ordinances applicable to certificated telecommunications providers in effect under a general-use ordinance adopted before January 12, 1999, and after July 1, 1998, and having 1.3 million access lines or more within the municipality on September 1, 1999, may continue to enforce

the indemnity provision contained in those franchise agreements or ordinances until the earlier of the date the franchise agreements or ordinances expire or December 31, 2003. A certificated telecommunications provider providing access lines in a municipality described by this subsection is also subject to the indemnity provided by this section.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

Sec. 283.058. ADDITIONAL COMMISSION JURISDICTION. The commission shall have the jurisdiction over municipalities and certificated telecommunications providers necessary to enforce this chapter and to ensure that all other legal requirements are enforced in a competitively neutral, non-discriminatory, and reasonable manner.

Added by Acts 1999, 76th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 284. DEPLOYMENT OF NETWORK NODES IN PUBLIC RIGHT-OF-WAY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 284.001. FINDINGS AND POLICY. (a) The legislature finds that:

(1) network nodes are instrumental to increasing access to advanced technology and information for the citizens of this state and thereby further an important public policy of having reliable wireless networks and services;

(2) this state has delegated to each municipality the fiduciary duty, as a trustee, to manage the public right-of-way for the health, safety, and welfare of the public, subject to state law;

(3) network nodes often may be deployed most effectively in the public right-of-way;

(4) network providers' access to the public right-of-way and the ability to attach network nodes to poles and structures in the public right-of-way allow network providers to densify their networks and provide next-generation services;

(5) expeditious processes and reasonable and nondiscriminatory terms, conditions, and compensation for use of the public right-of-way for network node deployments are essential to state-of-the-art wireless services and thereby further an important

public policy of having reliable wireless networks and services;

(6) network nodes help ensure that this state remains competitive in the global economy;

(7) the timely permitting of network nodes in the public right-of-way is a matter of statewide concern and interest;

(8) requirements of this chapter regarding fees, charges, rates, and public right-of-way management, when considered with fees charged to other public right-of-way users under this code, are fair and reasonable and in compliance with 47 U.S.C. Section 253;

(9) to the extent this state has delegated its fiduciary responsibility to municipalities as managers of a valuable public asset, the public right-of-way, this state is acting in its role as a landowner in balancing the needs of the public and the needs of the network providers by allowing access to the public right-of-way to place network nodes in the public right-of-way strictly within the terms of this chapter; and

(10) as to each municipality, including home-rule municipalities, this state has determined that it is reasonable and necessary to allow access to the public right-of-way for the purposes of deploying network nodes to protect and safeguard the health, safety, and welfare of the public as provided by this chapter.

(b) In order to safeguard the health, safety, and welfare of the public, it is the policy of this state to promote the adoption of and encourage competition in the provision of wireless services by reducing the barriers to entry for providers of services so that the number and types of services offered by providers continue to increase through competition.

(c) It is the policy of this state, subject to state law and strictly within the requirements and limitations prescribed by this chapter, that municipalities:

(1) retain the authority to manage the public right-of-way to ensure the health, safety, and welfare of the public; and

(2) receive from network providers fair and reasonable compensation for use of the public right-of-way and for collocation on poles.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.002. DEFINITIONS. In this chapter:

(1) "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

(2) "Applicable codes" means:

(A) uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization; and

(B) local amendments to those codes to the extent not inconsistent with this chapter.

(3) "Collocate" and "collocation" mean the installation, mounting, maintenance, modification, operation, or replacement of network nodes in a public right-of-way on or adjacent to a pole.

(4) "Decorative pole" means a streetlight pole specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal codes.

(5) "Design district" means an area that is zoned, or otherwise designated by municipal code, and for which the city maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(6) "Historic district" means an area that is zoned or otherwise designated as a historic district under municipal, state, or federal law.

(7) "Law" means common law or a federal, state, or local law, statute, code, rule, regulation, order, or ordinance.

(8) "Macro tower" means a guyed or self-supported pole or monopole greater than the height parameters prescribed by Section 284.103 and that supports or is capable of supporting antennas.

(9) "Micro network node" means a network node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, and that has an exterior antenna, if any, not longer than 11 inches.

(10) "Municipally owned utility pole" means a utility pole owned or operated by a municipally owned utility, as defined by Section 11.003, Utilities Code, and located in a public right-of-way.

(11) "Municipal park" means an area that is zoned or otherwise designated by municipal code as a public park for the

purpose of recreational activity.

(12) "Network node" means equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term:

(A) includes:

(i) equipment associated with wireless communications;

(ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and

(iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; and

(B) does not include:

(i) an electric generator;

(ii) a pole; or

(iii) a macro tower.

(13) "Network provider" means:

(A) a wireless service provider; or

(B) a person that does not provide wireless services and that is not an electric utility but builds or installs on behalf of a wireless service provider:

(i) network nodes; or

(ii) node support poles or any other structure that supports or is capable of supporting a network node.

(14) "Node support pole" means a pole installed by a network provider for the primary purpose of supporting a network node.

(15) "Permit" means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a network provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

(16) "Pole" means a service pole, municipally owned utility pole, node support pole, or utility pole.

(17) "Private easement" means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

(18) "Public right-of-way" means the area on, below, or above a public roadway, highway, street, public sidewalk, alley,

waterway, or utility easement in which the municipality has an interest. The term does not include:

(A) a private easement; or

(B) the airwaves above a public right-of-way with regard to wireless telecommunications.

(19) "Public right-of-way management ordinance" means an ordinance that complies with Subchapter C.

(20) "Public right-of-way rate" means an annual rental charge paid by a network provider to a municipality related to the construction, maintenance, or operation of network nodes within a public right-of-way in the municipality.

(21) "Service pole" means a pole, other than a municipally owned utility pole, owned or operated by a municipality and located in a public right-of-way, including:

(A) a pole that supports traffic control functions;

(B) a structure for signage;

(C) a pole that supports lighting, other than a decorative pole; and

(D) a pole or similar structure owned or operated by a municipality and supporting only network nodes.

(22) "Transport facility" means each transmission path physically within a public right-of-way, extending with a physical line from a network node directly to the network, for the purpose of providing backhaul for network nodes.

(23) "Utility pole" means a pole that provides:

(A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or

(B) services of a telecommunications provider, as defined by Section 51.002, Utilities Code.

(24) "Wireless service" means any service, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a network node.

(25) "Wireless service provider" means a person that provides wireless service to the public.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.003. LIMITATION ON SIZE OF NETWORK NODES. (a) Except as provided by Section 284.109, a network node to which this chapter applies must conform to the following conditions:

(1) each antenna that does not have exposed elements and is attached to an existing structure or pole:

(A) must be located inside an enclosure of not more than six cubic feet in volume;

(B) may not exceed a height of three feet above the existing structure or pole; and

(C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(2) if an antenna has exposed elements and is attached to an existing structure or pole, the antenna and all of the antenna's exposed elements:

(A) must fit within an imaginary enclosure of not more than six cubic feet;

(B) may not exceed a height of three feet above the existing structure or pole; and

(C) may not protrude from the outer circumference of the existing structure or pole by more than two feet;

(3) the cumulative size of other wireless equipment associated with the network node attached to an existing structure or pole may not:

(A) be more than 28 cubic feet in volume; or

(B) protrude from the outer circumference of the existing structure or pole by more than two feet;

(4) ground-based enclosures, separate from the pole, may not be higher than three feet six inches from grade, wider than three feet six inches, or deeper than three feet six inches; and

(5) pole-mounted enclosures may not be taller than five feet.

(b) The following types of associated ancillary equipment are not included in the calculation of equipment volume under Subsection (a):

(1) electric meters;

(2) concealment elements;

(3) telecommunications demarcation boxes;

(4) grounding equipment;

(5) power transfer switches;

(6) cut-off switches; and

(7) vertical cable runs for the connection of power and other services.

(c) Equipment attached to node support poles may not protrude from the outer edge of the node support pole by more than two feet.

(d) Equipment attached to a utility pole must be installed in accordance with the National Electrical Safety Code, subject to applicable codes, and the utility pole owner's construction standards.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. USE OF PUBLIC RIGHT-OF-WAY

Sec. 284.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to activities related to transport facilities for network nodes, activities of a network provider collocating network nodes in the public right-of-way or installing, constructing, operating, modifying, replacing, and maintaining node support poles in a public right-of-way, and municipal authority in relation to those activities.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.052. EXCLUSIVE USE PROHIBITED. A municipality may not enter into an exclusive arrangement with any person for use of the public right-of-way for the construction, operation, marketing, or maintenance of network nodes or node support poles.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.053. ANNUAL PUBLIC RIGHT-OF-WAY RATE. (a) A public right-of-way rate for use of the public right-of-way may not exceed an annual amount equal to $250 multiplied by the number of network nodes installed in the public right-of-way in the municipality's corporate boundaries.

(b) At the municipality's discretion, the municipality may

charge a network provider a lower rate or fee if the lower rate or fee is:

(1) nondiscriminatory;

(2) related to the use of the public right-of-way; and

(3) not a prohibited gift of public property.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.054. PUBLIC RIGHT-OF-WAY RATE ADJUSTMENT. (a) In this section, "consumer price index" means the annual revised Consumer Price Index for All Urban Consumers for Texas, as published by the federal Bureau of Labor Statistics.

(b) A municipality may adjust the amount of the public right-of-way rate not more often than annually by an amount equal to one-half the annual change, if any, in the consumer price index. The municipality shall provide written notice to each network provider of the new rate, and the rate shall apply to the first payment due to the municipality on or after the 60th day following that notice.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.055. USE OF PUBLIC RIGHT-OF-WAY AND APPLICABLE RATE. (a) A network provider that wants to connect a network node to the network using the public right-of-way may:

(1) install its own transport facilities subject to Subsection (b); or

(2) obtain transport service from a person that is paying municipal fees to occupy the public right-of-way that are the equivalent of not less than $28 per node per month.

(b) A network provider may not install its own transport facilities unless the provider:

(1) has a permit to use the public right-of-way; and

(2) pays to the municipality a monthly public right-of-way rate for transport facilities in an amount equal to $28 multiplied by the number of the network provider's network nodes located in the public right-of-way for which the installed transport facilities provide backhaul unless or until the time the network provider's

payment of municipal fees to the municipality exceeds its monthly aggregate per-node compensation to the municipality.

(c) A public right-of-way rate required by Subsection (b) is in addition to any public right-of-way rate required by Section 284.053.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.056. COLLOCATION OF NETWORK NODES ON SERVICE POLES. A municipality, subject to an agreement with the municipality that does not conflict with this chapter, shall allow collocation of network nodes on service poles on nondiscriminatory terms and conditions and at a rate not greater than $20 per year per service pole.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.057. PROHIBITION ON OTHER COMPENSATION. A municipality may not require a network provider to pay any compensation other than the compensation authorized by this chapter for the right to use a public right-of-way for network nodes, node support poles, or transport facilities for network nodes.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

SUBCHAPTER C. ACCESS AND APPROVALS

Sec. 284.101. RIGHT OF ACCESS TO PUBLIC RIGHT-OF-WAY. (a) Except as specifically provided by this chapter, and subject to the requirements of this chapter and the approval of a permit application, if required, a network provider is authorized, as a permitted use, without need for a special use permit or similar zoning review and not subject to further land use approval, to do the following in the public right-of-way:

(1) construct, modify, maintain, operate, relocate, and remove a network node or node support pole;

(2) modify or replace a utility pole or node support pole; and

(3) collocate on a pole, subject to an agreement with the municipality that does not conflict with this chapter.

(b) A network provider taking an action authorized by Subsection (a) is subject to applicable codes, including applicable public right-of-way management ordinances.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.102. GENERAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS. A network provider shall construct and maintain network nodes and node support poles described by Section 284.101 in a manner that does not:

(1) obstruct, impede, or hinder the usual travel or public safety on a public right-of-way;

(2) obstruct the legal use of a public right-of-way by other utility providers;

(3) violate nondiscriminatory applicable codes;

(4) violate or conflict with the municipality's publicly disclosed public right-of-way design specifications; or

(5) violate the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.103. GENERAL LIMITATION ON PLACEMENT OF POLES. A network provider shall ensure that each new, modified, or replacement utility pole or node support pole installed in a public right-of-way in relation to which the network provider received approval of a permit application does not exceed the lesser of:

(1) 10 feet in height above the tallest existing utility pole located within 500 linear feet of the new pole in the same public right-of-way; or

(2) 55 feet above ground level.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.104. INSTALLATION IN MUNICIPAL PARKS AND RESIDENTIAL AREAS. (a) A network provider may not install a new node support pole in a public right-of-way without the municipality's discretionary, nondiscriminatory, and written consent if the public right-of-way is in a municipal park or is adjacent to a street or thoroughfare that is:

(1) not more than 50 feet wide; and

(2) adjacent to single-family residential lots or other multifamily residences or undeveloped land that is designated for residential use by zoning or deed restrictions.

(b) In addition to the requirement prescribed by Subsection (a), a network provider installing a network node or node support pole in a public right-of-way described by Subsection (a) shall comply with private deed restrictions and other private restrictions in the area that apply to those facilities.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.105. INSTALLATION IN HISTORIC OR DESIGN DISTRICTS. (a) A network provider must obtain advance approval from a municipality before collocating new network nodes or installing new node support poles in an area of the municipality zoned or otherwise designated as a historic district or as a design district if the district has decorative poles. As a condition for approval of new network nodes or new node support poles in a historic district or a design district with decorative poles, a municipality may require reasonable design or concealment measures for the new network nodes or new node support poles. A municipality may request that a network provider comply with the design and aesthetic standards of the historic or design district and explore the feasibility of using certain camouflage measures to improve the aesthetics of the new network nodes, new node support poles, or related ground equipment, or any portion of the nodes, poles, or equipment, to minimize the impact to the aesthetics in a historic district or on a design district's decorative poles.

(b) This section may not be construed to limit a municipality's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47

U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.106. EQUIPMENT CABINETS. A network provider shall ensure that the vertical height of an equipment cabinet installed as part of a network node does not exceed the height limitation prescribed by Section 284.003, subject to approval of the pole's owner if applicable.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.107. COMPLIANCE WITH UNDERGROUNDING REQUIREMENT. (a) A network provider shall, in relation to installation for which the municipality approved a permit application, comply with nondiscriminatory undergrounding requirements, including municipal ordinances, zoning regulations, state law, private deed restrictions, and other public or private restrictions, that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval.

(b) A requirement or restriction described by Subsection (a) may not be interpreted to prohibit a network provider from replacing an existing structure.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.108. DESIGN MANUAL. (a) A municipality may adopt a design manual for the installation and construction of network nodes and new node support poles in the public right-of-way that includes additional installation and construction details that do not conflict with this chapter. The design manual may include:

(1) a requirement that an industry standard pole load

analysis be completed and submitted to the municipality indicating that the service pole to which the network node is to be attached will safely support the load; and

(2) a requirement that network node equipment placed on new and existing poles be placed more than eight feet above ground level.

(b) A network provider shall comply with a design manual, if any, in place on the date a permit application is filed in relation to work for which the municipality approved the permit application. A municipality's obligations under Section 284.154 may not be tolled or extended pending the adoption or modification of a design manual.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.109. EXCEPTIONS. Subject to Subchapter D, a network provider may construct, modify, or maintain in a public right-of-way a network node or node support pole that exceeds the height or distance limitations prescribed by this chapter only if the municipality approves the construction, modification, or maintenance subject to all applicable zoning or land use regulations and applicable codes.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.110. DISCRIMINATION PROHIBITED. A municipality, in the exercise of the municipality's administrative and regulatory authority related to the management of and access to the public right-of-way, must be competitively neutral with regard to other users of the public right-of-way.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

SUBCHAPTER D. APPLICATIONS AND PERMITS

Sec. 284.151. PROHIBITION OF CERTAIN MUNICIPAL ACTIONS. (a) Except as otherwise provided by this chapter, a municipality may not prohibit, regulate, or charge for the installation or collocation of

network nodes in a public right-of-way.

(b) A municipality may not directly or indirectly require, as a condition for issuing a permit required under this chapter, that the applicant perform services unrelated to the installation or collocation for which the permit is sought, including in-kind contributions such as reserving fiber, conduit, or pole space for the municipality.

(c) A municipality may not institute a moratorium, in whole or in part, express or de facto, on:

(1) filing, receiving, or processing applications; or

(2) issuing permits or other approvals, if any, for the installation of network nodes or node support poles.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.152. AUTHORITY TO REQUIRE PERMIT. (a) Except as otherwise provided by this chapter, a municipality may require a network provider to obtain one or more permits to install a network node, node support pole, or transport facility in a public right-of-way if the permit:

(1) is of general applicability to users of the public right-of-way;

(2) does not apply exclusively to network nodes; and

(3) is processed on nondiscriminatory terms and conditions regardless of the type of entity submitting the application for the permit.

(b) A network provider that wants to install or collocate multiple network nodes inside the territorial jurisdiction of a single municipality is entitled to file a consolidated permit application with the municipality for not more than 30 network nodes and receive permits for the installation or collocation of those network nodes.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.153. GENERAL PROCESS RELATING TO PERMIT APPLICATION. (a) Except as otherwise provided by this section, a municipality may

not require an applicant to provide more information to obtain the permit than a telecommunications utility that is not a network provider is required to provide unless the information directly relates to the requirements of this chapter.

(b) As part of the standard form for a permit application, a municipality may require the applicant to include applicable construction and engineering drawings and information to confirm that the applicant will comply with the municipality's publicly disclosed public right-of-way design specifications and applicable codes.

(c) A municipality may require an applicant to provide:

(1) information reasonably related to the provider's use of the public right-of-way under this chapter to ensure compliance with this chapter;

(2) a certificate that the network node complies with applicable regulations of the Federal Communications Commission; and

(3) certification that the proposed network node will be placed into active commercial service by or for a network provider not later than the 60th day after the date the construction and final testing of the network node is completed.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.154. MUNICIPAL REVIEW PROCESS. (a) A municipality shall process each permit application on a nondiscriminatory basis.

(b) Not later than the 30th day after the date the municipality receives an application for a permit for a network node or node support pole, or the 10th day after the date the municipality receives an application for a permit for a transport facility, the municipality shall determine whether the application is complete and notify the applicant of that determination. If the municipality determines that the application is not complete, the municipality shall specifically identify the missing information.

(c) A municipality shall approve an application that does not require zoning or land use approval under this chapter unless the application or the corresponding work to be performed under the permit does not comply with the municipality's applicable codes or other municipal rules, regulations, or other law that is consistent with this chapter.

(d) A municipality must approve or deny an application for a node support pole not later than the 150th day after the date the municipality receives the complete application. A municipality must approve or deny an application for a network node not later than the 60th day after the date the municipality receives the complete application. A municipality must approve or deny an application for a transport facility not later than the 21st day after the date the municipality receives a complete application. An application for a permit for a node support pole, network node, or transport facility shall be deemed approved if the application is not approved or denied on or before the applicable date for approval or denial prescribed by this subsection.

(e) A municipality that denies a complete application must document the basis for the denial, including the specific applicable code provisions or other municipal rules, regulations, or other law on which the denial was based. The municipality shall send the documentation by electronic mail to the applicant on or before the date the municipality denies the application.

(f) Not later than the 30th day after the date the municipality denies the application, the applicant may cure the deficiencies identified in the denial documentation and resubmit the application without paying an additional application fee, other than a fee for actual costs incurred by the municipality. Notwithstanding Subsection (d), the municipality shall approve or deny the revised completed application after a denial not later than the 90th day after the date the municipality receives the completed revised application. The municipality's review of the revised application is limited to the deficiencies cited in the denial documentation.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.155. TIME OF INSTALLATION. (a) A network provider shall begin the installation for which a permit is granted not later than six months after final approval and shall diligently pursue the installation to completion.

(b) Notwithstanding Subsection (a), the municipality may place a longer time limit on completion or grant reasonable extensions of time as requested by the network provider.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.156. APPLICATION FEES. (a) A municipality may charge an application fee for a permit only if the municipality requires the payment of the fee for similar types of commercial development inside the municipality's territorial jurisdiction other than a type for which application or permit fees are not allowed by law.

(b) The amount of an application fee charged by a municipality may not exceed the lesser of:

(1) the actual, direct, and reasonable costs the municipality determines are incurred in granting or processing an application that are reasonably related in time to the time the costs of granting or processing an application are incurred; or

(2) $500 per application covering up to five network nodes, $250 for each additional network node per application, and $1,000 per application for each pole.

(c) In determining for purposes of Subsection (b)(1) the amount of the actual, direct, and reasonable costs, the municipality may not:

(1) include costs incurred by the municipality in relation to third-party legal or engineering review of an application; or

(2) direct payments or reimbursement of third-party public right-of-way rates or fees charged on a contingency basis or under a result-based arrangement.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.157. CERTAIN WORK EXEMPTED. (a) Notwithstanding any other provision of this chapter, a municipality may not require a network provider to submit an application, obtain a permit, or pay a rate for:

(1) routine maintenance that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way;

(2) replacing or upgrading a network node or pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular

lanes in a public right-of-way; or

(3) the installation, placement, maintenance, operation, or replacement of micro network nodes that are strung on cables between existing poles or node support poles, in compliance with the National Electrical Safety Code.

(b) For purposes of Subsection (a)(2):

(1) a network node or pole is considered to be "substantially similar" if:

(A) the new or upgraded network node, including the antenna or other equipment element, will not be more than 10 percent larger than the existing node, provided that the increase may not result in the node exceeding the size limitations provided by Section 284.003; and

(B) the new or upgraded pole will not be more than 10 percent higher than the existing pole, provided that the increase may not result in the pole exceeding the applicable height limitations prescribed by Section 284.103;

(2) the replacement or upgrade does not include replacement of an existing node support pole; and

(3) the replacement or upgrade does not defeat existing concealment elements of a node support pole.

(c) The determination under Subsection (b)(1) of whether a replacement or upgrade is substantially similar is made by measuring from the dimensions of the network node or node support pole as approved by the municipality.

(d) Notwithstanding Subsection (a):

(1) a municipality may require advance notice of work described by that subsection;

(2) a network provider may replace or upgrade a pole only with the approval of the pole's owner; and

(3) the size limitations may not in any event exceed the parameters prescribed by Section 284.003 without the municipality's approval in accordance with Section 284.109, with the municipality acting on behalf of this state as the fiduciary trustee of public property.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

SUBCHAPTER E. ACCESS TO MUNICIPALLY OWNED UTILITY POLES

Sec. 284.201. USE OF MUNICIPALLY OWNED UTILITY POLES. (a) The governing body of a municipally owned utility shall allow collocation of network nodes on municipally owned utility poles on nondiscriminatory terms and conditions and pursuant to a negotiated pole attachment agreement, including any applicable permitting requirements of the municipally owned utility.

(b) The annual pole attachment rate for the collocation of a network node supported by or installed on a municipally owned utility pole shall be based on a pole attachment rate consistent with Section 54.204, Utilities Code, applied on a per-foot basis.

(c) The requirements of Subchapters B, C, and D applicable to the installation of a network node supported by or installed on a pole do not apply to a network node supported by or installed on a municipally owned utility pole.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

SUBCHAPTER F. EFFECT ON OTHER UTILITIES AND PROVIDERS

Sec. 284.251. DEFINITIONS. In this subchapter:

(1) "Cable service" and "video service" have the meanings assigned by Section 66.002, Utilities Code.

(2) "Electric cooperative" has the meaning assigned by Section 11.003, Utilities Code.

(3) "Electric utility" has the meaning assigned by Section 31.002, Utilities Code.

(4) "Telecommunications provider" has the meaning assigned by Section 51.002, Utilities Code.

(5) "Telephone cooperative" has the meaning assigned by Section 162.003, Utilities Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.252. EFFECT ON INVESTOR-OWNED ELECTRIC UTILITIES, ELECTRIC COOPERATIVES, TELEPHONE COOPERATIVES, AND TELECOMMUNICATIONS PROVIDERS. Nothing in this chapter shall govern attachment of network nodes on poles and other structures owned or operated by

investor-owned electric utilities, electric cooperatives, telephone cooperatives, or telecommunications providers. This chapter does not confer on municipalities any new authority over those utilities, cooperatives, or providers.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.253. EFFECT ON PROVIDERS OF CABLE SERVICES OR VIDEO SERVICES. (a) An approval for the installation, placement, maintenance, or operation of a network node or transport facility under this chapter may not be construed to confer authorization to provide:

(1) cable service or video service without complying with all terms of Chapter 66, Utilities Code; or

(2) information service as defined by 47 U.S.C. Section 153(24), or telecommunications service as defined by 47 U.S.C. Section 153(53), in the public right-of-way.

(b) Except as provided by this chapter, a municipality may not adopt or enforce any regulations or requirements that would require a wireless service provider, or its affiliate, that holds a cable or video franchise under Chapter 66, Utilities Code, to obtain any additional authorization or to pay any fees based on the provider's provision of wireless service over its network nodes.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

SUBCHAPTER G. GENERAL CONDITIONS OF ACCESS

Sec. 284.301. LOCAL POLICE-POWER-BASED REGULATIONS. (a) Subject to this chapter and applicable federal and state law, a municipality may continue to exercise zoning, land use, planning, and permitting authority in the municipality's boundaries, including with respect to utility poles.

(b) A municipality may exercise that authority to impose police-power-based regulations for the management of the public right-of-way that apply to all persons subject to the municipality.

(c) A municipality may impose police-power-based regulations in the management of the activities of network providers in the public

right-of-way only to the extent that the regulations are reasonably necessary to protect the health, safety, and welfare of the public.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.302. INDEMNIFICATION. The indemnification provisions of Sections 283.057(a) and (b) apply to a network provider accessing a public right-of-way under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.303. RELOCATION. Except as provided in existing state and federal law, a network provider shall relocate or adjust network nodes in a public right-of-way in a timely manner and without cost to the municipality managing the public right-of-way.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

Sec. 284.304. INTERFERENCE. (a) A network provider shall operate all network nodes in accordance with all applicable laws, including regulations adopted by the Federal Communications Commission.

(b) A network provider shall ensure that the operation of a network node does not cause any harmful radio frequency interference to a Federal Communications Commission-authorized mobile telecommunications operation of the municipality operating at the time the network node was initially installed or constructed. On written notice, a network provider shall take all steps reasonably necessary to remedy any harmful interference.

Added by Acts 2017, 85th Leg., R.S., Ch. 591 (S.B. 1004), Sec. 1, eff. September 1, 2017.

SUBTITLE B. COUNTY PUBLIC BUILDINGS

CHAPTER 291. GENERAL BUILDING PROVISIONS AFFECTING COUNTIES

Sec. 291.001. PROVIDING AND MAINTAINING COUNTY BUILDINGS. The commissioners court of a county shall:

(1) provide, as soon as practicable after a county seat is established or moved, a courthouse and offices for county officers at the county seat;

(2) provide other necessary public buildings; and

(3) maintain the courthouse, offices, and other public buildings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 291.002. OFFICES AT COUNTY SEAT. The county judge, sheriff, clerks of the district and county courts, county treasurer, tax assessor-collector, county surveyor, and county attorney shall keep their offices at the county seat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 291.003. CONTROL OF COURTHOUSE. The county sheriff shall have charge and control of the county courthouse, subject to the regulations of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 291.004. PROVISION OF OFFICES, SUPPLIES, AND COURTROOMS TO CERTAIN JUSTICES OF THE PEACE. (a) If requested by a justice of the peace of a county who handles an average of more than 50 cases a month during the 12 months preceding the date of the request, the commissioners court of the county shall furnish the justice of the peace with suitable office space and necessary telephones, equipment, and supplies. The commissioners court shall furnish the items at the beginning of the first fiscal year after the date the request is made. The items are in addition to the compensation and expenses provided for by Subchapter B, Chapter 152.

(b) The commissioners court may also provide a suitable courtroom for each justice of the peace.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 291.005. MAINTENANCE EMPLOYEES IN COUNTIES WITH POPULATION OF MORE THAN 500,000. (a) The commissioners court of a county with a population of more than 500,000 shall direct and control the employees needed to repair, maintain, and operate the county's courthouses and criminal court buildings.

(b) The commissioners court may designate a building superintendent to employ the personnel. Employments are subject to approval by the commissioners court. An employment must:

(1) be in writing and signed by the employee; and

(2) state the nature of the duties to be performed, the period of employment, the hours to be worked, and the amount to be paid.

(c) The employment of a person under this section ends January 1 of each year but may be renewed from year to year. The commissioners court may discharge the employee at any time for cause.

(d) The number of employees appointed under this section is subject to the approval of the county auditor.

(e) Regardless of Subsections (a)-(d), the sheriff is responsible for employing and discharging, as provided by other law, the employees engaged in the operation of county jails. The employees necessary for the proper conduct of the jails or the safekeeping of prisoners are under the exclusive direction and control of the sheriff.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 291.006. PRIVATE BUSINESS ON PUBLIC PROPERTY. (a) A county official or an agent, deputy, or employee of a county official may not operate a private business on public property unless the person:

(1) keeps an accurate and detailed record of money that the person receives and disburses;

(2) files with the county auditor or other county auditing authority, on or before January 1 of each year, a report of receipts and disbursements during the previous calendar year; and

(3) makes available to the county auditor all records of

the receipts and disbursements.

(b) An amount of money equal to the amount of receipts required to be reported plus any interest paid by a financial institution on deposits of this money, less the amount of disbursements required to be reported, shall be delivered to the county treasurer when the report required by Subsection (a) is filed or in installments at regular intervals during the year as may be prescribed by the county auditor or other county auditing authority. This subsection does not apply to a person acting under or by virtue of a written contract with the county.

(c) If a county official has not complied with this section by February 1 of each year, the county auditor shall notify the county or district attorney of the violation. The county or district attorney shall, and any qualified voter of the county may, file a petition in a district court of the county for a writ of mandamus to compel compliance.

(d) A person who violates this section or falsifies a record or report required by this section commits official misconduct and may be removed under Chapter 87.

(e) This section does not apply to compensation that a justice of the peace or official court reporter receives for performing an act not required by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 291.007. NONBINDING REFERENDUM ON COUNTY PROPERTY MATTER. The commissioners court of a county with a population of less than 40,000 may order a nonbinding referendum in the county on any matter affecting county property. The referendum must be held on an authorized uniform election date as provided by Chapter 41, Election Code.

Added by Acts 1993, 73rd Leg., ch. 368, Sec. 1, eff. Aug. 30, 1993.

Sec. 291.010. SECURITY SERVICES IDENTIFICATION CARD. (a) The commissioners court of a county by order may:

(1) authorize the issuance of an identification card to individuals permitting entrance into a county building that houses a justice court, county court, county court at law, or district court

without passing through the security services provided under Article 102.017, Code of Criminal Procedure; and

(2) set a reasonable fee for the issuance of the identification card to individuals other than county employees.

(b) The commissioners court shall adopt standards for issuing an identification card described by this section to ensure public safety and security.

(c) This section does not authorize a person to possess a firearm, as that term is defined by Section 46.01, Penal Code, in a county building that houses a justice court, county court, county court at law, or district court. A person who possesses a firearm in any court described by this section or in any office used by the court without the court's written authorization or without complying with any written regulation of the court is subject to the penalties provided by Chapter 46, Penal Code.

Added by Acts 1999, 76th Leg., ch. 754, Sec. 1, eff. Aug. 30, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 827 (H.B. 3003), Sec. 1, eff. September 1, 2011.

Sec. 291.011. ADVERTISING INSIDE CERTAIN COUNTY FACILITIES. (a) The commissioners court of a county may enter into an agreement with a public or private entity for a digital message display system to promote county information or news items of general interest in:

(1) a publicly accessible area of the office of the tax assessor-collector or a branch office established under Section 292.025, 292.026, or 292.027 for which a deputy assessor-collector has been appointed; or

(2) a jury assembly room.

(b) For the purpose of funding a digital message display system, a portion of the information displayed on the system may consist of digital advertisements. The commissioners court may review and has the right to reject any proposed advertising to be displayed on a system.

Added by Acts 2015, 84th Leg., R.S., Ch. 485 (H.B. 1542), Sec. 3, eff. June 16, 2015.

CHAPTER 292. AUXILIARY COUNTY BUILDINGS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 292.001. AUTHORITY FOR BUILDINGS OTHER THAN COURTHOUSE; LEASE TO OTHER PERSONS; LOCATION OF JUSTICE OF PEACE COURT. (a) The commissioners court of a county may purchase, construct, or provide by other means, including a lease or a lease with an option to purchase, or may reconstruct, improve, or equip a building or rooms, other than the courthouse, for the housing of county or district offices, county or district courts, justice of the peace courts, county records or equipment (including voting machines), or county jail facilities, or for the conducting of other public business, if the commissioners court determines that the additional building or rooms are necessary. The commissioners court may purchase and improve the necessary site for the building or rooms.

(b) Except as provided by this subsection and to the extent permitted under other law, the building or rooms must be located in the county seat. If the building or rooms are for housing a county or district court in buildings or rooms designated for that purpose, or for housing county jail facilities, the building or rooms may be located anywhere in the county at the discretion of the commissioners court.

(c) The commissioners court may lease or rent to any person any part of the building or rooms that are not necessary for the purposes described by Subsection (a).

(d) A justice of the peace court may not be housed or conducted in a building located outside the court's precinct except as provided by Section 27.051(f) or 27.0515, Government Code, or unless the justice of the peace court is situated in the county courthouse in a county with a population of at least 305,000 persons and the county seat of which is located in the Llano Estacado region of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 64(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1223, Sec. 2, eff. June 16, 1989; Acts 1989, 71st Leg., 1st C.S., ch. 31, Sec. 1, eff. Oct. 18, 1989; Acts 1993, 73rd Leg., ch. 825, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 669, Sec. 84, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 87, eff.

September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 507 (S.B. 40), Sec. 15, eff. June 7, 2019.

Acts 2021, 87th Leg., R.S., Ch. 934 (H.B. 3774), Sec. 3.06, eff. September 1, 2021.

Sec. 292.002. FACILITIES OUTSIDE COUNTY SEAT. (a) The commissioners court of a county may provide an office building or a jail facility at a location in the county outside the county seat in the same manner that is applicable to such a building or facility at the county seat. The commissioners court may provide for the building or facility through the issuance of bonds as provided by Subtitles A, C, and D, Title 9, Government Code, or through the issuance of other evidences of indebtedness in the same manner as bonds or evidences of indebtedness applicable to a courthouse or jail at the county seat. The commissioners court may provide office space in the building or facility for any county or precinct office. However, a county officer who is provided space in the building or facility shall maintain an office at the county seat and shall keep the original records of office at that office unless otherwise required during a disaster, as defined by Section 418.004, Government Code.

(b) The commissioners court may authorize places located in the county but outside the municipality designated as the county seat as auxiliary courts for the holding of court proceedings and may designate those places as auxiliary county seats for this purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 419, Sec. 1, eff. May 28, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.304, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 507 (S.B. 40), Sec. 16, eff. June 7, 2019.

Sec. 292.0025. FACILITIES OUTSIDE COUNTY SEAT IN CERTAIN COUNTIES. (a) This section applies only to a county that has a population of 18,000 or less.

(b) The commissioners court of a county may provide an

auxiliary court, office building, or jail facility at a location in the county and within five miles of the boundaries of the county seat in the same manner that is applicable to a court, building, or facility at the county seat. The commissioners court may provide for the building or facility through the issuance of bonds or other evidences of indebtedness as provided under Section 292.002 and may provide office space in the building or facility for any county or precinct office.

(c) The auxiliary court may be used for the holding of court proceedings, including district court proceedings. For the purpose of the court proceedings, the commissioners court may designate the location of the auxiliary court as an auxiliary county seat.

(d) The records of a county officer who is provided space at a court, building, or facility under this section and the records of the auxiliary court may be kept at the court, building, or facility.

Added by Acts 2003, 78th Leg., ch. 169, Sec. 1, eff. May 27, 2003.

Sec. 292.003. FACILITIES IN CERTAIN MUNICIPALITIES OUTSIDE COUNTY SEAT. (a) The commissioners court of a county may provide, maintain, and repair a branch office building or a branch jail in a municipality with a population of 15,000 or more, other than the county seat, in the same manner as the court may take those actions at the county seat. The commissioners court may finance those actions through the issuance of bonds as provided by Subtitles A, C, and D, Title 9, Government Code, or through the issuance of evidences of indebtedness in the same manner as evidences of indebtedness applicable to a courthouse or jail at the county seat. Taxes may be levied for the bonds or evidences of indebtedness in the same manner and subject to the same limitations applicable to a courthouse or jail at the county seat. The cost of the facility may not exceed two percent of the taxable value of the property in the county in the previous year. The commissioners court has custody of and shall care for the facility.

(b) On provision of a facility under this section, the commissioners court may allow a county officer, except the district clerk, a county or district judge, the county clerk, and the county treasurer, to maintain a branch office and provide deputies in the municipality where the facility is located, in the manner authorized

by Sections 292.024, 292.026, and 292.028. The commissioners court may limit the authorization and maintenance of branch offices.

(c) A county officer shall keep the original records of office at the county seat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 64(c), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1420, Sec. 8.305, eff. Sept. 1, 2001.

Sec. 292.004. FACILITIES WITHIN MUNICIPALITY DESIGNATED AS COUNTY SEAT. (a) The commissioners court of a county may provide, inside the municipality designated as the county seat, an auxiliary courthouse, a jail, a parking garage, a facility for district, county, and precinct administrative and judicial offices and courtrooms, or any facility related to the administration of civil or criminal justice. For the purposes of this section, the municipality designated as the county seat includes territory added to the municipality after it became the county seat but excludes any part of the municipality outside the county.

(b) The commissioners court may:

(1) acquire a necessary site;

(2) purchase, construct, equip, or enlarge the facility; and

(3) repair and maintain the facility.

(c) If the commissioners court designates the facility as an auxiliary courthouse, the facility may not replace the courthouse at the county seat.

(d) A court required by law to hold its terms at the county seat may hold its terms at a court facility provided under this section.

(e) A district, county, or precinct officer required by law to maintain an office at the county seat may maintain an office and keep official records at a facility provided under this section. The officer must also keep an office at the county seat.

(f) This section does not limit the authority of the commissioners court under any other law relating to the providing of county facilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 601, Sec. 2, eff. June 14, 1989.

Sec. 292.005. ISSUANCE OF BOAT AND OUTBOARD MOTOR CERTIFICATES AT BRANCH OFFICES. Each office of the tax assessor-collector away from the courthouse that maintains a permanent, full-time employee shall accept applications for and issue boat certificates of number, boat certificates of title, and outboard motor certificates of title, as provided for by Subchapters B and B-1, Chapter 31, Parks and Wildlife Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 292.006. BRANCH OFFICE OF COUNTY CLERK. (a) On the request of the county clerk, the commissioners court of a county may provide by any means, operate, and maintain one or more branch offices at any place in the county for the county clerk.

(b) If a branch office is provided under this section in a building owned by the county, the commissioners court shall operate and maintain the building in the same manner that it operates and maintains the county courthouse. The commissioners court shall have care and custody of the building and may place any limitations on the use and maintenance of the building it finds necessary.

(c) The county clerk may authorize one or more of the clerk's deputies to work in the branch office to conduct any business as determined by the county clerk and in accordance with Subsection (d).

(d) If the recording of instruments or documents in the county's official records is permitted at a branch office by the county clerk, the recording must be by electronic means and the electronically recorded instruments or documents must be available without delay to members of the public in the county clerk's office at the county seat. For purposes of this subsection, an instrument or document is available if it is capable of being:

(1) electronically examined by a member of the public in the county clerk's office at the county seat; and

(2) placed into a format and medium that a member of the public can electronically process using technology that is generally available and nonproprietary.

(e) On a daily basis, as directed by the county clerk, a deputy at a branch office shall file all original records made at that

office during the previous day with the county clerk's office at the county seat not later than the start of the next business day.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 65(a), eff. Aug. 28, 1989.
Amended by Acts 1999, 76th Leg., ch. 121, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER B. AUXILIARY FACILITIES IN CERTAIN COUNTIES

Sec. 292.021. FACILITIES IN CERTAIN COUNTIES WITH POPULATIONS OF 90,001 TO 225,000. (a) This section applies only to a county that has:

(1) a population of 90,001 to 225,000;

(2) an assessed valuation on property for property tax purposes of more than $125 million;

(3) four or more municipalities; and

(4) a municipality with a population of more than 50,000.

(b) If the commissioners court of a county determines that the courthouse is inadequate to properly house all county offices, that the jail is inadequate to properly confine prisoners, or that an agricultural building is necessary, the commissioners court may purchase, construct, or acquire in another manner a building and, when necessary, a site for the building to satisfy the determined need at any location in the county. The building may contain an auditorium, which may be used by the commissioners court or a county office or officer for any proper county or public purpose. The building or site must be paid for from the permanent improvement fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 292.022. FACILITIES IN CERTAIN COUNTIES WITH POPULATIONS OVER 110,000. (a) This section applies only to a county with a population of more than 110,000.

(b) The commissioners court of a county may acquire land for a branch county office building, may purchase, construct, repair, equip, or improve the building, and may acquire the building through a lease or lease with an option to purchase, at a location in a municipality that:

(1) has a population of 10,000 or more;

(2) is not the county seat; and

(3) is not contiguous to the county seat.

(c) The commissioners court may issue bonds or certificates of indebtedness and may levy and collect taxes to implement this section. Bonds and certificates of indebtedness issued under this section are negotiable instruments and may be paid from the permanent improvement fund of the county.

(d) Bonds and certificates of indebtedness issued under this section must:

(1) be authorized by order of the commissioners court;

(2) be signed by the county judge, attested by the county clerk, and registered by the county treasurer;

(3) mature in 40 years or less;

(4) bear interest at a rate not to exceed the interest rate prescribed by Chapter 1204, Government Code; and

(5) have attached coupons evidencing the interest.

(e) Bonds under this section must be issued in compliance with Subtitles A and C, Title 9, Government Code.

(f) The commissioners court shall submit bonds and certificates issued under this section and records relating to their issuance to the attorney general. If the attorney general approves the bonds or certificates as issued in accordance with state law, the comptroller of public accounts shall register them. On approval, registration, and delivery to the purchaser, the bonds or certificates are incontestable.

(g) This section does not permit the establishment of a branch office away from the county seat if this establishment is forbidden by other law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1409, Sec. 7, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.306, eff. Sept. 1, 2001.

Sec. 292.023. FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of:

(1) 32,800 to 34,000; or

(2) 98,000 to 105,000.

(b) The commissioners court of a county may provide for, operate, and maintain a branch courthouse outside the county seat. The commissioners court may provide for the branch courthouse by

constructing a building or by purchasing, renting, or leasing office space. The expense of operating and maintaining the branch courthouse must be paid from county funds used to operate and maintain other county buildings.

(c) If the branch courthouse is in a county-owned building, the commissioners court has care and custody of the building. The commissioners court:

(1) shall operate and maintain the building as it operates and maintains the county courthouse; and

(2) may limit the use and maintenance of the building as it finds necessary.

(d) On approval of the commissioners court, an office, a department, a facility, a court, or other agency of the county may maintain a branch office in the branch courthouse.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 96, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 85, 86, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 88, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 159, eff. September 1, 2023.

Sec. 292.0231. FACILITIES IN COUNTIES WITH POPULATIONS UNDER 30,000. (a) This section applies only to a county with a population of less than 30,000.

(b) The commissioners court of a county may provide for, operate, and maintain a branch courthouse outside the county seat. The commissioners court may provide for a branch courthouse by constructing a building or by purchasing, renting, or leasing office space. The expense of operating and maintaining the branch courthouse must be paid from county funds used to operate and maintain other county buildings.

(c) If the branch courthouse is in a county-owned building, the commissioners court:

(1) has care and custody of the building;

(2) may operate and maintain the building as it operates and maintains the county courthouse; and

(3) may limit the use and maintenance of the building as it finds necessary.

(d) On approval of the commissioners court, an office, a department, a facility, a court, or another agency of the county or of a judicial district may:

(1) maintain a branch office in the branch courthouse; and

(2) conduct any function at the branch courthouse that the entity is authorized to conduct at the courthouse located inside the county seat.

Added by Acts 1995, 74th Leg., ch. 15, Sec. 1, eff. Aug. 28, 1995.

Sec. 292.024. TAX ASSESSOR-COLLECTOR FACILITIES IN COUNTIES WITH LARGE MUNICIPALITIES. The commissioners court of a county may by order authorize the tax assessor-collector to maintain a branch office in a municipality with a population of 5,000 or more, other than the county seat, and to appoint a deputy assessor-collector for the branch office. The salary of a deputy assessor-collector and the expenses of the branch office are necessary expenses of the tax assessor-collector and shall be paid as the expenses of the tax assessor-collector are paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(r), eff. Aug. 28, 1989.

Sec. 292.025. FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of 35,850 to 36,000.

(b) The commissioners court of a county may construct, operate, and maintain a branch office building or a branch jail in a municipality other than the county seat in the same manner as the court may take those actions at the county seat. The commissioners court may finance those actions through the issuance of bonds as provided by Subtitles A, C, and D, Title 9, Government Code, or through the issuance of evidences of indebtedness in the same manner as evidences of indebtedness applicable to a courthouse or jail at the county seat. Taxes may be levied for the bonds or evidences of indebtedness in the same manner and subject to the same limitations applicable to a courthouse or jail at the county seat. The

commissioners court has custody of and shall care for the building.

(c) The commissioners court may allow the tax assessor-collector to maintain a branch office in the building. The commissioners court may allow the maintenance of a jail and justice court in the building. The commissioners court may limit the authorization and maintenance of facilities under this subsection as it considers proper. The expenses incidental to maintaining these facilities are expenses of the county.

(d) A county officer shall keep the original records of office at the county seat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 64(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 97, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 87, 88, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.307, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 89, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 160, eff. September 1, 2023.

Sec. 292.026. TAX ASSESSOR-COLLECTOR FACILITIES IN CERTAIN COUNTIES WITH POPULATIONS OVER 70,000. (a) This section applies only to a county with a population of more than 70,000.

(b) The commissioners court of a county may allow the tax assessor-collector to maintain a branch office in a municipality with a population of more than 1,000, other than the county seat.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 292.027. TAX ASSESSOR-COLLECTOR FACILITIES IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of 57,900 to 59,000.

(b) The commissioners court of a county may provide for, operate, and maintain a branch office for the tax assessor-collector. The commissioners court may provide for the branch office by constructing a building or by purchasing, renting, or leasing office space.

(c) If the branch office is in a county-owned building, the commissioners court has custody of and shall care for the building. The commissioners court:

(1) shall operate and maintain the building as it operates and maintains the county courthouse; and

(2) may limit the use and maintenance of the building as it finds necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 98, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 89, 90, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 90, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 161, eff. September 1, 2023.

Sec. 292.028. MAINTENANCE OF CERTAIN TAX OFFICES. (a) The commissioners court of a county that establishes a branch office under Section 292.025, 292.026, or 292.027 may appoint a deputy assessor-collector for that office.

(b) The deputy assessor-collector may collect taxes from persons wishing to pay at the branch office and may issue a valid receipt for those taxes. The deputy assessor-collector is subject to the law relating to deputy tax collectors.

(c) The deputy assessor-collector shall enter into a bond payable to the county judge and conditioned that the deputy will faithfully perform the duties of the position. The terms of the bond must be in accordance with the requirements of the tax assessor-collector and commissioners court.

(d) The commissioners court shall fix the period of service of the deputy assessor-collector and the period that a branch office may be maintained. The salary of the deputy assessor-collector and the expenses of the branch office are necessary expenses of the tax assessor-collector and shall be paid as the expenses of the tax assessor-collector are paid.

(e) This section does not limit the liability of the bonds of the tax assessor-collector or the deputy assessor-collector. The tax assessor-collector is liable on the assessor-collector's bond for the

taxes collected by the deputy assessor-collector.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 292.029. COURT FACILITIES IN POPULOUS COUNTIES. (a) This section applies only to a county with a population of 2.2 million or more.

(b) The commissioners court of a county may designate a specific geographical location in the county other than the county courthouse as an auxiliary county seat for the holding of nonjury court proceedings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 91, 92, eff. Sept. 1, 2001.

Sec. 292.030. FACILITIES IN UNINCORPORATED AREA OF COUNTY. (a) The commissioners court of a county may purchase, construct, reconstruct, improve, equip, or provide for by other means, including by lease or lease with an option to purchase, a branch office in the unincorporated area of the county.

(b) Any county officer may maintain an office and the county may provide any county service at the branch office authorized by this section. The maintenance of an office or the provision of a service at the branch office must be in addition to an office maintained or service provided at any other location required by law.

Added by Acts 2005, 79th Leg., Ch. 502 (H.B. 571), Sec. 1, eff. June 17, 2005.
Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 30, eff. September 1, 2005.

Sec. 292.031. FACILITIES OUTSIDE COUNTY SEAT IN CERTAIN COUNTIES. (a) This section applies only to a county with a population of less than 50,000 that is adjacent to a county with a population of more than 3.3 million.

(b) The commissioners court of a county may provide an auxiliary court facility, office building, or jail facility at a location in the county and within 10 miles of the boundaries of the

county seat in the same manner that is applicable to a court, building, or facility at the county seat. The commissioners court may provide for the building or facility through the issuance of bonds or other evidences of indebtedness as provided under Section 292.002 and may provide office space in the building or facility for any county or precinct office.

(c) The auxiliary court facility may be used for the holding of court proceedings, including district court proceedings. For the purpose of the court proceedings, the commissioners court may designate the location of the auxiliary court as an auxiliary county seat.

(d) The records of a county officer who is provided space at a court facility, building, or other facility under this section may be kept at the building or facility.

Added by Acts 2015, 84th Leg., R.S., Ch. 607 (S.B. 643), Sec. 3, eff. June 16, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 162, eff. September 1, 2023.

CHAPTER 293. COUNTY BUILDING AUTHORITY ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 293.001. SHORT TITLE. This chapter may be cited as the County Building Authority Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.002. DEFINITIONS. In this chapter:

(1) "Authority" means a county building authority created under this chapter.

(2) "Bond resolution" means a resolution of a board authorizing the issuance of bonds.

(3) "Board" means the board of directors of an authority.

(4) "Project" means the property acquired and building constructed by an authority.

(5) "Trust indenture" means an instrument pledging revenue of property or creating a mortgage lien on property to secure bonds issued under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.003. COUNTIES SUBJECT TO CHAPTER. This chapter applies only to a county that:

(1) has a population of more than 600,000; and

(2) owns and uses, together with other structures, a courthouse that is more than 30 years old and that has not been completely renovated or remodeled during the preceding 30 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.004. COUNTY BUILDING STUDY COMMITTEE. (a) The commissioners court of the county by order shall create a county building study committee if the commissioners court determines that doing so is in the best interest of the county and its residents.

(b) The committee consists of five members, with one appointed by the county judge and one appointed by each county commissioner.

(c) The committee may:

(1) study the need for a new or expanded county building and the possibility of including in the building devices and characteristics to protect life and property in modern warfare;

(2) make preliminary plans and surveys concerning the requirements, costs, and feasibility of the project; and

(3) make recommendations to the commissioners court.

(d) The county may pay the cost of the study, which may not exceed $25,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. CREATION AND OPERATION

Sec. 293.021. ELECTION; COUNTY BUILDING AUTHORITY. (a) After reviewing and considering the recommendations of the county building study committee, the commissioners court may call an election at which the qualified voters of the county are entitled to vote for or against the proposition: the construction, acquisition, improvement, equipping, and furnishing of a county building and the issuance of negotiable revenue bonds to provide funds for this purpose.

(b) If a majority of the qualified voters of the county vote

for the proposition, a county building authority is created.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.022. PURPOSES OF AUTHORITY. The purposes of the authority are to construct, acquire, improve, equip, furnish, maintain, and operate a county building adequate to meet the county's needs. In planning the building, the authority may consider the anticipated population and economic growth of the county and the demands that this growth will create for space for county activities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.023. BOARD OF DIRECTORS. (a) The authority is governed by a board composed of five directors. The county judge appoints one director and each county commissioner appoints one. A county officer or employee is not eligible for appointment as a director.

(b) The term of office of a director expires on December 31 not more than two years after the date that the director's term began. The directors may provide for staggered terms, in which case the directors shall draw lots to determine which directors' terms expire in which year.

(c) If a vacancy occurs in the office of a director by death, resignation, or expiration of a term, the person holding the office of the county officer who originally appointed the vacating director shall appoint a person to fill the vacancy.

(d) The board shall elect one member as president and one member as vice-president. The board shall select a secretary and a treasurer who may or may not be members. The offices of secretary and treasurer may be combined into one office. The board may elect other officers as authorized by the bylaws of the authority.

(e) A majority of the board is a quorum. The board may act by a majority vote of directors present if a quorum is present.

(f) A director may not receive compensation for services on the board but is entitled to reimbursement for expenses incurred in performing the services.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.024. EMPLOYEES. (a) The board may employ:

(1) a manager or executive director of properties;

(2) legal counsel; and

(3) other employees, experts, and agents that the board considers necessary.

(b) The board may delegate to the manager the power to employ and discharge employees.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.025. COMPTROLLER. (a) The county auditor shall appoint a comptroller for the authority, subject to the approval of the board and the commissioners court. The comptroller shall:

(1) work under the direction of the county auditor;

(2) institute budget, purchasing, and fiscal procedures that conform to accepted business and accounting practices; and

(3) make quarterly reports to the commissioners court.

(b) The county auditor shall fix the comptroller's salary, subject to approval of the board and commissioners court, and the authority shall pay the salary.

(c) The comptroller's employment may be terminated by an act of the county auditor and a majority vote of the board and commissioners court.

(d) Before the beginning of each fiscal year the comptroller, under the direction of the board, shall prepare the authority's budget for the following fiscal year and submit it to the commissioners court. Within 15 days after the date the budget is submitted, the commissioners court may approve or revise the budget.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.026. POWERS OF AUTHORITY. (a) The authority may:

(1) construct, enlarge, furnish, and equip a building to be used primarily as a county courthouse, subject to the approval of the commissioners court;

(2) sue or be sued, implead or be impleaded, and complain or defend in court;

(3) adopt, use, and alter a corporate seal;

(4) make bylaws for the management and regulation of its affairs;

(5) make contracts and execute instruments necessary or convenient for conducting its business;

(6) acquire, purchase, hold, and use land necessary for carrying out its purposes;

(7) lease land or an interest in land from the county for a term of not more than 99 years at nominal rent or annual rent determined by contract with the county;

(8) lease real or personal property or an interest in such property to the county for a term of not more than 99 years at nominal rent or annual rent determined by contract with the county;

(9) lease real or personal property or an interest in such property to a person other than a county for a term of not more than 40 years at an annual rent determined by contract with the person;

(10) borrow money and accept grants from, and enter into contracts, leases, or other transactions with, federal agencies;

(11) invest the proceeds of its bonds, until the money is needed, in direct obligations of or obligations unconditionally guaranteed by the United States government, to the extent authorized in the bond resolution or trust indenture;

(12) fix, alter, charge, and collect rates, rentals, and other charges for services of the authority or use of facilities of the authority or project;

(13) exercise the power of eminent domain to the extent, in the manner, and under the laws applicable to counties, for the purpose of acquiring property needed for a purpose authorized by this chapter; and

(14) do anything necessary or convenient to accomplish the purposes of the authority or carry out a power granted to the authority by statute.

(b) A lease under Subsection (a)(9) may not impair the authority's obligations under the bond resolution or trust indenture. On notice specified in the contract, a lessee under such a lease shall surrender possession of the property to the authority if and to the extent that the county requires use of the property.

(c) The power provided by Subsection (a)(10) is not subject to the limitations relating to other powers granted under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.027. OPERATION OF AUTHORITY. (a) The property of the authority must be held and operated only for governmental and public purposes, for the use and benefit of the public, and without private profit. The property of the authority is exempt from taxation.

(b) The authority shall charge rent, impose charges, and use its sources of revenue to generate revenue sufficient to:

(1) pay the expenses related to ownership, operation, and upkeep of the authority's property;

(2) pay interest on the authority's bonds as it becomes due;

(3) create a sinking fund to pay the authority's bonds as they come due; and

(4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.028. DEPOSITORY. The authority may:

(1) select a depository as provided by law for selection of a county depository; or

(2) award a depository contract to the same depository used by the county on the same terms applicable to the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.029. INVESTMENT OF FUNDS. The investment of and security for authority funds is governed, to the extent applicable, by the law governing investment of and security for a county's funds. The bond resolution or trust indenture may provide further restrictions on the investment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.030. LAW AFFECTING CERTAIN CONTRACTS. The board, in connection with a contract for construction or for purchase of

equipment and material that requires expenditure or payment of $2,000 or more, shall comply with Subchapter C, Chapter 262.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.031. UNDERGROUND SHELTER. The authority may include a civil defense shelter in underground facilities constructed under this chapter. In connection with this shelter the authority may:

(1) cooperate with the federal civil defense administrator and state civil defense officers; and

(2) contract as necessary to participate in federal or state assistance in construction and operation of the shelter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.032. POWER OF COUNTY. (a) A county may acquire and sell or lease to the authority land that the commissioners court determines is needed for the project. The sale or lease may be for the consideration that the commissioners court, after considering that the project is for the primary benefit of the county, determines is reasonable.

(b) The county may:

(1) lease property from the authority as is necessary or convenient and as is in the best interest of the county;

(2) pay the authority, at a bank designated by the authority, an annual rent determined by the lease; and

(3) levy a tax sufficient to pay the rent as it comes due.

(c) Without limitation by Subsections (a) and (b), a county may do all things necessary or convenient to accomplish the objectives of this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.033. PROVISION OF FACILITIES BY COUNTY. This chapter does not alter the authority of the commissioners court to provide county facilities that the commissioners court considers necessary for the convenience of the people in populated areas.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.034. TRANSFER OF ASSETS TO COUNTY; DISSOLUTION. On payment of all of its indebtedness, the authority shall convey all of its assets to the county, without cost to the county. On this conveyance, the authority is dissolved.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. FUNDING

Sec. 293.051. REVENUE BONDS. (a) The authority may issue negotiable revenue bonds to provide funds to carry out its purposes.

(b) The bonds must:

(1) be authorized by a board resolution;

(2) be authorized by an election that is:

(A) called by a resolution of the board;

(B) held throughout the authority; and

(C) called, held, and publicized in the manner provided by Chapter 1251, Government Code;

(3) be signed by the board president or vice-president and countersigned by the board secretary, either by actual or printed facsimile signature;

(4) include the authority seal;

(5) mature serially or otherwise in 40 years or less;

(6) be payable from and secured by a pledge of net revenues from ownership or operation of authority property; and

(7) be sold at a price and under terms that the board considers the most advantageous and the most reasonably obtainable.

(c) The bonds may:

(1) be secured, in addition to the security prescribed in Subsection (b)(6), by a mortgage or deed of trust on authority real or personal property;

(2) bear interest at a rate not to exceed the interest rate prescribed by Chapter 1204, Government Code;

(3) be made callable before maturity at the times and prices prescribed in the bond resolution; and

(4) be made registrable as to principal, interest, or both.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 8.308, eff. Sept. 1, 2001.

Sec. 293.052. JUNIOR LIEN BONDS; PARITY BONDS. (a) The authority may issue bonds constituting a junior lien on net revenues or property of the authority unless prohibited by the bond resolution or trust indenture.

(b) The authority may issue parity bonds under conditions specified in the bond resolution or trust indenture.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.053. EXAMINATION AND APPROVAL. (a) After the authority authorizes bonds, including refunding bonds, it shall submit the bonds and the record relating to their issuance to the attorney general. If the bonds purport to be secured by a pledge of proceeds of an existing lease with the county or another governmental agency, a copy of the lease contract and the proceedings of the governmental authority authorizing the lease shall also be submitted.

(b) The attorney general shall examine the submitted documents and shall approve the bonds and the lease contract, if any, if they are determined to be valid. On approval of the attorney general, the comptroller of public accounts shall register the bonds.

(c) On approval and registration of the bonds under this section, the bonds and the lease contract, if any, are valid, binding, and incontestable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.054. LEGAL AND AUTHORIZED INVESTMENTS. (a) Authority bonds are legal and authorized investments for a bank, savings bank, trust company, savings and loan association, insurance company, fiduciary, trustee, or guardian, or a sinking fund of a municipality, county, school district, or political subdivision of the state.

(b) Authority bonds may secure deposits of public funds of the state, a municipality, a county, a school district, or another political corporation or subdivision of the state. The bonds may provide this security in an amount up to their value, if all unmatured coupons, if any, are attached.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 293.055. REFUNDING BONDS. (a) The authority may issue bonds for the purpose of refunding outstanding bonds. Refunding bonds may be issued in the manner provided by this chapter for the issuance of other bonds, except that an election is not required.

(b) The comptroller may exchange the refunding bonds for the outstanding bonds or the authority may sell the refunding bonds and apply the proceeds according to Subchapter B or C, Chapter 1207, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.309, eff. Sept. 1, 2001.

Sec. 293.056. INITIAL INTEREST. The board may set aside the following money from the proceeds from the sale of bonds:

(1) money necessary to pay interest on the bonds for not more than two years; and

(2) money that the board estimates to be necessary to pay the authority's operating expenses for its first year of operation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBTITLE C. PUBLIC BUILDING PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 301. RECREATIONAL AND CULTURAL FACILITIES JOINTLY ESTABLISHED BY COUNTIES AND MUNICIPALITIES

Sec. 301.001. AUTHORITY TO ESTABLISH RECREATIONAL OR CULTURAL FACILITY. (a) In this chapter, "recreational or cultural facility" means an auditorium, civic center, convention center, or exposition center.

(b) The commissioners court of a county and the governing body of a municipality in that county may jointly erect, acquire, equip, maintain, and operate a recreational or cultural facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 483, Sec. 2, eff. Sept. 1, 1999.

Sec. 301.002. FINANCING OF RECREATIONAL OR CULTURAL FACILITY. The recreational or cultural facility may be financed out of the general revenues of the county and the municipality in proportions that the commissioners court of the county and the governing body of the municipality decide are appropriate.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 483, Sec. 2, eff. Sept. 1, 1999.

Sec. 301.003. DELEGATION OF AUTHORITY TO BOARD OF MANAGERS; DONATIONS. (a) The commissioners court of the county and the governing body of the municipality, by resolution or other proper action, may delegate to a board of managers the authority to acquire land for a recreational or cultural facility by purchase or lease and to erect, maintain, and equip a recreational or cultural facility.

(b) The board, for the benefit of the recreational or cultural facility, may accept gifts and bequests on behalf of the county and municipality and may borrow, receive, exchange, sell, and lend property. If a donor specifies a purpose for a gift or loan, the board shall use the gift or loan for that purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 483, Sec. 2, eff. Sept. 1, 1999.

Sec. 301.004. COMPOSITION AND TERMS OF OFFICE OF BOARD OF MANAGERS. (a) The board of managers must consist of seven members. The commissioners court of the county and the governing body of the municipality shall each appoint three members and shall jointly appoint one member.

(b) The members of the board are appointed for staggered terms of two years with the terms of two members appointed by the commissioners court and two members appointed by the governing body of the municipality expiring on February 1 of each odd-numbered year and the remaining terms expiring on February 1 of each even-numbered year.

(c) When the commissioners court or the governing body of the municipality makes its initial appointments to the board, it shall designate two of the members it appoints for terms expiring on the first February 1 of an odd-numbered year that follows the date of the

appointments. The remaining appointments shall be designated for terms that expire on the first February 1 of an even-numbered year that follows the date of the appointments.

(d) A vacancy on the board shall be filled for the unexpired part of the term in the same manner that the original appointment was made.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 301.005. CHAIRMAN AND OTHER OFFICERS. Each year the board shall elect a chairman. The chairman shall preside over board meetings and shall sign the contracts, agreements, and other instruments made by the board on behalf of the county and the municipality. The board may elect other officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 301.006. AUTHORITY OF BOARD TO CONTRACT. The board may make any contract connected with or incidental to establishing, equipping, maintaining, or operating the recreational or cultural facility and may expend funds set aside by the county and the municipality for purposes connected with operating and maintaining the recreational or cultural facility. However, the board may not bind the county or the municipality to make an expenditure of funds not specifically appropriated by the county or the municipality for the benefit of the recreational or cultural facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 483, Sec. 2, eff. Sept. 1, 1999.

Sec. 301.007. FINANCIAL STATEMENT AND BUDGET. (a) Each year the board shall prepare and present to the commissioners court of the county and the governing body of the municipality a complete financial statement about the condition of the recreational or cultural facility and a proposed budget for the anticipated financial needs of the recreational or cultural facility for the next year.

(b) On the basis of the financial statement and budget, the commissioners court of the county and the governing body of the

municipality may appropriate to the board an amount of money that the commissioners court of the county and the governing body of the municipality consider proper and necessary for the operation of the recreational or cultural facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 483, Sec. 2, eff. Sept. 1, 1999.

Sec. 301.008. PERSONNEL. The board may employ a superintendent or manager of the recreational or cultural facility. The superintendent or manager, with the consent of the board, may employ permanent or temporary personnel that are necessary for the maintenance and operation of the recreational or cultural facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 483, Sec. 2, eff. Sept. 1, 1999.

CHAPTER 302. ENERGY SAVINGS PERFORMANCE CONTRACTS FOR LOCAL GOVERNMENTS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Baseline" means a calculation or set of calculations in an energy savings performance contract that:

(A) may be based on:

(i) historical costs, revenues, accuracy, or related components; or

(ii) avoided anticipated costs; and

(B) may be used for determining:

(i) the costs for energy or water usage and related net operating costs;

(ii) the billable revenues from providing energy, water, or other utilities to users; or

(iii) the efficiency or accuracy of metering or related equipment, systems, or processes or procedures.

(2) "Energy or water conservation or usage measures" means:

(A) the installation or implementation of any of the items, equipment, modifications, alterations, improvements, systems, and other measures described by Subdivision (4) that are intended to provide:

(i) estimated energy savings;

(ii) an estimated increase in billable revenues; or

(iii) an estimated increase in meter accuracy; or

(B) the training for, or services related to, the operation of the items, equipment, modifications, alterations, improvements, systems, or other measures described by Paragraph (A).

(3) "Energy savings" means an estimated reduction in net fuel costs, energy costs, water costs, stormwater fees, or other utility costs, or related net operating costs, including costs for anticipated equipment replacement and repair, from or as compared to an established baseline of those costs. The term does not include an estimated reduction due to a decrease in energy rates that is not derived from increased conservation or reduced usage.

(4) "Energy savings performance contract" means a contract with a provider for energy or water conservation or usage measures in which the estimated energy savings, utility cost savings, increase in billable revenues, or increase in meter accuracy resulting from the measures is subject to guarantee to offset the cost of the energy or water conservation or usage measures over a specified period. The term does not include the design or new construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project. The term includes a contract related to the pilot program described by Subdivision (9-a) and a contract for the installation or implementation of the following in new or existing facilities, including all causally connected work:

(A) insulation of a building structure and systems within the building;

(B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(C) automatic energy control systems, including computer software and technical data licenses;

(D) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(E) lighting fixtures that increase energy efficiency;

(F) energy recovery systems;

(G) electric systems improvements;

(H) water-conserving fixtures, appliances, and

equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(I) water-conserving landscape irrigation equipment;

(J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(i) landscape contouring, including the use of berms, swales, and terraces; and

(ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;

(N) metering or related equipment or systems that improve the accuracy of billable-revenue-generation systems;

(O) alternative fuel programs resulting in energy cost savings and reduced emissions for local government vehicles, including fleet vehicles;

(P) programs resulting in utility cost savings; or

(Q) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(5) "Guarantee" means a written guarantee of a provider that the energy savings, increase in billable revenues, or increase in meter accuracy from the energy or water conservation or usage measures will at least equal the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in an energy savings performance contract.

(6) "Increase in billable revenues" means an estimated increase in billable revenues as compared to an established baseline of billable revenues.

(7) "Increase in meter accuracy" means an estimated increase in efficiency or accuracy of metering or related equipment,

systems, or processes or procedures that is calculated or determined by using applicable industry engineering standards.

(8) "Local government" means a county, municipality, or other political subdivision of this state. The term does not include a school district authorized to enter into an energy savings performance contract under Section 44.901, Education Code.

(9) "Meter guarantee" means a guarantee of a stipulated or agreed upon increase in billable revenues to result from the estimated increase in meter accuracy, based on stipulated or agreed upon components of a billable revenue calculation in an energy savings performance contract.

(9-a) "Pilot program" means a pilot program operated by the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station, in consultation with the Texas Facilities Commission and the State Energy Conservation Office, that:

(A) establishes and implements energy efficiency improvements to state-owned buildings maintained by the commission;

(B) generates savings in utility costs resulting from the improvements resulting in at least a 30 percent annual return on the costs of the improvements;

(C) provides for the participation of not fewer than two companies selected by the commission; and

(D) provides for any money attributable to utility cost savings resulting from the pilot program to be appropriated only to the commission.

(10) "Provider" means an entity in the business of designing, implementing, and installing of energy or water conservation or usage measures or an affiliate of such an entity.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.
Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 78, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 4, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. 1728), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1021 (H.B. 1184), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 258 (H.B. 1571), Sec. 4, eff. May

29, 2017.

Acts 2021, 87th Leg., R.S., Ch. 495 (H.B. 3583), Sec. 1, eff. June 14, 2021.

Sec. 302.002. ENERGY SAVINGS PERFORMANCE CONTRACTS. (a) The governing body of a local government may enter into an energy savings performance contract in accordance with this chapter.

(b) Each energy or water conservation or usage measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Section 302.001, an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.
Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 79, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 5, eff. June 16, 2007.

Sec. 302.003. PAYMENT AND PERFORMANCE BOND. Notwithstanding any other law, before entering into an energy savings performance contract, the governing body of the local government shall require the provider of the energy or water conservation or usage measures to file with the governing body a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253, Government Code. The governing body may also require a separate bond to cover the value of the guarantee.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.
Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 80, 121(23), eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 6, eff. June

16, 2007.

Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a) An energy savings performance contract may be financed:

(1) under a lease-purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation or usage measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(a-1) Notwithstanding other law, the governing body of a local government may use any available money to pay the provider of the energy or water conservation measures under this section, and the governing body is not required to pay for such costs solely out of the savings realized by the local government under an energy savings performance contract. The governing body may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(b) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation or usage measures to provide a guarantee. If the term of the contract exceeds one year, the local government's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy and water savings, the net operating cost savings, and the stipulated or agreed upon increase in billable revenues resulting from the estimated increase in meter accuracy, divided by the number of years in the contract term.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 1999, 76th Leg., ch. 361, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 81, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 7, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. 1728), Sec. 6, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 258 (H.B. 1571), Sec. 5, eff. May 29, 2017.

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a) An energy savings performance contract under this chapter may be let in accordance with the procedures established for procuring certain professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(b) Before entering into an energy savings performance contract, the governing body must require that the energy savings, increase in billable revenues, or increase in meter accuracy estimated or projected by a provider be reviewed by a licensed professional engineer who:

(1) has a minimum of three years of experience in energy calculation and review;

(2) is not an officer or employee of a provider for the contract under review; and

(3) is not otherwise associated with the contract.

(c) In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

(d) The scope of an energy savings performance contract may not be modified under this section by change order, contract addendum, or other method:

(1) to perform work that is not related to, connected with, or otherwise ancillary to the measures identified in the original scope of an energy savings performance contract; or

(2) in a way that increases the price of the original awarded contract by more than 25 percent of the original contract value.

(e) Subsection (d) applies only to the design or construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.
Amended by Acts 2001, 77th Leg., ch. 573, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 7; Acts 2003, 78th Leg., ch. 1276, Sec. 12.005, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 82, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 8, eff. June 16, 2007.

Acts 2021, 87th Leg., R.S., Ch. 495 (H.B. 3583), Sec. 2, eff. June 14, 2021.

Sec. 302.006. METER GUARANTEES. (a) This section applies to any energy savings performance contract that:

(1) provides for any metering or related equipment, system, or process or procedure; and

(2) includes a meter guarantee by the provider, regardless of whether the meter guarantee is a part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work.

(b) Not later than the fifth anniversary of the effective date of an energy savings performance contract, an engineer shall test a statistically relevant sample of the meters installed or implemented under the contract to determine or calculate the actual average accuracy and shall compare the actual average accuracy to the baseline average accuracy of those tested meters.

(c) A meter guarantee applies if the engineer reports to the local government and the provider that the average accuracy of the tested meters as of the testing date is less than the baseline average accuracy of the tested meters as of the testing date.

(d) The amount payable under the meter guarantee must be determined for each year subject to the engineer's report and is equal to the difference between:

(1) the agreed increase in billable revenues based on the estimated accuracy of all of the meters for each year, according to the energy savings performance contract; and

(2) the revenues for the same year that would result from applying the engineer's reported actual average accuracy of the tested meters to all of the meters subject to the energy savings performance contract, using the same contract components that were used to calculate the agreed increase in billable revenues for that year, assuming the annual decrease in actual average accuracy of all the meters was a pro rata percentage of the reported total decrease in actual average accuracy.

(e) Notwithstanding Subsection (d), if the meter guarantee in the contract is part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work under the contract, the amount payable under the meter guarantee for any year during the measurement period is reduced or offset by the difference between:

(1) the sum of the energy savings and the increase in billable revenues resulting from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period; and

(2) the guaranteed amount of the energy savings and the increase in billable revenues from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period.

(f) A test conducted under this section must be performed in accordance with the procedures established by the International Performance Measurement and Verification Protocol or succeeding standards of the United States Department of Energy.

(g) An engineer conducting a test under this section shall:

(1) verify that the tested meters have been properly maintained and are operating properly; and

(2) comply with Section 302.005(c).

Added by Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 9, eff. June 16, 2007.

Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter 2269, Government Code, does not apply to this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 3.04, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(25), eff. September 1, 2013.

Sec. 302.008. ENFORCEMENT. (a) A contract entered into or an arrangement made in violation of this chapter is voidable as against public policy.

(b) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date the contract is awarded.

Added by Acts 2021, 87th Leg., R.S., Ch. 495 (H.B. 3583), Sec. 3, eff. June 14, 2021.

CHAPTER 303. PUBLIC FACILITY CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 303.001. SHORT TITLE. This chapter may be cited as the Public Facility Corporation Act.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.002. PURPOSE; CONSTRUCTION. (a) The purpose of this chapter is to authorize the creation and use of public facility corporations with the broadest possible powers to finance or to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, and placement in service of public facilities in an orderly, planned manner and at the lowest possible borrowing costs.

(b) The legislature intends that a corporation created under this chapter be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of its sponsor for the purposes of Section 103, Internal Revenue Code of 1986 (26 U.S.C. Section 103). This chapter and the rules and rulings issued under this chapter shall be construed according to this intent.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.003. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of a corporation.

(2) "Bonds" includes notes, interim certificates, or other evidences of indebtedness of a corporation issued or incurred under this chapter.

(3) "Corporation" means a public facility corporation created and existing under this chapter.

(4) "Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase bonds or sponsor obligations, purchase or sale agreement, interest rate or commodities price swap agreement, cap or collar agreement, protection or management agreement, or commitment or other contract or agreement authorized and approved by the board of directors of a corporation in anticipation of, related to, or in connection with the authorization, issuance, incurrence, sale, security, exchange, payment, purchase, remarketing, or redemption of bonds or interest on bonds.

(5) "Director" means a member of a board of directors.

(6) "Housing authority" means a public corporation created under Chapter 392.

(7) "Public facility" means any real, personal, or mixed property, or an interest in property devoted or to be devoted to public use, and authorized to be financed, refinanced, or provided by sponsor obligations or bonds issued under this chapter.

(8) "Resolution" means a resolution, order, ordinance, or other official action by the governing body of a sponsor.

(9) "School district" means a political subdivision created under Section 3, Article VII, Texas Constitution.

(10) "Special district" means:

(A) a district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(B) a hospital district or authority; or

(C) a junior college district authorized by Chapter 130, Education Code.

(11) "Sponsor" means a municipality, county, school district, housing authority, or special district that causes a

corporation to be created to act in accordance with this chapter.

(12) "Sponsor obligation" means an evidence of indebtedness or obligation that a sponsor issues or incurs to finance, refinance, or provide a public facility, including bonds, notes, warrants, certificates of obligation, leases, and contracts authorized by Section 303.041 and Subchapter C.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 488 (H.B. 2679), Sec. 1, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 488 (H.B. 2679), Sec. 2, eff. June 16, 2015.

Sec. 303.004. ADOPTION OF ALTERNATE PROCEDURE IN CASE OF CONSTITUTIONAL VIOLATION. If a court holds that a procedure under this chapter violates the federal or state constitution, a corporation or its sponsor by resolution may provide an alternate procedure that conforms to the constitution.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.005. EFFECT OF CHAPTER ON OTHER LAW. (a) This chapter does not limit the police power provided by law to this state or a municipality or other political subdivision of this state, or an official or agency of this state or of a municipality or other political subdivision of this state, over property of a corporation.

(b) A sponsor or corporation may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power expressly or impliedly granted by this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.006. LIMITATION OF CHAPTER. This chapter does not authorize a sponsor to issue a sponsor obligation, use a letter of credit, or mortgage a public facility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.007. NATURAL GAS AS PUBLIC FACILITY. Natural gas purchased by a corporation for resale to a local government under an interlocal cooperation contract described by Section 791.025, Government Code, between the sponsor and the local government is considered a public facility for the purposes of this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 767 (S.B. 1063), Sec. 1, eff. June 14, 2013.

SUBCHAPTER B. CREATION AND OPERATION OF PUBLIC FACILITY CORPORATION

Sec. 303.021. AUTHORITY TO CREATE. (a) A sponsor may create one or more nonmember, nonstock, nonprofit public facility corporations to:

(1) issue bonds under this chapter, including bonds to purchase sponsor obligations;

(2) finance public facilities on behalf of its sponsor; or

(3) loan the proceeds of the obligations to other entities to accomplish the purposes of the sponsor.

(b) A sponsor may use the corporation to:

(1) acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in service public facilities; or

(2) issue bonds on the sponsor's behalf to finance the costs of the public facilities.

(c) A corporation created under this chapter must remain a public facility corporation under this chapter.

(d) A corporation or a sponsor may finance, own, or operate a multifamily residential development only if:

(1) the corporation or sponsor complies with all applicable provisions of this chapter; and

(2) the development is located:

(A) inside the area of operation of the sponsor, if the sponsor is a housing authority; or

(B) if the sponsor is not a housing authority, inside the boundaries of the sponsor, without regard to whether the sponsor is authorized to own property or provide services outside the boundaries of the sponsor.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 488 (H.B. 2679), Sec. 3, eff. June 16, 2015.
Acts 2021, 87th Leg., R.S., Ch. 526 (S.B. 1942), Sec. 1, eff. June 14, 2021.
Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 1, eff. June 18, 2023.

Sec. 303.022. CREATION UNDER OTHER LAW. A nonprofit corporation created by a housing authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), regardless of the date the corporation is created, is considered a corporation under this chapter, has the rights and powers necessary or convenient to accomplish a corporation's purposes under this chapter, and is subject to the requirements of this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 526 (S.B. 1942), Sec. 2, eff. June 14, 2021.

Sec. 303.023. PROCEDURE. A governing body of a sponsor that determines that it is in the public interest and to the benefit of the sponsor's residents and the citizens of this state that a corporation be created to finance, refinance, or provide the costs of public facilities of the sponsor may by resolution stating that determination:

(1) authorize and approve the creation of a corporation to act on behalf of the sponsor; and

(2) approve proposed articles of incorporation for the corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.024. ARTICLES OF INCORPORATION. (a) The articles of incorporation of the corporation must include:

(1) the corporation's name;

(2) a statement that the corporation is a nonprofit public corporation;

(3) the duration of the corporation, which may be perpetual;

(4) a statement that the purpose of the corporation is to assist its sponsor in financing, refinancing, or providing public facilities;

(5) a statement that the corporation has no members and is a nonstock corporation;

(6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;

(7) the number of directors on the initial board of directors and those directors' names and addresses;

(8) each incorporator's name and street address;

(9) the sponsor's name and address; and

(10) a statement that the sponsor has specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation and has approved the articles of incorporation.

(b) The corporate powers listed in this chapter are not required to be included in the articles of incorporation.

(c) The articles of incorporation may include provisions for the regulation of the internal affairs of the corporation, including a provision required or permitted by this chapter to be in the bylaws.

(d) Unless the articles of incorporation provide that a change in the number of directors may be made only by amendment to those articles, a change may be made by amendment to the bylaws.

(e) A provision of the articles of incorporation that requires the vote or concurrence of a greater proportion of the board of directors than this chapter controls over this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.025. CERTIFICATE OF INCORPORATION; BEGINNING OF CORPORATE EXISTENCE. (a) The incorporators shall deliver to the secretary of state the original and two copies of the articles of incorporation and a certified copy of the resolution of the sponsor's

governing body approving the articles of incorporation.

(b) If the secretary of state finds that the articles of incorporation comply with this chapter and have been approved by the sponsor's governing body, the secretary of state, on payment of the fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of incorporation with a copy of the articles of incorporation attached to each.

(c) The secretary of state shall deliver a certificate of incorporation, with a copy of the articles of incorporation attached, to the incorporators or their representatives and to the sponsor's governing body.

(d) The corporation's existence begins on issuance of the certificate of incorporation.

(e) The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsor have been performed and that the corporation has been incorporated under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.026. ORGANIZATIONAL MEETING. (a) After issuance of the certificate of incorporation and at the call of a majority of the incorporators, the board of directors named in the articles of incorporation shall hold an organizational meeting in this state to adopt bylaws, to elect officers, and for any other purpose.

(b) Not later than the sixth day before the date of the meeting, the incorporators shall mail, postage prepaid, notice to each director of the time and place of the meeting.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.027. AMENDMENT OF ARTICLES OF INCORPORATION. (a) Articles of incorporation may be amended to contain a provision that is lawful under this chapter if the sponsor's governing body by appropriate resolution determines that the amendment is advisable and

authorizes or directs that an amendment be made.

(b) The corporation's president or vice president and the secretary or clerk of the sponsor's governing body shall execute articles of amendment on behalf of the corporation. An officer signing the articles of amendment shall verify those articles.

(c) The articles of amendment must include:

(1) the name of the corporation;

(2) if the amendment alters a provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as amended;

(3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision;

(4) the name and address of the sponsor;

(5) a statement that the amendment was authorized by the sponsor's governing body; and

(6) the date of the meeting at which the governing body adopted or approved the amendment.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.028. CERTIFICATE OF AMENDMENT. (a) The original and two copies of the articles of amendment and a certified copy of the resolution of the sponsor's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of amendment comply with this chapter and are authorized by the sponsor's governing body, the secretary of state, on payment of the fees required by this chapter, shall:

(1) write "filed" on the original and on each copy of the articles of amendment and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of amendment with a copy of the articles of amendment attached to each.

(c) The secretary of state shall deliver to the corporation or its representative and to the sponsor's governing body a certificate of amendment with a copy of the articles of amendment attached.

(d) The amendment to the articles of incorporation takes effect on issuance of the certificate of amendment.

(e) An amendment does not affect an existing cause of action in favor of or against the corporation, a pending suit to which the corporation is a party, or an existing right of a person. Change of the corporate name by amendment does not abate a suit brought by or against the corporation under its former name.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.029. RESTATED ARTICLES OF INCORPORATION. (a) A corporation may authorize, execute, and file restated articles of incorporation by following the procedure to amend articles of incorporation, including obtaining authorization from the sponsor's governing body.

(b) The restated articles of incorporation must restate the entire text of the articles of incorporation as amended or supplemented by all previous certificates of amendment. The restated articles of incorporation may also contain further amendments to the articles of incorporation.

(c) Unless the restated articles of incorporation include amendments that were not previously in the articles of incorporation and previous certificates of amendment, the introductory paragraph of the restated articles of incorporation must contain a statement that the instrument accurately copies the articles of incorporation and all amendments that are in effect on the date of filing without further changes, except that:

(1) the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors; and

(2) the incorporators' names and addresses may be omitted.

(d) If the restated articles of incorporation contain further amendments not included in the articles of incorporation and previous certificates of amendment, the instrument containing the restated articles of incorporation must:

(1) include for each further amendment a statement that the amendment has been made in conformity with this chapter;

(2) include the statements required by this chapter to be

contained in articles of amendment, except that the full text of the amendment need not be included except in the restated articles of incorporation;

(3) contain a statement that the instrument accurately copies the articles of incorporation and all previous amendments in effect on the date of the filing, as further amended by the restated articles of incorporation, and that the instrument does not contain any other change, except that:

(A) the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors; and

(B) the incorporators' names and addresses may be omitted; and

(4) restate the entire text of the articles of incorporation as amended and supplemented by all previous certificates of amendment and as further amended by the restated articles of incorporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.030. RESTATED CERTIFICATE OF INCORPORATION. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the sponsor's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the restated articles of incorporation comply with this chapter and have been authorized by the sponsor's governing body, the secretary of state, on payment of the fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the restated articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two restated certificates of incorporation with a copy of the restated articles of incorporation attached to each.

(c) The secretary of state shall deliver a restated certificate of incorporation, with a copy of the restated articles of

incorporation attached, to the corporation or its representative and to the sponsor's governing body.

(d) On the issuance by the secretary of state of the restated certificate of incorporation, the original articles of incorporation and all amendments are superseded, and the restated articles of incorporation become the corporation's articles of incorporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.031. REGISTERED OFFICE AND AGENT. (a) A corporation shall continuously maintain a registered office and registered agent in this state.

(b) The registered office shall be the same as the corporation's principal office. The registered agent may be:

(1) an individual resident of this state whose business office is the same as the registered office; or

(2) a domestic or foreign profit or nonprofit corporation that is authorized to transact business or conduct affairs in this state and that has a principal or business office that is the same as the registered office.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.032. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A corporation may change its registered office, registered agent, or both by filing the original and a copy of a statement in the office of the secretary of state. The president or vice president of the corporation shall execute and verify the statement.

(b) The statement must include:

(1) the corporation's name;

(2) the post office address of the corporation's current registered office;

(3) if the registered office is to be changed, the post office address of the corporation's new registered office;

(4) the name of the corporation's registered agent;

(5) if the registered agent is to be changed, the name of the successor registered agent;

(6) a statement that, after the change, the post office address of the registered office will be the same as the post office

address of the business office of the registered agent; and

(7) a statement that the change was authorized by the board of directors or by a corporate officer authorized by the board of directors to make the change.

(c) If the secretary of state finds that the statement complies with this chapter, the secretary of state, when all fees have been paid as required by this chapter, shall:

(1) write "filed" on the original and each copy of the statement and the month, day, and year of the filing;

(2) file the original statement in the office of the secretary of state; and

(3) return the copy of the statement to the corporation or its representative.

(d) The change made by the statement takes effect on the filing of the statement.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.033. RESIGNATION OF REGISTERED AGENT. (a) A registered agent of a corporation may resign by:

(1) mailing or delivering written notice to the corporation; and

(2) filing the original and two copies of the notice in the office of the secretary of state not later than the 10th day after the date the notice is mailed or delivered to the corporation.

(b) The notice must include:

(1) the corporation's last known address;

(2) a statement that written notice was given to the corporation; and

(3) the date the written notice was given to the corporation.

(c) If the secretary of state finds that the notice complies with this chapter, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original notice and both copies and the month, day, and year of the filing;

(2) file the original notice in the office of the secretary of state;

(3) return one copy of the notice to the resigning

registered agent; and

(4) deliver one copy of the notice to the corporation at the address shown in the notice.

(d) The resignation takes effect on the 31st day after the date the notice is received by the secretary of state.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.034. AGENTS FOR SERVICE. (a) The president, each vice president, and the registered agent of a corporation are the corporation's agents on whom a process, notice, or demand required or permitted by law to be served on the corporation may be served.

(b) If a corporation does not appoint or maintain a registered agent in this state or if the registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent of the corporation on whom a process, notice, or demand may be served.

(c) The secretary of state may be served by delivering two copies of the process, notice, or demand to the secretary of state, the deputy secretary of state, or a clerk in charge of the corporation department of the secretary of state's office. The secretary of state shall immediately forward one copy of the process, notice, or demand by registered mail to the corporation at its registered office.

(d) Service on the secretary of state is returnable not earlier than the 30th day after the date of service.

(e) The secretary of state shall keep a record of each process, notice, and demand served, including the time of the service and the action of the secretary of state in reference to the process, notice, or demand.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 41 (H.B. 297), Sec. 3, eff. September 1, 2005.

Sec. 303.035. BOARD. (a) A corporation's affairs are governed by a board of directors composed of at least three individuals appointed by the sponsor's governing body. Directors may be divided

into classes.

(b) A director serves for a term of not more than six years. The terms of directors of different classes may be of different lengths.

(c) A director holds office for the term to which the director is appointed and until a successor is appointed and has qualified.

(d) The sponsor's governing body may remove a director for cause or at any time without cause.

(e) A director serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of duties under this chapter.

(f) A director has the same immunity from liability as is granted under the laws of this state to a member of the sponsor's governing body if the director was acting in good faith and in the course and scope of the duties or functions within the corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.103(a), eff. Sept. 1, 2001.

Sec. 303.036. OFFICERS. (a) The officers of a corporation are:

(1) the president, vice president, and secretary; and

(2) other officers, including a treasurer, and assistant officers considered necessary.

(b) An officer is elected or appointed at the time, in the manner, and for the term provided by the articles of incorporation or bylaws, except that an officer's term may not exceed three years. If the articles of incorporation or bylaws do not contain those requirements, the board of directors shall elect or appoint each officer annually.

(c) A person may simultaneously hold more than one office, except that the same person may not simultaneously hold the offices of president and secretary.

(d) An officer may be removed by the persons authorized to elect or appoint the officer if those persons believe the best interests of the corporation will be served by the removal.

(e) A director who is a member of the governing body or an officer or employee of the sponsor is eligible to serve as an officer

of the corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.037. INDEMNIFICATION. (a) Except as provided by Subsection (c), a corporation may indemnify a director, officer, employee, or agent or former director, officer, employee, or agent for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with a claim asserted against the person, by action in court or another forum, because of the person's being or having been a director, officer, employee, or agent.

(b) Except as provided by Subsection (c), if a corporation has not fully indemnified a director, officer, employee, or agent of the corporation under Subsection (a), the court in a proceeding in which a claim is asserted against the director, officer, employee, or agent of the corporation or a court having jurisdiction over an action brought by the director, officer, employee, or agent on a claim for indemnity may assess indemnity against the corporation or its receiver or trustee. The assessment must equal:

(1) the amount that the director, officer, employee, or agent paid to satisfy the judgment or compromise the claim, not including any amount paid the corporation; and

(2) to the extent the court considers reasonable and equitable, the expenses and costs, including attorney's fees, actually and necessarily incurred by the director, officer, employee, or agent in connection with the claim.

(c) A corporation may not provide indemnity in a matter if the director, officer, employee, or agent is guilty of negligence or misconduct in relation to the matter. A court may not assess indemnity unless it finds that the director, officer, employee, or agent was not guilty of negligence or misconduct in relation to the matter in which indemnity is sought.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.038. BYLAWS. (a) The board of directors shall adopt a corporation's initial bylaws and may amend or repeal the bylaws or adopt new bylaws. The bylaws and each amendment and repeal of the

bylaws must be approved by the sponsor's governing body by resolution.

(b) The bylaws may contain any provision for the regulation and management of the corporation's affairs consistent with law and the articles of incorporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.039. COMMITTEES. (a) If permitted by the articles of incorporation or bylaws, the board of directors, by resolution adopted by a majority of directors in office, may designate one or more committees consisting of two or more directors to exercise the board's authority in the management of the corporation to the extent provided by the resolution, articles of incorporation, or bylaws. The designation of a committee or delegation of authority to a committee does not relieve the board of directors or an individual director of a responsibility imposed by law.

(b) Other committees not exercising the authority of the board of directors in the management of the corporation may be designated. The composition of those committees may be limited to directors, and the committee members shall be designated and appointed by:

(1) the board of directors by resolution; or

(2) the president, if authorized by the articles of incorporation, the bylaws, or a resolution of the board of directors.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.040. MEETINGS; QUORUM. (a) A regular or special meeting of the board of directors must be called and held as provided by the bylaws. A regular or special meeting may be held at any location in this state.

(b) A director's attendance at a meeting waives notice to the director of the meeting, unless the attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(c) A quorum is the lesser of:

(1) a majority of the number of directors established by the bylaws or, if the bylaws do not establish a number of directors, a majority of the number of directors stated in the articles of

incorporation; or

(2) the number of directors, not less than three, established as a quorum by the articles of incorporation or bylaws.

(d) The act of a majority of the directors present at a meeting at which a quorum is present is an act of the board of directors, unless the act of a larger number is required by the articles of incorporation or bylaws.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.041. CORPORATION'S GENERAL POWERS. (a) Subject to Section 303.045, a corporation has the rights and powers necessary or convenient to accomplish the corporation's purposes, including the power to:

(1) acquire title to a public facility in order to lease, convey, or dispose of the public facility to the corporation's sponsor or, on direction of the sponsor and in furtherance of the sponsor's purposes, to another entity;

(2) accept or grant a mortgage or pledge of a public facility financed, refinanced, or provided by the corporation or by sponsor obligations purchased by the corporation and, as security for the payment of any connected bonds or credit agreements that the corporation issues or incurs:

(A) assign the mortgage or pledge and the revenue and receipts from the mortgage or pledge or from the corporation or sponsor obligations; or

(B) grant other security;

(3) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of the corporation's property and other assets, including sponsor obligations;

(4) make a contract, including a credit agreement, incur a liability, and borrow money at interest;

(5) lend money for its corporate purposes, invest its money, and take and hold security for the payment of money loaned or invested;

(6) sue and be sued in its corporate name;

(7) appoint agents of the corporation and determine their duties;

(8) have a corporate seal and use the seal by having it or a facsimile of it impressed on, affixed to, or reproduced on an instrument required or authorized to be executed by the corporation's proper officers; and

(9) exercise any powers that a nonprofit corporation may exercise, to the extent necessary or convenient to accomplish the purpose of the corporation.

(b) Subsection (a) does not authorize a corporate officer or director to exercise a power specified in that subsection in a manner that is inconsistent with the corporation's articles of incorporation or bylaws or beyond the scope of the corporation's purposes.

(c) A sponsor may not delegate to a corporation the power of taxation or eminent domain, a police power, or an equivalent sovereign power of this state or the sponsor.

(d) The authority granted under Subsection (a)(3) includes the authority to grant a leasehold or other possessory interest in a public facility owned by the corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 488 (H.B. 2679), Sec. 4, eff. June 16, 2015.

Sec. 303.0415. APPLICABILITY OF LAWS RELATING TO CONFLICT OF INTEREST. A member of the board of a corporation or a member of the governing body of a sponsor of a corporation is subject to the same restrictions as a local public official under Chapter 171.

Added by Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 2, eff. June 18, 2023.

Sec. 303.042. TAXATION; EXEMPTION. (a) A public facility, including a leasehold estate in a public facility, that is owned by a corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation under Title 1, Tax Code, shall be assessed to the user of the public facility to the same extent and subject to the same exemptions from taxation as if the user owned the public facility. If there is more than one user of the public facility, the public facility shall be assessed to the

users in proportion to the value of the rights of each user to occupy, operate, manage, or use the public facility.

(b) The user of a public facility is considered the owner of the facility for purposes of the application of:

(1) sales and use taxes in the construction, sale, lease, or rental of the public facility; and

(2) other taxes imposed by this state or a political subdivision of this state.

(c) Subject to Section 303.0421(h), a corporation is engaged exclusively in performance of charitable functions and is exempt from taxation by this state or a municipality or other political subdivision of this state. Bonds issued by a corporation under this chapter, a transfer of the bonds, interest on the bonds, and a profit from the sale or exchange of the bonds are exempt from taxation by this state or a municipality or other political subdivision of this state.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1493, Sec. 1, eff. Aug. 31, 2002.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 488 (H.B. 2679), Sec. 5, eff. June 16, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 3, eff. June 18, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 6, eff. June 18, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 7, eff. June 18, 2023.

Sec. 303.0421. MULTIFAMILY RESIDENTIAL DEVELOPMENTS OWNED BY PUBLIC FACILITY CORPORATIONS. (a) This section applies to a multifamily residential development that is owned by a corporation created under this chapter, except that this section does not apply to a multifamily residential development that:

(1) has at least 20 percent of its residential units reserved for public housing units;

(2) participates in the Rental Assistance Demonstration program administered by the United States Department of Housing and

Urban Development;

(3) receives financial assistance administered under Chapter 1372, Government Code, or receives financial assistance from another type of tax-exempt bond; or

(4) receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

(b) Notwithstanding Section 303.042(c) and subject to Subsections (c) and (d) of this section, an exemption under Section 303.042(c) for a multifamily residential development to which Subsection (a) applies is available only if:

(1) the requirements under Section 303.0425 are met;

(2) at least:

(A) 10 percent of the units in the multifamily residential development are reserved for occupancy as lower income housing units, as defined under Section 303.0425; and

(B) 40 percent of the units in the multifamily residential development are reserved for occupancy as moderate income housing units, as defined under Section 303.0425;

(3) the corporation delivers to the presiding officer of the governing body of each taxing unit in which the development is to be located written notice of the development, at least 30 days before the date:

(A) the corporation takes action to approve a new multifamily residential development or the acquisition of an occupied multifamily residential development; and

(B) of any public hearing required to be held under this section;

(4) if a majority of the members of the board are not elected officials, the development is approved by the governing body of the municipality in which the development is located or, if the development is not located in a municipality, the county in which the development is located;

(5) for an occupied multifamily residential development that is acquired by a corporation and not otherwise subject to a land use restriction agreement under Section 2306.185, Government Code:

(A) not less than 15 percent of the total gross cost of the existing development, as shown in the settlement statement, is expended on rehabilitating, renovating, reconstructing, or repairing the development, with initial expenditures and construction activities:

(i) beginning not later than the first anniversary of the date of the acquisition; and

(ii) finishing not later than the third anniversary of the date of the acquisition; or

(B) at least 25 percent of the units are reserved for occupancy as lower income housing units, as defined under Section 303.0425, and the development is approved by the governing body of the municipality in which the development is located or, if the development is not located in a municipality, the county in which the development is located; and

(6) not less than 30 days before final approval of the development:

(A) the corporation or corporation's sponsor conducts, or obtains from a professional entity that has experience underwriting affordable multifamily residential developments and does not have a financial interest in the applicable development, developer, or public facility user, an underwriting assessment of the proposed development that allows the corporation to make a good faith determination that:

(i) for an occupied multifamily residential development acquired by a corporation, the total annual amount of rent reduction on the income-restricted units provided at the development will be not less than 60 percent of the estimated amount of the annual ad valorem taxes that would be imposed on the property without an exemption under Section 303.042(c) for the second, third, and fourth years after the date of acquisition by the corporation; and

(ii) for a newly constructed multifamily residential development, the development would not be feasible without the participation of the corporation; and

(B) the corporation publishes on its Internet website a copy of the underwriting assessment described by Paragraph (A).

(c) A multifamily residential development that is owned by a corporation created under this chapter by a housing authority and to which Subsection (a) applies must hold a public hearing, at a meeting of the authority's governing body, to approve the development.

(d) Notwithstanding Subsection (b), an occupied multifamily residential development that is acquired by a corporation and to which Subsection (a) applies is eligible for an exemption under Section 303.042(c) for:

(1) the one-year period following the date of the acquisition, regardless of whether the development complies with the requirements of Subsection (b); and

(2) a year following the year described by Subdivision (1) only if the development comes into compliance with the requirements of Subsection (b) not later than the first anniversary of the date of the acquisition.

(e) For the purposes of Subsection (a), a "public housing unit" is a residential unit for which the landlord receives a public housing operating subsidy. It does not include a unit for which payments are made to the landlord under the federal Section 8 Housing Choice Voucher Program.

(f) Notwithstanding Sections 303.042(a) and (b) and except as otherwise provided by this section, during the period that a corporation owns a particular public facility that is a multifamily residential development:

(1) a leasehold or other possessory interest in the real property of the public facility granted by the corporation shall be treated in the same manner as a leasehold or other possessory interest in real property granted by an authority under Section 379B.011(b); and

(2) the materials used by a person granted a possessory interest described by Subdivision (1) to improve the real property of the public facility shall be exempt from all sales and use taxes because the materials are for the benefit of the corporation.

(g) Subsection (f) does not apply to taxes imposed on a multifamily residential development by a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that provides water, sewer, or drainage services to the development, unless the applicable corporation has entered into a written agreement with the district to make a payment to the district in lieu of taxation, in the amount specified in the agreement.

(h) Subject to Subsection (i), an exemption under Section 303.042(c) for a multifamily residential development to which Subsection (a) applies expires:

(1) for an occupied multifamily residential development that is acquired by a corporation, on the 30th anniversary of the date of the acquisition by the corporation; and

(2) for a multifamily residential development not described

by Subdivision (1), on the 60th anniversary of the date the development receives, from the corporation or the corporation's sponsor, the final approval under this chapter that is necessary to obtain the exemption.

(i) An exemption under Section 303.042(c) for a multifamily residential development to which Subsection (a) applies may be extended for the same term of years applicable to the length of the development's exemption under Subsection (h) if:

(1) in the five-year period preceding the expiration of the exemption under Subsection (h), the corporation provides notice of the extension to the governing body of the municipality in which the development is located or, if the development is not located in a municipality, the county in which the development is located;

(2) the extension is approved in the same manner as was required for the preceding approval of the exemption; and

(3) the development is in compliance with, and maintains compliance with, this section and Section 303.0425.

Added by Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 4, eff. June 18, 2023.
Added by Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 5, eff. June 18, 2023.
Added by Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 7, eff. June 18, 2023.

Sec. 303.0425. ADDITIONAL REQUIREMENTS FOR BENEFICIAL TAX TREATMENT RELATING TO CERTAIN PUBLIC FACILITIES. (a) In this section:

(1) "Developer" means a private entity that constructs a development, including the rehabilitation, renovation, reconstruction, or repair of a development.

(2) "Housing choice voucher program" means the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(3) "Lower income housing unit" means a residential unit reserved for occupancy by an individual or family earning not more than 60 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development.

(4) "Moderate income housing unit" means a residential unit reserved for occupancy by an individual or family earning not more than 80 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development.

(5) "Public facility user" means a public-private partnership entity or a developer or other private entity that has an ownership interest or a leasehold or other possessory interest in a public facility that is a multifamily residential development.

(b) The percentage of lower and moderate income housing units reserved in each category of units in the development, based on the number of bedrooms per unit, must be the same as the percentage of each category of housing units reserved in the development as a whole.

(c) The monthly rent charged per unit may not exceed:

(1) for a lower income housing unit, 30 percent of 60 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development; or

(2) for a moderate income housing unit, 30 percent of 80 percent of the area median income, adjusted for family size, as defined by the United States Department of Housing and Urban Development.

(d) In calculating the income of an individual or family for a lower or moderate income housing unit, the public facility user must use the definition of annual income described in 24 C.F.R. Section 5.609, as implemented by the United States Department of Housing and Urban Development. If the income of a tenant exceeds an applicable limit at the time of the renewal of a lease agreement for a residential unit, the provisions of Section 42(g)(2)(D), Internal Revenue Code of 1986, apply in determining whether the unit may still qualify as a lower or moderate income housing unit.

(e) The public facility user may not:

(1) refuse to rent a residential unit to an individual or family because the individual or family participates in the housing choice voucher program; or

(2) use a financial or minimum income standard that requires an individual or family participating in the housing choice voucher program to have a monthly income of more than 250 percent of the individual's or family's share of the total monthly rent payable

for a unit.

(f) A public facility user may require an individual or family participating in the housing choice voucher program to pay the difference between the monthly rent for the applicable unit and the amount of the monthly voucher if the amount of the voucher is less than the rent.

(g) A corporation that owns or leases to a public facility user a public facility used as a multifamily residential development shall publish on its Internet website information about the development's:

(1) compliance with the requirements of this section; and

(2) policies regarding tenant participation in the housing choice voucher program.

(h) The public facility user shall:

(1) affirmatively market available residential units directly to individuals and families participating in the housing choice voucher program; and

(2) notify local housing authorities of the multifamily residential development's acceptance of tenants in the housing choice voucher program.

(i) Each lease agreement for a residential unit in a multifamily residential development subject to this section must provide that:

(1) the landlord may not retaliate against the tenant or the tenant's guests by taking an action because the tenant established, attempted to establish, or participated in a tenant organization;

(2) the landlord may only choose to not renew the lease if the tenant:

(A) is in material noncompliance with the lease, including nonpayment of rent;

(B) committed one or more substantial violations of the lease;

(C) failed to provide required information on the income, composition, or eligibility of the tenant's household; or

(D) committed repeated minor violations of the lease that:

(i) disrupt the livability of the property;

(ii) adversely affect the health and safety of any person or the right to quiet enjoyment of the leased premises and related development facilities;

(iii) interfere with the management of the development; or

(iv) have an adverse financial effect on the development, including the failure of the tenant to pay rent in a timely manner; and

(3) to not renew the lease, the landlord must serve a written notice of proposed nonrenewal on the tenant not later than the 30th day before the effective date of nonrenewal.

(j) A tenant may not waive the protections provided by Subsection (i).

(k) Requirements under this subchapter relating to the reservation of income-restricted residential units or income restrictions applicable to tenants of a multifamily residential development subject to this subchapter must be documented in a land use restriction agreement or a similar restrictive instrument that:

(1) ensures that the applicable restrictions are in effect for not less than 10 years; and

(2) is recorded in the real property records of the county in which the development is located.

(l) An agreement or instrument recorded under Subsection (k) may be terminated if the development that is the subject of the agreement or instrument:

(1) is the subject of a foreclosure sale; or

(2) becomes ineligible for an exemption under Section 303.042(c) for a reason other than the failure to comply with restrictions recorded in the agreement or instrument.

Added by Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 8, eff. June 18, 2023.

Sec. 303.0426. AUDIT REQUIREMENTS FOR CERTAIN MULTIFAMILY RESIDENTIAL DEVELOPMENTS. (a) In this section:

(1) "Department" means the Texas Department of Housing and Community Affairs.

(2) "Developer" has the meaning assigned by Section 303.0425.

(3) "Public facility user" has the meaning assigned by Section 303.0425.

(b) A public facility user of a multifamily residential

development claiming an exemption under Section 303.042(c) and to which Section 303.0421 applies must annually submit to the department and the chief appraiser of the appraisal district in which the development is located an audit report for a compliance audit, prepared at the expense of the public facility user and conducted by an independent auditor or compliance expert with an established history of providing similar audits on housing compliance matters, to:

(1) determine whether the public facility user is in compliance with Sections 303.0421 and 303.0425; and

(2) identify the difference in the rent charged for income-restricted residential units and the estimated maximum market rents that could be charged for those units without the rent or income restrictions.

(c) Not later than the 60th day after the date of receipt of the audit conducted under Subsection (b), the department shall examine the audit report and publish a report summarizing the findings of the audit. The report must:

(1) be made available on the department's Internet website;

(2) be issued to a public facility user that has an interest in a development that is the subject of an audit, the comptroller, the applicable corporation, the governing body of the corporation's sponsor, and, if the corporation's sponsor is a housing authority, the elected officials who appointed the housing authority's governing board; and

(3) describe in detail the nature of any failure to comply with the requirements in Sections 303.0421 and 303.0425.

(d) If an audit report submitted under Subsection (b) indicates noncompliance with Sections 303.0421 and 303.0425, a public facility user:

(1) must be given:

(A) written notice from the department or appropriate appraisal district that:

(i) is provided not later than the 45th day after the date a report has been submitted under Subsection (b);

(ii) specifies the reasons for noncompliance;

(iii) contains at least one option for a corrective action to resolve the noncompliance; and

(iv) informs the public facility user that failure to resolve the noncompliance will result in the loss of an exemption

under Section 303.042(c);

(B) 60 days after the date notice is received under this subdivision, to resolve the matter that is the subject of the notice; and

(C) if a matter that is the subject of a notice provided under this subdivision is not resolved to the satisfaction of the department and the appropriate appraisal district during the period provided by Paragraph (B), a second notice that informs the public facility user of the loss of the exemption under Section 303.042(c) due to noncompliance with Sections 303.0421 and 303.0425; and

(2) is considered to be in compliance with Sections 303.0421 and 303.0425 if notice under Subdivision (1)(A) is not provided as specified by Subparagraph (i) of that paragraph.

(e) An exemption under Section 303.042(c) does not apply for a tax year in which a multifamily residential development that is owned by a public facility corporation created under this chapter is determined by the department based on an audit conducted under Subsection (b) to not be in compliance with the requirements of Section 303.0421 or 303.0425.

(f) The initial audit report required by Subsection (b) is due not later than June 1 of the year following the first anniversary of:

(1) the date of acquisition for an occupied multifamily residential development that is acquired by a corporation; or

(2) the date a new multifamily residential development first becomes occupied by one or more tenants.

(g) Subsequent audit reports following the issuance of the initial audit report under Subsection (f) are due not later than June 1 of each year.

(h) An independent auditor or compliance expert may not prepare an audit under Subsection (b) for more than three consecutive years for the same public facility user. After the third consecutive audit, the independent auditor or compliance expert may prepare an audit only after the second anniversary of the preparation of the third consecutive audit.

(i) The department shall adopt forms and reporting standards for the auditing process.

(j) An audit conducted under Subsection (b) is subject to disclosure under Chapter 552, Government Code, except that information containing tenant names, unit numbers, or other tenant

identifying information may be redacted.

Added by Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 8, eff. June 18, 2023.

For expiration of this section, see Subsection (e).

Sec. 303.0427. STUDY OF TAX EXEMPTIONS FOR MULTIFAMILY RESIDENTIAL DEVELOPMENTS OWNED BY PUBLIC FACILITY CORPORATIONS. (a) In this section, "board" means the Legislative Budget Board.

(b) The board shall conduct a study that assesses the long-term effects on the state's funding and revenue, including funding for public education, of ad valorem tax exemptions and sales and use tax exemptions for multifamily housing developments under Sections 303.042(c) and 303.0421(f).

(c) Not later than December 10, 2024, the board shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report on the results of the study. The report must include an estimate of:

(1) the funding or revenue that the state has lost as a result of the exemptions; and

(2) the potential increase in funding or revenue that would result from the repeal of the exemptions.

(d) The board may delegate any authority granted to the board under this section that the board determines is necessary to conduct the study under this section.

(e) This section expires January 1, 2025.

Added by Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 8, eff. June 18, 2023.

Sec. 303.043. NET EARNINGS. No part of a corporation's net earnings remaining after payment of its bonds and expenses in accomplishing its public purpose may benefit a person other than the sponsor of the corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.044. OPEN MEETINGS; OPEN RECORDS. A corporation and

its board of directors are considered to be governmental bodies under Chapters 551 and 552, Government Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.045. ALTERATION OF CORPORATION OR ACTIVITIES. The sponsor of a corporation, in its sole discretion, may alter the corporation's structure, organization, programs, or activities, consistent with the other provisions of this chapter and subject to limitations provided by law relating to the impairment of contracts entered into by the corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.046. EXAMINATION OF BOOKS AND RECORDS. A representative of the sponsor may examine all books and other records of the corporation at any time.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.047. WAIVER OF NOTICE. If a notice is required to be given to a director by this chapter, the articles of incorporation, or the bylaws, a written waiver of the notice signed by the person entitled to the notice, before or after the time that would have been stated in the notice, is equivalent to giving the notice.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

SUBCHAPTER C. BONDS

Sec. 303.071. AUTHORITY TO ISSUE. With the specific approval by resolution of the governing body of its sponsor, a corporation may issue or incur bonds, including refunding bonds, to finance, refinance, or provide one or more public facilities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.072. SOURCE OF PAYMENT. (a) Bonds of a corporation are payable from revenue derived from public facilities or sponsor obligations. Bonds issued under this chapter are not an obligation or a pledge of the faith and credit of this state, a sponsor or other political subdivision of this state, or an agency of this state.

(b) Each bond must contain on its face a statement that neither the faith and credit nor the taxing power of this state, the sponsor, except to the extent of the sponsor obligations, or another political subdivision of this state is pledged to the payment of the principal of or the interest on the bonds.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.073. TERMS. (a) A bond issued under this chapter must mature not later than 40 years after its date.

(b) Bonds issued under this chapter may be sold in any manner authorized by the corporation and permitted by Chapter 1201, Government Code.

(c) The interest rate on the bonds may be determined by a formula or index or in accordance with a contract or other arrangement for the periodic determination of interest rates.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.074. USE OF PROCEEDS. (a) The proceeds of the bonds of a corporation may be used to:

(1) finance, refinance, or provide one or more public facilities;

(2) maintain reserve funds determined by the sponsor and the corporation to be necessary and appropriate; or

(3) pay any costs relating to the issuance or incurrence of bonds by the corporation and the purchase of sponsor obligations by the corporation, including:

(A) the cost of:

(i) financing charges and interest on the bonds;

(ii) financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements;

(iii) an insurance policy;

(iv) printing, engraving, and reproduction

services;

(v) the initial and acceptance fees of a trustee, paying agent, bond registrar, or authenticating agent; and

(vi) a credit agreement; and

(B) reasonable amounts to reimburse the corporation for time spent by its agents or employees with respect to the issuance, incurrence, or purchase.

(b) The purchase by the corporation of a sponsor obligation does not extinguish the debt represented by the sponsor obligation.

(c) Pending a use described by Subsection (a), the proceeds may be invested in accordance with Section 303.041.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.075. REFUNDING OBLIGATIONS. (a) A corporation may issue or incur bonds to refund its outstanding bonds or sponsor obligations of its sponsor, including any redemption premium on them and interest accrued to the date of redemption.

(b) The provisions of this chapter generally applicable to bonds apply to the issuance, maturity, terms, and holder's rights in the refunding bonds and to the corporation's rights, duties, and obligations in relation to the refunding bonds.

(c) The corporation may issue the refunding bonds in exchange or substitution for outstanding bonds or sponsor obligations or may sell the refunding bonds and use the proceeds to pay or redeem outstanding bonds or sponsor obligations.

(d) A corporation may issue or incur bonds to refund outstanding debt obligations of a nonprofit corporation created by a housing authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.076. APPROVAL OF BONDS BY OTHER ENTITIES. Except as required by Chapter 1202, Government Code, and Section 303.071 a corporation may issue bonds, acquire sponsor obligations, and enter into credit agreements under this chapter without the consent or approval of any other subdivision or agency of this state.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.077. PERFECTION OF SECURITY INTEREST. (a) This section applies only to a security interest granted by:

(1) a corporation as security for its bonds;

(2) a credit agreement pledged as security for the obligations of the corporation on the bonds; or

(3) a credit agreement issued or entered into in connection with the bonds.

(b) Notwithstanding Section 9.109(d), Business & Commerce Code, and without any other filing, a security interest is perfected until payment of the bonds and credit agreement, with the effect specified by Chapter 9, Business & Commerce Code, when the bonds are registered by the comptroller and the proceedings authorizing the bonds are filed with the comptroller.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.104(a), eff. Sept. 1, 2001.

Sec. 303.078. PURCHASE OF SPONSOR OBLIGATIONS. A sponsor may sell its sponsor obligations to a corporation that the sponsor has created at public or private sale on the terms the governing body of the sponsor determines.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

SUBCHAPTER D. DISSOLUTION OF CORPORATION

Sec. 303.101. DISSOLUTION AUTHORIZED. After a corporation's bonds and other obligations are paid and discharged, or adequate provision is made for their payment and discharge, the sponsor's governing body by written resolution may authorize and direct the dissolution of the corporation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.102. ARTICLES OF DISSOLUTION. (a) Articles of

dissolution on behalf of the corporation must be executed by:

(1) the president or vice president and the secretary or assistant secretary; or

(2) the presiding officer of the sponsor's governing body and the secretary or clerk of that body.

(b) An officer signing the articles of dissolution must verify them.

(c) The articles of dissolution must include:

(1) the name of the corporation;

(2) the name and address of the sponsor;

(3) a statement that the dissolution was authorized by the sponsor's governing body;

(4) the date of the meeting at which the dissolution was authorized;

(5) a statement that all of the corporation's bonds and other obligations have been paid and discharged or that adequate provision has been made for their payment and discharge; and

(6) a statement that no suit is pending in a court against the corporation or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the corporation in each pending suit.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.103. CERTIFICATE OF DISSOLUTION. (a) The original and two copies of the articles of dissolution shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of dissolution comply with this chapter and have been authorized by the sponsor's governing body, the secretary of state, on payment of the fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the articles of dissolution and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two certificates of dissolution with a copy of the articles of dissolution attached to each.

(c) The secretary of state shall deliver a certificate of dissolution, with a copy of the articles of dissolution attached, to

the representative of the dissolved corporation and to the sponsor's governing body.

(d) The existence of the corporation ceases on the issuance of the certificate of dissolution, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of the corporation as provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.104. EXTENSION OF DURATION. If a corporation is dissolved by expiration of its duration, the corporation may amend its articles of incorporation to extend its duration before the third anniversary of the date of dissolution.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.105. VESTING PROPERTY IN SPONSORING ENTITY. The title to all funds and other property owned by a corporation when it dissolves automatically vests in the corporation's sponsor without further conveyance, transfer, or other act.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.106. RIGHTS, CLAIMS, AND LIABILITIES BEFORE DISSOLUTION. (a) The dissolution of a corporation by the expiration of its duration or by the issuance of a certificate of dissolution does not impair a remedy available to or against the corporation or a director or officer of the corporation for a right or claim existing or a liability incurred before the dissolution, if action or other proceeding on the remedy is begun before the third anniversary of the date of the dissolution.

(b) The action may be prosecuted or defended by the corporation in its corporate name.

(c) The directors and officers may take corporate or other action as appropriate to protect the remedy, right, or claim.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

SUBCHAPTER E. ADMINISTRATION BY SECRETARY OF STATE

Sec. 303.121. ADMINISTRATION OF CHAPTER. The secretary of state may act as reasonably necessary to efficiently administer this chapter and to perform the duties imposed by this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.122. FEES. (a) The secretary of state shall charge and collect fees for:

(1) filing articles of incorporation and issuing two certificates of incorporation;

(2) filing articles of amendment and issuing two certificates of amendment;

(3) filing a statement of change of address of registered office or change of registered agent or both;

(4) filing restated articles of incorporation and issuing two restated certificates of incorporation; and

(5) filing articles of dissolution.

(b) The fees are in the amounts charged by the secretary of state for the respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.123. NOTICE AND APPEAL OF DISAPPROVAL. (a) If the secretary of state does not approve a document required by this chapter to be approved by the secretary of state, the secretary of state, not later than the 10th day after the date the document is delivered to the secretary of state, shall give written notice of the disapproval to the person who delivered the document. The notice must state the reasons for the disapproval.

(b) The person may appeal the disapproval to a district court of Travis County by filing with the clerk of the court a petition including a copy of the disapproved document and a copy of the disapproval notice.

(c) The court shall try the matter de novo and either sustain the secretary of state's action or direct the secretary of state to take action the court considers proper.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

Sec. 303.124. DOCUMENTS AS PRIMA FACIE EVIDENCE. A court, public office, or official body shall receive the following documents as prima facie evidence of the facts, or the existence or nonexistence of the facts, stated in the documents:

(1) a certificate issued by the secretary of state under this chapter;

(2) a copy, certified by the secretary of state, of a document filed in the office of the secretary of state under this chapter; and

(3) a certificate of the secretary of state under the state seal as to the existence or nonexistence of a fact relating to a corporation that would not appear from a document or certificate under Subdivision (1) or (2).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 11, eff. Sept. 1, 1999.

CHAPTER 304. ENERGY AGGREGATION MEASURES FOR LOCAL GOVERNMENTS

Sec. 304.001. AGGREGATION BY POLITICAL SUBDIVISIONS. (a) In this chapter, "political subdivision" means a county, municipality, school district, hospital district, or any other political subdivision receiving electric service from an entity that has implemented customer choice, as defined in Section 31.002, Utilities Code.

(b) A political subdivision may join with another political subdivision or subdivisions to form a political subdivision corporation or corporations to act as an agent to negotiate the purchase of electricity, or to likewise aid or act on behalf of the political subdivisions for which the corporation is created, with respect to their own electricity use for their respective public facilities.

(c) The articles of incorporation and the bylaws of a political subdivision corporation must be approved by ordinance, resolution, or order adopted by the governing body of each political subdivision for which the corporation is created.

(d) A political subdivision corporation may negotiate on behalf of its incorporating political subdivisions for the purchase of

electricity, make contracts for the purchase of electricity, purchase electricity, and take any other action necessary to purchase electricity for use in the public facilities of the political subdivision or subdivisions represented by the political subdivision corporation. In this subsection, "electricity" means electric energy, capacity, energy services, ancillary services, or other electric services for retail or wholesale consumption by the political subdivisions.

(e) A political subdivision corporation may recover the expenses of the political subdivision corporation through the assessment of dues to the incorporating political subdivisions or through an aggregation fee charged per kilowatt hour, or a combination of both.

(f) A political subdivision corporation may appear on behalf of its incorporating political subdivisions before the Public Utility Commission of Texas, the Railroad Commission of Texas, the Texas Natural Resource Conservation Commission, any other governmental agency or regulatory authority, the Texas Legislature, and the courts.

(g) A political subdivision corporation has the powers of a corporation created and incorporated pursuant to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and such other powers as specified in Section 39.3545, Utilities Code.

(h) The provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) relating to powers, standards of conduct, and interests in contracts apply to the directors and officers of a political subdivision corporation.

(i) A member of the board of directors of a political subdivision corporation:

(1) is not a public official by virtue of that position; and

(2) unless otherwise ineligible, may be elected to serve as an official of a political subdivision or be employed by a political subdivision.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 42, eff. Sept. 1, 1999. Renumbered from Sec. 303.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(87), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 201, Sec. 58, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 680,

Sec. 2, eff. June 20, 2003.

Sec. 304.002. AGGREGATION BY POLITICAL SUBDIVISION FOR CITIZENS. (a) A political subdivision aggregator may negotiate for the purchase of electricity and energy services on behalf of the citizens of the political subdivision. The citizens must affirmatively request to be included in the aggregation services by the political subdivision aggregator.

(b) A political subdivision may contract with a third party or another aggregator to administer the aggregation of electricity and energy services purchased under Subsection (a).

(c) The political subdivision aggregator may use any mailing from the subdivision to invite participation by its citizens.

Added by Acts 1999, 76th Leg., ch. 405, Sec. 42, eff. Sept. 1, 1999. Renumbered from Sec. 303.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(87), eff. Sept. 1, 2001.

CHAPTER 305. MISCELLANEOUS PUBLIC BUILDING PROVISIONS AFFECTING MUNICIPALITIES AND COUNTIES

SUBCHAPTER A. JOINT CONSTRUCTION AND MAINTENANCE OF BUILDINGS BY CERTAIN COUNTIES AND MUNICIPALITIES

Sec. 305.001. JOINT CONSTRUCTION AND MAINTENANCE OF BUILDINGS BY CERTAIN COUNTIES AND MUNICIPALITIES. (a) This section applies only to a municipality with 2,000 or more inhabitants that is located more than 10 miles from the county seat of the county in which the municipality is located, and to the county in which the municipality is located.

(b) The county and the municipality may jointly own, construct, equip, enlarge, and maintain a building in the municipality, to be used by the justice of the peace, for county branch offices, for a county library, and for a city hall. The county and the municipality must hold in joint ownership the title to the land on which the building stands.

(c) The cost of construction of the building shall be paid from current income and funds on hand, as provided in the budgets or the tax levies of the county and municipality. Annual expenses for the operation and maintenance of the building shall be budgeted by the

county and the municipality.

(d) The county and the municipality shall specify in a contract between them:

(1) the amount or proportionate share of the cost of construction and equipment that each party shall contribute;

(2) the party with authority to award contracts, or the fact that awards are to be made by action of both parties;

(3) the account in which funds contributed under Subdivision (1) shall be deposited; and

(4) the procedure by which disbursements from that account shall be authorized.

(e) The contract may provide for:

(1) the appointment of a committee or board to operate and maintain the building;

(2) the delegation of operation and maintenance responsibility to either of the parties; or

(3) the division of annual operation and maintenance expenses between the parties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. SALE OF COLISEUM OR STADIUM BETWEEN MUNICIPALITY AND COUNTY

Sec. 305.011. MUNICIPALITY AND COUNTY COVERED BY SUBCHAPTER. This subchapter applies only to:

(1) any municipality; and

(2) a county that has a population of more than one million, has issued bonds for the purpose of constructing a coliseum or stadium within the county, and is operating the coliseum or stadium directly and not through another person under a lease or other agreement not subject to cancellation by the county in the event of a sale of the coliseum or stadium.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 66(a), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 99, eff. Sept. 1, 1991.

Sec. 305.012. SALE BY COUNTY. The commissioners court of the county may sell to a municipality a coliseum or stadium owned and

operated by it and related land and facilities if the court finds that:

(1) the coliseum or stadium is in need of expansion or other improvement; and

(2) the expansion or other improvement may be better accomplished, without resort to the tax funds and resources of the county, by the sale of the coliseum or stadium and related land and facilities to a municipality in which the coliseum or stadium is located.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 66(a), eff. Aug. 28, 1989.

Sec. 305.013. TERMS OF AGREEMENT. The sale agreement shall be on the terms, including the price, on which the county and municipality agree. However, the price may not be less than the amount of the outstanding bonds of the county issued for the purpose of constructing and equipping the coliseum or stadium.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 66(a), eff. Aug. 28, 1989.

Sec. 305.014. PAYMENTS BY MUNICIPALITY. (a) The purchase price may be paid by the municipality in cash and the funds for the payment may be obtained by the municipality in any manner permitted by law. In the alternative, the purchase price may be paid by the municipality in installments with interest at not lower than the same rates borne by the county's outstanding coliseum or stadium bonds. The funds with which to make the installments may be obtained by the municipality in any lawful manner, including one or more of the methods described by Subsections (b) and (c).

(b) The installments, by the sale agreement, may be made payable to the county out of revenues of the stadium or coliseum on dates coinciding with or earlier than the dates on which principal and interest on the county's outstanding coliseum or stadium bonds mature and come due. If this method of payment is selected, the payments due the county may be treated as a fixed operating expense of the stadium or coliseum payable solely from the revenues of the facilities. When received by the county, the funds shall be used for the purpose of retiring and paying interest on its outstanding coliseum or stadium bonds when due.

(c) The municipality and county may agree that the municipality shall issue a series of coliseum or stadium acquisition revenue bonds (or include such purpose as a part of a larger series of coliseum or stadium revenue bonds), which revenue bonds (or part of a larger series allocable to the purchase) shall be delivered to the county in payment of the purchase price for the stadium or coliseum. The bonds must be at least payable at the times and in the same amounts as and bear not lower than the same rates of interest borne by the county's outstanding coliseum or stadium bonds so as to provide funds from the revenue bonds to the county with which to pay the principal and interest when due on its outstanding bonds. The revenue bonds of the municipality may be on other terms as the municipality and county agree and may include any mortgage security authorized by Subchapter A, Chapter 1504, Government Code. On delivery of the bonds to the county, the county shall hold the bonds for the account of the interest and sinking fund created in connection with its outstanding coliseum or stadium bonds and shall use the payments when received to pay the principal and interest on its bonds when due.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 66(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.310, eff. Sept. 1, 2001.

Sec. 305.015. DELIVERY OF DEED. A sale under this subchapter must be effected by delivery of a deed, with a reservation of any vendor's liens on the facilities as may be appropriate in connection with the selected method for payment of the purchase price, from the county with the approval of the commissioners court and acceptance by the municipality in accordance with the sale agreement.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 66(a), eff. Aug. 28, 1989.

Sec. 305.016. MUNICIPAL POWERS. After the delivery of the deed, the municipality is the complete and total owner of the coliseum or stadium and the related land and facilities conveyed and may:

(1) exercise all the powers with respect to the property authorized and implied by Subchapter A, Chapter 1504, Government Code, and any other laws applicable to the municipality, for the

purpose of operating, maintaining, improving, or expanding the coliseum or stadium;

(2) in connection with the financing of the purchase, include any indoor or outdoor recreational facilities, properties, and entertainment attractions as may be considered by the municipality to be appropriate in connection with the coliseum or stadium; and

(3) lease or make operating agreements with respect to all or any part of the coliseum or stadium and related land and facilities for the periods and on the terms as the municipality may determine.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 66(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.311, eff. Sept. 1, 2001.

Sec. 305.017. SALE BY MUNICIPALITY. (a) If the governing body of the municipality affirmatively finds that the escalating burdens and costs of operating its stadium or coliseum acquired under this subchapter have caused continued ownership to cease to be economically feasible, resulting in increasing and unnecessary burdens on the taxpayers of the municipality, the governing body, after giving at least 14 days' notice of and holding a public hearing on the question, may sell the stadium or coliseum to another public or private entity.

(b) The sale shall be on the terms as the governing body may approve. The municipality has all power necessary and appropriate to complete the sale in accordance with the terms of the sale.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 66(a), eff. Aug. 28, 1989.

TITLE 10. PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES
SUBTITLE A. MUNICIPAL PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES
CHAPTER 306. PARK BOARD AND PARK BONDS: MUNICIPALITIES WITH POPULATION OF MORE THAN 40,000
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 306.001. ELIGIBLE MUNICIPALITIES. This chapter applies only to home-rule municipalities with a population of more than

40,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.002. DEFINITION. In this chapter, "board" means the park board of trustees.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.003. CUMULATIVE EFFECT WITH CHARTER PROVISIONS. This chapter is cumulative of home-rule charter provisions, but this chapter takes precedence in the event of a conflict.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. PARK BOARD OF TRUSTEES

Sec. 306.011. CREATION OF BOARD. The governing body of the municipality by ordinance may create a board to be known as the Park Board of Trustees for the purpose of acquiring, improving, equipping, maintaining, financing, or operating parks.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.012. COMPOSITION; TERM. (a) The board must be composed of nine trustees appointed by the governing body of the municipality. One of the trustees must be a member of the municipality's governing body.

(b) Trustees serve for staggered terms of two years. Terms expire on the anniversary of the date of appointment, except as provided by Subsection (d).

(c) In appointing the initial board, the governing body shall designate five trustees to serve for terms of two years and four trustees to serve for terms of one year.

(d) The governing body by ordinance may set a date other than the date of appointment as the date on which trustees' terms expire. If the board is in existence at the time the ordinance is adopted, the governing body must implement the new expiration date by reducing

the terms of trustees to conform to the new date. However, the expiration date may not be set on a date that would require the governing body to reduce terms by more than 60 days. An ordinance may not be adopted under this subsection more often than once in any five-year period.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 476, Sec. 1, eff. June 14, 1989.

Sec. 306.013. VACANCY. A vacancy on the board shall be filled by appointment of the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.014. COMPENSATION; EXPENSES. A trustee serves without compensation, but is entitled to be reimbursed for necessary expenses, including travel expenses, incurred in the performance of official duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.015. BOND; OATH. (a) Within 15 days after the date of appointment, a trustee must qualify for office by taking the official oath and filing a good and sufficient bond with the clerk or secretary of the municipality.

(b) The bond must be:

(1) in the amount prescribed by the governing body of the municipality, but not more than $5,000;

(2) payable to the order of the municipality;

(3) approved by the governing body; and

(4) conditioned that the trustee will faithfully perform the duties of trustee, including the proper handling of money that may come into the hands of the trustee in the trustee's capacity as a member of the board.

(c) The board shall pay the cost of the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.016. ORGANIZATION; MEETINGS. (a) The board shall annually elect from its membership a chairman, a vice-chairman, a secretary, and a treasurer, except that the first chairman shall be designated by the governing body of the municipality at the time of appointment of the first trustees. Officers serve in that capacity for a term of one year.

(b) The offices of secretary and treasurer may be held by the same person.

(c) The board shall hold regular meetings at times fixed by the board and may hold special meetings at other times as necessary. Special meetings may be called by the chairman or by any three trustees.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.017. RECORDS; AUDIT. (a) The board shall keep a complete record of all meetings and proceedings and shall maintain the records of the board in a secure manner. Records are the property of the board and are subject to inspection by the governing body of the municipality at reasonable times.

(b) The board may contract with the governing body to have the municipality keep and maintain its records.

(c) All financial transactions and records of the board shall be audited annually by independent auditors selected by the board.

(d) The preservation, microfilming, destruction, or other disposition of the records of the board is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 60, eff. Sept. 1, 1989.

Sec. 306.018. SEAL. The board shall adopt a seal, and the seal shall be placed on each lease, deed, or other instrument usually executed under seal. The seal may be placed on other instruments as required by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 306.031. MANAGEMENT OF PARKS AND FACILITIES. (a) The ordinance establishing the board shall designate the parks and facilities owned by the municipality to be placed under the management and control of the board. The municipality may from time to time by ordinance designate additional parks and facilities to be under the management and control of the board.

(b) The board may acquire by gift, devise, or purchase, or improve or enlarge:

(1) land and buildings to be used for public parks, playgrounds, or historical museums; or

(2) land on which are located:

(A) historic buildings, sites, or landmarks of statewide historical significance associated with historic events or personalities;

(B) prehistoric ruins, burial grounds, or archaeological, paleontological, or vertebrate paleontological sites; or

(C) sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological, or historical buildings, markers, monuments, or other historical features.

(c) Land described by Subsection (b) may be located inside or outside the boundaries of the municipality, but must be located inside the limits of the county in which the municipality is located.

(d) The board shall improve, manage, operate, maintain, equip, and finance:

(1) the parks and facilities placed by ordinance under its management and control; and

(2) additional parks and facilities acquired by gift, but not by the exercise of eminent domain.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.032. ADDITIONAL POWERS: COASTAL MUNICIPALITIES WITH POPULATION OF LESS THAN 80,000. (a) This section applies only to a home-rule municipality that has a population of less than 80,000 and borders on the Gulf of Mexico.

(b) In addition to other powers under this chapter, the

municipality or the board of the municipality may acquire by any method, including by gift, devise, lease, or purchase or may improve land or buildings, or may construct or enlarge buildings, to be used for public parks, playgrounds, or other facilities that serve the purpose of attracting visitors and tourists to the municipality. The municipality or board may lease the facilities, as lessor or lessee, on terms the municipality or board considers appropriate. The land may be located inside or outside the boundaries of the municipality, but must be located inside the limits of the county in which the municipality is located.

(c) In a municipality subject to this section, the facilities placed under the management and control of the board may include:

(1) parks;

(2) civic centers, civic center buildings, auditoriums, exhibition halls, or coliseums;

(3) marinas or cruise ship terminal facilities;

(4) hotels or motels;

(5) parking or storage facilities for motor vehicles or other conveyances;

(6) golf courses;

(7) trolley or trolley transportation systems; and

(8) other facilities considered advisable in connection with the preceding facilities that serve the purpose of attracting visitors and tourists to the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 67(a), eff. Aug. 28, 1989.

Sec. 306.033. LAND ACQUIRED IN NAME OF BOARD; SALE OF LAND. Any interest in land acquired by lease or otherwise and used in connection with a park under this chapter may be acquired in the name of the board. The interest may be sold only if:

(1) the sale is made by the titleholder in compliance with the municipal charter or in compliance with Subchapter A, Chapter 263; and

(2) contractual arrangements are made for the retirement of any indebtedness associated with the interest and issued under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.034. GIFTS. The board may accept and receive from any person, and may expend, gifts of money or other things of value for the purpose of performing any function or authority conferred on the board by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.035. PUBLIC FUNDS. The board may accept and receive from the municipality, and may expend, funds appropriated by the municipality for the purpose of improving, equipping, maintaining, operating, and promoting recreational and other facilities under the board's management and control.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.036. DEPOSITORIES. The money belonging to or under the control of the board shall be deposited and secured substantially in the manner prescribed by law for municipal funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.037. ADVERTISING. The board may advertise the municipality's recreational advantages for the purpose of attracting visitors, tourists, residents, and other users of the public facilities operated by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.038. CONTRACTS; OPERATING AGREEMENTS. (a) The board may enter into a contract, lease, or other agreement connected with, incident to, or in any manner affecting the financing, construction, equipping, maintaining, managing, or operating of facilities under its management and control. The board may execute and perform its powers and functions on land leased from others.

(b) The board may enter into a contract, lease, or agreement

with any person relating to the management, operation, or maintenance of any concession, facility, improvement, leasehold, land, or property of any other nature under the management and control of the board. Such a lease or agreement for the use of board properties by others may not exceed a term of 40 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.039. RULES. The board may adopt and enforce reasonable rules, including rules establishing a means of enforcing other rules, relating to the use of parks and facilities under the management and control of the board, including use by the public or by lessees, concessionaires, or other persons carrying on a business activity within the area of the parks and facilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.040. PERSONNEL. (a) The board may employ permanent or temporary personnel as it may require, including:

(1) secretaries, stenographers, bookkeepers, accountants, and technical experts;

(2) municipal park and recreational patrol officers and security officers employed as special park police officers, who must be licensed as peace officers by the Texas Commission on Law Enforcement;

(3) unarmed security guards; and

(4) parking attendants.

(b) The board shall determine the qualifications, duties, and compensation of its personnel.

(c) A special park police officer appointed and commissioned by the board under this section may make arrests or perform any other service or duty that may be performed by a sheriff, constable, or other peace officer in enforcing the laws of this state, the ordinances of the municipality, the ordinances of the county, and the rules of the board applicable to the use of municipal parks and facilities under the management and control of the board.

(d) The board may employ a manager for any park or facility and delegate to the manager full authority for the management and operation of the park or facility, subject only to the direction and

orders of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.55, eff. May 18, 2013.

Sec. 306.041. SUITS; LEGAL SERVICES. (a) The board may sue and be sued in its own name.

(b) The board may request from the municipal attorney the legal services it requires. In addition or in the alternative, the board may employ and compensate its own counsel and legal staff.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. FINANCING

Sec. 306.051. REVENUE BONDS. (a) The board may issue revenue bonds in the name of the board for the purpose of acquiring, constructing, improving, or enlarging land, buildings, facilities, or historically significant objects for any statutory purpose or to further a statutory power of the board.

(b) The bonds are payable solely from, and secured by a pledge of, the revenues of all or any designated part of the property or facilities under the management and control of the board or other revenues of the board including revenue from an occupancy tax on hotel rooms or from contracts, leases, or other agreements.

(c) The bonds may be issued in one or more installments or series by resolution of the board. Issuance of the bonds does not require an election.

(d) The bonds may be sold at any price and bear interest at any rate, except that the net effective interest rate may not exceed the maximum allowed by law. The bonds shall be sold by the board at public or private sale on the best terms obtainable.

(e) The bonds shall mature serially or otherwise not more than 40 years after the date of issuance.

(f) The bonds shall be executed by the chairman and secretary of the board in the manner provided for the execution of bonds issued by municipalities.

(g) The bonds shall be issued on terms and conditions in regard

to the security, manner, place, and time of payment, pledge of designated revenue, redemption before maturity, and issuance of additional parity or junior lien bonds as specified by the board in the resolution authorizing issuance of the bonds.

(h) Except as provided by this chapter, Chapter 1502, Government Code, applies to the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.312, eff. Sept. 1, 2001.

Sec. 306.052. BOND APPROVAL AND REGISTRATION. (a) The bonds may not be delivered until:

(1) a transcript of the proceedings authorizing their issuance has been submitted to the attorney general and approved by the attorney general as to legality; and

(2) the bonds have been registered by the comptroller of public accounts.

(b) If approved by the attorney general, the bonds are incontestable except for fraud.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.053. BONDS AS NEGOTIABLE INSTRUMENTS AND AUTHORIZED INVESTMENTS. (a) The bonds are negotiable instruments and investment securities governed by Chapter 8, Business & Commerce Code.

(b) The bonds are authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for the sinking funds of municipalities, counties, school districts, and other political corporations or subdivisions of the state.

(c) The bonds are eligible to secure the deposit of public funds of the state and of municipalities, counties, school districts, and other political corporations or subdivisions of the state, and are sufficient security for those deposits to the extent of their face value if accompanied by all unmatured appurtenant interest coupons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.054. REFUNDING BONDS. (a) The board may issue refunding bonds for the purpose of refunding one or more series or installments of outstanding original or refunding revenue bonds of the board.

(b) The refunding bonds must be issued, approved by the attorney general, and registered with the comptroller of public accounts in the manner and on the terms and conditions prescribed by this chapter for the issuance of original bonds.

(c) Refunding bonds must bear interest at rates not to exceed that provided by this chapter for original bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 306.055. TAX BONDS. (a) The board may not issue any bonds payable in whole or in part from ad valorem taxes.

(b) The board may receive and expend the proceeds of bonds that are payable from taxes and have been issued by the governing body of the municipality for park purposes after the bonds have been authorized at an election held in the manner required by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 307. USE OF TIDELANDS FOR PARK PURPOSES: GULF COAST MUNICIPALITIES WITH POPULATION OF 50,000 OR MORE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 307.001. ELIGIBLE MUNICIPALITIES. A municipality that borders on the Gulf of Mexico and has a population of 50,000 or more may use and occupy for park purposes gulf tidelands and adjacent water as provided by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 598, Sec. 1, eff. June 11, 2001.

Sec. 307.002. PROPERTY SUBJECT TO PARK USE. (a) The municipality may use and occupy for park purposes under this chapter:

(1) the tidelands between:

(A) the lines of ordinary high tide and ordinary low tide of the Gulf of Mexico; and

(B) extensions into the gulf, not more than 1,000 feet apart, of property lines of property that is above and fronting the tidelands and is owned or acquired by the municipality for park purposes or in or to which the municipality has or may acquire easements or other rights or privileges authorizing the municipality to use or occupy the property for park purposes; and

(2) the waters of the gulf adjacent to those tidelands, and the gulf bed below those waters, for a distance not to exceed 2,000 feet from the line of ordinary high tide.

(b) The municipality may declare abandoned for use as streets or highways and may take, use, and occupy for park purposes all or part of any land previously dedicated as a public street or highway that, because of submersion by the waters of the gulf or the building of a seawall, breakwater, or other structure, has become unfit for use as a street or highway, as determined and declared by the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 307.003. DEFINITION. In this chapter, "park land" means the land to which the municipality is granted use and occupancy for park purposes by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 307.004. RIGHTS UNAFFECTED. (a) This chapter does not authorize the taking of any private property or interest without compensation as required by the Texas Constitution.

(b) The State of Texas retains all of the oil, gas, and other mineral rights in and under the park land owned by the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 307.005. ADDITIONAL POWERS. The powers granted a municipality by this chapter are in addition to any other power conferred by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. MANAGEMENT AND DEVELOPMENT OF PARK LAND

Sec. 307.021. MANAGEMENT AND DEVELOPMENT OF PARK; PIER. (a) The governing body of a municipality is entitled to manage and control the park land for park purposes as provided by this chapter.

(b) The governing body may acquire, erect, construct, repair, enlarge, extend, improve, remodel, furnish, equip, operate, and maintain on the park land not more than one pier extending from the shore and other structures on the pier to provide facilities for recreation, amusement, comfort, assemblies, and lodging of the public.

(c) The pier may not:

(1) extend into the gulf for a distance of more than 2,000 feet from the line of ordinary high tide;

(2) extend into any part of a channel deepened or improved for commercial navigation or between the shoreline and any such channel; or

(3) extend into any arm, inlet, bay, or body of water other than the main body of the Gulf of Mexico.

(d) The governing body may determine the suitability of structures or facilities to be provided on the pier and may allow for the erection, provision, operation, and maintenance of any structure or facility for the convenience and comfort of the public, including one or more of the following:

(1) theaters;

(2) restaurants;

(3) accommodations for overnight and transient guests;

(4) convention halls;

(5) dance halls;

(6) aquariums;

(7) exhibition halls;

(8) stadiums for aquatic or other sports;

(9) concession and amusement device stands or platforms;

(10) fishing platforms;

(11) walkways;

(12) restrooms, toilet facilities, and resting places; and

(13) any other structure or facility reasonably adapted and suitable for park purposes on or in connection with the pier.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 307.022. ACQUISITION OF PRIVATE LANDS FOR PARK. The municipality may acquire by gift or purchase any interest in privately owned land within the limits of the municipality for use for park purposes in connection with the pier as the governing body of the municipality determines is necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 307.023. LEASES AND OPERATING AGREEMENTS. (a) The governing body of the municipality may enter into any contract in connection with the pier and its facilities on terms it considers to be in the best interest of the municipality, including:

(1) a lease under which all or part of the pier is leased to one or more other parties; and

(2) an operating contract under which all or part of the pier is to be operated by one or more other parties.

(b) A lease or operating contract must be authorized by ordinance or resolution adopted by the governing body and may cover any term of years not to exceed 40 years from the date of the lease or contract.

(c) All or part of the proceeds derived by the municipality from a lease or operating contract may be pledged to the payment of revenue bonds issued by the municipality under Subchapter C.

(d) A lease may authorize the lessee to acquire or construct improvements or facilities and may provide for the transfer of the improvements or facilities to the municipality at the termination of the lease.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. FINANCING

Sec. 307.041. TAX BONDS. (a) For the purpose of paying for all or part of the costs of acquiring privately owned land under Section 307.022 or the costs of constructing, furnishing, and equipping the pier or another structure connected with the pier, the municipality may borrow money, issue negotiable bonds, and levy and

collect ad valorem taxes sufficient to pay the interest on and provide a sinking fund for the bonds.

(b) The bonds shall be issued in accordance with Subtitles A and C, Title 9, Government Code. If bonds for the purposes described by this section have been authorized at a previous election in accordance with that chapter, the bonds may be issued without an additional election.

(c) The governing body of the municipality may use bond proceeds to pay part of the cost of erecting, constructing, furnishing, or equipping a structure or improvement authorized by this chapter that, together with the interest in the land occupied by or used in connection with the structure or improvement and the income from the structure or improvement, is to be or has been mortgaged and encumbered for the purpose of paying the additional costs of acquiring, erecting, constructing, furnishing, or equipping the structure or improvement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.313, eff. Sept. 1, 2001.

Sec. 307.042. REVENUE OBLIGATIONS. (a) For the purpose of obtaining funds for any purpose authorized by this chapter, the governing body of the municipality may from time to time issue bonds, notes, or warrants secured by a pledge of and payable from the net revenues derived from the operation of all or a designated part of the pier, structures, or improvements.

(b) As additional security for the bonds, notes, or warrants, the municipality may mortgage and encumber all or a designated part of:

(1) the pier, structures, or improvements;

(2) the furnishings and equipment; or

(3) the interest, easement, or other rights in land acquired or to be acquired and used in connection with the park land, including the right of use and occupancy of the park land and the title or rights to the tidelands, waters, or beds of the Gulf of Mexico acquired by the municipality.

(c) As additional security for the bonds, notes, or warrants, the municipality may, by the terms of a mortgage, grant to the purchaser under sale or foreclosure a franchise to operate the

properties purchased for a period of not more than 99 years after the purchase. If at the time of the sale or foreclosure there is a pier, structure, or improvement located in whole or in part on or over state-owned tideland, water, and bed of the Gulf of Mexico, during that period of 99 years the purchaser and the purchaser's heirs, successors, and assigns have the same right of use and occupancy to the state-owned tideland, water, and bed as is granted to the municipality under this chapter. On termination of that period or on cessation of use of the property for that purpose, the right of use and occupancy reverts to the municipality.

(d) The municipality may issue bonds, notes, and warrants and mortgage and encumber property under this section whether all or part of the cost is to be paid from:

(1) bonds, notes, and warrants issued under this section;

(2) bonds or warrants issued under Section 307.041 or 307.046;

(3) funds obtained from any other lawful source; or

(4) a combination of those sources.

(e) The municipality may sell the property described by Subsection (b) if no bonded indebtedness remains outstanding. If the municipality sells the property, the General Land Office may grant to the purchaser a lease of the state-owned tideland, water, and bed beneath the property or, if necessary, a larger area for a period of not more than 99 years after the purchase. The purchaser and the purchaser's heirs, successors, and assigns have the same right of use and occupancy to the state-owned tideland, water, and bed as is granted to the municipality under this chapter. On termination of that period or on cessation of use of the property for that purpose, the right of use and occupancy reverts to the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 598, Sec. 2, eff. June 11, 2001.

Sec. 307.043. ISSUANCE OF REVENUE OBLIGATIONS. (a) This section applies to the bonds and other obligations issued under Section 307.042.

(b) The bonds shall be made payable to the bearer or to the order of a named payee. The bonds are payable solely from the pledged revenues and, at the option of the municipality, secured by

the mortgage and franchise authorized by Section 307.042.

(c) The bonds shall bear interest at a rate not to exceed the maximum net effective interest rate provided by Chapter 1204, Government Code.

(d) The bonds must mature serially or otherwise not more than 40 years after the date of issuance. The governing body of the municipality shall determine:

(1) the denominations of the bonds;

(2) one or more places at which the bonds are payable as to interest or principal, which may be any bank inside or outside this state;

(3) the medium for payment of the bonds;

(4) the manner in which interest on the bonds is payable;

(5) any provisions for redemption of the bonds before maturity; and

(6) the form of the bonds.

(e) A bond or interest coupon bearing the signature or facsimile signature of an official of the municipality who was authorized to sign the bond or coupon at the time of the signature is not invalid because of the official's ceasing to hold the office before delivery of the bonds or not having held office on the date of the bonds.

(f) The governing body may provide for the bonds to be registrable as to principal and interest, or as to principal only, under the terms prescribed by the governing body. The bonds may be issued not subject to registration.

(g) The bonds may be executed in the manner set forth in the proceedings authorizing their issuance, and those proceedings may provide that the bonds or coupons, or both, shall be executed by facsimile signatures and that a facsimile seal of the municipality be printed on the bonds.

(h) In the proceedings authorizing the issuance of the bonds, the governing body may prohibit the further issuance of bonds payable from the pledged revenues or may reserve the right to issue additional bonds to be secured by a pledge of and payable from those net revenues on a parity with or subordinate to the lien and pledge in support of the bonds being issued, subject to any conditions as set forth in the proceedings.

(i) If a bond recites that it is secured partially or otherwise by a pledge of the proceeds of one or more contracts made between the

municipality and one or more other parties, including a lease or operating contract, a copy of the contracts and the proceedings authorizing the contracts shall be submitted to the attorney general. Approval of the bonds by the attorney general constitutes approval of the contracts, which makes the contracts incontestable except for forgery or fraud.

(j) A bond or other obligation is not a debt of the municipality, but is solely a charge on the income and properties encumbered. The obligation may not be considered in determining the power of the municipality to issue bonds for a purpose authorized by law. Each obligation must contain substantially the following clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

(k) The nature of the pledge of income and encumbrance of properties to secure the obligations and the control, management, and operation of the properties while any of the obligations remain unpaid is subject to and governed by Chapter 1502, Government Code, in the same manner as parks described in Section 1502.051. The issuance of the bonds does not require an election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.314, eff. Sept. 1, 2001.

Sec. 307.044. REFUNDING REVENUE BONDS. (a) The governing body of the municipality may provide by ordinance for the issuance of revenue refunding bonds for the purpose of refunding outstanding revenue bonds and any accrued interest, interest on past due principal, interest on past due interest, and court judgments pertaining to past due principal and interest.

(b) The issuance of refunding bonds, the maturity dates and other details of the bonds, the rights of bond holders, and the duties and powers of the municipality in regard to the bonds are governed by the provisions of this chapter relating to original revenue bonds to the extent those provisions can be made applicable.

(c) Refunding bonds may bear interest at a rate higher than that borne by the underlying bonds, but may not exceed the maximum net effective interest rate applicable to those bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 307.045. BONDS AS NEGOTIABLE INSTRUMENTS AND AUTHORIZED INVESTMENTS. (a) All bonds issued under this chapter are negotiable instruments under Chapter 3, Business & Commerce Code.

(b) The bonds are legal investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for the sinking funds of municipalities, counties, school districts, and other political corporations or political subdivisions of the state.

(c) The bonds are eligible to secure the deposit of any public funds of the state or of a municipality, county, school district, or other political corporation or political subdivision of the state. The bonds are sufficient security for the deposits to the extent of their face value when accompanied by all unmatured appurtenant interest coupons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 307.046. ADDITIONAL TAX; TIME WARRANTS. (a) In addition to the taxes authorized for the payment of principal of and interest on bonds, the governing body of the municipality may levy and collect an annual ad valorem tax for the purpose of:

(1) defraying in part the cost of acquiring, building, constructing, erecting, furnishing, or equipping the pier or a structure or improvement, or the cost of any interest in land in connection with the pier, structure, or improvement; or

(2) repairing, enlarging, extending, altering, or improving the pier or a structure or improvement.

(b) The governing body may issue interest-bearing time warrants, payable from the taxes authorized by this section, and expend the proceeds for the same purposes for which the taxes may be levied.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 308. MUNICIPAL BANDS

Sec. 308.001. DEFINITION. In this chapter, "band" means a band composed of musical instruments recognized in the standard

instrumentation established for use in United States Army bands.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 308.002. ESTABLISHMENT AND MAINTENANCE. (a) A municipality may establish and maintain a band and appropriate municipal funds for the maintenance and operation of the band as determined by the municipal governing body.

(b) The total appropriation for the band for a year may not exceed the equivalent of three-tenths of a cent for each one dollar of taxable value of property within the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 308.003. ELECTION. (a) On receipt of a written petition signed by a number of qualified property taxpaying voters equal to at least 10 percent of the total number of votes cast in the most recent municipal general election, the governing body of the municipality shall submit to the voters of the municipality the question of whether a band shall be established and maintained by the municipality.

(b) To the extent possible, the election shall be held in accordance with the law governing the municipality's general elections.

(c) If a majority of the votes received are in favor of the proposition to establish and maintain a band, the governing body shall establish and maintain a band.

(d) If the proposition is defeated, on receipt of a similar petition the municipality may hold subsequent elections for the purpose of determining whether to establish and maintain a band.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 308.004. ELECTION TO DISCONTINUE BAND. (a) On receipt of a petition meeting the requirements of Section 308.003, the governing body of the municipality shall hold an election to determine whether to discontinue a band previously established under this chapter. The election shall be conducted in the same manner as the election

establishing the band.

(b) If a majority of the votes received are in favor of the proposition to discontinue the band, the governing body shall discontinue the band and municipal maintenance of the band.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 308.005. FREQUENCY OF ELECTIONS. A municipality may not hold two elections under this chapter within a period of less than two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 308.006. ORDINANCES. The governing body of the municipality may adopt any ordinance or resolution to enable the municipality to maintain the band.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 308.007. CITIZEN COMMISSION. The governing body of the municipality shall appoint a nonpartisan citizen commission composed of three, four, or five members to negotiate contracts, formulate rules, and do all other things necessary or proper to establish, control, and maintain the band.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 308.008. EFFECT OF LAW ON OTHER POWERS. This chapter does not affect any special charter granted by the legislature, or any charter adopted by the voters, before August 23, 1925.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 309. ARTS AND ENTERTAINMENT DISTRICTS

Sec. 309.001. ARTS AND ENTERTAINMENT DISTRICTS. (a) A municipality with a population of more than one million may designate

a defined area in the municipality as an arts and entertainment district to develop a public and private collaboration that plays a vital role in the cultural life and development of the community in the district.

(b) The municipality shall develop the area in the district so that it contributes to the public through interpretive, educational, and recreational uses.

(c) The municipality may solicit grants and donations for the development of the district.

(d) The municipality may provide incentives to persons to develop the area in the district for public purposes.

(e) The municipality may provide tax breaks to persons in the district to develop the district for public purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 482 (H.B. 2514), Sec. 1, eff. June 16, 2007.

CHAPTER 315. MISCELLANEOUS PROVISIONS RELATING TO MUNICIPAL PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES

Sec. 315.001. MUNICIPAL PARKS OUTSIDE MUNICIPAL LIMITS: CHARGES; CUMULATIVE EFFECT WITH CHARTER PROVISIONS; LIABILITY. (a) The governing body of a municipality with a park or playground outside the municipal limits may fix and collect reasonable charges for use of the facilities by the public. All proceeds from the charges shall be used for the support, maintenance, and improvement of the municipal parks and playgrounds.

(b) The provisions of this title relating to the acquisition, operation, and maintenance of parks or playgrounds outside the municipal limits are cumulative of powers provided by a municipal charter, and the municipal charter may provide different powers in that regard.

(c) A municipality that acquires a park or playground outside the municipal limits is not liable for personal injuries resulting from or caused by any defective, unsound, or unsafe condition of the park or playground that results from or is caused by any negligence, want of skill, or lack of care of any governing board, officer, servant, employee, or other person with regard to the construction, management, conduct, or maintenance of the park or playground.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 315.002. ESTABLISHMENT OF MUNICIPAL STREETS THROUGH CERTAIN PARKS. (a) Unless approved by a majority of the qualified voters voting in a referendum on the question, a municipality may not establish or dedicate a thoroughfare, public street, or alley through property that:

(1) is dedicated or used for park purposes; and

(2) includes land owned by the state on which is situated one or more buildings in the construction of which the state has expended at least $50,000.

(b) A municipality may, without an election, maintain driveways through the land described by Subsection (a) if the driveways are for park purposes only and are not for use as general thoroughfares.

(c) This section does not apply to the campus of an educational institution or to the grounds of an eleemosynary institution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 315.003. IMPROVEMENT OF PUBLIC GROUNDS BY TYPE A GENERAL-LAW MUNICIPALITY. A Type A general-law municipality may provide for the enclosing of, and regulate and improve, all public grounds belonging to the municipality, and may direct and regulate the planting and preserving of ornaments and shade trees along streets and sidewalks and in public grounds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 315.004. SPECIAL ASSESSMENT TO PAY FOR PARKS: MUNICIPALITY WITH 12,000 OR MORE INHABITANTS. (a) A municipality with 12,000 or more inhabitants that condemns land for laying out, establishing, or enlarging a park, parkway, or pleasure ground may provide by ordinance that the cost of the land and improvements be paid for, wholly or partly to an extent not exceeding the special benefits received, by the property owners who own property in the vicinity of and are benefitted by the park, parkway, or pleasure ground.

(b) The municipality may fix liens against the benefitted property to the extent of the special benefits. Neither an

assessment nor a lien is effective against homestead property.

(c) The manner of assessing and collecting from the property owner is the same as provided by law in connection with the opening or widening of streets. Assessments may be made payable in not more than 16 installments, the last maturing in not more than 15 years, and may bear interest at a rate not exceeding eight percent a year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 315.005. MUNICIPAL LIBRARY IN TYPE A GENERAL-LAW MUNICIPALITY. A Type A general-law municipality may establish a free library in the municipality, adopt rules for the proper management of the library, and appropriate municipal revenues for the library's management or improvement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 315.006. LIABILITY FOR ADVERSELY AFFECTING HISTORIC STRUCTURE OR PROPERTY. (a) In this section, "historic structure or property" means a historic structure as defined by Section 442.001, Government Code, or a structure or property that is designated as historic by a political subdivision of the state, the state, or the federal government.

(b) A person is liable to a municipality for damages if the municipality has a demolition permit and a building permit procedure and the person:

(1) demolishes, causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a historic structure or property that is located in the municipality; and

(2) does not obtain the appropriate demolition or building permit or other form of written permission from the municipality before beginning to demolish, cause the demolition of, or otherwise adversely affect the structural, physical, or visual integrity of the structure or property.

(c) If the structural, physical, or visual integrity of the structure or property is adversely affected to the extent that it is not feasible to restore the structural, physical, or visual integrity substantially to its former level, the damages are equal to the cost

of constructing, using as many of the original materials as possible, a new structure or property that is a reasonable facsimile of the historic structure or property and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section. If it is feasible to restore the structural, physical, or visual integrity of the structure or property substantially to its former level, the damages are equal to the cost of the restoration, using as many of the original materials as possible, and the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section.

(d) Instead of accepting monetary damages, the municipality may permit the liable person to construct, using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic structure or property or to restore, using as many of the original materials as possible, the historic structure or property and to pay the cost of attorney's, architect's, and appraiser's fees and other costs related to the enforcement of this section.

(e) Damages recovered under this section shall be deposited in a special fund in the municipal treasury and may be used only to construct, using as many of the original materials as possible, a structure or property that is a reasonable facsimile of the demolished historic structure or property, to restore, using as many of the original materials as possible, the historic structure or property, or to restore another historic structure or property, as determined by the municipality.

(f) The construction of a facsimile structure or property under Subsection (d) or (e) must be undertaken at the location designated by the municipality, which may be the same location as that of the demolished historic structure or property.

(g) The municipality may make contracts and adopt ordinances as necessary to carry out this section.

(h) Each municipality shall file in the real property records of the county clerk's office of each county in which the municipality is located a verified written instrument listing each historic structure or property that is located in the municipality and county and is designated as historic by a political subdivision of the state by:

(1) the street address, if available in the municipal files;

(2) the legal description of the real property on which the structure or property is located; and

(3) the name of the owner of the real property, if the name is available in the municipal files.

(i) Subsections (a) through (g) of this section apply only to a historic structure or property on or after the date the instrument has been filed under Subsection (h) and indexed.

(j) A person is liable to the Texas Historical Commission for damages if:

(1) the person:

(A) demolishes, causes to be demolished, or otherwise adversely affects the structural, physical, or visual integrity of a historic structure or property that is located in the municipality; and

(B) does not obtain the appropriate demolition or building permit or other form of written permission from the municipality before beginning to demolish, cause the demolition of, or otherwise adversely affect the structural, physical, or visual integrity of the structure or property; and

(2) the commission determines that the municipality has not filed a civil action under Subsection (b) and has not taken appropriate action to carry out Subsection (d) before the 90th day after the date the action described by Subdivision (1)(A) occurs.

(k) If the Texas Historical Commission makes a determination under Subsection (j)(2), the commission may enforce this section, and the municipality may not act under this section. Damages recovered under this subsection shall be deposited in the Texas preservation trust fund account.

Added by Acts 1991, 72nd Leg., ch. 594, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 109, Sec. 22, eff. Aug. 30, 1995.

SUBTITLE B. COUNTY PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES

CHAPTER 316. COUNTY USE FEES

SUBCHAPTER A. GENERAL AUTHORITY

Sec. 316.001. AUTHORITY TO SET AND COLLECT FEES. Except as provided by Section 316.002, the commissioners court of a county may

set and collect fees:

(1) for the use of county recreational facilities, including facilities constructed or installed in a county park;

(2) for the use of recreational services provided by the county;

(3) for the rental or sale of recreational supplies by the county in conjunction with the provision of county recreational facilities or services; or

(4) for admission to a county park, if approved by a majority of the qualified voters of the county voting on the issue at a referendum election, which the commissioners court may order and hold for that purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 424, Sec. 1, eff. Aug. 28, 1989.

Sec. 316.002. EXCEPTIONS. This chapter does not authorize the commissioners court to set or collect a fee:

(1) for the use of a toilet or other restroom facility;

(2) for the sale of water for human consumption; or

(3) for the use of a team sports facility, including a baseball, football, basketball, volleyball, or soccer facility, by a sports team composed primarily of minors and sponsored and supported by a nonprofit organization.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 424, Sec. 2, eff. Aug. 28, 1989.

Sec. 316.003. AMOUNT OF FEES. (a) Except as provided by Subsection (b), the commissioners court may not set the fees in amounts that would produce more total revenue in a year than is necessary to pay the annual expense of providing all county recreational facilities and services.

(b) The commissioners court may set the fee for admission to a county park in an amount not to exceed the maximum amount provided by law for entrance to a state park.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 424, Sec. 3, eff. Aug. 28, 1989.

Sec. 316.004. SPECIAL CIRCUMSTANCES; WAIVER. The commissioners court may set and collect the fees in different amounts or may waive the fees in consideration of the following factors:

(1) the time of the day at which or the day of the week on which a facility or service is used;

(2) the size of a group wishing to use a facility or service;

(3) the special circumstances of certain classes of persons, including elderly persons and indigent persons; or

(4) other factors that the court considers to justify a different fee or the waiver of a fee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 316.005. DISPOSITION OF FEES. Fees collected under this chapter shall be deposited in the general fund of the county, and fees collected for admission to a county park may be used only to maintain or improve the county park the admission for which the fees were collected.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 424, Sec. 4, eff. Aug. 28, 1989.

SUBCHAPTER B. MISCELLANEOUS PROVISIONS

Sec. 316.021. MUSEUMS AND HISTORIC SITES IN POPULOUS COUNTIES. (a) The commissioners court of a county with a population of 2.2 million or more may charge and collect a fee from the general public for admission to a county-operated museum, historical site, historical building, or other similar building or site.

(b) The commissioners court by order may set the admission fee authorized by this section.

(c) Admission fees charged and collected under this section shall be placed in a county special fund to be used by the commissioners court for the payment of costs associated with the administration, maintenance, security, or staffing necessary to operate the building or site. The special fund may not be expended for purposes other than those associated with the building or site.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 93, 94, eff. Sept. 1, 2001.

Sec. 316.022. MUSEUMS AND HISTORIC SITES IN CERTAIN COUNTIES OPERATED BY NONPROFIT ORGANIZATIONS. (a) The commissioners court of a county with a population of 2.2 million or more may enter into a contract with a nonprofit organization authorizing the nonprofit organization to:

(1) manage and operate a museum, historical site, historical building, or similar building or site in the county; and

(2) charge and collect a fee from the general public for admission to the museum, historical site, historical building, or similar building or site if the nonprofit organization is not obligated to the county for capital improvements to the museum, historical site, historical building, or similar building or site.

(b) The commissioners court by order shall set the admission fee authorized by the contract.

(c) The funds generated by the admission fees are not required to be deposited in the county treasury.

(d) The nonprofit organization may spend funds generated by the admission fees for the payment of costs associated with the administration, maintenance, security, or staffing necessary to operate the building or site as approved by the commissioners court and provided by the contract. The funds may not be spent for purposes other than those associated with the building or site.

(e) In this section, "nonprofit organization" means a private, nonprofit, tax-exempt organization described by Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)), as amended.

Added by Acts 1997, 75th Leg., ch. 800, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 95, eff. Sept. 1, 2001.

CHAPTER 317. ABANDONMENT OF COUNTY PARKS

Sec. 317.001. HEARING. On the application of any person, the commissioners court of a county shall hold a hearing to determine if land dedicated as a county park is undesirable for park purposes and

if the park should be closed and abandoned. The commissioners court may conduct such a hearing on its own motion.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 317.002. NOTICE OF HEARING. (a) Notice of the time and place of the hearing shall be published in a newspaper published in the county. The notice must be in English and must be published once a week for three consecutive weeks before the hearing, with the first publication appearing before the 21st day before the date of the hearing.

(b) If no newspaper is published in the county, the commissioners court shall post the notice at the courthouse door. The notice must remain posted for at least 21 consecutive days preceding the date of the hearing.

(c) The notice must:

(1) contain a brief description of the land;

(2) state that at the hearing the commissioners court will determine whether the park should be closed and abandoned; and

(3) direct all interested persons desiring to protest the closing and abandonment to appear at the time and place of the hearing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 317.003. ACTION AT HEARING. (a) At the hearing, the commissioners court shall:

(1) hear evidence as to whether the land is desirable for park purposes; and

(2) make a full investigation as to whether the public interest would be better served by the retention and maintenance of the land as a county park or by the closing and abandonment of the park.

(b) After the hearing, the commissioners court shall enter in its minutes an order retaining the park or abandoning and closing the park, according to its determination as to the best public interest.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 317.004. EFFECT OF ABANDONMENT. (a) If the commissioners court orders that the park be closed and abandoned, the dedication of the land for that purpose expires, and the owner of the land holds fee simple title unencumbered by the dedication.

(b) To be vested with an unencumbered title under this section, the owner of the land must pay to the state and each political subdivision any taxes due on the land at the time the land was conveyed to the county for park purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 318. HISTORIC PRESERVATION BY COUNTIES

SUBCHAPTER A. COUNTY HISTORICAL COMMISSION

Sec. 318.001. DEFINITION. In this subchapter, "commission" means the county historical commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 318.002. ESTABLISHMENT. The commissioners court of a county may appoint a county historical commission for the purpose of initiating and conducting programs suggested by the commissioners court and the Texas Historical Commission for the preservation of the county's historic cultural resources. Programs suggested by the Texas Historical Commission must be consistent with the statewide preservation plan. In suggesting programs, the Texas Historical Commission shall consider the fiscal and human resources the county has to conduct the programs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.003. COMPOSITION; TERM. (a) The commission must be composed of at least seven residents of the county. Members of the commission must be individuals who broadly reflect the age, ethnic, and geographic diversity of the county.

(b) The members of the commission shall be appointed during the month of January of odd-numbered years and are appointed for a term of two years. The commissioners court shall fill a vacancy on the

commission for the remainder of the unexpired term.

(c) Each commission member must have an interest in historic preservation and an understanding of local history and resources.

(d) The commissioners court shall provide to the Texas Historical Commission a list of appointed members and the mailing address of each member.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.004. APPOINTMENT BY STATE. If the commissioners court fails to appoint a commission by April 1 of each odd-numbered year, the Texas Historical Commission may appoint the commission after 30 days' written notice to the commissioners court of its intention to do so. The county judge shall serve as commission chair during any interim period.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.005. MEETINGS. (a) The commission shall meet at least four times each year and may meet as often as the commission may determine under rules adopted by it for its own regulation.

(b) All meetings of the commission shall be conducted in accordance with the open meetings law, Chapter 551, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.006. RESOURCE IDENTIFICATION. (a) The commission should institute and carry out a continuing survey of the county to determine the existence of historic buildings and other historical and archeological sites, private archeological collections, important endangered properties, or other historical features within the county, and should report the data collected to the commissioners court and the Texas Historical Commission.

(b) The commission should develop and maintain its inventory of surveyed individual properties and districts in accordance with

standards established by the Texas Historical Commission.

(c) The commission should establish a system for the periodic review and assessment of the condition of designated properties in the county, including Recorded Texas Historic Landmarks, State Archeological Landmarks, and individual historic properties or districts listed in the National Register of Historic Places. The commission should report the results of the review and assessment to the Texas Historical Commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.007. EDUCATION. The commission should strive to create countywide awareness and appreciation of historic preservation and its benefits and uses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.008. REPORTS AND RECOMMENDATIONS. (a) In order to inform the commissioners court and the Texas Historical Commission of the commission's needs and programs, the commission shall make an annual report of its activities and recommendations to the commissioners court and to the Texas Historical Commission before the end of each calendar year. The commission may make as many other reports and recommendations as it sees fit.

(b) The commission shall make recommendations to the commissioners court and the Texas Historical Commission concerning the acquisition and designation of property, real or personal, that is of historical or archeological significance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.009. FISCAL AND HUMAN RESOURCES. (a) The commissioners court may pay the necessary expenses of the commission.

(b) The commissioners court may make agreements with governmental agencies or private organizations and may appropriate

funds from the general fund of the county for the purpose of:

(1) erecting historical markers and monuments;

(2) purchasing objects and collections of objects that are historically significant to the county;

(3) preparing, publishing, and disseminating, by sale or otherwise, a history of the county;

(4) hiring professional staff and consultants;

(5) providing matching funds for grants; and

(6) funding other programs or activities as suggested by the Texas Historical Commission and the commissioners court.

(c) The Texas Historical Commission may make grants available to the commission, subject to the budgetary authority and approval of the commissioners court, to carry out the purposes of this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.010. RESOURCE INTERPRETATION. (a) The commission shall review applications for Official Texas Historical Markers to determine the accuracy, appropriateness, and completeness of the application.

(b) The commission should establish a system for the periodic review, assessment, and maintenance of Official Texas Historical Markers in the county.

(c) The commission should work to promote historic and cultural sites in the county to develop and sustain heritage tourism.

(d) The commission may:

(1) operate and manage any museum owned or leased by the county;

(2) acquire artifacts and other museum collections in the name of the museum or the commission; and

(3) supervise any employees hired by the commissioners court to operate the museum.

(e) In operating museums, the commission shall adhere to professional standards in the care, collection, management, and interpretation of artifacts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.0101. PLANNING. The commission should work in partnership with other preservation entities in the county to prepare a plan for the preservation of the county's historic and cultural resources. The commission should use the Texas Historical Commission's statewide preservation plan for guidance.

Added by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.0102. LEADERSHIP AND TRAINING. (a) The Texas Historical Commission shall make orientation materials and training available to all county historical commissions.

(b) The commission should strive to be represented at informational or educational meetings sponsored by the Texas Historical Commission at least twice each year.

(c) The commission, with assistance from the Texas Historical Commission, shall carry out board and volunteer training.

Added by Acts 2001, 77th Leg., ch. 377, Sec. 1, eff. Sept. 1, 2001.

Sec. 318.012. HISTORIC SITE TAX EXEMPTION. (a) The commissioners court may establish a program under which the commission:

(1) receives and reviews applications that are filed with the county and that request a property tax exemption under Section 11.24, Tax Code; and

(2) recommends to the commissioners court whether to grant the exemption and, if the grant of the exemption is recommended, how much of the property's assessed value should be exempt from taxation.

(b) The commission may examine the property that is granted the exemption on recommendation of the commission and recommend to the commissioners court whether the exemption should be withdrawn because of changed circumstances involving the property.

(c) A person is entitled to appear before the commissioners court and state any objections to a recommendation made by the commission under this section regarding property owned by the person.

(d) The commissioners court may require a person whose property is granted the exemption to notify the commission of any plans the person may have to modernize the property or change it in any other manner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 318.013. CONTRACTS FOR LEASE OR MANAGEMENT OF LANDMARKS. (a) The commissioners court may, on recommendation of the commission or other interested persons, contract with a private person for the lease or management of any county-owned real estate or structure that is designated by the Texas Historical Commission as a Recorded Texas Historic Landmark considered worthy of preservation because of its history, culture, or architecture.

(b) The contract must be drawn in consultation with the commission and must specify the duties of the contracting party, including duties as to:

(1) maintenance and repairs;

(2) providing public access;

(3) restricting inappropriate commercial uses; and

(4) promoting preservation of the historic, cultural, or architectural aspects of the landmark.

(c) The contract may be handled in the same manner as a contract for professional services rendered to a county, such as a contract for architectural or engineering services, if the contract is with a nonprofit organization chartered in this state.

(d) The contract may be for a period of years as determined by the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. SUPPORT OF PRIVATE ORGANIZATIONS

Sec. 318.021. APPROPRIATIONS TO HISTORICAL FOUNDATIONS: CERTAIN COUNTIES. The commissioners court of a county with a population of 239,000 to 825,000 may appropriate money from the general fund of the county to a historical foundation or organization in the county for the purpose of purchasing, constructing, restoring, preserving, maintaining, or reconstructing historical landmarks, buildings, and furnishings that are of historical significance to the county. The foundation or organization must be incorporated under the law of this state as a nonprofit corporation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 100, eff. Sept. 1, 1991; Acts

1999, 76th Leg., ch. 972, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 96, eff. Sept. 1, 2001.

CHAPTER 319. HORTICULTURAL AND AGRICULTURAL EXHIBITS IN COUNTIES

Sec. 319.001. ANNUAL EXHIBITS. The commissioners court of a county may provide for annual exhibits of horticultural, agricultural, livestock, mineral, and other products that are of interest to the community.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 319.002. MUSEUMS, BUILDINGS, AND IMPROVEMENTS. To aid in the exhibition of products listed in Section 319.001, the commissioners court of a county may establish and maintain a museum, building, or other improvement in the county or at any other location in the United States at which a fair or exposition is being held.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 319.003. COOPERATIVE EFFORTS. (a) Two or more counties may cooperate with one another and a county may cooperate with local interests to construct the museum, building, or other improvement or to aid and share expenses in the exhibition of products listed in Section 319.001.

(b) A municipality, water improvement district, or water control and improvement district may cooperate with the commissioners court of a county for a purpose stated by Subsection (a) and may appropriate money to aid in the purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 319.004. CONTRACTS AND LEASES. (a) The commissioners court of a county may contract for the complete management of, and for the conducting, maintenance, use, and operation of, buildings, improvements, and exhibits authorized by this chapter or by Subchapter B, Chapter 1473, Government Code.

(b) The commissioners court may lease the buildings,

improvements, or exhibits.

(c) A contract or lease made under this section must be evidenced by an order of the commissioners court and entered in the minutes of the court.

(d) The commissioners court may permit the use of a building, improvement, or exhibit for any public purpose the court determines to be of benefit to the county and its residents.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 68, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1420, Sec. 8.315, eff. Sept. 1, 2001.

Sec. 319.005. REVENUE. The commissioners court of a county may use the net revenue derived from the use of a building, improvement, or exhibit authorized by this chapter or by Subchapter B, Chapter 1473, Government Code, for the management, operation, maintenance, development, improvement, or promotion of activities authorized under this chapter or under Subchapter B, Chapter 1473, Government Code, or for any other public purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 68, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1420, Sec. 8.316, eff. Sept. 1, 2001.

CHAPTER 320. PARK BOARD AND PARK BONDS: COUNTIES WITH POPULATION OF 5,000 OR MORE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 320.001. ELIGIBLE COUNTIES. The commissioners court of a county with a population of 5,000 or more by order may adopt this chapter for the purpose of acquiring, improving, equipping, maintaining, financing, and operating one or more public parks.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.002. DEFINITION. In this chapter, "board" means the board of park commissioners.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.003. CREATION OF PARKS BOARD. (a) The order adopting this chapter must specify whether the powers and duties provided by this chapter will be exercised and performed by the commissioners court or by a board of park commissioners to be created for that purpose.

(b) If a board is created, the commissioners court shall transfer to the board jurisdiction and control of the parks with respect to which the commissioners court adopted this chapter.

(c) The commissioners court may from time to time adopt this chapter with respect to one or more other parks and may appoint another board for those parks.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.004. EXERCISE OF POWERS BY COMMISSIONERS COURT. (a) If a board is not created, the commissioners court shall exercise the powers and perform the duties of the board, and references in this chapter to the board are considered to be references to the commissioners court.

(b) If creation of a board is declared by a court to be invalid, the commissioners court shall exercise the powers and perform the duties of the board under this chapter, and the prior acts of the board are considered to have been acts of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. BOARD OF PARK COMMISSIONERS

Sec. 320.021. COMPOSITION; TERM; QUALIFICATIONS. (a) The board must be composed of seven members appointed by the commissioners court.

(b) Members of the board serve for terms of two years, with the terms of three or four members expiring February 1 of each year. In appointing the initial board, the commissioners court shall designate three members to serve for a term expiring February 1 following their appointment and four members to serve for a term expiring the next February 1. The commissioners court shall make the necessary

appointments each January.

(c) A park commissioner must be a qualified voter of the county. A park commissioner may not be an officer or employee of the county or of a municipality in the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.022. VACANCY. A vacancy on the board shall be filled by appointment of the commissioners court for the unexpired term.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.023. OATH; BOND. (a) Within 15 days after the date a park commissioner is appointed, the commissioner must qualify by taking the official oath and by filing a good and sufficient bond with the county clerk.

(b) The bond must be:

(1) payable to the county judge;

(2) in an amount prescribed by the commissioners court of $5,000 or more; and

(3) conditioned that the commissioner will faithfully perform the duties of park commissioner, including the proper handling of all money that comes into the hands of the commissioner in the commissioner's capacity as park commissioner.

(c) The board shall pay the cost of the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.024. CERTIFICATE OF APPOINTMENT. A certificate of appointment executed by the county judge and attested by the county clerk shall be filed in the office of the county clerk. The certificate is conclusive evidence of the proper appointment of the park commissioner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.025. ORGANIZATION; MEETINGS. (a) The board shall

elect from its membership a chairman, vice-chairman, secretary, and treasurer, except that the first chairman of the board shall be designated by the commissioners court at the time of appointment of the first board. The member designated as the first chairman serves in that capacity until the expiration of the term to which the member was appointed or until the member vacates office during that term.

(b) The offices of secretary and treasurer may be held by the same person. If either the secretary or treasurer is absent or unavailable, the other may act for and perform the duties of the absent or unavailable officer.

(c) The board shall hold regular meetings at times to be fixed by the board and may hold special meetings as necessary.

(d) The board may act on the vote of a majority of a quorum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.026. EXPENSES. A park commissioner is entitled to compensation for all necessary expenses, including travel expenses, incurred in the performance of park commissioner duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.027. CONFLICT OF INTEREST. (a) A park commissioner or employee of the board may not acquire a direct or indirect pecuniary interest in any improvements, concessions, equipment, or business located in or related to a public park administered by the board.

(b) A park commissioner may not have a direct or indirect interest in a contract or proposed contract for construction, materials, or services in connection with or related to a park administered by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.028. SEAL. The board shall adopt a seal, and the seal shall be placed on each lease, deed, or other instrument usually executed under seal and on any other instrument as required by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 320.041. OPERATION AND MAINTENANCE OF PARKS. (a) Subject to the supervision of the commissioners court, the board shall maintain and operate the parks under its administration.

(b) The commissioners court may transfer to a previously created board jurisdiction and control of one or more additional parks if the transfer will not impair the contract rights of the holders of any outstanding revenue bonds.

(c) The board shall exercise its powers and perform its duties in respect to the additional parks in a manner that will not infringe on the rights of the holders of outstanding revenue bonds. The board may not operate or maintain the additional parks in a manner that will compete with or reduce the revenues of park properties or facilities the income of which has been pledged to the payment of outstanding revenue bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.042. PERSONNEL. (a) The board may employ permanent or temporary personnel, including secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents.

(b) The board shall determine the qualifications, duties, and compensation of employees.

(c) The board may employ a manager for one or more parks. The board may give the manager full authority for the management and operation of parks, subject to the direction and orders of the board and the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.043. DEPOSITORIES AND DISBURSEMENTS; AUDITS. (a) The commissioners court shall select one or more depositories for funds belonging to or under the control of the board other than bond proceeds or revenues and funds pledged to the payment of revenue bonds. The commissioners court shall select the depositories on the basis of competitive bids substantially in the manner provided by law

for county funds. The deposits must be secured substantially in the manner and amount prescribed by law for county funds.

(b) The county auditor shall maintain a current audit of the board's funds and shall prepare monthly and annual audit reports. The reports shall be filed with the commissioners court and with the board and must be available for public inspection at all reasonable times during office hours on business days.

(c) A warrant or check for the withdrawal of board funds must be signed by an officer of the board or, if designated by an order or resolution of the board, by a bonded employee of the board, and must be countersigned by the county auditor.

(d) The board may disburse funds under its control for any lawful purpose for the benefit of a park under its control.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.044. CONTRACTS. (a) The board may enter a contract, including a lease or other agreement, with any person as the board considers necessary or convenient to carry out the purposes and powers granted by this chapter, including a contract connected with, incident to, or affecting the acquisition, financing, construction, equipment, maintenance, or operation of a facility located or to be located in or pertaining to a park under its control.

(b) A contract may be on terms and conditions and for the length of time as agreed to by the board.

(c) To be effective, a contract must be:

(1) authorized by order or resolution of the board;

(2) executed by the board chairman or vice-chairman;

(3) attested by the secretary or treasurer; and

(4) approved by the commissioners court.

(d) A contract is binding on the board and the county without reference to any other law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.045. RULES. Subject to the approval of the commissioners court, the board may adopt reasonable rules concerning the use of any park administered by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.0455. RULES IN CERTAIN COUNTIES; PENALTY FOR VIOLATIONS. (a) This section applies only to a county with a population of:

(1) 2.8 million or more;

(2) 800,000 or more that is adjacent to a county with a population of 2.8 million or more; or

(3) more than 550,000 and less than 620,000.

(b) Except as provided by Subsection (b-1), and subject to the approval of the commissioners court, the board may adopt reasonable rules concerning the use of any park administered by the board.

(b-1) A board created for a county described by Subsection (a)(2) may not adopt rules relating to the use of fireworks.

(c) A person who violates a rule approved by the commissioners court under Subsection (b) is liable to the county for a civil penalty of not more than $100 per violation. A county may bring suit in a district court or county court to recover a civil penalty authorized by this subsection.

(d) Fines collected under Subsection (c) shall be deposited in the county's general fund.

Added by Acts 1999, 76th Leg., ch. 1059, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1274 (H.B. 510), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 912 (H.B. 72), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 912 (H.B. 72), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 164, eff. September 1, 2023.

Sec. 320.046. GRANTS. The board may accept grants and gratuities in any form and from any source approved by the board and the commissioners court, including the government of the United States, this state, a public or private corporation, or any other person, for the benefit of one or more parks administered by the

board or for the use of the board with respect to one or more of those parks.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.047. FINANCIAL STATEMENT; BUDGET. (a) On or immediately after January 1 of each year, the board shall prepare and file with the commissioners court a complete financial statement showing the financial status of the board and the properties, funds, and indebtedness under the administration of the board.

(b) The financial statement must show separately all information concerning:

(1) revenue bonds;

(2) the gross revenues from properties or facilities the net revenues of which are pledged to the payment of the revenue bonds and the expenditures from those gross revenues; and

(3) money appropriated by the county for operation and maintenance expenses.

(c) At the same time the financial statement is filed with the commissioners court, the board shall file with the county auditor:

(1) a copy of the financial statement; and

(2) a proposed budget for the board's needs for the current calendar year.

(d) In counties subject to Subchapter B, Chapter 111, the county auditor shall include the proposed budget as part of the county budget prepared and submitted to the commissioners court.

(e) The board shall operate the properties and facilities the net revenues of which are pledged to the payment of revenue bonds in a manner that will produce gross revenues sufficient to pay the operation and maintenance expenses and all payments required under the bond order, so that it is unnecessary to appropriate tax money for the operation and maintenance or for the revenue bond payments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.048. SUITS; LEGAL SERVICES. (a) The board may sue and be sued in its own name.

(b) The county attorney shall perform all necessary legal services for the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.049. RECORDS. The board shall keep a complete account of each board meeting and proceeding and shall maintain the records of the board in a secure manner. The records are the property of the board and are subject to inspection by the commissioners court and other county officers at all reasonable times during office hours on business days. The preservation, microfilming, destruction, or other disposition of the records of the board is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 61, eff. Sept. 1, 1989.

Sec. 320.050. SUPERVISION BY COMMISSIONERS COURT. (a) Notwithstanding any other provision of this chapter, the board is subject to the supervision of the commissioners court in the exercise of all rights, powers, and privileges and in the performance of all duties.

(b) The commissioners court must approve all contracts, leases, deeds, and other agreements made or granted by the board. An appropriate entry in the minutes of the commissioners court is sufficient evidence of approval.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. REVENUE BONDS

Sec. 320.071. ISSUANCE; PURPOSE. (a) For the purpose of providing funds to acquire, improve, equip, and repair any park administered by the board, or for the acquisition by construction or otherwise of any facilities to be used in or connected with or incident to such a park, the county may from time to time issue revenue bonds.

(b) The bonds are fully negotiable instruments under Chapter 3, Business & Commerce Code, and other laws of this state.

(c) Included among the properties, improvements, and facilities that may be acquired through the issuance of bonds are stadiums,

coliseums, auditoriums, athletic fields, pavilions, and buildings and grounds for assembly, including parking facilities or other improvements incident to those facilities.

(d) The bonds must be authorized by an order adopted by the commissioners court.

(e) The bonds must be issued in the name of the county, signed by the county judge, attested by the county clerk, and impressed with the seal of the commissioners court. The signature of the county judge or the signature of the county clerk may be a facsimile signature, and the seal of the commissioners court may be a facsimile seal, as provided in the bond order. The interest coupons attached to the bonds may also be executed by facsimile signatures of officers. A facsimile signature or facsimile seal may be lithographed, engraved, or printed.

(f) Revenue bonds must mature serially or otherwise in not more than 40 years from their date or dates and may be sold by the commissioners court at a price and under terms determined by the court to be the most advantageous reasonably obtainable. The net effective interest rate may not exceed the maximum rate provided by Chapter 1204, Government Code.

(g) The bond order shall prescribe the details as to the bonds. It may contain provisions for the calling of the bonds for redemption before the respective maturity dates at particular prices and times. Except for rights of redemption expressly reserved in the bond order and in the bonds, the bonds are not subject to redemption before their scheduled maturity date or dates without the consent of the holder or holders.

(h) The bonds may be made payable at times and places in or outside this state, as prescribed in the bond order. The bonds may be nonregistrable or may be made registrable as to principal, or both principal and interest, as provided in the bond order.

(i) The bonds may be issued in one or more installments and in one or more series.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.317, eff. Sept. 1, 2001.

Sec. 320.072. ELECTION. (a) Revenue bonds may not be issued unless authorized by a majority vote of the qualified voters of the

county voting at an election ordered for that purpose by the commissioners court.

(b) The election shall be ordered and held, and notice of the election shall be given, as provided by Chapter 1251, Government Code, except that the ballot shall be printed to provide for voting for or against the proposition: "The issuance of $_____ in park revenue bonds payable solely from revenues."

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.318, eff. Sept. 1, 2001.

Sec. 320.073. PLEDGE OF REVENUES. (a) Revenue bonds may be secured by a pledge of all or part of the net revenues from the operation of the parks or from the properties or facilities. The net revenues of any one or more contracts, operation contracts, leases, or agreements may be pledged as the sole or as additional security for the support of the bonds.

(b) Any revenue other than tax revenues, as specified in the bond order, may be pledged for the support of the bonds.

(c) In the bond order, the county may reserve the right to issue additional revenue bonds that will be on a parity with, or subordinate to, the revenue bonds then being issued.

(d) While any of the revenue bonds are outstanding, other obligations may not be issued against the pledged revenues except to the extent and in the manner expressly permitted in the bond order.

(e) In this subchapter, "net revenues" means the gross revenues from the operation of those properties and facilities of the parks, the net revenues of which properties and facilities are pledged for the support of the bonds, after deduction of the necessary and reasonable expenses of operation and maintenance of the properties and facilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.074. PROCEEDS. (a) The proceeds of the bonds shall be used under the restrictions provided in the bond order or in any separate escrow agreement, or both. The holders of the bonds and any trustee provided for in respect to the bonds have a lien on the proceeds until so applied.

(b) From the bond proceeds, there may be set aside:

(1) an amount for payment of interest on the bonds during construction and any additional period prescribed in the bond order; and

(2) an amount for the interest and sinking fund or for one or more separate reserve funds, as prescribed in the bond order, for the benefit of payment of the bonds.

(c) Proceeds remaining after the amounts are set aside under Subsection (b) shall be used for the payment of all expenses necessarily incurred in the sale, issuance, and delivery of the bonds and then for the purposes specified in the bond order and in the bonds.

(d) Any surplus remaining after accomplishment of the bond purposes shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, with any remainder being deposited to the credit of the interest and sinking fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.075. APPROVAL AND REGISTRATION. (a) After any bonds have been authorized by the commissioners court, the bonds and the records relating to their issuance shall be submitted to the attorney general for examination and approval. The attorney general shall approve the bonds if issued in accordance with this subchapter.

(b) After the bonds have been approved by the attorney general, they shall be registered by the comptroller of public accounts.

(c) When the bonds have been approved by the attorney general, registered by the comptroller, and delivered to the purchasers, they are incontestable.

(d) If the bonds recite that they are secured partially or otherwise by a pledge of the proceeds of or income from any contract, including a lease or other agreement, a copy of the contract and of the records of the proceedings authorizing the contract may be submitted to the attorney general with the bond record. In that event, the approval of the bonds by the attorney general constitutes an approval of the contract, and the contract is incontestable except for forgery or fraud.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.076. FEES AND REVENUE. (a) In this section, "fee" includes any fee, charge, or toll.

(b) The necessary and reasonable expenses of operation and maintenance of the properties and facilities whose revenues are pledged to the payment of the revenue bonds are a first lien on and charge against the income of the properties and facilities. While any of the bonds or interest remains outstanding, the board shall charge and require the payment of fees for the use of the properties and facilities. The board shall determine the rates of fees charged by it for the use, operation, or lease of the properties and facilities. Fees must be equal and uniform within classes and must be in amounts that yield revenues at all times at least sufficient to pay the expenses of operation and maintenance, and to provide for the payments prescribed in the bond order for the establishment and maintenance of the funds provided for in the bond order, including the interest and sinking fund and each reserve fund. The bond order may make additional covenants with respect to the bonds and the pledged revenues and the operation, maintenance, and upkeep of those properties and facilities, the income of which is pledged.

(c) The commissioners court shall ensure that the fees charged by the board are sufficient to comply with this subchapter. If for any reason the fees are not sufficient, the commissioners court shall impose additional fees so that the revenue will be sufficient.

(d) If any part of the security for the bonds consists of money to be received by the board as consideration for properties or facilities belonging to the county but operated by a person other than the board under a lease or operating contract, the board shall fix and authorize fees to be charged by the person for services rendered by the properties or facilities. The fees must be in amounts at least sufficient to assure receipt by the board of money that the board is committed to pay from that source for the benefit of the revenue bonds under the bond order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.077. REFUNDING BONDS. (a) The commissioners court may issue fully negotiable revenue bonds for the purpose of refunding bonds issued under this subchapter. An election is not necessary for the issuance of refunding bonds.

(b) The refunding bonds may be secured in the manner provided by this subchapter for securing original revenue bonds.

(c) Refunding bonds may be issued to refund bonds of more than one series or issue of outstanding revenue bonds and may combine pledges for the outstanding bonds for the security of the refunding bonds. Refunding bonds may be secured by other and additional revenues if the refunding bonds will not impair the contract rights of the holders or any of the outstanding bonds that are not to be refunded.

(d) Refunding bonds must be authorized by order of the commissioners court and shall be executed and mature as provided by this subchapter for original bonds.

(e) Refunding bonds must bear interest at the same or lower rate than that of the bonds refunded unless it is shown mathematically that a saving will result in the total amount of interest to be paid.

(f) Refunding bonds shall be approved by the attorney general as in the case of original bonds and shall be registered by the comptroller of public accounts on surrender and cancellation of the bonds to be refunded, unless the order authorizing issuance provides that the bonds are to be sold and the proceeds deposited in the place or places where the original bonds are payable. In that case, the refunding bonds may be issued in an amount sufficient to pay the interest on the original bonds to their option or maturity date, and the comptroller shall register them without the surrender and cancellation of the original bonds.

(g) Refunding bonds, after they have been approved by the attorney general and registered by the comptroller, are incontestable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.078. BONDS NOT STATE OR COUNTY DEBT. (a) The revenue bonds are not a debt of the county or of the state but are payable solely from the revenues pledged to their payment.

(b) The principal of or interest on revenue bonds or any refunding bonds is not a debt against the tax revenues of the county but is solely a charge on the pledged revenues.

(c) The revenue bonds or refunding bonds may not be considered

in determining the power of the county to incur obligations payable from taxation.

(d) Each bond must contain on its face substantially the following provision: "The holder hereof shall never have the right to demand payment of his obligation out of any funds raised or to be raised by taxation."

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 320.079. MISCELLANEOUS PROVISIONS. (a) This section applies to revenue bonds and refunding bonds issued under this subchapter.

(b) The bond order may require that the bonds contain a recital to the effect that they are issued pursuant to and in strict conformity with this subchapter. That recital is conclusive evidence of the validity of the bonds and the regularity of their issuance.

(c) Each bond is exempt from taxation by this state or by a municipal corporation, county, or other political subdivision or taxing district or entity of the state.

(d) If provided for in the bond order, an indenture securing the bonds may be entered into between, and executed by, the county and a corporate trustee, or entered into between, and executed by, the county and a corporate trustee and a corporate or individual cotrustee. A corporate trustee or corporate cotrustee must be a trust company or bank in or outside this state that has the powers of a trust company.

(e) The bond order or any indenture may:

(1) contain provisions for protecting or enforcing the rights or remedies of the bondholders as the commissioners court considers reasonable and proper and not in violation of law, including covenants setting forth the duties of the county and the board in reference to maintenance, operation, repair, and insurance (including insurance against loss of use and occupancy) of the properties or facilities whose revenues are pledged, and the custody, safeguarding, and application of the bond proceeds and of the revenues to be received from the operation of the properties or facilities;

(2) provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, reserve fund or funds,

and other funds; and

(3) include additional covenants with respect to the bonds and the pledged revenues and the operation, maintenance, and upkeep of those properties and facilities the income of which is pledged, as the commissioners court considers appropriate.

(f) Any bank or trust company in this state may act as depository for the proceeds obtained from the sale of the bonds. The depository shall be selected by the commissioners court without the necessity of seeking competitive bids and without reference to any other statute. The money deposited must be secured in the manner and amount as prescribed by the commissioners court or by the bond order, indenture, or separate escrow agreement.

(g) The bond order shall provide for and designate the depository or depositories of the interest and sinking fund, reserve fund or funds, and any other funds established by the order. The depository or depositories may be any bank or trust company in or outside this state and may be selected and designated without the necessity of seeking competitive bids and without reference to any other statute. The money in those funds must be secured in the manner and to the extent as provided in the bond order, and the bond order may require that the money be secured by direct obligations of the United States or obligations unconditionally guaranteed by the United States.

(h) The bond order or indenture may:

(1) set forth the rights and remedies of the bondholders and of the trustee, and may, subject to Subsection (i), restrict the individual rights of action of the bondholders; and

(2) set forth and contain other provisions and covenants as considered reasonable and proper for the security of the bondholders, including:

(A) provisions prescribing occurrences that constitute events of default and the terms and conditions on which any or all of the bonds become due, or may be declared to be due, before maturity; and

(B) provisions as to the rights, liabilities, powers, and duties arising from the breach by the board or by the commissioners court of any of its duties or obligations.

(i) Any holders of the bonds or of interest coupons originally attached to the bonds may either at law or in equity, by suit, action, mandamus, or other proceeding, enforce and compel performance

of all duties required by this subchapter to be performed by the board or by the commissioners court, including:

(1) the making and collection of reasonable and sufficient fees, charges, and tolls for the use of the properties and facilities the income of which is pledged;

(2) the segregation of the income and revenues of such properties and facilities; and

(3) the application of the income and revenues pursuant to the bond order, indenture, and this subchapter.

(j) The bond order or the indenture may contain provisions to the effect that while any bonds are outstanding either as to principal or interest, no free service may be rendered by any of the properties or facilities the income of which is pledged.

(k) The bonds are negotiable instruments under Chapter 3, Business & Commerce Code, and are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of municipalities, counties, school districts, and other political subdivisions or corporations of this state. The bonds are eligible to secure the deposit of public funds of this state and of a municipality, county, school district, or other political subdivision or corporation of this state. The bonds are lawful and sufficient security for those deposits to the extent of their face value when accompanied by all unmatured appurtenant coupons.

(l) The bond order, the indenture, and this subchapter constitute an irrevocable contract between the board and commissioners court and the holders of the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 321. ISLAND PARKS, BEACH PARKS, AND PUBLIC BEACHES OF COASTAL COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 321.001. ELIGIBLE COUNTIES. (a) A county that borders on the Gulf of Mexico and that has within its boundaries one or more islands or parts of islands suitable for park purposes may act under this chapter for the purpose of improving, equipping, maintaining, financing, and operating one or more parks on those islands.

(b) The suitability of an island or part of an island for park purposes is conclusively established when the commissioners court of the county by order makes a finding that the island or part of an island is suitable for park purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.002. DEFINITION. In this chapter, "board" means the board of park commissioners.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.003. CREATION OF PARKS BOARD. The commissioners court by order may create a board to be known as the Board of Park Commissioners.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.004. EXERCISE OF POWERS BY COMMISSIONERS COURT. (a) If the commissioners court has not attempted to create a board, or if the creation of a board is declared by a court to be invalid, the commissioners court may exercise the powers and perform the duties of the board under this chapter. The commissioners court may ratify the actions taken by a board before the declaration of the board's invalidity.

(b) This section does not authorize the commissioners court to limit or restrict the board from exercising the powers conferred on the board by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. BOARD OF PARK COMMISSIONERS

Sec. 321.021. COMPOSITION; TERM; QUALIFICATIONS. (a) The board must be composed of seven commissioners appointed by the county judge with the approval of the commissioners court.

(b) A commissioner serves for a term of two years from the date of appointment.

(c) A park commissioner may not be an officer or employee of the county or of a municipality in the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.022. VACANCY. A vacancy on the board shall be filled by appointment of the county judge for the unexpired term.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.023. OATH; BOND. (a) Within 15 days after the date a park commissioner is appointed, the commissioner must qualify by taking the official oath and by filing a good and sufficient bond with the county clerk.

(b) The bond must be:

(1) payable to the order of the county judge;

(2) approved by the commissioners court;

(3) in an amount prescribed by the commissioners court of $5,000 or more; and

(4) conditioned that the commissioner will faithfully perform the duties of park commissioner, including the proper handling of money that comes into the hands of the commissioner in the commissioner's capacity as park commissioner.

(c) The board shall pay the cost of the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.024. CERTIFICATE OF APPOINTMENT. A certificate of appointment executed by the county judge and attested by the county clerk shall be filed with the county clerk. The certificate is conclusive evidence of the proper appointment of the commissioner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.025. ORGANIZATION; MEETINGS. (a) The board shall elect from its membership a chairman, vice-chairman, secretary, and treasurer, except that the first chairman shall be designated by the

county judge at the time of appointment of the first board. The member designated as the first chairman serves in that capacity until the expiration of the term to which the member was appointed or until the member vacates office during that term.

(b) The offices of secretary and treasurer may be held by the same person. If either the secretary or treasurer is absent or unavailable, the other may act for and perform the duties of the absent or unavailable officer.

(c) The board shall hold regular meetings at times to be fixed by the board and may hold special meetings as necessary.

(d) The board may act on the majority vote of a quorum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.026. EXPENSES. A park commissioner's approved compensation and expenses shall be paid in due time by the board's check or warrant.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.027. CONFLICT OF INTEREST. (a) A park commissioner or employee of the board may not acquire a direct or indirect pecuniary interest in any improvements, concessions, equipment, or business located in a park administered by the board.

(b) A park commissioner or employee of the board may not have a direct or indirect interest in any contract or proposed contract for construction, materials, or services in connection with or related to a park administered by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.028. SEAL. The board shall adopt a seal, and the seal shall be placed on each lease, deed, or other instrument usually executed under seal and on other instruments as required by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 321.041. PERSONNEL. (a) The board may employ permanent or temporary personnel, including secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents.

(b) The board shall determine the qualifications, duties, and compensation of employees.

(c) The board may employ a manager for one or more parks and give the manager full authority for the management and operation of the parks subject only to the direction and orders of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.042. DEPOSITORIES AND DISBURSEMENTS. (a) Money belonging to or under control of the board shall be deposited and secured in substantially the manner prescribed by law for county funds.

(b) The board shall select one or more depositories.

(c) A warrant or check for the withdrawal of money must be signed by an officer of the board and one other commissioner or by two bonded employees of the board. The board by resolution entered in its minutes shall designate any employees authorized to sign a check or warrant.

(d) The board may disburse funds under its control for any lawful purpose for the benefit of a park under its control.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.043. CONTRACTS. (a) The board may without advertisement enter into a contract, including a lease or other agreement, with any person as the board considers necessary or convenient to carry out the purposes and powers granted by this chapter, including a contract connected with, incident to, or affecting the acquisition, financing, construction, equipment, maintenance, or operation of a facility located or to be located in or pertaining to a park under its control.

(b) To be effective, a contract must be:

(1) approved by resolution of the board;

(2) executed by the chairman or vice-chairman; and

(3) attested by the secretary or treasurer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.044. LEASES AND OPERATING AGREEMENTS. (a) Concurrent with or at any time before the authorization for issuance of bonds secured by a pledge of the revenues of a designated facility of a park, the board may enter into a contract, including a lease, with any person for the operation of the facility. The contract must specify the consideration or specify the method of determining the consideration. The contract may be for a period determined by the board.

(b) The revenues from the contract may be pledged in the resolution or indenture as security or additional security for the revenue bonds. If the contract is concurrent with the authorization for issuance of the bonds, the revenues constitute the sole or substantially all the security for the bonds.

(c) The contract must require that the rentals, tolls, and charges to be enforced by the lessee for the use or services provided by the facility be sufficient to yield at least in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of the facility, plus an amount that will assure income to the board to permit and assure payments into the funds and accounts in the manner, at the times, and in the amounts specified in the resolution.

(d) The contract may provide that the rentals, tolls, and charges may be sufficient to yield a reasonable profit to the other party to the contract, but to be realized only after payment in full of the obligation to the board.

(e) The contract may provide for payment of the annual consideration or rental in approximately equal monthly installments, and that failure to pay any required payment when due may be declared to be a breach of contract entitling the board under rules prescribed in the contract to declare the contract forfeited and to take over the operation and maintenance of the facility. That remedy is cumulative of all others.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.045. RULES. The board may adopt reasonable rules

applicable to tenants, concessioners, residents, and users of park facilities regulating hunting, fishing, boating, camping, and all other recreational and business privileges in the parks under the control of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.046. GRANTS. The board may accept grants and gratuities in any form from any source approved by the board, including the government of the United States, this state, a public or private corporation, or any other person, for the purpose of promoting, establishing, or accomplishing the objectives, purposes, and powers provided by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.047. FINANCIAL STATEMENT; BUDGET. (a) On or before July 1 of each year, the board shall prepare and file with the county judge a complete financial statement showing the financial status of the board and the board's properties, funds, and indebtedness.

(b) The financial statement must be in two parts or prepared to show separately all information concerning:

(1) revenue bonds, the pledged income from facilities, and expenditures of that revenue; and

(2) money appropriated to the board by the commissioners court and realized from taxation and money realized from the sale of tax-supported bonds previously issued by the commissioners court.

(c) At the same time the financial statement is filed, the board shall file with the county judge a proposed budget of its needs for the next calendar year. To the extent that the board is able to finance its operations and to maintain its property from the revenues of facilities the income of which is pledged to the revenue bonds, no approval or authorization of the commissioners court is necessary. However, the budget may involve only anticipated supplemental expenditures.

(d) The county judge shall incorporate the requested budget in the county budget to be prepared each year. As part of the county's tentative budget, the items certified by the board are subject to the procedure for county budget prescribed by Chapter 111.

(e) The board shall operate the parks under its control the revenues of which are pledged to the payment of bonds in a manner that will produce gross revenues sufficient to pay the operation and maintenance expenses of the facilities without seeking from the commissioners court the appropriation of additional money for those expenses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.048. SUITS; LEGAL SERVICES. (a) The board may sue and be sued in its own name.

(b) The board may request from the county attorney the legal services it requires. In addition or in the alternative, the board may employ and compensate its own legal staff.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.049. RECORDS. The board shall keep a complete account of each board meeting and proceeding and shall maintain the records of the board in a secure manner. Those records are the property of the board and are subject to inspection by the commissioners court at all reasonable times during office hours on business days. The preservation, microfilming, destruction, or other disposition of the records of the board is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 62, eff. Sept. 1, 1989.

SUBCHAPTER D. REVENUE BONDS

Sec. 321.071. ISSUANCE; PURPOSE. (a) For the purpose of providing funds for the acquisition of permanent improvements to the island parks, or for the acquisition or construction of facilities to be used in or connected with or incident to the parks, the county may issue revenue bonds from time to time.

(b) The bonds are fully negotiable instruments under Chapter 3, Business & Commerce Code, and other laws of this state.

(c) Included among the permanent improvements and facilities that may be acquired through the issuance of bonds are bath houses; bathing beaches; swimming pools; athletic fields; golf courses; stadiums; coliseums; auditoriums; pavilions; buildings and grounds for assembly, entertainment, health, and recreation; restaurants and refreshment places; yacht basins; and landing strips and airports.

(d) The bonds must be authorized by order of the commissioners court passed on its own motion. The order of the commissioners court may make covenants on behalf of the county as the court considers necessary and advisable, and the court shall perform or cause to be performed any covenants so made.

(e) The bonds must be issued in the name of the county, signed by the county judge, attested by the county clerk, and impressed with the seal of the commissioners court.

(f) The bonds must mature serially or otherwise in not more than 40 years and may be sold at a price and under terms determined by the county to be the most advantageous reasonably obtainable. The net effective interest rate may not exceed the maximum rate provided by Chapter 1204, Government Code.

(g) The order authorizing the issuance of the bonds shall prescribe the details as to the bonds. It may contain provisions for the calling of the bonds for redemption before their respective maturity dates at particular prices and times. Except for rights of redemption expressly reserved in the order and the bonds, the bonds are not subject to redemption before their scheduled maturity dates.

(h) The bonds may be made payable at times and places inside or outside this state as prescribed in the order.

(i) The bonds may be made registrable as to principal or both principal and interest.

(j) The bonds may be issued in one or more series.

(k) An election is not required for issuance of the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.319, eff. Sept. 1, 2001.

Sec. 321.072. PLEDGE OF REVENUES. (a) Revenue bonds may be secured by a pledge of all or part of the net revenues from the operation of one or more parks under control of the board, from the

facilities of or incident to the parks, or from the parks and the facilities.

(b) The net revenues of one or more contracts, operating contracts, leases, or agreements may be pledged as the sole security or as additional security for the support of the bonds.

(c) Any revenue other than that described by Subsection (a) or (b) may be pledged as the principal or as additional security for the bonds, as specified in the order.

(d) The order authorizing issuance of bonds may reserve the right, under conditions specified in the order, to issue additional bonds that will be on a parity with or subordinate to the bonds then being issued.

(e) While any bonds are outstanding, no additional bonds of equal dignity may be issued against the pledged revenues except to the extent and in the manner expressly permitted in the order.

(f) In this chapter, "net revenues" means the gross revenues from the operation of the park or parks and the facilities, leases, agreements, or contracts incident to the park or parks, the revenues of which have been pledged, after deduction of the necessary expenses as provided by Section 321.075.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.073. PROCEEDS. (a) The proceeds of the bonds shall be used under the restrictions provided in the order. The holders of the bonds and any trustee provided for in respect to the bonds have a lien on the proceeds until so applied, but neither the depository of those funds nor the trustee is obligated to see to the proper application of the funds except as expressly provided in the order or the indenture securing the bonds.

(b) From the bond proceeds there may be set aside:

(1) an amount for payment of interest on the bonds estimated to accrue during the construction period and any additional period prescribed in the order; and

(2) an amount for the interest and sinking fund or another reserve fund provided for in the order.

(c) Proceeds remaining after the amounts are set aside under Subsection (b) shall be used for the payment of all expenses necessarily incurred in the issuance and sale of the bonds and then

for the purposes specified in the bond order and in this chapter.

(d) Any surplus remaining after accomplishment of the bond purposes shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices, with any remainder being deposited to the credit of the fund established in the order for debt service.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.074. APPROVAL AND REGISTRATION. (a) Before the bonds are delivered to the purchaser, the bonds and the records pertaining to the bonds must be submitted to the attorney general for examination and approval. The attorney general shall approve the bonds if issued in accordance with this subchapter.

(b) Bonds approved by the attorney general and registered with the comptroller of public accounts are incontestable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.075. FEES AND REVENUE. (a) In this section, "fee" includes any fee, charge, or toll.

(b) The expense of operation and maintenance of facilities the revenues of which are pledged to the payment of bonds are a first lien on and charge against the income of the facilities. While any of the bonds or interest remains outstanding, the board shall charge or require the payment of fees for the use of the facilities. The board shall determine the rate of fees charged by it for the use, operation, or lease of the facilities. Fees must be equal and uniform within the classes defined by the board and must be in amounts that will yield revenues at least sufficient to pay the expenses of operation and maintenance and to make the payment prescribed in the order for debt service. "Debt service," as defined in the order, may include the payment of principal and interest as each matures, the establishment and maintenance of funds for extensions and improvements, an operating reserve, and an interest and sinking fund reserve.

(c) The board shall fix the fees in amounts that are sufficient to comply with the covenants in the order and with this chapter.

(d) If part of the security for the bonds consists of money to

be received by the board as consideration for facilities belonging to the board but operated by a person other than the board under a lease or operating contract, the board shall fix the fees to be charged by the person for use of and services rendered by the facilities. The fees must be in amounts at least sufficient to assure receipt by the board of money that the board is committed to pay from that source for debt service under the terms of the order.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.076. REFUNDING BONDS. (a) Fully negotiable bonds may be issued by the commissioners court for the purpose of refunding original bonds issued under this subchapter.

(b) The refunding bonds must be authorized and may be secured in the manner provided by this subchapter for original bonds.

(c) Refunding bonds may be sold and the proceeds used to retire the original bonds, or may be used in exchange for the original bonds, as provided in the order authorizing their issuance.

(d) An election is not required for issuance of the refunding bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.077. BONDS NOT STATE OR COUNTY DEBT. (a) The bonds are not a debt of the county or this state within the meaning of any constitutional or statutory provision, but are payable solely from the revenues pledged to their payment as provided by this subchapter.

(b) Each bond must contain on its face substantially the following provision: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

(c) The bonds may not be considered in determining the power of the county to incur obligations payable from taxation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 321.078. MISCELLANEOUS PROVISIONS. (a) In this section, "fee" includes a fee, charge, or toll.

(b) This section applies to revenue bonds issued under this subchapter.

(c) The bond order may require that the bonds contain a recital that they are issued pursuant to and in strict conformity with this subchapter. If made, that recital is conclusive evidence of the validity of the bonds and the regularity of their issuance.

(d) Each bond is exempt from taxation by this state or by a municipal corporation, county, or other political subdivision or taxing district of the state.

(e) If provided for in the order, an indenture securing the bonds may be executed between the county commissioners court and a corporate trustee. The order may also provide for execution of the indenture by a corporate or individual cotrustee. A corporate trustee or corporate cotrustee must be a trust company or a bank located inside or outside this state that has the powers of a trust company.

(f) Either the order or an indenture may contain provisions for protecting or enforcing the rights or remedies of the bondholders as considered by the commissioners court to be reasonable, proper, and not in violation of law. The provisions may include covenants setting forth the duties of the board in reference to the maintenance, operation or repair, and insurance of the facility the revenues of which are pledged, including within the discretion of the commissioners court insurance against loss of use and occupancy. The provisions may also include covenants for the custody, safeguarding, and application of money received from the sale of the bonds and from the revenues received from the operation of the project.

(g) Any bank or trust company in this state may act as depository for the proceeds of the bonds, the revenues derived for operation of the facilities the revenues of which are pledged, or for the special funds created to assure payment of the principal of and interest on the bonds, including reserve funds and accounts. The depository may furnish indemnity bonds or pledge securities as required by the board.

(h) The commissioners court may select the depository or depositories without the necessity of seeking competitive bids. The deposits must be secured in the manner required by law for the security of county funds. The order or indenture may bind the commissioners court to the use of direct obligations of the United States or obligations unconditionally guaranteed by the United States

as security for the deposits.

(i) The bond order or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. The order may contain other suitable provisions the commissioners court considers reasonable and proper for the security of the bondholders, including:

(1) covenants prescribing occurrences that constitute events of default and the terms and conditions on which any or all of the bonds become due, or may be declared to be due, before maturity; and

(2) covenants as to the rights, liabilities, powers, and duties arising from the breach by the commissioners court of any of its duties or obligations.

(j) Any bondholder or a trustee for a bondholder may by mandamus or other proceeding in a court of competent jurisdiction enforce the bondholder's rights against the commissioners court or its agents and employees or against any lessee of any facility the revenues of which are pledged to the bonds. These rights include the right to require the board to impose, establish, and enforce fees sufficient and effective to carry out the agreements contained in the order or indenture, the right to perform all agreements and covenants in the order and the duties arising from the order or indenture, and the right in the event of default as defined in the order or indenture to apply for and obtain the appointment of a receiver for any of the properties involved. If a receiver is appointed, the receiver shall enter and take possession of the facilities the revenues of which have been pledged. The receiver shall retain possession until the commissioners court is no longer in default or until relieved by a court, and shall collect and receive all revenues and fees arising from the retained property in the same manner as the commissioners court. The receiver shall dispose of and apply the money in accordance with the obligations of the commissioners court under the order or indenture and as the court may direct.

(k) This chapter does not authorize a bondholder to require the commissioners court to use any funds in the payment of the principal of or interest on the bonds except the revenues pledged for that payment.

(l) The order or indenture may contain provisions to the effect that while the revenues of the park facilities are pledged to the payment of bonds, no free service may be rendered by any of those

facilities for which fees are to be effective under the order.

(m) The bonds are legally authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, and trustees and for the sinking funds and other funds of this state or of a municipal corporation, county, political subdivision, public agency, or taxing district in this state. The bonds are eligible to secure the deposit of any public funds of this state and any public funds of a municipal corporation, county, political subdivision, public agency, or taxing district in this state, and the bonds are lawful and sufficient security for those deposits to the extent of their face value when accompanied by all unmatured appurtenant coupons.

(n) The order, the indenture, and this chapter constitute an irrevocable contract between the board and county and the bondholders.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. COASTAL COUNTY ISLAND PARK, BEACH PARK, AND PUBLIC BEACH RULES

Sec. 321.101. APPLICABILITY. Notwithstanding Section 321.001, this subchapter applies only to:

(1) a county described by Section 321.001; and

(2) a county that borders on the Gulf of Mexico and has within its boundaries a beach that:

(A) is wholly or partly operated by the county as a park; or

(B) is otherwise controlled or maintained by the county.

Added by Acts 2019, 86th Leg., R.S., Ch. 226 (H.B. 1628), Sec. 1, eff. September 1, 2019.

Sec. 321.102. RULES. The commissioners court of a county by order may adopt reasonable rules on camping, access, litter, resource protection, or waste disposal if the rules:

(1) are consistent with Chapter 352 of this code, Chapters 61 and 63, Natural Resources Code, and rules adopted under those chapters; and

(2) apply only in the following locations controlled or maintained by the county:

(A) an island park;

(B) a beach park; or

(C) any part of a public beach.

Added by Acts 2019, 86th Leg., R.S., Ch. 226 (H.B. 1628), Sec. 1, eff. September 1, 2019.

Sec. 321.103. OFFENSE. (a) A person commits an offense if the person violates a rule adopted under Section 321.102.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2019, 86th Leg., R.S., Ch. 226 (H.B. 1628), Sec. 1, eff. September 1, 2019.

CHAPTER 322. JOINT PARKS BOARD AND PARK BONDS: ADJACENT COUNTIES WITH POPULATIONS OF 2.1 MILLION OR MORE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 322.001. ELIGIBLE COUNTIES. Two adjacent counties that each have a population of 2.1 million or more may create a joint park board in accordance with this chapter for the purpose of providing one or more public parks for the two counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 97, eff. Sept. 1, 2001. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 166, eff. September 1, 2023.

Sec. 322.002. DEFINITION. In this chapter, "board" means the Joint Board of Park Commissioners.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.003. CREATION OF JOINT PARKS BOARD. (a) To create a joint parks board, the commissioners court of each county must adopt

an order creating the board.

(b) The commissioners court of each county by resolution may transfer to the board jurisdiction and control of any county park within either or both of the counties.

(c) Title to the parks under its jurisdiction and to the properties and facilities related to the parks vests in the board.

(d) The board shall be known as the Joint Board of Park Commissioners, except that the board may change its name by resolution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.004. MUNICIPAL CONVEYANCE OF LAND TO BOARD. Any municipality contained in either of the counties may sell land owned by it to the board or to the counties if the governing body of the municipality finds that the land is not required for municipal purposes. The sale must be authorized by ordinance and does not require an election.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.005. EXERCISE OF POWERS BY COMMISSIONERS COURT. If establishment of the board is declared by a court to be invalid, the commissioners court of the counties acting jointly may ratify any prior action taken by the board and may exercise the powers granted to the board by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. JOINT BOARD OF PARK COMMISSIONERS

Sec. 322.021. COMPOSITION; TERM; QUALIFICATIONS. (a) The board must be composed of 13 commissioners appointed by the governor with the advice and consent of the senate. The governor shall appoint the chairman from one county and six members from each county.

(b) Members of the board serve staggered terms of two years, with the terms of six or seven members expiring every other year. In appointing the initial board, the governor shall designate three of

the members appointed from each county to serve for terms of one year and three of the members appointed from each county to serve for terms of two years.

(c) The term as chairman is two years, and the chairmanship of the board alternates between the counties every two years. The governor shall appoint the first chairman from the county having the larger population.

(d) A park commissioner may not be an officer or employee of either of the counties or an officer or employee of any municipality in either of the counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.022. VACANCY. A vacancy on the board shall be filled by appointment by the governor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.023. OATH; BOND. (a) Within 15 days after the date a park commissioner is appointed, the commissioner must qualify by taking the official oath and by filing a good and sufficient bond with the county clerk of the county the commissioner represents.

(b) The bond must be:

(1) payable to the order of the county judge of the county that the commissioner represents;

(2) approved by the commissioners court of that county;

(3) in an amount prescribed by that commissioners court of $5,000 or more; and

(4) conditioned that the commissioner will faithfully perform the duties of park commissioner, including the proper handling of all money that comes into the hands of the park commissioner in the commissioner's capacity as park commissioner.

(c) The board shall pay the cost of the bond.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.024. ORGANIZATION; MEETINGS. (a) Seven park commissioners constitute a quorum, except that three of the members

comprising the quorum must be from each county. The board may act on the majority vote of a quorum.

(b) The board shall elect from its membership a vice-chairman, a secretary, and a treasurer. The vice-chairman and chairman must be from different counties, and the secretary and treasurer must be from different counties. Officers serve in that capacity for a term of two years.

(c) If either the secretary or treasurer is absent or unavailable, the other may act for the absent or unavailable officer.

(d) The board shall hold regular meetings at times fixed by the board and may hold special meetings as necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.025. EXPENSES. The expenses of a commissioner must be approved by the commissioners court of the county the commissioner represents, and when approved must be paid in due time by the board's check or warrant.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.026. CONFLICT OF INTEREST. (a) A park commissioner or employee of the board may not acquire a direct or indirect pecuniary interest in any improvements, concessions, equipment, or business located in or related to a public park administered by the board.

(b) A park commissioner or employee of the board may not have a direct or indirect interest in any contract or proposed contract for construction, materials, or services in connection with or related to a park administered by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.027. SEAL. The board shall adopt a seal, and the seal shall be placed on each lease, deed, or other instrument required to be executed under seal.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 322.041. PERSONNEL. (a) The board may employ permanent or temporary personnel, including secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents.

(b) The board shall determine the qualifications, duties, and compensation of employees.

(c) The board may employ a manager for one or more parks and give the manager full authority for the management and operation of the parks subject only to the direction and orders of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.042. DEPOSITORIES AND DISBURSEMENTS. (a) Money belonging to or under the control of the board must be deposited and secured substantially in the manner prescribed by law for county funds.

(b) The board shall select one or more depositories.

(c) A warrant or check for the withdrawal of money must be signed by an officer of the board and one other park commissioner or by two bonded employees of the board. The board by resolution entered in its minutes shall designate the officer and park commissioner or the employees authorized to sign the warrants or checks.

(d) The board may disburse funds under its control for any lawful purpose for the benefit of a park under its control.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.043. CONTRACTS. (a) The board may enter a contract, including a lease or other agreement, with any person as the board considers necessary or convenient to carry out the purposes and powers granted by this chapter, including a contract connected with, incident to, or affecting the acquisition, financing, construction, equipment, maintenance, or operation of a facility located or to be located in or pertaining to a park under its control.

(b) To be effective, a contract must be:

(1) approved by resolution of the board;

(2) executed by the chairman or vice-chairman; and
(3) attested by the secretary or treasurer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.044. LEASES AND OPERATING AGREEMENTS. (a) Concurrent with or at any time before the authorization for issuance of bonds secured by a pledge of the revenues of a designated facility of a park, the board may enter a contract, including a lease, with any person for the operation of the facility. The contract must specify the consideration or specify the method of determining the consideration. The contract may be for a period determined by the board.

(b) The revenues from the contract may be pledged in the resolution or indenture as security or additional security for the revenue bonds. If the contract is concurrent with the authorization for issuance of the bonds, the revenues constitute security for the bonds.

(c) The contract must require that the rentals, tolls, and charges to be enforced by the lessee for the use or services provided by the facility be sufficient to at least yield in the aggregate money necessary to pay the reasonable operation and maintenance expenses to assure proper operation and maintenance of the facility, plus an amount that will assure income to the board to permit and assure payments into the funds and accounts in the manner, at the times, and in the amounts specified in the resolution.

(d) The contract may provide that the rentals, tolls, and charges may be sufficient to yield a reasonable profit to the other party to the contract, but to be realized only after payment in full of the obligation to the board.

(e) The contract may provide for payment of the annual consideration or rental in approximately equal monthly installments, and that failure to pay any required payment when due may be declared to be a breach of contract, entitling the board under rules prescribed in the contract to declare the contract forfeited and to take over the operation and maintenance of the facility. That remedy is cumulative of all others.

(f) The board may in the resolution or trust indenture reserve the right to enter such a contract after issuance of the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.045. RULES. The board may adopt reasonable rules applicable to tenants, concessionaires, residents, and users of park facilities, regulating hunting, fishing, boating, camping, and other recreational and business privileges in parks under the control of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.046. GRANTS. The board may accept grants and gratuities in any form from any source approved by the board, including the government of the United States, this state, the commissioners court of either county or an agency of either county, a public or private corporation, or any other person, for the purpose of promoting, establishing, or accomplishing the objectives, purposes, and powers provided by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.047. FINANCIAL STATEMENT; BUDGET. (a) On or before July 1 of each year, the board shall prepare and file with the county clerk of each of the counties a complete financial statement showing the financial status of the board and the board's properties, funds, and indebtedness.

(b) The financial statement must show separately all information concerning:

(1) revenue bonds;

(2) income from facilities the income of which is pledged to the bonds, and the expenditures from that income; and

(3) money appropriated to the board by the commissioners courts for operational and maintenance expenses.

(c) At the same time the financial statement is filed, the board shall file with the county clerk of each of the counties a proposed budget of its needs for the next calendar year.

(d) The board shall operate the parks under its control, the revenues of which are pledged to the payment of bonds, in a manner that will produce gross revenues sufficient to pay the operation and

maintenance expenses of the facilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.048. SUITS. The board constitutes a body corporate and politic and may sue and be sued in its own name.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.049. NO TAXING POWER. The board may not levy a tax for any purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.050. RECORDS. The board shall keep a complete account of each board meeting and proceeding and shall maintain the records of the board in a secure manner. Those records are the property of the board and are subject to inspection by either of the commissioners courts at all reasonable times during office hours on business days. The preservation, microfilming, destruction, or other disposition of the records of the board is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 63, eff. Sept. 1, 1989.

SUBCHAPTER D. REVENUE BONDS

Sec. 322.071. ISSUANCE; PURPOSE. (a) For the purpose of providing funds to acquire, improve, equip, and repair parks under its control, or for the acquisition or construction of facilities to be used in or connected with or incident to one or more of the parks, the board by resolution may issue bonds from time to time.

(b) The bonds are fully negotiable instruments under Chapter 3, Business & Commerce Code, and other laws of this state.

(c) Included among the permanent improvements and facilities that may be acquired through the issuance of bonds are stadiums,

coliseums, auditoriums, athletic fields, pavilions, buildings and grounds for assembly, and parking facilities or other incident improvements.

(d) The bonds must be issued in the name of the board, signed by the chairman, and attested by the secretary. The signatures may be facsimile signatures printed on the bonds. The seal of the board must be impressed, printed, or lithographed on the bonds.

(e) The bonds must mature serially or otherwise in not more than 40 years and may be sold at a price and under terms determined by the board to be the most advantageous reasonably obtainable. The net effective interest rate may not exceed the maximum rate provided by Chapter 1204, Government Code.

(f) The resolution authorizing the issuance of the bonds shall prescribe the details as to the bonds. It may contain provisions for the calling of the bonds for redemption before their respective maturity dates at particular prices and times. Except for rights of redemption expressly reserved in the resolution and the bonds, the bonds are not subject to redemption before their scheduled maturity dates.

(g) The bonds may be made payable at times and places inside or outside this state as prescribed in the resolution.

(h) The bonds may be made registrable as to principal, or both principal and interest.

(i) The bonds may be issued in one or more series.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.320, eff. Sept. 1, 2001.

Sec. 322.072. PLEDGE OF REVENUES. (a) The bonds may be secured by a pledge of all or part of the net revenues from one or more parks under control of the board, from the facilities of or incident to the parks, or from the parks and the facilities.

(b) The net revenues of one or more contracts, operating contracts, leases, or agreements may be pledged as the sole security or as additional security for the support of the bonds.

(c) The bonds may be additionally secured by a mortgage on all or part of the real and personal property owned by the board.

(d) In the resolution authorizing issuance of bonds, the board may reserve the right, under conditions specified in the resolution,

to issue additional bonds that will be on a parity with or subordinate to the bonds then being issued.

(e) While any bonds are outstanding, no additional bonds of equal dignity may be issued against the pledged revenues except to the extent and in the manner expressly permitted in the resolution.

(f) In this chapter, "net revenues" means the gross revenues from the park or parks and the facilities, leases, agreements, or contracts incident to the park or parks, the revenues of which have been pledged, after deduction of the necessary expenses as provided by Section 322.075.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.073. PROCEEDS. (a) The proceeds of the bonds shall be used under the restrictions provided in the resolution. The holders of the bonds and any trustee provided for in respect to the bonds have a lien on the proceeds until so applied, but neither the depository of those funds nor the trustee is obligated to ensure the proper application of the funds except as expressly provided in the resolution or the indenture securing the bonds.

(b) From the bond proceeds there may be set aside:

(1) an amount for payment of interest on the bonds estimated to accrue during the construction period and any additional period prescribed in the resolution; and

(2) an amount for the interest and sinking fund or another reserve fund provided for in the resolution.

(c) Proceeds remaining after the amounts are set aside under Subsection (b) shall be used for the payment of all expenses necessarily incurred in the issuance and sale of the bonds and then for the purposes specified in the resolution.

(d) Any surplus remaining after accomplishment of the bond purposes shall be used for retiring the bonds to the extent that they can be purchased at prevailing market prices or be retained for future expansion or improvements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.074. APPROVAL AND REGISTRATION. (a) Before the bonds are delivered to the purchaser, the bonds and the records pertaining

to the bonds must be submitted to the attorney general for examination and approval. The attorney general shall approve the bonds if issued in accordance with this subchapter.

(b) Bonds approved by the attorney general and registered with the comptroller of public accounts are incontestable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.075. FEES AND REVENUE. (a) In this section, "fee" includes a fee, charge, or toll.

(b) The expense of operation and maintenance of facilities the revenues of which are pledged to the payment of bonds are a first lien on and charge against the income of the facilities. If any of the bonds or interest remains outstanding, the board shall charge or require the payment of fees for the use of the facilities. The board shall determine the rate of fees charged by it for the use, operation, or lease of the facilities. Fees must be equal and uniform within the classes defined by the board and must be in amounts that will yield revenues at least sufficient to pay the expenses of operation and maintenance and to make the payment prescribed in the resolution for debt service. "Debt service," as defined in the resolution, may include the payment of principal and interest as each matures, the establishment and maintenance of funds for extensions and improvements, an operating reserve, and an interest and sinking fund reserve.

(c) The board shall fix the fees in amounts that are sufficient to comply with the covenants in the resolution and with this chapter.

(d) If part of the security for the bonds consists of money to be received by the board as consideration for facilities belonging to the board but operated by a person other than the board under a lease or operating contract, the board shall fix and authorize fees to be charged by the person for services rendered by the facilities. The fees must be in amounts at least sufficient to assure receipt by the board of money that the board is committed to pay from that source for debt service under the terms of the resolution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.076. REFUNDING BONDS. (a) Fully negotiable bonds may

be issued by resolution of the board for the purpose of refunding bonds issued under this chapter.

(b) The refunding bonds may be secured in the manner provided by this chapter for securing original bonds.

(c) Refunding bonds may be sold and the proceeds used to retire the original bonds, or may be used in exchange for the original bonds, as provided in the resolution authorizing their issuance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.077. BONDS NOT STATE OR COUNTY DEBT. (a) The bonds are not a debt of either of the counties, of this state, or of the individual members of the board, but are payable solely from the income and properties of the board.

(b) Each bond must contain on its face substantially the following provision: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation."

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 322.078. MISCELLANEOUS PROVISIONS. (a) In this section, "fee" includes a fee, charge, or toll.

(b) The resolution authorizing the issuance of the bonds may require that the bonds contain a recital that they are issued pursuant to and in strict conformity with this chapter. If made, that recital is conclusive evidence of the validity of the bonds and the regularity of their issuance.

(c) Each bond is exempt from taxation by this state or by a municipal corporation, county, or other political subdivision or taxing district of the state.

(d) If provided for in the resolution, an indenture securing the bonds may be executed between the board and a corporate trustee. The resolution may also provide for execution of the indenture by a corporate or individual cotrustee. In addition to the pledge of revenues, the indenture may grant a mortgage or deed of trust lien on all or any part of the real and personal property of the board. A corporate trustee or corporate cotrustee must be a trust company or a bank located inside or outside this state that has trust powers.

(e) Either the resolution or an indenture may contain provisions for protecting or enforcing the rights or remedies of the bondholders as considered by the board to be reasonable, proper, and not in violation of law. The provisions may include covenants setting forth the duties of the board in reference to the maintenance, operation or repair, and insurance of the facility the revenues of which are pledged, including within the discretion of the board, insurance against loss of use and occupancy. The provisions may also include covenants for the custody, safeguarding, and application of money received from the sale of the bonds and from the revenues received from the operation of the project.

(f) Any bank or trust company in this state may act as depository for the proceeds of the bonds, the revenues derived for operation of the facilities the revenues of which are pledged, or for the special funds created to assure payment of principal and interest on the bonds, including reserve funds and accounts. The depository may furnish indemnity bonds or pledge securities as required by the board.

(g) The board may select the depository or depositories without the necessity of seeking competitive bids. The deposits must be secured in the manner required by law for the security of county funds. The board in the resolution or indenture may bind the board to the use of direct obligations of the United States or obligations unconditionally guaranteed by the United States as security for the deposits.

(h) The resolution or indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual rights of action of the bondholders. The resolution may contain other suitable provisions the board considers reasonable and proper for the security of the bondholders, including:

(1) covenants prescribing occurrences that constitute events of default and the terms and conditions on which any or all of the bonds become due, or may be declared to be due, before maturity; and

(2) covenants as to the rights, liabilities, powers, and duties arising from the breach by the board of any of its duties or obligations.

(i) Any bondholder or a trustee for a bondholder may by mandamus or other proceeding in a court of competent jurisdiction enforce the bondholder's rights against the board or its agents and

employees or against any lessee of any facility the revenues of which are pledged to the bonds, including the right to require the board to impose, establish, and enforce fees sufficient and effective to carry out the agreements contained in the resolution or indenture, the right to perform all agreements and covenants in the resolution and the duties arising from the resolution or indenture, and the right in the event of default as defined in the resolution or indenture to apply for and obtain the appointment of a receiver for any of the properties involved. If a receiver is appointed, the receiver shall enter and take possession of the facilities mortgaged and the revenues of which have been pledged. The receiver shall retain possession until the board is no longer in default or until relieved by a court, and shall collect and receive all revenues and fees arising from the retained property. The receiver may make and renew contracts or leases with the approval of the court in the same manner as the board. The receiver shall dispose of and apply the money in accordance with the obligations of the board under the resolution or indenture and as the court may direct.

(j) The resolution or indenture may contain provisions to the effect that while the revenues of the park facilities are pledged to the payment of bonds, no free service may be rendered by any of those facilities for which fees are to be effective under the resolution.

(k) The bonds are legally authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds and other funds of this state. The bonds are eligible to secure the deposit of any municipal corporation, county, political subdivision, public agency, or taxing district in this state, and the bonds are lawful and sufficient security for those deposits to the extent of their face value when accompanied by all unmatured appurtenant coupons.

(l) The resolution, the indenture, and this chapter constitute an irrevocable contract between the board and the bondholders.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 323. COUNTY LIBRARIES

SUBCHAPTER A. COUNTY LIBRARY

Sec. 323.001. ESTABLISHMENT AND MAINTENANCE. (a) The

commissioners court of a county may, on its own motion, and shall, on petition by a majority of the voters of the affected part of the county, establish, maintain, and operate a free county library for the area of the county located outside the municipalities that maintain free public libraries.

(b) The county library shall be located at the county seat in the courthouse unless a more suitable location is available.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.002. MAINTENANCE FUNDS. The commissioners court annually may set aside from the general fund or the permanent improvement fund of the county an amount to be used to maintain or to make a permanent improvement or acquire land for the county library. The amount may not exceed 12 cents on the $100 valuation of all property:

(1) located in the county outside the municipalities that are supporting a free public library and that are not participating in the county library system; and

(2) located within the municipalities that are supporting a free public library and that have elected to become a part of the county library system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.003. GIFTS. The commissioners court may receive a gift, bequest, or devise for the county library or a branch or subdivision of the library. Title to property given, bequeathed, or devised to the county library vests in the county. A gift or bequest made for the benefit of a branch of the library shall be administered as designated by the donor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.004. FARMERS' COUNTY LIBRARY. In a county that has a farmers' county library established under prior law, the library shall continue to operate as a farmers' county library, but if a county library is established in the county, the farmers' county

library shall become a part of the county library.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.005. LIBRARIAN. (a) If a county library is established, the commissioners court shall employ a county librarian. A person holds the position of county librarian at the pleasure of the commissioners court.

(b) Before beginning to perform duties, a person employed as county librarian must file with the county clerk the official oath and, at the discretion of the commissioners court, execute a bond conditioned that the person will faithfully perform the duties of the position. The bond must be in an amount determined by the commissioners court and must be purchased from sufficient sureties approved by the county judge.

(c) The county librarian shall attempt to provide equal and complete service to all areas of the county through branch libraries and deposit stations in schools and other suitable locations and shall distribute books, other printed matter, and other educational materials as quickly as circumstances permit. The librarian may make rules for the operation of the county library, establish branch libraries and deposit stations in the county, determine the number and type of employees needed by the library, and hire and dismiss the employees in the same manner as provided by the commissioners court for other county departments. The librarian shall, subject to the general rules adopted by the commissioners court, develop and manage the library in accordance with accepted rules of library management and shall determine which books and library equipment will be purchased.

(d) On or before March 31 of each year, the county librarian shall report to the commissioners court and the state librarian on the operation of the county library during the previous fiscal year. The report must be made on a form furnished by the state librarian and must contain a statement of the condition of the library and a statement of its operation during the year and must contain financial and book statistics customarily kept by well-regulated libraries.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 69(a), eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 983 (H.B. 3756), Sec. 24, eff. September 1, 2009.

Sec. 323.006. SUPERVISION. The county library is under the general supervision of the commissioners court. It is also under the supervision of the state librarian who, in person or by an assistant, shall periodically visit the library, inquire as to its condition, advise the librarian and the commissioners court about the library, and give whatever assistance possible in matters that relate to the library.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.007. LIBRARY FUND. Funds of the county library shall be deposited in a separate fund to be known as the county free library fund and may be used only for library purposes. The funds are under the custody of the county treasurer or any other county official designated to discharge the duties commonly assigned to the county treasurer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.008. PARTICIPATION WITH A MUNICIPALITY. (a) If a county library is established, the governing body of a municipality that maintains a free public library may notify the commissioners court that the municipality desires to become a part of the county library system. After the notice is given, the municipality is considered to be a part of the system, and the residents of the municipality are entitled to the benefits of the library. Property in the municipality shall be included in determining the amount to be set aside in the county free library fund for county library purposes.

(b) The commissioners court of a county that has established a county library may contract with the governing body of a municipality that maintains a free public library to extend county library privileges to the municipality's residents to the extent and for consideration as the parties may agree. The consideration paid by the municipality shall be deposited in the county free library fund.

On the making of the contract, the library privileges are extended to the residents of the municipality.

(c) After a municipality has been a part of the county library system for two years, the governing body of the municipality may withdraw from the system by giving notice of its intention to do so to the commissioners court. The notice must be given at least six months before the withdrawal. On withdrawal, the municipality is no longer entitled to participate in the benefits of the system, and the property located in the municipality may not be included in computing the amount to be set aside for county library purposes. Before the governing body may give the notice of withdrawal to the commissioners court or before the governing body may retract the notice of withdrawal after it has been given to the commissioners court, the governing body must publish another notice once a week for six consecutive weeks in a county newspaper circulated throughout the municipality and designated by the governing body. The published notice must state the nature of the proposed action and the date and location of the meeting at which the proposed action is to be taken.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.009. PARTICIPATION WITH A COUNTY. (a) The commissioners court of a county that has established a county library may contract with the commissioners court of another county to extend county library privileges to the residents of the other county to the extent and for the consideration as the parties may agree. The consideration received from the other county shall be deposited in the county free library fund. On the making of the contract, the library privileges are extended to the residents of the other county.

(b) The other county may provide for a county free library fund in the same manner in which a county that establishes a county library may provide for the fund. The purpose of the fund is to carry out a contract made by the other county under Subsection (a).

(c) If the other county makes a contract under Subsection (a), it is not prohibited from establishing its own county library under this subchapter, and if it does so, it may terminate the contract on mutually agreeable terms or may continue under the contract until expiration of its term.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.010. JOINT LIBRARY. (a) The commissioners court of a county may establish in cooperation with other counties a joint free county library for the benefit of the cooperating counties.

(b) The commissioners courts of two or more adjacent counties may jointly establish and maintain a free library under the terms and provisions established by this subchapter for the establishment and maintenance of a free county library. In doing so, the commissioners courts of the participating counties shall operate jointly in the same manner as the commissioners court of a single county. The participating counties have the same powers and are subject to the same liabilities under this subchapter as a single county.

(c) If a county withdraws from the joint county library, it is entitled to a division of property according to terms agreed on at the time the library was established.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.011. PARTICIPATION WITH AN ESTABLISHED LIBRARY. (a) Instead of establishing a county library, the commissioners court of a county may contract for library privileges from an established library.

(b) The contract must provide that the established library assume the functions of a county library within the county, including municipalities in the county. The commissioners court may contract to pay annually to the established library out of the general fund of the county an amount on which the parties may agree.

(c) Either party to the contract may terminate it by giving to the other party six months' notice of its intention to do so. Property acquired under the contract is subject to division on termination of the contract on terms specified in the contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 382, Sec. 1, eff. Aug. 30, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 983 (H.B. 3756), Sec. 25, eff. September 1, 2009.

Sec. 323.012. PARTICIPATION WITH A PRIVATELY OWNED LIBRARY. The commissioners court of a county that has established a county library may contract with a privately owned library that serves an area of the county not adequately served by the county library to provide county library service to that area. The contract may require that the privately owned library submit to any reasonable regulation that is imposed on governmental libraries.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.013. DISCONTINUATION OF LIBRARY. A county library may be discontinued on petition of a majority of the voters in that part of the county that maintains the library. The commissioners court shall, on termination of existing contracts, call in and inventory all books and other movable property of the discontinued library and shall store the property under lock and seal in a suitable place in the county courthouse.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. COUNTY LAW LIBRARY

Sec. 323.021. ESTABLISHMENT AND MAINTENANCE. (a) The commissioners court of a county by order may establish and maintain a county law library at the county seat or another location determined by the commissioners court.

(b) The commissioners court shall provide suitable space for housing the library at a place that is both convenient and accessible to the judges and litigants of the county. The commissioners court may, with the advice of the committee created under Section 323.024, use funds collected under this subchapter to acquire a location for the library, though priority in the use of funds shall be given to the acquisition of books, periodicals, other library materials, and staff for the library. The commissioners court may appropriate an amount not to exceed $20,000 to establish the library and shall annually appropriate an amount necessary for the proper maintenance and operation of the library.

(c) The commissioners court of a county may establish, maintain, and operate in cooperation with other counties a joint free county law library for the benefit of the cooperating counties in the

same manner that a joint county library may be established and operated under Section 323.010.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 760 (S.B. 1911), Sec. 2, eff. September 1, 2017.

Sec. 323.022. GIFTS. The commissioners court may receive any gift or bequest to the law library. Title to a gift or bequest vests in the county. A conditional gift or bequest shall be administered as designated by the donor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.023. LAW LIBRARY FUND. (a) The commissioners court shall establish a county law library fund.

(b) The county law library fund may be used only for:

(1) establishing the law library after the entry of the order creating it;

(2) purchasing or leasing library materials, maintaining the library, or acquiring furniture, shelving, or equipment for the library;

(3) purchasing or leasing library materials or acquiring library equipment, including computers, software, and subscriptions to obtain access to electronic research networks for use by judges in the county; or

(4) establishing and maintaining a self-help center to provide resources to county residents representing themselves in legal matters.

(c) Money in the fund may be used for the purposes described by Subsection (b)(3) only if the county's law librarian or, if the county has no law librarian, the person responsible for the county's law library, authorizes the use in consultation with the county auditor.

(d) Expenditures by a county under Subsection (b)(3) may not exceed $175,000 each year. Any unexpended and unobligated balance allocated by the county for Subsection (b)(3) purposes that remains at the end of the county's fiscal year remains available for use for

Subsection (b)(3) purposes during subsequent fiscal years.

(e) The county law library fund shall be administered by or under the direction of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 70(a), eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 331, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1010, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 760 (S.B. 1911), Sec. 3, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 3.15, eff. January 1, 2022.

Sec. 323.024. MANAGEMENT. (a) The commissioners court of a county that has established a law library under this subchapter shall adopt rules for the use of books in the county law library.

(b) The commissioners court may vest management of the library in a committee selected by the county bar association. Actions of the committee are subject to approval by the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 323.025. CLAIMS. A claim against the law library shall be handled as other claims against the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. ADDITIONAL LIBRARY AUTHORITY

Sec. 323.051. ACQUISITION AND LOCATION OF LIBRARY. (a) The commissioners court of a county may:

(1) purchase, construct, repair, equip, or improve a building or other permanent improvement for county library use;

(2) acquire land for county library use; and

(3) determine the location in the county of each county library building or permanent improvement.

(b) A county that maintains a permanent improvement fund shall use money in that fund to pay for each library building, repair, or

improvement.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 12, eff. Sept. 1, 1999.

Sec. 323.052. COUNTY LIBRARY BONDS. (a) A county may issue bonds, and impose ad valorem taxes for payment of the bonds, to pay the cost of:

(1) purchasing, constructing, repairing, equipping, or improving a building or other permanent improvement for county library use; or

(2) acquiring land for county library use.

(b) The issuance of the bonds and the imposition of the taxes must be in conformity with Subtitles A and C, Title 9, Government Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 12, eff. Sept. 1, 1999.

SUBCHAPTER D. LIBRARY FINES; CIVIL PENALTY

Sec. 323.071. LIBRARY FINES. (a) The commissioners court by order may establish reasonable fines to be collected by a county library for lost, damaged, or overdue library property.

(b) The fines shall be deposited in the county free library fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 697 (H.B. 2902), Sec. 1, eff. September 1, 2013.

Sec. 323.072. ABUSE OF COUNTY LIBRARY SERVICES. (a) The commissioners court by order may adopt reasonable regulations that prohibit a person from abusing library services by intentionally failing to pay a library fine or return library property.

(b) A person who violates a regulation adopted by the county under this section is liable to the county for a civil penalty of not more than $100 for each violation. A county may bring suit in a district or county court to recover a civil penalty authorized by this subsection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 697 (H.B. 2902), Sec. 1, eff.

September 1, 2013.

CHAPTER 324. PARK AND RECREATION DISTRICT AND PARK BONDS: COUNTIES WITH FRONTAGE ON GUADALUPE AND COMAL RIVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 324.001. ELIGIBLE COUNTIES. In a county that has river frontage on both the Guadalupe and Comal rivers, a district may be created for all or part of the unincorporated area in the county to:

(1) improve, equip, maintain, finance, and operate any public park located in the district and owned or leased by the county;

(2) conserve the natural resources in the district; and

(3) improve the public health, safety, and welfare in the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.002. DEFINITIONS. In this chapter:

(1) "District" means a park and recreation district created under this chapter.

(2) "Board" means the board of directors of a park district.

(3) "Fee" includes a toll or any other charge.

(4) "Park" includes any land, including any improvements to the land, that is administered, operated, or managed by the district for use by the general public.

(5) "District facility" includes any facility, land, or improvement to land, whether permanent or temporary, that is owned, leased, or acquired by the district.

(6) "Hotel" means a building in which persons may obtain sleeping accommodations for consideration of a fee and includes a motel, tourist court, lodging house, inn, rooming house, or condominium, but does not include a hospital, sanitarium, or nursing home.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 539, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 1039, Sec. 2, eff. Aug. 30, 1993.

SUBCHAPTER B. CREATION OF PARK AND RECREATION DISTRICT

Sec. 324.021. ORDER OF ELECTION. (a) The commissioners court of the county may order an election on the issue of the creation of a district:

(1) on the commissioners court's own motion; or

(2) after the filing of a written petition signed by a number of the registered voters who reside in the county equal to at least five percent of the votes received in the county in the most recent gubernatorial general election.

(b) The petition or commissioners court's motion must include:

(1) the name of the proposed district;

(2) an accurate description of the area to be included in the district by metes and bounds and by public roads or rights-of-way; and

(3) an accurate plat of the area to be included in the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.022. NOTICE OF HEARING. (a) After the filing of the petition, the commissioners court shall set a date for a hearing on the petition that is after the 20th day but on or before the 40th day after the date the petition is filed.

(b) The commissioners court shall publish notice of the petition and the hearing date in a newspaper of general circulation in the county.

(c) The notice must be published once each week for a period of two weeks before the hearing date.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.023. HEARING. (a) At the hearing, evidence shall be taken as in civil cases in the county court. The commissioners court shall hear all arguments for and against the creation of the district.

(b) The hearing may be adjourned from time to time on good cause shown.

(c) The commissioners court shall grant the petition and order the election on the issue of the creation of the district if the

court finds that:

(1) the petition is signed by the required number of registered voters in the county;

(2) the district will serve the purposes prescribed by Section 324.001; and

(3) the district does not include any incorporated area.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.024. CREATION ELECTION. (a) The election shall be held on the date of the first regularly scheduled countywide election that follows the date of the order of the election and for which there is sufficient time to comply with other requirements of law.

(b) The returns on the election shall be certified and canvassed and the results declared, in the same manner as provided for other county elections. If a majority of the votes received on the issue favor creation of the district, the commissioners court shall declare the district created and shall enter the results in its minutes at its next regularly scheduled meeting.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.025. COSTS OF CREATION AND ORGANIZATION. The costs necessarily incurred in the creation and organization of the district may be paid from the district's revenue from bond anticipation notes, the first revenue bonds issued by the district, or any other source.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

SUBCHAPTER C. BOARD OF DIRECTORS OF PARK AND RECREATION DISTRICT

Sec. 324.041. COMPOSITION AND APPOINTMENT OF BOARD. (a) A district is governed by a board composed of seven members.

(b) The commissioners court shall appoint the members of the board.

(c) A board member must be a citizen of the United States and must reside in the county. Four of the board members must reside, own property, or own a business in the district. One board member must live outside the district.

(d) A board member may not be an officer or employee of the county in which the district is created or of a municipality in that county.

(e) Three members of the initial board serve one-year terms and four serve two-year terms. The members shall draw lots to determine who serves the one-year terms. Thereafter, each director is appointed for a term of two years from the date of the director's appointment.

(f) If a vacancy occurs on the board, the commissioners court shall appoint a person to fill the vacancy for the unexpired term.

(g) The commissioners court shall file a certificate of the appointment of each board member with the county clerk. The certificate is conclusive evidence of the proper appointment of the board member.

(h) A board member may not serve more than four consecutive full terms.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.042. OATH AND BOND. (a) Within 30 days after the date a board member is appointed, the member must qualify by taking the official oath and by filing a good and sufficient bond with the county clerk.

(b) The bond must be:

(1) payable to the order of the commissioners court;

(2) payable in an amount prescribed by the commissioners court of $5,000 or more; and

(3) conditioned that the board member will faithfully perform the duties of a board member, including the proper handling of all money that comes into the board member's hands in the board member's official capacity.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 5, eff. Aug. 30, 1993.

Sec. 324.043. COMPENSATION AND REIMBURSEMENT. A board member is not entitled to compensation but is entitled to reimbursement for necessary expenses, including travel expenses, incurred in performing

the duties of a board member. A board member's reimbursement for necessary expenses, in excess of $250, shall be approved by the commissioners court. A board member's approved expense account shall be paid in due time by the board's check or warrant.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 6, eff. Aug. 30, 1993.

Sec. 324.044. QUORUM; MAJORITY VOTE. Four board members constitute a quorum of the board. The board may act on the majority of the vote of the assembled quorum.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 539, Sec. 2, eff. Sept. 1, 1989.

Sec. 324.045. APPROVAL OF COMMISSIONERS COURT. (a) The board is subject to the supervision of the commissioners court in the exercise of all its rights, powers, and privileges and in the performance of its duties.

(b) Not later than the 30th day after the date on which the board acts, the commissioners court may approve or disapprove the action. If the court disapproves the act, the act is ineffective. Otherwise, the act becomes effective on the date that the commissioners court approves the act or on the 31st day after the date on which the board acted, whichever is first.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 539, Sec. 3, eff. Sept. 1, 1989.

Sec. 324.046. ORGANIZATION; MEETINGS. (a) Annually, the board shall elect a president, a vice-president, a secretary, and a treasurer, except that the first president shall be designated by the commissioners court at the time of the appointment of the first board.

(b) The offices of secretary and treasurer may be held by the same person. If either the secretary or the treasurer is absent or unavailable, the president may appoint another board member to act

for and perform the duties of the absent or unavailable officer.

(c) The board shall set times for and hold regular meetings. On the request of two or more board members, the board may hold special meetings at other times as necessary.

(d) The board shall hold its meetings at a public place in a county in which at least part of the district is located.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 7, eff. Aug. 30, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 491 (H.B. 422), Sec. 1, eff. September 1, 2005.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 324.061. DEPOSITORIES AND DISBURSEMENTS. (a) Money and other funds belonging to or under control of the board are public funds.

(b) The board shall select depositories for the money.

(c) A warrant or check for the withdrawal of money must be signed by two persons authorized to sign a warrant or check by resolution entered in the minutes of the board.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 8, eff. Aug. 30, 1993.

Sec. 324.062. PERSONNEL. (a) The board may employ managers, secretaries, stenographers, bookkeepers, accountants, technical experts, and any other support personnel or agents the board considers necessary.

(b) The board shall determine the qualifications and set the duties of employees.

(c) The board may call on the county attorney, district attorney, or criminal district attorney for the legal services it requires. In addition, or in the alternative, the board may contract for and compensate its own legal staff.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 9, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 452, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 491 (H.B. 422), Sec. 2, eff. September 1, 2005.

Sec. 324.063. SEAL. The board shall adopt a seal to place on each lease, deed, or other instrument usually executed under seal and on other instruments as the board requires.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.064. CONTRACTS. (a) The board may enter into any contract that the board considers necessary or convenient to carry out the purposes and powers granted by this chapter, including a lease or other contract connected with, incident to, or affecting the acquisition, financing, construction, equipment, maintenance, renovation, repair, improvement, or operation of real property or facilities.

(b) If the contract is for an amount less than or equal to the amount in Section 262.023, the board may enter into the contract without advertisement. If the contract is for more than that amount, the contract is subject to the bidding provisions for contracts applicable to the county.

(c) To be effective, a contract must be:

(1) approved by resolution of the board;

(2) executed by the president or vice-president; and

(3) attested by the secretary or treasurer.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 10, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 452, Sec. 2, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 491 (H.B. 422), Sec. 3, eff. September 1, 2005.

Sec. 324.065. SUITS. The board may sue and be sued in its own name.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.066. DISTRICT RULES AND ORDINANCES; CRIMINAL PENALTY; CIVIL ENFORCEMENT. (a) The board may adopt reasonable rules and ordinances applicable to:

(1) the administration, enforcement, and collection of district taxes and the issuance, suspension, and cancellation of revenue permits;

(2) littering and litter abatement on the public water in the district, including the possession and disposition of glass containers;

(3) activities that endanger the health and safety of persons or property on public water in the district, subject to the public's paramount right to navigate inland water; and

(4) tenants, business privileges, concessionaires, users, and activities affecting district property and facilities, including hunting, fishing, boating, camping, tubing, swimming, and conservation of natural resources.

(b) A police officer, constable, sheriff, or other law enforcement officer with jurisdiction in the county may arrest persons violating rules or ordinances of the board, and carry out the prosecution of those persons in the proper court.

(c) A person who violates a rule or ordinance adopted under this section commits an offense. An offense under this section is a Class C misdemeanor.

(d) The county attorney, the district attorney, the criminal district attorney, or an attorney retained by the board for this purpose may bring an action to enjoin a violation of board rules or ordinances, and if the board authorizes, may seek damages and attorney's fees based on the violation, if the violation involves:

(1) the providing or offering of a service or the use or rental of a facility or an item for remuneration by a person who does not hold a revenue permit issued by the district or for which collection of a tax is required;

(2) failure of a revenue permit holder to remit a tax imposed and the tax has been due for more than 60 days; or

(3) violation by a revenue permit holder of a district rule relating to an activity that endangers the health or safety of a person or property in the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 11, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 452, Sec. 3, eff. Sept. 1, 1997.

Sec. 324.0665. BOND. If the board brings an action to enforce this subchapter or enjoin a violation of a rule or ordinance adopted by the board under this subchapter, the board is not required to post a bond.

Added by Acts 1997, 75th Leg., ch. 452, Sec. 4, eff. Sept. 1, 1997.

Sec. 324.067. POWER TO ACQUIRE PROPERTY. (a) For the conservation of the natural resources of the county, the board may acquire land in the county, in or out of the district, including streams, lakes, submerged lands, and swamplands, to create parks. The board may develop, improve, protect, and promote the land in a manner the board considers conducive to the general welfare.

(b) The land may be acquired by:

(1) gift or devise;

(2) lump-sum payment; or

(3) installment payments with or without option to purchase.

(c) The district does not have the power of eminent domain.

(d) The commissioners court by eminent domain may not acquire land for park purposes and subsequently transfer by any means the land or control of the land to the board for park purposes or other purposes. If the commissioners court by eminent domain acquires land for purposes other than park purposes, the court may not subsequently transfer by any means the land or control of the land to the board for park purposes or other purposes unless at least 10 years have expired after the date of the acquisition by the court. This subsection applies only to land that the commissioners court acquires by eminent domain on or after August 31, 1987.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.068. SALE OR LEASE OF LANDS. (a) If the board determines that any land owned by the district is not necessary for

the purposes for which the land was acquired, the board may sell and dispose of the land on terms the board considers advisable.

(b) The board may lease or permit the use of land for purposes consistent with the purposes for which the land was acquired and on terms the board considers advisable.

(c) Before land owned by the district may be sold, once a week for four consecutive weeks in a newspaper of general circulation in the county, the board must publish a notice of its intention to sell the land. The notice must include an accurate description of the land, the time of a public hearing that is before the 10th day before the disposition date, and the time and place at which sealed bids will be received.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.069. ACCEPTANCE OF GRANTS AND GRATUITIES. To promote, establish, or accomplish a purpose of this chapter, the board may:

(1) accept grants and gratuities in any form from any source, including the United States government, this state, any state or federal agency, any private or public corporation, or any other person;

(2) accept donations of money or other property; and

(3) act as trustee of land, money, or other property.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.070. COOPERATION WITH OTHER PUBLIC AUTHORITIES. Under an agreement with a public authority in control of parkland in the county, the district may assume control of all or part of the parkland within the district or contiguous to the district or may contract or cooperate with the public authority in connection with the use, development, improvement, and protection of the parkland.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 12, eff. Aug. 30, 1993.

Sec. 324.071. IMPROVEMENT OF PUBLIC HIGHWAY. The board may

enter into agreements with the public authorities in control of a highway in a park area or connecting two or more park areas to make alterations in the route or width of the highway, or to grade, drain, pave, or otherwise improve the highway.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.072. PLAN FOR DEVELOPMENT OF PARKS; ANNUAL BUDGET; FILING. (a) The board shall develop and approve a three-year master plan for capital development and the development of parks and district facilities.

(b) The board shall annually review and revise the master plan during the budget process and shall file a copy of the master plan and revisions with the county clerk.

(c) The board shall annually develop and approve a one-year budget that must include the suggested revisions and additions to the master plan.

(d) The board shall submit the annual budget to the commissioners court for approval and shall file a copy with the county clerk.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 13, eff. Aug. 30, 1993.

SUBCHAPTER E. BONDS, TAXES, AND OTHER FINANCIAL MATTERS

Sec. 324.091. REVENUE BOND ELECTION. (a) Revenue bonds may not be issued by the district until authorized by a majority vote of qualified voters of the district voting at an election called and held for that purpose.

(b) The board may order a bond election. Regardless of Section 324.045(b), the order is not effective unless approved by the commissioners court. Except as provided by this section, the election shall be held in the manner provided by the Election Code.

(c) At an election to authorize bonds, the ballot must be printed to provide for voting for or against the issuance of revenue bonds.

(d) If a majority of the votes cast at the election favor the issuance of the bonds, the bonds may be issued by the board, but if a

majority of the votes cast at the election do not favor issuance of the bonds, the bonds may not be issued.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.092. REVENUE BONDS. (a) For the purpose of providing funds for the acquisition of any permanent improvement to property of the district or for the acquisition, renovation, repair, improvement, equipping, or construction of a facility to be used in connection with the operation of the district, the board may issue revenue bonds that are approved at an election called under Section 324.091.

(b) The district may make the bonds payable out of any revenue of the district but may not levy ad valorem taxes on any property located within the district.

(c) Bonds issued under this chapter are fully negotiable instruments under Chapter 8, Business & Commerce Code, and other laws of this state.

(d) Except as provided by Section 324.095, among the permanent improvements and facilities that may be acquired through the issuance of revenue bonds are bathhouses; bathing beaches; swimming pools; pavilions; athletic fields; golf courses; buildings and grounds for assembly, entertainment, health, and recreation; restaurants and refreshment places; yacht basins; parking lots; and roads.

(e) The bonds must be issued in the name of the county, signed by the county judge, and attested by the county clerk and ex officio clerk of the commissioners court. The seal of the commissioners court must be impressed on the bonds.

(f) The bonds must mature serially or otherwise in not more than 40 years and may be sold at a price and under terms determined by the board to be the most advantageous reasonably obtainable.

(g) The resolution authorizing the issuance of the bonds may contain provisions for redemption of the bonds before their respective maturity dates at prices and times prescribed in the resolution. Except for rights of redemption expressly reserved in the resolution and in the revenue bonds, the bonds are not subject to redemption before maturity.

(h) The bonds may be made payable at times and at places, inside or outside the state, prescribed in the resolution.

(i) The bonds may be made registrable as to principal or as to

both principal and interest.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.093. APPROVAL BY ATTORNEY GENERAL. (a) Bonds issued by the district must be submitted to the attorney general for examination. The bonds must be submitted with the record relating to their issuance and the record relating to the creation of the district.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve the bonds and the comptroller shall register the bonds.

(c) Bonds that are approved and registered under this section are incontestable and are valid and binding obligations in accordance with their terms.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.094. REFUNDING BONDS. The district may issue refunding bonds under Chapter 1207, Government Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.321, eff. Sept. 1, 2001.

Sec. 324.095. PERMANENT IMPROVEMENTS ON LAND WITH RIVER FRONTAGE. (a) Through revenue bonds or any other revenue sources, the district may not purchase a river access location except for use as a:

(1) sanitary facility;
(2) litter receptacle;
(3) drinking water facility;
(4) parking lot;
(5) road or trail;
(6) river ingress or egress facility;
(7) information booth;
(8) tax collection facility;
(9) visitor's center; or

(10) district office.

(b) At a river access location permitted under this section, the district may not engage in any activity that competes with private enterprise except the provision and operation of a permanent improvement permitted under this section.

(c) Subject to the restrictions provided by Section 324.067(d), the district may accept as a grant, gratuity, gift, or devise land with river access and any improvement that may exist on the land at the time of the gift.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 14, eff. Aug. 30, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 491 (H.B. 422), Sec. 4, eff. September 1, 2005.

Sec. 324.096. FEES. (a) The expense of operation and maintenance of a facility of which the revenues are pledged to the payment of bonds is a first lien on and charge against the income of the facility. As long as any of the bonds or interest remain outstanding, the board shall charge or require the payment of fees for the use of the facilities, except drinking water or sanitary facilities. Fees must be equal and uniform within classes defined by the board and must be in amounts that will yield revenues at least sufficient to pay the expenses of operation and maintenance and to make the payment prescribed in the bond resolution for debt service. "Debt service," as defined in the bond resolution, may include: the payment of principal and interest as each matures, the establishment and maintenance of funds for extensions and improvements, an operating reserve, and an interest and sinking fund reserve.

(b) Except as provided by a contract entered into by the board, the board may determine the rate of fees charged for the use, operation, or lease of facilities, services, or equipment of the district. The board shall fix the fees in amounts sufficient to comply with the covenants in the bond resolution.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.097. FINANCIAL STATEMENT; BUDGET. (a) On or before February 1 of each year, the board shall prepare and file with the officer responsible for the county budget a complete financial statement showing the financial status of the district and the district's properties, funds, and indebtedness.

(b) The financial statement must be prepared in accordance with standards adopted by the Government Accounting Standards Board and must show separately all information concerning:

(1) revenue bonds, the income from pledged facilities, and expenditures of that revenue;

(2) leases, promissory notes, and other indebtedness of the district; and

(3) fee and tax revenue of the district.

(c) At the time the financial statement is filed, the board shall file with the commissioners court a proposed budget of its needs for the next fiscal year. The proposed budget shall include items that:

(1) the board is unable to finance from the district's revenues, including revenues from facilities of which the income is pledged to revenue bonds; and

(2) the board requests purchase of with county funds.

(d) The officer responsible for the county budget shall include the district's proposed budget on the calendar for the next regularly scheduled meeting of the commissioners court. As part of the county's tentative budget, the items certified by the board are subject to state law relating to county budgets.

(e) The county auditor may conduct a general audit and issue a financial statement of the district at times the auditor considers appropriate.

(f) The board shall operate the parks and facilities under its control for which revenues are pledged to the payment of revenue bonds in a manner that will produce gross revenues sufficient to pay the operation and maintenance expenses of the parks and facilities without seeking from the commissioners court the appropriation of additional money for expenses.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 15, eff. Aug. 30, 1993.

Sec. 324.098. BOND ANTICIPATION NOTES. (a) If funds are not available to pay the principal of or interest on bonds issued by the district or to pay other obligations of the district, the board may declare an emergency and may issue negotiable bond anticipation notes to borrow the money needed. The bond anticipation notes may bear interest at a rate that does not exceed the maximum rate provided by Chapter 1204, Government Code, and must mature within one year after their date of issuance.

(b) Bond anticipation notes may also be issued for any purpose for which bonds of the district have been voted or to refund previously issued bond anticipation notes.

(c) Bond anticipation notes issued under this section must be authorized by resolution of the board, subject to approval by the commissioners court under Section 324.045, and must be executed by the president of the board and attested by the secretary of the board.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.322, eff. Sept. 1, 2001.

Sec. 324.099. IMPOSITION AND COLLECTION OF TAXES; CRIMINAL PENALTY. (a) The district may levy and collect taxes and issue revenue permits to carry out any purposes prescribed by this chapter and to pay the obligations of the district.

(b) The taxes that a district may levy apply only within the district and are:

(1) a tax, at a rate not greater than five percent established by resolution of the board, imposed on each person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays $1 or more:

(A) for each day to rent:

(i) a camping space;

(ii) a picnic space;

(iii) a parking space;

(iv) a boat slip or dry boat storage;

(v) fishing tackle; or

(vi) water-oriented recreational equipment intended for use on a lake in the district, including a boat, personal

watercraft, windsurfer, or sailing craft;

(B) for each day of recreational guide services; or

(C) for an initiation or membership fee of a private club or organization that provides water-oriented recreational equipment for use to a member;

(2) a tax imposed by resolution of the board at a rate not greater than four percent on the cost of occupancy of a hotel if the cost of occupancy is $2 or more each day; a tax is not imposed if the accommodations are leased or contracted to one party for at least 30 consecutive days; and

(3) a tax imposed by resolution of the board at a rate not greater than $1 a person:

(A) for each rental of water-oriented recreational equipment, including a canoe, tube, raft, boat, or kayak intended for use on a river in the district; or

(B) if the person is not renting equipment under Paragraph (A), for each person using shuttle service in the district, including for river ingress and egress.

(c) The taxes imposed under this section are payable by the purchaser or consumer of the items subject to the tax except that if the person responsible for collecting the tax does not comply with this chapter by collecting and remitting the tax to the district, the person responsible for collecting the tax is liable for the tax.

(d) A person who does not hold a revenue permit issued by the board may not provide or offer for remuneration a service, a use of a facility, or a rental of an item if the price paid for the service, use, or rental is taxed under this section. A person who holds a revenue permit issued by the district shall collect the taxes imposed under this section and shall report and remit the collected taxes to the district as the district requires.

(e) If a revenue permit holder remits taxes after the due date but on or before the 30th day after the due date, the revenue permit holder shall pay the district a penalty of five percent of the amount of taxes due. If the revenue permit holder remits the taxes after the 30th day after the due date, the person who holds the permit shall pay the district a penalty of 10 percent of the amount of taxes due.

(f) Delinquent taxes and accrued penalties draw interest at the rate of 10 percent a year beginning 60 days after the date on which the taxes were due.

(g) If a revenue permit holder does not collect and remit a tax imposed, the board may suspend, revoke, or cancel the holder's revenue permit in addition to any other remedy the district may have to collect the tax under civil or criminal law.

(h) A person who violates Subsection (d) commits an offense if the person rents or offers for rent an item taxed under this section. Each provision or offer for remuneration of the service, use, or rental is a separate offense. An offense under this subsection is a Class C misdemeanor, unless it is shown at the trial of the defendant that the defendant has previously been convicted of an offense under this subsection, in which case the offense is a Class B misdemeanor.

(i) In the same manner that this section applies to a person who provides or offers a service, a use of a facility, or a rental of an item in the district, this section applies to a person who resides or does business outside the district but provides or offers recreational guide or shuttle services or the rental of water-oriented recreational equipment and the person regularly transports customers into the district for river access while the person is in the district.

(j) The board may settle a claim for a penalty or interest accrued on a tax imposed by this chapter if the board finds that the revenue permit holder exercised reasonable diligence to comply with this chapter.

(k) The district may impose different tax rates for the different types of services and different types of rental items to which Subsection (b)(3) applies but none of the rates may exceed the maximum rate provided by that subsection.

(l) The managing entity, as defined by Section 221.002, Property Code, of a timeshare property, as defined by Section 221.002, Property Code, shall collect and remit to a district, on a property owner's behalf, all district taxes imposed under Subsection (b)(2) if the managing entity participates in the rental of the property by either:

(1) advertising rental availability on behalf of the property owner; or

(2) collecting the rent on the property owner's behalf.

(m) If a managing entity located in the district does not collect rent or advertise rental availability on behalf of its property owners, a certificate executed in good faith by the managing entity and delivered to the district informing the district that the

managing entity does not collect rent or advertise rentals on the behalf of property owners shall be final and binding on the district, so long as the certificate remains accurate.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 539, Sec. 4, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 1039, Sec. 16, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1000, Sec. 67, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 452, Sec. 5, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 491 (H.B. 422), Sec. 5, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 145 (S.B. 1638), Sec. 1, eff. September 1, 2009.

Sec. 324.0995. TAX EXEMPTIONS. (a) Section 324.099(b)(2) does not impose a tax on:

(1) an employee of the United States government conducting official business in the district; or

(2) a person who occupies a lodging facility or campground in the district if the person has evacuated from the person's home due to an emergency and the state has temporarily suspended collection of the state hotel occupancy tax.

(b) The district may not tax a transaction between a person and an interest operated by:

(1) the United States in the district; or

(2) a state park in the district.

Added by Acts 2009, 81st Leg., R.S., Ch. 145 (S.B. 1638), Sec. 2, eff. September 1, 2009.

Sec. 324.100. DISPOSITION OF REVENUE. In addition to any other purpose or obligation of a district, a district may use its tax revenue and other revenue for:

(1) acquisition of a right-of-way that leads to or is in the district;

(2) construction, improvement, or maintenance of a road that leads to or is in the district;

(3) provision of law enforcement, emergency medical services, or fire protection in the district;

(4) programs to improve the water quality and sanitary conditions in the district;

(5) other programs that promote water-oriented recreation in the district;

(6) contribution to the county's general fund in the event that the board finds it has excess revenues;

(7) payment of indebtedness for bonds issued under Sections 324.091 and 324.092;

(8) acquiring insurance for the district;

(9) hiring necessary personnel as provided by Section 324.062;

(10) construction of facilities to house district personnel and equipment;

(11) leasing of property as necessary to benefit the district; and

(12) any other lawful purpose for the benefit of the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 1039, Sec. 17, eff. Aug. 30, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 491 (H.B. 422), Sec. 6, eff. September 1, 2005.

Sec. 324.101. REPLACEMENT FUND. (a) The board may establish a replacement fund. It may deposit in the fund any amounts from its revenue that it considers appropriate.

(b) The replacement fund may be used to rebuild on the original site or elsewhere, restore, repair, or improve property of the district that is destroyed or injured or that is necessary to expand, improve, demolish, repair, or replace because of its unfitness.

(c) The board may invest the replacement fund in bonds of the United States, this state, or a county, municipal corporation, or school district of this state.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

SUBCHAPTER F. ANNEXATION, INCORPORATION, DISSOLUTION

Sec. 324.121. ANNEXATION. (a) The voters of an unincorporated area that is contiguous to a district may file a petition with the board to annex the area to the district.

(b) The petition must contain an accurate description of the area proposed for annexation, accompanied by an accurate map or plat of the area.

(c) The petition must be signed by at least one percent of the registered voters in the area proposed for annexation.

(d) If the board considers the proposed annexation desirable, the board shall file the petition with the commissioners court with a statement of the reasons the board favors the annexation.

(e) The commissioners court shall give notice of a hearing on the petition and hold a hearing in the manner prescribed by Sections 324.022 and 324.023 for a petition for creation of a district.

(f) The commissioners court may grant the petition if it finds the petition meets the requirements of this section and the annexation promotes the purposes for which the district was created.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.122. EFFECT OF INCORPORATION OR ANNEXATION. The incorporation of a political subdivision or the annexation of any part of a park district by a political subdivision does not affect the district's boundaries.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 145 (S.B. 1638), Sec. 3, eff. September 1, 2009.

Sec. 324.123. DISANNEXATION. (a) The voters of or county commissioners for any area in a district may file a petition with the board to disannex the area from the district.

(b) The petition must contain an accurate description of the area proposed for disannexation, accompanied by an accurate map or plat of the area.

(c) The petition must be signed by at least one percent of the registered voters in the area proposed for disannexation or by the

county commissioners for the area proposed for disannexation.

(d) The board shall file the petition with the commissioners court if:

(1) the district has not acquired or constructed a permanent improvement or facility in the area proposed for disannexation; and

(2) the district's projected revenue from all sources, except from the area proposed for disannexation, is sufficient to pay the district's outstanding debts.

(e) The commissioners court shall give notice of a hearing on the petition and hold a hearing in the manner prescribed by Sections 324.022 and 324.023 for a petition for creation of a district.

(f) The commissioners court by order may grant the petition if it finds that:

(1) the petition meets the requirements of this section;

(2) the conditions listed in Subsection (d) exist; and

(3) the disannexation is in the best interests of the county.

(g) The disannexation takes effect on the date stated by the order or, if the order does not state a date, on the date the order is issued.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

Sec. 324.124. DISSOLUTION OF DISTRICT. (a) The commissioners court by order may dissolve a district. The order may be adopted:

(1) on the commissioners court's own motion; or

(2) after the filing of a written petition signed by a number of the registered voters who reside in the district equal to at least 10 percent of the votes received in the district in the most recent gubernatorial general election.

(b) The commissioners court shall give notice of a hearing on the petition and hold a hearing in the manner prescribed by Sections 324.022 and 324.023 for a petition for creation of a district.

(c) The commissioners court shall grant the petition and order the dissolution of the district if the court finds that the petition meets the requirements of this section and that the dissolution is in the best interest of the county.

(d) On dissolution of the district, the property and other

assets, the debts and other liabilities, and the obligations of the district become those of the county.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 71(a), eff. Aug. 28, 1989.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 324.901. REQUIREMENTS FOR RENTAL OF WATER-ORIENTED RECREATIONAL EQUIPMENT. (a) This section applies only to the rental of water-oriented recreational equipment in a district.

(b) A person may not rent water-oriented recreational equipment to a person younger than 18 years of age.

(c) A person may rent water-oriented recreational equipment to a person who is at least 18 years of age only if:

(1) each person who is at least 18 years of age who will use the equipment signs a written agreement for the rental of that equipment; and

(2) each person who will use the equipment, regardless of age, is listed on the agreement.

Added by Acts 1999, 76th Leg., ch. 1098, Sec. 2, eff. Sept. 1, 1999.

CHAPTER 325. SPORTS FACILITY DISTRICT ESTABLISHED BY COUNTY

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 325.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Director" means a member of the board.

(3) "District" means a sports facility district.

(4) "Sports facility" means a multi-use facility for sport and recreational activities.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.002. CREATION AND PURPOSE OF DISTRICT. The commissioners court of a county by order may create a sports facility district to finance and effect the construction, acquisition, or operation of a sports facility to serve the county.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.003. BOUNDARIES. A sports facility district is composed of the area of the county that created the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 325.011. BOARD OF DIRECTORS; TERM OF OFFICE. (a) The district is governed by a board of directors composed of five members, with two directors appointed by the commissioners court of the county, two directors appointed by the governing body of the municipality having the largest population in the county, and one director appointed by the governing body of the school district with the largest number of students in average daily attendance in the county. The board shall manage the district and administer this chapter.

(b) Directors are appointed for two-year terms expiring on February 1 of odd-numbered years. However, the initial directors may be appointed for terms covering a period of less than two years.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.012. VACANCY ON BOARD. A vacancy on the board shall be filled by appointment of the remaining members. The person appointed to fill the vacancy shall serve only for the unexpired term.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.013. COMPENSATION. Each director is entitled to receive an amount set by the board in its budget, not to exceed $25 a day, for each day the director is actually engaged in performing services for the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.014. ORGANIZATION OF BOARD. (a) After each directors' appointment, the board shall hold a regular meeting at the district office and shall organize by electing from the members of the board one person to serve as chairman, one person to serve as vice-chairman, and one person to serve as secretary.

(b) A member selected to serve as chairman, vice-chairman, or secretary shall serve in that capacity for the member's term of office on the board.

(c) The chairman shall preside over meetings of the board, and in the chairman's absence, the vice-chairman shall preside.

(d) The chairman, vice-chairman, and secretary shall perform the duties and may exercise the powers specifically given them by this chapter or by orders of the board.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.015. OTHER OFFICERS. (a) The board shall appoint a person to serve as treasurer for the district.

(b) The persons appointed under this section are entitled to the compensation provided by the district's budget.

(c) The person appointed as treasurer shall execute a bond in the amount determined by the board, payable to the district and conditioned on the faithful performance of the treasurer's duties. The district shall pay for the bond.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.016. GENERAL MANAGER. (a) The board may employ a general manager to be the chief administrative officer of the district and may delegate to the general manager full authority to manage and operate the district's affairs subject only to orders of the board.

(b) The general manager shall execute a bond in the amount determined by the board, payable to the authority and conditioned on the faithful performance of the general manager's duties. The authority shall pay for the bond.

(c) The general manager is entitled to receive the compensation provided by the district's budget.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.017. PERSONNEL. (a) The board or the general manager at the direction of the board shall employ persons necessary for the proper handling of district business and operation and may employ or contract with expert and specialized personnel who are necessary to carry out this chapter.

(b) The board shall determine the terms of employment and the compensation to be paid to employees under this section.

(c) The board shall require each employee or person under contract to the district who collects, pays, or handles any funds of the district to furnish a bond, payable to the district, for an amount sufficient to protect the district from financial loss resulting from actions of the employee or another person. Each bond shall be conditioned on the faithful performance of the employee's or person's duties and on accounting for all money and property of the district in the employee's or person's hands. The district shall pay for each bond.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.018. OFFICE. The board shall maintain an office within the boundaries of the district for conducting the business of the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.019. MEETINGS OF BOARD. The board shall hold regular meetings at the district's office at least once each month on a date established by rule of the board.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.020. MINUTES AND RECORDS. (a) The board shall keep a complete written account of all its meetings and other proceedings and shall preserve its minutes, contracts, records, plans, notices, accounts, receipts, and records of all kinds in a secure manner at

the district's office.

(b) Minutes, contracts, records, plans, notices, accounts, receipts, and other records are the property of the district and are subject to public inspection.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.021. SEAL. The board shall adopt a seal for the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 325.031. GENERAL POWERS. To carry out this chapter, the district may:

(1) apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source;

(2) enter into contracts with the federal government and its agencies, the state and its agencies, local governmental entities including the county, and private entities;

(3) conduct, request, and participate in studies, investigations, and research relating to providing a sports facility; and

(4) advise, consult, and cooperate with the federal government and its agencies, the state and its agencies, local governmental entities including the county, and private entities.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.032. CONTRACTS. The board may enter into contracts as provided by this subchapter, and those contracts shall be executed by the board in the name of the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.033. RULES. The board may adopt rules to carry out this subchapter.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.034. SUITS; PAYMENT OF JUDGMENTS. (a) The district may, through its board, sue and be sued in any court of this state in the name of the district. Service of process in a suit may be had by serving the general manager.

(b) The courts of this state shall take judicial notice of the creation of the district.

(c) A court of this state that renders a money judgment against the district may require the board to pay the judgment from money in the district depository that is not dedicated to the payment of any indebtedness of the authority.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.035. INSURANCE. The board may purchase insurance insuring the district and its employees for any liability incurred under this chapter and may purchase insurance coverage to cover losses of district property.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.036. ACQUISITION OF PROPERTY FOR SITE. (a) The district may acquire by gift, grant, purchase, or condemnation any land, easements, rights-of-way, and other property interests necessary to construct or improve a sports facility.

(b) The district may lease property on terms the board determines advantageous to the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.037. EMINENT DOMAIN. (a) The district may acquire land for a sports facility by condemnation if the board determines, after notice and hearing, that it is necessary.

(b) The right of eminent domain must be exercised in the manner provided by Chapter 21, Property Code, except that the district is not required to give bond for appeal or bond for costs in a

condemnation suit or other suit to which it is a party and is not required to deposit double the amount of any award in any suit.

(c) If the district, in the exercise of the power of eminent domain, makes necessary the relocation, raising, lowering, rerouting, or changing in grade, or alteration of the construction of any highway, railroad, electric transmission or distribution line, telephone or telegraph properties and facilities, or pipeline, all necessary relocations, raising, lowering, rerouting, changing in grade, or alteration of construction shall be accomplished at the sole expense of the district. "Sole expense" means the actual cost of relocation, raising, lowering, rerouting, or changing in grade, or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.038. DISTRICT TO ENTER INTO CONSTRUCTION CONTRACTS. The district may contract with any person to construct or improve any part of a sports facility.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.039. BIDS ON CONTRACTS FOR CONSTRUCTION. Construction contracts requiring an expenditure of more than $15,000 may be made only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 16, eff. Sept. 1, 1993.

Sec. 325.040. CHANGE ORDERS. After a construction contract is awarded, if the district determines that additional work is needed or if the character or type of work, facilities, or improvements should be changed, the board may authorize change orders to the contract on terms the board approves. A change made under this section may not increase or decrease the total cost of the contract by more than 25

percent. The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 4, eff. June 17, 2011.

Sec. 325.041. ATTACHMENTS TO CONSTRUCTION CONTRACTS. A construction contract must contain, or have attached to it, the specifications, plans, and details for work included in the contract, and work shall be done according to those plans and specifications under the supervision of the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.042. EXECUTION AND AVAILABILITY OF CONSTRUCTION CONTRACTS. (a) A construction contract must be in writing and signed by an authorized representative of the district and the contractor.

(b) The contract is a district record and is subject to Section 325.020.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.043. CONTRACTOR'S BOND. (a) A contractor shall execute a bond. The bond must be in an amount determined by the board, not to exceed the contract price, payable to the district, approved by the board, and conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond must provide that if the contractor defaults on the contract, the contractor will pay to the district all damages sustained as a result of the default. The district shall deposit the bond in its depository and shall keep a copy of the bond in its main office.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.044. MONITORING CONSTRUCTION WORK. (a) The board has control of any construction, acquisition, or improvement of the sports facility for which it has contracted. The board shall determine whether or not the contract is being fulfilled.

(b) The board shall have the construction work inspected by engineers, inspectors, or other personnel of the district.

(c) During the progress of the construction work, the employees inspecting the work shall submit to the board written reports that show whether the contractor is complying with the contract.

(d) On completion of construction work, the employees inspecting the work shall submit to the board a final detailed written report including information necessary to show whether the contractor has fully complied with the contract.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.045. PAYMENT FOR CONSTRUCTION WORK. (a) The district shall make monthly progress payments under construction contracts as the work proceeds, or at more frequent intervals as determined by the board.

(b) If requested by the board, the contractor shall furnish an analysis of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments.

(c) In making progress payments, the district shall retain 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the board, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the district, may release to the contractor all or a part of the excess amount.

(d) On completion and acceptance of each separate project, work, or other division of the contract, on which the price is stated

separately in the contract, payment may be made without retention of a percentage.

(e) When construction work is completed according to the terms of the contract, the board shall draw a warrant on the depository to pay any balance due on the contract.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.046. CONTRACTS FOR PURCHASE OF VEHICLES, EQUIPMENT, AND SUPPLIES OVER $5,000. (a) If the estimated amount of a proposed contract for the purchase of vehicles, equipment, or supplies is more than $15,000, the board shall ask for competitive bids in accordance with the bidding procedures provided by the County Purchasing Act (Subchapter C, Chapter 262, Local Government Code) except that the bids shall be presented to the board and the board shall award the contract.

(b) This section does not apply to purchases of property from public agencies or to contracts for personal or professional services.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 17, eff. Sept. 1, 1993.

Sec. 325.047. FEES AND CHARGES. (a) The board may adopt and enforce all necessary charges, fees, or rentals for providing any district facilities or service.

(b) The board may require a deposit for any service or facilities furnished and may provide that the deposit will bear interest.

(c) The board may discontinue a facility or service to prevent an abuse or enforce payment of an unpaid charge, fee, or rental due the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

SUBCHAPTER D. DISTRICT FINANCES

Sec. 325.061. FISCAL YEAR. (a) The district shall be operated

on the basis of a fiscal year established by the board.

(b) The fiscal year may not be changed more than once in a 24-month period.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.062. ANNUAL AUDIT. Annually, the board shall have an audit made of the financial condition of the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.063. ANNUAL BUDGET. (a) The board shall prepare and approve an annual budget.

(b) The budget must contain a complete financial statement, including a statement of the:

(1) outstanding obligations of the district;

(2) amount of cash on hand to the credit of each fund of the district;

(3) amount of money received by the district from all sources during the previous year;

(4) amount of money estimated to be available to the district from all sources during the ensuing year;

(5) amount of the balances expected at the end of the year in which the budget is being prepared; and

(6) estimated amount of revenues and balances available to cover the proposed budget.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.064. AMENDING BUDGET. After the annual budget is adopted, the board may amend the budget.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.065. LIMITATION ON EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.066. SWORN STATEMENT. As soon as practicable after the close of the fiscal year, the general manager shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.067. DEPOSITORY. (a) The board shall name one or more banks to serve as depository for district funds.

(b) District funds, other than those transmitted to a bank of payment for bonds issued by the district, shall be deposited as received with the depository bank. This subsection does not limit the power of the board to place a part of the district's funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.068. INVESTMENTS. (a) Funds of the district may be invested and reinvested by the board or its authorized representative in direct or indirect obligations of the United States, the state, or any county, municipality, school district, or other political subdivision of the state.

(b) Funds of the district may be placed in certificates of deposit of state or national banks or state or federal savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the state.

(c) The board, by resolution, may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the

appropriate accounts of the district for investments on terms the board considers advisable.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.069. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) The board may pay all costs and expenses necessarily incurred in the creation and organization of the district, legal fees, and other incidental expenses and may reimburse any person for money advanced for those purposes.

(b) Payments may be made from money obtained from the sale of bonds first issued by the district or other revenues of the district.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.070. BORROWING MONEY. The district may borrow money for any purpose authorized under this chapter or any combination of those purposes.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

SUBCHAPTER E. DISTRICT BONDS

Sec. 325.081. ISSUANCE OF BONDS. The board may issue revenue bonds in the name of the district to acquire land and construct facilities as provided by this chapter.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.082. MANNER OF REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds from revenues of the district, including fees and lease income.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.083. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of the state.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity, at the option of the district, or may contain a mandatory redemption provision.

(d) A district's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details, and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.084. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of those improvements and facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.085. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them, and they shall be registered by the comptroller of public accounts.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum, for any reason, and are valid and binding obligations in accordance with their terms for all purposes.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.086. BONDS AS INVESTMENTS. District bonds are legal and authorized investments for:

(1) banks;

(2) trust companies;

(3) savings and loan associations;

(4) insurance companies;

(5) fiduciaries;

(6) trustees;

(7) guardians; and

(8) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.087. BONDS AS SECURITY FOR DEPOSITS. District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.088. TAX STATUS OF BONDS. Bonds issued by a district under this chapter, any transaction relating to the bonds, and

profits made in the sale of the bonds, are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.089. MANDAMUS BY BONDHOLDERS. In addition to all other rights and remedies provided by law, if the district defaults in the payment of principal, interest, or redemption price on its bonds when due or if it fails to make payments into any fund or funds created in the orders or resolutions authorizing the issuance of the bonds or defaults in the observation or performance of any other covenants, conditions, or obligations set forth in the orders or resolutions authorizing the issuance of its bonds, the owners of any of the bonds are entitled to a writ of mandamus issued by a court of competent jurisdiction compelling and requiring the district and its officials to observe and perform the covenants, obligations, or conditions prescribed in the orders or resolutions authorizing the issuance of the district's bonds.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989.

Sec. 325.090. APPLICATION OF OTHER LAWS. Bonds of the district are considered public securities under Chapter 1201, Government Code.

Added by Acts 1989, 71st Leg., ch. 437, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.323, eff. Sept. 1, 2001.

CHAPTER 326. LIBRARY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 326.001. FINDINGS. The legislature finds that:

(1) children and other residents of many rural and suburban areas of the state do not have convenient access to a public library; and

(2) the creation of library districts in underserved areas would make valuable information resources more readily available to public school students and other residents of the state.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.002. PURPOSE. The purpose of a library district is to establish, equip, and maintain one or more public libraries for the dissemination of general information relating to the arts, sciences, and literature.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of trustees of a district.

(2) "District" means a library district created under this chapter.

(3) "Municipal public library" means a library that is:

(A) financed and operated by a municipality; and

(B) open free of charge to all members of the public under identical conditions.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.004. DISTRICT AUTHORIZATION. (a) A library district may be created and must be maintained, operated, and financed as provided by this chapter.

(b) A district created under this chapter is a governmental agency, body politic and corporate, and political subdivision of the state.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 819, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 326.021. CONFIRMATION ELECTION. A district may be created and a sales and use tax may be authorized only if the creation is confirmed and the tax is approved by a majority of the qualified voters of the district voting at an election held for that purpose.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.022. TERRITORY INCLUDED IN A DISTRICT. (a) A district may include any contiguous territory within a single county.

(b) The district may include incorporated or unincorporated territory.

(c) If the boundaries of the proposed district include any territory that, on the date on which an election is ordered on the question of creating the district, is part of a municipality that operated a municipal public library, then the governing authority of that municipality must consent by resolution to allow the inclusion of that municipal territory in the proposed district.

(d) After a district is created, the district may not be expanded to include additional territory unless the commissioners court of the county in which the district is located calls and holds an election for that purpose in the territory to be added to the district. The commissioners court may not expand the district unless a majority of the voters voting at the expansion election approve the expansion of the district.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 819, Sec. 2, eff. Sept. 1, 1999.

Sec. 326.023. PETITION FOR CREATION OF DISTRICT. (a) Before a district may be created, the commissioners court of the county in which the proposed district is located must receive a petition signed by at least five percent of the number of voters in the territory of the proposed district who voted in the most recent gubernatorial election.

(b) The petition must:

(1) include a name for the proposed district that describes the location of the district followed by the words "Library District";

(2) describe the boundaries of the proposed district by:

(A) metes and bounds;

(B) lot and block number, if there is a recorded map or plat and survey of the area; or

(C) other sufficient legal description;

(3) include the names of five persons who are willing and

qualified to serve as the initial board of trustees of the district if elected at the election to create the district; and

(4) include the rate of the sales and use tax that would be imposed by the board of the proposed district on approval of the district.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 2, eff. Sept. 1, 2001.

Sec. 326.024. PAYMENT OF ELECTION COSTS. The commissioners court may not order the creation of the district or a confirmation election until the petitioners deposit with the county clerk an amount of money equal to the cost of conducting the creation election of the proposed district, as computed by the county.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.025. FILING OF PETITION; HEARING; ORDERING ELECTION. (a) At the next regular or special session of the commissioners court held after the petition is filed with the commissioners court, the commissioners court shall consider the petition.

(b) The commissioners court shall grant the petition if the court finds that the petition is in proper form and conforms to the requirements of Section 326.023 and that the requirement of Section 326.024 is met.

(c) If a petition is granted, the commissioners court shall order an election to confirm the district's creation and to authorize the imposition of a sales and use tax.

(d) The election shall be held on the first authorized uniform election date under Chapter 41, Election Code, that occurs on or after the 45th day after the date the election is ordered.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.026. ELECTION ORDER. In addition to the elements required to be included by the Election Code, the election order must state:

(1) the ballot proposition stating the measure to be voted on;

(2) the hours that the polls will be open; and

(3) the location of each polling place.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.027. NOTICE. (a) The commissioners court shall give notice of the election by publishing a substantial copy of the election order once a week for two consecutive weeks in a newspaper with general circulation in the county in which the proposed district is located.

(b) The notice must be published not earlier than the 30th day or later than the 10th day before election day.

(c) In addition to the elements required to be included by the Election Code, the notice of the election must state the names of the five board of trustee candidates.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.028. BALLOT PROPOSITION. (a) The ballot for the election shall be printed to permit voting for or against the proposition: "The creation of the _____ (name of district) and adoption of a local sales and use tax in the (name of district) at the rate of _____ (rate) percent to provide revenue for the district."

(b) The ballot shall be printed to permit voting for or against each of the five initial trustees listed in the petition submitted to the commissioners court under Section 326.023. A blank space must be printed after the name of each candidate, in each of which a voter may write in the name of another person for trustee.

(c) A voter may not vote for more than five persons for trustee.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.029. RESULTS OF ELECTION. (a) If a majority of the votes received in the election favor the creation of the district and

the adoption of the sales and use tax, the commissioners court shall by resolution or order declare that the district is created and shall declare the amount of the local sales and use tax adopted and enter the result in its minutes.

(b) If a majority of the votes received in the election are against the creation of the district, the commissioners court shall declare the measure defeated and enter the result in its minutes.

(c) The order canvassing the results of the election must:

(1) contain a description of the district's boundaries and a map of the district;

(2) state the date of the election; and

(3) state the total number of votes cast for and against the ballot proposition.

(d) The order issued by a commissioners court canvassing the results of the election must be filed in the deed records of the county in which the district is located.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1467, Sec. 2.08, eff. Oct. 1, 1999; Acts 2001, 77th Leg., ch. 1263, Sec. 3, eff. Sept. 1, 2001.

Sec. 326.030. INITIAL TRUSTEES. (a) The commissioners court shall declare the five persons receiving the highest number of votes for trustee to be elected as trustees.

(b) The two trustees elected who received the fewest number of votes shall serve until the next board of trustees election following the confirmation election, and the three trustees who received the highest number of votes shall serve until the second succeeding trustee election after the confirmation election.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 326.041. BOARD OF TRUSTEES. A district shall be governed by a board of five trustees.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.042. REGISTERED VOTER REQUIREMENT. A person may not be elected to the board of trustees unless the person is a resident of the district and a registered voter of the county in which the district is located.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.043. ELECTION OF TRUSTEES; TERM OF OFFICE. (a) Trustees shall serve two-year terms.

(b) The general election for trustees shall be held annually on an authorized uniform election date under Chapter 41, Election Code.

(c) Except for the initial members of the board of trustees, a candidate for the office of trustee must file an application for a place on the ballot in accordance with Chapter 144, Election Code, and other applicable provisions of that code.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.0431. WRITE-IN CANDIDACIES. Write-in votes may be counted only for names appearing on a list of write-in candidates, in the manner that Subchapter C, Chapter 146, Election Code, provides for counting write-in votes for city officers.

Added by Acts 2001, 77th Leg., ch. 61, Sec. 1, eff. Sept. 1, 2001.

Sec. 326.0432. ELECTION OF UNOPPOSED CANDIDATE. Subchapter C, Chapter 2, Election Code, applies to the election of an unopposed candidate for the office of trustee after the election of the initial members of the board of trustees.

Added by Acts 2001, 77th Leg., ch. 61, Sec. 1, eff. Sept. 1, 2001.

Sec. 326.044. BOARD VACANCY. A vacancy in the office of a trustee shall be filled by appointment by the remaining trustees.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.045. OFFICERS. After the trustees have assumed office, the trustees shall elect from among the trustees a president, a vice president, a secretary, and any other officers the board considers necessary.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.046. QUORUM; OFFICERS' DUTIES. (a) Three trustees constitute a quorum and a concurrence of three is sufficient in any matter relating to the business of the district.

(b) The president presides at all board meetings and is the chief executive officer of the district.

(c) The vice president acts as the president if the president is incapacitated or absent from a meeting.

(d) The secretary acts as the president if both the president and vice president are incapacitated or absent from a meeting.

(e) The secretary is responsible for ensuring that all the records and books of the district are properly kept.

(f) The board may appoint the library director or an employee as assistant or deputy secretary to assist the secretary. The assistant or deputy secretary may certify the authenticity of any record of the district.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.047. BYLAWS. The board may adopt bylaws to govern:

(1) the time, place, and manner of conducting board meetings;

(2) the powers, duties, and responsibilities of the board's officers and employees;

(3) the disbursement of money by a check, draft, or warrant;

(4) the appointment and authority of board committees;

(5) the keeping of accounts and other records; and

(6) any other matter the board considers appropriate.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.048. MEETINGS AND NOTICE. (a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of the district requires.

(b) The board shall hold its meetings at a designated meeting place.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.049. MANAGEMENT OF DISTRICT. (a) The board has control over and shall manage the affairs of the district.

(b) The board shall employ any person, firm, partnership, or corporation the board considers necessary for conducting the affairs of the district.

(c) The board shall determine the term of office and compensation of any employee and consultant by contract or by resolution of the board.

(d) The board may remove any employee.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.050. LIBRARY DIRECTOR. The board may employ a library director to administer the affairs of the district under policies established by the board. The board shall set the compensation of the library director.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.051. BOND. The board may require an officer or employee to execute a bond payable to the district and conditioned on the faithful performance of the person's duties.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.052. TRUSTEE INTERESTED IN CONTRACT. (a) A trustee who is financially interested in a contract with the district, or a trustee who is an employee of a person that is financially interested

in a contract with the district, shall disclose that fact to the other trustees. The disclosure shall be entered into the minutes of the meeting.

(b) A trustee who is financially interested in a contract may not vote on the acceptance of the contract or participate in the discussion on the contract.

(c) The failure of a trustee to disclose the trustee's financial interest in a contract and to have the disclosure entered in the minutes invalidates the contract.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 326.061. GENERAL POWERS OF DISTRICT. (a) A district has all of the powers, authority, rights, and duties that will permit the accomplishment of the purposes for which the district was created, including the power to borrow money, purchase, construct, acquire, own, operate, maintain, repair, or improve any land, works, materials, supplies, improvements, facilities, equipment, vehicles, machinery, or appliances as necessary for the district.

(b) If a district acquires existing improvements, facilities, plants, equipment, or appliances, the district may assume the contracts and obligations of the previous owner.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 300, Sec. 1, eff. Sept. 1, 2001.

Sec. 326.062. EMPLOYEE PLANS. (a) The board may provide for and administer a workers' compensation, health benefit, retirement, disability, or death compensation plan for the employees of the district.

(b) The board may adopt a plan to accomplish the purpose of this section.

(c) The board, after notice and a hearing, may change any plan or rule adopted under this section.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.063. SUITS. (a) A district may sue and be sued in any court of this state in the name of the district.

(b) All courts of this state shall take judicial notice of the establishment of a district.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.064. RULES. (a) The board may adopt reasonable rules to accomplish the purposes of the district.

(b) The board may set monetary charges in reasonable amounts for the violation of a district rule.

(c) The board may exclude from the use of the library a person who wilfully violates a rule adopted by the board under this section.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.065. FEES. (a) A district may impose any necessary charges or fees for providing a district service.

(b) A district may discontinue a service to enforce payment of an unpaid charge or fee that is owed to the district.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.066. DEPOSITORY. (a) The board shall designate one or more banks inside or outside of the district to serve as the depository for district money.

(b) Tax revenue of the district shall be deposited in a depository bank.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.067. INVESTMENTS. (a) Tax revenue of the district may be invested in an obligation that is an authorized investment for the state.

(b) District money other than tax revenue may be invested in accordance with policies adopted by the board.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.068. EXPENDITURES. A district's money may be disbursed only by check, draft, order, or another instrument that must be signed by one or more officers or employees of the district as designated by the board of trustees.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.069. ACCOUNTS AND RECORDS; AUDITS. (a) The district shall keep a complete system of accounts.

(b) The district shall have an annual audit of the affairs of the district performed by an independent certified public accountant.

(c) A signed copy of the audit report shall be delivered to each trustee not later than the 120th day after the closing date of each fiscal year.

(d) A copy of the audit report shall be kept on file at the district office and shall be made available for inspection by any interested person during regular business hours.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.070. FISCAL YEAR. The fiscal year of the district is from January 1 to December 31, unless the board adopts another fiscal year.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.071. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) The district may:

(1) pay all costs and expenses necessarily incurred in the creation and organization of the district; and

(2) reimburse any entity or person for money advanced for the costs and expenses described by Subdivision (1).

(b) Payments under this section may be made from money obtained from taxes or other revenue of the district.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.072. GIFTS, GRANTS, AND DONATIONS. A district may accept and administer a gift, grant, or donation from any source to carry out the purposes of this chapter.

Added by Acts 1999, 76th Leg., ch. 152, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER E. SALES AND USE TAX

Sec. 326.091. SALES AND USE TAX. (a) If a district adopts the tax, there is imposed a tax on the receipts from the sale at retail of taxable items in the district at a rate of up to one-half of one percent. There is also imposed an excise tax on the use, storage, or other consumption in the district of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective in the district.

(b) For purposes of this section, "taxable items" includes all items subject to any sales and use tax that is imposed by the county if the county has imposed a sales and use tax.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.092. IMPOSITION, COMPUTATION, ADMINISTRATION, AND GOVERNANCE OF TAX. (a) Chapter 323, Tax Code, to the extent not inconsistent with this chapter, governs the imposition, computation, administration, and governance of the tax under this subchapter, except that Sections 323.101, 323.105, 323.404, and 323.406 through 323.408, Tax Code, do not apply.

(b) Chapter 323, Tax Code, does not apply to the use and allocation of revenue under this chapter.

(c) In applying the procedures under Chapter 323, Tax Code, to the district, the district's name shall be substituted for "the county" and "board of trustees" is substituted for "commissioners court."

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1467, Sec. 2.09, eff. Oct. 1, 1999.

Sec. 326.093. TAX RATES. The permissible rates for a local sales and use tax levied under this chapter are one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, and one-half of one percent.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.094. ABOLITION OF OR CHANGE IN TAX RATE. (a) The board by order may decrease or abolish the local sales and use tax rate or may call an election to increase, decrease, or abolish the local sales and use tax rate.

(b) At the election, the ballots shall be printed to permit voting for or against the proposition: "The increase (decrease) in the local sales and use tax rate of (name of district) to (percentage) to be used for the purposes of the district" or "The abolition of the district sales and use tax." The increase or decrease in the tax rate is effective if it is approved by a majority of the votes cast. In calling and holding the election, the board shall use the procedure for the confirmation and tax election set forth in this chapter.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

Sec. 326.095. USE OF TAX. Taxes collected under this subchapter may be used only for the purposes for which the district was created and may be pledged as collateral for borrowing money to further those purposes.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 300, Sec. 2, eff. Sept. 1, 2001.

Sec. 326.096. LIMITATION ON ADOPTION OF TAX. A district may adopt a tax under this subchapter only if as a result of adoption of the tax the combined rate of all local sales and use taxes imposed by political subdivisions having territory in the district will not exceed two percent.

Added by Acts 1997, 75th Leg., ch. 1204, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 327. ZOOLOGICAL OPERATION AND MAINTENANCE BOARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 327.001. DEFINITIONS. In this chapter:

(1) "County" means the county that created the zoo board.

(2) "Director" means a zoo board member.

(3) "Zoo board" means a zoological operation and maintenance board created under this chapter.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

SUBCHAPTER B. CREATION OF ZOO BOARD

Sec. 327.051. COUNTIES AUTHORIZED TO CREATE ZOO BOARD. The commissioners court of a county with a population of more than 2.1 million that is adjacent to a county with a population of more than 2.1 million by order may authorize the creation of a zoo board under this chapter to establish, finance, and manage facilities and services to provide conservation, education, research, public recreation, and care relating to the study and display of animals and other specimens in a public zoological park.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 167, eff. September 1, 2023.

Sec. 327.052. ORDER CREATING ZOO BOARD. (a) The order authorizing the creation of a zoo board must specify that the zoo board:

(1) is being created under this chapter; and

(2) has the powers and duties provided in this chapter.

(b) The order authorizing the creation of the zoo board may also serve as the election order under Section 327.054.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.053. AUTHORITY TO TAX; ELECTION REQUIRED. The county may assess and collect a separate ad valorem tax to provide revenue for a zoo board that it has created. The tax may not exceed a rate of three cents per $100 valuation of taxable property, and the amount of the tax must be approved by a majority of the voters of the county voting at an election held for that purpose by the county.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.054. ELECTION ORDER. (a) An order for an election under Section 327.053 must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open;

(4) the location of the polling places; and

(5) the proposed maximum ad valorem tax rate.

(b) The election order may contain additional information about the zoo board that the county commissioners court considers appropriate to inform the voters of, including information about the zoo board's mission or finances.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.055. CONDUCT OF ELECTION. (a) The county shall hold the election under the Election Code to the extent not inconsistent with this chapter.

(b) The ballot for the election shall be printed to permit voting for or against the following summary of the proposition: "Authorizing _____ (name of county) to assess and collect a separate ad valorem tax, in an amount not to exceed _____ (rate, not to exceed three cents) cents per $100 valuation of taxable property, to fund the acquisition, construction, operation, and maintenance of one or more zoos to be operated for the county by the _____ (name of zoo board)."

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.056. ELECTION RESULTS. (a) Not earlier than the second day or later than the 13th day after the election date, the county shall canvass the election returns.

(b) If a majority of the votes cast favor the proposition under Section 327.055, the county may use the ad valorem taxing authority as provided in the proposition and this chapter.

(c) If less than a majority of the votes cast favor the proposition, the county may not order another election on the matter earlier than the anniversary of the date of the preceding election.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

SUBCHAPTER C. ORGANIZATION OF BOARD OF DIRECTORS

Sec. 327.101. BOARD OF DIRECTORS. (a) A zoo board consists of seven directors appointed by the county commissioners court as follows:

(1) one director appointed by each member of the county commissioners court; and

(2) two directors appointed jointly by the county commissioners court.

(b) Each director serves at the pleasure of the county commissioners court.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.102. VACANCY. A vacancy on the zoo board is filled in the same manner as the original appointment.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.103. OFFICERS. (a) The county commissioners court shall designate the presiding officer for the zoo board to serve in that capacity at the pleasure of the commissioners court.

(b) The zoo board shall elect a vice presiding officer, secretary, and treasurer from among its members.

(c) The offices of secretary and treasurer may be held by the same director. If either the secretary or treasurer is unavailable, the other officer, if the offices are held by different directors,

may act for and perform the duties of the unavailable officer.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.104. MEETINGS. A zoo board shall hold regular meetings at times to be fixed by the zoo board or special meetings as necessary.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.105. COMPENSATION; EXPENSES. (a) A director serves without compensation but may be reimbursed for a reasonable and necessary expense, including a travel expense, incurred in performing an official duty.

(b) To receive reimbursement under Subsection (a):

(1) the director must report the expense in the zoo board's minute book or other zoo board record; and

(2) the zoo board must approve the expense.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.106. IMMUNITY FROM LIABILITY. A director is not liable for civil damages or criminal prosecution for any act performed in good faith in the execution of the director's duties or for any action taken by the zoo board.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

SUBCHAPTER D. ZOO BOARD POWERS AND DUTIES

Sec. 327.151. GENERAL POWERS. A zoo board may exercise any power necessary or appropriate to further a zoo board purpose, including establishing or operating one or more zoos.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.152. RULES. The zoo board may adopt rules to

implement this chapter, including rules to govern the zoo board or manage zoos.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.153. EXECUTIVE DIRECTOR; RULES. (a) A zoo board may appoint an executive director to manage the zoo board's operations.

(b) The zoo board by rule may define the powers, duties, and compensation of the executive director.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.154. EMPLOYEES; RULES. (a) A zoo board may delegate to the executive director the power to hire and fire persons necessary to carry out the zoo board's duties.

(b) The zoo board may adopt rules regarding the powers, duties, qualifications, and compensation of zoo board employees.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.155. CONTRACTS--GENERAL; APPROVAL REQUIRED. (a) A zoo board may contract with any person, including a governmental entity, private vendor, or foreign state, for any zoo board purpose, including contracting with the following entities to furnish staff, facilities, equipment, programs, utilities, and services the board considers necessary or appropriate to effectively operate the zoo board or a zoo under its control:

(1) a municipality, county, special district, or other political subdivision of the state;

(2) a state or federal agency;

(3) an individual; or

(4) an entity in the private sector.

(b) A contract may be on terms and conditions and for the length of time as agreed to by the zoo board.

(c) Before entering into a contract under this section, the zoo board must obtain the approval of the county commissioners court.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.156. AGREEMENT TO OPERATE DISTRICT. (a) In selecting a person to operate a zoo under Section 327.155, the zoo board shall consider:

(1) the financial capability of the person;

(2) the experience and qualifications of the person; and

(3) the likelihood that the person will obtain from the United States Department of Agriculture:

(A) accreditation of a zoo; and

(B) necessary permits.

(b) The agreement may allow a reasonable time after it becomes effective for the person to obtain accreditation and permits under Subsection (a)(3).

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.157. PROPERTY; APPROVAL REQUIRED. A zoo board may acquire and sell property for any zoo board purpose. Before the acquisition or sale, the zoo board must obtain the approval of the county commissioners court.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.158. PUBLIC PURPOSE OF DONATIONS, AGREEMENTS, OR TRANSFERS WITH OR FROM OTHER POLITICAL ENTITIES; EXCEPTION TO COMPETITIVE BIDDING. (a) A governmental entity, including a municipality, county, special district, or other political subdivision of the state, may sell, lease, donate, or otherwise transfer to a zoo board a zoo, zoo-related property, or any other property on a finding by the transferring entity that the action is being carried out to further the public purpose of providing and maintaining the zoo-related property.

(b) The entity may make the transfer without complying with laws on competitive bids or proposals.

(c) Before making a transfer under this section, the governmental entity must obtain the approval of the county commissioners court.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.159. ZOO BOARD RECORDS. (a) A zoo board shall:

(1) keep a complete account of each zoo board meeting or other proceeding; and

(2) maintain zoo board records in a secure manner.

(b) The records are the property of the zoo board.

(c) The commissioners court of the county and other county officers may inspect zoo board records at all reasonable times during regular business hours.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.160. DONATIONS. (a) A zoo board may accept a donation, grant, or other gift from any person for any zoo board purpose.

(b) Before accepting a donation, grant, or other gift under this section, the zoo board must obtain the approval of the county commissioners court.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.161. SUITS; SERVICE OF PROCESS; LEGAL SERVICES. (a) A zoo board may sue and be sued.

(b) In a suit against a zoo board, process may be served on a director or registered agent.

(c) The county or district attorney may perform any necessary legal services for the zoo board.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.162. SUPERVISION BY COUNTY. (a) The county commissioners court may supervise the zoo board in the exercise of all powers and duties under this chapter, including Subchapter E.

(b) The county commissioners court may decide to approve all zoo board budgets or contracts, leases, deeds, or other agreements. An appropriate entry in the minutes of the commissioners court of the

county is sufficient evidence of approval.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.163. SEAL. A zoo board shall adopt a seal for the zoo board.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

Sec. 327.201. GENERAL ZOO BOARD AND COUNTY POWER OVER FUNDS. A zoo board shall manage and control zoo board funds subject to the supervision or approval of the county commissioners court under Section 327.162 and subject to the approval of the county commissioners court of a budget under Section 327.207.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.202. ACCOUNTING AND CONTROL PROCEDURES. A zoo board by rule may adopt accounting and control procedures for the zoo board, subject to the supervision of the county commissioners court under Section 327.162.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.203. PURCHASING AND EXPENDITURE METHOD. A zoo board by rule may prescribe the zoo board's method of making purchases and expenditures.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.204. FISCAL YEAR. (a) A zoo board by rule shall establish the zoo board's fiscal year.

(b) The zoo board may not change the fiscal year more than once in a two-year period.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.205. ANNUAL AUDIT REQUIRED. A zoo board shall have an annual audit of the zoo board's financial condition performed by an independent auditor.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.206. ANNUAL BUDGET PROPOSAL. (a) A zoo board shall propose an annual budget.

(b) The proposed budget must contain a complete financial statement, including the:

(1) outstanding zoo board obligations;

(2) amount of cash on hand to the credit of each zoo board fund;

(3) amount of money received by the zoo board from all sources during the previous year;

(4) estimated amount of money available to the zoo board from all sources during the current fiscal year;

(5) amount of money needed to fund programs approved for funding by the zoo board;

(6) amount of the balances expected at the end of the fiscal year in which the budget is being prepared; and

(7) estimated amount of revenue and balances available to cover the proposed budget.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.207. ADOPTION OF ANNUAL BUDGET; HEARINGS. (a) Not later than the 100th day before the date each fiscal year begins, the zoo board shall hold a public hearing on the proposed annual budget.

(b) The zoo board shall publish notice of the hearing in a newspaper with general circulation in the county not later than the 10th day before the date of the hearing.

(c) Any county resident is entitled to be present and participate at the hearing.

(d) Not later than the 80th day before the date each fiscal year begins, the zoo board shall adopt a budget. The zoo board may make any changes in the proposed budget that in its judgment the

interests of the taxpayers demand.

(e) Not later than the 10th day after the date the budget is adopted, the zoo board shall submit the budget, with any revisions, to the county commissioners court.

(f) The budget is not considered final until the county commissioners court has approved the budget, including any revisions, after a public hearing and a vote by the commissioners court in favor of approval.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.208. LIMITATIONS ON EXPENDITURES AND INVESTMENTS. (a) A zoo board may not spend money unless the expense is included in the annual budget.

(b) A zoo board may not incur a debt payable from zoo board revenue except for revenue in the current or immediately following fiscal year.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.209. ACCOUNT OF ZOO BOARD DISBURSEMENTS. Not later than the 60th day after the last day of each fiscal year, a zoo board employee shall prepare for the zoo board a sworn statement showing:

(1) the zoo board's funds; and

(2) the disbursements of those funds.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

SUBCHAPTER F. BONDS

Sec. 327.251. GENERAL OBLIGATION BONDS. The county commissioners court may issue and sell bonds to acquire, construct, equip, or enlarge any zoo or zoo-related property, including a zoo board building or other facility.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.252. TAXES TO PAY BONDS. (a) When the county issues

bonds under this chapter, the county commissioners court shall impose an ad valorem tax on all property subject to county taxation.

(b) The tax amount must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature.

(c) The proceeds of the tax shall be used to pay the principal of, interest on, and other fees and charges relating to the bonds.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.253. AUTHORITY FOR BOND ELECTION. The county commissioners court may order a bond election on its own motion or on the zoo board's request.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.254. EXECUTION OF BONDS. The county judge shall execute the bonds and the county clerk shall countersign the bonds.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

SUBCHAPTER G. TAXES

Sec. 327.301. ANNUAL PROPERTY TAXES. (a) The county annually shall impose a separate ad valorem tax in an amount not to exceed the limit approved by the voters under Subchapter B.

(b) The taxes may be used to pay:

(1) the bonds issued by:

(A) the county under Subchapter F; or

(B) any other governmental entity for property transferred by that entity under Section 327.158; or

(2) maintenance or other expenses of the zoo board.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

Sec. 327.302. TAX RATE. In adopting the tax rate, the county may consider the zoo board's income from sources other than taxation.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

SUBCHAPTER H. DISSOLUTION

Sec. 327.351. DISSOLUTION BY COUNTY. (a) The county commissioners court may dissolve the zoo board if all zoo board debts and obligations have been discharged.

(b) Any property remaining after dissolution is transferred to the county.

Added by Acts 2003, 78th Leg., ch. 1235, Sec. 1, eff. June 20, 2003.

CHAPTER 330. MISCELLANEOUS PROVISIONS

Sec. 330.001. OPERATION AND FINANCING OF COUNTY MUSEUMS. (a) This section applies only to a county that has substantial urban areas and borders on an international boundary. For the purposes of this subsection, a county has substantial urban areas only if at least four municipalities, each with a population of more than 25,000, are located in the county.

(b) A county may construct or operate a museum in the county to display, construct, restore, preserve, maintain, or reconstruct buildings, works of art, and related furnishings for exhibitions.

(c) A county may contract with an entity operating a museum in the county to provide the museum described by Subsection (b). To be eligible to enter into the contract, the entity must be:

(1) organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); and

(2) accredited by a nationally recognized association of museums acceptable to the county.

(d) As part of the contract, the commissioners court may appropriate money from the general fund of the county to the museum to purchase, display, construct, restore, preserve, maintain, operate, or reconstruct a building, work of art, or related furnishings used by the museum to further its exhibitions or operations and to promote county purposes under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 738 (H.B. 2796), Sec. 1, eff. June 15, 2007.

SUBTITLE C. PARKS AND OTHER RECREATIONAL AND CULTURAL RESOURCES PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 331. MUNICIPAL AND COUNTY AUTHORITY TO ACQUIRE AND MAINTAIN PARKS, MUSEUMS, AND HISTORIC SITES

Sec. 331.001. GENERAL AUTHORITY. (a) A municipality or county may improve land for park purposes and may operate and maintain parks. The authority to improve the land includes the authority to construct buildings, lay out and pave driveways and walks, construct ditches or lakes, and set out trees and shrubs.

(b) A municipality or county may by gift, devise, purchase, or eminent domain proceeding acquire:

(1) land and buildings to be used for public parks, playgrounds, or historical museums; or

(2) land on which are located:

(A) historic buildings, sites, or landmarks of statewide historical significance associated with historic events or personalities;

(B) prehistoric ruins, burial grounds, or archaeological or vertebrate paleontological sites; or

(C) sites including fossilized footprints, inscriptions made by human agency, or any other archaeological, paleontological, or historic buildings, markers, monuments, or historical features.

(c) Land acquired by a municipality under Subsection (b) may be situated inside or outside the municipality but must be within the county in which the municipality is situated, and land acquired by a county under Subsection (b) must be within the limits of the county. The land may be acquired in any size tract considered suitable by the governing body of the municipality or county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(s), eff. Aug. 28, 1989.

Sec. 331.002. ACQUISITION OF HISTORIC OBJECTS. A municipality or county may acquire by gift or purchase, individually or in a collection, any historic book, painting, sculpture, coin, or other object or collection of historical significance to the municipality or county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 331.003. EMINENT DOMAIN. A municipality or county may exercise eminent domain under Section 331.001(b) for the acquisition of a historic site, building, or structure only on a showing that it is necessary to prevent the destruction or deterioration of the site, building, or structure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 331.004. BONDS AND TAXES. (a) A municipality or county may issue negotiable bonds for the purpose of acquiring or improving land, buildings, or historically significant objects for park purposes or for historic or prehistoric preservation purposes, and may assess, levy, and collect ad valorem taxes to pay the principal of and interest on those bonds and to provide a sinking fund.

(b) The issuance of the bonds and the levy of the taxes shall be in accordance with Subtitles A and C, Title 9, Government Code.

(c) There is no limit on the amount of taxes that may be levied for the operation and maintenance expenses of parks or for the payment of the principal of and interest on the bonds except for the limits provided by the Texas Constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.324, eff. Sept. 1, 2001.

Sec. 331.005. MANAGEMENT OF FACILITIES. (a) Parks acquired under this chapter are under the control and management of the municipality or county acquiring the park. The commissioners court or the governing body of the municipality may by agreement with the Parks and Wildlife Department turn the land over to the department to be operated as a public park. The expenses of the improvement and operation of the park shall be paid by the municipality or county according to the agreement with the department.

(b) A historic or prehistoric site, historical museum, or historically significant object acquired under this chapter is under the control and management of the municipality or county that acquired it.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 331.006. CONCESSIONS. (a) The management of any park, historical museum, or historic or prehistoric site acquired under this chapter may sell or lease concessions or privileges for the establishment of amusements, stores, gasoline stations, and other concerns consistent with the operation of a public park and the preservation of noteworthy features of a historic or prehistoric site or historical museum.

(b) The proceeds of the sales and leases may be used only for the improvement and operation of the park, museum, or site. However, the proceeds of the sales or leases in connection with a municipal park may also be used for the support, maintenance, and upkeep of other municipal parks.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 331.007. PUBLIC USE. A park, a playground, a historical museum and its contents, or a historic or prehistoric site acquired and maintained under this chapter shall be open for the use of the public under rules prescribed by the governing body of the park, playground, museum, or site.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 331.008. MUNICIPAL AND COUNTY COOPERATION. (a) A municipality and a county may act in cooperation with each other in the exercise of authority under this chapter. A park, playground, museum, or site acquired jointly by a municipality and county acting in cooperation is under joint management and control.

(b) If a municipality owns land outside its limits that is devoted to use as a playground or park and is adjacent to land that is owned by the county in which the municipality is situated and that is devoted to use as a public park, the municipality or county may purchase the adjacent land from the other on terms agreed to by each. The purchased land must be used in connection with the adjacent lands and devoted to use as a playground or park. The consideration for the purchase must be sufficient to provide for the payment of any outstanding bonded indebtedness incurred by the seller in acquiring the land. All sums credited to the sinking fund for the indebtedness shall be subtracted from the face value of the unpaid bonds in

determining the outstanding indebtedness.

(c) A municipality and the county in which the municipality is located that separately own adjacent land that is outside the municipal limits and is dedicated to use as a park or playground may by lease or other arrangement provide for the single management and control of the land. The agreement may be for any period and on any terms agreed to by the municipality and county. The agreement must vest exclusive management and control of the entirety of the lands for the benefit of the public as a recreational park or playground in the governing body of the municipality or the commissioners court of the county. Such an agreement does not affect the power of either the municipality or the county to contribute funds to the maintenance and improvement of the park or playground or the facilities of the park or playground.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 331.009. ROAD CLOSINGS. A roadway on land acquired by a municipality for park purposes outside the municipal limits, or a roadway that abuts on both sides land that the municipality or county may dedicate to the management and control of the other under Section 331.008, may be closed by order of the commissioners court of the county in which the roadway is located. All rights that the state may have in the roadway as a result of a previous dedication are canceled and surrendered to the county or municipality, as appropriate.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 331.010. COOPERATION OF STATE AGENCIES. (a) The Parks and Wildlife Department may cooperate with a municipality or county in the acquisition and establishment of parks and playgrounds, and may adopt rules for the acquisition, establishment, and operation of the parks and playgrounds with the municipality or county as the department and the municipality or county consider advisable.

(b) The governor and the Texas Board of Criminal Justice may permit the use of state inmates and defendants confined in state jail felony facilities for the improvement and maintenance of parks acquired under this chapter under agreements made by the Parks and

Wildlife Department and the municipality or county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.130, eff. September 1, 2009.

CHAPTER 332. MUNICIPAL AND COUNTY RECREATIONAL PROGRAMS AND FACILITIES

SUBCHAPTER A. MUNICIPAL AND COUNTY AUTHORITY

Sec. 332.001. DEFINITIONS. In this subchapter:

(1) "Governing body" means a governing body of a municipality or commissioners court of a county, or another body acting in place of the municipal governing body or commissioners court.

(2) "Board" means a board, commission, committee, or council appointed or designated to carry out this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 332.002. ESTABLISHMENT AND OPERATION OF RECREATIONAL FACILITIES AND PROGRAMS. A municipality or county may establish, provide, acquire, maintain, construct, equip, operate, and supervise recreational facilities and programs, either singly or jointly in cooperation with one or more other municipalities or counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 332.003. REFERENDUM. A municipality or county may submit in an election of its qualified voters the question of whether it should exercise the powers conferred by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 332.004. FINANCES. (a) A municipality or county may pay costs and expenses of carrying out this subchapter from its general revenues or from other revenues provided by law for the establishment

or the operation of parks and recreational facilities.

(b) Municipalities and counties jointly exercising the powers by this subchapter may agree on the manner and method of division of costs and expenses.

(c) Renumbered as V.T.C.A. Local Government Code, Sec. 445.022 by Acts 1993, 73rd Leg., ch. 107, Sec. 8.02, eff. Aug. 30, 1993.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 807, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 107, Sec. 8.02, eff. Aug. 30, 1993.

Sec. 332.005. ADMINISTRATION. A governing body may administer and operate recreational facilities and programs through a bureau or department of recreation or through a board established jointly with another governing body. The board shall adopt rules for the administration and operation of the recreational facilities and programs under its control subject to the approval of the establishing governing bodies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 332.006. GRANTS. A municipality or county may accept a grant, a lease, a loan or devise of real estate, a gift or bequest of money, either principal or income, or any other personal property for temporary or permanent use for the establishment, operation, or support of public recreation facilities and programs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. JOINT FACILITIES FOR POLITICAL SUBDIVISIONS

Sec. 332.021. JOINT RECREATIONAL FACILITIES. (a) Any two political subdivisions, including municipalities and independent school districts, that are located in the same or adjacent counties may jointly by agreement establish, provide, maintain, construct, and operate playgrounds, recreation centers, athletic fields, swimming pools, and other park or recreational facilities located on property owned or acquired by either political subdivision.

(b) The political subdivisions acting jointly may issue bonds

and otherwise act under either Subchapter A, Chapter 1504, Government Code, or Subchapter C, Chapter 1508, Government Code, for the purposes authorized by this section. The political subdivisions may issue the bonds and take other joint actions under their agreement by joint concurrent ordinances or resolutions.

(c) The political subdivisions may delegate supervision and management of the facilities to an operating board or agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.325, eff. Sept. 1, 2001.

CHAPTER 333. JOINT MUNICIPAL-COUNTY MUSEUMS

Sec. 333.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of managers of a joint municipal and county museum.

(2) "Governing body" means a commissioners court of a county or a governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.002. JOINT MUSEUM. The governing bodies of a county with a population of 20,000 or less and a municipality that has a population of 10,000 or more and that is located within the county may jointly erect, equip, maintain, and operate a museum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.003. FINANCES. The museum may be financed out of the general revenues of the municipality and county in agreed proportions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.004. BOARD OF MANAGERS. By resolution or other proper action, the governing bodies may delegate to a board of managers full authority to erect, maintain, own, and equip a museum and to own, lease, or sublet realty for the museum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.005. COMPOSITION OF BOARD; TERMS. (a) The board must be composed of nine members, with four members appointed by each governing body and one appointed jointly by the governing bodies.

(b) Members serve for staggered terms of four years. In appointing the initial board, each governing body shall designate one appointee to serve for a one-year term, one to serve for a two-year term, one to serve for a three-year term, and one to serve for a four-year term. The member appointed jointly shall serve for a four-year term. Terms expire on the appropriate anniversary of the date of appointment.

(c) A vacancy occurring on the board by death or resignation shall be filled for the unexpired term by appointment of the governing body that appointed the vacating member or by joint appointment, as applicable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.006. OFFICERS. (a) The board shall select from its membership a presiding officer. The presiding officer shall:

(1) preside over all board meetings; and

(2) sign all contracts, agreements, and other instruments executed by the board on behalf of the county and the municipality.

(b) The board may elect other officers from its membership as it considers necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.007. CONTRACTS, GRANTS, AND EXPENDITURES. (a) The board may enter into any contract connected with or incident to the establishment, equipping, maintaining, and operating of the museum.

(b) The board may borrow and receive, exchange, sell, and lend property for the benefit of the museum.

(c) The board may accept on behalf of the municipality and county a gift or bequest. A gift or loan of property must be administered as designated by the donor.

(d) The board may pay and disburse funds set aside by the

municipality and county for purposes connected with operating and maintaining the museum as if the action were taken by the governing bodies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.008. FINANCIAL STATEMENT AND BUDGET. (a) Once each year the board shall prepare and present to the governing bodies a complete financial statement on the condition of the museum and shall submit to those bodies a proposed budget for the anticipated financial needs for the next year.

(b) On the basis of the financial statement and budget, the governing bodies shall appropriate and set aside for the use of the board the amount of money the bodies consider necessary for the operation of the museum.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 333.009. PERSONNEL. (a) The board may hire a manager of the museum. With the consent of the board, the manager may hire other personnel.

(b) The manager and other personnel are subject to the bylaws and rules adopted by the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 334. SPORTS AND COMMUNITY VENUES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 334.001. DEFINITIONS. In this chapter:

(1) "Active transportation" means transportation that is wholly or primarily powered by human energy. The term includes walking, running, and bicycling.

(1-a) "Approved venue project" means a sports and community venue project that has been approved under this chapter by the voters of a municipality or county.

(2) "Governing body" means the governing body of a municipality or the commissioners court of a county.

(3) "Related infrastructure" includes any store,

restaurant, on-site hotel, concession, automobile parking facility, area transportation facility, road, street, water or sewer facility, park, or other on-site or off-site improvement that relates to and enhances the use, value, or appeal of a venue, including areas adjacent to the venue, and any other expenditure reasonably necessary to construct, improve, renovate, or expand a venue, including an expenditure for environmental remediation.

(4) "Venue" means:

(A) an arena, coliseum, stadium, or other type of area or facility:

(i) that is used or is planned for use for one or more professional or amateur sports events, community events, or other sports events, including rodeos, livestock shows, agricultural expositions, promotional events, and other civic or charitable events, provided that a facility financed wholly or partly with revenue from a tax imposed under Subchapter H is not, or will not be, primarily used for community, civic, and charitable events that are attended only by residents of the community; and

(ii) for which a fee for admission to the events is charged or is planned to be charged;

(B) a convention center, a convention center facility as defined by Section 351.001(2) or 352.001(2), Tax Code, or a related improvement such as a civic center hotel, theater, opera house, music hall, rehearsal hall, park, zoological park, museum, aquarium, or plaza located in the vicinity of a convention center or facility owned by a municipality or a county, provided that a related improvement for a facility financed wholly or partly with revenue from a tax imposed under Subchapter H must be in the vicinity of the convention center;

(C) a tourist development area;

(D) a municipal parks and recreation system, or improvements or additions to a parks and recreation system, or an area or facility, including an area or facility for active transportation use, that is part of a municipal parks and recreation system;

(E) a project authorized by Section 4A or 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as that Act existed on September 1, 1997;

(F) a watershed protection and preservation project; a recharge, recharge area, or recharge feature protection project; a

conservation easement; or an open-space preservation program intended to protect water; and

(G) an airport facility located in a municipality located on the international border.

(5) "Sports and community venue project" or "venue project" means a venue and related infrastructure that is planned, acquired, established, developed, constructed, or renovated under this chapter.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 784, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1044, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 189, Sec. 1, eff. June 2, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 966 (H.B. 1908), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 267 (H.B. 1896), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 785 (H.B. 2445), Sec. 1, eff. June 15, 2017.

Sec. 334.002. APPLICATION TO CERTAIN MUNICIPALITIES AND COUNTIES. This chapter applies to a municipality with a population of more than 1.9 million and to a county with a population of more than 3.3 million only if the municipality and county create a sports and community venue district under Chapter 335 and only to the extent the use of this chapter by the district is necessary or convenient for the creation or operation of the district to the fullest extent authorized by Chapter 335.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 98, eff. Sept. 1, 2001.

Sec. 334.003. APPLICATION TO VENUE CONSTRUCTED UNDER OTHER LAW. (a) Except as provided by Subsection (b), a county or municipality may use this chapter for a venue project relating to a venue and related infrastructure planned, acquired, established, developed, constructed, or renovated under other law, including Chapter 505 of this code or Subchapter E, Chapter 451, Transportation Code.

(b) For a venue and related infrastructure planned, acquired, established, developed, constructed, or renovated under other law, a county or municipality may not use revenue from a method of financing approved at an election held under this chapter for the purpose of improving, renovating, or expanding the venue or related infrastructure to:

(1) demolish the venue; and

(2) subsequently construct a new venue.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 490 (S.B. 191), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.19, eff. April 1, 2009.

Sec. 334.004. OTHER USES OF VENUE PERMITTED. This chapter does not prohibit the use of a venue for an event that is not related to a purpose described by Section 334.001, such as a community-related event.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.005. SPECIFIC PERFORMANCE. (a) The legislature expressly finds and determines that:

(1) the presence of a professional sports team in an approved venue project built or renovated under this chapter provides a unique value to the municipality or county that built or renovated the project that cannot be adequately valued in money; and

(2) the municipality or county that built or renovated the approved venue project would suffer irreparable injury if a professional sports team breaches its obligation to play its home games in the approved venue project as required by an agreement between the sports team and the municipality or county.

(b) An agreement described by Subsection (a)(2) shall be enforceable by specific performance in the courts of this state. A waiver of this remedy is contrary to public policy and is unenforceable and void.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.006. PROHIBITION AGAINST TAX EXPANSION. In a county with a population of over 2.8 million, no tax on real property or on personal property may be used for the operation, maintenance, renovation, or repair of any venue authorized by an election on November 5, 1996, and constructed after that date.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.007. RESTRICTION ON USE OF WATER OBTAINED AS RESULT OF ACQUISITION OF PROPERTY. Water obtained as a result of an acquisition of property for a project described by Section 334.001(4)(F) may be used only for the maintenance of that property.

Added by Acts 2003, 78th Leg., ch. 189, Sec. 3, eff. June 2, 2003.

Sec. 334.008. PARKS AND RECREATION SYSTEM AS VENUE PROJECT: CERTAIN COUNTIES. (a) A county that contains no incorporated territory of a municipality may provide for the planning, acquisition, establishment, development, construction, or renovation of a county parks and recreation system as a venue project under this chapter if the county:

(1) is located on an international border and has a population of less than 15,000; or

(2) has a population of less than 2,000.

(b) The venue project authorized by Subsection (a) includes:

(1) improvements or additions to the county parks and recreation system; and

(2) an area or facility that is part of the county parks and recreation system.

(c) To the extent that a provision of this chapter, including Sections 334.024(f), 334.1015, and 334.2515, applies to a venue project that is a municipal parks and recreation system or facility, those provisions apply to a venue project authorized by this section, and references to a municipality are considered references to a county to which this section applies.

(d) A county that authorizes a venue project described by this

section maintains the authority granted under this section even if at a later time a part of the county becomes incorporated in a municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 658 (H.B. 1166), Sec. 1, eff. June 15, 2007; Acts 2007, 80th Leg., R.S., Ch. 869 (H.B. 1524), Sec. 1, eff. June 15, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.007, eff. September 1, 2009.

Sec. 334.0082. VENUE PROJECTS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that:

(1) has a population of at least 250,000 that borders the Rio Grande, and that approved a sports and community venue project before January 1, 2009; or

(2) is located in a county adjacent to the Texas-Mexico border if:

(A) the county has a population of at least 500,000;

(B) the county does not have a city located within it that has a population of at least 500,000; and

(C) the municipality is the largest municipality in the county described by this subdivision.

(b) Notwithstanding any other law, including Section 334.089, after complying with Section 334.022, a municipality to which this section applies may hold an election under Section 334.024 on the question of approving and implementing a resolution to:

(1) authorize the municipality to plan, acquire, establish, develop, construct, or renovate a convention center and related infrastructure in the city limits of the municipality as part of an existing or previously approved sports and community venue project, regardless of whether the convention center is located on the premises of the existing or previously approved venue project;

(2) impose a tax under Subchapter H at a rate not to exceed two percent of the cost of a room; and

(3) authorize the municipality to finance, operate, and maintain the venue project described by Subdivision (1), including the convention center, using the revenue from any taxes imposed by the municipality under this chapter, including taxes previously

approved in relation to the existing or previously approved venue project.

(c) If the resolution is approved by a majority of the votes cast in the election, the municipality may implement the resolution.

Added by Acts 2009, 81st Leg., R.S., Ch. 264 (H.B. 2032), Sec. 1, eff. May 30, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 168, eff. September 1, 2023.

Sec. 334.0083. VENUE PROJECTS IN CERTAIN COUNTIES. (a) In this section, "venue" has the meaning assigned by Section 334.001 and includes a tourism development project such as a park, aquarium, birding center, bird viewing site, history center, art center, nature center, nature trail, museum, or water-related project that creates or enhances an activity involving water sports or fishing.

(b) A county with a population of 40,000 or less in which at least one state park and one national wildlife refuge are located may plan, acquire, establish, develop, construct, or renovate a venue as a venue project under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 908 (S.B. 803), Sec. 1, eff. June 17, 2011.

SUBCHAPTER B. VENUE PROJECTS

Sec. 334.021. RESOLUTION AUTHORIZING PROJECT. (a) A county or municipality by resolution may provide for the planning, acquisition, establishment, development, construction, or renovation of a venue project if:

(1) the comptroller determines under Section 334.022 or 334.023 that the implementation of the resolution will not have a significant negative fiscal impact on state revenue;

(2) to the extent required by Section 334.0235 or 334.0236, a rapid transit authority determines that the implementation of the resolution will not have a significant negative impact on the authority's ability to provide services and will not impair any existing contracts; and

(3) the resolution is approved by a majority of the

qualified voters of the municipality or county voting at an election called and held for that purpose under Section 334.024.

(b) The resolution must designate each venue project and each method of financing authorized by this chapter that the municipality or county wants to use to finance a project. A resolution may designate more than one method of financing.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.022. STATE FISCAL IMPACT ANALYSIS. (a) Before calling an election on the resolution under Section 334.024, the municipality or county shall send a copy of the resolution to the comptroller.

(b) Before the 15th day after the date the comptroller receives the copy of the resolution, the comptroller shall:

(1) perform an analysis to determine if approval and implementation of the resolution will have a significant negative fiscal impact on state revenue; and

(2) provide to the municipality or county written notice of the results of the analysis.

(c) If the comptroller determines that implementation will have a significant negative fiscal impact on state revenue, the written analysis required under Subsection (b)(2) must include information on how to change the resolution so that implementation will not have a significant negative fiscal impact on state revenue.

(d) If the comptroller does not complete the analysis and provide the notice before the 30th day after the date the comptroller receives the copy of the resolution, the comptroller is considered to have determined that approval and implementation of the resolution will not have a significant negative fiscal impact on state revenue.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.023. APPEAL OF COMPTROLLER DETERMINATION. (a) If the comptroller determines under Section 334.022 that implementation of the resolution will have a significant negative fiscal impact on state revenue, the municipality or county may contest the finding by filing an appeal with the comptroller not later than the 10th day after the date the municipality or county receives the written notice

under Section 334.022.

(b) Before the 11th day after the date the comptroller receives the appeal under Subsection (a), the comptroller shall perform a new analysis to determine if implementation of the resolution will have a significant negative fiscal impact on state revenue and provide to the municipality or county written notice of the results of the analysis.

(c) If the comptroller again determines that implementation will have a significant negative fiscal impact on state revenue, the written analysis required under Subsection (b) must include additional information on how to change the resolution so that implementation will not have a significant negative fiscal impact on state revenue.

(d) If the comptroller does not comply with Subsection (b) before the 30th day after the date the comptroller receives the appeal or request for information, the comptroller is considered to have determined that approval and implementation of the resolution will not have a significant negative fiscal impact on state revenue.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.0235. TRANSPORTATION AUTHORITY IMPACT ANALYSIS. (a) If the resolution contains a proposed sales and use tax under Subchapter D, and imposition of the tax would result in the reduction of the tax rate of a rapid transit authority created under Chapter 451, Transportation Code, or a regional transportation authority created under Chapter 452, Transportation Code, the municipality or county shall send a copy of the resolution to the authority before calling an election on the resolution under Section 334.024.

(b) Before the 30th day after the date the rapid transit authority receives the copy of the resolution, the authority shall:

(1) perform an analysis to determine if implementation of the proposed sales and use tax and the resulting reduction in the authority's tax rate will:

(A) have a significant negative impact on the authority's ability to provide services; or

(B) impair any existing contracts; and

(2) provide to the municipality or county written notice of the results of the analysis.

(c) If the rapid transit authority determines that implementation of the resolution will have a significant negative impact on the authority's ability to provide services or will impair any existing contracts, the written analysis required under Subsection (b)(2) must include information on how to change the resolution so that implementation will not have a significant negative impact on the authority's ability to provide service or will not impair any existing contracts.

(d) If the rapid transit authority does not complete the analysis and provide the notice before the 30th day after the date the authority receives the copy of the resolution, the authority is considered to have determined that implementation of the resolution will not have a significant negative impact on the authority's ability to provide services and will not impair any existing contracts.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.0236. APPEAL OF AUTHORITY DETERMINATION. (a) If a rapid transit authority determines under Section 334.0235 that implementation of the resolution will have a significant negative impact on the authority's ability to provide services or will impair an existing contract, the municipality or county may contest the finding by filing an appeal with the authority not later than the 10th day after the date the municipality or county receives the written notice under Section 334.0235.

(b) Before the 11th day after the date the rapid transit authority receives the appeal under Subsection (a), the authority shall perform a new analysis to determine if implementation of the resolution will have a significant negative impact on the authority's ability to provide services or will impair an existing contract and provide to the municipality or county written notice of the results of the analysis.

(c) If the authority again determines that implementation will have a significant negative impact on the authority's ability to provide services or will impair an existing contract, the written analysis required under Subsection (b) must include additional information on how to change the resolution so that implementation will not have a significant negative impact on the authority's

ability to provide services and will not impair an existing contract.

(d) If the rapid transit authority does not comply with Subsection (b) before the 11th day after the date the authority receives the appeal or request for information, the authority is considered to have determined that approval and implementation of the resolution will not have a significant negative impact on the authority's ability to provide services and will not impair any existing contracts.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.024. ELECTION. (a) If the comptroller determines under Section 334.022 or 334.023 that the implementation of the resolution will not have a significant negative fiscal impact on state revenue, and, if applicable, the rapid transit authority determines under Section 334.0235 or 334.0236 that the implementation will not have a significant negative impact on the authority's ability to provide service and will not impair any existing contracts, the governing body of the municipality or county may order an election on the question of approving and implementing the resolution.

(b) The order calling the election must:

(1) allow the voters to vote separately on each venue project;

(2) designate the venue project;

(3) designate each method of financing authorized by this chapter that the municipality or county wants to use to finance the project and the maximum rate of each method; and

(4) allow the voters to vote, in the same proposition or in separate propositions, on each method of financing authorized by this chapter that the municipality or county wants to use to finance the project and the maximum rate of each method.

(c) The ballot at the election held under this section must be printed to permit voting for or against the proposition: "Authorizing _____ (insert name of municipality or county) to _____ (insert description of venue project) and to _____ (insert "impose a new" or "authorize the use of the existing") _____ tax (insert the type of tax) at the rate of _____ (insert the maximum rate of the tax) for the purpose of financing the venue project."

(d) If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition: "Authorizing _____ (insert name of municipality or county) to _____ (insert description of venue project) and to impose a _____ tax at the rate of _____ (insert each type of tax and the maximum rate of each tax) for the purpose of financing the venue project."

(d-1) If the proposition is authorizing the imposition of a hotel occupancy tax under Subchapter H, the ballot must include the following language: "If approved, the maximum hotel occupancy tax rate imposed from all sources in _____ (insert name of municipality or county) would be _____ (insert the maximum combined hotel occupancy tax rate that would be imposed from all sources at any location in the municipality or county, as applicable, if the rate proposed in the ballot proposition is adopted) of the price paid for a room in a hotel."

(e) The Election Code governs an election held under this chapter.

(f) If the venue project is authorized by Section 334.001(4)(D) and the venue project does not include improvements and/or additions to all parks and/or recreation facilities of the municipality, the description of the venue project in the proposition, if for improvements or additions to an existing park or recreation facility, shall identify by name or location each park or recreation facility and, if for acquisition and/or improvement of a new park or recreation facility, the general location within the municipality of the new park, recreational system, or facility.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 784, Sec. 2, eff. June 18, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 189 (S.B. 169), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 966 (H.B. 1908), Sec. 2, eff. September 1, 2013.

Sec. 334.0241. ELECTION ON USE OF AD VALOREM TAXES. (a) The governing body of a municipality or county imposing a hotel occupancy tax under Subchapter H may order an election on the question of

approving the use of revenue derived from ad valorem taxes to finance a venue project.

(b) The ballot at the election held under this section must be printed to permit voting for or against the proposition:

"Authorizing _____ (insert name of municipality or county) to use an amount not to exceed _____ (insert percentage of property tax revenue or dollar amount of revenue to be used) of the revenue derived from the _____ (insert "county" or "municipal") property tax, in addition to the hotel occupancy tax and any other applicable taxes, for the purpose of financing the _____ (describe the venue project)."

(c) If a majority of the votes cast at the election under this section favor the use of revenue derived from ad valorem taxes to finance a venue project, the municipality or county shall annually deposit an amount not to exceed the authorized amount of ad valorem tax revenue in the venue project fund of the municipality or county and may use that amount to finance the venue project.

Added by Acts 2005, 79th Leg., Ch. 421 (S.B. 1730), Sec. 1, eff. June 17, 2005.

Sec. 334.0242. ELECTION ON USE OF TAXES TO IMPROVE OR MAINTAIN VENUE PROJECT. (a) Except as provided by Subsection (e), if one or more methods of financing have been approved at an election held under Section 334.024, the governing body of the municipality or county imposing the method may order an election on the question of approving the use of revenue derived from one or more approved methods to finance a related venue project.

(b) The ballot at the election held under this section must be printed to permit voting for or against the proposition:

"Authorizing _____ (insert name of municipality or county) to use an amount not to exceed _____ (insert percentage of tax revenue or dollar amount of revenue to be used for each type of tax) of the revenue derived from the _____ (insert each type of tax) tax, to finance the _____ (describe the related venue project and its relation to the previously approved venue project)."

(c) If a majority of the votes cast at an election held under this section approve the proposition, the municipality or county may use the revenue to finance the related venue project described in the

proposition.

(d) At an election held under this section, the municipality or county may not change the rate of the tax or the method of financing previously authorized under Section 334.024.

(e) This section does not authorize the municipality or county to use revenue from a hotel occupancy tax under Subchapter H.

Added by Acts 2007, 80th Leg., R.S., Ch. 869 (H.B. 1524), Sec. 2, eff. June 15, 2007.

Sec. 334.025. FALSE AND MISLEADING CAMPAIGN MATERIAL. (a) In this section, "campaign material" means a communication supporting or opposing the authorization of a venue project that:

(1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

(b) A person may not print, broadcast, or publish, or cause to be printed, broadcast, or published, campaign material that contains false and misleading information.

(c) An individual may file a complaint with the Texas Ethics Commission in accordance with Subchapter E, Chapter 571, Government Code, alleging a violation of Subsection (b). The commission may impose a penalty in accordance with Chapter 571, Government Code, if the commission determines that the campaign materials contain false and misleading information.

(d) Notwithstanding any other law, the Texas Ethics Commission has jurisdiction to consider and investigate a complaint filed under this section and to impose a penalty.

Added by Acts 2001, 77th Leg., ch. 1044, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 334.041. GENERAL POWERS. (a) A municipality or county may perform any act necessary to the full exercise of the municipality's or county's powers under this chapter.

(b) A municipality or county may acquire, sell, lease, convey, or otherwise dispose of property or an interest in property,

including an approved venue project, under terms and conditions determined by the municipality or county. In a transaction with another public entity that is made as provided by this subsection, the public purpose found by the legislature under Section 334.044 is adequate consideration for the municipality or county and the other public entity.

(c) A municipality or county may contract with a public or private person, including a sports team, club, organization, or other entity to:

(1) plan, acquire, establish, develop, construct, or renovate an approved venue project; or

(2) perform any other act the municipality or county is authorized to perform under this chapter, other than conducting an election under this chapter.

(d) A municipality or county may contract with or enter into an interlocal agreement with a school district, junior or community college district, or an institution of higher education as defined by Section 61.003, Education Code, for a purpose described by Subsection (c). The contract or interlocal agreement may provide for joint ownership and operation or joint use.

(e) The competitive bidding laws, including Chapter 271, do not apply to the planning, acquisition, establishment, development, construction, or renovation of an approved venue project under this chapter.

(f) A municipality or county may not use revenue derived from ad valorem taxes to construct, operate, maintain, or renovate a venue that is part of an approved venue project. This provision does not apply to:

(1) a venue authorized under Section 334.001(4)(D) or (F); or

(2) a county or municipality for which the use of revenue derived from ad valorem taxes to finance a venue project is approved at an election held under Section 334.0241.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 189, Sec. 2, eff. June 2, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 421 (S.B. 1730), Sec. 2, eff. June 17, 2005.

Sec. 334.0415. USE OF FINANCING FOR CERTAIN PROJECTS. Notwithstanding any other provision of this chapter, a municipality or county, or an entity created by or acting on behalf of or in conjunction with a municipality or county, that contracts with a professional sports team or the team's owner or representative on or before November 1, 1998, for the team to relocate and play at an arena, coliseum, or stadium in the municipality or county may not use any method of financing authorized by this chapter to finance the acquisition or construction of the arena, coliseum, or stadium if the team is playing under an existing contract and is located in another arena, coliseum, or stadium owned by a different municipality or county in this state unless the governing body of that different municipality or county consents to the contract.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.042. VENUE PROJECT FUND. (a) A municipality or county in which an approved venue project is located shall establish by resolution a fund known as the venue project fund. The municipality or county shall establish separate accounts within the fund for the various revenue sources.

(b) The municipality or county shall deposit into the venue project fund:

(1) the proceeds of any tax imposed by the municipality or county under this chapter;

(2) all revenue from the sale of bonds or other obligations by the municipality or county under this chapter; and

(3) any other money required by law to be deposited in the fund.

(c) The municipality or county may deposit into the venue project fund:

(1) money received by the municipality or county from innovative funding concepts such as the sale or lease of luxury boxes or the sale of licenses for personal seats;

(2) any other revenue received by the municipality or county from the approved venue project, including stadium rental payments and revenue from concessions and parking;

(3) if the revenue is not otherwise dedicated, all or a portion of any revenue the municipality or county receives from

bonuses, delay rentals, royalties, and any other payments the municipality or county receives as the owner of oil, gas, and other mineral interests;

(4) if the revenue is not otherwise dedicated, all or a portion of any revenues the municipality or county receives from the fees, payments, or charges imposed by:

(A) a joint operating board to which a municipality or county is a party; or

(B) a nonprofit corporation created by and acting on behalf of a county or municipality; and

(5) any other revenue the municipality by ordinance or the county by order determines is appropriate for use in financing a venue project and related infrastructure.

(d) The municipality or county may use money in the venue project fund to:

(1) reimburse or pay the costs of planning, acquiring, establishing, developing, constructing, or renovating one or more approved venue projects in the municipality or county;

(2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the municipality or county or to refund bonds, notes, or other obligations; or

(3) pay the costs of operating or maintaining one or more approved venue projects.

(e) Money deposited into the venue project fund, including money deposited under Subsection (c), is the property of the municipality or county depositing the money.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1031 (H.B. 4360), Sec. 1, eff. June 19, 2009.

Sec. 334.0425. BOOKS, RECORDS, AND PAPERS. The books, records, and papers of the municipality or county relating to an approved venue project and the revenue used to finance the project are public information and subject to disclosure under Chapter 552, Government Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.043. BONDS AND OTHER OBLIGATIONS. (a) A municipality or county in which an approved venue project is located may issue bonds, including revenue bonds and refunding bonds, or other obligations to pay the costs of the approved venue project.

(b) The bonds or other obligations and the proceedings authorizing the bonds or other obligations shall be submitted to the attorney general for review and approval as required by Chapter 1202, Government Code.

(c) The bonds or other obligations must be payable from and secured by the revenues in the venue project fund.

(d) The bonds or other obligations may mature serially or otherwise not more than 30 years from their date of issuance.

(e) The bonds or other obligations are not a debt of and do not create a claim for payment against the revenue or property of the municipality or county other than the revenue sources pledged and an approved venue project for which the bonds are issued.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.326, eff. Sept. 1, 2001.

Sec. 334.044. PUBLIC PURPOSE OF VENUE PROJECT. (a) The legislature finds for all constitutional and statutory purposes that an approved venue project is owned, used, and held for public purposes by the municipality or county.

(b) Section 25.07(a), Tax Code, does not apply to a leasehold or other possessory interest granted by the municipality or county while the municipality or county owns the venue project.

(c) The venue project is exempt from taxation under Section 11.11, Tax Code, while the municipality or county owns the venue project.

(d) If approval and implementation of a resolution under this chapter results in the removal from a school district's property tax rolls of real property otherwise subject to ad valorem taxation, the operator of the approved venue project located on that property shall pay to the school district on January 1 of each year in which the project is in operation and in which the real property is exempt from ad valorem taxation an amount equal to the ad valorem taxes that would otherwise have been levied for the preceding tax year on that

real property by the school district, without including the value of any improvements. This subsection does not apply if the operator of the project is a political subdivision of this state.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.045. PUBLIC SQUARE OR MUNICIPAL PARK. Section 253.001(b) does not apply to the sale or lease of a public square or municipal park for the acquisition, establishment, development, construction, or renovation of an approved venue project.

Added by Acts 2005, 79th Leg., Ch. 1247 (H.B. 1734), Sec. 3, eff. June 18, 2005.

SUBCHAPTER D. SALES AND USE TAX

Sec. 334.081. SALES AND USE TAX. (a) A municipality by ordinance or a county by order may impose a sales and use tax under this subchapter.

(b) A municipality by ordinance or a county by order may repeal or decrease the rate of a tax imposed under this subchapter.

(c) A municipality or county may impose a tax under this subchapter only if:

(1) an approved venue project is or is planned to be located in the municipality or county; and

(2) the tax is approved at an election held under Section 334.024.

(d) Subsection (c)(1) does not apply to a venue project for a venue described by Section 334.001(4)(F).

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 189, Sec. 4, eff. June 2, 2003.

Sec. 334.082. TAX CODE APPLICABLE. (a) Chapter 321, Tax Code, governs the imposition, computation, administration, collection, and remittance of a municipal tax authorized under this subchapter except as inconsistent with this chapter.

(b) Chapter 323, Tax Code, governs the imposition, computation, administration, collection, and remittance of a county tax authorized

under this subchapter except as inconsistent with this chapter.

(c) Sections 321.101(b), 321.506, and 323.101(b), Tax Code, do not apply to the tax authorized by this subchapter.

(d) The tax imposed by this subchapter is in addition to a tax imposed under other law, including Chapters 321 and 323, Tax Code, and is included in computing a combined sales and use tax rate for purposes of the limitation on the maximum combined sales and use tax rate of political subdivisions.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 1, eff. September 1, 2015.

Sec. 334.083. TAX RATE. (a) The rate of a tax adopted by a county under this subchapter must be one-eighth, one-fourth, three-eighths, or one-half of one percent. The rate of the tax adopted by a municipality may be any rate that is an increment of one-eighth of one percent, that the municipality determines is appropriate, and that would not result in a combined rate that exceeds the maximum combined rate prescribed by Section 321.101(f), Tax Code.

(b) The ballot proposition at the election held to adopt the tax must specify the rate of the tax to be adopted.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 2, eff. September 1, 2015.

Sec. 334.084. RATE INCREASE. (a) A municipality that has adopted a sales and use tax under this subchapter at any rate, and a county that has adopted a sales and use tax under this subchapter at a rate of less than one-half of one percent, may by ordinance or order increase the rate of the tax if the increase is approved by a majority of the registered voters of that municipality or county voting at an election called and held for that purpose.

(b) The county tax may be increased under Subsection (a) in one or more increments of one-eighth of one percent to a maximum of one-half of one percent. The municipal tax may be increased under

Subsection (a) in one or more increments of one-eighth of one percent to any rate that the municipality determines is appropriate and that would not result in a combined rate that exceeds the maximum combined rate prescribed by Section 321.101(f), Tax Code.

(c) The ballot for an election to increase the tax shall be printed to permit voting for or against the proposition: "The adoption of a sales and use tax for the purpose of financing _____ (insert description of venue project) at the rate of _____ percent (insert appropriate rate)."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 3, eff. September 1, 2015.

Sec. 334.085. IMPOSITION IN MUNICIPALITY OR COUNTY WITH OTHER TAXING AUTHORITY. (a) In this section, "taxing authority" means:

(1) a rapid transit authority created under Chapter 451, Transportation Code;

(2) a regional transportation authority created under Chapter 452, Transportation Code;

(3) a crime control district created under the Crime Control and Prevention District Act (Article 2370c-4, Vernon's Texas Civil Statutes); or

(4) a corporation created under Chapter 504 or 505.

(b) Except as provided by Section 334.0855, if a municipality or county is included within the boundaries of another taxing authority and the adoption or increase of the tax under this subchapter would result in a combined tax rate of more than two percent in any location in the municipality or county, the election to approve or increase the tax under this chapter is to be treated for all purposes as an election to reduce the tax rate of the other taxing authority (except a rapid transit authority created under Chapter 451, Transportation Code) to the highest rate that will not result in a combined tax rate of more than two percent in any location in the municipality or county. If the municipality or county is located within the boundaries of only one taxing authority, and the adoption or increase of the tax under this subchapter will result in a decrease of the tax rate of the taxing authority, the

ballot at an election to impose or increase the tax must clearly state that the adoption or increase of the tax will result in a reduction of the tax rate of the taxing authority. If the municipality or county is included within the boundaries of more than one taxing authority, the election to impose or increase the tax under this subchapter must allow the voters to choose which taxing authority's tax will be reduced.

(b-1) If the voters choose reduction of the tax collected by a rapid transit authority created under Chapter 451, Transportation Code, and imposition of the tax authorized under this section would result in a reduction of the rapid transit authority's tax rate to the highest rate that will not result in a combined tax rate of more than two percent in any location in the municipality or county, an election must be held pursuant to Subchapter M, Chapter 451, Transportation Code, as applicable for the type of authority involved, on the question of withdrawing the affected municipalities from the authority prior to imposition of the tax authorized in this section. If withdrawal is not authorized, the tax may not be imposed unless authorized pursuant to subsequent election(s). Upon withdrawal of each affected municipality from the authority (if withdrawal is authorized), the obligation to provide service (including service to persons with disabilities) shall be discontinued for that municipality except as required under applicable federal law. In all other respects, the provisions of Subchapter M, Chapter 451, Transportation Code, governing withdrawal procedures and obligations of municipalities upon withdrawal shall apply.

(c) The rate of the tax imposed by the other taxing authority is increased without further action of the board of the authority or the voters of the authority, municipality, or county on the date on which the tax imposed under this subchapter is decreased or expires, but only to the extent that any tax imposed by the authority was reduced under this section when the tax imposed by the municipality or county was adopted or increased.

(d) This section does not permit a taxing authority to impose taxes at differential tax rates within the territory of the authority.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.20, eff.

April 1, 2009.

Sec. 334.0855. IMPOSITION IN CERTAIN MUNICIPALITIES AND COUNTIES. (a) This section applies only to a:

(1) municipality that is included in a regional transportation authority created under Chapter 452, Transportation Code; and

(2) county that is included within the boundaries of a regional transportation authority created under Chapter 452, Transportation Code.

(b) If the adoption or increase of the tax under this subchapter would otherwise result under Section 334.085 in the reduction of the tax rate of the transportation authority, the election to approve or increase the tax under this subchapter is to be treated for all purposes as an election to withdraw from the authority in accordance with and subject to Subchapter Q, Chapter 452, Transportation Code.

(c) The ballot language at an election to which this section applies must clearly state that the adoption or increase of the tax under this subchapter will result in the withdrawal of the municipality or county from the transportation authority.

(d) A municipality or county subject to this section that votes to adopt or increase the tax under this subchapter may not impose that tax before the date on which the municipality's or county's financial obligations to the authority are satisfied in accordance with Subchapter Q, Chapter 452, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.086. IMPOSITION OF TAX. (a) If the municipality or county adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items in the municipality or county at the rate approved at the election.

(b) There is also imposed an excise tax on the use, storage, or other consumption in the municipality or county of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective in the municipality or county. The rate of the excise tax is the same as the rate of the sales tax

portion of the tax and is applied to the sale price of the tangible personal property.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.087. EFFECTIVE DATE OF TAX. The adoption of the tax or the change of the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date on which the comptroller receives a notice of the results of the election adopting or increasing the tax or of the ordinance or order decreasing the tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.088. DEPOSIT OF TAX REVENUES. Revenue from the tax imposed under this subchapter shall be deposited in the venue project fund of the municipality or county imposing the tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.089. ABOLITION OF TAX. (a) A sales and use tax imposed under this subchapter may not be collected after the last day of the first calendar quarter occurring after notification to the comptroller by the municipality or county that the municipality or county has abolished the tax or that all bonds or other obligations of the municipality or county that are payable in whole or in part from money in the venue project fund, including any refunding bonds or other obligations, have been paid in full or the full amount of money, exclusive of guaranteed interest, necessary to pay in full the bonds and other obligations has been set aside in a trust account dedicated to the payment of the bonds and other obligations.

(b) The municipality or county shall notify the comptroller of the expiration of the tax not later than the 60th day before the expiration date.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. SHORT-TERM MOTOR VEHICLE RENTAL TAX

Sec. 334.101. DEFINITIONS. (a) In this subchapter:

(1) "Motor vehicle" means a self-propelled vehicle designed principally to transport persons or property on a public roadway and includes a passenger car, van, station wagon, sports utility vehicle, and truck. The term does not include a:

(A) trailer, semitrailer, house trailer, truck having a manufacturer's rating of more than one-half ton, or road-building machine;

(B) device moved only by human power;

(C) device used exclusively on stationary rails or tracks;

(D) farm machine; or

(E) mobile office.

(2) "Rental" means an agreement by the owner of a motor vehicle to authorize for not longer than 30 days the exclusive use of that vehicle to another for consideration.

(3) "Place of business of the owner" means an established outlet, office, or location operated by the owner of a motor vehicle or the owner's agent or employee for the purpose of renting motor vehicles and includes any location at which three or more rentals are made during a year.

(b) Except as provided by Subsection (a), words used in this subchapter and defined by Chapter 152, Tax Code, have the meanings assigned by Chapter 152, Tax Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.1015. APPLICATION. (a) Except as provided by Subsection (b), this subchapter does not apply to the financing of a venue project that is an area or facility that is part of a municipal parks and recreation system.

(b) A municipality located on the international border may finance a venue project described by Section 334.001(4)(D) with the revenue from a tax imposed under this subchapter.

Added by Acts 1999, 76th Leg., ch. 784, Sec. 3, eff. June 18, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 785 (H.B. 2445), Sec. 2, eff. June 15, 2017.

Sec. 334.102. TAX AUTHORIZED. (a) A municipality by ordinance or a county by order may impose a tax on the rental in the municipality or county of a motor vehicle.

(b) A municipality by ordinance or a county by order may repeal or decrease the rate of a tax imposed under Subsection (a).

(c) A municipality or county may impose a tax under this subchapter only if:

(1) an approved venue project is or is planned to be located in the municipality or county; and

(2) the tax is approved at an election held under Section 334.024.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.103. SHORT-TERM RENTAL TAX. (a) Except as provided by Subsection (c), the tax authorized by this subchapter is imposed at a rate in increments of one-eighth of one percent, not to exceed five percent, on the gross rental receipts from the rental in the municipality or county of a motor vehicle.

(b) The ballot proposition at the election held to adopt the tax must specify the maximum rate of the tax to be adopted.

(c) A county with a population of more than 2.5 million that is adjacent to a county with a population of more than 2.1 million may impose the tax authorized by this subchapter at a rate not to exceed six percent on the gross rental receipts from the rental in the county of a motor vehicle.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 164, Sec. 1, eff. May 27, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 169, eff. September 1, 2023.

Sec. 334.104. RATE INCREASE. (a) Except as provided by Section 334.1041, a municipality or county that has adopted a tax under this subchapter at a rate of less than five percent may by ordinance or order increase the rate of the tax to a maximum of five

percent if the increase is approved by a majority of the registered voters of that municipality or county voting at an election called and held for that purpose.

(b) The ballot for an election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the motor vehicle rental tax for the purpose of financing _____ (insert description of venue project) to a maximum rate of _____ percent (insert new maximum rate not to exceed five percent)."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 164, Sec. 2, eff. May 27, 2003.

Sec. 334.1041. RATE INCREASE IN CERTAIN POPULOUS COUNTIES. (a) This section applies only to a county with a population of more than 2.5 million that is adjacent to a county with a population of more than 2.1 million.

(b) A county that has adopted a tax under this subchapter at a rate of less than six percent may by order increase the rate of the tax to a maximum of six percent if the increase is approved by a majority of the registered voters of the county voting at an election called and held for that purpose.

(c) The ballot for the election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the motor vehicle rental tax for the purpose of financing _____ (insert description of venue project) to a maximum rate of _____ percent (insert new maximum rate not to exceed six percent)."

Added by Acts 2003, 78th Leg., ch. 164, Sec. 3, eff. May 27, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 170, eff. September 1, 2023.

Sec. 334.105. COMPUTATION OF TAX. (a) The owner of a motor vehicle subject to the tax imposed under this subchapter shall collect the tax for the benefit of the municipality or county.

(b) The owner shall add the short-term motor vehicle rental tax imposed by the municipality or county under this subchapter, if

applicable, and the gross rental receipts tax imposed by Chapter 152, Tax Code, to the rental charge, and the sum of the taxes is a part of the rental charge, is a debt owed to the motor vehicle owner by the person renting the vehicle, and is recoverable at law in the same manner as the rental charge.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.106. CONSUMMATION OF RENTAL. A rental of a motor vehicle occurs in the municipality or county in which transfer of possession of the motor vehicle occurs.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.107. EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter E, Chapter 152, Tax Code, apply to the tax authorized by this subchapter.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.108. NOTICE OF TAX. Each bill or other receipt for a rental subject to the tax imposed under this subchapter must contain a statement in a conspicuous location stating: "_____ (insert name of taxing municipality or county) requires that an additional tax of ____ percent (insert rate of tax) be imposed on each motor vehicle rental for the purpose of financing _____ (describe approved venue project)."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.109. GROSS RECEIPTS PRESUMED SUBJECT TO TAX. All gross receipts of an owner of a motor vehicle from the rental of the motor vehicle are presumed to be subject to the tax imposed by this subchapter, except for gross receipts for which the owner has accepted in good faith a properly completed exemption certificate.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.110. RECORDS. (a) The owner of a motor vehicle used for rental purposes shall keep for four years records and supporting documents containing the following information on the amount of:

(1) gross rental receipts received from the rental of the motor vehicle; and

(2) the tax imposed under this subchapter and paid to the municipality or county on each motor vehicle used for rental purposes by the owner.

(b) Mileage records are not required.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.111. FAILURE TO KEEP RECORDS. (a) An owner of a motor vehicle commits an offense if the owner fails to make and retain complete records for the four-year period required by Section 334.110.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $25 or more than $500.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.112. EFFECTIVE DATE AND ENDING DATE OF TAX. (a) A tax imposed under this subchapter or a change in the tax rate takes effect on the date prescribed by the ordinance or order imposing the tax or changing the rate.

(b) A municipality or county may impose a tax under this subchapter only if the municipality or county issues bonds or other obligations under Section 334.043 before the first anniversary of the date the tax is imposed. The municipality or county may not impose the tax after those bonds or other obligations are paid in full.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.113. TAX COLLECTION; PENALTY. (a) The owner of a motor vehicle required to collect the tax imposed under this subchapter shall report and send the taxes collected to the

municipality or county as provided by the ordinance or order imposing the tax.

(b) A municipality by ordinance or a county by order may prescribe penalties, including interest charges, for failure to keep records required by the municipality or county, to report when required, or to pay the tax when due.

(c) The attorney acting for the municipality or county may bring suit against a person who fails to collect a tax under this subchapter and to pay it over to the municipality or county as required.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.1135. REIMBURSEMENT FOR TAX COLLECTION EXPENSES. (a) Subject to Subsection (b), a municipality or county shall allow a person who is required to collect and remit the tax imposed under this subchapter one percent of the amount collected and required to be remitted as reimbursement to the person for the costs of collecting the tax.

(b) A person required to collect and remit the tax imposed under this subchapter is not entitled to reimbursement under Subsection (a) unless the municipality or county receives the amount required to be collected not later than the 15th day after the end of the collection period. If the 15th day is on a weekend or holiday, the municipality or county must receive the amount required to be collected not later than the first working day after the 15th day. If the person remits the amount required to be collected by mail, the date postmarked by the United States Postal Service is considered to be the date of receipt by the municipality or county.

Added by Acts 2001, 77th Leg., ch. 1044, Sec. 3, eff. Sept. 1, 2001.

Sec. 334.114. COLLECTION PROCEDURES ON PURCHASE OF MOTOR VEHICLE RENTAL BUSINESS. (a) If the owner of a motor vehicle rental business that makes rentals subject to the tax imposed by this subchapter sells the business, the successor to the seller or the seller's assignee shall withhold an amount of the purchase price sufficient to pay the amount of tax due until the seller provides a receipt by a person designated by the municipality or county to

provide the receipt showing that the amount has been paid or a certificate showing that no tax is due.

(b) The purchaser of a motor vehicle rental business who fails to withhold an amount of the purchase price as required by this section is liable for the amount required to be withheld to the extent of the value of the purchase price.

(c) The purchaser of a motor vehicle rental business may request that the person designated by the municipality or county to provide a receipt under Subsection (a) issue a certificate stating that no tax is due or issue a statement of the amount required to be paid before a certificate may be issued. The person designated by the municipality or county shall issue the certificate or statement not later than the 60th day after the date the person receives the request.

(d) If the person designated by the municipality or county to provide a receipt under Subsection (a) fails to issue the certificate or statement within the period provided by Subsection (c), the purchaser is released from the obligation to withhold the purchase price or pay the amount due.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.115. DEPOSIT OF TAX REVENUE. Revenue from the tax imposed under this subchapter shall be deposited in the venue project fund of the municipality or county imposing the tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. ADMISSIONS TAX

Sec. 334.151. TAX AUTHORIZED. (a) A municipality by ordinance or a county by order may impose a tax on each ticket sold as admission to an event held at an approved venue project in the municipality or county for which the municipality or county has issued bonds to plan, acquire, establish, develop, construct, or renovate the approved venue project.

(b) The municipality or county may not impose the tax under this subchapter for admission to an event at a venue that is not an approved venue project or for which the municipality or county has not issued bonds to plan, acquire, establish, develop, construct, or

renovate the approved venue project.

(c) A municipality or county may impose a tax under this subchapter only if:

(1) an approved venue project is or will be located in the municipality or county; and

(2) the tax is approved at an election held under Section 334.024.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.152. TAX RATE. (a) The tax authorized by this subchapter is imposed at the tax rate on each ticket sold as admission to an event held at an approved venue.

(b) The amount of the tax may be imposed at any uniform percentage not to exceed 10 percent of the price of the ticket sold as admission to an event held at an approved venue.

(c) The ballot proposition at the election held to adopt the tax must specify the maximum rate of the tax to be adopted.

(d) The municipality by ordinance or the county by order may repeal or decrease the rate of the tax imposed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.153. RATE INCREASE. (a) A municipality or county that has adopted a tax under this subchapter at the rate of less than the maximum percentage allowed by this subchapter may by ordinance or order increase the rate of the tax to the maximum percentage allowed by this subchapter if the increase is approved by a majority of the registered voters of that municipality or county voting at an election called and held for that purpose.

(b) The ballot for an election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the admissions tax for the purpose of financing _____ (insert description of venue project) to a maximum rate of _____ percent of the price of each ticket sold as admission to an event held at an approved venue (insert new maximum rate not to exceed 10 percent of the price of each ticket sold as admission to an event held at an approved venue)."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.154. COLLECTION. (a) The municipality by ordinance or the county by order may require the owner or lessee of an approved venue project in the municipality or county to collect the tax for the benefit of the municipality or county.

(b) An owner or lessee required to collect the tax under this section shall add the tax to the admissions price, and the tax is a part of the admissions price, a debt owed to the owner or lessee of the approved venue project by the person admitted, and recoverable at law in the same manner as the admissions charge.

(c) The tax imposed by this subchapter is not an occupation tax imposed on the owner or lessee of the approved venue project.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.155. EFFECTIVE DATE AND ENDING DATE OF TAX. (a) A tax imposed under this subchapter or a change in a tax rate takes effect on the date prescribed by the ordinance or order imposing the tax or changing the rate.

(b) A municipality or county may impose a tax under this subchapter only if the municipality or county issues bonds or other obligations under Section 334.043. The municipality or county may impose the tax only while those bonds or other obligations are outstanding and unpaid.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.156. COLLECTION OF TAX. (a) A person required to collect a tax imposed under this subchapter shall report and send the taxes to the municipality or county as provided by the municipality or county imposing the tax.

(b) A municipality by ordinance or a county by order may prescribe penalties, including interest charges, for failure to keep records required by the municipality or county, to report when required, or to pay the tax when due. The attorney acting for the municipality or county may bring suit against a person who fails to collect a tax under this subchapter and to pay it over to the

municipality or county as required.

(c) A municipality by ordinance or a county by order may permit a person who is required to collect a tax under this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. The municipality or county may provide that the person may retain the amount only if the person pays the tax and files reports as required by the municipality or county.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.157. DEPOSIT OF TAX REVENUE. Revenue from the tax imposed under this subchapter shall be deposited in the venue project fund of the municipality or county imposing the tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. PARKING TAX

Sec. 334.201. EVENT PARKING TAX. (a) A municipality by ordinance or a county by order may impose a tax on each motor vehicle parking in a parking facility of an approved venue project.

(b) The municipality or county may impose the tax during a period beginning not more than three hours before and ending not more than three hours after the time an event in an approved venue project is scheduled to begin. The municipality or county may not impose the tax under this subchapter during any other time.

(b-1) Notwithstanding Subsection (b), if the approved venue project consists of three or more separate but adjacent venue facilities, the municipality or county may impose the tax during any hours.

(c) A municipality or county may impose a tax under this subchapter only if the tax is approved at an election held under Section 334.024.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1031 (H.B. 4360), Sec. 2, eff. June 19, 2009.

Sec. 334.202. TAX RATE. (a) The municipality by ordinance or the county by order may provide that the tax is imposed at a flat amount on each parked motor vehicle or is imposed as a percentage of the amount charged for event parking by the owner or lessee of the parking facility.

(b) Regardless of the method of imposition, the amount of the tax may not exceed $3 for each motor vehicle, except as provided by Subsection (b-1).

(b-1) A municipality with a population of more than 700,000 within a county with a population of more than 2.1 million adjacent to a county with a population of more than 2.5 million may impose the tax authorized by this subchapter at a rate not to exceed $5 for each motor vehicle.

(c) The ballot proposition at the election held to adopt the tax must specify the maximum rate of the tax to be adopted.

(d) The municipality by ordinance or the county by order may repeal or decrease the rate of the tax imposed under this section.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1031 (H.B. 4360), Sec. 3, eff. June 19, 2009.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 171, eff. September 1, 2023.

Sec. 334.203. RATE INCREASE. (a) Except as provided by Section 334.2031, a municipality or county that has adopted a tax under this subchapter at a rate of less than $3 a vehicle may by ordinance or order increase the rate of the tax to a maximum of $3 a vehicle if the increase is approved by a majority of the registered voters of that municipality or county voting at an election called and held for that purpose.

(b) The ballot for an election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the parking tax for the purpose of financing _____ (insert description of venue project) to a maximum rate of _____ (insert new maximum rate not to exceed $3)."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1031 (H.B. 4360), Sec. 4, eff. June 19, 2009.

Sec. 334.2031. RATE INCREASE IN CERTAIN MUNICIPALITIES IN CERTAIN POPULOUS COUNTIES. (a) This section applies only to a municipality with a population of more than 700,000 within a county with a population of more than 2.1 million that is adjacent to a county with a population of more than 2.5 million.

(b) A municipality that has adopted a tax under this subchapter at a rate of less than $5 a vehicle may by ordinance increase the rate of the tax to a maximum of $5 a vehicle if the increase is approved by a majority of the registered voters of the municipality voting at an election called and held for that purpose.

(c) The ballot for the election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the parking tax for the purpose of financing _____ (insert description of venue project) to a maximum rate of _____ (insert new maximum rate not to exceed $5)."

Added by Acts 2009, 81st Leg., R.S., Ch. 1031 (H.B. 4360), Sec. 5, eff. June 19, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 172, eff. September 1, 2023.

Sec. 334.204. COLLECTION. (a) The municipality by ordinance or the county by order may require the owner or lessee of a parking facility to collect the tax for the benefit of the municipality or county.

(b) An owner or lessee required to collect the tax under this section shall add the tax to the parking charge, and the tax is a part of the parking charge, a debt owed to the parking facility owner or lessee by the person parking, and recoverable at law in the same manner as the parking charge.

(c) The tax imposed by this subchapter is not an occupation tax imposed on the owner or lessee of the parking facility.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.205. EFFECTIVE DATE AND ENDING DATE OF TAX. (a) A tax imposed under this subchapter or a change in the tax rate takes effect on the date prescribed by the ordinance or order imposing the tax or changing the rate.

(b) A municipality or county may impose a tax under this subchapter only if the municipality or county issues bonds or other obligations under Section 334.043. The municipality or county may impose the tax only while those bonds or other obligations are outstanding and unpaid.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.206. COLLECTION OF TAX. (a) A person required to collect a tax imposed under this subchapter shall report and send the taxes to the municipality or county as provided by the municipality or county imposing the tax.

(b) A municipality by ordinance or a county by order may prescribe penalties, including interest charges, for failure to keep records required by the municipality or county, to report when required, or to pay the tax when due. The attorney acting for the municipality or county may bring suit against a person who fails to collect a tax under this subchapter and to pay it over to the municipality or county as required.

(c) A municipality by ordinance or a county by order may permit a person who is required to collect a tax under this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. The municipality or county may provide that the person may retain the amount only if the person pays the tax and files reports as required by the municipality or county.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.207. DEPOSIT OF TAX REVENUE. Revenue from the tax imposed under this subchapter shall be deposited in the venue project fund of the municipality or county imposing the tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. HOTEL OCCUPANCY TAXES

Sec. 334.251. DEFINITION. In this subchapter, "hotel" has the meaning assigned by Section 156.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.2515. APPLICATION. Except as provided by Sections 334.2516 and 334.2518, this subchapter does not apply to the financing of a venue project that is:

(1) an area described by Section 334.001(4)(C);

(2) an area or facility that is part of a municipal parks and recreation system as described by Section 334.001(4)(D);

(3) a project described by Section 334.001(4)(E), except for a project described by Section 334.001(4)(A); or

(4) a facility described by Section 334.001(4)(G).

Added by Acts 1999, 76th Leg., ch. 784, Sec. 4, eff. June 18, 1999. Amended by Acts 2001, 77th Leg., ch. 660, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1044, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 12.006, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 785 (H.B. 2445), Sec. 3, eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 977 (S.B. 2181), Sec. 1, eff. September 1, 2021.

Sec. 334.2516. USE OF REVENUE BY CERTAIN MUNICIPALITIES FOR CERTAIN PURPOSES. (a) This section applies only to a municipality that:

(1) is located in three counties;

(2) has a population of less than 130,000 as shown by the 2000 federal decennial census; and

(3) acquires by purchase or lease with a term of not less than 20 years an interest in real property that by the terms of the acquisition is required to be maintained as park property.

(b) A municipality may use revenue under this subchapter to acquire, construct, improve, and equip a venue project that is a convention center facility or related infrastructure to be constructed on real property described by Subsection (a)(3). In

addition, the municipality may pledge the revenue to the payment of bonds or other obligations the municipality issues to finance the convention center facility infrastructure.

Added by Acts 2001, 77th Leg., ch. 660, Sec. 2 and Acts 2001, 77th Leg., ch. 1044, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 264 (H.B. 2032), Sec. 2, eff. May 30, 2009.

Sec. 334.2517. USE OF REVENUE FOR CERTAIN PURPOSES. This subchapter does not apply to the financing of a venue project described by Section 334.001(4)(F).

Added by Acts 2003, 78th Leg., ch. 189, Sec. 5, eff. June 2, 2003.

Sec. 334.2518. USE OF REVENUE BY CERTAIN MUNICIPALITIES FOR CERTAIN PARK FACILITIES. (a) This section applies only to a municipality that has a population of more than 1.3 million but less than 1.4 million.

(b) Subject to Subsection (c), a municipality to which this section applies may acquire, construct, and improve a venue project that is an amphitheater, arena, exhibit hall, music hall, or stadium located within a municipally owned park that is at least 100 acres in size and all or part of which is designated as a national historic landmark district, if the applicable type of facility is specifically listed in the ballot proposition for a venue project for the expansion of an existing convention center facility that primarily hosts conventions and has at least one million square feet of meeting space.

(c) A municipality may not spend more than 20 percent of the revenue from the convention center facility expansion venue project described by Subsection (b) for costs related to an amphitheater, arena, exhibit hall, music hall, or stadium located within a municipally owned park.

Added by Acts 2021, 87th Leg., R.S., Ch. 977 (S.B. 2181), Sec. 2, eff. September 1, 2021.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 173, eff. September 1, 2023.

Sec. 334.252. IMPOSITION OF TAX. (a) A municipality by ordinance or a county by order may impose a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel, costs $2 or more each day, and is ordinarily used for sleeping.

(b) A municipality or county may impose a tax under this subchapter only if:

(1) an approved venue project is or is planned to be located in the municipality or county; and

(2) the tax is approved at an election held under Section 334.024.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.253. TAX CODE APPLICABLE. (a) Sections 351.002(c), 351.004, 351.0041, 351.005, and 351.006, Tax Code, govern the imposition, computation, administration, collection, and remittance of a municipal tax authorized under this subchapter except as inconsistent with this subchapter.

(b) Sections 352.002(c), 352.004, 352.0041, 352.005, and 352.007, Tax Code, govern the imposition, computation, administration, collection, and remittance of a county tax authorized under this subchapter except as inconsistent with this subchapter.

(c) The tax imposed by this subchapter is in addition to a tax imposed under Chapter 351 or 352, Tax Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.254. TAX RATE. (a) Except as provided by Subsections (c) and (d), the tax authorized by this subchapter may be imposed by a municipality or county at any rate not to exceed two percent of the price paid for a room in a hotel.

(b) The ballot proposition at the election held to adopt the tax must specify:

(1) the maximum rate of the tax to be adopted; and

(2) the maximum combined hotel occupancy tax rate that would be imposed from all sources at any location in the municipality or county, as applicable, if the rate proposed in the ballot proposition is adopted.

(c) Except as provided by Subsection (d), a county with a population of more than 2.5 million that is adjacent to a county with a population of more than 2.1 million may impose the tax authorized by this subchapter at any rate not to exceed three percent of the price paid for a room in a hotel.

(d) A municipality or county may not propose a hotel occupancy tax rate that would cause the combined hotel occupancy tax rate imposed from all sources at any location in the municipality or county, as applicable, to exceed 17 percent of the price paid for a room in a hotel. The following are not included in calculating the combined tax rate under this subsection:

(1) an assessment for an improvement project described by Section 372.0035;

(2) an assessment authorized by Chapter 375; or

(3) a fee collected by a hotel to recover the cost of an assessment described by Subdivision (1) or (2).

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 164, Sec. 4, eff. May 27, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 966 (H.B. 1908), Sec. 3, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 174, eff. September 1, 2023.

Sec. 334.255. RATE INCREASE. (a) A municipality or county that has adopted a tax under this subchapter at a rate of less than two percent may by ordinance or order increase the rate of the tax to the maximum applicable rate if the increase is approved by a majority of the registered voters of that municipality or county voting at an election called and held for that purpose.

(b) The ballot for an election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the hotel occupancy tax for the purpose of financing

_____ (insert description of venue project) to a maximum rate of _____ percent (insert new maximum applicable rate). If approved, the maximum hotel occupancy tax rate imposed from all sources in _____ (insert name of municipality or county) would be _____ (insert the maximum combined hotel occupancy tax rate that would be imposed from all sources at any location in the municipality or county, as applicable, if the rate proposed in the ballot proposition is adopted) of the price paid for a room in a hotel."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 966 (H.B. 1908), Sec. 4, eff. September 1, 2013.

Sec. 334.256. NOTICE OF TAX. (a) Each bill or other receipt for a hotel charge subject to the tax imposed under this subchapter must contain a statement in a conspicuous location stating the applicable hotel occupancy tax rate collected by the hotel from the customer for the State of Texas (insert state rate of tax) and the tax rate and identity of each other taxing authority that has imposed a hotel occupancy tax for the room night (insert rate of tax).

(b) If a hotel charge is subject to any additional hotel occupancy taxes, the statement required by Subsection (a) must be modified to state each additional entity that imposes a hotel occupancy tax and the rate of that tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1044, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 89, eff. Oct. 1, 2003.

Sec. 334.257. EFFECTIVE DATE AND ENDING DATE OF TAX. (a) A tax imposed under this subchapter or a change in the tax rate takes effect on the date prescribed by the ordinance or order imposing the tax or changing the rate.

(b) A municipality or county may impose a tax under this subchapter only if the municipality or county issues bonds or other obligations under Section 334.043 before the first anniversary of the date the tax is imposed. The municipality or county may impose the tax only while those bonds or other obligations are outstanding and

unpaid.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.258. DEPOSIT OF TAX REVENUE. Revenue from the tax imposed under this subchapter shall be deposited in the venue project fund of the municipality or county imposing the tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER I. FACILITY USE TAX

Sec. 334.301. DEFINITION. In this subchapter, "major league team" means a team that is a member of the National Football League, National Basketball Association, or National Hockey League or a major league baseball team or any other professional team.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.302. TAX AUTHORIZED. (a) A municipality by ordinance or a county by order may impose a facility use tax on each member of a major league team that plays a professional sports game in an approved venue project in the municipality or county for which the municipality or county has issued bonds to plan, acquire, establish, develop, construct, or renovate the approved venue project.

(b) The municipality or county may not impose the facility use tax under this subchapter for a professional sports game at a venue that is not an approved venue project or for which the municipality or county has not issued bonds to plan, acquire, establish, develop, construct, or renovate the approved venue project.

(c) A municipality or county may impose a tax under this subchapter only if:

(1) an approved venue project is or will be located in the municipality or county; and

(2) the tax is approved at an election held under Section 334.024.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.303. TAX RATE. (a) The tax authorized by this subchapter is imposed at the tax rate on each member of the professional sports team for each professional game the member plays at the approved venue project.

(b) The amount of the tax may be imposed at any uniform monetary amount not to exceed $5,000 a game.

(c) The ballot proposition at the election held to adopt the tax must specify the maximum rate of the tax to be adopted.

(d) The municipality by ordinance or the county by order may repeal or decrease the rate of the tax imposed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.304. RATE INCREASE. (a) A municipality or county that has adopted a tax under this subchapter at the rate of less than $5,000 a game may by ordinance or order increase the rate of the tax to a maximum of $5,000 a game if the increase is approved by a majority of the registered voters of that municipality or county voting at an election called and held for that purpose.

(b) The ballot for an election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the facility use tax for the purpose of financing _____ (insert description of venue project) to a maximum rate of _____ a game (insert new maximum rate not to exceed $5,000)."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.305. COLLECTION. (a) The municipality by ordinance or the county by order may require the owner or lessee of an approved venue project in the municipality or county to collect the tax for the benefit of the municipality or county.

(b) The tax imposed by this subchapter is a debt owed to the owner or lessee of the approved venue project by the team member and recoverable at law.

(c) The tax imposed by this subchapter is not an occupation tax imposed on the owner or lessee of the approved venue project or on the professional sports team member.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.306. EFFECTIVE DATE AND ENDING DATE OF TAX. (a) A tax imposed under this subchapter or a change in a tax rate takes effect on the date prescribed by the ordinance or order imposing the tax or changing the rate.

(b) A municipality or county may impose a tax under this subchapter only if the municipality or county issues bonds or other obligations under Section 334.043. The municipality or county may impose the tax only while those bonds or other obligations are outstanding and unpaid.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.307. COLLECTION OF TAX. (a) A person required to collect a tax imposed under this subchapter shall report and send the taxes to the municipality or county as provided by the municipality or county imposing the tax.

(b) A municipality by ordinance or a county by order may prescribe penalties, including interest charges, for failure to keep records required by the municipality or county, to report when required, or to pay the tax when due. The attorney acting for the municipality or county may bring suit against a person who fails to collect a tax under this subchapter and to pay it over to the municipality or county as required.

(c) A municipality by ordinance or a county by order may permit a person who is required to collect a tax under this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. The municipality or county may provide that the person may retain the amount only if the person pays the tax and files reports as required by the municipality or county.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.308. DEPOSIT OF TAX REVENUE. Revenue from the tax imposed under this subchapter shall be deposited in the venue project fund of the municipality or county imposing the tax.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER J. ATHLETIC EVENTS IN CERTAIN MUNICIPALITIES

Sec. 334.351. DEFINITION. In this subchapter, "athletic event" means a postseason intercollegiate athletic football bowl game that is held annually.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.352. APPLICATION OF SUBCHAPTER. This subchapter applies only to a municipality with a population of more than 500,000 that is located in a county that borders the United Mexican States.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.353. SHORT-TERM MOTOR VEHICLE RENTAL TAX. (a) Notwithstanding any other provision of this chapter, a municipality to which this subchapter applies may impose by ordinance a tax on the rental in the municipality of a motor vehicle.

(b) The municipality may impose the tax only if the tax is approved at an election called and held for that purpose.

(c) Except as otherwise provided by this subchapter, Subchapter E applies to the tax imposed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 334.354. USE OF REVENUE. Notwithstanding any other provision of this chapter, the municipality may use revenue from the tax to:

(1) pay the costs of collecting the tax;

(2) operate one or more athletic events in the municipality; and

(3) pay costs associated with an athletic event in the municipality, including paying the costs of planning, acquiring, establishing, developing, advertising, promoting, conducting, sponsoring, or otherwise supporting the event.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER K. LIVESTOCK FACILITY USE TAX

Sec. 334.401. DEFINITIONS. In this subchapter:

(1) "Designated facility" means an approved venue project the principal use of which is for rodeos, livestock shows, equestrian events, agricultural expositions, county fairs, or similar events.

(2) "Event" means a rodeo or an agricultural, equestrian or livestock show, fair, competition, exhibition, or sale held on one or more consecutive days under the auspices of one or more presenting or sponsoring organizations.

(3) "Stall or pen" means an enclosure or designated space and tie point for the purpose of housing or holding livestock.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.402. APPLICABILITY. This subchapter applies only to:

(1) a county in which the majority of the population of two or more municipalities with a population of 300,000 or more are located; or

(2) a municipality for which the majority of the population is located in a county described by Subdivision (1).

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.403. TAX AUTHORIZED. (a) A municipality or a county may impose a facility use tax for the use or occupancy by livestock of a stall or pen at a designated facility in that municipality or county for which the municipality or county has issued bonds to plan, acquire, establish, develop, construct, or renovate.

(b) The municipality or county may impose the facility use tax under this subchapter only at a designated facility that is an approved venue project.

(c) A municipality or county may impose a tax under this subchapter only if:

(1) the municipality or county issues bonds or other obligations under Section 334.043, and those bonds or other obligations are outstanding and unpaid; and

(2) the tax is approved at an election held under Section 334.024.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.404. TAX RATE. (a) The tax authorized by this subchapter is imposed on each stall or pen used or occupied at a designated facility.

(b) The tax may be imposed at any uniform amount not to exceed $20 for each event.

(c) The ballot proposition at the election held to adopt the tax must specify the maximum amount of the tax to be adopted.

(d) Different tax rates may be imposed based on the duration of an event, except that the rate must be uniform for each event of similar duration and the rate may not exceed the maximum rate adopted by the voters.

(e) The municipality or the county may repeal, decrease, and increase the rates of the tax imposed under this subchapter, except that the tax may not be imposed at a rate exceeding the maximum rate adopted by the voters.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.405. INCREASE IN MAXIMUM TAX RATE. (a) If the voters of a municipality or county have approved a tax under this subchapter at a rate of less than $20 for each event, the municipality or county may call an election for the approval of the voters to increase the maximum tax rate. If a majority of the votes cast at the election approve the new rate, the municipality or county may increase the rate of the tax to the maximum rate approved.

(b) The ballot for an election to increase the rate of the tax shall be printed to permit voting for or against the proposition: "The increase of the facility use tax for the purpose of financing _____ (insert description of the designated facility) to a maximum rate of _____ per event (insert new maximum rate not to exceed $20)."

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.406. EXEMPTION. The municipality by ordinance or the county by order may establish an exemption from the tax imposed under this subchapter for the use or occupancy of stalls or pens at a designated facility by livestock at a county junior livestock show.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.407. NATURE OF TAX. (a) The tax imposed by this subchapter is a debt owed to the owner or lessee of the designated facility by the user or sublessee of the designated facility and is recoverable at law.

(b) The tax imposed by this subchapter is not an occupation tax imposed on the owner or lessee of the designated facility, the user or the sublessee of the designated facility, the livestock, or the owner of the livestock.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.408. EFFECTIVE DATE OF TAX. A tax imposed under this subchapter or a change in a tax rate takes effect on the date prescribed by the ordinance or order imposing the tax or changing the rate.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.409. COLLECTION OF TAX. (a) The municipality or county may require the owner or lessee of a designated facility in the municipality or county to collect the tax for the benefit of the municipality or county.

(b) A person required to collect a tax imposed under this subchapter shall report and send the taxes to the municipality or county as provided by the municipality or county imposing the tax.

(c) For a tax imposed under this subchapter, a municipality or county may prescribe penalties, including interest charges, for failure to keep records required by the municipality or county, to report when required, or to pay the tax when due. An attorney acting for the municipality or county may bring suit against a person who fails to collect a tax under this subchapter and to pay the tax to

the municipality or county as required.

(d) A municipality or county may permit a person who is required to collect a tax under this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. The municipality or county may provide that the person may retain the amount only if the person pays the tax and files reports as required by the municipality or county.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

Sec. 334.410. DEPOSIT OF TAX REVENUE. Revenue from the tax imposed under this subchapter shall be deposited in the venue project fund of the municipality or county imposing the tax.

Added by Acts 2003, 78th Leg., ch. 672, Sec. 1, eff. June 20, 2003.

CHAPTER 335. SPORTS AND COMMUNITY VENUE DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 335.001. DEFINITIONS. In this chapter:

(1) "Approved venue project" has the meaning assigned by Section 334.001, except that the approval of the project must occur under this chapter.

(2) "Board" means the board of directors of a venue district.

(3) "District" means a venue district created under this chapter.

(4) "Related infrastructure" has the meaning assigned by Section 334.001.

(5) "Venue" has the meaning assigned by Section 334.001.

(6) "Venue project" has the meaning assigned by Section 334.001, except that the actions described by that section must occur under this chapter.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.002. APPLICATION TO VENUE CONSTRUCTED UNDER OTHER LAW. A district may use this chapter for a venue project relating to a

venue and related infrastructure planned, acquired, established, developed, constructed, or renovated under other law, including Chapter 505 of this code or Subchapter E, Chapter 451, Transportation Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.21, eff. April 1, 2009.

Sec. 335.003. OTHER USES OF VENUE PERMITTED. This chapter does not prohibit the use of a venue for an event that is not related to a purpose described by Section 334.001, such as a community-related event.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.004. SPECIFIC PERFORMANCE. (a) The legislature expressly finds and determines that:

(1) the presence of a professional sports team in an approved venue project built or renovated under this chapter provides a unique value to the district that built or renovated the project and to each political subdivision that created the district that cannot be adequately valued in money; and

(2) the district that built or renovated the approved venue project and each political subdivision that created the district would suffer irreparable injury if a professional sports team breaches its obligation to play its home games in the approved venue project as required by an agreement between the sports team and the district.

(b) An agreement described by Subsection (a)(2) shall be enforceable by specific performance in the courts of this state. A waiver of this remedy is contrary to public policy and is unenforceable and void.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.005. SUITS; SERVICE OF PROCESS. A district, through

its board, may sue and be sued in any court of this state in the name of the district. Service of process on a district may be had by serving either the current chairman of the board or the current chief executive officer of the district or its registered agent designated by the district by filing a statement with the office of the secretary of state setting forth: (i) the name of the district, and (ii) the name and address of the district's registered agent, which address must be in the State of Texas. The statement shall be executed on behalf of the district by an officer of the district. A district may change the name and address of its registered agent by filing another statement with the office of the secretary of state. Upon such filing, the prior registered agent for the district shall cease to be the registered agent for the district and service of process may not be had by serving the prior registered agent.

Added by Acts 2003, 78th Leg., ch. 981, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER B. VENUE DISTRICT

Sec. 335.021. CREATION. A county and a municipality, two or more counties, two or more municipalities, or a combination of municipalities, counties, or municipalities and counties may create a venue district under this chapter to plan, acquire, establish, develop, construct, or renovate one or more venue projects in the district subject to voter approval under Subchapter D.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.022. ORDER CREATING DISTRICT. A county and a municipality, two or more counties, two or more municipalities, or a combination of municipalities, counties, or municipalities and counties may create a district under this chapter by adopting concurrent orders. A concurrent order must:

(1) contain identical provisions;

(2) define the boundaries of the district to be coextensive with the combined boundaries of each creating political subdivision; and

(3) designate the number of directors, the manner of appointment, and the manner in which the chair will be appointed in accordance with Section 335.031.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.023. POLITICAL SUBDIVISION; RECORDS AND OPEN MEETINGS. (a) A district is a political subdivision of the creating political subdivisions and of this state.

(b) A district is subject to Chapter 551, Government Code.

(c) A district's books, records, and papers relating to an approved venue project and the revenue used to finance the project are public information and subject to disclosure under Chapter 552, Government Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 164, Sec. 5, 6, eff. May 27, 2003.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 335.031. COMPOSITION AND APPOINTMENT OF BOARD. (a) A district is governed by a board of at least four directors.

(b) The board is appointed by the mayors or county judges, or both as appropriate, of the political subdivisions that create the district in accordance with the concurrent order.

(c) Directors serve staggered two-year terms. A director may be removed by the appointing person at any time without cause. Successor directors are appointed in the same manner as the original appointees.

(d) To qualify to serve as a director, a person must be a resident of the appointing political subdivision. An employee, officer, or member of the governing body of the appointing political subdivision may serve as a director, but may not have a personal interest in a contract executed by the district other than as an employee, officer, or member of the governing body of the political subdivision.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1076, Sec. 3, eff. Sept. 1, 1999.

Sec. 335.032. COMPENSATION. A board member is not entitled to

compensation, but is entitled to reimbursement for actual and necessary expenses.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.033. MEETINGS. The board shall conduct its meetings in the district.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.034. OFFICERS. Except as provided by Section 335.035, the presiding officer is designated as provided by the concurrent order. The board shall designate from the members of the board a secretary and other officers the board considers necessary.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1076, Sec. 4, eff. Sept. 1, 1999.

Sec. 335.035. ADDITIONAL REQUIREMENTS FOR BOARD OF DISTRICT CREATED IN POPULOUS COUNTY. (a) This section applies only to the board of a district located in whole or in part in a county with a population of 3.3 million or more.

(b) The mayor of each municipality and the commissioners court of each county that create the district shall appoint an equal number of directors in accordance with the orders creating the district and Section 335.031. An appointment of a director by a mayor must be confirmed by a majority vote of the governing body of the municipality.

(c) The mayors of the municipalities and the commissioners courts of the counties that create the district shall appoint a presiding officer by concurrent orders on or before the 30th day after the date on which either the two-year term of office expires or a vacancy occurs in the presiding officer's position. The appointment must be confirmed by a majority vote of the governing body of each municipality. The presiding officer serves for a two-year term.

(d) If the mayors and the commissioners courts fail to agree on

the appointment of a presiding officer under Subsection (c), the board shall appoint, from the district's directors, a presiding officer by a majority vote at the first board meeting that follows the 30-day period described by Subsection (c). The confirmation requirement of Subsection (c) does not apply to an appointment of a presiding officer under this subsection.

(e) A presiding officer appointed under Subsection (d) shall resign as a director before serving as presiding officer. The vacancy created by the resignation is filled by the authority that appointed the director. The appointed director serves for the remainder of the vacated term.

(f) Section 335.031(b) does not apply to a district located in a county with a population of 3.3 million or more.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 91, eff. September 1, 2011.

SUBCHAPTER D. VENUE PROJECTS

Sec. 335.051. RESOLUTION AUTHORIZING PROJECT. (a) A district by resolution may provide for the planning, acquisition, establishment, development, construction, or renovation of a venue project if:

(1) the comptroller determines under Section 335.052 or 335.053 that the implementation of the resolution will not have a significant negative fiscal impact on state revenue;

(2) to the extent required by Section 335.0535 or 335.0536, a rapid transit authority determines that the implementation of the resolution will not have a significant negative impact on the authority's ability to provide services and will not impair any existing contracts; and

(3) the resolution is approved by a majority of the qualified voters of each political subdivision that created the district voting at one election or at separate elections called and held for that purpose under Section 335.054.

(b) The resolution must designate each venue project and each method of financing authorized by this chapter that the district wants to use to finance a project. A resolution may designate more

than one method of financing.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.052. STATE FISCAL IMPACT ANALYSIS. (a) Before calling an election on the resolution under Section 335.054, the district shall send a copy of the resolution to the comptroller.

(b) Before the 15th day after the date the comptroller receives the copy of the resolution, the comptroller shall:

(1) perform an analysis to determine if approval and implementation of the resolution will have a significant negative fiscal impact on state revenue; and

(2) provide to the district written notice of the results of the analysis.

(c) If the comptroller determines that implementation will have a significant negative fiscal impact on state revenue, the written analysis required under Subsection (b)(2) must include information on how to change the resolution so that implementation will not have a significant negative fiscal impact on state revenue.

(d) If the comptroller does not complete the analysis and provide the notice before the 30th day after the date the comptroller receives the copy of the resolution, the comptroller is considered to have determined that approval and implementation of the resolution will not have a significant negative fiscal impact on state revenue.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.053. APPEAL OF COMPTROLLER DETERMINATION. (a) If the comptroller determines under Section 335.052 that implementation of the resolution will have a significant negative fiscal impact on state revenue, the district may contest the finding by filing an appeal with the comptroller not later than the 10th day after the date the district receives the written notice under Section 335.052.

(b) Before the 11th day after the date the comptroller receives the appeal under Subsection (a), the comptroller shall perform a new analysis to determine if implementation of the resolution will have a significant negative fiscal impact on state revenue and provide to the district written notice of the results of the analysis.

(c) If the comptroller again determines that implementation

will have a significant negative fiscal impact on state revenue, the written analysis required under Subsection (b) must include additional information on how to change the resolution so that implementation will not have a significant negative fiscal impact on state revenue.

(d) If the comptroller does not comply with Subsection (b) before the 30th day after the date the comptroller receives the appeal or request for information, the comptroller is considered to have determined that approval and implementation of the resolution will not have a significant negative fiscal impact on state revenue.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.0535. TRANSPORTATION AUTHORITY IMPACT ANALYSIS. (a) If the resolution contains a proposed sales and use tax under Subchapter D, Chapter 334, and imposition of the tax would result in the reduction of the tax rate of a rapid transit authority created under Chapter 451, Transportation Code, or a regional transportation authority created under Chapter 452, Transportation Code, the district shall send a copy of the resolution to the authority before calling an election on the resolution under Section 335.054.

(b) Before the 30th day after the date the rapid transit authority receives the copy of the resolution, the authority shall:

(1) perform an analysis to determine if implementation of the proposed sales and use tax and the resulting reduction in the authority's tax rate will:

(A) have a significant negative impact on the authority's ability to provide services; or

(B) impair any existing contracts; and

(2) provide to the district written notice of the results of the analysis.

(c) If the rapid transit authority determines that implementation of the resolution will have a significant negative impact on the authority's ability to provide services or will impair any existing contracts, the written analysis required under Subsection (b)(2) must include information on how to change the resolution so that implementation will not have a significant negative impact on the authority's ability to provide service or will not impair any existing contracts.

(d) If the rapid transit authority does not complete the analysis and provide the notice before the 30th day after the date the authority receives the copy of the resolution, the authority is considered to have determined that implementation of the resolution will not have a significant negative impact on the authority's ability to provide services and will not impair any existing contracts.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.0536. APPEAL OF AUTHORITY DETERMINATION. (a) If a rapid transit authority determines under Section 335.0535 that implementation of the resolution will have a significant negative impact on the authority's ability to provide services or will impair an existing contract, the district may contest the finding by filing an appeal with the authority not later than the 10th day after the date the district receives the written notice under Section 335.0535.

(b) Before the 11th day after the date the rapid transit authority receives the appeal under Subsection (a), the authority shall perform a new analysis to determine if implementation of the resolution will have a significant negative impact on the authority's ability to provide services or will impair an existing contract and provide to the district written notice of the results of the analysis.

(c) If the authority again determines that implementation will have a significant negative impact on the authority's ability to provide services or will impair an existing contract, the written analysis required under Subsection (b) must include additional information on how to change the resolution so that implementation will not have a significant negative impact on the authority's ability to provide services and will not impair an existing contract.

(d) If the rapid transit authority does not comply with Subsection (b) before the 11th day after the date the authority receives the appeal or request for information, the authority is considered to have determined that approval and implementation of the resolution will not have a significant negative impact on the authority's ability to provide services and will not impair any existing contracts.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.054. ELECTION. (a) If the comptroller determines under Section 335.052 or 335.053 that implementation of the resolution will not have a significant negative fiscal impact on state revenue, and, if applicable, the rapid transit authority determines under Section 335.0535 or 335.0536 that the implementation will not have a significant impact on the authority's ability to provide service and will not impair any existing contracts, the board may order an election or elections on the question of approving and implementing the resolution. In a district created by a county with a population of more than 3.3 million and a municipality with a population of more than 1.9 million, the board may order one district-wide election or may order a separate election in each political subdivision that created the district. The election or elections shall be held on the same day.

(b) The order calling the election or elections must:

(1) allow the voters to vote separately on each venue project;

(2) designate the venue project;

(3) designate each method of financing authorized by this chapter that the district wants to use to finance the project and the maximum rate of each method; and

(4) allow the voters to vote, in the same proposition or in separate propositions, on each method of financing authorized by this chapter that the district wants to use to finance the project and the maximum rate of each method.

(c) The ballot at the election or elections held under this section must be printed to permit voting for or against the proposition: "Authorizing _____ (insert name of district) to _____ (insert description of venue project) and to impose a _____ tax (insert type of tax) at the rate of _____ (insert maximum rate) for the purpose of financing the venue project."

(d) If more than one method of financing is to be voted on in one proposition, the ballot must be printed to permit voting for or against the proposition: "Authorizing _____ (insert name of district) to _____ (insert description of venue project) and to impose a _____ tax at the rate of _____ (insert each type of tax and the maximum rate of each tax) for the purpose of financing the venue project."

(d-1) If the proposition is authorizing the imposition of a hotel occupancy tax, the ballot must include the following language: "If approved, the maximum hotel occupancy tax rate imposed from all sources in _____ (insert name of district) would be _____ (insert the maximum combined hotel occupancy tax rate that would be imposed from all sources at any location in the district if the rate proposed in the ballot proposition is adopted) of the price paid for a room in a hotel."

(e) If a majority of the votes cast at the district-wide election or at the election in each creating political subdivision approves the proposition authorizing the project, the district may implement the resolution. If separate elections are held and a majority of the votes cast in one or more of the creating political subdivisions disapproves the proposition authorizing the project, the district may not implement the resolution. If the project is approved, but one or more financing methods contained in separate propositions are disapproved, the district may use only the approved financing methods.

(f) The Election Code governs an election held under this chapter.

(g) Notwithstanding Subsections (c) and (d) of this section, if a district is presently collecting taxes from one or more methods of financing and seeks to use a portion of the revenue from the tax or taxes to finance the venue project and does not seek to change the rate of tax or taxes, the ballot at the election or elections held under this section must be printed to permit voting for or against the proposition: "Authorizing _____ (insert name of district) to _____ (insert description of venue project) using a portion of existing _____ (insert type of tax or taxes) tax for the purpose of financing the project."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1076, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 99, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 966 (H.B. 1908), Sec. 5, eff. September 1, 2013.

Sec. 335.055. FALSE AND MISLEADING CAMPAIGN MATERIAL. (a) In

this section, "campaign material" means a communication supporting or opposing the authorization of a venue project that:

(1) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(2) appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication.

(b) A person may not print, broadcast, or publish, or cause to be printed, broadcast, or published, campaign material that contains false and misleading information.

(c) An individual may file a complaint with the Texas Ethics Commission in accordance with Subchapter E, Chapter 571, Government Code, alleging a violation of Subsection (b). The commission may impose a penalty in accordance with Chapter 571, Government Code, if the commission determines that the campaign materials contain false and misleading information.

(d) Notwithstanding any other law, the Texas Ethics Commission has jurisdiction to consider and investigate a complaint filed under this section and to impose a penalty.

Added by Acts 2001, 77th Leg., ch. 1044, Sec. 7, eff. Sept. 1, 2001.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 335.071. GENERAL POWERS OF DISTRICT. (a) A district may:

(1) perform any act necessary to the full exercise of the district's powers;

(2) accept a gift, grant, or loan from a:

(A) department or agency of the United States;

(B) department, agency, or political subdivision of this state; or

(C) public or private person;

(3) acquire, sell, lease, convey, or otherwise dispose of property or an interest in property, including a right-of-way or easement or an approved venue project, under terms and conditions determined by the district;

(4) employ necessary personnel; and

(5) adopt rules to govern the operation of the district and its employees and property.

(b) A district may contract with a public or private person,

including one or more political subdivisions that created the district or a sports team, club, organization, or other entity, to:

(1) plan, acquire, establish, develop, construct, or renovate an approved venue project; or

(2) perform any other act the district is authorized to perform under this chapter, other than conducting an election under this chapter.

(c) A district may contract with or enter into an interlocal agreement with a school district, junior or community college district, or an institution of higher education as defined by Section 61.003, Education Code, for a purpose described by Subsection (b). The contract or interlocal agreement may provide for joint ownership and operation or joint use.

(d) The competitive bidding laws, including Chapter 271, do not apply to the planning, acquisition, establishment, development, construction, or renovation of an approved venue project.

(e) A district may impose any tax a municipality or county may impose under Chapter 334, subject to approval of the voters of the district as prescribed by this chapter and Chapter 334. The district shall impose the tax in the same manner as a county or municipality and may issue bonds in lieu of a county or municipality as required by Chapter 334.

(f) A district may not levy an ad valorem tax.

(g) In a transaction with another public entity that is made as provided by Subsection (a)(3), the public purpose found by the legislature under Section 335.074 is adequate consideration for the district and the other public entity.

(h) A district has the right and power of eminent domain under Chapter 21, Property Code, to acquire and condemn any interest, including a fee simple interest, in real property in the district, in connection with the planning, acquisition, establishment, development, construction, renovation, repair, maintenance, or operation of an approved venue project. A district is not required to provide bond for appeal or bond for costs under Section 21.021(a)(2) or (3), Property Code, in any lawsuit to which the district is a party and is not required to deposit more than the amount of the award in a suit.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.0711. LIMIT ON POWER TO OWN OR ACQUIRE REAL PROPERTY IN CERTAIN DISTRICTS. (a) In this section:

(1) "Facility site" means a site for:

(A) an arena, coliseum, stadium, or other type of area or facility:

(i) that is used or is planned for use for one or more professional or amateur sports events, community events, or other sports events, including rodeos, livestock shows, agricultural expositions, promotional events, and other civic or charitable events; and

(ii) for which a fee for admission to the events is charged or is planned to be charged; or

(B) a convention center facility or related improvement such as a convention center, civic center, civic center building, auditorium, theater, opera house, music hall, exhibition hall, rehearsal hall, museum, or aquarium.

(2) "Real property" includes an arena, coliseum, stadium, facility site, and related infrastructure.

(3) "Related infrastructure" means a store, restaurant, on-site hotel, concession, automobile parking facility, road, street, water or sewer facility, or other on-site improvement that relates to and enhances the use, value, or appeal of a venue.

(b) This section applies only to a district located in a county with a population of 3.3 million or more.

(c) Notwithstanding any other provision of this chapter, a district may not own or acquire real property by eminent domain or any other method unless the property is for a facility site or related infrastructure as part of an approved venue project.

(d) A district may not participate in any way in planning or zoning issues before the governing body of a municipality.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 92, eff. September 1, 2011.

Sec. 335.0715. USE OF FINANCING FOR CERTAIN PROJECTS. Notwithstanding any other provision of this chapter, a district, a municipality or county that created the district, or an entity

created by or acting on behalf of or in conjunction with the district, municipality, or county, that contracts with a professional sports team or the team's owner or representative on or before November 1, 1998, for the team to relocate and play at an arena, coliseum, or stadium in the district may not use any method of financing authorized by this chapter to finance the acquisition or construction of the arena, coliseum, or stadium if the team is playing under an existing contract and is located in another arena, coliseum, or stadium owned by a different municipality or county in this state unless the governing body of that different municipality or county consents to the contract.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.072. VENUE PROJECT FUND. (a) A district in which an approved venue project is located shall establish by resolution a fund known as the venue project fund. The district shall establish separate accounts within the fund for the various revenue sources.

(b) The district shall deposit into the venue project fund:

(1) the proceeds from any tax imposed by the district;

(2) all revenue from the sale of bonds or other obligations by the district;

(3) money received under Section 335.075 from a political subdivision that created the district; and

(4) any other money required by law to be deposited in the fund.

(c) The district may deposit into the venue project fund:

(1) money received by the district from innovative funding concepts such as the sale or lease of luxury boxes or the sale of licenses for personal seats; and

(2) any other revenue received by the district from the approved venue project, including stadium rental payments and revenue from concessions and parking.

(d) The district may use money in the venue project fund to:

(1) reimburse or pay the costs of planning, acquiring, establishing, developing, constructing, or renovating one or more approved venue projects in the district;

(2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the district or to

refund bonds or other obligations; or

(3) pay the costs of operating or maintaining one or more approved venue projects.

(e) Money deposited into the venue project fund, including money deposited under Subsection (c), is the property of the district depositing the money.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.0725. BOOKS, RECORDS, AND PAPERS. The books, records, and papers of the district relating to an approved venue project and the revenue used to finance the project are public information and subject to disclosure under Chapter 552, Government Code.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.073. BONDS AND OTHER OBLIGATIONS. (a) A district in which an approved venue project is located may issue bonds, including revenue bonds and refunding bonds, or other obligations to pay the costs of the approved venue project. For a district created by a county with a population of more than 3.3 million and a municipality with a population of more than 1.9 million, the power of the district to issue bonds or other obligations is subject to the prior approval by the governing bodies of the county and municipality.

(b) The bonds or other obligations and the proceedings authorizing the bonds or other obligations shall be submitted to the attorney general for review and approval as required by Chapter 1202, Government Code.

(c) The bonds or other obligations must be payable from and secured by the designated revenues in the venue project fund.

(d) The bonds or other obligations may mature serially or otherwise not more than 30 years from their date of issuance.

(e) The bonds or other obligations are not a debt of and do not create a claim for payment against the revenue or property of the district other than the revenue sources pledged and an approved venue project for which the bonds are issued.

(f) A district may issue obligations and enter into credit agreements under Chapter 1371, Government Code. For purposes of that chapter, a district is a "public utility" and an approved venue

project is an "eligible project."

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 100, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.327, eff. Sept. 1, 2001.

Sec. 335.074. PUBLIC PURPOSE OF VENUE PROJECT. (a) The legislature finds for all constitutional and statutory purposes that an approved venue project is owned, used, and held for public purposes by the district.

(b) Section 25.07(a), Tax Code, does not apply to a leasehold or other possessory interest granted by the district while the district owns the venue project.

(c) The project is exempt from taxation under Section 11.11, Tax Code, while the district owns the venue project.

(d) If approval and implementation of a resolution under this chapter results in the removal from a school district's property tax rolls of real property otherwise subject to ad valorem taxation, the operator of the approved venue project located on that real property shall pay to the school district on January 1 of each year in which the project is in operation and in which the real property is exempt from ad valorem taxation an amount equal to the ad valorem taxes that would otherwise have been levied for the preceding tax year on that real property by the school district, without including the value of any improvements. This subsection does not apply if the operator of the project is a political subdivision of this state.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.075. CONTRIBUTION OR DEDICATION OF CERTAIN REVENUE BY POLITICAL SUBDIVISION. (a) A political subdivision, including a metropolitan rapid transit authority created under Chapter 451, Transportation Code, may contribute or dedicate to the district all or part of the sales and use tax revenue received by the political subdivision that is generated, paid, or collected by any or all businesses operating in an approved venue project. If the political subdivision contributes or dedicates the revenue to assist the district in securing bonds or other obligations, including refunding

bonds, that are issued to provide funding for an approved venue project, the political subdivision may not make a contribution or dedication for that purpose after the date on which those bonds or other obligations are no longer outstanding.

(b) A political subdivision may contribute or dedicate sales and use tax revenue under this section only if the governing body or governing board of the political subdivision determines that the approved venue project from which the revenue was or will be derived will contribute to the economic, cultural, or recreational development or well-being of the residents of the political subdivision.

(c) The district shall deposit revenue contributed or dedicated under this section in the venue project fund and may use the revenue in the same manner as any other money deposited in the fund.

(d) A contribution or dedication of revenue under this section is not a "method of financing" of the district as that term is used in Subchapter D.

Added by Acts 1997, 75th Leg., ch. 551, Sec. 1, eff. Sept. 1, 1997.

Sec. 335.076. CONTRACTS WITH HISTORICALLY UNDERUTILIZED BUSINESSES. (a) This section applies only in relation to an approved venue project constructed and operated under the authority of a district in a county with a population of more than 2.5 million that is adjacent to a county with a population of more than 2.1 million.

(b) In this section, "historically underutilized business" has the meaning assigned by Section 2161.001, Government Code.

(c) A district shall make a good faith effort to increase the contracts the district awards to historically underutilized businesses for the construction of a venue project. The district shall make the good faith effort in the same manner, based on the same rules, and under the same conditions as a state agency under Section 2161.182, Government Code.

(d) A district shall make a good faith effort to increase the contracts the district awards to historically underutilized businesses for the purchase of goods and services relating to the construction or operation of a venue project. The district shall make the good faith effort in the same manner, based on the same

rules, and under the same conditions as a state agency under Section 2161.181, Government Code.

Added by Acts 2003, 78th Leg., ch. 164, Sec. 7, eff. May 27, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 175, eff. September 1, 2023.

Sec. 335.077. EXEMPTION FROM CONSTRUCTION CONTRACTING LAW. Chapter 2269, Government Code, does not apply to this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 3.05, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(26), eff. September 1, 2013.

Sec. 335.078. VENUE DISTRICT AS ENDORSING MUNICIPALITY OR COUNTY. (a) A venue district located in a county with a population of 3.3 million or more may act as an endorsing municipality or endorsing county under Subtitle E-1, Title 4, Government Code.

(b) A venue district acting as an endorsing municipality or endorsing county under Subtitle E-1, Title 4, Government Code, shall remit for deposit into the trust fund established for the games or event the amounts determined by the comptroller under that subtitle. The comptroller shall determine the incremental increase in receipts attributable to the games or event and related activities under that subtitle based on the amount of applicable taxes imposed by each municipality or county that comprises the venue district and not on the amount of taxes imposed by the venue district.

(c) A venue district acting as an endorsing municipality or endorsing county under Subtitle E-1, Title 4, Government Code, may guarantee the district's obligations under a games or event support contract by pledging surcharges from user fees, including parking or ticket fees, charged in connection with the games or event and related activities.

(d) Subject to Subsection (b), a venue district acting as an endorsing municipality or endorsing county under Subtitle E-1, Title 4, Government Code, as authorized by this section, has all the powers

of an endorsing municipality or endorsing county under that subtitle, and any action an endorsing municipality or endorsing county is required to take by ordinance or order under that subtitle may be taken by order or resolution of the venue district.

Added by Acts 2015, 84th Leg., R.S., Ch. 661 (H.B. 3402), Sec. 1, eff. June 17, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 301 (H.B. 4174), Sec. 2.01, eff. April 1, 2021.

SUBCHAPTER F. CODE OF CONDUCT FOR CERTAIN DISTRICTS

Sec. 335.101. DEFINITIONS. In this subchapter:

(1) "Code of conduct" means the rules adopted by a board under Section 335.104.

(2) "Director" means a board member.

(3) "Employee" means a district employee.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a district located in a county with a population of 3.3 million or more.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 93, eff. September 1, 2011.

Sec. 335.103. APPLICABILITY OF LAWS. (a) Chapter 171 applies to an employee as if the employee was a local public official, as that term is defined by Section 171.001.

(b) Chapter 553, Government Code, applies to an employee as if the employee was a public servant, as that term is defined by Section 553.001, Government Code.

(c) Chapter 573, Government Code, applies to an employee as if the employee was a public official, as that term is defined in Section 573.001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.104. CREATION OF CODE OF CONDUCT; DISTRIBUTION. (a) The board by rule shall adopt and maintain a code of conduct that establishes the general duties of directors and employees of the district and specific rules for directors, employees, and vendors. The code of conduct must include:

(1) information regarding a person's duties relating to the standards of conduct for a government officer or employee;

(2) a summary of and citation to the laws applicable to the conduct of a district officer, employee, or vendor, including a copy of the text of this subchapter;

(3) disclosure requirements for directors, employees, and vendors; and

(4) a summary of penalties provided by this subchapter and other law.

(b) The presiding officer of the board shall provide to directors, employees, and vendors, as often as necessary, the code of conduct created under this section.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.105. RULEMAKING. The board by rule may modify its code of conduct.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.106. GENERAL DUTIES. A director or employee shall:

(1) be, and give the appearance of being, independent and impartial;

(2) place, and give the appearance of placing, the public interest above any private interest in the person's position of public trust; and

(3) strive to instill confidence in the integrity of the board and employees.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.107. VENDOR REQUIREMENTS. (a) This section applies to a vendor who:

(1) responds to a district request for a proposal; or

(2) otherwise communicates with the district in connection with a potential agreement between that vendor and the district.

(b) The board by rule shall design a conflict of interest questionnaire that requires disclosure of a vendor's affiliations or business relationships that might cause a conflict of interest.

(c) A vendor shall file a completed conflict of interest questionnaire with the board secretary not less than seven days after the vendor:

(1) begins contract discussions or negotiations with the district; or

(2) forwards an application, response to a request for proposal, correspondence, or other writings related to an agreement or potential agreement with the district.

(d) A vendor shall file an updated completed questionnaire with the board secretary:

(1) on September 1 of each year; and

(2) after each event that would make a statement in the questionnaire incomplete or inaccurate.

(e) Each contract entered into between a district and a vendor shall contain a provision stating that the contract is voidable if the board or vendor violates this section. A contract entered into between a district and a vendor is voidable if the board or a vendor violates this section.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.108. DISCLOSURE OF VENDOR RELATIONSHIP BY DIRECTORS AND EMPLOYEES. (a) The board by rule shall design a conflicts disclosure statement for directors and employees that includes:

(1) a requirement that each director and employee disclose:

(A) an employment or other business relationship with a vendor that results in the director's or employee's receiving taxable income, including the nature and extent of the relationship; and

(B) any gifts received in a 12-month period by that director or employee from a vendor that have a total value of more than $250;

(2) an acknowledgment from the director or employee that:

(A) the disclosure applies to a person related to that director or employee within the first degree by consanguinity or by affinity, as defined by Subchapter B, Chapter 573, Government Code; and

(B) the statement covers the preceding 12 months; and

(3) a signature by the director or employee acknowledging execution of the statement under penalty of perjury.

(b) The disclosure requirement applies to a director or employee and requires disclosure for a person related to that director or employee within the first degree by consanguinity or by affinity, as defined by Subchapter B, Chapter 573, Government Code.

(c) A director or employee shall file a conflicts disclosure statement with the board secretary not later than the end of the first business day on which the director or employee became aware of the relationship between the district and the vendor if:

(1) the vendor has contracted with the district;

(2) the district is considering conducting business with the vendor; or

(3) a vendor offered one or more gifts to that director or employee in the previous 12-month period that have a total value of more than $250.

(d) If a director has knowledge that another director has not made a disclosure required by this section, the director may notify the presiding officer of the board of this fact, or may notify the board secretary if the presiding officer is the person who failed to make the disclosure. The presiding officer or secretary, as appropriate, may make a preliminary inquiry regarding the disclosure and may notify in writing the official who appointed the director of the alleged failure to disclose and the reasons for believing that a failure to disclose occurred.

(e) An employee may not receive during a 12-month period any gifts from a vendor that have a total value of more than $250 unless the employee receives written approval from the presiding officer.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.1085. FILING OF FINANCIAL STATEMENT BY DIRECTOR. (a) A director shall file the financial statement required of state

officers under Subchapter B, Chapter 572, Government Code, with:

(1) the board; and

(2) the Texas Ethics Commission.

(b) Subchapter B, Chapter 572, Government Code:

(1) applies to a director as if the director were a state officer; and

(2) governs the contents, timeliness of filing, and public inspection of a statement filed under this section.

(c) A director commits an offense if the director fails to file the statement required by this section. An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 249, Sec. 6.03, eff. Sept. 1, 2003.

Sec. 335.109. REQUEST FOR OPINION FROM GENERAL COUNSEL. (a) An employee, with the presiding officer's consent, or a director may seek a written advisory opinion from the district's general counsel concerning whether a violation of Section 335.107 or 335.108 exists in a certain situation. The request must provide detailed information about the alleged violation or hypothetical situation.

(b) After receiving a request, the district's general counsel shall prepare a written advisory opinion addressing whether a violation has occurred under the information provided.

(c) A director or employee may rely in good faith on a written advisory opinion issued under this section with respect to a potential violation of Section 335.107 or 335.108.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

Sec. 335.110. PENALTIES. The board may reprimand, suspend, or terminate an employee who violates the district's code of conduct.

Added by Acts 1999, 76th Leg., ch. 1076, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER G. DISSOLUTION OF DISTRICTS IN LESS POPULOUS COUNTIES

Sec. 335.151. APPLICABILITY. This subchapter applies only to a district wholly located in a county with a population of less than

15,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 951 (H.B. 1040), Sec. 2, eff. June 17, 2011.

Sec. 335.152. DISSOLUTION. The governing body of each political subdivision that created a district may dissolve the district by adopting a concurrent order.

Added by Acts 2011, 82nd Leg., R.S., Ch. 951 (H.B. 1040), Sec. 2, eff. June 17, 2011.

Sec. 335.153. ASSETS AND LIABILITIES. (a) The assets and liabilities of a district dissolved under this subchapter shall be transferred to the county in which the district is located.

(b) After payment of district liabilities, the county shall use the district assets that remain for an approved venue project of the county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 951 (H.B. 1040), Sec. 2, eff. June 17, 2011.

CHAPTER 336. MULTI-JURISDICTIONAL LIBRARY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 336.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of trustees.

(2) "District" means a multi-jurisdictional library district created under this chapter.

(3) "Executive director" means an executive director employed under Section 336.103.

(4) "Lead governmental entity" means the county or municipality that proposes to create a district under this chapter.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.002. NATURE OF DISTRICT. A district created under

this chapter is a special district and a political subdivision of this state.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.003. MULTI-JURISDICTIONAL PUBLIC LIBRARY. (a) A district created under this chapter shall establish, equip, support, operate, and maintain one or more public libraries for the dissemination of educational programs and general information relating to the arts, sciences, literature, and other subject areas of interest to the public.

(b) Each public library created under this chapter must be accredited by and meet the standards for basic public library services established by the Texas State Library and Archives Commission.

(c) A library created under this chapter must be open to all members of the public under identical conditions.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

SUBCHAPTER B. CREATION OF DISTRICT; ELECTIONS

Sec. 336.021. LEAD GOVERNMENTAL ENTITY; PARTICIPATION BY OTHER COUNTIES AND MUNICIPALITIES. (a) A district may be created by a lead governmental entity that, by resolution, proposes the creation of a district for specific counties and municipalities that by resolution agree to have their territory in the district.

(b) The governing body of a county or municipality may adopt a resolution under Subsection (a) on its own motion.

(c) As soon as feasible and prudent, the lead governmental entity shall provide over 50 percent of the initial assets to the district.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 2, eff. June 15, 2007.

Sec. 336.022. TERRITORY INCLUDED IN DISTRICT. (a) The lead governmental entity shall describe the initial district territory in the resolution creating the district under Section 336.021. The initial district territory must include all territory of each municipality or county that agrees to have its territory in the district under Section 336.021, except as provided by Subsections (c) and (d).

(b) The district may include incorporated or unincorporated territory and may include any territory in one or more counties that agree by resolution to have the counties' territory in the district under Section 336.021.

(c) If the boundaries of the proposed district include any territory that is part of a municipality that operates a municipal public library, the governing body of that municipality must consent by resolution to allow the inclusion of that municipal territory in the proposed district. This subsection applies only to a municipality whose municipal public library is:

(1) financed and operated by that municipality;

(2) accredited for membership in the state library system; and

(3) open and free of charge to all members of the public under identical conditions.

(d) Except as provided by this subsection and Subsection (c), the district includes all incorporated and unincorporated areas of a county that agrees by resolution to have its territory in the district under Section 336.021. In its resolution, the county may exclude any incorporated area of the county where the local sales and use tax exceeds one and one-half percent.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 3, eff. June 15, 2007.

Sec. 336.023. ELECTION. (a) A district may call an election to approve one or both of the following:

(1) a sales tax; or

(2) an ad valorem tax on property in the district.

(b) A sales tax and an ad valorem tax may be approved at the same election.

(c) Before a district may call the first election under this section, the lead governmental entity by resolution must set:

(1) the date of the election; and

(2) the type and rate of each tax that will appear on the ballot proposition under Section 336.027.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 4, eff. June 15, 2007.

Sec. 336.027. BALLOT PROPOSITION. (a) If the board calls an election to approve a sales tax, the ballot for the election shall be printed to permit voting for or against the proposition: "The adoption of a sales tax in the _____ (name of district) at a rate up to _____ (rate of tax) percent to be used for district purposes."

(b) If the board calls an election to approve an ad valorem tax, the ballot for the election shall be printed to permit voting for or against the proposition: "The adoption of an ad valorem tax in the _____ (name of district) at a rate up to _____ (rate of tax) cents per $100 valuation of property to be used for district purposes."

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 5, eff. June 15, 2007.

Sec. 336.028. RESULTS OF ELECTION. (a) If a majority of the voters voting in the election favor the adoption of a sales tax or of an ad valorem tax, the board shall by resolution declare the rate of the sales tax or the amount of the ad valorem tax adopted and enter

the result in its minutes.

(b) If a majority of the voters voting in the election are not in favor of a tax under Subsection (a), the board shall declare the measure defeated and enter the result in its minutes.

(c) An order under Subsection (a) must:

(1) contain a description of the district's boundaries and a map of the district;

(2) state the election date; and

(3) state the total number of votes cast for and against the ballot proposition.

(d) The board must file in the deed records of the county in which the district is located a resolution issued under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 6, eff. June 15, 2007.

Sec. 336.029. INITIAL BOARD AND PRESIDING OFFICER. (a) Appointments to the initial board are made as provided by Subchapter C, except that the initial trustees shall agree to stagger their terms, with four members' terms expiring in two years and three members' terms expiring in one year. If the trustees cannot agree on the initial staggering, the trustees shall draw lots to determine the staggering.

(b) The lead governmental entity shall appoint the board's initial presiding officer to serve a two-year term in that capacity. The requirement of Section 336.056 that the board of trustees elect the presiding officer does not apply to the presiding officer appointed under this subsection.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.030. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) The district may:

(1) pay all costs and expenses necessarily incurred in the

creation and organization of the district; and

(2) reimburse any person for money advanced for the costs and expenses described by Subdivision (1).

(b) Payments under this section may be made from money obtained from taxes or other district revenue.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

SUBCHAPTER C. BOARD OF TRUSTEES

Sec. 336.051. GOVERNING BODY. A district is governed by a seven-member board of trustees. The board has control over and shall manage the affairs of the district.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.052. APPOINTMENT. (a) The lead governmental entity shall appoint four trustees to the board.

(b) The most populous county in which the district is located shall appoint three trustees to the board, unless the county is the lead governmental entity. If the county is the lead governmental entity, the most populous municipality in the county shall appoint three trustees.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.053. ELIGIBILITY FOR APPOINTMENT. A person is eligible for appointment to the board if the person:

(1) resides in the district;

(2) is registered to vote in a county in which the district is located; and

(3) has recognized expertise in:

(A) library services;

(B) education;

(C) information technology;

(D) local or Texas history; or

(E) business management.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.054. TERMS. (a) Trustees serve staggered two-year terms.

(b) A trustee may not serve more than two consecutive terms or more than four terms.

(c) A trustee who has served two consecutive terms but fewer than four terms is eligible for appointment to a new term on the date one year after the date on which the trustee's former term ended.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.055. VACANCY. A vacancy on the board shall be filled by appointment for the remainder of the unexpired term by the governmental entity that appointed the vacating member.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.056. OFFICERS. (a) The board shall elect a trustee to serve as the board's presiding officer. The presiding officer presides at all board meetings and is the chief executive officer of the district.

(b) The board shall elect from among its members a vice presiding officer, a secretary, and any other officers the board considers necessary.

(c) The vice presiding officer acts as the presiding officer if the presiding officer is incapacitated or absent from a meeting.

(d) The secretary acts as the presiding officer if both the presiding officer and vice presiding officer are incapacitated or absent from a meeting.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.057. MEETINGS AND NOTICE. (a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of the district requires.

(b) The board shall hold its meetings at a designated meeting place.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.058. CONFLICT OF INTEREST IN CONTRACT. (a) For purposes of this section, a trustee who is an employee of, or a trustee related within the second degree by affinity or consanguinity as determined under Subchapter B, Chapter 573, Government Code, to a person who is financially interested in a contract is considered to be financially interested in the contract.

(b) A trustee who is financially interested in a contract may not vote on the acceptance of the contract or participate in the discussion on the contract.

(c) A trustee who is financially interested in a contract with the district shall disclose that fact to the other trustees. The disclosure shall be entered into the minutes of the meeting.

(d) The failure of a trustee to disclose the trustee's financial interest in a contract and to have the disclosure entered in the minutes invalidates the contract.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

SUBCHAPTER D. OTHER ADMINISTRATIVE PROVISIONS

Sec. 336.101. BYLAWS. The board may adopt bylaws to govern:

(1) the time, place, and manner of conducting board meetings;

(2) the powers, duties, and responsibilities of the board's officers and employees;

(3) the disbursement of money by a check, draft, or warrant;

(4) the appointment and authority of board committees;
(5) the keeping of accounts and other records; and
(6) any other matter the board considers appropriate.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.102. EMPLOYEES. (a) The board may employ any person the board considers necessary for conducting the district's affairs.
(b) The board may remove any employee.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.103. EXECUTIVE DIRECTOR. (a) The board may employ an executive director to administer the affairs of the district under policies and requirements established by the board.
(b) The board shall set the compensation of the executive director.
(c) The board may delegate to the executive director the board's authority to hire, establish the compensation of, review the performance of, discipline, or remove a district employee.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.104. QUALIFICATIONS OF EXECUTIVE DIRECTOR OR LIBRARY DIRECTOR. The board shall ensure that the executive director or a subordinate library director has all necessary qualifications to oversee library services in the district.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 251 (S.B. 913), Sec. 10, eff. September 1, 2007.

Sec. 336.105. BOND. The board may require an officer or employee to execute a bond payable to the district and conditioned on the faithful performance of the person's duties.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.106. EMPLOYEE PLANS. (a) The board may provide for and administer a workers' compensation, health benefit, retirement, disability, or death compensation plan for district employees.

(b) The board may adopt a plan to accomplish the purpose of this section.

(c) The board, after notice and a hearing, may change any plan or rule adopted under this section.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.107. RECORDS; SECRETARY. (a) The secretary is responsible for ensuring that all district books and other records are properly maintained.

(b) The board may appoint the executive director or an employee as assistant or deputy secretary to assist the secretary in performing the secretary's duties under this section. The assistant or deputy secretary may certify the authenticity of any district record.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 336.151. GENERAL POWERS OF DISTRICT. A district has all authority necessary to accomplish district purposes.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.152. RULES; VIOLATION OF RULES. (a) The board may adopt reasonable rules to accomplish district purposes.

(b) The board may set monetary charges in reasonable amounts for the violation of a district rule.

(c) The board may exclude from the use of a public library a person who intentionally violates a rule adopted by the board under this section.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.153. LOCATION OF PUBLIC LIBRARY FACILITIES. A district may locate a public library facility at any place in the district, including the territory of a political subdivision within the district.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.154. CONTRACTS. A district may contract with any person for any district purpose.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.155. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS. (a) A district may contract with a municipality, county, or other political subdivision for the district to provide public library services outside the district.

(b) A district may enter into one or more agreements with any municipality included in the area of the district for the acquisition or operation of the municipality's library facilities.

(c) A district and a political subdivision may enter into an agreement for any district purpose.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 7, eff. June 15, 2007.

Sec. 336.156. PROPERTY AND EQUIPMENT. (a) A district may construct, acquire, own, lease, operate, maintain, repair, or improve any land, works, materials, supplies, improvements, facilities, equipment, vehicles, machinery, appliances, or other property as necessary.

(b) If a district acquires property of any kind related to the operation of a public library, the district may assume the contracts and obligations of the previous owner.

(c) A district may hold, use, sell, lease, dispose of, and acquire, by any means, property and licenses, patents, rights, and other interests necessary, convenient, or useful to the exercise of any district power.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.157. SURPLUS PROPERTY. A district may sell, lease, or dispose of in any other manner and at any time:

(1) any right, interest, or property of the district that is not needed for, or, if a lease, is inconsistent with, the efficient operation and maintenance of a public library; or

(2) surplus materials or other property that is not needed for a district purpose.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.158. SUITS. (a) A district may sue and be sued in any court of this state in the name of the district.

(b) A court of this state shall take judicial notice of the establishment of a district.

(c) A district is not required to give security for costs in a suit or to give a supersedeas or cost bond in an appeal of a judgment.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.159. EXPANSION OF DISTRICT. (a) The district may expand to include additional territory if the commissioners court of the county in which the district is located holds an election for that purpose in the territory to be added to the district.

(b) If a majority of the voters voting at the expansion election approve the expansion of the district, the territory of the district is expanded.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.160. DONATION OF LIBRARY ASSETS BY COUNTY OR MUNICIPALITY. A county or municipality, including the lead governmental entity, that creates or joins the district may donate library assets to the district without compensation from the district.

Added by Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 8, eff. June 15, 2007.

SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

Sec. 336.201. BORROWING. A district may borrow money.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.202. FEES; GENERAL. (a) A district may impose any necessary charges or fee for providing a district service.

(b) A district may discontinue a service to enforce payment of an unpaid charge or fee that is owed to the district.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.203. LIBRARY FEES. A library created under this chapter may charge reasonable fees to remove certain materials from the library or for other services provided by the library.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.204. DEPOSITORY. (a) The board shall designate one or more banks inside or outside of the district to serve as the depository for district money.

(b) The district shall deposit district tax revenue in a depository bank.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.205. EXPENDITURES. A district may disburse district money only by check, draft, money order, or another instrument that must be signed by one or more officers or employees of the district as designated by the board.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.206. ACCOUNTS AND RECORDS; AUDITS. (a) A district shall keep a complete system of accounts.

(b) The district shall have an annual audit of the district affairs performed by an independent certified public accountant.

(c) A signed copy of the audit report shall be delivered to each trustee not later than the 120th day after the closing date of each fiscal year.

(d) A copy of the audit report shall be kept on file at the district office and shall be made available for inspection by any interested person during regular business hours.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.207. FISCAL YEAR. The fiscal year of the district is from October 1 to September 30, unless the board adopts another fiscal year.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.208. GRANTS AND DONATIONS. A district may accept and administer a grant or donation from any source for any district purpose.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

SUBCHAPTER G. TAXES

Sec. 336.251. AD VALOREM TAX ASSESSMENT AND COLLECTION. (a) A district may impose an ad valorem tax.

(b) If the district imposes an ad valorem tax, the board shall have the taxable property in its district assessed for ad valorem taxation and the ad valorem taxes in the district collected, in accordance with any one of the methods set forth in this section, and any method adopted remains in effect until changed by the board.

(c) The board may have the taxable property in its district assessed or its taxes collected, wholly or partly, by the tax assessors or tax collectors of any county, municipality, taxing district, or other governmental entity in which all or any part of the district is located. The tax assessors or tax collectors of a governmental entity, on the request of the board, shall assess and collect the taxes of the district in the manner prescribed in the Property Tax Code. Tax assessors and tax collectors shall receive compensation in an amount agreed on between the appropriate parties, but not to exceed two percent of the ad valorem taxes assessed.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.252. IMPOSITION, COMPUTATION, ADMINISTRATION, AND GOVERNANCE OF SALES TAX. (a) A district may impose a sales and use

tax.

(b) Chapter 323, Tax Code, to the extent not inconsistent with this chapter, governs the imposition, computation, administration, and governance of the sales and use tax under this subchapter, except that Sections 323.101, 323.105, 323.404, and 323.406-323.408, Tax Code, do not apply.

(c) Chapter 323, Tax Code, does not apply to the use and allocation of revenue under this chapter.

(d) In applying the procedures under Chapter 323, Tax Code, to the district, the district's name shall be substituted for "the county," and "board of trustees" is substituted for "commissioners court."

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.253. SALES AND USE TAX RATES. The permissible rates for a sales and use tax imposed under this chapter are one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, and one-half of one percent.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.254. ABOLITION OF OR CHANGE IN AD VALOREM TAX RATE. (a) The board by order may decrease or abolish the ad valorem tax rate or may call an election to increase, decrease, or abolish the ad valorem tax rate. In an election under this subsection and except as provided by Subsection (b), the board shall use the procedures for a tax election under Subchapter B.

(b) At the election, the ballot shall be printed to permit voting for or against the proposition: "The increase (decrease) in the ad valorem tax rate of _____ (name of district) to a rate up to _____ (rate of tax) cents per $100 valuation of taxable property to be used for district purposes" or "The abolition of the district ad valorem tax." The increase or decrease in the tax rate, or the abolition of the tax, is effective if it is approved by a majority of the votes cast.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1148, Sec.

11(4), eff. June 15, 2007.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 9, eff. June 15, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 11(4), eff. June 15, 2007.

Sec. 336.255. USE OF TAX. A tax collected under this subchapter may be used only for a district purpose and may be pledged as collateral for borrowing money to further those purposes.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

SUBCHAPTER H. BONDS

Sec. 336.301. DEFINITION. In this subchapter, "bond" includes a note.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.302. GENERAL POWER TO ISSUE BONDS. (a) A district may issue bonds at any time and for any amount it considers necessary or appropriate to acquire, construct, equip, or improve district facilities.
(b) The board by resolution may authorize the issuance of bonds payable solely from revenue.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.303. LEAD GOVERNMENTAL ENTITY'S CONSENT REQUIRED. The district may not issue bonds under this subchapter unless the lead governmental entity's governing body by resolution consents to the

issuance.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.304. SHORT-TERM BONDS. (a) The board by resolution may issue bonds that are secured by revenue or taxes of the district if the bonds:

(1) have a term of not more than 12 months; and

(2) are payable only from revenue or taxes received on or after the date of their issuance and before the end of the fiscal year following the fiscal year in which the bonds are issued.

(b) Approval by the attorney general or registration with the comptroller is not required for a bond issued under this section.

(c) An election is not required to issue bonds under this section.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.305. ELECTION REQUIRED FOR CERTAIN BONDS SECURED BY TAXES. Except for short-term bonds issued under Section 336.304, bonds payable wholly or partly from taxes may not be issued unless authorized by a majority of the votes received in an election held for that purpose.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.306. SECURITY PLEDGED. (a) To secure the payment of a district's bonds, the district may:

(1) pledge all or part of revenue realized from any tax that the district may impose;

(2) pledge all or part of revenue from library facilities; or

(3) mortgage all or part of the district's facilities, including any part of the facilities subsequently acquired.

(b) A district may, subject to the terms of the bond indenture

or the resolution authorizing the issuance of the bonds, secure payment of district bonds by encumbering a separate item of the district facilities and may acquire, use, hold, or contract for the property by lease, chattel mortgage, or other conditional sale.

(c) This subchapter does not prohibit a district from encumbering one or more library facilities to purchase, construct, or improve one or more other district facilities.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.307. LIEN ON REVENUE. The expense of operation and maintenance of library facilities, including salaries, labor, materials, and repairs necessary to provide efficient service, and every other proper item of expense are a first lien and charge against the revenue of a district encumbered under this chapter.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.308. EXCHANGE OF BONDS FOR EXISTING LIBRARY FACILITIES. A district's revenue bonds may be exchanged, in lieu of cash, for the property of all or part of existing library facilities to be acquired by the district.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

Sec. 336.309. GOVERNMENTAL ENTITIES NOT RESPONSIBLE FOR DISTRICT OBLIGATIONS. A governmental entity, other than the district, is not required to pay a bond or other district obligation.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.

SUBCHAPTER I. DISSOLUTION

Sec. 336.351. PROCEDURE FOR DISSOLUTION. (a) The board by

resolution may dissolve a district if the governing body of the lead governmental entity by resolution consents to the dissolution.

(b) If the district has debt, including any outstanding bonds, the district shall remain in existence for the sole purpose of paying its debt and transferring any remaining assets. The board shall transfer to the lead governmental entity any assets that remain after satisfaction of all debt.

(c) After the debt is paid and the assets are transferred, the district is dissolved.

Added by Acts 2005, 79th Leg., Ch. 883 (S.B. 1205), Sec. 2, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1148 (S.B. 940), Sec. 10, eff. June 15, 2007.

CHAPTER 337. CULTURAL EDUCATION FACILITIES FINANCE CORPORATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 337.001. SHORT TITLE. This chapter may be cited as the Cultural Education Facilities Finance Corporation Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.002. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the health, education, and general welfare of the people of this state require the development of new and expanded cultural and community facilities for the purpose of:

(A) exhibition and promotion of and education about:

(i) performing, dramatic, visual, and literary arts;

(ii) culture and history of races, ethnic groups, and national heritage groups; and

(iii) history, natural history, and science;

(B) promotion of and education about health and physical fitness, public health and safety, conservation and preservation of the environment or natural resources, child care, adoption, children's services, substance abuse counseling, family

counseling, and care of persons who are elderly or have disabilities;

(C) administration of the provision and granting of charitable services and grants in accomplishment of the purposes described by Paragraph (B);

(D) promotion of and education about activities devoted to general cultural improvement, including scouting programs and programs by which agencies seek to provide facilities for retreats in urban or rural settings;

(E) support of agencies devoted to the eradication, elimination, or amelioration of one or more diseases or afflictions affecting health or improving the condition of individuals or groups within a community; and

(F) provision of public health and safety and charitable services to communities in times of catastrophe or disaster;

(2) the existence, development, and expansion of cultural facilities are essential to the continuing education, health, general welfare, and comfort of the citizens of this state;

(3) the means and measures authorized and the assistance provided by this chapter are in the public interest and serve a public purpose in promoting the health, education, and general welfare of the people of this state by securing and maintaining cultural facilities and the resulting advancement of culture and civilization;

(4) qualified cultural organizations in this state have invested substantial funds in useful and beneficial cultural facilities and have experienced difficulty in undertaking additional projects because of:

(A) the partial inadequacy of their own funds or of funds potentially available from local subscription sources; and

(B) limitations of local financial institutions in providing necessary financing for these facilities;

(5) qualified nonprofit corporations in this state have invested substantial funds in useful and beneficial cultural facilities and have experienced difficulty in undertaking additional projects because of:

(A) the inadequacy of their own funds or of funds potentially available from local subscription sources; and

(B) limitations of local financial institutions in providing necessary financing for these facilities; and

(6) the enactment of this chapter will:

(A) secure for present and future generations the benefits and nurturance derived from these cultural facilities; and

(B) enhance the public health and welfare of communities receiving the benefit of the cultural facilities.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.003. CONSTRUCTION. (a) This chapter shall be liberally construed to carry out the intention of the legislature.

(b) If this chapter conflicts with a provision of another law, this chapter prevails.

(c) It is the intent of the legislature that a corporation authorized under this chapter is a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of the municipality or county on behalf of which the corporation is created, all within the meaning of Section 103, Internal Revenue Code of 1986, and the regulations adopted and rulings issued under that section, and this chapter shall be construed accordingly.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.004. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a corporation.

(2) "Bond" means a bond, note, interim certificate, or other evidence of indebtedness of a corporation issued under this chapter.

(3) "Corporation" means a cultural education facilities finance corporation created under this chapter.

(4) "Cost," as applied to a cultural facility, means the cost of the cultural facility, including:

(A) the cost of the acquisition of land or a right-of-way, an option to purchase land, an easement, a leasehold estate in land, or another interest in land related to the cultural facility;

(B) the cost of acquisition, construction, repair, renovation, remodeling, or improvement of a building or structure to be used as or in conjunction with the cultural facility;

(C) the cost of site preparation, including the cost of demolishing or removing a building or structure the removal of which is necessary or incident to providing the cultural facility;

(D) the cost of architectural, engineering, legal, and related services; the cost of the preparation of a plan, specification, study, survey, or estimate of cost and revenue; and other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of the cultural facility;

(E) the cost of machinery, equipment, furnishings, and facilities necessary or incident to the equipping of the cultural facility so that the cultural facility may be placed in operation;

(F) the cost of finance charges, interest, marketing, and start-up of the cultural facility before and during construction and for not more than two years after completion of construction;

(G) costs paid or incurred in connection with the financing of the cultural facility, including out-of-pocket expenses; bond insurance; a letter of credit, standby bond purchase agreement, or liquidity facility; financing, legal, accounting, financial advisory, and appraisal fees; expenses and disbursements; a policy of title insurance; printing, engraving, and reproduction services; and the initial or acceptance fee of a trustee, paying agent, remarketing agent, tender agent, or indexing agent; and

(H) direct and indirect costs of the corporation incurred in connection with providing the cultural facility, including reasonable sums to reimburse the corporation for time spent by the corporation's agents or employees in providing and financing the cultural facility.

(5) "Cultural facility" means any capital expenditure by a user. The term includes:

(A) real property or an interest in real property, including buildings and improvements, or equipment, furnishings, or other personal property that:

(i) is found by the board to be necessary or convenient to finance, refinance, acquire, construct, enlarge, remodel, renovate, improve, furnish, or equip for cultural education or community benefit;

(ii) is made available for use by the general public, the user, or a community group; and

(iii) is used for a purpose described by Section

337.002(1);

(B) a facility in which any of the following entities engage in any activity in which the entity is permitted to engage:

(i) a nonprofit corporation exempt from the franchise tax under Section 171.063, Tax Code;

(ii) an organization described in Section 11.18, Tax Code; or

(iii) an organization described in Section 501(c)(3), Internal Revenue Code of 1986; and

(C) facilities incidental, subordinate, or related to or appropriate in connection with property described by Paragraph (A) or (B), regardless of the date of construction or acquisition.

(6) "Furnishings" include works of art, books, artifacts, scientific instruments, stage sets, musical scores, collections, and other property necessary or useful for the purposes of the cultural facility.

(7) "User" means a nonprofit corporation exempt from the franchise tax under Section 171.063, Tax Code, an organization described in Section 11.18, Tax Code, or an organization described in Section 501(c)(3), Internal Revenue Code of 1986, that will own, use, operate, or develop a cultural facility after the financing, acquisition, or construction of the cultural facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.005. ADOPTION OF ALTERNATE PROCEDURE. If a procedure under this chapter is held by a court to be unconstitutional, a corporation by resolution may provide an alternate procedure conforming to the constitution.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Sec. 337.011. AUTHORITY TO CREATE. (a) A municipality or county may create a nonmember, nonstock, public, cultural educational facilities finance corporation for the sole purpose of acquiring, constructing, providing, improving, financing, and refinancing

cultural facilities for the public purposes stated in this chapter.

(b) The municipality or county shall create and organize the corporation in the same manner as a health facilities development corporation is created and organized under Chapter 221, Health and Safety Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.012. GENERAL POWERS. (a) A corporation has the same powers, authority, and rights:

(1) with respect to cultural facilities and health facilities that a health facilities development corporation has with respect to health facilities under Chapter 221, Health and Safety Code; and

(2) with respect to educational facilities, housing facilities, and other facilities incidental, subordinate, or related to those facilities that a nonprofit corporation created under Section 53.35(b), Education Code, or an authority created under Section 53.11, Education Code, has under Chapter 53, Education Code.

(b) Except as provided by this chapter, a corporation has the same rights and powers as a corporation organized under the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or formed under the Texas Nonprofit Corporation Law, as described by Section 1.008(d), Business Organizations Code.

(c) The powers of a corporation under Subsection (a) include the power to:

(1) acquire, purchase, lease, mortgage, and convey property with respect to a facility;

(2) borrow money by issuing bonds, notes, and other obligations;

(3) lend money for the corporation's corporate purposes;

(4) invest and reinvest the corporation's funds; and

(5) secure the corporation's bonds, notes, and obligations by mortgaging, pledging, assigning, or otherwise encumbering the corporation's property or assets.

(d) Except as otherwise provided by this chapter, any bonds, notes, or other obligations authorized under Subsection (c) must be issued in accordance with Chapter 1201, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.013. SCOPE OF AUTHORITY. (a) Notwithstanding any provision of Chapter 221, Health and Safety Code, or Chapter 53, Education Code, a corporation may exercise:

(1) the authority of the corporation inside or outside the limits of:

(A) the municipality that created the corporation if the municipality is located in a county with a population of more than 300,000; or

(B) the county that created the corporation if the county has a population of more than 300,000; and

(2) the powers of the corporation on behalf of a user outside of this state if the user also conducts lawful activities in this state.

(b) A corporation may exercise the authority of the corporation without the consent or other action of any person that would otherwise be required under Chapter 221, Health and Safety Code, or Chapter 53, Education Code, unless the articles of incorporation or bylaws of the corporation provide differently.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.014. LIMITATION ON AUTHORITY. The authority of a corporation may not preempt the police powers of any sponsoring entity or any other laws regulating or empowering sponsoring entities to regulate the activities of the corporation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

Sec. 337.015. LIMITATION ON CORPORATE PURPOSES. (a) A municipality or county that creates a corporation may limit the corporation's purposes in the proceedings directing the creation of the corporation by prohibiting the corporation from financing particular types of cultural facilities, including a cultural

facility to be used for a purpose specified in the proceedings.

(b) As a condition of providing financing, a corporation may restrict a person receiving financing from using a cultural facility for a particular purpose.

(c) A restriction imposed by a municipality or county on a corporation may be enforced by the governing body of the sponsoring entity by injunction or mandamus.

(d) A violation of a restriction by a corporation may not impair the validity of an obligation incurred by the corporation.

Added by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 20.004(a), eff. September 1, 2017.

TITLE 11. PUBLIC SAFETY
SUBTITLE A. MUNICIPAL PUBLIC SAFETY
CHAPTER 341. MUNICIPAL LAW ENFORCEMENT
SUBCHAPTER A. REGULAR POLICE FORCE

Sec. 341.001. POLICE FORCE OF TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may establish and regulate a municipal police force.

(b) The governing body by ordinance may provide for the appointment of police officers the governing body considers necessary and for the terms of office and qualifications of the officers.

(c) The governing body by ordinance may provide that the police officers serve at the pleasure of the governing body.

(d) Each police officer shall execute a bond as the governing body may require. The bond must be conditioned that the officer will faithfully perform the officer's duties.

(e) A police officer has:

(1) the powers, rights, duties, and jurisdiction granted to or imposed on a peace officer by the Code of Criminal Procedure; and

(2) other powers and duties prescribed by the governing body.

(f) A police officer may serve in each county in which the municipality is located all process issued by a municipal court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 829, Sec. 2, eff. Aug. 28, 1995.

Sec. 341.002. POLICE FORCE OF TYPE C GENERAL-LAW MUNICIPALITY. The governing body of a Type C general-law municipality may appoint police officers that the governing body considers necessary and may define the duties of the officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 341.003. POLICE FORCE OF HOME-RULE MUNICIPALITY. A home-rule municipality may provide for a police department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. OTHER POLICE FORCES

Sec. 341.011. SPECIAL POLICE FORCE IN TYPE A GENERAL-LAW MUNICIPALITY. (a) The mayor of a Type A general-law municipality shall summon as many residents as the mayor considers necessary to serve as a special police force if the mayor considers the force necessary:

(1) to enforce the municipality's laws, avert danger, or protect life or property;

(2) because of riot, outbreak, calamity, or public disturbance; or

(3) because of threat of serious violation of law or order, of outbreak, or of other danger to the municipality or its inhabitants.

(b) The mayor may issue the summons by:

(1) proclamation or other order addressed to the residents of the municipality generally or to the residents of a ward or other subdivision of the municipality; or

(2) personal notice.

(c) A special police force has the powers of the regular police force of the municipality.

(d) A special police force is subject to the orders of the mayor and shall perform the duties required by the mayor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 341.012. POLICE RESERVE FORCE. (a) The governing body of

a municipality may provide for the establishment of a police reserve force.

(b) The governing body shall establish qualifications and standards of training for members of the reserve force.

(c) The governing body may limit the size of the reserve force.

(d) The chief of police shall appoint the members of the reserve force. Members serve at the chief's discretion.

(e) The chief of police may call the reserve force into service at any time the chief considers it necessary to have additional officers to preserve the peace and enforce the law.

Text of subsection effective until January 1, 2025

(f) A member of a reserve force who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, may act as a peace officer only during the actual discharge of official duties.

Text of subsection effective on January 1, 2025

(f) A member of a reserve force who is not a peace officer as described by Article 2A.001, Code of Criminal Procedure, may act as a peace officer only during the actual discharge of official duties.

Text of subsection effective until January 1, 2025

(g) An appointment to the reserve force must be approved by the governing body before the person appointed may carry a weapon or otherwise act as a peace officer. On approval of the appointment of a member who is not a peace officer as described by Article 2.12, Code of Criminal Procedure, the person appointed may carry a weapon only when authorized to do so by the chief of police and only when discharging official duties as a peace officer.

Text of subsection effective on January 1, 2025

(g) An appointment to the reserve force must be approved by the governing body before the person appointed may carry a weapon or otherwise act as a peace officer. On approval of the appointment of a member who is not a peace officer as described by Article 2A.001, Code of Criminal Procedure, the person appointed may carry a weapon only when authorized to do so by the chief of police and only when discharging official duties as a peace officer.

Text of subsection effective until January 1, 2025

(h) Reserve police officers may act only in a supplementary capacity to the regular police force and may not assume the full-time duties of regular police officers without complying with the

requirements for regular police officers. On approval of the appointment of a member who is a peace officer as described by Article 2.12, Code of Criminal Procedure, the chief of police may authorize the person appointed to carry a weapon or act as a peace officer at all times, regardless of whether the person is engaged in the actual discharge of official duties, or may limit the authority of the person to carry a weapon or act as a peace officer to only those times during which the person is engaged in the actual discharge of official duties. A reserve police officer, regardless of whether the reserve police officer is a peace officer as described by Article 2.12, Code of Criminal Procedure, is not:

(1) eligible for participation in any program provided by the governing body that is normally considered a financial benefit of full-time employment or for any pension fund created by statute for the benefit of full-time paid peace officers; or

(2) exempt from Chapter 1702, Occupations Code.

Text of subsection effective on January 1, 2025

(h) Reserve police officers may act only in a supplementary capacity to the regular police force and may not assume the full-time duties of regular police officers without complying with the requirements for regular police officers. On approval of the appointment of a member who is a peace officer as described by Article 2A.001, Code of Criminal Procedure, the chief of police may authorize the person appointed to carry a weapon or act as a peace officer at all times, regardless of whether the person is engaged in the actual discharge of official duties, or may limit the authority of the person to carry a weapon or act as a peace officer to only those times during which the person is engaged in the actual discharge of official duties. A reserve police officer, regardless of whether the reserve police officer is a peace officer as described by Article 2A.001, Code of Criminal Procedure, is not:

(1) eligible for participation in any program provided by the governing body that is normally considered a financial benefit of full-time employment or for any pension fund created by statute for the benefit of full-time paid peace officers; or

(2) exempt from Chapter 1702, Occupations Code.

(i) This section does not limit the authority of the mayor of a Type A general-law municipality to summon a special police force under Section 341.011.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 90, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.825, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.142, eff. January 1, 2025.

SUBCHAPTER C. MARSHALS

Sec. 341.021. MARSHAL OF TYPE A GENERAL-LAW MUNICIPALITY. (a) The marshal of a Type A general-law municipality is the ex officio chief of police.

(b) The marshal may appoint one or more deputies. The appointment of a deputy must be approved by the governing body of the municipality.

(c) The marshal or a deputy marshal shall be available to the municipal court when it is in session and shall promptly and faithfully execute writs and process issued by the court. The marshal may execute writs and serve process within each county in which the municipality is located, both inside and outside the municipal boundaries.

(d) The marshal may take suitable and sufficient bail for the appearance before the municipal court of a person charged with a violation of an ordinance or law of the municipality.

(e) The marshal has the same power and jurisdiction as a peace officer has under the Code of Criminal Procedure to execute warrants, to prevent and suppress crime, and to arrest offenders. The marshal has other powers, not inconsistent with state law, that the governing body confers by ordinance.

(f) The marshal may close a theater, ballroom, or other place of public recreation or entertainment to prevent a breach of the peace or to preserve quiet and good order.

(g) The marshal shall:

(1) quell riots, disorder, and disturbance of the peace in the municipality;

(2) take into custody a person who disturbs the peace of the municipality;

(3) arrest, without warrant, a person who disturbs the peace, otherwise engages in disorderly conduct or a disturbance, or obstructs or interferes with the performance of the marshal's duties;

and

(4) perform other duties, not inconsistent with state law, that the governing body prescribes by ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 829, Sec. 3, eff. Aug. 28, 1995.

Sec. 341.022. MARSHAL OF TYPE B GENERAL-LAW MUNICIPALITY. (a) The marshal of a Type B general-law municipality has the same power within the municipality that a constable has within a precinct and is entitled to the same fees as a constable.

(b) The marshal shall perform duties, not inconsistent with state law, prescribed by the bylaws and ordinances of the municipality for fees determined by the governing body of the municipality.

(c) The marshal is the tax assessor-collector of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 341.901. WATCHMEN IN TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may appoint watchmen and prescribe their powers and duties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 341.902. WORKHOUSE AND HOUSE OF CORRECTION IN TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may build and establish one or more jails inside or outside the municipality.

(b) The governing body may adopt necessary rules and appoint necessary keepers or assistants for the jails.

(c) Vagrants and disorderly persons may be confined in a jail on commitment by a municipal court judge. A person who fails or refuses to pay the fine or costs imposed for an offense may be confined in a jail.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 402, Sec. 17, eff. Sept. 1, 2001.

Sec. 341.903. AUTHORITY OF HOME-RULE MUNICIPALITY TO POLICE MUNICIPALLY OWNED PROPERTY OUTSIDE MUNICIPALITY. A home-rule municipality may police the following areas owned by and located outside the municipality:

(1) parks and grounds;

(2) lakes and land contiguous to and used in connection with a lake; and

(3) speedways and boulevards.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 341.904. POSSESSION OR USE OF LAW ENFORCEMENT IDENTIFICATION, INSIGNIA, OR VEHICLE IN A MUNICIPALITY. (a) In this section, "police identification item" means a badge, identification card, insignia, shoulder emblem, or uniform of a municipal police department.

(b) A person commits an offense if in a municipality the person intentionally or knowingly:

(1) uses, possesses, or wears:

(A) a police identification item of the municipal police department;

(B) an item bearing the insignia or design prescribed by the police chief of the municipality for officers and employees of the municipal police department to use while engaged in official activities; or

(C) within the municipal police department's jurisdiction, an item that is deceptively similar to a police identification item of the department;

(2) uses, within the municipal police department's jurisdiction, the name of the department in connection with an object to create the appearance that the object belongs to or is used by the department; or

(3) uses, possesses, or operates, within the municipal police department's jurisdiction, a marked patrol vehicle that is deceptively similar to a department patrol vehicle.

(c) An item or vehicle is deceptively similar to a police identification item or patrol vehicle of a municipal police department if the circumstances under which the object is used could mislead a reasonable person as to the object's identity.

(d) An offense under this section is a Class B misdemeanor.

Text of subsection effective until January 1, 2025

(e) It is an affirmative defense to prosecution under this section that:

(1) the object was used or intended to be used exclusively for decorative purposes and:

(A) the actor was not engaged in an activity involving police work or security work; or

(B) the object was used only in an artistic or dramatic presentation;

(2) the actor was engaged in the commercial manufacturing or commercial sales of the items described by Subsection (b);

(3) the actor was a licensed peace officer who:

(A) was on active duty discharging an official duty for an agency listed under Article 2.12, Code of Criminal Procedure, and acting under the agency's direct supervision; and

(B) was not privately employed as or hired on an individual or independent contractor basis as a patrolman, guard, watchman, flagman, or traffic conductor;

(4) the police chief consented, after determining that consent would serve law enforcement interests in the municipality, to the actor's:

(A) using or possessing a police identification item or other insignia of the municipal police department;

(B) using, possessing, or wearing an item or insignia similar to a police identification item or insignia of the municipal police department; or

(C) operating a vehicle similar to a patrol vehicle of the municipal police department; or

(5) the actor prosecuted under this section for wearing a uniform wore a light blue uniform shirt in a municipality that uses a light blue uniform shirt with navy blue pocket flaps and epaulets for its police officers, if the actor's shirt did not have:

(A) the contrasting navy blue pocket flaps or epaulets found on the municipal police officers' uniform shirts; and

(B) a shoulder emblem similar in shape, color, or

design to an emblem found on the municipal police officers' uniform shirts.

Text of subsection effective on January 1, 2025

(e) It is an affirmative defense to prosecution under this section that:

(1) the object was used or intended to be used exclusively for decorative purposes and:

(A) the actor was not engaged in an activity involving police work or security work; or

(B) the object was used only in an artistic or dramatic presentation;

(2) the actor was engaged in the commercial manufacturing or commercial sales of the items described by Subsection (b);

(3) the actor was a licensed peace officer who:

(A) was on active duty discharging an official duty for an agency listed under Article 2A.001, Code of Criminal Procedure, and acting under the agency's direct supervision; and

(B) was not privately employed as or hired on an individual or independent contractor basis as a patrolman, guard, watchman, flagman, or traffic conductor;

(4) the police chief consented, after determining that consent would serve law enforcement interests in the municipality, to the actor's:

(A) using or possessing a police identification item or other insignia of the municipal police department;

(B) using, possessing, or wearing an item or insignia similar to a police identification item or insignia of the municipal police department; or

(C) operating a vehicle similar to a patrol vehicle of the municipal police department; or

(5) the actor prosecuted under this section for wearing a uniform wore a light blue uniform shirt in a municipality that uses a light blue uniform shirt with navy blue pocket flaps and epaulets for its police officers, if the actor's shirt did not have:

(A) the contrasting navy blue pocket flaps or epaulets found on the municipal police officers' uniform shirts; and

(B) a shoulder emblem similar in shape, color, or design to an emblem found on the municipal police officers' uniform shirts.

(f) The attorney general or a municipal attorney, district

attorney, or prosecuting attorney performing the duties of district attorney for the district in which a court is located may apply to the district court to enjoin a violation of this section. A district court shall grant an injunction if evidence demonstrates that a violation has occurred or will likely occur.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.05(a), eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 101, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 94, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 982 (H.B. 683), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 982 (H.B. 683), Sec. 2, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.143, eff. January 1, 2025.

Sec. 341.906. LIMITATIONS ON REGISTERED SEX OFFENDERS IN GENERAL-LAW MUNICIPALITIES. (a) In this section:

(1) "Child safety zone" means premises where children commonly gather. The term includes a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The term does not include a church, as defined by Section 544.251, Insurance Code.

(2) "Playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(3) "Registered sex offender" means an individual who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) To provide for the public safety, the governing body of a general-law municipality by ordinance may restrict a registered sex offender from going in, on, or within a specified distance of a child safety zone in the municipality.

(c) It is an affirmative defense to prosecution of an offense under the ordinance that the registered sex offender was in, on, or

within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with, transportation to and from work, and other work-related purposes.

(d) The ordinance may establish a distance requirement described by Subsection (b) at any distance of not more than 1,000 feet.

(e) The ordinance shall establish procedures for a registered sex offender to apply for an exemption from the ordinance.

(f) The ordinance must exempt a registered sex offender who established residency in a residence located within the specified distance of a child safety zone before the date the ordinance is adopted. The exemption must apply only to:

(1) areas necessary for the registered sex offender to have access to and to live in the residence; and

(2) the period the registered sex offender maintains residency in the residence.

Added by Acts 2017, 85th Leg., R.S., Ch. 997 (H.B. 1111), Sec. 3, eff. September 1, 2017.

CHAPTER 342. MUNICIPAL FIRE PROTECTION

SUBCHAPTER A. PROVISIONS APPLICABLE TO TYPE A GENERAL-LAW MUNICIPALITY

Sec. 342.001. SUBCHAPTER APPLICABLE TO TYPE A GENERAL-LAW MUNICIPALITY. This subchapter applies only to a Type A general-law municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 342.002. RULES RELATING TO FRAME BUILDINGS. (a) The governing body of the municipality may, for the purpose of preventing calamitous fires, prohibit the construction, location, relocation, or repair of wooden buildings within areas of the municipality designated by the governing body. Within those areas, the governing body may:

(1) prohibit the relocation of a wooden building from outside the area to a site in the area;

(2) prohibit the relocation of a wooden building from one

site to another in the area;

(3) direct that all buildings within the area be constructed of fireproof materials;

(4) prohibit the rebuilding or repairing in the area of a wooden building that has been damaged to the extent of 50 percent or more of its value;

(5) declare to be a nuisance any dilapidated building; and

(6) declare to be a nuisance any wooden building that is in the area and that the governing body considers a danger to contiguous buildings or considers a cause or promoter of fires.

(b) The governing body may determine the method of ascertaining damage under Subsection (a)(4) and may direct the manner in which a building declared to be a nuisance under Subsection (a)(5) or (6) is to be repaired or removed or the nuisance is to be abated.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 342.003. FIRE REGULATIONS. (a) The governing body of the municipality may:

(1) prohibit dangerous chimneys, flues, fireplaces, stovepipes, ovens, and other apparatus used in or about any building, and require the apparatus to be removed or placed in a safe condition;

(2) prohibit the unsafe deposit of ashes;

(3) appoint officers who may enter any building or enclosure to examine and determine whether it is in a dangerous condition and, if the building or enclosure is in a dangerous condition, require that it be put in a safe condition;

(4) require the inhabitant of a building to maintain as many fire buckets and means of access to the roof as prescribed by the governing body, and regulate the use of those items in the event of a fire;

(5) require the owner or occupant of a building to maintain access to the roof and to stairs or ladders that lead to the roof;

(6) prohibit or otherwise regulate factories and other works that pose a danger of promoting or causing fires;

(7) prohibit or otherwise regulate the erection of cotton presses and sheds;

(8) prohibit or otherwise regulate the use of fireworks and

firearms;

(9) prohibit, direct, or otherwise regulate the keeping and management of buildings within the municipality that are used to store gunpowder or other combustible, explosive, or dangerous materials, and regulate the keeping and conveying of those materials;

(10) regulate the building of parapet or party walls;

(11) authorize the mayor or other municipal officers, including the officers of fire companies, to keep away from the vicinity of any fire all idle, disorderly, or suspicious persons, and to arrest and confine those persons;

(12) compel municipal officers and all other persons to aid in extinguishing fires, preserving property exposed to the danger of fire, and preventing theft; and

(13) adopt other rules for the prevention and extinguishment of fires as the governing body considers necessary.

(b) Subsection (a)(8) or (9) does not authorize a municipality to adopt any prohibition or other regulation in violation of Section 229.001.

(c) Subsection (a)(8) does not authorize a municipality to confiscate packaged, unopened fireworks.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(t), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1420, Sec. 12.002(10), eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 957 (H.B. 1813), Sec. 1, eff. June 14, 2013.

Sec. 342.004. FIRE DEPARTMENT. (a) The governing body of the municipality may organize a fire department consisting of fire companies and the chief and any assistant engineers. The governing body shall prescribe the powers and duties of the fire department and its officers.

(b) Each company may elect its own members and officers. A company may adopt a constitution and bylaws that are not inconsistent with the statutes and the municipal ordinances.

(c) The fire department engineers shall be chosen as determined by the department, subject to the approval of the governing body, which shall pass ordinances that it considers necessary for the

welfare of the department. The mayor shall commission each elected officer approved by the governing body.

(d) The governing body may obtain fire engines and other fire-protection equipment, control the use of the equipment, and provide fire stations to preserve the equipment. The fire department shall maintain the fire engines and other fire-protection equipment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 342.005. DESTRUCTION OF BUILDINGS; CLAIM. (a) If a building in the municipality is on fire, the chief or acting chief engineer of the fire department with the concurrence of the mayor may order the burning building, or any other building determined to be hazardous and likely to transmit the fire to additional buildings, to be destroyed.

(b) Except as provided by Subsection (c), the municipality and the officers that act under Subsection (a) are not liable for damages resulting from the destruction.

(c) Within six months after the date a building is destroyed under this section, a person who has an interest in the building may apply in writing to the governing body of the municipality to request the governing body to assess and pay the damages of the person. If the governing body and the claimant cannot agree on the terms of adjustment, they shall refer the application to three commissioners, one appointed by the claimant, one appointed by the governing body, and one appointed jointly by both parties. The commissioners must be qualified voters and owners of real property in the municipality. The commissioners shall swear to faithfully execute their duty to the best of their ability. They may subpoena and swear witnesses. They shall give all parties a fair and impartial hearing and shall give notice of the time and place of each meeting. They shall take into account the probabilities of the destruction of the building by fire if the municipality had not destroyed the building and the loss of any insurance on the property caused by the destruction. They may report that no damages should equitably be allowed to the claimant. If a report is made and confirmed for the appraisal of the damages, compliance with the terms of that report by the governing body constitutes full satisfaction of those damages.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. PROVISIONS APPLICABLE TO HOME-RULE MUNICIPALITY

Sec. 342.011. FIRE DEPARTMENT. A home-rule municipality may provide for a fire department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 342.012. DESIGNATION OF FIRE LIMITS; REMOVAL OR DESTRUCTION OF STRUCTURES. (a) A home-rule municipality may establish fire limits and may prescribe the kind and character of structures and other improvements erected within those limits.

(b) The municipality may provide for the erection of fireproof buildings within certain limits and may condemn dangerous buildings or other structures, dilapidated buildings, or buildings considered to increase the hazard of fire. The municipality may provide for the manner of the removal or destruction of those buildings or structures.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 342.013. CONFISCATION OF CERTAIN FIREWORKS PROHIBITED; AFFIRMATIVE DEFENSE. (a) A home-rule municipality that regulates fireworks may not confiscate packaged, unopened fireworks.

(b) It is an affirmative defense to prosecution for possession of fireworks brought under a municipal ordinance that:

(1) the defendant was operating or was a passenger in a motor vehicle that was being operated in a public place; and

(2) the fireworks were not in the passenger area of the vehicle.

(c) For purposes of Subsection (b), the "passenger area" of a motor vehicle means the area of the vehicle designed for the seating of the operator and the passengers of the vehicle. The term does not include:

(1) a locked glove compartment or similar locked storage area;

(2) the trunk of a vehicle; or

(3) the area behind the last upright seat of a vehicle that does not have a trunk.

Added by Acts 2013, 83rd Leg., R.S., Ch. 957 (H.B. 1813), Sec. 2, eff. June 14, 2013.

SUBCHAPTER C. MUTUAL FIRE-PROTECTION AGREEMENTS

Sec. 342.020. MUTUAL FIRE-PROTECTION AGREEMENTS IN BORDER MUNICIPALITIES. (a) A municipality in this state that is located on the border between this state and the Republic of Mexico may make a mutual fire-protection agreement with its corresponding border municipality in the Republic of Mexico.

(b) Any fire fighter from a border municipality in this state who responds to a call for fire-fighting assistance from the corresponding border municipality in the Republic of Mexico under the terms of an agreement authorized by this section is performing the fire fighter's official duty for the purposes of Article III, Section 51-d, of the Texas Constitution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(u), eff. Aug. 28, 1989.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 342.901. FIRE SUPPRESSION STANDARDS IN CERTAIN MUNICIPALITIES. (a) This section applies to a general law municipality that:

(1) has a population of less than 4,000;

(2) is located in a county that:

(A) has a population of more than 1.2 million; and

(B) is adjacent to a county with a population of more than 600,000; and

(3) is served by a district governed by Chapter 51, Water Code.

(b) Notwithstanding any other law, the governing body of a municipality may by ordinance establish water flow and water pressure standards sufficient to provide adequate pressure to fire suppression systems and require a district described by Subsection (a)(3) that provides water service in the municipality to take reasonable measures to comply with those standards.

(c) Before a municipality adopts an ordinance under this section, the municipality and the district described by Subsection

(a)(3) that is subject to the proposed ordinance shall establish the scope of and estimate the costs associated with any capital improvements necessary to comply with the proposed ordinance.

(d) A district described by Subsection (a)(3) may recover the costs associated with complying with an ordinance adopted under this section through a surcharge assessed only to customers served in the municipality to the extent that:

(1) complying with the ordinance results in additional capital improvement costs for the district; and

(2) the ordinance establishes water flow and water pressure standards inside municipal boundaries that are more stringent than water flow and water pressure standards required outside municipal boundaries.

(e) To the extent of a conflict between this section and any other law, this section controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 720 (H.B. 3813), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 176, eff. September 1, 2023.

CHAPTER 343. MUNICIPAL PROVISION OF SCHOOL CROSSING GUARDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.001. DEFINITION. In this chapter, "school crossing guard" has the meaning assigned by Section 541.001, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.02, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.224, eff. Sept. 1, 1997.

Sec. 343.002. DESIGNATION OF GOVERNMENTAL FUNCTION. The employment, training, equipping, and location of school crossing guards by a political subdivision is a governmental function.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.02, eff. Sept. 1, 1995.

SUBCHAPTER B. PROVISIONS APPLICABLE TO MUNICIPALITIES WITH A POPULATION OF MORE THAN 1.3 MILLION

Sec. 343.011. APPLICATION. This subchapter applies only to a municipality with a population of more than 1.3 million.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.02, eff. Sept. 1, 1995.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 178, eff. September 1, 2023.

Sec. 343.012. CONTRACT WITH SCHOOL DISTRICTS. (a) The municipality may contract with one or more school districts to provide school crossing guards.

(b) Under a contract, a school district may provide school crossing guard services to an area of the municipality that is not a part of the school district.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.02, eff. Sept. 1, 1995.

Sec. 343.013. DEDUCTIONS FROM CHILD SAFETY TRUST FUND. (a) After contracting with a school district, the municipality may deduct from a child safety trust fund established under Chapter 106 the administrative cost of contracting for school crossing guard services and distributing the funds to the school district.

(b) The administrative costs may not exceed 10 percent of the funds available for school crossing guard services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.02, eff. Sept. 1, 1995.

Sec. 343.014. PROVISION OF SCHOOL CROSSING GUARDS. (a) The governing body of the municipality shall determine the number of school crossing guards needed by the municipality and shall provide for the use of school crossing guards to facilitate the safe crossing of streets in the municipality by children going to or leaving a public, parochial, or private elementary or secondary school.

(b) In making the determination of the need for school crossing guards, the municipality shall consider the recommendations of schools and traffic safety experts.

(c) The municipality shall equip school crossing guards that it employs or has under its jurisdiction with all necessary equipment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 10.02, eff. Sept. 1, 1995.

CHAPTER 344. FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 344.001. SHORT TITLE. This chapter may be cited as the Fire Control, Prevention, and Emergency Medical Services District Act.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Director" means a member of a board.

(3) "District" means a fire control, prevention, and emergency medical services district created under this chapter.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.003. LIABILITY OF STATE. The state is not obligated for the support, maintenance, or dissolution of a district created under this chapter.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

SUBCHAPTER B. CREATION OF DISTRICT AND TEMPORARY BOARD

Sec. 344.051. AUTHORITY OF MUNICIPALITY TO PROPOSE DISTRICT. (a) The governing body of a municipality with a population of not less than 25,000 nor more than 550,000, or a municipality with a population of more than 1.9 million, may propose the creation of a

fire control, prevention, and emergency medical services district under this chapter.

(a-1) The governing body of a municipality may propose the creation of a fire control, prevention, and emergency medical services district under this chapter if the municipality:

(1) has a population of 5,000 or more and less than 25,000; and

(2) is located in a county with a population of one million or more:

(A) in which all or part of a municipality with a population of one million or more is located; and

(B) that is adjacent to a county with a population of 2.5 million or more.

(a-2) The governing body of a municipality may propose the creation of a fire control, prevention, and emergency medical services district under this chapter if the municipality is located in the extraterritorial jurisdiction of another municipality that has a population of 200,000 or more, both of which are located in a county with a population of less than 300,000 that is located on the international border.

(a-3) The governing body of a municipality may propose the creation of a fire control, prevention, and emergency medical services district under this chapter if the municipality:

(1) has a population of 19,000 or more and less than 60,000; and

(2) contains a branch campus of North Central Texas College.

(b) The proposed district may include all or any part of the municipality.

(c) Except as provided by Subsection (f), a district may be created inside the boundaries of an emergency services district operating under Chapter 775, Health and Safety Code, only if the governing body of the emergency services district gives its written consent by order or resolution not later than the 60th day after the date the governing body receives a request for its consent.

(d) If the governing body of the emergency services district consents to the inclusion of territory inside its geographic boundaries, the territory may be included in the district in the same manner as other territory is included under this chapter.

(e) The consent of the governing body of the emergency services

district to include territory in the district and to initiate proceedings to create a district as prescribed by this chapter expires six months after the date on which the consent is given.

(f) Subsection (c) does not apply if:

(1) on the effective date of this chapter, the municipality is providing fire suppression and prevention services and emergency medical services; or

(2) the fire control, prevention, and emergency medical services plan of the proposed district proposes emergency services that, on the effective date of this chapter, were not provided by any rural fire prevention district or emergency services district inside the boundaries of the municipality.

(g) If the voters in a municipality with a population of more than 1.9 million create a fire control, prevention, and emergency medical services district under this chapter, the fire department shall comply with the minimum standards established by the National Fire Protection Association or its successor in function regarding fire protection personnel operating at emergency incidents.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 1204, Sec. 2.004, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 639 (S.B. 917), Sec. 14, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 852 (H.B. 339), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 898 (S.B. 1453), Sec. 1, eff. June 18, 2015.

Acts 2019, 86th Leg., R.S., Ch. 571 (S.B. 235), Sec. 1, eff. June 10, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 179, eff. September 1, 2023.

Sec. 344.052. TEMPORARY BOARD. (a) Not later than the 60th day after the date the governing body proposes to create a district under this chapter, the governing body shall appoint seven persons to serve as temporary directors of the district. The temporary directors must reside in the proposed district.

(b) Not later than the 75th day after the date the governing body proposes to create the district, the temporary board shall conduct a meeting to organize the board. The temporary directors shall elect one of its members as presiding officer of the board at that meeting.

(c) A temporary director other than the presiding officer may designate another person to serve in the director's place.

(d) The governing body shall fill a vacancy in the office of a temporary director in the same manner that it originally filled the vacant position.

(e) The term "governing body" in this section means the mayor if the municipality creating the district has a population of 1.9 million or more.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.053. ELECTION REQUIRED. A proposed district may be created and a district tax may be authorized only if the creation and the tax are approved by a majority of the qualified voters of the proposed district voting at an election called and held for that purpose.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.054. CONFIRMATION ELECTION ORDER. (a) The temporary board may call and hold a confirmation election only after the board adopts plans under Section 344.061.

(b) An order calling an election under Subsection (a) must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open;

(4) the location of the polling places;

(5) a summary of the proposed district's budget plan and fire control, prevention, and emergency medical services plan; and

(6) the proposed rate of the sales and use tax for the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.055. SALES AND USE TAX. (a) A municipality that creates a district shall adopt a sales and use tax under Section 321.106, Tax Code, for financing the operation of the district. The proposed rate for the district sales and use tax imposed under Subchapter B, Chapter 321, Tax Code, may be only:

(1) one-eighth of one percent;

(2) one-fourth of one percent;

(3) three-eighths of one percent; or

(4) one-half of one percent.

(b) A sales and use tax adopted under this chapter may be charged in addition to any other sales and use tax authorized by law, and is included in computing a combined sales and use tax rate for purposes of any limitation provided by law on the maximum combined sales and use tax rate of political subdivisions.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.056. NOTICE OF ELECTION. In addition to the notice required by Section 4.003(c), Election Code, the temporary directors of a proposed district shall give notice of an election to create a district by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed district once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.057. ELECTION DATE. The election shall be held on the next uniform election date authorized by Section 41.001(a), Election Code, after the date on which the election is ordered that affords sufficient time for election procedures to be carried out.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.058. BALLOT PROPOSITION. The ballot for an election

to create a district shall be printed to permit voting for or against the proposition: "The creation of the _____ (name of the municipality proposing to create the district) Fire Control, Prevention, and Emergency Medical Services District dedicated to fire safety and emergency medical services programs and the adoption of a proposed local sales and use tax at a rate of _____ (rate specified in the election order)."

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.059. CANVASSING RETURNS. (a) Not earlier than the second day and not later than the 13th day after the date of the election, the temporary board shall meet and canvass the returns of the election.

(b) If a majority of the votes cast in the election favor the creation of the district, the temporary board shall issue an order declaring the district created.

(c) If less than a majority of the votes cast in the election favor the creation of the district, the temporary board may order another election on the matter not earlier than the first anniversary of the date of the preceding election.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.060. DISSOLUTION OF TEMPORARY BOARD. If a district has not been created under this chapter before the fifth anniversary of the date a district is first proposed by the governing body or mayor, as appropriate, under Section 344.051:

(1) the temporary board is dissolved on that date; and

(2) the proposed district may not be created under this chapter.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.061. FIRE CONTROL, PREVENTION, AND EMERGENCY MEDICAL SERVICES PLAN AND BUDGET PLAN. (a) The temporary board shall develop and adopt a two-year fire control, prevention, and emergency medical services plan and a two-year budget plan. The fire control,

prevention, and emergency medical services plan must include:

(1) a detailed list of the fire control, prevention, and emergency medical services strategies to be supported by the district; and

(2) the method of evaluating each year the effectiveness and efficiency of individual fire control, prevention, and emergency medical services strategies.

(b) The budget plan must include:

(1) the amount of money budgeted by the district for each fire control, prevention, and emergency medical services strategy;

(2) the amount of money budgeted by the district and the percentage of the total budget of the district for administration, with individual amounts showing the cost of the administration that would be conducted by the district and the cost of administration that would be conducted by private or public entities;

(3) the estimated amount of money available to the district from all sources during the subsequent year;

(4) the account balances expected at the end of the years for which the budget is prepared; and

(5) the estimated tax rate that will be required to support the budget.

(c) Plans under this section must be adopted in the same manner as provided for adoption of a proposed annual budget under Section 344.204.

(d) The temporary board shall coordinate its efforts in developing its plans under this section with appropriate local officials and entities.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.062. FINANCING CREATION OF DISTRICT. (a) A municipality creating a district shall pay the entire cost of creating the district.

(b) If a district is created, the district shall reimburse the municipality for the actual expenses the municipality incurred in the creation of the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

SUBCHAPTER C. ADMINISTRATION

Sec. 344.101. BOARD OF DIRECTORS. (a) Except as provided by Subsections (e) and (f), a district is governed by a board of seven directors appointed in the same manner as provided by Section 344.052(a) for the appointment of temporary directors.

(b) Initial appointees under this section shall draw lots to determine their terms so that:

(1) three directors serve terms that expire on September 1 of the first year following creation of the district; and

(2) four directors serve terms that expire on September 1 of the second year following creation of the district.

(c) Directors serve staggered two-year terms.

(d) A vacancy in the office of director shall be filled for the unexpired term in the same manner that the vacant position was originally filled.

(e) The governing body of a municipality by resolution may appoint the governing body's membership as the board of directors of the district, if the appointment is approved by the voters in a creation election or continuation referendum under this chapter. A member of a governing body appointed under this section as an ex officio director serves a term concurrent with the member's term as a member of the governing body.

(f) In a district for which the governing body of the municipality does not serve as the district's board of directors, the governing body may create a board of directors for which one director is appointed by each member of the governing body to serve at the pleasure of that member for a term not to exceed two years and that expires when the member of the governing body that appointed the director leaves office.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.102. PERFORMANCE BOND. (a) Before assuming the duties of the office, each director or officer must execute a bond for $5,000 payable to the district, conditioned on the faithful performance of the person's duties as director or officer.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for the bonds of directors or officers

with district funds.

(d) The board and the district may issue and sell bonds conditioned on the faithful performance of a person's duties as a director as provided by this section.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.103. OFFICERS. (a) The board shall elect from among its members a president and vice president.

(b) The board shall appoint a secretary. The secretary may be a director.

(c) The person who performs the duties of auditor for the municipality shall serve as treasurer of the district.

(d) Each officer of the board serves for a term of one year.

(e) A vacancy in a board office shall be filled by the board for the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.104. COMPENSATION. A director or officer serves without compensation, but a director or officer may be reimbursed for actual expenses incurred in the performance of official duties. Those expenses must be reported in the district's minute book or other district record and must be approved by the board.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.105. VOTING REQUIREMENT. A concurrence of a majority of the members of the board is necessary in matters relating to the business of a district. A two-thirds majority vote of the board is required to reject any application for funding available under this chapter.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.106. CONTRACT FOR ADMINISTRATIVE ASSISTANCE. The board may contract with a public agency or private vendor to assist

the board in the administration or management of the district or to assist the board in the review of applications for funding available under this chapter.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 344.151. FINANCING DISTRICT PROGRAMS. (a) The district may finance all costs of a fire control, prevention, and emergency medical services district program, including costs for personnel, administration, expansion, enhancement, and capital expenditures.

(b) The program may include:

(1) fire apparatus and equipment;

(2) a bomb disposal unit and related equipment;

(3) compensation of fire protection and prevention personnel for specialized training regarding:

(A) arson;

(B) bomb disposal;

(C) hazardous materials;

(D) technical rescue;

(E) paramedic certification; and

(F) any other specialized training under the program;

(4) funding for turn-out gear, self-contained breathing apparatus, and protective uniforms or other firefighter safety equipment;

(5) additional compensation for municipal fire-fighting personnel, including overtime compensation for unforeseen staffing needs; and

(6) funding for the construction and maintenance of fire stations, training facilities, or the equipment needed for those stations or facilities.

(c) The program may include an enhanced emergency communications center or other emergency communications programs and equipment, including:

(1) emergency medical dispatch training;

(2) additional fire and emergency medical service dispatchers;

(3) uniformed fire deployment and communications officers;

(4) real-time weather information; and

(5) computer databases and systems maintenance personnel for hazardous materials responses.

(d) The program may include a public training program, including:

(1) a juvenile fire starter program;

(2) an urban survival program, including school programs for fire safety, gun safety, and safety with strangers;

(3) a fire prevention program;

(4) a fire education program;

(5) a hazardous materials education program;

(6) a psychological intervention program; and

(7) a citizen's ride-along program or home inspection program.

(e) The program may include public preventive health programs, including:

(1) juvenile inoculations;

(2) weekend health days;

(3) first aid and cardiopulmonary resuscitation training;

(4) injury prevention; and

(5) drug and alcohol awareness.

(f) The program may include response training programs, equipment, facilities, and instructors, including:

(1) a regional training center for fire, rescue, hazardous materials, and emergency medical services;

(2) staff personnel to support the center;

(3) equipment and apparatus to support the center;

(4) computer-aided continuing education training conducted in-station; and

(5) training regarding hazardous material storage and response.

(g) The program may include computers and other systems to support information management systems to:

(1) maintain occupancy information;

(2) track incident analyses;

(3) track incident reports;

(4) track internal communications and reporting;

(5) maintain inventory; and

(6) serve other information management needs.

(h) The program may include capital items needed to improve emergency response and increase service efficiency, including

equipment, apparatus, vehicles, and training material or equipment.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.152. COORDINATION; EVALUATION; GRANTS. (a) The district shall coordinate its efforts with local agencies in developing its fire control, prevention, and emergency medical services program.

(b) The district shall conduct an annual evaluation program to study the impact, efficiency, and effectiveness of new or expanded fire control, prevention, and emergency medical services programs.

(c) The board may seek the assistance of the Office of State-Federal Relations in identifying and applying for federal grants for fire control, prevention, and emergency medical services programs.

(d) The district may apply for and receive grants for fire control, prevention, and emergency medical services programs from a state or federal agency.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.153. GENERAL BOARD POWER OVER FUNDS. The board shall manage, control, and administer the district finances except as provided by Section 344.205.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.154. USE OF REVENUE. The board may spend revenue derived from the sales and use tax distributed under Section 321.106, Tax Code, only for a purpose authorized by Section 344.151.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.155. RULES AND PROCEDURES. (a) A board may adopt rules governing programs financed by the district and the functions of district staff.

(b) The board may prescribe accounting and control procedures for the district.

(c) The board is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.156. PURCHASING. (a) Except as provided by Subsection (b), the board may prescribe the method of making purchases and expenditures by and for the district.

(b) To the extent competitive bidding procedures in Title 8 apply, the board may not enter into a purchasing contract for more than $15,000 unless the board complies with Chapter 252.

(c) If the municipality that created the district has a purchasing agent authorized by law, that agent shall serve as purchasing agent for the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.157. PROPERTY TO BE USED IN ADMINISTRATION. The board may lease or acquire in another manner facilities, equipment, or other property for the sole purpose of administering the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.158. REIMBURSEMENT FOR SERVICES. (a) A county or municipality located outside the boundaries of a district on the district's request shall reimburse the district for the district's cost of including a resident of that county or municipality who is not a resident of that district in a district program.

(b) On behalf of the district, the board may contract with a municipal or county government or with the state or federal government for the municipal, county, state, or federal government to reimburse the district for including a person in a district program.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.159. SERVICE CONTRACTS. The board may contract with the following entities to furnish the staff, facilities, equipment, programs, or services the board considers necessary for the effective

operation of the district:

(1) a municipality, county, special district, or other political subdivision of the state;

(2) a state or federal agency;

(3) an individual; or

(4) a private person.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.160. DONATIONS, GIFTS, AND ENDOWMENTS. On behalf of the district, the board or the temporary board may accept a donation, gift, or endowment. The district may hold a donation, gift, or endowment in trust for any purpose and under any direction, limitation, or other provision prescribed in writing by the donor that is consistent with this chapter and the proper management of the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.161. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued in the name of the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

SUBCHAPTER D-1. ADDITION OF TERRITORY TO DISTRICT

Sec. 344.181. ELECTION REQUIRED. The municipality that created a district may add all or part of the territory in the municipality's extraterritorial jurisdiction to the district and the district may impose a tax in that territory only if the addition of the territory and the imposition of the tax are approved by a majority of the qualified voters of the territory to be added voting at an election held for that purpose.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 1, eff. June 19, 2015.

Sec. 344.182. CONFIRMATION ELECTION ORDER. (a) The board may

not call and hold a confirmation election until the board adopts a budget plan and a fire control, prevention, and emergency medical services plan under Section 344.061 that include the proposed addition of territory.

(b) An order calling an election under Subsection (a) must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open;

(4) the location of the polling places;

(5) a summary of the district's budget plan and fire control, prevention, and emergency medical services plan that includes the proposed addition of territory; and

(6) the proposed rate of the sales and use tax to be imposed in the territory to be added.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 1, eff. June 19, 2015.

Sec. 344.183. NOTICE OF ELECTION. In addition to the notice required by Section 4.003(c), Election Code, the board shall give notice of an election to add territory to the district by publishing a substantial copy of the election order in a newspaper with general circulation in the territory to be added once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 1, eff. June 19, 2015.

Sec. 344.184. BALLOT PROPOSITION. The ballot for an election to add territory to a district shall be printed to permit voting for or against the proposition: "The addition of _____ (description of territory to be added) to the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District dedicated to fire safety and emergency medical services programs and the adoption of a proposed local sales and use tax in the territory to be added at a rate of _____ (rate specified

in the election order)."

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 1, eff. June 19, 2015.

Sec. 344.185. ELECTION RESULTS. (a) If a majority of the votes cast in the election favor the addition of the territory to the district, the board shall issue an order declaring the territory added to the boundaries of the district.

(b) If a majority of the votes cast in the election do not favor the addition of the territory to the district, the board may not order another election on the matter before the first anniversary of the date of the most recent election.

(c) The provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter to territory added under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 1, eff. June 19, 2015.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 344.201. FISCAL YEAR. (a) The board shall establish the fiscal year for the district, and the district shall operate on the basis of that year.

(b) The fiscal year may not be changed more than once in a 24-month period.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.202. AUDITS AND DISTRICT RECORDS. (a) The board shall have an annual audit made of the financial condition of the district by an independent auditor.

(b) The annual audit and other district records shall be open to inspection during regular business hours at the principal office of the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.203. ANNUAL BUDGET PROPOSAL. (a) The board shall propose an annual budget. The board shall consider the applications for program funding in preparing the proposed budget.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the estimated amount of money available to the district from all sources during the current fiscal year;

(5) the amount of money needed to fund programs approved for funding by the board;

(6) the amount of money requested for programs that were not approved for funding by the board;

(7) the tax rate for the next fiscal year;

(8) the amount of the balances expected at the end of the year in which the budget is being prepared; and

(9) the estimated amount of revenues and balances available to cover the proposed budget.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.204. ADOPTION OF BUDGET. (a) Not later than the 100th day before the date each fiscal year begins, the board shall hold a public hearing to consider the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper with general circulation in the district not later than the 10th day before the date of the hearing.

(c) A resident of the district is entitled to participate in the hearing.

(d) Not later than the 80th day before the date each fiscal year begins, the board shall adopt a budget. The board may make any changes in the proposed budget that the interests of the taxpayers demand.

(e) Not later than the 10th day after the date the budget is

adopted, the board shall submit the budget to the governing body of the municipality that created the district.

(f) The board by rule may adopt alternative procedures for adopting a budget that differ from the procedures outlined in this subchapter. The board must hold at least one public hearing related to the alternative procedures before their adoption.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.205. APPROVAL OF BUDGET. (a) Not later than the 45th day before the date each fiscal year begins, the governing body of the municipality that created the district shall hold a public hearing to consider the budget adopted by the board and submitted to the governing body.

(b) The governing body must publish notice of the hearing in a newspaper with general circulation in the district not later than the 10th day before the date of the hearing.

(c) A resident of the district is entitled to participate in the hearing.

(d) Not later than the 30th day before the date the fiscal year begins, the governing body shall approve or reject the budget submitted by the board. The governing body may not amend the budget.

(e) If the governing body rejects the budget submitted by the board, the governing body and the board shall meet and together amend and approve the budget before the beginning of the fiscal year.

(f) The budget may be amended after the beginning of the fiscal year on approval by the board and the governing body.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.206. LIMITATIONS ON EXPENDITURES AND INVESTMENTS. (a) The district may spend money only for an expense included in the annual budget or an amendment to the budget.

(b) A district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current or immediately following fiscal year of the district.

(c) The board may not invest district money in funds or securities other than those specified by Chapter 2256, Government Code.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.207. ACCOUNT OF DISBURSEMENTS OF DISTRICT. Not later than the 60th day after the last day of each fiscal year, an administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.208. DEPOSIT OF MONEY. (a) The board shall deposit district money in a special account in the treasury of the municipality that created the district.

(b) District money, other than that invested as provided by Section 344.206(c), shall be deposited as received in the treasury of the municipality and must remain on deposit.

(c) The board shall reimburse the municipality for any costs, other than personnel costs, the municipality incurs for performing the duties under this section.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.209. APPLICATIONS FOR PROGRAM FUNDING. (a) An officer of the municipality that created the district or the head of a department of that municipality may, with the consent of the governing body of the municipality, apply to the board for funding of a program described by Section 344.151.

(b) The officer must apply under this section not later than the 140th day before the date the fiscal year begins, unless the board by rule has adopted an exception.

(c) The board by rule may adopt application procedures.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.210. BONDS PROHIBITED. The board may not issue or sell general obligation bonds, revenue bonds, or refunding bonds.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

SUBCHAPTER F. REFERENDUM ON CONTINUATION OR DISSOLUTION OF DISTRICT

Sec. 344.251. REFERENDUM AUTHORIZED. (a) The board may call and hold a referendum election on the question of whether to:

(1) continue the district; or

(2) dissolve the district.

(b) A board may order a referendum election on its own motion.

(c) The board shall order a referendum election:

(1) on receipt of a petition that requests continuation or dissolution of the district and complies with the requirements of Sections 344.252-344.256; or

(2) if the governing body of the municipality that created the district, after notice and a public hearing on the matter, by resolution requests a referendum on continuation or dissolution.

(d) The board may not hold a referendum election under this subchapter before the fourth anniversary of the date the district was created or before the third anniversary of the date of the last continuation or dissolution referendum election.

(e) For a continuation referendum election, the ballot shall be printed to permit voting for or against the proposition: "Whether the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District should be continued and whether the fire control, prevention, and emergency medical services district sales and use tax should be continued."

(f) For a dissolution referendum, the ballot shall be printed to permit voting for or against the proposition: "Whether the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District should be dissolved and whether the fire control, prevention, and emergency medical services district sales and use tax should be abolished."

(g) The governing body of a municipality that creates a district under this chapter may specify the number of years for which the district should be continued. The board or the governing body of a municipality may continue a district for 5, 10, 15, or 20 years. For a continuation referendum election under this subsection, the ballot shall be printed to permit voting for or against the

proposition: "Whether the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District should be continued for _____ years and whether the fire control, prevention, and emergency medical services district sales and use tax should be continued for _____ years."

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 662 (H.B. 2228), Sec. 1, eff. June 19, 2009.

Sec. 344.252. APPLICATION FOR PETITION. (a) On written application of 10 or more registered voters of the district, the clerk of the municipality that created the district shall issue to the applicants a petition to be circulated among registered voters for their signatures.

(b) An application for a petition to continue the district must contain:

(1) the heading: "Application for a Petition for a Local Option Referendum to Continue the Fire Control, Prevention, and Emergency Medical Services District and to Continue the Fire Control, Prevention, and Emergency Medical Services District Sales and Use Tax";

(2) the statement: "Whether the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District should be continued and whether the fire control, prevention, and emergency medical services district sales and use tax should be continued";

(3) immediately above the signatures of the applicants, the statement: "It is the purpose and intent of the applicants whose signatures appear below that the fire control, prevention, and emergency medical services district be continued and that the fire control, prevention, and emergency medical services district sales and use tax in _____ (name of the municipality that created the district) be continued"; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

(c) An application for a petition to dissolve the district must contain:

(1) the heading: "Application for a Petition for a Local Option Referendum to Dissolve the Fire Control, Prevention, and Emergency Medical Services District and to Abolish the Fire Control, Prevention, and Emergency Medical Services District Sales and Use Tax";

(2) the statement: "Whether the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District should be dissolved and whether the fire control, prevention, and emergency medical services district sales and use tax should be abolished";

(3) immediately above the signatures of the applicants, the statement: "It is the purpose and intent of the applicants whose signatures appear below that the fire control, prevention, and emergency medical services district be dissolved and that the fire control, prevention, and emergency medical services district sales and use tax in _____ (name of the municipality that created the district) be abolished"; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.253. PETITION. (a) A petition for a referendum to continue a district must contain:

(1) the heading: "Petition for a Local Option Referendum to Continue the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District and to Continue the Fire Control, Prevention, and Emergency Medical Services District Sales and Use Tax";

(2) a statement of the issue to be voted on in the same words used in the application;

(3) immediately above the signatures of the petitioners, the statement: "It is the purpose and intent of the petitioners whose signatures appear below that the fire control, prevention, and emergency medical services district be continued and that the fire control, prevention, and emergency medical services district sales and use tax in _____ (name of the municipality that created the district) be continued";

(4) lines and spaces for the names, signatures, residence

addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the clerk of the municipality on each page.

(b) A petition for a referendum to dissolve a district must contain:

(1) the heading: "Petition for a Local Option Referendum to Dissolve the _____ (name of the municipality that created the district) Fire Control, Prevention, and Emergency Medical Services District and to Abolish the Fire Control, Prevention, and Emergency Medical Services District Sales and Use Tax";

(2) a statement of the issue to be voted on in the same words used in the application;

(3) immediately above the signatures of the petitioners, the statement: "It is the purpose and intent of the petitioners whose signatures appear below that the fire control, prevention, and emergency medical services district be dissolved and that the fire control, prevention, and emergency medical services district sales and use tax in _____ (name of the municipality that created the district) be abolished";

(4) lines and spaces for the names, signatures, residence addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the clerk of the municipality on each page.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.254. COPIES OF APPLICATION AND PETITION. The clerk or secretary of the municipality shall keep an application and a copy of the petition in the files of the clerk's or secretary's office. The clerk shall issue to the applicants as many copies as they request.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.255. FILING OF PETITION. To form the basis for the ordering of a referendum, the petition must:

(1) be filed with the clerk or secretary of the municipality not later than the 60th day after the date of its

issuance; and

(2) contain at least a number of signatures of registered voters of the municipality equal to five percent of the number of votes cast in the municipality for all candidates for governor in the most recent gubernatorial general election.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.256. REVIEW BY CLERK OR SECRETARY. (a) The clerk or secretary of the municipality shall, on the request of any person, check each name on a petition to determine whether the signer is a registered voter of the district. A person requesting verification by the clerk or secretary of the municipality shall pay the clerk or secretary a sum equal to 20 cents for each name on the petition before the verification begins.

(b) The clerk or secretary of the municipality may not count a signature if the clerk or secretary has a reason to believe that:

(1) it is not the actual signature of the purported signer;

(2) the voter registration certificate number is not correct;

(3) it is a duplication either of a name or of handwriting used in any other signature on the petition;

(4) the residence address of the signer is not correct; or

(5) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.257. CERTIFICATION. Not later than the 40th day after the date a petition is filed, excluding Saturdays, Sundays, and legal holidays, the clerk or secretary of the municipality shall certify to the board the number of registered voters signing the petition.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.258. ELECTION ORDER. (a) The board shall record on its minutes the date the petition is filed and the date it is

certified by the clerk or secretary of the municipality.

(b) If the petition contains the required number of signatures and is in proper order, the board shall, at its next regular session after the certification by the clerk or secretary of the municipality, order a referendum election to be held at the regular polling place in each election precinct in the municipality on the next uniform election date authorized by Section 41.001(a), Election Code, that occurs at least 20 days after the date of the order.

(c) The board shall state in the order the proposition to be voted on in the referendum election. The order is prima facie evidence of compliance with all provisions necessary to give it validity.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.259. APPLICABILITY OF ELECTION CODE. A referendum election authorized by this subchapter shall be held and the returns shall be prepared and canvassed in conformity with the Election Code.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

Sec. 344.260. RESULTS OF REFERENDUM. (a) If less than a majority of the votes cast in a continuation referendum election are for the continuation of a district or if a majority of the votes cast in a dissolution referendum are for dissolution of the district:

(1) the board shall certify that fact to the secretary of state not later than the 10th day after the date of the canvass of the returns; and

(2) the district is dissolved and ceases to operate as provided by Section 344.301.

(b) If a majority of the votes cast in a continuation referendum election are for the continuation of the district or if less than a majority of the votes cast in a dissolution referendum election are for dissolution of the district, another referendum may not be held except as authorized by Section 344.251.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1190 (H.B. 4075), Sec. 1, eff.

September 1, 2019.

Sec. 344.261. ELECTION CONTEST. Not later than the 30th day after the date the result of a referendum is declared, any qualified voter of the district may contest the election by filing a petition in a district court located in the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

SUBCHAPTER G. DISTRICT DISSOLUTION

Sec. 344.301. TIME FOR DISSOLUTION OF DISTRICT. (a) A district is dissolved on the first uniform election date that occurs after the fifth anniversary of the date the municipality began to impose taxes for district purposes if the district has not held a continuation or dissolution referendum.

(b) The district is dissolved on the first uniform election date that occurs after the fifth anniversary of the date of the most recent continuation or dissolution referendum.

(c) Subsection (b) does not apply to a district that is continued under Section 344.251(g), and that district is dissolved on the first uniform election date that occurs after the end of the period for which it was continued.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1190 (H.B. 4075), Sec. 2, eff. September 1, 2019.

Sec. 344.302. DISSOLUTION OF DISTRICT. (a) On the date that the district is dissolved, the district shall convey or transfer, as provided by Subsection (h):

(1) title to land, buildings, real and tangible improvements, and equipment owned by the district;

(2) operating money and reserves for operating expenses and money that has been budgeted by the district for the remainder of the fiscal year in which the district is dissolved to support fire control, prevention, and emergency medical services activities and programs for residents of the municipality that created the district;

(3) taxes imposed for the district during the current year for fire control, prevention, and emergency medical services purposes;

(4) each fund established for payment of indebtedness assumed by the district; and

(5) any money accumulated in an employee retirement fund.

(b) After the date the district is dissolved, taxes may not be imposed for district purposes or for providing fire control, prevention, and emergency medical services activities and programs for the residents of the district.

(c) If on the date that the district is dissolved the district has outstanding short-term or long-term liabilities, the board shall, not later than the 30th day after the date of the dissolution, adopt a resolution certifying each outstanding short-term and long-term liability. The municipality that created the district shall assume the outstanding short-term and long-term liabilities. The municipality shall collect the sales and use tax under Chapter 321, Tax Code, for the remainder of the calendar year and may by resolution of its governing body continue to collect the tax for an additional calendar year if the revenue from the tax is needed to retire liabilities of the district that were assumed by the municipality. The governing body shall notify the comptroller of this continuation not later than the 60th day before the date the tax would otherwise expire. A tax collected after the liabilities have been retired shall be transferred or conveyed as provided by Subsection (a).

(d) The district and the board may continue to operate for a period not to exceed two months after carrying out the responsibilities required by Subsections (a) and (c). The board and the district are continued for the purpose of satisfying these responsibilities.

(e) If the board and the district are continued under Subsection (d), the board and district are dissolved entirely on the first day of the month following the month in which the board issues an order certifying to the secretary of state that the responsibilities of Subsections (a) and (c) are satisfied.

(f) A district or board that continues to operate under Subsection (d) may not incur any new liabilities without the approval of the governing body of the municipality that created the district. Not later than the 60th day after the date of the dissolution

referendum, the governing body shall review the outstanding liabilities of the district and set a specific date by which the municipality must retire the district's outstanding liabilities.

(g) On the date that the district is dissolved, programs funded by the district shall immediately terminate and personnel paid from district funds, except personnel required to retire the responsibilities of the district, are terminated.

(h) The board shall convey or transfer the value of the items described by Subsection (a) to the municipality that created the district.

Added by Acts 2001, 77th Leg., ch. 1295, Sec. 1, eff. June 1, 2001.

SUBTITLE B. COUNTY PUBLIC SAFETY
CHAPTER 351. COUNTY JAILS AND LAW ENFORCEMENT
SUBCHAPTER A. COUNTY JAIL FACILITIES

Sec. 351.001. DUTY TO PROVIDE JAILS; LOCATION. (a) The commissioners court of a county shall provide safe and suitable jails for the county.

(b) The jails must be located at the county seat unless the county has only one jail, in which case the jail may be located anywhere in the county at the discretion of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 64(e), eff. Aug. 28, 1989.

Sec. 351.002. JAIL STANDARDS. The jail standards prescribed by this subchapter are minimum standards for county jails. Each county jail must comply with the minimum standards and the rules and procedures of the Commission on Jail Standards.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.003. EXEMPTION. (a) A county with a population not large enough to justify building a new county jail or remodeling an existing county jail in order to comply with the standards in this subchapter is exempt from this subchapter if the commissioners court contracts with another county to incarcerate its prisoners.

(b) The county must contract with the nearest county whose county jail meets the standards in this subchapter.

(c) The county shall pay to the other county a daily per capita rate equal to the cost of maintaining its prisoners in the county jail or a daily rate on which the counties agree.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.0035. TEMPORARY HOUSING. (a) On request of the sheriff and the commissioners court of a county, the Commission on Jail Standards shall authorize a county to house a prisoner in a tent or other facility that is not a county jail.

(b) The Commission on Jail Standards shall adopt rules that govern the temporary housing of prisoners, including a specific requirement for:

(1) the classification and separation of prisoners;

(2) the supervision of prisoners;

(3) safety, sanitation, and health;

(4) the structure and maintenance of the facility;

(5) the provision of bunks or sleeping areas for prisoners or other furnishings for the facility;

(6) the space and capacity in the facility; and

(7) the enforcement of a rule the commission adopts under this subsection.

(c) A rule adopted under Subsection (b) must be consistent with the jail standards imposed by or adopted under other provisions of this subchapter unless the Commission on Jail Standards determines compliance is not practicable or reasonable.

Added by Acts 1993, 73rd Leg., ch. 145, Sec. 1, eff. May 15, 1993.

Sec. 351.0036. HOUSING OF CORRECTIONAL PROGRAM PARTICIPANTS. (a) Notwithstanding the requirements of Section 351.0035, the Commission on Jail Standards is hereby authorized to adopt rules governing the temporary housing of prisoners in connection with specific correctional programs which include work camps, wilderness camps, forestry camps, or boot camps.

Added by Acts 1993, 73rd Leg., ch. 145, Sec. 2, eff. May 15, 1993.

Sec. 351.004. STRUCTURAL AND MAINTENANCE REQUIREMENTS. A county jail must be:

(1) structurally sound;

(2) fire resistant;

(3) properly ventilated, heated, and lighted; and

(4) kept in good repair.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.007. SPACE REQUIREMENTS. (a) A county jail cell designed for one person only must have a clear floor area of 40 square feet or more.

(b) Any other housing area or day room in a county jail must have a clear floor area of 18 square feet or more for each prisoner to be confined in the area or room.

(c) The ceiling height above the finished floor in a cell, compartment, dormitory, or day room in a county jail in which prisoners are confined must be eight feet or more.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 952, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.008. ACCESS TO DAY ROOM. A cell, compartment, or dormitory used in a county jail for sleeping purposes and designed to accommodate three or more prisoners must be accessible to a day room to which the prisoners may be given access during the day.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.009. SAFETY VESTIBULE. (a) To provide safety to officers and security, entrance to and exit from a cell block or a group of cells or compartments used to confine three or more prisoners in a county jail must be through a safety vestibule.

(b) A safety vestibule must have one or more interior doors in addition to the main outside entrance door to the cell block or group of cells or compartments. All the interior doors must be designed to

be locked, unlocked, opened, and closed by a means located outside the cell block or group of cells or compartments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.010. SANITATION AND HEALTH REQUIREMENTS. A county jail must be:

(1) provided with safe water in ample quantity;

(2) provided with sewage disposal facilities in accordance with good sanitation standards;

(3) provided with food prepared and served in a palatable and sanitary manner according to good dietary practices and of sufficient quality to maintain good health; and

(4) maintained in a clean and sanitary condition in accordance with standards of sanitation and health.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.011. FURNISHINGS OF CELLS, COMPARTMENTS, AND DORMITORIES. (a) A county jail cell designed for one prisoner only must have a toilet, a combination sink and drinking fountain, a table, and a seat.

(b) A housing area designed for three or more prisoners must have one toilet and one combination sink and drinking fountain for every eight prisoners to be confined in the area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 952, Sec. 2, eff. Sept. 1, 1999.

Sec. 351.012. FURNISHINGS OF DAY ROOMS. (a) A day room designed in a county jail for three or more prisoners must have:

(1) for every eight prisoners to be confined in the room, one toilet and one combination sink and drinking fountain; and

(2) for every 12 prisoners to be confined in the room, one shower.

(b) A day room must be suitably furnished.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1999, 76th Leg., ch. 952, Sec. 3, eff. Sept. 1, 1999.

Sec. 351.013. BUNKS. (a) A cell, compartment, or dormitory in a county jail must have for each prisoner one bunk that is not less than two feet, three inches wide and not less than six feet, three inches long.

(b) Each bunk must have a clean, comfortable mattress and enough clean blankets for the prisoner's comfort.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.014. HOLDING INSANE PERSONS. (a) A person suspected to be or adjudged insane may not be held in a county jail unless the person:

(1) demonstrates homicidal tendencies; and

(2) must be restrained from committing acts of violence against other persons.

(b) A person requiring restraint under this section may be held in a county jail for not more than 24 hours. The person shall be kept under observation at all times.

(c) At the end of the 24-hour period, the person shall be released or taken to a hospital or mental hospital.

(d) A person held under this section shall be kept in a special enclosure or room for that purpose. The special enclosure or room must have:

(1) a clear floor area of 40 square feet or more;

(2) a ceiling height above the floor of eight feet or more; and

(3) a soft covering on the floor and walls, designed to protect a violent person from self-injury or destruction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 952, Sec. 4, eff. Sept. 1, 1999.

Sec. 351.015. ENFORCEMENT. This subchapter is enforceable by the Commission on Jail Standards.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. INTERCOUNTY COOPERATION FOR JAIL FACILITIES

Sec. 351.031. CONTRACT. (a) The commissioners courts of two or more counties may contract with each other for the joint operation of a jail to serve the counties.

(b) The contract may provide for the construction or acquisition of a facility or for the use of an existing facility.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.032. LOCATION OF FACILITY. A joint facility is not required to be located at the county seat of one of the counties.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.033. FINANCING. A county whose share of capital expenditures under the contract includes costs of acquiring land or acquiring, constructing, enlarging, or improving a joint facility may use any method of financing that share that would be available to the county if it operated its own jail, including issuing general obligation bonds or other evidences of indebtedness as provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.034. ADMINISTRATOR. (a) The sheriff of the county in which the jail is located shall serve as administrator of the jail.

(b) The sheriff may decline to serve as administrator by filing a written statement with the commissioners court of that county.

(c) If the sheriff declines to serve as administrator, the commissioners courts of the contracting counties shall jointly appoint a jail administrator. Until an individual is appointed and assumes the duties of jail administrator, the sheriff shall serve as administrator of the jail.

(d) If there is a vacancy in the position of jail administrator, the sheriff shall serve as administrator of the jail until a new jail administrator is appointed and assumes the position.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.035. DUTIES. The sheriff or jail administrator has all the powers, duties, and responsibilities with regard to keeping prisoners and operating the jail that are given by law to the sheriff in a county operating its own jail.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. OPERATION OF COUNTY JAILS

Sec. 351.041. SHERIFF. (a) The sheriff of each county is the keeper of the county jail. The sheriff shall safely keep all prisoners committed to the jail by a lawful authority, subject to an order of the proper court.

(b) The sheriff may appoint a jailer to operate the jail and meet the needs of the prisoners, but the sheriff shall continue to exercise supervision and control over the jail.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.0415. COMMISSARY OPERATION BY SHERIFF OR PRIVATE VENDOR. (a) The sheriff of a county or the sheriff's designee, including a private vendor operating a detention facility under contract with the county, may operate, or contract with another person to operate, a commissary for the use of the inmates committed to the county jail or to a detention facility operated by the private vendor, as appropriate. The commissary must be operated in accordance with rules adopted by the Commission on Jail Standards.

(b) The sheriff or the sheriff's designee:

(1) has exclusive control of the commissary funds;

(2) shall maintain commissary accounts showing the amount of proceeds from the commissary operation and the amount and purpose of disbursements made from the proceeds; and

(3) shall accept new bids to renew contracts of commissary suppliers every five years.

(c) The sheriff or the sheriff's designee may use commissary proceeds only to:

(1) fund, staff, and equip a program addressing the social

needs of the inmates, including an educational or recreational program and religious or rehabilitative counseling;

(2) supply inmates with clothing, writing materials, and hygiene supplies;

(3) establish, staff, and equip the commissary operation and fund the salaries of staff responsible for managing the inmates' commissary accounts;

(4) fund, staff, and equip both an educational and a law library for the educational use of inmates; or

(5) fund physical plant improvements, technology, equipment, programs, services, and activities that provide for the well-being, health, safety, and security of the inmates and the facility.

(d) For a jail under the supervision of the sheriff, at least once each county fiscal year, or more often if the commissioners court desires, the auditor shall, without advance notice, fully examine the jail commissary accounts. The auditor shall verify the correctness of the accounts and report the findings of the examination to the commissioners court of the county at its next term beginning after the date the audit is completed.

(e) A private vendor operating a detention facility under contract with the county shall ensure that the facility commissary accounts are annually examined by an independent auditor.

(f) When entering into a contract under Subsection (a), the sheriff or the sheriff's designee shall consider the following:

(1) whether the contract should provide for a fixed rate of return combined with a sales growth incentive;

(2) the menu items offered by the provider and the price of those items;

(3) the value, as measured by a best value standard, and benefits to inmates and the commissary, as offered by the provider;

(4) safety and security procedures to be performed by the provider; and

(5) the performance record of the provider, including service availability, reliability, and efficiency.

(g) Commissary proceeds may be used only for the purposes described in Subsection (c). A commissioners court may not use commissary proceeds to fund the budgetary operating expenses of a county jail.

Added by Acts 1989, 71st Leg., ch. 980, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 578, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 913, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 55, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1005, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1057, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 31, eff. September 1, 2005.

Sec. 351.04155. COMMISSARY OPERATION BY SHERIFF IN CERTAIN COUNTIES. (a) This section applies only to a county that:

(1) has a population of 2.1 million or more;

(2) has two municipalities with a population of 250,000 or more; and

(3) is adjacent to a county with a population of 2.1 million or more.

(b) The county is subject to Section 351.0415, except:

(1) Section 351.0415(b)(1) does not apply to the sheriff of the county;

(2) new bids to renew contracts under Section 351.0415(b)(3) are subject to the approval of the commissioners court of the county;

(3) the sheriff may not make a disbursement from the commissary proceeds unless the sheriff receives approval for the disbursement from the commissioners court of the county; and

(4) the sheriff shall provide to the commissioners court of the county each contract the sheriff makes under this section relating to the commissary and shall provide the contract within 10 days after the date the contract is made.

(c) A purchase made by the sheriff using commissary proceeds is subject to the competitive purchasing procedures contained in Subchapter C, Chapter 262. For the purpose of complying with that subchapter, a reference in that subchapter to "commissioners court" means the sheriff and a reference to "the county official who makes purchases for the county" means the sheriff or the sheriff's designee.

Added by Acts 2001, 77th Leg., ch. 1057, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 32, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 180, eff. September 1, 2023.

Sec. 351.042. JAIL ADMINISTRATOR IN BEXAR COUNTY. The Commissioners Court of Bexar County may appoint a jail administrator who shall exercise all power, supervision, and control over the jail, including the duties imposed by law on the sheriff with respect to the jail.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.043. FEDERAL PRISONERS. (a) The sheriff or jailer may receive into the county jail a federal prisoner delivered by a federal law enforcement officer unless the sheriff or jailer determines that receipt of the prisoner may violate a state or federal court order, a statute, or a rule of the Commission on Jail Standards or the Texas Board of Criminal Justice.

(b) The sheriff or jailer shall safely keep the prisoner until the prisoner is transferred or discharged by due course of law.

(c) The federal law enforcement officer on whose authority the prisoner is received and kept is directly and personally liable to the sheriff or jailer for the jail fees and other costs incurred in keeping the prisoner. The fees and costs shall be estimated according to laws regulating similar fees and costs in other cases.

(d) In this section, "federal law enforcement officer" has the meaning assigned by 5 U.S.C. Section 8331(20).

(e) Repealed by Acts 1997, 75th Leg., ch. 259, Sec. 10, eff. Sept. 1, 1997.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.16, eff. Aug. 29, 1991; Acts 1997, 75th Leg., ch. 259, Sec. 10, eff. Sept. 1, 1997.

Sec. 351.044. PRISONER IN ANOTHER COUNTY'S JAIL. A county to which a prisoner is sent due to the lack of a safe jail in the

sending county as determined by the Commission on Jail Standards may recover by suit from the sending county the reasonable cost of keeping the prisoner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 578, Sec. 3, eff. Sept. 1, 1991.

Sec. 351.045. EMPLOYMENT OF HEALTH CARE PROVIDERS. (a) The commissioners court of a county may appoint, contract for, or employ licensed physicians, dentists, or other health care providers to provide health care services to inmates in the custody of the sheriff.

(b) This section may not be construed as authorizing a commissioners court to supervise or control the practice of medicine as prohibited by Subtitle B, Title 3, Occupations Code, or to supervise or control the practice of dentistry as prohibited by Subtitle D, Title 3, Occupations Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 759 (H.B. 1566), Sec. 1, eff. June 17, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 760 (H.B. 1567), Sec. 1, eff. June 17, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 975 (H.B. 1568), Sec. 2, eff. June 17, 2011.
Reenacted by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 12.006, eff. September 1, 2013.

Sec. 351.046. NOTICE TO CERTAIN GOVERNMENTAL ENTITIES. (a) In this section, "medical assistance benefits" means medical assistance benefits provided under Chapter 32, Human Resources Code.

(b) The sheriff of a county may notify the Health and Human Services Commission on the confinement in the county jail of an individual who is receiving medical assistance benefits.

(c) If the sheriff of a county chooses to provide the notice described by Subsection (b), the sheriff, or an employee of the county or sheriff, shall provide the notice electronically or by other appropriate means as soon as possible after the 30th day after the date of the individual's confinement.

(d) If the sheriff of a county chooses to provide the notice

described by Subsection (b), the sheriff shall notify:

(1) the United States Social Security Administration of the release or discharge of a prisoner who, immediately before the prisoner's confinement in the county jail, was receiving:

(A) Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq.; or

(B) Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq.; and

(2) the Health and Human Services Commission of the release or discharge of a prisoner who, immediately before the prisoner's confinement in the county jail, was receiving medical assistance benefits.

(e) If the sheriff of a county provides the notices described by Subsection (d), the sheriff, or an employee of the county or sheriff, shall provide the notices electronically or by other appropriate means not later than 48 hours after the prisoner's release or discharge from custody.

(f) If the sheriff of a county provides the notice described by Subsection (d)(2), at the time of the prisoner's release or discharge, the sheriff, or an employee of the county or sheriff, shall provide the prisoner with a written copy of the notice and a telephone number at which the prisoner may contact the Health and Human Services Commission regarding confirmation of or assistance relating to reinstatement of the individual's eligibility for medical assistance benefits, if applicable.

(g) The Health and Human Services Commission shall establish a means by which the sheriff of a county, or an employee of the county or sheriff, may determine whether an individual confined in the county jail is or was, as appropriate, receiving medical assistance benefits for purposes of this section.

(h) A county or the sheriff of a county, or an employee of the county or sheriff, is not liable in a civil action for damages resulting from a failure to comply with this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 778 (H.B. 337), Sec. 2, eff. September 1, 2017.

Sec. 351.047. ASSISTANCE WITH REINSTATEMENT OF BENEFITS. The sheriff of a county may enter into an agreement with a third party

with experience providing reintegration resources or services to former prisoners under which the third party assists a person who is released or discharged from the county jail with the reinstatement of the person's eligibility for, as appropriate:

(1) medical assistance benefits under Chapter 32, Human Resources Code;

(2) Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq.; and

(3) Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq.

Added by Acts 2017, 85th Leg., R.S., Ch. 778 (H.B. 337), Sec. 2, eff. September 1, 2017.

Sec. 351.048. DUTIES FOLLOWING MISCARRIAGE OR PHYSICAL OR SEXUAL ASSAULT OF PREGNANT PRISONER. (a) In this section:

(1) "Physical assault" means any conduct that constitutes an offense under Section 22.01 or 22.02, Penal Code.

(2) "Sexual assault" means any conduct that constitutes an offense under Section 22.011 or 22.021, Penal Code.

(b) As soon as practicable after receiving a report of a miscarriage or physical or sexual assault of a pregnant prisoner while in the custody of a county jail, the sheriff shall ensure that an obstetrician or gynecologist and a mental health professional promptly:

(1) review the health care services provided to the prisoner; and

(2) order additional health care services, including obstetrical and gynecological services and mental health services, as appropriate.

Added by Acts 2021, 87th Leg., R.S., Ch. 424 (H.B. 1307), Sec. 2, eff. September 1, 2021.

SUBCHAPTER D. CONTRACTS FOR LAW ENFORCEMENT SERVICES ON FEE BASIS

Sec. 351.061. AUTHORITY TO CONTRACT. To protect the public interest, the commissioners court of a county may contract with a nongovernmental association for the provision of law enforcement services by the county on a fee basis in the geographical area

represented by the association.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.062. FEES. (a) The commissioners court shall determine the amount of the fee charged by the county. The fees must recover 100 percent of the cost to the county for supplying the law enforcement services, including salaries and any additional expenses the county may incur in providing the services. If the time of the sheriff or county official who provides the services is divided between services to the political subdivision and a nongovernmental association, the total cost to the association must be so prorated, as provided in the contract.

(b) The contract must provide for the payment of the fees to the county. The fees shall be deposited in the general fund of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.063. SERVICES BY SHERIFF OR COUNTY OFFICIAL. The commissioners court may request the sheriff of the county or a county official who has law enforcement authority to provide the services in the geographical area for which the official was elected or appointed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.064. USE OF DEPUTIES. (a) If the sheriff or county official agrees to provide the services, the sheriff or official may provide the services by using deputies. The sheriff or county official retains authority to supervise the deputies who provide the services and, in an emergency, may reassign the deputies to duties other than those to be performed under the contract.

(b) A deputy shall perform duties under the contract in the same manner as if the deputy were performing the duties in the absence of the contract.

(c) A deputy performing duties under the contract remains a county employee subject to the same benefits and restrictions as any

other deputy.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.065. REPORTS BY DEPUTIES. A deputy performing duties under the contract shall submit written copies of any felony offense report and subsequent copies of investigative reports to the sheriff and any municipal police department in the county that serves the area under contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.066. DUTIES IN AREA SERVED BY MUNICIPAL POLICE. (a) A deputy performing duties in an area served by a municipal police department shall promptly notify the police department of the deputy's receipt and response to a complaint constituting a felony offense and on request shall secure and preserve the scene of the offense for a reasonable time until the arrival of a representative of the municipal police department.

(b) The county and municipal departments shall cooperate in any criminal investigation to the greatest degree practical. However, this section does not prohibit a county or municipal officer from performing any duties that are required of a peace officer.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.067. MUNICIPAL APPROVAL OF CONTRACT COVERING AREA WITHIN MUNICIPALITY. (a) If, under a proposed contract, the county would provide law enforcement services within the corporate limits of a municipality, the county shall submit a copy of the proposed contract to the municipality for approval.

(b) The governing body of the municipality, after considering the individual contract, may disapprove the contract within 30 days after the date the contract is received in the municipal offices. If the governing body of the municipality approves the contract or takes no action for the 30 days, the county may enter into the contract as provided in this subchapter. If the governing body of the municipality disapproves the contract, the county may not enter into

the contract.

(c) The municipality and its officers and employees are not liable for any damage caused by the acts of a county official or employee providing services under the contract within the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. COUNTY PARK RANGERS

Sec. 351.081. ESTABLISHMENT IN POPULOUS COUNTIES. The commissioners court of a county with a population of more than 3.3 million or a county that borders the Gulf of Mexico may establish a department of county park rangers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 277, Sec. 1, eff. June 14, 1989; Acts 2001, 77th Leg., ch. 669, Sec. 102, eff. Sept. 1, 2001.

Sec. 351.082. APPOINTMENT OF CHIEF. The commissioners court shall appoint the county sheriff or other qualified person as chief of the department. The chief shall administer the department under the supervision of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.083. LAW ENFORCEMENT SERVICES IN COUNTY PARKS. The department shall provide law enforcement services within the county parks of the county and, in a county that borders the Gulf of Mexico, in the unincorporated areas of the county that are located on an island or isthmus.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 277, Sec. 2, eff. June 14, 1989.

Sec. 351.084. STAFF; AUTHORITY AS PEACE OFFICERS. (a) To carry out the functions of the department, the chief shall employ county park rangers as peace officers and shall employ administrative

staff in numbers approved by the commissioners court.

(b) The county park rangers have the same law enforcement authority that is given by law to deputy sheriffs except that the law enforcement jurisdiction of rangers is limited to the county parks of the county and, in a county that borders the Gulf of Mexico, to the unincorporated areas of the county that are located on an island or isthmus.

(c) The law of this state applying to deputy sheriffs applies, to the extent practicable, to county park rangers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 277, Sec. 3, eff. June 14, 1989.

SUBCHAPTER F. COUNTY CONTRACT WITH PRIVATE ENTITY FOR JAIL FACILITIES

Sec. 351.101. AUTHORITY TO CONTRACT. The commissioners court of a county, with the approval of the sheriff of the county, may contract with a private organization to place inmates in a detention facility operated by the organization. The commissioners court may not contract with a private organization in which a member of the court or an elected or appointed peace officer who serves in the county has a financial interest or in which an employee or commissioner of the Commission on Jail Standards has a financial interest. A contract made in violation of this section is void.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 73(a), eff. Aug. 28, 1989. Amended by Acts 1999, 76th Leg., ch. 952, Sec. 5, eff. Sept. 1, 1999.

Sec. 351.102. ADDITIONAL AUTHORITY TO CONTRACT. The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility. The commissioners court may not award a contract under this section unless the commissioners court requests proposals by public notice and not less than 30 days from such notice receives a proposal that meets or exceeds the requirements specified in the request for proposals. Before the commissioners court of a county enters into a contract under this section, the commissioners court of the county must receive the written approval of the sheriff of the county, which written approval

shall not be unreasonably withheld, or if the county has a population of 2.8 million or more:

(1) consult with the sheriff regarding the feasibility of ensuring that all services provided under the contract are required to meet or exceed standards set by the Commission on Jail Standards; or

(2) receive the written approval of the sheriff of the county, which written approval shall not be unreasonably withheld.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 73(a), eff. Aug. 28, 1989.
Amended by Acts 1989, 71st Leg., ch. 479, Sec. 2, eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 318, Sec. 73, eff. Sept. 1, 1995.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 667 (H.B. 1544), Sec. 1, eff. June 14, 2013.

Sec. 351.103. CONTRACT REQUIREMENTS. A contract made under Section 351.102 must:

(1) if the contract includes operation or management of the facility by the private vendor, require the private vendor to operate the facility in compliance with minimum standards adopted by the Commission on Jail Standards and receive and retain a certification of compliance from the commission;

(2) if the contract includes operation or management of the facility by the private vendor, provide for regular, on-site monitoring by the sheriff;

(3) if the contract includes construction, require a performance bond approved by the commissioners court that is adequate and appropriate for the proposed construction contract;

(4) provide for assumption of liability by the private vendor for all claims arising from the services performed under the contract by the private vendor;

(5) if the contract includes operation or management of the facility by the private vendor, provide for an adequate plan of insurance for the private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights, arising from the services performed under the contract by the private vendor;

(6) if the contract includes operation or management of the

facility by the private vendor, provide for a plan for the purchase and assumption of operations by the county in the event of the bankruptcy of the private vendor;

(7) if the contract includes operation or management of the facility by the private vendor and if the contract involves conversion of an existing county facility to private vendor operation, require the private vendor to give preferential consideration in hiring to employees at the existing facility who meet or exceed the company's qualifications and standards for employment in available positions;

(8) if the contract includes operation or management of the facility by the private vendor, require the private vendor to provide health care benefits comparable to that of the county;

(9) provide for an adequate plan of insurance to protect the county against all claims arising from the services performed under the contract by the private vendor and to protect the county from actions by a third party against the private vendor, its officers, guards, employees, and agents as a result of the contract; and

(10) if the contract includes operation or management of the facility by the private vendor, contain comprehensive standards for conditions of confinement.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 73(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 479, Sec. 3, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 1299, Sec. 1, eff. June 18, 1999.

Sec. 351.1035. DISADVANTAGED BUSINESSES. (a) In this section, "disadvantaged business" means:

(1) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control;

(2) a sole proprietorship for the purpose of making a profit that is 100 percent owned, operated, and controlled by a

person described by Subdivision (1) of this subsection;

(3) a partnership for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Subdivision (1) of this subsection. Those persons must have a proportionate interest in the control, operation, and management of the partnership's affairs;

(4) a joint venture in which each entity in the joint venture is a disadvantaged business under this subsection; or

(5) a supplier contract between a disadvantaged business under this subsection and a prime contractor under which the disadvantaged business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

(b) It is the goal of the legislature that disadvantaged businesses, as defined in this section, be given full and complete access to the process whereby contracts are let under this subchapter. It is also an intent of the legislature that the county and general contractor shall take into consideration participation of disadvantaged businesses having their home offices located in this state when awarding contracts.

(c) It is the intent of the legislature that the county shall:

(1) develop guidelines targeted to disadvantaged businesses in order to inform them fully about the county's contracting and procurement processes and the requirements for their participation in those processes;

(2) develop guidelines to inform disadvantaged businesses of opportunities with the county, including, but not limited to, specific opportunities to submit bids and proposals. Steps that may be appropriate in certain circumstances include mailing requests for proposals or notices inviting bids to all disadvantaged businesses in the county who have requested the county procurement office to place the business on a mailing list;

(3) require prime contractors, as part of their responses to requests for proposals or bids, to make a specific showing of how they intend to utilize participation by disadvantaged businesses as subcontractors;

(4) identify disadvantaged businesses in the county that provide or have the potential to provide supplies, materials, services, and equipment to the county; and

(5) identify barriers to participation by disadvantaged

businesses in the county's contracting and procurement processes, such as bonding, insurance, and working capital requirements that may be imposed on businesses.

Added by Acts 1989, 71st Leg., ch. 479, Sec. 4, eff. Aug. 28, 1989.

Sec. 351.104. SOVEREIGN IMMUNITY INAPPLICABLE. A private vendor operating under a contract authorized by Section 351.102 is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor. However, this section does not deprive the private vendor or the county of any benefits of any law limiting exposure to liability, setting a limit on damages, or establishing defenses to liability.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 73(a), eff. Aug. 28, 1989.

SUBCHAPTER G. JAIL DISTRICT

Sec. 351.121. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the district.

(2) "Cooperating county" means a county that has contracted with one or more other counties for the joint operation of a jail facility under Subchapter B and that has agreed to the creation of the district.

(3) "Director" means a member of the board.

(4) "District" means a jail district.

(5) "Jail facility" includes a juvenile detention facility.

(6) "Receiving county" means a county in which a jail facility constructed, acquired, or improved by the district is located and to which the facility is to be conveyed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.122. ELIGIBLE COUNTIES; PURPOSE; BOUNDARIES. (a) A jail district may be created by a county or by two or more counties that have contracted with one another for the joint operation of a jail under Subchapter B.

(b) A jail district may be created to finance and effect the construction, acquisition, or improvement of a jail facility to serve

the county or counties comprising the district.

(c) A district is composed of the area of the county or cooperating counties that created the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.123. PETITION. (a) To create a district, a petition requesting creation of the district must be filed with the county clerk's office of each county in the proposed district.

(b) Each petition must be signed by at least 10 percent of the registered voters in the county in which the petition is filed.

(c) Each petition must be certified as valid by the county clerk of the county in which the petition is filed. On certification, the county clerk shall forward the petition to the commissioners court of that county.

(d) A petition for creation of a district must include:

(1) the name of the proposed district;

(2) an accurate description of the area where the proposed district is to be located;

(3) a statement of the purpose for which the district is to be created; and

(4) a request that the district be created.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.124. HEARING. (a) The commissioners court of each county in the proposed district shall consider the petition for creation of the district at a public hearing.

(b) Within 10 days after the date a petition for the creation of a district is filed, the county judge of a county in the proposed district shall issue an order setting the date of the hearing on the petition by the commissioners court of that county and shall endorse the order on the petition or on a paper attached to the petition.

(c) After the order is issued, the county clerk shall issue notice of the hearing.

(d) The hearing on a petition for creation of a district must be held within 45 days after the date the petition is filed with the county clerk.

(e) A petition may be considered at a regular or a special

meeting of a commissioners court of a county in the proposed district.

(f) The county clerk of a county in which a petition is filed shall prepare notice of the hearing that includes a statement of the purpose for the hearing, a brief description of the location of the proposed district, and the date, time, and place of the hearing on the petition.

(g) The county clerk shall publish a copy of the notice in a newspaper of general circulation in the county once a week for two consecutive weeks. The first publication must be made before the 14th day before the date of the hearing.

(h) At the hearing, a person who owns land or resides in the proposed district may appear and present testimony and evidence to the commissioners court for or against the creation of the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.125. GRANTING OR DENYING PETITION. (a) Within 10 days after the date of the conclusion of the hearing, the commissioners court holding the hearing shall grant the petition pending approval by the commissioners courts of all other proposed cooperating counties in the district, if any, if it appears from the testimony and evidence presented at the hearing that:

(1) organization of the district is feasible and practicable;

(2) there is a public necessity or need for the district; and

(3) the creation of the district would further the public safety and welfare.

(b) If the commissioners court is unable to make any one of the findings required by Subsection (a), the commissioners court shall refuse to grant the petition's request for creation of the district.

(c) If a commissioners court of a county in the proposed district refuses to grant the petition's request for creation of the district, the district may not be created.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.126. APPOINTMENT OF TEMPORARY DIRECTORS. (a) If the

commissioners courts of all counties in the proposed district grant the petition's request for creation of the district, the commissioners court of the county with the greatest population shall appoint three temporary directors and the commissioners court of each other county in the proposed district shall appoint two temporary directors who shall serve until their successors are elected and have qualified for office.

(b) Within 15 days after the date of appointment, each director shall take the oath of office.

(c) If a director appointed by a commissioners court fails to qualify or a vacancy occurs in the office of director, the commissioners court that appointed that director shall appoint another person to fill the vacancy for the unexpired term.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.127. CONFIRMATION ELECTION. (a) Within 30 days after the date all temporary directors have been appointed and have qualified, the board of a proposed district shall meet and call an election to be held within the boundaries of the proposed district to confirm the creation of the district.

(b) The board shall give notice of the election. The notice must state the day and places for holding the election and the proposition to be voted on.

(c) The board shall publish the notice of the election at least once in a newspaper or newspapers of general circulation in the area of the proposed district. The notice must be published before the 30th day before the date set for the election.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of the _____ (name of each county in the proposed district) Jail District."

(e) Immediately after the election, the presiding judge of each polling place shall make returns of the results to the board, and the board shall canvass the returns and declare the result.

(f) If a majority of the votes cast at the election favor the creation of the district, the board shall declare that the district is created and shall enter the results in its minutes.

(g) If a majority of the votes cast at the election are against

the creation of the district, the board is abolished except that it shall declare that the district was defeated and shall enter the results in its minutes.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.128. BOND AND TAX PROPOSITION. (a) At an election to confirm the creation of a district, the board may include a proposition to approve the issuance of bonds and the levy of a property tax by the district.

(b) The board must include in any bond and tax proposition the maximum amount of bonds to be issued, their maximum maturity date, and the maximum rate of the tax that may be levied.

(c) The proposition to issue bonds and levy a tax must be included in the same proposition presented to the registered voters to confirm the creation of the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.129. BOARD OF DIRECTORS. (a) The district is governed by a board of directors composed of three directors from the county in the district with the greatest population and two directors from every other county in the district. The board shall manage and control the district and shall administer and implement this subchapter.

(b) Directors shall be elected as provided by this subchapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.130. METHOD OF ELECTION; STAGGERED TERMS; TERM OF OFFICE; ELECTION DATE. (a) Two directors shall be elected from each county in the district, except that three directors shall be elected from the county in the district with the greatest population.

(b) At the initial election of directors, the director elected from each county in the district who receives the higher number of votes serves for a term of two years, and the other director or directors serve for a term of one year.

(c) The initial election of directors must be held on the third

Saturday in May of the year following creation of the district. After the initial election of directors, an election shall be held in each county in the district on the third Saturday in May each year and successor directors shall be elected for a two-year term.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.131. OATH; COMPENSATION; OFFICERS; QUORUM. (a) Each director shall take the constitutional oath of office.

(b) Each director is entitled to receive compensation in an annual amount not to exceed the salary of the highest paid county judge from the counties in the district, as determined by the commissioners court of the receiving county.

(c) At the first board meeting after the appropriate number of directors are elected and have qualified for office by taking the oath, the directors shall select from their number one person to serve as chairman, one person to serve as vice-chairman, and one person to serve as secretary. If the district is composed of one county, the person who serves as vice-chairman shall also perform the duties of the secretary. The chairman shall preside over meetings of the board, and in his absence, the vice-chairman shall preside. The chairman, vice-chairman, and secretary shall perform the duties and may exercise the powers specifically given them in this subchapter or in orders of the board.

(d) A majority of the directors constitutes a quorum for the transaction of business of the district, but no official act of the board is valid without the affirmative vote of a majority of the directors.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.132. GENERAL MANAGER; EMPLOYEES. (a) The board shall employ a general manager to serve as the chief administrative officer of the district. The board may delegate to the general manager full authority to manage the affairs of the district subject only to orders of the board.

(b) The general manager shall execute a bond. The bond must be in an amount determined by the board, payable to the district, and conditioned on the faithful performance of the general manager's

duties. The district shall pay for the bond.

(c) The general manager is entitled to receive compensation in an annual amount not to exceed the salary of the highest paid county judge from the counties in the district, as provided in the district's budget.

(d) The general manager shall employ persons necessary for the proper handling of the business and operation of the district.

(e) The board shall determine the terms of employment of and the compensation to be paid to those employees.

(f) The general manager or a majority of the directors may dismiss an employee of the district.

(g) The board shall require each employee who collects, pays, or handles any funds of the district to furnish a bond. The bond must be payable to the district, in an amount sufficient to protect the district from financial loss resulting from actions of the employee, and conditioned on the faithful performance of the employee's duties and on accounting for all money and property of the district in the employee's hands. The district shall pay for each bond.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.133. DISTRICT OFFICE; MEETINGS; MINUTES; RECORDS; SEAL. (a) The board shall maintain a main office in the district for conducting the business of the district. The board shall maintain any other offices and stations necessary to carry out this subchapter.

(b) The board shall hold regular meetings at the main office at least once each month on a date established by rule of the board.

(c) The board shall keep a complete written account of all its meetings and other proceedings, and shall maintain the records of the district in a secure manner.

(d) Records of the district are subject to Chapter 552, Government Code.

(e) The board shall adopt a seal for the district.

(f) The preservation, microfilming, destruction, or other disposition of the records of the district is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 7, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.

Sec. 351.134. CONTRACTS; SUITS; PAYMENT OF JUDGMENT; INSURANCE. (a) The board may enter into contracts as provided by this subchapter and shall execute those contracts in the name of the district.

(b) The district may, through its board, sue and be sued in any court of this state in the name of the district. Service of process may be made by serving the general manager. The courts of this state shall take judicial notice of the creation of the district.

(c) A court of this state that renders a money judgment against the district may require the board to pay the judgment from the money of the district.

(d) The board may purchase insurance insuring the district and its employees against any liability incurred under this subchapter and may purchase insurance coverage to cover losses of district property.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.135. GENERAL POWERS. To carry out this subchapter, the district may:

(1) apply for, accept, receive, and administer gifts, grants, loans, and other funds available from any source;

(2) enter into contracts with the federal government and its agencies, this state and its agencies, local governmental entities including the county, and private entities;

(3) conduct, request, and participate in studies, investigations, and research relating to providing a jail facility; and

(4) advise, consult, and cooperate with the federal government and its agencies, the state and its agencies, local governmental entities including the county, and private entities.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.136. ACQUISITION OF PROPERTY FOR SITE; LEASE; EMINENT DOMAIN. (a) The district may acquire by gift, grant, purchase, or condemnation any land, easements, rights-of-way, and other property interests necessary to construct or improve a jail facility.

(b) The district may lease property on terms and conditions the board determines advantageous to the district.

(c) The district may acquire land for a jail facility by condemnation if the board determines, after notice and hearing, that it is necessary. The right of eminent domain must be exercised in the manner provided by Chapter 21, Property Code, except that the district is not required to give bond for appeal or bond for costs in a condemnation suit or other suit to which it is a party and is not required to deposit double the amount of any award in any suit.

(d) If the district, in the exercise of the power of eminent domain, makes necessary the relocation, raising, lowering, rerouting, or changing in grade or alteration of the construction of any highway, railroad, electric transmission or distribution line, telephone or telegraph properties and facilities, or pipeline, all necessary relocations, raising, lowering, rerouting, changing in grade, or alteration of construction shall be accomplished at the sole expense of the district. "Sole expense" means the actual cost of relocation, raising, lowering, rerouting, or changing in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.137. CONSTRUCTION CONTRACTS. (a) The district may contract with any person to construct or improve any part of a jail facility.

(b) Construction contracts requiring an expenditure of more than $50,000 may be made only after competitive bidding as provided by Subchapter B, Chapter 271.

(c) After a construction contract is awarded, if the district determines that additional work is needed or if the character or type of work, facilities, or improvements should be changed, the board may authorize change orders to the contract on terms the board approves.

The board may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of $50,000 or less. A change made under this subsection may not increase or decrease the total cost of the contract by more than 25 percent.

(d) A construction contract must contain or have attached to it the specifications, plans, and details for work included in the contract, and work shall be done according to those plans and specifications under the supervision of the district.

(e) A construction contract must be in writing and signed by an authorized representative of the district and the contractor.

(f) The contract is a record of the district and is subject to Sections 351.133(c) and (d).

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.
Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 18, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 12, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 479 (H.B. 679), Sec. 5, eff. June 17, 2011.

Sec. 351.138. CONTRACTOR'S BOND. (a) A contractor shall execute a bond. The bond must be in an amount determined by the board, not to exceed the contract price, payable to the district, approved by the board, and conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond must provide that if the contractor defaults on the contract, the contractor will pay to the district all damages sustained as a result of the default. The district shall deposit the bond in its depository and shall keep a copy of the bond in its main office.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.139. MONITORING CONSTRUCTION WORK. (a) Until a jail facility is conveyed to a receiving county under Section 351.141, the board has control of any construction, acquisition, or improvement of

the jail facility for which it has contracted. The board shall determine whether or not the contract is being fulfilled.

(b) The board shall have the construction work inspected by engineers, inspectors, or other personnel of the district.

(c) During the progress of the construction work, the employees inspecting the work shall submit to the board written reports that show whether or not the contractor is complying with the contract.

(d) On completion of construction work, the employees inspecting the work shall submit to the board a final detailed written report including information necessary to show whether or not the contractor has fully complied with the contract.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.140. PAYMENT FOR CONSTRUCTION WORK. (a) The district shall make monthly progress payments under construction contracts as the work proceeds or at more frequent intervals as determined by the board.

(b) If requested by the board, the contractor shall furnish an analysis of the total contract price showing the amount included for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments.

(c) In making progress payments, the district shall retain 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the board, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, it may authorize any of the remaining progress payments to be made in full. Also, if the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the district, may release to the contractor all or a part of the excess amount.

(d) On completion and acceptance of each separate project, work, or other division of the contract on which the price is stated separately in the contract, payment may be made without retention of a percentage.

(e) When construction work is completed according to the terms of the contract, the board shall draw a warrant on the depository to pay any balance due on the contract.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.141. FINAL APPROVAL AND CONVEYANCE BY BOARD. (a) On receiving the final construction inspection report, the board shall give notice and schedule a public hearing to determine whether the jail facility is complete as specified in the district's plans and in the contract.

(b) At the hearing, the board may require the presentation of any additional information or testimony necessary to make a determination, and the receiving county, if any, may have its representative attend the hearing and present any information and testimony that the receiving county considers necessary.

(c) At the conclusion of the hearing, if the board determines that the work on the jail facility is complete, the board shall pass a resolution to convey the jail facility to the receiving county subject to the requirements of this subchapter if the jail facility is not already owned by the receiving county. The board shall file a copy of the resolution, together with the instrument of conveyance, with the clerk of the receiving county.

(d) The jail district shall make any conveyance of a jail facility to a receiving county as provided by this subchapter free of all interest and indebtedness of the district.

(e) If the board determines that the work on the jail facility has not been completed satisfactorily, the board shall take necessary actions to have the jail facility completed as required by the district's plans, the contract, and the receiving county.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.142. RESPONSIBILITIES OF RECEIVING COUNTY. (a) On completion and approval by the board of the construction or the acquisition and any improvement of a facility constructed or acquired by a jail district under this subchapter and on written approval by the receiving county, the board shall convey the facility to the receiving county.

(b) A receiving county to which a jail facility is conveyed is the owner of the jail facility and is responsible for all operation, maintenance, upkeep, and administration of the jail facility. The

district will have no further responsibility for the jail facility. This section does not limit or change the authority of the receiving county to alter, relocate, close, or discontinue operation or maintenance of the jail facility as provided by law.

(c) Conveyance of a jail facility to a receiving county under this section does not affect the duties and responsibilities of the district to pay in full the principal of and the premium, if any, and interest on any outstanding bonds or other indebtedness of the district and to observe and perform the covenants, obligations, or conditions provided by the orders or resolutions authorizing the bonds or other indebtedness. Notwithstanding the conveyance of a jail facility to a receiving county under this section, the district is solely responsible and liable for payment in full of the principal of and the premium and interest on any bonds or other indebtedness of the district.

(d) A written protest alleging that the jail facility does not comply with the district's plans and written approval of the receiving county may be submitted to the board by the receiving county or a municipality in which the jail facility is located before or during the public hearing scheduled under Section 351.141. On receipt of a protest, the board may delay the facility conveyance until the district fully complies with the plans and written approvals.

(e) This subchapter does not prevent the conveyance of a part of the jail facility proposed to be constructed or acquired by a district if the district's jail facility is constructed in stages.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.143. CHANGES AND ADDITIONS TO FACILITIES. (a) Before a jail facility is conveyed to a receiving county, the district may make changes in or additions to the facility if the board determines that the changes or additions are necessary to:

(1) comply with the requirements of that county and, if the facility is located within the jurisdiction of a municipality, comply with the requirements of the municipality in whose limits or extraterritorial jurisdiction the facility is located; or

(2) adjust to circumstances or requirements that did not exist at the time the original plans for the facility were approved

by the board.

(b) Before changes or additions are made under this section, the board shall consult with the receiving county regarding the proposed changes.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.144. CONTRACTS FOR PURCHASE OF VEHICLES, EQUIPMENT, AND SUPPLIES OVER $5,000. (a) If the estimated amount of a proposed contract for the purchase of vehicles, equipment, or supplies is more than $15,000, the board shall ask for competitive bids in accordance with the bidding procedures provided by the County Purchasing Act (Subchapter C, Chapter 262) except that the bids shall be presented to the board and the board shall award the contract.

(b) This section does not apply to purchases of property from public agencies or to contracts for personal or professional services.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 19, eff. Sept. 1, 1993.

Sec. 351.145. FISCAL YEAR; ANNUAL AUDIT; ANNUAL BUDGET. (a) The district shall be operated on the basis of a fiscal year established by the board. The fiscal year may not be changed more than once in a 24-month period.

(b) Annually, the board shall have an audit made of the financial condition of the district.

(c) The board shall prepare and approve an annual budget. The budget must contain a complete financial statement, including a statement of the:

(1) outstanding obligations of the district;

(2) amount of cash on hand to the credit of each fund of the district;

(3) amount of money received by the district from all sources during the previous year;

(4) amount of money estimated to be available to the district from all sources during the ensuing year;

(5) amount of the balances expected at the end of the year

in which the budget is being prepared;

(6) estimated amount of revenues and balances available to cover the proposed budget; and

(7) estimated tax rate that will be required.

(d) The board shall hold a public hearing on the annual budget. Before the 10th day before the date set for the hearing, the board must publish notice of the hearing in a newspaper of general circulation in the district.

(e) Any person who owns land or resides in the district is entitled to be present at and participate in the hearing.

(f) At the conclusion of the hearing, the board shall act on the budget and may make changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(g) After the annual budget is adopted, the board may amend the budget.

(h) Money may not be spent for an expense not included in the annual budget or an amendment to it.

(i) As soon as practicable after the close of the fiscal year, the general manager shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.146. DEPOSITORY. (a) The board shall name one or more banks to serve as depository for district funds.

(b) District funds, other than those transmitted to a bank of payment for bonds issued by the district, shall be deposited as received with the depository bank. This subsection does not limit the power of the board to place a part of the district's funds on time deposit or to purchase certificates of deposit.

(c) Before the district deposits funds in a bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation, the bank must execute a bond or other security in an amount sufficient to secure from loss the district funds that exceed the amount secured by the Federal Deposit Insurance Corporation.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.147. INVESTMENTS. (a) Funds of the district may be invested and reinvested by the board or its authorized representative in direct or indirect obligations of the United States, the state, or any county, municipality, school district, or other political subdivision of the state.

(b) Funds of the district may be placed in certificates of deposit of state or national banks or state or federal savings and loan associations within the state provided that they are secured in the manner provided for the security of the funds of counties of the state.

(c) The board by resolution may provide that an authorized representative of the district may invest and reinvest the funds of the district and provide for money to be withdrawn from the appropriate accounts of the district for investments on such terms as the board considers advisable.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.148. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) The board may pay all costs and expenses necessarily incurred in the creation and organization of a district, legal fees, and other incidental expenses and may reimburse any person for money advanced for those purposes.

(b) Payments may be made from money obtained from the sale of bonds first issued by the district or out of operation taxes or other revenues of the district.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.149. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to acquire land to erect a jail facility and to construct, acquire, or improve a jail facility. The bond proceeds may be used to pay or establish a reasonable reserve to pay not more than three years' interest on the bonds and notes of the district and to pay expenses related to issuance and sale of bonds as provided by the bond orders or resolutions.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.150. MANNER OF REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds:

(1) from the levy and collection of ad valorem taxes on all taxable property within the district;

(2) by pledging all or any part of the designated revenues of the district; or

(3) from a combination of the sources listed in Subdivisions (1) and (2).

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.151. BOND AND TAX ELECTION. (a) Bonds secured in whole or in part by taxes may not be issued by the district until the bonds and the taxes are authorized by a majority vote of the registered voters of the district voting at an election called and held for that purpose.

(b) The board may order a bond and tax election, and the order calling the election must state the nature and the date of the election, the hours during which the polls will be open, the location of the polling places, the amount of bonds and the proposed maximum tax rate to be authorized, and the maximum maturity of the bonds.

(c) Notice of a bond and tax election must be given as provided by Section 351.127 for confirmation elections.

(d) At an election to authorize bonds payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the proposition: "The issuance of bonds and the levy of taxes at a maximum rate of _____ for payment of the bonds." At any election to authorize bonds payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against: "The issuance of bonds and the pledge of net revenues and the levy of ad valorem taxes at a maximum rate of _____ adequate to provide for the payment of the bonds."

(e) The board shall canvass the returns and declare the results of the election. If a majority of the votes cast at the election favor the issuance of the bonds and levy of taxes, the bonds may be issued and taxes levied by the board, but if a majority of the votes cast at the election do not favor issuance of the bonds and levy of taxes, the bonds may not be issued and the taxes may not be levied.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.152. FORM OF BONDS. (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate permitted by the constitution and laws of the state.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8 of the Business & Commerce Code and may be issued registrable as to principal or as to both principal and interest and may be made redeemable before maturity at the option of the district or may contain a mandatory redemption provision.

(d) A district's bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details and shall be signed and executed as provided by the board in the resolution or order authorizing their issuance.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.153. PROVISIONS OF BONDS. (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of those works, improvements, and facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.154. APPROVAL BY ATTORNEY GENERAL; REGISTRATION BY COMPTROLLER. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them, and they shall be registered by the comptroller.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.155. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 50 years from their date and shall bear interest at any rate or rates permitted by the constitution and laws of the state.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other additional sources.

(d) The refunding bonds must be approved by the attorney general as in the case of other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of and interest on the bonds being refunded to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms must be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds

without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8 of the Business & Commerce Code.

(g) Instead of the method set forth in this section, a district may refund bonds as provided by the general laws of the state.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.156. BONDS AS INVESTMENTS; BONDS AS SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

(1) banks;

(2) trust companies;

(3) savings and loan associations;

(4) insurance companies;

(5) fiduciaries;

(6) trustees;

(7) guardians; and

(8) sinking funds of municipalities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.157. TAX STATUS OF BONDS. Bonds issued by a district under this subchapter, any transaction relating to the bonds, and profits made in the sale of the bonds are free from taxation by the state or by any municipality, county, special district, or other political subdivision of the state.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.158. LEVY OF TAXES. (a) The board may annually levy taxes to pay the bonds authorized under Section 351.149 and issued by the district, but the district may not levy taxes to pay the principal of or interest on revenue bonds issued under this subchapter.

(b) The board may levy taxes for the entire year in which the district is created.

(c) The board shall levy taxes on all property in the district subject to district taxation.

(d) In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

(e) Title 1 of the Tax Code governs the appraisal, assessment, and collection of district taxes.

(f) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by Title 1 of the Tax Code.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

Sec. 351.159. DISSOLUTION OF DISTRICT. (a) After a district has completed all construction, acquisition, and improvement of jail facilities provided in the plans approved by the board and has conveyed those facilities to a receiving county under this subchapter and after all bonds and other indebtedness of the district are paid in full, the district may be dissolved in the manner provided by Subsection (b).

(b) A district is dissolved if:

(1) the board adopts a resolution dissolving the district;

(2) a majority of the commissioners courts of the counties in the district vote to dissolve the district; or

(3) a majority of the registered voters in a majority of the counties in the district vote to dissolve the district in referendum elections.

(c) A referendum election on whether to dissolve a district shall be called by the commissioners court of a county in the district if 10 percent or more of the registered voters in the county petition the commissioners court for such an election.

(d) If, at the time a district is dissolved, the district has any surplus funds in any of its accounts, the board shall transfer those funds to the county entity that assumes jurisdiction over the facilities conveyed by the district, and the county receiving the funds shall use those funds to maintain the facilities conveyed.

(e) On the dissolution of a district, the district ceases to exist and the board shall continue in existence only for the purpose of transferring district funds and disposing of district assets.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 74(a), eff. Aug. 28, 1989.

SUBCHAPTER H. COUNTY CORRECTIONAL CENTERS

Sec. 351.181. ESTABLISHMENT. The commissioners court of a county may establish a county correctional center after receiving the written consent of the sheriff. A sheriff may not unreasonably withhold consent under this subsection.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 3.03, eff. Sept. 1, 1989.

Sec. 351.182. POWERS AND DUTIES OF SHERIFF. The sheriff of the county in which a county correctional center has been established is responsible for the operation of the center, but must consult with the director of the community supervision and corrections department serving the county about issues relating to probationers participating in county correctional center programs.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 3.03, eff. Sept. 1, 1989.

Sec. 351.183. PROGRAMS. The sheriff, through a county correctional center program, may:

(1) house and provide work programs and counseling for:

(A) persons convicted of misdemeanors and sentenced to

a term of confinement in county jail;

(B) persons required as a condition of misdemeanor or felony probation to serve a term of confinement in county jail; or

(C) persons required to serve a term of confinement in county jail as punishment for violation of a condition of misdemeanor or felony probation; or

(2) in cooperation with the community supervision and corrections department serving the county, operate work programs and counseling programs for persons required as a condition of misdemeanor or felony probation to participate in those programs.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 3.03, eff. Sept. 1, 1989.

Sec. 351.184. CERTIFICATION. (a) To certify county correctional centers as eligible for state funding under Section 509.011(b)(6), Government Code, the community justice assistance division of the Texas Department of Criminal Justice, with the assistance of the Commission on Jail Standards, shall develop standards for the physical plant and operations of county correctional centers.

(b) The Texas Department of Criminal Justice and the Commission on Jail Standards shall adopt a memorandum of understanding that establishes their respective responsibilities in certifying county correctional centers. The community justice assistance division shall coordinate the development of the memorandum of understanding. The commission and the Texas Department of Criminal Justice by rule shall adopt the memorandum of understanding.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 3.03, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 25, Sec. 6, eff. June 18, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 7.08, eff. Sept. 1, 1995.

Sec. 351.185. PAYMENT OF STATE AID. (a) On or after the effective date of this section, a county may apply to the community justice assistance division of the Texas Department of Criminal Justice for state aid funded in the General Appropriations Act for residential services or the community corrections program.

(b) The sheriff shall deposit all state aid received under this section in the county treasury to be used solely for the purposes of the county correctional center program. The community justice assistance division may audit state aid received under this section.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 3.03, eff. Sept. 1, 1989.

Sec. 351.186. REPORTS. The sheriff of a county receiving state aid under this subchapter shall submit reports as required by the community justice assistance division of the Texas Department of Criminal Justice.

Added by Acts 1989, 71st Leg., ch. 785, Sec. 3.03, eff. Sept. 1, 1989.

SUBCHAPTER I. COUNTY JAIL INDUSTRIES PROGRAM

Sec. 351.201. COUNTY JAIL INDUSTRIES PROGRAM. (a) A commissioners court by order may establish a county jail industries program. The sheriff may allow inmate participation in the county jail industries program in carrying out his constitutional and statutory duties.

(b) The purposes for which a county jail industries program may be established are to:

(1) provide adequate, regular, and suitable employment for the vocational training of inmates;

(2) reimburse the county for expenses caused by the crimes of inmates and the cost of their confinement; or

(3) provide for the distribution of articles and products produced under this subchapter to:

(A) offices of the county and offices of political subdivisions located in whole or in part in the county; and

(B) nonprofit organizations that provide services to the general public and enhance social welfare and the general well-being of the community.

(c) A commissioners court, in an order establishing a county jail industries program, shall, with the approval of the sheriff:

(1) designate the county official or officials responsible for management of the program; and

(2) designate the county official or officials responsible for determining which inmates are allowed to participate in a county jail industries program.

(d) An order of a commissioners court establishing a county jail industries program, though not limited to, may provide for any of the following:

(1) an advisory committee;

(2) the priorities under which the county jail industries program is to be administered;

(3) procedures to determine the articles and products to be produced under this subchapter;

(4) procedures to determine the sales price of articles and products produced under this subchapter; and

(5) procedures for the development of specifications for articles and products produced under this subchapter.

(e) A county jail industries program may be operated at the county jail, workfarm, or workhouse or at any other suitable location.

(f) An inmate does not have a right to participate in a county jail industries program, and neither the sheriff, county judge, or commissioners nor any other county official or employee may be held liable for failing to provide a county jail industries program.

Added by Acts 1993, 73rd Leg., ch. 578, Sec. 1, eff. June 11, 1993.

Sec. 351.202. REVENUE. Money received from the operation of a county jail industries program shall be deposited in the general revenue fund of the county to be used as reimbursement for the cost of inmate confinement. The cost to a county for an inmate's participation in a county jail industries program is considered to be a part of the cost of confinement of the inmate.

Added by Acts 1993, 73rd Leg., ch. 578, Sec. 1, eff. June 11, 1993.

SUBCHAPTER J. COUNTY ADULT SEXUAL ASSAULT RESPONSE TEAMS

Sec. 351.251. DEFINITIONS. In this subchapter:

(1) "Adult" means an individual who is not a child as defined by Section 101.003, Family Code.

(2) "Response team" means a multidisciplinary team

established under this subchapter to strengthen the collaborative response and enhance health and judicial outcomes for sexual assault survivors who are adults.

(3) "Sexual assault program" means a program that:

(A) operates independently from a law enforcement agency or prosecutor's office;

(B) is operated by a local public or private nonprofit corporation either independently or as part of a municipal, county, or state agency; and

(C) provides the minimum services, as defined by Section 420.003, Government Code, to adult survivors of stranger and non-stranger sexual assault.

(4) "Survivor" means an individual who is a victim of a sexual assault or other sex offense, regardless of whether a police report is filed for the incident.

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff. September 1, 2021.

Sec. 351.252. ESTABLISHMENT. (a) Except as provided by Subsection (b), the commissioners court of each county shall establish an adult sexual assault response team that includes the following members appointed by the commissioners court:

(1) the chief administrator, or the chief administrator's designee, of a sexual assault program that provides services for the county;

(2) a prosecutor with jurisdiction in the county over cases involving sexual assault committed against adults;

(3) the chief, or the chief's designee, of the municipal police department with the largest population in the county, provided a municipality in the county has a municipal police department;

(4) the sheriff or the sheriff's designee;

(5) either:

(A) a sexual assault nurse examiner or forensic examiner from a facility that conducts sexual assault forensic exams for the county; or

(B) a representative from the largest health care provider operating in the county if the county does not have a professional described by Paragraph (A);

(6) a behavioral health services provider operating in the county or, if the county does not have a behavioral health services provider, a representative from the county health department; and

(7) other persons the presiding officer of the response team considers necessary for the operation of the response team or as recommended by the response team.

(b) Two or more counties, each with a population of 250,000 or less, within a contiguous area may partner to form a multicounty response team.

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff. September 1, 2021.

Sec. 351.253. PRESIDING OFFICER. The response team shall elect a presiding officer from among its members.

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff. September 1, 2021.

Sec. 351.254. MEETINGS. (a) A response team shall meet:

(1) at least quarterly at a time determined by the presiding officer;

(2) not later than the 90th day after the last day of a regular legislative session to review and amend as necessary any protocols, forms, or guidelines developed under this subchapter; and

(3) at any other time at the call of the presiding officer.

(b) If a response team member is unable to participate in a response team meeting, the member or entity the member is representing may designate another individual to represent the member or entity at the meeting. Each member or a designee of that member must participate in all response team meetings.

(c) A response team member must attend the quarterly meetings held as required under Subsection (a)(1) to participate in response team functions.

(d) A response team shall meet independently of a children's advocacy center multidisciplinary team described by Section 264.406, Family Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff.

September 1, 2021.

Sec. 351.255. VACANCIES. The commissioners court of a county shall fill a vacancy for a response team member not later than the 30th day after the date the vacancy occurs and in the same manner as the original appointment.

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff. September 1, 2021.

Sec. 351.256. ADULT SEXUAL ASSAULT RESPONSE PROTOCOL. (a) A response team shall develop a written protocol addressing the coordinated response for adult survivors in the county that includes:

(1) the procedures to be used in investigating and prosecuting cases arising from a report of sexual assault;

(2) interagency information sharing, in accordance with state and federal law, to ensure the timely exchange of relevant information and enhance the response to survivors;

(3) the location and accessibility of sexual assault forensic examinations;

(4) information on the availability of and access to medical care when the care is clinically indicated;

(5) a requirement to ensure survivors are offered access to sexual assault program advocates, as defined by Section 420.003, Government Code;

(6) information on the availability of and access to mental and behavioral health services;

(7) a requirement to ensure that relevant law enforcement agencies notify survivors in a timely manner regarding the status of any criminal case and court proceeding;

(8) an assessment of relevant community trends, including drug-facilitated sexual assault, the incidence of predatory date rape, and sex trafficking;

(9) a biennial evaluation through sexual assault case reviews of the effectiveness of individual agency and interagency protocols and systems;

(10) at least four hours of annual cross-agency training on the dynamics of sexual assault for response team members

participating in the quarterly meetings as required by Section 351.254(c); and

(11) procedures for addressing conflicts within the response team and for maintaining the confidentiality of information shared among response team members as required by law.

(b) In developing a protocol under this section, the response team:

(1) shall consider Chapter 56A, Code of Criminal Procedure;

(2) may provide different procedures for use within a particular municipality or area of the county served by the response team; and

(3) shall prioritize the health and safety of survivors.

(c) The purpose of the protocol developed under this section is to ensure coordination between all agencies involved in sexual assault cases to increase the efficacy of response and to minimize survivor traumatization. The response team shall provide the protocol to each agency in the county that responds to disclosures of sexual assault.

(d) Failure to follow a protocol developed under this section does not:

(1) constitute the basis for a claim or defense to a civil or criminal action; or

(2) preclude the admissibility of evidence.

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff. September 1, 2021.

Sec. 351.257. REPORT. Not later than December 1 of each odd-numbered year, a response team shall provide to the commissioners court of each county the response team serves a report that includes:

(1) a list of response team members able to participate in the quarterly meetings required by Section 351.254(c);

(2) a copy of the written protocol developed under Section 351.256; and

(3) either:

(A) a biennial summary detailing:

(i) the number of sexual assault reports received by local law enforcement agencies;

(ii) the number of investigations conducted as a

result of those reports;

(iii) the number of indictments presented in connection with a report and the disposition of those cases; and

(iv) the number of reports of sexual assault for which no indictment was presented; or

(B) an explanation of the reason the response team failed to provide the information described by Paragraph (A).

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff. September 1, 2021.

Sec. 351.258. MEETINGS AND RECORDS; CONFIDENTIALITY. (a) A response team meeting is not subject to Chapter 551, Government Code.

(b) This section does not prohibit a response team from requesting or allowing the attendance of a person who is not a response team member at a response team meeting.

(c) Information and records acquired by a response team in the exercise of its purpose and duties under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code, and may only be disclosed as necessary to implement the response team's purpose and duties.

(d) A report or a statistical compilation of data reports created by the response team is public information subject to Chapter 552, Government Code, provided the report or compilation does not contain any personally identifiable information.

(e) Information, documents, and records of the response team that are confidential under this section are not subject to subpoena or discovery and may not be introduced into evidence in any civil, criminal, or administrative proceeding, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or introduction into evidence solely because that information or those documents or records were presented during a response team meeting or maintained by the response team.

(f) A response team may only review a sexual assault case of an adult survivor with the signed, written consent of the survivor. The consent must specify:

(1) the information or records covered by the release;

(2) the reason or purpose for the release; and

(3) the person or agency to which the information is to be

released.

Added by Acts 2021, 87th Leg., R.S., Ch. 568 (S.B. 476), Sec. 1, eff. September 1, 2021.

SUBCHAPTER Z. MISCELLANEOUS LAW ENFORCEMENT PROVISIONS

Sec. 351.901. DONATION TO CERTAIN CRIME STOPPERS AND CRIME PREVENTION ORGANIZATIONS. (a) In this section:

(1) "Crime stoppers organization" means a private, nonprofit organization or a public organization that:

(A) is operated on a local or statewide level;

(B) accepts donations and expends funds for rewards to persons who submit tips under Section 414.0015(a), Government Code; and

(C) forwards the information received from tips to the appropriate law enforcement agency, school district, or open-enrollment charter school as provided by Section 414.0015(b), Government Code.

(2) "Crime prevention organization" means an organization with an advisory council consisting of local law enforcement officers and volunteers from the community that:

(A) is operated on a local or statewide level;

(B) identifies crime-related issues relevant to a segment of society particularly prone to victimization, including the elderly population; and

(C) provides assistance to the community in the form of crime prevention and education and provides training for law enforcement officers in dealing effectively with the segment of society prone to victimization.

(3) "Open-enrollment charter school" means a school that has been granted a charter under Subchapter D, Chapter 12, Education Code.

(4) "School district" means a public school district created under the laws of this state.

(b) The commissioners court of a county by contract may donate money to one or more crime stoppers or crime prevention organizations for expenditure by the organizations to meet the goals identified in Subsection (a). The total amount of all donations made in a calendar year may not exceed:

(1) $25,000; or

(2) $100,000, for a county with a population of 1.2 million or more.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 700, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 165, Sec. 1, eff. May 21, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 417 (H.B. 3067), Sec. 1, eff. June 10, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1172 (H.B. 3316), Sec. 12, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 181, eff. September 1, 2023.

Sec. 351.902. BUREAU OF CRIMINAL IDENTIFICATION. (a) On written and sworn application by a sheriff stating the necessity for the purchase, the commissioners court may purchase equipment for a bureau of criminal identification.

(b) The equipment must be compatible with the equipment used for this purpose by the Department of Public Safety, the United States Department of Justice, or the United States Bureau of Criminal Identification. The equipment may include items such as cameras, fingerprint cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, and tear gas.

(c) A purchase allowed under this section must be made by the sheriff by requisition in the manner provided by the county auditor or, if the county does not have a county auditor, by the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 351.904. ELECTRONIC MONITORING PROGRAM. (a) A commissioners court of a county may establish and operate an electronic monitoring program for the purpose of monitoring defendants required by a court of the county to participate in an electronic monitoring program under:

(1) Article 43.09, Code of Criminal Procedure, to discharge a fine or costs; or

(2) Article 42.035, Code of Criminal Procedure, as an alternative to serving all or part of a sentence of confinement in county jail.

(b) The commissioners court shall provide for the sheriff or the community supervision and corrections department serving the county, under an agreement with the commissioners court, to oversee and operate, or, if the program is operated by a private vendor under Subsection (c), oversee the operation of, an electronic monitoring program established under this section.

(c) A commissioners court may contract with a private vendor to operate an electronic monitoring program under this section, including by enrolling and tracking participants in the program and performing periodic reviews with participants regarding compliance with the program.

(d) A commissioners court may use money that a defendant is ordered to pay to a county under Article 42.035(c), Code of Criminal Procedure, to pay for the services of a private vendor that operates an electronic monitoring program under Subsection (c).

(e) A commissioners court may subsidize all or part of the cost of a defendant's participation in an electronic monitoring program under this section if the defendant is indigent.

(f) A commissioners court may contract for any available electronic monitoring technology, including a technology that provides continuous positional tracking of the participant, that meets the approval of the commissioners court and either the sheriff or the community supervision and corrections department, as appropriate.

Added by Acts 2009, 81st Leg., R.S., Ch. 854 (S.B. 2340), Sec. 6, eff. June 19, 2009.

CHAPTER 352. COUNTY FIRE PROTECTION

SUBCHAPTER A. PROTECTION OF COUNTY RESIDENTS

Sec. 352.001. FIRE PROTECTION OF COUNTY RESIDENTS. (a) The commissioners court of a county may furnish fire protection or fire-fighting equipment to the residents of the county or of an adjoining county who live outside municipalities.

(b) The commissioners court may:

(1) purchase fire trucks or other fire-fighting equipment;

(2) issue time warrants and levy and collect taxes to pay the principal of and interest on the time warrants as provided by law; and

(3) contract with the governing body of a municipality located within the county or within an adjoining county to use fire trucks or other fire-fighting equipment that belongs to the municipality.

(c) The commissioners court of a county may contract with an incorporated volunteer fire department that is located within the county to provide fire protection to an area of the county that is located outside the municipalities in the county. The court may pay for that protection from the general fund of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.002. USE OF SURPLUS OR SALVAGE PROPERTY BY VOLUNTEER FIRE DEPARTMENT. (a) In this section:

(1) "Surplus property" means personal property that is in excess of the needs of its owner, that is not required for the owner's foreseeable needs, and that possesses some usefulness for the purpose for which it was intended or for some other purpose.

(2) "Salvage property" means personal property, other than wastepaper, that because of use, time, or accident is so damaged, used, or consumed that it has no value for the purpose for which it was originally intended.

(b) The commissioners court of a county may contract to supply surplus or salvage property to any incorporated volunteer fire department with which the commissioners court has contracted under Section 352.001.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.003. FIRE PROTECTION IN CERTAIN COUNTIES. (a) For use in protecting bridges, county shops, county warehouses, and other property located outside the municipalities in a county with a population of 350,001 to 449,999, the commissioners court of the county may:

(1) purchase fire trucks and other fire-fighting equipment; and

(2) contract with a centrally located municipality within the county for the operation and maintenance of the equipment.

(b) In a county with a population of less than 20,000 and a property valuation of more than $100 million according to the most recently approved county tax rolls, the commissioners court of the county may:

(1) contract with the governing bodies of municipalities in the county for the furnishing by the municipalities of fire protection outside the municipalities; and

(2) appropriate funds to pay the municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.004. AGENCY; LIABILITY. (a) In this section, "furnishing fire protection" includes traveling to or from a fire.

(b) The act of a person who, in carrying out a county's authority to provide fire protection, furnishes fire protection to a county resident who lives outside the municipalities in the county, including the act of a person who is a regular employee or fire fighter of a municipality, is considered to be the act of an agent of the county.

(c) A municipality is not liable for the act of its employee in fighting fires outside the municipality under a contract between the commissioners court of the county and the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.005. CONTRACTUAL PROVISION OF FIRE-FIGHTING EQUIPMENT OR SERVICES. (a) This section applies to a county with a population of 350,000 or more.

(b) By an order or resolution passed by majority vote, the governing body of a municipality that has a volunteer fire department recognized by the State Board of Insurance may petition the commissioners court to furnish fire-fighting equipment to the municipality. The commissioners court may contract with the petitioning governing body to furnish the equipment if the governing body shows that the municipality is eligible to receive the service and benefit of the equipment by compliance with this section.

(c) A group of at least 25 county residents who live in an unincorporated community in the county, who are qualified to vote in a county bond election, and who have organized or will organize within a reasonable time a volunteer fire department recognized by the State Board of Insurance may petition the commissioners court of the county to furnish fire-fighting equipment to the group. The commissioners court may contract with the petitioning residents to furnish the equipment.

(d) The commissioners court may provide the fire-fighting equipment for the use and benefit of the petitioner under a contract subject to the conditions that the petitioner shall:

(1) furnish a satisfactory place in which to keep the equipment;

(2) pay all the costs of operating the equipment; and

(3) furnish the personnel necessary to operate the equipment.

(e) The petitioner shall keep the fire-fighting equipment in good working order, make all necessary repairs or replacements, and provide labor and materials for repairs. The commissioners court may provide the petitioner with at least one emergency unit of fire-fighting equipment to be used while the regular unit is being repaired or replaced. The commissioners court may use an available truck or other equipment if it is unable to acquire a new truck or equipment for the purpose of building or equipping the fire-fighting equipment.

(f) The petitioner is responsible for the safekeeping of the fire-fighting equipment and is liable to the county for any loss through theft, or, if the petitioner is a municipality, through negligence by an officer, agent, or employee of the municipality, or, if the petitioner is a group of county residents, through negligence by one of those residents who handles or operates the equipment.

(g) Before a unit of fire-fighting equipment is delivered to a petitioner, the petitioner must post a bond with good and sufficient surety, payable to the county, in an amount fixed by the commissioners court that does not exceed the initial cost of the unit of fire-fighting equipment. The bond must be conditioned on payment to the county of the amount of the actual loss to each unit of equipment, or part of a unit, that results from theft or negligence for which the petitioner is liable.

(h) The fire-fighting equipment shall remain in the county.

The commissioners court may inspect the equipment at any time and may repossess the equipment for noncompliance with this section by the petitioner.

(i) For the purpose of fighting fires outside the limits of a municipality, the commissioners court may contract with any municipality in the county for the use of fire-fighting equipment and the use and service of the equipment by the municipal fire department. The contract shall be on the terms and conditions agreed to by the commissioners court and the governing authority of the municipality. The commissioners court shall pay the costs of the items covered by the contract from the general fund of the county.

(j) Fire-fighting equipment purchased by a county for the purpose of furnishing equipment under this section is subject to the competitive bidding requirements applicable to other county purchases.

(k) The commissioners court shall pay the costs of administering this section from the general fund of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 265 (H.B. 712), Sec. 1, eff. September 1, 2013.

Sec. 352.006. SALE OF USED FIRE PROTECTION OR FIRE-FIGHTING EQUIPMENT TO CERTAIN VOLUNTEER FIRE DEPARTMENTS. (a) In this section, "volunteer fire department" means an association that:

(1) operates fire-fighting equipment;

(2) is organized primarily to provide and actively provides fire-fighting services;

(3) does not pay its members compensation other than nominal compensation; and

(4) does not distribute any of its income to its members, officers, or governing body, other than for reimbursement of expenses.

(b) Notwithstanding Subchapter D, Chapter 263, or other law, the commissioners court of a county may sell used fire-fighting equipment, excluding equipment described in Sections 419.040 and 419.041, Government Code, to a volunteer fire department for eight percent of the original purchase value of the equipment if:

(1) the fire protection or fire-fighting equipment is at least 15 years old and met the National Fire Protection Association standards at the original time of purchase; and

(2) the volunteer fire department provides fire protection to an area within the county.

Added by Acts 2003, 78th Leg., ch. 952, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER B. COUNTY FIRE MARSHAL

Sec. 352.011. CREATION OF OFFICE; TERM. (a) The commissioners court of a county may establish the office of county fire marshal and provide office facilities, equipment, transportation, assistants, and professional services for that office.

(b) The commissioners court shall establish the term of office for a county fire marshal for a period not to exceed two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.012. QUALIFICATIONS FOR OFFICE. (a) To qualify for office, the county fire marshal must take the oath prescribed by the constitution of this state and post a bond as required by the commissioners court conditioned that the marshal will faithfully and strictly perform the duties of the office.

(b) The county fire marshal may not be directly or indirectly interested in the sale of fire-fighting equipment and may not be engaged in any type of fire insurance business.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.013. INVESTIGATION OF FIRES. (a) The county fire marshal shall:

(1) investigate the cause, origin, and circumstances of fires that occur within the county but outside the municipalities in the county and that destroy or damage property or cause injury; and

(2) determine whether a fire was the result of negligent or intentional conduct.

(b) The commissioners court of a county, with the advice of the

county fire marshal, shall adopt rules and procedures for determining which fires warrant investigation by the county fire marshal. The county fire marshal shall begin an investigation within 24 hours after the receipt of information regarding a fire that warrants investigation under commissioners court rules and procedures. The 24-hour period does not include a Sunday.

(c) In the performance of official duties, the county fire marshal, at any time of day, may enter and examine a structure where a fire has occurred and may examine adjacent premises.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 371, Sec. 1, eff. Sept. 1, 2003.

Sec. 352.014. RECORD OF INVESTIGATION. The county fire marshal shall keep a record of each fire that the marshal is required to investigate. The record must include the facts, statistics, and circumstances determined by the investigation, including the origin of the fire and the estimated amount of the loss. Each fire department and state or local agency that provides emergency medical services must submit reports requested by the county fire marshal in a timely manner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 64, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 371, Sec. 1, eff. Sept. 1, 2003.

Sec. 352.015. ARSON INVESTIGATION. (a) If the county fire marshal determines that further investigation of a fire or of an attempt to set a fire is necessary, the marshal may:

(1) subpoena witnesses to testify regarding the fire or attempt;

(2) administer oaths to the witnesses;

(3) take and preserve written statements, affidavits, and depositions; and

(4) require the production of an instrument that is pertinent to the investigation.

(b) The county fire marshal shall file in a court of competent jurisdiction a complaint charging arson, attempted arson, conspiracy to defraud, or any other crime against a person the marshal believes

to be guilty.

(c) The county fire marshal shall file charges under Section 352.021 in a court of competent jurisdiction against a witness who refuses to cooperate with the investigation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.016. INSPECTION OR REVIEW OF PLAN FOR FIRE OR LIFE SAFETY HAZARDS. (a) In this section, "fire or life safety hazard" means any condition that endangers the safety of a structure or its occupants and promotes or causes fire or combustion, including:

(1) the presence of a flammable substance;

(2) a dangerous or dilapidated wall, ceiling, or other structural element;

(3) improper electrical components, heating, or other building services or facilities;

(4) the presence of a dangerous chimney, flue, pipe, main, or stove, or of dangerous wiring;

(5) dangerous storage, including storage or use of hazardous substances; or

(6) inappropriate means of egress, fire protection, or other fire-related safeguard.

(b) In the interest of safety and fire prevention, the county fire marshal may inspect for fire or life safety hazards any structure, appurtenance, fixture, or real property located within 500 feet of a structure, appurtenance, or fixture. The marshal shall inspect a structure for fire or life safety hazards if called on to do so. In the absence of a county fire code, the county fire marshal may conduct an inspection using any nationally recognized code or standard adopted by the state. If the marshal determines the presence of a fire or life safety hazard, the marshal may order the owner or occupant of the premises to correct the hazardous situation. If ordered to do so, an owner or occupant shall correct the hazardous situation in accordance with the order.

(b-1) In the interest of safety and fire prevention, the county fire marshal shall, if required, and may, if requested, review the plans of a business, single-family residence, multi-family dwelling, or commercial property for fire or life safety hazards.

(c) The commissioners court by order may authorize the county

fire marshal to charge a fee to the owner of a business, a multi-family dwelling, or commercial property for a plan review or inspection conducted under this section in a reasonable amount determined by the commissioners court to cover the cost of the plan review or inspection.

(d) The commissioners court by order may authorize the county fire marshal to charge a fee to the owner of a single-family residence for a plan review or inspection conducted under this section in a reasonable amount determined by the commissioners court to cover the cost of the plan review or inspection, if the plan review or inspection is requested by the owner of the property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 358, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 760, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 851, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 371, Sec. 1, eff. Sept. 1, 2003.

Sec. 352.0165. INSPECTION OF GROUP HOMES IN CERTAIN COUNTIES; FEE. (a) In this section:

(1) "Group home" means an establishment:

(A) in which three or more individuals who are unrelated to the owner or operator of the establishment reside;

(B) that provides residential care services to residents; and

(C) that receives payment or other compensation from a local, state, or federal governmental entity for providing residential care services to a resident.

(2) "Residential care services" means shelter, protection, meals, health care, mobility assistance, and personal care services, including bathing, dressing, and eating.

(b) This section applies only to a county with a population of 3.3 million or more.

(c) This section does not apply to a building owned or operated by:

(1) a person that is required to be licensed under Chapter 142, 242, 246, 247, or 252, Health and Safety Code;

(2) a person that is exempt from licensing under Section 142.003(a)(19), 242.003(3), or 247.004(4), Health and Safety Code;

(3) a hotel as defined by Section 156.001, Tax Code;

(4) a retirement community;

(5) a monastery or convent;

(6) a child-care facility as defined by Section 42.002, Human Resources Code;

(7) a family violence shelter center as defined by Section 51.002, Human Resources Code; or

(8) a sorority or fraternity house or other dormitory associated with an institution of higher education.

(d) On the complaint of any person, the county fire marshal, at any reasonable time, may enter:

(1) a building in the county in which a group home is operated; and

(2) the premises of a building described by Subdivision (1).

(e) The county fire marshal shall order the removal of a building in which a group home is located, the removal of a structure located on the premises of a building in which a group home is located, or other remedial action if the marshal finds that:

(1) the building or structure, because of lack of repair, age, dilapidated condition, or other reason, is susceptible to fire and is so located or occupied that fire would endanger persons or property in the building or structure or on the premises of the building or structure;

(2) a dangerous condition is created by:

(A) an improper arrangement of stoves, ranges, furnaces, or other heating appliances, including chimneys, flues, and pipes with which they are connected, or by their lighting systems or devices; or

(B) the manner of storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, or combustible, flammable, or refuse materials; or

(3) any other condition exists that is dangerous or is liable to cause or promote fire or create danger for firefighters, occupants, or other buildings or structures.

(f) The person to whom an order under Subsection (e) is directed shall immediately comply with the order. The marshal may, if necessary, apply to a court of competent jurisdiction for writs or orders necessary to enforce this section, and the court may grant appropriate relief. The marshal is not required to give a bond.

(g) The commissioners court of a county may adopt any appropriate standard developed by a nationally recognized standards-making association under which the county fire marshal may enforce this section, except that standards adopted under this subsection do not apply in a municipality that has adopted fire protection ordinances.

(h) The commissioners court of a county shall prescribe a reasonable fee for an inspection performed by the county fire marshal that may be charged to a property owner or occupant who requests the inspection, as the commissioners court considers appropriate. In prescribing the fee, the commissioners court shall consider the overall cost to the marshal to perform the inspections, including the approximate amount of time the staff of the marshal needs to perform an inspection, travel costs, and other expenses.

Added by Acts 2021, 87th Leg., R.S., Ch. 473 (S.B. 504), Sec. 1, eff. September 1, 2021.

Sec. 352.017. PRIVACY OF EXAMINATIONS; SERVICE OF PROCESS. (a) In a proceeding under this subchapter, the county fire marshal may:

(1) conduct an investigation or examination in private;

(2) exclude a person who is not under examination; and

(3) separate witnesses from each other until each witness is examined.

(b) Service of process required by this subchapter shall be made by a peace officer and shall be signed by the county fire marshal or the fire marshal's deputy.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 371, Sec. 2, eff. Sept. 1, 2003.

Sec. 352.018. EFFECT ON CIVIL ACTIONS. (a) An action taken by a county fire marshal in the investigation of a fire does not affect the rights of a policyholder or of any company regarding a loss caused by the fire.

(b) The result of an investigation by the county fire marshal of a fire may not be admitted in evidence in the trial of a civil action brought under the insurance policy.

(c) The statement of an insurance company, the company's officers, agents, or adjusters, or of a policyholder or the policyholder's representative, that is made to the county fire marshal or his representative with respect to the origin or cause or supposed origin or cause of the fire may not be admitted in evidence in or made the basis of a civil action for damages.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.019. COOPERATION WITH OTHER FIRE PROTECTION AGENCIES; TRAINING FOR FIRST RESPONDERS. (a) The county fire marshal shall enforce all state and county regulations that relate to fires, explosions, or damages of any kind caused by a fire or explosion.

(b) The county fire marshal shall coordinate the work of the various fire-fighting and fire prevention units in the county. On request, the county fire marshal may assist a rural fire prevention district or emergency services district located wholly or partially in the county to accomplish its powers and duties.

(b-1) If the commissioners court establishes procedures for firefighter certification under Subsection (b), the commissioners court must ensure that the procedures are at least as stringent as the minimum qualifications set by the Texas Commission on Fire Protection under Section 419.032, Government Code. This subsection does not apply to a volunteer firefighter as defined by Section 419.001, Government Code.

(c) The county fire marshal or the county fire marshal's designee may perform as the incident commander in a major event if the incident commander of the responsible fire department consents. The county fire marshal may not enforce orders and decrees within a municipality in the county unless specifically required to do so by interlocal agreement and may act in a cooperative and advisory capacity there only on request.

(d) The county fire marshal shall cooperate with the state fire marshal to conduct fire prevention and fire-fighting activities or postfire investigations. The county fire marshal shall aid or conduct an investigation in a municipality if requested by the state fire marshal, the municipality, or the fire chief of the municipality.

(e) A county commissioners court may authorize the fire marshal

to provide training programs relating to fire-fighting and fire prevention and operate a training facility for first responders in the county. The county may establish and collect a reasonable fee for the training programs, use of the facility, and services provided by the facility. In this subsection, "first responder" has the meaning assigned by Section 421.095, Government Code.

(f) The commissioners court and county fire marshal may jointly adopt voluntary guidelines, including voluntary funding guidelines, for fire departments located in unincorporated areas of the county, including fire departments located within rural fire prevention districts or emergency services districts, regarding participation in the Texas Fire Incident Reporting System (TXFIRS) or the National Fire Incident Reporting System (NFIRS), or both. The commissioners court may establish model procedures for voluntary use by the various fire departments in the county with respect to:

(1) emergency incident management;

(2) firefighter certification; and

(3) automatic mutual aid.

(g) If a commissioners court authorizes a fire marshal to provide training programs and operate a training facility under Subsection (e), the fire marshal must ensure that the training programs and operation of the training facility are at least as stringent as the minimum qualifications set by the Texas Commission on Fire Protection under Section 419.032, Government Code. This subsection does not apply to a volunteer firefighter as defined by Section 419.001, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 371, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 387 (H.B. 3753), Sec. 1, eff. June 2, 2019.

Acts 2019, 86th Leg., R.S., Ch. 387 (H.B. 3753), Sec. 2, eff. June 2, 2019.

Sec. 352.020. LIABILITY. The county fire marshal and the assistants and employees of the office are not liable in damages for any acts or omissions in the performance of their duties except in cases of gross negligence or wilful malfeasance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 352.021. CONTEMPT OF FIRE INVESTIGATION PROCEEDINGS. (a) A person commits an offense if the person is a witness in connection with an investigation under Section 352.015 and refuses to be sworn, refuses to appear and testify, or fails and refuses to produce before the county fire marshal any book, paper, or other document relating to any matter under investigation if called on by the marshal to do so.

(a-1) A person commits an offense if the person is the owner of property subject to an investigation under Section 352.015 and the person refuses to be sworn, refuses to appear and testify, or fails and refuses to produce before the county fire marshal any book, paper, or other document relating to any matter under investigation if called on by the marshal to do so.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $2,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 371, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 960 (H.B. 1634), Sec. 2, eff. September 1, 2005.

Sec. 352.022. PENALTY FOR FAILURE TO COMPLY WITH ORDER. An owner or occupant who is subject to an order issued under Section 352.016 or 352.0165 commits an offense if that person fails to comply with the order. Each refusal to comply is a separate offense. The offense is a Class B misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted two or more times under this section, in which event the offense is a state jail felony.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 371, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 473 (S.B. 504), Sec. 2, eff. September 1, 2021.

Sec. 352.023. EXEMPTION. This subchapter does not apply to a state agency that is authorized to prevent and extinguish forest and grass fires.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. FIREWORKS

Sec. 352.051. REGULATION OF RESTRICTED FIREWORKS. (a) For the purposes of this section the following definitions shall apply:

(1) "Restricted fireworks" means only those items classified under 49 C.F.R. Sec. 173.100(r)(2) (10-1-86 edition), as "skyrockets with sticks" and "missiles with fins".

(2) "Drought conditions" means the existence immediately preceding or during the fireworks season of a Keetch-Byram Drought Index of 575 or greater.

(b)(1) The Texas A&M Forest Service in the ordinary course of its activities shall determine whether drought conditions, as defined under Subsection (a)(2), exist on average in any county requesting such a determination. The Texas A&M Forest Service shall make available the measurement index guidelines used to determine whether drought conditions exist in a particular area. Following any determination that such drought conditions exist, the Texas A&M Forest Service shall notify said county or counties when such drought conditions no longer exist. The Texas A&M Forest Service shall make its services available each day during the Texas Independence Day, San Jacinto Day, Memorial Day, Fourth of July, Diwali, and December fireworks seasons to respond to the request of any county for a determination whether drought conditions exist on average in the county.

(2) The Texas A&M Forest Service shall be allowed to take such donations of equipment or funds as necessary to aid in the carrying out of this section.

(c) Upon a determination under this section that drought conditions exist on average in a specified county, the commissioners court of the county by order may prohibit or restrict the sale or use of restricted fireworks in the unincorporated area of the county. In addition, during the December fireworks season, the commissioners court of a county by order may restrict or prohibit the sale or use of restricted fireworks in specified areas when conditions on rural

acreage in the county not under cultivation for a period of at least 12 months are determined to be extremely hazardous for the danger of fire because of high grass or dry vegetation.

(d) To facilitate compliance with an order adopted under Subsection (c), the order must be adopted before:

(1) February 15 of each year for the Texas Independence Day fireworks season;

(2) April 1 of each year for the San Jacinto Day fireworks season;

(3) April 25 of each year for the Cinco de Mayo fireworks season;

(4) May 15 of each year for the Memorial Day fireworks season;

(5) June 15 of each year for the Fourth of July fireworks season;

(6) 15 days before the beginning of Diwali for the Diwali fireworks season; and

(7) December 15 of each year for each December fireworks season.

(e) An order issued under this section shall expire upon determination as provided under Subsection (b) that such drought conditions no longer exist.

(f) When a county issues an order restricting or prohibiting the sale or use of restricted fireworks under this section, the county may designate one or more areas of appropriate size and accessibility in the county as safe areas where the use of restricted fireworks is not prohibited, and the legislature encourages a county to designate such an area for that purpose. The safe area may be provided by the county, a municipality within the county, or an individual, business, or corporation. A safe area may be designated in and provided in the geographic area of the regulatory jurisdiction of a municipality if the activity conducted in the safe area is authorized by general law or a municipal regulation or ordinance. An area is considered safe if adequate public safety and fire protection services are provided to the area. A county, municipality, individual, business, or corporation is not liable for injuries or damages resulting from the designation, maintenance, or use of the safe area.

(g) A person selling any type of fireworks, including restricted fireworks, in a county that has adopted an order under

Subsection (c) shall, at every location at which the person sells fireworks in the county, provide reasonable notice of the order and reasonable notice of any location designated under Subsection (f) as a safe area.

(h) An affected party is entitled to injunctive relief to prevent the violation or threatened violation of a requirement or prohibition established by an order adopted under this section.

(i) A person commits an offense if the person knowingly or intentionally violates a prohibition established by an order issued under this section. An offense under this subsection is a Class C misdemeanor.

(j) A civil action against a county based on the county's actions under this section must be brought in the appropriate court in that county.

Added by Acts 1991, 72nd Leg., ch. 865, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 500, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1399, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1244, Sec. 1 to 3, eff. Sept. 1, 1999.
Renumbered from Sec. 240.904 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.004, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 7, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 710 (H.B. 1150), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 710 (H.B. 1150), Sec. 3, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 475 (H.B. 608), Sec. 2, eff. September 1, 2023.

SUBCHAPTER D. OUTDOOR BURNING

Sec. 352.081. REGULATION OF OUTDOOR BURNING. (a) In this section, "drought conditions" means the existence of a long-term deficit of moisture creating atypically severe conditions with increased wildfire occurrence as defined by the Texas Forest Service through the use of the Keetch-Byram Drought Index or, when that index is not available, through the use of a comparable measurement that takes into consideration the burning index, spread component, or

ignition component for the particular area.

(b) On the request of the commissioners court of a county, the Texas Forest Service shall determine whether drought conditions exist in all or part of the county. The Texas Forest Service shall make available the measurement index guidelines that determine whether a particular area is in drought condition. Following a determination that drought conditions exist, the Texas Forest Service shall notify the county when drought conditions no longer exist. The Texas Forest Service may accept donations of equipment or funds as necessary to aid the Texas Forest Service in carrying out this section.

(c) The commissioners court of a county by order may prohibit or restrict outdoor burning in general or outdoor burning of a particular substance in all or part of the unincorporated area of the county if:

(1) drought conditions have been determined to exist as provided by Subsection (b); or

(2) the commissioners court makes a finding that circumstances present in all or part of the unincorporated area create a public safety hazard that would be exacerbated by outdoor burning.

(d) An order adopted under this section must specify the period during which outdoor burning is prohibited or restricted. The period may not extend beyond the 90th day after the date the order is adopted. A commissioners court may adopt an order under this section that takes effect on the expiration of a previous order adopted under this section.

(e) An order adopted under this section expires, as applicable, on the date:

(1) a determination is made under Subsection (b) that drought conditions no longer exist; or

(2) a determination is made by the commissioners court, or the county judge or fire marshal if designated for that purpose by the commissioners court, that the circumstances identified under Subsection (c)(2) no longer exist.

(f) This section does not apply to outdoor burning activities:

(1) related to public health and safety that are authorized by the Texas Commission on Environmental Quality for:

(A) firefighter training;

(B) public utility, natural gas pipeline, or mining operations; or

(C) planting or harvesting of agriculture crops; or

(2) that are conducted by a certified and insured prescribed burn manager certified under Section 153.048, Natural Resources Code, and meet the standards of Section 153.047, Natural Resources Code.

(g) Any person is entitled to injunctive relief to prevent the violation or threatened violation of a prohibition or restriction established by an order adopted under this section.

(h) A person commits an offense if the person knowingly or intentionally violates a prohibition or restriction established by an order adopted under this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1999, 76th Leg., ch. 1435, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1185, Sec. 1, eff. Sept. 1, 2001. Renumbered from Sec. 240.906 by Acts 2001, 77th Leg., ch. 1420, Sec. 12.004, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 495 (H.B. 1174), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 20, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. 702), Sec. 4, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 2, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 1, eff. September 1, 2019.

Sec. 352.082. OUTDOOR BURNING OF HOUSEHOLD REFUSE IN CERTAIN RESIDENTIAL AREAS. (a) This section applies only to the unincorporated area of a county:

(1) that is adjacent to a county with a population of 3.3 million or more; and

(2) in which a planned community is located that has 20,000 or more acres of land, that was originally established under the Urban Growth and New Community Development Act of 1970 (42 U.S.C. Section 4501 et seq.), and that is subject to restrictive covenants containing ad valorem or annual variable budget based assessments on

real property.

(b) In this section, "neighborhood" and "refuse" have the meanings assigned by Section 343.002, Health and Safety Code.

(c) A person commits an offense if the person intentionally or knowingly burns household refuse outdoors on a lot that is:

(1) located in a neighborhood; or

(2) smaller than five acres.

(d) An offense under this section is a Class C misdemeanor. On conviction of an offense under this section, the court shall require the defendant, in addition to any fine, to perform community service as provided by Article 42A.304(e), Code of Criminal Procedure.

Added by Acts 2005, 79th Leg., Ch. 904 (H.B. 39), Sec. 2, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.78, eff. January 1, 2017.

SUBCHAPTER E. GATED COMMUNITIES AND MULTI-UNIT HOUSING PROJECTS

Sec. 352.111. GATED COMMUNITY OR HOUSING PROJECT SUBJECT TO SUBCHAPTER. This subchapter applies only to a gated community, or to a multi-unit housing project that controls access to the project by a pedestrian or vehicular gate, located outside municipal boundaries in an area not already subject to municipal regulations regarding vehicular or pedestrian gates.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 681 (S.B. 200), Sec. 2, eff. June 17, 2005.

Sec. 352.112. DEFINITIONS. In this subchapter:

(1) "Gated community" means a residential subdivision or housing development with a vehicular or pedestrian gate that contains two or more dwellings not under common ownership. The term does not include a multi-unit housing project.

(2) "Multi-unit housing project" means an apartment, condominium, or townhome project that contains two or more dwelling units.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 681 (S.B. 200), Sec. 3, eff. June 17, 2005.

Sec. 352.113. COUNTY AUTHORITY TO REGULATE VEHICULAR OR PEDESTRIAN GATES TO GATED COMMUNITIES AND MULTI-UNIT HOUSING PROJECTS. To assure reasonable access for fire-fighting vehicles and equipment, emergency medical services vehicles, and law enforcement officers, a county may require the owner or the owners association of a gated community or multi-unit housing project to comply with this subchapter.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 681 (S.B. 200), Sec. 4, eff. June 17, 2005.

Sec. 352.114. LOCKBOX REQUIREMENTS. (a) Each vehicular gate to the gated community or multi-unit housing project must have a lockbox within sight of the gate and in close proximity outside the gate. The lockbox at all times must contain a key, card, or code to open the gate or a key switch or cable mechanism that overrides the key, card, or code that normally opens the gate and allows the gate to be opened manually.

(b) If there are one or more pedestrian gates, at least one pedestrian gate must have a lockbox within sight of the gate and in close proximity outside the gate. The lockbox at all times must contain a key, card, code, key switch, or cable mechanism to open the gate.

(c) If different pedestrian gates are operated by different keys, cards, or codes, the lockbox must contain:

(1) each key, card, or code, properly labeled for its respective gate; or

(2) a single master key, card, or code or a key switch or cable mechanism that will open every gate.

(d) Access to a lockbox required by this section shall be limited to a person or agency providing fire-fighting or emergency

medical services or law enforcement for the county.

(e) If a gate is powered by electricity, it must be possible to open the gate without a key, card, code, or key switch if the gate loses electrical power.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 681 (S.B. 200), Sec. 5, eff. June 17, 2005.

Sec. 352.1145. SIREN-OPERATED SENSOR SYSTEMS FOR ELECTRIC GATES. The commissioners court of a county by order may require that each electric gate to a gated community or multiunit housing project be equipped with a gate-operating device that:

(1) is approved by the county fire marshal or other similar authority having jurisdiction over fire prevention; and

(2) will activate the electric gate on the sounding of an emergency vehicle siren.

Added by Acts 2009, 81st Leg., R.S., Ch. 620 (H.B. 1063), Sec. 1, eff. September 1, 2009.

Sec. 352.115. ADDITIONAL ACCESSIBILITY REQUIREMENTS. (a) In a gated community or multi-unit housing project that has one or more vehicular gates:

(1) at least one vehicular gate must be wide enough for fire-fighting vehicles, fire-fighting equipment, emergency medical services vehicles, or law enforcement vehicles to enter; and

(2) at least one driveway apron or entrance from the public right-of-way must be free of permanent obstacles that might impede entry by a vehicle or equipment listed in Subdivision (1).

(b) The county fire marshal or other authority shall waive the vehicular gate width requirements of Subsection (a) for a multi-unit housing project completed before January 1, 2002, if the requirements cannot readily be met because of space limitations or excessive cost. For purposes of this subsection, $6,000 per entrance based on the value of the dollar on January 1, 2000, is considered an excessive cost for expanding gate width and achieving an obstacle-free driveway apron or entrance.

(c) A pedestrian gate in a gated community or multi-unit housing project must be located so as to provide firefighters, law enforcement officers, and other emergency personnel reasonable access to each building.

(d) This section does not require a multi-unit housing project to have a vehicular gate or a pedestrian gate.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 681 (S.B. 200), Sec. 6, eff. June 17, 2005.

Sec. 352.116. BUILDING IDENTIFICATION. A county may require each residential building in a multi-unit housing project to have a number or letter in a contrasting color on the side of the building and placed so that the number or letter can be seen from the vehicular driving areas by a responding emergency agency.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.

Sec. 352.117. COUNTY AUTHORITY TO REQUIRE PERMIT. (a) A county may require the owner or the owners association of a gated community or multi-unit housing project to obtain a permit from the county fire marshal or other authority with fire-fighting jurisdiction in the county to ensure compliance with this subchapter.

(b) A permit may be issued under this subchapter only if the requirements of this subchapter and standards adopted under this subchapter are met.

(c) To pay for the cost of administering the permits, the county may collect a one-time fee not to exceed $50 from each person to whom a permit is issued under this section.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 681 (S.B. 200), Sec. 7, eff. June 17, 2005.

Sec. 352.118. SUSPENSION OR REVOCATION OF LICENSE. (a) A

permit issued under this subchapter may be suspended or revoked for violation of this subchapter or a regulation adopted under this subchapter after notice and a hearing on a complaint by the county fire marshal or other authority having jurisdiction for fire fighting, emergency medical service, or law enforcement. The hearing shall be held by the commissioners court of the county or by a person or entity designated by the commissioners court.

(b) A permit may be reinstated or a new permit issued if each violation that is a ground of the complaint is corrected within the time prescribed by the entity that holds the hearing.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.

Sec. 352.119. LIMITATION ON SPECIFIC COUNTY STANDARDS. (a) A county may not impose under this subchapter specific standards relating to vehicular gate widths, obstacle-free driveway aprons or entrances, pedestrian gate locations, or building numbers that exceed the requirements for new gated communities or new multi-unit housing projects contained in the municipal ordinances of:

(1) the municipality within whose extraterritorial jurisdiction the gated community or multi-unit housing project is located; or

(2) the municipality nearest, on a straight line, to the boundary of the gated community or multi-unit housing project, if the community or project is not within the extraterritorial jurisdiction of a municipality.

(b) The county fire marshal or other authority with fire-fighting jurisdiction may adopt reasonable standards relating to vehicular gate width, obstacle-free driveway aprons or entrances, pedestrian gate locations, and building numbers if the appropriate municipality described by Subsection (a) has not adopted applicable standards.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 681 (S.B. 200), Sec. 8, eff. June 17, 2005.

Sec. 352.120. OFFENSE. A person who violates this subchapter

or a regulation adopted under this subchapter in a county that requires compliance with this subchapter under Section 352.113 commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 111, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 353. COUNTY HAZARDOUS MATERIALS SERVICES

Sec. 353.001. DEFINITIONS. In this chapter:

(1) "Concerned party" means a person:

(A) involved in the possession, ownership, or transportation of a hazardous material that is released or abandoned; or

(B) who has legal liability for the causation of an incident resulting in the release or abandonment of a hazardous material.

(2) "Hazardous material" means a flammable material, an explosive, a radioactive material, a hazardous waste, a toxic substance, or related material, including a substance defined as a "hazardous substance," "hazardous material," "toxic substance," or "solid waste" under:

(A) the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.);

(C) the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.);

(D) the federal Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); or

(E) Chapter 361, Health and Safety Code.

Added by Acts 2005, 79th Leg., Ch. 930 (H.B. 580), Sec. 1, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 33, eff. September 1, 2005.

Sec. 353.002. APPLICABILITY. This chapter applies to an incident involving hazardous material that has been leaked, spilled,

released, or abandoned on any property.

Added by Acts 2005, 79th Leg., Ch. 930 (H.B. 580), Sec. 1, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 33, eff. September 1, 2005.

Sec. 353.003. HAZARDOUS MATERIALS SERVICES. (a) A county may provide hazardous materials services, including a response to an incident involving hazardous material that has been leaked, spilled, released, or abandoned, if:

(1) the county first provides reasonable notice to a concerned party regarding the need for the hazardous materials services so that the concerned party has a reasonable opportunity to respond to the incident involving hazardous material; and

(2) the concerned party fails to respond or fails to respond in a timely and effective manner to the incident.

(b) A county may provide limited control and containment measures that are necessary to protect human health and the environment without first complying with the requirements of Subsection (a) if the county is the first entity to arrive at a site where an incident involving hazardous material has occurred that is prepared to take action in response to the incident.

(c) If the hazardous material is natural gas released from an underground facility as defined by Section 251.002, Utilities Code, the county:

(1) must comply with the requirements of Section 251.159, Utilities Code; and

(2) may not operate any equipment or other controls or devices at the underground facility without the express permission of the operator of the facility.

Added by Acts 2005, 79th Leg., Ch. 930 (H.B. 580), Sec. 1, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 33, eff. September 1, 2005.

Sec. 353.004. FEE FOR PROVIDING HAZARDOUS MATERIALS SERVICE; EXCEPTION. (a) A county, or a person authorized by contract on the

county's behalf, may charge a reasonable fee, including a fee to offset the cost of providing control and containment measures under Section 353.003(b), to a concerned party for responding to a hazardous materials service call.

(b) A county, or a person authorized by contract on the county's behalf, may charge a fee for providing hazardous materials services under Section 353.003(a) only if the county has complied with the requirements of that subsection. A concerned party is not liable for a fee associated with the county's hazardous materials services under Section 353.003(a) or a fee to offset the cost of providing control and containment measures under Section 353.003(b) if the county provides hazardous materials services under Section 353.003(a) and the county does not provide notice as required by Section 353.003(a)(1).

(c) An individual who is a concerned party does not have to pay a fee under this section if:

(1) the individual is not involved in the possession, ownership, or transportation of the hazardous material as the employee, agent, or servant of another person;

(2) the individual is involved solely for private, noncommercial purposes related to the individual's own property and the individual receives no compensation for any services involving the hazardous materials; and

(3) the hazardous materials possessed, owned, or being transported by the individual are in forms, quantities, and containers ordinarily available for sale as consumer products to members of the general public.

Added by Acts 2005, 79th Leg., Ch. 930 (H.B. 580), Sec. 1, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 33, eff. September 1, 2005.

Sec. 353.005. EXEMPTION FOR GOVERNMENTAL ENTITIES. This chapter does not apply to hazardous materials owned or possessed by a governmental entity.

Added by Acts 2005, 79th Leg., Ch. 930 (H.B. 580), Sec. 1, eff. September 1, 2005.
Added by Acts 2005, 79th Leg., Ch. 1094 (H.B. 2120), Sec. 33, eff.

September 1, 2005.

SUBTITLE C. PUBLIC SAFETY PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 361. MUNICIPAL AND COUNTY AUTHORITY RELATING TO JAILS

SUBCHAPTER A. CRIMINAL JUSTICE CENTER IN CERTAIN MUNICIPALITIES AND COUNTIES

Sec. 361.001. MUNICIPALITIES AND COUNTIES COVERED BY SUBCHAPTER. This subchapter applies only to:

(1) a municipality that has a population of more than 17,500 and is not the county seat; and

(2) the county in which that municipality is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.002. CRIMINAL JUSTICE CENTER; OFFICE RESTRICTION INAPPLICABLE. (a) The municipality and county jointly or severally may own, construct, equip, enlarge, and maintain as a criminal justice center one or more buildings located in the municipality.

(b) The criminal justice center must provide public facilities related or incidental to the administration of criminal justice and may include:

(1) accommodations for the handling, processing, and detention of prisoners;

(2) offices for state, county, and municipal administrative and judicial officials;

(3) courtrooms; and

(4) parking facilities.

(c) A county officer may maintain office facilities in the criminal justice center in addition to any office facilities maintained at the county seat, notwithstanding Section 291.002 or any other law that restricts the location of county offices to the county seat of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.003. CONTRACT PROVISIONS RELATING TO JOINT CENTER. (a) If the municipality and county agree to jointly provide a

criminal justice center, they may specify by contract the purposes, terms, rights, and responsibilities of each of the parties, including the:

(1) amount of money to be contributed by each party for land acquisition costs, building acquisition costs, construction costs, and equipment costs, or the proportionate amount of those costs that each party is to pay;

(2) method or methods by which that money is to be provided;

(3) account or accounts in which the money is to be deposited;

(4) party that is to award construction contracts and other contracts, or that the contracts are to be awarded by action of both parties; and

(5) manner by which disbursements of the money are to be authorized.

(b) The municipality and county may specify in the contract that the money required to meet the costs of providing the center shall be derived:

(1) from current income and funds on hand that are budgeted by the municipality and county for that purpose;

(2) through the issuance of bonds by either or both of them under the procedures prescribed for the issuance of general obligation bonds for other public buildings and purposes;

(3) by the issuance by either or both of them of certificates of obligation under the Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271); or

(4) through a combination of those methods.

(c) Instead of or in combination with the use of taxing power in the payment of bonds or certificates of obligation issued under Subsection (b), those bonds or certificates may be payable from and secured by income derived from the facilities of the criminal justice center, including income from leases and from the proceeds of parking or other fees.

(d) The contract may provide for the creation of an administrative agency or may designate one of the parties to supervise the accomplishment of the purposes of the contract and to operate and maintain the criminal justice center. The administrative agency or designated party may employ personnel and may engage in other administrative activities as necessary to accomplish the

purposes of the contract and to operate and maintain the criminal justice center.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.004. GRANTS AND LOANS. To finance the facilities of the criminal justice center, the municipality or county jointly or severally may accept grants, gratuities, advances, and loans from the United States, this state, an agency of this state, a private or public corporation, or any other person.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. JUSTICE CENTERS LOCATED ON STATE LINE

Sec. 361.021. DEFINITION. In this subchapter, "law" means a state statute, a written opinion of a court of record, a municipal ordinance, an order of the commissioners court of a county, or a rule adopted under a statute.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.022. CONTRACT TO PROVIDE JUSTICE CENTER. (a) A county in this state and a municipality in that county, both of which are located on the state line, may contract with an adjoining county of the other state and any municipality in that county for the joint construction, financing, operation, and management of a justice center located on the state line. The municipality in this state need not be the county seat of the county.

(b) The contract may provide that the justice center contain:

(1) courtrooms and office space needed by municipal, justice, county, district, and appellate courts;

(2) jail, lockup, jail annex, and other detention facilities;

(3) federal, county, precinct, and municipal offices for prosecuting attorneys and other personnel as needed;

(4) adult or juvenile probation offices;

(5) other offices that either county or either municipality is separately authorized or required to operate or provide; or

(6) parking facilities, dining areas, and other facilities incidental to the operation of the center.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 17, Sec. 1, eff. April 2, 1993.

Sec. 361.023. CONTRACTUAL AUTHORITY CONTINGENT ON LEGISLATION OF OTHER STATE. A county or municipality in this state may make the contract only if the other state enacts legislation that relates to the establishment of a justice center under a contract and that:

(1) assigns responsibility for the operation of the detention facilities in the center in the manner required by Section 361.026;

(2) provides for the application and enforcement of the law of both states in the manner provided by Section 361.028;

(3) contains provisions authorizing the arrest, prosecution, transfer, and control of persons as prescribed by Sections 361.029(a)(2), (d), (e), and (f)(2);

(4) authorizes peace officers to take the actions authorized by Sections 361.029(j) and (k); and

(5) provides that:

(A) a person in custody in the center under the law of this state may not be prosecuted for an offense against the law of the other state without extradition and may not be personally served with process in the center for a proceeding in the other state;

(B) a person summoned to appear in the center under the law of this state may not be personally served with process in any part of the center for a proceeding in the other state; and

(C) a person summoned to appear in the center under the law of this state may not be arrested in any part of the center for an offense against the law of the other state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.024. FINANCING OF JUSTICE CENTER. The governing body of the municipality or county in this state that makes the contract may finance its share of the construction, operation, management, or other financing costs of the justice center by any means, including the use of available federal funds, that the governing body may use

to finance the type of facilities that the municipality or county will use in or provide to the center.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.025. MANAGEMENT OF JUSTICE CENTER; PERSONNEL. (a) The contracting parties may specify in the contract the manner of determining the persons responsible for the:

(1) operation, alteration, maintenance, cleaning, and repair of the justice center facilities;

(2) employment of the center personnel;

(3) purchase of materials, supplies, tools, and other equipment to be jointly used by offices provided or used by the contracting parties;

(4) preparation of reports to be made to the governing bodies of the contracting parties;

(5) joint record-keeping, communications, or dispatch systems; and

(6) performance of any other powers or duties relating to the operation of the center.

(b) The contracting parties may provide in the contract the manner of determining the personnel policies and employment benefit programs for personnel of the justice center.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.026. RESPONSIBILITY FOR OPERATION OF JAIL. The contract must provide:

(1) that the sheriffs of the two counties are jointly responsible for the operation of any jail, lockup, jail annex, or other detention facility in the justice center and for the custody, care, and treatment of persons in custody in that facility; or

(2) for the employment of a jailer who shall exercise those responsibilities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 17, Sec. 2, eff. April 2, 1993.

Sec. 361.027. COURTROOMS AND COURT PROCEEDINGS AT JUSTICE CENTER. (a) A court of appeals or a district, county, justice, or municipal court with jurisdiction in the county or municipality in which a part of the justice center is located may maintain offices and courtrooms and may hold proceedings at the center, except that:

(1) only a justice court for the precinct in which the part of the justice center in this state is located may maintain an office and courtroom in the center; and

(2) a court of this state may not hold proceedings in the part of the center that is located in the other state.

(b) A court of the other state may hold proceedings in the part of the justice center that is located in this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.028. EXTENT TO WHICH EACH STATE'S LAW APPLIES AT JUSTICE CENTER. (a) Except as otherwise provided by this subchapter, the law of both states that relates to the rights, duties, liabilities, privileges, and immunities arising from conduct applies to conduct that occurs in any part of the justice center. If it is impossible for a person in the center to conform the person's conduct to the law of both states, the person may choose which state's law governs the conduct. If the person elects to follow the law of the other state, the conflicting law of this state does not apply to the conduct.

(b) The physical plant of the justice center and the equipment and facilities used by personnel of both states who are employed at the center are constructively located in both states.

(c) Except as provided by Subsection (d), property located in any part of the justice center that is owned by or is in the possession of a person who is in custody at, or who is summoned to appear in, the center, is constructively located in the state under the law of which the person was taken into custody or was summoned to appear.

(d) Subsection (a) applies to conduct committed in the justice center that constitutes an offense relating to the possession of property. Subsection (a) also applies to a person's exercise of a duty relating to property located in the justice center.

(e) Property that is ordered by a court to be produced in the

justice center or that is in the possession of a peace officer or a party to a proceeding for use as evidence before a court holding a proceeding in the center is constructively located in the state in which the court has jurisdiction.

(f) Any property located in the justice center that is not covered by Subsection (c), (d), or (e) is constructively located in both states.

(g) The law of the state in which property is constructively located applies to that property to the same extent that that law would apply if the property were actually located in that state. If property is constructively located in only one state, the law of the state in which the property is not constructively located applies to that property only to the extent that the law of that state would apply if the property were actually located outside that state.

(h) Except as otherwise provided by this subchapter, the courts of both states have concurrent jurisdiction over the geographic area covered by the justice center. However, the state in which a prosecution for an offense committed in the justice center is first instituted may exercise its jurisdiction to the exclusion of the other state's jurisdiction unless the prosecution is terminated without the attachment of jeopardy under the law of the state of the initial prosecution. For the purposes of this subsection, prosecution is instituted in this state on the filing of an indictment, an information, or a complaint. The attachment of jeopardy in this state is determined by Article 27.05, Code of Criminal Procedure.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.029. ARREST, PROSECUTION, EXTRADITION, AND SERVICE OF PROCESS AT JUSTICE CENTER. (a) A person who is in the justice center in the custody, under the law of this state, of a peace officer or center personnel:

(1) is constructively present in this state while the person is in custody in the part of the center located in the other state;

(2) may be prosecuted for an offense against the law of this state without extradition; and

(3) may be personally served with process in any part of

the center for a proceeding in this state.

(b) A person who is in the justice center in the custody, under the law of the other state, of a peace officer or center personnel:

(1) is constructively present in the other state while the person is in custody in the part of the center located in this state;

(2) may not be prosecuted for an offense against the law of this state without extradition; and

(3) may not be personally served with process in any part of the center for a proceeding in this state.

(c) This state agrees that a person who is in the justice center in the custody, under the law of the other state, of a peace officer or center personnel may be:

(1) prosecuted for an offense against the law of the other state without extradition; and

(2) personally served with process in any part of the center for a proceeding in the other state.

(d) Justice center personnel or a peace officer of either state may transfer across the state line in the center a person who is in custody in the center under the law of either state and may exercise control over the person on both sides of the state line.

(e) A person who is present in the justice center but who has not been confined in the center, taken to the center under arrest, or summoned to appear in the center, may be arrested without extradition in any part of the center for an offense against the law of either state. Extradition of a person arrested in the justice center under those circumstances is not required for prosecution of the person if the person is actually present in any part of the center or in the state of the prosecution at the time of the prosecution.

(f) A person who is summoned to appear in the justice center under the law of this state:

(1) is constructively present in this state while that person is appearing under the summons in the part of the center located in the other state;

(2) may be arrested in any part of the center for an offense committed against the law of this state and prosecuted for that offense without extradition if the person is actually present in any part of the center or in this state at the time of the prosecution; and

(3) may be personally served with process in any part of the center for a proceeding in this state.

(g) A person who is summoned to appear in the justice center under the law of the other state:

(1) is constructively present in the other state while that person is appearing under the summons in the part of the center located in this state;

(2) may not be arrested, without extradition, under the law of this state in any part of the center for an offense against the law of this state; and

(3) may not be personally served with process in any part of the center for a proceeding in this state.

(h) This state agrees that a person who is summoned to appear in the justice center under the law of the other state may be:

(1) arrested in any part of the center for an offense against the law of the other state and prosecuted for that offense without extradition if the person is actually present in any part of the center or in the other state at the time of the prosecution; and

(2) personally served with process in any part of the center for a proceeding in the other state.

(i) If a person in the justice center is constructively present in one state under this section, the law of the state in which the person is not constructively present may be applied to the person only to the extent that the law of that state would apply if the person were actually outside that state. However, the law applicable to that person's conduct while in the justice center is governed by Section 361.028, and the question of whether extradition is required to arrest or prosecute that person for an offense committed in the center is governed by this section.

(j) A peace officer of this state may:

(1) arrest a person under the law of this state in the part of the justice center located in the other state for an offense against the law of this state if that peace officer is authorized to make that arrest in the part of the center located in this state; and

(2) arrest a person under the law of the other state in any part of the center for an offense against the law of the other state if a peace officer of the other state is authorized to make that arrest in the part of the center located in the other state.

(k) This state agrees that a peace officer of the other state may:

(1) arrest a person under the law of this state in any part

of the justice center for an offense against the law of this state if a peace officer of this state is authorized to make that arrest in the part of the center located in this state; and

(2) arrest a person under the law of the other state in the part of the justice center located in this state for an offense against the law of the other state if that peace officer is authorized to make that arrest in the part of the center located in the other state.

(l) Notwithstanding Sections 3 and 6, Article 51.13, Code of Criminal Procedure, the governor of this state may recognize a demand for the extradition of a person charged with a crime in the other state if the demand alleges that any element of the offense occurred in any part of the justice center.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. JOINT MUNICIPAL AND COUNTY JAIL FACILITIES IN CERTAIN COUNTIES

Sec. 361.041. MUNICIPAL-COUNTY JAIL FACILITIES IN COUNTY WITH POPULATION OF LESS THAN 20,000. (a) A county with a population of less than 20,000 and any municipality located within the county may finance, construct, maintain, and operate jail facilities for the joint use of the county and municipality. The governing body of the municipality and the commissioners court of the county by contract may determine each party's obligations relating to those actions and may provide for the custody, control, and operation of the jail facilities. The term of the contract may not exceed 20 years.

(b) The municipality and county may issue and sell bonds in the manner provided by law and may spend the proceeds of those bonds for the purposes authorized by this section. The bonds remain the sole obligations of the authority that issues them. Any funds derived from the sale of the bonds shall remain in the possession and control of the issuing authority until spent by that authority for the authorized purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 361.042. MUNICIPAL-COUNTY JAIL FACILITIES IN CERTAIN COUNTIES. (a) Instead of providing and maintaining its own jail,

the commissioners court of a county with a population of 120,000 to 123,000 may provide safe and suitable jail facilities for the county by contracting for the facilities with the governing body of the municipality that is the county seat of the county.

(b) The contract must provide for:

(1) the incarceration, on a daily per capita basis, of the county's prisoners in the jail facilities owned by the municipality, with the daily per capita rate to be equal to the cost of maintaining a prisoner in the facilities or to be at an amount mutually agreed on by the parties;

(2) the lease to the county of a part of the municipally owned jail facilities, with payment under the lease to be at a rate based on the proportion of the total area of the facilities that is occupied by the county's prisoners; or

(3) the joint operation and maintenance of the municipally owned jail facilities for the mutual use and benefit of the county and the municipality, with each party's obligations regarding the maintenance and operation of the facilities to be prescribed by the contract.

(c) The contract may provide for the custody, control, and operation of the jail facilities. The jail facilities must meet the requirements established by Subchapter A, Chapter 351.

(d) A contract made under Subsection (b)(2) or (3) may not exceed a term of 20 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 101, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 103, 104, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 95, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 182, eff. September 1, 2023.

Sec. 361.043. JAILER FOR MUNICIPAL-COUNTY JAIL FACILITIES. (a) A contract made under Section 361.041 or 361.042 may provide for a jailer to be custodian of the jail facilities.

(b) The jailer is under the control and supervision of the sheriff of the county and shall be appointed by the sheriff with the

advice and consent of the commissioners court of the county and the governing body of the municipality. The salary of the jailer shall be set in an amount equal to that of a deputy sheriff of the county and may be paid by the county and the municipality in proportionate amounts as provided by the contract.

(c) Except as otherwise provided by this section, the rights, duties, salary, and tenure of the jailer are controlled by the laws governing deputy sheriffs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. PROVISIONS FOR CORRECTIONAL FACILITIES

Sec. 361.051. DEFINITIONS. In this subchapter:

(1) "Credit agreement" means any one or more of a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitments to purchase obligations, purchase or sale agreements, or commitments or other contracts or agreements authorized and approved by the governing body of an entity in connection with the authorization, issuance, security, exchange, payment, purchase, or redemption of obligations. A credit agreement may include interest on an obligation.

(2) "Eligible project" means the acquisition, construction, equipping, or enlarging of facilities at any location in the state for, with relation to, or incidental in the administration of criminal justice, including, without limitation, correctional facilities or other accommodations for handling, processing, and detention of prisoners.

(3) "Entity" means a home-rule municipality or county or a nonprofit corporation acting on behalf of a home-rule municipality or county.

(4) "Lease obligation" means an obligation incurred by the Texas Board of Criminal Justice under Section 495.021, Government Code.

(5) "Obligations" means:

(A) certificates of obligation of an entity issued pursuant to this subchapter in the manner prescribed by the Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271);

(B) certificates of participation representing an

undivided interest in a lease obligation;

(C) revenue bonds of an entity issued pursuant to this subchapter; or

(D) contractual obligations incurred by an entity under a lease agreement, lease-purchase agreement, purchase on an installment contract, or other agreement providing for the lease, lease-purchase, installment purchase, or other acquisition of title to an eligible project.

(6) "Project costs" means all costs and expenses incurred in relation to an eligible project, one or more, including without limitation design, planning, engineering, and legal costs; acquisition costs of land, interests in land, right-of-way, and easements; construction costs; costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of an eligible project; and financing costs, including interest during construction and thereafter, underwriter's discount and/or fees; and fees and expenses for legal, financial, and other professional services. Project costs attributable to an eligible project and incurred prior to the delivery of any obligations issued to finance an eligible project may be reimbursed from the proceeds of sale of (i) obligations or (ii) lease obligations.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 70, Sec. 1, eff. Aug. 4, 1987. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.19, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 306, Sec. 1, eff. May 29, 1999.

Sec. 361.052. FINANCING ELIGIBLE PROJECTS. (a) The governing body of an entity is empowered and authorized to issue, or to provide for the issuance of, obligations and to execute credit agreements in relation thereto in order to finance project costs of an eligible project, or to refund obligations issued or incurred in connection with an eligible project. This subsection applies regardless of when:

(1) the obligation is due; or

(2) title to the project is transferred to the entity.

(b) Money to be paid pursuant to a lease obligation and revenues derived by an entity from the operation of an eligible

project constitute revenues to an entity that may be pledged to secure or pay any obligations, and the entity's obligations may be made payable from and secured by, in whole or in part, those revenues. An entity may apply the provisions of Chapter 1371, Government Code, Section 271.052 or 361.053, or any combination of those laws to the issuance of obligations and the execution of credit agreements to satisfy the purposes of this subchapter, except that an entity's obligations may be refunded by the issuance of public securities, as defined by Section 1201.002, Government Code, that are payable from a pledge of ad valorem tax receipts only if the issuance of the public securities is approved by a majority of votes cast at an election conducted in accordance with the bond election procedures established by Chapter 1251, Government Code.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 70, Sec. 1, eff. Aug. 4, 1987. Amended by Acts 1999, 76th Leg., ch. 306, Sec. 2, eff. May 29, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.328, eff. Sept. 1, 2001.

Sec. 361.053. REVENUE BONDS. (a) An entity may issue revenue bonds, without approval of the bonds at an election, for the purposes herein provided pursuant to a resolution which prescribes the terms and conditions for the payment of the principal of and interest thereon, and such revenue bonds may be secured by the revenues of an entity as described in Section 361.052, but in no event shall an entity be authorized to levy ad valorem taxes to pay all or part of such principal or interest.

(b) Revenue bonds issued under this section are not a debt or pledge of the faith and credit or the taxing power of the state or the entity but are payable solely from revenues arising under this section that are pledged to the repayment of the revenue bonds. To the extent that pledged revenues include amounts appropriated by the legislature, the revenue bonds shall state on their face that such revenues shall be available to pay debt service only if appropriated by the legislature for that purpose. Each revenue bond must also contain on its face a statement to the effect that:

(1) neither the state nor an agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bonds except as provided by this

subsection; and

(2) neither the faith and credit nor the taxing power of the state or any agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bonds.

(c) The revenue bonds may be issued from time to time in one or more series or issues, in bearer, registered, or any other form, which may include registered uncertified obligations not represented by written instruments and commonly known as book-entry obligations, the registration of ownership and transfer of which shall be provided for by the entity under a system of books and records maintained inside or outside the state by the entity or by an agent appointed by the entity in an order or a resolution providing for issuance of its bonds. Bonds may mature serially or otherwise not more than 50 years from their date, provided that bonds payable from money appropriated for that purpose by the legislature shall not mature or be subject to redemption before September 1, 1989, and the date of the first interest payment to be made from appropriated money shall not be scheduled to occur before September 1, 1989. Bonds may bear no interest or may bear interest at any rate or rates, fixed, variable, floating, or otherwise, determined by the entity or determined pursuant to any contractual arrangements approved by the entity and the state, subject to the provisions of Section 361.054(a). Interest on the bonds may be payable at any time and the rate of interest on the bonds may be adjusted at such time as may be determined by the entity or as may be determined pursuant to any contractual agreement approved by the entity and the state. The bonds may be issued in the form and denominations and executed in the manner and under the terms, conditions, and details determined by the governing body of the entity in the resolution authorizing their issuance. If any officer whose manual or facsimile signature appears on the bonds ceases to be an officer, the signature is still valid and sufficient for all purposes as if the officer had remained in office.

(d) The bonds may be secured additionally by a trust indenture or a deed of trust granting a security interest in an eligible project, under which the trustee may be a financial institution, domiciled inside or outside the state, which has trust power.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 70, Sec. 1, eff. Aug. 4, 1987. Amended by Acts 1999, 76th Leg., ch. 306, Sec. 3, eff. May 29,

1999.

Sec. 361.054. LIMITATIONS ON OBLIGATIONS AND LEASE OBLIGATIONS. (a) Obligations issued or lease obligations incurred hereunder shall be within the interest rate limitations of Chapter 1204, Government Code.

(b) From the proceeds from the sale of obligations an entity may set aside amounts for payments into the interest and sinking fund and reserve funds, and for interest and operating expenses during construction and development, as may be specified in the authorizing proceedings. Proceeds of obligations and amounts on deposit in interest and sinking funds and reserve funds may be invested pending their use for the purpose for which issued, in the manner described in Chapter 1371, Government Code.

(c) All obligations, lease obligations, and the records and contracts relating thereto shall be submitted prior to their delivery to the attorney general of Texas for examination and, if he finds that they have been issued or incurred in accordance with the constitution and this Act and that they will be binding special obligations of the entity issuing same, he shall approve them, and thereupon they shall be registered by the comptroller of public accounts of the State of Texas, and after such approval and registration they shall be valid and incontestable.

(d) Obligations may not be issued under this subchapter or any other law for eligible projects that include a lease obligation as both terms are defined by this subchapter without the prior approval of the Bond Review Board.

(e) Before an entity as defined by this subchapter may issue and sell obligations under this subchapter or any other law for eligible projects that include a lease obligation as both terms are defined by this subchapter, the legislature must have authorized the specific projects and method of financing by special act or in the general appropriations act, however this section does not apply to a 400-bed intermediate sanction facility located in a county with a population of 2.8 million or above.

(f) Refunding bonds may be issued to refund obligations in the manner now or hereafter provided by general law, including, without limitation, Chapter 1207, Government Code.

(g) The provisions of Chapter 1201, Government Code, apply to

obligations issued or lease obligations incurred hereunder, and such obligations shall constitute a "security" within the meaning of Chapter 8, Business & Commerce Code.

(h) An entity may not use proceeds from the sale of obligations under this subchapter to acquire, construct, equip, or enlarge a correctional facility unless the facility complies with federal constitutional standards and applicable court orders.

Added by Acts 1987, 70th Leg., 2nd C.S., ch. 70, Sec. 1, eff. Aug. 4, 1987. Amended by Acts 1993, 73rd Leg., ch. 40, Sec. 1, eff. April 22, 1993; Acts 2001, 77th Leg., ch. 1420, Sec. 8.329, eff. Sept. 1, 2001.

SUBCHAPTER E. MUNICIPAL CONTRACT WITH COUNTY OR PRIVATE ENTITY FOR JAIL FACILITIES

Sec. 361.061. AUTHORITY TO CONTRACT. The governing body of a municipality may contract with a private vendor or a county to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 75(a), eff. Aug. 28, 1989.

Sec. 361.062. CONTRACT REQUIREMENTS. A contract made under this subchapter must:

(1) require the private vendor or county to operate the facility in compliance with minimum standards of construction, equipment, maintenance, and operation of jails adopted by the Commission on Jail Standards and receive and retain a certification of compliance from the commission;

(2) provide for regular, on-site monitoring by the municipality;

(3) if the contract includes construction, provide for a performance bond and a payment bond specifically approved by resolution of the governing body as being adequate for the proposed contract and issued only by a surety authorized to do business as a surety in this state and regulated by the State Board of Insurance;

(4) provide for assumption of liability by a private vendor for all claims arising from the services performed under the contract

by the private vendor;

(5) provide for an adequate plan of insurance for a private vendor and its officers, guards, employees, and agents against all claims, including claims based on violations of civil rights, arising from the services performed under the contract by the private vendor;

(6) provide for a plan for the purchase and assumption of operations by the municipality in the event of the bankruptcy of the private vendor;

(7) provide for an adequate plan of insurance to protect the municipality against all claims arising from the services performed under the contract by a private vendor and to protect the municipality from actions by a third party against the private vendor, its officers, guards, employees, and agents as a result of the contract;

(8) contain comprehensive standards for conditions of confinement; and

(9) require that any improvement to real property occurring as a result of the contract be awarded under a competitive proposal procedure under which quotations and proposals are solicited by advertisement in the same manner as provided in the competitive bidding procedure specifying the relative importance of price and other evaluation factors.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 75(a), eff. Aug. 28, 1989.

Sec. 361.063. AWARD OF IMPROVEMENT PROJECT. (a) An award made under Section 361.062(9) must be made to the responsible offeror whose proposal is determined to be the lowest evaluated offer resulting from negotiation taking into consideration the relative importance of price and other evaluation factors set forth in the request.

(b) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submission and before award for the purpose of obtaining the best and final offers.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 75(a), eff. Aug. 28, 1989.

Sec. 361.064. SOVEREIGN IMMUNITY INAPPLICABLE. A private vendor operating under a contract authorized by this subchapter is not entitled to claim sovereign immunity in a suit arising from the services performed under the contract by the private vendor. However, this section does not deprive the municipality, private vendor, or county of any benefits of any law limiting exposure to liability, setting a limit on damages, or establishing defenses to liability.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 75(a), eff. Aug. 28, 1989.

Sec. 361.065. MAXIMUM INMATE POPULATION. A facility authorized by this subchapter must be designed, constructed, operated, and maintained to hold not more than an average daily population of 4,000 inmates.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 75(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 670, Sec. 1, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 873, Sec. 1, eff. June 20, 2003.

Sec. 361.066. APPLICATION TO PRIOR FACILITIES. The governing body may not convert a facility into a correctional facility operated by a private vendor if, before August 3, 1987, the facility is:

(1) operated as a correctional facility by the municipality; or

(2) being constructed by the municipality for use as a correctional facility.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 75(a), eff. Aug. 28, 1989.

Sec. 361.067. LOCATION OF JAIL RESTRICTED IN POPULOUS MUNICIPALITY. (a) Notwithstanding any other provision of this subchapter, a private vendor or county may not establish a jail, detention center, work camp, or related facility in a municipality with a population of 1,500,000 or more if that facility is to be located within one-half mile of a public school, institution of higher education, or place of worship.

(b) Subsection (a) does not apply to a booking facility that

will be established within 500 feet of an existing county jail or detention facility.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 75(a), eff. Aug. 28, 1989. Amended by Acts 2003, 78th Leg., ch. 453, Sec. 1, eff. June 20, 2003.

SUBCHAPTER F. DISCIPLINARY MATTERS RELATING TO MUNICIPAL AND COUNTY JAILS

Sec. 361.081. SUPERVISORY OR DISCIPLINARY AUTHORITY OF INMATES. (a) An inmate in a municipal or county jail may not act in a supervisory or administrative capacity over another inmate.

(b) An inmate in a municipal or county jail may not administer discipline over another inmate.

Added by Acts 1989, 71st Leg., ch. 212, Sec. 3.02, eff. Sept. 1, 1989.

Sec. 361.082. RESTRAINT OF PREGNANT INMATE OR DEFENDANT. (a) A municipal or county jail may not use restraints to control the movement of a pregnant woman in the custody of the jail at any time during which the woman is in labor or delivery or recovering from delivery, unless the sheriff or another person with supervisory authority over the jail determines that the use of restraints is necessary to:

(1) ensure the safety and security of the woman or her infant, jail or medical personnel, or any member of the public; or

(2) prevent a substantial risk that the woman will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

Added by Acts 2009, 81st Leg., R.S., Ch. 1184 (H.B. 3653), Sec. 3, eff. September 1, 2009.

SUBCHAPTER G. RELIGIOUS FREEDOM

Sec. 361.101. APPLICATION OF LAW RELATING TO FREE EXERCISE OF

RELIGION. For purposes of Chapter 110, Civil Practice and Remedies Code, an ordinance, rule, order, decision, or practice that applies to a person in the custody of a municipal or county jail or other correctional facility operated by or under a contract with a county or municipality is presumed to be in furtherance of a compelling governmental interest and the least restrictive means of furthering that interest. The presumption may be rebutted.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 5, eff. Aug. 30, 1999.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 361.901. AIDS AND HIV TESTING IN COUNTY AND MUNICIPAL JAILS; SEGREGATION. (a) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.

(b) A county or municipality may test an inmate confined in the county or municipal jail or in a contract facility authorized by Subchapter F, Chapter 351, or Subchapter E of this chapter to determine the proper medical treatment of the inmate or the proper social management of the inmate or other inmates in the jail or facility.

(c) If the county or municipality determines that an inmate has a positive test result for AIDS or HIV, the county or municipality may segregate the inmate from other inmates in the jail or facility.

(d) This section does not provide a duty to test for AIDS or HIV, and a cause of action does not arise under this section from a failure to test for AIDS or HIV.

Transferred, redesignated and amended from Code of Criminal Procedure, Chapter 46A by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 4.014, eff. September 1, 2019.

CHAPTER 362. LAW ENFORCEMENT SERVICES PROVIDED THROUGH COOPERATION OF MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 362.001. DEFINITIONS. In this chapter:

(1) "Joint airport" means an airport that is operated jointly by two municipalities and that is situated in two counties.

(2) "Law enforcement officer" means a municipal police officer, sheriff, deputy sheriff, constable, deputy constable, marshal, deputy marshal, investigator of a district attorney's,

criminal district attorney's, or county attorney's office, or police officer of a joint airport who has been commissioned as a peace officer under the laws of this state.

(3) "Multicounty drug task force" means a mutual aid law enforcement task force that is established as a multicounty law enforcement cooperation between counties and municipalities to enhance multicounty interagency coordination, acquire intelligence information, and facilitate multicounty investigations of drug-related crimes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 210, Sec. 1, eff. May 24, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 556 (H.B. 1239), Sec. 1, eff. September 1, 2005.

Sec. 362.002. LAW ENFORCEMENT ASSISTANCE. (a) A county, municipality, or joint airport may, by resolution or order of its governing body, provide for, or authorize its chief administrative officer, chief of police, or marshal to provide for, its regularly employed law enforcement officers to assist another county, municipality, or joint airport. This assistance may be provided only when the mayor or other officer authorized to declare a state of civil emergency in the other county, municipality, or joint airport considers additional law enforcement officers necessary to protect health, life, and property in the county, municipality, or joint airport because of disaster, riot, threat of concealed explosives, or unlawful assembly characterized by force and violence or the threat of force and violence by three or more persons acting together or without lawful authority.

(b) A county, municipality, or joint airport may, by resolution or order of its governing body, enter into an agreement with a municipality, joint airport, or county to form a mutual aid law enforcement task force to cooperate in criminal investigations and law enforcement. Peace officers employed by counties, municipalities, or joint airports covered by the agreement have only the additional investigative authority throughout the region as set forth in the agreement. The agreement must provide for the compensation of peace officers involved in the activities of the task

force.

(c) A law enforcement officer employed by a county, municipality, or joint airport that is covered by the agreement may make an arrest outside the county, municipality, or joint airport in which the officer is employed but within the area covered by the agreement. The law enforcement agencies of the area where the arrest is made shall be notified of the arrest without delay, and the notified agency shall make available the notice of the arrest in the same manner as if the arrest were made by a member of that agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 374 (H.B. 1789), Sec. 1, eff. June 2, 2019.

Sec. 362.003. PROVISIONS RELATING TO LAW ENFORCEMENT OFFICERS. (a) While a law enforcement officer regularly employed by one county, municipality, or joint airport is in the service of another county, municipality, or joint airport according to this chapter, the officer is a peace officer of the latter county, municipality, or joint airport and is under the command of the law enforcement officer who is in charge in that county, municipality, or joint airport. The officer has all the powers of a regular law enforcement officer of that county, municipality, or joint airport as fully as if the officer were in the county, municipality, or joint airport where regularly employed. Qualification for office in the territory of regular employment constitutes qualification for office in the other county, municipality, or joint airport and no additional oath, bond, or compensation is needed.

(b) The law enforcement officer who is ordered by the official designated by the governing body of the county, municipality, or joint airport to perform police or peace duties outside the limits of that county, municipality, or joint airport where regularly employed is entitled to the same wage, salary, pension, and other compensation and rights, including injury or death benefits, as if the service were rendered in the county, municipality, or joint airport of the officer's regular employment. The officer is also entitled to payment for any reasonable expenses incurred for travel, food, or lodging while on duty outside the limits of the territory of the

officer's regular employment.

(c) The county, municipality, or joint airport regularly employing the law enforcement officer shall pay all wages and disability payments, pension payments, damages to equipment and clothing, medical expenses, and travel, food, and lodging expenses. The county, municipality, or joint airport whose authorized official requested the services shall reimburse the original county, municipality, or joint airport after the payment is made and reimbursement is requested. Each county, municipality, or joint airport may make these payments and reimbursements regardless of any provision in its charter or ordinances to the contrary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 362.004. MULTICOUNTY DRUG TASK FORCE. (a) A multicounty drug task force is composed of law enforcement agencies located in two or more counties in this state. A multicounty drug task force may be established and operated only after the Department of Public Safety confirms:

(1) a strategic need for the task force; and

(2) the composition of the task force.

(b) A multicounty drug task force, and any county or municipality participating in the task force, must comply with the policies and procedures established for the operation of a multicounty drug task force by the Department of Public Safety.

Added by Acts 2005, 79th Leg., Ch. 556 (H.B. 1239), Sec. 2, eff. September 1, 2005.

Sec. 362.005. TEXAS TRANSNATIONAL INTELLIGENCE CENTER. (a) The sheriff's department of a county with a population of at least 870,000 that borders the Texas-Mexico border and the police department of the municipality having the largest population in that county shall jointly establish and operate the Texas Transnational Intelligence Center as a central repository of real-time intelligence relating to:

(1) autopsies in which the person's death is likely connected to transnational criminal activity;

(2) criminal activity in the counties along the Texas-

Mexico border and certain other counties; and

(3) other transnational criminal activity in the state.

(b) The Texas Department of Public Safety shall assist the county sheriff's department and the municipal police department in the establishment and operation of the center.

(c) Each law enforcement agency in a county located along the Texas-Mexico border or in a county that contains a federal checkpoint shall report to the Texas Transnational Intelligence Center intelligence regarding criminal activity in the law enforcement agency's jurisdiction, including details on kidnappings, home invasions, and incidents of impersonation of law enforcement officers. The Texas Alcoholic Beverage Commission and Parks and Wildlife Department shall report to the center intelligence regarding transnational criminal activity in the agency's jurisdiction.

(d) The intelligence in the Texas Transnational Intelligence Center shall be made available to each law enforcement agency in the state and the Texas Alcoholic Beverage Commission and Parks and Wildlife Department.

(e) The Texas Transnational Intelligence Center shall comply with Section 421.085, Government Code, and the rules relating to that section.

Added by Acts 2015, 84th Leg., R.S., Ch. 333 (H.B. 11), Sec. 13, eff. September 1, 2015.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 183, eff. September 1, 2023.

CHAPTER 363. CRIME CONTROL AND PREVENTION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 363.001. SHORT TITLE. This chapter may be cited as the Crime Control and Prevention District Act.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a district.

(2) "Director" means a member of a board.

(3) "District" means a crime control and prevention district created under this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.003. LIABILITY OF STATE. The state is not obligated for the support, maintenance, or dissolution of a crime control district created under this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

SUBCHAPTER B. CREATION OF DISTRICT AND TEMPORARY BOARD

Sec. 363.051. POLITICAL SUBDIVISIONS AUTHORIZED TO CREATE DISTRICT. (a) The creation of a crime control and prevention district may be proposed under this chapter by a majority vote of the governing body of a:

(1) county:

(A) with a population of more than 130,000; or

(B) that:

(i) does not border the United Mexican States;

(ii) is adjacent to a county with a population of 500,000 or more that borders the United Mexican States; and

(iii) has a population of 5,000 or more; or

(2) municipality that is partially or wholly located in a county with a population of more than 5,000.

(b) The governing body may create a district composed of all or part of the political subdivision governed by that body. A district created by a county may not contain area in more than one county.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.08(a), eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1101 (H.B. 3417), Sec. 1, eff. June 15, 2007.

Sec. 363.052. TEMPORARY BOARD. (a) Not later than the 60th day after the date a district is proposed to be created by a governing body, the governing body shall appoint seven persons that reside in the proposed district to serve as temporary directors of the district.

(b) Not later than the 75th day after the date the district is proposed, the temporary board shall organize. The directors of the temporary board shall elect one of the directors as presiding officer of the board not later than the 15th day after the date of the appointments under Subsection (a).

(c) A temporary director who is not serving as presiding officer may designate another person to serve in the director's place.

(d) The governing body shall fill a vacancy in the office of a temporary director in the same manner that it originally filled the vacant position.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.053. ELECTION REQUIRED. A district proposed by the governing body may be created and a tax may be authorized only if the creation and the tax are approved by a majority of the qualified voters of the proposed district voting at an election called and held for that purpose.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.054. ELECTION ORDER. (a) After a majority of the temporary directors of a proposed district have approved a budget plan and a crime control plan in accordance with Section 363.061, a majority of the temporary directors may order that a creation election be held.

(b) An order calling an election under Subsection (a) must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open;
(4) the location of the polling places;
(5) in summary form, the approved budget plan and crime control plan of the proposed district; and
(6) the proposed rate of the sales and use tax for the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.055. SALES TAX: RATE; LIMITATION; MUNICIPAL AUTHORITY. (a) The proposed rate for the district sales and use tax imposed under Subchapter B, Chapter 321, Tax Code, may be any rate that is an increment of one-eighth of one percent, that the municipality determines is appropriate, and that would not result in a combined rate that exceeds the maximum combined rate prescribed by Section 321.101(f), Tax Code. The proposed rate for the district sales and use tax imposed under Subchapter B, Chapter 323, Tax Code, may be only:
(1) one-eighth of one percent;
(2) one-fourth of one percent;
(3) three-eighths of one percent; or
(4) one-half of one percent.

(b) A sales and use tax approved under this chapter may be charged in addition to any other sales and use tax authorized by law and is included in computing a combined sales and use tax rate for purposes of any limitation provided by law on the maximum combined sales and use tax rate of political subdivisions.

(c) A municipality that creates a district shall adopt a sales and use tax under Section 321.108, Tax Code, for financing the operation of the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.08(b), eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1101 (H.B. 3417), Sec. 2, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 4, eff. September 1, 2015.

Sec. 363.056. NOTICE OF ELECTION. In addition to the notice required by Section 4.003(c), Election Code, the temporary directors of a proposed district shall give notice of an election to create a district by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed district once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.057. ELECTION DATE. The election shall be held on the first uniform election date that occurs after the 34th day after the date on which the election is ordered.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 340, Sec. 4, eff. Sept. 1, 2001.

Sec. 363.058. BALLOT PROPOSITION. The ballot for an election to create a district shall be printed to permit voting for or against the proposition: "The creation of the _____ (name of the political subdivision proposing to create the district) Crime Control and Prevention District dedicated to crime reduction programs and the adoption of a proposed local sales and use tax at a rate of _____ (rate specified in the election order)."

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.059. CANVASSING RETURNS. (a) Not earlier than the second day or later than the 13th day after the date of the election, the temporary board of a proposed district shall meet and canvass the returns of the election.

(b) If a majority of the votes cast favor the creation of the district, the temporary board shall issue an order declaring the

district created.

(c) If less than a majority of the votes cast favor the creation of the district, the temporary board may order another election on the matter not earlier than the first anniversary of the date of the preceding election.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.060. DISSOLUTION OF TEMPORARY BOARD. If a district has not been created under this chapter before the fifth anniversary of the date a district is proposed by the governing body, the temporary board is dissolved on that date and a district may not be created under this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.061. CRIME CONTROL PLAN AND BUDGET PLAN. (a) The temporary board of a proposed district shall formulate and approve a two-year crime control plan and a two-year budget plan. The crime control plan must include:

(1) a detailed list of the crime control and crime prevention strategies to be supported by the district; and

(2) the method of annually evaluating the effectiveness and efficiency of individual crime control and crime prevention strategies.

(b) The budget plan must include:

(1) the amount of money budgeted by the district for each crime control and crime prevention strategy;

(2) the amount of money budgeted by the district and the percentage of the total budget of the district for administration, with individual amounts showing the cost of the administration that would be conducted by the district and the cost of administration that would be conducted by private or public entities;

(3) the estimated amount of money available to the district from all sources during the ensuing year;

(4) the amount of balances expected at the end of the years for which the budget is prepared; and

(5) the estimated tax rate that will be required.

(c) The crime control plan and budget plan must be adopted in the same manner as provided for adoption of a proposed annual budget under Section 363.204.

(d) The temporary board shall coordinate its efforts with local law enforcement officials, the local community supervision and corrections department, and the local juvenile probation department in developing its crime control plan and budget plan.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.062. FINANCING CREATION OF DISTRICT. (a) Except as provided by Subsections (b) and (c), the costs of creating a district by a county to be composed of the whole county shall be allocated as follows:

(1) the county shall pay 40 percent;

(2) the municipality having the largest population in the county shall pay 40 percent; and

(3) the municipality having the second largest population in the county shall pay 20 percent.

(b) The county and the two municipalities may contract for a division of the costs of creating a district that is different from the division of costs described by Subsection (a).

(c) If a district is proposed for only a part of the county, the county shall pay the entire cost of creating the district.

(d) A municipality creating a district shall pay the entire cost of creating the district.

(e) If a district is created, the district shall reimburse each political subdivision that paid creation costs for the actual expenses the subdivision incurred in the creation of the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.063. DONATIONS, GIFTS, AND ENDOWMENTS. On behalf of a district, the temporary board may accept donations, gifts, and endowments to be held in trust for any purpose and under any direction, limitation, or provision prescribed in writing by the

donor that is consistent with this chapter and the proper management of the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 363.101. BOARD OF DIRECTORS. (a) A district is governed by a board of seven directors appointed in the same manner as provided for the selection of temporary directors under Section 363.052(a).

(b) Board members serve staggered two-year terms that expire September 1, except that the initial appointees under this section shall draw lots to determine:

(1) the three directors to serve terms that expire on September 1 of the first year following creation of the district; and

(2) the four directors to serve terms that expire on September 1 of the second year following creation of the district.

(c) Repealed by Acts 1999, 76th Leg., ch. 1219, Sec. 7(a), eff. Sept. 1, 1999.

(d) A vacancy in the office of director shall be filled for the unexpired term in the same manner that the vacant position was originally filled.

(e) A member of the board is not liable for civil damages or criminal prosecution for any act performed in good faith in the execution of duties as a board member or for an action taken by the board.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1219, Sec. 7(a), eff. Sept. 1, 1999.

Sec. 363.1015. ALTERNATE FORMS OF APPOINTMENT: BOARD OF DIRECTORS. (a) The governing body of a municipality or county by resolution may appoint the governing body's membership as the board of directors of the district.

(b) In a district for which the board is not appointed under Subsection (a), the governing body of the municipality or county may

create a board by having each member of the governing body appoint one director to the board, subject to confirmation by the governing body.

(c) A director appointed under Subsection (b) serves:

(1) at the pleasure of the governing body of the municipality or county; and

(2) for a term concurrent with the term of the appointing member.

Added by Acts 1999, 76th Leg., ch. 1219, Sec. 1, eff. Sept. 1, 1999.

Sec. 363.102. FILING OF OFFICER'S BOND. (a) Before assuming the duties of the office, each director or officer, including a person designated under Section 363.101(c), must execute a bond for $5,000 payable to the district, conditioned on the faithful performance of the person's duties as director or officer.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for the bonds of the directors or officers with district funds.

(d) The board and the district may issue or sell bonds conditioned on the faithful performance of a person's duties as a director as provided by this section.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.103. OFFICERS. (a) The board shall elect from among its members a president and vice president. The board shall appoint a secretary. The secretary need not be a director. The person who performs the duties of auditor for the political subdivision shall serve as treasurer for the district.

(b) Each officer of the board serves for a term of one year.

(c) A vacancy in a board office shall be filled for the unexpired term by the board.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.104. COMPENSATION. A director or officer serves without compensation, but a director or officer may be reimbursed for actual expenses incurred in the performance of official duties. Those expenses must be reported in the district's minute book or other district record and must be approved by the board.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.105. VOTING REQUIREMENT. A concurrence of a majority of the members of the board is necessary in matters relating to the business of a district. A two-thirds majority vote of the board is required to reject any application for funding available under this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.106. CONTRACT FOR ADMINISTRATIVE ASSISTANCE. The board may contract with a public agency or private vendor to assist in the administration or management of the district or to assist in the review of applications for funding available under this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 363.151. DISTRICT RESPONSIBILITIES; LIMITATIONS ON EXPENDITURES. (a) The district may finance all the costs of a crime control and crime prevention program, including the costs for personnel, administration, expansion, enhancement, and capital expenditures.

(b) The program may include police and law enforcement related programs, including:

(1) a multijurisdiction crime analysis center;

(2) mobilized crime analysis units;

(3) countywide crime stoppers telephone lines;

(4) united property-marking programs;

(5) home security inspection programs;
(6) an automated fingerprint analysis center;
(7) an enhanced radio dispatch center;
(8) a computerized criminal history system;
(9) enhanced information systems programs;
(10) a drug and chemical disposal center;
(11) a county crime lab or medical examiner's lab; and
(12) a regional law enforcement training center.

(c) The program may include community-related crime prevention strategies, including:
(1) block watch programs;
(2) a community crime resistance program;
(3) school-police programs;
(4) senior citizen community safety programs;
(5) senior citizen anticrime networks;
(6) citizen crime-reporting projects;
(7) home alert programs;
(8) a police-community cooperation program;
(9) a radio alert program; and
(10) ride along programs.

(d) The program may include specific treatment and prevention programs, including:
(1) positive peer group interaction programs;
(2) drug and alcohol awareness programs;
(3) countywide family violence centers;
(4) work incentive programs;
(5) social learning centers;
(6) transitional aid centers and preparole centers;
(7) guided group interaction programs;
(8) social development centers;
(9) street gang intervention centers;
(10) predelinquency intervention centers;
(11) school relations bureaus;
(12) integrated community education systems;
(13) steered straight programs;
(14) probation subsidy programs;
(15) Juvenile Offenders Learn Truth (JOLT) programs;
(16) reformatory visitation programs;
(17) juvenile awareness programs;
(18) shock incarceration;

(19) shock probation;
(20) community restitution programs;
(21) team probation;
(22) electronic monitoring programs;
(23) community improvement programs;
(24) at-home arrest;
(25) victim restitution programs;
(26) additional probation officers; and
(27) additional parole officers.

(e) The program may include court and prosecution services, including:

(1) court watch programs;
(2) community arbitration and mediation centers;
(3) night prosecutors programs;
(4) automated legal research systems;
(5) an automated court management system;
(6) a criminal court administrator;
(7) an automated court reporting system;
(8) additional district courts that are required by law to give preference to criminal cases, judges, and staff; and
(9) additional prosecutors and staff.

(f) The program may include additional jails, jailers, guards, and other necessary staff.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.152. COORDINATION; EVALUATION; GRANTS. (a) The district shall coordinate its efforts with the local community justice council in developing its crime control and crime prevention program.

(b) The district shall fund an annual evaluation program to study the impact, efficiency, and effectiveness of new or expanded crime control and crime prevention programs.

(c) The board may seek the assistance of the Office of State-Federal Relations in identifying and applying for federal grants for criminal justice programs. The board shall notify the appropriate council of government of any intent to submit applications for federal funds and for inclusion in the regional criminal justice

planning process.

(d) The district may apply for and receive grants for criminal and juvenile justice programs from the criminal justice division in the governor's office.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.153. GENERAL BOARD POWER OVER FUNDS. The board shall manage, control, and administer the district funds except as provided by Section 363.205.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.154. USE OF REVENUE. (a) In a district created by a county, the board, from the sales and use tax revenue distributed to the district under Section 323.105, Tax Code, must budget, to the extent practicable:

(1) not less than 49.75 percent of the revenue to finance programs for which applications are submitted under Section 363.209(a);

(2) not less than 24.87 percent of the revenue to finance programs for which applications are submitted under Section 363.209(b); and

(3) not less than 24.87 percent of the revenue to be distributed under Subsection (b) or (d).

(b) In a district containing more than one municipality, the funds under Subsection (a)(3) shall be apportioned to the municipalities of the district based on a formula that averages the proportionate percentage of:

(1) the population of a municipality to the total population of the district;

(2) the index crime reported in each municipality in the district to the total index crime reported in the district; and

(3) the sales tax generated by each municipality to the total sales tax generated in the district based on the amount collected during the preceding year.

(c) The regional council of governments of a county shall

compute the formula described by Subsection (b). The regional council of governments shall provide the population estimates and the index crime statistics that are required to compute the formula. The regional council of governments shall provide the district with a statement of the amounts that the district must make available to each municipality in a district before the board adopts the budget and at that time also shall provide the district with a detailed summary of the computation.

(d) In a district containing only one municipality, the funds under Subsection (a)(3) shall be apportioned to the municipality.

(e) In a district created by a municipality, the board may spend the revenue derived from the sales and use tax distributed under Section 321.108, Tax Code, only for a purpose authorized by Section 363.151.

(f) The budget distribution described by Subsection (a) or (e) shall be computed after a county or municipality has been properly reimbursed for expenses described by Section 363.062.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1101 (H.B. 3417), Sec. 3, eff. June 15, 2007.

Sec. 363.1541. REDUCTION OF TAX RATE FOR CERTAIN DISTRICTS. (a) This section applies only to a district created by a municipality that has elected to be added to the territory of a regional transportation authority under Section 452.6025, Transportation Code.

(b) The board shall reduce the sales and use tax imposed for the benefit of the district to the highest rate that will not impair the imposition of the regional transportation authority's sales and use tax on or before the effective date of the addition of the municipality to the authority as determined by the executive committee of the regional transportation authority under Section 452.6025, Transportation Code.

Added by Acts 2003, 78th Leg., ch. 915, Sec. 4, eff. June 20, 2003.

Sec. 363.155. RULES AND PROCEDURES. (a) A board may adopt rules governing district-funded programs and the functions of district staff.

(b) The board may prescribe accounting and control procedures for the district.

(c) The board is subject to the administrative procedure law, Chapter 2001, Government Code.

(d) Subsection (c) does not apply to a district that contains only one municipality.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1219, Sec. 2, eff. Sept. 1, 1999.

Sec. 363.156. PURCHASING. (a) Except as provided by Subsection (b), the board may prescribe the method of making purchases and expenditures by and for the district.

(b) To the extent competitive bidding procedures in Title 8 apply, the board may not enter purchasing contracts that involve spending more than $25,000 unless the board complies with:

(1) Subchapter C, Chapter 262, if the district was created by a county; or

(2) Chapter 252, if the district was created by a municipality.

(c) If the political subdivision that created the district has a purchasing agent authorized by law, that agent shall serve as purchasing agent for the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 115, Sec. 6, eff. Sept. 1, 2001.

Sec. 363.157. PROPERTY TO BE USED IN ADMINISTRATION. The board may lease or acquire in another manner facilities, equipment, or other property for the sole purpose of administering the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. July 1, 1997.

Sec. 363.158. REIMBURSEMENT FOR SERVICES. (a) A county or municipality located entirely outside the boundaries of the district shall, on request, reimburse a district for the district's cost of including in a district program a resident of that county or municipality.

(b) The board may require reimbursement from the state for the district's cost of including in a district program or facility a person who is a resident of the state but is not a resident of the district.

(c) On behalf of the district, the board may contract with a municipal or county government or with the state or federal government for the municipal, county, state, or federal government to reimburse the district for including a person in a district program.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. July 1, 1997.

Sec. 363.159. SERVICE CONTRACTS. When acting on behalf of the district, the board may contract with the following entities to furnish the staff, facilities, equipment, programs, and services the board considers necessary for the effective operation of the district:

(1) a municipality, county, special district, or other political subdivision of the state;

(2) a state or federal agency;

(3) an individual; or

(4) an entity in the private sector.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. July 1, 1997.

Sec. 363.160. DONATIONS, GIFTS, AND ENDOWMENTS. On behalf of the district, the board may accept donations, gifts, and endowments to be held in trust for any purpose and under any direction, limitation, or other provision prescribed in writing by the donor that is consistent with this chapter and the proper management of the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1,

1997.

Sec. 363.161. AUTHORITY TO SUE AND BE SUED. The board may sue and be sued in the name of the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

SUBCHAPTER D-1. ADDITION OF TERRITORY TO DISTRICT

Sec. 363.181. ELECTION REQUIRED. The governing body that created a district may add all or part of the territory in the political subdivision governed by that body to the district and the district may impose a tax in that territory only if the addition of the territory and the imposition of the tax are approved by a majority of the qualified voters of the territory to be added voting at an election held for that purpose.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 2, eff. June 19, 2015.

Sec. 363.182. ELECTION ORDER. (a) After a majority of the board has approved a budget plan and a crime control plan in accordance with Section 363.061 that include the proposed addition of territory, a majority of the board may order that an additional election be held.

(b) An order calling an election under Subsection (a) must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open;

(4) the location of the polling places;

(5) in summary form, the approved budget plan and crime control plan that include the proposed addition of territory; and

(6) the proposed rate of the sales and use tax to be imposed in the territory to be added.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 2,

eff. June 19, 2015.

Sec. 363.183. NOTICE OF ELECTION. In addition to the notice required by Section 4.003(c), Election Code, the board shall give notice of an election to add territory to the district by publishing a substantial copy of the election order in a newspaper with general circulation in the territory to be added once a week for two consecutive weeks. The first publication must appear before the 35th day before the date set for the election.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 2, eff. June 19, 2015.

Sec. 363.184. BALLOT PROPOSITION. The ballot for an election to add territory to a district shall be printed to permit voting for or against the proposition: "The addition of _____ (description of territory to be added) to the _____ (name of the political subdivision that created the district) Crime Control and Prevention District dedicated to crime reduction programs and the adoption of a proposed local sales and use tax in the territory to be added at a rate of _____ (rate specified in the election order)."

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 2, eff. June 19, 2015.

Sec. 363.185. ELECTION RESULTS. (a) If a majority of the votes cast in the election favor the addition of the territory to the district, the board shall issue an order declaring the territory added to the boundaries of the district.

(b) If a majority of the votes cast in the election do not favor the addition of territory to the district, the board may not order another election on the matter before the first anniversary of the date of the most recent election.

(c) The provisions of Section 321.102, Tax Code, governing the application of a municipal sales and use tax in the event of a change in the boundaries of a municipality apply to the application of a tax imposed under this chapter to territory added under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1096 (H.B. 2883), Sec. 2, eff. June 19, 2015.

SUBCHAPTER E. DISTRICT FINANCES

Sec. 363.201. FISCAL YEAR. (a) The board shall establish the fiscal year for the district, and the district shall operate on the basis of that year.

(b) The fiscal year may not be changed more than once in a 24-month period.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.202. AUDITS AND DISTRICT RECORDS. (a) The board shall have an annual audit made of the financial condition of the district by an independent auditor.

(b) The annual audit and other district records shall be open to inspection during regular business hours at the principal office of the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.203. ANNUAL BUDGET PROPOSAL. (a) The board shall propose an annual budget based on the apportionment described by Section 363.154. The board shall consider the applications for program funding in preparing the proposed budget.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;

(2) the amount of cash on hand to the credit of each fund of the district;

(3) the amount of money received by the district from all sources during the previous year;

(4) the estimated amount of money available to the district from all sources during the current fiscal year;

(5) the amount of money needed to fund programs approved for funding by the board;

(6) the amount of money requested for programs that were not approved for funding by the board;

(7) the tax rate for the next fiscal year;

(8) the amount of the balances expected at the end of the year in which the budget is being prepared; and

(9) the estimated amount of revenues and balances available to cover the proposed budget.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.204. ADOPTION OF BUDGET BY BOARD. (a) Not later than the 100th day before the date each fiscal year begins, the board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper with general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) Not later than the 80th day before the date each fiscal year begins, the board shall adopt a budget. The board may make any changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(e) Not later than the 10th day after the date the budget is adopted, the board shall submit the budget to the governing body of the political subdivision that created the district.

(f) The board by rule may adopt procedures for adopting a budget different from the procedures outlined in this subchapter, but the board must hold public hearings relating to the budget.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.205. APPROVAL OF BUDGET BY GOVERNING BODY OF CREATING POLITICAL SUBDIVISION. (a) Not later than the 45th day before the date each fiscal year begins, the governing body of the political subdivision that created the district shall hold a public hearing on the budget adopted by the board and submitted to the governing body.

(b) The governing body must publish notice of the hearing in a

newspaper with general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and to participate at the hearing.

(d) Not later than the 30th day before the date the fiscal year begins, the governing body shall approve or reject the budget submitted by the board. The governing body may not amend the budget.

(e) If the governing body rejects the budget submitted by the board, the governing body and the board shall meet and together amend and approve the budget before the beginning of the fiscal year.

(f) The budget may be amended after the beginning of the fiscal year on approval by the board and the governing body.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.206. LIMITATIONS ON EXPENDITURES AND INVESTMENTS. (a) Money may be spent only for an expense included in the annual budget or an amendment to it.

(b) A district may not incur a debt payable from revenues of the district other than the revenues on hand or to be on hand in the current or immediately following fiscal year of the district.

(c) The board may not invest district funds in funds or securities other than:

(1) bonds of the United States;

(2) certificates of indebtedness issued by the United States secretary of the treasury;

(3) bonds of this state or a county, municipality, or school district of this state;

(4) shares or share accounts of savings and loan associations organized under the laws of this state or federal savings and loan associations domiciled in this state, if the shares or share accounts are insured by the Federal Deposit Insurance Corporation; or

(5) investments specified by Chapter 2256, Government Code.

(d) Subsection (b) does not apply to an expenditure related to, or an obligation issued or incurred in connection with, the financing of the construction or equipping of police facilities. Funds received by a municipality or other political subdivision of the

state from a district for the financing of construction or equipping of police facilities may be used by the municipality or other political subdivision to secure the payment of bonds or other obligations issued by the municipality or other political subdivision to finance the construction or equipping of facilities described in Subsection (e), notwithstanding any law to the contrary.

(e) For purposes of this chapter, "police facility" means a police station or substation, police storefront, municipal court, jail, or minimum security facility.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1219, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.105, eff. Sept. 1, 2001.

Sec. 363.207. ACCOUNT OF DISBURSEMENTS OF DISTRICT. Not later than the 60th day after the last day of each fiscal year, an administrator shall prepare for the board a sworn statement of the amount of money that belongs to the district and an account of the disbursements of that money.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.208. DEPOSIT OF FUNDS. (a) The board shall deposit district funds in a special account in the treasury of the political subdivision that created the district.

(b) District funds, other than those invested as provided by Section 363.206(c), shall be deposited as received in the treasury of the political subdivision and must remain on deposit.

(c) The board shall reimburse the political subdivision for any costs, other than personnel costs, the political subdivision incurs for performing the duties under this section.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.209. APPLICATIONS FOR PROGRAM FUNDING. (a) An

officer of the political subdivision that created the district or the head of a department of that political subdivision may, with the consent of the political subdivision, apply to the board for funding of a program as described by Section 363.151.

(b) If the district was created by a county, the chief administrative officer of a municipality that is completely or partly located within the district may, with the consent of the governing body of the municipality, apply to the board for funding of a program as described by Section 363.151.

(c) An application under this section must be submitted not later than the 140th day before the date the fiscal year begins, unless an exception has been adopted by rule.

(d) The board by rule may adopt application procedures.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.210. BONDS PROHIBITED. The board may not issue or sell general obligation bonds, revenue bonds, or refunding bonds.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

SUBCHAPTER F. REFERENDUM ON CONTINUATION OR DISSOLUTION OF DISTRICT

Sec. 363.251. REFERENDUM AUTHORIZED. (a) The board may hold a referendum on the question of whether to:

(1) continue the district; or

(2) dissolve the district.

(b) A board may order a referendum authorized by this subchapter on its own motion by a majority vote of its members.

(c) The board shall order a referendum authorized by this subchapter:

(1) on presentation of a petition that requests continuation or dissolution of the district and complies with the requirements of Sections 363.252-363.256; or

(2) if a majority of the governing body of the political subdivision that created the district by resolution requests a referendum on continuation or dissolution after notice and a public hearing on the matter.

(d) The board may not hold a referendum under this subchapter earlier than the fourth anniversary of the date the district was created or earlier than the third anniversary of the date of the last continuation or dissolution referendum.

(e) For a continuation referendum, the ballot shall be printed to permit voting for or against the proposition: "Whether the _____ (name of the political subdivision that created the district) Crime Control and Prevention District should be continued and the crime control and prevention district sales and use tax should be continued."

(f) For a dissolution referendum, the ballot shall be printed to permit voting for or against the proposition: "Whether the _____ (name of the political subdivision that created the district) Crime Control and Prevention District should be dissolved and the crime control and prevention district sales and use tax should be abolished."

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1219, Sec. 4, eff. Sept. 1, 1999.

Sec. 363.2515. CONTINUATION OF DISTRICT: CERTAIN POLITICAL SUBDIVISIONS. (a) The board or the commissioners court of the county or governing body of the municipality that created the district may specify the number of years for which a district should be continued.

(b) A district may be continued under Subsection (a) only for 5, 10, 15, or 20 years.

(c) For a continuation referendum under this section, the ballot shall be printed to permit voting for or against the proposition: "Whether the _____ Crime Control and Prevention District should be continued for _____ years and the crime control and prevention district sales tax should be continued for _____ years."

Added by Acts 1999, 76th Leg., ch. 1219, Sec. 5, eff. Sept. 1, 1999.

Sec. 363.252. APPLICATION FOR PETITION. (a) On written application of 10 or more registered voters of the district, the

clerk of the political subdivision that created the district shall issue to the applicants a petition to be circulated among registered voters for their signatures.

(b) To be valid, an application for a petition to continue the district must contain:

(1) the following heading: "Application for a Petition for a Local Option Referendum to Continue the Crime Control and Prevention District and to Continue the Crime Control and Prevention District Sales and Use Tax";

(2) the following statement of the issue to be voted on: "Whether the _____ (name of the political subdivision that created the district) Crime Control and Prevention District should be continued and the crime control and prevention district sales and use tax should be continued";

(3) the following statement immediately above the signatures of the applicants: "It is the purpose and intent of the applicants whose signatures appear below that the crime control and prevention district be continued and the crime control and prevention district sales and use tax in _____ (name of the political subdivision that created the district) be continued"; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

(c) To be valid, an application for a petition to dissolve the district must contain:

(1) the following heading: "Application for a Petition for a Local Option Referendum to Dissolve the Crime Control and Prevention District and to Abolish the Crime Control and Prevention District Sales and Use Tax";

(2) the following statement of the issue to be voted on: "Whether the _____ (name of the political subdivision that created the district) Crime Control and Prevention District should be dissolved and the crime control and prevention district sales and use tax should be abolished";

(3) the following statement immediately above the signatures of the applicants: "It is the purpose and intent of the applicants whose signatures appear below that the crime control and prevention district be dissolved and the crime control and prevention district sales and use tax in _____ (name of the political subdivision that created the district) be abolished"; and

(4) the printed name, signature, residence address, and

voter registration certificate number of each applicant.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.253. PETITION. (a) To be valid, a petition for a referendum to continue a district must contain:

(1) the following heading: "Petition for a Local Option Referendum to Continue the _____ (name of the political subdivision that created the district) Crime Control and Prevention District and to Continue the Crime Control and Prevention District Sales and Use Tax";

(2) a statement of the issue to be voted on in the same words used in the application;

(3) the following statement immediately above the signatures of the petitioners: "It is the purpose and intent of the petitioners whose signatures appear below that the crime control and prevention district be continued and the crime control and prevention district sales and use tax in _____ (name of the political subdivision that created the district) be continued";

(4) lines and spaces for the names, signatures, residence addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the clerk of the political subdivision on each page.

(b) To be valid, a petition for a referendum to dissolve a district must contain:

(1) the following heading: "Petition for a Local Option Referendum to Dissolve the _____ (name of the political subdivision that created the district) Crime Control and Prevention District and to Abolish the Crime Control and Prevention District Sales and Use Tax";

(2) a statement of the issue to be voted on in the same words used in the application;

(3) the following statement immediately above the signatures of the petitioners: "It is the purpose and intent of the petitioners whose signatures appear below that the crime control and prevention district be dissolved and the crime control and prevention district sales and use tax in _____ (name of the political

subdivision that created the district) be abolished";

(4) lines and spaces for the names, signatures, residence addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the clerk of the political subdivision on each page.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.254. COPIES OF APPLICATION AND PETITION. The clerk of the political subdivision shall keep an application and a copy of the petition in the files of the clerk's office. The clerk shall issue to the applicants as many copies as they request.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.255. FILING OF PETITION. To form the basis for the ordering of a referendum, the petition must:

(1) be filed with the clerk of the political subdivision not later than the 60th day after the date of its issuance; and

(2) contain at least a number of signatures of registered voters of the political subdivision equal to five percent of the number of votes cast in the political subdivision for all candidates for governor in the most recent gubernatorial general election.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.256. REVIEW BY CLERK. (a) The clerk of the political subdivision shall, on the request of any person, check each name on a petition to determine whether the signer is a registered voter of the district. A person requesting verification by the clerk shall pay the clerk a sum equal to 20 cents for each name before the verification begins.

(b) The clerk may not count a signature if the clerk has a reason to believe that:

(1) it is not the actual signature of the purported signer;

(2) the voter registration certificate number is not correct;

(3) it is a duplication either of a name or of handwriting used in any other signature on the petition;

(4) the residence address of the signer is not correct; or

(5) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.257. CERTIFICATION. Not later than the 40th day after the date a petition is filed, excluding Saturdays, Sundays, and legal holidays, the clerk of the political subdivision shall certify to the board the number of registered voters signing the petition.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.258. ELECTION ORDER. (a) The board shall record on its minutes the date the petition is filed and the date it is certified by the clerk.

(b) If the petition contains the required number of signatures and is in proper order, the board shall, at its next regular session after the certification by the clerk, order a referendum to be held at the regular polling place in each election precinct in the political subdivision on the next uniform election date authorized by Section 41.001(a), Election Code, that occurs at least 20 days after the date of the order.

(c) The board shall state in the order the proposition to be voted on in the referendum. The order is prima facie evidence of compliance with all provisions necessary to give it validity.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.259. APPLICABILITY OF ELECTION CODE. A referendum authorized by this subchapter shall be held and the returns shall be prepared and canvassed in conformity with the Election Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.260. RESULTS OF REFERENDUM. (a) If less than a majority of the votes cast in a continuation referendum are for the continuation of a district or if a majority of the votes cast in a dissolution referendum are for dissolution of the district:

(1) the board shall certify that fact to the secretary of state not later than the 10th day after the date of the canvass of the returns; and

(2) the district is dissolved and ceases to operate on the earlier of:

(A) the last day of the district's fiscal year; or

(B) the 180th day after the date that the continuation or dissolution referendum is held.

(b) If a majority of the votes cast in a continuation referendum are for the continuation of the district or if less than a majority of the votes cast in a dissolution referendum are for dissolution of the district, another referendum may not be held except as authorized by Section 363.251.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1219, Sec. 6, eff. Sept. 1, 1999.

Sec. 363.261. ELECTION CONTEST. Not later than the 30th day after the date the result of a referendum is declared, any qualified voter of the district may contest the election by filing a petition in a district court located in the district.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Sec. 363.262. EFFECTIVE DATE OF TAX CHANGE. (a) If less than

a majority of the votes cast in a continuation referendum are for the continuation of the district or if a majority of the votes cast in a dissolution referendum are for dissolution of the district, the board shall notify the comptroller in writing of the results of the referendum not later than the 10th day after the date the referendum returns are canvassed.

(b) If the district is to be dissolved as a result of the referendum, the abolition of the local crime control sales and use tax takes effect on the first day of the first calendar quarter that occurs after the expiration of the first complete calendar quarter that occurs after the comptroller receives a notice of the results of the continuation or dissolution referendum.

(c) If the comptroller determines that an effective date provided by Subsection (b) will occur before the comptroller can reasonably take the action required to implement abolition of the tax, the comptroller may extend the effective date until the final day of the succeeding calendar quarter.

Added by Acts 2001, 77th Leg., ch. 1263, Sec. 4, eff. Sept. 1, 2001.

SUBCHAPTER G. DISTRICT DISSOLUTION

Sec. 363.301. TIME FOR DISSOLUTION OF DISTRICT. (a) The district is dissolved on the first uniform election date that occurs after the fifth anniversary of the date the district began to levy taxes for district purposes if the district has not held a continuation or dissolution referendum.

(b) The district is dissolved on the first uniform election date that occurs after the fifth anniversary of the date of the most recent continuation or dissolution referendum.

(c) Subsection (b) does not apply to a district that is continued under Section 363.2515, and that district is dissolved at the end of the period for which it was continued.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.08(e), eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1420 (S.B. 575), Sec. 1, eff. June 19, 2009.

Sec. 363.302. DISSOLUTION OF DISTRICT. (a) On the date that the district is dissolved, the district shall convey or transfer, as provided by Subsection (h):

(1) title to land, buildings, real and tangible improvements, and equipment owned by the district;

(2) operating funds and reserves for operating expenses and funds that have been budgeted by the district for the remainder of the fiscal year in which the district is dissolved to support crime control activities and programs for residents of the political subdivision that created the district;

(3) taxes levied by the district during the current year for crime control purposes;

(4) funds established for payment of indebtedness assumed by the district; and

(5) any accumulated employee retirement funds.

(b) After the date the district is dissolved, the district may not impose taxes for district purposes or for providing crime control activities and programs for the residents of the district.

(c) If on the date that the district is dissolved the district has outstanding short-term or long-term liabilities, the board shall, not later than the 30th day after the date of the dissolution, adopt a resolution certifying each outstanding short-term and long-term liability. The political subdivision that created the district shall assume the outstanding short-term and long-term liabilities. The political subdivision shall collect the sales and use tax under Section 321.108 or 323.105, Tax Code, for the remainder of the calendar year and may by resolution of its governing body continue to collect the tax for an additional calendar year if the revenue from the tax is needed to retire liabilities of the district that were assumed by the political subdivision. The governing body shall notify the comptroller of this continuation not later than the 60th day before the date the tax would otherwise expire. Any tax collected after the liabilities have been retired shall be transferred or conveyed as provided by Subsection (a).

(d) The district and the board may continue to operate for a period not to exceed two months after carrying out the responsibilities required by Subsections (a) and (c). The board and the district are continued in effect for the purpose of satisfying these responsibilities.

(e) If the board and the district are continued in effect under

Subsection (d), the board and district are dissolved entirely on the first day of the month following the month in which the board issues an order certifying to the secretary of state that no responsibilities of Subsections (a) and (c) are left unsatisfied.

(f) A district or board that continues to operate under Subsection (d) may not incur any new liabilities without the approval of the governing body of the political subdivision that created the district. Not later than the 60th day after the date of the dissolution referendum, the governing body shall review the outstanding liabilities of the district and set a specific date by which the political subdivision must retire the district's outstanding liabilities.

(g) On the date that the district is dissolved, district-funded programs, including additional courts, shall immediately terminate and district-funded personnel, except personnel required to retire the responsibilities of the district, are terminated.

(h) In a district created by a county, the board shall convey or transfer the value of the items described by Subsection (a) following the apportionment formula described by Section 363.154(a). In a district created by a municipality, the board shall convey or transfer the value of the items described by Subsection (a) to the municipality.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.03(a), eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1101 (H.B. 3417), Sec. 4, eff. June 15, 2007.

CHAPTER 364. ENFORCEMENT OF PUBLIC CAMPING BANS

Sec. 364.001. DEFINITIONS. In this chapter:

(1) "Local entity" means:

(A) the governing body of a municipality or county;

(B) an officer or employee of or a division, department, or other body that is part of a municipality or county, including a sheriff, municipal police department, municipal attorney, or county attorney; and

(C) a district attorney or criminal district attorney.

(2) "Policy" includes a formal, written rule, ordinance,

order, or policy and an informal, unwritten policy.

(3) "Public camping ban" means a law, rule, ordinance, order, or other regulation that prohibits camping in a public place, including Section 48.05, Penal Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 3, eff. September 1, 2021.

Sec. 364.002. POLICY ON CAMPING BANS. (a) A local entity may not adopt or enforce a policy under which the entity prohibits or discourages the enforcement of any public camping ban.

(b) In compliance with Subsection (a), a local entity may not prohibit or discourage a peace officer or prosecuting attorney who is employed by or otherwise under the direction or control of the entity from enforcing a public camping ban.

(c) This section does not prohibit a policy that encourages diversion or a provision of services in lieu of citation or arrest.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 3, eff. September 1, 2021.

Sec. 364.003. INJUNCTIVE RELIEF. (a) The attorney general may bring an action in a district court in Travis County or in a county in which the principal office of the entity is located to enjoin a violation of Section 364.002.

(b) The attorney general may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 3, eff. September 1, 2021.

Sec. 364.004. DENIAL OF STATE GRANT FUNDS. (a) A local entity may not receive state grant funds, and state grant funds for the local entity shall be denied, for the state fiscal year following the year in which a final judicial determination in an action brought under Section 364.003 is made that the entity has intentionally

violated Section 364.002.

(b) The comptroller shall adopt rules to implement this section uniformly among the state agencies from which state grant funds are distributed to a municipality or county.

(c) A local entity that has not violated Section 364.002 may not be denied state grant funds, regardless of whether the entity is a part of another entity that is in violation of that section.

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 3, eff. September 1, 2021.

CHAPTER 365. TEMPORARY SECURE WEAPON STORAGE FOR CERTAIN PUBLIC BUILDINGS

Sec. 365.001. APPLICABILITY. (a) This chapter applies to a building or portion of a building:

(1) that is:

(A) used by a political subdivision of this state; and

(B) generally open to the public; and

(2) in which:

(A) carrying a handgun or other firearm, location-restricted knife, club, or other weapon on the premises or part of the premises would violate Chapter 46, Penal Code, or other law; or

(B) the political subdivision in control of the building, by sign or otherwise, prohibits handguns or other firearms, location-restricted knives, clubs, or other weapons on the premises or part of the premises.

(b) This chapter does not apply to:

(1) a penal institution, as that term is defined by Section 1.07, Penal Code; or

(2) a public primary or secondary school or institution of higher education.

Added by Acts 2021, 87th Leg., R.S., Ch. 786 (H.B. 29), Sec. 2, eff. September 1, 2021.

Sec. 365.002. TEMPORARY SECURE WEAPON STORAGE. (a) A political subdivision may provide temporary secure weapon storage for a building or portion of a building to which this chapter applies for persons who enter the building or portion of the building with a

weapon prohibited in that building or portion of the building.

(b) The temporary secure weapon storage may be provided by:

(1) self-service weapon lockers described by Section 365.003; or

(2) other temporary secure weapon storage operated at all times by a designated employee of the political subdivision under Section 365.004.

Added by Acts 2021, 87th Leg., R.S., Ch. 786 (H.B. 29), Sec. 2, eff. September 1, 2021.

Sec. 365.003. SELF-SERVICE WEAPON LOCKERS FOR TEMPORARY SECURE STORAGE. (a) A political subdivision may provide self-service weapon lockers for the temporary secure storage of any weapon prohibited in a building or portion of a building.

(b) A self-service weapon locker must allow secure locking by the user and:

(1) provide a key for reopening; or

(2) reopen by electronic means, such as by a fingerprint scan or entry of a numeric code.

(c) A political subdivision may require a person to submit the person's name, the number of the person's driver's license or other form of identification, and the person's telephone number as a condition for use of a self-service weapon locker.

(d) A person placing a weapon in a self-service weapon locker may designate an alternate person to whom the weapon may be released if the person is not able to reclaim the person's weapon before the 30th day after the date the weapon was placed in the locker.

Added by Acts 2021, 87th Leg., R.S., Ch. 786 (H.B. 29), Sec. 2, eff. September 1, 2021.

Sec. 365.004. TEMPORARY SECURE WEAPON STORAGE ADMINISTERED BY EMPLOYEE OF POLITICAL SUBDIVISION. (a) A political subdivision may provide temporary secure weapon storage operated by a designated employee of the political subdivision for a building or portion of a building in which weapons are prohibited.

(b) The weapons in temporary secure weapon storage must be held in a safe, locker, or other location that is locked and accessible

only to the designated employee.

(c) If a person chooses to give to the designated employee the person's weapon for temporary secure storage, the employee shall:

(1) securely affix a claim tag to the weapon;

(2) provide the person with a claim receipt for reclaiming the weapon;

(3) record the person's name, the number of the person's driver's license or other form of identification, and the person's telephone number; and

(4) if designated by the person placing the weapon in temporary secure weapon storage, record the name of an alternate person to whom the weapon may be released if the person is not able to reclaim the person's weapon before the 30th day after the date the weapon was placed in storage.

(d) A person may reclaim the person's weapon by showing the designated employee operating the temporary secure weapon storage:

(1) the claim receipt given to the person at the time the weapon was placed in temporary secure storage; or

(2) the person's driver's license or other form of identification.

(e) A political subdivision that provides temporary secure weapon storage under this section shall ensure that:

(1) the temporary secure weapon storage is available and monitored by a designated employee of the political subdivision at all times that the building or portion of the building is open to the public; and

(2) a person who is choosing to place the weapon in storage or retrieving the weapon from storage is not required to wait more than a reasonable period.

Added by Acts 2021, 87th Leg., R.S., Ch. 786 (H.B. 29), Sec. 2, eff. September 1, 2021.

Sec. 365.005. FEES. A political subdivision under this chapter may collect a fee of not more than $5 for the use of a self-service weapon locker or other temporary secure weapon storage.

Added by Acts 2021, 87th Leg., R.S., Ch. 786 (H.B. 29), Sec. 2, eff. September 1, 2021.

Sec. 365.006. UNCLAIMED WEAPONS. (a) A weapon that is unclaimed at the end of a business day may be removed from the self-service weapon locker or other temporary secure storage and placed in another secure location.

(b) If practicable, the political subdivision shall notify the person who placed the weapon in a self-service weapon locker or other temporary secure storage that the weapon is in the custody of the political subdivision and is subject to forfeiture if not reclaimed before the 30th day after the date the weapon was placed in a self-service weapon locker or other temporary secure storage. If the person provided a telephone number when the weapon was placed in a self-service weapon locker or other temporary secure storage, the political subdivision shall notify the person by using that telephone number.

(c) At each location where a weapon may be placed in a self-service weapon locker or other temporary secure storage, the political subdivision shall post a sign that describes the process for reclaiming a weapon left in a self-service weapon locker or other temporary secure storage for more than one business day.

(d) The political subdivision may require identification or other evidence of ownership before returning the unclaimed weapon. On return of the weapon, the political subdivision may charge a fee of not more than $10 per day and not to exceed a total of $150 for the extended storage of the weapon.

(e) If the weapon is not reclaimed before the 30th day after the date the weapon was placed in a self-service weapon locker or other temporary secure storage, the weapon is forfeited.

(f) If the forfeited weapon may not be legally possessed in this state, the political subdivision shall turn the weapon over to local law enforcement as evidence or for destruction.

(g) If a person may legally possess the weapon in this state:

(1) the forfeited weapon may be sold at public sale by an auctioneer licensed under Chapter 1802, Occupations Code; or

(2) the law enforcement agency holding the weapon may release the weapon to another person if:

(A) the person:

(i) claims a right to or interest in the weapon and provides an affidavit confirming that the person wholly or partly owns the weapon or otherwise has a right to or interest in the weapon; or

(ii) is an alternate person designated by the person under Section 365.003(d) or 365.004(c)(4); and

(B) for a weapon that is a firearm, the law enforcement agency conducts a check of state and national criminal history record information and verifies that the person may lawfully possess a firearm under 18 U.S.C. Section 922(g).

(h) Only a firearms dealer licensed under 18 U.S.C. Section 923 may purchase a firearm at public sale under this section.

(i) Proceeds from the sale of a weapon under this section shall be transferred, after the deduction of auction costs, to the treasury of the political subdivision.

Added by Acts 2021, 87th Leg., R.S., Ch. 786 (H.B. 29), Sec. 2, eff. September 1, 2021.

CHAPTER 370. MISCELLANEOUS PROVISIONS RELATING TO HEALTH AND PUBLIC SAFETY OF MORE THAN ONE TYPE OF LOCAL GOVERNMENT

Sec. 370.001. HEALTH CONTRACTS IN BORDER MUNICIPALITIES OR COUNTIES. The governing body of a municipality or county that has a boundary that is contiguous with the border between this state and the Republic of Mexico may contract with a border municipality or state in the Republic of Mexico to provide or receive health services.

Added by Acts 1991, 72nd Leg., ch. 769, Sec. 1, eff. Aug. 26, 1991.

Sec. 370.003. MUNICIPAL OR COUNTY POLICY REGARDING ENFORCEMENT OF DRUG LAWS. The governing body of a municipality, the commissioners court of a county, or a sheriff, municipal police department, municipal attorney, county attorney, district attorney, or criminal district attorney may not adopt a policy under which the entity will not fully enforce laws relating to drugs, including Chapters 481 and 483, Health and Safety Code, and federal law.

Added by Acts 1997, 75th Leg., ch. 971, Sec. 1, eff. Sept. 1, 1997.

Sec. 370.004. NOTICE OF DAMAGED FENCE. (a) A peace officer employed by a political subdivision of this state who investigates or

responds to an incident in which a motor vehicle damages a fence shall, if the peace officer reasonably believes that the fence is intended to contain livestock or other animals:

(1) immediately determine the owner of the land on which the damaged fence is located; and

(2) notify the owner of the type and extent of the damage, if the owner has registered with the political subdivision in accordance with Subsection (c).

(b) A peace officer is not liable to an owner of land or any other person for damage resulting from the peace officer's failure to notify the owner under Subsection (a).

(c) A landowner must provide an agency or department of a political subdivision that employs peace officers with the following information if the landowner would like a peace officer of that agency or department to notify the landowner of damage under Subsection (a):

(1) the landowner's name, address, and telephone number; and

(2) the location and a description of the landowner's property.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 2, eff. September 1, 2007.

Sec. 370.005. MUNICIPAL OR COUNTY POLICY REGARDING MAINTENANCE OF PORTABLE FIRE EXTINGUISHERS IN GOVERNMENT-OWNED VEHICLES. (a) In this section, "local government" means:

(1) a county;

(2) a municipality; or

(3) an agency, department, or other division of a county or municipality.

(b) A local government that adopts an ordinance, order, or policy requiring motor vehicles owned by the local government to be equipped with portable fire extinguishers shall require maintenance to be performed on the portable fire extinguishers annually in accordance with standards that are at least as stringent as the National Fire Protection Association Standard Number 10, Portable Fire Extinguishers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 125 (H.B. 564), Sec. 2, eff.

May 27, 2011.

Sec. 370.006. ASSISTANCE IN MAN-MADE OR NATURAL DISASTER. (a) The governing body of a municipality, the chief of the fire department, or an emergency management director or coordinator designated for the municipality under Section 418.1015, Government Code, may request or accept any care, assistance, or advice described by Section 79.003(a), Civil Practice and Remedies Code, including the loan or operation of construction equipment or other heavy equipment by the owner or operator of the equipment, as applicable, or the donation of resources to the extent the governing body, chief, or emergency management director or coordinator believes necessary to address a man-made or natural disaster.

(b) The commissioners court of a county, the county judge, the county fire marshal, an incorporated volunteer fire department under contract with a county under Section 352.001, a volunteer fire department described by Section 352.005, as applicable, or an emergency management director or coordinator designated for the county under Section 418.1015, Government Code, may request or accept any care, assistance, or advice described by Section 79.003(a), Civil Practice and Remedies Code, including the loan or operation of construction equipment or other heavy equipment by the owner or operator of the equipment, as applicable, or the donation of resources to the extent the commissioners court, county judge, county fire marshal, volunteer fire department, or emergency management director or coordinator believes necessary to address a man-made or natural disaster.

(c) A person as defined by Section 79.001, Civil Practice and Remedies Code, who provides care, assistance, or advice to a municipality or county in the manner described by this section is immune from civil liability as provided by Section 79.003, Civil Practice and Remedies Code.

(d) Subsection (a) or (b) does not authorize the acceptance of care, assistance, or advice in violation of any other law or contractual agreement that prohibits the acceptance of that care, assistance, or advice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 141 (H.B. 487), Sec. 1, eff. May 24, 2013.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 204 (S.B. 1319), Sec. 2

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 425 (H.B. 1819), Sec. 6, see other Sec. 370.007.

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1049 (S.B. 252), Sec. 2, see other Sec. 370.007.

Sec. 370.007. PARTICIPATION AGREEMENT FOR OVERDOSE MAPPING. (a) A local health authority or law enforcement agency shall enter into a participation agreement with an entity that maintains a computerized system for mapping overdoses of one or more controlled substances for public safety purposes.

(b) A local health authority or law enforcement agency shall provide information received under Section 161.045, Health and Safety Code, to the entity with which the authority or agency has a participation agreement under Subsection (a) for purposes of entering the information into the computerized system. The local health authority or law enforcement agency is not required to provide information received under Section 161.045, Health and Safety Code, regarding a controlled substance to the entity with which the authority or agency has a participation agreement if the entity does not maintain an overdose map that includes the controlled substance.

(c) A local health authority or law enforcement agency or an employee of a local health authority or law enforcement agency is not subject to civil or criminal liability for providing information received under Section 161.045, Health and Safety Code, to an entity pursuant to a participation agreement under this section.

(d) Information provided to an entity pursuant to a participation agreement under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(e) This section does not waive sovereign immunity to suit or liability.

Added by Acts 2023, 88th Leg., R.S., Ch. 204 (S.B. 1319), Sec. 2, eff. September 1, 2023.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 425 (H.B.

1819), Sec. 6

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 204 (S.B. 1319), Sec. 2, see other Sec. 370.007.

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1049 (S.B. 252), Sec. 2, see other Sec. 370.007.

Sec. 370.007. JUVENILE CURFEWS PROHIBITED. (a) Notwithstanding any other law, a political subdivision may not adopt or enforce an order, ordinance, or other measure that imposes a curfew to regulate the movements or actions of persons younger than 18 years of age.

(b) This section does not apply to a curfew implemented under Chapter 418, Government Code, for purposes of emergency management.

Added by Acts 2023, 88th Leg., R.S., Ch. 425 (H.B. 1819), Sec. 6, eff. September 1, 2023.

Text of section as added by Acts 2023, 88th Leg., R.S., Ch. 1049 (S.B. 252), Sec. 2

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 204 (S.B. 1319), Sec. 2, see other Sec. 370.007.

For text of section as added by Acts 2023, 88th Leg., R.S., Ch. 425 (H.B. 1819), Sec. 6, see other Sec. 370.007.

Sec. 370.007. APPOINTING OR EMPLOYING CERTAIN VETERANS TO POSITION REQUIRING LICENSURE. (a) In this section, "commission" means the Texas Commission on Law Enforcement.

(b) Notwithstanding any other law, a political subdivision that appoints or employs a person to hold a position that requires the person to be licensed by the commission may appoint or employ a legal permanent resident of the United States to hold the position if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and holds the appropriate license issued by the commission.

(c) A political subdivision may not appoint or employ a person under this section to hold a supervisory position until the person becomes a United States citizen.

Added by Acts 2023, 88th Leg., R.S., Ch. 1049 (S.B. 252), Sec. 2, eff. September 1, 2023.

TITLE 12. PLANNING AND DEVELOPMENT
SUBTITLE A. MUNICIPAL PLANNING AND DEVELOPMENT
CHAPTER 371. MUNICIPAL PLANNING AND GROWTH
SUBCHAPTER A. PROMOTIONAL ADVERTISING BY POPULOUS MUNICIPALITIES

Sec. 371.001. AUTHORITY TO APPROPRIATE; CREATION OF BOARD. (a) The governing body of a municipality with a population of 1.3 million or less may appropriate from its general fund an amount not to exceed one percent of the general fund budget for that year for the purpose of advertising the municipality and promoting its growth and development.

(b) Before the governing body may spend money appropriated under this section, the governing body shall create a citizens' advisory board in accordance with this subchapter. The governing body may give the board the name Municipal Board of Development or another name.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 102, eff. Sept. 1, 1991. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 184, eff. September 1, 2023.

Sec. 371.002. COMPOSITION OF BOARD. (a) The governing body of the municipality shall appoint five members to the board.

(b) A board member serves two-year terms and may not receive compensation for service on the board. A board member serves only in an advisory capacity and is not a public officer or agent of the municipality.

(c) A member's service on the board does not invalidate a contract with the municipality in which the member has an interest.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 371.003. DUTIES OF BOARD. (a) The board shall:

(1) investigate various methods of advertising and promoting the municipality; and

(2) recommend to the governing body of the municipality:

(A) the best method of spending available funds for advertisement and promotion; and

(B) the amount to be appropriated in the next budget of the municipality for advertisement and promotion.

(b) A recommendation of the board is not binding on the governing body of the municipality. The governing body shall determine the methods of advertising and promotion to be used and, subject to this subchapter, the amount to be appropriated.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 371.004. MANAGEMENT OF BOARD. To carry out this subchapter, the governing body of the municipality may appoint a person to manage the promotion, development, tourism, and convention activities of the municipality or may designate an official of the municipality to perform that function. The person appointed or designated shall serve ex officio as secretary of the board created for the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 371.005. CUMULATIVE EFFECT. This subchapter is cumulative of powers that a municipality obtains under its charter and does not impair such a power.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. APPROPRIATIONS FOR PROMOTIONAL ADVERTISING BY GENERAL-LAW MUNICIPALITIES

Sec. 371.021. APPROPRIATION OF FUNDS FOR ADVERTISING. (a) The governing body of a general-law municipality may appropriate from its general fund an amount not to exceed five cents per $100 assessed valuation for the purpose of advertising the municipality and promoting its growth and development.

(b) Before the governing body may appropriate money under this section, a majority of voters voting in an election on the issue must approve the authority of the governing body to make appropriations under this section not to exceed the limit imposed by Subsection (a).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. JOINT MUNICIPAL PLANNING

Sec. 371.041. PLANNING; FUNDING. A municipality may compile statistics, conduct studies, and formulate plans related to future growth and development of the municipality. The municipality must pass an ordinance authorizing the expenditure of funds for those purposes before making the expenditures.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 371.042. CREATION OF JOINT PLANNING COMMISSION. (a) If the area in which a municipality may exercise zoning authority is adjacent to any area in which one or more other municipalities may exercise zoning authority, the municipality may participate in a joint planning commission with one or more of the other municipalities. To participate in a joint planning commission, a municipality must adopt the provisions of this subchapter.

(b) The governing bodies of each municipality participating in a joint planning commission shall appoint an equal number of representatives to the planning commission.

(c) The planning commission shall meet and determine the area under its jurisdiction, describe the area by metes and bounds in writing and on a map, and file a copy of the description with the county clerk of the county in which the municipalities are located.

(d) A municipality participating in the planning commission may contribute to or spend public funds for the commission to achieve the purposes of the commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 371.043. MASTER PLAN; OTHER DUTIES. (a) A joint planning commission shall prepare an organized master plan for the orderly growth of the area under the jurisdiction of the commission. In addition to other provisions, the plan must include:

(1) highway design;

(2) street and park layout; and

(3) designation of areas for the location of schools,

residences, business and commerce, industry, and water reservoirs.

(b) For a master plan to be effective, each municipality in the area must approve the plan.

(c) To prepare the master plan, a joint planning commission may:

(1) employ engineers, clerks, secretaries, and other administrative and field personnel; and

(2) make aerial photographs, land surveys, and topography studies.

(d) A joint planning commission shall:

(1) keep a complete record of all of its expenditures, meetings, activities, and plans;

(2) submit to each municipality participating in the commission regular reports stating the commission's income, expenditures, accounts, and progress; and

(3) prepare and submit to each municipality participating in the commission an annual audit of expenditures, accounts, and funds under the supervision of the commission.

(e) A joint planning commission shall make any report, account, or record requested by ordinance or resolution by a municipality participating in the commission. Additionally, the commission shall perform any other duty requested by ordinance or resolution by a municipality if the duty is not inconsistent with the purposes of this subchapter and the request is approved by a majority of the governing bodies of the municipalities participating in the commission.

(f) Any duty imposed on or power granted to a joint planning commission under this section must be approved by ordinance by each municipality participating in the commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 371.044. OPEN MEETINGS AND RECORDS. Meetings of a joint planning commission are open to the public. Records, minutes, books, and accounts of the commission are subject to public inspection.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 371.045. CUMULATIVE EFFECT. Authority under this

subchapter is cumulative of other authority that a municipality has to expend public funds from the municipal treasury for the purposes of municipal planning and does not limit that other authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 372. IMPROVEMENT DISTRICTS IN MUNICIPALITIES AND COUNTIES

SUBCHAPTER A. PUBLIC IMPROVEMENT DISTRICTS

Sec. 372.001. SHORT TITLE. This subchapter may be cited as the Public Improvement District Assessment Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 372.0015. DEFINITION. In this subchapter, "extraterritorial jurisdiction" means extraterritorial jurisdiction as determined under Chapter 42.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 76(b), eff. Aug. 28, 1989.

Sec. 372.002. EXERCISE OF POWERS. Powers granted under this subchapter may be exercised by a municipality or county in which the governing body of the municipality or county initiates or receives a petition requesting the establishment of a public improvement district. A petition must comply with the requirements of Section 372.005.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 2, eff. June 16, 2001.

Sec. 372.003. AUTHORIZED IMPROVEMENTS. (a) If the governing body of a municipality or county finds that it promotes the interests of the municipality or county, the governing body may undertake an improvement project that confers a special benefit on a definable part of the municipality or county or the municipality's extraterritorial jurisdiction. A project may be undertaken in the municipality or county or the municipality's extraterritorial jurisdiction.

(b) A public improvement project may include:

(1) landscaping;

(2) erection of fountains, distinctive lighting, and signs;

(3) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way;

(4) construction or improvement of pedestrian malls;

(5) acquisition and installation of pieces of art;

(6) acquisition, construction, or improvement of libraries;

(7) acquisition, construction, or improvement of off-street parking facilities;

(8) acquisition, construction, improvement, or rerouting of mass transportation facilities;

(9) acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements;

(10) the establishment or improvement of parks;

(11) projects similar to those listed in Subdivisions (1)-(10);

(12) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;

(13) special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement;

(14) payment of expenses incurred in the establishment, administration, and operation of the district; and

(15) the development, rehabilitation, or expansion of affordable housing.

(b-1) Payment of expenses under Subsection (b)(14) may also include expenses related to the operation and maintenance of mass transportation facilities.

(c) A public improvement project may be limited to the provision of the services described by Subsection (b)(13).

(d) A county may establish a public improvement district unless within 30 days of a county's action to approve such a district, a home rule municipality objects to its establishment within the municipality's corporate limits or extraterritorial jurisdiction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1, Sec. 76(c), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1341, Sec. 3, eff. June 16, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 340 (H.B. 1029), Sec. 1, eff. June 19, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 970 (H.B. 1400), Sec. 1, eff. September 1, 2011.

Sec. 372.0035. COMMON CHARACTERISTIC OR USE FOR PROJECTS IN MUNICIPALITIES. (a) This section applies only to:

(1) a municipality that:

(A) has a population of more than 900,000 and less than two million;

(B) has a population of more than 325,000 and less than 625,000;

(C) has a population of more than 197,000 and less than 200,500;

(D) has a population of more than 256,000 and less than 257,000;

(E) has a population of more than 20,000 and is wholly located in a county with a population of more than 62,000 and less than 68,000;

(F) has a population of more than 200,000 and borders Lake Lewisville;

(G) has a population of more than 138,000 and is wholly located in a county with a population of less than 265,000; or

(H) has a population of more than 130,000 and less than 140,000 and is wholly located in a county with a population of more than 900,000; and

(2) a public improvement district established under this subchapter and solely composed of territory in which the only businesses are:

(A) hotels with 100 or more rooms ordinarily used for sleeping, if the district is established by a municipality described by Subdivision (1)(A);

(B) hotels with 75 or more rooms ordinarily used for sleeping, if the district is established by a municipality described by Subdivision (1)(B), (D), (E), (F), (G), or (H); or

(C) hotels with 10 or more rooms ordinarily used for

sleeping, if the district is established by a municipality described by Subdivision (1)(C).

(a-1) This section applies only to a public improvement district established by a municipality under this subchapter and solely composed of territory in which the only businesses are one or more hotels.

(b) A municipality may undertake a project that confers a special benefit on areas that share a common characteristic or use. The areas may be noncontiguous.

(c) This section does not prohibit a municipality from or limit a municipality to establishing a district that includes a noncontiguous area authorized by this subchapter.

(d) A municipality that undertakes a project under this section may:

(1) adopt procedures for the collection of assessments under this chapter that are consistent with the municipality's procedures for the collection of a hotel occupancy tax under Chapter 351, Tax Code; and

(2) pursue remedies for the failure to pay an assessment under this chapter that are available to the municipality for failure to pay a hotel occupancy tax under Chapter 351, Tax Code.

(e) A district created after September 1, 2019, may undertake a project under this section only for advertising, promotion, or business recruitment, as authorized by Section 372.003(b)(13), directly related to hotels.

(e-1) A municipality may undertake a project under this section only for a purpose described by Section 372.003(b)(13).

Added by Acts 2011, 82nd Leg., R.S., Ch. 970 (H.B. 1400), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1330 (S.B. 660), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 447 (S.B. 837), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 59 (S.B. 385), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 60 (S.B. 642), Sec. 1, eff. May 20, 2019.

Acts 2019, 86th Leg., R.S., Ch. 244 (H.B. 1417), Sec. 1, eff. May

28, 2019.

Acts 2019, 86th Leg., R.S., Ch. 994 (H.B. 1135), Sec. 1, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 995 (H.B. 1136), Sec. 1, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 995 (H.B. 1136), Sec. 2, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 997 (H.B. 1474), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1271 (S.B. 386), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 185(a), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 185(b), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 185(c), eff. September 1, 2023.

Sec. 372.004. COMBINED IMPROVEMENTS. An improvement project may consist of an improvement on more than one street or of more than one type of improvement. A project described by this section may be included in one proceeding and financed as one improvement project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(d), eff. Aug. 28, 1989.

Sec. 372.005. PETITION. (a) A petition for the establishment of a public improvement district must state:

(1) the general nature of the proposed improvement;

(2) the estimated cost of the improvement;

(3) the boundaries of the proposed assessment district;

(4) the proposed method of assessment, which may specify included or excluded classes of assessable property;

(5) the proposed apportionment of cost between the public improvement district and the municipality or county as a whole;

(6) whether the management of the district is to be by the municipality or county, the private sector, or a partnership between the municipality or county and the private sector;

(7) that the persons signing the petition request or concur with the establishment of the district; and

(8) that an advisory body may be established to develop and recommend an improvement plan to the governing body of the municipality or county.

(b) The petition is sufficient if signed by:

(1) owners of taxable real property representing more than 50 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and

(2) record owners of real property liable for assessment under the proposal who:

(A) constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or

(B) own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

(b-1) Notwithstanding Subsection (b), a petition for the establishment of a public improvement district described by Section 372.0035(a) or (a-1) is sufficient only if signed by record owners of taxable real property liable for assessment under the proposal who constitute:

(1) more than 60 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and

(2) more than 60 percent of:

(A) all record owners of taxable real property that are liable for assessment under the proposal; or

(B) the area of all taxable real property that is liable for assessment under the proposal.

(c) The petition may be filed with the municipal secretary or other officer performing the functions of the municipal secretary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(e), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1341, Sec. 4, eff. June 16, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 447 (S.B. 837), Sec. 2, eff.

September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 995 (H.B. 1136), Sec. 3, eff. June 14, 2019.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 185(d), eff. September 1, 2023.

Sec. 372.0055. DEFERRED ASSESSMENT; ESTIMATE. If a proposed improvement under Section 372.005 includes a deferred assessment, before holding the hearing required by Section 372.009, the governing body of the municipality or county must estimate:

(1) the appraised value of taxable real property liable for assessment in the district; and

(2) the cost of the improvement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 970 (H.B. 1400), Sec. 3, eff. September 1, 2011.

Sec. 372.006. FINDINGS. If a petition that complies with this subchapter is filed, the governing body of the municipality or county may make findings by resolution as to the advisability of the proposed improvement, its estimated cost, the method of assessment, and the apportionment of cost between the proposed improvement district and the municipality or county as a whole.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 5, eff. June 16, 2001.

Sec. 372.007. FEASIBILITY REPORT. (a) Before holding the hearing required by Section 372.009, the governing body of the municipality may use the services of municipal employees, the governing body of the county may use the services of county employees, or the governing body of the municipality or county may employ consultants to prepare a report to determine whether an improvement should be made as proposed by petition or otherwise or whether the improvement should be made in combination with other improvements authorized under this subchapter. The governing body may also require that a preliminary estimate of the cost of the improvement or combination of improvements be made.

(b) For the purpose of determining the feasibility and desirability of an improvement district, the governing body may take other preliminary steps before the hearing required by Section 372.009, before establishing a public improvement district, or before entering into a contract.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 6, eff. June 16, 2001.

Sec. 372.008. ADVISORY BODY. (a) After receiving a petition that complies with Section 372.005, the governing body of the municipality or county may appoint an advisory body with the responsibility of developing and recommending an improvement plan to the governing body.

(b) The composition of the advisory body must include:

(1) owners of taxable real property representing more than 50 percent of the appraised value of taxable real property liable for assessment under the proposal, as determined by the current roll of the appraisal district in which the property is located; and

(2) record owners of real property liable for assessment under the proposal who:

(A) constitute more than 50 percent of all record owners of property that is liable for assessment under the proposal; or

(B) own taxable real property that constitutes more than 50 percent of the area of all taxable real property that is liable for assessment under the proposal.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 7, eff. June 16, 2001.

Sec. 372.009. HEARING. (a) A public improvement district may be established and improvements provided by the district may be financed under this subchapter only after the governing body of the municipality or county holds a public hearing on the advisability of the improvement.

(b) The hearing may be adjourned from time to time until the governing body makes findings by resolution as to:

(1) the advisability of the improvement;

(2) the nature of the improvement;
(3) the estimated cost of the improvement;
(4) the boundaries of the public improvement district;
(5) the method of assessment; and
(6) the apportionment of costs between the district and the municipality or county as a whole.

(c) Notice of the hearing must be given in a newspaper of general circulation in the municipality or county. If any part of the improvement district is to be located in the municipality's extraterritorial jurisdiction or if any part of the improvements is to be undertaken in the municipality's extraterritorial jurisdiction, the notice must also be given in a newspaper of general circulation in the part of the extraterritorial jurisdiction in which the district is to be located or in which the improvements are to be undertaken. The final publication of notice must be made before the 15th day before the date of the hearing. The notice must state:
(1) the time and place of the hearing;
(2) the general nature of the proposed improvement;
(3) the estimated cost of the improvement;
(4) the boundaries of the proposed assessment district;
(5) the proposed method of assessment; and
(6) the proposed apportionment of cost between the improvement district and the municipality or county as a whole.

(d) Written notice containing the information required by Subsection (c) must be mailed before the 15th day before the date of the hearing. The notice must be addressed to "Property Owner" and mailed to the current address of the owner, as reflected on tax rolls, of property subject to assessment under the proposed public improvement district.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(f), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1341, Sec. 8, eff. June 16, 2001.

Sec. 372.010. IMPROVEMENT ORDER. (a) During the six-month period after the date of the final adjournment of the hearing under Section 372.009, the governing body of the municipality or county may authorize an improvement district if, by majority vote of all members of the governing body, the members adopt a resolution authorizing the

district in accordance with its finding as to the advisability of the improvement. Except for a resolution authorizing a district described by Section 372.0035, the resolution must provide that the authorization takes effect on the date the resolution is adopted.

(b) Not later than the seventh day after the date the governing body of a municipality or county adopts a resolution under Subsection (a), the municipality or county shall file a copy of the resolution with the county clerk of each county in which all or part of the improvement district is located.

(c) Actual construction of an improvement may not begin until after the 20th day after the date the authorization takes effect and may not begin if during that 20-day period written protests signed by at least two-thirds of the owners of record of property within the improvement district or by the owners of record of property comprising at least two-thirds of the total area of the district are filed with the municipal or county secretary or other officer performing the duties of the municipal or county secretary. A person whose name appears on a protest may withdraw the name from the protest at any time before the governing body of the municipality or county convenes to determine the sufficiency of the protest.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(g), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1341, Sec. 9, eff. June 16, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 1, eff. September 1, 2021.

Sec. 372.011. DISSOLUTION. A public hearing may be called and held in the same manner as a hearing under Section 372.009 for the purpose of dissolving a district if a petition requesting dissolution is filed and the petition contains the signatures of at least enough property owners in the district to make a petition sufficient under Section 372.005(b). If the district is dissolved, the district nonetheless shall remain in effect for the purpose of meeting obligations of indebtedness for improvements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 372.012. AREA OF DISTRICT. The area of a public improvement district to be assessed according to the findings of the governing body of the municipality or county may be less than the area described in the proposed boundaries stated by the notice under Section 372.009. The area to be assessed may not include property not described by the notice as being within the proposed boundaries of the district unless a hearing is held to include the property and notice for the hearing is given in the same manner as notice under Section 372.009.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 10, eff. June 16, 2001.

Sec. 372.0121. INCLUSION OF PROPERTY IN COMMON CHARACTERISTIC PUBLIC IMPROVEMENT DISTRICT. (a) Notwithstanding Section 372.012 or any other requirement in this chapter, the governing body of a municipality may include property in a public improvement district described by Section 372.0035 after the establishment of the district if:

(1) the property is a hotel; and

(2) a sufficient number of the record owners of the real property currently included and proposed to be included in the district have consented to be included in the district by signing the original petition to establish the district or by signing a petition or written consent to include property in the district.

(b) Notwithstanding Subsection (a), no newly constructed hotel property may be added to the district unless the record owner of the property consents to its inclusion.

(c) For purposes of Subsection (a)(2), the number of consenting record owners is sufficient if the record owners own more than 60 percent of appraised value of taxable real property liable for assessment in the district, as determined by the current appraisal roll of the appraisal district in which the property is located, and:

(1) constitute more than 60 percent of all record owners of taxable real property liable for assessment in the district; or

(2) own, in aggregate, more than 60 percent of the area of all taxable real property liable for assessment in the district.

Added by Acts 2019, 86th Leg., R.S., Ch. 995 (H.B. 1136), Sec. 4, eff. June 14, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 587 (S.B. 804), Sec. 1, eff. June 14, 2021.

Sec. 372.013. SERVICE PLAN. (a) The advisory body shall prepare an ongoing service plan and present the plan to the governing body of the municipality or county for review and approval. The governing body may approve the plan only by ordinance or order. The governing body may assign responsibility for the plan to another entity in the absence of an advisory body.

(b) The service plan must:

(1) cover a period of at least five years;

(2) define the annual indebtedness and the projected costs for improvements; and

(3) include a copy of the notice form required by Section 5.014, Property Code.

(c) Not later than the seventh day after the date the governing body of a municipality or county approves a service plan, the municipality or county shall file a copy of the plan with the county clerk of each county in which all or part of the public improvement district is located.

(d) The governing body of the municipality or county shall review and update the service plan annually for the purpose of determining the annual budget for improvements. Except for the service plan for a district described by Section 372.0035, the governing body may amend or update the plan only by ordinance or order.

(e) Not later than the seventh day after the date the governing body of a municipality or county amends or updates the service plan, including the notice form required by Section 5.014, Property Code, the municipality or county shall file a copy of the amended or updated plan with the county clerk of each county in which all or part of the public improvement district is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 11, eff. June 16, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 2, eff. September 1, 2021.

Sec. 372.014. ASSESSMENT PLAN; PAYMENT BY EXEMPT JURISDICTIONS. (a) An assessment plan must be included in the annual service plan.

(b) The municipality or county is responsible for payment of assessments against exempt municipal or county property in the district. Payment of assessments by other exempt jurisdictions must be established by contract. An assessment paid by the municipality or county under this subsection is considered to have been paid by special assessment for the purposes of Subsection (a).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(h), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1341, Sec. 12, eff. June 16, 2001.

Sec. 372.015. DETERMINATION OF ASSESSMENT. (a) The governing body of the municipality or county shall apportion the cost of an improvement to be assessed against property in an improvement district. The apportionment shall be made on the basis of special benefits accruing to the property because of the improvement.

(b) Cost of an improvement may be assessed:

(1) equally per front foot or square foot;

(2) according to the value of the property as determined by the governing body, with or without regard to improvements on the property; or

(3) in any other manner that results in imposing equal shares of the cost on property similarly benefitted.

(c) The governing body may establish by ordinance or order:

(1) reasonable classifications and formulas for the apportionment of the cost between the municipality or county and the area to be assessed; and

(2) the methods of assessing the special benefits for various classes of improvements.

(d) The amount of assessment for each property owner may be adjusted following the annual review of the service plan.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 13, eff. June 16, 2001.

Sec. 372.016. ASSESSMENT ROLL. (a) After the total cost of an improvement is determined, the governing body of the municipality or county shall prepare a proposed assessment roll. The roll must state the assessment against each parcel of land in the district, as determined by the method of assessment chosen by the municipality or county under this subchapter.

(b) The governing body shall file the proposed assessment roll with the municipal secretary or other officer performing the functions of the municipal secretary or in a district formed by a county, the county tax assessor-collector. The proposed assessment roll is subject to public inspection. The governing body shall require the municipal secretary or other officer or county tax assessor-collector to publish notice of the governing body's intention to consider the proposed assessments at a public hearing. The notice must be published in a newspaper of general circulation in the municipality or county before the 10th day before the date of the hearing. If any part of the improvement district is located in the municipality's extraterritorial jurisdiction or if any part of the improvements is to be undertaken in the municipality's extraterritorial jurisdiction, the notice must also be published, before the 10th day before the date of the hearing, in a newspaper of general circulation in the part of the extraterritorial jurisdiction in which the district is located or in which the improvements are to be undertaken. The notice must state:

(1) the date, time, and place of the hearing;

(2) the general nature of the improvement;

(3) the cost of the improvement;

(4) the boundaries of the assessment district; and

(5) that written or oral objections will be considered at the hearing.

(c) When the assessment roll is filed under Subsection (b), the municipal secretary or other officer shall mail to the owners of property liable for assessment a notice of the hearing. The notice must contain the information required by Subsection (b) and the secretary or other officer shall mail the notice to the last known address of the property owner. The failure of a property owner to receive notice does not invalidate the proceeding.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(i), eff. Aug. 28, 1989; Acts

2001, 77th Leg., ch. 1341, Sec. 14, eff. June 16, 2001.

Sec. 372.017. LEVY OF ASSESSMENT. (a) At or on the adjournment of the hearing referred to by Section 372.016 on proposed assessments, the governing body of the municipality or county must hear and pass on any objection to a proposed assessment. The governing body may amend a proposed assessment on any parcel.

(b) After all objections have been heard and the governing body has passed on the objections, the governing body by ordinance or order shall levy the assessment as a special assessment on the property. The governing body by ordinance or order shall specify the method of payment of the assessment. The governing body may defer an assessment until a date the governing body specifies in the ordinance or order. The governing body may provide that assessments be paid in periodic installments, at an interest rate and for a period approved by the governing body. The provision that assessments be paid in periodic installments may, but is not required to, result in level annual installment payments. The installments must be in amounts necessary to meet annual costs for improvements and must continue for:

(1) the period necessary to retire the indebtedness on the improvements; or

(2) the period approved by the governing body for the payment of the installments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 15, eff. June 16, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 320 (H.B. 621), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 970 (H.B. 1400), Sec. 4, eff. September 1, 2011.

Sec. 372.0175. CONTRACTS FOR COLLECTION OF ASSESSMENTS. The governing body of a municipality or county may contract with the governing body of another taxing unit, as defined by Section 1.04, Tax Code, or the board of directors of an appraisal district to perform the duties of the municipality or county relating to

collection of special assessments levied under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1211 (S.B. 422), Sec. 1, eff. June 17, 2011.

Sec. 372.018. INTEREST ON ASSESSMENT; LIEN. (a) An assessment bears interest at the rate specified by the governing body of the municipality or county beginning at the time or times or on the occurrence of one or more events specified by the governing body. If general obligation bonds, revenue bonds, time warrants, or temporary notes are issued to finance the improvement for which the assessment is assessed, the interest rate for that assessment may not exceed a rate that is one-half of one percent higher than the actual interest rate paid on the debt. Interest on the assessment between the effective date of the ordinance or order levying the assessment and the date the first installment is payable shall be added to the first installment. The interest on any delinquent installment shall be added to each subsequent installment until all delinquent installments are paid.

(b) An assessment or reassessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is:

(1) a first and prior lien against the property assessed;

(2) superior to all other liens and claims except liens or claims for state, county, school district, or municipality ad valorem taxes; and

(3) a personal liability of and charge against the owners of the property regardless of whether the owners are named.

(c) The lien is effective from the date of the ordinance or order levying the assessment until the assessment is paid.

(d) The lien runs with the land and that portion of an assessment payment that has not yet come due is not eliminated by foreclosure of an ad valorem tax lien.

(e) The assessment lien may be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body. Foreclosure of accrued installments does not eliminate the outstanding principal balance of the assessment. Any purchaser of the property in foreclosure takes the property subject to the assessment lien and any associated obligations.

(f) Delinquent installments of the assessment shall incur interest, penalties, and attorney's fees in the same manner as delinquent ad valorem taxes. The owner of assessed property may pay at any time all or any part of the assessment, with interest that has accrued on the assessment, on any lot or parcel.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(j), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1341, Sec. 16, eff. June 16, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 320 (H.B. 621), Sec. 2, eff. June 19, 2009.

Sec. 372.019. SUPPLEMENTAL ASSESSMENTS. After notice and a hearing, the governing body of the municipality or county may make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement. Notice must be given and the hearing held under this section in the same manner as required by Sections 372.016 and 372.017.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 17, eff. June 16, 2001.

Sec. 372.020. REASSESSMENT. The governing body of the municipality or county may make a reassessment or new assessment of a parcel of land if:

(1) a court of competent jurisdiction sets aside an assessment against the parcel;

(2) the governing body determines that the original assessment is excessive; or

(3) on the written advice of counsel, the governing body determines that the original assessment is invalid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 18, eff. June 16, 2001.

Sec. 372.021. SPECIAL IMPROVEMENT DISTRICT FUND. (a) A municipality or county that intends to create a public improvement

district may by ordinance or order establish a special improvement district fund in the municipal or county treasury.

(b) The municipality or county annually may levy a tax to support the fund.

(c) The fund may be used to:

(1) pay the costs of planning, administration, and an improvement authorized by this subchapter;

(2) prepare preliminary plans, studies, and engineering reports to determine the feasibility of an improvement; and

(3) if ordered by the governing body of the municipality or county, pay the initial cost of the improvement until temporary notes, time warrants, or improvement bonds have been issued and sold.

(d) The fund is not required to be budgeted for expenditure during any year, but the amount of the fund must be stated in the municipality's or county's annual budget. The amount of the fund must be based on an annual service plan that describes the public improvements for the fiscal year.

(e) A grant-in-aid or contribution made to the municipality or county for the planning and preparation of plans for an improvement authorized under this subchapter may be credited to the special improvement district fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 19, eff. June 16, 2001.

Sec. 372.022. SEPARATE FUNDS. If bonds are issued, a separate public improvement district fund shall be created in the municipal or county treasury for each district. Proceeds from the sale of bonds, temporary notes, and time warrants, and other sums appropriated to the fund by the governing body of the municipality or county shall be credited to the fund. The fund may be used solely to pay costs incurred in making an improvement. When an improvement is completed, the balance of the part of the assessment that is for improvements shall be transferred to the fund established for the retirement of bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 20, eff. June 16, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 320 (H.B. 621), Sec. 3, eff. June

19, 2009.

Sec. 372.023. PAYMENT OF COSTS. (a) Costs of improvements may be paid or reimbursed by any combination of the methods described by this section if the improvements are dedicated, conveyed, leased, or otherwise provided to or for the benefit of:

(1) a municipality or county;

(2) a political subdivision or other entity exercising the powers granted under this subchapter as authorized by other law; or

(3) an entity that:

(A) is approved by the governing body of an entity described by Subdivision (1) or (2); and

(B) is authorized by order, ordinance, resolution, or other official action to act for an entity described by Subdivision (1) or (2).

(a-1) The payment or reimbursement may be provided before or after a method of payment or reimbursement authorized by this section is entered into or issued.

(b) A cost payable by the municipality or county as a whole may be paid from general funds available for the purpose or other available general funds.

(c) A cost payable from a special assessment that has been paid in full shall be paid from that assessment.

(d) Costs payable from a special assessment that is payable in installments may be paid by any combination of the following methods:

(1) under an installment sales contract or a reimbursement agreement between the municipality or county and the person who acquires, installs, or constructs the improvements;

(2) as provided by a temporary note or time warrant issued by the municipality or county and payable to the person who acquires, installs, or constructs the improvements; or

(3) by the issuance and sale of bonds under Section 372.024.

(d-1) An installment sales contract, reimbursement agreement, temporary note, or time warrant described by Subsection (d) may be assigned by the payee without the consent of the municipality or county.

(e) The interest rate on unpaid amounts due under an installment sales contract, reimbursement agreement, temporary note,

or time warrant described by Subsection (d):

(1) may not exceed, for a period of not more than five years, as determined by the governing body of the municipality or county, five percent above the highest average index rate for tax-exempt bonds reported in a daily or weekly bond index approved by the governing body and reported in the month before the date the obligation was incurred; and

(2) after the period described by Subdivision (1), may not exceed two percent above the bond index rate described by Subdivision (1).

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 384, Sec. 2, eff. June 17, 2011.

(g) The cost of more than one improvement may be paid:

(1) from a single issue and sale of bonds without other consolidation proceedings before the bond issue; or

(2) under a single installment sales contract, reimbursement agreement, temporary note, or time warrant.

(h) The costs of any improvement include interest payable on a temporary note or time warrant and all costs incurred in connection with the issuance of bonds under Section 372.024 and may be included in the assessments against the property in the improvement district as provided by this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 76(k), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1341, Sec. 21, eff. June 16, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 320 (H.B. 621), Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 384 (S.B. 412), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 384 (S.B. 412), Sec. 2, eff. June 17, 2011.

Sec. 372.024. GENERAL OBLIGATION AND REVENUE BONDS. General obligation bonds issued to pay costs under Section 372.023(d) must be issued under the provisions of Subtitles A and C, Title 9, Government Code. Revenue bonds issued to pay costs under that subsection may be issued from time to time in one or more series and are to be payable

from and secured by liens on all or part of the revenue derived from improvements authorized under this subchapter, including revenue derived from installment payments of special assessments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.330, eff. Sept. 1, 2001.

Sec. 372.025. TERMS AND CONDITIONS OF BONDS. (a) Revenue bonds may be issued to mature serially or in any other manner but must mature not later than 40 years after their date. A provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under terms and conditions specified in the ordinance or order authorizing the issuance of the bonds.

(b) The bonds shall be executed and the bonds and interest coupons appertaining to them are negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code (Section 1.101 et seq., Business & Commerce Code). The ordinance or order authorizing the issuance of the bonds must specify:

(1) whether the bonds are issued registrable as to principal alone or as to both principal and interest;

(2) whether the bonds are redeemable before maturity;

(3) the form, denomination, and manner of issuance;

(4) the terms, conditions, and other details applying to the bonds including the price, terms, and interest rates on the bonds; and

(5) the manner of sale of the bonds.

(c) The ordinance or order authorizing the issuance of the bonds may specify that the proceeds from the sale of the bonds:

(1) be used to pay interest on the bonds during and after the period of acquisition or construction of an improvement financed through the sale of the bonds;

(2) be used for creating a reserve fund for payment of the principal of and interest on the bonds and for creating other funds; and

(3) may be placed in time deposit or invested, until needed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 22, eff. June 16, 2001.

Sec. 372.026. PLEDGES. (a) In this section, "obligation" means bonds, temporary notes, time warrants, or an obligation under an installment sale contract or reimbursement agreement.

(b) For the payment of obligations issued or agreed to under this subchapter and the payment of principal, interest, and any other amounts required or permitted in connection with the obligations, the governing body of the municipality or county may pledge all or part of the income from improvements financed under this subchapter, including income received in installment payments under Section 372.023.

(c) Pledged income must be fixed and collected in amounts sufficient, with other pledged resources, to pay principal, interest, and other expenses related to the obligations, and to the extent required by the ordinance, order, or agreement authorizing the obligations, to pay for the operation, maintenance, and other expenses related to improvements authorized by this subchapter.

(d) The obligations may also be secured by mortgages or deeds of trust on any real property related to the facilities authorized under this subchapter that are owned or are to be acquired by the municipality or county and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. The governing body may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrance as evidence of the indebtedness.

(e) The governing body may pledge to the payment of obligations all or part of a grant, donation, revenue, or income received or to be received from the government of the United States or any other public or private source, whether or not it is received pursuant to an agreement or otherwise.

(f) The governing body may enter into an agreement with a corporation created by the municipality or county under the Texas Constitution or other law that provides for payment of amounts pledged under this section to the corporation to secure indebtedness issued by the corporation to finance an improvement project, including indebtedness to pay capitalized interest and a reserve fund permitted by this subchapter for revenue or general obligation bonds issued under this subchapter and indebtedness issued to pay the corporation's costs of issuance. In addition, the agreement may provide that:

(1) the corporation is responsible for managing the

district; or

(2) title to one or more improvements will be held by the corporation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 23, eff. June 16, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 320 (H.B. 621), Sec. 5, eff. June 19, 2009.

Sec. 372.027. REFUNDING BONDS. (a) Revenue bonds issued under this subchapter may be refunded or refinanced by the issuance of refunding bonds, under terms or conditions set forth in ordinances or orders of the municipality or county issuing the bonds. The provisions of this subchapter applying generally to revenue bonds, including provisions related to the issuance of those bonds, apply to refunding bonds authorized by this section. The refunding bonds may be sold and delivered in amounts necessary for the principal, interest, and any redemption premium of the bonds to be refunded, on the date of the maturity of the bond or any redemption date of the bond.

(b) Refunding bonds may be issued for exchange with the bonds they are refunding. The comptroller of public accounts shall register refunding bonds described by this subsection and deliver the bonds to holders of bonds being refunded in accordance with the ordinance or order authorizing the issuance of refunding bonds. The exchange may be made in one delivery or several installment deliveries.

(c) General obligation bonds issued under this subchapter may be refunded in the manner provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1341, Sec. 24, eff. June 16, 2001.

Sec. 372.028. APPROVAL AND REGISTRATION. (a) Revenue bonds issued under this subchapter and a record of the proceedings authorizing their issuance must be submitted to the attorney general for examination. If bonds state that they are secured by a pledge of revenue or rentals from a contract or lease, a copy of the contract

or lease and a description of the proceedings authorizing the contract or lease must also be submitted to the attorney general.

(b) If the attorney general determines that the bonds were authorized and the contracts or leases related to the bonds were made in accordance with the law, the attorney general shall approve the bonds and the contract or lease. On the approval of the attorney general, the comptroller of public accounts shall register the bonds.

(c) Bonds and contracts or leases approved and registered under this section are valid and binding obligations for all purposes in accordance with their terms and are incontestable in any court or other forum.

(d) General obligation bonds issued under this subchapter shall be approved and registered as provided by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 372.029. AUTHORIZED INVESTMENTS; SECURITY. (a) Bonds issued under this subchapter are legal and authorized investments for:

(1) banks, trust companies, and savings and loan associations;

(2) all insurance companies;

(3) fiduciaries, trustees, and guardians; and

(4) interest funds, sinking funds, and other public funds of the state or of an agency, subdivision, or instrumentality of the state, including a county, municipality, school district, or other district, public agency, or body politic.

(b) Bonds issued under this subchapter may be security for deposits of public funds of the state or of an agency, subdivision, or instrumentality of the state, including a county, municipality, school district, or other district, public agency, or body politic, to the extent of the market value of the bonds, if accompanied by any appurtenant unmatured interest coupons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 372.030. SUBCHAPTER NOT EXCLUSIVE. This subchapter is an alternative to other methods by which a municipality may finance public improvements by assessing property owners.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. IMPROVEMENT DISTRICTS IN HOME-RULE MUNICIPALITIES

Sec. 372.041. AUTHORITY OF HOME-RULE MUNICIPALITY. (a) A home-rule municipality may create improvement districts for the purposes of:

(1) levying, straightening, widening, enclosing, or otherwise improving a river, creek, bayou, stream, other body of water, street, or alley;

(2) draining, grading, filling, and otherwise protecting and improving the territory within the municipality's limits;

(3) issuing bonds to finance improvements listed in this subsection; and

(4) financing an improvement described in Subchapter A.

(b) If a home-rule municipality creates an improvement district in order to make improvements authorized by this subsection, the municipality must comply with the general law of the state relating to the creation of improvement districts. Bonds issued for improvements under this section must be issued in a manner that complies with the general authority of a home-rule municipality to issue bonds.

(c) A home-rule municipality may require the owners of property in the territory specially benefitted in enhanced value by improvements made under this section to pay the costs of the improvement. If a municipality finances an improvement under this subsection, the municipality shall make a personal charge against those property owners and fix a lien against that property by special assessment. The municipality may issue assignable or negotiable certificates to pay for the costs of improvements and require the property owners to make deferred payments to retire the certificates. Interest on deferred payments may not exceed eight percent. The municipality may appoint special commissioners or provide otherwise for the making and levying of special assessments under this subsection, or may provide that the making and levying of the assessment be performed by the governing body of the municipality, in compliance with requirements for hearings and other procedures as may be adopted under or required by the municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 970 (H.B. 1400), Sec. 5, eff. September 1, 2011.

SUBCHAPTER D. REIMBURSEMENT FOR PUBLIC IMPROVEMENTS IN CERTAIN COUNTIES

Sec. 372.151. APPLICABILITY. This subchapter applies only to a county that:

(1) does not wholly contain a municipality with a population of more than 50,000; and

(2) is adjacent to at least two counties, each with a population of more than 2.1 million.

Added by Acts 2009, 81st Leg., R.S., Ch. 645 (H.B. 1730), Sec. 1, eff. June 19, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 186, eff. September 1, 2023.

Sec. 372.152. ISSUANCE OF BONDS TO REIMBURSE ACQUIRED PUBLIC IMPROVEMENTS. (a) The governing body of a municipality or county may issue and sell general obligation bonds or revenue bonds to reimburse a developer for the cost of a public improvement if:

(1) the public improvement is located in a public improvement district created on or after January 1, 2005;

(2) the public improvement has been dedicated to and accepted by the municipality or county; and

(3) before the public improvement was dedicated to and accepted by the municipality or county, the governing body of the municipality or county entered into an agreement with the developer to pay for the public improvement.

(b) General obligation bonds or revenue bonds issued under this subchapter must comply with the provisions relating to general obligation bonds or revenue bonds issued under Subchapter A.

Added by Acts 2009, 81st Leg., R.S., Ch. 645 (H.B. 1730), Sec. 1, eff. June 19, 2009.

CHAPTER 373. COMMUNITY DEVELOPMENT IN MUNICIPALITIES

Sec. 373.001. SHORT TITLE. This chapter may be cited as the Texas Community Development Act of 1975.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 373.002. LEGISLATIVE FINDING; PUBLIC PURPOSES. (a) The legislature finds that the activities specified in this chapter contribute to the development of viable urban communities by providing decent housing and a suitable living environment and by expanding economic opportunities for persons of low and moderate income.

(b) Activities conducted under this chapter are directed toward the following purposes:

(1) elimination of slums and areas affected by blight;

(2) prevention of blighting influences and of the deterioration of property and neighborhood and community facilities important to the welfare of the community;

(3) elimination of conditions detrimental to the public health, safety, and welfare;

(4) expansion and improvement of the quantity and quality of community services essential for the development of viable urban communities;

(5) more rational use of land and other natural resources;

(6) improved arrangement of residential, commercial, industrial, recreational, and other necessary activity centers;

(7) restoration and preservation of properties of special value for historic, architectural, or aesthetic reasons;

(8) reduction of the isolation of income groups in communities and geographical areas, promotion of increased diversity and vitality of neighborhoods through spatial deconcentration of housing opportunities for persons of low and moderate income, and revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; and

(9) alleviation of physical and economic distress through the stimulation of private investment and community revitalization in slum or blighted areas.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 373.003. DEFINITION. In this chapter, "community development program" means a program adopted under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 373.004. GOALS OF PROGRAM. Through a community development program, a municipality may conduct work or activities designed to:

(1) improve the living and economic conditions of persons of low and moderate income;

(2) benefit low or moderate income neighborhoods;

(3) aid in the prevention or elimination of slums and blighted areas;

(4) aid a federally assisted new community; or

(5) meet other urgent community development needs, including an activity or function specified for a community development program that incorporates a federally assisted new community.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 373.005. ELEMENTS OF PROGRAM. (a) To conduct work or activities under Section 373.004, a municipality may adopt a community development program by ordinance or resolution.

(b) A community development program may include:

(1) acquisition of real property, including air rights, water rights, and other interests in real property, that:

(A) is blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

(B) is appropriate for rehabilitation or conservation activities;

(C) is appropriate for the preservation or restoration of historic sites, the beautification of urban land, or the conservation of open spaces, natural resources, and scenic areas;

(D) is appropriate for the provision of recreational opportunities or the guidance of urban development; or

(E) is to be used for the provision of public works, facilities, or other improvements eligible for assistance under this

chapter or is to be used for other public purposes;

(2) acquisition, construction, reconstruction, or installation of public works, facilities, sites, or other improvements, including construction, reconstruction, or installation that implements design features or makes improvements that promote energy or water use efficiency;

(3) municipal code enforcement in a deteriorated or deteriorating area in which enforcement, combined with public improvements and public services, may stop the decline of the area;

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements, including rehabilitation that promotes energy or water use efficiency, including assistance in and financing of public or private acquisition of those properties for rehabilitation, and including the renovation of closed school buildings;

(5) rehabilitation of privately owned properties;

(6) special projects related to the removal of barriers that restrict the mobility of elderly and handicapped persons;

(7) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units used for the relocation of persons displaced by programs conducted under this chapter;

(8) disposition, by sale, lease, donation, or otherwise, of real property acquired under this chapter, or the retention of the property for public purposes;

(9) provision of public services not otherwise available if the services are designed to improve the community's public services and facilities, including services related to employment opportunities, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreational needs of persons residing in those areas, or are designed to coordinate public and private development programs;

(10) payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of a local community development program;

(11) payment of the cost of completing a project funded under Title I of the Housing Act of 1949 (42 U.S.C.A. Section 1450 et seq.) or a federally assisted new community assisted by loan guarantees under Title X of the National Housing Act (12 U.S.C.A. Section 1749aa et seq.) if a portion of the federally assisted area

has received grants under Section 107(A)(1) of the Housing and Community Development Act of 1974 (42 U.S.C.A. Section 5307(a)(1));

(12) relocation payments and assistance for individuals, families, businesses, organizations, and farm operations if determined by the municipality to be appropriate;

(13) activities necessary to develop a comprehensive community development plan and to develop a policy-planning-management capacity in order that recipients of assistance under this chapter may more rationally and effectively determine their needs, set long-term goals and short-term objectives, devise programs and activities to meet those goals and objectives, evaluate the progress of the programs, and carry out management, coordination, and monitoring of activities necessary for effective implementation of the programs;

(14) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of those activities and including the carrying out of activities described by Section 701(e) of the Housing Act of 1954 on the day before the date of the enactment of the federal Housing and Community Development Amendments of 1981;

(15) activities that are conducted by public or private entities if the activities are necessary or appropriate to meet the needs and objectives of the community development plan, including:

(A) acquisition of real property;

(B) acquisition, construction, reconstruction, rehabilitation, or installation of public facilities, site improvements, utilities, commercial or industrial buildings or other structures, or other commercial or industrial real property improvements; and

(C) planning;

(16) grants to:

(A) neighborhood-based nonprofit organizations, local development corporations, or other entities organized to implement neighborhood revitalization projects, community economic development projects, or energy or water conservation projects;

(B) federally assisted new communities; or

(C) neighborhood-based nonprofit organizations or other private or public nonprofit organizations for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities in which elderly families benefit as a result of living in a dwelling in which facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and as a result reduces their cost of housing;

(17) provision of assistance to private, for-profit entities if the assistance is necessary or appropriate to carry out an economic development project; and

(18) the rehabilitation or development of housing assisted under Section 17 of the United States Housing Act of 1937.

(c) A municipality may implement programs to provide financing for the acquisition, construction, improvement, or rehabilitation of privately owned buildings and other improvements or to assist private, for-profit entities if the assistance is necessary or appropriate to carry out an economic development project, through the use of loans and grants from federal money remitted to the municipality at the interest rates and on the terms and conditions determined by the municipality. A municipality may not provide municipal property or municipal funds for private purposes. The programs and financing must be in keeping with an approved community development plan that the municipality has determined to be a public purpose. A program established for financing the acquisition, construction, improvement, or rehabilitation of buildings and improvements, or for financing economic development projects, through the use of federal funds may prescribe procedures under which the owners of the buildings, improvements, or economic development projects agree to partially or fully reimburse the municipality.

(d) A municipality may issue notes or other obligations guaranteed by the secretary of housing and urban development under Section 108, Housing and Community Development Act of 1974 (42 U.S.C. Section 5308), as amended, for the purpose of providing financing for those activities described in Section 108, Housing and Community Development Act (42 U.S.C. Section 5308), as amended, in furtherance of an approved community development program. The Section 108 guaranteed notes additionally may be secured by and made payable from the same sources as obligations issued under Subchapter C, Chapter 271, Local Government Code, subject to the notice provisions set

forth therein. The Section 108 guaranteed notes or other obligations may be issued in such form, denominations, manner, terms, and conditions, bear interest at such rates, be interim or permanent notes or obligations, be subject to transfer, exchange, change, conversion, or replacement, and be sold in such manner, at such price, and under such terms, all as provided in the ordinance or resolution authorizing the issuance of such Section 108 guaranteed notes or obligations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 77(a), eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 980, Sec. 51, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 330, Sec. 1, eff. Sept. 1, 2001.

Sec. 373.006. REQUIRED PROCEDURES BEFORE ADOPTION OF COMMUNITY DEVELOPMENT PROGRAM. Before exercising powers under Section 373.005, the governing body of the municipality must:

(1) identify areas of the municipality in which predominantly low and moderate income persons reside, that are blighted or slum areas, or that are federally assisted new communities;

(2) establish community development program areas in which community development activities, building rehabilitation, or the acquisition of privately owned buildings or land is proposed;

(3) adopt, by resolution or ordinance, a plan under which citizens may publicly comment on the proposed community development program;

(4) conduct public hearings on the proposed program before the 15th day before the date of its final adoption by the governing body; and

(5) adopt the community development program by resolution or ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 373.007. LIMITATION ON MUNICIPAL POWERS; EFFECT ON URBAN RENEWAL. (a) This chapter does not grant a municipality the power of condemnation to rehabilitate or remove buildings or to acquire real property for the purpose of resale.

(b) This chapter does not authorize a municipality to implement an urban renewal project under Chapter 374 without compliance with the provisions of that chapter. This chapter does not affect the status, operations, contracts, or other obligations of any urban renewal agency created under Chapter 374. This chapter does not prevent a municipality from exercising urban renewal authority under Chapter 374.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 373A. HOMESTEAD PRESERVATION DISTRICTS AND REINVESTMENT ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 373A.001. PURPOSE. The purpose of this chapter is to:

(1) promote the ability of municipalities to increase home ownership, provide affordable housing, and prevent the involuntary loss of homesteads by existing low-income and moderate-income homeowners living in disadvantaged neighborhoods;

(2) protect a municipality's interest in improving economic and social conditions within disadvantaged communities by enhancing the viability of home ownership among low-income and moderate-income residents in areas experiencing economic pressures; and

(3) provide municipalities with a means to expand and protect the homestead interests of low-income and moderate-income families.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.002. DEFINITIONS. In this chapter:

(1) "Affordable housing" means housing that is located in a district and is affordable to households earning 70 percent or less of the area median family income, adjusted for household size, as determined annually by the United States Department of Housing and Urban Development.

(1-a) "Central business district" means a compact and contiguous geographical area of a municipality in which at least 90 percent of the land is used or zoned for commercial purposes and that has historically been the primary location in the municipality where

business has been transacted.

(2) "Community housing development organization" has the meaning assigned by 42 U.S.C. Section 12704.

(2-a) "County" means the county containing all or the greatest portion of a homestead preservation reinvestment zone. For purposes of applying other law to a district or program created under this chapter, including Chapter 311, Tax Code, a reference in the other law to a "county" has the meaning assigned by this subdivision.

(3) "District" means a homestead preservation district designated under Subchapter B.

(3-a) "Project costs" has the meaning assigned by Section 311.002(1), Tax Code.

(4) "Taxing unit" has the meaning assigned by Section 1.04, Tax Code.

(5) "Trust" means a homestead land trust created or designated under Subchapter C.

(6) "Zone" means a homestead preservation reinvestment zone created under Subchapter D.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 1, eff. September 1, 2007.

Sec. 373A.003. APPLICABILITY OF CHAPTER. (a) This chapter applies to a municipality with a population of more than 950,000 that is located in a uniform state service region with fewer than 940,000 occupied housing units as determined by the most recent United States decennial census.

(b) Subchapters A, B, C, and D apply to any municipality with a population of 1.18 million or more which is located predominantly in a county that has a total area of less than 1,000 square miles and has adopted an urban land bank demonstration program under Chapter 379C, Local Government Code.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 3, eff.

September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 96, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 187, eff. September 1, 2023.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 373A.051. MUNICIPAL POWER TO DESIGNATE DISTRICT. (a) To promote and expand the ownership and rental of affordable housing and to prevent the involuntary loss of homesteads by existing homeowners and renters living in the area, the governing body of a municipality by ordinance may designate as a homestead preservation district an area in the municipality that is eligible under Section 373A.052.

(b) The ordinance must describe the boundaries of the district and designate the powers that apply to the district under this chapter.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 711 (H.B. 3350), Sec. 1, eff. September 1, 2013.

Sec. 373A.052. ELIGIBILITY FOR DESIGNATION. (a) To be designated as a district within a municipality described by Section 373A.003(a) under this subchapter, an area must be composed of census tracts forming a spatially compact area with:

(1) fewer than 75,000 residents;

(2) an overall poverty rate that is at least two times the poverty rate for the entire municipality; and

(3) in each census tract within the area, a median family income that is less than 80 percent of the median family income for the entire municipality.

(b) To be designated as a district within a municipality described by Section 373A.003(b) under this subchapter, an area must be composed of census tracts forming a spatially compact area contiguous to a central business district and with:

(1) fewer than 75,000 residents;

(2) a median family income that is less than $30,000 according to the last decennial census; and

(3) an overall poverty rate that is at least two times the poverty rate for the entire municipality.

(c) An area that is designated as a district under this subchapter may retain its designation as a district regardless of whether the area continues to meet the eligibility criteria provided by this section, except that an area that does not elect to retain its designation as permitted by this subsection must meet all eligibility criteria to be considered for subsequent redesignation as a district.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 4, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 3, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.008, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 711 (H.B. 3350), Sec. 2, eff. September 1, 2013.

Sec. 373A.0521. DISSOLUTION. (a) The governing body of a municipality in which a district is located may adopt an ordinance dissolving the district.

(b) On the adoption of the ordinance, the district is dissolved and the municipality succeeds to the property and assets of the district and assumes all bonds, debts, obligations, and liabilities of the district.

(c) This section does not prohibit the municipality from continuing to operate programs established by the municipality, including programs established under Subchapter C, D, or E, in the area previously included in the district that are owned and operated by the municipality on the date the district is dissolved.

Added by Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 4, eff. September 1, 2007.

Sec. 373A.053. INVENTORY OF PROPERTIES. (a) The municipality and any county containing all or the greatest portion of the district shall each prepare on an annual basis an inventory of all land owned by the municipality or county, as appropriate, in the district and the current and projected uses of the land.

(b) The municipality and the county shall prepare on an annual basis a list of parcels of land for which delinquent taxes have been owed for a period of two or more years.

(c) The municipality and the county shall make the inventories prepared under Subsection (a) available to the public on request.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.054. ADDITIONAL METHODS OF INCREASING THE SUPPLY OF AFFORDABLE HOUSING. A municipality that designates a district under Section 373A.051 may provide tax-exempt bond financing, offer density bonuses, or provide other incentives to increase the supply of affordable housing and maintain the affordability of existing housing for low-income and moderate-income families.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

SUBCHAPTER C. HOMESTEAD LAND TRUST

Sec. 373A.101. CREATION. The governing body of a political subdivision by ordinance or order may create or designate under this subchapter one or more homestead land trusts, including a housing finance corporation established under Chapter 394 or a land trust operated by a community housing development organization certified by the municipality, to operate in an area that includes a district designated under Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 5, eff. September 1, 2007.

Sec. 373A.102. NATURE OF NONPUBLIC TRUST. A trust that is not created by the governing body of a political subdivision must be a nonprofit organization that is:

(1) created to acquire and hold land for the benefit of developing and preserving long-term affordable housing in the district; and

(2) exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being certified as an exempt organization under Section 501(c)(3), Internal Revenue Code of 1986.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 6, eff. September 1, 2007.

Sec. 373A.103. PURPOSE OF TRUST. The purpose of a trust is to:

(1) control local land use and reduce absentee ownership;

(2) provide affordable housing for low-income and moderate-income residents in the community;

(3) promote resident ownership and control of housing;

(4) keep housing affordable for future residents; and

(5) capture the value of public investment for long-term community benefit.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.104. BOARD OF DIRECTORS. (a) A trust shall be governed by a board of directors.

(b) If a trust holds land that provides at least 100 housing units, at least one-third of the board members must reside in housing units located on land held by the trust.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 7, eff.

September 1, 2007.

Sec. 373A.105. TITLE TO LAND. (a) A trust may retain title to land it acquires and may lease housing units located on the land or sell housing units located on the land under long-term ground leases, as provided by Section 373A.106.

(b) A trust may not transfer title to any land owned by the trust without obtaining:

(1) a unanimous vote of the board members of the trust;

(2) approval by the municipality and county in which the land is located, as provided through a resolution of the governing bodies of the municipality and county adopted with the affirmative vote of four-fifths of the members following a public hearing; and

(3) the provision by the board of the trust of advance notice to all persons who own or rent housing units located on land owned by the trust.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.106. SALE OR LEASE OF HOUSING UNITS. (a) A trust shall sell or lease all housing units only to families with a yearly income at the time of purchase or lease of the housing unit at or below 70 percent of the area median family income, adjusted for family size.

(b) At least 40 percent of the housing units sold or leased by the trust must be sold or leased to families with a yearly income at the time of purchase or lease at or below 50 percent of the area median family income, adjusted for family size.

(c) At least 10 percent of the housing units sold or leased by the trust must be sold or leased to families with a yearly income at the time of purchase or lease at or below 30 percent of the area median family income, adjusted for family size.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.107. TRANSFER FROM GOVERNMENTAL ENTITIES; FORGIVING

OUTSTANDING TAXES. (a) A governmental entity may transfer land to a trust without competitive bidding.

(b) A taxing unit may forgive outstanding taxes and fees on property transferred under this section if otherwise allowed by law.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.109. RELATION TO OTHER LAW. This subchapter does not preclude the creation of a land trust by a nonprofit organization, including a community housing development organization, under other statutory or common law or the operation of that land trust inside or outside the district.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.110. APPLICABILITY OF SUBCHAPTER TO TRUST OPERATED BY HOUSING FINANCE CORPORATION. Sections 373A.102, 373A.104, 373A.105(b), and 373A.106 do not apply to a trust operated in the district by a housing finance corporation established under Chapter 394.

Added by Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 8, eff. September 1, 2007.

SUBCHAPTER D. HOMESTEAD PRESERVATION REINVESTMENT ZONE

Sec. 373A.151. APPLICABILITY OF OTHER LAW. (a) Except as provided by this subchapter, Chapter 311, Tax Code, applies to a homestead preservation reinvestment zone created under this subchapter. To the extent of any conflict between this subchapter and Chapter 311, Tax Code, this subchapter prevails.

(b) In addition to other provisions of this subchapter that modify or supersede the application of Chapter 311, Tax Code, to a zone established under this subchapter, Sections 311.005 and 311.006, Tax Code, do not apply to a zone established under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff.

September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 9, eff. September 1, 2007.

Sec. 373A.152. GENERAL AUTHORITY TO CREATE HOMESTEAD PRESERVATION REINVESTMENT ZONE. (a) A municipality by ordinance may designate a contiguous geographical area contained entirely within the boundaries of the district as a homestead preservation reinvestment zone to develop or redevelop affordable housing if the municipality determines the zone is necessary to accomplish the purposes of this chapter.

(b) A county may participate in a homestead preservation reinvestment zone established by a municipality under Subsection (a) by adopting a final order:

(1) agreeing to the creation of the zone, the zone boundaries, and the zone termination date specified by the municipality under Section 373A.1521(1); and

(2) specifying an amount of tax increment to be deposited by the county into the tax increment fund that is equal to the amount of the tax increment specified by the municipality under Section 373A.1521(3).

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1175, Sec. 17(1), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1175, Sec. 17(1), eff. September 1, 2007.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1175, Sec. 17(1), eff. September 1, 2007.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1175, Sec. 17(1), eff. September 1, 2007.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 10, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 17(1), eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 711 (H.B. 3350), Sec. 3, eff.

September 1, 2013.

Sec. 373A.1521. CONTENTS OF REINVESTMENT ZONE ORDINANCE. The ordinance designating the homestead preservation zone must:

(1) contain the information required under Sections 311.004(a)(1), (4), and (6), Tax Code;

(2) assign a name to the zone for identification, with the first zone designated as "(Name of municipality) Homestead Preservation Reinvestment Zone Number One," and subsequently created zones assigned names in the same form numbered consecutively in the order of their designation;

(3) specify the amount of tax increment to be deposited by the municipality into the tax increment fund; and

(4) contain findings that the area is unproductive, underdeveloped, or blighted as provided by Section 1-g(b), Article VIII, Texas Constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 11, eff. September 1, 2007.

Sec. 373A.1522. EFFECTIVE DATE OF ZONE. The zone designated by the ordinance adopted under Section 373A.1521 takes effect on the date designated by the municipality in the ordinance adopted under Section 373A.1521.

Added by Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 11, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 711 (H.B. 3350), Sec. 4, eff. September 1, 2013.

Sec. 373A.1541. TAX INCREMENT FINANCING AND ABATEMENT. Designation of an area as a homestead preservation reinvestment zone is also designation of the area as a reinvestment zone for tax increment financing under Chapter 311, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 12, eff. September 1, 2007.

Sec. 373A.155. COLLECTION AND DEPOSIT OF TAX INCREMENTS. (a) The municipality designating the zone and the county shall provide for the collection of its taxes on real property located in the zone as for any other property taxed by the municipality and the county.

(a-1) The municipality shall pay into the tax increment fund an amount specified in the ordinance designating the zone.

(b) If a county elects to participate in a homestead preservation reinvestment zone, the county shall pay into the tax increment fund for the zone an amount equal to the tax increment paid by the municipality as specified in the order adopted under Section 373A.152.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 13, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 711 (H.B. 3350), Sec. 5, eff. September 1, 2013.

Sec. 373A.157. ADMINISTRATION AND USE OF TAX INCREMENT FUND. (a) The tax increment fund is administered by the governing body of the municipality in accordance with the project and reinvestment zone financing plans. Revenue from the tax increment fund must be dedicated as provided by this section to the development, construction, and preservation of affordable housing in the zone by a political subdivision, a community housing development organization certified by the municipality, a trust created or designated by a political subdivision, or another entity as provided by this section.

(b) All revenue from the tax increment fund must be expended to benefit families that have a yearly income at or below 70 percent of the area median family income, adjusted for family size.

(c) At least 50 percent of the revenue from the tax increment fund expended annually must benefit families that have a yearly income at or below 50 percent of the area median family income, adjusted for family size.

(d) At least 25 percent of the revenue from the tax increment

fund expended annually must benefit families that have a yearly income at or below 30 percent of the area median family income, adjusted for family size.

(e) The municipality must spend at least 80 percent of the revenue expended annually from the tax increment fund for project costs, including the purchase of real property, the construction or rehabilitation of affordable housing in the zone, and infrastructure improvements directly related to supporting the construction or rehabilitation of affordable housing in the zone. The municipality may spend not more than 10 percent of the revenue expended annually from the tax increment fund for administration of the zone.

(f) The municipality may provide not more than 10 percent of the revenue expended annually from the tax increment fund to designated land banks and community housing development organizations for the administration of housing-related activities in the zone.

(g) All housing created or rehabilitated with revenue from the tax increment fund must have at least a 30-year affordability period.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 14, eff. September 1, 2007.

Sec. 373A.158. ANNUAL REPORT. (a) If a county elects to participate in a homestead preservation reinvestment zone, the county is the only taxing unit entitled to receive the annual report prepared under Section 311.016(a), Tax Code.

(b) The report must include:

(1) the amount and source of revenue in the tax increment fund established for the zone;

(2) the amount and purpose of expenditures from the fund and the income levels of the persons who benefited from the expenditures;

(3) the number of parcels of property purchased, housing units rehabilitated, and housing units constructed and the income levels of the persons residing in the housing units;

(4) the tax increment base and current captured appraised value retained by the zone;

(5) the total amount of tax increments received; and

(6) any additional information necessary to demonstrate good faith compliance with the provisions of this subchapter.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1175, Sec. 17(2), eff. September 1, 2007.

(d) The municipality shall make the report available to the public on the municipality's official website.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 15, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1175 (H.B. 470), Sec. 17(2), eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 711 (H.B. 3350), Sec. 6, eff. September 1, 2013.

SUBCHAPTER E. HOMESTEAD LAND BANK PROGRAM

Sec. 373A.201. SHORT TITLE. This subchapter may be cited as the Homestead Land Bank Program Act.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.202. APPLICABILITY. This subchapter applies only to a municipality that has designated a district under Section 373A.051.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.203. DEFINITIONS. In this subchapter:

(1) "Affordable" means that the monthly mortgage payment or contract rent does not exceed 30 percent of the applicable median family income for that unit size, in accordance with the income and rent limit rules adopted by the Texas Department of Housing and Community Affairs.

(2) "Community housing development organization" or

"organization" means an organization that:

(A) meets the definition of a community housing development organization in 24 C.F.R. Section 92.2;

(B) is certified by the municipality as a community housing development organization;

(C) is governed exclusively by a board of at least five members unrelated by blood, marriage, or business interest; and

(D) is not controlled, directly or indirectly, by any other party through any contract, arrangement, understanding, relationship, voting power, affiliation, trust, proxy, power of attorney, pooling arrangement, security, warrant, partnership, option, discretionary account, joint venture, interlocking directors, or other device, as evidenced by a notarized affidavit signed by each board member.

(3) "Homestead land bank plan" or "plan" means a plan adopted by the governing body of a municipality as provided by Section 373A.206.

(4) "Homestead land bank program" or "program" means a program adopted under Section 373A.204.

(5) "Land bank" means an entity established or approved by the governing body of a municipality for the purpose of acquiring, holding, and transferring unimproved real property under this subchapter.

(6) "Low income household" means a household with a gross income of not greater than 80 percent of the area median family income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(7) "Qualified participating developer" means a developer who meets the requirements of Section 373A.205 and includes a qualified organization under Section 373A.211.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.204. HOMESTEAD LAND BANK PROGRAM. (a) The governing body of a municipality may adopt a homestead land bank program in which the officer charged with selling real property ordered sold pursuant to foreclosure of a tax lien may sell certain eligible real

property by private sale for purposes of affordable housing development as provided by this subchapter.

(b) The governing body of a municipality that adopts a homestead land bank program shall establish or approve a land bank for the purpose of acquiring, holding, and transferring unimproved real property under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.205. QUALIFIED PARTICIPATING DEVELOPER. To qualify to participate in a homestead land bank program, a developer must:

(1) have developed three or more housing units within the 10-year period preceding the submission of a proposal to the land bank seeking to acquire real property from the land bank;

(2) have a development plan approved by the municipality for the land bank property; and

(3) meet any other requirements adopted by the municipality in the homestead land bank plan.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.206. HOMESTEAD LAND BANK PLAN. (a) A municipality that adopts a homestead land bank program shall operate the program in conformance with a homestead land bank plan.

(b) The governing body of a municipality that adopts a homestead land bank program shall adopt a plan annually. The plan may be amended from time to time.

(c) In developing the plan, the municipality shall consider other housing plans adopted by the municipality, including the comprehensive plan submitted to the United States Department of Housing and Urban Development and all fair housing plans and policies adopted or agreed to by the municipality.

(d) The plan must include the following:

(1) a list of community housing development organizations eligible to participate in the right of first refusal provided by Section 373A.211;

(2) a list of the parcels of real property that may become

eligible for sale to the land bank during the upcoming year;

(3) the municipality's plan for affordable housing development on those parcels of real property; and

(4) the sources and amounts of funding anticipated to be available from the municipality for subsidies for development of affordable housing in the municipality, including any money specifically available for housing developed under the program, as approved by the governing body of the municipality at the time the plan is adopted.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.207. PUBLIC HEARING ON PROPOSED PLAN. (a) Before adopting a plan, a municipality shall hold a public hearing on the proposed plan.

(b) The city manager or the city manager's designee shall provide notice of the hearing to all community housing development organizations and to neighborhood associations identified by the municipality as serving the neighborhoods in which properties anticipated to be available for sale to the land bank under this subchapter are located.

(c) The city manager or the city manager's designee shall make copies of the proposed plan available to the public not later than the 60th day before the date of the public hearing.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.208. PRIVATE SALE TO LAND BANK. (a) Notwithstanding any other law and except as provided by Subsection (f), property that is ordered sold pursuant to foreclosure of a tax lien may be sold in a private sale to a land bank by the officer charged with the sale of the property without first offering the property for sale as otherwise provided by Section 34.01, Tax Code, if:

(1) the market value of the property as appraised by the local appraisal district and as specified in the judgment of foreclosure is less than the total amount due under the judgment, including all taxes, penalties, and interest, plus the value of

nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale;

(2) the property is not improved with a building or buildings;

(3) there are delinquent taxes on the property for a total of at least five years; and

(4) the municipality has executed with the other taxing units that are parties to the tax suit an interlocal agreement that enables those units to agree to participate in the program while retaining the right to withhold consent to the sale of specific properties to the land bank.

(b) A sale of property for use in connection with the program is a sale for a public purpose.

(c) If the person being sued in a suit for foreclosure of a tax lien does not contest the market value of the property in the suit, the person waives the right to challenge the amount of the market value determined by the court for purposes of the sale of the property under Section 33.50, Tax Code.

(d) For any sale of property under this subchapter, each person who was a defendant to the judgment, or that person's attorney, shall be given, not later than the 60th day before the date of sale, written notice of the proposed method of sale of the property by the officer charged with the sale of the property. Notice shall be given in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure.

(e) After receipt of the notice required by Subsection (d) and before the date of the proposed sale, the owner of the property subject to sale may file with the officer charged with the sale a written request that the property not be sold in the manner provided by this subchapter.

(f) If the officer charged with the sale receives a written request as provided by Subsection (e), the officer shall sell the property as otherwise provided in Section 34.01, Tax Code.

(g) The owner of the property subject to sale may not receive any proceeds of a sale under this subchapter. However, the owner does not have any personal liability for a deficiency of the judgment as a result of a sale under this subchapter.

(h) Notwithstanding any other law, if consent is given by the taxing units that are a party to the judgment, property may be sold to the land bank for less than the market value of the property as specified in the judgment or less than the total of all taxes,

penalties, and interest, plus the value of nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale.

(i) The deed of conveyance of the property sold to a land bank under this section conveys to the land bank the right, title, and interest acquired or held by each taxing unit that was a party to the judgment, subject to the right of redemption.

(j) Property sold to and held by the land bank for subsequent resale is eligible for an exemption from ad valorem taxation for a period not to exceed three years from the date of acquisition. Property is eligible for an exemption under this subsection only during the period the property is held by the land bank.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.209. SUBSEQUENT RESALE BY LAND BANK. (a) Each subsequent resale of property acquired by a land bank under this subchapter must comply with the conditions of this section.

(b) The land bank must sell a property to a qualified participating developer within the three-year period following the date of acquisition for the purpose of construction of affordable housing for sale or rent to low income households. If after three years a qualified participating developer has not purchased the property, the property shall be transferred from the land bank to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

(c) Unless the municipality increases the amount in its plan, the number of properties acquired by a qualified participating developer under this section on which development has not been completed may not at any given time exceed three times the annual average residential production completed by the qualified participating developer during the preceding two-year period as determined by the municipality.

(d) The deed conveying a property sold by the land bank must include a right of reverter so that if the qualified participating developer does not apply for a construction permit and close on any construction financing within the two-year period following the later of the date of the conveyance of the property from the land bank to

the qualified participating developer or the expiration of the period specified by the municipality under Section 373A.211(d), the property will revert to the land bank for subsequent resale to another qualified participating developer or conveyance to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.210. RESTRICTIONS ON OCCUPANCY AND USE OF PROPERTY. (a) The land bank shall impose deed restrictions on property sold to qualified participating developers requiring the development and sale or rental of the property to low income households.

(b) At least 25 percent of the land bank properties sold during any given fiscal year to be developed for sale shall be deed restricted for sale to households with gross household incomes not greater than 60 percent of the area median family income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(c) If property is developed for rental housing, the deed restrictions must be for a period of not less than 20 years and must require that:

(1) 100 percent of the rental units be occupied by and affordable to households with incomes not greater than 60 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development;

(2) 40 percent of the units be occupied by and affordable to households with incomes not greater than 50 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development; or

(3) 20 percent of the units be occupied by and affordable to households with incomes not greater than 30 percent of area median family income, based on gross household income, adjusted for

household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(d) The deed restrictions under Subsection (c) must require the owner to file an annual occupancy report with the municipality on a reporting form provided by the municipality. The deed restrictions must also prohibit any exclusion of an individual or family from admission to the development based solely on the participation of the individual or family in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

(e) Except as otherwise provided by this section, if the deed restrictions imposed under this section are for a term of years, the deed restrictions shall renew automatically.

(f) The land bank or the governing body of the municipality may modify or add to the deed restrictions imposed under this section. Any modifications or additions made by the governing body of the municipality must be adopted by the municipality as part of its plan and must comply with the restrictions set forth in Subsections (b), (c), and (d).

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.211. RIGHT OF FIRST REFUSAL. (a) In this section, "qualified organization" means a community housing development organization that:

(1) contains within its designated geographical boundaries of operation, as set forth in its application for certification filed with and approved by the municipality, a portion of the property that the land bank is offering for sale;

(2) has developed or rehabilitated at least three single-family homes or duplexes or one multifamily residential dwelling of four or more units in compliance with all applicable building codes within the preceding 10-year period and within the organization's designated geographical boundaries of operation; and

(3) within the preceding three-year period has developed or rehabilitated housing units within a two-mile radius of the property that the land bank is offering for sale.

(b) The land bank shall first offer a property for sale to qualified organizations.

(c) Notice must be provided to the qualified organizations by certified mail, return receipt requested, not later than the 60th day before the beginning of the period in which a right of first refusal may be exercised.

(d) The municipality shall specify in its plan the period during which the right of first refusal provided by this section may be exercised by a qualified organization. That period must be at least 90 days in duration and begin at least three months but not more than 26 months following the date of the deed of conveyance of the property to the land bank.

(e) If the land bank conveys the property to a qualified organization before the expiration of the period specified by the municipality under Subsection (d), the interlocal agreement executed under Section 373A.208(a)(4) may provide tax abatement for the property until the expiration of that period.

(f) During the specified period, the land bank may not sell the property to a qualified participating developer other than a qualified organization. If all qualified organizations notify the land bank that they are declining to exercise their right of first refusal during the specified period, or if an offer to purchase the property is not received from a qualified organization during that period, the land bank may sell the property to any other qualified participating developer at the same price that the land bank offered the property to the qualified organizations.

(g) In its plan, the municipality shall establish the amount of additional time, if any, that a property may be held in the land bank once an offer has been received and accepted from a qualified organization or other qualified participating developer.

(h) If more than one qualified organization expresses an interest in exercising its right of first refusal, the organization that has designated the most geographically compact area encompassing a portion of the property shall be given priority.

(i) In its plan, the municipality may provide for other rights of first refusal for any other nonprofit corporation exempted from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, provided that the preeminent right of first refusal is provided to qualified organizations as provided by this section.

(j) The land bank is not required to provide a right of first

refusal to qualified organizations under this section if the land bank is selling property that reverted to the land bank under Section 373A.209(d).

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.212. OPEN RECORDS AND MEETINGS. The land bank shall comply with the requirements of Chapters 551 and 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

Sec. 373A.213. RECORDS; AUDIT; REPORT. (a) The land bank shall keep accurate minutes of its meetings and shall keep accurate records and books of account that conform with generally accepted principles of accounting and that clearly reflect the income and expenses of the land bank and all transactions in relation to its property.

(b) The land bank shall file with the municipality not later than the 90th day after the close of the fiscal year annual audited financial statements prepared by a certified public accountant. The financial transactions of the land bank are subject to audit by the municipality.

(c) For purposes of evaluating the effectiveness of the program, the land bank shall submit an annual performance report to the municipality not later than November 1 of each year in which the land bank acquires or sells property under this subchapter. The performance report must include:

(1) a complete and detailed written accounting of all money and properties received and disbursed by the land bank during the preceding fiscal year;

(2) for each property acquired by the land bank during the preceding fiscal year:

(A) the street address of the property;

(B) the legal description of the property;

(C) the date the land bank took title to the property;

(D) the name and address of the property owner of

record at the time of the foreclosure;

(E) the amount of taxes and other costs owed at the time of the foreclosure; and

(F) the assessed value of the property on the tax roll at the time of the foreclosure;

(3) for each property sold by the land bank during the preceding fiscal year to a qualified participating developer:

(A) the street address of the property;

(B) the legal description of the property;

(C) the name and mailing address of the developer;

(D) the purchase price paid by the developer;

(E) the maximum incomes allowed for the households by the terms of the sale; and

(F) the source and amount of any public subsidy provided by the municipality to facilitate the sale or rental of the property to a household within the targeted income levels;

(4) for each property sold by a qualified participating developer during the preceding fiscal year, the buyer's household income and a description of all use and sale restrictions; and

(5) for each property developed for rental housing with an active deed restriction, a copy of the most recent annual report filed by the owner with the land bank.

(d) The land bank shall maintain in its records for inspection a complete copy of the sale settlement statement for each property sold by a qualified participating developer and a copy of the first page of the mortgage note with the interest rate and indicating the volume and page number of the instrument as filed with the county clerk.

(e) The land bank shall provide copies of the performance report to the taxing units who were parties to the judgment of foreclosure and shall provide notice of the availability of the performance report for review to the organizations and neighborhood associations identified by the municipality as serving the neighborhoods in which properties sold to the land bank under this subchapter are located.

(f) The land bank and the municipality shall maintain copies of the performance report available for public review.

Added by Acts 2005, 79th Leg., Ch. 495 (H.B. 525), Sec. 1, eff. September 1, 2005.

CHAPTER 373B. COMMUNITY LAND TRUSTS

Sec. 373B.001. DEFINITION. In this chapter, "community housing development organization" has the meaning assigned by 42 U.S.C. Section 12704.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

Sec. 373B.002. CREATION OR DESIGNATION. The governing body of a municipality or county by ordinance or order may create or designate one or more community land trusts, including a housing finance corporation established under Chapter 394 or a land trust operated by a community housing development organization certified by the municipality or county, to operate in the municipality or county.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

Sec. 373B.003. NATURE OF TRUST. A community land trust created or designated under Section 373B.002 must be a nonprofit organization that is:

(1) created to acquire and hold land for the benefit of developing and preserving long-term affordable housing in the municipality or county; and

(2) organized as:

(A) a nonprofit corporation that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code;

(B) a limited partnership of which a nonprofit corporation described by Paragraph (A) controls 100 percent of the general partner interest; or

(C) a limited liability company for which a nonprofit corporation described by Paragraph (A) serves as the only member.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1020 (S.B. 113), Sec. 1, eff. September 1, 2021.

Sec. 373B.004. PURPOSES OF TRUST. The purposes of a community land trust are to:

(1) provide affordable housing for low-income and moderate-income residents in the community;

(2) promote resident ownership of housing;

(3) keep housing affordable for future residents; and

(4) capture the value of public investment for long-term community benefit.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

Sec. 373B.005. OWNERSHIP OF LAND AND HOUSING UNITS. A community land trust may retain title to land it acquires and may:

(1) sell housing units located on the land and lease the land under ground leases with terms of at least 99 years; or

(2) lease housing units located on the land.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

Sec. 373B.006. QUALIFICATIONS OF PURCHASERS OR LESSEES OF HOUSING UNITS. (a) A community land trust may sell housing units only to families with a yearly income at the time of sale at or below 80 percent of the area median family income, adjusted for family size.

(b) Notwithstanding Subsection (a), for housing units located on one or more tracts of land owned by the community land trust that constitute a contiguous geographic area or are located in the same platted subdivision, the trust may sell not more than 20 percent of the housing units to families with a yearly income at the time of sale that exceeds the amount provided by Subsection (a) but does not exceed 120 percent of the area median family income, adjusted for family size.

(c) At least 25 percent of the housing units sold by the trust must be sold to families with a yearly income at the time of sale at or below 60 percent of the area median family income, adjusted for family size.

(d) A community land trust may lease housing units only to families with a yearly income at the time of lease at or below 60 percent of the area median family income, adjusted for family size.

(e) Notwithstanding Subsection (d), for housing units located on one or more tracts of land owned by the community land trust that constitute a contiguous geographic area or are located in the same platted subdivision, the trust may lease not more than 20 percent of the housing units to families with a yearly income at the time of lease that exceeds the amount provided by Subsection (d) but does not exceed 80 percent of the area median family income, adjusted for family size.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

Sec. 373B.007. RELATION TO OTHER LAW. This chapter does not preclude the creation of a land trust by a nonprofit organization, including a community housing development organization, under other statutory or common law or the operation of that land trust inside or outside a municipality or county that has created or designated a community land trust under Section 373B.002.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

Sec. 373B.008. APPLICABILITY OF CHAPTER TO TRUST OPERATED BY HOUSING FINANCE CORPORATION. Section 373B.003 does not apply to a community land trust operated in the municipality or county by a housing finance corporation established under Chapter 394.

Added by Acts 2011, 82nd Leg., R.S., Ch. 383 (S.B. 402), Sec. 1, eff. January 1, 2012.

CHAPTER 374. URBAN RENEWAL IN MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 374.001. SHORT TITLE. This chapter may be cited as the Texas Urban Renewal Law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.002. LEGISLATIVE FINDINGS; INTENT. (a) The legislature finds that slum and blighted areas exist in municipalities in this state and that those areas:

(1) are a serious and growing menace that is injurious and inimical to the public health, safety, morals, and welfare of the residents of this state;

(2) contribute substantially and increasingly to the spread of disease and crime, requiring excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, and for crime prevention, correctional facilities, prosecution and punishment, treatment of juvenile delinquency, and the maintenance of adequate police, fire, and accident protection and other public services and facilities; and

(3) constitute an economic and social liability, substantially impair the sound growth of affected municipalities, and retard the provision of housing accommodations.

(b) For these reasons, prevention and elimination of slum and blighted areas are matters of state policy and concern that may be best addressed by the combined action of private enterprise, municipal regulation, and other public action through approved urban renewal plans. The legislature further finds that the repair and rehabilitation of buildings and other improvements in affected areas, public acquisition of real property, demolition of buildings and other improvements as necessary to eliminate slum or blight conditions or to prevent the spread of those conditions, the disposition of property acquired in affected areas and incidental to the purposes stated by this subsection, and other public assistance to eliminate those conditions are public purposes for which public money may be spent and the power of eminent domain exercised.

(c) It is the intent of the legislature that private enterprise be encouraged to participate in accomplishing the objectives of urban renewal to the extent of its capacity and with governmental assistance as provided by this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.003. DEFINITIONS. In this chapter:

(1) "Agency" means a public urban renewal agency created under this chapter.

(2) "Area of operation" means the area within the corporate boundaries of a municipality.

(3) "Blighted area" means an area that is not a slum area, but that, because of deteriorating buildings, structures, or other improvements; defective or inadequate streets, street layout, or accessibility; unsanitary conditions; or other hazardous conditions, adversely affects the public health, safety, morals, or welfare of the municipality and its residents, substantially retards the provision of a sound and healthful housing environment, or results in an economic or social liability to the municipality. The term includes an area certified as a disaster area as provided by Section 374.903.

(4) "Board" means a board, commission, department, division, office, body, or other municipal unit through which a municipality elects to perform urban renewal powers, duties, or other functions.

(5) "Bond" means any bond, including a refunding bond, note, interim certificate, certificate of indebtedness, debenture, or other obligation.

(6) "Captured market value" means the amount by which the current market value of property within the boundaries of an urban renewal project area exceeds its market value at the time the urban renewal project is designated under this chapter.

(7) "Conservation" means preserving and protecting an area from blight, and includes preventing an area susceptible to blight from becoming blighted.

(8) "Clerk" means the municipal clerk or other municipal officer who is the custodian of the official municipal records.

(9) "Comptroller" means the comptroller of public accounts.

(10) "Deterioration" means impairment of quality, character, value, or safety due to use, wear and tear, or other physical causes.

(11) "Federal government" means the United States, an agency of the United States, or a corporate or other instrumentality

of the United States.

(12) "Mayor" means the mayor or other chief executive officer of a municipality.

(13) "Obligee" includes a bondholder, an agent or trustee for a bondholder, a lessor who demises property used in connection with an urban renewal project to the municipality, an assignee of any part of the lessor's interest, and the federal government as a party to a contract with the municipality.

(14) "Planning commission" means a municipal planning commission established under law or charter.

(15) "Public body" means the state, any political subdivision of the state, or a department, agency, or instrumentality of the state or of a political subdivision of the state.

(16) "Real property" includes land, improvements and fixtures on land, property of any nature that is appurtenant to or used in connection with land, and every legal or equitable estate, interest, right, or use in land, including terms for years and liens.

(17) "Rehabilitate" means to restore to a former state of solvency or efficiency or to a similar better state.

(18) "Rehabilitation" means the restoration of buildings or other structures to prevent deterioration of an area that is tending to become a blighted area or a slum area.

(19) "Slum area" means an area within a municipality that is detrimental to the public health, safety, morals, and welfare of the municipality because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in Paragraphs (A)-(C) or any combination of those causes that:

(i) endanger life or property by fire or other causes; or

(ii) are conducive to:

(a) the ill health of the residents;

(b) disease transmission;

(c) abnormally high rates of infant mortality;

(d) abnormally high rates of juvenile delinquency and crime; or

(e) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(20) "Tax assessor-collector" means the tax assessor-collector of the municipality.

(21) "Tax increment" means the amount of property taxes levied and collected each year on real property in an urban renewal project area in excess of the amount levied and collected on that property during the year preceding the date of the adoption of the urban renewal plan.

(22) "Tax increment base" means the aggregate market value of all taxable real property in an urban renewal project area on the date of approval of the urban renewal plan.

(23) "Taxable real property" does not include personal property or intangible property.

(24) "Taxing entity" means a governmental unit that is authorized by law to levy taxes on property located in an urban renewal project area. The term includes the state and a political subdivision of the state, but does not include a municipality.

(25) "Urban renewal activities" includes slum clearance, redevelopment, rehabilitation, and conservation activities to prevent further deterioration of an area that is tending to become a blighted or slum area. The term includes:

(A) the acquisition of all or part of a slum area or blighted area or the acquisition of land that is predominantly open and that, because of obsolete platting, diversity of ownership, deterioration of structures or site improvements, or for other reasons, substantially impairs or arrests the sound growth of the community;

(B) the demolition and removal of buildings and improvements;

(C) the installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary to fulfill urban renewal objectives in accordance with an urban renewal plan;

(D) the disposition by the municipality of property acquired in an urban renewal area for use in accordance with an urban renewal plan, including the sale or initial lease of the property at its fair value or the retention of the property;

(E) the implementation of plans for a program of voluntary repair and rehabilitation of buildings or improvements in accordance with an urban renewal plan; and

(F) the acquisition of real property in an urban renewal area as necessary to remove or prevent the spread of blight or deterioration or to provide land for needed public facilities.

(26) "Urban renewal area" means a slum area, blighted area, or a combination of those areas that the governing body of a municipality designates as appropriate for an urban renewal project.

(27) "Urban renewal plan" means a plan for an urban renewal project that:

(A) conforms to the general municipal plan except as provided by Section 374.903; and

(B) includes:

(i) any zoning and planning changes;

(ii) building requirements;

(iii) land uses;

(iv) maximum densities;

(v) land acquisition;

(vi) redevelopment;

(vii) rehabilitation;

(viii) demolition and removal of structures; and

(ix) a description of the plan's relationship to local objectives relating to public transportation, traffic conditions, public utilities, recreational and community facilities, and other improvements.

(28) "Urban renewal project" includes any of the following activities undertaken in accordance with an urban renewal plan:

(A) municipal activities in an urban renewal area that are designed to eliminate or to prevent the development or spread of slums and blighted areas;

(B) slum clearance and redevelopment in an urban renewal area;

(C) rehabilitation or conservation in an urban renewal area;

(D) development of open land that, because of location

or situation, is necessary for sound community growth and that is to be developed, by replatting and planning, for predominantly residential uses; or

(E) any combination or part of the activities described by Paragraphs (A)-(D).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. MUNICIPAL POWERS AND DUTIES RELATING TO URBAN RENEWAL

Sec. 374.011. RESOLUTION; ELECTION. (a) Except as provided by Section 374.012, a municipality may not exercise a power granted under this chapter unless:

(1) the governing body of the municipality adopts a resolution that finds that a slum area or blighted area exists in the municipality and that the rehabilitation, the conservation, or the slum clearance and redevelopment of the area is necessary for the public health, safety, morals, or welfare of the residents of the municipality; and

(2) a majority of the municipality's voters voting in an election held as provided by Subsection (b) favor adoption of the resolution.

(b) Before adopting the resolution, the governing body must give notice of the proposed resolution and must hold an election on the question. The notice must be published at least twice in the newspaper officially designated by the governing body and must state that, on a date that is specified in the notice and that is after the 60th day after the date the notice is first published, the governing body will consider the question of holding an election to determine whether it should adopt the resolution. On the date specified in the notice to consider the question, the governing body may order an election on its own motion to consider the resolution. The governing body shall order an election on the question if it receives a petition during the notice period that is signed by at least five percent of the qualified voters of the municipality who own taxable real property included on the tax rolls of the municipality. If the governing body determines that it is necessary to order an election, it shall give at least 30 days' notice of the election.

(c) If a majority of the voters voting in the election are against the resolution, the governing body may not adopt it and may

not propose the resolution again for a one-year period.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.012. ALTERNATE APPROVAL PROCESS FOR CERTAIN PROJECTS. (a) A municipality that did not approve the exercise of urban renewal powers under Section 374.011 before April 27, 1973, may approve the exercise of those powers for a specific urban renewal project in the alternative manner provided by this section.

(b) The governing body of the municipality must order and hold an election in the manner provided by Section 374.011.

(c) The resolution ordering the election and the notice of the election must contain:

(1) a complete legal description of the area included in the proposed project;

(2) a statement of the nature of the proposed project; and

(3) a statement of the total amount of local funds to be spent on the proposed project.

(d) The ballot proposition at the election need not contain a complete legal description of the area included in the project, but the proposition must contain a general description of the area that is sufficient to give notice to the voters of the location of the proposed project. The proposition must also contain a statement of the nature of the proposed project and the total amount of local funds to be spent on the project.

(e) If the ballot proposition is approved, the municipality may not exceed the limitations imposed on the project in the resolution ordering the election with respect to the area, nature, or amount of local funds spent on the project. If the municipality desires to expand the project beyond those limitations, the proposed expansion must be approved at an election in the manner provided for the original project.

(f) Voter approval is not required for preliminary planning of an urban renewal project.

(g) This section does not require further elections, resolutions, or actions of a municipality that has exercised urban renewal powers under this chapter as of April 27, 1973.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.013. USE OF PUBLIC OR PRIVATE RESOURCES. (a) To further the urban renewal objectives of this chapter, a municipality may formulate a workable program to use appropriate private and public resources, including the resources specified by Subsection (b), to encourage urban rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake those activities or other feasible municipal activities as may be suitably employed to achieve the objective of the program. The program must specifically include provisions relating to:

(1) prevention, through diligent enforcement of housing and occupancy controls and standards, of the expansion of blight into areas of the municipality that are free from blight; and

(2) rehabilitation or conservation of slum and blighted areas as far as practicable to areas that are free from blight through replanning, removing congestion, providing parks, playgrounds, and other public improvements, encouraging voluntary rehabilitation and requiring the repair and rehabilitation of deteriorated or deteriorating structures, and the clearance and redevelopment of slum areas.

(b) Each municipality, to the greatest extent determined to be feasible, shall afford the maximum opportunity, consistent with the needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise. A municipality shall consider this objective in exercising powers under this chapter, including:

(1) formulation of a workable program for urban renewal under Subsection (a);

(2) approval of urban renewal plans consistent with the general plan of the municipality;

(3) exercise of zoning power;

(4) enforcement of other laws, codes, and regulations relating to land use, use and occupancy of buildings and improvements, and the disposition of any property acquired; and

(5) provision of necessary public improvements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.014. MUNICIPAL URBAN RENEWAL PLAN. (a) A municipality may not prepare an urban renewal plan for an area unless

the governing body of the municipality has, by resolution, declared the area to be a slum area, a blighted area, or both, and has designated the area as appropriate for an urban renewal project. The governing body may not approve an urban renewal plan until a general plan has been prepared for the municipality. A municipality may not acquire real property for an urban renewal project until the governing body has approved the urban renewal plan as provided by Subsection (d).

(b) Any person may submit an urban renewal plan to the municipality. The governing body, before approving the plan, must submit the proposed plan to the urban renewal agency and the planning commission, if any, for review and recommendations as to the plan's conformity with the general plan for municipal development. The urban renewal agency and the planning commission shall submit written recommendations relating to the proposed urban renewal plan to the governing body within 30 days after the date the plan is received for review. On receipt of those recommendations, the governing body shall hold a hearing relating to the proposed plan as provided by Subsection (c). If recommendations are not proposed within the 30-day period, the governing body may hold the hearing without recommendations.

(c) The governing body must hold a public hearing on the proposed urban renewal plan before it may approve the urban renewal plan. The governing body shall publish notice of the hearing three times in a newspaper of general circulation in the municipality. The first notice must be published before the 30th day before the date of the hearing. The notice must state the time, date, place, and purpose of the hearing, must generally identify the urban renewal area, and must describe the general scope of the urban renewal project under consideration.

(d) After the hearing, the governing body may approve an urban renewal plan if the governing body finds that:

(1) a feasible method exists for the relocation, in decent, safe, affordable, and sanitary accommodations, of families or individuals who will be displaced from the urban renewal area, without undue hardship to those persons;

(2) the urban renewal plan conforms to the general plan for municipal development; and

(3) the urban renewal plan offers the maximum opportunity, consistent with the needs of the municipality as a whole, for the

rehabilitation or redevelopment of the urban renewal area by private enterprise.

(e) An urban renewal plan may be modified at any time. If modified after the lease or sale by the municipality of real property within the urban renewal project area, the modification is subject to the rights at law or in equity of the lessee or purchaser, or that person's successor in interest. If a proposed modification affects the street layout, land use, public utilities, zoning, if any, open space, or density of the area, the modification may not be made until it is submitted to the planning commission and a report is made to the governing body as provided by Subsection (b).

(f) After the municipality approves an urban renewal plan, the provisions of the plan that relate to the future use of the affected property and the building requirements applicable to the property control with respect to that property.

(g) If a building in a good state of repair is located in an urban renewal area and may be incorporated into an urban renewal project pattern or plan for that area, the building may not be acquired without the consent of the owner. If the owner of property in an urban renewal area agrees to use the property in a manner that is consistent with the purposes of the urban renewal plan and if improvements to the property do not constitute a fire or health hazard, that property is not subject to the exercise of eminent domain authority. A property owner may contest before the governing body any exercise of eminent domain authority that affects that person's individual ownership and may appeal to the district court. The review on appeal is by trial de novo.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.015. GENERAL MUNICIPAL POWERS RELATING TO URBAN RENEWAL. (a) A municipality may exercise all powers necessary or convenient to carry out the purposes of this chapter, including the power to:

(1) conduct preliminary surveys to determine if undertaking an urban renewal project is feasible;

(2) conduct urban renewal projects within its area of operation;

(3) execute contracts and other instruments necessary or

convenient to the exercise of its powers under this chapter;

(4) provide, arrange, or contract for the furnishing or repair by any person of services, privileges, works, streets, roads, public utilities, or other facilities in connection with an urban renewal project, including installation, construction, and reconstruction of streets, utilities, parks, playgrounds, and other public improvements necessary to carry out an urban renewal project;

(5) acquire any real property, including improvements, and any personal property necessary for administrative purposes, that is necessary or incidental to an urban renewal project, hold, improve, clear, or prepare the property for redevelopment, mortgage or otherwise encumber or dispose of the real property, insure or provide for the insurance of real or personal property or municipal operations against any risk or hazard and to pay premiums on that insurance, and enter any necessary contracts;

(6) invest urban renewal project funds held in reserves or sinking funds, or not required for immediate disbursement, in property or securities in which banks may legally invest funds subject to their control, redeem bonds issued under Section 374.026 at the redemption price established in the bond, or purchase those bonds at less than the redemption price, and cancel the bonds redeemed or purchased;

(7) borrow money and apply for and accept advances, loans, grants, contributions, and other forms of financial assistance from the federal, state, or county government, other public body, or other public or private sources for the purposes of this chapter, give any required security, and make and carry out any contracts in connection with the financial assistance;

(8) make plans necessary to carry out this chapter in its area of operation, contract with any person in making and carrying out the plans, and adopt, approve, modify or amend the plans;

(9) develop, test, and report methods and techniques for the prevention of slums and urban blight, conduct demonstrations and other activities in connection with those methods and techniques, and apply for, accept, and use federal grants made for those purposes;

(10) prepare plans and provide reasonable assistance for the relocation of persons displaced from an urban renewal project area, including families, business concerns, and others, as necessary to acquire possession and to clear the area in order to conduct the urban renewal project;

(11) appropriate funds and make expenditures as necessary to implement this chapter and, subject to Subsection (c), levy taxes and assessments for that purpose;

(12) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places, plan, replan, zone, or rezone any part of the municipality and make exceptions from building regulations, and enter agreements with an urban renewal agency vested with urban renewal powers under Subchapter C, which may extend over any period, restricting action to be taken by the municipality under any of the powers granted under this chapter;

(13) organize, coordinate, and direct the administration of this chapter within the area of operation as those provisions apply to the municipality to most effectively promote and achieve the purposes of this chapter and establish new municipal offices or reorganize existing offices as necessary to most effectively implement those purposes; and

(14) issue tax increment bonds.

(b) A municipality may include in a contract made with the federal government for financial assistance for an urban renewal project the provisions and conditions imposed by federal law that the municipality considers reasonable, appropriate, and consistent with the purposes of this chapter.

(c) A municipality may not levy a tax or assessment under or for the purposes of this chapter until the proposed levy is submitted to the municipality's voters in an election on the question and a majority of those voting approve the levy.

(d) Except as provided by Section 374.016, a municipality may acquire by condemnation any interest in real property, including a fee simple interest, that the municipality considers necessary for or in connection with an urban renewal project. Property dedicated to a public use may be acquired in that manner, except that property belonging to the state or to a political subdivision of the state may not be acquired without the consent of the state or political subdivision.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.016. SLUM CLEARANCE. (a) In this section, "slum clearance and redevelopment section" means any substantial contiguous

part of an urban renewal area that a municipality proposes to acquire and clear of all buildings, structures, and other improvements for redevelopment and reuse in accordance with the urban renewal plan.

(b) If an urban renewal project includes a slum clearance and redevelopment section that the municipality proposes to use for other than public use, the municipality may not use condemnation to acquire that property unless the municipality determines by resolution that the rehabilitation of that property without clearance would be impractical and ineffective. That determination must be based on a finding that at least 50 percent of the structures in the section are dilapidated beyond the point of feasible rehabilitation or are otherwise unfit for rehabilitation, and that there exist other blighting characteristics, such as overcrowding of structures on the land, mixed uses of structures, deficient streets, or deficiencies in public utilities or recreational and community facilities. A municipality may exercise eminent domain authority as provided by Chapter 21, Property Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.017. DISPOSITION OF PROPERTY. (a) Subject to the covenants, conditions, and restrictions, including covenants running with the land, that the municipality considers to be in the public interest or necessary to implement this chapter and that are written into the instrument transferring or conveying title, and after the governing body of the municipality approves the urban renewal plan, the municipality may:

(1) sell, lease, or otherwise transfer real property or an interest in real property in an urban renewal area for residential, recreational, commercial, industrial, or other uses, including a public use, and enter contracts relating to the transfer; or

(2) retain the property or interest for public use in accordance with the urban renewal plan.

(b) The original owner from whom property was acquired under this chapter by condemnation or through threat of condemnation has the first right to repurchase the property at the price at which it is offered.

(c) The purchaser or lessee of property transferred under this section, and a successor in interest to such a person, including an

assignee, must devote the property to the uses specified in the urban renewal plan and may be obligated to comply with conditions specified in the deed of conveyance, including the requirement to begin any improvements required by the urban renewal plan within a reasonable time.

(d) Real property or an interest in real property subject to this section may only be sold, leased, or otherwise transferred or retained at not less than the fair value of the property for uses in accordance with the urban renewal plan. In determining the fair value, the municipality shall consider:

(1) the uses provided in the urban renewal plan;

(2) any restrictions on and any covenants, conditions, and obligations assumed by the purchaser, lessee, or municipality in retaining the property;

(3) the objectives of the plan for the prevention of the recurrence of slums or blighted areas; and

(4) any other matters that the municipality specifies as appropriate.

(e) The municipality or urban renewal agency may provide in an instrument of conveyance to a private purchaser or lessee that the purchaser or lessee may sell any or all of the unimproved property without profit to the seller. After improving a parcel of real property in accordance with the development plan adopted for the area, the purchaser may sell the parcel before completion of the development of the area or tract purchased, but the sale does not relieve that purchaser from the obligation of completing the development of that area or tract. The purchaser may sell a parcel of land purchased for redevelopment to another person who is obligated to improve the parcel as provided by the development plan for that project if the resale is without profit to the seller and if any subsequent purchaser is required to improve the property as provided by the urban renewal plan and by the conditions contained in the deed of conveyance.

(f) A municipality shall sell real property acquired by the municipality that is to be sold to private developers in accordance with the urban renewal plan as rapidly as is feasible in the public interest and consistent with the goals of the urban renewal plan. An instrument executed by a municipality or by an urban renewal agency that purports to convey any right, title, or interest in any property under this chapter is presumed to be executed in compliance with this

chapter with respect to the title or interest of any bona fide lessee, transferee, or purchaser of the property.

(g) A municipality that sells real property in an urban renewal area to a private person must conduct the sale through competitive sealed bids after advertising the offer in the official publication or a newspaper of general circulation. The advertisement must be published once before the 15th day before the date of the sale and must invite bids for the purchase of real property in the urban renewal area either in whole or in parcels as determined by the municipality. Before advertising for bids, the municipality shall adopt as part of the specifications in the general plan of improvement any conditions binding on the purchaser or the purchaser's successors in title, including heirs and assignees. The municipality or urban renewal agency may accept the highest and best responsible bid. The purchase price must be paid in cash. If the municipality or agency determines that the bids received are not satisfactory, it may reject all the bids and readvertise the offer. The urban renewal agency may not sell the property until the price and conditions of sale are approved by the governing body of the municipality. The municipality shall sell any real property acquired in connection with an urban renewal and rehabilitation project within a reasonable time for the purposes applicable to each project, except for the property retained by the municipality for public use. Property to be resold shall be sold within a reasonable time, taking into account the general economic situation at the time of sale.

(h) The municipality may temporarily lease any real property acquired in an urban renewal area, except property that is not fit for human habitation or that is declared substandard by any governmental agency. The lease must provide for a right of cancellation that permits the municipality to sell or dispose of the property for the purposes of this chapter.

(i) The former owner of any real property that is acquired under this chapter and that is not dedicated within a reasonable time to the purposes applicable to the urban renewal project for which it was acquired is entitled, after notice, to repurchase the property at the price for which it was acquired, less any actual damages sustained by the former owner because of the taking of the property, unless the property is devoted to the urban renewal purposes within 60 days after the date the former owner gives the record owner and the municipality written notice of the intention to exercise the

right of repurchase. After a repurchase, any buildings placed on or allowed to remain on the property must conform to the pattern and intent of the urban renewal project if the project is completed.

(j) Any purchaser or lessee who is a private developer of any part of the real property acquired under this chapter may use that property as security to finance the development of the property. The purchaser or lessee may execute and deliver to a lender notes, deeds of trust with powers of sale, mortgages, and other instruments required in connection with obtaining and securing the repayment of the loan. The purchaser or lessee has all the rights, titles, and incidents of ownership available to a purchaser or lessee of land generally, and the person is entitled to mortgage and encumber the property for either the purchase price or for improvements in accordance with the objectives of this chapter. Any subsequent owner or lessee who acquires title through foreclosure of a lien given to secure the indebtedness or through a conveyance or assignment in satisfaction of debt takes title subject only to the restrictive covenants related to the use and improvement of the land that are contained in the original conveyance from the municipality. The owner's or lessee's interest is not subject to any condition precedent or condition subsequent that would result in reverter or forfeiture of title or to any restraint as to the amount for which the property may be resold or leased.

(k) Notwithstanding any other provision of this chapter or of any other law relating to competitive bid requirements, a municipality or urban renewal agency may sell urban renewal land for uses in accordance with an urban renewal plan to a public or private nonprofit corporation or foundation. The sale must be for at least the fair market value of the land as determined by the municipality or urban renewal agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. URBAN RENEWAL AGENCY

Sec. 374.021. EXERCISE OF URBAN RENEWAL PROJECT POWERS. (a) A municipality may exercise urban renewal project powers through a board or through municipal officers selected by the governing body of the municipality by resolution. The municipality may exercise those powers through an urban renewal agency created under this subchapter

if the governing body by resolution determines that the creation of an urban renewal agency is in the public interest. An urban renewal agency created under this subchapter may exercise all the urban renewal project powers of the municipality.

(b) In this section, "urban renewal project powers" includes the rights, powers, functions, and duties of a municipality under this chapter. The term does not include the power to:

(1) determine an area as a slum area, blighted area, or both and to designate that area as appropriate for an urban renewal project;

(2) approve and amend urban renewal plans and hold public hearings relating to those plans;

(3) establish a general plan for the locality as a whole;

(4) establish a workable program under Section 374.013;

(5) make determinations and findings under Section 374.011(a), 374.013(b), or 374.014(d);

(6) issue general obligation bonds; and

(7) appropriate funds, levy taxes and assessments, and exercise other functions under Subdivisions (11) and (12) of Section 374.015(a).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.022. CREATION OF URBAN RENEWAL AGENCY. (a) An urban renewal agency created in a municipality is a public body corporate and politic.

(b) An urban renewal agency may not transact business or exercise any powers under this chapter until the governing body of the municipality:

(1) adopts a resolution as provided by Section 374.011; and

(2) elects to exercise urban renewal project power through an urban renewal agency as provided by Section 374.021(a).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.023. BOARD OF COMMISSIONERS. (a) If an urban renewal agency is created by a municipality, the mayor of the municipality, with the advice and consent of the governing body of the

municipality, shall appoint a board of commissioners for the urban renewal agency.

(b) The board must be composed of at least five but not more than nine members. A member serves a two-year term. The commissioners shall designate one member to serve as chairman and one to serve as vice-chairman for one-year terms. A member of the board must be a resident of the municipality and a real property owner. The number of commissioners shall be determined by the governing body at the time of the appointment of the commissioners and may not be changed more than once every two years. At the time of the initial appointments, a simple majority of the commissioners shall be designated to serve for a one-year term and the remaining members for two-year terms. If a vacancy occurs, the governing body shall fill the vacancy for the unexpired term in the same manner as the initial appointment.

(c) A commissioner serves without compensation but is entitled to necessary expenses incurred in the performance of official duties, including travel expenses.

(d) A certificate of appointment, which is conclusive evidence of the proper appointment of each commissioner, must be filed with the clerk of the municipality.

(e) If the board is composed of five, seven, or nine members, any action by the board, to be valid, must be adopted or rejected by a majority of the total number of the commissioners.

(f) The governing body may remove a commissioner for inefficiency, neglect of duty, or misconduct in office after notice of the charges and a hearing. The commissioner must receive a copy of the charges before the 10th day before the date of the hearing and must have the opportunity to be heard either in person or by counsel.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.024. AGENCY PERSONNEL; REPORT. (a) An urban renewal agency may employ an executive director, technical experts, and other agents and employees as it determines necessary, and may determine the qualifications, duties, and compensation of those personnel. An agency may employ or retain its own counsel and legal staff to perform required legal services.

(b) On or before March 31 of each year, an urban renewal agency

shall file with the municipality a report of its activities for the preceding calendar year. If requested by the governing body of the municipality, the agency shall file a quarterly report. The report must include a complete financial statement by the agency that shows its assets, liabilities, income, and operating expenses as of the end of the reporting period.

(c) At the time the report is filed, the agency shall publish notice of the filing in a newspaper of general circulation in the municipality. The notice must state that the report is available for inspection during business hours in the office of the urban renewal agency and in the office of the municipal secretary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.025. APPROVAL REQUIREMENT. An urban renewal agency created under this subchapter may not undertake a renewal or rehabilitation project until the area proposed as a renewal or rehabilitation area and the plan of improvement for the project area are approved by the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.026. URBAN RENEWAL BONDS. (a) An urban renewal agency created under this subchapter may issue bonds from time to time to finance an urban renewal project, including the payment of principal and interest on any advances for surveys and plans. The agency may also issue refunding bonds for the payment or retirement of bonds previously issued.

(b) Bonds issued under this section must be made payable, both as to principal and interest, only from the income, proceeds, revenues, and funds of the urban renewal agency that are derived from or held in connection with the conduct of urban renewal projects. Payment of the principal and interest of the bonds may be further secured by a pledge of any loan, grant, or contribution from the federal government, or from any other source, in aid of an urban renewal project, or by a mortgage of such a project if title is held by the urban renewal agency.

(c) A bond issued under this section is not an indebtedness of the state or of a political subdivision of the state other than the

issuing urban renewal agency and is not subject to any other law relating to the authorization, issuance, or sale of bonds.

(d) A bond issued under this section is issued for an essential public and governmental purpose and is, with the interest on the bond and the income from it, exempt from taxes.

(e) A bond issued under this section must be authorized by a resolution or ordinance of the governing body of the urban renewal agency and may be issued in one or more series. The bond must bear the date, be payable on demand or mature at a time or times, bear interest at a rate, be in a denomination or denominations, be in either coupon or registered form, carry conversion or registration privileges, have a rank or priority, have a manner of execution, be payable in a medium of payment and at a place or places of payment, be subject to terms of redemption, with or without premium, be secured in a manner, and have any other characteristics, as provided by the resolution, trust indenture, or mortgage issued in relation to the bond.

(f) A bond issued under this section may be sold at not less than par at a public sale held after notice is published in a newspaper of general circulation in the area of operation and in any other medium of publication determined by the urban renewal agency and may also be exchanged for other bonds on a par basis. A bond issued under this section is fully negotiable.

(g) A bond issued under this section may be sold to the federal government at not less than par at a private sale. If less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold at a private sale at not less than par at an interest cost to the urban renewal agency that does not exceed the interest cost to the agency of the part of the bonds sold to the federal government.

(h) If the officials whose signatures appear on bonds or coupons issued under this section cease to be officials of the urban renewal agency before the delivery of the bonds, their signatures are valid for all purposes as if they had remained in office until delivery.

(i) In an action involving the validity or enforceability of a bond issued under this subchapter or the security for such a bond, a bond that recites in substance that it was issued by an urban renewal agency in connection with an urban renewal project is conclusively considered to have been issued for those purposes, and the project is

conclusively considered to have been conducted in accordance with this chapter.

(j) A bank, trust company, banker, savings bank and institution, savings and loan association, investment company, and other person conducting a banking or investment business, an insurance company, insurance association, and other person conducting an insurance business, and an executor, administrator, curator, trustee, and other fiduciary may invest a sinking fund, money, or other fund belonging to it or in its control in any bonds or obligations issued by an urban renewal agency under this section. Those bonds or other obligations must be secured by an agreement between the issuer and the federal government in which the issuer agrees to borrow from the federal government and the federal government agrees to lend to the issuer, before the maturity of the bonds or other obligations, money in an amount that, together with any other money irrevocably committed to the payment of interest on the bonds or other obligations, is sufficient to pay the principal of the bonds or other obligations with interest to maturity. Under the terms of the agreement the money must be used to pay the principal of and interest on the bonds or other obligations at maturity. Those bonds and other obligations are authorized security for a public deposit. Any person may use funds owned or controlled by the person to purchase those bonds or obligations. This subsection does not relieve a person of a duty to exercise reasonable care in selecting securities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER D. TAX INCREMENT FINANCING FOR URBAN RENEWAL PROJECTS

Sec. 374.031. ELECTION REQUIRED. (a) A municipality may not use the tax increment method of financing prescribed under this subchapter unless a majority of the qualified voters of the municipality voting on the question approve that method of financing in an election held by the municipality.

(b) The ballot shall be printed to provide for voting for or against the proposition: "Use of tax increment financing for urban renewal purposes."

(c) The election may be held in conjunction with an election held under Section 374.011 or 374.012.

(d) This referendum is not required if the constitutional amendment on tax increment financing is approved by the voters.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.032. TAX INCREMENT FUND. On approval of an urban renewal plan by the governing body of a municipality and on approval of tax increment financing as required by Section 374.031, the governing body by resolution shall establish a fund known as the tax increment fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.033. COMPUTATION OF TAX INCREMENTS. (a) A tax increment is computed by multiplying the total in property taxes levied and collected by the municipality and all other taxing entities on the taxable real property in an urban renewal project area in a year by a fraction, the numerator of which is equal to that year's market value of all taxable real property in the area minus the tax increment base and the denominator of which is equal to that year's market value of all taxable real property in the area.

(b) For the purposes of this chapter, only the tax assessor-collector determines the market value of property located in an urban renewal project area during the time that the project exists. The determination requires the concurrence of the comptroller. A property owner who is aggrieved by a determination of the tax assessor-collector has the same right of appeal as that provided by law to owners of property not affected by this chapter.

(c) At the time an urban renewal project is designated by the governing body, the tax assessor-collector shall, with the concurrence of the comptroller, certify to the governing body the market value of property within the boundaries of the urban renewal district. The tax assessor-collector shall include at its most recently determined market value any property that is taxable at the time that the urban renewal project is designated and shall include at zero any property that is exempt from taxation at the time that the district is designated.

(d) The tax assessor-collector shall annually certify to the governing body the amount of the captured market value of property

within the boundaries of the district and the amount of tax increments produced from that captured market value. The tax assessor-collector shall make the initial certification not later than one year from the date on which an urban renewal project is designated.

(e) For any year in which taxes are to be paid into the tax increment fund established under Section 374.032, a taxing entity may not consider any captured market value with respect to an urban renewal project in computing a debt limitation or for any other purpose except to determine the amount to be paid into the tax increment fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.034. ALLOCATION OF TAX COLLECTIONS AND TAX INCREMENTS; TAX INCREMENT FUND. (a) For the purposes of this chapter, the tax assessor-collector has the sole authority and the duty to collect the taxes levied by the municipality and all other taxing entities on property located within an urban renewal project and to allocate taxes and tax increments in the manner required by this chapter.

(b) Beginning with the first payment of taxes levied by the municipality or other taxing entity after the time an urban renewal project is designated, the receipts from those taxes shall be allocated and paid as provided by this subsection. The receipts from the property taxes collected that are produced from the tax increment base shall first be allocated and paid to the municipality or appropriate taxing entity. All tax increments produced from the captured market value of the property located within the urban renewal project district shall then be deposited into the tax increment fund established for the project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.035. TAX INCREMENT BONDS. (a) A municipality may issue tax increment bonds, the proceeds of which may be used to pay redevelopment costs relating to the urban renewal project for which the bonds were issued or to satisfy claims of holders of those bonds. On the approval of two-thirds of the qualified voters of the municipality, the municipality may also issue refunding bonds for the

payment or retirement of tax increment bonds previously issued by the municipality. The tax increment bonds may be made payable, both as to principal and interest, only from:

(1) tax increments allocated to and paid into the tax increment fund established by the municipality under Section 374.032;

(2) private sources;

(3) contributions or other financial assistance from this state or the United States; or

(4) a combination of those methods.

(b) A tax increment bond issued under this section, with the interest and income from the bond, is exempt from taxation. The period of maturity of a tax increment bond is limited to a maximum of 20 years from the date of issuance. Bonds issued under this section must be authorized by a resolution or ordinance of the governing body of the municipality and may be issued in one or more series. The bond must have the characteristics prescribed by Section 374.026(e) as provided by the resolution, trust indenture, or mortgage issued in relation to the bond.

(c) A bond issued under this section may be sold at not less than par at a public sale after notice published in a newspaper of general circulation in the municipality and in any other medium of publication determined by the governing body or may be exchanged for other bonds on a par basis. A bond issued under this section is fully negotiable.

(d) In an action or proceeding involving the validity or enforceability of a bond issued under this section or the security for such a bond, a bond that recites in substance that it is issued by the municipality in connection with an urban renewal project is conclusively considered to have been issued for those purposes, and the urban renewal project is conclusively considered to have been planned, located, and carried out in accordance with this chapter.

(e) A bank, trust company, banker, savings bank and institution, savings and loan association, investment company, and other person conducting a banking or investment business, an insurance company, insurance association, and other person conducting an insurance business, and an executor, administrator, curator, trustee, and other fiduciary may invest a sinking fund, money, or other fund belonging to it or in its control in any tax increment bonds issued by a municipality under this section. The bond is an authorized security for a public deposit. Any person may use funds

owned or controlled by the person to purchase those bonds. This subsection does not relieve a person of a duty to exercise reasonable care in selecting securities.

(f) Tax increment bonds may be paid only out of the tax increment fund established under Section 374.032. The governing body of the municipality may irrevocably pledge all or part of the fund to the payment of those bonds or notes. The fund or the designated part of the fund may only be used for the payment of those bonds and interest on those bonds until they have been fully paid. A holder of those bonds or coupons relating to the bonds has a lien against the fund for the payment of the bonds or notes and the interest on them and may protect and enforce that lien by an action at law or in equity.

(g) To increase the security and marketability of tax increment bonds, the municipality, according to its best judgment, may:

(1) create a lien for the benefit of the bondholders on a public improvement or public work financed by the bonds or on the revenue from the public improvement or public work; or

(2) make covenants and take other action as necessary, convenient, or desirable to additionally secure the bonds or make the bonds more marketable.

(h) A tax increment bond issued under this section is not a general obligation of the municipality, is not a charge against its general credit or taxing powers, and is not payable other than as provided by this chapter. The tax increment bond must state those limitations on its face.

(i) A tax increment bond issued under this section may not be included in computing the debt of the issuing municipality.

(j) Tax increment bonds may not be issued in an amount exceeding the aggregate costs of implementing the urban renewal plan for the project for which they were issued.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.036. DISBURSEMENTS FROM TAX INCREMENT FUND. (a) Money may be disbursed from a tax increment fund only to satisfy the claims of holders of tax increment bonds issued in aid of the urban renewal project with respect to which the fund was established or to pay project costs. In this section, "project costs" means any

expenditure made or estimated to be made, or monetary obligations incurred or estimated to be incurred, by the municipality that are listed in an urban renewal project, plus any incidental costs, less any income or revenues other than tax increments, received or reasonably expected to be received by the municipality in connection with the implementation of the urban renewal plan. Those project costs include:

(1) capital costs, including:

(A) the actual costs of the construction of public works or improvements, new buildings, structures, and fixtures;

(B) the costs of demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and fixtures;

(C) the costs of acquisition of equipment; and

(D) the costs of clearing and grading of land;

(2) financing costs, including interest paid to holders of tax increment bonds issued to pay for project costs and any premium paid over the principal amount because of the redemption of the obligation before maturity;

(3) professional service costs, including costs incurred for architectural, planning, engineering, or legal services;

(4) imputed administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of an urban renewal plan; and

(5) organizational costs, including the cost of conducting studies and the cost of informing the public with respect to the creation of urban renewal projects and the implementation of project plans.

(b) Subject to any agreement with holders of tax increment bonds, money in a tax increment fund may be temporarily invested in the same manner as other municipal funds.

(c) After project costs and tax increment bonds issued with respect to an urban renewal project have been paid or payment has been arranged, and subject to any agreement with bondholders, any money remaining in a tax increment fund shall be paid over to the municipality and to other taxing entities levying taxes on property within the project in amounts belonging to each entity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.037. MUNICIPAL ANNUAL REPORT; STATEMENT. (a) Before July 2 each year, the governing body of the municipality shall submit to the chief executive officer of each taxing entity a report on the status of each urban renewal district. The report must include statements of:

(1) the amount and source of revenue in the tax increment fund established under Section 374.032;

(2) the amount and purpose of expenditures from the fund;

(3) the amount of principal and interest due on any outstanding bonded indebtedness;

(4) the tax increment base and the current captured market value retained by the urban renewal project; and

(5) the captured market value shared by the municipality and other taxing entities, the total in received tax increments, and any additional information required to demonstrate compliance with the tax increment financing plan adopted by the governing body.

(b) On or before July 1 each year, the governing body shall publish a statement in a newspaper of general circulation in the municipality showing:

(1) the tax increment received and expended during the previous year;

(2) the original market value and captured market value of all property located within the urban renewal project;

(3) the amount in outstanding indebtedness incurred in aid of the urban renewal project; and

(4) any additional information the governing body considers necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 374.901. USE OF ACQUIRED PROPERTY FOR PUBLIC HOUSING. (a) Except as provided by Subsection (b), real property acquired under this chapter may not be sold, leased, granted, conveyed, or otherwise made available for public housing.

(b) Real property acquired under this chapter may be made available for public housing if the municipality holds an election at which a majority of the qualified voters voting in the election approve that use of the property. The municipality shall conduct the

election in the manner provided for an election under Section 374.011. The ballot shall be printed to provide for voting for or against the proposition: "Permitting the use of land acquired by urban renewal for public housing."

(c) If the qualified voters of a municipality have approved the use of land acquired under this chapter for public housing, the municipality may order an election on prohibiting the use of that land for public housing. The municipality shall conduct the election in the manner provided by Subsection (b), except that the ballot shall be printed to provide for voting for or against the proposition: "Prohibiting the use of land acquired by urban renewal for public housing." If a majority of the voters voting in the election favor prohibiting the use of the land for public housing, the prohibition contained in Subsection (a) applies. An election that results in the prohibition of the use of land for public housing does not affect land that has been made available for public housing at the time of the election.

(d) If a municipality holds an election under this section, the municipality may not hold another election under this section for one year.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.902. EXERCISE OF URBAN RENEWAL POWERS BY CERTAIN COUNTIES. (a) Unless the context clearly requires otherwise, a statement in this chapter that applies to a mayor applies to the county judge of a county exercising powers under this section, a statement that applies to the governing body of a municipality applies to the county's commissioners court, and a statement that applies to a municipality applies to the county.

(b) A county with a population of more than 250,000 and located along an international border or a county with a population of more than 1.3 million may exercise the powers provided for municipalities under this chapter with respect to areas of the county that are not within the corporate boundaries of a municipality. A county with a population of more than 250,000 and located along an international border may exercise the powers provided for municipalities under this chapter with respect to areas of the county located within the corporate boundaries of a municipality, if the municipality approves

the county's participation in an urban renewal project through an interlocal agreement under Chapter 791, Government Code. The county may not exercise those powers until the commissioners court of the county adopts a resolution in the manner provided by Section 374.011 for adoption of a resolution by a municipality. The resolution must be approved at an election held in the county in the manner provided for a municipal election under Section 374.011. The adoption of the resolution is not approved unless a majority of the voters who vote on the question in the entire county as well as in each municipality in the county approve the adoption of the resolution. In a municipality that is only partially located in the affected county, only voters who reside in the county may vote.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 105, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 224 (H.B. 139), Sec. 1, eff. June 14, 2013.

Sec. 374.903. URBAN RENEWAL IN DISASTER AREA. If the governing body of a municipality certifies that an area needs redevelopment or rehabilitation because of a flood, fire, hurricane, earthquake, storm, or other catastrophe for which the governor has certified the state's need for disaster assistance under applicable federal law, the governing body may approve an urban renewal plan and an urban renewal project for the affected area without regard to Section 374.014(d) and to the provisions of this chapter that require a general plan for the municipality and a public hearing on the urban renewal project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.904. COSTS OF RELOCATION. If the relocating, raising, rerouting, changing of grade, or altering the construction of a railroad, electric transmission line, pipeline, or telephone or telegraph property or facility is made necessary by the exercise of powers conferred under this chapter on a municipality, an urban renewal agency, or another public body, the necessary action shall be made at the expense of the public body that made the change

necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.905. MUNICIPAL PROPERTY EXEMPT FROM LEVY AND EXECUTION. (a) All municipal property, including funds, owned or held for the municipality for the purposes of this chapter are exempt from levy and sale by execution. An execution or other judicial proceeding may not issue against the property, and a judgment against the municipality may not be a charge or lien on that property. This subsection does not apply to or limit the right of an obligee to pursue any remedies for the enforcement of any pledge or lien given under this chapter by a municipality on its rents, fees, grants, or revenues from urban renewal projects.

(b) If real property in the urban renewal project area is acquired and is owned as part of the project by a municipality or the urban renewal agency, and the project is not subject to ad valorem taxes because of Subsection (a), the gross project cost may include reasonable payments in lieu of taxes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.906. POWERS OF PUBLIC BODY. (a) To aid in the planning or implementation of an urban renewal project located within the area in which it is authorized to act, any public body, after determining that a project is beneficial to its residents and after setting terms with or without consideration, may:

(1) dedicate, sell, convey, or lease any of its interest in any urban renewal project or grant easements, licenses, or other rights and privileges in the project to a municipality or urban renewal agency;

(2) incur the entire expense of any public improvements made by the public body in exercising the powers granted under this section;

(3) do anything necessary to aid or cooperate in the planning or implementation of an urban renewal plan;

(4) lend, grant, or contribute funds to a municipality or an urban renewal agency;

(5) enter into agreements that may extend over any period

with a municipality, urban renewal agency, or other public body relating to action to be taken by the public body under any of the powers granted under this chapter, including furnishing funds or other assistance in connection with an urban renewal project;

(6) furnish public buildings and public facilities, including parks, playgrounds, recreational facilities, community facilities, educational facilities, water, sewer, or drainage facilities, or other public works;

(7) furnish, dedicate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places;

(8) plan, replan, zone, or rezone any part of the public body or make exceptions from building regulations; or

(9) furnish administrative and other services to the municipality or urban renewal agency.

(b) If title to or possession of any urban renewal project is held by the federal government, the provisions of an agreement under this section inure to and may be enforced by the federal government.

(c) A sale, conveyance, lease, or agreement under this section may be made by and between public bodies without appraisal, public notice, advertisement, or public bidding.

(d) To aid in planning or conducting an urban renewal project through an urban renewal agency under this chapter, a municipality may perform all of the functions that a public body may perform under Subsection (a), including furnishing financial and other assistance.

(e) For the purposes of this section or to aid in the planning or carrying out of a municipal urban renewal project, a municipality may issue and sell general obligation bonds in addition to bonds issued under Section 374.026. Bonds issued under this section must be issued in the manner and are subject to the limitations generally provided by the laws of this state for the issuance and authorization of municipal bonds for public purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.907. TITLE OF PURCHASER. An instrument executed by a municipality or by an urban renewal agency that purports to convey a right, title, or interest in property under this chapter is conclusively presumed to have been executed in compliance with this chapter as regards the title or other interest of a bona fide

purchaser, lessee, or transferee of the property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.908. CONFLICT OF INTEREST. (a) A public official or employee of a municipality, including an official or employee of an urban renewal agency that exercises urban renewal project powers for a municipality under Subchapter C or of any other municipal board or commission, may not voluntarily acquire any direct or indirect interest in an urban renewal project, in any property included or planned to be included in an urban renewal project or plan, or in any contract, or contract proposed, in connection with an urban renewal project.

(b) If the acquisition is not voluntary, the official or employee shall immediately disclose the acquisition of the interest in writing to the governing body of the municipality. The governing body shall enter the disclosure on its minutes. Not later than three months after the date on which the involuntary acquisition occurs, the official or employee shall either resign the position with the municipality or divest the interest.

(c) If the official or employee owns or controls any direct or indirect interest in property that the person knows is included or planned to be included in an urban renewal project, or if the official or employee owned or controlled any such interest at any time during the two-year period preceding the inclusion or planned inclusion of the property in an urban renewal project, the official or employee shall immediately disclose that fact in writing to the governing body of the municipality. The governing body shall enter the disclosure on its minutes. The official or employee may not participate in any action by the municipality or by the urban renewal agency that affects the property.

(d) Any required disclosure made under this section to the governing body of the municipality must also be made at the same time to the urban renewal agency that exercises urban renewal project powers under Section 374.021. A commissioner or other officer of an urban renewal agency or other board who exercises powers under this chapter may not hold any other public office with the municipality.

(e) A violation of this section is official misconduct.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.909. JUDICIAL PROCEEDINGS. (a) An action brought to review, modify, suspend, or satisfy a rule, order, decision, or other act of the governing body of a municipality or other agency shall be trial de novo as that term is used in an appeal from a justice of the peace court to a county court. In the trial, no presumptions in favor of the order or rule apply, and evidence relating to the validity or reasonableness of the order or rule may not be heard. The determination of the action shall be made on the facts as in other civil cases, and the procedure used and the determination of orders and judgments to be entered in the trial shall be under the rules of law, evidence, and procedure prescribed under the constitution, statutes, and rules of procedure of this state applicable to civil trials.

(b) The trial of an action brought under this section shall be strictly de novo and the decision in the action shall be made on the preponderance of the evidence presented at the trial, independent of any administrative action taken by the board and free from the application of the substantial evidence rule stated by the courts relating to orders of other administrative or quasi-judicial agencies.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 374.910. EFFECT ON MUNICIPAL POWERS. (a) This chapter does not repeal a charter provision adopted by a home-rule municipality to accomplish the same purposes as this chapter. This chapter is cumulative of municipal powers.

(b) The powers conferred by this chapter are supplemental to the powers conferred on municipalities by the charters of home-rule municipalities of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 375. MUNICIPAL MANAGEMENT DISTRICTS IN GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 375.001. LEGISLATIVE FINDINGS; PURPOSES. (a) The creation of a municipal management district is declared to be

essential to the accomplishment of the purposes of Article III, Section 52, Article XVI, Section 59, and Article III, Section 52-a, of the Texas Constitution and to the accomplishment of the other public purposes stated in this chapter.

(b) The creation of each district is necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the commercial areas of municipalities and metropolitan areas of this state.

(c) The creation of districts and this chapter may not be interpreted to relieve any municipality from providing services to an area included in the district or to release the municipality from the obligation it has to provide municipal services to that area. A district is created to supplement and not supplant the municipal services of the municipality.

(d) All of the land and other property to be included within the boundaries of a district will be benefited by the works and projects that are to be accomplished and the services to be provided by the district under powers conferred by Article III, Section 52, Article XVI, Section 59, and Article III, Section 52-a, of the Texas Constitution and other powers granted under this chapter.

(e) A district is created to serve a public use and benefit.

(f) The creation of a district is essential to further the public purposes of development and diversification of the economy of the state, the elimination of unemployment and underemployment, and the development or expansion of transportation and commerce and is in the public interest.

(g) A district will promote the health, safety, and general welfare of residents, employers, employees, and consumers in the district and the general public.

(h) A district is designed to provide needed funding for metropolitan areas to preserve, maintain, and enhance the economic health and vitality of the areas as community and business centers.

(i) The present and prospective traffic congestion in municipalities in this state, the need for traffic control and the safety of pedestrians, and the limited availability of funds require the promotion and development of public transportation and pedestrian facilities and systems by new and alternative means, and a district will serve the public purpose of securing expanded and improved transportation and pedestrian facilities and systems. The public transportation and pedestrian facilities and systems promoted and

developed by a district will be attractive, safe, and convenient and will benefit not only the land and property in the district, but also the employees, employers, and consumers of the district and the general public.

(j) A district will further promote the health, safety, welfare, morals, convenience, and enjoyment of the public by landscaping and developing certain areas within the district that are necessary for the restoration, preservation, and enhancement of scenic and aesthetic beauty.

(k) A district will not act as the agent or instrumentality of any private interests even though many private interests will be benefited by the district, as will the general public.

(l) The purpose of this chapter is to promote and benefit commercial development and commercial areas throughout the state. Each improvement project or service authorized by this chapter is found and declared to carry out a public purpose.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.002. CONSTRUCTION OF CHAPTER. (a) This chapter shall be liberally construed in conformity with the findings and purposes in Section 375.001.

(b) If any provision of general law is in conflict or inconsistent with this chapter, this chapter prevails. Any general law not in conflict or inconsistent with this chapter is adopted and incorporated by reference.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.003. DEFINITIONS. In this chapter:

(1) "Board" means a board of directors of a district.

(2) "Bond" means any type of interest-bearing obligation, including a bond, note, bond anticipation note, certificate of participation, lease, contract, or other evidence of indebtedness.

(3) "Commission" means the Texas Commission on Environmental Quality.

(4) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;

(B) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described by Paragraph (A);

(C) a partnership that is formed for the purpose of making a profit, in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A), and in which minority or women partners have a proportionate interest in the control, operation, and management of the partnership affairs;

(D) a joint venture between minority and women's group members formed for the purpose of making a profit and the minority participation in which is based on the sharing of real economic interest, including equally proportionate control over management, interest in capital, and interest earnings, other than a joint venture in which majority group members own or control debt securities, leasehold interest, management contracts, or other interests;

(E) a supplier contract between persons described in Paragraph (A) and a prime contractor in which the disadvantaged business is directly involved for the manufacture or distribution of the supplies or materials or otherwise for warehousing and shipping the supplies; or

(F) a person certified as a disadvantaged business by:

(i) this state;

(ii) a political subdivision of this state; or

(iii) a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391.

(5) "District" means a management district created under this chapter.

(6) "Mass transit" means transportation of passengers and

their hand-carried packages or baggage by motorbus, trolley, coach, street railway, rail, suspended overhead rail, elevated railway, subway, people mover, automobile, or any other surface, overhead, or underground transportation or any combination of the preceding and includes stations or terminals and public parking facilities and facilities incidental to or related to any of the preceding, including commercial or shopping areas.

(7) "System" means all real and personal property owned or held by a district for mass transit purposes, including land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, stations, platforms, terminals, rolling stock, garages, shops, equipment, and facilities including vehicle parking areas and facilities, and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars and buses, control houses, signals and land, facilities, and equipment for the protection and environmental enhancement of those facilities.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.256, eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 1, eff. September 1, 2011.

Sec. 375.004. GOVERNMENTAL AGENCY; TORT CLAIMS. (a) A district is a governmental agency, a body politic and corporate, and a political subdivision of the state.

(b) A district is a unit of government for purposes of Chapter 101, Civil Practice and Remedies Code (Texas Tort Claims Act), and operations of a district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 375.022. PETITION. (a) Before a district may be created,

the commission must receive a petition requesting creation of the district.

(b) The petition must be signed by the owners of a majority of the assessed value of the real property in the proposed district that would be subject to assessment by the district, according to the most recent certified county property tax rolls.

(c) The petition must:

(1) describe the boundaries of the proposed district:

(A) by metes and bounds;

(B) by verifiable landmarks, including a road, creek, or railroad line; or

(C) if there is a recorded map or plat and survey of the area, by lot and block number;

(2) state the specific purposes for which the district will be created;

(3) state the general nature of the work, projects, or services proposed to be provided, the necessity for those services, and the costs as estimated by the persons filing the petition;

(4) include a name of the district, which must be generally descriptive of the location of the district, followed by "Management District" or "Improvement District";

(5) include a proposed list of initial directors that includes the directors' experience and initial term of service; and

(6) include a resolution of the governing body of the municipality in support of the creation of the district.

(d) The petition may request that a succeeding board of directors be elected under Section 375.0645 instead of being appointed under Section 375.064.

(e) On receipt by the commission of a petition that complies with this section, the commission shall issue a notice indicating that the petition is administratively complete and may conduct a hearing on the petition in the manner provided by Section 49.011, Water Code, if the commission determines that a hearing is necessary.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 761 (S.B. 1987), Sec. 3, eff.

June 12, 2017.

Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 1, eff. June 18, 2023.

Sec. 375.025. HEARING. (a) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 32(2), eff. June 18, 2023.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 32(2), eff. June 18, 2023.

(c) If the commission finds that the petition is sufficient and conforms to the requirements of Section 375.022(c) and that the district is feasible and would benefit the public, the commission by order shall make that finding and grant the petition. In determining if the project is feasible and would benefit the public, the commission shall consider:

(1) the availability of comparable services from other systems, including special districts, municipalities, and regional authorities; and

(2) the reasonableness of the proposed public purpose projects and services.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 2, eff. June 18, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 32(2), eff. June 18, 2023.

Sec. 375.026. ORDER; INITIAL DIRECTORS. If the commission grants the petition, the commission in the order creating the district shall state the specific purposes for which the district is created and shall appoint the initial directors.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER C. BOUNDARIES

Sec. 375.041. COMMISSION ORDER. The boundaries of a district are as prescribed by the commission order creating the district. The commission may issue a subsequent order changing the boundaries of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.042. MISTAKE IN BOUNDARY DESCRIPTION. If in the petition or order a mistake is made in the field notes or in copying the field notes of the boundaries of a district, the mistake does not affect:

(1) the organization, existence, and validity of the district;

(2) the right of the district to issue any type of bonds or refunding bonds for the purposes for which the district is created or to pay the principal of and interest on the bonds;

(3) the right of the district to levy and collect assessments or taxes; or

(4) the legality or operation of the district or its governing body.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.043. ANNEXATION; NOTICE OF BOUNDARIES. (a) A district may annex land as provided by Section 49.301 and Chapter 54, Water Code, subject to the approval of the governing body of the municipality.

(b) Not later than the 90th day after the date a district annexes land under Subsection (a), the district shall provide a description of the metes and bounds of the district, as of the date the annexation takes effect, to each municipality that, on the date the annexation takes effect:

(1) has territory that overlaps with the district's territory; or

(2) is adjacent to the district.

(c) The district is not required to provide the description of

the metes and bounds required under Subsection (b) to a municipality that has waived in writing the municipality's right to the description.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 3, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 793 (H.B. 2018), Sec. 1, eff. September 1, 2019.

Sec. 375.044. EXCLUDING TERRITORY; NOTICE OF BOUNDARIES. (a) At any time during which a district does not have outstanding bonds, the board on its own motion may call a hearing on the question of the exclusion of land from the district in the manner provided by Chapter 54, Water Code, if the exclusions are practicable, just, or desirable.

(b) The board shall call a hearing on the exclusion of land or other property from the district if a signed petition evidencing the consent of the owners of a majority of the acreage in the district, according to the most recent certified tax roll of the county, is filed with the secretary of the board requesting the hearing before the issuance of bonds.

(c) Not later than the 90th day after the date a district excludes land under this section, the district shall provide a description of the metes and bounds of the district, as of the date the exclusion takes effect, to each municipality that, on the date the exclusion takes effect:

(1) has territory that overlaps with the district's territory; or

(2) is adjacent to the district.

(d) The district is not required to provide the description of the metes and bounds required under Subsection (c) to a municipality that has waived in writing the municipality's right to the description.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 4, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 793 (H.B. 2018), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 793 (H.B. 2018), Sec. 3, eff. September 1, 2019.

SUBCHAPTER D. ADMINISTRATIVE PROVISIONS; BOARD OF DIRECTORS

Sec. 375.061. NUMBER OF DIRECTORS; TERMS. A district is governed by a board of at least five but not more than 30 directors who serve staggered four-year terms.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 5, eff. September 1, 2011.

Sec. 375.062. TERMS OF INITIAL DIRECTORS. The initial directors shall be divided into two groups that are as equal in number as possible; one group serves four-year terms and one group serves two-year terms. The grouping of initial directors and terms for the directors in each group shall be determined by the commission.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.063. QUALIFICATIONS OF DIRECTOR. To be qualified to serve as a director, a person must be at least 18 years old and:

(1) an owner of property in the district;

(2) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district;

(3) an owner of a beneficial interest in a trust that owns property in the district; or

(4) an agent, employee, or tenant of a person covered by Subdivision (1), (2), or (3).

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 2, eff. September 1, 2019.

Sec. 375.064. RECOMMENDATIONS FOR SUCCEEDING BOARD. (a) The initial and each succeeding board of directors shall, and the owners of a majority of the assessed value of property subject to assessment by the district may, recommend to the governing body of the municipality persons to serve on the succeeding board.

(b) After reviewing the recommendations, the governing body shall approve or disapprove the directors recommended under Subsection (a).

(c) If the governing body is not satisfied with the recommendations submitted under Subsection (a), the board, on the request of the governing body, shall submit to the governing body additional recommendations.

(d) Board members may serve successive terms.

(e) If any provision of Subsections (a) through (d) is found to be invalid, the commission shall appoint the board from recommendations submitted by the preceding board.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 912, Sec. 20, eff. September 1, 2011.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 20, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 3, eff. September 1, 2019.

Sec. 375.0645. ELECTION OF DIRECTORS. (a) This section applies only to a district created by order of the commission providing for an elected board of directors as requested in the petition requesting creation of the district as provided by Section 375.022(d).

(b) The commission shall appoint the initial directors under Section 375.026, and subsequent directors are elected in the manner provided by Subchapter D, Chapter 49, Water Code.

(c) An elected director is entitled to receive fees of office and reimbursement for actual expenses as provided by Section 49.060, Water Code.

(d) Sections 375.069 and 375.070 do not apply to an elected director.

(e) Section 49.052(f), Water Code, does not exempt an elected director from disqualification under that section.

(f) Sections 375.064, 375.161, and 375.243 do not apply to a district with an elected board.

Added by Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 3, eff. June 18, 2023.

Sec. 375.065. REMOVAL OF DIRECTOR. The governing body of the municipality after notice and hearing may remove a director appointed by the municipality for misconduct or failure to carry out the director's duties on petition by a majority of the remaining directors.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 4, eff. June 18, 2023.

Sec. 375.066. BOARD VACANCY. A vacancy in the office of director shall be filled by the remaining members of the board for the unexpired term.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.067. DIRECTOR'S BOND AND OATH. (a) As soon as practicable after a director is appointed or elected as provided by this subchapter, the director shall execute a $10,000 bond payable to

the district and conditioned on the faithful performance of the director's duties.

(b) Each director's bond must be approved by the board, and each director shall take the oath of office prescribed by the constitution for public officers.

(c) The bond and oath shall be filed with the district and retained in its records.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 5, eff. June 18, 2023.

Sec. 375.068. OFFICERS. After directors are appointed or elected as provided by this subchapter and have qualified by executing a bond and taking the oath, they shall organize by electing a president, a vice-president, a secretary, and any other officers the board considers necessary.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 6, eff. June 18, 2023.

Sec. 375.069. BOARD POSITION NOT CIVIL OFFICE OF EMOLUMENT. A position on the board may not be construed to be a civil office of emolument for any purpose, including those purposes described by Article XVI, Section 40, of the Texas Constitution.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.070. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES. A director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a

director.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.071. QUORUM. (a) One-half of the serving directors constitutes a quorum, and a concurrence of a majority of a quorum of directors is required for any official action of the district.

(b) If at least two-thirds of the directors execute a written consent at any time, a majority of a quorum at a board meeting may authorize the levy of assessments, the levy of taxes, the imposition of impact fees, or the issuance of bonds. A director may execute a written consent outside of a board meeting.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 6, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 7, eff. June 18, 2023.

Sec. 375.072. PARTICIPATION IN VOTING. (a) A person who qualifies to serve on the board under Section 375.063 is qualified to serve as a director and participate in all votes pertaining to the business of the district regardless of any other statutory provision to the contrary.

(b) A director who has a beneficial interest in a business entity that will receive a pecuniary benefit from an action of the board may participate in discussion and vote on that action if a majority of the board has a similar interest in the same action or if all other similar business entities in the district will receive a similar pecuniary benefit.

(c) An employee of a public entity may serve on the board of directors of the district, but the public employee may not participate in the discussion of or vote on any matter regarding assessments on or contracts with the public entity of which the director is an employee.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 375.091. GENERAL POWERS OF DISTRICT. A district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including those conferred by Chapter 54, Water Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.225, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 7, eff. September 1, 2011.

Sec. 375.092. SPECIFIC POWERS. (a) A district has the powers necessary or convenient to carry out and effect the purposes and provisions of this chapter, including the powers granted in this section.

(b) A district has perpetual succession.

(c) A district may sue and be sued in courts of competent jurisdiction, may institute and prosecute suits without giving security for costs, and may appeal from a judgment without giving supersedeas or cost bond.

(d) A district may incur liabilities, borrow money on terms and conditions the board determines, and issue notes, bonds, or other obligations.

(e) A district may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease, or dispose of real and personal property, and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers under this chapter.

(f) A district may acquire, construct, complete, develop, own, operate, and maintain permanent improvements and provide services that directly benefit property in the district, regardless of whether the improvements or services are located inside or outside its

boundaries.

(g) A district may enter into agreements with a person or entity, public or private, for the joint use of facilities, installations, and property.

(h) A district may establish and maintain reasonable and nondiscriminatory rates, fares, tolls, charges, rents, or other fees or compensation for the use of the improvements constructed, operated, or maintained by the district.

(i) A district may enter contracts, leases, and agreements with and accept grants and loans from the United States and its departments and agencies, the state and its agencies, counties, municipalities, and political subdivisions, public or private corporations, including a nonprofit corporation created under a resolution of the board, and other persons and may perform all acts necessary for the full exercise of the powers vested in it on terms and conditions and for the term the board may determine to be advisable.

(j) A district may acquire property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement.

(k) A district may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties that are not needed for or, in the case of leases, that are not inconsistent with the efficient operation and maintenance of the district's improvements. A district may sell, lease, or otherwise dispose of any surplus material or personal or real property not needed for its requirements or for the purpose of carrying out its powers under this chapter.

(l) A district may lease projects or any part of a project to or contract for the use or operation of the projects or any part of a project by any operator.

(m) A district may conduct hearings and take testimony and proof, under oath or affirmation, at public hearings, on any matter necessary to carry out the purposes of this chapter.

(n) A district may procure and pay premiums to insurers for insurance of any type in amounts considered necessary or advisable by the board.

(o) A district may do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this chapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 4, eff. September 1, 2019.

Sec. 375.0921. AUTHORITY FOR ROAD PROJECTS. (a) Under Section 52, Article III, Texas Constitution, a district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

(b) The district may impose ad valorem taxes to provide for mass transit systems in the manner and subject to the limitations provided by Section 52, Article III, and Section 52-a, Article III, Texas Constitution.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 8, eff. September 1, 2011.

Sec. 375.0922. ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) If a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the road project must meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) If the state will maintain and operate the road, the Texas Transportation Commission must approve the plans and specifications of the road project.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 8, eff. September 1, 2011.

Sec. 375.093. USE AND ALTERATION OF PUBLIC WAYS. (a) With the

consent of the municipality, the district is entitled to use the streets, alleys, roads, highways, and other public ways and to relocate, raise, reroute, change the grade of, and alter the construction of any street, alley, highway, road, railroad, electric lines and facilities, telegraph and telephone properties and facilities, pipelines and facilities, conduits and facilities, and other property, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of the system or to have those things done at the district's sole expense.

(b) The district may not proceed with any action to change, alter, or damage the property or facilities of the state, its municipal corporations, agencies, or political subdivisions or of owners rendering public services, or that will disrupt those services being provided by others, or to otherwise inconvenience the owners of that property or those facilities without having first obtained the written consent of those owners. If the owners of the property or facilities desire to handle the relocation, raising, change in the grade of, or alteration in the construction of the property or facilities with their own personnel or have the work done by contractors of their own choosing, the district may enter agreements with the owners providing for the necessary relocations, changes, or alterations of the property or facilities by the owners or contractors and the reimbursement by the district to those owners of the costs incurred by the owners in making those relocations, changes, or alterations or having them accomplished by contractors.

(c) If a district, in exercising any of the powers conferred by this chapter, requires the relocation, adjustment, raising, lowering, rerouting, or changing the grade of or altering the construction of any street, alley, highway, overpass, underpass, or road, any railroad track, bridge, or other facilities or property, any electric lines, conduits, or other facilities or property, any telephone or telegraph lines, conduits, or other facilities or property, any gas transmission or distribution pipes, pipelines, mains, or other facilities or property, any water, sanitary sewer or storm sewer pipes, pipelines, mains, or other facilities, or property, any cable television lines, cables, conduits, or other facilities or property, or any other pipelines and any facilities or properties relating to those pipelines, those relocations, adjustments, raising, lowering, rerouting, or changing of grade, or altering of construction must be

accomplished at the sole cost and expense of the district, and damages that are suffered by the owners of the property or facilities shall be borne by the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.094. NO EMINENT DOMAIN POWER. A district may not exercise the power of eminent domain.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.095. MANAGEMENT BY BOARD OF DIRECTORS. The responsibility for the management, operation, and control of the property belonging to a district is vested in the board.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.096. SPECIFIC POWERS AND DUTIES OF BOARD. (a) The board may:

(1) employ all persons, firms, partnerships, or corporations considered necessary by the board for the conduct of the affairs of the district, including a general manager, bookkeepers, auditors, engineers, attorneys, financial advisers, peace or traffic control officers, architects, and operating or management companies and prescribe the duties, tenure, and compensation of each;

(2) dismiss employees;

(3) adopt a seal for the district;

(4) invest funds of the district in any investments authorized by Subchapter A, Chapter 2256, Government Code and provide, by resolution, that an authorized representative manage the district's funds and invest and reinvest the funds of the district on terms the board considers advisable;

(5) establish a fiscal year for the district;

(6) establish a complete system of accounts for the district and each year shall have prepared an audit of the district's

affairs, which shall be open to public inspection, by an independent certified public accountant or a firm of independent certified public accountants; and

(7) designate one or more banks to serve as the depository bank or banks.

(b) Funds of a district shall be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the district's bonds or notes. To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation, they must be secured in the manner provided by law for the security of funds of counties. The board by resolution may authorize a designated representative to supervise the substitution of securities pledged to secure the district's funds.

(c) The board may adopt and enforce reasonable rules and regulations governing the administration of the district and its programs and projects.

(d) The name of the district may be established or changed by resolution of the board.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(11), eff. Sept. 1, 1995.

Sec. 375.097. HEARINGS EXAMINER; ADMINISTRATIVE PROCEDURE ACT. (a) The board may appoint a hearings examiner to conduct any hearing called by the board, including a hearing required by Chapter 395. The hearings examiner may be an employee or contractor of the district, or a member of the district's board.

(b) The hearing shall be conducted in accordance with Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 9, eff. September 1, 2011.

Sec. 375.098. DISTRICT ACT OR PROCEEDING PRESUMED VALID. (a) A governmental act or proceeding of a district is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if:

(1) the third anniversary of the effective date of the act or proceeding has expired; and

(2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

(b) This section does not apply to:

(1) an act or proceeding that was void at the time it occurred;

(2) an act or proceeding that, under a statute of this state or the United States, was a misdemeanor or felony at the time the act or proceeding occurred;

(3) a rule that, at the time it was passed, was preempted by a statute of this state or the United States, including Section 1.06 or 109.57, Alcoholic Beverage Code; or

(4) a matter that on the effective date of this section:

(A) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(B) has been held invalid by a final judgment of a court.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 10, eff. September 1, 2011.

SUBCHAPTER F. ASSESSMENTS

Sec. 375.111. GENERAL POWERS RELATING TO ASSESSMENTS. In addition to the powers provided by Subchapter E, the board of a district may undertake improvement projects and services that confer a special benefit on all or a definable part of the district. The board may levy and collect special assessments on property in that area, based on the benefit conferred by the improvement project or services, to pay all or part of the cost of the project and services. If the board determines that there is a benefit to the district, the district may provide improvements and services to an area outside the boundaries of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26,

1991.

Sec. 375.112. SPECIFIC POWERS RELATING TO ASSESSMENTS. (a) An improvement project or services provided by the district may include the construction, acquisition, improvement, relocation, operation, maintenance, or provision of:

(1) landscaping; lighting, banners, and signs; streets and sidewalks; pedestrian skywalks, crosswalks, and tunnels; seawalls; marinas; drainage and navigation improvements; pedestrian malls; solid waste, water, sewer, and power facilities, including electrical, gas, steam, cogeneration, and chilled water facilities; parks, plazas, lakes, rivers, bayous, ponds, and recreation and scenic areas; historic areas; fountains; works of art; off-street parking facilities, bus terminals, heliports, and mass transit systems; theatres, studios, exhibition halls, production facilities and ancillary facilities in support of the foregoing; and the cost of any demolition in connection with providing any of the improvement projects;

(2) other improvements similar to those described in Subdivision (1);

(3) the acquisition of real property or any interest in real property in connection with an improvement, project, or services authorized by this chapter, Chapter 54, Water Code, or Chapter 365 or 441, Transportation Code;

(4) special supplemental services for advertising, economic development, promoting the area in the district, health and sanitation, public safety, maintenance, security, business recruitment, development, elimination or relief of traffic congestion, recreation, and cultural enhancement; and

(5) expenses incurred in the establishment, administration, maintenance, and operation of the district or any of its improvements, projects, or services.

(b) An improvement project on two or more streets or two or more types of improvements may be included in one proceeding and financed as one improvement project.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.226, eff. Sept. 1, 1997.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 11, eff. September 1, 2011.

Sec. 375.113. PROPOSED ASSESSMENTS. Services or improvement projects may be financed under this chapter after a hearing notice given as required by this subchapter and a public hearing by the board on the advisability of the improvements and services and the proposed assessments.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.114. PETITION REQUIRED. The board may not finance improvement projects or services under this chapter unless a written petition has been filed with the board requesting those improvements or services signed by:

(1) the owners of a majority of the assessed value of the property in the district subject to assessment, according to the most recent certified county property tax rolls; or

(2) for a proposed assessment to be apportioned under Section 375.119(1), the owners of a majority of the surface area of the real property subject to assessment by the district, according to the most recent certified county property tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 12, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 5, eff. September 1, 2019.

Sec. 375.115. NOTICE OF HEARING. (a) Notice of the hearing shall be given in a newspaper with general circulation in the county in which the district is located. The final publication must be made not later than the 30th day before the date of the hearing.

(b) The notice must include:

(1) the time and place of the hearing;

(2) the general nature of the proposed improvement project or services;

(3) the estimated cost of the improvement, including interest during construction and associated financing costs; and

(4) the proposed method of assessment.

(c) Written notice containing the information required by Subsection (b) shall be mailed by certified mail, return receipt requested, or by another method determined by the board to provide adequate proof that the notice was timely mailed, not later than the 30th day before the date of the hearing. The notice shall be mailed to each property owner in the district who will be subject to assessment at the current address of the property to be assessed as reflected on the tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1265 (H.B. 871), Sec. 1, eff. September 1, 2009.

Sec. 375.116. CONCLUSION OF HEARING; FINDINGS. (a) A hearing on the services or improvement project, whether conducted by the board or a hearings examiner, may be adjourned from time to time.

(b) At the conclusion of the hearing, the board shall make findings by resolution or order relating to the advisability of the improvement project or services, the nature of the improvement project or services, the estimated cost, the area benefited, the method of assessment, and the method and time for payment of the assessment.

(c) If a hearings examiner is appointed to conduct the hearing, after conclusion of the hearing, the hearings examiner shall file with the board a report stating the examiner's findings and conclusions.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.117. AREA TO BE ASSESSED. (a) The area of the

district to be assessed according to the findings of the board may be the entire district or any part of the district and may be less than the area proposed in the notice of the hearing.

(b) Except as provided by Subsection (c), the area to be assessed may not include property that is not within the district boundaries at the time of the hearing unless there is an additional hearing, preceded by the required notice.

(c) The owner of improvements constructed or land annexed to the district after the district has imposed assessments may waive the right to notice and an assessment hearing and may agree to the imposition and payment of assessments at an agreed rate for improvements constructed or land annexed to the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.118. OBJECTIONS; LEVY OF ASSESSMENT. (a) At a hearing on proposed assessments, at any adjournment of the hearing, or after consideration of the hearings examiner's report, the board shall hear and rule on all objections to each proposed assessment.

(b) The board may amend proposed assessments for any parcel.

(c) After all objections have been heard and action has been taken with regard to those objections, the board, by order or resolution, shall levy the assessments as special assessments on the property and shall specify the method of payment of the assessments and may provide that those assessments be paid in periodic installments, including interest.

(d) Periodic installments must be in amounts sufficient to meet annual costs for services and improvements as provided by Section 375.119 and continue for the number of years required to retire indebtedness or pay for the services to be rendered. The board may provide interest charges or penalties for failure to make timely payment and also may levy an amount to cover delinquencies and expenses of collection.

(e) If assessments are levied for more than one service or improvement project, the board may provide that assessments collected for one service or improvement project may be borrowed to be used for another service or improvement project.

(f) The board shall establish a procedure for the distribution

or use of any assessments in excess of those necessary to finance the services or improvement project for which those assessments were collected.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.119. APPORTIONMENT OF COST. The portion of the cost of an improvement project or services to be assessed against the property in the district shall be apportioned by the board based on the special benefits accruing to the property because of the improvement project or services. The cost may be assessed:

(1) equally by front foot or by square foot of land area against all property in the district;

(2) against property according to the value of the property as determined by the board, with or without regard to structures or other improvements on the property; or

(3) on any other reasonable assessment plan that results in imposing fair and equitable shares of the cost on property similarly benefited.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.120. ASSESSMENT ROLL. If the total cost of an improvement project or services is determined, the board shall levy the assessments against each parcel of land against which an assessment may be levied in the district. With regard to an assessment for services, the board may levy an annual assessment that may be lower but not higher than the initial assessment. The board shall have an assessment roll prepared showing the assessments against each property and the board's basis for the assessment. The assessment roll shall be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.121. INTEREST ON ASSESSMENTS; LIEN. (a) Assessments bear interest at a rate specified by the board that may not exceed the interest rate permitted by Chapter 1204, Government Code.

(b) Interest on an assessment between the effective date of the order or resolution levying the assessment and the date the first installment and any related penalty is payable shall be added to the first installment. The interest or penalties on all unpaid installments shall be added to each subsequent installment until paid.

(c) An assessment or any reassessment and any interest and penalties on that assessment or reassessment is a lien against the property until it is paid.

(d) The owner of any property assessed may pay at any time the entire assessment against any lot or parcel with accrued interest to the date of the payment.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.331, eff. Sept. 1, 2001.

Sec. 375.122. SUPPLEMENTAL ASSESSMENTS. After notice and hearing in the manner required for original assessments, the board may make supplemental assessments to correct omissions or mistakes in the assessment:

(1) relating to the total cost of the improvement project or services; or

(2) covering delinquencies or costs of collection.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.123. APPEAL. (a) After determination of an assessment, a property owner may appeal the assessment to the board. The property owner must file a notice of appeal with the board not later than the 30th day after the date that the assessment is adopted. The board shall set a date to hear the appeal.

(b) The property owner may appeal the board's decision on the assessment to a court of competent jurisdiction. The property owner must file notice of the appeal with the court of competent

jurisdiction not later than the 30th day after the date of the board's final decision with respect to the assessment.

(c) Failure to file either of the notices in the time required by this section results in a loss of the right to appeal the assessment.

(d) If an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the board, or determined to be invalid by the board, the board may make a reassessment or new assessment of the parcel.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.124. APPEAL OF ORDER. A person against whom an assessment is made by board order may appeal the assessment to a district court in the county in which the district is located in the manner provided for the appeal of contested cases under Chapter 2001, Government Code. Review by the district court is by trial de novo.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER G. IMPACT FEES

Sec. 375.141. IMPOSITION OF IMPACT FEES. (a) The board may impose impact fees to pay for the cost of providing improvements that the district is authorized to provide under this chapter, including mass transit systems.

(b) The board may provide for impact fees to be paid in periodic installments and may include an interest charge from the date the impact fees are imposed to the date the impact fees are paid.

(c) The board may provide interest charges and penalties for failure to make timely payment and also may levy an amount to cover delinquencies and expenses of collection.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.142. PROCEDURE FOR ADOPTING IMPACT FEES. Impact fees shall be adopted under the procedures provided by Chapter 395, Local Government Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER H. EXEMPTIONS

Sec. 375.161. CERTAIN RESIDENTIAL PROPERTY EXEMPT. (a) Except as provided by Subsection (b), the board may not impose an impact fee, assessment, tax, or other requirement for payment, construction, alteration, or dedication under this chapter on single-family detached residential property, duplexes, triplexes, and fourplexes.

(b) This section does not apply to a tax or assessment, if a tax is authorized or approved by the voters of the district, or to a required payment for a service provided by the district, including water and sewer services.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 8, eff. June 18, 2023.

Sec. 375.162. GOVERNMENTAL ENTITIES; ASSESSMENTS. Payment of assessments by municipalities, counties, other political subdivisions, and organizations exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, shall be established by contract. Municipalities, counties, and other political subdivisions may contract with the district under terms and conditions those entities consider advisable to provide for the payment of assessments.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.163. RECREATIONAL, PARK, OR SCENIC USE PROPERTY. (a) Property that comprises three or more acres, separated only by streets or public rights-of-way, that was used primarily for recreational, park, or scenic use during the immediately preceding calendar year and on which money has been spent for landscaping at any time in an amount that is equal to the lesser of five years of proposed district assessments on the property or the proposed amount of the district's assessments on the property pursuant to a plan of assessment adopted by the board is exempt from assessment by the district, except with consent of the owner of the property.

(b) Property is exempt from assessment by the district under this section during the period that the property is used primarily for recreational, park, or scenic use in accordance with this section.

(c) The fact that property is exempt from assessment by the district may not be construed to be an express or implied dedication of the property to the public for recreational, park, scenic, or other public use or constitute evidence of an intent by the owner of the property to make or offer to make that type of dedication and does not affect the status of the property as private property.

(d) If the district levies ad valorem taxes, property that qualifies for an exemption from assessment under this section must be taxed by the district at its appraised value for recreational, park, or scenic use determined in accordance with Subchapter F, Chapter 23, Tax Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.164. RESIDENTIAL PROPERTY EXEMPTED BY BOARD. The board may exempt residential property from all or a part of the assessments levied on that property or determine that residential property will not be benefited by the proposed improvement project or services.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.165. GOVERNMENTAL ENTITIES; IMPACT FEES. (a) A

municipality, county, or other political subdivision is exempt from impact fees imposed by the district unless the municipality, county, or other political subdivision consents to payment of the fees by official act of its governing body.

(b) Payment of impact fees by a municipality, county, or other political subdivision must be established by contract.

(c) A municipality, county, or other political subdivision may contract with the district under terms and conditions the governmental entity considers advisable to provide for payment of impact fees.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER I. FUNDS

Sec. 375.181. FUNDS AVAILABLE FOR PAYMENT OF PROJECTS AND SERVICES. (a) The cost of any improvement project or services, including interest during construction and costs of issuance of bonds, may be paid from general or available funds, assessments, or the proceeds of bonds payable from taxes, revenues, assessments, impact fees, grants, gifts, contracts, leases, or any combination of those funds.

(b) During the progress of an improvement project or services, the board may issue temporary notes to pay the costs of the improvement project or services and issue bonds on completion.

(c) The costs of more than one improvement project or service may be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.182. PROHIBITED USE OF FUNDS. Funds may not be spent, an assessment imposed, or a tax levied under this chapter to finance the opening, reopening, or maintenance of a pass, canal, or waterway across a barrier island connecting the Gulf of Mexico with inland waters.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26,

1991.

SUBCHAPTER J. BONDS

Sec. 375.201. GENERAL OBLIGATION AND REVENUE BONDS. For the payment of all or part of the costs of an improvement project or services, the board may issue bonds in one or more series payable from and secured by ad valorem taxes, assessments, impact fees, revenues, grants, gifts, contracts, leases, or any combination of those funds. Bonds may be liens on all or part of the revenue derived from improvements authorized under this chapter, including installment payments of special assessments or from any other source pledged to their payment.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.202. TERMS AND CONDITIONS OF BONDS. (a) Bonds may be issued to mature serially or otherwise not more than 40 years from their date of issue. Provision may be made for the subsequent issuance of additional parity bonds or subordinate lien bonds under terms or conditions that may be stated in the order or resolution authorizing the issuance of the bonds.

(b) The bonds are negotiable instruments within the meaning and for purposes of the Business & Commerce Code.

(c) The bonds may be issued registrable as to principal alone or as to both principal and interest, shall be executed, may be made redeemable before maturity, may be issued in the form, denominations, and manner and under the terms, conditions, and details, may be sold in the manner, at the price, and under the terms, and shall bear interest at the rates determined and provided in the order or resolution authorizing the issuance of the bonds.

(d) Bonds may bear interest and may be issued in accordance with Chapters 1201, 1204, and 1371, Government Code, and Subchapters A-C, Chapter 1207, Government Code.

(e) If provided by the bond order or resolution, the proceeds from the sale of bonds may be used to pay interest on the bonds during and after the period of the acquisition or construction of any improvement project to be provided through the issuance of the bonds,

to pay administrative and operation expenses to create a reserve fund for the payment of the principal of and interest on the bonds, to pay costs associated with the issuance of the bonds, and to create any other funds. The proceeds of the bonds may be placed on time deposit or invested, until needed, in securities in the manner provided by the bond order or resolution.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.332, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 13, eff. September 1, 2011.

Sec. 375.203. PLEDGES. (a) The board may pledge all or part of the income or assessments from improvement projects financed under this chapter or from any other source to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. The pledged income shall be set and collected in amounts that will be at least sufficient, with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds and, to the extent required by the order or resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds and to pay operation, maintenance, and other expenses in connection with the improvement projects authorized under this chapter.

(b) Bonds may be additionally secured by a mortgage or deed of trust on real property relating to the facilities authorized under this chapter owned or to be acquired by the district and by chattel mortgages, liens, or security interests on personal property appurtenant to that real property. The board may authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrance to evidence the indebtedness.

(c) The board may pledge to the payment of the bonds all or any part of any grant, donation, revenues, or income received or to be received from the United States government or any other public or private source.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26,

1991.

Sec. 375.204. REFUNDING BONDS. (a) Bonds issued under this chapter may be refunded or otherwise refinanced by the issuance of refunding bonds under terms or conditions determined by order or resolution of the board. Refunding bonds may be issued in amounts necessary to pay the principal of and interest and redemption premium, if any, on bonds to be refunded, at maturity or on any redemption date, and to provide for the payment of costs incurred in connection with the refunding.

(b) The refunding bonds shall be issued in the manner provided by this chapter for other bonds.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.205. APPROVAL BY ATTORNEY GENERAL; REGISTRATION. (a) The district shall submit bonds and the appropriate proceedings authorizing their issuance to the attorney general for examination. This subsection applies only to bonds that are public securities, as that term is defined by Section 1202.001, Government Code.

(b) If the bonds recite that they are secured by a pledge of assessments, impact fees, revenues, or rentals from a contract or lease, the district also shall submit to the attorney general a copy of the assessment procedures, impact fee procedures, contract, or lease and the proceedings relating to it.

(c) If the attorney general finds that the bonds have been authorized and any assessment, contract, or lease has been made in accordance with law, the attorney general shall approve the bonds and the assessment, impact fee, contract, or lease, and the bonds shall be registered by the comptroller.

(d) After approval and registration, the bonds and any assessment, impact fee, contract, or lease relating to them are incontestable in any court or other forum for any reason and are valid and binding obligations for all purposes in accordance with their terms.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 14, eff. September 1, 2011.

Sec. 375.206. AUTHORIZED INVESTMENTS; SECURITY. (a) District bonds are legal and authorized investments for:

(1) banks, trust companies, and savings and loan associations;

(2) insurance companies;

(3) fiduciaries, trustees, and guardians; and

(4) all interest and sinking funds and other public funds of the state and agencies, subdivisions, and instrumentalities of the state, including counties, municipalities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic.

(b) District bonds are eligible and lawful security for deposits of counties, municipalities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons appurtenant to the bonds.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.207. MUNICIPAL APPROVAL. (a) A district must obtain the approval of the governing body of the municipality in which it is located for bond issues for an improvement project and the plans and specifications of an improvement project financed by the bond issue before those bonds may be issued.

(b) Instead of approval of bonds by the municipality, the district before finally approving a capital improvements budget may obtain approval from the governing body of the municipality of a capital improvements budget for a period not to exceed five years. If a district obtains approval of a capital improvements budget, it may finance the capital improvements and issue bonds specified in the budget without further approval from the municipality.

(c) A district must obtain approval from the municipality of

the plans and specifications of any improvement project that involves the use of the rights-of-way of streets, roads, or highways or the use of municipal land or any easements granted by the municipality.

(d) Except as provided by Section 375.263, a municipality is not obligated to pay any bonds, notes, or other obligations of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.208. COMMISSION APPROVAL. A district must obtain approval of the commission as provided by Section 49.181, Water Code, only if the bonds are to provide water, sewage, or drainage facilities.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1009 (H.B. 2815), Sec. 9, eff. June 18, 2023.

Sec. 375.209. TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct annual ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 15, eff. September 1, 2011.

SUBCHAPTER K. COMPETITIVE BIDDING; DISADVANTAGED BUSINESSES

Sec. 375.221. APPLICABILITY OF WATER DISTRICTS LAW TO COMPETITIVE BIDDING ON CERTAIN CONTRACTS. (a) Except as provided by Subsection (b) of this section, Subchapter I, Chapter 49, Water Code, applies to a district contract for construction work, equipment, materials, or machinery.

(b) The board may adopt rules governing receipt of bids and

the award of the contract and providing for the waiver of the competitive bid requirement if:

(1) there is an emergency;

(2) the needed materials are available from only one source;

(3) in a procurement requiring design by the supplier competitive bidding would not be appropriate and competitive negotiation, with proposals solicited from an adequate number of qualified sources, would permit reasonable competition consistent with the nature and requirements of the procurement; or

(4) after solicitation, it is ascertained that there will be only one bidder.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 757, Sec. 20, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 13, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 16, eff. September 1, 2011.

Sec. 375.222. DISADVANTAGED BUSINESSES. (a) A district shall attempt to stimulate the growth of disadvantaged businesses inside its boundaries by encouraging the full participation of disadvantaged businesses in all phases of its procurement activities and affording those disadvantaged businesses a full and fair opportunity to compete for district contracts.

(b) A district shall establish one or more programs designed to increase participation by disadvantaged businesses in public contract awards. Each program shall be structured to further remedial goals and shall be established to eradicate the effects of any prior discrimination.

(c) The board shall review each of its disadvantaged business programs on an annual basis to determine if each program is the most effective method for remedying historical discriminatory actions. The board's review shall determine whether statistically significant disparities exist between the disadvantaged businesses in the relevant market that are qualified to undertake district work and the

percentage of total district funds that are awarded to disadvantaged businesses.

(d) A program established by a district under this section must attempt to remedy any statistically significant disparities that are found to exist, and, because a program is remedial in nature, it continues only until its purposes and objectives are met as determined by the regular periodic review.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.223. SUPERSEDES OTHER LAW. This chapter states the required procedures necessary for the district to award contracts and supersedes any law or other requirement with respect to award of contracts.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER L. ELECTIONS

Sec. 375.241. TIME OF ELECTION. (a) A bond election, maintenance tax election, and any other election held in a district may be held at the same time and in conjunction with any other election.

(b) Elections shall be called and held as provided by the appropriate provisions of Chapter 54, Water Code.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.242. ELECTION CALLED BY BOARD. The board may call an election for the purpose of voting on any measure.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.243. PETITION REQUIRED FOR BOND ELECTION. The board

may not call a bond election unless a written petition has been filed with the board requesting an election signed by the owners of a majority of the assessed value of the property subject to assessment or taxation by the district as determined from the most recent certified county property tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 6, eff. September 1, 2019.

Sec. 375.244. ELECTION TO APPROVE ISSUANCE OF BONDS. (a) Bonds payable in whole or in part from taxes may not be issued unless approved by a majority or any larger percentage if required by the constitution of the qualified voters in the district voting at an election held for that purpose.

(b) Bonds payable from sources other than taxes may be issued by the board, and assessments may be levied without approval at an election.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

SUBCHAPTER M. DISSOLUTION

Sec. 375.261. DISSOLUTION BY BOARD VOTE. Except as limited by Section 375.264, the board of a district by majority vote may dissolve the district at any time.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.262. DISSOLUTION BY PETITION BY OWNERS. Except as limited by Section 375.264, the board shall dissolve the district on written petition filed with the board by the owners of at least two-thirds of the assessed value of the property subject to assessment or taxation by the district based on the most recent certified county property tax rolls.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 7, eff. September 1, 2019.

Sec. 375.2621. PROHIBITION ON ISSUANCE OF BONDS AFTER PETITION. If a petition for dissolution under Section 375.262 is filed with the board, the board must consider the petition not later than the 60th day after the date the petition is filed. The district may not issue bonds secured by assessments after the date the board confirms that the petition is valid and complete under Section 375.262.

Added by Acts 2021, 87th Leg., R.S., Ch. 520 (S.B. 604), Sec. 1, eff. September 1, 2021.

Sec. 375.263. DISSOLUTION BY MUNICIPAL ORDINANCE. (a) The governing body of a municipality in which a district is wholly located, by a vote of not less than two-thirds of its membership, may adopt an ordinance dissolving the district.

(b) On the adoption of the ordinance, the district is dissolved, and, in accordance with Section 43.075, the municipality succeeds to the property and assets of the district and assumes all bonds, debts, obligations, and liabilities of the district.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.20, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 17, eff. September 1, 2011.

Sec. 375.264. LIMITATIONS ON DISSOLUTION BY BOARD OF DISTRICT WITH DEBT. (a) A district may not be dissolved by its board under Section 375.261 or after a petition is filed under Section 375.262 if the district has outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

(b) If a petition for dissolution is filed under Section 375.262 with the board of a district and the district has outstanding bonded indebtedness secured by assessments:

(1) the district shall remain in existence solely for the purposes of winding up district operations and discharging its bonded indebtedness; and

(2) the board shall use all district money that is available to:

(A) wind up district operations; and

(B) repay or defease the bonded indebtedness as soon as practicable in accordance with the order or resolution authorizing the issuance of the bonds.

(c) Subsection (b) does not apply to a district that has outstanding bonded indebtedness secured by a source other than assessments on the date the petition is filed with the board.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 13.21, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 18, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 520 (S.B. 604), Sec. 2, eff. September 1, 2021.

SUBCHAPTER N. CONTRACTS WITH DISTRICT

Sec. 375.281. CONTRACTS WITH DISTRICT. Notwithstanding any other law to the contrary, a state agency, municipality, county, other political subdivision, corporation, individual, or other entity may contract with a district without further authorization to carry out the purposes of this chapter.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.05(a), eff. Aug. 26, 1991.

Sec. 375.282. STRATEGIC PARTNERSHIP AGREEMENT. A district with territory in the extraterritorial jurisdiction of a municipality may negotiate and enter into a written strategic partnership with the municipality under Section 43.0751.

Added by Acts 2011, 82nd Leg., R.S., Ch. 912 (S.B. 1234), Sec. 19, eff. September 1, 2011.

SUBCHAPTER O. DEFENSE ADJUSTMENT MANAGEMENT AUTHORITY

Sec. 375.301. LEGISLATIVE FINDINGS; PURPOSES. (a) The legislature finds that:

(1) the closure of certain defense bases has had a negative impact on the economic development of the areas within the former defense bases and the areas in the general vicinity of the former defense bases and that the creation of the specific type of authority provided for in this subchapter is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution;

(2) it is an appropriate role for a municipality to foster economic opportunity, job generation, and capital investment by promoting a favorable business climate, preparing the workforce for productive employment, and supporting infrastructure development in areas around defense bases that are intended to be annexed by the municipality; and

(3) the programs designed to create a competent and qualified workforce are essential both to the economic growth and vitality of many municipalities in this state and to the elimination of unemployment and underemployment in those municipalities.

(b) The programs authorized by this subchapter are in the public interest, promote the economic welfare of this state, and serve the public purpose of developing and diversifying the economy of this state and of eliminating unemployment and underemployment in this state.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.302. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be liberally construed in conformity with the findings and purposes stated in Section 375.301.

(b) Except as provided by this subchapter, the other provisions of this chapter apply to an authority created under this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.303. DEFINITIONS. In this subchapter:

(1) "Authority" means a defense adjustment management authority created under this subchapter.

(2) "Eligible project" means a program authorized by Section 379A.051 and a project as defined by Section 501.002 and Sections 505.151-505.156. Notwithstanding this definition, seeking a charter for or operating an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code, shall not be an eligible project.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.22, eff. April 1, 2009.

Sec. 375.304. ELIGIBILITY FOR CREATION BY MUNICIPALITY. (a) The governing body of a municipality by resolution or ordinance may create an authority in an area that is:

(1) in the same county as a military installation or facility that is:

(A) closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) and its subsequent amendments; or

(B) a base efficiency project as defined by Section 379B.001; and

(2) in an area that has been annexed or disannexed for full or limited purposes under Subchapter F, Chapter 43, by a municipality with a population of at least 1.1 million or is in the extraterritorial jurisdiction of a municipality with a population of at least 1.1 million and that has been annexed for limited purposes by the municipality under Subchapter F, Chapter 43.

(b) Subchapter B and Sections 375.041 and 375.042 do not apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 1, eff. June 17, 2005.

Sec. 375.305. HEARING ON CREATION OF AUTHORITY. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of the municipality creates the authority, the governing body of the municipality shall hold two public hearings to consider the creation of the proposed authority. The municipality must publish notice of each public hearing in a newspaper of general circulation in the area of the proposed authority at least seven days before each public hearing.

(b) The notice required by Subsection (a) must state:

(1) the name of the proposed authority;

(2) the date, time, and place for the public hearing;

(3) the boundaries of the proposed authority, including a map of the proposed authority; and

(4) the powers of the proposed authority, including the power to levy assessments and to impose a sales and use tax.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 2, eff. June 17, 2005.

Sec. 375.306. BOARD OF DIRECTORS. (a) The board consists of 11 directors.

(b) The municipality shall appoint four members of the board.

(c) The county in which the municipality is primarily located shall appoint four members of the board.

(d) School districts whose boundaries overlap with an authority by 5,000 or more acres shall collectively appoint three members of the board.

(e) Except for the presiding officer, directors are appointed for terms of two years. Terms of directors may be staggered, and directors may serve successive terms.

(f) A vacancy on the board is filled for the unexpired term by the governing body of the entity that appointed the director who served in the vacant position.

(g) The mayor of the municipality and the county judge of the county in which the authority is primarily located shall, alternately, appoint one director to serve as presiding officer, with the first appointment to be made by the mayor of the municipality.

The presiding officers shall serve for a term of four years beginning on January 1 of the year following the appointment. The board may elect an assistant presiding officer to preside in the absence of the presiding officer or when there is a vacancy in that office. The board may elect other officers as it considers appropriate.

(h) Sections 375.061, 375.063, 375.066, and 375.068 and the limitations of Section 375.072(c) do not apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 3, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 663 (S.B. 1493), Sec. 1, eff. June 17, 2011.

Sec. 375.307. QUALIFICATIONS OF DIRECTORS. (a) At least three directors appointed by the municipality and at least three directors appointed by the county must:

(1) reside in the authority; or

(2) own property in the authority.

(b) Representatives or agents of a school district whose boundaries overlap with an authority or of an institution of higher education that operates facilities within an authority may serve on the board.

(c) To be qualified to serve as a director appointed by the municipality or the county, a person who does not meet the qualifications of Subsection (a) must be:

(1) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the authority;

(2) an owner of a beneficial interest in a trust that owns property in the authority; or

(3) an agent, employee, or tenant of a person who:

(A) owns property in the authority; or

(B) is covered by Subdivision (1) or (2).

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 663 (S.B. 1493), Sec. 2, eff. June 17, 2011.

Sec. 375.308. POWERS OF THE AUTHORITY; MUNICIPALITY. (a) An authority:

(1) may plan, design, implement, develop, construct, and finance eligible projects as defined in this subchapter; and

(2) has the powers of a municipality under Chapter 378, as added by Chapter 1221, Acts of the 76th Legislature, Regular Session, 1999, and Chapter 380.

(b) An authority may not:

(1) issue bonds or notes without the prior approval of the governing body of the municipality that created the authority;

(2) seek a charter for or operate, within the boundaries of the authority, an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code; or

(3) levy ad valorem property taxes.

(c) A municipality may not seek a charter for or operate an open-enrollment charter school authorized by Subchapter D, Chapter 12, Education Code, within the boundaries of the authority.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.3085. ANNEXATION OR DISANNEXATION. (a) The board may vote to annex or disannex territory to an authority.

(b) Not earlier than the 60th or later than the 30th day before the date the board votes on the annexation or disannexation, the board shall hold two public hearings to consider the annexation or disannexation. The board must publish notice of each public hearing in a newspaper of general circulation in the area of the proposed annexed or disannexed territory at least seven days before each public hearing.

(c) The notice must state:

(1) the date, time, and place for the public hearing; and

(2) the amended boundaries of the authority, including a map of the proposed annexation or disannexation of territory in the authority.

(d) If the board approves the proposed annexation or disannexation, the board shall submit the action to the governing body of the municipality for approval. The annexation or disannexation takes effect on the date the governing body of the municipality approves the annexation or disannexation by ordinance.

(e) Section 375.043 does not apply to the authority.

Added by Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 4, eff. June 17, 2005.

Sec. 375.309. MUNICIPAL ANNEXATION OF AREA IN AN AUTHORITY. (a) A municipality that creates an authority under this subchapter may annex all or part of the territory located in the authority under Chapter 43.

(b) Annexation of territory located in the authority does not affect the operation of the authority.

(c) Creation of an authority does not:

(1) affect the power of the municipality to designate all or part of an area in the authority as an industrial authority;

(2) limit a power of the municipality conferred by Chapter 42; or

(3) impose a duty on or affect the power of the municipality to provide municipal services to any area in the municipality or its extraterritorial jurisdiction that is in the authority.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.310. AUTHORITY PLAN. (a) An authority may only develop or construct public improvements or eligible projects in areas designated in an authority plan approved by the board and the governing body of the municipality that created the authority.

(b) The plan must include the information required for a municipal reinvestment zone under Sections 311.011(b) and (c), Tax Code, for the area of the authority. For the purposes of applying those sections, the area of the authority affected constitutes a zone.

(c) The authority shall generate the plan based on the economic development needs of the property owners and constituents in the authority.

(d) After approval by the board, the authority shall submit the plan to the municipality for approval. Before taking action to approve or reject the plan, the municipality shall make a copy of the proposed plan available to the public and hold hearings and publish

notice of the hearings in the manner required by Section 375.305. The notice of the public hearings must state where a copy of the proposed plan is available for inspection.

(e) The board may amend and submit the approved plan to the governing body of the municipality for approval.

(f) Before approving the authority's plan or any amendment, the municipality shall publish notice and hold hearings as required by Subsection (d).

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 5, eff. June 17, 2005.

Sec. 375.311. SALES AND USE TAX. (a) An authority may impose a sales and use tax to support or finance public infrastructure projects and eligible projects authorized under this subchapter if the tax is authorized by a majority of the qualified voters of the authority voting at an election held for that purpose in the manner provided by Sections 375.241 and 375.242.

(b) If an authority adopts the tax authorized by Subsection (a), a tax is imposed on the receipts from the sale at retail of taxable items within the authority at the rate approved by the voters. The rate must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent.

(c) Chapter 321, Tax Code, governs the imposition, computation, administration, governance, and abolition of a tax imposed under this section.

(d) If any territory in the authority is annexed by the municipality, the municipality's sales and use tax applies in the annexed area. If the authority's sales and use tax rate, when combined with any other sales and use tax applicable in the authority, exceeds two percent, the authority's sales and use tax is abolished upon annexation.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.312. ZONING AND PLANNING. (a) An authority has the power of a municipality under Chapters 211 and 212 in the area of the

authority, including an area of the authority that is in the boundaries of a municipality's limited purpose jurisdiction. On annexation of an area of the authority for full purposes by a municipality, the authority's power to regulate the area under Chapter 211 or 212 expires. The authority regains the power in an area if the municipality disannexes the area.

(b) The board may divide the authority into distinct areas as provided by Section 211.005 to accomplish the purposes of this chapter and Chapter 211.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 334 (S.B. 1105), Sec. 6, eff. June 17, 2005.

Sec. 375.313. REGIONAL DEVELOPMENT AGREEMENTS. (a) An authority may enter into regional development agreements with its creating municipality, other municipalities, counties, school districts, institutions of higher education, other political subdivisions, and private interests to:

(1) promote and advance long-term economic development in the authority; or

(2) achieve the purposes for the authority's creation and to implement the powers provided to the authority under this chapter.

(b) An authority, a municipality, a school district whose boundary overlaps with a portion of an authority, or an institution of higher education may enter into an agreement to:

(1) fund improvements to school facilities and teacher compensation of school districts or institutions of higher education in the authority; and

(2) develop programs provided for in Section 379A.051.

(c) Any agreement entered into with a school district under this section shall be designed in such a way that the school district funding under Title 2, Education Code, shall be not less than the school district would have received had the school district not entered into the agreement. This provision may be waived by a school district board of trustees by specific action suspending the provisions of this subsection.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.314. DISSOLUTION OF THE AUTHORITY. (a) The governing body of the municipality that created an authority under this subchapter may dissolve the authority.

(b) Before dissolution, the municipality shall publish notice and hold public hearings on the proposed dissolution in the manner provided in Section 375.305.

(c) On dissolution, the municipality shall assume the assets, debts, and other obligations of the authority.

(d) Subchapter M does not apply to this subchapter.

Added by Acts 2003, 78th Leg., ch. 961, Sec. 1, eff. June 20, 2003.

Sec. 375.315. EFFECTIVENESS STUDY; REPORT. (a) The board of an authority shall study the effectiveness of the authority.

(b) Not later than December 31 of each even-numbered year, the board of an authority shall report to the legislature on the effectiveness of the authority. The report must:

(1) compare utility and infrastructure development in:

(A) the authority since the authority's creation; and

(B) areas in the municipality that created the authority that are not in the authority;

(2) identify methods for improving residential, commercial, and industrial development in the authority;

(3) identify limitations and impediments to development in the authority;

(4) identify methods to improve the authority's accountability to property owners in the authority; and

(5) identify any competitive advantage opportunities of the authority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 663 (S.B. 1493), Sec. 3, eff. June 17, 2011.

SUBCHAPTER P. CONSOLIDATION OF DISTRICTS

Sec. 375.351. CONSOLIDATION OF DISTRICTS. (a) Two or more districts may consolidate into one district under this subchapter if none of the districts to be consolidated has issued bonds or notes

secured by assessments or ad valorem taxes, or has levied taxes.

(b) To initiate a consolidation, the board of a district shall adopt a resolution proposing a consolidation and deliver a copy of the resolution to the board of each district with which consolidation is proposed.

(c) A consolidation under this subchapter occurs if the board of each involved district adopts a resolution containing the terms and conditions for the consolidation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.352. TERMS AND CONDITIONS FOR CONSOLIDATION. (a) The terms and conditions for consolidation must include:

(1) adoption of a name for the consolidated district;

(2) the number and apportionment of directors to serve on the board of the consolidated district;

(3) the effective date of the consolidation;

(4) an agreement on finances for the consolidated district, including disposition of funds, property, and other assets of each district; and

(5) an agreement on governing the districts during the transition period, including selection of officers.

(b) The terms and conditions for consolidation may include any terms or conditions to which the board of each district agrees.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.353. NOTICE AND HEARING ON CONSOLIDATION. (a) Each district's board shall publish notice and hold a public hearing in its district regarding the terms and conditions for consolidation of the districts.

(b) Notice of the hearing must be published one time in a newspaper of general circulation in the area of each district at least seven days before the date of the hearing.

(c) After the hearing, the board by resolution may approve the terms and conditions for consolidation and enter an order consolidating the districts.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.354. GOVERNING CONSOLIDATED DISTRICTS. (a) After two or more districts are consolidated, they become one district and are governed as one district.

(b) During the transition period, the officers of each district shall continue to act jointly as officers of the original districts to settle the affairs of their respective districts.

(c) The consolidated district may exercise the powers of the districts being consolidate within the respective boundaries of the original districts. For land annexed into the consolidated district, the consolidated district may exercise any of the powers of the original districts.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.355. DEBTS OF ORIGINAL DISTRICTS. (a) After two or more districts are consolidated, the consolidated district shall protect the debts of the original districts and shall assure that the debts are not impaired. If the consolidated district has taxing authority, the debts may be paid by taxes levied on the land in the original districts as if they had not consolidated or from contributions from the consolidated district on terms stated in the consolidation agreement.

(b) If the consolidated district has taxing authority and assumes the bonds, notes, and other obligations of the original districts, taxes may be levied uniformly on all taxable property within the consolidated district to pay the debts.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.356. ASSESSMENT AND COLLECTION OF TAXES. If the consolidated district has taxing authority, the district shall assess and collect taxes on all property in the district uniformly, for maintenance and operation of the district.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

Sec. 375.357. FILING OF ORDER WITH COUNTY CLERK AND EXECUTIVE DIRECTOR. A consolidation order issued by the board shall be kept in the records of the consolidated district, recorded in the office of the county clerk in each of the counties in the consolidated district, and filed with the executive director of the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 1155 (H.B. 3009), Sec. 1, eff. June 19, 2009.

CHAPTER 376. CONTRACTUAL ASSESSMENTS FOR ENERGY EFFICIENCY IMPROVEMENTS

Sec. 376.001. AUTHORIZED FINANCING. An assessment under this chapter may finance:

(1) energy efficiency public improvements to developed lots for which the costs and time delays of creating an entity under law to assess the lot would be prohibitively large relative to the cost of the energy efficiency public improvement to be financed; and

(2) the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to residential, commercial, industrial, or other real property.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

Sec. 376.002. CERTAIN FINANCING PROHIBITED. An assessment under this chapter may not be used to finance:

(1) facilities for undeveloped lots or lots undergoing development at the time of the assessment; or

(2) the purchase or installation of appliances not permanently fixed to real property.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

Sec. 376.003. CONSENT FOR ASSESSMENT REQUIRED. A municipality may impose an assessment under this chapter only with the consent of the owner of the assessed property at the time of the assessment.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

Sec. 376.004. DESIGNATION OF AREA FOR ASSESSMENT. (a) The governing body of a municipality may determine that it is convenient and advantageous to designate an area of the municipality within which authorized municipal officials and property owners may enter into contracts to assess properties for energy efficiency public improvements described by Section 376.001(1) and make financing arrangements under this chapter.

(b) The governing body of a municipality may determine that it is convenient, advantageous, and in the public interest to designate an area of the municipality within which authorized municipal officials and property owners may enter into contracts to assess properties to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property.

(c) An area designated by the governing body of a municipality under this section may include the entire municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

Sec. 376.005. RESOLUTION OF INTENTION TO CONTRACT FOR ASSESSMENT. (a) To make a determination under Section 376.004, the governing body of a municipality must adopt a resolution indicating the governing body's intention to designate an area for assessment.

(b) The resolution of intention must:

(1) include a statement that the municipality proposes to make contractual assessment financing available to property owners;

(2) identify the types of energy efficiency public improvements, distributed generation renewable energy resources, or energy efficiency improvements that may be financed;

(3) describe the boundaries of the area in which contracts for assessments may be entered into;

(4) thoroughly describe the proposed arrangements for financing the program; and

(5) state the time and place for a public hearing and that interested persons may object to or inquire about the proposed program at the hearing.

(c) If contractual assessments are to be used to finance the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property, the resolution of intention must state that it is in the public interest to do so.

(d) The resolution shall direct an appropriate municipal official to:

(1) prepare a report under Section 376.006; and

(2) consult with the appropriate appraisal district or districts regarding collecting the proposed contractual assessments with property taxes imposed on the assessed property.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

Sec. 376.006. REPORT REGARDING ASSESSMENT. An appropriate municipal official designated in the resolution shall prepare a report containing:

(1) a map showing the boundaries of the area within which contractual assessments are proposed to be offered;

(2) a draft contract specifying the terms that would be agreed to by the municipality and a property owner within the contractual assessment area;

(3) a statement of municipal policies concerning contractual assessments including:

(A) identification of types of energy efficiency public improvements, distributed generation renewable energy sources, or energy efficiency improvements that may be financed through the use of contractual assessments;

(B) identification of a municipal official authorized to enter into contractual assessments on behalf of the municipality;

(C) a maximum aggregate dollar amount of contractual assessments;

(D) a method for ranking requests from property owners

for financing through contractual assessments in priority order if requests appear likely to exceed the authorization amount; and

(E) a method for ensuring that property owners requesting financing demonstrate the financial ability to fulfill financial obligations under the contractual assessments;

(4) a plan for raising a capital amount required to pay for work performed in accordance with contractual assessments that:

(A) may include:

(i) amounts to be advanced by the municipality through funds available to it from any source; and

(ii) the sale of bonds or other financing;

(B) shall include a statement of or method for determining the interest rate and period during which contracting property owners would pay any assessment; and

(C) shall provide for:

(i) any reserve fund or funds; and

(ii) the apportionment of all or any portion of the costs incidental to financing, administration, and collection of the contractual assessment program among the consenting property owners and the municipality; and

(5) the results of the consultations with the appropriate appraisal districts concerning incorporating the proposed contractual assessments into the assessments of property taxes.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

Sec. 376.007. DIRECT PURCHASE BY OWNER. On the written consent of an authorized municipal official, the proposed arrangements for financing the program pertaining to the installation of distributed generation renewable energy sources or energy efficiency improvements that are permanently fixed to real property may authorize the property owner to:

(1) purchase directly the related equipment and materials for the installation of the distributed generation renewable energy sources or energy efficiency improvements; and

(2) contract directly for the installation of the distributed generation renewable energy sources or energy efficiency improvements.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

Sec. 376.008. LIEN. An assessment imposed under this chapter and any interest or penalties on the assessment constitutes a lien against the lot on which the assessment is imposed until the assessment, interest, or penalty is paid.

Added by Acts 2009, 81st Leg., R.S., Ch. 655 (H.B. 1937), Sec. 1, eff. September 1, 2009.

CHAPTER 377. MUNICIPAL DEVELOPMENT DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 377.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a municipal development district.

(2) "District" means a municipal development district created under this chapter.

(3) "Development project" means:

(A) a "project" as that term is defined by Sections 505.151-505.158; or

(B) a convention center facility or related improvement such as a convention center, civic center, civic center building, civic center hotel, or auditorium, including parking areas or facilities that are used to park vehicles and that are located at or in the vicinity of other convention center facilities.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 232 (S.B. 466), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.23, eff. April 1, 2009.

Sec. 377.002. SCOPE. (a) A municipality may create a district as provided in this chapter in:

(1) all or part of the boundaries of the municipality;

(2) all or part of the boundaries of the municipality and

all or part of the boundaries of the municipality's extraterritorial jurisdiction; or

(3) all or part of the municipality's extraterritorial jurisdiction.

(b) The municipality may include territory outside of the municipality only to the extent that territory is in the municipality's extraterritorial jurisdiction.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 20, Sec. 1, eff. May 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 232 (S.B. 466), Sec. 2, eff. September 1, 2005.

Sec. 377.003. CONSTITUTIONAL PURPOSE. This chapter creates a program under Section 52-a, Article III, Texas Constitution.

Added by Acts 2005, 79th Leg., Ch. 232 (S.B. 466), Sec. 3, eff. September 1, 2005.

SUBCHAPTER B. MUNICIPAL DEVELOPMENT DISTRICT

Sec. 377.021. CREATION. (a) A municipality may call an election on the question of creating a municipal development district under this chapter to plan, acquire, establish, develop, construct, or renovate one or more development projects beneficial to the district.

(b) The order calling the election must:

(1) define the boundaries of the district; and

(2) call for the election to be held within those boundaries.

(c) The ballot at an election held under this section must be printed to permit voting for or against the proposition: "Authorizing the creation of the ____ Municipal Development District (insert name of district) and the imposition of a sales and use tax at the rate of ____ of one percent (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) for the purpose of financing development projects beneficial to the district."

(d) The district is created if a majority of the registered voters of the proposed district voting at the election favor creation

of the district.

(e) If a majority of the registered voters of the proposed district voting at the election to create the district vote against creation of the district, the municipality may not hold another election on the question of creating a municipal development district before the first anniversary of the most recent election concerning creation of a district.

(f) The Election Code governs an election held under this chapter.

(g) In the order calling the election, the municipality may provide for the district boundaries to conform automatically to any changes in the boundaries of the portion of the municipality or the municipality's extraterritorial jurisdiction included in the district, and the election shall be held on one of the four uniform election dates under Section 41.001, Election Code.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 20, Sec. 2, eff. May 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 232 (S.B. 466), Sec. 4, eff. September 1, 2005.

Sec. 377.022. POLITICAL SUBDIVISION; OPEN MEETINGS. (a) A district is a political subdivision of this state and of the municipality that created the district.

(b) A district is subject to Chapter 551, Government Code.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 232 (S.B. 466), Sec. 5, eff. September 1, 2005.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 377.051. COMPOSITION AND APPOINTMENT OF BOARD. (a) A district is governed by a board of at least four directors.

(b) The board is appointed by the governing body of the municipality that created the district.

(c) Directors serve staggered two-year terms. A director may be removed by the appointing municipality at any time without cause.

Successor directors are appointed in the same manner as the original appointees.

(d) To qualify to serve as a director, a person must reside in the municipality that created the district or in that municipality's extraterritorial jurisdiction. An employee, officer, or member of the governing body of the municipality may serve as a director, but may not have a personal interest in a contract executed by the district other than as an employee, officer, or member of the governing body of the municipality.

(e) Notwithstanding Subsection (d), a person may qualify to serve as a director of a district if the person resides in the independent school district that serves the majority of the district and the district is located in a municipality:

(1) with a population of more than 5,000 and less than 6,000 and that is located wholly in a county with a population of more than 20,000 and less than 25,000 and that borders the Brazos River; or

(2) with a population of more than 1,450 and less than 2,500 and that is located wholly in a county with a population of more than 20,000 and less than 30,000 that borders the Neches River and the Trinity River.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 232 (S.B. 466), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 874 (H.B. 3186), Sec. 1, eff. June 18, 2015.

Acts 2021, 87th Leg., R.S., Ch. 470 (H.B. 4356), Sec. 1, eff. June 14, 2021.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 188, eff. September 1, 2023.

Sec. 377.052. COMPENSATION. A board member is not entitled to compensation, but is entitled to reimbursement for actual and necessary expenses.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.053. MEETINGS. The board shall conduct its meetings in the municipality that created the district.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 232 (S.B. 466), Sec. 7, eff. September 1, 2005.

Sec. 377.054. OFFICERS. The board shall designate from the members of the board a presiding officer, a secretary, and other officers the board considers necessary.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 377.071. GENERAL POWERS OF DISTRICT. (a) A district may:

(1) perform any act necessary to the full exercise of the district's powers;

(2) accept a grant or loan from a:

(A) department or agency of the United States;

(B) department, agency, or political subdivision of this state; or

(C) public or private person;

(3) acquire, sell, lease, convey, or otherwise dispose of property or an interest in property, including a development project, under terms and conditions determined by the district;

(4) employ necessary personnel; and

(5) adopt rules to govern the operation of the district and its employees and property.

(b) A district may contract with a public or private person to:

(1) plan, acquire, establish, develop, construct, or renovate a development project; or

(2) perform any other act the district is authorized to perform under this chapter.

(c) A district may not levy an ad valorem tax.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.072. DEVELOPMENT PROJECT FUND. (a) A district shall establish by resolution a fund known as the development project fund. The district may establish separate accounts within the fund.

(b) The district shall deposit into the development project fund:

(1) the proceeds from any sales and use tax imposed by the district;

(2) all revenue from the sale of bonds or other obligations by the district; and

(3) any other money required by law to be deposited in the fund.

(c) Except as provided by Subsections (d) and (e), the district may use money in the development project fund only to:

(1) pay the costs of planning, acquiring, establishing, developing, constructing, or renovating one or more development projects located:

(A) in the district; or

(B) outside the district, if:

(i) the project is located in the extraterritorial jurisdiction of the municipality that created the district;

(ii) the board determines that the development project will provide an economic benefit to the district; and

(iii) the following entities, as applicable, by resolution approve the development project:

(a) the municipality that created the district; and

(b) each municipality in whose corporate limits or extraterritorial jurisdiction the project is located;

(2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the district or to refund bonds or other obligations; or

(3) pay the costs of operating or maintaining one or more development projects during the planning, acquisition, establishment, development, construction, or renovation or while bonds or other obligations for the planning, acquisition, establishment, development, construction, or renovation are outstanding.

(d) A district located in a county with a population of 3.3 million or more may use money in the development project fund only to:

(1) pay the costs of planning, acquiring, establishing,

developing, constructing, or renovating one or more development projects beneficial to the district if the projects are in the district boundaries or the extraterritorial jurisdiction of the municipality where the district is located;

(2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the district or to refund bonds or other obligations; or

(3) pay the costs of operating or maintaining one or more development projects during the planning, acquisition, establishment, development, construction, or renovation or while bonds or other obligations for the planning, acquisition, establishment, development, construction, or renovation are outstanding.

(e) A district that is located in a municipality with a population of more than 5,000 and less than 6,000 and that is located wholly in a county with a population of more than 20,000 and less than 25,000 and that borders the Brazos River may use money in the development project fund only to:

(1) pay the costs of planning, acquiring, establishing, developing, constructing, or renovating one or more development projects inside the county in which the district is located, if the project:

(A) accomplishes a public purpose of the district;

(B) allows the district to retain control over the money to ensure that the district's public purpose is accomplished and to protect the district's investment; and

(C) benefits the district;

(2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the district or to refund bonds or other obligations; or

(3) pay the costs of operating or maintaining one or more development projects during the planning, acquisition, establishment, development, construction, or renovation or while bonds or other obligations for the planning, acquisition, establishment, development, construction, or renovation are outstanding.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 911 (H.B. 167), Sec. 1, eff. June 18, 2005.

Acts 2015, 84th Leg., R.S., Ch. 874 (H.B. 3186), Sec. 2, eff.

June 18, 2015.

Acts 2021, 87th Leg., R.S., Ch. 661 (H.B. 1554), Sec. 1, eff. June 15, 2021.

Sec. 377.073. BONDS AND OTHER OBLIGATIONS. (a) A district may issue bonds, including revenue bonds and refunding bonds, or other obligations to pay the costs of a development project.

(b) The bonds or other obligations and the proceedings authorizing the bonds or other obligations shall be submitted to the attorney general for review and approval as required by Chapter 1202, Government Code.

(c) The bonds or other obligations must be payable from and secured by the revenues of the district.

(d) The bonds or other obligations may mature serially or otherwise not more than 30 years from their date of issuance.

(e) The bonds or other obligations are not a debt of and do not create a claim for payment against the revenue or property of the district other than a development project for which the bonds are issued.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.339, eff. Sept. 1, 2001.

Sec. 377.074. PUBLIC PURPOSE OF PROJECT. (a) The legislature finds for all constitutional and statutory purposes that a development project is owned, used, and held for public purposes by the district.

(b) Section 25.07(a), Tax Code, does not apply to a leasehold or other possessory interest granted by the district while the district owns the development project.

(c) The development project is exempt from taxation under Section 11.11, Tax Code, while the district owns the project.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. SALES AND USE TAX

Sec. 377.101. SALES AND USE TAX. (a) A district by order may

impose a sales and use tax under this subchapter.

(b) A district may impose a tax under this subchapter only if the tax is approved at an election held under Section 377.021.

(c) A district may not adopt a sales and use tax under this subchapter if the adoption of the tax under this subchapter would result in a combined tax rate of all local sales and use taxes of more than two percent in any location in the district.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.102. TAX CODE APPLICABLE. (a) Chapter 323, Tax Code, governs the imposition, computation, administration, collection, and remittance of a tax authorized under this subchapter except as inconsistent with this subchapter.

(b) Section 323.101(b), Tax Code, does not apply to the tax authorized by this subchapter.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.103. TAX RATE. The rate of a tax adopted under this subchapter must be one-eighth, one-fourth, three-eighths, or one-half of one percent.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.104. REPEAL OR RATE CHANGE. (a) A district that has adopted a sales and use tax under this subchapter may by order and subject to Section 377.101(c), change the rate of the tax or repeal the tax if the change or repeal is approved by a majority of the registered voters of that district voting at an election called and held for that purpose.

(b) The tax may be changed under Subsection (a) in one or more increments of one-eighth of one percent to a maximum of one-half of one percent.

(c) The ballot for an election to change the tax shall be printed to permit voting for or against the proposition: "The adoption of a sales and use tax at the rate of ____ of one percent (insert one-fourth, three-eighths, or one-half, as appropriate)."

(d) The ballot for the election to repeal the tax shall be printed to permit voting for or against the proposition: "The repeal of the sales and use tax for financing development projects in the _____ Municipal Development District (insert name of district)."

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.105. IMPOSITION OF TAX. (a) If the district adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items in the district at the rate approved at the election.

(b) There is also imposed an excise tax on the use, storage, or other consumption in the district of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective in the district. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.106. EFFECTIVE DATE OF TAX. Except as provided by Section 377.107, the adoption of the tax, the change of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date on which the comptroller receives a notice of the results of the election adopting, changing, or repealing the tax.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.107. COLLECTION OF TAX TO PAY BONDS OR OTHER OBLIGATIONS. (a) If the district votes to repeal the sales and use tax under Section 377.104, and the district had issued bonds or incurred other obligations secured by the tax before the date of the election, the district shall continue to collect the tax until the bonds or other obligations are paid.

(b) The district shall immediately notify the comptroller when the bonds or other obligations have been paid.

(c) The repeal of the tax takes effect on the first day of the

first calendar quarter occurring after the expiration of the first complete quarter occurring after the date on which the comptroller receives the notice under Subsection (b).

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

Sec. 377.108. DEPOSIT OF TAX REVENUES. Revenue from the tax imposed under this subchapter shall be deposited in the development project fund of the district imposing the tax.

Added by Acts 1997, 75th Leg., ch. 529, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 378. NEIGHBORHOOD EMPOWERMENT ZONE

Sec. 378.001. DEFINITION. In this chapter, "zone" means a neighborhood empowerment zone created by a municipality under this chapter.

Added by Acts 1999, 76th Leg., ch. 305, Sec. 1, eff. May 29, 1999.

Sec. 378.002. CREATION OF ZONE. A municipality may create a neighborhood empowerment zone covering a part of the municipality if the municipality determines the creation of the zone would promote:

(1) the creation of affordable housing, including manufactured housing, in the zone;

(2) an increase in economic development in the zone;

(3) an increase in the quality of social services, education, or public safety provided to residents of the zone; or

(4) the rehabilitation of affordable housing in the zone.

Added by Acts 1999, 76th Leg., ch. 305, Sec. 1, eff. May 29, 1999.

Sec. 378.003. ADOPTION OF ZONE. (a) A municipality may create a zone if the governing body of the municipality adopts a resolution containing:

(1) the determination described by Section 378.002;

(2) a description of the boundaries of the zone;

(3) a finding by the governing body that the creation of

the zone benefits and is for the public purpose of increasing the public health, safety, and welfare of the persons in the municipality; and

(4) a finding by the governing body that the creation of the zone satisfies the requirements of Section 312.202, Tax Code.

(b) A municipality may create more than one zone and may include an area in more than one zone.

Added by Acts 1999, 76th Leg., ch. 305, Sec. 1, eff. May 29, 1999.

Sec. 378.004. MUNICIPAL POWERS. In addition to other powers that a municipality may exercise, a municipality may:

(1) waive or adopt fees related to the construction of buildings in the zone, including fees related to the inspection of buildings and impact fees;

(2) enter into agreements, for a period of not more than 10 years, for the purpose of benefiting the zone, for refunds of municipal sales tax on sales made in the zone;

(3) enter into agreements abating municipal property taxes on property in the zone subject to the duration limits of Section 312.204, Tax Code; and

(4) set baseline performance standards, such as the Energy Star Program as developed by the Department of Energy, to encourage the use of alternative building materials that address concerns relating to the environment or to the building costs, maintenance, or energy consumption.

Added by Acts 1999, 76th Leg., ch. 305, Sec. 1, eff. May 29, 1999. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 5, eff. Sept. 1, 2001.

CHAPTER 379. NORTH AMERICAN FREE TRADE AGREEMENT IMPACT ZONE

Sec. 379.001. DEFINITION. In this chapter, "zone" means a North American Free Trade Agreement impact zone created by a municipality under this chapter.

Added by Acts 2001, 77th Leg., ch. 1150, Sec. 1, eff. Sept. 1, 2001.

Sec. 379.002. CREATION OF ZONE. A municipality may create a zone covering a part of the municipality if the municipality determines the creation of the zone would promote:

(1) business opportunities for local businesses in the zone;

(2) an increase in economic development in the zone; or

(3) employment opportunities for residents of the zone.

Added by Acts 2001, 77th Leg., ch. 1150, Sec. 1, eff. Sept. 1, 2001.

Sec. 379.003. ADOPTION OF ZONE. (a) A municipality may create a zone if the governing body of the municipality adopts a resolution containing:

(1) the determination described by Section 379.002;

(2) a description of the boundaries of the zone; and

(3) a finding by the governing body that the creation of the zone satisfies the requirements of Section 312.202, Tax Code.

(b) A municipality may create more than one zone and may include an area in more than one zone.

Added by Acts 2001, 77th Leg., ch. 1150, Sec. 1, eff. Sept. 1, 2001.

Sec. 379.004. ADDITIONAL POWERS. A municipality may:

(1) waive or adopt fees related to the construction of buildings in the zone, including fees related to the inspection of buildings and impact fees;

(2) enter into agreements, for a period of not more than 10 years, for the purpose of benefiting the zone, for sales tax refunds or abatements of municipal sales tax on sales made in the zone;

(3) enter into agreements abating municipal property taxes on property in the zone subject to the duration limits of Section 312.204, Tax Code; and

(4) set baseline performance standards, such as the Energy Star Program as developed by the Department of Energy, to encourage the use of alternative building materials that address concerns relating to the environment or to building costs, maintenance, or energy consumption.

Added by Acts 2001, 77th Leg., ch. 1150, Sec. 1, eff. Sept. 1, 2001.

Sec. 379.005. NAFTA DISPLACED WORKERS. (a) A business that operates in a zone and receives benefits as a result of a municipality's action under Section 379.004(1), (2), or (3) shall make a good faith effort to hire individuals receiving NAFTA transitional adjustment assistance under 19 U.S.C. Section 2331.

(b) A business described by Subsection (a) shall annually report to the governing body of the municipality on what percentage of the total number of individuals hired by the business during the year covered by the report is comprised of individuals described by Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1150, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 379A. MUNICIPAL DEVELOPMENT CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 379A.001. SHORT TITLE. This chapter may be cited as the Better Jobs Act.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.002. FINDINGS AND PURPOSES. (a) The legislature finds that:

(1) it is an appropriate role for a municipality to foster economic opportunity, job generation, and capital investment by promoting a favorable business climate, preparing the workforce for productive employment, and supporting infrastructure development;

(2) while some municipalities choose to meet that role through the creation of economic development zones and reinvestment zones, the core root of all economic development is a competent and qualified workforce; and

(3) the programs designed to create a competent and qualified workforce are essential both to the economic growth and vitality of many municipalities in this state and to the elimination of unemployment and underemployment in those municipalities.

(b) The programs authorized by this chapter are in the public interest, promote the economic welfare of this state, and serve the state public purpose of developing and diversifying the economy of

this state and eliminating unemployment and underemployment in this state.

(c) This chapter shall be liberally construed in conformity with the findings and purposes stated in this section.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a municipal development corporation.

(2) "Corporation" means a municipal development corporation created under this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.004. APPLICATION OF NON-PROFIT CORPORATION ACT. A corporation created under this chapter is governed by the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except to the extent inconsistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

SUBCHAPTER B. CREATION OF CORPORATION

Sec. 379A.011. CREATION. The governing body of a municipality may create a municipal development corporation under this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.012. ARTICLES OF INCORPORATION. The articles of incorporation of the corporation must state that the corporation is governed by this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.013. NUMBER OF CORPORATIONS. A municipality may not create more than one corporation under this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.014. ADOPTION AND APPROVAL OF BYLAWS. The initial bylaws of a corporation shall be adopted by its board of directors and approved by resolution of the governing body of the municipality that created the corporation, and any subsequent changes made to the bylaws must be approved by the governing body of the municipality that created the corporation.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.015. PERFORMANCE REVIEW AND ASSESSMENT. The governing body of the municipality that creates the corporation shall undertake a performance review and assessment of the corporation once every five years. Based on the performance review and assessment, the governing body of the municipality shall issue a finding of whether the corporation is satisfying the objectives set forth in this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 379A.021. COMPOSITION AND APPOINTMENT OF BOARD. (a) Except as provided by Subsection (g), the corporation is governed by a board of 5, 7, 9, 11, 13, or 15 directors, as determined by the governing body of the municipality that created the corporation. The number of directors may not exceed the number of members, including the mayor, constituting the governing body of the municipality.

(b) The governing body of the municipality that created the corporation shall appoint the members of the board.

(c) Directors serve staggered two-year terms, with as near as possible to one-half of the members' terms expiring each year. A director serves at the will of the governing body of the municipality that created the corporation. Successor directors are appointed in the same manner as the original appointees.

(d) Each director of a corporation created by a municipality that has a population of 20,000 or more must be a resident of the municipality. Each director of a corporation created by a

municipality that has a population of less than 20,000 must be a resident of the municipality or the county in which the major part of the area of the municipality is located.

(e) A person is disqualified from serving as a director if the person is an employee, officer, or member of the governing body of the municipality that created the corporation.

(f) A director may not have a personal interest in a contract executed by the corporation.

(g) In a municipality that has a population of more than one million and that creates a corporation under this chapter, the board of the corporation is composed of persons appointed to the board as required by this subsection. The governing body of the municipality shall appoint one director to the board of the corporation from each district that elects a member to the governing body of the municipality.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.022. COMPENSATION. A board member is not entitled to compensation, but is entitled to reimbursement for actual and necessary expenses incurred in serving as a director.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.023. MEETINGS. The board shall conduct its meetings in the municipality that created the corporation.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.024. OFFICERS. The board shall appoint from its members a presiding officer, a secretary, and other officers of the corporation that the governing body of the municipality that created the corporation considers necessary.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.025. ADOPTION AND APPROVAL OF BUDGET; REVIEW OF

CORPORATE FINANCES. (a) The board shall prepare an annual budget for the corporation. To be effective, the budget must be approved by the board and presented to and approved by the governing body of the municipality that created the corporation. The corporation may not make any expenditure authorized by this chapter until the budget has been approved as provided by this section. An amendment of the budget must be approved in the same manner as the budget.

(b) The governing body of the municipality that created the corporation may amend the corporation's budget with the approval of at least two-thirds of the members of the governing body.

(c) The budget presented to the governing body of the municipality that created the corporation must provide a detailed description of the proposed expenditures for the corporation's fiscal year, including expenditures for each program authorized by Subchapter D.

(d) The board shall annually prepare and present financial statements from the preceding fiscal year to the governing body of the municipality that created the corporation.

(e) The governing body of the municipality that created the corporation is entitled, at all times, to access to the books and records of the corporation.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

SUBCHAPTER D. POWERS OF CORPORATION

Sec. 379A.051. PROGRAMS. (a) A corporation may develop and implement programs for:

(1) job training, including long-term job training and in-training support service grants;

(2) early childhood development that prepare each child to enter school and make each child ready to learn after completing the program and that provide educational services that must include services designed to enable a child to:

(A) develop phonemic, print, and numeracy awareness, including the ability to:

(i) recognize that letters of the alphabet are a special category of visual graphics that can be individually named;

(ii) recognize a word as a unit of print;

(iii) identify at least 10 letters of the alphabet;

and

(iv) associate sounds with written words;

(B) understand and use language to communicate for various purposes;

(C) understand and use an increasingly complex and varied vocabulary;

(D) develop and demonstrate an appreciation of books; and

(E) progress toward mastery of the English language, if the child's primary language is a language other than English;

(3) after-school programs for primary and secondary schools;

(4) the provision of funding to accredited postsecondary educational institutions, including public and private junior colleges, public and private institutions of higher education, and public and private technical institutions, to be used to award scholarships;

(5) the promotion of literacy; and

(6) any other undertaking that the board determines will directly facilitate the development of a skilled workforce.

(b) A corporation may accept donated property, may develop or use land, buildings, equipment, facilities, and other improvements in connection with a program described by Subsection (a), or may dispose of property or an interest in property under terms determined by the corporation.

(c) A municipality may contract with a community nonprofit organization that sponsors long-term job training and related support services.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.052. GENERAL POWERS OF CORPORATION. The corporation may:

(1) own or operate a program authorized by this chapter;

(2) perform any act necessary to the full exercise of the corporation's powers;

(3) accept a grant or loan from a:

(A) department or agency of the United States;

(B) department, agency, or political subdivision of

this state; or

(C) public or private person;

(4) employ any necessary personnel, who shall be employees of the municipality;

(5) adopt rules to govern the operation of the corporation and its employees and property; and

(6) contract or enter into a memorandum of understanding or a similar agreement with a public or private person, including local workforce development boards or any political subdivision, in connection with a program authorized by this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.053. NATURE OF CORPORATE PROPERTY. (a) The legislature finds for all constitutional and statutory purposes that the corporation owns, uses, and holds its property for public purposes.

(b) Section 25.07(a), Tax Code, does not apply to a leasehold or other possessory interest granted by the corporation.

(c) Property owned by the corporation is exempt from taxation under Section 11.11, Tax Code, while the corporation owns the property.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.054. OPEN RECORDS AND MEETINGS. The board is treated as a governmental body for the purposes of Chapters 551 and 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.055. ADMINISTRATION OF SCHOLARSHIP FUND. (a) In providing funds to an accredited postsecondary educational institution to be used for scholarships as authorized by Section 379A.051, the corporation by agreement with the institution shall ensure that:

(1) the funds are distributed to individuals as scholarships connected with the institution; and

(2) no more than a maximum amount, as set by the corporation, of the funds are spent on administering the award of the scholarship.

(b) An accredited postsecondary educational institution receiving the funds for scholarships shall develop, in consultation with the corporation, a plan for awarding scholarships that will have the goal of having an eventual beneficial effect on the economic growth and vitality of and the elimination of unemployment and underemployment in the municipality that created the corporation and that will ensure that the recipient:

(1) meets financial need requirements as defined by the corporation;

(2) is enrolled in an undergraduate degree or certificate program;

(3) is enrolled for at least three-fourths of a full course load for an undergraduate student, as determined by the corporation;

(4) makes satisfactory academic progress toward an undergraduate degree or certificate; and

(5) complies with any additional nonacademic requirement adopted by the corporation.

(c) If the municipality that created the corporation has established an education partnership composed of community-based organizations, school districts, public or private sector entities, or postsecondary institutions for the purpose of distributing scholarships to students of local schools, the corporation may provide funds to the education partnership to enable the partnership to award scholarships to directly facilitate the development of a skilled workforce.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

SUBCHAPTER E. SALES AND USE TAX

Sec. 379A.081. SALES AND USE TAX. (a) A municipality may levy a sales and use tax for the benefit of the corporation if the tax is authorized by a majority of the voters of the municipality voting at an election called for that purpose.

(b) The ballot for an election to impose the tax shall be printed to permit voting for or against the proposition: "Adoption of a sales and use tax at the rate of ____ of one percent (insert

one-eighth, one-fourth, three-eighths, or one-half, as appropriate) for the purpose of financing authorized programs of the ____ Municipal Development Corporation (insert the name of the corporation)."

(c) The adoption of the tax may be limited on the ballot to any specific program, or the tax may be adopted with general language permitting the use of the tax for any purposes authorized by this chapter.

(d) If a sales and use tax is levied, it may be adopted for a maximum of 20 years, but may then be reauthorized, subject to a payment of indebtedness. The tax may be authorized for a shorter period of time or limited to the time necessary to pay any indebtedness.

(e) The rate of a tax adopted under this section must be one-eighth, one-fourth, three-eighths, or one-half of one percent. A municipality may not adopt a sales and use tax under this chapter if the adoption of the tax under this chapter would result in a combined tax rate of all local sales and use taxes of more than two percent in any location in the municipality.

(f) Chapter 321, Tax Code, governs a municipality's imposition, computation, administration, collection, and remittance of a tax authorized by this section except as inconsistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

Sec. 379A.082. ELECTION TO CHANGE RATE OF TAX. (a) A municipality that has adopted a sales and use tax under this chapter at a rate of less than one-half of one percent may increase or decrease the rate of the tax if the increase or decrease is approved by a majority of the voters of the municipality voting at an election called and held for that purpose.

(b) The tax may be increased or decreased under this section in one or more increments of one-eighth of one percent, but a maximum of one-half of one percent is permitted.

(c) The ballot for an election to increase or decrease the tax shall be printed to permit voting for or against the proposition: "The _____ (increase or decrease, as appropriate) of a sales and use tax to the rate of ____ of one percent (insert one-eighth, one-fourth, three-eighths, or one-half, as appropriate) for the purpose

of financing authorized programs of the _____ Municipal Development Corporation (insert the name of the corporation)."

(d) Notwithstanding Subsections (a)-(c), in a municipality that is located within the territorial limits of a regional transportation authority and was added to the authority under Section 452.6025, Transportation Code, a sales and use tax imposed by the municipality under this subchapter is subject to reduction in the manner prescribed by that section.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.
Amended by Acts 2003, 78th Leg., ch. 915, Sec. 5, eff. June 20, 2003.

Sec. 379A.083. IMPOSITION OF TAX. (a) If the municipality adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items in the municipality at the rate approved at the election, and an excise tax is imposed on the use, storage, or other consumption in the municipality of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective in the municipality. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.

(b) The adoption of the tax or the change of the tax rate takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a notice of the results of the election adopting, increasing, or decreasing the tax.

Added by Acts 2001, 77th Leg., ch. 149, Sec. 1, eff. May 16, 2001.

CHAPTER 379B. DEFENSE BASE DEVELOPMENT AUTHORITIES

Sec. 379B.001. DEFINITIONS. In this chapter:

(1) "Authority" means a defense base development authority established under this chapter.

(2) "Base efficiency project" means a demonstration project between a municipality and the United States Department of Defense to evaluate and demonstrate methods for more efficient operation of military installations through improved capital asset management and greater reliance on the public or private sector for less costly base support services and to improve mission effectiveness and reduce the

cost of providing quality installation support at military facilities under Pub. L. No. 106-246 or other applicable federal laws.

(3) "Base property" means land inside the boundaries of the defense base for which the authority is established and improvements and personal property on that land.

(4) "Board" means the board of directors of the authority.

(5) "Bond" means an interest-bearing obligation issued by an authority under this chapter, including a bond, certificate, note, or other evidence of indebtedness.

(6) "Defense base" means a military installation or facility that is:

(A) closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) and its subsequent amendments; or

(B) the subject of a base efficiency project.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 257, Sec. 1, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

Sec. 379B.0012. APPLICATION OF OTHER LAW. (a) In this section, "qualifying project" means any real estate project involving the construction of:

(1) tenant finish-out or construction of a build-to-suit facility for a tenant who, through the execution of a lease with an authority, pays for or reimburses the authority for the cost of the improvements;

(2) infrastructure improvements, including roads, driveways, or utility extensions, made in connection with the sale or lease of property owned by the authority and for which the proceeds of the sale or the lease are used to reimburse the authority for the infrastructure improvements; or

(3) an income-producing facility that generates revenue for the authority and that is constructed by a private developer with special expertise in development.

(b) Chapters 2267 and 2269, Government Code, do not apply to a qualifying project of an authority.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1294 (H.B. 2388), Sec. 1(b),

eff. June 14, 2013.

Sec. 379B.002. ESTABLISHMENT; SUCCESSOR. (a) A municipality by resolution may establish an authority. The resolution must include a legal description of the base property. On adoption of the resolution, the authority is established as a special district and political subdivision of this state, with a boundary coterminous with the base property described in the resolution.

(b) When establishing an authority, the municipality may designate the authority in the municipality's resolution to be the successor in interest to a nonprofit corporation organized under the Development Corporation Act (Subtitle C1, Title 12). On adoption of the resolution, the corporation is dissolved and the authority succeeds to all rights and liabilities of that corporation.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999.
Renumbered from Local Government Code Sec. 378.002 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.24, eff. April 1, 2009.

Sec. 379B.003. PURPOSE AND NATURE OF AUTHORITY. (a) An authority is created to:

(1) accept title to or operate under a lease from the United States or any other person all or a part of the base property and areas around the base property and engage in the economic development of the base property and areas around the base property; or

(2) carry out a base efficiency project.

(b) An authority created under Subsection (a)(2) may not operate a defense base that has been closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) and its subsequent amendments.

(c) An authority exercises public and essential governmental functions.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999.
Amended by Acts 2001, 77th Leg., ch. 257, Sec. 2, eff. Sept. 1, 2001.

Renumbered from Local Government Code Sec. 378.003 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

Sec. 379B.004. POWERS AND DUTIES OF AUTHORITY. (a) An authority may exercise power necessary or convenient to carry out a purpose of this chapter, including the power to:

(1) adopt an official seal, or alter it;

(2) adopt rules;

(3) enter into a contract or incur a liability;

(4) acquire and dispose of money;

(5) select a depository;

(6) establish a system of accounts for the authority;

(7) invest funds in accordance with Chapter 2256, Government Code;

(8) set the fiscal year for the authority;

(9) adopt an annual operating budget for major expenditures before the beginning of the fiscal year;

(10) borrow money or issue a bond in an amount that does not exceed the maximum amount set by the board;

(11) loan money;

(12) acquire, lease, lease-purchase, convey, grant a mortgage on, or otherwise dispose of a property right, including a right regarding base property;

(13) lease property located on the base property to a person to effect the purposes of this chapter;

(14) request and accept a donation, grant, guaranty, or loan from any source permitted by law;

(15) operate and maintain an office;

(16) charge for the use, lease, or sale of an open space or a facility;

(17) exercise a power granted to a municipality by Chapter 380;

(18) authorize by resolution the incorporation of a nonprofit airport facility financing corporation as provided and authorized by Subchapter E, Chapter 22, Transportation Code, to provide financing to pay the costs, including interest, and reserves for the costs of an airport facility authorized by that chapter and for other purposes set forth in the articles of incorporation;

(19) exercise the powers granted to a local government for

the financing of facilities to be located on airport property, including those set out in Chapter 22, Transportation Code, consistent with the requirements and the purposes of Section 52-a, Article III, Texas Constitution;

(20) lease, own, and operate an airport and exercise the powers granted to municipalities and counties by Chapter 22, Transportation Code;

(21) lease, own, and operate port facilities for air, trucking, and rail transportation;

(22) provide security for port functions, facilities, and operations;

(23) cooperate with and participate in programs and security efforts of this state and the federal Department of Homeland Security; and

(24) participate as a member or partner of a limited liability company, a limited liability partnership, or other entity organized to finance a project designated as a redevelopment project under Section 379B.009.

(b) An authority shall establish and maintain an office and agent registered with the secretary of state.

(c) An authority shall endeavor to raise revenue sufficient to pay its debts.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1516, Sec. 1, eff. June 17, 2001. Renumbered from Local Government Code Sec. 378.004 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 873 (S.B. 1090), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 702 (H.B. 447), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 866 (H.B. 2761), Sec. 1, eff. June 15, 2017.

Sec. 379B.0041. INLAND PORT AND TRADE POWERS. (a) The authority may establish and operate an inland port and related port facilities to engage in world trade.

(b) The authority may participate in national and international

agreements advancing world trade at the port.

Added by Acts 2007, 80th Leg., R.S., Ch. 1120 (H.B. 3879), Sec. 1, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1382 (S.B. 1237), Sec. 1, eff. September 1, 2007.

Sec. 379B.0042. SERVICES. An authority may charge for a service provided, including:

(1) professional consultation services provided in relation to international trade, planning, land use, or construction;

(2) real estate development services, including an employee licensed under Chapter 1101, Occupations Code, acting as a broker;

(3) support or participation in the acquisition of venture capital to finance the authority's redevelopment project, both inside and outside the authority;

(4) participation in or assistance on a joint venture composed of both public and private entities;

(5) promotion of an activity that creates employment opportunities; and

(6) any other service provided in relation to a project undertaken by the authority, alone or with others, to fulfill an authority purpose or objective.

Added by Acts 2011, 82nd Leg., R.S., Ch. 702 (H.B. 447), Sec. 2, eff. September 1, 2011.

Sec. 379B.0043. TRANSPORTATION PROJECT. (a) An authority may implement a transportation project:

(1) on the base property; or

(2) outside of the base property to provide access to the base property.

(b) An authority may enter into an agreement with any person, including another governmental entity, to plan, finance, construct, or maintain a project described by Subsection (a).

(c) An authority may construct a building, loading dock, or other facility as part of a transportation project described by Subsection (a)(1).

Added by Acts 2011, 82nd Leg., R.S., Ch. 702 (H.B. 447), Sec. 2, eff. September 1, 2011.

Sec. 379B.0045. EMINENT DOMAIN. (a) An authority or an authority whose subject property is within the territorial limits of a municipality may exercise the power of eminent domain to acquire property in the base property or in an area surrounding the base only in the manner provided by Chapter 21, Property Code.

(b) Before the authority initiates an eminent domain proceeding to acquire property, the board must:

(1) adopt a master development and redevelopment plan for the property in the base property or in an area surrounding the base and incorporate and approve the plan as part of the master plan of the municipality in which the base property is located; and

(2) find, after conducting a public hearing, that:

(A) notice of the hearing was published in a newspaper of general circulation in the municipality in which the base property is located not later than the 15th day before the date of the hearing;

(B) the property lies in a redevelopment project designated under Section 379B.009; and

(C) the use of eminent domain is necessary to acquire the property to carry out the essential objectives of the master development and redevelopment plan as approved by the municipality.

Added by Acts 2003, 78th Leg., ch. 1116, Sec. 1, eff. June 20, 2003. Renumbered from Local Government Code, Section 378.0045 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(67), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1120 (H.B. 3879), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1382 (S.B. 1237), Sec. 2, eff. September 1, 2007.

Sec. 379B.005. SUITS; INDEMNITY. (a) An authority may sue and be sued.

(b) In a suit against an authority, process may be served on

the president, vice president, or registered agent.

(c) An authority may not be required to give a bond on an appeal or writ of error taken in a civil case that the authority is prosecuting or defending.

(d) An authority may indemnify an authority employee or board member or a former authority employee or board member for necessary expenses and costs, including attorney's fees, incurred by that person in connection with a claim asserted against that person if:

(1) the claim relates to an act or omission of the person when acting in the scope of the person's board membership or authority employment; and

(2) the person has not been found liable or guilty on the claim.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Renumbered from Local Government Code Sec. 378.005 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

Sec. 379B.006. UTILITIES FOR AUTHORITIES CREATED IN POPULOUS MUNICIPALITY. (a) This section applies only to an authority created by a municipality with a population of 50,000 or more.

(b) An authority may accept an electric, gas, potable water, or sanitary sewage utility conveyed by the United States but may not operate it.

(c) An authority shall convey a utility received under Subsection (b) to the municipality that established the authority. The municipality shall pay the authority fair market value for the utility.

(d) If state or federal law prohibits the operation or ownership of the utility by the municipality, the municipality shall convey the utility to an entity that may operate it. The municipality may charge fair market value for the conveyance.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1069, Sec. 1, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.006 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

Sec. 379B.0065. UTILITIES FOR AUTHORITIES CREATED IN LESS

POPULOUS MUNICIPALITY. (a) This section applies only to an authority created by a municipality with a population of less than 50,000.

(b) An authority may own an electric, sewer service, or water supply utility and may sell those utility services to a person who leases real property from the authority.

Added by Acts 2001, 77th Leg., ch. 1069, Sec. 2, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.0065 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

Sec. 379B.007. BOARD OF DIRECTORS. (a) The board consists of 11 members.

(b) The board is responsible for the management, operation, and control of the authority.

(c) The governing body of the municipality that established the authority shall appoint each board member to a term not exceeding two years.

(d) A vacancy on the board is filled in the same manner as the original appointment.

(e) The municipality may remove a board member by adopting a resolution.

(f) The members of the board shall elect from its membership:

(1) a president and vice president or a chairperson and vice chairperson; and

(2) a secretary and a treasurer.

(f-1) The board by rule may provide for the election of other officers.

(g) A board member serves without compensation but may be reimbursed for a reasonable and necessary expense incurred in the performance of an official duty.

(h) The board shall adopt rules for its proceedings and may employ and compensate persons to carry out the powers and duties of the authority.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1069, Sec. 3, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.007 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 367 (H.B. 1345), Sec. 1, eff. September 1, 2009.

Sec. 379B.0075. ADDITIONAL REQUIREMENTS FOR BOARD OF DIRECTORS CREATED IN LESS POPULOUS MUNICIPALITY. (a) In this section, "county" means the county in which the majority of the municipality that created the authority is located.

(b) This section applies only to an authority created by a municipality with a population of less than 50,000.

(c) Each board member serves a two-year term and is appointed as follows:

(1) the county shall appoint four members, including a member of the county's governing body;

(2) junior colleges located in whole or in part in the county, if any, jointly shall appoint three members; and

(3) the municipality that established the authority shall appoint:

(A) four members, including a member of the municipality's governing body, if the county in which the authority is located contains a junior college; or

(B) seven members, including a member of the municipality's governing body, if the county in which the authority is located does not contain a junior college.

(d) The entity that appoints a board member may remove a board member by adopting a resolution or order, as appropriate.

(e) Sections 378.007(c) and (e) do not apply to an authority to which this section applies.

Added by Acts 2001, 77th Leg., ch. 1069, Sec. 4, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.0075 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

Sec. 379B.008. POWERS AND DUTIES OF BOARD. (a) The board of an authority shall, if consistent with the purposes for which the authority was created under Section 378.003:

(1) monitor the proposed closing of the defense base;

(2) manage and operate the defense base transition and development on behalf of the municipality that established the

authority;

(3) review options related to the most appropriate use of the defense base;

(4) conduct a study on issues related to the closure, conversion, redevelopment, and future use of the defense base;

(5) formulate, adopt, and implement a plan to convert and redevelop the defense base;

(6) submit the plan to an appropriate agency or agencies of the federal government; and

(7) manage the property used for a base efficiency project.

(b) For the base property and areas adjacent to the base property the board shall:

(1) promote economic development;

(2) attempt to reduce unemployment;

(3) encourage the development of new industry by private businesses; and

(4) encourage financing of projects designated under Section 379B.009.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 257, Sec. 3, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.008 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), 3(34), eff. Sept. 1, 2003.

Sec. 379B.0085. HEARINGS BY TELEPHONE OR SIMILAR MEANS. (a) As an exception to Chapter 551, Government Code, and other law, if the chairperson, president, vice chairperson, or vice president of a board, or chairperson or vice chairperson of a board committee, is physically present at a meeting of the board or committee, any number of the other members of the board or committee may attend the meeting by use of telephone conference call, video conference call, or other similar telecommunication device. This subsection applies for purposes of constituting a quorum, for purposes of voting, and for any other purpose allowing a board or committee member to otherwise fully participate in any board or committee meeting. This subsection applies without exception with regard to the subject of the meeting or topics considered by the members.

(b) A meeting held by use of telephone conference call, video

conference call, or other similar telecommunication device:

(1) is subject to the notice requirements applicable to other meetings;

(2) must specify in the notice of the meeting the location of the meeting at which the president, vice president, chairperson, or vice chairperson will be physically present;

(3) must be open to the public and audible to the public at the location specified in the notice of the meeting as the location of the meeting at which the president, vice president, chairperson, or vice chairperson will be physically present; and

(4) must provide two-way audio communication between all board or committee members attending the meeting during the entire meeting, and if the two-way audio communication link with any member attending the meeting is disrupted at any time, the meeting may not continue until the two-way audio communication link is reestablished.

Added by Acts 2007, 80th Leg., R.S., Ch. 1120 (H.B. 3879), Sec. 3, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1382 (S.B. 1237), Sec. 3, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 367 (H.B. 1345), Sec. 2, eff. September 1, 2009.

Sec. 379B.009. REDEVELOPMENT PROJECTS. (a) The board may designate as a redevelopment project a project that relates to:

(1) the development of base property and the surrounding areas; or

(2) the development of property directly related to the purposes or goals of the authority.

(b) A project designated under Subsection (a) is for a public purpose.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999.
Renumbered from Local Government Code Sec. 378.009 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1120 (H.B. 3879), Sec. 4, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1382 (S.B. 1237), Sec. 4, eff.

September 1, 2007.

Sec. 379B.010. BONDS. (a) An authority may issue bonds if authorized by board resolution.

(b) A bond issued under this chapter must:

(1) be payable solely from authority revenue;

(2) mature not later than 40 years after its date of issuance; and

(3) state on its face that it is not an obligation of this state or the municipality.

(c) An authority issuing bonds under this section may exercise the powers granted to the governing body of an issuer with regard to the issuance of obligations and the execution of credit agreements under Chapter 1371, Government Code.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1516, Sec. 2, eff. June 17, 2001. Renumbered from Local Government Code Sec. 378.010 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 873 (S.B. 1090), Sec. 2, eff. September 1, 2005.

Sec. 379B.011. TAX EXEMPTIONS. (a) An authority's property, income, and operations are exempt from taxes imposed by the state or a political subdivision of the state.

(b) Section 25.07(a), Tax Code, applies to a leasehold or other possessory interest in real property granted by an authority for a project designated under Section 379B.009(a) in the same manner as it applies to a leasehold or other possessory interest in real property constituting a project described by Section 505.161, except for the requirement in Section 505.161 that the voters of the municipality that created the authority have authorized the levy of a sales and use tax for the benefit of the authority.

(c) A commercial aircraft to be used as an instrumentality of commerce that is under construction inside the authority is presumed to be in interstate, international, or foreign commerce and not located in this state for longer than a temporary period for purposes

of Sections 11.01 and 21.02, Tax Code.

(d) Tangible personal property located inside the authority is presumed to be in interstate, international, or foreign commerce and not located in this state for longer than a temporary period for purposes of Sections 11.01 and 21.02, Tax Code, if the owner demonstrates to the chief appraiser for the appraisal district in which the authority is located that the owner intends to incorporate the property into or attach the property to a commercial aircraft described by Subsection (c).

(e) In this section, "commercial aircraft" means an aircraft under construction that is designed to be used as described by Section 21.05(e), Tax Code.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Renumbered from Local Government Code Sec. 378.011 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), 3(35), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 873 (S.B. 1090), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.25, eff. April 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1378 (H.B. 1348), Sec. 1, eff. January 1, 2014.

Sec. 379B.012. DISSOLUTION FOR AUTHORITIES CREATED IN POPULOUS MUNICIPALITY. (a) This section applies only to an authority created by a municipality with a population of 50,000 or more.

(b) The governing body of a municipality that established the authority by resolution may dissolve the authority after all debts or obligations of the authority have been satisfied.

(c) Property of the authority that remains after dissolution is conveyed to the municipality.

Added by Acts 1999, 76th Leg., ch. 1221, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2001, 77th Leg., ch. 1069, Sec. 5, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.012 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

Sec. 379B.013. DISSOLUTION FOR AUTHORITIES CREATED IN LESS POPULOUS MUNICIPALITY. (a) In this section, "county" means the county in which the majority of the municipality that created the authority is located.

(b) This section applies only to an authority created by a municipality with a population of less than 50,000.

(c) The authority may be dissolved if:

(1) all debts or obligations of the authority have been satisfied; and

(2) the dissolution is authorized by order or resolution of:

(A) the governing body of the municipality that established the authority;

(B) the county; and

(C) each junior college in the county, if the county in which the authority is located contains a junior college.

(d) Property of the authority that remains after dissolution is conveyed to the municipality.

Added by Acts 2001, 77th Leg., ch. 1069, Sec. 6, eff. Sept. 1, 2001. Renumbered from Local Government Code Sec. 378.013 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(108), eff. Sept. 1, 2003.

CHAPTER 379C. URBAN LAND BANK DEMONSTRATION PROGRAM

Sec. 379C.001. SHORT TITLE. This chapter may be cited as the Urban Land Bank Demonstration Program Act.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.

Sec. 379C.002. APPLICABILITY. This chapter applies only to home-rule municipalities that:

(1) have a population of 1.18 million or more; and

(2) are located predominantly in a county that has a total area of less than 1,300 square miles.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1085 (H.B. 3447), Sec. 1, eff. September 1, 2013.

Sec. 379C.003. DEFINITIONS. In this chapter:

(1) "Community housing development organization" or "organization" means an organization that:

(A) meets the definition of a community housing development organization in 24 C.F.R. Section 92.2; and

(B) is certified by the municipality as a community housing development organization.

(2) "Land bank" means an entity established or approved by the governing body of a municipality for the purpose of acquiring, holding, and transferring unimproved real property under this chapter.

(3) "Low income household" means a household with a gross income of not greater than 115 percent of the area median family income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(4) "Qualified participating developer" means a developer who meets the requirements of Section 379C.005 and includes a qualified organization under Section 379C.011.

(5) "Urban land bank demonstration plan" or "plan" means a plan adopted by the governing body of a municipality as provided by Section 379C.006.

(6) "Urban land bank demonstration program" or "program" means a program adopted under Section 379C.004.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 5, eff. September 1, 2007.

Sec. 379C.004. URBAN LAND BANK DEMONSTRATION PROGRAM. (a) The governing body of a municipality may adopt an urban land bank demonstration program in which the officer charged with selling real property ordered sold pursuant to foreclosure of a tax lien may sell certain eligible real property by private sale for affordable housing development or other purposes as provided by this chapter.

(b) The governing body of a municipality that adopts an urban

land bank demonstration program shall establish or approve a land bank for the purpose of acquiring, holding, and transferring unimproved real property under this chapter.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 721 (H.B. 1289), Sec. 1, eff. June 17, 2015.

Sec. 379C.005. QUALIFIED PARTICIPATING DEVELOPER. To qualify to participate in an urban land bank demonstration program, a developer must:

(1) have built one or more housing units within the three-year period preceding the submission of a proposal to the land bank seeking to acquire real property from the land bank;

(2) have a development plan approved by the municipality for the land bank property; and

(3) meet any other requirements adopted by the municipality in the urban land bank demonstration plan.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1037 (H.B. 2840), Sec. 1, eff. September 1, 2013.

Sec. 379C.006. URBAN LAND BANK DEMONSTRATION PLAN. (a) A municipality that adopts an urban land bank demonstration program shall operate the program in conformance with an urban land bank demonstration plan.

(b) The governing body of a municipality that adopts an urban land bank demonstration program shall adopt a plan annually. The plan may be amended from time to time.

(c) In developing the plan, the municipality shall consider other housing plans adopted by the municipality, including the comprehensive plan submitted to the United States Department of Housing and Urban Development and all fair housing plans and policies adopted or agreed to by the municipality.

(d) The plan must include the following:

(1) a list of community housing development organizations

eligible to participate in the right of first refusal provided by Section 379C.011;

(2) a list of the parcels of real property that may become eligible for sale to the land bank during the upcoming year;

(3) the municipality's plan for affordable housing development on those parcels of real property; and

(4) the sources and amounts of funding anticipated to be available from the municipality for subsidies for development of affordable housing in the municipality, including any money specifically available for housing developed under the program, as approved by the governing body of the municipality at the time the plan is adopted.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.

Sec. 379C.007. PUBLIC HEARING ON PROPOSED PLAN. (a) Before adopting a plan, a municipality shall hold a public hearing on the proposed plan.

(b) The city manager or the city manager's designee shall provide notice of the hearing to all community housing development organizations and to neighborhood associations identified by the municipality as serving the neighborhoods in which properties anticipated to be available for sale to the land bank under this chapter are located.

(c) The city manager or the city manager's designee shall make copies of the proposed plan available to the public not later than the 60th day before the date of the public hearing.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.

Sec. 379C.008. PRIVATE SALE TO LAND BANK. (a) Notwithstanding any other law and except as provided by Subsection (f), property that is ordered sold pursuant to foreclosure of a tax lien may be sold in a private sale to a land bank by the officer charged with the sale of the property without first offering the property for sale as otherwise provided by Section 34.01, Tax Code, if:

(1) the market value of the property as specified in the judgment of foreclosure is less than the total amount due under the judgment, including all taxes, penalties, and interest, plus the

value of nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale;

(2) the property is not improved with a habitable building or buildings or an uninhabitable building or buildings that are occupied as a residence by an owner or tenant who is legally entitled to occupy the building or buildings;

(3) there are delinquent taxes on the property for a total of at least five years; and

(4) the municipality has executed with the other taxing units that are parties to the tax suit an interlocal agreement that enables those units to agree to participate in the program while retaining the right to withhold consent to the sale of specific properties to the land bank.

(a-1) The property may be sold to a land bank, regardless of current zoning, and on development may be zoned for more than one use that must include residential housing in accordance with this chapter, provided that the requirements of Subsection (a) are satisfied.

(b) A sale of property for use in connection with the program is a sale for a public purpose.

(c) If the person being sued in a suit for foreclosure of a tax lien does not contest the market value of the property in the suit, the person waives the right to challenge the amount of the market value determined by the court for purposes of the sale of the property under Section 33.50, Tax Code.

(d) For any sale of property under this chapter, each person who was a defendant to the judgment, or that person's attorney, shall be given, not later than the 90th day before the date of sale, written notice of the proposed method of sale of the property by the officer charged with the sale of the property. Notice shall be given in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure.

(e) After receipt of the notice required by Subsection (d) and before the date of the proposed sale, the owner of the property subject to sale may file with the officer charged with the sale a written request that the property not be sold in the manner provided by this chapter.

(f) If the officer charged with the sale receives a written request as provided by Subsection (e), the officer shall sell the property as otherwise provided in Section 34.01, Tax Code.

(g) The owner of the property subject to sale may not receive

any proceeds of a sale under this chapter. However, the owner does not have any personal liability for a deficiency of the judgment as a result of a sale under this chapter.

(h) Notwithstanding any other law, if consent is given by the taxing units that are a party to the judgment, property may be sold to the land bank for less than the market value of the property as specified in the judgment or less than the total of all taxes, penalties, and interest, plus the value of nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale.

(i) The deed of conveyance of the property sold to a land bank under this section conveys to the land bank the right, title, and interest acquired or held by each taxing unit that was a party to the judgment, subject to the right of redemption.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 1, eff. June 19, 2009.

Sec. 379C.009. SUBSEQUENT RESALE BY LAND BANK. (a) Except as provided by Subsection (a-1), each subsequent resale of property acquired by a land bank under this chapter must comply with the conditions of this section.

(a-1) Notwithstanding any other law, this section does not apply to property sold to an eligible adjacent property owner under Section 379C.0106.

(b) Except as provided by Subsection (b-1), the land bank must sell a property to a qualified participating developer within the four-year period following the date of acquisition for the purpose of construction of affordable housing for sale or rent to low income households.

(b-1) Before the completion of the four-year period described by Subsection (b), the land bank may, subject to Section 379C.0106:

(1) transfer property that the land bank determines is not appropriate for residential development to the taxing units described by Subsection (b); or

(2) sell property described by Subdivision (1) to a political subdivision or a nonprofit organization.

(b-2) If after four years a qualified participating developer has not purchased the property, the property shall be transferred from the land bank to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

(c) Unless the municipality increases the amount in its plan, the number of properties acquired by a qualified participating developer under this section on which development has not been completed may not at any given time exceed three times the annual average residential production completed by the qualified participating developer during the preceding two-year period as determined by the municipality.

(d) The deed conveying a property sold by the land bank must include a right of reverter so that if the qualified participating developer does not apply for a construction permit and close on any construction financing within the three-year period following the date of the conveyance of the property from the land bank to the qualified participating developer, the property will revert to the land bank for subsequent resale in accordance with this chapter or conveyance to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law. If the property is replatted under Section 379C.0107, the right of reverter applies to the entire property as replatted.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 2, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1037 (H.B. 2840), Sec. 2, eff. September 1, 2013.

Sec. 379C.010. RESTRICTIONS ON OCCUPANCY AND USE OF PROPERTY. (a) The land bank shall impose deed restrictions on property sold to qualified participating developers requiring the development and sale, rental, or lease-purchase of the property to low income households.

(b) Each land bank property sold during any given fiscal year to be developed for sale must be deed restricted for sale to low

income households, and:

(1) at least 25 percent of those land bank properties must be deed restricted for sale to households with gross household incomes not greater than 60 percent of the area median family income, adjusted for household size; and

(2) not more than 30 percent of those land bank properties may be deed restricted for sale to households with gross household incomes greater than 80 percent of the area median family income, adjusted for household size.

(c) If property is developed for rental housing, the deed restrictions must be for a period of not less than 15 years and must require that:

(1) 100 percent of the rental units be occupied by households with incomes not greater than 60 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development;

(2) 40 percent of the units be occupied by households with incomes not greater than 50 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development; or

(3) 20 percent of the units be occupied by households with incomes not greater than 30 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(d) The deed restrictions under Subsection (c) must require the owner to file an annual occupancy report with the municipality on a reporting form provided by the municipality. The deed restrictions must also prohibit any exclusion of an individual or family from admission to the development based solely on the participation of the individual or family in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), as amended.

(e) Except as otherwise provided by this section, if the deed restrictions imposed under this section are for a term of years, the

deed restrictions shall renew automatically.

(f) The land bank or the governing body of the municipality may modify or add to the deed restrictions imposed under this section. Any modifications or additions made by the governing body of the municipality must be adopted by the municipality as part of its plan and must comply with the restrictions set forth in Subsections (b), (c), and (d).

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 7, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 3, eff. June 19, 2009.

Sec. 379C.0105. LOT EXCHANGE PERMITTED. (a) Notwithstanding Section 379C.010, the land bank may permit a qualified participating developer to exchange a property purchased from the land bank with any other property owned by the developer if:

(1) the developer agrees to construct on the other property affordable housing for low income households as provided by this chapter; and

(2) the other property will be located in:

(A) a planned development incorporating the property originally purchased from the land bank; or

(B) another location as approved by the land bank.

(b) The land bank shall adjust the deed restrictions under Section 379C.010 for each of the properties exchanged by the developer under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 4, eff. June 19, 2009.

Sec. 379C.0106. PROPERTY DETERMINED TO BE INAPPROPRIATE FOR RESIDENTIAL DEVELOPMENT: RIGHT OF FIRST REFUSAL. (a) In this section, "eligible adjacent property owner" means a person who:

(1) owns property located adjacent to property owned by the land bank; and

(2) satisfies eligibility requirements adopted by the land

bank.

(b) Notwithstanding any other right of first refusal granted under this chapter, if the land bank determines that a property owned by the land bank is not appropriate for residential development, the land bank first shall offer the property for sale to an eligible adjacent property owner according to terms and conditions developed by the land bank that are consistent with this chapter.

(c) The land bank shall sell the property to an eligible adjacent property owner, at whichever value is lower:

(1) the fair market value for the property as determined by the appraisal district in which the property is located; or

(2) the sales price recorded in the annual plan.

(d) Except as provided by Subsection (e), an adjacent property owner that purchases property under this section may not lease, sell, or transfer that property to another person before the third anniversary of the date the adjacent property owner purchased that property from the land bank.

(e) Subsection (d) does not apply to the transfer of property purchased under this section if the transfer:

(1) is made according to a policy adopted by the land bank; and

(2) is made to a family member of the eligible adjacent property owner or occurs as a result of the death of the eligible adjacent property owner.

Added by Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 5, eff. June 19, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1037 (H.B. 2840), Sec. 3, eff. September 1, 2013.

Sec. 379C.0107. REPLATTING BY QUALIFIED PARTICIPATING DEVELOPER. The land bank may sell two adjacent properties that are owned by the land bank to a qualified participating developer if:

(1) at least one of the properties is appropriate for residential development; and

(2) the developer agrees to replat the two adjacent properties as one property that is appropriate for residential development.

Added by Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 6, eff. June 19, 2009.

Sec. 379C.011. RIGHT OF FIRST REFUSAL TO QUALIFIED ORGANIZATIONS. (a) In this section, "qualified organization" means a community housing development organization that:

(1) contains within its designated geographical boundaries of operation, as set forth in its application for certification filed with and approved by the municipality, a portion of the property that the land bank is offering for sale;

(2) has built at least three single-family homes or duplexes or one multifamily residential dwelling of four or more units in compliance with all applicable building codes within the preceding two-year period and within the organization's designated geographical boundaries of operation; and

(3) within the preceding two-year period has built or rehabilitated housing units within a one-half mile radius of the property that the land bank is offering for sale.

(b) Except as provided by Section 379C.0106, the land bank shall first offer a property for sale to qualified organizations.

(c) Notice must be provided to the qualified organizations by certified mail, return receipt requested.

(d) The municipality shall specify in its plan that the period during which the right of first refusal provided by this section may be exercised by a qualified organization is six months from the date of the deed of conveyance of the property to the land bank.

(e) During the specified period, the land bank may not sell the property to a qualified participating developer other than a qualified organization. If all qualified organizations notify the land bank that they are declining to exercise their right of first refusal during the specified period, or if an offer to purchase the property is not received from a qualified organization during that period, the land bank may sell the property to any other qualified participating developer at the same price that the land bank offered the property to the qualified organizations.

(f) In its plan, the municipality shall establish the amount of additional time, if any, that a property may be held in the land bank once an offer has been received and accepted from a qualified organization or other qualified participating developer.

(g) If more than one qualified organization expresses an interest in exercising its right of first refusal, the organization that has designated the most geographically compact area encompassing a portion of the property shall be given priority.

(h) In its plan, the municipality may provide for other rights of first refusal for any other nonprofit corporation exempted from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended, provided that the preeminent right of first refusal is provided to qualified organizations as provided by this section.

(i) The land bank is not required to provide a right of first refusal to qualified organizations under this section if the land bank is selling property that reverted to the land bank under Section 379C.009(d).

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 8, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 7, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 8, eff. June 19, 2009.

Sec. 379C.012. OPEN RECORDS AND MEETINGS. The land bank shall comply with the requirements of Chapters 551 and 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.

Sec. 379C.013. RECORDS; AUDIT; REPORT. (a) The land bank shall keep accurate minutes of its meetings and shall keep accurate records and books of account that conform with generally accepted principles of accounting and that clearly reflect the income and expenses of the land bank and all transactions in relation to its property.

(b) The land bank shall file with the municipality not later than the 90th day after the close of the fiscal year annual audited financial statements prepared by a certified public accountant. The financial transactions of the land bank are subject to audit by the

municipality.

(c) For purposes of evaluating the effectiveness of the program, the land bank shall submit an annual performance report to the municipality not later than November 1 of each year in which the land bank acquires or sells property under this chapter. The performance report must include:

(1) a complete and detailed written accounting of all money and properties received and disbursed by the land bank during the preceding fiscal year;

(2) for each property acquired by the land bank during the preceding fiscal year:

(A) the street address of the property;

(B) the legal description of the property;

(C) the date the land bank took title to the property;

(D) the name and address of the property owner of record at the time of the foreclosure;

(E) the amount of taxes and other costs owed at the time of the foreclosure; and

(F) the assessed value of the property on the tax roll at the time of the foreclosure;

(3) for each property sold by the land bank during the preceding fiscal year to a qualified participating developer or eligible adjacent property owner:

(A) the street address of the property;

(B) the legal description of the property;

(C) the name and mailing address of the purchaser;

(D) the purchase price paid; and

(E) if sold to a qualified participating developer:

(i) the maximum incomes allowed for the households by the terms of the sale; and

(ii) the source and amount of any public subsidy provided by the municipality to facilitate the sale or rental of the property to a household within the targeted income levels;

(4) for each property sold by a qualified participating developer during the preceding fiscal year, the buyer's household income and a description of all use and sale restrictions; and

(5) for each property developed for rental housing with an active deed restriction, a copy of the most recent annual report filed by the owner with the land bank.

(d) The land bank shall maintain in its records for inspection

a copy of the sale settlement statement for each property sold by a qualified participating developer and a copy of the first page of the mortgage note with the interest rate and indicating the volume and page number of the instrument as filed with the county clerk.

(e) The land bank shall provide copies of the performance report to the taxing units who were parties to the judgment of foreclosure and shall provide notice of the availability of the performance report for review to the organizations and neighborhood associations identified by the municipality as serving the neighborhoods in which properties sold to the land bank under this chapter are located.

(f) The land bank and the municipality shall maintain copies of the performance report available for public review.

Added by Acts 2003, 78th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1297 (H.B. 2344), Sec. 9, eff. June 19, 2009.

Sec. 379C.014. ADDITIONAL AUTHORIZED USE OF LAND BANK PROPERTY. (a) Notwithstanding the other provisions of this chapter, the land bank may acquire and sell to a developer property intended for commercial use.

(b) To qualify to purchase property from the land bank under this section, a developer is not required to be a qualified participating developer but must obtain the municipality's approval of a development plan for the land bank property and must develop the property in accordance with the approved development plan.

(c) A sale under this section within the four-year period following the date of acquisition of the property by the land bank is for a public purpose and satisfies the requirement under Section 379C.009(b) that the property be sold within the four-year period to a qualified participating developer.

(d) The land bank may sell property as provided by this section only after granting any rights of first refusal otherwise required by this chapter, and any completed sale under this section remains subject to the right of reverter provided by Section 379C.009(d).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1037 (H.B. 2840), Sec. 4, eff. September 1, 2013.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 721 (H.B. 1289), Sec. 2, eff. June 17, 2015.

Sec. 379C.015. LAND USED FOR WORLD EXPOSITION. (a) A municipality may transfer to a land bank land that was part of the site of a world exposition recognized by the Bureau International des Expositions, subject to any deed restrictions the municipality adopts, after public notice and hearing, before January 1, 2014.

(b) Section 253.001(b) does not apply to the sale of land described by Subsection (a) if the remainder of the world exposition site includes dedicated public squares or parks that have a total area of 18 acres or more, which may include an area for which the municipality commits to demolishing any non-park improvements within 48 months after the date of the dedication.

(c) A petition for judicial review of a sale under Subsection (b) must be filed on or before the 60th day after the date the ordinance or resolution authorizing the sale is adopted. A petition filed after that date is barred.

(d) The restrictions and requirements applicable to the sale of land by a land bank under this chapter or any other law do not apply to land sold by a land bank under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1085 (H.B. 3447), Sec. 2, eff. September 1, 2013.
Redesignated from Local Government Code, Section 379C.014 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(40), eff. September 1, 2015.

CHAPTER 379E. URBAN LAND BANK PROGRAM

Sec. 379E.001. SHORT TITLE. This chapter may be cited as the Urban Land Bank Program Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.002. APPLICABILITY; CONSTRUCTION WITH OTHER LAW. This chapter applies only to a municipality:

(1) to which Chapter 379C or 379H does not apply; and

(2) that has not ever adopted a homestead land bank program under Subchapter E, Chapter 373A.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 2, eff. September 1, 2021.

Sec. 379E.003. DEFINITIONS. In this chapter:

(1) "Affordable" means that the monthly mortgage payment or contract rent does not exceed 30 percent of the applicable median family income for that unit size, in accordance with the income and rent limit rules adopted by the Texas Department of Housing and Community Affairs.

(2) "Community housing development organization" or "organization" means an organization that:

(A) meets the definition of a community housing development organization in 24 C.F.R. Section 92.2; and

(B) is certified by the municipality as a community housing development organization.

(3) "Land bank" means an entity established or approved by the governing body of a municipality for the purpose of acquiring, holding, and transferring unimproved real property under this chapter.

(4) "Low income household" means a household with a gross income of not greater than 80 percent of the area median family income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(5) "Qualified participating developer" means a developer who meets the requirements of Section 379E.005 and includes a qualified organization under Section 379E.011.

(6) "Urban land bank plan" or "plan" means a plan adopted

by the governing body of a municipality as provided by Section 379E.006.

(7) "Urban land bank program" or "program" means a program adopted under Section 379E.004.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.004. URBAN LAND BANK PROGRAM. (a) The governing body of a municipality may adopt an urban land bank program in which the officer charged with selling real property ordered sold pursuant to foreclosure of a tax lien may sell certain eligible real property by private sale for purposes of affordable housing development as provided by this chapter.

(b) The governing body of a municipality that adopts an urban land bank program shall establish or approve a land bank for the purpose of acquiring, holding, and transferring unimproved real property under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.005. QUALIFIED PARTICIPATING DEVELOPER. To qualify to participate in an urban land bank program, a developer must:

(1) have developed three or more housing units within the three-year period preceding the submission of a proposal to the land bank seeking to acquire real property from the land bank;

(2) have a development plan approved by the municipality for the land bank property; and

(3) meet any other requirements adopted by the municipality in the urban land bank plan.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33,

eff. September 1, 2007.

Sec. 379E.006. URBAN LAND BANK PLAN. (a) A municipality that adopts an urban land bank program shall operate the program in conformance with an urban land bank plan.

(b) The governing body of a municipality that adopts an urban land bank program shall adopt a plan annually. The plan may be amended from time to time.

(c) In developing the plan, the municipality shall consider other housing plans adopted by the municipality, including the comprehensive plan submitted to the United States Department of Housing and Urban Development and all fair housing plans and policies adopted or agreed to by the municipality.

(d) The plan must include the following:

(1) a list of community housing development organizations eligible to participate in the right of first refusal provided by Section 379E.011;

(2) a list of the parcels of real property that may become eligible for sale to the land bank during the next year;

(3) the municipality's plan for affordable housing development on those parcels of real property; and

(4) the sources and amounts of money anticipated to be available from the municipality for subsidies for development of affordable housing in the municipality, including any money specifically available for housing developed under the program, as approved by the governing body of the municipality at the time the plan is adopted.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.007. PUBLIC HEARING ON PROPOSED PLAN. (a) Before adopting a plan, a municipality shall hold a public hearing on the proposed plan.

(b) The city manager or the city manager's designee shall provide notice of the hearing to all community housing development

organizations and to neighborhood associations identified by the municipality as serving the neighborhoods in which properties anticipated to be available for sale to the land bank under this chapter are located.

(c) The city manager or the city manager's designee shall make copies of the proposed plan available to the public not later than the 60th day before the date of the public hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.008. PRIVATE SALE TO LAND BANK. (a) Notwithstanding any other law and except as provided by Subsection (f), property that is ordered sold pursuant to foreclosure of a tax lien may be sold in a private sale to a land bank by the officer charged with the sale of the property without first offering the property for sale as otherwise provided by Section 34.01, Tax Code, if:

(1) the market value of the property as specified in the judgment of foreclosure is less than the total amount due under the judgment, including all taxes, penalties, and interest, plus the value of nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale;

(2) the property is not improved with a building or buildings;

(3) there are delinquent taxes on the property for a total of at least five years; and

(4) the municipality has executed with the other taxing units that are parties to the tax suit an interlocal agreement that enables those units to agree to participate in the program while retaining the right to withhold consent to the sale of specific properties to the land bank.

(b) A sale of property for use in connection with the program is a sale for a public purpose.

(c) If the person being sued in a suit for foreclosure of a tax lien does not contest the market value of the property in the suit, the person waives the right to challenge the amount of the market value determined by the court for purposes of the sale of the

property under Section 33.50, Tax Code.

(d) For any sale of property under this chapter, each person who was a defendant to the judgment, or that person's attorney, shall be given, not later than the 90th day before the date of sale, written notice of the proposed method of sale of the property by the officer charged with the sale of the property. Notice must be given in the manner prescribed by Rule 21a, Texas Rules of Civil Procedure.

(e) After receipt of the notice required by Subsection (d) and before the date of the proposed sale, the owner of the property subject to sale may file with the officer charged with the sale a written request that the property not be sold in the manner provided by this chapter.

(f) If the officer charged with the sale receives a written request as provided by Subsection (e), the officer shall sell the property as otherwise provided in Section 34.01, Tax Code.

(g) The owner of the property subject to sale may not receive any proceeds of a sale under this chapter. However, the owner does not have any personal liability for a deficiency of the judgment as a result of a sale under this chapter.

(h) Notwithstanding any other law, if consent is given by the taxing units that are a party to the judgment, property may be sold to the land bank for less than the market value of the property as specified in the judgment or less than the total of all taxes, penalties, and interest, plus the value of nontax liens held by a taxing unit and awarded by the judgment, court costs, and the cost of the sale.

(i) The deed of conveyance of the property sold to a land bank under this section conveys to the land bank the right, title, and interest acquired or held by each taxing unit that was a party to the judgment, subject to the right of redemption.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.009. SUBSEQUENT RESALE BY LAND BANK. (a) Each subsequent resale of property acquired by a land bank under this chapter must comply with the conditions of this section.

(b) Within the three-year period following the date of acquisition, the land bank must sell a property to a qualified participating developer for the purpose of construction of affordable housing for sale or rent to low income households. If after three years a qualified participating developer has not purchased the property, the property shall be transferred from the land bank to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

(c) Unless the municipality increases the amount in its plan, the number of properties acquired by a qualified participating developer under this section on which development has not been completed may not at any time exceed three times the annual average residential production completed by the qualified participating developer during the preceding two-year period as determined by the municipality.

(d) The deed conveying a property sold by the land bank must include a right of reverter so that, if the qualified participating developer does not apply for a construction permit and close on any construction financing within the two-year period following the date of the conveyance of the property from the land bank to the qualified participating developer, the property will revert to the land bank for subsequent resale to another qualified participating developer or conveyance to the taxing units who were parties to the judgment for disposition as otherwise allowed under the law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.010. RESTRICTIONS ON OCCUPANCY AND USE OF PROPERTY. (a) The land bank shall impose deed restrictions on property sold to qualified participating developers requiring the development and sale or rental of the property to low income households.

(b) At least 25 percent of the land bank properties sold during any given fiscal year to be developed for sale shall be deed restricted for sale to households with gross household incomes not greater than 60 percent of the area median family income, adjusted for household size, for the metropolitan statistical area in which

the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(c) If property is developed for rental housing, the deed restrictions must be for a period of not less than 20 years and must require that:

(1) 100 percent of the rental units be occupied by and affordable to households with incomes not greater than 60 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development;

(2) 40 percent of the units be occupied by and affordable to households with incomes not greater than 50 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development; or

(3) 20 percent of the units be occupied by and affordable to households with incomes not greater than 30 percent of area median family income, based on gross household income, adjusted for household size, for the metropolitan statistical area in which the municipality is located, as determined annually by the United States Department of Housing and Urban Development.

(d) The deed restrictions under Subsection (c) must require the owner to file an annual occupancy report with the municipality on a reporting form provided by the municipality. The deed restrictions must also prohibit any exclusion of an individual or family from admission to the development based solely on the participation of the individual or family in the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f), as amended.

(e) Except as otherwise provided by this section, if the deed restrictions imposed under this section are for a term of years, the deed restrictions shall renew automatically.

(f) The land bank or the governing body of the municipality may modify or add to the deed restrictions imposed under this section. Any modifications or additions made by the governing body of the municipality must be adopted by the municipality as part of its plan and must comply with the restrictions set forth in Subsections (b), (c), and (d).

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.011. RIGHT OF FIRST REFUSAL. (a) In this section, "qualified organization" means a community housing development organization that:

(1) contains within its designated geographical boundaries of operation, as set forth in its application for certification filed with and approved by the municipality, a portion of the property that the land bank is offering for sale;

(2) has built at least three single-family homes or duplexes or one multifamily residential dwelling of four or more units in compliance with all applicable building codes within the preceding two-year period and within the organization's designated geographical boundaries of operation; and

(3) within the preceding three-year period has developed or rehabilitated housing units within a two-mile radius of the property that the land bank is offering for sale.

(b) The land bank shall first offer a property for sale to qualified organizations.

(c) Notice must be provided to the qualified organizations by certified mail, return receipt requested, not later than the 60th day before the beginning of the period in which a right of first refusal may be exercised.

(d) The municipality shall specify in its plan the period during which the right of first refusal provided by this section may be exercised by a qualified organization. That period must be at least nine months but not more than 26 months from the date of the deed of conveyance of the property to the land bank.

(e) If the land bank conveys the property to a qualified organization before the expiration of the period specified by the municipality under Subsection (d), the interlocal agreement executed under Section 379E.008(a)(4) must provide tax abatement for the property until the expiration of that period.

(f) During the specified period, the land bank may not sell the property to a qualified participating developer other than a qualified organization. If all qualified organizations notify the

land bank that they are declining to exercise their right of first refusal during the specified period, or if an offer to purchase the property is not received from a qualified organization during that period, the land bank may sell the property to any other qualified participating developer at the same price that the land bank offered the property to the qualified organizations.

(g) In its plan, the municipality shall establish the amount of additional time, if any, that a property may be held in the land bank once an offer has been received and accepted from a qualified organization or other qualified participating developer.

(h) If more than one qualified organization expresses an interest in exercising its right of first refusal, the organization that has designated the most geographically compact area encompassing a portion of the property shall be given priority.

(i) In its plan, the municipality may provide for other rights of first refusal for any other nonprofit corporation exempted from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended, provided that the preeminent right of first refusal is provided to qualified organizations as provided by this section.

(j) The land bank is not required to provide a right of first refusal to qualified organizations under this section if the land bank is selling property that reverted to the land bank under Section 379E.009(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.012. OPEN RECORDS AND MEETINGS. The land bank shall comply with the requirements of Chapters 551 and 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

Sec. 379E.013. RECORDS; AUDIT; REPORT. (a) The land bank

shall keep accurate minutes of its meetings and shall keep accurate records and books of account that conform with generally accepted principles of accounting and that clearly reflect the income and expenses of the land bank and all transactions in relation to its property.

(b) The land bank shall file with the municipality not later than the 90th day after the close of the fiscal year annual audited financial statements prepared by a certified public accountant. The financial transactions of the land bank are subject to audit by the municipality.

(c) For purposes of evaluating the effectiveness of the program, the land bank shall submit an annual performance report to the municipality not later than November 1 of each year in which the land bank acquires or sells property under this chapter. The performance report must include:

(1) a complete and detailed written accounting of all money and properties received and disbursed by the land bank during the preceding fiscal year;

(2) for each property acquired by the land bank during the preceding fiscal year:

(A) the street address of the property;

(B) the legal description of the property;

(C) the date the land bank took title to the property;

(D) the name and address of the property owner of record at the time of the foreclosure;

(E) the amount of taxes and other costs owed at the time of the foreclosure; and

(F) the assessed value of the property on the tax roll at the time of the foreclosure;

(3) for each property sold by the land bank during the preceding fiscal year to a qualified participating developer:

(A) the street address of the property;

(B) the legal description of the property;

(C) the name and mailing address of the developer;

(D) the purchase price paid by the developer;

(E) the maximum incomes allowed for the households by the terms of the sale; and

(F) the source and amount of any public subsidy provided by the municipality to facilitate the sale or rental of the property to a household within the targeted income levels;

(4) for each property sold by a qualified participating developer during the preceding fiscal year, the buyer's household income and a description of all use and sale restrictions; and

(5) for each property developed for rental housing with an active deed restriction, a copy of the most recent annual report filed by the owner with the land bank.

(d) The land bank shall maintain in its records for inspection a copy of the sale settlement statement for each property sold by a qualified participating developer and a copy of the first page of the mortgage note with the interest rate and indicating the volume and page number of the instrument as filed with the county clerk.

(e) The land bank shall provide copies of the performance report to the taxing units who were parties to the judgment of foreclosure and shall provide notice of the availability of the performance report for review to the organizations and neighborhood associations identified by the municipality as serving the neighborhoods in which properties sold to the land bank under this chapter are located.

(f) The land bank and the municipality shall maintain copies of the performance report available for public review.

Added by Acts 2007, 80th Leg., R.S., Ch. 1034 (H.B. 1742), Sec. 12, eff. September 1, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1341 (S.B. 1908), Sec. 33, eff. September 1, 2007.

CHAPTER 379H. URBAN LAND BANK PROGRAM IN MUNICIPALITY WITH POPULATION OF TWO MILLION OR MORE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 379H.001. SHORT TITLE. This chapter may be cited as the Urban Land Bank Program for a Municipality with a Population of Two Million or More.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.002. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality with a population of two million or more.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.003. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of a land bank.

(2) "Land bank" means an entity established or approved by the governing body of a municipality under this chapter.

(3) "Non-qualifying municipality" means a municipality to which this chapter does not apply and that is located in the same county in which a municipality to which this chapter does apply is predominantly located.

(4) "Real property" means land, land under water, and any structure, easement, air rights, franchise, or incorporeal hereditament, every estate, interest, and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise, and any fixture or improvement located thereon.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.004. APPLICABILITY OF OTHER LAW. A land bank created under this chapter:

(1) is:

(A) a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code;

(B) a local government corporation, as defined by Section 431.003, Transportation Code; and

(C) a public nonprofit corporation that has and may exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations in this state;

(2) is not:

(A) a program created or operating under Chapter 373 or 374; or

(B) a housing finance corporation created under Chapter 394; and

(3) must comply with the requirements of Chapters 551 and

552, Government Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.005. PURPOSE. A land bank created under this chapter exists for the purpose of acquiring, managing, and disposing of vacant, abandoned, deteriorated, non-revenue generating, and non-tax producing properties and converting those properties to productive uses. For purposes of this subsection, productive uses of a property include the development of housing that serves a wide range of local needs, including affordable housing, long-term affordable housing, workforce housing, public service housing, mixed-income housing, community-based economic development, food desert solutions, parks and recreation, flood reduction and storm resiliency, and other uses necessary and appropriate to return properties to the tax rolls, stabilize communities, improve living conditions, and protect against the displacement of residents of the municipality served by the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.006. CONSTRUCTION. This chapter shall be construed liberally to carry out the intended purposes as a complete and independent authorization for the performance of each and every act and thing authorized by this chapter, and all powers granted shall be broadly interpreted to carry out the intended purposes and not as a limitation of powers. Except as otherwise provided by this chapter, a land bank, in the exercise of its powers and duties under this chapter and with respect to real property held by the land bank, has the same amount of control as if the land bank represented a private property owner, and the land bank is not subject to restrictions imposed by the charter, ordinances, or resolutions of a local unit of government.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 379H.051. COMPOSITION OF BOARD. The size, membership, composition, and officers of the board of directors of a land bank, and methods of appointment to the board, must be established by the certificate of formation and the bylaws of the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.052. ELIGIBILITY FOR MEMBERSHIP. (a) In this section, "public officer" means an individual who is elected to a municipal office.

(b) A municipal employee is eligible to serve as a member of the board, and notwithstanding any law to the contrary, a public officer is eligible to serve as a member of the board and acceptance of the appointment will neither terminate nor impair service in the public office.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.053. MEETINGS; ATTENDANCE. (a) The board shall meet in regular session according to a schedule adopted by the board.

(b) The board may meet in a special session:

(1) convened by the president of the board in accordance with the bylaws of the board; or

(2) on written notice signed by a majority of the board members.

(c) The presence of a majority of the board's total membership constitutes a quorum for any regular or special session.

(d) The board shall establish rules related to the attendance and participation of members in regular or special meetings of the board. Rules adopted under this subsection may provide for the removal from office of a member for failure to comply with the rules if a majority of the remaining members of the board vote for the removal. Removal under this subsection takes effect the first day of the calendar month following the date of the vote. A person removed under this subsection is ineligible for reappointment to the board unless reappointment is confirmed unanimously by the board.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.054. BOARD ACTIONS. (a) Subject to Subsection (b), actions of the board must be approved by the affirmative vote of a quorum of the board.

(b) Action on the following matters requires approval by a majority of the total membership of the board:

(1) adoption of bylaws or rules for conduct of the business of the land bank for which the board serves;

(2) hiring or firing of any employee or contractor of the land bank for which the board serves;

(3) incurring debt;

(4) adoption or amendment of the annual budget; and

(5) sale, lease, encumbrance, or alienation of or improvements to real or personal property with a value of more than $50,000.

(c) By majority vote, the board may delegate the hiring and firing of employees and contractors to a specific officer or committee of the land bank for which the board serves, under terms and to the extent specified by the board.

(d) A board member may not vote by proxy.

(e) A board member may request a recorded vote on any resolution or action of the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.055. CONFLICT OF INTEREST. (a) A board member or employee of a land bank, or a relative of a member or employee within the first degree of consanguinity or affinity, as determined by Chapter 573, Government Code, may not:

(1) acquire any direct or indirect interest in real property of the land bank, in any real property to be acquired by the land bank, or in any real property to be acquired from the land bank; or

(2) have any direct or indirect interest in any contract or proposed contract for materials or services to be furnished or used

by the land bank.

(b) The provisions of the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) related to powers, standards of conduct, and interests in contracts apply to the directors and officers of the land bank.

(c) The board may adopt supplemental rules addressing potential conflicts of interest and ethical guidelines for board members and land bank employees.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.056. COMPENSATION; REIMBURSEMENT. (a) Board members serve without compensation.

(b) The board may reimburse a member for expenses actually incurred in the performance of duties on behalf of the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

SUBCHAPTER C. CREATION, OPERATION, AND DISSOLUTION OF LAND BANK

Sec. 379H.101. CREATION OF LAND BANK. (a) The governing body of a municipality may create a land bank by the adoption of an ordinance approving the land bank's certificate of formation and bylaws.

(b) Approval by the governing body of a municipality of the certificate of formation and bylaws of a corporation created under Chapter 431, Transportation Code, that will serve as a land bank under this chapter is sufficient to create a land bank under this section.

(c) A land bank's certificate of formation and bylaws approved under this section may not be changed or amended unless the governing body of the municipality for which the land bank was created approves the change or amendment by the adoption of an ordinance.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.102. GENERAL POWERS OF LAND BANK. (a) A land bank has all powers necessary to carry out the purposes of this chapter, including the power to:

(1) adopt, amend, and repeal bylaws for the regulation of the land bank's affairs and the conduct of the land bank's business;

(2) sue and be sued in the land bank's own name and plead and be interpleaded in all civil actions, including actions to clear title to real property of the land bank;

(3) adopt and alter a seal;

(4) borrow funds necessary for the operation of the land bank from private lenders, municipalities, this state, and the federal government;

(5) adopt any policy for procurement that is recognized under state law and permitted for governmental entities, including a policy recognized under Chapters 252 and 271 of this code, Chapter 431, Transportation Code, and Chapters 2254 and 2269, Government Code;

(6) procure insurance or guarantees from this state or the federal government of the payments of any debts or parts of debts incurred by the land bank and pay premiums in connection with those debts;

(7) enter into contracts and other agreements necessary, incidental, or convenient to the performance of the land bank's duties and the exercise of the land bank's powers, including governmental agreements under Subchapter D, Chapter 431, Transportation Code, or interlocal contracts under Section 791.011, Government Code, for the joint exercise of powers under this chapter;

(8) enter into contracts and other agreements with the municipality that created the land bank for the performance of services in accordance with Chapter 311, Tax Code;

(9) make and execute contracts and other instruments necessary or convenient to the exercise of the land bank's powers;

(10) procure insurance against losses in connection with the real property, assets, or activities of the land bank;

(11) invest money of the land bank, at the discretion of the board, in instruments, obligations, securities, or property determined proper by the board and name and use depositories for the land bank's money;

(12) enter into contracts for the management of, collection of rent from, or sale of real property of the land bank;

(13) design, develop, construct, demolish, reconstruct, rehabilitate, renovate, relocate, or otherwise improve real property of the land bank;

(14) set, charge, and collect rents, fees, and charges for the use of real property of the land bank and for services provided by the land bank;

(15) finance by loan, grant, lease, or otherwise refinance, construct, erect, assemble, purchase, acquire, own, repair, remodel, rehabilitate, modify, maintain, extend, improve, install, sell, equip, expand, add to, operate, or manage real property of the land bank and pay the costs of those activities from the proceeds of loans by persons, corporations, limited or general partnerships, and other entities;

(16) grant or acquire a license, easement, lease, as lessor or lessee, or option with respect to real property of the land bank;

(17) enter into partnerships, joint ventures, and other collaborative relationships with the municipality that created the land bank and other public and private entities for the ownership, management, development, and disposition of real property of the land bank;

(18) make application directly or indirectly to any federal, state, county, or municipal government or agency or to any other public or private source for loans, grants, guarantees, or other financial assistance in furtherance of the land bank's public purpose and accept and use the loans, grants, guarantees, or financial assistance on terms prescribed by that federal, state, county, or municipal government or agency or other source;

(19) as security for the repayment of any notes or other obligations of the land bank, pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the land bank, including real property, fixtures, personal property, revenue, and other funds, and execute any lease, trust indenture, trust agreement, agreement for the sale of the land bank's notes of other obligation, loan agreement, mortgage, security agreement, or other agreement necessary or desirable as determined by the land bank;

(20) hold title to real property for purposes of establishing contracts with public and private nonprofit entities, including long-term lease contracts; and

(21) perform any other appropriate action as necessary to carry out the purposes of this chapter or to comply with a

requirement under other law.

(b) A land bank may not:

(1) exercise the power of eminent domain; or

(2) acquire real property outside the geographical boundaries of the municipality that created the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.103. RESOLUTION OF COMPLEX TITLE QUESTIONS. A land bank may provide assistance and guidance to owners of real property for which there are complex, highly divided fractional interests in the real property because of multigenerational intestate distributions, unknown heirs, and other interested parties for whom accurate information cannot be ascertained.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.104. INTERLOCAL CONTRACTS. (a) A land bank may enter into an interlocal contract under Section 791.011, Government Code, with:

(1) a municipality for a program created by the municipality under Chapter 373 or 374; or

(2) a non-qualifying municipality for the purpose of the land bank conducting land bank activities on behalf of and within the geographical boundaries of the non-qualifying municipality.

(b) Notwithstanding Section 379H.102(b)(2), a land bank may acquire real property within the geographical boundaries of a non-qualifying municipality with which it has entered into an agreement under Subsection (a).

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.105. RECORDS AND REPORTS. (a) A land bank shall keep accurate minutes of the land bank's meetings and shall keep accurate records and books of account that conform with generally

accepted principles of accounting and that clearly reflect the income and expenses of the land bank and all transactions in relation to the land bank's real property.

(b) A land bank shall maintain and make available for public review and inspection:

(1) an inventory of all real property held by the land bank;

(2) a copy of the sale settlement statement for each real property sold or transferred to a third party; and

(3) a copy of the performance report filed under Subsection (e).

(c) Not later than the 90th day after the end of the fiscal year of the municipality that created the land bank, the land bank shall file with the municipality an annual audited financial statement prepared by a certified public accountant.

(d) Financial transactions of a land bank are subject to audit by the municipality that created the land bank.

(e) For purposes of evaluating the effectiveness of a land bank created under this chapter, a land bank shall submit an annual performance report to the municipality that created the land bank not later than November 1 of each year in which the land bank acquires or sells real property in accordance with this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.106. STAFF. (a) A land bank may employ an executive director, counsel and legal staff, technical experts, and other agents and employees, permanent or temporary, that the land bank may require and may determine the qualifications and set the compensation and benefits of each of those persons.

(b) A land bank may enter into contracts and agreements with municipalities for staffing services to be provided to the land bank by those municipalities or for the land bank to provide such staffing services to those municipalities.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.107. ADVISORY COMMITTEE AND NEIGHBORHOOD CONSULTATION. (a) A land bank shall create one or more advisory committees to consult with and advise the land bank on:

(1) properties within the municipality served by the land bank that are imposing the greatest harm on neighborhoods and communities in the municipality;

(2) neighborhood priorities for new uses of those properties; and

(3) the range of potential transferees of those properties.

(b) As appropriate to the location of the real property of the land bank, advisory committee membership and neighborhood consultations shall include formal and informal neighborhood-specific community associations, residents' associations, faith communities, community development corporations, and anchor institutions.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.108. DISSOLUTION OF LAND BANK. (a) A land bank may be dissolved not earlier than the 60th day after the date an affirmative resolution to dissolve the land bank is approved by two-thirds of the membership of the board and confirmed by resolution of the municipality that created the land bank.

(b) Not less than 60 days before the consideration of a resolution of dissolution by the board, the board shall:

(1) provide to the governing body of the municipality that created the land bank written notice of the board's intent to vote on a resolution for dissolution of the land bank; and

(2) publish the notice in a local newspaper of general circulation.

(c) On dissolution of the land bank, all real property, personal property, and other assets and obligations of the land bank become the assets and obligations of the municipality that created the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. ACQUISITION AND DISPOSITION OF PROPERTY

Sec. 379H.151. TAX EXEMPT STATUS OF LAND BANK PROPERTY. The real property of a land bank, including real property held by a land bank under a long-term lease contract with a community land trust, and the land bank's income and operations are exempt as public property used for public purposes from all license fees, recording fees, and all other taxes imposed by this state or by political subdivisions of this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.152. TITLE HELD BY LAND BANK. All real property acquired by a land bank must be held in the name of the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.153. QUIET TITLE ACTIONS. (a) A land bank may file an action to quiet title as to any real property in which the land bank has an interest. For purposes of a quiet title action, the land bank is considered to be the holder of sufficient legal and equitable interests and possessory rights to qualify the land bank as an adequate complainant in the action.

(b) Before filing an action to quiet title, the land bank shall conduct an examination of title to determine the identity of all persons and entities possessing a claim or interest in or to the real property. Service of the complaint to quiet title shall be provided to the interested parties by the following methods:

(1) by first class mail to an identity and address as reasonably ascertainable by an inspection of public records;

(2) in the case of occupied real property, by registered or certified mail addressed to "occupant";

(3) by posting a copy of the notice on the real property;

(4) by publication in a newspaper of general circulation in the municipality in which the property is located; and

(5) by another method the court may order.

(c) As part of the complaint to quiet title, a land bank shall file an affidavit identifying all parties potentially having an interest in the real property and the form of notice provided.

(d) A court hearing an action under this section shall:

(1) schedule a hearing on the complaint not later than the 90th day after the date of the filing of the affidavit under Subsection (c); and

(2) issue a final judgment not later than the 120th day after the date of the filing of the complaint for all matters on which an answer was not filed by an interested party.

(e) A land bank may join in a single complaint to quiet title for one or more parcels of real property.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.154. ACQUISITION OF PROPERTY GENERALLY. (a) A land bank may acquire real property by gift, devise, transfer, exchange, foreclosure, purchase, purchase contracts, lease purchase agreements, installment sales contracts, land contracts, or transfers from a municipality on terms as agreed by the land bank and the municipality, or through any other means on terms and in a manner the land bank considers appropriate.

(b) Notwithstanding any other law to the contrary, a municipality served by a land bank or a non-qualifying municipality that has entered into an interlocal contract with a land bank under Section 379H.104 may transfer to the land bank real property of the municipality or non-qualifying municipality on terms and according to procedures determined by the municipality or non-qualifying municipality.

(c) A land bank may acquire real property from this state, the municipality served by the land bank, the county in which that municipality is located, a governmental entity within the county, the federal government, or an agency or department of the federal government.

(d) A land bank shall maintain all of its real property in accordance with the laws and ordinances of the jurisdiction in which the real property is located.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.155. ACQUISITION OF FORECLOSED OR SEIZED PROPERTY. (a) In this section, "taxing unit" has the meaning assigned by Section 1.04, Tax Code.

(b) A land bank may submit a written bid to acquire real property at a tax sale conducted in accordance with Section 34.01, Tax Code. The bid:

(1) must be in an amount not less than the amount calculated under Section 34.01(b), Tax Code; and

(2) may be submitted in writing in advance of the auction or tendered in person at the auction.

(c) If the bid submitted under Subsection (b) is the highest bid received at the sale, the land bank:

(1) shall:

(A) pay in cash the amount of the costs and expenses as described by Section 33.48, Tax Code, and any penalties described by Section 33.07 or 33.08, Tax Code; or

(B) remit payment of the amounts described by Paragraph (A) to the selling officer by check or electronic funds transfer not later than the seventh calendar day after the date of the auction; and

(2) is entitled to credit bid that portion of the bid amount consisting of the amount of the taxes, penalties, other than penalties described by Sections 33.07 and 33.08, Tax Code, and interest set forth in the judgment.

(d) A taxing unit that is a party to a judgment of foreclosure for property sold at auction may request that the selling officer bid off the property to the taxing unit in the manner provided by Section 34.01(j), Tax Code, and, if the request is granted, the transfer to the taxing unit prevails over a bid by the land bank if the land bank's bid is the only bid sufficient to satisfy the minimum bid described by Section 34.01(j), Tax Code.

(e) The aggregate amount of all credit bids in a calendar year shall be considered satisfied by the aggregate expenditure in that calendar year of an amount equal to or greater than the credit bid amount, which expenditures are attributable directly and indirectly to maintenance, rehabilitation, construction, demolition, and remediation activities. As to any specific tract of property acquired by the credit bid and transferred by a land bank to a public entity described by Section 379H.158(a), the credit bid shall be considered satisfied by that transfer.

(f) A land bank may submit a written request to a taxing unit at any time for the commencement of tax foreclosure proceedings for delinquent taxes on real property, other than residential real property legally owned and occupied. A land bank may submit a written request to a taxing unit under this subsection for legally occupied residential real property only if the property is five or more years delinquent.

(g) A request submitted under Subsection (f) must include a commitment to tender a bid in the amount specified under Subsection (b). On receipt of the written request, the taxing unit, or the governmental office acting on behalf of the taxing unit, shall commence enforcement proceedings in accordance with Section 33.41, Tax Code.

(h) If there is no private third party bid in an amount more than the bid of the land bank, the real property must be sold to the land bank.

(i) A sale to a land bank under this section is not a sale to a taxing unit under Section 34.01(j) or (p) or 34.21, Tax Code.

(j) A land bank may bid an amount higher than the amount calculated under Section 34.01(b), Tax Code, and if that higher bid amount is the highest successful bid, the land bank shall pay the full amount of the bid in cash.

(k) The deed to a land bank vests good and perfect title in the land bank to the right, title, and interest owned by the defendants included in the foreclosure judgment, including the defendants' right to the use and possession of the property, subject only to the defendants' right of redemption, the terms of a recorded restrictive covenant running with the land that was recorded before January 1 of the year in which the tax lien on the property arose, a recorded lien that arose under that restrictive covenant that was not extinguished by the judgment foreclosing the tax lien, and each easement of record as of the date of the sale that was recorded before January 1 of the year the tax lien arose.

(l) A sale of real property to a land bank under this section:

(1) extinguishes each lien securing payment of the delinquent taxes, penalties, and interest against the property and included in the judgment; and

(2) does not affect the personal liability of any person for those taxes, penalties, and interest included in the judgment that are not satisfied from the proceeds of the sale.

(m) A municipality, and any taxing unit levying property taxes within the geographical jurisdiction of the municipality, may convey tax foreclosed real property owned by the municipality or the taxing unit to the land bank on terms and for an amount of consideration determined by the transferor and the land bank.

(n) A bid submitted by a land bank in accordance with this section is considered a bid for the amount calculated under Section 34.01(b), Tax Code, and received under Section 34.01(j), Tax Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.156. REDEMPTION BY OWNER OF FORECLOSED PROPERTY. (a) The owner of real property sold to a land bank under Section 379H.155 may redeem the property in the manner prescribed for owners of real property sold at a tax sale to a purchaser other than a taxing unit under Section 34.21, Tax Code.

(b) The price to be paid by the owner of real property sold to a land bank under this section to redeem the property shall be in the amounts set forth in Sections 34.21(a) and (e), Tax Code. For the purposes of calculating the price, the bid paid by the land bank shall be the aggregate amount of the land bank's bid as described by Section 379H.155(b).

(c) If the owner of real property sold to a land bank under Section 379H.155 redeems the property by paying to the land bank the full amount required to redeem as set forth in Sections 34.21(a) and (e), Tax Code, the land bank shall:

(1) retain an amount equal to the amount paid in cash by the land bank in accordance with Section 379H.155;

(2) retain any redemption premium and any reasonable costs the land bank may have expended on maintenance or environmental remediation of the property being redeemed; and

(3) remit to the county assessor-collector any remaining amounts to be distributed among the taxing units that were parties to the judgment of foreclosure in an amount equal to the proportion of each taxing unit's taxes, penalties, and interest due in accordance with the judgment of foreclosure.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.157. DISPOSITION OF PROPERTY GENERALLY. (a) A land bank may convey, exchange, sell, transfer, lease as lessor, grant, release and demise, pledge, or hypothecate any interest in, on, or to real property of the land bank.

(b) For real property that a land bank holds fee simple title to, the land bank must convey, exchange, sell, transfer, or otherwise dispose of the fee simple interest in the property not later than the last day of the fifth consecutive year during which the land bank continuously holds the fee simple title. This subsection does not apply to real property that a land bank holds fee simple title to:

(1) that is subject to a long-term lease with:

(A) a nonprofit corporation that is incorporated or holds a certificate of authority under Chapter 22, Business Organizations Code;

(B) a local government corporation, as defined by Section 431.003, Transportation Code; or

(C) a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code;

(2) for which the land bank is required by the municipality that created the land bank or an entity that funds the land bank, either under an agreement with the municipality or entity or to comply with an official action of the municipality or entity, to hold and assemble one or more parcels of real property for a period that is longer than five years for the purpose of fulfilling specific program or funding goals related to creating or developing affordable housing, supporting community-based economic development, creating parks and other public places, or supporting other goals required by the municipality or entity described by this subdivision;

(3) for which a determination has been made by the land bank that the best use of the real property is for flood control or storm water retention or drainage and the real property has not yet been transferred to a public entity such as a flood control district or a municipal parks and recreation department under Section 379H.158; or

(4) that is the subject of an active proceeding in a court of competent jurisdiction or is subject to a court order that conflicts with this subsection.

(c) A municipality may, in the ordinance creating a land bank,

require that a particular form of disposition of real property of the land bank, or any disposition of real property located within a specified jurisdiction of the municipality, be subject to specified voting and approval requirements of the board. Unless restricted under this subsection, the board may delegate to officers and employees the authority to enter into and execute agreements, instruments of conveyance, and all other related documents pertaining to the conveyance of real property by the land bank.

(d) Subject to Subsection (b), a land bank shall determine the terms, conditions, form, and substance of consideration necessary and appropriate to convey, exchange, sell, transfer, lease as lessor, grant, or mortgage as mortgagor any interest in, on, or to real property of the land bank. Consideration may take the form of monetary payments and secured financial obligations, covenants, and conditions related to the present and future use of the property, deed covenants and limitations, contractual commitments of the transferee, mortgage financing, defeasible fees, and other forms of consideration as determined by the board to be in the best interests of the land bank. The board shall determine and state in the land bank's policies and procedures the general terms for consideration to be received by the land bank for the transfer of real property of the land bank.

(e) The board may authorize in the board's policies governing the disposition of land bank property a program for the disposition of land bank property to owners of contiguous properties.

(f) A municipality may recommend that a land bank created by the municipality, and the land bank may in the land bank's own policies and procedures, establish a hierarchical ranking of priorities for the use of real property conveyed by the land bank, including use for:

(1) production of housing, including affordable housing, long-term affordable housing, workforce housing, public service housing, and mixed-income housing;

(2) community-based economic development, including retail, commercial, and industrial activities;

(3) parks and other purely public spaces and places;

(4) flood reduction, storm water retention and drainage, and storm resiliency;

(5) food desert solutions;

(6) conservation areas; and

(7) other purposes necessary and appropriate to convert properties to the tax rolls, stabilize communities, improve living conditions, and protect against the displacement of residents of the municipality served by the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.158. DISPOSITION OF PROPERTY FOR FLOOD CONTROL AND STORM WATER DRAINAGE AND PLANNING. (a) A land bank may convey to a public entity such as a flood control district or a municipal parks and recreation department real property held by the land bank:

(1) for which the highest and best use is flood control or storm water retention or drainage; and

(2) that, as a result of housing and building code restrictions, flood plain elevations, other local, state, or federal laws, or public or private agreements, conditions, and limitations, is no longer capable of being developed or redeveloped.

(b) The transfer of real property by a land bank under this section may be:

(1) by grant, deed lease, or other conveyance and may include additional limitations, restrictions, and conditions determined by the land bank; and

(2) for nominal consideration, for consideration consisting of contractual commitments, for an exchange of real properties, or for other consideration determined by the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.159. AFFORDABLE HOUSING POLICY. The board of a land bank may adopt a policy requiring that a percentage, as determined by the board based on local needs and available land bank inventory, of residential units constructed on residential real property conveyed by the land bank be deed restricted for housing that is affordable to households with an income of not greater than 80 percent of the area median family income, adjusted for household size, for the municipality, as determined annually by the United States Department of Housing and Urban Development.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

SUBCHAPTER E. FINANCING OF LAND BANK OPERATIONS

Sec. 379H.201. GENERAL FINANCING. (a) A land bank may receive funding through grants and loans from the municipality that created the land bank, other municipalities, this state, the federal government, and other public or private sources.

(b) A land bank may receive and retain payments for services rendered, for rents and leasehold payments received, for consideration for disposition of real and personal property, for proceeds of insurance coverage for losses incurred, for income from investments, and for any other asset or activity permitted under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.202. SALE OF LAND BANK PROPERTY. At the time a land bank sells or otherwise disposes of real property, the proceeds from the sale, if any, shall be allocated to operations and expenses of the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

Sec. 379H.203. COLLECTION OF TAXES ON PROPERTY CONVEYED BY LAND BANK. Not more than 75 percent of the real property taxes the municipality that created the land bank collected on real property, excluding any school district or county ad valorem tax, conveyed by a land bank under the laws of this state shall be remitted to the land bank. The real property taxes of any other taxing unit, as to real property of the land bank, may also be allocated to the land bank in a similar manner under an interlocal agreement between the other taxing unit and the land bank. The specific percentage of those taxes to be remitted shall be established by ordinance, resolution, or interlocal cooperation agreement of the land bank. The allocation of property tax revenue shall begin with the first taxable year

following the date of conveyance and shall continue for a period of five years. The funds shall be remitted to the land bank in accordance with the administrative procedures established by the assessor-collector of the county in which the land bank is located. The allocation of property tax revenue may not occur if those taxes have been previously allocated to a tax increment reinvestment zone, or to secure a debt of the municipality or other taxing unit, unless the municipality or other taxing unit enters into an agreement with the land bank for the remittance of those funds to the land bank.

Added by Acts 2021, 87th Leg., R.S., Ch. 780 (S.B. 1679), Sec. 1, eff. September 1, 2021.

CHAPTER 380. MISCELLANEOUS PROVISIONS RELATING TO MUNICIPAL PLANNING AND DEVELOPMENT

Sec. 380.001. ECONOMIC DEVELOPMENT PROGRAMS. (a) The governing body of a municipality may establish and provide for the administration of one or more programs, including programs for making loans and grants of public money and providing personnel and services of the municipality, to promote state or local economic development and to stimulate business and commercial activity in the municipality. For purposes of this subsection, a municipality includes an area that:

(1) has been annexed by the municipality for limited purposes; or

(2) is in the extraterritorial jurisdiction of the municipality.

(b) The governing body may:

(1) administer a program by the use of municipal personnel;

(2) contract with the federal government, the state, a political subdivision of the state, a nonprofit organization, or any other entity for the administration of a program; and

(3) accept contributions, gifts, or other resources to develop and administer a program.

(c) Any city along the Texas-Mexico border with a population of more than 500,000 may establish not-for-profit corporations and cooperative associations for the purpose of creating and developing an intermodal transportation hub to stimulate economic development. Such intermodal hub may also function as an international intermodal

transportation center and may be colocated with or near local, state, or federal facilities and facilities of Mexico in order to fulfill its purpose.

Added by Acts 1989, 71st Leg., ch. 555, Sec. 1, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 57 (H.B. 918), Sec. 1, eff. May 17, 2005.

Sec. 380.002. ECONOMIC DEVELOPMENT GRANTS BY CERTAIN MUNICIPALITIES. (a) A home-rule municipality with a population of more than 100,000 may create programs for the grant of public money to any organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(3) of that code for the public purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development or expansion of commerce in the state. The grants must be in furtherance of those public purposes and shall be used by the recipient as determined by the recipient's governing board for programs found by the municipality to be in furtherance of this section and under conditions prescribed by the municipality.

(b) A home-rule municipality may, under a contract with a development corporation created by the municipality under the Development Corporation Act (Subtitle C1, Title 12), grant public money to the corporation. The development corporation shall use the grant money for the development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.

(c) The funds granted by the municipality under this section shall be derived from any source lawfully available to the municipality under its charter or other law, other than from the proceeds of bonds or other obligations of the municipality payable from ad valorem taxes.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.06(a), eff. Aug. 26, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 25.02, eff. Aug. 22, 1991; Acts 2001, 77th Leg., ch. 56, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.26, eff. April 1, 2009.

Sec. 380.003. APPLICATION FOR MATCHING FUNDS FROM FEDERAL GOVERNMENT. A municipality may, as an agency of the state, provide matching funds for a federal program that requires local matching funds from a state agency to the extent state agencies that are eligible decline to participate or do not fully participate in the program.

Added by Acts 1995, 74th Leg., ch. 1051, Sec. 1, eff. June 17, 1995.

Sec. 380.004. PROVISION OF CERTAIN INFORMATION TO COMPTROLLER. (a) Not later than the 14th day after the date of entering into, amending, or renewing an agreement authorized by this chapter, a municipality shall submit to the comptroller the information described by Section 403.0246(c), Government Code, and any other information the comptroller considers necessary to operate and update the database described by that section.

(b) A municipality shall transmit the information required by Subsection (a) in a form and manner prescribed by the comptroller.

(c) If a municipality submits an agreement to the comptroller under this section and maintains an Internet website, the municipality shall provide on the website a direct link to the location of the agreement information published on the comptroller's Internet website.

Added by Acts 2021, 87th Leg., R.S., Ch. 208 (H.B. 2404), Sec. 2, eff. September 1, 2021.

SUBTITLE B. COUNTY PLANNING AND DEVELOPMENT

CHAPTER 381. COUNTY DEVELOPMENT AND GROWTH

Sec. 381.001. COUNTY INDUSTRIAL COMMISSION. (a) The county judge of a county may appoint a county industrial commission.

(b) The commission must consist of not less than seven persons who must be residents of the county and must have exhibited interest in the industrial development of the county.

(c) In a county with a population of 15,800 to 16,800, or 16,950 to 17,400, or 18,600 to 19,000, or 24,600 to 24,800, a person appointed to the commission also must be serving or must have served on an industrial foundation committee, commissioners court, municipality's governing body, or school board. In addition, in those counties information obtained by the commission shall be available to the commissioners court.

(d) A member of the commission serves a term of two years.

(e) The county may pay the necessary expenses of the commission.

(f) The commission shall investigate and undertake ways of promoting the prosperous development of business, industry, and commerce in the county. The commission shall promote the location and development of new businesses and industries in the county and the maintenance and expansion of existing businesses.

(g) The commission shall cooperate with and use the services of the Texas Department of Commerce.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 78(a), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 597, Sec. 103, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 106, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 97, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 189, eff. September 1, 2023.

Sec. 381.002. ADVERTISING AND PROMOTING GROWTH AND DEVELOPMENT. (a) If authorized by a majority vote of the qualified voters of the county voting at an election, the commissioners court of the county may appropriate from the county's general fund an amount not to exceed five cents on the $100 assessed valuation to advertise and promote the growth and development of the county. That money constitutes a separate fund to be known as the board of development fund and may be used only for board purposes.

(b) In a county qualifying under this section, a board of development is created. The board shall devote its time and effort to advertising and promoting the growth and development of the

county.

(c) The board consists of five members who are appointed by the commissioners court and who serve terms of two years from the date of appointment. Members serve without compensation. Vacancies on the board shall be filled by the commissioners court in the same manner as the original appointments.

(d) Annually, the board shall prepare and submit to the commissioners court a budget for the ensuing year in the same manner required of counties.

(e) Subject to the approval of the commissioners court, the board may spend for personnel, rent, or materials any sum reasonably necessary to accomplish its purposes.

(f) Before a claim against the board is presented for payment, the claim must be approved by the board. After approval of the claim, it must be presented to the commissioners court and the commissioners court shall act on it in the same manner in which it acts on any other claim against the commissioners court.

(g) Although a county may operate under another law authorizing the appropriation of money or levy of a tax for advertising and promotion purposes, the county may not appropriate more for those purposes than the amount provided by Subsection (a).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1060, Sec. 2, eff. Aug. 28, 1989.

Sec. 381.003. DEVELOPMENT PROJECTS AUTHORIZED UNDER FEDERAL LAW. (a) The commissioners court of a county may administer or otherwise engage in community and economic development projects authorized under Title I of the Housing and Community Development Act of 1974 or under any other federal law creating community and economic development programs.

(b) The commissioners court of a county may administer, engage in, and otherwise exercise all powers necessary for the county to fully participate in housing and community development programs authorized under the Cranston-Gonzalez National Affordable Housing Act. This authority includes the power to impose assessments on real property and the owners of the property to recover all or part of the cost of a public improvement, as authorized by Section 916 of the Cranston-Gonzalez National Affordable Housing Act. The commissioners

court may:

(1) use county funds, as matching funds, as may be necessary to obtain grants or financial assistance under that Act; or

(2) obtain grants and financial assistance under any other federal law creating housing and community development programs.

(c) The commissioners court of a county may provide services authorized by Chapter 2308, Government Code, if the commissioners court enters into a contract with a local workforce development board for the provision of services authorized by Chapter 2308, Government Code. The commissioners court may collect fees for the services performed and for unreimbursed costs associated with the provision of the services unless:

(1) state law prohibits the collection of the fee or unreimbursed cost; or

(2) the service provided is a service described by Subsections (a) and (b), 29 U.S.C. Section 49f.

(d) This section does not authorize a commissioners court to exercise any ordinance-making authority not otherwise specifically granted by state law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 140, Sec. 1, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 826, Sec. 3, eff. June 18, 1997.

Sec. 381.004. COMMUNITY AND ECONOMIC DEVELOPMENT PROGRAMS. (a) In this section:

(1) "Another entity" includes the federal government, the State of Texas, a municipality, school or other special district, finance corporation, institution of higher education, charitable or nonprofit organization, foundation, board, council, commission, or any other person.

(2) "Minority" includes blacks, Hispanics, Asian Americans, American Indians, and Alaska natives.

(3) "Minority business" means a business concern, more than 50 percent of which is owned and controlled in management and daily operations by members of one or more minorities.

(4) "Women-owned business" means a business concern, more than 50 percent of which is owned and controlled in management and

daily operations by one or more women.

(b) To stimulate business and commercial activity in a county, the commissioners court of the county may develop and administer a program:

(1) for state or local economic development;

(2) for small or disadvantaged business development;

(3) to stimulate, encourage, and develop business location and commercial activity in the county;

(4) to promote or advertise the county and its vicinity or conduct a solicitation program to attract conventions, visitors, and businesses;

(5) to improve the extent to which women and minority businesses are awarded county contracts;

(6) to support comprehensive literacy programs for the benefit of county residents; or

(7) for the encouragement, promotion, improvement, and application of the arts.

(c) The commissioners court may:

(1) contract with another entity for the administration of the program;

(2) authorize the program to be administered on the basis of county commissioner precincts;

(3) use county employees or funds for the program; and

(4) accept contributions, gifts, or other resources to develop and administer the program.

(d) A program established under this section may be designed to reasonably increase participation by minority and women-owned businesses in public contract awards by the county by establishing a contract percentage goal for those businesses.

(e) The legislature may appropriate unclaimed money the comptroller receives under Chapter 74, Property Code, for a county to use in carrying out a program established under this section. To receive money for that purpose for any fiscal year, the county must request the money for that fiscal year. The amount a county may receive under this subsection for a fiscal year may not exceed an amount equal to the value of the capital credits the comptroller receives from an electric cooperative corporation on behalf of the corporation's members in the county requesting the money less an amount sufficient to pay anticipated expenses and claims. The comptroller shall transfer money in response to a request after

deducting the amount the comptroller determines to be sufficient to pay anticipated expenses and claims.

(f) The commissioners court of a county may support a children's advocacy center that provides services to abused children.

(g) The commissioners court may develop and administer a program authorized by Subsection (b) for entering into a tax abatement agreement with an owner or lessee of a property interest subject to ad valorem taxation. The execution, duration, and other terms of the agreement are governed, to the extent practicable, by the provisions of Sections 312.204, 312.205, and 312.211, Tax Code, as if the commissioners court were a governing body of a municipality.

(h) The commissioners court may develop and administer a program authorized by Subsection (b) for making loans and grants of public money and providing personnel and services of the county.

Added by Acts 1989, 71st Leg., ch. 1060, Sec. 3, eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 3, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 254, Sec. 1, eff. May 22, 2001; Acts 2001, 77th Leg., ch. 1154, Sec. 1, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(109), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 12.003, eff. September 1, 2015.

Sec. 381.005. PROVISION OF CERTAIN INFORMATION TO COMPTROLLER. (a) Not later than the 14th day after the date of entering into, amending, or renewing an agreement authorized by this chapter, a county, county industrial commission, or development board, as applicable, shall submit to the comptroller the information described by Section 403.0246(c), Government Code, and any other information the comptroller considers necessary to operate and update the database described by that section.

(b) A county, commission, or board shall transmit the information required by Subsection (a) in a form and manner prescribed by the comptroller.

(c) If a county or a commission or board created by the county submits an agreement to the comptroller under this section and the county maintains an Internet website, the county shall provide on the

website a direct link to the location of the agreement information published on the comptroller's Internet website.

Added by Acts 2021, 87th Leg., R.S., Ch. 208 (H.B. 2404), Sec. 3, eff. September 1, 2021.

CHAPTER 382. IMPROVEMENT PROJECTS IN CERTAIN COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 382.001. DEFINITIONS. (a) In this chapter:

(1) "Board" means the board of directors of a district.

(2) "District" means a public improvement district created by a county under this chapter.

(3) "Hotel" has the meaning assigned by Section 156.001, Tax Code, and includes a timeshare, overnight lodging unit, or condominium during the time the timeshare, overnight lodging unit, or condominium is rented by a person who is not the owner of the timeshare, overnight lodging unit, or condominium.

(4) "Municipality" means the municipality in whose extraterritorial jurisdiction the improvement project is to be located.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.002. APPLICABILITY. This chapter applies only to:

(1) a county with a population of 1.5 million or more, other than a county that:

(A) borders on the Gulf of Mexico or a bay or inlet of the gulf; or

(B) has two municipalities located wholly or partly in its boundaries each having a population of 225,000 or more; or

(2) a county with a population of 70,000 or more that is adjacent to a county described by Subdivision (1) in which a municipality with a population of 90,000 or more is primarily situated and includes all or a part of the extraterritorial jurisdiction of a municipality with a population of 1.1 million or more.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 846 (H.B. 3597), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 98, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 190, eff. September 1, 2023.

Sec. 382.003. NATURE OF DISTRICT; PURPOSE. (a) A district is created under Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

(b) By enacting this chapter, the legislature has created a program for economic development as provided in Section 52-a, Article III, Texas Constitution. A county may engage in economic development projects as provided by this chapter, and, on a determination of the commissioners court of the county to create a district, may delegate the authority to oversee and manage the economic development project to an appointed board of directors. In appointing a board, the commissioners court delegates its authority to serve a public use and benefit.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.004. COUNTY MAY ESTABLISH DISTRICT. A county may create a public improvement district under this chapter if the county determines it is in the county's best interest. A district is a political subdivision of this state.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.005. APPLICABILITY; CONFLICT OF LAWS. This chapter

controls to the extent of a conflict between this chapter and Subchapter A, Chapter 372.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.006. ESTABLISHMENT OF ECONOMIC DEVELOPMENT PROJECTS; OPTIONAL CREATION OF PUBLIC IMPROVEMENT DISTRICT. (a) The commissioners court of a county may on receipt of a petition satisfying the requirements of Section 372.005, establish by order an economic development project in a designated portion of the county, or, if the county determines it is in the best interests of the county, create a district by order only in an area located in the extraterritorial jurisdiction of a municipality in that county. If the county is a county described by Section 382.002(2), the petition described by this subsection must also be approved by a resolution adopted by the municipality with a population of 1.1 million or more.

(b) For a county described by Section 382.002(2), a district may only be created in an area containing at least 2,000 contiguous acres of land that is located wholly or partly in the extraterritorial jurisdiction of a municipality with a population of 1.1 million or more.

(c) The order must:

(1) describe the territory in which the economic development project is to be located or the boundaries of a district;

(2) specifically authorize the district to exercise the powers of this chapter if the county has determined that creating a district is in the county's best interests; and

(3) state whether the petition requests improvements to be financed and paid for with taxes authorized by this chapter instead of or in addition to assessments.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 382.051. GOVERNING BODY; TERMS. If a county elects to

delegate the authority granted under this chapter, it shall appoint a board of seven directors to serve staggered two-year terms, with three or four directors' terms expiring June 1 of each year to manage the economic development project or, at the option of the county, govern the district.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.052. ELIGIBILITY. (a) To be eligible to serve as a director, a person must be at least 18 years old.

(b) If the population of the district is more than 1,000, to be eligible to serve as a director, a person must be at least 18 years old, reside in the district, and be:

(1) an owner of property in the district;

(2) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district;

(3) an owner of a beneficial interest in a trust that owns property in the district; or

(4) an agent, employee, or tenant of a person covered by Subdivision (1), (2), or (3).

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 717 (H.B. 304), Sec. 8, eff. September 1, 2019.

Sec. 382.053. VACANCIES; QUORUM. (a) A board vacancy is filled in the same manner as the original appointment.

(b) A vacant board position is not counted for the purposes of establishing a quorum of the board.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.054. CONFLICTS OF INTEREST. Chapter 171 governs conflicts of interest for directors.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.055. COMPENSATION. (a) For purposes of this section, "performs the duties of a director" means substantial performance of the management of the district's business, including participation in board and committee meetings and other activities involving the substantive deliberation of district business and in pertinent educational programs, but does not include routine or ministerial activities such as the execution of documents or self-preparation for meetings.

(b) A county is authorized to compensate the directors when they perform the duties of a director. The county shall compensate a director not more than $50 a day for each day that the director performs the duties of a director.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.056. OATH AND BOND; OFFICER ELECTIONS. As soon as practicable, a board member shall give the bond and take the oath of office in accordance with Section 375.067, and the board shall elect officers in accordance with Section 375.068.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 382.101. COUNTY'S GENERAL POWERS AND DUTIES. (a) A county operating under this chapter has the powers and duties of:

(1) a county development district under Chapter 383, except for Section 383.066;

(2) a road district created by a county under Section 52, Article III, Texas Constitution; and

(3) a municipality or county under Chapter 380 or 381, or under Section 372.003(b)(9).

(b) A county is authorized to manage an economic development project in a designated portion of the county, or to create a district and to delegate to a board the county's powers and duties as provided by this chapter.

(c) A county may not delegate to a district the powers and duties of a road district or the power to provide water, wastewater, or drainage facilities under this section unless both the municipality and county consent by resolution.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.102. DEVELOPMENT AGREEMENTS. A county may enter into a development agreement with an owner of land in the territory designated for an economic development project, or a district may enter into a development agreement, for a term not to exceed 30 years on any terms and conditions the county or the board considers advisable. The parties may amend the agreement.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.103. ECONOMIC DEVELOPMENT AGREEMENT; ELECTION; TAXES. (a) A county may enter into an agreement, only on terms and conditions the commissioners court and a board consider advisable, to make a grant or loan of public money to promote state or local economic development and to stimulate business and commercial activity in the territory where the economic development project is located, or in the district, including a grant or loan to induce the construction of a tourist destination or attraction in accordance with Chapter 380 or 381.

(b) If authorized by the county, a district may order an election to be held in the district to approve a grant or loan

agreement. The grant or loan may be payable over a term of years and be enforceable on the district under the terms of the agreement and the conditions of the election, which may, subject to the requirements of Section 382.153(c), include the irrevocable obligation to impose an ad valorem tax, sales and use tax, or hotel occupancy tax for a term not to exceed 30 years. If authorized at the election, the board may contract to pay the taxes to the recipient of the grant or loan in accordance with the agreement.

(c) If the property owners petitioning a county to create a district under Section 382.006 propose that the district be created only to provide economic development grants or loans and road improvements and not to impose assessments, and the county determines that the creation of the district is in the best interests of the county, the district is not required to prepare a feasibility report, a service plan or assessment plan, or an assessment roll as required by Subchapter A, Chapter 372.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.104. CONTRACTS; GENERAL. (a) A district may contract with any person, including the municipality or county, on the terms and conditions and for a period of time the board determines, to:

(1) accomplish any district purpose, including a contract to pay, repay, or reimburse from tax proceeds or another specified source of money any costs, including reasonable interest, incurred by a person on the county's or the district's behalf, including all or part of the costs of an improvement project; and

(2) receive, administer, and perform the county's or the district's duties and obligations under a gift, grant, loan, conveyance, or other financial assistance arrangement relating to the investigation, planning, analysis, study, design, acquisition, construction, improvement, completion, implementation, or operation by the district or another person of an improvement project or proposed improvement project.

(b) A state agency, municipality, county, other political subdivision, corporation, or other person may contract with the county or district to carry out the purposes of this chapter.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.105. PROCUREMENT CONTRACTS. A district may contract for materials, supplies, and construction:

(1) in accordance with the laws applicable to counties; or

(2) in the same manner that a local government corporation created pursuant to Chapter 431, Transportation Code, is authorized to contract.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.106. RULES; ENFORCEMENT. A county may authorize the board to adopt rules:

(1) to administer and operate the district;

(2) for the use, enjoyment, availability, protection, security, and maintenance of district property, including facilities; or

(3) to provide for public safety and security in the district.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.107. FEES. A county may authorize a board to establish, revise, repeal, enforce, collect, and apply the proceeds from user fees or charges for the enjoyment, sale, rental, or other use of its facilities or other property, or for services or improvement projects.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.108. RULES; REGULATION OF ROADS AND OTHER PUBLIC AREAS. (a) A county may authorize a board to adopt rules to regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas in the district, if the use is for a public purpose.

(b) A rule, order, ordinance, or regulation of a county or municipality that conflicts with a rule adopted under this section controls to the extent of any conflict.

(c) A rule adopted under this section may provide for the safe and orderly use of public roadways, open spaces, parks, sidewalks, and similar public areas in the area of the district or economic development project.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.109. ROAD PROJECTS. (a) To the extent authorized by Section 52, Article III, Texas Constitution, the county may delegate to the district the authority to construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or turnpikes, or improvements in aid of those roads or turnpikes, inside the territory targeted by the county for an economic development project, or the district.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located. If the district is located outside the extraterritorial jurisdiction of a municipality, a road project must meet all applicable construction standards, zoning and subdivision requirements, and regulatory ordinances of each county in which the district is located.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.110. UTILITIES. (a) This chapter does not grant the board any right-of-way management authority over public utilities.

(b) To the extent the construction, maintenance, or operation of a project under this chapter requires the relocation or extension of a public utility facility, the district shall reimburse the public utility for all costs associated with the relocation, removal, extension, or other adjustment of the facility.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.111. SERVICE PLAN REQUIRED. The commissioners court of the county that created the district may require a district to prepare an annual service plan, in the manner provided for by Section 372.013, that meets the approval of the commissioners court.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.112. NO EMINENT DOMAIN. A district may not exercise the power of eminent domain.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.113. ANNEXATION OR EXCLUSION OF LAND. (a) This section applies only to a district created in a county described by Section 382.002(1).

(b) A district may annex or exclude land from the district as provided by Subchapter J, Chapter 49, Water Code.

(c) Before a district may adopt an order adding or excluding land, the district must obtain the consent of:

(1) the county that created the district by a resolution of the county commissioners court; and

(2) a municipality in whose extraterritorial jurisdiction the district is located by a resolution adopted by the municipality's governing body.

Added by Acts 2011, 82nd Leg., R.S., Ch. 846 (H.B. 3597), Sec. 2, eff. June 17, 2011.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS; TAXES

Sec. 382.151. NO TAX ABATEMENTS. A county may not grant a tax abatement or enter into a tax abatement agreement for a district.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.152. BONDS; NOTES. (a) A district may not issue bonds unless approved by the commissioners court of the county that created the district. Bonds may not be issued unless approved by a majority of the voters of the district voting in an election held for that purpose. A bond election under this subsection does not affect prior bond issuances and is not required for refunding bond issuances.

(b) A district may not issue a negotiable promissory note or notes unless approved by the commissioners court of the county that created the district.

(c) If the commissioners court grants approval under this section, bonds, notes, and other district obligations may be secured by district revenue or any type of district taxes or assessments, or any combination of taxes and revenue pledged to the payment of bonds.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.153. AUTHORITY TO IMPOSE ASSESSMENTS AND AD VALOREM, SALES AND USE, AND HOTEL OCCUPANCY TAXES; ELECTION. (a) A county or a district may accomplish its purposes and pay the cost of services and improvements by imposing:

(1) an assessment;

(2) an ad valorem tax;

(3) a sales and use tax; or

(4) a hotel occupancy tax.

(b) A district may impose an ad valorem tax, hotel occupancy tax, or sales and use tax to accomplish the economic development purposes prescribed by Section 52a, Article III, Texas Constitution, if the tax is approved by:

(1) the commissioners court of the county that created the district; and

(2) a majority of the voters of the district voting at an election held for that purpose.

(c) A county must adopt an order providing whether a district has the authority to impose a hotel occupancy tax, sales and use tax, or ad valorem tax, and must provide the rate at which the district may impose the tax. A tax rate approved by the commissioners court and pledged to secure bonds, notes, grant agreements, or development agreements may not be reduced until the obligations of those instruments have been satisfied.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.154. USE OF REVENUE FROM TAXES. A tax authorized by a county to be imposed under this chapter may be used to accomplish any improvement project or road project, or to provide any service authorized by this chapter or Chapter 372, 380, 381, or 383.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.155. HOTEL OCCUPANCY TAX. (a) A county may authorize a district to impose a hotel occupancy tax on a person who pays for the use or possession of or for the right to the use or possession of a room that is ordinarily used for sleeping in a hotel in the district.

(b) If authorized by a county, a district shall impose a hotel occupancy tax in the same manner as provided by Section 352.107, Tax Code.

(c) The hotel occupancy tax rate is the greater of nine percent or the rate imposed by the municipality.

(d) A hotel occupancy tax imposed by a district in a county described by Section 382.002(1) may be used:

(1) for a purpose described by Chapter 352, Tax Code; or

(2) to encourage the development or operation of a hotel in the district, including an economic development program for or a grant, loan, service, or improvement to a hotel in the district.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 846 (H.B. 3597), Sec. 3, eff. June 17, 2011.

Sec. 382.1555. USE OF HOTEL OCCUPANCY TAX FOR ANY PURPOSE. (a) If authorized by a county, a district may impose a hotel occupancy tax under Section 382.155 and use the revenue from the tax for any purpose authorized by this chapter if the owner of the hotel agrees to the imposition of the tax.

(b) After the owner agrees, the agreement may not be revoked by the owner of the hotel or any subsequent owner of the hotel.

(c) To the extent of a conflict with Section 382.155(d), this section controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 846 (H.B. 3597), Sec. 4, eff. June 17, 2011.

Sec. 382.156. SALES AND USE TAX. (a) A commissioners court may authorize a district to impose a sales and use tax in increments of one-eighth of one percent up to a rate of two percent.

(b) Except as otherwise provided in this chapter, a sales and use tax must be imposed in accordance with Chapter 383, Local Government Code, or Chapter 323, Tax Code.

(c) The ballot for a sales tax election shall be printed to provide for voting for or against the proposition: "A sales and use tax at a rate not to exceed ____ [insert percentage rate] in the _____ [insert name of district]" or "The adoption of a ____ [insert percentage rate] sales and use tax in the _____ [insert name of district]."

(d) A tax authorized at an election held under this section may be imposed at a rate less than or equal to the rate printed in the ballot proposition.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.157. AD VALOREM TAX. A commissioners court may authorize a district to impose an ad valorem tax on property in the district in accordance with Chapter 257, Transportation Code.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.158. BORROWING. The commissioners court may authorize a district to borrow money for any district purpose, including for a development agreement that authorizes the district to borrow money.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.159. REPAYMENT OF COSTS. The commissioners court may authorize a district, by a lease, lease-purchase agreement, installment purchase contract, or other agreement, or by the imposition or assessment of a tax, user fee, concession, rental, or other revenue or resource of the district, to provide for or secure the payment or repayment of:

(1) the costs and expenses of the establishment, administration, and operation of the district;

(2) the district's costs or share of costs of an improvement project; or

(3) the district's contractual obligations or indebtedness.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec.

15.009, eff. September 1, 2009.

SUBCHAPTER E. ANNEXATION BY MUNICIPALITY; TAXES

Sec. 382.201. LIABILITIES; ASSUMPTION OF ASSETS AFTER COMPLETE ANNEXATION BY MUNICIPALITY. (a) If the municipality annexes the entire territory of a district, the municipality shall assume the district's assets, but is not liable for the district's debt or other obligations.

(b) If the county has authorized a district to have debt or other obligations, the district remains in existence after the territory is annexed by the municipality for the purpose of collecting any taxes or assessments authorized by the county and imposed by the district before annexation. Taxes or assessments collected after annexation must be used by the district solely for the purpose of satisfying any preexisting county-authorized district debt or other obligation. After the debt or other obligations have been discharged, or two years have expired since the date of the annexation, the district is dissolved and any outstanding debt or obligations are extinguished.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

Sec. 382.202. AUTHORITY TO IMPOSE TAXES OF ASSESSMENTS AFTER PARTIAL OR COMPLETE ANNEXATION. (a) After a district has been annexed by a municipality wholly or partly for general purposes, the county may not authorize the district to impose an ad valorem tax, hotel occupancy tax, or sales and use tax, or collect an assessment in the area that the municipality overlaps the district, except as provided by Subsection (b) or Section 382.201(b).

(b) A district may continue to impose a tax in an area that the municipality annexes for limited purposes and in which the municipality does not impose taxes. If the municipality annexes an area for limited purposes and imposes some of the taxes which the district is imposing but not all of them, the district may continue to impose taxes only to the extent that the level of taxation of the municipality and the district combined, calculating the hotel tax,

the sales tax, and the ad valorem tax independently, is equal to or less than the tax level of the municipality as to fully annexed areas.

(c) The legislature intends that the level of taxation of areas where the district and the municipality overlap do not exceed the level of taxation of fully annexed areas.

Transferred from Local Government Code, Subchapter C, Chapter 372 and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.009, eff. September 1, 2009.

CHAPTER 383. COUNTY DEVELOPMENT DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 383.001. SHORT TITLE. This chapter may be cited as the County Development District Act.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.601 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.002. LEGISLATIVE INTENT. This chapter furthers the public purpose of developing and diversifying the economy of this state by providing incentives for the location and development of projects in certain counties to attract visitors and tourists.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.602 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.003. FINDINGS. (a) Small and medium-sized counties in this state need incentives for the development of public improvements to attract visitors and tourists to those counties, and those counties are at a disadvantage in competing with counties in other states for the location and development of projects that attract visitors by virtue of the availability and prevalent use of financial incentives in other states.

(b) The means and measures authorized by this chapter are in the public interest and serve a public purpose of this state in

promoting the economic welfare of the residents of this state by providing incentives for the location and development in certain counties of this state of projects that attract visitors and tourists and that result in employment and economic activity.

(c) The creation of development districts is essential to the accomplishment of Section 52-a, Article III, Texas Constitution, and to the accomplishment of the other public purposes stated in this chapter and further serves the purpose of Section 59, Article XVI, and Section 52, Article III, Texas Constitution.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.603 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.004. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "Bonds" includes notes and other obligations.

(3) "Commissioners court" means the governing body of the county.

(4) "Cost" has the meaning assigned by Section 501.152.

(5) "County" means the county in which the district is located.

(6) "Director" means a member of the board.

(7) "District" means a county development district created under this chapter.

(8) "Project" has the meaning assigned by Sections 505.151-505.156.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.604 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.27, eff. April 1, 2009.

Sec. 383.005. GOVERNMENTAL AGENCY; TORT CLAIMS. A district is a governmental agency, a body politic and corporate, and a political subdivision of the state. Section 375.004 applies to a district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.627(b) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

SUBCHAPTER B. CREATION OF DISTRICT; TEMPORARY BOARD

Sec. 383.021. COUNTIES AUTHORIZED TO CREATE DISTRICTS. (a) The commissioners court of a county with a population of 400,000 or less, on petition of the owners of land in a proposed district, may commence the creation of a county development district.

(b) The creation of the district is subject to a confirmation election held as provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.605 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.022. PETITION OF LANDOWNERS. To create a district, a petition requesting creation must be filed with the commissioners court of the county in which all of the land in the proposed district is located. The petition must be accompanied by a sworn statement indicating consent to creation signed by the holders of fee simple title of all of the land in the proposed district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.6055 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.023. CONTENTS OF PETITION. The petition must:

(1) describe the boundaries of the proposed district by metes and bounds or by lot and block number, if there is a recorded map or plat and survey of the area;

(2) include a name for the proposed district, which must include the name of the county followed by the words "Development District No._____";

(3) include the names of five persons who are willing and qualified to serve as temporary directors of the proposed district;

(4) state the general nature of the work proposed to be done and the cost of the project as then estimated by the

petitioners; and

(5) state the necessity and feasibility of the proposed district and whether the district will serve the public purpose of attracting visitors and tourists to the county.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.606 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.024. COMMISSION HEARING; CONTENTS OF NOTICE. Before the 61st day after the date a petition is received, the commissioners court shall set a date, time, and place at which the petition shall be heard and shall issue notice of the date, time, place, and subject matter of the hearing. The notice shall inform all persons of their right to appear and present evidence and testify for or against the creation of the district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.607 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.025. NOTICE OF HEARING. Before the 30th day before the date set for the hearing, notice of the hearing shall be mailed to the developer who signed the petition and the landowners of all the land in the district and shall be published in a newspaper with general circulation in the county in which the proposed district is located.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.608 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.026. HEARING. At the hearing, the commissioners court shall examine the petition to ascertain its sufficiency, and any interested person may appear before the commissioners court to offer testimony on the sufficiency of the petition and whether the district should be created.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.609 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.027. GRANTING OR REFUSING PETITION. (a) After the hearing, if the commissioners court finds that the petition conforms to the requirements of Section 383.022 and that the creation of the district and the proposed project is feasible and necessary and would serve the public purpose of attracting visitors or tourists to the county, the commissioners court may make that finding and enter an order creating the district.

(b) The order creating the district may specify the cost to the county of publishing notice and conducting hearings for the creation of the district together with the cost of conducting the confirmation and sales and use tax election. The county may require the petitioner to pay to the county the amounts specified in the order creating the district at the time the order becomes final.

(c) If the commissioners court finds that the petition does not conform to the requirements of Section 383.022 or that the creation of the district and the proposed project is not feasible and necessary and would not serve the purpose of attracting visitors and tourists to the county, the commissioners court shall make that finding in an order and deny the petition.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.610 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1199, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 12.110, eff. Sept. 1, 2001.

Sec. 383.028. TEMPORARY DIRECTORS; VACANCY IN OFFICE. (a) If the commissioners court grants the petition, it shall appoint to serve as temporary directors of the district five persons who are qualified under this chapter to serve as directors.

(b) A vacancy in the office of temporary director shall be filled by appointment by the commissioners court.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.611 and amended by Acts 1997, 75th

Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.029. QUALIFICATION OF TEMPORARY DIRECTORS; ORGANIZATION. (a) Each temporary director shall execute a bond in accordance with Section 383.046 and shall take an oath of office.

(b) The board shall meet and organize.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.612 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.030. CONFIRMATION AND SALES AND USE TAX ELECTION. The temporary board of directors shall conduct an election in the district to confirm the creation of the district and authorize a sales and use tax in conformity with this chapter.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.613 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.031. ELECTION ORDER. An order calling an election under Section 383.030 must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;

(2) the date of the election;

(3) the hours during which the polls will be open;

(4) the location of the polling places; and

(5) the proposed rate of the sales and use tax for the district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.614 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.032. NOTICE. The temporary directors shall give notice of the election by publishing a substantial copy of the election order once a week for two consecutive weeks in a newspaper

with general circulation in the county in which the proposed district is located. The first publication must appear before the 14th day before the date set for the election.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.615 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.033. CONDUCT OF ELECTION. (a) The election shall be held in accordance with the provisions of the Election Code, to the extent not inconsistent with this chapter.

(b) The ballot shall be printed to permit voting for or against the proposition: "The creation of _____ County Development District No. _____ and the adoption of a proposed local sales and use tax rate of _____ (the rate specified in the election order) to be used for the promotion and development of tourism."

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.616 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.034. RESULTS OF ELECTION. (a) After the election, the presiding judge shall make returns of the result to the temporary board of directors. The temporary board of directors shall canvass the returns and declare the results.

(b) If a majority of the votes cast in the election favor the creation of the district and the adoption of the sales and use tax, the temporary board shall declare that the district is created and shall declare the amount of the local sales and use tax adopted and enter the result in its minutes. If a majority of the votes cast in the election are against the creation of the district and the adoption of the sales and use tax, the temporary board shall declare that the proposition to create the district was defeated and enter the result in its minutes.

(c) A certified copy of the minute order declaring that the district is created and the local sales and use tax adopted and including the rate of the sales and use tax, or declaring that the proposition to create the district was defeated, shall be sent to the commissioners court, the comptroller, and any taxing entity by

certified or registered mail. The order shall also show the date of the election, the proposition on which the vote was held, the total number of votes cast for or against the proposition, and the number of votes by which the proposition was approved.

(d) In the event 10 or fewer votes are cast in the confirmation and sales and use tax election, within 90 days following the entry of the order canvassing the election the proceedings of the election, including voter affidavits as to residency and qualification to vote, shall be submitted to the attorney general.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.617 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997. Amended by Acts 1997, 75th Leg., ch. 1199, Sec. 2, eff. Sept. 1, 1997.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS; BOARD OF DIRECTORS

Sec. 383.041. BOARD OF DIRECTORS; TERMS. (a) A district is governed by a board of five directors appointed by the commissioners court of the county in which the district is located. The temporary directors appointed under Section 383.028 shall become permanent directors of the district, if the creation of the district is confirmed at the confirmation election.

(b) Directors serve staggered terms of four years with two or three members' terms expiring September 1 of every other year. Following confirmation of the district at the election, the temporary directors shall draw lots to determine:

(1) the two directors to serve terms that expire on September 1 of the second year following creation of the district; and

(2) the three directors to serve terms that expire on September 1 of the fourth year following creation of the district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.618 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.042. QUALIFICATIONS OF DIRECTOR. To be qualified to serve as a director, a person must be at least 21 years of age, a resident citizen of this state, and a qualified voter of the county

in which the district is located.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.619 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.043. PERSONS DISQUALIFIED TO SERVE. Section 50.026, Water Code, applies to a director of a district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.620 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.044. REMOVAL OF DIRECTOR. The commissioners court, after notice and hearing, may remove a director for misconduct or failure to carry out the director's duties if petitioned by a majority of the remaining directors.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.622 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.045. BOARD VACANCY. A vacancy in the office of director shall be filled by appointment of the commissioners court.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.621 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.046. DIRECTOR'S COMPENSATION; BOND AND OATH OF OFFICE. A director is not entitled to receive compensation for service on the board. Sections 375.067, 375.069, and 375.070 apply to a director.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.626 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.047. OFFICERS. After each appointment of directors by the commissioners court, and after the directors have qualified by taking the proper oath, the directors shall organize by electing a president, a vice president, a secretary, and any other officer the board considers necessary.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.623 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.048. QUORUM; OFFICERS' DUTIES. (a) Three directors constitute a quorum and a concurrence of three is sufficient in any matter relating to the business of the district.

(b) The president presides at all board meetings and is the chief executive officer of the district. The vice president acts as president if the president is absent or disabled.

(c) The secretary acts as president if both the president and vice president are absent or disabled. The secretary acts as secretary of the board and is responsible for seeing that all records and books of the district are properly kept.

(d) The board may appoint another director, the general manager, or an employee as assistant or deputy secretary to assist the secretary. The assistant or deputy secretary may certify the authenticity of any record of the district, including a proceeding relating to a bond, contract, or indebtedness of the district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.624 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.049. BYLAWS. The board may adopt bylaws to govern:

(1) the time, place, and manner of conducting board meetings;

(2) the powers, duties, and other responsibilities of the board's officers and employees;

(3) the disbursement of money by a check, draft, or warrant;

(4) the appointment and authority of director committees;
(5) the keeping of accounts and other records; and
(6) any other matter the board considers appropriate.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.050. MANAGEMENT OF DISTRICT. (a) The board has control over and shall manage the affairs of the district and shall employ any person, firm, partnership, or corporation the board considers necessary for conducting the affairs of the district, including engineers, attorneys, financial advisors, a general manager, a utility operator, bookkeepers, auditors, and secretaries.

(b) The board shall determine the term of office and the compensation of any employee and consultant by contract or by resolution of the board.

(c) The board may remove any employee.

(d) The board may require an officer or employer to execute a bond payable to the district and conditioned on the faithful performance of the person's duties.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.051. DIRECTOR INTERESTED IN CONTRACT. (a) A director who is financially interested in a contract with the district or a director who is an employee of a person who or firm that is financially interested in a contract with the district shall disclose that fact to the other directors. The disclosure shall be entered into the minutes of the meeting.

(b) An interested director may not vote on the acceptance of the contract or participate in the discussion on the contract.

(c) The failure of a director to disclose the director's financial interest in a contract and to have the disclosure entered in the minutes invalidates the contract.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.052. DISTRICT OFFICE. The board shall designate and establish a district office in the county.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.625(a) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.053. MEETINGS AND NOTICE. (a) The board may establish regular meetings to conduct district business and may hold special meetings at other times as the business of the district requires.

(b) Notice of the time, place, and purpose of a meeting of the board shall be given by posting the notice at a place convenient to the public in the district. A copy of the notice shall be furnished to a clerk of the county, who shall post it on a bulletin board in the county courthouse used for that purpose.

(c) Except as otherwise provided by this chapter, Chapter 551, Government Code, applies to the meetings of the board. Any interested person may attend any meeting of the board.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.625(b) to (d) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 383.061. GENERAL POWERS OF DISTRICT. (a) A district may acquire and dispose of projects and has all of the other powers, authority, rights, and duties that will permit accomplishment of the purposes for which the district was created.

(b) The district has the powers of a municipal management district created under Chapter 375 to the extent not inconsistent with this chapter.

(c) The district has the power to provide for general promotion and tourist advertising of the district and its vicinity and to conduct a marketing program to attract visitors, any of which may be conducted by the district pursuant to contracts for professional services with persons or organizations selected by the district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995.

Renumbered from Tax Code Sec. 312.628 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.062. SUITS. A district, after it is created and confirmed, through its directors may sue and be sued in any court of this state in the name of the district. Service of process in any suit may be made by serving any two directors.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.627(b) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.063. EMINENT DOMAIN. (a) A district that is not located within a municipality may exercise the power of eminent domain to acquire land or interests in land in the district considered necessary by the board for the purpose of providing water and sewer services to an authorized project.

(b) The power of eminent domain shall be exercised in the manner provided by Chapter 21, Property Code.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.630 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.064. EXPENDITURES. A district's money may be disbursed only by check, draft, order, or another instrument that must be signed by at least three directors. The general manager, treasurer, or other employee of the district, if authorized by resolution of the board, may sign checks, drafts, orders, or other instruments on any district operation account and these need not be signed by any other person.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.631 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.065. PURPOSES FOR BORROWING MONEY. The district may

borrow money for any corporate purpose or combination of corporate purposes.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.632 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.066. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) The directors may pay:

(1) all costs and expenses necessarily incurred in the creation and organization of the district;

(2) the cost of investigation and making plans;

(3) the cost of the engineer's report;

(4) project designer fees;

(5) legal fees; and

(6) other incidental expenses.

(b) A director may reimburse any person for money advanced for the costs, fees, and expenses described by Subsection (a).

(c) Payments under this section may be made from money obtained from the issuance of notes or the sale of bonds first issued by the district or from other district revenues.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.633 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

SUBCHAPTER E. BONDS

Sec. 383.081. ISSUANCE OF BONDS. The district may issue bonds for the purpose of defraying all or part of the cost of any project as provided in this chapter. Sections 375.201 through 375.208 apply to a district to the extent not inconsistent with this chapter.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.634 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.082. MANNER OF REPAYMENT OF BONDS. The board may provide for the payment of principal of and interest and redemption

price on bonds:

(1) from taxes;

(2) by pledging all or any part of the designated revenues, license fees, or other compensation from a project or any part of a project, including revenues and receipts derived by the district from the lease or sale of the project;

(3) by pledging all or any part of any grant, donation, revenue, or income received or to be received from any public or private source; or

(4) from a combination of such sources.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.635 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.083. USE OF BOND PROCEEDS. The district may use bond proceeds to:

(1) pay interest on the bonds during and after the period of the acquisition or construction of a project;

(2) pay administrative and operating expenses;

(3) create a reserve fund for the payment of principal and interest on the bonds; and

(4) pay all expenses incurred or that will be incurred in the issuance, sale, and delivery of the bonds.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from V.T.C.A, Tax Code Sec. 312.636 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.084. ADDING AND EXCLUDING LAND FROM THE DISTRICT. (a) Before the board issues bonds, the board, on its own motion or on request of a landowner in the district, may petition the commissioners court for the addition of land to or exclusion of land from the district.

(b) If the commissioners court unanimously determines from the evidence that the best interests of the persons and property in the district will be served by adding or excluding land, the commissioners court shall enter in its records the appropriate findings and order adding or excluding land.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.638 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

SUBCHAPTER F. SALES AND USE TAX

Sec. 383.101. SALES AND USE TAX. (a) A district may impose a sales and use tax for the benefit of the district if authorized by a majority of the qualified voters of the district voting at an election called for that purpose. The sales and use tax, if adopted, does not count toward the limitation imposed by Chapter 323, Tax Code, on any sales and use tax that has been levied by the county.

(b) If a district adopts the tax, there is imposed a tax on the receipts from the sale at retail of taxable items in the district at a rate of up to one-half of one percent. There is also imposed an excise tax on the use, storage, or other consumption in the district of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective in the district. The rate of the excise tax is the same as the rate of the sales tax portion of the tax applied to the sales price of the taxable items and is included in the sales tax.

(c) For purposes of this section, "taxable items" includes all items subject to any sales and use tax that is imposed by the county if the county has imposed a sales and use tax.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.637(a), (b) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.102. IMPOSITION, COMPUTATION, ADMINISTRATION, AND GOVERNANCE OF TAX. (a) Chapter 323, Tax Code, to the extent not inconsistent with this chapter, governs the imposition, computation, administration, and governance of the tax under this subchapter, except that Sections 323.101(b) and (e), Tax Code, and Sections 323.209, 323.401 through 323.406, and 323.505, Tax Code, do not apply.

(b) Chapter 323, Tax Code, does not apply to the use and allocation of revenues under this chapter.

(c) In applying the procedures under Chapter 323, Tax Code, the

district's name shall be substituted for "the county" and "board of directors" is substituted for "commissioners court."

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.637(c) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.103. TAX RATES. The permissible rates for a local sales and use tax levied under this chapter are one-fourth of one percent, three-eighths of one percent, and one-half of one percent.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.637(d) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.104. ABOLITION OF OR CHANGE IN TAX RATE. (a) The board by order may decrease or abolish the local sales and use tax rate or may call an election to increase, decrease, or abolish the local sales and use tax rate.

(b) At the election, the ballots shall be printed to permit voting for or against the proposition: "The increase (decrease) in the local sales and use tax rate of (name of district) to (percentage) to be used for the promotion and development of tourism" or "The abolition of the district sales and use tax used for the promotion and development of tourism." The increase or decrease in the tax rate is effective if it is approved by a majority of the votes cast. In calling and holding the election, the board shall use the procedure for the confirmation and tax election set forth in this chapter.

(c) The district's sales and use tax is automatically discontinued by operation of law if no tax revenue is collected within the district before the first anniversary of the date the tax took effect. The comptroller shall notify the board and the commissioners court of the county in which the district is located of the discontinuance of the tax. The district may authorize a new sales and use tax by following the procedures provided by this subchapter for imposition of the tax.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995.

Renumbered from Tax Code Sec. 312.637(e), (f) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 6, eff. Sept. 1, 2001.

Sec. 383.105. USE OF TAX. Taxes collected under this subchapter may be used only for the purposes for which the district was created, and the district may pledge the revenue derived from the taxes imposed under this subchapter to the payment of bonds issued by the district.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.637(g) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.106. LIMITATION ON ADOPTION OF TAX. (a) A district may adopt a tax under this subchapter only if as a result of adoption of the tax the combined rate of all local sales and use taxes imposed by political subdivisions having territory in the district will not exceed two percent.

(b) If, as a result of the imposition or increase in a sales and use tax by a municipality in which there is located a district with an existing sales and use tax or as a result of the annexation by a municipality of the territory in a district with an existing sales and use tax, the overlapping local sales and use taxes in the area in the district will exceed two percent, the district's sales and use tax rate is automatically reduced to a rate that when added to the combined rate of local sales and use taxes will equal two percent.

(c) If a district's tax rate is reduced in accordance with Subsection (b), the municipality shall make payments to the district equal to the amounts that would have been collected by the district had the municipality not imposed or increased its sales and use tax or annexed the area in the district, less amounts that the district collects following the municipality's levy of or increase in its sales and use tax or annexation of the area in the district. The payment shall be made by the municipality to the district within 10 days after the date of receipt of the money from the comptroller's office and shall continue only for so long as any bonds of the

district are outstanding.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1997. Renumbered from Tax Code Sec. 312.637(h) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

SUBCHAPTER G. COMPETITIVE BIDDING

Sec. 383.111. COMPETITIVE BIDDING. Sections 375.221 and 375.223 apply to a district created under this chapter.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.629 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.112. EXEMPTION. Notwithstanding any other provision of this chapter to the contrary, any contract between the district and a governmental entity or nonprofit corporation created under the Development Corporation Act (Subtitle C1, Title 12) is not subject to the competitive bidding requirements of this chapter.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.629 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.28, eff. April 1, 2009.

SUBCHAPTER H. DISSOLUTION

Sec. 383.121. DISSOLUTION OF DISTRICT. A district may be dissolved only as provided by this subchapter.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.639(a) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.122. DISSOLUTION BY ORDER OF COMMISSIONERS COURT. (a) The board may petition the commissioners court to dissolve the

district if a majority of the board finds at any time:

(1) before the authorization of bonds or the final lending of its credit, that the proposed undertaking is impracticable or cannot be successfully and beneficially accomplished; or

(2) that all bonds of the district or other debts of the district have been paid and the purposes of the district have been accomplished.

(b) On receipt of a petition from the board for the dissolution of the district, the commissioners court shall hold a hearing as provided by Section 383.024.

(c) If the commissioners court unanimously determines from the evidence that the best interests of the county and the owners of property and interests in property in the district will be served by dissolving the district, the commissioners court shall enter in its records the appropriate findings and order dissolution of the district. Otherwise the commissioners court shall enter its order providing that the district has not been dissolved. On dissolution of the district, funds and property of the district, if any, shall be transferred to the commissioners court.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1997. Renumbered from Tax Code Sec. 312.639(b), (c) and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

Sec. 383.123. DISSOLUTION OF DISTRICT ON AGREEMENT WITH MUNICIPALITY. A district may be dissolved by agreement between the governing body of a municipality and the board if all of the territory in the district is located in or is annexed by the municipality. The agreement shall require the municipality to acquire all of the money, property, and other assets of the district and assume all contracts, debts, bonds, and other obligations of the district, and the municipality shall be bound in the same manner and to the same extent that the district was bound with respect to those contracts, debts, bonds, and other obligations. On dissolution of the district, the taxes levied by the district are abolished.

Added by Acts 1995, 74th Leg., ch. 995, Sec. 5, eff. Sept. 1, 1995. Renumbered from Tax Code Sec. 312.640 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.05, eff. Sept. 1, 1997.

CHAPTER 386. COMMERCIAL AND INDUSTRIAL DEVELOPMENT ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 386.001. DEFINITIONS. In this chapter:

(1) "Board" means a board of directors of a commercial and industrial development zone.

(2) "Development zone" means an area designated as a commercial and industrial development zone under this chapter.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.002. JURISDICTION OF MUNICIPALITY. For the purposes of this chapter, territory in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

SUBCHAPTER B. CREATION OF COMMERCIAL AND INDUSTRIAL DEVELOPMENT ZONE

Sec. 386.031. CRITERIA FOR DEVELOPMENT ZONE CREATION. (a) To be created as a development zone, an area must:

(1) have a continuous boundary;

(2) be at least 10 square miles but not larger than an area that is equal to five percent of the area, excluding lakes, waterways, and transportation arteries, of the municipality, county, or combination of municipalities and the county nominating the area as a development zone;

(3) be an area of pervasive poverty, unemployment, or economic distress;

(4) be located in a county with a population of 3.3 million or more;

(5) be adjacent to major transportation nodes and thoroughfares that may be used for exporting products to major airports, railways, and ports; and

(6) be designated as a development zone by an ordinance or order adopted by each creating body.

(b) A municipality may contain not more than three development zones within its jurisdiction.

(c) A county may contain not more than three development zones in its unincorporated areas.

(d) Repealed by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(9).

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.
Amended by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(9), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 99, eff. September 1, 2011.

Sec. 386.032. AREA OF PERVASIVE POVERTY, UNEMPLOYMENT, OR ECONOMIC DISTRESS. An area is an area of pervasive poverty, unemployment, or economic distress for the purposes of Section 386.031 if:

(1) the average rate of unemployment in the area during the most recent 12-month period for which data are available was at least 1-1/2 times the state average for that period;

(2) the area is a low-income poverty area;

(3) the area is in a jurisdiction or pocket of poverty, according to the most recent certification available from the United States Department of Housing and Urban Development; or

(4) at least 70 percent of the residents or households of the area have an income that is less than 80 percent of the median income of the residents or households of the locality or state, whichever is less.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.033. CREATION OF DEVELOPMENT ZONE. (a) A development zone is created to promote and encourage:

(1) commercial development, including the development of businesses in the technology field;

(2) workforce development;

(3) excellence in education through cooperation with public schools, junior colleges, and institutions of higher education;

(4) public and private sector partnerships; and

(5) the revitalization of neighborhoods.

(b) The governing body of a municipality or county, individually or in combination with other municipalities, by ordinance or order may create as a development zone an area within

its jurisdiction that meets the criteria under Section 386.031.

(c) Each creating body must hold a public hearing before adopting an ordinance or order under this section.

(d) The governing body of a county may not designate territory in the jurisdiction of a municipality as part of a proposed development zone unless the governing body of the municipality also designates the territory.

(e) A development zone created under this section is a:

(1) political subdivision of the state; and

(2) special district.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.034. DESIGNATING ORDINANCE OR ORDER. (a) An ordinance or order designating an area as a development zone must:

(1) describe precisely the area to be included in the zone by a legal description or by reference to roadways, lakes, waterways, or municipal or county boundaries;

(2) state a finding that the area meets the requirements of this chapter;

(3) summarize briefly the:

(A) incentives, including tax incentives, that the designating body chooses to apply to businesses in the area; or

(B) programs to be developed to affect businesses in the area; and

(4) designate the area as a development zone.

(b) The incentives or programs summarized under Subsection (a)(3) must include:

(1) an incentive that does not apply to all businesses located in the jurisdiction of a governmental entity that designated the area as a development zone;

(2) an incentive or program designed to improve the skills of the local labor pool; and

(3) an incentive or program designed to address infrastructure, housing, or other elements essential to improving quality of life.

(c) This section does not prohibit a municipality or county from extending additional incentives, including tax incentives, to business enterprises in a development zone by a separate ordinance or

order.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.035. TAX INCREMENT. (a) A creating body may use tax increment financing to fund a development zone, as provided by Chapter 311, Tax Code, and as modified by this section.

(b) On adoption of an order or ordinance by each creating body, the fund may be used to pay salaries of employees of the board and administrative expenses of the development zone.

(c) For the purpose of tax increment financing under this section, the board is considered the board of directors of the reinvestment zone under Chapter 311, Tax Code. Section 311.009, Tax Code, does not apply to this chapter.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.036. AMENDING BOUNDARIES. (a) A creating body by ordinance or order may amend the boundary of a development zone after a public hearing on the issue.

(b) The amended boundary:

(1) must be continuous;

(2) may not exceed the original size requirement of Section 386.031; and

(3) may not exclude any area originally included within the boundary of the development zone.

(c) The entire development zone with the amended boundary must continue to meet the unemployment or economic distress requirements of Section 386.031.

(d) A creating body may not make more than one boundary amendment for a development zone in a calendar year.

(e) If more than one body created the development zone, each body must agree on the amendment by ordinance or order.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 386.061. BOARD OF DIRECTORS. (a) A development zone is

governed by a board of nine directors who serve two-year terms, appointed as follows:

(1) the governing body of the municipality, if any, that includes the greatest part of the zone's territory shall appoint four directors;

(2) other municipalities, if any, any part of which are included in the zone's territory, jointly shall appoint one director;

(3) the commissioners court of the county in which the zone is located shall appoint:

(A) nine directors, if the zone contains no municipality; or

(B) four directors, if the zone contains one or more municipalities; and

(4) if a development zone contains territory in only one municipality, the municipality and the county in which the zone is located jointly shall appoint one director.

(b) The initial terms of directors may be staggered.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.062. QUALIFICATIONS OF DIRECTORS. To serve as a director, a person must:

(1) be at least 21 years old; and

(2) be registered to vote in the county in which the development zone is located.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.063. DISQUALIFICATION OF DIRECTORS. Section 49.052, Water Code, applies to directors of a development zone created under this chapter as if the zone were a district governed by that section.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.064. BOARD VACANCIES. A vacancy in the office of director shall be filled by appointment by the entity that appointed the vacating director.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.065. REMOVAL OF DIRECTOR. A majority of the board may remove a director for misconduct or failure to carry out the director's duties.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.066. ORGANIZATION OF BOARD. (a) Except as provided by Subsection (b), after each appointment and qualification of directors by the appointing entities, the board shall organize by electing a president, a vice president, a secretary, and any other officers the board considers necessary.

(b) If a director is appointed under Section 386.061(a)(4), that director shall serve as board president.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.067. QUORUM; DIRECTOR'S DUTIES; MANAGEMENT OF ZONE. Sections 49.053, 49.057, and 49.058, Water Code, apply to the board of directors of a development zone created under this chapter as if the zone were a district governed by those sections.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.068. MEETINGS AND NOTICE. (a) The board shall designate and establish a development zone office in the county.

(b) The board may establish regular meetings to conduct development zone business and may hold special meetings at other times as the business of a zone requires.

(c) Notice of the time, place, and purpose of any meeting of the board shall be given by posting a notice containing that information at a place convenient to the public within the development zone. A copy of the notice shall be furnished to the clerk or clerks of the county in which the zone is located, who shall post the notice on a bulletin board in the county courthouse used for that purpose.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.069. DIRECTOR'S COMPENSATION; BOND AND OATH OF OFFICE. Sections 375.067, 375.069, and 375.070 apply to directors of a development zone created under this chapter as if the zone were a municipal management district.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 386.101. GENERAL POWERS. (a) A development zone may acquire and dispose of projects and has the powers, authority, rights, and duties that are necessary to permit the accomplishment of purposes for which the zone was created.

(b) A development zone may provide for general promotion of and tourist advertising regarding the zone and its vicinity and for a marketing program to attract visitors. The zone may conduct those activities under contracts for professional services with persons or organizations the zone selects.

(c) A development zone may enter into a memorandum of understanding with any state agency, including an institution of higher education, to further the economic development of the zone.

(d) To the extent not inconsistent with this chapter, a development zone has the powers of:

(1) a municipal management district created under Chapter 375; and

(2) a county commissioners court under Section 381.004.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.102. DUTY TO EVALUATE AVAILABLE FINANCING OPTIONS. The board shall evaluate all options available to the development zone as alternatives to imposing a tax under Section 386.035, including:

(1) regional grants from federal and state agencies;

(2) local money from a creating body;

(3) money from charities;

(4) sales taxes for economic development in the development

zone;

(5) use or impact fees on affected business entities;

(6) incentives for business entities that may benefit from the development zone;

(7) money provided by local governmental entities; and

(8) in-kind contributions.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.103. LIMIT ON DEVELOPMENT ZONE POWERS; OTHER LAWS SUPERSEDE. (a) For purposes of this section, "district or zone" means:

(1) a federal enterprise zone;

(2) a state enterprise zone;

(3) a municipal management district; or

(4) any other special district, other than a development zone.

(b) This section applies only to a district or zone that contains territory included in the development zone's territory.

(c) The authority granted to a development zone under this chapter is not intended to duplicate the authority granted to a district or zone.

(d) This chapter does not limit the authority or jurisdiction of any district or zone.

(e) To the extent the laws of this chapter conflict with the laws of any other district or zone, the laws of the other district or zone shall control over this chapter.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.104. MONITORING. (a) The board shall monitor each person in a development zone that receives benefits available under this chapter.

(b) On the board's request, the Texas Workforce Commission or the comptroller's office shall provide to the board tax records of a person that receives benefits under this chapter.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.105. NEIGHBORHOOD REDEVELOPMENT ZONES. (a) The board may designate an area as a neighborhood redevelopment zone if the area is:

(1) adjacent to the development zone; and

(2) eligible for inclusion in the development zone under Sections 386.036(b) and (c).

(b) A development zone may exercise the powers available to it in an area designated by the board under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.106. SUITS. A development zone may, through its directors, sue and be sued in this state in the name of the development zone. Service of process in a suit may be had by serving a director.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

Sec. 386.201. EXPENDITURES. A development zone's money may be disbursed only by check, draft, order, or other instrument signed by at least three directors. The general manager, treasurer, or other employee of the development zone, if authorized by resolution of the board, may sign checks, drafts, orders, or other instruments on any development zone operation account on behalf of the board.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.202. COMPETITIVE BIDDING; CONTRACT AWARD. Subchapter K, Chapter 375, applies to a development zone created under this chapter as if the zone were a municipal management district.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

SUBCHAPTER F. DISSOLUTION

Sec. 386.301. DISSOLUTION OF DEVELOPMENT ZONE BY CREATING BODY. (a) After a hearing, a creating body may dissolve a development zone

if:

(1) the area no longer meets the criteria for designation under this chapter;

(2) the best interests of the creating body and the owners of property and interests in property in the zone will be served by dissolving the zone; and

(3) each creating body agrees by ordinance or order on the:

(A) proposition that the zone should be dissolved;

(B) disposition of zone assets; and

(C) assumption of liabilities by the creating bodies.

(b) The dissolution of a development zone does not affect the validity of a:

(1) tax incentive or regulatory relief granted or accrued before the removal; or

(2) bond issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.302. DISSOLUTION BY BOARD REQUEST. A board may petition a creating body to dissolve the development zone under Section 386.301 if a majority of the board finds at any time:

(1) before the authorization of bonds or the final lending of its credit that the continuation of the development zone is impracticable or cannot be successfully and beneficially accomplished; or

(2) that all bonds of the development zone or other debts of the zone have been paid and the purposes of the zone have been accomplished.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

Sec. 386.303. TAXES. On dissolution of a development zone, any taxes levied on behalf of the zone are abolished.

Added by Acts 2001, 77th Leg., ch. 1390, Sec. 1, eff. June 16, 2001.

CHAPTER 387. COUNTY ASSISTANCE DISTRICT

Sec. 387.001. DEFINITION. In this chapter, "district" means a

county assistance district created under this chapter.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.

Sec. 387.003. CREATION AND FUNCTIONS OF DISTRICT. (a) The commissioners court of the county may call an election on the question of creating a county assistance district under this chapter. More than one county assistance district may be created in a county. A district may consist of noncontiguous tracts.

(a-1) A district may perform the following functions in the district:

(1) the construction, maintenance, or improvement of roads or highways;

(2) the provision of law enforcement and detention services;

(3) the maintenance or improvement of libraries, museums, parks, or other recreational facilities;

(4) the provision of services that benefit the public health or welfare, including the provision of firefighting and fire prevention services; or

(5) the promotion of economic development and tourism.

(b) The order calling the election must:

(1) define the boundaries of the district to include any portion of the county in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would not exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code; and

(2) call for the election to be held within those boundaries.

(b-1) If the proposed district includes any territory of a municipality, the commissioners court shall send notice by certified mail to the governing body of the municipality of the commissioners court's intent to create the district. If the municipality has created a development corporation under Chapter 504 or 505, the commissioners court shall also send the notice to the board of

directors of the corporation. The commissioners court must send the notice not later than the 60th day before the date the commissioners court orders the election. The governing body of the municipality may exclude the territory of the municipality from the proposed district by sending notice by certified mail to the commissioners court of the governing body's desire to exclude the municipal territory from the district. The governing body must send the notice not later than the 45th day after the date the governing body receives notice from the commissioners court under this subsection. The territory of a municipality that is excluded under this subsection may subsequently be included in:

(1) the district in an election held under Subsection (f) with the consent of the municipality; or

(2) another district after complying with the requirements of this subsection and after an election under Subsection (f).

(c) The ballot at the election must be printed to permit voting for or against the proposition: "Authorizing the creation of the ____ County Assistance District No.___ (insert name of district) and the imposition of a sales and use tax at the rate of ____ percent (insert appropriate rate) for the purpose of financing the operations of the district."

(d) The district is created if a majority of the votes received at the election favor the creation of the district.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 1

(e) If a majority of the votes received at the election are against the creation of the district, the district is not created. The failure to approve the creation of a district under this subsection does not affect the authority of the county to call one or more elections on the question of creating one or more county assistance districts.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 21

(e) If a majority of the votes received at the election are against the creation of the district, the district is not created and the county at any time may call one or more elections on the question of creating one or more county assistance districts.

(f) The commissioners court may call an election to be held in an area of the county that is not located in a district created under

this section to determine whether the area should be included in the district and whether the district's sales and use tax should be imposed in the area. An election may not be held in an area in which the combined tax rate of all local sales and use taxes imposed, including the rate to be imposed by the district if approved at the election, would exceed the maximum combined rate of sales and use taxes imposed by political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code.

(g) The area in which an election is held under Subsection (f) is included in the district and the sales and use tax is imposed if a majority of the votes received at the election favor inclusion in the district and imposition of the sales and use tax.

(h) If more than one election to authorize a local sales and use tax is held on the same day in the area of a proposed district or an area proposed to be added to a district and if the resulting approval by the voters would cause the imposition of a local sales and use tax in any area to exceed the maximum combined rate of sales and use taxes of political subdivisions of this state that is prescribed by Sections 321.101 and 323.101, Tax Code, only a tax authorized at an election under this section may be imposed.

(i) In addition to the authority to include an area in a district under Subsection (f), the governing body of a district by order may include an area in the district on receipt of a petition or petitions signed by the owner or owners of the majority of the land in the area to be included in the district. If there are no registered voters in the area to be included in the district, no election is required.

(j) The commissioners court by order may exclude an area from the district if the district has no outstanding bonds payable wholly or partly from sales and use taxes and the exclusion does not impair any outstanding district debt or contractual obligation.

(k) A district annexing territory under this section may annex territory that is not adjacent or contiguous to the district.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999.
Renumbered from Local Government Code Sec. 384.003 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1252 (H.B. 1937), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 685 (H.B. 1720), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.010, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 21, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 479 (S.B. 1167), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1106 (H.B. 3795), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 827 (H.B. 1716), Sec. 1, eff. September 1, 2017.

Sec. 387.0031. INCLUSION OF ROADS OR COUNTY PROPERTY IN CERTAIN DISTRICTS. (a) This section applies only to a district created by a county with a population of more than 800,000 that borders a county with a population of more than four million.

(b) The governing body of a district by order may include in the district a portion of a road or public right-of-way, including associated drainage areas, or county-owned property that is being used for a public purpose if:

(1) the road, public right-of-way, or county-owned property is located in a municipality located in the county that created the district; and

(2) the municipality consents to the inclusion.

(b-1) An election is not required to approve an order described by Subsection (b).

(c) The district may use money available to the district to perform any function of the district under this chapter on a road or public right-of-way, including associated drainage areas, or any property included in the district in accordance with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 442 (H.B. 2599), Sec. 1, eff. June 15, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 614 (H.B. 3504), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 614 (H.B. 3504), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 191, eff. September 1, 2023.

Sec. 387.004. POLITICAL SUBDIVISION. A district is a political subdivision of this state.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.004 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.

Sec. 387.005. GOVERNING BODY. (a) The commissioners court of the county in which the district is created by order shall provide that:

(1) the commissioners court is the governing body of the district; or

(2) the commissioners court shall appoint a governing body of the district.

(b) A member of the governing body of the district is not entitled to compensation for service but is entitled to reimbursement for actual and necessary expenses.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 22, eff. June 17, 2011

(c) A board of directors appointed by the commissioners court under this section shall consist of five directors who serve staggered terms of two years. To be eligible to serve as a director, a person must be at least 18 years of age and a resident of the county in which the district is located. The initial directors shall draw lots to achieve staggered terms, with three of the directors serving one-year terms and two of the directors serving two-year terms.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 2, eff. June 17, 2011

(c) A board of directors appointed by the commissioners court under this section shall consist of five directors who serve staggered terms of two years. To be eligible to serve as a director, a person must be a resident of the county in which the district is

located. The initial directors shall draw lots to achieve staggered terms, with three of the directors serving one-year terms and two of the directors serving two-year terms.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999.
Renumbered from Local Government Code Sec. 384.005 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 2, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 22, eff. June 17, 2011.

Sec. 387.006. GENERAL POWERS OF DISTRICT. (a) A district may:
(1) perform any act necessary to the full exercise of the district's functions;
(2) accept a grant or loan from:
(A) the United States;
(B) an agency or political subdivision of this state; or
(C) a public or private person;
(3) acquire, sell, lease, convey, or otherwise dispose of property or an interest in property under terms determined by the district;
(4) employ necessary personnel;
(5) adopt rules to govern the operation of the district and its employees and property; and
(6) enter into agreements with municipalities necessary or convenient to achieve the district's purposes, including agreements regarding the duration, rate, and allocation between the district and the municipality of sales and use taxes.
(b) A district may contract with a public or private person to perform any act the district is authorized to perform under this chapter.
(c) A district may not levy an ad valorem tax.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999.
Renumbered from Local Government Code Sec. 384.006 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 23, eff. June 17, 2011.

Sec. 387.007. SALES AND USE TAX. (a) A district by order may impose a sales and use tax under this chapter to finance the operations of the district only if the tax is approved at an election held under Section 387.003.

(b) A district may not adopt a sales and use tax under this chapter if the adoption of the tax would result in a combined tax rate of all local sales and use taxes that would exceed the maximum combined rate prescribed by Sections 321.101 and 323.101, Tax Code, in any location in the district.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.007 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), 3(36), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 4, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 24, eff. June 17, 2011.

Sec. 387.008. TAX CODE APPLICABLE. (a) Chapter 323, Tax Code, governs the imposition, computation, administration, collection, and remittance of a tax authorized under this chapter except as inconsistent with this chapter.

(b) Section 323.101(b), Tax Code, does not apply to a tax authorized by this chapter.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.008 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.

Sec. 387.009. TAX RATE. The rate of a tax adopted under this chapter must be in increments of one-eighth of one percent.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.009 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 5, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 25, eff. June 17, 2011.

Sec. 387.010. REPEAL OR RATE CHANGE. (a) A district that has adopted a sales and use tax under this chapter may, by order and subject to Section 387.007(b):

(1) reduce the rate of the tax or repeal the tax without an election, except that the district may not repeal the sales and use tax or reduce the rate of the sales and use tax below the amount pledged to secure payment of an outstanding district debt or contractual obligation;

(2) increase the rate of the sales and use tax, if the increased rate of the sales and use tax will not exceed the rate approved at an election held under Section 387.003; or

(3) increase the rate of the sales and use tax to a rate that exceeds the rate approved at an election held under Section 387.003 after the increase is approved by a majority of the votes received in the district at an election held for that purpose.

(b) The tax may be changed under Subsection (a) in one or more increments of one-eighth of one percent.

(c) The ballot for an election to increase the tax shall be printed to permit voting for or against the proposition: "The increase of a sales and use tax for the ____ County Assistance District No. ___ (insert name of district) from the rate of ____ percent (insert appropriate rate) to the rate of ____ percent (insert appropriate rate)."

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1341, Sec. 29, eff. June 17, 2011.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.010 and amended by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), 3(37), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 6, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 8, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 26, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 29, eff. June 17, 2011.

Sec. 387.011. IMPOSITION OF TAX. (a) If the district adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items in the district at the rate approved at the election.

(b) There is also imposed an excise tax on the use, storage, or other consumption in the district of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective in the district. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.011 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.

Sec. 387.012. EFFECTIVE DATE OF TAX. The adoption of the tax, the increase or reduction of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller receives a copy of the order of the district's governing body adopting, increasing, reducing, or repealing the tax.

Added by Acts 1999, 76th Leg., ch. 1283, Sec. 1, eff. June 18, 1999. Renumbered from Local Government Code Sec. 384.012 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(110), eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 396 (S.B. 520), Sec. 7, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1341 (S.B. 1233), Sec. 27, eff.

June 17, 2011.

Sec. 387.013. DISSOLUTION. (a) The governing body of a district may petition the commissioners court of the county in which the district was created to dissolve the district if a majority of the governing body finds the performance of the district's functions cannot be accomplished to the benefit of the residents and owners of land in the district.

(b) The commissioners court of a county shall hold a hearing on the dissolution of a district if:

(1) the commissioners court receives a petition under Subsection (a); or

(2) in a district in which the commissioners court acts as the governing body of the district, a majority of the commissioners court finds that the performance of the district's functions cannot be accomplished to the benefit of the residents and owners of land in the district.

(c) A hearing under Subsection (b) must be held not later than the 61st day after the commissioners court receives the petition under Subsection (b)(1) or makes the finding described by Subsection (b)(2).

(d) The commissioners court shall give notice of the hearing as required by law and include in the notice information regarding the right of the residents and owners of land in the district to appear and present evidence for or against the district's dissolution.

(e) The commissioners court shall order the district dissolved and the district's assets transferred to the county if:

(1) the commissioners court unanimously votes that dissolution of the district is in the best interests of the district, the county in which the district is located, and the residents and owners of land in the district; and

(2) the district has no outstanding bonds payable wholly or partly from district revenue and the dissolution does not impair any outstanding district debt or contractual obligation.

Added by Acts 2019, 86th Leg., R.S., Ch. 1053 (H.B. 956), Sec. 1, eff. September 1, 2019.

CHAPTER 388. GRANT PROGRAM FOR UNINCORPORATED COMMUNITIES IN CERTAIN COUNTIES

Sec. 388.001. APPLICABILITY. This chapter applies only to a county that:

(1) has a population of not more than 3,000;

(2) is adjacent to at least three counties with populations of less than 10,000; and

(3) is located on an international border.

Added by Acts 2023, 88th Leg., R.S., Ch. 492 (H.B. 1330), Sec. 1, eff. June 10, 2023.

Sec. 388.002. IMPROVEMENT PROJECT GRANT PROGRAM. (a) The commissioners court of a county by order may establish and implement a grant program for the purpose of funding public improvement projects to benefit unincorporated communities located in the county.

(b) A public improvement project includes:

(1) the acquisition, construction, or improvement of:

(A) sidewalks, streets, roads, or other transportation infrastructure;

(B) water, wastewater, or drainage facilities or improvements; or

(C) other public facilities or improvements; and

(2) special supplemental services for improvement and promotion of the area, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement.

Added by Acts 2023, 88th Leg., R.S., Ch. 492 (H.B. 1330), Sec. 1, eff. June 10, 2023.

Sec. 388.003. GIFTS, GRANTS, AND DONATIONS. The county may apply for and accept a gift, grant, or donation from any source to fund a public improvement project described by Section 388.002.

Added by Acts 2023, 88th Leg., R.S., Ch. 492 (H.B. 1330), Sec. 1, eff. June 10, 2023.

SUBTITLE C. PLANNING AND DEVELOPMENT PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 391. REGIONAL PLANNING COMMISSIONS

Sec. 391.001. PURPOSE. (a) The purpose of this chapter is to encourage and permit local governmental units to:

(1) join and cooperate to improve the health, safety, and general welfare of their residents; and

(2) plan for the future development of communities, areas, and regions so that:

(A) the planning of transportation systems is improved;

(B) adequate street, utility, health, educational, recreational, and other essential facilities are provided as the communities, areas, and regions grow;

(C) the needs of agriculture, business, and industry are recognized;

(D) healthful surroundings for family life in residential areas are provided;

(E) historical and cultural values are preserved; and

(F) the efficient and economical use of public funds is commensurate with the growth of the communities, areas, and regions.

(b) The general purpose of a commission is to make studies and plans to guide the unified, far-reaching development of a region, eliminate duplication, and promote economy and efficiency in the coordinated development of a region.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.002. DEFINITIONS. In this chapter:

(1) "Governmental unit" means a county, municipality, authority, district, or other political subdivision of the state.

(2) "Commission" means a regional planning commission, council of governments, or similar regional planning agency created under this chapter.

(3) "Region" means a geographic area consisting of a county or two or more adjoining counties that have, in any combination:

(A) common problems of transportation, water supply, drainage, or land use;

(B) similar, common, or interrelated forms of urban development or concentration; or

(C) special problems of agriculture, forestry, conservation, or other matters.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.003. CREATION. (a) Any combination of counties or municipalities or of counties and municipalities may agree, by ordinance, resolution, rule, order, or other means, to establish a commission.

(b) The agreement must designate a region for the commission that:

(1) consists of territory under the jurisdiction of the counties or municipalities, including extraterritorial jurisdiction; and

(2) is consistent with the geographic boundaries for state planning regions or subregions that are delineated by the governor and that are subject to review and change at the end of each state biennium.

(c) A commission is a political subdivision of the state.

(d) This chapter permits participating governmental units the greatest possible flexibility to organize a commission most suitable to their view of the region's problems.

(e) The counties and municipalities making the agreement may join in the exercise of, or in acting cooperatively in regard to, planning, powers, and duties as provided by law for any or all of the counties and municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.004. PLANS AND RECOMMENDATIONS. (a) A commission may plan for the development of a region and make recommendations concerning major thoroughfares, streets, traffic and transportation studies, bridges, airports, parks, recreation sites, school sites, public utilities, land use, water supply, sanitation facilities, drainage, public buildings, population density, open spaces, and other items relating to the commission's general purposes.

(b) A plan or recommendation of a commission may be adopted in whole or in part by the governing body of a participating governmental unit.

(c) A commission may assist a participating governmental unit in:

(1) carrying out a plan or recommendation developed by the commission; and

(2) preparing and carrying out local planning consistent with the general purpose of this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.005. POWERS. (a) A commission may contract with a participating governmental unit to perform a service if:

(1) the participating governmental unit could contract with a private organization without governmental powers to perform the service; and

(2) the contract to perform the service does not impose a cost or obligation on a participating governmental unit not a party to the contract.

(b) A commission may:

(1) purchase, lease, or otherwise acquire property;

(2) hold or sell or otherwise dispose of property;

(3) employ staff and consult with and retain experts; or

(4)(A) provide retirement benefits for its employees through a jointly contributory retirement plan with an agency, firm, or corporation authorized to do business in the state; or

(B) participate in the Texas Municipal Retirement System, the Employees Retirement System of Texas, or the Texas County and District Retirement System when those systems by legislation or administrative arrangement permit participation.

(c) Participating governmental units may by joint agreement provide for the manner of cooperation between participating governmental units and provide for the methods of operation of the commission, including:

(1) employment of staff and consultants;

(2) apportionment of costs and expenses;

(3) purchase of property and materials; and

(4) addition of a governmental unit.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.006. GOVERNING BODY OF COMMISSION. (a) Except as provided by Subsection (c), participating governmental units may by joint agreement determine the number and qualifications of members of the governing body of a commission.

(b) At least two-thirds of the members of a governing body of a commission must be elected officials of participating counties or municipalities.

(c) The governing body of a commission of a region that is consistent with the geographic boundaries of a state planning region shall offer an ex officio, nonvoting membership on the governing body to a member of the legislature who represents a district located wholly or partly in the region of the commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 790 (H.B. 2160), Sec. 1, eff. June 17, 2011.

Sec. 391.007. DETAIL OR LOAN OF AN EMPLOYEE. (a) A state agency or a governmental unit may detail or loan an employee to a commission.

(b) During the period of the detail or loan, the employee continues to receive salary, leave, retirement, and other personnel benefits from the lending agency or governmental unit but works under the direction and supervision of the commission.

(c) The detail or loan of an employee may be on a reimbursable or nonreimbursable basis as agreed by the lending agency or governmental unit and the commission. The detail or loan expires at the mutual consent of the lending agency or governmental unit and the commission.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.008. REVIEW AND COMMENT PROCEDURES. (a) In a state planning region or subregion in which a commission has been organized, the governing body of a governmental unit within the region or subregion, whether or not a member of the commission, shall submit to the commission for review and comment an application for a loan or grant-in-aid from a state agency, and from a federal agency

if the project is one for which the federal government requires review and comment by an areawide planning agency, before the application is filed with the state or federal government.

(b) For federally aided projects for which an areawide review is required by federal law or regulation, the commission shall review the application from the standpoint of consistency with regional plans and other considerations as specified in federal or state regulations and shall enter its comments on the application and return it to the originating governmental unit.

(c) For other federally aided projects and for state-aided projects, the commission shall advise the governmental unit on whether the proposed project for which funds are requested has regionwide significance.

(d) If the proposed project has regionwide significance, the commission shall determine whether it is in conflict with a regional plan or policy. It may consider whether the proposed project is properly coordinated with other existing or proposed projects within the region. The commission shall record on the application its view and comments, transmit the application to the originating governmental unit, and send a copy to the concerned federal or state agency.

(e) If the proposed project does not have regionwide significance, the commission shall certify that it is not in conflict with a regional plan or policy.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.009. ROLE OF STATE AUDITOR, GOVERNOR, AND STATE AGENCIES. (a) To protect the public interest and promote the efficient use of public funds, the governor, with the technical assistance of the state auditor, may draft and adopt:

(1) rules relating to the operation and oversight of a commission;

(2) rules relating to the receipt or expenditure of funds by a commission, including:

(A) restrictions on the expenditure of any portion of commission funds for certain classes of expenses; and

(B) restrictions on the maximum amount of or percentage of commission funds that may be expended on a class of expenses,

including indirect costs or travel expenses;

(3) annual reporting requirements for a commission;

(4) annual audit requirements on funds received or expended by a commission from any source;

(5) rules relating to the establishment and use of standards by which the productivity and performance of each commission can be evaluated; and

(6) guidelines that commissions and governmental units shall follow in carrying out the provisions of this chapter relating to review and comment procedures.

(a-1) The governor may draft and adopt rules under Subsection (a) using negotiated rulemaking procedures under Chapter 2008, Government Code.

(a-2) Based on a risk assessment performed by the state auditor and subject to the legislative audit committee's approval for inclusion in the audit plan under Section 321.013, Government Code, the state auditor's office shall assist the governor as provided by Subsection (a).

(b) The governor and state agencies shall provide technical information and assistance to the members and staff of a commission to increase, to the greatest extent feasible, the capability of the commission to discharge its duties and responsibilities prescribed by this chapter and to ensure compliance with the rules, requirements, and guidelines adopted under Subsection (a).

(c) In carrying out their planning and program development responsibilities, state agencies shall, to the greatest extent feasible, coordinate planning with commissions to ensure effective and orderly implementation of state programs at the regional level.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 281, Sec. 16, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 694, Sec. 1, eff. June 13, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 9.01, 9.02, eff. Jan. 11, 2004.

Sec. 391.0091. STATE AGENCY CONSULTATION WITH REGIONAL PLANNING COMMISSIONS. (a) In this section, "service" includes a program.

(b) If a state agency determines that a service provided by that agency should be decentralized to a multicounty region, the agency shall use a state planning region or combination of regions

for the decentralization.

(c) A state agency that decentralizes a service provided to more than one public entity or nonprofit organization in a region shall consult with the commission for that region in planning the decentralization. The commission shall consult with each affected public entity or nonprofit organization.

(d) A state agency, in planning for decentralization of a service in a region, shall consider using a commission for that service to:

(1) achieve efficiencies through shared costs for:

(A) executive management;

(B) administration;

(C) financial accounting and reporting;

(D) facilities and equipment;

(E) data services; and

(F) audit costs;

(2) improve the planning, coordination, and delivery of services by coordinating the location of services;

(3) increase accountability and local control by placing a service under the oversight of the commission; and

(4) improve financial oversight through the auditing and reporting required under this chapter.

(e) This section does not apply to a service:

(1) that continues to be operated by a state agency through a regional administrative office of that agency; or

(2) for which the state agency determines that a law, rule, or program policy makes use of the geographic area of a single county or adjacent counties more appropriate.

Added by Acts 2003, 78th Leg., ch. 718, Sec. 1, eff. Sept. 1, 2003.

Sec. 391.0095. AUDIT AND REPORTING REQUIREMENTS. (a) The audit and reporting requirements under Section 391.009(a) shall include a requirement that a commission annually report to the state auditor:

(1) the amount and source of funds received by the commission;

(2) the amount and source of funds expended by the commission;

(3) an explanation of any method used by the commission to compute an expense of the commission, including computation of any indirect cost of the commission;

(4) a report of the commission's productivity and performance during the annual reporting period;

(5) a projection of the commission's productivity and performance during the next annual reporting period;

(6) the results of an audit of the commission's affairs prepared by an independent certified public accountant; and

(7) a report of any assets disposed of by the commission.

(b) The annual audit of a commission may be commissioned by the commission or at the direction of the governor's office, as determined by the governor's office, and shall be paid for from the commission's funds.

(c) A commission shall submit any other report or an audit to the state auditor and the governor.

(d) If a commission fails to submit a report or audit required under this section or is determined by the state auditor to have failed to comply with a rule, requirement, or guideline adopted under Section 391.009, the state auditor shall report the failure to the governor's office. The governor may, until the failure is corrected:

(1) appoint a receiver to operate or oversee the commission; or

(2) withhold any appropriated funds of the commission.

(e) A commission shall send to the governor, the state auditor, and the Legislative Budget Board a copy of each report and audit required under this section or under Section 391.009. The state auditor may review each audit and report, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code. If the state auditor reviews the audit or report, the state auditor must be given access to working papers and other supporting documentation that the state auditor determines is necessary to perform the review. If the state auditor finds significant issues involving the administration or operation of a commission or its programs, the state auditor shall report its findings and related recommendations to the legislative audit committee, the governor, and the commission. The governor and the legislative audit committee may direct the commission to prepare a corrective action plan or other response to the state auditor's

findings or recommendations. The legislative audit committee may direct the state auditor to perform any additional audit or investigative work that the committee determines is necessary.

Added by Acts 1999, 76th Leg., ch. 281, Sec. 17, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 742, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 785, Sec. 66, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 9.03, eff. Jan. 11, 2004. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 395 (S.B. 790), Sec. 1, eff. September 1, 2019.

Sec. 391.00951. REPORT TO SECRETARY OF STATE. (a) In this section, "colonia" means a geographic area that:

(1) is an economically distressed area as defined by Section 17.921, Water Code;

(2) is located in a county any part of which is within 62 miles of an international border; and

(3) consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood.

(b) To assist the secretary of state in preparing the report required under Section 405.021, Government Code, the commission on a quarterly basis shall provide a report to the secretary of state detailing any projects funded by the commission that provide assistance to colonias.

(c) The report must include:

(1) a description of any relevant projects;

(2) the location of each project;

(3) the number of colonia residents served by each project;

(4) the exact amount spent or the anticipated amount to be spent on each colonia served by each project;

(5) a statement of whether each project is completed and, if not, the expected completion date of the project; and

(6) any other information, as determined appropriate by the secretary of state.

(d) The commission shall require an applicant for funds administered by the commission to submit to the commission a colonia classification number, if one exists, for each colonia that may be

served by the project proposed in the application. If a colonia does not have a classification number, the commission may contact the secretary of state or the secretary of state's representative to obtain the classification number. On request of the commission, the secretary of state or the secretary of state's representative shall assign a classification number to the colonia.

Added by Acts 2007, 80th Leg., R.S., Ch. 341 (S.B. 99), Sec. 19, eff. June 15, 2007.

Sec. 391.010. CONFLICT OF INTEREST IN PROVISION OF LEGAL SERVICES. (a) A member of the governing body of a commission or a person who provides legal services to a commission may not:

(1) provide legal representation before or to the commission on behalf of a governmental unit located, in whole or in part, within the boundaries of the commission; or

(2) be a shareholder, partner, or employee of a law firm that provides those legal services to the governmental unit.

(b) A person who violates Subsection (a) may not receive compensation or reimbursement for expenses from the commission or governmental unit.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.011. FUNDS. (a) A commission does not have power to tax.

(b) A participating governmental unit may appropriate funds to a commission for the costs and expenses required in the performance of its purposes.

(c) A commission may apply for, contract for, receive, and expend for its purposes a grant or funds from a participating governmental unit, the state, the federal government, or other source.

(d) A commission may not expend funds for an automobile allowance for a member of the governing body of the commission if the member holds another state, county, or municipal office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 713, Sec. 3, eff. Sept. 1, 1995; Acts

1999, 76th Leg., ch. 280, Sec. 18, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1498, Sec. 6, eff. Sept. 1, 1999.

Sec. 391.0115. RESTRICTIONS ON COMMISSION TRAVEL COSTS. (a) In reimbursing commission personnel for travel expenses, a commission may not expend funds for travel in excess of the amount of money that may be expended for state personnel under the General Appropriations Act or travel regulations adopted by the comptroller, including any restrictions on mileage reimbursement, per diem, and lodging reimbursement rates.

(b) A member of the governing body of a commission may not be reimbursed from state-appropriated funds, including federal funds, for official travel in an amount in excess of the rates set for travel by state board and commission members. If a hotel is unable or unwilling to provide a commission or its officers or employees a rate equivalent to the rate provided to state employees or if a negotiated conference rate for an officially sanctioned conference or meeting exceeds the applicable state reimbursement rate for lodging, a commission may reimburse for lodging expenses at the rates of the expenses incurred.

(c) A commission may not expend any funds for the purchase of alcoholic beverages or entertainment.

(d) A commission may purchase goods or a service only if the commission complies with the same provisions for purchasing goods or a service that are equivalent to the provisions, including Chapter 252, applying to a local government.

(e) A commission may not spend an amount more than 15 percent of the commission's total expenditures on the commission's indirect costs. For the purposes of this subsection, the commission's capital expenditures and any subcontracts, pass-throughs, or subgrants may not be considered in determining the commission's total direct costs. In this subsection, "pass-through funds" means funds, including subgrants or subcontracts, that are received by a commission from the federal or state government or other grantor for which the commission serves merely as a cash conduit and has no administrative or financial involvement in the program, such as contractor selection, contract provisions, contract methodology payment, or contractor oversight and monitoring.

(f) In this section, "indirect costs" means costs that are not

directly attributable to a single action of a commission. The governor shall use the federal Office of Management and Budget circulars A-87 and A-122 or use any rules relating to the determination of indirect costs adopted under Chapter 783, Government Code, in administering this section.

Added by Acts 1999, 76th Leg., ch. 280, Sec. 19, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1498, Sec. 7, eff. Sept. 1, 1999.

Sec. 391.0116. RESTRICTIONS ON EMPLOYMENT. (a) An employee of a commission when using state-appropriated funds, including federal funds, is subject to the same rules regarding lobbying and other advocacy activities as an employee of any state agency.

(b) The nepotism provisions of Chapter 573, Government Code, apply to a commission.

Added by Acts 1999, 76th Leg., ch. 1498, Sec. 7, eff. Sept. 1, 1999.

Sec. 391.0117. SALARY SCHEDULES. (a) For each fiscal year, a commission shall adopt a salary schedule containing a classification salary schedule for classified positions and identifying and specifying the salaries for positions exempt from the classification salary schedule.

(b) The salary schedule adopted by the commission may not exceed, for classified positions, the state salary schedule for classified positions as prescribed by the General Appropriations Act adopted by the most recent legislature. A commission may adopt a salary schedule that is less than the state salary schedule.

(c) A salary for a position classified under the salary schedule may not exceed the state salary that has been approved by the state auditor's office and paid by the state for comparable work.

(d) A position may only be exempted from the classification salary schedule adopted by the commission if the exemption and the amount of salary paid for the exempt position is within the range determined appropriate for state exempt positions by the state auditor.

(e) A commission shall submit to the state auditor the commission's salary schedule, including the salaries of all exempt positions, not later than the 45th day before the date of the

beginning of the commission's fiscal year. If the state auditor, subject to the legislative audit committee's approval for inclusion in the audit plan under Section 321.013, Government Code, has recommendations to improve a commission's salary schedule or a portion of the schedule, the state auditor shall report the recommendations to the governor's office. The governor's office may not allow the portion of the schedule for which the state auditor has recommendations to go into effect until revisions or explanations are given that are satisfactory to the governor based on recommendations from the state auditor.

(f) This section does not apply to a commission if the most populous county that is a member of the commission has an actual average weekly wage that exceeds the state actual average weekly wage by 20 percent or more for the previous year as determined by the Texas Workforce Commission in its County Employment and Wage Information Report.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 9.04, eff. Jan. 11, 2004.

Sec. 391.012. STATE FINANCIAL ASSISTANCE. (a) To qualify for state financial assistance, a commission must:

(1) have funds available annually from sources other than federal or state governments equal to or greater than half of the state financial assistance for which the commission applies;

(2) comply with the regulations of the agency responsible for administering this chapter;

(3) offer membership in the commission to all counties and municipalities included in the state planning region;

(4) include any combination of counties or municipalities having a combined population equal to or greater than 60 percent of the population of the state planning region;

(5) include at least one full county;

(6) encompass an area that is economically and geographically interrelated and forms a logical planning region; and

(7) be engaged in a regional planning process.

(b) Within funds available and in accordance with rules issued by the office of the governor, a commission may use state financial

assistance to:

(1) promote intergovernmental cooperation by coordinating regional plans and programs with member governments, nonmember governments, state agencies which impact the region, and, where state agencies have regional office structures, state agency regional offices;

(2) function as a regional review agency under the Texas Review and Comment System pursuant to state and federal statutes and regulations;

(3) leverage commission dues, local funds, and state funds to obtain maximum federal funding assistance and private funding for the state and the region;

(4) provide assistance to local governments;

(5) assist state agencies and organizations in developing local and regional input for state plans, in planning for the successful implementation of state programs at the regional level as required in Section 391.009(c), in preparing for and conducting state-sponsored hearings and public meetings, and in disseminating state-generated information and educational materials; and

(6) provide assistance to state agencies and organizations in developing, implementing, and assessing state programs and services within the region as needed.

(c) A commission that qualifies for state financial assistance is eligible annually for an amount determined as follows:

(1) $1,000 for each dues-paying member county;

(2) an additional 10 cents per capita for the population of dues-paying member counties and municipalities; and

(3) the amount necessary to assure that the total amount available to the commission is no less than $50,000.

(d) If state appropriations are more than the amount necessary to fund the level of financial assistance generated by this formula, the governor shall increase the funding for which each commission is eligible in proportion to the amount it would have been eligible to receive in Subsection (c).

(e) If state appropriations are less than the amount necessary to fund the level of financial assistance generated by the formula in Subsection (c) above:

(1) No commission shall receive less than annual financial assistance of $50,000, as long as financial assistance available to all commissions remains at or above the level of assistance allocated

in fiscal year 2003.

(2) If available annual financial assistance is less than the amount allocated in fiscal year 2003, assistance to all commissions shall be reduced proportionally from the assistance they would have received at the fiscal year 2003 funding level.

(f) For the purposes of this section, the population of a county is the population outside all dues-paying member municipalities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 1137, Sec. 1, eff. June 20, 2003.

Sec. 391.013. INTERSTATE COMMISSIONS. (a) With the advance approval of the governor, a commission that borders another state may:

(1) join with a similar commission or planning agency in a contiguous area of the bordering state to form an interstate commission; or

(2) permit a similar commission or planning agency in a contiguous area of the bordering state to participate in planning functions.

(b) Funds provided a commission may be commingled with funds provided by the government of the bordering state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.014. INTERNATIONAL AREAS. With the advance approval of the governor, a commission that borders the Republic of Mexico may spend funds in cooperation with an agency, constituent state, or local government of the Republic of Mexico for planning studies encompassing areas lying both in this state and in contiguous territory of the Republic of Mexico.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.015. WITHDRAWAL FROM COMMISSION. A participating governmental unit may withdraw from a commission by majority vote of its governing body unless it has been otherwise agreed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 391.016. JOINING COMMISSION AFTER WITHDRAWAL. A governmental unit that has withdrawn from a commission under Section 391.015 may join another commission that is adjacent to the unit if:

(1) the transfer is approved by the governing bodies of:

(A) the unit; and

(B) the commission the unit wishes to join;

(2) the governmental unit submits a written request for approval of the transfer to the governor that:

(A) is in the form and manner prescribed by the office of the governor; and

(B) demonstrates the transfer furthers the purpose of this chapter as described by Section 391.001; and

(3) the governor approves the transfer.

Added by Acts 2019, 86th Leg., R.S., Ch. 1237 (H.B. 2736), Sec. 1, eff. June 14, 2019.

CHAPTER 392. HOUSING AUTHORITIES ESTABLISHED BY MUNICIPALITIES AND COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 392.001. SHORT TITLE. This chapter may be cited as the Housing Authorities Law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.002. DEFINITIONS. In this chapter:

(1) "Authority" or "housing authority" means a public corporation created under this chapter.

(2) "Bond" means a bond, note, interim certificate, debenture, or other obligation issued by an authority under this chapter.

(3) "Clerk of the municipality" means the clerk of a municipality or the officer given the duties customarily imposed on the clerk.

(4) "Farmers of low income" means persons or families who, at the time of their admission to occupancy in housing of a housing

authority:

(A) live in unsafe or unsanitary housing;

(B) earn their principal income from operating or working on a farm; and

(C) had an aggregate average annual net income for the preceding three years that is less than the amount determined by the housing authority to be necessary, in its area of operation, to obtain, without financial assistance, decent, safe, and sanitary housing without overcrowding.

(5) "Federal government" includes the United States, the Department of Housing and Urban Development, and any other agency or instrumentality, corporate or otherwise, of the United States.

(6) "Housing project" means a work or other undertaking to:

(A) demolish, clear, or remove buildings from a slum area, including a work or other undertaking to adapt an area for use as a park, for another recreational or community purpose, or for any other public purpose;

(B) provide decent, safe, and sanitary urban or rural housing for persons of low income, including buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, and parks, or for other purposes, including site preparation, gardening, administrative, community, health, recreational, educational, or welfare purposes;

(C) accomplish a combination of the purposes described by Paragraphs (A) and (B); or

(D) plan buildings and other improvements, acquire property, demolish structures, construct, reconstruct, alter, and repair improvements, and perform other related work.

(7) "Mayor" means the mayor of a municipality or the officer given the duties customarily imposed on the mayor or executive head of a municipality.

(8) "Obligee of the authority" or "obligee" includes:

(A) a bondholder;

(B) a trustee of a bondholder;

(C) a lessor demising to the authority any property used in connection with a housing project;

(D) an assignee of the interest, or part of the interest, of a lessor demising to the authority any property used in connection with a housing project; and

(E) the federal government if it is a party to a contract with the authority.

(9) "Persons of low income" means families or persons who lack the amount of income that an authority considers necessary to live, without financial assistance, in decent, safe, and sanitary housing without overcrowding.

(10) "Real property" means land, including improvements, fixtures, and other property appurtenant to or used in connection with the land and means any other estate, interest, or legal or equitable right in the land, improvement, fixture, or appurtenant property, including a term for years, a lien of any kind, and any indebtedness secured by a lien.

(11) "Slum" means an area that is predominated by housing that is detrimental to safety, health, and morals because of one or more of the following factors:

(A) dilapidation;

(B) overcrowding;

(C) faulty arrangement or design; or

(D) lack of ventilation, light, or sanitary facilities.

(12) "Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase bonds, purchase or sale agreement, or commitment or other contract or agreement authorized and approved by the governing body of an issuer in connection with the authorization, issuance, security, exchange, payment, purchase, or redemption of bonds or interest on bonds or both.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 1, eff. Aug. 28, 1989.

Sec. 392.003. LEGISLATIVE FINDINGS. The legislature finds that:

(1) there is a shortage of safe or sanitary housing at rents that persons of low income can afford that forces persons of low income to live in unsanitary or unsafe housing and in overcrowded and congested housing;

(2) these housing conditions are responsible for an increase in and spread of disease and crime, are a menace to the

health, safety, morals, and welfare of the residents of the state, impair economic values, and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

(3) the unsafe and unsanitary housing cannot be cleared and the shortage of safe and sanitary housing for persons of low income cannot be relieved by private enterprise;

(4) the construction of housing projects for persons of low income would not be competitive with private enterprise;

(5) the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing exists and the providing of safe and sanitary housing for persons of low income are public uses and purposes and governmental functions of state concern for which public money may be spent and private property acquired;

(6) it is in the public interest that work on low income housing projects commence as soon as possible to relieve the unemployment emergency; and

(7) this chapter is necessary in the public interest.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.004. OPERATION NOT FOR PROFIT. It is the policy of the state that a housing authority manage and operate its housing projects in an efficient manner to enable it to set rentals at the lowest possible rates consistent with providing decent, safe, and sanitary housing and that a housing authority may not construct or operate a project for profit or as a source of revenue to a municipality or county. For this purpose, an authority shall set rentals at a rate not higher than the rate necessary, together with other available money, revenue, income, and receipts, to produce revenue that is sufficient to:

(1) pay the principal and interest as it becomes due on bonds of the authority;

(2) meet the cost of and provide for maintaining and operating the projects, including insurance;

(3) pay the administrative expenses of the authority;

(4) create, to the extent determined necessary and advisable by the authority, a reserve for the bonds and to maintain

the reserve; and

(5) create, to the extent determined necessary and advisable by the authority, a capital and improvements fund to be used by the authority to accomplish the public purposes of this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 8, eff. Aug. 28, 1989.

Sec. 392.005. TAX EXEMPTION. (a) The property of an authority is public property used for essential public and governmental purposes. The authority and the authority's property are exempt from all taxes and special assessments of a municipality, a county, another political subdivision, or the state.

(b) If a municipality, county, or political subdivision furnishes improvements, services, or facilities for a housing project, an authority may, in lieu of paying taxes or special assessments, agree to reimburse in payments to the municipality, county, or political subdivision an amount not greater than the estimated cost to the municipality, county, or political subdivision for the improvements, services, or facilities.

(c) An exemption under this section for a multifamily residential development which is owned by a housing development corporation or a similar entity created by a housing authority, other than a public facility corporation created by a housing authority under Chapter 303, and which does not have at least 20 percent of its residential units reserved for public housing units, applies only if:

(1) the authority holds a public hearing, at a regular meeting of the authority's governing body, to approve the development; and

(2) at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median income, adjusted for family size.

(c-1) An exemption under this section for a multifamily residential development which is owned by a public facility corporation created by a housing authority under Chapter 303 applies only if:

(1) at least 50 percent of units in the multifamily

residential development are reserved for occupancy by individuals and families earning not more than 80 percent of the area median income, adjusted for family size; and

(2) the development:

(A) has at least 20 percent of its residential units reserved for public housing units;

(B) participates in the Rental Assistance Demonstration program administered by the United States Department of Housing and Urban Development;

(C) receives financial assistance administered under Chapter 1372, Government Code, or receives financial assistance from another type of tax-exempt bond; or

(D) receives financial assistance administered under Subchapter DD, Chapter 2306, Government Code.

(d) For the purposes of Subsections (c) and (c-1), a "public housing unit" is a residential unit for which the owner receives a public housing operating subsidy. It does not include a unit for which payments are made to the landlord under the federal Section 8 Housing Choice Voucher Program.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1493, Sec. 2, eff. Aug. 31, 2002.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1169 (H.B. 2071), Sec. 9, eff. June 18, 2023.

Sec. 392.006. UNIT OF GOVERNMENT; GOVERNMENTAL FUNCTIONS. For all purposes, including the application of the Texas Tort Claims Act (Chapter 101, Civil Practice and Remedies Code), a housing authority is a unit of government and the functions of a housing authority are essential governmental functions and not proprietary functions. Provided, however, a housing authority shall be subject to all landlord obligations and tenant remedies, other than a suit for personal injuries, as set forth in any lease or rental agreement and in Chapters 24, 54, 91, 92, and 301 of the Property Code.

Added by Acts 1989, 71st Leg., ch. 677, Sec. 2, eff. Aug. 28, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1065 (H.B. 2353), Sec. 1, eff. September 1, 2007.

SUBCHAPTER B. CREATION AND AREA OF OPERATION OF A HOUSING AUTHORITY

Sec. 392.011. CREATION OF A MUNICIPAL HOUSING AUTHORITY. (a) A housing authority is created in each municipality in the state.

(b) A municipal housing authority is a public body corporate and politic.

(c) A municipal housing authority may not transact business or exercise its powers until the governing body of the municipality declares by resolution that there is a need for the authority.

(d) The governing body of a municipality may determine on its own motion if there is a need for an authority.

(e) The governing body of a municipality shall determine if there is a need for an authority on the filing of a petition signed by at least 100 qualified voters of the municipality.

(f) The governing body of a municipality shall adopt a resolution declaring that there is a need for a housing authority if it finds that there is:

(1) unsanitary or unsafe inhabited housing in the municipality; or

(2) a shortage of safe or sanitary housing in the municipality available to persons of low income at rentals that they can afford.

(g) In determining whether housing is unsafe or unsanitary, the governing body may consider the degree of overcrowding, the percentage of land coverage, the availability to inhabitants of light, air, space, and access, the size and arrangement of rooms, the sanitary facilities, and the extent to which conditions in the housing subject life or property to the danger of fire or other hazard.

(h) In a proceeding involving the validity or enforcement of, or relating to, a contract of the authority, proof of the adoption of a resolution by the governing body that declares that there is a need for the authority and makes the finding that either or both of the requirements of Subsection (f) exist is conclusive evidence of the establishment of the authority and of its authority to transact business and exercise its powers under this chapter. A copy of the resolution that is certified by the clerk of the municipality is admissible in evidence in the proceeding.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.012. CREATION OF A COUNTY HOUSING AUTHORITY. (a) A housing authority is created in each county in the state.

(b) A county housing authority is a public body corporate and politic.

(c) A county housing authority may not transact business or exercise its powers until the commissioners court of the county declares by resolution that there is a need for the authority.

(d) The commissioners court of a county may determine on its own motion if there is a need for an authority.

(e) The commissioners court of a county shall determine if there is a need for an authority on the filing of a petition signed by at least 100 qualified voters of the county.

(f) The commissioners court of a county shall adopt a resolution declaring that there is a need for a housing authority if it finds that there is:

(1) unsanitary or unsafe inhabited housing in the county; or

(2) a shortage of safe or sanitary housing in the county available to persons of low income at rentals that they can afford.

(g) In determining whether housing is unsafe or unsanitary, the commissioners court may consider the degree of overcrowding, the percentage of land coverage, the availability to inhabitants of light, air, space, and access, the size and arrangement of rooms, the sanitary facilities, and the extent to which conditions in the housing subject life or property to the danger of fire or other hazard.

(h) In a proceeding involving the validity or enforcement of, or relating to, a contract of the authority, proof of the adoption of a resolution by the commissioners court that declares that there is a need for the authority and makes the finding that either or both of the requirements of Subsection (f) exist is conclusive evidence of the establishment of the authority and of its authority to transact business and exercise its powers under this chapter. A copy of the resolution that is certified by the county clerk is admissible in evidence in the proceeding.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.013. CREATION OF A REGIONAL HOUSING AUTHORITY. (a) If the commissioners courts of two or more contiguous counties declare by resolution that there is a need for a housing authority to exercise the powers of a regional housing authority under this chapter in the counties, a regional housing authority is created for the counties.

(b) A regional housing authority is a public body corporate and politic.

(c) A commissioners court shall adopt a resolution declaring that there is a need for a regional housing authority only if the commissioners court finds that:

(1) there is unsanitary or unsafe inhabited housing in the county or a shortage of safe or sanitary housing in the county available to persons of low income at rentals that they can afford; and

(2) a regional housing authority would be a more efficient or economical administrative unit than a county housing authority to carry out the purposes of this chapter for the county.

(d) In determining whether housing is unsafe or unsanitary, the commissioners court shall consider the safety and sanitation of the housing, the availability to inhabitants of light and air space, the degree of overcrowding, the size and arrangement of rooms, and the extent to which conditions in the housing subject life or property to the danger of fire or other hazard.

(e) If a county housing authority has outstanding obligations, the commissioners court may not adopt a resolution declaring a need for a regional housing authority unless:

(1) each obligee of the county housing authority and each party to a contract, bond, note, or other obligation of the authority agrees to the substitution of a regional housing authority on the contract, bond, note, or other obligation; and

(2) the commissioners of the county housing authority adopt a resolution consenting to the transfer of the rights, contracts, obligations, and real and personal property of the county housing authority to a regional housing authority.

(f) Before a resolution authorized by this section may be adopted, the commissioners court must hold a public hearing. Before the 10th day before the date of the hearing, the county clerk shall

publish notice of the time, place, and purpose of the hearing in a newspaper published in the county or, if no newspaper is published in the county, in a newspaper published in the state with general circulation in the county. At the hearing, the commissioners court shall grant an opportunity to be heard to residents of the county and other interested persons.

(g) In a proceeding involving the validity or enforcement of, or relating to, a contract of a regional housing authority, proof of an adoption of a resolution by the commissioners court of each county in the regional housing authority that declares that there is a need for the authority and makes the finding that the requirements of Subsection (c) exist is conclusive evidence that the regional housing authority is created and established as a public body corporate and politic that is authorized to transact business and exercise its powers under this chapter. A copy of the resolution of a commissioners court that is certified by the county clerk is admissible in evidence in the proceeding.

(h) When a regional housing authority is created:

(1) the rights, contracts, agreements, obligations, and property of the county housing authority become those of the regional housing authority;

(2) the county housing authority shall execute a deed of the property to the regional housing authority, which shall file the deed with the county clerk of the county where the real property is located; and

(3) a person with rights or remedies against the county housing authority may assert, enforce, and prosecute those rights or remedies against the regional housing authority.

(i) The vesting of the real property in the regional housing authority is not contingent on compliance with the provisions of Subsection (h)(2).

(j) At the time a regional housing authority is created, the county housing authority in a county for which the regional housing authority is created ceases to exist except for the purpose of winding up its affairs and executing the deed of its real property to the regional housing authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.0131. MERGER OF CERTAIN COUNTY HOUSING AUTHORITIES INTO MUNICIPAL HOUSING AUTHORITIES. (a) This section applies only to the merger of housing authorities operating in:

(1) a county that is located on the international border and contains a municipality with a population of 500,000 or more; and

(2) a municipality that has a population of more than 600,000 and less than 700,000 and is located in a county described by Subdivision (1).

(b) If the commissioners court of a county described by Subsection (a)(1) and the governing body of a municipality described by Subsection (a)(2) declare by resolutions that there is a need for the county housing authority to consolidate its powers with the municipal housing authority under this chapter, the county housing authority is merged into the housing authority for the municipality.

(c) The commissioners court and the governing body of the municipality may adopt a resolution declaring that there is a need for a merger as described by Subsection (b) only if the commissioners court and the governing body of the municipality each find that a merged housing authority would be more efficient or economical than separate county and municipal housing authorities in carrying out the purposes of this chapter.

(d) In a proceeding involving the validity or enforcement of, or relating to, a contract of a merged housing authority, proof of a resolution adopted under Subsection (b) by the commissioners court of the county and the governing body of the municipality is conclusive evidence that the merged housing authority is authorized to transact business and exercise its powers under this chapter.

(e) When housing authorities are merged in the manner provided by this section:

(1) the rights, contracts, agreements, obligations, and property of the county housing authority become those of the municipal housing authority;

(2) the county housing authority shall execute deeds of the property to the municipal housing authority, which shall file the deeds with the county clerk of the county where the real property is located; and

(3) a person with rights or remedies against the county housing authority may assert, enforce, and prosecute those rights or remedies against the municipal housing authority.

(f) The vesting of the real property in the municipal housing

authority is not contingent on compliance with Subsection (e)(2).

(g) At the time housing authorities are merged in the manner provided by this section, the county housing authority ceases to exist, except for the purpose of winding up the affairs of the authority and executing the deeds of real property to the municipal housing authority.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1137 (H.B. 2975), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 192, eff. September 1, 2023.

Sec. 392.014. AREA OF OPERATION OF A MUNICIPAL HOUSING AUTHORITY. The area of operation of a municipal housing authority is the municipality for which the authority is created and the area that is within five miles of the territorial boundaries of the municipality and is not within the territorial boundaries of another municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.015. AREA OF OPERATION OF A COUNTY HOUSING AUTHORITY. The area of operation of a county housing authority is the county in which the authority is created excluding the parts of the county that are within the territorial boundaries of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.016. AREA OF OPERATION OF A REGIONAL HOUSING AUTHORITY. The area of operation of a regional housing authority is the counties for which the authority is created excluding the parts of the counties that are within the territorial boundaries of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.0161. AREA OF OPERATION OF A MERGED HOUSING AUTHORITY. Notwithstanding Section 392.017(b), the area of operation of a merged housing authority is the county in which the authority is created, excluding any part of the county that is within the territorial boundaries of a municipality other than the municipality operating the municipal housing authority into which the county housing authority was merged.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1137 (H.B. 2975), Sec. 1, eff. June 14, 2013.

Sec. 392.0162. AREA OF OPERATION OF CERTAIN MUNICIPAL HOUSING AUTHORITIES. (a) This section applies only to the operation of a municipal housing authority operating in a municipality that:

(1) has a population of more than 600,000; and

(2) is located in a county that has a population of 800,000 or more, the territorial boundary of which is contiguous to the international border.

(b) Notwithstanding Sections 392.014 and 392.017(b), a municipal housing authority may operate in:

(1) the municipality for which the authority is created; and

(2) the county described by Subsection (a)(2), other than the parts of the county:

(A) that are within the territorial boundaries of a municipality other than the municipality for which the authority is created; and

(B) in which another housing authority operates under this chapter.

(c) A municipal housing authority may begin operations in the area authorized under Subsection (b)(2) only if:

(1) the authority has completed and presented to the commissioners court of the county described by Subsection (a)(2) a needs assessment relating to the operation of the authority in the county; and

(2) after a public hearing considering the needs assessment provided under Subdivision (1), the commissioners court votes to approve the operation of the authority in the applicable area.

Added by Acts 2019, 86th Leg., R.S., Ch. 1115 (H.B. 2287), Sec. 1,

eff. September 1, 2019.

Sec. 392.017. OPERATION OF HOUSING AUTHORITY IN OTHER POLITICAL SUBDIVISIONS. (a) A county housing authority may not undertake a housing project in a municipality unless a resolution is adopted by the governing body of the municipality and by the housing authority authorized to exercise its powers exclusively in the municipality, if any:

(1) declaring a need for the county housing authority to exercise its powers in the municipality; and

(2) authorizing a cooperation agreement under Section 392.059.

(b) A municipal housing authority may not undertake a housing project outside the boundaries of the municipality in which it is authorized to exercise its powers unless a resolution is adopted by the governing body of the political subdivision in which the housing project is to be located and by the housing authority authorized to exercise its powers exclusively in the political subdivision, if any:

(1) declaring a need for the municipal housing authority to exercise its powers in the political subdivision; and

(2) authorizing a cooperation agreement under Section 392.059.

(c) A regional housing authority may not undertake a housing project in an unincorporated area of a county unless a resolution is adopted by the commissioners court of the county and by the housing authority authorized to exercise its powers in the county, if any:

(1) declaring a need for the regional housing authority to exercise its powers in the county; and

(2) authorizing a cooperation agreement under Section 392.059.

(d) A regional housing authority may not undertake a housing project in a municipality unless a resolution is adopted by the governing body of the municipality and by the housing authority authorized to exercise its powers exclusively in the municipality, if any:

(1) declaring a need for the regional housing authority to exercise its powers in the municipality; and

(2) authorizing a cooperation agreement under Section 392.059.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 8, eff. Aug. 28, 1989.

Sec. 392.018. EXPANSION OF THE AREA OF OPERATION OF A REGIONAL HOUSING AUTHORITY. (a) If the commissioners of a regional housing authority, the commissioners court of each county in the authority, and the commissioners court of a county outside the authority each adopt a resolution declaring that there is a need to include the county that is outside the authority in the area of operation of the authority, the area of operation of the authority is increased to include that part of the county not within the territorial boundaries of a municipality.

(b) The commissioners of the authority, the commissioners court of each county in the authority, and the commissioners court of the county outside the authority shall adopt the resolution required for expansion under Subsection (a) if:

(1) the commissioners court of the county outside the authority finds that there is unsanitary or unsafe inhabited housing in the county or a shortage of safe or sanitary housing in the county available to persons of low income at rentals they can afford; and

(2) the commissioners of the authority, the commissioners court of each county in the authority, and the commissioners court of the county outside the authority find that the regional housing authority would be a more efficient or economical administrative unit to carry out the purposes of this chapter if the county outside the authority is included in the area of operation of the authority.

(c) In determining whether housing is unsafe or unsanitary, the commissioners court shall consider the safety and sanitation of the housing, the availability to inhabitants of light and air space, the degree of overcrowding, the size and arrangement of rooms, and the extent to which conditions in the housing subject life or property to the danger of fire or other hazard.

(d) If the housing authority of the county outside the regional housing authority has outstanding obligations, the resolutions required for expansion under Subsection (a) may not be adopted unless:

(1) each obligee of the county housing authority and each party to a contract, bond, note, or other obligation of the authority agrees to the substitution of the regional housing authority on the

contract, bond, note, or other obligation; and

(2) the commissioners of the county housing authority and of the regional housing authority adopt resolutions consenting to the transfer of the rights, contracts, obligations, and real and personal property of the county housing authority to the regional housing authority.

(e) If an obligee whose agreement is required by Subsection (d)(1) is unknown, the county housing authority shall publish a notice in a newspaper of general national circulation that states:

(1) the name of the county housing authority;

(2) the name of the regional housing authority;

(3) that the county and regional housing authorities propose that the regional housing authority be substituted for the county housing authority on the contracts, bonds, notes, and other obligations of the county housing authority and that the county housing authority be terminated; and

(4) an address where objections to the substitution may be sent.

(f) The failure to receive an objection to the substitution of the regional housing authority on the obligations of the county housing authority on or before the 30th day after the date of the publication of the notice is equivalent to the unknown obligee's consent to the substitution.

(g) Before a resolution may be adopted under this section by the commissioners court, the court must hold a public hearing. Before the 10th day before the date of the hearing, the county clerk shall publish notice of the time, place, and purpose of the hearing in a newspaper published in the county or, if no newspaper is published in the county, in a newspaper published in the state with general circulation in the county. At the hearing, the commissioners court shall grant an opportunity to be heard to residents of the county and other interested persons.

(h) When all resolutions required by Subsections (a) and (d)(2) are adopted:

(1) the county housing authority of the county added to the area of operation of the regional housing authority ceases to exist except to wind up its affairs and to execute the deed to the regional housing authority as required by Subdivision (3);

(2) the rights, contracts, agreements, obligations, and property of the county housing authority become those of the regional

housing authority;

(3) the county housing authority shall execute a deed of the property to the regional housing authority, which shall file the deed with the county clerk of the county where the property is located; and

(4) a person with rights and remedies against the county housing authority may assert, enforce, and prosecute those rights and remedies against the regional housing authority.

(i) The vesting of the real property is not contingent on compliance with Subsection (h)(3).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.019. EFFECT OF COOPERATION AGREEMENT ON AREA OF OPERATION OF HOUSING AUTHORITY. Regardless of Sections 392.015, 392.016, and 392.0161, the area of operation of a municipal housing authority, a county housing authority, a regional housing authority, or a merged housing authority may extend to and include another municipality, county, or other political subdivision of this state, under the terms of a cooperation agreement made under Section 392.059.

Added by Acts 1989, 71st Leg., ch. 677, Sec. 8, eff. Aug. 28, 1989.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1137 (H.B. 2975), Sec. 2, eff. June 14, 2013.

SUBCHAPTER C. COMMISSIONERS AND EMPLOYEES

Sec. 392.031. APPOINTMENT OF COMMISSIONERS OF A MUNICIPAL HOUSING AUTHORITY. (a) Each municipal housing authority shall be governed by five, seven, nine, or 11 commissioners. The presiding officer of the governing body of a municipality shall appoint five, seven, nine, or 11 persons to serve as commissioners of the authority. An appointed commissioner of the authority may not be an officer or employee of the municipality. Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.

(b) A commissioner may not be an officer or employee of the municipality. A commissioner may be:

(1) a tenant of a public project over which the housing authority has jurisdiction; or

(2) a recipient of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program.

(c) A certificate of the appointment of a commissioner shall be filed with the clerk of the municipality. The certificate is conclusive evidence of the proper appointment of the commissioner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 888, Sec. 1, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1009, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 436, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 900 (S.B. 1716), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 448 (S.B. 593), Sec. 1, eff. September 1, 2017.

Sec. 392.032. APPOINTMENT OF COMMISSIONERS OF A COUNTY HOUSING AUTHORITY. (a) Each county housing authority shall be governed by five commissioners. The commissioners court shall appoint five persons to serve as commissioners of the authority. An appointed commissioner of the authority may not be an officer or employee of the county. Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.

(b) A commissioner of the authority may not be an officer or employee of the county. A commissioner may be:

(1) a tenant of a public project over which the housing authority has jurisdiction; or

(2) a recipient of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program.

(c) A certificate of the appointment of a commissioner shall be filed with the county clerk. The certificate is conclusive evidence of the proper appointment of the commissioner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 1009, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 315 (H.B. 2529), Sec. 1, eff. September 1, 2019.

Sec. 392.033. APPOINTMENT OF COMMISSIONERS OF A REGIONAL HOUSING AUTHORITY. (a) The commissioners court of each county in a regional housing authority shall appoint a person to serve as a commissioner of the authority. Subsequently, the commissioners court of each county shall appoint successors to the commissioner of the authority appointed by that commissioners court. An appointed commissioner of the authority may not be an officer or employee of the county. A commissioner may be:

(1) a tenant of a public project over which the housing authority has jurisdiction; or

(2) a recipient of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program.

(b) If the area of operation of an authority is increased to include another county, the commissioners court of that county shall appoint a person to serve as a commissioner of the authority and, subsequently, the successors to that commissioner.

(c) If there are only two counties in the housing authority, the commissioners of the authority appointed by the commissioners courts shall appoint an additional commissioner to serve as commissioner of the authority. Subsequently, the commissioners of the authority appointed by the commissioners courts shall appoint a person to succeed the additional commissioner if the successor's term of office begins during their term of office. If the area of operation of the authority is increased to more than two counties, a successor to the additional commissioner is not appointed.

(d) If the housing authority contains only one county, the commissioners court of that county shall appoint three persons instead of one person to serve as commissioners of the authority. Subsequently, the commissioners court of the county shall appoint successors to the commissioners of the authority appointed by that commissioners court.

(e) A certificate of the appointment of a commissioner appointed by a commissioners court shall be filed with the county clerk. The certificate is conclusive evidence of the proper appointment of the commissioner.

(f) A certificate of the appointment of an additional commissioner by the commissioners of an authority composed of only two counties shall be filed with the records of the authority. The certificate is conclusive evidence of the proper appointment of the commissioner.

(g) Appointments made under this section must comply with the requirements of Section 392.0331, if applicable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 1009, Sec. 3, eff. Sept. 1, 1993. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 315 (H.B. 2529), Sec. 2, eff. September 1, 2019.

Sec. 392.0331. APPOINTMENT OF TENANT REPRESENTATIVE OR CERTAIN OTHER RECIPIENTS OF HOUSING ASSISTANCE AS COMMISSIONER OF MUNICIPAL, COUNTY, OR REGIONAL HOUSING AUTHORITY. (a) This section applies only to:

(1) a municipality; or

(2) a county that has a county housing authority or is a member of regional housing authority and the total number of units in the authority is more than 750.

(b) Except as provided by Subsection (b-1), in appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of five commissioners shall appoint at least one commissioner to the authority who is a tenant of a public housing project over which the authority has jurisdiction or who is a recipient of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program. In appointing commissioners under Section 392.031, a municipality with a municipal housing authority composed of seven or more commissioners shall appoint at least two commissioners to the authority who are tenants of a public housing project over which the authority has jurisdiction or who are recipients of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program.

(b-1) The presiding officer of the governing body of a municipality that has a municipal housing authority in which the total number of units is 150 or fewer is not required to appoint a

tenant or a recipient of housing assistance to the position of commissioner as otherwise required by Subsection (b) if the presiding officer has provided timely notice of a vacancy in the position to all eligible tenants or recipients of housing assistance and is unable to fill the position with an eligible tenant or recipient of housing assistance before the 60th day after the date the position becomes vacant.

(b-2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 315 (H.B. 2529), Sec. 5, eff. September 1, 2019.

(b-3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 315 (H.B. 2529), Sec. 5, eff. September 1, 2019.

(c) In appointing commissioners under Section 392.032, a county shall appoint at least one commissioner to a county housing authority who is a tenant of a public housing project over which the county housing authority has jurisdiction or who is a recipient of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program.

(d) In appointing commissioners under Section 392.033, a county or counties comprising a regional housing authority shall appoint at least one commissioner to a regional housing authority who is a tenant of a public housing project over which the regional housing authority has jurisdiction or who is a recipient of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program. If more than one county comprises a regional housing authority, the counties shall agree to a method for appointing to the regional housing authority the member who is a tenant or a recipient of housing assistance.

(e) A commissioner appointed under this section may not be an officer or employee of the municipality or county that appoints the commissioner.

(f) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 262, Sec. 1, eff. June 14, 2013.

(f-1) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 262, Sec. 1, eff. June 14, 2013.

(g) A commissioner appointed under this section may not participate:

(1) in any vote or discussion concerning the termination of:

(A) the commissioner's occupancy rights in public

housing;

(B) the commissioner's rights to housing assistance administered through a housing choice voucher program or a project-based rental assistance program; or

(C) the rights of any person related in the first degree by consanguinity to the commissioner with respect to the person's occupancy rights in public housing or right to receive housing assistance administered through a housing choice voucher program or a project-based rental assistance program; or

(2) in a grievance or administrative hearing in which the commissioner or a person related in the first degree by consanguinity to the commissioner is a party.

(h) If a commissioner appointed under this section as a tenant of a public housing project ceases to reside in a housing unit operated by the public housing authority during the commissioner's term, a majority of the other commissioners shall decide whether to request that a new commissioner be appointed. A majority of the commissioners may decide to allow the commissioner to serve the remaining portion of the commissioner's term.

(h-1) If a commissioner appointed under this section as a recipient of housing assistance administered through the authority's housing choice voucher program or project-based rental assistance program ceases to receive that assistance, a majority of the other commissioners shall decide whether to request that a new commissioner be appointed. A majority of the commissioners may decide to allow the commissioner to serve the remaining portion of the commissioner's term.

(i) If a commissioner appointed under this section fails to attend three consecutive regularly called meetings of the housing authority commissioners during the commissioner's term, a majority of the commissioners shall decide whether to declare the position vacant and request that a new commissioner be appointed. A majority of the commissioners may decide to allow the commissioner to serve the remaining portion of the commissioner's term.

Added by Acts 1993, 73rd Leg., ch. 1009, Sec. 4, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 834, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 175, Sec. 1, eff. May 21, 1999; Acts 1999, 76th Leg., ch. 436, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 291 (H.B. 1818), Sec. 10, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 262 (H.B. 654), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 900 (S.B. 1716), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 448 (S.B. 593), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 315 (H.B. 2529), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 315 (H.B. 2529), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 315 (H.B. 2529), Sec. 5, eff. September 1, 2019.

Sec. 392.034. TERMS OF OFFICE OF COMMISSIONERS. (a) Two of the original commissioners of a county housing authority shall be designated to serve one-year terms from the date of their appointment, and three shall be designated to serve two-year terms. Subsequent commissioners are appointed for two-year terms.

(b)(1) The original commissioners of a municipal housing authority shall serve terms as follows:

(A) for an authority with five commissioners, two shall be designated to serve one-year terms and three shall be designated to serve two-year terms;

(B) for an authority with seven commissioners, three shall be designated to serve one-year terms and four shall be designated to serve two-year terms;

(C) for an authority with nine commissioners, four shall be designated to serve one-year terms and five shall be designated to serve two-year terms; and

(D) for an authority with 11 commissioners, five shall be designated to serve one-year terms and six shall be designated to serve two-year terms.

(2) Subsequent municipal housing commissioners are appointed for two-year terms.

(c) Commissioners of a regional housing authority are appointed for two-year terms.

(d) Vacancies shall be filled for the unexpired term.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 436, Sec. 3, eff. Sept. 1, 1999.

Sec. 392.035. COMPENSATION. A commissioner of a housing authority may not receive compensation for service as a commissioner. A commissioner is entitled to receive reimbursement for the necessary expense, including traveling expenses, incurred in the discharge of duties as a commissioner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.036. VOTE REQUIRED FOR ACTION. Unless the authority's bylaws require a larger number, when a quorum is present an authority may take action on a vote of a majority of the commissioners present.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.037. CHAIRMAN AND VICE-CHAIRMAN OF A MUNICIPAL OR COUNTY HOUSING AUTHORITY. (a) The mayor shall designate one of the initial commissioners of a municipal housing authority as chairman. The commissioners court shall designate one of the initial commissioners of a county housing authority as chairman. Subsequently, when the office of chairman becomes vacant the authority shall select one of the commissioners as chairman.

(b) A municipal or county housing authority shall select one of the commissioners as vice-chairman.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.038. OTHER OFFICERS AND EMPLOYEES OF A MUNICIPAL OR COUNTY HOUSING AUTHORITY. A municipal or county housing authority may employ a secretary, who shall serve as executive director, and may employ technical experts and other officers, agents, and employees, permanent or temporary, the authority considers necessary. The authority shall determine the qualifications, duties, and compensation of the persons employed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.039. OFFICERS AND EMPLOYEES OF A REGIONAL HOUSING AUTHORITY. (a) The commissioners of a regional housing authority shall elect a chairman from among the commissioners.

(b) The commissioners of a regional housing authority may select or employ other officers and employees the commissioners consider necessary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.040. LEGAL SERVICES. (a) A municipal housing authority may request needed legal services from the municipal attorney or it may employ its own counsel and legal staff.

(b) A county housing authority may request needed legal services from the county attorney or it may employ its own counsel and legal staff.

(c) A regional housing authority may request needed legal services from the county attorney of a county in the authority or it may employ its own counsel and legal staff.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(v), eff. Aug. 28, 1989.

Sec. 392.041. REMOVAL OF A COMMISSIONER. (a) The mayor may remove a commissioner of a municipal housing authority for inefficiency, neglect of duty, or misconduct in office.

(b) The commissioners court may remove a commissioner of a county housing authority for inefficiency, neglect of duty, or misconduct in office.

(c) For inefficiency, neglect of duty, or misconduct in office, the commissioners court may remove a commissioner of a regional housing authority who was appointed by the commissioners court.

(d) For inefficiency, neglect of duty, or misconduct in office, the commissioners of a regional housing authority consisting of only two counties may remove the additional commissioner appointed by the commissioners.

(e) Before a commissioner may be removed, the commissioner must

be given:

(1) a copy of the charges before the 10th day before the date of a hearing on the charges; and

(2) an opportunity to be heard in person or by counsel at the hearing.

(f) If a commissioner of a municipal housing authority is removed, a record of the proceedings with the charges and findings shall be filed in the office of the clerk of the municipality.

(g) If a commissioner of a county housing authority is removed, a record of the proceedings with the charges and findings shall be filed in the office of the county clerk.

(h) If a commissioner of a regional housing authority is removed, a record of the proceedings with the charges and findings shall be filed in the office of the county clerk if the commissioner was appointed by a commissioners court or shall be filed with the records of the authority if the commissioner was appointed by the other commissioners of the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.042. INTERESTED COMMISSIONERS. (a) In this section, "housing project" includes, in addition to the works or undertakings described by Subdivision (6) of Section 392.002:

(1) a work or undertaking implemented for a reason described by Subdivision (6) of Section 392.002 that is financed in any way by public funds or tax-exempt revenue bonds; or

(2) a building over which the housing authority has jurisdiction and of which a part is reserved for occupancy by persons who receive income or rental supplements from a governmental entity.

(b) Except as provided by Subsection (c), a commissioner of an authority may not have dealings with a housing project for pecuniary gain and may not own, acquire, or control a direct or indirect interest in a:

(1) housing project;

(2) property included or planned to be included in a housing project;

(3) contract or proposed contract for the sale of land to be used for a housing project;

(4) contract or proposed contract for the construction of a

housing project; or

(5) contract or proposed contract for the sale of materials or services to be furnished or used in connection with a housing project.

(c) A commissioner may:

(1) manage a housing project;

(2) own, acquire, or control a management company that renders management services to a housing project;

(3) continue to own or control an interest in a housing project held by the commissioner before the commissioner's term of office began; or

(4) own, acquire, or control an interest in, or have dealings with, a housing project over which the commissioner's housing authority does not have jurisdiction.

(d) If a commissioner manages, owns, acquires, or controls a direct or indirect interest in property included or planned to be included in a housing project or has any other dealings for pecuniary gain with a housing project, the commissioner shall immediately disclose the interest or dealings to the authority in writing. The disclosure shall be entered in the minutes of the authority. The failure to disclose the interest constitutes misconduct of office.

(e) A commissioner who knowingly or intentionally violates Subsection (b) or (d) commits an offense. An offense under this subsection is a felony of the third degree.

(f) A person finally convicted under Subsection (e) is ineligible for future employment with the state, a political subdivision of the state, or a public corporation formed under the authority of the state or a political subdivision of the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.043. INTERESTED EMPLOYEES. (a) Except as provided by Subsection (b), (c), or (f), an employee of an authority may not have dealings with a housing project for pecuniary gain and may not own, acquire, or control a direct or indirect interest in a:

(1) housing project;

(2) property included or planned to be included in a housing project;

(3) contract or proposed contract for the sale of land to

be used for a housing project;

(4) contract or proposed contract for the construction of a housing project; or

(5) contract or proposed contract for the sale of materials or services to be furnished or used in connection with a housing project.

(b) An employee may not have any dealings with a housing project for pecuniary gain except in the performance of duties as an employee of the housing authority.

(c) Except as otherwise permitted by this chapter or another law, an employee of an authority may not be employed by or otherwise contract to provide services to another authority unless the first authority gives its written consent to the employment or contract. An employee of an authority who is employed by or who contracts to provide services to another authority under this subsection does not violate Subsection (a) or (b).

(d) An employee who knowingly or intentionally violates Subsection (a) or (c) commits an offense. An offense under this subsection is a felony of the third degree.

(e) A person finally convicted under Subsection (d) is ineligible for future employment with the state, a political subdivision of the state, or a public corporation formed under the authority of the state or a political subdivision of the state.

(f) An employee of an authority may be a party to or otherwise participate in a contract or agreement for assistance under a housing program, including a contract or agreement for public housing, Section 8 housing assistance, low-interest home loans, lease-purchase assistance, or down payment assistance, to the same extent as a member of the public if the employee qualifies for assistance under the program.

(g) In this section, "Section 8 housing assistance" means housing assistance provided under Section 8, United States Housing Act of 1937 (42 U.S.C. Section 1437f).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 64, Sec. 1, eff. Nov. 1, 1987; Acts 1999, 76th Leg., ch. 231, Sec. 1, eff. May 24, 1999.

SUBCHAPTER D. POWERS AND DUTIES OF A HOUSING AUTHORITY

Sec. 392.051. GENERAL POWERS. (a) An authority exercises public and essential governmental functions and has the powers necessary or convenient to accomplish the purposes and provisions of this chapter.

(b) The powers of an authority are vested in the commissioners of the authority.

(c) An authority may delegate a power or duty to an agent or employee as it considers proper.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.052. OPERATION, CONSTRUCTION, AND LEASING OF HOUSING PROJECTS. (a) An authority may prepare, carry out, acquire, lease, and operate a housing project in its area of operation.

(b) An authority may provide for the construction, improvement, alteration, or repair of a housing project, or part of a housing project, in its area of operation.

(c) An authority may arrange or contract for services, privileges, works, or facilities for, or in connection with, a housing project or the occupants of a housing project to be furnished by a person or public or private agency.

(d) Without regard to another provision in this chapter or other law, an authority may include stipulations in a contract made in connection with a housing project that require the contractor and subcontractors to comply with the requirements regarding minimum wages and maximum hours of labor and with any conditions the federal government has attached to its financial aid to the project.

(e) An authority may lease or rent housing, land, buildings, structures, or facilities included in a housing project at rents established or revised, subject to the limitations of this chapter, by the authority.

(f) An authority may take action necessary or desirable in the undertaking, construction, maintenance, or operation of a housing project, including action to:

(1) borrow money or accept grants or other financial assistance from the federal government for, or in aid of, a housing project in the authority's area of operation;

(2) take over, lease, or manage a housing project or undertaking constructed or owned by the federal government;

(3) comply with conditions and enter into mortgages, trust indentures, leases, or agreements that are necessary, convenient, or desirable to accomplish the public purposes of this chapter;

(4) form a partnership or another legal entity to raise capital for a housing project to be owned by the partnership or other legal entity; and

(5) acquire, construct, lease, or manage commercial space incidental to a mixed-finance housing project, as defined by 42 U.S.C. Section 1437z-7, if:

(A) the commercial space occupies less than 20 percent of the square footage of the housing project and can reasonably be expected to be used by the residents of the housing project; and

(B) the housing project is designed in a manner that minimizes the noise, safety, and traffic impact of the commercial space on the residential space.

(g) A housing project is subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the site of the housing project. In planning a housing project, including site location, an authority shall consider the relationship of the project to a larger plan or long-range program for the development of the area within the housing authority.

(h) Competitive bidding laws, including Chapter 271, do not apply to an authority activity to develop a mixed-finance housing project as defined by 42 U.S.C. Section 1437z-7, if the housing project otherwise complies with the procurement requirements imposed by federal law and regulations.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 3, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1346, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 2001.

Sec. 392.0525. LETTER OF CREDIT ACCEPTED IN LIEU OF PAYMENT AND PERFORMANCE BONDS. In the award of a contract for the construction, reconstruction, improvement, alteration, or repair of any public building or for the completion of any public work, an authority must comply with applicable state laws regarding the execution of a contractor's performance bond and payment bond. However, if authorized by a federal program or federal regulation, an authority

may accept, in lieu of a performance bond and payment bond, an unconditional and irrevocable letter of credit in the amount of the contract price and payable to the authority.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 80(a), eff. Aug. 28, 1989.

Sec. 392.053. PUBLIC MEETING ON PROPOSED HOUSING PROJECT. (a) In this section, "housing project" includes, in addition to the works or undertakings described by Subdivision (6) of Section 392.002:

(1) a work or undertaking implemented for a reason described by Subdivision (6) of Section 392.002 that is financed in any way by public funds or tax-exempt revenue bonds; or

(2) a building over which the housing authority has jurisdiction and of which a part is reserved for occupancy by persons who receive income or rental supplements from a governmental entity.

(b) Unless the commissioners of an authority hold a public meeting about a proposed housing project before the site for the project is approved, the authority may not authorize the construction of the housing project or obtain a permit, certificate, or other authorization required by a municipality or other political subdivision for any part of the construction of the housing project. A majority of the commissioners must attend the public meeting.

(c) The commissioners shall hold the meeting at the closest available facility to the site of the proposed project.

(d) The commissioners shall allow a person who owns or leases real property within one-fourth mile of the proposed site to comment on the proposed project.

(e) If a housing authority has not complied with the requirements of this section and Section 392.054, a municipality or other political subdivision may not issue a permit, certificate, or other authorization for any part of the construction of, or for the occupancy of, a housing project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.054. NOTICE OF PUBLIC MEETING. (a) In addition to any other notice required by law, the commissioners of an authority shall post notice of the date, hour, place, and subject of a meeting required by Section 392.053. The notice must be posted before the

30th day before the date of the meeting on a bulletin board at a place convenient to the public in:

(1) the county courthouse of the county in which the proposed site is located; and

(2) the city hall of the municipality in which the proposed site is located, if applicable.

(b) Before the 30th day before the date of the meeting, the commissioners shall publish a copy of the notice required by Subsection (a) in a newspaper with, or in newspapers that collectively have, general circulation in the county in which the proposed project is located.

(c) Before the 30th day before the date of the meeting, the commissioners shall mail a notice containing the same information as the notice required by Subsection (a) to each person who owns real property within one-fourth mile of the site of the proposed project. The commissioners may rely on the most recent county tax roll for the names and addresses of the owners.

(d) At a location at the proposed site that is visible from a regularly traveled thoroughfare, before the 30th day before the date of the meeting the commissioners shall post a sign not less than four feet by four feet with a caption stating "Site of Proposed Housing Project" in eight-inch letters. The sign must state the nature and location of the proposed project, the names and addresses of the governmental entities involved in the development of the project, and the date, time, and place of the meeting.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.055. RENTALS AND TENANT SELECTION. (a) An authority may rent or lease housing only to persons of low income and only at rentals that persons of low income can afford, in accordance with policy guidelines to be adopted annually by the authority on or before the beginning of each fiscal year of the authority.

(b) An authority may not rent or lease housing to a tenant that consists of a greater number of rooms than the number the authority considers necessary to provide safe and sanitary housing to the proposed occupants without overcrowding.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 8, eff. Aug. 28, 1989.

Sec. 392.0555. PET OWNERSHIP POLICY. A housing authority policy permitting tenant ownership of a pet must comply with all applicable county or municipal restrictions on dangerous dogs imposed under Section 822.047, Health and Safety Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 4 (S.B. 349), Sec. 1, eff. May 10, 2023.

Sec. 392.056. ACQUISITION, USE, AND DISPOSITION OF REAL AND PERSONAL PROPERTY. (a) An authority may own, hold, and improve real or personal property.

(b) An authority may purchase, lease, or obtain an option on an interest in real or personal property. An authority may acquire an interest in real or personal property by gift, grant, bequest, devise, or any other manner.

(c) An authority may sell, lease, exchange, transfer, assign, pledge, or grant an option on the authority's real property or personal property and may insure or provide for the insurance of the authority's real property, personal property, or operations against risks or hazards.

(d) Regardless of whether the debt is incurred by the authority, an authority may procure insurance or guarantees from the federal government of the payment of a debt, or part of a debt, secured by a mortgage on property included in a housing project.

(e) Another law with respect to the acquisition, operation, or disposition of property by another public body does not apply to a housing authority unless specifically provided by the legislature.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 4, eff. Aug. 28, 1989.

Sec. 392.0565. PURCHASES MADE UNDER FEDERAL PROCUREMENT PROGRAM. (a) An authority may purchase equipment and supplies and award contracts for services or for repairs, maintenance, and replacements in compliance with the consolidated supply program or any other procurement program or procedure established by the federal government. The authority is exempt from applicable state laws to

the extent necessary to allow the authority's participation in the program or procedure.

(b) On the request of a Texas vendor, an authority shall provide the vendor with the current cost published by the consolidated supply program or any other product program established by the federal government that the authority might use to purchase any of the supplies or equipment it uses. An authority shall permit the vendor to bid on those items it believes that it can provide at the same or lower delivered cost if the vendor can demonstrate that the items are of the same quality and specifications as those offered through the applicable federal program.

(c) In this section, "consolidated supply program" means a program established by the U.S. Department of Housing and Urban Development to assist housing authorities to operate public housing projects efficiently and economically and to assure the availability of products that have the durability required for the safety, security, and economical maintenance of low-income housing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 81(a), eff. Aug. 28, 1989.

Sec. 392.057. INVESTMENT OF FUNDS. An authority may invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement in property or securities in which a savings bank may legally invest funds subject to its control.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.058. RESEARCH AND INVESTIGATION. (a) An authority may research, study, and experiment on the subject of housing in its area of operation.

(b) An authority may investigate housing conditions and methods of improving housing conditions in its area of operation.

(c) An authority may determine where there is a slum area or a shortage of decent, safe, and sanitary housing available to persons of low income in its area of operation.

(d) An authority may make studies and recommendations relating to the problems of clearing, replanning, and reconstructing slum areas and of providing housing for persons of low income in its area of operation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.059. COOPERATION WITH OTHER GOVERNMENTAL ENTITIES OR HOUSING AUTHORITIES. (a) An authority may cooperate with a municipality, a county, another political subdivision of this state, or the state in action taken in connection with the problems of clearing, replanning, and reconstructing slum areas and of providing housing for persons of low income in the area of operation of the authority or within the boundaries of the cooperating political subdivision.

(b) Housing authorities may cooperate in the exercise of a power conferred by this chapter to finance, plan, undertake, construct, or operate a housing project in the area of operation of one or more of the cooperating authorities.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 5, eff. Aug. 28, 1989.

Sec. 392.060. HEARINGS. Acting through one or more commissioners or other persons designated by the authority, an authority may:

(1) conduct examinations and investigations and hear testimony and accept evidence under oath at a public or private hearing on a matter material for the authority's information;

(2) administer oaths, issue a subpoena requiring the attendance of a witness or the production of books and papers, and issue a commission for the examination of a witness who is outside the state, unable to attend the hearing, or excused from attendance; and

(3) make its findings and recommendations with regard to a building or property where conditions exist that are dangerous to the public health, morals, safety, or welfare available to appropriate agencies, including agencies charged with the duty of abating, or requiring the correction of, nuisances or similar conditions or of demolishing unsafe or unsanitary structures within the authority's area of operation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.061. EMINENT DOMAIN. (a) An authority may acquire an interest in real property, including a fee simple interest, by the exercise of the power of eminent domain after it adopts a resolution describing the real property and declaring the acquisition of the property necessary for the purposes of the authority under this chapter.

(b) An authority may exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, or by other applicable statutory provisions for the exercise of the power of eminent domain.

(c) An authority may exercise the power of eminent domain to acquire property already devoted to public use, but the authority may not acquire real property belonging to a municipality, a county, another political subdivision, or the state without the consent of the governmental entity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.062. REPORTS. (a) At least once a year, each housing authority shall file a report of its activities for the preceding year and make recommendations for additional legislation or other action it considers necessary to carry out the purposes of this chapter.

(b) A municipal housing authority shall file the report with the clerk of the municipality. A county housing authority shall file the report with the county clerk. A regional housing authority shall file the report with the county clerks of the counties in the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.063. PROJECTS FOR FARMERS OF LOW INCOME. (a) A county, regional, or merged housing authority may borrow money, accept grants, and exercise its powers to provide housing for farmers of low income.

(b) As the authority considers necessary to assure the achievement of the objectives of this chapter, in connection with a project for farmers of low income an authority may enter into a lease or purchase agreement, accept a conveyance, and rent or sell housing

that is part of the project to or for farmers of low income. The lease, agreement, or conveyance may include covenants that the authority considers appropriate regarding the housing and the land described in the instrument. If the authority considers it necessary and on the stipulation of the parties, the covenants run with the land.

(c) The owner of a farm operated, or worked on, by farmers of low income in need of safe and sanitary housing may file an application with a county, regional, or merged housing authority requesting that the authority provide safe and sanitary housing for the farmers. The housing authority shall consider the applications in connection with the formulation of projects or programs to provide housing for farmers of low income.

(d) A county or regional housing authority is not subject to the limitations in Subsections (c) and (d) of Section 392.055 in respect to housing projects for farmers of low income.

(e) This section does not limit other powers of a housing authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1137 (H.B. 2975), Sec. 3, eff. June 14, 2013.

Sec. 392.064. CORPORATE NAME OF REGIONAL HOUSING AUTHORITY. A regional housing authority may select an appropriate corporate name.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.065. MISCELLANEOUS POWERS. An authority may:

(1) sue and be sued;

(2) have a seal and change the seal at will;

(3) have perpetual succession;

(4) make and execute contracts and other instruments that are necessary or convenient to the exercise of the authority's powers; and

(5) make, amend, and repeal bylaws and rules that are consistent with this chapter to implement the authority's powers and purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.066. PUBLIC FACILITY CORPORATION. (a) An authority that creates a public facility corporation under Chapter 303 may, with or without consideration, for the purpose of providing affordable housing or housing assistance, enter into an agreement with, make a contribution to, make an investment in, enter into a lease or exchange with, or make a mortgage or loan to the corporation to:

(1) acquire, construct, rehabilitate, renovate, repair, equip, furnish, or provide assistance to a residential development described by Section 394.004 or a housing project; or

(2) accomplish another public purpose authorized by law.

(b) For the purpose of providing affordable housing or housing assistance and for a purpose described by Subsection (a), an authority described by Subsection (a) may also, with or without consideration:

(1) transfer, convey, pledge, or otherwise use money, personal or real property, or any other right or benefit to which the authority is entitled under state or federal law; and

(2) pledge a right or benefit described by Subdivision (1) to secure the payment of indebtedness issued by the public facility corporation created by the authority.

(c) For the purpose of providing affordable housing or housing assistance, an authority may exercise a power granted by Subsection (a) as necessary to:

(1) develop or diversify the economy of this state;

(2) reduce unemployment or underemployment in this state;

(3) develop or expand commerce in this state; or

(4) promote another public purpose.

(d) The powers granted by this section do not affect the powers of an authority granted under Chapter 303.

(e) A housing development project or other program that uses funds provided by an authority under this section must benefit individuals and families whose incomes are not more than 60 percent of the area median family income, adjusted for family size, as determined by the United States Department of Housing and Urban Development, in the same proportion that the funds provided by the authority under this section bear to the overall cost of the housing

development project or other program.

Added by Acts 1999, 76th Leg., ch. 348, Sec. 1, eff. May 29, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.341, eff. Sept. 1, 2001.

Sec. 392.067. VETERANS HOUSING IN CERTAIN COUNTIES. (a) In this section, "veteran" means a person who has served on active duty in the armed forces of the United States or in the state military forces as defined by Section 437.001, Government Code.

(b) A county or municipal housing authority in a county with a population of more than 500,000 may borrow money, accept grants, and exercise its powers to provide safe and sanitary housing communities for veterans.

(c) As the authority considers necessary to achieve the purposes of this chapter, an authority may enter into a lease or purchase agreement or accept a conveyance regarding real property as part of a housing project that will benefit veterans. The agreement or conveyance may include any restrictive covenants that the authority considers appropriate regarding the property. As the authority considers necessary and on the stipulation of the parties, the covenants run with the property.

(d) A county or municipal housing authority to which this section applies is not subject to the limitations in Section 392.014, 392.015, or 392.017 with respect to a housing project that benefits veterans as authorized by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 951 (H.B. 3358), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.16, eff. September 1, 2013.

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 392.081. AUTHORITY TO ISSUE BONDS. (a) An authority may, by resolution, authorize the issuance of bonds in one or more series for a corporate purpose of the authority.

(b) An authority may issue refunding bonds to repay or retire bonds that the authority previously issued.

(c) An authority may determine the type of bond to issue, including bonds on which the principal and interest are payable:

(1) exclusively from the income and revenues of the housing project financed by the proceeds of the bonds or financed by those proceeds and a federal grant in aid of the project;

(2) exclusively from the income and revenue of designated housing projects regardless of whether the projects are financed by the bonds; or

(3) from general revenue of the housing authority.

(d) Bonds issued by an authority may be additionally secured by a pledge of revenue or by the mortgage of a housing project or other property of the authority. In addition, an authority may make credit agreements in conjunction with the issuance, payment, sale, resale, or exchange of bonds to enhance the security for or provide for the payment, redemption, or remarketing of the bonds and the interest on the bonds. The cost to the authority of the credit agreement may be paid from the proceeds of the sale of the bonds to which the credit agreement relates or from any other source, including revenues of the authority that are available for the purpose of paying the bonds and the interest on the bonds or that may otherwise be legally available to make those payments.

(e) Bonds issued by an authority are not a debt for the purposes of a constitutional or statutory debt limitation or restriction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 6, eff. Aug. 28, 1989.

Sec. 392.082. FORM OF BONDS. (a) The resolution authorizing bonds of an authority, or a trust indenture or mortgage of the authority that secures the bonds, may provide:

(1) the date to appear on the bonds;

(2) the maturity date of the bonds;

(3) the interest rate of the bonds;

(4) the denomination of the bonds;

(5) the form of the bonds, either coupon or registered;

(6) conversion or registration privileges of the bonds;

(7) the rank and priority of the bonds;

(8) the manner of execution of the bonds;

(9) the medium and place of payment of the bonds; and

(10) the terms of redemption of the bonds, with or without premium.

(b) The signatures of commissioners or officers on the bonds are valid and sufficient for all purposes regardless of whether the commissioners or officers are in office or have left office at the time the bonds are delivered.

(c) In a proceeding involving the validity or enforceability of a bond of an authority, or the security for the bond, a bond that recites in substance that it is issued by the authority to aid in financing a housing project to provide housing for persons of low income shall be conclusively considered to be issued for that purpose and the project shall be conclusively considered to be planned, located, and constructed in accordance with this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.083. SALE OF BONDS. (a) Bonds issued by an authority may be sold either at a public sale after notice is published in accordance with this section or at a private sale. Bonds may be sold at the price or prices determined by the authority but may not be sold at a price that would cause the interest on the bonds to exceed the maximum net effective interest rate established by Chapter 1204, Government Code.

(b) Notice of a public sale of bonds of a housing authority must be published before the fifth day before the date of the sale in a newspaper with general circulation within the boundaries of the authority and in a financial newspaper published in New York, New York.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 677, Sec. 7, eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 1420, Sec. 8.342, eff. Sept. 1, 2001.

Sec. 392.0831. PAYMENT FOR BONDS. Bonds issued by an authority may be sold:

(1) for cash;

(2) in exchange for property constituting a housing project; or

(3) by any combination of those methods.

Added by Acts 1989, 71st Leg., ch. 677, Sec. 8, eff. Aug. 28, 1989.

Sec. 392.084. NEGOTIABILITY OF BONDS. A bond issued under this chapter is fully negotiable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.085. LIABILITY ON BONDS AND OTHER OBLIGATIONS. (a) A commissioner of an authority or a person who executes the bonds for an authority is not liable personally on the bonds due to the issuance of the bonds.

(b) The bonds and other obligations of an authority are not a debt of a municipality, a county, another political subdivision of the state, or the state, and a municipality, a county, another political subdivision, or the state is not liable on the bonds.

(c) Bonds issued by an authority are payable from only the funds and property of the authority issuing the bonds.

(d) Bonds and other obligations of an authority must state on their face that they are not debts of a municipality, a county, another political subdivision, or the state; that a municipality, a county, another political subdivision, or the state is not liable on the bonds; and that the bonds are payable from only the funds and property of the authority issuing the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.086. TAX EXEMPTION. Bonds of an authority are issued for an essential public and governmental purpose and are public instrumentalities. The bonds, interest on the bonds, and income from the bonds are exempt from taxes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.087. PLEDGES, MORTGAGES, AND COVENANTS TO SECURE BONDS OR LEASE OBLIGATIONS. In connection with the issuance of bonds or

the incurring of obligations under a lease, an authority may make a covenant or take an action that is necessary, convenient, or desirable to secure the payment of the bonds or obligations or to make the bonds more marketable, including:

(1) pledging of gross or net rent, fees, or revenues to which it has a right or may have a right in the future;

(2) mortgaging real or personal property that the authority owns or later acquires;

(3) providing terms and conditions for the redemption of bonds;

(4) vesting in a trustee or the holder of the bonds, or a part of the bonds, the right to enforce the payment of the bonds or a covenant securing or relating to the bonds;

(5) vesting in a trustee, in the event of a default by the authority, the right to take possession of, and to use, operate, and manage, a housing project, or part of a housing project; to collect the rents and revenues of the housing project; and to dispose of that money in accordance with the agreement of the authority with the trustee;

(6) providing for the powers and duties of a trustee; limiting the liabilities of the trustee; and providing the terms and conditions on which the trustee or a holder of bonds, or a part of the bonds, may enforce a covenant or right securing or relating to the bonds;

(7) prescribing the procedure, if any, by which the terms of a contract with bond holders may be amended or abrogated; the amount of bonds that may not be amended or abrogated without consent of the holder; and the manner in which the consent may be given;

(8) making a covenant against:

(A) pledging rents, fees, and revenues; mortgaging real or personal property that the authority owns or may later acquire; or permitting a lien on its revenues or property; or

(B) extending the time for payment of the bonds or interest on the bonds or the time to redeem the bonds;

(9) making a covenant regarding:

(A) limitations on the authority's right to sell, lease, or dispose of in any manner a housing project, or part of a housing project;

(B) debts or obligations incurred by the authority;

(C) bonds to be issued, the issuance of the bonds in

escrow or otherwise, and the use and disposition of the proceeds from the bonds;

(D) the rents and fees charged in operating a housing project, subject to the limitations of this chapter; the amount to be raised each year, or other period, by rents, fees, and other revenues; and the use and disposition of the rents, fees, and other revenues;

(E) the use, maintenance, or replacement of the authority's real or personal property;

(F) insurance carried on the authority's real or personal property and the use and disposition of insurance money; or

(G) the rights, liabilities, powers, and duties arising on a breach by the authority of a covenant, condition, or obligation; the events of default and terms and conditions on which a bond or obligation is, or may be declared, due before maturity; and the terms and conditions on which the declaration and its consequences may be waived; or

(10) making a covenant to:

(A) replace lost, destroyed, or mutilated bonds; or

(B) create or authorize the creation of special funds for money held for construction or operation costs, debt service, reserves, or other purposes and to provide for the use and disposition of the money held in those funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.088. CERTIFICATION OF ATTORNEY GENERAL. After the proceedings for the issuance of bonds are complete, an authority may submit to the attorney general the bonds to be issued and the record of the proceedings. The attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings in connection with the bonds. If the proceedings conform to this chapter and are otherwise regular in form and if the bonds, on delivery and receipt of payment, will be binding and legal obligations of the authority that are enforceable according to their terms, the attorney general shall certify in substance on the back of the bonds that the bonds are issued in accordance with the constitution and the laws of the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.089. PURCHASE OF BONDS BY AUTHORITY. An authority may purchase its bonds at a price not greater than the principal and accrued interest of the bonds. Bonds purchased by an authority shall be canceled.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.090. COVENANT OF REGIONAL HOUSING AUTHORITY REGARDING AREA OF OPERATION. In connection with the issuance of bonds or the incurring of other obligations, a regional housing authority may make a covenant regarding limitations on its right to adopt resolutions relating to the increase of its area of operation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER F. REMEDIES

Sec. 392.101. REMEDIES OF AN OBLIGEE OF THE AUTHORITY. (a) Subject to contractual restrictions binding on the obligee, an obligee of an authority may compel, by mandamus or other proceeding at law or in equity, the performance by the authority and the commissioners, officers, agents, or employees of the authority of a term, provision, or covenant in a contract of the authority with or for the benefit of the obligee and of the duties of the authority under this chapter.

(b) Subject to contractual restrictions binding on the obligee, an obligee may obtain an injunction, by a proceeding in equity, of an unlawful act or of a violation of a right of the obligee by the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.102. OPTIONAL REMEDIES OF AN OBLIGEE. (a) By resolution, trust indenture, mortgage, lease, or other contract, an authority may confer on an obligee holding or representing a specified amount in bonds or holding a lease the right on default to:

(1) the possession of a housing project or part of a

housing project;

(2) the appointment of a receiver of a housing project or part of a housing project and of the rents and profits of the project; or

(3) require the authority and the commissioners of the authority to account as if the authority and commissioners were the trustees of an express trust.

(b) The resolution or other instrument conferring a right under Subsection (a) must define the term "default." The obligee may enforce the right in a proceeding in a court of competent jurisdiction.

(c) A receiver appointed in a proceeding brought under this section may take possession of, operate, maintain, and collect and receive the fees, rents, revenues, or other charges of the project or part of the project. The receiver shall keep the money in one or more separate accounts and apply the money in accordance with the obligations of the authority as the court directs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.103. EXEMPTION OF PROPERTY FROM EXECUTION SALE. (a) The real property of an authority is exempt from levy and sale by execution. An execution or other judicial process may not issue against the property, and a judgment against the authority may not be a charge or lien on the property.

(b) Subsection (a) does not limit the right of an obligee to foreclose or otherwise enforce a mortgage of an authority or to pursue a remedy for the enforcement of a pledge or lien given by the authority on its rents, fees, or revenues.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 392.104. EFFECT OF CERTAIN PROVISIONS ON OBLIGEE RIGHTS CONFERRED BY AUTHORITY. Sections 392.004 and 392.055 do not limit the power of an authority to vest in an obligee the right, in the event of default by the authority, to take possession of a housing project, obtain the appointment of a receiver for the project, or acquire title to the project through foreclosure, free from the restrictions imposed by those sections.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 393. HOUSING COOPERATION AMONG MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

Sec. 393.001. SHORT TITLE. This chapter may be cited as the Housing Cooperation Law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.002. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature has found in the Housing Authorities Law (Chapter 392) that:

(1) unsafe and unsanitary housing conditions exist in this state for persons of low income;

(2) there is a shortage of safe and sanitary dwellings for those persons;

(3) those conditions require excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and

(4) the public interest requires the remedying of those conditions.

(b) The legislature finds and declares that:

(1) the assistance provided under this chapter to remedy the conditions described in the Housing Authorities Law constitutes a public purpose and an essential governmental function for which public money may be spent and other aid given;

(2) it is a proper public purpose for a public body to aid a housing authority that operates within the boundaries or jurisdiction of the public body or to aid a housing project within its boundaries or jurisdiction because the public body derives immediate benefits and advantages from the authority or project; and

(3) this chapter is necessary in the public interest.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.003. DEFINITIONS. In this chapter:

(1) "Federal government" includes the United States, the

United States Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise, of the United States.

(2) "Governing body" means the council, commissioners court, board, or other body that is in charge of the fiscal affairs of a public body.

(3) "Housing authority" means an authority created under the Housing Authorities Law (Chapter 392).

(4) "Housing project" means a work or other undertaking of a housing authority in accordance with the Housing Authorities Law or any similar work or other undertaking of the federal government.

(5) "Public body" means a municipality or municipal corporation, county, commission, district, authority, or other subdivision or public body of the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.004. POWERS OF PUBLIC BODY RELATING TO HOUSING PROJECTS. To aid and cooperate in the planning, undertaking, construction, or operation of a housing project located within its jurisdiction, a public body may, on terms established by the public body:

(1) dedicate, sell, convey, or lease any of its property to a housing authority or to the federal government;

(2) provide that parks, playgrounds, other recreational facilities, community facilities, educational facilities, water facilities, sewer facilities, or drainage facilities, or other works that it has the power to undertake, be furnished adjacent to or in connection with a housing project;

(3) furnish, dedicate, close, pave, install, grade, or plan streets, roads, alleys, sidewalks, or other places that it has the power to undertake;

(4) plan or zone any part of the public body and, in the case of a municipality, change its map;

(5) make exceptions to building regulations or ordinances;

(6) enter agreements for any period with a housing authority or the federal government relating to action to be taken by the public body under the powers granted by this chapter;

(7) enter agreements relating to the exercise of power by

the public body relating to the repair, elimination, or closing of unsafe, unsanitary, or unfit dwellings;

(8) provide for the furnishing of services to a housing authority of the type the public body has power to furnish;

(9) purchase or invest in bonds issued by a housing authority;

(10) exercise the rights of a bondholder in relation to any bonds purchased under Subdivision (9); or

(11) take other action necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of a housing project.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.005. RESTRICTION ON CERTAIN HOUSING PROJECT CHANGES. A public body may not require changes to be made with respect to a housing project that a housing authority has acquired or taken over from the federal government and that the housing authority by resolution has found and declared to have been constructed in a manner that promotes the public interest and affords the necessary safety, sanitation, and other protection. The public body may not require changes to be made in the manner of the construction of the project and may not take other action relating to that construction.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.006. PAYMENT OF EXPENSES; CONVEYANCE POWERS. (a) A public body may incur the entire expense of any public improvement made by the public body in exercising powers under this chapter.

(b) A public body may sell, convey, lease, or make an agreement under this chapter without appraisal, public notice, advertisement, or public bidding.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.007. PAYMENT CONTRACTS. (a) In connection with a housing project located wholly or partly within its jurisdiction, a public body may contract with a housing authority or with the federal

government relating to any amounts that the housing authority or the federal government agrees to pay to the public body during the contract period for the improvements, services, and facilities furnished by the public body for the benefit of the housing project. The amount of those payments may not exceed the estimated cost to the public body of the improvements, services, or facilities.

(b) The absence of a contract for those payments does not relieve the public body from the duty to furnish for the benefit of the housing project the customary improvements and any services and facilities that the public body usually furnishes without a service fee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.008. LOANS TO HOUSING AUTHORITY. (a) When a housing authority that is created for a municipality becomes operative, the governing body of the municipality shall immediately estimate the amount necessary for the administrative expenses and overhead of the housing authority during its first year of operation. The governing body shall appropriate that amount to the authority from money in the municipal treasury that is not appropriated for other purposes. The governing body shall pay that amount to the housing authority as a loan.

(b) Any municipality located wholly or partly within the area of operation of a housing authority may lend or agree to lend money to the housing authority at any time.

(c) The housing authority shall repay loans made to it under this section when it has money available for repayment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.009. POWERS AUTHORIZED BY RESOLUTION. (a) The exercise by a public body of the powers granted under this chapter may be authorized by a resolution of its governing body adopted by a majority of the members of the governing body who are present at a meeting. The resolution may be adopted at the meeting at which it is introduced, and the resolution takes effect immediately. However, the exercise of the powers is subject to the conditions prescribed by Section 393.010.

(b) The resolution is not required to be laid over, published, or posted.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 393.010. NOTICE OF PROPOSED ACTION; PETITION; ELECTION. (a) An action authorized by this chapter may not be consummated until the governing body of the public body gives notice of its intention to enter into a cooperation agreement with a housing authority. A copy of the notice must be published at least twice in the officially designated newspaper, if any, of the public body. The notice must state that at the expiration of 60 days the governing body will consider the question of whether to enter into a cooperation agreement.

(b) If, during the 60-day period, a petition signed by at least 2,000 of the qualified voters of the public body or by at least five percent of the qualified voters of the public body is presented to the governing body requesting that an election be held on the question, and if the petition is determined to have been signed by the requisite number of qualified voters, the governing body shall order an election to be held in the public body on the question. Two weeks' notice of the election must be given in the manner required by law for elections on the question of issuing tax-supported bonds. If a majority of the votes received in the election favor the cooperation agreement, the governing body shall execute the agreement.

(c) The governing body may also order such an election on its own motion. If a majority of the votes received in the election favor the cooperation agreement, the governing body may execute the agreement.

(d) If the governing body fails or refuses to give notice of its intention to enter a cooperation agreement with a housing authority or fails or refuses to submit the question to an election as provided by Subsection (c), then, on filing of a petition demanding an election and signed by at least 2,000 of the qualified voters of the public body or by at least five percent of the qualified voters of the public body, the governing body shall order an election to be held in the public body for the purpose of submitting a proposition for the approval of the cooperation

agreement. If a majority of the votes received in the election favor the cooperation agreement, the governing body may execute the cooperation agreement.

(e) The laws relating to elections for the issuance of municipal or county bonds as prescribed by Chapter 1251, Government Code, apply to an election covered by this section unless those laws are inconsistent with this section or are superseded by the Election Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.343, eff. Sept. 1, 2001.

CHAPTER 394. HOUSING FINANCE CORPORATIONS IN MUNICIPALITIES AND COUNTIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 394.001. SHORT TITLE. This chapter may be cited as the Texas Housing Finance Corporations Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.002. PURPOSE; LEGISLATIVE FINDINGS. (a) The purpose of this chapter is to provide a means to finance the cost of residential ownership and development that will provide decent, safe, and sanitary housing at affordable prices for residents of local governments.

(b) The legislature finds that residential ownership and development:

(1) promotes the public health, safety, morals, and welfare;

(2) relieves conditions of unemployment and encourages the increase of industry, commercial activity, and other economic development to reduce the adverse effects of unemployment;

(3) provides for efficient and well-planned urban growth and development, including the elimination and prevention of potential urban blight and the proper coordination of industrial facilities with public services, mass transportation, and residential development;

(4) assists persons of low and moderate income to acquire and own decent, safe, sanitary, and affordable housing; and

(5) preserves and increases the ad valorem tax bases of local governments.

(c) The legislature finds that the accomplishment of the results described by Subsection (b) is a public purpose and function and lessens the burdens of government. The legislature further finds that:

(1) the creation of a housing finance corporation is for the benefit of the people of the state, improves the public health and welfare, and promotes the economy;

(2) those purposes are public purposes; and

(3) the corporation, as a public instrumentality and nonprofit corporation, performs an essential governmental function on behalf of and for the benefit of the general public, the local government, and this state.

(d) It is the intent of the legislature to authorize local governments to create and use public nonprofit corporations to issue obligations to accomplish the results described by Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.003. DEFINITIONS. In this chapter:

(1) "Bond" means a revenue bond authorized under this chapter and includes a note and any other limited obligation payable as provided by this chapter.

(2) "Development cost" means the sum total of reasonable or necessary costs incidental to the provision, acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, and extension of a residential development. The term includes:

(A) the cost of studies, surveys, plans, and specifications;

(B) underwriting fees;

(C) the cost of architectural, engineering, financial advisory, mortgage banking, and administrative services;

(D) the cost of legal, accounting, marketing, and other special services that relate to residential development or are incurred in connection with the issuance and sale of bonds;

(E) necessary application fees and other fees paid to federal, state, and local government agencies for approvals required

for construction, for assisted financing, or for other purposes;

(F) financing, acquisition, demolition, construction, equipment, and site development costs for new and rehabilitated buildings;

(G) relocation costs for utilities, public ways, and parks;

(H) construction costs for recreational, cultural, and commercial facilities;

(I) rehabilitation, reconstruction, repair, or remodeling costs for existing buildings and all other necessary and incidental expenses, including trustee and rating agency fees and an initial bond and interest reserve together with interest on bonds issued to finance a residential development to a date 12 months after the estimated date of completion;

(J) premiums for mortgage insurance or other insurance with respect to bonds; and

(K) other expenses considered appropriate by a housing finance corporation to carry out the purposes of this chapter.

(3) "Economically depressed or blighted area" means:

(A) an area determined by the issuer to be a qualified census tract or an area of chronic economic distress under Section 143, Internal Revenue Code of 1986 (26 U.S.C.A. Section 143);

(B) an area established within a municipality that has a substantial number of substandard, slum, deteriorated, or deteriorating structures, that suffers from a high relative rate of unemployment; or

(C) an area designed and included in a tax increment district created under Chapter 695, Acts of the 66th Legislature, Regular Session, 1979 (Article 1066d, Vernon's Texas Civil Statutes).

(4) "Elderly person" means a person who is 60 years of age or older.

(5) "Federally assisted new community" means an area:

(A) that receives federal assistance in the form of loan guarantees under Title X of the National Housing Act (12 U.S.C.A. Section 1749aa et seq.); and

(B) a part of which has received grants under Section 107(a)(1), Housing and Community Development Act of 1974 (42 U.S.C.A. Section 5307(a)(1)).

(6) "Home" means real property and improvements on that property consisting of not more than four connected dwelling units,

which may include condominium units, located within a local government and owned by one mortgagor who occupies or intends to occupy one of the units.

(7) "Home mortgage" means an interest-bearing loan to a mortgagor, or a participation in such a loan, that is:

(A) made to purchase, improve, or construct a home;

(B) evidenced by a promissory note;

(C) secured by a mortgage, mortgage deed, deed of trust, or other instrument that constitutes a lien on the home; and

(D) except as provided by Section 394.906, guaranteed or insured by the United States, an instrumentality of the United States, or a private mortgage insurance or surety company to the extent the loan amount exceeds 80 percent of the lesser of the appraised value of the home at the time the loan is made or the sale price of the home.

(8) "Housing finance corporation" means a public, nonprofit corporation organized under this chapter.

(9) "Lending institution" means a bank, trust company, savings bank, national banking association, savings and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution or government agency that customarily provides services or assistance in mortgage financing on single family residential housing or multifamily residential housing located in the local government. The term includes a holding company for such an institution.

(10) "Local government" means any municipality or county.

(11) "Mortgagor" means a person of low or moderate income whose adjusted gross aggregate income, together with the adjusted gross aggregate income of all persons who intend to reside with that person in one dwelling unit, did not, for the preceding tax year, exceed the maximum amount established as constituting moderate income by the housing finance corporation's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of bonds. In an economically depressed or blighted area or in a federally assisted new community located within a home-rule municipality, the term includes:

(A) a person whose adjusted gross aggregate income exceeds the amount constituting moderate income if at least 90 percent of the total mortgage amount available under a home mortgage revenue bond issue is designated for persons of low or moderate

income; or

(B) a person permitted to be a mortgagor under Section 143, Internal Revenue Code of 1986 (26 U.S.C.A. Section 143), as it applies to that area or community.

(12) "Person" means, if used in reference to a mortgagor or owner of a home, a natural person or a trust for the benefit of a natural person.

(13) "Residential development" means the acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, or extension of any of the following items or any combination of the following items for the purpose of providing decent, safe, and sanitary housing and nonhousing facilities that are an integral part of or are functionally related to any affordable housing project, whether in one or multiple locations, including any facilities used for the purpose of delivering tenant services, as defined by Section 2306.254, Government Code:

(A) land, an interest in land, a building or other structure, facility, system, fixture, improvement, addition, appurtenance, or machinery or other equipment;

(B) real or personal property considered necessary in connection with an item described by Paragraph (A); or

(C) real or personal property or improvements functionally related and subordinate to an item described by Paragraph (A).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1250, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 113, Sec. 1, eff. May 11, 2001.

Sec. 394.004. APPLICATION OF CHAPTER TO CERTAIN RESIDENTIAL DEVELOPMENTS. This chapter applies only to a residential development at least 90 percent of which is for use by or is intended to be occupied by persons of low and moderate income whose adjusted gross income, together with the adjusted gross income of all persons who intend to reside with those persons in one dwelling unit, did not for the preceding tax year exceed the maximum amount constituting moderate income under the housing finance corporation's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.005. APPLICATION OF CHAPTER TO PROPERTY IN CERTAIN MUNICIPALITIES. This chapter does not apply to property located within a municipality with more than 20,000 inhabitants as determined by the housing finance corporation's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of bonds, unless the governing body of the municipality approves the application of the chapter to that property.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. INCORPORATION OF HOUSING FINANCE CORPORATIONS

Sec. 394.011. APPLICATION FOR INCORPORATION. (a) The governing body of a local government shall consider a written application for the incorporation of a housing finance corporation filed with the governing body by at least three residents of the local government who are citizens of this state and at least 18 years of age.

(b) If the governing body by resolution determines that the formation of the housing finance corporation is wise, expedient, necessary, or advisable and approves the form of the proposed articles of incorporation of the corporation, the articles may be filed as provided by this chapter. A corporation may not be formed unless the application is filed with the governing body and the governing body adopts the resolution.

(c) The approval of the articles of incorporation of one housing finance corporation does not preclude the approval by the governing body of the articles of incorporation of additional corporations that have names or designations sufficient to distinguish them from previously created corporations. The governing body may not permit the incorporation on its behalf of more than one corporation that has the power to make or acquire home mortgages, or to make loans to lending institutions, the proceeds of which are to be used to make home mortgages or to make loans on residential developments.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.012. APPLICATION FOR INCORPORATION OF, AND OTHER SPECIAL PROVISIONS FOR, JOINT CORPORATION. (a) The governing bodies of more than one local government may consider a written application for the incorporation of a joint housing finance corporation to act on behalf of the local governments filed by at least three residents of each sponsoring local government who are citizens of this state and at least 18 years of age.

(b) If each governing body by resolution determines that the formation of the joint housing finance corporation is wise, expedient, necessary, or advisable and approves the form of the proposed articles of incorporation of the joint corporation, the articles may be filed as provided by this chapter. The joint corporation may not be formed unless the application is filed with the governing body of each sponsoring local government and each governing body adopts the resolution.

(c) The approval of the articles of incorporation of the joint housing finance corporation does not preclude the approval by the governing body of the articles of incorporation of additional corporations that have names or designations sufficient to distinguish them from previously created corporations. A governing body that creates the joint corporation may not later create a corporation that has the power to make home mortgages or to make loans to lending institutions, the proceeds of which are to be used to make home mortgages or to make loans on residential developments.

(d) Each incorporator or director of the joint housing finance corporation must reside in a sponsoring local government. The initial directors of the joint corporation shall be appointed by all the sponsoring local governments. Succeeding directors shall be appointed by one or more of the sponsoring local governments as provided in the articles of incorporation or the bylaws of the joint corporation.

(e) The sponsoring local governments of the joint housing finance corporation are considered to be one local government for the purposes of this chapter. If the action of the governing body of a local government is required, this chapter requires the action to be taken by the governing body of each sponsoring local government of the joint corporation.

(f) The joint housing finance corporation has all the powers granted to a housing finance corporation under this chapter. The joint corporation acts on behalf of each of the sponsoring local

governments as provided by the articles of incorporation.

(g) The net earnings of the joint housing finance corporation and funds and properties of the joint housing finance corporation on dissolution shall be disbursed to the sponsoring local governments as provided by the articles of incorporation.

(h) For the purposes of determining the applicable population for Section 1372.026, Government Code, the joint housing finance corporation may only consider areas in its own state planning region.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1420, Sec. 10, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.344, eff. Sept. 1, 2001.

Sec. 394.013. INCORPORATORS. Three or more residents of the local government who are at least 18 years of age may act as incorporators of the housing finance corporation by signing, verifying, and delivering in duplicate to the secretary of state the articles of incorporation for the corporation. An incorporator may be a member of the governing body, an officer, or an employee of the local government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.014. ARTICLES OF INCORPORATION. (a) The articles of incorporation of the housing finance corporation must contain:

(1) the name of the corporation;

(2) a statement that the corporation is a public, nonprofit corporation;

(3) the period of duration, which may be perpetual;

(4) a statement that the corporation is organized solely to carry out the purposes of this chapter;

(5) a statement that the corporation is to have no members;

(6) any provision not inconsistent with law, including any provision required or permitted under this chapter to be included in the bylaws, for the regulation of the internal affairs of the corporation;

(7) the street address of the corporation's initial registered office, which must be located in the local government, and the name of its initial registered agent at that address;

(8) the number of directors constituting the initial board of directors and the names and addresses of those directors, with a statement that each of them resides in the local government;

(9) the name and street address of each incorporator with a statement that each of them resides in the local government; and

(10) a statement that a resolution approving the form of the articles of incorporation has been adopted by the governing body of the local government and the date of the adoption of the resolution.

(b) A housing finance corporation may exercise any power prescribed by this chapter regardless of whether the power is stated in its articles of incorporation. The articles may prohibit the exercise of any power prescribed by this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors may be made only by amendment to the articles, a change in the number of directors may be made by an amendment to the bylaws. In all other cases if a provision of the articles is inconsistent with the bylaws, the articles provision controls.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.015. FILING OF ARTICLES OF INCORPORATION; ISSUANCE OF CERTIFICATE OF INCORPORATION. (a) Duplicate originals of the articles of incorporation must be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to this chapter, the secretary shall, when a $25 fee is paid:

(1) endorse on each duplicate original the word "Filed" and the date of the filing;

(2) file one of the duplicate originals in the office of the secretary of state; and

(3) issue a certificate of incorporation, to which the secretary shall affix the other duplicate original.

(b) The secretary of state shall deliver the certificate of incorporation, with the affixed duplicate original, to the incorporators or their representatives.

(c) On the issuance of the certificate of incorporation, corporate existence begins. The certificate of incorporation is

conclusive evidence that all conditions precedent required to be performed by the local government and the incorporators have been met and that the housing finance corporation is properly incorporated under this chapter.

(d) The housing finance corporation constitutes a public instrumentality and a nonprofit corporation under the name stated in the articles of incorporation. The corporation does not constitute a municipality, county, or other political corporation or subdivision of this state. The corporation may issue bonds and carry out the public purposes for which it is incorporated on behalf of and for the benefit of the general public, the local government, and this state.

(e) A copy of the articles of incorporation shall be delivered to the Texas Department on Aging.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.016. AMENDMENT OF ARTICLES OF INCORPORATION. (a) The articles of incorporation may be amended at any time in the manner provided by this section.

(b) The board of directors of the housing finance corporation may file a written application with the governing body of the local government requesting permission to amend the articles and specifying the proposed amendment. The governing body shall consider the application. If the governing body by resolution determines that the making of an amendment is wise, expedient, necessary, or advisable, authorizes the amendment, and approves the form of the amendment the board of directors may amend the articles by adopting the amendment at a meeting and delivering articles of amendment to the secretary of state.

(c) At a meeting, the governing body in its sole discretion may amend the articles of incorporation to change the structure, organization, programs, or activities of the housing finance corporation, including the power to terminate the corporation, subject to any limitation on the impairment of contracts. The governing body shall deliver the articles of amendment to the secretary of state.

(d) The articles of amendment must be executed in duplicate. The president or vice-president of the housing finance corporation and the secretary or assistant secretary of the corporation must

execute articles of amendment adopted by the board of directors. The presiding officer of the governing body of the local government and the local government's secretary or clerk must execute articles of amendment adopted by the governing body. The articles of amendment must be verified by one of the officers signing the articles. The articles of amendment must contain:

(1) the name of the corporation;

(2) if the amendment alters an original or amended provision of the articles of incorporation, an identification by reference to or description of the altered provision and a statement of the text as amended;

(3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of the added provision; and

(4) the date of the meeting of the board of directors or the governing body at which the amendment was adopted and a statement that the amendment received a majority vote of the corporation's directors or the governing body's members in office.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.017. FILING OF ARTICLES OF AMENDMENT; ISSUANCE OF CERTIFICATE OF AMENDMENT. (a) Duplicate originals of the articles of amendment must be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, the secretary shall, when a $25 fee is paid:

(1) endorse on each duplicate original the word "Filed" and the date of the filing;

(2) file one of the duplicate originals in the office of the secretary of state; and

(3) issue a certificate of amendment, to which the secretary shall affix the other duplicate original.

(b) The secretary of state shall deliver the certificate of amendment, with the affixed duplicate original, to the housing finance corporation or its representative.

(c) On the issuance of the certificate of amendment, the amendment takes effect and the articles of incorporation are amended accordingly.

(d) An amendment does not affect an existing cause of action or

any pending action to which the housing finance corporation is a party, or the existing rights of persons other than members. If the amendment changes the housing finance corporation's name, the change does not abate a suit brought by or against the corporation under its former name.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER C. CORPORATE ADMINISTRATION AND OPERATION

Sec. 394.021. BOARD OF DIRECTORS. (a) A housing finance corporation must have a board of directors in which all the powers of the corporation are vested. The board may consist of any number of directors, all of whom must be residents of the local government. A director may be a member of the governing body, an officer, or an employee of the local government.

(b) Members of the initial board of directors hold office for the period specified in the articles of incorporation. After the initial directors, the governing body of the local government shall appoint directors in the manner and for the terms provided by the articles of incorporation or the bylaws. Directors may be divided into classes, and the terms of office of the various classes may differ.

(c) Each director shall hold office for the term for which the director is elected or appointed and until the director's successor is elected or appointed and has qualified. A director may be removed from office under any removal procedure provided by the articles of incorporation or the bylaws. The governing body shall fill any vacancy in the board of directors by appointment in the manner provided by the articles of incorporation or the bylaws.

(d) A majority of the directors constitutes a quorum. The directors may take action by a majority vote when a quorum is present. Board meetings may be held inside or outside this state. A regular meeting may be held with or without notice as provided by the bylaws. A special meeting may be held on notice as provided by the bylaws.

(e) The officers of a housing finance corporation consist of a president, one or more vice-presidents, a secretary, a treasurer, and other officers and assistant officers as considered necessary. Each officer shall be elected or appointed in the manner and for the term

provided by the articles of incorporation or the bylaws.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.022. ORGANIZATIONAL MEETING. (a) After the issuance of the certificate of incorporation, the board of directors named in the articles of incorporation, at the call of a majority of the incorporators, shall hold an organizational meeting to adopt bylaws, elect officers, and consider other issues that come before the meeting. The meeting may be held inside or outside this state.

(b) The incorporators who call the meeting must give at least three days' notice of the meeting to each director by mailing to the director a notice that states the time and place of the meeting.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.023. DISPOSITION OF CORPORATE EARNINGS. (a) The housing finance corporation may not pay dividends. The net earnings of the corporation may not be distributed to or benefit the directors or officers of the corporation or any person except as reasonable compensation for services rendered to the corporation.

(b) If the board of directors determines that sufficient provision has been made for full payment of the expenses, bonds, and other obligations of the corporation, any net corporate earnings accruing after the determination shall be paid to the local government. The local government shall use amounts received under this subsection only to provide for the housing needs of individuals and families of low and moderate incomes, including single-family units and mixed income multifamily projects found by the local government to serve the interests of low and moderate income individuals and families if the single-family and multifamily projects have as a major purpose the provision of safe, sanitary, and decent housing for individuals and families of low income.

(c) This section does not prohibit the board of directors from transferring corporate property as provided by a contract made by the corporation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 951, Sec. 7, eff. June 16, 1995.

Sec. 394.024. REGISTERED OFFICE AND AGENT. The housing finance corporation shall maintain a registered office and a registered agent as provided by Article 2.05, Texas Non-Profit Corporation Act (Article 1396-2.05, Vernon's Texas Civil Statutes). The corporation may change its registered office or agent as provided by Article 2.06 of that Act. Process may be served on the corporation as provided by Article 2.07 of that Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.025. CORPORATE BOOKS AND RECORDS. A housing finance corporation shall keep complete books and records of account and shall keep minutes of the proceedings of its board of directors.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.026. DISSOLUTION OF CORPORATION. (a) If the board of directors determines by resolution that the purposes for which the housing finance corporation was formed have been substantially met and that all bonds issued by and all obligations incurred by the corporation have been fully paid, the directors shall execute a certificate of dissolution stating those facts and declaring that the corporation is dissolved. The directors shall file the certificate for recording in the office of the secretary of state. The directors shall execute the certificate under the corporation's seal.

(b) On the filing of the certificate of dissolution, the corporation is dissolved. The title to all funds and property owned by the corporation at the time of dissolution vests in the local government to be used exclusively by the local government to provide for the housing needs of individuals and families of low and moderate incomes, including single-family units and mixed income multifamily projects found by the local government to serve the interests of low and moderate income individuals and families if the single-family and multifamily projects have as a major purpose the provision of safe, sanitary, and decent housing for individuals and families of low income. The funds and property shall be promptly delivered to the local government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 951, Sec. 8, eff. June 16, 1995.

Sec. 394.027. ANNUAL REPORT. (a) Before August 31 of each year, a housing finance corporation shall file with the Texas Department of Housing and Community Affairs a report in accordance with this section. The department by rule shall prescribe the form of the report.

(b) The report must include for each single-family home mortgage loan made by the housing finance corporation during the preceding 12 months ending June 30 of the year the report is filed, the data reported by originating lenders under the Federal Home Mortgage Disclosure Act.

(c) The report must include for persons residing in multifamily housing units financed by the housing finance corporation information similar to the geographic and demographic information contained in the Texas Department of Housing and Community Affairs compliance monitoring form and tenant income certification, including household size, total household income, and project location.

Added by Acts 1995, 74th Leg., ch. 951, Sec. 9, eff. June 16, 1995.

SUBCHAPTER D. CORPORATE POWERS

Sec. 394.031. EXERCISE OF POWERS. (a) A housing finance corporation may exercise any powers incidental to or necessary for the performance of the powers prescribed by this subchapter and may exercise other powers necessary or appropriate to carry out the purposes for which the corporation is organized.

(b) A housing finance corporation may exercise powers under this chapter by resolution of the board of directors. The resolution takes effect immediately on adoption.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.032. GENERAL POWERS. (a) A housing finance corporation may:

(1) make contracts and other instruments as necessary or convenient to the exercise of powers under this chapter;

(2) incur liabilities;

(3) borrow money at rates determined by the corporation;

(4) issue notes, bonds, and other obligations; and

(5) secure any of its obligations by the mortgage or pledge of all or part of the corporation's property, franchises, and income.

(b) A housing finance corporation may plan, research, study, develop, and promote the establishment of residential development.

(c) A housing finance corporation may make donations for the public welfare or for charitable, scientific, or educational purposes.

(d) A housing finance corporation may enter into contracts to perform services for any other housing finance corporation or any individual or entity acting on behalf of any other housing finance corporation or, with respect to residential development, any housing authority, nonprofit enterprise, or similar entity.

(e) A housing finance corporation may delegate to the Texas Department of Housing and Community Affairs the authority to act on its behalf in the financing, refinancing, acquisition, leasing, ownership, improvement, and disposal of home mortgages or residential developments, within and outside the jurisdiction of the housing finance corporation, including its authority to issue bonds for those purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 258, Sec. 1, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1420, Sec. 11, eff. June 20, 1997.

Sec. 394.033. CORPORATE NAME; DURATION; SEAL. (a) A housing finance corporation may have perpetual succession under its corporate name, unless a limited period of duration is stated in the articles of incorporation, and may sue and be sued, and complain and defend, under its corporate name.

(b) A housing finance corporation may have a corporate seal, which may be altered at will, and may use the seal by causing it, or a facsimile of it, to be impressed on, affixed to, or otherwise reproduced on any instrument required to be executed by the corporation's officers.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.034. OFFICERS; AGENTS. A housing finance corporation may elect or appoint corporate officers or agents for a period determined by the corporation, define their duties, and may set their compensation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.035. BYLAWS. A housing finance corporation may make, amend, and repeal bylaws, not inconsistent with the articles of incorporation or this chapter, for the administration and regulation of the corporation's affairs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.036. ACCEPTANCE OF FINANCIAL ASSISTANCE. (a) A housing finance corporation may apply for and accept, on its own behalf or on behalf of another person, advances, loans, grants, contributions, guarantees, rent supplements, mortgage assistance, and other forms of financial assistance from the federal government, the state, a county, a municipality, or any other public or quasi-public body, corporation, or foundation, or from any other public or private source, for any of the purposes of this chapter.

(b) The corporation may include reasonable and appropriate terms, not inconsistent with the purposes of this chapter, in any contract for financial assistance obtained under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.037. BONDS. (a) A housing finance corporation may issue bonds to defray, in whole or in part:

(1) the development costs of a residential development;

(2) the costs of purchasing or funding the making of home mortgages, either on a first-come, first-served basis or by selling lender commitments, including the costs of studies and surveys, insurance premiums, financial advisory services, mortgage banking services, administrative services, underwriting fees, legal services, accounting services, and marketing services incurred in connection with the issuance and sale of the bonds, including bond and interest

reserve accounts, capitalized interest accounts, and trustee, custodian, and rating agency fees; or

(3) any other costs associated with the provision of decent, safe, and sanitary housing and nonhousing facilities that are an integral part of or are functionally related to an affordable housing project.

(b) The corporation may pledge all or a part of the revenues, receipts, or resources of the corporation, including any revenues or receipts received from residential development or home mortgages, to the prompt payment of bonds authorized under this chapter and to the interest and any redemption premiums on those bonds. It may issue bonds to refund in whole or in part at any time any bonds previously issued under this chapter by the corporation.

(c) The corporation may designate appropriate names for bonds issued under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1420, Sec. 12, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 113, Sec. 2, eff. May 11, 2001.

Sec. 394.038. ACQUISITION OF SHARES OR OBLIGATIONS. A housing finance corporation may purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell, or otherwise dispose of, and otherwise use and deal in and with:

(1) shares and other interests in or obligations of other domestic or foreign corporations, whether profit or nonprofit, associations, partnerships, or individuals; or

(2) direct or indirect obligations of the United States or of any other government, state, political subdivision of a state, territory, government district, or any instrumentality of such a governmental entity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.039. SPECIFIC POWERS RELATING TO FINANCIAL AND PROPERTY TRANSACTIONS. A housing finance corporation may:

(1) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real or personal property as

security for the payment of the loaned or invested funds;

(2) mortgage, pledge, or grant security interests in any residential development, home mortgage, note, or other property in favor of the holders of bonds issued for those items;

(3) purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or deal in and with real or personal property or interests in that property, wherever the property is located, as required by the purposes of the corporation or as donated to the corporation; and

(4) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or part of its property and assets.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.040. TRANSACTIONS WITH LENDING INSTITUTIONS. (a) A housing finance corporation may make, contract to make, but is not required to make, and enter into advance commitments to make home mortgages originated, administered, and serviced by lending institutions. It may pay the reasonable value of services rendered under those contracts. It may acquire, contract to acquire, and enter into advance commitments to acquire, by assignment or other means, home mortgages owned by lending institutions at purchase prices and on other terms determined by the corporation or its agent.

(b) The corporation may require each lending institution from which home mortgages are proposed to be purchased or to which loans are made to submit evidence satisfactory to the corporation of the ability and intention of the lending institution to make home mortgages, and require the submission, within the time specified by the corporation for making disbursements for home mortgages, of evidence satisfactory to the corporation of the making of home mortgages and of the compliance with the standards and requirements established by the corporation under Section 394.041.

(c) The corporation may make loans to lending institutions under terms that, in addition to other provisions determined by the corporation, require:

(1) the institutions to use substantially all of the net proceeds of the loans, directly or indirectly, to make home mortgages in an aggregate principal amount substantially equal to the amount of

the net proceeds; and

(2) the loans to be fully secured, to the extent not secured by home mortgages, in the same manner as deposits of public funds of the local government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1420, Sec. 13, eff. June 20, 1997.

Sec. 394.041. STANDARDS FOR MORTGAGES OR LOANS. A housing finance corporation may establish by rule, in resolutions or financing documents relating to the issuance of bonds, standards and requirements applicable to making or purchasing home mortgages or making loans to lending institutions as considered necessary or desirable by the corporation, including standards and requirements related to:

(1) the time within which lending institutions must make commitments and disbursements for home mortgages;

(2) the location and other characteristics of homes financed by home mortgages;

(3) the terms of home mortgages made or acquired;

(4) the amounts and types of insurance coverage required on homes, home mortgages, and bonds;

(5) the representations and warranties of lending institutions confirming compliance with the standards and requirements;

(6) restrictions as to interest rates and other terms of home mortgages or as to the return realized on those mortgages by lending institutions;

(7) the type and amount of collateral security required on a loan from the corporation and to assure repayment of bonds; and

(8) other matters regarding the making or purchasing of home mortgages or the making of loans to lending institutions as the corporation considers relevant.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.042. DISPOSAL OF RESIDENTIAL DEVELOPMENTS OR HOME MORTGAGES. (a) A housing finance corporation may sell and convey any residential development or home mortgage, including a sale and

conveyance subject to a mortgage, pledge, or security interest, as provided in the resolution relating to the issuance of bonds and for the prices and at the times determined by the board of directors.

(b) The corporation may rent, lease, sell, or otherwise dispose of any residential development or home mortgages in whole or in part, or lend sufficient funds to any person to defray in whole or in part the development costs of any residential development or the costs of purchasing home mortgages, so that the rent or other revenue derived from the residential development or home mortgages, combined with any insurance proceeds, reserve accounts, and earnings on those accounts, is designed to produce revenues and receipts at least sufficient to provide for the prompt payment on maturity of principal, interest, and any redemption premiums on bonds issued to finance those costs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER E. HOUSING FINANCE CORPORATION BONDS

Sec. 394.051. BONDS; INVESTMENT. (a) A housing finance corporation may issue its bonds by resolution of the board of directors for the purposes prescribed by this chapter. The resolution takes effect immediately on adoption. The bonds bear interest at a rate authorized by Chapter 1204, Government Code, and are subject to the following terms provided by the resolution:

(1) the time at which the bonds are payable;

(2) the number of series in which the bonds are issued;

(3) the dates that the bonds bear;

(4) the time of maturity of the bonds;

(5) the medium of payment and the place of payment of the bonds;

(6) any registration privileges;

(7) terms of redemption at certain premiums;

(8) manner of execution of the bonds;

(9) covenants and other terms of the bonds; and

(10) the form of the bonds, either coupon or registered.

(b) The bonds may be sold at public or private sale in the manner and on the terms provided by the resolution. Pending the preparation of definitive bonds, any interim receipts or certificates in the form and with the provisions provided by the resolution may be issued to the purchasers of bonds sold under this chapter.

(c) The aggregate principal amount of bonds that a housing finance corporation may issue in a calendar year to defray costs described by Section 394.037(a)(2) may not exceed the total of:

(1) the cost of issuance of the bonds, any reserves or capitalized interest required by the resolutions authorizing the bonds, plus any bond discounts; and

(2) the largest of:

(A) $20 million;

(B) the product of $150 and the population of the local government as determined by the corporation's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of the bonds; or

(C) an amount equal to 25 percent of the total dollar amount of the market demand for home mortgages during that calendar year as determined by the corporation's rules, resolutions relating to the issuance of bonds, or financing documents relating to the issuance of the bonds.

(d) A determination made under Subsection (c)(2)(B) or (c)(2)(C) is conclusive.

(e) The housing finance corporation shall notify the Texas Department on Aging of each bond issuance and shall deliver to the department a copy of each certificate of resolution authorizing the issuance and any other information required by the department.

(f) The housing finance corporation, or any trustee or custodian on behalf of the corporation, may invest any funds held by it as provided by the resolution authorizing the issuance of the bonds.

(g) The housing finance corporation is not required to acquire or hold title to a residential development, a home mortgage, or any interest in the development or mortgage.

(h) The housing finance corporation is not required to sell commitments to lenders to originate home mortgages. A housing financing corporation may establish a program so that lenders will utilize the proceeds of the bonds to originate home mortgages on a first-come, first-served basis.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1420, Sec. 14, eff. June 20, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.345, eff. Sept. 1, 2001.

Sec. 394.052. BOND COVENANTS. (a) A resolution authorizing the issuance of bonds under this chapter may contain covenants relating to:

(1) the use and disposition of the bond proceeds and of the revenue and receipts from any residential development or home mortgages for which the bonds are issued, including the creation and maintenance of reserves;

(2) the issuance of other or additional bonds relating to any residential development or to any rehabilitation, improvement, renovation, or enlargement of, or addition to, a residential development;

(3) the maintenance and repair of a residential development or any homes;

(4) the insurance carried on any residential development, home, home mortgage, or bonds, and the use and disposition of insurance money;

(5) the appointment of one or more banks or trust companies located inside or outside this state that have the necessary trust powers as trustee or custodian for the benefit of the bondholders, paying agent, or bond registrar, and the investment of any funds held by the trustee or custodian;

(6) the appointment of one or more mortgage bankers to provide necessary administrative and mortgage servicing functions to assure the proper administration of the corporation's portfolio of home mortgage loans for the benefit of the bondholders;

(7) the maximum interest rate payable on any home mortgage; and

(8) the terms on which the bondholders or the trustees for the bonds are entitled to the appointment of a receiver by a court of competent jurisdiction.

(b) The terms established under Subsection (a)(8) relating to the appointment of a receiver may provide that the receiver may:

(1) enter and take possession of all or part of the residential development or home mortgage;

(2) maintain, lease, sell, or otherwise dispose of the development or mortgage;

(3) prescribe rentals or other payments; and

(4) collect, receive, and apply all income and other revenues that arise from the development or mortgage after the receiver takes possession.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.053. VALIDITY OF BONDS; SIGNATURES. (a) Bonds issued under this chapter must bear the actual or facsimile signature of the housing finance corporation's officers designated in the resolution authorizing the bonds. The validity of a signature of an officer of the corporation is not affected by the fact that before the delivery of the bond or its payment, a person whose signature appears on the bond ceases to be an officer.

(b) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the residential development or home mortgages for which the bonds are issued.

(c) The resolution authorizing the bonds may require that the bonds contain a statement that they are issued under this chapter. The statement is conclusive evidence of the validity of the bonds and the regularity of their issuance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.054. SECURITY FOR BONDS. (a) A resolution authorizing the issuance of bonds under this chapter may require that the principal of and interest on the bonds be secured by a mortgage, pledge, security interest, insurance agreement, or indenture of trust that covers the residential development or home mortgages for which the bonds are issued and may include any improvements or extensions made after the bonds are issued. A security instrument may contain covenants and agreements to properly safeguard the bonds as provided by the resolution authorizing the bonds and shall be executed in the manner provided by the resolution.

(b) This chapter, the resolution, and the mortgage, pledge, security interest, or indenture of trust constitute a contract with the bondholders that continues in effect until the principal of and interest on the bonds and any redemption premiums have been fully paid or provision for payment has been made.

(c) The resolution, the mortgage, pledge, security interest, or indenture of trust, and the duties under this chapter of the housing finance corporation and its officers and other authorities are

enforceable as provided by the resolution, the instrument, or this chapter by any bondholder by mandamus, by foreclosure of the mortgage, pledge, security interest, or indenture of trust, or by any other appropriate action in a court of competent jurisdiction. The resolution or the mortgage, pledge, security interest, or indenture of trust may provide that the remedies and rights to enforcement may be vested in a trustee, with full power of appointment, for the benefit of all the bondholders. The trustee is subject to the control of a number of bondholders or bond owners as provided in the resolution or instrument.

(d) Bonds issued under this chapter may be secured by a pledge of or a lien on all or part of the revenues, receipts, or other resources of the housing finance corporation, including the revenues and receipts derived from the residential development or home mortgages or from any notes or other obligations of lending institutions with respect to which the bonds have been issued. The board of directors may provide in the resolution authorizing the bonds for the issuance of additional bonds equally and ratably secured by a lien on the revenues and receipts or may provide that the lien on the revenues and receipts is subordinate. Subordinate lien bonds may also be issued unless prohibited by a bond resolution.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.055. LIABILITY FOR BONDS AND CONTRACTS; DEBT NOT CREATED. (a) Bonds issued under this chapter are limited obligations of the housing finance corporation and are payable solely from the revenue, receipts, and other resources pledged to their payment. A bondholder may not compel the local government to pay the bond, the interest, or any redemption premium.

(b) The local government and this state are not liable in any way regarding bonds issued by the housing finance corporation. An agreement or obligation of the corporation does not constitute, within the meaning of a statutory or constitutional provision, an agreement, obligation, or debt of the state or the local government.

(c) The bonds do not constitute, within the meaning of a statutory or constitutional provision, an indebtedness, an obligation, or a loan of credit of the state, the local government, or any other municipality, county, or other municipal or political

corporation or subdivision of the state. The bonds do not create a moral obligation on the part of any of those governmental entities with respect to the payment of the bonds. Those governmental entities may not make payments with respect to the bonds.

(d) The face of each bond must plainly state that it has been issued under this chapter and that it does not constitute, within the meaning of any statutory or constitutional provision, an indebtedness, an obligation, or a loan of credit of the state, the local government, or any other municipality, county, or other municipal or political corporation or subdivision of the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.056. BOND AS SECURITY. (a) A bond issued under this chapter or a coupon representing interest on the bond is, when delivered, a security as that term is defined under Chapter 8 of the Uniform Commercial Code (Chapter 8, Title 1, Business & Commerce Code) and is an exempt security under The Securities Act (Title 12, Government Code).

(b) A contract made under this chapter is not a security under The Securities Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.36, eff. January 1, 2022.

Sec. 394.057. BOND AS AUTHORIZED INVESTMENT OR AS SECURITY FOR DEPOSIT. (a) Bonds issued under this chapter are legal and authorized investments for any bank, savings bank, trust company, savings and loan association, insurance company, fiduciary, trustee, guardian, or sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds are eligible to secure the deposit of any public funds of this state or of a municipality, county, school district, or other political corporation or subdivision of the state, and are lawful and sufficient securities for the deposits at face value if accompanied by all unmatured coupons, if any, appurtenant to the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 394.901. DESIGNATION OF AREA AS ECONOMICALLY DEPRESSED OR BLIGHTED; NOTICE. (a) To designate an area as economically depressed or blighted under the meaning provided by Section 394.003(3)(B) or (C), the governing body of the affected municipality must hold a public hearing and must find that the area substantially impairs or arrests the sound growth of the municipality or that it constitutes an economic or social liability and is, in its current condition and use, a menace to the public health, safety, morals, or welfare.

(b) The governing body shall give notice of the hearing as provided by Chapter 551, Government Code, except that the notice must be published at least 10 days before the date of the hearing.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(78), eff. Sept. 1, 1995.

Sec. 394.902. HOUSING FOR ELDERLY. (a) The housing finance corporation shall require that at least five percent of the units in a multifamily residential development be built or renovated and be reserved for the lifetime of the development for occupancy by elderly persons of low income or by families of low or moderate income in which an elderly person is the head of a household if the development:

(1) contains at least 20 units; and

(2) is financed by bonds issued under this chapter as a result of an official decision to issue bonds that occurs on or after January 1, 1986.

(b) Instead of requiring a reservation of units as required under Subsection (a), the housing finance corporation may collect a fee equal to one-tenth percent of the total principal amount of the loan made for the multifamily residential development. The corporation shall collect the fee from the person who receives the loan at the time the loan is delivered. Immediately after the receipt of the fee, the corporation shall remit the fee to the Texas Department on Aging. The department shall deposit all funds received

under this subsection to the credit of a special account in the general revenue fund. Funds in the special account may be used only to assist in obtaining housing for elderly persons or families in which an elderly person is the head of a household.

(c) If the housing finance corporation requires a reservation under Subsection (a), the design engineer for the development must certify to the corporation that the reserved units in the development meet standards set by the Texas Department on Aging for elderly persons.

(d) The governing body of the local government that authorizes, sponsors, or otherwise participates in the creation of the housing finance corporation shall cooperate with the Texas Department on Aging to implement this section and shall submit to the department an annual report relating to the number of developments financed under this chapter, the number of units reserved for the elderly persons or for families in which an elderly person is the head of the household, the amount of fees collected, and other information required by the department.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.9025. MULTIFAMILY RESIDENTIAL DEVELOPMENT. (a) Following a public hearing, a housing finance corporation may issue bonds to finance a multifamily residential development to be owned by the housing finance corporation if at least 50 percent of the units in the multifamily residential development are reserved for occupancy by individuals and families earning less than 80 percent of the area median family income.

(b) Following a public hearing by the governing body of the local government, a housing finance corporation may issue bonds to finance a multifamily residential development to be owned by the housing finance corporation in accordance with Section 394.004 if the housing finance corporation receives approval of the governing body of the local government.

Added by Acts 2001, 77th Leg., ch. 1493, Sec. 3, eff. Aug. 31, 2002.

Sec. 394.903. LOCATION OF RESIDENTIAL DEVELOPMENT; RESIDENTIAL DEVELOPMENT SITES. (a) A residential development covered by this

chapter must be located within the local government.

(b) The local government may transfer any residential development site to a housing finance corporation by sale or lease. The governing body of the local government may authorize the transfer by resolution without submitting the issue to the voters and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law. The site may be located wholly or partly inside or outside the local government.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.904. EXEMPTION FROM REQUIREMENTS AND RESTRICTIONS APPLYING TO PUBLIC PROPERTY. (a) The acquisition, construction, or rehabilitation of a private residential development or a home is not subject to requirements relating to public buildings, structures, grounds, works, or improvements imposed by the laws of this state, or to any other similar requirements.

(b) Any competitive bidding requirement or restriction imposed on the procedure regarding the award of contracts for that acquisition, construction, or rehabilitation or regarding the lease, sale, or other disposition of property of the local government is not applicable to any action taken under this chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.905. EXEMPTION FROM TAXATION. The housing finance corporation, all property owned by it, the income from the property, all bonds issued by it, the income from the bonds, and the transfer of the bonds are exempt, as public property used for public purposes, from license fees, recording fees, and all other taxes imposed by this state or any political subdivision of this state. The corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.906. CONDITIONS UNDER WHICH FEDERAL GUARANTEE OR HOME

MORTGAGE INSURANCE NOT REQUIRED. A home mortgage does not require a federal guarantee or home mortgage insurance if the principal of and interest on the housing finance corporation's bonds issued to make or purchase the home mortgage or to make loans to lending institutions are guaranteed or insured by an agency, department, or instrumentality of the United States or by an insurance or surety company authorized to issue municipal bond insurance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 394.907. CORPORATION POWERS NOT RESTRICTED; POLICE POWERS NOT AFFECTED. (a) This chapter does not restrict or otherwise limit any powers that the housing finance corporation may otherwise exercise under the laws of this state.

(b) Except as provided by this chapter, no proceeding, notice, or approval is required for the organization of the housing finance corporation, the issuance of bonds, or the issuance of any instrument as security for the bonds.

(c) This chapter does not deprive this state or a governmental subdivision of this state of their respective police powers over property of the housing finance corporation and does not impair any power over the property that is otherwise provided by law to any official or agency of the state or its governmental subdivisions.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 395. FINANCING CAPITAL IMPROVEMENTS REQUIRED BY NEW DEVELOPMENT IN MUNICIPALITIES, COUNTIES, AND CERTAIN OTHER LOCAL GOVERNMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 395.001. DEFINITIONS. In this chapter:

(1) "Capital improvement" means any of the following facilities that have a life expectancy of three or more years and are owned and operated by or on behalf of a political subdivision:

(A) water supply, treatment, and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage, and flood control facilities; whether or not they are located within the service area; and

(B) roadway facilities.

(2) "Capital improvements plan" means a plan required by this chapter that identifies capital improvements or facility expansions for which impact fees may be assessed.

(3) "Facility expansion" means the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization, or expansion of an existing facility to better serve existing development.

(4) "Impact fee" means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition. The term does not include:

(A) dedication of land for public parks or payment in lieu of the dedication to serve park needs;

(B) dedication of rights-of-way or easements or construction or dedication of on-site or off-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks, or curbs if the dedication or construction is required by a valid ordinance and is necessitated by and attributable to the new development;

(C) lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing water or sewer mains or lines; or

(D) other pro rata fees for reimbursement of water or sewer mains or lines extended by the political subdivision.

However, an item included in the capital improvements plan may not be required to be constructed except in accordance with Section 395.019(2), and an owner may not be required to construct or dedicate facilities and to pay impact fees for those facilities.

(5) "Land use assumptions" includes a description of the service area and projections of changes in land uses, densities, intensities, and population in the service area over at least a 10-year period.

(6) "New development" means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural

alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units.

(7) "Political subdivision" means a municipality, a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, or, for the purposes set forth by Section 395.079, certain counties described by that section.

(8) "Roadway facilities" means arterial or collector streets or roads that have been designated on an officially adopted roadway plan of the political subdivision, together with all necessary appurtenances. The term includes the political subdivision's share of costs for roadways and associated improvements designated on the federal or Texas highway system, including local matching funds and costs related to utility line relocation and the establishment of curbs, gutters, sidewalks, drainage appurtenances, and rights-of-way.

(9) "Service area" means the area within the corporate boundaries or extraterritorial jurisdiction, as determined under Chapter 42, of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan, except roadway facilities and storm water, drainage, and flood control facilities. The service area, for the purposes of this chapter, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, except for roadway facilities and storm water, drainage, and flood control facilities. For roadway facilities, the service area is limited to an area within the corporate boundaries of the political subdivision and shall not exceed six miles. For storm water, drainage, and flood control facilities, the service area may include all or part of the land within the political subdivision or its extraterritorial jurisdiction, but shall not exceed the area actually served by the storm water, drainage, and flood control facilities designated in the capital improvements plan and shall not extend across watershed boundaries.

(10) "Service unit" means a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards and based on historical data and trends applicable to the political subdivision in

which the individual unit of development is located during the previous 10 years.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., ch. 566, Sec. 1(e), eff. Aug. 28, 1989; Acts 2001, 77th Leg., ch. 345, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. AUTHORIZATION OF IMPACT FEE

Sec. 395.011. AUTHORIZATION OF FEE. (a) Unless otherwise specifically authorized by state law or this chapter, a governmental entity or political subdivision may not enact or impose an impact fee.

(b) Political subdivisions may enact or impose impact fees on land within their corporate boundaries or extraterritorial jurisdictions only by complying with this chapter, except that impact fees may not be enacted or imposed in the extraterritorial jurisdiction for roadway facilities.

(c) A municipality may contract to provide capital improvements, except roadway facilities, to an area outside its corporate boundaries and extraterritorial jurisdiction and may charge an impact fee under the contract, but if an impact fee is charged in that area, the municipality must comply with this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.012. ITEMS PAYABLE BY FEE. (a) An impact fee may be imposed only to pay the costs of constructing capital improvements or facility expansions, including and limited to the:

(1) construction contract price;

(2) surveying and engineering fees;

(3) land acquisition costs, including land purchases, court awards and costs, attorney's fees, and expert witness fees; and

(4) fees actually paid or contracted to be paid to an independent qualified engineer or financial consultant preparing or updating the capital improvements plan who is not an employee of the political subdivision.

(b) Projected interest charges and other finance costs may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds,

notes, or other obligations issued by or on behalf of the political subdivision to finance the capital improvements or facility expansions identified in the capital improvements plan and are not used to reimburse bond funds expended for facilities that are not identified in the capital improvements plan.

(c) Notwithstanding any other provision of this chapter, the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay a staff engineer who prepares or updates a capital improvements plan under this chapter.

(d) A municipality may pledge an impact fee as security for the payment of debt service on a bond, note, or other obligation issued to finance a capital improvement or public facility expansion if:

(1) the improvement or expansion is identified in a capital improvements plan; and

(2) at the time of the pledge, the governing body of the municipality certifies in a written order, ordinance, or resolution that none of the impact fee will be used or expended for an improvement or expansion not identified in the plan.

(e) A certification under Subsection (d)(2) is sufficient evidence that an impact fee pledged will not be used or expended for an improvement or expansion that is not identified in the capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 90, Sec. 1, eff. May 16, 1995.

Sec. 395.013. ITEMS NOT PAYABLE BY FEE. Impact fees may not be adopted or used to pay for:

(1) construction, acquisition, or expansion of public facilities or assets other than capital improvements or facility expansions identified in the capital improvements plan;

(2) repair, operation, or maintenance of existing or new capital improvements or facility expansions;

(3) upgrading, updating, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental, or regulatory standards;

(4) upgrading, updating, expanding, or replacing existing capital improvements to provide better service to existing

development;

(5) administrative and operating costs of the political subdivision, except the Edwards Underground Water District or a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may use impact fees to pay its administrative and operating costs;

(6) principal payments and interest or other finance charges on bonds or other indebtedness, except as allowed by Section 395.012.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.014. CAPITAL IMPROVEMENTS PLAN. (a) The political subdivision shall use qualified professionals to prepare the capital improvements plan and to calculate the impact fee. The capital improvements plan must contain specific enumeration of the following items:

(1) a description of the existing capital improvements within the service area and the costs to upgrade, update, improve, expand, or replace the improvements to meet existing needs and usage and stricter safety, efficiency, environmental, or regulatory standards, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(2) an analysis of the total capacity, the level of current usage, and commitments for usage of capacity of the existing capital improvements, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(3) a description of all or the parts of the capital improvements or facility expansions and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, which shall be prepared by a qualified professional engineer licensed to perform the professional engineering services in this state;

(4) a definitive table establishing the specific level or quantity of use, consumption, generation, or discharge of a service unit for each category of capital improvements or facility expansions and an equivalency or conversion table establishing the ratio of a

service unit to various types of land uses, including residential, commercial, and industrial;

(5) the total number of projected service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;

(6) the projected demand for capital improvements or facility expansions required by new service units projected over a reasonable period of time, not to exceed 10 years; and

(7) a plan for awarding:

(A) a credit for the portion of ad valorem tax and utility service revenues generated by new service units during the program period that is used for the payment of improvements, including the payment of debt, that are included in the capital improvements plan; or

(B) in the alternative, a credit equal to 50 percent of the total projected cost of implementing the capital improvements plan.

(b) The analysis required by Subsection (a)(3) may be prepared on a systemwide basis within the service area for each major category of capital improvement or facility expansion for the designated service area.

(c) The governing body of the political subdivision is responsible for supervising the implementation of the capital improvements plan in a timely manner.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 2, eff. Sept. 1, 2001.

Sec. 395.015. MAXIMUM FEE PER SERVICE UNIT. (a) The impact fee per service unit may not exceed the amount determined by subtracting the amount in Section 395.014(a)(7) from the costs of the capital improvements described by Section 395.014(a)(3) and dividing that amount by the total number of projected service units described by Section 395.014(a)(5).

(b) If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full

development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to projected new service units described by Section 395.014(a)(6) by the projected new service units described in that section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 3, eff. Sept. 1, 2001.

Sec. 395.016. TIME FOR ASSESSMENT AND COLLECTION OF FEE. (a) This subsection applies only to impact fees adopted and land platted before June 20, 1987. For land that has been platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before June 20, 1987, or land on which new development occurs or is proposed without platting, the political subdivision may assess the impact fees at any time during the development approval and building process. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(b) This subsection applies only to impact fees adopted before June 20, 1987, and land platted after that date. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after June 20, 1987, the political subdivision may assess the impact fees before or at the time of recordation. Except as provided by Section 395.019, the political subdivision may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(c) This subsection applies only to impact fees adopted after June 20, 1987. For new development which is platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision before the adoption of an impact fee, an impact fee may not be collected on any service unit for which a valid building permit is issued within one year after the

date of adoption of the impact fee.

(d) This subsection applies only to land platted in accordance with Subchapter A, Chapter 212, or the subdivision or platting procedures of a political subdivision after adoption of an impact fee adopted after June 20, 1987. The political subdivision shall assess the impact fees before or at the time of recordation of a subdivision plat or other plat under Subchapter A, Chapter 212, or the subdivision or platting ordinance or procedures of any political subdivision in the official records of the county clerk of the county in which the tract is located. Except as provided by Section 395.019, if the political subdivision has water and wastewater capacity available:

(1) the political subdivision shall collect the fees at the time the political subdivision issues a building permit;

(2) for land platted outside the corporate boundaries of a municipality, the municipality shall collect the fees at the time an application for an individual meter connection to the municipality's water or wastewater system is filed; or

(3) a political subdivision that lacks authority to issue building permits in the area where the impact fee applies shall collect the fees at the time an application is filed for an individual meter connection to the political subdivision's water or wastewater system.

(e) For land on which new development occurs or is proposed to occur without platting, the political subdivision may assess the impact fees at any time during the development and building process and may collect the fees at either the time of recordation of the subdivision plat or connection to the political subdivision's water or sewer system or at the time the political subdivision issues either the building permit or the certificate of occupancy.

(f) An "assessment" means a determination of the amount of the impact fee in effect on the date or occurrence provided in this section and is the maximum amount that can be charged per service unit of such development. No specific act by the political subdivision is required.

(g) Notwithstanding Subsections (a)-(e) and Section 395.017, the political subdivision may reduce or waive an impact fee for any service unit that would qualify as affordable housing under 42 U.S.C. Section 12745, as amended, once the service unit is constructed. If affordable housing as defined by 42 U.S.C. Section 12745, as amended,

is not constructed, the political subdivision may reverse its decision to waive or reduce the impact fee, and the political subdivision may assess an impact fee at any time during the development approval or building process or after the building process if an impact fee was not already assessed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 980, Sec. 52, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 345, Sec. 4, eff. Sept. 1, 2001.

Sec. 395.017. ADDITIONAL FEE PROHIBITED; EXCEPTION. After assessment of the impact fees attributable to the new development or execution of an agreement for payment of impact fees, additional impact fees or increases in fees may not be assessed against the tract for any reason unless the number of service units to be developed on the tract increases. In the event of the increase in the number of service units, the impact fees to be imposed are limited to the amount attributable to the additional service units.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.018. AGREEMENT WITH OWNER REGARDING PAYMENT. A political subdivision is authorized to enter into an agreement with the owner of a tract of land for which the plat has been recorded providing for the time and method of payment of the impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.019. COLLECTION OF FEES IF SERVICES NOT AVAILABLE. Except for roadway facilities, impact fees may be assessed but may not be collected in areas where services are not currently available unless:

(1) the collection is made to pay for a capital improvement or facility expansion that has been identified in the capital improvements plan and the political subdivision commits to commence construction within two years, under duly awarded and executed contracts or commitments of staff time covering substantially all of the work required to provide service, and to have the service

available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in no event longer than five years;

(2) the political subdivision agrees that the owner of a new development may construct or finance the capital improvements or facility expansions and agrees that the costs incurred or funds advanced will be credited against the impact fees otherwise due from the new development or agrees to reimburse the owner for such costs from impact fees paid from other new developments that will use such capital improvements or facility expansions, which fees shall be collected and reimbursed to the owner at the time the other new development records its plat; or

(3) an owner voluntarily requests the political subdivision to reserve capacity to serve future development, and the political subdivision and owner enter into a valid written agreement.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.020. ENTITLEMENT TO SERVICES. Any new development for which an impact fee has been paid is entitled to the permanent use and benefit of the services for which the fee was exacted and is entitled to receive immediate service from any existing facilities with actual capacity to serve the new service units, subject to compliance with other valid regulations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.021. AUTHORITY OF POLITICAL SUBDIVISIONS TO SPEND FUNDS TO REDUCE FEES. Political subdivisions may spend funds from any lawful source to pay for all or a part of the capital improvements or facility expansions to reduce the amount of impact fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.022. AUTHORITY OF POLITICAL SUBDIVISION TO PAY FEES. (a) Political subdivisions and other governmental entities may pay impact fees imposed under this chapter.

(b) A school district is not required to pay impact fees imposed under this chapter unless the board of trustees of the district consents to the payment of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the board of trustees considers advisable to provide for the payment of the fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 250 (S.B. 883), Sec. 1, eff. May 25, 2007.

Sec. 395.023. CREDITS AGAINST ROADWAY FACILITIES FEES. Any construction of, contributions to, or dedications of off-site roadway facilities agreed to or required by a political subdivision as a condition of development approval shall be credited against roadway facilities impact fees otherwise due from the development.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.024. ACCOUNTING FOR FEES AND INTEREST. (a) The order, ordinance, or resolution levying an impact fee must provide that all funds collected through the adoption of an impact fee shall be deposited in interest-bearing accounts clearly identifying the category of capital improvements or facility expansions within the service area for which the fee was adopted.

(b) Interest earned on impact fees is considered funds of the account on which it is earned and is subject to all restrictions placed on use of impact fees under this chapter.

(c) Impact fee funds may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by this chapter.

(d) The records of the accounts into which impact fees are deposited shall be open for public inspection and copying during ordinary business hours.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.025. REFUNDS. (a) On the request of an owner of the property on which an impact fee has been paid, the political subdivision shall refund the impact fee if existing facilities are available and service is denied or the political subdivision has, after collecting the fee when service was not available, failed to commence construction within two years or service is not available within a reasonable period considering the type of capital improvement or facility expansion to be constructed, but in no event later than five years from the date of payment under Section 395.019(1).

(b) Repealed by Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

(c) The political subdivision shall refund any impact fee or part of it that is not spent as authorized by this chapter within 10 years after the date of payment.

(d) Any refund shall bear interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Section 302.002, Finance Code, or its successor statute.

(e) All refunds shall be made to the record owner of the property at the time the refund is paid. However, if the impact fees were paid by another political subdivision or governmental entity, payment shall be made to the political subdivision or governmental entity.

(f) The owner of the property on which an impact fee has been paid or another political subdivision or governmental entity that paid the impact fee has standing to sue for a refund under this section.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 37, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.82, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 345, Sec. 9, eff. Sept. 1, 2001.

SUBCHAPTER C. PROCEDURES FOR ADOPTION OF IMPACT FEE

Sec. 395.041. COMPLIANCE WITH PROCEDURES REQUIRED. Except as otherwise provided by this chapter, a political subdivision must comply with this subchapter to levy an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0411. CAPITAL IMPROVEMENTS PLAN. The political subdivision shall provide for a capital improvements plan to be developed by qualified professionals using generally accepted engineering and planning practices in accordance with Section 395.014.

Added by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.042. HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. To impose an impact fee, a political subdivision must adopt an order, ordinance, or resolution establishing a public hearing date to consider the land use assumptions and capital improvements plan for the designated service area.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.043. INFORMATION ABOUT LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN AVAILABLE TO PUBLIC. On or before the date of the first publication of the notice of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall make available to the public its land use assumptions, the time period of the projections, and a description of the capital improvement facilities that may be proposed.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.044. NOTICE OF HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. (a) Before the 30th day before the date of the hearing on the land use assumptions and capital improvements plan, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order, ordinance, or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the

hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN RELATING TO POSSIBLE ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the land use assumptions and capital improvements plan under which an impact fee may be imposed; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the land use assumptions and capital improvements plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.045. APPROVAL OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED. (a) After the public hearing on the land use assumptions and capital improvements plan, the political subdivision shall determine whether to adopt or reject an ordinance, order, or resolution approving the land use assumptions and capital improvements plan.

(b) The political subdivision, within 30 days after the date of the public hearing, shall approve or disapprove the land use assumptions and capital improvements plan.

(c) An ordinance, order, or resolution approving the land use assumptions and capital improvements plan may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.0455. SYSTEMWIDE LAND USE ASSUMPTIONS. (a) In lieu of adopting land use assumptions for each service area, a political

subdivision may, except for storm water, drainage, flood control, and roadway facilities, adopt systemwide land use assumptions, which cover all of the area subject to the jurisdiction of the political subdivision for the purpose of imposing impact fees under this chapter.

(b) Prior to adopting systemwide land use assumptions, a political subdivision shall follow the public notice, hearing, and other requirements for adopting land use assumptions.

(c) After adoption of systemwide land use assumptions, a political subdivision is not required to adopt additional land use assumptions for a service area for water supply, treatment, and distribution facilities or wastewater collection and treatment facilities as a prerequisite to the adoption of a capital improvements plan or impact fee, provided the capital improvements plan and impact fee are consistent with the systemwide land use assumptions.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(b), eff. Aug. 28, 1989.

Sec. 395.047. HEARING ON IMPACT FEE. On adoption of the land use assumptions and capital improvements plan, the governing body shall adopt an order or resolution setting a public hearing to discuss the imposition of the impact fee. The public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution imposing an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.049. NOTICE OF HEARING ON IMPACT FEE. (a) Before the 30th day before the date of the hearing on the imposition of an impact fee, the political subdivision shall send a notice of the hearing by certified mail to any person who has given written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of the hearing within two years preceding the date of adoption of the order or resolution setting the public hearing.

(b) The political subdivision shall publish notice of the

hearing before the 30th day before the date set for the hearing, in one or more newspapers of general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies.

(c) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON ADOPTION OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the adoption of an impact fee;

(4) the amount of the proposed impact fee per service unit; and

(5) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the plan and proposed fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.050. ADVISORY COMMITTEE COMMENTS ON IMPACT FEES. The advisory committee created under Section 395.058 shall file its written comments on the proposed impact fees before the fifth business day before the date of the public hearing on the imposition of the fees.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.051. APPROVAL OF IMPACT FEE REQUIRED. (a) The political subdivision, within 30 days after the date of the public hearing on the imposition of an impact fee, shall approve or disapprove the imposition of an impact fee.

(b) An ordinance, order, or resolution approving the imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 5, eff. Sept. 1, 2001.

Sec. 395.052. PERIODIC UPDATE OF LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN REQUIRED. (a) A political subdivision imposing an impact fee shall update the land use assumptions and capital improvements plan at least every five years. The initial five-year period begins on the day the capital improvements plan is adopted.

(b) The political subdivision shall review and evaluate its current land use assumptions and shall cause an update of the capital improvements plan to be prepared in accordance with Subchapter B.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 6, eff. Sept. 1, 2001.

Sec. 395.053. HEARING ON UPDATED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLAN. The governing body of the political subdivision shall, within 60 days after the date it receives the update of the land use assumptions and the capital improvements plan, adopt an order setting a public hearing to discuss and review the update and shall determine whether to amend the plan.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.054. HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE. A public hearing must be held by the governing body of the political subdivision to discuss the proposed ordinance, order, or resolution amending land use assumptions, the capital improvements plan, or the impact fee. On or before the date of the first publication of the notice of the hearing on the amendments, the land use assumptions and the capital improvements plan, including the amount of any proposed amended impact fee per service unit, shall be made available to the public.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.055. NOTICE OF HEARING ON AMENDMENTS TO LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEE. (a) The

notice and hearing procedures prescribed by Sections 395.044(a) and (b) apply to a hearing on the amendment of land use assumptions, a capital improvements plan, or an impact fee.

(b) The notice of a hearing under this section must contain the following:

(1) a headline to read as follows:

"NOTICE OF PUBLIC HEARING ON AMENDMENT OF IMPACT FEES"

(2) the time, date, and location of the hearing;

(3) a statement that the purpose of the hearing is to consider the amendment of land use assumptions and a capital improvements plan and the imposition of an impact fee; and

(4) a statement that any member of the public has the right to appear at the hearing and present evidence for or against the update.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 345, Sec. 7, eff. Sept. 1, 2001.

Sec. 395.056. ADVISORY COMMITTEE COMMENTS ON AMENDMENTS. The advisory committee created under Section 395.058 shall file its written comments on the proposed amendments to the land use assumptions, capital improvements plan, and impact fee before the fifth business day before the date of the public hearing on the amendments.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.057. APPROVAL OF AMENDMENTS REQUIRED. (a) The political subdivision, within 30 days after the date of the public hearing on the amendments, shall approve or disapprove the amendments of the land use assumptions and the capital improvements plan and modification of an impact fee.

(b) An ordinance, order, or resolution approving the amendments to the land use assumptions, the capital improvements plan, and imposition of an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.0575. DETERMINATION THAT NO UPDATE OF LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN OR IMPACT FEES IS NEEDED. (a) If, at the time an update under Section 395.052 is required, the governing body determines that no change to the land use assumptions, capital improvements plan, or impact fee is needed, it may, as an alternative to the updating requirements of Sections 395.052-395.057, do the following:

(1) The governing body of the political subdivision shall, upon determining that an update is unnecessary and 60 days before publishing the final notice under this section, send notice of its determination not to update the land use assumptions, capital improvements plan, and impact fee by certified mail to any person who has, within two years preceding the date that the final notice of this matter is to be published, give written notice by certified or registered mail to the municipal secretary or other designated official of the political subdivision requesting notice of hearings related to impact fees. The notice must contain the information in Subsections (b)(2)-(5).

(2) The political subdivision shall publish notice of its determination once a week for three consecutive weeks in one or more newspapers with general circulation in each county in which the political subdivision lies. However, a river authority that is authorized elsewhere by state law to charge fees that function as impact fees may publish the required newspaper notice only in each county in which the service area lies. The notice of public hearing may not be in the part of the paper in which legal notices and classified ads appear and may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.

(b) The notice must contain the following:

(1) a headline to read as follows:

"NOTICE OF DETERMINATION NOT TO UPDATE LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, OR IMPACT FEES";

(2) a statement that the governing body of the political subdivision has determined that no change to the land use assumptions, capital improvements plan, or impact fee is necessary;

(3) an easily understandable description and a map of the service area in which the updating has been determined to be unnecessary;

(4) a statement that if, within a specified date, which date shall be at least 60 days after publication of the first notice, a person makes a written request to the designated official of the political subdivision requesting that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body must comply with the request by following the requirements of Sections 395.052-395.057; and

(5) a statement identifying the name and mailing address of the official of the political subdivision to whom a request for an update should be sent.

(c) The advisory committee shall file its written comments on the need for updating the land use assumptions, capital improvements plans, and impact fee before the fifth business day before the earliest notice of the government's decision that no update is necessary is mailed or published.

(d) If, by the date specified in Subsection (b)(4), a person requests in writing that the land use assumptions, capital improvements plan, or impact fee be updated, the governing body shall cause an update of the land use assumptions and capital improvements plan to be prepared in accordance with Sections 395.052-395.057.

(e) An ordinance, order, or resolution determining the need for updating land use assumptions, a capital improvements plan, or an impact fee may not be adopted as an emergency measure.

Added by Acts 1989, 71st Leg., ch. 566, Sec. 1(d), eff. Aug. 28, 1989.

Sec. 395.058. ADVISORY COMMITTEE. (a) On or before the date on which the order, ordinance, or resolution is adopted under Section 395.042, the political subdivision shall appoint a capital improvements advisory committee.

(b) The advisory committee is composed of not less than five members who shall be appointed by a majority vote of the governing body of the political subdivision. Not less than 40 percent of the membership of the advisory committee must be representatives of the real estate, development, or building industries who are not employees or officials of a political subdivision or governmental entity. If the political subdivision has a planning and zoning commission, the commission may act as the advisory committee if the

commission includes at least one representative of the real estate, development, or building industry who is not an employee or official of a political subdivision or governmental entity. If no such representative is a member of the planning and zoning commission, the commission may still act as the advisory committee if at least one such representative is appointed by the political subdivision as an ad hoc voting member of the planning and zoning commission when it acts as the advisory committee. If the impact fee is to be applied in the extraterritorial jurisdiction of the political subdivision, the membership must include a representative from that area.

(c) The advisory committee serves in an advisory capacity and is established to:

(1) advise and assist the political subdivision in adopting land use assumptions;

(2) review the capital improvements plan and file written comments;

(3) monitor and evaluate implementation of the capital improvements plan;

(4) file semiannual reports with respect to the progress of the capital improvements plan and report to the political subdivision any perceived inequities in implementing the plan or imposing the impact fee; and

(5) advise the political subdivision of the need to update or revise the land use assumptions, capital improvements plan, and impact fee.

(d) The political subdivision shall make available to the advisory committee any professional reports with respect to developing and implementing the capital improvements plan.

(e) The governing body of the political subdivision shall adopt procedural rules for the advisory committee to follow in carrying out its duties.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

SUBCHAPTER D. OTHER PROVISIONS

Sec. 395.071. DUTIES TO BE PERFORMED WITHIN TIME LIMITS. If the governing body of the political subdivision does not perform a duty imposed under this chapter within the prescribed period, a person who has paid an impact fee or an owner of land on which an

impact fee has been paid has the right to present a written request to the governing body of the political subdivision stating the nature of the unperformed duty and requesting that it be performed within 60 days after the date of the request. If the governing body of the political subdivision finds that the duty is required under this chapter and is late in being performed, it shall cause the duty to commence within 60 days after the date of the request and continue until completion.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.072. RECORDS OF HEARINGS. A record must be made of any public hearing provided for by this chapter. The record shall be maintained and be made available for public inspection by the political subdivision for at least 10 years after the date of the hearing.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.073. CUMULATIVE EFFECT OF STATE AND LOCAL RESTRICTIONS. Any state or local restrictions that apply to the imposition of an impact fee in a political subdivision where an impact fee is proposed are cumulative with the restrictions in this chapter.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.074. PRIOR IMPACT FEES REPLACED BY FEES UNDER THIS CHAPTER. An impact fee that is in place on June 20, 1987, must be replaced by an impact fee made under this chapter on or before June 20, 1990. However, any political subdivision having an impact fee that has not been replaced under this chapter on or before June 20, 1988, is liable to any party who, after June 20, 1988, pays an impact fee that exceeds the maximum permitted under Subchapter B by more than 10 percent for an amount equal to two times the difference between the maximum impact fee allowed and the actual impact fee imposed, plus reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.075. NO EFFECT ON TAXES OR OTHER CHARGES. This chapter does not prohibit, affect, or regulate any tax, fee, charge, or assessment specifically authorized by state law.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.076. MORATORIUM ON DEVELOPMENT PROHIBITED. A moratorium may not be placed on new development for the purpose of awaiting the completion of all or any part of the process necessary to develop, adopt, or update land use assumptions, a capital improvements plan, or an impact fee.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.
Amended by Acts 2001, 77th Leg., ch. 441, Sec. 2, eff. Sept. 1, 2001.

Sec. 395.077. APPEALS. (a) A person who has exhausted all administrative remedies within the political subdivision and who is aggrieved by a final decision is entitled to trial de novo under this chapter.

(b) A suit to contest an impact fee must be filed within 90 days after the date of adoption of the ordinance, order, or resolution establishing the impact fee.

(c) Except for roadway facilities, a person who has paid an impact fee or an owner of property on which an impact fee has been paid is entitled to specific performance of the services by the political subdivision for which the fee was paid.

(d) This section does not require construction of a specific facility to provide the services.

(e) Any suit must be filed in the county in which the major part of the land area of the political subdivision is located. A successful litigant shall be entitled to recover reasonable attorney's fees and court costs.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.078. SUBSTANTIAL COMPLIANCE WITH NOTICE REQUIREMENTS. An impact fee may not be held invalid because the public notice requirements were not complied with if compliance was substantial and in good faith.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989.

Sec. 395.079. IMPACT FEE FOR STORM WATER, DRAINAGE, AND FLOOD CONTROL IN POPULOUS COUNTY. (a) Any county that has a population of 3.3 million or more or that borders a county with a population of 3.3 million or more, and any district or authority created under Article XVI, Section 59, of the Texas Constitution within any such county that is authorized to provide storm water, drainage, and flood control facilities, is authorized to impose impact fees to provide storm water, drainage, and flood control improvements necessary to accommodate new development.

(b) The imposition of impact fees authorized by Subsection (a) is exempt from the requirements of Sections 395.025, 395.052-395.057, and 395.074 unless the political subdivision proposes to increase the impact fee.

(c) Any political subdivision described by Subsection (a) is authorized to pledge or otherwise contractually obligate all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued or incurred by or on behalf of the political subdivision and to the payment of any other contractual obligations.

(d) An impact fee adopted by a political subdivision under Subsection (a) may not be reduced if:

(1) the political subdivision has pledged or otherwise contractually obligated all or part of the impact fees to the payment of principal and interest on bonds, notes, or other obligations issued by or on behalf of the political subdivision; and

(2) the political subdivision agrees in the pledge or contract not to reduce the impact fees during the term of the bonds, notes, or other contractual obligations.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 107, eff. Sept. 1, 2001.

Sec. 395.080. CHAPTER NOT APPLICABLE TO CERTAIN WATER-RELATED SPECIAL DISTRICTS. (a) This chapter does not apply to impact fees, charges, fees, assessments, or contributions:

(1) paid by or charged to a district created under Article XVI, Section 59, of the Texas Constitution to another district created under that constitutional provision if both districts are required by law to obtain approval of their bonds by the Texas Natural Resource Conservation Commission; or

(2) charged by an entity if the impact fees, charges, fees, assessments, or contributions are approved by the Texas Natural Resource Conservation Commission.

(b) Any district created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution may petition the Texas Natural Resource Conservation Commission for approval of any proposed impact fees, charges, fees, assessments, or contributions. The commission shall adopt rules for reviewing the petition and may charge the petitioner fees adequate to cover the cost of processing and considering the petition. The rules shall require notice substantially the same as that required by this chapter for the adoption of impact fees and shall afford opportunity for all affected parties to participate.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 82(a), eff. Aug. 28, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.257, eff. Sept. 1, 1995.

Sec. 395.081. FEES FOR ADJOINING LANDOWNERS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality with a population of 115,000 or less that constitutes more than three-fourths of the population of the county in which the majority of the area of the municipality is located.

(b) A municipality that has not adopted an impact fee under this chapter that is constructing a capital improvement, including sewer or waterline or drainage or roadway facilities, from the municipality to a development located within or outside the municipality's boundaries, in its discretion, may allow a landowner whose land adjoins the capital improvement or is within a specified distance from the capital improvement, as determined by the governing body of the municipality, to connect to the capital improvement if:

(1) the governing body of the municipality has adopted a finding under Subsection (c); and

(2) the landowner agrees to pay a proportional share of the cost of the capital improvement as determined by the governing body of the municipality and agreed to by the landowner.

(c) Before a municipality may allow a landowner to connect to a capital improvement under Subsection (b), the municipality shall adopt a finding that the municipality will benefit from allowing the landowner to connect to the capital improvement. The finding shall describe the benefit to be received by the municipality.

(d) A determination of the governing body of a municipality, or its officers or employees, under this section is a discretionary function of the municipality and the municipality and its officers or employees are not liable for a determination made under this section.

Added by Acts 1997, 75th Leg., ch. 1150, Sec. 1, eff. June 19, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1043 (H.B. 3111), Sec. 5, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 100, eff. September 1, 2011.

CHAPTER 397. STRATEGIC PLANNING RELATING TO MILITARY BASES AND DEFENSE FACILITIES

Sec. 397.001. DEFINITIONS. In this chapter:

(1) "Defense community" means a political subdivision, including a municipality, county, or special district, that is adjacent to, is near, or encompasses any part of a military base or defense facility.

(2) "Defense facility" means a government agency, private business, or other entity providing a United States Department of Defense related function or a private business that provides direct services or products to the United States Department of Defense.

(3) "Military base" means a federally owned or operated military installation or facility that is presently functioning or was closed as a result of the United States Department of Defense base realignment process.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 9, eff. May 27, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 396 (S.B. 1481), Sec. 4, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1160 (H.B. 3302), Sec. 7, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 13, eff. September 1, 2013.

Sec. 397.002. MILITARY BASE OR DEFENSE FACILITY VALUE ENHANCEMENT STATEMENT. (a) A defense community that applies for financial assistance from the Texas military value revolving loan account under Section 436.153, Government Code, shall prepare, in consultation with the authorities from each military base or defense facility associated with the community, a military base or defense facility value enhancement statement that illustrates specific ways the funds will enhance the military or defense value of the military base or defense facility and must include the following information for each project:

(1) the purpose for which financial assistance is requested, including a description of the project;

(2) the source of other funds for the project;

(3) a statement on how the project will enhance the military or defense value of the military base or defense facility;

(4) whether the defense community has coordinated the project with authorities of the military base or defense facility and whether any approval has been obtained from those authorities;

(5) whether any portion of the project is to occur on the military base or defense facility;

(6) whether the project will have any negative impact on the natural or cultural environment;

(7) a description of any known negative factors arising from the project that will affect the community or the military base or defense facility; and

(8) a description of how the project will address future base realignment or closure or a negative United States Department of Defense decision.

(b) The Texas Military Preparedness Commission may require a defense community to provide any additional information the commission requires to evaluate the community's request for financial assistance under this section.

(c) Two or more defense communities near the same military base or defense facility that apply for financial assistance from the Texas military value revolving loan account may prepare a joint statement.

(d) A copy of the military base or defense facility value enhancement statement shall be distributed to the authorities of each military base or defense facility included in the statement and the Texas Military Preparedness Commission.

(e) This section does not prohibit a defense community that is not applying for financial assistance from preparing a military base or defense facility value enhancement statement under this section.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 9, eff. May 27, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 396 (S.B. 1481), Sec. 5, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1160 (H.B. 3302), Sec. 8, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 14, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 15, eff. September 1, 2013.

Sec. 397.0021. DEFENSE COMMUNITY ECONOMIC REDEVELOPMENT VALUE STATEMENT. (a) A defense community that is adjacent to a closed military base or defense facility and applies for financial assistance from the Texas military value revolving loan account shall prepare an economic redevelopment value statement that illustrates specific ways the funds will be used to promote economic development in the community and include the following information for each project:

(1) the purpose for which financial assistance is requested, including a description of the project;

(2) the source of other funds for the project;

(3) a statement on how the project will promote economic development in the community;

(4) whether any portion of the project is to occur on a closed military base or defense facility;

(5) whether any approval has been obtained from those

authorities retaining or receiving title to that portion of the closed military base or defense facility to be affected by the project;

(6) whether the project will have any negative impact on the natural or cultural environment; and

(7) a description of any known negative factors arising from the project that will affect the defense community.

(b) The Texas Military Preparedness Commission may require a defense community to provide any additional information the commission requires to evaluate the community's request for financial assistance under this section.

(c) Two or more defense communities near the same military base or defense facility that apply for financial assistance from the Texas military value revolving loan account may prepare a joint statement.

(d) A copy of the economic redevelopment value statement shall be distributed to the Texas Military Preparedness Commission and any defense community which may be affected by the resulting project.

(e) This section does not prohibit a defense community that is not applying for financial assistance from preparing an economic redevelopment value statement under this section.

Added by Acts 2005, 79th Leg., Ch. 396 (S.B. 1481), Sec. 6, eff. June 17, 2005.
Added by Acts 2005, 79th Leg., Ch. 1160 (H.B. 3302), Sec. 9, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 16, eff. September 1, 2013.

Sec. 397.003. COMPREHENSIVE DEFENSE COMMUNITY STRATEGIC IMPACT PLAN. (a) A defense community may request financial assistance from the Texas military value revolving loan account to prepare a comprehensive defense community strategic impact plan that states the defense community's long-range goals and development proposals relating to the following purposes:

(1) controlling negative effects of future growth of the defense community on the military base or defense facility and minimizing encroachment on military exercises or training activities

connected to the military base or defense facility;

(2) enhancing the military or defense value of the military base or defense facility while reducing operating costs; and

(3) identifying which, if any, property and services in a region can be shared by the military base or defense facility and the defense community.

(b) The comprehensive defense community strategic impact plan should include, if appropriate, maps, diagrams, and text to support its proposals and must include the following elements as they relate to each military base or defense facility included in the plan:

(1) a land use element that identifies:

(A) proposed distribution, location, and extent of land uses such as housing, business, industry, agriculture, recreation, public buildings and grounds, and other categories of public and private land uses as those uses may impact the base or facility; and

(B) existing and proposed regulations of land uses, including zoning, annexation, or planning regulations as those regulations may impact the base or facility;

(2) a transportation element that identifies the location and extent of existing and proposed freeways, streets, and roads and other modes of transportation;

(3) a population growth element that identifies past and anticipated population trends;

(4) a water resources element that:

(A) addresses currently available surface water and groundwater supplies; and

(B) addresses future growth projections and ways in which the water supply needs of the defense community and the base or facility can be adequately served by the existing resources, or if such a need is anticipated, plans for securing additional water supplies;

(5) a conservation element that describes methods for conservation, development, and use of natural resources, including land, forests, soils, rivers and other waters, wildlife, and other natural resources;

(6) an open-space area element that includes:

(A) a list of existing open-space land areas;

(B) an analysis of the base's or facility's forecasted needs for open-space areas to conduct its military training activities; and

(C) suggested strategies under which land on which some level of development has occurred can make a transition to an open-space area, if needed;

(7) a restricted airspace element that creates buffer zones, if needed, between the base or facility and the defense community; and

(8) a military training route element that identifies existing routes and proposes plans for additional routes, if needed.

(c) Two or more defense communities near the same military base or defense facility may prepare a joint plan.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 9, eff. May 27, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 17, eff. September 1, 2013.

Sec. 397.004. PLANNING MANUAL. A defense community that has prepared a comprehensive defense community strategic impact plan described by Section 397.003 is encouraged to develop, in coordination with the authorities of each military base or defense facility associated with the community, a planning manual based on the proposals contained in the plan. The manual should adopt guidelines for community planning and development to further the purposes described under Section 397.002. The defense community should, from time to time, consult with military base or defense facility authorities regarding any changes needed in the planning manual guidelines adopted under this section.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 9, eff. May 27, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 17, eff. September 1, 2013.

Sec. 397.005. CONSULTATION WITH OR NOTIFICATION TO MILITARY BASE OR DEFENSE FACILITY AUTHORITIES: PROPOSED ORDINANCE, RULE, OR PLAN. (a) This subsection applies to a defense community other than a defense community described by Subsection (b). If a defense community determines that an ordinance, rule, or plan proposed by the community may impact a military base or defense facility or the

military exercise or training activities connected to the base or facility, the defense community shall seek comments and analysis from the base or facility authorities concerning the compatibility of the proposed ordinance, rule, or plan with base operations. The defense community shall consider and analyze the comments and analysis before making a final determination relating to the proposed ordinance, rule, or plan.

(b) This subsection applies only to a defense community that includes a municipality with a population of more than 125,000 located primarily in a county with a population of less than 145,000 and that has not adopted airport zoning regulations under Chapter 241. A defense community that proposes to adopt or amend an ordinance, rule, or plan in an area located within eight miles of the boundary line of a military base or defense facility shall notify the base or facility authorities concerning the compatibility of the proposed ordinance, rule, or plan with base operations.

(c) A defense community that proposes to adopt or amend an ordinance, rule, or plan that would be applicable in a controlled compatible land use area as defined by Section 241.003 and that may impact base operations shall notify the base or facility authorities concerning the compatibility of the proposed ordinance, rule, or plan with base operations. This subsection applies only to a defense community that has not adopted airport zoning regulations under Chapter 241 and that:

(1) is a county with a population of more than 1.5 million that contains a municipality in which at least 70 percent of the county's population resides;

(2) is a county with a population of 170,000 or more that is adjacent to a county described by Subdivision (1);

(3) is located in a county described by Subdivision (1) or (2); or

(4) is or includes a municipality that is located in a county with a population of more than 100,000 and less than 130,000 that borders the Red River.

(d) A defense community described by Subsection (c) may enter into a memorandum of agreement with the military base or defense facility to establish a smaller area in the controlled compatible land use area for which notification under Subsection (c) would be required by the defense community.

(e) After providing notice under Subsection (c), the defense

community shall enter into a memorandum of agreement with the military base or defense facility to establish provisions to maintain the compatibility of the proposed ordinance, rule, or plan with base operations.

Added by Acts 2003, 78th Leg., ch. 149, Sec. 9, eff. May 27, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 1, eff. June 19, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1140 (H.B. 1665), Sec. 1, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1140 (H.B. 1665), Sec. 2, eff. June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1140 (H.B. 1665), Sec. 5, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 17, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 738 (H.B. 1640), Sec. 1, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 193, eff. September 1, 2023.

Sec. 397.006. CONSULTATION WITH OR NOTIFICATION TO MILITARY BASE OR DEFENSE FACILITY AUTHORITIES: PROPOSED STRUCTURE. (a) Subsection (b) applies only to a defense community that includes a municipality with a population of more than 125,000 located primarily in a county with a population of less than 145,000 and that has not adopted airport zoning regulations under Chapter 241.

(b) On receipt of an application for a permit as described by Section 245.001 for a proposed structure in an area located within eight miles of the boundary line of a military base or defense facility, the defense community reviewing the application shall notify the base or facility authorities concerning the compatibility of the proposed structure with base operations.

(c) On receipt of an application for a permit as defined by Section 245.001 for a proposed structure that would be located in a controlled compatible land use area as defined by Section 241.003 and may impact base operations, a defense community shall notify the base or facility authorities concerning the compatibility of the proposed

structure with base operations. This subsection applies only to a defense community that has not adopted airport zoning regulations under Chapter 241 and that:

(1) is a county with a population of more than 1.5 million that contains a municipality in which at least 70 percent of the county's population resides;

(2) is a county with a population of 170,000 or more that is adjacent to a county described by Subdivision (1);

(3) is located in a county described by Subdivision (1) or (2); or

(4) is or includes a municipality that is located in a county with a population of more than 100,000 and less than 130,000 that borders the Red River.

(c-1) A defense community described by Subsection (c) may enter into a memorandum of agreement with the military base or defense facility to establish a smaller area in the controlled compatible land use area for which notification under Subsection (c) would be required by the defense community.

(c-2) After providing notice under Subsection (c), a defense community shall enter into a memorandum of agreement with the military base or defense facility to establish provisions to maintain the compatibility of the proposed structure with base operations.

(d) This section does not apply if a defense community is required to take immediate action on an application to protect the public health, safety, or welfare of residents of the defense community.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 2, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1140 (H.B. 1665), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1140 (H.B. 1665), Sec. 4, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1140 (H.B. 1665), Sec. 5, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 18, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 777 (S.B. 1200), Sec. 19, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 738 (H.B. 1640), Sec. 2, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 194, eff. September 1, 2023.

Sec. 397.007. PUBLIC INFORMATION REGARDING IMPACT OF MILITARY INSTALLATIONS. A county and any municipality in which is located a military installation shall work closely with the military installation as necessary to ensure that the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study applicable to each military installation or a link to that information is publicly available on the local governmental entity's Internet website.

Added by Acts 2017, 85th Leg., R.S., Ch. 35 (H.B. 890), Sec. 1, eff. September 1, 2017.

CHAPTER 397A. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS RELATING TO CERTAIN MILITARY INSTALLATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 397A.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the areas that surround military installations will be frequented for military, national security, and international training purposes by residents from many parts of the state, nation, and world;

(2) compatible development and use of those areas is of concern to the state and nation; and

(3) without adequate regulation, the areas will tend to become incompatible with military missions and will be used in ways that interfere with:

(A) the proper continued use of those areas as secure locations for military installations and missions; and

(B) the effective operation of the military installations and missions.

(b) The powers granted under this chapter are for the purposes of:

(1) promoting the public health, safety, and general

welfare;

(2) protecting and preserving places and areas of military and national security importance and significance;

(3) protecting critical military missions and operations related to those missions; and

(4) ensuring state and national security.

(c) This chapter may not be interpreted to grant regulatory powers to administer Chapter 245 or to amend a protection or benefit provided by Chapter 245.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

SUBCHAPTER B. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS IN POPULOUS AREAS

Sec. 397A.051. APPLICABILITY. (a) A regulation or compatible development standard adopted under this subchapter does not apply to:

(1) a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision;

(2) a tract of land in agricultural use;

(3) an activity or a structure or appurtenance on a tract of land in agricultural use; or

(4) an area designated as part of the commission's territory under Section 397A.052 that is subject to the jurisdiction of a regulatory agency as defined by Section 245.001, and that, on the effective date of the Act adding this chapter, is:

(A) within the boundaries of a project as defined by Section 245.001 and any revision to the project that has accrued rights under Chapter 245;

(B) the subject of a permit as defined by Section 245.001 issued by or a permit application filed with a regulatory agency as defined by Section 245.001; or

(C) subject to a plan for development or plat application filed with a regulatory agency as defined by Section 245.001.

(b) In this section:

(1) "Agricultural use" means use or activity involving agriculture.

(2) "Agriculture" means:

(A) cultivating the soil to produce crops for human food, animal feed, seed for planting, or the production of fibers;

(B) practicing floriculture, viticulture, silviculture, or horticulture;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food, fiber, leather, pelts, or other tangible products having commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in a government program or normal crop or livestock rotation procedure; or

(E) engaging in wildlife management.

(c) A term used in this subchapter that is defined or used in Chapter 245 has the meaning assigned by Chapter 245.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.052. CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) This section applies only to:

(1) a county:

(A) in which three or more locations of a joint military base are located; and

(B) with a population of more than 1.7 million;

(2) a county that is adjacent to a county described by Subdivision (1); and

(3) a municipality located in a county described by Subdivision (1) or (2).

(b) One or more municipalities with extraterritorial jurisdiction located within five miles of the boundary line of a military installation and one or more counties with unincorporated area located within five miles of the boundary of a military installation may agree by order, ordinance, or other means to establish and fund a regional military sustainability commission under this subchapter with respect to the military installation.

(c) A commission's territory consists of the area:

(1) located outside the military installation's boundaries and:

(A) within two miles of the boundary line of a military

installation, except as provided by Paragraph (B); or

(B) for a commission established for a military installation engaged in flight training at the time the commission is established, within a rectangle bounded by lines located no farther than 1-1/2 statute miles from the centerline of a runway of the installation and lines located no farther than five statute miles from each end of the paved surface of a runway of the installation;

(2) located in:

(A) the extraterritorial jurisdiction of a participating municipality; or

(B) the unincorporated area of a participating county; and

(3) designated as the commission's territory when the commission is established.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 765 , Sec. 2, eff. September 1, 2015.

(e) This subchapter shall be narrowly construed in conformity with the findings and purposes under Section 397A.001.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 765 (H.B. 2232), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 765 (H.B. 2232), Sec. 2, eff. September 1, 2015.

Sec. 397A.053. HEARING ON CREATION OF COMMISSION. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of each participating governmental entity establishes a regional military sustainability commission, each governing body shall hold two public hearings to consider the creation of the proposed commission. Each governing body must, at least seven days before each public hearing, prominently post notice of the hearing in the administrative offices of the governmental entity and publish notice of the hearing in a newspaper of general circulation, if any, in the proposed territory.

(b) The notice required by Subsection (a) must:

(1) state the date, time, and place for the public hearing;

(2) identify the boundaries of the proposed territory, including a map of the proposed territory; and

(3) provide a description of the proposed commission's functions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.054. MEMBERS OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) The regional military sustainability commission is composed of not more than nine members.

(b) Participating governmental entities may by joint agreement determine the number, qualifications, and method of selecting members of a commission.

(c) A member of a commission may not be an elected official of a participating county or municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.055. COMMISSION REVIEW OF NEW PROJECTS. (a) In this section, "new project" means a project, as that term is defined by Section 245.001, for which an application for a permit that will establish a vesting date under Chapter 245 has not been submitted to a regulatory agency before the effective date of the Act adding this chapter. The term does not include a revision to a project commenced before the effective date of the Act adding this chapter.

(b) A regional military sustainability commission shall establish an advisory committee and appoint six members to the committee. Three of the members appointed to the committee must represent the military installation for which the commission is established and three members must represent landowners in the area surrounding the military installation. The committee shall advise the commission on protecting the critical military missions of the military installation with regard to development.

(c) On receipt of an application for a permit for a new project in the commission's territory, the governing body of the participating governmental entity shall review the application and request a report from the commission regarding the proposed project.

The commission, with the advice of the advisory committee, shall review the compatibility of the new project with the military installation's military missions and related operations based on the commission's compatible development standards. The commission shall submit a report of its findings, including a recommendation regarding compatibility, to the reviewing governmental entity not later than the 30th calendar day after the date the request was made. The report must include an estimate of the fiscal impact on the affected property of any recommendations submitted by the commission, if the fiscal impact is determinable based on the project description and other information provided by the developer.

(d) The reviewing governmental entity may not take action on the permit application until it receives the report of the commission. If the commission finds that the proposed new project is not compatible with the military installation's missions and recommends denial of the permit application, the reviewing governmental entity may disapprove the permit application.

(e) On annexation of an area in the commission's territory for full or limited purposes by a municipality, the area is removed from the commission's territory. If the municipality disannexes the area, the area is included in the commission's territory.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.056. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS. (a) Before exercising the duties described by Section 397A.055, a regional military sustainability commission shall recommend compatible development standards for the territory. The commission must consider, as part of the regional compatible development standards, standards required by the Federal Aviation Administration regulations for military installations that service aircraft and helicopters. The commission shall submit the proposed compatible development standards to the participating governmental entities for approval.

(b) Before taking action to approve or reject the compatible development standards proposed by the commission, the participating governmental entities shall:

(1) provide notice of the commission's proposed compatible

development standards to property owners in the commission's territory, as determined by the most recent county tax roll; and

(2) publish notice of the commission's proposed compatible development standards in a newspaper of general circulation, if any, in the commission's territory.

(c) The failure of notice to reach each property owner under Subsection (b) does not invalidate compatible development standards adopted under this section.

(d) The compatible development standards are final after approval by a majority vote of each participating governmental entity. Notice of the final compatible development standards must be provided to all appropriate taxing entities for filing in the real property records of the county.

(e) The commission may include in the proposed compatible development standards a recommendation to a participating governmental entity to purchase property in the commission's territory as practical to protect a critical military mission.

(f) The commission may recommend amendments to approved compatible development standards. The participating governmental entities may approve the commission's proposed standards under procedures adopted by the entities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.057. COORDINATION WITH OTHER PLANS AND STUDIES. The compatible development standards and regulations adopted under this subchapter must be coordinated with:

(1) the county plan for growth and development of the participating county or a county located in the regional military sustainability commission's territory;

(2) the comprehensive plan of the participating municipality; and

(3) the most recent Joint Land Use Study, if the commission makes a finding that the conclusions of the study accurately reflect circumstances in the territory.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.058. CONFLICT WITH OTHER LAWS. Except with respect to Chapter 245, if a regulation adopted under this subchapter conflicts with a standard imposed under another statute or local order or regulation, the more stringent standard controls.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.059. FUNDS. (a) A participating governmental entity may appropriate funds to the commission for the costs and expenses required in the performance of the commission's purposes.

(b) A commission may apply for, contract for, receive, and expend for its purposes a grant or funds from a participating governmental entity, the state, the federal government, or any other source.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.060. WITHDRAWAL FROM COMMISSION. A participating governmental entity may withdraw from a regional military sustainability commission:

(1) by a two-thirds vote of its governing body; and

(2) after providing notice to the relevant military installation commander not later than the 45th day before the date of the vote under Subdivision (1).

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.061. EXPIRATION AFTER MILITARY INSTALLATION CLOSURE. A regional military sustainability commission that has territory around a military installation that is closed by the federal government and the regional compatible development standards for the commission's territory may continue in effect until the fourth anniversary of the date the military installation is closed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3,

eff. June 19, 2009.

Sec. 397A.062. JUDICIAL REVIEW OF COMMISSION OR GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision of this subchapter, a landowner aggrieved by a report submitted by the regional military sustainability commission or by a permit application decision of the participating governmental entity under this subchapter may appeal all or part of the report or permit application decision to a district court. The court may reverse or modify, wholly or partly, the report submitted by the commission or the permit application decision that is appealed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

SUBCHAPTER C. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS IN LESS POPULOUS AREAS

Sec. 397A.101. APPLICABILITY. (a) A regulation or compatible development standard adopted under this subchapter does not apply to:

(1) an area located in a county with a population of less than 5,000 that is adjacent to an international border;

(2) a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision;

(3) a tract of land in agricultural use;

(4) an activity or a structure or appurtenance on a tract of land in agricultural use; or

(5) any activity or a project, as that term is defined by Section 245.001, that is:

(A) occurring or in existence on the effective date of the Act adding this chapter; or

(B) receiving the benefits of or protected under Chapter 245.

(b) In this section, "agricultural use" and "agriculture" have the meanings assigned by Section 397A.051.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.102. CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) A county with a population of 60,000 or less and a municipality that, with respect to the same active military installation, constitutes a defense community, as defined by Section 397.001, may agree by order, ordinance, or other means to establish and fund a regional military sustainability commission under this subchapter in an area that is located:

(1) in the same county as the active military installation; and

(2) in the extraterritorial jurisdiction of the municipality.

(b) Defense communities may not establish more than one commission in a county.

(c) A commission's territory consists of the unincorporated area located within five miles of the boundary line of a military installation designated as the commission's territory when the commission is established.

(d) This subchapter shall be narrowly construed in conformity with the findings and purposes under Section 397A.001.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.103. HEARING ON CREATION OF COMMISSION. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of each participating governmental entity establishes a regional military sustainability commission, each governing body shall hold two public hearings to consider the creation of the proposed commission. Each governing body must, at least seven days before each public hearing, prominently post notice of the hearing in the administrative offices of the governmental entity and publish notice of the hearing in a newspaper of general circulation, if any, in the proposed territory.

(b) The notice required by Subsection (a) must:

(1) state the date, time, and place for the public hearing;

(2) identify the boundaries of the proposed territory, including a map of the proposed territory; and

(3) provide a description of the proposed commission's functions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.104. MEMBERS OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) The regional military sustainability commission is composed of not more than nine members.

(b) Participating governmental entities may by joint agreement determine the number, qualifications, and method of selecting members of a commission.

(c) A member of a commission may not be an elected official of a participating county or municipality.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.105. COMMISSION REVIEW OF NEW PROJECTS. (a) In this section, "new project" means a project, as that term is defined by Section 245.001, for which an application for a permit that will establish a vesting date under Chapter 245 has not been submitted to a regulatory agency before the effective date of the Act adding this chapter, including a water contract, sewer contract, or master plan.

(b) A regional military sustainability commission shall establish an advisory committee and appoint six members to the committee. Three of the members appointed to the committee must represent the military installation for which the commission is established and three members must represent landowners in the area surrounding the military installation. The committee shall advise the commission on protecting the critical military missions of the military installation with regard to development.

(c) On receipt of an application for a permit for a new project in the commission's territory, the governing body of the participating governmental entity shall review the application and request a report from the commission regarding the proposed project. The commission, with the advice of the advisory committee, shall review the compatibility of the new project with the military installation's military missions and related operations based on the commission's compatible development standards. The commission shall submit a report of its findings, including a recommendation regarding

compatibility, to the reviewing governmental entity not later than the 15th calendar day after the date the request was made. The report must include an estimate of the fiscal impact on the affected property of any recommendations submitted by the commission as part of the report.

(d) The reviewing governmental entity may not take action on the permit application until it receives the report of the commission. If the commission finds that the proposed new project is not compatible with the military installation's missions and recommends denial of the permit application, the reviewing governmental entity may disapprove the permit application.

(e) On annexation of an area in the commission's territory for full or limited purposes by a municipality, the area is removed from the commission's territory. If the municipality disannexes the area, the area is included in the commission's territory.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.106. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS. (a) Before exercising the duties described by Section 397A.105, a regional military sustainability commission shall recommend compatible development standards for the territory. The commission must consider, as part of the regional compatible development standards, the Federal Aviation Administration regulations regarding height restrictions surrounding a military installation that services aircraft and helicopters. The commission shall submit the proposed compatible development standards to the participating governmental entities for approval.

(b) Before taking action to approve or reject the compatible development standards proposed by the commission, the participating governmental entities shall:

(1) provide notice of the commission's proposed compatible development standards to property owners in the commission's territory, as determined by the most recent county tax roll; and

(2) publish notice of the commission's proposed compatible development standards in a newspaper of general circulation, if any, in the commission's territory.

(c) The failure of notice to reach each property owner under

Subsection (b) does not invalidate compatible development standards adopted under this section.

(d) The compatible development standards are final after approval by a majority vote of each participating governmental entity. Notice of the final compatible development standards must be provided to all appropriate taxing entities for filing in the real property records of the county.

(e) The commission may include in the proposed compatible development standards a recommendation to a participating governmental entity to purchase property in the commission's territory as practical to protect a critical military mission.

(f) The commission may recommend amendments to approved compatible development standards. The participating governmental entities may approve the commission's proposed standards under procedures adopted by the entities.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.107. COORDINATION WITH OTHER PLANS AND STUDIES. The compatible development standards and regulations adopted under this subchapter must be coordinated with:

(1) the county plan for growth and development of the participating county or a county located in the regional military sustainability commission's territory;

(2) the comprehensive plan of the participating municipality; and

(3) the most recent Joint Land Use Study, if the commission makes a finding that the conclusions of the study accurately reflect circumstances in the territory.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.108. CONFLICT WITH OTHER LAWS. Except with respect to Chapter 245, if a regulation adopted under this subchapter conflicts with a standard imposed under another statute or local order or regulation, the more stringent standard controls.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.109. FUNDS. (a) A participating governmental entity may appropriate funds to the commission for the costs and expenses required in the performance of the commission's purposes.

(b) A commission may apply for, contract for, receive, and expend for its purposes a grant or funds from a participating governmental entity, the state, the federal government, or any other source.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.110. WITHDRAWAL FROM COMMISSION. A participating governmental entity may withdraw from a regional military sustainability commission:

(1) by a two-thirds vote of its governing body; and

(2) after providing notice to the relevant military installation commander not later than the 45th day before the date of the vote under Subdivision (1).

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.111. EXPIRATION AFTER MILITARY INSTALLATION CLOSURE. A regional military sustainability commission that has territory around a military installation that is closed by the federal government and the regional compatible development standards for the commission's territory may continue in effect until the fourth anniversary of the date the military installation is closed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

Sec. 397A.112. JUDICIAL REVIEW OF COMMISSION OR GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision of this

subchapter, a landowner aggrieved by a report submitted by the regional military sustainability commission or by a permit application decision of the participating governmental entity under this subchapter may appeal all or part of the report or permit application decision to a district court, county court, or county court at law. The court may reverse or modify, wholly or partly, the report submitted by the commission or the permit application decision that is appealed.

Added by Acts 2009, 81st Leg., R.S., Ch. 1320 (H.B. 2919), Sec. 3, eff. June 19, 2009.

CHAPTER 399. MUNICIPAL AND COUNTY WATER AND ENERGY IMPROVEMENT REGIONS

Sec. 399.001. SHORT TITLE. This chapter may be cited as the Property Assessed Clean Energy Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.002. DEFINITIONS. In this chapter:

(1) "Local government" means a municipality or county.

(2) "Program" means a program established under this chapter.

(3) "Qualified improvement" means a permanent improvement fixed to real property and intended to decrease water or energy consumption or demand, including a product, device, or interacting group of products or devices on the customer's side of the meter that uses energy technology to generate electricity, provide thermal energy, or regulate temperature.

(4) "Qualified project" means the installation or modification of a qualified improvement.

(5) "Real property" means privately owned commercial or industrial real property or residential real property with five or more dwelling units.

(6) "Region" means a region designated under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.003. EXERCISE OF POWERS. (a) In addition to the authority provided by Chapter 376 for municipalities, the governing body of a local government that establishes a program in accordance with the requirements provided by Section 399.008 may exercise powers granted under this chapter.

(b) The establishment and operation of a program under this chapter by a local government is a governmental function for all purposes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 1, eff. June 16, 2015.

Sec. 399.004. AUTHORIZED ASSESSMENTS. (a) An assessment under this chapter may be imposed to repay the financing of qualified projects on real property located in a region designated under this chapter.

(b) An assessment under this chapter may not be imposed to repay the financing of:

(1) facilities for undeveloped lots or lots undergoing development at the time of the assessment; or

(2) the purchase or installation of products or devices not permanently fixed to real property.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.005. WRITTEN CONTRACT FOR ASSESSMENT REQUIRED. A local government may impose an assessment under this chapter only under a written contract with the record owner of the real property to be assessed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.006. ESTABLISHMENT OF PROGRAM. (a) The governing body of a local government may determine that it is convenient and advantageous to establish a program under this chapter.

(b) An authorized representative of the local government that establishes a program may enter into a written contract with a record owner of real property in a region designated under this chapter to impose an assessment to repay the owner's financing of a qualified project on the owner's property. The financing to be repaid through assessments may be provided by a third party or, if authorized by the program, by the local government.

(c) If the program provides for third-party financing, the authorized representative of the local government that enters into a written contract with a property owner under Subsection (b) must also enter into a written contract with the party that provides financing for a qualified project under the program to service the debt through assessments.

(d) If the program provides for local government financing, the written contract described by Subsection (b) must be a contract to finance the qualified project through assessments.

(e) The financing for which assessments are imposed may include:

(1) the cost of materials and labor necessary for installation or modification of a qualified improvement;

(2) permit fees;

(3) inspection fees;

(4) lender's fees;

(5) program application and administrative fees;

(6) project development and engineering fees;

(7) third-party review fees, including verification review fees, under Section 399.011; and

(8) any other fees or costs that may be incurred by the property owner incident to the installation, modification, or improvement on a specific or pro rata basis, as determined by the local government.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 2, eff. June 16, 2015.

Sec. 399.007. DESIGNATION OF REGION. (a) The governing body of a local government may determine that it is convenient and advantageous to designate an area of the local government as a region within which the authorized representative of the local government and record owners of real property may enter into written contracts to impose assessments to repay the financing by owners of qualified projects on the owners' property and, if authorized by the local government program, finance the qualified project.

(b) An area designated as a region by the governing body of a local government under this section:

(1) may include the entire local government; and

(2) must be located wholly within the local government's jurisdiction.

(c) For purposes of determining a municipality's jurisdiction under Subsection (b)(2), the municipality's extraterritorial jurisdiction may be included.

(d) A local government may designate more than one region. If multiple regions are designated, the regions may be separate, overlapping, or coterminous.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 3, eff. June 16, 2015.

Sec. 399.008. PROCEDURE FOR ESTABLISHMENT OF PROGRAM. (a) To establish a program under this chapter, the governing body of a local government must take the following actions in the following order:

(1) adopt a resolution of intent that includes:

(A) a finding that, if appropriate, financing qualified projects through contractual assessments is a valid public purpose;

(B) a statement that the local government intends to make contractual assessments to repay financing for qualified projects available to property owners;

(C) a description of the types of qualified projects that may be subject to contractual assessments;

(D) a description of the boundaries of the region;

(E) a description of any proposed arrangements for third-party financing to be available or any local government financing to be provided for qualified projects;

(F) a description of local government debt servicing procedures if third-party financing will be provided and assessments will be collected to service a third-party debt;

(G) a reference to the report on the proposed program prepared as provided by Section 399.009 and a statement identifying the location where the report is available for public inspection;

(H) a statement of the time and place for a public hearing on the proposed program; and

(I) a statement identifying the appropriate representative of the local government and the appropriate assessor-collector for purposes of consulting regarding collecting the proposed contractual assessments imposed on the assessed property;

(2) hold a public hearing at which the public may comment on the proposed program, including the report required by Section 399.009; and

(3) adopt a resolution establishing the program and the terms of the program, including:

(A) each item included in the report under Section 399.009; and

(B) a description of each aspect of the program that may be amended only after another public hearing is held.

(b) For purposes of Subsection (a)(3)(A), the resolution may incorporate the report or the amended version of the report, as appropriate, by reference.

(c) Subject to the terms of the resolution establishing the program as referenced by Subsection (a)(3)(B), the governing body of a local government may amend a program by resolution.

(d) A local government may:

(1) hire and set the compensation of a program administrator and program staff; or

(2) contract for professional services necessary to administer a program.

(e) A local government may impose fees to offset the costs of administering a program. The fees authorized by this subsection may be assessed as:

(1) a program application fee paid by the property owner

requesting to participate in the program expressed as a set amount, a percentage of the amount of the assessment, or in any other manner;

(2) a component of the interest rate on the assessment in the written contract between the local government and the property owner; or

(3) a combination of Subdivisions (1) and (2).

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 4, eff. June 16, 2015.

Sec. 399.009. REPORT REGARDING ASSESSMENT. (a) The report for a proposed program required by Section 399.008 must include:

(1) a map showing the boundaries of the proposed region;

(2) a form contract between the local government and the property owner specifying the terms of:

(A) assessment under the program; and

(B) financing provided by a third party or the local government, as appropriate;

(3) if the proposed program provides for third-party financing, a form contract between the local government and the third party regarding the servicing of the debt through assessments;

(4) a description of types of qualified projects that may be subject to contractual assessments;

(5) a statement identifying a local government representative authorized to enter into written contracts on behalf of the local government;

(6) a plan for ensuring sufficient capital for third-party financing and, if appropriate, raising capital for local government financing for qualified projects;

(7) if bonds will be issued to provide capital to finance qualified projects as part of the program as provided by Section 399.016:

(A) a maximum aggregate annual dollar amount for financing through contractual assessments to be provided by the local government under the program;

(B) a method for ranking requests from property owners

for financing through contractual assessments in priority order if requests appear likely to exceed the authorization amount; and

(C) a method for determining:

(i) the interest rate and period during which contracting owners would pay an assessment; and

(ii) the maximum amount of an assessment;

(8) a method for ensuring that the period of the contractual assessment does not exceed the useful life of the qualified project that is the basis for the assessment;

(9) a description of the application process and eligibility requirements for financing qualified projects to be repaid through contractual assessments under the program;

(10) a method as prescribed by Subsection (b) for ensuring that property owners requesting to participate in the program demonstrate the financial ability to fulfill financial obligations to be repaid through contractual assessments;

(11) a statement explaining the manner in which property will be assessed and assessments will be collected;

(12) a statement explaining the lender notice requirement provided by Section 399.010;

(13) a statement explaining the review requirement provided by Section 399.011;

(14) a description of marketing and participant education services to be provided for the program;

(15) a description of quality assurance and antifraud measures to be instituted for the program; and

(16) the procedures for collecting the proposed contractual assessments.

(b) The method for ensuring a demonstration of financial ability under Subsection (a)(10) must be based on appropriate underwriting factors, including:

(1) providing for verification that:

(A) the property owner requesting to participate under the program:

(i) is the legal owner of the benefited property;

(ii) is current on mortgage and property tax payments; and

(iii) is not insolvent or in bankruptcy proceedings; and

(B) the title of the benefited property is not in

dispute; and

(2) requiring an appropriate ratio of the amount of the assessment to the assessed value of the property.

(c) The local government shall make the report available for public inspection:

(1) on the local government's Internet website; and

(2) at the office of the representative designated to enter into written contracts on behalf of the local government under the program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 5, eff. June 16, 2015.

Sec. 399.010. NOTICE TO MORTGAGE HOLDER REQUIRED FOR PARTICIPATION. Before a local government may enter into a written contract with a record owner of real property to impose an assessment to repay the financing of a qualified project under this chapter:

(1) the holder of any mortgage lien on the property must be given written notice of the owner's intention to participate in a program under this chapter on or before the 30th day before the date the written contract for assessment between the owner and the local government is executed; and

(2) a written consent from the holder of the mortgage lien on the property must be obtained.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.011. REVIEW REQUIRED. (a) A program established under this chapter must require for each proposed qualified project:

(1) a review of water or energy baseline conditions and the projected water or energy savings to establish the projected water or energy savings; and

(2) a verification that a proposed qualified improvement meets the requirements of a qualified project.

(a-1) A verification provided as required under Subsection

(a)(2) conclusively establishes that the improvement is a qualified improvement and the project is a qualified project.

(b) After a qualified project is completed, the local government shall require written verification that the qualified project was properly completed and is operating as intended.

(c) A baseline water or energy review or verification review under this section must be conducted by an independent third party.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 6, eff. June 16, 2015.

Sec. 399.012. DIRECT ACQUISITION BY OWNER. The proposed arrangements for financing a qualified project may authorize the property owner to:

(1) purchase directly the related equipment and materials for the installation or modification of a qualified improvement; and

(2) contract directly, including through lease, power purchase agreement, or other service contract, for the installation or modification of a qualified improvement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.013. RECORDING OF NOTICE OF CONTRACTUAL ASSESSMENT REQUIRED. (a) A local government that authorizes financing through contractual assessments under this chapter shall file written notice of each contractual assessment in the real property records of the county in which the property is located.

(b) The notice under Subsection (a) must contain:

(1) the amount of the assessment;

(2) the legal description of the property;

(3) the name of each property owner; and

(4) a reference to the statutory assessment lien provided under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff.

June 14, 2013.

Sec. 399.014. LIEN. (a) A contractual assessment under this chapter and any interest or penalties on the assessment:

(1) is a first and prior lien against the real property on which the assessment is imposed from the date on which the notice of contractual assessment is recorded as provided by Section 399.013 and until the assessment, interest, or penalty is paid; and

(2) has the same priority status as a lien for any other ad valorem tax.

(a-1) After the notice of a contractual assessment is recorded as provided under Section 399.013, the lien may not be contested on the basis that the improvement is not a qualified improvement or the project is not a qualified project.

(b) The lien runs with the land, and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien.

(c) The assessment lien may be enforced by the local government in the same manner that a property tax lien against real property may be enforced by the local government to the extent the enforcement is consistent with Section 50, Article XVI, Texas Constitution.

(d) Delinquent installments of the assessments incur interest and penalties in the same manner as delinquent property taxes.

(e) A local government may recover costs and expenses, including attorney's fees, in a suit to collect a delinquent installment of an assessment in the same manner as in a suit to collect a delinquent property tax.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 7, eff. June 16, 2015.

Sec. 399.015. CONTRACT FOR COLLECTION OF ASSESSMENTS; NO PERSONAL LIABILITY. (a) The governing body of a local government may contract with the governing body of another taxing unit, as defined by Section 1.04, Tax Code, or another entity, including a

county assessor-collector, to perform the duties of the local government relating to collection of assessments imposed by the local government under this chapter.

(b) A county assessor-collector who performs the duties of a local government relating to collection of assessments imposed by a local government under this chapter is not personally liable as a result of exercising those duties under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 864 (H.B. 2654), Sec. 1, eff. September 1, 2017.

Sec. 399.016. BONDS OR NOTES. (a) A local government may issue bonds or notes to finance qualified projects through contractual assessments under this chapter.

(b) Bonds or notes issued under this section may not be general obligations of the local government. The bonds or notes must be secured by one or more of the following as provided by the governing body of the local government in the resolution or ordinance approving the bonds or notes:

(1) payments of contractual assessments on benefited property in one or more specified regions designated under this chapter;

(2) reserves established by the local government from grants, bonds, or net proceeds or other lawfully available funds;

(3) municipal bond insurance, lines of credit, public or private guaranties, standby bond purchase agreements, collateral assignments, mortgages, or any other available means of providing credit support or liquidity; and

(4) any other funds lawfully available for purposes consistent with this chapter.

(c) A local government pledge of assessments, funds, or contractual rights in connection with the issuance of bonds or notes by the local government under this chapter is a first lien on the assessments, funds, or contractual rights pledged in favor of the person to whom the pledge is given, without further action by the local government. The lien is valid and binding against any other

person, with or without notice.

(d) Bonds or notes issued under this chapter further an essential public and governmental purpose, including:

(1) improvement of the reliability of the state electrical system;

(2) conservation of state water resources consistent with the state water plan;

(3) reduction of energy costs;

(4) economic stimulation and development;

(5) enhancement of property values;

(6) enhancement of employment opportunities; and

(7) reduction in greenhouse gas emissions.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.017. JOINT IMPLEMENTATION. (a) Any combination of local governments may agree to jointly implement or administer a program under this chapter, including entering into an interlocal contract under Chapter 791, Government Code, to jointly implement or administer a program.

(b) If two or more local governments implement a program jointly, a single public hearing held jointly by the cooperating local governments is sufficient to satisfy the requirement of Section 399.008(a)(2).

(c) One or more local governments may contract with a third party, including another local government, to administer a program. Local governments that are parties to an interlocal contract described by Subsection (a) may contract with an entity listed in Section 791.013, Government Code, for program administration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 8, eff. June 16, 2015.

Sec. 399.018. PROHIBITED ACTS. A local government that establishes a region under this chapter may not:

(1) make the issuance of a permit, license, or other authorization from the local government to a person who owns property in the region contingent on the person entering into a written contract to repay the financing of a qualified project through contractual assessments under this chapter; or

(2) otherwise compel a person who owns property in the region to enter into a written contract to repay the financing of a qualified project through contractual assessments under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 416 (S.B. 385), Sec. 1, eff. June 14, 2013.

Sec. 399.019. NO PERSONAL LIABILITY. The members of the governing body of a local government, other elected officials of a local government, employees of a local government, and board members, executives, employees, and contractors of a third party who enter into a contract with a local government to provide administrative services for a program under this chapter are not personally liable as a result of exercising any rights or responsibilities granted under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 577 (H.B. 3187), Sec. 9, eff. June 16, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 864 (H.B. 2654), Sec. 2, eff. September 1, 2017.

SUBTITLE C1. ADDITIONAL PLANNING AND DEVELOPMENT PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 501. PROVISIONS GOVERNING DEVELOPMENT CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. SHORT TITLE. This subtitle may be cited as the Development Corporation Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.002. DEFINITIONS. In this subtitle:

(1) "Authorizing unit" means the unit that authorizes the creation of a corporation under this subtitle.

(2) "Board of directors" means the board of directors of a corporation.

(3) "Bonds" includes evidences of indebtedness, including bonds and notes.

(4) "Corporate headquarters facilities" means buildings proposed for construction or occupancy as the principal office for a business enterprise's administrative and management services.

(5) "Corporation" means a corporation organized under this subtitle.

(6) "Cost," with respect to a project, has the meaning assigned by Section 501.152.

(7) "County alliance" means two or more counties that jointly authorize the creation of a corporation under this subtitle.

(8) "District" means a conservation and reclamation district established under Section 59, Article XVI, Texas Constitution.

(9) "Economic development office" means the Texas Economic Development and Tourism Office within the office of the governor.

(10) "Governing body" means the commissioners court of a county or the governing body of a municipality or district.

(11) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(12) "Primary job" means:

(A) a job that is:

(i) available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and

(ii) included in one of the following sectors of the North American Industry Classification System (NAICS):

NAICS Sector #	Description
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities

311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 512131 and 512132)	Information (excluding motion picture theaters and drive-in motion picture theaters)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416, 5417, and 5419	Architectural, Engineering, and Related Services; Computer System Design and Related Services; Management, Scientific, and Technical Consulting Services; Scientific Research and Development Services; Other Professional, Scientific, and Technical Services
551	Management of Companies and Enterprises
56142	Telephone Call Centers
922140	Correctional Institutions; or

(B) a job that is included in North American Industry Classification System (NAICS) sector number 928110, National Security, for the corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps, and Military Bases.

(13) "Project" means a project specified as such under Subchapter C.

(14) "Resolution" means a resolution, order, ordinance, or other official action by the governing body of a unit.

(15) "Type A corporation" means a corporation governed by Chapter 504.

(16) "Type B corporation" means a corporation governed by Chapter 505.

(17) "Unit" means a municipality, county, or district that may create and use a corporation under this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.003. WHO MAY BE USER. The following may be a user under this subtitle:

(1) an individual, a partnership, a corporation, or any other private entity organized for profit or not for profit; or

(2) a municipality, county, district, other political subdivision, public entity, or agency of this state or the federal government.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.004. LEGISLATIVE FINDINGS; CONSTRUCTION OF SUBTITLE. (a) The legislature finds that:

(1) the present and prospective right to gainful employment and the general welfare of the people of this state require as a public purpose the promotion and development of new and expanded business enterprises and of job training;

(2) the existence, development, and expansion of business, commerce, industry, higher education, and job training are essential to the economic growth of this state and to the full employment, welfare, and prosperity of residents of this state;

(3) the assistance provided by corporations in promoting higher education opportunities encourages and fosters the development and diversification of the economy of this state and the elimination of unemployment and underemployment in this state;

(4) the means authorized by this subtitle and the assistance provided by this subtitle, especially with respect to financing, are in the public interest and serve a public purpose of this state in promoting the welfare of the residents of this state economically by securing and retaining business enterprises and as a result maintaining a higher level of employment, economic activity, and stability;

(5) community industrial development corporations in this state have invested substantial money in successful industrial development projects and have experienced difficulty in undertaking additional industrial development projects because of the partial inadequacy of the community industrial development corporations' money or money potentially available from local subscription sources and the limitations of local financial institutions in providing

additional and sufficiently large first mortgage loans; and

(6) communities in this state have been at a critical disadvantage in competing with communities in other states for the location or expansion of business enterprises because of the availability and prevalent use in all other states of financing and other special incentives, and, for that reason, the issuance of revenue bonds under this subtitle by a corporation on behalf of political subdivisions of this state for the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare is in the public interest and is a public purpose.

(b) This subtitle shall be construed in conformity with the intention of the legislature expressed in this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.005. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this subtitle violates the federal or state constitution, a corporation by resolution may provide an alternate procedure that conforms to the constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.006. USE OF CORPORATION TO FINANCE PROJECT. A unit may use a corporation to issue bonds on the unit's behalf to finance the cost of a project, including a project in a federally designated empowerment zone or enterprise community or in an enterprise zone designated under Chapter 2303, Government Code, to promote and develop new and expanded business enterprises for the promotion and encouragement of employment and the public welfare.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.007. LENDING CREDIT OR GRANTING PUBLIC MONEY. (a) Except as provided by Subsection (b), a unit may not lend its credit

or grant public money or another thing of value in aid of a corporation.

(b) A municipality may grant public money to a corporation under a contract authorized by Section 380.002.

(c) The grants, loans, expenditures, and tax exemptions authorized by this subtitle in connection with a project and authorized by a corporation in accordance with this subtitle constitute the making of loans or grants of public money or constitute other actions authorized by Section 52-a, Article III, Texas Constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.011(a), eff. September 1, 2009.

Sec. 501.008. LIMITATION ON FINANCIAL OBLIGATION. (a) Except as provided by Subsection (b), a corporation may not incur a financial obligation that cannot be paid from:

(1) bond proceeds;

(2) revenue realized from the lease or sale of a project;

(3) revenue realized from a loan made by the corporation to wholly or partly finance or refinance a project; or

(4) money granted under a contract with a municipality under Section 380.002.

(b) A Type A or Type B corporation may obtain a loan from the Texas small and rural community success fund program under Subchapter E, Chapter 489, Government Code, for eligible projects as authorized by this subtitle. To secure the loan, the Type A or Type B corporation may pledge revenue from the sales and use tax imposed by the corporation's authorizing municipality under Chapter 504 or 505, as applicable, for the benefit of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 947 (S.B. 1465), Sec. 2, eff. June 18, 2021.

Sec. 501.009. POLICE POWERS NOT AFFECTED. This subtitle does not deprive this state or a governmental subdivision of this state of its police powers over a corporation's property and does not impair any police power over the property that is otherwise provided by law to any official or agency of this state or its governmental subdivisions.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.010. DELEGATION OF UNIT'S SOVEREIGN POWERS PROHIBITED. A unit may not delegate to a corporation any of the unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.011. REFERENCE TO ARTICLES OF INCORPORATION OR CERTIFICATE OF FORMATION. (a) With respect to a corporation created under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) before January 1, 2006, a reference in any law of this state or in the corporation's governing documents to "articles of incorporation" means, for purposes of this subtitle, the corporation's certificate of formation.

(b) With respect to a corporation that is created under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) before January 1, 2006, and continues to operate under articles of incorporation, a reference in this subtitle or any other law of this state or in the corporation's governing documents to "certificate of formation" means the corporation's articles of incorporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Sec. 501.051. AUTHORITY TO CREATE. (a) Three or more

individuals who are qualified voters of a unit may file with the unit's governing body a written application requesting the unit to authorize creation of a corporation to act on behalf of the unit. The governing body may not charge a filing fee for the application.

(b) A corporation may be created only if the governing body of the unit by resolution:

(1) determines that the creation of the corporation is advisable; and

(2) approves the certificate of formation proposed to be used in organizing the corporation.

(c) A unit may authorize the creation of one or more corporations if the resolution authorizing the creation of each corporation specifies the public purpose of the unit to be furthered by the corporation. The specified public purpose must be limited to the promotion and development under this subtitle of enterprises to promote and encourage employment and the public welfare.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.052. NONMEMBER, NONSTOCK FORM OF CORPORATION. A corporation is a nonmember, nonstock corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.053. CORPORATION NONPROFIT; NET EARNINGS. (a) A corporation is nonprofit, and the corporation's net earnings remaining after payment of its expenses may not benefit an individual, firm, or corporation, except as provided by Subsection (b).

(b) If the board of directors determines that sufficient provision has been made for the full payment of the corporation's expenses, bonds, and other obligations, any net earnings of the corporation subsequently accruing shall be paid to the corporation's authorizing unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.054. GENERAL POWERS, PRIVILEGES, AND FUNCTIONS. (a) A corporation has the powers, privileges, and functions of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or formed under the Texas Nonprofit Corporation Law, as described by Section 1.008, Business Organizations Code. To the extent that the provisions governing powers, privileges, and functions of a nonprofit corporation under those laws are in conflict with or inconsistent with provisions of this subtitle governing powers, privileges, and functions of a nonprofit corporation, the provisions of this subtitle prevail.

(b) A corporation:

(1) has all powers incidental to or necessary for the performance of the powers provided by Sections 501.059, 501.060, 501.064, 501.153-501.155, 501.159, 501.201(a), 501.208, 501.209, 501.214, and 501.402; and

(2) with respect to a project, may exercise all powers necessary or appropriate to effect a purpose for which the corporation is organized, subject to the control of the governing body of the corporation's authorizing unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.055. CONSTITUTED AUTHORITY OR INSTRUMENTALITY. (a) A corporation is a constituted authority and an instrumentality, within the meaning of the United States Department of the Treasury regulations and the Internal Revenue Service rulings adopted under Section 103, Internal Revenue Code of 1986, as amended, including regulations and rulings adopted under Section 103, Internal Revenue Code of 1954, and may act on behalf of the corporation's authorizing unit for the specific public purpose authorized by the unit.

(b) A corporation is not a political subdivision or a political corporation for purposes of the laws of this state, including Section 52, Article III, Texas Constitution.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.056. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a corporation must state:

(1) the name of the corporation;

(2) that the corporation is a nonprofit corporation;

(3) the duration of the corporation, which may be perpetual;

(4) the specific purpose for which the corporation is organized and may issue bonds on behalf of the unit;

(5) that the corporation has no members and is a nonstock corporation;

(6) any provision consistent with law for the regulation of the corporation's internal affairs, including any provision required or permitted by this subtitle to be stated in the bylaws;

(7) the street address of the corporation's initial registered office and the name of the corporation's initial registered agent at that address;

(8) the number of directors of the initial board of directors and the name and address of each initial director;

(9) the name and street address of each organizer; and

(10) that the unit has:

(A) by resolution specifically authorized the corporation to act on the unit's behalf to further the public purpose stated in the resolution and the certificate of formation; and

(B) approved the certificate of formation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.057. FILING OF CERTIFICATE OF FORMATION AND DELIVERY OF CERTIFICATE EVIDENCING FILING. (a) If the unit's governing body adopts a resolution under Section 501.051, the certificate of formation may be filed as provided by this section.

(b) Three originals of the certificate of formation shall be delivered to the secretary of state. If the secretary of state determines that the certificate of formation conforms to this subchapter, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on

each original certificate of formation;

(2) file one of the original certificates of formation in the secretary of state's office;

(3) issue two certificates evidencing the filing of the certificate of formation;

(4) attach to each certificate evidencing the filing of the certificate of formation an original of the certificate of formation; and

(5) deliver a certificate evidencing the filing of the certificate of formation and the attached certificate of formation to:

(A) the organizers or the organizers' representatives; and

(B) the governing body of:

(i) the corporation's authorizing unit; or

(ii) any county in the county alliance that authorized the creation of the corporation, for a county alliance corporation.

(c) The governing body of a county to which a certificate evidencing the filing of the certificate of formation and the attached certificate of formation are delivered under Subsection (b)(5)(B)(ii) shall provide photocopies of the certificate evidencing the filing of the certificate of formation and the attached certificate of formation to each other member of the county alliance.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.058. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING FILING. (a) A corporation's existence begins when the certificate evidencing the filing of its certificate of formation is issued.

(b) After the issuance of the certificate evidencing the filing of the certificate of formation, the formation of the corporation may not be contested for any reason.

(c) A certificate evidencing the filing of the certificate of formation is conclusive evidence that:

(1) the organizers and the unit have performed all conditions precedent for the formation of the corporation; and

(2) the corporation is formed under this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.059. CORPORATE SEAL. A corporation may have a corporate seal and with respect to a project may impress, affix, or otherwise reproduce the seal or a facsimile of the seal on an instrument required to be executed by the corporation's appropriate officers.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.060. MAY SUE AND BE SUED. With respect to a project, a corporation may sue, be sued, complain, and defend in the corporation's name.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.061. CORPORATION'S ORGANIZATION NOT RESTRICTED. Except as provided by this subtitle, no proceeding, notice, or approval is required for the organization of a corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.062. BOARD OF DIRECTORS. (a) All of the powers of a corporation are vested in a board of directors consisting of three or more directors appointed by the governing body of the corporation's authorizing unit.

(b) A director serves for a term of not more than six years.

(c) The governing body of the corporation's authorizing unit may remove a director for cause or at will.

(d) A director serves without compensation, but is entitled to reimbursement for actual expenses incurred in the performance of the director's duties under this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.063. ORGANIZATIONAL MEETING. (a) After issuance of the certificate evidencing the filing of the certificate of formation, the board of directors named in the certificate of formation shall hold an organizational meeting in this state to adopt bylaws and elect officers and for other purposes.

(b) Not later than the third day before the date of the meeting, the organizers who call the meeting shall give notice by mail of the time and place of the meeting to each director named in the certificate of formation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.064. BYLAWS. (a) A corporation may adopt and amend bylaws for the administration and regulation of the corporation's affairs.

(b) The board of directors shall adopt a corporation's initial bylaws.

(c) The bylaws and each amendment of the bylaws must:

(1) be consistent with state law and with the certificate of formation of the corporation; and

(2) be approved by resolution of the governing body of the corporation's authorizing unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.065. OFFICERS. (a) A corporation has the following officers:

(1) a president;

(2) at least one vice president;

(3) a secretary;

(4) a treasurer; and

(5) other officers or assistant officers considered necessary.

(b) An officer of the corporation is elected or appointed at the time, in the manner, and for the term prescribed by the certificate of formation or bylaws, except that an officer's term may not exceed three years. In the absence of provisions in the certificate of formation or the bylaws prescribing the selection or terms of officers, the board of directors shall annually elect or appoint officers.

(c) A person may hold more than one office, except that the same person may not hold the offices of president and secretary.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.066. INDEMNIFICATION. (a) In this section, "director or officer" includes a former director or officer.

(b) Except as provided by Subsection (d), a corporation may indemnify a director or officer of the corporation for necessary expenses and costs, including attorney's fees, actually incurred by the director or officer in connection with a claim asserted against the director or officer, by action in court or another forum, by reason of the director's or officer's being or having been a director or officer of the corporation.

(c) Except as provided by Subsection (d), if a corporation has not fully indemnified a director or officer under Subsection (b), the court in a proceeding in which a claim is asserted against the director or officer or a court having jurisdiction over an action brought by the director or officer on a claim for indemnity may assess indemnity against the corporation or the corporation's receiver or trustee. The assessment must equal the amount that the director or officer paid to satisfy the judgment or compromise the claim, including attorney's fees and not including any amount paid to the corporation, to the extent that:

(1) the amount paid was actually and necessarily incurred; and

(2) the court considers the amount paid reasonable and equitable.

(d) A corporation may not indemnify a director or officer for a matter in which the director or officer is guilty of negligence or misconduct. A court may assess indemnity against the corporation

only if the court finds that the director or officer was not guilty of negligence or misconduct in the matter for which indemnity is sought.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.067. INSURANCE AND BENEFITS. (a) Notwithstanding any law to the contrary and with the consent of the corporation's authorizing unit, a corporation may obtain:

(1) health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the authorizing unit's insurance policies, through self-funded coverage, or under coverage provided under an interlocal agreement with a political subdivision; or

(2) retirement benefits under a retirement program the authorizing unit participates in or operates.

(b) Health benefits coverage may be extended to the corporation's directors and employees, and to the dependents of the directors and employees.

(c) Workers' compensation benefits may be extended to the corporation's directors, employees, and volunteers.

(d) Liability coverage may be extended to protect the corporation and the corporation's directors and employees.

(e) Retirement benefits may be extended to the corporation's employees.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.068. BOARD MEETINGS; NOTICE OF MEETING. (a) A board of directors may hold a regular meeting in this state with or without notice as prescribed by the corporation's bylaws.

(b) A board of directors may hold a special meeting with notice as prescribed by the corporation's bylaws.

(c) A director's attendance at a board meeting constitutes a waiver of notice of the meeting, unless the director attends the meeting for the express purpose of objecting to the transaction of any business at the meeting because the meeting has not been lawfully

called or convened.

(d) Unless required by the corporation's bylaws, notice or waiver of notice of a board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.069. WAIVER OF NOTICE. If a notice is required to be given to a director of a corporation under this subtitle or the corporation's certificate of formation or bylaws, a written waiver of the notice signed by the person entitled to the notice is equivalent to giving the required notice. The waiver may be given before or after the time that would have been stated in the notice.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.070. ACTION OF BOARD; QUORUM. (a) A quorum of a board of directors is the lesser of:

(1) a majority of the number of directors:

(A) established by the corporation's bylaws; or

(B) stated in the corporation's certificate of formation, if the bylaws do not establish the number of directors; or

(2) the number of directors, not less than three, established as a quorum by the certificate of formation or bylaws.

(b) The act of a majority of the directors present at a meeting at which a quorum is present is an act of the board of directors, unless the act of a larger number is required by the certificate of formation or bylaws of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.071. ACTION WITHOUT MEETING. (a) An action that may be taken at a meeting of a board of directors, including an action required by this subtitle to be taken at a meeting, may be taken

without a meeting if each director signs a written consent providing the action to be taken.

(b) The consent has the same effect as a unanimous vote and may be stated as such in a document filed with the secretary of state under this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.072. OPEN MEETINGS AND PUBLIC INFORMATION. A board of directors is subject to the open meetings law, Chapter 551, Government Code, and the public information law, Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.073. SUPERVISION BY AUTHORIZING UNIT. (a) The corporation's authorizing unit will approve all programs and expenditures of a corporation and annually review any financial statements of the corporation.

(b) A corporation's authorizing unit is entitled to access to the corporation's books and records at all times.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.074. PURCHASING. A corporation may use the reverse auction procedure defined by Section 2155.062(d), Government Code, for purchasing.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.075. EXEMPTION FROM TAXATION. (a) The activities of a corporation affect all the residents of the corporation's authorizing unit by the corporation's assuming to a material extent

what otherwise might be an obligation or duty of the authorizing unit, and therefore the corporation is an institution of purely public charity within the tax exemption of Section 2, Article VIII, Texas Constitution.

(b) A corporation is exempt from the tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER C. AUTHORIZED PROJECTS

Sec. 501.101. PROJECTS RELATED TO CREATION OR RETENTION OF PRIMARY JOBS. In this subtitle, "project" includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements that are:

(1) for the creation or retention of primary jobs; and

(2) found by the board of directors to be required or suitable for the development, retention, or expansion of:

(A) manufacturing and industrial facilities;

(B) research and development facilities;

(C) military facilities, including closed or realigned military bases;

(D) transportation facilities, including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, related infrastructure located on or adjacent to an airport or railport facility, marine ports, inland ports, mass commuting facilities, and parking facilities;

(E) sewage or solid waste disposal facilities;

(F) recycling facilities;

(G) air or water pollution control facilities;

(H) facilities for furnishing water to the public;

(I) distribution centers;

(J) small warehouse facilities capable of serving as decentralized storage and distribution centers;

(K) primary job training facilities for use by institutions of higher education; or

(L) regional or national corporate headquarters facilities.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01,

eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.012(a), eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 150 (S.B. 2052), Sec. 1, eff. September 1, 2009.

Sec. 501.102. PROJECTS RELATED TO CERTAIN JOB TRAINING. In this subtitle, "project" includes job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this subtitle, as provided by Section 501.162.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.103. CERTAIN INFRASTRUCTURE IMPROVEMENT PROJECTS. In this subtitle, "project" includes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, limited to:

(1) streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;

(2) telecommunications and Internet improvements; or

(3) beach remediation along the Gulf of Mexico.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.104. PROJECTS RELATED TO CERTAIN MILITARY BASES OR MISSIONS. In this subtitle, "project" includes the infrastructure, improvements, land acquisition, buildings, or expenditures that:

(1) are for the creation or retention of primary jobs or jobs that are included in North American Industry Classification System (NAICS) sector number 926120, Regulation and Administration of Transportation Programs, for the corresponding index entry for Coast Guard (except the Coast Guard Academy); and

(2) are found by the board of directors to be required or suitable for:

(A) promoting or supporting a military base in active use to prevent the possible future closure or realignment of the base;

(B) attracting new military missions to a military base in active use; or

(C) redeveloping a military base that has been closed or realigned, including a military base closed or realigned according to the recommendation of the Defense Base Closure and Realignment Commission under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.105. CAREER CENTER PROJECTS OUTSIDE OF JUNIOR COLLEGE DISTRICT. In this subtitle, "project" includes the land, buildings, equipment, facilities, improvements, and expenditures found by the board of directors to be required or suitable for use for a career center, if the area to be benefited by the career center is not located in the taxing jurisdiction of a junior college district.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.106. AIRPORT FACILITIES OR OTHER PROJECTS BY CORPORATIONS AUTHORIZED BY CERTAIN BORDER MUNICIPALITIES. (a) This section applies only to a corporation authorized to be created by a municipality, any part of which is located within 25 miles of an international border.

(b) For a corporation to which this section applies, in this subtitle, "project" includes the land, buildings, facilities, infrastructure, and improvements that:

(1) the corporation's board of directors finds are required or suitable for the development or promotion of new or expanded business enterprises through transportation facilities including airports, hangars, railports, rail switching facilities, maintenance and repair facilities, cargo facilities, marine ports, inland ports,

mass commuting facilities, parking facilities, and related infrastructure located on or adjacent to an airport or railport facility; or

(2) are undertaken by the corporation if the municipality that authorized the creation of the corporation has, at the time the corporation approves the project as provided by this subtitle:

(A) a population of less than 50,000; or

(B) an average rate of unemployment that is greater than the state average rate of unemployment during the most recent 12-month period for which data is available that precedes the date the project is approved.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 795 (H.B. 2772), Sec. 1, eff. June 17, 2015.

Sec. 501.107. INFRASTRUCTURE PROJECTS BY CORPORATIONS AUTHORIZED BY MUNICIPALITIES IN CERTAIN BORDER COUNTIES. (a) This section applies only to a corporation that:

(1) is authorized to be created by a municipality wholly or partly located in a county that:

(A) is bordered by the Rio Grande;

(B) has a population of at least 500,000; and

(C) has wholly or partly within its boundaries at least four municipalities each of which has a population of at least 25,000; and

(2) does not support a project, as defined by this subchapter, with sales and use tax revenue collected under Chapter 504 or 505.

(b) For a corporation to which this section applies, in this subtitle, "project" includes expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER D. CORPORATE POWERS AND LIMITATIONS RELATING TO PROJECTS

Sec. 501.151. AUTHORITY TO FINANCE PROJECT. A corporation is a constituted authority for the purpose of financing one or more projects.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.152. DEFINITION OF COST WITH RESPECT TO PROJECT. In this subtitle, "cost," with respect to a project, means the cost of the acquisition, cleanup, construction, reconstruction, improvement, or expansion of a project, including:

(1) the cost of acquiring all land, rights-of-way, property rights, easements, and interests;

(2) the cost of all machinery and equipment;

(3) financing charges;

(4) the cost of inventory, raw materials, and other supplies;

(5) research and development costs;

(6) interest accruing before and during construction and until the first anniversary of the date the construction is completed, regardless of whether capitalized;

(7) necessary reserve funds;

(8) the cost of estimates, including estimates of cost and revenue;

(9) the cost of engineering or legal services;

(10) the cost of plans, specifications, or surveys;

(11) other expenses necessary or incident to determining the feasibility and practicability of acquiring, cleaning, constructing, reconstructing, improving, and expanding the project;

(12) administrative expenses; and

(13) other expenditures necessary or incident to:

(A) acquiring, cleaning, constructing, reconstructing, improving, and expanding the project;

(B) placing the project in operation; and

(C) financing or refinancing the project, including refunding any outstanding obligations, mortgages, or advances issued, made, or given by a person for a cost described by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01,

eff. April 1, 2009.

Sec. 501.153. LEASE OR SALE OF PROJECT. (a) A corporation may:

(1) lease all or any part of a project to a user, for the rental and on the terms that the corporation's board of directors considers advisable and not in conflict with this subtitle; or

(2) sell, by installment payments or otherwise, and convey all or any part of a project to a user for the purchase price and on the terms the corporation's board of directors considers advisable and not in conflict with this subtitle.

(b) A corporation may grant a lessee an option to purchase all or any part of a project when all bonds of the corporation delivered to provide those facilities have been paid or provision has been made for the bonds' final payment. This subsection is procedurally exclusive for authority to convey or grant an option to purchase all or part of a project, and reference to another law is not required.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.154. CONVEYANCE OF PROPERTY TO INSTITUTION OF HIGHER EDUCATION. With respect to a project, a corporation may donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property, fixtures, furnishings, equipment, or personal property to an institution of higher education for a legal purpose of the institution, on the terms the corporation's board of directors considers advisable and not in conflict with this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.155. LOAN TO FINANCE PROJECT. (a) A corporation may make a secured or unsecured loan to a user for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of a project, including the refunding of an outstanding obligation, mortgage, or advance issued, made, or given by a person for the cost of a project.

(b) For a loan made under this section, a corporation may charge and collect interest on the terms the corporation's board of directors considers advisable and not in conflict with this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.156. AGREEMENT MUST BENEFIT CORPORATION. An agreement relating to a project must be for the benefit of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.157. DEFAULT ON AGREEMENT; ENFORCEMENT. An agreement relating to a project must provide that if a default occurs in the payment of the principal of or the interest or premium on the bonds or in the performance of any agreement contained in a proceeding, mortgage, or instrument, the payment or performance may be enforced by:

(1) mandamus; or

(2) the appointment of a receiver in equity with the power to:

(A) charge and collect rents, purchase price payments, and loan payments; and

(B) apply the revenue from the project in accordance with the resolution, mortgage, or instrument.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.158. PERFORMANCE AGREEMENTS. (a) A corporation may not provide a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined by Subchapter C of this chapter or by Subchapter D, Chapter 505, unless the corporation enters into a performance agreement with the business enterprise.

(b) A performance agreement between a corporation and business enterprise must:

(1) provide, at a minimum, for a schedule of additional

payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement; and

(2) specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.159. POWERS CONCERNING PROJECTS; JURISDICTION. (a) A corporation may acquire, by construction, devise, purchase, gift, lease, or otherwise, or any one or more of those methods and may construct, improve, maintain, equip, and furnish one or more projects undertaken by another corporation or located within this state, including within the coastal waters of this state, and within or partially within the limits of the authorizing unit of the corporation or within the limits of another unit, if the governing body of the other corporation or the unit requests the corporation to exercise its powers within that unit.

(b) A corporation may recover the costs of an investment under Subsection (a) from a unit or another corporation under a contract with a limited or unlimited duration.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.160. OWNING OR OPERATING PROJECT AS BUSINESS. (a) Except as provided by Subsection (d), a corporation may not own or operate a project as a business other than:

(1) as a lessor, seller, or lender; or

(2) according to the requirements of any trust agreement securing the credit transaction.

(b) The user under a lease, sale, or loan agreement relating to a project is considered the owner of the project for purposes of ad valorem taxes, sales and use taxes, or any other taxes imposed by this state or a political subdivision of this state.

(c) Purchasing and holding a mortgage, deed of trust, or other security interest or contracting for the servicing of a mortgage,

deed of trust, or other security interest is not considered the operation of a project.

(d) A corporation has all the powers necessary to own and operate a project as a business if:

(1) the project is a military installation or military facility that has been closed or realigned, including a military installation or facility closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note), as amended; or

(2) the project is authorized under Section 501.106.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 795 (H.B. 2772), Sec. 2, eff. June 17, 2015.

Sec. 501.161. CERTAIN ECONOMIC INCENTIVES PROHIBITED. (a) In this section, "related party" means a person who owns at least 80 percent of the business enterprise to which the sales and use tax would be rebated as part of an economic incentive.

(b) Notwithstanding any other provision of this subtitle, a corporation may not offer to provide an economic incentive for a business enterprise whose business consists primarily of purchasing taxable items using a resale certificate and then reselling those items to a related party.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.162. USE OF TAX REVENUE FOR JOB TRAINING. A corporation may spend tax revenue received under this subtitle for job training offered through a business enterprise only if the business enterprise has committed in writing to:

(1) create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or

(2) increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the

local labor market area.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.163. USE OF TAX REVENUE FOR JOB-RELATED SKILLS TRAINING BY CERTAIN CORPORATIONS. (a) This section applies only to a corporation the creation of which was authorized by a municipality that:

(1) has a population of 10,000 or more;

(2) is located in a county that borders:

(A) the Gulf of Mexico or the Gulf Intracoastal Waterway; or

(B) the United Mexican States and in which four municipalities with a population of 70,000 or more are located; and

(3) has, or is included in a metropolitan statistical area of this state that has, an unemployment rate that averaged at least two percent above the state average for the most recent two consecutive years for which statistics are available.

(b) A corporation may spend tax revenue received under this subtitle for job training that consists of:

(1) providing job-related life skills sufficient to enable an unemployed individual to obtain employment; and

(2) providing job training skills sufficient to enable an unemployed individual to obtain employment.

(c) A corporation to which this section applies may contract with any person to provide the job training authorized under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1283 (H.B. 1967), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 648 (S.B. 1748), Sec. 1, eff. June 12, 2017.

SUBCHAPTER E. CORPORATE POWERS AND LIMITATIONS RELATING TO BONDS

Sec. 501.201. AUTHORITY TO ISSUE BONDS. (a) A corporation may issue bonds to defray all or part of the cost of a project, regardless of whether the bonds are wholly or partly exempt from

federal income taxation.

(b) Except as limited by this subtitle or rules and guidelines of the economic development office, a corporation has full authority with respect to bonds.

(c) Except as otherwise provided by this subtitle, a corporation may issue bonds under this subtitle without obtaining the consent or approval of any department, division, or agency of this state, other than the attorney general under Chapter 1202, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.202. TERMS. Bonds issued by a corporation must be dated and must mature in not more than 40 years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.203. SECURITIES COMMISSIONER PERMIT TO SELL SECURITIES REQUIRED. A corporation may not sell or offer for sale bonds or other securities until the securities commissioner grants a permit authorizing the corporation to offer and sell the bonds or other securities under the registration provisions of The Securities Act (Title 12, Government Code), except as exempted from registration by rule or order of the State Securities Board. Appeal from an adverse decision of the securities commissioner or the State Securities Board is under the administrative procedure law, Chapter 2001, Government Code. The substantial evidence rule applies in an appeal under this subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.37, eff. January 1, 2022.

Sec. 501.204. AUTHORIZING UNIT'S APPROVAL OF BONDS. (a) A

corporation may not deliver bonds, including refunding bonds, unless the governing body of the corporation's authorizing unit adopts a resolution, not earlier than the 60th day before the date the bonds are delivered, specifically approving the corporation's resolution providing for the issuance of the bonds.

(b) If the corporation is authorized to be created by a county alliance, the resolution required by Subsection (a) must be adopted by the commissioners courts of at least three-fifths of the members of the county alliance.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.205. BOND COUNSEL AND FINANCIAL ADVISORS. Bond counsel and financial advisors participating in a bond issue must be mutually acceptable to the corporation and the user.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.206. MONEY USED TO PAY BONDS. The principal of and interest on bonds issued by a corporation are payable only from the money provided for that payment and from the revenue of the project or projects for which the bonds were authorized.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.207. BONDS NOT DEBT OF STATE OR AUTHORIZING UNIT. (a) Bonds issued under this subtitle are not a debt or pledge of the faith and credit of this state, the authorizing unit of the corporation issuing the bonds, or any other political corporation, subdivision, or agency of this state.

(b) The revenue bonds issued under this subtitle must contain on their face a statement to the effect that:

(1) neither this state, the authorizing unit of the corporation issuing the bonds, nor any other political corporation, subdivision, or agency of this state is obligated to pay the

principal of or the interest on the bonds; and

(2) neither the faith and credit nor the taxing power of this state, the authorizing unit of the corporation issuing the bonds, or any other political corporation, subdivision, or agency of this state is pledged to the payment of the principal of or the interest on the bonds.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.208. BOND SECURITY; DEFAULT. (a) The principal of and interest on any bonds issued by a corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project financed by the bonds or from the loan made by the corporation with respect to the project financed or refinanced by the bonds.

(b) As security for the payment of the principal of and interest on any bonds issued by a corporation and any agreements made in connection with the issuance of bonds, the corporation may:

(1) mortgage and pledge any or all of the corporation's projects or any part of a project, including the project financed or refinanced and any enlargements of and additions to the project, owned before or acquired after the time of the mortgage or pledge; and

(2) assign any mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation, and pledge the revenues and receipts from the assigned mortgage or security.

(c) The resolution authorizing the issuance of bonds and any mortgage covering all or part of the project financed may include any agreement or provision that the board of directors considers advisable and not in conflict with this subtitle and that relates to:

(1) the maintenance of the project covered by the bonds or mortgage;

(2) the fixing and collection of rents;

(3) purchase price payments;

(4) loan payments;

(5) the creation and maintenance of special funds from those revenues; or

(6) the rights and remedies available in the event of a default.

(d) A mortgage to secure bonds may also provide that, in the event of a default in the payment of the bonds or a violation of another agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property may be sold in any manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder of any of the bonds secured by the mortgage may purchase property at a foreclosure sale if the trustee or holder is the highest bidder.

(e) A pledge, agreement, or mortgage made for the benefit or security of any of the corporation's bonds continues in effect until the principal of and interest on the bonds benefited or secured by the pledge, agreement, or mortgage have been fully paid.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.209. TRUST AGREEMENT. (a) Bonds issued under this subtitle may be secured by a trust agreement between the corporation and a trust company or bank having the powers of a trust company. The trust company or bank may be located in or outside of this state.

(b) The trust agreement may:

(1) pledge or assign the lease, sale, or loan revenues to be received with respect to a project from a lessee, purchaser, or borrower for the payment of the principal of and interest and any premium on the bonds as the bonds become due and payable;

(2) provide for the creation and maintenance of reserves for a purpose described by Subdivision (1);

(3) state the rights and remedies of the bondholders and the trustee;

(4) restrict the individual right of action by bondholders in a manner that is customary in trust agreements or trust indentures securing bonds and debentures of private corporations; and

(5) include any additional provision that the corporation considers reasonable and proper for the security of the bondholders.

(c) The trust agreement or a resolution approving the issuance of the bonds may provide for the protection and enforcement of the rights and remedies of the bondholders as may be reasonable and

proper and not in violation of law, including covenants providing the duties relating to:

(1) the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which the bonds are authorized; and

(2) the custody, protection, and application of all money.

(d) A bank or trust company incorporated under the laws of this state that acts as depository of the bond proceeds or of revenues may furnish indemnifying bonds or pledge securities as required by the corporation.

(e) All expenses incurred in carrying out the trust agreement may be treated as a part of the cost of operating the project.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.210. FINANCIAL ASSURANCE OR RESPONSIBILITY REQUIREMENTS FOR CERTAIN PROJECTS. (a) The resolution or mortgage described by Section 501.208(c) may contain any agreement or provision for satisfying the financial assurance or responsibility requirements applicable to a project for which a permit is required under Chapter 361, Health and Safety Code, or Chapter 27, Water Code, including a requirement relating to construction, proper operation, liability coverage, emergency response capability, well plugging, closure, and post-closure care.

(b) Evidence of the passage of a resolution by a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance or responsibility requirements applicable to the project is an adequate demonstration that sufficient financial resources will be available to comply with all existing financial assurance or responsibility requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.211. USE OF BOND PROCEEDS. (a) The proceeds of the bonds of each issue shall be:

(1) used to pay or make a loan in the amount of all or part of the cost of the project or projects for which the bonds were

authorized; and

(2) disbursed in the manner and under any restrictions provided in the resolution authorizing the issuance of the bonds or in any trust agreement securing the bonds.

(b) Bond proceeds may be used to:

(1) pay all costs incurred in issuing the bonds;

(2) pay interest on the bonds for any time determined by the board of directors of the corporation issuing the bonds; and

(3) establish reserve funds and sinking funds for the bonds.

(c) If the proceeds of the bonds of any series issued for a project exceed the cost of the project for which the bonds were issued, the surplus shall be:

(1) deposited to the credit of the sinking fund for the bonds; or

(2) used to purchase bonds in the open market.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.212. INTERIM BONDS. (a) Before the preparation of definitive bonds, the corporation may, under like restrictions, issue interim bonds that may be exchanged for definitive bonds when the definitive bonds are executed and available for delivery.

(b) The corporation may issue interim bonds with or without coupons.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.213. REFUNDING BONDS. (a) A corporation may provide by resolution for the issuance of refunding bonds:

(1) to refund outstanding bonds issued under this subtitle for a project, including the payment of any redemption premium on the bonds and the interest accrued or to accrue to the date of redemption; and

(2) if considered advisable by the corporation, additionally to finance improvements, extensions, or enlargements to the project for which the bonds being refunded were issued or for

another project.

(b) The provisions of this subtitle relating to other bonds govern the issuance, maturities, and other details of the refunding bonds, the rights of the holders of the refunding bonds, and the rights, duties, and obligations of the corporation with respect to the same to the extent those provisions may be applicable.

(c) The corporation may issue the refunding bonds in exchange for outstanding bonds or may sell the refunding bonds and use the proceeds to redeem outstanding bonds.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.214. SALE OR EXCHANGE OF BONDS. With respect to a project, a corporation may:

(1) sell bonds; or

(2) exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER F. ADMINISTRATION BY ECONOMIC DEVELOPMENT OFFICE

Sec. 501.251. STATE STANDARDS FOR PROJECT ELIGIBILITY. The economic development office shall adopt rules providing minimum standards for project eligibility.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.252. STATE STANDARDS AND GUIDELINES FOR LEASE, SALE, OR LOAN AGREEMENTS. (a) The economic development office shall adopt rules:

(1) providing minimum standards for lease, sale, and loan agreements entered into under this subtitle; and

(2) providing guidelines with respect to the business experience, financial resources, and responsibilities of the lessee,

purchaser, or borrower under a lease, sale, or loan agreement entered into under this subtitle.

(b) The economic development office may adopt rules governing the terms of a loan made by a corporation to a bank or other lending institution the proceeds of which are reloaned as permanent or temporary financing of a project.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.253. RULES FOR SMALL BUSINESS PROGRAMS. The economic development office shall adopt rules governing programs for small businesses receiving loans guaranteed wholly or partly by the United States Small Business Administration or another federal agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.254. FILING OF RULES AND GUIDELINES WITH SECRETARY OF STATE. Rules and guidelines adopted by the economic development office and amendments to the rules and guidelines take effect only after the filing of the rules and guidelines or amendments with the secretary of state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.255. APPROVAL OF LEASE, SALE, OR LOAN AGREEMENT. (a) A lease, sale, or loan agreement entered into under this subtitle must be approved by the economic development office. The economic development office may not approve an agreement unless the office affirmatively finds that the project sought to be financed furthers the public purposes of this subtitle.

(b) The corporation may appeal an adverse ruling or decision of the economic development office under Subsection (a) to a district court of Travis County. The substantial evidence rule applies in an appeal under this subsection.

(c) A corporation:

(1) may enter into a lease, sale, or loan agreement under this subtitle without obtaining the consent or approval of any department, division, or agency of this state except as otherwise provided by this subtitle; and

(2) has full authority with respect to a lease, sale, or loan agreement, except as limited by this subtitle or by rules and guidelines of the economic development office.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.256. APPROVAL OF BONDS BY ECONOMIC DEVELOPMENT OFFICE. (a) A corporation may submit a transcript of proceedings in connection with the issuance of bonds to the economic development office and request that the office approve the bonds. A corporation shall include a nonrefundable filing fee with the request. The office shall set the amount of the fee at a reasonable amount that is not less than $500 or more than $25,000.

(b) If the economic development office refuses to approve the bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Texas Supreme Court, and for this purpose the executive director of the economic development office is considered a state officer under Section 22.002, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.257. FILING OF FEE SCHEDULE AND BOND PROCEDURES. The economic development office by rule shall require a corporation to file fee schedules and bond procedures.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.258. DELEGATION OF AUTHORITY. The economic development office may delegate to the executive director of the office the authority to approve a lease, sale, or loan agreement made under this subtitle or bonds issued by a corporation or any documents

submitted as provided in this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER G. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF FORMATION

Sec. 501.301. AMENDMENT BY BOARD OF DIRECTORS. (a) The board of directors of a corporation at any time may file with the governing body of the corporation's authorizing unit a written application requesting that the authorizing unit approve an amendment to the certificate of formation.

(b) The application must specify the proposed amendment. The board of directors shall amend the certificate of formation in accordance with this subchapter if the governing body of the authorizing unit by resolution:

(1) determines that it is advisable to adopt the amendment;

(2) authorizes the adoption of the amendment; and

(3) approves the form of the amendment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.302. AMENDMENT BY UNIT. The governing body of the authorizing unit of a corporation, at the unit's sole discretion, may in accordance with this subchapter amend the corporation's certificate of formation at any time by:

(1) adopting the amendment by resolution; and

(2) delivering the certificate of amendment to the secretary of state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.303. AMENDMENT TO COUNTY ALLIANCE CORPORATION'S CERTIFICATE OF FORMATION. An amendment to the certificate of formation of a county alliance corporation may not be adopted unless approved by the governing body of each member of the county alliance

that authorized the creation of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.304. CONTENTS OF CERTIFICATE OF AMENDMENT. The certificate of amendment must:

(1) state the name of the corporation;

(2) if the amendment alters a provision of the certificate of formation, identify by reference or describe the altered provision and include the provision's text as amended;

(3) if the amendment is an addition to the certificate of formation, state that fact and include the text of each provision added; and

(4) state that the amendment was adopted or approved by the governing body of the authorizing unit and give the date the governing body adopted or approved the amendment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.305. EXECUTION AND VERIFICATION OF CERTIFICATE OF AMENDMENT. (a) A certificate of amendment shall be executed:

(1) on behalf of the corporation by the president or a vice president of the corporation and by the secretary or an assistant secretary of the corporation; or

(2) by the presiding officer of the governing body of the corporation's authorizing unit and by the secretary or clerk of the governing body.

(b) One of the officers who signs the certificate of amendment shall verify the certificate of amendment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.306. DELIVERY AND FILING OF CERTIFICATE OF AMENDMENT. (a) Three originals of the certificate of amendment shall be delivered to the secretary of state.

(b) If the secretary of state determines that the certificate of amendment conforms to this subchapter and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the certificate of amendment;

(2) file one of the original certificates of amendment in the secretary of state's office;

(3) issue two certificates evidencing the filing of the certificate of amendment;

(4) attach to each certificate evidencing the filing of the certificate of amendment; and

(5) deliver a certificate evidencing the filing of the certificate of amendment and the attached certificate of amendment to:

(A) the corporation or the corporation's representative; and

(B) the governing body of the corporation's authorizing unit.

(c) On the issuance of the certificate evidencing the filing of the certificate of amendment, the amendment becomes effective and the certificate of formation is amended accordingly.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.307. SUITS OR RIGHTS NOT AFFECTED. (a) An amendment to a corporation's certificate of formation does not affect:

(1) any existing cause of action in favor of or against the corporation;

(2) any pending suit to which the corporation is a party; or

(3) the existing rights of any person.

(b) If a corporation's name is changed by amendment to the certificate of formation, a suit brought by or against the corporation under its former name does not abate for that reason.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.308. RESTATED CERTIFICATE OF FORMATION. A corporation may authorize, execute, and file a restated certificate of formation by following the procedure to amend the certificate of formation provided by this subchapter, including obtaining the approval of the governing body of the corporation's authorizing unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.309. RESTATEMENT WITHOUT ADDITIONAL AMENDMENT. (a) A corporation may, without making any additional amendment, restate the entire text of the certificate of formation as amended or supplemented by all certificates evidencing the filing of a certificate of amendment previously issued by the secretary of state.

(b) The introductory paragraph of a restatement under this section must contain a statement that the restatement:

(1) accurately copies the certificate of formation and all amendments to the certificate of formation that are in effect; and

(2) does not contain any change to the certificate of formation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.310. RESTATEMENT WITH ADDITIONAL AMENDMENT. (a) A corporation may:

(1) restate the entire text of the certificate of formation as amended or supplemented by all certificates evidencing the filing of a certificate of amendment previously issued by the secretary of state; and

(2) as part of the restatement, make additional amendments to the certificate of formation.

(b) A restatement under this section must:

(1) state that each additional amendment to the certificate of formation conforms to this subtitle;

(2) contain any statement required by this subtitle for the certificate of amendment, except that the full text of an additional amendment is not required to be set out other than in the restatement itself;

(3) contain a statement that:

(A) the restatement is an accurate copy of the certificate of formation and all amendments to the certificate of formation that are in effect and all additional amendments made to the certificate of formation; and

(B) the restatement does not contain any other change to the certificate of formation; and

(4) restate the text of the entire certificate of formation as amended or supplemented by all certificates evidencing the filing of a certificate of amendment previously issued by the secretary of state and as additionally amended by the restated certificate of formation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.311. CHANGE IN CERTAIN INFORMATION NOT AMENDMENT. For purposes of restating the certificate of formation under Sections 501.309 and 501.310, substituting the current number, names, and addresses of the directors for similar information of the initial board of directors or omitting the name and address of each organizer is not an amendment to or change in the certificate of formation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.312. EXECUTION AND VERIFICATION OF RESTATED CERTIFICATE OF FORMATION. (a) Originals of the restated certificate of formation shall be executed on behalf of the corporation by the president or a vice president of the corporation and by the secretary or an assistant secretary of the corporation.

(b) One of the officers who signs the restated certificate of formation shall verify the restated certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.313. DELIVERY AND FILING OF RESTATED CERTIFICATE OF

FORMATION. (a) Three originals of the restated certificate of formation shall be delivered to the secretary of state.

(b) If the secretary of state determines that the restated certificate of formation conforms to law and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the restated certificate of formation;

(2) file one of the original restated certificates of formation in the secretary of state's office;

(3) issue two certificates evidencing the filing of the restated certificate of formation;

(4) attach to each certificate evidencing the filing of the restated certificate of formation an original of the restated certificate of formation; and

(5) deliver a certificate evidencing the filing of the restated certificate of formation and the attached restated certificate of formation to:

(A) the corporation or the corporation's representative; and

(B) the governing body of:

(i) the corporation's authorizing unit; or

(ii) any county in the county alliance that authorized the creation of the corporation, for a county alliance corporation.

(c) The governing body of a county to which a certificate evidencing the filing of the restated certificate of formation and the attached restated certificate of formation are delivered under Subsection (b)(5)(B)(ii) shall provide photocopies of the certificate evidencing the filing of the restated certificate of formation and the attached restated certificate of formation to each other member of the county alliance.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.314. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING FILING OF RESTATED CERTIFICATE OF FORMATION. On the issuance of the certificate evidencing the filing of the restated certificate of formation by the secretary of state:

(1) the original certificate of formation and all amendments to the original certificate of formation are superseded; and

(2) the restated certificate of formation becomes the certificate of formation of the corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER H. REGISTERED OFFICE AND AGENT; SERVICE OF PROCESS

Sec. 501.351. REGISTERED OFFICE AND AGENT. (a) A corporation shall continuously maintain in this state a registered office and registered agent.

(b) A corporation's registered office may, but is not required to be, the same as the corporation's principal office.

(c) A corporation's registered agent may be:

(1) an individual who is a resident of this state and whose business office is the same as the corporation's registered office; or

(2) a domestic or foreign for-profit or nonprofit corporation that:

(A) is authorized to transact business or to conduct affairs in this state; and

(B) has a principal or business office that is the same as the corporation's registered office.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.352. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A corporation may change its registered office or registered agent by filing in the office of the secretary of state a statement declaring:

(1) the name of the corporation;

(2) the postal mailing address of the corporation's registered office at the time of filing;

(3) the postal address to which the registered office is to be changed, if the postal mailing address of the corporation's registered office is to be changed;

(4) the name of the corporation's registered agent at the

time of filing;

(5) the name of the corporation's successor registered agent, if the corporation's registered agent is to be changed;

(6) that the postal mailing address of the corporation's registered office and the postal mailing address of the business office of the corporation's registered agent as changed will be the same; and

(7) that the change was authorized by:

(A) the corporation's board of directors; or

(B) an officer of the corporation authorized by the corporation's board of directors to make the change.

(b) Two originals of the statement shall be:

(1) executed on behalf of the corporation by the president or a vice president of the corporation;

(2) verified by the executing officer; and

(3) delivered to the secretary of state.

(c) If the secretary of state determines that the statement conforms to this section and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the statement;

(2) file one of the original statements in the secretary of state's office; and

(3) return the other original statement to the corporation or the corporation's representative.

(d) A change made by the statement becomes effective on the filing of the statement by the secretary of state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.353. RESIGNATION OF REGISTERED AGENT. (a) A corporation's registered agent may resign by:

(1) giving written notice to the corporation at the corporation's last known address; and

(2) giving three originals of the written notice to the secretary of state not later than the 10th day after the date the notice is mailed or delivered to the corporation.

(b) The notice of resignation must include:

(1) the corporation's last known address;

(2) a statement that written notice of the resignation was given to the corporation; and

(3) the date on which the written notice of resignation was given to the corporation.

(c) If the secretary of state determines that the notice of resignation conforms to this section, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the notice of resignation;

(2) file one of the original notices of resignation in the secretary of state's office;

(3) return one original notice of resignation to the resigning registered agent; and

(4) return one original notice of resignation to the corporation at the corporation's last known address shown in the notice.

(d) The appointment of a registered agent terminates on the 31st day after the date the secretary of state receives the notice of resignation that complies with this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.354. AGENTS FOR SERVICE. (a) The president, each vice president, and the registered agent of a corporation are the corporation's agents on whom a process, notice, or demand required or permitted by law to be served on the corporation may be served.

(b) If a corporation does not appoint or maintain a registered agent in this state or if the corporation's registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent of the corporation on whom a process, notice, or demand described by Subsection (a) may be served.

(c) Service of a process, notice, or demand on the secretary of state is made by delivering two copies of the process, notice, or demand to the secretary of state, the deputy secretary of state, or a clerk in charge of the corporation department of the secretary of state's office. The secretary of state shall immediately forward by registered mail one copy of the process, notice, or demand to the corporation at the corporation's registered office.

(d) Service made on the secretary of state under this section is returnable not earlier than the 30th day after the date of service.

(e) The secretary of state shall keep a record of each process, notice, and demand served on the secretary of state under this subtitle and shall include in the record the time of the service and the secretary of state's action in response to the service.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER I. ALTERATION OR TERMINATION OF CORPORATION

Sec. 501.401. ALTERATION OR TERMINATION BY AUTHORIZING UNIT. (a) At any time a corporation's authorizing unit, in its sole discretion, may in accordance with this subtitle:

(1) alter the corporation's structure, organization, programs, or activities; or

(2) terminate the existence of the corporation.

(b) The authority of an authorizing unit under this section is limited only by the law of this state on the impairment of contracts entered into by the corporation.

(c) An authorizing unit may make an alteration or may terminate the corporation's existence only by a written resolution of the authorizing unit's governing body.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.402. TERMINATION OF CORPORATION ON COMPLETION OF PURPOSE. The board of directors of a corporation, with the approval by written resolution of the corporation's authorizing unit, shall terminate the corporation's existence as provided by this subtitle if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all bonds issued by the corporation have been fully paid.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01,

eff. April 1, 2009.

Sec. 501.403. EXECUTION OF CERTIFICATE OF TERMINATION. A certificate of termination shall be executed:

(1) on behalf of the corporation by the president or a vice president of the corporation and by the secretary or an assistant secretary of the corporation; or

(2) by the presiding officer of the governing body of the corporation's authorizing unit and the secretary or clerk of the governing body.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.404. DELIVERY AND FILING OF CERTIFICATE OF TERMINATION. (a) Three originals of the certificate of termination shall be delivered to the secretary of state.

(b) If the secretary of state determines that the certificate of termination conforms to this subtitle and on receipt of a $25 fee, the secretary of state shall:

(1) endorse the word "Filed" and the date of the filing on each original of the certificate of termination;

(2) file one of the original certificates of termination in the secretary of state's office;

(3) issue two certificates evidencing the filing of the certificate of termination;

(4) attach to each certificate evidencing the filing of the certificate of termination an original of the certificate of termination; and

(5) deliver a certificate evidencing the filing of the certificate of termination and the attached certificate of termination to:

(A) the representative of the terminated corporation; and

(B) the governing body of the terminated corporation's authorizing unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.405. EFFECT OF ISSUANCE OF CERTIFICATE EVIDENCING FILING OF CERTIFICATE OF TERMINATION. The corporate existence ends on the issuance of the certificate evidencing the filing of the certificate of termination except for the purpose of:

(1) any suit or other proceeding; and

(2) appropriate corporate action by a director or officer under this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.406. ASSETS ON TERMINATION. On termination the title to all funds and property owned by the corporation is transferred to the corporation's authorizing unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 501.407. TERMINATION WITH TRANSFER OF ASSETS TO TYPE A CORPORATION. On approval of the governing bodies of each unit and corporation involved, a corporation that is not a Type A corporation may transfer all of the corporation's assets to a Type A corporation and terminate its existence as provided by this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER J. HURRICANE IKE DISASTER RELIEF

Sec. 501.451. APPLICABILITY. This subchapter applies only to a corporation the creation of which was authorized by a unit wholly or partly located in the Hurricane Ike disaster area, as defined by Section 704, Heartland Disaster Tax Relief Act of 2008 (Pub. L. No. 110-343).

Added by Acts 2009, 81st Leg., R.S., Ch. 991 (H.B. 3854), Sec. 1, eff. June 19, 2009.

Sec. 501.452. PROJECTS RELATED TO HURRICANE IKE DISASTER AREA. For a corporation to which this subchapter applies, in this subtitle, "project":

(1) includes an undertaking the costs of which are eligible to be paid from the proceeds of qualified Hurricane Ike disaster area bonds under Section 704, Heartland Disaster Tax Relief Act of 2008 (Pub. L. No. 110-343); and

(2) does not include:

(A) a qualified residential rental project, as defined by Section 142(d), Internal Revenue Code of 1986; or

(B) a project the costs of which are payable from qualified mortgage bonds, as defined by Section 143, Internal Revenue Code of 1986.

Added by Acts 2009, 81st Leg., R.S., Ch. 991 (H.B. 3854), Sec. 1, eff. June 19, 2009.

Sec. 501.453. PROJECTS NOT ADMINISTERED BY ECONOMIC DEVELOPMENT OFFICE. A project authorized under this subchapter and bonds issued to pay all or part of the cost of a project under this subchapter are not subject to the requirements of Subchapter F.

Added by Acts 2009, 81st Leg., R.S., Ch. 991 (H.B. 3854), Sec. 1, eff. June 19, 2009.

CHAPTER 502. PROVISIONS APPLICABLE TO TYPE A AND TYPE B CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. APPLICABILITY OF CHAPTER. This chapter applies only to Type A and Type B corporations.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER B. CORPORATE POWERS AND LIMITATIONS

Sec. 502.051. WRITTEN CONTRACT REQUIRED FOR BUSINESS

RECRUITMENT OR DEVELOPMENT. (a) Except under a written contract approved by the corporation's board of directors, a corporation may not pay compensation, including a commission or fee, or another thing of value to a broker, agent, or other third party who:

(1) is involved in business recruitment or development; and

(2) is not an employee of the corporation.

(b) A corporation that violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed $10,000.

(c) The attorney general may bring an action to recover the civil penalty in a district court in Travis County or the county in which the violation occurred.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 502.052. USE OF TAX REVENUE FOR MASS TRANSIT-RELATED FACILITIES. A corporation may, as authorized by the corporation's board of directors, spend tax revenue received under this subtitle for the development, improvement, expansion, or maintenance of facilities relating to the operation of commuter rail, light rail, or motor buses.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.013(b), eff. September 1, 2009.

SUBCHAPTER C. TRAINING REQUIREMENTS

Sec. 502.101. TRAINING REGARDING OPERATION OF CORPORATION. (a) At least once in each 24-month period, the following persons associated with a corporation shall attend a training seminar regarding the operation of a corporation created under this subtitle:

(1) the municipal attorney, administrator, or clerk of the municipality that authorized the creation of the corporation; and

(2) the corporation's executive director or other person responsible for the corporation's daily administration.

(b) The training seminar must provide at least six hours of instruction on topics relating to the legal and proper operation of a corporation created under this subtitle.

(c) The training seminar must be held at least four times each calendar year in a different geographical region of this state.

(d) A corporation may spend corporate revenue to pay for required attendance at the training seminar.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 502.102. PROVISION OF TRAINING SEMINAR. (a) A training seminar under Section 502.101 must be provided by a statewide organization representing corporations created under this subtitle, except that if the economic development office determines that no statewide organization is able to provide a seminar as required by Section 502.101, the office, in conjunction with the attorney general and the comptroller, shall by rule develop the seminar. The office may enter into an agreement for provision of a seminar developed under those rules with a person the office determines is qualified to provide the seminar.

(b) A person providing a training seminar may:

(1) charge a reasonable fee for attending the seminar; and

(2) compensate an individual who provides instruction at the seminar.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 502.103. PROOF OF COMPLIANCE. (a) A person providing a training seminar under Section 502.101 shall issue a certificate of completion, on a form approved by the comptroller, to each person who completes the seminar.

(b) A corporation shall present proof of compliance with Section 502.101 to the comptroller by presenting the certificate of completion issued under Subsection (a) for each person required to attend a training seminar. The comptroller may impose an administrative penalty, in an amount not to exceed $1,000 for each violation, against a corporation that fails to present proof in accordance with this subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER D. REPORTING REQUIREMENTS

Sec. 502.151. REPORT TO COMPTROLLER. (a) Not later than April 1 of each year, the board of directors of a corporation shall submit a report to the comptroller that includes:

(1) a statement of:

(A) the corporation's primary economic development objectives;

(B) the corporation's total revenue during the preceding fiscal year;

(C) the corporation's total expenditures during the preceding fiscal year; and

(D) the corporation's total expenditures during the preceding fiscal year in each of the following categories:

(i) administration;

(ii) personnel;

(iii) marketing or promotion;

(iv) direct business incentives;

(v) job training;

(vi) debt service;

(vii) capital costs;

(viii) affordable housing; and

(ix) payments to taxing units, including school districts;

(2) a list of the corporation's capital assets, including land and buildings; and

(3) any other information the comptroller requires to determine the use of the sales and use tax imposed under Chapter 504 or 505 to encourage economic development in this state.

(b) The report:

(1) must be in the form required by the comptroller; and

(2) may not exceed one page.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 3 (S.B. 450), Sec. 1, eff. September 1, 2019.

Sec. 502.152. NOTICE OF FAILURE TO REPORT. (a) If a

corporation does not submit a report as required by Section 502.151 or does not include sufficient information in the report, the comptroller shall provide to the corporation written notice of the failure, including information on how to correct the failure.

(b) The comptroller may impose an administrative penalty of $200 against a corporation that does not correct the failure before the 31st day after the date the corporation receives notice under Subsection (a). The comptroller by rule shall prescribe the procedures for imposition of the administrative penalty. The rules must protect the corporation's due process rights.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 502.153. REPORT TO LEGISLATURE. Not later than November 1 of each even-numbered year, the comptroller shall submit to the legislature a report on the use of the sales and use tax imposed under Chapters 504 and 505 to encourage economic development in this state. On request, the comptroller shall provide without charge a copy of the report to a corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

CHAPTER 504. TYPE A CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITION. In this chapter, "authorizing municipality" means the municipality that authorizes the creation of a Type A corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.002. APPLICABILITY OF CHAPTER. This chapter applies only to a municipality that:

(1) is located in a county that has a population of 500,000 or less; or

(2) has a population of less than 50,000 and:

(A) is located in two or more counties, one of which has a population of 500,000 or more;

(B) is located within the territorial limits of, but has not elected to become a part of, a metropolitan rapid transit authority:

(i) the principal municipality of which has a population of less than 1.9 million; and

(ii) that was created before January 1, 1980, under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973, and is operating under Chapter 451, Transportation Code; or

(C) is located within the territorial limits of, but has not elected to become a part of, a regional transportation authority:

(i) the principal municipality of which has a population of more than 1.3 million; and

(ii) that was created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979, or Chapter 452, Transportation Code, and is operating under Chapter 452, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 195, eff. September 1, 2023.

Sec. 504.003. AUTHORITY TO CREATE CORPORATION. (a) A municipality may authorize the creation under this subtitle of a Type A corporation.

(b) A municipality may not authorize the creation of more than one Type A corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.004. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a Type A corporation must state that the corporation is governed by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.005. CORPORATION NOT SUBJECT TO CERTAIN PROVISIONS. Sections 501.203, 501.205, 501.251-501.254, 501.255(a) and (b), 501.256, and 501.257 do not apply to a corporation under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 504.051. BOARD OF DIRECTORS. (a) The board of directors of a Type A corporation consists of at least five directors.

(b) A director is appointed by the governing body of the authorizing municipality, serves at the pleasure of that governing body, and may be removed by that governing body at any time without cause.

(c) The governing body of the authorizing municipality shall determine the number of directors and the length of each director's term, except that the length of a director's term may not exceed six years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.052. OFFICERS. The board of directors of a Type A corporation shall appoint:

(1) a president;

(2) a secretary; and

(3) other officers of the corporation that the governing body of the authorizing municipality considers necessary.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.053. QUORUM. A majority of the entire membership of

the board of directors of a Type A corporation is a quorum.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.054. LOCATION OF BOARD MEETINGS. (a) Except as provided by Subsection (b), the board of directors of a Type A corporation shall conduct each board meeting within the boundaries of the authorizing municipality.

(b) If the authorizing municipality is located in a county with a population of less than 30,000, the board of directors of a Type A corporation may conduct a board meeting within the boundaries of the county.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 473 (H.B. 479), Sec. 1, eff. June 17, 2011.

Sec. 504.055. RESTRICTIONS ON REGISTERED AGENT AND OFFICE. (a) The registered agent of a Type A corporation must be an individual who is a resident of this state.

(b) The registered office of a Type A corporation must be located within the boundaries of the authorizing municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 504.101. APPLICABILITY OF OTHER LAW; CONFLICTS. A Type A corporation has the powers and is subject to the limitations of a corporation created under another provision of this subtitle outside of this chapter. To the extent of a conflict between this chapter and another provision of this subtitle, this chapter prevails.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.102. CONTRACT WITH OTHER PRIVATE CORPORATION. A Type A corporation may contract with another private corporation to:

(1) carry out an industrial development program or objective; or

(2) assist with the development or operation of an economic development program or objective consistent with the purposes and duties provided by this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.103. LIMITATION ON PRIMARY PURPOSE OF PROJECT; EXCEPTIONS. (a) Except as otherwise provided by this section, a Type A corporation may not undertake a project the primary purpose of which is to provide:

(1) a transportation facility;

(2) a solid waste disposal facility;

(3) a sewage facility;

(4) a facility for furnishing water to the general public; or

(5) an air or water pollution control facility.

(b) A Type A corporation may provide a facility described by Subsection (a) to benefit property acquired for a project that has another primary purpose.

(c) A Type A corporation may undertake a project the primary purpose of which is to provide:

(1) a general aviation business service airport that is an integral part of an industrial park;

(2) a port-related facility to support waterborne commerce; or

(3) an airport-related facility, if the authorizing municipality:

(A) is wholly or partly located within 25 miles of an international border; and

(B) has, at the time the project is approved by the corporation as provided by this subtitle:

(i) a population of less than 50,000; or

(ii) an average rate of unemployment that is greater than the state average rate of unemployment during the most recent 12-month period for which data is available that precedes the date the project is approved.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.104. ASSUMPTION OR PAYMENT OF PREEXISTING DEBT PROHIBITED. A Type A corporation may not:

(1) assume a debt that existed before the date the authorizing municipality authorized the creation of the corporation; or

(2) make an expenditure to pay the principal of or interest on a debt that existed before the date prescribed by Subdivision (1).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.105. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSE. (a) Except as provided by Subsection (b), a Type A corporation may spend not more than 10 percent of the corporate revenues for promotional purposes.

(b) A Type A corporation may spend not more than 25 percent of the corporate revenues for promotional purposes if the authorizing municipality:

(1) is located in two counties;

(2) has a population of less than 24,250 according to the 1990 federal census; and

(3) is located wholly or partly within 10 miles of a federal military reservation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.106. EMINENT DOMAIN. A Type A corporation may not exercise the power of eminent domain except by action of the governing body of the authorizing municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.107. LIABILITY. (a) The following are not liable for damages arising from the performance of a governmental function of a Type A corporation or the authorizing municipality:

(1) the corporation;

(2) a director of the corporation;

(3) the municipality;

(4) a member of the governing body of the municipality; and

(5) an employee of the corporation or municipality.

(b) For purposes of Chapter 101, Civil Practice and Remedies Code (Texas Tort Claims Act), a Type A corporation is a governmental unit and the corporation's actions are governmental functions.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER D. AUTHORIZATION FOR ADDITIONAL PROJECTS

Sec. 504.151. DEFINITIONS. In this subchapter:

(1) "Related infrastructure" has the meaning assigned by Section 334.001.

(2) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility:

(A) that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events; and

(B) for which a fee is charged or is planned to be charged for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.152. ELECTION TO AUTHORIZE PROJECTS APPLICABLE TO TYPE B CORPORATIONS. (a) An authorizing municipality may submit to the voters of the municipality a ballot proposition that authorizes the Type A corporation to use the sales and use tax imposed under this

chapter, including any amount previously authorized and collected, for a specific project or for a specific category of projects that do not qualify under this chapter but qualify under Chapter 505, including a sports venue and related infrastructure.

(b) The project or category of projects described by Subsection (a) must be clearly described on the ballot so that a voter is able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales and use tax, the ballot language must clearly state that fact.

(c) The authorizing municipality may submit the ballot proposition at:

(1) an election held under another provision of this subtitle, including the election at which the proposition to initially approve the adoption of a sales and use tax for the benefit of the corporation is submitted; or

(2) a separate election to be held on a uniform election date.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.153. PUBLIC HEARING PRECEDING ELECTION. Before an election may be held under Section 504.152, a public hearing must be held in the authorizing municipality to inform the municipality's residents of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, notice of the date, time, place, and subject of the hearing must be published in a newspaper with general circulation in the municipality in which the project is located. The notice should be published on a weekly basis until the date of the hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.154. LIMITATION ON SUBSEQUENT ELECTION. If a majority of the voters voting on the issue do not approve a specific project or a specific category of projects at an election under Section 504.152, another election concerning the same project or category of

projects may not be held before the first anniversary of the date of the most recent election disapproving the project or category of projects.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.155. SUBSEQUENT APPROVAL OF ADDITIONAL PROJECTS. Prior approval of a specific project at an election or completion of a specific project approved at an election does not prevent an authorizing municipality from seeking voter approval of an additional project or category of projects under this subchapter to be funded from the same sales and use tax.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.156. APPLICABILITY OF CHAPTER TO ADDITIONAL PROJECT. A project undertaken under this subchapter is governed by this chapter, including the provisions of this chapter relating to the authorization and expiration of a sales and use tax.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.171. AUTHORITY OF CERTAIN CORPORATIONS TO UNDERTAKE TYPE B PROJECTS. (a) This section applies only to a Type A corporation the creation of which was authorized by a municipality:

(1) that has also authorized the creation of a Type B corporation; and

(2) that has a population of 7,500 or less.

(b) Notwithstanding Section 504.152, if permitted by ordinance of the authorizing municipality, a Type A corporation to which this section applies may undertake any project that a Type B corporation, the creation of which was authorized by the same municipality, may undertake under Chapter 505.

(c) The governing body of an authorizing municipality may by ordinance revoke any authority granted to a Type A corporation under

Subsection (b). A revocation under this subsection does not affect the authority of a corporation to complete a project already undertaken or the obligation to repay any debt incurred in connection with a project under Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1177 (H.B. 3302), Sec. 1, eff. June 17, 2011.

SUBCHAPTER E. INVESTMENT AGREEMENTS

Sec. 504.201. DEFINITIONS. In this subchapter:

(1) "Base taxable value" means the taxable value of property located in the defined area of a project as of January 1 of the year in which the agreement is entered into under Section 504.202.

(2) "Corresponding taxing unit" means another taxing unit that:

(A) is of the same type of political subdivision as a taxing unit that enters into an agreement under Section 504.202; and

(B) taxes property located in the defined area of a project that is the subject of the agreement.

(3) "Taxing unit" has the meaning assigned by Section 1.04, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.202. AGREEMENT TO INVEST IN EXTRATERRITORIAL PROJECT. (a) A taxing unit may enter into an agreement with a Type A corporation to invest in a project that is undertaken by the corporation and that is not located in the territory of the taxing unit. A Type A corporation may enter into an agreement under this section with more than one taxing unit.

(b) Before entering into the agreement, the Type A corporation undertaking the project must designate a defined area that includes the territory where the project is to be located.

(c) The agreement must state the base taxable value of the property in the defined area of the project.

(d) The agreement may provide that the taxing unit is entitled to receive from the Type A corporation, in exchange for the

investment, an amount equal to a specified percentage of the tax revenue from taxes imposed by the corresponding taxing unit on the taxable value of the property in the defined area that exceeds the base taxable value, during the period the corresponding taxing unit imposes taxes on that property.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.203. REQUIRED AGREEMENT WITH CORRESPONDING TAXING UNIT. A Type A corporation that enters into an agreement under Section 504.202 shall enter into an agreement with a corresponding taxing unit to recover the amount paid by the corporation to a taxing unit as provided by Section 504.202(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.204. EFFECT ON AUTHORITY UNDER OTHER LAW. (a) This subchapter does not affect a taxing unit's authority to grant a tax abatement.

(b) This subchapter does not affect a Type A corporation's authority to invest in a project or recover its total investment by contract under Section 501.159.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER F. SALES AND USE TAX

Sec. 504.251. TAX AUTHORIZED. The authorizing municipality may adopt a sales and use tax for the benefit of a Type A corporation if the tax is approved by a majority of the voters of the municipality voting at an election held for that purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.252. SALES TAX. (a) If the authorizing municipality adopts the tax under Section 504.251, a tax is imposed on the receipts from the sale at retail of taxable items within the municipality at the rate approved by the voters.

(b) The rate of the tax imposed under Subsection (a) may be any rate that is an increment of one-eighth of one percent, that the authorizing municipality determines is appropriate, and that would not result in a combined rate that exceeds the maximum combined rate prescribed by Section 504.254(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 5, eff. September 1, 2015.

Sec. 504.253. USE TAX. (a) If the authorizing municipality adopts the tax under Section 504.251, an excise tax is imposed on the use, storage, or other consumption within the municipality of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective within the municipality.

(b) The rate of the excise tax is the same as the rate of the sales tax portion of the sales and use tax and is applied to the sales price of the taxable items.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.254. COMBINED TAX RATE. (a) An authorizing municipality may not adopt a rate under this chapter that, when added to the rates of all other sales and use taxes imposed by the authorizing municipality and other political subdivisions of this state having territory in the authorizing municipality, would result in a combined rate exceeding two percent.

(b) An election adopting a rate that would result in a rate exceeding the combined rate limit under Subsection (a) has no effect.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.255. APPLICABILITY OF TAX CODE. (a) Chapter 321, Tax Code, governs an election to approve the adoption of the sales and use tax under this chapter and governs the imposition, computation, administration, governance, use, and abolition of the tax except as inconsistent with this chapter.

(b) The tax imposed under this chapter takes effect as provided by Section 321.102(a), Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.256. BALLOT. In an election to adopt the sales and use tax under this chapter, the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of _____ percent" (insert appropriate rate).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 6, eff. September 1, 2015.

Sec. 504.257. LIMITATION ON DURATION OF TAX. (a) At an election held under Section 504.251 or 504.258, the authorizing municipality may also allow the voters to vote on a ballot proposition to limit the period for imposition of a sales and use tax. If an authorizing municipality elects to limit the period for imposition of the tax, the following phrase shall be added to the end of the ballot proposition prescribed by Section 504.256: "to be imposed for _____ years" (the number of years to be inserted as appropriate). The governing body of the municipality shall set the expiration date of the proposed tax to occur on the appropriate anniversary of the effective date of the tax.

(b) A sales and use tax imposed for a limited period under this section expires on the date set by the governing body of the

authorizing municipality under Subsection (a) unless the tax is repealed on an earlier date by a majority of the voters voting in an election held in the municipality. If an election to abolish the tax is held, Sections 321.102(a) and 321.402(b), Tax Code, apply to the date of repeal.

(c) If an authorizing municipality reduces the rate of an additional sales and use tax under Chapter 321, Tax Code, to impose a tax under this chapter for a limited period as provided by this section, and the municipality does not have an election to change the rate of the additional sales and use tax before the tax under this chapter expires, on the date the tax under this chapter expires, the rate of the municipality's additional sales and use tax returns to the rate in effect immediately before the tax under this chapter was adopted. The municipality is not required to hold an election under Chapter 321, Tax Code, to impose the additional sales and use tax at that rate.

(d) A sales and use tax that is approved without limiting the period during which the tax is imposed remains in effect until repealed by election.

(e) An authorizing municipality that has imposed a tax under this chapter may extend the period of the tax's imposition or reimpose the tax only if the extension or reimposition is approved by a majority of the voters of the municipality voting at an election held for that purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.258. ELECTION TO REDUCE OR INCREASE TAX RATE. (a) An authorizing municipality that has imposed a sales and use tax under this chapter may, in the same manner and by the same procedure as the municipality imposed the tax, reduce or increase the tax rate by a majority of the voters of the municipality voting at an election held for that purpose.

(b) On petition of 10 percent or more of the registered voters of the authorizing municipality requesting an election to reduce or increase the tax rate under this chapter, the governing body of the municipality shall order an election on the issue.

(c) The tax rate may be reduced or increased to any rate that

is an increment of one-eighth of one percent, that the authorizing municipality determines is appropriate, and that would not result in a combined rate that exceeds the maximum combined rate prescribed by Section 504.254(a).

(d) The ballot for an election under this section shall be printed in the same manner as the ballot under Section 504.256.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 7, eff. September 1, 2015.

Sec. 504.259. REDUCTION OF TAX WITHIN REGIONAL TRANSPORTATION AUTHORITY. Notwithstanding any other provision of this chapter, a tax under this chapter imposed by an authorizing municipality that is located within the territorial limits of a regional transportation authority and that has been added to the territory of the authority under Section 452.6025, Transportation Code, is subject to reduction in the manner prescribed by Section 452.6025, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.260. LIMITED SALES AND USE TAX FOR SPECIFIC PROJECT. (a) At an election held under Section 504.251 or 504.258, the authorizing municipality may also allow the voters to vote on a ballot proposition to limit the use of the sales and use tax to a specific project. If an authorizing municipality elects to limit the use of the tax to a specific project, in the ballot proposition prescribed by Section 504.256 or 504.261 a description of the project shall be substituted for the words "new and expanded business enterprises."

(b) When the last of a Type A corporation's obligations have been satisfied regarding the specific project for which the sales and use tax was limited, the corporation shall send to the comptroller a notice stating that the sales and use tax imposed for the specific project may not be collected after the last day of the first calendar quarter beginning after the date of notification. A sales and use

tax imposed for a specific project under this section may not be collected after the last day of the first calendar quarter beginning after the date of the notification to the comptroller. The state shall forward revenue collected after the obligations for the specific project have been satisfied to the governing body of the authorizing municipality to be used to pay current bonded indebtedness of the municipality.

(c) A Type A corporation created to perform a specific project under this section may retain its corporate existence and perform any other project approved by the voters of the authorizing municipality at an election held under Section 504.251 or 504.258.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.261. CONCURRENT ELECTION WITH ELECTION UNDER TAX CODE. (a) At an election to adopt, reduce, increase, or abolish the sales and use tax under this chapter, the authorizing municipality may also allow voters to vote on the same ballot on a proposition to impose, reduce, increase, or abolish the additional sales and use tax imposed under Section 321.101(b), Tax Code, if the municipality is authorized by Chapter 321, Tax Code, to impose, reduce, increase, or abolish the additional sales and use tax. Except as provided by Subsection (b), the municipality must follow the procedures of Chapter 321, Tax Code, in relation to the imposition, reduction, increase, or abolishment of the additional sales and use tax imposed under Section 321.101(b), Tax Code.

(b) In an election to impose, reduce, increase, or abolish the tax under this chapter and the additional sales and use tax, the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax within the municipality for the promotion and development of new and expanded business enterprises at the rate of _____ percent (insert appropriate rate) and the adoption of an additional sales and use tax within the municipality at the rate of _____ percent to be used to reduce the property tax rate" (insert appropriate rate).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 8, eff. September 1, 2015.

Sec. 504.262. PROCEDURES ON EXPIRATION OF TAX. (a) Before the 60th day before the date that a sales and use tax imposed under this chapter is to expire, the governing body of the authorizing municipality imposing the tax shall send to the comptroller a notice stating the expiration date of the tax.

(b) The state shall forward revenue collected from the imposition of the tax after the tax's expiration date to the governing body of the authorizing municipality to be used to pay current bonded indebtedness of the municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER G. USE OF TAX PROCEEDS

Sec. 504.301. DELIVERY AND GENERAL USE OF TAX PROCEEDS. On the authorizing municipality's receipt from the comptroller of the proceeds of the sales and use tax imposed under this chapter, the authorizing municipality shall deliver the proceeds to the Type A corporation for use in carrying out the corporation's functions.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.302. PAYMENT OF MAINTENANCE AND OPERATING COSTS; ELECTION. (a) The costs of a publicly owned and operated project purchased or constructed under this chapter include the maintenance and operating costs of the project.

(b) The proceeds of the sales and use tax imposed under this chapter may be used to pay the maintenance and operating costs of a project unless, not later than the 60th day after the date notice of the specific use of the tax proceeds is first published, the governing body of the authorizing municipality of the Type A corporation undertaking the project receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the tax proceeds may be

used to pay the maintenance and operating costs of the project.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.303. PAYMENT OF BONDS. The proceeds of the sales and use tax imposed under this chapter may be used to pay the principal of, interest on, and other costs relating to the Type A corporation's bonds, but the bonds or any instrument related to the bonds may not give a bondholder a right to demand payment from tax proceeds in excess of the proceeds collected from the tax imposed under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.304. PAYMENT FOR CLEANUP OF CONTAMINATED PROPERTY; ELECTION. (a) The economic development office, with the assistance of the Texas Commission on Environmental Quality, may encourage a Type A corporation to use proceeds from the sales and use tax imposed under this chapter for the cleanup of contaminated property.

(b) A Type A corporation may use proceeds from the sales and use tax for the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the voters of the authorizing municipality voting at an election held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.305. PAYMENT FOR JOB TRAINING. The proceeds of the sales and use tax imposed under this chapter may also be used to pay expenses relating to job training incurred by the Type A corporation under Section 501.162.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER H. TERMINATION OF CORPORATION

Sec. 504.351. ELECTION TO TERMINATE EXISTENCE OF CORPORATION ON PETITION. (a) On petition of 10 percent or more of the registered voters of an authorizing municipality requesting an election on the termination of the existence of the Type A corporation, the governing body of the municipality shall order an election on the issue.

(b) The authorizing municipality shall hold the election on the next available uniform election date that occurs after the time required by Section 3.005, Election Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.352. BALLOT. The ballot for an election held under Section 504.351 shall be printed to provide for voting for or against the proposition: "Termination of the _____ (name of the corporation)."

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 504.353. TERMINATION OF EXISTENCE OF CORPORATION. (a) If a majority of voters voting on the issue at an election held under Section 504.351 approve the termination, the Type A corporation shall:

(1) continue operations only as necessary to pay the principal of and interest on the corporation's bonds and to meet obligations incurred before the date of the election; and

(2) dispose of the corporation's assets and apply the proceeds to satisfy obligations described by Subdivision (1), to the extent practicable.

(b) When the last of the Type A corporation's obligations are satisfied, any remaining assets of the corporation shall be transferred to the authorizing municipality, and the existence of the corporation is terminated.

(c) A tax imposed under this chapter may not be collected after the last day of the first calendar quarter that begins after the Type A corporation notifies the comptroller that the last of the corporation's obligations has been satisfied.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

CHAPTER 505. TYPE B CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 505.001. DEFINITION. In this chapter, "authorizing municipality" means the municipality that authorizes the creation of a Type B corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.002. APPLICABILITY OF CHAPTER. This chapter applies only to:

(1) a municipality:

(A) that is located in a county with a population of 500,000 or more; and

(B) in which the combined rate of all sales and use taxes imposed by the municipality, this state, and other political subdivisions of this state having territory in the municipality does not exceed 8.25 percent on the date of any election held under or made applicable to this chapter;

(2) a municipality:

(A) that has a population of 400,000 or more;

(B) that is located in more than one county; and

(C) in which the combined rate of all sales and use taxes imposed by the municipality, this state, and other political subdivisions of this state having territory in the municipality, including taxes imposed under this chapter, does not exceed 8.25 percent; or

(3) a municipality to which Chapter 504 applies.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.003. AUTHORITY TO CREATE CORPORATION. (a) A municipality may authorize the creation under this subtitle of a Type B corporation.

(b) A municipality may not authorize the creation of more than one Type B corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.004. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a Type B corporation:

(1) must state that the corporation is governed by this chapter; and

(2) may include in the corporation's name any word or phrase the authorizing municipality specifies.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.005. CORPORATION NOT SUBJECT TO CERTAIN PROVISIONS. Sections 501.203, 501.205, 501.251-501.254, 501.255(a) and (b), 501.256, and 501.257 do not apply to a corporation under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 505.051. BOARD OF DIRECTORS. (a) The board of directors of a Type B corporation consists of seven directors.

(b) A director is appointed by the governing body of the authorizing municipality for a two-year term.

(c) A director may be removed by the governing body of the authorizing municipality at any time without cause.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01,

eff. April 1, 2009.

Sec. 505.052. RESTRICTION ON BOARD MEMBERSHIP. (a) Each director of a Type B corporation authorized to be created by a municipality with a population of 20,000 or more must be a resident of the municipality.

(b) Each director of a Type B corporation authorized to be created by a municipality with a population of less than 20,000 must:

(1) be a resident of the municipality;

(2) be a resident of the county in which the major part of the area of the municipality is located; or

(3) reside:

(A) within 10 miles of the municipality's boundaries; and

(B) in a county bordering the county in which most of the area of the municipality is located.

(c) Three directors of a Type B corporation must be persons who are not employees, officers, or members of the governing body of the authorizing municipality.

(d) Notwithstanding Subsections (a)-(c), if a municipality terminates a Type A corporation's existence and authorizes the creation of a Type B corporation, a person serving as a director of the Type A corporation at the time of termination may serve on the board of directors of the Type B corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.053. OFFICERS. The board of directors of a Type B corporation shall appoint:

(1) a president;

(2) a secretary; and

(3) other officers of the corporation the governing body of the authorizing municipality considers necessary.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.054. QUORUM. A majority of the entire membership of the board of directors of a Type B corporation is a quorum.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.055. LOCATION OF BOARD MEETINGS. (a) Except as provided by Subsection (b), the board of directors of a Type B corporation shall conduct all meetings within the boundaries of the authorizing municipality.

(b) If the authorizing municipality is located in a county with a population of less than 30,000, the board of directors of a Type B corporation may conduct a board meeting within the boundaries of the county.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 473 (H.B. 479), Sec. 2, eff. June 17, 2011.

Sec. 505.056. RESTRICTIONS ON REGISTERED AGENT AND OFFICE. (a) The registered agent of a Type B corporation must be an individual who is a resident of this state.

(b) The registered office of a Type B corporation must be located within the boundaries of the authorizing municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 505.101. APPLICABILITY OF OTHER LAW; CONFLICTS. A Type B corporation has the powers granted by this chapter and by other chapters of this subtitle and is subject to the limitations of a corporation created under another provision of this subtitle. To the extent of a conflict between this chapter and another provision of this subtitle, this chapter prevails.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.102. CONTRACT WITH OTHER PRIVATE CORPORATION. A Type B corporation may contract with another private corporation to:

(1) carry out an industrial development program or objective; or

(2) assist with the development or operation of an economic development program or objective consistent with the purposes and duties specified by this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.103. LIMITATION ON USE OF REVENUES FOR PROMOTIONAL PURPOSES. A Type B corporation may spend not more than 10 percent of the corporate revenues for promotional purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.104. BOND REPAYMENT. (a) Bonds or other obligations that mature in 30 years or less and that are issued to pay the costs of projects of a type added to the definition of "project" by Subchapter D may be made payable from any source of funds available to the Type B corporation, including the proceeds of a sales and use tax imposed under this chapter.

(b) Bonds or other obligations that by their terms are payable from the tax proceeds:

(1) may not be paid wholly or partly from any property taxes imposed or to be imposed by the authorizing municipality; and

(2) are not a debt of and do not give rise to a claim for payment against the authorizing municipality, except as to sales and use tax revenue held by the municipality and required under this chapter to be delivered to the Type B corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.1041. APPRAISAL REQUIRED BEFORE PURCHASE OF PROPERTY WITH BOND PROCEEDS. A Type B corporation may not purchase property for a project wholly or partly with bond proceeds until the corporation obtains an independent appraisal of the property's market value.

Added by Acts 2011, 82nd Leg., R.S., Ch. 719 (H.B. 782), Sec. 2, eff. September 1, 2011.

Sec. 505.105. EMINENT DOMAIN. A Type B corporation may exercise the power of eminent domain only:

(1) on approval of the action by the governing body of the authorizing municipality; and

(2) in accordance with and subject to the laws applicable to the authorizing municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.106. LIABILITY. (a) The following are not liable for damages arising from the performance of a governmental function of a Type B corporation or the authorizing municipality:

(1) the corporation;

(2) a director of the corporation;

(3) the municipality;

(4) a member of the governing body of the municipality; or

(5) an employee of the corporation or municipality.

(b) For purposes of Chapter 101, Civil Practice and Remedies Code, a Type B corporation is a governmental unit and the corporation's actions are governmental functions.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER D. AUTHORIZED PROJECTS

Sec. 505.151. AUTHORIZED PROJECTS. In this chapter, "project"

means land, buildings, equipment, facilities, expenditures, and improvements included in the definition of "project" under Chapter 501, including:

(1) job training as provided by Section 501.162; and

(2) recycling facilities.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.152. PROJECTS RELATED TO RECREATIONAL OR COMMUNITY FACILITIES. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of the items described by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.153. PROJECTS RELATED TO AFFORDABLE HOUSING. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the promotion of development and expansion of affordable housing, as described by 42 U.S.C. Section 12745.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.154. PROJECTS RELATED TO WATER SUPPLY FACILITIES AND WATER CONSERVATION PROGRAMS. For purposes of this chapter,

"project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for:

(1) the development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or

(2) the development and institution of water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and programs to replace malfunctioning or leaking water lines and other water facilities.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.155. PROJECTS RELATED TO BUSINESS ENTERPRISES THAT CREATE OR RETAIN PRIMARY JOBS. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to promote or develop new or expanded business enterprises that create or retain primary jobs, including:

(1) a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, and any improvements or facilities related to a project described by this subdivision; and

(2) any other project that the board of directors in the board's discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.156. PROJECTS RELATED TO BUSINESS ENTERPRISES IN CERTAIN MUNICIPALITIES. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development, retention, or expansion of business enterprises if the project is undertaken by a Type B corporation authorized to be

created by a municipality:

(1) that has not for each of the preceding two fiscal years received more than $50,000 in revenues from sales and use taxes imposed under this chapter; and

(2) the governing body of which has authorized the project by adopting a resolution only after giving the resolution at least two separate readings conducted at least one week apart.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.1561. PROJECTS RELATED TO AIRPORT FACILITIES IN CERTAIN MUNICIPALITIES. For purposes of this chapter, "project" includes land, buildings, equipment, facilities, and improvements found by the board of directors to be required or suitable for the development or expansion of airport or railport facilities, including hangars, maintenance and repair facilities, cargo facilities, and related infrastructure located on or adjacent to an airport or railport facility, if the project is undertaken by a Type B corporation authorized to be created by a municipality:

(1) that enters into a development agreement with an entity in which the entity acquires a leasehold or other possessory interest from the corporation and is authorized to sublease the entity's interest for other projects authorized by Sections 505.151 through 505.156; and

(2) the governing body of which has authorized the development agreement by adopting a resolution at a meeting called as authorized by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.014(a), eff. September 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 150 (S.B. 2052), Sec. 2, eff. September 1, 2009.

Sec. 505.157. PROJECTS RELATED TO BUSINESS ENTERPRISES IN LANDLOCKED COMMUNITIES. (a) In this section, "landlocked community" means a municipality that:

(1) is wholly or partly located in a county with a

population of 2.5 million or more; and

(2) has within its municipal limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the municipality's zoning laws or land use restrictions.

(b) For a landlocked community that authorizes or has authorized the creation of a Type B corporation, "project" also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises in the landlocked community.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 196, eff. September 1, 2023.

Sec. 505.158. PROJECTS RELATED TO BUSINESS DEVELOPMENT IN CERTAIN SMALL MUNICIPALITIES. (a) For a Type B corporation authorized to be created by a municipality with a population of 20,000 or less, "project" also includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the corporation's board of directors to promote new or expanded business development.

(b) A Type B corporation may not undertake a project authorized by this section that requires an expenditure of more than $10,000 until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.159. HEARING REQUIRED TO UNDERTAKE PROJECT. (a) Except as provided by Subsection (b), a Type B corporation shall hold at least one public hearing on a proposed project before spending money to undertake the project.

(b) A Type B corporation the creation of which was authorized by a municipality with a population of less than 20,000 is not

required to hold a public hearing under this section if the proposed project is defined by Subchapter C, Chapter 501.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.015(a), eff. September 1, 2009.

Sec. 505.160. ELECTION REQUIRED FOR PROJECT; PETITION. (a) A Type B corporation may undertake a project under this chapter unless, not later than the 60th day after the date notice of the specific project or general type of project is first published, the governing body of the authorizing municipality receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the specific project or general type of project is undertaken.

(b) The governing body of the authorizing municipality is not required to hold an election after the submission of a petition under Subsection (a) if the voters of the municipality have previously approved the undertaking of the specific project or general type of project:

(1) at an election ordered for that purpose by the governing body of the municipality; or

(2) in conjunction with another election required under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.161. PUBLIC PURPOSE DESIGNATION; EXEMPTION FROM TAXATION. (a) The legislature finds for all constitutional and statutory purposes that:

(1) a project of the type added to the definition of "project" by this subchapter is owned, used, and held for a public purpose for and on behalf of the municipality that authorized the creation of the Type B corporation; and

(2) except as otherwise provided by this section, Section 501.160 of this subtitle and Section 25.07(a), Tax Code, do not apply

to a leasehold or other possessory interest granted by a Type B corporation during the period the corporation owns projects on behalf of the authorizing municipality.

(b) A project is exempt from ad valorem taxation under Section 11.11, Tax Code, for the period described by Subsection (a)(2) of this section.

(c) This subsection applies only if the voters of the authorizing municipality of a Type B corporation have not approved the adoption of a sales and use tax for the benefit of the corporation under Section 505.251. An ownership, leasehold, or other possessory interest of a person other than the corporation in real property constituting a project of the corporation described by this section:

(1) is subject to ad valorem taxation under Section 25.07(a), Tax Code; or

(2) if the interest was created under an agreement entered into by the corporation before September 1, 1999, is covered by the provisions of the law codified by this section that govern ad valorem taxation of the ownership, leasehold, or other possessory interest that were in effect on the date the agreement was executed.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER E. SPORTS VENUE PROJECTS AND RELATED INFRASTRUCTURE

Sec. 505.201. DEFINITIONS. In this subchapter:

(1) "Related infrastructure" has the meaning assigned by Section 334.001.

(2) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events and for which a fee is charged or is planned to be charged for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events. The term does not include an arena, coliseum, stadium, or other type of area or facility that is or will be owned and operated by a state-supported institution of higher education.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.202. ELECTION: USE OF TAX PROCEEDS FOR SPORTS VENUE PROJECTS. (a) An authorizing municipality may submit to the voters of the municipality a ballot proposition that authorizes the Type B corporation to use the sales and use tax, including any amount previously authorized and collected, for a specific sports venue project, including related infrastructure, or for a specific category of sports venue projects, including related infrastructure.

(b) The project or category of projects described by Subsection (a) must be clearly described on the ballot so that a voter is able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales and use tax, the ballot language must clearly state that fact.

(c) The authorizing municipality may submit the ballot proposition at:

(1) an election held under another provision of this subtitle, including the election at which the proposition to initially approve the adoption of a sales and use tax for the benefit of the Type B corporation is submitted; or

(2) a separate election to be held on a uniform election date.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.203. PUBLIC HEARING PRECEDING ELECTION. Before an election may be held under Section 505.202, a public hearing must be held in the authorizing municipality to inform the municipality's residents of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, notice of the date, time, place, and subject of the hearing must be published each week until the date of the hearing in a newspaper with general circulation in the municipality in which the project is located.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.204. LIMITATION ON SUBSEQUENT ELECTION. If a majority of the voters voting on the issue do not approve a specific sports venue project or a specific category of sports venue projects at an election under Section 505.202, another election concerning the same project or category of projects may not be held before the first anniversary of the date of the most recent election disapproving the project or category of projects.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.205. SUBSEQUENT APPROVAL OF ADDITIONAL PROJECTS. Prior approval of a specific sports venue project at an election or completion of a specific sports venue project approved at an election does not prevent an authorizing municipality from seeking voter approval of an additional project or category of projects under this subchapter to be funded from the same sales and use tax that is used to fund the previously approved sports venue project.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.206. EFFECT OF SUBCHAPTER ON ELECTION AUTHORITY. This subchapter does not affect an authorizing municipality's authority to call an election under this chapter to impose a sales and use tax for any purpose authorized by this chapter after the sales and use tax described by this subchapter is, in accordance with Section 505.258, no longer collected.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER F. SALES AND USE TAX

Sec. 505.251. TAX AUTHORIZED. The governing body of the authorizing municipality by ordinance may adopt a sales and use tax for the benefit of a Type B corporation if the tax is approved by a majority of the voters of the municipality voting at an election held for that purpose in accordance with Chapter 321, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.252. SALES TAX. (a) If the authorizing municipality adopts the tax under Section 505.251, a tax is imposed on the receipts from the sale at retail of taxable items within the municipality at the rate approved at the election.

(b) The rate of a tax adopted under this chapter may be any rate that is an increment of one-eighth of one percent, that the authorizing municipality determines is appropriate, and that would not result in a combined rate that exceeds the maximum combined rate prescribed by Section 505.256(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 9, eff. September 1, 2015.

Sec. 505.253. USE TAX. (a) If the authorizing municipality adopts the tax under Section 505.251, an excise tax is imposed on the use, storage, or other consumption within the municipality of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective within the municipality.

(b) The rate of the excise tax is the same as the rate of the sales tax portion of the sales and use tax and is applied to the sale price of the tangible personal property.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.254. SPECIFICATION OF TAX RATE ON BALLOT. In an election held to adopt the sales and use tax under this chapter, the ballot proposition must specify the rate of the tax to be adopted.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.255. ADOPTION OF TAX AT ELECTION TO REDUCE OR ABOLISH TAX FOR TYPE A CORPORATION. A municipality that holds an election to reduce the rate of or abolish a tax imposed under Chapter 504 may in the same proposition or in a separate proposition on the same ballot adopt a tax under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.256. APPLICABILITY OF TAX CODE. (a) Chapter 321, Tax Code, governs the imposition, computation, administration, collection, and remittance of the sales and use tax, except as inconsistent with this chapter. An authorizing municipality may not adopt a rate under this chapter that, when added to the rates of all other sales and use taxes imposed by the authorizing municipality and other political subdivisions of this state having territory in the authorizing municipality, would result in a combined rate exceeding two percent at any location in the municipality.

(b) Except as provided by this subsection, the tax imposed under this chapter takes effect as provided by Section 321.102(a), Tax Code. If an election is held under this chapter at the same time an election is held to impose or change the rate of the additional municipal sales and use tax, the tax under this chapter and the imposition or change in rate of the additional municipal sales and use tax take effect as provided by Section 321.102(b), Tax Code.

(c) After the effective date of the taxes imposed under this chapter, the adoption of a sales and use tax or the attempted adoption of a sales and use tax by the authorizing municipality or another taxing jurisdiction having territory in the municipality does not impair the taxes imposed under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 10, eff. September 1, 2015.

Sec. 505.2565. LIMITATION ON DURATION OF TAX. (a) At an election held under Section 505.251, the authorizing municipality may also allow the voters to vote on a ballot proposition to limit the period for imposition of a sales and use tax.

(b) An authorizing municipality that has imposed a tax for a limited time under this section may extend the period of the tax's imposition or reimpose the tax only if the extension or reimposition is approved by a majority of the voters of the municipality voting at an election held for that purpose in the same manner as an election held under Section 504.257.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.016(a), eff. September 1, 2009.

Sec. 505.2566. ELECTION TO REDUCE OR INCREASE TAX RATE. (a) An authorizing municipality that has imposed a sales and use tax under this chapter may, in the same manner and by the same procedure as the municipality imposed the tax, reduce or increase the tax rate by a majority of the voters of the municipality voting at an election held for that purpose.

(b) On petition of 10 percent or more of the registered voters of the authorizing municipality requesting an election to reduce or increase the tax rate under this chapter, the governing body of the municipality shall order an election on the issue.

(c) The tax rate may be reduced or increased to any rate that is an increment of one-eighth of one percent, that the authorizing municipality determines is appropriate, and that would not result in a combined rate that exceeds the maximum combined rate prescribed by Section 505.256(a).

Added by Acts 2017, 85th Leg., R.S., Ch. 882 (H.B. 3045), Sec. 1, eff. June 15, 2017.

Sec. 505.257. REDUCTION OF TAX WITHIN REGIONAL TRANSPORTATION AUTHORITY. Notwithstanding any other provision of this chapter, a tax imposed under this chapter by an authorizing municipality that is located within the territorial limits of a regional transportation authority and that has been added to the territory of the authority under Section 452.6025, Transportation Code, is subject to reduction

in the manner prescribed by Section 452.6025, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.2575. LIMITED SALES AND USE TAX FOR SPECIFIC PROJECT. (a) At an election held under Section 505.251, the authorizing municipality may also allow the voters to vote on a ballot proposition to limit the use of the sales and use tax to a specific project.

(b) A Type B corporation created to perform a specific project as provided by this section may retain its corporate existence and perform any other project approved by the voters of the authorizing municipality at an election held for that purpose in the same manner as Section 504.260 provides for an election held under Section 504.251. Before spending money to undertake a project, a Type B corporation shall hold a public hearing as otherwise provided by this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.016(a), eff. September 1, 2009.

Sec. 505.258. CESSATION OF COLLECTION OF TAXES. A sales and use tax imposed under this chapter may not be collected after the last day of the first calendar quarter that occurs after the Type B corporation notifies the comptroller that:

(1) all bonds or other obligations of the corporation, including any refunding bonds, payable wholly or partly from the proceeds of the sales and use tax imposed under this chapter, have been paid in full; or

(2) the total amount, exclusive of guaranteed interest, necessary to pay in full the bonds and other obligations has been set aside in a trust account dedicated to the payment of the bonds and other obligations.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.259. ELECTION REQUIREMENT FOR CERTAIN MUNICIPALITIES. For a tax under this subchapter at a rate that does not exceed one-half of one percent, the election requirement under Section 505.251 is satisfied and another election is not required if the voters of the authorizing municipality approved the imposition of an additional one-half cent sales and use tax at an election held before March 28, 1991, under an ordinance calling the election that:

(1) was published in a newspaper of general circulation in the municipality at least 14 days before the date of the election; and

(2) expressly stated that the election was being held in anticipation of the enactment of enabling and implementing legislation without further elections.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1246 (H.B. 157), Sec. 11, eff. September 1, 2015.

SUBCHAPTER G. USE OF TAX PROCEEDS

Sec. 505.301. DELIVERY OF TAX PROCEEDS. On the authorizing municipality's receipt from the comptroller of the proceeds of the sales and use tax imposed under this chapter, the authorizing municipality shall deliver the proceeds to the Type B corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.302. PAYMENT OF PROJECT COSTS, BONDS, OR OTHER OBLIGATIONS. The proceeds of the sales and use tax imposed under this chapter may be used to:

(1) pay the costs of projects of the types added to the definition of "project" by Subchapter D; or

(2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the Type B corporation to:

(A) pay the costs of the projects; or

(B) refund bonds or other obligations issued to pay the

costs of projects.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.303. PAYMENT OF MAINTENANCE AND OPERATING COSTS; ELECTION. (a) The costs of a publicly owned and operated project purchased or constructed under this chapter include the maintenance and operating costs of the project.

(b) The proceeds of taxes may be used to pay the maintenance and operating costs of a project, unless not later than the 60th day after the date notice of the specific use of the tax proceeds is first published, the governing body of the authorizing municipality of the Type B corporation undertaking the project receives a petition from more than 10 percent of the registered voters of the municipality requesting that an election be held before the tax proceeds may be used to pay the maintenance and operating costs of a project.

(c) The governing body of the authorizing municipality is not required to hold an election after the submission of a petition under Subsection (b) if the voters of the municipality have previously approved at an election ordered for that purpose by the governing body or in conjunction with another election required under this chapter that:

(1) the costs of a publicly owned and operated project purchased or constructed under this chapter include the maintenance and operating costs of the project; and

(2) the tax proceeds may be used to pay the maintenance and operating costs of a project.

(d) An authorizing municipality is not required to hold an election under this section if the municipality:

(1) is located in a county with a population of more than 1.3 million; and

(2) has held before February 1, 1993, an election under this chapter at which the additional sales tax was approved.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.304. PAYMENT FOR CERTAIN WATER-RELATED PROJECTS: ELECTION REQUIRED. (a) A Type B corporation may not use proceeds from the sales and use tax to undertake a project described by Section 505.154 unless the use of tax proceeds for that purpose is authorized by a majority of the voters voting at an election held in the municipality for that purpose.

(b) The ballot in an election held under this section shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate)."

(c) An election held under this section may be authorized by the governing body of an authorizing municipality subsequent to an earlier election authorized under Section 505.251.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.305. PAYMENT FOR CLEANUP OF CONTAMINATED PROPERTY; ELECTION. (a) The economic development office, with the assistance of the Texas Commission on Environmental Quality, may encourage a Type B corporation to use proceeds from the sales and use tax imposed under this chapter for the cleanup of contaminated property.

(b) Notwithstanding any other provision of this chapter, a Type B corporation may use proceeds from the sales and use tax for the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the voters voting at an election held in the authorizing municipality for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER H. TERMINATION OF CORPORATION

Sec. 505.351. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a Type B corporation created on or after September 1, 1999.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.352. ELECTION TO TERMINATE EXISTENCE OF CORPORATION ON PETITION. (a) The governing body of an authorizing municipality shall order an election on the termination of the existence of the Type B corporation on receipt of a petition requesting the election that is signed by at least 10 percent of the registered voters of the municipality.

(b) The authorizing municipality shall hold the election on the first available uniform election date that occurs after the time required by Section 3.005, Election Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.353. BALLOT. The ballot for an election held under Section 505.352 shall be printed to permit voting for or against the proposition: "Termination of the _____ (name of corporation)."

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.354. TERMINATION OF EXISTENCE OF CORPORATION. (a) If a majority of the votes cast at an election held under Section 505.352 approve the termination, the Type B corporation shall:

(1) continue operations only as necessary to meet the obligations the corporation incurred before the date of the election, including paying the principal of and interest on the corporation's bonds; and

(2) liquidate the corporation's assets and apply the proceeds to satisfy the corporation's obligations, to the extent practicable.

(b) After the Type B corporation has satisfied all of the corporation's obligations, any remaining assets of the corporation shall be transferred to the authorizing municipality, and the existence of the corporation is terminated.

(c) The authorizing municipality shall promptly notify the

comptroller and the secretary of state of the date the existence of a Type B corporation is terminated under this subchapter.

(d) A tax imposed under this chapter may not be collected after the last day of the first calendar quarter that begins after the authorizing municipality provides notice under Subsection (c).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 505.355. ELECTION REJECTING TERMINATION. If less than a majority of the votes cast at an election held under Section 505.352 approve the termination, Section 505.354 has no effect.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

CHAPTER 506. COUNTY ALLIANCE CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. DEFINITION. In this chapter, "county alliance corporation" means the corporation authorized to be created by a county alliance.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 506.002. CREATION OF COUNTY ALLIANCE; AUTHORITY TO CREATE CORPORATION. Two or more counties that are adjacent or in close proximity, as determined by the commissioners courts of the counties involved, may establish a county alliance to authorize the creation of a corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 506.003. STATUS OF COUNTY ALLIANCE AS SINGLE UNIT. For purposes of this subtitle, a county alliance is considered a single unit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 506.004. APPLICABILITY OF SUBTITLE. The provisions of this subtitle outside of this chapter apply to a county alliance and to a county alliance corporation, except to the extent inconsistent with this chapter or another provision of this subtitle that expressly applies to a county alliance or to a county alliance corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 506.051. APPOINTMENT OF DIRECTORS; TERM. (a) The board of directors of a county alliance corporation consists of directors appointed by the commissioners court of each county in the alliance as follows:

(1) three directors from each county if the alliance includes 10 or fewer counties; or

(2) two directors from each county if the alliance includes more than 10 counties.

(b) A director may not serve more than six years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 506.052. NO COMPENSATION; REIMBURSEMENT FOR EXPENSES. A director serves without compensation but is entitled to reimbursement for expenses incurred in the performance of the director's duties.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 506.053. REMOVAL OF DIRECTOR. A director is subject to removal at the will of the appointing county.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER C. MEMBERSHIP IN COUNTY ALLIANCE

Sec. 506.101. MEMBERSHIP IN ESTABLISHED COUNTY ALLIANCE. A county may become a member of an established county alliance that has authorized the creation of a county alliance corporation. The county becomes a member of the county alliance if:

(1) the commissioners court of the county proposing to join the county alliance petitions the board of directors of the established county alliance corporation for admission;

(2) the board approves the admission of the petitioning county; and

(3) the petitioning county:

(A) agrees to abide by the bylaws of the county alliance corporation;

(B) pays a fee to the county alliance as determined by the board; and

(C) meets any other requirement established by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 506.102. WITHDRAWAL FROM COUNTY ALLIANCE. (a) A county may withdraw from a county alliance if all of the county's obligations and entitlements relating to the county alliance corporation have been properly settled.

(b) The county withdrawing from the county alliance may not receive any assets, including money or other property, of the county alliance corporation until the existence of the corporation is terminated as provided by Section 506.202.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER D. FINANCIAL PROVISIONS

Sec. 506.151. DISTRIBUTION OF NET EARNINGS. If the board of

directors of a county alliance corporation determines that sufficient provisions have been made to pay the corporation's expenses, bonds, and other obligations, any net earnings may be distributed among the counties in the county alliance as a percentage of the per capita contributions made by each of the counties during the corporation's existence.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER E. TERMINATION OF CORPORATION

Sec. 506.201. EFFECT OF WITHDRAWAL OF COUNTY. A county alliance corporation is not required to terminate its existence as a result of the withdrawal of a county from the county alliance if at least two counties remain in the county alliance.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 506.202. DISTRIBUTION OF ASSETS. (a) Subject to Subsection (b), on termination of the existence of a county alliance corporation, any assets of the corporation remaining after all the corporation's obligations have been met shall be distributed among the counties in the county alliance as a percentage of the per capita contributions made by each of the counties during the corporation's existence.

(b) A county that withdraws from a county alliance is entitled to receive a distribution under Subsection (a) that is reduced by one percent for each year the corporation operated without the county's membership in the alliance.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

CHAPTER 507. SPACEPORT DEVELOPMENT CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 507.001. DEFINITIONS. In this chapter:

(1) "Authorizing entity" means the political subdivision or

combination of political subdivisions that authorizes the creation of a spaceport development corporation as permitted under Section 507.003.

(2) "Spacecraft" means any object and its components designed to be launched for operations in a suborbital trajectory, in earth orbit, or in outer space. The term includes a satellite, a payload, an object carrying crew or a space flight participant, and any subcomponents of the launch vehicle or reentry vehicle specifically designed or adapted for that object.

(3) "Spaceport" includes:

(A) an area intended to be used for space flight activities, as defined by Section 100A.001, Civil Practice and Remedies Code;

(B) a spaceport building or facility located in an area reasonably proximate to a launch vehicle, reentry vehicle, or spacecraft launching or landing area;

(C) an area reasonably proximate to a launch vehicle, reentry vehicle, or spacecraft launching or landing area that is intended for use for a spaceport building or facility; and

(D) a right-of-way related to a launch vehicle, reentry vehicle, or spacecraft launching or landing area, building, facility, or other area that is reasonably proximate to a launching or landing area.

(4) "Spaceport development corporation" means a corporation governed by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 953 (H.B. 1791), Sec. 4, eff. September 1, 2013.

Sec. 507.002. SCOPE OF PROJECT. For purposes of a spaceport development corporation, in addition to land, buildings, equipment, facilities, and improvements that constitute a project under Chapter 501, "project" includes the land, buildings, equipment, facilities, and improvements found by the board of directors of the corporation to:

(1) be required or suitable for use for the promotion or

development of a spaceport, related area transportation facilities, automobile parking facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance the spaceport or another item specified by this subdivision;

(2) promote or develop new or expanded business enterprises relating to a spaceport;

(3) promote or develop educational programs or job training relating to a spaceport; or

(4) be required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745, relating to a spaceport.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.003. AUTHORITY TO CREATE CORPORATION BY ELIGIBLE ENTITIES. The following entities are eligible to authorize the creation under this subtitle of a spaceport development corporation:

(1) a county;

(2) a municipality with a population of two million or more; or

(3) a combination of one or more municipalities and one or more counties.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 120 (H.B. 303), Sec. 1, eff. May 23, 2019.

Sec. 507.004. CONTENTS OF CERTIFICATE OF FORMATION. The certificate of formation of a spaceport development corporation:

(1) must state that the corporation is governed by this chapter; and

(2) may include in the corporation's name any word or phrase the authorizing entity specifies.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.005. CORPORATION NOT SUBJECT TO CERTAIN PROVISIONS. Sections 501.203, 501.205, 501.251-254, 501.255(a) and (b), 501.256, and 501.257 do not apply to a corporation under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.006. CONFLICTS OF LAW. To the extent of any conflict between this chapter and any other provision of this subtitle, this chapter prevails.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER B. GOVERNANCE OF CORPORATION

Sec. 507.051. BOARD OF DIRECTORS. (a) A spaceport development corporation is governed by a board of seven directors.

(b) If a single county authorizes the creation of a spaceport development corporation, the commissioners court of the county shall appoint the directors of the corporation. If a single municipality authorizes the creation of a spaceport development corporation under Section 507.003(2), the governing body of the municipality shall appoint the directors of the corporation.

(b-1) If more than one political subdivision authorizes the creation of a spaceport development corporation, the governing bodies of the political subdivisions shall appoint the directors through written agreement between the governing bodies.

(c) Each director serves a two-year term that expires June 1 of each odd-numbered year, except that three or four of the initial directors may serve a one-year term so that the terms may be staggered in the future.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 120 (H.B. 303), Sec. 2, eff. May 23, 2019.

Sec. 507.052. OFFICERS. (a) The board of directors of a spaceport development corporation shall elect a presiding officer from among its members.

(b) The board of directors by rule may provide for the election of other officers.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.053. MEETINGS. The board of directors of a spaceport development corporation shall meet:

(1) at least once every three months; and

(2) at the call of the presiding officer or a majority of the directors.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 507.101. GENERAL POWERS AND LIMITATIONS OF CORPORATION. A spaceport development corporation:

(1) has the powers granted by this chapter and by other chapters of this subtitle; and

(2) is subject to the limitations of a corporation authorized to be created under another provision of this subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.102. ACQUISITION, MORTGAGE, OR DISPOSAL OF PROPERTY. (a) A spaceport development corporation may acquire property but only if a site in the territory of the authorizing entity has been designated as the site for a spaceport.

(b) A spaceport development corporation may:

(1) mortgage property; or

(2) convey or otherwise dispose of property.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.103. EMINENT DOMAIN. (a) This section does not apply to a spaceport development corporation whose authorizing entity is a single municipality with a population of two million or more.

(a-1) A spaceport development corporation may exercise the power of eminent domain to acquire property for a spaceport, including the power to:

(1) acquire fee title in land condemned;

(2) relocate or modify a railroad, utility line, pipeline, or other facility that may interfere with a spaceport; or

(3) impose a reasonable restriction on using the surface of the property for mineral development if the corporation does not own the mineral rights.

(b) Before exercising the power of eminent domain under this chapter, a spaceport development corporation must obtain a resolution approving the proposed condemnation from the governing body of a county or municipality in which the property is located. For purposes of this chapter, territory in the extraterritorial jurisdiction of a municipality is considered to be in the jurisdiction of the municipality.

(c) Chapter 21, Property Code, governs the exercise of the power of eminent domain by a spaceport development corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 120 (H.B. 303), Sec. 3, eff. May 23, 2019.

Sec. 507.104. CONTRACTS. (a) Except as provided by Subsection (b), a spaceport development corporation may enter into:

(1) an agreement with any person; or

(2) an interlocal contract under Chapter 791, Government Code.

(b) A spaceport development corporation may not enter into a contract to operate a spaceport unless the agreement provides that

the person contracting with the corporation assumes the corporation's liability for a cause of action arising from environmental damage.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.105. GENERAL POWERS RELATED TO FINANCES. A spaceport development corporation may:

(1) impose a charge for using a spaceport or a service the corporation provides;

(2) borrow money;

(3) loan money to fund a spaceport; and

(4) invest money under the corporation's control in an investment authorized by Chapter 2256, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.106. DONATIONS, GRANTS, AND LOANS. A spaceport development corporation may accept a donation, grant, or loan from any person.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.107. AUTHORITY TO SUE AND BE SUED. A spaceport development corporation may sue and be sued.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.108. HIGHER EDUCATION COURSES AND DEGREE PROGRAMS. (a) The board of directors of a spaceport development corporation by rule may develop a plan for higher education courses and degree programs to be offered at or near a spaceport.

(b) A course or degree program offered under this section must be related to the purposes of this chapter.

(c) The aerospace and aviation office of the Texas Economic Development and Tourism Office and the Texas Higher Education Coordinating Board shall cooperate with and advise the board of directors in carrying out this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER D. BONDS

Sec. 507.151. AUTHORITY TO ISSUE BONDS; APPROVAL. (a) A spaceport development corporation may issue bonds only if a site in the territory of the authorizing entity has been designated as the site for a spaceport.

(b) Bonds issued under this chapter must be approved by the governing body of each political subdivision that authorized creation of the spaceport development corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.152. BONDS NOT OBLIGATION OF CERTAIN ENTITIES. Bonds issued by a spaceport development corporation are not an obligation or a pledge of the faith and credit of this state, a political subdivision that authorized the creation of the corporation, or another political subdivision or agency of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.153. BOND REQUIREMENTS. Bonds issued under this chapter must:

(1) be payable only from the revenue of a spaceport developed by the spaceport development corporation issuing the bonds;

(2) mature not later than 50 years after the date of issuance; and

(3) state on their faces that the bonds are not an obligation of the State of Texas or a political subdivision of this state, other than the corporation that issued the bonds.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

SUBCHAPTER E. TAXES

Sec. 507.201. EXEMPTION FROM CERTAIN TAXES. (a) The property, income, and operations of a spaceport development corporation are exempt from taxes imposed by this state or a political subdivision of this state.

(b) Tangible personal property located in the spaceport, such as a spacecraft or other property necessary to launch the spacecraft, is exempt from ad valorem taxation.

(c) Chapter 151, Tax Code, does not apply to tangible personal property purchased by a person for use in a spaceport.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

Sec. 507.202. PAYMENT IN LIEU OF AD VALOREM TAXES. In lieu of taxes, a spaceport development corporation shall pay to each political subdivision of this state in which land owned by the corporation is located an amount equal to the amount of ad valorem taxes that would be imposed on that land if the land were privately owned.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.01, eff. April 1, 2009.

TITLE 13. WATER AND UTILITIES

SUBTITLE A. MUNICIPAL WATER AND UTILITIES

CHAPTER 551. WATER CONTROL BY MUNICIPALITIES

Sec. 551.001. CONTROL OF HARMFUL EXCESS OF WATER BY MUNICIPALITY WITH POPULATION OF 150,001 TO 239,999. (a) In this section, "water control body" means a municipality, county, levee district, water control and improvement district, water improvement district, navigation district, or other body politic created under the laws of the state with statutory powers concerned with the control of harmful excess of water.

(b) To change or abate by mechanical means a harmful excess of

water, either constant or periodic, that threatens life and property within its boundaries, a municipality with a population of 150,001 to 239,999 may:

(1) straighten, widen, levee, restrain, or otherwise control or improve a river, creek, bayou, stream, or other body of water;

(2) grade or fill land; or

(3) take other appropriate actions.

(c) The municipality may pay for an improvement, or a part of an improvement, under Subsection (b) in the manner provided by Section 372.041 or any other manner not expressly prohibited by the charter of the municipality.

(d) If an improvement under Subsection (b) is provided or operated by a water control body other than the municipality, the municipality may contribute to the payment of the cost, replacement, alteration, extension, maintenance, and operation of the improvement.

(e) If an improvement under Subsection (b) is provided and operated by the municipality, the municipality may solicit and receive from another water control body a contribution for the payment of the cost, alteration, enlargement, maintenance, and operation of the improvement.

(f) The municipality may purchase or otherwise acquire and take over any improvement or the maintenance or operation of any improvement and may contract to assume an outstanding bond debt or other debt secured by lien if:

(1) the debt was incurred to provide for the improvement; and

(2) the interest on the debt is not greater than six percent a year.

(g) The municipality may not, in purchasing or otherwise acquiring an improvement or the right to maintain and control property of a levee or improvement district, assume the bonded indebtedness outstanding and owing by the district unless the municipality is authorized to do so at an election at which the qualified voters of the municipality approve the assumption of indebtedness or maintenance.

(h) Subsection (f) supersedes any provision in a municipal charter that is not in conformity with that subsection. Subsection (f) does not authorize an increase in the municipal debt limit fixed by law.

(i) The municipality may contract with a water control body to perform, jointly with a water control body or independently, an action authorized by this section.

(j) Water control bodies otherwise having appropriate powers may use this section and contract with one another to accomplish the purposes of this section.

(k) A water control body, under contract with a municipality having power under this section, may provide money required to construct, maintain, and operate an improvement under this section, either separately or jointly under contract with another water control body, in a manner not expressly prohibited by the charter of the municipality or the statute creating the municipality or the water control body.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 401.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(1), eff. April 1, 2009.

Sec. 551.002. PROTECTION OF STREAMS AND WATERSHEDS BY HOME-RULE MUNICIPALITY. (a) A home-rule municipality may prohibit the pollution or degradation of and may police a stream, drain, recharge feature, recharge area, or tributary that may constitute or recharge the source of water supply of any municipality.

(b) A home-rule municipality may provide for the protection of and may police any watersheds.

(c) The authority granted by this section may be exercised inside the municipality's boundaries or inside the municipality's extraterritorial jurisdiction or outside the municipality's extraterritorial jurisdiction only if required to meet other state or federal requirements. The authority granted by this section for the protection of recharge, recharge areas, or recharge features of groundwater aquifers may be exercised outside the municipality's boundaries and within the extraterritorial jurisdiction provided the municipality exercising such authority has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the municipality's source of water supply.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 4.47, eff. Sept. 1, 1997.

Renumbered from Local Government Code, Section 401.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(1), eff. April 1, 2009.

Sec. 551.003. NOTICE OF MUNICIPAL DEVELOPMENT REGULATIONS APPLYING TO WATERSHEDS AND FLOOD-PRONE AREAS. (a) The governing body of a home-rule municipality that by resolution, ordinance, or other proceeding regulates and controls the use and development of any watersheds, flood-prone areas, and impoundment areas for flood control and preservation shall file a notice with the county clerk of each county in which the property subject to the regulation is situated.

(b) The notice required by this section must:

(1) be signed in the name of the municipality by its clerk, secretary, or mayor or other officer performing the duties of one of those officers;

(2) show that the governing body of the municipality by resolution, ordinance, or other proceeding has enacted regulations of the area; and

(3) give or attach the boundaries of the land subject to the regulation.

(c) A notice required by this section need not give details or be sworn to or acknowledged. The notice may be filed at any time.

(d) A county clerk with whom a notice is filed under this section shall record the notice in the records of deeds and shall index it in the name of the municipality.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.07(a), eff. Aug. 26, 1991.
Renumbered from Local Government Code, Section 401.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(1), eff. April 1, 2009.

Sec. 551.004. PROTECTION OF PLAYA LAKES BY CERTAIN HOME-RULE MUNICIPALITIES. (a) In this section, "playa lake" means a natural saucer-like depression in the topography, typically having a clayey bottom that is normally located in an arid or semiarid part of the state and collects runoff from rain but is subject to rapid

evaporation. The term includes all areas within the basin projected to be inundated by pooled storm water runoff, as determined by an engineering analysis performed according to the specific requirements adopted by and in effect for a municipality.

(b) The governing body of a home-rule municipality with a population of 185,000 or more may regulate the filling of a playa lake within the municipality's extraterritorial jurisdiction as a means for the effective management of storm water runoff to prevent:

(1) harmful flooding; or

(2) excess surface water.

(c) A regulation adopted under this section may not:

(1) interfere with normal agricultural practices, including moving soil, berming for tail water reuse, plowing, seeding, cultivating, and harvesting for the production of food or fiber; or

(2) prohibit any practice or activity that does not decrease the water holding capacity of a playa lake.

Added by Acts 1999, 76th Leg., ch. 120, Sec. 1, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 401.004 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(1), eff. April 1, 2009.

Sec. 551.005. RESTRICTION ON PUMPING, EXTRACTION, OR USE OF GROUNDWATER. (a) For the purpose of establishing and enforcing a municipal setting designation, the governing body of a municipality may regulate the pumping, extraction, or use of groundwater by persons other than retail public utilities, as defined by Section 13.002, Water Code, to prevent the use of or contact with groundwater that presents an actual or potential threat to human health.

(b) For the purpose of establishing and enforcing a municipal setting designation, the governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under this section.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 4, eff. Sept. 1, 2003. Renumbered from Local Government Code, Section 401.005 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(1), eff. April 1, 2009.

Sec. 551.006. IRRIGATION SYSTEMS. (a) A municipality with a population of 20,000 or more by ordinance shall require an installer of an irrigation system:

(1) to hold a license issued under Section 1903.251, Occupations Code; and

(2) to obtain a permit before installing a system within the territorial limits or extraterritorial jurisdiction of the municipality.

(b) The ordinance shall include minimum standards and specifications for designing, installing, and operating irrigation systems in accordance with Section 1903.053, Occupations Code, and any rules adopted by the Texas Commission on Environmental Quality under that section.

(c) A municipality may employ or contract with a licensed plumbing inspector or a licensed irrigation inspector to enforce the ordinance.

(d) A municipality may charge an installer of an irrigation system a fee for obtaining or renewing a permit under Subsection (a)(2). The municipality shall set the fee in an amount sufficient to enable the municipality to recover the cost of administering this section.

(e) This section does not apply to:

(1) an on-site sewage disposal system, as defined by Section 366.002, Health and Safety Code; or

(2) an irrigation system:

(A) used on or by an agricultural operation as defined by Section 251.002, Agriculture Code; or

(B) connected to a groundwater well used by the property owner for domestic use.

Added by Acts 2007, 80th Leg., R.S., Ch. 874 (H.B. 1656), Sec. 3, eff. June 15, 2007.
Transferred from Local Government Code, Section 401.006 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(66), eff. September 1, 2009.

Sec. 551.007. WATER CONSERVATION BY HOME-RULE MUNICIPALITY. A home-rule municipality may adopt and enforce ordinances requiring water conservation in the municipality and by customers of the

municipality's municipally owned water and sewer utility in the extraterritorial jurisdiction of the municipality.

Added by Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 12, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.31, eff. September 1, 2007.
Transferred from Local Government Code, Section 401.006 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(67), eff. September 1, 2009.

CHAPTER 552. MUNICIPAL UTILITIES
SUBCHAPTER A. PUBLIC UTILITY SYSTEMS IN GENERAL

Sec. 552.001. MUNICIPAL UTILITY SYSTEMS; GENERAL POWERS. (a) In this section, "utility system" means a water, sewer, gas, or electricity system.

(b) A municipality may purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality. The municipality may own land inside or outside its boundaries for these purposes.

(c) A municipality may extend the lines of its utility systems outside the municipal boundaries and may sell water, sewer, gas, or electric service to any person outside its boundaries. The municipality may contract with persons outside its boundaries to permit them to connect with those utility systems on terms the municipality considers to be in its best interest. This subsection does not authorize the extension of electric lines into the corporate limits of another municipality.

(d) A municipality that owns or operates a utility system may prescribe the kind of water or gas mains, sewer pipes, and electric appliances that may be used inside or outside the municipality. The municipality may inspect those facilities and appliances, require that they be kept in good condition at all times, and prescribe the necessary rules, which may include penalties, concerning them.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.002. CERTAIN PUBLIC SERVICES AND UTILITY SYSTEMS IN HOME-RULE MUNICIPALITY. (a) In this section, "public service" includes a public telephone system, street railway system, fertilizing plant, slaughterhouse, municipal railway terminal, dock, wharf, ferry, ferry landing, or shipping facility, including loading and unloading devices.

(b) A home-rule municipality may buy, own, construct inside or outside the municipal limits, and maintain and operate a gas system, electric lighting plant, sewage plant, or other public service or public utility and may require and receive compensation for services furnished for private purposes or otherwise. The municipality may use eminent domain authority to appropriate real property, rights-of-way, or other property as necessary to efficiently carry out those objects. The municipality may condemn the property of any person that conducts such a business or utility service for the purpose of operating and maintaining the public service or public utility and distributing the utility services in the municipality. In its charter, the municipality may adopt rules it considers advisable for the acquisition or operation of the public service or public utility.

(c) The municipality may manufacture its own electricity, gas, or anything else needed or used by the public. It may purchase, and make contracts for the purchase of, gas, electricity, oil, or any other commodity or article used by the public and may sell it to the public on terms as provided by the municipal charter, ordinance, or resolution of the governing body of the municipally owned utility.

(d) The municipality may require water works corporations, gas companies, street car companies, telephone companies, telegraph companies, electric companies, or other persons who hold a franchise from the municipality to extend their services to territory as required by the municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 44, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 402.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.0025. CONNECTION, DISCONNECTION, AND LIABILITY FOR MUNICIPAL UTILITY SERVICES. (a) A municipality may not require a customer to pay for utility service previously furnished to another customer at the same service connection as a condition of connecting or continuing service.

(b) A municipality may not require a customer's utility bill to be guaranteed by a third party as a condition of connecting or continuing service.

(c) A municipality may require varying utility deposits for customers as it deems appropriate in each case.

(d) Except as provided in Subsections (e) and (f), a municipality may by ordinance impose a lien against an owner's property, unless it is a homestead as protected by the Texas Constitution, for delinquent bills for municipal utility service to the property.

(e) The municipality's lien shall not apply to bills for service connected in a tenant's name after notice by the property owner to the municipality that the property is rental property.

(f) The municipality's lien shall not apply to bills for service connected in a tenant's name prior to the effective date of the ordinance imposing the lien. This subsection shall not apply to ordinances adopted prior to the effective date of this Act.

(g) The municipality's lien shall be perfected by recording in the real property records of the county where the property is located a notice of lien containing a legal description of the property and the utility's account number for the delinquent charges. The municipality's lien may include penalties, interest, and collection costs.

(h) The municipality's lien is inferior to a bona fide mortgage lien that is recorded before the recording of the municipality's lien in the real property records of the county where the property is located. The municipality's lien is superior to all other liens, including previously recorded judgment liens and any liens recorded after the municipality's lien.

Added by Acts 1989, 71st Leg., ch. 304, Sec. 1, eff. Aug. 28, 1989. Renumbered from Local Government Code, Section 402.0025 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.003. ACQUISITION OF EXISTING PUBLIC UTILITY; PAYMENT IN LIEU OF SCHOOL TAXES. (a) If, after May 8, 1943, a municipality acquires an existing public utility, the property of which is subject to taxation by a school district, and the municipality finances the purchase of the utility by issuing revenue bonds, the governing body of the municipality may expressly provide, in an indenture of trust, mortgage, or other lien instrument that evidences the obligation of the municipality for the purchase price, for an annual payment from the income of the utility of an amount equal to the average annual taxes assessed by the school district on the properties of the utility for the five years preceding the year in which the utility is acquired.

(b) The school board trustees and the governing body of the municipality may agree on an annual payment of a sum in lieu of school taxes. The sum must be adequate and just under the circumstances of the case considering the school district's needs.

(c) The obligation of the municipality to make the payment in lieu of taxes is a proper item of municipal operating expenses that, with other operating expenses, is a first lien and charge against the income of the encumbered utility.

(d) The obligation of the municipality to make the payment in lieu of taxes as provided in the encumbrance agreement is an "expense or obligation" of the utility system as that term is used in statutes authorizing the acquisition of a public utility and the issuance of revenue bonds for the purchase of the utility. The obligation extends to and binds any municipality that purchases or otherwise acquires an existing public utility in accordance with the terms of the encumbrance agreement or mutual agreements as authorized under Subsections (a) and (b).

(e) The obligation of the municipality as fixed in the indenture or encumbrance is not impaired, affected, modified, or released by the release or discharge of the encumbrance, and, as long as the municipality owns and operates the public utility, it shall continue to pay to the school district on an annual basis from the revenues of the utility an amount equal to the average annual taxes assessed in behalf of the school district on the properties of the utility for the five years preceding the year in which the utility is acquired by the municipality. Alternatively, after the release or discharge of the encumbrance, the school board trustees and the governing body of the municipality may agree to provide for a payment

in lieu of school taxes as provided by Subsection (b).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

SUBCHAPTER B. ACQUISITION OF INTERESTS FOR DRAINAGE, SEWAGE, OR WATER SUPPLY PURPOSES

Sec. 552.011. USE OF EMINENT DOMAIN POWER. A municipality that owns its water system may exercise the power of eminent domain to condemn private property located inside or outside the municipal limits to acquire rights-of-way for digging or excavating canals or for laying water mains or other pipelines to bring water into the municipality for public use.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.011 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.012. MUNICIPALITIES IN OR CONTRACTING WITH A WATER DISTRICT. (a) In this section, "water district" means a municipal water authority or other district created under Article XVI, Section 59, of the Texas Constitution.

(b) This section applies to a municipality that is located in a water district or that has a contract with a water district for a supply of untreated water. This section is cumulative of municipal charter provisions relating to the same subject but takes precedence over a municipal charter provision to the extent of any conflict.

(c) The municipality, acting alone or with one or more other municipalities to which this section applies, may:

(1) receive or acquire by gift, dedication, purchase, or condemnation any property in this state, located inside or outside the municipal boundaries, to build or acquire:

(A) water purification and treatment facilities;

(B) reservoirs; or

(C) pipelines and any type of water transportation facilities considered necessary to provide the municipality or

municipalities with fresh water for municipal, domestic, and industrial purposes; and

(2) construct or otherwise acquire any facility described by Subdivision (1).

(d) Chapter 21, Property Code, applies to a condemnation proceeding brought under this section.

(e) The municipality or municipalities, individually or jointly, may operate, maintain, and improve, and may sell or lease in whole or in part, property acquired or constructed under this section and any improvements on that property. Municipalities may individually or jointly control and operate jointly owned facilities by contracting with one another on mutually agreeable terms.

(f) The governing body of a municipality providing water treatment facilities under this section may:

(1) issue negotiable municipal bonds or warrants for that purpose and impose taxes to provide the interest and sinking fund for those bonds or warrants in the manner provided by law for the issuance of tax supported bonds and warrants by the municipality; or

(2) issue revenue bonds supported by the revenues of one or more of the municipal utilities as provided by Chapter 1502, Government Code.

(g) The governing body of a municipality that acquires facilities or property under this section may impose reasonable charges for the use of the facilities or property. In the case of jointly operated facilities, the governing bodies of the municipalities involved may impose the charges by agreement.

(h) A municipality or a combination of municipalities acting under this section may contract with any other municipality to supply the other municipality with services from the facilities or improvements acquired or constructed under this section. By ordinance, the governing bodies of the municipalities providing the services may prescribe and enforce rules relating to the use of the improvements and facilities.

(i) An election is not required for approval of any contract relating to water treatment under this section.

(j) In addition to taxes for the interest and sinking fund of bonds or warrants issued under this section, the governing body of the municipality separately or jointly acquiring improvements or facilities under this section may impose taxes for the improvement, operation, and maintenance of the improvements and facilities. Those

taxes are subject to limits on taxation imposed by the constitution and laws of this state and by the municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.346, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 402.012 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.013. WATER SYSTEM IN MUNICIPALITIES WITH POPULATION OF MORE THAN 1,000. (a) This section applies to a municipality with a population of more than 1,000 that owns and operates a water system for its residents for fire protection or domestic consumption. Except as otherwise provided by this section, a municipality's authority under this section is in addition to authority granted by municipal charter.

(b) The municipality may acquire any interest, including a fee simple interest, in publicly or privately owned property, including riparian rights, located anywhere in the state. The municipality may acquire the interest by purchase, gift, devise, or eminent domain.

(c) To furnish an adequate and wholesome supply of water for the residents, the municipality may exercise the power of eminent domain to acquire and condemn public or private property to extend, improve, or enlarge its water system, including water supply reservoirs, riparian rights, standpipes, and watersheds, to construct water supply reservoirs, wells or artesian wells, or dams, and to construct or establish necessary facilities or appurtenances.

(d) For purposes of this section, the municipality has the same powers relating to eminent domain conferred by statute on water improvement districts or water control and preservation districts or conferred by general law on municipalities.

(e) The municipality may acquire fee simple title to property under this section if the resolution ordering condemnation proceedings specifies that such an interest is to be acquired.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 402.013 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.014. CONTRACTS WITH WATER DISTRICTS OR NONPROFIT CORPORATIONS. (a) In this section:

(1) "Project" means a water supply or treatment system, a water distribution system, a sanitary sewage collection or treatment system, works or improvements necessary for drainage of land, recreational facilities, roads and improvements in aid of roads, or facilities to provide firefighting services.

(2) "Water district" means a district created under Article XVI, Section 59, of the Texas Constitution.

(b) A municipality may enter into a contract with a water district or with a corporation organized to be operated without profit under which the district or corporation will acquire for the benefit of and convey to the municipality, either separately or together, one or more projects. In connection with the acquisition, the district or corporation shall improve, enlarge, or extend the existing municipal facilities as provided by the contract.

(c) If the contract provides that the municipality assumes ownership of the project on completion of construction or at the time that all debt incurred by the district or corporation in the acquisition, construction, improvement, or extension of the project is paid in full, the municipality may make payments to the district or corporation for project services to part or all of the residents of the municipality. The contract may provide for purchase of the project by the municipality through periodic payments to the district or corporation in amounts that, together with the net income of the district or corporation, are sufficient to pay the principal of and interest on the bonds of the district or corporation as they become due. The contract may provide:

(1) that any payments due under this section are payable from and are secured by a pledge of a specified part of the revenues of the municipality, including revenues from municipal sales and use taxes;

(2) for the levying of a tax to make payments due under this section; or

(3) that the payments due under this section be made from a combination of revenues and taxes.

(d) The contract may provide that the district or corporation may use the streets, alleys, and other public ways and places of the municipality for project purposes for a period that ends at the time the indebtedness of the district or corporation is paid in full and

the municipality acquires title to the project in accordance with this section.

(e) The contract may provide for the operation of the project by the municipality, and, if so authorized, the municipality may operate the project.

(f) A contract under this section must be authorized by a majority vote of the governing body of the municipality.

(g) This section does not authorize a water district or corporation described by Subsection (b) to participate in a project that the water district or corporation is not authorized to participate in under other law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.014 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 105 (S.B. 902), Sec. 3, eff. September 1, 2013.

Sec. 552.015. WATER SUPPLY IN TYPE A GENERAL-LAW MUNICIPALITY. (a) The governing body of a Type A general-law municipality may provide for a municipal water supply system.

(b) The municipality may establish and regulate public wells, pumps, cisterns, hydrants, and reservoirs located inside or outside the municipality, including in the municipality's streets, for the convenience of its residents, for firefighting purposes, and for the prevention of unnecessary waste of water.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.015 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.016. SALE OR LEASE OF WATER SYSTEM BY TYPE A GENERAL-LAW MUNICIPALITY. (a) A Type A general-law municipality may not sell or lease a water system and plant owned by the municipality unless the question of the sale or lease is first approved by a majority of the qualified voters of the municipality who vote on the

question at a referendum. The governing body of the municipality may provide for submission of the question at a general or special election.

(b) Before the 20th day before the date of the election, the proposed lease or sales agreement must be plainly set out in the form of an ordinance or contract and must be filed in the office of the secretary or clerk of the municipality, where it shall be available for public inspection at all times.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 402.016 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.017. WATER SYSTEMS IN HOME-RULE MUNICIPALITIES. (a) A home-rule municipality may exercise the exclusive right to own, construct, and operate a water system for the use of the municipality and its residents. The municipality may regulate the system and may prescribe rates for the water furnished.

(b) The municipality may acquire by purchase, donation, or other means suitable land inside or outside the municipality for construction of the system, including any necessary rights-of-way.

(c) The municipality may take the necessary action to operate and maintain the system and to require water customers to pay charges imposed for the water furnished.

(d) The municipality may create, from revenue received from operating the water system, a separate fund dedicated solely to extending, operating, maintaining, repairing, and improving the water system. This revenue may be pledged for paying the principal of and providing an interest and sinking fund on bonds issued for these purposes, subject to applicable regulations in the municipal charter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 304, Sec. 2, eff. Aug. 28, 1989. Renumbered from Local Government Code, Section 402.017 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.018. MUNICIPAL CONTRACT WITH PRIVATE ENTITY. (a) A

municipality that owns and operates its water distribution system may contract with an individual, firm, or corporation that operates without profit to make available for delivery to and use by the municipality all or part of the raw or treated water to be used for the municipal water distribution system. The service to be provided by the supplier may include the holding of water in reserve to serve needs of the municipality, and charges to the municipality under the contract may include compensation for this service.

(b) The contract may be for any duration to which the parties agree and may provide for renewal and extension.

(c) Contractual payments required solely from municipal water system revenue are an operating expense of that system. The municipality shall set its rates and charges to users of the municipal water system at a level sufficient to pay the maintenance and operating expenses of that system as provided by Section 1502.057, Government Code, and to provide for payment of principal of and interest on any revenue bonds of the municipality payable from water revenue.

(d) If a contract with a term of more than one year obligates the municipality to pay the consideration from tax revenue, involves the leasing to the supplier of a major part of an existing water production or supply facility belonging to the municipality or involves the right to operate a major part of such a facility, or restricts the municipality from obtaining water from another supplier, the contract is not effective unless approved or authorized at an election on the question.

(e) If Subsection (d) is not applicable, an election is not required. The governing body of the municipality may, however, order an election on the question before approving the contract.

(f) An election under this section shall be held to the extent practicable in the same manner as an election for the issuance of municipal bonds under Chapter 1251, Government Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.347, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 402.018 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.019. CONTRACT WITH WATER IMPROVEMENT DISTRICT OR WATER CONTROL AND IMPROVEMENT DISTRICT. (a) A municipality may contract with a water improvement district or water control and improvement district created under Article XVI, Section 59, of the Texas Constitution for the supplying of water to the municipality. The governing body of the municipality and the board of directors of the district may provide for any duration for the contract that does not exceed 30 years, except that they may provide for the contract to continue in effect until the repayment of all warrants, notes, or bonds issued by the district to acquire facilities necessary or convenient for the district to supply water to the municipality.

(b) The municipality shall pay for water supplied under the contract from water system revenues of the municipality. Payment may be secured by an irrevocable pledge of and a first lien on those revenues. The district may not demand payment from tax revenue.

(c) A contract under this section is not binding until approved by a majority of the qualified voters of the municipality who vote on the question at an election held for the purpose. The governing body of the municipality may order the election. Notice of the election must be published once each week for two consecutive weeks in a newspaper of general circulation published in the municipality, with the first publication occurring before the 10th day before the date of the election. If such a newspaper is not published in the municipality, notice of the election must be posted at each election precinct in the municipality and at the city hall. The notice need not set out the full text of the contract or detail its provisions. During the 10-day period preceding the date of the election, the proposed contract shall be on file at the office of the municipal secretary and available for public inspection. If the election results in approval of the contract, the contract takes effect immediately; otherwise the contract is ineffective.

(d) As is necessary or convenient to supply water under a contract made under this section, a district may:

(1) construct or otherwise acquire and equip canals, reservoirs, basins, pipelines, conduits, filtration and aeration plants, and other equipment and supplies; and

(2) acquire property by purchase, eminent domain, or other means.

(e) A contracting district may issue warrants, notes, or bonds for the acquisition of facilities necessary or convenient for

supplying water under the contract. The district may secure those evidences of indebtedness by a pledge of revenues to be derived under the contract under this section. With voter approval, the district may issue bonds for this purpose secured by taxes or a combination of taxes and contract revenues.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.019 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.020. CONTRACT WITH WATER DISTRICT. (a) In this section, "water district" means a district or authority created under Article XVI, Section 59, of the Texas Constitution.

(b) A municipality and a water district by contract may provide for the district to supply water to the municipality. By contract, the municipality and district may also provide for:

(1) the lease of the municipality's water production, water supply, and water supply facilities to the district;

(2) the district to operate the municipality's water production, water supply, and water supply facilities; or

(3) the municipality to operate the district's water production, water supply, and water supply facilities.

(c) A contract under this section may prohibit the municipality from obtaining water from sources other than the district, subject to any exceptions that the contract may provide.

(d) The contract may be on any terms and for any duration to which the parties agree and may provide that it continues in effect as long as any bonds of the district specified in the contract, including bonds issued to refund them, remain unpaid.

(e) A contract under this section is subject to the district's statutory or contractual duty to periodically revise the rate charged for water sold or services rendered by the district to the municipality under the contract so that the net revenues of the district will be sufficient to allow the district to pay its operation and maintenance expenses and the principal of and interest on the bonds secured by the contract to the extent provided by the resolution authorizing the bonds. Payments by the municipality under the contract are an operating expense of the municipal water system.

(f) A municipality may not contract under this section without first obtaining the approval of a majority of the qualified voters of the municipality who vote on the question at an election held for the purpose. The governing body of the municipality shall order the election. The governing body may submit to the voters the question of authorizing the municipality to make a water supply contract, a lease and water supply contract, or both. Both issues may be submitted as a single proposition. Notice of the election must be published once each week for two consecutive weeks in a newspaper of general circulation published in the municipality, with the first publication occurring before the 14th day before the date of the election. If such a newspaper is not published in the municipality, notice of the election must be posted at the city hall and two other public places in the municipality. If the election result is favorable, the governing body shall enact an ordinance prescribing the form and substance of the lease or contract or both, as the case may be, and directing the mayor or mayor pro tempore to sign it. The ordinance may be enacted by a vote of a majority of the members of the governing body on one reading and at the same meeting at which it is introduced.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.020 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.0205. REVENUE BONDS TO PAY FOR DISTRICT SERVICES UNDER CONTRACT. (a) In this section, "district" has the meaning assigned by Section 49.001, Water Code.

(b) If a district contracts with a municipality to provide all or part of the water or wastewater services to the municipality, the municipality may issue bonds payable from the revenues of its water and wastewater system to provide funds to make payments owed by the municipality to the district under the contract.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 36, eff. June 17, 2001.
Renumbered from Local Government Code, Section 402.0205 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.021. CONTRACT BETWEEN DISTRICT AND MUNICIPALITY WITH POPULATION OF MORE THAN 900,000. (a) In this section, "district" means a conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution.

(b) A municipality with a population of more than 900,000 that owns and operates a municipal water system may:

(1) enter into a contract or joint enterprise with a district for the conveyance, transportation, and distribution of water for or on behalf of the municipality; or

(2) contract to sell water to a district and repurchase all or part of the water at one or more designated points on the district's conveyance, transportation, and distribution system.

(c) A contract under Subsection (b) may provide that municipal payments to the district under the contract:

(1) are an operating expense of the municipal water system; or

(2) are payable from surplus or other funds of the municipal water system, from the revenues of specified municipal water sales contracts, or from other sources.

(d) If the contract under Subsection (b) obligates the municipality to pay any of the consideration from tax revenue, it must first be approved at an election ordered and conducted in the same manner as a bond election.

(e) A contract under Subsection (b) may be made for any period not to exceed 40 years and may provide that it continues in effect until payment of:

(1) all bonds issued by the district to finance conveyance, transportation, or distribution facilities, or the extension, enlargement, or improvement of those facilities; and

(2) any bonds issued to refund bonds described by Subdivision (1).

(f) A municipality covered by this section may contract for the sale of water to industrial and commercial customers or municipal corporations or political subdivisions as provided by ordinance. A contract under this subsection may not be for a term longer than 40 years.

(g) A municipality electing to make a contract under this section is governed solely by this section regardless of another statute, charter provision, or ordinance to the contrary.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.021 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.022. CONTRACTS WITH CERTAIN SPECIAL DISTRICTS. (a) In this section, "special district" means a district that derives its powers from Article XVI, Section 59, of the Texas Constitution and that has statutory authority to contract with municipalities for the transportation and disposal of sewage.

(b) A municipality located in whole or in part in a county containing a special district, and acting under an ordinance enacted by its governing body, may enter into a contract with the district that may provide:

(1) that the district will make available to the municipality and provide sewage transportation, sewage treatment and disposal services, or any one or more of those services;

(2) for the provision of standby service; or

(3) for use by the district of sewage transportation, treatment, and disposal facilities owned by the municipality.

(c) The contract may be on terms and for a duration agreeable to the parties and may provide that it continue in effect until payment of:

(1) bonds issued by the district and specified in the contract; and

(2) any bonds issued to refund bonds described by Subdivision (1).

(d) The municipality is entitled to continued performance of services covered by the contract after the amortization of the district's investment in the facilities during the useful life of the facilities on payment of charges reduced to take into account the amortization.

(e) Except as provided by Subsection (f), revenue received by a special district from a municipality under a contract made under this section may be used only for:

(1) payment of principal of and interest on, and providing reserve for, bonds issued by the district to finance the facilities covered by the contract; and

(2) operating and maintenance expenses related to the

contract, including legal, administrative, and management supervision fees and expenses.

(f) The contract may provide that a designated part of any surplus accumulated for the benefit of the municipality may be spent by the district to enlarge or improve facilities of the district used to serve the municipality.

(g) Payments by a municipality to a district shall be made from revenues of the municipality's water system, sanitary sewer system, or both of those systems, or of the municipality's combined water and sanitary sewer system, as specified in the contract. Those payments are an operating expense of the system whose revenues are to be so applied. Except as provided by Subsection (h), neither the district nor a holder of the bonds of the district may demand payment of the municipality's obligations out of funds raised or to be raised by taxation.

(h) A municipality may pledge its taxing power in a contract made under this section if a majority of the qualified voters of the municipality who vote on the question at an election vote in favor of the proposed contract and the levy of property taxes to pay the municipality's obligations to the authority under the contract. The election shall be conducted in substantially the same manner as a municipal bond election held under Chapter 1251, Government Code. If the voters approve the contract and tax levy:

(1) the municipal governing body shall enact an ordinance prescribing the form and substance of the contract and directing the proper officers of the municipality to sign it; and

(2) once the contract has been executed, the municipality's obligations to the authority under the contract are an obligation of the municipality's taxing power, but may be paid, as provided by the contract, from taxes and revenues from which payments are required by Subsection (g).

(i) A municipality that has executed a contract under this section that is payable in whole or in part from revenue of the municipality's water or sanitary sewer system, or both of those systems, or the municipality's combined water and sewer system shall set and periodically adjust rates charged to users so that at all times that revenue is sufficient to pay:

(1) the expenses of operating and maintaining each system in accordance with current standards and requirements for preventing stream pollution;

(2) obligations of the municipality under the contract; and

(3) all obligations of the municipality relating to revenue bonds issued from the system before or after execution of the contract under this section.

(j) The contract may require the use of consulting engineers and financial experts to advise the municipality as to when service rates are to be adjusted.

(k) A district may render services concurrently to more than one municipality through construction and operation of a plant serving multiple municipalities, with the cost for the services to be allocated among the participating municipalities as provided by one or more contracts made under this section. All the compensation to be received by and all the security pledged to the district by all municipalities is available to the authority to secure bonds issued to provide necessary construction funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.348, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 402.022 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.023. CONTRACT BETWEEN MUNICIPALITY AND TRINITY RIVER AUTHORITY. (a) In this section, "sewage disposal services" includes sewage transportation, treatment, and disposal.

(b) A municipality that is located in whole or in part inside the boundaries of the Trinity River Authority or located in whole or in part in the watershed of the Trinity River may, by ordinance, contract with the authority for the authority to provide the municipality with sewage disposal services. The contract may contain a provision for standby service. The contract may be made on terms and for a duration agreeable to the parties and may provide that it will continue in effect as long as specified bonds of the authority, including refunding bonds, remain unpaid. The municipality is entitled to the continued performance of services covered by the contract after amortization of the authority's investment in facilities during the useful life of the facilities, on payment of charges reduced to take the amortization into account.

(c) Except as provided by Subsection (d), revenue received by the authority from a municipality under a contract made under this section may be used only for:

(1) payment of principal of and interest on, and providing reserves for, bonds issued by the authority to finance facilities for sewage disposal services; and

(2) operation and maintenance expenses related to the contract, including legal, administrative, and management supervision fees and expenses.

(d) The authority and a municipality may provide in the contract that a designated part of any surplus revenue accumulated for the benefit of the municipality may be spent by the authority to enlarge or improve facilities of the authority used especially to serve that municipality.

(e) The authority becomes owner of sewage accepted by it for transportation and treatment and is solely responsible for the proper treatment and disposal of the sewage and the effluent. A contracting municipality is immune from liability for any improper treatment or disposal of the sewage or effluent. A municipality is not entitled to credit of any type, either in the exchange of water, money, or other consideration, for any effluent delivered to the authority. Such an exchange or sale may not be made a condition to any contract under this section.

(f) Payments by a municipality under a contract shall be made from revenues of the municipality's water system, sanitary sewer system, or both of those systems, or of the municipality's combined water and sanitary sewer system, as specified in the contract. Those payments are an operating expense of the system whose revenues are pledged under the contract. Except as provided by Subsection (h), neither the authority nor a holder of bonds of the authority may demand payment of the municipality's obligations out of funds raised or to be raised by taxation.

(g) If at the time it executes a contract under this section a municipality has outstanding revenue bonds secured by a pledge of the net revenue from a combined water and sanitary sewer system plus the net revenue from the municipality's gas distribution or electric power system, that portion of the payments made by the municipality to the authority and used by the authority for debt service on bonds of the authority may be treated by the municipality for its accounting purposes as a capital expenditure if:

(1) revenue from the municipality's gas or electric system, as the case may be, is adequate to satisfy the requirements of the ordinance or ordinances authorizing the outstanding revenue bonds and similarly secured bonds that may later be authorized, regarding the provision of funds for operation, maintenance, and debt service; and

(2) revenue from the municipality's sanitary sewer system and, if encumbered under the contract, from the municipality's water system, are sufficient to meet the requirements of the contract with the authority.

(h) A municipality may pledge its taxing power in a contract made under this section if a majority of the qualified voters of the municipality who vote on the question at an election vote in favor of the proposed contract and the levy of property taxes to pay the municipality's obligations to the authority under the contract. The election shall be conducted in substantially the same manner as a municipal bond election held under Chapter 1251, Government Code. If the voters approve the contract and tax levy:

(1) the municipal governing body shall enact an ordinance prescribing the form and substance of the contract and directing the proper officers of the municipality to sign it; and

(2) once the contract has been executed, the municipality's obligations to the authority under the contract are an obligation of the municipality's taxing power, but may be paid as provided by the contract, from taxes and revenues from which payments are required by Subsection (f).

(i) A municipality that has executed a contract under this section that is payable in whole or in part from revenue of the municipality's water or sewer system, or both of those systems, or the municipality's or combined water and sewer system shall set and periodically adjust rates charged to users so that at all times that revenue is sufficient to pay:

(1) the expenses of operating and maintaining the system in accordance with current standards and requirements for preventing stream pollution;

(2) obligations of the municipality under the contract; and

(3) all obligations of the municipality relating to revenue bonds issued for the system before or after execution of the contract under this section.

(j) A contract under this section may require the use of

consulting engineers and financial experts to advise the municipality as to when service rates are to be adjusted.

(k) The authority may render services concurrently to more than one municipality through construction and operation of a plant serving multiple municipalities, with the cost for the services to be allocated among the participating municipalities as provided by one or more contracts made under this section. All the compensation to be received by and all the security pledged to the authority by all municipalities is available to the authority to secure bonds issued to provide necessary construction funds. A contract used by the authority to secure bonds to finance its plant and facilities must be submitted by the authority to the attorney general for examination. If the attorney general approves the contract and bonds, the contract is incontestable.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 10.06, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1420, Sec. 8.349, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 402.023 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.024. MUNICIPAL CONTRACT FOR RECLAIMED WATER FACILITY IN CERTAIN MUNICIPALITIES. (a) In this section, "reclaimed water project" means the design, construction, equipment, repair, reconstruction, replacement, expansion, operation, or maintenance of:

(1) a reclaimed water facility with a capacity of not less than 10 million gallons per day to be owned by a municipality; and

(2) related infrastructure.

(b) This section applies only to a home-rule municipality that:

(1) has a population of at least 99,000 and not more than 160,000;

(2) is located in two counties, only one of which has a population of at least 150,000 and not more than 170,000; and

(3) owns and operates a water system, sewer system, or combined system.

(c) A municipality to which this section applies may execute, perform, and make payments under a contract with any person for the development of a reclaimed water project and the provision of water

from that project.

(d) A contract entered into under this section is an obligation of the municipality that:

(1) may provide that:

(A) the contract is payable from a pledge of the revenues of the water system, sewer system, or combined system of the municipality; or

(B) the payments from the municipality are an operating expense of the water system, sewer system, or combined system of the municipality; and

(2) may not be made payable from ad valorem taxes.

(e) A contract entered into under this section may:

(1) be in the form and on the terms considered appropriate by the governing body of the municipality;

(2) be for the term approved by the governing body of the municipality and contain an option to renew or extend the term;

(3) provide for the design, construction, and financing of the reclaimed water project by the person with whom the municipality contracts for the development of the reclaimed water project; and

(4) provide for the provision of reclaimed water for industrial purposes at specified rates for the term approved by the governing body of the municipality as part of the consideration for the acquisition of the reclaimed water project by the municipality.

(f) If a contract entered into under this section provides for the design, construction, and financing of the reclaimed water project by the person with whom the municipality contracts:

(1) a contract procurement or delivery requirement applicable to the municipality does not apply to the reclaimed water project; and

(2) Chapter 2254, Government Code, does not apply to the reclaimed water project.

(g) Subchapter I, Chapter 271, applies to a written contract entered into under this section as if the contract were a contract described by Section 271.151(2).

(h) To the extent of a conflict with another statute or municipal charter provision or ordinance, this section controls.

(i) The validity or enforceability of a contract entered into under this section by a municipality is not affected if, after the contract is entered into, the municipality no longer meets the requirements described by Subsection (b).

Added by Acts 2017, 85th Leg., R.S., Ch. 78 (H.B. 101), Sec. 1, eff. May 23, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 197, eff. September 1, 2023.

SUBCHAPTER C. MUNICIPAL DRAINAGE UTILITY SYSTEMS

Sec. 552.041. SHORT TITLE. This subchapter may be cited as the Municipal Drainage Utility Systems Act.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.041 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.042. LEGISLATIVE FINDING. (a) The legislature finds that authority is needed to:

(1) permit municipalities to establish a municipal drainage utility system within the established service area;

(2) provide rules for the use, operation, and financing of the system;

(3) protect the public health and safety in municipalities from loss of life and property caused by surface water overflows, surface water stagnation, and pollution arising from nonpoint source runoff within the boundaries of the established service area;

(4) delegate to municipalities the power to declare, after a public hearing, a drainage system created under this subchapter to be a public utility;

(5) prescribe bases on which a municipal drainage utility system may be funded and fees in support of the system may be assessed, levied, and collected;

(6) provide exemptions of certain persons from this subchapter; and

(7) prescribe other rules related to the subject of municipal drainage.

(b) This subchapter is remedial.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 1230, Sec. 1(b), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.042 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.043. APPLICATION OF SUBCHAPTER TO MUNICIPALITIES. This subchapter applies to any municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(c), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.043 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.044. DEFINITIONS. In this subchapter:

(1)(A) "Benefitted property" means an improved lot or tract to which drainage service is made available under this subchapter.

(B) "Benefitted property," in a municipality with a population of more than 1.18 million located primarily in a county with a population of 2.5 million or more which is operating a drainage utility system under this chapter, means a lot or tract, but does not include land appraised for agricultural use, to which drainage service is made available under this subchapter and which discharges into a creek, river, slough, culvert, or other channel that is part of the municipality's drainage utility system. Sections 552.053(c)(2) and (c)(3) do not apply to a municipality described in this subdivision.

(2) "Cost of service" as applied to a drainage system service to any benefitted property means:

(A) the prorated cost of the acquisition, whether by eminent domain or otherwise, of land, rights-of-way, options to purchase land, easements, and interests in land relating to structures, equipment, and facilities used in draining the benefitted property;

(B) the prorated cost of the acquisition, construction,

repair, and maintenance of structures, equipment, and facilities used in draining the benefitted property;

(C) the prorated cost of architectural, engineering, legal, and related services, plans and specifications, studies, surveys, estimates of cost and of revenue, and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of structures, equipment, and facilities used in draining the benefitted property;

(D) the prorated cost of all machinery, equipment, furniture, and facilities necessary or incident to the provision and operation of draining the benefitted property;

(E) the prorated cost of funding and financing charges and interest arising from construction projects and the start-up cost of a drainage facility used in draining the benefitted property;

(F) the prorated cost of debt service and reserve requirements of structures, equipment, and facilities provided by revenue bonds or other drainage revenue-pledge securities or obligations issued by the municipality; and

(G) the administrative costs of a drainage utility system.

(3) "Drainage" means bridges, catch basins, channels, conduits, creeks, culverts, detention ponds, ditches, draws, flumes, pipes, pumps, sloughs, treatment works, and appurtenances to those items, whether natural or artificial, or using force or gravity, that are used to draw off surface water from land, carry the water away, collect, store, or treat the water, or divert the water into natural or artificial watercourses.

(4) "Drainage charge" means:

(A) the levy imposed to recover the cost of the service of the municipality in furnishing drainage for any benefitted property; and

(B) if specifically provided by the governing body of the municipality by ordinance, an amount made in contribution to funding of future drainage system construction by the municipality.

(5) "Drainage system" means the drainage owned or controlled in whole or in part by the municipality and dedicated to the service of benefitted property, including provisions for additions to the system.

(6) "Facilities" means the property, either real, personal, or mixed, that is used in providing drainage and included in the

system.

(7) "Public utility" means a drainage service that is regularly provided by the municipality through municipal property dedicated to that service to the users of benefitted property within the service area and that is based on:

(A) an established schedule of charges;

(B) the use of the police power to implement the service; and

(C) nondiscriminatory, reasonable, and equitable terms as declared under this subchapter.

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor, except as provided by Section 552.0451, may a service area of one municipality extend into the boundaries of another municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

(A) a municipality of more than 500,000 population located within 50 miles of an international border;

(B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Natural Resource Conservation Commission; or

(C) as provided by Section 552.0451.

(9) "User" means the person or entity who owns or occupies a benefitted property.

(10) "Improved lot or tract" means a lot or tract that has a structure or other improvement on it that causes an impervious coverage of the soil under the structure or improvement.

(11) "Wholly sufficient and privately owned drainage system" means land owned and operated by a person other than a municipal drainage utility system the drainage of which does not discharge into a creek, river, slough, culvert, or other channel that is part of a municipal drainage utility system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(d), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, Sec. 1, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 35, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.258, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 633, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 13.22, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 669, Sec. 108, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 520 (S.B. 688), Sec. 1, eff. June 16, 2007.

Renumbered from Local Government Code, Section 402.044 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(5), eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 101, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 198, eff. September 1, 2023.

Sec. 552.045. ADOPTION OF SYSTEM; RULES. (a) Subject to the requirements in Subsections (b) and (c), the governing body of the municipality, by a majority vote of its entire membership, may adopt this subchapter by an ordinance that declares the adoption and that declares the drainage of the municipality to be a public utility.

(b) Before adopting the ordinance, the governing body must find that:

(1) the municipality will establish a schedule of drainage charges against all real property in the proposed service area subject to charges under this subchapter;

(2) the municipality will provide drainage for all real property in the proposed service area on payment of drainage charges, except real property exempted under this subchapter; and

(3) the municipality will offer drainage service on nondiscriminatory, reasonable, and equitable terms.

(c) Before adopting the ordinance, the governing body must publish a notice in a newspaper of general circulation in the municipality stating the time and place of a public hearing to consider the proposed ordinance. The proposed ordinance must be published in full in the notice. The governing body shall publish the notice three times before the date of the hearing. The first publication must occur on or before the 30th day before the date of the hearing.

(d) After passage of the ordinance adopting this subchapter, the municipality may levy a schedule of drainage charges. The municipality must hold a public hearing on the charges before levying the charges. The municipality must give notice of the hearing in the manner provided by Subsection (c). The proposed schedule of drainage charges, as originally adopted or as revised, must be published in the notice.

(e) The municipality by ordinance may adopt and enforce rules as it considers appropriate to operate the drainage utility system. Provided, however, that the prohibitions contained in Section 212.003(a) of the Local Government Code relating to quasi-zoning and other land use regulations in the extraterritorial jurisdiction of a municipality shall apply to any rule or ordinance adopted or enacted by the municipality under this Act, except that rates may be established using impervious cover measurements relating to land use and building size.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(e), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.045 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.0451. EXTENSION OF SERVICE AREA BY CERTAIN MUNICIPALITIES. (a) A municipality with a population of more than 900,000 located in one or more counties with a population of less than 1.5 million as of the 1990 federal census may extend its service area:

(1) into the boundaries of another municipality if:

(A) before the extension water from the municipality to

which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and

(B) the extension is provided for by an interlocal agreement between the municipalities; or

(2) beyond its municipal boundaries into an unincorporated area of its extraterritorial jurisdiction if:

(A) before the extension water from the area to which the service area is to be extended regularly drains into the drainage system of the municipality extending its service area; and

(B) the extension is provided for by an interlocal agreement between the municipality extending its service area and the county containing the area to which the service area is to be extended.

(b) An interlocal agreement under Subsection (a) may:

(1) contain provisions necessary for the operation of a drainage system within the area to which the service area is extended; and

(2) provide for charges for treatment of drainage water and methods of assessment of the charges to an owner of a lot or tract of benefitted property in the area to which the service area is extended.

(c) Charges and methods of assessment agreed to under Subsection (b)(2) must comply with Section 552.047.

Added by Acts 1993, 73rd Leg., ch. 773, Sec. 2, eff. June 18, 1993. Renumbered from Local Government Code, Section 402.0451 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(6), eff. April 1, 2009.

Sec. 552.046. INCORPORATION OF EXISTING FACILITIES. The municipality may incorporate existing drainage facilities, materials, and supplies into the drainage utility system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.046 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1,

2009.

Sec. 552.047. DRAINAGE CHARGES. (a) The governing body of the municipality may charge a lot or tract of benefitted property for drainage service on any basis other than the value of the property, but the basis must be directly related to drainage and the terms of the levy, and any classification of the benefitted properties in the municipality must be nondiscriminatory, equitable, and reasonable.

(b) In setting the schedule of charges for drainage service, the governing body must base its calculations on an inventory of the lots and tracts within the service area. The governing body may use approved tax plats and assessment rolls for that purpose. The governing body may also consider the land use made of the benefitted property. The governing body may consider the size, in area, the number of water meters, and topography of a parcel of benefitted property, in assessing the drainage charge to the property.

(c) The governing body may fix rates for drainage charges in advance and may change, adjust, and readjust the rates and charges for drainage service from time to time. The rates must be equitable for similar services in all areas of the service area.

(d) Unless a person's lot or tract is exempted under this subchapter, the person may not use the drainage system for the lot or tract unless the person pays the full, established, drainage charge.

(e) Users residing within the established service area, but outside the municipality's boundaries, may appeal rates established for drainage charges under Section 13.043(b), Water Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.259, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 633, Sec. 2, eff. Sept. 1, 1997.
Renumbered from Local Government Code, Section 402.047 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.87, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 87, eff. September 1, 2013.

Sec. 552.048. BILLINGS; DEPOSIT NOT REQUIRED. (a) The municipality may bill drainage charges, identified separately, with the municipality's other public utility billings. Any delinquent billings may be collected on the benefitted property under the procedure prescribed by this subchapter.

(b) The municipality may not require a deposit for drainage service as a precondition to accepting surface flow in the drainage utility system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.048 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.049. SEGREGATION OF INCOME. The income of a drainage utility system must be segregated and completely identifiable in municipal accounts. If drainage charges are solely for the cost of service, the municipality may transfer the charges in whole or in part to the municipal general fund, except for any part collected outside municipal boundaries and except for any part pledged to retire any outstanding indebtedness or obligation incurred, or as a reserve for future construction, repair, or maintenance of the drainage system. If the governing body has levied, in the drainage charge, an amount in contribution to the funding of future system improvements, including replacement, new construction, or extension, that amount is not transferable to the general fund.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(f), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.049 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.050. DELINQUENT CHARGES. (a) Any charge due hereunder which is not paid when due may be recovered in an action at

law by the municipality. In addition to any other remedies or penalties provided at law or in this subchapter, failure of a user of the municipal utilities within the service area to pay the charges promptly when due shall subject such user to discontinuance of any utility services provided by the municipality, and municipalities are hereby empowered to enforce this provision against delinquent users. The employees of the utility established in accordance with this subchapter shall have access, at all reasonable times, to any benefitted properties served by the drainage utility for inspection or repair or for the enforcement of the provisions of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991. Renumbered from Local Government Code, Section 402.050 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.051. DRAINAGE REVENUE BONDS. By majority vote of the governing body, the municipality may issue drainage revenue bonds. The municipality may use Chapter 1201, Government Code. In addition, the municipality may pledge income received by contracts for the provision of drainage to other governments or governmental subdivisions located inside or outside the service area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 8.350, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 402.051 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.052. DISCONTINUATION OF DRAINAGE SYSTEM. (a) If, after at least five years of substantially continuous operation of a municipal drainage system, the governing body of the municipality determines that the system should be discontinued, that the powers under this subchapter should be revoked, and that provision for municipal drainage should be made by other revenues, the governing body may adopt an ordinance to that effect after providing notice and

a public hearing as provided by Section 552.045.

(b) If the municipality discontinues a system under Subsection (a), it may not adopt a system under this subchapter for at least five years after the discontinuation.

(c) A discontinuation does not affect a written obligation incurred by the municipality for funding or for the purchase of equipment, materials, or labor for the drainage system that is not then fully paid or otherwise discharged.

(d) A claim for damages based on an alleged failure of the drainage system that is filed with the municipality before the adoption of the ordinance discontinuing the drainage system is not abated by the discontinuation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1230, Sec. 1(g), eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.
Renumbered from Local Government Code, Section 402.052 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(7), eff. April 1, 2009.

Sec. 552.053. EXEMPTIONS. (a) A governmental entity or person described by Subsection (b) and a lot or tract in which the governmental entity or person holds a freehold interest may be exempt from this subchapter and all ordinances, resolutions, and rules adopted under this subchapter.

(b) The following may be exempt:

(1) this state;

(2) a county;

(3) a municipality; or

(4) school districts and open-enrollment charter schools.

(c) The following shall be exempt from the provisions of any rules or ordinances adopted by a municipality pursuant to this Act:

(1) property with proper construction and maintenance of a wholly sufficient and privately owned drainage system;

(2) property held and maintained in its natural state, until such time that the property is developed and all of the public

infrastructure constructed has been accepted by the municipality in which the property is located for maintenance; and

(3) a subdivided lot, until a structure has been built on the lot and a certificate of occupancy has been issued by the municipality in which the property is located.

(d) A municipality may exempt property owned by a religious organization that is exempt from taxation pursuant to Section 11.20, Tax Code, from all or a portion of drainage charges under this subchapter, as the governing body of the municipality considers appropriate.

(d-1) A municipality may exempt property used for cemetery purposes from drainage charges under Section 552.047 if the cemetery is closed to new interments and does not accept new burials.

(e) The following property is exempt from drainage charges under Section 552.047 and all ordinances, resolutions, and rules adopted under this subchapter:

(1) property owned by a county in which a municipality described by Section 552.044(8)(A) is located;

(2) property owned by a school district located wholly or partly in a municipality described by Section 552.044(8)(A); and

(3) property owned by a municipal housing authority of a municipality described by Section 552.044(8)(A).

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 674, Sec. 2, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 773, Sec. 3, eff. June 18, 1993.
Renumbered from Local Government Code, Section 402.053 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 278 (S.B. 874), Sec. 1, eff. May 30, 2009.

Acts 2009, 81st Leg., R.S., Ch. 539 (S.B. 1522), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 16.006, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1230 (S.B. 609), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 161 (H.B. 1662), Sec. 1, eff. May

28, 2015.

Acts 2023, 88th Leg., R.S., Ch. 699 (H.B. 1707), Sec. 3, eff. June 12, 2023.

Sec. 552.054. EFFECT OF SUBCHAPTER. This subchapter does not:

(1) enhance or diminish the authority of a home-rule municipality to establish a drainage utility under Article XI, Section 5, of the Texas Constitution;

(2) preclude a municipality from utilizing revenues, other than drainage utility revenues, for drainage purposes; or

(3) preclude a municipality from imposing impact fees or other charges for drainage authorized by law.

Added by Acts 1989, 71st Leg., ch. 1230, Sec. 1(h), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 852, Sec. 1, eff. June 16, 1991.
Renumbered from Local Government Code, Section 402.054 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

SUBCHAPTER D. IMPROVEMENTS TO WATER AND SEWER SYSTEMS IN CERTAIN MUNICIPALITIES

Sec. 552.061. APPLICATION OF SUBCHAPTER TO CERTAIN MUNICIPALITIES. To exercise authority under this subchapter, a municipality must:

(1) have all or a major part of its territory in a county with a population of more than 25,000; or

(2) be located in a county in which at least 60 percent of the total area is regularly covered by water and in which is located the majority of the total area of a wildlife refuge for species of wildlife on the federal endangered species list.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 83(b), eff. Aug. 28, 1989.
Renumbered from Local Government Code, Section 402.061 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.062. DEFINITIONS. In this subchapter:

(1) "Benefitted property" means a lot or tract to which water or sewer service is made available under this subchapter.

(2) "Cost of improvement" includes engineering expenses, fiscal fees, and other expenses incident to the construction of improvements to the water system, sewer system, or both systems in addition to the other costs of the improvements.

(3) "Sewer system improvements" means the laying of mains, laterals, and extensions and all appliances and necessary adjuncts required for the sanitary disposal of excreta and offal from the area in which the improvements are made but does not include off-site mains, laterals, and extensions and appliances and adjuncts necessary to connect the improvements to the existing sewer system operated by the municipality.

(4) "Water system improvements" means the laying of a water main with gates, tees, crosses, taps, meter boxes, manholes, or extensions, and any other appurtenances required to furnish water for domestic or commercial purposes to the area in which the improvements are constructed, but does not include any off-site appurtenances required to connect the improvements to the existing water system operated by the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.062 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.063. MUNICIPAL AUTHORITY. (a) The municipality may improve a water works system or sanitary sewer system within the municipal boundaries by constructing, extending, enlarging, or reconstructing the system.

(b) The governing body of the municipality may determine the need for improvements, may order the construction of the necessary improvements, and may contract for the improvements.

(c) The governing body may act under this subchapter through resolution, motion, order, or ordinance unless an ordinance is specifically required. The governing body may adopt, by resolution or ordinance, any rules appropriate to the exercise of its powers under this subchapter, including rules relating to notice and hearing

under this subchapter.

(d) The governing body may not assess a special tax or assessment against a railway, street railway, or interurban right-of-way to defray a portion of the cost of the improvements to the municipal water or sanitary sewer system.

(e) This subchapter does not affect the law of this state relating to the duty of a municipality to furnish water or sewer service in its proprietary capacity.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.063 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.064. DECLARATION; COSTS; ESTIMATED ASSESSMENT. (a) In the ordinance or resolution that declares the need for the improvements, the municipality:

(1) must state the general nature and extent of the improvements; and

(2) may direct that detailed plans, specifications, and cost estimates for the improvements be prepared and submitted to the governing body.

(b) The cost of the improvements may be paid wholly by the municipality or partly by the municipality and partly by the benefitted property and its owners. If any part of the cost is to be paid by the benefitted property and its owners, the governing body of the municipality must prepare an estimate of the cost of the improvements. The governing body must prepare the estimate before any improvements are constructed, either before or after bids for the proposed construction are received by the municipality, but before the hearing required under this subchapter is held.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.064 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.065. ASSESSMENT PROVISIONS. (a) By ordinance, the governing body of the municipality may:

(1) assess not more than nine-tenths of the estimated cost of improvements against the benefitted property and the owners of that property;

(2) provide the time, terms, and conditions of payment and defaults of the assessments; and

(3) prescribe the interest rate on the assessment, not to exceed 10 percent a year.

(b) The governing body may issue in the name of the municipality assignable certificates in evidence of assessments levied under this section that declare the lien on the property and the liability of the owners whether named correctly or not. The governing body may set the terms and conditions of those certificates. If a certificate substantially states that the required proceeding relating to improvements referred to in the certificate has been held in compliance with law and that all the prerequisites to the fixing of an assessment lien against the property described in the certificate and the personal liability of the owner of the property have been performed, the certificate is prima facie evidence of all the matters recited in the certificate, and further proof is not required. In a suit on an assessment or reassessment in evidence of which a certificate may be issued under this subchapter, it is sufficient to allege the substance of the recitals in the certificate and that those recitals are true. Further allegations with reference to the proceedings relating to the assessment or reassessment are not necessary.

(c) An assessment against benefitted property under this section is collectable with interest, cost of collection, and reasonable attorney's fees. The assessment is a first and prior lien on the assessed property and the lien takes effect on the date that a notice of proposed improvements is made under Section 552.067. The lien is superior to any other lien or claim except a state, county, school district, or municipal property tax lien. The assessment is a personal liability and charge against the owners of the assessed property on the date on which the lien takes effect, whether or not the owners are named in a notice, instrument, certificate, or ordinance provided for under this subchapter.

(d) The municipality may make assessments against several parcels of benefitted property in one assessment if the parcels are owned by the same person. The municipality may jointly assess benefitted property owned jointly by one or more persons.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.065 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(8), eff. April 1, 2009.

Sec. 552.066. APPORTIONMENT OF ASSESSMENTS. (a) Except as provided by Subsection (c), the municipality shall separately compute the cost of the water or sewer improvements and shall apportion the part of the cost of those improvements that may be assessed against the benefitted property and the owners of the property, among the parcels of the benefitted property and the owners, in accordance with the front foot rule.

(b) Under the front foot rule, the governing body of the municipality shall assess each parcel of benefitted property according to the number of lineal feet of the parcel that abuts on a public street, irrespective of the location of improvements constructed under this subchapter relating to that parcel if the improvements provide water or sewer service to the assessed parcel. The governing body shall assess a corner lot based on the shorter side of the lot that abuts on a public street.

(c) If, in the opinion of the governing body, application of that rule would result in injustice or inequality in particular cases, the governing body shall apportion and assess those costs in the proportion it considers just and equitable, taking into account the special benefits in enhanced value to be received by those owners, and shall adjust the apportionment so as to produce a substantial equality of benefits received and burdens imposed.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.066 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.067. NOTICE OF PROPOSED IMPROVEMENTS; LIEN. (a) If the governing body of the municipality proposes to levy or assess any

of the cost of improvements against the benefitted property as provided by Section 552.065, the governing body may file a notice, signed on behalf of the municipality by the municipal clerk, secretary, mayor, or other officer performing the duties of those officers, with the county clerk of the county in which the property is located. The notice must substantially show that the governing body has determined by order, directive, or otherwise that water or sewer system improvements are necessary, identify the required improvements by location or otherwise, state that a portion of the cost of the improvements is to be or has been specially assessed as a lien against the benefitted property, and describe that property. One notice may contain any number of systems or improvements.

(b) It is not necessary that a notice under this section give details or be sworn to or acknowledged. The governing body may file the notice at any time. The county clerk with whom the notice is filed shall record the notice in the records of mortgages or deeds of trust and shall index it in the name of the municipality and in the name or other designation of the water or sewer system to which the notice relates.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.067 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(9), eff. April 1, 2009.

Sec. 552.068. EXEMPTIONS; PERSONAL LIABILITY FOR ASSESSMENT. (a) All property, including church and school property, is subject to a tax or assessment authorized for local improvements under this subchapter. However, this subchapter does not authorize the municipality or its governing body to fix a lien against any interest in property that is exempt from the lien of a special assessment for local improvements under the constitution of this state at the time the lien takes effect. The owner of such a property is personally liable for any assessment made in connection with the improvement, and the municipality may refuse water or sewer service to the owner until the owner pays the municipality the assessment made against the

property or an amount equal to the assessment made against private property of equal or comparable size. The fact that an ordered improvement is omitted as to property, an interest in which is exempt, does not invalidate the lien or liability of assessment made against any other property.

(b) The municipality may enforce a lien created against any property and the personal liability of the owner of the property by an action in a court having jurisdiction or by sale of the assessed property in the manner provided by law or charter in effect in that municipality for the sale of property for municipal property taxes.

(c) As an aid to enforcement of the liability imposed by the assessment, the municipality may refuse to connect or may disconnect water or sewer service to a parcel of benefitted property during the period in which there is a default in the payment of any amount assessed under this subchapter against the parcel or its owner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.068 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.069. NOTICE AND HEARING REQUIREMENTS; APPEAL. (a) The municipality may not make an assessment under this subchapter against any benefitted property until it has given notice and provided an opportunity for a hearing as provided by this section. The municipality may not make an assessment against any benefitted property or the owners of the property in excess of the enhancement of value of the property caused by the improvements as determined by the hearing.

(b) The municipality shall deliver the notice required under this section in writing by mailing the notice to the address of the owner of the property or to the person who last paid taxes on the property as determined by the municipal tax rolls. The municipality must mail the notice before the 10th day before the date set for the hearing and must publish the notice at least three times in a newspaper of general circulation in the municipality in which the special assessment tax is to be imposed. The municipality shall publish the first notice before the 10th day before the date set for the hearing. Proof of the mailing and publication constitutes proof

that all the notice requirements of this section have been met.

(c) A notice is sufficient, valid, and binding on all persons who own or claim benefitted property or an interest in that property if the notice:

(1) generally describes the nature of the improvements for which the municipality proposes to make assessments and to which the notice relates;

(2) describes the water or sanitary sewer system to be improved or the portions of that system to which the improvements relate;

(3) states the estimated amount per front foot proposed to be assessed against benefitted property or the owners of the property;

(4) describes the property benefitted by each system or portion of system with reference to which the required hearing is to be held;

(5) states the estimated total cost of the improvements on each system or portion of a system; and

(6) states the time and place of the hearing.

(d) The governing body of the municipality shall conduct the hearing. Each person who owns or claims benefitted property or an interest in that property is entitled to be heard on any matter to which a hearing is a constitutional prerequisite to the validity of an assessment authorized by this subchapter. Such a person may contest the amount of the proposed assessment, the lien and liability for the lien, the special benefits claimed for the property to be improved and its owner by means of improvements for which assessments are to be levied, and the accuracy, sufficiency, regularity, and validity of the proceedings and any contract in connection with the improvements and proposed assessments. The governing body may correct any deficiencies and may determine the amounts of the assessments and other necessary matters. By ordinance, the municipality may close the hearing and may levy the assessment for improvements before, during, or after the construction of those improvements. The municipality may not make any part of such an assessment mature before the acceptance by the municipality of the improvements for which the assessment is levied.

(e) A person who owns or claims assessed property or an interest in that property may appeal the assessment based on the amount of the assessment; on any inaccuracy, irregularity,

invalidity, or insufficiency of the proceedings or contract relating to the assessment; or on anything that is not within the discretion of the governing body of the municipality, by bringing suit in a court of competent jurisdiction within 15 days after the date the assessment is levied. A claimant who does not bring suit within that time waives the right to contest any matter that might have been presented at the hearing and is barred and estopped from contesting the assessment or the proceedings and contract relating to the assessment in any manner. The only defense to an assessment in a suit brought to enforce the assessment is failure to publish notice as required by this section or that the assessment exceeds the amount of the estimate. The words or acts of any municipal officer or employee, including a member of the governing body, do not affect the force and effect of this subchapter, except for official actions of the governing body as shown in its written proceedings and records.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.069 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.070. CHANGE; ABANDONMENT. (a) Except as limited by this section, the governing body of the municipality may change plans, methods, contracts, or other proceedings relating to improvements.

(b) The governing body may not make a change that substantially affects the nature or quality of the improvements unless the governing body, by a two-thirds vote, determines that it is impractical to proceed with the improvements as proposed.

(c) If a substantial change is made after a hearing has been ordered or held, a new cost estimate and a new hearing with proper notices is required unless the improvement is totally abandoned.

(d) A change in or an abandonment of improvements requires the consent of any person who has contracted with the municipality for the construction of the improvements.

(e) If improvements are abandoned, the municipality shall pass an ordinance that cancels any assessments already levied for the improvements and that cancels any other proceedings relating to those improvements.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.070 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.071. CORRECTIONS; REASSESSMENTS. (a) If an assessment is determined to be invalid or unenforceable, the governing body of the municipality may correct any deficiency in the proceedings relating to the assessment or any mistake or irregularity in connection with the assessment. The governing body may make and levy reassessments after a notice and hearing that comply as nearly as possible with the requirements for the original notice and hearing, and subject to the provisions relating to special benefits. A recital in a certificate issued as evidence of a reassessment has the same force as a recital in a certificate related to an original assessment.

(b) A person who owns or claims an interest in property against which a reassessment is levied has the same right of appeal provided under this subchapter for an original assessment. If the person does not appeal within 15 days after the date of the hearing relating to the reassessment, the provisions of Section 552.069 relating to waiver, bar, estoppel, and defense apply.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.071 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(10), eff. April 1, 2009.

Sec. 552.072. JOINT PROCEEDINGS. The municipality may make the improvements and assessments provided under this subchapter in conjunction with the street improvements and assessments provided for in Chapter 313, Transportation Code, through a joint proceeding. If a joint proceeding is conducted, only one hearing is required, and the procedure required under this subchapter controls. The municipality may issue a single assessment certificate against a

parcel of benefitted property and its owner in evidence of the total assessment made for all improvements made under this subchapter, including street improvements made in a joint proceeding, if the amount assessed for each class of improvements is set out separately and distinctly in the ordinance under which the assessment is made.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.227, eff. Sept. 1, 1997. Renumbered from Local Government Code, Section 402.072 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.073. RESTRICTIONS IN CERTAIN COUNTIES. (a) In this section, "subdivided or platted property" means property that:

(1) has been platted under Chapter 212; or

(2) has been subdivided or platted by a map or plat that is filed for record in the office of any county clerk and that contains a dedication of the property for public use for a street or alley right-of-way or for a public utility easement.

(b) A municipality located in a county with a population of less than 700,000 may not make an assessment or other charge for the construction of improvements to a water or sewer system against any property or property owner, regardless of who initiates the request for the construction, unless the property is located in an area that has been subdivided or platted for at least the 10 years preceding the date of the assessment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 402.073 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.074. AUTHORIZED INVESTMENT. A certificate of special assessment issued under this subchapter, including a certificate issued under a joint proceeding under Section 552.072, is a legal and authorized investment for a bank, savings bank, trust company, savings and loan association, insurance company, sinking fund of a municipality, county, school district, or other political subdivision of this state, and for all other public funds of this state or an

agency of this state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.074 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(11), eff. April 1, 2009.

Sec. 552.075. HOME-RULE MUNICIPALITY. A home-rule municipality to which this subchapter applies may adopt plans and specifications for improvements as provided by this subchapter and may pay in cash to the contractor who is the successful bidder that part of the cost assessed against the owner and the benefitted property. The municipality may reimburse itself by levying an assessment against the benefitted property and its owner after notice and hearing as provided by this subchapter. The municipality may reimburse itself up to the amount of the enhancement in value represented by the benefits and as permitted under this subchapter and may issue assignable certificates in favor of the municipality for the assessment. The certificates are enforceable in the manner provided by Section 552.065. The municipality may use its own forces to make the improvements if the work may be performed more expeditiously and economically in that manner.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.075 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(12), eff. April 1, 2009.

SUBCHAPTER E. CONSTRUCTION OF SANITARY SEWERS IN CERTAIN MUNICIPALITIES

Sec. 552.091. APPLICATION OF SUBCHAPTER TO CERTAIN MUNICIPALITIES. To exercise authority under this subchapter, a municipality must have:

(1) a population of less than 15,000;
(2) levied the maximum rate of tax allowed by law; and
(3) adopted Subchapters A through C, Chapter 312, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 12, eff. Sept. 1, 1995. Renumbered from Local Government Code, Section 402.091 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.092. CONSTRUCTION OF SANITARY SEWERS. (a) The governing body of a municipality may order the construction and installation of sanitary sewers if it is presented with a petition that is signed by at least two-thirds of the owners of property abutting the proposed construction.

(b) A municipality's authority under this subchapter is subject to the same provisions relating to assessments, hearings, and other matters that apply to a highway improvement ordered under Subchapters A through C, Chapter 312, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 12, eff. Sept. 1, 1995. Renumbered from Local Government Code, Section 402.092 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

SUBCHAPTER F. MUNICIPAL WATER CORPORATIONS AND MUNICIPAL WATER SYSTEMS

Sec. 552.101. MUNICIPAL WATER CONTRACTS. The governing body of a municipality in which there is a water corporation may contract with the corporation to supply water to a street, alley, lot, square, or public place in a municipality.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 3, eff. Sept. 1, 1997. Renumbered from Local Government Code, Section 402.101 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.102. EMINENT DOMAIN BY MUNICIPAL SEWER PROVIDERS. (a)

A corporation incorporated in this state for the purpose of owning, constructing, or maintaining a sewer system in a municipality may by eminent domain condemn private property to:

(1) construct and maintain sewer pipes, mains and laterals, and connections; and

(2) maintain vats, filtration pipes, and other pipes for the final disposition of sewage.

(b) A corporation may exercise a power described by Subsection (a) only if:

(1) the use of private property is necessary for the successful operation of the sewer system; and

(2) the sewer system is beneficial to the public use, health, or convenience.

(c) The power of eminent domain may not be used under this section in the boundaries of a municipality unless permitted or required by the municipality granting a franchise to the corporation seeking the right of condemnation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 3, eff. Sept. 1, 1997. Renumbered from Local Government Code, Section 402.102 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.103. RIGHTS OF WATER CORPORATION PROVIDING SERVICE TO MUNICIPALITY; EMINENT DOMAIN. (a) A water corporation in a municipality may sell and furnish water required by a municipality for a public or private building or for any other purpose.

(b) A water corporation may lay water system pipes, mains, or conductors through a street, alley, lane, or square of a municipality if the governing body of the municipality consents, subject to any regulation by the governing body.

(c) If necessary to preserve the public health, a water corporation incorporated under state law to construct waterworks or to furnish water supply to a municipality may exercise the power of eminent domain to condemn private property necessary to construct a supply reservoir or standpipe for water work.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 3, eff. Sept. 1, 1997. Renumbered from Local Government Code, Section 402.103 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1,

2009.

Sec. 552.104. LOCATION OF WATER LINES OUTSIDE MUNICIPAL BOUNDARIES. (a) A water corporation or municipality may lay water system pipes, mains, conductors, or other fixtures through, under, along, across, or over a public road, a public street, or a public waterway not in a municipality in a manner that does not inconvenience the public using the road, street, or waterway.

(b) A water corporation or municipality proposing under this subchapter to build a water line along the right-of-way of a state highway or county road not in a municipality shall give notice of the proposal to:

(1) the Texas Transportation Commission, if the proposal relates to a state highway; or

(2) the commissioners court of the county if the proposal relates to a county road.

(c) On receipt of notice under Subsection (b), the Texas Transportation Commission or commissioners court may designate the location in the right-of-way where the corporation or municipality may construct the water line.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 3, eff. Sept. 1, 1997. Renumbered from Local Government Code, Section 402.104 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.105. RELOCATION OF WATER LINE TO ALLOW CHANGE TO TRAFFIC LANE. (a) The authority of the Texas Transportation Commission under this section is limited to a water line on a state highway not in a municipality. The authority of the commissioners court under this section is limited to a water line on a county road not in a municipality.

(b) The Texas Transportation Commission or the commissioners court of a county may require a water corporation or municipality to relocate the corporation's or municipality's water line at the corporation's or municipality's own expense to allow the widening or other changing of a traffic lane.

(c) To impose a requirement under this section, the Texas

Transportation Commission or the commissioners court, as appropriate, must give to the water corporation or municipality 30 days' written notice of the requirement. The notice must identify the water line to be relocated and indicate the location on the new right-of-way where the corporation or municipality may place the line.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 3, eff. Sept. 1, 1997.
Renumbered from Local Government Code, Section 402.105 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

SUBCHAPTER G. MANAGEMENT OF CERTAIN ENCUMBERED MUNICIPAL ELECTRIC UTILITY SYSTEMS

Sec. 552.121. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a home-rule municipality that owns an electric utility system, that by ordinance or charter elects to have the management and control of the utility system governed by a board of trustees, and that:

(1) has outstanding obligations payable in whole or in part from and secured by a lien on and pledge of the net revenue of the system; or

(2) issues obligations that:

(A) are payable in whole or in part from and secured by a lien on and pledge of the net revenue of the system; and

(B) are approved by the attorney general.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 13, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.106(a), eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 402.121 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.122. TRANSFER OF MANAGEMENT AND CONTROL OF ELECTRIC UTILITY SYSTEM. (a) A municipality by ordinance may transfer management and control of the municipality's electric utility system to a board of trustees appointed by the municipality's governing body.

(b) The municipality by ordinance shall prescribe:

(1) the number of members; and

(2) the qualifications for appointment to the board.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 13, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.106(a), eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 402.122 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.123. AUTHORITY OF BOARD OF TRUSTEES. (a) The municipality by ordinance may vest in the board the power to establish rates and related terms for its municipally owned electric utility system.

(b) The municipality may delegate to the board of trustees all or part of the municipality's authority to:

(1) exercise the power of eminent domain with respect to property that will be used by, useful to, or required by the utility system; and

(2) issue obligations in the name of the municipality to acquire or construct an improvement to or extension of the utility system or to repair the system.

(c) The municipality may authorize the board of trustees to issue obligations under Subsection (b)(2) without the prior approval of the municipality. The obligations must be payable solely from the net revenue of the utility system.

(d) The municipality may not delegate to the board of trustees the authority to:

(1) levy or collect ad valorem taxes; or

(2) issue obligations that are payable in whole or in part from ad valorem taxes.

(e) The municipality and the board of trustees may jointly provide for the issuance of obligations payable from ad valorem taxes and the utility system's net revenue by adopting identical provisions in an ordinance or resolution, as appropriate.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 13, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.106(a), eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 402.123 by Acts 2007,

80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.124. EFFECT OF PREVIOUSLY ISSUED BONDS. (a) A municipality or an existing board of trustees may not exercise a power provided by this subchapter in relation to an obligation issued before June 14, 1989, unless the ordinance authorizing the issuance of the obligation or the deed of trust or trust indenture securing payment of the obligation specifically allows the municipality or board to exercise the power. The authority of the municipality or board in relation to that obligation is subject to any restriction or covenant contained in the ordinance, deed of trust, or trust indenture.

(b) The board of trustees may authorize, issue, and sell additional obligations on a parity with an obligation issued before June 14, 1989, if the ordinance, deed of trust, or trust indenture provides for the issuance of the obligations. The obligations must be payable from the revenue pledged to pay the previous obligation and must be secured by pledges and liens on a parity with the pledge securing the previous obligation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 13, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 402.124 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

SUBCHAPTER H. MANAGEMENT OF CERTAIN ENCUMBERED MUNICIPAL WATER SYSTEMS

Sec. 552.141. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a home-rule municipality that owns or may own a water, wastewater, storm water, or drainage utility system, by ordinance or charter elects to have the management and control of two or more of those utility systems governed by this subchapter, and:

(1) has outstanding obligations payable solely from and secured by a lien on and pledge of the net revenue of one or more of those systems; or

(2) issues obligations that are payable solely from and secured by a lien on and pledge of the net revenue of one or more of

those systems.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 13, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 402.141 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1003 (H.B. 2207), Sec. 2, eff. June 17, 2011.

Sec. 552.142. TRANSFER OF MANAGEMENT AND CONTROL OF UTILITY SYSTEM. (a) A municipality by ordinance may transfer management and control of two or more of its water, wastewater, storm water, or drainage systems to a board of trustees. A municipality by ordinance may grant the board authority to set rates and related terms for the systems.

(b) The board of trustees must consist of at least seven members, one of whom must be the presiding officer of the governing body of the municipality.

(c) The ordinance transferring management and control must prescribe the number, qualifications, terms of office, succession, compensation, powers, and duties of the members of the board of trustees.

(d) On any matter not covered by the ordinance, the board is governed by the laws and rules governing the governing body of the municipality, to the extent applicable.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 13, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 402.142 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1003 (H.B. 2207), Sec. 3, eff. June 17, 2011.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 552.901. RELOCATION OR REPLACEMENT OF WATER OR SEWER LATERALS. (a) By ordinance, a municipality may contract for the relocation or replacement of a sanitation sewer lateral or water

lateral that serves a residential structure on private property to connect the lateral to a new, renovated, or rebuilt sanitation main or water main constructed by the municipality. The municipality shall assess the cost of the relocation or replacement of the lateral against the property on which the lateral is located. A lien attaches to the property for the cost of the relocation or replacement.

(b) Before a municipality contracts under Subsection (a), the municipality must obtain the property owner's written consent to the contract, to the relocation or replacement of the sewer lateral or water lateral, and to the assessment. The written consent must state that the person giving the consent is the property owner or the authorized representative of the property owner, must state the owner's address, and must state that:

(1) the consent is given freely;

(2) the owner understands that as a result of the assessment a lien attaches to the property for the total cost of the relocation or replacement;

(3) the municipality will not pay any part of the relocation or replacement cost; and

(4) the owner has five years from the date the work is completed to repay the cost to the municipality.

(c) Before the contract for the work is made but after the municipality has received bids for the work, the municipality must give notice to the property owner. The notice must state the bid price accepted by the municipality for the completion of the work and that the contract price may be increased by not more than 10 percent because of changes without the written consent of the owner. The notice shall be given to the owner by personal delivery, or by depositing the notice in the United States mail, postage prepaid, addressed to the owner at the address in the owner's written consent.

(d) The municipality shall contract for the performance of the work in accordance with the law applicable to public improvements before work begins on the relocation or replacement of a lateral and after the municipality files the written consent of the property owner with the municipal clerk or municipal secretary. The contract may be changed as necessary for the successful completion of the work, but the contract price may not be increased by more than 10 percent because of those changes without the written consent of the owner as provided by Subsection (c).

(e) Unless the owner waives the right to reject the contract as provided by Subsection (f) on or before the 45th day after the date the notice is mailed or delivered, the owner may exercise that right by notifying the municipal clerk or municipal secretary of the withdrawal of consent. If the owner fails to withdraw consent during the 45-day period, the municipality may contract for the performance of the work, the work may proceed, and the assessment may be made without further consent by the owner. After the expiration of the 45-day period, the owner may not withdraw the consent.

(f) The owner may waive the right to reject the contract by filing a sworn affidavit to that effect with the municipal clerk or municipal secretary. After the affidavit is filed, the municipality may contract for the performance of the work, the work may proceed, and the assessment may be made without further consent by the owner.

(g) On receipt by the municipality of a certificate from the contractor certifying that all work has been completed in accordance with the contract, and on a finding by the municipality that the work has been properly completed in accordance with the applicable codes and ordinances of the municipality, the municipality may pay the contractor the cost of the completed work.

(h) When payment is made to the contractor, the municipality shall issue a certificate certifying that the work has been completed and that payment has been made under the contract. The municipality shall file the certificate with the county clerk of the county in which the property is located and shall deliver a copy of the certificate to the property owner.

(i) The property owner, within five years after the date of the issuance of the certificate under Subsection (h), must pay the municipality the amount that the municipality paid for the completed work as evidenced by the certificate, plus simple interest in an amount not to exceed 10 percent a year as set by the governing body of the municipality. On payment of the principal amount and accrued interest, the municipality shall issue a release of the assessment and lien. The release may be filed for record as provided by law.

(j) If the property owner does not pay the assessment during the five-year period, the municipality may enforce the lien on the property in the same manner in which it is authorized by law to enforce the lien for a paving or other assessment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Renumbered from Local Government Code, Section 402.901 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.902. OPERATION OF CERTAIN ELECTRIC LIGHT AND POWER SYSTEMS BY HOME-RULE MUNICIPALITIES. (a) If a home-rule municipality, whose charter authorizes it to furnish electric light and power service inside and outside the municipal boundaries, owned and operated a municipal electric system as of July 4, 1949, and on that date owned and operated a rural electric system as a unit separate from the municipal system, and if the governing body of the municipality set up a rural electric system as a separate system, the bonds, mortgages, warrants, or other evidences of indebtedness are obligations of the system which they benefitted. The obligations of one system do not apply to or affect the other system.

(b) Any issued obligation of a system is not a debt of the municipality but is only a charge on the properties of the system and may not be considered in determining the ability of the municipality to issue bonds for any purpose authorized by law.

(c) The expense of operation and maintenance of each system is a first lien and charge against the income of the system. Operation and maintenance expenses include salaries, labor, repairs, cost of electrical energy, interest, repairs or extensions necessary for efficient service, and other proper operation and maintenance expenses.

(d) The governing body of the municipality shall charge and collect for each service a rate sufficient to:

(1) pay operation and maintenance expenses, depreciation, replacement, improvement, and interest;

(2) pay the principal of and interest on obligations issued against each system separately; and

(3) maintain any reserves required by the ordinance authorizing the issuance of the obligations.

(e) None of the income of a system may be used to pay any other debt, expense, or operation until the secured indebtedness is finally paid.

(f) Each evidence of indebtedness issued by a municipality to which this section applies must contain the clause: "The holder of the instrument hereof shall never have the right to demand payment of

this obligation out of any funds raised or to be raised by taxation." The evidence of indebtedness must be payable not more than 40 years from the date of the instrument and may bear interest at a rate not to exceed five percent a year. The instrument must be signed by the mayor and countersigned by the municipal secretary. Facsimile signatures of those officers may be printed on interest coupons attached to the instrument.

(g) A municipality to which this section applies is not required to submit an instrument issued against either of the systems to any public official of this state. The only approval required or authorized by this section is that of the governing body of the municipality. An obligation issued under this section is not contestable after issuance and delivery except for fraud and forgery.

(h) This section does not authorize a municipality to construct facilities or furnish electric power and energy to an area served with central station electric service as of July 4, 1949.

(i) An obligation issued under this section is exempt from state or local taxation.

(j) After a finding that a merger is in the best interests of its separately owned rural electric system and its municipal electric system, the governing body of a municipality to which this section applies may by ordinance order a merger of the systems. After the merger, all laws relating to the municipal electric system, including laws relating to authorization and issuance of bonds, apply to the merged system.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 402.902 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.903. AGREEMENT WITH CONSERVATION AND RECLAMATION DISTRICT. (a) A municipality may agree or contract with a conservation and reclamation district created under Article XVI, Section 59, of the Texas Constitution for the supply and purchase of hydroelectric power or energy. The agreement or contract shall be for a period and contain the terms and conditions agreed on by the parties. The agreement or contract is a valid and binding municipal obligation that is enforceable as provided by its terms.

(b) The agreement or contract may provide for the municipality to pay for the hydroelectric power or energy whether or not the power or energy is produced or delivered to the municipality. The agreement or contract may include provisions relating to acquiring, constructing, and equipping generation and transmission facilities to supply the power and energy, provisions relating to financing the costs of the generation and transmission facilities, and provisions that the agreement or contract continues in effect while any obligations specified in the agreement or contract, including refunding obligations, remain outstanding. The provisions shall be as specified in the agreement or contract.

(c) If provided in the agreement or contract, the amounts required to be paid by the municipality to the district under the agreement or contract are an operating expense of the electric system, or combined utility system of which the electric system is a part, in the manner provided for other operating and maintenance expenses of the electric system or combined utility system as provided by Section 1502.056, Government Code.

(d) Notwithstanding any express or implied limitation on municipal power or purposes under any general or special law, charter provision, or ordinance, this section is authority for the performance of an agreement or contract entered into under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 23.06, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.351, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 402.903 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.904. LEASE OF NATURAL GAS DISTRIBUTION SYSTEM BY CERTAIN MUNICIPALITIES. (a) A municipality that owns its natural gas distribution system and that has conducted an election before July 13, 1959, that resulted in a vote to sell the system may, by majority vote of the governing body, enter a contract to lease the system to any person. The municipality may also grant an option to the lessee or other person to purchase the system at a price specified or determined in the manner provided by the lease or option

contract.

(b) If the municipality has any outstanding bonds that are payable from the revenues of the system, unless the municipality provides for the full payment of the bonds with interest to their maturities or to the date the bonds are to be redeemed before maturity, it may not enter a lease or option contract except under the conditions specified in the ordinance that authorized the bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 402.904 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.905. OPERATION OF CABLE TV SYSTEMS BY GENERAL-LAW MUNICIPALITIES. A general-law municipality may own and/or operate a cable TV system.

Added by Acts 1995, 74th Leg., ch. 674, Sec. 1, eff. Aug. 28, 1995.
Renumbered from Local Government Code, Section 402.905 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.906. MUNICIPAL UTILITY PLANTS. (a) This section applies only to a general-law municipality that owns a utility plant that provides utility service.

(b) The governing body of a municipality may:

(1) by ordinance regulate the rates and compensation charged the public by the municipality for utility service;

(2) establish and operate a plant to manufacture, generate, or produce utility service; and

(3) sell and distribute utility service to the public in the municipality's boundaries.

(c) In this section, "utility service" means the provision of water, sewer service, gas, electric energy, or a substance used for lighting, heat, or power.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 4, eff. Sept. 1, 1997.
Renumbered from Local Government Code, Section 402.906 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1,

2009.

Sec. 552.907. CONSTRUCTION OF WATER OR WASTEWATER IMPROVEMENTS TO PRESERVE WATER QUALITY AQUIFER. (a) This section applies only to territory located in a municipality or in the extraterritorial jurisdiction of a municipality and located over the recharge zone of an aquifer that provides all or part of the water supply of the municipality.

(b) To preserve the quality of the aquifer, the municipality or a person with whom the municipality contracts may:

(1) construct a sanitation sewer lateral or water lateral that serves a residential structure on private property to connect the lateral to a new, renovated, or rebuilt sanitation main or water main constructed by or for the municipality; and

(2) take any action necessary to remedy aquifer pollution problems caused by septic tanks or septic systems located on the property, including filling in the tank or system or removing the tank or system.

(c) The municipality shall assess the cost of the water or wastewater improvements under Subsection (b)(1) or Subsections (b)(1) and (b)(2), as applicable, against the property on which the lateral is located. A lien attaches to the property for the cost of the improvements.

(d) Before a municipality acts under Subsection (b), the municipality must give notice to the property owner and obtain the property owner's written consent to the activity to be performed and to the amount of the assessment.

(e) The notice provided under Subsection (d) must state the estimated cost to the property owner of the improvements and state that the cost may be increased by not more than 10 percent because of changes without the written consent of the owner. The municipality shall give the notice to the owner by personal delivery or by depositing the notice in the United States mail with postage prepaid.

(f) To be valid, the owner's written consent must:

(1) state that the person giving the consent is the property owner or the authorized representative of the property owner;

(2) state the owner's address; and

(3) state that:

(A) the consent is given freely;

(B) the owner understands that as a result of the assessment a lien attaches to the property for the total cost of the improvements;

(C) the municipality will not pay any part of the cost of the improvements; and

(D) the owner will repay the cost to the municipality on or before the fifth anniversary of the date the municipality certifies the work is completed.

(g) The municipality shall file the written consent of the property owner with the municipal clerk or secretary.

(h) If the municipality contracts with another person to perform the work, the contract must be awarded in compliance with the competitive bidding requirements applicable to the municipality. The provisions of the contract must comply with any law applicable to the construction of public improvements by the municipality. The contract may be changed as necessary for the successful completion of the work, but the contract price may not be increased by more than 10 percent because of those changes without the written consent of the owner as provided by Subsection (e).

(i) When the work is completed, the municipality shall issue a certificate certifying that the work has been completed and the cost of the improvements. The municipality shall file the certificate with the county clerk of the county in which the property is located and shall deliver a copy of the certificate to the property owner. The certificate must contain the legal description of the land and name of the property owner. The lien created pursuant to this section shall attach and arise when the certificate is recorded in the real property records. The lien is binding on subsequent grantees, lienholders, or other transferees of an interest in the property who acquire such interest after the recording of the certificate.

(j) The property owner, on or before the fifth anniversary of the date of the issuance of the certificate, must pay the municipality the amount that the completed work cost the municipality as evidenced by the certificate, plus simple interest in an amount not to exceed 10 percent a year as set by the governing body of the municipality. On payment of the principal amount and accrued interest, the municipality shall issue a release of the assessment and lien. The release may be filed for record as provided by law.

(k) If the property owner does not pay the assessment during the five-year period, the municipality may enforce the lien on the property in the same manner in which it is authorized by law to enforce the lien for a paving or other assessment.

Added by Acts 1997, 75th Leg., ch. 171, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 402.906 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(87), eff. Sept. 1, 1999.
Renumbered from Local Government Code, Section 402.907 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.909. PROHIBITED EMPLOYMENT OF OR CONTRACTING WITH FORMER TRUSTEE OR BOARD MEMBER. (a) This section applies to a municipality that creates a board of trustees or other board to manage and control a water, wastewater, storm water, or drainage utility system that the municipality owns.

(b) The municipality or a board of trustees or other board described by Subsection (a) may not employ or contract with an individual who was a member of the board before the second anniversary of the date the individual ceased to be a member of the board.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 38, eff. June 17, 2001.
Renumbered from Local Government Code, Section 402.909 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Sec. 552.910. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS FOR COLLECTION OF PAST DUE UTILITY OR SOLID WASTE DISPOSAL SERVICE FEES. (a) A municipality that operates a utility system, as defined by Section 552.001, or provides solid waste disposal services may enter an agreement for the collection of unpaid utility charges or solid waste disposal services fees with:

(1) another municipality that operates a utility system;

(2) a county or public agency that provides solid waste disposal services; or

(3) another political subdivision acting on behalf of a municipality, county, or public agency to assist in the collection of

unpaid utility charges or solid waste disposal fees.

(b) The agreement may provide that a municipality:

(1) may refuse to provide utility service to a person if the person is past due on utility charges or solid waste disposal services fees owed to another party to the agreement; or

(2) may collect an amount equal to the past due utility charges or solid waste disposal services fees owed to another party to the agreement plus a service charge and provide the utility service the person requests.

(c) The agreement shall provide for:

(1) the confidentiality of a person's utility or solid waste disposal account information and the prevention of disclosure to a person or other entity that is not a party to the agreement; and

(2) the apportionment of any past due charges, fees, and service charges authorized by Subsection (b)(2) between the collecting entity and the entity to which the fees are owed.

Added by Acts 2003, 78th Leg., ch. 271, Sec. 1, eff. June 18, 2003. Renumbered from Local Government Code, Section 402.910 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(a)(2), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(13), eff. April 1, 2009.

Sec. 552.911. DUTIES OF WATER SERVICE PROVIDER TO AN AREA SERVED BY SEWER SERVICE OF CERTAIN POLITICAL SUBDIVISIONS. (a) This section applies only to an area:

(1) that is located in a county that has a population of more than 1.3 million; and

(2) in which a customer's sewer service is provided by a municipality or conservation and reclamation district that also provides water service to other customers and the same customer's water service is provided by another entity.

(b) For each person the water service provider serves in an area to which this section applies, the water service provider shall provide the municipality or district with any relevant customer information so that the municipality or district may bill users of

the sewer service directly and verify the water consumption of users. Relevant customer information provided under this section includes the name, address, and telephone number of the customer of the water service provider, the monthly meter readings of the customer, monthly consumption information, including any billing adjustments, and certain meter information, such as brand, model, age, and location.

(c) The municipality or district shall reimburse the water service provider for its reasonable and actual incremental costs for providing services to the municipality or district under this section. Incremental costs are limited to only those costs that are in addition to the water service provider's costs in providing its services to its customers, and those costs must be consistent with the costs incurred by other water utility providers. Only if requested by the wastewater provider, the water service provider must provide the municipality or district with documentation certified by a certified public accountant of the reasonable and actual incremental costs for providing services to the municipality or district under this section.

(d) A municipality or conservation and reclamation district may provide written notice to a person to whom the municipality's or district's sewer service system provides service if the person has failed to pay for the service for more than 90 days. The notice must state the past due amount owed and the deadline by which the past due amount must be paid or the person will lose water service. The notice may be sent by mail or hand-delivered to the location at which the sewer service is provided.

(e) The municipality or district may notify the water service provider of a person who fails to make timely payment after the person receives notice under Subsection (d). The notice must indicate the number of days the person has failed to pay for sewer service and the total amount past due. On receipt of the notice, the water service provider shall discontinue water service to the person.

(f) This section does not apply to a nonprofit water supply or sewer service corporation created under Chapter 67, Water Code, or a district created under Chapter 65, Water Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.32, eff. September 1, 2007.
Transferred from Local Government Code, Section 402.911 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(68), eff. September

1, 2009.

Sec. 552.912. CERTAIN DAMAGES CAUSED BY SEWAGE BACKUP. (a) A municipality or a river authority, other than a river authority listed in Subsection (c), may pay actual property damages caused by the backup of the municipality's or river authority's sanitary sewer system regardless of whether the municipality or river authority would be liable for the damages under Chapter 101, Civil Practice and Remedies Code.

(b) This section does not waive governmental immunity from suit or liability.

(c) This section does not apply to the Trinity River Authority, the San Jacinto River Authority, the Sabine River Authority, or the Lower Neches Valley River Authority.

Added by Acts 2009, 81st Leg., R.S., Ch. 1119 (H.B. 1174), Sec. 1, eff. June 19, 2009.

Sec. 552.913. COMBINED HEATING AND POWER SYSTEMS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a home-rule municipality that:

(1) has a population of more than 100,000;

(2) owns and operates an electric utility that is a member of a municipal power agency; and

(3) is located in a county adjacent to a county with a population of more than 2.5 million.

(b) To the extent this section conflicts with a municipal charter provision, this section controls.

(c) A municipality may buy, own, construct, maintain, and operate a combined heating and power system or plant and related infrastructure.

(d) The governing body of the municipality may designate a combined heating and power economic development district that includes territory that:

(1) is within three miles of the combined heating and power plant;

(2) is wholly located within the corporate boundaries of the municipality; and

(3) does not have an interstate or federal highway located within the boundaries of the district on the date the territory is designated.

(e) The municipality may sell an energy commodity from the system or plant, including electricity, chilled water, steam, or gas. The municipality may sell gas only to industrial customers located in the combined heating and power economic development district.

(f) The municipality shall assess fees against a municipal entity selling gas to industrial customers in the combined heating and power economic district that are substantially the same as the fees assessed against a gas utility that is not owned by the municipality for occupation of a municipal right-of-way.

Added by Acts 2011, 82nd Leg., R.S., Ch. 38 (S.B. 1230), Sec. 1, eff. May 9, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 199, eff. September 1, 2023.

Sec. 552.914. UTILITY CONTRACTS FOR CERTAIN MUNICIPALITIES. (a) In this section, "utility system" means an electric, water, sewer, solid waste disposal, drainage utility, or natural gas system, or any combination of those systems.

(b) This section applies only to a municipality described by Section 1502.070(a)(2)(C), Government Code.

(c) Notwithstanding any limitation provided by a home rule charter, the governing body, board of trustees, or other entity vested with the management and control of the municipality's utility system may contract for the purchase of electricity under terms the governing body, board of trustees, or other entity considers appropriate.

Added by Acts 2013, 83rd Leg., R.S., Ch. 98 (S.B. 795), Sec. 2, eff. May 18, 2013.

Sec. 552.915. RECORDS OF MUNICIPALLY OWNED ELECTRIC UTILITY PROVIDING BROADBAND SERVICES. (a) In this section, "broadband service" has the meaning assigned by Section 181.048, Utilities Code.

(b) This section applies only to a municipally owned utility

that:

(1) provides electricity and broadband services; and

(2) provided electricity services and cable, Internet, or broadband services on or before January 1, 2003.

(c) A municipally owned utility shall maintain separate books and records of broadband service operations and shall ensure that the rates charged for provision of electric service do not include any broadband service costs or any other costs not related to the provision of electric service.

Added by Acts 2023, 88th Leg., R.S., Ch. 1148 (S.B. 983), Sec. 2, eff. September 1, 2023.

SUBTITLE B. COUNTY WATER

CHAPTER 561. WATER CONTROL BY COUNTIES

Sec. 561.001. FLOOD CONTROL PROPERTY; CONDEMNATION. (a) A county may acquire public or private real property, including easements and rights-of-way, for the purpose of building canals, drains, levees, and other improvements to provide for flood control and water outlets. The county has the right of eminent domain to make an acquisition under this section.

(b) An appeal from a finding and assessment of damages by special commissioners in a condemnation case does not act to suspend the work for which the property is acquired.

(c) A county may, if the commissioners court of the county considers it necessary, obtain the fee title to the property that is the subject of the condemnation. However, a county may not obtain through condemnation the fee title to property lawfully used or occupied by a public utility, railroad, canal, levee, or any other person devoting its property to a public use. This prohibition does not prevent the county from condemning an easement or a right-of-way in favor of the county.

(d) If the commissioners court considers it necessary to condemn an easement on the property of a person that also has the power of eminent domain, the expense of acquisition, construction, and maintenance of the flood control or drainage project is the obligation of the county, flood control district, or drainage district, as the case may be.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Renumbered from Local Government Code, Section 411.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.

Sec. 561.002. JOINT PROJECT. (a) The commissioners court of a county may contract with a governmental unit, including a county, municipality, or other political subdivision, to jointly acquire a right-of-way or to jointly construct or maintain a canal, drain, levee, or other improvement for the purpose of providing flood control or drainage as it relates to flood control or for the purpose of providing and maintaining necessary outlets.

(b) The contract may contain any provisions that the governing bodies of the contracting entities consider necessary.

(c) The contracting entities may provide by contract, on mutually agreeable terms, that they shall jointly maintain the project or that one of them shall maintain the project under its exclusive direction and control while the other entity contributes to the expense of maintenance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 411.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.

Sec. 561.003. PLANS AND PROGRAMS. (a) The commissioners court of a county may contract with the federal soil conservation service, a state soil conservation district, the state extension service, a conservation and reclamation district, a drainage district, a water control and improvement district, a navigation district, a flood control district, a levee improvement district, or a municipality as provided by Section 256.006, Transportation Code, for the purpose of carrying out plans and programs for flood control and soil conservation. The contract may provide that payments due under the contract are payable from and secured by a pledge of any revenue of the county or the county's ad valorem taxes or a combination of those revenues and taxes.

(b) The contract may divide or delegate among the contracting parties the responsibility and cost of carrying out the plans and

programs and may be for a specified term of years or may terminate when the plans or programs have been accomplished.

(c) The contract may provide that, if the contracting agency, district, or municipality issues bonds payable from and secured by revenues derived from the contract, the contract will continue in effect until the bonds, or any refunding bonds issued in their place, are fully paid.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.228, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1183, Sec. 8, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 411.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.

Sec. 561.004. SURVEY BY COUNTY WITH TAX VALUATION OF $290 MILLION OR MORE. In a county with a tax valuation of $290 million or more according to the most recently approved county tax roll, the commissioners court of the county may spend not more than $15,000 in any one year out of the general fund of the county to make a preliminary engineering survey relating to drainage, reclamation, conservation, levee improvement, or water control.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 411.004 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.

Sec. 561.005. COOPERATION WITH UNITED STATES. (a) The commissioners court of a county that borders Mexico, or of a county adjacent to a county that borders Mexico, may, in consideration of the benefits of flood control work performed by the United States, by resolution agree to:

(1) indemnify and hold harmless the United States and its officers, agents, or employees for damage or a claim for damage asserted by any person if:

(A) the damage or claim arises from or is connected with the action of the United States or its officers, agents, or employees in entering, occupying, constructing on, or exercising a

right in or to land located in the county; and

(B) the action by the United States or its officers, agents, or employees is in connection with the construction, reconstruction, alteration, extension, improvement, maintenance, or operation of flood control works or works that are connected or incidental to flood control works;

(2) obtain any release or waiver of claims and provide evidence of the county's interest in land located in the county and needed for flood control works or works that are connected or incidental to flood control works, as required by the United States; and

(3) acquire and without monetary compensation convey to the United States any interest in land located in the county and needed for flood control works, on request of the United States.

(b) The commissioners court, county attorney, and county engineer shall do all things useful and necessary to carry out the provisions of the agreement.

(c) If the agreement provides for the conveyance of an interest in land to the United States, the county judge may convey the interest by warranty deed on behalf of the county according to the terms of the agreement.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 411.005 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.

Sec. 561.006. GRANT OF SEAWALL RIGHT-OF-WAY. (a) The commissioners court of a county by order may, if it considers it proper, donate and grant to the state or to a nonprofit eleemosynary institution incorporated under the laws of this state and operated for the benefit of the public any part of a seawall right-of-way acquired by the county.

(b) If the commissioners court determines that a seawall right-of-way should be donated, the county judge may convey the property in accordance with the order of the commissioners court.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 411.006 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1,

2009.

Sec. 561.007. MASTER DRAINAGE PLAN FOR CERTAIN COUNTIES. (a) This section applies only to a county that:

(1) has a population of 190,000 or more, is adjacent to a county with a population of 3.3 million or more, and borders the Gulf of Mexico; and

(2) operates a road department system under Subchapter D, Chapter 252, Transportation Code.

(b) The commissioners court may require the county road engineer to prepare and coordinate a county master drainage plan. The commissioners court by order may adopt regulations to implement the county master drainage plan.

Added by Acts 1997, 75th Leg., ch. 989, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Local Government Code, Section 411.007 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 102, eff. September 1, 2011.

Sec. 561.008. BREAKWATERS IN CERTAIN COUNTIES. (a) The commissioners court of a county that borders the Gulf of Mexico, other than Jefferson, Kenedy, Kleberg, Nueces, Orange, or Willacy County, may:

(1) construct breakwaters;

(2) issue bonds, time warrants, or certificates of indebtedness of the county to pay for the construction; and

(3) impose ad valorem taxes to pay the bonds, warrants, or certificates.

(b) The commissioners court shall:

(1) issue any bonds and impose related taxes in compliance with Subtitles A and C, Title 9, Government Code; or

(2) issue any time warrants in compliance with Subchapter C, Chapter 262, and impose related taxes in compliance with Chapter 1251, Government Code.

(c) A certificate of indebtedness must be authorized by order

of the commissioners court. A certificate of indebtedness must mature not later than 35 years after its date and must be signed by the county judge and attested by the county clerk. The commissioners court shall impose a tax sufficient to pay the principal of and interest on the certificate as they become due.

(d) A county that maintains a permanent improvement fund shall pay the debt incurred under this section from that fund.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 14, eff. Sept. 1, 1999.
Amended by Acts 1999, 76th Leg., ch. 1064, Sec. 41, eff. Sept. 1, 1999.
Renumbered from Local Government Code, Section 411.008 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.

Sec. 561.009. REFERENDUM ON FLOOD CONTROL TAX AND PROJECTS FUNDED. (a) The commissioners court of a county may order a referendum on the question of whether:

(1) flood control taxes should be increased;

(2) flood control taxes should be decreased; or

(3) an existing or proposed flood control project should receive funding.

(b) The ballot for a referendum under this section shall be printed to permit voting for or against one or more of the following propositions:

(1) "Whether the flood control tax imposed under Section 1-a, Article VIII, Texas Constitution, should be increased by (state amount of increase as a percentage or as a specific amount)";

(2) "Whether the flood control tax imposed under Section 1-a, Article VIII, Texas Constitution, should be decreased by (state amount of decrease as a percentage or as a specific amount)"; or

(3) "Whether the following flood control projects should receive funds generated by the flood control tax imposed under Section 1-a, Article VIII, Texas Constitution (list any flood control projects designated by the commissioners court as available for funding)."

(c) If a majority of votes cast in the referendum approve an increase in the flood control tax, the flood control tax is increased. If a majority of votes cast in the referendum approve a

decrease in the flood control tax, the flood control tax is decreased. A flood control project for which a majority of the votes cast at the referendum do not approve funding may not receive funds from revenue generated by the flood control tax.

Added by Acts 2001, 77th Leg., ch. 273, Sec. 1, eff. May 22, 2001. Renumbered from Local Government Code, Section 411.009 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(1), eff. April 1, 2009.

Sec. 561.010. PROVISION OF FLOOD RELIEF TO COLONIAS. (a) In this section, "colonia" means a geographic area that consists of 11 or more dwellings located in close proximity to each other in an area that may be described as a community or neighborhood and that:

(1) has a majority population composed of individuals and families of low income, as defined by Section 2306.004, Government Code, and based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under Section 17.921, Water Code; or

(2) has the physical and economic characteristics of a colonia, as determined by the Texas Department of Housing and Community Affairs.

(b) A county may provide assistance for the removal from private property, including a road, of flood water resulting from a natural disaster in a colonia if the removal of the water is necessary to protect the health and safety of the colonia.

Added by Acts 2009, 81st Leg., R.S., Ch. 383 (H.B. 1579), Sec. 1, eff. June 19, 2009.

CHAPTER 562. COUNTY WATER SUPPLY

SUBCHAPTER A. SALE OF SURPLUS WATER

Sec. 562.001. DEFINITION. In this subchapter, "county surplus water" means water that a county has acquired from an underground source for the county's water supply and that is not needed for county purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 412.001 by Acts 2007,

80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.002. SALE OF SURPLUS WATER; USE OF PROCEEDS. (a) The commissioners court of a county may sell and deliver county surplus water to:

(1) a public corporation of this state; or

(2) a political subdivision of this state, including a municipality, water control and improvement district, or fresh water supply district.

(b) A county shall credit money received from the sale of county surplus water to the general fund of the county and may spend the money for general county purposes.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 412.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.003. ESTABLISHMENT OF RATE. The commissioners court may determine the rate at which county surplus water is sold.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 412.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.004. TERM OF CONTRACT. A contract to sell county surplus water may not exceed a term of 40 years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 412.004 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.005. USE OR RESALE. A buyer of county surplus water may use or resell the water for any lawful purpose.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 412.005 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

SUBCHAPTER B. WATER SUPPLY AND SEWAGE

Sec. 562.011. MATAGORDA COUNTY. (a) The Commissioners Court of Matagorda County may acquire, construct, or operate a water supply system or sewage system to serve areas of the county located outside the limits of a municipality.

(b) The county may enter a management or lease agreement with another public or private entity for the operation of a county water or sewage system acquired or constructed under this section.

(c) The county may apply for and receive grants or other assistance from a state or federal governmental entity to implement the purposes of this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 412.011 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.012. CONTRACT FOR WATER SUPPLY AND SEWER SYSTEM IN POPULOUS COUNTY. (a) The commissioners court of a county that has a population of more than 1.3 million and in which a municipality with a population of more than one million is primarily located may enter a contract with a district created under Article III, Sections 52(b)(1) and (2), or Article XVI, Section 59, of the Texas Constitution under which the district will provide and operate a water supply system or sewage system in areas of the county located outside the limits of a municipality.

(b) The commissioners court may distribute federal funds and state water conservation and development funds received by the county to a district that is a party to a contract under this section. Those funds may be used only for the construction, renovation, or maintenance of a water supply system or sewage system that is covered by a contract under this section.

(c) The acts performed and services provided under this section

by a district must be within the scope of the powers, duties, and purposes of the district as provided by the laws under which the district was created.

(d) A contract that affects a municipality's extraterritorial jurisdiction as established by Chapter 42 must be submitted to and approved by the municipality.

(e) If a contract under this section affects an area not located within the limits of the contracting district, district funds may not be used to fulfill the contract.

(f) A county and a district that contract under this section must submit the contract to the Texas Natural Resource Conservation Commission for approval. The commission shall examine the contract to assure that the interests of the residents of the district are served and protected. A county may not enter a contract that the commission determines would jeopardize the quality of service provided by a district to the persons residing in the district. The commission may submit suggested changes to the parties for inclusion in the contract before the commission gives its approval.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 104, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.260, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 669, Sec. 109, 110, eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 412.012 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.013. WATER NEEDS OF CERTAIN COUNTIES WITH RIVER. (a) In a county with a river that flows through it or forms part of its boundary, the commissioners court of the county may, on voter approval, make expenditures from the general fund, or any other available county fund, to conduct an investigation and assemble information relating to the present and future water needs of the county inhabitants and to the feasibility of developing the water resources of the river for uses in the county.

(b) To obtain the voter approval required by Subsection (a), the commissioners court must order an election at which each qualified voter of the county is entitled to vote. The court shall determine the maximum cost of the proposed investigation and shall

order the ballots for the election to be printed to provide for voting for or against the proposition: "Spending county funds for the purpose of making a survey of water resources, in an amount not to exceed $_____ (the maximum amount determined by the court)."

(c) If a majority of the ballots cast at the election are in favor of the expenditure, the commissioners court may contract for professional services and incur other necessary expenses in an amount not to exceed the maximum amount fixed for this purpose. If a majority of the ballots cast are opposed to the expenditure, the commissioners court may not spend funds for this purpose, and another election on the proposition may not be held for two years.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 412.013 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.014. ACQUISITION OF PROPERTY FOR WATER SUPPLY OR TRANSPORT OF WATER. (a) The commissioners court of a county may acquire by purchase, gift, lease, or any other method, except condemnation, any property or an interest in property inside or outside the county that the commissioners court finds necessary to obtain a surface water supply or to transport and deliver surface water.

(b) If the property being acquired is located outside the county, the commissioners court of the county or counties where the property is located shall hold a public hearing and acquisition must be approved by the commissioners court at a regular meeting of the court.

(c) The commissioners court may contract with any political subdivision of the state for the management and operation of all or part of the property or interests in property and for the beneficial use of the surface water. A contract may be made on terms the commissioners court considers appropriate but may not be for a term of more than 40 years.

Added by Acts 1989, 71st Leg., ch. 1, Sec. 84(a), eff. Aug. 28, 1989. Renumbered from Local Government Code, Section 412.014 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.

Sec. 562.015. COUNTY WATER AND SEWER UTILITY. An affected county, as defined by Section 16.341, Water Code, may own, operate, or maintain a water or sewer utility in the same manner as a municipality under Chapter 552.

Added by Acts 1995, 74th Leg., ch. 979, Sec. 5, eff. June 16, 1995.
Renumbered from Local Government Code, Section 412.015 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(14), eff. April 1, 2009.

Sec. 562.016. COUNTY WATER AND SEWER SYSTEM. (a) A county may acquire, own, finance, operate, or contract for the operation of, a water or sewer utility system to serve an unincorporated area of the county in the same manner and under the same regulations as a municipality under Chapter 552. The county must comply with all provisions of Chapter 13, Water Code, that apply to a municipality. However, a county with a population of 2.5 million or more and any adjoining county may, with the municipality's approval, serve an area within a municipality.

(b) To finance the water or sewer utility system, a county may issue bonds payable solely from the revenue generated by the water or sewer utility system. A bond issued under this section is not a debt of the county but is only a charge on the revenues pledged and is not considered in determining the ability of the county to issue bonds for any other purpose authorized by law. This subsection does not authorize the issuance of general obligation bonds payable from ad valorem taxes to finance a water or sewer utility system. However, a county with a population of 2.5 million or more and any adjoining county may issue general obligation bonds with the approval of qualified voters.

(c) A county may acquire any interest in property necessary to operate a system authorized by this section through any means available to the county, including eminent domain. A county may not use eminent domain under this subsection to acquire property in a

municipality. Provided, however, a county with a population of 2.5 million or more and any adjoining county may, with the municipality's approval, use the power of eminent domain under this subsection to acquire property within a municipality.

Added by Acts 1999, 76th Leg., ch. 191, Sec. 1, eff. May 24, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 549 (S.B. 1271), Sec. 1, eff. June 16, 2007.
Acts 2007, 80th Leg., R.S., Ch. 858 (H.B. 1314), Sec. 1, eff. June 15, 2007.
Renumbered from Local Government Code, Section 412.016 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(2), eff. April 1, 2009.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(15), eff. April 1, 2009.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 200, eff. September 1, 2023.

Sec. 562.017. REGULATION OF WATER AND SEWER UTILITY IN POPULOUS COUNTIES. (a) In this section, "water or sewer utility system" means a water or sewer utility system that serves:

(1) an economically distressed area as defined by Section 15.001, Water Code; or

(2) an area listed on:

(A) the state registry by the Texas Commission on Environmental Quality under Subchapter F, Chapter 361, Health and Safety Code; or

(B) the National Priorities List by the federal Environmental Protection Agency under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601-9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(b) A county with a population of 3.3 million or more may by order:

(1) prohibit a person from installing an on-site sewage disposal system, as defined by Section 366.002, Health and Safety Code, or installing a water well, if the lot or parcel of land on

which the on-site sewage disposal system or water well is to be installed has access to service from a water or sewer system; and

(2) prohibit a person from installing another water or sewer utility system to serve a lot or parcel of land within the area if the lot or parcel of land has access to service from a water or sewer utility system.

(c) A county that adopts an order under Subsection (b) may adopt the order only if the area that has access to service from a water or sewer utility system:

(1) is not served by another legally operating water or sewer utility system at the time the order is adopted; and

(2) was developed before September 1, 1987.

(d) A person who violates an order adopted under this section is liable to the county for a civil penalty of not more than $1,000 for each violation. Each day a violation continues is a separate violation for purposes of assessing the civil penalty.

(e) A county may bring suit in a district court to restrain a violation or threatened violation of an order adopted under this section, recover a civil penalty, or both. The county is not required to give bond as a condition to issuing injunctive relief.

(f) Except as provided in Subsection (g), a county that is involved in selecting a water or sewer utility system and that adopts an order under Subsection (b) may adopt the order only if the county complies with Chapter 262 in selecting the water or sewer utility system.

(g) Section 262.024 does not apply to this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 858 (H.B. 1314), Sec. 2, eff. June 15, 2007.
Transferred from Local Government Code, Section 412.017 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(69), eff. September 1, 2009.

Sec. 562.018. WATER SUPPLY AND SEWAGE SYSTEM FOR CERTAIN BORDER COUNTIES. (a) This section applies only to a county:

(1) that is located adjacent to an international border; and

(2) in which a military installation and a national recreation area are located.

(b) The commissioners court of a county to which this section applies may acquire, construct, or operate a water supply system or a sewage system to serve unincorporated areas of the county.

(c) The county may enter a management or lease agreement with another public or private entity for the operation of a county water or sewage system acquired or constructed under this section.

(d) The county may apply for and receive grants or other assistance from a state or federal governmental entity to implement this section.

(e) The county may own, operate, or maintain a water or sewer utility in the same manner as a municipality under Chapter 402.

(f) A county may not construct, operate, or maintain a water supply system or sewage system in an area previously served by the county's water supply or sewage system after the area is annexed by a municipality and the municipality begins providing to the area water or sewer services previously provided by the county.

(g) This section does not authorize a county to sell water for a purpose other than for local use.

Added by Acts 2007, 80th Leg., R.S., Ch. 1104 (H.B. 3475), Sec. 1, eff. September 1, 2007.
Transferred from Local Government Code, Section 412.017 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(70), eff. September 1, 2009.

CHAPTER 563. WATER, WASTEWATER, OR SOLID WASTE SYSTEMS IN COUNTIES WITH POPULATION OF 10,000 OR LESS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 563.001. APPLICABILITY OF CHAPTER. This chapter applies only to a county that:

(1) adopts an order under Section 563.052; and

(2) has a population of 10,000 or less, according to the most recent federal census, on the date on which the order is adopted.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999.
Renumbered from Local Government Code, Section 413.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(16), eff. April 1, 2009.

Sec. 563.002. COUNTY FINANCING OF WATER OR WASTEWATER SYSTEM. The commissioners court of a county may spend money in the general fund of the county or issue and sell bonds to finance the county's:

(1) wastewater collection and treatment system; or

(2) water supply and distribution system.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

SUBCHAPTER B. COUNTY UTILITY SYSTEM BOARD FOR WATER, WASTEWATER, OR SOLID WASTE SYSTEM

Sec. 563.051. DEFINITION. In this subchapter, "board" means a county utility system board established under Section 563.052.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.051 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(17), eff. April 1, 2009.

Sec. 563.052. AUTHORITY TO ESTABLISH BOARD. (a) The commissioners court of a county by order adopted at a regular meeting of the court may establish a county utility system board to operate and manage the county's:

(1) wastewater collection and treatment system;

(2) water supply and distribution system; or

(3) solid waste collection and disposal system.

(b) The board is responsible for the operation and management of each utility system that is:

(1) owned or being acquired by the county; and

(2) placed under its control under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.052 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.053. BOARD COMPOSITION. (a) The board is composed of five directors.

(b) One director must be a member of the commissioners court appointed by the court at its first meeting of each county fiscal year.

(c) Four directors are elected by voters in the county. The elected positions are designated as positions 1, 2, 3, and 4. Elected directors serve two-year terms with the terms of positions 1 and 3 beginning October 1 of each odd-numbered year and the terms of positions 2 and 4 beginning October 1 of each even-numbered year. A candidate must be a qualified voter of the county.

(d) An election shall be held on the second Saturday of each September to fill the appropriate director positions.

(e) The commissioners court shall appoint temporary directors to serve until the initially elected directors take office.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.053 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.054. BOARD OFFICERS. (a) The directors shall select a president, vice president, secretary, and treasurer to serve one-year terms.

(b) The president and vice president must be members of the board. The secretary and treasurer are not required to be board members.

(c) The offices of secretary and treasurer may be combined.

(d) The president is the board's chief executive officer and budget officer and shall preside at the meetings of the board.

(e) The vice president shall act as president if the president is incapacitated or absent from a meeting.

(f) The secretary shall keep the records and the minutes of the

meetings of the board.

(g) The board shall require the treasurer to give a bond in the amount equal to the estimated amount to be held, at any time, by the treasurer. The board shall pay the bond premium.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.054 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.055. COMPENSATION OF DIRECTORS. A director is entitled to receive:

(1) reimbursement for actual expenses incurred in conducting the business of the board; and

(2) a fee in the amount set by the commissioners court for each meeting attended.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.055 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.056. APPLICABILITY OF OTHER LAW TO BOARD AND COUNTY. (a) The board is subject to:

(1) Subchapter C, Chapter 262;

(2) the open meetings law, Chapter 551, Government Code;

(3) the public information law, Chapter 552, Government Code; and

(4) Chapter 2256, Government Code.

(b) The board is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code, and all of its activities are essential governmental functions.

(c) The board and the county when operating under this subchapter are subject to:

(1) Chapter 271;

(2) Chapter 1371, Government Code; and

(3) Subchapters C and D.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999.

Renumbered from Local Government Code, Section 413.056 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.057. BYLAWS. (a) The board may adopt bylaws to regulate its affairs and establish the area in the county in which it has responsibility for providing utility service.

(b) The bylaws may provide for a seal for the board.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.057 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.058. UTILITY SYSTEM'S BUDGET. (a) The president of the board, with the assistance of the business manager, shall propose a budget for each utility system under the board's control that includes for the next fiscal year of the county:

(1) the anticipated revenue of that utility system by each source; and

(2) the expenses of that utility system and the board.

(b) The president shall submit the budget to the board not later than June 1 of each year.

(c) The board shall:

(1) schedule a public hearing to consider the budget not later than July 1 of each year;

(2) adopt a final budget not later than July 15 of each year; and

(3) submit the final budget to the commissioners court for consideration as a part of the county budget.

(d) Until the county budget is adopted, the budget for each utility system is the same as the budget for that system in the preceding fiscal year. If a system's preceding budget was for a period shorter than a complete fiscal year, the budget for that system is increased proportionally to cover a fiscal year.

(e) The board and the commissioners court shall include in the budget an amount sufficient to pay and secure any outstanding obligation under this chapter to the extent the obligation is payable

from the revenue of a utility system.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.058 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.059. DEPOSIT OF REVENUE. (a) Except as provided by Subsection (b), the treasurer of the board shall deposit all revenue from a system operated and managed by the board to the credit of one or more separate accounts in the county depository.

(b) The treasurer may deposit amounts set aside for the payment or security of obligations issued on behalf of the board with the paying agent as provided by the order authorizing the issuance of the obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.059 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.060. DISBURSEMENT OF UTILITY SYSTEM'S MONEY. (a) The board in its bylaws shall provide procedures under which money the board deposits in the county depository may be spent only after the board has determined that the money for payment was properly budgeted. Approval of the board is not required for the transfer of money to a paying agent to pay and secure an outstanding obligation.

(b) A check issued by the board must be signed by at least two persons, at least one of whom is an officer of the board.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.060 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.061. RATES AND CHARGES. The board may establish rates and charges for services, fees for connections, security deposits, and other charges required for efficient operation of each utility

system for which it has responsibility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.061 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.062. USE OF EMINENT DOMAIN PROHIBITED. The board may not exercise the power of eminent domain.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.062 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.063. EXTENSION OR IMPROVEMENT OF SYSTEM. (a) The board may provide for an extension or improvement to a utility system.

(b) The board may not provide for the extension of service to an area within the boundaries or extraterritorial jurisdiction of a municipality or within a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution, without the consent of the governing body of the municipality or district.

(c) The service area of the board may not include territory that on June 6, 1993, was served by another utility under a certificate of public convenience and necessity unless the certificate ceases to be effective.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.063 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.064. PURCHASE OF WATER OR WASTEWATER SYSTEM. With the approval of the commissioners court, the board may purchase an existing privately owned wastewater collection and treatment system or water supply and distribution system that supplies retail utility service in the county.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.064 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.065. ABOLITION OF CONSERVATION AND RECLAMATION DISTRICT. (a) With the consent of the directors of a conservation and reclamation district located in a county, the commissioners court of the county may assume the outstanding obligations of the district and provide for the abolition of the district.

(b) The territory of the former district remains secondarily liable for the payment of any taxes pledged to the payment of an outstanding debt of the former district until the debt is paid or payment has been provided for, including refunding by the county. The commissioners court as the successor to the district shall impose those taxes in the territory of the former district.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.065 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.066. AUTHORITY TO ISSUE AD VALOREM TAX OBLIGATIONS. (a) The board may not incur or issue an obligation that is payable, in whole or in part, from ad valorem taxes.

(b) The commissioners court of the county by order may authorize on behalf of the board the issuance of obligations payable in whole or in part from ad valorem taxes to acquire, improve, repair, or extend the county's wastewater collection system, treatment system, water supply and distribution system, or solid waste collection and disposal system.

(c) An order under Subsection (b) must be adopted at a regular meeting of the commissioners court.

(d) If the obligations authorized under this section are payable from ad valorem taxes and revenue, the board must also approve the issuance of the obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.066 by Acts 2007,

80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.067. AUTHORITY TO ISSUE REVENUE OBLIGATIONS. The board by resolution may authorize the issuance of obligations for one or more of the purposes described by Section 563.066(b) that are payable solely from the revenue of one or more systems.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.067 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(18), eff. April 1, 2009.

Sec. 563.068. MATURITY. An obligation issued under this subchapter must mature not later than 40 years after its date.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.068 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

SUBCHAPTER C. BONDS FOR WATER OR WASTEWATER SYSTEM

Sec. 563.101. PLEDGE FOR PAYMENT OF BONDS. The commissioners court of a county may provide for the payment of the principal of and interest on bonds issued under this chapter:

(1) by pledging all or part of the county's revenue from its wastewater collection and treatment system or water supply and distribution system; or

(2) from other sources.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.101 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.102. ADDITIONAL BOND SECURITY. (a) Bonds issued under this chapter may be secured additionally by an encumbrance on part or all of the physical property of the wastewater collection and treatment system or water supply and distribution system and each right relating to that property, vesting in the trustee the power to:

(1) operate the property;

(2) sell the property to pay the debt; or

(3) take any other action to secure the bonds.

(b) Regardless of an encumbrance on the property, a trust indenture on the property may:

(1) contain any provision that the commissioners court prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture; and

(3) provide for investment of money from the wastewater collection and treatment system or water supply and distribution system.

(c) A purchaser under a sale under the encumbrance on the physical property:

(1) is the absolute owner of the property and the rights purchased; and

(2) may maintain and operate the property.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.102 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.103. CONTENTS OF ORDER OR RESOLUTION AUTHORIZING ISSUANCE OF BONDS. (a) An order or resolution of the commissioners court authorizing the issuance of bonds, including refunding bonds, under this chapter may:

(1) provide for the flow of funds and the establishment and maintenance of an interest and sinking fund, a reserve fund, or another fund;

(2) prohibit the further issuance of obligations payable from the pledged revenues or reserve the right to issue additional bonds that are on a parity with, or subordinate to, the lien and

pledge on the revenue being used to support the bonds being issued; and

(3) contain any other provision determined by the commissioners court.

(b) The commissioners court may make covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.103 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.104. ADOPTION AND EXECUTION OF DOCUMENTS. The commissioners court may adopt and have executed any other proceeding or instrument necessary and convenient in the issuance of bonds under this chapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.104 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.105. MATURITY. A bond issued under this chapter other than a bond issued under Subchapter B must mature not later than 25 years after its date of issuance.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.105 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.106. AUTHORIZED INVESTMENT FOR SAVINGS AND LOAN ASSOCIATION. A bond issued under this chapter is an authorized investment for a savings and loan association.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.106 by Acts 2007,

80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.107. EXEMPTION FROM TAXATION. A bond issued under this chapter, any transaction relating to the bond, and profits made in the sale of the bond are exempt from taxation by this state or by a municipality or other political subdivision of the state.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.107 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

SUBCHAPTER D. REFUNDING BONDS

Sec. 563.151. AUTHORITY TO ISSUE REFUNDING BONDS. A county may issue bonds under this subchapter to refund all or part of its outstanding bonds issued under this chapter, including matured but unpaid interest coupons.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.151 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.152. SOURCES AVAILABLE FOR PAYMENT. Refunding bonds issued under this subchapter may be payable from any source, including the source from which the bonds to be refunded are payable.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.152 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.153. REGISTRATION. The comptroller shall register refunding bonds issued under this subchapter on surrender and cancellation of the bonds to be refunded.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.153 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.154. AUTHORITY TO DEPOSIT WITH PAYING AGENT. (a) In an order or resolution authorizing the issuance of refunding bonds, the commissioners court may provide that proceeds from the sale of the bonds are to be deposited with the person at whose location the bonds to be refunded are payable.

(b) If the authorization includes a provision authorized by Subsection (a), the commissioners court may issue the refunding bonds before the cancellation of the bonds to be refunded. The commissioners court shall deposit with the person at whose location the bonds to be refunded are payable an amount sufficient to pay the principal of those bonds and interest on those bonds accruing to the maturity date or to the option date if the bonds have been called for payment before maturity according to their terms.

(c) The comptroller shall register refunding bonds issued under this section without the surrender and cancellation of the bonds to be refunded.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.154 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

Sec. 563.155. MANNER OF REFUNDING. The refunding may take place in one delivery or in installment deliveries.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 15, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 413.155 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(b)(3), eff. April 1, 2009.

SUBTITLE C. WATER PROVISIONS APPLYING TO MORE THAN ONE TYPE OF LOCAL GOVERNMENT

CHAPTER 571. SEAWALLS AND LEVEES IN COASTAL MUNICIPALITIES AND

COUNTIES

SUBCHAPTER A. AUTHORITY OF COUNTY OR MUNICIPALITY BORDERING GULF

Sec. 571.001. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county or municipality that borders the Gulf of Mexico.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.002. AUTHORIZED PROJECTS; DEBT. (a) The commissioners court of the county or the municipal authority of the municipality may:

(1) establish, construct, extend, maintain, or improve a seawall, breakwater, levee, floodway, or drainway;

(2) improve, maintain, or beautify a boulevard erected in connection with the seawall, breakwater, levee, floodway, or drainway; and

(3) for purposes of implementing Subchapter H, Chapter 33, Natural Resources Code:

(A) participate as a qualified project partner for an erosion response project undertaken by the General Land Office, as those terms are defined by Section 33.601, Natural Resources Code; and

(B) undertake or contribute to the funding of:

(i) beach renourishment on public beaches, as defined by Section 61.012, Natural Resources Code; or

(ii) any other erosion response project as defined by Section 33.601, Natural Resources Code, on waterways, bays, and bay shorelines.

(b) The commissioners court or municipal authority may incur debt for a purpose authorized under Subsection (a).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 485, Sec. 1, eff. June 20, 2003. Renumbered from Local Government Code, Section 421.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.003. USE OF PUBLIC PROPERTY. (a) The commissioners court or municipal authority may impose additional uses or restrictions on a street, alley, public highway, or other public ground necessary for the location, construction, or maintenance of a seawall, breakwater, levee, floodway, or drainway.

(b) The commissioners court or municipal authority may authorize an additional use of the seawall, breakwater, levee, floodway, or drainway if that use will not impair the efficiency of the seawall, breakwater, levee, floodway, or drainway.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.004. ACQUISITION OF PROPERTY; EMINENT DOMAIN. (a) The county or municipality may acquire property that is necessary for the establishment, construction, and maintenance of a seawall, breakwater, levee, floodway, or drainway.

(b) The county or municipality may exercise the right of eminent domain to condemn an interest in real property for the purposes described by Subsection (a). The county or municipality must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code.

(c) Before exercising the power of eminent domain under this section the commissioners court or municipal authority, by order, ordinance, or resolution entered in its minutes, shall define and describe the real property to be acquired and shall determine whether an easement or fee simple interest in the real property is to be taken.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.004 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.005. CESSION OF USE AND CONTROL OF STATE LAND. The

state cedes to a county or municipality that uses this subchapter the right to the use and control of as much of the land and sea bottom below high tide that the commissioners court or municipal authority considers necessary for the purposes prescribed by this subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.005 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.006. TAX; BONDS. (a) The commissioners court or municipal authority may impose a tax to pay the debt incurred under Section 571.002. The rate of the tax in any year may not exceed 50 cents on each $100 of the taxable value of property taxable by the county or municipality.

(b) The commissioners court or municipal authority may issue bonds under this subchapter for the payment of the debt, but, if revenue from the tax will not pay off the debt within five years, the commissioners court or municipal authority shall issue bonds for the payment of the debt.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.006 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(19), eff. April 1, 2009.

Sec. 571.007. PREREQUISITES FOR ISSUING BONDS; ELECTION. (a) Before the commissioners court or municipal authority may issue bonds under this subchapter:

(1) the commissioners court or municipal authority shall prescribe the amount of and the rate of interest on bonds to be issued; and

(2) the tax proposed to pay the interest and sinking fund on the bonds must be approved by a majority of the voters of the county or municipality, as appropriate, voting at an election held on the proposed tax.

(b) The election shall be held in accordance with Chapter 1251, Government Code. In addition to the notice required under Section 1251.003, Government Code, and Chapter 4, Election Code, the commissioners court or municipal authority shall mail to each registered voter in the county or municipality a copy of the ballot proposition before the 10th day preceding the date of the election.

(c) The commissioners court or municipal authority shall issue any bonds under this subchapter in compliance with the applicable provisions of Subtitles A and C, Title 9, Government Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.007 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.008. ELECTION RESULTS. If the canvass of the election returns shows that the requisite number of voters voted in favor of the proposition, the commissioners court or municipal authority may issue the bonds and impose the tax for the purposes provided by this subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.008 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.009. GENERAL LAW APPLICABLE TO BONDS. A bond issued under this subchapter is subject to other law regulating bonds issued by counties and municipalities to the extent that law does not conflict with this subchapter.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.009 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.010. HANDLING OF BOND PROCEEDS AND TAXES. (a) All amounts received from the sale of bonds under this subchapter shall

be deposited with the county or municipal treasurer, as appropriate. The county or municipal treasurer shall hold the amounts in trust exclusively for the purposes prescribed by this subchapter.

(b) The county or municipality shall hold all taxes collected to pay the interest on and principal of bonds issued under this subchapter in trust for the payment of the interest and principal. Any amount that exceeds the amount required to pay the annual interest on the bonds may be invested for the benefit of the sinking fund in:

(1) bonds issued under this subchapter;

(2) bonds of the state; or

(3) bonds of the United States.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 421.010 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1, 2009.

Sec. 571.011. COOPERATION AND CONTRACTS WITH UNITED STATES. (a) The commissioners court or municipal authority may cooperate and contract with the United States for grants, loans, or advance payments to carry out any of the powers or purposes prescribed by this subchapter.

(b) The commissioners court or municipal authority may contribute and pay to the United States all or any part of the proceeds of bonds they have issued and sold under this subchapter, in connection with any project undertaken by the federal government affecting or relating to the construction or maintenance of a seawall, boulevard, or other project authorized under this subchapter.

(c) It is the purpose of this section to confer on the commissioners court or municipal authority the fullest possible power of contract with regard to projects of common interest enumerated in this subchapter, when these projects are approved by an act of the United States Congress.

Renumbered from Sec. 421.001 and amended by Acts 1999, 76th Leg., ch. 227, Sec. 16, eff. Sept. 1, 1999.
Renumbered from Local Government Code, Section 421.011 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(1), eff. April 1,

2009.

CHAPTER 572. PUBLIC UTILITY AGENCIES FOR PROVISION OF WATER OR SEWER SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 572.001. DEFINITIONS. In this chapter:

(1) "Facility" means a facility necessary or incidental to the collection, transportation, treatment, or disposal of sewage or to the conservation, storage, transportation, treatment, or distribution of water, including a plant site, right-of-way, and property, equipment, or right of any kind useful in connection with the collection, transportation, treatment, or disposal of sewage or with the conservation, storage, transportation, treatment, or distribution of water.

(2) "Private entity" means an entity, other than a public entity, involved solely in financing, constructing, operating, or maintaining water and sewer facilities.

(3) "Public entity" means a political entity or corporate body of this state, including a county, municipality, or district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.002. EFFECT OF CHAPTER. This chapter does not affect:

(1) the statutory purposes relating to the establishment, operation, or regulation under the Water Code or other applicable law of a public entity that may become a co-owner of a public utility agency under this chapter; or

(2) a public or private entity's rights or powers in effect on August 27, 1979.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.003. CONSTRUCTION. This chapter shall be liberally construed to carry out its purposes.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.004. CONFLICTS WITH OTHER LAW. This chapter prevails to the extent of a conflict between this chapter and any other law, including:

(1) a law regulating the affairs of a municipal corporation; or

(2) a home-rule charter provision.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.004 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

SUBCHAPTER B. COOPERATION BY PUBLIC AND PRIVATE ENTITIES

Sec. 572.011. AUTHORITY TO JOINTLY OWN FACILITIES. Two or more public entities that have the authority to engage in the collection, transportation, treatment, or disposal of sewage or the conservation, storage, transportation, treatment, or distribution of water may join together as cotenants or co-owners to plan, finance, acquire, construct, own, operate, or maintain facilities to:

(1) achieve economies of scale in providing essential water and sewage systems to the public;

(2) promote the orderly economic development of this state; and

(3) provide environmentally sound protection of this state's future water and wastewater needs.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.011 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1,

2009.

Sec. 572.012. GENERAL RIGHTS, POWERS, AND DUTIES OF PUBLIC ENTITIES. (a) Each participating public entity may:

(1) use the entity's money to plan, acquire, construct, own, operate, and maintain its interest in a facility;

(2) share in the facility;

(3) issue bonds and other securities to raise money for a purpose described by Subdivision (1) in the same manner and to the same extent and subject to the same conditions as would be applicable if the public entity had sole ownership of the facility;

(4) acquire, for the use and benefit of each participating public entity, land, easements, and property for a facility by purchase or by exercising the power of eminent domain; and

(5) transfer or otherwise convey the land, property, or property interest or otherwise have the land, property, or property interest become vested in other participating public entities to the extent and in the manner agreed between the entities.

(b) In relation to a participating public entity's undivided interest in a facility, the entity has each right, privilege, exemption, power, duty, and liability the entity would have if the entity had sole ownership.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.012 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.013. USE OF EMINENT DOMAIN. (a) A participating public entity has the power of eminent domain to be exercised as provided by this section.

(b) The use of eminent domain authority by a participating public entity is governed by the law relating to an eminent domain proceeding involving a municipality in this state.

(c) A participating public entity may acquire a fee title to the condemned real property, excluding mineral interests.

(d) A participating public entity may not use eminent domain authority to acquire an interest in a facility that belongs to

another public entity or a private entity.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.013 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.014. EXEMPTION FROM TAXATION. A participating public entity is entitled to each constitutional or statutory ad valorem or other tax exemption attributable to the jointly owned facility or to a property or service bought, sold, leased, or used to construct, maintain, repair, or operate the facility to the extent that the entity would have been exempt from the tax if the entity's undivided interest were an entire interest in the facility or in the property or service. The entity is entitled to any applicable exemption certificate or statement provided by law to claim or prove the exemption.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.014 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

SUBCHAPTER C. PUBLIC UTILITY AGENCIES

Sec. 572.051. DEFINITIONS. In this subchapter:

(1) "Concurrent ordinance" means an ordinance or resolution adopted under this subchapter by two or more public entities.

(2) "Obligation" means a revenue bond or note.

(3) "Public utility agency" means an agency created under this subchapter by two or more public entities to plan, finance, construct, own, operate, or maintain facilities.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.051 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 667 (S.B. 1596), Sec. 1, eff. June 17, 2011.

Sec. 572.052. CREATION OF PUBLIC UTILITY AGENCY. (a) Public entities may create a public utility agency by concurrent ordinances.

(b) A public entity may join in the creation of a public utility agency under this subchapter only if, at the time the concurrent ordinance is adopted, the entity has the authority to engage in the collection, transportation, treatment, or disposal of sewage or the conservation, storage, transportation, treatment, or distribution of water. This subsection does not prohibit a public entity from disposing of a facility after creation of the agency.

(c) A public utility agency is a:

(1) separate agency;

(2) political subdivision of this state; and

(3) political entity and corporate body.

(d) A public utility agency may not impose a tax but has all the other powers that are related to facilities and that are provided by law to a municipality that owns a facility.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.052 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.053. CHANGES IN PUBLIC ENTITIES PARTICIPATING IN PUBLIC UTILITY AGENCY. The public entities that participate in a public utility agency may by concurrent ordinances add a public entity to, or delete a public entity from, participation in the public utility agency.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.053 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 667 (S.B. 1596), Sec. 2, eff. June 17, 2011.

Sec. 572.054. NOTICE. (a) The governing body of each public

entity that participates in the creation of a public utility agency shall publish notice of its intention to create the agency in a newspaper of general circulation in the county in which the entity is located.

(a-1) The governing body of a public entity that proposes to be added to an existing public utility agency shall publish notice of its intention to be added to the agency in a newspaper of general circulation in the county in which the entity is located.

(b) A notice under this section must be published once a week for two consecutive weeks. The first publication must appear at least 14 days before the date set for passage of the concurrent ordinance.

(c) The notice must state:

(1) the date, time, and location at which the governing body proposes to adopt the concurrent ordinance; and

(2) that a public utility agency will be created or a public entity will be added to an agency on the date on which the concurrent ordinances take effect, as applicable.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.054 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 667 (S.B. 1596), Sec. 3, eff. June 17, 2011.

Sec. 572.055. CONTENTS OF CONCURRENT ORDINANCE. A concurrent ordinance creating a public utility agency under Section 572.052 or changing the public entities participating in an agency under Section 572.053 must, as adopted by each public entity:

(1) contain identical provisions;

(2) define the boundaries of the agency to include the territory within the boundaries of each participating public entity as the boundaries are changed periodically;

(3) designate the name of the agency; and

(4) designate the number, place, initial term, and manner of appointment of directors in accordance with Section 572.057.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999.

Renumbered from Local Government Code, Section 422.055 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(20), eff. April 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 667 (S.B. 1596), Sec. 4, eff. June 17, 2011.

Sec. 572.056. PETITION AND REFERENDUM. (a) If, before the date set for the adoption of a concurrent ordinance that creates a public utility agency or adds a public entity to an agency, 10 percent of the registered voters of a public entity required to publish notice of the creation or addition present a petition to the governing body of the entity requesting that a referendum be called, the ordinance may not take effect unless a majority of the qualified voters of the entity voting in the election have approved the ordinance.

(b) The public entity must hold the election in conformity with:

(1) the Election Code;

(2) Chapter 1251, Government Code; and

(3) this subchapter.

(c) Except as provided by Subsection (a), a concurrent ordinance is not subject to a referendum.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999.
Renumbered from Local Government Code, Section 422.056 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 667 (S.B. 1596), Sec. 5, eff. June 17, 2011.

Sec. 572.057. BOARD OF DIRECTORS. (a) A public utility agency shall be governed by a board of directors. The board is responsible for the management, operation, and control of the property belonging to the agency.

(b) Each director must be appointed by place by the governing bodies of the participating public entities. Each participating public entity is entitled to appoint at least one director.

(c) An employee, officer, or member of the governing body of a public entity may serve as a director but may not have a personal interest in a contract executed by the public utility agency other than as an employee, officer, or member of the governing body of the public entity.

(d) A director of a public utility agency is entitled to $50 for each day spent in attending meetings of the board and a per diem of $50 if authorized by resolution of the board, plus actual expenses incurred in attending the meetings.

(e) Except as provided by Subsection (d), a director of a public utility agency serves without compensation.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.057 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.058. POWERS. (a) A public utility agency may not engage in any utility business other than the collection, transportation, treatment, or disposal of sewage or the conservation, storage, transportation, treatment, or distribution of water for a participating public entity that owns jointly with the agency a facility in this state.

(b) A public utility agency may:

(1) perform any act necessary to the full exercise of the agency's powers;

(2) enter into a contract, lease, or agreement with or accept a grant or loan from a:

(A) department or agency of the United States;

(B) department, agency, or municipality or other political subdivision of this state; or

(C) public or private corporation or person;

(3) sell, lease, convey, or otherwise dispose of any right, interest, or property the agency considers to be unnecessary for the efficient operation or maintenance of its facilities; and

(4) adopt rules to govern the operation of the agency and

its employees, facilities, and service.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.058 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.0585. EMINENT DOMAIN IN CERTAIN COUNTIES. (a) A public utility agency has the power of eminent domain to be exercised in the manner provided by this section. The public utility agency may acquire by condemnation, for the use and benefit of the agency, land, easements, and property inside the service area of the public utility agency, necessary for water, sanitary sewer, storm drainage, or flood drainage or control purposes or for any other of its projects or purposes. The public utility agency may elect to condemn either the fee simple title or a lesser property interest.

(b) The power of eminent domain shall be exercised in the manner provided in Chapter 21, Property Code, except that the public utility agency is not required to:

(1) give bond for appeal or bond for costs in any condemnation suit or other suit to which it is a party; or

(2) deposit more than the amount of any award in any suit.

(c) The power of eminent domain may not be used for the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.

(d) This section only applies to a public utility agency domiciled in a county with a population of more than 1.2 million.

Added by Acts 2023, 88th Leg., R.S., Ch. 990 (H.B. 4217), Sec. 1, eff. June 18, 2023.

Sec. 572.0586. EXTENSION OF SERVICES. A public utility agency shall hold a public hearing and provide an opportunity for public comment before extending service to new customers located outside the service area identified in the 10-year capital improvements plan adopted in compliance with Chapter 395 that is in effect when an application for extension of service is received.

Added by Acts 2023, 88th Leg., R.S., Ch. 990 (H.B. 4217), Sec. 1, eff.

June 18, 2023.

Sec. 572.059. CONSTRUCTION CONTRACTS. (a) A public utility agency may award a contract for construction of an improvement that involves the expenditure of more than $20,000 only on the basis of competitive bids.

(b) The agency shall publish notice of intent to receive bids once a week for two consecutive weeks in a newspaper of general circulation in the county in which the agency is domiciled. The first publication must appear at least 14 days before the date bids are to be received.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.059 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.060. CONTRACTS FOR SEWER OR WATER SERVICES. A public utility agency may:

(1) contract with the public entities creating the agency for the collection, transportation, treatment, or disposal of sewage or the conservation, storage, transportation, treatment, or distribution of water; and

(2) under terms the agency's board of directors considers appropriate, contract with private entities for services described by Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.060 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.061. RATES AND CHARGES. (a) In contracting with a public or private entity for wastewater collection, transmission, treatment, or disposal services or for water conservation, storage, transportation, treatment, or distribution, a public utility agency must charge rates sufficient to produce revenue adequate to:

(1) pay all expenses of operation and maintenance;

(2) pay when due the principal of and interest on obligations issued under this subchapter;

(3) pay the principal of and interest on any legal debt of the agency;

(4) pay when due all sinking and reserve fund payments; and

(5) fulfill any agreements made with the holders of any obligations.

(b) A public utility agency may also establish a reasonable depreciation and emergency fund.

(c) Payments made under a contract with a public utility agency constitute an operating expense of the public or private entity served under the contract, unless otherwise prohibited by a previously outstanding obligation of the purchasing entity.

(d) Notwithstanding Subsection (a), the state reserves its power to regulate and control the rates and charges by a public utility agency.

(e) Until obligations issued under this subchapter have been paid and discharged, this state pledges to and agrees with the purchasers and successive holders of the obligations that it will not limit or alter the powers of the agency to establish and collect rates and charges that will produce revenue sufficient to pay for those items specified in Subsections (a) and (b) and any other obligations of the agency in connection with those items.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.061 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.062. OBLIGATIONS. (a) A public utility agency may issue obligations to accomplish the purposes of the agency.

(b) The public utility agency may pledge to the payment of the obligations the revenue of all or part of its facilities, including facilities acquired after the obligations are issued. However, operation and maintenance expenses, including salaries and labor, materials, and repairs of facilities necessary to render efficient service, are a first lien on and charge against the pledged revenue.

(c) The public utility agency may set aside from the proceeds

of the sale of the obligations amounts for payment into the interest and sinking fund and reserve fund, and for interest and operating expenses during construction and development, as specified in the proceedings authorizing the obligations.

(d) Obligation proceeds may be invested, pending their use, in securities, interest-bearing certificates, or time deposits as specified in the proceedings authorizing the obligations.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.062 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.063. REFUNDING NOTES. A public utility agency may issue refunding notes for the purpose and in the manner provided by general law, including Chapter 1207, Government Code.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.063 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

Sec. 572.064. FORM AND PROVISIONS OF OBLIGATIONS. (a) An obligation issued under this subchapter must mature not later than 40 years after its date of issuance.

(b) The obligations must be signed by the presiding officer or assistant presiding officer of the public utility agency and be attested by the secretary.

(c) A public utility agency may sell obligations issued under this subchapter at public or private sale at a price or under the terms the agency determines to be in the best interest of the agency.

Added by Acts 1999, 76th Leg., ch. 227, Sec. 19, eff. Sept. 1, 1999. Renumbered from Local Government Code, Section 422.064 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(2), eff. April 1, 2009.

CHAPTER 573. AUTHORITY OF CERTAIN COUNTIES AND DISTRICTS TO REGULATE

STORMWATER MANAGEMENT

Sec. 573.001. COUNTY OR DISTRICT SUBJECT TO CHAPTER. This chapter applies only to:

(1) a county with a population of 2.8 million or more;

(2) a district or authority created under Section 59, Article XVI, Texas Constitution, that:

(A) has boundaries coterminous with a county described by Subdivision (1); and

(B) is authorized to provide stormwater drainage and flood control facilities;

(3) a county with a population of more than 1.3 million for which the primary source of drinking water is an underground aquifer; or

(4) a county with a population of 800,000 or more that contains a portion of the Edwards Aquifer.

Added by Acts 1999, 76th Leg., ch. 245, Sec. 1, eff. May 28, 1999.
Renumbered from Sec. 422.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(92), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 195, Sec. 1, eff. June 2, 2003.
Renumbered from Local Government Code, Section 423.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(3), eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 524 (S.B. 1299), Sec. 1, eff. June 19, 2009.

Sec. 573.002. GENERAL AUTHORITY. (a) A county, district, or authority may take any necessary or proper action to comply with the requirements of the stormwater permitting program under the national pollutant discharge elimination system (Section 402, Federal Water Pollution Control Act (33 U.S.C. Section 1342)), including:

(1) developing and implementing controls to reduce the discharge of pollutants from any conveyance or system of conveyance owned or operated by the county, district, or authority that is designed for collecting or conveying stormwater;

(2) developing, implementing, and enforcing stormwater management guidelines, design criteria, or rules to reduce the discharge of pollutants into any conveyance or system of conveyance

owned or operated by the county, district, or authority that is designed for collecting or conveying stormwater;

(3) assisting residents with the proper management of used oil and toxic materials, including the holding of household hazardous waste collection events;

(4) developing and providing educational tools and activities designed to reduce or lead to the reduction of the discharge of pollutants into stormwater; and

(5) assessing reasonable charges to fund the implementation, administration, and operation of the stormwater permitting program as necessary to comply with federal or state program requirements.

(b) Notwithstanding Subsection (a)(5), a county, district, or authority may not assess a charge against property that is:

(1) exempt from ad valorem taxation; or

(2) subject to an assessment for the same purpose by another entity.

Added by Acts 1999, 76th Leg., ch. 245, Sec. 1, eff. May 28, 1999.
Renumbered from Sec. 422.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(92), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 160 (S.B. 1932), Sec. 1, eff. September 1, 2007.
Renumbered from Local Government Code, Section 423.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(3), eff. April 1, 2009.

Sec. 573.003. CIVIL PENALTY; INJUNCTION. (a) A person who violates a rule or order adopted by the county, district, or authority under this chapter is liable to the county, district, or authority for a civil penalty of not more than $1,000 for each violation. Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.

(b) A county, district, or authority may bring suit in a district court to:

(1) restrain a violation or threatened violation of a rule or order adopted by the county, district, or authority under this chapter; or

(2) recover a civil penalty authorized by Subsection (a).

Added by Acts 1999, 76th Leg., ch. 245, Sec. 1, eff. May 28, 1999.
Renumbered from Sec. 422.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(92), eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 423.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(3), eff. April 1, 2009.

CHAPTER 580. MISCELLANEOUS PROVISIONS RELATING TO MUNICIPAL AND COUNTY WATER

Sec. 580.001. WATER CONTRACTS IN BORDER MUNICIPALITIES AND COUNTIES. The governing body of a municipality or county that has a boundary that is contiguous with the border between this state and the Republic of Mexico may contract for the acquisition of water or water rights with a border municipality or state in the Republic of Mexico if the contract is approved and monitored by the Texas Natural Resource Conservation Commission and the International Boundary and Water Commission, United States and Mexico.

Added by Acts 1991, 72nd Leg., ch. 769, Sec. 2, eff. Aug. 26, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.261, eff. Sept. 1, 1995.
Renumbered from Local Government Code, Section 430.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(4), eff. April 1, 2009.

Sec. 580.002. CONSIDERATION OF XERISCAPE ORDINANCES. The governing body of each municipality and county may consider enacting orders or ordinances, as appropriate, requiring the use of xeriscape to conserve water. If the governing body determines that the water conservation benefits of the required use of xeriscape would be significant relative to the cost of implementing that use, the governing body may adopt a xeriscape order or ordinance, as appropriate.

Added by Acts 1993, 73rd Leg., ch. 642, Sec. 3, eff. Sept. 1, 1993.
Renumbered from Local Government Code, Section 430.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(4), eff. April 1,

2009.

Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.33

Sec. 580.003. EXEMPTIONS OF CERTAIN PROPERTY FROM INFRASTRUCTURE FEES. No county, municipality, or utility district may collect from a state agency or a public or private institution of higher education any fee charged for the development or maintenance of programs or facilities for the control of excess water or storm water.

Added by Acts 2003, 78th Leg., ch. 1310, Sec. 83, eff. June 20, 2003. Renumbered from Local Government Code, Section 430.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(4), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.33, eff. September 1, 2007.

Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1356 (H.B. 462), Sec. 1

Sec. 580.003. EXEMPTIONS OF STATE PROPERTY FROM INFRASTRUCTURE FEES. (a) Except as provided by Subsection (b), no county, municipality, or utility district may collect from a state agency or public institution of higher education any fee charged for the development or maintenance of programs of facilities for the control of excess water or storm water.

(b) A municipality with a population of 25,000 or less and through which the Bosque River runs may collect from a state agency or public institution of higher education a fee charged for the development or maintenance of programs of facilities for the control of excess water or storm water.

Added by Acts 2003, 78th Leg., ch. 1310, Sec. 83, eff. June 20, 2003. Renumbered from Local Government Code, Section 430.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(c)(4), eff. April 1, 2009.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1356 (H.B. 462), Sec. 1, eff. June 15, 2007.

Sec. 580.004. RAINWATER HARVESTING. (a) Each municipality and county is encouraged to promote rainwater harvesting at residential, commercial, and industrial facilities through incentives such as the provision at a discount of rain barrels or rebates for water storage facilities.

(b) The Texas Water Development Board shall ensure that training on rainwater harvesting is available for the members of the permitting staffs of municipalities and counties at least quarterly. Each member of the permitting staff of each county and municipality located wholly or partly in an area designated by the Texas Commission on Environmental Quality as a priority groundwater management area under Section 35.008, Water Code, whose work relates directly to permits involving rainwater harvesting and each member of the permitting staff of each county and municipality with a population of more than 10,000 whose work relates directly to permits involving rainwater harvesting must receive appropriate training regarding rainwater harvesting standards and their relation to permitting at least once every five years. Members of the permitting staffs of counties and municipalities not located wholly or partly in an area designated by the Texas Commission on Environmental Quality as a priority groundwater management area under Section 35.008, Water Code, whose work relates directly to permits involving rainwater harvesting and members of the permitting staffs of counties and municipalities with a population of 10,000 or less whose work relates directly to permits involving rainwater harvesting are encouraged to receive the training. The Texas Water Development Board may provide appropriate training by seminars or by videotape or functionally similar and widely available media without cost.

(c) A municipality or county may not deny a building permit solely because the facility will implement rainwater harvesting. However, a municipality or county may require that a rainwater harvesting system comply with the minimum state standards established for such a system.

(d) Each school district is encouraged to implement rainwater harvesting at facilities of the district.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 4, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 5, eff. September 1, 2013.

SUBTITLE D. POWERS OF COUNTIES OR MUNICIPALITIES OVER UTILITIES GENERALLY

CHAPTER 590. POWERS OF MUNICIPALITIES OVER UTILITIES

Sec. 590.0001. POWERS OF HOME-RULE MUNICIPALITIES RELATING TO UTILITIES. Except as otherwise provided by state law enacted after the Revised Statutes of 1925 (S.B. 84, Acts of the 39th Legislature, Regular Session, 1925) or by federal law:

(1) a home-rule municipality may:

(A) prohibit the use of any street, alley, highway, or grounds of the municipality by any telegraph, telephone, electric light, street railway, interurban railway, steam railway, gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and on paying such compensation as may be prescribed and on such condition as may be provided by any such ordinance; and

(B) determine, fix, and regulate the charges, fares, or rates of any person, firm, or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said municipality and prescribe the kind of service to be furnished by such person, firm, or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations, and compensation; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done, or property actually received in accordance with the laws and constitution of this state applicable thereto;

(2) in order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect

the books and compel the attendance of witnesses for such purpose;

(3) provided that in any municipality with a population of more than 25,000, the governing body of such municipality, when the public service of such municipality may require the same, shall have the right and power to compel any street railway or other public utility corporation to extend its lines of service into any section of said municipality not to exceed two miles, all told, in any one year; and

(4) whenever any municipality may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the municipality may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds, notes, or other evidence of indebtedness and shall secure the same by fixing a lien on the said properties constituting the said public utility so acquired by condemnation or purchase or otherwise; said security shall apply alone to said properties so pledged; and such further regulations may be provided by any charter for the proper financing or raising the revenue necessary for obtaining any public utilities and providing for the fixing of said security.

Added by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 18.002(a), eff. September 1, 2019.

TITLE 14. PARKING AND TRANSPORTATION
SUBTITLE A. MUNICIPAL PARKING PROVISIONS
CHAPTER 601. MUNICIPAL AUTHORITY RELATING TO PARKING
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 601.001. PARKING ON PRIVATE PROPERTY. A municipality by ordinance may regulate the parking of motor vehicles on private property and may enforce the ordinance in the same manner that it enforces ordinances regulating parking in public no-parking zones, including the impoundment of offending vehicles.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 431.001 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(1), eff. April 1, 2009.

SUBCHAPTER B. MUNICIPAL PARKING AUTHORITIES

Sec. 601.021. DEFINITIONS. In this chapter:

(1) "Authority" means a parking authority created under this subchapter.

(2) "Board" means the governing body of an authority.

(3) "Bond" means a note, bond, or other evidence of indebtedness or obligation issued by an authority.

(4) "Construction" includes acquisition.

(5) "Deed of trust" means a deed of trust, indenture, or other similar agreement.

(6) "Federal agency" means the United States, the president of the United States, or a department, corporate agency, or instrumentality of the United States.

(7) "Improvement" includes extension and enlargement.

(8) "Parking facility" means a public lot, garage, parking terminal, or other structure or accommodation for the parking of motor vehicles off the street or highway, and includes equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in the parking of vehicles.

(9) "Project" means a structure, facility, or undertaking of an authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.021 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.022. CREATION OF AUTHORITY. (a) The governing body of a municipality by ordinance may create an authority, which shall be called "City of (name of municipality) Parking Authority."

(b) A notice, including the text of the ordinance creating the authority, a synopsis of the articles of incorporation of the authority, and a reference to this subchapter, must be published once weekly for four consecutive weeks in a newspaper of general circulation in the municipality. The municipality shall file the ordinance with the secretary of state within 10 days after the date of the passage of the ordinance.

(c) The ordinance takes effect 60 days after the date of its last publication unless a protest petition has been filed with the

clerk of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.022 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.023. PROTEST PETITION. (a) A protest petition must object to the adoption of the ordinance creating an authority and request that the ordinance be submitted to the voters of the municipality. It must be signed by a number of registered voters of the municipality equal to at least 10 percent of the number of votes cast at the most recent general municipal election.

(b) If a petition is filed, the municipality must determine whether the petition is valid within 10 days after the date of filing.

(c) The governing body of the municipality shall call an election to submit the ordinance to a vote on the next uniform election date authorized by Chapter 41, Election Code, that occurs more than 30 days after the date the municipality verifies the petition is valid.

(d) If a majority of the votes cast at the election are in favor of the ordinance, it takes effect on the certification of the results. If a majority of the votes cast are against the ordinance, it does not take effect.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.023 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.024. COMPOSITION OF BOARD. (a) The powers of an authority are exercised by a board composed of five members who must be residents of the municipality.

(b) The presiding officer of the governing body of the municipality shall appoint the members of the board for two-year staggered terms.

(c) The terms of two members shall expire on July 1 of each even-numbered year and the terms of three members shall expire on

July 1 of each odd-numbered year.

(d) The board members shall select from among themselves a chairman, a vice-chairman, and other officers as they determine.

(e) A vacancy that occurs more than 60 days before the expiration date of a term shall be promptly filled for the unexpired term by appointment by the presiding officer of the governing body of the municipality.

(f) A board member may be removed for cause following a hearing. Removal is by order of the presiding officer of the governing body of the municipality, with the concurrence of two-thirds of the members of the governing body of the municipality.

(g) An appointment must be confirmed by the governing body of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.024 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.025. COMPENSATION AND LIABILITY. (a) A board member may not receive compensation for services as a member but is entitled to payment for the necessary expenses incurred in the discharge of duties as a member.

(b) A board member is not liable personally on the bonds of an authority, and the rights of creditors are solely against the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.025 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.026. POWERS OF BOARD. (a) The board manages the property and business of the authority.

(b) The board may adopt bylaws and rules governing the manner in which the business of the authority is conducted.

(c) The board may employ a secretary, an executive director, legal staff, technical experts, and other agents and employees that it requires. It may determine the qualifications and fix the

compensation of those persons.

(d) The board may delegate to an agent or employee powers as it considers necessary to carry out the purposes of this subchapter, and the agent or employee is subject to the supervision and control of the board.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.026 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.027. POWERS OF AN AUTHORITY. (a) An authority may:

(1) construct, improve, maintain, repair, or operate a project;

(2) conduct research necessary for efficient operation of a parking facility;

(3) establish a permanent coordinated system of parking facilities;

(4) plan, design, locate, hold, construct, improve, maintain, operate, own, or lease land and facilities for the parking of vehicles;

(5) sue and be sued, implead and be impleaded, and complain and defend in court;

(6) adopt, use, and alter a corporate seal;

(7) acquire, purchase, hold, lease as lessee, or use a franchise, property, or an interest in property, as necessary or desirable for carrying out the purpose of this subchapter;

(8) sell, lease as lessor, exchange, transfer, or dispose of property or an interest in property;

(9) contract and execute instruments necessary or convenient to carry on its business;

(10) borrow money, accept a grant, and enter into a contract, lease, or other transaction with a federal agency, the state, a municipality, a corporation, or another authority;

(11) exercise the power of eminent domain;

(12) pledge, hypothecate, or otherwise encumber the revenue or receipts of the authority as security for the obligations of the authority;

(13) enter into a contract of group insurance for the

benefit of its employees and set up a retirement or pension fund for the employees;

(14) on consent of the municipality, use an appointed officer, agent, employee, and facility of the municipality and pay the municipality for the use;

(15) dedicate its real property to the public purposes for a street or highway;

(16) invest that part of the proceeds received from the sale of bonds or other funds that the authority considers available in direct obligations of the United States; and

(17) act as necessary to accomplish its purpose, the promotion of its business, and its general welfare.

(b) An authority may not pledge the credit or taxing power of the state or a political subdivision of the state. The obligations of an authority are not the obligations of the state or a political subdivision of the state. The state or a political subdivision of the state is not liable for the payment of the principal of or interest on the obligations.

(c) An authority may not sell goods or provide services other than those necessary for the parking of vehicles in a facility of the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.027 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.028. CHARGES FOR USE OF FACILITY. (a) An authority may collect charges for the use of its facility at reasonable rates determined by the authority for the purpose of paying the expenses and obligations of the authority.

(b) A person questioning the reasonableness of a rate or charge of the authority may bring suit against the authority in a district court in the county in which the project is located.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.028 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.029. FINANCING; BONDS. (a) In addition to bonds provided for by this subchapter, an authority, subject to the specific authorization and approval of the municipality creating it, may finance the creation and establishment of parking facilities by one or more of the following methods:

(1) parking fees or special charges derived from the use of parking facilities;

(2) general fund appropriation;

(3) parking meter revenue; and

(4) a gift, bequest, devise, or grant-in-aid.

(b) A municipality establishing an authority under this subchapter, on a two-thirds vote of its governing body, may pay to the authority money necessary to:

(1) acquire all or part of the land on which the authority intends to erect a parking facility;

(2) construct all or part of a parking facility;

(3) pay operating expenses of the authority and debt service on outstanding bonds of the authority; or

(4) make payments into a reserve fund for the payment of the principal of and interest on indebtedness of the authority, as may be provided by a resolution of the authority authorizing the issuance of revenue bonds or a trust indenture securing revenue bonds.

(c) A municipality, to provide funds for use under Subsection (b) of this section, may issue general obligation bonds, secured by the faith and credit of the municipality, payable from unlimited ad valorem taxes on all of the real estate in the municipality subject to taxation, and may levy those taxes in an unlimited rate or amount.

(d) A municipality may guarantee revenue bonds of the authority issued under this subchapter by pledging its full faith and credit to the payment of the principal of and interest on the revenue bonds. The aggregate amount of general obligation bonds issued by a municipality under this subsection, the indebtedness guaranteed, and the taxes levied are in addition to, and not subject to the limitations of, the statutory debt or tax limitation of the municipality. The municipality may fund the guarantee by levying an ad valorem tax on real estate subject to taxation, not to exceed a rate of one-hundredth of one percent, or may use other money of the municipality available for this purpose.

(e) An agreement by a municipality to guarantee the revenue

bonds of the authority, to maintain a reserve fund, or to pay debt service or operating expenses of the authority may be included in a contract with holders of revenue bonds of the authority and may be pledged by the authority to the payment of the revenue bonds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.029 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.030. REVENUE BONDS. (a) An authority by resolution may issue revenue bonds to finance a parking facility, the acquisition, construction, reconstruction, and repair of property related to the facility, and the necessary expenses of financing the facility and its operations.

(b) The total principal amount of the revenue bonds outstanding at one time may not exceed $20 million.

(c) As provided by the board before the issuance of revenue bonds, the bonds:

(1) must be dated, must bear interest at a rate, and must mature at a time not to exceed 25 years from the date of their issuance and not to extend beyond the existence of the authority; and

(2) may be made redeemable before maturity at a particular price and under particular terms.

(d) The board shall determine the form of the revenue bonds, including interest coupons, if any, and the manner of execution of the bonds. The board shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at a bank or trust company in the state.

(e) The revenue bonds are negotiable instruments under state law and may be sold in the manner and for the price determined to be in the best interests of the municipality.

(f) The revenue bonds are not a pledge of the faith and credit of a municipality or the state but are payable only from revenues under this subchapter. The face of the bonds must state this.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.030 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1,

2009.

Sec. 601.031. RESOLUTION AUTHORIZING ISSUANCE OF REVENUE BONDS. (a) A resolution authorizing issuance of revenue bonds must pledge the revenues to be received from the parking facility for which the bonds are issued. The resolution may pledge parking meter revenues for this purpose and may provide for mortgaging the parking facility as additional security. The resolution may contain other provisions for protecting and enforcing the rights and remedies of a bondholder as permitted by this subchapter and may contain a limitation on the issuance of additional revenue bonds as the board considers proper.

(b) An expense incurred in carrying out the provisions of the resolution may be treated as a part of the cost of operation of the facility.

(c) The resolution may contain provisions, which if in the resolution must be included as part of the contract with a bondholder, relating to:

(1) the construction, improvement, operation, maintenance, and repair of a project and to the authority's duties regarding those actions;

(2) limitations on the purpose for which the proceeds of the revenue bonds or of a loan or grant from a federal agency may be used;

(3) the rate of a toll and other charge for use of a facility of the authority or a service provided by the authority;

(4) the setting aside, regulation, and disposition of a reserve or sinking fund; and

(5) any other agreement with the bondholder.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.031 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.032. DEED OF TRUST. An authority may enter into a deed of trust as security for revenue bonds and may assign and pledge all or part of the revenues or receipts of the authority under the agreement. The deed of trust may contain provisions relating to:

(1) the construction, improvement, operation, maintenance, and repair of a project and to the authority's duties regarding those actions;

(2) the application and safeguarding of funds under the control of the authority;

(3) the rights and remedies of the trustee and bondholders, including a restriction on a right of action of bondholders; and

(4) terms of the revenue bonds or the resolution authorizing their issuance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.032 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.033. PLEDGED CONTRACT. (a) A contract between the municipality and an authority may be pledged by the authority to secure its bonds. A pledged contract may not be modified except as provided by the terms of the pledge. The governing body of the municipality may authorize the contract without further authorization.

(b) A payment required by the municipality under the contract may be made even if the payment is not provided for in the budget of the municipality, but the payment shall be included in subsequent budgets of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.033 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.034. RIGHTS AND REMEDIES OF BONDHOLDER. (a) The rights and remedies of a bondholder under this section are in addition to any rights and remedies lawfully granted to the bondholder by a resolution providing for the issuance of bonds or by a deed of trust under which bonds are issued.

(b) If an authority fails to pay the principal of or interest on a bond on or before the 60th day after the date payment is due, violates this chapter, or breaches another agreement with a

bondholder, the holders of 25 percent of the aggregate principal amount of the bonds outstanding may appoint a trustee to represent the bondholders. To appoint a trustee, the bondholders must file in the office of the recorder of deeds of the county in which the authority is located an instrument that is proved or acknowledged in the same manner as required by law for a deed to be recorded.

(c) The trustee appointed under this section or a trustee under a deed of trust under this subchapter may, and on written request of the holders of 25 percent of the aggregate principal amount of the bonds outstanding, unless provided otherwise by the deed of trust, shall, in the trustee's own name:

(1) bring an action to enforce the rights of the bondholders;

(2) bring suit on the bonds;

(3) require the authority to account as if it were the trustee of an express trust for the bondholders; or

(4) sue to enjoin violations of law or the rights of the bondholders.

(d) By notice in writing to the authority the trustee may declare bonds due and payable. If the authority cures all defaults, the trustee, with the consent of the holders of 25 percent of the aggregate principal amount of the bonds then outstanding, unless provided otherwise by the deed of trust, may rescind the declaration.

(e) A district court in the county in which the authority is located has jurisdiction of an action by the trustee. A trustee appointed or acting under a deed of trust is entitled to the appointment of a receiver, who may enter and take possession of all or part of the facilities of the authority and the revenues or receipts that may be applicable to the payment of the bonds in default, and who may operate and maintain the facilities and collect and receive rent and other revenues of the facilities. The receiver shall deposit the money in a separate account and apply it in the manner the court directs. In an action by the trustee, any fees, attorney's fees, and expenses of the trustee and the receiver and the costs and disbursements allowed by the court are a first charge on the revenues and receipts from the facilities of the authority that are applicable to the payment of the bonds in default. The trustee may exercise the powers necessary or appropriate for carrying out the trustee's functions under this section or incident to the general representation of the bondholders in the enforcement and protection

of their rights.

(f) This subchapter does not authorize a bondholder or a receiver or trustee appointed under this subchapter to sell, assign, mortgage, or otherwise dispose of the assets of the authority. A receiver may only operate and maintain the facilities of the authority as the court directs.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.034 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.035. BONDS EXEMPT FROM TAXATION. Revenue bonds issued under this subchapter, transfer of the bonds, income from the bonds, and a profit made on the sale of the bonds are free from taxation by the state or a subdivision of the state.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.035 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.036. ELIGIBILITY FOR INVESTMENT. (a) A bond is a security in which a public officer or body of the state or a municipality or municipal subdivision, insurance company, bank, trust company, savings and loan association, or investment company may invest.

(b) A bond is not eligible for the investment of funds of a trust, estate, or guardianship under the control of an individual fiduciary.

(c) A bond may be deposited with a public officer or body of the state or a municipality or municipal subdivision for any purpose for which a bond of the state may be deposited.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.036 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.037. MONEY. Money of an authority shall be paid to the treasurer of the authority who shall deposit it in a separate account in a bank or trust company. The money may be paid out on the warrant or other order of the chairman of the authority or of another person designated by the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.037 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.038. EXAMINATION OF ACCOUNTS. (a) At least once a year, the authority shall have a certified public accountant conduct an audit of its books, accounts, and other records. A copy of the audit shall be delivered to the municipality creating the authority.

(b) If the authority fails to make the required audit, an auditor or accountant designated by the municipality may examine, at the expense of the authority, the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and other matters relating to its finances, operation, and affairs.

(c) The attorney general may examine the books, accounts, and other records of an authority.

(d) A concise financial statement shall be published annually in a newspaper of general circulation in the municipality in which the principal office of the authority is located. If the publication is not made by the authority, the municipality shall publish the statement at the expense of the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.038 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.039. CONVEYANCE OF PROPERTY. (a) The municipality, by resolution or an instrument authorized by a resolution, may convey property to an authority for use in a project.

(b) The legal title to real property conveyed remains with the municipality, but the authority may, until it ceases to exist, use

the property.

(c) Legal title to personal property conveyed passes to the authority.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.039 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.040. ACQUISITION OF REAL PROPERTY. (a) The municipality may acquire real property for a project or for building or improving a road leading to a project.

(b) The municipality may close a road as is necessary or convenient for the purposes of this subchapter.

(c) An authority may, at its own expense, acquire real property for a project in the name of the municipality by purchase or condemnation under the laws relating to the condemnation of land by the municipality. The authority may, until it ceases to exist, use the property.

(d) If an authority determines that real property is no longer required for a project, and the property was acquired at the expense of the municipality, the authority may give the use of the property to the municipality. If the property was acquired at the expense of the authority, the authority may sell, lease, or otherwise dispose of the property and may use the proceeds for the purposes of this subchapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.040 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.041. TAX-EXEMPT STATUS. Unless otherwise specifically provided by statute or in the ordinance or resolution creating an authority, property of an authority is exempt from taxation.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.041 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1,

2009.

Sec. 601.042. CONTRACTS. An authority shall let a contract in the manner, to the extent practicable, provided by law for contracts of the municipality, except that if the estimated expense of a contract does not exceed $5,000, the contract may be entered into without public bidding.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.042 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.043. NOTICE OF CLAIM. (a) In an action against an authority for damages, injury to property, or personal injury or death, a person making a claim shall notify the authority of the claim, reasonably describing the damage or injury and stating the time, manner, and place of the incident from which the claim arose. The notice must be given within six months after the date of the incident.

(b) Notice need not be given if an authority has actual notice of the damage or injury.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.043 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

Sec. 601.044. DURATION. (a) An authority ceases to exist 25 years after the date it is created, except that the municipality that created the authority may extend its existence for not more than 10 years by filing a certified ordinance with the secretary of state.

(b) An authority continues to exist until its liabilities and bonds issued by its board or by the municipality on its behalf have been paid.

(c) When an authority ceases to exist, its rights and property pass to the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 431.044 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(d)(2), eff. April 1, 2009.

SUBTITLE B. COUNTY PARKING AND TRANSPORTATION PROVISIONS
CHAPTER 615. MISCELLANEOUS PARKING AND TRANSPORTATION PROVISIONS AFFECTING COUNTIES
SUBCHAPTER A. PARKING

Sec. 615.001. PARKING ON COUNTY PROPERTY. (a) The commissioners court of a county by order may regulate the parking of vehicles on property owned or leased by the county.

(b) The commissioners court may adopt rules under this section to:

(1) limit the use of parking spaces to certain vehicles or types of vehicles;

(2) limit the time that a vehicle may be parked in a specific space or area; or

(3) prohibit the parking of vehicles in certain areas.

(c) If a county restricts or prohibits parking in a place, it shall erect an appropriately worded sign at the place to inform a driver of a vehicle of the restriction or prohibition. The county is not required to erect a sign to indicate that parking is prohibited on a lawn or other area that does not appear to be a place intended for use as a parking area.

(d) A county may provide for towing and storing a vehicle at the owner's expense if it is parked in violation of a rule adopted under this section. The county may not provide for towing a vehicle that is parked under circumstances that create a defense to prosecution under Subsection (e).

(e) A person commits an offense if the person parks a vehicle in violation of a rule adopted under this section. An offense under this section is a Class C misdemeanor. It is a defense to prosecution under this section that the place where the person parked is an area in which a sign is required under Subsection (c) and that there was no sign in place at the time the person parked.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.
Renumbered from Local Government Code, Section 445.001 by Acts 2007,

80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(1), eff. April 1, 2009.

Sec. 615.002. REGULATION OF COURTHOUSE PARKING LOTS IN CERTAIN COUNTIES. (a) This section applies to a county with a population of:

(1) 14,800 to 15,000;
(2) 19,900 to 20,000;
(3) 21,300 to 21,500;
(4) 57,800 to 57,900;
(5) 36,000 to 36,500; or
(6) 234,000 or more.

(b) The commissioners court of the county may purchase necessary equipment and may make and enforce rules for parking in a county-owned or county-leased parking lot in, under, adjacent to, or near the county courthouse.

(c) The commissioners court and the governing body of the municipality in which the courthouse is located may contract for enforcement of the rules.

(d) The sheriff's department of the county may enforce the rules.

(e) A person commits an offense if the person violates a parking rule adopted under this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than $1 nor more than $20.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 105, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 111, eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 445.002 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(1), eff. April 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 103, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 201, eff. September 1, 2023.

Sec. 615.003. PARKING LOTS AND PARKING GARAGES IN CERTAIN COUNTIES. (a) A county with a population of 150,000 or more may construct, enlarge, equip, and operate a parking lot or parking garage adjacent to or near the county courthouse.

(b) The county may lease the parking lot or parking garage to a person on terms considered appropriate by the commissioners court of the county.

(c) To exercise a power granted by this section, the commissioners court of the county may appropriate and spend money from the general fund or the permanent improvement fund of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Local Government Code, Section 445.003 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(1), eff. April 1, 2009.

Sec. 615.004. FREE PARKING IN COUNTY PARKING FACILITIES. (a) The commissioners court of a county by order may permit former prisoners of war or persons awarded the Purple Heart or a Congressional Medal of Honor to park free of charge in any county parking facility.

(b) The commissioners court of the county may adopt procedures to administer this section, including procedures to verify the status of a person described by Subsection (a).

Added by Acts 1999, 76th Leg., ch. 1049, Sec. 1, eff. Aug. 30, 1999. Renumbered from Local Government Code, Section 445.004 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(1), eff. April 1, 2009.

SUBCHAPTER B. AIRPORTS

Sec. 615.011. USE OF EQUIPMENT ON AIRSTRIPS BY CERTAIN COUNTIES. (a) In this section, "airstrip" means:

(1) an area of land or water used or intended for use for the landing and takeoff of aircraft; and

(2) an appurtenant area used or intended for use for an airport building, other airport facility, or right-of-way.

(b) A county with a population of 44,500 to 45,500 may

authorize the use of county equipment, machinery, and employees to construct, establish, and maintain a public airstrip in the county.

(c) The county shall pay the cost of the use of the county equipment, machinery, and employees from appropriate county funds.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 106, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 112, eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 445.011 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(2), eff. April 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 104, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 202, eff. September 1, 2023.

SUBCHAPTER C. TRANSPORTATION

Sec. 615.021. GRANTS FOR TRANSPORTATION SERVICES. (a) A county may provide grants to an eligible nonprofit corporation that provides transportation services to residents of the county.

(b) An eligible nonprofit corporation is one that was organized before September 1, 1985, to coordinate the public transportation services of state agencies in a regional rural area and to provide public transportation in a county or multicounty rural area.

Added by Acts 1991, 72nd Leg., ch. 679, Sec. 1, eff. June 16, 1991.
Renumbered from Local Government Code, Section 445.021 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(3), eff. April 1, 2009.

Sec. 615.022. TRANSPORTATION EXPENSES OF CERTAIN COUNTIES FOR SENIOR CITIZENS. The commissioners court of a county with a population of 2.2 million or more may pay out of the county general funds costs and expenses for the transportation of senior citizens and their caregivers for civic, community, educational, and recreational activities within and outside the county if a majority of the costs and expenses paid are for the transportation of senior citizens.

Renumbered from Sec. 332.004(c) by Acts 1993, 73rd Leg., ch. 107, Sec. 8.02, eff. Aug. 30, 1993.
Renumbered from Local Government Code, Section 445.022 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(3), eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 15.017, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 105, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 865 (H.B. 1929), Sec. 1, eff. September 1, 2015.

Sec. 615.023. CONTRACTS WITH TRANSIT AUTHORITIES. (a) The commissioners court of a county may contract with a rapid transit authority operating under Chapter 451, Transportation Code, or a metropolitan transportation authority operating under Chapter 452 of that code for the authority to provide public transportation services to an unincorporated area of the county outside the boundaries of the authority.

(b) The county may impose taxes and pledge and encumber other receipts and revenue as may be required to make payments to the authority under the contract.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 13, eff. Sept. 1, 1995.
Renumbered from Local Government Code, Section 445.023 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(3), eff. April 1, 2009.

Sec. 615.024. REGULATION OF TRANSIT AUTHORITY PASSENGERS. (a) The commissioners court of a county in which there is located a rapid transit authority operating under Chapter 451, Transportation Code, the principal municipality of which has a population of more than 1.9 million, may adopt an ordinance of the principal municipality relating to the conduct of persons:

(1) on board a transit vehicle;

(2) awaiting transportation on a transit vehicle at a bus stop or other place designated as a place of entry to or exit from a

transit vehicle;

(3) in a facility, including a building, storage unit, or parking lot of the rapid transit authority; or

(4) in a transit route or other dedicated traffic lane over which a transit vehicle travels and that is specifically labeled or numbered for the purpose of picking up or discharging passengers at regularly scheduled stops or intervals.

(b) An order adopted under this section applies in all parts of the county.

(c) An offense defined by an order under this section is a Class C misdemeanor.

(d) In this section:

(1) "Principal municipality" has the meaning assigned by Section 451.001, Transportation Code.

(2) "Transit vehicle" means a vehicle operated by a rapid transit authority operating under Chapter 451, Transportation Code.

Added by Acts 1995, 74th Leg., ch. 165, Sec. 14, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 669, Sec. 113, eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 445.024 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(3), eff. April 1, 2009.

SUBCHAPTER D. SPECIAL COUNTY ROAD ASSISTANCE PROGRAM

Sec. 615.101. SPECIAL COUNTY ROAD ASSISTANCE PROGRAM. On or before October 15 of each year, the comptroller shall distribute to counties money appropriated for the special county road assistance program under this subchapter.

Added by Acts 2001, 77th Leg., ch. 943, Sec. 1, eff. Sept. 1, 2001.
Renumbered from Local Government Code, Section 445.101 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(4), eff. April 1, 2009.

Sec. 615.102. USE OF MONEY. Money appropriated to the program under this subchapter may be used only for the support of the county road system, including uses specified by Section 256.003, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 943, Sec. 1, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 445.102 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(4), eff. April 1, 2009.

Sec. 615.103. ALLOCATION FORMULA. The comptroller shall distribute money appropriated to the program under this subchapter among the counties as follows:

(1) two-fifths according to total population, determined by the ratio of the total population of the county to the total population of the state;

(2) one-fifth according to population, determined by the ratio of the population in unincorporated areas of the county to the population in all unincorporated areas of the state;

(3) one-fifth according to lineal county road miles, determined by the ratio of lineal mileage of county roads in the county to the lineal mileage of county roads in the state, according to the most recent county road inventory compiled by the Texas Department of Transportation; and

(4) one-fifth according to paved and concrete county road miles, determined by the ratio of miles of lanes of paved and concrete county roads in the county to the miles of lanes of paved and concrete county roads in the state, according to the most recent county road inventory compiled by the Texas Department of Transportation.

Added by Acts 2001, 77th Leg., ch. 943, Sec. 1, eff. Sept. 1, 2001. Renumbered from Local Government Code, Section 445.103 by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.76(e)(4), eff. April 1, 2009.

NATURAL RESOURCES CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent natural resources law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 71, eff. Sept. 1, 1985.

Sec. 1.003. PREEMPTION. Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An

ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code.

Added by Acts 2023, 88th Leg., R.S., Ch. 899 (H.B. 2127), Sec. 13, eff. September 1, 2023.

TITLE 2. PUBLIC DOMAIN
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO THE PUBLIC DOMAIN
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "State" means the State of Texas.

(2) "Land office" means the General Land Office.

(3) "Commissioner" means the Commissioner of the General Land Office.

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. TERRITORY AND BOUNDARIES OF THE STATE

Sec. 11.011. VACANT AND UNAPPROPRIATED LAND. So that the law relating to the public domain may be brought together, the following extract is taken from the joint resolutions of the Congress of the United States relating to the annexation of Texas to the United States, which was approved June 23, 1845: "Said State, when admitted into the Union, . . . shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct. . . ."

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.0111. LOCATION OF COASTAL BOUNDARIES. (a) The commissioner shall:

(1) have the area between the coastline of the Gulf of Mexico and the Three Marine League line compiled and platted; and

(2) locate and set the boundary lines between the coastal counties from the coastline to the Three Marine League line.

(b) The commissioner shall locate and set the boundary lines between the counties from the coastline to the Three Marine League line in accordance with established engineering practice.

(c) The legal description of the boundary lines set between the counties from the coastline to the continental shelf shall be filed and recorded in the office of the county clerk of the affected county.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 30, eff. June 20, 2003.

Sec. 11.012. GULFWARD BOUNDARY OF TEXAS. (a) The gulfward boundary of the State of Texas is the boundary determined in and pursuant to the decision of the United States Supreme Court in Texas v. Louisiana, 426 U.S. 465 (1976).

(b) The State of Texas has full sovereignty over the water, the beds and shores, and the arms of the Gulf of Mexico within its boundaries as provided in Subsection (a) of this section, subject only to the right of the United States to regulate foreign and interstate commerce under Article I, Section 8 of the United States Constitution, and the power of the United States over admiralty and maritime jurisdiction under Article III, Section 2 of the United States Constitution.

(c) The State of Texas owns the water and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico within the boundaries provided in this section, including all land which is covered by the Gulf of Mexico and the arms of the Gulf of Mexico either at low tide or high tide.

(d) None of the provisions of this section may be construed to relinquish any dominion, sovereignty, territory, property, or rights of the State of Texas previously held by the state.

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.013. GULFWARD BOUNDARIES OF COUNTIES, CITIES, TOWNS, OR VILLAGES. (a) The gulfward boundary of each county located on the coastline of the Gulf of Mexico is the Three Marine League line as

determined by the United States Supreme Court.

(b) The area in the extended boundaries of the counties as provided in this section becomes a part of the public free school land and is subject to the constitutional and statutory provisions of this state pertaining to the use, distribution, sale, and lease of public free school land in this state.

(c) The gulfward boundaries of any city, town, or village created and operating under the general laws of the State of Texas shall not be established or extended by incorporation or annexation more than 5,280 feet gulfward beyond the coastline. The governing body of such a city, town, or village may, by ordinance, extend the municipal boundaries up to 5,280 feet gulfward. Any inclusion of territory in any such city, town, or village more than 5,280 feet gulfward beyond the coastline is void. The term "coastline" as used in this subsection means the line of mean low tide along that portion of the coast which is in direct contact with the open Gulf of Mexico. The term "city, town, or village created and operating under the general laws of the State of Texas" shall not include any city operating under a home-rule charter.

If any such general-law city, town, or village has heretofore been established by incorporation or attempted incorporation more than 5,280 feet gulfward beyond the coastline, the corporate existence of such general-law city, town, or village is in all things validated, ratified, approved, and confirmed.

The boundaries of such general-law city, town, or village, including the gulfward boundaries to the extent of 5,280 feet gulfward beyond the coastline, are in all things validated, ratified, approved, and confirmed and shall not be held invalid by reason of the inclusion of more territory than is expressly authorized in Article 971, Revised Civil Statutes of Texas, 1925, as amended, or by reason of the inclusion of territory other than that which is intended to be used for strictly town or city purposes as required by Section 7.002, Local Government Code or by reason of not constituting a city, town, or village.

Neither this Act nor the general laws nor the special laws of the state shall have the effect of validating, ratifying, approving, or confirming the inclusion of territory in any such general-law city, town, or village more than 5,280 feet gulfward beyond the coastline.

If for any reason it should be determined by any court of

competent jurisdiction that any such general-law city, town, or village has heretofore been incorporated in violation of the laws of the state in effect as of the date of such incorporation or is invalid, the corporate boundaries of any such general-law city, town, or village shall be revised and reformed to exclude all territory more than 5,280 feet gulfward of the coastline.

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2165, ch. 828, Sec. 1, eff. June 14, 1979; Acts 1987, 70th Leg., ch. 149, Sec. 24, eff. Sept. 1, 1987.

Sec. 11.0131. JURISDICTION OF HOME-RULE CITIES OVER SUBMERGED LANDS. (a) In this section:

(1) "Coastline" has the meaning assigned by Section 11.013(c) of this code.

(2) "State-owned submerged lands" means the state-owned submerged lands described by Section 11.012 of this code.

(b) The boundary of a home-rule city may not extend into the gulf outside of an area that is enclosed by:

(1) for home-rule cities which have not prior to May 1, 1983, annexed gulfward from the coastline:

(A) drawing a straight line connecting the two most remote points on the part of the coastline located in the city on June 1, 1983, the distance to be measured along the coastline;

(B) drawing straight lines that extend gulfward for one marine league from each of the two ends of the line drawn under Paragraph (A) of Subdivision (1) of this subsection and that are perpendicular to the line drawn under Paragraph (A); and

(C) drawing a straight line connecting the two gulfward ends of the lines drawn under Paragraph (B) of Subdivision (1) of this subsection; or

(2) for home-rule cities which have, prior to May 1, 1983, annexed no farther than one marine league gulfward from the coastline:

(A) drawing a straight line that connects the two most remote points on the part of the coastline located in the city on June 1, 1983, and that extends through those two points as far as necessary to draw the lines described by Paragraph (B) of Subdivision

(2) of this subsection;

(B) drawing two straight lines that extend gulfward for one marine league, that are perpendicular to the line drawn under Paragraph (A) of Subdivision (2) of this subsection, and that each extend through one of the two most remote points from the coastline on the boundary lines extending gulfward from the coastline;

(C) drawing a straight line connecting the two gulfward ends of the lines drawn under Paragraph (B) of Subdivision (2) of this subsection; or

(3) for home-rule cities which have, prior to May 1, 1983, annexed farther than one marine league gulfward from the coastline:

(A) drawing lines following the two current boundary lines extending gulfward from the coastline for a distance of one marine league;

(B) drawing a straight line connecting the two gulfward ends of the lines drawn under Paragraph (A) of Subdivision (3) of this subsection.

(c) A contract or agreement by which a home-rule city purports to pledge, directly or indirectly, taxes or other revenue from or attributable to state-owned submerged lands or other lands located outside the area described by Subsection (b) of this section does not create an enforceable right to prevent the reformation of the city's boundary under Subsection (d) of this section.

(d) The boundary of a home-rule city is void to the extent that it violates Subsection (b) of this section, and the boundary is reformed on the effective date of this Act to exclude the territory situated outside the area described by Subsection (b) of this section.

(e) A home-rule city may create industrial districts in the area that is outside the city limits and that is located in an area formed in the manner prescribed by Subsection (b) of this section except that the lines drawn under Paragraph (B) of Subdivision (1), Paragraph (B) of Subdivision (2) or Paragraph (A) of Subdivision (3) of Subsection (b) may be extended for no more than five statute miles instead of one marine league. The governing body of such city shall have the right, power, and authority to designate the area described as an industrial district, as the term is customarily used, and to treat such area from time to time as such governing body may deem to be in the best interest of the city. Included in such rights and powers of the governing body of any city is the right and power to

enter into contracts or agreements with the owner(s) or lessee(s) of land in such industrial district upon such terms and considerations as the parties might deem appropriate. The city shall have no authority to regulate oil and gas exploration, production, and transportation operations in an industrial district established pursuant to this Act, but in consideration of such relinquishment and the relinquishment of other rights under Section 42.044, Local Government Code, the city is expressly authorized to require payments of a property owner or lessee(s) in such industrial district in an amount not to exceed 35 percent of the revenue that would be produced if the city imposed a property tax in the industrial district. Nothing herein shall prohibit a city and property owner or lessee(s) from agreement by contract for payments in a lesser amount.

Added by Acts 1981, 67th Leg., p. 3057, ch. 803, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 3134, ch. 538, Sec. 1, eff. June 19, 1983; Acts 1987, 70th Leg., ch. 149, Sec. 38, eff. Sept. 1, 1987.

Sec. 11.014. LAND ACQUIRED FROM OKLAHOMA. (a) Land acquired by the state in Oklahoma v. Texas, 272 U.S. 21 (1926) and subsequent orders of the United States Supreme Court relating to that case, is incorporated into the counties which are adjacent to the land, and the north and south lines of the adjacent counties, Lipscomb, Hemphill, Wheeler, Collingsworth, and Childress, are extended east to the 100th degree of west longitude as it is fixed in the final judgment.

(b) The land acquired from Oklahoma shall become a part of the respective counties as though it were originally included in each county for governmental purposes and shall be assessed for taxes and have taxes collected under the provisions of existing law.

Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.015. EXTENSION OF TEXAS-NEW MEXICO BOUNDARY. (a) The boundary lines of all counties in the Texas Panhandle that border on the New Mexico boundary line are extended by extending the north and south lines of certain counties west to the Texas-New Mexico line,

which was established by the survey of John H. Clark in 1859 and later retraced to completion on September 26, 1911, by the Boundary Commission composed of Francis M. Cockrell and Sam R. Scott, under authority of S.J.R. No. 124, of the 61st Congress, Third Session.

(b) The boundary line is referred to as the 103rd Meridian and is described as follows:

> Beginning at the point where the one hundred and third degree of longitude west from Greenwich intersects the parallel of thirty-six degrees and thirty Minutes North latitude, as determined and fixed by John H. Clark, the Commissioner on the part of the United States in the years eighteen hundred and fifty-nine and eighteen hundred and sixty; thence South with the line run by said Clark for the said one hundred and third degree of longitude to the Thirty-second parallel of North latitude to the point marked by said Clark as the Southeast corner of New Mexico; and thence West with the thirty-second degree of North latitude as determined by said Clark to the Rio Grande.

(c) Copies of the deeds certified by the custodian of records in each of the counties in New Mexico in which the land is located and other instruments of title are admissible as evidence in suits filed in this state to the same extent as the original deeds or certified copies of them.

(d) The county clerk of each of the counties in Texas in which the land is now located may file the certified copies of deeds and other instruments affecting title in the same manner as the original deeds could have been filed.

Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.016. LAND ACQUIRED FROM MEXICO IN 1933. (a) The State of Texas recognizes the provisions of 54 Stat. 21 (1940) and accepts as part of its territory and assumes civil and criminal jurisdiction over all of certain parcels or tracts of land lying adjacent to the territory of the State of Texas which were acquired by the United States under a convention between the United States of America and the United Mexican States signed February 1, 1933.

(b) The parcels and tracts of land acquired by the state

constitute a part of the respective counties within whose boundaries they are located by extending the county boundaries to the Rio Grande and are subject to the civil and criminal jurisdiction of these counties.

(c) Any parcels or tracts, parts of which are located in two separate counties, shall be surveyed by the county surveyors of both counties, who shall determine the portion of the land located in their respective counties and shall file the field notes of the land in their offices together with a map of the parcels or tracts in the map records of the county.

(d) For the purpose of determining the boundaries, the boundary lines of the parcels and tracts established by the American Section of the International Boundary Commission, United States and Mexico, shall be accepted as the true boundaries.

(e) Any parcels or tracts of land that are adjacent to or contiguous to a water improvement district or a conservation and reclamation district may be included within the district by a written contract entered into between the owner of the land and the board of directors of the district. The contract shall specifically describe the land to be included in the district, the character of water service to be furnished to the land, and the terms and conditions on which the land is to be included in the district and shall be acknowledged in the manner required for the acknowledgment of deeds and recorded in the deed records of the county in which the land is located.

(f) None of the provisions of this section may be construed to affect the ownership of the land.

Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.017. CHAMIZAL AREA. (a) The State of Texas accepts as part of its territory and assumes civil and criminal jurisdiction over the tract of land lying adjacent to the State of Texas which was acquired by the United States of America from the United Mexican States under the Convention for the Solution of the Problem of the Chamizal, signed August 29, 1963, and ceded to Texas by Act of Congress.

(b) The territory shall be a part of El Paso County.

(c) None of the provisions of this section affect the ownership of the land.

Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.018. CESSION OF CERTAIN EL PASO LAND. (a) To facilitate the project for rectification of the Rio Grande in the El Paso-Juarez Valley under the convention between the United States of America and the United Mexican States signed February 1, 1933, without cost to the state, all right, title, and interest of the State of Texas in and to the bed and banks of the Rio Grande in El Paso County and Hudspeth County which may be necessary or expedient in the construction of the project is ceded to the United States of America.

(b) This cession is made on the express condition that the State of Texas retain concurrent jurisdiction with the United States of America over every portion of land ceded which remains within the territorial limits of the United States after the project is completed so that process may be executed in the same manner and with the same effect as before the cession took place.

(c) None of the provisions of this section may be construed as a cession or relinquishment of any rights which the State of Texas, its citizens, or any property owners have in the water of the Rio Grande, its use, or access to it.

Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. SPECIAL FUNDS

Sec. 11.041. PERMANENT SCHOOL FUND. (a) In addition to land and minerals granted to the permanent school fund under the constitution and other laws of this state, the permanent school fund shall include:

(1) the mineral estate in river beds and channels;

(2) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state; and

(3) the arms and the beds and shores of the Gulf of Mexico

within the boundary of Texas.

(b) The land and minerals dedicated to the permanent school fund shall be managed as provided by law.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.042. ASYLUM FUND. The 400,000 acres of land set apart for the various asylums in equal portions of 100,000 acres for each by act of the legislature, approved August 30, 1856, is recognized and set apart to provide a permanent fund for the support, maintenance, and improvement of the asylums.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.043. UNIVERSITY FUND. After payment of the amount due to the permanent school fund for proceeds from the sale of the portion of the public land set aside for payment of the public debt by act of the legislature in 1879 and payment directed to be made to the permanent school and university funds by act of the legislature in 1883, the remainder of the land not to exceed two million acres or the proceeds from their sale shall be divided in half and one of the halves shall constitute a permanent endowment fund for The University of Texas System.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. REGULATION OF THE PUBLIC DOMAIN

Sec. 11.071. RECOVERY OF VALUE OF MINERALS AND TIMBER. (a) At least semiannually, the commissioner and the county attorney of each county shall report to the attorney general the name and address of each person who has taken any minerals or other property of value from public land or who has cut, used, destroyed, sold, or otherwise appropriated any timber from public land and shall report any other data within their knowledge. The county attorneys also shall assist the attorney general relating to these matters in any manner he

requests.

(b) The attorney general shall file suit in any county in which all or part of the injury occurred or in the county in which the defendant resides to recover the value of the property, or with the consent of the governor, the attorney general may compromise and settle any of these liabilities with or without suit.

(c) The attorney general shall pay all amounts collected or received by him to the permanent funds to which they belong.

(d) From amounts recovered by suit, the attorney general shall receive a fee of 10 percent and the county attorney shall receive a fee of five percent, and from amounts recovered by compromise, the attorney general and county attorney shall each receive one-half of the fees to be taxed against the defendant as costs. No county attorney may receive compensation from cases not reported by him to the attorney general.

(e) Except as otherwise provided by law, no person may use for his benefit or cut or remove any mineral, plant, or anything of value located on land belonging to the permanent school fund without proper authority from the commissioner.

(f) In addition to any other penalties provided by law, a person violating the provisions of Subsection (e) of this section shall be liable for a civil penalty of not more than $10,000 for each thing of value cut, used, or removed. All civil penalties collected under this subsection shall be credited to the permanent school fund.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 208, Sec. 9, eff. Aug. 31, 1987.

Sec. 11.072. FENCES WITH AND WITHOUT GATES. (a) A person who has used any of the pasture land by joining fences or otherwise and who builds or maintains more than three miles lineal measure of fences running in the same general direction without a gate in it shall be fined not less than $200 nor more than $1,000.

(b) The gate in the fence described in Subsection (a) of this section shall be at least 10 feet wide and shall not be locked or kept closed so that it obstructs free ingress or egress.

(c) The provisions of this section do not apply to persons who have previously settled on land not their own, if the enclosure is

200 acres or less and if the principal pursuit of the person on the land is agriculture.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.073. DEFINITION OF FENCING. In Sections 11.074 and 11.075 of this code, "fencing" means the erection of any structure of wood, wire, wood and wire, or any other material, whether it encloses land on all sides or only one or more sides, which is intended to prevent the passage of cattle, horses, mules, sheep, goats, or hogs.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.074. HERDING AND LINE-RIDING. (a) No owner of stock, manager, agent, employee, or servant may fence, use, occupy, or appropriate by herding or line-riding any portion of the public land of the state or land which belongs to the public schools or asylums unless he obtains a lease for the land from the proper authority.

(b) Any owner of stock or his manager, agent, employee, or servant who fences, uses, occupies, or appropriates by herding or line-riding any portion of the land covered by Subsection (a) of this section without a lease for the land, on conviction, shall be fined not less than $100 nor more than $1,000 and confined in the county jail for not less than three months nor more than two years. Each day for which a violation continues constitutes a separate offense.

(c) Prosecution under this section may take place in the county in which a portion of the land is located or to which the county may be attached for judicial purposes or in Travis County.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.075. APPROPRIATION OF LAND BY FENCING. (a) Unless a lease for the land is obtained, any appropriation of public land of the state or land which belongs to the public schools and asylums by fencing or by enclosures consisting partly of fencing and partly of

natural obstacles or impediments to the passage of livestock is an unlawful appropriation of land which is punishable by the penalty provided in Subsection (b) of Section 11.074 of this code.

(b) Each day that the violation continues constitutes a separate offense.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.076. UNLAWFUL ENCLOSURES. (a) If the governor is credibly informed that any portion of the public land or the land which belongs to any of the special land funds has been enclosed or that fences have been erected on the land in violation of law, he may direct the attorney general to institute suit in the name of the state for the recovery of the land, damages, and fees.

(b) The fee for the attorney general may not be less than $10 if the amount recovered is less than $100, but if the amount of recovery is over $100, the fee shall be 10 percent paid by the defendant for the use and occupancy of the land and the removal of the enclosure and fences.

(c) The damages may not be less than five cents an acre a year for the period of occupancy.

(d) In a suit brought under this section, the court shall issue a writ of sequestration directed to any sheriff in the state requiring him to take into actual custody the land and any property on the land which belongs to the person who is unlawfully occupying the land and to hold the land and other property until the court issues further orders. The writ may be executed by the sheriff to whom it is delivered, and he shall proceed to execute the writ.

(e) The defendant in the suit may replevy the property as provided in other cases by executing the bond required by law.

(f) An appeal from a suit brought under this section has precedence over other cases.

(g) If judgment is recovered by the state in the suit, the court shall order the enclosure or fences removed and shall charge the costs of the suit to the defendant. Property on the land which belongs to the defendant and which is not exempt from execution may be used to pay costs and damages in addition to the personal liability of the defendant.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2644, ch. 707, Sec. 4(32), eff. Aug. 31, 1981.

Sec. 11.077. SUIT AGAINST ADVERSE CLAIMANT. If any public land is held, occupied, or claimed adversely to the state or to any fund of the state by any person or if land is forfeited to the state for any reason, the attorney general shall file suit for the land, for rent on the land, and to recover damages to the land.

Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.078. VENUE. A suit brought under the provisions of Section 11.076 or Section 11.077 of this code shall be brought in the county in which the land or any part of the land is located.

Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.079. ACCESS TO LAND. (a) The state, a permittee of the state, or a lessee or assignee of state land or minerals dedicated to the permanent school fund may exercise the power of eminent domain to obtain an easement whenever it is necessary to enter or cross the land of another person for the purpose of obtaining access to any land or interest in land that is owned by the state and that is dedicated by law to the permanent school fund.

(b) If the state or such permittee, lessee, or assignee and the private owner of the land through which an easement for access is sought cannot agree on the place or the terms for the easement to obtain access, either the state or such permittee, lessee, or assignee may, in order to provide that access, exercise this power of eminent domain in the manner provided by Chapter 21, Property Code.

(c) Easements acquired under this section are declared to be for the sole use and benefit of the state, its permittee, lessee, or assignee and may be used only to the extent necessary to achieve the required access or for the purposes for which the permit, lease, or assignment was granted. An easement so acquired is hereby dedicated

to the permanent school fund.

(d) If the state desires to utilize the power of eminent domain to obtain an easement under this section for access to a tract of land, the attorney general shall institute condemnation proceedings as provided under Chapter 21, Property Code. If agreement regarding an easement for access cannot be reached with a private landowner, a permittee of the state or a lessee or assignee of land or minerals dedicated to the permanent school fund desiring to utilize this section to obtain an easement for access to a tract of land must institute the condemnation proceedings authorized by this section.

(e) If the easement acquired under this section is taken solely to benefit a tract of land in which the permanent school fund owns only a mineral interest, the easement shall not be permanent but shall be limited to the term that the state minerals are held under a valid prospect permit or lease. The easement will terminate when the prospect permit and lease expires or terminates.

(f) This section is cumulative of the provisions of Subtitles C and D, Title 2, Natural Resources Code, relating to access to land and to the power of eminent domain. The special fund accounts established under Sections 51.401, 52.297, and 53.155 of this code may be used to compensate landowners for an easement to obtain access under this section.

Added by Acts 1987, 70th Leg., ch. 1061, Sec. 1, eff. Aug. 31, 1987.

Sec. 11.0791. OTHER PROVISIONS REGARDING ACCESS TO STATE LANDS. When a state governmental entity sells state land, the entity shall require that the state have the right of ingress and egress to remaining state land in the immediate area by an easement to a public thoroughfare.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.41, eff. Sept. 1, 1999.

Sec. 11.080. DAMAGES TO PERSONS AND PERSONALTY. When access to any land is obtained by the state under Section 11.079 of this code, the state shall be liable to the property owner to the same extent that any private easement holder would be held liable for the use of access across privately owned property.

Added by Acts 1987, 70th Leg., ch. 1061, Sec. 2, eff. Aug. 31, 1987.

Sec. 11.081. RULES. The General Land Office of the State of Texas shall promulgate and enforce rules governing the construction, maintenance, and use of roads created by access granted under Section 11.079 of this code.

Added by Acts 1987, 70th Leg., ch. 1061, Sec. 3, eff. Aug. 31, 1987.

Sec. 11.082. NOTICE TO SCHOOL LAND BOARD. (a) A state agency or political subdivision may not formally take any action that may affect state land dedicated to the permanent school fund without first giving notice of the action to the board. Notice of the proposed action shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office on or before the state agency's or political subdivision's formal initiation of the action.

(b) The notice must:

(1) describe the proposed action;

(2) state the location of the permanent school fund land to be affected; and

(3) describe any foreseeable impact or effect of the state agency's or political subdivision's action on the permanent school fund land.

(c) An action taken by a state agency or political subdivision without the notice required by Subsection (a) of this section that affects state land dedicated to the permanent school fund is not effective as to permanent school fund land affected by the action.

(d) In this section:

(1) "Action" means:

(A) formal adoption of an agency or political subdivision policy;

(B) final adoption of an administrative rule;

(C) issuance of findings of fact or law;

(D) issuance of an administrative order in an administrative hearing; or

(E) adoption of a local ordinance or resolution.

(2) "Board" means the School Land Board.

(3) "Initiation" means the commencement of the first phase of public consideration of a formal policy, rule, or ordinance, or a hearing undertaken by a state agency or political subdivision that is intended to result in final adoption of a formal policy, rule, or ordinance.

(4) "Political subdivision" means a county, public school district, or special-purpose district or authority.

(5) "State agency" means:

(A) a department, commission, board, office, bureau, council, or other agency in the executive branch of state government other than the Texas Department of Transportation and the Railroad Commission of Texas; or

(B) a university system or an institution of higher education as defined in Section 61.003, Education Code.

Added by Acts 1993, 73rd Leg., ch. 991, Sec. 7, eff. Sept. 1, 1993.

Sec. 11.083. RETENTION OF MINERAL RIGHTS. The state shall retain the mineral rights to state land that is sold unless it is impractical to do so.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.42, eff. Sept. 1, 1999.

Sec. 11.084. SCHOOL LAND BOARD APPROVAL OF PATENT FOR INTEREST IN LAND RELEASED BY STATE. (a) The School Land Board may approve a tract of land for patenting to release all or part of the state's interest in land, excluding mineral rights, if the board:

(1) finds that:

(A) the land is surveyed, unsold, permanent school fund land according to the records of the land office;

(B) the land is not patentable under the law in effect before January 1, 2002; and

(C) the person claiming title to the land:

(i) holds the land under color of title;

(ii) holds the land under a chain of title that originated on or before January 1, 1952;

(iii) acquired the land without actual knowledge that title to the land was vested in the State of Texas;

(iv) has a deed to the land recorded in the appropriate county; and

(v) has paid all taxes assessed on the land and any interest and penalties associated with any period of tax delinquency; and

(2) unanimously approves the release of the state's interest.

(b) This section does not apply to:

(1) beach land, submerged or filled land, or islands; or

(2) land that has been determined to be state-owned by judicial decree.

(c) This section may not be used to:

(1) resolve boundary disputes; or

(2) change the mineral reservation in an existing patent.

Added by Acts 2001, 77th Leg., ch. 310, Sec. 1, eff. Nov. 6, 2001.

Sec. 11.085. PROCEDURE FOR APPLYING FOR PATENT FOR INTEREST IN LAND RELEASED BY STATE. (a) A person claiming title to land may apply for a patent under Section 11.084 by filing with the commissioner an application on a form prescribed by the commissioner. The claimant must attach to the application all documentation necessary to support the claimant's request for a patent.

(b) The land office shall review the claimant's application to determine whether the claimant substantially meets the criteria for issuance of a patent under Section 11.084.

(c) If the land office determines that the application is complete for consideration by the board, the commissioner shall convene the board to determine whether a patent is to be issued under Section 11.084.

(d) The commissioner may adopt rules as necessary to administer Section 11.084 and this section.

Added by Acts 2001, 77th Leg., ch. 310, Sec. 1 eff. Nov. 6, 2001.

Sec. 11.086. CONFIDENTIALITY OF CERTAIN INFORMATION RELATED TO PURCHASE, SALE, OR DEVELOPMENT OF REAL PROPERTY. (a) Information relating to the development, location, purchase price, or sale price of real property developed, purchased, or sold by or for the School

Land Board, Veterans' Land Board, land office, or commissioner under authority granted by this code, including a contract provision related to the development, purchase, or sale of the property, is confidential and exempt from disclosure under Chapter 552, Government Code, until all deeds for the property that are applicable to the transaction or series of related transactions are executed and until all substantive performance or executory requirements of applicable contracts have been satisfied. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, or investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of developing, purchasing, or selling real property.

(b) Information that is confidential and excluded from disclosure under Subsection (a) is not subject to a subpoena directed to the School Land Board, Veterans' Land Board, land office, commissioner, attorney general, or governor.

Added by Acts 2001, 77th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 2001. Renumbered from Sec. 11.084 and amended by Acts 2003, 78th Leg., ch. 532, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(111), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 381 (S.B. 596), Sec. 1, eff. June 15, 2007.

CHAPTER 12. RED RIVER BOUNDARY COMPACT; RED RIVER BOUNDARY COMMISSION

SUBCHAPTER A. RED RIVER BOUNDARY COMPACT

Sec. 12.001. ADOPTION OF COMPACT. This state enacts the Red River Boundary Compact into law and enters into the compact with the State of Oklahoma if that state legally joins in the compact in substantially the form provided by Section 12.002.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

Sec. 12.002. TEXT OF COMPACT. The Red River Boundary Compact reads as follows:

RED RIVER BOUNDARY COMPACT

ARTICLE I. PURPOSE

(a) The states of Texas and Oklahoma recognize that:

(1) there are actual and potential disputes, controversies, criminal proceedings, and litigation arising, or that may arise, out of the location of the boundary line between the states along the Red River;

(2) the south bank of the Red River is the boundary between the states along the Red River;

(3) the boundary between the states changes as a result of the natural action of the river and, because of those changes and the nature of the land, the south bank of the river is often not readily or easily identified;

(4) while the south bank, at any given time, may be located through expensive and time-consuming survey techniques, such surveys can, at best, identify the south bank only as it exists at the time of the survey;

(5) locating the south bank through survey techniques is of minimal aid when agencies of the party states must locate the state boundary line for law enforcement, administrative, and taxation purposes; and

(6) the interests of the party states are better served by establishing the boundary between the states through use of a readily identifiable natural landmark than through use of an artificial survey line.

(b) It is the principal purpose of the party states in entering into this compact to establish an identifiable boundary between the states of Texas and Oklahoma along the Red River as of the effective date of this compact without interfering with or otherwise affecting private property rights or title to property. In addition, this compact serves the compelling purposes of:

(1) creation of a friendly and harmonious interstate relationship;

(2) avoidance of multiple exercise of sovereignty and jurisdiction, including matters of taxation, judicial and police powers, and exercise of administrative authority;

(3) avoidance of lack of exercise of sovereignty and jurisdiction over any lands along the boundary;

(4) avoidance of questions of venue in civil and criminal proceedings that may arise as a result of incidents along the boundary and avoidance or minimization of future disputes and litigation;

(5) promotion of economic and political stability; and

(6) placement of the boundary at a location that can be visually identified or located without the necessity of a current survey and that is close to the historical boundary location.

ARTICLE II. ESTABLISHMENT OF BOUNDARY

(a) In this article:

(1) "Vegetation" means trees, shrubs, grasses, and other plant species that substantially cover the ground. Whether the vegetation substantially covers the ground is determined by reference to the density of the coverage of the ground by trees, shrubs, grasses, and other plant species in the area adjacent to the relevant portion of the riverbed.

(2) "Vegetation line" means the visually identifiable continuous line of vegetation that is adjacent to that portion of the riverbed kept practically bare of vegetation by the natural flow of the river and is continuous with the vegetation beyond the riverbed. Stray vegetation, patches of vegetation, or islands of vegetation within the riverbed that do not form such a line are not considered part of the vegetation line. Where the riverbed is entered by the inflow of another watercourse or is otherwise interrupted or disturbed by a man-made event, the line constituting the boundary is an artificial line formed by extending the vegetation line above and below the other watercourse or interrupted or disturbed area to connect and cross the watercourse or area.

(b) The permanent political boundary line between the states of Texas and Oklahoma along the Red River is the vegetation line along the south bank of the Red River except for the Texoma area, where the boundary does not change. For purposes of this compact:

(1) the Texoma area extends from the east bank of Shawnee Creek (which flows into the Red River from the south approximately one-half mile below the Denison Dam) at its mouth to the upper end of the normal pool elevation of Lake Texoma (which is 617 feet); and

(2) the upper end of the normal pool elevation of Lake Texoma is along the latitude of 33 degrees 54 minutes as it crosses the watercourse at the approximate location of longitude 96 degrees 59 minutes.

(c) The party states agree that the existing boundary within the Texoma area begins at the intersection of the vegetation line on the south bank of the Red River with the east bank of Shawnee Creek. From this point, the boundary extends west along the south bank of

the Red River as the bank existed immediately before the commencement of the construction of Lake Texoma. From Shawnee Creek to Denison Dam, this boundary line is within the current channel of the Red River. Within Lake Texoma, this boundary line follows the south bank of the Red River as the bank was located and marked by the United States Army Corps of Engineers before the commencement of the construction of Lake Texoma.

(d) Within one year after the date the United States Congress consents to this compact, the Commissioner of the General Land Office of Texas and a designated member of the Oklahoma Red River Boundary Commission shall:

(1) locate the boundary line within the Texoma area as described by Subsection (c), using the survey that the United States Army Corps of Engineers prepared in connection with the construction of Lake Texoma and any other surveys, historical maps, or other information that may be available;

(2) prepare a map of the boundary line; and

(3) file the map in the state library and archives of each party state and with the Oklahoma Secretary of State, after which the map will be a part of this compact.

(e) Within one year after the date the map is filed under Subsection (d)(3), the United States Army Corps of Engineers shall permanently mark the boundary line within the Texoma area as shown on the map. The United States Army Corps of Engineers shall maintain the markers annually, or more frequently if necessary.

(f) The party states may:

(1) agree to equally share the cost of monumenting and maintaining the lines demarking both the boundary within the Texoma area and the upper limit of the normal pool elevation in a manner designed to make the boundary readily identifiable to the using public; or

(2) seek funding from other sources for monumenting and maintaining the lines.

(g) Should there be a change in the watercourse of the Red River, the party states recognize the rules of accretion, erosion, and avulsion. The states agree that accretion or erosion may cause a change in the boundary between the states if it causes a change in the vegetation line. With regard to avulsion, the states agree that a change in the course of the Red River caused by an immediately perceivable natural event that changes the vegetation line will

change the location of the boundary between the states.

ARTICLE III. SOVEREIGNTY

On the effective date of this compact, the party states agree that the State of Oklahoma possesses sovereignty over all lands north of the boundary line established by this compact and that the State of Texas possesses sovereignty over all lands south of the boundary line established by this compact. This compact does not change or affect in any manner the sovereignty rights of federally recognized Indian tribes over lands on either side of the boundary line established by this compact. Tribal sovereignty rights continue to be established and defined by controlling federal law.

ARTICLE IV. PENDING LITIGATION

This compact does not affect the jurisdiction of any litigation concerning the title to any of the lands bordering the Red River pending in the courts of either of the party states or the United States as of the effective date of this compact. The states intend that such litigation, if any, continue in the trial and appellate courts of the jurisdiction where pending, until the litigation is finally determined.

ARTICLE V. PUBLIC RECORDS

(a) All public records in either party state concerning any lands the sovereignty over which is changed by this compact are accepted as evidence of record title to such lands, to and including the effective date of this compact, by the courts of the other state and the federal courts.

(b) As to lands the sovereignty over which is changed by this compact, the recording officials of the counties of each party state shall accept for filing certified copies of documents of title previously filed in the other state and documents of title using legal descriptions derived from the land descriptions of the other state. The acceptance of a document for filing has no bearing on its legal effect or sufficiency. The legal sufficiency of a document's form, execution, and acknowledgments, and the document's ability to convey or otherwise affect title, are determined by the document itself and the real estate laws of the jurisdiction in which the land was located at the time the document was executed or took effect.

ARTICLE VI. TAXES

(a) Except as provided by Subsections (b) and (c), the lands the sovereignty over which is changed by this compact are, after the effective date of this compact, subject to taxation only by the state

gaining sovereignty over the lands by this compact.

(b) Taxes for the year of adoption of this compact for property the jurisdiction over which is changed by this compact may be lawfully imposed only by the state in which the property was located on January 1 of the year of adoption of this compact. The taxes for the year of adoption may be levied and collected by that state or its authorized governmental subdivisions or agencies, and any liens or other rights accrued or accruing, including the right of collection, are fully recognized, except that all liens or other rights arising out of the imposition of those taxes must be claimed or asserted within five years after this compact takes effect or they are barred.

(c) The party states recognize that the boundary between the states will change from time to time as a result of the natural actions of accretion, erosion, and avulsion and agree that for years subsequent to the year of adoption of this compact, the state within which lands adjoining the boundary line are located on January 1 of each year has the right to levy and collect taxes for the entire ensuing year.

(d) All taxes currently assessed by governmental entities in each party state as to lands that border or cross the boundary line established by this compact are presumed to be correct as to acreage within the particular jurisdiction, absent competent proof to the contrary presented in writing by the property owner or owners to the appropriate taxing agencies. All such proof must be presented to the appropriate taxing agencies before May 1 of the year following the year in which this compact takes effect. In subsequent years it is presumed that the acreage taxed in each jurisdiction for the previous year was correct unless evidence of change is furnished to or obtained by the various taxing agencies under rules and regulations adopted by those taxing agencies.

ARTICLE VII. PROPERTY AND WATER RIGHTS

This compact does not change:

(1) the title of any person or entity, public or private, to any of the lands adjacent to the Red River;

(2) the rights, including riparian rights, of any person or entity, public or private, that exist as a result of the person's or entity's title to lands adjacent to the Red River; or

(3) the boundaries of those lands.

ARTICLE VIII. EFFECTIVE DATE

This compact takes effect when enacted by the states of Texas

and Oklahoma and consented to by the United States Congress.

ARTICLE IX. ENFORCEMENT

(a) This compact does not limit or prevent either party state from instituting or maintaining any action or proceeding, legal or equitable, in any court having jurisdiction, for the protection of any right under this compact or the enforcement of any of its provisions.

(b) This compact is not binding or obligatory on either party state unless and until it has been enacted by both states and consented to by the United States Congress. Notice of enactment of this compact by each state shall be given by the governor of that state to the governor of the other state and to the president of the United States. The president is requested to give notice to the governors of the party states of the consent to this compact by the United States Congress.

ARTICLE X. AMENDMENTS

This compact remains in full force and effect unless amended in the same manner as it was created.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

Sec. 12.003. NEGOTIATIONS TO RESOLVE DIFFERENCES. (a) Until the State of Oklahoma enters into the Red River Boundary Compact in substantially the form provided by Section 12.002, the Commissioner of the General Land Office has the authority to negotiate with the appropriate Oklahoma representative to resolve any differences between the states of Texas and Oklahoma regarding matters covered by the compact. The commissioner shall conduct the negotiations in cooperation with the Red River Boundary Commission created by H.C.R. No. 128, Acts of the 74th Legislature, Regular Session, 1995.

(b) The Commissioner of the General Land Office shall report annually to the governor of this state, or more frequently if necessary, on the status of the negotiations.

(c) Notwithstanding any other provision of this subchapter, if the boundary in the Texoma area, as described by Article II(b)(1), Red River Boundary Compact, Section 12.002, is not marked in accordance with Article II of the compact, the Red River Boundary Commission shall confer and act jointly with representatives appointed on behalf of the State of Oklahoma to redraw the boundary

in the Texoma area in accordance with the provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 3, eff. June 14, 2013.

Sec. 12.004. IMPLEMENTATION OF COMPACT. (a) If the State of Oklahoma enters into the Red River Boundary Compact in substantially the form provided by Section 12.002, the Commissioner of the General Land Office has the authority to negotiate with the appropriate Oklahoma representative to establish procedures for implementing the compact's provisions. The commissioner shall conduct the negotiations in cooperation with the Red River Boundary Commission.

(b) The Commissioner of the General Land Office shall report annually to the governor of this state, or more frequently if necessary, on the status of the negotiations.

(c) A procedure for implementing a provision of the compact must be approved by the governor of this state.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

Sec. 12.005. RELATION TO OTHER LAW AND LITIGATION. The Red River Boundary Compact does not affect:

(1) the Red River Compact, the text of which is set out in Section 46.013, Water Code; or

(2) the riparian rights of adjacent landowners to access and use the waters of the Red River as provided by the Treaty of Amity, Settlement and Limits, Feb. 22, 1819, United States-Spain, 8 Stat. 252, T.S. No. 327; or

(3) litigation pending in either state involving title to land or boundaries of rivers or water bodies of that state.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

For expiration of this subchapter, see Section 12.058.

SUBCHAPTER B. RED RIVER BOUNDARY COMMISSION

Sec. 12.051. DEFINITIONS. In this subchapter:

(1) "Commission" means the Red River Boundary Commission.

(2) "Texoma area" means the area defined by the Texoma Area Boundary Agreement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.052. CREATION OF COMMISSION. The Red River Boundary Commission is established to oversee the redrawing of the boundary between this state and the State of Oklahoma in the Texoma area.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.053. MEMBERSHIP. (a) The commission is composed of five members appointed by the governor to represent:

(1) private property owners;

(2) local governments;

(3) state elected officials; and

(4) the general public.

(b) The governor shall designate one member as the presiding officer of the commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.054. COMPENSATION. A commission member is not entitled to receive compensation for service on the commission but may receive reimbursement for travel expenses incurred while conducting commission business.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.055. STAFF SUPPORT. The General Land Office, the office of the attorney general, and the Texas Commission on Environmental Quality shall provide necessary staff support to the

commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.056. POWERS AND DUTIES. The commission shall confer and act jointly with representatives appointed on behalf of the State of Oklahoma to:

(1) evaluate the methods, surveys, historical maps, and other information used to establish the boundary line between this state and the State of Oklahoma in the Texoma area;

(2) determine the location of the south bank of the Red River as the bank was located and marked by the United States Army Corps of Engineers before the beginning of construction of Lake Texoma, in accordance with Article II(c), Red River Boundary Compact, Section 12.002;

(3) redraw the boundary line between this state and the State of Oklahoma on any real property for which the United States Army Corps of Engineers granted an easement before August 31, 2000, to at least two districts or authorities created under Section 59, Article XVI, Texas Constitution, for the construction, operation, and maintenance of a water pipeline and related facilities in the Texoma area in order to negate any effects the boundary as it is currently drawn has on property interests associated with those easements in the Texoma area, in such a way that there is no net loss of property between either state so as to ensure that the redrawn boundary does not increase the political power or influence of either state, and in accordance with:

(A) the Lake Texoma preconstruction survey of the south bank of the Red River prepared by the United States Army Corps of Engineers; or

(B) other historical records or documentation of the United States Army Corps of Engineers identifying the location of the south bank of the Red River, if the survey described by Subdivision (3)(A) is unavailable;

(4) hold hearings and conferences in this state and in the State of Oklahoma as necessary to accomplish the purposes of this section; and

(5) take other action, alone or in cooperation with the

State of Oklahoma or the United States, necessary to accomplish the purposes of this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 94 (H.B. 908), Sec. 1, eff. May 23, 2015.

Sec. 12.057. REPORTS. (a) Not later than January 15, 2015, the commission shall report to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature the commission's findings and recommendations concerning joint action by this state and the State of Oklahoma regarding amendment of the Texoma Area Boundary Agreement to incorporate the boundary between this state and the State of Oklahoma in the Texoma area as redrawn.

(b) Not later than July 30, 2027, the commission shall issue a final report to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 94 (H.B. 908), Sec. 2, eff. May 23, 2015.
Acts 2017, 85th Leg., R.S., Ch. 82 (H.B. 641), Sec. 1, eff. May 23, 2017.
Acts 2021, 87th Leg., R.S., Ch. 220 (H.B. 374), Sec. 1, eff. June 4, 2021.
Acts 2023, 88th Leg., R.S., Ch. 184 (H.B. 1949), Sec. 1, eff. May 24, 2023.

Sec. 12.058. EXPIRATION OF SUBCHAPTER. This subchapter expires December 31, 2027.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 94 (H.B. 908), Sec. 3, eff. May 23, 2015.

Acts 2017, 85th Leg., R.S., Ch. 82 (H.B. 641), Sec. 2, eff. May 23, 2017.

Acts 2021, 87th Leg., R.S., Ch. 220 (H.B. 374), Sec. 2, eff. June 4, 2021.

Acts 2023, 88th Leg., R.S., Ch. 184 (H.B. 1949), Sec. 2, eff. May 24, 2023.

SUBTITLE B. SURVEYS AND SURVEYORS

CHAPTER 21. SURVEYS AND FIELD NOTES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Navigable stream" means a stream which retains an average width of 30 feet from the mouth up.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. SURVEYS

Sec. 21.011. SURVEYS OF PUBLIC LAND. Each survey of public land shall be made under authority of law and by a surveyor duly appointed, elected, or licensed and qualified.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.012. SURVEYS ON NAVIGABLE STREAMS. (a) If the circumstances of the lines previously surveyed under the law will permit, land surveyed for individuals, lying on a navigable stream, shall front one-half of the square on the stream with the line running at right angles with the general course of the stream.

(b) A navigable stream may not be crossed by the lines of a survey.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.013. SURVEYS NOT ON A NAVIGABLE STREAM. Surveys that are not made on navigable streams shall be in a square as far as lines previously surveyed will permit.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.014. SURVEY FOR DIVISION LINE. (a) Before running a division line between two settlers or occupants claiming land, the surveyor shall give written notice to the interested parties.

(b) A survey made contrary to the true intent and meaning of this section is invalid.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. FIELD NOTES

Sec. 21.041. FIELD NOTES OF A SURVEY OF PUBLIC LAND. The field notes of a survey of public land shall state:

(1) the county in which the land is located;

(2) the authority under which the survey is made and a true description of the survey;

(3) the land by proper field notes with the necessary calls and connections for identification, observing the Spanish measurement by varas;

(4) a diagram of the survey;

(5) the State Plane Coordinates based on the Texas Coordinate System of 1927, the Texas Coordinate System of 1983, or an alternative coordinate system adopted under Section 21.0711 values for the beginning point on the survey with appropriate reference to zone, mapping angle, grid distances, acreage and the N.G.S. Station to which the survey is tied;

(6) the names of the field survey personnel;

(7) the date the survey was made; and

(8) the signature of the surveyor.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 616, Sec. 1, eff. Sept. 1, 1987. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 381 (S.B. 1072), Sec. 1, eff. September 1, 2021.

Sec. 21.042. SURVEYOR'S CERTIFICATION. (a) The surveyor shall certify officially:

(1) to the correctness of the survey;

(2) that the survey was made according to law;

(3) that the survey was actually made in the field; and

(4) that the field notes are duly recorded, giving the book and page.

(b) If the survey was made by a deputy, the county surveyor shall certify officially that:

(1) he has examined the field notes;

(2) he finds them correct; and

(3) he has determined that the survey is duly recorded, giving the book and page of record.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.043. LOST FIELD NOTES. (a) If the original field notes of an authorized survey are lost or destroyed, the owner or his agent may obtain a certified copy of the record from the county surveyor on making an affidavit of the loss or destruction and filing it in the office of the county surveyor where the survey was recorded.

(b) The certified copy shall be as valid as the original record and shall secure to the owner all the rights before the commissioner that the original would have secured.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.044. INCORRECT FIELD NOTES. (a) The commissioner

shall have a plain statement of errors in any field notes submitted to the land office, together with a sketch of the map, forwarded by mail, or personally by the interested party, to the surveyor who made the survey, with a request to correct and return the field notes and map.

(b) The surveyor shall correct and return the field notes and map at once without further charge.

(c) If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts and furnish a true sketch of the survey with its connections.

(d) This section does not require the commissioner or a surveyor to make a new survey of land or a portion of the land after a survey of the land is accepted by the commissioner for filing in the official records of the land office.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 160 (H.B. 3340), Sec. 1, eff. September 1, 2005.

SUBCHAPTER D. TEXAS COORDINATE SYSTEMS

Sec. 21.071. ADOPTION OF COORDINATE SYSTEMS. (a) The systems of plane coordinates which have been established by the National Oceanic Survey/National Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Texas are adopted and will be known and designated as the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983.

(b) Each system is a separate system and must be used as a separate system.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 3, eff. Sept. 1, 1987.

Sec. 21.0711. ALTERNATIVE COORDINATE SYSTEMS. (a) The Texas Spatial Reference Center at Texas A&M University--Corpus Christi established under Section 88.503, Education Code, may adopt a revised

state coordinate system that may be used for purposes of this subchapter under the authority granted to the center as the state's facilitator of the National Spatial Reference System.

(b) A revised coordinate system adopted under Subsection (a) is an official state coordinate system.

Added by Acts 2021, 87th Leg., R.S., Ch. 381 (S.B. 1072), Sec. 2, eff. September 1, 2021.

Sec. 21.072. PURPOSE AND LIMITATIONS OF COORDINATE SYSTEMS. (a) The only purpose for adopting the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983 is to recognize a system for use in the State of Texas to definitely ascertain positions on the surface of the earth.

(b) Except as provided in Section 21.041 of this code, the use of a system is not required, and the provisions of this subchapter shall not be construed to set aside or disturb any corner or survey already established.

(c) The use of the term "Texas Coordinate System" on a map, report, survey, or other document is limited to coordinates based on a Texas Coordinate System as defined in this subchapter.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 2, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 616, Sec. 4, eff. Sept. 1, 1987.

Sec. 21.073. DIVISION OF STATE INTO ZONES. For the purpose of using a system, the state is divided into five zones:

(1) the North Zone;
(2) the North Central Zone;
(3) the Central Zone;
(4) the South Central Zone; and
(5) the South Zone.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 5, eff. Sept. 1, 1987.

Sec. 21.074. AREA WITHIN ZONES. (a) The area included in the following counties constitutes the North Zone: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(b) The area included in the following counties constitutes the North Central Zone: Andrews, Archer, Bailey, Baylor, Borden, Bowie, Callahan, Camp, Cass, Clay, Cochran, Collin, Cooke, Cottle, Crosby, Dallas, Dawson, Delta, Denton, Dickens, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Grayson, Gregg, Hale, Hardeman, Harrison, Haskell, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Morris, Motley, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Scurry, Shackelford, Smith, Somervell, Stephens, Stonewall, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.

(c) The area included in the following counties constitutes the Central Zone: Anderson, Angelina, Bastrop, Bell, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Cherokee, Coke, Coleman, Comanche, Concho, Coryell, Crane, Crockett, Culberson, Ector, El Paso, Falls, Freestone, Gillespie, Glasscock, Grimes, Hamilton, Hardin, Houston, Hudspeth, Irion, Jasper, Jeff Davis, Kimble, Lampasas, Lee, Leon, Liberty, Limestone, Llano, Loving, McLennan, McCulloch, Madison, Mason, Menard, Midland, Milam, Mills, Montgomery, Nacogdoches, Newton, Orange, Pecos, Polk, Reagan, Reeves, Robertson, Runnels, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Sterling, Sutton, Tom Green, Travis, Trinity, Tyler, Upton, Walker, Ward, Washington, Williamson, and Winkler.

(d) The area included in the following counties constitutes the South Central Zone: Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Brazoria, Brewster, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Dimmit, Edwards, Fayette, Fort Bend, Frio, Galveston, Goliad, Gonzales, Guadalupe, Harris, Hays, Jackson, Jefferson, Karnes, Kendall, Kerr, Kinney, LaSalle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Presidio, Real, Refugio, Terrell, Uvalde, Val Verde, Victoria, Waller, Wharton, Wilson, and Zavala.

(e) The area included in the following counties constitutes the

South Zone: Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Webb, Willacy, and Zapata.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.075. ZONE NAMES IN LAND DESCRIPTION. (a) As established for use in the North Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, North Zone" or "Texas Coordinate System of 1983, North Zone."

(b) As established for use in the North Central Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, North Central Zone" or "Texas Coordinate System of 1983, North Central Zone."

(c) As established for use in the Central Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, Central Zone" or "Texas Coordinate System of 1983, Central Zone."

(d) As established for use in the South Central Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, South Central Zone" or "Texas Coordinate System of 1983, South Central Zone."

(e) As established for use in the South Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, South Zone" or "Texas Coordinate System of 1983, South Zone."

Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 6, eff. Sept. 1, 1987.

Sec. 21.076. DEFINITIONS. (a) For the purpose of precisely defining the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983, the following definitions are adopted:

(1) The Texas Coordinate System of 1927, North Zone, and the Texas Coordinate System of 1983, North Zone, is a Lambert conformal projection, having standard parallels at north latitudes 34° 39' and 36° 11', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 101° 30' west longitude and the parallel 34° 00' north latitude. The origin of the 1927 coordinate system is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 200,000 meters (236,220 varas) and y = 1,000,000 meters (1,181,100 varas).

(2) The Texas Coordinate System of 1927, North Central Zone, and the Texas Coordinate System of 1983, North Central Zone, is a Lambert conformal projection, having standard parallels at north latitudes 32° 08' and 33° 58', along which parallels the scale shall be exact. The origin of coordinates for the 1927 coordinate system is at the intersection of the meridian 97° 30' west longitude and the parallel 31° 40' north latitude. This origin is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of coordinates for the 1983 coordinate system is at the intersection of the meridian 98° 30' west longitude and the parallel 31° 40' north latitude. This origin is given the coordinates: x = 600,000 meters (708,660 varas) and y = 2,000,000 meters (2,362,200 varas).

(3) The Texas Coordinate System of 1927, Central Zone, and the Texas Coordinate System of 1983, Central Zone, is a Lambert conformal projection, having standard parallels at north latitudes 30° 07' and 31° 53', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 100° 20' west longitude and the parallel 29° 40' north latitude. The origin of the 1927 coordinate system is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 700,000 meters (826,770 varas) and y = 3,000,000 meters (3,543,300 varas).

(4) The Texas Coordinate System of 1927, South Central Zone, and the Texas Coordinate System of 1983, South Central Zone, is a Lambert conformal projection, having standard parallels at north latitudes 28° 23' and 30° 17', along which parallels the scale shall

be exact. The origin of coordinates is at the intersection of the meridian of 99° 00' west longitude and the parallel 27° 50' north latitude. The origin of the 1927 coordinate system is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 600,000 meters (708,660 varas) and y = 4,000,000 meters (4,724,400 varas).

(5) The Texas Coordinate System of 1927, South Zone, and the Texas Coordinate System of 1983, South Zone, is a Lambert conformal projection, having standard parallels at north latitudes 26° 10' and 27° 50', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 98° 30' west longitude and the parallel 25° 40' north latitude. The origin of the 1927 coordinate system is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 300,000 meters (354,330 varas) and y = 5,000,000 meters (5,905,500 varas).

(b) The position of the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983 shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the National Oceanic and Atmospheric Administration for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927 or 1983, and whose coordinates have been computed on the system defined in this subchapter. Any of these stations may be used for establishing a survey connection with the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983.

Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 7, eff. Sept. 1, 1987.

Sec. 21.077. UNIT OF MEASUREMENT. The unit of measurement in this subchapter has the following values, based on the International Meter established by the National Bureau of Standards:

(1) one meter = 39.37 inches exactly;

(2) one U.S. survey foot = 0.3048006096 meter;

(3) one vara = 33-1/3 inches exactly; and

(4) one international foot = 0.3048 meter exactly.

Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 381 (S.B. 1072), Sec. 3, eff. September 1, 2021.

Sec. 21.078. TERMS "X COORDINATE" AND "Y COORDINATE". (a) The plane coordinate values for a point on the earth's surface, to be used in expressing the position or location of the point in the appropriate zone, of either system, shall consist of two distances, expressed in U.S. Survey Feet and decimals of a foot or varas or tenths of a vara when using the Texas Coordinate System of 1927 and expressed in meters and decimals of a meter, in U.S. Survey Feet or decimals of a foot, or in varas or tenths of a vara when using the Texas Coordinate System of 1983.

(b) One of these distances, to be known as the "x coordinate," shall give the position in an east-and-west direction; the other, to be known as the "y coordinate," shall give the position in a north-and-south direction.

(c) These coordinates shall be made to depend on and conform to the plane rectangular coordinate values for the monumented points of the North American Horizontal Geodetic Control Network as published by the National Oceanic Survey/National Geodetic Survey, or its successors, and whose plane coordinates have been computed on the systems defined in this subchapter.

(d) Any station described in this section may be used for establishing a survey connection to either the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983.

Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 8, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 991, Sec. 4, eff. Sept. 1, 1993.

Sec. 21.079. LAND IN MORE THAN ONE ZONE. If a tract of land to be defined by a single description extends from one zone into another of the coordinate zones, the positions of all points on its boundaries may be referred to by either of the zones, the zone which is used being specifically named in the description.

Acts 1977, 65th Leg., p. 2360, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 9, eff. Sept. 1, 1987.

CHAPTER 23. COUNTY SURVEYORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 23.011. ELECTION. (a) A county surveyor is elected to a four-year term as provided by Article XVI, Sections 64 and 65, of the Texas Constitution.

(b) To be eligible to serve as a county surveyor, a person must be a registered professional land surveyor.

Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 1091, Sec. 29, eff. Sept. 1, 1989.

Sec. 23.012. RESIDENCE. The county surveyor shall reside in the county.

Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.013. BOND. The county surveyor shall execute a bond conditioned on the faithful performance of the duties of the office. The amount of the bond shall be fixed by the commissioners court and shall be not less than $500 nor more than $10,000.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 23.014. DEPUTY SURVEYOR. (a) A county surveyor may appoint a deputy surveyor as he considers necessary.

(b) The county surveyor shall administer the deputy surveyor's official oath and take his bond in the sum of not less than $500 nor more than $10,000, conditioned on the faithful performance of the duties of the office.

(c) The deputy may perform all acts authorized or required by law to be done by the county surveyor.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.015. CHAIN CARRIERS AND MARKERS. (a) A county surveyor may employ persons 16 years of age or older as chain carriers or markers.

(b) The county surveyor shall administer an oath to each of these employees to faithfully perform his duties in accordance with the instructions given him.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.016. OFFICE LOCATION. (a) The county surveyor's office shall be located in the courthouse or in a suitable building at the county seat.

(b) Rent for an office outside the courthouse shall be paid by the commissioners court on showing that:

(1) the rent is reasonable;

(2) the office is necessary; and

(3) an office is not available at the courthouse.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.017. ABOLITION OF OFFICE IN CERTAIN COUNTIES. In a

county in which the office of county surveyor was abolished by Chapter 315, Acts of the 61st Legislature, Regular Session, 1969 (Article 5298a, Vernon's Texas Civil Statutes), the commissioners court may, when the court considers it necessary, employ a qualified person to perform a function formerly performed by the county surveyor.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 25, eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 23.051. IN GENERAL. The county surveyor shall perform the duties required of him by law.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.0515. FIELD NOTES, PLATS, AND OTHER DOCUMENTS. (a) In a county in which there is a county surveyor, only the county surveyor may:

(1) file and record field notes and plats of surveys made in the county and other documents required by law to be recorded in the county surveyor's records; and

(2) issue a certificate of fact and certify the correctness of a copy of any document, record, or entry shown by the records of the county surveyor.

(b) If the county surveyor and each authorized deputy of the county surveyor are absent from the county surveyor's office, the county clerk of the county has unrestricted access to the county surveyor's office and public records and may:

(1) record field notes, plats, and other documents required to be recorded in the county surveyor's records; and

(2) issue a certificate of fact and certify the correctness of a copy of any document, record, or entry shown by the official records of the county surveyor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 7, eff. June 1, 2003.

Sec. 23.052. SURVEYS ON WHICH PATENTS ARE TO BE OBTAINED. The

county surveyor shall:

(1) receive and examine all field notes of surveys made in the county on which patents are to be obtained;

(2) certify to the same according to law; and

(3) record the field notes in a book to be kept by him for that purpose.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.053. RECORD OF FIELD NOTES. (a) The commissioners court shall furnish the county surveyor all necessary books of record.

(b) The county surveyor shall record in a well-bound book all the surveys in his county, with the plats that he may make, whether private or official.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.054. RIGHT OF INSPECTION. At all times, any interested person, agent, or attorney may examine the books, papers, plats, maps, or other archives belonging to the office of the county surveyor on the payment of the fee set by law. In addition to the fees allowed by law for field work, the county surveyor may charge 20 cents per 100 words for the record.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.055. BOUND RECORDS. If the commissioners court considers it necessary, it may order that the county surveyor's record be transcribed in good and substantial books by the county surveyor or special deputies sworn to make true copies of the record. For this service, not more than 15 cents per 100 words shall be allowed to be paid out of the county treasury.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 23.056. LOST RECORDS. (a) If the maps, field notes, or other records of the county surveyor's office, or any part of them, are lost or destroyed, the county surveyor shall obtain from the commissioner a transcript of the lost records, certified to as required by law.

(b) The certified copy has the same force and effect as the original.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.057. CUSTODY OF RECORDS IN ABSENCE OF COUNTY SURVEYOR; POWERS AND DUTIES OF COUNTY CLERK. If a county does not have a county surveyor, the county clerk of the county:

(1) is the legal custodian of the county surveyor's records;

(2) shall take charge of all records, maps, and papers belonging to the county surveyor's office and safely keep them in the county clerk's office; and

(3) may make any certificate and certify any copy that the county surveyor would be authorized to make or certify.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 1421, Sec. 8, eff. June 1, 2003.

Sec. 23.058. DELIVERY OF RECORDS TO SUCCESSOR. On removal from office or at the expiration of his term of office, the county surveyor shall deliver to his successor all records, books, papers, maps, and other things pertaining to his office.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.059. FAILURE TO SURVEY. If a county surveyor fails,

neglects, or refuses to make a survey or have a survey made, within one month after the amount of lawful surveying fees are tendered to him by a person legally entitled to the survey, he and his sureties shall be liable on his official bond to the injured parties in the amount of damages or injury the parties may sustain by reason of the neglect, refusal, or failure.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.060. FEES FOR RECORDING AND ISSUING DOCUMENTS. (a) The fees for recording documents in the county surveyor's records, for issuing certificates, and for making certified copies are the fees provided by law.

(b) The county surveyor is entitled to fees for all documents recorded by the county surveyor or a deputy of the county surveyor and for all certificates and certified copies issued by the county surveyor or a deputy of the county surveyor.

(c) The county clerk of the county is entitled to all fees for documents recorded by the county clerk and for all certificates and certified copies issued by the county clerk under Sections 23.0515(b) and 23.057(3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 9, eff. June 1, 2003.

SUBTITLE C. ADMINISTRATION
CHAPTER 31. GENERAL LAND OFFICE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. DEFINITIONS. In this chapter:

(1) "Appraiser" means a state-certified or state-licensed real estate appraiser who:

(A) is employed by or contracts with the land office; and

(B) performs professional valuation services completely and in a manner that is independent, impartial, and objective.

(2) "Board" means the School Land Board.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Division" means the asset management division of the

General Land Office or any other division delegated the duties of the asset management division by the commissioner.

(5) "Evaluation report" means the annual report prepared by the commissioner as provided by Subchapter E.

(6) "Exchange" means an exchange of equal value or an exchange of real property accompanied by consideration.

(7) "Governor's report" means the report prepared by the commissioner as provided by Section 31.157.

(8) "Institution of higher education" means the Texas State Technical College System, the Southwest College for the Deaf, or an institution of higher education, excluding a public junior college, as defined by Section 61.003, Education Code.

(9) "Land office" means the General Land Office.

(10) "Market value" means the value of real property determined by an appraisal of the real property performed by an appraiser.

(11) "Political subdivision" means a municipality, county, public school district, levee improvement district, municipal utility district, or any other special purpose district authorized by state law.

(12) "Real estate transaction" means a sale, lease, trade, exchange, gift, grant, or other conveyance of a real property interest.

(13) "Real property owned by the state" means any interest in real property in the possession of the state or a state agency, including real property held in trust by a state agency.

(14) "State" means the State of Texas.

(15) "State agency" means a board, commission, department, institution, office, or other agency of state government, including an institution of higher education but excluding a special purpose district or authority.

Acts 1977, 65th Leg., p. 2370, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 2 (H.B. 1101), Sec. 5, eff. September 1, 2019.

Sec. 31.002. EXEMPTION FROM CERTAIN REAL ESTATE TRANSACTION LAWS. (a) Unless the statute specifically states that the statute applies to the land office, the following statutes do not apply to the land office:

(1) a statute that would require the land office to provide a notice or disclosure to a buyer of real property; and

(2) a statute relating to the sale, purchase, or financing of real property by an executory contract, including a contract for deed or other similar sale.

(b) This section does not affect the application of a statute described by Subsection (a)(2) to a party involved in a transaction with the land office.

Added by Acts 2007, 80th Leg., R.S., Ch. 234 (H.B. 1853), Sec. 1, eff. May 25, 2007.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 31.011. LAND OFFICE ESTABLISHED. There shall be one General Land Office located in Austin, which shall register all land titles emanating from the state if not prohibited by the constitution.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 31.014. COMMISSIONER'S LIABILITY. The commissioner and a surety on a bond authorized under Chapter 653, Government Code, are responsible to any person who is injured by removal, withdrawal, or alteration of any record or file in the land office, unless the commissioner is able to show that the act has taken place with the permission of the person owning the file or record.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 20, eff. Sept. 1, 2003.

Sec. 31.015. CHIEF CLERK. (a) The commissioner shall appoint a chief clerk.

(b) The chief clerk may perform any of the duties of the commissioner if the commissioner is sick, is absent, dies, or resigns.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 21, eff. Sept. 1, 2003.

Sec. 31.016. ABSTRACT CLERK. The commissioner shall designate one of his clerks as the abstract clerk and shall assign to him the special duty to correct the abstracts of patented, titled, and surveyed real property required to be kept in the land office to reflect errors, changes caused by cancellation of patents and in county lines, and the creation of new counties and to add new patented surveys on the date they are patented.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 3, eff. June 20, 2003.

Sec. 31.017. RECEIVER. With the consent of the governor, the commissioner shall appoint a suitable person to serve as receiver for the land office.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 31(28), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 3, eff. June 20, 2003.
Reenacted by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.002, eff. September 1, 2005.

Sec. 31.018. TRANSLATOR. (a) The commissioner shall appoint a translator who thoroughly understands the Spanish and English languages.

(b) The translator shall take the official oath.

(c) The translator shall translate into English any laws and public contracts relating to titles to real property and any original titles or papers which are written in the Spanish language and which

are filed in the land office.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 22, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 4, eff. June 20, 2003.

Sec. 31.019. SURVEYORS. (a) The commissioner shall appoint a chief surveyor and as many assistant surveyors as authorized by law.

(b) The chief surveyor and the chief surveyor's assistant surveyors shall draw and complete county maps.

(c) The chief surveyor and the chief surveyor's assistant surveyors shall perform drafting and other duties required by the commissioner for the benefit of the state or individuals.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 5, eff. June 20, 2003.

Sec. 31.021. REIMBURSEMENT FOR NOTARY PUBLIC EXPENSE. The land office may reimburse an employee for the fees and costs of a bond that are required for appointment as a notary public if the employee provides notary public service as part of the employee's duties with the land office.

Added by Acts 1979, 66th Leg., p. 70, ch. 45, Sec. 1, eff. April 11, 1979.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 31.051. GENERAL DUTIES. The commissioner shall:

(1) superintend, control, and direct the official conduct of subordinate officers of the land office;

(2) execute and perform all acts and other things relating to public real property of the state or rights of individuals in public real property which is required by law;

(3) make and enforce suitable rules consistent with the law; and

(4) give information when required to the governor and the legislature relating to public real property and the land office.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 6, eff. June 20, 2003.

Sec. 31.0515. DUTIES RELATED TO THE ALAMO COMPLEX. (a) The land office shall:

(1) employ staff necessary to preserve and maintain the Alamo complex and contract for professional services of qualified consultants;

(2) commission as a peace officer an Alamo complex ranger who has been certified as qualified to be a peace officer by the Texas Commission on Law Enforcement; and

(3) prepare an annual budget and work plan, including preservation, future construction, and usual maintenance for the Alamo complex, including buildings on the Alamo property, their contents, and their grounds.

(b) An Alamo complex ranger commissioned as a peace officer under this section has the powers, privileges, and immunities of a peace officer while carrying out duties as an Alamo complex ranger under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 984 (S.B. 2612), Sec. 2, eff. September 1, 2023.

Sec. 31.052. CUSTODY OF RECORDS. (a) Books, accounts, records, papers, maps, and original documents relating to real property titles which are termed archives by law shall be the books and papers of the land office under the control and custody of the commissioner.

(b) The commissioner shall keep in the land office a copy of each permit, lease, or other paper issued under law.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 7, eff. June 20, 2003.

Sec. 31.053. FILING PAPERS. (a) The commissioner shall adopt the most convenient method for filing papers and preserving records of the land office.

(b) A list of all papers in each file shall be retained in the file.

(c) Each employee who files a paper shall place his name on it.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 31.054. PUBLIC ACCESS TO AND REMOVAL OF PAPERS. (a) Any person who desires to examine any paper, record, or file must make a written request on a form and according to procedures prescribed by the commissioner. The commissioner may establish procedures as reasonably necessary to maintain the integrity of the records.

(b) No transfer or deed which may be a link in any chain of title to any certificate on file in the land office may be removed by any person, but the commissioner shall deliver to the interested person on demand certified copies which shall have the same force and effect as the originals.

(c) If the genuineness of any original paper is questioned in a suit, the commissioner, on order of the court in which the suit is pending, shall deliver the original paper to the proper person and shall retain a certified copy of the paper which will have the same force and effect as the original if the original is lost.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.

Sec. 31.056. REVISION, COMPILATION, AND PRINTING OF ABSTRACTS. (a) The commissioner may prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed real property which were previously made by the land office.

(b) The various counties of the state may be apportioned into districts for the purpose of revising and compiling the abstracts and the abstracts of each of the districts may be compiled in a separate volume.

(c) The commissioner may distribute to the officers of the

state who require its use but have not previously received a set, one complete set of the abstracts, as supplemented, of patented, titled, and surveyed real property. The commissioner may distribute to officers of counties who are required to use abstracts copies of supplementary abstracts.

(d) The commissioner may provide the abstracts and supplementary abstracts electronically.

(e) The commissioner may make available a sufficient number of volumes and supplementary abstracts of patented, titled, and surveyed real property to meet the demand.

(f) The land office shall pay the cost of the abstracts and the supplementary abstracts from its appropriated funds.

(g) Copies of the abstracts and supplementary abstracts may be sold at a reasonable price to any person who applies for a copy. The commissioner shall deposit any money received from the sale of surplus volumes and supplementary abstracts to the credit of the General Revenue Fund.

Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 866 (H.B. 2971), Sec. 1, eff. June 10, 2019.

Sec. 31.058. RECEIVING FUNDS. (a) The receiver shall receive funds required by law to be paid to the commissioner and on request shall give to each person who deposits money a receipt stating the amount, the name of the person, and a description of the purpose of the remittance.

(b) If funds are received which are of a general character in advance of fees and dues, it shall be stated.

(c) The receiver shall be responsible to the state or individual for the funds.

Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.

Sec. 31.059. RECEIVER'S BOOKS. (a) The receiver shall keep books in which the following shall be entered:

(1) each deposit separately; and

(2) the name of the person.

(b) The receiver shall keep letters and other vouchers filed in neat and regular order and number corresponding with the books of the office.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(128), eff. June 17, 2011.

(d) In the books of the office, the receiver shall keep separate columns indicating the amount of funds paid.

(e) On removal from office or resignation, the receiver shall turn over the books of the office, accounts, and money to the appointed successor or to the commissioner and shall receive a receipt for them.

Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(128), eff. June 17, 2011.

Sec. 31.062. EMBEZZLEMENT. If a suspended receiver is found guilty of embezzlement, the receiver shall be removed from office and a suit shall be instituted to recover on a bond authorized under Chapter 653, Government Code.

Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 23, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 33(1), eff. June 20, 2003.

Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.003, eff. September 1, 2005.

Sec. 31.064. SETTING AND COLLECTING FEES. The commissioner shall set and collect, for the use of the state, reasonable fees in amounts for filing fees, preparation of certificates of fact,

certified copies, maps, reproduction of maps and sketches, Spanish translations, patents and deeds of acquittance, and for other miscellaneous services, including but not limited to shipping in a mailing tube and typed transcriptions or taped copies of tapes or other sound recordings, and any other provided services and products.

Added by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(m), eff. Sept. 1, 1983. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 9, eff. June 20, 2003.

Sec. 31.065. AUTHORITY TO ACCEPT GRANTS, GIFTS, DEVISES, TRUSTS, AND BEQUESTS. (a) In the absence of any law to the contrary, the commissioner may, if the commissioner determines it to be in the best interest of the state, accept grants, gifts, devises, or bequests, either absolutely or in trust, of money or real or personal property on behalf of the state. Real property so acquired by the state becomes public free school land unless the person making the grant, gift, devise, or bequest provides that the real property is to be possessed, administered, or used by a particular state agency, board, commission, department, or other particular state entity or provides that it is to be held in some other manner by the state.

(b) Under Subsection (a) of this section, the commissioner may accept a grant, gift, devise, or bequest even if it is encumbered, restricted, or subject to a beneficial interest of private persons or corporations as long as any current or future use or interest in the grant, gift, devise, or bequest is for the benefit of the state.

(c) If the commissioner determines that the real property acquired by the state by grant, gift, devise, or bequest is not suitable for the purpose for which the grant, gift, devise, or bequest was originally made, the commissioner together with the agency, board, commission, department, or other state entity, if any, designated to possess, administer, or use the real property may exchange the real property for real property that is suitable for such purpose.

(d) If real property acquired by grant, gift, devise, or bequest is not held as part of the permanent school fund or possessed, administered, or used by a particular state agency, board, commission, department, or other particular state entity, the

commissioner may manage that real property or sell or exchange the real property under terms and conditions the commissioner determines to be in the best interest of the state. Real property sold under this subsection must be sold in accordance with Section 31.158. Proceeds of the sale that are not required for the management of real property under this subsection shall be deposited in the Texas farm and ranch lands conservation fund established under Chapter 84, Parks and Wildlife Code. Real property acquired under this subsection may be dedicated by the commissioner to any state agency, board, commission, or department, a political subdivision or other governmental entity of this state, or the federal government, for the benefit and use of the public in exchange for nonmonetary consideration, if the commissioner determines that the exchange is in the best interest of the state.

(e) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 6, eff. Aug. 31, 1987.
Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 10, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 461 (H.B. 1138), Sec. 1, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 2, eff. June 10, 2015.

Sec. 31.0655. SAVE TEXAS HISTORY AND ADOPT-A-BEACH PROGRAMS. (a) For purposes of Subchapter I, Chapter 659, Government Code:

(1) the land office, for the sole purpose of managing the Save Texas History and Adopt-A-Beach programs, is considered an eligible charitable organization entitled to participate in the state employee charitable campaign; and

(2) a state employee is entitled to authorize a deduction for contributions to the land office for the purposes of managing the Save Texas History and Adopt-A-Beach programs as a charitable contribution under Section 659.132, Government Code, and the land office may use the contributions for the purpose of:

(A) preserving historic maps and documents under the Save Texas History program; or

(B) administering the Adopt-A-Beach program.

(b) The land office may use cash, gifts, grants, donations, or in-kind contributions the land office receives through the administration of the Save Texas History program to:

(1) preserve, conserve, and promote the land office's records;

(2) provide educational programming and resources on Texas history; and

(3) acquire additional records to complement the land office's records.

Added by Acts 2003, 78th Leg., ch. 36, Sec. 1, eff. May 14, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1213 (H.B. 860), Sec. 1, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 866 (H.B. 2971), Sec. 2, eff. June 10, 2019.

Sec. 31.066. AUTHORITY TO ACCEPT TITLE TO A SITE FOLLOWING COMPLETION OF REMEDIAL ACTION IN ACCORDANCE WITH FEDERAL LAW. (a) If it is necessary for the United States government to acquire real property in this state to conduct remedial action at a site listed on the National Priorities List under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), the commissioner may accept transfer on behalf of the state of the title and interest in the real property from the United States government. The commissioner may accept a transfer following completion of remedial action at a site only on the condition that the state will not incur any liability under that federal law solely by acquiring the title and interest in the real estate.

(b) Following state assumption of ownership, the Texas Commission on Environmental Quality shall provide for maintenance of the real property, including necessary environmental monitoring, consistent with terms of contracts and cooperative agreements with the federal government entered in accordance with the Water Code and Chapter 361, Health and Safety Code.

(c) Any title and interest in real property acquired by the commissioner under this section shall be held in the name of the state. Title or interest acquired under this section does not become a part of the permanent school fund or any other fund created by the Texas Constitution.

(d) The commissioner may sell any title or interest acquired by the state under this section in accordance with Section 31.158. Proceeds of the sale shall be deposited in the Texas farm and ranch lands conservation fund established under Chapter 84, Parks and Wildlife Code.

Added by Acts 1989, 71st Leg., ch. 507, Sec. 1, eff. June 14, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.262, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1091, Sec. 11, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 3, eff. June 10, 2015.

Sec. 31.067. AUTHORITY TO SELL CERTAIN AGENCY REAL PROPERTY. The division is authorized to sell any real property acquired on behalf of the state pursuant to Section 402.025, Government Code. Sale of such real property shall be conducted in accordance with the provisions of Section 31.158 of this code unless otherwise provided by law. Proceeds of sale shall be deposited in the General Revenue Fund as specified in Section 402.025, Government Code.

Added by Acts 1991, 72nd Leg., ch. 633, Sec. 4, eff. Aug. 26, 1991. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 12, eff. June 20, 2003.

Sec. 31.0671. AGENCY AUTHORITY TO SELL OR EXCHANGE REAL PROPERTY. Any state agency or political subdivision may directly sell or exchange real property to which it holds title with the School Land Board for the benefit of the permanent school fund if the sale or exchange is for market value. Section 272.001, Local Government Code, does not apply to an exchange under this section. A

political subdivision must provide the governor with advance notice of a proposed sale or exchange under this section, which notice must be sent to the governor at least 30 days before the transaction may be effected. In addition, the governor may disapprove any sale or exchange of real property by a state agency under this section prior to the sale or exchange. The state agency contemplating a sale or exchange under this section shall submit to the governor a formal request for approval. The state agency may conduct the sale or exchange unless the governor gives the state agency written notice disapproving the sale or exchange. The governor must provide written notice of disapproval under this section not later than the 30th day after the date the governor receives the written request for approval.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 13, eff. June 20, 2003.

Sec. 31.0672. AUTHORITY TO CONDUCT CERTAIN REAL PROPERTY TRANSACTIONS. (a) The division may directly sell to a political subdivision or a development corporation organized under Subtitle C1, Title 12, Local Government Code, any real property owned by the state that the legislature has authorized or the governor has approved for sale under Subchapter E if the commissioner determines the sale is in the best interest of the state.

(b) The governor must approve any sale of real property under this section. Failure of the governor to approve the sale constitutes a veto of the transaction.

(c) A sale of real property under this chapter must be for market value and under other terms and conditions the commissioner determines to be in the best interest of the state.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 13, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 156 (S.B. 1509), Sec. 1, eff. May 21, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 16.001, eff. September 1, 2009.

Sec. 31.068. STANDING TO ENFORCE RESTRICTIONS. (a) The commissioner and the attorney general have standing to enforce a:

(1) restrictive covenant affecting real property owned by the permanent school fund or a state agency;

(2) restriction expressed in a transfer document or legislative act conveying real property then owned by the state; or

(3) statutory restriction on the sale or lease of real property patented or leased by the state to a navigation district, including a restriction provided by Section 61.116 or 61.117, Water Code.

(b) The attorney general, on the attorney general's own initiative or at the request and on behalf of the commissioner, may bring suit to enforce the rights of the state under this section.

(c) This section does not apply to:

(1) permanent university fund land; or

(2) other real property controlled or administered by the board of regents of The University of Texas System.

Added by Acts 1997, 75th Leg., ch. 613, Sec. 1, eff. June 11, 1997. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 14, eff. June 20, 2003.

Sec. 31.069. INDEFINITE QUANTITY CONTRACTS FOR SERVICES AFTER DECLARED NATURAL DISASTER. (a) The land office shall enter into indefinite quantity contracts with vendors to provide services the land office determines may be necessary to construct, repair, or rebuild property or infrastructure in the event of a natural disaster.

(b) The terms of a contract under Subsection (a) must provide that the contract is contingent on:

(1) the availability of funds;

(2) the occurrence of a natural disaster within the term of the contract; and

(3) delivery of the services to an area of this state declared by the governor or president of the United States under law to be a disaster area as a result of the natural disaster.

(c) The land office shall ensure that it has contracts in place under this section with vendors to provide services that take effect immediately on the expiration of a contract under this section.

(d) A contract under this section may be funded by multiple sources including local, state, and federal agencies and the disaster

contingency fund established under Section 418.073, Government Code.

(e) If the land office determines that federal funds may be used for a contract under Subsection (a), the land office shall ensure that the contract complies with the requirements of the Federal Acquisition Regulation (48 C.F.R. Chapter 1), or a successor regulation.

(f) In awarding a contract under this section, the land office shall consider and apply any applicable state law and rules of the land office relating to contracting with historically underutilized businesses.

(h) Notwithstanding any other provision of this section, the land office shall follow the procedures provided by Section 2254.004, Government Code, in contracting for engineering services under this section.

(i) The land office may award a contract under this section to one or more vendors:

(1) on the basis of demonstrated competence and qualifications to perform the services for which the land office issues a request for qualifications; or

(2) using any other applicable state procurement method.

(j) A contract under this section may include:

(1) a unit price book;

(2) a list of pre-priced work items; or

(3) another schedule identifying agreed prices for services.

(k) A contract under this section that does not include the items listed in Subsection (j) must require a vendor to submit a price proposal for services on request by the land office.

(l) The land office shall issue task, work, or purchase orders for services under a contract entered into under this section to the vendor that provides the best value to the land office using the standard provided by Section 2155.074, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 577 (S.B. 300), Sec. 1, eff. September 1, 2019.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 732 (H.B. 2738), Sec. 1, eff. September 1, 2023.

SUBCHAPTER E. REAL PROPERTY ACCOUNTING AND MANAGEMENT

Sec. 31.153. REAL PROPERTY ACCOUNTING AND RECORDS. (a) All real property owned by the state shall be accounted for by the state agency that possesses the real property.

(b) Each state agency shall maintain a record of each item of real property it possesses. The record must include the following information and shall be furnished to the division:

(1) a description of each item of real property by reference to a volume number, and page or image number or numbers of the official public records of real property in a particular county, or if not applicable, by a legal description;

(2) the date of purchase of the real property, if applicable;

(3) the purchase price of the real property, if applicable;

(4) the name of the state agency holding title to the real property for the state;

(5) a description of the current uses of the real property and of the projected future uses of the real property; and

(6) a description of each building or other improvement located on the real property.

(c) If the description of real property required under this section is excessively voluminous, the division may direct the agency in possession of the real property to furnish the description only in summary form, as agreed to by the division and the state agency involved.

(d) Each state agency, other than an institution of higher education, annually at the time set by the division, shall furnish the Texas Historical Commission with a photograph and information that specifies and identifies the age of each building:

(1) that was acquired by the agency after the date of the preceding annual submission and that is at least 45 years old on the date of the current submission; or

(2) that is possessed by the agency and has become 45 years old since the date the information was previously submitted.

(e) On request, each state agency shall provide the division with any photographs and information furnished to the Texas Historical Commission under this section.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985.
Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20,

2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.14, eff. June 17, 2011.

Sec. 31.154. REAL PROPERTY INVENTORY. The division shall review and keep inventory records of all real property owned by the state. The division shall compile the inventory records from the information submitted under Sections 31.153 and 31.155 of this subchapter.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985.
Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.

Sec. 31.155. SPECIAL STATUS OF CERTAIN AGENCIES. (a) The division is not responsible for maintaining the inventory records, as provided by Section 31.154, of the real property administered by the Texas Department of Transportation, an institution of higher education, the Employees Retirement System of Texas, or the Teacher Retirement System of Texas. The agencies administering the real property shall maintain those records.

(b) The Texas Department of Transportation, on the request of the division, shall submit its real property inventory records to the division. The real property inventory records of an institution of higher education, the Employees Retirement System of Texas, and the Teacher Retirement System of Texas, on the request of the division, but not more than semiannually, shall be submitted to the division for information purposes only. The division shall maintain the inventory records of the former Texas National Research Laboratory Commission, to the extent possible, and is responsible for the disposal of any real property interests held by the former commission as provided by Subchapter G.

(c) The division may review and verify the department's records and make recommendations regarding the department's real property, and the commissioner shall prepare a report involving the department's real property to the same extent that the division and commissioner perform these functions with regard to the records and

real property of other state agencies.

(d) The duty under this subchapter of the division to review and verify real property records and to make recommendations regarding real property and of the commissioner to prepare a report involving real property does not apply to:

(1) the real property of an institution of higher education;

(2) the real property that is part of a fund created or specifically authorized by the constitution of this state and that is administered by or with the assistance of the land office;

(3) the real property of the Employees Retirement System of Texas;

(4) the real property of the Teacher Retirement System of Texas; and

Text of subdivision as added by Acts 2013, 83rd Leg., R.S., Ch. 713, Sec. 4, and Ch. 1339, Sec. 3

(5) the real property located in the Capitol complex, as defined by Section 443.0071, Government Code

Text of subdivision as added by Acts 2013, 83rd Leg., R.S., Ch. 1153, Sec. 37

(5) the real property included in the Capitol Complex as defined by Section 411.061(a)(1), Government Code.

(e) The duties of the division to make recommendations regarding real property and of the commissioner to prepare a report involving real property under this subchapter do not apply to:

(1) the real property of the Texas Historical Commission;

(2) the real property comprising the Alamo;

(3) the real property comprising the French Legation;

(4) the real property comprising the Governor's Mansion;

(5) the real property comprising the Texas State Cemetery, more specifically described as 17.376 acres located at 801 Comal, Lot 5, Division B, City of Austin, Travis County, Texas;

(6) the real property administered by the State Preservation Board; and

(7) highway rights-of-way owned by the Texas Department of Transportation.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1991, 72nd Leg., ch. 582, Sec. 15, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 633, Sec. 6, eff. Aug. 26, 1991;

Acts 1995, 74th Leg., ch. 165, Sec. 22(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 823, Sec. 12, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 713 (H.B. 3436), Sec. 4, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 37, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1339 (S.B. 894), Sec. 3, eff. June 14, 2013.

Sec. 31.156. REAL PROPERTY REVIEW. (a) The division shall review the real property inventory of each state agency not less than every four years, and a review shall be made during the calendar year before the agency is scheduled for abolition under the Texas Sunset Act (Chapter 325, Government Code). The division may verify the accuracy of inventory records provided by an agency.

(b) The division shall:

(1) identify real property owned or controlled by the state that is not being used or is being substantially underused; and

(2) make recommendations to the commissioner regarding the use of the real property or a real estate transaction involving the real property.

(c) The division's recommendations must include an analysis of the highest and best use to which the real property may legally be placed and shall also include alternative uses of the real property addressing potential for commercial or agricultural lease of the real property or any other real estate transaction or use that the division may deem to be in the best interest of the state.

(d) The division shall submit to the commissioner information pertinent to the evaluation of a real estate transaction involving the real property, including an evaluation of any proposals received from private parties that would be of significant benefit to the state and:

(1) if the division recommends a real estate transaction involving the real property, the market value of the real property and the current market conditions; or

(2) if the division does not recommend a real estate transaction involving the real property, evidence of the real

property's value in a form determined to be appropriate by the commissioner.

(e) In any year that the division will evaluate real property under the management and control of the Texas Military Department, the division shall notify the department before the division begins the evaluation.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.20(39), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 907, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1021, Sec. 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1416, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 685, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 194 (H.B. 957), Sec. 1, eff. May 27, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1335 (S.B. 1724), Sec. 11, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.12, eff. September 1, 2013.

Sec. 31.157. EVALUATION REPORT. (a) The commissioner shall prepare a draft evaluation report, which shall include the results and findings of the evaluation of the real property owned by the state required under Section 31.156.

(b) The draft report shall be submitted to the Texas Facilities Commission, which shall further evaluate the potential use of the real property by another state agency. The land office shall submit a draft report to each agency that owns or holds in trust property that is the subject of the draft report. The Texas Facilities Commission may make additional recommendations regarding the use of the real property. The state agency that owns or controls real property named in the report may comment on any findings or recommendations made by the commissioner. The Texas Facilities Commission and any state agency that owns or controls real property named in the report shall complete a review of the draft report within 60 days of the receipt of the report and forward all recommendations and comments to the commissioner.

(c) The commissioner shall prepare and issue a final evaluation report that incorporates any recommendations of the Texas Facilities Commission regarding the potential use of the real property by another state agency and any comments from any state agency that owns or controls property named in the report.

(d) If under the Texas Military Department's report submitted as provided by Section 437.154, Government Code, the department determines that real property under the management and control of the department is used for military purposes, the commissioner may not recommend a real estate transaction involving that real property in the final report submitted as provided by Subsection (e).

(e) The final report shall be submitted to the governor, the presiding officers of both houses of the legislature, the Legislative Budget Board, and the governor's budget office not later than September 1 of each year.

(f) Properties reported as not being used or being substantially underused under this section may not be annexed by a political subdivision of the state without prior written approval of the commissioner.

(g) A state agency that owns or controls real property identified in the evaluation report as not being used or being substantially underused shall notify the land office 30 days before any planned development, acquisition, disposition, lease, or exchange of the real property, including any planned construction of new improvements or a major modification to an existing improvement.

(h) Each state agency owning real property identified in the evaluation report as unused or substantially underused shall provide to the land office, within 30 days of the land office's request, information on the status of those properties. The report shall include a list of:

(1) the individual properties recommended for an alternative use or a real estate transaction by the land office;

(2) the status of those individual properties; and

(3) any plans the agency owning the real property has to convert the use of or dispose of each real property.

(i) The division may solicit proposals and shall accept unsolicited proposals regarding real estate transactions involving real property that would be of significant benefit to the state.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985.

Amended by Acts 1995, 74th Leg., ch. 484, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 907, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1021, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1416, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 685, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1335 (S.B. 1724), Sec. 12, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.13, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 125, eff. September 1, 2019.

Sec. 31.1571. GOVERNOR'S REPORT. (a) At any time, the commissioner may make a report to the governor recommending real estate transactions or other actions involving any real property included in the most recent evaluation report and identified as not used or substantially underused.

(b) After the commissioner recommends a real estate transaction to the governor under this section, the commissioner shall notify the state agency that owns or controls the real property and the Texas Department of Housing and Community Affairs. Not later than the 60th day after the date the written recommendation is received, the state agency and the Texas Department of Housing and Community Affairs may file with the governor their comments on or objections to the recommendation.

(c) If the commissioner recommends a real estate transaction to the governor involving real property identified as not used or substantially underused and the division's analysis of the highest and best use for the real property is determined to be residential, the Texas Department of Housing and Community Affairs shall evaluate the property and identify any property suitable for affordable housing. The Texas Department of Housing and Community Affairs shall submit comments concerning any property suitable for affordable housing and any documents supporting the comments to the governor not later than the 60th day after the date it receives the report prepared under this section.

(d) Any unused or underused state property may be sold or

leased, or an easement over the property may be granted, to the United States for the use and benefit of the United States armed forces if the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the sale, lease, or easement would materially assist the military in accomplishing its mission. A sale, lease, or easement under this subsection must be at market value. The state shall retain all minerals it owns with respect to the land, but it may relinquish the right to use the surface to extract them.

(e) Notwithstanding any other law, real property that the commissioner has reported as unused or substantially underused and recommended for a real estate transaction may not be developed, sold, or otherwise disposed of by the state agency that owns or controls the real property before the earlier of:

(1) the date the governor rejects a recommended real estate transaction involving the real property; or

(2) two years from the date the recommendation is approved, unless extended by the governor.

(f) If a state agency that owns or controls real property reported as unused or substantially underused intends to dispose of or change the use of the real property prior to the time provided by Subsection (e), the governor may require a general development plan for future use of the real property or any other information. At any time, the governor may request that the state agency provide its general development plan or any other information to the land office for evaluation and may consult with the commissioner. The plan shall be submitted no later than 30 days prior to the time that the real estate transaction would be approved by operation of law if not disapproved by the governor. The governor may take such plan into consideration in determining whether to reject the commissioner's recommendation.

(g) The commissioner may conduct the transaction unless the governor gives the commissioner written notice disapproving the recommendation. The governor must provide written notice of disapproval under this subsection not later than the 90th day after the date the governor receives the commissioner's written recommendation.

Added by Acts 1995, 74th Leg., ch. 484, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 14.01(a), eff. Sept. 1,

1999; Acts 2003, 78th Leg., ch. 149, Sec. 10, eff. May 27, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003. Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.004, eff. September 1, 2005.

Sec. 31.1573. REAL ESTATE TRANSACTIONS AUTHORIZED BY GOVERNOR. (a) The land office shall take charge and control of real property as necessary to conduct and close a real estate transaction authorized by the governor.

(b) The expenses incurred by the land office in conducting a real estate transaction, including the payment of reasonable brokerage fees, may be deducted from the proceeds of the transaction before the proceeds are deposited. The land office may adopt rules relating to the payment of reasonable brokerage fees.

(c) Unless otherwise dedicated by the Texas Constitution, the proceeds of the transaction shall be deposited:

(1) to the credit of the Texas capital trust fund if the agency is eligible under Chapter 2201, Government Code, to participate in that fund;

(2) in the state treasury to the credit of the affected agency if the agency is not eligible under Chapter 2201, Government Code, to participate in the Texas capital trust fund; or

(3) notwithstanding Subdivisions (1) and (2), as otherwise directed under the procedures of Chapter 317, Government Code.

(d) The grant of an interest in real property owned by the state under this section must:

(1) comply with the requirements of Section 31.158 to the extent the requirements do not conflict with a recommendation in the governor's report under Section 31.1571; and

(2) be conveyed by an instrument signed by the commissioner and, if the transaction was conducted under Section 31.158(c)(7), by the governor.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 16, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 1, eff. September 1, 2015.

Sec. 31.158. REAL ESTATE TRANSACTIONS AUTHORIZED BY LEGISLATURE. (a) If the legislature authorizes a real estate transaction involving real property owned by the state, the division shall take possession and control of the real property and shall negotiate and close such real estate transaction on behalf of the state. In performing such duties, the division shall act on behalf of the state agency which owns or controls the subject state real property. Proceeds from the real estate transaction shall be deposited in the Texas capital trust fund unless the proceeds are dedicated by the constitution of this state to another fund or unless the enabling legislation ordering the real estate transaction provides otherwise.

(b) The division may not take possession and control under this section of real property administered by a state agency that, under Chapter 2201, Government Code, is ineligible to benefit from the Texas capital trust fund.

(c) Unless the enabling legislation or general law authorizing the real estate transaction specifies a different procedure, the division shall transact the sale or lease of state real property in the following manner:

(1) The sale or lease shall be by sealed bid, by public auction, or as provided by Subsection (d); provided, however, the School Land Board shall have the first option to purchase such real property pursuant to Section 31.159 of this code. Subdivisions (2)-(7) apply only to a sale or lease by sealed bid or public auction.

(2) Notice of the sale or lease shall be published at least 30 days prior to the date of sale or lease in at least three issues of four daily newspapers in the state. One of the papers must be of general circulation in the county where the real property is located.

(3) The notice shall state that real property is to be offered for sale or lease on a certain date and that lists describing the real property and terms of sale or lease can be obtained from the division.

(4) No bid may be accepted that does not meet the minimum value established by the commissioner, which shall not be less than market value.

(5) The division may reject any and all bids, but if the division elects not to reject any and all bids, it is required to accept the best bid submitted.

(6) If the award of a bid does not result in a final

transaction with the bidder, the land office may solicit proposals, negotiate, and sell, exchange, or lease the real property, provided that the sales price may not be less than market value.

(7) If, after proper notice has been posted, no bids meeting the minimum requirements are received at the appointed time and place for the sale or lease, the division may solicit proposals and negotiate the sale, exchange, or lease of the real property to any person, provided that the sales price may not be less than the market value of the real property. The governor must approve any sale or lease of real property negotiated under this section. Failure of the governor to approve the sale or lease constitutes a veto of the transaction.

(8) Each grant of an interest in real property made pursuant to this section shall be made by an instrument signed by the commissioner and, if the governor's approval is required, by the governor.

(9) The expenses incurred by the division in conducting the sale, exchange, or lease, including the payment of reasonable brokerage fees, may be deducted from the proceeds of the sale prior to deposit in the Texas capital trust fund or other appropriate depository account. The division may promulgate rules relating to the payment of reasonable brokerage fees.

(10) These procedures will not apply to sales or leases of real property that are possessed by an agency that under Chapter 2201, Government Code, is ineligible to use the Texas capital trust fund or real property which belongs to the permanent school fund.

(11) Prior to the actual sale or lease, the state representative and state senator in the district where the subject real property is located shall be notified of all efforts to sell or lease the real property and shall be provided with copies of all brokerage contacts relating to the sale or lease.

(d) The division may contract for the services of a real estate broker or a private brokerage or real estate firm in the course of a real estate transaction under this section if the commissioner determines contracting for those services is in the best interest of the state.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1989, 71st Leg., ch. 839, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 633, Sec. 2, eff. Aug. 26, 1991; Acts

1995, 74th Leg., ch. 76, Sec. 5.95(5), 12.01(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 685, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1091, Sec. 17, eff. June 20, 2003.

Sec. 31.1581. TRANSFER OF REAL PROPERTY FOR USE AS AFFORDABLE HOUSING. (a) If the legislature authorizes or the governor approves the transfer of title to real property to an entity for use as affordable housing, the division shall take possession and control of the real property and shall conduct the transaction as provided by the policy adopted under Subsection (b).

(b) The division shall adopt a policy regarding the method of transferring title to real property designated as suitable for affordable housing to an entity for use as affordable housing. The policy must include monitoring and enforcement provisions to ensure that the real property is used for affordable housing.

Acts 2001, 77th Leg., ch. 685, Sec. 3, eff. Sept. 1, 2001. Redesignated from Natural Resources Code Sec. 31.158(d), (e) and amended by Acts 2003, 78th Leg., ch. 1091, Sec. 17, eff. June 20, 2003.

Sec. 31.1582. SALE OF CERTAIN MINERAL INTERESTS. (a) If the General Land Office receives from a landowner an offer to buy the state's interest in the mineral estate in real property to which the landowner holds title, the General Land Office may sell to the landowner, for fair market value, any fractional mineral interest held by the state that:

(1) is a fractional mineral interest of 1/32 or less; and

(2) is severed from a parcel of land that:

(A) is 80 acres or less; and

(B) is located in a county with a population of less than 11,000.

(b) This section does not apply to land under the management and control of the board of regents of a public or private institution of higher education.

Added by Acts 2007, 80th Leg., R.S., Ch. 491 (S.B. 214), Sec. 1, eff. June 16, 2007.

Sec. 31.1585. CERTAIN PROCEEDS. Notwithstanding any other law, proceeds from the sale of real property purchased with general revenue funds that was recommended for sale by the division and not disapproved for sale by the governor during the calendar years 1995 through 2002 shall be deposited in the unobligated portion of the general revenue fund and may only be appropriated to the state agency that possessed the property at the time of the sale for use by the state agency in performing its duties.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 18, eff. June 20, 2003.

Sec. 31.159. FIRST OPTION TO PURCHASE. (a) The School Land Board has a first option to purchase real property authorized for sale by the legislature or the governor. The board may exercise its option by tendering cash for market value as mutually agreed on by the board and the state agency that owns the real property, but the purchase price may not be less than market value. For purposes of this section, the division may request more than one appraisal to determine market value. If the parties cannot agree on a value, the board and the state agency that owns the real property shall follow the procedures provided by Subsections (d) and (e). The board may not pay more than market value.

(b) The division shall inform the School Land Board of the proposed sale and its first option to purchase state agency real property. If the board decides to exercise its option under this section, the division shall appoint an appraiser not later than the 30th day after the date the board notifies the division of its decision.

(c) The School Land Board must complete the cash purchase not later than the 120th day after the date the board exercises its first option to purchase. If the School Land Board fails to complete the purchase within the time permitted, the division may extend the time for completing the purchase or disposing of the real property as authorized by the legislature or approved by the governor.

(d) If the state agency that owns the real property disputes the market value, the School Land Board shall request a second appraisal. If the School Land Board fails to request a second appraisal, the division shall appoint a second appraiser not later than the 21st day after the date the state agency notifies the School

Land Board that it disputes the market value. On completion of the second appraisal, the two appraisers shall meet promptly and attempt to reach agreement on the market value. If the two appraisers fail to reach agreement within 10 days of the meeting, the land office shall request a third appraiser to reconcile the two previous appraisals. The determination of value by the third appraiser may not be less than the lower or more than the higher of the first two appraisals. The market value determined by the third appraiser is final and binding on all parties.

(e) The division may appoint an appraiser employed by the land office for the performance of any one of the required appraisals. Any other appraiser employed under this section must be selected in accordance with Subchapter A, Chapter 2254, Government Code. The party requesting the appraisal shall award the appraisal services contract to the provider of professional services after considering the factors identified in Chapter 2254, Government Code. The division shall pay the expenses of appraisal.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1985, 69th Leg., ch. 270, Sec. 5, eff. June 5, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 11, eff. Aug. 31, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(47), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(18), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1091, Sec. 19, eff. June 20, 2003.

Sec. 31.161. DEVELOPMENT PLAN. (a) If the state intends to conduct a sale or lease for nongovernmental purposes of real property belonging to the state, to the permanent school fund, or to any of the dedicated funds of the state, other than the permanent university fund, or any other real property subject to the administration and control of the board of regents of The University of Texas System, the division may promulgate a development plan on the real property.

(b) The purpose of a development plan is to conserve and enhance the value of real property belonging to the state, taking into consideration the preservation of the health, safety, and general welfare of the communities in which the real property is situated.

(c) The plan shall address local land use planning ordinances, which may include the following:

(1) allocation and location of specific uses of the real property, including residential, commercial, industrial, recreational, or other appropriate uses;

(2) densities and intensities of designated land uses;

(3) the timing and rate of development;

(4) timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, and roads and transportation facilities; or

(5) needed zoning and other land use regulations.

(d) The plan shall comply with existing rules, regulations, orders, or ordinances for real property development to the extent such rules, regulations, orders, or ordinances are not detrimental to the interests of the state as determined by the special board of review.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 20, eff. June 20, 2003.

Sec. 31.1611. PUBLIC HEARING BEFORE PREPARATION OF DEVELOPMENT PLAN. (a) If the division is requested to prepare a development plan under Section 31.161, the division shall notify the local government to which the plan will be submitted under Section 31.162 of the division's intent to prepare a development plan. The division shall provide the local government with information relating to:

(1) the location of the real property to be offered for sale or lease;

(2) the highest and best use of the real property as provided in the division's report under Section 31.157; and

(3) the process for preparing the development plan under Section 31.161 and the process provided under Sections 31.165 and 31.166 for the special board of review.

(b) Not later than the 30th day after the date the local government receives the notice provided under Subsection (a), the local government may request the division to hold a public hearing to solicit public comment. If requested by the local government, the division shall hold a public hearing. The local government shall provide notice of the hearing to real property owners in at least the

same manner that notice is provided for adopting zoning regulations or subdivision requirements in the local government's jurisdiction. The division shall set the agenda for the hearing, which must be completed no later than the 120th day after the date notice is provided under Subsection (a).

(c) If the local government does not request a public hearing under Subsection (b), the commissioner may hold a hearing to solicit public comment. The division shall provide notice of the hearing in the same manner that a local government is required to provide notice under Subsection (b). The commissioner shall set the agenda for the hearing and must complete the hearing not later than the 120th day after the date the notice is provided under Subsection (a).

(d) A public hearing under this section may include:

(1) a presentation by the division relating to the division's classification of the real property as unused or substantially underused and the division's recommendation of the highest and best use to which the real property may legally be placed;

(2) a presentation by the local government relating to relevant local plans, development principles, and ordinances that may affect the development of the real property; and

(3) oral comments and presentations of information by and written comments received from other persons relating to the development of the real property.

(e) The division shall prepare a summary of the information and testimony presented at a hearing conducted under this section and may develop recommendations based on the information and testimony. The division shall prepare and deliver a report to the commissioner summarizing the information and testimony presented at the hearing and the views presented by the state, the affected local governments, and other persons who participated in the hearing process. The commissioner shall review the division's report and may instruct the division to incorporate information based on the report in preparing the development plan under Section 31.161.

(f) The commissioner may adopt rules to implement this section. The division shall administer the process provided by this section.

Added by Acts 1999, 76th Leg., ch. 903, Sec. 1, eff. June 18, 1999. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 21, eff. June 20, 2003.

Sec. 31.162. SUBMISSION OF THE PLAN TO AFFECTED LOCAL GOVERNMENT. (a) The plan shall be submitted to any local government having jurisdiction over the real property in question for consideration.

(b) The local government shall evaluate the plan and either accept or reject the plan no later than the 120th day after the date the division submits the plan.

(c) The plan may be rejected by the local government only on grounds that it does not comply with local ordinances and land use regulations, including but not limited to zoning and subdivision ordinances.

(d) If the plan is rejected, the local government shall specifically identify any ordinance with which the plan conflicts and propose specific modifications to the plan that will bring it into compliance with the local ordinance.

(e) If the plan is rejected by the affected local government, the division may modify the plan to conform to the ordinances specifically identified by the local government and resubmit the plan for approval, or the commissioner may apply for necessary rezoning or variances from the local ordinances.

(f) Failure by the local government to act within the 120-day period prescribed by Subsection (b) will be deemed an acceptance by the local government of the plan.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 22, eff. June 20, 2003.

Sec. 31.163. REZONING. (a) If the plan would require zoning inconsistent with any existing zoning or other land use regulation, the division or its designated representative may at any time submit a request for rezoning to the local government with jurisdiction over the real property in question.

(b) The rezoning or variance request shall be submitted in the same manner as any such request is submitted to the affected local government; provided, however, the local government must take final action on the request no later than the 120th day after the date the

request for rezoning or variance is submitted.

(c) Failure by the local government to act within the 120-day period prescribed by Subsection (b) will be deemed an approval of the rezoning request by the local government.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 23, eff. June 20, 2003.

Sec. 31.164. FEES AND ASSESSMENTS. (a) The local government may impose no application, filing, or other fees or assessments on the state for consideration of the plan or the application for rezoning or variance submitted by the state.

(b) The local government may not require the submission of architectural, engineering, or impact studies to be completed at state expense before considering the plan or application for rezoning or variance.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987.

Sec. 31.165. SPECIAL BOARD OF REVIEW. (a) If the local government denies the rezoning request, the matter may be appealed to a special board of review consisting of the following members:

(1) the members of the School Land Board;

(2) the chairman of the governing board of the agency or institution possessing the real property or his or her designated representative;

(3) the mayor of the city or town within whose corporate boundaries or extraterritorial jurisdiction the real property is located; and

(4) the county judge of the county within which the real property is located.

(b) The commissioner shall serve as chairman of the special board of review.

(c) If the plan involves real property belonging to the permanent school fund, the special board of review shall consist of the members of the School Land Board and the local officials, with the commissioner serving as chairman.

(d) If the real property is not located within the corporate

boundaries or the extraterritorial jurisdiction of a city or town, the board shall consist of the members of the School Land Board, the agency chairman, and the county judge, with the commissioner serving as chairman.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 24, eff. June 20, 2003.

Sec. 31.166. HEARING. (a) The special board of review shall conduct one or more public hearings to consider the proposed development plan.

(b) Hearings shall be conducted in accordance with rules promulgated by the land office for conduct of such special review.

(c) If real property is located in more than one city or town, the hearings on any single tract of real property may be combined.

(d) Any political subdivision in which the tract in question is located and the appropriate central appraisal district shall receive written notice of board hearings at least 14 days prior to the hearing.

(e) At least one hearing shall be conducted in the county where the real property is located.

(f) If after the hearings, the special board of review determines that local zoning requirements are detrimental to the best interest of the state, it shall issue an order establishing a development plan to govern the use of the real property as provided in this section.

(g) Development of the real property shall be in accordance with the plan and must comply with all local rules, regulations, orders, or ordinances except as specifically identified in an order of the special board of review issued pursuant to Subsection (f) of this section. In the event that substantial progress is not made toward development of the tract within five years of the date of adoption by the special board of review, local development policies and procedures shall become applicable to development of the tract, unless the special board of review promulgates a new plan.

(h) The hearing shall not be considered a contested case proceeding under Chapter 2001, Government Code and shall not be subject to appeal thereunder.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1091, Sec. 25, eff. June 20, 2003.

Sec. 31.167. BINDING EFFECT OF DEVELOPMENT PLAN. (a) Except as provided by this subsection, a development plan promulgated by the special board of review and any plan accepted by a local government shall be final and binding on the state, its lessees, successors in interest and assigns, and affected local governments or political subdivisions unless revised by the special board of review. If the division does not receive a bid or auction solicitation for the real property subject to the development plan, the division, at the direction of the commissioner, may revise the development plan to conserve and enhance the value and marketability of the real property.

(b) A local government, political subdivision, owner, builder, developer, or any other person may not modify the development plan without specific approval by the special board of review.

(c) The special board of review must file a copy of the development plan in the deed records of the county in which the real property is located. Revisions to the development plan are governed by local development policies and procedures if the revisions are requested after the later of:

(1) the 10th anniversary of the date on which the development plan was promulgated by the special board of review; or

(2) the date on which the state no longer holds a financial or property interest in the real property subject to the plan.

(d) After issuance of an order establishing a development plan for real property that is not part of the permanent school fund or in which the permanent school fund does not have a financial interest, the composition of any future special board of review called to consider revision of that order must consist of:

(1) the presiding officer of the governing board of the agency or institution possessing the real property or the presiding officer's designated representative;

(2) two members who are employed by the agency or institution possessing the real property, appointed by the presiding officer of the governing board of the agency or institution or the presiding officer's designated representative;

(3) the county judge of the county in which the real property is located; and

(4) if the real property is located within the corporate boundaries or extraterritorial jurisdiction of a municipality, the mayor of the municipality.

(e) The member described by Subsection (d)(1) serves as the presiding officer of the special board of review.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987.
Amended by Acts 1999, 76th Leg., ch. 903, Sec. 2, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1091, Sec. 26, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 3, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 2, eff. September 1, 2015.

SUBCHAPTER G. SUPER COLLIDER SITE

Sec. 31.307. DEDICATION OF ROADS. The commissioner may dedicate roads located on the real property used as the site for the superconducting super collider research facility to the county in which the roads are located if the commissioner believes that the dedication will enhance the value of remaining state real property.

Added by Acts 1997, 75th Leg., ch. 345, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 27, eff. June 20, 2003.

Sec. 31.308. CONVEYANCE OF SURFACE AND SUBSURFACE ESTATE. (a) In this section, "subsurface estate" means the subsurface acquired by the state to construct or maintain the underground accelerator partially built or proposed to be built as part of the superconducting super collider research facility.

(b) The commissioner shall convey the state's interest in the subsurface estate underlying the surface estate of real property used as the site for the superconducting super collider research facility if the owner of the surface estate pays a sum equal to the market value of the subsurface estate as determined by the commissioner. After the state conveys its interest in the subsurface estate as

provided by this subsection, title to the subsurface estate is reunited with the title to the surface estate.

(c) Unless the instrument of conveyance provides otherwise, a conveyance of the surface estate of real property by the state under this subchapter includes the conveyance of the subsurface estate to the extent of the state's interest in the subsurface estate.

(d) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1997, 75th Leg., ch. 345, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 28, eff. June 20, 2003.

Sec. 31.309. PREFERENCE RIGHT TO PURCHASE CERTAIN REAL PROPERTY. (a) A person or the person's heirs who conveyed real property to the state for use by the superconducting super collider research facility has a preference right to purchase the same tract of real property previously conveyed before the tract is offered for sale by the state to any other person.

(b) A person who has a preference right under this section must pay at least the market value for the real property as determined by an appraisal conducted by the land office.

(c) This section does not apply to a subsurface estate as defined by Section 31.308.

(d) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1997, 75th Leg., ch. 345, Sec. 3, eff. Jan. 1, 1998. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 29, eff. June 20, 2003.

SUBCHAPTER H. USE OF STATE ENERGY RESOURCES

Sec. 31.401. NATURAL GAS ACQUISITION CONTRACTS. (a) The land office shall review and must approve any contract entered into by a state agency for the acquisition of an annual average of 100 MCF per day or more of natural gas used to meet its energy requirements.

(b) Before approving a contract described by Subsection (a) of this section, the land office shall ensure that the agency, to meet its energy requirements, is using, to the greatest extent practical,

natural gas produced from land leased from:

(1) the school land board;

(2) a board for lease other than the Board for Lease of University Lands; or

(3) the surface owner of Relinquishment Act land.

(c) If the land office is able to substitute a contract using in-kind royalty gas from state-owned lands or using other gas for a contract under which a state agency acquires or proposes to acquire its natural gas supplies, the commissioner shall inform the comptroller each month of the amount of savings attributable to the substitution.

(d) In this section, "state agency" has the meaning assigned by Subchapter A, Chapter 572, Government Code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 3.01, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(42), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1499, Sec. 1.43, eff. Sept. 1, 1999.

Sec. 31.402. RULES. The commissioner shall adopt any rules necessary to carry out this subchapter, including rules regarding review and approval of natural gas acquisition contracts under Section 31.401 of this code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 3.01, eff. Sept. 1, 1991.

SUBCHAPTER I. THE ALAMO COMPLEX

Sec. 31.450. FINDINGS; MEMORANDUM OF UNDERSTANDING. (a) The legislature finds that:

(1) the Alamo has played an important role in the history of this state and continues to be a symbol of liberty and freedom for this state;

(2) this state wants to honor the individuals whose lives were lost at the Alamo;

(3) the entire history of the Alamo, from the time the Alamo was established as a mission until the present, should be recognized; and

(4) the Alamo is a world-class destination that provides a

place of remembrance and education.

(b) The land office shall enter into a memorandum of understanding with the City of San Antonio to coordinate the planning and development of improvements to the Alamo complex and the area immediately surrounding the complex.

Added by Acts 2015, 84th Leg., R.S., Ch. 1101 (H.B. 2968), Sec. 1, eff. September 1, 2015.

Sec. 31.451. PRESERVATION AND MAINTENANCE OF ALAMO. (a) The Alamo complex is under the jurisdiction of the land office. The land office is responsible for the preservation, maintenance, and restoration of the Alamo complex and its contents and the protection of the historical and architectural integrity of the exterior, interior, and grounds of the Alamo complex.

(b) Any power or duty related to the Alamo complex formerly vested in any other state agency or entity is vested solely in the land office.

(c) Notwithstanding any other law, the land office is not required to comply with state purchasing law in carrying out its duties under this subchapter.

(d) The land office may participate in the establishment of and partner with a qualifying nonprofit organization the purposes of which include raising funds for or providing services or other benefits for the preservation and maintenance of the Alamo complex. The land office may contract with the organization for the performance of any activity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.452. ASSISTANCE FROM STATE PRESERVATION BOARD. The land office may consult with the State Preservation Board in the performance of duties under this subchapter. On request of the land office, the State Preservation Board shall assist the land office with the land office's duties relating to the Alamo complex.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.453. AGREEMENT WITH DAUGHTERS OF THE REPUBLIC OF TEXAS. (a) The land office shall enter into an agreement with the Daughters of the Republic of Texas for the management, operation, and financial support of the Alamo complex.

(b) The agreement at a minimum must:

(1) detail the expectations and goals of the land office and the Daughters of the Republic of Texas, including the transfer of any state money held in trust for the Alamo by the Daughters of the Republic of Texas and the property described in Subsection (d);

(2) outline the management and operation of the Alamo complex;

(3) establish management standards;

(4) provide for oversight by the land office;

(5) address funding and payment for costs;

(6) address equipment;

(7) establish insurance requirements;

(8) address compliance with local, state, and federal building and operation laws;

(9) address construction, maintenance, and repair;

(10) establish the term of the agreement;

(11) require submission of financial information from the Daughters of the Republic of Texas, excluding chapters of the organization;

(12) address ownership by this state of the Alamo complex and its contents;

(13) include a dispute resolution process;

(14) provide that the laws of this state govern the agreement; and

(15) include notice requirements.

(c) The land office may enter into the agreement required by Subsection (a) only if the Daughters of the Republic of Texas is a properly formed nonprofit corporation in this state in accordance with Section 2.008, Business Organizations Code, and is exempt from income taxation under Section 501(c)(3), Internal Revenue Code of 1986.

(d) All property received by the Daughters of the Republic of Texas in its capacity as custodian or trustee of the Alamo for the benefit of the Alamo is subject to the requirements of this

subchapter and the agreement required by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.454. THE ALAMO COMPLEX ACCOUNT. (a) The Alamo complex account is a separate account in the general revenue fund.

(b) The account consists of:

(1) transfers made to the account;

(2) fees and other revenue from operation of the Alamo complex;

(3) grants, donations, and bequests from any source designated for the benefit of the Alamo complex; and

(4) income earned on investments of money in the account.

(c) The land office may accept a gift, grant, or bequest of money, securities, services, or property to carry out any purpose related to the preservation and maintenance of the Alamo complex, including funds raised or services provided by a volunteer or volunteer group to promote the work of the land office. All proceeds under this subsection shall be deposited to the credit of the account.

(d) Appropriations to the land office for the preservation, operation, or maintenance of the Alamo complex shall be deposited to the credit of the account.

(e) The land office may use money in the account only to administer this subchapter, including to support the preservation, repair, renovation, improvement, expansion, equipping, operation, or maintenance of the Alamo complex or to acquire a historical item appropriate to the Alamo complex.

(f) Any money in the account not used in a fiscal year remains in the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.455. ALAMO PRESERVATION ADVISORY BOARD. (a) The land office may establish an Alamo Preservation Advisory Board to provide advice, proposals, and recommendations to:

(1) promote the development of a world-class site to educate visitors on the history and importance of the Alamo in this state's fight for independence and to honor the people who lost their lives at the Alamo;

(2) promote and support the Alamo complex;

(3) provide the resources and support necessary to advance the understanding and education of current and future generations on the historical significance and factual record of the Alamo complex;

(4) inspire virtues of honor and Texas pride;

(5) preserve the memory and achievement of individuals who served at the Alamo and provide a fitting tribute to the heroism of the people who paid the ultimate sacrifice for freedom and of the noble men and women of this state who have served in the armed forces or died while serving in the armed forces to ensure the freedom of the people of this state;

(6) provide educational and museum facilities for the preservation, perpetuation, appropriate publication, and display of manuscripts, books, relics, pictures, oral histories, and all other items and information related to the history of the Alamo complex and of this state that preserve the historical character of the Alamo shrine; and

(7) promote, counsel, and provide support to governmental and private organizations that are committed to objectives similar to the objectives described in this subsection.

(b) The advisory board is composed of:

(1) the commissioner or the commissioner's designee, who serves as the presiding officer of the advisory board;

(2) a designee appointed by the governor;

(3) a representative of the Alamo Endowment, appointed by the commissioner;

(4) the director of the Alamo;

(5) the Alamo curator;

(6) one representative of the Texas Historical Commission;

(7) a designee appointed by the county judge of Bexar County;

(8) a designee appointed by the mayor of the City of San Antonio;

(9) a designee appointed by the commissioner representing the local travel and tourism industry and the businesses and landholders from the area immediately surrounding the Alamo complex;

(10) one member of the house of representatives appointed by the speaker of the house of representatives; and

(11) one senator appointed by the lieutenant governor.

(c) Subject to approval by the advisory board, the advisory board may include nonvoting members, who as individuals or as representatives of institutions, are interested in the purposes for which the advisory board was established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1101 (H.B. 2968), Sec. 2, eff. September 1, 2015.

CHAPTER 32. SCHOOL LAND BOARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. DEFINITIONS. In this chapter:

(1) "Board" means the School Land Board.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

(4) "Land" means:

(A) land dedicated to or acquired on behalf of the permanent school fund and the asylum funds under the constitution and laws of this state;

(B) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state;

(C) the mineral estate in river beds and channels; and

(D) land owned by the state or held in trust for the use and benefit of the state or of a department, board, or agency of the state.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 4, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 642, Sec. 1, eff. Aug. 26, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 1, eff. June 19, 2009.

Sec. 32.002. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) land dedicated by the constitution or a law of this state to The University of Texas System, land donated by a will or instrument in writing or otherwise to The University of Texas System, as trustee, for a scientific, educational, or other charitable or public purpose, or any other land under the control of the Board of Regents of The University of Texas System;

(2) land whose title is vested in the state for the use and benefit of any part of The Texas A&M University System or land under the control of the Board of Regents of The Texas A&M University System;

(3) minerals subject to lease under Subchapter F, Chapter 52, commonly known as the Relinquishment Act, and Subchapters B and C, Chapter 53;

(4) land owned by the Parks and Wildlife Department; or

(5) land owned by the Texas Board of Criminal Justice.

(a-1) Oil and gas underlying land that is owned by this state, was acquired to construct or maintain a highway, road, street, or alley, is located in a producing area, and is subject to an oil or gas lease may be pooled or unitized only prospectively and is subject to Sections 32.201, 32.202, and 32.203.

(b) For purposes of Subsection (a-1), land is located in a producing area if the closest boundary line of the surface of such land is within 2,500 feet of a well capable of producing oil or gas in paying quantities.

(c) Oil and gas underlying land not located within a producing area or that is leased for the specific purpose of drilling a horizontal well may be leased under the provisions of Section 32.201 of this code.

(d) If title to land subject to Subchapter F, Chapter 52 of this code, commonly known as the Relinquishment Act, is acquired by a department, board, or agency of the state, the land shall be leased as provided by Chapter 52 of this code for the leasing of unsold public school land.

(e) If title to land subject to Subchapter C, Chapter 53, of this code is acquired by a department, board, or agency of the state, the land shall be leased as provided by Chapter 53 of this code for the leasing of unsold surveyed public school lands.

(f) This chapter does not authorize drilling or other

operations on the surface of land during the period in which the land is used by this state as a highway, road, street, or alley.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 5, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(e), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 642, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 897, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(50), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 2, eff. June 19, 2009.

Sec. 32.003. APPLICATION OF SUNSET ACT. The School Land Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2031.

Added by Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 3, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.04, eff. June 17, 2011.
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 32.011. CREATION OF BOARD. There is created a board to be known as the School Land Board.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.012. MEMBERS OF THE BOARD. (a) The board is composed of:

(1) the commissioner; and

(2) four citizens of the state appointed by the governor with the advice and consent of the senate.

(b) Two citizens appointed by the governor must be selected

from lists of nominees submitted by the State Board of Education. The State Board of Education shall submit to the governor a list of six nominees for a vacant position described by this subsection. The governor may request that the State Board of Education submit a second list of six nominees if the governor does not choose to appoint a nominee from the first list.

(c) At least one of the citizens appointed under Subsection (a) must be a resident of a county with a population of less than 200,000. The governor and the State Board of Education shall collaborate to ensure that the membership of the board complies with this subsection.

(d) Each appointment made by the governor shall be made in accordance with and subject to the provisions of the Texas Constitution authorizing the filling of vacancies in state offices by appointment of the governor.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 2, eff. September 1, 2019.

Sec. 32.0121. APPOINTMENTS WITHOUT DISCRIMINATION. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 7, eff. Sept. 1, 1985.

Sec. 32.0122. DISQUALIFICATION OF LOBBYISTS. A person who is required to register as a lobbyist under Chapter 305 of the Government Code, by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 8, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(20), eff. Sept. 1, 1987.

Sec. 32.0123. CONFLICTS OF INTEREST PROHIBITED. An officer, employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry be a member of the board or an employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 9, eff. Sept. 1, 1985.

Sec. 32.013. TERMS OF APPOINTED MEMBERS. The appointed members of the board serve for terms of two years.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 3, eff. September 1, 2019.

Sec. 32.014. CHAIRMAN OF THE BOARD. The commissioner serves as chairman of the board.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.015. PER DIEM AND REIMBURSEMENT. Each citizen member of the board is entitled to receive a per diem allowance for each day spent in performing his duties and as reimbursement for actual and necessary travel expenses incurred in performing his duties the amount provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.016. BOARD MEETINGS. (a) When necessary, the board shall meet on the first and third Tuesdays of each month at a time and location to be designated by the board.

(b) Subject to recesses at the discretion of the board, meetings of the board shall continue until the board has completed its docket.

(c) The chairman of the board may call special meetings of the board at any time the chairman thinks necessary by giving the other members notice.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1999, 76th Leg., ch. 139, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 4, eff. June 19, 2009.

Sec. 32.017. SECRETARY OF THE BOARD. (a) The board shall select a secretary from persons nominated by the commissioner.

(b) The person selected as secretary shall be approved by a majority of the board.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.0171. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 32.012 of this code for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) of Section 32.012 of this code for appointment to the board;

(3) violates a prohibition established by Section 32.0122 or 32.0123 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or

disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(c) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the governor that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 10, eff. Sept. 1, 1985.

Sec. 32.018. EMPLOYMENT OF GEOLOGIST AND MINERALOGIST. The commissioner may employ a geologist and a mineralogist who shall be informed about minerals on land under the board's jurisdiction and activities under pending applications and previous leases and sales. The geologist and mineralogist shall report to the board any information relating to these subjects.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 11, eff. Sept. 1, 1985.

Sec. 32.019. BOARD EMPLOYEES. (a) The commissioner may employ additional employees necessary for the discharge of the duties of the board.

(b) Employees of the board shall be considered employees of the land office, and civil and criminal laws regulating the conduct and relations of employees of the land office apply to employees of the board.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.0191. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking

responsibilities of the board and the management responsibilities of the commissioner and the staff of the land office.

Added by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 5, eff. September 1, 2019.

Sec. 32.020. MINUTES OF BOARD. The board shall keep minutes which shall include a record of its proceedings and a docket on which the secretary shall enter matters to be considered by the board.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.021. RECORDS AND PROCEEDINGS AS ARCHIVES. The records and proceedings of the board shall be records and archives of the land office.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.022. INSPECTION OF MINUTES AND DOCKET. (a) On payment of the fees prescribed by law for examination of other land office records, the minutes and docket shall be subject to inspection by any citizen of the state who desires to make the examination.

(b) An examination made under this section shall be made in the presence of the secretary of the board or a clerk designated by law.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.025. AUDIT. The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 13, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 6, eff. Sept. 1, 1989.

Sec. 32.026. POLICIES ON PUBLIC HEARINGS. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 14, eff. Sept. 1, 1985.

Sec. 32.027. MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the board's investment programs and strategies;

(4) the permanent school fund, including a comprehensive overview of the law governing the fund;

(5) the scope of and limitations on the rulemaking authority of the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The commissioner shall create a training manual that includes the information required by Subsection (b).

(e) The commissioner shall distribute a copy of the training manual annually to each appointed member of the board. Each of those members shall sign and submit to the commissioner a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 6, eff. September 1, 2019.

Sec. 32.028. COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 7, eff. September 1, 2019.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 32.061. BOARD'S GENERAL DUTIES. Except as provided by Subchapter G, Chapter 51, of this code, the board shall:

(1) set the dates to open received bids for the sale of land, for the lease of land for prospecting or exploring for, mining, producing, storing, caring for, transporting, preserving, selling, or disposing of oil, gas, or other minerals leased under this chapter, and for the commitment of land to a contract for development;

(2) determine the prices and set the terms and conditions under which land shall be sold, leased, or committed to a contract for development;

(3) consult with the president, chairman, or other head of the department, board, or agency, as applicable, or with the representative of the head, on each matter before the board that affects land owned or held in trust for the use and benefit of a department, board, or agency of the state; and

(4) perform any other duties which may be required by law.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended Acts 1985, 69th Leg., ch. 624, Sec. 15, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 5, eff. June 19, 2009.

Sec. 32.062. ADOPTION OF RULES AND COLLECTION OF FEES. (a) The board shall adopt rules of procedure and rules for the sale, lease, and commitment to a contract for development of land as provided by this chapter.

(b) The board by rule shall adopt and shall collect reasonable fees necessary to carry out this chapter.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 16, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 3, eff. Sept. 1, 1993.

Sec. 32.063. DUTY TO ADVISE COMMISSIONER. The board shall advise the commissioner regarding any matters submitted to it for that purpose.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.064. SURVEY OR SUBDIVISION OF LAND. The board may have land surveyed or subdivided into tracts, lots, or blocks based on its determination of which method will be most conducive and convenient to facilitate the advantageous sale of land, the lease of land for oil, gas, or other minerals, or the commitment of land to a contract for development.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 4, eff. Sept. 1, 1993.

Sec. 32.065. PERMITS FOR SURVEYS OR INVESTIGATIONS. If land other than public school land is not under a valid lease or committed to a contract for development, the board may issue a permit for a geological, geophysical, or other survey or investigation of that land that will encourage the development of the land for oil, gas, or other minerals. The permit may be issued for the consideration and under the terms and conditions the board considers to be in the best interest of the state.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 18, eff. Sept. 1, 1985.
Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 5, eff. Sept. 1, 1993.

Sec. 32.066. EASEMENTS. (a) The board may grant easements of right-of-way on any land except:

(1) unsold public school land;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state; and

(3) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits.

(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

(c) This section shall not apply to land owned by the Texas Department of Transportation.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 19, eff. Sept. 1, 1985.
Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(51), eff. Sept. 1, 1995.

Sec. 32.067. MARGINAL PROPERTY ROYALTY RATES. (a) In this section:

(1) "Barrel of oil equivalent" means 6,000 cubic feet of natural gas for each 42-gallon barrel of crude oil or a volume of gas with a minimum heating value of 6,000,000 British thermal units (6,000 Mbtu), whichever is greater.

(2) "Qualifying Gulf of Mexico property" means land described in Section 52.011(2) that is subject to a lease issued under Subchapter B, Chapter 52.

(3) "Qualifying Gulf of Mexico reservoir" means a reservoir that:

(A) during a period established by board rule has an average daily per well production equal to or less than 50 barrels of oil or barrels of oil equivalent; and

(B) underlies:

(i) a qualifying Gulf of Mexico property; or

(ii) a pooled unit that includes a qualifying Gulf of Mexico property.

(4) "Qualifying property" means land subject to a lease issued under this chapter, under Subchapter E, Chapter 51, or under Chapter 52.

(5) "Qualifying reservoir" means a reservoir that:

(A) during a period established by board rule has an average daily per well production equal to or less than 15 barrels of oil or barrels of oil equivalent; and

(B) underlies:

(i) a qualifying property; or

(ii) a pooled unit that includes a qualifying property.

(6) "Reservoir" has the same meaning as "common reservoir" as that term is defined in Section 86.002.

(b) The board by rule may provide for the reduction of royalty rates as provided by this section.

(c) The royalty rate for oil and gas produced from a qualifying reservoir may be reduced to not less than one-sixteenth (6.25 percent) for a term prescribed by the board. In determining whether to grant a reduction in the royalty rate, the board may consider whether the qualifying property is being operated efficiently, including whether the property is pooled or has reasonable potential for the application of secondary or tertiary recovery techniques.

(d) The royalty rate for the state's share under a lease issued under Subchapter F, Chapter 52, or Sections 51.195(c)(2) and (d) may be reduced under this section to not less than one-thirty-second (3.125 percent) for a term prescribed by the board. The state's royalty rate may be reduced under this subsection only if the royalty rate for the owner of the soil is reduced in the same proportion.

(e) The royalty rate under a lease issued under Subchapter C, Chapter 52, may not be reduced to a rate that is lower than the rate under lease of land that:

(1) adjoins the land leased under Subchapter C; and

(2) is held or operated by, or under the significant

control of, the state's lessee.

(f) The royalty rate under a lease issued under Subchapter F of this chapter may not be reduced to a rate that is lower than the rate under a lease of land that adjoins the land leased under Subchapter F.

(g) If a qualifying reservoir for which a royalty rate reduction is sought under this section is included in a unit subject to the board's authority, the board may modify the terms and conditions for the unit as a condition of approving the requested reduction in the royalty rate.

(h) This section does not apply to the free royalty reserved by the state under Section 51.054.

Added by Acts 1995, 74th Leg., ch. 1007, Sec. 1, eff. June 17, 1995. Amended by Acts 1999, 76th Leg., ch. 1300, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. SALE AND LEASE OF LAND

Sec. 32.101. APPLICABLE LAW. Land shall be offered for sale, lease, or commitment to a contract for development subject to the terms and conditions provided by law. Sales and leases of upland within 2,500 feet of a military base may not be made unless the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the sale or lease will not adversely affect the mission of the military base.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 6, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 149, Sec. 11, eff. May 27, 2003.

Sec. 32.104. APPRAISAL FEE. (a) The board shall charge applicants for the purchase of excess acreage and unsurveyed public school land an appraisal fee for appraising the acreage and land to determine the price at which it is to be sold by the state.

(b) The appraisal fee shall be in an amount set by the board, and any part of the fee which in the opinion of the board is unused shall be refunded to the applicant.

(c) The appraisal fee shall be paid to the commissioner who shall deposit all fees that are not refunded in the State Treasury in

the fund provided under Section 32.110 of this code.

(d) The money deposited in the fund to the extent necessary is appropriated to the land office to pay salaries, travel expenses, and other expenses of personnel necessary to accomplish the appraisals or other work of the board.

(e) The provisions of this section are cumulative of other laws which are not in conflict, but if a conflict exists, this section is controlling.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.105. DATE FOR OPENING BIDS. The date for opening bids for the sale, lease, or commitment to a contract for development of land shall be:

(1) the first or third Tuesday of a month in which the board meets; or

(2) any date on which the board has a special meeting.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 7, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 7, eff. June 19, 2009.

Sec. 32.106. DESCRIPTION OF LAND. The description of public school land offered for sale, lease, or commitment to a contract for development shall be in accord with the description which may be found in the School Land Registry or other records in the land office.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 8, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 3, eff. September 1, 2015.

Sec. 32.107. NOTICE OF SALE, LEASE, AND CONTRACT FOR DEVELOPMENT. (a) The board shall publish notice that the board will receive bids for the sale, lease, or commitment to a contract for development of land in at least three issues of at least four daily newspapers or other publications, two of which may be Internet-based journals, trade publications, newsletters, or similar news media, that are, in the opinion of the commissioner, likely to reach the public interested in responding to the notice of sale, lease, or commitment to a contract for development.

(b) The notice shall be published at least 30 days before the date the bids are due.

(c) The notice shall state that land is to be offered for sale, lease, or commitment to a contract for development on a certain date and at a certain time and the method of the sale, lease, or commitment to a contract for development and shall give notice of how a person may obtain additional information concerning the land offered for sale, lease, or commitment to a contract for development.

(d) The land office may solicit and include advertising in its publications. The commissioner shall deposit fees paid for advertising in land office publications in a separate account in the state treasury.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 20, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 9, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 8, eff. June 19, 2009.

Sec. 32.1071. LEASE SALES. (a) The sale of oil, gas, or other mineral leases shall be by sealed bid or at public auction or through a combination of public auction and sealed bid, as the board elects.

(b) Sections 52.015 through 52.020 of this code apply to the sale of leases by sealed bid.

(c) The leases shall be made on terms and conditions that may be prescribed by the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 21, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 10, eff. Sept. 1, 1993.

Sec. 32.1072. MINIMUM ROYALTY, BONUS, AND RENTAL. The board may not accept a bid on an oil and gas lease that offers:

(1) a royalty of less than one-eighth of the gross production of oil and gas; or

(2) a cash bonus of less than $10 an acre.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 22, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 11, eff. Sept. 1, 1993.

Sec. 32.1073. FIXING ROYALTY, BONUS, AND RENTAL. In offering land for lease under this subchapter, the board may:

(1) set the royalty and rental and provide for bidding on a basis of the highest cash bonus offered; or

(2) set the cash bonus and rental and provide for bidding on the basis of the highest royalty offered.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 23, eff. Sept. 1, 1985.

Sec. 32.109. ACCEPTANCE AND REJECTION OF BIDS. (a) For each tract offered for sale, lease, or commitment to a contract for development, the board must accept the best bid submitted that meets the minimum requirements set by the board or by law or reject all bids.

(b) The minutes of the board shall reflect the acceptance or rejection of a bid.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 12, eff. Sept. 1, 1993.

Sec. 32.110. SPECIAL SALE FEE. (a) On land sales and mineral leases made by the board, the purchaser or bidder is required to pay by separate check an amount equal to one and one-half percent of the bid or sale amount payable to the commissioner as a special fee. The board may waive the special fee on land sales to any state agency,

board, commission, political subdivision, or other governmental entity.

(b) If the sale is by bid, only the special fees paid on the bids accepted by the board shall be deposited by the commissioner in the State Treasury as a special fund.

(c) Failure to pay the special fee shall not void a bid, but the commissioner shall demand payment of the fee before accepting the bid and completing the transaction.

(d) Checks submitted by unsuccessful bidders shall be returned to the bidders.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(n), eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 13, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 9, eff. June 19, 2009.

Sec. 32.111. ISSUANCE OF AWARD OR LEASE. Each award or lease shall be issued by the commissioner according to the minutes approved by the board.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.112. SALE OF TAX FORECLOSURE PROPERTY. (a) All real property or any interest in real property placed in the name of the state as a result of foreclosure of a tax lien, whether the property was sold, bid off, or otherwise transferred to the state, may be sold or leased by the board in the same manner as provided for the sale or lease of land under Chapter 51, free of any lien of a taxing unit that was a party to the judgment in the delinquent tax suit involving the property for taxes imposed on the property, penalties, or interest that are due the taxing unit.

(b) A sale of property by the board under this section vests in the purchaser of the property good and perfect title to the interest in the property owned by the person liable for the delinquent taxes. The purchaser has the right to the use and possession of the

property, subject only to the person's right of redemption, a recorded restrictive covenant running with the land, and a valid easement of record as of the date the property was placed in the name of the state, if the covenant or easement was recorded before January 1 of the year in which the tax lien attached to the property.

(c) The board may retain from the proceeds of a sale or lease conducted under this section the cost of conducting the transaction, including advertising, appraisal, and administrative costs. The balance of the proceeds shall be deposited in the State Treasury to the credit of the Texas capital trust fund. The board is not required to pay any portion of the proceeds to a taxing unit that was a party to the judgment in the delinquent tax suit involving the property in satisfaction of any taxes imposed on the property, penalties, or interest that are due the taxing unit.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 10, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 861, Sec. 1, eff. June 18, 1997.

Sec. 32.113. EXEMPTION FROM CERTAIN REAL ESTATE TRANSACTION LAWS. (a) Unless the statute specifically states that the statute applies to the board, the following statutes do not apply to the board:

(1) a statute that would require the board to provide a notice or disclosure to a buyer of real property; and

(2) a statute relating to the sale, purchase, or financing of real property by an executory contract, including a contract for deed or other similar sale.

(b) This section does not affect the application of a statute described by Subsection (a)(2) to a party involved in a transaction with the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 234 (H.B. 1853), Sec. 2, eff. May 25, 2007.

SUBCHAPTER E. CONDITIONS OF LEASES

Sec. 32.151. TERM OF LEASE. Each oil and gas lease shall be for a primary term not to exceed 10 years and for as long thereafter as oil or gas is produced in paying quantities.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 14, eff. Sept. 1, 1993.

Sec. 32.152. ASSIGNMENT AND TRANSFER. A lessee may transfer or assign his lease at any time in the manner provided by Section 52.026 of this code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.153. LEASE RELINQUISHMENT. A lessee may relinquish his lease to the state at any time in the manner provided by Section 52.027 of this code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.154. LEASES SUBJECT TO LAWS, ORDERS, AND RULES. Drilling or mining operations for oil, gas, or other minerals and the production of oil, gas, or other minerals under a lease issued under this chapter are subject to:

(1) the laws of this state;

(2) valid orders made by the Railroad Commission of Texas or any other regulatory authority controlling the development of leases for the production of oil, gas, or other minerals; and

(3) rules the board adopts.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.155. RENTAL AND ROYALTY PAYMENTS. (a) Each lessee or his assigns shall pay annual rentals and royalties as specified by the board.

(b) Subchapter D, Chapter 52 of this code applies to a lease issued under this chapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.156. FORFEITURE. Each lease is subject to forfeiture by the commissioner under the conditions and in the manner provided by Section 52.176 of this code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.157. SPECIAL ACCOUNTS. (a) Special funds are created in the State Treasury to be known as the Parks and Wildlife Department and the Texas Department of Corrections special mineral funds.

(b) All money collected as bonus, royalty, rental, payments for easements, and permit fees attributable to land covered by this chapter, other than land dedicated to the permanent school fund, shall be deposited in the special mineral fund of the department, board, or agency owning the land.

(c) To offset the costs of leasing and administering mineral leasing, all fees collected relating to leasing lands owned by boards, departments, or agencies, including the sales fee and any penalties collected shall be credited to the same fund account in the treasury as those similar fees collected in the leasing of land dedicated to the permanent school fund.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 50, eff. Sept. 1, 1985.

SUBCHAPTER F. LEASE OF HIGHWAY LANDS

Sec. 32.201. PREFERENTIAL RIGHT TO LEASE CERTAIN LAND BY ADJOINING MINERAL OWNER; ALLOCATION AND USE OF PAYMENTS RECEIVED FROM LEASING OF LAND OWNED FOR COUNTY ROAD. (a) In this section, "mineral owner" means any person who owns the right to explore for, develop, and produce oil and gas from a tract of land adjoining lands owned by the state that were or may be acquired to construct or maintain a highway, road, street, alley, or other right-of-way.

(b) Oil and gas under lands owned by the state that were or may be acquired to construct or maintain a highway, road, street, alley, or other right-of-way may be offered for lease under this chapter only after the oil and gas are first offered for lease to the mineral owner of the land adjoining the length of the land to be leased. The board shall set the terms and conditions of the lease as follows:

(1) In instances where the adjoining land is covered by an

existing oil and gas lease currently in effect, the royalty, bonus, and rental shall be identical to those amounts contained in the lease covering the adjoining land or, in the event there is more than one lease covering adjoining land, shall be no less favorable to the state than the most favorable of such leases.

(2) In instances where the adjoining land is not covered by an existing oil and gas lease, the royalty, bonus, and rental for the lease shall be as provided in Sections 32.1072 and 32.1073 of this code.

(c) The preferential right of the mineral owner created by Subsection (b) of this section is subject to the following limitations:

(1) the lease of the oil and gas extends only to the center of the width of the particular highway, road, street, alley, or other right-of-way adjacent to the property in which the lessee is the mineral owner; and

(2) the preferential right to lease must be exercised by the mineral owner within 120 days of actual notice of the intention to lease as provided by Subsection (d) of this section.

(d) Actual notice, describing the land as required by Section 32.204 of this code, has occurred upon mailing of the notice of the intention to lease by registered mail to the last known address of the affected mineral owner or owners, if more than one, as determined from records of the county clerk for the county in which the land to be leased is located. If the identity or address of a mineral owner is not known, and cannot be located after a diligent search of the records of the county clerk and tax assessor-collector for the county in which the land is located, the actual notice required by Subsection (c) of this section shall be provided by publication. The notice shall be published in the manner provided in the Texas Rules of Civil Procedure for citation by publication in actions against unknown owners or claimants of interest in the land. Actual notice has occurred on completion of all procedures required by the Rules of Civil Procedure.

(e) To exercise the preferential right under this section, the mineral owner must tender to the commissioner the bonus set by the board, together with the appropriate statutory sales fee. The tender to the commissioner must be made on or before the end of the 120-day period provided by Subsection (c)(2) of this section.

(f) At any time during the 120-day period a mineral owner may

waive his preferential right to lease by providing the General Land Office with a written waiver. Failure by the mineral owner to exercise his preferential right to lease the land within the 120-day period provided by Subsection (c)(2) of this section, or the filing of a written waiver, results in forfeiture of the preferential right to lease the land.

(g) If a mineral owner's preferential right is forfeited under this section, the land may be offered for lease by the board directly to an applicant or by sealed bid as provided by this chapter. The board shall not offer nor accept a price or terms which are less than that offered to the adjoining mineral owner under this section. If not leased at a public offering within 18 months from the date the lease was offered to the adjoining mineral owner, it shall be reoffered to the mineral owner prior to public offering in accordance with the provisions of this section.

(h) An adjoining mineral owner shall have the right to seek a judicial determination of the state's title to minerals beneath the adjoining highway right-of-way, and legislative consent to sue the state is hereby granted. Within 60 days of a final nonappealable judgment finding the state did not have title, or only had partial title, the state shall refund all or the proportionate part of any bonus, rental, royalty, and other consideration to the lessee. The state's lessee shall pay to the lawful mineral owner the value of any oil and gas produced from or allocated to the minerals upon which the state's title failed.

(i) Subject to Subsection (j), any payment received from the leasing of oil and gas under lands owned by the state that were or may be acquired by a county to construct a county road shall be deposited to the credit of the county road oil and gas fund as provided by Section 32.2015.

(j) Notwithstanding any other provision of law, a lease of oil and gas under land described by Subsection (i) that is entered into on or after September 1, 2017, must require any payment under the lease to be made directly to the county treasurer, or officer performing the function of that office, in the county in which the land is located, as determined by the commissioner and described in the lease, for deposit to the credit of the county road and bridge fund of the county to be used for the purposes described by Section 32.2015(d). A lessee's obligation to make a payment under this subsection is satisfied by making that payment to the county

described in the lease. This subsection does not create a cause of action for a county to pursue remedies under a lease described by this subsection, and a county is not considered to be a party to such a lease for the purpose of asserting a right granted by the lease or under this subsection.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 2, eff. June 8, 1985. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 16, eff. Sept. 1, 1987. Renumbered from Sec. 34.0511 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(c), (f)(1), (2), (g), eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1079 (H.B. 2521), Sec. 1, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1079 (H.B. 2521), Sec. 2, eff. September 1, 2017.

Sec. 32.2015. FUND. (a) The county road oil and gas fund is a trust fund outside the state treasury to be held and administered by the comptroller as trustee for the payment, without appropriation, to counties of money received from the leasing of oil and gas under lands owned by the state that were or may be acquired by a county to construct a county road.

(b) The land office shall deposit to the credit of the fund money received under Section 32.201(i) from the leasing of oil and gas under lands owned by the state that were or may be acquired by a county to construct a county road.

(c) Interest or other income from investment of the fund shall be deposited to the credit of the fund.

(d) Money in the fund received from the leasing of oil and gas under lands described by Subsection (b) located in a county, together with the interest or other income from investment of that money deposited to the credit of the fund, shall be disbursed at least twice each fiscal year, without appropriation, to the county treasurer or officer performing the function of that office. The county treasurer or officer shall deposit amounts received under this subsection to the credit of the county road and bridge fund of the county. Money deposited to the credit of that fund under this subsection may be used by the county only for road maintenance

purposes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1079 (H.B. 2521), Sec. 3, eff. September 1, 2017.

Sec. 32.202. POOLING. Any oil and gas lease offered under Sec. 32.201 of this code shall provide:

(1) authority for pooling all of the leased area into units of no more than 160 acres for an oil well or 640 acres for a gas well plus a 10 percent tolerance or of a unit size allowed under or prescribed by rules of the Railroad Commission of Texas;

(2) that the production allocable to the state lease shall be based upon the surface acreage of the state lease included in the unit;

(3) that the unit operations, production from any portion of the unit or payment of shut-in gas well royalty on a lease or unit well shall be considered for all purposes to be the conduct of operations and production on the state lease; and

(4) that neither unit production of oil or gas, nor unit operations, nor payment of shut-in royalties from a unit gas well, shall serve to hold the lease in force as to any area outside the unit, regardless of whether the production, maintenance of a shut-in gas well, or operations are actually located on the state tract or not.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985. Renumbered from Sec. 34.0512 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(b), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 642, Sec. 3, eff. Aug. 26, 1991.

Sec. 32.203. COMPENSATORY ROYALTY. Compensatory royalty shall be paid to the state on any lease offered and granted under Section 32.201 of this code if the lease is not being held by production on the tract, by production from a pooled unit, or by payment of shut-in royalties in accordance with the terms of the lease, and if oil or gas is sold and delivered in paying quantities from a well located within 2,500 feet of the leased premises and completed in a producible reservoir underlying the state lease or in any case in

which drainage is occurring. Such compensatory royalty shall be paid at the royalty rate provided in the state lease based on the value of production from the well as provided in the lease on which such well is located. The compensatory royalty shall be paid in the same proportion that the acreage of the state lease has to the acreage of the state lease plus the acreage of a standard proration unit under statewide field rules or, if applicable, the special field rules adopted by the Railroad Commission of Texas for the field in which the well has been completed. The compensatory royalty is to be paid monthly to the commissioner on or before the last day of the month next succeeding the month in which the oil or gas is sold and delivered from the well. Notwithstanding anything herein to the contrary, compensatory royalty payable under this section shall be no less than an amount equal to double the annual rental payable under the state lease. Payment of compensatory royalty shall maintain the state lease in force and effect for so long as such payments are made as provided in this section.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985. Renumbered from Sec. 34.0513 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(b), eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 10, eff. June 19, 2009.

Sec. 32.204. LEASE PROVISIONS. Any lease offered under Section 32.201 of this code shall contain a sufficient description of the land to be leased to enable the tract to be located on the ground. All other terms and conditions of the lease shall be identical to those contained in the lease covering such adjacent land, provided the terms and conditions are not inconsistent with any laws of this state. In the event there is more than one lease covering such land, the terms and conditions of the lease shall be no less favorable to the state than the most favorable of such leases. In those instances where the adjoining land is not covered by an existing oil and gas lease, all other terms and conditions of the lease shall be set by the board.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985.

Renumbered from Sec. 34.0514 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(b), (f)(3), eff. Sept. 1, 1987.

Sec. 32.205. RULES. The board may adopt rules to carry out the provisions of this chapter.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985. Renumbered from Sec. 34.0515 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(f)(4), eff. Sept. 1, 1987.

Sec. 32.206. RATIFICATIONS AND OTHER AGREEMENTS. (a) The board may approve by rule or order a ratification or other agreement that includes in the benefits of production a mineral or royalty interest in land owned by the state that was acquired to construct or maintain a highway, road, street, or alley.

(b) An agreement approved by the board under this section must be executed by the commissioner to be effective.

(c) This section does not apply to an interest subject to pooling or unitization by a lessee under a lease issued under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 15, eff. Sept. 1, 1993.

Sec. 32.207. ADVERTISING FOR BIDS; POOLING. Section 52.076 applies to oil and gas under land owned by this state that was acquired to construct or maintain a highway, road, street, or alley in the same manner as that section applies to oil and gas under a riverbed or channel.

Added by Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 11, eff. June 19, 2009.

SUBCHAPTER G. TRADE OF LAND

Sec. 32.251. AUTHORITY OF BOARD, IN CONJUNCTION WITH LAND OFFICE, TO TRADE LAND. The Board, in conjunction with the land

office, may trade fee and lesser interests in land dedicated to the permanent school fund for fee and lesser interests in land not dedicated to that fund if the board and the commissioner determine that the trade is in the best public interest of the people of this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.252. AUTHORITY OF STATE AGENCY OR POLITICAL SUBDIVISION TO SELL OR EXCHANGE REAL PROPERTY. (a) A State Agency Or Political subdivision may directly sell or exchange real property belonging to the state agency or political subdivision with the board for land dedicated to the permanent school fund if the exchange is for fair market value.

(b) Section 272.001, Local Government Code, does not apply to an exchange under this section.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.253. PURPOSE OF TRADE. Land dedicated to or acquired for the use and benefit of the permanent school fund may be traded to:

(1) aggregate sufficient acreage of contiguous land to create a manageable unit;

(2) acquire land having unique biological, geological, cultural, or recreational value;

(3) create a buffer zone for the enhancement of already existing public land, facilities, or amenities; or

(4) acquire land for the use and benefit of the permanent school fund as determined by the board to be in the best interest of the fund.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 12, eff. June 19, 2009.

Sec. 32.255. DEED REQUIRED. (a) A trade of land dedicated to the permanent school fund may be made only by a deed signed jointly by the commissioner and the governor.

(b) The governor's failure to sign the deed is a veto of the proposed trade.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.256. DEDICATION OF ACQUIRED LAND TO FUND. Land acquired by the board by trade under this subchapter is dedicated to the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.257. SUBSURFACE MINERAL RIGHTS. (a) If this state retains the subsurface mineral rights to the oil, gas, and other minerals in permanent school fund land traded under this subchapter, an unrestricted right of ingress to and egress from the land by this state and its lessees shall be retained for the purpose of exploration, development, and production of the oil, gas, and other minerals to which the rights are retained by this state.

(b) This state is entitled to lease the subsurface mineral rights retained under this section in the same manner and under the same conditions as subsurface mineral rights are leased in permanent school fund land in which this state owns the surface title and the subsurface mineral rights.

(c) A lessee of the subsurface mineral rights retained under this section is liable to the owner of the land for actual damages to the land that may occur as a result of exploration for and development and production of the oil, gas, and other minerals to which rights are retained under this section.

(d) Notwithstanding anything to the contrary in this subchapter, the board, to complete a trade of equal value, may convey the surface estate and reserve the oil, gas, and other minerals, with the surface owner acting as agent for the state under:

(1) Subchapter F, Chapter 52, in leasing the land for oil and gas and receiving one-half the bonus, rental, and royalty for acting as agent for the state in leasing the land and as compensation for surface damages; or

(2) Subchapter C, Chapter 53, in leasing the land for sulphur, coal, lignite, uranium, or potash and receiving 40 percent of the bonus, rental, and royalty for acting as agent for the state in leasing the land and as compensation for surface damages.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.258. REPORT TO LEGISLATURE. (a) The board shall report to the legislature a trade of land dedicated to the permanent school fund. The board shall report the trade at:

(1) the first regular session of the legislature occurring after the trade if the legislature is not meeting in regular session at the time the trade is made; or

(2) the regular session of the legislature occurring at the time of the trade if the legislature is meeting in regular session at the time the trade is made.

(b) The report must state the facts that warranted the trade.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. POLICY. (a) The surface estate in the coastal public land of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas, and it is the declared policy of this state that the estate be managed pursuant to the policies stated in the following subsections of this section.

(b) The natural resources of the surface estate in coastal public land shall be preserved. These resources include the natural aesthetic values of those areas and the value of the areas in their natural state for the protection and nurture of all types of marine life and wildlife.

(c) Uses which the public at large may enjoy and in which the public at large may participate shall take priority over those uses which are limited to fewer individuals.

(d) The public interest in navigation in the intracoastal water shall be protected.

(e) Unauthorized use of coastal public land shall be prevented.

(f) Utilization and development of the surface estate in the coastal public land shall not be allowed unless the public interest as expressed by this chapter is not significantly impaired by it.

(g) For the purposes of this chapter, the surface estate in coastal public land shall not be alienated except by the granting of leaseholds and lesser interests and by exchanges of coastal public land for littoral property as provided in this chapter.

(h) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of these rights, and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired.

Acts 1977, 65th Leg., p. 2382, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.002. PURPOSE. The purpose of this chapter is to implement the policies stated in Section 33.001 by delegating to the board, assisted by the appropriate staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.003. SHORT TITLE. This chapter may be cited as the Coastal Public Lands Management Act of 1973.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.004. DEFINITIONS. In this chapter:

(1) "Land office" means the General Land Office.

(2) "Commissioner" means the Commissioner of the General Land Office.

(2-a) "Committee" means the Coastal Coordination Advisory Committee.

(3) "Board" means the School Land Board.

(4) "Person" means any individual, firm, partnership, association, corporation which is public or private and profit or nonprofit, trust, or political subdivision or agency of the state.

(5) "Coastal area" means the geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

(6) "Coastal public land" means all or any portion of state-owned submerged land, the water overlying that land, and all state-owned islands or portions of islands in the coastal area.

(7) "Island" means any body of land surrounded by the water of a saltwater lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(8) "Management program" means the coastal management program provided by this chapter.

(9) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(10) "Structure" means any structure, work, or improvement constructed on, affixed to, or worked on coastal public land, including fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(11) "Submerged land" means any land extending from the boundary between the land of the state and the littoral owners seaward to the low-water mark on any saltwater lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath the body of water, but for the purposes of this chapter only, shall exclude beaches bordering on and the water of the open Gulf of Mexico and the land lying beneath this water.

(12) "Littoral owner," in this chapter only, means the owner of any public or private upland bordered by or contiguous to coastal public land.

(13) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(1), eff. September 1, 2011.

(14) "Coastal zone" means the portion of the coastal area located within the boundaries established by the coastal management program under Section 33.053(a)(1).

(15) "Network" means the Texas Coastal Ocean Observation Network.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 1, eff. June 8, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 719 (S.B. 471), Sec. 1, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(1), eff. September 1, 2011.

Sec. 33.005. EFFECT OF CHAPTER. (a) This subchapter does not repeal Subchapter B, Chapter 436, Health and Safety Code, or the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76, Subchapter B of Chapter 81, Subchapter G of Chapter 82, Subchapter C of Chapter 216, or Sections 66.101, 66.107, 66.112 through 66.118, 66.205, 76.031 through 76.036, 78.001 through 78.003, 81.002, 136.047, 184.024, 201.015, or 335.025.

(b) None of the provisions of this chapter may be construed to alter, amend, or revoke any existing right granted pursuant to any law.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(100), eff. Sept. 1, 1991.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 33.011. BOARD TO ADMINISTER, IMPLEMENT, AND ENFORCE CHAPTER. The board is the executive agency of the state charged with the administration, implementation, and enforcement of this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.012. LAND OFFICE TO ASSIST BOARD. The appropriate staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.013. ADDITIONAL PERSONNEL. The commissioner may employ any additional personnel in the land office that may be necessary for the board to perform effectively its functions under this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.015. SPECIAL ACCOUNT. (a) A dedicated account is created, and money received by the board for the grant of permits under this chapter shall be deposited in the State Treasury to the credit of this dedicated account.
(b) Sections 403.094(h) and 403.095(b), Government Code, do not apply to the dedicated account created under this section.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 9, eff. Sept. 1, 1993.

Sec. 33.016. DISPOSITION OF OTHER FUNDS. Money received by the board for the grant of any interest not under Section 33.015 of this

code shall be deposited in the State Treasury to the credit of the permanent school fund.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 33.051. GENERAL DUTY. The board, the commissioner, the land office, and the network shall perform the duties provided in this subchapter.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 33, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 719 (S.B. 471), Sec. 2, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 3, eff. September 1, 2011.

Sec. 33.052. DEVELOPMENT OF COASTAL MANAGEMENT PROGRAM. (a) The commissioner shall develop a continuing comprehensive coastal management program pursuant to the policies stated in Section 33.202.

(b) In developing the program, the land office shall act as the lead agency to coordinate and implement a comprehensive coastal management program for the management of uses affecting coastal natural resource areas, in cooperation with other state agencies that have duties relating to coastal matters. The program shall implement the policies stated in Section 33.202 and shall include the elements listed in Section 33.053.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(2), eff. September 1, 2011.

(d) For purposes of Subsections (a) and (b) of this section, "coastal natural resource areas" has the meaning assigned by Section 33.203 of this code.

(e) This section does not add to or subtract from the duties and responsibilities of a state agency other than the land office, the commissioner, and the board.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 1145, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 295, Sec. 34, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.263, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(52), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(2), eff. September 1, 2011.

Sec. 33.053. ELEMENTS OF COASTAL MANAGEMENT PROGRAM. (a) The coastal management program, in compliance with the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), shall include the following elements:

(1) an identification of the boundaries of the coastal zone subject to the coastal management program as provided by Section 33.2053(k);

(2) a continuous analysis of the potential uses for the land and water within the coastal zone, including recommendations as to which configurations of uses consonant with the policies of this chapter maximize the benefits conferred on the present and future citizens of Texas;

(3) guidelines on the priority of uses within the coastal zone, including specifically those uses of lowest priority;

(4) a list of the uses of the land and water within the coastal zone that are permissible under state law and under agency or subdivision actions described by Sections 33.2051 and 33.2053 and that would have a direct and significant impact on the coastal waters;

(5) recommendations as to increments of jurisdiction or authority necessary to protect land and water within the coastal zone from direct and significant detrimental consequences flowing from the

uses of adjacent land;

(6) an inventory of designated coastal natural resource areas, as defined by Section 33.203, in the coastal zone;

(7) a description of the organizational structure by which the coastal management program is implemented and administered;

(8) a compilation of state constitutional provisions, laws, rules, and judicial decisions under which the state proposes to exercise control over the uses of land and water described by Subdivision (4);

(9) a list of each agency or subdivision action, as described by Sections 33.2051 and 33.2053, that may have a direct and significant detrimental impact on coastal natural resource areas;

(10) a list of each federal agency action or activity and each outer continental shelf plan that may have a direct and significant detrimental impact on coastal natural resource areas;

(11) a procedure, as described under Sections 33.205, 33.2051, 33.2052, 33.2053, 33.206, 33.208, and 33.209, for determining the consistency of an agency or subdivision action or a federal agency action or activity or outer continental shelf plan with the goals and policies of the coastal management program;

(12) a definition of "gulf beach," as defined by Section 33.203, and a description of the statutory planning process or program for protection of and access to public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value;

(13) a description of the statutory planning process or program for energy facilities likely to be located in, or that may directly and significantly affect, the coastal zone;

(14) a description of the statutory planning process or program for:

(A) assessing the effects of shoreline erosion;

(B) studying and evaluating ways to control or reduce the impact of shoreline erosion; and

(C) restoring areas detrimentally affected by shoreline erosion;

(15) a description of the state's statutory program regulating nonpoint source water pollution, as it relates to the coastal zone; and

(16) an explanation of the relationship of specific policies of the coastal management program to:

(A) protection of resources;
(B) management of coastal development; and
(C) simplification of governmental procedures.

(b) For purposes of Subsections (a)(9) and (a)(11), "agency or subdivision action" has the meaning assigned by Section 33.203.

(c) For purposes of Subsections (a)(10) and (a)(11), "federal agency action," "federal agency activity," and "outer continental shelf plan" have the meanings assigned by Section 33.203.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995.

Sec. 33.054. REVIEW AND AMENDMENT OF MANAGEMENT PROGRAM. The commissioner may review the management program periodically and may amend the management program as new information or changed conditions may warrant.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 35, eff. June 7, 1991.

Sec. 33.055. PUBLIC HEARINGS TO CONSIDER COASTAL MANAGEMENT PROGRAM. In developing, reviewing, or amending the coastal management program, after due notice to affected persons and the public generally, the commissioner shall hold or have held public hearings as the commissioner determines to be appropriate.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 36, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 7, eff. September 1, 2011.

Sec. 33.056. STRUCTURES ON LAND ADJACENT TO COASTAL PUBLIC LAND. (a) On receipt of appropriate applications, the board shall register existing structures extending on coastal public land from

adjacent land not owned by the state.

(b) Insofar as consonant with the policies of this chapter, the board may regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which are built so that they extend on coastal public land from adjacent land not owned by the state.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.057. GIFTS OF INTERESTS IN LAND. (a) The board may accept gifts of interests in land, and these interests shall become part of the permanent school fund unless otherwise designated by the grantor.

(b) At the discretion of the board, the land may be managed as if it were coastal public land within the meaning of this chapter.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.058. PURCHASE OF FEE AND LESSER INTERESTS IN LAND. (a) The board may select and purchase fee and lesser interests in land of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities.

(b) The interests may be purchased by the board with money acquired by gift or grant, but the interests may not be obtained by condemnation.

(c) Interests acquired under this section shall not become a part of the permanent free school fund unless they are so designated by the board.

(d) In the discretion of the board, the interests may be managed as if they were coastal public land within the meaning of this chapter regardless of whether they fall within the meaning of coastal public land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.059. STUDIES. The board may study various coastal engineering problems, including the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements on the physical and biological systems of the coastal public land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.060. LOCATING AND MARKING BOUNDARIES. The board may locate and have marked on the ground the boundaries separating coastal public land from other land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.061. COMPLAINTS. (a) The board shall receive and evaluate any complaint or report from any person concerning instances of unauthorized construction, maintenance, use, or assertion of control of any structure on coastal public land.

(b) The board shall refer to the attorney general all cases warranting judicial remedies, and the attorney general shall immediately initiate judicial proceedings for the appropriate relief.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.062. DESIGNATED OFFICIAL REPRESENTATIVE. The board is designated and shall serve as the official representative of the governor of the state to conduct with the federal government any business concerning any matter affecting the coastal public land which arises out of the exercise by the federal government of any authority it may have over navigable water under the Constitution of the United States.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.063. FEES. The board may prescribe reasonable filing fees and fees for granting leases, easements, permits, and other interests in or rights to use coastal public land.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.064. RULES. The board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce this chapter.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.065. TEXAS COASTAL OCEAN OBSERVATION NETWORK. (a) The Texas Coastal Ocean Observation Network is a cooperative project of Texas A&M University--Corpus Christi, Lamar University, the Texas Water Development Board, and the land office.

(b) The network shall collect data on natural processes affecting the coast for the purpose of studying, planning for, and managing human uses of the coast as they are affected by those natural processes.

(c) The participating state entities shall coordinate the project with the United States Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and other appropriate entities, including private entities.

(d) The participating state entities may contract and enter into agreements with the United States Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and other appropriate entities, including private entities, as necessary to carry out their duties under this section.

Added by Acts 2005, 79th Leg., Ch. 719 (S.B. 471), Sec. 3, eff. June 17, 2005.

SUBCHAPTER D. RIGHTS IN COASTAL PUBLIC LAND

Sec. 33.101. APPLICATION TO ACQUIRE RIGHTS IN COASTAL PUBLIC LAND. Any person who desires to acquire rights in the surface estate in any coastal public land shall make application to the board in writing in the form prescribed by the board.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.102. CONTENTS OF APPLICATION. The application to acquire rights in coastal public land shall include any information the board considers necessary to process the application, including information necessary to evaluate the purpose for which the land is to be used.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.103. INTERESTS WHICH MAY BE GRANTED BY THE BOARD. (a) The board may grant the following interests in coastal public land for the indicated purposes:

(1) leases for public purposes;

(2) easements for purposes connected with:

(A) ownership of littoral property; or

(B) the operation of a facility operated by an existing channel and dock corporation that was issued articles of incorporation under Chapters 13 and 14, Title 32, Revised Statutes;

(3) permits authorizing limited continued use of previously unauthorized structures on coastal public land not connected with ownership of littoral property;

(4) channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or

appropriate to the use of the interests; and

(5) subject to Section 33.001(g), any other interest in coastal public land for any purpose if the board determines that the grant is in the best interest of the state.

(b) The board may not grant any interest in land within 2,500 feet of a military base unless the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the grant will not adversely affect the mission of the military base.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 1, eff. Aug. 26, 1985; Acts 2003, 78th Leg., ch. 149, Sec. 12, eff. May 27, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 2, eff. September 1, 2007.

Sec. 33.104. DETERMINATION OF TERMS OF GRANT; CONSUMMATION OF TRANSACTION. If the board approves the application, the board shall determine the terms, conditions, and consideration for the grant of an interest in or right to use coastal public land and may consummate the transaction.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 3, eff. September 1, 2007.

Sec. 33.105. PERSONS TO WHOM INTEREST IN LAND MAY BE GRANTED. The board may grant to any person an interest in coastal public land if the board determines that the grant is in the best interest of the state.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 3, eff. September 1, 2007.

Sec. 33.106. POLICIES, PROVISIONS, AND CONDITIONS OF LEASES. In addition to policies generally applicable under this chapter, leases granted under this subchapter shall be subject to the policies, provisions, and conditions stated in Sections 33.107 through 33.110 of this code.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.107. PROTECTION OF RIGHTS. The littoral rights of the adjacent upland owner shall be protected in a lease.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.108. RIGHTS OF THE PUBLIC. Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.109. COUNTIES AND CITIES ELIGIBLE TO LEASE COASTAL PUBLIC LAND. (a) A county is eligible to apply for a lease of coastal public land inside the county and outside the boundaries of any incorporated city, town, or village for public recreational purposes.

(b) An incorporated city, town, or village is eligible to lease coastal public land within its corporate boundaries for public recreational purposes.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.110. CONTRACTS AND FRANCHISES. (a) With the approval

of the board, a lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1256, Sec. 24, eff. September 1, 2007.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 24, eff. September 1, 2007.

Sec. 33.111. GRANTING EASEMENTS. (a) The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public land for purposes connected with the ownership of littoral property.

(b) The board may grant easement rights to construct channels, wharves, docks, and marinas to an existing corporation that was issued articles of incorporation under Chapters 13 and 14, Title 32, Revised Statutes.

(c) Notwithstanding any provision in its charter or articles of incorporation to the contrary, a corporation described in Subsection (b) of this section may only obtain the use of or acquire property from the state as provided by that subsection.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 2, eff. Aug. 26, 1985.

Sec. 33.112. FAILURE TO OBTAIN AN EASEMENT. (a) Any owner of littoral property or any person acting under the owner of littoral property who for purposes connected with the ownership of the littoral property shall construct or fix or place on coastal public land any structure without first obtaining an easement from the land office is subject to a civil penalty of not more than $200.

(b) Each day the structure remains on or is affixed to coastal public land constitutes a separate offense.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.113. INTERPRETATION OF EASEMENT GRANT. The grant of an easement under Section 33.111 of this code and the waiver under Section 33.115 of this code shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.114. POLICIES, PROVISIONS, AND CONDITIONS OF EASEMENTS. In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of an easement is subject to the policies, provisions, and conditions of Sections 33.115 and 33.117 of this code.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.115. PIERS. (a) Without obtaining an easement from the board, the owner of littoral property may construct a pier on adjacent coastal public land if the pier:

(1) is not used for commercial purposes;

(2) is 115 feet or less in length and 25 feet or less in width; and

(3) requires no filling or dredging.

(b) In addition to the provisions of Subsection (a), the board may adopt rules with limitations and requirements that are consistent with the policies stated in Section 33.001 of this code that allow an owner of littoral property to construct a pier with associated appurtenances on adjacent coastal public land without first obtaining an easement from the board.

(c) The location and dimensions of the pier and description of any associated appurtenances must be registered with the board in the manner provided in this chapter.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 366, Sec. 1, eff. May 26, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 58 (H.B. 932), Sec. 1, eff. May 17, 2005.

Sec. 33.116. FAILURE TO REGISTER PIER. Any owner of littoral property who fails to register the location and dimensions of the pier which is authorized to be constructed under Section 33.115 of this code is subject to a civil penalty of not more than $200.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.117. PUBLIC POLICY OF STATE TO BE CONSIDERED. In administering Sections 33.111 through 33.115 of this code, the board shall consider the public policy of the state that the orderly use of privately owned littoral property in a manner consistent with the public policy of the state will not be impaired.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.118. SINGLE PERMIT. If the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of state government, the board may agree with the agency or department to issue a single document incorporating all rights and privileges of the applicant.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.119. ISSUANCE OF PERMITS. The board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming an interest in the structure but is not incident to the

ownership of littoral property.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.120. FAILURE TO OBTAIN A PERMIT. A person who maintains, uses, or repairs any structure for which a permit is required under Section 33.119 of this code without first obtaining a permit from the board is subject to a civil penalty of not less than $50 nor more than $1,000.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.121. UNAUTHORIZED STRUCTURES. Any person who constructs, fixes, or places on coastal public land any unauthorized structure for purposes not connected with ownership of littoral property is subject to a civil penalty of not less than $50 nor more than $1,000.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.122. EXCEPTION TO PERMIT REQUIREMENT. No permit may be required for structures, excavations, or other similar structures as long as they are located wholly on the private littoral upland, even though the activities may result in the area being inundated by public water.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.123. POLICIES, PROVISIONS, AND CONDITIONS OF PERMITS. In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of a permit is subject to the policies, provisions, and conditions of Sections 33.120 through 33.122 and 33.124 through 33.126 of this code.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.124. PERMITS PROHIBITED FOR CERTAIN STRUCTURES. The board may not grant a permit which authorizes the continued use of a structure located within 1,000 feet of privately owned littoral residential property, without written consent of the littoral owner.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 42 (H.B. 708), Sec. 1, eff. May 13, 2005.

Sec. 33.125. AUTOMATIC REVOCATION AND TERMINATION OF A PERMIT. A permit that authorizes the continued use of a previously unauthorized structure on coastal public land is considered automatically revoked and terminated if the coastal public land on which the structure is located is:

(1) subsequently leased for public purposes;
(2) exchanged for littoral property under this chapter; or
(3) conveyed to a navigation district as provided by law.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.126. TERMINATION OF PERMIT BY BOARD. Each permit shall provide that if the terms of the permit are broken, the permit may be terminated at the option of the board.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.127. TERMS AND RENEWAL OF PERMITS. Permits may be issued for a period of not more than five years and may be renewed at the discretion of the board.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.128. USE OF PREVIOUSLY UNAUTHORIZED STRUCTURES. Previously unauthorized structures for which permits are obtained may be used only for noncommercial, recreational purposes.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.129. PROHIBITIONS ON THE GRANT OF PERMITS. The board may not grant an application for a permit which would violate the public policy of this state as expressed in this chapter and may not grant a permit for any structure not in existence on August 27, 1973.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.130. REPAIRS AND REBUILDING. If a structure for which a permit is issued is severely damaged or destroyed by any means, no major repairs or rebuilding may be undertaken by the permit holder without the approval of the board.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.131. STRUCTURES AS PROPERTY OF THE STATE. A structure presently existing or to be constructed in the future for which a permit is required under Section 33.119 of this code is the property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 10, eff. Sept. 1, 1993.

Sec. 33.132. REGISTRATION BY BOARD. (a) The registration by the board on or before December 31, 1973, of a structure located in whole or in part on coastal public land on August 27, 1973, and claimed by the person submitting it for registration as an incident of the ownership of littoral property shall not be construed as evidence of the acquiescence of the state in the claim by the owner.

(b) Failure of the owner to register the structure estops the owner from making any further claim of right against the state in the structure and renders the structure a nuisance per se subject to abatement by the state at the expense of the littoral owner.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.133. REMEDIES CUMULATIVE. Remedies provided in this subchapter are cumulative of all other remedies which may be applicable, including those remedies arising from the power of a court to enforce its jurisdiction and its judgments.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.134. USE AND DEVELOPMENT OF LAND BY LITTORAL OWNER. None of the provisions of this chapter shall prevent the littoral owner of property from developing or otherwise using his property in a lawful manner, and this chapter shall not be construed to confer on the board the authority to regulate, control, or restrict the use or development of the property.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.135. NOTICE TO PURCHASER OR GRANTEE OF COASTAL AREA PROPERTY. (a) A person who sells, transfers, or conveys an interest other than a mineral, leasehold, or security interest in real property adjoining and abutting the tidally influenced waters of the state must include the following notice as a part of a written executory contract for the sale, transfer, or conveyance:

"(1) The real property described in and subject to this contract adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the property described in this contract may gain or lose portions of the tract because of changes in the boundary.

"NOTICE REGARDING COASTAL AREA PROPERTY

"(2) The seller, transferor, or grantor has no knowledge of any prior fill as it relates to the property described in and subject to this contract.

"(3) State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.

"(4) The purchaser or grantee is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the surveying division of the General Land Office in Austin."

(b) If property described under Subsection (a) of this section is sold, transferred, or conveyed without an executory contract for conveyance, a written statement containing the notice prescribed by that subsection must be delivered to the grantee for execution and acknowledgement of receipt before the conveyance is recorded.

(c) Failure to include the statement in an executory contract for conveyance shall be grounds for the purchaser to terminate such contract, and upon termination any earnest money shall be returned to the party making the deposit.

(d) Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute a deceptive act under Section 17.46, Business & Commerce Code.

(e) This section or the action of any party subject to this section does not diminish or modify the beach access and use rights of the public as acquired by statute or under common law.

Added by Acts 1993, 73rd Leg., ch. 991, Sec. 11, eff. Sept. 1, 1993.

Sec. 33.136. PROPERTY RIGHTS: PRESERVATION OF LITTORAL RIGHTS. (a) Notwithstanding any law to the contrary, a person may not undertake an action on or immediately landward of a public beach or submerged land, including state mineral lands, relating to erosion response that will cause or contribute to shoreline alteration before the person has conducted and filed a coastal boundary survey in the same manner as the survey of public land required by Chapter 21 and any applicable rule of the commissioner and has obtained any required lease or other instrument from the commissioner or board, as applicable. A person is not required to obtain a lease or other instrument from the commissioner or board if the action is confined to land owned by a navigation district or municipality. On filing of the survey, the shoreline depicted on the survey is a fixed line for the purpose of locating a shoreline boundary, subject to movement landward of that line. A coastal boundary survey conducted under this section may not be filed until the commissioner gives notice of approval under Subsection (c).

(b) The survey must contain the following statement: "NOTICE: This survey was performed in accordance with Section 33.136, Natural Resources Code, for the purpose of evidencing the location of the shoreline in the area depicted in this survey as that shoreline existed before commencement of erosion response activity, as required by Chapter 33, Natural Resources Code. The line depicted on this survey fixes the shoreline for the purpose of locating a shoreline boundary, subject to movement landward as provided by Section 33.136, Natural Resources Code."

(c) Within 30 days after the date the commissioner approves a coastal boundary survey under this section, the commissioner shall provide notice of that approval by:

(1) publication in the Texas Register;

(2) publication for two consecutive weeks on the Internet website of the land office; and

(3) filing a copy of the approval in the archives and records division of the land office.

(d) A person who claims title to permanent school fund land as a result of accretion, reliction, or avulsion in the coastal zone on or after September 1, 1999, must, in order to prevail in the claim, prove that:

(1) a change in the shoreline has occurred;

(2) the change did not occur as a result of the claimant's actions, the action of any predecessor in title, the action of any grantee, assignee, licensee, or person authorized by the claimant to use the claimant's land, or an erosion response activity; and

(3) the claimant is entitled to benefit from the change.

(e) An upland owner who, because of erosion response activity undertaken by the commissioner, ceases to hold title to land that extends to the shoreline as altered by the erosion response activity is entitled to continue to exercise all littoral rights possessed by that owner before the date the erosion response activity commenced, including rights of ingress, egress, boating, bathing, and fishing.

(f) In this section, "erosion response" means an action intended to address coastal erosion, mitigate the effect of coastal erosion, or maintain or enhance beach stability or width. The term includes:

(1) beach nourishment;

(2) sediment management;

(3) beneficial use of dredged material;

(4) construction of breakwaters;

(5) dune creation or enhancement; and

(6) revegetation.

Added by Acts 1997, 75th Leg., ch. 938, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 508, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 4, eff. September 1, 2015.

SUBCHAPTER E. ENFORCEMENT AND APPEAL

Sec. 33.171. ENFORCEMENT OF RIGHTS OF LITTORAL OWNERS. (a) A littoral owner whose rights may be affected by any action of the board under this chapter may bring suit for a declaratory judgment against the State of Texas in a district court in Travis County to try the issues.

(b) Service of citation may be obtained by serving the commissioner.

(c) The state is entitled to receive notice of a claim against the School Land Board under this subchapter not later than the 180th

day after the day the action of the board giving rise to the claim occurred. The notice must reasonably describe:

(1) the action of the board that affected the littoral owner's rights;

(2) the time and place of the board's action; and

(3) the nature of the claim, specifying, as applicable, the manner in which:

(A) the board's action affected the title to or boundary of coastal public land to the detriment of the littoral owner;

(B) the board's action affected an interest in land sought or granted under this chapter; or

(C) the board violated this chapter or a rule adopted by the board under this chapter.

(d) The notice requirement of Subsection (c) is a jurisdictional prerequisite to the institution of suit under this section regardless of actual notice, express or implied, to the board or the state.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 147, Sec. 1, eff. Sept. 1, 2003.

Sec. 33.172. VENUE. Unless expressly waived in writing by the attorney general, venue lies in Travis County in any proceeding:

(1) arising out of an alleged violation of any provision of this chapter or any rule adopted by the board under this chapter;

(2) touching any interest in land sought or granted under this chapter; and

(3) to determine the boundaries or title to any coastal public land.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.173. RIGHT TO APPEAL. Any interested party who is aggrieved by an action of the board under this chapter may appeal the action by filing a petition in a district court in Travis County.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.174. TIME FOR FILING PETITION. The petition for the appeal must be filed within 30 days after the date of the final action of the board or 30 days after the effective date of the action, whichever is the later date.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.175. SERVICE OF CITATION. Service of citation on the board may be accomplished by serving the commissioner.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.176. ISSUE ON APPEAL. In an appeal of a board action, the issue is whether the action is invalid, arbitrary, or unreasonable.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. COASTAL COORDINATION

Sec. 33.201. SHORT TITLE. This subchapter may be cited as the Coastal Coordination Act.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.

Sec. 33.202. POLICY. (a) It is declared to be the policy of this state to make more effective and efficient use of public funds and provide for more effective and efficient management of coastal natural resource areas, and to better serve the people of Texas by:

(1) continually reviewing the principal coastal problems of state concern, coordinating the performance of government programs affecting coastal natural resource areas, and coordinating the measures required to resolve identified coastal problems; and

(2) making all coastal management processes more visible, accessible, coherent, consistent, and accountable to the people of Texas.

(b) It is declared to be the policy of this state that the chief executive officer of the state should represent the State of Texas in discussions and negotiations with the federal government with regard to the effect of federal actions on the coastal programs and policies of the State of Texas.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 3, eff. June 8, 1995.

Sec. 33.203. DEFINITIONS. In this subchapter:

(1) "Coastal natural resource areas" means:

(A) coastal barriers;

(B) coastal historic areas;

(C) coastal preserves;

(D) coastal shore areas;

(E) coastal wetlands;

(F) critical dune areas;

(G) critical erosion areas;

(H) gulf beaches;

(I) hard substrate reefs;

(J) oyster reefs;

(K) submerged land;

(L) special hazard areas;

(M) submerged aquatic vegetation;

(N) tidal sand or mud flats;

(O) water of the open Gulf of Mexico; and

(P) water under tidal influence.

(2) "Coastal barrier" means an undeveloped area on a barrier island, peninsula, or other protected area, as designated by United States Fish and Wildlife Service maps.

(3) "Coastal historic area" means a site that is specially identified in rules adopted by the Texas Historical Commission or the Antiquities Committee as being coastal in character and that is:

(A) a site on the National Register of Historic Places, designated under 16 U.S.C. Section 470a and 36 CFR Part 63, Chapter 1; or

(B) a state archaeological landmark, as defined by Subchapter D, Chapter 191.

(4) "Coastal preserve" means any land, including a park or wildlife management area, that is owned by the state and that is:

(A) subject to Chapter 26, Parks and Wildlife Code, because it is a park, recreation area, scientific area, wildlife refuge, or historic site; and

(B) designated by the Parks and Wildlife Commission as being coastal in character.

(5) "Coastal shore area" means an area within 100 feet landward of the highwater mark on submerged land.

(6) "Coastal waters" means waters under tidal influence and waters of the open Gulf of Mexico.

(7) "Coastal wetlands" means wetlands, as the term is defined by Section 11.502, Water Code, located:

(A) seaward of the coastal facility designation line established by rules adopted under Chapter 40;

(B) within rivers and streams, to the extent of tidal influence, as shown on the Texas Natural Resource Conservation Commission's stream segment maps, excluding the portion of the Trinity River located in Liberty County;

(C) within one mile of the mean high tide of the portion of river and stream described by Paragraph (B), except as provided by Paragraphs (D) and (E);

(D) in the case of wetlands bordering the portion of the Trinity River to which Paragraph (B) applies:

(i) within the area located between the mean high tide line on the western shoreline of that portion of the river and Farm-to-Market Road 565 and Farm-to-Market Road 1409; or

(ii) within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 563; or

(E) in the case of wetlands bordering the portion of the Neches River described by Paragraph (B):

(i) within one mile from the mean high tide line of the western shoreline of that portion of the river described by Paragraph (B); or

(ii) within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 105.

(8) "Critical area" means a coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat.

(9) "Critical dune area" means a protected sand dune complex on the Gulf shoreline within 1,000 feet of mean high tide designated by the land commissioner under Section 63.121.

(10) "Critical erosion area" has the meaning assigned to the term "critical coastal erosion area" by Section 33.601(4).

(11) "Gulf beach" means a beach bordering the Gulf of Mexico that is:

(A) located inland from the mean low tide line to the natural line of vegetation bordering the seaward shore of the Gulf of Mexico; or

(B) part of a contiguous beach area to which the public has a right of use or easement:

(i) continuously held by the public; or

(ii) acquired by the public by prescription, dedication, or estoppel.

(12) "Hard substrate reef" means a naturally occurring hard substrate formation, including a rock outcrop or serpulid worm reef, living or dead, in an intertidal or subtidal area.

(13) "Oyster reef" means a natural or artificial formation that is:

(A) composed of oyster shell, live oysters, and other living or dead organisms;

(B) discrete, contiguous, and clearly distinguishable from scattered oyster shell or oysters; and

(C) located in an intertidal or subtidal area.

(14) "Special hazard area" means an area designated under 42 U.S.C. Section 4001 et seq. as having special flood, mudslide or mudflow, or flood-related erosion hazards and shown on a flood hazard boundary map or flood insurance rate map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E.

(15) "Submerged land" means land located under waters under

tidal influence or under waters of the open Gulf of Mexico, without regard to whether the land is owned by the state or a person other than the state.

(16) "Submerged aquatic vegetation" means rooted aquatic vegetation growing in permanently inundated areas in estuarine and marine systems.

(17) "Tidal sand or mud flat" means a silt, clay, or sand substrate, without regard to whether it is vegetated by algal mats, that occur in intertidal areas and that are regularly or intermittently exposed and flooded by tides, including tides induced by weather.

(18) "Water of the open Gulf of Mexico" means water in this state, as defined by Section 26.001(5), Water Code, that is part of the open water of the Gulf of Mexico and that is within the territorial limits of the state.

(19) "Water under tidal influence" means water in this state, as defined by Section 26.001(5), Water Code, that is subject to tidal influence according to the Texas Natural Resource Conservation Commission's stream segment map. The term includes coastal wetlands.

(20) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(3), eff. September 1, 2011.

(21) "Agency or subdivision" means any state agency, department, board, or commission or political subdivision of the state.

(22) "Coastal management program " means an ongoing, comprehensive program containing the elements required for approval of a program under the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) that is designed to coordinate agencies' management of activities that may adversely affect coastal natural resource areas for the purpose of continually making management of those activities more efficient and effective.

(23) "Agency or subdivision action" means an action described by Section 33.2051 or 33.2053.

(24) "Federal agency activity" means a function performed by or for a federal agency in the exercise of its statutory responsibility, including financial assistance, the planning, construction, modification, or removal of a public work, facility, or any other structure, and the acquisition, use, or disposal of land or water resources. The term does not include the issuance of a federal

license or permit.

(25) "Federal agency action" means a license or permit that a federal agency may issue that represents the proposed federal authorization, approval, or certification needed by the applicant to begin an activity.

(26) "Proposed action" means an agency or subdivision action under consideration by the agency or subdivision, but with respect to which the agency or subdivision has not made a final decision.

(27) "Outer continental shelf plan" means a plan for the exploration or development of, or production from, an area leased under the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331 et seq.) and the rules adopted under that Act that is submitted to the secretary of the United States Department of the Interior after federal approval of the coastal management program.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.264, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 1997, 75th Leg., ch. 396, Sec. 1, eff. May 28, 1997; Acts 1999, 76th Leg., ch. 508, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 70, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(3), eff. September 1, 2011.

Sec. 33.204. ADMINISTRATION OF COASTAL MANAGEMENT PROGRAM. (a) The commissioner by rule shall adopt goals and policies of the coastal management program. A goal or policy may not require an agency or subdivision to perform an action that would exceed the constitutional or statutory authority of the agency or subdivision to which the goal or policy applies.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(4), eff. September 1, 2011.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(4), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(4), eff. September 1, 2011.

(e) In conducting consistency reviews under Section 33.205, the commissioner shall receive and consider the oral or written testimony of any person regarding the coastal management program as the testimony relates to the agency or subdivision action or federal agency action or activity or outer continental shelf plan under review. The commissioner may reasonably limit the length and format of the testimony and the time at which it will be received. Notice of the period during which the testimony will be received shall be published in the Texas Register and in a newspaper of general circulation in each county directly affected by the matter under review before the commencement of that period. The commissioner shall consider only the record before the agency or subdivision involved in the matter under review, the agency's or subdivision's findings, applicable laws and rules, any additional information provided by that agency or subdivision, and public testimony under this subsection, provided that if the agency or subdivision did not hold a hearing, make a record, or make findings, the commissioner may hold a hearing and make findings necessary to a complete and thorough review.

(f) The land office, in coordination with other agencies and subdivisions, shall prepare a biennial report on the effectiveness of the coastal management program. On or before January 15 of each odd-numbered year, the land office shall send the report to the legislature.

(g) The commissioner may award grants to projects that further the goals and policies of the coastal management program. The commissioner shall establish the procedures for making any determination related to awarding a grant.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 22 (S.B. 803), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(4), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 259 (H.B. 622), Sec. 1, eff. June 14, 2013.

Sec. 33.2041. COASTAL COORDINATION ADVISORY COMMITTEE. (a) The commissioner by rule shall establish the Coastal Coordination Advisory Committee to advise the commissioner on matters related to the coastal management program. The committee shall consist of:

(1) a representative of each of the following entities designated by the presiding officer of that entity:

(A) the land office;

(B) the Parks and Wildlife Department;

(C) the Texas Commission on Environmental Quality;

(D) the Railroad Commission of Texas;

(E) the Texas Water Development Board;

(F) the Texas Department of Transportation;

(G) the State Soil and Water Conservation Board; and

(H) the Texas Sea Grant College Program to serve as a nonvoting member; and

(2) the following members to be appointed by the commissioner:

(A) a city or county elected official who resides in the coastal area;

(B) an owner of a business located in the coastal area who resides in the coastal area;

(C) a resident from the coastal area; and

(D) a representative of agriculture.

(b) The commissioner by rule shall establish the terms of office for and duties of committee members.

(c) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the committee.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 9, eff. September 1, 2011.

Sec. 33.205. CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM; COMMISSIONER REVIEW. (a) An agency or subdivision that takes an

agency or subdivision action described by Section 33.2051 or 33.2053 that may adversely affect a coastal natural resource area shall comply with the goals and policies of the coastal management program.

(b) An agency or subdivision subject to the requirements of Subsection (a) shall affirm that it has taken into account the goals and policies of the coastal management program by issuing a written determination that a proposed agency or subdivision action described by Section 33.2051 or 33.2053 is consistent with the program goals and policies.

(c) The commissioner may review a proposed agency or subdivision action subject to the requirements of Subsections (a) and (b) for consistency with the goals and policies of the coastal management program if:

(1) the consistency determination for the proposed action was contested by:

(A) a member of the committee or an agency that was a party in a formal hearing under Chapter 2001, Government Code, or in an alternative dispute resolution process; or

(B) another person by the filing of written comments with the agency before the action was proposed if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available;

(2) a person described by Subdivision (1) files a request for referral alleging a significant unresolved dispute regarding the proposed action's consistency with the goals and policies of the coastal management program; and

(3) any three members of the committee other than the representative of the Texas Sea Grant College Program agree that there is a significant unresolved dispute regarding the proposed action's consistency with the goals and policies of the coastal management program and the matter is referred to the commissioner for review.

(d) If consistency review thresholds are in effect under Section 33.2052, the commissioner may not review a proposed action subject to the requirements of Subsections (a) and (b) for consistency with the goals and policies of the coastal management program unless the requirements of Subsection (c) are satisfied and:

(1) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is available:

(A) the action exceeds the applicable thresholds and

the agency's consistency determination was contested in a formal hearing or in an alternative dispute resolution process; or

(B) the action does not exceed the applicable thresholds but may directly and adversely affect a critical area, critical dune area, coastal park, wildlife management area or preserve, or gulf beach and a state agency contested the agency's consistency determination in a formal hearing; or

(2) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available to contest the agency's determination, the action exceeds the applicable thresholds.

(e) The commissioner must consider and act on a matter referred under Subsection (c) or (d) before the 26th day after the date the agency or subdivision proposed the action. For purposes of this section, an action subject to the contested case provisions of Chapter 2001, Government Code, is proposed when notice of a decision or order is issued under Section 2001.142, Government Code.

(f) The commissioner by rule shall establish a process by which an applicant for a permit or other proposed action described in Section 33.2053, or an agency or subdivision proposing an action, may request and receive a preliminary consistency review. The rules shall:

(1) create a permitting assistance group composed of representatives of committee member agencies and other interested committee members to coordinate the preliminary reviews; and

(2) require that the following written information be produced not later than the 45th day after the date of the request for preliminary review:

(A) a statement from each agency or subdivision required to permit or approve the project as to whether the agency or subdivision anticipates approving or denying the application;

(B) if an agency or subdivision intends to deny an application, the agency's or subdivision's explanation of the grounds for denial and recommendations for resolving the grounds in a way that would allow the application to be approved;

(C) if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the goals and policies of the coastal management program; and

(D) if the project is likely to be found inconsistent

with the goals and policies of the coastal management program, an explanation and recommendation for resolving the inconsistency in a way that would allow the project to be found consistent.

(f-2) The commissioner may adopt rules as necessary to:

(1) restructure or abolish the permitting assistance group;

(2) expand the functions of the permitting assistance group; or

(3) add members to the permitting assistance group.

(g) The commissioner by rule shall establish a process by which an individual or small business may request and receive assistance with filing applications for permits or other proposed actions described by Section 33.2053. The rules shall provide for:

(1) the coordination of preapplication assistance through the permitting assistance group; and

(2) the provision of the following, by the permitting assistance group, to an individual or a small business, on request:

(A) a list of the permits or other approvals necessary for the project;

(B) a simple, understandable statement of all permit requirements;

(C) a coordinated schedule for each agency's or subdivision's decision on the action;

(D) a list of all the information the agencies or subdivisions need to declare the applications for the permits or other approvals administratively complete;

(E) assistance in completing the applications as needed; and

(F) if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the goals and policies of the coastal management program.

(h) If an agency, subdivision, or applicant has received a preliminary finding of consistency under Subsection (f)(2)(C) or (g)(2)(F) and a request for referral was filed on that action under Subsection (c)(2), the commissioner may accept the request for referral only if the agency or subdivision has substantially changed the permit or proposed action since the preliminary finding was issued.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.

Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 10, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 11, eff. September 1, 2011.

Sec. 33.2051. AGENCY RULEMAKING ACTIONS. (a) The land office shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing the prevention of, response to, or remediation of a coastal oil spill.

(b) The Texas Natural Resource Conservation Commission shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing:

(1) air pollutant emissions;

(2) on-site sewage disposal systems; or

(3) underground storage tanks.

(c) The State Soil and Water Conservation Board shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing agricultural or silvicultural nonpoint source pollution.

(d) An agency shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing an individual action described by Section 33.2053.

(e) The commissioner may not review a proposed rule of the Department of Agriculture.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 12, eff. September 1, 2011.

Sec. 33.2052. CERTIFICATION OF AGENCY RULES; AGENCY ACTIONS CONSIDERED CONSISTENT. (a) The commissioner by rule shall establish and may modify a process by which an agency may submit rules and rule amendments described by Section 33.2051 to the commissioner for review and certification for consistency with the goals and policies of the coastal management program.

(b) The process must provide that an agency may submit to the commissioner consistency review thresholds for the agency's actions described in Section 33.2053. After the commissioner certifies that an agency's rules are consistent and approves the agency's thresholds, the agency's consistency determination under Section 33.205(b) for an action is final and is not subject to referral and review, except as provided by Section 33.205(d).

(c) The commissioner by rule shall provide that the commissioner may revoke a certification under Subsection (b) if the commissioner finds that an agency has:

(1) implemented certified rules in a manner that conflicts with the goals and policies of the coastal management program; or

(2) amended certified rules in a manner inconsistent with the goals and policies of the coastal management program.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 13, eff. September 1, 2011.

Sec. 33.2053. INDIVIDUAL AGENCY OR SUBDIVISION ACTIONS. (a) The land office, the School Land Board, or a board for lease of state-owned lands shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) a mineral lease plan of operations;

(2) a geophysical or geochemical permit;

(3) a coastal easement;

(4) a miscellaneous easement;

(5) a coastal lease;

(6) a surface lease;

(7) a structure registration;

(8) a cabin permit;

(9) a navigation district lease;

(10) certification of a local government beach access or dune protection plan; or

(11) an agency or subdivision wetlands mitigation bank.

(b) The Public Utility Commission of Texas shall comply with Sections 33.205(a) and (b) when issuing a certificate of convenience and necessity.

(c) The Railroad Commission of Texas shall comply with Sections 33.205(a) and (b) when issuing:

(1) a wastewater discharge permit;

(2) a waste disposal or storage pit permit; or

(3) a certification of a federal permit for the discharge of dredge or fill material.

(d) The Texas Transportation Commission shall comply with Sections 33.205(a) and (b) when approving:

(1) an acquisition of a site for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway; or

(2) a transportation construction project or maintenance program.

(e) The Texas Historical Commission and the Antiquities Committee shall comply with Sections 33.205(a) and (b) when issuing:

(1) a permit for destruction, alteration, or taking of a coastal historic area; or

(2) a review of a federal undertaking affecting a coastal historic area.

(f) The Texas Natural Resource Conservation Commission shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) a wastewater discharge permit;

(2) a permit for a new concentrated animal feeding operation located one mile or less from a critical area or coastal waters;

(3) a permit for solid or hazardous waste treatment, storage, or disposal;

(4) creation of a special purpose district or approval of bonds for the purpose of construction of infrastructure on coastal barriers;

(5) levee improvement or flood control projects;

(6) a certification of a federal permit for the discharge of dredge or fill material;

(7) a declaration of an emergency and request for an emergency release of water;

(8) a new permit for an annual appropriation of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

(9) an amendment to a water permit for an increase in an annual appropriation of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast; or

(10) a change in the purpose of use of an annual appropriation of water to a more consumptive use of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(9), eff. September 1, 2011.

(h) The Parks and Wildlife Department shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) an oyster lease;

(2) a permit for taking, transporting, or possessing threatened or endangered species;

(3) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(4) development by a person other than the Parks and Wildlife Department that requires the use or taking of any public land in a state park, wildlife management area, or preserve.

(i) A subdivision shall comply with Sections 33.205(a) and (b) when issuing a dune protection permit or beachfront construction certificate that authorizes:

(1) construction activity that is located 200 feet or less landward of the line of vegetation and that results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;

(2) construction activity that results in the disturbance of more than 7,500 cubic yards of dunes;

(3) a coastal shore protection project undertaken on a gulf beach or 200 feet or less landward of the line of vegetation and that affects more than 500 linear feet of gulf beach; or

(4) a closure, relocation, or reduction in existing public beach access or public beach access designated in an approved local government beach access plan, other than for a short term.

(j) An action to renew, amend, or modify an existing permit,

certificate, lease, easement, approval, or other action is not an action under this section if the action is taken under a rule that the commissioner has certified under Section 33.2052 and:

(1) for a wastewater discharge permit, if the action is not a major permit modification that would:

(A) increase pollutant loads to coastal waters; or

(B) result in relocation of an outfall to a critical area;

(2) for solid, hazardous, or nonhazardous waste permits, if the action is not a Class III modification under rules of the Texas Commission on Environmental Quality; or

(3) for any other action, if the action:

(A) only extends the period of the existing authorization and does not authorize new or additional work or activity; or

(B) is not directly relevant to Sections 33.205(a) and (b).

(k) The commissioner shall establish a program boundary to limit the geographic area in which the requirements of Sections 33.205(a) and (b) apply. The boundary is the coastal facility designation line as defined by Appendix 1 to 31 TAC Section 19.2 as that appendix existed on the effective date of this section, as modified by Section 33.203(7). Except as provided by Subsections (f)(8)-(10), this subchapter does not apply to an agency action authorizing an activity outside the program boundary.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(9), eff. September 1, 2011.

Sec. 33.206. ACTION BY COMMISSIONER OR ATTORNEY GENERAL. (a) A proposed action is consistent with the goals and policies of the coastal management program and approved by the commissioner unless the commissioner determines the action to be inconsistent with the coastal management program and protests the action.

(b) If the commissioner protests the proposed action, the

commissioner shall report the commissioner's findings on the matter to the agency or subdivision. The report shall specify how the proposed action is inconsistent with the goals and policies of the coastal management program and include specific recommendations of the commissioner regarding how the proposed action may be modified or amended to make it consistent with the program. Before the 21st day after the date the agency or subdivision receives the report, the agency or subdivision shall review the findings and recommendations and determine whether to modify or amend the proposed action to make it consistent with the goals and policies of the coastal management program and shall notify the commissioner of its decision.

(c) If an agency or subdivision does not modify or amend a proposed action to be consistent with the goals and policies of the coastal management program, the commissioner shall request the attorney general to issue an opinion on the consistency of the proposed action with the coastal management program. The agency or subdivision is stayed from taking the proposed action until the attorney general issues the opinion. The attorney general shall issue an opinion before the 26th day after the date the commissioner requests the opinion.

(d) The commissioner shall adopt guidance and procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate the provisions of federal regulations governing those reviews. The guidance and rules shall provide that the commissioner or any three committee members may request additional information from a federal agency or additional time for review as provided by the federal regulations.

(e) The commissioner shall review any federal action, activity, or outer continental shelf plan that any three committee members agree presents a significant unresolved issue regarding consistency with the goals and policies of the coastal management program.

(f) If an activity requiring an agency or subdivision action described by Section 33.2053 that falls above thresholds in effect under Section 33.2052 also requires an equivalent federal permit or license, the commissioner may determine the consistency of the agency or subdivision action or the federal license or permit, but not both. The determination regarding the consistency of an action made by the commissioner under this subsection constitutes the state's determination regarding consistency of the equivalent agency or subdivision action or federal action.

(g) Notwithstanding the other provisions of this subchapter, on request for referral, the commissioner may not review a consistency determination of the land office, the commissioner, or the board. The commissioner shall refer a request for a review of the consistency of such an action to the attorney general not later than the second day after the date the commissioner receives the request. The attorney general shall determine whether the action is consistent with the goals and policies of the coastal management program in accordance with the applicable provisions of this subchapter governing determinations by the commissioner. If the attorney general determines the action to be inconsistent with the goals and policies of the coastal management program, the attorney general may protest the action in accordance with the provisions of this subchapter governing protests by the commissioner. A protest by the attorney general has the same effect as a protest by the commissioner. The attorney general may adopt rules as necessary to implement this subsection.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 15, eff. September 1, 2011.

Sec. 33.207. COMMISSIONER RECOMMENDATIONS. In addition to the report required by Section 33.206, the commissioner:

(1) may periodically submit recommendations to an agency or subdivision designed to encourage the agency or subdivision to carry out its functions in a manner consistent with the coastal management program, including recommendations for methods to simplify governmental procedures and changes in applicable rules or statutes; and

(2) shall report to the legislature on:

(A) recommended statutory changes needed to make more effective and efficient use of public funds and provide for more effective and efficient management of coastal natural resource areas, including recommendations on methods to simplify governmental procedures;

(B) agency or subdivision actions that are not

consistent with the coastal management program; and

(C) population growth of, infrastructure needs of, and use of resources on the coast.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 16, eff. September 1, 2011.

Sec. 33.208. ENFORCEMENT. (a) The agency or subdivision with jurisdiction over a proposed action shall enforce the provisions of the coastal management program.

(b) If the attorney general issues an opinion under Section 33.206(c) that a proposed agency or subdivision action is inconsistent with the coastal management program and the agency or subdivision fails to implement the commissioner's recommendation regarding the action, the attorney general shall file suit in a district court of Travis County to enforce this subchapter. The court shall consider the attorney general's opinion in determining whether the proposed action is consistent with the coastal management program.

(c) Notwithstanding the request of an opinion from, or the filing of suit by, the attorney general, the commissioner and the agency or subdivision may enter into a settlement agreement with regard to the proposed agency or subdivision action. If the commissioner and the agency or subdivision enter into a settlement agreement, the commissioner may rescind the commissioner's request for an opinion from the attorney general.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 17, eff. September 1, 2011.

Sec. 33.209. PROHIBITION ON SPECIAL AREA MANAGEMENT PLANS. The

land office may not develop or approve a special area management plan, including a plan for an area designated under the national estuary program.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 18, eff. September 1, 2011.

Sec. 33.210. PRIVATE PROPERTY. The requirements of this subchapter may not be applied in a manner that would result in the taking, damage, or destruction of property without adequate compensation.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

SUBCHAPTER G. COASTAL WETLAND ACQUISITION

Sec. 33.231. SHORT TITLE. This subchapter may be cited as the Coastal Wetland Acquisition Act.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.232. POLICY. It is the declared policy of the state:

(1) to protect the property rights of those who sell interests in land to the state by fairly compensating the sellers;

(2) to protect that coastal wetland which is most essential to the public interest by acquiring fee and lesser interests in the coastal wetland and managing it in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland; and

(3) to assure that the state does not expend funds to acquire any coastal wetland to which it already holds a valid title at the time of the expenditure.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.233. DEFINITIONS. In this subchapter:

(1) "Acquiring agency" means the Parks and Wildlife Department.

(2) "Land office " means the General Land Office.

(3) "Coastal wetland" means wetlands underlying or adjacent to tidal waters in the coastal area.

(4) "Wetlands" has the meaning assigned under Subchapter J, Chapter 11, Water Code.

(5) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 4, eff. June 5, 1991.

Sec. 33.234. DUTIES AND AUTHORITY OF ACQUIRING AGENCY. (a) The acquiring agency shall do the following:

(1) accept gifts, grants, or devises of interests in land;

(2) acquire, by purchase or condemnation, fee and lesser interests in the surface estate in coastal wetland certified as most essential to protection of the public interest, provided that in each instance in which an interest in land is acquired by the acquiring agency pursuant to this section, a sufficient interest shall be acquired to preserve and protect the productivity and integrity of such land as coastal wetland; and

(3) manage interests in land acquired pursuant to this section in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland.

(b) This subchapter shall not be construed to authorize the condemnation of any interest in the mineral estate in any coastal wetland.

(c) The acquiring agency shall promulgate reasonable rules and regulations necessary to preserve and protect the productivity and integrity of the land as coastal wetland acquired pursuant to this subchapter. The rules and regulations shall include regulations governing activities conducted on the land in conjunction with mineral exploration, development, and production.

(d) If the acquiring agency seeks to condemn an interest less

than the fee interest in the surface estate in any coastal wetland, the owner of the coastal wetland may demand that the acquiring agency instead seek condemnation of the fee interest in the surface estate in the coastal wetland. Upon this demand, the acquiring agency shall either:

(1) seek to condemn the fee interest in the surface estate in the coastal wetland; or

(2) cease all condemnation proceedings pursuant to this subchapter against the coastal wetland.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 5, eff. June 5, 1991.

Sec. 33.235. AGRICULTURAL EXEMPTION. Coastal wetland used only for farming or ranching activities, including maintenance and repair of buildings, earthworks, and other structures, shall not be subject to any power of condemnation exercised pursuant to this subchapter. However, this exemption from condemnation shall terminate upon the receipt by any state or federal agency of an application for a permit, license, or other authorization to conduct on the wetland, activities other than farming and ranching activities, including irrigation and water well drilling, and activities necessary to exploration, development, or production of the underlying mineral estate.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.236. DUTIES AND AUTHORITY TO CERTIFY. (a) The land office and the acquiring agency, in coordination, shall do the following:

(1) certify coastal wetlands which are most essential to the public interest in accordance with criteria developed by the land office and the acquiring agency under Chapter 14, Parks and Wildlife Code, and this subchapter, assign priorities for acquisition of interests in the coastal wetland, and revoke certification made pursuant to this section when it is in the public interest to do so; and

(2) publicize the importance to the public interest of coastal wetland in general, and of designated coastal wetland in particular.

(b) A certification, assignment of priority for acquisition, or revocation of certification made pursuant to this subchapter does not constitute a "contested case" within the meaning of Chapter 2001, Government Code.

(c) to (h) Repealed by Acts 1991, 72nd Leg., ch. 265, Sec. 7, eff. June 5, 1991.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Secs. 6, 7, eff. June 5, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 33.237. MOST ESSENTIAL COASTAL WETLAND CERTIFICATION. (a) In selecting and certifying coastal wetland most essential to the public interest, and in assigning priorities of acquisition to coastal wetland, the land office and the acquiring agency shall consider the following criteria:

(1) whether the land is coastal wetland within the definition, intent, and purpose of this subchapter;

(2) whether the state owns the coastal wetland or claims title to it, which title can be validated by bringing an appropriate action in a court of law;

(3) whether the biological, geological, or physical characteristics of the coastal wetland, including the interrelationship of the coastal wetland with other coastal wetland, is essential to the public interest;

(4) the degree to which the coastal wetland is in danger of being altered, damaged, or destroyed, and the imminence of that danger; and

(5) the cost of acquiring the coastal wetland.

(b) The legislature declares that certifications, assignments of priority for acquisition, and revocations of certifications made pursuant to Section 33.235 of this code are made only for the purpose of administering the provisions of this subchapter. No certifications, assignments of priority for acquisition, or revocations of certification shall be grounds for an inference, or

admissible in a court of law to prove, that any coastal wetland is of greater or lesser value than any other coastal wetland for any purpose other than administering the provisions of this subchapter.

(c) A certification made pursuant to this subchapter shall expire one year from the date of certification.

(d) If on or before the expiration date of such certification the acquiring agency files suit in a court of law to condemn the certified coastal wetland, the certification shall extend until the suit is settled, dismissed, or otherwise terminated.

(e) If a contract of sale between the state and the owner of the certified coastal wetland is entered into on or before the expiration date of the certification, the certification shall extend until title to the coastal wetland is conveyed to the state or the contract is rescinded, invalidated, or otherwise terminated.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 8, eff. June 5, 1991.

Sec. 33.238. FUNDING. The acquiring agency may compensate the seller of land acquired pursuant to this subchapter with funds obtained through:

(1) gift, grant, or devise;

(2) legislative appropriation; or

(3) gift or grant from the United States.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

SUBCHAPTER H. COASTAL EROSION

Sec. 33.601. DEFINITIONS. In this subchapter:

(1) "Account" means the coastal erosion response account established under Section 33.604.

(2) "Beach nourishment" means the placement of beach-quality sediment on an eroded beach to restore it as a recreational beach, provide storm protection for upland property, maintain a restored beach by the replacement of sand, or serve other similar beneficial purposes.

(3) "Coastal erosion" means the loss of land, marshes,

wetlands, beaches, or other coastal features within the coastal zone because of the actions of wind, waves, tides, storm surges, subsidence, or other forces.

(4) "Critical coastal erosion area" means a coastal area that is experiencing historical erosion, according to the most recently published data of the Bureau of Economic Geology of The University of Texas at Austin, that the commissioner finds to be a threat to:

(A) public health, safety, or welfare;

(B) public beach use or access;

(C) general recreation;

(D) traffic safety;

(E) public property or infrastructure;

(F) private commercial or residential property;

(G) fish or wildlife habitat; or

(H) an area of regional or national importance.

(5) "Erosion response project" means an action intended to address or mitigate coastal erosion, including beach nourishment, sediment management, beneficial use of dredged material, creation or enhancement of a dune, wetland, or marsh, and construction of a breakwater, bulkhead, groin, jetty, or other structure.

(6) "Hard structure" means an erosion response structure such as a bulkhead, seawall, revetment, jetty, groin, or similar structure that is the functional equivalent of one of those structures.

(7) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(8) "Local government" means a political subdivision of this state.

(9) "Project cooperation agreement" means a contract executed by the land office and a qualified project partner that explicitly defines the terms under which a study or project will be conducted.

(10) "Public beach" has the meaning assigned by Section 61.013.

(11) "Qualified project partner" means a local government, state or federal agency, institution of higher education, homeowners' association, or other public or private entity that enters into an agreement with the land office to finance, study, design, install, or maintain an erosion response project.

(12) "Shared project cost" means a project cost identified by the commissioner and established in a project cooperation agreement that will be shared with a qualified project partner.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.602. COASTAL EROSION DUTIES AND AUTHORITY. (a) The land office shall implement a program of coastal erosion avoidance, remediation, and planning. The commissioner shall ensure that erosion avoidance, remediation, and planning protect the common law rights of the public in public beaches as affirmed by Subchapter B, Chapter 61.

(b) The commissioner shall publish and periodically update a coastal erosion response plan. The commissioner shall develop the plan in coordination with state and federal agencies and local governments and provide for public input on the plan. The plan must identify critical coastal erosion areas designated by the commissioner and prioritize coastal erosion response studies and projects so that:

(1) benefits are balanced among areas throughout the coast designated by the commissioner as critical coastal erosion areas;

(2) federal and local financial participation is maximized;

(3) studies and projects are scheduled to achieve efficiencies and economies of scale; and

(4) the severity of erosion effects in each area is taken into account.

(c) The commissioner may adopt rules necessary to implement this subchapter.

(d) The commissioner shall adopt rules requiring that beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state be placed on eroding beaches or to restore eroding wetlands wherever practicable.

(e) In order to determine which areas should be designated as critical coastal erosion areas and guide the allocation of resources, the commissioner may conduct a coast-wide analysis of the costs and benefits of coastal erosion avoidance, remediation, and planning. An analysis conducted under this subsection may consider:

(1) historical erosion rates in an area;

(2) the elevation of an area adjacent to the shoreline;

(3) the presence of critical infrastructure in an area adjacent to the shoreline;

(4) the population density of an area adjacent to the shoreline;

(5) the presence of economic activity conducted in an area adjacent to the shoreline;

(6) the presence of critical natural resources in an area adjacent to the shoreline;

(7) anthropogenic contributions to erosion; and

(8) any other factor identified as relevant by the commissioner.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.601 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1405, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 15 (H.B. 2074), Sec. 1, eff. September 1, 2009.

Sec. 33.603. COASTAL EROSION STUDIES AND PROJECTS. (a) The land office shall undertake coastal erosion studies, demonstration projects, and response projects if the land office receives legislative appropriations or other funding for that purpose. If reasonable and appropriate, the land office shall work in conjunction with other state agencies, local governments, federal agencies, including the United States Army Corps of Engineers, or other qualified project partners in undertaking those studies and projects.

(b) The studies and projects shall address:

(1) assessment of the feasibility, cost, and financing of different methods of avoiding, slowing, or remedying coastal erosion;

(2) beneficial placement of dredged material where appropriate to replenish eroded public beach, bay shore, marsh, and dune areas;

(3) public beach, bay shore, and marsh nourishment or restoration projects using sediments other than material from navigational or other dredging projects;

(4) guidelines on grain size and toxicity level;

(5) the economic, natural resource, and other benefits of

coastal erosion projects;

(6) the protection, revegetation, and restoration of dunes;

(7) the planting of vegetation as a means of inhibiting bay shore erosion and projects developing and cultivating disease-resistant vegetation adapted to local conditions;

(8) the construction or retrofitting of dams, jetties, groins, and other impoundment structures, provided that the structures include sediment bypassing systems;

(9) estimating the quantity and quality of sediment trapped by reservoirs, navigation channels, and placement areas and identification of other sediment sources;

(10) the use of hard or soft structures on bay shorelines as a method of avoiding, slowing, or remedying erosion;

(11) storm damage mitigation, post-storm damage assessment, and debris removal;

(12) removal and relocation of structures from public beaches, including the purchase of property located on a public beach;

(13) the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project under this subchapter;

(14) structural shoreline protection projects that use innovative technologies designed or engineered to minimize beach scour; and

(15) other studies or projects the commissioner considers necessary or appropriate to implement this subchapter.

(c) An agreement between the commissioner and a qualified project partner to undertake a coastal erosion response study or project:

(1) must require the qualified project partner to pay a specified percentage of the shared project cost that is not less than the minimum amount prescribed by Subsection (e):

(A) before completion of the project; or

(B) following completion of the project, in accordance with a schedule provided by the agreement; and

(2) may contain other terms governing the study or project.

(d) Except as provided by Subsections (b)(8) and (14), this chapter does not authorize the construction or funding of a hard structure on or landward of a public beach.

(e) A qualified project partner must pay:

(1) not less than 25 percent of the shared project cost if the project is a beach nourishment project on a public beach or bay shore; and

(2) not less than 40 percent of the shared project cost if the project is any other coastal erosion response study or project, including:

(A) a marsh restoration project; or

(B) a bay shoreline protection project other than a beach nourishment project.

(f) Notwithstanding Subsections (c) and (e), each biennium the commissioner may undertake at least one erosion response project without requiring a qualified project partner to pay a portion of the shared project cost if the total cost of the projects that do not have a cost share requirement does not exceed one-half of the total amount appropriated to the land office for coastal erosion planning and response.

(g) Notwithstanding Subsection (d), each biennium the commissioner may undertake or provide funding for one or more erosion response demonstration projects if the state's portion of the shared project cost does not exceed one-tenth of the total amount appropriated to the land office for coastal erosion planning and response.

(h) Notwithstanding Subsection (e), the commissioner may determine the percentage of the shared project cost a qualified project partner must pay for a project undertaken pursuant to Subsection (b)(11), (12), or (13).

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.602 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1404, Sec. 1, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 304 (S.B. 517), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1302 (H.B. 2387), Sec. 1, eff. September 1, 2009.

Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. (a) The

coastal erosion response account is an account in the general revenue fund that may be appropriated only to the commissioner and used only for the purpose of implementing this subchapter and administration of the coastal management program as provided in Subchapter F.

(b) The account consists of:

(1) all money appropriated for the purposes of this subchapter;

(2) grants to this state from the United States for the purposes of this subchapter;

(3) all money received by this state from the sale of dredged material; and

(4) penalties or costs collected under Section 61.0184 or 63.1814.

(b-1) In addition to the money described by Subsection (b), the account consists of money transferred to the account under Section 156.252, Tax Code. This subsection expires September 1, 2031.

(c) The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 4, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1018 (H.B. 6), Sec. 4, eff. September 1, 2019.

Sec. 33.605. USES OF ACCOUNT. (a) Money in the account may be used for:

(1) any action authorized by this subchapter; and

(2) the administration of the coastal management program as provided in Subchapter F.

(b) The commissioner must approve an expenditure from the account. In determining whether to approve an expenditure for a study or project, the commissioner shall consider:

(1) the amount of money in the account;

(2) the feasibility and cost-effectiveness of the study or project;

(3) the locations of other existing or proposed erosion response projects;

(4) the needs in other critical coastal erosion areas;

(5) the effect of the study or project on public or private property; and

(6) if the site to be studied or project to be conducted will be located within the jurisdiction of a local government subject to Chapter 61 or 63:

(A) whether the local government is adequately administering those chapters; and

(B) the plan for reducing public expenditures for erosion and storm damage losses prepared by the local government under Section 33.607.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 2, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 14 (H.B. 2073), Sec. 1, eff. September 1, 2009.

Sec. 33.606. GRANTS AND GIFTS. The commissioner may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out the powers and duties provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991.
Renumbered from Sec. 33.603 by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND EDUCATION; LOCAL GOVERNMENT PLANNING AND REGULATION. (a) The land office shall be responsible for and shall coordinate with other agencies to increase public awareness through public education concerning:

(1) the causes of erosion;

(2) the consequences of erosion;

(3) the importance of barrier islands, dunes, and bays as a natural defense against storms and hurricanes; and

(4) erosion avoidance techniques.

(b) On an ongoing basis, the commissioner, in consultation with the Bureau of Economic Geology of The University of Texas at Austin and coastal county and municipal governments, shall monitor historical erosion rates at each location along the shore of the Gulf of Mexico.

(c) The commissioner shall make historical erosion data accessible, through the Internet and otherwise, to the public and persons receiving the notice required under Section 61.025.

(d) The Bureau of Economic Geology of The University of Texas at Austin shall make historical erosion data relating to a critical coastal erosion area available to each state agency, local government, or other person responsible for, or with jurisdiction over, the area.

(e) A local government subject to Chapter 61 or 63 shall use historical erosion data and the coastal erosion response plan published by the commissioner under Section 33.602 to prepare a local plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches. A plan prepared under this subsection may include a building set-back line that will accommodate a shoreline retreat. The local government shall hold a public educational meeting on the plan before proposing to implement it through the plans, orders, or ordinances provided by Chapters 61 and 63.

(f) A local plan for reducing public expenditures for erosion and storm damage losses to public and private property prepared under Subsection (e) may:

(1) preserve and enhance the public's right of access to and use of the public beach;

(2) preserve critical sand dunes for natural storm protection and conservation purposes;

(3) establish a building set-back line no further landward than the dune protection line established by the local government under Chapter 63;

(4) provide for the prohibition of new construction seaward of the building set-back line; and

(5) provide for the acquisition of fee title to or a lesser interest in property seaward of the building set-back line.

(g) The commissioner may adopt rules for the preparation and implementation by a local government of a local plan for reducing public expenditures for erosion and storm damage losses to public and

private property under Subsection (e).

(h) Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by this section.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.604 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 14 (H.B. 2073), Sec. 2, eff. September 1, 2009.

Sec. 33.608. REPORT TO LEGISLATURE. Each biennium, the commissioner shall submit to the legislature a report listing:

(1) each critical erosion area;

(2) each proposed erosion response study or project;

(3) an estimate of the cost of each proposed study or project described by Subdivision (2);

(4) each coastal erosion response study or project funded under this subchapter during the preceding biennium;

(5) the economic and natural resource benefits from each coastal erosion response study or project described by Subdivision (4);

(6) the financial status of the account; and

(7) an estimate of the cost of implementing this subchapter during the succeeding biennium.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.609. LANDOWNER CONSENT. (a) The commissioner may not undertake a coastal erosion response project on:

(1) permanent school fund land without first obtaining the written consent of the school land board; or

(2) private property, other than that encumbered by the common law rights of the public affirmed by Chapter 61, without first obtaining the written consent of the property owner.

(b) If the commissioner cannot determine the identity of or locate a property owner, consent is considered to have been given if:

(1) the commissioner publishes a notice of the project at least once a week for two consecutive weeks in the newspaper having the largest circulation in the county in which the project is located; and

(2) the property owner does not object on or before the 20th day after the last date notice is published under Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.610. REMOVAL OF SUBMERGED LAND FROM APPRAISAL AND TAX ROLLS. (a) If the commissioner determines that land has become submerged by erosion or subsidence and as a result is dedicated to the permanent school fund, the commissioner may notify in writing the appraisal district that appraises the land for ad valorem tax purposes and each taxing unit that imposes taxes on the land. The notice must include a legal description of the land.

(b) On receipt of notice under Subsection (a):

(1) the appraisal district shall remove the land from the appraisal roll; and

(2) each taxing unit shall remove the land from its tax roll.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.611. IMMUNITY. (a) This state, the commissioner, and land office staff are immune from suit for damages and from liability for an act or omission related to:

(1) the approval, disapproval, funding, or performance of a coastal erosion response activity, including an erosion response study or project or a survey; or

(2) the failure of an erosion response project undertaken by the commissioner under this subchapter to fulfill its intended purpose.

(b) The immunity granted by this section does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or committed with conscious indifference or reckless disregard for

the safety of others.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.612. JUDICIAL REVIEW. (a) Judicial review of rights affected by an action of this state, the commissioner, or land office staff under this subchapter is under the substantial evidence rule. In order to prevail, a person seeking review must prove that the action complained of was arbitrary, capricious, or otherwise not in accordance with law.

(b) Venue for an action relating to this subchapter is in Travis County.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.613. CLOSURE OR MODIFICATION OF CERTAIN MAN-MADE PASSES. (a) Notwithstanding Sections 66.204 and 81.103, Parks and Wildlife Code, the commissioner may undertake the closure or modification of a man-made pass or its environs between the Gulf of Mexico and an inland bay if:

(1) the commissioner determines that the pass causes or contributes to significant erosion of the shoreline of the adjacent beach;

(2) the pass is not a public navigational channel constructed or maintained by the federal government; and

(3) the land office receives legislative appropriations or other funding for that purpose.

(b) If the closing of a man-made pass under this section results in a loss of public recreational opportunities, the commissioner shall develop, in consultation with the Parks and Wildlife Department and the county and, if applicable, the municipality in which the pass is located, and approve a plan to mitigate the loss. In developing the plan, the commissioner is strongly encouraged to assess the feasibility of installing fishing piers, boat ramps, and other facilities that provide public recreational opportunities. The plan must be presented to the public for comment before the commissioner approves it.

Added by Acts 2009, 81st Leg., R.S., Ch. 66 (S.B. 2043), Sec. 1, eff.

September 1, 2009.

SUBCHAPTER I. COASTAL PROTECTION AND IMPROVEMENT

Sec. 33.651. DEFINITIONS. In this subchapter:

(1) "Bond" means any type of interest-bearing obligation, including a bond, note, bond anticipation note, certificate of participation, lease, contract, or other evidence of indebtedness issued by a coastal county to pay the project costs of a qualified project.

(2) "Coastal county" means a county that borders on the Gulf of Mexico.

(3) "Coastal erosion" has the meaning assigned by Section 33.601.

(4) "Coastal improvement project" means a project to improve access to a public beach by:

(A) acquiring fee title to property or a right of public access to a public beach;

(B) constructing or maintaining public roads, parking, or other facilities in aid of public access to or use of a public beach;

(C) requiring a landowner, as prescribed by land office rules, to restore land affected by coastal erosion to its original boundaries; or

(D) implementing a building set-back line established under Section 33.607.

(5) "Coastal protection project" means a project to address or mitigate coastal erosion.

(6) "Coastal protection and improvement fund" means the coastal protection and improvement fund created under Section 33.653.

(7) "County coastal protection and improvement fund" means a county coastal protection and improvement fund created by a coastal county under Section 33.655.

(8) "Project cost" means a cost or expense incurred in relation to a qualified project, including the cost of:

(A) designing, engineering, acquiring, constructing, maintaining, improving, extending, repairing, replacing, monitoring, removing, or administering a qualified project; or

(B) financing a qualified project, including the cost of issuing bonds and the payment of principal, interest, and

redemption price.

(9) "Public beach" has the meaning assigned by Section 61.013.

(10) "Qualified agreement" means an agreement between the land office and a coastal county in accordance with Section 33.657.

(11) "Qualified payment" means a payment by the commissioner to a coastal county from the coastal protection and improvement fund, as provided by this subchapter, that has been approved in amount and qualification for payment by the land office and the applicable coastal county.

(12) "Qualified project" means a coastal protection or improvement project that qualifies for funding under Section 33.656.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 7, eff. September 1, 2007.

Sec. 33.652. APPLICABILITY OF SUBCHAPTER TO CERTAIN MUNICIPALITIES. The provisions of this subchapter relating to coastal counties apply to a municipality if all or substantially all of the gulf beach within a coastal county is located within the boundaries of the municipality.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.653. CREATION OF COASTAL PROTECTION AND IMPROVEMENT FUND. (a) The coastal protection and improvement fund is created as a trust fund outside the state treasury to be held by the Texas Treasury Safekeeping Trust Company and administered by the commissioner as trustee on behalf of the coastal counties.

(b) The fund consists of:

(1) gifts and grants; and

(2) appropriations of money to the fund by the legislature.

(c) The commissioner shall allocate five percent of the amount deposited in the fund to the land office to be used only to pay the cost of administering any coastal protection and improvement efforts

undertaken under this subchapter and to support a coastal monitoring program by The University of Texas Bureau of Economic Geology and the sea turtle and shore monitoring programs of Texas A&M University at Galveston.

(d) The commissioner shall allocate 95 percent of the amount deposited in the fund for use by the coastal counties as provided by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.654. USE OF COASTAL PROTECTION AND IMPROVEMENT FUND. (a) The coastal protection and improvement fund shall be used only to make a qualified payment to a coastal county sponsoring a qualified project under this subchapter.

(b) The commissioner may make a qualified payment from the fund to a coastal county only if and to the extent that the coastal county is sponsoring a project that qualifies for funding as certified by the coastal county and the land office.

(c) The amount and timing of a qualified payment shall be determined by agreement between the land office and the coastal county sponsoring the project. The amount of a qualified payment may not exceed the estimated project costs.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.655. COUNTY COASTAL PROTECTION AND IMPROVEMENT FUND. (a) Each coastal county shall create a county coastal protection and improvement fund.

(b) Each coastal county shall deposit any qualified payment that it receives into its county coastal protection and improvement fund and shall use the money in the fund only to pay the project costs of a qualified project as provided by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. To qualify for funding under this subchapter, a project must:

(1) be sponsored by a coastal county;

(2) be located within the sponsoring coastal county along or adjacent to the shore of the Gulf of Mexico, an inland bay, or a connecting channel between the Gulf of Mexico and an inland bay;

(3) be accessible by public roads or a common carrier ferry;

(4) be identified and approved for funding by a coastal county and the land office; and

(5) require more than $5 million to complete, as estimated by the land office, unless the project implements a building set-back line established under Section 33.607.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 8, eff. September 1, 2007.

Sec. 33.657. QUALIFIED AGREEMENT. (a) The land office and a coastal county may enter into one or more agreements relating to a qualified project and the payment of the associated project costs. An agreement is governed by this subchapter.

(b) An agreement may provide that the commissioner will pay to the coastal county an agreed amount from the coastal protection and improvement fund over a term of years to be used by the coastal county for a project that qualifies for funding under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.658. QUALIFIED PAYMENT. (a) The commissioner shall make qualified payments to a coastal county based on the land office's estimate of the expected project costs of any qualified projects undertaken by that county in the fiscal year in which the payment is made.

(b) To the extent that the aggregate of qualified payments by

the commissioner to a coastal county in a fiscal year exceeds the project costs of qualified projects undertaken by the county during that year, the commissioner shall recover the amount of the overpayment by:

(1) requiring the county to remit the amount of the overpayment to the commissioner for deposit in the coastal protection and improvement fund; or

(2) taking a credit against qualified payments due that county the following year or years.

(c) If a coastal county that received an overpayment is not due additional qualified payments the following year, the county shall promptly remit the amount of the overpayment to the commissioner for deposit in the coastal protection and improvement fund.

(d) Notwithstanding Subsection (b), the commissioner may not take a credit against qualified payments due a coastal county the following year if the county needs the full amount of the qualified payment that year to:

(1) pay the principal or interest on, or the redemption price of, bonds issued to finance a qualified project; or

(2) fund a reserve or other fund required by the documents authorizing the issuance of bonds.

(e) The failure of a coastal county to use the full amount of a qualified payment in the fiscal year in which it is received does not prejudice the right of the county to receive money from the coastal protection and improvement fund in future years as may be provided in the county's qualified agreement.

(f) A coastal county may not use a qualified payment as a local match for funding under a state program.

(g) A coastal county may use a qualified payment as a local match for funding under a federal program.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.659. GENERAL POWERS OF COASTAL COUNTIES. (a) In addition to all other powers that a coastal county has under general law, a coastal county has the rights, powers, privileges, authority, and functions that are necessary or convenient to:

(1) the designing, engineering, acquiring, constructing,

improving, maintaining, extending, repairing, replacing, monitoring, removing, administering, and financing of a qualified project located in a coastal county;

(2) the funding of a reserve or other fund relating to bonds; and

(3) the establishment and implementation of a building set-back line under Section 33.607.

(b) A coastal county may issue bonds to pay the project costs of a qualified project. For purposes of this subchapter, a coastal county is an issuer and a qualified project is an eligible project within the meaning of Chapter 1371, Government Code, and the provisions of Chapter 1371, Government Code, are applicable to bonds issued by a coastal county.

(c) A coastal county may:

(1) enter into agreements with a public or private person for the joint ownership, financing, or operation of a qualified project;

(2) enter into contracts, leases, and agreements with, and accept grants and loans from, any person to perform all acts necessary for the full exercise of the powers vested in the county on terms and for the term the county determines to be advisable;

(3) acquire property under a conditional sales contract, lease, equipment trust certificate, or other form of contract or trust agreement; and

(4) do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 9, eff. September 1, 2007.

Sec. 33.660. AUTHORITY TO CONTRACT. (a) A coastal county may contract with a state agency, municipality, county, or other political subdivision of the state or any agency or instrumentality of the federal government to implement a qualified project under this subchapter. A contract under this section may:

(1) be for a period on which the parties agree;

(2) include terms on which the parties agree; and

(3) be payable from taxes, qualified payments, or any other source of revenue available for that purpose.

(b) A coastal county may enter into a contract, lease, or agreement with or make or accept grants and loans to or from:

(1) the United States;

(2) the State of Texas;

(3) a county, municipality, or other political subdivision of the state;

(4) a public or private corporation; or

(5) any other person.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.661. FUNDS AVAILABLE FOR QUALIFIED PROJECTS. (a) A coastal county may pay the project costs of a qualified project from general or available funds, payments received from the land office, including payments from the coastal protection and improvement fund, contract reserves, ad valorem taxes, sales taxes, the proceeds of bonds, or any combination of those funds.

(b) Payments made by the commissioner under this subchapter are in addition to any other funds to which the coastal county may be entitled under any other state law or program.

(c) This subchapter does not preclude a contribution to a qualified project from any state, federal, private, or other source.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.662. BONDS ELIGIBLE FOR PURCHASE. Bonds issued by a coastal county under this subchapter may be purchased by the Texas Water Development Board for purposes authorized by Chapter 17, Water Code.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.663. CONSTRUCTION OF SUBCHAPTER. This subchapter shall be liberally construed to accomplish the purposes of mitigation of coastal erosion and improvement of public access to public beaches.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

CHAPTER 34. BOARDS FOR LEASE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 34.001. DEFINITIONS. In this chapter:

(1) "Board" means a board for lease.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.002. APPLICATION OF CHAPTER. (a) The provisions of this chapter apply to:

(1) land owned by the Parks and Wildlife Department, except as provided by Section 34.064(c); and

(2) land owned by the Texas Department of Criminal Justice.

(b) If title to land subject to the provisions of the Relinquishment Act is acquired by the Texas Parks and Wildlife Department or the Texas Department of Criminal Justice, the land is not subject to lease by a board created under the provisions of this chapter but shall be leased in the manner provided for the leasing of unsold public school land.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2572, ch. 686, Sec. 1, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 327, Sec. 1, eff. June 8, 1985; Acts 1985, 69th Leg., ch. 624, Sec. 25, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 6.05(d), eff. Sept. 1, 1987. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.131, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 502 (H.B. 1449), Sec. 1, eff.

June 17, 2011.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 34.011. BOARDS FOR LEASE. Boards for lease are created to lease land owned by the Texas Parks and Wildlife Department and the Texas Department of Criminal Justice.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 26, eff. Sept. 1, 1985.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.132, eff. September 1, 2009.

Sec. 34.012. TITLE OF BOARD. The title of each board shall be selected by each board for lease at its first meeting.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.013. MEMBERS OF BOARD. (a) The membership of each board shall include:

(1) the commissioner;

(2) one citizen of the state appointed by the governor with the advice and consent of the senate; and

(3) the president or chairman of the board or agency or head of the department charged with the responsibility of management or control of land owned by or held in trust for the use and benefit of the department, agency, or board.

(b) The appointed member serves for a term of two years.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.0131. APPOINTMENTS WITHOUT DISCRIMINATION. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the

appointees.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.0132. DISQUALIFICATION OF LOBBYISTS. A person who is required to register as a lobbyist under Chapter 305 of the Government Code, by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(21), eff. Sept. 1, 1987.

Sec. 34.0133. CONFLICTS OF INTEREST PROHIBITED. An officer, employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry be a member of the board or an employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.0134. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 34.013 of this code for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) of Section 34.013 of this code for appointment to the board;

(3) violates a prohibition established by Section 34.0132 or 34.0133 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

(c) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the governor that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.0135. POLICIES ON PUBLIC HEARINGS. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.014. OFFICERS OF BOARD. (a) The commissioner is the chairman of the board.

(b) Each board shall select a secretary who shall be nominated by the commissioner and approved by a majority of the board.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.015. QUORUM. A majority of a board constitutes a quorum for the transaction of business.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.016. RECORDS OF BOARD. A board shall keep a complete record of all of its proceedings.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.017. SPECIAL MINERAL FUNDS. Special funds are created in the State Treasury to be known as the "(appropriate department, board, or agency) special mineral fund."

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.018. DEPOSIT OF RECEIPTS. Amounts received under the provisions of this chapter shall be deposited in the State Treasury to the credit of the appropriate special account, with the exception that all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from land held by the department for game and fish conservation, protection, and management purposes shall be deposited in the State Treasury to the credit of the game, fish, and water safety account, and all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from park, recreation, and historic land shall be deposited in the State Treasury to the credit of the state parks account.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 62, eff. Sept. 1, 1993.

Sec. 34.019. EXPENDITURES. (a) The expenses of executing the provisions of this chapter shall be paid by warrants drawn by the comptroller on the State Treasury against the income from the special funds accumulated from leases, rentals, royalties, and other payments.

(b) The amounts received under the provisions of this chapter and deposited to the credit of a special fund shall be used exclusively for the benefit of the appropriate department, board, or

agency.

(c) No money may be spent from the special funds except by legislative appropriation and for the purposes and in the amount stated in the Act appropriating it.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.0192. AUDIT. The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 7, eff. Sept. 1, 1989.

Sec. 34.020. FILING IN GENERAL LAND OFFICE. All surveys, files, records, abstracts of title, copies of sale and lease contracts, and all other records pertaining to sales and leases authorized under the provisions of this chapter shall be filed in the land office and constitute archives.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 34.051. LAND SUBJECT TO LEASE. Land owned by or held in trust for the use and benefit of either agency may be leased by the appropriate board to any person under the provisions of this chapter for the purpose of prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, selling, and disposing of the oil, gas, or other minerals.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 28, eff. Sept. 1, 1985.

Sec. 34.052. SUBDIVISION OF LAND. A board may have the land

subject to its control surveyed or subdivided into tracts, lots, or blocks which will, in its judgment, be most conducive and convenient to facilitate the advantageous sale of oil, gas, or mineral leases.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.053. MAPS AND PLATS. A board may make maps and plats it considers necessary to carry out the purposes of this chapter.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.054. ABSTRACTS OF TITLE. A board may obtain authentic abstracts of title to the land subject to its control that it considers necessary and may take the necessary steps to perfect a marketable title to the land.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.055. GEOLOGICAL SURVEYS AND INVESTIGATIONS. A board may issue a permit for geological, geophysical, and other surveys and investigations on land subject to lease by the board that is not under valid and existing leases and that will encourage the development of the land for oil, gas, or other minerals. A permit may be issued for a consideration and under terms and conditions which the board considers to be in the best interest of the state.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.056. PLACING LEASE ON MARKET. If a board determines there is a demand for the purchase of oil, gas, or mineral leases on a lot or tract of land subject to the control of the board which will reasonably insure an advantageous sale, the board shall place the oil, gas, or mineral leases on the market in the tract or tracts

which the board may designate.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.057. LEASE PROVISIONS. (a) Leases shall be advertised and sold in the same manner and shall contain the same terms and conditions as leases issued by the School Land Board under Chapter 32 of this code.

(b) A board may place any other terms and conditions in the lease it determines to be in the best interest of the state.

(c) The special sales fee provided for in Section 32.110 of this code shall be collected on leases issued under this chapter.

(d) The provisions of Chapter 32 of this code relating to payment of royalty, penalties and interest on delinquent payments, assignments, releases, and forfeiture shall apply to leases issued under this chapter.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 29, eff. Sept. 1, 1985.

Sec. 34.064. EASEMENTS. (a) A board may grant easements of rights-of-way on the land covered by the provisions of this chapter.

(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

(c) The provisions of this section:

(1) do not apply to land owned by the Parks and Wildlife Department on which an easement may be granted under Section 11.301, Parks and Wildlife Code;

(2) do not apply to land owned by the state as a part of the penitentiary system; and

(3) do not repeal Section 496.004, Government Code.

Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 30, eff. Sept. 1, 1985.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 502 (H.B. 1449), Sec. 2, eff.

June 17, 2011.

Sec. 34.065. RULES. A board may adopt rules and collect fees necessary for the implementation of this chapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 31, eff. Sept. 1, 1985.

CHAPTER 40. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. SHORT TITLE. This chapter may be cited as the Oil Spill Prevention and Response Act of 1991.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.002. POLICY. (a) The legislature finds and declares that the preservation of the Texas coast is a matter of the highest urgency and priority. It is the policy of this state to keep its coastal waters, rivers, lakes, estuaries, marshes, tidal flats, beaches, and public lands as pristine as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests. Spills, discharges, and escapes of crude oil, petroleum, and other such substances resulting from their handling, storage, and transportation, particularly by vessel, endanger the coastal environment of the state, public and private property on the coast, and the well-being of those deriving their livelihood from marine-related activity in coastal waters. The hazards posed by the handling, storage, and transportation of these substances in the coastal waters are contrary to the paramount interests of the state. These state interests outweigh the economic burdens imposed under this chapter.

(b) The legislature finds and declares that the natural resources of the state and particularly those in the coastal waters of the state offer significant benefits to the citizens of Texas. These natural resources are important for their existence and their recreational, aesthetic, and commercial value. It is the policy of the state to protect these natural resources and to restore, rehabilitate, replace, and/or acquire the equivalent of these natural

resources with all deliberate speed when they have been damaged. The legislature finds and declares that it is difficult to assess the value of these natural resources and to quantify injury to natural resources at a reasonable cost. The procedures and protocols utilized by the trustees must therefore consider the unique characteristics of each spill incident and the location of the natural resources affected. It is the intent of the legislature that natural resource damage assessment methodologies be developed for the purpose of reasonably valuing the natural resources of the State of Texas in the event of an oil spill and that the state recover monetary damages or have actions commenced by the spiller as early as possible to expedite the restoration, rehabilitation, and/or replacement of injured natural resources.

(c) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

(1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;

(2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges; and

(3) administer a fund to provide for funding these activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

(d) The legislature declares that it is the intent of this chapter to support and complement the Oil Pollution Act of 1990 (Pub. L. 101-380) and other federal law, specifically those provisions relating to the national contingency plan for cleanup of oil and hazardous substance spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resources trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.265, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 1, eff. Sept. 1, 2003.

Sec. 40.003. DEFINITIONS. In this chapter:

(1) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(2) "Coastal waters" means the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Comprehensive assessment method" means a method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury to natural resources resulting from an unauthorized discharge of oil.

(5) "Comptroller" means the comptroller of public accounts.

(6) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate.

(7)(A) "Damages" means compensation:

(i) to an owner, lessee, or trustee for any direct, documented loss of, injury to, or loss of use of any real or personal property or natural resources injured by an unauthorized discharge of oil;

(ii) to a state or local government for any direct, documented net loss of taxes or net costs of increased entitlements or public services; or

(iii) to persons, including but not limited to holders of an oyster lease or permit; persons owning, operating, or employed on commercial fishing, oystering, crabbing, or shrimping vessels; persons owning, operating, or employed by seafood processing concerns; and others similarly economically reliant on the use or acquisition of natural resources for any direct, documented loss of income, profits, or earning capacity from the inability of the claimant to use or acquire natural resources arising solely from injury to the natural resources from an unauthorized discharge of oil.

(B) With respect to natural resources, "damages" includes the cost to assess, restore, rehabilitate, or replace injured natural resources, or to mitigate further injury, and their diminution in value after such restoration, rehabilitation,

replacement, or mitigation.

(8) "Discharge of oil" means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters or at a place adjacent to coastal waters where, unless controlled or removed, an imminent threat of pollution to coastal waters exists.

(9) "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be recognized as a discharge cleanup organization, provided the commissioner or the United States properly certifies or classifies the organization.

(10) "Federal fund" means the federal Oil Spill Liability Trust Fund.

(11) "Fund" means the coastal protection fund.

(12) "Harmful quantity" means that quantity of oil the discharge of which is determined by the commissioner to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(13) "Hazardous substance" means any substance, except oil, designated as hazardous by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and designated by the Texas Commission on Environmental Quality.

(14) "Marine terminal" means any terminal facility used for transferring crude oil to or from vessels.

(15) "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(16) "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, and other similar

resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(16-a) "No intrinsic value" means that the cost of removal and disposal of a vessel or structure that has been abandoned or left in or on coastal waters exceeds the salvage value of the vessel or structure.

(16-b) "Numbered vessel" means a vessel:

(A) for which a certificate of number has been awarded by this state as required by Chapter 31, Parks and Wildlife Code; or

(B) covered by a number in full force and effect awarded under federal law or a federally approved numbering system of another state.

(17) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Commission on Environmental Quality.

(18) "Owner" or "operator" means:

(A) any person owning, operating, or chartering by demise a vessel; or

(B) any person owning a terminal facility or a person operating a terminal facility by lease, contract, or other form of agreement.

(19) "Person in charge" means the person on the scene who is directly responsible for a terminal facility or vessel when a discharge of oil occurs or a particular duty arises under this chapter.

(20) "Person responsible" or "responsible person" means:

(A) the owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate;

(B) in the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment; and

(C) any other person who causes, allows, or permits an

unauthorized discharge of oil or threatened unauthorized discharge of oil.

(21) "Pollution" means the presence of harmful quantities of oil from an unauthorized discharge in coastal waters or in or on adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes.

(22) "Response costs" means:

(A) with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this chapter, and costs of any reasonable measures to prevent or limit damage to the public health, safety, or welfare, public or private property, or natural resources; or

(B) with respect to an actual or threatened discharge of a hazardous substance, only costs incurred to supplement the response operations of the Texas Commission on Environmental Quality.

(23) "Terminal facility" or "facility" means any waterfront or offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge of oil from the facility could threaten coastal waters, including but not limited to any such facility owned or operated by a public utility or a governmental or quasi-governmental body, but does not include any temporary storage facilities used only in connection with the containment and cleanup of unauthorized discharges of oil.

(24) "Trained personnel" means one or more persons who have satisfactorily completed an appropriate course of instruction developed under Section 40.302 of this code or all other training requirements as determined by the commissioner.

(25) "Trustee" means a natural resources trustee of the state as designated by the governor under federal law.

(26) "Unauthorized discharge of oil" means any discharge of oil, or any discharge of oil emanating from a vessel into waters adjoining and accessible from coastal waters, that is not authorized by a federal or state permit.

(27) "Unauthorized discharge of hazardous substances" means a spill or discharge subject to Subchapter G, Chapter 26, Water Code.

(28) "Vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise,

including barges.

(29) Repealed by Acts 1995, 74th Leg., ch. 76, art. 11, Sec. 11.334(a), eff. Sept. 1, 1995.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.054, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 776, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Secs. 11.266, 11.334(a), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1324 (H.B. 3306), Sec. 1, eff. September 1, 2009.

Sec. 40.004. ADMINISTRATION OF OIL SPILL RESPONSE AND CLEANUP. (a) The General Land Office, under the direction and control of the commissioner, is the state's lead agency for response to actual or threatened unauthorized discharges of oil and for cleanup of pollution from unauthorized discharges of oil. The commissioner shall administer this chapter and direct all state discharge response and cleanup operations resulting from unauthorized discharges of oil.

(b) All persons and all other officers, agencies, and subdivisions of the state shall carry out response and cleanup operations related to unauthorized discharges of oil subject to the authority granted to the commissioner under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.005. ADMINISTRATION OF HAZARDOUS SUBSTANCE SPILL RESPONSE AND CLEANUP. The General Land Office, under the direction and control of the commissioner, is the state's lead agency for initiating response to all actual or threatened unauthorized discharges of oil. In the event of an unauthorized discharge of a hazardous substance, nothing in this chapter shall preclude the Texas Commission on Environmental Quality from at the earliest time practicable assuming response and cleanup duties pursuant to Subchapter G, Chapter 26, Water Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.267, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 3, eff. Sept. 1, 2003.

Sec. 40.007. GENERAL POWERS AND DUTIES. (a) The commissioner may promulgate rules necessary and convenient to the administration of this chapter.

(b) The commissioner shall by rule establish procedures under Chapter 2001, Government Code for all hearings required by this chapter. The commissioner may administer oaths, receive evidence, issue subpoenas to compel attendance of witnesses and production of evidence related to hearings, and make findings of fact and decisions with respect to administering this chapter.

(c) The commissioner may contract with any public agency or private person or other entity, including entering into cooperative agreements with the federal government, acquire and dispose of real or personal property, delegate responsibility for implementing the requirements of this chapter, and perform any other act within or without the boundaries of this state necessary to administer this chapter.

(d) If the commissioner finds it necessary to enter property to conduct a vessel or terminal facility audit, inspection, or drill authorized under this chapter or to respond to an actual or threatened unauthorized discharge of oil, the commissioner may enter the property after making a reasonable effort to obtain consent to enter the property.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.008. RAILROAD COMMISSION AUTHORITY. The Railroad Commission of Texas shall continue to exercise its authority pursuant to Section 91.101 of this code and Section 26.131, Water Code, to issue and enforce rules, permits, and orders to prevent pollution of surface and subsurface waters in the state by activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas by

pipeline. Nothing in this chapter preempts the jurisdiction of the Railroad Commission of Texas under Subchapter E, Chapter 121, Utilities Code, and Chapter 117, Natural Resources Code, over pipeline transportation of gas and hazardous liquids and over gas and hazardous liquid pipeline facilities.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.39, eff. Sept. 1, 1999.

SUBCHAPTER B. DISCHARGE RESPONSE

Sec. 40.051. NOTIFICATION. On notification of an actual or threatened unauthorized discharge of oil, the commissioner shall act to assess the discharge and prevent, abate, or contain any pollution from the discharge.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.052. HAZARDOUS SUBSTANCES DISCHARGES. If the unauthorized discharge involves predominantly a hazardous substance, the Texas Commission on Environmental Quality shall carry out responsibility for abatement, containment, removal, and cleanup of the hazardous substances discharged, pursuant to Subchapter G, Chapter 26, Water Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.267, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER C. OIL SPILL PREVENTION AND RESPONSE

Sec. 40.101. NOTIFICATION AND RESPONSE. (a) Any person responsible for an unauthorized discharge of oil or the person in charge of any vessel or a terminal facility from or at which an unauthorized discharge of oil has occurred, as soon as that person has knowledge of the discharge, shall:

(1) immediately notify the commissioner of the discharge; and

(2) undertake all reasonable actions to abate, contain, and

remove pollution from the discharge.

(b) If the persons responsible or in charge are unknown or appear to the commissioner to be unwilling or unable to abate, contain, and remove pollution from an unauthorized discharge of oil in an adequate manner, the commissioner may abate, contain, and remove pollution from the discharge and may contract with and appoint agents who shall operate under the direction of the commissioner.

(c) In order to prevent duplication of effort among state agencies, the commissioner shall utilize the expertise of the Texas Commission on Environmental Quality on technical and scientific actions, including but not limited to:

(1) taking samples in the spill area;

(2) monitoring meteorological conditions that may affect spill response operations; and

(3) regulating disposal of spilled material.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.269, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 5, eff. Sept. 1, 2003.

Sec. 40.102. RESPONSE COORDINATION. (a) In responding to actual or threatened unauthorized discharges of oil, the commissioner may appoint a state-designated on-scene coordinator to act in the commissioner's place.

(b) If the unauthorized discharge of oil is subject to the national contingency plan, in responding to the discharge the commissioner or the state-designated on-scene coordinator shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan.

(c) The commissioner or the state-designated on-scene coordinator may act independently to the extent no federal on-scene coordinator or authorized agency or official of the federal government has assumed federal authority to oversee, coordinate, and direct response operations.

(d) The state or federal on-scene coordinator may authorize the decanting of recovered water during containment, cleanup, and response activities resulting from an unauthorized discharge of oil.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 4, eff. Sept. 1, 1993.

Sec. 40.103. ASSISTANCE AND COMPENSATION. (a) Subject to the commissioner's authority under this chapter, any person or discharge cleanup organization may assist in abating, containing, or removing pollution from any unauthorized discharge of oil. This chapter does not affect any rights not inconsistent with this chapter that any such person or organization may have against any third party whose acts or omissions caused or contributed to the unauthorized discharge.

(b) Any person or discharge cleanup organization that renders assistance in abating, containing, or removing pollution from any unauthorized discharge of oil may receive compensation from the fund for response costs, provided the commissioner approves compensation prior to the assistance being rendered. The commissioner, on petition and for good cause shown, may waive the prior approval prerequisite.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 2003, 78th Leg., ch. 146, Sec. 6, eff. Sept. 1, 2003.

Sec. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS. (a) No action taken by any person or discharge cleanup organization to abate, contain, or remove pollution from an unauthorized discharge of oil, whether such action is taken voluntarily, or pursuant to the national contingency plan, or pursuant to a discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge.

(b) No person or discharge cleanup organization that voluntarily, or pursuant to the national contingency plan, or pursuant to any discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, renders assistance or advice in abating, containing, or removing pollution from an unauthorized discharge of oil is liable for

response costs, damages, or civil penalties resulting from acts or omissions committed in rendering such assistance or advice, except for acts or omissions of gross negligence or wilful misconduct.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 2003, 78th Leg., ch. 146, Sec. 7, eff. Sept. 1, 2003.

Sec. 40.105. EQUIPMENT AND PERSONNEL. The commissioner may establish and maintain equipment and trained personnel at places the commissioner determines may be necessary to facilitate response operations.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.106. REFUSAL TO COOPERATE. (a) If a responsible person, or a person or discharge cleanup organization under the control of a responsible person, participating in operations to abate, contain, and remove pollution from any unauthorized discharge of oil, reasonably believes that any directions or orders given by the commissioner or the commissioner's designee under this chapter will unreasonably endanger public safety or natural resources or conflict with directions or orders of the federal on-scene coordinator, the party may refuse to comply with the direction or orders.

(b) The party shall state at the time of refusal the reason or reasons why the party refuses to comply. The party shall give the commissioner written notice of the reason or the reasons for the refusal within 48 hours of the refusal.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.107. NATURAL RESOURCES DAMAGES. (a) (1) In any action to recover natural resources damages, the amount of damages established by the commissioner in conjunction with the trustees shall create a rebuttable presumption of the amount of such damages.

(2) The commissioner shall represent the consensus position of the trustees whenever a collective decision or agreement is required by this section.

(3) Whenever trustees cannot achieve a consensus, the commissioner may invoke mediation to settle any disputed matter related to this section. The mediation shall be immediately commenced and shall be concluded within 10 days of its commencement. The trustees shall abide by the consensus achieved through mediation.

(4) The trustees shall enter into a memorandum of agreement which describes the mediation process of Subdivision (3) of this subsection.

(b) The commissioner may establish the rebuttable presumption by submitting to the court a written report of the amounts computed or expended according to the state plan. The written report shall be admissible in evidence.

(c)(1) The commissioner, in conjunction with the trustees, shall develop an inventory that identifies and catalogs the physical locations, the seasonal variations in location, and the current condition of natural resources; provides for data collection related to coastal processes; and identifies the recreational and commercial use areas that are most likely to suffer injury from an unauthorized discharge of oil. The inventory shall be completed by September 1, 1995.

(2) The physical locations surveyed for the inventory of natural resources shall include, at a minimum, the following priority areas:

(A) the Galveston Bay system and the Houston Ship Channel;

(B) the Corpus Christi Bay system;

(C) the lower Laguna Madre;

(D) Sabine Lake; and

(E) federal and state wildlife refuge areas.

(3) The current condition of selected natural resources inventoried and cataloged shall be determined by, at a minimum, a baseline sampling and analysis of current levels of constituent substances selected after considering the types of oil most frequently transported through and stored near coastal waters.

(4) The commissioner shall adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil. As developed through negotiated rulemaking with the trustees and other interested parties, the procedures and protocols shall require the trustees to assess natural resource damages by considering the unique characteristics of the

spill incident and the location of the natural resources affected. These procedures and protocols shall be adopted by rule, by the trustee agencies after negotiation, notice, and public comment, by June 1, 1994.

(5) The administrative procedures and protocols shall include provisions which address:

(A) notification by the commissioner to all trustees in the event of an unauthorized discharge of oil;

(B) coordination with and among trustees, spill response agencies, potentially responsible parties, experts in science and economics, and the public; and

(C) participation in all stages of the assessment process by the potentially responsible party, as consistent with trustee responsibilities.

(6) The administrative procedures and protocols shall also require the trustees to:

(A) assist the on-scene coordinator, during spill response activities and prior to the time that the state on-scene coordinator determines that the cleanup is complete, in predicting the impact of the oil and in devising the most effective methods of protection for the natural resources at risk;

(B) identify appropriate sampling and data collection techniques to efficiently determine the impact on natural resources of the unauthorized discharge of oil;

(C) initiate, within 24 hours after approval for access to the site by the on-scene coordinator, an actual field investigation which may include sampling and data collection; the protocols shall require that the responsible party and the trustees be given, on request, split samples and copies of each other's photographs utilized in assessing the impact of the unauthorized discharge of oil; and

(D) establish plans, including alternatives that are cost-effective and efficient, to satisfy the goal of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources.

(7)(A) The administrative procedures and protocols shall also include the following types of assessment procedures and deadlines for their completion:

(i) an expedited assessment procedure which may be used in situations in which the spill has limited observable

mortality and restoration activities can be speedily initiated and/or in which the quantity of oil discharged does not exceed 1,000 gallons; the purpose of utilizing the expedited assessment procedure is to allow prompt initiation of restoration, rehabilitation, replacement, and/or acquisition of an equivalent natural resource without lengthy analysis of the impact on affected natural resources; this procedure shall, at a minimum, require that the trustees consider the following items:

(aa) the quantity and quality of oil discharged;

(bb) the time period during which coastal waters are affected by the oil and the physical extent of the impact;

(cc) the condition of the natural resources prior to the unauthorized discharge of oil; and

(dd) the actual costs of restoring, rehabilitating, and/or acquiring the equivalent of the injured natural resources;

(ii) a comprehensive assessment procedure for use in situations in which expedited or negotiated assessment procedures are not appropriate; and

(iii) any other assessment method agreed upon between the responsible person and the trustees, consistent with their public trust duties.

(B) The trustees shall determine, within 60 days of the determination by the on-scene coordinator that the cleanup is complete, whether:

(i) action to restore, rehabilitate, or acquire an equivalent natural resource is required;

(ii) an expedited assessment which may include early commencement of restoration, rehabilitation, replacement, and/or acquisition activities, may be required; and

(iii) a comprehensive assessment is necessary.

(C) The trustees may petition the commissioner for a longer period of time to make the above determination by showing that the full impact of the discharge on the affected natural resources cannot be determined in 60 days.

(D) The trustees shall complete the comprehensive assessment procedure within 20 months of the date of the determination by the state on-scene coordinator that the cleanup is complete. The trustees may petition the commissioner for a longer

period of time to complete the assessment by showing that the full impact of the discharge on the affected natural resources cannot be determined in 20 months.

(E) Any assessment generated by the trustees shall be reasonable and have a rational connection to the costs of conducting the assessment and of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. The trustees shall ensure that the cost of any restoration, rehabilitation, replacement, or acquisition project shall not be disproportionate to the value of the natural resource before the injury. The trustees shall utilize the most cost-effective method to achieve restoration, rehabilitation, replacement, or acquisition of an equivalent resource. Furthermore, the trustees shall take into account the quality of the actions undertaken by the responsible party in response to the spill incident, including but not limited to containment and removal actions and protection and preservation of natural resources.

(F) The potentially responsible party shall make full payment within 60 days of the completion of the assessment by the trustees or, if mediation pursuant to this paragraph is conducted, within 60 days of the conclusion of the mediation. To facilitate an expedited recovery of funds for natural resource restoration and to assist the trustees and the responsible party in the settlement of disputed natural resource damage assessments at their discretion and at any time, all disputed natural resource damage assessments shall be referred to mediation as a prerequisite to the jurisdiction of any court. Results of the mediation and any settlement offers tendered during the mediation shall be treated as settlement negotiations for the purposes of admissibility in a court of law. Either the trustees or the potentially responsible person may initiate the mediation process, after an assessment has been issued, by giving written notice to the commissioner, who shall give written notice to all parties. One mediator shall be chosen by the trustees and one mediator shall be chosen by the responsible parties. Within 45 days of the receipt of the assessment from the trustees, the mediators shall be designated. The mediation shall end 135 days after the receipt of the assessment from the trustees.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 5, eff. Sept. 1, 1993;

Acts 2003, 78th Leg., ch. 146, Secs. 8, 9, eff. Sept. 1, 2003.

Sec. 40.108. DERELICT VESSELS AND STRUCTURES. (a) A person may not, without the consent of the commissioner, leave, abandon, or maintain any structure or vessel in or on coastal waters, on public or private lands or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition and the commissioner finds the structure or vessel to be:

(1) involved in an actual or threatened unauthorized discharge of oil;

(2) a threat to public health, safety, or welfare;

(3) a threat to the environment; or

(4) a navigation hazard.

(b) The commissioner may remove and dispose of or contract for the removal and disposal of any vessel or structure described in Subsection (a) and may recover the costs of removal, storage, and disposal from the owner or operator of the vessel or structure. Except as provided by Subsection (d-1), the recovered costs shall be deposited to the credit of the coastal protection fund established by Section 40.151.

(c) The commissioner must comply with the requirements of Section 40.254 before removing or disposing of a vessel or structure described in Subsection (a), except that the commissioner may remove a vessel or structure without first providing notice and an opportunity for a hearing if the owner or operator of the vessel or structure, or a person acting on behalf of the owner or operator, is not taking reasonable steps to abate the discharge, threat, or hazard described by Subsection (a) and the vessel or structure:

(1) is involved in an actual or threatened unauthorized discharge of oil;

(2) creates an imminent and significant threat to life or property; or

(3) creates a significant navigation hazard.

(d) The commissioner may dispose of the vessel or structure in any reasonable and environmentally sound manner. The commissioner shall give preference to disposal options that generate a monetary benefit from the vessel or structure. If no value may be generated from the vessel or structure, the commissioner shall select the least

costly method. Except as provided by Subsection (d-1), proceeds from the sale of the vessel or structure shall be used for removal, storage, and disposal costs, and any proceeds in excess of the cost of removal, storage, and disposal shall be deposited to the credit of the coastal protection fund.

(d-1) If the commissioner has actual notice that a person holds a security interest in a vessel or structure subject to removal or disposal under this section, notice must be given to the person in the manner provided by Section 40.254. If the vessel or structure is not removed within a reasonable time as specified in the preliminary report under Section 40.254, the commissioner may remove and dispose of, or contract for the removal and disposal of, any vessel or structure described by Subsection (a). The interest of the state in recovering removal, storage, and disposal costs shall have priority over the interest of the holder of a security interest in a vessel or structure described by Subsection (a). Proceeds from the sale of the vessel or structure in excess of the cost of removal, storage, and disposal shall be paid to the holder of the security interest in the vessel or structure in an amount not to exceed the amount necessary to satisfy the secured debt.

(d-2) For purposes of this section, the term "structure" includes a vehicle as defined by Section 502.001, Transportation Code, if the vehicle is:

(1) located in coastal waters; and

(2) in a wrecked, derelict, or substantially dismantled condition.

(d-3) The commissioner shall make information on abandoned vessels and structures accessible on the General Land Office's Internet website and in any other medium, as determined by the commissioner, to the public and to a person receiving notice as required by Section 40.254.

(e) The commissioner by rule may establish a system for prioritizing the removal or disposal of vessels or structures under this section.

(f) This section does not impose a duty on the state to remove or dispose of a vessel or structure or to warn of a hazardous condition on state land.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1324 (H.B. 3306), Sec. 2, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 1, eff. September 1, 2017.

Sec. 40.109. REGISTRATION OF TERMINAL FACILITIES. (a) A person may not operate or cause to be operated a terminal facility without a discharge prevention and response certificate issued pursuant to rules promulgated under this chapter.

(b)(1) As a condition precedent to the issuance or renewal of a certificate, the commissioner shall require satisfactory evidence that:

(A) the applicant has implemented a discharge prevention and response plan consistent with state and federal plans and regulations for prevention of unauthorized discharges of oil and abatement, containment, and removal of pollution when such discharge occurs; and

(B) the applicant can provide, directly or through membership or contract with a discharge cleanup organization, all required equipment and trained personnel to prevent, abate, contain, and remove pollution from an unauthorized discharge of oil as provided in the plan.

(2) A terminal facility response plan that complies with requirements under federal law and regulations for a terminal facility response plan satisfies the requirements of Subdivision (1)(A) of this subsection.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.110. GENERAL TERMS. (a) Discharge prevention and response certificates are valid for a period of five years. The commissioner by rule shall require each registrant to report annually on the status of its discharge prevention and response plan and response capability.

(b) The commissioner may review a certificate at any time there is a material change affecting the terminal facility's discharge

prevention and response plan or response capability.

(c) Certificates shall be issued subject to such terms and conditions as the commissioner may determine are reasonably necessary to carry out the purposes of this chapter.

(d) Certificates issued to any terminal facility shall take into account the vessels used to transport oil to or from the facility.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1014 (H.B. 1481), Sec. 2, eff. September 1, 2017.

Sec. 40.111. INFORMATION. Each applicant for a discharge prevention and response certificate shall submit information, in a form satisfactory to the commissioner, describing the following:

(1) the barrel or other measurement capacity of the terminal facility;

(2) the dimensions and barrel capacity of the largest vessel docking at or providing service from the terminal facility;

(3) the storage and transfer capacities and average daily throughput of the terminal facility;

(4) the types of oil stored, handled, or transferred at the terminal facility;

(5) information related to implementation of the applicant's discharge prevention and response plan, including:

(A) all response equipment such as vehicles, vessels, pumps, skimmers, booms, bioremediation supplies and application devices, dispersants, chemicals, and communication devices to which the terminal facility has access, as well as the estimated time required to deploy the equipment after an unauthorized discharge of oil;

(B) the trained personnel that are required and available to deploy and operate the response equipment, as well as the estimated time required to deploy the personnel after an unauthorized discharge of oil;

(C) the measures employed to prevent unauthorized

discharges of oil; and

(D) the terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs;

(6) the source, nature of, and conditions of financial responsibility for response costs and damages; and

(7) any other information necessary or appropriate to the review of a registrant's discharge prevention and response capabilities.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.112. ISSUANCE. On compliance with Sections 40.109 through 40.111, the commissioner shall issue the applicant a discharge prevention and response certificate covering the terminal facility.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1014 (H.B. 1481), Sec. 1, eff. September 1, 2017.

Sec. 40.113. SUSPENSION. If the commissioner determines that a registrant does not have a discharge prevention and response plan or that the registrant's preventive measures or containment and cleanup capabilities are inadequate, the commissioner may, after notice and hearing as provided in Section 40.254 of this code, suspend the registrant's certificate until such time as the registrant complies with the requirements of this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.114. CONTINGENCY PLANS FOR VESSELS. (a) Any vessel with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operates in coastal waters or waters adjoining and accessible from coastal waters shall maintain a written vessel-specific discharge prevention and response plan that satisfies the requirements of rules promulgated under this chapter. This section

shall not apply to any dedicated response vessel or to any other vessel for activities within state waters related solely to the containment and cleanup of oil, including response-related training or drills.

(b) The plan must:

(1) provide for response actions including notification to the commissioner, verification of the unauthorized discharge, identification of the pollutant, assessment of the discharge, vessel stabilization, and discharge abatement and mitigation;

(2) designate an on-board spill officer who satisfies the definition of trained personnel as provided by Section 40.003 of this code and who shall train the vessel's crew to conduct unauthorized discharge response operations according to the plan and shall coordinate on-board response operations in the event of an unauthorized discharge; and

(3) contain any other provision the commissioner reasonably requires by rule.

(c) A discharge prevention and response plan that complies with requirements under federal laws and regulations for a vessel-specific plan satisfies the requirements of Subsections (a) and (b) of this section.

(d) The owner or operator of a vessel subject to this section must be able to provide, directly or through membership or contract with a discharge cleanup organization, all required equipment and trained personnel to prevent, abate, contain, and remove pollution from an unauthorized discharge of oil as provided in the plan.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 6, eff. Sept. 1, 1993.

Sec. 40.116. AUDITS, INSPECTIONS, AND DRILLS. The commissioner may subject a vessel subject to Section 40.114 of this code or a terminal facility to an announced or unannounced audit, inspection, or drill to determine the discharge prevention and response capabilities of the terminal facility or vessels. Any vessel drill conducted by the commissioner shall be in cooperation and conjunction with the United States Coast Guard, and the commissioner's participation may not interfere with the schedule of the vessel.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Amended by Acts 2003, 78th Leg., ch. 146, Sec. 10, eff. Sept. 1, 2003.

Sec. 40.117. REGULATIONS. (a) The commissioner shall from time to time adopt, amend, repeal, and enforce reasonable regulations, including but not limited to those relating to the following matters regarding the unauthorized discharge of oil:

(1) standards and requirements for discharge prevention and response capabilities of terminal facilities and vessels;

(2) standards, procedures, and methods of designating persons in charge and reporting unauthorized discharges and violations of this chapter;

(3) standards, procedures, methods, means, and equipment to be used in the abatement, containment, and removal of pollution;

(4) development and implementation of criteria and plans of response to unauthorized discharges of various degrees and kinds, including realistic worst-case scenarios;

(5) requirements for complete and thorough inspections of vessels subject to Section 40.114 of this code and of terminal facilities;

(6) certification of discharge cleanup organizations;

(7) requirements for the safety and operation of vessels, motor vehicles, motorized equipment, and other equipment involved in the transfer of oil at terminal facilities and the approach and departure from terminal facilities;

(8) requirements that required containment equipment be on hand, maintained, and deployed by trained personnel;

(9) requirements for certification as trained personnel;

(10) standards for reporting material changes in discharge prevention and response plans and response capability for purposes of terminal facility certificate reviews; and

(11) such other rules and regulations consistent with this chapter and appropriate or necessary to carry out the intent of this chapter.

(b) Repealed by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1,

2003.

SUBCHAPTER D. PAYMENT OF COSTS AND DAMAGES

Sec. 40.151. COASTAL PROTECTION FUND. (a) The purpose of this subchapter is to provide immediately available funds for response to all unauthorized discharges, for cleanup of pollution from unauthorized discharges of oil, for payment of damages from unauthorized discharges of oil, and for erosion response projects.

(b) The coastal protection fund is established in the state treasury to be used by the commissioner as a nonlapsing revolving fund only for carrying out the purposes of this chapter and of Subchapter H, Chapter 33. To this fund shall be credited all fees, penalties, judgments, reimbursements, proceeds from the sale of a vessel or structure removed under Section 40.108, money forfeited under Section 77.119(e), Parks and Wildlife Code, interest or income on the fund, and charges provided for in this chapter and the fee revenues levied, collected, and credited pursuant to this chapter. The fund shall not exceed $50 million.

(c) The commissioner may accept grants, gifts, and donations of property, including real property, on behalf of the fund. The commissioner may sell real or personal property accepted on behalf of the fund and shall deposit the proceeds of the sale in the fund.

(d) Any interest in real or personal property acquired by donation, gift, or grant or by using money in the fund shall be held by the commissioner.

(e) Repealed by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.055, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 1058, Sec. 14(a), eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 508, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 146, Secs. 11, 16, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 2, eff. September 1, 2005.

Sec. 40.152. USE OF FUND. (a) Money in the fund may be

disbursed for the following purposes and no others:

(1) administrative expenses, personnel and training expenses, and equipment maintenance and operating costs related to implementation and enforcement of this chapter;

(2) response costs related to abatement and containment of actual or threatened unauthorized discharges of oil incidental to unauthorized discharges of hazardous substances;

(3) response costs and damages related to actual or threatened unauthorized discharges of oil;

(4) assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources damaged by an unauthorized discharge of oil;

(5) in an amount not to exceed $50,000 annually, the small spill education program;

(6) in an amount not to exceed $1,250,000 annually, interagency contracts under Section 40.302;

(7) the purchase of response equipment under Section 40.105 within two years of the effective date of this chapter, in an amount not to exceed $4 million; thereafter, for the purchase of equipment to replace equipment that is worn or obsolete;

(8) other costs and damages authorized by this chapter;

(9) in an amount not to exceed the interest accruing to the fund annually, erosion response projects under Subchapter H, Chapter 33; and

(10) in conjunction with the Railroad Commission of Texas, costs related to the plugging of abandoned or orphaned oil wells located on state-owned submerged lands.

(b) There is hereby appropriated from the fund to the General Land Office, subject to this section, the amounts specified for the purposes of Subdivisions (5) and (6) of Subsection (a) of this section, $2.5 million for administrative costs under this chapter for the two-year period beginning with the effective date of this chapter, and the actual amounts necessary to pay response costs and damages as provided in this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 7, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 508, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 146, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 15.01, eff. August 29, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1268 (H.B. 3385), Sec. 1, eff. June 15, 2007.

Sec. 40.153. REIMBURSEMENT OF FUND. The commissioner shall recover to the use of the fund, either from persons responsible for the unauthorized discharge or otherwise liable or from the federal fund, jointly and severally, all sums owed to or expended from the fund. This section does not apply to sums expended under Section 40.152(a)(9).

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1999, 76th Leg., ch. 508, Sec. 8, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.006(a), eff. September 1, 2005.

Sec. 40.154. COASTAL PROTECTION FEE; ADMINISTRATIVE COSTS. (a) There is hereby imposed a fee on every person owning crude oil in a vessel at the time such crude oil is transferred to or from a marine terminal. This fee is in addition to all taxes or other fees levied on crude oil.

(b) The operator of the marine terminal shall collect the fee from the owner of the crude oil and remit the fee to the comptroller unless the owner of the crude oil is registered with the comptroller for remittance of the fee. The fee shall be imposed only once on the same crude oil. The fee shall be paid monthly by the last day of the month following the calendar month in which liability for the fee is incurred.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.155. DETERMINATION OF FEE. (a) Except as otherwise provided in this section, the rate of the fee shall be 1-1/3 cents per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached $20 million. The commissioner shall certify to the comptroller the date on which the

unencumbered balance in the fund exceeds $20 million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds $20 million.

(b) If the unencumbered balance in the fund falls below $10 million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

(1) the unencumbered balance in the fund is less than $20 million;

(2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and

(3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches $20 million or any lesser amount that the commissioner determines is necessary to pay response costs and damages without substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds $20 million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

(e) For purposes of this section, the unencumbered balance of the fund shall be determined by the unencumbered cash balance of the fund at the end of each month or on the date of a finding under Subsection (c) of this section.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1995, 74th Leg., ch. 1058, Sec. 15, eff. Aug. 30, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 15.02, eff. August 29, 2005.

Sec. 40.156. ADMINISTRATION OF FEE. (a) The comptroller shall administer the provisions of this section as provided in Chapters 101 through 113 of the Tax Code.

(b) In the event the commissioner makes a finding under Section 40.155(c) of this code, the commissioner shall publish the finding in the Texas Register. In the event of any suspension or other reinstatement of the fee, the comptroller shall publish the suspension or reinstatement in the Texas Register at least 30 days prior to the scheduled effective date of the suspension or reinstatement.

(c) In the event of an emergency, the comptroller shall reinstate the fee in accordance with rules promulgated for that purpose.

(d) The fee levied under this section shall be due and collected beginning 60 days after the effective date of this chapter. Contingent upon receipt by the comptroller of such fees, the commissioner may temporarily use general revenue funds, in an amount not to exceed estimated revenues to the coastal protection fund in the fiscal year in which revenues are collected. The general revenue amounts used shall be repaid out of the first fees collected under this chapter, and may be used only for purposes of meeting temporary cash flow needs during the fiscal year. The transfer and repayment of these funds shall be completed by the end of each fiscal year under procedures and standards established by the comptroller.

(e) If refunds are determined to be due, they shall be paid only from the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.157. LIABILITY OF THE FUND. (a) Persons who incur response costs or who are entitled to damages as a result of an unauthorized discharge of oil may receive compensation from the fund.

(b) Any person other than the state seeking compensation from the fund must file a claim with the commissioner. The claimant must provide the commissioner with satisfactory proof of the costs

incurred or damages claimed. Each claimant shall make a sworn verification of the claim.

(c) The commissioner shall prescribe appropriate forms and requirements and by rule shall establish procedures for filing claims for compensation from the fund and for response cost reimbursements to other state agencies from the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.158. EXCEPTIONS TO LIABILITY. (a) Except as provided by Subsection (b) of this section, the fund is absolutely liable for:

(1) all proven, reasonable response costs approved by the commissioner under Section 40.103 of this code from an unauthorized discharge of oil;

(2) all natural resources damages from an unauthorized discharge of oil; and

(3) with the exception of those damages proportionately attributable to the negligence or wilful misconduct of the claimant, all other proven damages from the fund from an unauthorized discharge of oil.

(b) A person liable for an unauthorized discharge of a hazardous substance may not file a claim or be reimbursed from the fund for the unauthorized discharge of a hazardous substance. A person responsible for an unauthorized discharge of oil may not file a claim or be reimbursed from the fund except:

(1) if the person responsible is entitled to a defense to liability under Section 40.204 of this code, a claim for response costs and damages may be filed; or

(2) if the person responsible is entitled to a limitation of liability under Section 40.202 of this code, a claim for response costs and damages to the extent that they exceed the applicable limitation may be filed.

(c) No claim may be approved or certified during the pendency of any action by the claimant in court to recover response costs or damages that are the subject of the claim.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.159. CLAIMS FROM DISCHARGES OF OIL. (a) (1) On

determining that damage from an unauthorized discharge of oil is likely to occur or has occurred and will result in the filing of claims, the commissioner shall immediately designate the person or persons responsible who, if the designation is not challenged within five days of notice thereof, shall immediately and widely advertise the manner in which the person will accept claims.

(2) If the designation is challenged or the commissioner is otherwise unable to designate a responsible person, the commissioner shall immediately and widely advertise the manner in which the commissioner shall accept claims.

(b)(1) A claimant shall submit any claim exceeding $50,000 to the designated responsible person. If there is no reasonable response from the designated responsible person within 90 days or in the absence of a designated responsible person as provided under Subsection (a)(2) of this section, the claimant shall submit the claim to the federal fund. If there is no reasonable response from the federal fund within 60 days, the claimant may submit the claim to the fund.

(2) A claimant shall submit any claim less than or equal to $50,000 to the designated responsible person. If there is no reasonable response from the designated responsible person within 30 days or in the absence of a designated responsible person as provided under Subsection (a)(2) of this section, the claimant may submit the claim to the fund.

(c) Claims must be submitted to the fund by filing with the commissioner not later than 180 days after the periods prescribed in Subsection (b) of this section. Claims not filed within the time allowed are barred as against the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.160. PAYMENT OF AWARDS. (a) The commissioner shall establish the amount of the award. If the claimant accepts the award, the commissioner shall certify the amount of the award and the name of the claimant to the comptroller, who shall pay the award from the fund, subject to Section 40.162 of this code.

(b) If either the claimant or the person or persons determined by the commissioner to be responsible for the unauthorized discharge of oil disagrees with the amount of the award, such person may

request a hearing. The commissioner shall hold a hearing and issue an order setting the amount of the award.

(c) Each person's claims arising from a single discharge must be stated in one application. Costs or damages omitted from any claim at the time a claimant accepts an award are waived. The commissioner may make partial final awards toward a single claim.

(d) If a person accepts an award from the fund, it shall bind both the claimant and the commissioner as to all issues covered by the award and may not be further attacked, collaterally or by separate action. The commissioner shall be subrogated to all rights or causes of action of the claimant arising from the unauthorized discharge and covered by the award. The claimant shall have no further cause of action against the person responsible for the discharge.

(e) Claims proceedings under this chapter are not contested cases under Chapter 2001, Government Code and judicial review of such proceedings is not available under that Act.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.161. REIMBURSEMENT OF FUND. (a) The commissioner shall diligently pursue reimbursement to the fund of any sum expended or paid from the fund.

(b) In any action to recover such sums, the commissioner shall submit to the court a written report of the amounts paid from or owed by the fund. The amounts paid from or owed by the fund stated in the report shall create a rebuttable presumption of the amount of the fund's damages. The written report shall be admissible in evidence.

(c) This section does not apply to a sum expended under Section 40.152(a)(9).

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1999, 76th Leg., ch. 508, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.006(b), eff. September 1, 2005.

Sec. 40.162. AWARDS EXCEEDING FUND. (a) If the total awards against the fund exceed the existing balance of the fund, the claimant or claimants shall be paid from the future income of the fund. Each claimant or claimants shall receive a pro rata share of all money available in the fund until the total amount of awards is paid.

(b) The commissioner by rule may make exceptions to Subsection (a) of this section in cases of hardship. Amounts collected by the fund from the prosecution of actions shall be used to satisfy the claims as to which such prosecutions relate to the extent unsatisfied.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

SUBCHAPTER E. LIABILITY OF PERSONS RESPONSIBLE

Sec. 40.201. FINANCIAL RESPONSIBILITY. (a) Each owner or operator of a vessel subject to Section 40.114 of this code and operating within coastal waters or waters adjoining and accessible from coastal waters or any terminal facility subject to this code shall establish and maintain evidence of financial responsibility for costs and damages from unauthorized discharges of oil pursuant to federal law or in any other manner provided in this chapter.

(b) If a vessel subject to Section 40.114 of this code or a terminal facility is not required under federal law to establish and maintain evidence of financial responsibility, the owner or operator of that vessel or terminal facility shall establish and maintain evidence in an amount and form prescribed by rules promulgated under this code.

(c) Any owner or operator of a vessel that is a member of any protection and indemnity mutual organization, which is a member of the international group, any other owner or operator that is an assured of the Water Quality Insurance Syndicate, or an insured of any other organization approved by the commissioner, and which is covered for oil pollution risks up to the amounts required by federal law is in compliance with the financial responsibility requirements of this chapter. The commissioner shall specifically designate the organizations and the terms under which owners and operators of vessels shall demonstrate financial responsibility.

(d) After an unauthorized discharge of oil, a vessel shall

remain in the jurisdiction of the commissioner until the owner, operator, or person in charge has shown the commissioner evidence of financial responsibility. The commissioner may not detain the vessel longer than 12 hours after the vessel has proven financial responsibility.

(e) In addition to any other remedy or enforcement provision, the commissioner may suspend a registrant's discharge prevention and response certificate or may deny a vessel entry into any port in coastal waters for failure to comply with this section.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 8, eff. Sept. 1, 1993.

Sec. 40.202. RESPONSE COSTS AND DAMAGES LIABILITY. (a) Subject to Subsection (c) of this section, any person responsible for an actual or threatened unauthorized discharge of oil from a vessel is liable for:

(1) all response costs from the actual or threatened discharge to an amount not to exceed $1 million for vessels of 300 gross tons or less that do not carry oil as cargo, to an amount not to exceed $5 million for vessels of 8,000 gross tons or less or, for vessels greater than 8,000 gross tons, to an amount equal to $600 per gross ton of such vessel, not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code; and

(2) in addition to response costs, all damages other than natural resources damages from the actual or threatened discharge to an amount not to exceed $1 million for vessels of 300 gross tons or less that do not carry oil as cargo, to an amount not to exceed $5 million for vessels of 8,000 gross tons or less or, for vessels greater than 8,000 gross tons, to an amount equal to $600 per gross ton of such vessel, not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code.

(b) Subject to Subsection (c) of this section, any person responsible for an actual or threatened unauthorized discharge of oil from a terminal facility is liable for:

(1) all response costs from the actual or threatened discharge to an amount not to exceed $5 million, except any person responsible for an actual or threatened unauthorized discharge of oil from an offshore drilling or production facility is liable for all

response costs from the actual or threatened discharge; and

(2) in addition to response costs, all damages other than natural resources damages from the actual or threatened discharge to an amount not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code, except any person responsible for an actual or threatened unauthorized discharge of oil from an offshore drilling or production facility is liable for all such damages from the actual or threatened discharge.

(c)(1) If any actual or threatened unauthorized discharge of oil was the result of gross negligence or wilful misconduct, the person responsible for such gross negligence or wilful misconduct is liable for the full amount of all response costs and damages.

(2) "Wilful misconduct" under this chapter includes intentional violation of state, federal, or local safety, construction, or operating standards or requirements, including the requirements of this chapter.

(3) If an actual or threatened unauthorized discharge of oil is not eligible for expenditures from the federal fund, the person responsible is liable for the full amount of all response costs and damages incurred by the fund.

(4) If the responsible person unreasonably fails to cooperate with discharge response and cleanup operations as provided in Section 40.106 of this code, the responsible person is liable for the full amount of all response costs and damages.

(d) Liability limits established under this section are exclusive of interest or attorney fees to which the state is entitled to recover under this code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.203. LIABILITY FOR NATURAL RESOURCES DAMAGES. (a) The commissioner, on behalf of the trustees, shall seek reimbursement from the federal fund for damages to natural resources in excess of the liability limits prescribed in Section 40.202 of this code. If that request is denied or additional money is required following receipt of the federal money, the commissioner has the authority to pay the requested reimbursement from the fund for a period of two years from the date the federal fund grants or denies the request for reimbursement.

(b) In addition to liability under Section 40.202 of this code, persons responsible for actual or threatened unauthorized discharges of oil are liable for natural resources damages attributable to the discharge.

(c) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a vessel shall not exceed the following:

(1) for a vessel that carries oil in bulk, as cargo, the greater of:

(A) $1,200 per gross ton; or

(B)(i) in the case of a vessel greater than 3,000 gross tons, $10 million; or

(ii) in the case of a vessel of 3,000 gross tons or less, $2 million; or

(2) for any other vessel, $600 per gross ton or $500,000, whichever is greater.

(d) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a terminal facility shall not exceed the following:

(1) for each terminal facility with a capacity:

(A) above 150,000 barrels, $70 per barrel not to exceed $350,000,000;

(B) from 70,001 to 150,000 barrels, $10,000,000;

(C) from 30,001 to 70,000 barrels, $5,000,000;

(D) from 10,000 to 30,000 barrels, $2,000,000;

(2) for any other terminal, $500,000.

(e) The commissioner shall ensure that there will be no double recovery of damages or response costs.

(f) If any actual or threatened unauthorized discharge of oil was the result of gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation, the person responsible for such gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation is liable for the full amount of all damages to natural resources.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 9, eff. Sept. 1, 1993.

Sec. 40.204. DEFENSES. The only defense of a person responsible for an actual or threatened unauthorized discharge of oil shall be to plead and prove that the discharge resulted solely from any of the following or any combination of the following:

(1) an act of war or terrorism;

(2) an act of government, either state, federal, or local;

(3) an unforeseeable occurrence exclusively occasioned by the violence of nature without the interference of any human act or omission; or

(4) the wilful misconduct or a negligent act or omission of a third party, other than an employee or agent of the person responsible or a third party whose conduct occurs in connection with a contractual relationship with the responsible person, unless the responsible person failed to exercise due care and take precautions against foreseeable conduct of the third party.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.205. THIRD PARTIES. If a responsible person alleges a defense under Section 40.204(4) of this code, the responsible person shall pay all response costs and damages. The responsible person shall be subrogated to any rights or cause of action belonging to those to whom such payment is made.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

SUBCHAPTER F. ENFORCEMENT

Sec. 40.251. PENALTIES. (a) A person who intentionally commits any of the following acts in violation of Subchapter C, D, or E shall be guilty of a Class A misdemeanor:

(1) operating a terminal facility or vessel without a discharge prevention and response plan;

(2) operating a terminal facility or vessel without establishing and maintaining financial responsibility;

(3) causing, allowing, or permitting an unauthorized discharge of oil;

(4) making a material false statement with a fraudulent intent in an application or report;

(5) with respect to the person in charge of a vessel from

which an unauthorized discharge of oil emanates, taking the vessel from the jurisdiction of the commissioner prior to proving financial responsibility; or

(6) leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition.

(b) A person responsible for an unauthorized discharge of oil or the person in charge of any vessel or terminal facility from or at which an unauthorized discharge of oil emanates, who knows or has reason to know of the discharge and who fails to give immediate notification of the discharge to the commissioner, shall be:

(1) subject to a civil penalty of not less than $500 nor more than $250,000 for an individual or $500,000 for a corporation, partnership, association, or other entity; and

(2) guilty of a Class A misdemeanor.

(c) A person responsible for an unauthorized discharge of oil shall be subject to a civil penalty of not less than $250 nor more than $25,000 for each day of the discharge, or not more than $1,000 per barrel of oil discharged.

(d) A person responsible for an unauthorized discharge of oil who without sufficient cause fails to abate, contain, and remove pollution from the discharge pursuant to applicable federal and state requirements and plans shall be liable for a civil penalty of not more than $25,000 for each day the pollution is not abated, contained, and removed, or not more than three times the costs incurred by the fund as a result of the discharge.

(e) A person who with a fraudulent intent makes or causes to be made any material false statement in filing a claim or reporting any information concerning an actual or threatened unauthorized discharge of oil in response to the requirements of this chapter shall be guilty of a third degree felony.

(f) A person who violates any provision, rule, or order issued under Subchapter C, D, or E of this chapter shall be subject to a civil penalty of not less than $100 nor more than $10,000 per violation for each day of violation, not to exceed a maximum of $125,000.

(g) It is a defense to prosecution for a criminal offense under Subchapter C, D, or E of this chapter that the conduct complained of was committed pursuant to response or cleanup operations and was

authorized by the national contingency plan, by a discharge response plan required under this chapter, or by an authorized federal or state official.

(h) The defenses to liability under Section 40.204 of this code shall be defenses to the assessment of penalties under this chapter for any unauthorized discharge of oil.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 17.001, eff. September 1, 2011.

Sec. 40.252. ADMINISTRATIVE PENALTIES. The commissioner may assess administrative penalties for the violations and in the amounts established in Section 40.251 of this code. In determining the amount of penalties, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.253. CUMULATIVE ENFORCEMENT. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.254. ORDERS AND HEARINGS. (a) The commissioner shall assess administrative penalties, pursue suspension of terminal facility discharge prevention and response certificates, and pursue

the removal or disposal of derelict structures or vessels in accordance with this section.

(b) The commissioner shall issue a preliminary report if the commissioner, after an investigation, concludes that:

(1) a violation has occurred for which:

(A) a penalty should be assessed; or

(B) a discharge prevention and response certificate should be suspended; or

(2) there is a need for removal or disposal of a derelict vessel or structure.

(b-1) The preliminary report must:

(1) state the facts that support the commissioner's conclusion;

(2) in the case of a derelict vessel or structure, determine whether the vessel or structure is considered:

(A) a numbered vessel;

(B) a vessel or structure that has no intrinsic value; or

(C) a vessel or structure described by Section 40.108(c)(1), (2), or (3);

(3) recommend:

(A) that a penalty be imposed;

(B) that a certificate be suspended;

(C) that a derelict vessel or structure be removed or disposed of;

(D) that a derelict vessel or structure be removed or disposed of because it is a vessel or structure described by Section 40.108(c)(1), (2), or (3); or

(E) any combination of remedies under Paragraphs (A)-(D); and

(4) if a penalty under Subdivision (3)(A) is recommended, recommend the amount of the penalty.

(c) The commissioner shall serve written notice of the preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the findings;

(2) a statement of the commissioner's recommendations;

(3) a statement of the right of the person charged with the violation to a hearing; and

(4) a copy of the preliminary report.

(c-1) Except as provided by Subsection (c-3), the notice required by Subsection (c) must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person is unknown, by posting a copy of the notice on the facility, vessel, or structure and by publishing notice on the Internet website of the General Land Office and in the Texas Register at least two times within 10 consecutive days.

(c-2) If notice is given in the manner provided by Subsection (c-1), not later than the 20th day after the date on which the notice is served or mailed, or not later than the 20th day after the later of the date on which the notice was posted or the last date the notice was published, as applicable, the person charged with the violation or a person claiming ownership of the facility, vessel, or structure may consent in writing to the report, including the commissioner's recommendations, or make a written request for a hearing.

(c-3) The notice required by Subsection (c) must be given by posting a copy of the notice on a derelict vessel or structure or by publishing notice on the Internet website of the General Land Office for 10 consecutive days if the derelict vessel or structure has been determined to have no intrinsic value under Subsection (b-1) and:

(1) the vessel or structure is not a numbered vessel or structure;

(2) there are no identifiable markings on the vessel or structure for which the current owner can be reasonably identified for service; or

(3) the address of the person charged with the violation is unknown.

(c-4) If notice is given in the manner provided by Subsection (c-3), not later than the 10th day after the date on which the notice was posted or the last date the notice was published, the person charged with the violation or a person claiming ownership of the vessel or structure may consent in writing to the report, including the commissioner's recommendations, or make a written request for a hearing.

(d) If a vessel or structure is removed without notice as authorized by Section 40.108(c), the commissioner shall serve written

notice of the removal to the person charged with the violation not later than the 10th day after the date on which the removal occurs. The removal notice must:

(1) include the information required to be in a preliminary report notice under Subsection (c); and

(2) be provided in the manner described by Subsection (c-1), except that notice provided under the circumstances described by Subsection (c-1)(2) is not required to be posted on the vessel or structure.

(d-1) If notice is given in the manner provided by Subsection (d), not later than the 20th day after the date on which the notice is served or mailed, or not later than the 20th day after the last date the notice was published, as applicable, the person charged with the violation or a person claiming ownership of the vessel or structure may consent in writing to the report, including the commissioner's recommendations, or make a written request for a hearing.

(e)(1) If the person charged with the violation or a person claiming ownership of a facility, vessel, or structure for which notice is provided under Subsection (c-1), (c-3), or (d) consents to the commissioner's recommendations or does not timely respond to the notice, the commissioner by order shall take the recommended action or order a hearing to be held on the findings and recommendations in the report.

(2) If the commissioner takes the recommended action, the commissioner shall serve written notice of the decision to the person in the same manner as provided for notice of the preliminary report. The person must comply with the order, including a removal order, and pay any penalty assessed.

(3) The commissioner is not required to provide notice under Subdivision (2) of this subsection if notice was provided under Subsection (c-1)(2), (c-3), or (d) and the subject of the notice is a vessel or structure that was removed in the manner provided by Section 40.108.

(f)(1) If the person charged with the violation or a person claiming ownership of a facility, vessel, or structure for which notice is provided under Subsection (c-1), (c-3), or (d) requests a hearing, the commissioner shall order a hearing and shall give written notice of that hearing.

(2) The hearing shall be held by a hearing examiner

designated by the commissioner.

(3) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation on suspension of the discharge prevention and response certificate, the amount of any proposed penalty, the removal or disposal of the derelict vessel or structure, or any combination of those remedies.

(4) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may:

(A) find that a violation has occurred and assess a penalty;

(B) suspend a discharge prevention and response certificate;

(C) order the removal or disposal of a derelict vessel or structure;

(D) order any combination of those remedies; or

(E) find that no violation occurred.

(5) The commissioner shall serve notice to the person of the commissioner's decision. If the commissioner finds that a violation has occurred and assesses a penalty, suspends a discharge prevention and response certificate, or orders the removal or disposal of a derelict vessel or structure, the commissioner shall give to the person written notice of:

(A) the commissioner's findings;

(B) the amount of the penalty or the terms of the suspension or removal or disposal; and

(C) the person's right to judicial review of the commissioner's order.

(g)(1) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the violation or a person claiming ownership of the facility, vessel, or structure shall comply with the order or file a petition for judicial review.

(2) On failure of the person to comply with the order or file a petition for judicial review, the commissioner may refer the matter to the attorney general for collection and enforcement.

(3) Judicial review of the order or decision of the commissioner shall be under Subchapter G, Chapter 2001, Government Code.

(h)(1) If a penalty is reduced or not assessed, the commissioner shall remit to the person charged with the violation the

appropriate amount of any penalty payment plus accrued interest.

(2) Accrued interest on amounts remitted by the commissioner shall be paid for the period beginning on the date the penalty is paid to the commissioner and ending on the date the penalty is remitted at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(i) Payment of an administrative penalty under this section shall preclude, in any action brought under this chapter, collection of a civil penalty for the violation specified in the commissioner's order.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 13, 14, 16, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1324 (H.B. 3306), Sec. 3, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 5, eff. September 1, 2017.

Sec. 40.255. ACTIONS. (a) The commissioner may seek injunctive relief to prevent a violation of this chapter from continuing or occurring.

(b) All actions on behalf of the state to enforce this chapter or recover civil penalties, unpaid administrative penalties, claims of the fund, response costs, and damages arising under this chapter shall be brought by the attorney general at the direction of the commissioner. In any such action in which the state prevails, the state shall be entitled to recover reasonable attorney fees.

(c) Repealed by Acts 1993, 73rd Leg., ch. 776, Sec. 10, eff.

Sept. 1, 1993.

(d) Each owner or operator of a terminal facility or vessel subject to the provisions of this chapter shall designate a person in the state as his legal agent for service of process, and such designation shall be filed with the secretary of state. In the absence of such designation, the secretary of state shall be the designated agent for purposes of service of process under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 10, eff. Sept. 1, 1993.

Sec. 40.256. INDIVIDUAL CAUSE OF ACTION. The remedies in this chapter are cumulative and not exclusive. This chapter does not require pursuit of any claim against the fund as a condition precedent to any other remedy, nor does this chapter prohibit any person from bringing an action at common law or under any other law not inconsistent with this chapter for response costs or damages resulting from a discharge or other condition of pollution covered by this chapter. No such action shall collaterally estop or bar the commissioner in any action brought by the commissioner under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.257. VENUE. (a) Venue for all actions and prosecution of all offenses under this chapter may be brought in Travis County or in any county where the violation of this chapter that is the subject of the action or prosecution occurred.

(b) All appeals from administrative proceedings under this chapter shall be filed in a district court of Travis County, Texas, pursuant to Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.258. FEDERAL LAW. (a) (1) The commissioner shall promulgate rules that, to the greatest extent practicable, conform to the national contingency plan and rules promulgated under federal law.

(2) The commissioner may impose requirements under such rules that are in addition to or vary materially from federal requirements if the state interests served by the requirements substantially outweigh the burdens imposed on those subject to the requirements.

(3) Any request for judicial review of any rule must be filed in a district court in Travis County within 90 days of the effective date of the rule or plan challenged.

(4) Any matter subject to judicial review under Subdivisions (1) through (3) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or for recovery of response costs or damages.

(b) In implementing this chapter, the commissioner to the greatest extent practicable shall employ federal funds unless federal funds will not be available in an adequate period of time.

(c) All federal funds received by the state relating to response to unauthorized discharges of oil under this chapter shall be deposited in the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 15, eff. Sept. 1, 2003.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

Sec. 40.301. INTERSTATE COMPACTS. The commissioner may enter into compacts or agreements with other states consistent with and to further the purposes of this chapter. The commissioner may also participate in initiatives to develop multistate and international standards and cooperation on unauthorized discharge prevention and response.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.302. INSTITUTIONS OF HIGHER EDUCATION. The commissioner by interagency contract shall enter into agreements with

state institutions of higher education for research, testing, and development of oil discharge prevention and response technology, oil discharge response training, wildlife and natural resources rescue and rehabilitation, development of computer models to predict the movements and impacts of unauthorized discharges of oil, and other purposes consistent with and in furtherance of the purposes of this chapter. Contracts or agreements relating to wildlife and aquatic resources shall be made in coordination with the Parks and Wildlife Department. To the greatest extent possible, contracts shall be coordinated with studies being done by other state agencies, the federal government, or private industry to minimize duplication of efforts.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.304. SMALL SPILL EDUCATION PROGRAM. The commissioner shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, offshore support vessels, ferries, cruise ships, ports, marinas, and recreational boats. The small spill education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of motor oil and hydraulic fluid during routine maintenance, and spills during refueling. The program shall illustrate proper disposal of oil and promote strategies to meet shoreside oil handling and disposal needs of targeted groups. The program shall include a series of training materials and workshops and the development of educational materials.

Added by Acts 1993, 73rd Leg., ch. 776, Sec. 11, eff. Sept. 1, 1993.

SUBTITLE D. DISPOSITION OF THE PUBLIC DOMAIN
CHAPTER 51. LAND, TIMBER, AND SURFACE RESOURCES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the School Land Board.

(4) "Comptroller" means the Comptroller of Public Accounts

of the State of Texas.

(5) "Board of regents" means the board of regents of The University of Texas System.

(6) "Public school land" means all land of the state that is dedicated to the permanent school fund.

(7) "Appraiser" means a state certified or state licensed real estate appraiser who is employed by or contracts with the land office and who performs professional valuation services competently and in a manner that is independent, impartial, and objective.

(8) "Surveyed land" means all or part of any tract of land surveyed either on the ground or by protraction and dedicated to or acquired on behalf of the public school fund which is unsold and for which field notes are on file in the land office or that may be delineated on the maps of that office as such.

(9) "Unsurveyed land" means any land that is not included in surveys on file in the land office or surveys delineated on maps of that office.

(10) "Land" or "real property" means any interest in the physical land and appurtenances attached to the land, including improvements.

(11) "Market value" has the meaning assigned by Section 1.04, Tax Code.

(12) "Sovereign land" means land that has not been sold and severed by the sovereign.

(13) "Real property holding" means any direct or indirect interest in real property located in the state or any interest in a joint venture whose primary purpose is the acquisition, development, holding, and disposing of real property located in the state. The term does not include an interest in an investment vehicle.

(14) "Investment vehicle" means:

(A) a multi-investment separately managed account or similar investment fund;

(B) a multi-asset closed-end or open-end investment fund sponsored and managed by a third party;

(C) a real estate investment trust;

(D) an investment managed by a third party alongside a multi-asset closed-end or open-end investment fund that is also managed by the third party or by any of the third party's related persons or affiliates; or

(E) a corporation, partnership, limited liability

company, or other entity whose primary purpose is to:

(i) sponsor and manage investments on behalf of third parties, including institutional investors; or

(ii) operate assets or provide brokerage or other services to third parties under circumstances in which the entity does not directly or indirectly own the underlying assets.

Acts 1977, 65th Leg., p. 2417, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.02, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 280, Sec. 1, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 1, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 13, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.01, eff. December 31, 2022.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO THE MANAGEMENT OF PUBLIC SCHOOL AND ASYLUM LAND

Sec. 51.011. MANAGEMENT OF PUBLIC SCHOOL LAND. (a) Any land, mineral or royalty interest, or real property holding, and revenue received from any land or real property holding, that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be subject to the sole and exclusive management and control of the School Land Board and the commissioner under the provisions of this chapter and other applicable law.

(a-1) The board may acquire, sell, lease, trade, improve, maintain, protect, or otherwise manage, control, or use land, mineral and royalty interests, or real property holdings, and revenue received from land or real property holdings, that are set apart to the permanent school fund in any manner, at such prices, and under such terms and conditions as the board finds to be in the best interest of the fund.

(a-2) Not later than October 15 of each year, the board shall

report to the Legislative Budget Board the sale of any land that is set apart to the permanent school fund for less than appraised value or the purchase of any land that is set apart to the permanent school fund for more than appraised value during the preceding state fiscal year.

(a-3) All revenue received from mineral or royalty interests described by Subsection (a), including bonus payments, mineral lease rental revenues, royalties, and any other type of revenue received from those interests, less any amount specified by appropriation to be retained by the board under this subsection, shall be transferred each month to the Texas Permanent School Fund Corporation for investment in the permanent school fund.

(b) Notwithstanding any other provision of this chapter, land within 2,500 feet of a military base may not be sold or leased and an easement over the land may not be granted unless the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the grant will not adversely affect the mission of the military base.

(c) Any public land may be sold or leased, or an easement over the property may be granted, to the United States for the use and benefit of the United States armed forces if the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the sale, lease, or easement would materially assist the military in accomplishing its mission. A sale, lease, or easement under this subsection must be at market value. The state shall retain all minerals it owns with respect to the land, but it may relinquish the right to use the surface to extract them.

(d) The commissioner shall determine whether a conveyance under this section takes priority over any preference otherwise granted by law, including the preferential right of a surrounding landowner. In making the determination, the commissioner must only consider the interests of preference holders who assert their preferences in writing after notice of the proposed conveyance is published in a newspaper of general circulation in the area. The commissioner shall, in the commissioner's discretion, balance the competing interests of the preference holders and the military. The commissioner's determination is final. After land is conveyed to the military, all competing preferences terminate.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 2003, 78th Leg., ch. 149, Sec. 13, eff. May 27, 2003; Acts 2003, 78th Leg., ch. 280, Sec. 2, eff. June 18, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 3, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 4, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 1, eff. June 15, 2007.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.02, eff. December 31, 2022.

Sec. 51.012. COMMISSIONER'S AUTHORITY. Subject to the authority of the board and to exceptions and restrictions that may be imposed by the constitution and laws of this state, the commissioner is vested with the authority necessary to carry out the provisions of this chapter relating to the sale and lease of public school land and to the protection of this land from free use and occupancy and from unlawful enclosure.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 3, eff. June 18, 2003.

Sec. 51.0125. LAND USED BY STATE AGENCY. Land that belongs to the permanent school fund as a result of having been deeded or given to the state and that has been used in the past by a state agency shall be first offered for sale or lease to state agencies before it can be sold or leased to any other party. No permanent school fund land may be used by a state agency without market value compensation to the permanent school fund.

Added by Acts 1993, 73rd Leg., ch. 991, Sec. 12, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 4, eff. June 18, 2003.

Sec. 51.013. CLASSIFICATION OF LAND. (a) As the public interest may require, the commissioner shall classify or reclassify all public school land and shall include a designation of the land,

including a classification as agricultural, grazing, timber, or a combination of these classifications based on the facts in the particular case.

(b) After the classification is entered on the records of the land office, no further action needs to be taken by the commissioner and no notice is required to be given to the county clerk for the classification to be effective.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 5, eff. June 18, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 14, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 15, eff. June 19, 2009.

Sec. 51.014. RULES. The commissioner may adopt rules necessary to carry out the provisions of this chapter and may alter or amend the rules to protect the public interest.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 16, eff. June 19, 2009.

Sec. 51.015. FORMS. The commissioner shall adopt forms that are necessary or proper to transact business that he is required to transact and may request that the attorney general prepare the forms.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.016. DUTIES OF THE ATTORNEY GENERAL. The attorney general shall furnish the commissioner with advice and legal assistance that may be required to execute the provisions of this chapter.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.017. FURNISHING DATA TO TEXAS PERMANENT SCHOOL FUND CORPORATION. On request, the commissioner shall furnish to the Texas Permanent School Fund Corporation all available data.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.03, eff. December 31, 2022.

Sec. 51.018. RECORDS AND ACCOUNTS. The commissioner shall keep in his custody as records of his office each application, affidavit, obligation, and paper relating to the sale and lease of public school land and shall keep accurate accounts with each purchaser or lessee.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 6, eff. June 18, 2003.

Sec. 51.019. SPECIAL FEE. Each bidder on a mineral lease or land sale by the board shall remit by separate check a special sale fee in the amount and in the manner provided in Section 32.110 of this code.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 32, eff. Sept. 1, 1985.

Sec. 51.020. REFUNDS. (a) On presentation of proper proof, money paid in good faith to a fund in the State Treasury for public land or by a lessee of public land or minerals to which the fund is not entitled may be offset or credited by the commissioner against other sums owing or shall be refunded by the comptroller in the following instances:

(1) if an error is made in good faith and the refund, stating to whom payment is to be made, is supported by the official signature of the commissioner or the attorney general;

(2) if the payment is made according to law but title cannot issue or possession cannot pass because of a conflict in boundaries, an erroneous sale, an erroneous lease, or other cause;

(3) if there is a sale of leased land;

(4) if lease money is paid on a previous forfeited sale and the sale has been reinstated and the interest paid;

(5) if erroneous timber sales or leases have been made;

(6) if overpayments have been made in final payments to the comptroller because of decreased acreage or other cause;

(7) if reduction has been made in acreage of timber sold or leased; or

(8) if payments are made in good faith by claimants of land where the applicants have no right to purchase the land as revealed by investigation of title.

(b) After specific appropriations are made according to law, refunds shall be paid from the funds to which the payments have been credited.

(c) Any claim for refund except a refund covered by Subdivision (1) of Subsection (a) of this section shall be certified by the commissioner, verified by the affidavit of the claimant, and approved by the attorney general as to the correctness and as to whom the refund is due.

(d) In the event of a failure of title or right of possession, money paid by any purchaser or lessee who subsequently sells the land or assigns the lease shall be refunded to the person on whom the loss falls.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 642, Sec. 5, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 14.03, eff. Sept. 1, 1997.

SUBCHAPTER C. SALE OF PUBLIC SCHOOL AND ASYLUM LAND

Sec. 51.051. SALE OF LAND. All sales of land described in Section 51.011 shall be made by or under the direction of the school land board.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 5, eff. June 18, 2005.

Sec. 51.052. CONDITIONS FOR SALE OF LAND. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1175, Sec. 33(2), eff. June 19, 2009.

(b) A purchaser of land under this subchapter may make a down payment of an amount determined by the board and the board may set the terms and conditions of the sale, including the interest rate. On full payment and satisfaction of other conditions, the purchaser is entitled to a patent for the land. This subsection does not prevent the board from requiring a tract of land to be purchased for cash.

(c) Repealed by Acts 1987, 70th Leg., ch. 208, Sec. 14, eff. Aug. 31, 1987.

(d) Before the land under this chapter is sold, the appraiser must appraise the land at its market value and file a copy of the appraisal with the commissioner.

(e) The owner of land that surrounds a tract of land approved for sale by the board shall have a preference right to purchase the tract before the land is made available for sale to any other person, provided the person having the preference right pays not less than the market value for the land as determined by the board and the board finds use of the preference to be in the best interest of the state. The board shall adopt rules to implement this preference right.

(f) If the surrounding land is owned by more than one person, the owners of land with a common boundary with a tract of land approved for sale by the board shall have a preference right to purchase the tract before it is made available to any other person, provided the person with the preference right pays not less than the market value of the land as determined by the board and the board finds use of the preference to be in the best interest of the state. The board shall adopt rules to implement this preference right.

(g) If land is located within the boundaries of or adjacent to any state park, refuge, natural area, or historical site subject to the management and control of the Parks and Wildlife Department, the

department has a preference right to purchase the land before it is made available to any other person. A sale to the department under this section may not be for less than the market value of the land, as determined by the board.

(h) The board may sell or exchange any interest in the surface estate of public school land directly to any state agency, board, commission, or political subdivision or other governmental entity of this state without the necessity of a sealed bid sale. All sales or exchanges made pursuant to this subsection shall be for not less than market value as determined by the board and under such other terms and conditions the board determines to be in the best interest of the state.

(i) If no bid meeting minimum requirements is received for a tract of land offered at a sealed bid sale under Subchapter D of Chapter 32, or if the transaction involves commercial real estate and the board determines that it is in the best interest of the permanent school fund, the asset management division of the land office may solicit proposals or negotiate a sale, exchange, or lease of the land to any person. The board must approve any negotiated sale, exchange, or lease of any land under this section.

(i-1) The land office shall post information related to the process for purchasing commercial real estate under Subsection (i) on the land office's Internet website.

(j) The board, in its sole discretion and in the best interests of the permanent school fund as determined by the board and without regard to requirements of local governments as to the necessity of any such dedication, may dedicate permanent school fund land to any governmental unit for the benefit and use of the public in exchange for nonmonetary consideration with a value reasonably equivalent to or greater than the market value of the dedicated land, if the board determines that such an exchange would benefit the permanent school fund. The asset management division of the land office shall determine the value of the nonmonetary consideration and shall file a copy of its determination with the commissioner. Examples of public purposes for which permanent school fund land may be dedicated under this subsection include but are not limited to: (1) rights-of-way for public roads, utilities, or other infrastructure; (2) public schools; (3) public parks; (4) government offices or facilities; (5) public recreation facilities; and (6) residential neighborhood public amenities.

(k) The asset management division of the land office may contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in any sale, lease, or exchange of land under this subchapter.

(l) If the board leases land under this subchapter and the lease includes the right to produce groundwater from the land, the lessee shall comply with the statutory provisions governing and the rules adopted by the groundwater conservation district, if any, in which the land is located, including the statutory provisions and rules governing the production and use of groundwater and the transfer of groundwater out of the district.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5242, ch. 965, Sec. 1, eff. June 19, 1983; Acts 1987, 70th Leg., ch. 208, Sec. 14, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 383, Sec. 4, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 633, Sec. 5, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 991, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 293, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 280, Sec. 7, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 6, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 726 (H.B. 2518), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 17, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 33(2), eff. June 19, 2009.

Sec. 51.054. RESERVATION OF MINERALS. (a) Except as otherwise provided in this section, land dedicated to the permanent school fund shall be sold subject to a reservation set by the board of not less than one-eighth of all sulphur and other mineral substances from which sulphur may be derived or produced and not less than one-sixteenth of all other minerals to the state; provided, that if leasing rights are retained hereunder, the reserved minerals shall be subject to lease as provided by Subchapter B, Chapter 52, Natural Resources Code, and Subchapters B and E, Chapter 53, Natural

Resources Code. The mineral reservation to the state shall be determined by the board before the land is offered for sale. If the board determines that a mineral reservation under this section would substantially reduce the value of the surface of land by restricting its suitability for agricultural, commercial, or residential use, the board may take such action or waive such rights as are in the best interest of the permanent school fund, including, without limitation, establishing designated exploration or drilling sites, waiving surface or other rights of access or development, or conveying the land with no mineral reservation.

(b) Land that is set apart for the various asylum funds shall be sold with the oil, gas, coal, and all other minerals reserved to the fund to which the land belongs.

(c) The provisions of this section do not apply to oil and gas sold from public school land covered by Subchapter F, Chapter 52, of this code.

(d) The provisions of this section do not apply to vacancies covered by Section 51.201 of this code.

(e) An oil, gas, or other mineral lease on land in which the state reserves a mineral or royalty interest is not effective until a certified copy of the recorded lease is filed in the General Land Office.

Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5243, ch. 965, Sec. 2, eff. June 19, 1983; Acts 1985, 69th Leg., ch. 923, Sec. 3, eff. Aug. 26, 1985; Acts 1995, 74th Leg., ch. 354, Sec. 3, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 280, Sec. 8, eff. June 18, 2003.

Sec. 51.0551. LISTS OF PUBLIC LAND OFFERED FOR SALE: CRIMINAL PENALTIES. (a) A person, including a corporation or an association, commits an offense if he reproduces, prints, or prepares or sells or furnishes a printed, multigraphed, or mimeographed list prepared by or under the direction of the commissioner offering for sale or lease any state or public school land.

(b) This section does not prohibit the commissioner or land board from advertising in a newspaper or otherwise as is provided by law nor a newspaper or periodical from publishing the list in a regular issue as a news item.

(c) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

Added by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 5, Sec. 1(a), eff. Sept. 1, 1983.

Sec. 51.056. APPLICATION OR REQUEST TO PURCHASE LAND. A person who wants to purchase public school land shall submit to the commissioner a written application or request in a form designated by the commissioner.

Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5243, ch. 965, Sec. 3, eff. June 19, 1983; Acts 1987, 70th Leg., ch. 208, Sec. 5, eff. Aug. 31, 1987; Acts 2003, 78th Leg., ch. 280, Sec. 9, eff. June 18, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 18, eff. June 19, 2009.

Sec. 51.065. NOTICE AND RECORD OF SALE. (a) The commissioner shall send a written notice of the sale of a tract of public school land to the county clerk of the proper county that includes the name and address of the purchaser and the price of the land.
(b) After receiving a notice of the sale of public school land, the county clerk shall record the notice at no charge in the official public records of the county.
(c) The notice of sale is a public record.

Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 12, eff. June 18, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 1, eff. September 1, 2017.

Sec. 51.066. LAND AWARD. (a) The commissioner shall prepare and issue a land award for each tract of sovereign land sold.
(b) Each land award shall be appropriately numbered and shall

be worded in a manner that will constitute a receipt for the first or full payment after it is signed by the commissioner.

(c) One copy of the land award shall be retained in the land office, one copy shall be sent to the purchaser, and one copy shall be sent to the county clerk of the proper county to be recorded at no charge in the official public records of the county.

Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 19, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 2, eff. September 1, 2017.

Sec. 51.067. INFORMATION REQUIRED WITH PAYMENTS. A person who is making a payment of principal, interest, or lease rental on land shall give the name of the original purchaser or lessee and shall sufficiently designate the land.

Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.068. FUND ACCOUNTS. (a) Payments of principal, interest, and lease rental shall be accounted for in a similar form but separate from first payments on land.

(b) The comptroller shall deposit 90 percent of the payments on land received each month to the probable fund to which the payments belong as indicated by the commissioner and shall hold the remaining 10 percent of the payments in the suspense account until the comptroller receives notice from the commissioner indicating the proper fund for the payments. After notice is received, the comptroller shall credit the full amount to the proper fund.

(c) The commissioner and comptroller shall keep an account with each fund according to advices given by them and shall retain the advices as permanent records.

Added by Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 5, eff. September 1, 2015.

Sec. 51.069. DISPOSITION OF PAYMENTS ON PUBLIC SCHOOL LAND. Payments on public school land received by the commissioner, including payments received as interest on the purchase of public school land, shall be transmitted to the comptroller to be credited to the permanent school fund.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.09, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.

Sec. 51.070. UNPAID PRINCIPAL ON PUBLIC SCHOOL LAND SALES. (a) Unpaid and delinquent principal on sales of public school land shall bear interest at a rate set by the board, which principal and interest shall be payable at the times and on such terms as are established by the board.

(b) No patent may be issued for any public school land until all principal, accrued interest, late charges, and other fees and expenses are paid in full.

(c) Any unpaid principal and interest is considered delinquent on the 30th day after the date payment of the principal and interest is due for the obligation.

(d) After the payment of principal and interest becomes delinquent under the obligation, notice of delinquency and subsequent potential forfeiture must be provided by certified mail, return receipt requested, to the last known address of the obligee and must be documented in the records of the land office.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5244, ch. 965, Sec. 4, eff. June 19, 1983; Acts 1995, 74th Leg., ch. 354, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 280, Sec. 13, eff. June 18, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 20, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 21, eff. June 19, 2009.

Sec. 51.071. FORFEITURE OF LAND. (a) If principal, accrued interest, late charges, and other fees and expenses on a sale of sovereign land are not paid when due as required by the terms set by the board, the land is subject to forfeiture by the commissioner by entry on the file containing the papers "Land Forfeited" or similar words, the date of the forfeiture, and the official signature of the commissioner.

(b) After the entry is made on the file, the land and all payments that have been made for it are forfeited to the state, and the land may be resold in accordance with the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5244, ch. 965, Sec. 5, eff. June 19, 1983; Acts 2003, 78th Leg., ch. 280, Sec. 14, eff. June 18, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 22, eff. June 19, 2009.

Sec. 51.072. EFFECT OF FORFEITURE. In cases of forfeiture, the original obligations and reinstatement fees are as binding as if no forfeiture occurred.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 15, eff. June 18, 2003.

Sec. 51.073. CLASSIFICATION AND SALE OF LEASED AND FORFEITED LAND. Before it is sold, the commissioner shall classify and determine the market value of land on which leases have expired and land forfeited to the state.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 16, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 23, eff. June 19, 2009.

Sec. 51.074. REINSTATEMENT OF LAND PURCHASES. (a) If no rights of third persons have intervened, the purchasers or their vendees, heirs, or legal representatives, who claim land that has been forfeited for nonpayment of principal and interest, may have the claim reinstated on written request by paying into the State Treasury the amount of all principal and interest due on the claim up to the date of reinstatement.

(b) The right to reinstate a claim under this section is limited to the last purchaser from the state, or his vendees, heirs, or legal representatives, and must be exercised within six months from the date of the forfeiture.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 17, eff. June 18, 2003.

Sec. 51.075. FORFEITURE OF A DECEASED PURCHASER'S LAND. (a) If a purchaser of land dies, the heirs or legal representatives of the deceased have one year following November 1 after the purchaser's death in which to make payment before the commissioner declares the land to be forfeited.

(b) If the forfeiture is declared by the commissioner within the time period stated in Subsection (a) of this section, it will be set aside on proper proof of death if no rights of third parties have intervened.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.076. LEGAL PROCEEDINGS. None of the provisions of Sections 51.071 through 51.072 and 51.074 through 51.075 of this code shall prevent the state from instituting legal proceedings necessary:

(1) to enforce a forfeiture;

(2) to recover the full amount of principal and interest that may be owed to the state at the time the forfeiture occurred; or

(3) to protect another right to the land.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 18, eff. June 18, 2003.

Sec. 51.077. LIEN. To secure the payment of principal and interest due on a sale of public school land and university land the state has an express lien for the use and benefit of the fund to which the land belongs. The lien is in addition to any right and remedy that the state has for enforcement of the payment of principal and interest due and unpaid, up to and including the period required to reinstate the land award and obligation.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 19, eff. June 18, 2003.

Sec. 51.0771. REINSTATEMENT FEE. (a) A reinstatement fee is due when a forfeited award is reinstated. The reinstatement fee is calculated at one and one-half percent of all amounts delinquent at the time of the reinstatement.

(b) The comptroller must receive the reinstatement fee before the forfeited award is reinstated.

(c) Amounts received in the form of a reinstatement fee are considered proceeds from the sale of permanent school fund land and shall be deposited in the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 280, Sec. 20, eff. June 18, 2003.

Sec. 51.078. TRANSFER OF INDEBTEDNESS. (a) If a person or the Federal Farm Loan Bank, with the consent of the owner of land covered by Section 51.077 of this code, pays to the state the principal and interest due on any obligation given for the land, the commissioner, on written request of the owner, may execute, acknowledge, and

deliver to the person or the Federal Farm Loan Bank a written transfer of the indebtedness held by the state. The written request of the owner shall be acknowledged in the manner required for the conveyance of real estate and shall be accompanied by an affidavit of ownership.

(b) The person or the Federal Farm Loan Bank is subrogated to all the rights, liens, and remedies held by the state to secure and enforce the payment of the principal and interest that was paid to the state.

(c) If the land claimed by a person claiming to be the owner is held under evidence of title that the law or rules of the land office do not authorize to be filed in the land office, the commissioner may admit the owner to be the person that the person or the Federal Farm Loan Bank paying the indebtedness admits to be the owner, and on making this admission the instrument of transfer shall be executed.

(d) None of the provisions of this section shall change any part of the law or rules that apply to the land office with relation to titles to land and issuance of patents.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.079. TRANSFERS GENERALLY. (a) An owner of public school land purchased from the state may sell the land or a definite portion of the land in any size tract.

(b) If land to be sold is separated from another portion of land but is not sufficiently designated by metes and bounds in the papers offered to be filed so that it may be identified with certainty, the commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 21, eff. June 18, 2003.

Sec. 51.080. PERSONAL TRANSFERS. (a) A vendee who obtains through personal transfer a whole survey or a whole portion of a survey purchased from the state as a whole or who obtains through personal transfer a portion of a survey purchased from the state as a

whole or in a quantity less than the whole survey is entitled to become a substitute purchaser directly from the state in the manner provided in this section.

(b) With the approval of the commissioner, the vendee may file in the land office a complete chain of title through personal transfers that have been duly executed and recorded in the counties in which the land or a part of the land is located and shall pay the fees provided by law.

(c) After the papers are filed in the land office, the substituted purchaser shall have his portion of land separated from the other portion of land, if any, on the records of the land office and shall assume and be liable to the state for all unpaid principal and interest due the state for the land conveyed by the deeds that are filed, together with all obligations and penalties attaching to the original purchase.

(d) The obligation of the original purchaser and the obligation of all vendors of the substituted purchaser are enforceable against the substituted purchaser as if he were the original purchaser from the state, and the obligation of the vendor or vendors of the substituted purchaser are canceled.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.081. TRANSFERS OTHER THAN PERSONAL TRANSFER. A person who claims title through a source other than by personal transfer to a definite portion of a survey that is less than the whole survey purchased from the state, with the approval of the commissioner, may have the portion of land that he claims separated from the other portion of the survey on the records of the land office by filing in the land office evidence of claims that may be required by the commissioner and by paying the fees provided by law for papers filed as evidence of the claim or a right to a separation of the area.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.082. LIABILITY OF VENDEE. After a separation of land is made on the records of the land office, the portion that is

separated shall be charged and credited with its pro rata part of the principal and interest due and paid to November 1 preceding the date of the filing of the transfers or other papers.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.083. PATENT ON PART OF A TRACT. (a) If an owner or claimant of land whose ownership or claim is shown on the records of the land office desires a patent on a portion of the whole tract, the owner or claimant, with the approval of the commissioner, may file field notes for the portion of the tract on which the patent is desired, together with the filing fee required by law, and may obtain a patent for the portion of the tract after the full price is paid, together with all fees required by law.

(b) If the ownership of the tract is evidenced by personal transfer, the patent shall be issued to the owner and his assigns, but if the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns who hold title by original purchase or in the name of the person and his assigns who appear on the records to hold title through the last personal transfer.

(c) If a patent is issued in the name of any person other than the legal owner, the patent and the rights granted in the patent inure to the benefit of the legal owner.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.085. TIME FOR PURCHASE OF LAND. Each purchaser of land has the option of paying the purchase price in full at any time, together with all fees, and obtaining a patent for the land.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.086. SALE OF ESCHEATED PERMANENT SCHOOL LAND. (a) All sales of escheated land that is a part of the permanent school fund

must be made at a price that may not be less than the minimum price set by the court under Section 71.107, Property Code, and in the same manner as the sale of public school land as provided by this chapter.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1175, Sec. 33(13), eff. June 19, 2009.

(c) When escheated permanent school land is sold, this state shall reserve all minerals in the land for the permanent school fund.

Added by Acts 1983, p. 3729, ch. 576, Sec. 4, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 24, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 33(13), eff. June 19, 2009.

SUBCHAPTER D. LEASE OF LAND

Sec. 51.121. LEASE OF UNSOLD LAND. (a) Unsold public school land may be leased for any purpose the commissioner determines is in the best interest of the state under terms and conditions set by the commissioner. Improvements on land under this subsection shall not become the property of the state and shall be taxed in the same manner as other private property.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 2

(b) Improvements on land leased under Subsection (a) shall be removed prior to the expiration of the lease unless the commissioner determines it to be in the best interest of the state that removal of the improvements not be required and includes such a provision in the terms and conditions of the lease.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 2

(b) Improvements on land leased under Subsection (a) shall be removed prior to the expiration of the lease unless the commissioner determines it to be in the best interest of the state that removal of the improvements not be required and includes a provision in the terms and conditions of the lease that the improvements on the land shall become property of the state upon termination or expiration of

the lease.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 387, Sec. 14(1), eff. June 15, 2007.

(d) In leases granted under this subchapter, the commissioner may grant the lessee a preference right to purchase the leased premises. In order to grant this preference right, the commissioner must include such a provision in the lease. The provision may provide that the preference right to purchase may be exercised at any time during the term of the lease. If the commissioner does include the preference right to purchase in the lease, the lessee shall have a preference right to purchase the leased premises before the leased premises are made available for sale to any other person. All sales under this subsection must be for a price determined by the board and under any other terms and conditions that the commissioner deems to be in the best interest of the state. The preference right to purchase granted under this subsection is superior to any other preference right to purchase granted under any other section of this code or under any other law. Nothing in this subsection shall be construed to allow the commissioner to grant a preference right to purchase submerged land.

(e) Subject to the provisions of Title 2, Utilities Code, any district created by Section 59, Article XVI, Texas Constitution, that leases unsold public school land for power generation through the use of renewable energy sources, such as wind, solar, or geothermal energy and other sustainable sources, or a district participating in a power generation project using renewable energy sources which is located on unsold public school lands may distribute and sell electric energy generated on public school lands within or without the boundaries of the district and may issue bonds to accomplish such purposes pursuant to Chapter 1371, Government Code, or other applicable law. For any such power generation project which is located on both public lands and private lands, the district may sell outside its boundaries only the pro rata portion of the total amount as is generated on the public lands. All electric energy generated pursuant to this section shall be sold for resale only to utilities authorized to make retail sales under Title 2, Utilities Code, and shall be subject to the solicitation process and integrated resource planning process authorized by that title.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1979, 66th Leg., p. 472, ch. 215, Sec. 1, eff. May 17, 1979; Acts 1983, 68th Leg., p. 3729, ch. 576, Sec. 5, eff. Jan. 1, 1984; Acts 1985, 69th Leg., ch. 624, Sec. 33, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 4, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 991, Sec. 14, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 18.40, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.352, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 22, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 14(1), eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 2, eff. June 15, 2007.

Sec. 51.122. ADVERTISEMENT OF LEASES. Leases under the provisions of this subchapter may be advertised in the manner provided in Section 32.107 of this code.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.123. LEASE APPLICATION. A person who desires to lease land shall submit a written application to the commissioner specifying and describing the particular land he desires to lease.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.124. AWARD OF LEASE. (a) A lease shall be awarded to the highest responsible bidder.

(b) The lease shall be awarded under the rules and in the quantities the commissioner considers to be in the best interest of the state and not inconsistent with the equities of the occupant.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 33, eff. Sept.

1, 1985.

Sec. 51.125. REJECTION OF BID OR OFFER TO LEASE. Any bid or offer to lease may be rejected by the commissioner for fraud, collusion, or other good and sufficient cause before the lease is signed.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 33, eff. Sept. 1, 1985.

Sec. 51.126. NOTIFICATION OF ACCEPTANCE AND EXECUTION OF LEASE. After the applications are received, the commissioner shall give written notification to the successful applicant that his bid or offer to lease is accepted and execute a lease to the applicant in the name and by the authority of the State of Texas.

Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.127. RECORDING MEMORANDUM OF LEASE. (a) The commissioner shall prepare a descriptive memorandum of the lease at the time the lease is executed and deliver the lease and the memorandum to the lessee.

(b) The lessee shall deliver the memorandum of the lease to the clerk of the county in which the land is located.

(c) The clerk shall record the memorandum in the county clerk's office.

(d) On payment of the recording fee, the clerk shall deliver the recorded memorandum to the lessee. The lessee shall provide to the commissioner a certified copy of the recorded memorandum.

Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 3, eff. June 15, 2007.

Sec. 51.129. LIEN. (a) During the continuance of the lease and after forfeiture, the state has a lien on all property owned by the lessee which is located on the leased premises to secure payment of rent due.

(b) The lien is superior to all other liens.

(c) A reservation of the lien in the lease is not essential to preserve its validity.

Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.131. SOIL AND WATER CONSERVATION PLANS. (a) For each lease issued under this subchapter for agricultural or grazing purposes, the commissioner may require the lessee to implement a soil and water conservation plan approved by the commissioner. The commissioner, in reviewing a plan, and the lessee, in implementing a plan, may be assisted by the United States Department of Agriculture Natural Resources Conservation Service.

(b) The commissioner by rule shall adopt a procedure for reviewing and approving soil and water conservation plans required by Subsection (a) of this section.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 34, eff. Sept. 1, 1985.
Amended by Acts 2003, 78th Leg., ch. 280, Sec. 23, eff. June 18, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 15.001, eff. September 1, 2023.

SUBCHAPTER E. SALE AND LEASE OF VACANCIES

Sec. 51.171. PURPOSE; APPLICATION OF OTHER LAW. (a) This subchapter controls the purchase and lease of vacant land and the authority of the commissioner and the board to:

(1) determine whether a vacancy exists; and

(2) sell and lease vacant land.

(b) To the extent a provision of this subchapter conflicts with another law relating to vacant land or Chapter 2001, Government Code, this subchapter controls.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.172. DEFINITIONS. In this subchapter:

(1) "Administratively complete" means a vacancy application that complies with Section 51.176 and any rule adopted by the commissioner regarding the filing of a vacancy application.

(1-a) "Applicant" means any person, including a good-faith claimant, who files a vacancy application.

(1-b) "Application commencement date" means:

(A) the date, as designated in the commissioner's notice to the applicant required by Section 51.177(b); or

(B) the date, as designated in the commissioner's notice to the applicant required by Section 51.177(d), indicating that any deficiency in the vacancy application has been resolved.

(2) "Good-faith claimant" means a person who, on the application commencement date:

(A) occupies or uses or has previously occupied or used, or whose predecessors in interest in the land claimed to be vacant have occupied or used, the land or any interest in the land for any purposes, including occupying or using:

(i) the surface or mineral estate for any purposes, including exploring for or removing oil, gas, sulphur, or other minerals and geothermal resources from the land;

(ii) an easement or right-of-way; or

(iii) a mineral royalty or leasehold interest;

(B) has had, or whose predecessors in interest have had, the land claimed to be vacant enclosed or within definite boundaries recognized in the community and in possession under a chain of title for a period of at least 10 years with a good-faith belief that the land was included within the boundaries of a survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the land if the land were actually located within the boundaries of the survey or surveys;

(C) is the owner of land:

(i) that adjoins the land claimed to be vacant; and

(ii) for which no vacancy application has been previously filed; or

(D) holds title under a person described by Paragraph (A), (B), or (C) or is entitled to a distributive share of a title acquired under an application filed by a person described by Paragraph (A), (B), or (C).

(3) "Interest" means any right or title in or to real property, including a surface, subsurface, or mineral estate. "Interest" includes a right or title described as follows:

(A) a fee simple title;

(B) a determinable fee or other leasehold or mineral interest created under a conveyance instrument, including a mineral lease;

(C) a mineral royalty, nonparticipating royalty, or overriding royalty interest described by Section 51.194(c);

(D) a life estate;

(E) a remainder or reversionary interest; or

(F) a secured interest under a lien.

(4) "Necessary party" means:

(A) an applicant or good-faith claimant whose present legal interest in the surface or mineral estate of the land claimed to be vacant may be adversely affected by a vacancy determination;

(B) a person who asserts a right to or who claims an interest in land claimed to be vacant;

(C) a person who asserts a right to or who claims an interest in land adjoining land claimed to be vacant as shown in the records of the land office or the county records, including tax records, of any county in which all or part of the land claimed to be vacant is located;

(D) a person whose name appears in the records described by Paragraph (C); or

(E) an attorney ad litem appointed under Section 51.180.

(5) "Survey report" means a written report of a survey conducted by a licensed state land surveyor or a county surveyor of the county in which a majority of the land claimed to be vacant is located.

(6) "Vacancy" means an area of unsurveyed public school land that:

(A) is not in conflict on the ground with land

previously titled, awarded, or sold;

(B) has not been listed on the records of the land office as public school land; and

(C) was not, on the application commencement date:

(i) subject to an earlier subsisting application;

(ii) subject to a vacancy application denied with prejudice;

(iii) the subject of pending litigation relating to state ownership or possession of the land; or

(iv) subject to a previous vacancy application that has been finally adjudicated by the commissioner or a court of this state or the United States.

(7) "Vacancy application" means a form submitted to the commissioner by an applicant to:

(A) initiate a determination by the commissioner whether land claimed to be vacant is vacant; and

(B) purchase or lease vacant land.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 25, eff. June 19, 2009.

Sec. 51.173. DISPOSITION OF VACANT LAND. (a) Vacant and unsurveyed public school land shall be located, sold, and leased under this subchapter, except:

(1) submerged lands within tidewater limits;

(2) all islands, flats, and emergent lands within tidewater limits;

(3) natural lakes; and

(4) riverbeds, including channels and islands in riverbeds, above tidewater limits.

(b) This subchapter does not alter or diminish the public domain status of the surface estate of riverbeds and channels and islands in riverbeds that are located above tidewater limits.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1,

2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.174. GENERAL POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner may:

(1) delegate responsibility for implementing this subchapter;

(2) perform any other act necessary to administer and implement the purposes of this subchapter, including entering into a contract with a private party to provide the notices required under this subchapter; and

(3) terminate without prejudice a vacancy application if an applicant fails to comply with this subchapter or a rule adopted under this subchapter.

(b) The commissioner may grant an extension of time to comply with a requirement under this subchapter. For each application, the commissioner may grant not more than a total of 30 days in extensions of time to comply with one or more requirements of this subchapter, excluding any extensions of time related to the survey report under this subchapter. The commissioner may grant not more than 90 days in extensions of time to comply with a requirement related to the survey report under this subchapter.

(c) The commissioner shall adopt rules necessary and convenient to administer this subchapter.

(d) The commissioner shall advise the board relating to the market value of the surface, mineral, and leasehold estates of vacant land.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 24, eff. June 18, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.175. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall set the terms and conditions for each sale and lease of a

vacancy.

(b) The board shall adopt rules governing the terms and conditions for the sale and lease of a vacancy. The rules shall be adopted and amended as necessary to be consistent with real property law of this state and other applicable law.

(c) The board may adopt rules governing mineral classification, royalty reservations, and awards of royalty reservations and preferential rights to an applicant or to a good-faith claimant in addition to the provisions prescribed by this subchapter.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 25, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.176. VACANCY APPLICATION; FILING. (a) To purchase or lease land claimed to be vacant, a person must file a vacancy application on a form prescribed by the commissioner. A completed application must include:

(1) a description of the land claimed to be vacant that is sufficient to locate the land on the ground;

(2) a written statement indicating whether the applicant seeks to purchase the land claimed to be vacant or obtain a mineral lease on the land or both purchase the land and obtain a mineral lease on the land;

(3) a list, in a format prescribed by the commissioner, containing the name and last known mailing address of each necessary party whose name appears in the records described by Section 51.172(4)(C);

(4) an affidavit executed by the applicant affirming that the applicant conducted a diligent search of all the records described by Section 51.172(4)(C) in preparing the list required by Subdivision (3);

(5) if applicable, a statement of the basis for and documentary proof for an assertion of good-faith-claimant status;

(6) at the applicant's discretion:

(A) a survey report, including:

(i) the field notes describing the land and the

lines and corners surveyed; and

(ii) a plat depicting the results of the survey; or

(B) an abstract of title to any land that adjoins the land claimed to be vacant; and

(7) any other information required by the commissioner.

(b) The applicant must file the original and a duplicate copy of the vacancy application with the county clerk of each county in which all or part of the land claimed to be vacant is located.

(c) The county clerk shall mark the exact date and hour of filing on the original and a duplicate copy of the vacancy application and shall return a marked copy to the person filing the application. The original shall be recorded in the official public records of the county. The failure to record a vacancy application as provided by this subsection does not affect the validity of the application filing.

(d) Not later than the fifth day after the date an applicant files the vacancy application with the county clerk, the applicant shall file a duplicate copy of the marked copy received from the county clerk with the county surveyor of each county in which all or part of the land claimed to be vacant is located if that county has a county surveyor.

(e) Priority among vacancy applications covering the same land claimed to be vacant is determined by the earliest time of filing indicated by the date and hour marked on the application by the county clerk.

(f) The applicant shall submit to the commissioner two duplicate copies of the marked copy that has been file-stamped by the county clerk not later than the 30th day after the date the vacancy application is filed with the county clerk. The commissioner shall mark the date the two duplicate copies are received on each copy, assign a file number to the vacancy application, and return a marked duplicate copy containing the file number to the applicant.

(g) The applicant shall include a filing fee set by the commissioner in an amount of not less than $100.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17,

2005.

Acts 2007, 80th Leg., R.S., Ch. 682 (H.B. 1679), Sec. 1, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 3, eff. September 1, 2017.

Sec. 51.177. PROCESSING VACANCY APPLICATION. (a) Not later than the 45th day after the date the commissioner accepts the duplicate copies as properly filed by the applicant as provided by Section 51.176(f), the commissioner shall:

(1) determine whether the vacancy application is administratively complete; and

(2) provide to the applicant the notice required by this section.

(b) If the commissioner determines that the vacancy application is administratively complete, the commissioner shall provide written notice to the applicant that:

(1) informs the applicant that the application is administratively complete;

(2) states the application commencement date; and

(3) states the amount of any deposit required under Section 51.178 and the date by which the applicant must pay the deposit.

(c) If the commissioner determines that the vacancy application is not administratively complete, the commissioner shall provide written notice to the applicant that:

(1) informs the applicant that the application is not administratively complete;

(2) provides a list of any deficiencies the applicant must resolve; and

(3) states a reasonable period of not more than 30 days from the date of the notice to resolve any listed deficiencies.

(d) Not later than the 30th day after the date provided under Subsection (c)(3) to resolve any deficiencies, the commissioner shall determine whether the vacancy application is administratively complete. If the commissioner determines that the vacancy application is administratively complete, the commissioner shall provide the notice required by Subsection (b). If the commissioner determines that the vacancy application is not administratively complete, the commissioner shall:

(1) dismiss the application without prejudice; and

(2) provide written notice to the applicant informing the applicant that the application is not administratively complete and is dismissed without prejudice.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 26, eff. June 19, 2009.

Sec. 51.178. DEPOSIT. (a) The commissioner may recover from the applicant state funds expended in evaluating and investigating the application, providing notice, preparing a survey, appointing an attorney ad litem, and conducting hearings under this subchapter.

(b) The commissioner shall require the applicant to submit a deposit in an amount sufficient to pay the reasonable costs under Subsection (a) not later than the 30th day after the application commencement date.

(c) If the amount deposited is insufficient, the commissioner shall require a reasonably necessary supplemental deposit. If a supplemental deposit is required, the applicant must make the deposit not later than the 30th day after the date the commissioner requests the supplemental deposit.

(d) An applicant may not challenge or appeal the amount of the required deposits, and the applicant's refusal or failure to make the required deposits in the period prescribed by this section terminates the application without prejudice.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 33.01, eff. Jan. 11, 2004; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 33.02, eff. Jan. 11, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.179. DISPOSITION OF DEPOSITS. (a) The commissioner shall deposit all initial and supplemental deposits received under this subchapter to the credit of a separate trust account in the state treasury. The comptroller, on the commissioner's order, shall make disbursements from that account for purposes authorized by this subchapter.

(b) After proceedings on a vacancy application are concluded and all expenditures authorized under this subchapter are paid, the commissioner shall provide to the applicant a complete statement of all deposits and expenditures and shall remit to the applicant any balance remaining from the deposit or supplemental deposits made by the applicant.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.180. ATTORNEY AD LITEM. (a) If the applicant cannot provide evidence to the commissioner to establish the applicant's ownership of all interests as defined by Section 51.172 in the land surrounding the land claimed to be vacant, the commissioner shall investigate the ownership interests of the land claimed to be vacant and the surrounding land to ensure that all necessary parties have been identified and located.

(b) The investigation must conclude not later than the 60th day after the application commencement date. If the investigation yields any evidence that a necessary party may not have been identified and located, as determined by the commissioner, the commissioner shall, not later than the 30th day after the conclusion of the investigation, appoint an attorney ad litem to identify and locate all necessary parties.

(c) The commissioner shall provide the attorney ad litem with all documents submitted by the applicant and the results of the investigation to identify necessary parties, and the attorney ad litem shall search public land records and other available records to identify and locate necessary parties.

(d) If any necessary party cannot be located, the attorney ad

litem shall represent the interests of that necessary party.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.
Acts 2007, 80th Leg., R.S., Ch. 682 (H.B. 1679), Sec. 2, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 27, eff. June 19, 2009.

Sec. 51.181. NOTICE TO NECESSARY PARTIES. (a) Not later than the 30th day after the application commencement date, and at any time after that date that the commissioner considers it necessary to notify an identified necessary party, the commissioner shall provide to each necessary party identified and located as of that date a written notice that:

(1) informs the necessary party that a vacancy application has been filed;

(2) states the application commencement date; and

(3) includes:

(A) a copy of the vacancy application and any attachments; and

(B) a form for requesting subsequent notices regarding the application.

(b) If the attorney ad litem is unable to locate an identified necessary party, the attorney ad litem shall notify the commissioner in writing, and the commissioner shall provide notice required under this section by publication in the same manner prescribed by the Texas Rules of Civil Procedure.

(c) Except as provided by Subsection (d), a necessary party is not entitled to notices subsequent to the notice provided under Subsection (a) unless the party requests subsequent notices.

(d) The commissioner shall notify each necessary party of a final order issued under Section 51.188.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 28, eff. June 19, 2009.

Sec. 51.182. FILING OF EXCEPTIONS TO APPLICATION. (a) Not later than the 60th day after the date of the commissioner's notice under Section 51.181(a), a necessary party may file an exception to the vacancy application, any documentation attached to the application, or any other documents or public records that may be used by the commissioner to make a determination.

(b) A necessary party must:

(1) file an exception with the land office; and

(2) provide a copy of the filing to each necessary party that requested subsequent notice as provided by Section 51.181.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.183. INVESTIGATION. (a) The commissioner shall conduct an investigation of the vacancy application.

(b) The investigation shall include:

(1) an evaluation of the vacancy application;

(2) a determination that the vacancy application was filed as provided by Section 51.176; and

(3) a review of public records at the land office relating to the land claimed to be vacant.

(c) The investigation may include a review of:

(1) any survey conducted by a licensed state land surveyor or by the county surveyor of a county in which all or part of the land claimed to be vacant is located; or

(2) any documents or public records necessary to determine whether a vacancy exists, including a review of public records relating to the land claimed to be vacant at:

(A) the state archives; or

(B) any county in which all or part of the land claimed to be vacant is located.

(d) An investigation may include a survey requested by the commissioner under Section 51.184 or a surveyor's report as provided by Section 51.185.

(e) The commissioner shall record the names of the persons consulted, the documents and surveys reviewed, and the relevant law and other materials used in the investigation.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.184. COMMISSIONER'S SURVEY. (a) To investigate a vacancy application under Section 51.183, the commissioner may require a survey. If the commissioner requires a survey, the commissioner shall appoint a licensed state land surveyor who is not associated with the vacancy application to prepare a report as provided by Section 51.185. The commissioner may limit the scope of the work performed by the surveyor.

(b) A necessary party may observe a survey conducted under this section. A survey will not be delayed to accommodate a necessary party who provides notice to the commissioner that the party intends to observe the surveyor conducting the survey.

(c) The commissioner shall mail a notice of intention to survey to each necessary party not later than the 30th day before the date the surveyor begins work. The notice must contain:

(1) the proposed starting date of the survey;

(2) the name, address, and telephone number of the surveyor; and

(3) a statement informing the necessary party that any necessary party may observe the field work of the surveyor conducting the survey.

(d) The fees and expenses paid for the survey are the same as those provided by law. If the fees and expenses are not provided by law, the commissioner shall contract for fees and expenses reasonably necessary for the scope of the required work. Contracts under this

subsection:

(1) must include hourly rates, categories of reimbursable expenses, and an estimated completion date; and

(2) may include other expenses the commissioner considers reasonable.

(e) The commissioner shall adopt rules regarding the removal of an appointed surveyor on the grounds of bias, prejudice, or conflict. The rules must permit the commissioner to remove an appointed surveyor on the commissioner's own motion or on the motion of a necessary party.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.185. SURVEYOR'S REPORT. (a) Not later than the 120th day after the date a surveyor is appointed under Section 51.184, the surveyor shall file a written report of the survey, the field notes describing the land and the lines and corners surveyed, a plat depicting the results of the survey, and any other information required by the commissioner. The commissioner may extend the time for filing the report as reasonably necessary.

(b) The survey report must also contain:

(1) the name and last known mailing address of:

(A) each person who has possession of the land described in the vacancy application; and

(B) each person determined by the surveyor to have an interest in the land; and

(2) all abstract numbers associated with surveys of land adjoining the land claimed to be vacant.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.186. COMPLETION OF SURVEY. (a) The commissioner shall serve a true copy of the survey report filed by the surveyor on each necessary party, including those named in the survey report, by certified mail, return receipt requested, not later than the 30th business day after the date the survey report is filed with the land office.

(b) Any necessary party may file exceptions to the surveyor's report not later than the 30th day after the date the survey report is mailed to the necessary party by the commissioner. Any exceptions must be filed with the land office and a copy must be sent by the party filing the exception to each necessary party who has requested subsequent notice under Section 51.181.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.187. HEARING. (a) If the commissioner has not issued a final order with a finding of "Not Vacant Land" on or before the first anniversary of the application commencement date and one or more exceptions have been filed under Section 51.182(a) or 51.186(b), the commissioner shall order a hearing to determine if a vacancy exists. A hearing under this subchapter:

(1) shall be held not later than the 60th day after the date the hearing is ordered;

(2) shall be conducted as a contested case hearing subject to Chapter 2001, Government Code; and

(3) may be waived by written agreement of all necessary parties and the commissioner.

(b) Not later than the 30th day after the date a hearing is ordered under Subsection (a), the commissioner shall provide notice of the hearing date to each necessary party.

(c) Not later than the 60th day after the date of the hearing, the commissioner shall enter a final order as provided by Section 51.188.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 29, eff. June 19, 2009.

Sec. 51.188. COMMISSIONER'S FINAL ORDER. (a) At any time during or after an investigation of or hearing regarding a vacancy application, the commissioner may determine that land claimed to be vacant is not vacant and issue a final order with a finding of "Not Vacant Land" or an order finding a vacancy if a hearing is not required under Section 51.187.

(b) After a hearing conducted under Section 51.187, the commissioner shall issue a final order with a finding of "Not Vacant Land" or issue an order finding a vacancy exists. Not later than the 15th day after the date the final order is issued, the commissioner shall notify each necessary party of the final order by providing each party a copy of the final order.

(c) A final order finding a vacancy exists must contain:

(1) a finding by the commissioner that the land claimed to be vacant is unsurveyed public school land that is not in conflict with land previously titled, awarded, or sold by the state as established by:

(A) clear and convincing proof for an application to which an exception has been filed as provided by Section 51.182; or

(B) a preponderance of the evidence for an application to which no exceptions have been filed as provided by Section 51.182;

(2) the field note description used to determine the vacancy, which must be sufficient to locate the land on the ground;

(3) an accurate plat of the land that is:

(A) consistent with the field notes; and

(B) prepared by a licensed state land surveyor or a county surveyor of the county in which a majority of vacant land is located; and

(4) any other matters required by law or as the commissioner considers appropriate.

(d) In determining the boundaries and size of a vacancy, the commissioner is not restricted to a description of the land claimed to be vacant that is provided by the applicant, the surveyor, or any

other person. The commissioner shall adopt the description of a vacancy that best describes the land found to be vacant and that is consistent with the investigation under this subchapter.

(e) The commissioner shall attach to the commissioner's final order a document entitled "Notice of Claim of Vacancy." The commissioner shall prescribe the contents of the notice. The commissioner shall file the notice with the county clerk and any county surveyor of each county in which all or part of the vacancy is located.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 30, eff. June 19, 2009.

Sec. 51.189. APPEAL. (a) A final order with a finding of "Not Vacant Land" under Section 51.188 may not be appealed. The final order is conclusive regarding the land described in the vacancy application or the land investigated by the commissioner as a result of the vacancy application.

(b) A final order finding a vacancy exists is subject to appeal by a necessary party that has standing to appeal under Section 51.192. The district court in the county in which a majority of the vacant land is located has jurisdiction of an appeal under this subchapter. A necessary party must file an appeal not later than the 30th day after the date the commissioner's final order is issued. All necessary parties must be provided notice of an appeal under this section by the party filing the appeal.

(c) A person whose predecessor in title was bound by the outcome of an appeal is bound to the same extent the predecessor in title would be bound if the predecessor in title continued to hold title.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17,

2005.

Sec. 51.190. SCOPE OF REVIEW. In an appeal of the commissioner's final order determining that a vacancy exists, the district court shall conduct a trial de novo.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.191. ISSUES REVIEWABLE. The court may review the commissioner's declaration of good-faith-claimant status only in conjunction with a review of a final order determining that a vacancy exists.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.192. STANDING TO APPEAL. A person may appeal the commissioner's final order determining that a vacancy exists if the person:

(1) is a necessary party;

(2) has a present legal interest in the surface or mineral estate at the time a vacancy application is filed; or

(3) acquires a legal interest before the date of the commissioner's final order.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.193. APPLICATION FOR AND DETERMINATION OF GOOD-FAITH-CLAIMANT STATUS. (a) A necessary party may apply for good-faith-claimant status not later than the 90th day after the date the commissioner issues a final order finding that a vacancy exists.

(b) The application must include certified copies of the applicable county records supporting the good-faith claimant's status.

(c) Not later than the 120th day after the date the commissioner issues a final order finding that a vacancy exists, the commissioner shall declare whether a necessary party is a good-faith claimant.

(d) A person who is denied good-faith-claimant status may:

(1) request a hearing by the commissioner; or

(2) appeal the denial as part of any appeal of a final order finding that a vacancy exists.

(e) If the commissioner grants a hearing, the commissioner shall:

(1) determine the scope of the hearing;

(2) provide timely notice of the time and place of the hearing to each necessary party; and

(3) provide each necessary party an opportunity to be heard.

(f) A declaration of good-faith-claimant status grants a preferential right to the claimant to purchase or lease the land or an interest in the land as provided by Section 51.194. The declaration does not confer any other rights.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.194. PREFERENTIAL RIGHT OF GOOD-FAITH CLAIMANT. (a) A good-faith claimant who has been notified by the commissioner that a vacancy exists under this subchapter has a preferential right to purchase or lease the interest claimed in the land before the land was declared vacant. The preferential right may be exercised after a final judicial determination or after the commissioner's final order and the period for filing an appeal has expired.

(a-1) If a good-faith claimant does not apply to purchase or

lease the interest before the later of the 121st day after the date the commissioner's order becomes final or the 60th day after the date of the final judicial determination of an appeal under this subchapter, then the good-faith claimant's preferential right expires.

(a-2) If a good-faith claimant does not close a transaction to purchase or lease the interest before the 121st day after the date the terms and conditions are determined by the board, then the good-faith claimant's preferential right expires.

(b) A good-faith claimant may purchase or lease the vacancy by submitting a written application to the board.

(c) A good-faith claimant that owns a separate surface interest, a contractual right to a mineral or leasehold interest, a leasehold interest, or a royalty interest in the land occupied or used that is found to be part of or to include a vacancy is entitled to purchase or lease that same interest in the portion of the land determined to be vacant at the price and under the conditions set by the board and in accordance with the law in effect on the date the application is filed.

(d) If the interest purchased under Subsection (c) is less than a permanent interest, then:

(1) the interest purchased is limited to the duration of a deed, contract, instrument, or lease in existence before the filing of the vacancy application and subject to a division of the amount of the royalty between the state and the existing royalty owners, provided that the state retains at least one-half of the amount of the royalty interest; and

(2) the interest and any remaining mineral interest, including all executory rights, vest with the state at the expiration of the deed, contract, instrument, or lease.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 31, eff. June 19, 2009.

Sec. 51.195. PURCHASE OR LEASE BY APPLICANT. (a) If no good-faith claimant exists or if no good-faith claimant exercises a

preferential right within the applicable period, the applicant has a preferential right to purchase or lease the land determined to be vacant on or before the 60th day after the date:

(1) the commissioner determines that no good-faith claimant exists; or

(2) the period for a good-faith claimant to exercise a preferential right to purchase or lease the land determined to be vacant expires.

(b) If a good-faith claimant exercises the claimant's preferential right in the land determined to be vacant, the applicant has a preferential right to either:

(1) an award by the board of a perpetual 1/32 nonparticipating royalty of the full mineral interest of the vacancy; or

(2) a preferential right to purchase or lease any remaining interest in the land determined to be vacant.

(c) If a lease described by Section 51.194(d)(1) exists on the land determined to be vacant, the applicant's 1/32 nonparticipating royalty interest, as described by Subsection (b)(1), shall be taken from the state's royalty interest as reserved under Section 51.194(d)(1) for the duration of the lease, provided that the applicant's share for the duration of the lease may never equal more than the interest retained by the state.

(d) An applicant who exercises a preferential right under Subsection (a) or (b)(2) may purchase or lease the land or an interest in the land:

(1) at the price set by the board;

(2) subject to the royalty reservations provided by the board; and

(3) in accordance with the law in effect on the date the application is filed.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

SUBCHAPTER F. PATENTS

Sec. 51.241. ISSUANCE OF PATENT. The commissioner shall issue a patent when the records of his office reflect that full payment for

land has been made where required and fees that are due on the land have been paid to the land office and have not been withdrawn, including the fee for recording the patent in the county or counties in which the land is located.

Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.242. PATENT FEES. When a person applies for a patent, he shall pay to the land office in addition to all other required payments a fee set by the commissioner in an amount not less than $1 for each county in which all or a part of the land is located and shall give the name and address of the owner or agent.

Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, Sec. 21(h), eff. Sept. 1, 1983.

Sec. 51.243. REQUISITES OF A PATENT. (a) Each patent for land from the state shall be issued in the name and by authority of the state under the state seal and the land office seal and shall be signed by the governor and countersigned by the commissioner.

(b) Before the patent is delivered to the person who is entitled to it, it shall be registered in the land office patent book.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 35, eff. Aug. 30, 1993.

Sec. 51.244. DELIVERY OF PATENT. (a) When a patent is ready for delivery, the commissioner shall send it, together with the check for payment of the fee required by Section 51.242 of this code and the name and address of the owner or his agent, by certified mail to the clerk of the proper county.

(b) On receiving the patent, the clerk shall record it and shall send the patent, together with the name and address of the owner or his agent and the remaining recording fees, by certified

mail to the clerk of another proper county until the patent has been recorded in each county in which all or part of the land is located.

(c) After the patent is recorded in all the proper counties, it shall be sent by certified mail to the proper party.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 354, Sec. 2, eff. Aug. 28, 1995.

Sec. 51.245. DECEASED PATENTEE. A patent issued in the name of a person who is deceased at the time the patent is issued conveys and secures valid title to the heirs or assignee of the deceased person.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.246. ACQUISITION OF DEED OF ACQUITTANCE TO EXCESS ACREAGE. (a) If the area of a tract of land that is titled or patented exceeds the quantity provided in the title or patent and if under the existing law the title to all or a part of the tract may be affected by the existence of the excess acreage, the person who owns the survey or portion of the survey or has an interest in it may pay for the total excess acreage in the survey or the total excess in a given tract out of the patented or titled survey at the price fixed by the board.

(b) Any person who owns an interest in a titled or patented survey or any portion of a titled or patented survey in which excess acreage is located and who desires to pay for the excess acreage shall file with the commissioner a request for a determination of market value by an appraiser with corrected field notes in the form provided by law, together with a sworn statement of facts relating to his right to purchase and other evidence of his right to purchase which may be required by the commissioner. The corrected field notes shall describe the patented tract, and if purchasing excess in a portion of a tract, shall include a description of the portion in which the applicant is making application to purchase excess.

(c) If it appears that excess acreage actually exists and that the applicant is entitled to obtain it under the law, the commissioner shall execute a deed of acquittance covering the land in

the name of the original patentee or his assignees with a mineral reservation or with no mineral reservation accordingly as may have been the case when the survey was titled or patented.

(d) The transfer shall inure distributively to the benefit of the lawful owners of the land in proportion to their holdings.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 26, eff. June 18, 2003.

Sec. 51.247. PATENTS FOR LAND THAT CANNOT BE PATENTED BY OTHER METHODS. (a) Any headright survey, homestead donation, preemption survey, scrip survey, or other survey awarded or sold before August 20, 1931, which has been held and claimed in good faith by a person for 10 years before the date of application for a patent but which cannot be patented under existing law may be patented on payment to the commissioner of the purchase price as set by the board.

(b) The patent shall be issued to the owner of record as shown in the records of the land office and shall inure distributively to the legal owners of the land.

(c) If a tract of school land has been occupied by mistake as part of another tract, the occupant shall have a preference right for a period of six months after discovery of the mistake to purchase the land at the same price paid or contracted to be paid for the land actually conveyed to him.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.248. DOUBTFUL CLAIM. If it appears to the commissioner from the records of his office or from information given to him under oath that there is an illegality in a claim, the commissioner, if he considers it necessary, shall refer the matter to the attorney general, and the attorney general's written decision is sufficient authority for the commissioner to issue or withhold the patent.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.249. CONFLICTING SURVEYS. If conflicts exist between surveys, the commissioner shall issue patents to the portions of the surveys that are free from conflict.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.250. CONFLICTING TITLE. (a) If a patent to land is issued by mistake on any valid claim for land and is afterwards found to be in conflict with an older title, the owner of the patent or any part of the land embraced by the patent which is in conflict may return the patent to the commissioner for cancellation. If the owner of the land that is the subject of the conflict cannot obtain the patent, he shall return to the commissioner legal evidence of his title to the patent or part of the patent.

(b) The person returning the patent or filing the evidence also shall make and file with the commissioner an affidavit stating that he is still the owner of the land and has not sold or transferred it.

(c) If the land office records or a duly certified copy of a judgment of a court of competent jurisdiction that has adjudicated the title reflects that a conflict exists, the commissioner may cancel the patent or the part of a patent that appears to belong to the party making the application.

(d) In cases where a survey in a block or system of surveys conflicts on one side or more, and omits an unpatented strip on another side or sides due to the patent being issued on an erroneous subsequent survey not conforming to the original and recognized pattern for the block or system, the commissioner, at the request of all parties owning under said patent, may cancel said patent and issue a corrected patent that shall conform to said block or system of surveys. In the event that excess acreage exists, a deed of acquittance shall be procured, as provided by law, and will be issued simultaneously with the corrected patent. This Subsection (d) shall not adversely affect the rights of any party in or entitled to possession of land affected by this subsection, but merely clarifies that the ownership in any land in a block or system of surveys exists as if the patent had been correctly issued on the date the erroneous patent was issued. The rights of a claimant under applicable law shall be construed as if the corrected patent had been originally

issued.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2239, ch. 535, Sec. 1, eff. Aug. 31, 1981.

Sec. 51.251. PARTIAL CONFLICT OF TITLE. If there is only a partial conflict of title under a patent, the commissioner in the manner provided in Section 51.250 of this code may cancel any patent presented to him and issue a patent to the applicant for the portion of the land that is covered by his original patent but that is not in conflict with the older title if the area can be determined from the field notes.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.252. REFUND OF PURCHASE MONEY. (a) If a patent cannot be issued for land because of a conflict, erroneous survey, or illegal sale or if a patent is issued for land and is later canceled, the comptroller, on proper proof, may issue his warrant to the proper parties for amounts paid in good faith to the State Treasury for taxes, lease payments, or purchase payments on this land.

(b) Proof of these good-faith payments may be shown by the certificate of the commissioner if the records of the land office show that a patent cannot be issued because of conflict, erroneous survey, or illegal sale or that a patent has been canceled.

(c) The provisions of this section do not apply to surveys on which the errors may be corrected.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.253. CORRECTED PATENT. (a) An owner of land in one or more patented surveys may apply to the General Land Office for a corrected patent to correct scriveners' errors or obvious errors in the field note description of the original patent as determined by the commissioner. The application must clearly identify the error in

the original patent.

(b) The General Land Office may adopt rules relating to the implementation and operation of this section, including rules requiring the payment of reasonable filing and processing fees by an applicant for a corrected patent.

Added by Acts 1983, 68th Leg., p. 752, ch. 182, Sec. 1, eff. Sept. 1, 1983.

SUBCHAPTER G. EASEMENTS

Sec. 51.291. GRANTS OF EASEMENTS. (a) Except as provided by Subsection (b), the commissioner may execute grants of easements or other interests in property for rights-of-way or access across, through, and under unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, the state-owned riverbeds and beds of navigable streams in the public domain, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for:

(1) telephone, telegraph, electric transmission, and power lines;

(2) oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature;

(3) irrigation canals, laterals, and water pipelines;

(4) roads; and

(5) any other purpose the commissioner considers to be in the best interest of the state.

(b) Consent to conduct an activity that would disturb or remove marl, sand, gravel, shell, or mudshell on or near the surface of a state-owned riverbed or the bed of a navigable stream in the public domain may be granted only under Chapter 86, Parks and Wildlife Code.

(c) Money received by the land office for the grants of easements through and under the state-owned riverbeds and beds of navigable streams in the public domain shall be deposited in a special fund account in the state treasury to be used for the removal or improvement of unauthorized structures on permanent school fund land. This fund does not impose a duty or obligation on the state to

accept ownership of, remove, or improve unauthorized structures on permanent school fund land.

Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 35, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 991, Sec. 15, eff. Sept. 1, 1993.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 4, eff. June 15, 2007.

Sec. 51.292. EASEMENTS AND LEASES FOR CERTAIN FACILITIES. The commissioner may execute grants of easements or leases for electric substations, pumping stations, loading racks, and tank farms, and for any other purpose the commissioner determines to be in the best interest of the state, to be located on state land other than land owned by The University of Texas System.

Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 5, eff. June 15, 2007.

Sec. 51.295. CONDITIONS FOR EASEMENT. Telephone, telegraph, electric transmission, powerline, and pipeline right-of-way easements and easements or rights-of-way for irrigation canals, laterals, and water pipelines shall be executed on terms to be determined by the commissioner.

Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 7, eff. June 15, 2007.

Sec. 51.296. TERM OF EASEMENTS. (a) The term for easements or leases granted under Sections 51.291 and 51.292 may be for any term the commissioner deems to be in the best interest of the state.

(b) The commissioner by rule shall set the amount of and shall collect money for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in the special fund account described in Section 52.297 of this code.

(d) A right-of-way easement for a pipeline connecting onshore storage facilities with the offshore facilities of a deepwater port, as defined by the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), may be granted for a term coincident with the term of the license issued by the secretary of transportation pursuant to the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), and the easement may be renewed for additional terms of up to 10 years coincident with the term for each renewal of the license.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 37, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 7, eff. Aug. 31, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 8, eff. June 15, 2007.

Sec. 51.297. RECORDING EASEMENTS. (a) Each easement granted under this subchapter shall be recorded in the county clerk's office of the county in which the land is located, and the recording fee shall be paid by the person who obtains the easement.

(b) The person who obtains an easement under this subchapter shall furnish to the commissioner a certified copy of the easement.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 12, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 12, eff. Aug. 31, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 9, eff. June 15, 2007.

Sec. 51.299. FEES FOR CERTAIN FACILITIES. The rent to be charged for an easement or lease for an electric substation site, pumping station, loading rack, tank farm, or road or for an easement

for a purpose not specifically listed by Section 51.291 or 51.292 but granted in the best interest of the state shall be an amount agreed to between the lessee and the commissioner.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 38, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 10, eff. June 15, 2007.

Sec. 51.2995. WAIVER OR REDUCTION OF EASEMENT FEES IN CERTAIN CIRCUMSTANCES. The commissioner may waive or reduce an easement fee if the easement granted is to improve the infrastructure of the land, including production and transportation of alternative or renewable energy resources.

Added by Acts 2003, 78th Leg., ch. 280, Sec. 27, eff. June 18, 2003.

Sec. 51.300. DISPOSITION OF INCOME. Income received by the commissioner under this subchapter from public school land shall be credited to the permanent school fund. Other income received by the commissioner on other land under this subchapter shall be credited to the General Revenue Fund.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 11, eff. June 15, 2007.

Sec. 51.301. INTEREST ON PAST-DUE PAYMENTS. Payments under this subchapter that are past due shall bear interest at a rate equal to the rate imposed by the comptroller under Section 111.060, Tax Code, for delinquent payments due the state, except that if the commissioner enters into an agreement with the grantee of the easement or lease specifying a lower rate, the payments bear interest

at that lower rate.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 12, eff. June 15, 2007.

Sec. 51.302. PROHIBITION AND PENALTY. (a) No person may construct or maintain any structure or facility on land owned by the state, nor may any person who has not acquired a proper easement, lease, permit, or other instrument from the state as required by this chapter or Chapter 33 and who owns or possesses a facility or structure that is now located on or across state land continue in possession of the land unless he obtains from the commissioner or the board an easement, lease, permit, or other instrument required by this chapter or Chapter 33 for the land on which the facility or structure is to be constructed or is located.

(b) A person who constructs, maintains, owns, or possesses a facility or structure on state land without a proper easement or lease from the state under this chapter or under Chapter 33 of this code is liable for a penalty of not less than $50 or more than $1,000 a day for each day that a violation occurs. The penalty shall be recovered by the commissioner under Section 51.3021 of this code or in a civil action by the attorney general.

(c) A person who owns, maintains, or possesses an unauthorized facility or structure is, for purposes of this section, the person who last owned, maintained, or possessed the facility or structure.

(d) The commissioner or attorney general may also recover from a person who constructs, maintains, owns, or possesses a facility or structure on state land without the proper easement the costs to the state of removing that facility or structure under Section 51.3021 of this code.

(e) Penalties and costs recovered under this section shall be deposited in the special fund established under Sections 52.297 and 53.155 of this code.

(f) This section is cumulative of all other applicable penalties or enforcement provisions of this code.

(g) In lieu of seeking administrative penalties or removal of

the facility or structure under Section 51.3021 of this code, the commissioner may elect to accept ownership of the facility or structure as a fixture and may exercise the state's rights as owner of the facility or structure by filing notice of such ownership in the real property records of the county in which the facility or structure is located. For facilities or structures located on coastal public land and connected with the ownership of adjacent littoral property, notice of ownership shall be filed in the county in which the adjacent littoral property is located.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 39, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 465, Sec. 1, eff. June 11, 1991; Acts 1993, 73rd Leg., ch. 991, Sec. 16, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 280, Sec. 28, eff. June 18, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 13, eff. June 15, 2007.

Sec. 51.3021. REMOVAL OF FACILITY OR STRUCTURE BY COMMISSIONER. (a) The commissioner may remove and dispose of a facility or structure on land owned by the state if the commissioner finds the facility or structure to be:

(1) without the proper easement or lease from the state under Chapter 33 or 51 of this code; or

(2) an imminent and unreasonable threat to public health, safety, or welfare.

(b) Before the commissioner may remove a facility or structure under this section or impose a penalty under Section 51.302 of this code, the commissioner must give written notice to a person who is constructing, maintains, owns, or possesses the facility or structure. The notice must state:

(1) the specific facility or structure that is without proper easement or lease or that threatens public health, safety, or welfare;

(2) that the person who is constructing, maintains, owns, or possesses the facility or structure shall remove the facility or structure:

(A) not later than the 30th day after the date on which

the notice is served, if the facility or structure is on state land without a proper lease or easement; or

(B) within a reasonable time specified by the commissioner if the facility or structure is an imminent and unreasonable threat to public health, safety, or welfare;

(3) that failure to remove the facility or structure may result in liability for a penalty under Section 51.302(b) of this code in an amount specified, removal by the commissioner and liability for the costs of removal, attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs of removal, or any combination of such remedies; and

(4) that the person who is constructing, maintains, owns, or possesses the facility or structure may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(c) The notice required by Subsection (b) must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the notice on the facility or structure and by publishing notice on the Internet website of the land office and in the Texas Register for 10 consecutive days.

(d) The commissioner by rule shall adopt procedures for a hearing under this section.

(e) The commissioner must grant a hearing if a hearing is requested. A person who does not timely request a hearing waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the facility or structure and pay any penalty assessed. If a hearing is held, the commissioner shall issue a final order concerning removal of the facility or structure and payment of a penalty.

(f) The trial courts of this state shall give preference to an appeal from a final order of the commissioner under this section as provided by Section 23.101(a), Government Code.

(g) The commissioner may contract for the removal and disposal of a facility or structure under this section and may pay the costs of removal from the special fund established under Sections 52.297 and 53.155 of this code or from funds appropriated by the legislature.

(h) If the person who is constructing, maintains, owns, or possesses the facility or structure does not pay assessed penalties, removal costs, and other assessed fees and expenses not later than the 60th day after the entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) sell salvageable parts or attachments of the facility or structure to offset those costs;

(2) record a lien, in the total amount of the penalties, costs, and other fees and expenses assessed, against the adjacent littoral property;

(3) request the attorney general to institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or

(4) use any combination of the remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed on account of the unauthorized facility or structure on state land and its removal by the commissioner.

(i) The lien authorized by this section arises and attaches at the time a notice of lien is recorded and indexed in the real property records in the county where the adjacent littoral property is located. The notice of lien must contain a legal description of the adjacent littoral property, the name of the owner of the adjacent littoral property, if known, and the total amount of the penalties, costs, and other fees. The lien is subordinate to the rights of prior bona fide purchasers or lienholders on the adjacent littoral property.

(j) The decision to remove a facility or structure under this section is discretionary with the commissioner. This section does not impose a duty on the state to remove a facility or structure or to remedy or warn of a hazardous condition on state land.

(k) A wrecked, derelict, or substantially dismantled vessel that is moored or left in place for at least 21 days without the consent of the commissioner is considered a structure for purposes of this section.

Added by Acts 1991, 72nd Leg., ch. 465, Sec. 2, eff. June 11, 1991.
Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 17, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 6, eff. September 1, 2015.

Sec. 51.303. VENUE. The venue for suits by or against the state under Sections 51.291 through 51.3021 of this code or for violation of provisions of Sections 51.291 through 51.302 of this code shall be in Travis County.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 465, Sec. 3, eff. June 11, 1991.

Sec. 51.304. EASEMENTS FOR SOIL CONSERVATION AND FLOOD PREVENTION. The commissioner may execute grants of easements on unsold public school land to conservation and reclamation districts for soil conservation and flood prevention projects authorized by the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.), as amended.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.305. TERMS AND FORM OF GRANT. The grant of the easement may contain any provisions that the commissioner considers necessary to protect the interests of the state and may be perpetual or for a term of years.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.306. CONSIDERATION. The consideration paid to the state for the grant of the easement under Section 51.304 of this code shall be determined by the commissioner to compensate the state for any damage to the land or to the use of the land caused by the easement, but if the commissioner determines that the benefits

resulting from the grant of the easement are more than the damage, the commissioner may waive the consideration for the easement.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.307. RESERVATION OF MINERAL RIGHTS. Mineral rights together with the right to explore for, produce, and market the minerals in land granted as an easement under Section 51.304 of this code shall be reserved to the state and shall be subject to lease for minerals in the same manner as other unsold public school land.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. SALE OF TIMBER, GAYULE, AND LECHUGUILLA

Sec. 51.341. DEFINITION. In this subchapter, "timbered land" means land that is valued chiefly for the timber located on it.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.342. SALE OR LEASE OF TIMBER. Timber located on public land shall be sold or leased in full tracts for cash at its market value.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 29, eff. June 18, 2003.

Sec. 51.343. RULES. Subject to the provisions of this chapter, the commissioner shall adopt rules for the sale of timber which are considered necessary and judicious.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.344. APPLICATION TO PURCHASE TIMBER. An application to purchase timber shall be made in the manner provided for filing an application to purchase land.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.345. INGRESS AND EGRESS FROM LAND. The purchaser of timber without the land is entitled to ingress and egress on the land for a period of five years after the date of the award to remove or protect the timber on the land.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.346. REVERSION OF TITLE TO TIMBER. After the five-year period provided in Section 51.345 of this code, title to the timber reverts to the fund to which the land belongs and is subject to sale by the state.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.347. SALE OF GAYULE AND LECHUGUILLA. The board may sell the gayule or lechuguilla growing or found on the public school land, exclusive of timber.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.348. CONDITIONS OF SALE. The sale of gayule and lechuguilla may be on any terms and conditions and with any limitations that the board considers most advantageous and in the best interest in protecting the public school fund and the state.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.349. CONTRACTS. The board may enter into any contract including an executory contract of sale which they consider wise for the purpose of having the commercial properties and value of gayule and lechuguilla determined, but it may not spend any public money or incur any liability on behalf of the state through these contracts.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. ACQUISITION OF PUBLIC SCHOOL LAND

Sec. 51.401. REAL ESTATE SPECIAL FUND ACCOUNT. (a) The board may designate funds or revenue received from any land or real property holdings, and any proceeds received from the sale of any mineral or royalty interest, that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, for deposit in the real estate special fund account of the permanent school fund in the State Treasury to be used by the board as provided by this subchapter.

(b) The real estate special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the real estate special fund account of the permanent school fund.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1368, Sec. 10, eff. June 15, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1368, Sec. 10, eff. June 15, 2007.

(e) Section 403.095, Government Code, does not apply to a fund account created under this section.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 18, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 900, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 328, Sec. 6, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 7, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 3, eff.

June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 10, eff. June 15, 2007.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.04, eff. December 31, 2022.

Sec. 51.402. USE OF DESIGNATED FUNDS. (a) The board may use funds designated under Section 51.401 for any of the following purposes:

(1) to add to a tract of public school land to form a tract of sufficient size to be manageable;

(2) to add contiguous land to public school land;

(3) to acquire, as public school land, interests in real property for biological, residential, commercial, geological, cultural, or recreational purposes;

(4) to acquire mineral and royalty interests for the use and benefit of the permanent school fund;

(5) to protect, maintain, or enhance the value of public school land and mineral or royalty interests on that land;

(6) to acquire real property holdings;

(7) to pay reasonable fees for professional services related to a permanent school fund investment; or

(8) to acquire, sell, lease, trade, improve, maintain, protect, or use land, mineral and royalty interests, or real property holdings, at such prices and under such terms and conditions the board determines to be in the best interest of the permanent school fund.

(b) Before using funds under Subsection (a), the board must determine, using the prudent investor standard, that the use of the funds for the intended purpose is authorized by Subsection (a) and in the best interest of the permanent school fund. A determination by the board on the use of funds under this section is conclusive unless the determination was made as a result of fraud or obvious error.

(b-1) The board may confer with one or more employees of the board or with a third party regarding an investment or potential investment in real estate, including the acquisition or potential acquisition of interests in real estate, to the extent permitted to

the board of trustees of the Texas growth fund under Section 551.075, Government Code.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.10(3), eff. December 31, 2022.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40. Amended by Acts 2001, 77th Leg., ch. 900, Secs. 2, 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 30, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 8, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 5, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 493 (H.B. 4388), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 8, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.05, eff. December 31, 2022.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.10(3), eff. December 31, 2022.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 13.001, eff. September 1, 2021.

Sec. 51.4021. APPOINTMENT OF INVESTMENT CONSULTANTS OR ADVISORS. (a) The board may appoint investment consultants or advisors to assist the board in using funds designated under Section 51.401 in a manner authorized under Section 51.402 by contracting for professional investment advisory services with one or more organizations that are in the business of advising on the management of real estate investments.

(b) To be eligible for appointment under this section, an investment consultant or advisor shall agree to abide by the policies, requirements, or restrictions, including ethical standards and disclosure policies and criteria for determining the quality of investments and for the use of standard rating services, that the board adopts for real estate investments of the permanent school fund. Funds designated under Section 51.401 may not be invested in a real estate investment trust, as defined by Section 200.001, Business

Organizations Code.

(c) Compensation paid to an investment consultant or advisor by the board must be consistent with the compensation standards of the investment industry and compensation paid by similarly situated institutional investors.

(d) Chapter 2263, Government Code, applies to investment consultants and advisors appointed under this section. The board by rule shall adopt standards of conduct for investment consultants and advisors appointed under this section as required by Section 2263.004, Government Code, and shall implement the disclosure requirements of Section 2263.005 of that code.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 6, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 9, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.06, eff. December 31, 2022.

Sec. 51.404. TITLE SECURITY. (a) Real property acquired under this chapter shall be conveyed to the state by warranty deed.

(b) The board may purchase or acquire title insurance for any real property purchased under this chapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 32, eff. June 18, 2003.

Sec. 51.405. CONTRACTS FOR PURCHASE. The board may enter into contracts for the purchase of property under this subchapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40, eff. Nov. 5, 1985.

Sec. 51.406. DEDICATION TO PERMANENT SCHOOL FUND. Land acquired under this subchapter is dedicated to the permanent school fund and is subject to sale and lease in the same manner and under

the same authority as any other real property dedicated to the permanent school fund.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40, eff. Nov. 5, 1985.

Sec. 51.407. RULES. The board shall adopt rules for the implementation of this subchapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40, eff. Nov. 5, 1985.

Sec. 51.408. ETHICS POLICY AND TRAINING. (a) In addition to any other requirements provided by law, the board shall adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the funds designated under Section 51.401. The ethics policy must include provisions that address the following issues as they apply to the management and investment of the funds and to persons responsible for managing and investing the funds:

(1) general ethical standards;

(2) conflicts of interest;

(3) prohibited transactions and interests;

(4) the acceptance of gifts and entertainment;

(5) compliance with applicable professional standards;

(6) ethics training; and

(7) compliance with and enforcement of the ethics policy.

(b) The ethics policy must include provisions applicable to:

(1) members of the board;

(2) the commissioner;

(3) employees of the board; and

(4) any person who provides services to the board relating to the management or investment of the funds designated under Section 51.401.

(c) Not later than the 45th day before the date on which the board intends to adopt a proposed ethics policy or an amendment to or revision of an adopted ethics policy, the board shall submit a copy of the proposed policy, amendment, or revision to the Texas Ethics Commission and the state auditor for review and comments. The board shall consider any comments from the commission or state auditor before adopting the proposed policy.

(d) The provisions of the ethics policy that apply to a person who provides services to the board relating to the management or investment of the funds designated under Section 51.401 must be based on the Code of Ethics and the Standards of Professional Conduct prescribed by the Association for Investment Management and Research or other ethics standards adopted by another appropriate professionally recognized entity.

(e) The board shall ensure that applicable provisions of the ethics policy are included in any contract under which a person provides services to the board relating to the management and investment of the funds designated under Section 51.401.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.409. DISCLOSURE OF CONFLICTS OF INTEREST AND FINANCES. (a) A member of the board, the commissioner, an employee of the board, or a person who provides services to the board that relate to the management or investment of the funds designated under Section 51.401 who has a business, commercial, or other relationship that could reasonably be expected to diminish the person's independence of judgment in the performance of the person's responsibilities relating to the management or investment of the funds shall disclose the relationship in writing to the board.

(b) The board or the board's designee shall, in the ethics policy adopted under Section 51.408, define the kinds of relationships that may create a possible conflict of interest.

(c) A person who is required to file a disclosure statement under Subsection (a) shall refrain from giving advice or making decisions about matters affected by the conflict of interest unless the board, after consultation with the general counsel of the board, expressly waives this prohibition. The board shall maintain a written record of each waiver and the reasons for it. The board may delegate the authority to waive prohibitions under this subsection to one or more designated employees of the land office on a vote of a majority of the members of the board at an open meeting called and held in compliance with Chapter 551, Government Code. The board shall have any order delegating authority to waive prohibitions under this section entered into the minutes of the meeting. The board may

adopt criteria for designated employees to use to determine the kinds of relationships that do not constitute a material conflict of interest for purposes of this subsection.

(d) Each employee of the board who exercises significant decision-making or fiduciary authority, as determined by the board, shall file financial disclosure statements with a person designated by the board. The content of a financial disclosure statement must comply substantially with the requirements of Subchapter B, Chapter 572, Government Code. A statement must be filed not later than the 30th day after the date a person is employed in a significant decision-making or fiduciary position and annually after employment not later than April 30. The filing deadline may be postponed by the board for not more than 60 days on written request or for an additional period for good cause, as determined by the chairman of the board. The board shall maintain a financial disclosure statement for at least five years after the date of its filing.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.410. REPORTS OF EXPENDITURES. A consultant, advisor, broker, or other person providing services to the board relating to the management and investment of the funds designated under Section 51.401 shall file with the board regularly, as determined by the board, a report that describes in detail any expenditure of more than $50 made by the person on behalf of:

(1) a member of the board;

(2) the commissioner; or

(3) an employee of the board.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.411. FORMS; PUBLIC INFORMATION. (a) The board shall prescribe forms for:

(1) statements of possible conflicts of interest and waivers of possible conflicts of interest under Section 51.409; and

(2) reports of expenditures under Section 51.410.

(b) A statement, waiver, or report described by Subsection (a)

is public information.

(c) The board shall designate an employee of the board to act as custodian of statements, waivers, and reports described by Subsection (a) for purposes of public disclosure.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.412. REPORT ON USE OF CERTAIN MONEY. (a) Not later than September 1 of each even-numbered year, the board shall submit to the legislature, the Texas Permanent School Fund Corporation, and the Legislative Budget Board a report that, specifically and in detail, assesses the direct and indirect economic impact, as anticipated by the board, of the use of funds:

(1) retained by the board as provided by Section 51.011(a-3); or

(2) designated under Section 51.401 for deposit in the real estate special fund account of the permanent school fund.

(b) The board may not disclose information under this section that is confidential under applicable state or federal law.

(c) The report must include the following information:

(1) the total amount of the funds designated by Section 51.401 for deposit in the real estate special fund account of the permanent school fund that the board intends to use in a manner authorized under Section 51.402;

(2) the amount of funds retained by the board as provided by Section 51.011(a-3) and the purposes for which the board intends to use those funds;

(3) the amount of the funds the board expects to distribute to the available school fund or the Texas Permanent School Fund Corporation for investment in the permanent school fund under Section 51.413;

(4) the amounts of all fees or other compensation paid by the board to investment consultants and advisors appointed or organizations contracted with under Section 51.4021; and

(5) any other information the board considers necessary to include in the report.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 7, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 10, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.07, eff. December 31, 2022.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.08, eff. December 31, 2022.

Sec. 51.413. TRANSFERS FROM THE REAL ESTATE SPECIAL FUND ACCOUNT TO THE AVAILABLE SCHOOL FUND AND THE PERMANENT SCHOOL FUND. (a) The board may, by a resolution adopted at a regular meeting, release from the real estate special fund account funds previously designated under Section 51.401 or managed, used, or encumbered under Section 51.402 or Section 51.4021 to be deposited in the State Treasury to the credit of:

(1) the available school fund; or

(2) the Texas Permanent School Fund Corporation for investment in the permanent school fund.

(b) The board shall adopt rules to establish the procedure that will be used by the board to determine the date a transfer will be made and the amount of the funds that will be transferred to the available school fund or to the Texas Permanent School Fund Corporation for investment in the permanent school fund from the real estate special fund account as provided by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 8, eff. June 15, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 735 (H.B. 1551), Sec. 1, eff. June 17, 2015.

Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 11, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 875 (S.B. 1232), Sec. 2.09, eff. December 31, 2022.

SUBCHAPTER J. GRANTS

Sec. 51.501. APPLICATION FOR GRANT. A lessee of real property owned by the permanent school fund and used for grazing or agricultural purposes may apply to the commissioner for a grant to construct a permanent improvement on the leased property.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.502. SOURCE OF GRANT MONEY. A grant under this subchapter shall be made from money collected for surface damages under Sections 52.297 and 53.155.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.503. APPRAISAL REQUIRED. (a) Before a grant is made under Section 51.501, an appraiser employed by the land office must appraise the effect of the improvement for which a grant is sought on the value of the permanent school fund property.

(b) If the appraiser finds that the improvement will increase the value of the real property in an amount at least equal to the amount the improvement will cost, the commissioner may authorize the disbursement of money to construct the improvement.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.504. EVIDENCE OF EXPENDITURE REQUIRED. The commissioner shall require each lessee who receives a grant to provide copies of receipts, vouchers, or other evidence of expenditures for the improvement.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.505. IMPROVEMENTS: REAL PROPERTY OF PERMANENT SCHOOL FUND. Any improvement constructed with money disbursed under this subchapter is the real property of the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.506. MAINTENANCE. As a condition for a grant under this subchapter, the commissioner shall require the grantee to agree in writing to maintain the improvement in a manner that will protect the best interest of the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.507. RULES. The commissioner shall adopt rules as necessary to administer this subchapter, including rules establishing a procedure for applying for a grant under Section 51.501 and for monitoring the maintenance of the improvement.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

CHAPTER 52. OIL AND GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the school land board.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. LEASE OF PUBLIC SCHOOL AND GULF LAND

Sec. 52.011. AREA SUBJECT TO LEASE. Under the provisions of this subchapter, the board may lease to any person for the production of oil and natural gas:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state;

(3) all unsold surveyed and unsurveyed public school land; and

(4) all land sold with a reservation of minerals to the state under Section 51.054 or 51.086 of this code in which the state has retained leasing rights.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5245, ch. 965, Sec. 6, eff. June 19, 1983; Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(b), eff. Sept. 1, 2003.

Sec. 52.012. CONDITIONS FOR LEASE. Oil and gas shall only be leased together and shall be leased separately from other minerals.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.013. DETERMINATION OF LEASE PRICE AND DELAY RENTALS. The board shall determine the price at which areas under this subchapter shall be leased and the amount of delay rentals that shall be charged.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.014. DATE FOR LEASE AND NOTICE. The date for opening bids to lease areas covered by this subchapter shall be set and notice of the date shall be given in the manner provided in Sections 32.105 and 32.107 of this code.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 16, eff. Sept. 1, 1993.

Sec. 52.015. BID TO LEASE. (a) To apply to lease a tract, a bidder must submit a separate bid for each separate tract to be leased.

(b) A bid must include a completed application to lease form, a payment to the commissioner in the amount of the actual bonus bid or set, and a separate payment to the commissioner in the amount of the special fee provided by Section 52.016 of this code.

(c) A bid must be delivered to the land office on or before the date and time the board advertises that the bids will be opened.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 17, eff. Sept. 1, 1993.

Sec. 52.016. SPECIAL FEE. Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 32.110 of this code.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 41, eff. Sept. 1, 1985.

Sec. 52.017. KEEPING AND OPENING BIDS. Bids shall be kept secure and unopened by the commissioner or the commissioner's designee until opened on the date and at the time set as provided in Section 52.014 of this code.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 18, eff. Sept. 1, 1993.

Sec. 52.018. VOID APPLICATION. An application that includes two or more areas or that is for a price that is less than the fixed royalty and price per acre is void.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.019. TIE BIDS. (a) If the highest bid for an area is made by more than one applicant, all applications shall be rejected and the board shall set a date for lease of the area that shall not be later than the 15th day of the following month.

(b) The area will be subject to lease in the same manner as it was originally subject to lease.

(c) No bids for a lease shall be considered if the price is less than the highest bid offered in the original application.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.020. RETURN OF PAYMENTS ON REJECTED APPLICATIONS. The comptroller or commissioner shall return all amounts paid on rejected applications.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 13, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1423, Sec. 14.11, eff. Sept. 1, 1997.

Sec. 52.021. TERM OF LEASE. A lease granted under this subchapter shall be for a primary term not to exceed 10 years and for as long after that time as oil or gas is produced from the leased area.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5247, ch. 965, Sec. 9, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 19, eff. Sept. 1, 1993.

Sec. 52.022. ROYALTY RATE. The board shall set the royalty rate on production of oil and gas from land leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the oil and gas produced.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 20, eff. Sept. 1, 1993.

Sec. 52.023. LEASE PROVISIONS FOR DRILLING AND REWORKING. Each lease shall provide that:

(1) if the production of oil or gas on premises leased under this subchapter ceases for any reason after the expiration of the primary term, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days

after the cessation of production;

(2) the lease shall remain in effect as long as drilling or reworking operations continue in good faith and in a workmanlike manner without interruptions totaling more than 60 days;

(3) if the drilling or reworking operations result in the production of oil or gas, the lease shall remain in effect so long as oil or gas is produced from the leased premises in paying quantities or payment of shut-in royalties or payment of compensatory royalties is made as provided by law; and

(4) if the drilling or reworking operations result in the completion of a well as a dry hole, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days after the completion of the well as a dry hole, and the lease shall remain in effect so long as the lessee continues drilling or reworking operations in good faith and in a workmanlike manner without interruptions totaling more than 60 days.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2005, ch. 785, Sec. 6, eff. June 13, 1979; Acts 1993, 73rd Leg., ch. 897, Sec. 21, eff. Sept. 1, 1993.

Sec. 52.024. LEASE PROVISIONS FOR SHUT-IN OIL OR GAS ROYALTY AND COMPENSATORY ROYALTY. (a) For purposes of this section, "well" means any well that has been assigned a well number by the state agency having jurisdiction over the production of oil and gas.

(b) Each lease shall provide that:

(1) if, at any time after the expiration of the primary term of a lease that, until being shut in, was being maintained in force and effect, a well capable of producing oil or gas in paying quantities is located on the leased premises but oil or gas is not being produced for lack of suitable production facilities or lack of a suitable market, then the lessee may pay as a shut-in oil or gas royalty an amount equal to double the annual rental provided in the lease but not less than $1,200 a year for each well capable of producing oil or gas in paying quantities. To be effective, each initial shut-in oil or gas royalty must be paid on or before: (A) the expiration of the primary term, (B) 60 days after the lessee ceases to produce oil or gas from the leased premises, or (C) 60 days

after the lessee completes a drilling or reworking operation in accordance with the lease provisions, whichever date is latest;

(2) if the shut-in oil or gas royalty is paid, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month following the month in which production ceased, and, after that, if no suitable production facilities or suitable market for the oil or gas exists, the lessee may extend the lease for four more successive periods of one year by paying the same amount each year on or before the expiration of each shut-in year;

(3) if, during the period the lease is kept in effect by payment of the shut-in oil or gas royalty, oil or gas is sold and delivered in paying quantities from a well located within 1,000 feet of the leased premises and completed in the same producing reservoir, or in any case in which drainage is occurring, the right to continue to maintain the lease by paying the shut-in oil or gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid. The lessee may maintain the lease for four more successive years by the lessee paying compensatory royalty at the royalty rate provided in the lease of the market value of production from the well causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises;

(4) the compensatory royalty is to be paid monthly to the commissioner beginning on or before the last day of the month following the month in which the oil or gas is produced from the well causing the drainage or that is completed in the same producing reservoir and located within 1,000 feet of the leased premises;

(5) if the compensatory royalty paid in any 12-month period is in an amount less than the annual shut-in oil or gas royalty, the lessee shall pay an amount equal to the difference within 30 days from the end of the 12-month period; and

(6) none of these provisions will relieve the lessee of the obligation of reasonable development nor the obligation to drill offset wells as provided in Section 52.034 of this code; however, at the determination of the commissioner and with the commissioner's written approval, the payment of compensatory royalties shall satisfy the obligation to drill offset wells.

Acts 1977, 65th Leg., p. 2447, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 1858, ch. 438, Sec. 1, eff. June 11, 1981; Acts 1987, 70th Leg., ch. 948, Sec. 18, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 22, eff. Sept. 1, 1993.

Sec. 52.026. LEASE TRANSFER. (a) A lessee of an area under this subchapter may transfer the lease at any time. The liability of the transferor to properly discharge its obligations under the lease, including properly plugging abandoned wells, removing platforms or pipelines, or remediation of contamination at drill sites shall pass to the transferee upon prior written consent of the commissioner. The commissioner may not withhold the consent unreasonably. The commissioner may require the transferee to demonstrate that it has the financial responsibility to properly discharge its obligations under the lease and may require the transferee to post a bond or provide other security to secure those obligations if the transferee is unable to demonstrate such financial responsibility to the satisfaction of the commissioner.

(b) The transfer of the lease shall be recorded in any county in which all or part of the leased area is located.

(c) Within 90 days after the execution of the transfer, the recorded transfer or a certified copy of the recorded transfer accompanied by a filing fee set by the commissioner in an amount not less than $5 shall be filed in the land office.

(d) Every transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to the state by the original lessee or any prior transferee of the lease, including any liabilities to the state for unpaid royalties.

(e) This section does not relieve a person from the duty to comply with a rule adopted or order issued by the Railroad Commission of Texas under another provision of this code.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, Sec. 21(i), eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 19, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1483, Sec. 2, eff. Aug. 30, 1999.

Sec. 52.027. LEASE RELINQUISHMENT. (a) A lessee may relinquish his lease to the state at any time by recording the relinquishment in each county in which all or part of the leased area is located.

(b) Within 90 days after the execution of the relinquishment, the recorded relinquishment or a certified copy of the recorded relinquishment together with a filing fee set by the commissioner in an amount not less than $5 shall be filed in the land office.

(c) After the lessee relinquishes the area, he is relieved of any further obligations to the state, but the relinquishment does not release the lessee from any obligations or liabilities previously accrued in favor of the state.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, Sec. 21(j), eff. Sept. 1, 1983.

Sec. 52.028. SUSPENSION OF LEASE BECAUSE OF LITIGATION. (a) If an oil and gas lease that has been issued by the commissioner is involved in litigation relating to the validity of the lease or to the authority of the commissioner to issue the lease, the lease and all of the conditions and covenants contained in the lease shall be suspended during the period of the litigation, except as otherwise provided by this section.

(b) If the litigation is instituted during the primary term of the lease, then, after a final, nonappealable judgment is entered in the litigation, the primary term provided in the lease shall resume and the lease shall continue to run for the remainder of the period specified in the lease, and all conditions and covenants contained in the lease shall be operative.

(c) If the litigation is instituted during the secondary term of the lease, then, after a final, nonappealable judgment is entered in the litigation, the lease and all the conditions and covenants contained in the lease shall be operative, and the lessee shall have 60 days from the date a final, nonappealable judgment is entered in the litigation to produce in paying quantities or to commence drilling or reworking operations on the lease as if production had ceased on that date under Section 52.023 of this code.

(d) The lessee shall pay any royalties that accrue during the

period of suspension of the lease in the same manner as they are to be paid under the terms of the lease.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 20, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 23, eff. Sept. 1, 1993.

Sec. 52.029. FORFEITURE OF RIGHTS. The provisions of Subchapter F of this chapter governing the forfeiture and reinstatement of rights apply to forfeiture and reinstatement of leases issued under this subchapter, and on forfeiture of a lease, the area covered by the lease may be leased, after advertisement, by any other person.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.030. REFUND OF LEASE MONEY IN CERTAIN SITUATIONS. (a) If a lessee is prevented from exploring, developing, drilling, or producing oil and gas from the tract leased to him as a result of the action of any agency of the United States or of this state during the entire primary term of the lease, he is entitled to a refund of all money paid for bonus, delay rentals, and other fees under the lease as provided by legislative appropriation.

(b) A refund shall be made only on verification of the claim by the board or on the judgment of a court of competent jurisdiction.

(c) A lessee who has a claim under this section is given permission to bring suit against the state within two years after the expiration of the lease in any court of competent jurisdiction to recover the money paid.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.0301. SUSPENSION OF TERMS OF LEASE IN CERTAIN SITUATIONS. (a) If the lessee of a valid oil and gas lease granted by the state is unable to obtain access to the leased premises, or is unable to obtain in a timely manner a permit to drill on or produce

from the leased premises by any duly constituted authority of the United States or of this state after a diligent, good faith attempt has been made by the lessee to obtain access to, or a permit to drill on or produce from, the leased premises, the lessee may file with the board an application describing and giving the date of the action that deprives the lessee of access to or a permit to drill on or produce from the leased premises.

(b) If the board is satisfied that the facts included in the application are true and that the lessee acted diligently and in good faith in an attempt to gain access to or the right to drill on or produce from the leased premises, the board may order the suspension of the lease or any condition or covenant contained in the lease from the date the board determines to be the date the cause for the suspension began, except as otherwise provided by this section.

(c) The board may set as a condition to approving the application for a suspension of the lease any term or requirement that relates to the duration of the suspension, the administration of the property during the suspension, reporting requirements during the suspension, or another administrative matter that the board determines is in the best interest of the state.

(d) If the lease is suspended during its primary term, the lessee shall make payments in the amount of the annual delay rental stipulated in the lease by each anniversary date of the lease during the period of suspension. If the payments in the amount of the annual delay rental are not paid by each anniversary date of the lease, the lease shall not automatically terminate. However, the amount of the annual delay rental stipulated in the lease due by each anniversary date of the lease during the period of suspension continues to be an obligation and debt owed by the lessee. The lessee shall pay all royalties, if any, that accrue during the period of suspension of the lease in the same manner as they are to be paid under the terms of the lease.

(e) If the lease is suspended during its primary term, then, when the suspension ends, the primary term provided in the lease shall resume and continue to run for the remainder of the period specified in the lease, and all conditions and covenants contained in the lease shall be operative.

(f) If the lease is suspended during its secondary term, then, when the suspension ends, the lease and all of the conditions and covenants contained in the lease shall be operative, and the lessee

shall have 60 days from the date the suspension ends to produce in paying quantities or to commence drilling or reworking operations on the lease as if production had ceased on that date under Section 52.023 of this code.

(g) This section may not be construed as abridging any rights or privileges conveyed under Chapter 287, Acts of the 47th Legislature, Regular Session, 1941 (Article 5366a, Vernon's Texas Civil Statutes).

Added by Acts 1979, 66th Leg., p. 2006, ch. 785, Sec. 7, eff. June 13, 1979. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 14, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 948, Sec. 21, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 24, eff. Sept. 1, 1993.

Sec. 52.031. EXTENSION OF LEASE BY COMMISSIONER. (a) At the expiration of the primary term of a lease made under the provisions of this subchapter, if production of oil or gas has not been obtained on the leased premises but drilling operations are being conducted in good faith and in good and workmanlike manner, the lessee may file in the land office on or before the expiration of the primary term a written application to the commissioner for a 30-day extension of the lease accompanied by $3,000 for 640 acres or less or $6,000 for more than 640 acres.

(b) The commissioner shall extend the lease in writing for a 30-day period from the expiration of the primary term and as long after that time as oil or gas is produced in paying quantities.

(c) As long as drilling operations are being conducted, the lessee may submit an application and payment during any 30-day extended period for an additional extension of 30 days. On receiving the application and payment, the commissioner shall again extend the lease in writing so that it will remain effective for an additional 30-day period and as long after that time as oil or gas is produced in paying quantities.

(d) No lease may be extended under this section for more than 390 days after the expiration of the primary term unless production is obtained in paying quantities.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.032. REGULATION OF DEVELOPMENT AND OPERATIONS. (a) Development and operations on areas covered by this subchapter shall be done insofar as practicable in a manner that will prevent the pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(b) The commissioner shall adopt and enforce rules that may be necessary for the purposes stated in Subsection (a) of this section.

(c) Any rules and changes of rules adopted under this section shall be submitted to the attorney general for his written approval before the rules or their changes become effective.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.033. ACCESS TO LAND. (a) If it is necessary for the lessee to enter the enclosed land of another person for the purpose of ingress and egress to and from the area leased from the state and if the lessee and the owner cannot agree on the place or the conditions of entry and exit, the lessee or his agent may petition the commissioners court of the county in which all or part of the enclosure is located to open the places of ingress and egress that may be necessary.

(b) On filing the petition, the commissioners court shall delineate the roads necessary for the stated purpose in the manner provided for delineating third-class public roads.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.034. OFFSET WELLS. (a) In this section:

(1) "Horizontal drainhole well" means a well with a horizontal drainhole that may produce oil or gas along at least 100 feet of the drainhole.

(2) "Take point" means any point in a horizontal drainhole well where oil and gas can be produced from the reservoir or field interval recognized by the Railroad Commission of Texas.

(3) "Unconventional fracture treated field" means an oil or gas field in which horizontal well development and hydraulic fracture treatment must be used to recover resources from all or part of the

field.

(a-1) Except as provided by Subsection (a-2), if oil or gas is produced in commercial quantities from a well located on a privately owned area or areas of state land leased at a lesser royalty and the well is located within 1,000 feet of an area leased under this subchapter or is draining an area leased under this subchapter, the lessee of the state area shall begin in good faith and prosecute diligently the drilling of an offset well or wells on the area leased from the state within 60 days after the initial production from the draining well or the well located within 1,000 feet of the leased state area.

(a-2) If the well producing oil or gas in commercial quantities under Subsection (a-1) is a horizontal drainhole well located in an unconventional fracture treated field, a lessee of a state area is not required to drill an offset well as provided by Subsection (a-1) unless any take point in the horizontal drainhole well is located closer to the leased state area than the greater of:

(1) the minimum distance established by the applicable lease-line spacing requirement of the Railroad Commission of Texas; or

(2) a perpendicular distance of 330 feet.

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state area.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

(d) At the determination of the commissioner and with the commissioner's written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells required by Subsection (a-1). Such compensatory royalty shall be paid at the royalty rate provided by the state lease issued under this subchapter and shall be paid on the market value at the well of production from the well producing oil or gas in commercial quantities described by Subsection (a-1).

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 22, eff. Sept. 1, 1987.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 392 (S.B. 1258), Sec. 1, eff.

September 1, 2021.

Sec. 52.035. AGREEMENTS WITH U.S. GOVERNMENT. (a) The governor may execute agreements on behalf of the state to obtain access to confidential and proprietary information from the secretary of the United States Department of the Interior regarding exploration, development, or production of oil, gas, or other minerals on the outer continental shelf. The governor may agree to waive sovereign immunity and other defenses as prescribed by this section, and may agree to indemnify the United States government from unauthorized disclosure of the information obtained.

(b) The information obtained from the Department of the Interior under an agreement executed under Subsection (a) of this section is confidential and may not be used publicly, opened to public inspection, or disclosed, except that the information may be examined and used by the governor and the commissioner of the General Land Office, or their designees, for the administration of their official duties and to assure a fair and equitable division of federal revenues derived from leasing lands adjacent to the boundaries of this state.

(c) The state waives its right to claim sovereign immunity in any action commenced against the state for unauthorized disclosure of the confidential information obtained from the Department of the Interior under an agreement executed by the governor under Subsection (a) of this section, and waives its right to claim that an employee who revealed privileged information was acting outside the scope of employment by disclosing the information.

(d) The state agrees to hold the United States government harmless from any actions or damages brought as a result of the acts or omissions of the state or its employees in releasing proprietary information obtained under an agreement executed under Subsection (a) of this section.

Added by Acts 1985, 69th Leg., ch. 923, Sec. 15, eff. Aug. 26, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 25, eff. Sept. 1, 1993.

SUBCHAPTER C. DEVELOPMENT OF RIVERBEDS AND CHANNELS

Sec. 52.071. AUTHORITY OVER RIVERBEDS AND CHANNELS. The riverbeds and channels belonging to the state are subject to development by the state and to lease or contract for recovery of oil and gas.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.072. STATE POLICY. (a) With regard to leases and contracts for the development of riverbeds and channels, it is the policy of the state that activities of the state and all lessees and contracting parties or their heirs, successors, or assigns under a lease or contract shall comply with laws of the state and rules and orders of any state agency that are applicable to development of oil and gas bearing land in the state by persons other than the state.

(b) Each lease and contract issued under the provisions of this subchapter is subject to the provisions of Subsection (a) of this section.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.073. AREA SUBJECT TO LEASE. Riverbeds and channels that belong to the state may be leased to any person by the board under the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.074. SIZE OF TRACT. Subject to the conditions in this subchapter, riverbeds and channels shall be leased in tracts of the size determined by the board.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.076. DUTY TO ADVERTISE. (a) The board may:

(1) advertise for bids to lease riverbeds and channels for oil and gas development;

(2) advertise for bids to contract to develop the oil or gas under riverbeds and channels on consideration involving compensation with oil and gas or money so that the state will receive a portion of the oil and gas as it is produced or advanced royalties paid in money;

(3) advertise for bids to purchase oil and gas in place under riverbeds and channels without requiring mineral development; and

(4) pool or bring an action to force pool unleased riverbeds and channels.

(b) The board shall advertise that the board will receive bids and award the right to lease, develop, or purchase under this section in the same manner as provided in Subchapter D, Chapter 32, of this code and Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 16, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 26, eff. Sept. 1, 1993.

Sec. 52.077. SPECIAL FEE. Each bidder on a lease under this subchapter shall remit with each bid by separate payment a special sale fee in the amount and in the manner provided by Section 32.110 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 27, eff. Sept. 1, 1993.

Sec. 52.080. FORMS FOR LEASE AND CONTRACT. Leases and contracts for the development of riverbeds and channels shall be executed on forms approved by the board.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 17, eff. Aug. 26, 1985.

Sec. 52.082. TERM OF LEASE. A lease granted under this

subchapter shall be for a primary term not to exceed 10 years and for as long after that time as oil or gas is produced from the leased area.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5248, ch. 965, Sec. 10, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 28, eff. Sept. 1, 1993.

Sec. 52.083. CONDITIONS OF LEASE. Oil and gas shall only be leased together and separately from other minerals.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.084. SPECIAL LEASE PROVISIONS. Each lease shall include the provisions required by Sections 52.023 and 52.024 of this code.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.085. PREVENTION OF POLLUTION. (a) Each lease and contract shall require the lessee or contracting party or his successors or assigns to use the highest degree of care and all proper safeguards to prevent pollution of streams.

(b) If the lessee or contracting party fails to meet the requirements in Subsection (a) of this section, the state is entitled to take charge of the property immediately and to cancel the lease.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.087. DETERMINATION OF LEASE PRICE AND DELAY RENTALS. The board shall determine the price at which riverbeds and channels shall be leased and the amount of delay rentals that shall be charged.

Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.088. ROYALTY RATE. The board shall set the royalty rate on production of oil and gas from riverbeds and channels leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the oil and gas produced.

Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 29, eff. Sept. 1, 1993.

Sec. 52.090. EXTENSION OF LEASE. A lease may be extended in the manner provided in Section 52.031 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.091. REFUND OF LEASE MONEY IN CERTAIN SITUATIONS. A lessee under this subchapter is entitled to a refund of all money paid for bonus, delay rentals, and other fees for the reasons and in the manner provided in Section 52.030 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.092. POWER OF EMINENT DOMAIN. The board or any person including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain to condemn land as provided in the general laws of this state for the purposes stated in Section 52.093 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.093. EMINENT DOMAIN PURPOSES. The board and any person, including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain for the following purposes:

(1) to secure additional adjoining land that may be necessary to erect power machinery and to construct storage tanks and slush pits for the operation of the river or channel development and to prevent or lessen the dangers of pollution involved in the drilling of any well in the riverbed or channel; and

(2) to secure a right-of-way to and from any well that is drilled in the riverbed or channel so that the board or any of the leaseholders or contracting parties may go to and from the well and may transport any materials necessary to develop the riverbed or channel and to transport oil and gas away from the well.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.094. DRILLING OFFSET WELL ON CONDEMNED LAND. (a) If the landowner or other interested party and the board or the lessee of the riverbed or channel cannot agree on the amount of damages, if any, and it is necessary to commence condemnation proceedings and if it is necessary for the landowner or other interested party to drill an offset well within the area to be condemned, the mineral rights of the condemned party are superior to the surface rights of the condemning party.

(b) If there is any conflict surrounding the drilling of an offset well under a permit from the Railroad Commission of Texas, the condemning party is required to move any interference or hindrance or to go around any offset well, and if he fails or refuses to immediately move the interference or hindrance on demand, the owner of the mineral rights is entitled to do so immediately without liability.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.095. RIGHTS OF PARTIES TO CONDEMNATION. It is the

intent of this subchapter that the mineral rights of the owner are superior to the surface rights of the condemning party.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.096. EXCLUSION FROM DAMAGES IN CONDEMNATION. In determining the damages resulting from condemnation, the commissioners or any other tribunal shall not consider the value of oil or gas located beneath the rights-of-way of the condemned property.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.097. INJUNCTION. (a) No injunction may be granted against the board, its agents, or persons with whom it has contracted, to restrain the board from enforcing its orders or contracts or from carrying out any development that has begun or was contemplated by the board until notice is given to the board and its agents or the contracting parties and a hearing is held.

(b) Before an injunction or restraining order is issued or becomes effective, the court shall require the complaining party to execute a bond payable to the governor with good and sufficient sureties authorized to do business in this state in an amount determined by the court to be sufficient to protect the state from loss from drainage of the riverbed or channel, of lease or bonus or consideration, or from any other reason. In determining the amount of the bond, the court shall consider the probable and possible loss to the state by granting the injunction.

(c) The attorney general shall bring suit on the bond to recover any loss to the state caused by the suit for injunction.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.098. APPEAL. (a) Either party to the suit for an injunction or restraining order is entitled to appeal from the final

judgment.

(b) The appeal shall be returnable to the appellate court at once and shall have precedence in that court over all pending cases, proceedings, and causes of a different character.

(c) The court of appeals shall decide the questions involved in the appeal at as early a date as possible.

(d) If any question is certified to the supreme court or if writ of error is requested or granted, the supreme court shall set the cause for hearing immediately, and the cause shall have precedence over all other cases, proceedings, and causes of a different character. The supreme court shall decide the cause at as early a date as possible.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 799, ch. 291, Sec. 90, eff. Sept. 1, 1981.

Sec. 52.099. VENUE. The venue for any suit arising from this subchapter either by or against the board and regardless of the kind or nature shall be in Travis County.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.100. EFFECT OF SUBCHAPTER. The provisions of this subchapter do not repeal or supersede Chapter 138, Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), which validated, relinquished, quitclaimed, and granted to patentees and awardees and their assignees land and minerals that are included in surveys lying across or partly across watercourses and navigable streams in the state and that have been patented or awarded as provided in that chapter.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. ROYALTIES

Sec. 52.131. PAYMENT OF ROYALTY GENERALLY. (a) Royalties due

under a lease of state land or minerals that are required to be paid to the land office, including leases on land on which a free royalty is reserved pursuant to Section 51.201 or 51.054 of this title, shall be due and shall be paid as provided in this section.

(b) The commissioner shall by rule set the date for making royalty payments and for filing any reports, documents, or other records required to be filed by the commissioner. However, the commissioner may not set the due date for royalty on oil before the 5th day of the second month succeeding the month of production and may not set the due date for royalty on gas before the 15th day of the second month succeeding the month of production.

(c) Royalty payments shall be accompanied by:

(1) an affidavit of the owner, manager, or other authorized agent, completed in the form and manner required by the land office and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas;

(2) a copy of all documents, records, or reports required by the land office, confirming the gross production, disposition, and market value, including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, pools, and gas lines or gas storage;

(3) a check stub, schedule, summary, or other remittance advice showing by the assigned land office lease number the amount of royalty being paid on each lease; and

(4) other reports or records that the land office may require to verify the gross production, disposition, and market value.

(d) The lessee has the responsibility for paying royalties or having royalties paid by the date provided for payment in this section.

(e) If any royalty is not paid when due but is paid before the 31st day after the date on which it is due, a penalty of five percent of the royalty due shall be added to the unpaid amount due. If the royalty is not paid before the 31st day after the date on which it is due, a penalty of an additional five percent of the royalty due shall be imposed. The minimum penalty under this section is $25. The penalty may not be imposed in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to the market value of the production.

(f) The commissioner shall add a penalty of 25 percent to any

delinquent royalty if a part of the delinquency is due to fraud or an intent to evade the provisions of this chapter.

(g) The annual interest rate on delinquent royalties is 12 percent. Interest accrues on delinquent royalties beginning 60 days after the date on which the royalty is due.

(h) If any report, affidavit, supporting document, or any other instrument required to be filed under this chapter is not filed when due, the commissioner shall charge a reasonable penalty in an amount established by rule adopted by the commissioner.

(i) Interest charged under Subsection (g) of this section or penalties under Subsection (e), (f), or (h) of this section are in addition to any other right, including forfeiture, that the commissioner may exercise for failure to submit a report or other instrument.

(j) By rule, the board may provide procedures and standards for reduction of interest charged or penalties assessed under this section or any other interest or penalties assessed by the commissioner relating to unpaid or delinquent royalties.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 42, 43, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 948, Sec. 23, 24, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 30, eff. Sept. 1, 1993.

Sec. 52.132. FORM OF PAYMENT. Except as provided in Section 52.133 of this code, royalty payments shall be made in cash, by bank draft drawn on a state or national bank in Texas, by a post-office or express money order, or in any other form that the law may provide for making payments to the State Treasury and are payable to the commissioner in Austin.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.133. PAYMENT OF ROYALTY IN KIND. (a) Each oil or gas lease covering land leased by the board, by a board for lease, or by the surface owner of land under which the state owns the minerals, commonly referred to as Relinquishment Act land, which shall be

subject to approval by the commissioner before it is effective, shall include a provision granting the board authorized to lease the land or the owner of the soil of Relinquishment Act land and the commissioner authority to take their royalty in kind, and the commissioner and the boards for lease may include any other reasonable provisions that are not inconsistent with this section.

(b) The option to take the royalty in kind may be exercised at any time or from time to time on not less than 60 days' notice to the holder of the lease.

(c) The commissioner, the owner of the soil under Subchapter F, or the commissioner acting on the behalf of and at the direction of an owner of the soil under Subchapter F, the board, or a board for lease, or at the direction of the Board for Lease of University Lands, may negotiate and execute contracts or any other instruments or agreements necessary to dispose of or enhance their portion of the royalty taken in kind, including contracts for sale, marketing, purchase, transportation, including purchase and exchange agreements necessary to transport gas, and storage and including insurance contracts or other agreements, to secure or guarantee payment.

(d) The commissioner, the owner of the soil under Subchapter F, or the commissioner acting on behalf of and at the direction of an owner of the soil under Subchapter F, the board, or a board for lease may negotiate and execute contracts or any other instruments or agreements necessary to convert that portion of the royalty taken in kind into other forms of energy, other than electricity.

(e) This section shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under existing or future leases to receive royalty from its lessee on the basis of the market value of the production from state public land or land under the provisions of Subchapter F of this chapter.

(f) For the purposes of this section, royalty taken in kind includes oil or gas sold or marketed by the commissioner that has been produced on state mineral lands or from the first three miles of federal waters adjacent to the state boundaries, also known as the 8g zone.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 31, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 427, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 405, Sec. 49, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. 2263), Sec. 1, eff. May 17, 2019.

Sec. 52.134. FILING CONTRACTS AND AGREEMENTS. Copies of contracts for the sale or processing of gas and subsequent agreements and amendments to those contracts shall be filed in the land office within 30 days after the contracts, agreements, or amendments are made. These contracts and agreements received by the land office shall be held in confidence by the land office unless otherwise authorized by the lessee.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.135. INSPECTIONS AND EXAMINATIONS. (a) The books and accounts, receipts, and discharges of all lines, tanks, pools, and meters and all contracts and other records relating to the production, transportation, sale, and marketing of the oil and gas are subject at any time to inspection and examination by the commissioner and the attorney general and governor or their representatives.

(a-1) Not later than the 60th day after the date of receipt of a request from the commissioner, the attorney general, or the governor for information described by Subsection (a), a lessee shall produce the requested information.

(a-2) A lessee who is unable to produce requested information in the time required by Subsection (a-1) must, not later than the 30th day after the date of receipt of a request for the information, reply in writing to the requestor and state the reason for the inability to provide the information in the time required and when the information will be available. A requestor who receives a reply under this subsection may extend the deadline for the production of the requested information by written response to the lessee. If the requestor does not extend the deadline, the lessee shall produce the information not later than the later of:

(1) the fifth day after the date of receipt of a written response from the requestor rejecting the extension; or

(2) the 60th day after the date of receipt of the original request.

(a-3) A lessee who withholds requested information on a good faith legal basis must, not later than the 60th day after the date of receipt of a request for the information, provide the requestor with a detailed explanation of the basis for withholding the information.

(b) If, after inspection and examination of books, accounts, reports, or other records, the commissioner or his representative determines that additional royalties are due under a lease of state land or minerals, the commissioner shall send to the lessee by certified mail, return receipt requested, an audit billing notice notifying the lessee of such additional royalties, and interest and penalty, due and of the reasons for such determination.

(c) A lessee shall have 30 days from the date of the receipt of an audit billing notice under Subsection (b) or a notice of a penalty assessment under Subsection (e) in which to pay the audit deficiency assessment or penalty or to request a hearing before the commissioner or the commissioner's representative for redetermination of the assessment or to challenge the assessment of the penalty. A statement of grounds setting out in detail the lessee's reasons for disagreement with the assessment or penalty and the factual and legal grounds on which the claim is based must be submitted by a lessee with its request for a hearing. The hearing shall be conducted in accordance with the rules and procedures established by the commissioner.

(d) In order to stop the further accrual of penalty or interest, the lessee may pay the additional royalties assessed at any time after receipt of an audit billing notice.

(e) Except as provided by Subsection (f), the commissioner may assess an administrative penalty against a lessee who fails to produce requested information in the time required under Subsection (a-1) or (a-2) by intentionally withholding information to which the land office is legally entitled. The penalty may not exceed:

(1) $100 a day for each day after the deadline for producing the information that the lessee fails to produce the information until the 60th day after the deadline; and

(2) $1,000 a day for each day after the 60th day after the deadline for producing the information that the lessee fails to produce the information.

(f) The commissioner may not assess a penalty against a lessee

who withholds information under Subsection (a-3) until the commissioner determines that the requestor is entitled to the information.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 5, Sec. 1, eff. Sept. 30, 1986.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 361 (H.B. 2571), Sec. 1, eff. September 1, 2013.

Sec. 52.136. LIEN. (a) The state has a statutory first lien on all oil and gas produced on any lease area to secure payment of unpaid royalty and other amounts due.

(b) By acceptance of a lease, the lessee grants to the state an express contractual lien on and security interest in all oil and gas in and extracted from the area covered by the lease, all proceeds which may accrue to the lessee from the sale of the oil and gas, whether the proceeds are held by the lessee or another person, and all fixtures on and improvements to the area covered by the lease used in connection with the production or processing of the oil and gas, to secure the payment of royalties and other amounts due or to become due under the lease or this subchapter and to secure payment of damages or loss that the state may suffer by reason of the lessee's breach of a covenant or condition of the lease, whether express or implied.

(c) The statutory and contractual liens and security interests described in this section may be foreclosed with or without court proceedings in the manner provided under Chapter 9, Business & Commerce Code. The state may require the lessee to execute and record instruments reasonably necessary to acknowledge, attach, or perfect the liens.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1324, Sec. 2, eff. Jan. 1, 1998.

Sec. 52.137. SUIT AFTER PROTEST. (a) If a lessee, who has received an audit deficiency assessment and has waived the right to

request a hearing before the commissioner or who is required by final order of the commissioner following a hearing to pay additional royalties, contends that such audit deficiency assessment is unlawful or that the commissioner may not legally demand or collect such royalties, and the lessee intends to bring suit under this section, the lessee must submit a protest in writing stating fully and in detail each reason why it contends such royalty is not due. Such protest shall be made to the commissioner within 30 days of the date of receipt of the audit billing notice or of the date of receipt of the final order of the commissioner following a hearing, as the case may be. All such mailings shall be by certified mail, return receipt requested.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 3 , Sec. 10(2), eff. September 1, 2015.

(c) A suit under this section is barred unless brought in the district courts of Travis County within 90 days after the date of the protest or within 90 days after the date of the final order of the commissioner following hearing, whichever is later.

(d) The issues to be determined in a suit under this section are limited to those arising from the reasons stated in the written protest as originally filed.

(e) The trial of the issues in a suit under this section is de novo and the substantial evidence rule will not apply.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 5, Sec. 2, eff. Sept. 30, 1986. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 25, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1423, Sec. 14.13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 328, Sec. 7.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 10(2), eff. September 1, 2015.

Sec. 52.139. LIMITATIONS ON AUDIT ASSESSMENTS. (a) If an audit billing notice has been issued under Section 52.135 and any outstanding audit deficiency assessment has been paid either:

(1) voluntarily;

(2) after a hearing was requested and the commissioner has entered a final non-appealable order concerning the assessment; or

(3) after a final non-appealable judgment has been rendered by a court after filing of a suit under Section 52.137, then the commissioner may not issue another deficiency assessment which covers the same issues, time periods, and leases as those covered by the previous assessment.

(b) If the commissioner audits a lessee's books and records under Section 52.135 of this code the commissioner shall notify the lessee upon completion of his findings. If the commissioner notifies the lessee that no additional royalties are due, the commissioner may not again audit the books and records covering the same issues, time periods, and leases involved in the first audit.

(c) This section shall not preclude the commissioner from conducting subsequent audits or examinations covering the same issues, time periods, and leases in cases where fraud exists or where the first audit deficiency assessment results only from an examination of documents, records, or reports submitted to the commissioner and not from a complete audit of the books, accounts, reports, or other records of a lessee.

Added by Acts 1987, 70th Leg., ch. 948, Sec. 26, eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 9, eff. September 1, 2015.

Sec. 52.140. AUDIT INFORMATION CONFIDENTIAL. (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in Section 52.135 of this code, is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(b) All information made confidential in this section shall not be subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding in which this state is a party.

(c) The commissioner or the attorney general may use information made confidential by the provisions of this section and contracts made confidential by Section 52.134 of this code to enforce any provisions of this chapter or may authorize their use in judicial or administrative proceedings in which this state is a party.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information which is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 52.135 of this code or the release of other information which would have been properly included in reports required under Section 52.131 of this code.

Added by Acts 1987, 70th Leg., ch. 948, Sec. 27, eff. Sept. 1, 1987.

SUBCHAPTER E. UNITIZATION OF LEASED AREAS

Sec. 52.151. AUTHORIZATION TO OPERATE AREAS AS UNITS. (a) The commissioner, on behalf of the state or any fund that belongs to the state, may execute agreements that provide for operating areas as a unit for the exploration, development, and production of oil or gas or both and to commit to the agreements:

(1) the royalty interests in oil, gas, or both oil and gas, reserved to the state or any fund of the state by law, in a patent, in a contract of sale, or under the terms of an oil and gas lease legally executed by an official, board, agent, agency, or authority of the state; or

(2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

(b) Before executing an agreement authorized by Subsection (a) of this section, the commissioner must find that the agreement is in the best interest of the state.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 28, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 32, eff. Sept. 1, 1993.

Sec. 52.152. APPROVAL OF AGREEMENTS. (a) An agreement must be approved by the board and executed by the commissioner to be effective if the agreement commits:

(1) a royalty interest in land belonging to the permanent school fund or the asylum funds, in riverbeds, inland lakes, and channels, or in an area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea; or

(2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

(b) An owner of the soil who is subject to Subchapter F of this chapter may grant to a lessee prior authority to pool or unitize the interest of the owner in a lease executed under that subchapter. For the provisions of an agreement to bind the interest of an owner of the soil who is subject to Subchapter F of this chapter and who has not granted the lessee prior authorization to pool or unitize the owner's interest in an oil and gas lease executed under that subchapter, the agreement must be executed by the owner of the soil.

(c) An agreement that commits any interest in any land not listed in Subsection (a) of this section must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for oil and gas and must be executed by the commissioner to be effective.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 29, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 33, eff. Sept. 1, 1993.

Sec. 52.153. PROVISIONS OF AGREEMENT. (a) An agreement executed under this subchapter may include the following provisions:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be conduct of the operations on each tract in the unit;

(2) that production allocated by the agreement to each tract included in the unit when produced shall be considered for all

purposes to have been production from the tract;

(3) that the interest reserved to or provided for the state or any of its funds on production from any tract included in the unit shall be paid only on that portion of the production from the unit that is allocated to the tract under the agreement; and

(4) that each lease included in the unit shall remain in effect as long as the agreement remains in effect and that on termination of the agreement each lease shall continue in effect under the terms and conditions of the lease.

(b) The agreement may include any other terms and conditions the commissioner or any board, official, agent, agency, or authority of the state that has the authority to lease or to approve a lease of the land for oil and gas may consider to be in the best interest of the state.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 34, eff. Sept. 1, 1993.

Sec. 52.154. RATIFICATIONS AND OTHER AGREEMENTS. (a) The board may approve, by rule or order, a ratification or other agreement that includes in the benefits of production a mineral or royalty interest in land belonging to the permanent school fund or the asylum funds.

(b) An agreement approved by the board under this section must be executed by the commissioner to be effective.

(c) A ratification or other agreement that commits any of the interests listed in Subsection (a) of this section in land not belonging to the permanent school fund or the asylum funds must be approved by the board, official, agent, agency, or authority of the state that has the authority to lease or to approve the lease of the land for oil and gas and must be executed by the commissioner to be effective.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 35, eff. Sept. 1, 1993.

SUBCHAPTER F. RELINQUISHMENT

Sec. 52.171. SCHOOL AND ASYLUM LANDS. The state hereby constitutes the owner of the soil its agent for the purposes herein

named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.172. SALE AND LEASE BY AGENT. The owner of said land is hereby authorized to sell or lease to any person, firm, or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for a delay rental during the primary term of less than 10 cents per acre per year plus royalty, and in case of production, the lessee or purchaser shall pay the state the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 44, eff. Sept. 1, 1985.

Sec. 52.173. OFFSET WELLS. (a) In this section:

(1) "Horizontal drainhole well" means a well with a horizontal drainhole that may produce oil or gas along at least 100 feet of the drainhole.

(2) "Take point" means any point in a horizontal drainhole well where oil or gas can be produced from the reservoir or field interval recognized by the Railroad Commission of Texas.

(3) "Unconventional fracture treated field" means an oil or gas field in which horizontal well development and hydraulic fracture

treatment must be used to recover resources from all or part of the field.

(a-1) Except as provided by Subsection (a-2), if oil or gas is produced in commercial quantities within 1,000 feet of land subject to this subchapter or if production of oil or gas is draining land subject to this subchapter, the owner, lessee, sublessee, receiver, or other agent in control of land subject to this subchapter shall in good faith begin the drilling of a well or wells upon such state land within 100 days after the draining well or wells or the well or wells completed within 1,000 feet of the state land commence to produce in commercial quantities and shall prosecute such drilling with diligence to reasonably develop the state land and to protect such state land against drainage.

(a-2) If the well producing oil or gas in commercial quantities under Subsection (a-1) is a horizontal drainhole well located in an unconventional fracture treated field, the owner, lessee, sublessee, receiver, or other agent in control of land subject to this subchapter is not required to drill an offset well as provided by Subsection (a-1) unless any take point in the horizontal drainhole well is located closer to the state land than the greater of:

(1) the minimum distance established by the applicable lease-line spacing requirement of the Railroad Commission of Texas; or

(2) a perpendicular distance of 330 feet.

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state land.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

(d) At the determination of the commissioner and with the commissioner's written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells required by Subsection (a-1). Such compensatory royalty shall be paid at a royalty rate established by the commissioner if the land is unleased, or at the royalty rate provided by the state lease, if the land is leased. Such compensatory royalty shall be paid on the market value at the well of production from the well producing oil or gas in commercial quantities described by Subsection (a-1).

Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 30, eff. Sept. 1, 1987.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 392 (S.B. 1258), Sec. 2, eff. September 1, 2021.

Sec. 52.174. FAILURE TO DRILL OFFSET. If such persons fail or refuse to begin the drilling of such well or wells within the time required or to prosecute such drilling as necessary for the purpose intended herein, any lease of such land executed under the provisions of this law shall be subject to forfeiture by the Commissioner of the General Land Office, and he shall forfeit same when he is sufficiently informed of the facts which authorize a forfeiture, and shall, on the wrapper containing the papers relating to such lease, write and sign officially words declaring such forfeiture, and the lease and all rights thereunder shall thereupon be forfeited together with all payments made thereunder. Notice of such action shall forthwith be mailed to the persons shown by the records of the General Land Office to be the owners of the surface and the owners of the forfeited lease at their last known addresses as shown by the records of said office. Upon proper showing by the owner of the forfeited lease within 30 days after the declaration of forfeiture, the lease may, at the discretion of the commissioner and upon the terms of this subchapter and such other terms as he may prescribe, be reinstated. If such lease be not reinstated within such time, or if the commissioner finds that any unleased land included in this law is being drained, the commissioner shall notify the person at his last known address, as shown by records of the General Land Office to be the surface owner, that the oil and gas is subject to sale or lease by the owner of the soil in accordance with this law, and that drilling is required. If such owner shall fail or refuse to obtain the commencement of such a well within 100 days after the date of such notice, the relinquishment herein granted and the rights acquired thereunder shall be subject to forfeiture by the commissioner by endorsing on the file wrapper containing the papers relating to the sale of the land, words indicating such forfeiture, and such rights shall thereupon be forfeited, and notice of such forfeiture shall be forwarded to the county clerk of the county wherein the land is situated. The rights of any owner of the soil

which may have ipso facto terminated under prior laws shall be reinstated and are hereby reinstated, together with all rights acquired thereunder except where rights of third parties may have intervened. All rights herein reinstated shall be subject to the terms and provisions of this subchapter.

Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.175. LEASE OF OIL AND GAS AFTER FORFEITURE. When the relinquishment or agency right herein granted has been forfeited, the land shall be subject to lease for oil and gas under the procedure provided by law for the leasing of unsold surveyed public school lands. The substantive provisions of Subchapter B of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to the oil and gas lease. No oil and gas lease shall be executed which provides for a royalty of less than one-eighth, payable to the state for the benefit of the permanent free school fund. The owner of the soil shall not be entitled to any revenue generated by a lease executed pursuant to this section. Upon the termination or expiration of a lease so executed by the Commissioner of the General Land Office, the rights of the surface owner to act under this law shall be ipso facto reinstated.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 36, eff. Sept. 1, 1993.

Sec. 52.176. FORFEITURE OF RIGHTS. If any person, firm, or corporation operating under this law shall fail or refuse to make the payment of any sum within 30 days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail to file reports in the manner required by law or fail to comply with General Land Office rules and regulations or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail

or refuse to furnish the land office a correct log of any well, or if any lease is assigned and the assignment is not filed in the General Land Office as required by law, the rights acquired under the permit or lease shall be subject to forfeiture by the commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.177. RIGHTS OF SUBSEQUENT PURCHASER. If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the state. A relinquishment to the state of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.178. OPERATION UNDER PERMIT. The owner of a permit or combination of permits shall have 18 months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one

permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.179. LEASE UNDER PERMIT. If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the commissioner within 30 days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager, or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed 10 years, subject to renewal or renewals.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.180. PAYMENTS UNDER PERMIT. The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the state 10 cents per acre, annually in advance, for the second and third years, and shall likewise pay the owner of the soil 10 cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said commissioner shall forfeit the same by an

endorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of 10 cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the land office relating to such permits.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.181. RELINQUISHMENT UNDER PERMIT. The owner of a permit or combination of permits may relinquish to the state a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the land office within 60 days after its execution, with a filing fee set by the commissioner in an amount not less than $1.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(k), eff. Sept. 1, 1983.

Sec. 52.182. DAMAGES TO SOIL. The payment of delay rentals and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 18, eff. Aug. 26, 1985.

Sec. 52.183. EFFECTIVE DATE OF LEASE. No mineral lease

executed by the owner of the land or minerals under this subchapter is effective until a certified copy of the lease is filed in the land office.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.184. STATEMENT OF CONSIDERATION. No lease executed under this subchapter after September 17, 1939, is binding on the state unless it recites the actual and true consideration paid or promised.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.185. UNIVERSITY LAND. The provisions of this subchapter relating to a combination of permits and extension of time for beginning development and time for development applies to permits on university land.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.186. LEASE OF CERTAIN MINERALS WHEN OWNER OF THE SOIL UNAVAILABLE. (a) If an owner of the soil or of any undivided interest therein of any land subject to the terms of this subchapter or Subchapter C, Chapter 53, of this code is found to be unavailable under Subsection (b) of this section to act as the state's agent for leasing oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code, such land or undivided interest therein shall be subject to lease for the applicable minerals under the procedure provided by Subchapter B of this chapter for the leasing of unsold surveyed public school lands. The substantive provisions of Subchapter B of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to a lease of land subject to lease under this subchapter. The substantive provisions of Subchapter E, Chapter 53, of this code and Subchapters D and E, Chapter 32, of this code shall apply to a lease of land subject to lease under Subchapter C,

Chapter 53, of this code. Subject to the provisions of Subsection (b)(4) of this section, the owner of the soil shall not be entitled to any revenue generated by a lease executed pursuant to this section.

(b) An owner of the soil or of an undivided interest therein may be found to be unavailable to act as the state's agent for leasing oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code, if the following conditions have been satisfied:

(1) Any party who has been unable to locate an owner of any interest, including an undivided interest, in the surface of land subject to this subchapter or Subchapter C, Chapter 53, of this code must submit a written affidavit to the commissioner stating that the party (hereafter called affiant) has been unable to locate said owner. This affidavit must specify the legal description of the land which the affiant has been unable to lease and the extent of the interest and type of mineral which the affiant has been unable to lease. In the affidavit, the affiant must also attest to the fact that he diligently searched the county clerk's records and the tax assessor's records to determine the name, identity, and last known place of residence of the owner of the soil who could lease the interest that the affiant has been unable to lease. The affiant must further attest to the results of his search of such records and to any other steps taken to locate the owner of the soil.

(2) The commissioner shall provide notice to any owner of the soil identified by the affiant in Subdivision (1) of this subsection of the consequences of a finding that such owner of the soil is unavailable to act as the state's leasing agent. Such notice shall be in writing to the owner of the soil's last known address and shall also be provided by publication in the manner provided by the Texas Rules of Civil Procedure for citation by publication in actions against unknown owners or claimants of an interest in land.

(3) If the owner of the soil has not contacted the commissioner within 30 days after the completion of all notice procedures provided under Subdivision (2) of this subsection, then the owner of the soil will be deemed unavailable to act as the state's leasing agent and the School Land Board may lease the state's mineral interest under Subsection (a) of this section. However, if prior to the execution of a lease under Subsection (a) the owner of the soil notifies the commissioner in writing that he can and will act as the state's agent, then the owner of the soil's ability to act

as a leasing agent under this subchapter or under Subchapter C, Chapter 53, of this code shall be reinstated.

(4) If the owner of the soil or of any undivided interest therein appears within two years after the execution of a lease on his land pursuant to this section, he shall be entitled to one-half of all royalties theretofore paid or thereafter to be paid under such lease, reduced in the proportion which his interest bears to the whole and undivided surface estate, upon showing to the satisfaction of the commissioner that the information submitted under Subsection (b)(1) was inaccurate or that a reasonably diligent search would have resulted in his being located.

(c) Upon the termination or expiration of a lease for oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code executed pursuant to this section, the rights of the owner of the soil to act under this subchapter shall be ipso facto reinstated.

Added by Acts 1979, 66th Leg., p. 860, ch. 384, Sec. 1, eff. June 6, 1979. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 2, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 37, eff. Sept. 1, 1993.

Sec. 52.188. ASSIGNMENTS TO THE OWNER OF THE SOIL. (a) An owner of the soil may acquire by assignment a lease which he executed on land subject to the Relinquishment Act, Subchapter F, Chapter 52 of this code; however, such an assignment is subject to the terms of this section.

(b) When an owner of the soil seeks an assignment under Subsection (a) of this section, both the current lessee and the owner of the soil should notify the General Land Office of the proposed assignment. This notification must include proof of the consideration to be paid for the assignment. The land commissioner may then approve the assignment; if the commissioner does approve it, then both the current lessee and the owner of the soil will receive written notice of this approval. Such written approval shall also become part of the General Land Office's mineral file on this land.

(c) A lease which has been assigned to an owner of the soil without the advance approval of the land commissioner is void as of the time of assignment. In addition, the land commissioner may also

forfeit the agency powers of the owner of the soil, and the state will execute a subsequent lease pursuant to Section 52.175 of this code.

(d) Whenever an owner of the soil is assigned a Relinquishment Act lease that he executed, he shall be accountable to the state as follows:

(1) If the lease was assigned to the owner of the soil without the advance approval of the commissioner and the owner of the soil subsequently assigns the lease, the owner of the soil must pay the state two times the entire consideration that he received upon subsequent assignment of the lease. Payment of this money in no way alters the fact that the lease is void under Subsection (c) of this section.

(2) When an assignment to an owner of the soil has the commissioner's advance approval and the owner of the soil subsequently assigns the lease, the owner of the soil must pay the state one-half of his profit on the subsequent assignment. His profit is the difference between what he paid for his assignment and what he received for the subsequent assignment.

(e) Under this section, an assignment will be treated as if it were made to the owner of the soil when:

(1) the assignee is a nominee of the owner of the soil;

(2) the assignee is a corporation or subsidiary in which the owner of the soil is a principal stockholder or is an employee of such a corporation or subsidiary;

(3) the assignee is a partnership in which the owner of the soil is a partner or is an employee of such a partnership;

(4) the assignee is a principal stockholder or employee of the corporation which is the owner of the soil;

(5) the assignee is a partner or employee in a partnership which is the owner of the soil;

(6) the assignee is a fiduciary for the owner of the soil, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator for the owner of the soil; or

(7) the assignee is a family member of the owner of the soil or related to the owner of the soil by marriage, blood, or adoption.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 45, eff. Sept. 1, 1985.

Renumbered from Sec. 52.187 and amended by Acts 1987, 70th Leg., ch. 912, Sec. 3, eff. Aug. 31, 1987.

Sec. 52.189. AUTHORITY AND DUTIES OF AGENT. (a) Prohibition Against Self-Dealing. (1) The owner of the soil may not lease, either directly or indirectly, to himself or to a nominee, to any corporation or subsidiary in which he is a principal stockholder or to an employee of such a corporation or subsidiary, or to a partnership in which he is a partner or to an employee of such a partnership. If the owner of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator.

(2) Except as provided by this section, the owner of the soil may not lease, directly or indirectly, to a person related to him within and including the second degree of consanguinity or affinity, including a person related by adoption, or to a corporation or subsidiary in which that person is a principal stockholder, or to a partnership in which that person is a partner, or to an employee of such a corporation or subsidiary or partnership.

(3) An owner of the soil who wishes to lease to a person, corporation, or partnership described in Subdivision (2) may request the approval of the board for authority to execute such a lease before its execution. The owner of the soil requesting approval must also execute and file with the commissioner a sworn affidavit stating that the owner of the soil will not receive any benefit under a lease so approved by the board that will not be shared with the permanent school fund in the proportion prescribed by this subchapter.

(4) If an owner of the soil makes any material misstatement of fact in connection with an application to the board or affidavit made pursuant to Subdivision (3), then any lease executed pursuant to the authority of the board shall be voidable at the election of the commissioner. The election to void such a lease shall be cumulative of and in addition to all other remedies available to the commissioner or the state.

(b) Fiduciary Duty of Agent. An owner of the soil owes the state a fiduciary duty and a duty of utmost good faith. An owner of the soil must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the owner of the soil. In addition to these specific statutory duties, the owner of the soil owes the state all the common-law duties of a holder of executive rights.

(c) When the commissioner determines that an owner of the soil has breached any duty or obligation under this subchapter, the commissioner may request that the attorney general file an action or proceeding either to enforce the duties and obligations of the owner of the soil or to forfeit the then applicable agency rights of the surface owner. Such an action or proceeding shall be filed in a district court in Travis County.

(d) A penalty of 10 percent shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. This penalty shall be applied only to amounts owed as a result of breaches occurring on and after the effective date of this subsection. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10 percent penalty imposed by this subsection.

Added by Acts 1985, 69th Leg., ch. 652, Sec. 1, eff. June 14, 1985. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 6, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 948, Sec. 31, eff. Sept. 1, 1987. Renumbered from Sec. 52.187 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(31), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 937, Sec. 2, eff. Sept. 1, 1995.

Sec. 52.190. LEASE BY OWNER OF THE SOIL. (a) An owner of the soil of lands covered by this subchapter may lease those lands for the purpose of exploring for and producing oil and gas in the manner provided by this section.

(b) An owner of the soil may apply in writing to the board for an oil and gas lease.

(c) The application shall contain the following:

(1) the name and address of the applicant;

(2) a complete legal description of the land the applicant seeks to lease;

(3) the name and address of every owner of the soil of the land the applicant seeks to lease, if the applicant is not the sole owner of the soil;

(4) a brief letter opinion signed by an attorney licensed in this state setting out the surface ownership of the land sought to be leased;

(5) a statement of the applicant's experience in oil and gas exploration and production, including, without limitation, the applicant's Railroad Commission of Texas operator number and a list of any State of Texas or federal oil and gas leases held or operated by the applicant or other entity in which the applicant has or had a significant interest during the five-year period preceding the date of the application;

(6) a statement that the applicant intends to explore for and, if commercially reasonable, produce oil and gas or if the applicant plans that another person or firm shall conduct exploration and production:

(A) the name and address of the person or firm;

(B) a description of the person's or firm's experience in oil and gas exploration and production, including, without limitation, the person's or firm's Railroad Commission of Texas operator number and a list of any State of Texas or federal oil and gas leases held or operated by the person or firm during the five-year period preceding the date of the application; and

(C) a description of the applicant's intended degree and type of participation in the exploration of and production from the property and all consideration or benefits the applicant expects to receive in connection with the exploration of and production from the property; and

(7) the amount of bonus, rental, royalty, and other lease terms that the applicant proposes to pay or offer or pay and offer for the lease.

(d) The applicant shall provide geological, geophysical, geochemical, and other data or copies of the data, including interpretative data, pertinent to mineral exploration on the lands for which the application is made, in the applicant's possession or to which the applicant has reasonable access and which the applicant has the ability to provide to the land office. All such data shall

be confidential and not subject to the provisions of the open records law, Chapter 552, Government Code, until one year after the expiration, termination, or forfeiture of a lease granted pursuant to this section. After one year after the expiration, termination, or forfeiture of such a lease, the data shall remain confidential to the extent permitted by Chapter 552, Government Code. If a lease is not issued, the data shall be returned to the applicant.

(e) The board may prescribe the form of the application, specify information required to be submitted in support of an application, and, by rule, otherwise provide for the implementation of this section.

(f) The staff of the land office shall review the information presented in the application, other geological, geophysical, and geochemical data reasonably available to it relevant to the land proposed to be leased, and leasing information reasonably available to it relevant to the land proposed to be leased. The staff shall prepare a report to the board that contains:

(1) a summary of bonus, rental, royalty, and other lease terms then being offered and asked for leases of similar lands in the area of the land proposed to be leased; and

(2) any factual data considered by the staff to be relevant, including, but not limited to, data concerning the land proposed to be leased and its estimated value for oil and gas exploration and production, recommended lease terms, and the applicant, including the applicant's history of leasing State of Texas or federal lands for oil and gas.

(g) The board shall consider the application at a regular meeting. It may, in its sole discretion, grant or deny the application or grant the application subject to specified conditions. Such conditions may include a requirement that if the applicant does not materially participate in the exploration or development of the leased premises, through labor performed, cash or goods contributed, or supplying other enhancement in value, the applicant must share equally with the permanent school fund any benefit derived from the lease.

(h) After the board has approved an application, the commissioner shall issue a lease to the applicant. The lease shall conform, as nearly as is practicable, to the form of lease prescribed by the board under Section 32.1071.

(i) The commissioner may not deliver a lease issued under this

section until the applicant has executed and delivered to the commissioner a waiver of the applicant's right and duty to act as agent for the state in leasing the leased premises and to receive any part of the bonus, rental, royalty, and other consideration accruing to the owner of the soil under this subchapter. The waiver and the lease shall be effective as of the date the commissioner executes the lease.

(j) Upon the expiration, termination, or forfeiture of a lease issued under this section, the agency rights and duties of the applicant as owner of the soil are reinstated without the necessity for further action by the owner of the soil, the board, or the commissioner.

(k) If an applicant is not the sole owner of the soil, the applicant may secure leases from the other owners of the soil from which the applicant is not prohibited from leasing under Section 52.189. If the applicant must obtain a lease from an owner of the soil from whom the applicant would otherwise not be permitted to lease in order reasonably to explore for or produce or explore for and produce oil or gas, the commissioner may approve the lease on the condition that the applicant shall not receive any benefit from the lease, and, if the applicant should acquire by any method, including devise or inheritance, the right to receive any rental, royalty, or other benefit accruing to the owner of the soil's interest under the lease, the applicant shall assign the benefit to the commissioner for the benefit of the permanent school fund.

(l) The commissioner shall not approve any lease obtained by an applicant from another owner of the soil if the lease contains terms that are substantially inconsistent with or provide for a lesser bonus, rental, or royalty than the lease approved by the board. If the bonus, rental, or royalty in a lease obtained by an applicant from another owner of the soil for a comparable interest is greater than that approved by the board, then the lease approved by the board shall be amended to provide for the greater bonus, rental, or royalty, and the applicant shall be liable for all greater sums due. In determining whether an interest is comparable, the board shall consider the quantum of the interest, the time at which the lease was taken, and any other aspects of the lease transaction that the board considers to be relevant.

Added by Acts 1995, 74th Leg., ch. 937, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER H. LEASE LIMITATIONS

Sec. 52.291. COVERAGE. The following persons, agencies, and entities are subject to the provisions of Sections 52.292 through 52.293 of this code:

(1) the commissioner;

(2) the board;

(3) boards for lease of land owned by a department, board, or agency of the state created by Chapter 34 of this code;

(4) the Board for Lease of University Lands;

(5) the Board of Regents of Texas A&M University;

(6) the Board of Regents of Texas Tech University;

(7) the Board of Regents of the Texas State University System;

(8) the Board of Regents of the University of Houston;

(9) any other board of regents or other governing board of a state-supported institution of higher learning having authority to execute oil and gas leases on land owned by the institution;

(10) an owner of land or minerals in this state whose authority to lease the land or minerals as agent for the state arises in whole or in part from what is commonly known as the Relinquishment Act, codified in Subchapter F of this chapter;

(11) the Board for Lease of State Park Lands;

(12) the Board for Lease of the Texas Department of Criminal Justice; and

(13) the commissioners court of any county in this state.

Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 227, Sec. 6, eff. May 23, 1997.

Sec. 52.297. COMPENSATION FOR DAMAGES FROM USE OF SURFACE. (a) Leases issued under Subchapter B of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring the compensation for damages from the use of the surface in

prospecting for, exploring, developing, or producing the leased minerals.

(b) The commissioner by rule shall set the procedure for receiving compensation for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or construction of permanent improvements on land that belongs to the permanent school fund.

(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the permanent school fund.

(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

(g) The compensation for damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 46, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 42, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 328, Sec. 8, eff. Jan. 1, 2004.

SUBCHAPTER I. GEOPHYSICAL AND GEOCHEMICAL EXPLORATION PERMIT

Sec. 52.321. DEFINITIONS. In this subchapter:

(1) "Geophysical exploration" means a survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electrical techniques.

(2) "Geochemical exploration" means a survey or investigation conducted to discover or locate oil and gas prospects using techniques involving soil sampling and analysis.

(3) "Public school land" means land dedicated by the constitution or laws of this state to the permanent free school fund, and specifically includes land with a mineral classification under Subchapter F of this chapter in which the state has retained the oil

and gas interest and areas within tidewater limits.

(4) "Areas within tidewater limits" means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

(5) "Permit" means a license issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(6) "Permittee" means the holder of a permit.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 47, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 43, eff. Sept. 1, 1993.

Sec. 52.322. PERMIT REQUIRED FOR EXPLORATION. (a) Except for a person who has a valid oil and gas lease on public school land authorized by this chapter, a person may not conduct geophysical or geochemical exploration on public school land unless the person obtains a permit from the commissioner.

(b) Every person who is authorized to conduct a geophysical or geochemical exploration on public school land shall comply with the commissioner's rules relating to such exploration. Any person with a valid oil and gas lease on land subject to this chapter must comply with the commissioner's rules concerning exploration.

(c) Nothing in this title shall prohibit the conduct of airborne geophysical exploration.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 47, eff. Sept. 1, 1985.

Sec. 52.323. APPLICATION FOR PERMIT. (a) The person responsible for conducting a geophysical or geochemical exploration is the person who must apply for a permit.

(b) An application for a permit shall be made on a form prescribed by the commissioner and shall state the name and address of each person for whom the exploration is being conducted as well as any other information required by the commissioner.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.324. AUTHORITY OF COMMISSIONER. (a) The commissioner:

(1) as a condition of issuing a permit, shall collect reasonable fees from the applicant in an amount determined by the commissioner;

(2) may require a permittee to furnish to the commissioner, upon the commissioner's request, copies of maps, plats, reports, data, and any other information in the possession of the permittee that relates to the progress or results of an exploration under a permit; provided however, the commissioner shall not require a permittee to furnish any of its interpretive data;

(3) shall by rule require a permittee to restore land explored under the permit as nearly as is practicable to its condition immediately prior to the exploration;

(4) shall by rule determine the procedure for receiving compensation for damages to the surface of public school land except land with a mineral classification under Subchapter F of this chapter; and

(5) may make any other rules relating to geophysical or geochemical explorations, permits, or permittees the commissioner considers appropriate.

(b) Money collected for surface damages shall be deposited and used in the manner provided by Section 52.297 of this chapter.

(c) In the case of areas within tidewater limits, the commissioner shall follow the recommendations of the Parks and Wildlife Department in making rules to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(d) If a permittee violates a rule of the commissioner or a term of a permit, the commissioner may cancel the permit.

(e) If by authority of Subsection (a)(2) of this section the commissioner acquires information concerning a permittee's geophysical or geochemical exploration, the commissioner shall consider the information to be confidential and may not disclose it, except by authority of a court order, to the public or any other agency of this state.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 47, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 44, eff. Sept. 1, 1993.

Sec. 52.325. PERMITTEE'S FAILURE TO COMPLY. (a) If a permittee fails to restore land in accordance with Section 52.324(a)(3) of this code and the rules of the commissioner, the commissioner and any surface lessee may maintain an action against the permittee for actual damages to the land, or to the improvements, growing crops, or domesticated animals on the land that were caused by the geophysical or geochemical exploration.

(b) If a permittee violates this subchapter, the provisions of a permit issued by authority of this subchapter, or a rule of the commissioner, the permittee commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000. Each day that a violation occurs is a separate offense.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 53. MINERALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the School Land Board.

(4) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed. The term does not include in situ mining activities.

Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 45, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1483, Sec. 3, eff. Aug. 30, 1999.

SUBCHAPTER B. PROSPECT AND LEASE ON STATE LAND

Sec. 53.011. LAND SUBJECT TO PROSPECT. Any tract of land that belongs to the state, including islands, salt and freshwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits, the part of the Gulf of Mexico within the state's jurisdiction, unsold surveyed public school land, rivers and channels that belong to the state, and land sold with a reservation of minerals to the state are subject to prospect by any person for those minerals which are not subject to lease or permit under any other statute. A person may not prospect from a location within 2,500 feet of a military base, but prospectors may, from a location more than 2,500 feet from a base, look for minerals within the 2,500-foot strip.

Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 4, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 1061, Sec. 4, eff. Aug. 31, 1987; Acts 2003, 78th Leg., ch. 149, Sec. 14, eff. May 27, 2003.

Sec. 53.012. APPLICATION FOR RIGHT TO PROSPECT. (a) A person who desires to prospect land covered by this subchapter shall file an application with the commissioner designating the area to be prospected.

(b) Each area covered by an application may not be in excess of 640 acres with a 10 percent tolerance for tracts, sections, and surveys that include more than 640 acres.

(c) The commissioner may determine the contents of an application.

Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 46, eff. Sept. 1, 1993.

Sec. 53.013. CONDITIONS OF PERMIT. (a) The commissioner may issue to the first applicant a permit to prospect the area designated in the applicant's application for a period up to one year from the date the application is filed. If the commissioner elects to grant the application for a permit to prospect under the provisions of this subchapter, the permit shall not be issued until after the land

office receives the rental payment set by the commissioner.

(b) After receipt of an additional rental payment set by the commissioner, the commissioner may extend the permit for a period of one year.

(c) No permit may be extended for a period of more than five consecutive years from the date of its issuance.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 19, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 47, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 354, Sec. 4, eff. Aug. 28, 1995.

Sec. 53.015. APPLICATION FOR LEASE. (a) At any time during the term of the permit, the permittee may file an application to lease the area or a designated portion of the area covered by the permit for the purpose of mining or producing the minerals covered by the permit.

(b) An application to lease must designate the specific minerals the permittee is applying to lease. The commissioner may determine any additional information an application must contain.

(c) If the area designated for lease in the application is less than the area covered by the permit, the applicant shall include with the application field notes prepared by the county surveyor or by a licensed state land surveyor describing the land designated.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 48, eff. Sept. 1, 1993.

Sec. 53.016. ISSUANCE OF LEASE. (a) After receipt of the bonus payment set by the commissioner, the lease shall be issued by the commissioner under the provisions of this subchapter and shall be for a primary term not to exceed 20 years and as long after that time as the minerals are produced in paying quantities.

(b) Any lease covering land adjacent to a military base shall require the lessee to forego the right to use the surface within 2,500 feet of the military base while exploiting the minerals. The commissioner may include in the lease any other provision the commissioner considers necessary for protection of the interests of

the state.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5248, ch. 965, Sec. 11, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 49, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 149, Sec. 15, eff. May 27, 2003.

Sec. 53.018. ROYALTY. The royalty under the lease shall not be less than one-sixteenth of the value of the minerals produced under the lease.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.019. PAYMENTS. Lease payments and royalty shall be paid to the commissioner at Austin, and all payments shall be credited to the account of the permanent school fund.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.020. ASSIGNMENT AND TRANSFER. A lease issued under this subchapter may be transferred or assigned at any time in the manner provided by Section 52.026 of this code.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(l), eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 50, eff. Sept. 1, 1993.

Sec. 53.021. FORFEITURE OF LEASE. (a) A lease is subject to forfeiture by act of the commissioner if:

(1) the lessee fails or refuses to pay any amount which is due either as a lease payment or royalty;

(2) the lessee or his authorized agent knowingly makes any false return or false report concerning the lease;

(3) the lessee or his agent refuses the commissioner or his authorized representative access to the records or other data relating to operations under the lease; or

(4) a material term of the lease is violated.

(b) Any area forfeited under this section is subject to application for a permit under the same terms as the original application.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.022. EFFECT OF SUBCHAPTER. None of the provisions of this subchapter shall apply to, alter, or affect any rights existing on June 22, 1955, under a valid permit issued by the commissioner under the provisions of Section 12, Chapter 271, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 5421c, Vernon's Texas Civil Statutes), but if the permittee desires that his lease continue as long as production is obtained in paying quantities, he shall pay lease payments and royalty provided in this subchapter.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.023. IMMEDIATE LEASE. If the commissioner determines that a certain mineral is located on a state tract subject to prospect under this subchapter, a lease for that mineral may be issued immediately on the application for the prospect permit if the applicant identifies the mineral in the application and requests the immediate issuance of the lease.

Added by Acts 1985, 69th Leg., ch. 923, Sec. 20, eff. Aug. 26, 1985.

Sec. 53.024. PENALTY AND INTEREST. A lease issued under this subchapter shall be subject to Sections 52.131(e) through (j) of this code.

Added by Acts 1985, 69th Leg., ch. 923, Sec. 20, eff. Aug. 26, 1985.

Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 51, eff. Sept. 1, 1993.

Sec. 53.025. LEASE RELINQUISHMENT. A lease issued under this subchapter may be relinquished to the state at any time in the manner provided by Section 52.027 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.

Sec. 53.026. IN KIND ROYALTY. (a) The commissioner or the commissioner acting on behalf of and at the direction of the board or a board for lease may negotiate and execute a contract or any other instrument or agreement necessary to dispose of or enhance their portion of the royalty taken in kind, including contracts for sale, purchase, transportation, or storage.

(b) The commissioner or the commissioner acting on behalf of and at the direction of the board or a board for lease may negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, other than electricity.

(c) This section shall not be construed to surrender or in any way affect the right of the state under an existing or future lease to receive monetary royalty from its lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 405, Sec. 50, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. 2263), Sec. 2, eff. May 17, 2019.

Sec. 53.027. CONTRACTS AND AGREEMENTS. On the land office's written request, mailed to the lessee's address as shown on its lease or otherwise properly changed in conformity with the terms of the lease, a copy of a contract for the sale or processing of minerals leased under this subchapter and any subsequent agreement or amendment to the contract shall be filed in the land office within 30 days after the date the land office mails the written request. The

land office shall treat a contract, agreement, or amendment filed in the land office as confidential unless otherwise authorized by the lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.

Sec. 53.028. AUDIT INFORMATION CONFIDENTIAL. (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records as provided by this code, a rule, or a lease provision is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(b) All information made confidential in this section is not subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding to which this state is a party.

(c) The commissioner or the attorney general may use information made confidential by this section and contracts made confidential by Section 53.027 of this code to enforce this chapter or may authorize their use in judicial or administrative proceedings to which this state is a party.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information that is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under this code, a rule, or a lease provision or the release of other information that would have been properly included in reports required under this code, a rule, or a lease provision.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.

SUBCHAPTER C. LEASE OF MINERALS BY SURFACE OWNER

Sec. 53.061. AUTHORITY TO LEASE CERTAIN MINERALS. (a) The state constitutes the owner of the surface its agent to lease to any person any mineral, except oil and gas, which may be within all or part of a survey previously sold with all minerals reserved to the state.

(b) The lease shall be made on terms and conditions that may be prescribed by the school land board.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1061, Sec. 6, eff. Aug. 31, 1987.

Sec. 53.062. LEASE OF MINERALS SEPARATELY AND TOGETHER. Minerals covered by the provisions of this subchapter may be leased either separately or together.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.063. FORMS. The owner of the surface may lease to any person the minerals covered by this subchapter on lease forms prepared by the land office.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.064. PREREQUISITES FOR EFFECTIVENESS OF LEASE. (a) No lease executed by the owner of the surface is binding on the state unless it recites the actual consideration paid or promised for the lease. A lease covering land adjacent to a military base shall require the lessee to forego the right to use the surface within 2,500 feet of the military base while exploiting the minerals.

(b) No lease is effective until a certified copy is filed in the land office and the bonus accruing to the state is paid to the commissioner. The commissioner is entitled to reject for filing any lease submitted to him that he feels is not in the best interest of the state.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 149, Sec. 16, eff. May 27, 2003.

Sec. 53.065. PAYMENTS UNDER LEASE. (a) Under a lease executed under this subchapter before September 1, 1987, the lessee shall pay to the state 60 percent of all bonuses agreed to be paid for the lease and 60 percent of all rentals and royalties that are payable under the lease. The lessee shall pay to the owner of the surface 40 percent of all bonuses agreed to be paid for the lease and 40 percent of all rentals and royalties payable under the lease.

(b) Except as provided by Subsection (c), under a lease executed under this subchapter on or after September 1, 1987, the lessee shall pay:

(1) to the state 80 percent of all bonuses agreed to be paid for the lease and 80 percent of all rentals and royalties that are payable under the lease; and

(2) to the owner of the surface 20 percent of all bonuses agreed to be paid for the lease and 20 percent of all rentals and royalties payable under the lease.

(c) Under a lease executed under this subchapter on or after September 1, 1999, for the exploration and production by surface mining of coal, lignite, potash, sulphur, thorium, or uranium, the lessee shall pay:

(1) to the state 60 percent of all bonuses agreed to be paid for the lease and 60 percent of all rentals and royalties that are payable under the lease; and

(2) to the owner of the surface 40 percent of all bonuses agreed to be paid for the lease and 40 percent of all rentals and royalties payable under the lease.

(d) If production is obtained, the state shall receive not less than one-sixteenth of the value of the minerals produced.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1061, Sec. 7, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 1483, Sec. 4, eff. Aug. 30, 1999.

Sec. 53.066. DAMAGES TO SURFACE. Payments made by the lessee to the owner of the surface as provided in this subchapter and acceptance of the payments by the owner of the surface are in place of all damages to the soil.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.067. PAYMENT PROCEDURE. Royalties and other payments accruing to the state under this subchapter shall be paid to the commissioner in Austin and shall be deposited in the fund to which the minerals belong.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.068. PRODUCTION REPORT AND RECORDS. (a) Each payment shall be accompanied by an affidavit of the lessee or his authorized agent indicating:

(1) the amount of minerals produced and marketed during the month;

(2) the person to whom the minerals were sold; and

(3) the selling price for the minerals as shown by copies of the smelter, mint, mill, refinery, or other returns or documents attached to the affidavit.

(b) Books, accounts, weights, wage contracts, correspondence, and other documents or papers relating to production under this subchapter are open at all times to inspection by the commissioner or his authorized representatives.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.069. FORFEITURE OF LEASE. (a) A lease and all rights under a lease are subject to forfeiture by action of the commissioner if the lessee or his assignee, sublessee, receiver, or other agent in control of the lease:

(1) fails or refuses to pay any royalty within 30 days

after it becomes due;

(2) fails or refuses to the proper authorities access to the records relating to the operations; or

(3) knowingly fails or refuses to give correct information to the proper authorities.

(b) The commissioner may declare the forfeiture when he is sufficiently informed of the facts that authorize the forfeiture. He shall write on the wrapper containing the papers relating to the lease words declaring the forfeiture and shall sign it officially. Then the lease and all rights under the lease together with payments made under it are forfeited.

(c) Notice of the forfeiture shall be mailed to the person shown by the records of the land office to be the owner of the surface and the owner of the forfeited lease at their last known addresses as shown in the land office records.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.070. REINSTATEMENT OF LEASE. (a) If the owner of the forfeited lease complies with the provisions of this subchapter within 30 days after the declaration of forfeiture, the commissioner may reinstate the lease under the terms of this subchapter and other terms that he may prescribe.

(b) If the lease is not reinstated within the 30-day period, the owner of the surface, as agent of the state, is entitled to lease the minerals.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.071. LIEN. The state has a first lien on all minerals produced from any lease to secure the payment of unpaid royalty or other amounts that are due under this subchapter.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.072. EFFECT OF CERTAIN LAWS. Any rights acquired under Articles 5388 through 5403, Revised Civil Statutes of Texas, 1925, before March 15, 1967, are not affected by the repeal of those articles, and the rights, powers, duties, and obligations conferred or imposed by those articles are governed by those repealed articles.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.073. CERTAIN MINERALS AND LAWS EXEMPT FROM SUBCHAPTER. The provisions of this subchapter do not apply to or affect oil and gas and do not affect the provisions of Subchapter F, Chapter 52 of this code or Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.074. AUTHORITY AND DUTIES OF AGENT. (a) Prohibition Against Self-Dealing. (1) The owner of the soil may not lease, either directly or indirectly, to himself or to a nominee, to any corporation or subsidiary in which he is a principal stockholder or to an employee of such a corporation or subsidiary, or to a partnership in which he is a partner or to an employee of such a partnership. If the owner of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator.

(2) Except as provided by this section, the owner of the soil may not lease, directly or indirectly, to a person related to him within and including the second degree of consanguinity or affinity, including a person related by adoption, or to a corporation or subsidiary in which that person is a principal stockholder, or to a partnership in which that person is a partner, or to an employee of such a corporation or subsidiary or partnership.

(3) An owner of the soil who wishes to lease to a person,

corporation, or partnership described in Subdivision (2) may request the approval of the board for authority to execute such a lease before its execution. The owner of the soil requesting approval must also execute and file with the commissioner a sworn affidavit stating that the owner of the soil will not receive any benefit under a lease so approved by the board that will not be shared with the permanent school fund in the proportion prescribed by this subchapter.

(4) If an owner of the soil makes any material misstatement of fact in connection with an application to the board or affidavit made pursuant to Subdivision (3), then any lease executed pursuant to the authority of the board shall be voidable at the election of the commissioner. The election to void such a lease shall be cumulative of and in addition to all other remedies available to the commissioner or the state.

(b) Fiduciary Duty of Agent. An owner of the soil owes the state a fiduciary duty and a duty of utmost good faith. An owner of the soil must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the owner of the soil. In addition to these specific statutory duties, the owner of the soil owes the state all the common-law duties of a holder of executive rights.

(c) Consequences of a Breach of the Surface Owner's Fiduciary Duty or a Violation of the Prohibition Against Self-Dealing. When the commissioner determines that an owner of the soil has breached any duty or obligation under this subchapter, the commissioner may request that the attorney general file an action or proceeding either to enforce the duties and obligations of the owner of the soil or to forfeit the then applicable agency rights of the surface owner. Such an action or proceeding shall be filed in a district court in Travis County.

(d) Leasing Procedure When Surface Owner's Agency Rights Have Been Forfeited. When the surface owner's agency rights have been forfeited in accordance with Subsection (c) of this section, the minerals subject to lease under this subchapter can then be leased under the leasing procedure set out for the lease of oil and gas under Section 52.175 of this code. The substantive provisions of Subchapter E of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to the lease.

(e) A penalty of 10 percent shall be imposed on any sums due

the state because a surface owner breaches a fiduciary duty. This penalty shall be applied only to amounts owed as a result of breaches occurring on and after the effective date of this section. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10 percent penalty imposed by this subsection.

Added by Acts 1987, 70th Leg., ch. 912, Sec. 5, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 53, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 937, Sec. 4, eff. Sept. 1, 1995.

Sec. 53.075. ASSIGNMENT AND TRANSFER. A lease issued under this subchapter may be assigned or transferred at any time in the manner provided by Section 52.026 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.076. LEASE RELINQUISHMENT. A lease issued under this subchapter may be relinquished to the state at any time in the manner provided by Section 52.027 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.077. IN KIND ROYALTY. (a) The commissioner, each owner of the soil under this subchapter, or the commissioner acting on the behalf of and at the direction of an owner of the soil under this subchapter may negotiate and execute a contract or any other instrument or agreement necessary to dispose of or enhance their portion of the royalty taken in kind, including a contract for sale, transportation, or storage.

(b) The commissioner, each owner of the soil under this subchapter, or the commissioner acting on behalf of and at the direction of the owner of the soil under this subchapter may negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, other than electricity.

(c) This section shall not be construed to surrender or in any

way affect the right of the state or the owner of the soil under an existing or future lease to receive monetary royalty from its lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 405, Sec. 51, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. 2263), Sec. 3, eff. May 17, 2019.

Sec. 53.078. PENALTY AND INTEREST. A lease issued under this subchapter shall be subject to Sections 52.131(e) through (j) of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.079. CONTRACTS AND AGREEMENTS. On the land office's written request, mailed to the lessee's address as shown on its lease or otherwise properly changed in conformity with the terms of the lease, a copy of a contract for the sale or processing of minerals leased under this subchapter and any subsequent agreement or amendment to the contract shall be filed in the land office within 30 days after the date the land office mails the written request. The land office shall treat a contract, agreement, or amendment filed in the land office as confidential unless otherwise authorized by the lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.080. AUDIT INFORMATION CONFIDENTIAL. (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records as provided by Section 53.068 of this code, a rule, or a lease provision is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(b) All information made confidential by this section is not

subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding to which this state is a party.

(c) The commissioner or the attorney general may use information made confidential by this section and contracts made confidential by Section 53.079 of this code to enforce this chapter or may authorize their use in judicial or administrative proceedings to which this state is a party.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information that is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 53.068 of this code, a rule, or a lease provision or the release of other information that would have been properly included in reports required under Section 53.068 of this code, a rule, or a lease provision.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.081. LEASE BY OWNER OF THE SOIL. (a) An owner of the soil of lands covered by this subchapter may lease those lands for the purpose of exploring for and producing minerals other than oil and gas in the manner provided by this section.

(b) An owner of the soil may apply in writing to the board for a lease of a mineral or minerals other than oil and gas.

(c) The application shall contain the following:

(1) the name and address of the applicant;

(2) a complete legal description of the land the applicant seeks to lease;

(3) the name and address of every owner of the soil of the land the applicant seeks to lease, if the applicant is not the sole owner of the soil;

(4) a brief letter opinion signed by an attorney licensed

in this state setting out the surface ownership of the land sought to be leased;

(5) a statement of the applicant's experience in the exploration for and production of minerals other than oil and gas, including, without limitation, a list of any State of Texas or federal mineral leases currently or previously held or operated by the applicant or other entity in which the applicant has or had a significant interest during the five-year period preceding the date of the application;

(6) a statement that the applicant intends to explore for and, if commercially reasonable, produce minerals other than oil and gas or if the applicant plans that another person or firm shall conduct exploration and production:

(A) the name and address of the person or firm;

(B) a description of such person's or firm's experience in the exploration for and production of minerals other than oil and gas, including, without limitation, a list of any State of Texas or federal minerals other than oil and gas leases currently or previously held or operated by the person or firm during the five-year period preceding the date of the application; and

(C) a description of the applicant's intended degree and type of participation in the exploration of and production from the property and all consideration or benefits the applicant expects to receive in connection with the exploration of and production from the property; and

(7) the amount of bonus, rental, royalty, and other lease terms that the applicant proposes to pay or offer or pay and offer for the lease.

(d) The applicant shall provide geological, geophysical, geochemical, and other data or copies of the data, including interpretative data, pertinent to exploration for minerals other than oil and gas on the lands for which the application is made, in the applicant's possession or to which the applicant has reasonable access and which the applicant has the ability to provide to the land office. All such data shall be confidential and not subject to the provisions of the open records law, Chapter 552, Government Code, until one year after the expiration, termination, or forfeiture of a lease granted pursuant to this section. After one year after the expiration, termination, or forfeiture of such a lease, the data shall remain confidential to the extent permitted by Chapter 552,

Government Code. If a lease is not issued, the data shall be returned to the applicant.

(e) The board may prescribe the form of the application, require additional information as it considers appropriate, and, by rule, otherwise provide for the implementation of this section.

(f) The staff of the land office shall review the information presented in the application, such other geological, geophysical, and geochemical data reasonably available to it relevant to the land proposed to be leased, and leasing information reasonably available to it relevant to the land proposed to be leased. The staff shall prepare a report to the board that contains:

(1) a summary of bonus, rental, royalty, and other lease terms then being offered and asked for leases of similar lands in the area of the land proposed to be leased; and

(2) data considered by the staff to be relevant, including, but not limited to, data concerning the land proposed to be leased and its estimated value for minerals other than oil and gas, recommended lease terms, and the applicant, including the applicant's history of leasing State of Texas or federal lands for minerals other than oil and gas.

(g) The board shall consider the application at a regular meeting. It may, in its sole discretion, grant or deny the application or grant the application subject to specified conditions. Such conditions may include a requirement that if the applicant does not materially participate in the exploration or development of the leased premises, through labor performed, cash or goods contributed, or supplying other enhancement in value, the applicant must share equally with the permanent school fund any benefit derived from the lease.

(h) After the board has approved an application, the commissioner shall issue a lease to the applicant. The lease shall conform, as nearly as is practicable, to the form of lease prescribed by the commissioner under this chapter.

(i) The commissioner may not deliver a lease issued under this section until the applicant has executed and delivered to the commissioner a waiver of the applicant's right and duty to act as agent for the state in leasing the leased premises and to receive any part of the bonus, rental, royalty, and other consideration accruing to the owner of the soil under this subchapter. The waiver and the lease shall be effective as of the date the commissioner executes the

lease.

(j) Upon the expiration, termination, or forfeiture of a lease issued under this section, the agency rights and duties of the applicant as owner of the soil are reinstated without the necessity for further action by the owner of the soil, the board, or the commissioner.

(k) If an applicant is not the sole owner of the soil, the applicant may secure leases from the other owners of the soil from which the applicant is not prohibited from leasing under Section 53.074. If the applicant must obtain a lease from an owner of the soil from whom the applicant would otherwise not be permitted to lease in order reasonably to explore for or produce or explore for and produce minerals other than oil or gas, the commissioner may approve the lease on the condition that the applicant shall not receive any benefit from the lease, and, if the applicant should acquire by any method, including devise or inheritance, the right to receive any rental, royalty, or other benefit accruing to the owner of the soil's interest under the lease, the applicant shall assign the benefit to the commissioner for the benefit of the permanent school fund.

(l) The commissioner shall not approve any lease obtained by an applicant from another owner of the soil if the lease contains terms that are substantially inconsistent with or provide for a lesser bonus, rental, or royalty than the lease approved by the board. If the bonus, rental, or royalty in a lease obtained by an applicant from another owner of the soil for a comparable interest is greater than that approved by the board, then the lease approved by the board shall be amended to provide for the greater bonus, rental, or royalty, and the applicant shall be liable for all greater sums due. In determining whether an interest is comparable, the board shall consider the quantum of the interest, the time at which the lease was taken, and any other aspects of the lease transaction that the board considers to be relevant.

Added by Acts 1995, 74th Leg., ch. 937, Sec. 3, eff. Sept. 1, 1995.

SUBCHAPTER D. UNITIZATION OF SULPHUR PRODUCTION

Sec. 53.111. AUTHORITY TO OPERATE AN AREA AS A UNIT FOR PRODUCTION OF SULPHUR. The commissioner on behalf of the state or

any fund that belongs to the state may execute agreements that provide for operating areas as a unit for the exploration, development, and production of sulphur and may commit to the agreements:

(1) the royalty interests in sulphur reserved to the state or any fund of the state by law in a patent, award, mining claim, or contract of sale or under the terms of any lease legally executed by an official, board, agent, agency, or authority of the state; or

(2) the free royalty interests, whether leased or unleased, reserved to the state under Section 51.201 or 51.054 of this code.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 55, eff. Sept. 1, 1993.

Sec. 53.112. APPROVAL OF CERTAIN AGREEMENTS BY SCHOOL LAND BOARD. (a) An agreement must be approved by the board and executed by the commissioner to be effective if the agreement commits:

(1) a royalty interest in land belonging to the permanent school fund or the asylum funds, in riverbeds, inland lakes, channels, or areas within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea; or

(2) the free royalty interests, whether leased or unleased, reserved to the state under Section 51.201 or 51.054 of this code.

(b) An owner of the soil who is subject to Subchapter C of this chapter may grant to a lessee prior authority to pool or unitize the interest of the owner in a lease executed under that subchapter. For the agreement to bind the interest of an owner of the soil who is subject to Subchapter C of this chapter and who has not granted the lessee prior authorization to pool or unitize the interest of the owner in a sulphur lease executed under that subchapter, the agreement must be executed by the owner of the soil.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 56, eff. Sept. 1, 1993.

Sec. 53.113. APPROVAL OF AGREEMENTS. An agreement that commits the royalty interest in any land not listed in Section 53.112 of this

code must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for sulphur and must be executed by the commissioner to be effective.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 57, eff. Sept. 1, 1993.

Sec. 53.114. COMMISSIONER'S APPROVAL. Before executing an agreement authorized by Section 53.111 of this code, the commissioner must find that the agreement is in the best interest of the state.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 58, eff. Sept. 1, 1993.

Sec. 53.115. PROVISIONS OF AGREEMENT. (a) An agreement executed under this subchapter may include the following provisions:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be conduct of the operations on each tract in the unit;

(2) that production allocated by the agreement to each tract included in the unit shall be considered for all purposes to have been production from the tract;

(3) that the interest reserved to or provided for the state or any of its funds on production from any tract included in the unit shall be paid only on that portion of the production from the unit that is allocated to the tract under the agreement; and

(4) that each lease included in the unit shall remain in effect so long as the agreement remains in effect and that on termination of the agreement each lease shall continue in effect under the terms and conditions of the lease.

(b) The agreement may include any other terms and conditions the commissioner or any board, official, agent, agency, or authority of the state that has the authority to lease or to approve a lease of the land for sulphur may consider to be in the best interest of the state.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 59, eff. Sept. 1, 1993.

Sec. 53.116. APPLICATION TO UNIVERSITY LAND. None of the provisions of this subchapter apply to any land under the control and management of the Board of Regents of The University of Texas System.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.117. CONSTRUCTION OF SUBCHAPTER. (a) Agreements and operations under this subchapter are necessary to prevent waste and conserve the natural resources of the state and are not a violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions of this subchapter and the code cited in the previous subsection, this subchapter is intended as a reasonable exception to those laws which is necessary to prevent waste and conserve the natural resources.

(c) If a court finds that a conflict exists between this subchapter and the laws cited in Subsection (a) of this section and that this subchapter is not a reasonable exception to those laws, it is the intent of the legislature that this subchapter or any conflicting portion of this subchapter be declared invalid and that the previously cited laws remain valid.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.118. RATIFICATIONS AND OTHER AGREEMENTS. (a) The board may approve, by rule or order, a ratification or other agreement that includes in the benefits of production a mineral or royalty interest in land belonging to the permanent school fund or the asylum funds.

(b) An agreement approved by the board under this section must be executed by the commissioner to be effective.

(c) A ratification or other agreement that commits any of the

interests listed by Subsection (a) of this section in land not belonging to the permanent school fund or the asylum funds must be approved by the board, official, agent, agency, or authority of the state that has the authority to lease or to approve the lease of the land for sulphur and must be executed by the commissioner to be effective.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 60, eff. Sept. 1, 1993.

SUBCHAPTER E. LEASE OF PUBLIC SCHOOL AND GULF LAND FOR COAL, LIGNITE, SULPHUR, SALT, AND POTASH

Sec. 53.151. LEASE OF CERTAIN AREAS. (a) Under the provisions of this subchapter, the board may lease to any person for the production of coal, lignite, sulphur, salt, and potash:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state;

(3) rivers and channels that belong to the state;

(4) all unsold surveyed and unsurveyed public school land; and

(5) all land sold with a reservation of minerals to the state under Section 51.054 or 51.086 of this code in which the state has retained leasing rights.

(b) The lease may not be granted for any land within 2,500 feet of a military base.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3, 1979. Amended by Acts 1983, 68th Leg., p. 5245, ch. 965, Sec. 7, eff. June 19, 1983; Acts 2003, 78th Leg., ch. 149, Sec. 17, eff. May 27, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(c), eff. Sept. 1, 2003.

Sec. 53.152. LAWS APPLICABLE TO LEASES. Leases of land described by Section 53.151 of this code shall be made in the same procedural manner as leases of that land for oil and gas under Chapter 52 of this code.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3,

1979. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 61, eff. Sept. 1, 1993.

Sec. 53.153. CONDITIONS OF LEASE. (a) Coal, lignite, sulphur, salt, and potash may be leased together or separately.

(b) A lease granted under this subchapter shall be for a primary term not to exceed 20 years and as long after that time as the minerals are produced in paying quantities.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3, 1979. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 62, eff. Sept. 1, 1993.

Sec. 53.154. ROYALTY RATE. The board shall set the royalty rate on production of sulphur, coal, lignite, salt, and potash from land leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the sulphur produced and at least one-sixteenth of the gross production or the market value of the coal, lignite, salt, and potash produced.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3, 1979. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 63, eff. Sept. 1, 1993.

Sec. 53.155. COMPENSATION FOR DAMAGES FROM USE OF SURFACE. (a) Leases issued under Subchapter B or E of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring compensation for damages from the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

(b) The commissioner by rule shall set the procedure for receiving compensation for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for

conservation, reclamation, or constructing permanent improvements on land that belongs to the permanent school fund.

(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the permanent school fund.

(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

(g) Compensation for damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 48, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 32, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 64, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 328, Sec. 9, eff. Jan. 1, 2004.

Sec. 53.156. CONTRACTS AND AGREEMENTS. On the land office's written request, mailed to the lessee's address as shown on its lease or otherwise properly changed in conformity with the terms of the lease, a copy of a contract for the sale or processing of minerals leased under this subchapter and any subsequent agreement or amendment to the contract shall be filed in the land office within 30 days after the date the land office mails the written request. The land office shall treat a contract, agreement, or amendment filed in the land office as confidential unless otherwise authorized by the lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 65, eff. Sept. 1, 1993.

SUBCHAPTER F. GEOPHYSICAL AND GEOCHEMICAL EXPLORATION PERMIT

Sec. 53.161. DEFINITIONS. In this subchapter:

(1) "Mineral(s)" means coal, lignite, sulphur, salt, and potash.

(2) "Geophysical exploration" means a survey or

investigation conducted to discover or locate mineral prospects using magnetic, gravity, seismic, and/or electrical techniques.

(3) "Geochemical exploration" means a survey or investigation conducted to discover or locate mineral prospects using techniques involving soil sampling and analysis.

(4) "Public school land" means land dedicated by the constitution or laws of this state to the permanent free school fund, but does not include land with a mineral classification described in Section 53.061 of this chapter in which the state has retained the minerals, nor does it include areas within tidewater limits.

(5) "Permit" means a license issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(6) "Permittee" means the holder of a permit.

(7) "Areas within tidewater limits" means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

Added by Acts 1981, 67th Leg., p. 2453, ch. 631, Sec. 2, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 66, eff. Sept. 1, 1993.

Sec. 53.162. PERMIT REQUIRED FOR EXPLORATION. (a) Except for a person who has a valid mineral lease on public school land authorized by this chapter, a person may not conduct geophysical or geochemical exploration on public school land unless the person obtains a permit from the commissioner.

(b) Every person who is authorized to conduct a geophysical or geochemical exploration on public school land shall comply with the commissioner's rules relating to such exploration. A person with a valid mineral lease on land subject to this chapter shall comply with the commissioner's rules concerning exploration.

Added by Acts 1981, 67th Leg., p. 2453, ch. 631, Sec. 2, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 67, eff. Sept. 1, 1993.

Sec. 53.163. LAWS APPLICABLE TO PERMITS. Permits for

geophysical and geochemical exploration under this subchapter shall be issued in the same manner and under the same terms and conditions as permits for oil and gas under Subchapter I of Chapter 52 of this code.

Added by Acts 1981, 67th Leg., p. 2453, ch. 631, Sec. 2, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 49, eff. Sept. 1, 1985.

Sec. 53.1631. GROUNDWATER. (a) Unless otherwise expressly provided by statute, deed, patent, or other grant from the State of Texas, groundwater shall not be considered a mineral in any past or future reservation of title or rights to minerals by the State of Texas.

(b) Notwithstanding Subsection (a), the State of Texas shall retain any and all rights to reasonable use of the surface and groundwater for mineral development and production purposes.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 32, eff. June 20, 2003.

SUBTITLE E. BEACHES AND DUNES

CHAPTER 61. USE AND MAINTENANCE OF PUBLIC BEACHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Construction" means causing or carrying out any building, bulkheading, filling, clearing, excavation, or any substantial improvement to land or the size of any structure.

(3) "Department" means the Parks and Wildlife Department.

(4) "Land office" means the General Land Office.

(4-a) "Launch" and "space flight activities" have the meanings assigned by Section 100A.001, Civil Practice and Remedies Code.

(5) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.

(6) "Littoral owner" means the owner of land adjacent to the shore and includes a lessee, licensee, or anyone acting under the littoral owner's authority.

(7) "Local government" means a municipality, county, or any other political subdivision of the state.

(7-a) "Meteorological event" means atmospheric conditions or phenomena resulting in avulsion, erosion, accretion, or other impacts to the shoreline that alter the location of the line of vegetation.

(8) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 4, eff. June 7, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 152 (H.B. 2623), Sec. 1, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. ACCESS TO PUBLIC BEACHES

Sec. 61.011. POLICY AND RULES. (a) It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(b) The legislature recognizes that, in order to provide and maintain public facilities and public services to enhance access to

and safe and healthy use of the public beaches by the public, adequate funds are required to provide public facilities and public services. Any local government responsible for the regulation, maintenance, and use of such beaches may charge reasonable fees pursuant to its authority to cover the cost of discharging its responsibilities with respect to such beaches, provided such fees do not exceed the cost of such public facilities and services, and do not unfairly limit public access to and use of such beaches.

(c) The commissioner shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement.

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

(1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6);

(2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;

(3) local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, the use on a public beach of a golf cart, as defined by Section 551.401, Transportation Code, for the transportation of a person with a physical disability, and other minimum measures needed to mitigate for any adverse effect on public access and dune areas;

(4) imposition of beach access, user, or parking fees and reasonable exercises of the police power by local governments with respect to public beaches;

(5) contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches, including procedures for expedited review of beach access and use plans under Section 61.015;

(6) construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and

use of public beaches;

(7) the temporary suspension under Section 61.0185 of enforcement of the prohibition against encroachments on and interferences with the public beach easement and the ability of a property owner to make repairs to a house while a suspension is in effect;

(8) the determination of the line of vegetation or natural line of vegetation;

(9) the factors to be considered in determining whether a structure, improvement, obstruction, barrier, or hazard on the public beach:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach;

(10) the procedures for determining whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section;

(11) the closure of beaches for space flight activities; and

(12) the temporary suspension under Section 61.0171 of the determination of the "line of vegetation" or the "natural line of vegetation."

(e) Repealed by Acts 2003, 78th Leg., ch. 245, Sec. 9.

(f) Chapter 2007, Government Code, does not apply to rules adopted under Subsection (d)(7).

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 5, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 1, 9, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 40 (H.B. 1213), Sec. 1, eff. May 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 152 (H.B. 2623), Sec. 2, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 2, eff.

September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 13.001, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 5, eff. June 14, 2019.

Sec. 61.012. DEFINITION. In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.013. PROHIBITION. (a) It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach or to use any public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) Unless properly certified as consistent with this subchapter, no person may cause, engage in, or allow construction landward of and adjacent to a public beach within the area described in Section 61.011(d)(6) of this code in a manner that will or is likely to affect adversely public access to and use of the public beach. The prohibition in this subsection takes effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

(c) For purposes of this section, "public beach" shall mean any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on

the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, Sec. 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4818, ch. 850, Sec. 1, eff. June 19, 1983; Acts 1991, 72nd Leg., ch. 295, Sec. 6, eff. June 7, 1991.

Sec. 61.014. DENIAL OF ACCESS BY POSTING. (a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) No person may display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or cause to be made any written or oral communication which states that the public beach is private property or represent in any other manner that the public does not have the right of access to the public beach as guaranteed by this subchapter.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, Sec. 7, eff. June 7, 1991.

Sec. 61.015. BEACH ACCESS AND USE PLANS. (a) Each local government with ordinance authority over construction adjacent to public beaches and each county that contains any area of public beach within its boundaries shall adopt a plan for preserving and enhancing access to and use of public beaches within the jurisdiction of the

local government. Such beach access and use plans must be consistent with the policies in Section 61.011 of this code and the rules promulgated thereunder and Chapter 63 of this code and shall to the greatest extent practicable incorporate the local government's ordinary land use planning procedures. A municipality may adopt and apply any appropriate ordinances within its extraterritorial jurisdiction to effect the purposes of this subchapter.

(b) Local governments shall submit proposed beach access and use plans to the commissioner for certification as to compliance with such policies and rules. The commissioner shall act on a local government's proposed beach access and use plan within 90 days of submission by either approving the plan or denying certification. In the event of denial, the commissioner shall send the proposed plan back to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan. The commissioner's certification of local government plans shall be by adoption into the rules under Section 61.011.

(c) A littoral owner proposing construction adjacent to and landward of a public beach in the area described in Section 61.011(d)(6) shall submit a development plan to the appropriate local government. The local government shall forward a development plan for small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories or less in height to the commissioner no less than 10 working days prior to acting on the development plan. The local government shall forward a development plan for large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height to the commissioner no less than 30 working days prior to acting on the development plan. The commissioner may submit comments on the proposed construction to the local government.

(d) The local government shall review the proposed development plan and the commissioner's comments and other information the local government may consider useful to determine consistency with the local government's beach access and use plan.

(e) If the proposed construction is required to be permitted by the local government under Chapter 63 of this code, the local government shall consider the issuance of the permit concurrently with the certification under this section, unless otherwise provided

by rules promulgated under Section 61.011 of this code.

(f) The local government, after considering all appropriate information, shall make the determination and shall certify that the construction as proposed either is consistent with the local government's beach access and use plan or is inconsistent with the local government's beach access and use plan, in which case the local government must specify how the construction is inconsistent with the plan.

(g) The local government may include in the certification any reasonable terms and conditions it finds necessary to assure adequate public beach access and use rights consistent with Chapter 63 of this code.

(h) The requirements of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 8, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 2, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 11, eff. September 1, 2007.

Sec. 61.016. BOUNDARIES FOR AREAS WITH NO MARKED VEGETATION LINE. (a) To determine the "line of vegetation" in any area of public beach in which there is no clearly marked line of vegetation (for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be to the nearest clearly marked line of vegetation on each side of the unmarked area.

(b) The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side.

(c) If the elevation of the two points on each side of the area are not the same, the extension defining the "line of vegetation" shall be the average elevation as between the two points, but if there is no clearly marked line of vegetation, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(d) The "line of vegetation" is dynamic and may move landward or seaward due to the forces of erosion or natural accretion. For the purposes of determining the public beach easement, if the "line of vegetation" is obliterated due to a meteorological event, the landward boundary of the area subject to the public easement shall be the line established by order under Section 61.0171(a) or as determined by the commissioner under Section 61.0171(f).

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 9, eff. June 7, 1991.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 3, eff. September 1, 2013.

Sec. 61.017. LINE OF VEGETATION UNAFFECTED BY CERTAIN CONDITIONS. (a) The "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them or by artificial fill, the addition or removal of turf, beach nourishment projects or artificial placement of dredged or fill material, whether conducted by public or private entities, or other artificial changes in the natural vegetation of the area.

(b) If the changes listed in Subsection (a) of this section are made and the vegetation line is obliterated or is created artificially, the line of vegetation shall be determined in the same manner as in those areas covered by Section 61.016 of this code, but if there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to public easement until a final court adjudication establishes the line in another place.

(c)(1) In an area of public beach where a seawall structure constructed in its entirety as a single structure of one design before 1970 and continuously maintained with a height of not less than 11 feet above mean low tide interrupts the natural line of vegetation for a distance not less than 4,000 feet nor greater than 4,500 feet, the line of vegetation is along the seaward side of the seawall for the distance marked by the seawall, provided that prior to September 2, 1997:

(A) a perpetual easement has been granted in favor of the public affording pedestrian, noncommercial use along and over the entire length of the seawall and adjacent sidewalk by the general public;

(B) fee title to the surface estate to an area for public parking and other public uses adjacent to the seawall has been conveyed to and accepted by a public entity, which area contains sufficient acreage to provide at least one parking space for each 15 linear feet of the seawall, is located within the center one-third of the length of the seawall or not farther than 300 feet from that center one-third, and has frontage on the seawall for at least 300 linear feet; and

(C) permanent roadway easements exist within 1,000 feet of each end of the seawall affording vehicular access from the nearest public road to the beach.

(2) A line of vegetation established as described in this subsection shall be the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.

(d)(1) In an area of public beach where a combination stone revetment and concrete sheet pile wall constructed in its entirety as a single structure before 1999 and continuously maintained with a height of not less than five feet above mean low tide interrupts the natural line of vegetation for a distance not less than 7.5 miles and not more than 8.5 miles, the line of vegetation is along the landward boundary of that strip of land conveyed to the United States of America for the construction of the stone revetment and concrete sheet pile wall and for the distance marked by the stone revetment and concrete sheet pile wall.

(2) A line of vegetation established as described by this subsection is the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.

(e) In an area of public beach where a shore protection structure constructed as provided by Section 61.022(a)(6) interrupts the natural line of vegetation for a distance of at least 1,000 feet, the line of vegetation is along the seaward side of the shore protection structure for the distance marked by that structure. A line of vegetation established under this subsection is the landward boundary of the public beach and of the public easement for all

purposes, provided that before or concurrently with the construction of the structure:

(1) a perpetual easement has been granted in favor of the public affording pedestrian, noncommercial use along and over the entire length of the structure and an adjacent sidewalk by the general public; and

(2) the subdivision that constructed the shore protection structure has provided a public parking area of sufficient acreage to provide at least one parking space for each 15 linear feet of the structure, located so that ingress and egress ways are not more than one-half mile apart.

(f) Before a subdivision of this state begins construction of a shore protection structure described by Subsection (e), the subdivision must conduct and obtain the commissioner's approval of a coastal boundary survey under Section 33.136. The state retains fee title to all land described by Section 11.012 that is occupied by or affected by the placement of the structure.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 331, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 377 (H.B. 1445), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 4, eff. September 1, 2013.

Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION DETERMINATION. (a) The commissioner may, by order, suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event. For the duration of the order, the public beach shall extend to a line 200 feet inland from the line of mean low tide as established by a licensed state land surveyor.

(b) An order issued under this section shall be:

(1) posted on the land office's Internet website;

(2) published by the land office as a miscellaneous

document in the Texas Register; and

(3) filed for record by the land office in the real property records of the county in which the area of beach subject to the order is located.

(c) Issuance of an order under this section is purely within the discretion of the commissioner. This section does not create:

(1) a duty on the part of the commissioner to issue an order related to the line of vegetation; or

(2) a private cause of action for:

(A) issuance of an order under this section; or

(B) failure to issue an order under this section.

(d) Chapter 2007, Government Code, does not apply to an order issued under this section.

(e) If the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under this chapter is suspended and does not run against this state, the public, or private land owners for the period the order is in effect.

(f) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with Sections 61.016 and 61.017 and taking into consideration the effect of the meteorological event on the location of the public beach easement.

(g) The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin or a licensed state land surveyor and consider other relevant factors when making a determination under Subsection (f) regarding the annual erosion rate for the area of beach subject to the order issued under this section.

(h) The line of vegetation, as determined by the commissioner under Subsection (f), shall constitute the landward boundary of the area subject to public easement until the line of vegetation moves landward due to a subsequent meteorological event, erosion, or public use, or until a final court adjudication establishes the line in another place.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 5, eff. September 1, 2013.

Sec. 61.018. ENFORCEMENT. (a) Except as provided by

Subsection (a-1), any county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the commissioner, shall file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove or prevent any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public's right of access to and use of a public beach or other activity that violates this chapter.

(a-1) A county attorney, district attorney, or criminal district attorney or the attorney general may not file a suit under Subsection (a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if:

(1) the line of vegetation establishing the boundary of the public beach moved as a result of a meteorological event that occurred before January 1, 2009;

(2) the house was located landward of the natural line of vegetation before the meteorological event;

(3) a portion of the house continues to be located landward of the line of vegetation; and

(4) the house is located on a peninsula in a county with a population of more than 315,000 and less than 351,000 that borders the Gulf of Mexico.

(a-2) The owner of a house described by Subsection (a-1) may repair or rebuild the house if the house was damaged or destroyed by the meteorological event.

(a-3) Notwithstanding Subsection (a-1), a county attorney, district attorney, or criminal district attorney or the attorney general may file a suit under Subsection (a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house described by Subsection (a-1) from a public beach if the house was damaged or destroyed by the meteorological event and the owner of the house fails to repair or rebuild the house before September 1, 2013.

(b) In the same suit, the attorney general, the commissioner, county attorney, district attorney, or criminal district attorney may recover penalties and the costs of removing any improvement, obstruction, barrier, or other encroachment if it is removed by

public authorities pursuant to an order of the court or a removal order issued by the commissioner as provided by Section 61.0183.

(c) A person who violates this chapter or a removal order issued by the commissioner as provided by Section 61.0183 is liable for a civil penalty of not less than $50 nor more than $2,000. Each day the violation occurs or continues is a separate violation.

(d) Any county attorney, or the attorney general at the request of the commissioner, may bring a suit for a declaratory judgment to try any issue affecting the public's right of access to or use of the public beach.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 10, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 3, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 12, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1417 (H.B. 770), Sec. 1, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 106, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 203, eff. September 1, 2023.

Sec. 61.0181. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter in the amount provided by Section 61.018(c) for a civil penalty. In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0182. ENFORCEMENT PROVISIONS CUMULATIVE. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0183. REMOVAL OF CERTAIN STRUCTURES, IMPROVEMENTS, OBSTRUCTIONS, BARRIERS, AND HAZARDS ON PUBLIC BEACH. (a) The commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach if the commissioner finds the structure, improvement, obstruction, barrier, or hazard to be on the public beach as defined by Section 61.013(c) and:

(1) the structure, improvement, obstruction, barrier, or hazard was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan; or

(2) the structure, improvement, obstruction, or barrier constitutes an imminent hazard to safety, health, or public welfare.

(b) The decision to remove a structure, improvement, obstruction, barrier, or hazard under this section is discretionary with the commissioner. This section does not impose a duty on the state to remove a structure, improvement, obstruction, barrier, or hazard or to remedy or warn of a hazardous condition on the public beach.

(c) The commissioner may contract for the removal and disposal of a structure, improvement, obstruction, barrier, or hazard under this section and may pay the costs of removal from money appropriated by the legislature.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0184. NOTICE REQUIREMENTS; ORDERS AND HEARINGS. (a) The commissioner shall make a determination that a structure is located on the public beach, assess an administrative penalty, and

pursue the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach in accordance with this section.

(b) Before the commissioner may notify the Texas Windstorm Insurance Association as provided by Section 2210.004, Insurance Code, regarding the status of property, the commissioner must give written notice and an opportunity for a hearing to a person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. The notice must state that:

(1) the commissioner finds that a specific structure is located on the public beach as determined under this chapter, and:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach;

(2) the commissioner intends to notify the Texas Windstorm Insurance Association of a determination in accordance with Section 2210.004, Insurance Code; and

(3) the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard located on the public beach may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing to contest the determination.

(c) Before the commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard under Section 61.0183 or impose an administrative penalty under Section 61.0181, the commissioner must provide written notice to the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard. The notice must:

(1) describe the specific structure, improvement, obstruction, barrier, or hazard that violates this subchapter;

(2) state that the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard is required to remove the structure, improvement, obstruction, barrier, or hazard:

(A) not later than the 30th day after the date on which the notice is served, if the structure, improvement, obstruction, barrier, or hazard is obstructing access to or use of the public beach; or

(B) within a reasonable time specified by the commissioner if the structure, improvement, obstruction, barrier, or hazard is an imminent and unreasonable threat to public health, safety, or welfare;

(3) state that failure to remove the structure, improvement, obstruction, barrier, or hazard may result in liability for a civil penalty under Section 61.018(c), removal by the commissioner and liability for the costs of removal, or any combination of those remedies; and

(4) state that the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(d) A person is considered to be the person who owns, maintains, controls, or possesses an improvement, obstruction, barrier, or other encroachment on the public beach for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the improvement, obstruction, barrier, or other encroachment on the public beach.

(e) The notice required by Subsection (b) must be given:

(1) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the notice on the structure, improvement, obstruction, barrier, or hazard and by publishing notice in a newspaper with general circulation in the county in which the structure, improvement, obstruction, barrier, or hazard is located at least two times within 10 consecutive days.

(f) The commissioner by rule may adopt procedures for a hearing under this section.

(g) The commissioner must grant a hearing before an administrative law judge employed by the State Office of Administrative Hearings if a hearing is requested. A person who does not request a hearing within 30 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the structure, improvement, obstruction, barrier, or hazard and pay any penalty assessed. If a hearing is held, the commissioner may issue a final order approving the proposal for decision submitted by the administrative law judge concerning a determination regarding whether

a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section or concerning removal of the structure, improvement, obstruction, barrier, or hazard and payment of a penalty. The commissioner may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative judge in accordance with Section 2001.058, Government Code.

(h) A person may seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The trial courts of this state shall give preference to an appeal of a final order of the commissioner under this section in the same manner as provided by Section 23.101(a), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 of this code.

(i) If the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard does not pay assessed penalties, removal costs, and other assessed fees and expenses on or before the 30th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) sell salvageable parts of the structure, improvement, obstruction, barrier, or hazard to offset those costs;

(2) request that the attorney general institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or

(3) use any combination of the remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed because of the structure, improvement, obstruction, barrier, or hazard on the public beach and its removal by the commissioner.

(j) Penalties or costs collected under this section shall be deposited in the coastal erosion response account as established under Section 33.604.

(k) Notwithstanding any other provision of this subchapter, if a structure that is the subject of an order for removal under Section 61.0183 or an administrative penalty under Section 61.0181 has been used as a permanent, temporary, or occasional residential dwelling by at least one person at any time during the year before the date on

which the order is issued or the penalty is assessed:

(1) the notice required by Subsection (c) must state that the person who is constructing, maintains, controls, owns, or possesses the structure may submit, not later than the 90th day after the date on which the notice is served, written request for a hearing;

(2) if the person does not request a hearing within 90 days after the date on which the notice is served, the person waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the structure and pay any penalty assessed; and

(3) the amount of the administrative penalty assessed may not exceed $1,000 for each day the violation occurs or continues.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0185. TEMPORARY SUSPENSION OF SUBMISSION OF REQUESTS THAT ATTORNEY GENERAL FILE SUIT. (a) The commissioner by order may suspend for a period of three years from the date the order is issued the submission of a request that the attorney general file a suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if the commissioner determines that:

(1) the line of vegetation establishing the boundary of the public beach has moved as a result of a meteorological event;

(2) the house was located landward of the natural line of vegetation before the meteorological event; and

(3) the house does not present an imminent threat to public health and safety.

(b) The commissioner shall make a determination under Subsection (a) regarding the line of vegetation in accordance with Sections 61.016 and 61.017.

(c) The commissioner shall consult with the Bureau of Economic Geology of The University of Texas at Austin when making a determination under Subsection (a) regarding:

(1) the line of vegetation; or

(2) the effect of a meteorological event on the location of the public beach easement.

(d) This section does not apply to a house that the commissioner determines to be:

(1) located in whole or in part below mean high tide; or

(2) more than 50 percent destroyed as a result of a meteorological event.

(e) An order issued under this section shall be:

(1) posted on the land office's Internet website;

(2) published by the land office as a miscellaneous document in the Texas Register; and

(3) filed for record by the land office in the real property records of the county in which the house is located.

(f) The commissioner shall notify the attorney general and each pertinent county attorney, district attorney, or criminal district attorney of the issuance of an order under this section.

(g) A county attorney, district attorney, or criminal district attorney may not file suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach while the house is subject to an order issued under this section.

(h) While an order issued under this section is in effect, a local government may:

(1) issue a certificate or permit authorizing repair of a house subject to the order if the local government determines that the repair:

(A) is solely to make the house habitable;

(B) complies with rules adopted by the commissioner under Section 61.011(d)(7); and

(C) does not increase the footprint of the house or involve the use of concrete, Fibercrete, or other impervious materials seaward of the line of vegetation; and

(2) allow utilities to be reconnected to a house subject to the order.

(i) Issuance of an order under this section is purely within the discretion of the commissioner. This section does not create:

(1) a duty on the part of the commissioner to issue an order related to all or part of a house, regardless of any determination made; or

(2) a private cause of action for:

(A) issuance of an order under this section; or

(B) failure to issue an order under this section.

(j) Chapter 2007, Government Code, does not apply to an order issued under this section.

(k) If the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under this chapter is suspended and does not run against this state, the public, or the owner of the house for the period the order is in effect.

(l) Expenses incurred while an order issued under this section is in effect by the owner of a house in an effort to repair or otherwise make the house habitable may not be claimed as damages in any litigation with this state or a local government that may be filed to enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 245, Sec. 4, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 6, eff. September 1, 2013.

Sec. 61.019. DECLARATORY JUDGMENT SUITS. (a) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(b) Service of citation on the state shall be made by serving the citation on the attorney general.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.020. PRIMA FACIE EVIDENCE. (a) In a suit or administrative proceeding brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area a common law right or easement in favor of the public for ingress and egress to the sea.

(b) The determination of the location of the line of vegetation

by the commissioner as provided by Sections 61.016 and 61.017 constitutes prima facie evidence of the landward boundary of the area subject to the public easement until a court adjudication establishes the line in another place.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 11, eff. June 7, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 14, eff. September 1, 2007.

Sec. 61.021. AREA NOT COVERED BY SUBCHAPTER. (a) None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists.

(b) A local government or local official may not adopt, apply, or enforce a beach access and use plan or any other provision of this subchapter within a state or national park area, wildlife refuge, or other designated state or national natural area.

(c) Any requirement to keep a beach open for vehicular traffic under this subchapter or rules adopted under this subchapter does not apply to a beach or segment of a beach within 3,100 feet of a natural science laboratory in a county with a population of 40,000 or less.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 14, eff. June 7, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 32, eff. June 19, 2009.

Sec. 61.0211. STATE OR NATIONAL PARK COVERED BY SUBCHAPTER. This subchapter applies to any island or peninsula that is a state or national park or wildlife management area regardless of whether the island or peninsula is accessible by public road or ferry facility.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 12, eff. June 7, 1991.

Sec. 61.022. GOVERNMENT AGENCIES AND SUBDIVISIONS. (a) The provisions of this subchapter do not prevent any of the following governmental entities from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty, or other structure as an aid to navigation, protection of the shore, fishing, safety, or other lawful purpose authorized by the constitution or laws of this state or the United States:

(1) an agency, department, institution, subdivision, or instrumentality of the federal government;

(2) an agency, department, institution, or instrumentality of this state;

(3) a county;

(4) a municipality;

(5) a subdivision of this state, other than a county or municipality, acting in partnership with the county or municipality in which the structure is located; or

(6) a subdivision of this state, acting with the approval of the commissioner, if the structure is a shore protection structure that:

(A) is designed to protect public infrastructure, including a state or county highway or bridge;

(B) is located on land that:

(i) is state-owned submerged land or was acquired for the project by a subdivision of this state; and

(ii) is located in or adjacent to the mouth of a natural inlet from the Gulf of Mexico; and

(C) extends at least 1,000 feet along the shoreline.

(a-1) In granting approval of a shore protection structure under Subsection (a)(6) of this section, the commissioner may specify requirements for the design and location of the structure or any public parking area required by Section 61.017(e).

(b) No local government may regulate vehicular traffic so as to prohibit vehicles from an area of public beach or impose or increase public beach access, parking, or use fees in any manner inconsistent with the policies of Section 61.011 of this code or the rules promulgated thereunder.

(c) A local government proposing to adopt or amend such vehicular traffic regulations, except those for public safety, or fees shall submit a plan detailing the proposed action to the commissioner for review. The commissioner shall certify whether the

proposed action is consistent or inconsistent with such policies and rules. Certifications of consistency shall be by adoption into the rules promulgated under Section 61.011.

(d) Subsections (b) and (c) of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code. Subsections (b) and (c) of this section do not apply to any existing local government traffic regulation or beach access, parking, or use fee adopted or enacted before the effective date of Subsections (b) and (c) of this section, and the former law is continued in effect for the purpose of the existing regulations and fees, until the regulations or fees are amended or changed in whole or in part.

(e) State-owned or public land not specifically exempted by this chapter shall be subject to the same requirements of this chapter as land owned by private littoral owners except as provided by Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 13, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 5, eff. June 18, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 377 (H.B. 1445), Sec. 2, eff. June 19, 2009.

Sec. 61.023. EFFECT ON LAND TITLES AND PROPERTY ADJACENT TO AND ON BEACHES. The provisions of this subchapter shall not be construed as affecting in any way the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicle traffic by public road or by beach.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.024. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a) Except as provided by Subsection (b), a person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel must include in any executory contract for conveyance a statement in substantially the following form:

CONCERNING THE PROPERTY AT _____

DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC LOSS TO YOU AS THE PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY STATE LAW.

• READ THIS NOTICE CAREFULLY. DO NOT SIGN THIS CONTRACT UNTIL YOU FULLY UNDERSTAND THE RISKS YOU ARE ASSUMING.

• BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING ECONOMIC RISKS OVER AND ABOVE THE RISKS INVOLVED IN PURCHASING INLAND REAL PROPERTY.

• IF YOU OWN A STRUCTURE LOCATED ON COASTAL REAL PROPERTY NEAR A GULF COAST BEACH, IT MAY COME TO BE LOCATED ON THE PUBLIC BEACH BECAUSE OF COASTAL EROSION AND STORM EVENTS.

• AS THE OWNER OF A STRUCTURE LOCATED ON THE PUBLIC BEACH, YOU COULD BE SUED BY THE STATE OF TEXAS AND ORDERED TO REMOVE THE STRUCTURE.

• THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH AND ANY OTHER ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER WOULD BE SOLELY YOUR RESPONSIBILITY.

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity

to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code.

Much of the Gulf of Mexico coastline is eroding at rates of more than five feet per year. Erosion rates for all Texas Gulf property subject to the open beaches act are available from the Texas General Land Office.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF PROCESSES SUCH AS SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.

The purchaser is hereby notified that the purchaser should:

(1) determine the rate of shoreline erosion in the vicinity of the real property; and

(2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

(b) If the statement is not included in the executory contract for conveyance or there is no executory contract for conveyance, the statement must be delivered to, and receipt thereof acknowledged by, the purchaser not later than 10 calendar days prior to closing the transaction.

(c) Failure to comply with Subsection (a) or (b), as applicable, shall be grounds for the purchaser to terminate the contract or agreement to convey, and upon termination any earnest money shall be returned to the party making the deposit.

(d) A seller commits a deceptive act under Section 17.46,

Business & Commerce Code, if the seller fails to comply with Subsection (a) or Subsection (b), as applicable.

(e) This section, or the failure of a person to give or receive the notice in the manner required by this section, does not diminish or modify the beach access and use rights of the public acquired through statute or under common law.

Added by Acts 1985, 69th Leg., ch. 350, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1987, 70th Leg., ch. 75, Sec. 1, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 508, Sec. 10, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 14, eff. September 1, 2007.

Sec. 61.026. BEACH ACCESS PUBLIC AWARENESS AND EDUCATION. (a) The land office in conjunction with the Texas Department of Transportation shall design and produce a uniform bilingual beach access sign to be used by local governments to designate access ways to and from public beaches.

(b) The land office may develop and distribute public information about the requirements of this chapter, the importance of natural beach and dune systems, and the necessity for preserving them. Such information may include public service announcements made under the direction of the land office.

(c) The Texas A&M University Sea Grant Program shall make available to public schools materials for natural science classes which explain the importance of natural beach and dune systems and the necessity of preserving them.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 15, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(54), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 245, Sec. 6, eff. June 18, 2003.

SUBCHAPTER C. MAINTENANCE OF THE PUBLIC BEACHES

Sec. 61.061. PURPOSE. It is the purpose of this subchapter to allocate responsibility for cleaning the beaches of this state and to preserve and protect local initiative in the maintenance and administration of beaches.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.062. PUBLIC POLICY. It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.063. DEFINITIONS. In this subchapter:

(1) "Clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected and includes the employment of lifeguards, beach patrols, and litter patrols.

(2) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 1, eff. Sept. 1, 1991.

Sec. 61.064. APPLICATION OF SUBCHAPTER. This subchapter applies to incorporated cities, towns, and villages that are located or border on the Gulf of Mexico and to all counties that are located or border on the Gulf of Mexico if the city, town, or village or county that makes application for funds under this subchapter has within its boundaries public beaches.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 366, ch. 163, Sec. 1, eff.

Aug. 27, 1979.

Sec. 61.065. DUTY OF CITIES. (a) It is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries.

(b) The duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located.

(c) As part of the duty under this section to clean and maintain the condition of public beaches, a municipality shall:

(1) during reasonable daylight hours, as established and posted by the municipality, from Memorial Day to Labor Day, provide, or ensure that a park board created by the municipality under Chapter 306, Local Government Code, provides:

(A) occupied lifeguard towers or mobile lifeguard units on each side of each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within the corporate boundaries; or

(B) a single occupied lifeguard tower or mobile lifeguard unit at each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within the corporate boundaries if the single tower provides an unobstructed view of both sides of the structure; and

(2) post within 100 yards of each side of each structure described by Subdivision (1) signs clearly describing the dangerous water conditions that may occur near the structure.

(d) A municipality may suspend or alter the duties imposed under Subsection (c) during dangerous weather conditions or emergency operations.

(e) Subsection (c)(1) does not apply to a municipality with a population of less than 1,000 that is located in a county adjacent to a county with a population of more than 3.3 million.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 724 (H.B. 3807), Sec. 2, eff.

September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 466 (H.B. 630), Sec. 1, eff. June 10, 2023.

Sec. 61.066. DUTY OF COUNTY. (a) It is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village.

(b) As part of the duty under this section to clean and maintain the condition of public beaches, a county shall:

(1) during reasonable daylight hours, as established and posted by the county, from Memorial Day to Labor Day, provide:

(A) occupied lifeguard towers or mobile lifeguard units on each side of each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located on a public beach described by Subsection (a); or

(B) a single occupied lifeguard tower or mobile lifeguard unit at each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located on a public beach described by Subsection (a) if the single tower provides an unobstructed view of both sides of the structure; and

(2) post within 100 yards of each side of each structure described by Subdivision (1) signs clearly describing the dangerous water conditions that may occur near the structure.

(c) A county may suspend or alter the duties imposed under Subsection (b) during dangerous weather conditions or emergency operations.

(e) Subsection (b)(1) does not apply to a county adjacent to a county with a population of more than 3.3 million that contains a municipality adjacent to the Gulf of Mexico with a population of less than 1,000.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 724 (H.B. 3807), Sec. 3, eff.

September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 466 (H.B. 630), Sec. 2, eff. June 10, 2023.

Sec. 61.067. DUTY OF STATE. (a) It is the duty and responsibility of the state to clean and maintain the condition of all public beaches located within state parks designated by the department.

(a-1) Notwithstanding Sections 61.065 and 61.066, the land office shall clean, maintain, and clear debris from a public beach that is located in an area designated as a threatened area in a declaration of a state of disaster issued under Section 418.014, Government Code. The duty of the land office under this subsection is limited to debris related to the event that is the subject of the disaster declaration.

(a-2) As part of the duty under this section to clean and maintain the condition of public beaches located within state parks, the department shall:

(1) during reasonable daylight hours, as established and posted by the department, from Memorial Day to Labor Day, provide:

(A) occupied lifeguard towers or mobile lifeguard units on each side of each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within a state park; or

(B) a single occupied lifeguard tower or mobile lifeguard unit at each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within a state park if the single tower provides an unobstructed view of both sides of the structure; and

(2) post within 100 yards of each side of each structure described by Subdivision (1) signs clearly describing the dangerous water conditions that may occur near the structure.

(a-3) The department may suspend or alter the duties imposed under Subsection (a-2) during dangerous weather conditions or emergency operations.

(b) The land office shall consult with the department in adopting rules and procedures for cleaning beaches in state parks and areas adjacent to state parks.

(c) The land office shall expand the Adopt-A-Beach program to the greatest extent feasible to enhance the performance of its duties

under this subchapter.

(d) The land office may use any cash, gifts, grants, donations, or in-kind contributions that it receives from a public or private entity through the administration of the Adopt-A-Beach program to assist a municipality, a county, or the department in performing any duty imposed on the city, county, or department by this subchapter.

(e) The land office may adopt rules reasonably necessary to perform its duties under this subchapter.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 7.01, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 6 (H.B. 2457), Sec. 1, eff. May 5, 2009.

Acts 2021, 87th Leg., R.S., Ch. 724 (H.B. 3807), Sec. 4, eff. September 1, 2021.

Sec. 61.068. APPLICATION REQUIREMENT. A city or county that seeks state funds under this subchapter to clean the public beaches must submit an application to the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 3, eff. Sept. 1, 1991.

Sec. 61.069. CONTENTS OF APPLICATION. To be approved, the application must provide:

(1) for the administration or supervision of the public beaches of the city or county by a beach park board of trustees, county parks board, commissioners court, or other administrative body that the legislature may from time to time authorize, and provide that the board or agency will have adequate authority to administer an effective program of keeping clean the public beaches within its jurisdiction;

(2) for the receipt by the city or county treasurer or other officer exercising similar functions, if there is no city or county treasurer, of all funds paid to the city or county under this

subchapter and provide for the proper safeguarding of the funds by the officer, provide that the funds will be spent solely for the purposes for which they are paid, and provide for the repayment by the city or county of any funds lost or diverted from the purposes for which paid;

(3) that the governing body of the city or county will make reports as to amounts and categories of expenditures that the land office may from time to time require;

(4) that entrance to all public beaches under the jurisdiction of the governing body of the city or county is free of charge; and

(5) for the establishment, maintenance, and administration of at least one beach park by the city or county which meets the minimum requirements of size and facilities available to the public as determined by the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 4, eff. Sept. 1, 1991.

Sec. 61.070. PARKING AND USE FEES. Subsection (4), Section 61.069 of this code shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.071. COMPLIANCE BEFORE APPROVAL. The land office shall not approve any application that fails to meet the conditions specified in Section 61.069 of this code.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 5, eff. Sept. 1, 1991.

Sec. 61.072. STATE FUNDS. The land office shall pay to each city or county that has an application approved under Sections 61.068

through 61.070 of this code from appropriations that are made available the state share for cleaning and maintenance of public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 6, eff. Sept. 1, 1991.

Sec. 61.073. CONDITIONS FOR PAYMENTS. No payments shall be made under this subchapter until the land office finds that:

(1) there will be available in the budget of the city or county not less than $20,000 to clean and maintain public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought; and

(2) there will be available in the budget of the city or county for the purpose of cleaning and maintaining the public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought an amount not less than the total amount spent by the city or county to clean the beaches in the state fiscal year ending August 31, 1969.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 7, eff. Sept. 1, 1991.

Sec. 61.074. SUBMISSION OF PROPOSED EXPENDITURES. A city or county that seeks reimbursement under the provisions of this subchapter shall submit to the land office proposed expenditures for cleaning and maintaining the public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 8, eff. Sept. 1, 1991.

Sec. 61.075. FAIR DISTRIBUTION OF FUNDS. The land office shall distribute the state share to the cities and counties in a fair and impartial manner and under procedures and accounting methods to be adopted by the land office.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 9, eff. Sept. 1, 1991.

Sec. 61.076. LIMITATION ON STATE SHARE. (a) No city or county may receive as its state share an amount that is greater than two-thirds of the amount the city or county spends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought.

(b) The land office shall allocate the state share to eligible cities and counties taking into account the frequency with which public beaches within the jurisdiction of the cities and counties are used.

(c) For purposes of determining the maximum amount of money a municipality may receive under Subsection (a), money received under Section 156.2511, Tax Code:

(1) is not included in determining the amount the municipality spends to clean and maintain public beaches during the state fiscal year for which reimbursement is sought; and

(2) is included as part of the state share.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 10, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 454, Sec. 9, eff. Sept. 1, 1995.

Sec. 61.077. FUNDS FOR ADMINISTRATIVE PURPOSES AND EMERGENCIES. (a) The land office may use for administrative purposes not more than 10 percent of the appropriated funds for any state fiscal year.

(b) The land office may withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 11, eff. Sept. 1, 1991.

Sec. 61.078. AUTHORITY TO SPEND COUNTY FUNDS. The commissioners court of any county located or bordering on the Gulf of Mexico may spend from any available fund the amount it considers necessary to carry out the responsibilities provided in this subchapter.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.079. NOTICE OF INELIGIBILITY. After reasonable notice and opportunity for a hearing to a city or county that is receiving funds under the provisions of this subchapter, if the land office finds that the city or county no longer complies with the requirements of this subchapter, it shall notify the city or county that further payments will not be made until the land office is satisfied that there is no longer any failure to comply.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 12, eff. Sept. 1, 1991.

Sec. 61.080. PUBLIC BEACHES IN INELIGIBLE CITY. (a) The governing body of any incorporated city located or bordering on the Gulf of Mexico that is not entitled to receive funds under this subchapter may contract with the commissioners court of the county in which the city is located to allow the county to clean the beaches within the corporate limits of the city.

(b) The city may apply to the land office for rebates of 40 percent of the contract price, and the city is not required to meet the terms and conditions imposed in Section 61.069 of this code unless otherwise provided by law.

(c) The land office shall make the rebates at the close of each fiscal year on a showing by the city that entrance to all public beaches under the jurisdiction of the city is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 13, eff. Sept. 1, 1991.

Sec. 61.081. PUBLIC BEACHES IN INELIGIBLE COUNTY. (a) The commissioners court of a county that is not entitled to receive funds under this subchapter may contract with the commissioners court of any adjacent county that is entitled to receive funds under this subchapter to allow the adjacent county to clean the public beaches of the ineligible county.

(b) The contracting county that is not entitled to receive funds under this subchapter may apply to the land office for rebates of 40 percent of the contract price, but the ineligible county is not required to meet the terms and conditions imposed in Section 61.069 of this code.

(c) The land office shall make the rebates at the close of each state fiscal year on a showing by the ineligible county that entrance to all public beaches under the jurisdiction of the county is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 14, eff. Sept. 1, 1991.

Sec. 61.082. AUTHORITY OF LOCAL GOVERNMENTS. (a) Except as provided by Section 61.067(a-1), the provisions of this subchapter shall not be construed to interfere with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches.

(b) The administration of public beaches, the selection of personnel, and the determination of the best uses of the funds insofar as is consistent with the purposes of this subchapter are reserved to the several political subdivisions receiving funds under this subchapter.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 6 (H.B. 2457), Sec. 2, eff. May 5, 2009.

Sec. 61.083. EXEMPTIONS FROM SUBCHAPTER. None of the provisions of this subchapter apply to any beach area that does not border on the Gulf of Mexico or to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. COUNTY REGULATION OF PUBLIC USE OF BEACHES

Sec. 61.121. DEFINITION. In this subchapter, "beach" shall have the same definition as provided in Section 61.012 of this code.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.122. COUNTY REGULATORY AUTHORITY. (a) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate motor vehicle traffic on any beach within the boundaries of the county, including prohibiting motor vehicle traffic on any natural or man-made sand dune or other form of shoreline protection, and may prohibit the littering of the beach and may define the term "littering."

(b) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate the possession of animals on the beach within its boundaries, including but not limited to prohibiting animals to run at large on said beach.

(c) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate swimming in passes leading to and from the Gulf of Mexico, located within its boundaries, including but not limited to prohibiting swimming in said passes and posting signs notifying persons of such regulation or prohibition.

(d) The commissioners court of a county bordering on the Gulf

of Mexico or its tidewater limits, by order, may prohibit the use and possession of all glass containers and products on a beach in the unincorporated area of the county. The commissioners court shall not prohibit any one or several glass products to the exclusion of any others.

(e) Regulation under Subsection (a) of this section that prohibits vehicles from an area of public beach is subject to Section 61.022 of this code.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 775, ch. 341, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, Sec. 16, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 164, Sec. 2, 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 243, Sec. 1, eff. May 22, 2001.

Sec. 61.123. NOTICE OF HEARING. (a) Before the commissioners court adopts an order under Section 61.122 of this code, it must publish notice of the intention to adopt the order in at least one newspaper with general circulation in the county.

(b) The notice shall state the time and place of the public hearing on the proposed order and that interested persons may obtain copies of the proposed order from the commissioners court.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.124. COPIES OF ORDER. The commissioners court shall make copies of the proposed order available to interested persons.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.125. PUBLIC HEARING. (a) Not less than one month but more than two weeks after notice is published, the commissioners court shall conduct a hearing at the time and place stated in the notice.

(b) At the hearing, the commissioners shall allow all interested persons to express their views on the proposed order.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.126. TRAFFIC REGULATIONS. If the order includes a traffic regulation, the order shall provide for signs that are designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.127. CRIMINAL PENALTIES. In any order adopted under this subchapter, the commissioners court may adopt the following criminal penalties for violation of the order:

(1) for a first conviction, a fine of not less than $50; nor more than $100;

(2) for a second conviction, a fine of not less than $100 nor more than $200;

(3) for any subsequent convictions after the second conviction, a fine of not less than $200 nor more than $1,000 or confinement in the county jail for not more than 60 days, or both.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 585, Sec. 3, eff. Sept. 1, 1985.

Sec. 61.128. ORDER PREVAILS OVER STATE LAW. If an order adopted under this subchapter conflicts with the general law of the state, the order shall control over the state law, and in cases of violation, prosecution may be maintained only under the order.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.129. ORDINANCE PREVAILS OVER ORDER AND STATE LAW. (a)

Except as provided in Section 61.022 of this code, this subchapter does not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any adjacent body of water to regulate motor vehicle traffic and prohibit littering on any beach within its corporate limits.

(b) If these regulatory ordinances are adopted by a city, town, or village and the ordinance conflicts with the general law of the state or with an order of the commissioners court adopted under this subchapter, and the ordinance is consistent with policies and rules under Section 61.011 of this code, the ordinance shall control over the state law and the order, and in cases of violation, prosecution may be maintained only under the ordinance.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 17, eff. June 7, 1991.

Sec. 61.130. RIGHTS OF THE PUBLIC. The right of the public to use the public beaches defined in this subchapter is inviolate and is subject only to orders adopted by a commissioners court under this subchapter and to ordinances enacted by an incorporated city, town, or village.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.131. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.132. CLOSING OF BEACHES FOR SPACE FLIGHT ACTIVITIES. (a) This section applies only to a county bordering on the Gulf of Mexico or its tidewater limits that contains a launch site the construction and operation of which have been approved in a record of

decision issued by the Federal Aviation Administration following the preparation of an environmental impact statement by that administration.

(b) A person planning to conduct a launch in a county to which this section applies must submit to the commissioners court proposed primary and backup launch dates for the launch.

(c) To protect the public health, safety, and welfare, the commissioners court by order may temporarily close a beach in reasonable proximity to the launch site or access points to the beach in the county on a primary or backup launch date, subject to Subsection (d).

(d) The commissioners court may not close a beach or access points to the beach on a primary launch date consisting of any of the following days without the approval of the land office:

(1) the Saturday or Sunday preceding Memorial Day;

(2) Memorial Day;

(3) July 4;

(4) Labor Day; or

(5) a Saturday or Sunday that is after Memorial Day but before Labor Day.

(e) The commissioners court must comply with the county's beach access and use plan adopted and certified under Section 61.015 and dune protection plan adopted and certified under Chapter 63 when closing a beach or access point under this section.

(f) The land office may:

(1) approve or deny a beach or access point closure request under Subsection (d);

(2) enter into a memorandum of agreement with the commissioners court of a county to which this section applies to govern beach and access point closures made under this section; and

(3) adopt rules to govern beach and access point closures made under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 152 (H.B. 2623), Sec. 3, eff. May 24, 2013.

SUBCHAPTER E. LICENSES FOR BUSINESS ESTABLISHMENTS

Sec. 61.161. PUBLIC POLICY. It is the public policy of this state that the state-owned beaches bordering on the seaward shore of

the Gulf of Mexico, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.162. FINDINGS. (a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) The legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as provided in this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.163. DEFINITION. In this subchapter, "business

establishment" means any structure or vehicle where any commodity including memberships in any private club or other similar organization is offered to the public for sale or lease but does not include any structure or vehicle where only services are offered to the public for sale.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.164. APPLICATION. A person who desires to operate a mobile business establishment on a public beach located outside the municipal limits of an incorporated city shall submit a written application to the county of jurisdiction.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 1, eff. Aug. 28, 1995.

Sec. 61.165. CONTENTS OF APPLICATION. The application shall include:

(1) the name and street address of the applicant;

(2) the commodity to be sold or leased; and

(3) the limits of the territory within which the mobile business establishment will operate.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.166. FILING FEE. (a) The application shall be accompanied by a filing fee in an amount determined by the county.

(b) The filing fee may be used by the county to pay the expenses of carrying out the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 75, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 63, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 399, Sec. 2, eff. Aug. 28, 1995.

Sec. 61.167. SEPARATE APPLICATIONS. Any applicant who plans to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment that he seeks to have licensed.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.168. GRANTING LICENSE. (a) On finding that the issuance of a license is consistent with recreational needs and the public welfare, and that the mobile business establishment would not create a traffic or safety hazard, and on compliance with this subchapter by the applicant, the county shall grant the license.

(b) The license shall be valid for a term selected by the county, not to exceed two years from the day it is issued.

(c) If the license is not granted, the county shall return the filing fee to the applicant.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 342, Sec. 1, eff. June 10, 1985; Acts 1995, 74th Leg., ch. 399, Sec. 3, eff. Aug. 28, 1995.

Sec. 61.169. APPLICATIONS NOT TO BE GRANTED. The county shall not grant an application:

(1) for a business establishment located at a fixed or permanent location on a public beach; or

(2) that does not otherwise meet the terms and provisions of this subchapter.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 4, eff. Aug. 28, 1995.

Sec. 61.170. LICENSE PROHIBITION AGAINST GLASS CONTAINERS. (a) Each license granted under this subchapter authorizing the sale of commodities on a public beach shall include a prohibition against the

sale of any commodity in a glass container.

(b) Any person selling a commodity in a glass container on a public beach outside the boundaries of any incorporated city shall have his rights conferred by the license immediately terminated and revoked as provided in Section 61.172 of this code.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.171. ASSIGNMENT. No license issued under this subchapter may be assigned.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.172. TERMINATION AND REVOCATION OF LICENSE. (a) The failure or refusal of the licensee to comply with the terms and conditions of a license shall operate as an immediate termination and revocation of all rights conferred in or claimed under the license.

(b) The termination and revocation of the license is not effective until notice is delivered by mail to the address of the licensee listed on the application for the license.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.173. MAXIMUM TERRITORIAL LIMITS. (a) If territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in the territory, the county may establish maximum territorial limits over which mobile business establishments may operate.

(b) A license to sell or lease only surfboards and related equipment may not be limited as to the territory over which the mobile business establishment may operate.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 5, eff. Aug. 28, 1995.

Sec. 61.174. ADDITIONAL STANDARDS. In addition to other standards provided in this subchapter, it is the intention of the legislature that the county exercise the authority delegated to it under this subchapter according to the following considerations:

(1) that the number of mobile business establishments licensed by the county should not constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public provided in this subchapter;

(2) that the number of licenses issued by the county under this subchapter are sufficient to ensure free and unrestricted competition in selling or leasing of commodities to the public; and

(3) that no person should be allowed to operate any mobile business establishment on any public beach in restraint of trade or competition by which the person controls all or substantially all the business establishments on the public beach licensed by the county.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 6, eff. Aug. 28, 1995.

Sec. 61.175. RULES, PROCEDURES, AND CONDITIONS. The county may establish additional rules, procedures, and conditions necessary or appropriate to carry out the purposes of this subchapter.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 7, eff. Aug. 28, 1995.

Sec. 61.176. AREAS EXEMPT FROM SUBCHAPTER. This subchapter does not apply to a public beach that is within the boundaries of a state park designated by the department or to a remote beach on any island or peninsula which is not accessible by public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.177. PENALTY. A person, who for himself or on behalf of or under the direction of another person, operates any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city without first obtaining a license to operate the business establishment from the county shall be fined not less than $10 nor more than $200.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 8, eff. Aug. 28, 1995.

Sec. 61.178. ENFORCEMENT. At the request of a county, department game wardens will assist with enforcement of the provisions of this Act, or permits issued hereunder, along with any other state or local law enforcement entities with jurisdiction over public beaches.

Added by Acts 1995, 74th Leg., ch. 399, Sec. 9, eff. Aug. 28, 1995.

SUBCHAPTER F. REMOVAL OF SAND, MARL, GRAVEL, AND SHELL

Sec. 61.211. FINDINGS. The legislature finds that the unregulated excavation, taking, removal, and carrying away of sand, marl, gravel, and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of the state constitute a substantial interference with public enjoyment of Texas beaches and a hazard to life and property.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.212. EXEMPTIONS FROM SUBCHAPTER. (a) The provisions of this subchapter do not apply:

(1) to excavating, taking, removing, or carrying away sand, marl, gravel, or shell made for the purpose of constructing improvements on real property if the improvements are constructed on the property on which the excavating, taking, removing, or carrying away occurs;

(2) to any landowner who desires to shift sand, marl, gravel, or shell from one location to another on land wholly owned by him; or

(3) to any agency of the federal or state government or any county, city, or other political subdivision or any of their agents or officers acting in their official capacities.

(b) Any person who holds a lease that was issued by the state under Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Vernon's Texas Civil Statutes), before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes provided in Subsection (a) of this section without obtaining a permit from the commissioners court.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.213. APPLICATION. Before a person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a mainland public beach that is located outside the boundaries of an incorporated city, town, or village, he must submit a written application to the commissioners court of the county in which the excavation, taking, removal, or carrying away is to take place.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.214. CONTENTS OF APPLICATION. The application shall include:

(1) the name of the applicant;

(2) the location and dimensions of the proposed excavation;

(3) the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and

(4) certification by the county treasurer, or other official exercising similar authority if there is no county treasurer, that the applicant has deposited a filing fee of $50.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.215. PREREQUISITES TO ISSUANCE OF PERMIT. No permit may be issued by the commissioners court under this subchapter to excavate, take, remove, or carry away sand, marl, gravel, or shell from land owned by the state, public beach, or privately owned land that is subject to this subchapter and that is not located on a public beach, unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.216. NOTICE OF APPLICATIONS RECEIVED. (a) The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell.

(b) The notice shall be published once in a newspaper of general circulation in the county.

(c) The notice shall include the name of the applicant and the location and dimensions of the proposed activity.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.217. PUBLIC HEARING. (a) The commissioners court shall hold a public hearing if the hearing is requested by any citizen within 10 days after notice is published under Section 61.216 of this code.

(b) The hearing may not be held less than 30 days from the date of the first publication of notice under Section 61.218 of this code.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.218. NOTICE OF PUBLIC HEARING. Notice of the public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.219. ISSUANCE OF PERMIT. (a) On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm water, the commissioners court may issue a permit to the applicant, and it shall be valid for six months from the date of its issuance.

(b) The decision to issue a permit shall be made with the advice and counsel of the county engineer in counties in which the commissioners court employs a county engineer.

(c) None of the provisions of this subchapter prohibit a commissioners court from issuing a permit to a person who holds a right-of-way easement granted by the commissioner for a pipeline to cross state land, provided the applicant complies with the provisions of this subchapter relating to the issuance of permits.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.220. RETURN OF FILING FEE. If the commissioners court refuses to issue the permit, the applicant may recover his filing fee from the county treasurer or other official exercising similar authority if there is no county treasurer.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.221. ASSIGNMENT OF PERMITS. No permit may be assigned without the approval of the commissioners court.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.222. TERMINATION AND REVOCATION OF PERMIT. Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.223. SUITS FOR ORDERS AND INJUNCTIONS. The attorney general, any county attorney, district attorney, or criminal district attorney of the state shall file in a district court in the county in which the conduct takes place, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state if the land is located outside the boundaries of an incorporated city, town, or village in violation of the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.224. PENALTY. A person who for himself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state, if the land is located outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this subchapter shall be fined not less than $10 nor more than $200. Each day a violation occurs constitutes a separate offense.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.225. SAND, MARL, GRAVEL, OR SHELL FROM PUBLIC BEACHES WITHIN INCORPORATED CITIES, TOWNS, OR VILLAGES. No incorporated city, town, or village having within its boundaries a public beach may authorize a person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from the public beach except for the construction of a publicly owned and operated recreational facility or for the construction of a shoreline protection structure.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.226. APPLICATION OF SUBCHAPTER TO CERTAIN ISLANDS AND PENINSULAS. The provisions of this subchapter do not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition continues.

Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.227. AUTHORITY OF PARKS AND WILDLIFE DEPARTMENT. None of the provisions of this subchapter may be construed to repeal or modify the provisions of Chapter 86, Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this subchapter be construed to create additional or supplemental requirements or procedures to those provided in Chapter 86, Parks and Wildlife Code.

Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. PERMITS FOR MASS GATHERINGS

Sec. 61.251. DEFINITION. In this subchapter, "mass gathering" means a gathering that attracts or is expected to attract more than 200 individuals who will remain at the location of the gathering for

more than two continuous hours.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.252. PERMIT REQUIREMENTS. (a) To protect the public health, safety, and welfare, the commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate mass gatherings of individuals on any beach in the unincorporated area of the county by requiring a person to obtain a permit and pay a permit fee set by the commissioners court before the person may hold a mass gathering.

(b) A commissioners court that requires a permit under this subchapter must adopt procedures governing the application for and issuance of a permit under this subchapter. The commissioners court may require the holder of the permit to take reasonable specified actions to protect the public health, safety, and welfare.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.253. INJUNCTION. The county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an order adopted under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.254. CRIMINAL PENALTY. A person commits an offense if the person violates an order adopted under this chapter. An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

CHAPTER 62. BEACH PARK BOARD OF TRUSTEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. APPLICABILITY. (a) The provisions of this chapter apply to counties that are located or border on the Gulf of Mexico and have within their boundaries beaches that are suitable for park purposes. The suitability of a beach for park purposes is

established conclusively when the commissioners court of the county makes a finding that the beach located within its boundaries, but not located within the boundaries of an incorporated city, is suitable for park purposes.

(b) As long as an island or peninsula is not accessible by a public road or common carrier ferry facility, the provisions of this chapter do not apply to that island or peninsula.

(c) The provisions of this chapter do not interfere with, preempt, or in any manner restrict or usurp the authority of the land office over state-owned beaches.

(d) The provisions of this chapter do not prohibit the creation of, or limit the lawful actions of, a beach park board of trustees of a home-rule city as provided in Chapter 306, Local Government Code.

(e) The provisions of this chapter do not permit any interference with the right the public has under the provisions of Subchapter B, Chapter 61, to the free and unrestricted use of, and to ingress and egress to, the area bordering on the Gulf of Mexico from mean low tide to the line of vegetation, as that term is defined in Section 61.001. A county, county official, or anyone acting under the authority of this chapter may not exercise any authority, contract out a right to exercise authority, or otherwise delegate authority beyond that specifically granted to it in Sections 61.122 through 61.128 over that area notwithstanding any of the specific provisions of this chapter. The rights established in Subchapters B and D, Chapter 61, are paramount over the rights or interests that might otherwise be created by the provisions of this chapter, and nothing in this chapter encroaches on those rights or upon land, or interests in land, that may ultimately be held subject to those rights.

Acts 1977, 65th Leg., p. 2492, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 149, Sec. 39, eff. Sept. 1, 1987.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 13.001, eff. September 1, 2013.

Sec. 62.002. DEFINITION. In this chapter, "board" means the Beach Park Board of Trustees.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. CREATION OF BOARD

Sec. 62.011. PURPOSE AND AUTHORITY. A county located or bordering on the Gulf of Mexico with a beach suitable for park purposes may create a board in the manner provided in this subchapter for the purpose of improving, equipping, maintaining, financing, and operating a public park or parks, or any facilities owned by the county, or to be acquired by the county, or to be managed by the county under the terms of a written contract. The board, to be designated Beach Park Board of Trustees, has the powers and duties specified in this chapter.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.012. METHOD OF CREATING BOARD. A board may be created after a favorable majority vote of the qualified voters of the county voting at an election held on the proposition.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.013. ELECTION. (a) The election shall be called by the commissioners court.

(b) Notice of the election shall be given in the manner provided by Chapter 1251, Government Code.

(c) The ballots shall be printed to provide for voting for or against the proposition: "Establishing a beach park board of trustees."

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.353, eff. Sept. 1, 2001.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 62.041. MEMBERS OF BOARD. (a) The board is composed of seven members appointed by the commissioners court.

(b) One board member shall be a member of the commissioners court.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.042. TERM OF OFFICE. (a) With the exception of the trustees first appointed, a trustee serves for a term of two years from the date of appointment.

(b) At the time of the appointment of the first trustees, the commissioners court shall designate three trustees to serve for one year and four trustees to serve for two years.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.043. OATH AND BOND. (a) A trustee shall qualify within 15 days after his appointment by taking the official oath and filing a good and sufficient bond with the county clerk.

(b) The bond shall be approved by the commissioners court, payable to the county, in a sum not to exceed $5,000 as approved by the commissioners court of the county, and conditioned on the faithful performance of the duties of the trustee, including his proper handling of all money which may come into his hands in his capacity as a member of the board.

(c) The cost of the bond shall be paid by the board.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.044. COMPENSATION; EXPENSES. A trustee serves without compensation but shall be reimbursed for travel and other necessary expenses incurred in the performance of his official duties.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.045. VACANCY. A vacancy on the board shall be filled by appointment of the commissioners court.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.046. OFFICERS OF BOARD. (a) On the appointment of the first trustees, the commissioners court shall designate one of the trustees to serve as chairman of the board for a period of one year.

(b) After the first year the board annually shall elect a chairman, a vice-chairman, a secretary, and a treasurer from among its members. The office of secretary and treasurer may be held by the same person.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.047. PARK MANAGER. The board may employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.048. LEGAL SERVICES. (a) The board may call on the county attorney of the county for the legal services it requires.

(b) In lieu of or in addition to the county attorney, the board may employ and compensate its own counsel and legal staff.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.049. EMPLOYEES OF BOARD. (a) The board may employ temporary or permanent secretaries, stenographers, bookkeepers,

accountants, technical experts, and other agents and employees it requires.

(b) The board shall determine the qualifications, duties, and compensation of its employees.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.050. MEETINGS. (a) The board shall hold regular meetings at times set by the board.

(b) The board may hold special meetings at the times business or necessity requires. Special meetings may be called by the chairman or any three members of the board.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.051. BOARD RECORDS. (a) The board shall keep a true and full record of all its meetings and proceedings and maintain the records of the board in a secure manner.

(b) The board may contract with the commissioners court of the county to have the county keep and maintain its records.

(c) All the records are the property of the board and are subject to inspection by the commissioners court at all reasonable times.

(d) The preservation, microfilming, destruction, or other disposition of the records of the board is subject to the requirements of Subtitle C, Title 6, Local Government Code, and rules adopted under that subtitle.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 65, eff. Sept. 1, 1989.

Sec. 62.052. MANAGEMENT OF FUNDS. The money belonging to or under control of the board shall be deposited and secured in the same manner prescribed by law for county funds.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.053. AUDIT. Independent auditors selected by the board shall make an annual audit of all financial transactions and records of the board.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.054. COURT ACTIONS. The board may sue and be sued in its own name.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.055. SEAL. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments usually executed under seal and on other instruments required by the board.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 62.091. LAND UNDER JURISDICTION, MANAGEMENT, AND CONTROL. (a) The following land is under the jurisdiction of the board:

(1) public beaches owned in fee by the county; and

(2) land used as parks in connection with public beaches not located inside the boundaries of an incorporated city and not inside the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Section 61.001.

(b) The Commissioners Court may designate the following land to be under the management and control of the board:

(1) additional parks and facilities owned by the county; or

(2) additional parks and facilities to be managed by the

county under the terms of a written contract.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 13.002, eff. September 1, 2013.

Sec. 62.092. PRIORITY OF JURISDICTION. (a) The board has no jurisdiction over a public beach located inside the boundaries of the county that has been designated a national park, national seashore, or state park.

(b) The authority of the board preempts the right of the county board of park commissioners to act with regard to a beach, park, or facility within the jurisdiction of the board.

(c) The provisions of this chapter are cumulative of other laws relating to county parks but take precedence in the event of conflict.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.093. PARK AUTHORITY. The board may manage, operate, maintain, equip, improve, and finance:

(1) an existing public park placed under its jurisdiction by the commissioners court; or

(2) additional parks acquired by gift or otherwise but not acquired by the exercise of the power of eminent domain.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.094. FEE CHARGED. The board may charge and collect a reasonable fee for access or entrance to or parking on the land under its jurisdiction, other than public beaches owned by the county, or use of a facility located on land under its jurisdiction.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.095. USE OF FUNDS. (a) The board may accept, receive, and spend gifts of money or other things of value from any person for the purpose of performing any function, power, or authority vested in the board and funds from the county that are appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control.

(b) The board may spend money appropriated by the commissioners court for the purpose of cleaning and maintaining public beaches and land within its jurisdiction, including money appropriated to the commissioners court by the state for that purpose.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.096. CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING TO LAND AND FACILITIES. The board may enter into a contract, lease, or other agreement connected with, incident to, or affecting the financing, construction, equipping, maintenance, or operation of facilities located or to be located on or pertaining to land under its jurisdiction or facilities under its control and may execute and perform its lawful powers and functions on land leased from others.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.097. CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING TO MANAGEMENT, OPERATION, AND MAINTENANCE OF LAND AND FACILITIES. The board may enter into any contract, lease, or agreement with any person for a period of not more than 40 years relating to the management, operation, and maintenance of a concession, facility, improvement, leasehold, land, or other property over which the board has jurisdiction and control.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 62.098. CONTRACTS WITH OTHER GOVERNMENTAL AGENCIES. To accomplish any purpose authorized in this chapter, the board may enter into contracts with:

(1) adjacent counties;

(2) boards in adjacent counties; and

(3) boards in cities of the same county in which the board has jurisdiction.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.099. ADVERTISING. The board may publish brochures and otherwise advertise the county's recreational advantages for the purpose of attracting tourists, residents, and other users of the public facilities operated by the board.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.100. RULES. The board may adopt and enforce reasonable rules for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons carrying on a business activity inside the area of the public parks and facilities.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.101. LEGISLATIVE INTENT. It is the intent of the legislature in enacting the provisions of this chapter that the rights established or recognized in Subchapters B and D of Chapter 61 of this code are paramount over any rights or interests that might otherwise be considered created by this chapter, and none of the provisions of this chapter may trench on those rights or encroach on

land or interests in land that may ultimately be held subject to those rights.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. ISSUANCE OF BONDS

Sec. 62.131. AUTHORITY TO ISSUE REVENUE BONDS. For the purpose of acquiring, developing, improving, and enlarging public recreational areas and facilities, the board may issue revenue bonds payable solely from:

(1) the revenue of all or any designated part of the properties or facilities under the jurisdiction and control of the board; or

(2) any other source of funds the board may wish to dedicate for that purpose.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.132. FORMAL REQUIREMENTS OF BONDS. (a) The bonds may be issued by resolution adopted by the board without the necessity of an election.

(b) The bonds may be issued in the name of the board in one or more installments or series and shall mature serially or otherwise within 40 years from their date or dates.

(c) The bonds shall be issued on the terms and conditions, with regard to the security, manner, place, and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds, that the board specifies in the resolution or resolutions authorizing the bonds.

(d) The bonds shall be executed by the chairman and secretary of the board and shall be signed by the chairman and secretary or shall bear the facsimile signature of either or both.

(e) The bonds shall display the seal of the board, which may be impressed, printed, or lithographed on the bonds.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 62.133. SALE OF BONDS. The board shall sell the bonds on the best terms obtainable.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.134. APPROVAL AND REGISTRATION. The bonds shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the attorney general and approved as to legality by the attorney general and the bonds are registered by the comptroller of public accounts.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.135. AUTHORIZED INVESTMENTS. The bonds issued under the provisions of this subchapter are legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.136. SECURITY FOR DEPOSITS. The bonds are eligible to secure the deposit of public funds of the state and public funds of cities, towns, villages, or other political corporations or subdivisions of the state and are lawful and sufficient security for deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant to them.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 62.137. TAX BONDS. (a) The board shall not issue bonds payable in whole or in part from ad valorem taxes.

(b) The board may receive and spend the proceeds of bonds payable from taxes which are issued by the governing body of the county for park purposes after the bonds are authorized at an election held in the manner required by law.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.138. REFUNDING BONDS. (a) The board may issue refunding bonds for the purpose of refunding one or more series or installments of outstanding original or refunding bonds of the board.

(b) The refunding bonds shall be issued, approved as to legality by the attorney general, and registered by the comptroller of public accounts in the manner and on the terms and conditions provided in this subchapter for the issuance of original revenue bonds.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. DISSOLUTION OF BOARD

Sec. 62.161. ORDER CALLING ELECTION TO DISSOLVE; NOTICE OF ELECTION. (a) The commissioners court may order an election to dissolve a board.

(b) The commissioners court shall give notice of the election. The notice must include:

(1) the name of the board;

(2) the proposal that the board be dissolved; and

(3) the place, date, and time of the election.

(c) The notice shall be published in a newspaper of general circulation in the county once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the election will be held.

Added by Acts 1997, 75th Leg., ch. 1135, Sec. 1, eff. June 19, 1997.

Sec. 62.162. ELECTION TO DISSOLVE. (a) An election to dissolve a board shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law and that occurs after the date on which the commissioners court orders the election.

(b) The ballot shall be printed to provide for voting for or against the following: "Dissolving the [name of county] Beach Park Board of Trustees and transferring its parks jurisdiction, assets and liabilities to the [name of county] Commissioners Court."

(c) A copy of the tabulation of results shall be filed with the county clerk of the county in which the board is located.

(d) If a majority of those voting at the election vote to dissolve the board, the board and the commissioners court shall proceed with dissolution. An election to create a new board under this chapter in that county may not be held for at least one year after dissolution.

(e) If a majority of those voting at the election vote against dissolving the board, the commissioners court may not order another election on the issue before the first anniversary of the date of the canvass of the election.

Added by Acts 1997, 75th Leg., ch. 1135, Sec. 1, eff. June 19, 1997.

Sec. 62.163. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After a vote to dissolve a board, the board shall continue to control and administer the property, debts, and assets of the board until:

(1) the board executes and files a written assignment of all its property, debts, and assets to the commissioners court; and

(2) the commissioners court executes and files in its minutes an acceptance and assumption of the property, debts, and assets of the board.

(b) The assignment prescribed by Subsection (a) must be filed with the commissioners court not later than the 30th day after the date of the canvass of the election.

(c) After the commissioners court determines that the

requirements of this section have been fulfilled, the commissioners court shall enter an order dissolving the board.

(d) Each trustee is discharged from liability under the trustee's bond on entry of the order prescribed by Subsection (c).

(e) An employee or contract of the board becomes an employee or contract of the county, acting by and through its commissioners court, on entry of the order prescribed by Subsection (c).

Added by Acts 1997, 75th Leg., ch. 1135, Sec. 1, eff. June 19, 1997.

CHAPTER 63. DUNES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.001. FINDINGS OF FACT. The legislature finds and declares:

(1) that the mainland gulf shoreline, barrier islands, and peninsulas of this state contain a significant portion of the state's human, natural, and recreational resources;

(2) that these areas are and historically have been wholly or in part protected from the action of the water of the Gulf of Mexico and storms on the Gulf by a system of vegetated and unvegetated sand dunes that provide a protective barrier for adjacent land and inland water and land against the action of sand, wind, and water;

(3) that certain persons have from time to time modified or destroyed the effectiveness of the protective barriers and caused environmental damage in the process of developing the shoreline for various purposes;

(4) that the operation of recreational vehicles and other activities over these dunes have destroyed the natural vegetation on them;

(5) that these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property and constitute a real danger to natural resources and to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms and are areas of significant biological diversity;

(7) that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline; and

(8) that different areas of the coast are characterized by dunes of various types and values, all of which should be afforded protection.

Acts 1977, 65th Leg., p. 2499, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 1, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 18, eff. June 7, 1991.

Sec. 63.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

(3) "Peninsula" means an arm of land bordering on the Gulf of Mexico surrounded on three sides by water.

(4) "Recreational vehicle" means a dune buggy, marsh buggy, minibike, trail bike, jeep, off-highway vehicle, as defined by Section 551A.001, Transportation Code, or any other mechanized vehicle that is being used for recreational purposes, but does not include a vehicle that is not being used for recreational purposes.

(5) "Mainland shoreline" means all shoreline fronting on the open Gulf of Mexico that is not located on a barrier island or a peninsula.

(6) "Restoration" means the repair or replacement of dunes or dune vegetation.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 2, eff. Aug. 26, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 15, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 895 (H.B. 1044), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 6, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 41(1),

eff. June 14, 2019.

Sec. 63.003. EFFECT OF CHAPTER. The provisions of this chapter do not apply to any dune area not accessible by public road or common carrier ferry facility for as long as that condition exists.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985.

SUBCHAPTER B. DUNE PROTECTION LINE

Sec. 63.011. ESTABLISHING DUNE PROTECTION LINE. (a) After notice and hearing, the commissioners court of each county that has within its boundaries mainland shoreline, a barrier island, or a peninsula located on the seaward shore of the Gulf of Mexico shall establish a dune protection line on any such shoreline, island, or peninsula within its boundaries for the purpose of preserving sand dunes.

(b) A county may allow a municipality within the county to administer this chapter within its corporate limits and extraterritorial jurisdiction. On delegation by a county, a municipality may adopt and apply any appropriate ordinances within its extraterritorial jurisdiction to effect the purposes of this chapter.

(c) Municipalities and counties may enter into interlocal cooperation contracts for the administration of dune permit programs under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(d) The land office may assist and advise counties and municipalities in establishing or altering dune protection lines.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 19, eff. June 7, 1991.

Sec. 63.012. LOCATION OF DUNE PROTECTION LINE. The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high

tide of the Gulf of Mexico.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.013. NOTICE. (a) Notice of a hearing to consider establishing the dune protection line shall be published at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing.

(b) Notice shall be given to the commissioner not less than one week nor more than three weeks before the hearing.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.014. MAP AND DESCRIPTION OF DUNE PROTECTION LINE. (a) The commissioners court or governing body of each municipality in establishing a dune protection line shall define the line by presenting it on a map or drawing, by making a written description, or by both. Each shall be designated appropriately and filed with the clerk of the county or municipality establishing the line and with the commissioner.

(b) Notice of alterations in the dune protection line shall be filed with the clerk and with the commissioner, and the appropriate changes shall be made on the map, drawing, or description.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 20, eff. June 7, 1991.

Sec. 63.015. DUNE PROTECTION LINE PROHIBITED. No dune protection line may be established within a state or national park area, wildlife refuge, or other designated state or national natural area; provided, however, any state-owned or other public land not specifically exempted by this section shall be subject to the same requirements as private lands except as provided in Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 21, eff. June 7, 1991.

SUBCHAPTER C. PERMITS

Sec. 63.051. PERMIT REQUIREMENT. An owner of land or a person holding an interest in land under the owner who desires to perform or allow any of the acts prohibited in Section 63.091 of this code must apply for a permit from the appropriate commissioners court or municipal governing body.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 22, eff. June 7, 1991.

Sec. 63.052. PERMIT NOT REQUIRED. No permit is required for the following activities:

(1) grazing livestock;

(2) production of oil and gas; and

(3) recreational activity other than the operation of a recreational vehicle.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.053. FEES. (a) The commissioners court or governing body of the municipality may require a reasonable fee to accompany the application.

(b) Any commissioners court or governing body of a municipality that has adopted a dune protection line and is administering this chapter and that has a certified beach access plan as provided for in Section 61.015 of this code is hereby authorized, subject to all requirements of Chapter 61 of this code, to charge reasonable fees that do not exceed the cost for the provision and maintenance of public beach related facilities and services necessary to implement such plans, including but not limited to parking, public health and safety, environmental protection and matters contained in the certified beach access plans, and that do not unfairly limit access

to and use of such beaches.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 23, eff. June 7, 1991.

Sec. 63.054. REVIEW. (a) The commissioners court or governing body of the municipality shall evaluate the permit application, and if the commissioners court or governing body of the municipality finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or materially damage vegetation on the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, it may grant the permit.

(b) In determining whether or not to grant the permit, the commissioners court or governing body of the municipality shall consider the height, width, and slope of the dune, any significant environmental features of the dune, the feasibility and desirability of restoration of vegetation, and cumulative impacts and shall consider requirements for protection of critical dune areas.

(c) Each county or municipality administering this chapter shall establish procedures and requirements governing the review and approval of dune permits, and these procedures and requirements shall be submitted to the commissioner for certification to determine whether the procedures and requirements are in compliance with rules and policies adopted under Section 63.121. The commissioner shall act on a county or municipality's proposed dune protection plan not later than the 90th day after the date the plan is submitted by approving the plan or denying certification. If certification is denied, the commissioner shall return the proposed plan to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the county or municipality shall revise and resubmit the plan. The commissioner must certify a county or municipality's procedures and requirements under this section in accordance with rules adopted under Section 63.121.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 24, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 7, eff. June 18, 2003.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 16, eff. September 1, 2007.

Sec. 63.055. TERMS AND CONDITIONS OF PERMIT. The commissioners court or governing body of the municipality may include in a permit the terms and conditions it finds necessary to assure the protection of life, natural resources, and property.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 25, eff. June 7, 1991.

Sec. 63.056. NOTICE TO AND COMMENTS OF COMMISSIONER ON PERMITS. (a) After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 in connection with small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories in height or less, the commissioners court or the governing body of the municipality shall notify the commissioner by sending, not less than 10 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application. After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 in connection with large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height, the commissioners court or the governing body of the municipality shall notify the commissioner by sending, not less than 30 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application.
(b) The commissioner may submit any written or oral comments regarding the effect of the proposed activity on the dunes that protect state-owned land, shores, and submerged land.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 26, eff. June 7, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 17, eff. September 1, 2007.

Sec. 63.057. PERMIT FOR CERTAIN ACTIVITY PROHIBITED. (a) No permit may be issued that allows the operation of a recreational vehicle on a sand dune seaward of the dune protection line.

(b) No permit may be issued that allows any activity in a critical dune area inconsistent with rules promulgated by the commissioner for protection of critical dune areas.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 27, eff. June 7, 1991.

SUBCHAPTER D. PROHIBITIONS

Sec. 63.091. CONDUCT PROHIBITED. Unless a permit is properly issued authorizing the conduct, no person may damage, destroy, or remove a sand dune or portion of a sand dune seaward of a dune protection line or within a critical dune area or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 28, eff. June 7, 1991.

Sec. 63.093. PROHIBITED OPERATION OF RECREATIONAL VEHICLES. No person may operate a recreational vehicle on a sand dune seaward of the dune protection line in any county in which a dune protection line has been established.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. CRITICAL DUNE AREAS

Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS; RULES. (a) The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas within 1,000 feet of mean high tide that are essential to the protection of state-owned

land, public beaches, and submerged land.

(b) The commissioner shall promulgate rules for:

(1) the identification and protection of critical dune areas; and

(2) the certification of procedures and requirements governing the review and approval of dune permits by a county or municipality.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 30, eff. June 7, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 18, eff. September 1, 2007.

Sec. 63.122. NOTICE TO COUNTIES. After the commissioner has identified the critical dune areas, notice of the critical dune areas and the rules for their protection shall be given to the commissioners court of each county and the governing body of each municipality in which one or more of these areas is located.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 30, eff. June 7, 1991.

SUBCHAPTER F. APPEALS

Sec. 63.151. APPEAL BY LITTORAL OWNER. A littoral owner aggrieved by a decision of the commissioners court or governing body of the municipality under this chapter may appeal to a district court in that county.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 31, eff. June 7, 1991.

Sec. 63.152. APPEAL BY COMMISSIONER. The commissioner may appeal to a district court of that county any decision of the commissioners court or governing body of the municipality that the

commissioner determines to be a violation of this chapter.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 31, eff. June 7, 1991.

SUBCHAPTER G. PENALTIES

Sec. 63.181. ENFORCEMENT. (a) Any county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the commissioner, shall file in a district court of Travis County or in the county in which the violation occurred a suit to obtain either a temporary or permanent court order or injunction to prohibit and remedy any violation of this chapter or any rule, permit, or order under this chapter and to collect damages to natural resources injured by the violation and to recover civil penalties.

(b) A person who violates this chapter or any rule, permit, or order under this chapter is liable for a civil penalty of not less than $50 nor more than $2,000. Each day that a violation occurs or continues constitutes a separate offense. A violation of Section 63.091 is considered to be a continuing violation from the date of the initial unauthorized conduct until the earlier of:

(1) the date on which a proper permit is issued authorizing the conduct; or

(2) the date on which restoration of dunes or dune vegetation damaged by the violation is completed.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 32, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 8, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 19, eff. September 1, 2007.

Sec. 63.1811. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty for a violation of Section 63.091 or any rule, permit, or order issued under this chapter in the amount established by Section 63.181(b) for a civil penalty. In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature,

circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

Sec. 63.1812. ENFORCEMENT PROVISIONS CUMULATIVE. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

Sec. 63.1813. MITIGATION FOR DAMAGE, DESTRUCTION, OR REMOVAL OF DUNE OR DUNE VEGETATION WITHOUT PERMIT. (a) The commissioner may order restoration for the damage, destruction, or removal of a sand dune or a portion of a sand dune or the killing, destruction, or removal of any vegetation growing on a sand dune seaward of the dune protection line or within a critical dune area in violation of this chapter or any rule, permit, or order issued under this chapter.

(b) The decision to require restoration under this section is discretionary with the commissioner. This section does not impose a duty on the state to order restoration.

(c) The commissioner may contract for the restoration required under this section and may pay the costs of restoration from money appropriated by the legislature.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

Sec. 63.1814. NOTICE REQUIREMENTS; ORDERS AND HEARINGS. (a) The commissioner shall assess an administrative penalty and pursue restoration in accordance with this section.

(b) Before the commissioner may order restoration under Section 63.1813 or assess an administrative penalty under Section 63.1811, the commissioner must give written notice to a person who is taking or has taken actions that violate Section 63.091 or any rule, permit, or order issued under this chapter. The notice must state:

(1) the specific conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter;

(2) that the person who is engaged in or has been engaged in the conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter must perform restoration for the damage caused by the violation not later than the 60th day after the date on which the notice is served;

(3) that failure to perform restoration for the damage caused by the violation in accordance with the commissioner's order may result in liability for a civil penalty under Section 63.181(b) in an amount specified, restoration contracted or undertaken by the commissioner and liability for the costs of restoration, or any combination of those remedies; and

(4) that the person who is engaging in or has engaged in conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter may submit, not later than the 60th day after the date on which the notice is served, a written request for a hearing.

(c) A person is considered to be engaging in or to have engaged in conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the real property on which the conduct occurred.

(d) The notice required by Subsection (b) must be given:

(1) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the written notice at the site where the conduct was engaged in and by publishing notice in a newspaper with general circulation in the county in which the site is located at least two times within 10 consecutive days.

(e) The commissioner by rule may adopt procedures for a hearing under this section.

(f) The commissioner must grant a hearing before an

administrative law judge employed by the State Office of Administrative Hearings if a hearing is requested. A person who does not request a hearing within 60 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and shall immediately initiate mitigation and pay any penalty assessed. If a hearing is held, the commissioner may issue a final order approving the proposal for decision submitted by the administrative law judge concerning mitigation and payment of a penalty. The commissioner may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge in accordance with Section 2001.058, Government Code.

(g) A person may seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The trial courts of this state shall give preference to an appeal of a final order of the commissioner under this section in the same manner as provided by Section 23.101(a), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 of this code.

(h) If the person who is engaged in or has been engaged in conduct that violated Section 63.091 or any rule, permit, or order issued under this chapter does not pay assessed penalties, mitigation costs, and other assessed fees and expenses on or before the 60th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) request that the attorney general institute civil proceedings to collect the penalties, costs of restoration, and other fees and expenses remaining unpaid; or

(2) use any combination of the remedies prescribed by this section, or other remedies authorized by law, to collect the unpaid penalties, costs of restoration, and other fees and expenses assessed because of unauthorized conduct and its mitigation by the commissioner.

(i) Penalties or costs collected under this section shall be deposited in the coastal erosion response account established under Section 33.604.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

SUBTITLE F. LAND OF POLITICAL SUBDIVISIONS
CHAPTER 71. LEASE FOR MINERAL DEVELOPMENT
SUBCHAPTER A. LEASES BY POLITICAL SUBDIVISIONS

Sec. 71.001. DEFINITION. In this subchapter, "political subdivision" means any body corporate with a recognized and defined area.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.002. AUTHORITY TO LEASE. A political subdivision may lease land owned by it for mineral development, including development of coal and lignite.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.003. GOVERNING BODY TO EXERCISE AUTHORITY. The governing body of the political subdivision which is vested by law with management, control, and supervision of the political subdivision shall exercise the right to lease the land.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.004. NOTICE AND HEARING. Before a lease is made under this subchapter, notice must be given and a public hearing must be held for consideration of bids.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.005. NOTICE OF INTENTION TO LEASE LAND. (a) After the governing body determines that it is advisable to lease land belonging to the political subdivision, it shall give notice of the

intention to lease the land.

(b) The notice shall describe the land to be leased and designate the time and place at which the governing body will receive and consider bids for the lease.

(c) The notice shall be published once a week for three consecutive weeks in a newspaper published in the county and with general circulation in the county.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.006. RECEIVING BIDS AND AWARDING LEASE. On the date specified in the notice, the governing body of the political subdivision shall receive and consider bids submitted for leasing all or part of the land that was advertised for lease, and the governing body may award the lease to the highest and best bidder who submits a bid.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.007. REJECTION OF BIDS AND ADDITIONAL BIDS. If the governing body believes that the bids submitted to it do not represent the fair value of the leases, the governing body may reject the bids, give notice, and call for additional bids.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.008. GRANT OF LEASE. A lease made under this subchapter, including leases for coal and lignite, may be granted by public auction.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.009. ROYALTY. (a) In each lease other than a lease

for coal and lignite executed under this subchapter, the lessor shall retain at least a one-eighth royalty.

(b) In a lease for coal and lignite executed under this subchapter, the lessor shall retain at least a royalty based on one of the following or a combination of the following:

(1) a sum certain per ton;

(2) a percentage certain of the gross sale price F.O.B. at the mine site of the coal and lignite; or

(3) a sum certain for each acre-foot of coal and lignite mined and removed from the premises.

(c) Royalties under a coal and lignite lease may be paid as advanced mineral royalties.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.010. LEASE TERM. (a) No primary term of a lease other than a lease for coal and lignite made under this subchapter may be for a period of more than 10 years from the date of the execution and approval of the lease.

(b) No primary term for a coal and lignite lease made under this subchapter may be for a period of more than 35 years from the date of execution.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. POOLING MINERAL LEASES

Sec. 71.051. DEFINITIONS. In this subchapter:

(1) "City or town" means a city or town organized or chartered under the general laws of the state or under a special act or charter.

(2) "Political subdivision" means a body corporate which has a recognized and defined area.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.052. INSERTING POOLING PROVISIONS IN LEASES. A city, town, or political subdivision may insert in an oil and gas lease or in an oil, gas, and mineral lease executed by it a provision authorizing the lessee to pool the lease, the land or minerals included in the lease, or any part of these with any other land, leases, mineral estates, or parts of any of these to form a drilling or spacing unit for the exploration, development, and production of oil or gas and authorizing the lessee to form the units and accomplish the pooling by written designations filed in the county in which the land is located.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.053. COMPLIANCE WITH GOVERNMENTAL AGENCIES. With respect to land owned by the city or town or other land owned by the political subdivisions, the drilling or spacing units may not be more than the minimum number of acres on which an oil and gas well must be located to comply with the rules or orders of the Railroad Commission of Texas or any other federal or state regulatory body that has authority to control or regulate the spacing of oil and gas wells.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.054. TERMS AND CONDITIONS OF LEASES OF COUNTY SCHOOL LAND. Leases of county school land that are governed by Article VII, Section 6, of the Texas Constitution, may include authorization for the formation of drilling and spacing units on any terms and provisions the commissioners court considers best.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.055. ADDITIONAL TERMS OF LEASES. A lease covered by this subchapter may provide:

(1) that the entire acreage pooled into a unit shall be treated for all purposes except the payment of royalties as if it

were included in the lease and drilling or reworking operations and production of oil or gas on any part of the unit shall be considered for all purposes except the payment of royalties as if the operations were on and production were from the land included in the lease whether or not the well or wells are located on the premises included in the lease; and

(2) that instead of the royalties provided in the lease, the lessor shall receive on production from a pooled unit only the proportion of the royalty provided in the lease as the amount of the lessor's acreage placed in the unit or its royalty interest on an acreage basis bears to the total acreage included in the unit.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.056. AMENDING LEASE. On application of the lessee or present owner of any oil and gas lease or any oil, gas, and mineral lease validly executed before June 4, 1953, by any city, town, or political subdivision, the governing body of the city, town, or political subdivision may amend the lease to include a pooling provision that includes the terms provided in this subchapter.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.057. AUTHORITY TO COMMIT ROYALTY INTERESTS. (a) A city, town, or political subdivision without notice may commit, to any agreement that provides for the operation of areas as a unit for the exploration, development, and production of oil or gas, any royalty interests owned by the city, town, or political subdivision in oil or gas.

(b) The agreement may include any terms and provisions that the city, town, or political subdivision considers best and may provide in substance:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be the conduct of the operation on each separately owned tract in the unit by the several owners of the tracts;

(2) that the production allocated to each tract included in

a unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on it;

(3) that any lease that covers any part of the area committed to the agreement shall continue in force as long as oil or gas is produced in paying quantities from any part of the unit area; and

(4) that royalties reserved to the city, town, or political subdivision from any tract or portion of a tract included within the unit shall be paid only on that portion of the production allocated to the tract or on the value of the production allocated according to the agreement.

(c) No agreement may be made by any city, town, or political subdivision which commits the city, town, or political subdivision to the payment of any part of the cost or expense of operating any unit area or any well located on the area.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

TITLE 3. OIL AND GAS
SUBTITLE A. ADMINISTRATION
CHAPTER 81. RAILROAD COMMISSION OF TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Commissioner" means any member of the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.002. DEFINITION OF PERSON FOR CERTAIN PROVISIONS. In this chapter:

(1) "person" includes a corporation, as provided by Section 312.011, Government Code; and

(2) the definition of "person" assigned by Section 311.005, Government Code, does not apply.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.01,

eff. April 1, 2011.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 81.01001. SUNSET PROVISION. (a) The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2029.

(b) The Railroad Commission of Texas shall pay the costs incurred by the Sunset Advisory Commission in performing a review of the commission under this section. The Sunset Advisory Commission shall determine the costs, and the commission shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission detailing the costs.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.
Amended by:

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.14(b), eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.07(a), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 2.05, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 1, eff. September 1, 2017.

Sec. 81.01002. CHAIRMAN. The commissioners shall elect one commissioner as the chairman.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01003. QUALIFICATIONS FOR OFFICE. A commissioner must be:

(1) a qualified voter under the constitution and laws; and
(2) at least 25 years of age.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02,

eff. April 1, 2011.

Sec. 81.01004. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST. A commissioner is subject to the provisions of Chapter 572, Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01005. NAME AND SEAL. (a) The commissioners are known collectively as the "Railroad Commission of Texas."

(b) The seal of the commission contains a star of five points with the words "Railroad Commission of Texas" engraved on it.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01006. PROCEDURAL RULES. The commissioners may adopt all rules necessary for the commission's government and proceedings.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01007. SUPPLIES. The commissioners shall be furnished necessary furniture, stationery, supplies, and expenses, to be paid for on the order of the governor.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01008. SESSIONS. The commission may hold sessions at any place in this state when considered necessary.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02,

eff. April 1, 2011.

Sec. 81.01009. RECORDS RESEARCH FEE. The commission shall charge a person who requests an examination or search of commission records $5 for each half hour or fraction of a half hour that a commission employee spends in the examination or search unless the person requesting the search represents this state or a county.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01010. FEE FOR COPIES. (a) The commission may charge a fee for copies of papers provided by the commission to a person other than a department of this state.

(b) The fee for a copy of a paper, document, or record in the commission's office, including the certificate and seal to be applied by the secretary, is 15 cents for each 100 words.

(c) This section does not authorize the commission to charge a person a fee for a tariff sheet for the person's own use if the tariff sheet is in effect.

(d) The fees charged and collected under this section shall be accounted for by the secretary of the commission and paid into the treasury as provided by Chapter 603, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01011. METHOD OF MAKING PAYMENTS TO COMMISSION. (a) The commission may authorize payment, as prescribed by the commission, of a regulatory fee, fine, penalty, or charge for goods and services by means of an electronic payment method or a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission. A payment by the authorized method may be made in person, by telephone, or through the Internet.

(b) The commission may require a person who makes a payment to the commission by means of an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and

necessary to reimburse the commission for the costs involved in processing the payment.

(c) The commission may adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01012. GIFTS, GRANTS, AND DONATIONS. (a) In this section, "contested case" has the meaning assigned by Section 2001.003, Government Code.

(b) The commission may apply for, request, solicit, contract for, receive, accept, and administer gifts, grants, and donations of money or other assistance from any source to carry out any commission purpose or power.

(c) The commission may not, under Subsection (b), accept a gift or donation of money or of property from a party in a contested case during the period from the inception of the contested case until the 30th day after the date a final order is signed in the contested case.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01013. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a business or industry regulated by the commission; or

(2) the person's spouse is an officer, manager, or paid

consultant of a Texas trade association in a business or industry regulated by the commission.

(c) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not act as the general counsel to the commission.

(d) The commission shall provide to commissioners and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01014. EQUAL EMPLOYMENT OPPORTUNITY. (a) The commission shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b); and

(3) be filed with the governor's office.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01016. SEPARATION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commissioners and the management responsibilities of the staff of the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.011. CHIEF SUPERVISOR. (a) The commission shall employ a chief supervisor of its oil and gas division to assist the commission in enforcing the laws relating to the production, transportation, and conservation of oil and gas and rules and orders of the commission adopted under these laws.

(b) The chief supervisor also shall perform the duties of the pipeline expert as provided in the pipeline laws of this state.

Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.012. QUALIFICATIONS OF CHIEF SUPERVISOR. In addition to other qualifications that may be required by the commission, a person appointed chief supervisor must have had at least five years' experience in some line of the oil or gas business, or in some other business or profession that would provide the necessary knowledge and experience for the performance of his duties.

Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.013. DEPUTY SUPERVISORS, ASSISTANTS, AND CLERICAL PERSONNEL. The commission may appoint a chief deputy supervisor, deputy supervisors, assistants, and clerical personnel necessary to execute the laws relating to oil and gas.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.014. QUALIFICATIONS OF CHIEF DEPUTY SUPERVISOR. A person appointed chief deputy supervisor must have had at least three years' experience in oil and gas field work.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.015. QUALIFICATIONS OF DEPUTY SUPERVISORS. Any person appointed deputy supervisor must have had at least two years' experience in oil and gas field work, including substantial experience in drilling or production.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.016. SALARIES. The salary of the chief supervisor, the chief deputy supervisor, and the deputy supervisors shall be the same as that provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.0165. SALARY OF SECRETARY. The salary of the secretary of the commission shall be the amount appropriated for that purpose by the legislature.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.017. ADDITIONAL EMPLOYEES. The commission may employ gaugers, inspectors, investigators, supervisors, and clerical employees. These employees shall include a chief engineer, chief petroleum engineer, and an administrative chief, and their salaries shall be paid in the amounts provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1981, 67th Leg., p. 144, ch. 65, Sec. 1, eff. Sept. 1, 1981.

Sec. 81.018. PAYMENT OF SALARIES AND OTHER EXPENSES. (a) Salaries and other expenses necessary in the administration and enforcement of the oil and gas laws shall be paid by warrants drawn by the comptroller on the State Treasury from general revenue.

(b) Warrants for expenses shall be issued only on duly verified statements of the persons entitled to the funds and on approval of the chairman of the commission.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 470 (S.B. 757), Sec. 3, eff. September 1, 2015.

Sec. 81.019. DUTIES OF CHIEF SUPERVISOR, CHIEF DEPUTY SUPERVISOR, DEPUTY SUPERVISORS, AND OTHER EMPLOYEES. The chief supervisor, chief deputy supervisor, deputy supervisors, and other employees shall perform the duties prescribed by the commission in conformity with rules of the commission relating to the production, transportation, and conservation of crude oil and natural gas.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.020. ADDITIONAL DUTIES OF CHIEF SUPERVISOR AND HIS DEPUTIES. (a) The chief supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and shall follow the rules of the commission relating to the production and conservation of oil and gas.

(b) The chief supervisor shall gather information and assist the commission in the performance of its duties under this title.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.021. INTELLECTUAL PROPERTY. (a) The commission may:

(1) apply for, register, secure, hold, and protect under the laws of the United States or any state or nation:

(A) a patent for the invention, discovery, or improvement of any process, machine, manufacture, or composition of matter;

(B) a copyright for an original work of authorship fixed in any tangible medium of expression, known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the commission uses to identify and distinguish the commission's goods and services from other goods and services; or

(D) other evidence of protection or exclusivity issued for intellectual property;

(2) contract with a person for the sale, lease, marketing, or other distribution of the commission's intellectual property;

(3) obtain under a contract described in Subdivision (2) a royalty, license right, or other appropriate means of securing reasonable compensation for the development or purchase of the commission's intellectual property; and

(4) waive or reduce the amount of compensation secured by contract under Subdivision (3) if the commission determines that the waiver or reduction will:

(A) further a goal or mission of the commission; and

(B) result in a net benefit to the state.

(b) Money paid to the commission under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 2017, 85th Leg., R.S., Ch. 72 (S.B. 1422), Sec. 1, eff. May 22, 2017.

SUBCHAPTER C. JURISDICTION, POWERS, AND DUTIES

Sec. 81.051. JURISDICTION OF COMMISSION. (a) The commission has jurisdiction over all:

(1) common carrier pipelines defined in Section 111.002 of this code in Texas;

(2) oil and gas wells in Texas;

(3) persons owning or operating pipelines in Texas;

(4) persons owning or engaged in drilling or operating oil or gas wells in Texas; and

(5) pipeline transportation and underground storage of hydrogen.

(b) Persons listed in Subsection (a) of this section and their pipelines and oil and gas wells are subject to the jurisdiction conferred by law on the commission.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 5, eff. Sept. 1, 1977.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 734 (H.B. 2847), Sec. 1, eff. September 1, 2023.

Sec. 81.052. RULES. The commission may adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission as set forth in Section 81.051, including such rules as the commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 19, ch. 12, Sec. 1, eff. March 15, 1979.

Sec. 81.0521. FEE FOR APPLICATION FOR EXCEPTION TO RAILROAD COMMISSION RULE. (a) With each application for an exception to any commission rule contained in Chapter 3 of Part I of Title 16 of the Texas Administrative Code, the applicant shall submit to the commission a fee of $150.

(b) The application fee for an exception to any commission rule may not be refunded.

(c) The proceeds from this fee, excluding any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 73, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.01, eff. September 28, 2011.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 26, eff. September 1, 2015.

Sec. 81.0522. NATURAL GAS POLICY ACT APPLICATION FEE. (a) With each Natural Gas Policy Act (15 U.S.C. Sections 3301-3432) application, the applicant shall submit to the commission a fee. The commission shall set the application fee in an amount necessary to cover the cost of the commission's well category determination program but not to exceed $150.
(b) The fee for any Natural Gas Policy Act application may not be refunded.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 73, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 4, eff. Sept. 1, 2001.

Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS PREEMPTION. (a) In this section:
(1) "Commercially reasonable" means a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act.
(2) "Oil and gas operation" means an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities.
(b) An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided by Subsection (c), a

municipality or other political subdivision may not enact or enforce an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

(c) The authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality may enact, amend, or enforce an ordinance or other measure that:

(1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements;

(2) is commercially reasonable;

(3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and

(4) is not otherwise preempted by state or federal law.

(d) An ordinance or other measure is considered prima facie to be commercially reasonable if the ordinance or other measure has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

Added by Acts 2015, 84th Leg., R.S., Ch. 30 (H.B. 40), Sec. 2, eff. May 18, 2015.

Sec. 81.053. COMMISSION POWERS. In the discharge of its duties and the enforcement of its jurisdiction under this title, the commission shall:

(1) institute suits;

(2) hear and determine complaints;

(3) require the attendance of witnesses and pay their expenses out of funds provided for that purpose;

(4) obtain the issuance of writs and process which may be necessary for the enforcement of its orders; and

(5) punish for contempt or disobedience of its orders in the manner provided for the district courts.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.0531. ADMINISTRATIVE PENALTY. (a) If a person violates provisions of this title which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed:

(1) $10,000 a day for each violation that is not related to pipeline safety; or

(2) $200,000 a day for each violation that is related to pipeline safety.

(b-1) Each day a violation continues may be considered a separate violation for purposes of penalty assessments, provided that the maximum penalty that may be assessed for any related series of violations related to pipeline safety may not exceed $2 million.

(c) In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the permittee's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the oil-field cleanup fund.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1999, 76th Leg., ch. 1089, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 1, eff. September 1, 2013.

Sec. 81.0532. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 81.0531 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983.

Sec. 81.0533. PAYMENT OF PENALTY; REFUND. (a) On the issuance of an order finding that a violation has occurred, the commission shall inform the person charged within 30 days of the amount of the penalty.

(b) Within the 30-day period immediately following the day on

which the decision or order is final as provided in Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty, such bond to be effective until all judicial review of the order or decision is final.

(c) If through judicial review of the decision or order it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the commission shall execute a release of such bond.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(e) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with the district court of Travis County, Texas, and not elsewhere, as provided for in Subchapter G, Chapter 2001, Government Code.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), (59), eff. Sept. 1, 1995.

Sec. 81.0534. RECOVERY OF PENALTY. Civil penalties owed under Sections 81.0531-81.0533 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept.

1, 1983.

Sec. 81.054. ENFORCEMENT BY ATTORNEY GENERAL. (a) The attorney general shall enforce the provision of this title by injunction or other adequate remedy and as otherwise provided by law.

(b) If an action is instituted by the attorney general under this section alleging a violation of an NPDES permit or the failure to obtain an NPDES permit under Chapter 91 or Chapter 141 of the Natural Resources Code, the attorney general may not oppose intervention by a person who has standing to intervene, as provided by Rule 60, Texas Rules of Civil Procedure.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 310, Sec. 5, eff. Aug. 28, 1995.

Sec. 81.055. PIPELINE SYSTEM FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(132), eff. June 17, 2011.

(b) If the legislature finds that adoption of such a requirement is desirable, the commission by rule may require an owner, operator, or manager of a pipeline system to obtain evidence of financial responsibility. The rules must specify the appropriate form and amount of that evidence and may require evidence of financial responsibility in different amounts for different pipeline systems, taking into consideration whether the pipeline system:

(1) has a history of discharges or other violations of regulatory requirements; or

(2) is located over a public drinking water supply, a natural resource, or a critical groundwater resource or near a school or populated area.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(132), eff. June 17, 2011.

Sec. 81.056. CONTAMINATION REPORT. (a) In this section:

(1) "Common carrier" has the meaning assigned by Section 111.002.

(2) "Owner of the land" or "landowner" means the first person who is shown on the appraisal roll of the appraisal district established for the county in which a tract of land is located as owning an interest in the surface estate of the land at the time a contamination report is required to be made under this section.

(b) If in the process of placing, repairing, replacing, or maintaining a pipeline a common carrier or an owner or operator of a pipeline observes or detects any petroleum-based contamination of soil or water in proximity to the pipeline, the common carrier or pipeline owner or operator shall report the contamination to the commission and the owner of the land on which the pipeline is located. Petroleum-based contamination of soil or water that is observed or detected is required to be reported under this subsection if:

(1) hydrocarbons are present on the surface of the water;

(2) at least five linear yards of soil have been affected by hydrocarbons; or

(3) soil affected by hydrocarbons extends beyond the face of the excavation in which the contamination is observed or detected.

(c) The contamination report:

(1) must be made not later than 24 hours after the common carrier or pipeline owner or operator observes or detects the contamination;

(2) must include the global positioning satellite coordinates of the location of the contamination; and

(3) may be made by telephone, facsimile, or electronic mail.

(d) Not later than the third business day after the date the commission receives the contamination report, a person authorized by the commission shall withdraw a soil sample from the contaminated land. The person is entitled to enter the land for the purpose of withdrawing the sample.

(e) A common carrier or pipeline owner or operator that makes a contamination report under this section is released from all liability for the contamination or the cleanup of the contamination covered by the report, except for any contamination caused by the common carrier or pipeline owner or operator.

(f) The commission shall adopt rules to implement this section.

(g) The commission may use money in the oil-field cleanup fund to implement this section. The amount of money in the fund the commission may use for that purpose may not exceed the amount of money in the fund that is derived from fees collected under Section 91.142 from common carriers or owners or operators of pipelines as determined annually by the commission.

Added by Acts 2005, 79th Leg., Ch. 339 (S.B. 1130), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 166 (H.B. 472), Sec. 1, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 166 (H.B. 472), Sec. 2, eff. September 1, 2009.

Sec. 81.057. EXEMPTION FROM CERTAIN PURCHASING RULES. The commission is not required to follow any purchasing procedures prescribed by or under Subchapter E, Chapter 2155, Government Code, when the commission makes a purchase in connection with the remediation of surface locations or well plugging.

Added by Acts 2003, 78th Leg., ch. 1272, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 514 (H.B. 773), Sec. 2, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. 1705), Sec. 3.06, eff. September 1, 2009.

Sec. 81.058. ADMINISTRATIVE PENALTY FOR CERTAIN NATURAL GAS-RELATED ACTIVITIES. (a) The commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas, a person described by Section 81.051(a) or 111.081(a), or any other entity under the jurisdiction of the commission under this code that the commission determines has:

(1) violated a commission rule adopting standards or a code of conduct for entities in the natural gas industry prohibiting unlawful discrimination; or

(2) unreasonably discriminated against a seller of natural

gas in the purchase of natural gas from the seller.

(b) The commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, or gatherer of natural gas if the commission determines that the person engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the commission against the person relating to the person's purchase, transportation, or gathering of the gas.

(c) The commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the commission to have:

(1) failed to participate in the proceeding; or

(2) failed to provide information requested by a mediator in the proceeding.

(d) An administrative penalty imposed under this section may not exceed $5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(e) If the commission determines after notice and opportunity for hearing that an entity has engaged in prohibited discrimination for which a penalty may be imposed under this section, the commission may issue any order necessary and reasonable to prevent the discrimination from continuing.

(f) The remedy provided by this section is cumulative of any other remedy the commission may order.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.059. APPOINTMENT OF MEDIATORS FOR INFORMAL COMPLAINTS. (a) The commission may provide for the appointment of a commission staff member as the mediator of an informal complaint filed with the commission, or the parties may agree to employ and pay an independent mediator for the purpose of mediating the complaint.

(b) If the parties request that the mediation be conducted at a location other than the offices of the commission in Austin, the

parties shall reimburse the commission for the commission's costs related to travel to those other locations.

(c) This section does not prohibit the commission from requiring that the parties participate in a formal complaint resolution proceeding.

(d) At least annually, the commission shall notify oil and gas producers of the existence of any informal complaint resolution process provided for by the commission.

(e) Filing an informal complaint is not a prerequisite for filing a formal complaint.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.0591. COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.0592. CONSUMER INTEREST INFORMATION. (a) The commission shall prepare information of consumer interest describing the regulatory functions of the commission and the procedures by which consumer complaints are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.060. CONFIDENTIALITY PROVISIONS. (a) A confidentiality provision may not be required in a contract to which a producer is a party for the sale, transportation, or gathering of natural gas that is entered into on or after September 1, 2007.

(b) A confidentiality provision in a contract to which a producer is a party for the sale, transportation, or gathering of natural gas that was entered into before September 1, 2007, becomes unenforceable on the date the term of the contract expires.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.061. AUTHORITY TO ESTABLISH MARKET-BASED RATES. (a) This section does not apply to rates established under Chapter 103, Utilities Code, or Subchapter C or G, Chapter 104, of that code.

(b) The commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.

(c) On the filing of a complaint by a shipper or seller of natural gas, the commission may set a transportation or gathering rate in a formal rate proceeding if the commission determines that the rate is necessary to remedy unreasonable discrimination in the provision of transportation or gathering services. The commission may set a rate regardless of whether the transporter or gatherer is classified as a utility by other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.062. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.063. ISSUANCE, SUSPENSION, OR REVOCATION OF LICENSE, PERMIT, OR CERTIFICATE. (a) If the commission proposes to suspend or revoke a person's license, permit, or certificate of public convenience and necessity, the person is entitled to a hearing before the commission.

(b) The commission may not:

(1) refuse to issue a license, permit, or certificate to a person because of the person's race, religion, color, sex, or national origin; or

(2) revoke or suspend the license, permit, or certificate of a person because of the person's race, religion, color, sex, or national origin.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.064. POWERS OF COMMISSIONER OR DESIGNATED EMPLOYEE IN CASES BEFORE COMMISSION. (a) In a case before the commission, a commissioner, or an authorized commission employee, designated by the commission for that purpose, in the same manner as if the entire commission were present, may:

(1) hold a hearing;

(2) conduct an investigation;

(3) make a record of a hearing or investigation for the use and benefit of the commission;

(4) administer an oath;

(5) certify to an official act; and

(6) compel the attendance of a witness and the production of papers, books, accounts, and other pertinent documents and

testimony.

(b) The record of a hearing or investigation made under this section that is certified to by the commissioner or employee has the same effect as if made before the commission. The commission shall determine a case in which the record is made under this section in the same manner as if the record had been made before the commission.

(c) The commission may punish for contempt a person who:

(1) refuses to comply with this section; or

(2) obstructs or attempts to obstruct a proceeding under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.065. ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for alternative dispute resolution; and

(3) collect information concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 2, eff. September 1, 2017.

Sec. 81.066. OIL AND GAS DIVISION MONITORING AND ENFORCEMENT STRATEGIC PLAN. (a) The oil and gas division of the commission shall develop and publish an annual plan for each state fiscal year to use the oil and gas monitoring and enforcement resources of the commission strategically to ensure public safety and protect the

environment.

(b) The commission shall seek input from stakeholders when developing each annual plan.

(c) The commission shall collect and maintain information that accurately shows the commission's oil and gas monitoring and enforcement activities. Each annual plan must include a report of the information collected by the commission that shows the commission's oil and gas monitoring and enforcement activities over time.

(d) The information described by Subsection (c) must include data regarding violations of statutes or commission rules that relate to oil and gas, including:

(1) the number, type, and severity of:

(A) violations the commission found to have occurred;

(B) violations the commission referred for enforcement to the section of the commission responsible for enforcement; and

(C) violations for which the commission imposed a penalty or took other enforcement action;

(2) the number of major violations for which the commission imposed a penalty or took other enforcement action; and

(3) the number of repeat major violations, categorized by individual oil or gas lease, if applicable.

(e) The commission shall publish each annual plan on the commission's Internet website not later than July 1 of the year preceding the state fiscal year in which the commission implements the plan.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 2, eff. September 1, 2017.

Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND. (a) The oil and gas regulation and cleanup fund is created as an account in the general revenue fund of the state treasury.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 3, eff. September 1, 2019.

(c) The fund consists of:

(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to

the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091, if applicable;

(2) private contributions, including contributions made under Section 89.084;

(3) expenses collected under Section 89.083;

(4) fees imposed under Section 85.2021;

(5) costs recovered under Section 91.457 or 91.459;

(6) proceeds collected under Sections 89.085 and 91.115;

(7) interest earned on the funds deposited in the fund;

(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

(9) costs recovered under Section 91.113(f);

(10) hazardous oil and gas waste generation fees collected under Section 91.605;

(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;

(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;

(13) fees for a reissued certificate collected under Section 91.707;

(14) fees collected under Section 91.1013;

(15) fees collected under Section 89.088;

(16) fees collected under Section 91.142;

(17) fees collected under Section 91.654;

(18) costs recovered under Sections 91.656 and 91.657;

(19) fees collected under Section 81.0521;

(20) fees collected under Sections 89.024 and 89.026;

(21) legislative appropriations;

(22) any surcharges collected under Section 81.070;

(23) fees collected under Section 91.0115;

(24) fees collected under Subchapter E, Chapter 121, Utilities Code;

(25) fees collected under Section 27.0321, Water Code;

(26) fees collected under Section 81.071; and

(27) money collected under Section 81.021.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 10, eff. June

14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1075 (H.B. 3309), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 27, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 72 (S.B. 1422), Sec. 2, eff. May 22, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 13.001, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 3, eff. September 1, 2019.

Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 11.001, eff. September 1, 2019.

Sec. 81.068. PURPOSES OF OIL AND GAS REGULATION AND CLEANUP FUND. Money in the oil and gas regulation and cleanup fund may be used by the commission or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, and oil and gas well plugging, the study and evaluation of electronic access to geologic data and surface casing depths necessary to protect usable groundwater in this state, the administration of pipeline safety and regulatory programs, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 11, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1075 (H.B. 3309), Sec. 2, eff. September 1, 2013.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 28, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 4, eff.

September 1, 2017.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND. (a) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil and gas regulation and cleanup fund for the next biennium, including goals for each quarter of each state fiscal year of the biennium for the number of:

(1) orphaned wells to be plugged with state-managed funds;

(2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and

(3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

(A) the amount of money deposited in the oil and gas regulation and cleanup fund;

(B) the amount of money spent from the fund for the purposes described by Subsection (a);

(C) the balance of the fund; and

(D) the commission's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance; and

(2) any additional information or data requested in writing by the Legislative Budget Board.

(c) The commission shall submit to the legislature and make available to the public, annually, a report that reviews the extent to which money provided under Section 81.067 has enabled the commission to better protect the environment through oil-field cleanup activities. The report must include:

(1) the performance goals established under Subsection (a) for that state fiscal year, the commission's progress in meeting those performance goals, and, if the number of orphaned wells plugged

with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with commission rules, by region;

(5) the status of enforcement proceedings for all wells in violation of commission rules and the period during which the wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which the commission sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, Chapter 91, by region.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.

Sec. 81.070. ESTABLISHMENT OF SURCHARGES ON FEES. (a) Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067 in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) The commission may not impose a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an

oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) The commission by rule shall establish a methodology for determining the amount of a surcharge that takes into account:

(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;

(2) the number of individuals or entities from which the commission's costs may be recovered;

(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;

(4) the balance in the oil and gas regulation and cleanup fund; and

(5) any other factors the commission determines to be important to the fair and equitable imposition of the surcharge.

(d) The commission shall collect a surcharge on a fee at the time the fee is collected.

(e) A surcharge collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

(f) A surcharge collected under this section shall not exceed an amount equal to 185 percent of the fee on which it is imposed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.

Sec. 81.071. PIPELINE SAFETY AND REGULATORY FEES. (a) The commission by rule may establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the commission's pipeline safety and regulatory program.

(b) The commission may establish fees to be assessed annually against permit or registration holders, as well as individual fees for new permits or registrations, permit or registration renewals, and permit or registration amendments.

(c) The fees must be in amounts that in the aggregate are sufficient to support all pipeline safety and regulatory program costs, including:

(1) permitting or registration costs;

(2) administrative costs; and

(3) costs of employee salaries and benefits.

(d) The commission by rule must establish the method or methods by which the fees will be calculated and assessed so that fee amounts will reflect the time spent and costs incurred to perform the regulatory work associated with permitting or registering pipelines, the effects of required fees on operators of all sizes, and other factors the commission determines are important to the fair imposition of the fees. The commission may base the fees on any factor the commission considers necessary to efficiently and fairly recover the pipeline safety and regulatory program's costs, including:

(1) the length of the pipeline;

(2) the number of new permits or registrations, permit or registration renewals, or permit or registration amendments; or

(3) the number of pipeline systems.

(e) The commission by rule may establish a reasonable late payment penalty for a fee charged under this section.

(f) The authority provided by this section is in addition to the authority provided by Section 121.211, Utilities Code, and the commission shall consider any fees assessed under that section in establishing the fees to be assessed under this section.

(g) A fee collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 5, eff. September 1, 2017.

Sec. 81.072. VERIFICATION BY CONTRACTORS. (a) In this section, "E-verify program" has the meaning assigned by Section 673.001, Government Code.

(b) The commission may not award a contract for goods or services in this state to a contractor unless the contractor and any subcontractor register with and participate in the E-verify program to verify employee information. The contractor and any subcontractor shall continue to participate in the program during the term of the contract.

(c) The commission shall develop procedures for the administration of the E-verify program under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 6, eff. September 1, 2017.

Sec. 81.073. CRITICAL NATURAL GAS FACILITIES AND ENTITIES. (a) The commission shall collaborate with the Public Utility Commission of Texas to adopt rules to establish a process to designate certain natural gas facilities and entities associated with providing natural gas in this state as critical customers or critical gas suppliers during energy emergencies.

(b) The rules must:

(1) establish criteria for designating persons who own or operate a facility under the jurisdiction of the commission under Section 81.051(a) or engage in an activity under the jurisdiction of the commission under Section 81.051(a) who must provide critical customer and critical gas supply information, as defined by the commission, to the entities described by Section 38.074(b)(1), Utilities Code;

(2) consider essential operational elements when defining critical customer designations and critical gas supply information for the purposes of Subdivision (1), including natural gas production, processing, and transportation, related produced water handling and disposal facilities, and the delivery of natural gas to generators of electric energy; and

(3) require that only facilities and entities that are prepared to operate during a weather emergency may be designated as a critical customer under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 4, eff. June 8, 2021.

For expiration of this section, see Subsection (h).

Sec. 81.075. TEXAS HYDROGEN PRODUCTION POLICY COUNCIL. (a) In this section, "council" means the Texas hydrogen production policy council.

(b) The Texas hydrogen production policy council is established within the commission to study and make recommendations relating to the commission's policy framework for hydrogen energy development.

(c) The council is composed of:

(1) the chair of the commission or the chair's designee; and

(2) not more than 11 members appointed by the commission to represent as many different types of participants as possible, including at least three but not more than five representatives from the hydrogen industry.

(d) The commissioner or the commissioner's designee is the chair of the council.

(e) A member of the council is not entitled to compensation or reimbursement of expenses for service on the council.

(f) The council:

(1) shall study the development of hydrogen industries in this state, including the development of facilities for the production, pipeline transportation, and storage of hydrogen;

(2) shall monitor regional efforts for the application and development of a regional clean hydrogen hub authorized under the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) or another federal act;

(3) may coordinate actions with other state agencies in supporting an application for a regional clean hydrogen hub described by Subdivision (2); and

(4) shall develop a state plan for hydrogen production oversight by the commission.

(g) The council shall make recommendations to the legislature relating to legislative changes needed for the oversight and regulation of production, pipeline transportation, and storage of hydrogen.

(h) The council is abolished and this section expires on January 1, 2030.

Added by Acts 2023, 88th Leg., R.S., Ch. 734 (H.B. 2847), Sec. 2, eff. September 1, 2023.

SUBCHAPTER D. WITNESSES

Sec. 81.091. INCRIMINATING TESTIMONY. If a witness fails or refuses to appear on being summoned, to answer any question he is asked, or to produce any record or data required by subpoena, the claim that the testimony may tend to incriminate the person giving it does not excuse the witness from testifying or producing the records

and data, but the evidence or testimony may not be used against the person on the trial of any criminal proceeding.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.092. FEE FOR EXECUTING PROCESS. The sheriff or constable executing process shall receive the compensation authorized by the commission.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.093. DEPOSITIONS. (a) In a matter pending for hearing before the commission or a division of the commission, the commission or an interested party may produce the testimony of a witness by written or oral deposition instead of compelling the personal attendance of the witness. For that purpose, the commission may issue a commission or other process necessary to take a deposition.

(b) The deposition shall be taken, to the extent applicable and to the greatest extent possible, in accordance with the provisions of the Texas Rules of Civil Procedure relating to written and oral depositions.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.04, eff. April 1, 2011.

SUBCHAPTER E. FEES

Sec. 81.115. APPROPRIATIONS TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES. Money appropriated to the commission under the General Appropriations Act for the purposes described by Section 81.068 shall be paid from the oil and gas regulation and cleanup fund or other fund indicated by the appropriation.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 144, ch. 65, Sec. 1, eff. Sept. 1, 1981.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.03, eff. September 28, 2011.

Sec. 81.116. OIL-FIELD CLEANUP REGULATORY FEE ON OIL. (a) An oil-field cleanup regulatory fee is imposed on crude petroleum produced in this state in the amount of five-eighths of one cent on each barrel of 42 standard gallons.

(b) The fee is in addition to, and independent of any liability for, the tax imposed under Chapter 202, Tax Code.

(c) Except as provided by Subsection (d) of this section, Chapter 202, Tax Code, applies to the administration and collection of the fee, and the penalties provided by that chapter apply to any person who fails to pay or report the fee.

(d) The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 7, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 17, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 1, eff. January 1, 2006.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.04, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 470 (S.B. 757), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 1, eff. September 1, 2019.

Sec. 81.117. OIL-FIELD CLEANUP REGULATORY FEE ON GAS. (a) An oil-field cleanup regulatory fee is imposed on gas initially produced and saved in this state in the amount of one-fifteenth of one cent for each thousand cubic feet.

(b) The fee is in addition to, and independent of any liability for, the tax imposed under Section 201.052, Tax Code.

(c) Except as provided by Subsection (d), the administration, collection, and enforcement of the fee is the same as for the tax imposed under Section 201.052, Tax Code.

(d) The exemptions and reductions set out in Sections 201.053, 201.057, 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 18, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 2, eff. January 1, 2006.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.05, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 2, eff. September 1, 2019.

SUBCHAPTER F. CAMPAIGNING

Sec. 81.151. PENALTY FOR CAMPAIGNING. A person who receives a salary from funds provided under this title and who uses his time or a state-owned automobile for campaign purposes or for the purpose of furthering the candidacy of his employer or any other candidate for state office is guilty of a misdemeanor and on conviction shall be fined not less than $100 nor more than $500 and shall be confined in jail for not less than 30 nor more than 90 days.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.152. DISCHARGE AND INELIGIBILITY. A person found guilty under Section 81.151 of this code shall be discharged immediately from his position and shall be ineligible for employment by the state in the future.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.153. SETTING CIVIL COMPLAINT FOR HEARING. If a citizen of this state files a civil complaint with a district court in Travis County charging an employee with use of his time or a state-owned automobile for campaign purposes or to further the candidacy of his employer or any other candidate for state office, the court shall set the complaint for hearing at a time not less than 10 nor more than 20 days after the day on which the complaint is filed.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.154. NOTICE TO EMPLOYEE. The court shall have notice of the hearing served on the employee against whom the complaint was filed at least five days before the date of the hearing.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.155. COURT'S ORDER. At the hearing, if the court determines that the employee has used his time or a state-owned automobile as charged in the complaint, the court shall certify the fact to the department, agency, or commission which employs the person and order the employee's immediate discharge.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.156. APPEAL. Any person against whom charges have been filed is entitled to appeal to the court of appeals, but the pendency of the appeal does not suspend his discharge.

Acts 1977, 65th Leg., p. 2512, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 799, ch. 291, Sec. 91, eff. Sept. 1, 1981.

CHAPTER 82. ENFORCEMENT OF FEDERAL LAWS

Sec. 82.0101. DEFINITION. In this chapter, "oil and gas operation" has the meaning assigned by Section 81.0523.

Added by Acts 2023, 88th Leg., R.S., Ch. 897 (H.B. 33), Sec. 1, eff. September 1, 2023.

Sec. 82.0102. ENFORCEMENT OF CERTAIN FEDERAL LAWS REGULATING OIL AND GAS OPERATIONS. (a) An agency of this state or a person employed by an agency of this state may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate oil and gas operations if the statute, order, rule, or regulation imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state.

(b) The attorney general shall defend any agency of this state that the federal government attempts to sue for an action or omission consistent with the requirements of this section.

(c) This section does not prohibit a state agency from:

(1) implementing a federal law by executing authority delegated to the state agency by a federal agency; or

(2) entering into a memorandum of understanding with a federal agency to implement a federal law, if otherwise authorized by state law.

Added by Acts 2023, 88th Leg., R.S., Ch. 897 (H.B. 33), Sec. 1, eff. September 1, 2023.

SUBTITLE B. CONSERVATION AND REGULATION OF OIL AND GAS

CHAPTER 85. CONSERVATION OF OIL AND GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Pool," "common pool," "field," or "common source of supply" means a common reservoir.

(3) "Pool" means an underground reservoir containing a

connected accumulation of crude petroleum oil, or natural gas, or both.

(4) "Product" and "product of oil or gas" mean a commodity or thing made or manufactured from oil or gas and derivatives or by-products of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of oil, or gas, or any derivatives or by-products of them.

(b) "Oil" means crude petroleum oil, crude petroleum, and crude oil, and "gas" means natural gas. These terms shall not be construed as referring to substances different from those referred to in this chapter and other laws as "oil and gas" and these terms mean the same whether used in this chapter or in other laws relating to the conservation of oil and gas.

Acts 1977, 65th Leg., p. 2514, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.002. ANTITRUST AND MONOPOLY STATUTES. (a) The provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, and Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, do not affect, alter, diminish, change, or modify the antitrust and monopoly laws of this state and do not directly or indirectly authorize a violation of the antitrust and monopoly laws of this state.

(b) It is the legislative intent that no provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, shall affect, alter, diminish, or amend in any manner a provision of the antitrust and monopoly laws of this state or authorize a violation of the antitrust and monopoly laws. The legislative intent expressed in this subsection shall prevail and

take precedence over sections cited in this subsection regardless of any statement in these sections to the contrary.

(c) If any provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, is construed by a court of this state in a manner that will affect, alter, diminish, or modify any provision of the antitrust and monopoly laws of this state, this provision which is in conflict is declared null and void rather than the antitrust and monopoly laws.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 85.011. SUPERVISORS, DEPUTY SUPERVISORS, AND UMPIRES. The commission shall employ all supervisors, deputy supervisors, and umpires necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.012. ASSISTANTS AND CLERICAL HELP. The commission shall employ other assistants and clerical help necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.013. PERSONS ENFORCING RULES AND ORDERS. A person entrusted with the enforcement of the rules and orders of the commission shall be a regular employee of the state and paid by the state. No person other than a regular employee of the state may be charged with or relied on for the performance of these duties.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PROVISIONS GENERALLY APPLICABLE TO THE CONSERVATION OF OIL AND GAS

Sec. 85.041. ACTS PROHIBITED IN VIOLATION OF LAWS, RULES, AND ORDERS. (a) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of oil or gas, produced in whole or in part in violation of any oil or gas conservation statute of this state or of any rule or order of the commission under such a statute, is prohibited.

(b) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of any product of oil or gas which is derived in whole or in part from oil or gas or any product of either, which was in whole or part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation statute of this state, or of any rule or order of the commission under such a statute, is prohibited.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.042. RULES AND ORDERS. (a) The commission may promulgate and enforce rules and orders necessary to carry into effect the provisions of Section 85.041 of this code and to prevent that section's violation.

(b) When necessary, the commission shall make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.043. APPLICATION OF CERTAIN RULES AND ORDERS. If the commission requires a showing that refined products were manufactured from oil legally produced, the requirement shall be of uniform

application throughout the state; provided that, if the rule or order is promulgated for the purpose of controlling a condition in any local area or preventing a violation in any local area, then on the complaint of a person that the same or similar conditions exist in some other local area and the promulgation and enforcement of the rule could be beneficially applied to that additional area, the commission may determine whether or not those conditions do exist, and if it is shown that they do, the rule or order may be enlarged to include the additional area.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 1, eff. June 17, 2005.

Sec. 85.044. EXEMPT PURCHASES. The provisions of Sections 85.041 through 85.043 of this code do not apply to the purchase of products of oil if made by the ultimate consumer from a retail distributor of the products.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.045. WASTE ILLEGAL AND PROHIBITED. The production, storage, or transportation of oil or gas in a manner, in an amount, or under conditions that constitute waste is unlawful and is prohibited.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.046. WASTE. (a) The term "waste," among other things, specifically includes:

(1) operation of any oil well or wells with an inefficient gas-oil ratio and the commission may determine and prescribe by order the permitted gas-oil ratio for the operation of oil wells;

(2) drowning with water a stratum or part of a stratum that

is capable of producing oil or gas or both in paying quantities;

(3) underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section;

(4) permitting any natural gas well to burn wastefully;

(5) creation of unnecessary fire hazards;

(6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;

(7) waste or loss incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this section or the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, to require repressuring of an oil pool or to require that the separately owned properties in any pool be unitized under one management, control, or ownership;

(8) surface waste or surface loss, including the temporary or permanent storage of oil or the placing of any product of oil in open pits or earthen storage, and other forms of surface waste or surface loss including unnecessary or excessive surface losses, or destruction without beneficial use, either of oil or gas;

(9) escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas;

(10) production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand; and

(11) surface or subsurface waste of hydrocarbons, including the physical or economic waste or loss of hydrocarbons in the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and opportunity for

hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

(c) The commission, after notice and opportunity for hearing, may permit surface commingling of production of oil or gas or oil and gas from two or more tracts of land producing from the same reservoir or from one or more tracts of land producing from different reservoirs if the commission finds that the commingling will prevent waste, promote conservation, or protect correlative rights. The commission may permit the commingling regardless of whether the tracts or commission-designated reservoirs have the same working or royalty interest ownership. The amount of production attributable to each tract or commission-designated reservoir shall be determined in a manner consistent with this title. The commission has broad discretion in administering this subsection and shall adopt and enforce rules or orders as necessary to administer this subsection.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 673, ch. 300, Sec. 1, eff. May 29, 1979; Acts 1981, 67th Leg., p. 3166, ch. 830, Sec. 2, eff. June 17, 1981; Acts 1995, 74th Leg., ch. 870, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 871, Sec. 1, eff. Sept. 1, 1995.

Sec. 85.047. EXCLUSION FROM DEFINITION OF WASTE. The use of gas produced from an oil well within the permitted gas-oil ratio for manufacture of natural gasoline shall not be included in the definition of waste.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.048. AUTHORITY TO LIMIT PRODUCTION. (a) Under the provisions of Subsection (10), Section 85.046 of this code, the commission shall not restrict the production of oil from any new field brought into production by exploration until the total production from that field is 10,000 barrels of oil a day in the aggregate.

(b) The commission's authority to restrict production from a new field under other provisions of Section 85.046 of this code is

not limited by this section.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.049. HEARING. (a) On verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission, after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent, or lessen the waste.

(b) The hearing shall be held at the time and place determined by the commission.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.050. PROCEDURE AT HEARING. (a) At the hearing, interested parties shall be entitled to be heard and to introduce evidence and require the attendance of witnesses.

(b) The production of evidence may be required as provided by law.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.051. ADOPTION OF RULE OR ORDER. If the commission finds at the hearing that waste is taking place or is reasonably imminent, it shall adopt a rule or order in the manner provided by law as it considers reasonably required to correct, prevent, or lessen the waste.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.052. COMPLIANCE WITH RULE OR ORDER. From and after the

promulgation of a rule or order of the commission, it is the duty of each person affected by the rule or order to comply with it.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.053. DISTRIBUTION, PRORATION, AND APPORTIONMENT OF ALLOWABLE PRODUCTION. (a) If a rule or order of the commission limits or fixes in a pool or portion of a pool the production of oil, or the production of gas from wells producing gas only, the commission, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, shall distribute, prorate, or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis if the commission finds that action to be necessary to:

(1) prevent waste; or

(2) adjust the correlative rights and opportunities of each owner of oil or gas in a common reservoir to produce and use or sell the oil or gas as permitted in this chapter.

(b) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may distribute, prorate, apportion, or allocate the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single pool; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2578, ch. 688, Sec. 1, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 1, eff. Aug.

28, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 2, eff. June 17, 2005.

Sec. 85.054. ALLOWABLE PRODUCTION OF OIL. (a) To prevent unreasonable discrimination in favor of one pool as against another, and on written complaint and proof of such discrimination or if the commission on its own initiative finds such an action to be necessary, the commission may allocate or apportion the allowable production of oil on a fair and reasonable basis among the various pools in the state.

(b) In allocating or ascertaining the reasonable market demand for the entire state, the reasonable market demand of one pool shall not be discriminated against in favor of another pool.

(c) The commission may determine the reasonable market demand of the respective pool as the basis for determining the allotments to be assigned to the respective pool so that discrimination may be prevented.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 3, eff. June 17, 2005.

Sec. 85.055. ALLOWABLE PRODUCTION OF GAS. (a) If, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, the commission finds that full production from wells producing gas only from a common source of supply of gas in this state is in excess of the reasonable market demand, the commission shall inquire into the production and reasonable market demand for the gas and shall determine the allowable production from the common source of supply.

(b) The allowable production from a prorated common source of supply is that portion of the reasonable market demand that can be produced without waste.

(c) The commission shall allocate, distribute, or apportion the

allowable production from the prorated common source of supply among the various producers on a reasonable basis and shall limit the production of each producer to the amount allocated or apportioned to the producer.

(d) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may allocate, distribute, or apportion the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single common source of supply; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2579, ch. 688, Sec. 2, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 4, eff. June 17, 2005.

Sec. 85.056. PUBLIC INTEREST. In the administration of the provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, the commission shall take into consideration and protect the rights and interests of the purchasing and consuming public in oil and all its products, such as gasoline and lubricating oil.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.057. RESTRICTION ON UNEXPLORED TERRITORY. The provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, shall not be construed to grant the commission any authority to restrict or in any manner limit the drilling of wells to explore for oil or gas or both in territory that is not known to produce either oil or gas.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.058. COMMISSION INQUIRY AND DETERMINATION. From time to time, the commission may inquire into the production, storage, transportation, refining, reclaiming, treating, marketing, and processing of oil and gas, and the reasonable market demand for oil and gas, so that it may determine whether or not waste exists or is imminent or whether the oil and gas conservation laws of this state or the rules and orders of the commission promulgated under those laws are being violated.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 5, eff. June 17, 2005.

Sec. 85.059. RECORDS. Each person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either shall keep in this state accurate records of the amount of oil or gas which such person produced, stored, transported, refined, reclaimed, treated, marketed, or processed and of the source from which the person produced, obtained, or received the oil or gas or the products of either and the disposition made of them.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.060. SWORN STATEMENTS AND REPORTS. The commission may require a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to make and file with the commission sworn statements or reports as to facts within his knowledge or possession pertaining to the reasonable market demand for oil and to the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of oil or gas and the products of either. The report shall include those facts enumerated in Section 85.059 of this code.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.061. INSPECTION AND GAUGING. The commission may require any well, lease, refinery, plant, tank or storage, pipeline, or gathering line that belongs to or is under the control of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to be inspected or gauged by the agents of the commission whenever and as often as and for such periods as the commission considers necessary.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.062. EXAMINATION OF BOOKS AND RECORDS. The commission and its agents and the attorney general and his assistants and representatives may examine the books and records of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either as often as considered necessary for the purpose of determining the facts concerning matters covered by Sections 85.058 through 85.061 of this code.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.063. VIOLATIONS BY CORPORATIONS. (a) The failure of a

corporation chartered under the laws of this state to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall constitute grounds for forfeiture of the corporation's charter rights and privileges and dissolution of its corporate existence.

(b) The failure of a foreign corporation to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall be grounds for enjoining and forever prohibiting such corporation from doing business in this state.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.064. ACTION AGAINST CORPORATION. (a) If he determines that the public interest requires it, the attorney general shall institute suit or other appropriate action in Travis County for forfeiture of charter rights of a domestic corporation or to enjoin a foreign corporation from doing business in this state when a corporation is deemed guilty of violating the provisions of Sections 85.059 through 85.062 of this code. The attorney general may take this action on his own motion and without leave or order of any judge or court.

(b) On judgment against a defendant for violating the provisions of Sections 85.059 through 85.062 of this code, the court may, if in its judgment the public interest requires it, forfeit the charter rights of a defendant domestic corporation or enjoin a defendant foreign corporation from doing business in this state.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.065. INFORMAL COMPLAINT PROCESS REGARDING LOSS OF OR INABILITY TO ACCOUNT FOR NATURAL GAS GATHERED OR TRANSPORTED. (a) A

producer may submit a written request to a person who gathers or transports gas for the producer for an explanation of any loss of or inability to account for the gas tendered to the person by the producer. The request may ask the person to provide any or all of the information that would be required to be included in an accounting under Subsection (c). Not later than the 30th day after the date the person receives the request from the producer, the person must provide the producer a written explanation of any loss of or inability to account for the gas tendered to the person by the producer. The response must include any relevant information requested by the producer that is available to the person and that would be required to be included in an accounting under Subsection (c).

(b) If a producer submits a request under Subsection (a) to a person who gathers or transports gas for the producer and the person provides an inadequate explanation of any loss of or inability to account for the gas, or fails to provide any explanation of any loss of or inability to account for the gas by the deadline provided by that subsection, the producer may file with the commission an informal complaint against the person. An informal complaint may not be filed before the 30th day after the end of the production period covered by the complaint. An informal complaint must:

(1) specify the production period covered by the complaint;

(2) state that at least 30 days have elapsed since the end of the production period covered by the complaint; and

(3) if the producer metered the volume of gas tendered to the person who gathered or transported the gas:

(A) describe the type of meter used; and

(B) state the date the meter was last calibrated.

(c) Not later than the 14th day after the date the complaint is filed, the person who gathered or transported the gas shall provide to the producer and the commission an accounting of the gas tendered to the person by the producer for gathering or transport during the production period covered by the complaint. The accounting may be provided on a thousand cubic feet or a million British thermal unit basis, as applicable, and must include the information the commission determines to be necessary to resolve an informal complaint under this section, which may include:

(1) the amount of gas tendered by the producer from each well that has a meter;

(2) a laboratory analysis of the composition and heating value of the gas and other substances tendered by the producer, if such an analysis has been performed;

(3) if available, a schematic drawing of the person's system for gathering or transporting gas that shows:

(A) each meter type;

(B) the date each meter was last calibrated;

(C) the accuracy of each meter; and

(D) all equipment that alters, disposes of, or otherwise consumes any of the gas tendered to the person;

(4) the estimated amount of gas used for fuel, flared, or vented for construction, repair, maintenance, or other operational uses and, if the information is available, the location of that use;

(5) the estimated amount of contaminants or other impurities removed from the gas and the location at which the impurities were removed;

(6) the estimated amount of liquid hydrocarbons and condensate removed from the gas and the location at which the liquid hydrocarbons and condensate were removed;

(7) the estimated amount of gas lost and the location at which the gas was lost;

(8) the estimated amount of gas redelivered by the person, including the amount of gas sold that was allocated to the producer, and the location at which the redelivery of the gas occurred;

(9) any amount of gas received from the producer by the person that remains unaccounted for; and

(10) any other information the person who gathered or transported the gas considers relevant to the resolution of the complaint.

(d) The commission may grant an extension of time to the person who gathered or transported the gas to provide the accounting required by Subsection (c). An extension may not permit the accounting to be provided later than the 45th day after the date the informal complaint was filed.

(e) If the person who gathered or transported the gas does not have the information necessary to provide the accounting required by Subsection (c), the person must provide to the producer and to the commission a written explanation of the reason the person does not have the information.

(f) If the person who gathered or transported the gas fails to

provide the accounting required by Subsection (c) or the explanation required by Subsection (e), the informal complaint filed by the producer is considered to be valid.

(g) If Subsection (f) applies or the commission determines that the person who gathered or transported the gas committed waste, the commission may take any action it considers appropriate, including issuing an order in a formal proceeding to prevent waste by the person who gathered or transported the gas.

(h) This subsection applies only to a producer and a person who gathers or transports gas for the producer under a contract between the producer and that person that is entered into or renewed on or after September 1, 2007. On written request, the producer is entitled to audit the books and records of the person that pertain to the contract between the producer and the person for the purpose of verifying whether any gas tendered to the person by the producer that the person has lost or is unable to account for has been allocated to the volume of gas tendered to the person by the producer as required by the contract. A producer is not entitled to conduct an audit under this subsection more frequently than annually.

Added by Acts 2007, 80th Leg., R.S., Ch. 696 (H.B. 1920), Sec. 1, eff. September 1, 2007.

SUBCHAPTER D. MARGINAL WELLS

Sec. 85.121. DEFINITIONS. (a) In this subchapter, "marginal well" means an oil well that is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil, as provided in this subchapter, that would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of the well, if its maximum daily production were artificially curtailed.

(b) As used in Subsection (a), Section 85.121 and Section 85.122 of this code, "gas lift" means gas lift by the use of gas not in solution with oil produced.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.122. WELLS CONSIDERED AS MARGINAL WELLS. Wells that are considered marginal wells include any oil well in this state that is incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift and having:

(1) when producing from a depth of 2,000 feet or less, a maximum daily capacity for production of 10 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(2) when producing from a horizon deeper than 2,000 feet and less in depth than 4,000 feet, a maximum daily capacity for production of 20 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(3) when producing from a horizon deeper than 4,000 feet and less in depth than 6,000 feet, a maximum daily capacity for production of 25 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(4) when producing from a horizon deeper than 6,000 feet and less in depth than 8,000 feet, a maximum daily capacity for production of 30 barrels or less, averaged over the preceding 10 consecutive days of stabilized production; or

(5) when producing from a horizon deeper than 8,000 feet, a maximum daily capacity for production of 35 barrels or less, averaged over the preceding 10 consecutive days of stabilized production.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 325, ch. 73, Sec. 1, eff. May 3, 1983.

Sec. 85.123. CURTAILMENT OF MARGINAL WELL PRODUCTION AS WASTE. To artificially curtail the production of a marginal well below the marginal limit as set out in Sections 85.121 through 85.122 of this code before the marginal well's ultimate plugging and abandonment is declared to be waste.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.124. RULES AND ORDERS RESTRICTING MARGINAL WELLS. No rule or order of the commission or of any other constituted legal authority shall be adopted requiring the restriction of the

production of a marginal well.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.125. EFFECT OF OTHER SUBCHAPTERS. None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, authorize or may be construed to limit, modify, or repeal the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. RULES AND ORDERS OF THE COMMISSION

Sec. 85.201. ADOPTION OF RULES AND ORDERS. The commission shall make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.202. PURPOSES OF RULES AND ORDERS. (a) The rules and orders of the commission shall include rules and orders:

(1) to prevent waste, as defined in Section 85.046 of this code, of oil and gas in drilling and producing operations and in the storage, piping, and distribution of oil and gas;

(2) to require dry or abandoned wells to be plugged in a manner that will confine oil, gas, and water in the strata in which they are found and prevent them from escaping into other strata;

(3) for the drilling of wells and preserving a record of the drilling of wells;

(4) to require wells to be drilled and operated in a manner that will prevent injury to adjoining property;

(5) to prevent oil and gas and water from escaping from the strata in which they are found into other strata;

(6) to provide rules for shooting wells and for separating oil from gas;

(7) to require records to be kept and reports made; and

(8) to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the commission's rules or orders for the prevention of waste.

(b) The commission shall do all things necessary for the conservation of oil and gas and prevention of waste of oil and gas and may adopt other rules and orders as may be necessary for those purposes.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

(1) $200 if the total depth of the well is 2,000 feet or less;

(2) $225 if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;

(3) $250 if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;

(4) $300 if the total depth of the well is greater than 9,000 feet.

(b) An applicant shall submit an additional nonrefundable fee of $200 when a Rule 37 spacing or a Rule 38 density exception review is requested.

(c) An applicant shall submit an additional nonrefundable fee of $150 when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(d) All fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 1983, 68th Leg., p. 5260, ch. 967, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 74, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 603, Sec. 5, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1089, Sec. 2, eff. Sept. 1, 1999;

Acts 2001, 77th Leg., ch. 1233, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 10, eff. Sept. 1, 2004.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.06, eff. September 28, 2011.

Sec. 85.203. CONSIDERATIONS IN ADOPTING RULES AND ORDERS TO PREVENT WASTE. The commission may consider any or all of the definitions of waste stated in Section 85.046 of this code, whenever the facts, circumstances, or conditions make them applicable, in adopting rules or orders to prevent waste of oil or gas.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.204. PROHIBITED RULES AND ORDERS. The commission is not authorized to adopt a rule or order or to make a determination or holding that any mode, manner, or process of refining oil constitutes waste.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.205. NOTICE AND HEARING. No rule or order pertaining to the conservation of oil and gas or to the prevention of waste of oil and gas may be adopted by the commission except after notice and hearing as provided by law.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.206. EMERGENCY ORDER. (a) If the commission finds an emergency to exist, that in the commission's judgment requires the adoption of an order without giving notice or holding a hearing, the emergency order may be adopted and shall be valid as though notice had been given and a hearing held.
(b) The emergency order shall remain in force no longer than 15

days from its effective date.

(c) The emergency order shall expire, in any event, at the time an order relating to the same subject matter and adopted after proper notice and hearing becomes effective.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.207. EFFECT OF AMENDMENT, REPEAL, OR EXPIRATION OF A RULE OR ORDER. The amendment, repeal, or expiration of a rule or order of the commission adopted under the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, shall not have the effect of releasing or discharging from liability, penalty, or forfeiture any person violating the rule or order before the effective date of the amendment, repeal, or expiration. Prosecutions and suits for these violations, liabilities, penalties, and forfeitures shall be instituted and proceeded with in all respects as if the rule or order had not been amended or repealed, or had not expired.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. SUITS CHALLENGING THE VALIDITY OF LAWS AND ORDERS

Sec. 85.241. SUITS BY INTERESTED PERSONS. Any interested person who is affected by the conservation laws of this state or orders of the commission relating to oil or gas and the waste of oil or gas, and who is dissatisfied with any of these laws or orders, may file suit against the commission or its members in a court of competent jurisdiction in Travis County to test the validity of the law or order.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.242. EXPEDITIOUS TRIAL. A suit brought under Section 85.241 of this code shall be advanced for trial and shall be determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.243. BURDEN OF PROOF. In the trial of a suit brought under Section 85.241 of this code, the burden of proof shall be on the party complaining of the law or order, and the law or order is deemed prima facie valid.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.244. CONDITIONS FOR INJUNCTIVE RELIEF. No temporary restraining order, temporary or permanent injunction, or other form of injunctive relief may be granted against the commission, its members, agents, and representatives to restrain it or them from enforcing any rule or order adopted by the commission under the oil and gas conservation laws of this state or from enforcing any of these laws unless notice is given to the commission and a hearing is held as provided in this subchapter.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.245. NOTICE TO COMMISSION. (a) At the time a petition or application is filed requesting a temporary restraining order or any form of temporary injunctive relief, the clerk of the court in which the petition or application is filed shall issue notice in writing to the commission.

(b) The notice shall include:

(1) the docket number;

(2) the style of the case; and

(3) a brief statement of the nature of the suit.

(c) The notice shall be served on the commission in Travis County by delivering a copy of the citation to the commission, a member of the commission, or the secretary of the commission for the service of other citations.

(d) Five days after the citation has been served a hearing may be held on the petition or application.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.246. INTERVENTION IN SUIT. In the discretion of the court, any person who is interested in the subject matter of the suit may intervene.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.247. RULES AND ORDERS PRIMA FACIE VALID. The rule or order complained of in the suit is prima facie valid, and the use and introduction of the verified petition of the plaintiff shall not be sufficient to overcome the prima facie validity of the rule or order or to authorize the court to grant any injunctive relief against the enforcement of the rule or order.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.248. BOND. Before an order granting injunctive relief against an oil and gas conservation law, rule, or order of the commission becomes effective, the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in a reasonably sufficient amount determined by the court to indemnify any persons whom the court may find from the facts proven will suffer damage as a result of the violation of the law, rule, or order in question. The persons shall be named in the order of the judge at the time the amount of the bond is fixed by the court and entered in the record.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.249. CONDITIONS OF BOND. (a) In determining the amount of the bond, the judge shall consider all facts and circumstances surrounding the parties and the ability of the plaintiff to make the bond so that the judge can determine the amount and reasonableness of the bond under the facts and circumstances.

(b) A bond made or executed by a bonding or surety company shall be by a company authorized to do business in Texas.

(c) The bond shall be approved by the judge and shall be for the use and benefit of and may be sued on by any person named in the order who suffers damage as a result of violation of the law, rule, or order.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.250. CHANGING AMOUNT, PARTIES, AND SURETIES. On a motion and for good cause shown, and after notice to the parties, the court periodically may:

(1) increase or decrease the amount of the bond;

(2) add new beneficiaries; and

(3) require new and additional sureties that the facts may justify.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.251. SUITS ON BONDS. A suit on a bond must be instituted within six months from the date of the final determination of the validity in whole or in part of the rule or order.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.252. INADMISSIBLE EVIDENCE. A finding by the court

that any party is likely to suffer damage is not admissible as evidence of damages in a suit on the bond.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.253. APPEAL. After notice and hearing on an application for injunctive relief, either party to the suit is entitled to appeal the judgment or order granting or refusing the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief or granting or overruling a motion to dissolve the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.254. APPEAL HAS PRECEDENCE. The appeal is returnable at once to the appellate court and the action appealed shall have precedence in the appellate court over all cases, proceedings, and causes of a different character that are pending.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.255. EARLY DECISION BY COURT OF APPEALS. The court of appeals shall decide the question in the appeal at as early a date as possible.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 92, eff. Sept. 1, 1981.

Sec. 85.256. APPEAL PROCEDURES. The provisions and requirements of Article 4662, Revised Civil Statutes of Texas, 1925, as amended, and Rule 385 of the Texas Rules of Civil Procedure, as amended, relating to temporary injunctions, apply to appeals from any

order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve a temporary restraining order under the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.257. CERTIFIED QUESTIONS AND WRITS OF ERROR. (a) If a question is certified or writ of error requested or granted to the supreme court, the supreme court shall set the cause for hearing immediately and shall decide the cause at as early a date as possible.

(b) The cause shall have precedence over all other causes, proceedings, and causes of a different character in the court.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.258. AUTHORITY OF COURT OF APPEALS TO ISSUE WRITS. The court of appeals and its judges have the jurisdiction to issue writs of prohibition, mandamus, and injunction to prevent the enforcement of any order or judgment of a trial court or judge who grants any type of injunctive relief without notice and hearing in violation of the requirements of Sections 85.244 and 85.245 of this code.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 93, eff. Sept. 1, 1981.

Sec. 85.259. ISSUANCE OF WRITS BY COURT OF APPEALS. If it appears that the provisions of Sections 85.244 and 85.245 of this code have not been complied with, then on proper application from the commission to the court of appeals having jurisdiction, the court shall issue instanter the necessary writs of prohibition, mandamus, or injunction to prohibit and restrain the trial judge from enforcing or attempting to enforce the provisions of the injunction issued by him and to prohibit and restrain the party or parties in whose favor the order is entered from acting or attempting to act under the

protection of the order or from violating the law, rule, or order of the commission attacked.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 94, eff. Sept. 1, 1981.

SUBCHAPTER H. RECEIVERSHIP

Sec. 85.291. REQUEST FOR RECEIVER. If a rule or order of the commission has been finally adjudicated to be valid in whole or part in a suit to which the commission is a party, and if after that time a party to the suit or other proceedings in which the rule or order was declared valid violates the rule, order, or judgment or shall thereafter use or permit to be used any property owned or controlled by him in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and stating that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting that a receiver be appointed as provided in this subchapter.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.292. APPOINTMENT OF RECEIVER AND BOND. After an application is submitted as provided in Section 85.291 of this code, the judge of the trial court, after notice and hearing, may appoint a receiver of the property involved or used in violation of the rule, order, or judgment and shall set a proper bond for the receiver.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.293. DUTIES OF RECEIVER. As soon as the receiver is qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.294. DISSOLUTION OF RECEIVERSHIP. A party whose property is placed in receivership may move to dissolve the receivership and to discharge the receiver on the terms the court may prescribe.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. DAMAGES

Sec. 85.321. SUIT FOR DAMAGES. A party who owns an interest in property or production that may be damaged by another party violating the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, or another law of this state prohibiting waste or a valid rule or order of the commission may sue for and recover damages and have any other relief to which he may be entitled at law or in equity. Provided, however, that in any action brought under this section or otherwise, alleging waste to have been caused by an act or omission of a lease owner or operator, it shall be a defense that the lease owner or operator was acting as a reasonably prudent operator would act under the same or similar facts and circumstances.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1071, Sec. 1, eff. Aug. 31, 1987.

Sec. 85.322. PROCEEDINGS NOT TO IMPAIR SUIT FOR DAMAGES. None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, no suit by or against the commission, and no penalties imposed on or claimed against any party violating a law, rule, or order of the commission shall impair or abridge or delay a cause of action for damages or other relief that an owner of land or a producer of oil or gas, or any other party at interest, may have or assert against any party violating any rule or order of the

commission or any judgment under this chapter.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER J. INJUNCTIONS

Sec. 85.351. SUIT FOR INJUNCTION. (a) If it appears that a person is violating or threatening to violate the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws, the commission, through the attorney general, shall bring suit in the name of the state to restrain the violation or threatened violation.

(b) The suit shall be brought against the person violating or threatening to violate the law, rule, or order in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of residence of any defendant.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 2, eff. Sept. 1, 1983.

Sec. 85.352. TYPES OF COURT ORDERS. In the suit, the commission in the name of the state may obtain prohibitory and mandatory injunctions, including temporary restraining orders and temporary injunctions, that the facts may warrant.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.353. APPOINTMENT OF RECEIVER. (a) The violation by a person of any injunction granted under the provisions of this subchapter shall be sufficient grounds for appointment by the court of a receiver to take charge of the person's property and to exercise authority that in the judgment of the court is necessary to bring about compliance with the injunction. The court may appoint the

receiver either on its own motion or on motion of the commission in the name of the state.

(b) No receiver may be appointed until after notice is given and a hearing is held.

(c) The authority to appoint a receiver is in addition to and cumulative of the authority to punish for contempt.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER K. PENALTIES, IMPRISONMENT, AND CONFINEMENT

Sec. 85.381. PENALTY FOR VIOLATION OF LAWS, RULES, AND ORDERS. (a) In addition to being subject to any forfeiture provided by law and to any penalty imposed by the commission for contempt for violation of its rules or orders, any person who violates the provisions of Sections 85.045 and 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission promulgated under those laws is subject to a penalty of not more than:

(1) $10,000 when the provision, rule, or order pertains to safety or the prevention or control of pollution; or

(2) $1,000 when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(b) The applicable maximum penalty may be assessed for each and every day of violation and for each and every act of violation.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 85.382. VENUE. The penalty provided in Section 85.381 of this code shall be recovered in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of the residence of any defendant.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 85.383. SUIT. By direction of the commission, the suit to recover the penalty shall be instituted and conducted in the name of the state by the attorney general or by the county or district attorney in the county in which the suit is brought.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.384. EFFECT OF RECOVERY OR PAYMENT OF PENALTY. The recovery or payment of the penalty shall not authorize the violation of any provision of Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.385. PERSONS AIDING OR ABETTING VIOLATION. Any person who aids or abets any other person in violating Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order adopted by the commission under those laws is subject to the same penalties as provided in Section 85.381 of this code.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.3855. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person who:

(1) violates Section 91.705 or 91.706 or a rule or order adopted under Section 91.705 or 91.706; or

(2) knowingly destroys, breaks, removes, or otherwise tampers with, or attempts to destroy, break, remove, or otherwise tamper with, a cap, seal, or other device placed by the commission on

an oil well, gas well, oil and gas well, or other associated oil or gas gathering equipment.

(b) The amount of the penalty may not exceed $10,000 for each violation. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commission to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

(e) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(f) A penalty imposed under this section is in addition to a forfeiture provided by law or a penalty imposed by the commission for contempt for violation of a commission rule or order.

Added by Acts 1999, 76th Leg., ch. 1252, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 2, eff. September 1, 2007.

Sec. 85.386. FORGING NAMES ON PERMITS AND TENDERS. A person shall be imprisoned in the Texas Department of Criminal Justice for not less than two nor more than five years if he:

(1) forges the name of an agent, officer, or employee of the commission to a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas;

(2) forges the name of any person to such a tender or

permit; or

(3) knowingly uses a forged instrument to induce another to handle or transport oil or gas or any product or by-product of oil or gas.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.133, eff. September 1, 2009.

Sec. 85.387. PROCURING TENDERS AND PERMITS. A person shall be imprisoned in the Texas Department of Criminal Justice for not less than two nor more than five years if he:

(1) knowingly procures or causes an agent, officer, or employee of the commission to approve or issue a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas that includes a statement or representation that is false and that materially misrepresents the true facts respecting the oil or gas or any product or by-product of either; or

(2) procures or causes an agent, officer, or employee of the commission to issue to him a permit or tender relating to oil or gas or any product or by-product of either with the intent to defraud.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.134, eff. September 1, 2009.

Sec. 85.388. POSSESSING A FORGED PERMIT OR TENDER. Any person who knowingly has in his possession a forged tender or permit of the commission relating to oil or gas or any product or by-product of oil or gas for the purpose of transporting, handling, or selling oil or gas shall be guilty of a misdemeanor and on conviction shall be fined not less than $25 nor more than $1,000 or shall be confined in the county jail for not less than 30 days nor more than one year, or both.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.389. CRIMINAL PENALTY. (a) A person who is not the owner or operator of an oil well, gas well, or oil and gas well, a purchaser under contract of oil, gas, or oil and gas from a well, a gatherer with written authorization from the owner, operator, or purchaser, or an authorized representative of the commission who knowingly destroys, breaks, removes, or otherwise tampers with or attempts to destroy, break, remove, or otherwise tamper with any cap, seal, or other device placed on an oil well, gas well, oil and gas well, or associated oil or gas gathering equipment by the owner or operator for the purpose of controlling or limiting the operation of the well or associated equipment commits an offense.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1983, 68th Leg., p. 5230, ch. 960, Sec. 1, eff. Sept. 1, 1983.

CHAPTER 86. REGULATION OF NATURAL GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 86.001. DECLARATION OF POLICY. In recognition of past, present, and imminent evils occurring in the production and use of gas as a result of waste in this production and use of gas in the absence of correlative opportunities of owners of gas in a common reservoir to produce and use the gas, the provisions of this chapter are enacted for the protection of public and private interests against these evils by prohibiting waste and compelling ratable production.

Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.002. DEFINITIONS. In this chapter:

(1) "Oil" means crude petroleum oil.

(2) "Gas" means natural gas.

(3) "Commission" means the Railroad Commission of Texas.

(4) "Common reservoir" means all or part of any oil or gas field or oil and gas field that comprises and includes any area that is underlaid or that, from geological or other scientific data or experiments or from drilling operations or other evidence, appears to be underlaid by a common pool or accumulation of oil or gas or oil and gas.

(5) "Gas well" means a well that:

(A) produces gas not associated or blended with oil at the time of production;

(B) produces more than 100,000 cubic feet of gas to each barrel of oil from the same producing horizon; or

(C) produces gas from a formation or producing horizon productive of gas only encountered in a well bore through which oil also is produced through the inside of another string of casing.

(6) "Oil well" means any well that produces one barrel or more of oil to each 100,000 cubic feet of gas.

(7) "Dry gas" means gas produced from a stratum that does not produce oil.

(8) "Sour gas" means gas:

(A) containing more than one and one-half grains of hydrogen sulphide per 100 cubic feet;

(B) containing more than 30 grains of total sulphur per 100 cubic feet; or

(C) which in its natural state is found by the commission to be unfit for use in generating light or fuel for domestic purposes.

(9) "Sweet gas" means all gas except sour gas and casinghead gas.

(10) "Casinghead gas" means any gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(11) "Natural gasoline" means gasoline manufactured from casinghead gas or from any gas.

(12) "Cubic foot of gas" or "standard cubic foot of gas" means the volume of gas, including natural and casinghead gas, contained in one cubic foot of space at a standard pressure base of 14.65 pounds per square inch absolute and at a standard temperature base of 60 degrees Fahrenheit, and if the conditions of pressure and temperature differ from this standard, conversion of the volume from the differing conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.003. DETERMINATION OF SEPARATE WELLS. If oil or gas, or both, is produced through different strings of casing set in the same well bore, the inner string through which oil or gas, or both, is produced shall be regarded as one well, and each successive additional string of casing through which oil or gas, or both, is produced from a different producing horizon through the same well bore shall be regarded as another well.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.004. APPLICABILITY. The provisions in this chapter do not impair the authority of the commission to prevent waste under the oil and gas conservation laws of this state and do not repeal, modify, or impair any of the provisions relating to oil and gas conservation in Sections 85.002, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, and 85.381 through 85.385, Subchapter J of Chapter 85, and Subchapter P of Chapter 91.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 3, eff. September 1, 2007.

SUBCHAPTER B. WASTE OF GAS

Sec. 86.011. PROHIBITION AGAINST WASTE. The production, transportation, or use of gas in a manner, in an amount, or under conditions which constitute waste is unlawful and is prohibited.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.012. DEFINITION OF WASTE. (a) The term "waste" includes:

(1) the operation of an oil well or wells with an inefficient gas-oil ratio;

(2) the drowning with water of a stratum or part of a stratum capable of producing gas in paying quantities;

(3) permitting a gas well to burn wastefully;

(4) the creation of unnecessary fire hazards;

(5) physical waste or loss incident to or resulting from so drilling, equipping, or operating a well or wells as to reduce or tend to reduce the ultimate recovery of gas from any pool;

(6) the escape of gas from a well producing both oil and gas into the open air in excess of the amount that is necessary in the efficient drilling or operation of the well;

(7) the production of gas in excess of transportation or market facilities or reasonable market demand for the type of gas produced;

(8) the use of gas for the manufacture of carbon black without first having extracted the natural gasoline content from the gas, except it shall not be necessary to first extract the natural gasoline content from the gas where it is utilized in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(9) the use of sweet gas produced from a gas well for the manufacture of carbon black unless it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet and unless the sweet gas is produced from a well located in a common reservoir producing both sweet and sour gas;

(10) permitting gas produced from a gas well to escape into the air before or after the gas has been processed for its gasoline content, unless authorized as provided in Section 86.185 of this code;

(11) the production of natural gas from a well producing oil from a stratum other than that in which the oil is found unless the gas is produced in a separate string of casing from that in which the oil is produced;

(12) the production of more than 100,000 cubic feet of gas to each barrel of crude petroleum oil unless the gas is put to one or more of the uses authorized for the type of gas so produced under allocations made by the commission or unless authorized as provided

in Section 86.185 of this code; and

(13) underground waste or loss however caused and whether or not defined in other subdivisions of this section.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and opportunity for hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, Sec. 8, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 674, ch. 300, Sec. 2, eff. May 29, 1979; Acts 1995, 74th Leg., ch. 870, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

Sec. 86.041. IN GENERAL. The commission has broad discretion in administering the provisions of this chapter and may adopt any rule or order in the manner provided by law that it finds necessary to effectuate the provisions and purposes of this chapter.

Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.042. RULES AND ORDERS. The commission shall adopt and enforce rules and orders to:

(1) conserve and prevent the waste of gas;

(2) prevent the waste of gas in drilling and producing operations and in the piping and distribution of gas;

(3) require dry or abandoned wells to be plugged in a way that confines gas and water in the strata in which they are found and prevents them from escaping into other strata;

(4) provide for drilling wells and preserving a record of them;

(5) require wells to be drilled and operated in a manner that prevents injury to adjoining property;

(6) prevent gas and water from escaping from the strata in which they are found into other strata;

(7) require records to be kept and reports made;

(8) provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; and

(9) otherwise accomplish the purposes of this chapter.

Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.043. DETERMINING GAS-OIL RATIO. The commission may fix and determine the gas-oil ratio of all oil wells in the state but none of the provisions of this chapter may be construed to authorize the limitation of the production of marginal wells below the amount fixed by statute. If a restriction imposed by the commission on the production of oil from an oil well operates to increase the gas-oil ratio of the well so as to then classify it as a gas well under the provisions of this chapter, the well nevertheless shall be considered to be an oil well.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.044. WEATHER EMERGENCY PREPAREDNESS. (a) In this section, "gas supply chain facility" means a facility that is:

(1) used for producing, treating, processing, pressurizing, storing, or transporting natural gas;

(2) not primarily used to support liquefied natural gas pretreatment, liquefaction, or regasification facilities in the business of exporting or importing liquefied natural gas to or from foreign countries;

(3) otherwise regulated by the commission under this subtitle; and

(4) not regulated by the commission under Chapter 121, Utilities Code.

(b) This section applies only to a gas supply chain facility that is:

(1) included on the electricity supply chain map created under Section 38.203, Utilities Code; and

(2) designated as critical by the commission in the manner provided by Section 81.073.

(c) The commission by rule shall require a gas supply chain facility operator to implement measures to prepare to operate during a weather emergency. In adopting the rules, the commission shall take into consideration weather predictions produced by the office of the state climatologist.

(d) The commission shall:

(1) inspect gas supply chain facilities for compliance with rules adopted under Subsection (c);

(2) provide the owner of a facility described by Subdivision (1) with a reasonable period of time in which to remedy any violation the commission discovers in an inspection; and

(3) report to the attorney general any violation that is not remedied in a reasonable period of time.

(e) The commission shall prioritize inspections conducted under Subsection (d)(1) based on risk level, as determined by the commission.

(f) The commission by rule shall require an operator of a gas supply chain facility that experiences repeated weather-related or major weather-related forced interruptions of production to:

(1) contract with a person who is not an employee of the operator to assess the operator's weatherization plans, procedures, and operations; and

(2) submit the assessment to the commission.

(g) The commission may require an operator of a gas supply chain facility to implement appropriate recommendations included in an assessment submitted to the commission under Subsection (f).

(h) If the commission determines that a person has violated a rule adopted under this section, the commission shall notify the attorney general of a violation that is not remedied in a reasonable amount of time. The attorney general shall initiate a suit to recover a penalty for the violation in the manner provided by Subchapter G.

Added by Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 5, eff. June 8, 2021.

SUBCHAPTER D. PRODUCTION OF GAS

Sec. 86.081. REGULATION OF PRODUCTION. (a) For the protection of public and private interests, the commission, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, shall prorate and regulate the daily gas well production from a common reservoir if the commission finds that action to be necessary to:

(1) prevent waste; or

(2) adjust the correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas as permitted in this chapter.

(b) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may regulate all activities that are under its jurisdiction and associated with such commingled, separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if the accumulations were a single common reservoir; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2580, ch. 688, Sec. 3, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 3, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1119 (H.B. 2440), Sec. 1, eff. June 18, 2005.

Sec. 86.082. EXERCISE OF AUTHORITY TO PREVENT WASTE. The commission shall exercise its authority to prevent waste when the presence or imminence of waste is supported by a finding based on the evidence introduced at a hearing after proper notice.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.083. EXERCISE OF AUTHORITY TO ADJUST CORRELATIVE RIGHTS AND OPPORTUNITIES. The commission shall exercise its authority to adjust correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas when evidence introduced at a hearing after proper notice will support a finding made by the commission that the aggregate lawful volume of the open flow or daily potential capacity to produce of all gas wells located in a common reservoir is in excess of the daily reasonable market demand for gas from gas wells that may be produced from the common reservoir, to be used as permitted in this chapter.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.084. DETERMINATION OF STATUS OF PRODUCTION. (a) The commission, on written complaint by an affected party or on its own initiative, may determine the status of gas production from any reservoir in the state.

(b) If the commission finds that waste exists or is imminent in the production of gas from a reservoir, or that the capacity of the wells to produce gas from a reservoir exceeds the market demand for gas from the reservoir, the commission by proper order shall prorate and regulate the gas production from the reservoir on a reasonable basis.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 2, eff. June 17, 2005.

Sec. 86.085. DETERMINATION OF DEMAND AND VOLUME. On or before the last day of each month, the commission or a person authorized by the commission shall determine:

(1) the lawful market demand for gas to be produced from each prorated reservoir during the following month; and

(2) the volume of gas that can be produced without waste from each prorated reservoir and each well in the reservoir during the following month.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 270, Sec. 1, eff. May 24, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 3, eff. June 17, 2005.

Sec. 86.086. MONTHLY RESERVOIR ALLOWABLE. After determining demand for and volume of production from a prorated reservoir as provided in Section 86.085, the commission shall fix the monthly reservoir allowable of gas to be produced from the reservoir at the lawful market demand for the gas or at the volume that can be produced from the reservoir without waste, whichever is the smaller quantity.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 4, eff. June 17, 2005.

Sec. 86.087. MONTHLY WELL ALLOWABLE. The monthly reservoir allowable shall be allocated among all wells entitled to produce gas from a prorated reservoir to give each well its fair share of the gas to be produced from the reservoir, but each well is restricted to the amount of gas that can be produced from it without waste. The volume of gas allocated to each well is the monthly allowable for that well.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:
Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 5, eff. June 17, 2005.

Sec. 86.088. DAILY ALLOWABLE. The daily market demand for gas and the daily allowable shall be determined by dividing the monthly demand and the monthly allowable by the number of days in the month.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.089. FACTORS IN DETERMINING ALLOWABLE. (a) In determining the daily allowable production for each gas well in a prorated reservoir, the commission shall take into account:

(1) the size of the tract segregated with respect to the surface position and common ownership on which the gas well or wells are located;

(2) the relation between the daily producing capacity of each gas well and the aggregate daily capacity of all gas wells producing the same kind of gas in the same common reservoir or zone; and

(3) other factors that are pertinent.

(b) In determining the daily allowable production for each gas well, the commission shall not take into account the size of the tract on which any gas well or wells are located in excess of the efficient drainage area of the well or wells. The drainage area shall be determined by the commission.

(c) In ascertaining the drainage area of a well, the commission shall take into account such factors as are reflected in the productive capacity of a gas well, including formation pressure, the permeability and porosity of the producing formation, and the well bore's structural position, together with all other factors taken into account by a reasonably prudent operator in determining the drainage area for a gas well.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 745, Sec. 2, eff. June 14, 1985.
Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 6, eff. June 17, 2005.

Sec. 86.090. AUTHORIZING OVERPRODUCTION AND UNDERPRODUCTION. (a) In order to adjust the correlative rights and opportunities of each owner to produce, use, and sell gas from a common reservoir from which a portion of the market demand is seasonal or where a portion of the market demand fluctuates from month to month, the commission may permit the wells in the reservoir to be produced in excess of the monthly allowable, in accordance with the conditions and limitations set forth in Subsections (b), (c), (d), and (e) of this section, if no waste would be caused by such production.

(b) Except as authorized in Subsection (e) of this section, no well may be permitted in any one month to produce in excess of two times its monthly allowable, except if there exists or there is threatened a situation causing an increase in the demand for the gas from the reservoir which cannot be satisfied otherwise from the reservoir, then the commission may allow a well to be produced in excess of two times its monthly allowable.

(c) Except as authorized in Subsection (e) of this section, no well may ever be allowed to produce in excess of twice its allowable for more than two months in any period of six months beginning on the first day of March and September of each year. If a well has produced twice its allowable or more during a period of six months beginning on the first day of March or September, it shall be shut in or, by appropriate commission order, have its production restricted to a fractional part of its monthly allowable until its production and allowable are in balance.

(d) On the first day of March and September of each year, the commission shall restrict production from all wells that are then overproduced to the fractional part of their monthly allowable that will bring the accumulated allowables and the accumulated monthly production in balance during the next six months. If the overproduction is not balanced during that six-month period, the overproduced well shall be shut in or, by appropriate commission order, have its production restricted to a fractional part of its monthly allowable until its production and allowable are in balance.

(e) The commission by appropriate order may permit a gas well to be underproduced for a period of six consecutive months and may

allow the accumulated underproduction to be produced in addition to the regular monthly allowable during the following six-month period. If the underproduction is not balanced during this six-month period, the remaining accumulated underproduction may, by appropriate commission order, be produced in addition to the regular monthly allowable during subsequent consecutive six-month periods.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 745, Sec. 1, eff. June 14, 1985.

Sec. 86.091. MARGINAL GAS WELL AND LIMITS ON WELL RESTRICTIONS. A "marginal gas well," as applied to a well classified by the commission as a gas well, means a well that is incapable of producing under normal operating conditions more than 250,000 cubic feet of gas per day. None of the provisions of this chapter shall require the commission to limit the production from a marginal gas well to a quantity less than its actual deliverability if the well:

(1) has a daily deliverability of 100,000 cubic feet of gas or less; or

(2) is in a field for which special field rules are not in effect.

Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 745, Sec. 2, eff. June 14, 1985; Acts 1995, 74th Leg., ch. 361, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 299, Sec. 1, eff. May 26, 1997.

Sec. 86.093. EFFECT OF OIL AND GAS STRATUM ON GAS ONLY STRATUM. If gas is produced from one stratum and oil and gas are produced from another stratum in the same well bore, the commission shall take into account the amount of gas produced from the oil stratum in determining the amount of gas that may be produced from the stratum producing gas only. The commission may subtract the amount of the casinghead gas produced from the dry gas that would be allocated to the well if it produced dry gas and may restrict the dry gas production accordingly.

Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 86.094. AUTHORITY TO INCREASE TAKE ABOVE ALLOWABLE. If unforeseen contingencies increase the demand for gas required by a distributor, transporter, or purchaser to an amount in excess of the total allowable production of the wells in a prorated reservoir to which the person is connected, the distributor, transporter, or purchaser may increase the person's take ratably from all these wells in order to supply the person's demand for gas, provided that notice of the increase and the amount of the increase are given to the commission within five days; and provided further, the commission shall adjust the inequality of withdrawals caused by the increase in fixing the allowable production of the various wells in the common reservoir or zone.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 7, eff. June 17, 2005.

Sec. 86.095. ZONING COMMON RESERVOIRS. (a) The commission shall zone a common reservoir if, on consideration of the evidence introduced at a hearing, it finds that either the prevention of waste or adjustment of correlative rights and opportunities, or both, as designated in Section 86.081 of this code, may be accomplished more adequately by zoning the common reservoir.

(b) If the commission zones a common reservoir, each zone shall be regarded as a separate common reservoir in making allocations of daily allowable production as provided in this chapter.

(c) If the commission zones a common reservoir, the commission:

(1) shall allocate to each zone its just proportion of the market demand for gas from the common reservoir;

(2) shall establish appropriate rules applicable to each zone;

(3) may adjust its orders to the practicable conditions that exist; and

(4) may enter any reasonable order necessary to effectuate

the purposes of this chapter.

(d) The commission may segregate a sour gas area from a sweet gas area and is not required to restrict the allowable production of the sour gas zone to the same percentages that may be produced from the sweet gas zone.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.096. FAILURE TO USE OR SELL ALLOWABLE PRODUCTION. If the commission finds that the owner of a gas well failed or refused to use or sell the allowable production from his well when the owner was offered a connection or market for the gas at a reasonable price, the well shall be excluded from consideration in allocating the daily allowable production from the reservoir or zone in which it is located until the owner of the well signifies to the commission his desire to use or sell the gas. In all other cases, all gas wells shall be taken into account in allocating the allowable production among wells producing the same type of gas.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.097. PRODUCTION OF GAS FROM OIL WELL. No person in possession of or operating an oil well may produce from the oil well gas found in a horizon productive of gas only.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. METER AND PRESSURE TESTS

Sec. 86.141. DUTY TO TEST GAS WELLS. The commission may require persons producing gas from any gas well to determine periodically through an appropriate test the deliverability and wellhead pressure of each gas well from which gas is produced.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 26, Sec. 1, eff. Sept. 1,

1995.

Sec. 86.142. TEST REQUIREMENTS. A test to determine the deliverability and pressure of a gas well shall be made:

(1) under uniform and generally recognized methods; and

(2) under rules prescribed by the commission.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 26, Sec. 2, eff. Sept. 1, 1995.

Sec. 86.143. TEST REPORTS. (a) Verified reports of the tests to determine deliverability and pressure shall be filed with the commission within a time period after the end of the test period as set by the commission.

(b) The reports are a public record. They shall be kept on file with the commission for a period of time determined by the commission and shall be open to the inspection and examination of the public.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 26, Sec. 3, eff. Sept. 1, 1995.

Sec. 86.144. DEMANDING SECOND TEST. A person producing gas from the same common reservoir who is dissatisfied with the test as made and reported may demand that a second test be made in the manner provided in this subchapter and in the presence of the person making the demand or his representative.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.145. DUTY TO TEST METER. The commission shall require one of its duly authorized agents to inspect, read, or test any meter or meters through which gas is being measured or gauged on the request of a lessor, lessee, operator, or royalty owner from whose

land, lease, or royalty interest gas is being produced.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. USE OF GAS

Sec. 86.181. USE OF SWEET GAS PRODUCED FROM GAS WELL. No sweet gas produced from a gas well may be used for any purpose except:

(1) light or fuel;

(2) efficient chemical manufacture, other than the manufacture of carbon black, provided that sweet gas produced from wells located in a common reservoir producing both sweet and sour gas may be used for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(3) bona fide introduction of gas into oil or gas bearing horizon in order to maintain or increase the rock pressure, or otherwise increase the ultimate recovery of oil or gas from the horizon; and

(4) the extraction of natural gasoline when the residue is returned to the horizon from which it is produced.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.182. USE OF SOUR GAS. In addition to the purposes for which sweet gas produced from a gas well may be used, sour gas may be used for efficient chemical manufacturing purposes including the manufacture of carbon black provided:

(1) it is utilized in a plant producing a recovery of not less than one pound of carbon black to each 1,000 cubic feet of gas; and

(2) the gasoline content is removed and saved from the sour gas before the gas is used for carbon black.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.183. USE OF CASINGHEAD GAS. Casinghead gas may be used for any beneficial purpose, which includes the manufacture of natural gasoline.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.184. USE AS GAS LIFT. (a) A producer of either sweet or sour gas or casinghead gas may use the gas as gas lift in the bona fide production of oil if the gas is not used in excess of 10,000 cubic feet per barrel of oil produced.

(b) To prevent waste in a case where the facts in the case warrant it, the commission may permit the use of additional quantities of gas to lift oil provided:

(1) all the gas used in excess of 10,000 cubic feet for each barrel of oil is processed for natural gasoline; and

(2) the residue is burned for carbon black when it is reproduced.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.185. PROHIBITION AGAINST GAS IN AIR. No gas from a gas well may be permitted to escape into the air after the expiration of 10 days from the time the gas is encountered in the gas well, or from the time of perforating the casing opposite a gas-bearing zone if casing is set through the zone, whichever is later, but the commission may permit the escape of gas into the air for an additional time if the operator of a well or other facility presents information to show the necessity for the escape; provided that the amount of gas which is flared under that authority is charged to the operator's allowable production. A necessity includes but is not limited to the following situations:

(1) cleaning a well of sand or acid or both following stimulation treatment of a well; and

(2) repairing or modifying a gas-gathering system.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II,

Sec. 9, eff. Sept. 1, 1977.

SUBCHAPTER G. ENFORCEMENT; JUDICIAL REVIEW

Sec. 86.221. UNAUTHORIZED PRODUCTION PROHIBITED. No person may produce gas from a gas well in violation of the valid orders of the commission.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.222. PENALTIES. (a) Any person who violates a provision of this chapter or a rule or order adopted under this chapter is liable for a penalty of not more than:

(1) $10,000 for each offense when the provision, rule, or order pertains to safety or the prevention or control of pollution; or

(2) $1,000 for each offense when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(a-1) Notwithstanding Subsection (a), a person who violates a provision of a rule adopted under Section 86.044 is liable for a penalty of not more than $1,000,000 for each offense.

(b) Each day a violation occurs constitutes a separate offense.

(c) The commission by rule shall establish a classification system to be used by a court under this subchapter for violations of rules adopted under Section 86.044 that includes a range of penalties that may be recovered for each class of violation based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of a prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) The classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds $5,000 may be

recovered only if the violation is included in the highest class of violations in the classification system.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 426 (S.B. 3), Sec. 6, eff. June 8, 2021.

Sec. 86.223. SUIT FOR PENALTY. The penalty may be recovered with the cost of suit by the State of Texas through the attorney general or the county or district attorney when joined by the attorney general in a civil action instituted in Travis County, in the county in which the violation occurred, or in the county of residence of the defendant.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 86.224. SUIT FOR INJUNCTION. A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which the suit for penalty may be brought. The court may issue mandatory or prohibitory writs of injunction that the facts justify.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.225. JUDICIAL REVIEW. Any person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than trial de novo.

Acts 1977, 65th Leg., p. 2540, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 87. REGULATION OF SOUR NATURAL GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 87.001. DEFINITIONS. In this chapter, the words "oil," "gas," "commission," "common reservoir," "gas well," "oil well," "sour gas," "sweet gas," "natural gasoline," "cubic foot of gas," and "casinghead gas" are defined as provided in Section 86.002 of this code.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 87.011. RULES AND ORDERS. (a) In administering the provisions of this chapter, the commission shall hold hearings, make determinations, and promulgate rules and orders as provided in Sections 86.084-86.090 of this code and other laws of this state.

(b) After notice and hearing as provided by law, the commission shall promulgate any other rule or order it finds necessary to carry out the provisions of this chapter.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.012. VALIDITY. (a) Rules and orders adopted by the commission under the terms of this chapter are considered prima facie valid.

(b) A person affected by an order may sue to test the validity of the order adopted by the commission under this chapter in the same manner, on the same conditions, and in the same court or courts as prescribed for suits testing the validity of orders of the commission promulgated under the general oil conservation statutes of this state.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.013. HEARINGS. From time to time, the commission shall hold hearings, after proper notice, to hear evidence and to adopt

rules and orders to enforce the provisions of this chapter.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.014. INSPECTION OF RECORDS; REPORTS. In addition to authority given by existing law, the commission or its agents may:

(1) inspect the books and records of any person who is affected by the provisions of this chapter; and

(2) require sworn reports to be filed from time to time as the commission finds necessary.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PRODUCTION OF SOUR GAS

Sec. 87.051. LIMITATION OF SOUR GAS PRODUCTION. No person may produce sour gas from any sour gas well in a reservoir producing both sweet and sour gas in excess of the daily allowable production for the gas well as fixed by the orders and schedules of the commission. The rate of production from a sour gas well is considered to be the daily average rate of production for the calendar month.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.052. MAXIMUM PRODUCTION OF SOUR GAS FOR CARBON BLACK MANUFACTURE. (a) In any common reservoir in the state producing both sweet and sour gas, there shall never be produced from the common reservoir for use in carbon black manufacture a maximum daily volume of sour gas from the gas wells in excess of 750 million cubic feet.

(b) The commission shall prorate the daily volume of sour gas from gas wells among all the sour gas wells in the reservoir to prevent cognizable and preventable drainage of gas from tracts of land in the sour gas producing area segregated as to surface position and common ownership on which the sour gas wells are located.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.053. EFFECT OF DEMAND BELOW MAXIMUM ALLOWABLE PRODUCTION. (a) If the daily demand for sour gas from gas wells for use in carbon black manufacture is less than the daily maximum allowable permitted in Section 87.052 of this code, the total daily volume of gas from gas wells from the sour gas area for use in carbon black manufacture shall be equal to the daily demand.

(b) The commission shall determine the daily demand and prorate it among all the sour gas wells in the area as provided in Section 87.052 of this code.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.054. EFFECT OF DEMAND FOR OTHER PURPOSES THAN CARBON BLACK MANUFACTURE. (a) If a lawful daily demand exists for sour gas from gas wells for purposes of utilization permitted by law, other than the manufacture of carbon black, the additional demand shall be added to the daily demand for carbon black manufacture, and that sum shall constitute the daily volume of sour gas from gas wells that may be withdrawn from the common reservoir for utilization.

(b) The commission shall prorate the daily volume provided for in Subsection (a) of this section among the sour gas wells in the area on the basis set forth in Section 87.052 of this code.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. PLANTS EXTRACTING NATURAL GASOLINE

Sec. 87.091. PROHIBITED COMMINGLING OF GAS. In a plant for the extraction of natural gasoline content of gas, no sweet gas may be commingled with sour gas and no casinghead gas may be commingled with sweet gas or sour gas or both, except on the conditions and requirements stated in this subchapter.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 87.092. PERMIT REQUIRED. In any common reservoir in this state producing both sweet and sour gas, no person may operate a plant for the extraction of the natural gasoline content of gas in which sweet gas and sour gas are commingled, or plant casinghead gas is commingled with either sweet gas or sour gas or both, until the person secures from the commission a permit authorizing the operation of the plant.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.093. ISSUANCE OF PERMIT. The commission shall issue a permit if it appears that the plant is being operated and the residue gas from the plant is and will be disposed of in accordance with the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.094. CANCELLATION OF PERMIT. (a) If it appears to the commission that a plant is operating in violation of any of the provisions of this subchapter, the commission shall cancel the permit issued to the plant.

(b) After the cancellation of the permit, no operator of the plant may commingle either sweet gas and sour gas or casinghead gas with sweet gas or sour gas in the plant for the purpose of extracting the natural gasoline content.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.095. RESIDUE GAS ALLOWED IN AIR. (a) Except as provided in Subsection (b) of this section, if a plant operating under this subchapter commingles casinghead gas with sweet gas or sour gas or both, the operator of the plant shall not blow, or permit

to be blown, in the air any of the residue gas remaining after the gasoline content of the gas is extracted.

(b) The operator of a plant may blow in the air an amount of residue gas from the plant that is determined by the commission to be necessary to accomplish uninterrupted deliveries in required amounts to carbon black plants for carbon black manufacture.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.096. RESIDUE GAS: DETERMINATION BY COMMISSION. If a plant operating under this subchapter commingles casinghead gas with sweet gas or sweet gas with sour gas, the commission shall ascertain:

(1) the quantity of residue gas required to be used for fuel purposes in the efficient operation of the plant; and

(2) the quantity of residue gas required to be returned by the operator of the plant to the leases to which the plant is connected for use as fuel in the operation of the leases.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.097. USE OF RESIDUE GAS FOR OTHER PURPOSES. (a) The operator of the plant is required to use, or cause to be used, for one or more of the uses provided for sweet gas by law a quantity of the residue gas from the plant equal to the quantity of sweet gas taken into the plant for processing, less the extraction loss from the processing.

(b) The operator shall not be credited with use of residue for plant-fuel or lease-fuel operations in an amount in excess of the quantity of the residue gas found by the commission to be necessary for the efficient operation of the plant and return to the leases for fuel for lease operations.

Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. USE OF GAS WITHOUT EXTRACTION OF NATURAL GASOLINE

Sec. 87.131. USE OF SWEET GAS FOR CARBON BLACK MANUFACTURE. Sweet gas produced from any gas well in this state may be used without the prior extraction of its gasoline content for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black for each 1,000 cubic feet of gas.

Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.132. USE OF GAS FROM CERTAIN WELLS FOR CARBON BLACK MANUFACTURE. (a) Gas from any gas well completed on or before September 5, 1947, within a common reservoir producing both sweet and sour gas from which the gas was not sold off the leased premises to an interstate pipeline company during the year immediately preceding September 5, 1947, or gas from any gas well completed after September 5, 1947, within a common reservoir producing both sweet and sour gas, may be used for the manufacture of carbon black without the prior extraction of its natural gasoline content if:

(1) it is used in a plant producing an average recovery of not less than one and one-half pounds of carbon black for each 1,000 cubic feet of gas; and

(2) the royalty rate and market price paid for the gas at the wellhead at least equals the royalty rate and market price paid at the wellhead in the immediate area for gas used for light and fuel purposes.

(b) In arriving at the market price of sour gas, a reduction of not more than one-half cent per 1,000 cubic feet shall be allowed for purifying the gas to render it suitable for light and fuel purposes.

(c) If the gas is used by a producer, any royalty rate paid shall be paid on the same basis.

Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.134. EFFECT OF SUBCHAPTER. The provisions of this subchapter are cumulative of existing laws relating to the uses of gas and do not restrict or affect the manufacture of carbon black from processed sour gas as authorized by Section 86.182 of this code.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. USE OF GAS DETERMINED BY HYDROCARBON CONTENT

Sec. 87.171. GAS CONTAINING LOW HYDROCARBON CONTENT. Any natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing less than one and one-half gallons of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.172. GAS CONTAINING HIGH HYDROCARBON CONTENT. (a) Except as provided in Subsection (b) of this section, no natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed without the prior extraction of its natural gasoline content.

(b) On the filing of an application and after proper notice and hearing as provided by law, the commission may authorize the use of any natural gas, including casinghead gas, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, in the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed if the commission finds it is unprofitable to first extract the natural gasoline content of the gas.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.173. ADDITIONAL EXTRACTION TO ALLEVIATE SHORTAGE. If a general shortage of propane or heavier liquid hydrocarbons occurs, the commission, after notice and hearing, may require additional extraction of hydrocarbons from the gas to alleviate the shortage, but additional extraction shall not be required if it is not economically feasible to do so.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.174. APPLICABILITY OF THIS SUBCHAPTER. The provisions of this subchapter shall not apply to:

(1) gas produced from a common reservoir that contains both sweet and sour gas which was being lawfully used for the manufacture of carbon black under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section; or

(2) gas from gas wells located in these reservoirs which were entitled to be so used under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. CARBON BLACK PLANTS

Sec. 87.211. PROHIBITED LOCATION. Unless adequate precaution is taken to minimize the emission of smoke from the plant, no channel-type carbon black plant shall be erected or constructed closer than five miles to:

(1) the limits of a city, town, or village incorporated at or before the time the erection or construction of the plant is begun; or

(2) a commercially operated citrus fruit orchard planted not less than one year before the time the erection or construction of the plant is commenced.

Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. ENFORCEMENT

Sec. 87.241. PENALTY. (a) A person who violates this chapter is liable to a penalty of not more than $1,000 for each offense.

(b) Each day a violation occurs constitutes a separate offense.

(c) The penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the attorney general in Travis County, in the county in which the violation occurred, or in the county of residence of the defendant.

Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 3, eff. Sept. 1, 1983.

Sec. 87.242. INJUNCTIVE RELIEF. (a) A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought.

(b) The court shall issue the writs or prohibitory or mandatory injunctions that the facts justify.

Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 88. CONTROL OF OIL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Governmental agent" or "governmental agency" means the Railroad Commission of Texas and any other administrative governmental board and governmental agent to which the legislature delegates the duty of supervising the production of oil and gas in the State of Texas.

(3) "Oil property" means a well producing oil, gas, or oil and gas, and any group of such contiguous wells of any number owned, operated, or controlled as a producing unit by the same person in the same locality, and any leasehold estate to the extent that it is

owned, operated, and controlled by the same person.

Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. RULES

Sec. 88.011. ADOPTION OF RULES. (a) The governmental agency may promulgate and adopt rules:

(1) to provide for the method of measuring oil and gas produced from any well in this state and to provide for the type of measuring devices to be used in obtaining the measurement;

(2) for the inspection of all oil properties to ascertain that the prescribed measuring devices are installed, are in accurate working condition, and are being accurately used;

(3) to provide that no oil or gas is being permitted to leave the possession of the producer without first being accurately measured and an accurate record of production made and preserved;

(4) to provide that no oil is being produced from a well producing both oil and gas without burning a flare or flares if the installation and use of a flare or flares is required by the terms of this chapter;

(5) for the keeping of complete and accurate records correctly reflecting the amount of oil or gas or both produced from each oil property each calendar day and the disposition and method of disposition of all the oil and gas produced, and for the monthly filing with the governmental agency of monthly reports accurately reflecting the true facts with respect to all such matters; and

(6) for the inspection and examination by the governmental agency, or its agents, servants, and employees, of all oil properties and the records provided for in this chapter.

(b) The rules shall be adopted in the manner provided by law for adoption of rules of the commission.

Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.012. RULES AND ORDERS RELATING TO RECORDS AND REPORTS. The rules and orders of the governmental agency relating to records and reports shall prescribe the form in which the records and reports

will be made and kept, but the records and reports shall contain the data and information provided for in this chapter.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.013. NOTICE BY PUBLICATION. (a) When the governmental agency adopts a rule under this chapter, the governmental agency shall publish a complete copy of the rule once each day for three consecutive days in three newspapers of general circulation in the state, to be selected by the governmental agency.

(b) Notice of any amendment, repeal, alteration, or modification of the order may be similarly adopted and will become effective after similar notice.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PRACTICES PROHIBITED IN THE PRODUCTION OF OIL AND GAS

Sec. 88.051. PRODUCTION PROHIBITED IN EXCESS OF ALLOWABLE AMOUNT. No person owning, leasing, operating, producing, or controlling an oil property or any oil well in this state may produce or cause to be produced on any day from any oil property or oil well any oil in excess of the amount allowed to be produced each day from the oil property or oil well under an order previously adopted by the governmental agency and in force at the time.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.052. PROHIBITED PASSAGE FROM CONTROL OF PRODUCER WITHOUT MEASUREMENT AND RECORD OF AMOUNT. No person owning, leasing, operating, or controlling an oil property in this state may permit the oil or gas produced to pass beyond the possession or control of that person to the possession or control of any other person without first accurately measuring the amount of the oil or gas and making and preserving an accurate record of the amount.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.053. PROHIBITED EVASION OR PREVENTION OF ACCURATE MEASUREMENT. No person owning, leasing, operating, or controlling an oil property in this state may use a method or device to evade or prevent obtaining the accurate measurement as provided in Section 88.052 of this code.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.0531. CRIMINAL PENALTY. (a) A person who knowingly violates Section 88.052 or 88.053 of this code commits an offense.

(b) An offense under this section is a Class A misdemeanor unless the actor has been convicted previously under this section, in which event the offense is a felony of the third degree.

Added by Acts 1983, 68th Leg., p. 5231, ch. 960, Sec. 2, eff. Sept. 1, 1983.

Sec. 88.054. PASSAGE FROM CONTROL OF PRODUCER PROHIBITED IF TANK NOT UNDER HIS CONTROL. No person owning, leasing, operating, or controlling an oil property may permit oil produced by him in this state to pass from his possession or control to the possession or control of any other person except from a tank or tanks under the control of the person producing the oil.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.055. PRODUCTION PROHIBITED WITHOUT FLARE. If the gas from a well producing both oil and gas is not trapped and used and the gas is capable of being burned in a flare, no person owning, leasing, operating, or controlling an oil property in this state may produce oil from the well at any time without simultaneously and continuously burning a flare to consume all gas that otherwise would

be permitted to escape into the open air. The Railroad Commission of Texas shall have the authority to grant exceptions to this section.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 565, Sec. 1, eff. June 14, 1989.

Sec. 88.056. IDENTIFYING SIGNS. Each oil property in this state, each tank owned or controlled by such person to which the property is connected, and each flare to which the property is connected shall be posted at all times with a sign written in the English language with letters at least one inch in height, stating:

(1) the name of the owner of the property;

(2) the operator of the property;

(3) the number of acres contained in the property; and

(4) the name by which the property is commonly known and identified.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. INSPECTION AND EXAMINATION OF OIL PROPERTY

Sec. 88.091. ACCESS TO PROPERTY AND RECORDS. The governmental agency shall have access at all times to:

(1) the oil property of all persons for inspection and examination; and

(2) the records of all these persons for inspection, examination, and audit.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.092. PROHIBITED INTERFERENCE WITH ACCESS AND INSPECTION. No person may:

(1) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access to an oil property for inspection and examination;

(2) interfere with the inspection and examination;

(3) remove, tamper with, mutilate, or destroy a device, seal, or meter on an oil property placed there or used in the inspection and examination; or

(4) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access, for inspection, examination, and audit, to the books, documents, and records pertaining to, used in connection with, or required to be used in connection with an oil property.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.093. PROHIBITED EQUIPMENT OR ENCLOSURE. No person owning, leasing, operating, or controlling an oil property in this state may equip or enclose his oil property, or any part of his oil property, in a manner that:

(1) prevents inspection and examination; or

(2) prevents an inspection and examination from revealing the true facts with respect to:

(A) the amount of oil or oil and gas being produced from the oil property;

(B) the manner in which the oil property is being operated; or

(C) the manner and method by which the production from the oil property is produced, stored, or delivered from the possession or control of that person.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.094. PROHIBITED GIFT OR GRATUITY. No person may corruptly give, offer, or promise to give a member of the governmental agency, chief supervisor, deputy supervisor, or any agent or employee of the governmental agency a gift or gratuity with intent to influence the officer or person in his acts or conduct with respect to:

(1) enforcing any provision of the law applicable to oil and gas in force at the time in this state;

(2) enforcing any order or rule of the governmental agency

adopted under the power and authority given to it; or

(3) the discharge of any duty imposed on him by the oil and gas laws, orders, and rules duly promulgated and in force at the time in this state.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. ENFORCEMENT; PENALTIES

Sec. 88.131. VENUE. The courts of the county in which the oil property or any part of the oil property is located and with respect to which a violation of the provisions of this chapter is charged, the courts of Travis County, or the courts of the county of the residence of any defendant, have jurisdiction of all prosecutions for violations of the provisions of this chapter.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 88.132. SERVICE OF PROCESS. (a) In a suit or action involving the enforcement of the conservation laws of this state or the orders of the commission affecting the conservation of the natural resources of this state, a Texas Ranger or an agent of the commission may serve civil or judicial process, citation, notice, warrant, subpoena, or writ, including process of every character in contempt proceedings, the same and as fully as a sheriff or constable of a county to whom the process, writ, notice, citation, subpoena, or warrant might be directed could within the limits of his own county.

(b) A ranger or an agent of the commission may serve the process anywhere in the State of Texas although it may be directed to "any sheriff or constable" of a particular county. He shall make the same return as any other officer, sign his name, and add under his name the title of "State Ranger" or "Agent, Railroad Commission of Texas," as the case may be, which is sufficient to make it valid if the writ otherwise is properly prepared.

(c) No fees are allowed the rangers or agents of the commission other than their regular salary or compensation.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.133. RESPONSIBILITY FOR COMPLIANCE AND LIABILITY TO PROSECUTION. The president of each corporation, the chief managing executive of each association, all active members of each firm and partnership, and all trustees of each trust subject to the provisions of this chapter shall be responsible for the compliance with the terms of this chapter by the corporation, association, firm, partnership, or trust of which he is, respectively, president, chief managing executive, member, or trustee, and he shall be liable to prosecution under and subject to the criminal penalties provided in this chapter for violations of this chapter by the respective corporation, association, firm, partnership, or trust of which he has actual knowledge or to which he assents.

Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.134. PENALTIES. (a) A person who violates any of the provisions of Sections 88.091 through 88.093 of this code, or any person who fails to comply with any of the provisions of those sections, is guilty of a misdemeanor and on conviction shall be subject to a fine of not more than $500, or by confinement in the county jail for not more than six months, or by both.

(b) A person who violates any other provision of this chapter other than those covered by Subsection (a), a person who fails to comply with any of the other terms of this chapter, a person who fails to comply with the terms of a rule or order adopted by the governmental agency under the terms of this chapter, or a person who violates any of the rules or orders of the governmental agency adopted under the provisions of this chapter on conviction is considered guilty of a felony and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for a term of not less than two nor more than four years.

Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.135, eff. September 1, 2009.

Sec. 88.135. CIVIL PENALTIES AND INJUNCTIONS. In addition to the powers specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the same manner and subject to the same conditions as provided by Chapters 81 and 85 of this code, including recovering civil penalties and seeking injunctive relief as provided by those chapters.

Added by Acts 1983, 68th Leg., p. 5260, ch. 967, Sec. 7, eff. Sept. 1, 1983.

CHAPTER 89. ABANDONED WELLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. POLICY. The conservation and development of all the natural resources of this state are declared to be a public right and duty. It is also declared that the protection of water and land of the state against pollution or the escape of oil or gas is in the public interest. In the exercise of the police power of the state, it is necessary and desirable to provide additional means so that wells that are drilled for the exploration, development, or production of oil or gas, or as injection or salt water disposal wells, and that have been abandoned and are leaking salt water, oil, gas, or other deleterious substances into freshwater formations or on the surface of the land, may be plugged, replugged, or repaired by or under the authority and direction of the commission.

Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 89.002. DEFINITIONS. (a) In this chapter:

(1) "Well" means a hole drilled for the purpose of:

(A) producing oil or gas;

(B) injecting fluid or gas in the ground in connection with the exploration or production of oil and gas;

(C) obtaining geological information by taking cores or

through seismic operations; or

(D) producing geothermal energy and associated resources that are subject to the jurisdiction of the Railroad Commission of Texas.

(2) "Operator" means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. The commission may not require a person to assume responsibility for a well as a condition to being permitted to assume responsibility for another well. In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention or control of pollution at the time of sale or conveyance and once the person who acquires the well or right to operate the well:

(A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission;

(B) has a commission-approved organization report as required by Section 91.142;

(C) has a commission-approved bond, letter of credit, or cash deposit under Sections 91.103-91.107 covering the well; and

(D) places the well in compliance with commission rules.

(3) "Nonoperator" means a person who owns a working interest in a well at the time the well is required to be plugged pursuant to commission rules and is not an operator as defined in Subdivision (2) of this subsection.

(4) "Commission" means the Railroad Commission of Texas.

(5) "Well-site equipment" means any production-related equipment or materials specific to the well being plugged, including motors, pumps, pump jacks, tanks, tank batteries, separators, compressors, casing, tubing, and rods.

(6) "Lease" means the lease on which a well made the subject of a plugging contract is located.

(7) "Delinquent inactive well" means an inactive well for which, after notice and opportunity for a hearing, the commission has not extended the plugging deadline.

(8) "Plugging" includes replugging.

(9) "Cost calculation for plugging an inactive well" means the commission's calculated cost for each foot of well depth plugged based on average actual plugging costs for wells reported by the commission for the preceding state fiscal year for the commission oil and gas division district in which the inactive well is located.

(10) "Enhanced oil recovery project":

(A) means:

(i) a commission-approved project that uses any process for the displacement of oil or other hydrocarbons from a reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process;

(ii) a certified project described by Section 202.054, Tax Code; or

(iii) any other project approved by the commission for enhanced oil recovery; and

(B) does not include a water disposal project.

(11) "Good faith claim" means a factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

(12) "Inactive well" means an unplugged well that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.

(13) "Physically terminated electric service to the well's production site" means that electric service to an inactive well site has been disconnected at a point on the electric service lines most distant from the production site toward the main supply line in a manner that will not interfere with electrical supply to adjacent operations, including cathodic protection units.

(b) The terms operator and nonoperator as defined in this section do not mean a royalty interest owner or an overriding royalty interest owner.

Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 4, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5406, ch. 1002, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 882, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 515, Sec. 1, eff. Jan. 1, 1994; Acts 1997, 75th Leg., ch. 89, Sec. 1, eff. Sept. 1, 1997;

Acts 2001, 77th Leg., ch. 1233, Sec. 11, eff. Sept. 1, 2004.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 1, eff. September 1, 2009.

Sec. 89.003. APPLICABILITY. The provisions of this chapter do not alter causes of action arising before August 30, 1965.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. DUTY TO PLUG WELLS

Sec. 89.011. DUTY OF OPERATOR. (a) The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of the plugging.

(b) If useable quality water zones are present, the operator shall verify the placement of the plug at the base of the deepest fresh water zone required to be protected. The well is considered to have been properly plugged only when the verification is satisfactory and meets commission requirements.

(c) If, for the use of the surface owner, the operator of the well plugs the well back to produced fresh water, the duty of the operator to properly plug the well ends only when:

(1) the well has been properly plugged in accordance with commission requirements; and

(2) the surface owner has obtained a permit for the well from the groundwater conservation district, if applicable.

(d) Subsections (b) and (c) apply only to wells plugged on or after the effective date of this Act.

(e) The duty of a person to plug an unplugged well that has ceased operation ends only if the person's interest in the well is sold or conveyed while the well is in compliance with rules of the commission relating to safety or the prevention or control of pollution and the provisions of Sections 89.002(a)(2)(A)-(D) have been met. The person acquiring the seller's interest through such a sale or conveyance succeeds the seller as the operator of the well for the purpose of plugging responsibility once the provisions of Sections 89.002(a)(2)(A)-(D) have been met.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 882, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 89, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 12, eff. Sept. 1, 2001.

Sec. 89.012. DUTY OF NONOPERATOR. If the operator of a well fails to comply with Section 89.011 of this code, each nonoperator is responsible for his proportionate share of the cost of the proper plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B-1. PLUGGING OF CERTAIN INACTIVE WELLS

Sec. 89.021. APPLICABILITY. This subchapter does not apply to a bay or offshore well as defined by commission rules.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

Sec. 89.022. PLUGGING OF INACTIVE WELLS REQUIRED. (a) Except as provided by Section 89.023, on or before the date the operator is required to renew the operator's organization report required by Section 91.142, an operator of an inactive well must plug the well in accordance with statutes and commission rules in effect at the time of plugging.

(b) Notwithstanding Subsection (a), a person who assumes responsibility for the physical operation and control of an existing inactive well must satisfy the requirements of Sections 89.023(a)(1) and (3) not later than six months after the date the commission approves the initial form described by Section 89.002(a)(2) and filed with the commission under which the person assumes responsibility for the well.

(c) The commission may not renew or approve the organization report required by Section 91.142 for an operator that fails to comply with the requirements of this subchapter.

(d) Before the commission issues an order refusing to renew an

operator's organization report under Subsection (c), an authorized commission employee or a person designated by the commission for that purpose must determine whether the operator has failed to comply with the requirements of this subchapter. If the authorized commission employee or designated person determines that the organization report does not qualify for renewal on that ground, the authorized commission employee or designated person must:

(1) notify the operator of the determination;

(2) provide the operator with a written statement of the reasons the organization report does not qualify for renewal; and

(3) notify the operator that the operator has 90 days to comply with the requirements of this subchapter.

(e) After the expiration of the period specified by Subsection (d)(3), the authorized commission employee or designated person shall determine whether the organization report qualifies for renewal and notify the operator of the determination. If the authorized commission employee or designated person determines that the organization report does not qualify for renewal because the operator has continued to fail to comply with the requirements of this subchapter, the operator, not later than the 30th day after the date of the determination, may request a hearing regarding the determination. The operator shall pay the costs associated with a hearing requested under this subsection.

(f) If the commission determines following the hearing that the operator has failed to comply with the requirements of this subchapter or the operator fails to file a timely request for a hearing, the commission by order shall refuse to renew the organization report. The organization report remains in effect until the commission's order becomes final.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 1, eff. June 17, 2011.

Sec. 89.023. EXTENSION OF DEADLINE FOR PLUGGING INACTIVE WELL. (a) The commission may grant an extension of the deadline for plugging an inactive well if the operator maintains a current

organization report with the commission as required by Section 91.142 and if, on or before the date of renewal of the operator's organization report as required by that section, the operator files with the commission an application for an extension that includes:

(1) an affirmation that complies with Section 89.029;

(2) a statement that the operator has, and on request will provide, evidence of a good faith claim to a continuing right to operate the well; and

(3) at least one of the following:

(A) documentation that since the preceding date that the operator's organization report was required to be renewed the operator has plugged, or restored to active operation as defined by commission rule, a number of inactive wells equal to or greater than 10 percent of the number of inactive wells operated by the operator on that date;

(B) an abeyance of plugging report on a form approved by the commission that:

(i) is in the form of a certification signed by a person licensed by the Texas Board of Professional Engineers and Land Surveyors as an engineer or by the Texas Board of Professional Geoscientists;

(ii) includes:

(a) an affirmation by the licensed person that the well has:

(1) a reasonable expectation of economic value in excess of the cost of plugging the well for the duration of the period covered by the report, based on the cost calculation for plugging an inactive well; and

(2) a reasonable expectation of being restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well were plugged; and

(b) appropriate documentation demonstrating the basis for the affirmation of the well's future utility; and

(iii) specifies the field and the covered wells within that field in a format prescribed by the commission;

(C) a statement that the well is part of an enhanced oil recovery project;

(D) if the operator of the well is not currently otherwise required by commission rule or order to conduct a fluid

level or hydraulic pressure test of the well, documentation of the results of a successful fluid level or hydraulic pressure test of the well conducted in accordance with the commission's rules in effect at the time the test is conducted;

(E) a supplemental bond, letter of credit, or cash deposit sufficient for each well specified in the application that:

(i) complies with the requirements of Chapter 91; and

(ii) is of an amount at least equal to the cost calculation for plugging an inactive well for each well specified in the application;

(F) documentation of the deposit with the commission each time the operator files an application of an amount of escrow funds as prescribed by commission rule that equal at least 10 percent of the total cost calculation for plugging an inactive well for each well specified in the application; or

(G) if the operator is a publicly traded entity:

(i) the following documents:

(a) a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations; and

(b) an original, executed Uniform Commercial Code Form 1 Financing Statement, filed with the secretary of state, that:

(1) names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor"; and

(2) specifies the funds covered by the documents described by Sub-subparagraph (a) in the amount of the cost calculation for plugging an inactive well for each well specified in the application; or

(ii) a blanket bond in the amount of the lesser of:

(a) the cost calculation for plugging any inactive wells; or

(b) $2 million.

(b) Notwithstanding Subsection (a), an operator may not obtain an extension of the deadline for plugging an inactive well by complying with that subsection if the plugging of the well is otherwise required by commission rules or orders.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff.

September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 2, eff. June 17, 2011.
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.11, eff. September 1, 2019.

Sec. 89.024. ABEYANCE OF PLUGGING REPORT. (a) An abeyance of plugging report filed under Section 89.023(a)(3)(B) is valid for a period of not more than five years.

(b) An abeyance of plugging report may cover more than one well in a field but may not cover more than one field.

(c) An abeyance of plugging report may not be transferred to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new abeyance of plugging report or otherwise comply with the requirements of this subchapter on or before the deadline provided by Section 89.022(b). This subsection does not prohibit the transfer of an abeyance of plugging report in the event of a change of name of an operator.

(d) An operator who files an abeyance of plugging report must pay an annual fee of $100 for each well covered by the report. A fee collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 3, eff. June 17, 2011.
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.07, eff. September 28, 2011.

Sec. 89.025. ENHANCED OIL RECOVERY PROJECT. (a) For purposes of Section 89.023(a)(3)(C), an inactive well is considered to be part of an enhanced oil recovery project if the well is located on a unit or lease or in a field associated with such a project.

(b) A statement that an inactive well is part of an enhanced oil recovery project may not be transferred to a new operator of an

existing inactive well. A new operator of an existing inactive well must file a new statement that the well is part of such a project or otherwise comply with the requirements of this subchapter on or before the deadline provided by Section 89.022(b). This subsection does not prohibit the transfer of a statement that a well is part of an enhanced oil recovery project in the event of a change of name of an operator.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 4, eff. June 17, 2011.

Sec. 89.026. FLUID LEVEL OR HYDRAULIC PRESSURE TEST. (a) Documentation filed under Section 89.023(a)(3)(D) of the results of a successful fluid level test is valid for a period of one year from the date of the test. Documentation filed under that section of the results of a successful hydraulic pressure test is valid for a period of not more than five years from the date of the test.

(b) The operator must notify the office of the commission oil and gas division district in which an inactive well is located at least three days before the date the operator conducts a fluid level or hydraulic pressure test of the well and may not conduct the test without the approval of the office. The commission may require that a test be witnessed by a commission employee.

(c) Documentation of the results of a successful fluid level or hydraulic pressure test may be transferred to a new operator of an existing inactive well.

(d) An operator who files documentation described by Subsection (a) must pay an annual fee of $50 for each well covered by the documentation. A fee collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 5, eff. June 17, 2011.
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.08, eff.

September 28, 2011.

Sec. 89.027. SUPPLEMENTAL FINANCIAL ASSURANCE. (a) A supplemental bond, letter of credit, or cash deposit filed under Section 89.023(a)(3)(E) is in addition to any other financial assurance otherwise required of the operator or for the well.

(b) A supplemental bond, letter of credit, or cash deposit may not be transferred to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the requirements of this subchapter by the deadline provided by Section 89.022(b).

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 6, eff. June 17, 2011.

Sec. 89.028. ESCROW FUNDS. (a) Escrow funds described by Section 89.023(a)(3)(F) must be deposited with the commission each time an operator files an application for an extension of the deadline for plugging an inactive well.

(b) Escrow funds deposited with the commission may be released only with the approval of the commission as prescribed by commission rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 7, eff. June 17, 2011.

Sec. 89.029. AFFIRMATION REGARDING SURFACE REQUIREMENTS. (a) An application for an extension of the deadline for plugging an inactive well must include a written affirmation by the operator:

(1) that the operator has physically terminated electric service to the well's production site; and

(2) stating the following, as applicable, if the operator does not own the surface of the land on which the well is located:

(A) if the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well; or

(B) if the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that the operator has removed all surface process equipment and related piping, tanks, tank batteries, pump jacks, headers, and fences, as well as junk and trash as defined by commission rule, associated with and exclusive to the well.

(b) An operator of an inactive well shall leave a clearly visible marker at the wellhead of the well.

(c) The commission shall adopt rules regulating the transfer of material described by Subsection (a)(2)(B) and restricting its accumulation on an active lease.

(d) Notwithstanding Subsection (a), an operator may be eligible for a temporary extension of the deadline for plugging an inactive well or a temporary exemption from the requirements of Subsection (a) as provided by commission rule if the operator is unable to comply with the requirements of that subsection because of safety concerns or required maintenance of the well site and the operator includes with the application a written affirmation of the facts regarding the safety concerns or maintenance.

(e) An operator may be eligible for an extension of the deadline for plugging a well without complying with Subsection (a)(2)(B) if the well is located on a unit or lease or in a field associated with an enhanced oil recovery project and the operator includes a statement in the written affirmation that the well is part of such a project. The exemption provided by this subsection applies only to the equipment required for the project.

(f) Notwithstanding the other provisions of this subchapter, the commission shall adopt rules providing for the phase-in of the duty to comply with Subsection (a)(2)(B) over a period of five years beginning September 1, 2010. The rules must require the operators of one-fifth of the wells that are subject to that subsection in each year during the phase-in period to comply with that subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

Sec. 89.030. REVOCATION OF EXTENSION OF DEADLINE FOR PLUGGING INACTIVE WELL. The commission may revoke an extension of the deadline for plugging an inactive well granted under this subchapter if the commission determines, after notice and an opportunity for a hearing, that the applicant is ineligible for the extension under the commission's rules or orders.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

Sec. 89.041. DETERMINING PROPER PLUGGING. If it comes to the attention of the commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.042. COMMISSION ORDER TO PLUG. (a) If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

(b) If the operator cannot be found or is no longer in existence or has no assets with which to properly plug the well, the commission shall order the nonoperators to plug the well according to the rules of the commission in effect at the time the order is issued.

(c) Repealed by Acts 1983, 68th Leg., p. 5409, ch. 1002, Sec. 3, eff. Aug. 29, 1983.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5409, ch. 1002, Sec. 3, eff. Aug. 29, 1983.

Sec. 89.043. PLUGGING BY COMMISSION. (a) If the commission determines at a hearing under Section 89.041 of this code that a well has not been properly plugged or needs replugging, the commission, through its employees or through a person acting as agent for the commission, may plug or replug the well if:

(1) the well was properly plugged according to rules in effect at the time the well was abandoned or ceased to be operated; or

(2) neither the operator nor nonoperator properly plugged the well, and

(A) neither the operator nor nonoperator can be found; or

(B) neither the operator nor nonoperator has assets with which to properly plug the well.

(b) If a well is leaking salt water, oil, or gas or is likely to leak salt water, oil, or gas, and the leakage will cause or is likely to cause a serious threat of pollution or injury to the public health, the commission, through its employees or agents, may direct the operator to take remedial action or to plug the well or may plug or replug the well without holding a hearing under Section 89.041 of this code or giving notice under Subsection (c) of this section.

(c) Not later than the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 and commission rules. The notice shall direct the operator to plug the well and shall state that:

(1) the commission may plug the well and foreclose its statutory lien under Section 89.083 unless the operator requests a hearing not later than the 10th day after the date the operator receives the notice;

(2) if the commission forecloses its statutory lien under Section 89.083, all well-site equipment will be presumed to have been abandoned and the commission may dispose of the equipment and

hydrocarbons from the well as provided by Section 89.085;

(3) if the commission plugs the well, the commission:

(A) by order may require the operator to reimburse the commission for the plugging costs; or

(B) may request the attorney general to file suit against the operator to recover those costs;

(4) the commission has a statutory lien on all well-site equipment under Section 89.083; and

(5) the lien described by Subdivision (4) is foreclosed by operation of law if the commission does not receive a valid and timely request for a hearing before the 15th day after the date the notice is mailed.

(d) The operator of a well made the subject of a prior commission final order directing that it be plugged is not entitled to a second hearing under this section.

(e) The commission shall file for record a copy of the notice in the office of the county clerk of the county in which the well is located. The notice filed with the county need not be acknowledged. The copy of the notice filed in the office of the county clerk must contain the section, block, survey, and abstract number, when available to the commission, of the land on which the well is located. The clerk shall record the notice in the real property records of the county. The commission shall not be charged a fee for the filing or recording of the notice. The commission shall furnish a copy of the notice to a holder of a lien on the well or a nonoperator on that person's request. For purposes of title insurance policies issued under authority of Title 11, Insurance Code, this notice is not a notice of enforcement or violation of law, ordinance, or governmental regulation unless the notice contains a legally sufficient description of the specific land on which the well is located.

(f) At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under Subsection (c)(3)(A).

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 515, Sec. 2, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 928, Sec. 1, eff. Aug. 28, 1995;

Acts 1999, 76th Leg., ch. 29, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 57, Sec. 1, eff. May 10, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 13, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.147, eff. September 1, 2005.

Sec. 89.044. RIGHT TO ENTER ON LAND. (a) The commission or its employees or agents, the operator, or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged.

(b) A prospective operator who has been authorized under Section 89.047 to conduct a surface inspection of a well, on proper identification, may enter the land of another for the sole purpose of conducting the inspection.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.
Amended by:
Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 3, eff. January 1, 2006.

Sec. 89.045. LIABILITY FOR DAMAGES. The commission and its employees and agents, the operator, and the nonoperator are not liable for any damages that may occur as a result of acts done or omitted to be done by them or each of them in a good-faith effort to carry out this chapter.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.046. PENALTIES AND OTHER RELIEF. The plugging or replugging of a well by the commission does not prevent the commission from seeking penalties or other relief provided by law

from any person who is required by law, rules adopted by the commission, or a valid order of the commission to plug the well.

Added by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983.

Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this section:

(1) "Depth of the well" means the vertical depth of a well as measured in linear feet from the surface to the lowest perforation of the casing of the well that is within the commission-designated correlative interval for the field for which the well is issued a permit.

(1-a) "Energy conservation well" means a well used for the retention of energy that may be used to provide dispatchable generation of electricity for the power grid.

(1-b) "Geothermal energy and associated resources" has the meaning assigned by Section 141.003.

(2) "Operator in good standing" means an operator who:

(A) has a commission-approved organization report;

(B) is the designated operator of at least one well within the jurisdiction of the commission;

(C) has filed with the commission under Section 91.104 a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and

(D) is not the subject of a commission or court order regarding a violation of a commission rule with which the operator has not complied or a complaint that has been docketed by the commission alleging a violation of a commission rule.

(3) "Orphaned well" means a well:

(A) for which the commission has issued a permit;

(B) for which production of oil or gas or another activity under the jurisdiction of the commission has not been reported to the commission for the preceding 12 months; and

(C) whose operator's commission-approved organization report has lapsed.

(4) "Producing well" means a well classified by the commission as an oil or gas well in accordance with commission rules.

(5) "Service well" means a well for which the commission

has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

(b) A person who is considering assumption of operatorship and regulatory responsibility for an orphaned well may nominate the well under consideration by filing a request on a form prescribed by the commission notifying the commission that the person seeks authority to conduct a surface inspection of the well to determine whether the person desires to be designated by the commission as the operator of the well.

(c) If the person is an operator in good standing and the well is not already subject to a nomination, the commission shall accept the nomination and issue a written confirmation to the person of the person's authority to conduct a surface inspection of the nominated well for a stated period not to exceed 30 days.

(d) A person to whom a confirmation is issued under Subsection (c) may conduct a surface inspection of the well. The person must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three days before the date of the inspection. The notice must:

(1) identify the orphaned well;

(2) state the name, address, and telephone number of the person;

(3) state the date the person intends to conduct the surface inspection;

(4) state the name of at least one representative of the person who will participate in the surface inspection; and

(5) state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well.

(e) In conducting a surface inspection of the orphaned well, the person may visually inspect the well and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the well, reenter the well, pull tubing from or perform any other type of downhole work on the well, conduct a salvage operation on the well, or remove any tangible item from the well site.

(f) The commission shall designate the person as the operator of the well if the person files with the commission:

(1) a factually supported claim based on a recognized legal

theory to a continuing possessory right in:

(A) the mineral estate accessed by the well, as established by a current oil and gas lease, a recorded deed conveying a fee interest in the mineral estate, or any other documentation of an interest in the mineral estate;

(B) the geothermal energy and associated resources estate accessed by the well, as established by a current geothermal lease, a recorded deed conveying a fee interest in the geothermal estate, or any other documentation of an interest in the geothermal estate; or

(C) the geologic space accessed by the well for the purpose of an energy conservation well, as established by a recorded deed conveying a fee interest in the space accessed by the well or any other documentation of an interest in that space;

(2) a completed certificate of compliance; and

(3) a nonrefundable fee in the amount of $250.

(g) A fee collected under Subsection (f) shall be deposited to the credit of the general revenue fund and may be appropriated only to the commission to be used to enforce the laws and rules concerning oil and gas conservation and waste and pollution prevention.

(h) A person who is designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

(1) a nontransferable exemption from severance taxes for all future production from the well as provided by Section 202.060, Tax Code;

(2) a nontransferable exemption from the fees provided by Sections 81.116 and 81.117 for all future production from the well; and

(3) a payment from the commission in an amount equal to the depth of the well multiplied by 50 cents for each foot of well depth if, not later than the third anniversary of the date the commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with commission rules.

(i) A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if:

(1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the commission

and as authorized by a permit issued by the commission; or

(2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission.

(j) The commission shall make payments to operators under Subsection (h)(3) annually in the same order the commission determines the operators to be entitled to the payments. The aggregate amount of payments in a state fiscal year under that subsection may not exceed $500,000. An operator may not receive:

(1) more than one payment under that subsection for the same well; or

(2) cumulative payments in an amount that exceeds the amount of the bond, letter of credit, or cash deposit the operator has filed with the commission under Section 91.104.

Added by Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 4, eff. January 1, 2006.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 87 (S.B. 1210), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 87 (S.B. 1210), Sec. 2, eff. September 1, 2023.

Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER. (a) In this section, "orphaned well" has the meaning assigned by Section 89.047.

(b) The owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a commission-approved well plugger to plug the well.

(c) If the surface estate owner enters into a contract under Subsection (b), the well plugger shall:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of the commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the

commission and the commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by Section 91.107; and

(4) plug the well in accordance with commission rules.

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil and gas regulation and cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

(e) The commission shall adopt any rules reasonably necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 4, eff. January 1, 2006.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.09, eff. September 28, 2011.

SUBCHAPTER D. COSTS OF PLUGGING WELLS

Sec. 89.081. CAUSE OF ACTION FOR DISPROPORTIONATE SHARE OF COST. If an operator or nonoperator owns only a partial interest in the well or oil and gas and the operator or nonoperator pays a larger proportion of the cost of plugging the well than his proportionate interest in the well or oil and gas, he has a cause of action against the other operators and nonoperators for their proportionate shares of the cost of plugging.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.083. FIRST LIEN ON EQUIPMENT; CAUSE OF ACTION IF COMMISSION PLUGS. (a) If a well has not been plugged by the

deadline for plugging established by commission rules, the state has a first lien, superior to all other preexisting and subsequent liens and security interests, on the operator's and nonoperator's interests in well-site equipment, in the amount of the total costs of removing well-site equipment from the well, plugging the well, and transporting, storing, and disposing of the well-site equipment.

(b) The lien arises on the date by which the well is required to be plugged under commission rules.

(c) The lien may be foreclosed by judicial action or commission order at any time after notice and an opportunity for a hearing. If notice is mailed under Section 89.043 and if the lien is not previously foreclosed, the lien is foreclosed by operation of law on the 15th day after the date the notice is mailed unless the commission has received a valid and timely request for a hearing before that date. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders or nonoperators before foreclosing the lien.

(d) The lien is extinguished if the well is plugged or otherwise brought into compliance in accordance with commission rules by any person authorized to do so before the commission enters into a plugging contract.

(e) The lien is extinguished as to any item of well-site equipment that is lawfully removed by any person other than the operator or a nonoperator pursuant to a lien, lease, judgment, written contract, or security agreement before the commission sends notice under Section 89.043(c). A person may not remove from an inactive well site any equipment necessary to prevent the well from serving as a conduit for the passage of oil, gas, saltwater, oil and gas wastes, or freshwater from one stratum or formation to another or to the surface or from the surface downward except in the course of plugging in accordance with commission rules.

(f) If the commission plugs a well under Sections 89.043 through 89.044 of this code, the state has a cause of action for all reasonable expenses incurred in plugging or replugging the well and not recovered under Section 89.085 of this code or through reimbursement to the commission.

(g) The cause of action is:

(1) first, against the operator, to be secured by a first lien, superior to all preexisting and subsequent liens and security interests, on the operator's interest in the oil and gas in the land

and the fixtures, machinery, and equipment found or used on the land where the well is located; and

(2) second, against a nonoperator at the time the well should have been plugged, to be secured by a lien on the nonoperator's interest in the oil and gas in the land. A nonoperator may be made a party defendant in the suit against the operator.

(h) The commission:

(1) by order may require the operator and any nonoperator to reimburse the commission for all reasonable expenses incurred in plugging a well; or

(2) may request the attorney general to file suit against the operator and any nonoperator to recover those expenses.

(i) At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under Subsection (h)(1).

(j) Money collected in a suit under this section shall be deposited in the oil and gas regulation and cleanup fund.

(k) A civil action for reimbursement under this section may be brought in Travis County, the county in which the plugged well is located, or the county in which any defendant resides.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 515, Sec. 3, eff. Jan. 1, 1994; Acts 1999, 76th Leg., ch. 29, Sec. 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 57, Sec. 2, eff. May 10, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 14, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.10, eff. September 28, 2011.

Sec. 89.084. MONEY PAID COMMISSION BY PRIVATE PERSON. (a) The commission may accept money from private persons and use the money to plug or replug a well.

(b) Paying money to the commission is not an admission that the person paying the money is obligated to plug or replug the well. Evidence that a person has paid money to the commission is not

admissible against the person in a suit in which the person's obligation to plug a well is an issue and introducing the evidence is a compulsory ground for mistrial.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 89.085. POSSESSION AND SALE OF EQUIPMENT TO COVER PLUGGING COSTS. (a) When the commission forecloses its lien under Section 89.083 on a delinquent inactive well, well-site equipment and any amount of hydrocarbons from the well that is stored on the lease are presumed to have been abandoned and may be disposed of by the commission in a commercially reasonable manner by either or both of the following methods:

(1) entering into a plugging contract that provides that the person plugging or cleaning up pollution, or both, will take title to well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation in exchange for a sum of money deducted as a credit from the contract price; or

(2) selling the well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation at a public auction or a public or private sale.

(b) The commission shall assign separate costs to:

(1) removing well-site equipment;

(2) plugging the well; and

(3) transporting, storing, and disposing of the well-site equipment.

(c) The commission shall dispose of well-site equipment or hydrocarbons under this section at a price or value that reflects the generally recognized market value of the equipment or hydrocarbons, with allowances for physical condition.

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil and gas regulation and cleanup fund. The commission shall separately account for money and credit received for each well.

(e) A person who acquires well-site equipment or hydrocarbons

under this section by sale or contract receives a clear title, free of all prior legal or equitable claims of whatever nature, whether perfected or inchoate.

(f) Not later than the 30th day after the date well-site equipment or hydrocarbons are disposed of under this section, the commission shall mail a notice by first class mail to the operator of the well at the address last reported to the commission as required by Section 91.142 of this code and commission rules and, on request, to any lienholder or nonoperator.

(g) The notice required by Subsection (f) of this section must include:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the abstract number of the property on which the lease is situated;

(5) the commission lease or gas well identification number or drilling permit number;

(6) a list of the property disposed of under this section; and

(7) a statement that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien may file a claim with the commission.

(h) Not later than the 180th day after the date the well-site equipment or hydrocarbons are disposed of under this section, the commission shall publish a notice that states:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the commission lease or gas well identification number or drilling permit number; and

(5) that equipment or hydrocarbons if applicable from the well and lease were disposed of under this section and that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien may file a claim with the commission.

(i) The commission shall publish the notice required under Subsection (h) of this section in a newspaper of general circulation

in the county in which the lease is located. A single notice may contain the information required for more than one well and lease. A notice given under this section following the plugging of a well may be combined with a notice given under Section 91.115 of this code following the cleanup of a site or facility.

Added by Acts 1985, 69th Leg., ch. 715, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1989, 71st Leg., ch. 755, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 515, Sec. 4, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 1233, Sec. 15, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.11, eff. September 28, 2011.

Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND CLEANUP FUND. (a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 may make a claim against the oil and gas regulation and cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(b) The commission shall adopt a form on which a person may file a sworn claim with the commission.

(c) A claimant must identify the well-site equipment or hydrocarbons in which the claimant has an interest and state the amount of the property interest as of the date the commission foreclosed its statutory lien under Section 89.083.

(d) The commission may require a person to include with a claim documentation that substantiates the claim or to disclose whether the claimant was an operator or nonoperator of the well.

(e) The commission may set a hearing to receive evidence on a claim filed under this section. The commission shall notify the claimant of the date, time, and place of a hearing.

(f) If the commission holds a hearing, the commission shall issue:

(1) a decision on the claim;

(2) a statement of findings of fact that includes the substance of the evidence heard; and

(3) the conclusions of law that support the decision.

(g) The commission shall consider the validity of claims in the order in which the claims are filed.

(h) The commission shall suspend an amount of money in the oil and gas regulation and cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil and gas regulation and cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil and gas regulation and cleanup fund in the manner provided by Subsection (j).

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall

pay the valid portion of the claim from the suspended amount in the oil and gas regulation and cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and cleanup fund the amount of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

(l) A person who informs a potential claimant that the potential claimant may be entitled to file a claim under this section or who files a claim on behalf of a claimant may not contract for or receive from the claimant for services an amount greater than 10 percent of the paid claim.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 16, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.12, eff. September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.13, eff. September 28, 2011.

Sec. 89.087. JUDICIAL REVIEW OF COMMISSION DECISIONS; IMMUNITY FROM SUIT AND LIABILITY. (a) A claimant aggrieved by the commission's decision on a claim may appeal the decision in a district court of Travis County on or before the 60th day after the date the decision was issued. If the commission does not decide a claim by the 90th day after the date it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the

date of filing.

(b) Judicial review under this section is by trial de novo.

(c) No interest accrues on a claim before an appeal is filed under this section.

(d) Except to the extent permitted by this chapter, and notwithstanding any other provision of law, the commission, its employees or agents, and the State of Texas are immune from suit and from liability based on the disposition of well-site equipment or hydrocarbons in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.

Sec. 89.088. RECORD OF REQUEST FOR NOTICE BY LIENHOLDER OR NONOPERATOR; FORM; FEE. (a) The commission shall maintain a record of a request for notice by a lienholder or nonoperator under Section 89.043(e) or 89.085(f) of this code for five years after the date on which the commission receives the request.

(b) The commission shall prepare a form for a request for notice. The commission shall require a person who requests notice to include on the form information that identifies the lease covered by the request.

(c) The commission may charge a filing fee for a request for notice not to exceed $10 for each lease covered by the request.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.

SUBCHAPTER E. ENFORCEMENT; JUDICIAL REVIEW

Sec. 89.121. ENFORCEMENT BY COMMISSION. (a) In addition to the powers specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule or order of the commission adopted under this chapter in the same manner and on the same conditions as provided in the other chapters of Title 3 of this code.

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the general revenue fund.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1,

eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 7, eff. Sept. 1, 1991.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.14, eff. September 28, 2011.

Sec. 89.122. APPEAL TO COURTS. Any person affected by the provisions of this chapter may sue to test the validity of any order adopted by the commission under this chapter in the same manner, on the same conditions, and to the same court or courts as prescribed for suits testing the validity of orders of the commission adopted under the general oil conservation statutes of this state.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 90. INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Sec. 90.001. RATIFICATION. The Interstate Compact to Conserve Oil and Gas, executed in the City of Dallas, on February 16, 1935, by the Governor of Texas, the text of which is set out in Section 90.007 of this code, was ratified by the legislature of this state in Chapter 81, General Laws, Acts of the 44th Legislature, Regular Session, 1935.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.002. ORIGINAL COPY. The original copy of the compact is on deposit with the Department of State of the United States.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.003. REPRESENTATIVE. (a) The governor is the official representative of the State of Texas on the Interstate Oil Compact Commission, provided for in the Interstate Compact to Conserve Oil and Gas. He shall exercise and perform for the state all the powers

and duties as a member of the Interstate Oil Compact Commission.

(b) The governor may appoint an assistant representative who shall act in his stead as the official representative of the State of Texas as a member of the commission.

(c) The representative shall take the oath of office prescribed by the constitution, which shall be filed with the Secretary of State.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.0031. ANNUAL REPORT. Before October 1 of each year, the office of the Interstate Oil Compact Commissioner for Texas shall prepare and file with the presiding officer of each house of the legislature a complete and detailed written report describing the activities of the office relating to this state's participation in the Interstate Compact to Conserve Oil and Gas and accounting for all funds received and disbursed by the office during the preceding fiscal year. The report must be included as a part of the annual financial report of the governor's office.

Added by Acts 1983, 68th Leg., p. 93, ch. 14, Sec. 1, eff. Aug. 29, 1983.

Sec. 90.004. EXTENSION. (a) The continuous extension of the Interstate Compact to Conserve Oil and Gas until September 1, 1951, by an agreement executed by the governor in the name of the State of Texas with other states currently members of the Interstate Oil Compact Commission was authorized by the legislature, subject to the approval of Congress, in:

(1) Chapter 217, Acts of the 45th Legislature, Regular Session, 1937;

(2) Chapter 2, Special Laws, page 527, Acts of the 46th Legislature, Regular Session, 1939;

(3) Chapter 63, Acts of the 47th Legislature, Regular Session, 1941;

(4) Chapter 15, Acts of the 48th Legislature, Regular Session, 1943; and

(5) Chapter 52, Acts of the 50th Legislature, Regular

Session, 1947.

(b) The governor may execute agreements in the name of the State of Texas for the further extension of the expiration date of the Interstate Compact to Conserve Oil and Gas.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.005. FORM OF AGREEMENT. The agreement to extend the Interstate Compact to Conserve Oil and Gas, which the governor is authorized to execute for the state, shall be in substance as follows:

"It is hereby agreed that the Interstate Compact to Conserve Oil and Gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, be and the same is hereby extended for a period of four (4) years from its date of expiration (September 1, 1947), this agreement to become effective when executed by any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico, and consent thereto is given by Congress."

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.006. WITHDRAWAL FROM COMPACT. (a) The governor may determine if and when it is in the best interest of the state to withdraw from the compact as provided by its terms on 60 days' notice.

(b) If the governor determines that the state should withdraw from the compact, he has full authority to give necessary notice and take any steps necessary and proper to effect the withdrawal of the State of Texas from the compact.

Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.007. TEXT OF COMPACT. The Interstate Compact to Conserve Oil and Gas reads as follows:

"AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

"ARTICLE I

"This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified, and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

"ARTICLE II

"The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

"ARTICLE III

"Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

"(a) The operation of any oil well with an inefficient gas-oil ratio;

"(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities;

"(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

"(d) The creation of unnecessary fire hazards;

"(e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

"(f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

"The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

"ARTICLE IV

"Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid order and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

"ARTICLE V

"It is not the purpose of this Compact to authorize the states

joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

"ARTICLE VI

"Each state joining herein shall appoint a representative to a Commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas; and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

"The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

"No action shall be taken by the Commission, except: (1) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

"ARTICLE VII

"No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

"ARTICLE VIII

"This Compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

"The representatives of the signatory states have signed this

agreement in a single original, which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

"This Compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified."

Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Gas" means natural gas.

(3) "Oil" means crude oil and crude petroleum oil.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.002. CRIMINAL PENALTY. (a) A person who wilfully or with criminal negligence violates Section 91.101 of this code or a rule, order, or permit of the commission issued under that section commits an offense.

(b) An offense under Subsection (a) of this section is punishable by a fine of not more than $10,000 a day for each day a violation is committed.

(c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Added by Acts 1983, 68th Leg., p. 5262, ch. 967, Sec. 9, eff. Sept. 1, 1983. Renumbered from Sec. 91.351 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(32), eff. Sept. 1, 1987.

Sec. 91.003. ADDITIONAL ENFORCEMENT AUTHORITY. (a) In

addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the manner and subject to the conditions provided in Chapters 81 and 85 of this code, including the authority to seek and obtain civil penalties and injunctive relief as provided by those chapters.

(b) If the enforcement authority in Section 81.054, Natural Resources Code, is used to institute a civil action alleging a violation of an NPDES permit issued under this chapter, the attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

Added by Acts 1983, 68th Leg., p. 5262, ch. 967, Sec. 9, eff. Sept. 1, 1983. Renumbered from Sec. 91.352 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(32), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 310, Sec. 6, eff. Aug. 28, 1995.

SUBCHAPTER B. DUTIES RELATING TO OIL AND GAS WELLS

Sec. 91.011. CASING. (a) Before drilling into the oil or gas bearing rock, the owner or operator of a well being drilled for oil or gas shall encase the well with good and sufficient wrought iron or steel casing or with any other material that meets standards adopted by the commission, particularly where wells could be subjected to corrosive elements or high pressures and temperatures, in a manner and to a depth that will exclude surface or fresh water from the lower part of the well from penetrating the oil or gas bearing rock, and if the well is drilled through the first into the lower oil or gas bearing rock, the well shall be cased in a manner and to a depth that will exclude fresh water above the last oil or gas bearing rock penetrated.

(b) The commission shall adopt rules regarding the depth of well casings necessary to meet the requirements of this section.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 704, Sec. 1, eff. Aug. 26, 1985.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.01, eff. September 1, 2011.

Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The commission shall issue, on request from an applicant for a permit for a well to be drilled into oil or gas bearing rock, a letter of determination stating the total depth of surface casing required for the well by Section 91.011.

(b) The commission may charge a fee in an amount to be determined by the commission for a letter of determination.

(c) The commission shall charge a fee not to exceed $75, in addition to the fee required by Subsection (b), for processing a request to expedite a letter of determination.

(d) The fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.02, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 13, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1075 (H.B. 3309), Sec. 3, eff. September 1, 2013.

Sec. 91.012. WATER IN WELLS. (a) In boring any well for oil or gas, if a person pierces any cap rock or other geological formation in a manner that will cause a flow of salt water or fresh water injurious to an already bored oil well or any oil or gas deposits and that will probably result in the injury of the oil or gas field or already bored oil or gas well, the person shall abandon immediately all work on the well if the flow of water cannot be cased off and shall plug and fill the well in a manner and with materials that will stop the flow of the water.

(b) No well owner or person boring a well described under Subsection (a) of this section may remove the casing from the drilled well until the flow of water is stopped either by casing off or plugging the well.

(c) The provisions of this section apply only if the cap rock or other formation is pierced at a depth below the horizon at which oil or gas has been discovered already.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.013. PLUGGING AND SHUTTING IN WELLS BY OTHERS. (a) If the owner of a well described in Subsection (a) of Section 91.012 of this code neglects or refuses to have the well plugged or shut in for more than 20 days after written notice is given to him, the owner or operator of adjacent or neighboring land may enter the premises on which the well is located and have the well plugged if it is an abandoned well or shut in if it is not abandoned, in the manner provided by law.

(b) Notice may be given to the owner of the well either by personal service on the owner or by posting the notice at a conspicuous place at or near the well.

(c) The reasonable cost and expense incurred in plugging or shutting in the well shall be paid by the owner of the well and may be recovered as debts of like amount are recovered under the law.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.014. PETITION TO RESTRAIN WASTE. (a) In addition to any other penalties, a district judge, in term time or vacation time, shall hear and determine any petition that is filed to restrain the waste of gas in violation of this subchapter and may issue mandatory or restraining orders that in his judgment are necessary.

(b) The petition may be filed by any citizen of this state and does not have to allege further financial interest of the petitioner in the state's natural resources than that possessed in common with all citizens of the state.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.015. PREVENTION OF WASTE. Operators, contractors, drillers, pipeline companies, and gas distributing companies that drill for or produce oil or gas or pipe oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil, gas, or both oil and gas in drilling and producing operations, storage, piping, and

distribution and shall not wastefully use oil or gas or allow oil or gas to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.016. CONFINING GAS TO ORIGINAL STRATUM. (a) If gas located in a gas-bearing stratum known to contain gas in paying quantities is encountered in a well drilled for oil or gas in this state, the gas shall be confined to its original stratum until it can be produced and used without waste.

(b) Gas-bearing strata shall be adequately protected from infiltrating water.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.017. USING GAS IN THE OPEN AIR. (a) Any person who uses gas in lights in the open air or in or around derricks shall turn off the gas not later than 8 a. m. of each day the lights are burning or are used and shall not turn the lights on or relight them between 8 a. m. and 5 p. m.

(b) The person consuming the gas and using the burners in the open air shall enclose them in glass globes or lamps.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.018. ILLUMINATION. No person, copartnership, or corporation may use gas for illuminating purposes in flambeau lights. The use of "jumbo" burners or other burners consuming no more gas than the "jumbo" burners is not prohibited.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.019. STANDARDS FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF ELECTRICAL POWER LINES. An operator shall construct, operate, and maintain an electrical power line serving a well site or other surface facility employed in operations incident to oil and gas development and production in accordance with the National Electrical Code published by the National Fire Protection Association and adopted by the Texas Commission of Licensing and Regulation under Chapter 1305, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 3, eff. September 1, 2009.

Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission shall work cooperatively with other appropriate state agencies to study and evaluate electronic access to geologic data and surface casing depths necessary to protect usable groundwater in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.03, eff. September 1, 2011.

SUBCHAPTER C. STANDARD GAS MEASUREMENT

Sec. 91.051. TITLE. This subchapter may be cited as the Standard Gas Measurement Law.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.052. DEFINITION. (a) The term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base.

(b) The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. If the conditions of pressure and temperature differ from this standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.053. COMMISSION DETERMINATION. The commission shall determine the average temperature of gas as produced in each oil and gas field in Texas, other variable factors necessary to calculate the metered volumes in accordance with the ideal gas laws, and the variable factors to correct for deviation from the ideal gas laws in each of the oil and gas fields in the state.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.054. NOTICE AND HEARING. On request of any interested person, the commission shall give proper notice and hold a public hearing before making a determination under Section 91.053 of this code.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.055. FINDINGS AND RULES. On making the determination, the commission promptly shall make its findings and shall adopt reasonable field rules that may be necessary to effectuate the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.056. USE OF FINDINGS AND FIELD RULES. (a) Any person may use the findings and field rules of the commission for any purposes under this subchapter.

(b) If the findings or field rules are not used as provided in Subsection (a) of this section in determining volumes under this subchapter, the volumes otherwise determined shall be corrected to the basis of the standard cubic foot of gas as defined in Section 91.052 of this code.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.057. METHOD OF REPORTING. A person required to report volumes of gas under the laws of this state shall report the volumes in number of standard cubic feet calculated and determined under the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.058. SALE, PURCHASE, DELIVERY, AND RECEIPT OF GAS. (a) Each sale, purchase, delivery, and receipt of gas by volume made in this state by, for, or on behalf of an oil and gas lease owner, royalty owner under a lease, or other mineral interest owner shall be made and the gas shall be measured, calculated, purchased, delivered, and accounted for on the basis of a standard cubic foot of gas as defined in this subchapter and determined under this subchapter.

(b) If the provisions of this subchapter operate to change the basis of measurement provided in existing contracts, the price for gas, including royalty gas, provided for in the contracts shall be adjusted to compensate for the change in the method of measuring the volume of gas delivered under the contracts if either the purchaser or seller so desires.

(c) This section is intended to protect parties to contracts in existence on October 4, 1949, so that the total amount of money paid for a volume of gas purchased or required to be accounted for under these contracts shall remain unaffected by this subchapter.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.059. CONSTITUTIONALITY. If the provisions of Section 91.058 of this code or any part of that section are held to be invalid or unconstitutional by the courts, the remaining portions of this subchapter shall become ineffective and inoperative.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 91.061. CIVIL SUIT. None of these provisions shall prevent an aggrieved person from maintaining a civil suit for damages in the county or counties in which the gas is produced.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.062. APPLICABILITY OF CERTAIN PROVISIONS. None of the provisions of Sections 91.058 through 91.061 of this code affect or apply to purchases or sales made on any basis other than a volume basis.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. PREVENTION OF POLLUTION

Text of section effective until delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.101. RULES AND ORDERS.

(a) To prevent pollution of surface water or subsurface water in the state, the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(3) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this subsection.

(b) Notwithstanding the provisions of Subsection (a) of this section, the authority granted to the commission by this section does not include the authority to adopt and enforce rules and orders or issue permits regarding the collection, storage, handling, transportation, processing, or disposal of waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Sec. 91.101. RULES AND ORDERS.

Text of section effective upon delegation of RCRA authority to

Railroad Commission of Texas

To prevent pollution of surface water or subsurface water in the state, the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(3) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this section.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Text of section effective until delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.1011. OIL AND GAS WASTE.

(a) In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(1) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(4) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(5) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel.

(b) "Oil and gas waste" includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material, but does not include waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

Added by Acts 1983, 68th Leg., p. 5060, ch. 967, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.1011. OIL AND GAS WASTE.

(a) In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(1) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(4) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(5) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel.

(b) "Oil and gas waste" includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material.

Added by Acts 1983, 68th Leg., p. 5060, ch. 967, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Sec. 91.1012. ACCESS TO PROPERTY AND RECORDS. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the quality of water in the state, to inspect and investigate conditions relating to development of rules, orders, or permits issuable under Section 91.101 of this code, to monitor compliance with a rule, permit, or other order of the commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 1983, 68th Leg., p 5260, ch. 967, Sec. 7, eff. Sept. 1, 1983.

Sec. 91.1013. APPLICATION FEES. (a) With each application for a fluid injection well permit, the applicant shall submit to the commission a nonrefundable fee of $200. In this section, "fluid injection well" means any well used to inject fluid or gas into the ground in connection with the exploration or production of oil or gas other than an oil and gas waste disposal well regulated by the commission pursuant to Chapter 27, Water Code.

(b) With each application for a permit to discharge to surface water under this chapter and commission rules, other than a permit for a discharge that meets National Pollutant Discharge Elimination System requirements for agricultural or wildlife use, the applicant shall submit to the commission a nonrefundable fee of $300.

(c) Fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 72, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 14, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1089, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 17, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.15, eff. September 28, 2011.

Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The commission shall adopt rules to establish groundwater protection requirements for operations that are within the jurisdiction of the commission, including requirements relating to the depth of surface casing for wells.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.04, eff. September 1, 2011.

Sec. 91.1017. LOCATION OF CERTAIN PITS. The commission by rule shall establish standards governing permissible locations for pits used by commercial oil and gas disposal facilities. The rules must include a history of flooding in the 10 years preceding the construction of the pit as a factor in determining whether a proposed location of a pit is permissible.

Added by Acts 2021, 87th Leg., R.S., Ch. 687 (H.B. 2201), Sec. 1, eff. September 1, 2021.

Sec. 91.102. ADDITIONAL PERSONNEL. The commission is directed to employ additional personnel necessary to administer this subchapter and related laws and rules and orders adopted by the commission.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983.

Sec. 91.103. PERSONS REQUIRED TO EXECUTE BOND, LETTER OF CREDIT, OR CASH DEPOSIT.

Any person, including any firm, partnership, joint stock association, corporation, or other organization, required to file an organization report under Section 91. 142 of this code shall execute and file with the commission a bond, letter of credit, or cash deposit.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 8, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 18, eff. Sept. 1, 2004.

Sec. 91.104. BONDS, LETTERS OF CREDIT, CASH DEPOSITS, AND WELL-SPECIFIC PLUGGING INSURANCE POLICIES. (a) The commission shall require a bond, letter of credit, or cash deposit to be filed with the commission as provided by Subsection (b).

(b) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is an inactive operator or who operates one or more wells must, at the time of filing or renewing an organization report required by Section 91.142, file:

(1) an individual bond as provided under Section 91.1041;

(2) a blanket bond as provided under Section 91.1042; or

(3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042.

(c) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who operates one or more wells is considered to have met that requirement for a well if the well bore is included in a well-specific plugging insurance policy that:

(1) is approved by the Texas Department of Insurance;

(2) names this state as the owner and contingent beneficiary of the policy;

(3) names a primary beneficiary who agrees to plug the specified well bore;

(4) is fully prepaid and cannot be canceled or surrendered;

(5) provides that the policy continues in effect until the specified well bore has been plugged;

(6) provides that benefits will be paid when, but not before, the specified well bore has been plugged in accordance with commission rules in effect at the time of plugging; and

(7) provides benefits that equal the greatest of:

(A) an amount equal to $2 for each foot of well depth, as determined in the manner specified by the commission, for the specified well;

(B) if the specified well is a bay well and regardless of whether the well is producing oil or gas, the amount required

under commission rules for a bay well that is not producing oil or gas;

(C) if the specified well is an offshore well and regardless of whether the well is producing oil or gas, the amount required under commission rules for an offshore well that is not producing oil or gas; or

(D) the payment otherwise due under the policy for plugging the well bore.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 9, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 30, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 19, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 20, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 490, Sec. 1, eff. Sept. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 1, eff. June 17, 2005.

Sec. 91.1041. INDIVIDUAL BOND.

(a) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who operates one or more wells may file a bond in an amount equal to $2 for each foot of well depth for each well.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of one or more bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a).

(c) When calculating under Subsection (a) the amount of the bond a person who operates one or more wells is required to file, the commission shall exclude a well if the well bore is included in a well-specific plugging insurance policy described by Section 91.104(c).

(d) If the inclusion of a bay or offshore well whose well bore is included in a well-specific plugging insurance policy described by Section 91.104(c) in the calculation under Subsection (b) of the amount of the bond an operator of one or more bay or offshore wells is required to file would result in an increase in the amount of the

bond that would otherwise be required, the rules must provide for the exclusion of the well from the calculation.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 10, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 21, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 22, eff. Sept. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 2, eff. June 17, 2005.

Sec. 91.1042. BLANKET BOND.

(a) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 may file a blanket bond to cover all wells for which a bond, letter of credit, or cash deposit is required as follows:

(1) a person who operates 10 or fewer wells shall file a $25,000 blanket bond;

(2) a person who operates more than 10 but fewer than 100 wells shall file a $50,000 blanket bond; and

(3) a person who operates 100 or more wells shall file a $250,000 blanket bond.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), or (3), as applicable.

(c) When calculating the number of an operator's wells for purposes of Subsection (a), the commission shall exclude a well if the well bore is included in a well-specific plugging insurance policy described by Section 91.104(c).

(d) If the inclusion of a bay or offshore well whose well bore is included in a well-specific plugging insurance policy described by Section 91.104(c) in the calculation under Subsection (b) of the amount of the bond an operator of bay or offshore wells is required to file would result in an increase in the amount of the bond that would otherwise be required, the rules must provide for the exclusion of the well from the calculation.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 10, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 23, eff. Sept. 1,

2001; Acts 2001, 77th Leg., ch. 1233, Sec. 24, eff. Sept. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 3, eff. June 17, 2005.

Sec. 91.105. BOND CONDITIONS. Each bond required by Section 91.103 shall be conditioned that the operator will plug and abandon all wells and control, abate, and clean up pollution associated with an operator's oil and gas activities covered under the bond in accordance with the law of the state and the permits, rules, and orders of the commission. This section does not apply to a well-specific plugging insurance policy described by Section 91.104(c).

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 91.106 by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 11, eff. Sept. 1, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 4, eff. June 17, 2005.

Sec. 91.106. EXECUTION OF BOND. Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and be continued in effect until the conditions have been met or release is authorized by the commission.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 91.107 by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983.

Sec. 91.107. NEW BOND, LETTER OF CREDIT, OR CASH DEPOSIT. If an active or inactive well is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to file a new bond, letter of credit, or cash deposit as provided by Section 91.104(b), and the financial security of the prior operator shall continue to be required and to remain in effect, and the commission may not approve the transfer of operatorship, until the new bond, letter of credit, or cash deposit is provided or the

commission determines that the bond, letter of credit, or cash deposit previously submitted to the commission by the person acquiring the well complies with this subchapter. A transfer of a well from one entity to another entity under common ownership is a transfer for purposes of this section. This section does not apply to a well bore that is included in a well-specific plugging insurance policy described by Section 91.104(c).

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 91.108 by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 12, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 25, 26, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 27, eff. Sept. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 5, eff. June 17, 2005.

Sec. 91.108. DEPOSIT AND USE OF FUNDS. Subject to the refund provisions of Section 91.1091, if applicable, proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies shall be deposited in the oil and gas regulation and cleanup fund and, notwithstanding Sections 81.068 and 91.113, may be used only for actual well plugging and surface remediation.

Added by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 15, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 28, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 5, eff. June 17, 2005.
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.16, eff. September 28, 2011.

Sec. 91.109. FINANCIAL SECURITY FOR PERSONS INVOLVED IN

ACTIVITIES OTHER THAN OPERATION OF WELLS. (a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091, proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

(b) In addition to the financial security requirements of Subsection (a), a person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is involved in activities other than the ownership or operation of wells must file the bond, letter of credit, or cash deposit at the time of filing or renewing an organization report required by Section 91.142 according to the following schedule:

(1) no bond, letter of credit, or cash deposit if the person is a:

(A) local distribution company;

(B) gas marketer;

(C) crude oil nominator;

(D) first purchaser;

(E) well servicing company;

(F) survey company;

(G) salt water hauler;

(H) gas nominator;

(I) gas purchaser; or

(J) well plugger; or

(2) a bond, letter of credit, or cash deposit in an amount not to exceed $25,000 if the person is involved in an activity that is not associated with the ownership or operation of wells and is not

listed in Subdivision (1).

(c) A person who engages in more than one activity or operation, including well operation, for which a bond, letter of credit, or cash deposit is required under this subchapter is not required to file a separate bond, letter of credit, or cash deposit for each activity or operation in which the person is engaged. The person is required to file a bond, letter of credit, or cash deposit only in the amount required for the activity or operation in which the person engages for which a bond, letter of credit, or cash deposit in the greatest amount is required. The bond, letter of credit, or cash deposit filed covers all of the activities and operations for which a bond, letter of credit, or cash deposit is required under this subchapter.

Added by Acts 1985, 69th Leg., ch. 464, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 17, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 29, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 490, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.17, eff. September 28, 2011.

Sec. 91.1091. REFUND. The commission shall refund the proceeds from a bond, letter of credit, or cash deposit required under this subchapter if:

(1) the conditions that caused the proceeds to be collected are corrected;

(2) all administrative, civil, and criminal penalties relating to those conditions are paid; and

(3) the commission has been reimbursed for all costs and expenses incurred by the commission in relation to those conditions.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 16, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 30, Sec. 2, eff. Aug. 30, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 5, eff. June 17, 2005.

Sec. 91.110. OIL AND GAS WASTE REDUCTION AND MINIMIZATION. To

encourage the reduction and minimization of oil and gas waste, the commission shall implement a program to:

(1) provide operators with training and technical assistance on oil and gas waste reduction and minimization;

(2) assist operators in developing oil and gas waste reduction and minimization plans; and

(3) by rule establish incentives for oil and gas waste reduction and minimization.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.06, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 6, eff. June 16, 1991.

Sec. 91.113. INVESTIGATION, ASSESSMENT, OR CLEANUP BY COMMISSION. (a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(b) For purposes of this section, "responsible person" means any operator or other person required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

(c) The commission or its employees or agents, on proper identification, may enter the land of another for the purpose of conducting a site investigation or environmental assessment or controlling or cleaning up oil and gas wastes or other substances or materials under this section.

(d) The conducting of a site investigation or environmental assessment or the control or cleanup of oil and gas wastes or other

substances or materials by the commission under this section does not prevent the commission from seeking penalties or other relief provided by law from any person who is required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

(e) The commission and its employees are not liable for any damages arising from an act or omission if the act or omission is part of a good-faith effort to carry out this section.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the oil and gas regulation and cleanup fund.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 120, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 57, Sec. 3, eff. May 10, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.18, eff. September 28, 2011.

Sec. 91.1131. RISK ASSESSMENT STANDARDS. (a) The commission by rule may establish risk assessment as the guide for:

(1) conducting site investigations and environmental assessments; and

(2) controlling and cleaning up oil and gas wastes and other substances and materials.

(b) Rules adopted under this section must provide for:

(1) determining whether an actual or potential risk exists

at a site;

(2) screening contaminants at the site to identify those that pose a risk;

(3) developing cleanup standards based on contamination levels that are protective of human health and the environment; and

(4) establishing a reporting mechanism for informing the commission regarding specific remediation activities.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 32, eff. Sept. 1, 2001.

Sec. 91.1132. PRIORITIZATION OF HIGH-RISK WELLS. The commission by rule shall develop a system for:

(1) identifying abandoned wells that pose a high risk of contaminating surface water or groundwater;

(2) periodically testing high-risk wells by conducting a fluid level test or, if necessary, a pressure test; and

(3) giving priority to plugging high-risk wells with compromised casings.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 32, eff. Sept. 1, 2001.

Sec. 91.114. ACCEPTANCE OF ORGANIZATION REPORT OR APPLICATION FOR PERMIT; APPROVAL OF CERTIFICATE OF COMPLIANCE; REVOCATION. (a) Except as provided by Subsection (d), the commission may not accept an organization report required under Section 91.142 or an application for a permit under this Chapter, Chapter 85, or Chapter 26, 27, or 29, Water Code, or approve a certificate of compliance under Section 91.701 if:

(1) the organization that submitted the report, application, or certificate violated a statute or commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) a person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization and during that period of ownership or control the other organization violated a statute or commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(b) An organization has committed a violation if:

(1) a final judgment or final administrative order finding the violation has been entered against the organization and all appeals have been exhausted; or

(2) the commission and the organization have entered into an agreed order relating to the alleged violation.

(c) Regardless of whether the person's name appears or is required to appear on the organization report required by Section 91.142, a person holds a position of ownership or control in an organization if:

(1) the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of a sole proprietorship organization;

(D) the owner of at least 25 percent of the beneficial interest in the organization; or

(E) a trustee of the organization; or

(2) the person has been determined by a final judgment or final administrative order to have exerted actual control over the organization.

(d) The commission shall accept the report or application or approve the certificate if:

(1) the conditions that constituted the violation are corrected or are being corrected in accordance with a schedule to which the commission and the organization have agreed;

(2) all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the state relating to those conditions are paid or are being paid in accordance with a payment schedule to which the commission and the organization have agreed; and

(3) the report, application, or certificate is in compliance with all other requirements of law and commission rules.

(e) If a report or application is rejected or a certificate is disapproved under this section, the commission shall provide the organization with a written statement explaining the reason for the rejection or disapproval.

(f) Notwithstanding Subsection (a), the commission may issue a permit to an organization described by Subsection (a) for a term specified by the commission if the permit is necessary to remedy a violation of law or commission rules.

(g) A fee tendered in connection with a report or application that is rejected under this section is nonrefundable.

(h) If the commission is prohibited by Subsection (a) from accepting an organization's organization report or application or approving the organization's certificate or would be prohibited from doing so by that subsection if the organization submitted a report, application, or certificate, the commission, after notice and opportunity for a hearing, by order may revoke:

(1) the organization's organization report filed under Section 91.142;

(2) a permit issued to the organization under this chapter, Chapter 85, or Chapter 26, 27, or 29, Water Code; or

(3) any certificate of compliance approved under Section 91.701.

(i) An order under Subsection (h) shall provide the organization a reasonable period of time to comply with the judgment or order finding the violation before the revocation takes effect.

(j) On revocation of its organization report, an organization may not perform any activities under the jurisdiction of the commission under this title or Chapter 26, 27, or 29, Water Code, except as necessary to remedy a violation of law or commission rules and as authorized by the commission.

(k) The commission may not revoke an organization's organization report, permit, or certificate of compliance under Subsection (h) if it finds that the organization has fulfilled the conditions set out in Subsection (d).

(l) In determining whether or not to revoke an organization's organization report, permit, or certificate of compliance under Subsection (h), the commission shall consider the organization's history of previous violations, the seriousness of previous violations, any hazard to the health or safety of the public, and the demonstrated good faith of the organization.

(m) Revocation of an organization's organization report, permit, or certificate does not relieve the organization of any existing or future duty under law, rules, or permit conditions to:

(1) protect surface or subsurface water from pollution;

(2) properly dispose of oil and gas waste; or

(3) clean up unpermitted discharges of oil and gas waste.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 13, eff. Sept. 1, 1991.

Renumbered from Sec. 91.110 by Acts 1993, 73rd Leg., ch. 107, Sec. 10.01(10), eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 617, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 121, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 30, Sec. 3, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 956, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 5, eff. September 1, 2007.

Sec. 91.115. FIRST LIEN ON EQUIPMENT AND STORED HYDROCARBONS OR DRILL CUTTINGS. (a) If a responsible person fails to clean up a site or facility that has ceased oil and gas operations under the commission's jurisdiction on or before the date the site or facility is required to be cleaned up by law or by a rule adopted or order issued by the commission, the state has a first lien, superior to all preexisting and subsequent liens and security interests, on the responsible person's interest in any hydrocarbons or drill cuttings stored at the site or facility and in any equipment that is:

(1) located at the site or facility; and

(2) used by the responsible person in connection with the activity that generated the pollution.

(b) The lien is in the amount of the total costs of cleaning up the oil and gas wastes or other substances from the site or facility and arises on the date the site or facility is required by law or by a rule or order of the commission to be cleaned up.

(c) The commission may foreclose on the lien by entering into a contract to clean up the site or facility. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders before entering into a contract to clean up the site or facility.

(d) The lien is extinguished if the site or facility is cleaned up in accordance with commission rules by any person before the commission enters into a contract to clean up the site or facility.

(e) The lien is extinguished as to any stored hydrocarbons or drill cuttings or items of equipment that are lawfully removed by any person other than the operator or a nonoperator according to a lien, lease, judgment, written contract, or security agreement before the commission enters into a cleanup contract. An item of equipment may

not be removed from an abandoned site or facility if the removal will cause the release of a substance that may cause pollution unless the substance is lawfully disposed of.

(f) Equipment or stored hydrocarbons or drill cuttings subject to a lien under this section are presumed to have been abandoned on the date the commission enters into a contract to clean up the site or facility on which the equipment, hydrocarbons, or drill cuttings are located.

(f-1) The commission may dispose of the abandoned equipment or stored hydrocarbons in accordance with the provisions of Sections 89.085, 89.086, and 89.087 for the disposition of well-site equipment and hydrocarbons.

(f-2) The commission may dispose of the abandoned stored drill cuttings by contracting with a person to treat the drill cuttings at the site or facility for a subsequent beneficial use and selling the treated drill cuttings at a public auction or a public or private sale. Sections 89.085(c)-(i), 89.086, and 89.087 apply to the disposition of drill cuttings under this subsection in the same manner as those sections apply to the disposition of hydrocarbons.

(g) In this section:

(1) "Drill cuttings" has the meaning assigned by Section 123.001.

(2) "Responsible person" has the meaning assigned by Section 91.113.

(3) "Treat" means to use a manufacturing, mechanical, thermal, or chemical process other than sizing, shaping, diluting, or sorting.

(h) The lien provided by this section, as it relates to stored hydrocarbons, shall be subject to and inferior to any lien in favor of the State of Texas to secure royalty payments.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 7, eff. Jan. 1, 1994.
Amended by Acts 2003, 78th Leg., ch. 1121, Sec. 1, 2, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 57 (S.B. 1260), Sec. 1, eff. May 18, 2021.

Acts 2021, 87th Leg., R.S., Ch. 57 (S.B. 1260), Sec. 2, eff. May 18, 2021.

Sec. 91.116. NOTICE OF COMMERCIAL SURFACE DISPOSAL FACILITY PERMIT APPLICATION. (a) In this section, "commercial surface disposal facility" means a facility whose primary business purpose is to provide, for compensation, surface disposal of oil field fluids or oil and gas wastes, including land application for treatment and disposal.

(b) A person who files an application for a permit for a commercial surface disposal facility shall publish notice of the application in accordance with this section.

(c) The notice must include:

(1) the date the application was filed;

(2) a description of the location of the site for which the application was made, including the county in which the site is located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(3) the name of the owner of the site;

(4) the name of the applicant;

(5) the type of fluid or waste to be disposed of at the facility;

(6) the disposal method proposed; and

(7) the procedure for protesting the application.

(d) The notice must be published:

(1) at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed and not later than the 30th day after the date on which the application is filed; and

(2) in a newspaper of general circulation in the county in which the proposed disposal would occur.

Added by Acts 1999, 76th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1999.

Sec. 91.117. PUBLIC INFORMATION HEARING ON APPLICATION FOR COMMERCIAL SURFACE DISPOSAL FACILITY PERMIT. (a) In this section, "commercial surface disposal facility" has the meaning assigned by Section 91.116.

(b) The commission may hold a public meeting to receive public comment on an application for a commercial surface disposal facility if the commission determines a public meeting is in the public interest.

(c) The meeting must be held in the county in which the proposed facility would be located.

Added by Acts 1999, 76th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. BOOKS, RECORDS, AND REPORTS

Sec. 91.141. BOOKS AND RECORDS. (a) Owners and operators of oil and gas wells shall keep books that show accurately:

(1) the amount of sold and unsold stock;

(2) the amount of promotion money paid;

(3) the amount of oil and gas produced and disposed of and the price for which the oil and gas was sold;

(4) the receipts from the sale or transfer of leases or other property; and

(5) disbursements made in connection with or for the benefit of the business.

(b) The books shall be kept open for the inspection of the commission or any accredited representative of the commission and any stockholder or shareholder or royalty owner in the business.

(c) The owners and operators of oil and gas wells shall report the information to the commission for its information if required by the commission to do so.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.142. REPORT TO COMMISSION. (a) A person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating wholly or partially in this state and acting as principal or agent for another for the purpose of performing operations which are within the jurisdiction of the commission shall file immediately with the commission:

(1) the name of the company or organization;

(2) the post-office address of the company or organization;

(3) the plan under which the company or organization was organized;

(4) the names and post-office addresses of the trustee or trustees of the company or organization;

(5) the names, unique identifying numbers such as driver's

license numbers, and post-office addresses of the officers and directors; and

(6) if required by Subsection (b) of this section, the name and address of the resident agent.

(b) Any foreign or nonresident entity listed in Subsection (a) of this section shall maintain or designate a resident agent upon whom any process, notice, or demand required or permitted by law to be served upon such entity may be served.

(c) If any such entity required by the terms of this section to maintain or designate such agent shall fail to do so, then and in such event, the organization report required to be filed with the commission is not valid.

(d) Failure by any such entity listed in Subsection (a) of this section to answer such process or demand shall render the organization report invalid.

(e) The commission shall require an entity described by Subsection (a) of this section to refile an organization report annually according to a schedule established by the commission.

(f) If an entity described by Subsection (a) does not maintain on file with the commission an organization report and financial security as required by this chapter:

(1) the entity may not perform operations under the jurisdiction of the commission except as necessary to remedy a violation of law or commission rules and as authorized by the commission; and

(2) the commission, on written notice, may suspend:

(A) any permits held by the entity; or

(B) any certificates of compliance approved under Subchapter P.

(g) An organization report filed under this section must be accompanied by the following fee:

(1) for an operator of not more than 25 wells, $300;

(2) for an operator of more than 25 but not more than 100 wells, $500;

(3) for an operator of more than 100 wells, $1,000;

(4) for an operator of one or more natural gas pipelines as classified by the commission, $225;

(5) for an operator of one or more service activities or facilities who does not operate any wells, an amount determined by the commission but not less than $300 or more than $500;

(6) for an operator of one or more liquids pipelines as classified by the commission who does not operate any wells, an amount determined by the commission but not less than $425 or more than $625;

(7) for an operator of one or more service activities or facilities, including liquids pipelines as classified by the commission, who also operates one or more wells, an amount determined by the commission based on the sum of the amounts provided by the applicable subdivisions of this subsection but not less than $425 or more than $1,125; and

(8) for an entity not currently performing operations under the jurisdiction of the commission, $300.

(h) To enable the commission to better protect the state's resources, an entity described by Subsection (a) or an affiliate of such an entity performing operations within the jurisdiction of the commission that files for federal bankruptcy protection shall give written notice to the commission of that action by submitting the notice to the office of general counsel not later than the 30th day after the date of filing.

Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 398, Sec. 1, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 121, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 33, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 490, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 626, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 6, eff. September 1, 2007.

Sec. 91.143. FALSE APPLICATIONS, REPORTS, AND DOCUMENTS AND TAMPERING WITH GAUGES. (a) A person may not:

(1) make or subscribe any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;

(2) aid or assist in, or procure, counsel, or advise the

preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter, knowing them to be fraudulent, false, or incorrect in any material matter;

(3) knowingly simulate or falsely or fraudulently execute or sign such an application, report, or other document;

(4) knowingly procure these applications, reports, or other documents to be falsely or fraudulently executed, or advise, aid in, or connive at this execution; or

(5) knowingly render inaccurate any monitoring device required to be maintained by a commission rule, order, or permit.

(b) A person commits an offense if the person violates this section. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not less than two years or more than five years;

(2) a fine of not more than $10,000; or

(3) both the imprisonment and the fine.

(c) If other penalties prescribed in Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, overlap offenses that are also punishable under this section, the penalties prescribed in this section shall be in addition to other penalties.

(d) No application, report, or other document required or permitted to be filed with the commission under Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, may be required to be under oath, verification, acknowledgment, or affirmation.

(e) The commission may impose an administrative penalty in the manner provided by Sections 81.0531-81.0534 on a person who violates this section. The amount of the penalty may not exceed $1,000 for each violation.

Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1999, 76th Leg., ch. 31, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.136, eff. September 1, 2009.

SUBCHAPTER F. UNDERGROUND NATURAL GAS STORAGE AND CONSERVATION

Sec. 91.171. SHORT TITLE. This subchapter may be cited as the Underground Natural Gas Storage and Conservation Act of 1977.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.172. DECLARATION OF POLICY. The underground storage of natural gas promotes the conservation of natural gas, permits the building of reserves for orderly withdrawal in periods of peak demand, makes more readily available natural gas resources to residential, commercial, and industrial customers of this state, provides a better year-round market to the various gas fields, and promotes the public interest and welfare of this state.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.173. DEFINITIONS. In this subchapter:

(1) "Person" means any natural person, partnership or other combination of natural persons, corporation, group of corporations, trust, or governmental entity.

(2) "Gas utility" means a gas utility as defined in Section 101.003, Utilities Code, or Subchapter A, Chapter 121, Utilities Code.

(3) "Natural gas" means any gaseous material composed predominantly of the following hydrocarbons or mixtures thereof: methane, ethane, propane, butane (normal or isobutane), in either its original or manufactured state, or gas which has been processed to separate it into one or more of its component parts after its withdrawal from the earth.

(4) "Native gas" means:

(A) natural gas which has not previously been withdrawn from the earth; or

(B) natural gas which has been withdrawn from the storage facility, processed, and reinjected into the storage facility.

(5) "Storage facility" means any subsurface sand, stratum, or formation used or to be used for the underground storage of natural gas and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the underground storage of natural gas.

(6) "Storer" means (A) a gas utility, (B) a wholly owned subsidiary of a gas utility, (C) the parent corporation of a gas utility, or (D) a wholly owned subsidiary of a parent corporation which also wholly owns a subsidiary gas utility, but a nonutility storer included in category (B), (C), or (D) must operate the storage facility pursuant to a contract with its affiliated gas utility that provides that all withdrawals of natural gas from the storage facility must be delivered to the affiliated gas utility.

(7) "Substantially depleted" means that at least 75 percent of the estimated volume of recoverable native gas reserves originally in place in any gas-bearing sand, formation, or stratum have been withdrawn from the sand, formation, or stratum.

(8) "Interested person" means any person who enters an appearance at the commission hearing required by Section 91.174 of this code.

(9) "Commission" means the Railroad Commission of Texas.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.41, eff. Sept. 1, 1999.

Sec. 91.174. FINDINGS OF COMMISSION. (a) Any storer desiring to exercise the right of eminent domain for the acquisition of a storage facility shall, as a condition precedent to the filing of its petition in the appropriate court, obtain from the commission an order finding:

(1) that the underground formation or stratum sought to be acquired is classified by the commission as a gas reservoir and is suitable for the underground storage of natural gas and that the storage of natural gas is necessary for the gas utility to provide adequate service to the public and is in the public interest;

(2) that the use of the formation or stratum as a storage facility will cause no injury to surface or underground water resources;

(3) that the formation or stratum does not contain native gas producible in paying quantities unless the recoverable volumes of native gas originally in place are substantially depleted and unless the formation or stratum has a greater value of ultimate use to the consuming public as a storage facility to ensure an adequate supply of natural gas or for the conservation of natural gas than the production of native gas which remains;

(4) the extent of the horizontal limits of the reservoir expected to be penetrated by displaced or injected gas; and

(5) that no portion of the formation or stratum sought to be acquired has been condemned or is being utilized for the injection, storage, and withdrawal of gas by others.

(b) The designation of a storage facility does not prevent any storer from instituting additional proceedings in the event it is later determined that the underground reservoir should be extended to prevent the escape, displacement, or withdrawal by others of injected gas.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.175. COMMISSION JURISDICTION. The commission shall have jurisdiction to supervise the construction and operation of all storage facilities formed pursuant to this subchapter, and in addition to the findings required by Section 91.174 of this code, the commission shall include in any order of approval a requirement that the storer file a report each month, including each month prior to the time the storage facility is in operation, with the commission showing, for that month, the volume of gas injected and stored gas withdrawn from storage.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.176. WITHDRAWAL OF NATIVE GAS. A storer may withdraw from storage injected and stored gas as market demand dictates. However, any time a storer's withdrawals from a storage facility equal the volume of gas injected for storage, the storer shall not withdraw additional gas from the storage facility without first

obtaining specific authority from the commission.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.177. STORAGE OPERATIONS MUST BE BONA FIDE. (a) A storer must initiate injection operations for gas storage within 12 months after the condemnation order of the court becomes final and storage operations must continue with reasonable diligence after that time.

(b) Should the monthly reports to the commission indicate that bona fide underground gas storage operations are not being conducted, the commission may, on its own motion or on motion of any interested person, schedule a public hearing, giving the storer the opportunity to show cause why the commission approval of the project should not be withdrawn.

(c) If the commission finds that the storage project is not being conducted in a bona fide manner, it shall issue an order withdrawing approval of the storage facility, and all property, both mineral and surface, that was condemned by the storer shall revert to those who owned the property at the time of condemnation or their successors.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.178. RELOCATION OF FACILITIES. In the event the acquisition or operation of a storage facility acquired through the exercise of the power of eminent domain requires the relocation or alteration of any railroad, electric, telegraph, telephone, or pipeline lines or facilities, the expense of the relocation or alteration shall be borne by the storer. The expense of relocation means the actual cost incurred in providing a comparable replacement line or facility, less net salvage value from the sale or other disposition of the old facility.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.179. APPROPRIATION OF STORAGE FACILITIES; LIMITATIONS. After an order of the commission is issued approving a storage facility, a storer may condemn without further attack as to its right to condemn, any subsurface sand, stratum, or formation for the underground storage of natural gas, condemning all mineral and royalty rights as are reasonably necessary for the operation of the storage facility, subject to the limitations of this subchapter, and the storer may condemn any other interests in property that may be required, including interests in the surface estate in the sand, stratum, or formation reasonably necessary to the operation of the storage facility, provided that:

(1) no part of a reservoir is subject to condemnation unless the storer has acquired by option, lease, conveyance, or other negotiated means at least 66-2/3 percent of the ownership of minerals, including working interests, and 66-2/3 percent of the ownership of the royalty interests, computed in relation to the surface area overlying the part of the reservoir which as found by the commission to be expected to be penetrated by displaced or injected gas;

(2) no dwelling, barn, store, or other building is subject to condemnation; and

(3) the right of condemnation is without prejudice to the rights of the owners or holders of other rights or interests of land to drill through the storage facility under such terms and conditions as the commission may prescribe for the purpose of protecting the storage facility against pollution or escape of natural gas and is without prejudice to the rights of the owners or holders of other rights or interests of the land to all other uses so long as those uses do not interfere with the operation of the storage facility.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.180. INSTITUTION OF CONDEMNATION PROCEEDINGS. (a) The finding by the commission that underground storage is in the public interest is binding on all persons whose property the storer has the right to condemn. After that finding of the commission, the storer has the right to condemn all of the underground storage area and any surface area required for the use and enjoyment of the storage

facility.

(b) The storer shall initiate eminent domain proceedings in the court having jurisdiction in the area in which a portion of the land is situated. The petition shall set forth the purpose for which the property is sought to be acquired, a description of the sand, stratum, or formation and of the land under which it is alleged to be contained, the names of the owners as shown by the deed records of the county, and a description of all other property and rights sought to be appropriated for use in connection with the storage facility, including any parts of the surface necessary for any facilities incidental to the operation of the storage facility.

(c) The petition shall state facts showing that the storer has obtained the findings of the commission required by Section 91.174 of this code, that the storer in good faith has been unable to acquire the rights sought to be appropriated, that the storer has acquired, prior to the filing of the petition, by any means other than condemnation, at least 66-2/3 percent of the ownership of the minerals, including working interests, and 66-2/3 percent of the royalty interests of the property rights in the storage facility required for that purpose, and shall describe the surface area overlying the storage facility the storer seeks to acquire and the names of the owners of those rights and interests.

(d) Where more than one tract of land is involved, all or any tracts may be joined in one proceeding, without prejudice to the right of the storer to institute additional proceedings; provided, that the failure to make service upon a defendant does not affect the right of the storer to proceed against any or all other of the defendants upon whom service has been made.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.181. EXERCISE OF RIGHT OF EMINENT DOMAIN. All proceedings in connection with the condemnation and acquisition of storage facilities shall be in accordance with Articles 3264 through 3271, Revised Civil Statutes of Texas, 1925, as amended, and to the extent of any conflict between those articles and this subchapter, the provisions of this subchapter prevail.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June

13, 1979.

Sec. 91.182. OWNERSHIP OF STORED GAS. All natural gas in the stratum condemned which is not native gas, and which is subsequently injected into storage facilities is personal property and is the property of the injector or its assigns, and in no event is the gas subject to the right of the owner of the surface of the land or of any mineral or royalty owner's interest under which the storage facilities lie, or of any person other than the injector to produce, take, reduce to possession, either by means of the law of capture or otherwise, waste, or otherwise interfere with or exercise any control over a storage facility. Upon failure, neglect, or refusal of the person to comply with this section, the storer has the right to compel compliance by injunction or by other appropriate relief by application to a court of competent jurisdiction.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.183. RIGHTS OF PURCHASERS OF NATIVE GAS. (a) In the event there are remaining reserves of native gas in the storage facility which are dedicated to a purchaser and the purchaser and storer are unable to agree on an equitable settlement of rights with respect to the remaining native gas within a period of time that will prevent interference with the operation of the storage facility, the storer or purchaser may apply to the commission for an adjudication concerning remaining reserves of native gas.

(b) Upon application, the commission shall direct a settlement of remaining reserves of native gas that is equitable to all parties, but which does not interfere with the public benefits arising from the operation of the storage facility.

(c) In addition to any other disposition that is equitable to all parties, the commission may make a finding of the quantity of remaining recoverable native gas and an allocation of future production on a reasonable production schedule and order delivery to the purchaser by the storer of the amounts of native gas that the commission finds would have been taken by the purchaser during the term of the purchase agreement.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.184. ABANDONMENT. (a) When a storer has permanently abandoned the storage facility, the storer shall file with the commission a notice of abandonment, and shall file an instrument in the deed records in the appropriate county or counties, stating that the storage has ceased, and that all property, both mineral and surface, condemned by the storer has reverted to those who owned the property at the time of condemnation, or their heirs, successors, or assigns.

(b) The storer shall also file in the deed records in the appropriate county or counties a list of the owners of the mineral, royalty, and surface owners to whom the various interests have reverted, together with an affidavit that the storer has compiled the list from a current examination of title records and that the list is true and correct to the best of the knowledge of the affiant.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

SUBCHAPTER G. UNDERGROUND HYDROCARBON STORAGE

Sec. 91.201. DEFINITIONS. In this subchapter:

(1) "Underground hydrocarbon storage facility" or "storage facility" means a subsurface sand, stratum, or geological formation used for the underground storage of hydrocarbons, and includes surface or subsurface rights and appurtenances necessary for the operation of the facility.

(2) "Hydrocarbons" means oil, gas, or products of oil or gas, as those terms are defined by Section 85.001 of this code.

(3) "Waste" means surface or subsurface waste, as defined by Section 85.046 of this code, of hydrocarbons, including, but not limited to, the physical or economic waste or loss of hydrocarbons in the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

(4) "Commission" means the Railroad Commission of Texas.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.202. POLICY. It is the policy of this state and the purpose of this subchapter to prevent the waste of oil, gas, and products of oil or gas, to protect the ground and surface water of the state from unreasonable degradation, and to protect the public health, welfare, and physical property in the creation, operation, maintenance, and abandonment of underground hydrocarbon storage facilities.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.203. AUTHORITY; RULES. (a) The commission shall supervise or monitor the construction, operation, maintenance, and closure of storage facilities.

(b) The commission may adopt reasonable rules or issue reasonable orders to implement the policies of this subchapter and may establish minimum standards regulating the creation, operation, maintenance, and abandonment of underground hydrocarbon storage facilities. The rules and standards of the commission may include, but are not limited to, requirements for monitoring, recordkeeping, and reporting, the drilling and creation of the facility, selecting the site of the facility, and for proper closure of the facility on abandonment.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.204. PERMITS. (a) The commission by rule may require a person who creates, operates, maintains, or abandons an underground hydrocarbon storage facility to obtain a permit from the commission. A permit issued by the commission may contain provisions and conditions necessary to implement the policies of this subchapter. The commission may adopt reasonable rules for the amendment, revocation, transfer, or suspension of a permit.

(b) A person desiring to obtain a permit or to amend a permit must submit an application containing the information required by the commission.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.205. AUTHORITY TO ENTER PROPERTY. Members and employees of the commission may enter public or private property at reasonable times to inspect and investigate conditions relating to the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility. The members and employees may not enter private property having management in residence without notifying the management of their presence and shall observe safety, internal security, and fire protection rules of the establishment being inspected.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.206. AUTHORITY TO EXAMINE RECORDS. Members and employees of the commission may examine and copy during regular business hours records pertaining to the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.207. NOTICE OF NONCOMPLIANCE. (a) On receipt of notice from the commission that a person creating, operating, maintaining, or abandoning an underground hydrocarbon storage facility has violated this subchapter or a term, condition, or provision of a permit issued under this subchapter, an operator of the pipeline or other carrier connected to the facility shall disconnect from the facility and shall remain disconnected from the facility until notice of compliance has been received from the commission.

(b) On receipt of notice from the commission of a violation of this subchapter, a rule of the commission issued under this subchapter, or a term, condition, or provision of a permit issued under this subchapter, the owner or operator of an underground

hydrocarbon storage facility shall discontinue any removal of hydrocarbons from the facility or any addition of hydrocarbons to the facility and may not begin or renew removal of hydrocarbons from the facility or begin or renew addition of hydrocarbons to the facility until notice of compliance has been received from the commission.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

SUBCHAPTER H. UNDERGROUND STORAGE FACILITIES FOR NATURAL GAS

Sec. 91.251. DEFINITIONS. In this subchapter:

(1) "Intrastate gas pipeline facility" has the meaning assigned by the United States Department of Transportation under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(2) "Natural gas" means any gaseous material composed primarily of methane in either its original or its manufactured state.

(3) "Natural gas underground storage" means the storage of natural gas beneath the surface of the earth in a formation, stratum, or reservoir.

(4) "Storage facility" has the meaning assigned by Section 91.173.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 1, eff. September 1, 2013.

Sec. 91.252. COMMISSION JURISDICTION. (a) The commission has jurisdiction over:

(1) natural gas underground storage; and

(2) surface and subsurface equipment and facilities used for natural gas underground storage.

(b) This subchapter does not apply to a storage facility that is:

(1) part of an interstate gas pipeline facility as defined by the United States Department of Transportation; and

(2) subject to federal minimum standards adopted under 49

U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 2, eff. September 1, 2013.

Sec. 91.253. COMMISSION ENFORCEMENT. (a) In addition to other authority specifically granted to the commission under this subchapter, the commission may enforce this subchapter or a rule adopted or an order or permit issued under this subchapter as provided by Section 91.207.

(b) Section 91.003 does not apply to this subchapter.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.254. INSPECTION; EXAMINATION; CREDENTIALS. (a) The commission may inspect a storage facility for compliance with the safety standards and practices and the recordkeeping requirements adopted under Sections 91.255, 91.257, and 91.258.

(b) To conduct an inspection under this section, a commissioner or a designated commission employee or agent may enter property on which a storage facility is located at a reasonable time and in a reasonable manner to examine:

(1) the facility and any related buildings or equipment; and

(2) the records required to be maintained at the storage facility under Section 91.258.

(c) A commissioner or a commission employee or agent may not enter the premises of a storage facility having personnel on the premises of the facility unless proper credentials are first presented to the person at the facility who is in charge of the property.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.255. SAFETY STANDARDS AND PRACTICES. (a) The

commission by rule shall adopt safety standards and practices for natural gas underground storage and storage facilities. The standards and practices must:

(1) require the installation and periodic testing of safety devices;

(2) establish emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public;

(3) establish fire prevention and response procedures;

(4) require training for the employees of the storage facility on the safe operation of the storage facility; and

(5) establish any other safety standard or practice that is reasonable and necessary for underground natural gas storage and the safe construction, operation, and maintenance of a storage facility.

(b) The commission may adopt different standards and practices for different types of storage facilities and may distinguish among natural gas underground storage in salt dome caverns, depleted reservoirs, and embedded salt formations.

(c) The commission may grant an exception to a standard or practice adopted under this section in a permit or amended permit issued to a storage facility if the exception will not constitute an unreasonable danger to the public.

(d) The commission may impose an additional standard or practice in a permit or amended permit issued to a storage facility.

(e) A safety standard or practice adopted by the commission for a storage facility that is part of an intrastate gas pipeline facility must be compatible with federal minimum standards.

(f) The commission shall require that records of safety device tests required by Subsection (a)(1) be:

(1) filed with the commission; or

(2) maintained by the owner or operator and made available for inspection by the commission.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.256. LIMITATION ON POWERS OF MUNICIPALITIES AND COUNTIES. A municipality or county may not adopt or enforce an ordinance that establishes a safety standard or practice applicable to a storage facility that is subject to regulation under this

subchapter, another state law, or a federal law.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.257. SAFETY PROCEDURE MANUAL. The commission may require the owner or operator of a storage facility to prepare a safety procedure manual for each storage facility and to:

(1) file a copy of the manual with the commission; or

(2) make the manual available for inspection under Section 91.254.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.258. RECORDS; REPORTS. (a) An owner or operator of a storage facility shall:

(1) maintain records and make reports relating to construction, operation, or maintenance of the facility as required by commission rule; and

(2) provide any other information required by the commission relating to construction, operation, or maintenance of the facility.

(b) The commission may provide forms for reports required under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.259. DAMAGE TO STORAGE FACILITY; DISABLING A SAFETY DEVICE. A person may not:

(1) intentionally damage or destroy a storage facility; or

(2) disable a safety device in a storage facility except to:

(A) repair, maintain, test, or replace the device; or

(B) conduct other activities that are reasonably necessary for the safe operation of the storage facility.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.260. INJUNCTION; CIVIL PENALTY. (a) The attorney general, at the request of the commission, shall bring a civil action against a person who has violated or is violating this subchapter or a rule adopted or an order or permit issued under this subchapter for:

(1) injunctive relief to restrain the person from the violation;

(2) the assessment and recovery of a civil penalty for a violation; or

(3) both injunctive relief and a civil penalty.

(b) A civil penalty assessed under this section may not exceed $25,000 for each violation.

(c) Each day of a continuing violation may be considered a separate violation for the purpose of penalty assessment.

(d) The maximum penalty assessed for a related series of violations may not exceed $500,000.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.261. ADMINISTRATIVE PENALTY. (a) The commission may assess, as provided by this section and Sections 91.262, 91.263, and 91.264, an administrative penalty against a person who violates this subchapter or a rule adopted or an order or permit issued under this subchapter.

(b) Except as provided by Subsection (c), the penalty for each violation may be in an amount not to exceed $10,000. The maximum penalty assessed under this subsection for a related series of violations may not exceed $200,000.

(c) The penalty for each violation of Section 91.259 may be in an amount not to exceed $25,000. The maximum penalty assessed under this subsection for a continuing violation may not exceed $300,000.

(d) Each day a violation continues or occurs may be considered a separate violation for the purpose of penalty assessment under Subsection (b) or (c).

(e) In determining the amount of the penalty, the commission shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic

welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.262. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after the person charged under Section 91.261 has been given an opportunity for a public hearing. If a public hearing is held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the penalty amount warranted by the violation, incorporating, if appropriate, an order requiring that the penalty be paid. If appropriate, the commission shall consolidate the hearing with other proceedings.

(b) If a person charged under Section 91.261 fails to take advantage of the opportunity for a public hearing, a penalty may be assessed by the commission after it has determined that a violation occurred and the penalty amount warranted by the violation. The commission shall then issue an order requiring the penalty to be paid.

(c) The commission shall give notice of the commission's order to the person charged with the violation as provided by Chapter 2001, Government Code. The notice must include a statement of the right of the person to judicial review of the order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.263. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date on which the commission's order imposing an administrative penalty becomes final as provided by Section 2001.144, Government Code, the person charged with the violation shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for

judicial review contesting:

(A) the amount of the penalty;

(B) the fact of the violation; or

(C) both the amount of the penalty and the fact of the violation; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting:

(A) the amount of the penalty;

(B) the fact of the violation; or

(C) both the amount of the penalty and the fact of the violation.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay the enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond in a form approved by the court that is effective until all judicial review of the order or decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) delivering a copy of the affidavit to the commission.

(c) If the commission receives a copy of an affidavit under Subsection (b), the commission may file a contest to the affidavit with the court not later than the fifth day after the date the copy is received. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the penalty is not stayed, the commission may refer the matter to the attorney general for enforcement.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.264. JUDICIAL REVIEW OF ADMINISTRATIVE PENALTY. (a) Judicial review of a commission order imposing an administrative penalty is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) under the substantial evidence rule.

(b) If the person paid the amount of the penalty and that amount is reduced or is not assessed by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond, the court shall order the release of the bond:

(1) without further action by the person if the penalty is not assessed by the court; or

(2) on payment of the penalty in the amount determined by the court.

(c) A penalty collected under this section shall be deposited to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.19, eff. September 28, 2011.

SUBCHAPTER J. PAYMENT FOR PROCEEDS OF SALE

Sec. 91.401. DEFINITIONS. In this subchapter:

(1) "Payee" means any person or persons legally entitled to payment from the proceeds derived from the sale of oil or gas from an oil or gas well located in this state.

(2) "Payor" means the party who undertakes to distribute oil and gas proceeds to the payee, whether as the purchaser of the production of oil or gas generating such proceeds or as operator of the well from which such production was obtained or as lessee under the lease on which royalty is due. The payor is the first purchaser of such production of oil or gas from an oil or gas well, unless the owner of the right to produce under an oil or gas lease or pooling

order and the first purchaser have entered into arrangements providing that the proceeds derived from the sale of oil or gas are to be paid by the first purchaser to the owner of the right to produce who is thereby deemed to be the payor having the responsibility of paying those proceeds received from the first purchaser to the payee.

(3) "Division order" means an agreement signed by the payee directing the distribution of proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons. The order directs and authorizes the payor to make payment for the products taken in accordance with the division order. When used herein "division order" shall also include "transfer order".

(4) "Transfer order" means an agreement signed by a payee and his transferee (new payee) directing the payor under the division order to pay another person a share in the oil or gas produced.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 650, Sec. 1, eff. Aug. 26, 1991.

Sec. 91.402. TIME FOR PAYMENT OF PROCEEDS. (a) The proceeds derived from the sale of oil or gas production from an oil or gas well located in this state must be paid to each payee by payor on or before 120 days after the end of the month of first sale of production from the well. After that time, payments must be made to each payee on a timely basis according to the frequency of payment specified in a lease or other written agreement between payee and payor. If the lease or other agreement does not specify the time for payment, subsequent proceeds must be paid no later than:

(1) 60 days after the end of the calendar month in which subsequent oil production is sold; or

(2) 90 days after the end of the calendar month in which subsequent gas production is sold.

(b) Payments may be withheld without interest beyond the time limits set out in Subsection (a) if:

(1) there is:

(A) a dispute concerning title that would affect distribution of payments;

(B) a reasonable doubt that the payee:

(i) has sold or authorized the sale of its share of the oil or gas to the purchaser of such production; or

(ii) has clear title to the interest in the proceeds of production; or

(C) a requirement in a title opinion that places in issue the title, identity, or whereabouts of the payee and that has not been satisfied by the payee after a reasonable request for curative information has been made by the payor; or

(2) the payments are subject to a child support lien under Chapter 157, Family Code, or an order or writ of withholding issued under Chapter 158, Family Code.

(b-1) A payee does not have a common law cause of action for breach of contract against a payor for withholding payments under Subsection (b) unless, for a dispute concerning the title, the contract requiring payment specifies otherwise.

(c)(1) As a condition for the payment of proceeds from the sale of oil and gas production to payee, a payor shall be entitled to receive a signed division order from payee containing only the following provisions:

(A) the effective date of the division order, transfer order, or other instrument;

(B) a description of the property from which the oil or gas is being produced and the type of production;

(C) the fractional and/or decimal interest in production claimed by payee, the type of interest, the certification of title to the share of production claimed, and, unless otherwise agreed to by the parties, an agreement to notify payor at least one month in advance of the effective date of any change in the interest in production owned by payee and an agreement to indemnify the payor and reimburse the payor for payments made if the payee does not have merchantable title to the production sold;

(D) the authorization to suspend payment to payee for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production claimed by payee;

(E) the name, address, and taxpayer identification number of payee;

(F) provisions for the valuation and timing of settlements of oil and gas production to the payee; and

(G) a notification to the payee that other statutory rights may be available to a payee with regard to payments.

(2) Such a division order does not amend any lease or operating agreement between the interest owner and the lessee or operator or any other contracts for the purchase of oil or gas.

(d) In the alternative, the provisions of Subsection (c) of this section may be satisfied by a division order for oil payments in substantially the following form and content:

DIVISION ORDER

TO: _____ (Payor) Property No. _____

Effective _____
(Date)

The undersigned severally and not jointly certifies it is the legal owner of the interest set out below of all the oil and related liquid hydrocarbons produced from the property described below:

OPERATOR:

Property name: _____

County: _____ State: _____

Legal Description: _____

OWNER NO. _____ TAX I.D./SOC. SEC. NO. PAYEE

DIVISION OF INTEREST

THIS AGREEMENT DOES NOT AMEND ANY LEASE OR OPERATING AGREEMENT BETWEEN THE INTEREST OWNERS AND THE LESSEE OR OPERATOR OR ANY OTHER CONTRACTS FOR THE PURCHASE OF OIL OR GAS.

The following provisions apply to each interest owner ("owner") who executes this agreement:

TERMS OF SALE: The undersigned will be paid in accordance with the division of interests set out above. The payor shall pay all parties at the price agreed to by the operator for oil to be sold pursuant to this division order. Purchaser shall compute quantity and make corrections for gravity and temperature and make deductions for impurities.

PAYMENT: From the effective date, payment is to be made monthly by payor's check, based on this division of interest, for oil run during the preceding calendar month from the property listed above, less taxes required by law to be deducted and remitted by payor as purchaser. Payments of less than $100 may be accrued before

disbursement until the total amount equals $100 or more, or until 12 months' proceeds accumulate, whichever occurs first. However, the payor may hold accumulated proceeds of less than $10 until production ceases or the payor's responsibility for making payment for production ceases, whichever occurs first. Payee agrees to refund to payor any amounts attributable to an interest or part of an interest that payee does not own.

INDEMNITY: The owner agrees to indemnify and hold payor harmless from all liability resulting from payments made to the owner in accordance with such division of interest, including but not limited to attorney fees or judgments in connection with any suit that affects the owner's interest to which payor is made a party.

DISPUTE; WITHHOLDING OF FUNDS: If a suit is filed that affects the interest of the owner, written notice shall be given to payor by the owner together with a copy of the complaint or petition filed.

In the event of a claim or dispute that affects title to the division of interest credited herein, payor is authorized to withhold payments accruing to such interest, without interest unless otherwise required by applicable statute, until the claim or dispute is settled.

TERMINATION: Termination of this agreement is effective on the first day of the month that begins after the 30th day after the date written notice of termination is received by either party.

NOTICES: The owner agrees to notify payor in writing of any change in the division of interest, including changes of interest contingent on payment of money or expiration of time.

No change of interest is binding on payor until the recorded copy of the instrument of change or documents satisfactorily evidencing such change are furnished to payor at the time the change occurs.

Any change of interest shall be made effective on the first day of the month following receipt of such notice by payor.

Any correspondence regarding this agreement shall be furnished to the addresses listed unless otherwise advised by either party.

In addition to the legal rights provided by the terms and provisions of this division order, an owner may have certain statutory rights under the laws of this state.

Witness	Signature of Interest Owner	Social Security/ Tax I.D. No.	Address

_____ _____ _____ _____
_____ _____

_____ _____ _____ _____
_____ _____

_____ _____ _____ _____
_____ _____

Failure to furnish your Social Security/Tax I.D. number will result in withholding tax in accordance with federal law, and any tax withheld will not be refundable by payor.

(e) If an owner in a producing property will not sign a division order because it contains provisions in addition to those provisions provided for in this section, payor shall not withhold payment solely because of such refusal. If an owner in a producing property refuses to sign a division order which includes only the provisions specified in Subsection (c) of this section, payor may withhold payment without interest until such division order is signed.

(f) Payment may be remitted to a payee annually for the aggregate of up to 12 months' accumulation of proceeds if the payor owes the payee a total amount of $100 or less for production from all oil or gas wells for which the payor must pay the payee. However, the payor may hold accumulated proceeds of less than $10 until production ceases or the payor's responsibility for making payment for production ceases, whichever occurs first. On the written request of the payee, the payor shall remit payment of accumulated proceeds to the payee annually if the payor owes the payee less than $10. On the written request of the payee, the payor shall remit payment of proceeds to the payee monthly if the payor owes the payee more than $25 but less than $100.

(g) Division orders are binding for the time and to the extent that they have been acted on and made the basis of settlements and payments, and, from the time that notice is given that settlements will not be made on the basis provided in them, they cease to be binding. Division orders are terminable by either party on 30 days written notice.

(h) The execution of a division order between a royalty owner and lessee or between a royalty owner and a party other than lessee shall not change or relieve the lessee's specific, expressed or implied obligations under an oil and gas lease, including any obligation to market production as a reasonably prudent lessee. Any provision of a division order between payee and its lessee which is

in contradiction with any provision of an oil and gas lease is invalid to the extent of the contradiction.

(i) A division order may be used to clarify royalty settlement terms in the oil and gas lease. With respect to oil and/or gas sold in the field where produced or at a gathering point in the immediate vicinity, the terms "market value," "market price," "prevailing price in the field," or other such language, when used as a basis of valuation in the oil and gas lease, shall be defined as the amount realized at the mouth of the well by the seller of such production in an arm's-length transaction.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 650, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 681, Sec. 1, eff. June 15, 1995. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 961 (S.B. 1965), Sec. 4, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 101 (S.B. 1259), Sec. 1, eff. May 24, 2021.

Sec. 91.403. PAYMENT OF INTEREST ON LATE PAYMENTS. (a) If payment has not been made for any reason in the time limits specified in Section 91.402 of this code, the payor must pay interest to a payee beginning at the expiration of those time limits at two percentage points above the percentage rate charged on loans to depository institutions by the New York Federal Reserve Bank, unless a different rate of interest is specified in a written agreement between payor and payee.

(b) Subsection (a) of this section does not apply where payments are withheld or suspended by a payor beyond the time limits specified in Section 91.402 of this code because of the conditions enumerated in Section 91.402 of this code.

(c) The payor's obligation to pay interest and the payee's right to receive interest under Subsection (a) of this section terminate on delivery of the proceeds and accumulated interest to the comptroller as provided by Title 6, Property Code.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 18, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 650, Sec. 3, eff. Aug. 26, 1991;

Acts 1991, 72nd Leg., ch. 676, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 14.15, eff. Sept. 1, 1997.

Sec. 91.404. NONPAYMENT OF OIL AND GAS PROCEEDS OR INTEREST. (a) If a payee seeks relief for the failure of a payor to make timely payment of proceeds from the sale of oil or gas or an interest in oil or gas as required under Section 91.402 or 91.403 of this code, the payee must give the payor written notice by mail of that failure as a prerequisite to beginning judicial action against the payor for nonpayment.

(b) The payor has 30 days after receipt of the required notice from the payee in which to pay the proceeds due, or to respond by stating in writing a reasonable cause for nonpayment.

(c) A payee has a cause of action for nonpayment of oil or gas proceeds or interest on those proceeds as required in Section 91.402 or 91.403 of this code in any court of competent jurisdiction in the county in which the oil or gas well is located.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.405. EXEMPTIONS. This subchapter does not apply to any royalties that are payable to:

(1) the board of regents of The University of Texas System under a lease of land dedicated to the permanent university fund; or

(2) the General Land Office as provided by Subchapter D, Chapter 52, of this code.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.406. ATTORNEY'S FEES AND MINIMUM AWARD. If a suit is filed to collect proceeds and interest under this subchapter, the court shall include in any final judgment in favor of the plaintiff an award of:

(1) reasonable attorney's fees; and

(2) if the actual damages to the plaintiff are less than

$200, an additional amount so that the total amount of damages equals $200.

Added by Acts 1987, 70th Leg., ch. 1011, Sec. 1, eff. Aug. 31, 1987.

Sec. 91.407. NOTICE OF CHANGE OF PAYOR. (a) Following a change in payor, the new payor shall give written notice to each payee to whom the payor is responsible for distributing oil or gas proceeds. The notice must be given to the payee or the payee's designee at the payee's or designee's most recent known address.

(b) Upon receipt of payee's address from the operator or lessee, the payor must provide the notice within the time permitted for payment of proceeds and in accordance with the conditions for payment provided by Section 91.402. The notice must include:

(1) the information required by Sections 91.502(1), (2), and (12) and Section 91.503; and

(2) the payor's telephone number.

(c) The notice may be given by any writing, including a division order, check stub, or attachment to a payment form.

(d) A payor that is obligated to pay interest to a payee under Section 91.403 and that does not give the payee a notice required by this section is liable to the payee for interest under that section at a rate that is two percent more than the rate provided by that section.

Added by Acts 1997, 75th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1997.

Sec. 91.408. INFORMATION FOR PAYEES OF PROCEEDS OF PRODUCTION FROM CERTAIN GAS WELLS. (a) A payor of proceeds from the sale of gas produced from a tight formation as defined by Section 29(c)(2)(B), Internal Revenue Code of 1986, annually shall furnish the payee a statement providing the information necessary to compute the federal income tax credit provided by that section for the gas for which payment was made in the preceding year, including:

(1) information as described in Section 91.502(1) of this code; and

(2) the volume of the gas, measured in:

(A) thousands of cubic feet and heating value; or

(B) millions of British thermal units for each thousand

cubic feet.

(b) A payor shall furnish a statement required by Subsection (a) not later than March 15 each year.

Added by Acts 1999, 76th Leg., ch. 609, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1483, Sec. 5, eff. Sept. 1, 1999.

SUBCHAPTER K. SALTWATER DISPOSAL PITS

Sec. 91.451. DEFINITION. In this subchapter, "saltwater disposal pit" means a collecting pit on the surface of the ground used to store or evaporate oil field brines, geothermal resource water, or other mineralized water.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.452. PROHIBITED ACTIVITY. Except as provided by this subchapter, a person conducting oil and gas development or production operations, geothermal operations, or underground hydrocarbon storage operations may not use a saltwater disposal pit for storage or evaporation of oil field brines.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.453. COMMISSION AUTHORIZED. (a) On written application, the commission or its designated employee may administratively authorize a person to use a saltwater disposal pit on a temporary emergency basis.

(b) On written application, the commission or its designated employee may administratively authorize a person to use an impervious surface pit in conjunction with a geothermal operation, an underground hydrocarbon storage operation, or an approved saltwater disposal operation.

(c) In cases where it may be conclusively shown that use of a saltwater disposal pit can cause no pollution of surrounding productive agricultural land and no pollution of ground or surface water supplies, either because of the absence of such waters, or due

to physical isolation of such waters by naturally occurring impervious barriers, the commission or its designated employee may administratively authorize a person to use a saltwater disposal pit.

(d) An authorization under this section must be in writing and must state the conditions under which any pit may be operated.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.454. REMOVAL OF AUTHORIZED PITS. (a) A person who is authorized to operate a saltwater disposal pit under Section 91.453 of this code shall close the pit within 45 days after being ordered to close the pit by the commission; provided that the commission may grant an extension or extensions for a reasonable period or periods of time on a showing of good cause or upon request for an extension by the surface owner or owners of the land upon which the pit is situated.

(b) A saltwater disposal pit must be closed in compliance with this subchapter and rules, standards, and specifications adopted by the commission.

(c) In closing a saltwater disposal pit, the person authorized to operate the pit shall remove all salt water and wastes and shall backfill and compact in compliance with commission-approved procedures.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.455. RULES, STANDARDS, AND SPECIFICATIONS. (a) The commission shall adopt rules that:

(1) define the procedures for obtaining authorization to operate a saltwater disposal pit;

(2) define the conditions under which authorizations for saltwater disposal pits will be granted;

(3) establish standards for saltwater disposal pits authorized by the commission;

(4) provide for standards for the proper closing of saltwater disposal pits authorized by the commission; and

(5) provide other standards, procedures, and requirements

necessary to carry out this subchapter.

(b) The commission, by rule, shall require:

(1) liner specifications and installation procedures that are adequate to insulate a saltwater disposal pit; and

(2) the draining, cleaning, and closing of saltwater disposal pits.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.456. INJUNCTIVE RELIEF. If a person is operating a saltwater disposal pit in violation of this subchapter or the commission's rules, standards, or specifications, the commission may have the attorney general institute a suit in a district court in the county in which the saltwater disposal pit is located for injunctive relief to restrain the person from continuing to operate the pit in violation of this subchapter or the rules, standards, or specifications of the commission.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.457. REMOVAL OF UNAUTHORIZED PIT. (a) The commission may order a person who is operating a saltwater disposal pit in violation of this subchapter to close the pit in compliance with this subchapter and commission rules, standards, and specifications, at the pit operator's own expense.

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 18, eff. Sept. 1, 1991.

Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.20, eff. September 28, 2011.

Sec. 91.458. CRIMINAL PENALTY. (a) A person who violates Section 91.452 of this code or an order of the commission under Subsection (a), Section 91.457, commits an offense.
(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.459. CIVIL PENALTY. (a) A person who violates this subchapter or a rule, standard, or specification of the commission or who fails to close a saltwater disposal pit in compliance with this subchapter, a rule, standard, or specification of the commission, an order of the commission, or the authorization for the pit is subject to a civil penalty of not less than $100 nor more than $10,000 for each act of violation or failure to comply.
(b) The attorney general shall recover the civil penalty provided by Subsection (a) of this section in a court of competent jurisdiction.
(c) Any costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and cleanup fund.
(d) Repealed by Acts 1991, 72nd Leg., ch. 603, Sec. 32(1), eff. Sept. 1, 1991.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Secs. 19, 32(1), eff. Sept. 1, 1991.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.21, eff. September 28, 2011.

SUBCHAPTER L. ROYALTY REPORTING STANDARDS

Sec. 91.5001. DEFINITION. In this subchapter, "payor" has the meaning assigned by Section 91.401.

Added by Acts 2001, 77th Leg., ch. 824, Sec. 1, eff. Jan. 1, 2002.

Sec. 91.501. INFORMATION REQUIRED. If payment is made to a royalty interest owner from the proceeds derived from the sale of oil or gas production pursuant to a division order, lease, servitude, or other agreement, the payor shall include the information required by Section 91.502 on the check stub, an attachment to the payment form, or another remittance advice that accompanies the payment.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 232 (H.B. 129), Sec. 1, eff. September 1, 2017.

Sec. 91.502. TYPES OF INFORMATION PROVIDED. Each check stub, attachment to a payment form, or other remittance advice must include:

(1) the lease, property, or well name, any lease, property, or well identification number used to identify the lease, property, or well, and a county and state in which the lease, property, or well is located;

(2) the month and year during which the sales occurred for which payment is being made;

(3) the total number of barrels of oil or the total amount of gas sold;

(4) the price per barrel or per MCF of oil or gas sold;

(5) the total amount of state severance and other production taxes paid;

(6) the windfall profit tax paid on the owner's interest;

(7) any other deductions or adjustments;

(8) the net value of total sales after deductions;

(9) the owner's interest in sales from the lease, property, or well expressed as a decimal;

(10) the owner's share of the total value of sales before any tax deductions;

(11) the owner's share of the sales value less deductions; and

(12) an address and telephone number at which additional information regarding the payment may be obtained and questions may be answered.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.

Sec. 91.503. LEASE, PROPERTY, OR WELL DESCRIPTION. If a division order is not provided that includes the information required by Section 91.402(c)(1)(B), the payor must, at a minimum, provide prior to or with the first payment to which this subchapter applies the information required by Section 91.402(c)(1)(B) for the lease, property, or well for which payment of proceeds is being reported.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Jan. 1, 2002.

Sec. 91.504. PROVIDING INFORMATION ABOUT PAYMENT DEDUCTIONS AND ADJUSTMENTS, HEATING VALUE, OR LEASE IDENTIFICATION. (a) If the payor does not explain on the check stub, attachment to the payment form, or other remittance advice, or by a separate mailing, deductions from or adjustments to payments, the payor must provide an explanation by certified mail not later than the 60th day after the date the payor receives a request from the royalty interest owner. The royalty interest owner must send the request by certified mail.

(b) If a royalty interest owner requests information by certified mail concerning the heating value of the gas produced or sold from the lease, property, or well in which the owner has an interest, the payor must, not later than the 60th day after the date the payor receives the request, provide by certified mail:

(1) a copy of the Form G-1 filed with the commission; or

(2) a check stub or separate statement that includes the information.

(c) A royalty interest owner who received a payment from a payor during the preceding calendar year may request in writing by certified mail that the payor provide a report listing the following information for the preceding year:

(1) each lease, property, or well identification number;

(2) each lease, property, or well name;

(3) the field name;

(4) the county and state in which the property is located; and

(5) the commission lease identification number or commingling permit number or any other identification number under which the production for the lease, property, or well is being reported to the state.

(d) A payor who receives a request for information under Subsection (c) shall provide the information by certified mail not later than the 60th day after the date the payor receives the request.

(e) At least once every 12 months, a payor shall provide the following statement to each royalty interest owner to whom the payor makes a payment:

> Section 91.504, Texas Natural Resources Code, gives an owner of a royalty interest in oil or gas produced in Texas the right to request from a payor information about itemized deductions, the heating value of the gas, and the Railroad Commission of Texas identification number for the lease, property, or well that may not have been provided to the royalty interest owner. The request must be in writing and must be made by certified mail. A payor must respond to a request regarding itemized deductions, the heating value of the gas, or the Railroad Commission of Texas identification number by certified mail not later than the 60th day after the date the request is received. An owner of a royalty interest in oil or gas may obtain information regarding production that has been reported to the Railroad Commission of Texas by contacting the oil and gas division of the commission or accessing the commission's website and providing the identification number of the lease and the county in which the lease is located.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 1037 (H.B. 1161), Sec. 1, eff. September 1, 2005.

Sec. 91.505. PROVIDING OTHER INFORMATION. If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subchapter, other than information requested under Section 91.504, and the request is made by certified mail, the payor must respond to the request by certified mail not later than 30 days after the request is received.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Jan. 1, 2002.

Sec. 91.506. EXEMPTION. (a) Except as provided by Subsection (b), if the information required by Section 91.502 is provided in some other manner on a monthly basis, the payor is not required to include the information on the check stub, an attachment to the payment form, or another remittance advice that accompanies the payment.

(b) If payment is made to the royalty interest owner by a paper check delivered by mail or by means of a private delivery service, the payor may not provide the information required by Section 91.502 in a manner other than by including the information on the check stub, an attachment to the payment form, or another remittance advice that accompanies the payment unless the payor obtains, or a previous payor has obtained, the consent of the royalty interest owner to provide the information in some other manner.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 232 (H.B. 129), Sec. 1, eff. September 1, 2017.

Sec. 91.507. ENFORCEMENT. (a) A royalty interest owner who does not receive the information required to be provided under Section 91.502 or 91.503 in a timely manner may send a written request for the information to the payor by certified mail.

(b) Not later than the 60th day after the date the payor receives the written request for information under this section, the payor shall provide the requested information by certified mail.

(c) If a payor fails to provide the requested information

within the period specified by Subsection (b), either party may request mediation.

(d) If the royalty interest owner makes a written request for information under Section 91.504 or this section and the payor does not provide the information within the 60-day period, the royalty interest owner may bring a civil action against the payor to enforce the provisions of Section 91.504 or this section, as applicable. The prevailing party is entitled to recover reasonable court costs and attorney's fees.

Added by Acts 2001, 77th Leg., ch. 824, Sec. 3, eff. Sept. 1, 2002.

SUBCHAPTER M. ELECTRIC LOGS

Sec. 91.551. DEFINITIONS. (a) In this subchapter:

(1) "Well" means a well drilled for any purpose related to exploration for or production or storage of oil or gas or both oil and gas, including a well drilled for injection of fluids to enhance hydrocarbon recovery, disposal of produced fluids, disposal of waste from exploration or production activity, or brine mining.

(2) "Electric log" means a wireline survey, except dipmeter surveys and seismic wireline surveys, run in an open hole or a cased hole of a well for purposes of obtaining geological information.

(3) "Drilling operation" means a continuous effort to drill or deepen a well bore for which the commission has issued a permit.

(4) "Operator" means a person who assumes responsibility for the regulatory compliance of a well as shown by a form the person files with the commission and the commission approves.

(b) In this subchapter, "operator" includes a predecessor or successor operator.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:

Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 2, eff. September 1, 2005.

Sec. 91.552. ELECTRIC LOGS REQUIRED TO BE FILED; CRITERIA. (a) Except as otherwise provided by this subchapter, not later than the

90th day after the date a drilling operation is completed, the operator shall file with the commission a copy of each electric log, including each borehole section of the log at all depths, run after September 1, 2013, in conjunction with the drilling or deepening of the well that meets basic criteria established by the commission. Each electric log must be filed with the commission electronically in a manner acceptable to the commission if the commission has the technological capability to receive the electronic filing.

(b) The commission by rule shall establish criteria for electric logs to be filed with the commission.

(c) Not later than the deadline prescribed by Subsection (a) for the filing of each electric log, an operator shall file with the commission a copy of a cased hole log run after September 1, 2013, in conjunction with the drilling or deepening of a well in lieu of an electric log run after that date if:

(1) a cased hole log was run; and

(2) an electric log was not run.

(d) Nothing in this subchapter requires an operator to run an electric log in conjunction with the drilling or deepening of a well.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:

Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 1, eff. September 1, 2013.

Sec. 91.553. AVAILABILITY OF ELECTRIC LOGS. (a) Except as specifically provided by this section, each electric log filed with the commission under this subchapter is not confidential and is public information under Chapter 552, Government Code.

(b) Not later than the date by which an electric log is required to be filed with the commission under Section 91.552, the operator may file a written request with the commission asking that the electric log remain confidential and not be made available as public information. On filing this request, the electric log or copy of the electric log required to be filed with the commission may be retained by the operator, and the electric log may remain in the possession of the operator for the period of confidentiality. On

filing of the request for confidentiality, the electric log becomes confidential and remains confidential for a period of:

(1) three years after the date that the drilling operation was completed, if the well is an onshore well; or

(2) five years after the date that the drilling operation was completed, if the well is a bay or offshore well.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 279, Sec. 6, eff. September 1, 2013.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 279, Sec. 6, eff. September 1, 2013.

(e) An operator required to file an electric log under this section who has held the log during a period of confidentiality shall file the log with the commission within 30 days after the conclusion of the period of confidentiality.

(f) An operator who fails to timely file with the commission a written request under Subsection (b) that an electric log remain confidential and not be made available as public information shall file the log with the commission immediately after the conclusion of the period for filing the request.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 4, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 6, eff. September 1, 2013.

Sec. 91.554. AVAILABILITY OF CONFIDENTIAL ELECTRIC LOGS. If the commission requires an electric log to be filed before the expiration of a period of confidentiality, the commission shall make that electric log available for inspection during the period of confidentiality only to:

(1) a person authorized in writing by the operator; and

(2) members of the commission and its employees in the exercise of their powers and duties under this code.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:
Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 5, eff. September 1, 2005.

Sec. 91.555. MANAGEMENT AND STORAGE OF ELECTRIC LOGS. The commission may contract with any person for the management and storage of the electric logs filed with the commission.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.

Sec. 91.556. ENFORCEMENT. If an operator fails to file an electric log as required by this subchapter, the commission may:

(1) if the well is completed as a producing well, refuse to assign an allowable or a change in allowable for production from the well for which the electric log is required until the operator files the electric log with the commission; or

(2) impose an administrative penalty on the operator in the manner provided by Sections 81.0531-81.0534 for each well for which the operator failed to file an electric log.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:
Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 5, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 3, eff. September 1, 2013.

SUBCHAPTER N. OIL AND GAS HAZARDOUS WASTE

Sec. 91.601. DEFINITIONS. In this subchapter:

(1) "Oil and gas hazardous waste" means oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(2) "Oil and gas waste" means oil and gas waste as defined in Section 91.1011 of this chapter.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.602. RULES. (a) To protect human health and the environment, the commission shall adopt and enforce rules and orders and may issue permits relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

(b) The rules adopted by the commission under this section must be consistent with the hazardous waste regulations adopted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.). The commission may adopt and enforce rules that are more stringent than the federal hazardous waste regulations if necessary to protect human health.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.603. ACCESS TO PROPERTY AND RECORDS. (a) A member or employee of the commission, on proper identification, may enter public or private property to:

(1) inspect and investigate conditions relating to the generation, transportation, treatment, storage, or disposal of oil and gas hazardous waste;

(2) inspect and investigate conditions relating to the development of rules, orders, or permits under Section 91.602 of this code;

(3) monitor compliance with a rule, order, or permit of the commission; or

(4) examine and copy, during reasonable working hours, those records or memoranda of the business being investigated.

(b) A member or employee acting under this section who enters an establishment on public or private property shall observe the establishment's posted safety, internal security, and fire protection rules.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.604. CRIMINAL PENALTY. (a) A person who knowingly

violates a rule, order, or permit of the commission issued under this subchapter commits an offense.

(b) An offense under this section is punishable by imprisonment for up to six months, by a fine of up to $10,000 for each day the violation is committed, or by both.

(c) Venue for prosecution under this section is in the county in which the violation is alleged to have occurred.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.605. HAZARDOUS OIL AND GAS WASTE GENERATION FEE. (a) An annual fee is imposed on each operator who generates hazardous oil and gas waste.

(b) The commission by rule shall set the fee, which must:

(1) be based on the volume of hazardous oil and gas waste generated by the operator; and

(2) be reasonably related to the costs of implementing this subchapter and enforcing the rules, orders, and permits adopted or issued by the commission under this subchapter.

(c) The commission by rule shall also prescribe the procedures by which an operator must account for the volume of hazardous oil and gas waste generated and pay the fee.

(d) This section does not apply to an operator who, at all facilities operated in this state, satisfies the requirements established by the administrator of the United States Environmental Protection Agency for a conditionally exempt small quantity generator.

(e) The fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.22, eff. September 28, 2011.

SUBCHAPTER O. RAILROAD COMMISSION VOLUNTARY CLEANUP PROGRAM

Sec. 91.651. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes a waste, pollutant, or substance regulated by, or that results from an activity under the jurisdiction

of, the commission under this chapter, Chapter 141 of this code, or Chapter 27, Water Code.

(2) "Environmental assessment" means the assessment described by Section 91.654.

(3) "Response action" means the cleanup or removal of a contaminant from the environment.

(4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.652. PURPOSE. The purpose of the voluntary cleanup program is to provide an incentive to remediate property by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site covered by the certificate. The program does not replace other voluntary actions and is restricted to voluntary actions.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.653. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a) Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that may be subject to a commission order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 91. 656; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.654. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

(b) An application submitted under this section must:

(1) be on a form provided by the commission;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) the name, address, and telephone number of all surface and mineral owners;

(B) other background information requested by the commission;

(C) an environmental assessment of the actual or threatened release of the contaminant at the site; and

(D) if the person applying is not the surface owner, written authorization from the surface owner agreeing to the applicant's participation in the program;

(3) be accompanied by an application fee of $1,000; and

(4) be submitted according to schedules set by the commission.

(c) The environmental assessment required by Subsection (b) must include:

(1) a legal description of the site;

(2) a description of the physical characteristics of the site;

(3) the operational history of the site to the extent that history is known by the applicant;

(4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and

(5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.

(d) An application shall be processed in the order in which it is received.

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund under Section 81.067.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.23, eff. September 28, 2011.

Sec. 91.655. REJECTION OF APPLICATION. (a) The commission may reject an application submitted under Section 91.654 if:

(1) a state or federal enforcement action is pending that concerns the remediation of the contaminant described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is incomplete or inaccurate; or

(4) the site is ineligible under Section 91.653.

(b) If an application is rejected because it is incomplete or inaccurate, the commission, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an additional application fee if the person resubmits the application not later than the 45th day after the date the commission issues notice that the application has been rejected.

(c) If the commission rejects the application, the commission shall:

(1) notify the person that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to resubmit the application.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.656. VOLUNTARY CLEANUP AGREEMENT. (a) Before the commission evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions

of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement; and

(C) in excess of the amount of fees submitted by the applicant under Section 91.654;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules with which the person must comply;

(2) describe any work plan or report to be submitted for review by the commission, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the commission on or before the 30th day after good faith negotiations have begun:

(1) the person or the commission may withdraw from the negotiations; and

(2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for activity that resulted in the contamination or release.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.657. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The commission or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the commission before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the commission has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the commission, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.658. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the commission.

(b) The commission shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The commission may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the commission may request the person to submit additional or corrected information.

(d) After considering future land use, the commission may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.659. CERTIFICATE OF COMPLETION. (a) If the commission determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the commission shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion must:

(1) acknowledge the protection from liability provided by Section 91.660;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's surface and mineral owner and mineral operator at the time the application to participate in the voluntary cleanup program was filed.

(c) If the commission determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the commission shall notify of this determination the person who undertook the voluntary cleanup and the current surface and mineral owner and mineral operator of the site that is the subject of the cleanup.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.660. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible person under Section 91.113 at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible person solely because the person signs the application; and

(2) is released, on certification under Section 91.659, from all liability to the state for cleanup of areas of the site covered by the certification, except for releases and consequences

that the person causes.

(b) A person who is not a responsible person under Section 91.113 at the time the commission issues a certificate of completion under Section 91.659 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) caused or contributed to the contamination at the site covered by the certificate;

(2) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(3) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (2); or

(4) changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.661. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

SUBCHAPTER P. CERTIFICATE OF COMPLIANCE

Sec. 91.701. WELL OWNERS AND OPERATORS CERTIFICATES. The owner or operator of any well subject to the jurisdiction of the commission under this title, Section 26.131, Water Code, or Subchapter C,

Chapter 27, Water Code, shall secure from the commission a certificate showing compliance with that title, section, or subchapter, as applicable, rules adopted and orders issued under that title, section, or subchapter, as applicable, and any license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.702. PROHIBITED CONNECTION. No operator of a pipeline or other carrier shall connect with any well subject to the jurisdiction of the commission under this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, until the owner or operator of the well furnishes a certificate from the commission that the owner or operator has complied with that title, section, or subchapter, as applicable, rules adopted and orders issued under that title, section, or subchapter, as applicable, and any license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.703. TEMPORARY CONNECTION. The provisions of this subchapter do not prevent a temporary connection with a well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of the well to secure the certificate.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.704. CANCELLATION OF CERTIFICATE. The commission may cancel any certificate of compliance issued under the provisions of

this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, a rule adopted or order issued under that title, section, or subchapter, as applicable, or a license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Section 2001.054, Government Code.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.705. EFFECT OF CANCELLATION ON OPERATOR OF PIPELINE OR OTHER CARRIER. (a) On notice from the commission to the operator of a pipeline or other carrier connected to a well that the certificate of compliance pertaining to that well has been cancelled, the operator of the pipeline or other carrier shall disconnect from the well.

(b) It shall be unlawful for the operator of a pipeline or other carrier to reconnect to the well until a new certificate of compliance has been issued by the commission.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.706. EFFECT OF CANCELLATION ON OWNER OR OPERATOR OF WELL. (a) On notice from the commission that a certificate of compliance for a well has been cancelled, it shall be unlawful for the owner or operator of the well to use the well for production, injection, or disposal until a new certificate of compliance covering the well has been issued by the commission.

(b) If an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been cancelled, the commission may refuse to renew the operator's organization report required by Section 91.142 until the operator pays the fee required by Section 91.707 and the commission issues the certificate of compliance required for that well.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.707. FEE FOR REISSUED CERTIFICATE. (a) If a certificate of compliance for a well has been canceled for one or more violations of provisions of this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, rules adopted or orders issued under that title, section, or subchapter, as applicable, or licenses, permits, or certificates issued to the owner or operator of the well under that title, section, or subchapter, as applicable, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of $300 for each severance or seal order issued for the well.

(b) Fees collected under this section shall be deposited to the oil and gas regulation and cleanup fund.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.24, eff. September 28, 2011.

SUBCHAPTER Q. NOTICE OF PERMIT FOR CERTAIN OIL AND GAS OPERATIONS

Sec. 91.751. DEFINITION. In this subchapter, "surface owner" means the first person who is shown on the appraisal roll of the appraisal district established for the county in which a tract of land is located as owning an interest in the surface estate of the land at the time notice is required to be given under this

subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.701 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.752. APPLICABILITY. This subchapter applies only to the drilling of a new oil or gas well or the reentry of a plugged and abandoned oil or gas well. This subchapter does not apply to:

(1) the plugging back, reworking, sidetracking, or deepening of an existing oil or gas well that has not been plugged and abandoned; or

(2) the use of a surface location that is the site of an existing oil or gas well that has not been plugged and abandoned to drill a horizontal oil or gas well.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.702 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.753. NOTICE REQUIRED. (a) Not later than the 15th business day after the date the commission issues an oil or gas well operator a permit to drill a new oil or gas well or to reenter a plugged and abandoned oil or gas well, the operator shall give written notice of the issuance of the permit to the surface owner of the tract of land on which the well is located or is proposed to be located.

(b) An oil or gas well operator is not required to give notice under this subchapter to a surface owner if:

(1) the operator and the surface owner have entered into an agreement that contains alternative provisions regarding the operator's obligation to give notice of oil and gas operations; or

(2) the surface owner has waived in writing the owner's right to notice under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.703 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.754. ADDRESS FOR NOTICE. The notice must be given to the surface owner at the surface owner's address as shown by the records of the county tax assessor-collector at the time the notice is given.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.704 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.755. COMMISSION PERMITS AND RIGHTS OF OWNER OF MINERAL ESTATE NOT AFFECTED. (a) This subchapter does not affect the status of any rule of law to the effect that the mineral estate in land is dominant over the surface estate.

(b) Failure to give notice as required by this subchapter does not restrict, limit, work as a forfeiture of, or terminate any existing or future permit issued by the commission or right to develop the mineral estate in land.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.705 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

SUBCHAPTER R. AUTHORIZATION FOR MULTIPLE OR ALTERNATIVE USES OF WELLS

Sec. 91.801. RULES AUTHORIZING MULTIPLE OR ALTERNATIVE USES OF WELLS. The commission shall adopt rules allowing:

(1) a person to obtain a permit for a well from the commission that authorizes the well to be used for multiple purposes;

and

(2) an operator of a well authorized by a permit issued by the commission to convert the well from its authorized purpose to a new or additional purpose.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 6, eff. September 1, 2009.

Sec. 91.802. LAW APPLICABLE TO GEOLOGIC STORAGE FACILITIES AND ASSOCIATED INJECTION WELLS. (a) In this section, "anthropogenic carbon dioxide injection well" has the meaning assigned by Section 27.002, Water Code.

(b) If a well is authorized as or converted to an anthropogenic carbon dioxide injection well for geologic storage, Subchapter C-1, Chapter 27, Water Code, applies to the well.

(c) A conversion of an anthropogenic carbon dioxide injection well from use for enhanced recovery operations to use for geologic storage is not considered to be a change in the purpose of the well.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 6, eff. September 1, 2009.

SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS

Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS. (a) The commission by rule shall:

(1) require an operator of a well on which a hydraulic fracturing treatment is performed to:

(A) complete the form posted on the hydraulic fracturing chemical registry Internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission with regard to the well;

(B) include in the form completed under Paragraph (A):

(i) the total volume of water used in the hydraulic fracturing treatment; and

(ii) each chemical ingredient that is subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2), as provided by a service company or chemical supplier or by the operator, if the operator provides its own chemical ingredients;

(C) post the completed form described by Paragraph (A) on the website described by that paragraph or, if the website is discontinued or permanently inoperable, post the completed form on another publicly accessible Internet website specified by the commission;

(D) submit the completed form described by Paragraph (A) to the commission with the well completion report for the well; and

(E) in addition to the completed form specified in Paragraph (D), provide to the commission a list, to be made available on a publicly accessible website, of all other chemical ingredients not listed on the completed form that were intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well. The commission rule shall ensure that an operator, service company, or supplier is not responsible for disclosing ingredients that:

(i) were not purposely added to the hydraulic fracturing treatment;

(ii) occur incidentally or are otherwise unintentionally present in the treatment; or

(iii) in the case of the operator, are not disclosed to the operator by a service company or supplier. The commission rule shall not require that the ingredients be identified based on the additive in which they are found or that the concentration of such ingredients be provided;

(2) require a service company that performs a hydraulic fracturing treatment on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well to provide the operator of the well with the information necessary for the operator to comply with Subdivision (1);

(3) prescribe a process by which an entity required to comply with Subdivision (1) or (2) may withhold and declare certain information as a trade secret for purposes of Section 552.110, Government Code, including the identity and amount of the chemical ingredient used in a hydraulic fracturing treatment;

(4) require a person who desires to challenge a claim of entitlement to trade secret protection under Subdivision (3) to file the challenge not later than the second anniversary of the date the relevant well completion report is filed with the commission;

(5) limit the persons who may challenge a claim of

entitlement to trade secret protection under Subdivision (3) to:

(A) the landowner on whose property the relevant well is located;

(B) a landowner who owns property adjacent to property described by Paragraph (A); or

(C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret is relevant;

(6) require, in the event of a trade secret challenge, that the commission promptly notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade secret being challenged and provide the owner an opportunity to substantiate its trade secret claim; and

(7) prescribe a process, consistent with 29 C.F.R. Section 1910.1200, for an entity described by Subdivision (1) or (2) to provide information, including information that is a trade secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health professional or emergency responder who needs the information in accordance with Subsection (i) of that section.

(b) The protection and challenge of trade secrets under this section is governed by Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1179 (H.B. 3328), Sec. 1, eff. September 1, 2011.

SUBCHAPTER T. SALTWATER PIPELINES

Sec. 91.901. DEFINITIONS. In this subchapter:

(1) "Saltwater pipeline facility" means a pipeline facility that conducts water that contains salt and other substances and is intended to be used in drilling or operating a well used in the exploration for or production of oil or gas, including an injection well used for enhanced recovery operations, or is produced during drilling or operating an oil, gas, or other type of well. The term includes a pipeline facility that conducts flowback and produced water from an oil or gas well on which a hydraulic fracturing treatment has been performed to an oil and gas waste disposal well for disposal.

(2) "Saltwater pipeline operator" means a person who owns, installs, manages, operates, leases, or controls a saltwater pipeline facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 389 (H.B. 497), Sec. 1, eff. June 10, 2015.

Sec. 91.902. PIPELINE ON PUBLIC ROAD. A saltwater pipeline operator is entitled to install, maintain, and operate a saltwater pipeline facility through, under, along, across, or over a public road only if:

(1) the pipeline facility complies with applicable rules adopted by the Texas Transportation Commission and applicable county and municipal regulations regarding the accommodation of utility facilities on a public road or right-of-way, including regulations relating to the horizontal or vertical placement of the pipeline facility;

(2) the saltwater pipeline operator ensures that the public road and associated facilities are promptly restored to their former condition of usefulness after the installation or maintenance of the pipeline facility is complete; and

(3) the saltwater pipeline operator leases the right-of-way or area in which the pipeline facility is installed and pays to the applicable governmental entity the fair market value of the operator's use of the right-of-way or area, unless the operator is authorized by other law to install, maintain, and operate the pipeline facility through, under, along, across, or over the public road.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.

Sec. 91.903. RELOCATION OF SALTWATER PIPELINE FACILITY FOR CERTAIN PURPOSES. (a) Except as provided by Section 203.092, Transportation Code, the Texas Transportation Commission, the commissioners court of a county, or the governing body of a

municipality, as applicable, may require a saltwater pipeline operator to relocate a saltwater pipeline facility at the cost of the saltwater pipeline operator to accommodate construction or expansion of a public road or for any other public work unless the saltwater pipeline operator has a property interest in the land occupied by the facility to be relocated.

(b) The Texas Transportation Commission, the commissioners court of a county, or the governing body of a municipality, as applicable, shall give to the saltwater pipeline operator 30 days' written notice of the requirement. The notice must identify the pipeline facility to be relocated and indicate the approximate location on the new right-of-way where the saltwater pipeline operator may place the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.

Sec. 91.904. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to:

(1) limit the authority of a saltwater pipeline facility to use a public right-of-way under any other law;

(2) affect the authority of a municipality to:

(A) regulate the use of a public right-of-way by a saltwater pipeline operator under any other law; or

(B) require payment of any applicable charge under Section 182.025, Tax Code; or

(3) require a county or municipality to:

(A) grant a right to a saltwater pipeline operator that applies to a public road or right-of-way and that is broader than the county's or municipality's legal interest in the public road or right-of-way; or

(B) grant more than a surface right to a saltwater pipeline operator in a right-of-way acquired by prescription.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.

Sec. 91.905. APPLICATION OF OTHER LAW. Section 212.153(e), Local Government Code, and Sections 203.092 and 224.008,

Transportation Code, apply to saltwater pipeline operators and saltwater pipeline facilities in the same manner as they apply to utilities and utility facilities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 968 (S.B. 2075), Sec. 1, eff. September 1, 2017.

CHAPTER 92. MINERAL USE OF SUBDIVIDED LAND

Sec. 92.001. PURPOSE. It is the finding of the legislature that the rapidly expanding population and development of the cities and towns of this state and the concomitant need for adequate and affordable housing and suitable job opportunities call for full and efficient utilization and development of all the land resources of this state, as well as the full development of all the minerals of this state. In view of that finding, it is the intent of the legislature that the mineral resources of this state be fully and effectively exploited and that all land in this state be maintained and utilized to its fullest and most efficient use. It is the further finding of this legislature that it is necessary to exercise the authority of the legislature pursuant to Article XVI, Section 59, of the Constitution of the State of Texas to assure proper and orderly development of both the mineral and land resources of this state and that the enactment of this chapter will protect the rights and welfare of the citizens of this state.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983.

Sec. 92.002. DEFINITIONS. In this chapter:

(1) "Operations site" means a surface area of two or more acres located in whole or in part within a qualified subdivision, designated on the subdivision plat, that an owner of a possessory mineral interest may use to explore for and produce minerals.

(2) "Possessory mineral interest" means a mineral interest that includes the right to use the land surface for exploration and production of minerals.

(3) "Qualified subdivision" means a tract of land of not more than 640 acres:

(A) that is located in a county having a population in excess of 400,000, or in a county having a population in excess of 140,000 that borders a county having a population in excess of 400,000 or located on a barrier island;

(B) that has been subdivided in a manner authorized by law by the surface owners for residential, commercial, or industrial use; and

(C) that contains an operations site for each separate 80 acres within the 640-acre tract and provisions for road and pipeline easements to allow use of the operations site.

(4) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 274, Sec. 1, eff. June 11, 1987.

Sec. 92.003. CREATION OF SUBDIVISION. The surface owners of a parcel of land may create a qualified subdivision on the land if a plat of the subdivision has been approved by the railroad commission and filed with the clerk of the county in which the subdivision is to be located.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983.

Sec. 92.004. HEARING AND ORDER BY RAILROAD COMMISSION. (a) The railroad commission shall adopt rules governing the contents of an application for a qualified subdivision. An application must be accompanied by a plat of the subdivision showing the applicant's proposed location of operations sites and road and pipeline easements.

(b) The railroad commission shall, on notice to the applicant and owners of possessory mineral interests, hold a hearing on the application at which the commission shall consider the adequacy of the number and location of operations sites and road and pipeline easements. At the hearing on the application, evidence may be

presented by the applicant and the owners of possessory mineral interests. After considering the evidence, the commission shall approve, reject, or amend the application to ensure that the mineral resources of the subdivision are fully and effectively exploited. The applicant or the owner of the possessory mineral interest may appeal the order of the railroad commission as provided by law.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 274, Sec. 2, eff. June 11, 1987.

Sec. 92.005. USE OF OPERATIONS SITE. (a) An owner of a possessory mineral interest within a qualified subdivision may use only the surface contained in designated operations sites for exploration, development, and production of minerals and the designated easements only as necessary to adequately use the operations sites.

(b) The owner of the possessory mineral interest may drill wells or extend well bores from an operations site or from a site outside of the qualified subdivision under the surface of other parts of the qualified subdivision if the operations do not unreasonably interfere with the use of the surface of the qualified subdivision outside the operations site.

(c) This section ceases to apply to a subdivision if, by the third anniversary of the date on which the order of the commission becomes final:

(1) the surface owner has not commenced actual construction of roads or utilities within the qualified subdivision; and

(2) a lot within the qualified subdivision has not been sold to a third party.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts, 1987, 70th Leg., ch. 274, Sec. 3, eff. June 11, 1987.

Sec. 92.006. AMENDMENT, REPLAT, OR ABANDONMENT. All or any portion of a qualified subdivision may be amended, replatted, or abandoned by the surface owner. An amendment or replat, however, may not alter, diminish, or impair the usefulness of an operations site

or appurtenant road or pipeline easement unless the amendment or replat is approved by the commission in accordance with Section 92.003 of this code.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 274, Sec. 4, eff. June 11, 1987.

Sec. 92.007. MUNICIPAL AUTHORITY. This chapter does not affect the authority of a municipality to require approval of subdivision plats or the authority of a home-rule city to regulate exploration and development of mineral interests within its boundaries.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983.

SUBTITLE C. POOLING AND COOPERATIVE AGREEMENTS
CHAPTER 101. COOPERATIVE DEVELOPMENT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. DEFINITION. In this chapter, "commission" means the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.002. EXISTING AGREEMENT RIGHTS. None of the provisions in this chapter restrict any of the rights that a person now may have to make and enter into unitization and pooling agreements.

Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.003. APPLICABILITY. None of the provisions in this chapter impair the power of the commission to prevent waste under the oil and gas conservation laws of the state except as provided in Section 101.004 or repeal, modify, or impair any of the provisions of

Sections 85.002 through 85.003, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, or 85.381 through 85.385, Subchapter J of Chapter 85, or Subchapter P of Chapter 91, relating to oil and gas conservation.

Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 7, eff. September 1, 2007.

Sec. 101.004. CONFLICT WITH ANTITRUST ACTS. (a) Agreements and operations under agreements which are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the provisions in this chapter are intended as a reasonable exception to that law, necessary for the public interests stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, and finds that the provisions in this chapter are not a reasonable exception to said Chapter 15, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring Chapter 15, Business & Commerce Code, as amended, or any portion of it, invalid.

Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. COOPERATIVE AGREEMENTS IN SECONDARY RECOVERY OPERATIONS

Sec. 101.011. AUTHORIZED AGREEMENTS FOR SEPARATELY OWNED PROPERTIES. Subject to the approval of the commission, as provided in this chapter, persons owning or controlling production, leases, royalties, or other interests in separate property in the same oil

field, gas field, or oil and gas field may voluntarily enter into and perform agreements for either or both of the following purposes:

(1) to establish pooled units, necessary to effect secondary recovery operations for oil or gas, including those known as cycling, recycling, repressuring, water flooding, and pressure maintenance and to establish and operate cooperative facilities necessary for the secondary recovery operations;

(2) to establish pooled units and cooperative facilities necessary for the conservation and use of gas, including those for extracting and separating the hydrocarbons from the natural gas or casinghead gas and returning the dry gas to a formation underlying any land or leases committed to the agreement.

Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.012. PERSONS BOUND BY AGREEMENTS. Agreements for pooled units and cooperative facilities do not bind a landowner, royalty owner, lessor, lessee, overriding royalty owner, or any other person who does not execute them. The agreements bind only the persons who execute them, their heirs, successors, assigns, and legal representatives. No person shall be compelled or required to enter into such an agreement.

Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.013. COMMISSION APPROVAL. (a) Agreements for pooled units and cooperative facilities are not legal or effective until the commission finds, after application, notice, and hearing:

(1) that the agreement is necessary to accomplish the purposes specified in Section 101.011 of this code;

(2) that it is in the interest of the public welfare as being reasonably necessary to prevent waste and to promote the conservation of oil or gas or both;

(3) that the rights of the owners of all the interests in the field, whether signers of the unit agreement or not, would be protected under its operation;

(4) that the estimated additional cost, if any, of

conducting the operation will not exceed the value of additional oil and gas so recovered, by or on behalf of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, lien claimants, and others as well as the lessees;

(5) that other available or existing methods or facilities for secondary recovery operations or for the conservation and utilization of gas in the particular area or field concerned or for both are inadequate for the purposes; and

(6) that the area covered by the unit agreement contains only that part of the field that has reasonably been defined by development, and that the owners of interests in the oil and gas under each tract of land in the area reasonably defined by development are given an opportunity to enter into the unit on the same yardstick basis as the owners of interests in the oil and gas under the other tracts in the unit.

(b) A finding by the commission that the area described in the unit agreement is insufficient or covers more acreage than is necessary to accomplish the purposes of this chapter is grounds for the disapproval of the agreement.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.014. JOINTLY OWNED PROPERTIES. None of the provisions in this chapter shall be construed to require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.015. COMMISSION REGULATION. An agreement executed under the provisions of this chapter is subject to any valid order or rule of the commission relating to location, spacing, proration, conservation, or other matters within the authority of the commission, whether adopted prior to or subsequent to the execution of the agreement.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.016. PERMISSIBLE PROVISIONS. (a) An agreement authorized by this chapter may provide for the location and spacing of input wells and for the extension of leases covering any part of land committed to the unit as long as operations for drilling or reworking are conducted on the unit or as long as production of oil or gas in paying quantities is had from any part of the land or leases committed to the unit. However, no agreement may relieve an operator from the obligation to develop reasonably the land and leases as a whole committed to the unit.

(b) An agreement authorized by this chapter may provide that the dry gas after extraction of hydrocarbons may be returned to a formation underlying any land or leases committed to the agreement and may provide that no royalties are required to be paid on the gas so returned.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.017. PROHIBITED PROVISIONS. (a) No agreement authorized by this chapter may attempt to contain the field rules for the area or field, or provide for or limit the amount of production of oil or gas from the unit properties, those provisions being solely the province of the commission.

(b) No agreement authorized by this chapter may provide directly or indirectly for the cooperative refining of crude petroleum, distillate, condensate, or gas, or any by-product of crude petroleum, distillate, condensate, or gas. The extraction of liquid hydrocarbons from gas, and the separation of the liquid hydrocarbons into propanes, butanes, ethanes, distillate, condensate, and natural gasoline, without any additional processing of any of them, is not considered to be refining.

(c) No agreement authorized by this chapter may provide for the cooperative marketing of crude petroleum, condensate, distillate, or gas, or any by-products of them.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 101.018. EFFECT OF APPROVAL OUTSIDE OF UNIT. The approval of an agreement authorized by this chapter shall not of itself be construed as a finding that operations of a different kind or character in the portion of the field outside of the unit are wasteful or not in the interest of conservation.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PUBLIC LAND

Sec. 101.051. AUTHORITY OF COMMISSIONER OF GENERAL LAND OFFICE. Subject to the approval specified in Section 101.052 of this code, the Commissioner of the General Land Office, on behalf of the State of Texas or of any fund belonging to the state, may execute contracts committing to the agreements declared lawful by the provisions of this chapter (1) the royalty interests in oil or gas or both reserved to the state, or any fund of the state, by law, in any patent, in any contract of sale, or under the terms of any oil and gas lease lawfully issued by an official, board, agent, agency, or authority of the state or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 33, eff. Sept. 1, 1987.

Sec. 101.052. NECESSARY APPROVAL BY OTHER PERSONS AND STATE AGENCIES. (a) An agreement that commits (1) the royalty interests in land set apart by the constitution and laws of this state for the permanent free school fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code, must be approved by the School Land Board.

(b) An agreement that covers land leased for oil and gas under the Relinquishment Act, codified as Subchapter F in Chapter 52 of this code, must be executed by the owners of the soil.

(c) An agreement that commits the royalty interests in land or areas other than those covered by Subsections (a) and (b) of this section must be approved by the board, official, agent, agency, or authority of the state vested with authority to lease or to approve the leasing of the land or areas for oil and gas.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 34, eff. Sept. 1, 1987.

CHAPTER 102. POOLING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. TITLE. This chapter may be cited as the Mineral Interest Pooling Act.

Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.002. DEFINITIONS. In this chapter:

(1) "Mineral" means and is limited to oil and gas.

(2) "Commission" means the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.003. APPLICATION TO CERTAIN RESERVOIRS. The provisions of this chapter do not apply to any reservoir discovered and produced before March 8, 1961.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.004. APPLICATION TO PUBLIC LAND. (a) The provisions of this chapter do not apply to land owned by the State of Texas nor

to land in which the State of Texas has an interest directly or indirectly.

(b) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority or jurisdiction of the Commissioner of the General Land Office or the State of Texas with respect to any land or interest in land in which the Commissioner of the General Land Office has jurisdiction.

(c) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority, jurisdiction, or consent of the Commissioner of the General Land Office on the pooling of any interest now subject to the jurisdiction, authority, or consent of the Commissioner of the General Land Office.

(d) With the approval or consent first obtained, or at the instance of the Commissioner of the General Land Office, or any board or agency having jurisdiction, the land in which the State of Texas has an interest as described in this chapter may be pooled under the provisions of this chapter.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. REQUIREMENTS AND PROCEDURE FOR POOLING

Sec. 102.011. AUTHORITY OF COMMISSION. When two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the commission has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, the commission, on the application of an owner specified in Section 102.012 of this code and for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.012. OWNERS AUTHORIZED TO APPLY FOR POOLING. The following interested owners may apply to the commission for the pooling of mineral interests:

(1) the owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit;

(2) the owner of any working interest; or

(3) any owner of an unleased tract other than a royalty owner.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.013. REQUIRED VOLUNTARY POOLING OFFER. (a) The applicant shall set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit.

(b) The commission shall dismiss the application if it finds that a fair and reasonable offer to pool voluntarily has not been made by the applicant.

(c) An offer by an owner of a royalty or any other interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other owners within the existing proration unit are then sharing shall be considered a fair and reasonable offer.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.014. PRODUCTIVE ACREAGE EQUAL TO STANDARD PRORATION UNIT. (a) The commission shall not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of the standard proration unit for the reservoir, to pool his interest with others unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool

voluntarily.

(b) If the conditions specified in Subsection (a) of this section exist, the commission shall pool the smaller tract with adjacent acreage on a fair and reasonable basis and may authorize a larger allowable for the unit if it exceeds the size of the standard proration unit for the reservoir.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.015. PROHIBITED PROVISIONS IN OPERATING AGREEMENT. A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable if it provides for an operating agreement containing any of the following provisions:

(1) preferential right of the operator to purchase mineral interests in the unit;

(2) a call on or option to purchase production from the unit;

(3) operating charges that include any part of district or central office expense other than reasonable overhead charges; or

(4) prohibition against nonoperators questioning the operation of the unit.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.016. NOTICE OF HEARING. On the filing of an application for pooling of interests into a unit under the provisions of this chapter, at least 30 days notice before hearing on the application shall be given to all interested parties, including notice by publication if there are unknown owners or owners whose whereabouts are unknown. The notice shall be given in the manner and form prescribed by the commission.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.017. POOLING ORDER. (a) After notice and hearing,

all orders effecting the pooling shall be made on terms and conditions that are fair and reasonable and will afford the owner or owners of each tract or interest in the unit the opportunity to produce or receive his fair share.

(b) Each order shall:

(1) describe the land included in the unit, identifying the reservoir to which it applies;

(2) designate the location of the well; and

(3) appoint an operator for the unit.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.018. ACREAGE SUBJECT TO POOLING. The commission shall pool only the acreage which at the time of its order reasonably appears to lie within the productive limits of the reservoir.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. RIGHTS IN A POOLED UNIT

Sec. 102.051. OWNERSHIP OF PRODUCTION. (a) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit.

(b) Notwithstanding the provisions in Subsection (a) of this section, if the commission finds that allocation on a surface-acreage basis does not allocate to each tract its fair share, the commission shall allocate the production so that each tract will receive its fair share, which for any nonconsenting owner shall be no less than he would receive under a surface-acreage allocation.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.052. DRILLING AND COMPLETION COSTS. (a) As to an

owner who elects not to pay his proportionate share of the drilling and completion costs in advance, the commission shall make provision in the pooling order for reimbursement solely out of production, to the parties advancing the costs, of all actual and reasonable drilling, completion, and operating costs plus a charge for risk not to exceed 100 percent of the drilling and completion costs.

(b) If there is a dispute relative to the costs, the commission shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing on the costs.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.053. EFFECT OF OPERATIONS. (a) The operations on and production from any portion of a unit for which a pooling order has been entered shall be considered for all purposes the conduct of the operations on and production from each separately owned tract in the pooled unit. If a gas well on a pooled unit is shut-in, it shall be considered that the shut-in gas well is on each separately owned tract in the pooled unit.

(b) If only part of a tract is included in the unit, operations on, production from, or a shut-in gas well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained had the unit been created voluntarily under the provisions of the lease.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. DISSOLUTION OF UNIT

Sec. 102.081. DISSOLVED WITH CONSENT OF OWNERS. A unit established by order of the commission under this chapter may not be modified or dissolved subsequently without the consent of all mineral owners affected, except as necessary to permit its enlargement as provided in Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.082. AUTOMATIC DISSOLUTION. A unit is automatically dissolved:

(1) two years after its effective date if no production or drilling operations have been had on the unit or surface location for the unit;

(2) six months after the completion of a dry hole on the unit; or

(3) six months after cessation of production from the unit.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 57 (H.B. 3226), Sec. 1, eff. September 1, 2019.

Sec. 102.083. TERMINATION OF POOLED LEASE. On termination of a lease pooled by order of the commission under authority granted by this chapter, interests covered by the lease are considered pooled as unleased mineral interests.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. JUDICIAL REVIEW

Sec. 102.111. RIGHT TO APPEAL. A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.112. VENUE. Appeal shall be to the district court of the county in which the land or any part of the land covered by the order is located and not elsewhere, notwithstanding the provisions of Sections 85.241 through 85.243 of this code.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 103. COOPERATIVE FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 103.001. DEFINITION. In this chapter, "commission" means the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.002. RIGHTS EXISTING ON MAY 12, 1953. None of the provisions in this chapter restrict any of the rights that persons had on May 12, 1953, to make and enter into contracts for the construction and operation of cooperative facilities as provided in this chapter.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.003. CONFLICT WITH ANTITRUST LAWS. (a) Agreements and operations under agreements that are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the provisions in this chapter are intended as a reasonable exception necessary for the public interest stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and the laws cited in Subsections (a) and (b) of this section and finds that the provisions in this chapter are not a reasonable exception, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring the cited laws, or

any portion of them, invalid.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

Sec. 103.041. AUTHORIZED COOPERATIVE FACILITIES FOR SEPARATELY OWNED PROPERTY. The commission may approve agreements by persons owning or controlling leases or other interests in separate property in oil fields, gas fields, or oil and gas fields for the construction and operation of cooperative facilities necessary for the conservation and utilization of gas, including facilities for extracting and separating hydrocarbons from gas or casinghead gas.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.042. COMMISSION APPROVAL. Agreements for the construction and operation of cooperative facilities shall be approved by the commission only after application, notice, and hearing, and a finding by the commission that the cooperative facilities are in the interest of conservation and that secondary recovery operations are not feasible or necessary.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.043. COOPERATIVE REFINING. (a) No agreement for the construction or operation of cooperative facilities may provide directly or indirectly for the cooperative refining of oil, distillate, condensate, or gas, or any by-product of oil, distillate, condensate, or gas.

(b) The extraction of liquid hydrocarbons from gas and the separation of liquid hydrocarbons into butanes, propanes, ethanes, distillate, condensate, and natural gasoline without any additional processing of any of them is not considered to be refining.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 103.044. COOPERATIVE MARKETING. No agreement for the construction or operation of cooperative facilities may provide for the cooperative marketing of oil, condensate, distillate, or gas, or any by-product of oil, condensate, distillate, or gas.

Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.045. EFFECT OF APPROVAL ON OPERATIONS IN OTHER FIELDS. The approval of an agreement authorized by this chapter is not of itself a finding that similar operations in other fields are wasteful or not in the interest of conservation.

Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.046. JOINTLY OWNED PROPERTY. None of the provisions in this chapter require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.

Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBTITLE D. REGULATION OF SPECIFIC BUSINESSES AND OCCUPATIONS
CHAPTER 111. COMMON CARRIERS, PUBLIC UTILITIES, AND COMMON PURCHASERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 111.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Public utility" means a person, association of persons, or corporation that owns, operates, or manages crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipeline, pipelines, or otherwise. The term does not include an electric cooperative, as that term is defined by Section 11.003, Utilities Code, or its subsidiary, that

sells electricity at wholesale and that owns or operates an underground storage facility and provides gas storage services to the public for hire if the gas storage facility is predominantly operated to support the integration of renewable resources. Such a gas storage facility may not have a working gas capacity of greater than five billion cubic feet.

Acts 1977, 65th Leg., p. 2578, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 4 (S.B. 312), Sec. 3, eff. April 21, 2011.

Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. A person is a common carrier subject to the provisions of this chapter if it:

(1) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire, or engages in the business of transporting crude petroleum by pipeline;

(2) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire and the pipeline is constructed or maintained on, over, or under a public road or highway, or is an entity in favor of whom the right of eminent domain exists;

(3) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire which is or may be constructed, operated, or maintained across, on, along, over, or under the right-of-way of a railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier;

(4) under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind, owns, operates, manages, or participates in ownership, operation, or management of a pipeline or part of a pipeline in the State of Texas for the transportation of crude petroleum, bought of others, from an oil field or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state;

(5) owns, operates, or manages, wholly or partially, pipelines for the transportation for hire of coal in whatever form or of any mixture of substances including coal in whatever form;

(6) owns, operates, or manages, wholly or partially, pipelines for the transportation of carbon dioxide or hydrogen in whatever form to or for the public for hire, but only if such person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter; or

(7) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of feedstock for carbon gasification, the products of carbon gasification, or the derivative products of carbon gasification, in whatever form, to or for the public for hire, but only if the person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, Sec. 2, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 199, ch. 93, Sec. 1, eff. Aug. 31, 1981; Acts 1991, 72nd Leg., ch. 689, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 22 (H.B. 1967), Sec. 1, eff. September 1, 2007.

Sec. 111.003. APPLICABILITY OF CHAPTER. (a) The provisions of this chapter do not apply to pipelines that are limited in their use to the wells, stations, plants, and refineries of the owner and that are not a part of the pipeline transportation system of a common carrier as defined in Section 111.002 of this code.

(b) The provisions of this chapter do not apply to any property of a common carrier, as defined in Section 111.002 of this code, that is not a part of or necessarily incident to its pipeline transportation system.

(c) The provisions of this chapter, and any common law

requirements or limitations applicable to a common carrier, do not apply to an underground storage facility owned or operated by an electric cooperative, as that term is defined by Section 11.003, Utilities Code, or its subsidiary, that sells electricity at wholesale and offers or provides gas storage services to the public for hire if the gas storage facility is predominantly operated to support the integration of renewable resources. Such a gas storage facility may not have a working gas capacity of greater than five billion cubic feet.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 4 (S.B. 312), Sec. 4, eff. April 21, 2011.

Sec. 111.004. GENERAL RESTRICTION ON TRANSPORTATION OF OIL. No person, including a common carrier, may transport crude oil or petroleum in this state unless the crude oil or petroleum has been produced or purchased or both in accordance with the laws of this state or a rule of the commission made under those laws, or both.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. COMMON CARRIERS

Sec. 111.011. REGULATION IN PUBLIC INTEREST. The operation of common carriers covered by this chapter is a business in which the public is interested and is subject to regulation by law.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.012. GENERAL JURISDICTION OF COMMISSION. Particular powers granted to the commission by the provisions of this chapter do not limit the general powers conferred by other laws.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 111.013. CONTROL OF PIPELINES. A pipeline subject to the provisions of this chapter not exempt under Section 111.003, which is used in connection with the business of purchasing or purchasing and selling crude petroleum, or in the business of transporting coal, carbon dioxide, hydrogen, feedstock for carbon gasification, the products of carbon gasification, or the derivative products of carbon gasification in whatever form by pipeline for hire in Texas, shall be operated as a common carrier and shall be subject to the jurisdiction of the commission.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, Sec. 2, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 199, ch. 93, Sec. 1, eff. Aug. 31, 1981; Acts 1991, 72nd Leg., ch. 689, Sec. 2, eff. Sept. 1, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 22 (H.B. 1967), Sec. 2, eff. September 1, 2007.

Sec. 111.014. PUBLICATION OF TARIFFS. Common carriers shall make and publish their tariffs under rules prescribed by the commission.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.015. TRANSPORTATION WITHOUT DISCRIMINATION. Subject to the law and the rules prescribed by the commission, a common carrier shall receive and transport crude petroleum delivered to it for transportation and perform its other related duties without discrimination.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.016. DISCRIMINATION BETWEEN SHIPPERS. (a) A common carrier in its operations as a common carrier shall not discriminate between or against shippers with regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum.

(b) A common carrier shall not discriminate in the transportation of crude petroleum produced or purchased by itself directly or indirectly.

(c) In this connection, a pipeline is a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.017. EQUAL COMPENSATION FOR LIKE SERVICE. (a) No common carrier in its operations as a common carrier may charge, demand, collect, or receive either directly or indirectly from anyone a greater or lesser compensation for a service rendered than from another for a like and contemporaneous service.

(b) The provisions of Subsection (a) of this section do not limit the right of the commission to prescribe rules and rates from or to some places that are different from rules or rates for transportation from or to other places.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.018. EFFECT OF COMMISSION ORDER. A common carrier is not guilty of discrimination when obeying an order of the commission.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.019. RIGHT OF EMINENT DOMAIN. (a) Common carriers have the right and power of eminent domain.

(b) In the exercise of the power of eminent domain granted under the provisions of Subsection (a) of this section, a common

carrier may enter on and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of the common carrier pipeline.

(c) Upon written request by a resident or owner of land crossed by a common carrier pipeline, the common carrier must disclose material data safety sheets concerning the commodities transported by the common carrier required by the commission and the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.). Such disclosure must be in writing and must be mailed or delivered to the resident or landowner within 30 days of receipt of the request.

(d) Before entering property for the purpose of making a preliminary survey to be used in the exercise of the power of eminent domain granted under this section, the common carrier or its employees, contractors, agents, or assigns shall provide the property owner with:

(1) written notice of the carrier's intent to enter the property; and

(2) an indemnification provision in favor of the property owner with respect to damages, if any, resulting from the survey.

(e) Notice and indemnification provided under Subsection (d):

(1) must be provided to the property owner not later than the second day before the date of entry to the property;

(2) must include the phone number of a person whom the property owner may contact regarding any questions or objections the property owner has relating to the survey; and

(3) may be provided by first class mail, e-mail, personal delivery to an adult living on the property, or by any other method of service authorized by the Texas Rules of Civil Procedure.

(f) Entry to property for which notice is provided under Subsection (d) is subject to the conditions that the entry:

(1) is limited to only the portion of the property that:

(A) is anticipated to be affected by:

(i) the route of the proposed pipeline; or

(ii) a proposed pipeline appurtenance; or

(B) must be accessed to conduct the survey, including the property corners or property location monuments necessary to identify the boundaries of the property;

(2) is limited to the purpose of conducting surveys;

(3) unless otherwise authorized by the property owner, does not authorize the cutting, removal, or relocation of a fence for the purpose of conducting the survey without the prompt restoration or repair of the fence;

(4) requires the restoration of property to be as close as reasonably possible to the original condition before entry;

(5) requires all equipment and tools used in the survey to be removed by a certain date; and

(6) requires that the property owner, on written request, be provided, at no charge, a survey plat or depiction gathered and prepared from information obtained from the survey.

(g) This section does not prevent an entity from seeking survey access rights or seeking to prevent interference with those rights in a civil action authorized under other law.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 630, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 1039 (H.B. 4107), Sec. 1, eff. September 1, 2021.

Sec. 111.0191. COSTS OF RELOCATION OF PROPERTY. In the event a common carrier pipeline in the exercise of the power of eminent domain or police power or any other power granted under this chapter makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any railroad, electric transmission, telegraph or telephone lines, properties and facilities, or pipeline, all such relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of such common carrier pipeline. The term "sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facilities, after deducting therefrom the net salvage value derived from the old facility.

Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 4, eff. Sept. 1, 1977.

Sec. 111.0192. LIMITATIONS ON THE POWERS OF EMINENT DOMAIN IN CERTAIN SITUATIONS. (a) The right of eminent domain granted under this chapter to any pipelines transporting coal in whatever form shall not include and cannot be used to condemn water or water rights for use in the transportation of coal by pipeline, and no Texas water from any source shall be used in connection with the transportation, maintenance, or operation of a coal slurry pipeline (except water used for drinking, toilet, bath, or other personal uses at pumping stations or offices) within the State of Texas unless the Texas Natural Resource Conservation Commission shall determine, after public hearing, that the use will not be detrimental to the water supply of the area from which the water is sought to be extracted.

(b) The right of eminent domain granted under this chapter to any pipeline transporting coal in whatever form shall not include the power to take land or any interest in land, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing any oil, gas, geothermal, geothermal/geopressured, lignite, coal, sulphur, uranium, plutonium, or other mineral, but this provision does not impair the right of any such entity to acquire title to real property for pipelines, including cooling ponds and related surface installations and equipment.

Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 6, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.271, eff. Sept. 1, 1995.

Sec. 111.0193. RESTORATION OF PROPERTY. Every condemnation award granted under this chapter shall require that the condemnor restore the property which is the subject of the award to its former condition as near as reasonably practicable.

Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, Sec. 7, eff. Sept. 1, 1977.

Sec. 111.0194. PIPELINE EASEMENTS. (a) Unless the terms of the grant or the condemnation judgment expressly provide otherwise, or the easement rights otherwise prescriptively owned through actual use are greater, an easement created through grant or through the power of eminent domain for the benefit of a single common carrier

pipeline for which the power of eminent domain is available under Section 111.019 of this code as of January 1, 1994, is presumed to create an easement in favor of the common carrier pipeline, or a successor in interest to the common carrier pipeline, that extends only a width of 50 feet as to each pipeline laid under the grant or judgment in eminent domain prior to January 1, 1994.

(b) The presumption in Subsection (a) of this section is not applicable to pipeline easements of a common carrier pipeline granted under the terms of an oil and gas lease or oil, gas, and mineral lease, or to any easement which authorizes the construction of gathering lines.

(c) The presumption set out in Subsection (a) of this section on the limitation of width may be rebutted by evidence on behalf of the common carrier pipeline that a greater width is reasonably needed for purposes of operation, construction of additional lines under the grant or judgment in an eminent domain proceeding, maintenance, repair, replacement, safety, surveillance, or as a buffer zone for protection of the safe operation of the common carrier pipeline, together with such other evidence as a court may deem relevant to establish the extent of an easement in excess of 50 feet in width.

(d) The presumption in Subsection (a) of this section shall apply separately as to each pipeline under a grant or judgment which allows more than one pipeline on the subservient estate.

(e) This section shall not be deemed to limit any rights of ingress to or egress from easements that may exist under the original grant, prescriptive rights, or common law.

(f) This section does not limit or otherwise affect the rights of parties engaged in litigation before January 1, 1994.

Added by Acts 1993, 73rd Leg., ch. 787, Sec. 1, eff. Jan. 1, 1994.

Sec. 111.020. PIPELINE ON PUBLIC STREAM OR HIGHWAY. (a) Subject to the provisions of Subsection (b) of this section, all common carriers are entitled to lay, maintain, and operate along, across, or under a public stream or highway in this state pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of the pipelines.

(b) The right to run a pipeline or telegraph or telephone line

along, across, or over a public road or highway may be exercised only on condition that:

(1) it does not interfere with traffic on the road or highway;

(2) the road or highway is promptly restored to its former condition of usefulness;

(3) the restoration of the road or highway is subject also to the supervision of the commissioners court or other proper local authority; and

(4) no pipes or pipelines are laid parallel with and on a public highway closer than 15 feet from the improved section of the highway except with the approval and under the direction of the commissioners court of the county in which the public highway is located.

(c) The common carrier shall compensate the county or road district, respectively, for any damage done to the public road in the exercise of the privileges conferred.

(d) A person may acquire the right conferred in this section by filing with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.021. PIPELINE UNDER RAILROAD, STREET RAILROAD, OR CANAL. A common carrier is entitled to lay its pipe or pipeline under any railroad, railroad right-of-way, street railroad, or canal in this state.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.022. RIGHT TO USE STREET OR ALLEY IN CITY OR TOWN. The provisions of this chapter do not grant a pipeline company the right to use a public street or alley in an incorporated or unincorporated city or town except with express permission of the governing body of the city or town or the right to lay its pipes or

pipelines along and under a street or alley in an incorporated city or town except with the consent and under the direction of the governing body of the city or town.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.023. EXCHANGE OF FACILITIES. (a) A common carrier shall exchange crude petroleum tonnage with each like common carrier.

(b) When a necessity exists, the commission may require connections and facilities for the interchange of crude petroleum tonnage to be made at every locality reached by both pipelines, subject to the rules and rates made by the commission.

(c) A common carrier pipeline under like rules shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on the pipeline.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.024. LIMIT ON AMOUNT OF OIL CARRIED. No common carrier may be required at any time to receive for shipment from any person more than 3,000 barrels of petroleum in any one day.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.025. ABANDONING CONNECTIONS. (a) No common carrier may abandon any of its connections or lines except under authority of a permit granted by the commission or with written consent of the owner or duly authorized agent of the wells to which connections are made.

(b) Before granting a permit to abandon any connection, the commission shall issue proper notice and hold a hearing as provided by law.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PUBLIC UTILITIES

Sec. 111.051. APPLICABILITY OF STATUTE TO PUBLIC UTILITIES. A public utility is subject to the provisions of this subchapter and other provisions of this chapter relating to public utilities.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.052. DISCRIMINATION BY PUBLIC UTILITY. No public utility in its operations as a public utility may discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same or similar circumstances, in the storage of crude oil.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.053. BOND OF PUBLIC UTILITY. (a) Before engaging in business as a public utility, a person, association, or corporation that is to engage in business as a public utility shall file a bond in an amount not to exceed $25,000 that is properly executed and made payable to the State of Texas with the amount of the bond and the sureties on the bond subject to the approval of the commission.

(b) In lieu of a bond as required by Subsection (a), a person, association, or corporation may deposit with the commission:

(1) bonds of the United States;

(2) certificates of indebtedness issued by the United States secretary of the treasury;

(3) bonds of this state or a county, municipality, or school district of this state; or

(4) shares or share accounts of savings and loan associations organized under the laws of this state or federal savings and loan associations domiciled in this state, if the shares or share accounts are insured by the Federal Deposit Insurance Corporation.

(c) The bond or securities in lieu of the bond as provided by Subsection (b) shall be approved by the commission before the bond is

filed or the securities deposited.

(d) After proper notice and hearing as provided by law, the amount of the bond may be changed from time to time by order of the commission, according to the volume of business done or to be done by the public utility.

(e) The bond shall be conditioned that the public utility will observe the applicable provisions of this subchapter and chapter and the rules of the commission insofar as its business is regulated and controlled by the commission and that the public utility will exercise ordinary care in the storage, preservation, handling, and delivery of petroleum products entrusted to it and shall guarantee the classification, measurements, and grades made by it under its authority and in conformity herewith.

(f) The bond shall be for the benefit of the patrons of the public utility and their assignees as though they were named obligees in the bond and they shall severally have the right of suit on the bond.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.107, eff. Sept. 1, 2001.

Sec. 111.054. LIEN FOR STORAGE CHARGES. A public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against the commodity or the transportation charges accrued to or paid or advanced by it or both and the lien is superior to all other liens on the commodity except a lien for taxes.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. COMMON PURCHASERS

Sec. 111.081. DEFINITION OF COMMON PURCHASER. (a) In this subchapter, "common purchaser" means:

(1) every person that purchases crude oil or petroleum produced within the limits of this state and that is affiliated through stock ownership, common control, contract, or in any other manner with a common carrier by pipeline or is itself a common

carrier;

(2) every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or that engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas thereof;

(3) every person that operates a crude oil gathering system, whether by pipeline or truck, that may purchase crude oil or petroleum in this state, whether or not it is a common carrier or affiliated with a common carrier; and

(4) the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck.

(b) The persons covered by Subdivision (3), Subsection (a) of this section do not include persons transporting only crude oil from property in which they own an operating interest.

(c) The operation of a crude oil gathering system by a person, association of persons, or corporation transporting only crude oil from property in which it owns an operating interest shall not be considered to be included in Subdivision (4) of Subsection (a) of this section.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.082. PURPOSE FOR INCLUDING CERTAIN ENTITIES UNDER REGULATION AS COMMON PURCHASERS. Persons, gas pipeline companies, and gas purchasers claiming or exercising the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state are regulated as common purchasers under this subchapter for the purpose of further conserving the natural gas resources of this state.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.083. DUTY OF CERTAIN COMMON PURCHASERS. A common purchaser as defined in Subdivision (2), Subsection (a), Section

111.081 of this code shall purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed by the commission in the manner, under the inhibitions against discriminations, and subject to the provisions applicable under this chapter to common purchasers of oil.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.084. OPERATION OF GATHERING SYSTEMS FOR CRUDE PETROLEUM. The operation of gathering systems for crude petroleum by pipeline or by truck in connection with the purchase or purchase and sale of crude petroleum is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law. Therefore, it is provided that the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck, shall not be conducted unless the person operating the gathering system being used in this manner in connection with this business is a common purchaser under this law and subject to the jurisdiction conferred on the commission over common purchasers.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.085. APPLICABILITY OF RATE PROVISIONS TO CERTAIN COMMON PURCHASERS. Common purchasers as defined in Subdivision (3), Subsection (a), Section 111.081 of this code are subject to the same regulation concerning rates and charges for gathering, transporting, loading, and delivering crude petroleum as set out in Subchapter F of this chapter.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.086. DISCRIMINATION BETWEEN PERSONS AND FIELDS. (a) A common purchaser shall purchase oil offered to it for purchase without discrimination in favor of one producer or person against

another producer or person in the same field and without unjust or unreasonable discrimination between fields in this state.

(b) A question of justice or reasonableness under this section shall be determined by the commission taking into consideration the production and age of wells in respective fields and all other proper factors.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.087. CONDITIONS IN TAKING PRODUCTION. (a) No common purchaser may discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or production in which the common carrier may be directly or indirectly interested in whole or part.

(b) For the purpose of prorating the purchase of crude oil or petroleum to be marketed, the production shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that the production bears to the total production offered for market in the field.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.088. COMMISSION RELIEF. After proper notice and hearing as provided by law, the commission may relieve any common purchaser from the duty of purchasing petroleum of inferior quality or grade.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.089. DISCRIMINATION AS TO ROYALTY OIL. (a) In making purchases of royalty oil, a common purchaser shall comply with the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and shall not discriminate between royalty owners or landowners or both in making

those purchases.

(b) No common purchaser may unreasonably delay payments to a royalty owner or landowner or both in purchases of said oil or gas.

(c) In addition to other penalties, the royalty owner or landowner or both have a cause of action for violation of this section against the common purchaser for damages and may file suit for damages in any court of competent jurisdiction in the county in which the royalty lies.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.090. COMPLIANCE BY COMMON PURCHASERS. The commission shall enforce compliance with this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code and after notice and hearing, may make rules and orders defining the distance that extensions or gathering lines shall be made to all oil or gas wells and other rules or orders that may be necessary to carry out those provisions cited in this section and to prevent discrimination.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.091. PREVENTION OF DISCRIMINATION. (a) The commission shall make inquiry in each field concerning the connection of various producers, and if discrimination is found to be practiced by a common purchaser, the commission shall issue an order to the common purchaser to make any reasonable extensions of its lines, reasonable connections, and ratable purchases that will prevent the discrimination.

(b) The commission may issue a show cause order to any common purchaser requesting it to appear and show cause why it should not purchase the allowable production of any producer discriminated against under Subsection (a) of this section.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.092. INJUNCTION TO PREVENT DISCRIMINATION. On information that discrimination is practiced in its purchases by a common purchaser, the commission shall request the attorney general to bring a mandatory injunction suit against the common purchaser to compel the reasonable extensions that are necessary to prevent discrimination.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.093. FORFEITURE OF CHARTER OF DOMESTIC CORPORATION. (a) If a domestic corporation that is a common purchaser violates any provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or any valid rule promulgated by the commission under those provisions, the attorney general may bring suit in a district court in Travis County against the corporation to forfeit the charter of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom the action is brought under this section, the charter of the corporation may be forfeited and the injunction may be granted, provided that the forfeiture and injunction are in addition to all other penalties.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.094. FORFEITURE OF CHARTER OF FOREIGN CORPORATION. (a) If a foreign corporation that is a common purchaser violates a provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or a valid rule promulgated by the commission under these provisions, the attorney general may bring suit in a district court of Travis County to cancel the permit of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom

the action is brought, the permit may be cancelled and the injunction may be granted, provided the cancellation and injunction are in addition to all other penalties.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.095. ACTION FOR DAMAGES. (a) If a person is discriminated against by a common purchaser in favor of the production of the common purchaser, the person may bring an action for damages against the common purchaser.

(b) An action for damages under this section may be brought in any court of competent jurisdiction in the county in which the damage occurred.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.096. DUTIES AND RESPONSIBILITIES OF COMMON PURCHASERS, PURCHASERS, GATHERERS, AND TRANSPORTERS. Notwithstanding the provisions of any statute or law including the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, none of the provisions of Sections 111.081, 111.084, 111.085, and 111.091 of this code shall increase or decrease the duties or responsibilities of any common purchaser, purchaser, gatherer, or transporter of natural gas, residue gas, or casinghead gas.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.097. ANTITRUST LAWS UNAFFECTED. (a) No provision of this subchapter may be construed as modifying, limiting, changing, repealing, or affecting in any manner any part of the present law of this state defining and regulating trusts, monopolies, and conspiracies in restraint of trade.

(b) No provision of this subchapter may be construed as

authorizing any agreement or combination or both of capital, skill, and acts or any of these and any combination or consolidation now prohibited by the antitrust laws of this state or laws of this state prohibiting trusts, monopolies, and conspiracies in restraint of trade or both.

(c) No provision of this subchapter is intended or may be construed as authorizing any agreement, act, combination, consolidation, or other arrangement that is now prohibited under the antitrust laws of this state or the laws prohibiting and defining trusts, monopolies, and conspiracies in restraint of trade or both.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. POWERS AND DUTIES OF THE COMMISSION

Sec. 111.131. COMMISSION RULES FOR COMMON CARRIERS. The commission shall establish and promulgate rules for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation and shall prescribe and enforce rules, in the manner provided by law, for the government and control of common carriers with respect to their pipelines and receiving, transferring, and loading facilities.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.132. COMMISSION RULES FOR PUBLIC UTILITIES. (a) The commission shall establish and enforce rules governing:

(1) the character of facilities to be furnished by public utilities;

(2) the forms of receipts to be issued by public utilities; and

(3) the rates, charges, and rules for the storage of crude petroleum by public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, and the delivery of their products.

(b) The commission also shall exercise its authority to establish and enforce rules governing public utilities on petition of

an interested person.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.133. ENFORCEMENT BY COMMISSION. The commission may make rules for the enforcement of the provisions of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.132, 111.136, 111.137, and 111.140 of this code.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.134. NOTICE AND HEARING. No order of the commission establishing, prescribing, or modifying rules or rates may be made except after a hearing and after not less than 10 days nor more than 30 days notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipeline or pipelines affected.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.135. VALIDITY OF COMMISSION ORDERS. Until set aside or vacated by an order or decree of a court of competent jurisdiction, all orders of the commission relating to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.136. REVIEW OF ORDERS. A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.137. ENLARGEMENT AND EXTENSION OF FACILITIES. On its own initiative without complaint, and after proper notice and hearing, as provided by law the commission may authorize or require by order any common carrier owning or operating pipelines in this state or owning, operating, or managing crude petroleum storage tanks or facilities for the public for hire, to extend or enlarge those pipelines or storage facilities if the extension or enlargement is found to be reasonable and required in the public interest and the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.138. BOOKS AND RECORDS. The commission may investigate the books and records kept by any common carrier in connection with its business.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.139. REPORTS. (a) The commission shall require each common carrier to make reports including duly verified monthly reports of:

(1) the total quantities of crude petroleum owned by the common carrier in the state;

(2) the total quantities of crude petroleum held by the common carrier in storage for others in the state; and

(3) the common carrier's unfilled storage capacity.

(b) The commission shall give no publicity to the stock of crude petroleum on hand of any particular common carrier, but the commission may, in its discretion, make public the aggregate amounts held by all common carriers making reports and their aggregate storage capacity.

(c) The commission shall require each common carrier to mail,

return receipt requested, a copy of all spill or leak reports required by the commission to residents or owners of land upon which a spill or leak has occurred within 30 days of filing the report with the commission. If a resident or owner of land has not registered with the commission, the common carrier is relieved of the requirement to mail copies of spill or leak reports to the resident or landowner. The commission shall provide a procedure for residents and owners of land crossed by a common carrier pipeline to voluntarily register their names and mailing addresses with the commission.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 630, Sec. 2, eff. Sept. 1, 1993.

Sec. 111.140. FILING MONTHLY STATEMENTS. (a) On or before the 20th day of each calendar month, every common carrier in this state and every public utility shall file with the commission and shall post in a conspicuous place accessible to the general public in its principal office and each of its division offices in this state a statement, duly verified, containing information concerning its business during the preceding calendar month as follows:

(1) the amount of crude or refined petroleum in the actual and immediate custody of the common carrier or public utility at the beginning and close of the month and the location or holding point of this petroleum, including the location and designation of each plant or place of deposit and the name of its owner;

(2) the amount of crude or refined petroleum received by the common carrier or public utility during the month;

(3) the amount of crude or refined petroleum that was delivered by the common carrier or public utility during the month;

(4) the amount of crude or refined petroleum held by the common carrier or public utility for itself or parent or affiliated organizations; and

(5) the available empty storage owned or controlled by the common carrier or public utility and its location.

(b) The information to be provided under Subsection (a) of this section shall be set out separately as to crude petroleum and each refined product of crude petroleum in each statement.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.141. GRADES OF OIL. (a) The commission shall make rules for:

(1) the ascertainment of the amount of water and other foreign matter in oil tendered for transportation;

(2) deduction for water and other foreign matter; and

(3) the amount of deduction to be made for temperature, leakage, and evaporation.

(b) No common carrier may be required to receive or transport any crude petroleum except that which is marketable under rules prescribed by the commission.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.142. EQUITABLE APPORTIONMENT OF EXCESSIVE AMOUNT OF CRUDE PETROLEUM. If more crude petroleum is offered for transportation by a common carrier than can be transported immediately, it shall be apportioned equitably, and the commission may make and enforce general or specific rules for equitable apportionment.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. RATES

Sec. 111.181. ESTABLISHING AND PROMULGATING RATES. The commission shall establish and promulgate rates of charges for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.182. ITEMS INCLUDED IN RATES. The rates established and promulgated by the commission shall include both single- and joint-line transportation, deduction for evaporation and shrinkage, demurrage, storage, and overage charges and all other similar items.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.183. BASIS FOR RATE. The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.184. DISCRETION OF COMMISSION. The commission has reasonable latitude in establishing and adjusting competitive rates.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.185. TEMPORARY RATES. If a common carrier makes application or files a tariff to establish a new rate on either a new or old line, a temporary rate may be placed into effect immediately on filing the tariff with the commission.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.186. REPARATION AND REIMBURSEMENT. If rates have been filed, each shipper who pays these filed rates is entitled to reparation or reimbursement of all excess rates or transportation charges paid over and above the rate that is finally determined on the shipments.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.187. REIMBURSEMENT OF EXCESS CHARGES. If a rate is filed by a common carrier and complaint against the rate or petition to reduce the rate is filed by a shipper, and the complaint is sustained in whole or part, all shippers who have paid the rates filed by the common carrier are entitled to reparation or reimbursement of all excess transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of the complaint.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.188. ANNUAL RATE HEARING. The commission shall hold a general hearing once each year for the purpose of adjusting rates to conform to the basis of rates and charges provided in this subchapter.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.189. HEARING AND DETERMINATION OF RATES. If a person at interest files an application for a change in a rate or rates, the commission shall call a hearing and immediately after the hearing shall establish and promulgate a rate or rates in accordance with the basis provided in this subchapter.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.190. HEARINGS TO ADJUST RATES. On its own motion or on motion of any interested person, the commission shall hold a hearing to adjust, establish, and promulgate a proper rate or rates if it has reason to believe that any rate or rates do not conform to the basis provided in this subchapter.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. ENFORCEMENT

Sec. 111.221. COMPLAINTS; JURISDICTION TO HEAR COMPLAINTS. Any person or the attorney general on behalf of the state may institute proceedings before the commission or apply for a hearing before the commission on any question relating to the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and the commission has jurisdiction to hear and determine these questions after giving proper notice as provided by law.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.222. APPLICATION FOR RECEIVERSHIP. If a rule or order promulgated by the commission under Subchapter C, D, or F of this chapter or Section 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code is found by a court to be valid in whole or part in a suit to which the commission is a party, and if another party to the suit or other proceedings violates the rule, order, or judgment or allows any property owned or controlled by him to be used in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting a receiver be appointed as provided in Section 111.223 of this code.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.223. APPOINTMENT OF RECEIVER. On application by the commission and after notice and hearing, the judge of the trial court may appoint a receiver of the property involved in violating the rule, order, or judgment and shall set a proper bond for the receiver.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.224. DUTIES AND RESPONSIBILITIES OF RECEIVER. As soon as the receiver has qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.225. MOTION TO DISSOLVE RECEIVERSHIP. A party whose property has been placed in the hands of a receiver may move to dissolve the receivership and discharge the receiver only on showing that the party has not wilfully violated nor allowed property owned or controlled by him to be used in violating the rule, order, or judgment or on other good cause shown.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.226. BOND. (a) Before dissolving the receivership or discharging the receiver, the court, in its discretion, may require the party applying for the dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule or order judged to be valid.

(b) In determining the amount of the bond, the judge shall take into consideration all the facts and circumstances surrounding the parties that he considers necessary to determine the reasonableness of the amount of the bond.

(c) If the bond is made by a bonding or surety company, it shall be made by a company authorized to do business in this state.

(d) The bond shall be made payable to and be approved by the judge of the court and shall be for the use and benefit of and may be sued on by all persons who suffer damage by reason of any further violation by the party giving the bond and who brings suit on the

bond.

(e) From time to time on motion, the court may increase or decrease the amount of the bond and may require new or additional sureties as the facts may warrant or justify.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.227. PROVISIONS APPLICABLE TO ENFORCEMENT. The provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, apply in the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. PENALTIES

Sec. 111.261. PENALTY RECOVERABLE BY STATE. A common carrier under this chapter is subject to a penalty of not less than $100 nor more than $1,000 for each offense, recoverable in the name of the state, if the common carrier:

(1) violates Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code or a valid order of the commission; or

(2) fails to perform a duty imposed by Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code.

Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.262. PENALTY RECOVERABLE BY AGGRIEVED PARTY. A common carrier is subject to a penalty of not less than $100 nor more than $1,000 for each offense of unlawful discrimination as defined in Sections 111.015 through 111.017 of this code. The suit shall be brought in the name of and for the use of the aggrieved person,

corporation, or association of persons.

Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.263. PENALTY RECOVERABLE BY STATE AND AGGRIEVED PARTY. (a) Any person who violates a provision of Subchapter C, D, F, or G of this chapter or Section 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code, a rule promulgated under these subchapters or sections, or an order passed by the commission under these subchapters or sections or one of these rules, on violation, is subject to a penalty of not less than $100 nor more than $1,000 for each offense recoverable in the name of the state in a district court in Travis County. Each day a violation continues constitutes a separate offense.

(b) One-half of the penalty may be recovered by and for the use of any person against whom there is an unlawful discrimination as defined in Subchapter D of this chapter, and this suit shall be brought in the name of and for the use of the party or parties aggrieved.

Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. COMMON CARRIER COAL PIPELINES

Sec. 111.301. CERTIFICATE REQUIRED. A person that is a common carrier under Subsection (5), Section 111.002 of this code must apply for and be issued a certificate of public convenience and necessity from the commission pursuant to the commission's authority to issue certificates under Section 111.302 of this code if the commission finds after a hearing that the public convenience and necessity will be served by the construction and operation of the pipeline.

Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.302. COMMISSION AUTHORITY TO ISSUE CERTIFICATES. (a) The commission is further authorized, empowered, and directed to

issue certificates of public convenience and necessity to pipelines transporting coal in whatever form or mixture for hire in Texas if the commission finds that the public convenience and necessity will be served in that existing facilities will not be able to provide the transportation as economically or efficiently as the proposed pipeline.

(b) In exercising its powers and duties under this section, the commission may not issue a permit for or attempt to regulate in any manner the condemnation, appropriation, or acquisition of surface or ground water in Texas.

(c) The commission shall not issue a permit, certificate, or any authority to any applicant whose rates and charges are not regulated by government authority, either state or federal, and that state or federal regulations insure to the public and to the ultimate electric consumer that the contracts, rates, and charges shall be just and reasonable, nondiscriminatory, and offering no preference or advantage to any person, corporation, entity, or group.

(d) The commission shall not issue a permit, certificate, or any authority to any applicant whose pipeline transporting coal in whatever form unless the pipeline transporting coal in whatever form is to be buried at least 36 inches below the surface, except in such instances in which the commission specifically exempts the 36-inch depth requirement and unless the pipeline transporting coal in whatever form conforms to all applicable state or federal regulations concerning the operation, maintenance, and construction of that same pipeline.

(e) The commission shall condition the issuance of a certification upon the requirement that the pipeline company shall take no more than 50 feet in width of right-of-way under the power of eminent domain, except for temporary work areas adjacent to the right-of-way and then not to exceed 100 feet in width for the duration of the construction period only; and provided that any condemnation award granted under this chapter shall take into account the damages to the remainder caused by the exercise of eminent domain for the temporary work areas.

Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.303. CERTIFICATION PROCEDURE. (a) The coal pipeline applicant shall publish, in accordance with regulations promulgated by the commission and existing law, a notice that it has filed an application for a certificate of public convenience and necessity under this Act in a newspaper of general circulation in each county in which the project will be located. The notice shall, among other things, specify to the extent practicable the land which would be subject to the power of eminent domain.

(b) The commission shall then conduct public hearings in areas of the state along the prospective pipeline right-of-way as it shall determine shall be necessary to give property owners an opportunity to be heard. The commission is vested with authority to alter the right-of-way to meet with local objections.

Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.304. TRANSPORTATION CONTRACT. No common carrier pipeline transporting coal in whatever form shall contract or otherwise agree to transport coal for a term in excess of three years without prior approval of that contract or agreement by the commission which approval shall be given on determination that the contract or agreement is in the public interest in which case the contract or agreement shall be enforceable.

Acts 1977, 65th Leg., p. 3693, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.305. OTHER AGENCIES. (a) The commission shall seek and act on the recommendations of the Texas Natural Resource Conservation Commission, the Governor's Energy Advisory Council, or their successors responsible for environmental determinations and shall specify the proper use and disposal of nondischargeable water.

(b) Neither the authority conveyed to the commission by this subchapter to issue certificates and to promulgate rules governing pipelines transporting coal in whatever form nor the powers and duties conveyed on those pipelines by this chapter shall affect, diminish, or otherwise limit the jurisdiction and authority of the Texas Natural Resource Conservation Commission to regulate by

applicable rules the acquisition, use, control, disposition, and discharge of water or water rights in Texas.

Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.272, eff. Sept. 1, 1995.

SUBCHAPTER J. WELL WASTEWATER CORPORATION

Sec. 111.401. DEFINITION. In this subchapter, "well wastewater" means water containing salt or other substances produced during drilling or operating oil and other types of wells.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.402. CREATION OF WELL WASTEWATER CORPORATION. A well wastewater corporation may be created to gather, store, and impound well wastewater and to prevent the flow of the well wastewater into a stream when the stream may be used for irrigation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.403. CORPORATION POWERS. In addition to the general powers conferred to a private corporation, a well wastewater corporation may acquire, own, and operate a ditch, canal, pipeline, levee, or reservoir, and an associated appliance as appropriate to gather, impound, or store well wastewater and to protect a reservoir from inflow or damage by surface water.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.404. CONDEMNATION. (a) A well wastewater corporation may condemn land or a property right necessary for a purpose of the corporation.

(b) A well wastewater corporation's ditch, canal, or pipeline may cross under a highway, canal, pipeline, railroad, or tram or logging road if the use of the highway, canal, pipeline, railroad, or tram or logging road is not impaired except for the time necessary to

construct the crossing.

(c) Without the consent of the appropriate authority, a well wastewater corporation's ditch, canal, or pipeline may not:

(1) pass through a cemetery;

(2) pass under a residence or public building; or

(3) cross a street or alley of a municipality.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.405. SERVICE TO WELL WASTEWATER PRODUCERS. (a) A well wastewater corporation shall serve all well wastewater producers in the area in which the corporation operates to the extent the corporation has adequate facilities to gather, impound, and store well wastewater.

(b) A well wastewater corporation:

(1) shall serve a well wastewater producer in proportion to the needs of all of the producers in the area;

(2) shall charge a fair and reasonable fee for its services; and

(3) may not discriminate between different producers under similar conditions.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.406. OWNERSHIP OF STOCK. A corporation interested in the proper disposition of well wastewater may purchase, own, or vote stock in a well wastewater corporation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

CHAPTER 112. USED OIL FIELD EQUIPMENT DEALERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. DEFINITIONS. In this chapter:

(1) "Pipeline equipment" means all pipe, fittings, pumps, telephone and telegraph lines, and all other material and equipment used as part of or incident to the construction, maintenance, and operation of a pipeline for the transportation of oil, gas, water, or other liquid or gaseous substance.

(2) "Oil and gas equipment" means equipment and materials that are part of or incident to the exploration, development, maintenance, and operation of oil and gas properties and includes equipment and materials that are part of or incident to the construction, maintenance, and operation of oil and gas wells, oil and gas leases, gasoline plants, and refineries.

(3) "Used materials" means pipeline equipment or oil and gas equipment after the equipment has once been placed in the use for which it first was manufactured and intended.

(4) "Dealer" means every person whose primary business is buying, selling, or otherwise dealing in used materials and who has a fixed, designated place or places of business within the state.

(5) "Broker" means every person whose primary business is buying, selling, or otherwise dealing in used materials as agent for the seller of the used materials, or as agent for the buyer of the used materials, or as agent for both.

(6) "Peddler" means every person who is not a dealer or broker and whose primary business is buying, selling, or otherwise dealing in used materials.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2339, ch. 573, Sec. 1, eff. Aug. 31, 1981.

Sec. 112.002. APPLICABILITY. The provisions of this chapter shall not apply if the reasonable market value of the purchase made is less than $25.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. SALE OF USED EQUIPMENT

Sec. 112.011. BILL OF SALE. Before purchasing or acquiring by exchange used materials, a dealer, broker, or peddler shall require that a bill of sale for the used materials be executed by the seller or the person who exchanges the materials. The dealer, broker, or peddler shall keep a copy of each bill of sale at his place of business.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2339, ch. 573, Sec. 2, eff. Aug. 31, 1981.

Sec. 112.012. REQUIRED INFORMATION. (a) The bill of sale shall include:

(1) the name and address of the dealer, broker, or peddler;

(2) the serial number, if any;

(3) the kind, make, size, weight, length, and quantity of the used materials purchased or acquired by exchange;

(4) the date of the purchase or acquisition by exchange, if different from the date of the bill of sale;

(5) the name and address of the seller or person who exchanged the materials;

(6) the place of location of the property at the time purchased or acquired by exchange;

(7) the license number of each motor vehicle used in transporting a purchased or exchanged item to the dealer's, broker's, or peddler's place of business; and

(8) the driver's license number of the seller or person who exchanged the materials.

(b) A dealer, broker, or peddler under this chapter shall keep at his regular place of business all records required to be kept by this chapter for two years after the date of the purchase or acquisition by exchange of the materials.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2340, ch. 573, Sec. 3, eff. Aug. 31, 1981.

SUBCHAPTER C. ENFORCEMENT; PENALTY

Sec. 112.031. INJUNCTIVE RELIEF. In the name and on behalf of the State of Texas, the attorney general or any district attorney or county attorney in this state may enjoin a dealer, peddler, or broker from continuing in business in this state as a dealer, peddler, or broker on violation of any of the provisions of this chapter.

Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 112.032. CRIMINAL PENALTY. A person, dealer, peddler, or broker who violates any of the provisions of this chapter is guilty of a misdemeanor and on conviction is subject to a fine of not less than $500 for each violation.

Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2340, ch. 573, Sec. 4, eff. Aug. 31, 1981.

Sec. 112.033. INSPECTION. (a) Any Texas Ranger or other officer commissioned by the Department of Public Safety, any sheriff or deputy sheriff, or any municipal police officer may enter the business premises of a dealer, broker, or peddler under this chapter during normal business hours to inspect the premises and the records of the dealer, broker, or peddler to determine whether the dealer, broker, or peddler is in compliance with this chapter.

(b) A dealer, broker, or peddler under this chapter must allow and shall not interfere with inspections conducted pursuant to this chapter.

(c) Each inspection conducted under this chapter shall be commenced and completed with reasonable promptness and shall be conducted in a reasonable manner.

Added by Acts 1981, 67th Leg., p. 2340, ch. 573, Sec. 5, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4526, ch. 741, Sec. 3, eff. Sept. 1, 1983.

CHAPTER 113. LIQUEFIED PETROLEUM GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. TITLE. This chapter may be cited as the Liquefied Petroleum Gas Code or LPG Code.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) Repealed by Acts 2001, 77th Leg., ch. 1233, Sec. 76(2), eff. Sept. 1, 2001.

(3) "Employee" means any individual who renders or performs any services or labor for compensation and includes individuals hired on a part-time or temporary basis or a full-time or permanent basis including an owner-employee.

(4) "Liquefied petroleum gas," "LPG," or "LP-gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(5) "Container" means any receptacle designed for the transportation or storage of LPG or any receptacle designed for the purpose of receiving injections of LPG for use or consumption by or through an LPG system.

(6) "Appliance" means any apparatus or fixture that uses or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(7) "LPG system" means all piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LPG.

(8) "Transport system" means any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(9) "Transfer system" means all piping, fittings, valves, and equipment utilized in dispensing LPG between containers.

(10) "Transport" means any bobtail or semitrailer equipped with one or more containers.

(11) "Subframing" means the attachment of supporting structural members to the pads of a container but does not include welding directly to or on the container.

(12) "Representative" means the individual designated to the commission by a license applicant or licensee as the principal person in authority and, in the case of a licensee other than a category "P" licensee, actively supervising the conduct of the licensee's LPG activities.

(13) "Person" means any individual, partnership, firm, corporation, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision.

(14) "Registrant" means any person exempt from the

licensing requirements, as established by rule pursuant to Section 113.081 of this code, who is required to register with the commission, any person qualified by examination by the commission, or any person who applies for registration with the commission.

(15) "Intermodal portable tank" means a portable tank built according to the United States Department of Transportation specifications and designed primarily for international intermodal use.

(16) "Intermodal container" means a freight container designed and constructed for interchangeable use in two or more modes of transport.

(17) "Mobile fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(18) "Mobile fuel container" means an LPG container mounted on a vehicle to store LPG as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(19) "Motor fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an engine used to propel the vehicle.

(20) "Motor fuel container" means an LPG container mounted on a vehicle to store LPG as the fuel supply to an engine used to propel the vehicle.

(21) "Portable cylinder" means a receptacle constructed to United States Department of Transportation specifications, designed to be moved readily, and used for the storage of LPG for connection to an appliance or an LPG system. The term does not include a cylinder designed for use on a forklift or similar equipment.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 1, eff. June 11, 1987; Acts 1991, 72nd Leg., ch. 725, Sec. 1, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 611, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 76(2), eff. Sept. 1, 2001.

Sec. 113.003. EXCEPTIONS. (a) None of the provisions of this chapter apply to:

(1) the production, refining, or manufacture of LPG;

(2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;

(3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car;

(4) any deliveries of LPG to another person at the place of production, refining, or manufacturing;

(5) underground storage facilities other than LP-gas containers designed for underground use;

(6) any LP-gas container having a water capacity of one gallon or less, or to any LP-gas piping system or appliance attached or connected to such container; or

(7) a railcar loading rack used by a pipeline company, producer, refiner, or manufacturer.

(b) Nothing in Subsection (a) of this section shall be construed to exempt truck loading racks from the jurisdiction of the commission under this chapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1991, 72nd Leg., ch. 725, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 113.011. REGULATION OF LIQUEFIED PETROLEUM GAS ACTIVITIES. The commission shall administer and enforce the laws of this state and the rules and standards of the commission relating to liquefied petroleum gas.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

Sec. 113.014. EMPLOYEES. Sufficient employees shall be

provided for the enforcement of this chapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

Sec. 113.015. FUNDS FOR FINANCING REGULATION OF LPG ACTIVITIES. The commission shall look only to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of regulating liquefied petroleum gas activities and administering this chapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1991, 72nd Leg., ch. 725, Sec. 3, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

SUBCHAPTER C. RULES AND STANDARDS

Sec. 113.051. ADOPTION OF RULES AND STANDARDS. Except as provided in Section 113.003 of this code, the commission shall promulgate and adopt rules or standards or both relating to any and all aspects or phases of the LPG industry that will protect or tend to protect the health, welfare, and safety of the general public.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.0511. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding by a licensee except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a licensee's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade

name.

Added by Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

Sec. 113.052. ADOPTION OF NATIONAL CODES. The commission may adopt by reference, in whole or in part, the published codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and other nationally recognized societies or any one or more of these codes as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LPG or any one or more of these purposes.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.053. EFFECT ON CERTAIN CONTAINERS. Rules, standards, and codes adopted pursuant to Sections 113.051 through 113.052 of this code do not apply to containers used in accordance with and subject to the regulations of the United States Department of Transportation or to containers that are owned or used by the United States government.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.054. EFFECT ON OTHER LAW. The rules and standards promulgated and adopted by the commission under Section 113.051 preempt and supersede any ordinance, order, or rule adopted by a political subdivision of this state relating to any aspect or phase of the liquefied petroleum gas industry. A political subdivision may petition the commission's executive director for permission to promulgate more restrictive rules and standards only if the political subdivision can prove that the more restrictive rules and standards

enhance public safety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1020 (H.B. 2663), Sec. 1, eff. September 1, 2011.

SUBCHAPTER D. LICENSING AND REGISTRATION

Sec. 113.080. DEFINITIONS. In this subchapter:

(1) "Carrier" means a person licensed for transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems.

(2) "Portable cylinder exchange service" means an operation conducted under a commission license for the sale of LP-gas in portable cylinders that are not filled on site and that have an LP-gas capacity not greater than 21 pounds.

(3) "Retail and wholesale dealer" means a person licensed for any LP-gas activity except:

(A) the assembly, repair, subframing, or testing of LP-gas containers; or

(B) the sale or installation of motor fuel systems or mobile fuel systems that have an engine with a rating of more than 25 horsepower.

(4) "Testing laboratory" means a person licensed for testing containers, motor fuel systems or mobile fuel systems, transfer systems, or transport systems for the purpose of determining the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, or repair of motor fuel systems or mobile fuel systems, transfer systems, or transport systems involved in the testing of containers.

(5) "Transport outfitter" means a person licensed to:

(A) subframe, test, or sell LP-gas transport containers;

(B) test LP-gas storage containers;

(C) install, test, or sell motor fuel containers and systems or mobile fuel containers and systems;

(D) install transport systems; or

(E) repair transport systems, motor fuel systems, or mobile fuel systems.

Added by Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 2, eff. September 1, 2019.

Sec. 113.081. LICENSE REQUIREMENT. (a) Unless otherwise stated in this chapter, a person may not engage in any of the following activities unless that person has obtained a license from the commission authorizing that activity:

(1) container activities: the assembly, repair, testing, sale, installation, or subframing of containers for use in this state, except that a license is not required for the sale of a new container of 96 pounds water capacity or less;

(2) systems activities: the installation, service, and repair of systems for use in this state, including the laying or connecting of pipes and fittings connecting with or to systems or serving a system and appliances to be used with LP-gas as a fuel;

(3) appliance activities: the service, installation, and repair of appliances used or to be used in this state in connection with systems using LP-gas as a fuel, except that a license is not required for installation or connection of manufactured unvented appliances to LP-gas systems by means of LP-gas appliance connectors, or where only duct or electrical work is performed to or on an LP-gas appliance; or

(4) product activities: the sale, transportation, dispensation, or storage of LP-gas in this state, except that a license is not required to sell LP-gas where the vendor never obtains possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

(b) The licensing requirements of Subsection (a) apply to a person other than a political subdivision who installs or services a motor fuel system or mobile fuel system on a motor vehicle used in the transportation of the general public. Subsections (a)(1) and (a)(2) do not apply to intermodal containers or intermodal portable tanks constructed in accordance with United States Department of Transportation specifications.

(c) The licensing requirements of Subsection (a) do not apply to a mobile home park operator who does not obtain any possessory rights to LP-gas products, and utilizes only LP-gas licensees in the installation and maintenance of the LP-gas containers and system. For purposes of this subsection, the term "mobile home park operator" means an individual or business entity owning or operating a place,

divided into sites, at which the primary business is the rental or leasing of the sites to persons for use in occupying mobile homes as dwellings. "Mobile home" has the meaning set out in Chapter 1201, Occupations Code.

(d) The commission by rule may exempt journeymen or master plumbers licensed by the Texas State Board of Plumbing Examiners from the license requirements of Subsection (a).

(e) The commission by rule may exempt a person licensed under Chapter 1302, Occupations Code, from the license requirements of Subsection (a).

(f) No license is required by an original manufacturer of a new motor vehicle powered by LPG or subcontractor of such a manufacturer who produces a new LPG-powered vehicle for the manufacturer.

(g) The commission by rule may establish reasonable conditions for licensing and exemptions from license requirements for a state agency or institution, county, municipality, school district, or other governmental subdivision.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 5428, ch. 1011, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 911, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 533, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 2, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.797, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 3, eff. September 1, 2019.

Sec. 113.0815. REGISTRATION OF CONTAINER MANUFACTURERS AND FABRICATORS. (a) A person may not engage in the manufacture or fabrication of containers for use in this state unless the person registers with the commission in accordance with rules adopted by the commission.

(b) A registration under this section must be renewed annually.

Added by Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 4, eff. September 1, 2019.

Sec. 113.082. CATEGORIES OF LP-GAS ACTIVITIES; FEES. (a) The commission by rule shall establish license categories for LP-gas activities.

(b) The commission by rule shall establish reasonable application and original license fees and renewal fees for each type of license category established under Subsection (a).

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 2, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 5, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 66, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1260, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 5, eff. September 1, 2019.

Sec. 113.083. LIQUEFIED PETROLEUM GAS EMERGENCY. (a) In the event of a temporary statewide, regional, or local shortage of liquid petroleum gas in this state or another state, as determined under Subsection (b) of this section, LP gas trucks and operators meeting all certification, permitting, and licensing requirements of the federal government and another state whose governor has declared an LP gas emergency may transport LP gas in this state without having first obtained any license, permit, or certification ordinarily required under state law.

(b) The governor may determine the existence of a temporary statewide, regional, or local shortage of LP gas in this state or another state and on such a determination, the governor may join with the governor of any other state in declaring an LP gas emergency.

(c) The waiver of Texas licensing, permitting, and certification requirements regarding LP gas trucks and operators is valid only during the time of the emergency. An LP gas emergency may not continue for more than 14 days unless renewed by the governor.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 9, Sec. 1, eff. Aug. 29,

1991.

Sec. 113.084. APPLICATION. (a) An application for a license shall be submitted to the commission on forms furnished by the commission or on a facsimile of those forms.

(b) A prospective licensee shall submit the required application together with the original nonrefundable license fee established by the commission under Section 113.082 for each type of license category for which an application is made. The applicant shall submit additional information and data with each application as the commission may reasonably require.

(c) A licensee shall submit the nonrefundable renewal fee for each type of license sought along with information and data the commission may reasonably require.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 36, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 6, eff. September 1, 2019.

Sec. 113.087. COURSE OF INSTRUCTION, EXAMINATION, AND SEMINAR REQUIREMENTS. (a) The satisfactory completion of the requirements of this section is mandatory, and operations requiring an LP-gas license may not commence, continue, or resume unless examination and seminar requirements are fulfilled. The commission shall prepare, administer, and grade or review an examination required by this section or contract with a testing or proctoring service to prepare, administer, and grade or review the examination.

(b) Before license issuance, the commission shall require the individual designated as the licensee's representative to the commission to provide good and sufficient proof through examination of working knowledge of this chapter and rules of the commission which affect the type of license for which application is made. Thereafter, each licensee shall maintain a qualified representative at all times.

(c) An individual who will be actively supervising operations

that require a license under this chapter, other than a portable cylinder exchange service, at any outlet or location, shall be required to provide good and sufficient proof through examination that the supervisor has a working knowledge of the safety requirements and penalties in this chapter and the rules of the commission which apply to that type of license. A licensee who provides portable cylinders to a licensee operating a portable cylinder exchange service shall:

(1) prepare or obtain a manual approved by the commission covering the proper procedures for handling LP-gas in the portable cylinder exchange process;

(2) provide a copy of the manual to each outlet or location of the licensee operating the portable cylinder exchange service; and

(3) provide training approved by the commission regarding the contents of the manual to each individual who will be actively supervising operation of the portable cylinder exchange service at each outlet or location.

(d) As determined by commission rule, each individual who is or will be utilized by a licensee or a public employee of the state, the federal government, or a state or federal subdivision in LPG-related activities shall be required to provide good and sufficient proof through examination that the employee has a working knowledge of the safety requirements in the rules of the commission relating to the activity or activities. Should the commission determine that an individual has a history of failure to comply with the requirements of this code or with the rules of the commission, the commission shall promptly notify the individual in writing of failure to qualify for LP-gas employee certification and the reasons therefor. Written notice by the commission, a written request for a hearing, and the public hearing itself shall be governed by Section 113.091.

(e) No licensee may employ or otherwise utilize any person as a representative to the commission, nor as a supervisor or employee in LPG-related activities, unless and until the person has qualified by satisfactory completion of the examination or training requirements, as applicable, established by this section.

(f) The commission shall promulgate rules relating to changes in representatives, supervisors, and employees, and may permit temporary exemption from the examination or training requirements, as applicable, for a maximum period of 45 days.

(g) In no event shall an original or renewal license be issued

to an applicant whose listed representative has not maintained qualified status, as defined by rule, or to any person who has a history of failure to comply with the requirements of this code or with the rules of the commission. The commission shall have written notification of license denial and the reasons therefor prepared promptly and provided to both the representative and the license applicant. Written notice by the commission, a written request for a hearing, and the public hearing itself shall be governed by Section 113.091.

(h) Satisfactory completion of any required examination or training under this section shall accrue to the individual.

(i) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the commission shall notify the person of the results of the examination.

(j) If the examination is graded or reviewed by a testing or proctoring service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing or proctoring service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(k) The commission may require a testing or proctoring service to notify a person of the results of the person's examination.

(l) If requested in writing by a person who fails a licensing examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

(m) The commission by rule may require, in addition to examination requirements as set out in Subsections (b), (c), and (d):

(1) an examination for technical competence that is validated by a recognized educational testing organization or similar organization; or

(2) attendance at approved academic, trade, professional, or commission-sponsored seminars or other continuing education programs.

(n) Prior to qualifying an individual to perform LP-gas work, the commission may establish by rule an initial course of instruction

for any person who has not yet passed the examination for the LPG activity for which the person seeks qualification; for any person who has not maintained qualified status, as defined by rule; and for any person whose certification has been revoked pursuant to Subchapter F of this code. If an initial course of instruction is established by the commission, it shall be available at least once every 180 days.

(o) The commission by rule may exempt from any provision of this section:

(1) a journeyman or master plumber licensed by the Texas State Board of Plumbing Examiners;

(2) a person licensed under Chapter 1302, Occupations Code; or

(3) company representatives, operations supervisors, or employees of a testing laboratory that was registered under Section 113.135 prior to the effective date of this subsection.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 3, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 6, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 239, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 611, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 37, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.798, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 999 (H.B. 473), Sec. 1, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1095 (H.B. 3726), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 7, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 885 (S.B. 1582), Sec. 1, eff. September 1, 2021.

Sec. 113.088. EXAMINATION; SEMINAR FEES. (a) The commission shall establish reasonable examination, course of instruction, and seminar registration fees.

(b) Before seminar attendance or examination of any person, except as provided by Subsection (c), the commission shall receive a nonrefundable fee for each examination or seminar registration.

(c) The commission may exempt voluntary firemen, or public employees of the State of Texas, federal government, or state or federal subdivisions from the examination fee, the examination renewal fee, and seminar fees.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 4, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 4, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 999 (H.B. 473), Sec. 2, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 885 (S.B. 1582), Sec. 2, eff. September 1, 2021.

Sec. 113.089. SPECIAL REQUIREMENTS FOR LICENSING. (a) If application is made for a license by a retail and wholesale dealer or for any other type of license specified by commission rule, the commission, in addition to other requirements, shall have an actual inspection conducted of any and all facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify satisfactory compliance with all current safety laws, rules, and practices. The inspection may be waived by the commission on an application resulting solely from a change in legal entities under which a current licensee operates.

(b) The inspection, if required, shall be performed before the issuance of the license, but in no event later than 15 days after the inspection is requested in writing by the applicant for license.

(c) A license for which an inspection under Subsection (a) is required may not be issued until the inspection verifies the applicant to be in satisfactory compliance with all current safety laws, rules, and practices.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1991, 72nd Leg., ch. 725, Sec. 7, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 38, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 8, eff.

September 1, 2019.

Sec. 113.090. FILING AND REGISTRATION FEES. (a) The commission by rule may establish reasonable fees for the review of site applications related to the installation of containers when site applications are reviewed by the commission before such installation is placed into LP-gas service.

(b) The commission by rule may establish reasonable fees for recording the location of containers at public buildings and commercial installations when prior approval of site applications is not required.

(c) The commission by rule may establish reasonable fees for any registration required under this code.

Added by Acts 1987, 70th Leg., ch. 325, Sec. 5, eff. June 11, 1987. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 39, eff. Sept. 1, 2001.

Sec. 113.091. LICENSE DENIAL. (a) If an applicant fails to meet the requirements for original or renewal licensing set out in this chapter, the commission shall promptly send notice to the applicant specifying the reason for the applicant's failure to qualify for license and advising the applicant of the right to request a hearing.

(b) Within 30 days of the notice of denial, an applicant for license under this chapter who is denied a license may request a hearing to determine whether or not the applicant has complied in all respects with the licensing procedure applicable to each type of license sought. The applicant's request for hearing must be in writing and delivered to the commission.

(c) A hearing to determine an applicant's compliance with the licensing procedure applicable to each type of license sought must be scheduled within 30 days following receipt of a request under Subsection (b) of this section.

(d) If the record made at the hearing supports the applicant's claim, the commission shall enter an order in its records to that effect, noting each type of license to which the applicant is found entitled, and the commission shall have the license or licenses

issued. If the applicant is found unqualified, the commission shall likewise enter an order in its records to that effect, and no license may be issued to the applicant.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 40, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 9, eff. September 1, 2019.

Sec. 113.092. LICENSE ISSUANCE. (a) The commission shall issue the appropriate license to an applicant who has satisfied the licensing procedures and requirements set out in this chapter and in the rules of the commission, except as otherwise provided for in Section 113.163.

(b) The license shall be issued in the name under which the applicant proposes to conduct business.

(c) The license shall belong to the applicant to which it is issued and shall be nontransferable.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 6, eff. June 11, 1987.
Amended by:
Acts 2005, 79th Leg., Ch. 609 (H.B. 2172), Sec. 1, eff. September 1, 2005.

Sec. 113.093. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

(g) A renewal license will be issued to a licensee as soon as is practicable after compliance with this section, and fulfillment of insurance, examination, and seminar requirements established by this chapter, and submission of any information and data the commission may reasonably require.

(h) Renewal fees shall be nonrefundable.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 7, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 1016, Sec. 5, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 41, eff. Sept. 1, 2001.

Sec. 113.094. STAGGERED RENEWAL OF LICENSES. The commission, by rule, may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on a specified date shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 1983, 68th Leg., p. 1174, ch. 263, Sec. 8, eff. Sept. 1, 1983.

Sec. 113.095. LICENSE AND EXAMINATION BY ENDORSEMENT: OUT-OF-

STATE LICENSE OR CERTIFICATION. (a) The commission may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(b) The commission by rule may waive the requirements of Section 113.087 for an applicant holding a valid examination certificate issued by another state having certification requirements substantially equivalent to those of this state.

Added by Acts 1983, 68th Leg., p. 1174, ch. 263, Sec. 8, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 239, Sec. 5, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 617 (S.B. 1668), Sec. 1, eff. September 1, 2021.

Sec. 113.0955. CERTIFICATION AND EXAMINATION BY ENDORSEMENT: NATIONALLY RECOGNIZED TRAINING. The commission by rule shall waive the requirements of Section 113.087 for an applicant for a certificate for cylinder filling who:

(1) has completed training consistent with the guidelines established by the Propane Education & Research Council;

(2) submits proof of completion of training described by Subdivision (1);

(3) submits an application for that type of certificate;

(4) pays the applicable original nonrefundable certification fee as established by the commission under Section 113.088; and

(5) completes an examination for cylinder filling that:

(A) is administered by the commission;

(B) is approved by the commission as a comparable examination to the examination administered by the commission and submits proof of completion of the examination to the commission; or

(C) uses Propane Education & Research Council training and examination materials and submits proof of completion of the examination to the commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 617 (S.B. 1668), Sec. 2, eff. September 1, 2021.

Sec. 113.096. PROVISIONAL LICENSE. (a) The commission may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and

(3) is sponsored by a person licensed by the commission under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license. The commission shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 113.095; or

(2) the provisional license holder:

(A) passes the part of the examination under Section 113.087 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license under this chapter; and

(C) satisfies any other licensing requirements under this chapter.

(d) The commission must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The commission may extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 42, eff. Sept. 1, 2001.

Sec. 113.097. INSURANCE REQUIREMENT. (a) The commission shall not issue a license authorizing LP-gas activities or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state as evidenced by a certificate of authority having been issued to the carrier by the Texas Department of Insurance or, if the applicant is unable to obtain coverage from such a carrier, provides, on approval of the commission, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter.

(b) A licensee may not perform an LP-gas activity licensed by the commission unless the insurance coverage required by this chapter is in effect.

(c) Except as provided in Section 113.099, the types and amounts of insurance provided in Subsections (d) through (i) are required while engaged in an LP-gas activity licensed by the commission or any activity incidental thereto.

(d) A person licensed to transport LP-gas must carry motor vehicle bodily injury and property damage liability coverage on each motor vehicle, including trailers and semitrailers, used to transport LP-gas. The commission shall establish by rule a reasonable amount of coverage to be maintained, except that coverage may not be less than the amounts required as evidence of financial responsibility under Chapter 601, Transportation Code.

(e) All licensees must carry general liability coverage in a reasonable amount, based on the type or types of licensed activities, which shall be established by commission rule.

(f) A licensee, other than a licensee operating a portable cylinder exchange service, must acquire and maintain appropriate workers' compensation or coverage for its employees under policies of work-related accident, disability, and health insurance, including coverage for death benefits, from an insurance carrier authorized to provide coverage in this state, in the amounts required by the commission.

(g) Notwithstanding Subsection (f) of this section, a state

agency or institution, county, municipality, school district, or other governmental subdivision may submit appropriate evidence of workers' compensation coverage by self-insurance if permitted by the state workers' compensation act. The commission may require forms of evidence of coverage for this purpose other than that required under Section 113.098 of this code.

(h) As required by commission rule, a person registered under Section 113.0815 or licensed as a transport outfitter, carrier, retail and wholesale dealer, or testing laboratory must carry completed operations or products liability insurance, or both, in a reasonable amount, based on the type or types of registered or licensed activities.

(i) The commission by rule may exempt or provide reasonable alternatives to the insurance requirements set forth in Subsections (a) through (e) and (h) of this section for a state agency or institution, county, municipality, school district, or other governmental subdivision.

(j) The commission by rule may exempt from the insurance requirements of this section or adopt a reasonable alternative to those requirements for:

(1) a master or journeyman plumber licensed by the Texas State Board of Plumbing Examiners; or

(2) a person licensed under Chapter 1302, Occupations Code.

(k) The commission by rule may allow a licensee to self-insure under Subsection (d), (e), or (f) and by rule shall establish standards for that self-insurance.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 7, eff. June 11, 1987; Acts 1987, 70th Leg., ch. 1050, Sec. 2, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 14.01, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 725, Sec. 8, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 66, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 165, Sec. 30.229, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 611, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 43, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.538, 14A.799, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 10, eff. September 1, 2019.

Sec. 113.098. INSURANCE CONDITIONS. (a) As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the commission shall be filed with the commission before licensing, license renewal, and during the entire period that the license is in effect. Any document filed with the commission in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the commission, but which complies with the substantive requirements of this section and with the rules adopted under this section may be considered by the commission to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the commission an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(b) All certificates filed under this section shall be continuous in duration.

(c) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

(1) commission receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time equivalent to the notice period required by law to be given the insured before the insurance cancellation;

(2) receipt by the commission of an acceptable replacement insurance certificate;

(3) voluntary surrender of a license and the rights and privileges conferred by the license;

(4) commission receipt of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the commission; or

(5) written order of commission.

(d) Cancellation under Subsection (c) of this section shall not become effective until approved by the commission.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 8, eff. June 11, 1987; Acts 1991, 72nd Leg., ch. 725, Sec. 9, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 44, eff. Sept. 1, 2001.

Sec. 113.099. STATEMENTS IN LIEU OF INSURANCE CERTIFICATES. (a) A person licensed to transport LP-gas that does not operate or contemplate the operation of a motor vehicle equipped with an LP-gas cargo container and does not transport or contemplate the transportation of LP-gas by vehicle in any manner, may make and file with the commission a statement to that effect in lieu of filing a certificate of motor vehicle bodily injury and property damage insurance.

(b) A licensee or an applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may make and file with the commission a statement to that effect in lieu of filing a certificate of general liability insurance.

(c) A licensee or an applicant for a license that does not employ or contemplate the hiring of an employee or employees to be engaged in LPG-related activities in this state may make and file with the commission a statement to that effect in lieu of filing evidence of coverage of workers' compensation or other alternative form of coverage as provided in this subchapter.

(d) A person registered under Section 113.0815 or licensed as a transport outfitter, carrier, retail and wholesale dealer, or testing laboratory that does not engage in or contemplate engaging in any LP-gas operations which would be covered by completed operations or products liability insurance, or both, for a period of time may make and file with the commission a statement to that effect in lieu of filing a certificate of insurance.

(e) Any statement filed pursuant to Subsections (a) through (d) of this section must further state that the licensee or applicant agrees to file a certificate of insurance evidencing appropriate coverage before engaging in any activities that require insurance

coverage under this subchapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1989, 71st Leg., ch. 533, Sec. 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 10, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 7, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 7, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1233, Sec. 45, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 11, eff. September 1, 2019.

SUBCHAPTER E. MOTOR VEHICLES AND TESTING LABORATORIES

Sec. 113.131. TRANSPORT TRUCKS AND TRAILERS. (a) Each transport truck, trailer, or other motor vehicle equipped with an LPG cargo container and each truck used principally for transporting LPG in portable containers shall be registered with the commission.

(b) A licensee who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the name or names under which the licensee conducts business before the transportation of LPG by means of that unit.

(c) An ultimate consumer of LPG who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the person's name before the transportation of LPG by means of that unit on public roads or highways.

(d) The commission, by rule, shall establish reasonable, nonrefundable annual registration and transfer fees for each LP-gas cargo trailer, semitrailer, bobtail, and cylinder-delivery unit registered or transferred as follows:

(1) the annual registration fee established by the commission shall not be less than $100 nor more than $300.

(2) the annual transfer fee established by the commission shall not be less than $25 nor more than $100.

(e) Any unit registered pursuant to this section shall be covered by motor vehicle bodily injury and property damage liability insurance as prescribed by Section 113.097 of this code.

(f) Any delivery or transport driver shall meet the applicable

examination and seminar requirements set out in Section 113.087 of this code.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 9, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 11, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 5, eff. Sept. 1, 1997.

Sec. 113.133. MOTOR CARRIER LAWS. No provision of this chapter shall be construed to modify, amend, or revoke any motor carrier law of this state.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.134. DEPARTMENT OF PUBLIC SAFETY. The Department of Public Safety shall cooperate with the commission in the administration and enforcement of this chapter and the rules promulgated under this chapter to the extent that they are applicable to motor vehicles.

Added by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

SUBCHAPTER F. LICENSE AND REGISTRATION FOR AN EXEMPTION: DENIAL AND DISCIPLINARY ACTION

Sec. 113.161. VIOLATIONS OF CHAPTER OR RULES; INFORMAL ACTIONS. (a) The commission shall notify a licensee or registrant in writing when it finds probable violation or noncompliance with this chapter or the safety rules promulgated under this chapter.

(b) The notification shall specify the particular acts, omissions, or conduct comprising the alleged violation and shall designate a date by which the violation must be corrected or discontinued.

(c) The licensee or registrant shall report timely compliance or shall request extension of time for compliance if deemed

necessary.

(d) If a licensee or registrant objects to the complaint or requirements under this section, or if the commission determines that the licensee or registrant is not proceeding adequately to compliance, then, on written request of the licensee or registrant or order of the commission, a public hearing shall be conducted as provided in Section 113.162 of this code.

(e) If the commission determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing as provided in Section 113.162.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 47, eff. Sept. 1, 2001.

Sec. 113.162. HEARINGS. Any hearing or proceeding under this chapter shall be subject to the provisions of the Administrative Procedure and Texas Register Act.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.163. DENIAL, REFUSAL TO RENEW, OR REVOCATION OF LICENSE OR REGISTRATION FOR AN EXEMPTION IN EVENT OF VIOLATION. (a) Except as provided by Subsections (d) and (f), the commission may not approve an application for a license under this chapter or approve a registration for an exemption under Section 113.081(d) or (e) if:

(1) the applicant or registrant for an exemption has violated a statute or commission rule, order, license, permit, or certificate that relates to safety; or

(2) a person who holds a position of ownership or control in the applicant or registrant for an exemption has held a position of ownership or control in another person during the seven years preceding the date on which the application or registration for an exemption is filed and during that period of ownership or control the other person violated a statute or commission rule, order, license, permit, or certificate that relates to safety.

(b) An applicant, registrant for an exemption, or other person has committed a violation described by Subsection (a) if:

(1) a final judgment or final administrative order finding the violation has been entered against the applicant, registrant for an exemption, or other person and all appeals have been exhausted; or

(2) the commission and the applicant, registrant for an exemption, or other person have entered into an agreed order relating to the alleged violation.

(c) Regardless of whether the person's name appears or is required to appear on an application or registration for an exemption, a person holds a position of ownership or control in an applicant, registrant for an exemption, or other person if:

(1) the person is:

(A) an officer or director of the applicant, registrant for an exemption, or other person;

(B) a general partner of the applicant, registrant for an exemption, or other person;

(C) the owner of a sole proprietorship applicant, registrant for an exemption, or other person;

(D) the owner of at least 25 percent of the beneficial interest in the applicant, registrant for an exemption, or other person; or

(E) a trustee of the applicant, registrant for an exemption, or other person; or

(2) the applicant, registrant for an exemption, or other person has been determined by a final judgment or final administrative order to have exerted actual control over the applicant, registrant for an exemption, or other person.

(d) The commission shall approve an application for a license under this chapter or for a registration for an exemption under Section 113.081(d) or (e) if:

(1) the conditions that constituted the violation are corrected or are being corrected in accordance with a schedule to which the commission and the applicant, registrant for an exemption, or other person have agreed;

(2) all administrative, civil, and criminal penalties are paid or are being paid in accordance with a payment schedule to which the commission and the applicant, registrant for an exemption, or other person have agreed; and

(3) the application or registration for an exemption is in

compliance with all other requirements of law and commission rules.

(e) If an application or registration for an exemption is denied under this section, the commission shall provide the applicant or registrant for an exemption with a written statement explaining the reason for the denial.

(f) Notwithstanding Subsection (a), the commission may issue a license to an applicant described by Subsection (a) or approve a registration for an exemption for a registrant for an exemption described by that subsection for a term specified by the commission if the license or registration for an exemption is necessary to remedy a violation of law or commission rules.

(g) A fee tendered in connection with an application or registration for an exemption that is denied under this section is nonrefundable.

(h) If the commission is prohibited by Subsection (a) from approving an application for a license or a registration for an exemption or would be prohibited from doing so by that subsection if the applicant, licensee, or registrant for an exemption submitted an application or registration for an exemption, the commission, after notice and opportunity for a hearing, by order may refuse to renew or may revoke a license or registration for an exemption issued to the applicant, licensee, or registrant for an exemption under this chapter. The commission may not revoke or refuse to renew a license or registration for an exemption under this subsection if the commission finds that the applicant, licensee, or registrant for an exemption has fulfilled the conditions set out in Subsection (d).

(i) An order issued under Subsection (h) must provide the applicant, licensee, or registrant for an exemption a reasonable period to comply with the judgment or order finding the violation before the order takes effect.

(j) On refusal to renew or revocation of a person's license or registration for an exemption under Subsection (h), the person may not perform any activities under the jurisdiction of the commission under this chapter, except as necessary to remedy a violation of law or commission rules and as authorized by the commission under a license or registration for an exemption issued under Subsection (f).

(k) In determining whether to refuse to renew or to revoke a person's license or registration for an exemption under Subsection (h), the commission shall consider the person's history of previous violations, the seriousness of previous violations, any hazard to the

health or safety of the public, and the demonstrated good faith of the person.

(l) Refusal to renew or revocation of a person's license or registration for an exemption under Subsection (h) does not relieve the person of any existing or future duty under law, rules, or license or registration conditions.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 1167, ch. 263, Sec. 5, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 11, eff. June 11, 1987; Acts 2001, 77th Leg., ch. 1233, Sec. 48, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 609 (H.B. 2172), Sec. 3, eff. September 1, 2005.

Sec. 113.164. APPEAL. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

SUBCHAPTER G. FEES AND FUNDS

Sec. 113.201. DEPOSIT AND EXPENDITURE OF FEES AND FUNDS. Money received by the commission under this chapter shall be deposited in the state treasury to the credit of the General Revenue Fund and spent in accordance with the appropriations made by law.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1981, 67th Leg., p. 144, ch. 65, Sec. 2, eff. Sept. 1, 1981.

SUBCHAPTER H. ENFORCEMENT

Sec. 113.231. INJUNCTIONS. (a) On request of the commission, the attorney general may bring an action in the name and on behalf of the state to enjoin a person from committing any act that violates or does not comply with any provision of this chapter or of any rule promulgated under this chapter.

(b) A suit for injunction instituted pursuant to Subsection (a) of this section shall be in addition to any other remedies at law or in equity.

(c) A district court of any county in which it is shown that all or part of the acts have been or are about to be committed has jurisdiction of an action brought under Subsection (a) of this section.

(d) No bond for injunction may be required of the commission or the attorney general in relation to a proceeding instituted pursuant to Subsection (a) of this section.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.232. GENERAL PENALTY. (a) In addition to injunctive relief and other penalties provided in this chapter, a person who knowingly violates or fails to comply with this chapter or rules adopted under this chapter is guilty of a Class C misdemeanor and is punishable by a fine of not less than $100 nor more than the maximum fine as set out in Section 12.23 of the Penal Code.

(b) A person previously convicted under Subsection (a) of this section who knowingly violates or fails to comply with this chapter is guilty of a Class A misdemeanor punishable by a fine of not less than the maximum fine allowed by law for a Class C misdemeanor, nor more than the maximum fine as set out in Section 12.21 of the Penal Code.

(c) A penalty prescribed by this section is in addition to injunctive relief and other penalties provided by this chapter.

(d) Each day the violation or failure to comply continues constitutes a separate offense.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 5429, ch. 1011, Sec. 2, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 12, eff. June 11, 1987.

Sec. 113.233. ENTRY FOR INSPECTION AND INVESTIGATION. (a) An inspector, employee, or agent of the commission may enter the premises of a licensee under this chapter or any building or other

premises open to the public at any reasonable time for the purpose of determining and verifying compliance with this chapter and the safety rules of the commission. This same authority shall extend to private property with the permission of the owner of such private property or an authorized agent of the owner.

(b) Any authorized representative of the commission may enter any buildings or premises where an accident has occurred in which LP-gas was a probable cause for purposes of investigating the cause, origin, and circumstances of such accident. The commission may request that any state or local authority having jurisdiction take appropriate action, to the extent permitted by law, as may be necessary for preservation of property and premises.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1985, 69th Leg., ch. 911, Sec. 2, eff. Aug. 26, 1985; Acts 2001, 77th Leg., ch. 1233, Sec. 49, eff. Sept. 1, 2001.

Sec. 113.234. WARNING TAG. An inspector, employee, or agent of the commission may declare any container, appliance, equipment, transport, system, or LP-gas operation that does not conform to the safety requirements of this chapter or rules adopted under this chapter, or which is otherwise defective, as unsafe or dangerous for LP-gas service and shall attach a warning tag in a conspicuous location.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 13, eff. June 11, 1987.

Sec. 113.235. SUPPLYING OR REMOVING LPG AFTER WARNING TAG ATTACHED. (a) Any person who knowingly sells, furnishes, delivers, or supplies LPG for storage in or use or consumption by or through a container, appliance, transport, or system to which a warning tag is attached is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $2,000.

(b) LP-gas shall be removed from a container to which a warning tag is attached only under the direction of the commission.

(c) In an emergency situation and for immediate need, the commission may allow a reasonable amount of LP-gas to be introduced into a container or may allow an LP-gas system or an LP-gas appliance

to be placed into LP-gas service, for a reasonable time period provided the reasons for the warning tag have been eliminated.

Added by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980. Amended by Acts 1991, 72nd Leg., ch. 725, Sec. 13, eff. Aug. 26, 1991.

Sec. 113.236. PENALTY FOR UNAUTHORIZED REMOVAL OF TAG. An unauthorized person who knowingly removes, destroys, or in any way obliterates a warning tag attached to a container, appliance, transport, or system is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $2,000.

Added by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

SUBCHAPTER K. LIABILITY OF LICENSE HOLDER

Sec. 113.301. LIMITATION OF LIABILITY OF LICENSED INSTALLER OR SERVICER. A person is not liable for damages caused solely by a malfunction or the installation, modification, or improper operation of an LPG system that the person delivered for installation, installed, or serviced in a residential, commercial, or public building or in a motor vehicle if:

(1) the person was licensed by the commission to perform the installation or service or was a registrant;

(2) the delivery, installation, or service was performed in compliance with the safety rules and standards adopted by the commission;

(3) the person has no control over the operation or use of the LPG system;

(4) the person was not negligent; and

(5) the person did not supply a defective product which was a producing cause of harm.

Added by Acts 1993, 73rd Leg., ch. 80, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 300, Sec. 1, eff. May 26, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 462 (H.B. 1170), Sec. 2, eff. June 16, 2007.

SUBCHAPTER L. TESTING OF LP-GAS SYSTEMS IN SCHOOL FACILITIES

Sec. 113.351. DEFINITIONS. In this subchapter:

(1) "School district" means:

(A) an entity created under the laws of this state and accredited by the Texas Education Agency under Subchapter D, Chapter 39, Education Code;

(B) a private elementary or secondary school, other than a school in a residence; or

(C) a state or regional school for the blind and visually impaired or the deaf under Chapter 30, Education Code.

(2) "Supplier" means an individual or company that sells and delivers liquefied petroleum gas to a school district facility. If more than one individual or company sells and delivers LP-gas to a facility of a school district, each individual or company is a supplier for purposes of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

Sec. 113.352. DUTY TO TEST FOR LEAKAGE. (a) Each school district shall perform leakage tests for leakage on the LP-gas piping system in each school district facility at least biennially. The tests must be performed before the beginning of the school year.

(b) The school district may perform the leakage tests on a two-year cycle under which the tests are performed for the LP-gas piping systems of approximately one-half of the facilities each year.

(c) If a school district operates one or more school district facilities on a year-round calendar, the leakage test in each of those facilities must be conducted and reported not later than July 1 of the year in which the test is performed.

(d) A test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 995 (H.B. 3918), Sec. 1, eff. June 19, 2009.

Sec. 113.353. REQUIREMENTS OF TEST. (a) The school district shall perform the leakage test to determine whether the LP-gas piping system holds at least the amount of pressure specified by the commission.

(b) The leakage test must be conducted in accordance with commission rules.

(c) At the request of a school district, the commission shall assist the district in providing for the certification of an employee of the school district or school, as applicable, to conduct the test and in developing a procedure for conducting the test.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 995 (H.B. 3918), Sec. 2, eff. June 19, 2009.

Sec. 113.354. NOTICE OF TEST. (a) A school district shall retain documentation specifying the date and the result of each leakage test or other inspection of each LP-gas piping system until at least the fifth anniversary of the date the test or other inspection was performed.

(b) Before the introduction of any LP-gas into the LP-gas piping system, the school district shall provide verification to the district's supplier that the piping has been tested in accordance with this subchapter.

(c) The commission may review a school district's documentation of each leakage test or other inspection conducted by the school district.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 995 (H.B. 3918), Sec. 3, eff. June 19, 2009.

Sec. 113.355. TERMINATION OF SERVICE. A supplier shall terminate service to a school district facility if:

(1) the supplier receives official notification from the firm or individual conducting the test of a hazardous leakage in the facility LP-gas piping system; or

(2) a test at the facility is not performed as required by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

Sec. 113.356. REPORT TO BOARD OF TRUSTEES. An identified LP-gas leakage in a school district facility shall be reported to the board of trustees of the district in which the facility is located.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

Sec. 113.357. ENFORCEMENT. The commission shall enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

SUBCHAPTER M. CONSUMER SAFETY NOTIFICATION

Sec. 113.401. NOTICE REQUIRED. (a) A person holding a license to install or repair an LPG system who sells, installs, or repairs an LPG system, piping or other equipment that is part of a system, or an appliance that is connected or attached to a system shall provide the following notice to the purchaser or owner of the system, piping or other equipment, or appliance:

WARNING: Flammable Gas. The installation, modification, or repair of an LPG system by a person who is not licensed or registered to install, modify, or repair an LPG system may cause injury, harm, or loss. Contact a person licensed or registered to install, modify, or repair an LPG system. A person licensed to install or repair an LPG system may not be liable for damages caused by the modification of an LPG system by an unlicensed person except as otherwise provided by applicable law.

(b) The commission shall adopt rules relating to the notice required by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 462 (H.B. 1170), Sec. 1, eff. September 1, 2007.

CHAPTER 114. OIL TANKER VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 114.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Liquid hydrocarbons" means unrefined oil or condensate, and refined oil or condensate to be blended with unrefined liquid hydrocarbons.

(3) "Transporter" means each gatherer, storer, or other handler of liquid hydrocarbons who moves or transports those liquid hydrocarbons by truck or other motor vehicle.

(4) "Oil tanker vehicle" means a motor vehicle licensed for highway use on a public highway or used on a public highway:

(A) that is equipped with, carrying, pulling, or otherwise transporting an assembly, compartment, tank, or other container that is used for transporting, hauling, or delivering liquids; and

(B) that is being used to transport liquid hydrocarbons on a public highway.

(5) "Public highway" means a way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

(6) "Lease" means a well producing oil, gas, or oil and gas, and any group of contiguous wells producing oil, gas, or oil and gas of any number operated as a producing unit.

(7) "Facility" means any place used to store, process, refine, reclaim, dispose of, or treat liquid hydrocarbons.

(8) "Cargo manifest" means one or more documents that together contain the information required by Section 114.012 of this code.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.002. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) a common carrier as defined by and regulated under Chapter 111 of the Natural Resources Code; or

(2) the movement by a person or entity by motor vehicle of

salt water, brine, sludge, drilling mud, and other liquid or semiliquid material arising out of or incidental to drilling for or producing oil or gas if:

(A) the commission has authorized the person or entity to move or transport the material and the material being moved or transported contains less than seven percent liquid hydrocarbons by volume; or

(B) the person or entity is not moving or transporting the material for hire and the material being moved or transported contains less than seven percent liquid hydrocarbons by volume.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

SUBCHAPTER B. CARGO MANIFEST

Sec. 114.011. CARGO MANIFEST REQUIRED. A cargo manifest must be carried in each oil tanker vehicle transporting liquid hydrocarbons on a public highway in this state and must be presented on request for inspection as provided by Section 114.101 of this code.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.012. CONTENTS OF CARGO MANIFEST. For each load of liquid hydrocarbons loaded onto and transported by an oil tanker vehicle, the cargo manifest must include:

(1) an identification of the lease or facility from which the liquid hydrocarbons were removed which must include:

(A) the lease or facility name; and

(B) the name of the operator of the lease or facility;

(2) the total quantity of liquid hydrocarbons removed from the lease or facility and loaded onto the oil tanker vehicle;

(3) the date and hour when the liquid hydrocarbons were removed from the lease or facility and loaded onto the oil tanker vehicle;

(4) the identity of the transporter which must include:

(A) the company or individual transporter's name and address;

(B) the oil tanker vehicle driver's name; and

(C) a unique number for the oil tanker vehicle that for a truck tractor and semitrailer type oil tanker vehicle must include unique vehicle numbers for both truck tractor and semitrailer; and

(5) the intended point of destination for the liquid hydrocarbons, including the name of the receiving facility.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.013. COPY OF CARGO MANIFEST LEFT AT LEASE OR FACILITY. (a) A copy of the cargo manifest must be left at the lease or facility from which the liquid hydrocarbons were removed or delivered to the lease or facility operator, his agent, or his representative.

(b) The requirements of this section may be met by leaving a separate document at the lease or facility from which the liquid hydrocarbons were removed or delivering to the lease or facility operator a separate document that includes information required under Subdivisions (1)-(3) and Subdivisions (4)(A) and (B), Section 114.012, of this code.

(c) If more than one load of liquid hydrocarbons are removed from a single tank or other container of liquid hydrocarbons within a period of 24 consecutive hours, Subdivisions (2) and (3), Section 114.012, of this code may be met for purposes of this section by a separate document that includes:

(1) the total quantity of liquid hydrocarbons removed;

(2) the date and hour the first load was removed; and

(3) the date and hour the last load was removed.

(d) If the operator of a facility requires that a transporter leave at the facility or deliver to the operator a document other than the transporter's cargo manifest, a transporter may meet the requirements of this section by leaving those specified documents at an agreed location or delivering the document to the operator.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.014. CARGO MANIFEST RECORDS. After the delivery of all liquid hydrocarbons in an oil tanker vehicle is completed, the

cargo manifest must be maintained in the records of the transporter for a period of not less than two years from the date the liquid hydrocarbons are removed from the oil tanker vehicle.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

SUBCHAPTER C. ENFORCEMENT

Sec. 114.101. AUTHORITY TO EXAMINE CARGO MANIFESTS. The commission, its designated agents or employees, or a peace officer may examine a cargo manifest, whether it is on an oil tanker vehicle or in the records of the transporter, under circumstances where the examination is a lawful attempt to determine whether this chapter is being violated.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.102. CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly or intentionally:

(1) fails to leave a copy of the cargo manifest or other document as required under Section 114.013 of this code at the lease or facility from which the liquid hydrocarbons were removed or fails to deliver a copy of the cargo manifest or other document as required under Section 114.013 of this code to the operator of the lease or facility, his agent, or his representative;

(2) operates an oil tanker vehicle without a cargo manifest as required by this chapter;

(3) fails to maintain cargo manifest records as required under Section 114.014 of this code; or

(4) forges or falsifies a cargo document or documents required by this chapter or exhibits a cargo document or documents knowing that those documents are forged or falsified.

(b) An offense under this section is a felony of the third degree.

(c) It is an affirmative defense to prosecution under Subdivision (1), (2), or (3), Subsection (a), of this section that the person charged with the offense provides the information required by Section 114.012 of this code.

(d) A penalty imposed for violation of this chapter is in addition to any civil or administrative penalty or sanction authorized by Sections 85.042 and 85.201 of this code or any other provision of law.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

CHAPTER 115. REGULATION OF CERTAIN TRANSPORTERS OF OIL OR PETROLEUM PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 115.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Commission order" includes a rule or order adopted by the commission under the oil and gas conservation statutes of this state, including this title and Subtitle B, Title 3, Utilities Code.

(3) "Gas" includes natural gas, bradenhead gas, casinghead gas, or gas produced from an oil or gas well.

(4) "Manifest" includes a document issued by a shipper that covers oil or a petroleum product transported by motor vehicle.

(5) "Oil" includes crude petroleum oil:

(A) in its natural state as produced; or

(B) from which only the basic sediment and water have been removed.

(6) "Person" includes an individual, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, or representative.

(7) "Petroleum product" includes:

(A) refined crude oil;

(B) crude tops;

(C) topped crude;

(D) processed crude petroleum;

(E) residue from crude petroleum;

(F) cracking stock;

(G) uncracked fuel oil;

(H) fuel oil;

(I) treated crude oil;

(J) residuum;

(K) gas oil;

(L) casinghead gasoline;
(M) natural gas gasoline;
(N) naphtha;
(O) distillate;
(P) gasoline;
(Q) kerosene;
(R) benzine;
(S) wash oil;
(T) waste oil;
(U) blended gasoline;
(V) lubricating oil;
(W) blends or mixtures of petroleum; or
(X) any other liquid petroleum product or byproduct derived from crude petroleum oil or gas.

(8) "Shipping papers" includes:
(A) a bill of lading that covers oil or a petroleum product transported by railway;
(B) a manifest; or
(C) a document that covers oil or a petroleum product transported by pipeline, boat, or barge.

(9) "Tender" means a permit or certificate of clearance for the transportation of oil or a petroleum product that is approved and issued or registered under the authority of the commission.

(10) "Unlawful gas" includes gas produced or transported in violation of a law of this state or commission order.

(11) "Unlawful petroleum product" includes a petroleum product:
(A) any part of which was processed or derived in whole or in part from:
(i) unlawful oil;
(ii) a product of unlawful oil; or
(iii) unlawful gas; or
(B) transported in violation of a law of this state or commission order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.002. EXCEPTION. This chapter does not apply to the retail purchase of a petroleum product if that product is:

(1) contained in the ordinary equipment of a motor vehicle; and

(2) used only to operate the motor vehicle in which it is contained.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.003. DEFINITION OF UNLAWFUL OIL; PRESUMPTION. (a) For purposes of this chapter, oil is unlawful if the oil is:

(1) produced in this state from a well in excess of the amount allowed by a commission order or otherwise in violation of a law of this state or commission order; or

(2) transported in violation of a law of this state or commission order.

(b) It is presumed that oil is "unlawful oil" for purposes of this chapter if the oil is retained in storage for more than six years without being used, consumed, or moved into regular commercial channels.

(c) The presumption under Subsection (b) may be rebutted by proof that the oil:

(1) was produced from a well within the production allowable then applying to that well;

(2) was not produced in violation of a law of this state or commission order; and

(3) if transported from the lease from which it was produced, was not transported in violation of a law of this state or commission order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

SUBCHAPTER B. TENDERS AND MANIFESTS

Sec. 115.011. TENDER REQUIREMENTS. The commission by order may require that a tender be obtained before oil or a petroleum product may be transported or received for transportation by pipeline, railway, boat, or barge.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.012. TENDER; APPLICATION REQUIREMENTS. (a) The commission by order shall prescribe the form of a tender and a tender application.

(b) The form must show:

(1) the name and address of the shipper or other person who tenders oil or a petroleum product for transportation;

(2) the name and address of the transporter if the commission order requires the transporter to be designated;

(3) the quantity and classification of each commodity authorized to be transported;

(4) each location at which delivery is to be made to the transporter; and

(5) other related information as prescribed by commission order.

(c) Each tender must:

(1) bear a date and serial number;

(2) state the expiration date of the tender; and

(3) be executed by an agent authorized by the commission to deny, approve, or register tenders.

(d) An agent may not approve or register a tender for the transportation of unlawful oil or an unlawful petroleum product.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.013. ACTION ON TENDER APPLICATION. (a) If an agent of the commission rejects an application for a tender, the agent shall return a copy of the application to the applicant with the reasons for the rejection indicated on the copy.

(b) A person whose tender application is not acted on before the 21st day after the date on which the application is filed is entitled to judicial review in the manner provided by Section 115.014 for the appeal of a rejection of a tender application.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.014. JUDICIAL REVIEW. (a) A person whose tender application is rejected may appeal that action by filing a petition against the commission in a district court of Travis County for review of the agent's decision.

(b) The clerk of the court shall issue to the commission a notice setting forth briefly the cause of action stated in the petition. The court may not enter an order on the petition until the court conducts a hearing. The court must conduct the hearing not later than the fifth day after the date of issuance of the notice.

(c) The court may sustain, modify, or overrule the agent's decision and may issue a restraining order or injunction as warranted by the facts.

(d) A person dissatisfied with the decision of the district court may appeal to the court of appeals.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.015. TRANSFER UNDER TENDER. (a) A person who obtains a tender may not transport or deliver, or cause or permit to be transported or delivered, any more or any different commodity than that authorized by the tender.

(b) A connecting carrier or consignee who receives oil or a petroleum product from another transporter by pipeline, railway, boat, or barge under authority of shipping papers executed by the initial transporter that bear the date and serial number of a tender issued to that initial transporter is considered to receive the oil or petroleum product by authority of that tender if the commission order provides that a connecting carrier or consignee may rely on the shipping papers.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.016. ISSUANCE OF MANIFEST. (a) A person who obtains a tender required under this subchapter shall sign and issue a manifest to the operator of each motor vehicle used to transport the oil or petroleum product that is covered by the tender.

(b) The person shall issue a separate manifest for each load carried by the motor vehicle.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.017. FORM OF MANIFEST. (a) The commission by order

may prescribe the form of a manifest.

(b) A manifest must:

(1) bear a certificate signed by the shipper that states the amount of oil or petroleum products to be transported and specifies each petroleum product to be transported; and

(2) include, if required by commission order:

(A) the date and serial number of the tender that authorizes the transportation or a seal, number, or other evidence of the tender, if a tender is required;

(B) the amount and classification of each petroleum product to be transported;

(C) the name and address of the transporter, the name and address of the shipper, and the name and address of the consignee, if known;

(D) the name and address of the operator of the motor vehicle;

(E) the license plate number of the motor vehicle;

(F) the date, time, and place at which the motor vehicle was loaded and the destination, if known, of the load; and

(G) other related information as required by commission order.

(c) If the form of the manifest is not prescribed by commission order, each shipper required to issue a manifest to a transporter shall use a form of manifest that is:

(1) commonly used in commercial transactions; or

(2) required by another state agency to accompany the movement of gasoline.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.018. TRANSFER UNDER MANIFEST; RESTRICTIONS. (a) A person authorized to transport oil or a petroleum product on a manifest issued by a shipper may not receive:

(1) a commodity for transportation that is different from the commodity described in the manifest; or

(2) oil or a petroleum product in an amount exceeding the amount authorized by the manifest.

(b) A person authorized to transport oil or a petroleum product by a shipper-issued manifest that bears on its face the date and

serial number of the tender may rely on the manifest delivered to that person and each consignee or person to whom the transporter delivers oil or a petroleum product covered by that manifest may rely on the manifest as authority to receive the commodity delivered if the manifest:

(1) appears to be valid on its face;

(2) is signed by the shipper; and

(3) bears the certificate of the shipper that the transportation of the oil or petroleum product is authorized by the tender.

(c) If the commission by order prohibits the transportation of oil or a petroleum product by motor vehicle without a manifest that shows the date and serial number of a tender authorizing the transportation, a person may not ship or transport or cause to be shipped or transported by motor vehicle oil or a petroleum product unless the person furnishes the manifest to the operator of the motor vehicle. The person transporting the oil or petroleum product shall maintain the manifest in the vehicle at all times during the shipment. If the person to whom the tender is issued is the operator of the motor vehicle and the tender identifies the motor vehicle by license number and covers one load, the person may carry the tender in the vehicle in lieu of a manifest.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.019. RECEIPT REQUIRED. A person who transports oil or a petroleum product by motor vehicle under conditions that require a tender or manifest shall obtain a receipt from each person to whom any part of the oil or petroleum product is delivered. The receipt must be on the reverse side of the tender or manifest and must indicate:

(1) the number of gallons of oil or of each petroleum product delivered;

(2) the date of delivery; and

(3) the signature and address of the purchaser or consignee of the oil or petroleum product.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.020. RECORDS; INSPECTION. (a) A person who transports by motor vehicle and delivers oil or a petroleum product shall keep in this state for two years each tender or manifest issued to the person, together with the receipts and endorsements on the tender or manifest.

(b) A tender or manifest is at all times subject to inspection by the commission or an agent or inspector of the commission.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

SUBCHAPTER C. FORFEITURE OF UNLAWFUL OIL OR PETROLEUM PRODUCT

Sec. 115.031. FORFEITURE AUTHORIZED. Unlawful oil and unlawful petroleum products, regardless of the date of production or manufacture, are declared to be a nuisance and shall be forfeited to this state as provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.032. REPORT TO ATTORNEY GENERAL. On the discovery of unlawful oil or an unlawful petroleum product, a member of the commission, an agent or employee of the commission, or a peace officer shall immediately file with the attorney general a report that describes the unlawful oil or unlawful petroleum product. The report must state the ownership, party in possession, amount, location, and classification of the oil or petroleum product.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.033. ACTION IN REM. (a) If the attorney general is advised of the presence of unlawful oil or an unlawful petroleum product, the attorney general shall bring an action in rem in the name of the state in Travis County or in the county in which the oil or petroleum product is located against the unlawful oil or petroleum product and against each person who owns, claims, or is in possession of the oil or petroleum product.

(b) If it appears to the court from an examination of the petition or after hearing evidence on the petition at a preliminary hearing that the unlawful oil or petroleum product mentioned in the

petition is in danger of being removed, wasted, lost, or destroyed, the court shall:

(1) issue restraining orders or injunctive relief, either mandatory or prohibitive;

(2) appoint a receiver to take charge of the oil or petroleum product; or

(3) direct the sheriff of the county in which the unlawful oil or petroleum product is located to seize and impound the oil or petroleum product pending further orders of the court.

(c) A party to the action may demand a trial by jury on any issue of fact raised by the pleadings, and the case shall proceed to trial in the manner provided for other civil cases.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.034. FORFEITURE SALE. (a) If, on the trial of the action, the oil or petroleum product in controversy is found to be unlawful, the court shall render judgment forfeiting the oil or petroleum product to this state. The court shall issue an order of sale directing the sheriff or a constable of the county in which the oil or petroleum product is located to seize and sell the oil or petroleum product in the same manner as personal property is sold under execution. The court may order the oil or petroleum product sold in whole or in part.

(b) The sale shall be conducted at the courthouse door of the county in which the oil or petroleum product is located.

(c) The court shall apply the money realized from the sale first to the payment of the costs of the action and expenses incident to the sale of the oil or petroleum product. The court may then use not more than one-half of the money to compensate a person for expenses incurred in storing the unlawful oil or petroleum product. Any balance remaining shall be remitted to the comptroller.

(d) The officers of the court shall receive the same fees provided by law for other civil actions. The sheriff who executes the sale shall issue a bill of sale or certificate to the purchaser of the oil or petroleum product, and the commission, on presentation of that certificate of clearance, shall issue a tender, if a tender is required, permitting the purchaser of the oil or petroleum product to move the oil or petroleum product into commerce.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 115.041. ENFORCEMENT; ARRESTS. (a) To enforce this chapter, an agent of the commission or a peace officer of this state who has probable cause and reasonable grounds to believe that a motor vehicle is transporting unlawful oil or an unlawful petroleum product may stop the vehicle to take samples of the cargo and to inspect the shipping papers.

(b) If, on examination of the motor vehicle, the agent or officer finds that the vehicle is transporting unlawful oil or an unlawful petroleum product or is transporting oil or a petroleum product without a required tender, the agent or officer, with or without a warrant, shall arrest the operator of the vehicle and file a complaint against the operator under this chapter.

(c) In a criminal action under this chapter, the agent or officer is not entitled to a fee for executing a warrant of arrest or capias or for making an arrest with or without a warrant.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.042. PUBLICATION OF COMMISSION ORDER PRIOR TO ENFORCEMENT. A criminal action may not be maintained against a person involving the violation of a rule or order that the commission adopts, modifies, or amends until the commission publishes a complete copy of the rule or order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.043. CERTIFICATE AS EVIDENCE. (a) A certificate that sets forth the terms of a commission order and states that the order has been adopted and published and was in effect on a specified date or during a specified period is prima facie evidence of those facts if the certificate is:

(1) made under the seal of the commission; and

(2) executed by a member or the secretary of the commission.

(b) The certificate is admissible in evidence in any civil or

criminal action that involves the order without further proof of the adoption, publication, or contents of the order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.044. SERVICE OF PROCESS. (a) In an action or proceeding that involves the enforcement of this chapter or a commission order, a Texas Ranger or agent of the commission may serve any judicial process, warrant, subpoena, or writ as directed by the court issuing the process and shall serve the process in the same manner as a peace officer.

(b) The ranger or agent may serve the process, warrant, or subpoena anywhere in this state although it may be directed to the sheriff or a constable of a particular county.

(c) The ranger or agent shall make the same return as any other officer, sign the return, and add under the name the title "State Ranger" or "Agent, Railroad Commission of Texas," as appropriate, which is sufficient to make the writ valid if the writ is otherwise properly prepared.

(d) A Texas Ranger or agent of the commission is not entitled to a fee in addition to that person's regular compensation for a service provided under this section.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.045. PLEADING; PROOF. (a) In a complaint, information, or indictment that alleges a violation of a commission order, it is unnecessary to set forth fully the terms of the order and sufficient to allege the substance of the order or the pertinent terms of the order that are alleged to have been violated.

(b) In a criminal action filed under this chapter, a certificate executed by a member or the secretary of the commission that shows the amount of allowable oil that may be produced per day or during a stated period from an oil well, proof of production from which is involved in the criminal action, is admissible and is prima facie evidence of the facts stated in the certificate.

(c) This section does not limit the power of the commission to adopt rules or orders under the oil and gas conservation statutes of this state, including this title and Subtitle B, Title 3, Utilities

Code.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.046. VENUE. A criminal action maintained under this chapter must be brought in:

(1) the county in which the oil or petroleum product involved in the criminal action is received or delivered; or

(2) any county in or through which that oil or petroleum product is transported.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.047. PENALTIES. (a) A person commits an offense if the person is the operator of a motor vehicle that transports oil or a petroleum product and the person:

(1) intentionally fails to stop the vehicle on the command of an agent of the commission or peace officer; or

(2) intentionally fails to permit inspection by the agent or officer of the contents of or the shipping papers accompanying the vehicle.

(b) A person commits an offense if the person:

(1) knowingly violates Section 115.011, 115.015(a), 115.016, 115.018, 115.019, or 115.020;

(2) knowingly ships or transports or causes to be shipped or transported unlawful oil or an unlawful petroleum product by motor vehicle over a public highway in this state;

(3) knowingly ships or transports or causes to be shipped or transported by motor vehicle oil or a petroleum product without the authority of a tender if a tender is required by a commission order; or

(4) if a tender is required by a commission order, knowingly receives from a motor vehicle or knowingly delivers to a motor vehicle oil or a petroleum product that is not covered by a tender authorizing the transportation of the oil or petroleum product.

(c) A person commits an offense if the person:

(1) knowingly ships or transports or causes or permits to be shipped or transported by pipeline, railway, boat, or barge

unlawful oil or an unlawful petroleum product;

(2) knowingly receives or delivers for transportation by pipeline, railway, boat, or barge unlawful oil or an unlawful petroleum product;

(3) knowingly ships or transports or causes or permits to be shipped or transported by pipeline, railway, boat, or barge oil or a petroleum product without authority of a tender if a tender is required by a commission order; or

(4) knowingly receives or delivers by pipeline, railway, boat, or barge oil or a petroleum product without authority of a tender if a tender is required by a commission order.

(d) An offense under this section is punishable by a fine of not less than $50 or more than $200.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

CHAPTER 116. COMPRESSED NATURAL GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 116.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Compressed natural gas" or "CNG" means natural gas primarily consisting of methane in a gaseous state that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

(3) "Liquefied natural gas" or "LNG" means natural gas primarily consisting of methane in liquid or semisolid state.

(4) "CNG cylinder" means a cylinder or other container designed for use or used as part of a CNG system.

(5) "LNG container" means a container designed for use or used as part of an LNG system.

(6) "CNG system" means a system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or public place by the general public or in conjunction with a motor vehicle or mobile fuel system fueled by compressed natural gas and any system or facilities designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of compressed natural gas in portable CNG cylinders, but does not include natural gas

facilities, equipment, or pipelines located upstream of the inlet of a compressor devoted entirely to compressed natural gas.

(7) "LNG system" means a system of safety devices, containers, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other LNG equipment intended for use or used with a motor vehicle fueled by liquefied natural gas and any system or other facilities designed to be used or used in the sale, storage, transportation for delivery, or distribution of liquefied natural gas.

(8) "Motor vehicle" means any self-propelled vehicle licensed for highway use or used on a public highway.

(9) "Compressed natural gas cargo tank" means a container built in accordance with A.S.M.E. or D.O.T. specifications and used to transport compressed natural gas for delivery.

(10) "Liquefied natural gas cargo tank" means a container built in accordance with A.S.M.E. or D.O.T. specifications and used to transport liquefied natural gas for delivery.

(11) "Mobile fuel system" means a CNG or LNG system to supply natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(12) "Motor fuel system" means a CNG or LNG system to supply natural gas as a fuel for an engine used to propel the vehicle.

(13) "Registrant" means any individual exempt from the licensing requirements as established by rule of the commission who is required to register with the commission, any person qualified by examination by the commission, or any person who applies for registration with the commission. Registrant includes an employee of a licensee who performs CNG-related or LNG-related activities.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1995.

Sec. 116.002. EXCEPTIONS. This chapter does not apply to:

(1) the production, transportation, storage, sale, or distribution of natural gas that is not included in the definition of compressed natural gas or liquefied natural gas;

(2) the production, transportation, storage, sale, or

distribution of natural gas that is subject to commission jurisdiction under Subtitle A or B, Title 3, Utilities Code;

(3) pipelines, fixtures, and other equipment used in the natural gas industry that are not used or designed to be used as part of a CNG or LNG system; or

(4) pipelines, fixtures, equipment, or facilities to the extent that they are subject to the safety regulations promulgated and enforced by the commission pursuant to Chapter 117, Natural Resources Code, or Subchapter E, Chapter 121, Utilities Code.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 18.42, eff. Sept. 1, 1999.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 116.011. ADMINISTRATION. The commission shall administer and enforce this chapter and rules and standards adopted under this chapter relating to compressed natural gas and liquefied natural gas.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.012. RULES AND STANDARDS. To protect the health, safety, and welfare of the general public, the commission shall adopt necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.013. NATIONAL CODES. The commission may adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design,

construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.014. FEES. (a) Fees collected by the commission under Section 116.034 of this code for training, examinations, and seminars must be deposited in a special fund in the state treasury designated as the CNG and LNG examination fund. The commission shall use money in this fund to pay the cost of training, examinations, and seminars sponsored or administered by the commission.

(b) Except as provided by Subsection (a) of this section, money collected by the commission as fees under this chapter shall be deposited in the general revenue fund.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.015. ENTRY ON PROPERTY; INSPECTION AND INVESTIGATION. (a) An employee, agent, or inspector of the commission may enter the premises of a licensee under this chapter or any building or other premises open to the public or inspect any CNG or LNG system or motor vehicle equipped with CNG or LNG equipment at any reasonable time for the purpose of determining and verifying compliance with this chapter and rules of the commission adopted under this chapter.

(b) Any authorized representative of the LPG division may enter any building or premises where an accident has occurred in which CNG or LNG was a probable cause for purposes of investigating the cause, origin, and circumstances of such accident. The LPG division may request that any state or local authority having jurisdiction take appropriate action as may be necessary for preservation of property and premises.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.016. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding by a licensee or registrant except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a licensee or registrant's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee or registrant; or

(4) restricts the licensee or registrant's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 54, eff. Sept. 1, 2001.

SUBCHAPTER C. LICENSING AND REGISTRATION

Sec. 116.031. LICENSE REQUIREMENT. (a) Unless otherwise provided in this chapter or by commission rule, a person shall be required to obtain a license from the commission to engage in any of the following activities:

(1) work that includes the assembly, repair, testing, sale, installation, or subframing of CNG cylinders or LNG containers for use in this state;

(2) systems work that includes the installation, modification, or servicing of CNG or LNG systems for use in this state, including the installation, modification, or servicing by any person, except a political subdivision, of a CNG or LNG motor fuel system or mobile fuel system on a vehicle used in the transportation of the general public; or

(3) product work that includes the sale, storage, transportation for delivery, or dispensing of CNG or LNG in this state.

(b) A license obtained by a partnership, corporation, or other legal entity extends to the entity's employees who are performing CNG or LNG work, provided that each employee is qualified and registered as required by rules adopted by the commission.

(c) No license is required by an original vehicle manufacturer or a subcontractor of such manufacturer for the installation and sale of a new CNG or LNG system when such system is installed on a new original vehicle fueled by CNG or LNG.

(d) The commission by rule may provide for the annual registration of all individuals performing CNG-related or LNG-related activities who are exempt from the licensing requirements of the commission. Employees of a political subdivision are not required to be licensed or registered under this chapter.

(e) The commission shall adopt rules providing for the registration of persons engaged in the manufacture of CNG cylinders or LNG containers for use in this state.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 189 (H.B. 2127), Sec. 1, eff. September 1, 2019.

Sec. 116.032. LICENSE AND REGISTRATION FEES. (a) The commission shall adopt rules establishing registration fees and license categories and license fees to be charged for application for and issuance and renewal of a license or registration.

(b) The commission by rule may establish reasonable fees for each category of license.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 55, eff. Sept. 1, 2001.

Sec. 116.033. APPLICATION AND RENEWAL PROCEDURES. (a) The commission shall adopt rules establishing procedures for submitting and processing applications for issuance and renewal of licenses and for registration.

(b) A person who is otherwise eligible to renew a license or registration may renew an unexpired license or registration by paying the required renewal fee to the commission before the expiration date

of the license or registration. A person whose license or registration has expired may not engage in activities that require a license or registration until the license or registration has been renewed.

(c) A person whose license or registration has been expired for 90 days or less may renew the license or registration by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose license or registration has been expired for more than 90 days but less than one year may renew the license or registration by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose license or registration has been expired for one year or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license or registration.

(f) A person who was licensed or registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding the date of application may obtain a new license or registration without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license or registration.

(g) Not later than the 30th day before the date a person's license or registration is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 56, eff. Sept. 1, 2001.

Sec. 116.034. EXAMINATION AND SEMINAR REQUIREMENTS. (a) The commission may adopt rules providing training and seminar attendance requirements and shall adopt rules providing examination requirements for persons who are required or who wish to be licensed or registered

under this chapter.

(b) The commission may adopt a reasonable fee to cover the cost of any training, examination, or seminar required by and sponsored or administered by the commission.

(c) Before a license or registration may be issued, the person to be licensed or registered must satisfactorily complete any training, examinations, and seminars required by the commission.

(d) Not later than the 30th day after the date a person takes a licensing or registration examination under this chapter, the commission shall notify the person of the results of the examination.

(e) If the examination is graded or reviewed by a testing or proctoring service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing or proctoring service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(f) The commission may require a testing or proctoring service to notify a person of the results of the person's examination.

(g) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

(h) The commission may recognize, prepare, or administer continuing education programs for its licensees and registrants. A licensee or registrant must participate in the programs to the extent required by the commission to keep the person's license.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 57, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1038 (H.B. 1162), Sec. 1, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 885 (S.B. 1582), Sec. 3, eff. September 1, 2021.

Sec. 116.0345. LICENSE OR REGISTRATION BY ENDORSEMENT. The commission may waive any prerequisite to obtaining a license or registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or registration issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 58, eff. Sept. 1, 2001.

Sec. 116.0346. PROVISIONAL LICENSE OR REGISTRATION. (a) The commission may issue a provisional license or registration to an applicant currently licensed or registered in another jurisdiction who seeks a license or registration in this state and who:

(1) has been licensed or registered in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and

(3) is sponsored by a person licensed or registered by the commission under this chapter with whom the provisional license or registration holder will practice during the time the person holds a provisional license or registration.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license or registration is valid until the date the commission approves or denies the provisional license or registration holder's application for a license or registration. The commission shall issue a license or registration under this chapter to the provisional license or registration holder if:

(1) the provisional license or registration holder is eligible to be licensed or registered under Section 116.0345; or

(2) the provisional license or registration holder:

(A) passes the part of the examination under Section 116.034 that relates to the applicant's knowledge and understanding

of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license or registration under this chapter; and

(C) satisfies any other licensing or registration requirements under this chapter.

(d) The commission must approve or deny a provisional license or registration holder's application for a license or registration not later than the 180th day after the date the provisional license or registration is issued. The commission may extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses or registrations in an amount reasonable and necessary to cover the cost of issuing the license or registration.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 58, eff. Sept. 1, 2001.

Sec. 116.035. DENIAL OF LICENSE. The commission may deny issuance or renewal of a license or registration to any person who fails to qualify under the requirements of this chapter and rules adopted by the commission under this chapter. The commission shall give written notice to an applicant for the issuance or renewal of a license or for registration of the denial of the license or registration and the reasons for denial.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.036. INSURANCE REQUIREMENT. (a) All licensees must acquire and maintain appropriate workers' compensation or coverage for its employees under policies of work-related accident, disability, and health insurance, including coverage for death benefits, from an insurance carrier authorized to provide coverage in this state and other insurance coverage required by the commission in the amounts required by the commission.

(b) Notwithstanding Subsection (a) of this section, a state agency or institution, county, municipality, school district, or

other governmental subdivision may submit evidence of workers' compensation coverage by self-insurance if permitted by the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes).

(c) The commission shall adopt rules establishing specific requirements for insurance coverage under this chapter and evidence of such coverage. The types and amounts of insurance coverage required by the commission shall be based on the type and category of licensed activity. The commission by rule may allow a licensee to self-insure under Subsection (a) or (e) and by rule shall establish standards for that self-insurance.

(d) The commission may not issue or renew a license, and a licensee may not perform any licensed activity unless the insurance coverage required by the commission's rules is in effect and evidence of that coverage is filed with the commission as required by commission rule.

(e) Every motor vehicle operated in this state as a conveyance for a CNG or an LNG cargo tank must meet motor vehicle insurance requirements established by the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 6, eff. Sept. 1, 1997.

Sec. 116.037. DISCIPLINARY ACTION. (a) The commission shall notify a licensee or registrant in writing if it finds probable violation or noncompliance with this chapter or the rules adopted under this chapter.

(b) The notice shall specify the particular acts, omissions, or conduct comprising the alleged violation and shall designate a date by which the violation must be corrected or discontinued.

(c) The licensee or registrant shall report timely compliance or shall request extension of time for compliance if considered necessary.

(d) If a licensee or registrant objects to the complaint or requirements under this section, or if the commission determines that the licensee or registrant is not proceeding adequately to compliance, then, on written request of the licensee or registrant or order of the commission, a public hearing must be conducted.

(e) If the commission or division determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing.

(f) The commission shall revoke, suspend, or refuse to renew a license or registration or shall reprimand the licensee or registrant if the commission finds that the licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule adopted under this chapter.

(g) The commission may place on probation a person whose license or registration is suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(h) Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 59, 60, eff. Sept. 1, 2001.

Sec. 116.038. STAGGERED RENEWAL OF LICENSES. The commission by rule may adopt a system under which license and registration fees required by Section 116.032 of this code expire on various dates during the year. For the year in which the license and registration expiration dates are changed, license and registration fees payable on a specified date shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license and registration fees that is allowable to the number of months during which the license and registration is valid. On renewal of the license and registration on the new expiration date, the total license and registration fees are payable.

Added by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. MOTOR VEHICLE REGULATION

Sec. 116.071. REGISTRATION RULES. The commission shall adopt rules relating to the registration of motor vehicles that are equipped with a CNG or LNG cargo tank and motor vehicles used principally to transport compressed natural gas or liquefied natural gas in portable cylinders or containers.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.072. REGISTRATION. (a) Each motor vehicle that is equipped with a CNG or LNG cargo tank and each motor vehicle used principally to transport CNG or LNG in portable cylinders or containers must be registered with the commission as provided by commission rules.

(b) The commission may not impose a fee for registration under this section on a motor vehicle owned by a county.

(c) The commission by rule shall establish a reasonable, nonrefundable annual registration and transfer fee for each CNG or LNG cargo trailer, semitrailer, bobtail, and cylinder-delivery unit registered or transferred as follows:

(1) the annual registration fee established by the commission shall not be less than $100 nor more than $500; and

(2) the annual transfer fee established by the commission shall not be less than $25 nor more than $100.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 375, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 7, eff. Sept. 1, 1997.

Sec. 116.073. SAFETY RULES. The commission shall adopt safety rules relating to the transportation of compressed natural gas and liquefied natural gas in this state.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.074. COOPERATION OF THE DEPARTMENT OF PUBLIC SAFETY. The Department of Public Safety shall cooperate with the commission in administering and enforcing this chapter and rules of the commission relating to regulation of motor vehicles required to be registered under this subchapter.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.075. APPLICATION OF OTHER LAWS. This chapter and the rules adopted under this chapter do not modify, amend, or repeal any laws of this state relating to the regulation of motor carriers.

Renumbered from Sec. 116.076 by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Sec. 116.101. MALODORANTS. Compressed natural gas must be odorized as provided by Subchapter F, Chapter 121, Utilities Code.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 18.43, eff. Sept. 1, 1999.

Sec. 116.102. TESTING LABORATORIES. The commission shall adopt rules relating to testing of CNG and LNG equipment and to the qualifications required of the persons who are to perform those tests.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept.

1, 1993.

Sec. 116.103. WARNING TAGS. (a) An employee, agent, or inspector of the commission may declare unsafe or dangerous for service any motor vehicle required to be registered under this chapter or any CNG or LNG equipment or system that is defective or that does not otherwise conform to the safety requirements of this chapter and the rules adopted under this chapter and shall attach a warning tag to the motor vehicle, equipment, or system in a conspicuous location.

(b) A person may not sell, furnish, deliver, or supply compressed natural gas and liquefied natural gas for use or consumption by or through a motor vehicle or system in a public place or operate a motor vehicle having CNG or LNG equipment to which a warning tag is attached.

(c) A warning tag may be removed on approval of the commission or by a person designated by the commission to remove the tag. A warning tag may not be removed by any person who is not authorized to remove the tag by the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. ENFORCEMENT

Sec. 116.141. INJUNCTIVE RELIEF. (a) On request of the commission, the attorney general shall bring suit in the name of the state to enjoin a person from violating this chapter or a rule adopted under this chapter.

(b) A suit for injunction instituted under this section is in addition to other remedies available to the commission under this chapter.

(c) A suit seeking injunctive relief under this section shall be brought in a district court in Travis County.

(d) The commission is not required to provide a bond in a suit instituted under this section.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.142. CRIMINAL PENALTY. (a) A person who knowingly violates this chapter or rules adopted by the commission under this chapter commits an offense.

(b) An offense under this section is punishable by a fine of not less than $100 nor more than $5,000.

(c) Each day a violation continues constitutes a separate offense.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.143. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter, a rule of the commission adopted under this chapter, or a term, condition, or provision of a license or registration issued by the commission under this chapter and the violation results in pollution of the air or water of this state or poses a threat to the public safety, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider the person's history of previous violations of this chapter, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.144. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty under Section 116.145 of this code may be assessed only after the person charged with the violation has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is

warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings under this chapter.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.145. PAYMENT OF PENALTY; REFUND. (a) On the issuance of notice or an order charging that a violation has occurred, the commission shall inform the person charged within 30 days of the proposed amount of the penalty.

(b) Within the 30-day period immediately following the day on which the notice or order is issued, the person charged with the penalty shall pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commission for placement in an escrow account.

(c) If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall, within the 30-day period immediately following that determination, remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.146. RECOVERY OF PENALTY. Civil penalties owed under

Sections 116.143 through 116.145 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

CHAPTER 117. HAZARDOUS LIQUID OR CARBON DIOXIDE PIPELINE TRANSPORTATION INDUSTRY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Hazardous liquid" means:

(A) petroleum or any petroleum product;

(B) nonpetroleum fuel, including biofuel, that is flammable, toxic, or corrosive or would be harmful to the environment if released in significant quantities; and

(C) a substance or material, other than liquefied natural gas, determined by the United States secretary of transportation to pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state.

(3) "Transportation of hazardous liquids or carbon dioxide" means the movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

(4) "Pipeline facilities" includes new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of hazardous liquids or carbon dioxide.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 3, eff. September 1, 2013.

SUBCHAPTER B. JURISDICTION, POWERS, AND DUTIES

Sec. 117.011. JURISDICTION UNDER DELEGATED FEDERAL AUTHORITY. (a) The commission has jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(b) The commission may seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate hazardous liquid or carbon dioxide pipeline facilities located in this state.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 951, Sec. 1, eff. June 18, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 4, eff. September 1, 2013.

Sec. 117.012. RULES AND STANDARDS. (a) The commission shall adopt rules that include:

(1) safety standards applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities resulting from the movement of earth by a person in the vicinity of such a facility, other than movement by tillage that does not exceed a depth of 16 inches.

(a-1) Rules adopted under Subsection (a) that apply to the intrastate transportation of hazardous liquids and carbon dioxide by gathering pipelines in rural locations and intrastate hazardous liquid and carbon dioxide gathering pipeline facilities in rural

locations must be based only on the risks the transportation and the facilities present to the public safety, except that the commission shall revise the rules as necessary to comply with Subsection (c) and to maintain the maximum degree of federal delegation permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law, if the federal government adopts rules that include safety standards applicable to the transportation and facilities.

(b) Rules that adopt safety standards do not apply to production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

(c) The safety standards adopted by the commission in its rules must be compatible with those standards established by the United States secretary of transportation under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(d) The commission may adopt rules that require a hazardous liquid pipeline facility to prepare and submit for commission approval a facility response plan for all or any part of a hazardous liquid pipeline facility located landward of the coast. Rules shall require the facility response plan to include plans for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge of hazardous liquids that could reasonably be expected to cause substantial harm to the environment by discharging into navigable waters.

(e) Rules relating to facility response plans shall be consistent with the provisions of the federal Water Pollution Prevention and Control Act, 33 U.S.C. Section 1321(j)(5). Rules shall provide that, in lieu of submitting a plan for approval under Subsection (a), a facility may submit a facility response plan prepared in compliance with the Water Pollution Prevention and Control Act, 33 U.S.C. Section 1321(j)(5). A plan approved or pending approval by the United States Department of Transportation Office of Pipeline Safety shall be deemed approved by the commission for the purposes of this section.

(f) Rules relating to facility response plans do not apply to a hazardous liquid pipeline facility that is required to implement a discharge prevention and response plan under the Oil Spill Prevention and Response Act of 1991, Chapter 40, Natural Resources Code.

(g) The commission shall adopt rules regarding:

(1) public education and awareness concerning hazardous liquid or carbon dioxide pipeline facilities; and

(2) community liaison for the purpose of responding to an emergency concerning a hazardous liquid or carbon dioxide pipeline facility.

(h) The commission shall require operators of hazardous liquid and carbon dioxide pipeline facilities or the designated representatives of such operators to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (i) only if the operator or the operator's representative has made an effort, by one of the following methods, to conduct a community liaison meeting in person with the officials:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; or

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(i) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (h), the operator or the operator's representative shall conduct community liaison activities by one of the following methods:

(1) holding a telephone conference with the appropriate officials; or

(2) delivering the community liaison information required to be conveyed by certified mail, return receipt requested.

(k) The commission by rule shall require the owner or operator of each intrastate hazardous liquid or carbon dioxide pipeline facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of another public school facility where students congregate, to:

(1) on written request from the school district, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:

(A) a description and map of the pipeline facilities that are within 1,000 feet of the school building or facility;

(B) a list of any product transported in the segment of the pipeline that is within 1,000 feet of the school facility;

(C) the designated emergency number for the pipeline facility operator;

(D) information on the state's excavation one-call system; and

(E) information on how to recognize, report, and respond to a product release; and

(2) mail a copy of the requested items by certified mail, return receipt requested, to the superintendent of the school district in which the school building or facility is located.

(l) A pipeline operator or the operator's representative shall appear at a regularly scheduled meeting of the school board to explain the items listed in Subsection (k) if requested by the school board or school district.

(m) The commission may not require the release of parts of an emergency response plan that include security sensitive information including maps or data. Security sensitive information shall be made available for review by but not provided to the school board.

(n) In this subsection, "telecommunications service" and "information service" have the meanings assigned by 47 U.S.C. Section 153. Notwithstanding Subsection (a), this title does not grant the commission jurisdiction or right-of-way management authority over a provider of telecommunications service or information service. A provider of telecommunications service or information service shall comply with all applicable safety standards, including those provided by Subchapter H, Chapter 756, Health and Safety Code.

(o) The power granted by Subsection (a) does not apply to:

(1) surface mining operations; or

(2) other entities or occupations if the commission determines in its rulemaking process that exempting those entities or occupations from rules adopted under that subsection:

(A) is in the public interest; or

(B) is not likely to cause harm to the safety and welfare of the public.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 616, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 951, Sec. 2, eff. June 18, 1997;

Acts 2001, 77th Leg., ch. 1233, Sec. 61, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1082, Sec. 1, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 6, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1197 (H.B. 4300), Sec. 2, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 17.003, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 2, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 5, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 7, eff. September 1, 2017.

Sec. 117.013. RECORDS AND REPORTS. (a) Each owner or operator of a pipeline engaged in the transportation of hazardous liquids or carbon dioxide within this state shall maintain records, make reports, and provide any information the commission may require under the jurisdiction granted by this chapter and 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.
(b) The commission, by rule, shall designate the records that are required to be maintained and the reports that are to be filed by the owner or operator and shall provide forms for reports if necessary.
(c) The commission may require the owners or operators of hazardous liquid or carbon dioxide pipeline facilities to prepare and make available for inspection by its employees or agents or file for approval a procedural manual for each such facility in accordance with the requirements of Title 49, Part 195.402, Code of Federal Regulations.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 5, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 6, eff. September 1, 2013.

Sec. 117.014. INSPECTION AND EXAMINATION OF RECORDS AND PROPERTY. (a) The commission and its employees and designated agents may enter property on which is located pipeline facilities or any other property relating to the transportation of hazardous liquids or carbon dioxide by pipeline and may inspect and examine the records and property to the extent relevant to determine if a person is acting in compliance with this chapter and rules adopted by the commission under this chapter.

(b) Before the commission or its employees or designated agents enter property for the purposes of this section, the person requesting entry must present proper credentials to the person in charge at the property.

(c) Entry, examination, and inspection under this section may be made only at reasonable times and in a reasonable manner.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 6, eff. Sept. 1, 1993.

Sec. 117.015. COMPLIANCE WITH FEDERAL LAW. The commission shall make reports and certifications to the United States Department of Transportation and shall take any other actions necessary to comply with 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 7, eff. September 1, 2013.

SUBCHAPTER C. ENFORCEMENT

Sec. 117.051. CIVIL PENALTY. A person who violates this chapter or a rule adopted by the commission under this chapter is subject to a civil penalty of not more than $200,000 for each act of violation and for each day of violation, provided that the maximum civil penalty that may be assessed for any related series of

violations may not exceed $2 million.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1991, 72nd Leg., ch. 724, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 92, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 2, eff. September 1, 2013.

Sec. 117.052. ENFORCEMENT BY COMMISSION AND ATTORNEY GENERAL. (a) If it appears that a rule of the commission has been or is being violated, the commission may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or for the assessment and recovery of a civil penalty under Section 117.051 of this code, or for both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated or is violating this chapter or a rule of the commission adopted under this chapter, the district court shall grant the injunctive relief the facts so warrant.

(c) At the request of the commission, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief to recover the civil penalty, or for both injunctive relief and the civil penalty.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.

Sec. 117.053. CRIMINAL PENALTY FOR VIOLATION OF CHAPTER AND RULES. (a) A person who intentionally violates this chapter or a rule adopted under this chapter commits an offense.

(b) An offense under this section is punishable by a fine of not more than $2 million, confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by Section 3.03, Penal

Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a single offense under this section.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.137, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 3, eff. September 1, 2013.

Sec. 117.054. CRIMINAL PENALTY FOR INJURING OR DESTROYING PIPELINE FACILITIES. (a) A person who intentionally injures or destroys or attempts to injure or destroy any pipeline facility in this state commits an offense.

(b) An offense under this section is punishable by a fine of not more than $2 million, confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a single offense under this section.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.138, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 4, eff. September 1, 2013.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 117.101. LIMITATIONS ON POWERS OF CITIES. (a) Except as

otherwise provided by this subchapter, this chapter may not be construed to reduce, limit, or impair the authority provided by law to any city.

(b) Except as provided by Subsection (c) of this section, a city may not adopt or enforce an ordinance that establishes safety standards or practices applicable to the pipeline transportation of hazardous liquids or carbon dioxide or hazardous liquid or carbon dioxide pipeline facilities that are subject to regulation by federal or state law.

(c) A city may adopt ordinances that establish conditions for installing or relocating pipelines over, under, along, or across public streets and alleys within the boundaries of the city.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 7, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 3, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 1, eff. September 1, 2005.

Sec. 117.102. AUTHORITY OF CITY TO ASSESS CHARGES. (a) Except as otherwise provided by this section, a city may not assess a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility on, along, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) A city may:

(1) assess a reasonable annual charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal by an owner or operator of a hazardous liquid or carbon dioxide pipeline facility on, along, or across the public roads, highways, streets, alleys, streams, canals, or other public ways located within the city and maintained by the city; and

(2) recover the reasonable cost of repairing damage to a public road, highway, street, alley, stream, canal, or other public way located within the city and maintained by the city that is caused by the placement, construction, maintenance, repair, replacement,

operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility if the owner or operator of the facility does not repair the damage in accordance with generally applicable paving standards or other applicable standards in the city.

(c) A charge authorized by Subsection (b)(1) may not exceed the cost to the city of administering, supervising, inspecting, and otherwise regulating the location of the pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(d) The owner or operator of a pipeline facility may appeal the assessment of a charge under Subsection (b)(1) to the commission. The commission shall hear the appeal de novo. Unless the city that assessed the charge establishes that the charge is authorized by this section, the commission shall declare the charge invalid or reduce the charge to an amount authorized by this section. The commission has exclusive jurisdiction to determine whether a charge under Subsection (b)(1) is authorized by this section. The owner or operator of the pipeline facility and the city shall share equally the costs incurred by the commission in connection with the appeal.

(e) A city must file suit to collect a charge authorized by Subsection (b)(1) not later than the fourth anniversary of the date the charge becomes due. The running of the limitations period under this subsection is tolled on the filing of an appeal of the charge under Subsection (d) and begins running again on the date the appeal is determined.

(f) This section may not be construed to prevent a city from:

(1) recovering the reasonable cost of repairing damage to a city facility, other than a public way, caused by acts of the owner or operator of a pipeline facility; or

(2) requiring the owner or operator of a pipeline facility to relocate the pipeline facility, at the owner's or operator's expense, to permit the construction, maintenance, modification, or alteration of a city facility.

(g) Notwithstanding Subsection (f)(2), the city shall pay the cost of relocating a pipeline facility if the pipeline facility is authorized by a property right that has priority over the city's right to use the public way for the city facility.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 4, eff. June

17, 2005.
Added by Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 2, eff. September 1, 2005.

CHAPTER 118. PIPELINE ASSESSMENT AND TESTING

Sec. 118.001. AUTHORITY TO REQUIRE PLAN FOR PIPELINE ASSESSMENT OR TESTING. (a) The Railroad Commission of Texas by rule may require an operator to file for commission approval a plan for assessment or testing of a pipeline if the commission finds that:

(1) there is reason to believe that the pipeline may present a hazard to public health or safety;

(2) the commission lacks adequate information to assess the risk to public health or safety presented by the pipeline; or

(3) a plan is necessary for the commission to initiate or complete a pipeline safety investigation.

(b) The Railroad Commission of Texas may take enforcement action against a person who fails to:

(1) submit a required plan; or

(2) participate in a pipeline safety investigation.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

Sec. 118.002. PIPELINES FOR WHICH PLAN MAY BE REQUIRED. (a) Except as provided by Subsection (b), the rules adopted under this chapter may apply to interstate pipelines, intrastate pipelines, portions of pipeline systems the regulation of which the federal government has temporarily delegated to the Railroad Commission of Texas, or gathering lines, and to pipelines for the transportation of any substance or material under the jurisdiction of the commission, as specified by the commission.

(b) Exempted from the application of this chapter are gathering lines outside:

(1) the limits of an incorporated or unincorporated city or village;

(2) any designated residential or commercial area such as residential subdivisions, businesses, shopping centers, or community development.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

Amended by Acts 2003, 78th Leg., ch. 1273, Sec. 1, eff. June 21, 2003.

Sec. 118.003. CONTENTS OF PLAN. The rules adopted under this chapter may require that a plan include:

(1) an identification of risk factors associated with a pipeline system, including population density;

(2) information about previous inspections and maintenance;

(3) information about pressure tests;

(4) information about leaks;

(5) information about operating characteristics;

(6) information about corrosion protection methods; and

(7) other information that may assist the Railroad Commission of Texas in assessing the risk to public health or safety presented by the pipeline.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

Sec. 118.004. APPROVAL OF PLAN. The Railroad Commission of Texas may approve a plan that complies with rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

Sec. 118.005. CONSEQUENCES OF PLAN APPROVAL. The approval of a plan by the Railroad Commission of Texas does not constitute a certification or representation that the pipeline is in compliance with or exempt from applicable safety standards.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

CHAPTER 119. OWNERSHIP OF CARBON DIOXIDE CAPTURED BY CLEAN COAL PROJECT

Sec. 119.001. DEFINITIONS. In this chapter:

(1) "Clean coal project" has the meaning assigned by Section 5.001, Water Code.

(2) "Commission" means the Railroad Commission of Texas.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.002. ACQUISITION OF CARBON DIOXIDE. (a) The commission shall acquire title to carbon dioxide captured by a clean coal project.

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the commission, acting on behalf of the state, and shall be administered and controlled by the commission in the name of the state.

(c) A right, title, or interest acquired under this section does not vest in any fund created by the Texas Constitution.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.0025. MONITORING OF SEQUESTERED CARBON DIOXIDE. The Bureau of Economic Geology of The University of Texas at Austin shall monitor, measure, and verify the permanent status of sequestered carbon dioxide in which the commission has acquired the right, title, and interest under Section 119.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 3, eff. September 1, 2007.

Sec. 119.003. TRANSFER COSTS. Carbon dioxide transferred to the state under Section 119.002 shall be transferred to the state without cost, other than administrative and legal costs incurred in making the transfer.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.004. LIABILITY. (a) The transfer of title to the state under Section 119.002 does not relieve an owner or operator of a clean coal project of liability for any act or omission regarding the generation of carbon dioxide performed before the carbon dioxide

was captured.

(b) On the date the commission acquires the right, title, and interest in carbon dioxide captured by a clean coal project under Section 119.002, the owner or operator of the clean coal project is relieved from liability for any act or omission regarding the carbon dioxide injection location, and the method or means of performing carbon dioxide injection, if the injection location and method or means of injection comply with the terms of a license or permit issued by the state and applicable state law and regulations.

(c) Notwithstanding Subsection (b), no owner, operator, or contractor of the clean coal project is immune from liability for personal injury or death that results from construction of the site, or drilling or operation of the injection wells.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 4, eff. September 1, 2007.

Sec. 119.005. SALE OF CARBON DIOXIDE FOR BENEFICIAL USE. (a) The commission may sell, for enhanced oil recovery or other beneficial use, carbon dioxide that is:

(1) captured by a clean coal project; and

(2) not injected for permanent storage in a geologic formation.

(b) The commission shall deposit any proceeds from the sale of carbon dioxide under this section to the credit of the general revenue fund.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.006. INDEMNIFICATION. The University of Texas System, the permanent university fund, and the Texas Board of Criminal Justice may enter into a lease with the commission or with an owner or operator of a clean coal project for the use of lands owned or controlled by the system, the fund, or the board for permanent storage of carbon dioxide captured by a clean coal project, provided

that such lease adequately indemnifies the system, the fund, the board, and the Texas Department of Criminal Justice against liability for personal injury or property damage incurred by the system, the fund, the board, or the department as a result of the escape or migration of the carbon dioxide after it is injected into a zone or reservoir. This section does not affect the application of Chapter 101, Civil Practice and Remedies Code, to any activity carried out by a governmental unit, as defined by that chapter.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 5, eff. September 1, 2007.

Sec. 119.007. REPRESENTATION BY ATTORNEY GENERAL. (a) In this section, "state agency" includes:

(1) a department, commission, board, office, or other agency in the legislative, executive, or judicial branch of state government; and

(2) a university system or institution of higher education as defined by Section 61.003, Education Code.

(b) A state agency may request the attorney general to represent the state agency in a legal proceeding that arises from an escape or migration of carbon dioxide captured or sequestered in connection with a clean coal project.

(c) If the attorney general declines to represent the state agency, the state agency may obtain outside counsel in accordance with Section 402.0212, Government Code, and for purposes of that section, the attorney general's declination to represent the agency constitutes the attorney general's approval of the outside counsel for the matter.

Added by Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 6, eff. September 1, 2007.

CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION OF CLEAN ENERGY PROJECT

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Bureau" means the Bureau of Economic Geology of The University of Texas at Austin.

(2) "Clean energy project" means a project to construct a coal-fueled, natural gas-fueled, or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that will:

(A) have a capacity of at least 200 megawatts;

(B) meet the emissions profile for an advanced clean energy project under Section 382.003(1-a)(B), Health and Safety Code;

(C) capture at least 70 percent of the carbon dioxide resulting from or associated with the generation of electricity by the facility;

(D) be capable of permanently sequestering in a geological formation the carbon dioxide captured; and

(E) be capable of supplying the carbon dioxide captured for purposes of an enhanced oil recovery project.

(3) "Commission" means the Railroad Commission of Texas.

(4) "Sequester" means to inject carbon dioxide into a geological formation in a manner and under conditions that create a reasonable expectation that at least 99 percent of the carbon dioxide injected will remain sequestered from the atmosphere for at least 1,000 years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 3, eff. June 14, 2013.

Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a) The commission is the authority responsible for certifying whether a project has met the requirements for a clean energy project.

(b) An entity may apply to the commission for a certification that a project operated by the entity meets the requirements for a clean energy project. An entity may not submit an application under this section before September 1, 2018. The application must be accompanied by:

(1) a certificate from a qualified independent engineer that the project is operational and meets the standards provided by

Sections 120.001(2)(A), (B), and (C); and

(2) a fee payable to the commission.

(c) The amount of the fee prescribed by Subsection (b)(2) is $50,000 unless the commission by rule determines that a fee in a greater amount is necessary to cover the commission's costs of processing an application.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 4, eff. June 14, 2013.

Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE. (a) An entity that applies to the commission under Section 120.002 for a certification that a project operated by the entity meets the requirements for a clean energy project is responsible for conducting a monitoring, measuring, and verification process that demonstrates that the project complies with the requirements of Section 171.602(b)(4), Tax Code.

(b) The entity shall contract with the bureau for the bureau to:

(1) design initial protocols and standards for the process described by Subsection (a);

(2) review the conduct of the process described by Subsection (a) in order to make any necessary changes in the design of the protocols and standards;

(3) evaluate the results of the process described by Subsection (a);

(4) provide an evaluation of the results of the process described by Subsection (a) to the commission; and

(5) determine whether to transmit to the comptroller the verification described by Section 171.602(b)(4), Tax Code.

(c) Unless otherwise agreed by the entity and the bureau, a contract required by Subsection (b) must require the entity to compensate the bureau by paying an annual fee in accordance with the following schedule:

Year	Amount
One	$700,000

Two	$1,300,000
Three	$1,800,000
Four	$1,500,000
Five	$1,200,000
Six	$900,000
Seven	$500,000
Eight	$200,000

(d) The first payment under Subsection (c) is due not later than 24 months before the date the entity first supplies carbon dioxide captured by the project to an enhanced oil recovery project.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 5, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.002(17), eff. September 1, 2015.

Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a) On verification that a project meets the requirements for certification as a clean energy project, the commission shall issue a certificate of compliance for the project to the entity operating the project and shall provide a copy of the certificate to the comptroller.

(b) The commission may not issue a certificate of compliance for more than three clean energy projects. Not more than one of the clean energy projects may be a natural gas project.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 6, eff. June 14, 2013.

CHAPTER 121. OWNERSHIP AND STEWARDSHIP OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Anthropogenic carbon dioxide," "anthropogenic carbon dioxide injection well," and "geologic storage facility" have the

meanings assigned by Section 27.002, Water Code.

(2) "Commission" means the Railroad Commission of Texas.

(3) "Storage operator" means a person authorized by the commission to operate a geologic storage facility.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

Sec. 121.002. OWNERSHIP OF ANTHROPOGENIC CARBON DIOXIDE. (a) This section does not apply to anthropogenic carbon dioxide injected for the primary purpose of enhanced recovery operations.

(b) Unless otherwise expressly provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other law, anthropogenic carbon dioxide stored in a geologic storage facility is considered to be the property of the storage operator or the storage operator's heirs, successors, or assigns.

(c) Absent a final judgment of wilful abandonment rendered by a court or a regulatory determination of closure or abandonment, anthropogenic carbon dioxide stored in a geologic storage facility is not considered to be the property of the owner of the surface or mineral estate in the land in which the anthropogenic carbon dioxide is stored or of a person claiming under the owner of the surface or mineral estate.

(d) The owner, as designated by Subsection (b) or (c), of the anthropogenic carbon dioxide stored in a geologic storage facility, or the owner's heirs, successors, or assigns, may produce, take, extract, or otherwise possess anthropogenic carbon dioxide stored in the facility.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

Sec. 121.003. ANTHROPOGENIC CARBON DIOXIDE STORAGE TRUST FUND. (a) The anthropogenic carbon dioxide storage trust fund is created as a special fund in the state treasury.

(b) The anthropogenic carbon dioxide storage trust fund is an

interest-bearing fund. Interest earned on money in the fund shall be deposited to the credit of the fund.

(c) Fees collected by the commission under Subchapter C-1, Chapter 27, Water Code, penalties imposed for violations of that subchapter or rules adopted under that subchapter, and funds received by the commission from financial responsibility mechanisms under Section 27.073, Water Code, shall be deposited to the credit of the anthropogenic carbon dioxide storage trust fund.

(c-1) Penalties imposed for violations of commission rules adopted under Section 382.502, Health and Safety Code, shall be deposited to the credit of the anthropogenic carbon dioxide storage trust fund.

(d) The anthropogenic carbon dioxide storage trust fund may be used by the commission only for:

(1) permitting, inspecting, monitoring, investigating, recording, and reporting on geologic storage facilities and associated anthropogenic carbon dioxide injection wells;

(2) long-term monitoring of geologic storage facilities and associated anthropogenic carbon dioxide injection wells;

(3) remediation of mechanical problems associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells;

(4) repairing mechanical leaks at geologic storage facilities;

(5) plugging abandoned anthropogenic carbon dioxide injection wells used for geologic storage;

(6) training and technology transfer related to anthropogenic carbon dioxide injection and geologic storage; and

(7) compliance and enforcement activities related to geologic storage and associated anthropogenic carbon dioxide injection wells.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 460 (H.B. 1284), Sec. 5, eff. June 9, 2021.

Sec. 121.004. EXTRACTION OF STORED ANTHROPOGENIC CARBON DIOXIDE. (a) The commission shall adopt rules allowing anthropogenic carbon dioxide stored in a geologic storage facility to be extracted for a commercial or industrial use.

(b) The commission has jurisdiction over the extraction of anthropogenic carbon dioxide stored in a geologic storage facility.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

CHAPTER 122. TREATMENT AND RECYCLING FOR BENEFICIAL USE OF FLUID OIL AND GAS WASTE

Sec. 122.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Fluid oil and gas waste" means waste containing salt or other mineralized substances, brine, hydraulic fracturing fluid, flowback water, produced water, or other fluid that arises out of or is incidental to the drilling for or production of oil or gas.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.

Sec. 122.002. OWNERSHIP OF FLUID OIL AND GAS WASTE TRANSFERRED FOR TREATMENT AND SUBSEQUENT BENEFICIAL USE. Unless otherwise expressly provided by an oil or gas lease, a surface use agreement, a contract, a bill of sale, or another legally binding document:

(1) when fluid oil and gas waste is produced and used by or transferred to a person who takes possession of that waste for the purpose of treating the waste for a subsequent beneficial use, the waste is considered to be the property of the person who takes possession of it for the purpose of treating the waste for subsequent beneficial use until the person transfers the waste or treated waste to another person for disposal or use; and

(2) when a person who takes possession of fluid oil and gas waste for the purpose of treating the waste for a subsequent beneficial use transfers possession of the treated product or any treatment byproduct to another person for the purpose of subsequent disposal or beneficial use, the transferred product or byproduct is

considered to be the property of the person to whom the material is transferred.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 147 (H.B. 3246), Sec. 1, eff. September 1, 2019.

Sec. 122.003. RESPONSIBILITY IN TORT. (a) Except as provided by Subsection (b), a person who takes possession of fluid oil and gas waste, produces from that waste a treated product generally considered in the oil and gas industry to be suitable for use in connection with the drilling for or production of oil or gas, and transfers the treated product to another person with the contractual understanding that the treated product will be used in connection with the drilling for or production of oil or gas is not liable in tort for a consequence of the subsequent use of that treated product by the person to whom the treated product is transferred or by another person.

(b) This section does not affect the liability of a person that treats fluid oil and gas waste for beneficial use in an action brought by a person for damages for personal injury, death, or property damage arising from exposure to fluid oil and gas waste or a treated product.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.

Sec. 122.004. COMMISSION RULES FOR TREATMENT AND BENEFICIAL USE. (a) The commission shall adopt rules to govern the treatment and beneficial use of oil and gas waste.

(b) Rules adopted under this section must:

(1) encourage fluid oil and gas waste recycling for beneficial purposes; and

(2) establish standards for the issuance of permits for commercial recycling of fluid oil and gas waste.

(c) In adopting rules under this section, the commission shall consider previously adopted rules for recycling fluid oil and gas

waste.

(d) Rules adopted under this section for commercial recycling of fluid oil and gas waste must establish:

(1) minimum siting standards for fluid recycling pits;

(2) uniform technical, construction, and placement standards;

(3) uniform standards for estimating closure costs;

(4) minimum and maximum bonding and financial security amounts based on factors determined by the commission; and

(5) standards for sampling and analysis of fluid oil and gas waste.

(e) The commission shall approve or deny an application for a permit issued under rules adopted under this section not later than the 90th day after the date the complete application was received by the commission, unless a protest is filed with the commission, in which case the commission may extend the amount of time to approve or deny the application in order to allow for notice, public comment, and a public hearing on the application. If the commission does not approve or deny the application before that date, the permit application is considered approved and the applicant may operate under the terms specified in the application for a period of one year.

(f) An application requesting a variance from the standards adopted under this section must be evaluated and determined to be substantially similar to previous variances approved by the commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 420 (H.B. 3516), Sec. 1, eff. September 1, 2021.

CHAPTER 123. TREATMENT AND RECYCLING FOR BENEFICIAL USE OF DRILL CUTTINGS

Sec. 123.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Drill cuttings" means bits of rock or soil cut from a subsurface formation by a drill bit during the process of drilling an

oil or gas well and lifted to the surface by means of the circulation of drilling mud. The term includes any associated sand, silt, drilling fluid, spent completion fluid, workover fluid, debris, water, brine, oil scum, paraffin, or other material cleaned out of the wellbore.

(3) "Permit holder" means a person who holds a permit from the commission to operate a stationary commercial solid oil and gas waste recycling facility or a commercial oil and gas waste disposal facility.

(4) "Treatment" means a manufacturing, mechanical, thermal, or chemical process other than sizing, shaping, diluting, or sorting.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 184 (S.B. 1541), Sec. 1, eff. May 26, 2017.
Acts 2023, 88th Leg., R.S., Ch. 145 (S.B. 502), Sec. 1, eff. May 23, 2023.

Sec. 123.0015. BENEFICIAL USE. (a) For the purposes of this chapter, a use of drill cuttings is considered to be beneficial if the cuttings are used:

(1) in the construction of oil and gas lease pads or oil and gas lease roads; or

(2) as part of a legitimate commercial product.

(b) The commission by rule shall define "legitimate commercial product" for the purposes of this chapter.

(c) The commission by rule shall adopt criteria for beneficial uses to ensure that a beneficial use of recycled drill cuttings under this chapter is at least as protective of public health, public safety, and the environment as the use of an equivalent product made without recycled drill cuttings.

Added by Acts 2017, 85th Leg., R.S., Ch. 184 (S.B. 1541), Sec. 2, eff. May 26, 2017.

Sec. 123.002. OWNERSHIP OF DRILL CUTTINGS TRANSFERRED FOR TREATMENT AND SUBSEQUENT BENEFICIAL USE. Unless otherwise expressly

provided by a contract, bill of sale, or other legally binding document:

(1) when drill cuttings are transferred to a permit holder who takes possession of the cuttings for the purpose of treating the cuttings for a subsequent beneficial use, the transferred material is considered to be the property of the permit holder until the permit holder transfers the cuttings or treated cuttings to another person for disposal or use; and

(2) when a permit holder who takes possession of drill cuttings for the purpose of treating the cuttings for a subsequent beneficial use transfers possession of the treated product or any treatment byproduct to another person for the purpose of subsequent disposal or beneficial use, the transferred product or byproduct is considered to be the property of the person to whom the material is transferred.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.

Sec. 123.003. RESPONSIBILITY IN TORT. Unless otherwise provided by a contract or other written agreement, a person who generates drill cuttings and transfers the drill cuttings in an arm's length transaction to an unaffiliated third-party permit holder under a contract that requires that the drill cuttings be used in connection with road building or another beneficial use or disposed of is not liable in tort for a consequence of the subsequent use or disposal of the drill cuttings by the permit holder or by another person if:

(1) the person who generates the drill cuttings has the legal and contractual right to transfer the drill cuttings to the permit holder;

(2) the method and location of the use or disposal are not prohibited by law, contract, or other written agreement; and

(3) the consequence was caused solely by the permit holder.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 145 (S.B. 502), Sec. 2, eff. May 23, 2023.

Sec. 123.004. PERMIT COPY REQUIRED. A permit holder who takes possession of drill cuttings from the person who generated the drill cuttings shall provide to the generator a copy of the holder's permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.

Sec. 123.005. COMMISSION RULES, PERMITS, AND ORDERS FOR TREATMENT AND BENEFICIAL USE. (a) The commission shall adopt rules to govern the treatment and beneficial use of drill cuttings.

(b) A rule adopted by the commission under this chapter or a permit or order issued by the commission regarding the treatment and beneficial use of drill cuttings must be at least as protective of public health, public safety, and the environment as a rule, permit, or order, respectively, adopted or issued by the commission regarding the disposal of drill cuttings.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 184 (S.B. 1541), Sec. 3, eff. May 26, 2017.

TITLE 4. MINES AND MINING
CHAPTER 131. URANIUM SURFACE MINING AND RECLAMATION ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 131.001. SHORT TITLE. This chapter may be cited as the Texas Uranium Exploration, Surface Mining, and Reclamation Act.

Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, Sec. 39, eff. May 9, 1979; Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 1, eff. September 1, 2007.

Sec. 131.002. DECLARATION OF POLICY. The legislature finds and declares that:

(1) the extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to the economic well-being of the state and nation;

(2) proper reclamation of land explored for minerals and surface-mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of this state;

(3) surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications for reclamation operations must vary accordingly;

(4) it is not always possible to explore for or to extract minerals required by our society without disturbing the earth and producing waste materials, and the very character of certain types of surface mining operations occasionally precludes complete restoration of the affected land to its original condition;

(5) unregulated surface mining may destroy or diminish the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources, which results are declared to be inimical to the public interest and destructive to the public health, safety, welfare, and economy of the State of Texas;

(6) due to its unique character or location, some land within the state may be unsuitable for all or certain types of surface mining operations;

(7) reclamation of land explored for minerals and surface-mined land as provided by this chapter will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of land; and

(8) the requirements of this chapter for reclamation and

maintenance of affected land are necessary for the public health and safety and thus constitute a valid application of the police power of this state.

Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 1, eff. September 1, 2007.

Sec. 131.003. PURPOSES. It is declared to be the purpose of this chapter:

(1) to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations as defined in this chapter;

(2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface mining operations;

(3) to assure that surface mining operations are not conducted where reclamation as required by this chapter is not possible;

(4) to assure that exploration and surface mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources; and

(5) to assure that reclamation of all explored land and surface-mined land is accomplished as contemporaneously as practicable with the exploration or surface mining, recognizing that the exploration for and extraction of minerals by responsible operations is an essential and beneficial economic activity.

Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 1, eff. September 1, 2007.

Sec. 131.004. DEFINITIONS. In this chapter:

(1) "Minerals" means uranium and uranium ore.

(2) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface; provided, this definition shall not be construed to include in situ mining activities associated with the removal of uranium or uranium ore.

(3) "Exploration activity" means the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a mineral deposit.

(4) "Affected land" or "land affected" means:

(A) the area from which any materials are to be or have been displaced in a surface mining operation;

(B) the area on which any materials that are displaced are to be or have been deposited;

(C) the haul roads and impoundment basins within the surface mining area; and

(D) other land whose natural state has been or will be disturbed as a result of the surface mining operations.

(5) "Surface mining operation" means those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing, and shipping of minerals and reclamation of the land affected.

(6) "Operator" means the individual or entity, including any public or governmental agency, that is to engage or that is engaged in a surface mining operation, including any individual or entity whose permit has expired or been suspended or revoked.

(7) "Overburden" means all materials displaced in a mining operation which are not, or will not be, removed from the affected area.

(8) "Reclamation" means the process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.

(9) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the

earth.

(10) "Surface mining permit" or "permit" means the written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification. These terms do not include:

(A) a discharge permit issued by the commission pursuant to Subchapter H of this chapter; or

(B) an exploration permit issued by the commission pursuant to Subchapter I of this chapter.

(11) "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government and who demonstrates that he has suffered or will suffer actual injury or economic damage.

(12) "Commission" means the Railroad Commission of Texas.

(13) "Fund" means the Land Reclamation Fund.

(14) "Toxic material" means any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the surface-mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated, although the new contour may subsequently be at a moderately lower or higher elevation than existed prior to the surface mining operation.

(16) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, government or governmental subdivision or agency, business trust, estate, trust, organization or association of citizens, or any other legal entity.

(17) "Party to the administrative proceedings" means any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of this chapter.

(18) "Permit area" means all the area designated as such in

the permit application and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area that the operator proposes to surface mine after that time.

Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 308, ch. 141, Sec. 42, eff. May 9, 1979; Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 3, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 413, ch. 171, Sec. 1, eff. May 20, 1981; Acts 1985, 69th Leg., ch. 921, Sec. 5, 6, eff. June 15, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 2, eff. September 1, 2007.

Sec. 131.005. RECLAMATION. (a) The basic objective of reclamation is to reestablish on a continuing basis, where required, vegetation and other natural conditions consistent with the anticipated subsequent use of the affected land.

(b) The process of reclamation may require contouring, terracing, grading, backfilling, resoiling, revegetation, compaction and stabilization and settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to minimize water diminution to existing water sources, pollution, soil and wind erosion, or flooding resulting from mining or any other activity that may be considered necessary to accomplish the reclamation of the land affected to a substantially beneficial condition.

Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.006. EXCLUSIONS AND EXEMPTIONS. The provisions of this chapter do not apply to the following:

(1) surface mining operations conducted on public land regulated by the General Land Office if the land is reclaimed in a manner consistent with this chapter; and

(2) land on which the overburden has been removed and minerals have been produced before June 21, 1975.

Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

Sec. 131.021. GENERAL AUTHORITY OF COMMISSION. In seeking to accomplish the purposes of this chapter, the commission shall have the authority:

(1) to adopt and amend rules pertaining to exploration, surface mining, and reclamation operations consistent with the general intent and purposes of this chapter;

(2) to issue permits pursuant to the provisions of this chapter;

(3) to conduct hearings pursuant to the provisions of this chapter;

(4) to issue orders requiring an operator to take actions that are necessary to comply with this chapter and with rules adopted under this chapter;

(5) to issue orders modifying previous orders;

(6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take action required by this chapter or rules adopted under this chapter;

(7) to order the immediate cessation of an ongoing exploration or surface mining operation if the commission finds that the operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions;

(8) to hire employees, adopt standards for employment of these persons, and hire and authorize the hiring of outside contractors to assist in carrying out the requirements of this chapter;

(9) to enter on and inspect, in person or by its agents, an exploration or a surface mining operation that is subject to the provisions of this chapter to assure compliance with the terms of this chapter;

(10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training,

and demonstrations by contract, grant, or otherwise;

(11) to prepare reports and to require persons who hold exploration or surface mining permits to prepare reports;

(12) to collect and disseminate to the public information considered reasonable and necessary for the proper enforcement of this chapter;

(13) to accept, receive, and administer grants, gifts, loans, or other funds made available from any source for the purposes of this chapter;

(14) to enter into contracts with state boards and agencies that have pertinent expertise to obtain professional and technical services necessary to carry out the provisions of this chapter; and

(15) to perform other duties and acts required by and provided for in this chapter.

Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.022. JURISDICTION OF COMMISSION. (a) The commission is the mining and reclamation authority for the State of Texas and has exclusive jurisdiction for establishing reclamation requirements for mining and exploration operations in this state, except for in situ recovery processes.

(b) Except as provided by Section 131.354, the commission has exclusive jurisdiction and is solely responsible for the regulation of all exploration activities.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.023. COMMISSION PROCEDURE. The commission shall seek the accomplishment of the purposes of this chapter by all practicable methods.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.024. COMPLIANCE WITH FEDERAL SURFACE MINING LAWS. (a) On passage of federal surface mining legislation, the commission shall take actions necessary to establish the exclusive jurisdiction of this state over the regulation of surface mining and reclamation operations.

(b) If the federal administrative agency disapproves the regulatory program of this state as submitted, the commission shall take all necessary and appropriate action, including making recommendations for remedial legislation, to clarify, alter, or amend the program to comply with the requirements of the federal act.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.025. HEARING PROCEDURE. At a hearing under this chapter, the commission may:

(1) administer oaths or affirmations;

(2) subpoena witnesses and compel their attendance;

(3) take evidence; and

(4) require production of books, papers, correspondence, memoranda, agreements, or other documents or records that are considered relevant or material to the administration of this chapter.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.033. DIFFERING TERMS AND PROVISIONS OF RULES. A rule or an amendment of a rule adopted by the commission may differ in its terms and provisions between particular conditions, particular mining techniques, particular areas of the state, or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this chapter.

Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, Sec. 39, eff. May 9, 1979; Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.

Sec. 131.034. EXPLORATION ACTIVITIES. The commission shall promulgate rules governing uranium exploration activity.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.035. RULES DESIGNATING UNSUITABLE LAND. (a) The commission shall develop rules that adopt appropriate procedures for identifying and designating land in this state as unsuitable for all or certain types of surface mining in accordance with Sections 131.036 through 131.041 of this code.

(b) The rules shall be in sufficient detail to provide reasonable notice to prospective operators of areas that might be designated as unsuitable for surface mining.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.036. SURVEY OF LAND. (a) When application is made to conduct surface mining operations and before a permit is issued, the commission shall immediately have the areas to be included in the proposed permit surveyed in accordance with the requirements of Sections 131.035 and 131.037 through 131.041 of this code.

(b) In conducting the survey and in declaring various areas to be unsuitable for mining, the commission shall employ competent and scientifically sound data and information as the basis for objective decisions with respect to each area surveyed.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.037. COMMISSION STATEMENT. Before designating a land area as unsuitable for surface mining operations, the commission shall prepare a detailed statement on the potential mineral and other resources in the area, the demand for these resources, and the impact of the designation on the environment, the economy, and the supply of the mineral.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.038. REASONS FOR UNSUITABLE DESIGNATION. After the survey is made, an area may be designated unsuitable for all or certain types of surface mining if:

(1) the commission determines that reclamation under this chapter is not feasible;

(2) the operations will result in significant damage to important areas of historic, cultural, or archaeological value or to important natural systems;

(3) the operations will affect renewable resource land that includes aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products;

(4) the operations are located in an area subject to frequent flooding or an area that is geologically unstable and may reasonably be expected to endanger life and property;

(5) the operations will adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild and scenic river area, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark, or city or county park; or

(6) the operations would endanger any public road, public building, cemetery, school, church, or similar structure or existing dwelling outside the permit area.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.039. PETITION AND HEARING ON DESIGNATION. (a) Any person is entitled to petition the commission to have an area designated as unsuitable for surface mining operations or to have the designation terminated.

(b) The petition shall include allegations of facts with supporting evidence that in the opinion of the commission would tend to establish the allegations.

(c) The commission shall make a determination of the validity of the petition, and if the petition is found to be valid, it shall be kept on file by the commission and made available for public inspection.

(d) On application for a surface mining permit for which a valid petition has been filed, the commission shall hold a public hearing as provided in Section 131.163 of this code in the locality of the proposed mining operation.

(e) Any person affected may intervene before the public hearing by filing allegations of facts with supporting evidence that would tend to establish the allegations.

(f) If all the petitioners and the applicant stipulate agreement before the requested hearing, the hearing does not have to be held.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979.

Sec. 131.040. MODIFYING, AMENDING, AND TERMINATING DESIGNATIONS. The commission may modify, amend, or terminate a designation pursuant to the requirements of Sections 131.035 through 131.039 of this code.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.041. APPLICABILITY OF SUBCHAPTER. The provisions of Sections 131.035 through 131.040 of this code do not apply to land on which surface mining operations were being conducted on June 21,

1975.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.042. RECORDS, REPORTS, MONITORING EQUIPMENT, AND INFORMATION. The commission shall require each permittee to:

(1) establish and maintain appropriate records;

(2) make reports as frequently as the commission may prescribe;

(3) install, use, and maintain necessary monitoring equipment for observing and determining relevant surface or subsurface effects of the mining operation and reclamation program; and

(4) provide other information relative to mining and reclamation operations the commission determines to be reasonable and necessary.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.043. INSPECTION BY COMMISSION. Without advance notice and on presentation of appropriate credentials to the operation supervisor, if present, the authorized representatives of the commission are entitled to enter in, on, or through a surface mining operation or premises in which any records required under Section 131.042 of this code are located, and may at reasonable times and without delay have access to and copy any records and inspect monitoring equipment or methods of operation required under this chapter.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.044. TIME AND PROCEDURES FOR INSPECTIONS. (a) The inspections by the commission shall occur on an irregular basis at a frequency necessary to insure compliance with the intent and purposes of this chapter and the commission's rules for the surface mining and

reclamation operations covered by each permit.

(b) The inspections shall occur only during normal operating hours if practicable and without prior notice to the permittee or his agents or employees.

(c) An inspection shall include the filing of an inspection report adequate to enforce the requirements of and to carry out the terms and purposes of this chapter. The commission shall make each report a part of the record and furnish one copy of the report to the operator.

(d) Insofar as practicable, the commission shall establish a system of rotation of inspectors.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.045. SIGN. Each permittee shall maintain at the entrances to the surface mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface mining and reclamation operations.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.046. PROCEDURE ON DETECTION OF VIOLATION. On detection of each violation of a requirement of this chapter, each inspector shall inform the operator of the violation orally at the time of the detection and in writing at a later time and shall report the violation in writing to the commission.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.047. JUDICIAL REVIEW. (a) Any party to the administrative proceedings whose interest is or may be adversely affected by a ruling, order, decision, or other act of the commission may appeal by filing a petition in a district court of Travis County or in the county in which the greater portion of the land in question

is located.

(b) The plaintiff shall pursue his action with reasonable diligence, and if the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(c) The court shall hear the complaint solely on the record made before the commission. The findings of the commission, if supported by substantial evidence on the record considered as a whole, shall be upheld.

(d) The court may, under conditions it may prescribe, grant temporary relief that it considers appropriate pending final determination of the proceedings.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the commission.

(f) Repealed by Acts 1981, 67th Leg., p. 2647, ch. 707, Sec. 4(48), eff. Aug. 31, 1981.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(48), eff. Aug. 31, 1981.

Sec. 131.048. CONFIDENTIALITY. Information submitted to the commission concerning mineral deposits, including test borings, core samplings, geophysical logs, or trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant for an exploration permit or surface mining permit and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff.

September 1, 2007.

Sec. 131.049. TEMPORARY ORDERS PRIOR TO NOTICE AND HEARING. (a) The commission may issue temporary orders relating to a surface mining operation without notice and hearing, or with the notice and hearing as the commission considers practical under the circumstances, when necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) If the commission issues a temporary order under this authority without a hearing, and if the subject matter of the order is such as to require a public hearing under Section 131.163 of this code or under any rule of the commission, the order shall set a time and place for a public hearing to be held. The hearing shall be held as soon after the temporary order is issued as is practical.

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of Chapter 2001, Government Code.

(d) The requirements of Sections 131.159 and 131.160 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to the hearing, but general notice of the hearing shall be given that the commission considers practical under the circumstances.

Added by Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 6, eff. June 6, 1979. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER C. PLANS AND STANDARDS

Sec. 131.101. RECLAMATION PLAN. (a) A reclamation plan shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies.

(b) A reclamation plan submitted as part of a permit application shall include:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, that immediately preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses;

(4) a description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation;

(5) the steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications;

(6) a general timetable that the operator estimates will be necessary for accomplishing the major events included in the reclamation plan; and

(7) other information the commission, by rule, determines to be reasonably necessary to effectuate the purposes of this chapter.

(c) The operator may revise or amend the reclamation plan at any time in accordance with the requirements of this code.

Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.102. RECLAMATION STANDARDS. (a) A permit issued under this chapter to conduct surface mining operations shall require that the surface mining operations meet all applicable reclamation standards of this chapter and any other requirements that the commission establishes by rule.

(b) Reclamation standards shall apply to all surface mining and reclamation operations that are not exempted or excluded and shall require the operator as a minimum to:

(1) conduct surface mining operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered so that reaffecting the land in the future through surface mining can be minimized;

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as the condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the permit applicants' declared anticipated land use following reclamation is not considered to be impractical or unreasonable, to involve unreasonable delay in implementation, or to violate federal, state, or local law, provided that a variety of postmining land conditions that differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this section;

(3) reduce all highwalls, spoil piles, and banks to a degree to control erosion effectively and sufficiently to sustain vegetation, where required, consistent with the anticipated subsequent use of the affected land, provided that backfilling, compacting, and grading shall be required to restore the approximate original contour where required by federal law and where the volume of overburden is large in comparison to the volume of mineral deposit and the commission considers the requirement to be practical;

(4) stabilize and protect all surface areas affected by the mining and reclamation operation effectively to control erosion and attendant air and water pollution;

(5) remove the topsoil, if any, from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by toxic material, and is in a usable condition for

sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation, provided that the requirements of this provision shall not apply if a mixing of strata can be shown to be equally suitable for revegetation requirements;

(6) replace the topsoil or the best available subsoil, if any, on top of the land to be reclaimed;

(7) fill any auger holes with an impervious material in order to prevent drainage;

(8) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:

(A) avoiding toxic mine drainage by such measures as:

(i) preventing or removing water from contact with toxic-producing deposits,

(ii) treating drainage to reduce toxic content,

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep toxic drainage from entering ground and surface water;

(B) conducting surface mining operations in a manner to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(C) removing temporary or large siltation structures from drainways consistent with good water conservation practices after disturbed areas are revegetated and stabilized; or

(D) other actions as the commission may prescribe pursuant to its rules;

(9) stabilize any waste piles;

(10) refrain from surface mining in proximity to active and abandoned underground mines in which mining would cause breakthroughs or would endanger the health or safety of miners;

(11) incorporate with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes current engineering practices for the design and construction of water retention facilities which, at a minimum, shall

be compatible with the requirements of Section 6.0731, Water Code, and applicable federal laws, ensure that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) ensure that all debris, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface water or combustion;

(13) ensure that any explosives are used only in accordance with existing state and federal law and rules promulgated by the commission;

(14) ensure that all reclamation efforts proceed as contemporaneously as practicable with the surface mining operations;

(15) ensure that construction, maintenance, and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property, provided that the commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(16) refrain from the construction of roads or other access ways up a streambed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(17) establish on all affected land, where required in the approved reclamation plan, a diverse vegetative cover native to the affected land where vegetation existed prior to mining and capable of self-regeneration and plant succession equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or necessary to achieve the approved reclamation plan;

(18) assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan;

(19) ensure with respect to permanent impoundments of water as part of the approved reclamation plan that:

(A) the size of the impoundment and the availability of water are adequate for its intended purpose;

(B) the impoundment dam construction will meet the

requirements of Section 6.0731, Water Code, and applicable federal laws;

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;

(D) final grading will provide adequate safety and access for anticipated water users; and

(E) the water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(20) meet other criteria pursuant to the commission's rules as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.

(c) The purpose of this section is to have land affected restored to the same condition as the land that existed enjoyed before the mining or some substantially beneficial condition.

(d) A method of reclamation other than that provided in this section may be approved by the commission after public hearing if the commission determines that any method of reclamation required by this section is not practical and that the alternative method will provide for the affected land to be restored to a substantially beneficial condition.

(e) If an alternative method of reclamation is generally applicable to all surface mining operations involving a particular mineral, the commission shall promulgate rules in the manner provided in Section 131.033 of this code.

(f) The operator is entitled to access to the land affected to the extent necessary to carry out the reclamation and maintenance required under this chapter.

Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, Sec. 40, eff. May 9, 1979; Acts 1979, 66th Leg., p. 850, ch. 379, Sec. 2, eff. June 6, 1979.

SUBCHAPTER D. SURFACE MINING PERMITS

Sec. 131.131. PERMIT REQUIRED FOR OPERATION. (a) No person shall conduct a surface mining operation unless he first obtains a surface mining permit issued by the commission under this subchapter; provided, any operator conducting a surface mining operation in this state before September 20, 1976, who has filed a permit application pursuant to this chapter, may continue to conduct that surface mining operation until the commission approves or denies his application.

(b) An operator who was conducting a surface mining operation in this state after the expiration of 180 days following the promulgation of the initial rules under Section 131.026 of this code and who has filed a permit application in accordance with the provisions of this subchapter may continue to conduct the surface mining operation until the commission approves or denies his application.

Acts 1977, 65th Leg., p. 2619, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1990, ch. 784, Sec. 3, eff. Aug. 27, 1979.

Sec. 131.132. FORM OF PERMIT APPLICATION. On application to the commission for a surface mining permit, an operator shall submit three copies of a permit application on a form prescribed by the commission, and the commission shall require in the form the information it considers reasonably necessary to process the application and to ensure compliance with the provisions of this chapter.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.133. REQUIRED INFORMATION. The permit application shall include information concerning:

(1) the name, address, ownership, and management officers of the permit applicant and affiliated persons engaged in surface mining;

(2) legal and equitable interests of record, if reasonably ascertainable, in the surface and mineral estates of the permit area and in the surface estate of land located within 500 feet of the permit area, provided that the mineral estate includes only minerals

as defined in this chapter;

(3) persons residing on the property at the time of the application;

(4) current or previous surface mining permits held by the applicant, including any revocations, suspensions, or bond forfeitures;

(5) the type and method of surface mining operation, the engineering techniques, and the equipment that is proposed to be used, including mining schedules, the nature and expected amount of overburden to be removed, the depth of excavations, a description of the affected land and permit area, the results of any test borings, test pits, or core samplings that have been gathered from the permit area, and the anticipated hydrologic consequences of the mining operation;

(6) the applicant's legal right to surface mine the affected land; and

(7) other pertinent matters that the commission considers reasonably necessary to effectuate the provisions of this chapter.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.134. DOCUMENTS TO BE INCLUDED WITH APPLICATION. An applicant shall include with his permit application a copy of a reclamation plan prepared as provided in Section 131.101 of this code and a copy of the notice published in compliance with the requirement of Section 131.159 of this code.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.135. APPLICATION FEES. (a) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule.

(b) An initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but shall not exceed $400.

(c) After approval but before issuance of the surface mining

permit, the applicant shall pay an approved application fee in the amount of $10 per acre of the permit area, which may be paid in annual installments apportioned over the term of the permit.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1991, ch. 784, Sec. 4, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 358, ch. 81, Sec. 2(b), eff. Sept. 1, 1983.

Sec. 131.136. AMENDMENT TO PERMIT APPLICATION. A permit application may be amended to exclude the part of an operation that lies within an area designated as unsuitable for surface mining under Sections 131.035 through 131.041 of this code.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.137. COMBINED PERMIT APPLICATION. (a) The commission shall adopt rules permitting an operator of more than one noncontiguous surface mining operation to submit a single application for a combined surface mining permit covering all his mining operations.

(b) A combined permit application shall require the same detailing of information as required by this subchapter for each separate location.

(c) An operator desiring to operate under a combined permit may submit a consolidated reclamation plan covering all his operations under rules prescribed by the commission, but he may be required to furnish specific information relating to reclamation of a single operating area if the commission determines that this is necessary to carry out the purposes of this chapter.

(d) Except as provided in this section, each surface mining operation submitted as part of a combined permit application shall be separate and independent of all other surface mining operations included in the same permit application.

(e) The commission may approve or deny an individual surface mining operation and the reclamation plan that relates to an individual surface mining operation without affecting other portions of the same permit application.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.138. FILING APPLICATION WITH COUNTY CLERK. After deleting confidential information as provided in Section 131.048 of this code, the commission shall file for public inspection with the county clerk at the county courthouse of the county in which any portion of the mining is proposed to occur a copy of each application.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.139. SUBMISSION OF APPLICATION TO AGENCIES FOR COMMENT. (a) The commission immediately shall submit copies of the permit application to the Parks and Wildlife Department, Texas Natural Resource Conservation Commission, General Land Office, Texas Historical Commission, State Soil and Water Conservation Board, Bureau of Economic Geology, Texas Department of Health, and other state agencies whose jurisdiction the commission feels the particular mining operation may affect.

(b) Each of these agencies shall review the permit application and submit any comments the agency cares to make within 30 days of receipt of the application.

(c) An agency's comments shall include an enumeration of permits or licenses required under the agency's jurisdiction.

(d) The comments of each agency shall be made a part of the record and a copy shall be furnished to the applicant.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.154, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.274, eff. Sept. 1, 1995.

Sec. 131.140. APPROVAL OF PERMIT. (a) The commission shall grant a surface mining permit if it is established that the permit application complies with the requirements of this chapter and applicable federal and state laws.

(b) The commission may approve a surface mining permit conditioned on the approval of other state permits or licenses that may be required.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.141. DENIAL OF A PERMIT. The commission shall deny a permit if:

(1) it finds that the reclamation as required by this chapter cannot be accomplished by means of the proposed reclamation plan;

(2) part of the proposed operation lies within an area designated as unsuitable for surface mining in Sections 131.035 through 131.041 of this code;

(3) it is advised by the Texas Natural Resource Conservation Commission that the proposed mining operation will cause pollution of water of the state, or that the proposed mining operation will cause pollution of the ambient air of the state, in violation of the laws of this state;

(4) the applicant has had another permit issued under this chapter revoked or any bond posted to comply with this chapter forfeited and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission;

(5) it determines that the proposed operation will endanger the health and safety of the public;

(6) the surface mining operation will adversely affect a public highway or road; or

(7) the operator is unable to produce the bonds or otherwise meet the requirements of Sections 131.201 through 131.206 of this code.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979; Acts 1995, 74th Leg., ch. 76, Sec. 11.275, eff. Sept. 1, 1995.

Sec. 131.142. TERM AND TRANSFERABILITY OF PERMIT. (a) A

surface mining permit issued under this chapter for uranium and uranium ore shall be issued for a term of not more than 10 years.

(b) Except as provided in Sections 131.155 through 131.158 of this code, a surface mining permit is nontransferable.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 308, ch. 141, Sec. 41, eff. May 9, 1979; Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 4, eff. June 6, 1979.

Sec. 131.143. LIABILITY INSURANCE POLICY. (a) After a permit application is approved but before the permit is issued, the applicant shall file a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in this state or, if the applicant is unable to obtain coverage from an insurance carrier authorized to do business in this state, file, with the commission's approval, such a certificate of insurance from a surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter.

(b) The liability insurance policy required by Subsection (a) of this section shall cover all surface mining operations of the applicant in this state and shall afford bodily injury protection and accidental business property damage protection in an amount determined by the commission to compensate adequately any persons damaged as a result of surface mining and reclamation operations.

(c) The liability insurance policy shall be maintained in full force and effect during the term of the permit or the renewal of the permit, including the length of all reclamation operations.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1050, Sec. 3, eff. June 19, 1987; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.539, eff. Sept. 1, 2003.

Sec. 131.144. RULES FOR REVISION, TRANSFER, AND RENEWAL OF PERMITS. The commission shall promulgate rules for renewal, revision, and transfer of surface mining permits.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.145. RIGHT TO RENEWAL. A valid surface mining permit issued under this chapter carries with it the right of successive renewal on expiration with respect to area within the boundaries of the existing permit.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.146. APPLICATION FOR AND ISSUANCE OF RENEWAL. The holder of a permit may apply for renewal and the renewal shall be issued on the basis of the following requirements and written findings by the commission that:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or substitute collateral required under the terms of this chapter will continue in full force and effect and unimpaired for the requested renewal, revision, or transfer;

(3) the operator has provided additional or revised information as required by the commission; and

(4) notice under Section 131.159 of this code has been provided with respect to the application for renewal, revision, or transfer.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.147. RENEWAL APPLICATION FEE. (a) Each application for renewal of a surface mining permit shall be accompanied by a renewal application fee as determined by the commission in accordance with a published fee schedule.

(b) The fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but in no event shall the amount exceed $200.

(c) The approved application fee as provided in Section 131.135

of this code is not applicable to a renewal application except for the portion, if any, that addresses any new land areas.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.148. EXTENSION OF PERMIT COVERAGE. If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas shall be subject to the full standards, including application fees, applicable to new applications under this chapter.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.149. TERM OF RENEWAL PERMIT. A surface mining permit renewal shall be for a term not to exceed the period of the original permit established under this chapter.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.150. TIME LIMIT FOR RENEWAL APPLICATION. Application for permit renewal shall be made at least 90 days before the expiration of the valid permit.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.151. REVISION OF PERMIT. During the term of a surface mining permit, the permittee may submit an application, together with a revised reclamation plan, to the commission for a revision of the permit.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 131.152. APPROVAL OR DISAPPROVAL OF PERMIT REVISION. No application for a revision of a permit may be approved unless the commission finds that reclamation as required under this chapter can be accomplished under the revised reclamation plan.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979.

Sec. 131.153. GUIDELINES FOR REVISION. (a) The commission shall establish by rule guidelines for a determination of the scale or extent of a revision request to which all permit application information requirements and procedures, including notice and hearings, shall apply.

(b) A revision that proposes a substantial change in the intended future use of the land or significant alteration in the reclamation plan shall be subject at a minimum to the notice and hearing requirements provided in Sections 131.159 and 131.163 of this code.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.154. EXTENSIONS TO AREA. Except for incidental boundary revisions, an extension to the area covered by a permit must be made by application for another permit or for revision of a permit.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.155. TRANSFER OF PERMIT. (a) No transfer, assignment, or sale of the rights granted under a permit issued under this chapter shall be made without the written approval of the commission.

(b) A person desiring to succeed to the interests of a permittee under this chapter must file an application on a form prescribed by the commission and including any pertinent information the commission by rule may require.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.156. REQUIRED INFORMATION FOR TRANSFER. As part of the information for transfer, the commission shall require:

(1) the information required by Subdivisions (1) and (4) of Section 131.133 of this code relating to ownership and other mining activities of the applicant;

(2) proof that the public liability insurance requirement in Section 131.143 of this code will be fulfilled;

(3) proof that the performance bond or substitute collateral required by Sections 131.201 through 131.206 of this code will be furnished; and

(4) the statement of the applicant that he will faithfully carry out all of the requirements of the reclamation plan approved in the original application.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.157. APPROVAL OF TRANSFER. After notice and an opportunity for a public hearing, if required under Sections 131.159 and 131.163 of this code, and on a written finding by the commission that the requirements of Sections 131.146 through 131.150 of this code have been met, the application for transfer shall be approved.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.158. DENIAL OF APPLICATION FOR TRANSFER. An application for transfer shall be denied if the applicant has had a permit issued under this chapter revoked or a bond posted to comply with this chapter forfeited, and the conditions causing the permit to

be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.

Sec. 131.159. NOTICE BY APPLICANT. (a) At the time an application for a surface mining permit or an application for revision, renewal, or transfer of an existing surface mining permit is submitted under this chapter, the applicant shall publish notice of the ownership, location, and boundaries of the permit area sufficiently detailed for local residents to locate readily the proposed operation and the location at which the application is available for public inspection.

(b) The notice shall be published in the local newspaper of greatest general circulation in the locality in which the proposed surface mine is to be located.

(c) The notice shall be published at least once a week for four consecutive weeks.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.160. NOTIFICATION BY COMMISSION. The commission shall contact various local governmental bodies, planning agencies, sewage, and water treatment authorities or water companies that have jurisdiction over or in the locality in which the proposed surface mining will occur, and the owners of record of surface areas within 500 feet of any part of the permit area and shall give them notice of the applicant's intention to surface mine a particularly described tract of land and indicate the applicant's permit number, if any, and the place at which a copy of the proposed mining and reclamation plan may be inspected.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.161. COMMENTS. (a) Within 30 days after the last publication as provided in Section 131.159 of this code, each local body, agency, authority, or company may submit written comments with respect to the effect of the proposed operation on the environment within its area of responsibility.

(b) These comments shall be made part of the record, and one copy of the comments shall be furnished to the operator.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.162. WRITTEN OBJECTIONS. (a) Within 30 days after the last publication of notice under Section 131.159 of this code, a person affected or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to the application for a surface mining permit or to the application for the renewal, revision, or transfer of a surface mining permit.

(b) The written objections shall be made part of the record and one copy of the written objections shall be furnished to the operator.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.163. NOTICE AND PUBLIC HEARING. (a) If the commission determines that the application for a surface mining permit is of a significance sufficient to warrant a public hearing, the commission shall hold a public hearing in the locality of the proposed surface mining and reclamation operations.

(b) In determining whether to hold a public hearing, the commission shall consider any objections that have been filed, and if no substantial written objections have been filed, no hearing shall be required.

(c) The commission shall publish notice of the date, time, and location of the public hearing in the newspaper with the greatest general circulation in the locality at least once a week for three consecutive weeks before the scheduled hearing date.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 5, eff. June 6, 1979.

Sec. 131.165. PROCEDURE. The commission shall comply with the Administrative Procedure and Texas Register Act in all proceedings under this chapter except where inconsistent with this chapter.

Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979.

SUBCHAPTER E. BONDS AND DEPOSITS

Sec. 131.201. PERFORMANCE BOND REQUIREMENT. (a) After a surface mining permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed by rule, a bond for performance payable to the State of Texas and conditioned on full and faithful performance of all the requirements of this chapter and the permit.

(b) The bond shall cover that area of land within the permit area on which the operator will initiate and conduct surface mining and reclamation operations, and as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the commission an additional bond or bonds to cover the increments in accordance with Sections 131.202 through 131.206 of this code.

Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.202. AMOUNT OF PERFORMANCE BOND. (a) The amount of the bond required for each bonded area depends on the reclamation requirements of the approved permit and shall be determined by the commission.

(b) The commission's determination shall be based on two estimates, one of which shall be submitted by the permit applicant and the other prepared by the commission under procedures established by rule. Only the commission's estimate will be considered if the applicant waives the right to submit an estimate.

(c) The amount of the bond shall be determined by the commission and shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 639, Sec. 1, eff. June 16, 1991.

Sec. 131.203. BOND WITHOUT SURETY. The commission may accept the bond of the operator itself, without separate surety, if the operator demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure or bond the amount.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.204. EXTENT OF LIABILITY UNDER BOND. Liability under the bond shall be for the duration of surface mining and reclamation operations and for a period coincident with the operator's responsibility pursuant to Section 131.102 of this code.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.205. SECURITY FOR BOND. (a) The bond shall be executed by the operator and a corporate surety licensed to do business in this state, or the operator may elect to deposit cash or negotiable securities acceptable to the commission, or an assignment of a savings account in a Texas bank on an assignment deposit form prescribed by the commission's rules.

(b) A cash deposit or market value of the substitute collateral shall be equal to or greater than the amount of the bond required for the bonded area.

(c) Cash or other substitute collateral shall be deposited on the same terms as the terms on which surety bonds may be deposited.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.206. INCREASE OR DECREASE OF BOND. (a) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or substitute collateral may be increased or decreased from time to time to reflect changes in the cost of future reclamation of land mined or to be mined.

(b) The amount of the bond or substitute collateral may be reduced only in accordance with the provisions of Sections 131.208 through 131.213 of this code.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.207. FORFEITURE OF OPERATOR'S PERFORMANCE BOND. On issuance of a final order revoking an operator's permit for failure to comply with an order of the commission to take action as required by this chapter or rules adopted under this chapter, the operator's performance bond shall be forfeited if it is determined that forfeiture is necessary to reclaim land disturbed by the operator's surface mining operation.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.208. APPLICATION FOR RELEASE OF PERFORMANCE BOND OR DEPOSIT. (a) At any time, an operator may file an application with the commission for the release of all or part of the performance bond or deposit.

(b) The application shall be on a form prescribed by the commission and in addition to other information the commission may require, shall include the type and the approximate date of reclamation work performed and a description of the results achieved as they relate to the operator's reclamation plan.

(c) The commission shall file a copy of the bond release application for public inspection with the county clerk at the county courthouse of the county in which the surface mining and reclamation

operation is located.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.209. NOTICE. (a) The operator shall submit a copy of a notice that has been published once a week for four consecutive weeks in the newspaper of greatest general circulation in the locality of the surface mining and reclamation operation.

(b) The advertisement shall be considered part of any bond release application and shall include:

(1) notice of the location and boundaries of the land affected;

(2) the permit number and the date approved;

(3) the amount of the bond filed and the portion sought to be released; and

(4) the location at which the bond release application has been placed for public inspection.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.210. INSPECTION AND EVALUATION. (a) On receipt of the notice and request, the commission shall conduct an inspection and evaluation of the reclamation work involved, the inspection and evaluation to occur within a reasonable time not to exceed 45 days.

(b) The evaluation shall consider among other things:

(1) the degree of difficulty to complete remaining reclamation;

(2) whether pollution of surface and subsurface water is occurring;

(3) the probability of continuance or future occurrence of pollution; and

(4) the estimated cost of abating pollution.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.211. BASIS FOR RELEASE OF BOND OR DEPOSIT. The commission may release in whole or part the bond or deposit if it is satisfied that reclamation covered by the bond or deposit or a portion of the bond or deposit has been accomplished as required by this chapter according to the following schedule:

(1) when the operator completes required backfilling, regrading, and drainage control of a bonded area as provided in his approved reclamation plan, the commission may authorize the release of up to 75 percent of the bond or substitute collateral for the applicable permit area, provided the amount of the unreleased portion of the bond or substitute collateral is not less than the amount necessary to assure completion of the reclamation work by a third party in the event of forfeiture; and

(2) when the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in Section 131.102 of this code, the commission may release the remaining portion of the bond or substitute collateral, provided that no bond is fully released until all reclamation requirements of this chapter are fully met.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.212. DISAPPROVAL OF APPLICATION FOR BOND OR DEPOSIT RELEASE. If the commission disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the operator in writing of the reasons for disapproval and recommend corrective actions necessary to secure the release.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.213. NOTICE OF RELEASE TO LOCAL GOVERNMENTAL AGENCY. Within 30 days after an application for total or partial bond or deposit release is filed with the commission, the commission shall notify the local governmental agency in which the surface mining operation is located by certified mail.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.214. OBJECTIONS TO RELEASE. (a) Any person or the officer or head of a federal, state, or local governmental agency is entitled to file written objections to the proposed release from the bond or deposit.

(b) The objections must be filed with the commission within 30 days after the last publication of notice as provided in Section 131.209 of this code.

(c) If the commission determines that the application is of a significance sufficient to warrant a public hearing considering the objections that have been filed, the commission shall hold a public hearing.

(d) The commission shall give notice to all interested parties of the time and place of the hearing which shall be conducted as provided in Sections 131.160 through 131.164 of this code.

(e) The hearing shall be held in the locality of the surface mining operation proposed for bond or deposit release.

(f) Notice of the date, time, and location of the public hearing shall be published by the commission as provided in Section 131.163 of this code.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. FUNDS

Sec. 131.231. LAND RECLAMATION FUND. (a) Money received through the payment of fees, loans, grants, gifts, penalties, bond forfeitures, and other money received by the commission shall be deposited in the State Treasury and credited to a special account to be designated the land reclamation fund.

(b) The fund shall be available to the commission and may be spent for the administration and enforcement of this chapter and for the reclamation of land affected by surface mining operations.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.232. APPROPRIATION. Money for the operation of the commission under this chapter shall be appropriated by the legislature.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.233. USE OF PROCEEDS FROM BOND FORFEITURES AND PENALTIES. Proceeds from the forfeiture of bonds and penalties recovered shall be spent to reclaim land as provided in this chapter with respect to which the bonds were provided and the penalties assessed.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.234. RECLAMATION OF LAND. (a) In the reclamation of land affected by surface mining for which funds are available, the commission may use services of other state agencies or the federal government and may compensate them for the services.

(b) The commission may have reclamation work done by its own employees or by employees of other governmental agencies or through contracts with qualified persons.

(c) The contracts shall be awarded to the lowest bidder on competitive bids after reasonable advertisement.

(d) The commission and any other agency and any contractor under a contract are entitled to access to the land affected to carry out the reclamation.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. ENFORCEMENT

Sec. 131.261. CONDITIONS, PRACTICES, AND VIOLATIONS CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) On the basis of any inspection, if the commission or its authorized representative or agent determines that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or a

permit condition required by this chapter, and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, a member of the commission shall immediately order a cessation of exploration or surface mining operations on the portion of the area relevant to the condition, practice, or violation.

(b) The cessation order shall set a time and place for a hearing to be held before the commission and shall be held as soon after the order is issued as is practicable.

(c) The requirements of Section 131.159 of this code relating to time for notice, newspaper notice, and method of giving notice do not apply to a hearing under this section, but general notice shall be given in the manner that the commission judges to be practicable under the circumstances.

(d) No more than 24 hours after the commencement of the hearing and without adjournment, the commission shall affirm, modify, or set aside the order.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 4, eff. September 1, 2007.

Sec. 131.262. VIOLATIONS NOT CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) On the basis of an inspection, if the commission or its authorized representative or agent determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent harm to land, air, or water resources, the commission shall issue a notice to the permittee or the permittee's agent setting a reasonable time not to exceed 30 days for the abatement of the violation. The commission may authorize an extension of the period of time for the abatement of the violation, for good cause as determined by a written finding by the commission.

(b) If, on expiration of the period of time as originally set

or subsequently extended, the commission finds that the violation has not been abated, it may order a cessation of exploration or surface mining operations on the portion of this area relevant to the violation. However, if requested by the operator, a hearing must be held prior to a commission finding or order.

(c) The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission under Section 131.263 of this code.

Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 5, eff. September 1, 2007.

Sec. 131.263. CONTINUOUS VIOLATIONS. (a) On the basis of an inspection, if the commission has reason to believe that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the commission also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this chapter or permit conditions or that the violations are wilfully caused by the permittee, the commission shall issue an order to the permittee forthwith to show cause as to why the permit should not be suspended or revoked.

(b) The order shall set a time and place for a public hearing to be held in accordance with the notice and procedural requirements of Sections 131.159 through 131.164 of this code.

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission shall promptly suspend, or revoke the permit.

Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.264. FORM OF NOTICES AND ORDERS. (a) Notices and orders issued under Sections 131.261 through 131.263 of this code shall set forth with reasonable specificity:

(1) the nature of the violation and the remedial action required;

(2) the period of time established for abatement; and

(3) a reasonable description of the portion of the surface mining and reclamation operation to which the notice or order applies.

(b) Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission.

(c) Notices and orders shall be in writing and shall be signed by the commission or its authorized representative.

(d) A notice or order issued under Sections 131.261 through 131.263 of this code may be modified, vacated, or terminated by the commission.

Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.265. CIVIL ACTIONS. (a) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

(1) violates or fails or refuses to comply with an order or decision issued by the commission under this chapter;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this chapter;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to permit inspection of the mine by an authorized representative;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to permit access to and copying of records the commission determines reasonably necessary to carry out the provisions of this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide the relief that is

appropriate, and relief granted by the court to enforce Subdivision (1) of Subsection (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of the order under this chapter unless before that time the district court granting the relief sets the order aside or modifies it.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.266. INJUNCTIVE RELIEF AND CIVIL PENALTY. (a) The commission may have a civil suit instituted for injunctive relief to restrain a permittee from continuing a violation or threatening a violation or for the assessment of a civil penalty of not more than $5,000 as the court considers proper for each day of violation, or for both.

(b) In determining the amount of the civil penalty, consideration shall be given to:

(1) the permittee's history of previous violations under this chapter;

(2) the appropriateness of the penalty to the size of the business of the permittee;

(3) the seriousness of the violation, including irreparable harm to the environment and hazard to the health or safety of the public;

(4) whether the permittee was negligent; and

(5) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notice of the violation.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.2661. ADMINISTRATIVE PENALTY. (a) If a person violates a permit of this chapter and the violation results in pollution of the air or water of this state or poses a threat to the public safety, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations of this chapter, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the permittee or person charged.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.2662. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 131.2661 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings under this chapter.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.2663. PAYMENT OF PENALTY; REFUND. (a) On the issuance of notice or an order finding that a violation has occurred, the commission shall inform the person charged within 30 days of the proposed amount of the penalty.

(b) Within the 30-day period immediately following the day on which the notice or order is issued, the person charged with the penalty shall pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commission for

placement in an escrow account.

(c) If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall, within the 30-day period immediately following that determination, remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.2664. RECOVERY OF PENALTY. Civil penalties owed under Sections 131.2661-131.2663 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.267. CRIMINAL PENALTY FOR VIOLATING PERMITS AND ORDERS. A person who wilfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, on conviction by a district court, shall be punished by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.268. CRIMINAL PENALTY FOR CORPORATE PERMITTEE. If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under

Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.269. CRIMINAL PENALTY FOR FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION. A person who knowingly makes a false statement, representation, or certification or who knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.270. RECOVERY OF CIVIL PENALTIES. (a) The commission may request the attorney general to institute a suit to recover civil or criminal penalties or to obtain injunctive relief or for both as provided in Sections 131.265 through 131.269 of this code.

(b) Suit shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. DISCHARGES

Sec. 131.301. DISCHARGE RULES, ORDERS, AND PERMITS. To prevent the pollution of surface and subsurface water in the state, the commission has the exclusive authority to adopt rules and may issue

orders and permits relating to the discharge or runoff of waste or any other substance or material from any permitted uranium exploration activity. Notwithstanding any provision of any other section of this chapter, a rule adopted, order issued, or permit issued by the commission under this subchapter shall be administered and enforced solely in the manner provided by this subchapter by the rule, order, or permit, or by Chapter 2001, Government Code.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.302. ACCESS TO PROPERTY AND RECORDS. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions associated with any uranium exploration activity and related to the quality of water in the state, to inspect and investigate conditions related to the development of rules, orders, or permits issuable by the commission under this subchapter, to monitor compliance with any rule, order, or permit issued by the commission under this subchapter, or to examine and copy, during reasonable working hours, any records required to be maintained under any rule, order, or permit issued by the commission under this subchapter. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

Sec. 131.303. INJUNCTIVE RELIEF AND CIVIL PENALTY. If a person violates or threatens to violate a rule, order, or permit issued by the commission under this subchapter, the commission may request the attorney general to institute an action to obtain a permanent or temporary injunction, temporary restraining order, or other appropriate order enjoining the violation or threatened violation, or to recover a civil penalty of not more than $10,000 a day for each

violation or threatened violation, or for both injunctive relief and civil penalty. The action shall be brought in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of residence of any defendant.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

Sec. 131.304. ADMINISTRATIVE PENALTY. A person who violates a rule, order, or permit issued by the commission under this subchapter may be assessed a civil penalty by the commission. The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments. In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. The penalty shall be assessed, recovered, and contested in accordance with the procedures provided in Sections 131.2662-131.2664 of Subchapter G of this chapter.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

Sec. 131.305. CRIMINAL PENALTY. A person who knowingly, willfully, or with criminal negligence violates a rule, order, or permit issued by the commission under this subchapter commits an offense that is punishable by a fine of not more than $10,000 a day for each violation. Venue for prosecution of an alleged violation is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

SUBCHAPTER I. PERMITS FOR EXPLORATION ACTIVITIES

Sec. 131.351. APPLICABILITY OF SUBCHAPTER. (a) If this subchapter conflicts with other law, this subchapter controls.

(b) Sections 131.037, 131.038, 131.039, 131.040, 131.041, 131.042, 131.043, 131.044, and 131.045 do not apply to exploration activity subject to an exploration permit issued under this

subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.352. EXPLORATION PERMITS. (a) A person may not conduct exploration activity unless the person holds an exploration permit issued by the commission.

(b) An exploration permit issued by the commission may contain provisions and conditions necessary to implement the policies of this subchapter. The commission shall adopt rules governing the amendment, revocation, transfer, or suspension of an exploration permit.

(c) A person may conduct exploration activities under an exploration permit issued by the commission until the term expires or may apply for a new exploration permit issued under this subchapter if:

(1) the person has been exploring under an exploration permit issued before June 1, 2007; or

(2) the person has a pending application on file before June 1, 2007, and is issued the exploration permit after that date.

(d) On expiration of an exploration permit held by a person described by Subsection (c)(1) or (2), the person may apply for an exploration permit renewal under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.353. SCOPE OF EXPLORATION PERMIT. (a) An exploration permit may govern all activities associated with determining the location, quantity, or quality of uranium deposits.

(b) An exploration permit must contain provisions to govern:

(1) locating, drilling, plugging, and abandoning exploration holes;

(2) casing exploration holes for use in the exploration process;

(3) using cased exploration wells for rig supply purposes; and

(4) plugging and abandoning cased exploration wells.

(c) Except as provided by Section 131.354, a cased exploration well subject to an exploration permit issued under this subchapter is exempt from regulation by another agency, governmental entity, or political subdivision if the well is:

(1) used for exploration; or

(2) used for rig supply purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.354. COMMISSION JURISDICTION. (a) The commission has jurisdiction over uranium exploration holes and cased exploration wells completed under an exploration permit issued under this subchapter until:

(1) exploration holes and cased exploration wells are properly plugged and abandoned; or

(2) cased exploration wells are:

(A) registered with the Texas Commission on Environmental Quality; or

(B) included in an area permit issued by the Texas Commission on Environmental Quality under Chapter 27, Water Code.

(b) A well described by Section 131.353(c) is subject to a groundwater conservation district's rules regarding registration of wells if:

(1) the well is located in the groundwater conservation district and the well is used for monitoring purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to the exploration permit and completed under the exploration permit issued under this subchapter exceeds 40 acre feet in one year.

(c) A well described by Section 131.353(c) is subject to a groundwater conservation district's rules for registration, production, and reporting if:

(1) the well is located in the groundwater conservation district and the well is used for rig supply purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to the exploration permit and completed under the exploration permit issued under this subchapter exceeds 40 acre feet in one year.

(d) Each month, the holder of an exploration permit governing a well described by Section 131.353(c) and located in a groundwater conservation district shall report to the district the total amount of water produced from each well described by Section 131.353(c) and located inside the area subject to the exploration permit.

(e) Each groundwater conservation district shall use the number of acres described in the exploration permit in determining any district production requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.355. APPLICATION FEES. (a) The commission may impose an application fee to recover the costs of administering this subchapter.

(b) Section 131.231 does not apply to a fee imposed under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.356. NOTIFICATION BY COMMISSION. (a) At the time the commission receives an application for an exploration permit, the commission shall provide written notice of the exploration permit application to:

(1) each groundwater conservation district in the area in which the permitted exploration will occur;

(2) the mayor and health authority of each municipality in the area in which the permitted exploration will occur;

(3) the county judge and health authority of each county in the area in which the permitted exploration will occur; and

(4) each member of the legislature who represents the area in which the proposed exploration will occur.

(b) At the time the commission issues an exploration permit under this subchapter, the commission shall provide written notice of the exploration permit to:

(1) each groundwater conservation district in the area in which the permitted exploration will occur;

(2) the mayor and health authority of each municipality in

the area in which the permitted exploration will occur;

(3) the county judge and health authority of each county in the area in which the permitted exploration will occur; and

(4) each member of the legislature who represents the area in which the proposed exploration will occur.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.357. GEOLOGIC, HYDROLOGIC, WATER QUALITY, AND WELL INFORMATION. (a) A person issued an exploration permit under this subchapter that authorizes exploration in a groundwater conservation district shall provide to the district:

(1) pre-exploration water quality information from:

(A) each existing well located in the district that is tested by the person before exploration; and

(B) the following wells, as applicable:

(i) each existing well located inside the area subject to the exploration permit, if there are fewer than 10 existing wells located inside that area; or

(ii) 10 existing wells that are distributed as evenly as possible throughout the area subject to the exploration permit, if there are at least 10 existing wells located inside that area;

(2) pre-mining water quality information from:

(A) each existing well in the jurisdiction of the groundwater conservation district that the person tests during exploration; and

(B) cased exploration wells completed under the exploration permit issued under this subchapter; and

(3) well logs that do not contain confidential information as described by Section 131.048.

(b) A person may take not more than 90 days after the person receives the final information to perform standard quality control and quality assurance procedures before submitting the information as required by Subsection (a).

(c) If the commission issues to a person an exploration permit under this subchapter that governs wells described by Section 131.353(c) that are located inside a groundwater conservation

district, the person shall provide to the district:

(1) the person's name, address, and telephone number; and

(2) the following information with regard to the wells described by Section 131.353(c):

(A) well completion information for each well in the district;

(B) the location of each well in the district, including a legal description and the acreage of the property where the well is located;

(C) verification that each well will be used for an industrial purpose; and

(D) the type and capacity of the pump used in each well.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

CHAPTER 132. INTERSTATE MINING COMPACT

Sec. 132.001. ADOPTION OF COMPACT. The Interstate Mining Compact is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form provided in Section 132.002 of this code.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.002. TEXT OF COMPACT. The Interstate Mining Compact reads as follows:

INTERSTATE MINING COMPACT

ARTICLE I. FINDINGS AND PURPOSES

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(3) Measures for the reduction of the adverse effects of

mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) advance the protection and restoration of land, water, and other resources affected by mining;

(2) assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining;

(3) encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;

(4) assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources;

(5) assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II. DEFINITIONS

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in

order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III. STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(a) the protection of the public and the protection of adjoining and other landowners from damage to their land and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations;

(b) the conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water;

(c) the institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined land;

(d) the prevention, abatement, and control of water, air, and soil pollution resulting from mining, present, past, and future.

ARTICLE IV. POWERS

In addition to any other powers conferred on the Interstate Mining Commission established by Article V of this compact, such commission shall have power to:

(a) study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change;

(b) study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining;

(c) make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact;

(d) gather and disseminate information relating to any of the matters within the purview of this compact;

(e) cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact;

(f) consult, on the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact;

(g) study and make recommendations with respect to any practice, process techniques, or course of action that may improve the efficiency of mining or the economic yield from mining operations;

(h) study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V. THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the commission." The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV(c), IV(g), and IV(h) of this compact, or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph or Article V(g), V(h), or VII of this compact, shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting; provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other

governmental agency, or from any person, firm, association, or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and service, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to Paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, legislature, and advisory body required by Article V(a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI. ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII. FINANCE

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that

party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V(h) of this compact; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V(h) of this compact, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become

effective as to any other state on its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX. EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.003. ESTABLISHMENT AND DUTIES OF TEXAS MINING COUNCIL. The Texas Mining Council is established in the office of the governor and shall perform the duties of the advisory board provided in Section (a), Article V of the Interstate Mining Compact.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.004. MEMBERSHIP OF TEXAS MINING COUNCIL. (a) The Texas Mining Council is composed of 11 members appointed by the

governor.

(b) Each member of the Texas Mining Council shall be a member of the general public who has demonstrated a continuing interest in conservation matters, the head of a state agency, board, or commission, or a representative of the mining industry.

(c) Of the 11 members of the Texas Mining Council, at least three shall be members of the general public who have demonstrated an interest in conservation matters, at least three shall be representatives of the mining industry, and at least two shall be heads of state agencies, boards, or commissions.

(d) The service of members who are heads of state agencies, boards, or commissions is in addition to their other duties.

(e) A person serving as a member of the Texas Mining Council who is the head of a state agency, board, or commission ceases to be a member of the council if he ceases to be head of a state agency, board, or commission.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.0041. LIMITATIONS ON COUNCIL MEMBERSHIP. (a) A member or employee of the council may not be an officer, employee, or paid consultant of a trade association for an industry that is engaged in any of the types of mining defined by Section (a), Article II of the Interstate Mining Compact.

(b) A person is not eligible for appointment as a public member of the council if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization related to the field of mining as defined by Section (a), Article II of the Interstate Mining Compact; or

(2) has, other than as a consumer, a financial interest in a business entity related to the field of mining as defined by Section (a), Article II of the Interstate Mining Compact.

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

Sec. 132.0042. REMOVAL OF COUNCIL MEMBERS. (a) It is a ground

for removal from the council if a member:

(1) does not have at the time of appointment the qualifications required by Section 132.004 of this code for appointment to the council;

(2) does not maintain during the service on the council the qualifications required by Section 132.004 of this code for appointment to the council; or

(3) violates a prohibition established by Section 132.0041 of this code.

(b) The validity of an action of the council is not affected by the fact that it was taken when a ground for removal of a member of the council existed.

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

Sec. 132.005. TERMS OF OFFICE. Members of the Texas Mining Council shall serve for terms of two years.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.0051. COUNCIL CHAIRMAN. The member of the council selected as the governor's alternate under Section (a), Article V of the Interstate Mining Compact serves as chairman of the council.

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

Sec. 132.006. COMPENSATION AND TRAVEL EXPENSES. (a) The members of the Texas Mining Council are not entitled to compensation for their services.

(b) The members of the Texas Mining Council are entitled to receive actual expenses incurred for attendance at council meetings or attendance at meetings of the Interstate Mining Commission as alternate for the governor.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 132.007. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. (a) The Employees Retirement System of Texas may enter into agreements with the Interstate Mining Commission for participation in the retirement system and other benefit programs for state employees administered by the agency or agencies.

(b) An agreement made under this section shall provide, as nearly as possible, for rights, contributions, obligations, and benefits comparable to those accorded employees of this state participating in or benefiting from the program involved.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.008. FILING BYLAWS AND AMENDMENTS. A copy of the bylaws and all amendments to the bylaws of the Interstate Mining Commission promulgated under Section (i), Article V of the Interstate Mining Compact shall be filed in the office of the Secretary of State.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.0081. ANNUAL REPORT. On or before October 1 of each year, the office of the Interstate Mining Compact Commissioner for Texas shall prepare and file with the presiding officer of each house of the legislature a complete and detailed written report describing activities of the office relating to this state's participation in the Interstate Mining Compact and accounting for all funds received and disbursed by the office during the preceding year. The report must be included as part of the annual financial report of the governor's office.

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

CHAPTER 133. QUARRY SAFETY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 133.001. SHORT TITLE. This chapter may be cited as the Texas Aggregate Quarry and Pit Safety Act.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.002. PURPOSE. The Legislature of the State of Texas finds that:

(1) protection of the public good by requiring safety devices for certain aggregate quarries and pits and regulation of public access to such aggregate quarries and pits, with reasonable, fair, and certain laws, accompanied by civil penalties for failure to obey such laws, are essential to protect the public good and welfare;

(2) to carry out the stated purpose of this Act, a method must be provided to secure usable information concerning the definition, existence of, operation of, and abandonment of aggregate quarries and pits;

(3) to provide for a centralized, easily understood method of requiring safety devices and the administration thereof by one agency of this state to the exclusion of any other governmental entity is essential to the smooth workings of any law having statewide impact.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.003. DEFINITIONS. In this chapter:

(1) "Abandoned" means having relinquished all right, title, claim, and possession with the intent of never again claiming a future right or title or resuming possession.

(2) "Aggregates" includes any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance.

(3) "Barrier" means an object of substantial construction that will obstruct, restrain, and prevent the normal passage of persons or vehicular traffic and may include guardrails, fences, or berms or barricades composed of consolidated material or overburden.

(4) "Berm" means a ridge of refuse, overburden, consolidated material, or other material in a lengthened elevation designed to act as a dike or barrier, capable of moderating or limiting the force of a vehicle in order to impede the passage of the vehicle.

(5) "Commission" means the Railroad Commission of Texas.

(6) "Consolidated material" means material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing.

(7) "Division" means the Surface Mining and Reclamation Division, Railroad Commission of Texas, or such department, bureau, or commission as may lawfully succeed to the powers and duties of such division.

(8) "Director" means the director, Surface Mining and Reclamation Division, Railroad Commission of Texas, or the director's representative.

(9) "Federal act" means the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), and any amendment thereof.

(10) "Fund" means the abandoned mine reclamation fund established pursuant to Section 401 of the federal act, and any amendment thereof.

(11) "Guardrail" means a system of posts and metal rails as defined by the Texas Department of Transportation.

(12) "Inactive quarry or pit" means a site or any portion of a site that although previously in aggregate production is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

(13) "In hazardous proximity to a public road" means that distance beginning 200 feet from the nearest roadway edge of a public road or highway to the pit perimeter.

(14) "Operator" means any person, partnership, firm, or corporation engaged in and responsible for the physical operation and control of the extraction of aggregates.

(15) "Overburden" means all materials displaced in an aggregate extraction operation that are not or reasonably would not be expected to be removed from the affected area.

(16) "Owner" means any person, partnership, firm, or corporation having title, in whole or in part, to the land on which an aggregate operation exists or has existed.

(17) "Pit" means an open excavation not less than five feet below the adjacent and natural ground level from which aggregates have been or are being extracted.

(18) "Public road or right-of-way" means every way publicly maintained or any part thereof as defined by Section 541.302, Transportation Code, and the decisions thereunder.

(19) "Quarrying" means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.

(20) "Quarry" means the site where aggregates are being or have been removed or extracted from the earth to form the pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.

(21) "Refuse" means all waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(22) "Responsible party" means the operator, lessor, or owner of lessee as may be subject to the provision of Chapters 2 and 3 of this Act.

(23) "Ridge" means a lengthened elevation of overburden created in the aggregate production process.

(24) "Roadway" means the part of the public road intended for vehicular traffic that consists of an improved driving surface constructed of concrete, asphalt, compacted soil, rock, or other material.

(25) "Setback distance" means from the outer right-of-way line of a public road or highway up to a distance of 25 feet.

(26) "Site" means the tract of land on which is located a pit and includes the immediate area on which the plant used in the extraction of aggregates is located.

(27) "Unacceptable unsafe location" means a condition where the edge of a pit is located within 200 feet of a public roadway intersection in a manner which, in the judgment of the commission:

(A) presents a significant risk of harm to public motorists by reason of the proximity of the pit to the roadway intersection; and,

(B) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from accidentally entering the pit as the result of a motor vehicle collision at or near the intersection; or which,

(C) in the opinion of the commission, is also at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as prescribed by this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(56), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.231, eff. Sept. 1, 1997.

SUBCHAPTER B. AUTHORITY OF COMMISSION

Sec. 133.011. GENERAL AUTHORITY OF THE COMMISSION. To accomplish the limited purposes of this chapter, the commission may:

(1) with proper notice to all parties affected, adopt rules and regulations consistent with the provisions of this chapter and issue orders necessary to implement and enforce this chapter;

(2) conduct research necessary for the discharge of its duties under this chapter;

(3) collect and make available to the public information relating to the inventory and classification of quarries, including maps and other technical data;

(4) apply for, accept, receive, and administer grants, gifts, loans, or other funds from any source; and

(5) hold public hearings, take written sworn testimony, hear witnesses upon oath, and consider reports in regard to the classifications of pits within the definitions of hazardous proximity to a public road and unacceptable unsafe location, issuing rules and orders in relation thereto.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.012. INVENTORY OF ACTIVE, INACTIVE, AND ABANDONED QUARRIES AND PITS. (a) The commission shall inventory, classify,

and maintain a log according to the degree of hazard, proximity to public roads, age, and current use of all existing, inactive, or abandoned quarries that have a pit perimeter that is in hazardous proximity to a public road, and those pits that are in an unacceptable unsafe location.

(b) The commission shall keep a current log of all quarries that are required to be inventoried under Subsection (a) of this section, including such quarries and pits for which initial operations begin after June 30, 1991.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.013. DETERMINATION OF STATUS. After notice and hearing, the commission may determine whether a quarry or pit has been abandoned, is active, or is inactive.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER C. PERSON RESPONSIBLE FOR QUARRY OR PIT

Sec. 133.021. PERSONS RESPONSIBLE FOR QUARRY OR PIT. (a) For the purposes of this chapter, the person responsible for a quarry or pit is the current operator of the quarry or pit, except that if a quarry or pit was abandoned on or before January 1, 1991, or became inactive before that date and has not resumed operations, or if no operator exists, then the owner in which the pit exists is the person responsible.

(b) Where a conflict arises in identifying a person responsible for the pit, the commission may hold a public hearing.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER C-1. INITIAL REPORTING REQUIREMENTS

Sec. 133.031. REPORT OF ABANDONED OR INACTIVE QUARRY OR PIT. (a) On or before March 1, 1992, the person responsible for an abandoned quarry or pit shall report to the commission.

(b) On or before March 1, 1992, the person responsible for a quarry or pit that became inactive before January 1, 1991, and did not resume operations before June 30, 1991, shall report to the

commission.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.032. REPORT OF AN ACTIVE QUARRY OR PIT. On or before October 1, 1991, the person responsible for a quarry or pit that is active on June 30, 1991, shall report to the commission.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.033. FORM AND CONTENT OF REPORT. (a) Each report under this chapter must show the location, age, operational status, and current use of the quarry or pit to which the report applies, and the report form shall be concise and limited to the information necessary to effect the inventory, and be of not more than five pages, containing only the information prescribed in Section 133.046 of this code.

(b) Only a single report under this subchapter is required when joint owners or operators or a combination of either exists.

(c) Only a single report under this subchapter is required for each owner or operator having multiple pit locations within the state.

(d) Only one accurate report relating to each quarry or pit is required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER D. SAFETY AND CERTIFICATION

Sec. 133.041. BARRIERS REQUIRED. (a) A person responsible for an active pit must construct a barrier or other device required by this code between a public road adjoining the site and a pit, provided the pit is in hazardous proximity to the public road.

(b) A person responsible for an abandoned or inactive pit must construct a barrier or other device required by this code between a public road adjoining the site and the pit, provided that the pit is in hazardous proximity to a public road and in an unacceptable unsafe location. The commission may grant a waiver from the barrier requirement if the person responsible for the abandoned or inactive

pit submits an application to the commission showing that:

(1) a governmental entity obtained a right-of-way and constructed a public road within 200 feet of the abandoned or inactive pit before August 26, 1991; and

(2) the pit has remained abandoned or inactive since the road was constructed.

(c) The responsible party may choose to slope the sidewalls of a pit in place of constructing a berm or barrier, provided that in the opinion of the responsible party such corrective measure better serves the public safety and provided that the slope shall not exceed 30 degrees from the horizontal.

(d) The barrier or other device must be completed not later than the 90th day after the day on which the person responsible for the quarry or pit receives a notice of approval under Section 133.048(b) of this code. An additional time of not more than 60 days may be granted by the commission for good cause shown. If the responsible person must obtain an easement before constructing the barrier or other device, the commission may grant additional reasonable time to complete the barrier or other device.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 2, eff. Sept. 1, 1993.

Sec. 133.042. CONSTRUCTION STANDARDS. (a) A barrier constructed under Section 133.041 of this code must:

(1) reach a height that the commission determines that under the circumstances will obstruct, restrain, and prevent the normal passage of vehicular traffic;

(2) be of substantial construction suitable for impact under normal driving conditions; and

(3) have openings to the extent necessary for travel on the premises and for public road drainage, although such drainage paths must be covered with protective material, substantial enough to turn away motor vehicular traffic that normally travels the adjacent public road.

(b) The commission may not adopt construction standards for barriers under Subsection (a) that are more stringent than the Texas Department of Transportation standards.

(c) In the event the commission determines that the pit

location as detailed in the quarry safety plan or other application will contain substantial soil types of such density and other factors that will have a high probability of holding or impounding water, when the pit is operating, inactive, or abandoned, wherein the impoundment of water poses a definite and determinable unreasonable risk to human health and safety as set out in this code, the commission may require the responsible party operating soil, dirt, clay, gravel, sand, caliche and clay pits to slope the sidewalls as an additional requirement to obtain a safety certificate or to alter the berm or barrier.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 3, eff. Sept. 1, 1993.

Sec. 133.043. CONSTRUCTION COSTS. (a) The commission shall adopt and implement rules, standards, or procedures necessary to obtain funds that are or may become available under the federal act, or any federal or state law, for the cost of constructing barriers required by this code.

(b) The person responsible for the pit shall pay the cost of constructing a barrier to the extent that person is unable to obtain funds available under any state, municipal, or federal source.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.044. PROHIBITION AGAINST OPENING PITS. (a) From and after November 1, 1991, no person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter will be less than 25 feet from the outer right-of-way line of any public road or highway ("the setback distance").

(b) From and after November 1, 1991, no person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter is in hazardous proximity to a public road without first filing a quarry safety plan detailing how the applicant intends to comply with the safety provisions of this code in the opening and closing of the pit.

(c) The quarry safety plan must:

(1) set out the information required in Section 133.046 et seq. of this code; and

(2) be filed by the applicant at least 60 days prior to the opening of the pit; and

(3) contain a statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to a public road, if any, and the type of berm or barrier or other device required by this code that will be erected; and

(4) be in writing, certified and sworn to the applicant; and

(5) contain any other information relating to safety matters as the commission by rule or regulation deems essential to the implementation of this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.045. SAFETY CERTIFICATE REQUIRED. (a) A safety certificate is required for an active, inactive, or abandoned quarry or pit that is located in hazardous proximity to a public road or is in an unacceptable unsafe location, excluding an inactive or abandoned quarry or pit that receives a written waiver from the commission.

(b) From and after November 1, 1991, unless a person responsible for a quarry or pit has obtained from the commission a certificate that a quarry or pit complies with this subchapter and rules or orders adopted under this subchapter, and subject to Subsection (c) of this section, the person responsible may not:

(1) open a new pit in hazardous proximity to a public road; and

(2) locate a pit in an area wherein it is in an unacceptable unsafe location; or

(3) reopen, operate, or abandon a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location; and

(4) provided, however, that the person responsible must have received a notice from the commission that the quarry or pit requires the operator to obtain a safety certificate, before that person is prohibited from operating or maintaining the quarry or pit without a safety certificate.

(c) Any person responsible who, on November 1, 1991, is utilizing a portion of a site for quarrying operations, including the

stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(d) A person responsible for a quarry or pit may operate the pit during a period that is described by Subsection (a) or (c) of Section 133.052 of this code.

(e) In the event a quarry or pit previously not within the proscribed distance in the definition of "in hazardous proximity to a public road" and not initially within the purview of "unacceptable unsafe location" later becomes subject to regulation as the result of an expansion or relocation of an existing public road or construction of a new public road, the person or entity responsible for the expansion or relocation of the existing public road or construction of a new public road shall be liable to report the same to the commission within 90 days of the date the expansion, relocation, or construction is finally accomplished.

(f) The commission shall provide such rules and regulations to require the person or entity responsible for the expansion or relocation to erect berms or barriers.

(g) For the purposes of this subsection, the person or entity responsible for the erection of berms or barriers is that person or entity having the original and initial legal authority and responsibility for the initiation and contracting of the expansion or relocation.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 4, eff. Sept. 1, 1993.

Sec. 133.046. FORM AND CONTENTS OF APPLICATION. (a) The commission by rule shall prescribe the form of an application for a safety certificate.

(b) An application for a safety certificate must contain not more than:

(1) the name, address, and telephone number of the person responsible for the quarry or pit;

(2) the name, address, and telephone number of the owner or

owners if different from the person responsible for the quarry or pit;

(3) the type of quarrying activities, if any, occurring on the site;

(4) a brief description of the site, including the acreage outside and inside the pit;

(5) the distance of each pit perimeter from the nearest roadway edge of each public road that the site adjoins and the nearest intersection of any public or private road or driveway;

(6) the depth in feet, below the top of the pit highwall located between the pit and the roadway, of the deepest excavation in the pit;

(7) a description of and a construction plan for any barrier or other device allowed in this code to be constructed, specifying the material to be used and the expected date of completion; and

(8) any other information or condition that, in the opinion of the operator or owner, constitutes an unacceptable unsafe location, as defined or required by this Act that is absolutely essential to the purposes of this Act.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 5, eff. Sept. 1, 1993.

Sec. 133.047. APPLICATION FEE. (a) The commission may require the payment of an application fee.

(b) The commission shall set the fee in an amount reasonably necessary to cover the commission's cost of carrying out this chapter, but not more than:

(1) $500 for an active aggregate quarry or pit;

(2) $500 for an inactive or abandoned aggregate quarry or pit unless the responsible party is a governmental entity in which case the fee shall be no more than $350.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 6, eff. Sept. 1, 1993.

Sec. 133.048. REVIEW OF APPLICATION. (a) Not later than the 10th day after the day on which an application for a safety

certificate is received, the commission shall review the application and the plan and determine if each complies with this subchapter, and with rules or orders adopted under this subchapter, and issue such findings and conclusions as may be necessary.

(b) If the application and plan comply with this subchapter, and rules or orders adopted under this subchapter, the commission must approve the application and notify the applicant in writing of the commission's decision.

(c) If the commission determines that an application or plan does not comply with this subchapter and rules or orders adopted under this subchapter, the commission must notify the applicant in writing of the commission's decision, specifying any defects.

(d) Any notices required under Subsections (b) and (c) of this section must be mailed to the applicant certified mail, postage prepaid, return receipt requested, not later than the fifth day after the day on which the commission approves or disapproves the application.

(e) An applicant who receives notice of denial under Subsections (c) and (d) of this section may submit, not later than the 30th day after the day on which the notice is received, a modified application or plan.

(f) Not later than the fifth day after the day on which the commission receives a modified application or plan, the commission must approve or deny the modified application or plan and notify the applicant in writing of the commission's decision.

(g) The commission shall first review applications for sites that have been abandoned and that are within the setback distances.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.049. INSPECTION OF BARRIERS. Within 15 days of the time in which construction of barriers required by Section 133.041 of this code and described in an approved application is required to be completed, the commission may inspect those barriers to determine whether they meet the requirements of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.050. ISSUANCE OF CERTIFICATE. (a) If, after

inspection, the commission determines that the barriers described in an approved application conform with the plan and comply with this subchapter, and the rules or orders adopted under this subchapter, the commission must issue a safety certificate to the person responsible for the pit.

(b) If, after inspection, the commission determines that a barrier does not comply with this subchapter or a rule or order adopted under this subchapter, the commission shall give the applicant written notice of any defects in that barrier and shall allow the applicant a reasonable time, not to exceed 60 days from the day notice is received, to cure the defects.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.051. TRANSFER OF CERTIFICATE AFTER TRANSFER OF TITLE. (a) A person holding a safety certificate has the full right, power, and authority to transfer the certificate upon the sale, lease, or other transfer of title to the site, provided the new owner, operator, lessor or lessee, or party in interest files a written affidavit that:

(1) all barriers between a pit and the nearest roadway edge of any public road comply with this subchapter, and rules and orders adopted by this subchapter; and

(2) there will be no change, on or after the day of the transfer of title or operation, in:

(A) the condition or location of a barrier; and

(B) the distance of a pit perimeter from:

(i) the nearest public road; and

(ii) the nearest intersection of a public road and a private road or driveway.

(b) The transfer affidavit must be filed not later than the 30th day after the day on which the transfer of title to or operation of the quarry or pit occurs.

(c) Except as provided by Section 133.053(a) of this code, the commission must process and approve a transfer of a safety certificate not later than the 10th day after the day on which the commission receives a completed transfer affidavit.

(d) The commission may require the payment of a reasonable fee for processing the transfer affidavit, not to exceed the actual

administrative costs of receipt and processing, which amount shall not be more than $250.

(e) The hypothecating, mortgaging, or other transfer of equitable title or a pledge of any assets to creditors of the operator or owner shall not require the filing of a transfer affidavit.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 7, eff. Sept. 1, 1993.

Sec. 133.052. RECERTIFICATION AFTER TRANSFER OF TITLE. (a) Unless proper transfer affidavit is filed pursuant to this subchapter, or an application for an amended certificate as required by Subsection (b) of this section is pending, an existing safety certificate expires on the 90th day after the day on which a sale, lease, or other transfer of title to or operation of the quarry or pit for which the certificate was issued occurs.

(b) To obtain an amended or new safety certificate, a new owner, operator, lessor, or lessee must submit an application and plan as required by Section 133.046 of this code not later than the 30th day after the day on which the transfer of title to the quarry or pit occurs or a change in the activities of the quarry or pit necessitates.

(c) If an application for a new certificate has been submitted as required by Subsection (b) of this section, the existing safety certificate continues in effect until the commission's decision either approving or disapproving the new or amended certificate is issued and becomes final.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.053. DENIAL OR REVOCATION OF CERTIFICATE. (a) At its option, the commission may not issue or approve the transfer of a certificate to a person who has violated this chapter or a rule or order adopted under this chapter.

(b) The commission may revoke or disapprove the transfer of a safety certificate issued under this subchapter only if, after notice and hearing, the commission determines that the holder of the certificate has violated this chapter or a rule or order adopted

under this chapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.054. CESSATION OF ACTIVE PIT OPERATIONS. (a) The responsible party who plans or intends to cease active operations in a quarry or pit subject to the provisions of this code shall, 60 days prior to cessation of operations, notify the commission of its intent and submit any additional plans the operator determines necessary to protect the public good and welfare after the cessation of operations. The commission may charge a fee for the actual costs of processing the notice, which fee shall not exceed $500.

(b) The commission shall have inspected the quarry and pit within 10 days after receipt of the notice in order to ensure compliance with the provisions of this chapter and any additional plans by the operator as may be submitted pursuant to Subsection (a) of this section.

(c) Upon inspection, the commission shall have 10 days to notify the operator of compliance, or lack thereof, and in the event of compliance shall issue a safety certificate pursuant to Section 133.050 of this code.

(d) In the event of noncompliance, the commission shall follow the procedures as set out in Section 133.048 et seq. of this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 133.081. NOTICE OF VIOLATION; TIME TO CURE. (a) On receipt of a complaint or a violation of this chapter or a rule or order adopted under this chapter or on its own motion, the commission must give the person responsible for the quarry or pit written notice of each alleged violation, including the applicable statutory reference, and rule or order so violated and its relation thereto, and the date, time, and place for a hearing.

(b) If, after notice and a hearing, the commission determines that a violation has occurred, the commission must make written findings of the actual or threatened violation and the required corrective work and shall prescribe by order a specific period, commensurate with the work to be done but not to exceed 90 days from

the date of the order, during which the corrective work must be done, unless an extension of time for good cause shown by the person responsible is granted by the commission.

(c) If the responsible party fails to perform corrective work required by the commission under Subsection (b) of this section within 120 days after notice is given to the responsible party, the commission may contract for the corrective work to be done at reasonable, customary, and ordinary costs applicable in the industry. Such costs shall be submitted within 30 days of the date the work is finished, and the responsible party shall have 60 days to pay the costs or appeal the decision. In the event the responsible party fails to pay the costs as presented or fails timely to contest or appeal the costs as presented by the commission, the commission shall have the right to impose such fine or injunction as is warranted, consistent with the provisions of Section 133.082 et seq.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.082. CIVIL PENALTY. (a) A person or responsible party who violates this chapter or a rule or order adopted under this chapter after due notice is liable to the state for a civil penalty of not less than $500 or more than $5,000 for each act of violation on a first offense.

(b) A person or responsible party who violates this chapter or a rule or order adopted under this chapter after due notice is liable to the state for a civil penalty of not less than $1,000 or more than $10,000 for each act of violation on a second and subsequent offense.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.083. INJUNCTION. (a) The commission may enforce this chapter or a rule or order adopted under this chapter by injunction or other appropriate remedy.

(b) On application for injunctive or other relief and a finding that a person is violating or has violated this chapter or a rule or order adopted under this chapter, a court may grant the injunctive or other relief warranted by the facts.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.084. RECOVERY OF COSTS. A person responsible for a quarry or pit is liable to the state for customary, ordinary, and reasonable costs incurred by the commission in undertaking corrective or enforcement action under this chapter and for court costs and attorney's fees.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.085. PROCEDURE. (a) At the request of the commission, the attorney general shall bring suit for injunctive or other relief, to recover a civil penalty or costs as provided by Section 133.082 or 133.084 of this code, or for both injunctive or other relief and to recover a civil penalty or costs.

(b) The action may be brought in the county in which the offending action has occurred or in the county in which the defendant resides or has a place of business.

(c) The provisions of this Act supersede any other municipal ordinance or county regulation that seeks to accomplish the same ends as set out herein.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.086. DISPOSITION OF PENALTIES AND COSTS. Money collected under Section 133.082 or 133.084 of this code shall be deposited in the state treasury to the credit of the Texas aggregates quarry and pit safety fund.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.087. COMPLIANCE. Compliance with this Act shall be admissible as evidence in any legal proceeding.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.088. GOVERNMENTAL LIABILITY. The provisions of this

act shall not be construed to impose any liability upon a state governmental entity or county, or their officers or employees.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 8, eff. Sept. 1, 1993.

SUBCHAPTER F. AUTHORITY TO REGULATE QUARRIES AND PITS IN CERTAIN COUNTIES

Sec. 133.091. COUNTY AUTHORITY TO REGULATE. A county with a population of 3.3 million or more may adopt regulations requiring the placement of signs or barriers on aggregate quarries and pits.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 107, eff. September 1, 2011.

Sec. 133.092. AREA SUBJECT TO REGULATION. A regulation adopted under this subchapter applies only in the unincorporated area of the county.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.

Sec. 133.093. CONFLICT WITH COMMISSION RULE. A county may not adopt regulations for aggregate quarries and pits which are regulated by the commission.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.

SUBCHAPTER G. AUTHORITY TO REGULATE QUARRIES IN CERTAIN MUNICIPALITIES

Sec. 133.121. USE OF MUNICIPAL QUARRY SITE LOCATED IN DIFFERENT MUNICIPALITY. (a) This section applies only to a rock quarry:

(1) owned or leased by a municipality with a population of more than 650,000 according to the 2000 federal decennial census;

(2) located in the boundaries of a municipality with a population of less than 50,000 according to the 2000 federal

decennial census; and

(3) any part of which is located within one mile of a residential property.

(b) Before the municipality that owns or leases the rock quarry may dispose of water treatment byproducts in the site of the quarry, the municipality must receive the consent of the governing body of the municipality in which the quarry is located.

(c) The municipality that owns or leases the rock quarry must receive the consent of the governing body of the municipality in which the quarry is located before entering into or extending a lease to operate the quarry.

(d) The governing body of the municipality in which the rock quarry is located may not provide consent under Subsection (b) or (c) if:

(1) that governing body determines that the health, safety, or welfare of the residents of the municipality may be negatively affected by the disposal of byproducts or operation of the quarry;

(2) the quarry site or the operation of the quarry fails to comply with the land use and zoning regulations of the municipality; or

(3) the quarry site or the operation of the quarry fails to correspond with the municipality's land use and development plans.

Added by Acts 2007, 80th Leg., R.S., Ch. 1259 (H.B. 2910), Sec. 1, eff. June 15, 2007.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 133.901. DISTANCE BETWEEN PIT AND PROPERTY LINE. (a) Except as provided by Subsection (b), at the time quarrying is completed, the distance from the edge of the consolidated material of a pit that does not have lateral support to the property line of the nearest property that is not owned or leased by the operator may not be less than 50 feet.

(b) This section does not apply:

(1) to a pit if the operator and the adjacent property owner agree that the pit may be located closer to the property line;

(2) to an excavation constructed by a political subdivision to provide drainage or stormwater retention; or

(3) to a county with a population of 3.3 million or more.

Added by Acts 2001, 77th Leg., ch. 1051, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1017, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 134. TEXAS SURFACE COAL MINING AND RECLAMATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001. SHORT TITLE. This chapter may be cited as the Texas Surface Coal Mining and Reclamation Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.002. FINDINGS AND DECLARATION OF POLICY. The legislature finds and declares that:

(1) the Congress of the United States has enacted the federal Act, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation in the United States;

(2) Section 101 of the federal Act contains the finding by Congress that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to that Act should rest with the states;

(3) Section 503 of the federal Act provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in that state by obtaining approval of a state program of regulation that demonstrates that the state is able to carry out the provisions and meet the purposes of that Act;

(4) Section 503 of the federal Act further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with that Act; and

(5) this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.003. PURPOSES. It is the purpose of this chapter:

(1) to prevent adverse effects to society and the environment from unregulated surface coal mining operations as defined by this chapter;

(2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface coal mining operations;

(3) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;

(4) to assure that reclamation of all land on which surface coal mining takes place occurs as contemporaneously as practicable with the surface coal mining, recognizing that extracting coal by responsible mining operations is an essential and beneficial economic activity;

(5) to assure that the coal supply essential to this state's energy requirements and to its economic and social well-being is provided and to strike a balance between environmental protection and agricultural productivity and this state's need for coal as an essential source of energy; and

(6) to promote the reclamation of mined areas left without adequate reclamation before the enactment of the federal Act and that continue, in their unreclaimed condition, substantially to degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.004. DEFINITIONS. In this chapter:

(1) "Affected person" means a person having an interest that is or may be affected.

(2) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. The term does not include upland areas that are generally overlaid by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, or windblown deposits.

(3) "Applicant" means a person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities under this chapter.

(4) "Approximate original contour" means the surface configuration achieved by backfilling and grading the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.

(5) "Coal" means all forms of coal and includes lignite.

(6) "Coal exploration operations" means the substantial disturbance of the surface or subsurface for or related to the purpose of determining the location, quantity, or quality of a coal deposit.

(7) "Commission" means the Railroad Commission of Texas.

(7-a) "Director" means the director, Surface Mining and Reclamation Division, Railroad Commission of Texas, or the director's representative.

(8) "Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.).

(9) "Imminent danger to the health or safety of the public" means the existence of a condition or practice or a violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the

time necessary for abatement.

(10) "Operator" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive months in one location.

(11) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and other solid materials or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals that occur naturally in liquid or gaseous form.

(12) "Permit" means a permit to conduct surface coal mining and reclamation operations or underground mining operations issued by the commission.

(13) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land must be covered by an operator's bond as required by Subchapter F and readily identifiable by appropriate markers on the site.

(14) "Permit holder" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities under this chapter.

(15) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(15-a) "Previously mined land" means land that:

(A) was affected by surface coal mining operations occurring before August 3, 1977; and

(B) has not been reclaimed in accordance with this chapter.

(16) "Prime farmland" means land that the commission determines meets the criteria prescribed by the secretary of agriculture and published in the Federal Register, including moisture availability, temperature regime, chemical balance, permeability without regard to annual mean soil temperatures, surface layer composition, susceptibility to flooding, and erosion characteristics, and that historically has been used for intensive agricultural purposes. Land has not historically been used for the production of cultivated crops if:

(A) the land has been used as woodland or rangeland; or

(B) the only cultivation has been disking to:

(i) establish or help maintain bermuda grass used as forage; or

(ii) plant oats or rye for quick cover, to be used as forage and not as a grain crop.

(17) "Secretary of agriculture" means the secretary of the United States Department of Agriculture.

(18) "Secretary of the interior" means the secretary of the United States Department of the Interior.

(19) "Surface coal mining and reclamation operations" means surface coal mining operations and the activities necessary and incidental to the reclamation of those operations.

(20) "Surface coal mining operations" means:

(A) activities conducted on the surface of land in connection with a surface coal mine or subject to the requirements of Section 134.015 incidental to an underground coal mine, including excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; excluding the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this chapter; and

(B) the areas on which those activities occur or where those activities disturb the natural land surface, areas adjacent to land the use of which is incidental to any of those activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to those activities.

(21) "Unwarranted failure to comply" means the failure of a permit holder to prevent the occurrence of any violation of the

permit holder's permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit holder's permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 143 (S.B. 1478), Sec. 1, eff. May 27, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 1, eff. June 17, 2011.

Sec. 134.005. EXEMPTIONS. (a) This chapter does not apply to the extraction of coal:

(1) by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner; or

(2) incidental to federal, state, or local government-financed highway or other construction under commission rules.

(b) Subsection (a)(1) does not exempt the noncommercial production of coal by in situ distillation or retorting, leaching, or another chemical or physical process or preparation.

(c) This chapter does not apply to surface coal mining and reclamation operations in existence before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 25.01(b), eff. Sept. 1, 1997.

Sec. 134.006. WATER RIGHTS. This chapter does not affect the right of a person under other law to enforce or protect the person's interest in water resources affected by a surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.007. CONFLICT OF INTEREST; OFFENSE. (a) An employee of the commission commits an offense if the employee knowingly:

(1) performs a function or duty under this chapter; and

(2) has a direct or indirect financial interest in an underground or surface coal mining operation.

(b) An offense under this section is punishable by:

(1) a fine of not more than $2,500;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.008. APPLICABILITY TO GOVERNMENTAL UNITS. An agency, unit, or instrumentality of federal, state, or local government, including a publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to this chapter shall comply with this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(c), eff. Sept. 1, 1997.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 134.011. GENERAL AUTHORITY OF COMMISSION. To accomplish the purposes of this chapter, the commission may:

(1) adopt, amend, and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this chapter;

(2) issue permits under this chapter;

(3) conduct hearings under this chapter and Chapter 2001, Government Code;

(4) issue orders requiring an operator to take actions necessary to comply with this chapter or rules adopted under this chapter;

(5) issue orders modifying previous orders;

(6) issue a final order revoking the permit of an operator who has not complied with a commission order to take action required by this chapter or rules adopted under this chapter;

(7) order the immediate cessation of all or part of an ongoing surface coal mining operation if the commission finds that the operation or part of the operation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and take other action or make changes in a permit that are reasonably necessary to avoid or alleviate those conditions;

(8) hire employees, adopt standards for employment, and hire or authorize the hiring of outside contractors to assist in carrying out this chapter;

(9) enter and inspect, in person or by its agents, a surface mining operation that is subject to this chapter to assure compliance with this chapter;

(10) conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) prepare and require permit holders to prepare reports;

(12) accept, receive, and administer grants, gifts, loans, or other money made available from any source for the purposes of this chapter;

(13) take the steps necessary for this state to participate to the fullest extent practicable in the abandoned land program provided by Title IV of the federal Act;

(14) take the actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the federal Act, including, if the federal agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the federal Act;

(15) contract with state boards and agencies that have pertinent expertise to obtain the professional and technical services necessary to carry out this chapter;

(16) establish a process, to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(17) enter into cooperative agreements with the secretary of the interior for the regulation of surface coal mining operations on federal land in accordance with the federal Act; and

(18) perform any other duty or act required by or provided

for in this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.012. JURISDICTION OF COMMISSION OVER SURFACE COAL, IRON ORE, AND IRON ORE GRAVEL MINING AND RECLAMATION OPERATIONS. (a) The commission has exclusive jurisdiction over:

(1) surface coal mining and reclamation operations in this state; and

(2) iron ore and iron ore gravel mining and reclamation operations in this state.

(b) This chapter governs iron ore and iron ore gravel mining and reclamation operations to the extent it can be made applicable.

(c) The jurisdiction conferred by Subsection (a)(2) does not extend to:

(1) a mining or reclamation activity in progress on or before September 1, 1985; or

(2) a mining operation or reclamation activity that is conducted solely on real property owned in fee simple by the person authorizing the operation or reclamation activity and that is confined to a single, contiguous tract of land, if:

(A) the activity is conducted in an area not larger than 20 acres;

(B) the depth of the mining operation is restricted to 30 inches or less; and

(C) the fee simple owner receives surface damages.

(d) This chapter does not authorize the commission to adjudicate property title or property rights disputes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.013. RULEMAKING AND PERMITTING. (a) The commission shall adopt rules pertaining to surface coal mining and reclamation operations required by this chapter.

(b) The process of making and amending rules and issuing permits is subject to Chapter 2001, Government Code.

(c) A rule or an amended rule adopted or a permit issued by the

commission may have different terms for particular conditions, types of coal being extracted, particular areas of the state, or other relevant or necessary conditions if the action taken is consistent with the general intent and purposes of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.014. COAL EXPLORATION OPERATIONS. (a) A person who conducts coal exploration operations that substantially disturb the natural land surface shall comply with commission rules adopted to govern those operations. The rules shall require that before conducting the exploration, a person file with the commission notice of intent to explore and include with the notice:

(1) a description of the exploration area and the period of proposed exploration; and

(2) provisions for reclaiming, in accordance with the performance standards in Sections 134.091 through 134.109, the land disturbed in exploration, including provisions for reclamation of excavations, roads, and drill holes and for removal of necessary facilities and equipment.

(b) A person who conducts coal exploration operations that substantially disturb the natural land surface in violation of this section or a rule adopted under this section is subject to Sections 134.174 through 134.181.

(c) An operator may not remove more than 250 tons of coal under an exploration permit without the specific written approval of the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(d), eff. Sept. 1, 1997.

Sec. 134.015. SURFACE EFFECTS OF UNDERGROUND MINING. (a) The commission shall adopt rules applicable to the surface effects of underground mining that are consistent with the federal Act and regulations adopted under that Act by the secretary of the interior.

(b) This chapter applies to the regulation of the surface effects of underground mining operations as established by Section

516 of the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.016. DEVELOPMENT OF PROCESS FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING. The commission shall develop a process for designating areas unsuitable for surface coal mining. The process shall include:

(1) reviewing surface coal mining land;

(2) developing a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

(3) developing, by rule, a method or methods for implementing land use planning decisions about surface coal mining operations; and

(4) developing, by rule, proper notice, provisions, and opportunities for public participation, including a public hearing, before the commission makes a designation or redesignation under Section 134.020.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.017. PETITION FOR DESIGNATION. (a) An affected person is entitled:

(1) before an application is filed under Section 134.052, to petition the commission to designate an area unsuitable for surface coal mining operations; or

(2) to petition the commission to terminate a designation.

(b) The petition shall contain:

(1) allegations of facts; and

(2) supporting evidence that would tend to establish the allegations.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.018. HEARING ON DESIGNATION. (a) Not later than 10 months after the date the commission receives the petition, the commission shall hold a public hearing under Chapter 2001, Government Code, in the locality of the affected area.

(b) After a person has filed a petition under Section 134.017 and before the hearing required by Subsection (a), any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations.

(c) A hearing is not required if all petitioners stipulate agreement before the requested hearing and withdraw their requests.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.019. COMMISSION STATEMENT. Before designating a land area unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:

(1) the potential coal resources of the area;

(2) the demand for coal resources; and

(3) the impact of the designation on the environment, the economy, and the supply of coal.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.020. DESIGNATION OF AREA AS UNSUITABLE FOR SURFACE COAL MINING. (a) On petition under Section 134.017, the commission shall designate an area unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation under this chapter is not technologically and economically feasible.

(b) On petition under Section 134.017, the commission may designate a surface area unsuitable for certain types of surface coal mining operations if those operations will:

(1) be incompatible with existing state or local land use plans or programs;

(2) affect fragile or historic land in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(3) affect renewable resource lands, including aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, in which the operations could substantially endanger life and property.

(c) Sections 134.016 through 134.019 and this section do not apply to land:

(1) for which substantial legal and financial commitments in a surface coal mining operation or proposed operation were in existence before January 4, 1977;

(2) on which surface coal mining operations were being conducted on August 3, 1977; or

(3) on which surface coal mining operations are being conducted under a permit issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.021. INTEGRATION WITH LAND USE PLANNING AND REGULATION PROCESSES. Determinations of the unsuitability of land for surface coal mining under Sections 134.016 through 134.020 shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.022. PROHIBITION ON SURFACE COAL MINING IN CERTAIN AREAS. (a) Surface coal mining operations may not be permitted:

(1) that will adversely affect a publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or historic site;

(2) within 100 feet of the outside right-of-way line of a public road, except:

(A) where a mine access road or haulage road joins the

right-of-way line; or

(B) as provided by Subsection (b);

(3) within 300 feet of an occupied dwelling, unless the owner of the dwelling waives the prohibition;

(4) within 300 feet of a public, school, church, community, or institutional building;

(5) within 300 feet of a public park; or

(6) within 100 feet of a cemetery.

(b) The commission may permit a public road to be relocated or the area affected by surface coal mining operations to lie within 100 feet of the outside right-of-way line of the public road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.

(c) This section is subject to rights existing on August 3, 1977, and does not affect surface coal mining operations that existed on August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(e), eff. Sept. 1, 1997.

Sec. 134.023. COOPERATIVE AGREEMENTS WITH FEDERAL GOVERNMENT. The commission may enter into cooperative agreements with the federal government under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.024. EXPERIMENTAL PRACTICES. (a) The commission, with approval by the secretary of agriculture, may authorize experimental departures, in individual cases, from the environmental protection performance standards of this chapter to:

(1) encourage advances in mining and reclamation practices; and

(2) allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities.

(b) The commission may authorize departures if:

(1) the experimental practices are potentially at least as

environmentally protective, during and after mining operations, as those required by this chapter;

(2) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

(3) the experimental practices do not reduce the protection afforded public health and safety below that provided by adopted standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.025. CERTIFICATION OF BLASTERS. The commission shall adopt rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface coal mining operations.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.026. MONITORING, REPORTING, AND INSPECTIONS. (a) The commission shall:

(1) require monitoring and reporting;

(2) inspect surface coal mining and reclamation operations;

(3) require the maintenance of signs and markers; and

(4) take other actions necessary to:

(A) administer, enforce, or evaluate the administration of this chapter; or

(B) meet the state program requirements of the federal Act.

(b) For purposes of this section, the commission or its authorized representative:

(1) without advance notice and on presentation of appropriate credentials, has the right to enter:

(A) a surface coal mining and reclamation operation; or

(B) premises on which records required to be maintained are located; and

(2) at reasonable times and without delay, may have access to and copy records required under this chapter or rules adopted under this chapter or inspect any monitoring equipment or method of operation required under this chapter or rules adopted under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.027. MONITORING OF OPERATIONS THAT AFFECT AQUIFERS. For surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers that significantly ensure the hydrologic balance of water use on or off the mining site, the commission shall specify:

(1) monitoring sites to record:

(A) the quantity and quality of surface drainage above and below the mine site and in the potential zone of influence;

(B) the level and amount and to take samples of groundwater and aquifers potentially affected by the mining and directly below the lowermost, deepest coal seam to be mined; and

(C) precipitation; and

(2) records of well logs and borehole data to be maintained.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.028. INSPECTION PROCEDURE. Inspections by the commission shall:

(1) occur irregularly, averaging not fewer than one partial inspection each month and one complete inspection each calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) occur without prior notice to the permit holder or the permit holder's agents or employees except for necessary on-site meetings with the permit holder; and

(3) include filing inspection reports adequate to enforce the requirements of, and to carry out, this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.029. PROCEDURE ON DETECTION OF VIOLATION. On detection of a violation of this chapter, an inspector, in writing, shall:

(1) promptly inform the operator; and

(2) report the violation to the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.030. RULES REGARDING MONITORING, REPORTING, AND INSPECTIONS. The commission shall adopt rules for:

(1) informing an operator of a violation detected by an inspector; and

(2) making public all inspection and monitoring reports and other records and reports required to be kept under this chapter and rules adopted under this chapter and not confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.031. CONFIDENTIALITY. (a) Information pertaining to coal seams, test borings, core samplings, or soil samples required by Section 134.052 shall be made available to an affected person. However, information that pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or chemical content that is potentially toxic in the environment, is confidential and is not a public record.

(b) Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission.

(c) Information submitted to the commission under Section 134.041 concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission. However, information required by another section that must, by the terms of the other section, be on public file or available to an affected person and information about the chemical and physical properties of the coal that relate to mineral or elemental contents that are potentially toxic in the environment is not confidential.

(d) Information submitted to the commission under Section 134.014 as confidential concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the person intending to explore the described area is not available for public examination.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.032. DETERMINATION REGARDING PRIME FARMLAND. The commission may determine that land is not prime farmland because of its soil type or slope.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER C. PLANS

Sec. 134.041. RECLAMATION PLAN. A reclamation plan submitted as part of a permit application shall include, in sufficient detail to demonstrate that reclamation required by this chapter can be accomplished, a statement that:

(1) identifies land subject to the surface coal mining operation over the estimated life of the operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought;

(2) describes the condition of the land to be covered by the permit before any mining, including:

(A) the uses existing at the time of the application and, if the land has a history of mining, the uses that preceded any mining;

(B) the capability of the land before any mining to support a variety of uses, considering soil and foundation characteristics, topography, vegetative cover, and, if applicable, a soil survey prepared under Section 134.052(a)(16);

(C) the productivity of the land before mining, including appropriate classification as prime farmland; and

(D) if the land is classified as prime farmland, the average yield of food, fiber, forage, or wood products obtained from the land under high levels of management;

(3) describes the proposed use of the land after reclamation,including:

(A) a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to existing land uses; and

(B) the comments of state and local governments or agencies of state or local government that must approve or authorize the proposed use of the land after reclamation;

(4) describes in detail how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use;

(5) specifies the engineering techniques proposed to be used in mining and reclamation and describes the major equipment;

(6) includes a plan for the control of surface water drainage and water accumulation;

(7) includes, if appropriate, a plan for backfilling, soil stabilization and compacting, grading, and appropriate revegetation;

(8) includes a plan for soil reconstruction, replacement, and stabilization under the performance standards in Section 134.092(a)(7) for land identified as prime farmland under Section 134.052(a)(16);

(9) estimates the cost for each acre of the reclamation, including a statement as to how the permit holder plans to comply with each requirement in Sections 134.091 through 134.109;

(10) describes the consideration given to maximizing the use and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized;

(11) provides an estimated timetable for accomplishing each

major step in the reclamation plan;

(12) describes the consideration given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs;

(13) identifies the steps to be taken to comply with applicable air and water quality laws, rules, and regulations and any applicable health and safety standards;

(14) describes the consideration given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions;

(15) contains the results of test borings the applicant has made at the permit area or other equivalent information in a form satisfactory to the commission, including:

(A) the location of subsurface water; and

(B) an analysis of the chemical properties of the coal and overburden that can be expected to adversely affect the environment;

(16) identifies:

(A) any land contiguous to the area to be covered by the permit, or any interest or option on an interest in the contiguous land, held by the applicant; and

(B) any pending bid by the applicant on an interest in the contiguous land; and

(17) describes in detail the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to surface-water systems and groundwater systems, both on and off the mine site; and

(C) the quantity of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process, or to provide alternative sources of water where the protection of quantity cannot be assured.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.042. BLASTING PLAN. An applicant for a surface coal mining and reclamation permit shall submit to the commission as part of its application a blasting plan that outlines the procedures and standards by which the operator will comply with Section 134.092(a)(15).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER D. SURFACE COAL MINING PERMITS

Sec. 134.051. PERMIT REQUIRED FOR OPERATION. A person may not conduct a surface coal mining operation in this state without first obtaining a permit for that operation from the commission under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.052. CONTENTS OF PERMIT APPLICATION. (a) A permit application must be submitted in a manner satisfactory to the commission and must contain:

(1) the name and address of:

(A) the applicant;

(B) each owner of record of the property to be mined;

(C) each holder of record of any leasehold interest in the property;

(D) the purchaser of record of the property under a real estate contract;

(E) the operator if the operator is not the applicant;

(F) the principals, officers, and resident agent of a person described by Paragraph (A), (B), (C), (D), or (E) if the person is a business entity other than a sole proprietor; and

(G) the owners of record of the property adjoining the permit area;

(2) a description of any:

(A) current or previous surface coal mining permits held by the applicant; or

(B) other pending application by the applicant;

(3) information about ownership and management of the

applicant or operator required by commission rule;

(4) a statement of whether the applicant or a subsidiary, affiliate, or other person controlled by or under common control with the applicant:

(A) has held a federal or state mining permit that has been suspended or revoked in the five years preceding the date the application is submitted and, if so, a brief explanation of the facts involved; or

(B) has forfeited a mining bond or similar security deposited in lieu of bond and, if so, a brief explanation of the facts involved;

(5) a copy of the notice required by Section 134.058;

(6) a description of:

(A) the type and method of the existing or proposed coal mining operation;

(B) the engineering techniques proposed or in use; and

(C) the equipment in use or proposed to be used;

(7) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(8) an accurate map or plan, to an appropriate scale, clearly showing:

(A) the land to be affected as of the date of the application; and

(B) the area of land in the permit area on which the applicant has the right to enter and begin surface mining operations;

(9) the documents on which the applicant bases the applicant's right to enter and begin surface mining operations on the affected area;

(10) a statement of whether the applicant's right to enter and begin surface mining operations on the affected area is the subject of pending court litigation;

(11) the name of the watershed and location of the surface streams or tributaries into which surface and pit drainage will be discharged;

(12) a determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime and the quantity and quality of water in surface-water systems and groundwater systems, including the dissolved and suspended solids

under seasonal flow conditions;

(13) sufficient data on the mine site and surrounding areas for the commission to assess the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area, particularly on water availability;

(14) when requested by the commission, the published climatological factors peculiar to the locality of the land to be affected, including:

(A) the average seasonal precipitation;

(B) the average direction and velocity of prevailing winds; and

(C) the seasonal temperature ranges;

(15) a statement of the result of test borings or core samplings from the permit area, including:

(A) logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;

(E) a chemical analysis of any potentially acid- or toxic-forming sections of the overburden; and

(F) a chemical analysis of the stratum lying immediately underneath the coal to be mined;

(16) for land in the permit application that a reconnaissance inspection suggests may be prime farmland, a soil survey made or obtained according to standards established by the secretary of agriculture to confirm the exact location of the land;

(17) a reclamation plan that complies with this chapter;

(18) if applicable, a schedule listing any notices of violations as provided by Section 134.068;

(19) a certificate satisfactory to the commission that the applicant has a public liability insurance policy as described by Section 134.053 in effect for the surface coal mining and reclamation operation for which the permit is sought, or evidence satisfactory to the commission that the applicant should be allowed to be self-insured; and

(20) other data and maps the commission requires by rule.

(b) A determination under Subsection (a)(12) may not be required until the time that hydrologic information on the general area before mining is made available from an appropriate state agency, but the permit may not be approved until the information is

available and has been incorporated into the application.

(c) The commission may waive Subsection (a)(15) for a particular application if the commission determines in writing that the information is unnecessary.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.053. LIABILITY INSURANCE POLICY. (a) The public liability insurance policy required by Section 134.052(a)(19) shall provide for personal injury and property damage protection in an amount adequate to compensate a person who is:

(1) damaged as a result of the surface coal mining and reclamation operations, including the use of explosives; and

(2) entitled to compensation under state law.

(b) The policy shall be maintained in effect during the term of the permit and any renewal for the entire period in which reclamation operations are conducted.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.054. APPLICATION FEES. (a) An application for a surface mining permit or for renewal or revision of a surface mining permit must be accompanied by an application fee determined by the commission in accordance with a published fee schedule. The commission shall base the application fee as nearly as possible on the actual or anticipated cost of reviewing the application.

(b) The application fee may not be less than:

(1) $5,000 for an initial surface mining permit;

(2) $3,000 for renewal of a surface mining permit; or

(3) $500 for revision of a surface mining permit.

(c) The initial application fee and the application fee for renewal of a surface mining permit may be paid in equal annual installments during the term of the permit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.055. ANNUAL FEES. (a) In addition to the application fees required by Section 134.054, each permit holder shall pay to the commission the following annual fees:

(1) a fee for each acre of land in the permit area on which the permit holder actually conducted operations for removing coal during the year;

(2) a fee for each acre of land in the bonded permit area on December 31 of the year; and

(3) a fee for the permit if the permit was in effect on December 31 of the year.

(b) A fee under Subsection (a) is due not later than March 15 of the year following the year for which the fee was imposed.

(c) The commission shall determine the amount of each fee under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 179 (H.B. 472), Sec. 1, eff. September 1, 2005.

Sec. 134.056. SMALL MINE EXEMPTION. The commission shall designate a qualified public or private laboratory to prepare the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by Section 134.052 and shall pay the costs of preparing the determination and statement if:

(1) a surface coal mining operator makes a request in writing; and

(2) the commission finds that the probable total annual production at all locations of the surface coal mining operator will not exceed 300,000 tons.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1307, Sec. 1, eff. Sept. 1, 1997.

Sec. 134.057. PUBLIC INSPECTION OF APPLICATION. (a) An applicant for a surface coal mining and reclamation permit shall file

a copy of the application for public inspection with the county clerk of the county in which the mining is proposed to occur. This subsection does not apply to information in the application pertaining to the coal seam itself.

(b) Copies of any records, reports, inspection materials, or information obtained under this chapter by the commission shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining. This subsection does not apply to records, reports, inspection materials, or information that is confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.058. NOTICE BY APPLICANT. At the time the applicant submits an application for a surface coal mining and reclamation permit or renewal of an existing permit, the applicant shall publish an advertisement in a newspaper of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks that:

(1) shows the ownership and describes the location and boundaries of the proposed site sufficiently so that the proposed operation can be readily located; and

(2) states that the application is available for public inspection at the county courthouse of the county in which the property lies.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.059. NOTIFICATION BY COMMISSION. (a) The commission shall notify local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality of a proposed surface coal mining operation that the operator intends to conduct a surface mining operation.

(b) The notice shall indicate the application number and the county courthouse in which a copy of the proposed surface coal mining

and reclamation plan can be inspected.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.060. COMMENTS. (a) During a period established by the commission, a local body, agency, authority, or company described by Section 134.059 may submit written comments on the effect of the proposed operation on the environment in the entity's area of responsibility.

(b) The commission shall immediately send the comments to the applicant.

(c) The comments shall be made available to the public at the same location as the mining application.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.061. WRITTEN OBJECTIONS. (a) Not later than the 30th day after the date of the last publication of notice under Section 134.058, an affected person or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to a proposed initial or revised application for a surface coal mining and reclamation operation permit.

(b) The commission shall immediately send the objections to the applicant.

(c) The objections shall be made available to the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.062. REQUEST FOR PUBLIC HEARING; NOTICE. (a) Not later than the 45th day after the date of the last publication of notice under Section 134.058, the applicant or an affected person may request a hearing on the application. The hearing shall be held not later than the 30th day after the date the commission receives the request.

(b) The commission shall publish notice of the date, time, and location of the public hearing in a local newspaper of general circulation in the locality of the proposed surface coal mining operations at least once a week for three consecutive weeks before the scheduled hearing date.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.063. NOTICE OF APPROVAL OR DENIAL. The commission shall notify the applicant and any objector that the permit application has been approved or denied:

(1) within the time provided by Chapter 2001, Government Code, if a public hearing is held under Section 134.062; or

(2) not later than the 45th day after the date of the last publication of notice of application if a public hearing is not held.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.064. PROCEDURE. Chapter 2001, Government Code, applies to a permit application under this chapter. Notice of hearing and appeal is governed by that chapter, except as provided by Section 134.062.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.065. PERMIT APPROVAL OR DENIAL. (a) On the basis of a complete application for a surface coal mining and reclamation permit or a revision or renewal of a permit, as required by this chapter, the commission shall grant, require modification of, or deny a permit application.

(b) The commission shall notify the applicant of its decision in writing within a reasonable time as set by the commission.

(c) An applicant for a permit or a permit revision has the burden of establishing that the application complies with this chapter.

(d) Not later than the 10th day after the date the commission grants a permit, the commission shall notify the county judge in the county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.066. WRITTEN FINDINGS REQUIRED. (a) The commission may not approve an application for a permit or a permit revision unless it finds, in writing, using the information in the application or information otherwise available that will be documented in the approval and made available to the applicant, that:

(1) the application is accurate and complete and complies with this chapter;

(2) the applicant has demonstrated that the reclamation required by this chapter can be accomplished under the reclamation plan contained in the application;

(3) the commission has assessed the probable cumulative impact that all anticipated surface coal mining in the area will have on the hydrologic balance, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) the area proposed to be mined is not included in an area:

(A) designated unsuitable for surface coal mining under this chapter; or

(B) under study for this designation in an administrative proceeding begun under this chapter;

(5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, will not:

(A) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding:

(i) undeveloped rangeland that is not significant to farming on the alluvial valley floors; and

(ii) land on which the commission finds that the farming to be interrupted, discontinued, or precluded is of such small acreage as to have negligible impact on the farm's agricultural

production; or

(B) materially damage the quantity or quality of water in surface or underground water systems that supply those valley floors; and

(6) the applicant has submitted to the commission, if the ownership of the coal has been severed from the private surface estate:

(A) the surface owner's written consent to the extraction of coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

(b) Subsection (a)(4)(B) does not apply to an area as to which an administrative proceeding has begun if the applicant demonstrates that, before January 1, 1977, the applicant made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.

(c) Subsection (a)(5) does not apply to a surface coal mining operation that in the year preceding May 9, 1979:

(1) produced coal in commercial quantities and was located in or adjacent to alluvial valley floors; or

(2) had obtained specific permit approval by the commission to conduct surface coal mining operations in the alluvial valley floors.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.067. DETERMINATION OF OWNERSHIP. If the ownership of the coal has been severed from the private surface estate by a conveyance that does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.068. SCHEDULE OF NOTICES OF VIOLATIONS. (a) The applicant shall file with the application a schedule listing any notices of violations of this chapter, the federal Act, a federal

regulation or federal or state program adopted under the federal Act, or another law, rule, or regulation of the United States, this state, or a department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the three years before the application date.

(b) The schedule must indicate the final resolution of any notice of violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(f), eff. Sept. 1, 1997.

Sec. 134.069. EFFECT OF PAST OR PRESENT VIOLATION. (a) If the schedule under Section 134.068 or other information available to the commission indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or another law referred to in Section 134.068, the commission may not issue a permit until the applicant submits proof that the violation has been corrected or is being corrected to the satisfaction of the commission, department, or agency with jurisdiction over the violation.

(b) The commission may not issue a permit to an applicant if it finds, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of wilful violations of this chapter or another law referred to in Section 134.068 that, by their nature and duration and the resulting irreparable damage to the environment, indicate an intent not to comply with this chapter or another law referred to in that section.

(c) Notwithstanding Subsections (a) and (b), the commission may not deny an applicant's permit application based on a previous violation by the applicant that occurred in connection with a surface coal mining operation conducted on previously mined land if the violation resulted from an event or condition that was not contemplated in the permit for the surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 25.01(f), eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 2, eff. June 17, 2011.

Sec. 134.070. PERMIT FOR MINING ON PRIME FARMLAND. (a) After consulting with the secretary of agriculture and under regulations issued under the federal Act by the secretary of the interior with the concurrence of the secretary of agriculture, the commission shall grant a permit to mine on prime farmland if:

(1) the area proposed to be mined contains prime farmland;

(2) the commission makes the findings required by Section 134.066 for the application under consideration; and

(3) the commission in addition finds in writing that:

(A) the operator has the technological capability to restore the mined area within a reasonable time to a level of yield equal to or higher than that of nonmined prime farmland in the surrounding area under equivalent levels of management; and

(B) the applicant can meet the soil reconstruction standards of the federal Act.

(b) This section does not apply to:

(1) a permit issued before August 3, 1977;

(2) a revision or renewal of a permit issued before August 3, 1977; or

(3) an existing surface mining operation for which a permit was issued before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.071. TERM. (a) A permit is issued for a term not to exceed five years.

(b) The commission may grant a permit for a specified longer term if:

(1) an applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment or the opening of the operation; and

(2) the application for the specified longer term is complete.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.072. TERMINATION ON FAILURE TO BEGIN OPERATIONS. (a) A permit terminates if the permit holder has not begun the surface coal mining operation covered by the permit on or before the third anniversary of the date on which the period for which the permit is issued begins.

(b) The commission may grant reasonable extensions of time on a showing that the extensions are necessary because of:

(1) litigation that precludes the beginning of operations or threatens substantial economic loss to the permit holder; or

(2) conditions beyond the control and without the fault or negligence of the permit holder.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, a permit holder is considered to have begun surface mining operations at the time the construction of the facility is initiated.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.073. SUCCESSOR IN INTEREST. A successor in interest to a permit holder may continue the surface coal mining and reclamation plan of the original permit holder until the successor's application is granted or denied if the successor:

(1) applies for a new permit not later than the 30th day after the date the person succeeds to the interest; and

(2) is able to obtain the same bond coverage as the original permit holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.074. RIGHT TO RENEWAL. A permit issued under this chapter carries with it the right of successive renewal on expiration for areas within the boundaries of the existing permit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.075. APPLICATION FOR AND ISSUANCE OF RENEWAL. (a) A permit holder may apply for renewal.

(b) After the public notice requirements of Sections 134.058 through 134.062 have been met, the commission shall renew the permit unless the opponents of renewal establish and the commission makes written findings that:

(1) the terms of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operation does not comply with the environmental protection standards of this chapter;

(3) the requested renewal substantially jeopardizes the operator's continuing responsibility for existing permit areas;

(4) the operator has not provided evidence that the performance bond in effect for the operation and any additional bond the commission may require under Section 134.121 will continue in effect for the renewal requested in the application; or

(5) additional revised or updated information required by the commission has not been provided.

(c) Before renewing a permit, the commission shall notify the appropriate public authorities.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.076. EXTENSION OF PERMIT AREA. (a) Except for incidental boundary revisions, an extension of the permit area must be made by application for another permit.

(b) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the permit, the part of the application that addresses new land areas must meet all standards applicable to a new application under this chapter.

(c) Notwithstanding Subsection (b), if the surface coal mining operations authorized by the existing permit are not subject to the

standards contained in Section 134.066(a)(5), the part of the application for renewal that addresses new land areas previously identified in the reclamation plan submitted under Section 134.041 is not subject to those standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.077. TERM OF RENEWAL PERMIT. A permit renewal is for a term not to exceed the term of the original permit established by this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.078. TIME LIMIT FOR RENEWAL APPLICATION. Application for permit renewal must be made not later than the 120th day before the date the existing permit expires.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.079. APPLICATION FOR PERMIT REVISION. During the term of a permit, the permit holder may submit to the commission an application for a permit revision, together with a revised reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.080. APPROVAL OF PERMIT REVISION. The commission may not approve an application for a permit revision unless the commission finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 143 (S.B. 1478), Sec. 2, eff. May 27, 2011.

Sec. 134.081. GUIDELINES FOR REVISION. (a) The commission shall establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, apply.

(b) A revision that proposes significant alterations in the reclamation plan is subject at a minimum to notice and hearing requirements.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.082. COMMISSION REQUIREMENT OF PERMIT REVISION OR MODIFICATION. (a) The commission, within a time prescribed by rule, shall review outstanding permits and may require reasonable revision or modification of a permit during the term of the permit.

(b) A revision or modification must be supported by a written finding and is subject to the notice and hearing requirements of Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.083. TRANSFER OF PERMIT. A person may not transfer, assign, or sell the rights granted under a permit issued under this chapter without the written approval of the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.084. SUSPENSION OR RESCISSION OF IMPROVIDENTLY ISSUED PERMIT. (a) The commission may suspend or rescind an improvidently issued permit under rules adopted by the commission.

(b) A rule adopted by the commission under this section must be

consistent with and not less effective than a regulation adopted under the federal Act.

(c) Except as provided by Subsection (d), Chapter 2001, Government Code, does not apply to an action by the commission under this section to suspend or rescind an improvidently issued permit.

(d) A permit holder who is given notice of suspension or rescission of an improvidently issued permit under this section may file an appeal for administrative review of the notice as provided by commission rules. The review is governed by Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(g), eff. Sept. 1, 1997.

Sec. 134.085. REVIEW PERIODS FOR NEW PERMITS, RENEWALS, AND REVISIONS. (a) Not later than the seventh day after the date the commission receives an application for a new permit or for renewal or a significant revision of a permit, the director shall complete a review of the application to determine whether the application is complete.

(b) If the director determines that the application is complete, the director shall file the application with the commission's office of general counsel for processing under commission rules and Chapter 2001, Government Code.

(c) If the director determines that the application is not complete, the director shall send a written notice to the applicant that identifies the specific information that the applicant must provide to the commission. Not later than the seventh day after the date the commission receives the requested information, the director shall complete another review of the application to assess the completeness of the application.

(d) Not later than the 120th day after the date the commission receives an application described by Subsection (a) that the director determines is complete, the director shall complete the technical review of the application and make a recommendation to approve or deny the application to the commission's office of general counsel.

(e) If the director determines that the application is deficient under Subsection (d):

(1) the period required by Subsection (d) for completing

the review of the application is tolled until the date the commission receives the requested information from the applicant; and

(2) the director shall send a written notice to the applicant that notifies the applicant:

(A) that the review period required by Subsection (d) is being tolled;

(B) of the reason the review period is being tolled;

(C) of the information the applicant must submit to the commission before the commission will resume the review of the application; and

(D) of the number of days remaining that the commission has to review the application after the commission receives the requested information from the applicant.

(f) If the applicant submits supplemental information to the commission that is not in response to a request for information under Subsection (e), the director may extend the review period required by Subsection (d) for an additional period of not more than 60 days. The director shall provide written notice to the applicant that includes the director's decision regarding whether to extend the review period, the reason for the decision, and the number of days remaining in the review period.

(g) This subsection and Subsection (h) apply only to an application for a permit revision that the director determines is not a significant departure from the approved method or conduct of mining and reclamation operations. Not later than the 90th day after the date the commission receives a complete application, the director shall provide written notice to the applicant that the permit revision request has been approved or denied.

(h) If the director determines that the application is deficient:

(1) the review period required by Subsection (g) to approve or deny the application under this section is tolled until the date the commission receives the requested information from the applicant; and

(2) the director shall send a written notice to the applicant that notifies the applicant:

(A) that the review period required by Subsection (g) is being tolled;

(B) of the reason the review period is being tolled;

(C) of the information that the applicant must submit

to the commission before the commission will resume the review of the revision application; and

(D) of the number of days remaining that the commission has to review the application after the commission receives the requested information from the applicant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 143 (S.B. 1478), Sec. 3, eff. May 27, 2011.

SUBCHAPTER E. PERFORMANCE STANDARDS

Sec. 134.091. OPERATIONS REQUIRED TO MEET PERFORMANCE STANDARDS. A permit issued under this chapter to conduct surface coal mining operations shall require that the operations meet the applicable performance standards of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.092. PERFORMANCE STANDARDS. (a) Performance standards for surface coal mining and reclamation operations shall require an operator:

(1) to conduct surface coal mining operations to maximize the use and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(2) to restore the land affected to a condition capable of supporting the uses that it could support before mining or reasonably likely higher or better uses if:

(A) the uses do not present an actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution; and

(B) the permit applicant's declared proposed land use following reclamation:

(i) is not considered impractical or unreasonable;

(ii) is not inconsistent with applicable land use policies and plans;

(iii) does not involve unreasonable delay in implementation; and

(iv) does not violate federal, state, or local law;

(3) except as provided by Sections 134.093(b), 134.094(b), and 134.107, to backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed to retain moisture to assist revegetation or as otherwise authorized under this chapter;

(4) to stabilize and protect the surface areas, including spoil piles affected by the surface coal mining and reclamation operation, for effective control of erosion and attendant air and water pollution;

(5) to remove the topsoil from the land in a separate layer and replace it on the backfill area or, if the topsoil is not used immediately, to segregate it in a separate pile from other spoil;

(6) to restore the topsoil or the best available subsoil that is best able to support vegetation;

(7) for prime farmland to be mined and reclaimed, at a minimum:

(A) to segregate the A horizon of the natural soil, unless it can be shown that other available soil materials will create a final soil having a greater productive capacity, and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic materials;

(B) to segregate the B horizon of the natural soil, underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of a depth and quality comparable to that which existed in the natural soil and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) to replace and regrade the root zone material described by Subdivision (7)(B) with proper compaction and uniform depth over the regraded spoil material; and

(D) to redistribute and grade uniformly the surface soil horizon described by Subdivision (7)(A);

(8) to create a permanent impoundment of water on a mining site as part of a reclamation activity if:

(A) the approved mining and reclamation plan and permit authorize impoundment; and

(B) it is adequately demonstrated that:

(i) the size of the impoundment is adequate for its intended purposes;

(ii) the impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.);

(iii) the quality of impounded water will be permanently suitable for its intended use;

(iv) discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established under applicable federal and state law;

(v) the water level will be reasonably stable;

(vi) final grading will provide adequate safety and access for proposed water users; and

(vii) the impoundment will not reduce the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) to conduct any augering operation associated with surface mining so as to maximize recoverability of coal reserves remaining after the operation and reclamation are complete and to seal the auger holes with an impervious and noncombustible material to prevent drainage unless the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety;

(10) to minimize disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface-water systems and groundwater systems both during and after surface coal mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by measures including:

(i) preventing water from contacting or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content that

adversely affects downstream water when the drainage is released to a watercourse; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater;

(B) conducting surface coal mining operations to:

(i) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area; and

(ii) prevent those contributions from exceeding requirements set by applicable state or federal law;

(C) constructing any siltation structures under Paragraph (B) before beginning surface coal mining operations;

(D) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the commission;

(E) restoring the recharge capacity of the mined area to approximate premining conditions;

(F) avoiding channel deepening or enlargement in operations requiring the discharge of water from a mine;

(G) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(H) performing other actions the commission prescribes;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations:

(A) to stabilize the waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials, if necessary; and

(B) to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this chapter;

(12) to refrain from surface coal mining within 500 feet of an active or abandoned underground mine to prevent a breakthrough and to protect the health or safety of miners;

(13) to design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards developed under commission rule, existing and new coal mine

waste piles used temporarily or permanently as dams or embankments;

(14) to ensure that debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of surface water or groundwater and that contingency plans are developed to prevent sustained combustion;

(15) to ensure that explosives are used in accordance with state and federal law, including commission rules;

(16) to ensure that reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations;

(17) to ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent:

(A) erosion and siltation;

(B) water pollution; and

(C) damage to:

(i) fish or wildlife or their habitat; or

(ii) public or private property;

(18) to refrain from constructing roads or other access ways up a stream bed or drainage channel or so near the channel as to seriously alter the normal flow of water;

(19) to establish on regraded areas and other affected land a diverse, effective, and permanent vegetative cover:

(A) of the seasonal variety native to the area of land to be affected;

(B) capable of self-regeneration and plant succession; and

(C) at least equal in extent of cover to the natural vegetation of the area;

(20) to assume responsibility for successful revegetation as required by Subdivision (19) for:

(A) five years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with that subdivision, if the land is not previously mined land; or

(B) two years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with that subdivision, if the land is previously mined land;

(21) to protect off-site areas from slides or damage

occurring during the surface coal mining and reclamation operations and to refrain from depositing spoil material or locating any part of the operations or waste accumulations outside the permit area;

(22) to place the excess spoil material resulting from surface coal mining and reclamation activities in accordance with Section 134.106;

(23) to meet other standards necessary to achieve reclamation in accordance with the purposes of this chapter, considering the physical, climatological, and other characteristics of the site;

(24) to the extent possible, using the best technology currently available, to minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values and to enhance those resources where practicable; and

(25) to provide an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the commission determines shall be retained in place as a barrier to slides and erosion.

(b) In Subsection (a)(13), "coal mine waste piles" means piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(h), eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 3, eff. June 17, 2011.

Sec. 134.093. BACKFILLING, GRADING, AND COMPACTING: INSUFFICIENT OVERBURDEN. (a) This section applies to a surface coal mining operation:

(1) that is carried out at the same location over a substantial period;

(2) that transects the coal deposit;

(3) in which the thickness of the coal deposit relative to the volume of the overburden is large; and

(4) for which the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the

permit area or otherwise available from the entire permit area are insufficient, considering volumetric expansion, to restore the approximate original contour.

(b) Notwithstanding Section 134.092(a)(3), the operator, at a minimum, shall backfill, grade, and compact, where advisable, using the available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage, and to cover the acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.094. BACKFILLING, GRADING, AND COMPACTING: SUFFICIENT OVERBURDEN. (a) This section applies to a surface coal mining operation:

(1) in which the volume of overburden is large relative to the thickness of the coal deposit; and

(2) for which the operator demonstrates that because of volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour.

(b) Notwithstanding Section 134.092(a)(3), the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover the acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region. The overburden or spoil shall be shaped and graded to prevent slides, erosion, and water pollution and shall be revegetated in accordance with this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.095. MAINTENANCE OF TOPSOIL OR OTHER STRATA. (a) The performance standards shall require that, if the topsoil is not replaced on a backfill area within a time short enough to avoid

deterioration of the topsoil, the operator shall maintain a successful cover by quick-growing plant or other means so that the topsoil:

(1) is preserved from wind and water erosion;

(2) remains free of contamination by other acid or toxic material; and

(3) is in a usable condition for sustaining vegetation when restored during reclamation.

(b) The performance standards shall require that, if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in the manner provided by Section 134.092(a)(5) and Subsection (a) the other strata that are best able to support vegetation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.096. SPECIFICATIONS FOR SOIL REMOVAL, STORAGE, REPLACEMENT, AND RECONSTRUCTION. For prime farmland to be mined and reclaimed, the applicable specifications for soil removal, storage, replacement, and reconstruction are those established by the secretary of agriculture.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.097. REMOVAL, STORAGE, AND REPLACEMENT OF SOIL AND OVERBURDEN WITHOUT REGARD TO SOIL HORIZONS. (a) This section applies only to prime farmland to be mined and reclaimed.

(b) On proper documentation supporting the use of the mining technique to obtain crop yields equivalent to or higher than yields on surrounding nonmined soil of the same type, the commission may authorize the permit holder, without regard to soil horizons, to:

(1) remove the soil and overburden in one step;

(2) store the soil and overburden in one stockpile; and

(3) begin reclamation by replacing and grading the stockpile material.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.098. PROHIBITION ON AUGERING. The commission may prohibit augering if necessary to:

(1) maximize the use, recoverability, or conservation of the solid fuel resources; or

(2) protect against adverse water quality impacts.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.099. CERTIFICATION OF SILTATION STRUCTURE. The performance standards shall require that a siltation structure constructed under Section 134.092(a)(10)(B) be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.100. PROXIMITY OF MINE TO UNDERGROUND MINES: EXCEPTION. Notwithstanding Section 134.092(a)(12), the commission shall permit an operator to mine near or through an abandoned underground mine or closer to an active underground mine than allowed by that section if:

(1) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners; and

(2) the operations will result in:

(A) improved resource recovery;

(B) abatement of water pollution; or

(C) elimination of hazards to the health and safety of the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.101. RULES REGARDING USE OF EXPLOSIVES. The commission rules described by Section 134.092(a)(15) shall require that:

(1) adequate advance written notice be given to local governments and residents who might be affected by the use of the explosives, by:

(A) publishing the planned blasting schedule in a newspaper of general circulation in the locality;

(B) mailing a copy of the proposed blasting schedule to each resident living within one-half mile of the proposed blasting site; and

(C) providing daily notice to residents in the area before blasting;

(2) a log be maintained for at least three years and made available for public inspection on request, detailing:

(A) the location of the blasts;

(B) the pattern and depth of the drill holes;

(C) the amount of explosives used for each hole; and

(D) the order and length of delay in the blasts;

(3) the type of explosives and detonating equipment and the size, timing, and frequency of blasts be limited according to the physical conditions of the site to prevent:

(A) injury to persons;

(B) damage to public and private property outside the permit area;

(C) adverse impacts on an underground mine; and

(D) change in the course, channel, or availability of groundwater or surface water outside the permit area;

(4) blasting operations be conducted by trained and competent persons certified by the commission; and

(5) on the request of a resident or owner of a man-made structure within one-half mile of the permit area, the applicant or permit holder:

(A) conduct a preblasting survey of the structures in an area to be decided by the commission; and

(B) submit the survey to the commission with a copy to the resident or owner making the request.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.102. VARIANCE TO PERMIT UNDERGROUND MINING OPERATIONS BEFORE RECLAMATION. (a) The commission may grant a variance from the contemporaneous reclamation requirement of Section 134.092(a)(16) for specific areas within the reclamation plan to permit underground mining operations before reclamation if:

(1) the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources; and

(2) the commission finds in writing that:

(A) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbances of the surface;

(C) the applicant has satisfactorily demonstrated that:

(i) the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction; and

(ii) permits necessary for the underground mining operations have been issued by the appropriate authority;

(D) the applicant has shown that the areas proposed for the variance are necessary for implementing the proposed underground mining operations;

(E) substantial environmental damage, either on or off the site, will not result from the delay in completing reclamation as required by this chapter; and

(F) provisions for the off-site storage of spoil will comply with Section 134.106.

(b) Liability under the bond filed by the applicant with the commission under Section 134.121 must extend for the duration of the underground mining operations and until Sections 134.092 through 134.106 and Sections 134.128 through 134.134 have been complied with.

(c) The commission must adopt specific rules to govern the granting of a variance under this section and may impose additional requirements it considers necessary.

(d) The commission shall review a variance granted under this section not later than the third anniversary of the date the permit is issued.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.103. USE OF INTRODUCED SPECIES FOR REVEGETATION. Notwithstanding Section 134.092(a)(19), introduced species may be used in the revegetation process where necessary to achieve the approved postmining land use plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.104. RESPONSIBILITY FOR REVEGETATION: AREA OF LOW PRECIPITATION. Notwithstanding Section 134.092(a)(20), in areas or regions of the state where the annual average precipitation is 26 inches or less, an operator's assumption of responsibility and liability extends for:

(1) 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work, if the land is not previously mined land; or

(2) five years after the last year of augmented seeding, fertilizing, irrigation, or other work, if the land is previously mined land.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 4, eff. June 17, 2011.

Sec. 134.105. RESPONSIBILITY FOR REVEGETATION: LONG-TERM INTENSIVE AGRICULTURAL POSTMINING USE. (a) The applicable period of responsibility for revegetation begins on the date of initial planting for long-term intensive agricultural postmining land use if the commission approves a long-term intensive agricultural postmining

land use.

(b) The commission may grant an exception to Section 134.092(a)(19) if the commission issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 5, eff. June 17, 2011.

Sec. 134.106. SPOIL DISPOSAL. (a) The performance standards shall require an operator:

(1) to transport the excess spoil material resulting from surface coal mining and reclamation activities and place it in a controlled manner in position for concurrent compaction to assure mass stability and to prevent mass movement;

(2) to dispose of spoil only within the bonded permit areas;

(3) to remove the organic matter immediately before spoil placement;

(4) to use appropriate surface and internal drainage systems and diversion ditches to prevent spoil erosion and movement;

(5) to use a spoil disposal area that does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that prevents the water from filtering into the spoil pile;

(6) if the spoil is placed on a slope:

(A) to place the spoil on the most moderate slope among the slopes on which, in the judgment of the commission, the spoil could be placed in compliance with this chapter; and

(B) where possible, to place the spoil on or above a natural terrace, bench, or berm if that placement provides additional stability and prevents mass movement;

(7) to construct a rock toe buttress of sufficient size to prevent mass movement if the toe of the spoil rests on a downslope; and

(8) to place the spoil in compliance with other provisions

of this chapter.

(b) The final configuration of the spoil disposal area shall be compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(c) The design of the spoil disposal area shall be certified by a qualified registered professional engineer in conformance with professional standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.107. PERMIT WITHOUT REGARD TO REQUIREMENT TO RESTORE TO APPROXIMATE ORIGINAL CONTOUR. (a) The commission may grant a permit, without regard to the requirement to restore to approximate original contour set forth in Section 134.092(a)(3) or 134.108(a)(2), for the surface mining of coal if:

(1) the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided by Subsection (b)(1), by removing the overburden and creating a level plateau or a gently rolling contour that has no highwalls remaining and that can support postmining uses in accord with this section;

(2) an industrial, commercial, agricultural, residential, or public facility use, including use as a recreational facility, is proposed for the postmining use of affected land;

(3) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is considered to constitute an economic or public use of the affected land equal to or better than premining use;

(4) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be:

(A) compatible with adjacent land uses;

(B) obtainable according to data regarding expected need and market;

(C) assured of investment in necessary public facilities;

(D) supported by commitments from public agencies, where appropriate;

(E) practicable with respect to private financial

capability for completion of the proposed use;

(F) planned under a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(G) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(5) the proposed use is consistent with adjacent land uses and existing state and local land use plans and programs;

(6) the commission provides the county in which the land is located and any state or federal agency that the commission, in its discretion, determines to have an interest in the proposed use an opportunity of not more than 60 days to review and comment on the proposed use; and

(7) the other requirements of this chapter are met.

(b) In granting a permit under this section, the commission shall require that:

(1) the toe of the lowest coal seam and the associated overburden are retained in place as a barrier to slides and erosion;

(2) the reclaimed area is stable;

(3) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(4) natural watercourses are not damaged;

(5) spoil is placed on the mountaintop bench as necessary to achieve the planned postmining land use and any excess spoil material not retained on the mountaintop is placed in accordance with Section 134.106;

(6) the stability of the spoil retained on the mountaintop is ensured; and

(7) the other requirements of this chapter are met.

(c) The commission shall adopt specific rules to govern the granting of permits under this section and may impose additional requirements it considers necessary.

(d) A permit granted under this section shall be reviewed not later than the third anniversary of the date the permit is issued unless the applicant demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.108. STEEP SLOPE SURFACE COAL MINING. (a) An operator of a steep slope surface coal mining operation, in addition to meeting the general performance standards of this subchapter:

(1) shall ensure that during surface coal mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter is not placed on the downslope below the bench or mining cut;

(2) shall backfill with spoil material to:

(A) return the site to the approximate original contour; and

(B) maintain the stability of the material after mining and reclamation; and

(3) may not disturb land above the top of the highwall.

(b) Notwithstanding Subsection (a)(1), the operator shall permanently store under Section 134.106 spoil material in excess of that required to reconstruct the approximate original contour under Section 134.092(a)(3) or Subsection (a)(2).

(c) Notwithstanding Subsection (a)(3), the operator may disturb land above the top of the highwall if the commission finds that the disturbance will facilitate compliance with the environmental protection standards of this subchapter. The amount of land disturbed above the highwall may not exceed the amount necessary to facilitate the compliance.

(d) This section does not apply to an operator who:

(1) is mining on flat or gently rolling terrain on which an occasional steep slope is encountered through which the mining operations are to proceed, leaving a plain or predominantly flat area; or

(2) meets the requirements of Section 134.107.

(e) In this section, "steep slope" means a slope:

(1) that exceeds 20 degrees; or

(2) less than or equal to 20 degrees determined by the commission to be a steep slope after considering soil, climate, or other characteristics of the region or the state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.109. VARIANCE FROM REQUIREMENT TO RESTORE CONTOUR. (a) The commission may grant a variance from the requirement in Section 134.108(a)(2) to restore to approximate original contour after steep slope surface coal mining if:

(1) the surface owner requests in writing, as part of the permit application, that the variance be granted to render the land suitable after reclamation for industrial, commercial, residential, or public use, including use as a recreational facility;

(2) the watershed control of the affected area is improved; and

(3) other requirements of this section are met.

(b) The watershed control of an affected area is considered to be improved for purposes of Subsection (a) if the potential use of the affected land is:

(1) considered by the commission, after consultation with the appropriate land use planning agencies, if any, to constitute an economic or public use equal to or better than the premining use;

(2) designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(3) approved by the appropriate state environmental agencies.

(c) In granting a variance under this section, the commission shall require the operator to:

(1) backfill with spoil material to cover the highwall completely and ensure that the material maintains stability after mining and reclamation;

(2) place off the mine bench only the amount of spoil necessary to achieve the planned postmining land use;

(3) comply with Section 134.106 in placing spoil off the mine bench;

(4) ensure stability of the spoil retained on the bench; and

(5) meet the other requirements of this chapter.

(d) The commission shall adopt specific rules to govern the granting of variances under this section and may impose additional

requirements it considers necessary.

(e) A variance granted under this section shall be reviewed not later than the third anniversary of the date the permit is issued unless the permit holder demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.110. WATER SUPPLY REPLACEMENT. The operator of a surface coal mining operation shall replace the water supply of an owner of an interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source if the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER F. BONDS AND DEPOSITS

Sec. 134.121. PERFORMANCE BOND REQUIREMENT. (a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed and furnished by the commission, a performance bond payable to this state and conditioned on the faithful performance of the requirements of this chapter and the permit.

(b) The bond shall cover the area of land in the permit area on which the applicant will begin and conduct surface coal mining and reclamation operations during the initial term of the permit.

(c) The permit holder shall provide an additional bond or bonds to cover a succeeding increment of surface coal mining and reclamation operations conducted in the permit area at the time the increment begins.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.122. AMOUNT OF BOND. (a) The commission shall determine the amount of the bond required for each bonded area.

(b) The amount of the bond shall:

(1) reflect the probable difficulty of the reclamation, considering factors including:

(A) topography;

(B) geology of the site;

(C) hydrology; and

(D) revegetation potential; and

(2) be sufficient to assure completion of the reclamation plan if the commission has to perform the work in the event of forfeiture.

(c) The bond for the entire area under one permit may not be less than $10,000.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.123. BOND WITHOUT SURETY. The commission may accept the bond of an applicant without separate surety if the applicant demonstrates to the satisfaction of the commission the existence of a suitable and continuous operation sufficient for authorization to self-insure or bond the amount.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.124. ALTERNATIVE TO BONDING PROGRAM. Instead of establishing a bonding program under this subchapter, the commission may approve an alternative system that will achieve the purposes of the bonding program under this subchapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.125. EXTENT OF LIABILITY UNDER BOND. Liability under

the bond shall be for the duration of the surface coal mining and reclamation operation and of the applicant's responsibility for revegetation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.126. SECURITY FOR BOND. (a) The applicant and a corporate surety licensed to do business in this state shall execute the bond unless the applicant elects to deposit security under Subsection (b).

(b) The applicant may elect to deposit as security for the performance of the applicant's obligations under the bond:

(1) cash;

(2) negotiable bonds of the United States government or the state; or

(3) negotiable certificates of deposit of a bank organized or transacting business in the United States.

(c) The cash deposit or market value of the securities deposited under Subsection (b) must equal or exceed the amount of the bond required for the bonded area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.127. ADJUSTMENT OF AMOUNT OF BOND OR DEPOSIT. The commission periodically shall adjust the amount of the bond or deposit required and the terms of each acceptance of the applicant's bond to reflect changes in:

(1) the acreage affected; or

(2) the cost of future reclamation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.128. APPLICATION FOR RELEASE OF BOND OR DEPOSIT. The permit holder may file a request with the commission for the release of all or part of a performance bond or deposit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.129. NOTICE. (a) Not later than the 30th day after the date the permit holder files with the commission an application for release of a bond or deposit, the permit holder shall submit a copy of an advertisement placed at least once a week for four consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement is part of a bond release application and shall:

(1) identify the precise location of the land affected;

(2) state the number of acres;

(3) identify the permit and the date the permit was approved;

(4) state the amount of the bond filed and the portion sought to be released;

(5) describe the type and give appropriate dates of reclamation work performed; and

(6) describe the results achieved as they relate to the permit holder's reclamation plan.

(b) As part of a bond release application, the applicant shall submit copies of letters the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality, as the commission directs, notifying them of the applicant's intention to seek release from the bond.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.130. INSPECTION AND EVALUATION. (a) Not later than the 30th day after the date the commission receives a request under Section 134.128 and a copy of an advertisement or letters under Section 134.129, the commission shall inspect and evaluate the reclamation work involved.

(b) The evaluation shall consider, among other things:

(1) the degree of difficulty in completing any remaining reclamation;

(2) whether pollution of surface and subsurface water is occurring;

(3) the probability that pollution will continue to occur in the future; and

(4) the estimated cost of abating the pollution.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.131. RELEASE OF BOND OR DEPOSIT. (a) The commission may release part or all of the bond or deposit if the commission is satisfied that the reclamation covered by the bond or deposit or part of the reclamation has been accomplished as required by this chapter according to the schedule provided by this section.

(b) The commission may release 60 percent of the bond or deposit for the applicable permit area if the permit holder completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan.

(c) The commission may release part of the bond after successful revegetation has been established on the regraded mined lands in accordance with the reclamation plan. In determining the amount of the bond to be released under this subsection, the commission shall retain, for the period of permit holder responsibility specified under Section 134.092(a)(20), 134.104, or 134.105, a bond amount for the revegetated area that is sufficient for a third party to establish revegetation.

(d) The commission may not release any of the bond or deposit under Subsection (c) if:

(1) the land to which the release would apply is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of Section 134.092(a)(10); or

(2) soil productivity for prime farmland has not returned to levels of yield equivalent to those of nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey performed under Section 134.052(a)(16).

(e) If a silt dam will be retained as a permanent impoundment under Section 134.092(a)(8), the commission may release the part of

the bond authorized by Subsection (c) after provisions for sound future maintenance have been made with the commission.

(f) The commission may release the remaining part of the bond if:

(1) the permit holder has successfully completed all surface coal mining and reclamation activities;

(2) the period of permit holder responsibility specified under Section 134.092(a)(20), 134.104, or 134.105 has expired; and

(3) all reclamation requirements of this chapter have been met.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.132. NOTICE TO PERMIT HOLDER OF DECISION TO APPROVE OR DISAPPROVE RELEASE. (a) The commission shall notify the permit holder in writing of its decision to release or not to release all or part of the bond or deposit:

(1) not later than the 60th day after the date the request is filed if a public hearing is not held; or

(2) not later than the 30th day after the date of the hearing if a public hearing is held.

(b) If the commission disapproves the application for release of all or part of the bond, it shall notify the permit holder, in writing:

(1) stating the reasons for disapproval;

(2) recommending corrective actions necessary to secure the release; and

(3) allowing opportunity for a public hearing.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.133. NOTICE TO COUNTY JUDGE. Not later than the 31st day before the date of release of all or part of a bond, the commission, by certified mail, shall notify the county judge of any county in which the surface coal mining operation is located that an application for the release has been filed with the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.134. OBJECTIONS TO RELEASE. (a) A person is entitled to file a written objection to a proposed release of a bond if the person:

(1) has a legal interest that might be adversely affected by release of the bond; or

(2) is the responsible officer or head of a federal, state, or local governmental agency that:

(A) has jurisdiction by law or has special expertise with respect to an environmental, social, or economic impact involved in the mining operation; or

(B) is authorized to develop and enforce environmental standards with respect to the operation.

(b) Objections must be filed with the commission not later than the 30th day after the date of the last publication of the notice under Section 134.129.

(c) If a written objection is filed and a public hearing is requested, not later than the 30th day after the date the hearing is requested the commission shall:

(1) inform the interested parties of the time and place of the hearing; and

(2) hold the hearing in the locality of the surface coal mining operation or at the state capital, at the option of the person objecting to the proposed release.

(d) The commission shall advertise the date, time, and location of the hearing in a newspaper of general circulation in the locality of the surface coal mining operation for two consecutive weeks.

(e) The hearing and any appeal shall be conducted under Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER G. ABANDONED MINE RECLAMATION

Sec. 134.141. FUND PARTICIPATION. (a) The commission may take any action necessary to:

(1) ensure this state's participation to the fullest extent practicable in the abandoned mine reclamation fund established by the federal Act; and

(2) act as this state's agency for that participation.

(b) Under the federal Act, the commission by rule shall:

(1) establish priorities that meet the terms of that Act for the expenditure of money in the fund;

(2) designate the land and water eligible for reclamation or abatement expenditures;

(3) submit reclamation plans, annual projects, and applications to the appropriate authorities under that Act; and

(4) administer money received for abandoned mine reclamation or related purposes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.142. ELIGIBILITY OF LAND AND WATER. Land and water are eligible for reclamation or abatement expenditures under this subchapter if the land and water are eligible for reclamation or abatement expenditures under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1307, Sec. 1, eff. Sept. 1, 1997.

Sec. 134.143. RIGHT OF ENTRY. The commission is entitled to enter any property to conduct studies or exploratory work to determine:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.144. RECLAMATION BY COMMISSION. (a) The commission

is entitled to enter property adversely affected by past coal mining practices or other property necessary to have access to that property to do the things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects if the commission:

(1) makes a finding of fact that:

(A) land or water resources have been adversely affected by past coal mining practices;

(B) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken; and

(C) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:

(i) are not known or readily available; or

(ii) will not permit this state or a political subdivision to enter the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; and

(2) gives notice by mail to the owners, if known, or, if not known, by posting notice on the premises and advertising once in a newspaper of general circulation in the county in which the land lies.

(b) The money expended for the work and the benefits accruing to the premises entered are chargeable against the land and mitigate or offset a claim for, or an action brought by an owner of an interest in the premises for, damages from the entry. This subsection does not create a new right of action or eliminate an existing immunity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.145. ACQUISITION. This state may acquire by purchase, donation, or condemnation land that is adversely affected by past coal mining practices if:

(1) it is in the public interest; and

(2) the commission determines that:

(A) acquiring the land is necessary for successful

reclamation;

(B) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will:

(i) serve recreational and historical purposes;

(ii) serve conservation and reclamation purposes; or

(iii) provide open space benefits; and

(C) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, acquisition of coal refuse disposal sites and the coal refuse on those sites will serve the purposes of this section, or public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.146. TITLE. Title to land acquired under Section 134.145 shall be in the name of this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.147. COST OF LAND. The price paid for land acquired under Section 134.145 shall reflect the market value of the land as adversely affected by past coal mining practices.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.148. SALE OF ACQUIRED LAND. (a) If land acquired under Section 134.145 is considered suitable for industrial, commercial, residential, or recreational development, this state may sell the land by public sale under a system of competitive bidding at not less than fair market value and under rules adopted to ensure

that the land is put to proper use consistent with local plans, if any, as determined by the commission.

(b) The land may be sold only when authorized by the secretary of the interior if federal money was involved in the acquisition of the land to be sold.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.149. HEARING ON SALE. (a) The commission, after appropriate public notice and on request, shall hold a public hearing in the county or counties in which land acquired under Section 134.145 is located.

(b) The hearing shall be held at a time that gives residents and local governments maximum opportunity to participate in the decision about the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.150. LIEN. (a) Not later than six months after the date projects to reclaim privately owned land are completed, the commission:

(1) shall itemize the money spent; and

(2) may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money spent will result in a significant increase in property value.

(b) The statement is a lien on the land second only to a property tax lien. The amount of the lien may not exceed the amount determined by either of two appraisals to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(c) A lien may not be filed under this section against the

property of a person who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 815 (S.B. 1666), Sec. 1, eff. June 15, 2007.

Sec. 134.151. HEARING ON LIEN. Not later than the 60th day after the date the lien is filed, an affected landowner may petition the commission for a hearing on the amount of the lien. The hearing and any appeal shall be conducted under Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.152. EMERGENCY POWERS. (a) The commission may spend money available for abandoned mine reclamation for the emergency restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices on eligible land and water if the commission finds that:

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) there is not another person who will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(b) The commission may enter land where an emergency exists and other land necessary to have access to that land to:

(1) restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices; and

(2) do the things necessary or expedient to protect the public health, safety, or general welfare.

(c) Entry under this section is an exercise of the police power and not an act of condemnation of property or trespass.

(d) Money spent under this section and the benefits accruing to the premises entered are chargeable against the land and mitigate or

offset a claim for, or an action brought by an owner of an interest in the premises for, damages by virtue of the entry. This subsection does not create a new right of action or eliminate an existing immunity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER H. ENFORCEMENT

Sec. 134.161. CONDITION, PRACTICE, OR VIOLATION CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) The commission or its authorized representative shall immediately order the cessation of surface coal mining operations or the relevant part of those operations if, after an inspection, the commission or its authorized representative determines that:

(1) a condition exists, a practice exists, or a violation of this chapter or a permit condition required by this chapter exists; and

(2) the condition, practice, or violation:

(A) creates an imminent danger to the health or safety of the public; or

(B) is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources.

(b) The commission, in addition to the cessation order, shall require the operator to take any steps the commission considers necessary to completely abate the imminent danger to health or safety or significant imminent environmental harm if the commission finds that the ordered cessation will not completely abate the imminent danger or environmental harm.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.162. VIOLATION NOT CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) The commission or its authorized representative shall issue a notice to a permit holder who is violating this chapter or a permit condition required by this chapter and shall set a reasonable time not to exceed 90 days for abating the violation if,

after an inspection, the commission or its authorized representative determines that:

(1) the permit holder is violating this chapter or a permit condition required by this chapter; and

(2) the violation:

(A) does not create an imminent danger to the health or safety of the public; and

(B) is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources.

(b) The commission or its authorized representative shall order a cessation of surface mining operations or the part of the operations relevant to the violation if:

(1) the time for abatement, as originally set or subsequently extended, expires;

(2) the commission or its authorized representative shows good cause; and

(3) the commission or its authorized representative finds in writing that the violation has not been abated.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.163. TERM OF CESSATION ORDER. Except as provided by Section 134.167, a cessation order under Section 134.161 or 134.162 remains in effect until the commission:

(1) determines the condition, practice, or violation has been abated; or

(2) modifies, vacates, or terminates the order under Section 134.166.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(i), eff. Sept. 1, 1997.

Sec. 134.164. CONTINUOUS VIOLATION. (a) The commission shall issue an order to a permit holder promptly to show cause why a permit should not be suspended or revoked if, after an inspection:

(1) the commission has reason to believe that a pattern of

violations of this chapter or of permit conditions required by this chapter exists or has existed; and

(2) the commission or its authorized representative finds that the violations are:

(A) caused by the unwarranted failure of the permit holder to comply with this chapter or the permit conditions; or

(B) wilfully caused by the permit holder.

(b) The order shall set a time, place, and date for a public hearing. The hearing is of record and is subject to Chapter 2001, Government Code.

(c) The commission shall promptly suspend or revoke the permit if the permit holder does not show cause why the permit should not be suspended or revoked.

(d) The permit holder shall immediately stop surface coal mining operations on the permit area and shall complete reclamation within a time specified by the commission if the commission revokes the permit. The commission shall declare the performance bonds for the operation forfeited if the permit holder fails to comply with this subsection.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.165. FORM OF NOTICE OR ORDER. (a) A notice or order issued under Section 134.161, 134.162, or 134.164 shall:

(1) state with reasonable specificity the nature of the violation and the remedial action required;

(2) state the time established for abatement; and

(3) reasonably describe the part of the surface coal mining and reclamation operation to which the notice or order applies.

(b) The commission or its authorized representative shall promptly give the notice or order to the permit holder or the permit holder's agent.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.166. MODIFICATION, VACATION, OR TERMINATION OF NOTICE OF ORDER. The commission or its authorized representative may

modify, vacate, or terminate a notice or order issued under Section 134.161, 134.162, or 134.164.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.167. EXPIRATION OF NOTICE OR ORDER. If a notice or order issued under Section 134.161, 134.162, or 134.164 requires the operator to stop mining, the notice or order expires not later than the 30th day after the date of actual notice to the operator unless a public hearing is held at or reasonably near the site so that the site can be viewed during the hearing.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.168. APPLICATION FOR COMMISSION REVIEW OF NOTICE OR ORDER. (a) A permit holder to whom the commission issues a notice or order under Section 134.161 or 134.162 or an affected person may apply to the commission for review of the notice or order not later than the 30th day after the date of receipt of the notice or order or the date the notice or order is modified, vacated, or terminated.

(b) The filing of an application for review under this section does not stay a notice or order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.169. INVESTIGATION AND HEARING ON APPLICATION FOR REVIEW. (a) On receipt of an application filed under Section 134.168, the commission shall investigate as it considers appropriate.

(b) The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the affected person, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order.

(c) The permit holder and other affected persons shall be given

written notice of the time and place of the hearing not later than the sixth day before the date of the hearing.

(d) The hearing is of record and is subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.170. COMMISSION FINDINGS AND DECISION. (a) On receiving the investigation report, the commission shall:

(1) make findings of fact; and

(2) issue a written decision incorporating:

(A) its findings; and

(B) an order vacating, affirming, modifying, or terminating:

(i) the notice or order; or

(ii) the modification, vacation, or termination of the notice or order.

(b) If the application for review concerns a cessation order issued under Section 134.161 or 134.162, the commission shall issue the written decision not later than the 30th day after the date it receives the application for review unless it grants temporary relief under Section 134.171.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.171. REQUEST FOR TEMPORARY RELIEF. (a) Before the investigation and hearing required by Section 134.169 are completed, the applicant may file with the commission a written request that the commission grant temporary relief from a notice or order issued under Section 134.161 or 134.162, together with a detailed statement giving reasons for granting the relief.

(b) The commission shall promptly issue an order or decision granting or denying the relief. If the applicant requests relief from a cessation order issued under Section 134.161 or 134.162, the order or decision on the request shall be issued not later than the fifth day after the date the request is received.

(c) The commission may grant the relief, under conditions

prescribed by the commission, if:

(1) a hearing has been held:

(A) in the locality of the permit area on the request for temporary relief; and

(B) in which all parties have had an opportunity to be heard;

(2) the applicant shows that there is a substantial likelihood that the findings of the commission will favor the applicant; and

(3) the relief will not:

(A) adversely affect the health or safety of the public; or

(B) cause significant, imminent environmental harm to land, air, or water resources.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.172. ASSESSMENT OF COSTS INCURRED IN ADMINISTRATIVE PROCEEDING OR JUDICIAL REVIEW. (a) If the commission issues an order under Sections 134.161 through 134.171 or in an administrative proceeding under this chapter, the commission may, on request of any person, assess against the person to whom the order is issued or the commission the costs and expenses, including attorney's fees, that the commission determines the requestor reasonably incurred in connection with the requestor's participation in the action or proceeding.

(b) If the commission issues an order under Sections 134.161 through 134.171 or in an administrative proceeding under this chapter and the commission's decision is appealed, the court may, on request of any person, assess against the person to whom the order is issued or the commission the costs and expenses, including attorney's fees, that the commission determines the requestor reasonably incurred in connection with the requestor's participation in judicial review of the action or proceeding.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.173. CIVIL ACTION. (a) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permit holder:

(1) violates, fails, or refuses to comply with an order or decision issued by the commission under this chapter;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out Sections 134.161 through 134.172;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to allow an authorized representative to inspect the mine;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to allow access to and copying of records the commission determines reasonably necessary to carry out this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater part of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide appropriate relief.

(d) Relief granted by the court to enforce Subsection (a)(1) continues in effect until the earlier of the date on which:

(1) all proceedings for review of the order are completed or finally terminated; or

(2) the court sets aside or modifies the order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.174. ADMINISTRATIVE PENALTY FOR VIOLATION OF PERMIT CONDITION OF THIS CHAPTER. (a) The commission may assess an administrative penalty against a person who violates a permit condition or this chapter. The commission shall assess an administrative penalty if the violation leads to the issuance of a cessation order.

(b) The penalty may not exceed $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the person's history of violations at the particular surface coal mining operation;

(2) the seriousness of the violation, including:

(A) any irreparable harm to the environment; and

(B) any hazard to the health or safety of the public;

(3) whether the person was negligent; and

(4) the demonstrated good faith of the person in attempting to comply rapidly after notification of the violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 431 (S.B. 1667), Sec. 1, eff. September 1, 2007.

Sec. 134.175. PENALTY ASSESSMENT PROCEDURE. (a) The commission may assess an administrative penalty under Section 134.174 only after giving the person charged with a violation an opportunity for a public hearing.

(b) If a public hearing is held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty. The decision shall incorporate, if appropriate, an order to pay the penalty.

(c) If appropriate, the commission shall consolidate the hearing with other proceedings under Sections 134.161 through 134.173. A hearing under this section is of record and is subject to Chapter 2001, Government Code.

(d) If the person does not take the opportunity for a public hearing, the commission may assess an administrative penalty after determining that a violation has occurred and the amount of the penalty. The commission shall then issue an order to pay the penalty.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.176. PAYMENT OF PENALTY; REFUND. (a) Not later than

the 30th day after the date the commission issues a notice or order charging that a violation of this chapter has occurred, the commission shall inform the person charged of the proposed amount of the penalty.

(b) Not later than the 30th day after the date the person is informed under Subsection (a), the person shall:

(1) pay the proposed penalty in full; or

(2) forward the proposed amount to the commission for placement in an escrow account if the person wishes to contest the amount of the penalty or the fact of the violation.

(c) If administrative or judicial review of the proposed penalty determines that a violation did not occur or that the amount of the penalty should be reduced, the commission, not later than the 30th day after the date of the determination, shall remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.177. ADMINISTRATIVE PENALTY FOR FAILING TO CORRECT VIOLATION FOR WHICH CITATION HAS BEEN ISSUED. (a) The commission shall assess a person who does not correct a violation for which a citation has been issued under Section 134.161 within the time permitted for its correction an administrative penalty of not less than $750 for each day the violation continues after that time.

(b) If the person initiates a review proceeding in which the commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the person will suffer irreparable loss or damage from the application of those requirements, the period during which the person must correct the violation before the commission may impose an administrative penalty under this section expires when the commission enters a final order.

(c) If the person initiates a review proceeding in which a court orders the suspension of an abatement requirement of the citation, the period during which the person must correct the violation before the commission may impose an administrative penalty under this section expires when the court enters an order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.178. RECOVERY OF ADMINISTRATIVE PENALTY. The attorney general at the request of the commission may bring a civil action to recover an administrative penalty owed under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.179. CRIMINAL PENALTY FOR WILFUL AND KNOWING VIOLATION. (a) A person commits an offense if the person wilfully and knowingly violates a condition of a permit issued under this chapter or does not comply with an order issued under this chapter, except an order incorporated in a decision issued by the commission under Section 134.175.

(b) An offense under this section is punishable by:

(1) a fine of not more than $10,000;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.180. CRIMINAL PENALTY FOR FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION. (a) A person commits an offense if the person knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification, in an application, record, report, or other document filed or required to be maintained under this chapter or under an order of decision issued by the commission under this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than $10,000;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.181. PENALTY FOR DIRECTOR, OFFICER, OR AGENT OF CORPORATION. (a) If a corporation violates a condition of a permit issued under this chapter or does not comply with an order issued under Section 134.161, 134.162, 134.164, 134.166, 134.170, 134.171, 134.172, or 134.173 or an order incorporated in a final decision issued by the commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation or noncompliance is subject to the same administrative penalties, fines, and imprisonment that may be imposed under Sections 134.174 and 134.179.

(b) Subsection (a) does not apply to the violation of an order incorporated in a decision issued by the commission under Section 134.175.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.182. CITIZEN SUIT. (a) Except as provided by Subsection (d), an affected person may bring a civil action to compel compliance with this chapter against:

(1) the commission if the person alleges the commission did not perform a nondiscretionary act under this chapter;

(2) a state governmental instrumentality or agency if the person alleges the instrumentality or agency is violating this chapter or a rule, order, or permit adopted or issued under this chapter; or

(3) any other person if the person alleges the other person is violating a rule, order, or permit adopted or issued under this chapter.

(b) A person who is injured or whose property is damaged by a permit holder's violation of a rule, order, or permit adopted or issued under this chapter may bring an action for damages, including reasonable attorney's and expert witness's fees.

(c) Subsection (b) does not affect the rights established by or limits imposed under the workers' compensation laws of this state.

(d) A person may not bring an action under Subsection (a)(2) or

(3) if the state has brought and is diligently prosecuting a civil action in state or federal court to require compliance with this chapter or a rule, order, or permit adopted or issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.183. NOTICE TO COMMISSION BEFORE BRINGING SUIT; SUIT BY STATE. (a) A person must give written notice to the commission of an action under Section 134.182(a)(1) not later than the 61st day before the date the person brings the action.

(b) The person must give notice under Subsection (a) as prescribed by commission rule.

(c) The person may bring the action immediately after notifying the commission if the violation or order complained of:

(1) constitutes an imminent threat to the health or safety of the person; or

(2) would immediately affect a legal interest of the person.

(d) A person must give written notice of the violation to the commission and any alleged violator not later than the 61st day before the date the person brings an action under Section 134.182(a)(2) or (3).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.184. VENUE. A person may bring an action under Section 134.182 only in the judicial district in which the surface coal mining operation complained of is located.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.185. INTERVENTION BY COMMISSION. The commission may intervene as a matter of right in an action brought under Section 134.182.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.186. COSTS OF SUIT; FILING OF BOND. (a) In issuing a final order in an action brought under Section 134.182(a), a court may award a party litigation costs, including attorney's and expert witness's fees, if the court determines the award is appropriate.

(b) The court may require a person to file a bond or equivalent security in accordance with the Texas Rules of Civil Procedure if the person seeks a temporary restraining order or preliminary injunction.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.187. RIGHTS UNDER OTHER LAW. Sections 134.182 through 134.186 do not restrict any right a person or class of persons may have under a statute or common law to seek enforcement of this chapter and rules adopted under this chapter or to seek other relief, including relief against the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.188. DEFENSE. It is a defense to a civil or criminal penalty under this chapter that a person allegedly conducting an iron ore or iron ore gravel mining and reclamation operation in violation of this chapter has a written general warranty of ownership of land, separate from any lease, from the person authorizing the operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

TITLE 5. GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES

CHAPTER 141. GEOTHERMAL RESOURCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 141.001. SHORT TITLE. This chapter may be cited as the Geothermal Resources Act of 1975.

Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.002. DECLARATION OF POLICY. It is declared to be the policy of the State of Texas that:

(1) the rapid and orderly development of geothermal energy and associated resources located within the State of Texas is in the interest of the people of the State of Texas;

(2) in developing the state's geothermal energy and associated resources, the primary purpose is to provide a dependable supply of energy in an efficient manner that avoids waste of the energy resources;

(3) consideration shall be afforded to protection of the environment, to protection of correlative rights, and to conservation of natural resources by all agencies and officials of the State of Texas involved in directing and prescribing rules or orders governing the exploration, development, and production of geothermal energy and associated resources and by-products in Texas;

(4) since geopressured geothermal resources in Texas are an energy resource system, and since an integrated development of components of the resources, including recovery of the energy of the geopressured water without waste, is required for best conservation of these natural resources of the state, all of the resource system components, as defined in this chapter, shall be treated and produced as mineral resources; and

(5) in making the declaration of policy in Subdivision (4) of this section, there is no intent to make any change in the substantive law of this state, and the purpose is to restate the law in clearer terms to make it more accessible and understandable.

Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 394, ch. 185, Sec. 1, eff. Aug. 27, 1979.

Sec. 141.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Board" means the School Land Board.

(3) "Commissioner" means the Commissioner of the General

Land Office.

(4) "Geothermal energy and associated resources" means:

(A) products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;

(B) steam and other gasses, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(C) heat or other associated energy found in geothermal formations; and

(D) any by-product derived from them.

(5) "By-product" means any other element found in a geothermal formation which is brought to the surface, whether or not it is used in geothermal heat or pressure inducing energy generation. The term does not include:

(A) a mineral, as defined by Section 75.001, Property Code; or

(B) oil, gas, or a product of oil or gas, as defined by Section 85.001.

Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 395, ch. 185, Sec. 2, eff. Aug. 27, 1979.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1108 (S.B. 785), Sec. 2, eff. June 18, 2023.

Sec. 141.004. OWNERSHIP OF GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES. (a) Except as otherwise expressly provided by a conveyance, contract, deed, reservation, exception, limitation, lease, or other binding obligation, the geothermal energy and associated resources below the surface of land are owned as real property by:

(1) the landowner; or

(2) if the surface estate and the mineral estate of the land have been severed, the owner of the surface estate of the land.

(b) Subject to the provisions of this chapter, the property rights described by this section entitle the owner of the geothermal energy and associated resources below the surface of land and the owner's lessee, heir, or assignee to drill for and produce the

geothermal energy and associated resources.

(c) This section does not:

(1) apply to minerals dissolved or otherwise contained in groundwater, including in hot brines; or

(2) change existing law regarding:

(A) oil, gas, or mineral extraction regardless of its heat or energy potential;

(B) the rights of the dominant and servient estates; or

(C) the ownership and use of groundwater.

Added by Acts 2023, 88th Leg., R.S., Ch. 1108 (S.B. 785), Sec. 3, eff. June 18, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF THE RAILROAD COMMISSION

Sec. 141.011. GENERAL DUTY OF THE RAILROAD COMMISSION. Except for duties and responsibilities given to other agencies and officials under this chapter, the commission shall regulate the exploration, development, and production of geothermal energy and associated resources on public and private land for the purpose of conservation and the protection of correlative rights.

Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.012. RULES. (a) The commission, in consultation with the commissioner and the executive director of the Texas Natural Resource Conservation Commission, shall make, publish, and enforce rules providing for the rapid and orderly exploration, development, and production of geothermal energy and associated resources and to accomplish the purposes of this chapter.

(b) The rules made under this section shall include rules governing:

(1) protection of the environment against damage resulting from the exploration, development, and production of geothermal energy and associated resources;

(2) prevention of waste of natural resources, including geothermal energy and associated resources, in connection with the exploration, development, and production of geothermal energy and associated resources;

(3) protection of the general public against injury or damage resulting from the exploration, development, and production of geothermal energy and associated resources; and

(4) protection of correlative rights against infringement resulting from the exploration, development, and production of geothermal energy and associated resources.

(c) Rules shall be made and enforced only after a public hearing.

Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.276, eff. Sept. 1, 1995.

Sec. 141.013. ADMINISTRATIVE PENALTY. (a) If a person violates provisions of this title which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider the person's history of previous violations of this subchapter or the rules, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983.

Sec. 141.014. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 141.013 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that

the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983.

Sec. 141.015. PAYMENT OF PENALTY; REFUND. (a) On the issuance of an order finding that a violation has occurred, the commission shall inform the permittee and any other person charged within 30 days of the amount of the penalty.

(b) Within the 30-day period immediately following the day on which the decision or order is final as provided in Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post a supersedeas bond with the commission under the following conditions. If the decision or order being appealed is the first final commission decision or order assessing any administrative penalty against the person, the commission shall accept a supersedeas bond. In the case of appeal of any subsequent decision or order assessing any administrative penalty against the person, regardless of the finality of judicial review of any previous decision or order, the commission may accept a supersedeas bond. Each supersedeas bond shall be for the amount of the penalty and in a form approved by the commission and shall stay the collection of the penalty until all judicial review of the decision or order is final.

(c) If through judicial review of the decision or order it is

determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the commission shall execute a release of such bond.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(e) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with the district court of Travis County, Texas, and not elsewhere, as provided for in Subchapter G, Chapter 2001, Government Code.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Secs. 5.95(53), (59), eff. Sept. 1, 1995.

Sec. 141.016. RECOVERY OF PENALTY. Civil penalties owed under Sections 141.013-141.015 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983.

Sec. 141.018. ACCESS TO PROPERTY. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the exploration, development, and production of geothermal energy, to monitor compliance with a rule, permit, or other order of the commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection

rules.

Added by Acts 1983, 68th Leg., p. 5263, ch. 967, Sec. 10, eff. Sept. 1, 1983. Renumbered from Sec. 141.013 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(33), eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSIONER AND BOARD

Sec. 141.071. GENERAL AUTHORITY OF COMMISSIONER. To facilitate and encourage the rapid and orderly development of geothermal energy and associated resources, the commissioner may:

(1) provide for the orderly exploration of land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas except as provided in Section 141.077 of this code; and

(2) issue permits and charge reasonable fees for the permits in accordance with rules promulgated under this chapter by the board.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.072. DEPOSIT OF FEES. The fees collected from issuance of the permits shall be deposited in General Land Office Fund 80 and used as the legislature may direct.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.073. LEASE OF PERMANENT SCHOOL FUND LAND. (a) On direction of the commissioner, the board may lease land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas, for the production of geothermal energy and associated resources.

(b) The board has full authority to set the terms and conditions of leases and may adopt rules relating to exploration, development, and production of geothermal energy and associated resources as the board determines to be in the best interest of the state.

(c) The board may require the taking in kind of the state's interest in the geothermal energy and associated resources or its by-products provided from this land.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.074. FURNISHING LISTS OF LAND TO OTHER AGENCIES. Before advertising land for lease, the commissioner shall furnish a list of the tracts considered by the board for lease to the Texas Natural Resource Conservation Commission, the commission, and any other state or federal agency that might have information that would be beneficial to the board in its determination of terms and conditions of the proposed lease.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.277, eff. Sept. 1, 1995.

Sec. 141.075. NOTICE OF SALE. Land offered for lease to the public by the board shall be advertised in four daily newspapers in the state that have general circulation at least 30 days in advance of the sale date. The notice shall be published in three issues of each newspaper.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.076. BIDS. (a) Sales of leases shall be made by sealed bids.

(b) The board is entitled to reject any and all bids, but if it accepts a bid, the bid must be determined by the board to be in the best interest of the State of Texas.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.077. LEASES AND PERMITS FOR GOVERNMENTAL AGENCIES. (a) The board may grant permits and leases to state and federal institutions, organizations, or groups desiring to do exploratory or experimental research of geothermal energy and associated resource potentials.

(b) These permits and leases may be granted on land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas.

(c) The permits and leases may be issued or granted for research or experimental purposes under rules and conditions the board determines to be in the best interest of the state.

(d) In granting these leases, the commissioner and board do not have to follow the procedures in this subchapter for leasing to the public.

Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.078. UNIT AGREEMENTS. (a) The board may approve unit agreements of one or more leased tracts on application of the lessees.

(b) Before approving any unit agreement, the board must find that the unit agreement if approved by the board will be in the best interest of the state.

Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.079. REPORT TO LEGISLATURE. Not later than January 1 of each odd-numbered year, the commissioner shall report to the legislature on the status of the exploration, development, and production of geothermal energy and associated resources under the land governed by this subchapter.

Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 86, eff. September 1, 2013.

SUBCHAPTER D. ENFORCEMENT

Sec. 141.101. GENERAL ENFORCEMENT AUTHORITY. (a) In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the same manner and subject to the same conditions provided by Chapters 81 and 85 of this code, including the authority to seek and obtain civil penalties and injunctive relief under those chapters.

(b) If the enforcement authority in Section 81.054, Natural Resources Code, is used to institute a civil action alleging a violation of an NPDES permit or the failure to obtain an NPDES permit issued under this chapter, the attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

Added by Acts 1983, 68th Leg., p. 5263, ch. 967, Sec. 11, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 310, Sec. 7, eff. Aug. 28, 1995.

Sec. 141.102. CRIMINAL PENALTY. (a) A person who knowingly, wilfully, or with criminal negligence violates Subchapter B of this chapter or a rule, order, or permit of the commission issued under that subchapter commits an offense.

(b) An offense under Subsection (a) of this section is punishable by a fine of not more than $10,000 a day for each day a violation is committed.

(c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Added by Acts 1983, 68th Leg., p. 5263, ch. 967, Sec. 11, eff. Sept. 1, 1983.

CHAPTER 142. NATURAL ENERGY AND WATER RESOURCES COMPACT

Sec. 142.001. RATIFICATION. The compact set out in Section 142.005 of this code is ratified by this state.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.002. APPOINTMENT OF COMMISSIONERS. When the compact takes effect as provided in Article I, the governor, the lieutenant governor, and the speaker of the house of representatives shall each appoint a commissioner.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.003. TERMS AND OATH OF COMMISSIONERS. (a) Each commissioner serves a term of two years and until his successor is appointed and has qualified.

(b) Each commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

(c) If a vacancy occurs in the office of commissioner, the original appointing officer shall appoint a successor to serve for the unexpired portion of the term.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.004. COMPENSATION. Each commissioner is entitled to compensation and reimbursement for expenses as provided by legislative appropriation.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.005. TEXT OF COMPACT. The compact reads as follows:

Article I. The states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas are eligible to ratify this compact. When three of those states have ratified it, the compact takes effect as to those three states. It takes effect as to others of them when they ratify it.

Article II. (a) The purposes of this compact are to:

(1) provide for the conservation and wise utilization of natural energy and water resources by party states;

(2) establish the relative importance of different types of natural energy and water resources being used;

(3) promote comity among the party states and remove causes of present and future controversies;

(4) foster the expeditious development of agriculture and industry in the party states; and

(5) give priority to the exchange of natural energy and water resources among the party states.

(b) To accomplish the purposes of this compact, the party states pledge their mutual cooperation and their intention to develop and execute appropriate programs.

Article III. (a) This compact applies within each party state to individuals, associations, corporations, and governmental and private entities claiming any right to the use of the natural energy or water resources in a party state, except as otherwise provided in this compact.

(b) Each party state agrees that within a reasonable time it may enact laws designed to promote a free flow of natural energy and water resources among all party states. These laws will not apply to states that are not parties to this compact.

Article IV. (a) An administrative agency known as the Interstate Natural Energy and Water Resources Commission is created. Each party state shall appoint, in accordance with its laws, three members of the commission. Members of the commission are known as commissioners.

(b) The commission shall conduct studies and make recommendations to the party states regarding the conservation and wise utilization of natural energy and water resources by those states. It shall recommend to the party states methods of coordinating the exercise of state power to promote maximum conservation and utilization of natural energy and water resources.

(c) The commission may meet as often as it considers necessary, but it must meet at least once each year. At least once each year the commission shall report its findings and recommendations to the governor and legislature of each party state.

(d) The commission shall organize and adopt rules and bylaws for conducting its business. It shall adopt a seal. The commission

may not act on any matter except by an affirmative vote of a majority of all commissioners serving on the commission.

(e) The commission shall elect annually from among its members a chairman, vice-chairman, and treasurer. It shall appoint a director who serves at its pleasure. The director is also secretary of the commission. The director and treasurer shall be bonded in an amount and in a manner determined by the commission. The director is responsible for the appointment and discharge of personnel. He shall establish personnel policies, retirement programs, and employee benefit programs, subject to the approval of the commission.

(f) The commission shall establish and maintain such facilities as it considers necessary for transacting its business.

(g) For the purposes of this compact, the commission may accept and use gifts or grants of money, equipment, or supplies from any public or private legal entity and may accept and use the services of personnel made available to it by any public or private legal entity.

Article V. (a) Nothing in this compact shall be construed as:

(1) affecting the jurisdiction of any interstate agency in which a party state participates;

(2) affecting the provisions of any interstate compact to which a member state is a party, or any obligation of a member state under such a compact;

(3) discouraging additional interstate compacts in which one or more parties to this compact may be a party;

(4) discouraging the coordination of activities regarding a specific natural resource or any aspect of natural resource management;

(5) discouraging the establishment of intergovernmental planning agencies within the area of the states that are party to this compact; or

(6) limiting the jurisdiction or activities of any participating government or any agency or officer of a participating government except as expressly provided in this compact.

Article VI. The commission shall submit to the governor and legislature of each party state a budget of its estimated expenditures for a period of time as is appropriate, based on the laws of that state. Each budget of estimated expenditures shall contain specific recommendations as to the apportionment of costs among the party states.

Article VII. Any party state may, by legislative act and one

year's notice, withdraw from this compact.

Article VIII. The provisions of this compact are severable. If any provision or application of it is held invalid, that does not affect the validity of any other provision or application. The provisions of this compact shall be construed liberally to accomplish its purposes.

Article IX. This compact does not seek to affect political balance within the federal system and shall not be construed as requiring the consent of congress under Article I, Section 10, United States Constitution.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

TITLE 6. TIMBER

CHAPTER 151. PROVISIONS GENERALLY APPLICABLE

SUBCHAPTER A. REQUIRED DOCUMENTATION FOR PURCHASE OF TREES AND TIMBER

Sec. 151.001. REQUIRED BILL OF SALE. Before purchasing or accepting delivery of any trees, timber, logs, pulpwood, or in-woods chips, a seller shall provide and a purchaser shall require a bill of sale for the trees, timber, logs, pulpwood, or in-woods chips executed by the seller. The bill of sale may be a part of, a compilation of information taken from, or an addendum to, by way of example, a timber deed, scale ticket, weight ticket, cutting contract, harvest agreement, wood purchase agreement, or other records of the sale and purchase made at the time if all the information required by Section 151.002 is included.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.041 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.002. INFORMATION IN BILL OF SALE. (a) The bill of sale, which may be filed of record in the appropriate real property records, shall at a minimum include:

(1) the name of the:

(A) owner of the land from which the trees, timber, logs, pulpwood, or in-woods chips were or are to be obtained;

(B) seller, if the seller is not the owner of the land; and

(C) purchaser;

(2) the name of the county containing the tract of land from which the trees, timber, logs, pulpwood, or in-woods chips were or are to be obtained and:

(A) a legal survey, abstract, and tract number of that tract of land; or

(B) information from which the identity of that tract of land may be ascertained, including the property address or GPS coordinates;

(3) a general description of the trees, timber, logs, pulpwood, or in-woods chips conveyed in the bill of sale; and

(4) representations and a warranty from the seller that the seller is the lawful owner of all the trees, timber, logs, pulpwood, or in-woods chips conveyed in the bill of sale and that the trees, timber, logs, pulpwood, or in-woods chips are free and clear of all liens, security agreements, encumbrances, claims, demands, and charges.

(b) The purchaser of trees, timber, logs, pulpwood, or in-woods chips conveyed in the bill of sale may, and is entitled to, rely on the information required to be provided by the seller to be incorporated into the bill of sale, as well as on the representations and warranty of the seller.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.042 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 229 (H.B. 1772), Sec. 2, eff. September 1, 2023.

Sec. 151.003. RETENTION OF BILL OF SALE. A person that purchases trees, timber, logs, pulpwood, or in-woods chips shall retain the bill of sale for not less than five years following the later of the date of execution of the bill of sale or the expiration date referenced in the bill of sale.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.043 and amended by Acts 2001, 77th

Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 229 (H.B. 1772), Sec. 3, eff. September 1, 2023.

Sec. 151.0035. DOCUMENTATION OF DELIVERY REQUIRED FOR CERTAIN PURCHASES. (a) A timber purchaser, as defined by Section 151.101, who purchases timber on a pay-per-unit sale shall provide documentation to the beneficiary described by Section 151.104 that proves delivery for any product delivered to a mill, wood yard, transfer yard, or storage yard.

(b) Documentation required under Subsection (a) must:

(1) include:

(A) a description of the delivered product;

(B) the name and location of the mill, wood yard, transfer yard, or storage yard to which the product was delivered;

(C) the site identification number or scale ticket number for the delivered product;

(D) the net weight of the delivered product;

(E) the name of the person delivering the product; and

(F) the name of the person or entity receiving payment for the product, if different from the person delivering the product; and

(2) be provided on or before the 45th day after the date the product is delivered.

Added by Acts 2023, 88th Leg., R.S., Ch. 229 (H.B. 1772), Sec. 4, eff. September 1, 2023.

Sec. 151.004. NOTICE CONCERNING SALE OR PURCHASE OF TREES OR TIMBER. At each designated point of delivery for trees, timber, logs, pulpwood, or in-woods chips, a wood yard, transfer yard, mill site, or storage yard shall post the following written notice in lettering not less than one inch:

NOTICE CONCERNING SALE OR PURCHASE OF TREES OR TIMBER

1. A seller or purchaser of trees, timber, logs, pulpwood, or in-woods chips who knowingly fails to provide, obtain, or retain a bill of sale as provided in Chapter 151, Natural

Resources Code, is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense.

2. A person, firm, partnership, or corporation adjudged guilty of theft or fraud in connection with the sale or purchase of trees or timber will be punished as provided by the Penal Code.

3. A timber purchaser who knowingly fails to provide documentation as required by Section 151.0035, Natural Resources Code, or a timber purchaser or person acting on behalf of a timber purchaser who knowingly provides false information in documentation required by that section will be punished as provided by Section 151.005, Natural Resources Code.

4. The Texas A&M Forest Service Timber Theft Hotline is 1-800-364-3470.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st. Leg., ch. 1248, Sec. 85(5), eff. Sept. 1, 1989. Renumbered from Sec. 151.044 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 229 (H.B. 1772), Sec. 5, eff. September 1, 2023.

Sec. 151.005. PENALTY. (a) A seller or purchaser who knowingly fails to provide, obtain, or retain a bill of sale as required by Sections 151.001, 151.002, and 151.003 is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense.

(b) A wood yard, transfer yard, mill site, or storage yard that knowingly fails to post the notice concerning sale or purchase of trees or timber as required by Section 151.004 is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense.

(c) A timber purchaser, as defined by Section 151.101, who knowingly fails to provide the documentation required by Section 151.0035 in the manner provided by that section is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense.

(d) Except as otherwise provided by this section, a timber

purchaser, as defined by Section 151.101, or a firm, partnership, or agent acting on behalf of a timber purchaser, who knowingly provides false information in documentation required by Section 151.0035 is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense. If an offense described by this subsection was committed to conceal or to attempt to conceal an offense under Section 151.052 or 151.105, the offense under this subsection is:

(1) a state jail felony if it is shown on the trial of the offense that the value of the timber purchased is at least $500 but less than $20,000;

(2) a felony of the third degree if it is shown on the trial of the offense that the value of the timber purchased is at least $20,000 but less than $100,000;

(3) a felony of the second degree if it is shown on the trial of the offense that the value of the timber purchased is at least $100,000 but less than $200,000; or

(4) a felony of the first degree if it is shown on the trial of the offense that the value of the timber purchased is at least $200,000.

(e) A seller or a firm, partnership, or agent acting on behalf of the seller who knowingly provides in the bill of sale required by Section 151.001 false information that is required by Section 151.002 is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense. If an offense described by this subsection was committed to conceal or to attempt to conceal an offense under Section 151.052 or 151.105, the offense is:

(1) a state jail felony if it is shown on the trial of the offense that the value of the timber purchased is at least $500 but less than $20,000;

(2) a felony of the third degree if it is shown on the trial of the offense that the value of the timber purchased is at least $20,000 but less than $100,000;

(3) a felony of the second degree if it is shown on the trial of the offense that the value of the timber purchased is at least $100,000 but less than $200,000; or

(4) a felony of the first degree if it is shown on the trial of the offense that the value of the timber purchased is at least $200,000.

Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.045 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 229 (H.B. 1772), Sec. 6, eff. September 1, 2023.

Sec. 151.006. APPLICABILITY. This subchapter does not apply to the sale of:
(1) finished wood products;
(2) logs or pulpwood from a wood yard, transfer yard, mill site, or storage yard;
(3) trees from a nursery; or
(4) trees, logs, or pulpwood with a commercial value of less than $250.

Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.046 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.007. PENALTIES CUMULATIVE. A penalty provided by this subchapter is in addition to a penalty provided under other law.

Added by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.008. CIVIL LIABILITY. Nothing in this subchapter shall be construed to affect the liability under any other statute or under common law, provided that failure to comply with the provisions of this subchapter shall not, by itself, create civil liability.

Added by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. UNAUTHORIZED HARVESTING OF TIMBER

Sec. 151.051. DAMAGES FOR UNAUTHORIZED HARVESTING. (a) A person who harvests standing timber with knowledge that the harvesting is without the permission of the owner of the standing timber and a person who causes another person to harvest standing

timber without the permission of the owner of the standing timber are jointly and severally liable to the owner for damages in an amount equal to the sum of the mill price of the timber harvested and all reasonable expenses incurred by the owner as a direct result of the unauthorized harvesting.

(b) Payment of damages by a person under this section does not preclude a prosecution of the person under Section 151.005 or 151.052.

(c) This section does not apply to the trimming or clearing of trees in the vicinity of a utility line or right-of-way.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.101 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 23 (H.B. 613), Sec. 1, eff. September 1, 2011.

Sec. 151.052. CRIMINAL OFFENSE. (a) A person commits an offense if the person:

(1) harvests standing timber with knowledge that the harvesting is without the permission of the owner of the standing timber; or

(2) causes another person to harvest standing timber without the permission of the owner of the standing timber.

(b) An offense under this section is:

(1) a state jail felony if it is shown on the trial of the offense that the value of the timber harvested is at least $500 but less than $20,000;

(2) a felony of the third degree if it is shown on the trial of the offense that the value of the timber harvested is at least $20,000 but less than $100,000;

(3) a felony of the second degree if it is shown on the trial of the offense that the value of the timber harvested is at least $100,000 but less than $200,000; or

(4) a felony of the first degree if it is shown on the trial of the offense that the value of the timber harvested is at least $200,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 23 (H.B. 613), Sec. 2, eff.

September 1, 2011.

SUBCHAPTER C. PAYMENT FOR TIMBER PURCHASED

Sec. 151.101. DEFINITION. In this subchapter, "timber purchaser" means a person who purchases standing timber for harvest.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.151 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.102. MONEY COLLECTED FOR TIMBER AS TRUST MONEY. Money a timber purchaser collects for harvested timber is trust money.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.152 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.103. TIMBER PURCHASER AS TRUSTEE. A timber purchaser and each officer, director, partner, or agent of a timber purchaser are trustees of trust money.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.153 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.104. BENEFICIARY OF TRUST. Each seller of standing timber is a beneficiary of trust money to the extent of the beneficiary's share of the purchase price for the timber.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.154 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.105. OFFENSE. (a) A trustee commits an offense if the trustee, knowingly or with intent to defraud, directly or indirectly retains, uses, disperses, or otherwise diverts more than

$500 of trust money without first fully paying all of the beneficiaries the purchase price for the timber.

(b) A trustee acts with intent to defraud if the trustee retains, uses, disperses, or diverts trust money with the intent to deprive a beneficiary of trust money.

(c) A trustee is presumed to have acted with intent to defraud if the trustee does not pay all of the beneficiaries the purchase price for the timber not later than the 45th day after the date the trustee collects money for the timber.

(d) An offense under this section is:

(1) a state jail felony if it is shown on the trial of the offense that the value of the timber sold is at least $500 but less than $20,000;

(2) a felony of the third degree if it is shown on the trial of the offense that the value of the timber sold is at least $20,000 but less than $100,000;

(3) a felony of the second degree if it is shown on the trial of the offense that the value of the timber sold is at least $100,000 but less than $200,000; or

(4) a felony of the first degree if it is shown on the trial of the offense that the value of the timber sold is at least $200,000.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 151.155 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 22 (H.B. 612), Sec. 1, eff. September 1, 2011.

Sec. 151.106. DEFENSES TO PROSECUTION. It is an affirmative defense to prosecution under this section that:

(1) the trustee paid the beneficiaries all trust money to which the beneficiaries were entitled not later than the 15th day after the date written notice was given to the trustee at the trustee's most recent address known that a criminal complaint has been filed against the trustee or that a criminal investigation of the trustee is pending; or

(2) two or more persons claim to be beneficiaries of the

same trust money, and the trustee has deposited the amount of the disputed trust money into the registry of the district court of the county in which the standing timber was located by action in interpleader or other appropriate legal proceeding for the benefit of persons the district court determines to be entitled to the trust money.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.156 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.107. ELECTION OF OFFENSES. If conduct constituting an offense under Section 151.105 is an offense under another law of this state, the state may elect the offense for which it prosecutes the trustee.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.157 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 152. FOREST PEST CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. POLICY. It is the public policy of the State of Texas to mitigate and control pests threatening forest land in this state in order to protect associated ecological resources, enhance the health and maintenance of forests, promote stability of forest-using industries, ensure public safety, and conserve the ecosystem values of the forest.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 1, eff. September 1, 2017.

Sec. 152.002. PUBLIC NUISANCE. Forest pests are declared to be a public nuisance.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.003. DEFINITIONS. In this chapter:

(1) "Service" means the Texas A&M Forest Service.

(2) "Forest pests" means native insects and diseases, nonnative invasive insects and diseases, and noxious and invasive plants included on a list under Section 71.151, Agriculture Code, that are harmful, injurious, or destructive to forests or trees and whose damage, if uncontrolled, is of considerable economic and environmental importance.

(3) "Forest land" means land with at least 10 percent cover by live trees of any size, including land that formerly had that amount of tree cover and will be naturally or artificially regenerated, but does not include land within the incorporated limits of a village, town, or city.

(4) "Forest" means the standing trees on forest land.

(5) "Control" means prevent, retard, suppress, eradicate, or destroy.

(6) "Infestation" means actual infestation or infection at conditions beyond normal proportion causing loss to forests.

(7) "Landowner" and "owner" mean a person who owns forest land or has forest land under the person's direction irrespective of ownership.

(8) "Forest owner" means a person who owns the standing trees on forest land, either by a present right or by a future right under the terms of a valid existing contract.

(9) Repealed by Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 17, eff. September 1, 2017.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 17, eff. September 1, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS A&M FOREST SERVICE

Sec. 152.011. IN GENERAL. The Texas Forest Service shall administer the provisions of this chapter and make all relevant determinations.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.012. SURVEYS AND INVESTIGATIONS. (a) The service shall make surveys and investigations to determine the existence of infestations of forest pests and means practical for their control by landowners.

(b) Duly delegated representatives of the service may enter private land and public land, including that held by the United States if permission is obtained, for the purpose of conducting surveys and investigations.

(c) All the service's information shall be available to all interested landowners.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.013. DETERMINATION OF AREA CONTROL MEASURES. If the service finds an infestation existent or threatened in the state, it shall determine:

(1) when control measures are needed;

(2) the nature of the control measures;

(3) availability of control measures; and

(4) the techniques by which the control measures shall be applied.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.014. NOTICE OF FINDING OF INFESTATION. After determining that an infestation exists, the service shall give notice of the fact by:

(1) placing a notice in a newspaper or newspapers in the

county or counties in which any infested land is located, or, if there is no newspaper in the county, placing a notice in a newspaper or newspapers with general circulation in the county or counties in which any infested land is located, stating its findings and setting a time and place for a hearing on the need for the control of the pest, to be held not less than 10 days from the date of the notice;

(2) mailing copies of the notice to owners of forest land known to the service to have holdings in the affected area; and

(3) arranging for publicity on the subject by all news media serving the affected area.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.015. HEARING. At the hearing, the agent of the service who presides shall:

(1) describe the conditions that have been found;

(2) explain the measures needed to control the pest infestation;

(3) hear all suggestions and protests; and

(4) record the proceedings.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.016. PROCEDURES FOR CONTROL. As soon as practicable after the hearing, the service shall promulgate procedures to be followed for the control of the infestation and shall publish a copy in a newspaper circulated in the affected area in the same manner as publication of preliminary notice.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 4, eff. September 1, 2017.

Sec. 152.017. SPECIFIC CONTROL MEASURES. If the provisions of

Sections 152.013 through 152.016 of this code have not been applied and control measures are needed to check the spread of the forest pests on forest land owned or controlled by any person, written notice, signed by a duly authorized representative of the service whose mailing address is shown on the notice, shall be given to the person owning or controlling the forest land.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.018. NOTICE TO SPECIFIC LANDOWNER. (a) The notice required by Section 152.017 shall inform the landowner of:

(1) the facts found to exist;

(2) the landowner's responsibilities for the control measures;

(3) the control technique recommended;

(4) the law under which control must be accomplished; and

(5) the authority of the service in the event the landowner takes no action toward controlling the pest.

(b) The notice may be given by:

(1) personal delivery to the landowner or the person having control of the forest land;

(2) registered or certified mail directed to the landowner or person having control of the forest land at that person's last known address; or

(3) if the identity or address of the landowner or person having control of the forest land is unknown:

(A) publication in one issue of a newspaper of general circulation in the county in which the land is located; or

(B) posting notice on the county's Internet website or on a bulletin board at a place convenient to the public in the county courthouse for the county in which the land is located.

(c) A published or posted notice under Subsection (b) must include the information specified in Subsection (a), state the name of the owner, if known, and briefly describe the land to which the notice applies.

(d) No other notice is necessary under the provisions of this chapter.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 5, eff. September 1, 2017.

Sec. 152.019. NOTICE TO FOREST OWNER. If the landowner has notified the service of a forest owner under Section 152.064, the service shall furnish the same information to the forest owner that it is required by this chapter to give to the landowner.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 6, eff. September 1, 2017.

Sec. 152.020. SUPERVISION. (a) A landowner shall inform the service of measures taken by the landowner to control the infestation and the results of those measures.
(b) The service may change its prescribed procedures as conditions or new information may require.
(c) On request, the service shall certify when all reasonably practicable measures to be done by the landowner, pursuant to its prescribed procedures, have been completed.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 7, eff. September 1, 2017.

Sec. 152.021. CONTROL MEASURES APPLIED BY SERVICE. If the landowner or another person fails to apply the pest control measures prescribed by the service not later than the 10th day after the date notice is given under Section 152.014 or 152.018, the service may contact the landowner to offer further assistance or may enter the land and have the forest pests controlled.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 8, eff. September 1, 2017.

Sec. 152.022. EXPENSE OF CONTROL MEASURES TAKEN BY SERVICE. (a) The landowner shall pay all charges and expenses of control measures taken by the service.

(b) The service shall charge amounts consistent with current commercial rates for control measures taken by the service.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 9, eff. September 1, 2017.

Sec. 152.023. CLAIM AGAINST LANDOWNER. The amount charged for control measures taken by the service constitutes a legal claim against the landowner, but does not constitute a lien on any land owned by the landowner.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 10, eff. September 1, 2017.

Sec. 152.024. SUIT. The attorney general may bring suit on behalf of the service in the county in which the infestation occurred to recover the claim against the landowner, together with all costs incurred in the suit.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.025. LANDOWNER REIMBURSEMENT. (a) If the landowner has notified the service of a forest owner under Section 152.064, the landowner is entitled to reasonable reimbursement from the forest owner for amounts:

(1) spent by the landowner for pest control measures under Section 152.062; or

(2) paid on a legal claim under Sections 152.022 through 152.024.

(b) The amount of reimbursement paid by a forest owner under Subsection (a) shall be proportional to the interest owned in the forest by the forest owner.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 11, eff. September 1, 2017.

Sec. 152.026. COOPERATIVE AGREEMENTS. The service may enter into cooperative agreements with private landowners or forest owners, the federal government, or other public or private agencies to accomplish the control of forest pests.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. POWERS AND DUTIES OF THE LANDOWNER

Sec. 152.061. GENERAL DUTY OF LANDOWNER. Each owner of forest land shall control the forest pests on land owned by the person or under the person's direction as provided in this chapter.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 12, eff. September 1, 2017.

Sec. 152.062. DUTY TO APPLY CONTROL MEASURES. Not later than

the 10th day after the date notice is given under Section 152.014 or 152.018, each affected landowner shall commence diligently to take measures to control the infestation as prescribed and continue this activity with all practical expedition and efficiency under the direction of the service.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 13, eff. September 1, 2017.

Sec. 152.063. REPORTS AND CONSULTATION WITH SERVICE. (a) The landowner shall notify the service of the landowner's actions and the result of those actions.

(b) The landowner may report to and consult with a representative of the service as often as necessary.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 14, eff. September 1, 2017.

Sec. 152.064. NOTIFYING SERVICE OF FOREST OWNER. If all or part of the standing trees are owned by someone other than the landowner, either by a present right or by a future right under the terms of a valid existing contract, the landowner shall notify the service of that fact and furnish the name and address of each forest owner not later than the 10th day after the date the landowner receives notice from the service under Section 152.014 or 152.018.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 15, eff. September 1, 2017.

SUBCHAPTER D. JUDICIAL REVIEW

Sec. 152.101. JUDICIAL REVIEW OF SERVICE NOTICE. A landowner or person having control of forest land who is aggrieved by the notice given by the service is entitled to seek relief but only if the proceedings to obtain the relief are initiated within 10 days from the time notice is given, exclusive of the date the notice is given.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.102. VENUE. The proceeding to obtain relief shall be in the district court of the county in which the land is located.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.103. CONTROL MEASURES PENDING LITIGATION. The service shall not proceed with any control measures while the litigation is pending unless permission to do so is given by the court on a showing of probable harm due to a delay in using the control measures.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.105. INJUNCTIVE RELIEF FOR LANDOWNER. If the final judgment in an action seeking relief from a notice is in favor of the landowner, the landowner may be entitled to injunctive relief against the use of any control measures on the landowner's forest land by the service until a time determined by the court.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 16, eff. September 1, 2017.

Sec. 152.106. NOTICE FINAL. If the final judgment is against the landowner, or if the landowner fails to seek relief in the district court of the county in which the land is located, the notice from the service is final, and the service shall summarily take the measures necessary to control the infestation.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 153. PRESCRIBED BURNING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 153.001. DEFINITIONS. In this chapter:

(1) "Board" means the Prescribed Burning Board.

(2) "Department" means the Department of Agriculture.

(3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 6, eff. September 1, 2019.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.01, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 6, eff. September 1, 2019.

Sec. 153.002. LANDOWNER'S RIGHT TO CONDUCT BURNS NOT LIMITED. This chapter does not limit a landowner's right to conduct burns on the landowner's property.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.003. LIABILITY. This chapter does not modify a landowner's liability for property damage, personal injury, or death resulting from a burn that is not conducted as provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. A certified and insured prescribed burn manager may conduct a burn in a county in which a state of emergency or state of disaster has been declared by the governor or the president of the United States, unless the declaration expressly prohibits all outdoor burning.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.02, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 4, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. PRESCRIBED BURNING BOARD

Sec. 153.041. ESTABLISHMENT. (a) The Prescribed Burning Board is established within the department and is composed of:

(1) an employee of the Texas Forest Service designated by the director of the Texas Forest Service;

(2) an employee of the Parks and Wildlife Department appointed by the executive director of the Parks and Wildlife Department;

(3) an employee of the Texas Commission on Environmental Quality appointed by the executive director of the Texas Commission on Environmental Quality;

(4) an employee of the Texas AgriLife Extension Service appointed by the executive director of the Texas AgriLife Extension Service;

(5) an employee of Texas AgriLife Research appointed by the director of Texas AgriLife Research;

(6) an employee of the Texas Tech University Range and Wildlife Department appointed by the dean of the Texas Tech University College of Agricultural Sciences and Natural Resources;

(7) an employee of the department appointed by the commissioner of agriculture;

(8) an employee of the State Soil and Water Conservation

Board appointed by the executive director of the State Soil and Water Conservation Board; and

(9) five persons who are:

(A) owners of agricultural land, as that term is defined by Section 153.081;

(B) self-employed or employed by a person other than a governmental entity; and

(C) appointed by the commissioner of agriculture.

(b) A member serves for a two-year term.

(c) The board shall, by majority vote, elect a presiding officer from the members of the board.

(d) Appointments to the board shall be made without regard to the race, creed, sex, disability, age, religion, or national origin of the appointees.

(e) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) for appointment to the board;

(3) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(4) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.03, eff. September 1, 2009.

Sec. 153.042. INFORMATION RELATING TO STANDARDS OF CONDUCT. The presiding officer of the board or the presiding officer's

designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.043. MEMBER TRAINING. (a) A person appointed to the board is not eligible for membership on the board unless the person completes at least one training program that complies with this section.

(b) The training program must provide information to the member regarding:

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the requirements of Chapters 551, 552, and 2001, Government Code;

(5) the requirements of the conflict of interest laws and other laws relating to public officials; and

(6) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement for travel expenses incurred in attending the training program as provided by the General Appropriations Act as if the person were a member of the board.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.044. SUNSET PROVISION. The Prescribed Burning Board is subject to Chapter 325, Government Code (Texas Sunset Act). The board shall be reviewed during the period in which the Department of Agriculture is reviewed.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 2.04, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 3.05, eff.

September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 2.04, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.04, eff. September 1, 2009.

Sec. 153.045. ADVISORY BOARD. (a) The board shall establish an advisory board of members of the public, including individuals representing:

(1) property owners;

(2) agriculture, forestry, and livestock producers;

(3) conservation interests;

(4) environmental interests; and

(5) insurance interests.

(b) The board shall determine the number of persons and manner of selection of the advisory board.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.046. DUTIES. The board by rule shall establish:

(1) standards for prescribed burning;

(2) a comprehensive training curriculum for certified and insured prescribed burn managers;

(3) standards for certification, recertification, and training for certified and insured prescribed burn managers;

(4) minimum education and professional requirements for instructors for the approved curriculum; and

(5) insurance requirements for certified and insured prescribed burn managers in amounts not less than those required by Section 153.082.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.05, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. 702), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 37, eff. September 1, 2021.

Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum standards established by the board for prescribed burning must:

(1) ensure that prescribed burning is the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescription plan:

(A) designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and

(B) that conforms to the standards established under this section;

(2) if the prescription plan lists a certified and insured prescribed burn manager as the burn boss, require that the burn boss be present on site during the conduct of the prescribed burn;

(3) establish appropriate guidelines for size of burning crews sufficient to:

(A) conduct the burn in accordance with the prescription plan; and

(B) provide adequate protection for the safety of persons and of adjacent property;

(4) include standards for notification to adjacent land owners, the Texas Commission on Environmental Quality, and local fire authorities; and

(5) include minimum insurance requirements for certified and insured prescribed burn managers.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.06, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 6, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 302 (H.B. 162), Sec. 1, eff.

September 1, 2023.

Sec. 153.048. CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS. (a) Minimum standards established by the board for certification as a certified and insured prescribed burn manager must require the completion of the approved training curriculum to be developed and promulgated by the board and taught by an approved instructor.

(b) The board shall certify a person as a certified and insured prescribed burn manager if the person:

(1) applies to the board for certification;

(2) demonstrates completion of an approved training program by an approved instructor;

(3) pays a fee to the board in an amount determined by the board; and

(4) meets the insurance requirements established by the board under Section 153.046.

(c) The certification is for two years.

(d) A person may renew certification only by completing a continuing education program established by the board.

(e) The board shall maintain a register of certified and insured prescribed burn managers and dates of completion of initial and continuing training.

(f) The board may waive any prerequisite to obtaining certification for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid certification from another state that has certification requirements substantially equivalent to those of this state.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.07, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. 702), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. 702), Sec. 3, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 38, eff. September 1, 2021.

Sec. 153.049. CRIMINAL HISTORY EVALUATION. The board shall perform the duties of a licensing authority under Chapter 53, Occupations Code, for each certification issued by the board under this chapter or other law, including issuing guidelines under Section 53.025, Occupations Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 39, eff. September 1, 2021.

SUBCHAPTER C. LIMITATIONS ON LIABILITY

Sec. 153.081. LIMITATION OF OWNER LIABILITY. (a) Subject to Section 153.082, an owner, lessee, or occupant of agricultural or conservation land is not liable for property damage or for injury or death to persons caused by or resulting from prescribed burning conducted on the land owned by, leased by, or occupied by the person if the prescribed burning is conducted under the supervision of a certified and insured prescribed burn manager.

(b) This section does not apply to an owner, lessee, or occupant of agricultural or conservation land who is a certified and insured prescribed burn manager and conducts a burn on that land.

(c) In this section, "agricultural or conservation land" means land that is located in this state and that is suitable for:

(1) use and production of plants and fruits for human or animal consumption or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed;

(2) forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial, commercial, or personal consumption;

(3) domestic or native farm or ranch animals kept for use or profit;

(4) management of native or exotic wildlife; or

(5) conservation or management of an ecosystem, a forest, a habitat, a species, water, or wildlife.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.08, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 196 (S.B. 764), Sec. 1, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 8, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 3, eff. September 1, 2019.

Sec. 153.082. INSURANCE. The limitation on liability under Section 153.081 does not apply to an owner, lessee, or occupant of agricultural or conservation land unless:

(1) the burn is conducted under the supervision of a certified and insured prescribed burn manager who has liability insurance coverage:

(A) of at least $1 million for each single occurrence of bodily injury or death, or injury to or destruction of property; and

(B) with a policy period minimum aggregate limit of at least $2 million; or

(2) the owner, lessee, or occupant is a governmental unit, as that term is defined by Section 2259.001, Government Code, that has a self-insurance program that provides the amount of coverage required by Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 829, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.09, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 196 (S.B. 764), Sec. 2, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 9, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 4, eff. September 1, 2019.

Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED BURNS. (a) In this section, "burn boss" means an individual responsible for directing a prescribed burn under a written prescription plan described by Section 153.047.

(b) Except as provided by Subsection (c), if a prescribed burn

is conducted in accordance with a written prescription plan described by Subsection (d) and Section 153.047, a person may be held liable for property damage, personal injury, or death caused by or resulting from the burn only if the person:

(1) is the burn boss; and

(2) is otherwise liable under other law.

(c) Subject to Sections 153.081 and 153.082, a person other than the burn boss, including a person assisting or acting under the direction of the burn boss, may be held liable for property damage, personal injury, or death caused by or resulting from the burn only if the person:

(1) commits gross negligence or intentionally causes the property damage, personal injury, or death; and

(2) is otherwise liable under other law.

(d) For purposes of this section, if the burn boss is not the owner, lessee, or occupant of the land on which the burn is conducted, the written prescription plan must include:

(1) the signature of:

(A) the burn boss; or

(B) the owner, lessee, or occupant of the land on which the burn is conducted; and

(2) a contract acknowledging liability.

(e) Nothing in this section may be construed to create a cause of action or to create a standard of care, obligation, or duty that forms the basis of a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 5, eff. September 1, 2019.

Sec. 153.084. LIMITATION OF BURN BOSS LIABILITY. (a) In this section, "burn boss" has the meaning assigned by Section 153.083.

(b) Except as provided by Subsection (c), a burn boss is not liable for property damage, personal injury, or death caused by or resulting from the burn in excess of the insurance requirements established by the board for certified and insured prescribed burn managers under Section 153.046 if the burn boss:

(1) has completed an accredited prescribed burning training course approved by the board;

(2) has satisfied the minimum experience requirements

prescribed by the board; and

(3) has liability insurance coverage equal to or in excess of the amounts provided by Section 153.082(1).

(b-1) Except as provided by Subsection (c), if a burn boss is a certified and insured prescribed burn manager under Section 153.048, the burn boss is not liable for property damage, personal injury, or death caused by or resulting from smoke that occurs more than 300 feet from the burn.

(c) This section does not apply to a burn boss who commits gross negligence or intentionally causes property damage, personal injury, or death.

Added by Acts 2021, 87th Leg., R.S., Ch. 330 (H.B. 2004), Sec. 1, eff. September 1, 2021.
Added by Acts 2021, 87th Leg., R.S., Ch. 630 (H.B. 222), Sec. 1, eff. September 1, 2021.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(32), eff. September 1, 2023.

SUBCHAPTER D. COMPLAINTS, ENFORCEMENT, AND PENALTIES

Sec. 153.101. COMPLAINTS. The department shall receive and process complaints concerning certified and insured prescribed burn managers in the manner described by Sections 12.026 and 12.02601, Agriculture Code, and rules adopted under those sections.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10, eff. September 1, 2009.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 40, eff. September 1, 2021.

Sec. 153.102. DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) The department may impose an administrative sanction, including an administrative penalty, as provided by Sections 12.020, 12.0201, 12.0202, and 12.0261, Agriculture Code, for a violation of this chapter.

(b) The board by rule shall adopt a schedule of the disciplinary sanctions that the department shall impose under this

chapter. In adopting the schedule of sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(c) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the department shall consider:

(1) whether the person:

(A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or

(B) has previously been the subject of disciplinary action by the department under this chapter and has previously complied with department rules and this chapter;

(2) the seriousness of the violation;

(3) the threat to public safety; and

(4) any mitigating factors.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10, eff. September 1, 2009.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 41, eff. September 1, 2021.

Sec. 153.1025. CERTAIN DISCIPLINARY ACTION PROHIBITED. Notwithstanding Section 153.102 or any other law, the department or another state agency may not take disciplinary action against a certified and insured prescribed burn manager in relation to a prescribed burn conducted in accordance with this chapter on the basis that the burn resulted in emissions or is a nuisance.

Added by Acts 2021, 87th Leg., R.S., Ch. 330 (H.B. 2004), Sec. 2, eff. September 1, 2021.

Sec. 153.103. INJUNCTION. (a) The department may apply to a district court in any county for an injunction to restrain a person who is not a certified and insured prescribed burn manager from representing that the person is a certified and insured prescribed burn manager.

(b) At the request of the department, the attorney general

shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10, eff. September 1, 2009.

Sec. 153.104. EMERGENCY SUSPENSION. (a) On determining that a certification holder is engaged in or about to engage in a violation of this chapter and that the certification holder's continued practice constitutes an immediate threat to the public welfare, the department may issue an order suspending the certification holder's certification without notice or a hearing. The department shall immediately serve notice of the suspension on the certification holder.

(b) The notice required by Subsection (a) must:

(1) be personally served on the certification holder or be sent by registered or certified mail, return receipt requested, to the certification holder's last known address according to the department's records;

(2) state the grounds for the suspension; and

(3) inform the certification holder of the right to a hearing on the suspension order.

(c) A certification holder whose certification is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the fifth day after the date a hearing is requested, the department shall issue a notice of hearing.

(d) A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the department whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the department. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the department shall determine whether to vacate the order not later than the second day after the date of the recommendation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10,

eff. September 1, 2009.

TITLE 7. RESOURCES PROGRAMS
CHAPTER 161. VETERANS LAND BOARD
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Veterans' Land Board.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

(4) "Program" means the Veterans' Land Program.

(5) "Fund" means the veterans' land fund.

(6) "Bonds" means general obligation bonds issued by the board for the purpose of funding the program.

(7) "Veteran" means a person who:

(A)(i) served not less than 90 days, unless sooner discharged by reason of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard, United States Public Health Service (as constituted under 42 U.S.C. Section 201 et seq.), or Marine Corps of the United States after September 16, 1940, and who on the date of filing an application under the program has not been dishonorably discharged from the branch of the service in which the person served;

(ii) has at least 20 years of active or reserve military service as computed when determining the person's eligibility to receive retired pay under applicable federal law;

(iii) has enlisted or received an appointment in the Texas National Guard, who has completed all initial active duty training required as a condition of the enlistment or appointment, and who on the date of filing the person's application has not been dishonorably discharged from the Texas National Guard; or

(iv) served in the armed forces of the Republic of Vietnam between February 28, 1961, and May 7, 1975, if the board adopts a rule regarding these veterans under Subsection (b);

(B) at the time of the person's enlistment, induction, commissioning, appointment, or drafting was a bona fide resident of this state or has resided in this state at least one year immediately before the date of filing an application under this chapter; and

(C) at the time of the person's application under this

chapter is a bona fide resident of this state. The term includes the unmarried surviving spouse of a veteran who died or who is identified as missing in action if the deceased or missing veteran meets the requirements of this section, with the exception that the deceased or missing veteran need not have served 90 days under Paragraph (A)(i) of this subdivision, and if the deceased or missing veteran was a bona fide resident of this state at the time of enlistment, induction, commissioning, appointment, or drafting.

(8) "Commission" means the Texas Veterans Commission.

(b) Notwithstanding Subdivision (7) of Subsection (a) of this section, the board may by rule change the definition of "veteran" as necessary or appropriate to protect the best interests of the program. If the board adopts a rule to change the definition of "veteran" to include a person who served in the armed forces of the Republic of Vietnam between February 28, 1961, and May 7, 1975, the rule must include procedures for establishing proof of that service.

(c) For purposes of this section, a person who has been discharged from the branch of the service in which the person served or from the Texas National Guard is considered not to have been dishonorably discharged if the person:

(1) received an honorable discharge;

(2) received a discharge under honorable conditions; or

(3) received a discharge and provides evidence from the United States Department of Veterans Affairs, its successor, or other competent authority that indicates that the character of the person's duty has been determined to be other than dishonorable.

Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 1; Acts 1989, 71st Leg., ch. 298, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 242, Sec. 1.01, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 83, Sec. 1, eff. May 11, 2001; Acts 2003, 78th Leg., ch. 1145, Sec. 1, 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 17 (S.B. 581), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 161.011. VETERANS LAND BOARD DESIGNATED. The Veterans Land Board is a state agency designated to perform the governmental functions authorized in Article III, Section 49-b of the Texas Constitution.

Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.0111. SUNSET PROVISION. The Veterans' Land Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2031 are reviewed and every 12th year after that.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.20(42), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 3.08, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 970, Sec. 2.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1169, Sec. 2.10, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1481, Sec. 2.04, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1112, Sec. 2.05, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 2, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 1, eff. September 1, 2019.

Sec. 161.013. EXECUTIVE SECRETARY AND ASSISTANT EXECUTIVE SECRETARY. (a) The board shall select an executive secretary and an assistant executive secretary, each of whom shall be nominated by the commissioner and approved by a majority of the board.

(b) The executive secretary and assistant executive secretary shall perform all duties required of them by the board.

Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.014. EMPLOYEES. (a) The commissioner may employ all other employees that may be necessary for the discharge of the board's duties. The employees may include stenographers, typists, bookkeepers, surveyors, appraisers, and other employees in the number and for the time necessary to perform these duties.

(b) The employees of the board are considered to be employees of the land office, and civil and criminal laws regulating the conduct and relations of the employees of the land office apply to the employees of the board.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.0141. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive secretary, assistant executive secretary, and staff of the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 2, eff. September 1, 2019.

Sec. 161.015. COMPENSATION AND DUTIES OF EMPLOYEES. The employees of the board shall be paid their compensation and shall perform their duties with the same rules and requirements of the general law governing other state employees in those respects.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.016. FISCAL AGENT. (a) The board may designate the comptroller as the fiscal agent for payment of principal of and interest on the bonds.

(b) The comptroller shall act as fiscal agent without compensation.

(c) In the alternative, the board may employ a private fiscal agent to perform these services and shall pay him adequate compensation.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.16, eff. Sept. 1, 1997.

Sec. 161.017. MEETINGS OF BOARD. (a) When necessary, the board shall meet on the first and third Tuesdays of each month in the land office, where its session shall be held and continue until its docket is cleared. The board may recess at its own discretion.

(b) The chairman of the board may call special meetings of the board at any time he thinks necessary by giving the other members notice.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.018. MINUTES OF BOARD. Minutes of each meeting of the board shall be kept, and only those matters that actually transpire at the meeting shall be entered in the minutes.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.019. DEPOSITORY FOR PAPERS, RECORDS, AND ARCHIVES. Papers, records, and archives of the board shall be deposited and kept in the land office.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.020. PURCHASE OF SUPPLIES. The board may purchase at state expense through the comptroller supplies, including stationery, stamps, printing, record books, and other things that may be needed to carry on the board's functions as a state agency in performing the duties imposed by this chapter.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.105, eff. September 1, 2007.

Sec. 161.021. SEAL. The board shall procure and adopt a seal bearing the words "Veterans Land Board" encircled by the oak and olive branches common to other official seals.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.022. CHAPTER APPLICATION TO SUCCESSOR BOARDS. The provisions of this chapter shall apply to any successor of the board.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.023. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the results of the most recent formal audit of the board;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties; and

(6) any applicable ethics policies adopted by the board or

the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The commissioner shall create a training manual that includes the information required by Subsection (b). The commissioner shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the commissioner a statement acknowledging that the member has received and reviewed the training manual.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 3, eff. September 1, 2019.

Sec. 161.024. CONFLICTS OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an appointed member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of real property sales, brokerage, or development; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of real property sales, brokerage, or development.

(c) A person may not be an appointed member of the board or act

as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(22), eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.025. EQUAL PROTECTION FOR BOARD MEMBERS. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.026. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if an appointed member:

(1) does not have at the time of appointment the qualifications required by Article III, Section 49-b, of the Texas Constitution for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Article III, Section 49-b, of the Texas Constitution for appointment to the board;

(3) is ineligible for membership under Section 161.024;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of an appointed

member of the board existed.

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the board of the potential ground. The presiding officer of the board shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive secretary shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.028. CAREER LADDER. (a) The executive secretary or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

(b) The program and posting requirements of this section apply to the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.029. PERFORMANCE EVALUATIONS. (a) The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this section.

(b) The evaluations required by this section apply to the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.030. AUDIT. The financial transactions of the board

are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 8, eff. Sept. 1, 1989.

Sec. 161.0301. INTERNAL AUDITOR. An internal auditor who performs an audit function for the board shall:

(1) submit to the board any parts of the applicable internal audit plan that relate to the board; and

(2) report to the board regarding the results of any internal audits that relate to the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.031. EQUAL EMPLOYMENT OPPORTUNITY. (a) The executive secretary or his or her designee shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan shall include:

(1) a comprehensive analysis which meets federal and state guidelines of all the agency's work force by race, sex, ethnic origin, class of position, and salary or wages;

(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;

(3) procedures by which a determination can be made of significant underutilization in the agency work force of all persons for whom federal and state guidelines encourage a more equitable balance and steps reasonably designed to overcome any identified underutilization; and

(4) objectives and goals, with appropriate timetables for the achievement of the objectives and goals, assignments of responsibility for their achievement, and an appropriate program for reviewing and maintaining these goals and objectives once achieved.

(b) The plan shall be filed with the governor's office within 60 days of the effective date of this Act, cover an annual period, and be updated at least annually. The governor's office shall

develop a biennial report to the legislature based on the information submitted. Such report may be made separately or as a part of other biennial reports made to the legislature.

(c) The personnel transactions referred to in Subsection (a) of this section apply to the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 4, eff. September 1, 2019.

Sec. 161.032. STANDARDS OF CONDUCT. (a) The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The employees referred to in Subsection (a) of this section are the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.033. PUBLIC DEBATE BEFORE BOARD. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.034. COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.035. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.036. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction, other than disputes governed by Section 161.311.

(b) The board's procedures relating to alternative dispute resolution shall conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 161.061. GENERAL DUTIES OF BOARD. The board shall:

(1) authorize and execute negotiable bonds as provided by law;

(2) provide by resolution for use of the fund in a manner that will effectuate the intent of the constitution and the law;

(3) prescribe the interest rates as provided by law;

(4) provide for the forfeiture of contracts of sale and purchase and resale of forfeited land;

(5) conduct investigations it considers necessary;

(6) obtain and review any components of internal audit plans that relate to board functions and approve those plans as appropriate during public meetings of the board;

(7) obtain and review any internal audit reports that relate to board functions and discuss those reports during public meetings of the board; and

(8) formulate policies and rules necessary and not in conflict with the law to ensure the proper administration and to carry out the intent and purposes of the law.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.02, eff. Aug. 30, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.062. GENERAL DUTIES OF COMMISSIONER. The commissioner is the chairman of the board and administrator of the program as provided in Article III, Section 49-b of the Texas Constitution, and shall perform the duties and functions of the board prescribed by law except for those duties and functions provided in Section 161.061 of this code, which shall be performed by the board.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.063. RULES. (a) The board may adopt rules that are not inconsistent with this chapter and that it considers necessary or advisable. The board shall adopt rules and procedures that it considers necessary to ensure the integrity of the program.

(b) The rules shall be considered a part of this chapter and violation of the rules subject the offender to prosecution under Sections 161.401 through 161.403 of this code.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 4, eff. Sept. 1, 1985.

Sec. 161.064. BOARD AUTHORITY TO MAKE INVESTIGATIONS. The board may make any investigation it considers necessary relating to transactions involving land purchases or sales under this chapter.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.065. OATHS; BOOKS, RECORDS, AND DOCUMENTS. (a) The board is specifically authorized to administer oaths and to examine the books, records, or other documents dealing with or relating to the transactions of any person involved in the transaction.

(b) The board may make copies of the books, records, and other documents that in its judgment may show or tend to show fraud on the board or a veteran or a violation or attempted violation under this chapter.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.066. SUBPOENA DUCES TECUM. The board may issue a subpoena duces tecum to require a person to produce books, records, or any other documents for the board's examination.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.067. FORFEITURE OF CHARTER AND RIGHTS. (a) If a corporation fails or refuses to comply with the orders of the board under Sections 161.064 through 161.066 of this code, the corporation shall forfeit its right to do business in this state, and its permit or charter shall be canceled or forfeited by the attorney general.

(b) The failure or refusal by a person is presumed to be prima facie evidence of fraud on the board and veteran in violation of this chapter, and the person shall lose and forfeit all rights and benefits under this chapter.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.068. FORM OF INSTRUMENTS. The board may prescribe the form and contents of notices, bids, applications, awards, contracts, deeds, and instruments used by the board in carrying out a project or plan if it is not in conflict with the law.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.069. FEES. (a) The board shall collect the fee it considers necessary from each applicant under Subchapter G of this chapter and deposit the fee in a bank. Interest received on the deposit shall be credited to the General Land Office special fund and shall be spent for administrative purposes.

(b) Repealed by Acts 1985, 69th Leg., ch. 798, Sec. 22, eff. Sept. 1, 1985.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 22, eff. Sept. 1, 1985.

Sec. 161.070. ADDITIONAL FEES. (a) The board shall set and collect, for the use of the state, reasonable fees in amounts determined by the board for services it may provide in connection with processing and servicing of purchase applications and contracts of sale and purchase and matters incidental to these purchases.

These fees may include but are not limited to the following:

(1) appraisal fee for each application under Subchapter G of this chapter;

(2) contract of sale and purchase transfer fee for each transfer;

(3) mineral lease service fee for each lease executed by purchasers;

(4) reappraisal fee, if required by the board;

(5) fee for each loan of abstract;

(6) fee for servicing and filing each easement;

(7) service fee for each contract of sale and purchase;

(8) fee for homesite, severance, or paid-in-full deed;

(9) title examination fee;

(10) recording fees;

(11) fee for preparing credit reports;

(12) fee from each successful bidder under Section 161.319 of this code in an amount sufficient to pay for examination of title, recording fees, and other expenses incidental to resale of land under Section 161.319 of this code;

(13) fee for preparation of legal instruments, including but not limited to deeds, contracts, affidavits, and curative instruments;

(14) fee for legal research, including but not limited to preparation of title opinions and other legal opinions, preparation for court appearances;

(15) fee for general research, including but not limited to preparation of certified copies of documents on file with the board; and

(16) fees for any other services which may be requested of the board.

(b) These fees may be added to the price of any land sold or resold by the board.

(c) Fees or portions of fees that are in the opinion of the board unused shall be refunded.

(d) Money received from payment of these fees and not refunded shall be deposited in the State Treasury and credited to the fund and shall be spent as provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 406, ch. 81, Sec. 21(o),

eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 798, Sec. 5, eff. Sept. 1, 1985.

Sec. 161.071. PAMPHLETS. The board shall have published pamphlets containing the provisions of this chapter and rules the board desires, and these pamphlets shall be made available to any interested veteran, veterans organization, or other interested person in the state.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.072. LEASE BY BOARD. (a) The board may lease any property that it owns on terms it considers proper.

(b) A lease for agricultural and grazing purposes is subject to cancellation on the sale of the property to a veteran.

(c) The board may execute oil, gas, and mineral leases on land purchased by it before it sells the land by following the same procedure provided for the school land board in the lease of public school land.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.073. CONTRACTS WITH PRIVATE ENTITIES. The board may contract with a private entity to administer all or part of the program if it is cost effective to do so.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 6, eff. Sept. 1, 1985.

Sec. 161.074. BOND ENHANCEMENT AGREEMENTS. (a) The board may at any time and from time to time enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Bond enhancement agreements may include, on terms and conditions approved by the

board, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, agreements providing for payments based on levels of or changes in interest rates or currency exchange rates, agreements to exchange cash flows or a series of payments, or agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves. The fees and expenses of the board in connection with the issuance of bonds and the purchase and sale of land may be paid from money in the fund, provided that payments due from the board under a bond enhancement agreement, other than fees and expenses, that relate to the payment of debt service on bonds constitute payments of principal of and interest on the bonds.

(b) The resolution of the board authorizing a bond enhancement agreement may authorize one or more designated officers or employees of the board to act on behalf of the board in entering into and delivering the bond enhancement agreement and in determining or setting the counterparty and terms of the bond enhancement agreement specified in the resolution, except that the resolution must set the maximum amount and term for the bond enhancement agreement.

(c) Unless the board elects otherwise in its approval of a bond enhancement agreement, the bond enhancement agreement is not a credit agreement for purposes of Chapter 1371, Government Code, regardless of whether the bonds relating to the bond enhancement agreement were issued in part under that law.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.03, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 134, Sec. 1, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.354, eff. Sept. 1, 2001.

Sec. 161.075. INFORMATION FOR LENDING INSTITUTIONS. (a) In this section, "lending institution" has the meaning assigned by Section 161.502.

(b) On request, the board shall provide to a lending institution information regarding state land and housing benefits programs for veterans in this state.

Added by Acts 2003, 78th Leg., ch. 69, Sec. 3, eff. May 16, 2003.

Sec. 161.076. MEMORANDUM OF UNDERSTANDING. (a) The board shall enter into a memorandum of understanding with the commission. The memorandum of understanding must specify the guidelines, powers, and duties necessary for the board and the commission to coordinate veterans benefits outreach activities.

(b) The memorandum of understanding must address board and commission coordination with respect to the following veterans benefits outreach activities:

(1) operation by the board of a consolidated communications center;

(2) combined direct mail efforts;

(3) sharing veterans contact databases;

(4) dissemination of information through integrated websites and a joint brochure;

(5) veterans benefits seminars; and

(6) any other veterans benefits outreach activity determined by the board and the commission to be appropriate for coordination by those agencies.

(c) The memorandum of understanding must identify the joint and separate powers and duties of the board and the commission as necessary to implement coordinated veterans benefits outreach activities, including powers and duties relating to:

(1) reimbursements for coordinated activities;

(2) the management and funding of a consolidated communications center;

(3) operating expenses associated with the coordinated activities, including expenses relating to office space, printing, and postage;

(4) the development and maintenance of integrated web services regarding veterans benefits and services;

(5) the development and dissemination of a joint brochure regarding veterans benefits and services; and

(6) joint presentations at or sponsorship of veterans benefits seminars.

(d) The commission and the board shall periodically update the memorandum of understanding and continue to explore additional opportunities for coordination between the agencies regarding their respective veterans benefits outreach activities.

(e) The commission and the board shall consider the appropriate use of authorized bond proceeds and federal money to ensure that each agency complies with applicable funding constraints in entering into the memorandum of understanding.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.077. COMMUNICATIONS CENTER. (a) Based on the memorandum of understanding described by Section 161.076, the board shall operate a consolidated communications center to provide information regarding the benefits and services available to veterans of this state, including benefits and services offered by the board and the commission.

(b) In operating the communications center, employees must be knowledgeable about the functions of the center and be able to access information regarding all available veterans benefits and services and shall:

(1) answer the veterans toll-free hotline; and

(2) disseminate to veterans, including newly discharged veterans, information regarding the benefits and services, as appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.078. WEBSITE; BROCHURE. (a) Based on the memorandum of understanding described by Section 161.076, the board shall integrate web services and develop a hard-copy brochure that provides in a centralized, comprehensive, and simplified format information about all available veterans benefits and services, including benefits and services offered by the board and the commission. In integrating web services, the board shall develop a single entry point to allow public access to information related to all available veterans benefits and services.

(b) This section does not preclude the board or commission from operating additional websites or disseminating other information as determined appropriate by the board or the commission, in accordance with the memorandum of understanding provided under Section 161.076.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.079. BENEFITS SEMINARS. (a) To ensure that the veterans of this state receive uniform information on all veterans benefits and services available, the board and the commission shall:

(1) jointly plan and provide state-sponsored veterans benefits seminars; and

(2) coordinate the involvement of each agency in seminars hosted for veterans by other organizations.

(b) Planning and coordination under this section must ensure the consistent presentation of benefits and services information by the board or the commission at seminars described by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.080. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) This section applies only to:

(1) a veteran or a family member of the veteran who applies for or receives any benefits or services offered by the board; or

(2) a current member of:

(A) the armed forces of the United States, including a reserve component; or

(B) the Texas military forces, as that term is defined by Section 437.001, Government Code.

(b) Except as provided by Subsection (c), the following information received or maintained by the board that relates to a person to whom this section applies is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) name;

(2) home address;

(3) telephone number;

(4) e-mail address;

(5) emergency contact information;

(6) social security number; or

(7) any other information that reveals whether the person has family members.

(c) The board may disclose the information described by Subsection (b) to:

(1) a federal agency, state agency, political subdivision of this state, or private vendor contracted by the board for the purpose of administering any benefits or services offered by the board for veterans or the family members of veterans; or

(2) any person with the written consent of a person to whom this section applies if:

(A) the information is disclosed for the purpose specified in the written consent; and

(B) the disclosed information relates to the consenting person.

(d) Information disclosed under Subsection (c) is not subject to disclosure under Chapter 552, Government Code, and the disclosure does not constitute a voluntary disclosure to the public by the board for purposes of Section 552.007, Government Code.

(e) To the extent of any conflict between this section and Section 552.137, Government Code, this section prevails.

Added by Acts 2023, 88th Leg., R.S., Ch. 472 (H.B. 562), Sec. 1, eff. June 10, 2023.

SUBCHAPTER D. GENERAL OBLIGATION BONDS

Sec. 161.111. ISSUANCE AND SALE OF BONDS; DISPOSITION OF PROCEEDS. By appropriate action, the board may provide by resolution for the issuance and sale of negotiable bonds authorized by the constitution, and the proceeds shall be a part of the fund.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.112. INSTALLMENTS. The board, at its option, may issue bonds in one or several installments.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.113. INTEREST RATE. The bonds shall bear the rate or

rates of interest prescribed by the board.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.05, eff. Aug. 30, 1993.

Sec. 161.114. PAYMENT AND MATURITY OF BONDS. (a) The bonds shall be payable as provided by the board and shall mature serially or otherwise not later than 40 years from their date.

(b) Bonds previously issued shall mature according to their provisions.

(c) The board shall determine the medium of payment for both principal of and interest on the bonds.

(d) The board at its own option may make the bonds redeemable or subject to tender for purchase before maturity at the price and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.06, eff. Aug. 30, 1993.

Sec. 161.115. FORM, DENOMINATION, AND PLACE OF PAYMENT OF BONDS. The board shall determine the form of the bonds, including the forms of interest coupons attached to the bonds, and shall fix the denomination or denominations of the bonds and the place or places for payment of the principal of and interest on the bonds.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.116. MANNER OF EXECUTION. (a) The bonds shall be executed by and on behalf of the board and the state as obligations of the state in the manner provided in Subsection (b) of this section.

(b) The bonds shall be signed and executed as the board provides in the resolution or order authorizing the issuance of the bonds.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.07, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 300, Sec. 36, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 620, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.117. SIGNATURES AND SEALS. (a) The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals may be used in lieu of manual signatures and manually impressed seals in executing the bonds and attached coupons.

(b) Interest coupons may be signed with the facsimile signatures of the chairman and secretary of the board.

(c) If an officer whose manual or facsimile signature appears on a bond, or whose facsimile signature appears on a coupon, ceases to be an officer before the bonds are delivered, the signature shall still be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery of the bonds.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.118. APPROVAL BY ATTORNEY GENERAL. Before bonds are delivered to the purchasers, the record relating to the bonds shall be examined by the attorney general. If the record demonstrates that the bonds have been issued in accordance with the constitution and this subchapter, the bonds shall be approved by the attorney general.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.08, eff. Aug. 30, 1993.

Sec. 161.119. REGISTRATION WITH COMPTROLLER. After the bonds are approved by the attorney general, they shall be registered in the office of the comptroller.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 161.120. VALIDITY OF BONDS. (a) After the bonds are approved by the attorney general and registered with the state comptroller, they shall be held as valid and binding obligations of the state in every action, suit, or proceeding in which their validity is or may be brought into question.

(b) In each action brought to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general or a certified copy of that certificate shall be admitted and received in evidence as to the validity of the bonds.

(c) The only defense that can be offered against the validity of the bonds shall be forgery or fraud.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.121. BONDS AS NEGOTIABLE INSTRUMENTS. Bonds issued under this chapter have and are declared to have all qualities and incidents of negotiable instruments under the laws of this state.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.123. NOTICE FOR BIDS ON BONDS. If the board authorizes the issuance of a series of bonds and decides to call for bids, it shall publish an appropriate notice at least one time not less than 10 days before the date of the sale in a recognized financial journal of general circulation.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.10, eff. Aug. 30, 1993.

Sec. 161.124. SECURITY FOR BID. The board may require bidders to accompany their bids with exchange or bank cashier's checks in an amount considered adequate by the board to be a forfeit guaranteeing the acceptance and payment for bonds covered by the bids and accepted

by the board.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.11, eff. Aug. 30, 1993.

Sec. 161.125. SALE OF BONDS. Bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.12, eff. Aug. 30, 1993.

Sec. 161.126. REPLACEMENT BONDS. The board may provide for replacement of bonds that are mutilated, lost, or destroyed.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.127. REFUNDING BONDS. (a) The board may provide by resolution for issuance of refunding bonds for the purpose of refunding outstanding bonds issued under this chapter together with accrued interest on the bonds.

(b) As far as applicable, the preceding provisions of this subchapter shall govern:

(1) the issuance of the refunding bonds;

(2) the maturities and other details of the refunding bonds;

(3) the rights of bondholders; and

(4) the duties of the board with respect to the refunding bonds.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.128. BONDS AS INVESTMENTS AND SECURITY. (a) Bonds

issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

(b) The bonds are legal and sufficient security for the deposits in the amount of the par value of the bonds.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.13, eff. Aug. 30, 1993.

Sec. 161.129. TAXATION OF BONDS. Bonds are exempt from any tax by the state and by cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.14, eff. Aug. 30, 1993.

Sec. 161.130. CONSTITUTIONAL APPROPRIATIONS. (a) If during the existence of the fund or during the time general obligation bonds are payable from the fund the board determines that there will not be sufficient money in the fund during the following biennium available to pay principal of or interest on the bonds that are to come due and to be paid from the fund during that biennium, the comptroller shall transfer to the fund the first money coming into the State Treasury not otherwise appropriated by the constitution in amounts sufficient to pay the obligations.

(b) The money appropriated shall be used to pay the obligations only if at the time the principal or interest actually become due there is not sufficient money in the fund available to pay the amount due.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.15, eff. Aug. 30, 1993.

Sec. 161.131. MINORITY-OWNED BUSINESSES. (a) The board shall make a good faith effort to award to minority-owned businesses:

(1) contracts relating to the issuance of bonds by the board under this chapter in the amount of at least 20 percent of the total costs of issuing those bonds; and

(2) contracts for the items to be financed by bonds issued by the board in the amount of at least 20 percent of the proceeds of those bonds.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(134), eff. June 17, 2011.

(c) In this section:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

(2) "Minority group" includes:

(A) African Americans;

(B) American Indians;

(C) Asian Americans; and

(D) Mexican Americans and other Americans of Hispanic origin.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.15, eff. Aug. 30, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(134), eff. June 17, 2011.

Sec. 161.132. WOMEN-OWNED BUSINESSES. (a) The board shall make a good faith effort to award to women-owned businesses:

(1) contracts relating to the issuance of bonds by the board under this chapter in the amount of at least 10 percent of the total costs of issuing those bonds; and

(2) contracts for the items to be financed by bonds issued by the board in the amount of at least 10 percent of the proceeds of those bonds.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec.

25(135), eff. June 17, 2011.

(c) In this section:

(1) "Women-owned business" means a business entity at least 51 percent of which is owned by women or, in the case of a corporation, at least 51 percent of the shares of which are owned by women, and that is managed and controlled by women in its daily operations.

(2) "Minority group" includes:

(A) African Americans;

(B) American Indians;

(C) Asian Americans; and

(D) Mexican Americans and other Americans of Hispanic origin.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.15, eff. Aug. 30, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(135), eff. June 17, 2011.

SUBCHAPTER E. VETERANS' LAND FUND

Sec. 161.171. MONEY AND LAND INCLUDED IN FUND. (a) The veterans' land fund shall include:

(1) land purchased by the board from money in the fund;

(2) money attributable to general obligation bonds issued and sold by the board, including proceeds from the issuance and sale of the bonds;

(3) money received from the sale or resale of land or rights in land purchased with the proceeds from the general obligation bonds;

(4) money received from the sale or resale of land or rights in land purchased with other money attributable to the general obligation bonds;

(5) proceeds derived from the sale or other disposition of the board's interest in:

(A) contracts for the sale of land or rights in land; or

(B) a loan made under Subchapter K;

(6) interest and penalties received from the sale or resale

of land purchased under this chapter or from rights in the land;

(7) bonuses, income, rents, royalties, and any other pecuniary benefit received by the board from:

(A) land purchased under this chapter; or

(B) loans made under Subchapter K;

(8) money received as indemnity or forfeiture for the failure of any bidder for purchase of general obligation bonds to comply with the person's bid and accept and pay for the bonds or for the failure of a bidder for purchase of land comprising a part of the fund to comply with the person's bid and accept and pay for the land and amounts received by the board under bond enhancement agreements with respect to the bonds;

(9) interest received from investments of this money;

(10) any interest of the board in a loan made under Subchapter K using money in the fund, including any title insurance related to the loan or land purchased with the loan; and

(11) any equitable interest in property encumbered under Subchapter K and attributable to the fund.

(b) Except as otherwise provided by law, money in the fund shall be deposited in the State Treasury to the credit of the fund.

Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.17, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 71, Sec. 1, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 333, Sec. 1, eff. May 21, 2001.

Sec. 161.173. INVESTMENT OF MONEY IN FUND. (a) Money in the fund that is not immediately committed to paying principal of and interest on the bonds, to the purchase of land, or to the payment of expenses as provided in this chapter may be invested in:

(1) direct security repurchase agreements and reverse security repurchase agreements made with state or national banks that have main offices or branch offices in this state or with primary dealers as approved by the Federal Reserve System;

(2) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;

(3) direct obligations of or obligations guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing

Association, the Federal Home Loan Mortgage Corporation, or a successor organization to one of those organizations;

(4) bankers' acceptances that:

(A) are eligible for purchase by members of the Federal Reserve System;

(B) do not exceed 270 days to maturity; and

(C) are issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;

(5) commercial paper that:

(A) does not exceed 270 days to maturity; and

(B) has received the highest short-term credit rating by a nationally recognized investment rating firm;

(6) contracts written by the board in which the board grants the purchaser the right to purchase securities in the board's marketable securities portfolio at a specified price over a specified period and for which the board is paid a fee and specifically prohibits naked-option or uncovered option trading;

(7) obligations of a state or an agency, county, city, or other political subdivision of a state, including revenue bonds issued under Chapter 164, and mutual funds composed of these obligations;

(8) an investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States;

(9) an investment, account, depository receipt, or deposit that is fully:

(A) insured by the Federal Deposit Insurance Corporation or its successor; or

(B) secured by securities described by Subdivision (2), (3), or (8) of this subsection;

(10) a collateralized mortgage obligation fully secured by securities or mortgages issued or guaranteed by the Government National Mortgage Association (GNMA) or any entity described by Subdivision (3) of this subsection;

(11) a security or evidence of indebtedness issued by the Farm Credit System Financial Assistance Corporation, the Private Export Funding Corporation, or the Export-Import Bank; and

(12) any other investment authorized for investment of state funds by the comptroller under Section 404.024, Government

Code.

(b) In this section:

(1) "Direct security repurchase agreement" means an agreement under which the board buys, holds for a specified time, and then sells back any of the following securities, obligations, or participation certificates:

(A) United States government securities;

(B) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;

(C) direct obligations of or obligations guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, or a successor organization to one of those organizations; or

(D) any other investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States.

(2) "Market value" means the fair and reasonable prevailing price at which a security is being sold on the open market at the time of the appraisement of the security by the board.

(3) "Reverse security repurchase agreement" means an agreement under which the board sells and after a specified time buys back any of the securities, obligations, or participation certificates listed in Paragraphs (A) through (D) of Subdivision (1) of this subsection.

(c) The Veterans Land Board shall not invest more than $50 million in revenue bonds issued under Chapter 164.

Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 720, Sec. 2, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 56, Sec. 1, 2; Acts 1993, 73rd Leg., ch. 242, Sec. 1.18, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 265, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 14.17, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch; 262, Sec. 1, 2, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 5.013, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 23, eff. June 17, 2011.

Sec. 161.1731. CUSTODY AND INVESTMENT OF ASSETS PENDING TRANSACTIONS. With the approval of the comptroller, the board, in managing the assets of the fund, pending the completion of an investment transaction, may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the cash or securities of the fund; and

(2) authorize the custodian to invest cash held under Subdivision (1) in the investments determined by the board.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 2, eff. May 9, 1997.

Sec. 161.1732. LENDING SECURITIES. (a) In managing the assets of the fund, the board may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the securities of the fund; and

(2) authorize the custodian to lend the securities held under Subdivision (1) as provided by this section and by rules adopted by the board.

(b) To be eligible to lend securities under this section, a custodian selected by the board under Subsection (a) must be experienced in the operation of a fully secured securities loan program and must:

(1) maintain adequate capital in the prudent judgment of the board to assure the safety of the securities;

(2) execute an indemnification agreement satisfactory in form and content to the board fully indemnifying the board against loss resulting from the custodian's operation of a securities loan program for the fund's securities; and

(3) require any securities broker or dealer to whom it lends securities of the fund to deliver to, and maintain with, the custodian collateral in the form of cash, United States government securities, or letters of credit that are issued by banks rated as to investment quality not less than A or its equivalent by a nationally recognized investment rating firm in an amount equal to at least 100 percent of the market value, from time to time, of the loaned

securities.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 2, eff. May 9, 1997. Amended by Acts 1999, 76th Leg., ch. 134, Sec. 2, eff. May 20, 1999.

Sec. 161.174. USE OF FUND TO PAY PRINCIPAL AND INTEREST. The principal of and interest on bonds issued by the board shall be paid from money in the fund as provided by the constitutional provision authorizing the bonds.

Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.19, eff. Aug. 30, 1993.

Sec. 161.175. USE OF FUND TO PAY EXPENSES RELATED TO THE LAND. (a) The board may use money in the fund attributable to bonds that have been issued and sold to pay:

(1) expenses of surveying and monumenting the land and the tracts of land;

(2) the cost of constructing roads on the land or the tracts of land;

(3) legal fees, recordation fees, and advertising costs arising from the purchase and sale or resale of the land and the tracts of land; and

(4) other similar costs necessary or incidental to the purchase and sale of land acquired by the board.

(b) These expenses shall be added to the price of the land when sold or resold by the board.

(c) The board may award a contract in an amount not to exceed $25,000 to purchase supplies, materials, services, and equipment for use by the board in connection with improvements to, repairs to, or maintenance of land and with roadways and improvements located on land that are undertaken by the board under this chapter to make the land more marketable or useable without the necessity of soliciting or obtaining competitive bids. The board may not award a contract under this subsection in an amount that exceeds $25,000 without soliciting or obtaining competitive bids.

Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.20, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 25, Sec. 1, eff. May 12, 2003.

Sec. 161.176. USE OF FUND TO PAY BOND EXPENSES. The board may use money in the fund attributable to bonds issued and sold to pay:

(1) legal fees and fees for financial advice necessary in the opinion of the board to the sale of bonds;

(2) the expense of publishing notice of sale of an installment of bonds;

(3) the expense of printing the bonds;

(4) the expenses of issuance of the bonds, including the actual costs of travel, lodging, and meals of board members, officers or employees of the board, the comptroller, and the attorney general that are necessary in the opinion of the board to effectuate the issuance, rating, and delivery of the bonds;

(5) the cost of manually signing the bonds;

(6) remuneration to any agent employed by the board to pay the principal of and interest on the bonds;

(7) any amounts required to be paid to maintain the federal tax exemption of interest on the bonds; and

(8) all other costs, fees, and expenses relating to the issuance of the bonds.

Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 720, Sec. 3, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 242, Sec. 1.21, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 14.18, eff. Sept. 1, 1997.

Sec. 161.177. PURCHASE AND DESTRUCTION OF BONDS. (a) The board may use money in the fund to purchase on the open market any bonds it has issued and sold, and the debt represented by these bonds when purchased is considered canceled.

(b) Bonds purchased by the board under Subsection (a) of this section shall be mutilated, burned, or otherwise destroyed by the comptroller, who shall certify this fact to the board under the seal of his office.

(c) No further interest shall be paid on these bonds.

Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.19, eff. Sept. 1, 1997.

Sec. 161.178. DISPOSAL OF EXCESS FUNDS. Subject to the provisions of the constitution:

(a) Money in the fund that is not spent for the purposes provided in this chapter shall remain in the fund until there is sufficient money to retire fully bonds issued and sold by the board.

(b) Money in the fund that is in addition to that necessary to retire the bonds shall be deposited to the credit of the General Revenue Fund to be appropriated as provided by law, and the money necessary to retire the bonds shall be set aside and shall remain in the fund.

(c) Money that becomes at a later time a part of the fund after there is sufficient money to retire the bonds shall be deposited to the credit of the General Revenue Fund.

Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 17, eff. Sept. 1, 1985.

Sec. 161.179. SALE OF LAND AND LAND CONTRACTS. Notwithstanding any other provision of this chapter, the board may sell at public or private sale, with or without public bidding, any or all of the land contracts and related land. Proceeds from the sale shall be deposited in the fund or account from which the contracts or related land were sold and otherwise applied in the manner set forth in this chapter, except that at the direction of the board the sale proceeds may be used by the board, together with other available money, to discharge, pay, or redeem, in whole or in part, outstanding bonds issued by the board.

Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 18, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 242, Sec. 1.22, eff. Aug. 30, 1993.

Sec. 161.180. TEMPORARY TRANSFERS. Amounts temporarily transferred from the fund to the veterans' housing assistance fund or the veterans' housing assistance fund II under the Texas Constitution shall be returned to the fund as soon as practicable. Investment earnings allocated by the board to the transferred amounts shall be credited to the fund as if the transfer had not been made.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.23.

SUBCHAPTER F. PURCHASE, SALE, AND OTHER DISPOSITION OF LAND

Sec. 161.2111. REPORT TO BOND REVIEW BOARD. When the Veterans' Land Board applies under Subchapter C, Chapter 1231, Government Code, for the Bond Review Board's approval of a bond issuance, or on request of the Bond Review Board, with respect to purchases made under this chapter, the Veterans' Land Board shall file with the Bond Review Board a report on the performance of loans made by the Veterans' Land Board in connection with the purchases. The Bond Review Board shall review the reports filed by the Veterans' Land Board under this section to assess the performance of loans made under this chapter. The filing dates and the contents of the reports must comply with any rules adopted by the Bond Review Board.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 13.02, eff. Aug. 22, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.355, eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 87, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.42, eff. September 1, 2019.

Sec. 161.212. APPRAISAL. (a) Before purchasing land under the provisions of this chapter, the board shall have an appraisal of the property made to determine its value.

(b) A person making an appraisal on behalf of the board shall be licensed or certified as an appraiser by the State of Texas.

(c) The appraiser shall make a written report to the board in the form and manner required by the board.

(d) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff.

Sept. 1, 2003.

Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 7, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 674, Sec. 1, 21, eff. Sept. 1, 2003.

Sec. 161.213. SWORN REPORT. (a) Before the board purchases land under Section 161.211 of this code or Subchapter G of this chapter, it shall require the seller to execute a sworn report to the board that shall include the following:

(1) the date the seller purchased the land;

(2) the amount the seller paid for the land if purchased subsequent to June 7, 1949;

(3) from whom the seller purchased the land; and

(4) the improvements made on the land since the seller purchased it and the cost of the improvements.

(b) If the land is purchased under Subchapter G of this chapter, the sworn report shall include the following additional information:

(1) if the seller by any manner or method is making the down payment to the board on behalf of the veteran;

(2) if there is a lease arrangement between the seller and the veteran, and if so, the duration, term, and amount to be paid; and

(3) if there is an agreement or contract of any nature between the seller and the veteran to transfer, sell, or convey at any time in the future.

Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.214. TITLE. (a) Before making payment for land, the board shall have the title of the property sought to be purchased examined and may require for this purpose a title insurance policy or appropriate examination of title. The board may submit the title to the attorney general for examination and opinion.

(b) The board may purchase land that has mineral interests outstanding or that is subject to title exceptions acceptable to the

board.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 2, eff. Sept. 1, 2003.

Sec. 161.215. PURCHASE OF LAND. Land purchased by the board shall be acquired at the lowest price that can be obtained in the opinion of the board, taking into consideration the quality, location, natural advantages, and improvements of the land. The land shall be paid for in cash and shall be clear of all liens and shall be a part of the fund.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.216. COST OF LAND SOLD BY BOARD. Except for forfeited land that may be resold by the board at less than actual cost under Section 161.319 of this code, land shall not be sold by the board at less than its actual cost.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.24, eff. Aug. 30, 1993.

Sec. 161.217. APPOINTMENT OF LOCAL COMMITTEE. The commissioners court of each county in the state shall appoint a committee composed of three resident real property owners of the county.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.218. WORK OF LOCAL COMMITTEE. (a) A person who considers himself an eligible veteran under this chapter and who desires to benefit under this chapter shall submit to the local committee the forms prescribed by the board before he submits his

application of purchase and sales contract to the board. If the veteran is a resident of one county and is seeking to purchase land located in another, he shall submit the forms to the local committee in both counties.

(b) The local committee shall consider the forms and shall submit to the board a report concerning the financial responsibility of the veteran, if it is known, a statement of opinion as to whether or not the transaction is bona fide, a statement as to the amount the committee considers to be the reasonable value of the land in question, and a statement of the credit rating of the veteran applicant.

(c) Notwithstanding Subsection (a) or (b) of this section, or Section 161.217 of this subchapter, the committees of the various counties shall function as provided by the board's rules and may be abolished by the board if it is determined that they are no longer necessary.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 8, eff. Sept. 1, 1985.

Sec. 161.219. BOARD INVESTIGATION. (a) The board may make inquiries and investigations it considers proper to determine the veteran's eligibility and qualifications and shall obtain from the veteran a written credit report.

(b) If the board determines from the information submitted or from its own inquiries and investigations that the financial responsibility of the veteran leaves reasonable doubt as to his ability to carry the contract through to completion and make all payments, the board shall reject the application.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 9, eff. Sept. 1, 1985.

Sec. 161.220. EXEMPTION. The provisions of Sections 161.217 through 161.219 of this code do not apply to sales under Sections 161.175, 161.231 through 161.234, and 161.319 of this code unless the board so desires.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.221. INITIATION OF SALE. The sale of land by the board may be properly initiated by contract of sale and purchase, and the contract shall be recorded in the deed records in the county in which the land is located.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.222. PURCHASE PAYMENTS. (a) The purchaser shall make an initial payment in an amount set by the board's rules for land sold under this chapter.

(b) The balance of the selling price shall be amortized over a period determined by the board not to exceed 40 years together with interest at a fixed, variable, floating, or other rate or rates determined by the board.

(c) The purchaser is entitled to pay any or all installments still remaining unpaid on any installment date.

(d) In an individual case, the board may postpone for good cause the payment of the whole or any part of an installment of the selling price or interest on the selling price on terms the board considers proper.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1898, ch. 768, Sec. 1, eff. June 13, 1979; Acts 1985, 69th Leg., ch. 798, Sec. 10, 20, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 242, Sec. 1.25, eff. Aug. 30, 1993.

Sec. 161.223. BOARD TO SPECIFY TERMS. The board may specify in each individual case the terms of the contract entered into with the purchaser as long as they are not contrary to the provisions of this chapter.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.224. TIME LIMIT ON TRANSFER. (a) No property sold under this chapter may be transferred, sold, or conveyed in whole or part until the original veteran purchaser has enjoyed possession for a period of three years from the date of purchase of the property and complied with the terms and conditions of this chapter and rules of the board.

(b) If the veteran purchaser dies or becomes financially incapacitated or if there is an involuntary transfer by court order or proceedings including bankruptcy, sheriff or trustee sale, or divorce, the property may be conveyed before the expiration of the three-year period by the purchaser or his heirs, administrators, or executors by complying with rules of the board and by securing the approval of the board.

(c) After the three-year period, a purchaser may transfer, sell, or convey land purchased under this chapter at any time if all mature interest, principal, and taxes have been paid, the terms and conditions of this chapter and rules of the board have been met, and the approval of the board has been obtained.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.225. SALE TO A NONVETERAN. If the sale is made to a person other than a qualified Texas veteran, the assignee and all subsequent assignees shall assume an interest rate on the indebtedness to the board determined by the board at an amount not less than one percent a year greater than the rate determined by the board for sale to veterans under Sections 161.175 and 161.231 through 161.234 of this code or Subchapter G of this chapter on the date on which the transfer, sale, or conveyance is approved. If the purchase contract is awarded in a divorce action or incident to a written separation agreement, the interest rate shall not change.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.226. DISPOSITION OF LAND THAT IS PAID FOR. Property

sold under this chapter may be transferred, sold, or conveyed at any time after the entire indebtedness due to the board has been paid.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.227. LEASE OF LAND. (a) No land purchased under this chapter may be leased by the purchaser for a term of more than 10 years except as follows:

(1) leases for oil, gas, and other minerals may be for a term of not more than 10 years, and as long thereafter as such oil, gas, and other minerals are produced from the land in commercial quantities;

(2) leases for coal and lignite may be for a term of not more than 40 years, and as long thereafter as such coal and lignite are produced from the land in commercial quantities; and

(3) leases, whether referred to as leases, licenses, or easements, for microwave, radio, or other communication towers, may be for a term of not more than 50 years.

(b) No lease may contain a provision for option or renewal of the lease or re-lease of the property for any term which would cause the entire fixed term of such lease or leases to exceed the applicable maximum fixed term set forth in Subsection (a)(1), (2), or (3) above, and the taking of any such option, renewal, or re-lease agreement in a separate instrument to take effect in the future is prohibited. A lease or instrument that contains an option, renewal, or re-lease agreement in violation of this section is expressly declared to be void.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 3080, ch. 812, Sec. 1, eff. June 17, 1981; Acts 2003, 78th Leg., ch. 674, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.228. CONDITIONS OF LEASES. While the veteran is indebted to the board for land purchased, if he executes or there exists a lease or contract of sale of oil, gas, or other minerals, chemicals, or hard metals or a lease or contract of sale for timber, sand, gravel, or other materials that covers all or part of the land

and that would result in the depletion of the corpus of the tract, at least one-half of all bonus money, delay rentals, and royalties received as consideration for or payment under the oil, gas, and mineral lease and at least one-half of all money received under a lease or contract of sale of any other minerals, chemicals, hard metals, timber, sand, gravel, and other materials or as much as is required, shall be paid to the board by the owner of the lease or contract of sale and applied by the board to the satisfaction of the indebtedness.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 3080, ch. 812, Sec. 2, eff. June 17, 1981.

Sec. 161.229. DEEDS. (a) When the entire indebtedness due the state under the contract of sale is paid, the chairman of the board shall execute a deed under seal to the original purchaser of the land or to the last assignee whose assignment has been approved by the board.

(b) None of the provisions of this chapter shall be construed to prohibit the board from accepting full payment for a portion of a tract and issuing a deed to the land according to the rules of the board.

(c) Deeds issued by the board and executed by the chairman under seal are ratified, confirmed, and validated whether they convey all or only a part of the land contracted to be sold to the veteran.

(d) If a deed is executed to a person other than the legal owner or to a deceased grantee, the deed and the rights conveyed still inure to the benefit of the legal owner.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.230. DEATH OF PURCHASER. (a) If the purchaser of the land dies while indebted to the board under a contract, his rights, acquired under this chapter and the contract devolve on his heirs, devisees, or personal representatives under the laws of this state, but subject to all rights, claims, and charges of the board.

(b) Default by an heir, devisee, or personal representative

with respect to a right, claim, or charge of the board has the same effect as default by the purchaser before his death.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.231. SUBDIVIDING LAND. Land acquired by the board may be subdivided for sale into tracts of the size the board may consider advisable.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.232. CONDITIONS FOR SALE OF LAND. Land acquired and subdivided under Sections 161.175, 161.231, 161.233, and 161.234 of this code shall be offered for sale according to rules adopted by the board and shall be sold by the board to veterans qualified to participate in the program in conformity with the provisions of this chapter relating to the sale of land purchased generally by the board.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.233. DOWN PAYMENT. (a) The sale price of land sold under Sections 161.175 and 161.231, 161.232, and 161.234 of this code may include the addition of the expenses and fees in Sections 161.069, 161.070, and 161.175 of this code. Provided, however, no tract may be sold under Sections 161.175 and 161.231, 161.232, and 161.234 of this code at a price exceeding $40,000 unless the veteran pays the board in cash, in accordance with its rules, a down payment equal to that portion of the sale price in excess of $40,000. This down payment shall be in addition to the initial payment required by Section 161.222 of this code and shall be paid not later than the sale date.

(b) If the sale is not consummated, the down payment shall be refunded to the veteran.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1899, ch. 768, Sec. 2, eff. June 13, 1979; Acts 1985, 69th Leg., ch. 798, Sec. 11, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 160, Sec. 1, eff. Aug. 26, 1991.

Sec. 161.234. SALE TO OTHER PURCHASERS. The provisions of Sections 161.175 and 161.231 through 161.233 of this code notwithstanding, land acquired and subdivided under these sections that has first been offered for sale to veterans and that has not been sold to the purchasers may be sold to any purchaser in the same manner as land forfeited under this chapter.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.235. RIGHTS OF SURVIVING SPOUSE. If an eligible Texas veteran dies after he has filed with the board an application and contract of sale to purchase through the board the tract selected by him or her and before the purchase is completed, the surviving spouse of the veteran may complete the transaction.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.236. NUMBER OF TRACTS PURCHASED. The board may promulgate rules to determine the number of tracts of land that a veteran may purchase under this chapter.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1999, 76th Leg., ch. 133, Sec. 1, eff. May 20, 1999.

Sec. 161.237. EXEMPTION FROM CERTAIN REAL ESTATE TRANSACTION LAWS. (a) Unless the statute specifically states that the statute applies to the board, the following statutes do not apply to the board:

(1) a statute that would require the board to provide a notice or disclosure to a buyer of real property; and

(2) a statute relating to the sale, purchase, or financing of real property by an executory contract, including a contract for deed or other similar sale.

(b) This section does not affect the application of a statute described by Subsection (a)(2) to a party involved in a transaction with the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 234 (H.B. 1853), Sec. 3, eff. May 25, 2007.

SUBCHAPTER G. PURCHASE AND SALE OF SELECTED LAND

Sec. 161.281. SELECTION OF LAND. (a) If a veteran desires a particular tract of land located in this state, on proper showing of eligibility to benefits under this chapter, he may be authorized by the board to select the land that he desires and submit his selection to the board on its prescribed form.

(b) The board shall establish a procedure that requires the veteran to personally inspect the tract he has selected. The board may by rule waive the inspection requirement. If the board grants the veteran's request for a waiver, the veteran must designate in writing a personal representative who will inspect the tract for him. The veteran's representative shall submit to the board an affidavit stating that he has inspected the tract the veteran selected.

(c) In order to respond to market conditions, the board may from time to time by rule set the minimum acreage that a veteran may purchase. However, the board may not set the minimum acreage at less than one acre.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 12, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 674, Sec. 4, eff. Sept. 1, 2003.

Sec. 161.282. PROCESSING APPLICATIONS. As far as practical, applications shall be processed in the order in which they are received by the board.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 161.283. PURCHASE BY BOARD. (a) If the board is satisfied with the value and desirability of the property selected by the veteran, it may purchase the land from its owner on the agreed terms.

(b) The board shall pay not more than $60,000 for the property, but may pay more if the veteran pays to the board or the board's designee in cash, in accordance with its rules, that portion of the purchase price in excess of the amount that the board agrees to pay. The amount shall be paid not later than the date on which the board acquires title to the property.

(c) A cash payment by the veteran is considered a down payment on the price of the land when sold to the veteran by the board and is in addition to the initial payment required by Section 161.222 of this code.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1899, ch. 768, Sec. 3, eff. June 13, 1979; Acts 1991, 72nd Leg., ch. 160, Sec. 2, eff. Aug. 26, 1991; Acts 2003, 78th Leg., ch. 674, Sec. 5, eff. Sept. 1, 2003.

Sec. 161.284. APPRAISAL AND TITLE. The board shall have an appraisal of the property made as it considers necessary to determine the value and, before consummating the purchase, shall satisfy itself regarding the title as provided in Section 161.214 of this code. The board may by rule require an on-site meeting between the appraiser and the veteran.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 13, eff. Sept. 1, 1985.

Sec. 161.285. SEPARATE TRANSACTIONS. (a) No transaction under this chapter may be considered together with any other transaction to constitute a block deal between the state and two or more veteran purchasers, and each tract of land is considered as a wholly separate entity without dependence on any other tract of land, substance,

matter, person, or thing in determining its value, purchase, or sale under this chapter.

(b) None of the provisions of this chapter may be construed to prevent the purchase or sale or both of contiguous tracts of land to separate purchasers as long as the value of the land is determined in the manner provided in Section 161.284 of this code.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.286. PURCHASE PREFERENCE. (a) The property acquired by the board becomes a part of the fund, but the veteran who has selected the land has a preference right to purchase the land from the board.

(b) To be entitled to the preference right, the veteran shall agree in writing before the board purchases the land to purchase the land from the board for the price paid for it.

(c) If the veteran fails or refuses to exercise the preference right, the land may be sold by the board in the same manner provided for the sale of land forfeited under this chapter.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.287. RULES GOVERNING SALE. The rules governing the sale of land under this subchapter are governed by the provisions of this chapter relating to sale of land generally by the board except where those provisions conflict with this subchapter.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.288. REFUND. If the title to the land is not approved and accepted by the board, any amount paid to the board or the board's designee in excess of the amount that the board agreed to pay for the selected land shall be refunded to the veteran together with any other down payment remitted to the board.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER H. FORFEITURE

Sec. 161.311. BOARD JUDGE OF FORFEITURE. The board is the sole judge of forfeiture of any purchase contract under this chapter and any person availing himself of the provisions of this chapter by so doing agrees to abide by this chapter.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.312. FORFEITURE BY BOARD. (a) If a portion of the principal of or interest on any sale is not paid when due, or if the provisions of this chapter, the contract, or the rules of the board are not complied with, the contract of sale and purchase is subject to forfeiture by action of the board on 30 days written notice to the original purchaser and his vendee.

(b) The notice shall state the reason why the contract of sale and purchase is subject to forfeiture and is sufficient if given by certified mail to the last known address of the original purchaser and his vendees.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1999, 76th Leg., ch. 134, Sec. 3, eff. May 20, 1999.

Sec. 161.313. CORRECTION OF REASON FOR FORFEITURE. If the person corrects or cures the reason for forfeiture within the 30-day notice period, the board shall not enter an order of forfeiture.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.314. TIME OF FORFEITURE. The forfeiture is effective at the time the board meets and adopts a resolution directing its

chairman to endorse on the wrapper that contains the papers of the sale or on the purchase contract filed in the land office the word "forfeited" or words of similar import and the date of the action and to officially sign the document. At that time, the land and all payments previously made are forfeited.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.315. NOTICE TO COUNTY CLERK. Notice of the board's action in forfeiting the original contract shall be mailed to the county clerk of the county in which the land is located and the clerk shall:

(1) enter a notation of the forfeiture on the margin of the page or pages containing the record of the original contract; or

(2) record the notice of forfeiture.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 7, eff. Sept. 1, 2003.

Sec. 161.316. EFFECT OF FORFEITURE ON LEASES. On forfeiture, the full title to the land, including both surface and mineral estates, shall revest in the board, and the board shall recognize and continue in force and effect any outstanding valid oil, gas, or mineral lease and collect all rentals, royalties, or other amounts payable under the lease.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.317. REINSTATEMENT OF PURCHASE. (a) If a sale is forfeited and the title to the land revested in the fund, the original purchaser or the original purchaser's vendee is entitled to reinstate the purchase contract at any time before the date on which the board meets and orders the land to be advertised for resale or for lease for mineral development but not after that time. If a contract is forfeited more than two times, the board may require, as

a condition of reinstatement, that the purchaser or the purchaser's vendee pay the account in full.

(b) A person who exercises a right of reinstatement shall:

(1) pay all delinquent installments, penalties, and costs incident to the reinstatement; and

(2) fulfill any other requirements prescribed by the board.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 8, eff. Sept. 1, 2003.

Sec. 161.318. RESALE OF LAND. Land included in a forfeited contract is subject to resale under Section 161.319 of this code.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.319. RESALE OF FORFEITED LAND. (a) Resale of forfeited land under this chapter may be made to the highest bidder under terms and conditions and at the time and in the manner prescribed by the board in its rules, the provisions of this chapter notwithstanding.

(b) The board may reject any and all bids.

(c) If the successful bidder refuses to execute a contract of sale and purchase, the money submitted with the person's bid is forfeited and shall be deposited in the State Treasury and credited to the fund.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.26, eff. Aug. 30, 1993.

Sec. 161.320. LATE PAYMENTS; DEFAULT INTEREST RATE. (a) The board may impose charges for late payments.

(b) In addition to charging for late payments under Subsection (a), the board may set and impose a default rate of interest on:

(1) the past due amounts; or

(2) the entire unpaid balance.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 14, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 674, Sec. 9, eff. Sept. 1, 2003.

Sec. 161.321. VACATING PREMISES. If the board declares a forfeiture under a purchase contract, the purchaser shall vacate the premises within 45 days after the date of the letter giving notice of the declaration. The letter shall be sent by registered mail to the last known address of the purchaser.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.322. ENFORCEMENT OF FORFEITURE AND PROTECTION OF RIGHTS. The board, by and through the attorney general, shall institute legal proceedings that are necessary to enforce the forfeiture or to recover the full amount of the delinquent installments, interest, and other penalties that may be due to the board at the time the forfeiture occurred or to protect any other right to the land.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.323. LIABILITY. The liability of the original veteran purchaser and any subsequent assignee or assignees of the veteran are joint and several, but the original veteran purchaser is primarily liable for payment of the money under the original contract of sale and purchase. The board may release an assignor from liability under this section if at least three years have passed since the approved assignment.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 10, eff. Sept. 1, 2003.

Sec. 161.324. DEFENSES IN LAWSUITS. After obtaining the

permission of the legislature, in any action brought in the courts against the state involving the title to a tract of land to which the state has a warranty deed, the state is entitled to plead all statutes of limitations in the general laws of this state, but this shall not be considered as a limitation to any other defense the state may have.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. INSURANCE

Sec. 161.361. DEFINITION. In this subchapter, "person purchasing land under the program" means a person or a person's successor or assign who buys land from the board under a contract of sale and purchase regardless of whether the land is sold under Sections 161.175 and 161.231 through 161.234 or Section 161.319 or Subchapter G, or who buys land using a mortgage loan under Subchapter K.

Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 11, eff. Sept. 1, 2003.

Sec. 161.362. INSURANCE REQUIREMENT. (a) Persons purchasing land under the program shall carry insurance on the improvements on the property in an amount that the board considers necessary. Failure to do so will subject the contract to forfeiture or the mortgage to foreclosure.

(b) The board may promulgate rules necessary to enforce this subchapter.

(c) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff. Sept. 1, 2003.

Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.20, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 674, Sec. 12, 21, eff. Sept. 1, 2003.

Sec. 161.363. INSURANCE CONTRACT. The board may enter into a contract or agreement with one or more insurance companies authorized to do business in this state to provide life, disability, or other insurance coverage to persons purchasing land under the program, if it is in the best interest of the program.

Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 13, eff. Sept. 1, 2003.

Sec. 161.366. INSURANCE NOT MANDATORY. It is not mandatory that a person purchasing land under the program accept the offer of the insurance coverage, and refusal by the person to accept the offer of the coverage shall not be a ground for the board to decline to enter into a contract of sale and purchase or a mortgage with the person.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 14, eff. Sept. 1, 2003.

Sec. 161.368. COLLECTION OF PREMIUM. The board may collect or provide for collection of the insurance premium in a reasonable manner.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 15, eff. Sept. 1, 2003.

Sec. 161.370. CANCELLATION BY INSURER. The contract or agreement shall not prohibit cancellation by the insurer of the entire contract on reasonable notice to the board but shall prohibit cancellation of individual coverage except as provided in this subchapter.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 16, eff. Sept. 1, 2003.

Sec. 161.371. TERMINATION OF INDIVIDUAL COVERAGE. (a) Individual insurance coverage may be terminated for any person on terms agreed to by the insurer and the board.

(b) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff. Sept. 1, 2003.

(c) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff. Sept. 1, 2003.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 17, 18, 21, eff. Sept. 1, 2003.

SUBCHAPTER J. PENALTIES

Sec. 161.401. PENALTY FOR CERTAIN TRANSACTIONS. Any person, seller, veteran, or appraiser who knowingly makes, utters, publishes, passes, or uses any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing in connection with or pertaining to any transaction under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for not less than two nor more than 10 years, or by a fine of not less than $1,000 nor more than $10,000, or by both.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.139, eff. September 1, 2009.

Sec. 161.402. PENALTY RELATING TO CERTAIN PURCHASES, SALES, AND RESALES OF LAND. A person who knowingly files a false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing relating to the purchase, sale, or resale of land under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for not less than two nor more than 10 years or by a fine of not less than $1,000 nor more than $10,000, or

by both.

Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.140, eff. September 1, 2009.

Sec. 161.403. PENALTY FOR DEFRAUDING VETERAN AND STATE. A person who defrauds a veteran of his rights and benefits under this chapter by an act of fraud, duress, deceit, coercion, or misrepresentation or a person who uses the purposes or provisions of this chapter to defraud the state or any veteran by an act of fraud, duress, coercion, misrepresentation, or deceit, is guilty of a felony, and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for not less than two nor more than 10 years or by a fine of not less than $1,000 nor more than $10,000, or by both.

Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.141, eff. September 1, 2009.

SUBCHAPTER K. LAND LOANS

Sec. 161.501. PURPOSE OF SUBCHAPTER; CONSTRUCTION. The purpose of this subchapter is to authorize the board to provide loans to veterans for the purchase of land that are secured by a mortgage, deed of trust, or other lien on the land. This subchapter shall be liberally construed to effect that purpose.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.502. DEFINITIONS. In this subchapter:

(1) "Lending institution" means a bank, savings bank, savings and loan association, credit union, trust company, mortgage banker, mortgage company, life insurance company, or other financial

institution that customarily provides service or aids in the financing of mortgages on single-family residential housing, or a holding company for one of those institutions.

(2) "Loan" means a veterans' land loan made or acquired by the board under this subchapter secured by a mortgage, deed of trust, or other lien on the land purchased with the proceeds of the loan.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.503. LOANS. (a) In addition to purchasing land under Subchapters F and G, the board shall make or acquire loans with money from the fund to finance land purchases by eligible persons in accordance with this subchapter and rules adopted by the board.

(b) The board may enter into contracts with lending institutions to assist in processing, originating, servicing, or administering loans under this subchapter.

(c) The board shall adopt credit, underwriting, and appraisal standards that protect the best interest of the program and limit the exposure of the fund to any losses.

(d) The board shall adopt rules as necessary to implement this subchapter.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 19, eff. Sept. 1, 2003.

Sec. 161.504. ELIGIBILITY FOR LOAN. (a) To qualify for a loan under this subchapter, a person must be a veteran at the time the person applies for the loan. If an eligible veteran dies after filing an application for a loan, the veteran's surviving spouse may complete the transaction.

(b) The board by rule may determine the number of loans that a person may receive under this subchapter.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.505. SECURITY FOR LOAN. A disbursement of money on a loan may not be made unless the loan is secured by a mortgage, deed

of trust, or other lien on the land purchased with the proceeds of the loan. A mortgage, deed of trust, or other lien may be a participation in a lien securing any other loan for the purchase of the property, including a lien securing a home loan under Chapter 162.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.506. INITIAL PAYMENT OR EQUITY. The board may require an initial payment on a loan or may require an investment in the land by the loan recipient in an amount set by the board by rule.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.507. LOAN PAYMENTS. (a) The final principal payment on a loan shall be made not later than the 40th anniversary of the date of the loan.

(b) The board shall determine the maximum principal amount of loans to the same eligible person that may be outstanding at any time.

(c) Payments on the loan must be made at times determined by the board.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.508. FEES; INTEREST. (a) All fees to be charged to a person who receives a loan must be approved by the board.

(b) Any fees or expenses incurred in connection with a loan, including the cost of insurance, may be charged to the loan recipient and included in the principal amount of the loan.

(c) A loan must bear a fixed, variable, floating, or other rate or rates of interest determined by the board. The board may set the interest rate or rates to provide a margin over the rate paid by the board on bonds issued by the board under this chapter.

(d) The difference between the cost of the money to the board and the interest rate or rates charged to a loan recipient may be used in whole or in part to defray the expense of administering the program.

(e) To ensure the maximum benefit of the program to the loan recipient, the board shall adopt rules:

(1) relating to the fees, charges, and interest rates that may be charged by a lending institution in connection with financing the purchase of land with money that does not come from the fund; and

(2) limiting to the maximum extent practical the fees, charges, and interest rates to the fees, charges, and interest rates that would be collected by the lending institution in the normal course of the institution's mortgage lending business.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.509. LATE PAYMENTS; DEFAULT INTEREST RATE. (a) The board may impose charges for late payments.

(b) In addition to charging for late payments under Subsection (a), the board may set and impose a default rate of interest on:

(1) the past due amounts; or

(2) the entire unpaid balance.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.
Amended by Acts 2003, 78th Leg., ch. 674, Sec. 20, eff. Sept. 1, 2003.

Sec. 161.510. COMBINATION WITH CERTAIN HOME LOANS. The board may:

(1) permit a person to combine a loan made under this subchapter with:

(A) a housing assistance loan made under Chapter 162 if the portion of the loan made under this subchapter is funded from amounts on deposit in the fund and the portion of the loan made under Chapter 162 is not funded from amounts in the fund; or

(B) in accordance with board rules, a home mortgage loan made under Chapter 164; and

(2) prescribe the amounts of and forms for a combined loan under this section.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 223 (H.B. 1416), Sec. 2, eff. September 1, 2007.

Sec. 161.511. TIME LIMIT ON TRANSFER OF LAND. (a) Except as provided by Subsection (c), a recipient of a loan may not lease, sell, or otherwise transfer in whole or part land or any interest in land against which there is a mortgage, deed of trust, or any other lien securing the loan:

(1) before the third anniversary of the date the recipient purchases the land; and

(2) unless the recipient has complied with any other terms and conditions provided by this subchapter and the rules of the board.

(b) After the three-year period prescribed by Subsection (a), land may be sold or otherwise transferred, subject to any lien securing a loan, if:

(1) all interest, principal, and taxes that are due have been paid;

(2) the terms and conditions of this subchapter and rules of the board have been met; and

(3) the board approves the sale or other transfer.

(c) The board may waive the three-year period prescribed by Subsection (a):

(1) in a case of death, bankruptcy, financial incapacity, or divorce of the loan recipient;

(2) if a loan recipient is forced to move because of a change in employment or because the recipient's home is condemned through no fault of the recipient; or

(3) at any other time the board considers a waiver to be in the best interest of the program.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.512. INCREASE IN INTEREST RATE; ACCELERATED REPAYMENT. If a recipient of a loan does not comply with the requirements of Section 161.511(a) and the board does not waive the three-year period prescribed by that section, the board by rule may provide for:

(1) an increase in the interest rate on the loan;

(2) the acceleration of repayment of the principal of and interest on the loan; or

(3) any other remedy the board considers appropriate.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.513. FORECLOSURE AND RESALE. The board shall adopt rules providing procedures governing foreclosure of a lien securing a loan.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.514. SALE OF LOANS. (a) The board may sell at public or private sale, with or without public bidding, any or all of the loans made under this subchapter. Proceeds from the sale shall be deposited in the fund and otherwise applied in the manner provided by this chapter, except that at the direction of the board the sale proceeds may be used by the board, together with other available money, to discharge, pay, or redeem, wholly or partly, outstanding bonds issued by the board under this chapter.

(b) A loan made under this chapter that is combined with a housing assistance loan made under Chapter 162 or a home mortgage loan made under Chapter 164 may be sold under this section or under Chapter 162 or 164, as applicable.

Added by Acts 2007, 80th Leg., R.S., Ch. 223 (H.B. 1416), Sec. 1, eff. September 1, 2007.

Sec. 161.515. CERTAIN RIGHTS, BENEFITS, CONDITIONS, AND OBLIGATIONS PROHIBITED. In making rules and administering this subchapter, the board may not impose on or grant a loan recipient or a transferee under Section 161.511 a right, benefit, condition, or obligation that, in any way, may impair:

(1) the ability of the board to sell a loan made under this subchapter; or

(2) the market value of a loan made under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 223 (H.B. 1416), Sec. 1, eff. September 1, 2007.

CHAPTER 162. VETERANS' HOUSING ASSISTANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 162.001. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Veterans' Land Board.

(2) "Fund" means the veterans' housing assistance fund.

(3) "Home" means a dwelling within this state in which a veteran intends to reside as the veteran's principal residence.

(4) "Lending institution" means a bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution that customarily provides service or aids in the financing of mortgages on single-family residential housing which has been approved for participation in the program by the board. The term includes a holding company for any of the foregoing.

(5) "Loan" means a veterans' housing assistance loan made or acquired by the board under this chapter secured by a mortgage on a veteran's home.

(6) "Program" means the Veterans' Housing Assistance Program.

(7) "Commission" means the Texas Veterans Commission.

(8) "Veteran" has the meaning assigned by Section 161.001.

(9) "Veterans' housing assistance fund" means the Veterans' Housing Assistance Fund established under Article III, Section 49-b-1, of the Texas Constitution or the Veterans' Housing Assistance Fund II established under Article III, Section 49-b-2, of the Texas Constitution. Each fund shall be separate and distinct from the other fund and the provisions of this chapter dealing with the fund shall relate to each fund separately and to the separate assets, liabilities, and administration of each fund.

(b) Repealed by Acts 2003, 78th Leg., ch. 1145, Sec. 5.

(c) Repealed by Acts 2003, 78th Leg., ch. 1145, Sec. 5.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 266, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 798, Sec. 15; Acts 1991, 72nd Leg., ch. 239,

Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 242, Sec. 2.01 to 2.03, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 83, Sec. 2, eff. May 11, 2001; Acts 2003, 78th Leg., ch. 1145, Sec. 3, 5, eff. June 20, 2003.

Sec. 162.002. MONEY AND INTERESTS INCLUDED IN THE VETERANS' HOUSING ASSISTANCE FUND. (a) The veterans' housing assistance fund shall include:

(1) any interest of the board in home mortgage loans made from money in the fund to veterans pursuant to this chapter including any insurance thereon or on the homes;

(2) the proceeds derived from the sale or other disposition of the board's interest in home mortgage loans;

(3) the money attributable to any bonds issued and sold by the board to provide money for the fund which shall include but shall not be limited to the proceeds from the issuance and sale of such bonds;

(4) income, rents, and any other pecuniary benefit received by the board as a result of making these loans;

(5) sums received by way of indemnity or forfeiture for the failure of any bidder for the purchase of any such bonds to comply with the person's bid and accept and pay for such bonds and amounts received by the board under bond enhancement agreements with respect to the bonds;

(6) interest received from investments of any such money; and

(7) any equitable interest in properties encumbered under this program and attributable to the fund.

(b) Except as otherwise provided by law, money in the fund shall be deposited in the State Treasury to the credit of the fund.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.04, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 71, Sec. 3, eff. May 9, 1997.

Sec. 162.003. ADMINISTRATION. (a) The board shall administer the veterans' housing assistance fund and the Veterans' Housing Assistance Program in accordance with this chapter.

(1) The board may contract with other agencies of the state or with private entities to administer all or part of the program.

(2) To the extent that it is cost effective, the board may contract with the commission to determine whether or not applicants qualify as veterans under the terms of this chapter.

(3) The board may set and collect fees it considers reasonable and necessary from each applicant to cover the expenses of administering the program, and these fees shall be deposited in the State Treasury and credited to a special housing program fee fund.

(b) The board shall adopt rules governing the administration of the fund and program, the making or acquiring of veterans' housing assistance loans, the criteria for approving lending institutions, the use of insurance on the loans and the homes financed under the program, as deemed appropriate by the board, as further security for the loans, the verification of occupancy of the home by the veteran as his principal residence, and the terms and conditions of any contract made with any lending institution for processing, originating, servicing, or administering the loans. In determining the terms of any contracts for the origination or servicing of loans, the board shall review the prudent lending practices prevalent in the residential mortgage lending industry and shall follow such practices to the maximum extent practical.

(c) The board shall determine the quality and type of homes to be financed under the Veterans' Housing Assistance Program.

(d) The board shall maintain a list of approved lending institutions and shall review and revise such list as necessary at least annually.

(e) When the Veterans' Land Board applies under Subchapter C, Chapter 1231, Government Code, for the Bond Review Board's approval of a bond issuance, or on request of the Bond Review Board, with respect to loans made under the program, the Veterans' Land Board shall file with the Bond Review Board a report on the performance of the loans. The Bond Review Board shall review the reports filed by the Veterans' Land Board under this subsection to assess the performance of loans made under the program. The filing dates and the contents of the reports must comply with any rules adopted by the Bond Review Board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 16, eff. Sept. 1, 1985; Acts

1991, 72nd Leg., 1st C.S., ch. 4, Sec. 13.03, eff. Aug. 22, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 8.356, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 88, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.43, eff. September 1, 2019.

Sec. 162.004. INVESTMENTS OF CERTAIN MONEY IN THE VETERANS' HOUSING ASSISTANCE FUND. Money in the fund that is not immediately committed to the payment of principal and interest on bonds issued by the board to provide money for the fund, the making of home mortgage loans as provided by this chapter, or the payment of expenses as provided by this chapter may be invested in investments authorized for the veterans land fund.

Added by Acts 1989, 71st Leg., ch. 720, Sec. 4, eff. June 14, 1989.

Sec. 162.0041. CUSTODY AND INVESTMENT OF ASSETS PENDING TRANSACTIONS. With the approval of the comptroller, the board, in managing the assets of the fund, pending the completion of an investment transaction, may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the cash or securities of the fund; and

(2) authorize the custodian to invest cash held under Subdivision (1) in the investments determined by the board.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 4, eff. May 9, 1997.

Sec. 162.0042. LENDING SECURITIES. (a) In managing the assets of the fund, the board may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the securities of the fund; and

(2) authorize the custodian to lend the securities held under Subdivision (1) as provided by this section and by rules adopted by the board.

(b) To be eligible to lend securities under this section, a custodian selected by the board under Subsection (a) must be experienced in the operation of a fully secured securities loan program and must:

(1) maintain adequate capital in the prudent judgment of the board to assure the safety of the securities;

(2) execute an indemnification agreement satisfactory in form and content to the board fully indemnifying the board against loss resulting from the custodian's operation of a securities loan program for the fund's securities; and

(3) require any securities broker or dealer to whom it lends securities of the fund to deliver to, and maintain with, the custodian collateral in the form of cash, United States government securities, or letters of credit that are issued by banks rated as to investment quality not less than A or its equivalent by a nationally recognized investment rating firm in an amount equal to at least 100 percent of the market value, from time to time, of the loaned securities.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 4, eff. May 9, 1997.
Amended by Acts 1999, 76th Leg., ch. 134, Sec. 4, eff. May 20, 1999.

Sec. 162.005. SALE OF LOANS. (a) Notwithstanding any other provision of this chapter, the board may sell at public or private sale, with or without public bidding, any or all of the loans in the fund. Proceeds from the sale shall be deposited in the fund and otherwise applied in the manner provided by this chapter, except that at the direction of the board the sale proceeds may be used by the board, together with other available money, to discharge, pay, or redeem, in whole or in part, outstanding bonds issued by the board under this chapter.

(b) In the resolution of the board that authorizes the sale of any or all of the loans in the fund, the board may also authorize one or more designated officers or employees of the board to act on the board's behalf in:

(1) conducting the sale of the loans; and

(2) determining:

(A) the purchaser of the loans; and

(B) the terms of the purchase agreement.

(c) A resolution that authorizes an officer or employee of the board to act on the board's behalf as provided by Subsection (b) must establish the maximum principal amount of the loans to be sold and the minimum sales price of the loans to be sold, expressed as a percentage of the principal amount of the loans.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.05, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 620, Sec. 2, eff. Sept. 1, 2001.

Sec. 162.006. TEMPORARY TRANSFERS. Amounts temporarily transferred from either veterans' housing assistance fund to the veterans' land fund or to the other veterans' housing assistance fund under the Texas Constitution shall be returned to the fund as soon as practicable. Investment earnings allocated by the board to the transferred amounts shall be credited to the fund as if the transfer had not been made.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.06.

SUBCHAPTER B. VETERANS' HOUSING ASSISTANCE PROGRAM

Sec. 162.011. LOANS. (a) The board shall make or acquire loans with money from the veterans' housing assistance fund in accordance with this chapter and the rules adopted by the board.

(b) To qualify for a loan under this chapter, a person must be a veteran at the time the person applies for the loan. If an eligible veteran dies after filing an application, the surviving spouse may complete the transaction.

(c) The final principal payment on any loan under this chapter shall be made not later than 40 years after the date of the loan. The board shall determine the maximum principal amount of loans to any veteran that may be outstanding at any time, except that amounts allocable to a home mortgage loan may not exceed the maximum amount allowable for a similar home mortgage loan through the United States Department of Veterans Affairs or any successor agency.

(d) The board shall obtain insurance covering at least 50 percent of all losses anticipated in connection with veteran payment defaults on loans secured by first or second mortgages, based upon the advice of one or more qualified consultants to the board as to

potential losses which may be reasonably expected on the loans as determined by analysis, including but not limited to actual experience in the residential mortgage lending industry on similar types of mortgage loans, or, in the alternative, the board shall obtain insurance which shall insure repayment of at least 50 percent of the outstanding principal amount of all loans in the event of the nonpayment of the loans by the veterans.

(e) All fees to be charged to a veteran receiving a loan under this chapter must be approved by the board. The board may enter into contracts with lending institutions to assist in processing, originating, servicing, or administering loans under this chapter. Any fees and expenses incurred in connection with a loan, including the cost of insurance, may be charged to the veteran and made a part of the veteran's payments.

(f) The board may by rule determine, from time to time, the number of loans that a veteran may receive under this chapter.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 21, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 160, Sec. 3, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 242, Sec. 2.07, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 133, Sec. 2, eff. May 20, 1999.

Sec. 162.013. INTEREST RATE. A loan under this chapter shall bear a fixed, variable, floating, or other rate or rates of interest determined by the board. The board may set the interest rate or rates to provide a margin over the rate paid by the board on its bonds issued under this chapter. The difference between the cost of the money to the board and the interest rate or rates charged to a veteran may be used in whole or in part to defray the expense of administering the program. To assure the maximum benefit of the program to the veteran, the board shall adopt rules relative to the fees, charges, and interest rates charged by the lending institutions on the financing of the home with money other than from the fund and shall limit to the maximum extent practical such fees, charges, and interest rates to those which would be collected by the lending institution in the normal course of its residential mortgage lending business.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by

Acts 1993, 73rd Leg., ch. 242, Sec. 2.08, eff. Aug. 30, 1993.

Sec. 162.014. SECURITY FOR THE LOAN. No disbursement of funds on a loan shall be made unless the loan is secured by a mortgage, deed of trust, or other lien on the home. A mortgage retained by or a deed of trust to the board or any other lien may be a participation in a lien securing any other loan for the purchase of the property. Payments to retire the loan shall be made at times determined by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.015. INITIAL PAYMENT OR EQUITY. The board may require an initial payment on a loan or may require an investment in the home by the veteran in an amount or amounts set by the board's rules under this chapter.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.09, eff. Aug. 30, 1993.

Sec. 162.016. TIME LIMIT ON TRANSFER. (a) A home or any interest therein, against which there is a mortgage, deed of trust, or any other lien securing a loan under this chapter may not be leased, transferred, sold, or conveyed in whole or in part until the original veteran purchaser has occupied the home as his principal residence for a period of three years from the date of the purchase of the home and complied with the terms and conditions of this chapter and the rules of the board.

(b) After the three-year period, a home may be transferred, sold, or conveyed subject to any lien securing a loan under this chapter at any time if all mature interest, principal, and taxes have been paid, the terms and conditions of this chapter and rules of the board have been met, and the approval of the board has been obtained.

(c) The board may waive the time limitation of Subsection (a) of this section upon the death, bankruptcy, financial incapacity, or divorce of the veteran or in the event a veteran is forced to move due to a change in employment or because his home is condemned through no fault of the veteran or at any other time it deems a

waiver to be in the best interest of the program.

(d) In the event the requirements of Subsection (a) of this section fail to be met and the board does not waive the time limitations as provided in Subsection (c) of this section, the board may provide in its rules for the escalation of the interest rate on the loan to a higher rate of interest or the acceleration of all principal and interest on the loan or such other remedy as the board may in its discretion deem appropriate.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.017. FORECLOSURE AND RESALE. The board shall adopt rules providing for the procedures and the rules for foreclosure and resale of homes financed with a loan under this chapter.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.018. INTEREST RATE ON DELINQUENT PRINCIPAL AND INTEREST. Principal and interest that become delinquent shall bear interest at a rate fixed by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.019. ENFORCEMENT OF FORFEITURE AND PROTECTION OF RIGHTS. The board may request the attorney general to take whatever action is necessary to protect the rights of the state and the veterans' housing assistance funds in any matter concerning the program, and on a request, the attorney general shall take such action.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

SUBCHAPTER C. BONDS

Sec. 162.031. ISSUANCE AND SALE OF BONDS; DISPOSITION OF PROCEEDS. (a) By appropriate action, the board may provide by resolution for the issuance and sale of negotiable bonds authorized by the constitution, and the proceeds shall be a part of the fund,

except that the proceeds of bonds issued under the authority of Article III, Section 49-b-1, of the Texas Constitution for the purpose of making loans to veterans shall be a part of the veterans' housing assistance fund established by that provision, and the proceeds of bonds issued under the authority of Article III, Section 49-b-2, of the Texas Constitution for the purpose of making loans to veterans shall be a part of the veterans' housing assistance fund established by that provision.

(b) The board may use money in the fund attributable to bonds issued to provide money for the fund to pay all costs of issuance of the bonds, including costs, fees, and expenses of the sort the board is authorized to pay from the veterans' land fund in connection with the issuance of the veterans' land bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1989, 71st Leg., ch. 720, Sec. 5, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 242, Sec. 2.10.

Sec. 162.032. INSTALLMENTS. The board may issue bonds in one or several installments.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.033. INTEREST RATE. The bonds shall bear the rate of interest prescribed by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.034. PAYMENT AND MATURITY OF BONDS. (a) The bonds shall be payable as provided by the board and shall mature serially or otherwise not later than 40 years from the date of their issuance.

(b) The board may make the bonds redeemable or subject to tender for purchase before maturity at the price and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.11, eff. Aug. 30, 1993.

Sec. 162.035. FORM, DENOMINATION, AND PLACE OF PAYMENT OF BONDS. The board shall determine the terms of the bonds and the form of the bonds, including the forms of interest coupons attached to the bonds, if any, and shall fix the denomination of the bonds and the place for payment of the principal of and interest on the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.036. MANNER OF EXECUTION. (a) The bonds shall be executed by and on behalf of the board and the state as obligations of the state in the manner provided in Subsection (b) of this section.

(b) The bonds shall be signed and executed as the board provides in the resolution or order authorizing the issuance of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.12, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 300, Sec. 37, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 620, Sec. 3, eff. Sept. 1, 2001.

Sec. 162.037. SIGNATURES AND SEALS. (a) The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals may be used in lieu of manual signatures and manually impressed seals in executing the bonds and attached coupons.

(b) Interest coupons may be signed with the facsimile signatures of the chairman and secretary of the board.

(c) If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before the bonds are delivered, the signature shall still be valid and sufficient for all purposes as if the officer had remained in office until the delivery of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.038. APPROVAL BY ATTORNEY GENERAL. Before the bonds are delivered to the purchasers, the record relating to the bonds shall be examined by the attorney general. If the record demonstrates that the bonds have been issued in accordance with the constitution and this chapter, the bonds shall be approved by the attorney general.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.039. REGISTRATION WITH COMPTROLLER. After the bonds are approved by the attorney general, they shall be registered in the office of the comptroller of public accounts.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.040. VALIDITY OF BONDS. (a) After the bonds are approved by the attorney general and registered with the comptroller of public accounts, they shall be held as valid and binding general obligations of the state in every action, suit, or proceeding in which their validity is or may be brought into question.

(b) In each action brought to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general or certified copy of that certificate shall be admitted and received in evidence as to the validity of the bonds.

(c) Only forgery or fraud may be offered as a challenge to the validity of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.041. BONDS AS NEGOTIABLE INSTRUMENTS. Bonds issued under this chapter have and are declared to have all qualities and incidents of negotiable instruments under the laws of this state.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.042. NOTICE FOR BIDS ON BONDS. If the board authorizes the issuance of a series of bonds and decides to call for

bids, it shall publish an appropriate notice at least one time not less than 10 days before the date of the sale in a recognized financial journal of general circulation.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.043. SECURITY FOR BID. The board may require bidders to accompany their bids with exchange or bank cashier's checks in an amount considered adequate by the board to be a forfeit guaranteeing the acceptance and payment for bonds covered by the bids and accepted by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.044. SALE OF BONDS. Bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.13, eff. Aug. 30, 1993.

Sec. 162.045. REPLACEMENT BONDS. The board may provide for replacement of bonds that are mutilated, lost, or destroyed.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.046. REFUNDING BONDS. The board may provide by resolution for issuance of refunding bonds for the purpose of refunding outstanding bonds issued under this chapter together with accrued interest on the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.047. BONDS AS INVESTMENTS AND SECURITY. (a) Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan

associations, insurance companies, fiduciaries, trustees, guardians, and the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

(b) The bonds are legal and sufficient security for the deposits in the amount of the par value of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.14, eff. Aug. 30, 1993.

Sec. 162.048. TAXATION OF BONDS. The bonds are exempt from any tax by the state and by cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.049. PAYMENT OF PRINCIPAL AND INTEREST. The comptroller shall pay the principal on bonds as they mature and the interest as it becomes payable. Payments shall be made at the place of payment designated on the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.21, eff. Sept. 1, 1997.

Sec. 162.050. CONSTITUTIONAL APPROPRIATIONS. (a) If, during the existence of the fund or during the time any general obligation bonds are payable from the fund, the board determines that there will not be sufficient money in the fund during the following biennium available to pay principal of or interest on the bonds or both principal and interest that are to come due and to be paid from the fund during the following biennium, the comptroller shall transfer to the fund the first money coming into the State Treasury not otherwise appropriated by the constitution in amounts sufficient to pay the obligations.

(b) The money appropriated shall be used to pay the obligations only if at the time the principal or interest or both actually become due there is not sufficient money in the fund available to pay the

amount due.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.15, eff. Aug. 30, 1993.

Sec. 162.051. PURCHASE AND DESTRUCTION OF BONDS. (a) The board may use money in the fund to purchase on the open market any bonds it has issued and sold to provide money for the fund, and the debt represented by those bonds when purchased is considered canceled.

(b) Bonds purchased by the board under Subsection (a) of this section shall be mutilated, burned, or otherwise destroyed by the comptroller, who shall certify this fact to the board under the seal of office.

(c) Interest may not be paid on those bonds after their purchase by the board.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.16, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.22, eff. Sept. 1, 1997.

Sec. 162.052. BOND ENHANCEMENT AGREEMENTS. (a) The board may at any time and from time to time enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Bond enhancement agreements may include, on terms and conditions approved by the board, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, agreements providing for payments based on levels of or changes in interest rates or currency exchange rates, agreements to exchange cash flows or a series of payments, or agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves. The fees and expenses of the board in connection with the issuance of bonds and the making of loans may be paid from money in the related fund, provided that any payments due from the

board under a bond enhancement agreement, other than fees and expenses, that relate to the payment of debt service on bonds constitute payments of principal of and interest on the bonds.

(b) The resolution of the board authorizing a bond enhancement agreement may authorize one or more designated officers or employees of the board to act on behalf of the board in entering into and delivering the bond enhancement agreement and in determining or setting the counterparty and terms of the bond enhancement agreement specified in the resolution, except that the resolution must set the maximum amount and term for the bond enhancement agreement.

(c) Unless the board elects otherwise in its approval of a bond enhancement agreement, the bond enhancement agreement is not a credit agreement for purposes of Chapter 1371, Government Code, regardless of whether the bonds relating to the bond enhancement agreement were issued in part under that law.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.17, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 134, Sec. 5, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.357, eff. Sept. 1, 2001.

CHAPTER 164. VETERANS' FINANCIAL ASSISTANCE PROGRAM

Sec. 164.001. PURPOSE AND POLICY. (a) The legislature declares that it is the policy of the state to provide financial assistance to veterans of the state in recognition of their service to this state and the United States and to honor veterans with a final resting place and with lasting memorials that commemorate their service.

(b) The legislature declares that existing mechanisms for implementing the policy stated in Subsection (a) of this section may be enhanced by adoption of this chapter and implementation of the financial assistance programs authorized by this chapter.

(c) The legislature finds that this chapter and the financial assistance programs authorized by this chapter are in furtherance of a public purpose.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 981, Sec. 1, eff. Nov. 6, 2001.

Sec. 164.002. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Veterans' Land Board.

(2) "Bonds" means the revenue bonds issued by the board under this chapter.

(3) "Financial assistance" means the purchase of land, the sale of land to veterans, and the making of home mortgage loans to veterans, as provided for in this chapter.

(4) "Home" means a dwelling within this state in which a veteran intends to reside as the veteran's principal residence.

(5) "Lending institution" means a bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution that customarily provides service or aids in the financing of mortgages on single-family residential housing that has been approved for participation by the board, including a holding company for a lending institution.

(6) "Veteran" has the meaning assigned by Section 161.001.

(7) "Veterans cemetery" means a burial ground operated solely for the burial of veterans and their eligible relatives.

(8) "Veterans home" means a life care facility, retirement home, retirement village, home for the aging, or other facility that furnishes shelter, food, medical attention, nursing services, medical services, social activities, or other personal services or attention to veterans.

(b) Repealed by Acts 2003, 78th Leg., ch. 1145, Sec. 5.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 5, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 981, Sec. 2, eff. Nov. 6, 2001; Acts 2003, 78th Leg., ch. 1145, Sec. 4, 5, eff. June 20, 2003.

Sec. 164.003. FINANCIAL ASSISTANCE PROGRAMS. The board may establish one or more programs for providing financial assistance to veterans under this chapter. A program may be limited to the purpose of purchasing land, selling land to veterans, making home mortgage loans to veterans, or providing one or more veterans homes or veterans cemeteries. To the extent a financial assistance program is for the purpose of purchasing land or selling land to veterans, the

program shall be administered, to the extent consistent with this chapter and otherwise deemed practicable and desirable by the board, in accordance with the board's Veterans' Land Program. To the extent a financial assistance program is for the purpose of making home mortgage loans to veterans, the program shall be administered, to the extent consistent with this chapter and otherwise deemed practicable and desirable by the board, in accordance with the board's Veterans' Housing Assistance Program.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 6, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 981, Sec. 3, eff. Nov. 6, 2001.

Sec. 164.004. RULES. The board shall adopt rules providing for the administration of its financial assistance programs established under this chapter, including rules concerning:

(1) the purchasing of land and the selling of land to veterans;

(2) the making of home mortgage loans to veterans;

(3) the use of insurance on land and homes as deemed appropriate by the board, as further security for land sold or home mortgage loans made;

(4) the criteria for approving lending institutions participating in programs;

(5) the terms and conditions of a contract made with a lending institution;

(6) the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, or furnishing or equipping of veterans homes or veterans cemeteries; and

(7) other matters as the board deems appropriate.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 7, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 981, Sec. 4, eff. Nov. 6, 2001.

Sec. 164.005. RIGHTS AND POWERS OF BOARD. (a) In connection with the administration of its financial assistance programs under this chapter, the board has and may exercise, to the extent not inconsistent with this chapter, all the rights and powers granted to

it by Chapters 161 and 162 of this code relating to the administration of the board's Veterans' Land Program and Veterans' Housing Assistance Program.

(b) In administering any of the board's financial assistance programs relating to veterans homes, the board, or the board in conjunction with other state or federal agencies, may acquire by purchase, gift, devise, lease, or a combination of those methods, construct, operate, enlarge, improve, furnish, or equip one or more veterans homes.

(c) The board may enter into an agreement with any person for the management or operation of all or part of a veterans home or all or part of a veterans cemetery. The board may delegate to the manager the authority to manage the veterans home or veterans cemetery and to employ and discharge employees.

(d) The board may not authorize the use of any veterans home in a manner that would entitle the United States to recover any amounts pursuant to 38 U.S.C. Section 8136, as amended, or any successor statute.

(e) On terms and conditions acceptable to it, the board may accept and administer gifts, grants, or donations for the support, acquisition, construction, operation, enlargement, improvement, furnishing, or equipping of veterans homes or veterans cemeteries and may enter into agreements with a nonprofit corporation for the solicitation, receipt, and disbursement of the gifts, grants, or donations.

(f) The board, the chairman of the Texas Veterans Commission, and two representatives of the veterans community selected by the chairman of the Texas Veterans Commission shall:

(1) establish the guidelines for determining:

(A) the location and size of veterans cemeteries; and

(B) the eligibility for burial in a veterans cemetery; and

(2) select up to seven locations across the state for veterans cemeteries.

(g) In administering any of the board's financial assistance programs relating to veterans cemeteries, the board, or the board in conjunction with other state or federal agencies, may plan and design, operate, maintain, enlarge, or improve veterans cemeteries.

(h) Of the funds available in the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing

assistance fund II that may be used for veterans cemeteries, the board may spend not more than $7 million each fiscal year to plan and design, operate, maintain, enlarge, or improve veterans cemeteries. The board may not use funds from the veterans' land fund, the veterans' housing assistance fund, or the veterans' housing assistance fund II to acquire land to be used for a veterans cemetery.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 8, eff. May 9, 1997; Acts 1999, 76th Leg., ch. 134, Sec. 6, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 981, Sec. 5, eff. Nov. 6, 2001.

Sec. 164.0051. LOCATION OF VETERANS HOMES. To the extent practicable, when determining the location of new veterans homes in this state, the board shall consider:

(1) the geographic proximity to existing state veterans homes with special regard to areas not served by state veterans homes;

(2) the economic impact of the veterans home on the local community and the veterans program; and

(3) the areas with a significant veteran population, without regard to international boundaries.

Added by Acts 2001, 77th Leg., ch. 746, Sec. 1, eff. June 13, 2001.

Sec. 164.006. ISSUANCE OF BONDS. For the issuance of bonds under this chapter, the board may exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code, to the extent that it is not inconsistent with this chapter.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.358, eff. Sept. 1, 2001.

Sec. 164.007. CONDITIONS FOR ISSUANCE OF BONDS. (a) Bonds may be issued in various series and issues.

(b) Bonds shall be payable as provided by the board and may mature serially or otherwise.

(c) Bonds shall be redeemable before maturity or subject to tender for purchase at the price or prices and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

(d) Bonds may bear a fixed, variable, floating, or other rate or rates of interest or may bear no interest, as determined by the board.

(e) Bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

(f) Bonds issued under this chapter for a purpose other than buying back or refunding general obligation bonds issued under Article III, Section 49-b, 49-b-1, or 49-b-2, of the Texas Constitution may not in the aggregate exceed $1 billion.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 875, Sec. 1, eff. June 14, 2001.

Sec. 164.008. FORM OF BONDS. (a) The bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details as provided by the board in the resolution authorizing their existence.

(b) The bonds shall be signed and executed as provided by the board's resolution or order authorizing the issuance of the bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.009. SECURITY FOR THE BONDS. (a) The bonds issued under this chapter shall be special obligations of the board. As security for the payment of the bonds, the board may provide for a pledge of and lien or mortgage on:

(1) the receipts of all kinds of the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II determined by the board, on the basis of facts, circumstances, and expectations at the time of issuance of the bonds, not to be required for the payment of principal of or interest on the

general obligation bonds issued by the board to augment the funds or to make payments with respect to principal or interest under a bond enhancement agreement with respect to the general obligation bonds;

(2) the assets of the veterans' land fund, the veterans' housing assistance fund, or the veterans' housing assistance fund II determined by the board on the basis of facts, circumstances, and expectations at the time of issuance of the bonds not to be required for the purposes of the fund;

(3) the payments and repayments received by the board from the board's financial assistance provided under this chapter;

(4) other program revenues;

(5) other available revenues of the board; and

(6) one or more veterans homes.

(b) The pledge and lien or mortgage are to be provided for and determined in accordance with the resolution of the board providing for the issuance and sale of the bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 3.02; Acts 1997, 75th Leg., ch. 71, Sec. 9, eff. May 9, 1997; Acts 1999, 76th Leg., ch. 134, Sec. 7, eff. May 20, 1999; Acts 2003, 78th Leg., ch. 590, Sec. 1, eff. Sept. 13, 2003.

Sec. 164.010. BOND ENHANCEMENT AGREEMENTS. (a) The board may at any time and from time to time enter into one or more bond enhancement agreements that the board deems to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Bond enhancement agreements may include, on terms and conditions approved by the board, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, agreements providing for payments based on levels of or changes in interest rates or currency exchange rates, agreements to exchange cash flows or a series of payments, or agreements including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves. The cost to the board of the bond enhancement

agreement may be paid from the proceeds of the sale of the bonds to which the bond enhancement agreement relates or from any other source, including the revenues of the board that are available for the purpose of paying the bonds or that may otherwise be available to make those payments.

(b) The resolution of the board authorizing a bond enhancement agreement may authorize one or more designated officers or employees of the board to act on behalf of the board in entering into and delivering the bond enhancement agreement and in determining or setting the counterparty and terms of the bond enhancement agreement specified in the resolution, except that the resolution must set the maximum amount and term for the bond enhancement agreement.

(c) Unless the board elects otherwise in its approval of a bond enhancement agreement, the bond enhancement agreement is not a credit agreement for purposes of Chapter 1371, Government Code, regardless of whether the bonds relating to the bond enhancement agreement were issued in part under that law.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 10, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.359, eff. Sept. 1, 2001.

Sec. 164.011. FUNDS. (a) In the resolution authorizing the issuance of bonds, the board may make additional covenants with respect to the bonds and the pledged revenues and may provide for the flow of funds and the establishment, maintenance, and investment of funds. The funds established may include an interest and sinking fund, a reserve fund, and other funds that will be kept and maintained by or under the direction of the board.

(b) The board may by resolution provide for the establishment, maintenance, and investment of additional funds into which the board may deposit revenues from any financial assistance program under this chapter that are not pledged to bonds, including any gifts, grants, or donations accepted by the board for the support, acquisition, construction, operation, enlargement, improvement, furnishing, or equipping of veterans homes or veterans cemeteries.

(c) Funds established by the board under this chapter are not to be part of the State Treasury and are not subject to Subchapter F,

Chapter 404, Government Code. Any provision of this chapter or other law that provides for the deposit of money or another thing of value into the funds prevails over the requirements of Subchapter F, Chapter 404, Government Code. The funds shall remain under the control of the board but, at the direction of the board, may be kept and held in escrow and in trust by the comptroller on behalf of the board and the owners of the bonds and used only as provided by this chapter.

(d) Money in a fund shall be invested in investments authorized as provided by a resolution or order of the board.

(e) Legal title to money in a fund is in the board unless or until paid from the fund as provided by this chapter or the resolution authorizing the issuance of the bonds or the establishment of the fund.

(f) The board shall select the comptroller or one or more commercial banks, depository trust companies, or other entities to serve as custodian of the cash or securities of a fund and may authorize the custodian to invest the cash in investments as determined by the board.

(g) In managing the assets of a fund, the board may permit the custodian of the fund's securities to lend the securities as provided by this section and by rules adopted by the board.

(h) To be eligible to lend securities under this section, a custodian selected under Subsection (f) must be experienced in the operation of a fully secured securities loan program and must:

(1) maintain adequate capital in the prudent judgment of the board to assure the safety of the securities;

(2) execute an indemnification agreement satisfactory in form and content to the board fully indemnifying the board against loss resulting from the custodian's operation of a securities loan program for the fund's securities; and

(3) require any securities broker or dealer to whom it lends securities of the fund to deliver and maintain with the custodian collateral in the form of cash, United States government securities, or letters of credit that are issued by banks rated as to investment quality not less than A or its equivalent by a nationally recognized investment rating firm in an amount equal to at least 100 percent of the market value, from time to time, of the loaned securities.

(i) The board shall require the custodian or custodians of a

fund to administer the fund solely and strictly as provided by this chapter and the resolution authorizing the issuance of the bonds, and the state may not take any other action relating to the fund except those specified in this chapter and the resolution authorizing the issuance of the bonds or the establishment of the fund.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 11, eff. May 9, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 14.23, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 134, Sec. 8, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 981, Sec. 6.

Sec. 164.012. RESOLUTIONS. (a) The resolution authorizing the issuance of the bonds may prohibit the further issuance of bonds or other obligations payable from the pledged revenues or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(b) The resolution of the board authorizing the issuance of the bonds may include other provisions and covenants that the board determines necessary.

(c) In a resolution authorizing the issuance of bonds, the board may prescribe systems, methods, routines, and procedures under which the board will function.

(d) The board may adopt and have executed any other proceedings or instruments necessary or convenient in the issuance of bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.013. INVESTMENT SECURITIES. The bonds and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest or may be made redeemable before maturity at the option of the authority or may contain a mandatory redemption provision.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.014. APPROVAL OF THE ATTORNEY GENERAL. Bonds issued under this chapter are subject to review and approval by the attorney general in the same manner and with the same effect as provided by Chapter 1371, Government Code.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.360, eff. Sept. 1, 2001.

Sec. 164.015. REFUNDING BONDS. (a) The board may issue refunding bonds to refund all or part of its outstanding bonds issued under this chapter, including matured but unpaid interest.

(b) The board may refund bonds in the manner provided by general law for revenue bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.016. BONDS AS INVESTMENTS AND SECURITY. (a) The bonds are legal and authorized investments for banks, savings banks, trust companies, savings and loan companies, insurance companies, fiduciaries, trustees, guardians, the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions of the state, and other public funds of the state and its agencies.

(b) The bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their par value.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.017. TAX EXEMPT. Since the board is performing an essential governmental function in the exercise of the powers conferred on it by this chapter, the bonds issued under this chapter,

and the interest and income from the bonds, including any profit made on the sale of bonds, and all fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of bonds are free from taxation and assessments of every kind by this state and any city, county, district, authority, or other political subdivision of this state.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.018. NO PLEDGE OF STATE FAITH AND CREDIT; COVENANT WITH OWNERS OF BONDS. (a) Bonds issued under this chapter are special obligations of the board and are payable only from and secured only by the revenues and assets pledged to secure payment of the bonds under the Texas Constitution and this chapter, and the bonds are not and do not create or constitute a pledge, gift, or loan of the faith, credit, or taxing authority of the state.

(b) Each bond must include a statement that the faith or credit and the taxing authority of the state are not pledged, given, or loaned to secure payment of the principal of, or premium or interest on the bonds.

(c) The state pledges to and agrees with the owners of bonds issued under this chapter that the state will not limit or alter the rights vested in the board to fulfill the terms of agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, together with any premium and interest, interest on any unpaid premium or installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners, are fully met and discharged. The board may include this pledge and agreement of the state in an agreement with the owners of the bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.019. ENFORCEMENT BY MANDAMUS. A writ of mandamus and all other legal and equitable remedies are available to a party in interest to require the board and any other party to carry out agreements and to perform functions and duties under this chapter,

the Texas Constitution, or the board's bond resolutions or orders.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

TITLE 8. ACQUISITION OF RESOURCES
CHAPTER 183. CONSERVATION EASEMENTS
SUBCHAPTER A. CONSERVATION EASEMENTS GENERALLY

Sec. 183.001. DEFINITIONS. In this chapter:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to:

(A) retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use;

(B) protect natural resources;

(C) maintain or enhance air or water quality; or

(D) preserve the historical, architectural, archeological, or cultural aspects of real property.

(2) "Holder" means:

(A) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(B) a charitable corporation, charitable association, or charitable trust created or empowered to:

(i) retain or protect the natural, scenic, or open-space values of real property;

(ii) assure the availability of real property for agricultural, forest, recreational, or open-space use;

(iii) protect natural resources;

(iv) maintain or enhance air or water quality; or

(v) preserve the historical, architectural, archeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.

(4) "Servient estate" means the real property burdened by

the conservation easement.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.002. CREATION, CONVEYANCES, ACCEPTANCES, AND DURATION. (a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third-party right of enforcement does not arise under a conservation easement before its acceptance by the holder and the recordation of the acceptance.

(c) Except as provided by Section 183.003(b) of this code, a conservation easement is unlimited in duration unless the instrument creating it makes some other provision.

(d) An interest that exists in real property at the time a conservation easement is created is not impaired unless the owner of the interest is a party to the conservation easement or consents to it.

(e) A conservation easement must be created in writing, acknowledged and recorded in the deed records of the county in which the servient estate is located, and must include a legal description of the real property which constitutes the servient estate.

(f) If land that has been subject to a conservation easement is no longer subject to such easement, an additional tax is imposed on the land equal to the difference, if any, between the taxes imposed on the land for each of the five years preceding the year in which the easement terminates and the taxes that would have been imposed had the land not been subject to a conservation easement in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.003. JUDICIAL ACTIONS. (a) An action affecting a

conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by some other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.004. VALIDITY. A conservation easement is valid even though:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to another holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes affirmative obligations on the owner of an interest in the burdened property or on the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.005. APPLICABILITY. (a) This chapter applies to any interest created on or after September 1, 1983, that complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before September 1, 1983, if it would have been enforceable had it been created on or after September 1, 1983, unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This chapter does not invalidate any interest, whether

designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.006. COUNTY FINANCING FOR ACQUISITION OF CONSERVATION EASEMENT. (a) In addition to other methods of financing, including the use of the county's general fund, a county may finance the acquisition of a conservation easement under this chapter in the same manner as permitted for that county under:

(1) Section 331.004, Local Government Code, for the acquisition or improvement of land, buildings, or historically significant objects for park purposes or for historic or prehistoric preservation purposes; or

(2) Section 271.045, Local Government Code, for land and rights-of-way.

(b) A conservation easement financed under this section:

(1) may not be acquired by eminent domain; and

(2) is not subject to Section 331.007, Local Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1239 (S.B. 1044), Sec. 1, eff. June 17, 2011.

TITLE 9. HERITAGE
CHAPTER 191. ANTIQUITIES CODE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. TITLE. This chapter may be cited as the Antiquities Code of Texas.

Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.002. DECLARATION OF PUBLIC POLICY. It is the public policy and in the public interest of the State of Texas to locate, protect, and preserve all sites, objects, buildings, pre-twentieth

century shipwrecks, and locations of historical, archeological, educational, or scientific interest, including but not limited to prehistoric and historical American Indian or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, pre-history, history, natural history, government, or culture in, on, or under any of the land in the State of Texas, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.003. DEFINITIONS. In this chapter:

(1) "Committee" means the Texas Historical Commission.

(2) "Landmark" means a state archeological landmark.

(3) "State agency" means a department, commission, board, office, or other agency that is a part of state government and that is created by the constitution or a statute of this state. The term includes an institution of higher education as defined by Section 61.003, Texas Education Code.

(4) "Political subdivision" means a local governmental entity created and operating under the laws of this state, including a city, county, school district, or special district created under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution.

Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2001, ch. 364, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 109, Sec. 18, eff. Aug. 30, 1995.

Sec. 191.004. CERTAIN RECORDS NOT PUBLIC INFORMATION. (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.

(b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.

(c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Added by Acts 1981, 67th Leg., p. 959, ch. 365, Sec. 1, eff. June 10, 1981.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 191.021. COMPLIANCE WITH OPEN MEETINGS ACT AND ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. (a) Repealed by Acts 1995, 74th Leg., ch. 109, Sec. 29, eff. Aug. 30, 1995.

(b) If an institution of higher education notifies the committee in a timely manner (as established by the committee's rules) that it protests the proposed designation of a building or land under its control as a landmark, the matter becomes a contested case under the provisions of Sections 12 through 20 of the Administrative Procedure and Texas Register Act. In the conduct of proceedings under the Administrative Procedure and Texas Register Act, both the hearing officer in his or her recommendations to the committee and the committee in its determinations of findings of fact and conclusions of law shall consider, in addition to such other objective criteria as the committee may establish pursuant to Section 191.091 of this chapter:

(1) that the primary mission of institutions of higher education is the provision of educational services to the state's citizens;

(2) that the authority for expenditure of the portion of the state's resources allocated to institutions of higher education for construction and repair purposes is entrusted to the governing boards of institutions of higher education for the purpose of the furtherance of the primary mission of the respective institutions of higher education;

(3) whether the benefit to the state from landmark designation outweighs the potential inflexibility of use that may be a consequence of the designation; and

(4) whether the cost of remodeling and/or restoration that might be required under the permit procedures of the committee if the

building were designated as a landmark may be so substantially greater than remodeling under procedures established by law for the review of remodeling projects for higher education buildings not so designated as to impair the proper use of funds designated by the state for educational purposes at the institution.

(c) If an institution of higher education notifies the committee in a timely manner (as established by the committee's rules) that it protests the terms of a permit proposed to be granted to an institution of higher education under this chapter, the matter becomes a contested case under the provisions of Sections 12 through 20 of the Administrative Procedure and the Texas Register Act. The hearing officer in his or her recommendations to the committee and the committee in its determination of findings of fact and conclusions of law shall consider:

(1) that the primary mission of institutions of higher education is the provision of educational services to the state's citizens;

(2) that the authority for expenditure of the portion of the state's resources allocated to institutions of higher education for construction and repair purposes is entrusted to the governing boards of institutions of higher education for the purpose of the furtherance of the primary mission of the respective institutions of higher education;

(3) whether the legislature has provided extra funds that may be required to implement any proposed requirements;

(4) the effect of any proposed requirements on maintenance costs;

(5) the effect of any proposed requirements on energy costs; and

(6) the appropriateness of any proposed permit requirements to the uses to which a public building has been or will be dedicated by the governing board of the institution of higher education.

(d) Weighing the criteria set forth in Subsections (b) and (c) of this section against the criteria it adopts pursuant to Section 191.092 of this chapter and such criteria as it may adopt with regard to permit requirements, the committee shall designate a building or land under the control of an institution of higher education as a landmark or include a requirement in a permit only if the record before the committee establishes by clear and convincing evidence that such designation or inclusion would be in the public interest.

Added by Acts 1983, 68th Leg., p. 2003, ch. 364, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 109, Sec. 29, eff. Aug. 30, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 5, eff. June 19, 2009.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 191.051. IN GENERAL. (a) The committee is the legal custodian of all items described in this chapter that have been recovered and retained by the State of Texas.

(b) The committee shall:

(1) maintain an inventory of the items recovered and retained by the State of Texas, showing the description and depository of them;

(2) determine the site of and designate landmarks and remove from the designation certain sites, as provided in Subchapter D of this chapter;

(3) contract or otherwise provide for discovery operations and scientific investigations under the provisions of Section 191.053 of this code;

(4) consider the requests for and issue the permits provided for in Section 191.054 of this code;

(5) prepare and make available to the general public and appropriate state agencies and political subdivisions information of consumer interest describing the functions of the committee and the procedures by which complaints are filed with and resolved by the committee; and

(6) protect and preserve the archeological and historical resources of Texas.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2002, ch. 364, Sec. 5, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 4, eff. Sept. 1, 1987.

Sec. 191.052. RULES. The committee may promulgate rules and require contract or permit conditions to reasonably effect the

purposes of this chapter.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.0525. NOTICE REQUIRED. (a) Before breaking ground at a project location on state or local public land, the person primarily responsible for the project or the person's agent shall notify the committee. The committee shall promptly determine whether:

(1) a historically significant archeological site is likely to be present at the project location;

(2) additional action, if any, is needed to protect the site; and

(3) an archeological survey is necessary.

(b) Except as provided by Subsection (c), the committee shall make a determination not later than the 30th day after the date the committee receives notice under Subsection (a). If the committee fails to respond in the 30-day period, the person may proceed with the project without further notice to the committee. If the committee determines that an archeological survey is necessary at the project location, the project may not commence until the archeological survey is completed.

(c) The committee shall make a determination not later than the 15th day after the date the committee receives notice under Subsection (a) for project locations regarding oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline projects. If the committee fails to respond in the 15-day period, the person may proceed with the project without further notice to the committee. If the committee determines that an archeological survey is necessary at the project location, the project may not commence until the archeological survey is completed.

(d) A project for a county, municipality, or an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, requires advance project review only if the project affects a cumulative area larger than five acres or disturbs a cumulative area of more than 5,000 cubic yards, whichever measure is triggered first, or if the project is inside a designated historic

district or recorded archeological site.

(e) There exist categorical exclusions since many activities conducted on nonfederal public land have little, if any, chance to damage archeological sites, and therefore should not require notification under this section. The following are categorical exclusions at a minimum:

(1) water injection into existing oil and gas wells;

(2) upgrading of electrical transmission lines when there will be no new disturbance of the existing easement;

(3) seismic exploration activity when there is no ground penetration or disturbance;

(4) building and repairing fences that do not require construction or modification of associated roads, fire breaks, or previously disturbed ground;

(5) road maintenance that does not involve widening or lengthening the road;

(6) installation or replacement of meter taps;

(7) controlled burning of fields;

(8) animal grazing;

(9) plowing, if the techniques are similar to those used previously;

(10) installation of monuments and sign posts unless within the boundaries of designated historic districts;

(11) maintenance of existing trails;

(12) land sales and trades of land held by the permanent school fund and permanent university fund;

(13) permanent school fund and permanent university fund leases, easements, and permits, including mineral leases and pooling agreements, in which the lessee, grantee, or permittee is specifically required to comply with the provisions of this chapter;

(14) oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline project in an area where the project will cross state or local public roads, rivers, and streams, unless they contain a recorded archeological site or a designated state land tract in Texas' submerged lands;

(15) maintenance, operation, replacement, or minor modification of an existing oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline; and

(16) any project for which a state permit application has been made prior to promulgation of rules under this section.

(f) This section does not apply to any state agency or political subdivision that has entered into a memorandum of understanding for coordination with the committee.

(g)(1) If, during the course of a project or class of projects that have complied with the notification requirements of this section, a person encounters an archeological site, the person shall abate activity on the project at the project location and shall promptly notify the committee. Within two business days of notification under this subsection, the committee shall determine whether:

(A) a historically significant archeological site is likely to be present in the project area;

(B) additional action, if any, is needed to protect the site; and

(C) an archeological investigation is necessary.

(2) If the committee fails to respond within two business days, the person may proceed without further notice to the committee.

(h) The notification required by this section does not apply to a response to a fire, spill, or other emergency associated with an existing facility located on state or local public lands if the emergency requires an immediate response.

(i) The committee by rule shall establish procedures to implement this section.

Added by Acts 1995, 74th Leg., ch. 109, Sec. 19, eff. Aug. 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 51, eff. Sept. 1, 1997.

Sec. 191.053. CONTRACT FOR DISCOVERY AND SCIENTIFIC INVESTIGATION. (a) The committee may contract with other state agencies or political subdivisions and with qualified private institutions, corporations, or individuals for the discovery and scientific investigation of sunken or abandoned ships or wrecks of the sea, or any part of the contents of them, or archeological deposits or treasure imbedded in the earth.

(b) The contract shall:

(1) be on a form approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the contract; and

(3) provide for the termination of any right in the investigator or permittee under the contract on the violation of any of the terms of the contract.

(c) The executed contract shall be recorded by the person, firm, or corporation obtaining the contract in the office of the county clerk in the county or counties in which the operations are to be conducted prior to the commencement of the operation.

(d) Title to all objects recovered is retained by the State of Texas unless and until it is released by the committee.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2006, ch. 364, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 5, eff. Sept. 1, 1987.

Sec. 191.054. PERMIT FOR SURVEY AND DISCOVERY, EXCAVATION, RESTORATION, DEMOLITION, OR STUDY. (a) The committee may issue a permit to other state agencies or political subdivisions or to qualified private institutions, companies, or individuals for the survey and discovery, excavation, demolition, or restoration of, or the conduct of scientific or educational studies at, in, or on landmarks, or for the discovery of eligible landmarks on public land if it is the opinion of the committee that the permit is in the best interest of the State of Texas.

(b) Restoration shall be defined as any rehabilitation of a landmark excepting normal maintenance or alterations to nonpublic interior spaces.

(c) The permit shall:

(1) be on a form approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the permit; and

(3) provide for the termination of any right in the investigator or permittee under the permit on the violation of any of the terms of the permit.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2006, ch. 364, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 6, eff.

Sept. 1, 1987.

Sec. 191.055. SUPERVISION. All scientific investigations or recovery operations conducted under the contract provisions in Section 191.053 of this code and all operations conducted under permits or contracts set out in Section 191.054 of this code must be carried out:

(1) under the general supervision of the committee;

(2) in accordance with reasonable rules adopted by the committee; and

(3) in such manner that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved in addition to the physical recovery of items.

Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2002, ch. 364, Sec. 7, eff. Sept. 1, 1983.

Sec. 191.056. ACCEPTANCE OF GIFTS. The committee may accept gifts, grants, devises, or bequests of money, securities, or property to be used in the pursuance of its activities and the performance of its duties.

Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2006, ch. 364, Sec. 7, eff. Sept. 1, 1983.

Sec. 191.057. SURVEY, EXCAVATION, OR RESTORATION FOR PRIVATE PARTIES. The committee may survey, excavate, or restore antiquities for private parties under rules promulgated by the committee. All real and administrative costs incurred in the survey, excavation, or restoration shall be paid by the private party.

Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 7, eff. Sept. 1, 1987.

Sec. 191.058. CURATION OF ARTIFACTS. (a) As far as is consistent with the public policy of this chapter, the committee, on a majority vote, may arrange or contract with other state agencies or political subdivisions, and qualified private institutions, corporations, or individuals, for public display of artifacts and other items in its custody through permanent exhibits established in the locality or region in which the artifacts were discovered or recovered. The committee, on a majority vote, may also arrange or contract with these same persons and groups for portable or mobile displays.

(b) The committee is the legal custodian of the items described in this chapter and shall adopt appropriate rules, terms, and conditions to assure appropriate security, qualification of personnel, insurance, facilities for preservation, restoration, and display of the items loaned under the contracts.

(c) Arrangements for curation of artifacts, data, and other materials recovered under Texas Antiquities Committee permits are specified in the body of the permit. Should a state agency or political subdivision lack the facilities or for any reason be unable to curate or provide responsible storage for such artifacts, data, or other materials, the Texas Antiquities Committee will arrange for curation at a suitable institution. The Texas Antiquities Committee may by rule assess costs for the curation.

(d) The committee may contract with a qualified institution for the institution to serve as a repository for artifacts and other items in the custody of the committee. The Corpus Christi Museum of Science and History is the repository for marine artifacts. The committee may contract with other qualified institutions to serve as additional repositories for marine artifacts. The committee may authorize an archeological repository to loan artifacts and other items curated by the repository to a qualified institution for public display. The Corpus Christi Museum of Science and History:

(1) does not own the artifacts for which it serves as a repository; and

(2) shall make available for loan to a qualified institution for display the marine artifacts for which it serves as a repository.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2008, ch. 364, Sec. 8,

eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 8, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 797, Sec. 1, 2, eff. June 17, 1997.

Sec. 191.059. COMPLAINTS. (a) The committee shall keep an information file about each complaint filed with the committee.

(b) If a written complaint is filed with the committee, the committee, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint.

Added by Acts 1983, 68th Leg., p. 2009, ch. 364, Sec. 9, eff. Sept. 1, 1983.

SUBCHAPTER D. STATE ARCHEOLOGICAL LANDMARKS

Sec. 191.091. SHIPS, WRECKS OF THE SEA, AND TREASURE IMBEDDED IN EARTH. Sunken or abandoned pre-twentieth century ships and wrecks of the sea, and any part or the contents of them, and all treasure imbedded in the earth, located in, on, or under the surface of land belonging to the State of Texas, including its tidelands, submerged land, and the beds of its rivers and the sea within jurisdiction of the State of Texas, are declared to be state archeological landmarks and are eligible for designation.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 9, eff. Sept. 1, 1987.

Sec. 191.092. OTHER SITES, ARTIFACTS, OR ARTICLES. (a) Sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest, including those pertaining to prehistoric and historical American Indians or aboriginal campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archeological sites of every character that are located in, on, or under the surface of any land belonging to the State of Texas or to any county, city, or political subdivision of the state are state archeological landmarks and are eligible for designation.

(b) For the purposes of this section, a structure or a building has historical interest if the structure or building:

(1) was the site of an event that has significance in the history of the United States or the State of Texas;

(2) was significantly associated with the life of a famous person;

(3) was significantly associated with an event that symbolizes an important principle or ideal;

(4) represents a distinctive architectural type and has value as an example of a period, style, or construction technique; or

(5) is important as part of the heritage of a religious organization, ethnic group, or local society.

(c) An individual or a private group that desires to nominate a building or site owned by a political subdivision as a state archeological landmark must give notice of the nomination at the individual's or group's own expense in a newspaper of general circulation published in the city, town, or county in which the building or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation published in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(1) be printed in 12-point boldface type;

(2) include the exact location of the building or site; and

(3) include the name of the group or individual nominating the building or site.

(d) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the commission with the application for nomination.

(e) The commission may not consider for designation as a state archeological landmark a building or site owned by a political subdivision unless the notice and affidavit required by Subsection (d) are attached to the application.

(f) Before the committee may designate a structure or building as a state archeological landmark, the structure or building must be listed on the National Register of Historic Places.

(g) The committee shall adopt rules establishing criteria for the designation of a structure or building as a state archeological

landmark.

(h) The committee shall consider any and all fiscal impact on local political subdivisions before any structure or building owned by a local political subdivision may be designated as a state archeological landmark.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 193, ch. 90, Sec. 1, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 948, Sec. 10, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 109, Sec. 20, eff. Aug. 30, 1995.

Sec. 191.093. PREREQUISITES TO REMOVAL, ALTERING, DAMAGING, DESTROYING, SALVAGING, OR EXCAVATING CERTAIN LANDMARKS. Landmarks under Section 191.091 or 191.092 of this code are the sole property of the State of Texas and may not be removed, altered, damaged, destroyed, salvaged, or excavated without a contract with or permit from the committee.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 193, ch. 90, Sec. 2, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 948, Sec. 11, eff. Sept. 1, 1987.

Sec. 191.094. DESIGNATING A LANDMARK ON PRIVATE LAND. (a) Any site located on private land which is determined by majority vote of the committee to be of sufficient archeological, scientific, or historical significance to scientific study, interest, or public representation of the aboriginal or historical past of Texas may be designated a state archeological landmark by the committee.

(b) No site may be designated on private land without the written consent of the landowner or landowners in recordable form sufficiently describing the site so that it may be located on the ground.

(c) On designation, the consent of the landowner shall be recorded in the deed records of the county in which the land is located.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.095. PERMIT FOR LANDMARK ON PRIVATE LAND. All sites or items of archeological, scientific, or historical interest located on private land in the State of Texas in areas designated as landmarks, as provided in Section 191.094 of this code, and landmarks under Section 191.092 of this code, may not be taken, altered, damaged, destroyed, salvaged, or excavated without a permit from the committee or in violation of the terms of the permit.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.096. MARKING LANDMARK ON PRIVATE LAND. Any site on private land which is designated a landmark shall be marked by at least one marker bearing the words "State Archeological Landmark".

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 12, eff. Sept. 1, 1987.

Sec. 191.097. REMOVING DESIGNATION AS LANDMARK. (a) Any landmark on public or private land may be determined by majority vote of the committee to be of no further historical, archeological, educational, or scientific value, or not of sufficient value to warrant its further classification as a landmark, and on this determination may be removed from the designation as a landmark.

(b) On removal of the designation on private land which was designated by instrument of record, the committee shall execute and record in the deed records of the county in which the site is located an instrument setting out the determination and releasing the site from the provisions of this chapter.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 13, eff. Sept. 1, 1987.

Sec. 191.098. NOTIFICATION OF ALTERATION OR DEMOLITION OF

POSSIBLE LANDMARK. (a) A state agency may not alter, renovate, or demolish a building possessed by the state that was constructed at least 50 years before the alteration, renovation, or demolition and that has not been designated a landmark by the committee, without notifying the committee of the proposed alteration, renovation, or demolition not later than the 60th day before the day on which the agency begins the alteration, renovation, or demolition.

(b) After receipt of the notice the committee may waive the waiting period; however, if the committee institutes proceedings to determine whether the building is a state archeological landmark under Section 191.092 of this code not later than the 60th day after the day on which the notice is received by the committee, the agency must obtain a permit from the committee before beginning an alteration, renovation, or demolition of the building during the time that the committee's proceedings are pending.

(c) Should the committee fail to provide a substantive response within 60 days to a request for a review of project plans, application for permit, draft report review, or other business required under the Antiquities Code, the applicant may proceed without further reference to the committee.

Added by Acts 1983, 68th Leg., p. 2009, ch. 364, Sec. 10, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 14, eff. Sept. 1, 1987.

SUBCHAPTER E. PROHIBITIONS

Sec. 191.131. CONTRACT OR PERMIT REQUIREMENT. (a) No person, firm, or corporation may conduct a salvage or recovery operation without first obtaining a contract.

(b) No person, firm, or corporation may conduct an operation on any landmark without first obtaining a permit and having the permit in his or its possession at the site of the operation, or conduct the operation in violation of the provisions of the permit.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.132. DAMAGE OR DESTRUCTION. (a) No person may intentionally and knowingly deface American Indian or aboriginal

paintings, hieroglyphics, or other marks or carvings on rock or elsewhere that pertain to early American Indian or aboriginal habitation of the country.

(b) A person who is not the owner shall not wilfully injure, disfigure, remove, or destroy a historical structure, monument, marker, medallion, or artifact without lawful authority.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.133. ENTRY WITHOUT CONSENT. No person who is not the owner, and does not have the consent of the owner, proprietor, lessee, or person in charge, may enter or attempt to enter on the enclosed land of another and intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historic archeological site, American Indian or aboriginal campsite, artifact, burial, ruin, or other archeological remains located in, on, or under any private land within the State of Texas.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. ENFORCEMENT

Sec. 191.171. CRIMINAL PENALTY. (a) A person violating any of the provisions of this chapter is guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than $50 and not more than $1,000, by confinement in jail for not more than 30 days, or by both.

(b) Each day of continued violation of any provision of this chapter constitutes a separate offense for which the offender may be punished.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.172. CIVIL ACTION BY ATTORNEY GENERAL. (a) In

addition to, and without limiting the other powers of the attorney general, and without altering or waiving any criminal penalty provided in this chapter, the attorney general may bring an action in the name of the State of Texas in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue for an action instituted by the attorney general lies either in Travis County or in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.173. CIVIL ACTION BY CITIZEN. (a) A citizen of the State of Texas may bring an action in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue of an action by a citizen lies in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.174. ASSISTANCE FROM STATE AGENCIES, POLITICAL SUBDIVISIONS, AND LAW ENFORCEMENT OFFICERS. (a) The chief administrative officers of all state agencies and political subdivisions are directed to cooperate and assist the committee and the attorney general in carrying out the intent of this chapter.

(b) All state and local law enforcement agencies and officers are directed to assist in enforcing the provisions and carrying out the intent of this chapter.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 15, eff. Sept.

1, 1987.

TITLE 10. CAVES
CHAPTER 201. CAVERN PROTECTION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. POLICY. It is declared to be the public policy and in the public interest of the State of Texas to protect and preserve all caves on or under any of the land in the State of Texas, including tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

Sec. 201.002. DEFINITIONS. In this chapter:

(1) "Cave" means any naturally occurring subterranean cavity, and includes or is synonymous with cavern, pit, pothole, well, sinkhole, and grotto.

(2) "Gate" means any structure, lock, door, or device located to limit or prohibit access or entry to any cave.

(3) "Speleothem" means a natural mineral formation or deposit occurring in a cave, and includes or is synonymous with stalagmites, stalactites, helictites, anthodites, gypsum flowers, needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral), rimstone dams, columns, plettes, flowstone, or other similar crystalline mineral formations commonly composed of calcite, epsomite, gypsum, aragonite, celestite, and other similar minerals and formations.

(4) "Owner" means a person who owns title to land on which a cave is located, including a person who owns title to a leasehold estate in the land.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

SUBCHAPTER B. PERMITS

Sec. 201.011. PERMIT REQUIRED. No person may excavate, remove, destroy, injure, alter in any significant manner, or deface any part

of a cave owned by the State of Texas, unless the person possesses a valid permit under Section 201.012.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 1, eff. September 1, 2007.

Sec. 201.012. ISSUANCE OF PERMIT. The General Land Office may issue a permit under this subsection if the person seeking the permit furnishes the following information:

(1) a detailed statement giving the reasons and objectives for the excavation, removal, or alteration and the benefits expected to be obtained from the contemplated work;

(2) data and results of any completed excavation;

(3) the prior written permission from the state agency which manages the site of the proposed excavation;

(4) a sworn statement that he will carry the permit while exercising the privileges granted; and

(5) any other reasonable information which the General Land Office may prescribe.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

Sec. 201.013. REVOCATION. The General Land Office may for good cause revoke any permit issued under Section 201.012 of this code.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

Sec. 201.014. PENALTIES. A person who violates Section 201.011 is guilty of a Class A misdemeanor, unless the person has previously been convicted of violating that section, in which case the person is guilty of a state jail felony.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 1, eff. September 1, 2007.
Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 16.002, eff. September 1, 2009.

SUBCHAPTER C. PROHIBITIONS

Sec. 201.041. VANDALISM. (a) A person may not, without express, prior, written permission of the owner, knowingly:

(1) break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, deface, mar, or harm the surfaces of any cave or any natural material in a cave, including speleothems;

(2) deface, mar, or harm in any manner the natural condition of any cave; or

(3) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any cave, even though entrance to the cave may not be gained.

(b) A person who violates a provision of this section is guilty of a state jail felony, unless the person has previously been convicted of violating this section, in which case the person is guilty of a felony of the third degree.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 1, eff. September 1, 2007.
Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 16.003, eff. September 1, 2009.

Sec. 201.042. SALE OF SPELEOTHEMS. (a) A person may not sell or offer for sale any speleothems in this state, or export them for sale outside the state, without written permission from the owner of the cave from which the speleothems were removed.

(b) A person who violates this section is guilty of a Class A misdemeanor, unless the person has previously been convicted of violating this section, in which case the person is guilty of a state jail felony.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 2, eff. September 1, 2007.

TITLE 11. MISCELLANEOUS USES OF NATURAL RESOURCES
CHAPTER 211. HAZARDOUS LIQUID SALT DOME STORAGE FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 211.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Hazardous liquid" means any liquid which is not defined as a solid or hazardous waste by Section 361.003, Health and Safety Code, and which is:

(A) petroleum or any petroleum or liquid natural gas product; or

(B) any hydrocarbon in a liquid state, other than liquified natural gas, that has been determined by the United States secretary of transportation to be a hazardous liquid.

(3) "Salt dome storage of hazardous liquids" means the storage of a hazardous liquid in any salt formation or bedded salt formation storage facility, but does not include a facility that has been defined by the federal Department of Transportation as part of an interstate pipeline facility and that is subject to federal minimum standards adopted under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(4) "Salt dome storage facility" includes any new or existing salt formation or bedded salt formation storage cavern and

any equipment, facility, or building used or intended for use in the storage of a hazardous liquid in the salt formation cavern.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 8, eff. September 1, 2013.

Sec. 211.002. POWERS OF LOCAL GOVERNMENTS. (a) This chapter does not reduce, limit, or impair the authority provided by law to any municipality, except as provided by Subsection (b) of this section.

(b) A municipality or county may not adopt or enforce an ordinance or other regulation that establishes safety standards or practices applicable to hazardous liquid salt formation storage facilities that are subject to regulation by federal or state law.

(c) "Safety standards or practices" means any regulation of an activity or facility covered by this chapter or that is incompatible with the safety standards or practices enacted or adopted by federal or state government pursuant to 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 9, eff. September 1, 2013.

SUBCHAPTER B. REGULATION OF FACILITIES

Sec. 211.011. JURISDICTION. The commission has jurisdiction over all salt dome storage of hazardous liquids and over salt dome storage facilities used for the storage of hazardous liquids.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.012. RULES AND STANDARDS. (a) The commission by rule shall adopt safety standards and practices for the salt dome storage of hazardous liquids and the facilities used for that purpose. Safety standards and practices adopted by the commission for a

storage facility that is part of an intrastate pipeline facility, as defined by the federal Department of Transportation under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law, must be compatible with federal minimum standards. The rules shall require:

(1) the installation and periodic testing of safety devices at a salt dome storage facility;

(2) the establishment of emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public;

(3) fire prevention and response procedures;

(4) employee and third-party contractor safety training with respect to the operation of the facility; and

(5) other requirements that the commission finds necessary and reasonable for the safe construction, operation, and maintenance of salt dome storage facilities.

(b) The commission may grant exceptions to its rules or impose additional requirements in any permit or amended permit issued to a facility if the facility, as permitted, will not cause an unreasonable danger to the public.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 10, eff. September 1, 2013.

Sec. 211.013. RECORDS AND REPORTS. (a) Each owner or operator of a hazardous liquid salt dome storage facility shall maintain records, make reports, and provide any information the commission may require with respect to the construction, operation, or maintenance of the facility. The operator of a hazardous liquid salt dome storage facility shall report or make available for inspection the results of any commission-required test of a safety device installed at the facility to the commission within 10 days after the day of the test.

(b) The commission by rule shall designate the records required to be maintained and the reports required to be filed by the owner or operator and shall provide forms for reports if necessary.

(c) The commission may require the owner or operator of a

hazardous liquid salt dome storage facility to prepare a safety procedural manual for the facility. The commission may require the owner or operator to file the manual with the commission for approval or to make the manual available for inspection by an employee or agent of the commission.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.014. INSPECTIONS AND EXAMINATIONS. (a) The commission or its employee or designated agent may enter property on which a hazardous liquid salt dome storage facility is located or any other property relating to salt dome storage of a hazardous liquid and may inspect and examine the property and any records located on the property to the extent relevant to determine if a person is acting in compliance with this chapter and any rules adopted by the commission under this chapter.

(b) Before the commission or its employees or agents enter the premises of a storage facility with on-site personnel, proper credentials must be presented to the on-site person in charge of the property.

(c) An entry, examination, or inspection under this section must be made only at a reasonable time and in a reasonable manner.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. ENFORCEMENT

Sec. 211.031. CIVIL PENALTY. A person who violates this chapter or a rule adopted or order or permit issued under this chapter is subject to a civil penalty of not more than $25,000 for each act of violation and for each day of violation. The total amount of penalties that may be assessed under this section for a related series of violations may not exceed $500,000.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.

Sec. 211.032. ENFORCEMENT BY COMMISSION AND ATTORNEY GENERAL. (a) If it appears that a person has been or is violating this chapter or a rule of the commission adopted under this chapter, the

commission may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or for the assessment and recovery of a civil penalty under Section 211.031 of this code, or for both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated or is violating this chapter or a rule of the commission under this chapter, the district court shall grant the injunctive relief that the facts warrant.

(c) At the request of the commission, the attorney general shall institute and conduct a suit under this section in the name of the state.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.

Sec. 211.033. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person who:

(1) violates this chapter or a rule adopted or order or permit issued under this chapter;

(2) intentionally or knowingly destroys or damages or attempts to destroy or damage a hazardous liquid salt dome storage facility; or

(3) intentionally or knowingly disables a safety device in a hazardous liquid salt dome storage facility, except to facilitate a repair; maintain, repair, or test the device; or conduct an activity reasonably necessary for the safe operation of the facility.

(b) The penalty may be in an amount not to exceed $25,000. Each day a violation occurs or continues constitutes a separate violation for the purpose of this section.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) A civil penalty may be assessed only after the person charged under this section has been given an opportunity for a public hearing.

(e) If a public hearing has been held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(f) If appropriate, the commission shall consolidate the hearings with other proceedings.

(g) If a person charged under this section fails to take advantage of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation occurred and the amount of the penalty that is warranted.

(h) The commission shall then issue an order requiring the penalty to be paid.

(i) The notice of the commission's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Not later than the 30th day after the date the commission's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until

all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) If the commission receives a copy of an affidavit under Subsection (k)(2) of this section, the commission may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if

the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for the deposit to the credit of the oil-field cleanup fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Sec. 211.034. NOTICES OF NONCOMPLIANCE. In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule adopted or order or permit issued under this chapter as provided by Section 91.207 of this code.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.

TITLE 12. WETLANDS
CHAPTER 221. WETLAND MITIGATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. DEFINITIONS. In this chapter:

(1) "Buffer zone" means a strip of land adjoining a wetland mitigation bank to protect the wetland habitat and wildlife within the bank from the impact of an activity outside the zone. The term includes a strip of land composed primarily of water or a strip of land that includes a fence, wall, or screen of vegetation.

(2) "Eligible political subdivision" means:

(A) a county with a population of 3.3 million or more or a county adjacent to such a county; or

(B) a conservation and reclamation district:

(i) that is established under Section 59, Article XVI, Texas Constitution;

(ii) the boundaries of which are within a county that has a population of 3.3 million or more; and

(iii) that is authorized under other law to participate in a program under this chapter.

(3) "Federal requirement" means a requirement of the federal government contained in a statute, regulation, or guideline for an eligible mitigation bank program or a wetland regulation program.

(4) "Mitigation bank" means a parcel of land that has undergone or is proposed to undergo a physical change necessary to create or optimize the acreage or quality of wetland habitat on the parcel expressly to provide a mitigation credit to offset an adverse impact to wetland caused by an approved project located elsewhere.

(5) "Mitigation credit" means a unit of measured area that supports wetland habitat or wetland habitat value that did not exist at the mitigation bank site before the mitigation bank was developed.

(6) "Wetland" means land that:

(A) has a predominance of hydric soil;

(B) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(C) under normal circumstances does support a prevalence of that vegetation.

(7) "Wetland regulation program" means a program of the state, a state agency, or an eligible political subdivision under which the state, agency, or subdivision administers its own individual or general permit program regulating the use of wetland.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 114, eff. Sept. 1, 2001.

Sec. 221.002. USE OF MONEY. A state agency or an eligible political subdivision may use any money to accomplish a purpose of this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.003. COST OF MOVING OR CHANGING FACILITY. If a state

agency, eligible political subdivision, or nonprofit corporation, in exercising a power under this chapter, makes it necessary to move, raise, lower, reroute, or change the grade of or alter the construction of a pipeline, highway, railroad, electric transmission or distribution line, or telephone or telegraph property or facility, the agency, subdivision, or corporation must bear the sole expense of the action.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

SUBCHAPTER B. WETLAND MITIGATION BANKING AND CONTRACTS

Sec. 221.021. ACTIONS TO ESTABLISH OR MAINTAIN MITIGATION BANK. (a) With the approval of the General Land Office, a state agency or eligible political subdivision may take any necessary and reasonable action to comply with a federal requirement to establish or maintain a mitigation bank. An action under this section may include:

(1) authorizing or making a continuing study of wetland areas and wetland mitigation programs;

(2) consistent with federal requirements, engaging in a wetland mitigation program and adopting and enforcing permanent land use and control measures on land the agency or subdivision owns in a mitigation bank;

(3) consulting with, providing information to, and entering into an agreement with a federal agency to identify and publish information about wetland areas;

(4) cooperating with a federal or state agency in connection with a study or investigation regarding the adequacy of a local measure with respect to a federal or state wetland program;

(5) improving the long-range management or use of wetland or a wetland mitigation bank;

(6) purchasing, leasing, condemning, or otherwise acquiring property inside or outside the eligible political subdivision that is necessary for a wetland mitigation bank or buffer zone and, as necessary, improving the land or other property as a wetland mitigation bank, including any adjacent buffer zone, to comply with a federal requirement;

(7) requesting or receiving aid from a federal or state agency or an eligible political subdivision;

(8) purchasing, selling, or contracting to purchase or sell a mitigation credit in a mitigation bank;

(9) incurring a liability or borrowing money on terms approved by the governing body of the subdivision;

(10) acquiring, holding, using, selling, leasing, or disposing of real or personal property, including a license, patent, right, or interest, that is necessary, convenient, or useful for the full exercise of a power under this chapter;

(11) contracting with any operator to use or operate any part of a mitigation bank; and

(12) procuring any type of insurance and paying an insurance premium in an amount the governing body of the eligible political subdivision considers necessary or advisable.

(b) The power of eminent domain granted by this section does not enable a state agency or eligible political subdivision to acquire by condemnation an interest in land that is owned or used by a public utility. In this subsection, "public utility" has the meaning assigned by the Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes).

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.022. OPTIONAL MITIGATION BANK PROVISIONS. A mitigation bank project may include a provision for:

(1) a park;

(2) recreation;

(3) a scenic area; or

(4) flood control.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.023. MITIGATION BANK CONTRACTS; CONTRACT PAYMENTS. (a) A state agency or eligible political subdivision may contract with another state agency or eligible political subdivision to pay jointly any part of the cost to acquire, design, construct, improve, or maintain a wetland mitigation bank or a buffer zone.

(b) Payment of the cost of a project or a payment required to

be made under a contract may be made out of bond proceeds, taxes, or any other money available for the payment.

(c) If a contract provides for payment over a term of years, an eligible political subdivision may impose a tax in an amount necessary to:

(1) create a sinking fund for the contract payments; and

(2) make the payments when due.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

SUBCHAPTER C. PROVISIONS FOR POLITICAL SUBDIVISIONS

Sec. 221.041. APPLICATION TO FEDERAL AGENCY. On behalf of an eligible political subdivision that proposes to administer its own individual or general wetland regulation program, the governor may apply to the appropriate federal agency for program approval.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.042. COMPLIANCE WITH FEDERAL PROGRAM. An eligible political subdivision authorized to implement a wetland mitigation program may comply with a program established by the federal government with respect to the implementation of a wetland regulation program or for the acquisition, ownership, or operation of a wetland mitigation bank.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.043. COUNTY APPROVAL OF POLITICAL SUBDIVISION PROGRAM. An eligible political subdivision may not institute a wetland regulation program unless the commissioners court of each county in which the eligible political subdivision lies approves the program after conducting a public hearing.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.044. RULES FOR WETLAND DELINEATION. (a) An eligible political subdivision authorized to implement a wetland mitigation program may adopt and compile reasonably necessary rules.

(b) An eligible political subdivision by rule may set standards for delineating land as wetland for purposes of:

(1) this chapter; or

(2) a federal requirement.

(c) A rule under Subsection (b) may be adopted after consultation with federal agencies, including the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the United States Army Corps of Engineers, and the Soil Conservation Service of the United States Department of Agriculture.

(d) A standard for delineating wetland must comply with federal requirements for delineating wetland.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.045. PERMIT. (a) An eligible political subdivision authorized to implement a wetland mitigation program may issue a permit that incorporates, and assures compliance with, an applicable:

(1) requirement of this chapter; or

(2) federal requirement.

(b) A permit may be terminated or modified for cause, including:

(1) violation of a permit condition;

(2) obtaining a permit by misrepresentation or not fully disclosing all relevant facts; or

(3) a change in a condition that requires temporarily or permanently reducing or eliminating the permitted activity.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.046. MITIGATION BANK FINANCING. (a) A mitigation project participant may issue a bond, note, or other obligation to acquire land for, to pay any part of the cost of, or to acquire,

construct, improve, operate, or maintain a wetland mitigation bank.

(b) The subdivision may issue a bond, note, or obligation:

(1) in one or more series; and

(2) payable from and secured by:

(A) a tax;

(B) an assessment;

(C) an impact fee;

(D) revenue;

(E) a grant or gift;

(F) a lease or contract; or

(G) a combination of resources listed in Paragraphs (A)-(F).

(c) In this section, "mitigation project participant" means an eligible political subdivision that seeks to:

(1) implement a project the unavoidable result of which would adversely affect wetland; and

(2) compensate for the loss of wetland acreage or wetland habitat value through participation in a mitigation bank.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.047. BOND REQUIREMENTS. (a) A bond issued under Section 221.046 is a negotiable instrument within the meaning and for purposes of the Business & Commerce Code.

(b) The bond may be:

(1) issued registrable as to principal or as to both principal and interest; or

(2) made redeemable before maturity.

(c) The bond may be:

(1) issued in the form, denominations, and manner and under the terms provided by the order or resolution authorizing the issuance of the bond; and

(2) sold in the manner, at the price, and under the terms provided by the order or resolution authorizing the issuance of the bond.

(d) The bond shall:

(1) be executed in accordance with the order or resolution authorizing the issuance of the bond; and

(2) bear interest at the rate provided by the order or resolution authorizing the issuance of the bond.

(e) The bond may bear interest and may be issued in accordance with:

(1) Chapters 1201, 1204, and 1371, Government Code; or

(2) Subchapters A-C, Chapter 1207, Government Code.

(f) The bond may be additionally secured by a:

(1) mortgage or deed of trust on real property that is related to the mitigation bank; or

(2) chattel mortgage, lien, or security interest on personal property appurtenant to that real property.

(g) The eligible political subdivision may authorize the execution of a trust indenture, mortgage, deed of trust, or other encumbrance to evidence the indebtedness.

(h) The eligible political subdivision may pledge to the payment of the bond any part of a grant, a donation, revenue, or income received or to be received from the United States or any other source.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.361, eff. Sept. 1, 2001.

Sec. 221.048. BOND PROCEEDS. If the use authorized by the order or resolution authorizing the issuance of a bond under Section 221.046, the bond proceeds may be used to:

(1) pay interest on the bond during or after the acquisition or construction of an improvement project financed by the bond issue;

(2) pay administrative and operation expenses;

(3) create a reserve fund for payment of the principal of and interest on the bonds; or

(4) create any other fund.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

OCCUPATIONS CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1.003. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of that statute.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1.004. PREEMPTION. (a) Unless expressly authorized by

another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code.

(b) Subsection (a) may not be construed to affect municipal or county authority to regulate a massage establishment in accordance with Section 455.005.

Added by Acts 2023, 88th Leg., R.S., Ch. 899 (H.B. 2127), Sec. 14, eff. September 1, 2023.

TITLE 2. GENERAL PROVISIONS RELATING TO LICENSING
CHAPTER 51. TEXAS DEPARTMENT OF LICENSING AND REGULATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means a board, committee, council, or other entity with multiple members that has as its primary function advising the commission or department.

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "License" means a license, certificate, registration, title, or permit issued by the department.

(4) "License holder" means a person who holds a license issued by the department.

(5) "Respondent" means a person, regardless of whether the person is a license holder, who is charged with violating a law establishing a regulatory program administered by the department or a rule adopted or order issued by the commission or executive director.

(6) "Sanction" means an action by the executive director against a license holder or another person, including the denial, suspension, or revocation of a license, the reprimand of a license holder, or the placement of a license holder on probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 6, eff. June 14, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 1, eff.

September 1, 2009.

Sec. 51.002. APPLICATION OF SUNSET ACT. The Texas Commission of Licensing and Regulation and the Texas Department of Licensing and Regulation are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission and the department are abolished September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.001, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.05, eff. June 17, 2011.
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 1, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 1.03, eff. June 10, 2019.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.01, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 1.04, eff. June 16, 2021.
Reenacted by Acts 2023, 88th Leg., R.S., Ch. 613 (H.B. 3743), Sec. 1, eff. September 1, 2023.
Reenacted by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 16.001, eff. September 1, 2023.

Sec. 51.003. APPLICABILITY. This chapter applies to each regulatory program administered by the department, including any program under which a license is issued by the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.002, eff. Sept. 1, 2003.

SUBCHAPTER B. DEPARTMENT AND COMMISSION

Sec. 51.051. TEXAS DEPARTMENT OF LICENSING AND REGULATION. (a) The Texas Department of Licensing and Regulation is the primary state agency responsible for the oversight of businesses, industries, general trades, and occupations that are regulated by the state and

assigned to the department by the legislature.

(b) The department is governed by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 7, eff. June 14, 2001.

Sec. 51.052. APPOINTMENT OF COMMISSION. (a) The commission consists of seven members appointed by the governor with the advice and consent of the senate.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.003, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 25.01, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.001(b), eff. September 1, 2005.

Sec. 51.053. COMMISSION MEMBERSHIP; ELIGIBILITY. (a) Each member of the commission must be a representative of the general public.

(b) A person is not eligible for appointment as a member of the commission if the person or the person's spouse:

(1) is regulated by the department;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the department;

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(5) is an employee of the department.

(c) Notwithstanding any other law, a person may be a member of the commission if the person or the person's spouse is registered,

certified, or licensed by a regulatory agency in the field of health care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 8, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.004, 1.026, eff. Sept. 1, 2003. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.02, eff. September 1, 2021.

Sec. 51.0535. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a field regulated by the department; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a field regulated by the department.

(c) A person may not be a member of the commission or act as the general counsel to the commission or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.005, eff. Sept. 1, 2003.

Sec. 51.054. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote,

deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing department operations;

(2) the programs, functions, rules, and budget of the department;

(3) the scope of and limitations on the rulemaking authority of the commission;

(4) the results of the most recent formal audit of the department;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties; and

(6) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the department shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the commission. Each member of the commission shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.006, eff. Sept. 1, 2003.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.03, eff. September 1, 2021.

Sec. 51.055. TERMS; VACANCY. (a) Members of the commission

serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.007, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 25.02, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.001, eff. September 1, 2005.

Sec. 51.056. PRESIDING OFFICER. (a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) The presiding officer may vote on all matters before the commission as provided by Robert's Rules of Order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 9, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.008, eff. Sept. 1, 2003.

Sec. 51.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 51.053;

(2) does not maintain during service on the commission the qualifications required by Section 51.053;

(3) is ineligible for membership under Section 51.0535;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential

ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 10, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.009, eff. Sept. 1, 2003.

Sec. 51.058. COMPENSATION; REIMBURSEMENT. (a) A commission member may not receive compensation for service on the commission.

(b) A commission member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a commission member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.059. MEETINGS. (a) The commission shall meet at least once in each quarter of the fiscal year.

(b) The commission may meet at other times at the call of the presiding officer or as provided by commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 11, eff. June 14, 2001.

Sec. 51.060. CIVIL LIABILITY. A member of the commission is not liable in a civil action for an act performed in good faith while performing duties as a commission member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER DEPARTMENT PERSONNEL

Sec. 51.101. EXECUTIVE DIRECTOR. The commission shall appoint the executive director of the department. The executive director serves at the will of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 13, eff. June 14, 2001.

Sec. 51.103. EXECUTIVE DIRECTOR POWERS AND DUTIES. (a) The executive director shall:

(1) perform any duties assigned by the commission and other duties specified by law;

(2) administer and enforce the department's programs; and

(3) issue licenses authorized by the laws establishing programs regulated by the department.

(b) The executive director may delegate any power or duty assigned to the executive director unless prohibited by statute or rule.

(c) The executive director may:

(1) impose sanctions and issue orders relating to a sanction as provided by Section 51.353; and

(2) assess an administrative penalty or issue an order relating to an administrative penalty as authorized by a law establishing a program regulated by the department or as provided by Sections 51.301 and 51.302.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 14, eff. June 14, 2001.

Sec. 51.104. PERSONNEL. The executive director may employ persons to perform the department's work and may prescribe their duties and compensation, subject to the personnel policies adopted by the commission and the commission's approval of the budget.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 15, eff. June 14, 2001.

Sec. 51.105. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the

policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 16, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.010, eff. Sept. 1, 2003.

Sec. 51.106. INFORMATION ON STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the commission and to department employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.011, eff. Sept. 1, 2003.

Sec. 51.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director shall develop a career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director shall develop a system of employee performance evaluations. The system must require that evaluations be conducted at least annually. All merit pay for department employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 17, eff. June 14, 2001.

Sec. 51.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 18, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.012, eff. Sept. 1, 2003.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 51.201. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission shall:

(1) supervise the executive director's administration of the department;

(2) formulate the policy objectives for the department; and

(3) approve the department's operating budget and the department's requests for legislative appropriations.

(b) The commission:

(1) may adopt rules as necessary for its own procedures; and

(2) shall adopt rules as necessary to implement this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 19, eff. June 14, 2001.

Sec. 51.202. FEES. (a) The commission shall set fees, in amounts reasonable and necessary to cover the costs of administering

the programs or activities, for:

(1) licenses issued by the department;

(2) license renewals and late renewals;

(3) examinations; and

(4) any other program or activity administered by the department.

(b) The executive director by rule may provide for prorating fees for the issuance of a license, so that a person regulated by the department pays only that portion of the applicable fee that is allocable to the number of months during which the license is valid.

(c) The executive director shall develop cost management procedures that enable the commission to determine with reasonable accuracy the cost to the department of each program and activity for which a fee is charged.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 20, eff. June 14, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 613 (H.B. 3743), Sec. 2, eff. September 1, 2023.

Sec. 51.203. RULES REGARDING PROGRAMS REGULATED BY DEPARTMENT. (a) The commission shall adopt rules as necessary to implement each law establishing a program regulated by the department.

(b) Notwithstanding any other law, for each program regulated by the department, including a program under which a license is issued by the department, the commission by rule may establish:

(1) the length of a license term, not to exceed two years;

(2) a fee for the issuance or renewal of a license; and

(3) any continuing education required to renew a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 21, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.014, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.001, eff. September 1, 2019.

Sec. 51.2031. RULES REGARDING HEALTH-RELATED PROGRAMS;

PROVISION OF INFORMATION. (a) This section applies only to the regulation of the following professions by the department:

(1) athletic trainers;
(2) behavior analysts;
(3) dietitians;
(4) hearing instrument fitters and dispensers;
(5) midwives;
(6) orthotists and prosthetists; and
(7) speech-language pathologists and audiologists.

(a-1) The commission may not adopt a new rule relating to the scope of practice of or a health-related standard of care for a profession to which this section applies unless the rule has been proposed by the advisory board established for that profession. The commission shall adopt rules prescribing the procedure by which an advisory board may propose rules described by this subsection.

(a-2) For each rule proposed under Subsection (a-1), the commission shall either adopt the rule as proposed or return the rule to the advisory board for revision. The commission retains authority for final adoption of all rules and is responsible for ensuring compliance with all laws regarding the rulemaking process.

(b) The commission shall adopt rules clearly specifying the manner in which the department and commission will solicit input from, and on request provide information to, an advisory board established for a profession to which this section applies regarding the general investigative, enforcement, or disciplinary procedures of the department or commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.001, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.002, eff. September 1, 2019.

Sec. 51.2032. RULES REGARDING PODIATRY; PROVISION OF INFORMATION. (a) In this section, "advisory board" means the Podiatric Medical Examiners Advisory Board.

(b) The commission may not adopt a new rule relating to the

scope of practice of, a health-related standard of care for, or the ethical practice of the profession of podiatry unless the rule has been proposed by the advisory board. The commission shall adopt rules prescribing the procedure by which the advisory board may propose rules described by this subsection.

(c) For each rule proposed under Subsection (b), the commission shall either adopt the rule as proposed or return the rule to the advisory board for revision. The commission retains authority for final adoption of all rules and is responsible for ensuring compliance with all laws regarding the rulemaking process.

(d) The commission shall adopt rules clearly specifying the manner in which the department and commission will solicit input from, and on request provide information to, the advisory board regarding:

(1) continuing education requirements; and

(2) the general investigative, enforcement, or disciplinary procedures of the department or commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 2, eff. September 1, 2017.

Sec. 51.204. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) The commission may not include in rules to prohibit false, misleading, or deceptive practices by a license holder a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the license holder's personal appearance or the use of the license holder's voice in an advertisement;

(3) relates to the size or duration of an advertisement; or

(4) restricts the use of a trade name in advertising.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 22, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.014, eff. Sept. 1, 2003.

Sec. 51.207. USE OF TECHNOLOGY. (a) The commission shall

develop and implement a policy requiring the executive director and department employees to research and propose appropriate technological solutions to improve the department's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the department on the Internet;

(2) ensure that persons who want to use the department's services are able to:

(A) interact with the department through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the department's planning processes.

(b) The department shall provide on its Internet website a link to an Internet website that allows the public to track legislation affecting the programs administered by the department, which may be a website that provides legislative information administered by the Texas Legislature.

(c) The commission by rule may require an applicant, license holder, or other person who regularly receives correspondence from the department to provide an e-mail address to the department for purposes of receiving correspondence. An e-mail address used under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.015, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 452 (S.B. 845), Sec. 1, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 613 (H.B. 3743), Sec. 3, eff. September 1, 2023.

Sec. 51.208. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.015, eff. Sept. 1, 2003.

Sec. 51.209. ADVISORY BOARDS; REMOVAL OF ADVISORY BOARD MEMBER. (a) This section applies to any advisory board appointed to advise the commission or department regarding a program subject to regulation by the department.

(a-1) An advisory board shall meet at the call of the executive director or the presiding officer of the commission.

(a-2) An advisory board may meet by telephone conference call, videoconference, or other similar telecommunication method, provided that each portion of the meeting that is required to be open to the public shall be audible to the public and, in the case of a meeting held by videoconference, visible to the public. If a problem occurs that causes a meeting to no longer be visible or audible to the public as required under this subsection, the meeting must be recessed until the problem is resolved. If the problem is not resolved in six hours or less, the meeting must be adjourned. The face of each participant in a meeting held by videoconference, while that participant is speaking, must be clearly visible, and the participant's voice must be audible, to each other participant and, during the open portion of the meeting, to the members of the public. A meeting held by telephone conference call, videoconference, or

other similar telecommunication method is not subject to the requirements of Sections 551.127(a-3), (b), (c), (e), (f), (h), (i), and (j), Government Code.

(b) An advisory board member who was appointed by the presiding officer of the commission with the commission's approval may be removed from the advisory board by the presiding officer with the commission's approval on any of the following grounds:

(1) the member does not have at the time of becoming a member of the advisory board the qualifications required by the law or rule authorizing appointment of the member;

(2) the member does not maintain during service on the advisory board the qualifications required by the law or rule authorizing appointment of the member;

(3) the member cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(4) the member is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board; or

(5) the member is unfit to continue serving on the advisory board.

(c) The validity of an action of an advisory board is not affected by the fact that it is taken when a ground for removal of a member exists.

(d) Notwithstanding any other law, Chapter 2110, Government Code, does not apply to an advisory board established to advise the commission or department.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.04, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 613 (H.B. 3743), Sec. 4, eff. September 1, 2023.

Sec. 51.2095. INTERDISCIPLINARY ADVISORY BOARDS. The executive director or the presiding officer of the commission may appoint

interdisciplinary advisory boards consisting of members from various businesses, industries, general trades, or occupations to provide expertise related to a program regulated by the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.05, eff. September 1, 2021.

Sec. 51.210. METHOD OF MAKING PAYMENTS. (a) The commission may authorize payment of regulatory fees, fines, penalties, and charges for goods and services through:

(1) an electronic payment method; or

(2) a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission.

(b) A payment by a method under this section may be made in person, by telephone, or through the Internet.

(c) The commission may require a person who makes a payment to the department through an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment.

(d) The commission may adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 2, eff. September 1, 2009.

Sec. 51.211. RISK-BASED INSPECTIONS. (a) The department shall conduct risk-based inspections that prioritize inspections based on key risk factors identified by the department, including:

(1) whether a license holder has previously violated a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director; and

(2) the number of violations committed by a license holder.

(b) The department may use alternative inspection methods, including the use of videoconference technology or other methods instead of conducting an in-person inspection, in circumstances the department considers appropriate.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.05, eff. September 1, 2021.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 51.251. PUBLIC INTEREST INFORMATION. (a) The department shall prepare information of public interest describing the functions of the commission and department and the procedures by which complaints are filed with and resolved by the commission or executive director.

(b) The department shall make the information available to the public and appropriate state agencies.

(c) The executive director shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 24, eff. June 14, 2001. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.06, eff. September 1, 2021.

Sec. 51.252. COMPLAINTS. (a) The department shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The department shall maintain a file on each written complaint filed with the department. The file must include:

(1) except for a complaint described by Subsection (b-1), the name of the person who filed the complaint;

(2) the date the complaint is received by the department;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the department closed the file without taking action other than to investigate the complaint.

(b-1) The department may accept, but is not required to investigate, a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(b-2) The department shall make information available describing its procedures for complaint investigation and resolution.

(c) The department shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(7), eff. September 1, 2021.

(e) The department may contract with a qualified individual, including an advisory board member unless otherwise prohibited by law, to assist the department with reviewing or investigating complaints filed with the department. Except for an act of the individual involving fraud, conspiracy, or malice, an individual with whom the department contracts under this subsection is immune from liability and may not be subject to a suit for damages for any act arising from the performance of the individual's duties in:

(1) participating in an informal conference to determine the facts of a complaint;

(2) evaluating evidence in a complaint and offering an expert opinion or technical guidance on an alleged violation of:

(A) a law establishing a regulatory program administered by the department; or

(B) a rule adopted or order issued by the executive director or commission;

(3) testifying at a hearing regarding a complaint; or

(4) making an evaluation, report, or recommendation regarding a complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 25, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.016, eff. Jan. 1, 2004.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 289 (H.B. 2452), Sec. 1, eff. May 29, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.003, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.07, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(7), eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 14.001, eff. September 1, 2021.

Sec. 51.2521. COMPLAINT INVESTIGATION. (a) The department shall assign priorities and investigate complaints based on risk to the public of the conduct alleged in the complaint.

(b) If the department determines at any time that an allegation made or formal complaint submitted by a person is inappropriate or without merit, the department shall dismiss the complaint.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.08, eff. September 1, 2021.

Sec. 51.253. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.254. CONFIDENTIALITY OF COMPLAINT AND DISCIPLINARY INFORMATION. (a) In this section, unless the context requires otherwise:

(1) "Disciplinary action" includes, with respect to any person subject to regulation by the department or the commission:

(A) enforcement activity, prosecution, discipline, or penalization; and

(B) any related complaint, investigation, or resolution

of a complaint or investigation.

(2) "Patient" includes:

(A) a patient;

(B) a client; and

(C) an authorized representative of a patient or client.

(b) This section applies to health-related professions regulated by this state the administration of which is assigned to the department by law, including the following professions:

(1) athletic trainers regulated under Chapter 451;

(2) behavior analysts regulated under Chapter 506;

(3) dietitians regulated under Chapter 701;

(4) dyslexia practitioners and dyslexia therapists regulated under Chapter 403;

(5) hearing instrument fitters and dispensers regulated under Chapter 402;

(6) massage therapists regulated under Chapter 455;

(7) midwives regulated under Chapter 203;

(8) orthotists and prosthetists regulated under Chapter 605;

(9) podiatrists regulated under Chapter 202; and

(10) speech-language pathologists and audiologists regulated under Chapter 401.

(c) Except as otherwise provided by this section, a complaint and investigation concerning a person to whom this section applies and all information and materials subpoenaed or compiled by the department in connection with the complaint and investigation are confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) disclosure, discovery, subpoena, or other means of legal compulsion for their release to any person.

(d) A complaint or investigation subject to this section and all information and materials subpoenaed or compiled by the department in connection with the complaint and investigation may be disclosed to:

(1) persons involved with the department in a disciplinary action;

(2) a respondent or the respondent's authorized representative;

(3) a governmental agency, if:

(A) the disclosure is required or permitted by law; and

(B) the agency obtaining the disclosure protects the identity of any patient whose records are examined;

(4) a professional licensing, credentialing, or disciplinary entity in another jurisdiction;

(5) a peer assistance program approved by the commission under Chapter 467, Health and Safety Code, including a properly established peer assistance program in another jurisdiction;

(6) a peer review committee reviewing a license holder's application for privileges or the license holder's qualifications related to retaining the privileges;

(7) a law enforcement agency; and

(8) a person engaged in bona fide research, if all individual-identifying information has been deleted.

(e) Notwithstanding any other provision of this section, if a department investigation would be jeopardized by the release or disclosure, the department may temporarily withhold or otherwise refrain from releasing or disclosing to any person any information or materials that the department would otherwise be required to release or disclose.

(f) The department may not be compelled to release or disclose complaint and investigation information or materials to a person listed in Subsection (d) if the department has not issued a notice of alleged violation related to the information or materials.

(g) The department may release or disclose complaint and investigation information or materials in accordance with Subsection (d) at any stage of a disciplinary action.

(h) The department shall protect the identity of any patient whose records are examined in connection with a disciplinary action, other than a patient who:

(1) initiates the disciplinary action;

(2) is a witness in the disciplinary action; or

(3) has submitted a written consent to release the records.

(i) Notices of alleged violation issued by the department against respondents, disciplinary proceedings of the department, commission, or executive director, and final disciplinary actions, including warnings and reprimands, by the department, commission, or executive director are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.004, eff. September 1, 2019.

Sec. 51.255. STATISTICAL ANALYSIS OF COMPLAINTS. (a) The department shall make available on the department's Internet website a statistical analysis of the complaints received by the department.

(b) The analysis under this section must include aggregate information on the number, source, type, and disposition of complaints received during the preceding state fiscal year and must include, as applicable, the following information for each program regulated by the department:

(1) the number of license holders;

(2) the number of complaints received against license holders;

(3) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal;

(B) the number of contested cases referred to and heard by the State Office of Administrative Hearings;

(C) the number of cases appealed to a district court;

(D) the number of complaints resulting in disciplinary action, the disciplinary action taken, and whether the disciplinary action was imposed by an agreed settlement or default order issued by the executive director or a final order issued by the commission;

(E) a breakdown of the nature of the alleged violations in:

(i) complaints opened for investigation; and

(ii) cases that resulted in disciplinary action; and

(F) the number of complaints resolved, categorized by whether the complaint originated from department staff or from the public;

(4) the average time required to resolve a complaint;

(5) the average amount of administrative penalties assessed; and

(6) the number and amount of refunds ordered by the commission or executive director or obtained through an informal resolution.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.08, eff. September 1, 2021.

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 51.301. IMPOSITION OF PENALTY. The executive director or commission may impose an administrative penalty against a person who violates:

(1) a law establishing a regulatory program administered by the department; or

(2) a rule adopted or order issued by the executive director or commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 26, eff. June 14, 2001.

Sec. 51.302. AMOUNT OF PENALTY. (a) If the relevant law establishing a program regulated by the department does not state the maximum amount of an administrative penalty under that law, the amount of the penalty shall be assessed by the commission or executive director in an amount that may not exceed $5,000 per day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the respondent's history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made by the respondent to correct the violation; and

(5) any other matter that justice may require.

(c) The commission shall by rule or by procedure published in the Texas Register establish a written enforcement plan that provides notice to license holders of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the department determines the amount of a proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 27, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 816, Sec. 1.017, eff. Sept. 1, 2003.

Sec. 51.3025. IMPOSITION OF SANCTION. A proceeding under this subchapter imposing an administrative penalty may be combined with a proceeding to impose an administrative sanction. If a sanction is imposed in a proceeding under this subchapter, the requirements of this subchapter apply to the imposition of the sanction.

Added by Acts 2001, 77th Leg., ch. 836, Sec. 28, eff. June 14, 2001.

Sec. 51.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall issue to the respondent a notice of alleged violation stating:

(1) a brief summary of the alleged violation;

(2) the amount of the recommended administrative penalty; and

(3) that the respondent has the right to a hearing to contest the alleged violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 29, eff. June 14, 2001.

Sec. 51.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the respondent receives the notice, the respondent may:

(1) accept the department's determination and recommended administrative penalty; or

(2) make a written request for a hearing on that determination.

(b) If the respondent accepts the department's determination, the executive director by order shall approve the determination and require the person to pay the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 30, eff. June 14, 2001.

Sec. 51.305. HEARING ON RECOMMENDATIONS. (a) If the respondent requests a hearing, the hearing shall be conducted by the State Office of Administrative Hearings.

(b) The State Office of Administrative Hearings shall consider the department's applicable substantive rules and policies when conducting a hearing under this subchapter.

(c) An administrative law judge at the State Office of Administrative Hearings shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commission a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 31, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 1215, Sec. 11, eff. Sept. 1, 2003.

Sec. 51.306. DECISION BY COMMISSION. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the commission by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The department shall give notice of the order to the respondent.

(c) The order under this section must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed;

(3) a statement of the right of the respondent to judicial review of the order; and

(4) any other information required by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 32, eff. June 14, 2001.

Sec. 51.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commission's order becomes final, the respondent shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the order and:

(A) forward the penalty to the department for deposit in an escrow account; or

(B) give the department a supersedeas bond in a form approved by the executive director that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the decision is final.

(b) A respondent who is financially unable to comply with Subsection (a)(2) is entitled to judicial review if the respondent files with the court, as part of the respondent's petition for judicial review, a sworn statement that the respondent is unable to meet the requirements of that subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 33, eff. June 14, 2001.

Sec. 51.308. COLLECTION OF PENALTY. If the person on whom the administrative penalty is imposed violates Section 51.307(a), the department or the attorney general may bring an action to collect the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.309. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed, the executive director shall:

(1) remit to the person the appropriate amount, plus accrued interest, if the person paid the amount of the penalty; or

(2) execute a release of the bond, if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid to the department and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 34, eff. June 14, 2001.

Sec. 51.310. ADMINISTRATIVE PROCEDURE. (a) The executive director by rule shall prescribe procedures for the determination and appeal of a decision to impose an administrative penalty.

(b) A proceeding under this subchapter to impose an administrative penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The executive director by rule shall prescribe notice procedures for proceedings under this subchapter that provide for notice by certified mail with electronic return receipt.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 35, eff. June 14, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 3, eff. September 1, 2009.

SUBCHAPTER G. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 51.351. INSPECTIONS AND INVESTIGATIONS. (a) The department may conduct inspections or investigations as necessary to enforce the laws administered by the department.

(b) The department, during reasonable business hours, may:

(1) enter the business premises of a person regulated by the department or a person suspected of being in violation of or threatening to violate a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director related to a regulatory program administered by the department; and

(2) examine and copy records pertinent to the inspection or investigation.

(c) A department employee may check the license, registration, or endorsement of a person regulated by the Texas State Board of Plumbing Examiners in accordance with the memorandum of understanding under Section 1301.259 and report any noncompliance to that agency.

(d) The department shall conduct joint investigations with the Texas State Board of Plumbing Examiners as circumstances require.

(e) The department may take action under Section 51.353 for a violation identified during an inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 36, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 819, Sec. 27, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.09, eff. September 1, 2021.

Sec. 51.3511. ISSUANCE OF EMERGENCY ORDERS. (a) If the executive director determines that an emergency exists requiring immediate action to protect the public health and safety, the executive director may issue an emergency order to:

(1) suspend or revoke a license or other authorization issued under a program regulated by the department; or

(2) halt operation of an unsafe facility or unsafe equipment that is subject to regulation by the department.

(b) The executive director may issue an emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued. The order shall be affirmed to the extent that reasonable cause existed to issue the order.

(d) The commission by rule may prescribe procedures for the determination and appeal of an emergency order issued under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

(e) A proceeding under this section is a contested case under Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 4, eff. September 1, 2009.

Sec. 51.3512. SUBPOENAS. (a) The department may issue a subpoena as provided by this section.

(b) The department may request and, if necessary, compel by subpoena:

(1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter, a law establishing a regulatory program administered by the department, or a rule adopted or order issued by the commission or executive director; and

(2) the attendance of a witness for examination under oath.

(c) A subpoena under this section may be issued throughout this state and may be served by any person designated by the commission or the executive director.

(d) The department, acting through the attorney general, may bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(e) Venue for an action brought under this section is in a district court in:

(1) Travis County; or

(2) any county in which the department may hold a hearing.

(f) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 4, eff. September 1, 2009.

Sec. 51.3513. CEASE AND DESIST ORDER. The executive director may issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of:

(1) this chapter;

(2) a law establishing a regulatory program administered by the department; or

(3) a rule adopted or order issued by the commission or the executive director.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 4, eff. September 1, 2009.

Sec. 51.352. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The

attorney general or the executive director may institute an action for injunctive relief to restrain a violation by and to collect a civil penalty from a person that appears to be in violation of or threatening to violate a law establishing a regulatory program administered by the department or a rule or order of the commission or executive director related to the regulatory program. A civil penalty assessed under this subsection may not exceed $5,000 per day for each violation.

(b) An action filed under this section must be filed in a district court in Travis County.

(c) The attorney general and the department may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 37, eff. June 14, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 5, eff. September 1, 2009.

Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS. (a) The commission may deny, revoke, suspend, or refuse to renew a license or may reprimand a license holder for a violation of this chapter, a law establishing a regulatory program administered by the department, or a rule or order of the commission or the executive director.

(b) The commission may place on probation a person whose license is suspended. If a license suspension is probated, the commission may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 38, eff. June 14, 2001; Acts

2003, 78th Leg., ch. 816, Sec. 1.018, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 6, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 7, eff. September 1, 2009.

Sec. 51.354. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE. (a) A respondent is entitled to a hearing conducted by the State Office of Administrative Hearings if the executive director proposes to deny, suspend, or revoke a license.

(b) A proceeding under this chapter to deny, suspend, or revoke a license is considered to be a contested case under Chapter 2001, Government Code.

(c) The executive director by rule shall prescribe notice procedures for a contested case under this chapter that provide for notice by certified mail with electronic return receipt.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 39, eff. June 14, 2001; Acts 2003, 78th Leg., ch. 1215, Sec. 12, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1215, Sec. 16, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 8, eff. September 1, 2009.

For expiration of Subsections (a-1) and (a-2), see Subsection (a-1).

Sec. 51.355. LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE HAS BEEN REVOKED. (a) Except as otherwise provided by this section, a person whose license has been revoked by order of the commission or executive director is not eligible for a new license until the first anniversary of the date of the revocation.

(a-1) Subsection (a) does not apply to a person whose license was revoked under Section 455.251(b)(1).

(a-2) This subsection and Subsection (a-1) expire September 1, 2025.

(b) Notwithstanding Subsection (a), a person whose license has been revoked by order of the commission or executive director is

eligible to apply for a new license before the first anniversary of the date of the revocation if:

(1) the revocation was based solely on the person's failure to pay an administrative penalty; and

(2) the person:

(A) has paid the administrative penalty in full; or

(B) is paying the administrative penalty under a payment plan with the department and is in good standing with respect to that plan.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 9, eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 13 (S.B. 483), Sec. 1, eff. May 13, 2023.

Sec. 51.356. DEFERRED ADJUDICATION; LICENSE SUSPENSION, LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) The commission may deny, suspend, revoke, or refuse to renew a license or other authorization issued by a program regulated by the department if:

(1) the person holding or seeking the license received deferred adjudication for:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by Paragraph (A) if:

(i) the person has not completed the period of deferred adjudication or the person completed the period of deferred adjudication less than five years before the date the person applied for the license; or

(ii) a conviction for the offense would make the person ineligible for the license by operation of law; and

(2) the commission determines that the deferred adjudication makes the person unfit for the license.

(b) In making a determination under Subsection (a)(2), the commission shall consider the factors set forth in Sections 53.022

and 53.023 and the guidelines issued by the department under Section 53.025.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 9, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 938 (H.B. 1659), Sec. 1, eff. September 1, 2013.

Sec. 51.357. RESTRICTED LICENSES FOR CERTAIN OCCUPATIONS. (a) As an alternative to denying, revoking, suspending, or refusing to issue or renew a license under Section 51.356 or 51.4012(a) or Chapter 53, the commission or executive director may issue a restricted license to an applicant for a license under:

(1) Chapter 1302; or

(2) Chapter 1305.

(b) The department may impose reasonable conditions on a holder of a restricted license, including requiring the license holder to:

(1) limit the scope or location of the license holder's practice;

(2) be supervised; and

(3) report to the department, including notifying the department promptly of any change in the license holder's supervision.

(c) The department may:

(1) include on the face of a license and in the department's records a statement:

(A) that the license is restricted; and

(B) of any condition of the restricted license; and

(2) use a distinctive design for a restricted license.

(d) A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section.

(e) The commission or executive director may impose an administrative penalty or other sanction on the holder of a restricted license or on a license holder who supervises the person for a violation of this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 2, eff. September 1, 2019.

Sec. 51.358. RESTRICTED LICENSE TERM. (a) A restricted license issued under Section 51.357 is valid for the term provided for an unrestricted license of the same type.

(b) A restricted license may be renewed by complying with the requirements for the renewal of an unrestricted license of the same type.

(c) On the expiration of the term of a restricted license and the receipt by the department of a license renewal application, there is a rebuttable presumption that the applicant is entitled to issuance by the department of an unrestricted license.

(d) The presumption under Subsection (c) may be rebutted by the department's determination that:

(1) the applicant failed to comply with any condition imposed under Section 51.357;

(2) the applicant is not in good standing with the department; or

(3) issuing an unrestricted license to the applicant would result in an increased risk of harm to any person or property.

Added by Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 2, eff. September 1, 2019.

Sec. 51.359. REFUND. (a) Subject to Subsection (b), the commission or executive director may order a license holder to pay a refund to a consumer as provided in an agreed settlement, default order, or commission order instead of or in addition to imposing an administrative penalty or sanction.

(b) The amount of a refund ordered may not exceed the amount the consumer paid to the license holder for a service regulated by the department. The commission or executive director may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.10, eff. September 1, 2021.

SUBCHAPTER H. LICENSE REQUIREMENTS

Sec. 51.401. LICENSE EXPIRATION AND RENEWAL. (a) A person who

is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than 18 months may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee. On approval by the executive director, a person whose license has been expired for at least 18 months but less than three years may renew the license by paying to the department a renewal fee equal to two times the normally required renewal fee.

(d) Except as provided by Subsection (c), a person whose license has been expired for 18 months or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 133 (H.B. 3287), Sec. 1, eff. September 1, 2011.

Sec. 51.4011. INACTIVE STATUS. (a) The commission may adopt rules to allow a license holder to place a license issued by the

department on inactive status by:

(1) submitting, on a form prescribed by the department, an application for inactive status to the department not later than the expiration date of the license; and

(2) paying the required fee.

(b) Except as provided by Subsection (f), a person whose license is on inactive status is not required to complete continuing education required under this chapter, a law establishing a program regulated by the department, or a rule adopted by the commission.

(c) A person whose license is on inactive status may reapply for inactive status before the expiration date of the license. The person must pay the required fee.

(d) A person whose license is on inactive status may not engage in any activity for which the license is required.

(e) A license holder may not employ a person for an activity for which a license is required if the person's license is on inactive status.

(f) A person whose license is on inactive status may return the license to active status by:

(1) applying to the department for active status on a form prescribed by the department;

(2) paying the required fee; and

(3) providing evidence satisfactory to the department that the person has completed the number of hours of continuing education that would otherwise have been required for a renewal of an active license for the preceding license period.

(g) The commission may set fees and adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 10, eff. May 1, 2010.

Sec. 51.4012. LICENSE ELIGIBILITY REQUIREMENTS REGARDING APPLICANT'S BACKGROUND; DETERMINATION LETTER. (a) Notwithstanding any other law, the commission may determine that a person is not eligible for a license based on the person's criminal history.

(b) Before applying for a license from the department, a person may request that the department issue a letter determining whether the person would be eligible for a license under Subsection (a) of

this section, Section 51.356, or Chapter 53. To obtain a determination letter, a person must file a request on a form prescribed by the department and pay the required fee.

(c) Not later than the 30th day after the date the department makes its determination, the department shall issue the determination letter to the person.

(d) The department has the same powers to investigate a request filed under this section as the department has to investigate a person applying for a license.

(e) A determination letter issued under this section that is adverse to a person does not prevent the person from subsequently applying for a license.

(f) The department is not bound by its determination that the person would be eligible if, after the issuance of the determination letter, the department determines there has been a change in a person's circumstances or discovers a previously undiscovered fact.

(g) A determination under this section is not a contested case under Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 10, eff. May 1, 2010.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.11, eff. September 1, 2021.

Sec. 51.4013. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, the department shall credit verified military service, training, or education toward the licensing requirements, other than examination requirements, for a license issued by the department.

(b) The commission shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 738 (S.B. 242), Sec. 1, eff. June 14, 2013.

Sec. 51.4014. LICENSE APPLICATION FROM INMATE. (a) Notwithstanding any other law, the department may accept an application from an applicant who is an inmate imprisoned in the

Texas Department of Criminal Justice except that the department may not issue the license until the applicant has been released.

(b) This section does not limit the ability of the department to determine or verify the applicant's eligibility for the license or to issue a provisional or restricted license in accordance with other law.

Added by Acts 2023, 88th Leg., R.S., Ch. 613 (H.B. 3743), Sec. 5, eff. September 1, 2023.

Sec. 51.402. EXAMINATIONS. (a) Not later than the 30th day after the date a person takes a license examination, the department shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to:

(1) notify a person of the results of the person's examination; or

(2) collect a fee for administering a license examination from a person taking the examination.

(d) If requested in writing by a person who fails a license examination, the department shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 11, eff. September 1, 2009.

Sec. 51.403. EXAMINATION FEE REFUND. (a) The department may refund a license examination fee to a person who is unable to take

the examination if the person:

(1) provides reasonable advance notice to the department; or

(2) cannot take the examination because of an emergency.

(b) The commission by rule shall define what constitutes reasonable notice and an emergency under this section.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.

Sec. 51.4041. ALTERNATIVE QUALIFICATIONS FOR LICENSE. (a) The commission, department, or executive director may adopt alternative means of determining or verifying a person's eligibility for a license issued by the department, including evaluating the person's education, training, experience, and military service.

(a-1) Notwithstanding any other law, the alternative means adopted under Subsection (a) may include accepting as sufficient evidence of a person's eligibility for a license relevant education, training, or experience obtained while the person was imprisoned if the person:

(1) previously held a license of the same type for which the person is applying and the license was revoked under Section 53.021(b);

(2) has not been convicted of, placed on deferred adjudication for, or entered a plea of guilty or nolo contendere to:

(A) an offense listed in Article 42A.054, Code of Criminal Procedure;

(B) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure; or

(C) an offense under Chapter 21 or 43, Penal Code; and

(3) while imprisoned, maintained a record of good behavior and:

(A) successfully participated in a program acceptable to the department to prepare the person for reentry into the workforce in the occupation for which the person seeks a license; or

(B) performed work on a regular basis in the occupation for which the person seeks a license.

(b) Notwithstanding any other law, the commission or the executive director may waive any prerequisite for obtaining a license

if the applicant currently holds a similar license issued by another jurisdiction that:

(1) has requirements for the license that are substantially equivalent to those of this state; or

(2) has a reciprocity agreement with this state for the license.

(c) The department, with approval of the governor, may enter into an agreement with another state to allow for licensing by reciprocity.

Added by Acts 2015, 84th Leg., R.S., Ch. 586 (H.B. 3742), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 3, eff. September 1, 2019.

Sec. 51.405. CONTINUING EDUCATION. (a) The department shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the commission to keep the person's license.

(b) Notwithstanding other law, the commission by rule may:

(1) establish a minimum number of hours of continuing education required for license renewal;

(2) provide for the registration and renewal of continuing education providers and the approval of continuing education courses; and

(3) assess reasonable and necessary fees on continuing education providers.

(c) In adopting rules under this section for a program regulated by the department, the commission shall consult, if applicable, with the advisory board established for the program.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.019, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.12, eff. September 1, 2021.

Sec. 51.406. STAGGERED RENEWAL OF LICENSES. The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Renumbered from Occupations Code, Sec. 51.205 and amended by Acts 2003, 78th Leg., ch. 816, Sec. 1.020, eff. Sept. 1, 2003.

Sec. 51.407. TEMPORARY LICENSE. (a) The commission by rule may provide for the issuance of a temporary license to an applicant who:

(1) submits to the executive director an application on a form prescribed by the executive director;

(2) meets preliminary qualifications established by commission rule; and

(3) pays any required fees.

(b) A temporary license issued under this section expires on the 21st day after the date of issuance and may not be renewed.

(c) A temporary license holder is subject to:

(1) this chapter;

(2) any law applicable to the activity for which the license is required; and

(3) any rule of the commission or the executive director applicable to the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 12, eff. September 1, 2009.

Sec. 51.408. EMERGENCY LICENSE. (a) The executive director may issue an emergency license to a person who meets eligibility requirements provided by:

(1) a law establishing a regulatory program administered by the department; or

(2) a rule adopted to implement this section.

(b) An emergency license issued under this section expires on the date indicated by the executive director, but not later than the 90th day after the date the license is issued. If the governor declares an extended state of disaster under Section 418.014, Government Code, the executive director may extend the term of an emergency license to an expiration date after the 90th day after the date the license was issued.

(c) The emergency license holder may engage in the activities authorized by the type of license only:

(1) during a period in which a state of disaster has been declared and the following recovery period; and

(2) in an area designated as a disaster area under Chapter 418, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 669 (H.B. 2310), Sec. 12, eff. September 1, 2009.

Sec. 51.409. FINANCIAL DISCLOSURE STATEMENT. (a) The commission by rule may require a person, other than an individual, applying for a license issued by the department to submit with the license application a financial disclosure statement. The rules may require any of the following information to be disclosed based on the type of license for which the application is submitted:

(1) the name of the applicable business entity;

(2) the name of each person who has a direct financial investment in the business;

(3) the name of each person, other than an individual, who:

(A) has a financial investment in the business; and

(B) is not otherwise disclosed under Subdivision (2);

(4) the total amount or percentage of the financial investment made by each person described by Subdivision (2); and

(5) the name of each of the following persons associated with the business, if the person is not otherwise disclosed under Subdivision (2) or (3):

(A) a partner;

(B) an officer;

(C) a director;

(D) a managing employee;

(E) an owner or person who controls the owner; and

(F) a person who acts as a controlling person of the business through the exercise of direct or indirect influence or control over the management of the business, the expenditure of money by the business, or a policy of the business, including:

(i) any management company, landlord, marketing company, or similar person who operates or contracts for the operation of the business and, if the business is a publicly traded corporation or is controlled by a publicly traded corporation, any officer or director of the corporation;

(ii) an individual who has a personal, familial, or other relationship with an owner, manager, landlord, tenant, or provider of a business that allows the individual to exercise actual control of the business; and

(iii) any other person the commission by rule requires to be included based on the person's exercise of direct or indirect influence or control other than a shareholder or lender of the corporation.

(b) The department may deny an application for the issuance or renewal of a license or may suspend or revoke a license on the grounds that an applicant or license holder:

(1) fails to disclose a relationship for which disclosure is required by rules adopted under this section; or

(2) discloses a relationship for which disclosure is required by rules adopted under this section with a person whose license was revoked or who has failed to comply with an order of the commission or executive director.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.13, eff. September 1, 2021.

SUBCHAPTER I. TELEPHONE INFORMATION SYSTEM

Sec. 51.451. DEFINITION. In this subchapter, "licensing entity" means a department, commission, board, office, authority, or other agency or governmental entity of this state that issues an occupational license.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.021, eff. Sept. 1, 2003.

Sec. 51.452. TELEPHONE INFORMATION SYSTEM. The department shall establish and operate a toll-free telephone information system to provide assistance and referral services for persons who inquire about a program regulated by a licensing entity.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 1.021, eff. Sept. 1, 2003.

SUBCHAPTER J. PRACTICE BY CERTAIN LICENSE HOLDERS

Sec. 51.501. TELEHEALTH. (a) In this section:

(1) "Health professional" means a person who holds a license issued by the department under Title 3.

(2) "Patient" means a client, consumer, or other person receiving care or services from a health professional.

(3) "Telehealth service" has the meaning assigned by Section 111.001.

(b) A health professional may provide telehealth services in accordance with Chapter 111 and any requirements imposed by the law and rules governing practice by the health professional.

(c) Unless the context indicates otherwise, a reference in Title 3 or a rule adopted under that title to direct observation of a patient by a health professional or direct care or services provided to a patient by a health professional includes the provision of that observation, care, or service using telehealth services.

(d) The commission may adopt rules as necessary to:

(1) ensure that patients receiving telehealth services receive appropriate, quality care;

(2) prevent abuse and fraud in the use of telehealth services, including rules relating to the filing of claims and records required to be maintained in connection with telehealth services;

(3) implement the requirements of Chapter 111 or other laws of this state regarding the provision of telehealth services or the protection of patients receiving telehealth services;

(4) provide for the remote supervision of assistants and other authorized persons performing duties within their existing scope of practice using telecommunications or information technology; and

(5) provide for the remote supervision of experience for

apprentices, interns, or other similar trainees using telecommunications or information technology.

(e) Rules under this section may allow for the provision of:

(1) remote education or distance learning for public or private schools; and

(2) continuing education using telecommunications or information technology.

(f) The adoption of rules under this section is subject to Sections 51.2031 and 51.2032.

(g) This section may not be interpreted to:

(1) expand the scope of practice of a health professional; or

(2) authorize a practice or procedure otherwise prohibited by the law or rules governing a health professional.

Added by Acts 2021, 87th Leg., R.S., Ch. 210 (S.B. 40), Sec. 1, eff. June 3, 2021.

CHAPTER 52. TRANSFER OF LICENSE

Sec. 52.001. TRANSFER OF LICENSE PERMITTED. Except as otherwise provided by law, a person who owns or holds a license to engage in an occupation issued in accordance with the laws of this state may transfer the license in the records of the licensing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 52.002. AUTHORITY TO ENGAGE IN OCCUPATION AFTER ACQUIRING LICENSE. A person who purchases or is assigned a license to engage in an occupation may engage in that occupation under the license during the unexpired term of the license after the person has complied with the legal requirements provided for in original applications for those licenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 52.003. MULTIPLE HOLDERS OF SINGLE LICENSE PROHIBITED. This chapter does not permit two or more persons to engage in the

same occupation under one license at the same time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 52.004. SALE OF CERTAIN LICENSES. (a) A license held by a person to engage in an occupation is considered an asset of the person and may be sold in the same manner as the person's other property if the entity operating under the license is closed out by legal process.

(b) A person who purchases a license sold under Subsection (a) may engage in that occupation under the license or transfer the license to another person.

(c) A license transferred under Subsection (b) may be transferred only one time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 53. CONSEQUENCES OF CRIMINAL CONVICTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. APPLICABILITY OF CERTAIN DEFINITIONS. The definitions provided by Chapter 2001, Government Code, apply to this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.002. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) the Supreme Court of Texas, a person licensed under the court's authority on behalf of the judicial department of government, or an applicant for a license issued under the court's authority on behalf of the judicial department of government;

(2) a person licensed or an applicant for a license under Chapter 1701;

(3) an applicant for certification as emergency medical services personnel under Chapter 773, Health and Safety Code; or

(4) a person who:

(A) is licensed by the Texas Medical Board, the Texas State Board of Pharmacy, the State Board of Dental Examiners, or the

State Board of Veterinary Medical Examiners; and

(B) has been convicted of a felony under Chapter 481 or 483 or Section 485.033, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1149 (H.B. 2845), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 754 (H.B. 1402), Sec. 1, eff. September 1, 2011.

Sec. 53.003. LEGISLATIVE INTENT; LIBERAL CONSTRUCTION OF SUBCHAPTER. (a) It is the intent of the legislature to enhance opportunities for a person to obtain gainful employment after the person has:

(1) been convicted of an offense; and

(2) discharged the sentence for the offense.

(b) This chapter shall be liberally construed to carry out the intent of the legislature.

Added by Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 4, eff. September 1, 2019.

SUBCHAPTER B. INELIGIBILITY FOR LICENSE

Sec. 53.021. AUTHORITY TO REVOKE, SUSPEND, OR DENY LICENSE. (a) Subject to Section 53.0231, a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

(1) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(2) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

(a-1) Subsection (a) does not apply to a person who has been convicted only of an offense punishable as a Class C misdemeanor unless:

(1) the person is an applicant for or the holder of a

license that authorizes the person to possess a firearm; and

(2) the offense for which the person was convicted is a misdemeanor crime of domestic violence as that term is defined by 18 U.S.C. Section 921.

(b) A license holder's license shall be revoked on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(c) Except as provided by Subsections (d) and (e), notwithstanding any other law, a licensing authority may not consider a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization:

(1) the person entered a plea of guilty or nolo contendere;

(2) the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and

(3) at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

(d) A licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if:

(1) the person was charged with:

(A) any offense described by Article 62.001(5), Code of Criminal Procedure; or

(B) an offense other than an offense described by Paragraph (A) if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or

(ii) a conviction for the offense would make the person ineligible for the license by operation of law; and

(2) after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that:

(A) the person may pose a continued threat to public safety; or

(B) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to

repeat the prohibited conduct.

(e) Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:

(1) law enforcement or public health, education, or safety services; or

(2) financial services in an industry regulated by a person listed in Section 411.0765(b)(18), Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1148 (H.B. 2808), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 938 (H.B. 1659), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1265 (H.B. 798), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.79, eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. 1902), Sec. 31, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 5, eff. September 1, 2019.

Sec. 53.0211. LICENSING OF CERTAIN APPLICANTS WITH PRIOR CRIMINAL CONVICTIONS. (a) This section does not apply to an applicant for a license that would allow the applicant to provide:

(1) law enforcement services;

(2) public health, education, or safety services; or

(3) financial services in an industry regulated by the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner.

(b) Notwithstanding any law other than Subsection (a) and unless the applicant has been convicted of an offense described by Section 53.021(a), a licensing authority shall issue to an otherwise qualified applicant who has been convicted of an offense:

(1) the license for which the applicant applied; or

(2) a provisional license described by Subsection (c).

(c) A licensing authority may issue a provisional license for a term of six months to an applicant who has been convicted of an offense.

(d) The licensing authority shall revoke a provisional license if the provisional license holder:

(1) commits a new offense;

(2) commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or

(3) violates the law or rules governing the practice of the occupation for which the provisional license is issued.

(e) The licensing authority shall issue the license for which the applicant originally applied to a provisional license holder on the expiration of the provisional license term if the provisional license holder does not engage in conduct described by Subsection (d).

(f) If the licensing authority revokes a provisional license under Subsection (d), the provisional license holder is disqualified from receiving the license for which the applicant originally applied.

(g) An applicant who is on community supervision, mandatory supervision, or parole and who is issued a provisional license under this section shall provide to the licensing authority the name and contact information of the probation or parole department to which the person reports. The licensing authority shall notify the probation or parole department that a provisional license has been issued. The probation or parole department shall notify the licensing authority if the person's community supervision, mandatory supervision, or parole supervision is revoked during the term of the provisional license.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 4, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1182 (H.B. 3453), Sec. 13, eff. September 1, 2011.

Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION DIRECTLY

RELATES TO OCCUPATION. In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority shall consider each of the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and

(5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 6, eff. September 1, 2019.

Sec. 53.023. ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER AFTER DETERMINING CONVICTION DIRECTLY RELATES TO OCCUPATION. (a) If a licensing authority determines under Section 53.022 that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority shall consider the following in determining whether to take an action authorized by Section 53.021:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's fitness, including letters of recommendation.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations described by Subsection (a)(7).

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 12, eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 7, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 8, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 12, eff. September 1, 2019.

Sec. 53.0231. NOTICE OF PENDING DENIAL OF LICENSE. (a) Notwithstanding any other law, a licensing authority may not deny a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense unless the licensing authority:

(1) provides written notice to the person of the reason for the intended denial; and

(2) allows the person not less than 30 days to submit any relevant information to the licensing authority.

(b) A notice required under Subsection (a) must contain, as applicable:

(1) a statement that the person is disqualified from receiving the license or being examined for the license because of the person's prior conviction of an offense specified in the notice; or

(2) a statement that:

(A) the final decision of the licensing authority to deny the person a license or the opportunity to be examined for the license will be based on the factors listed in Section 53.023(a); and

(B) it is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in Section 53.023(a).

Added by Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 9, eff. September 1, 2019.

Sec. 53.0232. LIMITATION REGARDING CONSIDERATION OF CERTAIN ARRESTS. For purposes of determining a person's fitness to perform the duties and discharge the responsibilities of the licensed occupation, a licensing authority may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision.

Added by Acts 2019, 86th Leg., R.S., Ch. 984 (S.B. 1217), Sec. 1, eff. June 14, 2019.
Redesignated from Occupations Code, Section 53.0231 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(61), eff. September 1, 2021.

Sec. 53.024. PROCEEDINGS GOVERNED BY ADMINISTRATIVE PROCEDURE ACT. A proceeding before a licensing authority to establish factors required to be considered under this subchapter is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.025. GUIDELINES. (a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

(b) A state licensing authority that issues guidelines under this section shall file the guidelines with the secretary of state for publication in the Texas Register.

(c) A local or county licensing authority that issues guidelines under this section shall post the guidelines at the courthouse for the county in which the licensing authority is located or publish the guidelines in a newspaper having countywide circulation in that county.

(d) Amendments to the guidelines, if any, shall be issued

annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 53.026. APPLICANT BEST PRACTICES GUIDE. (a) The state auditor shall, in collaboration with licensing authorities, develop a guide of best practices for an applicant with a prior conviction to use when applying for a license. The state auditor shall publish the guide on the state auditor's Internet website.

(b) A licensing authority shall include a link to the guide on the authority's Internet website and in each notice described by Section 53.051 and letter described by Section 53.104.

Added by Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 9, eff. September 1, 2019.

SUBCHAPTER C. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, OR DENIAL OF LICENSE

Sec. 53.051. NOTICE. A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense shall notify the person in writing of:

(1) the reason for the suspension, revocation, denial, or disqualification, including any factor considered under Section 53.022 or 53.023 that served as the basis for the suspension, revocation, denial, or disqualification;

(2) the review procedure provided by Section 53.052; and

(3) the earliest date the person may appeal the action of the licensing authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 10, eff. September 1, 2019.

Sec. 53.052. JUDICIAL REVIEW. (a) A person whose license has been suspended or revoked or who has been denied a license or the opportunity to take an examination under Section 53.021 and who has

exhausted the person's administrative appeals may file an action in the district court in the county in which the licensing authority is located for review of the evidence presented to the licensing authority and the decision of the licensing authority.

(b) The petition for an action under Subsection (a) must be filed not later than the 30th day after the date the licensing authority's decision is final and appealable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. PRELIMINARY EVALUATION OF LICENSE ELIGIBILITY

Sec. 53.101. DEFINITIONS. In this subchapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state that issues a license.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

Sec. 53.102. REQUEST FOR CRIMINAL HISTORY EVALUATION LETTER. (a) A person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(b) The request must state the basis for the person's potential ineligibility.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

Sec. 53.103. AUTHORITY TO INVESTIGATE. A licensing authority has the same powers to investigate a request submitted under this subchapter and the requestor's eligibility that the authority has to investigate a person applying for a license.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

Sec. 53.104. DETERMINATION OF ELIGIBILITY; LETTER. (a) If a licensing authority determines that a ground for ineligibility does not exist, the authority shall notify the requestor in writing of the authority's determination on each ground of potential ineligibility.

(b) If a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility, including any factor considered under Section 53.022 or 53.023 that served as the basis for potential ineligibility, and the authority's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(c) A licensing authority must provide notice under Subsection (a) or issue a letter under Subsection (b) not later than the 90th day after the date the authority receives the request.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 765 (H.B. 1342), Sec. 11, eff. September 1, 2019.

Sec. 53.105. FEES. A licensing authority may charge a person requesting an evaluation under this subchapter a fee adopted by the authority. Fees adopted by a licensing authority under this subchapter must be in an amount sufficient to cover the cost of administering this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 616 (H.B. 963), Sec. 1, eff. June 19, 2009.

SUBCHAPTER E. NOTICE OF POTENTIAL INELIGIBILITY FOR LICENSE

Sec. 53.151. DEFINITIONS. Notwithstanding Section 53.001, in this subchapter, "licensing authority" and "occupational license" have the meanings assigned to those terms by Section 58.001.

Added by Acts 2017, 85th Leg., R.S., Ch. 1018 (H.B. 1508), Sec. 1, eff. September 1, 2017.

Sec. 53.152. NOTICE BY ENTITIES PROVIDING EDUCATIONAL PROGRAMS. (a) An entity that provides an educational program to prepare an individual for issuance of an initial occupational license shall notify each applicant to and enrollee in the educational program of:

(1) the potential ineligibility of an individual who has been convicted of an offense for issuance of an occupational license on completion of the educational program;

(2) the current guidelines issued under Section 53.025 by any licensing authority that may issue an occupational license to an individual who completes the educational program;

(3) any other state or local restriction or guideline used by a licensing authority described by Subdivision (2) to determine the eligibility of an individual who has been convicted of an offense for an occupational license issued by the licensing authority; and

(4) the right to request a criminal history evaluation letter under Section 53.102.

(b) The entity shall provide the notice required under Subsection (a) to each applicant and enrollee regardless of whether the applicant or enrollee has been convicted of an offense.

Added by Acts 2017, 85th Leg., R.S., Ch. 1018 (H.B. 1508), Sec. 1, eff. September 1, 2017.

Sec. 53.153. REFUND AND ORDERED PAYMENTS. A licensing authority that determines that an entity regulated by the licensing authority has failed to provide the notice required by Section 53.152 to an individual entitled to receive the notice and that the

individual's application for an occupational license for which the entity's educational program prepares the individual was denied because the individual has been convicted of an offense shall order the entity to:

(1) refund the amount of any tuition paid by the individual to the entity; and

(2) pay to the individual an amount equal to the total of the following, as applicable:

(A) the amount of any application fees paid by the individual to the licensing authority; and

(B) the amount of any examination fees paid by the individual to the licensing authority or an examination provider approved by the licensing authority.

Added by Acts 2017, 85th Leg., R.S., Ch. 1018 (H.B. 1508), Sec. 1, eff. September 1, 2017.

CHAPTER 54. EXAMINATION ON RELIGIOUS HOLY DAY; EXAMINATION ACCOMMODATIONS FOR PERSON WITH DYSLEXIA

Sec. 54.001. DEFINITIONS. In this chapter:

(1) "Religious holy day" means a day on which the tenets of a religious organization prohibit the organization's members from participating in secular activities.

(2) "Religious organization" means an organization that qualifies under Section 11.20, Tax Code.

(3) "State agency" means an agency in the executive, legislative, or judicial branch of state government that administers an examination for licensing or other regulatory purposes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 54.002. EXAMINATION SCHEDULED ON RELIGIOUS HOLY DAY. (a) Each state agency shall adopt a procedure to permit an examinee who wishes to observe a religious holy day on which the person's religious beliefs prevent the person from taking an examination to take an examination scheduled to be administered by the agency on that religious holy day on an alternate date.

(b) Each state agency shall adopt rules as necessary to implement this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 54.003. EXAMINATION ACCOMMODATIONS FOR PERSON WITH DYSLEXIA. (a) In this section, "dyslexia" has the meaning assigned by Section 51.970, Education Code.

(b) For each licensing examination administered by a state agency, the agency shall provide reasonable examination accommodations to an examinee diagnosed as having dyslexia.

(c) Each state agency shall adopt rules necessary to implement this section, including rules to establish the eligibility criteria an examinee must meet for accommodation under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 418 (S.B. 867), Sec. 2, eff. September 1, 2011.

CHAPTER 55. LICENSING OF MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Armed forces of the United States" means the army, navy, air force, space force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(3) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(4) "Military service member" means a person who is on active duty.

(5) "Military spouse" means a person who is married to a military service member.

(6) "Military veteran" means a person who has served on active duty and who was discharged or released from active duty.

(7) "State agency" means a department, board, bureau,

commission, committee, division, office, council, or agency of the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 2, eff. May 18, 2013.
Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 2, eff. September 1, 2015.
Acts 2021, 87th Leg., R.S., Ch. 46 (H.B. 139), Sec. 2, eff. September 1, 2021.

Sec. 55.002. EXEMPTION FROM PENALTY FOR FAILURE TO RENEW LICENSE. A state agency that issues a license shall adopt rules to exempt an individual who holds a license issued by the agency from any increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 3, eff. September 1, 2015.

Sec. 55.003. EXTENSION OF LICENSE RENEWAL DEADLINES FOR MILITARY SERVICE MEMBERS. A military service member who holds a license is entitled to two years of additional time to complete:

(1) any continuing education requirements; and

(2) any other requirement related to the renewal of the military service member's license.

Added by Acts 2005, 79th Leg., Ch. 675 (S.B. 143), Sec. 1, eff. June 17, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 4, eff. September 1, 2015.

Sec. 55.004. ALTERNATIVE LICENSING FOR MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES. (a) A state agency that issues a license shall adopt rules for the issuance of the license to an applicant who is a military service member, military veteran, or military spouse and:

(1) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date held the license in this state.

(b) The executive director of a state agency may waive any prerequisite to obtaining a license for an applicant described by Subsection (a) after reviewing the applicant's credentials.

(c) In addition to the rules adopted under Subsection (a), a state agency that issues a license may adopt rules that would establish alternate methods for a military service member, military veteran, or military spouse to demonstrate competency to meet the requirements for obtaining the license, including receiving appropriate credit for training, education, and clinical and professional experience.

(d) A state agency that issues a license that has a residency requirement for license eligibility shall adopt rules regarding documentation necessary for an applicant who is a military service member or military spouse to establish residency for purposes of this subsection, including by providing to the agency a copy of the permanent change of station order for the applicant or the applicant's spouse.

Added by Acts 2011, 82nd Leg., R.S., Ch. 930 (S.B. 1733), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 586 (H.B. 3742), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 5, eff. September 1, 2015.
Reenacted by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 14.001, eff. September 1, 2017.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 46 (H.B. 139), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1061 (S.B. 422), Sec. 1, eff. September 1, 2023.

Sec. 55.0041. RECOGNITION OF OUT-OF-STATE LICENSE OF MILITARY SERVICE MEMBERS AND MILITARY SPOUSES. (a) Notwithstanding any other law, a military service member or military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the member or spouse is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Before engaging in the practice of the business or occupation, the military service member or military spouse must:

(1) notify the applicable state agency of the member's or spouse's intent to practice in this state;

(2) submit to the agency proof of the member's or spouse's residency in this state in accordance with rules adopted under Section 55.004(d) and a copy of the member's or spouse's military identification card; and

(3) receive from the agency confirmation that:

(A) the agency has verified the member's or spouse's license in the other jurisdiction; and

(B) the member or spouse is authorized to engage in the business or occupation in accordance with this section.

(c) The military service member or military spouse shall comply with all other laws and regulations applicable to the business or occupation in this state.

(d) A military service member or military spouse may engage in the business or occupation under the authority of this section only for the period during which the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in this state but not to exceed three years from the date the member or spouse receives the confirmation described by Subsection (b)(3).

(d-1) Notwithstanding Subsection (d), in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the confirmation described by Subsection (b)(3).

(e) A state agency that issues a license shall adopt rules to implement this section. The rules must establish a process for the agency to:

(1) identify, with respect to each type of license issued by the agency, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and

(2) not later than the 30th day after the date a military service member or military spouse submits the information described by Subsections (b)(1) and (2), verify that the member or spouse is licensed in good standing in a jurisdiction described by Subdivision (1).

(f) In addition to the rules adopted under Subsection (e), a state agency that issues a license may adopt rules to provide for the issuance of a license to a military service member or military spouse to whom the agency provides confirmation under Subsection (b)(3). A license issued under this subsection must expire not later than the third anniversary of the date the agency provided the confirmation and may not be renewed. A state agency may not charge a fee for the issuance of the license.

Added by Acts 2019, 86th Leg., R.S., Ch. 622 (S.B. 1200), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 46 (H.B. 139), Sec. 4, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1061 (S.B. 422), Sec. 2, eff. September 1, 2023.

Sec. 55.005. EXPEDITED LICENSE PROCEDURE FOR MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES. (a) A state agency that issues a license shall, not later than the 30th day after the date a military service member, military veteran, or military spouse files an application for a license:

(1) process the application; and

(2) issue the license to an applicant who qualifies for the license under Section 55.004.

(b) A license issued under this section may not be a provisional license and must confer the same rights, privileges, and

responsibilities as a license not issued under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 6, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 7, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 1061 (S.B. 422), Sec. 3, eff. September 1, 2023.

Sec. 55.006. RENEWAL OF EXPEDITED LICENSE ISSUED TO MILITARY SERVICE MEMBER, MILITARY VETERAN, OR MILITARY SPOUSE. (a) As soon as practicable after a state agency issues a license under Section 55.005, the state agency shall determine the requirements for the license holder to renew the license.

(b) The state agency shall notify the license holder of the requirements for renewing the license in writing or by electronic means.

(c) A license issued under Section 55.005 has the term established by law or state agency rule, or a term of 12 months from the date the license is issued, whichever term is longer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 9, eff. September 1, 2015.

Sec. 55.007. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, a state agency that issues a license shall, with respect to an applicant who is a military service member or military veteran, credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the state agency.

(b) The state agency shall adopt rules necessary to implement this section.

(c) Rules adopted under this section may not apply to an applicant who:

(1) holds a restricted license issued by another jurisdiction; or

(2) has an unacceptable criminal history according to the law applicable to the state agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 3, eff. May 18, 2013.

Sec. 55.008. APPRENTICESHIP REQUIREMENTS FOR APPLICANT WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, if an apprenticeship is required for a license issued by a state agency, the state agency shall credit verified military service, training, or education that is relevant to the occupation toward the apprenticeship requirements for the license.

(b) The state agency shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 348 (H.B. 2254), Sec. 2, eff. June 14, 2013.
Redesignated and amended from Occupations Code, Section 55.005 by Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 8, eff. September 1, 2015.
Redesignated from Occupations Code, Section 55.005 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(43), eff. September 1, 2015.

Sec. 55.009. LICENSE APPLICATION AND EXAMINATION FEES. Notwithstanding any other law, a state agency that issues a license shall waive the license application and examination fees paid to the state for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

Added by Acts 2015, 84th Leg., R.S., Ch. 328 (S.B. 807), Sec. 1, eff. September 1, 2015.

Sec. 55.010. NOTICE OF CHAPTER PROVISIONS. A state agency that issues a license shall prominently post a notice on the home page of the agency's Internet website describing the provisions of this chapter that are available to military service members, military veterans, and military spouses.

Added by Acts 2015, 84th Leg., R.S., Ch. 1193 (S.B. 1307), Sec. 10, eff. September 1, 2015.
Redesignated from Occupations Code, Section 55.009 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(30), eff. September 1, 2017.

CHAPTER 56. DISCIPLINARY ACTION AGAINST RECIPIENTS OF STUDENT FINANCIAL ASSISTANCE PROHIBITED

Sec. 56.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 506 (S.B. 37), Sec. 7(4), eff. June 7, 2019.

(2) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(3) "Licensing authority" means a department, commission, board, office, or other agency of the state or of a political subdivision of the state that issues a license.

(4) "Scholarship contract" means an agreement by this state, an agency of this state, a political subdivision of this state, or the United States to make a grant to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment in exchange for the person's agreement to perform a service obligation.

(5) "Student loan" means a loan made to a person by a public or private entity to support the person while attending a public or private institution of higher education or other postsecondary educational establishment.

(6) "Student loan repayment contract" means an agreement by this state, an agency of this state, a political subdivision of this state, or the United States to repay all or part of a person's student loan in exchange for the person's agreement to perform a service obligation.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 506 (S.B. 37), Sec. 2, eff. June 7, 2019.
Acts 2019, 86th Leg., R.S., Ch. 506 (S.B. 37), Sec. 7(4), eff. June 7, 2019.

Sec. 56.003. DISCIPLINARY ACTION IN EVENT OF DEFAULT OR BREACH PROHIBITED. A licensing authority may not take disciplinary action against a person based on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including by:

(1) denying the person's application for a license or license renewal;

(2) suspending the person's license; or

(3) taking other disciplinary action against the person.

Added by Acts 2001, 77th Leg., ch. 512, Sec. 1, eff. June 11, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 506 (S.B. 37), Sec. 3, eff. June 7, 2019.

CHAPTER 57. REQUIREMENTS FOR LICENSING AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. DEFINITIONS. In this chapter:

(1) "License" means a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business, occupation, or profession.

(2) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency of the state.

Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. GOVERNING BOARD MEMBERSHIP

Sec. 57.051. REQUIREMENTS FOR GOVERNING BOARD MEMBERSHIP. A person may not be required to be a member of a private trade association as a precondition to serving as a member of the governing board of a state agency that issues a license or otherwise regulates a business, occupation, or profession.

Added by Acts 2001, 77th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 2001. Transferred and redesignated from Occupations Code, Section 57.002 by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 3, eff. September 1, 2019.

SUBCHAPTER C. REVIEW OF STATE AGENCY RULES

Sec. 57.101. DEFINITION. In this subchapter, "division" means the division of the governor's office established under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.102. APPLICABILITY. This subchapter applies only to a state agency with a governing board that is controlled by persons who provide services that are regulated by the agency.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.103. ESTABLISHMENT OF DIVISION. (a) The governor shall:

(1) establish a division to review state agency rules in accordance with this subchapter; and

(2) appoint a director for the division with the advice and consent of the senate.

(b) The director must be licensed to practice law in this state and have experience in antitrust law.

(c) The director serves a two-year term expiring February 1 of each odd-numbered year.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.104. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be appointed as director or employed by the division in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association.

(c) A person may not be appointed as director or act as the general counsel to the division if the person is required to register as a lobbyist under Chapter 305, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.105. SUBMISSION OF CERTAIN STATE AGENCY RULES. (a) A state agency that issues a license must submit any proposed rule affecting market competition in this state relating to the business, occupation, or profession for which a license is issued to the division for review before the rule is adopted or implemented.

(b) A state agency that issues a license must submit to the division for review any rule that the agency proposes to repeal or readopt with amendment after a review under Section 2001.039, Government Code, if the rule affects market competition as described by this section.

(b-1) A state agency that issues a license must submit to the division for review any rule that the agency proposes to readopt without amendment after a review under Section 2001.039, Government Code, if the rule affects market competition as described by this section. This subsection expires January 1, 2024.

(c) The state agency must include with the submission a statement of the purpose for the proposed rule, copies of all administrative records regarding the proposed rule, including any information or comments the agency received from the public, and any other information required by the division.

(d) For purposes of this section, a rule affects market competition if the rule would, if implemented or readopted:

(1) create a barrier to market participation in this state; or

(2) result in higher prices or reduced competition for a product or service provided by or to a license holder in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.106. REVIEW BY DIVISION. (a) The division shall conduct a thorough, independent review of each proposed rule submitted under Section 57.105 to determine:

(1) if the effect of the proposed rule on market competition is consistent with state policy as established by the applicable state agency's governing statute; and

(2) whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action.

(b) In conducting the review, the division may:

(1) request information from the state agency;

(2) require the state agency to conduct an analysis of possible implications of the rule;

(3) solicit public comments; or

(4) hold public hearings.

(c) The division shall complete the review not later than the 90th day after the date the proposed rule is submitted under Section 57.105.

(d) After review, the division shall:

(1) approve the proposed rule; or

(2) reject the proposed rule and return the rule to the state agency with instructions for revising the rule to be consistent with applicable state policy.

(e) A state agency may not finally adopt or implement a proposed rule required to be submitted for review under this subchapter unless the division has approved the rule under this section.

(f) The division shall, for each proposed rule submitted under this subchapter, provide to the state agency and make available to the public an explanation of the division's reasons for approving or rejecting the rule, including a discussion of the division's determination regarding the consistency of the rule with applicable state policy.

(g) The division may initiate a review of a proposed rule that was not submitted for review under this subchapter if the division has reason to believe that the proposed rule may have an anticompetitive market effect. A state agency may not finally adopt or implement a proposed rule for which the division has initiated a review under this subsection unless the division approves the rule in accordance with this section.

(h) When conducting a review of a proposed rule or deciding whether to initiate a review, the division shall only consider evidence or communications that are:

(1) submitted to the division in writing from an identified person or entity and made available to the public;

(2) submitted in a public hearing; or

(3) generally known to the public.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

Sec. 57.107. RULEMAKING AUTHORITY. The division may adopt rules to carry out this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 668 (S.B. 1995), Sec. 4, eff. September 1, 2019.

CHAPTER 58. USE OF GENETIC INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) 'DNA' means deoxyribonucleic acid.

(2) 'Family health history' means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.

(3) 'Genetic characteristic' means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

(i) predispose an individual to a disease, disorder, or syndrome; or

(ii) be associated with a statistically significant increased risk of developing a disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date the genetic information is obtained regarding the individual.

(4) 'Genetic information' means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on, or a family health history obtained from, an individual.

(5) 'Genetic test' means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition, or alteration that is associated with the individual's having a statistically increased risk of:

(i) developing a clinically recognized disease, disorder, or syndrome; or

(ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

(6) 'Licensing authority' means a state agency or political

subdivision that issues an occupational license.

(7) 'Occupational license' means a license, certificate, registration, permit, or other form of authorization required by law or rule that must be obtained by an individual to engage in a particular business or occupation.

(8) 'Political subdivision' means a municipality, county, or special district or authority. The term includes a school district.

(9) 'RNA' means ribonucleic acid.

(10) 'State agency' means a department, board, bureau, commission, committee, division, office, council, or agency in the executive or judicial branch of state government.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

SUBCHAPTER B. USE AND RETENTION OF GENETIC INFORMATION

Sec. 58.051. CERTAIN USES OF GENETIC INFORMATION PROHIBITED. A licensing authority may not deny an application for an occupational license, suspend, revoke, or refuse to renew an occupational license, or take any other disciplinary action against a license holder based on the refusal of the license applicant or license holder to:

(1) submit to a genetic test;

(2) submit a family health history;

(3) disclose whether the applicant or holder has submitted to a genetic test; or

(4) disclose the results of any genetic test to which the applicant or holder has submitted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.052. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

(1) the sample is retained under a court order;

(2) the individual authorizes retention of the sample for medical treatment or scientific research;

(3) the sample was obtained for research that is cleared by an institutional review board and retention of the sample is:

(A) under a requirement the institutional review board imposes on a specific research project; or

(B) authorized by the research participant with institutional review board approval under federal law; or

(4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or a laboratory approved by that department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

SUBCHAPTER C. DISCLOSURE OF GENETIC INFORMATION; CONFIDENTIALITY; EXCEPTIONS

Sec. 58.101. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED. An individual who submits to a genetic test has the right to know the results of the test. On written request by the individual, the entity that performed the test shall disclose the test results to:

(1) the individual; or

(2) a physician designated by the individual.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.102. CONFIDENTIALITY OF GENETIC INFORMATION. (a) Except as provided by Section 58.103, genetic information is confidential and privileged regardless of the source of the information.

(b) A person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 58.104.

(c) This section applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept.

1, 2003.

Sec. 58.103. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization under Section 58.104 if the disclosure is:

(1) authorized under a state or federal criminal law relating to:

(A) the identification of individuals; or

(B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;

(2) required under a specific order of a state or federal court;

(3) for the purpose of establishing paternity as authorized under a state or federal law;

(4) made to provide genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or

(5) made to identify a decedent.

(b) Genetic information may be disclosed without an authorization under Section 58.104 if:

(1) the disclosure is for information from a research study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;

(2) the information does not identify a specific individual; and

(3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.104. AUTHORIZED DISCLOSURE. An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.001(a), eff. Sept. 1, 2003.

Sec. 58.105. CIVIL PENALTY. (a) A person who discloses genetic information in violation of Sections 58.102-58.104 is liable for a civil penalty not to exceed $10,000.

(b) The attorney general may bring an action in the name of the state to recover a civil penalty under this section, plus reasonable attorney's fees and court costs.

Added by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.002, eff. September 1, 2005.

CHAPTER 59. INFORMATION RELATING TO LICENSING

Sec. 59.001. CONFIDENTIALITY OF SOCIAL SECURITY NUMBER. The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.001(a), eff. Sept. 1, 2001. Renumbered from Occupations Code Sec. 56.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(112), eff. Sept. 1, 2003.
Renumbered from Occupations Code, Section 58.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(68), eff. September 1, 2005.

CHAPTER 60. DIGITAL LICENSES

Sec. 60.001. DEFINITIONS. In this chapter:

(1) "Licensing authority" means a state agency, county, or municipality that is authorized to issue an occupational license.

(2) "Occupational license" means a license, certificate, registration, permit, or other form of authorization required by

statute, ordinance, order, or rule that must be obtained by an individual to engage in a particular business, occupation, or profession.

Added by Acts 2023, 88th Leg., R.S., Ch. 719 (H.B. 2453), Sec. 1, eff. September 1, 2023.

Sec. 60.002. REQUIREMENTS FOR DIGITAL LICENSES. A licensing authority that issues an occupational license may issue a digital license to a license holder. If the licensing authority issues a digital license, the digital license must comply with the following requirements:

(1) the digital license must be in a secure format and readily accessible by the license holder through an Internet website and on a wireless communication device;

(2) the public must be able to view a license holder's digital license through an Internet website or by using a QR code as defined by Section 443.001, Health and Safety Code; and

(3) if the authority contracts with a vendor for the issuance of a digital license, the digital license must be in a format in which the vendor and authority can verify the validity of the license.

Added by Acts 2023, 88th Leg., R.S., Ch. 719 (H.B. 2453), Sec. 1, eff. September 1, 2023.

TITLE 3. HEALTH PROFESSIONS
SUBTITLE A. PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY
CHAPTER 101. HEALTH PROFESSIONS COUNCIL
SUBCHAPTER A. HEALTH PROFESSIONS COUNCIL

Sec. 101.001. HEALTH PROFESSIONS COUNCIL. In this chapter, "council" means the Health Professions Council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.002. COMPOSITION OF COUNCIL. The council consists of 13 members, with one member appointed by each of the following:

(1) the Texas Board of Chiropractic Examiners;

(2) the State Board of Dental Examiners;
(3) the Texas Optometry Board;
(4) the Texas State Board of Pharmacy;
(5) the State Board of Veterinary Medical Examiners;
(6) the Texas Medical Board;
(7) the Texas Board of Nursing;
(8) the Texas Behavioral Health Executive Council;
(9) the Texas Funeral Service Commission;
(10) the entity that regulates the practice of physical therapy;
(11) the entity that regulates the practice of occupational therapy;
(12) the health licensing division of the Health and Human Services Commission; and
(13) the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.013, eff. Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 31, eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.018, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 3.007, eff. September 1, 2019.

Sec. 101.003. OFFICERS. The council shall elect from the council's members a presiding officer and assistant presiding officer to conduct the business of the council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.004. COMPENSATION OF MEMBERS. A member of the council is not entitled to receive compensation or a per diem for the member's service on the council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.005. COUNCIL STAFF. The council may employ staff or designate staff for the council from the employees of the regulatory agencies listed in Section 101.002 as necessary for the council to carry out the council's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.006. BUDGET. The council shall adopt an annual budget that is funded by a prorated assessment paid by the regulatory agencies listed in Section 101.002.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.007. DUTIES OF COUNCIL. The council shall:

(1) administer the functions provided by this chapter; and

(2) provide a means for the regulatory agencies represented on the council to coordinate administrative and regulatory efforts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. TELEPHONE COMPLAINT SYSTEM

Sec. 101.051. TELEPHONE COMPLAINT SYSTEM. The council shall establish and operate a toll-free telephone complaint system to provide assistance and referral services for persons making a complaint relating to a health profession regulated by the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.0515. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to the Texas Funeral Service Commission.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.02, eff. Sept. 1, 2001.

Sec. 101.052. TELEPHONE LISTING. A state agency that regulates a health profession shall list the toll-free telephone number of the

complaint system with the agency's regular telephone number.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.053. CONFIDENTIALITY. A complaint, adverse report, or other information regarding the content of a complaint in the possession of the council or its employee or agent relating to a person initiating a complaint or the license holder who is the subject of the complaint is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than:

(1) a council employee or agent involved in collecting complaint information;

(2) the specific council member agency or board responsible for regulating the health profession in which the person who is the subject of the complaint is a license holder; or

(3) an employee or agent of the member agency or board who is involved in the discipline of license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. TRAINING PROGRAM

Sec. 101.101. TRAINING PROGRAM. (a) The council shall establish a training program for the governing bodies of state agencies that regulate health professions.

(b) Before a member of a governing body may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.102. PROGRAM REQUIREMENTS. The training program must provide information to a participant regarding:

(1) the enabling legislation that created the governing body to which the member is appointed;

(2) the programs operated by the state agency governed by the governing body;

(3) the role and functions of that state agency;

(4) the rules of that state agency with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for that state agency;

(6) the results of the most recent formal audit of that state agency;

(7) the requirements of the:

(A) open meetings law, Chapter 551, Government Code;

(B) open records law, Chapter 552, Government Code; and

(C) administrative procedure law, Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. REPORTING REQUIREMENTS

Sec. 101.151. ANNUAL REPORT. (a) The council shall prepare an annual report that includes:

(1) a statistical compilation of enforcement actions taken by a regulatory agency listed in Section 101.002;

(2) recommendations for statutory changes to improve the regulation of the health care professions;

(3) strategies to expand the health care workforce in this state, including:

(A) methods for reducing the time required to process license applications for health care professions;

(B) methods for increasing the number of health care practitioners providing mental and behavioral health care services; and

(C) any statutory and legislative appropriation recommendations the council determines are appropriate for expanding the health care workforce in this state, including recommendations for expanding the health care workforce in medically underserved areas; and

(4) other relevant information and recommendations

determined necessary by the council.

(b) The council shall send the report to the governor, the lieutenant governor, the speaker of the house of representatives, the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over public health, and the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over state finance or appropriations not later than February 1 of each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 644 (S.B. 1636), Sec. 1, eff. June 10, 2019.

SUBCHAPTER E. GROUNDS FOR LICENSE REVOCATION OR DENIAL

Sec. 101.201. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) A person may not use advertising that is false, misleading, deceptive, or not readily subject to verification.

(b) False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

(6) represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take

advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.203. OVERCHARGING OR OVERTREATING. A health care professional may not violate Section 311.0025, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.011(a), eff. Sept. 1, 2001.

Sec. 101.204. REMEDIES. (a) A violation of this subchapter is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license.

(b) A violation of Section 101.201 is grounds for action under Section 17.47, 17.58, 17.60, or 17.61, Business & Commerce Code, by the consumer protection division of the office of the attorney general.

(c) A violation of Section 101.201 does not create a private cause of action, including an action for breach of warranty or for an implied contract or warranty for good and workmanlike service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. ENFORCEMENT

Sec. 101.251. CIVIL PENALTY. (a) A person who violates this chapter is liable to the state for a civil penalty in an amount not to exceed $1,000 for each violation. Each day a violation occurs constitutes a separate violation.

(b) The attorney general may initiate an action under this section by filing suit in a district court in Travis County or in the county in which the violation occurred.

(c) The attorney general may recover reasonable expenses

incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered under this section shall be deposited in the state treasury.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.252. INJUNCTION. (a) The attorney general or the appropriate health licensing agency may bring an action for an injunction to stop a violation or threatened violation of this chapter.

(b) The attorney general or health licensing agency may recover reasonable expenses incurred in obtaining an injunction under this section, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 101.253. REMEDIES NOT EXCLUSIVE. The remedies provided by this chapter are in addition to any other remedy provided by law, including rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. OFFICE OF PATIENT PROTECTION

Sec. 101.301. GENERAL PROVISIONS. (a) In this subchapter:

(1) "Consumers as a class" means five or more individuals whose complaints are of the same or similar regulatory and factual circumstances and issues.

(2) "Licensing agency" means a health occupation regulatory agency that is a member of the council.

(3) "Office" means the office of patient protection.

(b) The council shall establish an office of patient protection within the council to represent the interests of consumers in matters before licensing agencies.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.302. EXECUTIVE COMMITTEE; DIRECTOR. (a) The governor shall appoint an executive committee consisting of at least three members who are public members of the governing bodies of licensing agencies. The executive committee shall appoint a director for the office. The director shall be responsible for administering the provisions of this subchapter.

(b) The director may not be:

(1) a health care professional licensed or certified by a licensing agency;

(2) financially involved with the provision of health care or with an entity that provides health care, including an entity regulated by a licensing agency;

(3) an officer, employee, or paid consultant of a trade association for a profession that is regulated by a licensing agency;

(4) an officer, employee, or paid consultant of a trade association for an entity regulated by the Texas Department of Insurance; or

(5) required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to a person or organization subject to regulation by a licensing agency.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.303. ADMINISTRATIVE ATTACHMENT TO COUNCIL; REIMBURSEMENT. The office is located in the council but may not interfere with the other duties of the council. The office shall reimburse the council from fees received by the office under Section 101.307 for administrative costs incurred by the council in providing administrative support for the office.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.304. PUBLIC INFORMATION PROVIDED BY OFFICE; STANDARD COMPLAINT FORM. (a) The office shall provide to the public information about the complaint process at each licensing agency.

(b) The office shall conduct a public awareness campaign to increase awareness of the telephone complaint system under Subchapter B.

(c) Through the use of the Internet and other information and communications media, the office shall provide information to the public in easily understood language regarding the complaint procedures and sanctions processes used by the licensing agencies.

(d) The office, in cooperation with the licensing agencies, shall adopt a standard complaint form that may be used by a member of the public to file a complaint with a licensing agency. Each licensing agency shall accept the form adopted under this section in addition to any other form required by the agency.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.305. POWERS AND DUTIES OF OFFICE. (a) The office shall:

(1) establish, in consultation with and on the approval of the council, protocols for interaction with licensing agencies;

(2) serve as the ombudsman for consumer complaints at the licensing agencies on the request of an individual consumer;

(3) assist consumers in obtaining information about the status of complaints; and

(4) review the Internet websites of licensing agencies and make recommendations to the agencies on making public information, including information relating to disciplinary actions, understandable to and easily accessible by the public.

(b) The office may:

(1) appear at or present information or testimony to a licensing agency on behalf of consumers as a class; and

(2) appeal the decisions of licensing agencies to the governing body of the appropriate licensing agency on behalf of consumers as a class but not for individual complainants.

(c) The office may not appeal an individual complainant's case before any agency.

(d) The office is entitled to access to:

(1) complaints received by a licensing agency, unless the access would jeopardize an ongoing investigation; and

(2) the public records of a licensing agency and the

records of a licensing agency that are filed with the State Office of Administrative Hearings.

(e) The confidentiality requirements that apply to the records of a licensing agency and the sanctions for disclosure of confidential information apply to the office and to information obtained by the office under Subsection (d).

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.306. MONITORING OF AGENCIES. (a) The office shall review and evaluate rules proposed for adoption by the licensing agencies and changes made to the statutes that govern the operation of the agencies and the professions regulated by the agencies.

(b) The office may report to the legislature and recommend to licensing agencies changes in agency rules that, in the office's judgment, would positively affect the interests of consumers.

(c) The office shall recommend changes to the statutes described by Subsection (a) to the Sunset Advisory Commission during the commission's review of the relevant licensing agency.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

Sec. 101.307. FUNDING OF OFFICE. (a) To provide funding sufficient for the office to exercise the powers and duties prescribed by this subchapter:

(1) the initial licensing or registration fee charged by each licensing agency is increased by $5; and

(2) the renewal fee charged by each licensing agency is increased by $1 for each year for which the license or registration is renewed.

(b) The fee increases authorized under this section shall be collected in the same manner as the assessment under Section 101.006. The council may spend the fees collected under this section only to fund the activities of the office under this subchapter.

Added by Acts 2003, 78th Leg., ch. 305, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER H. BILLING

Sec. 101.351. FAILURE TO PROVIDE BILLING INFORMATION. On the written request of a patient, a health care professional shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient. This section does not apply to a physician subject to Section 101.352.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Transferred from Occupations Code, Section 101.202 and amended by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 6, eff. September 1, 2007.

Sec. 101.352. BILLING POLICIES AND INFORMATION; PHYSICIANS. (a) A physician shall develop, implement, and enforce written policies for the billing of health care services and supplies. The policies must address:

(1) any discounting of charges for health care services or supplies provided to an uninsured patient that is not covered by a patient's third-party payor, subject to Chapter 552, Insurance Code;

(2) any discounting of charges for health care services or supplies provided to an indigent patient who qualifies for services or supplies based on a sliding fee scale or a written charity care policy established by the physician;

(3) whether interest will be applied to any billed health care service or supply not covered by a third-party payor and the rate of any interest charged; and

(4) the procedure for handling complaints relating to billed charges for health care services or supplies.

(b) Each physician who maintains a waiting area shall post a clear and conspicuous notice of the availability of the policies required by Subsection (a) in the waiting area and in any registration, admission, or business office in which patients are reasonably expected to seek service.

(c) On the request of a patient who is seeking services that are to be provided on an out-of-network basis or who does not have coverage under a government program, health insurance policy, or health maintenance organization evidence of coverage, a physician shall provide an estimate of the charges for any health care services or supplies. The estimate must be provided not later than the 10th

business day after the date of the request. A physician must advise the consumer that:

(1) the request for an estimate of charges may result in a delay in the scheduling and provision of the services;

(2) the actual charges for the services or supplies will vary based on the patient's medical condition and other factors associated with performance of the services;

(3) the actual charges for the services or supplies may differ from the amount to be paid by the patient or the patient's third-party payor; and

(4) the patient may be personally liable for payment for the services or supplies depending on the patient's health benefit plan coverage.

(d) For services provided in an emergency department of a hospital or as a result of an emergent direct admission, the physician shall provide the estimate of charges required by Subsection (c) not later than the 10th business day after the request or before discharging the patient from the emergency department or hospital, whichever is later, as appropriate.

(e) A physician shall provide a patient with an itemized statement of the charges for professional services or supplies not later than the 10th business day after the date on which the statement is requested if the patient requests the statement not later than the first anniversary of the date on which the health care services or supplies were provided.

(f) If a patient requests more than two copies of the statement, a physician may charge a reasonable fee for the third and subsequent copies provided. The Texas Medical Board shall by rule set the permissible fee a physician may charge for copying, processing, and delivering a copy of the statement.

(g) On the request of a patient, a physician shall provide, in plain language, a written explanation of the charges for services or supplies previously made on a bill or statement for the patient.

(h) If a patient overpays a physician, the physician must refund the amount of the overpayment not later than the 30th day after the date the physician determines that an overpayment has been made. This subsection does not apply to an overpayment subject to Section 1301.132 or 843.350, Insurance Code.

(i) In this section, "physician" means a person licensed to practice in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 6, eff. September 1, 2007.

CHAPTER 102. SOLICITATION OF PATIENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. SOLICITING PATIENTS; OFFENSE. (a) A person commits an offense if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.002. REBUTTABLE PRESUMPTION. It is a rebuttable presumption that a person violated Section 102.001 if:

(1) the person refers or accepts a referral of a patient to an inpatient mental health facility or chemical dependency treatment facility;

(2) before the patient is discharged or furloughed from the facility, the person pays the referring person or accepts payment from the facility for outpatient services to be provided by the referring person after the patient is discharged or furloughed from the facility; and

(3) the referring person does not provide the outpatient services for which payment was made and does not return to the facility the payment received for those services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.003. FEDERAL LAW; CONSTRUCTION. Section 102.001 permits any payment, business arrangement, or payment practice permitted by 42 U.S.C. Section 1320a-7b(b) or any regulation adopted under that law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.004. APPLICABILITY TO ADVERTISING. Section 102.001 does not prohibit advertising, unless the advertising is:

(1) false, misleading, or deceptive; or

(2) not readily subject to verification, if the advertising claims professional superiority or the performance of a professional service in a superior manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section 102.001 does not apply to:

(1) a licensed insurer;

(2) a governmental entity, including:

(A) an intergovernmental risk pool established under Chapter 172, Local Government Code; and

(B) a system as defined by Section 1601.003, Insurance Code;

(3) a group hospital service corporation;

(4) a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor; or

(5) a health care collaborative certified under Chapter 848, Insurance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.542, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.05, eff. September 28, 2011.

Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE. (a) A person commits an offense if:

(1) the person, in a manner otherwise permitted under Section 102.001, accepts remuneration to secure or solicit a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency; and

(2) does not, at the time of initial contact and at the time of referral, disclose to the patient:

(A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and

(B) that the person will receive, directly or indirectly, remuneration for securing or soliciting the patient.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.007. APPLICABILITY. (a) This subchapter does not apply to a health care information service that:

(1) provides its services to a consumer only by telephone communication on request initiated by the consumer and without charge to the consumer;

(2) provides information about health care providers to enable consumer selection of health care provider services without any direct influence by a health care provider on actual consumer selection of those services;

(3) in response to each consumer inquiry, on a nondiscriminatory basis, provides information identifying health care providers who substantially meet the consumer's detailed criteria based on consumer responses to standard questions designed to elicit a consumer's criteria for a health care provider, including criteria concerning location of the practice, practice specialties, costs and payment policies, acceptance of insurance coverage, general

background and practice experience, and various personal characteristics;

(4) does not attempt through its standard questions for solicitation of consumer criteria or through any other means to lead a consumer to select or consider selection of a particular health care provider for health care provider services;

(5) identifies to a consumer:

(A) all health care providers substantially meeting the consumer's stated criteria who are located within the zip code area in which the consumer elects to obtain services from a health care provider; or

(B) all health care providers substantially meeting the consumer's stated criteria who are located in zip code areas in the closest proximity to the elected zip code area if no health care provider substantially meeting the consumer's criteria is located within that zip code area;

(6) discloses to each consumer the relationship between the health care information service and health care providers participating in its services;

(7) does not provide or represent itself as providing diagnostic or counseling services or assessment of illness or injury and does not make any promise of cure or guarantee of treatment;

(8) does not provide or arrange for transportation of a consumer to or from the location of a health care provider;

(9) does not limit the scope of or direct its advertising or other marketing of its services to a particular health care provider specialty, to a particular segment of the population, or to persons suffering from a particular illness, condition, or infirmity;

(10) charges to and collects a fee from a health care provider participating in its services that is set in advance, is consistent with the fair market value for those information services, and is not based on the potential value of a patient to a health care provider or on the value of or a percentage of the value of a professional service provided by the health care provider;

(11) does not limit participation by a health care provider in its services to a particular health care specialty or to a particular service provided by a health care provider;

(12) does not limit participation by a health care provider in its services for a reason other than:

(A) failure to have a current license without

limitation to practice in this state;

(B) failure to maintain professional liability insurance while participating in the service;

(C) significant dissatisfaction of consumers of the health care information service that is documented and can be proved;

(D) a decision by a peer review committee that the health care provider has failed to meet prescribed standards or has not acted in a professional or ethical manner; or

(E) termination of the contract between the health care provider and the health care information service by either party under the terms of the contract;

(13) maintains a customer service department to handle complaints and answer questions for consumers;

(14) maintains a customer follow-up system to monitor consumer satisfaction; and

(15) does not use, maintain, distribute, or provide for any purpose any information that will identify a particular consumer, such as a name, address, or telephone number, obtained from a consumer seeking its services other than for the purposes of:

(A) providing the information to the health care provider with whom an appointment is made;

(B) performing administrative functions necessary to operate the health care information service;

(C) providing directly to a consumer, at the request of that consumer on that consumer's initial contact with the health care information service, information relating to health-related support groups or providers of health-care-related services or equipment within the area of interest requested by the consumer; or

(D) conducting analytical research on data obtained through provision of services and preparing statistical reports that generally analyze that data but do not in any manner identify one or more specific consumers.

(b) In this section:

(1) "Health care information service" means a person who provides information to a consumer regarding health care providers that can enable the consumer to select one or more health care providers to furnish health care services.

(2) "Health care provider" means a person licensed, certified, or registered by a state health care regulatory agency other than:

(A) a mental health facility as defined by Section 571.003, Health and Safety Code; or

(B) a treatment facility as defined by Section 464.001, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.008. DISCIPLINARY ACTION. A violation of Section 102.001 or 102.006 is grounds for disciplinary action by the regulatory agency that issued a license, certification, or registration to the person who committed the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.009. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may institute and conduct an action in a district court of Travis County or of a county in which any part of the violation occurs for an injunction or other process against a person who is violating this subchapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.010. CIVIL PENALTIES. (a) A person who violates this subchapter is subject to a civil penalty of not more than $10,000 for each day of violation and each act of violation. In determining the amount of the civil penalty, the court shall consider:

(1) the person's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the person; and

(5) the amount necessary to deter future violations.

(b) The attorney general or the appropriate district or county

attorney, in the name of the state, may institute and conduct an action authorized by this section in a district court of Travis County or of a county in which any part of the violation occurs.

(c) A penalty collected under this section by the attorney general shall be deposited to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.011. SUIT FOR INJUNCTIVE RELIEF OR ASSESSMENT OF CIVIL PENALTY. (a) The party bringing a suit under this subchapter may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(b) The party bringing the suit may recover reasonable expenses incurred in obtaining civil penalties, injunctive relief, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

(c) The civil penalty and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. HEALING ARTS

Sec. 102.051. SOLICITING PATIENTS; OFFENSE. (a) A person commits an offense if the person:

(1) practices the art of healing with or without the use of medicine; and

(2) employs or agrees to employ, pays or promises to pay, or rewards or promises to reward another for soliciting or securing a patient or patronage.

(b) A person commits an offense if the person accepts or agrees to accept anything of value for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200. Each violation of this section is a separate offense.

(d) For purposes of this section, a person who practices the art of healing includes a masseur and an optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.052. APPLICABILITY TO PHYSICIANS. This subchapter does not apply to a practitioner of medicine subject to regulation under Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.053. EXCEPTION FOR CERTAIN ADVERTISING. Section 102.051 does not prohibit:

(1) placement in a newspaper of an advertisement of the person's profession, business, or place of business; or

(2) advertisement by handbill and payment for services in distributing the handbill.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 102.054. ACCESSIBILITY AND USE OF WITNESS TESTIMONY. (a) A person is not exempt from giving testimony in a proceeding to enforce Section 102.051.

(b) The testimony a person gives in a proceeding to enforce Section 102.051 may not be used against that person in any criminal action or proceeding. A criminal action or proceeding may not be brought against a person because of the testimony given by that person in a proceeding to enforce Section 102.051.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 103. RIGHT TO OBJECT TO PARTICIPATION IN ABORTION PROCEDURE

Sec. 103.001. RIGHT TO OBJECT. A physician, nurse, staff member, or employee of a hospital or other health care facility who

objects to directly or indirectly performing or participating in an abortion procedure may not be required to directly or indirectly perform or participate in the procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.002. DISCRIMINATION PROHIBITED. (a) A hospital or health care facility may not discriminate against a physician, nurse, staff member, or employee, or an applicant for one of those positions, who refuses to perform or participate in an abortion procedure.

(b) A hospital or health care facility may not discriminate against a physician, nurse, staff member, or employee because of the person's willingness to participate in an abortion procedure at another facility.

(c) An educational institution may not discriminate against an applicant for admission or employment as a student, intern, or resident because of the applicant's attitude concerning abortion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.003. REMEDIES. A person whose rights under this chapter are violated may sue a hospital, health care facility, or educational institution in district court in the county where the hospital, facility, or institution is located for:

(1) an injunction against any further violation;

(2) appropriate affirmative relief, including admission or reinstatement of employment with back pay plus 10 percent interest; and

(3) any other relief necessary to ensure compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.004. DUTY OF CERTAIN PRIVATE ENTITIES TO MAKE FACILITIES AVAILABLE. A private hospital or private health care facility is not required to make its facilities available for the performance of an abortion unless a physician determines that the

life of the mother is immediately endangered.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 104. HEALING ART PRACTITIONERS

Sec. 104.001. SHORT TITLE. This chapter may be cited as the Healing Art Identification Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.002. HEALING ART. The healing art includes any system, treatment, operation, diagnosis, prescription, or practice to ascertain, cure, relieve, adjust, or correct a human disease, injury, or unhealthy or abnormal physical or mental condition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.003. REQUIRED IDENTIFICATION. (a) A person subject to this section who uses the person's name on a written or printed professional identification, including a sign, pamphlet, stationery, or letterhead, or who uses the person's signature as a professional identification shall designate as required by this section the healing art the person is licensed to practice.

(b) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of medicine degree shall use:

(1) physician or surgeon, M.D.;

(2) doctor, M.D.; or

(3) doctor of medicine, M.D.

(c) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of osteopathy degree shall use:

(1) physician or surgeon, D.O.;

(2) osteopathic physician or surgeon;

(3) doctor, D.O.;

(4) doctor of osteopathy;

(5) doctor of osteopathic medicine;

(6) osteopath; or

(7) D.O.

(d) A person who is licensed by the State Board of Dental

Examiners shall use:

(1) dentist;

(2) doctor, D.D.S.;

(3) doctor of dental surgery;

(4) D.D.S.; or

(5) doctor of dental medicine, D.M.D.

(e) A person who is licensed by the Texas Board of Chiropractic Examiners shall use:

(1) chiropractor;

(2) doctor, D.C.;

(3) doctor of chiropractic; or

(4) D.C.

(f) A person who is licensed by the Texas Optometry Board shall use:

(1) optometrist;

(2) doctor, optometrist;

(3) doctor of optometry; or

(4) O.D.

(g) A person who is licensed by the Texas Department of Licensing and Regulation to practice podiatry shall use:

(1) chiropodist;

(2) doctor, D.S.C.;

(3) doctor of surgical chiropody;

(4) D.S.C.;

(5) podiatrist;

(6) doctor, D.P.M.;

(7) doctor of podiatric medicine; or

(8) D.P.M.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.019, eff. September 1, 2019.

Sec. 104.004. OTHER PERSONS USING TITLE "DOCTOR". In using the title "doctor" as a trade or professional asset or on any manner of professional identification, including a sign, pamphlet, stationery, or letterhead, or as a part of a signature, a person other than a person described by Section 104.003 shall designate the authority

under which the title is used or the college or honorary degree that gives rise to the use of the title.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.005. ENFORCEMENT. (a) On the request of a healing art licensing board listed in Section 104.003, the district or county attorney shall file and prosecute appropriate judicial proceedings in the name of the state against a person who violates Section 104.003.

(b) The district or county attorney shall file the proceeding in the district court of the county in which the violation occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.006. APPLICABILITY TO ESTABLISHED CHURCH. This chapter does not affect the use of the principles or teachings of an established church in ministering, without the use of any drug or material remedy, to the sick or suffering by prayer if:

(1) sanitary and quarantine laws are complied with; and

(2) the person ministering or offering to minister does not maintain an office, other than to exercise the principles or teachings of the church of which the person is a bona fide member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 104.007. PENALTIES. (a) A person who violates this chapter commits an offense. An offense under this section is a misdemeanor punishable by:

(1) on conviction of a first offense, a fine of $100;

(2) on conviction of a second offense, a fine of $500; and

(3) on conviction of a third offense:

(A) a fine of $1,000; or

(B) revocation of the person's license to practice the healing art.

(b) On conviction of the person, the district court shall notify the licensing board that issued the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 105. UNPROFESSIONAL CONDUCT BY HEALTH CARE PROVIDER

Sec. 105.001. DEFINITION. In this chapter, "health care provider" means a person who furnishes services under a license, certificate, registration, or other authority issued by this state or another state to diagnose, prevent, alleviate, or cure a human illness or injury.

Added by Acts 2001, 77th Leg., ch. 1033, Sec. 4, eff. Sept. 1, 2001.

Sec. 105.002. UNPROFESSIONAL CONDUCT. (a) A health care provider commits unprofessional conduct if the health care provider, in connection with the provider's professional activities:

(1) knowingly presents or causes to be presented a false or fraudulent claim for the payment of a loss under an insurance policy;

(2) knowingly prepares, makes, or subscribes to any writing, with intent to present or use the writing, or to allow it to be presented or used, in support of a false or fraudulent claim under an insurance policy; or

(3) knowingly directs or requires a patient to obtain health care goods or services from a niche hospital in which the health care provider or an immediate family member of the provider has a financial interest, unless the provider:

(A) discloses to the patient, in writing, that the provider or the provider's family member has a financial interest in the niche hospital; and

(B) informs the patient that the patient has the option of using an alternative health care facility.

(b) In addition to other provisions of civil or criminal law, commission of unprofessional conduct under Subsection (a) constitutes cause for the revocation or suspension of a provider's license, permit, registration, certificate, or other authority or other disciplinary action.

(c) Subsection (a)(3) does not apply to a financial interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) In this section:

(1) "Diagnosis-related group" means the classification system mandated by Medicare regulations for reimbursement purposes that groups patients according to principal diagnosis, presence of a surgical procedure, age, presence or absence of significant complications, and other relevant criteria.

(2) "Niche hospital" means a hospital that:

(A) classifies at least two-thirds of the hospital's Medicare patients or, if data is available, all patients:

(i) in not more than two major diagnosis-related groups; or

(ii) in surgical diagnosis-related groups;

(B) specializes in one or more of the following areas:

(i) cardiac;

(ii) orthopedics;

(iii) surgery; or

(iv) women's health; and

(C) is not:

(i) a public hospital;

(ii) a hospital for which the majority of inpatient claims are for major diagnosis-related groups relating to rehabilitation, psychiatry, alcohol and drug treatment, or children or newborns; or

(iii) a hospital with fewer than 10 claims per bed per year.

Added by Acts 2001, 77th Leg., ch. 1033, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 1, eff. September 1, 2005.

CHAPTER 106. GENERAL REGULATORY AUTHORITY REGARDING HEALTH CARE PRACTITIONERS' USE OF INTERNET

Sec. 106.001. EFFECT OF INTERNET ACTIVITY. (a) In this section:

(1) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that regulates activities and persons under this title.

(2) "Internet" has the meaning assigned by Section 2002.001, Government Code.

(b) The fact that an activity occurs through the use of the Internet does not affect a licensing authority's power to regulate an activity or person that would otherwise be regulated under this title.

Added by Acts 2001, 77th Leg., ch. 286, Sec. 1, eff. May. 23, 2001. Renumbered from Occupations Code Sec. 105.001 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(113), eff. Sept. 1, 2003.

CHAPTER 107. INTRACTABLE PAIN TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 107.001. SHORT TITLE. This chapter may be cited as the Intractable Pain Treatment Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.002. DEFINITIONS. In this chapter:

(1) 'Board' means the Texas State Board of Medical Examiners.

(2) 'Intractable pain' means a state of pain for which:

(A) the cause of the pain cannot be removed or otherwise treated; and

(B) in the generally accepted course of medical practice, relief or cure of the cause of the pain:

(i) is not possible; or

(ii) has not been found after reasonable efforts.

(3) 'Physician' means a physician licensed by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.003. NONAPPLICABILITY OF CHAPTER TO CERTAIN CHEMICALLY DEPENDENT PERSONS. Except as provided by Subchapter C, this chapter does not apply to a person being treated by a physician for chemical dependency because of the person's use of a dangerous drug or

controlled substance.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

SUBCHAPTER B. PRESCRIPTION AND ADMINISTRATION OF DANGEROUS DRUGS AND CONTROLLED SUBSTANCES

Sec. 107.051. AUTHORITY TO PRESCRIBE OR ADMINISTER DANGEROUS DRUG OR CONTROLLED SUBSTANCE. Notwithstanding any other law, a physician may prescribe or administer a dangerous drug or controlled substance to a person in the course of the physician's treatment of the person for intractable pain.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.052. LIMITATIONS ON PRESCRIPTION OR ADMINISTRATION OF DANGEROUS DRUG OR CONTROLLED SUBSTANCE. This chapter does not authorize a physician to prescribe or administer to a person a dangerous drug or controlled substance:

(1) for a purpose that is not a legitimate medical purpose as defined by the board; and

(2) if the physician knows or should know the person is using drugs for a nontherapeutic purpose.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.053. LIMITATION ON AUTHORITY OF HOSPITAL OR OTHER HEALTH CARE FACILITY REGARDING USE OF DANGEROUS DRUG OR CONTROLLED SUBSTANCE. A hospital or other health care facility may not prohibit or restrict the use of a dangerous drug or controlled substance prescribed or administered by a physician who holds staff privileges at the hospital or facility for a person diagnosed and treated by a physician for intractable pain.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

SUBCHAPTER C. TREATMENT OF CERTAIN PATIENTS

Sec. 107.101. PATIENT. In this subchapter, "patient" includes a person who:

(1) is currently abusing a dangerous drug or controlled substance;

(2) is not currently abusing such a drug or substance but has a history of such abuse; or

(3) lives in an environment that poses a risk for misuse or diversion to illegitimate use of such a drug or substance.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.102. AUTHORITY TO TREAT. This chapter authorizes a physician to treat a patient with an acute or chronic painful medical condition with a dangerous drug or controlled substance to relieve the patient's pain using appropriate doses, for an appropriate length of time, and for as long as the pain persists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.103. DUTY TO MONITOR PATIENT. A physician who treats a patient under this subchapter shall monitor the patient to ensure that a prescribed dangerous drug or controlled substance is used only for the treatment of the patient's painful medical condition.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.104. DOCUMENTATION AND CONSULTATION REQUIRED. To ensure that a prescribed dangerous drug or controlled substance is not diverted to another use and to ensure the appropriateness of the treatment of the patient's targeted symptoms, the physician shall:

(1) specifically document:

(A) the understanding between the physician and patient

about the patient's prescribed treatment;

(B) the name of the drug or substance prescribed;

(C) the dosage and method of taking the prescribed drug or substance;

(D) the number of dose units prescribed; and

(E) the frequency of prescribing and dispensing the drug or substance; and

(2) consult with a psychologist, psychiatrist, expert in the treatment of addictions, or other health care professional, as appropriate.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

SUBCHAPTER D. DISCIPLINARY ACTION

Sec. 107.151. DISCIPLINARY ACTION PROHIBITED. A physician is not subject to disciplinary action by the board for prescribing or administering a dangerous drug or controlled substance in the course of treatment of a person for intractable pain.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

Sec. 107.152. AUTHORITY OF BOARD TO REVOKE OR SUSPEND LICENSE. (a) This chapter does not affect the authority of the board to revoke or suspend the license of a physician who:

(1) prescribes, administers, or dispenses a drug or treatment:

(A) for a purpose that is not a legitimate medical purpose as defined by the board; and

(B) that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(2) fails to keep a complete and accurate record of the purchase and disposal of:

(A) a drug listed in Chapter 481, Health and Safety Code; or

(B) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(3) writes a false or fictitious prescription for:

(A) a dangerous drug as defined by Chapter 483, Health and Safety Code;

(B) a controlled substance listed in a schedule under Chapter 481, Health and Safety Code; or

(C) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(4) prescribes, administers, or dispenses in a manner inconsistent with public health and welfare:

(A) a dangerous drug as defined by Chapter 483, Health and Safety Code;

(B) a controlled substance listed in a schedule under Chapter 481, Health and Safety Code; or

(C) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) For purposes of Subsection (a)(2), the physician's records must include a record of:

(1) the date of purchase;

(2) the sale or disposal of the drug or substance by the physician;

(3) the name and address of the person receiving the drug or substance; and

(4) the reason for the disposal or dispensing of the drug or substance to the person.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.002(a), eff. Sept. 1, 2003.

SUBCHAPTER E. PAIN TREATMENT REVIEW COMMITTEE

CHAPTER 108. LICENSE SUSPENSION OR REVOCATION REQUIRED

SUBCHAPTER A. SUSPENSION OR REVOCATION OF PHYSICIAN LICENSE FOR CERTAIN DRUG FELONY CONVICTIONS

Sec. 108.001. DEFINITION. In this subchapter, "board" means the Texas Medical Board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.003(a), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 789 (H.B. 1899), Sec. 7, eff. September 1, 2019.

Sec. 108.002. LICENSE SUSPENSION ON CONVICTION; REVOCATION. (a) The board shall suspend a license issued by the board if it is determined at an administrative hearing that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.032 of that code.

(b) A hearing under Subsection (a) shall be conducted under Chapter 2001, Government Code.

(c) The board shall revoke the license of a person whose license is suspended under Subsection (a) on the person's final conviction.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.003(a), eff. Sept. 1, 2003.

Sec. 108.003. LICENSE REINSTATEMENT OR REISSUANCE. (a) The board may not reinstate or reissue a license suspended or revoked under Section 108.002 unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the person whose license was suspended or revoked.

(b) The board must base its determination under Subsection (a) on substantial evidence contained in an investigative report.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.003(a), eff. Sept. 1, 2003.

SUBCHAPTER B. AUTOMATIC DENIAL OR REVOCATION OF HEALTH CARE PROFESSIONAL LICENSE

Sec. 108.051. DEFINITIONS. In this subchapter:

(1) "Health care professional" means:

(A) a dentist licensed under Subtitle D;

(B) a dental hygienist licensed under Chapter 262;

(C) a hearing instrument fitter and dispenser licensed under Chapter 402;

(D) a nurse, including an advanced practice registered

nurse, licensed under Chapter 301;

(E) an occupational therapist licensed under Chapter 454;

(F) an optometrist or therapeutic optometrist licensed under Chapter 351;

(G) a pharmacist licensed under Subtitle J;

(H) a physical therapist licensed under Chapter 453;

(I) a physician licensed under Subtitle B;

(J) a physician assistant licensed under Chapter 204;

(K) a podiatrist licensed under Chapter 202;

(L) a psychologist licensed under Chapter 501;

(M) a social worker licensed under Chapter 505; and

(N) a speech-language pathologist or audiologist licensed under Chapter 401.

(2) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(3) "Licensing authority" means a department, commission, board, office, or other agency of this state that issues a license.

Added by Acts 2019, 86th Leg., R.S., Ch. 789 (H.B. 1899), Sec. 8, eff. September 1, 2019.

Sec. 108.052. DENIAL OF LICENSE. A licensing authority shall deny an application for a license as a health care professional for an applicant who:

(1) is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) has been previously convicted of or placed on deferred adjudication community supervision for the commission of a felony offense involving the use or threat of force; or

(3) has been previously convicted of or placed on deferred adjudication community supervision for the commission of an offense:

(A) under Section 22.011, 22.02, 22.021, or 22.04, Penal Code, or an offense under the laws of another state or federal law that is equivalent to an offense under one of those sections;

(B) committed:

(i) when the applicant held a license as a health care professional in this state or another state; and

(ii) in the course of providing services within the scope of the applicant's license; and

(C) in which the victim of the offense was a patient of the applicant.

Added by Acts 2019, 86th Leg., R.S., Ch. 789 (H.B. 1899), Sec. 8, eff. September 1, 2019.

Sec. 108.053. REVOCATION OF LICENSE. (a) The license of a health care professional is revoked if the health care professional is:

(1) convicted or placed on deferred adjudication community supervision for an offense described by Section 108.052(2) or (3); or

(2) required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) The licensing authority shall revoke a license and update the authority's records to reflect the revocation under Subsection (a) immediately on receiving notification:

(1) by a court under Article 42.0175, Code of Criminal Procedure, that the court made a finding under that article; or

(2) by a parole panel under Section 508.1864, Government Code, that the license holder is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, as a condition of release on parole or to mandatory supervision.

Added by Acts 2019, 86th Leg., R.S., Ch. 789 (H.B. 1899), Sec. 8, eff. September 1, 2019.

Sec. 108.054. REAPPLICATION. A person whose license application is denied under this subchapter:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by Section 108.052(2) or (3) may reapply for the license if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may reapply for the

license after the expiration of the period for which the person is required to register.

Added by Acts 2019, 86th Leg., R.S., Ch. 789 (H.B. 1899), Sec. 8, eff. September 1, 2019.

Sec. 108.055. REINSTATEMENT. A person whose license is revoked under this subchapter:

(1) based on a conviction or placement on deferred adjudication community supervision for an offense described by Section 108.052(2) or (3) may apply for reinstatement of the license with the appropriate licensing authority if the conviction or deferred adjudication is reversed, set aside, or vacated on appeal; or

(2) based on a requirement to register as a sex offender under Chapter 62, Code of Criminal Procedure, may apply for reinstatement of the license after the expiration of the period for which the person is required to register.

Added by Acts 2019, 86th Leg., R.S., Ch. 789 (H.B. 1899), Sec. 8, eff. September 1, 2019.

CHAPTER 109. RELEASE OF SEX OFFENDER TREATMENT INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 109.001. DEFINITIONS. In this chapter:

(1) "Administration of criminal justice" and "criminal justice agency" have the meanings assigned by Article 66.001, Code of Criminal Procedure.

(2) "Local law enforcement authority" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

(3) "Sex offender" has the meaning assigned by Article 42A.251(2), Code of Criminal Procedure.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1008 (H.B. 867), Sec. 2.10, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.80, eff.

January 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 4.15, eff. January 1, 2019.

Sec. 109.002. PURPOSE OF RELEASING INFORMATION. A person who is required by this chapter to release or obtain information may do so only for the administration of criminal justice.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April 10, 2003.

Sec. 109.003. IMMUNITY FROM DAMAGES. A person who releases or obtains information as authorized by this chapter is not liable for damages arising from the release of the information.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003.

SUBCHAPTER B. RELEASE OF TREATMENT INFORMATION

Sec. 109.051. RELEASE BY PERSONS PROVIDING MENTAL HEALTH OR MEDICAL SERVICES. (a) Information concerning the treatment of a sex offender may be released by a person who:

(1) is licensed or certified in this state to provide mental health or medical services, including a:

(A) physician;

(B) psychiatrist;

(C) psychologist;

(D) licensed professional counselor;

(E) licensed marriage and family therapist; or

(F) social worker; and

(2) while licensed or certified, provides or provided mental health or medical services for the rehabilitation of sex offenders.

(b) Notwithstanding Subtitle B, Title 3, of this code or Chapter 611, Health and Safety Code, a person described by Subsection (a), on request or in the normal course of business, shall release information concerning the treatment of a sex offender to:

(1) another person described by Subsection (a);
(2) a criminal justice agency;
(3) a local law enforcement authority; or
(4) the Texas Civil Commitment Office.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April 10, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 18, eff. September 1, 2023.

Sec. 109.052. RELEASE BY CRIMINAL JUSTICE AGENCY. A criminal justice agency, on request or in the normal course of official business, shall release information concerning the treatment of a sex offender to:
(1) another criminal justice agency;
(2) a local law enforcement authority;
(3) a person described by Section 109.051(a); or
(4) the Texas Civil Commitment Office.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April 10, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 19, eff. September 1, 2023.

Sec. 109.053. RELEASE BY LOCAL LAW ENFORCEMENT AUTHORITY. A local law enforcement authority, on request or in the normal course of official business, shall release information concerning the treatment of a sex offender to:
(1) another local law enforcement authority;
(2) a criminal justice agency;
(3) a person described by Section 109.051(a); or
(4) the Texas Civil Commitment Office.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.004(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 6, Sec. 4, eff. April

10, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 20, eff. September 1, 2023.

Sec. 109.054. TREATMENT INFORMATION. In this subchapter, information concerning the treatment of a sex offender includes:
(1) criminal history;
(2) the discharge summary;
(3) the official offense report;
(4) progress reports;
(5) test results;
(6) victim statements; and
(7) any other information necessary for the treatment of the sex offender.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 2, eff. September 1, 2005.

CHAPTER 110. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 110.001. DEFINITIONS. In this chapter:
(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(1), eff. April 2, 2015.
(2) "Council" means the Council on Sex Offender Treatment.
(3) "Department" means the Department of State Health Services.
(3-a) "Executive director" means the executive director of the council.
(4) Repealed by Acts 2005, 79th Leg., Ch. 1089, Sec. 31(1), eff. September 1, 2005.
(5) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1219, Sec. 11, eff. September 1, 2007.
(6) "Sex offender" means a person who:
(A) is convicted of committing or adjudicated to have committed a sex crime under state or federal law;
(B) is awarded deferred adjudication for a sex crime under state or federal law; or

(C) is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct.

(7) "Sex offender treatment provider" means a person, licensed by the council and recognized based on training and experience to provide assessment and treatment to adult sex offenders or juveniles with sexual behavioral problems who have been convicted, adjudicated, awarded deferred adjudication, or referred by a state agency or a court, and licensed in this state to practice as a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed master social worker under a clinical supervision plan approved by the Texas Behavioral Health Executive Council, or advanced practice nurse recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, who provides mental health or medical services for rehabilitation of sex offenders.

(8) "Sexually motivated conduct" has the meaning assigned by Section 841.002, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 31(1), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 11, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.001, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(1), eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 3.008, eff. September 1, 2019.

Sec. 110.002. APPLICATION OF CHAPTER. (a) This chapter does not apply to a person licensed to practice in this state who provides adjunct therapy.

(b) This chapter does not apply to the prescribing of a drug, remedy, or clinical supply by a physician licensed under Subtitle B.

Added by Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 2, eff. September 1, 2007.

SUBCHAPTER B. COUNCIL ON SEX OFFENDER TREATMENT

Sec. 110.051. COUNCIL; MEMBERSHIP. (a) The council is within the department.

(b) The council consists of seven part-time members, appointed by the governor with the advice and consent of the senate as follows:

(1) three representatives of the public; and

(2) four members each of whom meets the requirements for a license as a sex offender treatment provider under this chapter.

(c) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 4, eff. September 1, 2005.

Sec. 110.052. PUBLIC MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment as a public member if:

(1) the person meets the requirements for a license as a sex offender treatment provider under this chapter; or

(2) the person or the person's spouse:

(A) is registered, certified, or licensed by an occupational regulatory agency in the field of sex offender treatment;

(B) is employed by or participates in the management of a business entity or other organization regulated by the council or receiving funds from the council;

(C) owns or controls, directly or indirectly, more than

a 10 percent interest in a business entity or other organization regulated by the council or receiving funds from the council; or

(D) uses or receives a substantial amount of tangible goods, services, or funds from the council, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 5, eff. September 1, 2005.

Sec. 110.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) A person may not serve as a member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept.

1, 2003.

Sec. 110.054. TERMS. Members of the council serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.004(b), eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 6, eff. September 1, 2005.

Sec. 110.055. PRESIDING OFFICER. The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the pleasure of the governor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of appointment the qualifications required by Sections 110.051(b) and 110.052;

(2) does not maintain during service on the council the qualifications required by Sections 110.051(b) and 110.052;

(3) does not complete the training program as required by Section 110.059;

(4) violates a prohibition established by Section 110.053;

(5) cannot because of illness or disability discharge the member's duties for a substantial part of the member's term; or

(6) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

(b) The validity of an action of the council is not affected by the fact the action is taken when a ground for removal of a council

member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the council, who shall notify the governor and the attorney general that a potential ground exists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.057. MEETINGS. (a) The council shall meet at least four times each year.

(b) The council may hold additional meetings at the call of the presiding officer or as provided by council rule.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.058. COMPENSATION; REIMBURSEMENT. (a) A council member may not receive compensation for performing the duties of the council.

(b) A council member is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided in the General Appropriations Act for state employees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.059. TRAINING. (a) To be eligible to take office as a member of the council, a person appointed to the council must complete at least one course of a training program that complies with this section. If the person has not completed the training course at the time of the appointment, the person must complete the training

program not later than six months after the date of appointment.

(b) The training program must provide information to a person regarding:

(1) the enabling legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the council;

(4) the rules of the council, with an emphasis on the rules relating to disciplinary and investigatory authority;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of Chapters 551, 552, and 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act, as if the person were a member of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND STAFF

Sec. 110.101. EXECUTIVE DIRECTOR. The commissioner of state health services shall employ an executive director, chosen with the advice and consent of the council, who is the executive head of the council and performs its administrative duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.002, eff. April 2, 2015.

Sec. 110.102. STAFF. The executive director shall employ staff necessary to administer the council's duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.103. DIVISION OF RESPONSIBILITIES. The council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the executive director and the staff of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to council members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER D. COUNCIL POWERS AND DUTIES

Sec. 110.151. TREATMENT FOR SEX OFFENDERS. The council shall:

(1) develop treatment strategies for sex offenders by evaluating in-state and out-of-state programs for sex offender treatment;

(2) set standards for treatment of sex offenders that must be met by sex offender treatment providers to be eligible for a license under this chapter; and

(3) recommend to licensing and regulatory boards and to the directors of current programs methods of improving programs to meet council standards.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 7, eff. September 1, 2005.

Sec. 110.152. LIST AND LICENSE REQUIREMENTS. The council shall:

(1) maintain a list of sex offender treatment providers under Section 110.161; and

(2) develop and implement by rule under Subchapter G:

(A) license requirements; and

(B) procedures for sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 8, eff. September 1, 2005.

Sec. 110.153. COLLECTION AND DISSEMINATION OF INFORMATION. The council shall collect and disseminate information about available sex offender treatment programs to:

(1) judicial officers;

(2) community supervision or parole workers;

(3) appropriate state and municipal agencies; and

(4) the public.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.154. DISTRIBUTION OF MONEY. The council shall distribute money appropriated to the council by the legislature for that purpose to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of sex offender treatment programs.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.155. AGENCY ASSISTANCE. The council shall advise and assist agencies in coordinating procedures to provide treatment services. The treatment services may include community-based programs.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.156. ADJUDICATION INFORMATION. (a) The council shall establish a uniform method of obtaining adjudication information. The uniform method must require that:

(1) a complete set of fingerprints, the complete name of the person being investigated, or other information necessary to conduct a criminal history background check be submitted to the Department of Public Safety or another law enforcement agency; and

(2) if fingerprints are submitted, the fingerprints be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement agency.

(b) A law enforcement agency may provide to the council information about the conviction or deferred adjudication of a person being investigated only if the information:

(1) is relevant to the person's current or proposed registration; and

(2) was collected in accordance with this section.

(c) The council is not entitled to adjudication information that is not relevant. Adjudication information is relevant only if it relates to a conviction or deferred adjudication for:

(1) a sexual offense;

(2) murder, assault, battery, or any other offense involving personal injury or threat to another person; or

(3) a felony not listed in Subdivision (1) or (2).

(d) All adjudication information received by the council is privileged information and for the exclusive use of the council. The information may be released or otherwise disclosed to any other person or agency only:

(1) on court order; or

(2) with the consent of the person being investigated.

(e) The council by rule shall establish a method to collect and destroy adjudication information after the council makes a decision on the eligibility of the person for registration who is the subject of the information. The council shall destroy the adjudication information not later than the first anniversary of the date of the council's decision on the person's eligibility for registration.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.157. CONTINUING EDUCATION PROGRAMS. The council shall design and conduct continuing education programs for sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.158. RULEMAKING. (a) The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

(1) consider the rules and procedures of the department; and

(2) adopt procedural rules consistent with similar existing rules and procedures of the department.

(b) A sex offender treatment provider licensed under this chapter is subject to the rules of the council, in relation to the person's provision of sex offender treatment, rather than the rules of the licensing entity by which the provider is licensed or otherwise regulated. A sex offender treatment provider who acts in conformance with the rules, policies, and procedures of the council is not subject to any administrative sanction against the provider by the licensing entity by which the provider is licensed or otherwise regulated.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.003, eff.

April 2, 2015.

Sec. 110.159. FEES. (a) The council shall:

(1) charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and

(2) send all fees collected under this section to the department.

(a-1) Notwithstanding Subsection (a), the council shall set fees for issuing or renewing a license in amounts designed to allow the department and the council to recover from the license holders all of the direct and indirect costs to the department and to the council in administering and enforcing this chapter.

(b) Fees charged and collected by the council under this section may include:

(1) sex offender treatment provider license and renewal fees;

(2) training fees;

(3) publication fees; and

(4) fees for providing continuing education and other services to sex offender treatment providers.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 9, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.004, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.005, eff. April 2, 2015.

Sec. 110.160. BIENNIAL REPORT. (a) The council shall file biennially a report with the governor, lieutenant governor, and speaker of the house of representatives about the activities of the council. The council shall include in the report:

(1) any recommendation made under Section 110.151; and

(2) any other recommendation the council considers appropriate.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.161. PUBLICATION OF LIST. (a) The council shall prepare annually a list of sex offender treatment providers.

(b) The council by rule shall establish procedures for developing and distributing the list of sex offender treatment providers.

(c) The council, on request, shall make the list of sex offender treatment providers available on payment of a reasonable fee in an amount sufficient to cover the costs of printing and distribution.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 10, eff. September 1, 2005.

Sec. 110.162. CONFIDENTIALITY REQUIRED. The council and the staff and consultants employed by the council shall keep confidential any record relating to the identity, examination, diagnosis, prognosis, or treatment of a sex offender.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.163. GRANTS AND DONATIONS. The council may apply for and accept on behalf of the state a grant or donation from any source to be used by the council to perform its duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.164. DYNAMIC RISK ASSESSMENT TOOL. (a) The council shall develop or adopt a dynamic risk assessment tool to be used in determining the likelihood that a person who is confined in a penal

institution and will become subject to Chapter 62, Code of Criminal Procedure, on being released from the institution will commit an offense described by Article 62.001(5), Code of Criminal Procedure, after being released from the institution.

(b) The dynamic risk assessment tool must enable the assignment to a person of a risk level of low, medium, or high.

Added by Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 46, eff. June 15, 2007.

SUBCHAPTER E. INTERAGENCY ADVISORY COMMITTEE

Sec. 110.201. INTERAGENCY ADVISORY COMMITTEE. The interagency advisory committee shall advise the council on administering the council's duties under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.202. ADVISORY COMMITTEE MEMBERSHIP. (a) The executive head of each of the following agencies or that person's designated representative shall serve as a member of the interagency advisory committee:

(1) Texas Department of Criminal Justice;

(2) Texas Juvenile Justice Department;

(3) the department;

(4) Sam Houston State University;

(5) Department of Family and Protective Services; and

(6) Texas Council of Community Centers.

(b) The director of each of the following divisions of a state agency or that person's designated representative shall serve as a member of the interagency advisory committee:

(1) the criminal justice division of the governor's office; and

(2) the sexual assault prevention and crisis services division of the office of the attorney general.

(c) The council may appoint additional members to the interagency advisory committee as the council determines is necessary. An additional member appointed by the council must be a representative of a public or private nonprofit entity that has a

demonstrated interest in improving the treatment of sex offenders.

(d) If the executive head of a state agency or the director of a division designates a representative as a member of the interagency advisory committee, the representative must be, at the time of the designation and during the time of service on the committee, an officer or employee of the agency or division.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.006, eff. April 2, 2015.

Sec. 110.203. MEETINGS. The interagency advisory committee shall meet at the call of its presiding officer or at the request of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.204. AGENCY COOPERATION. Each state agency or division of an agency represented on the interagency advisory committee shall cooperate with the council at the request of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 110.251. PUBLIC INTEREST INFORMATION. (a) The council shall prepare information of public interest describing the functions of the council and the procedures by which complaints are filed with and resolved by the council.

(b) The council shall make the information available to the public and appropriate state agencies.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.252. PUBLIC PARTICIPATION. (a) The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the council's jurisdiction.

(b) The executive director shall prepare and maintain a written plan describing how a person who does not speak English may be provided reasonable access to the council's programs and services.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.253. COMPLAINTS. The council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the council for the purpose of directing complaints to the council. The council may provide for that notice:

(1) on each license form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 11, eff. September 1, 2005.

Sec. 110.254. RECORD OF COMPLAINTS. (a) The council shall keep an information file about each written complaint filed with the council that the council has authority to resolve. The information file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the

complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the council took no action, an explanation of the reason the complaint was closed without action.

(b) The council shall provide to a person filing a complaint and to each person who is the subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) The council, at least quarterly and until final disposition of a complaint, shall notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Sec. 110.255. COMPLAINT INVESTIGATION; SUBPOENAS. (a) In an investigation of a complaint filed with the council, the council may request that the commissioner of state health services or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the council may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in this state. The council may delegate the authority granted under this subsection to the executive director of the council.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the council, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or the county in which a hearing conducted by the council may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The council shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the council may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose

attendance is compelled under this section is governed by Section 2001.103, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.007, eff. April 2, 2015.

Sec. 110.256. CONFIDENTIALITY. (a) Except as provided by Subsection (b), all information and materials subpoenaed or compiled by the council in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the council or its employees or agents involved in the complaint and investigation.

(b) The information described by Subsection (a) may be disclosed to:

(1) persons involved with the council in a complaint and investigation;

(2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;

(3) an approved peer assistance program, as defined by Section 467.001, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) The filing of formal charges by the council against a person under this chapter, the nature of those charges, the council's disciplinary proceedings, and final disciplinary actions, including warnings and reprimands, by the council are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.008, eff. April 2, 2015.

SUBCHAPTER G. SEX OFFENDER TREATMENT PROVIDER LICENSE

Sec. 110.301. LICENSE REQUIRED. (a) A person may not provide sex offender treatment or act as a sex offender treatment provider unless the person is licensed under this chapter.

(b) A person may not claim to be a sex offender treatment provider, or use the title "sex offender treatment provider" or a similar title or an abbreviation that implies the person is a sex offender treatment provider, unless the person is licensed under this chapter.

(c) This section does not apply to a physician whose treatment of a sex offender is limited to prescribing medication to the sex offender.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1219 (H.B. 2034), Sec. 4, eff. September 1, 2007.

Sec. 110.302. LICENSE REQUIREMENTS. (a) The council by rule shall develop procedures and eligibility and other requirements for issuance of a license under this chapter, including, if appropriate, requirements related to clinical practice experience and assessment, continuing education, and supervision.

(b) In developing the rules, the council shall coordinate with the Texas Department of Criminal Justice and the Texas Juvenile Justice Department.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 61

(c) The Texas Board of Criminal Justice may vote to exempt employees of the Texas Department of Criminal Justice from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency. The Texas Youth Commission may not exempt any employee of the commission from a licensing requirement imposed

by this section for any reason.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 47

(c) The governing board of the Texas Youth Commission may vote to exempt employees of the Texas Youth Commission from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency. The Texas Board of Criminal Justice may not exempt any employee of the Texas Department of Criminal Justice from a licensing requirement imposed by this section for any reason.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 14, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 61, eff. June 8, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1308 (S.B. 909), Sec. 47, eff. June 15, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.009, eff. April 2, 2015.

Sec. 110.303. LICENSE OF OUT-OF-STATE APPLICANTS. The council may waive any prerequisite to a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid license from another state that has license requirements substantially equivalent to those of this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 15, eff. September 1, 2005.

Sec. 110.304. CONVICTION OR DEFERRED ADJUDICATION INFORMATION. The council may receive from a law enforcement agency information about the conviction or deferred adjudication of a person who has

applied for a license or renewal of a license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 16, eff. September 1, 2005.

Sec. 110.3045. LICENSE TERM. A license issued under this chapter is valid for two years.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.010, eff. April 2, 2015.

Sec. 110.305. LICENSE EXPIRATION. (a) The council by rule may adopt a system under which licenses expire on various dates during the year.

(b) For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each person pays only that portion of the license fee allocable to the number of months during which the license is valid.

(c) On renewal of a license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 17, eff. September 1, 2005.

Sec. 110.306. LICENSE RENEWAL REQUIRED. A person whose license has expired may not engage in activities that require a license until the license is renewed.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 18, eff.

September 1, 2005.

Sec. 110.307. PROCEDURE FOR RENEWAL. (a) Not later than the 30th day before the expiration date of a person's license, the council shall send written notice of the license expiration to the person at the person's last known address according to the records of the council.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required license fee to the council before the license expiration date.

(c) A person who is otherwise eligible to renew a license and whose license has been expired for:

(1) 90 days or less, may renew the license by paying to the council a fee equal to one and one-half times the required renewal fee; and

(2) longer than 90 days but less than one year, may renew the license by paying to the council a fee equal to two times the required renewal fee.

(d) Except as provided by Section 110.308, a person whose license has been expired for one year or longer may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 19, eff. September 1, 2005.

Sec. 110.308. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. A person whose license has been expired for one year or longer may renew the license without complying with the requirements of Section 110.307(d) by paying to the council a fee equal to two times the required renewal fee if the person:

(1) was licensed in this state;

(2) moved to another state; and

(3) has been licensed and in practice in the other state

for two years preceding the date of application for renewal.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 20, eff. September 1, 2005.

Sec. 110.309. DENIAL OF LICENSE. The council may deny an application for a license if:

(1) the council determines that a previous criminal conviction or deferred adjudication indicates the applicant is not qualified or suitable; or

(2) the applicant fails to provide the information described by Section 110.156(a)(1).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 21, eff. September 1, 2005.

SUBCHAPTER H. DISCIPLINARY PROCEDURES

Sec. 110.351. DISCIPLINARY POWERS OF COUNCIL. The council shall revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a person who is licensed under this chapter if the person violates this chapter or a rule of the council.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 22, eff. September 1, 2005.

Sec. 110.352. PROBATION. If the suspension of a person's license is probated, the council may require the person to:

(1) report regularly to the council on matters that are the

basis of the probation;

(2) limit the person's practice to the areas prescribed by the council; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the council in those areas that are the basis of the probation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 23, eff. September 1, 2005.

Sec. 110.353. DISCIPLINARY HEARING. (a) If the council proposes to revoke, suspend, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the council under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 24, eff. September 1, 2005.

Sec. 110.354. EMERGENCY SUSPENSION. (a) The council or a three-member committee of council members designated by the council shall temporarily suspend the license of a person licensed under this chapter if the council or committee determines from the evidence or information presented to it that continued practice by the person would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 25, eff. September 1, 2005.

SUBCHAPTER I. CRIMINAL PENALTIES

Sec. 110.401. OFFENSE. (a) A person commits an offense if the person violates Section 110.301.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 27, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 28, eff. September 1, 2005.

Sec. 110.402. OFFENSE: RELEASE OF ADJUDICATION INFORMATION. (a) A person commits an offense if the person releases or discloses in violation of Section 110.156 adjudication information received by the council.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14.005(a), eff. Sept. 1, 2003.

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 110.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The council may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than $50 or more than $5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation occurred, the executive director may issue to the council a report stating:

(1) the facts on which the determination is based; and

(2) the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.454. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the executive director; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director, or fails to respond in a timely manner to the notice, the council by order shall approve the determination and impose the recommended penalty.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.455. HEARING. (a) If the person requests a hearing, the executive director shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the council a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.456. DECISION BY COUNCIL. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the council by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the council's order given to the person must

include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the council's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the council's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff.

September 1, 2005.

Sec. 110.458. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.459. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

Sec. 110.460. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff.

September 1, 2005.

Sec. 110.461. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 1089 (H.B. 2036), Sec. 26, eff. September 1, 2005.

CHAPTER 111. TELEMEDICINE, TELEDENTISTRY, AND TELEHEALTH

Sec. 111.001. DEFINITIONS. In this chapter:

(1) "Dentist," "health professional," and "physician" have the meanings assigned by Section 1455.001, Insurance Code.

(2) "Store and forward technology" means technology that stores and transmits or grants access to a person's clinical information for review by a health professional at a different physical location than the person.

(2-a) "Teledentistry dental service" means a health care service delivered by a dentist, or a health professional acting under the delegation and supervision of a dentist, acting within the scope of the dentist's or health professional's license or certification to a patient at a different physical location than the dentist or health professional using telecommunications or information technology.

(3) "Telehealth service" means a health service, other than a telemedicine medical service or a teledentistry dental service, delivered by a health professional licensed, certified, or otherwise entitled to practice in this state and acting within the scope of the health professional's license, certification, or entitlement to a patient at a different physical location than the health professional using telecommunications or information technology.

(4) "Telemedicine medical service" means a health care service delivered by a physician licensed in this state, or a health professional acting under the delegation and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005.

Renumbered from Occupations Code, Section 107.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 1, eff. May 27, 2017.
Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 2, eff. September 1, 2021.

Sec. 111.002. INFORMED CONSENT. (a) A treating physician, dentist, or health professional who provides or facilitates the use of telemedicine medical services, teledentistry dental services, or telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services, teledentistry dental services, or telehealth services are provided.
(b) A dentist who delegates a teledentistry dental service shall ensure that the informed consent of the patient includes disclosure to the patient that the dentist has delegated the service.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005.
Renumbered from Occupations Code, Section 107.002 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 3, eff. September 1, 2021.

Sec. 111.003. CONFIDENTIALITY. A treating physician, dentist, or health professional who provides or facilitates the use of telemedicine medical services, teledentistry dental services, or telehealth services shall ensure that the confidentiality of the patient's clinical information is maintained as required by Chapter 159, by Subchapter C, Chapter 258, or by other applicable law.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005.
Renumbered from Occupations Code, Section 107.003 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 4, eff.

September 1, 2021.

Sec. 111.004. RULES. (a) The Texas Medical Board, in consultation with the commissioner of insurance, as appropriate, may adopt rules necessary to:

(1) ensure that patients using telemedicine medical services receive appropriate, quality care;

(2) prevent abuse and fraud in the use of telemedicine medical services, including rules relating to the filing of claims and records required to be maintained in connection with telemedicine medical services;

(3) ensure adequate supervision of health professionals who are not physicians and who provide telemedicine medical services; and

(4) establish the maximum number of health professionals who are not physicians that a physician may supervise through a telemedicine medical service.

(b) The State Board of Dental Examiners, in consultation with the commissioner of insurance, as appropriate, may adopt rules necessary to:

(1) ensure that patients using teledentistry dental services receive appropriate, quality care;

(2) prevent abuse and fraud in the use of teledentistry dental services, including rules relating to the filing of claims and records required to be maintained in connection with teledentistry dental services;

(3) ensure adequate supervision of health professionals who are not dentists and who provide teledentistry dental services under the delegation and supervision of a dentist; and

(4) authorize a dentist to simultaneously delegate to and supervise through a teledentistry dental service not more than five health professionals who are not dentists.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 22, eff. April 1, 2005. Renumbered from Occupations Code, Section 107.004 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(69), eff. September 1, 2005. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 2, eff. May 27, 2017.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 5, eff.

September 1, 2021.

Sec. 111.005. PRACTITIONER-PATIENT RELATIONSHIP FOR TELEMEDICINE MEDICAL SERVICES OR TELEDENTISTRY DENTAL SERVICES. (a) For purposes of Section 562.056, a valid practitioner-patient relationship is present between a practitioner providing a telemedicine medical service or a teledentistry dental service and a patient receiving the service as long as the practitioner complies with the standard of care described in Section 111.007 and the practitioner:

(1) has a preexisting practitioner-patient relationship with the patient established in accordance with rules adopted under Section 111.006;

(2) communicates, regardless of the method of communication, with the patient pursuant to a call coverage agreement established in accordance with:

(A) Texas Medical Board rules with a physician requesting coverage of medical care for the patient; or

(B) State Board of Dental Examiners rules with a dentist requesting coverage of dental care for the patient; or

(3) provides the telemedicine medical services or teledentistry dental services through the use of one of the following methods, as long as the practitioner complies with the follow-up requirements in Subsection (b), and the method allows the practitioner to have access to, and the practitioner uses, the relevant clinical information that would be required in accordance with the standard of care described in Section 111.007:

(A) synchronous audiovisual interaction between the practitioner and the patient in another location;

(B) asynchronous store and forward technology, including asynchronous store and forward technology in conjunction with synchronous audio interaction between the practitioner and the patient in another location, as long as the practitioner uses clinical information from:

(i) clinically relevant photographic or video images, including diagnostic images; or

(ii) the patient's relevant clinical records, such as the relevant medical or dental history, laboratory and pathology results, and prescriptive histories; or

(C) another form of audiovisual telecommunication technology that allows the practitioner to comply with the standard of care described in Section 111.007.

(b) A practitioner who provides telemedicine medical services to a patient as described in Subsection (a)(3) shall:

(1) provide the patient with guidance on appropriate follow-up care; and

(2) if the patient consents and the patient has a primary care physician, provide to the patient's primary care physician within 72 hours after the practitioner provides the services to the patient a medical record or other report containing an explanation of the treatment provided by the practitioner to the patient and the practitioner's evaluation, analysis, or diagnosis, as appropriate, of the patient's condition.

(c) Notwithstanding any other provision of this section, a practitioner-patient relationship is not present if a practitioner prescribes an abortifacient or any other drug or device that terminates a pregnancy.

Added by Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 3, eff. May 27, 2017.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 6, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 7, eff. September 1, 2021.

Sec. 111.006. COORDINATION TO ADOPT RULES THAT DETERMINE VALID PRESCRIPTION. (a) The Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy shall jointly adopt rules that establish the determination of a valid prescription in accordance with Section 111.005. Rules adopted under this section must allow for the establishment of a practitioner-patient relationship by a telemedicine medical service provided by a practitioner to a patient in a manner that complies with Section 111.005(a)(3).

(b) The Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy shall jointly develop and publish on each respective board's

Internet website responses to frequently asked questions relating to the determination of a valid prescription issued in the course of the provision of telemedicine medical services.

(c) The State Board of Dental Examiners and the Texas State Board of Pharmacy shall jointly adopt rules that establish the determination of a valid prescription in accordance with Section 111.005. Rules adopted under this subsection must allow for the establishment of a practitioner-patient relationship by a teledentistry dental service provided by a dentist to a patient in a manner that complies with Section 111.005(a)(3) and must be substantially similar to the rules adopted under Subsection (a) of this section. The State Board of Dental Examiners and the Texas State Board of Pharmacy shall jointly develop and publish on each respective board's Internet website responses to frequently asked questions relating to the determination of a valid prescription issued in the course of the provision of teledentistry dental services.

Added by Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 3, eff. May 27, 2017.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 8, eff. September 1, 2021.

Sec. 111.007. STANDARD OF CARE FOR TELEMEDICINE MEDICAL SERVICES, TELEDENTISTRY DENTAL SERVICES, AND TELEHEALTH SERVICES. (a) A health professional providing a health care service or procedure as a telemedicine medical service, a teledentistry dental service, or a telehealth service is subject to the standard of care that would apply to the provision of the same health care service or procedure in an in-person setting.

(b) An agency with regulatory authority over a health professional may not adopt rules pertaining to telemedicine medical services, teledentistry dental services, or telehealth services that would impose a higher standard of care than the standard described in Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 3, eff. May 27, 2017.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 9, eff. September 1, 2021.

Sec. 111.0075. LICENSING FOR TELEDENTISTRY DENTAL SERVICES. A health professional providing a health care service or procedure as a teledentistry dental service is subject to the licensing requirements that would apply to the provision of the same health care service or procedure in an in-person setting.

Added by Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 10, eff. September 1, 2021.

Sec. 111.008. MENTAL HEALTH SERVICES EXCLUDED. This chapter does not apply to mental health services.

Added by Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 3, eff. May 27, 2017.

Sec. 111.009. LIMITATION ON CERTAIN PRESCRIPTIONS. (a) In this section:

(1) "Controlled substance," "opiate," and "prescribe" have the meanings assigned by Section 481.002, Health and Safety Code.

(2) "National holiday" means a day described by Section 662.003(a), Government Code.

(b) The State Board of Dental Examiners by rule shall establish limits on the quantity of a controlled substance, including an opiate, that a dentist may prescribe to a patient as a teledentistry dental service. Except as provided by Subsection (c), the rules may not authorize a dentist to prescribe more than is necessary to supply a patient for:

(1) if the prescription is for an opiate, a two-day period; or

(2) if the prescription is for a controlled substance other than an opiate, a five-day period.

(c) For each day in a period described by Subsection (b)(1) or (2) that is a Saturday, Sunday, or national holiday, the period is extended to include the next day that is not a Saturday, Sunday, or national holiday.

(d) Rules adopted under this section must comply with applicable federal laws and rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 11, eff. September 1, 2021.

CHAPTER 112. GENERAL LICENSING REQUIREMENTS APPLICABLE TO MULTIPLE HEALTH CARE PRACTITIONERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. DEFINITIONS. In this chapter:

(1) "Health care practitioner" means an individual issued a license, certificate, registration, title, permit, or other authorization to engage in a health care profession.

(2) "Licensing entity" means a department, commission, board, office, authority, or other agency of the state that regulates activities and persons under this title.

Added by Acts 2005, 79th Leg., Ch. 1136 (H.B. 2680), Sec. 1, eff. June 18, 2005.

Sec. 112.002. APPLICABILITY. This chapter applies only to licensing entities and health care practitioners under Chapters 401, 453, and 454 and Subtitles B, C, D, E, F, and K.

Added by Acts 2005, 79th Leg., Ch. 1136 (H.B. 2680), Sec. 1, eff. June 18, 2005.

SUBCHAPTER B. SERVICES PROVIDED TO CHARITIES

Sec. 112.051. REDUCED LICENSE REQUIREMENTS FOR RETIRED HEALTH CARE PRACTITIONERS PERFORMING CHARITY WORK. (a) Each licensing entity shall adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care.

(b) The licensing entity by rule shall define voluntary charity care.

Added by Acts 2005, 79th Leg., Ch. 1136 (H.B. 2680), Sec. 1, eff. June 18, 2005.

CHAPTER 113. MENTAL HEALTH TELEMEDICINE AND TELEHEALTH SERVICES

Sec. 113.001. DEFINITIONS. The definitions provided by Section 111.001 apply to this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1328 (H.B. 4455), Sec. 1, eff. September 1, 2019.

Sec. 113.002. PATIENT LOCATED OUTSIDE OF STATE. Notwithstanding any other law, a health professional may provide a mental health service that is within the scope of the professional's license, certification, or authorization through the use of a telemedicine medical service or a telehealth service to a patient who is located outside of this state, subject to any applicable regulation of the jurisdiction in which the patient is located.

Added by Acts 2019, 86th Leg., R.S., Ch. 1328 (H.B. 4455), Sec. 1, eff. September 1, 2019.

CHAPTER 114. REPORTING REQUIREMENTS APPLICABLE TO MULTIPLE HEALTH OCCUPATION REGULATORY AGENCIES

Sec. 114.001. DEFINITIONS. In this chapter:

(1) "Health care practitioner" means an individual issued a license, certificate, registration, title, permit, or other authorization to engage in a health care profession.

(2) "Health occupation regulatory agency" means a department, commission, board, office, authority, or other agency of the state that regulates a health care practitioner under this title.

Added by Acts 2009, 81st Leg., R.S., Ch. 512 (S.B. 1058), Sec. 1, eff. September 1, 2009.

Sec. 114.002. ANNUAL REPORT TO LEGISLATURE. (a) Not later than February 1 of each year, each health occupation regulatory agency shall file a report with the chairs of the house and senate committees with primary oversight over the agency that includes the following:

(1) the number of persons regulated by the agency;

(2) the number of persons who became subject to regulation by the agency in the previous year;

(3) the number of persons regulated by the agency by county;

(4) a description of any complaints reported to the agency or a description of the complaint categories used by the agency and the number of complaints in each category;

(5) the number of complaints investigated by the agency and a description of the final resolution of the complaints;

(6) the amount of fees collected by the agency each year;

(7) the expenses of the agency; and

(8) any unfunded needs of the agency.

(b) The Health Professions Council shall adopt a standard format that must be used by health occupation regulatory agencies to report the information required under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 512 (S.B. 1058), Sec. 1, eff. September 1, 2009.

CHAPTER 115. HEALTH OR VETERINARY SERVICES PROVIDED IN CATASTROPHIC CIRCUMSTANCES

Sec. 115.001. SHORT TITLE. This chapter may be cited as the Uniform Emergency Volunteer Health Practitioners Act.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.002. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) is designated or recognized as a provider of those services under a disaster response and recovery plan adopted by an agency of the federal government or the division; or

(B) regularly plans and conducts its activities in

coordination with an agency of the federal government or the division.

(3) "Division" has the meaning assigned by Section 418.004, Government Code.

(4) "Emergency" means an event or condition that is a disaster as defined by Section 418.004, Government Code.

(5) "Emergency declaration" means a declaration of emergency issued by the governor or a designee of the governor.

(6) "Emergency Management Assistance Compact" means the interstate compact approved by Congress (Pub. L. No. 104-321) as provided by Chapter 778, Health and Safety Code.

(7) "Entity" means a person other than an individual.

(8) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(9) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(10) "Health services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:

(A) with respect to the physical or mental condition or functional status of an individual or the structure or function of the body:

(i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; and

(ii) counseling and assessment procedures or other related services;

(B) the sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(C) funeral, cremation, cemetery, or other mortuary services.

(11) "Host entity" means an entity operating in this state that uses volunteer health practitioners to respond to an emergency.

(12) "License" means an authorization by a state agency to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of this state to an individual to provide health or veterinary services based

on a national certification issued by a public or private entity.

(13) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.

(14) "Veterinary services" means the provision of treatment, care, advice or guidance, or other services or supplies related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including:

(A) diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of a vaccine, a drug, surgery, or therapy;

(B) use of a procedure for reproductive management; and

(C) monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(15) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services without compensation. The term does not include a practitioner who receives compensation under a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in this state, unless the practitioner is not a resident of this state and is employed by a disaster relief organization providing services in this state while an emergency declaration is in effect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.003. APPLICABILITY TO VOLUNTEER HEALTH PRACTITIONERS. This chapter applies to volunteer health practitioners who are registered with the system administered by the department under Section 115.005 and who provide health or veterinary services in this state for a host entity while an emergency declaration is in effect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.004. REGULATION OF SERVICES DURING EMERGENCY. (a) While an emergency declaration is in effect, the division by order may limit, restrict, or otherwise regulate:

(1) the duration of practice by volunteer health practitioners;

(2) the geographical areas in which volunteer health practitioners may practice;

(3) the types of volunteer health practitioners who may practice; and

(4) any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.

(b) An order issued under Subsection (a) may take effect immediately, without prior notice or comment, and is not a rule within the meaning of Chapter 2001, Government Code.

(c) A host entity that uses volunteer health practitioners to provide health or veterinary services in this state shall:

(1) consult and coordinate its activities with the division to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) comply with laws in addition to this chapter relating to the management of emergency health or veterinary services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.005. VOLUNTEER HEALTH PRACTITIONER REGISTRATION SYSTEM. (a) The department shall administer a volunteer health practitioner registration system that:

(1) accepts applications for the registration of volunteer health practitioners before or during an emergency;

(2) includes information about the licensing and good standing of health practitioners that is accessible by authorized persons;

(3) is capable of confirming whether a health practitioner is licensed and in good standing before health or veterinary services are provided by the practitioner under this chapter; and

(4) includes information regarding the results of a

criminal history record information check performed on the volunteer health practitioners listed in the system.

(b) To satisfy a requirement of Subsection (a) or (c), the department may:

(1) use information available in the Texas disaster volunteer registry maintained by the department; or

(2) enter into agreements with disaster relief organizations or the verification systems of other states for the advance registration of volunteer health practitioners under 42 U.S.C. Section 247d-7b.

(c) While an emergency declaration is in effect, a state agency that grants a license to a health practitioner shall coordinate with the department to provide licensing or criminal history record information for volunteer health practitioners seeking registration under this chapter.

(d) If an applicant for registration under this chapter has an unacceptable licensing or criminal history, the department may not allow the applicant to register and the applicant may not serve as a volunteer health practitioner under this chapter.

(e) While an emergency declaration is in effect, the division, a person authorized to act on behalf of the division, or a host entity may confirm whether volunteer health practitioners used in this state are registered with the registration system under Subsection (a). Confirmation is limited to obtaining the identity of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing and have an acceptable criminal history.

(f) On request by a person in this state authorized under Subsection (e) or a similarly authorized person in another state, the department shall notify the person of the identity of volunteer health practitioners registered with the registration system and whether the practitioners are licensed and in good standing and have an acceptable criminal history.

(g) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with the registration system and the system indicates that the practitioner is licensed and in good standing and has an acceptable criminal history.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1,

eff. September 1, 2013.

Sec. 115.006. RECOGNITION OF VOLUNTEER HEALTH PRACTITIONERS LICENSED IN OTHER STATES. (a) While an emergency declaration is in effect, a volunteer health practitioner registered with the registration system under Section 115.005 who is licensed and in good standing in another state and has an acceptable criminal history may practice in this state to the extent authorized by this chapter as if the practitioner were licensed in this state.

(b) A volunteer health practitioner qualified under Subsection (a) is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges or has been voluntarily terminated under threat of sanction.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.007. NO EFFECT ON CREDENTIALING AND PRIVILEGING. (a) In this section:

(1) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include license, education, training, experience, competence, health status, and specialized skill.

(b) This chapter does not affect credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.008. PROVISION OF VOLUNTEER HEALTH OR VETERINARY SERVICES; ADMINISTRATIVE SANCTIONS. (a) Subject to Subsections (b) and (c), a volunteer health practitioner shall adhere to the scope of practice for a similarly licensed practitioner established by the licensing provisions or other laws of this state.

(b) Except as otherwise provided by Subsection (c), this chapter does not authorize a volunteer health practitioner to provide a service that is outside the practitioner's scope of practice, even if a similarly licensed practitioner in this state would be permitted to provide the service.

(c) The division may modify or restrict the health or veterinary services that a volunteer health practitioner may provide under this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of Chapter 2001, Government Code.

(d) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide under this chapter.

(e) A volunteer health practitioner does not engage in unauthorized practice unless the practitioner has reason to know of any limitation, modification, or restriction under this section or that a similarly licensed practitioner in this state would not be permitted to provide the service. A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in this state would not be permitted to provide a service if:

(1) the practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service; or

(2) from all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in this state would not be permitted to provide the service.

(f) In addition to the authority granted by the law of this state other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in this state:

(1) may impose administrative sanctions on a health practitioner licensed in this state for conduct outside of this state

in response to an out-of-state emergency;

(2) may impose administrative sanctions on a practitioner not licensed in this state for conduct in this state in response to an in-state emergency; and

(3) shall report any administrative sanction imposed on a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(g) In determining whether to impose an administrative sanction under Subsection (f), a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's scope of practice, education, training, experience, and specialized skill.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.009. RELATION TO OTHER LAWS. (a) This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided by Subsection (b), this chapter does not affect requirements for the use of health practitioners under the Emergency Management Assistance Compact.

(b) The division, under the Emergency Management Assistance Compact, may incorporate into the emergency forces of this state volunteer health practitioners who are not officers or employees of this state or a political subdivision of this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.010. REGULATORY AUTHORITY. The division may adopt rules to implement this chapter. In adopting rules, the division shall consult with and consider the recommendations of the entity established to coordinate the implementation of the Emergency Management Assistance Compact and shall consult with and consider rules adopted by similarly empowered agencies in other states to promote uniformity in the application of this chapter and to make the

emergency response systems in the various states reasonably compatible.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

Sec. 115.011. LIMITATIONS ON CIVIL LIABILITY FOR VOLUNTEER HEALTH PRACTITIONERS. (a) Subject to Subsection (c), a volunteer health practitioner who provides health or veterinary services under this chapter is not liable for damages for an act or omission of the practitioner in providing those services.

(b) A person is not vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under Subsection (a).

(c) This section does not limit the liability of a volunteer health practitioner for:

(1) wilful misconduct or wanton, grossly negligent, reckless, or criminal conduct;

(2) an intentional tort;

(3) breach of contract;

(4) a claim asserted by a host entity or by an entity located in this or another state that employs or uses the services of the practitioner; or

(5) an act or omission relating to the operation of a motor vehicle, vessel, aircraft, or other vehicle.

(d) A person who operates, uses, or relies on information provided by the volunteer health practitioner registration system under this chapter is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is wilful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1264 (H.B. 746), Sec. 1, eff. September 1, 2013.

CHAPTER 116. TRAINING COURSE ON HUMAN TRAFFICKING PREVENTION

Sec. 116.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health care practitioner" means an individual who holds a license, certificate, permit, or other authorization issued under this title to engage in a health care profession and who provides direct patient care.

Added by Acts 2019, 86th Leg., R.S., Ch. 796 (H.B. 2059), Sec. 1, eff. September 1, 2019.

Sec. 116.002. REQUIRED TRAINING COURSE ON HUMAN TRAFFICKING PREVENTION FOR CERTAIN HEALTH CARE PROVIDERS. (a) A health care practitioner, other than a physician or nurse, within the time prescribed by commission rule shall successfully complete a training course approved by the executive commissioner on identifying and assisting victims of human trafficking.

(b) The executive commissioner shall:

(1) approve training courses on human trafficking prevention, including at least one course that is available without charge; and

(2) post a list of the approved training courses on the commission's Internet website.

(c) The executive commissioner shall update the list of approved training courses described by Subsection (b) as necessary and consider for approval training courses conducted by health care facilities.

Added by Acts 2019, 86th Leg., R.S., Ch. 796 (H.B. 2059), Sec. 1, eff. September 1, 2019.

Sec. 116.003. TRAINING REQUIRED FOR LICENSE RENEWAL. A health care practitioner, other than a physician or nurse, shall successfully complete a training course described by Section 116.002 as a condition for renewal of a license issued to the health care practitioner under this title.

Added by Acts 2019, 86th Leg., R.S., Ch. 796 (H.B. 2059), Sec. 1, eff. September 1, 2019.

SUBTITLE B. PHYSICIANS
CHAPTER 151. GENERAL PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. SHORT TITLE. This subtitle may be cited as the Medical Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.002. DEFINITIONS. (a) In this subtitle:

(1) "Board" means the Texas Medical Board.

(2) "Continuing threat to the public welfare" means a real danger to the health of a physician's patients or to the public from the acts or omissions of the physician caused through the physician's lack of competence, impaired status, or failure to care adequately for the physician's patients, as determined by:

(A) the board;

(B) a medical peer review committee in this state;

(C) a physician licensed to practice medicine in this state or otherwise lawfully practicing medicine in this state;

(D) a physician engaged in graduate medical education or training; or

(E) a medical student.

(3) "Disciplinary order" means an action taken under Section 164.001, 164.053, 164.058, or 164.101.

(4) "Doctor of osteopathic medicine" includes a doctor of osteopathy, an osteopath, an osteopathic physician, and an osteopathic surgeon.

(5) "Health care entity" means:

(A) a hospital licensed under Chapter 241 or 577, Health and Safety Code;

(B) an entity, including a health maintenance organization, group medical practice, nursing home, health science center, university medical school, hospital district, hospital authority, or other health care facility, that:

(i) provides or pays for medical care or health care services; and

(ii) follows a formal peer review process to further quality medical care or health care;

(C) a professional society or association of

physicians, or a committee of such a society or association, that follows a formal peer review process to further quality medical care or health care;

(D) an organization established by a professional society or association of physicians, hospitals, or both, that:

(i) collects and verifies the authenticity of documents and other information concerning the qualifications, competence, or performance of licensed health care professionals; and

(ii) acts as a health care facility's agent under the Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.); or

(E) a health care collaborative certified under Chapter 848, Insurance Code.

(6) "Legally authorized representative" of a patient means:

(A) a parent or legal guardian if the patient is a minor;

(B) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(C) an agent of the patient authorized under a durable power of attorney for health care;

(D) an attorney ad litem appointed for the patient;

(E) a guardian ad litem appointed for the patient;

(F) a personal representative or statutory beneficiary if the patient is deceased; or

(G) an attorney retained by the patient or by another person listed by this subdivision.

(6-a) "License holder" means a person holding a license, permit, or certificate issued under this subtitle.

(6-b) "Maintenance of certification" means the satisfactory completion of periodic recertification requirements that are required for a physician to maintain certification after initial certification from:

(A) a medical specialty member board of the American Board of Medical Specialties;

(B) a medical specialty member board of the American Osteopathic Association Bureau of Osteopathic Specialists;

(C) the American Board of Oral and Maxillofacial Surgery; or

(D) any other certifying board that is recognized by the Texas Medical Board.

(7) "Medical peer review" or "professional review action" means the evaluation of medical and health care services, including evaluation of the qualifications and professional conduct of professional health care practitioners and of patient care provided by those practitioners. The term includes evaluation of the:

(A) merits of a complaint relating to a health care practitioner and a determination or recommendation regarding the complaint;

(B) accuracy of a diagnosis;

(C) quality of the care provided by a health care practitioner;

(D) report made to a medical peer review committee concerning activities under the committee's review authority;

(E) report made by a medical peer review committee to another committee or to the board as permitted or required by law; and

(F) implementation of the duties of a medical peer review committee by a member, agent, or employee of the committee.

(8) "Medical peer review committee" or "professional review body" means a committee of a health care entity, the governing board of a health care entity, or the medical staff of a health care entity, that operates under written bylaws approved by the policy-making body or the governing board of the health care entity and is authorized to evaluate the quality of medical and health care services or the competence of physicians, including evaluation of the performance of those functions specified by Section 85.204, Health and Safety Code. The term includes:

(A) an employee or agent of the committee, including an assistant, investigator, intervenor, attorney, and any other person or organization that serves the committee; and

(B) the governing body of a public hospital owned or operated by a governmental entity, the governing body of a hospital authority created under Chapter 262 or 264, Health and Safety Code, and the governing body of a hospital district created under Article IX, Texas Constitution, but only:

(i) in relation to the governing body's evaluation of the competence of a physician or the quality of medical and health care services provided by the public hospital, hospital authority, or hospital district; and

(ii) to the extent that the evaluation under

Subparagraph (i) involves discussions or records that specifically or necessarily identify an individual patient or physician.

(9) "Medical records" means all records relating to the history, diagnosis, treatment, or prognosis of a patient.

(10) "Operation" means the application of surgery or the performance of surgical services.

(11) "Person" means an individual, unless the term is expressly made applicable to a partnership, association, or corporation.

(12) "Physician" means a person licensed to practice medicine in this state.

(13) "Practicing medicine" means the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who:

(A) publicly professes to be a physician or surgeon; or

(B) directly or indirectly charges money or other compensation for those services.

(14) "Surgery" includes:

(A) surgical services, procedures, and operations; and

(B) the procedures described in the surgery section of the common procedure coding system as adopted by the Health Care Financing Administration of the United States Department of Health and Human Services.

(b) The terms "physician" and "surgeon" are synonyms. As used in this subtitle, the terms "practitioner" and "practitioner of medicine" include physicians and surgeons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.021(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 1, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.01, eff. September 1, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 4.06, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1180 (S.B. 949), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 2, eff.

January 1, 2018.

Sec. 151.003. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the practice of medicine is a privilege and not a natural right of individuals and as a matter of public policy it is necessary to protect the public interest through enactment of this subtitle to regulate the granting of that privilege and its subsequent use and control; and

(2) the board should remain the primary means of licensing, regulating, and disciplining physicians.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.004. APPLICATION OF SUNSET ACT. The Texas Medical Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle and Chapters 204, 205, 206, 601, 602, 603, and 604 expire September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.02, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.001, eff. September 1, 2015.

Acts 2017, 85th Leg., 1st C.S., Ch. 2 (S.B. 20), Sec. 1, eff. August 11, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.02, eff. June 18, 2023.

Sec. 151.005. GOVERNMENTAL DISCRIMINATION PROHIBITED. (a) A program supported in whole or in part by the state or by a political subdivision of the state may not discriminate against a health care practitioner because the practitioner is a physician specializing in ophthalmology.

(b) A law or policy of the state or of a political subdivision of the state that requires or encourages a person to obtain vision care or medical eye care that is within the scope of practice of an optometrist or therapeutic optometrist may not discriminate against a health care practitioner because the practitioner is a physician specializing in ophthalmology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. APPLICATION AND CONSTRUCTION OF SUBTITLE

Sec. 151.051. DISCRIMINATION BASED ON TYPE OF ACADEMIC MEDICAL DEGREE OR CERTAIN RELIGIOUS TENETS PROHIBITED. (a) A hospital, institution, or program that is licensed by the state, is operated by the state or a political subdivision of the state, or directly or indirectly receives state financial assistance may not differentiate in regard to a person licensed under this subtitle solely on the basis of the academic medical degree held by the person. The hospital, institution, program, state agency, or political subdivision may adopt rules and requirements relating to qualifications for medical staff appointments, including reappointments and the termination of appointments, the delineation of clinical privileges, or the curtailment of clinical privileges of persons who are appointed to that medical staff or permitted to participate in educational programs if those rules and requirements do not differentiate solely on the basis of the academic medical degree held by the affected physician and are:

(1) determined on a reasonable basis, such as the professional and ethical qualifications of the physician;

(2) based on reasonable standards;

(3) applied without irrelevant considerations;

(4) supported by sufficient evidence; and

(5) not arbitrary or capricious.

(b) The limitations imposed under this section relating to discrimination based on the academic medical degree of a physician do not apply to practice limitations adopted by:

(1) a medical school or college, including a program of a medical school or college; or

(2) any office or offices of physicians, singularly or in groups, in the conduct of their profession.

(c) This subtitle may not be construed in a manner that:

(1) discriminates against a school or system of medical practice; or

(2) affects the use of the principles or teachings of any church in ministering to the sick or suffering by prayer or pastoral counseling without the use of a drug or other material substance represented as medically effective.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.0515. DISCRIMINATION BASED ON MAINTENANCE OF CERTIFICATION. (a) Except as otherwise provided by this section, the following entities may not differentiate between physicians based on a physician's maintenance of certification:

(1) a health facility that is licensed under Subtitle B, Title 4, Health and Safety Code, or a mental hospital that is licensed under Chapter 577, Health and Safety Code, if the facility or hospital has an organized medical staff or a process for credentialing physicians;

(2) a hospital that is owned or operated by this state;

(3) an institution or program that is owned, operated, or licensed by this state, including an institution or program that directly or indirectly receives state financial assistance, if the institution or program:

(A) has an organized medical staff or a process for credentialing physicians on its staff; and

(B) is not a medical school, as defined by Section 61.501, Education Code, or a comprehensive cancer center, as designated by the National Cancer Institute; or

(4) an institution or program that is owned, operated, or licensed by a political subdivision of this state, if the institution or program has an organized medical staff or a process for credentialing physicians on its staff.

(b) An entity described by Subsection (a) may differentiate between physicians based on a physician's maintenance of certification if:

(1) the entity's designation under law or certification or accreditation by a national certifying or accrediting organization is contingent on the entity requiring a specific maintenance of

certification by physicians seeking staff privileges or credentialing at the entity; and

(2) the differentiation is limited to those physicians whose maintenance of certification is required for the entity's designation, certification, or accreditation as described by Subdivision (1).

(c) An entity described by Subsection (a) may differentiate between physicians based on a physician's maintenance of certification if the voting physician members of the entity's organized medical staff vote to authorize the differentiation.

(d) An authorization described by Subsection (c) may:

(1) be made only by the voting physician members of the entity's organized medical staff and not by the entity's governing body, administration, or any other person;

(2) subject to Subsection (e), establish terms applicable to the entity's differentiation, including:

(A) appropriate grandfathering provisions; and

(B) limiting the differentiation to certain medical specialties; and

(3) be rescinded at any time by a vote of the voting physician members of the entity's organized medical staff.

(e) Terms established under Subsection (d)(2) may not conflict with a maintenance of certification requirement applicable to the entity's designation under law or certification or accreditation by a national certifying or accrediting organization.

Added by Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 3, eff. January 1, 2018.

Sec. 151.052. EXEMPTIONS. (a) This subtitle does not apply to:

(1) a dentist, licensed under the laws of this state, engaged strictly in the practice of dentistry;

(2) a licensed optometrist or therapeutic optometrist engaged strictly in the practice of optometry or therapeutic optometry as defined by law;

(3) a licensed chiropractor engaged strictly in the practice of chiropractic as defined by law;

(4) a registered nurse or licensed vocational nurse engaged

strictly in the practice of nursing in accordance with the applicable licensing acts and other laws of this state;

(5) a licensed podiatrist engaged strictly in the practice of podiatry as defined by law;

(6) a licensed or certified psychologist engaged strictly in the practice of psychology as defined by law;

(7) a licensed physical therapist engaged strictly in the practice of physical therapy in accordance with the law relating to physical therapy practice;

(8) a commissioned or contract surgeon in the United States uniformed services or Public Health Service in the performance of that person's duties if the person is not engaged in private practice;

(9) a person who furnishes medical assistance in an emergency or disaster situation if no charge is made for the medical assistance;

(10) a student in training in a board-approved medical school while performing, under the supervision of a licensed practitioner, the duties assigned in the course of training;

(11) a legally qualified physician of another state who is in this state for consultation with a physician licensed in this state but who does not:

(A) maintain an office in this state; or

(B) appoint a place in this state for seeing, examining, or treating a patient; or

(12) any other activity that the board designates as exempt from the application of this subtitle.

(b) Notwithstanding Subsection (a)(10), a medical resident, intern, or fellow is required to register and is subject to the other applicable provisions of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.0521. EXEMPTION FOR SPORTS TEAM PHYSICIAN. A person is exempt from the licensing requirements of this subtitle and may engage in the practice of medicine in this state if the person:

(1) is employed or designated as a team physician by a sports team visiting this state for a specific sporting event;

(2) is licensed to practice medicine in the team's home

state; and

(3) limits the person's practice of medicine in this state to treating, during the period beginning on the date the team arrives in this state for the event and ending on the date the team leaves this state:

(A) the members, coaches, and staff of the team; and

(B) a family member of a person described by Paragraph (A) if the family member is visiting this state for the event.

Added by Acts 2019, 86th Leg., R.S., Ch. 376 (H.B. 2299), Sec. 1, eff. September 1, 2019.

Sec. 151.053. APPLICATION TO CERTAIN PERSONS PROVIDING NUTRITIONAL ADVICE. (a) This subtitle does not prohibit a person from giving advice regarding the use and role of food and food ingredients, including dietary supplements.

(b) Subsection (a) does not authorize a person to:

(1) practice medicine; or

(2) state, in violation of law, that a product might cure a disease, disorder, or condition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.054. APPLICATION TO SELF-CARE. (a) This subtitle does not prohibit:

(1) a person from providing or seeking advice or information relating to that person's self-care; or

(2) the dissemination of information relating to self-care.

(b) This section does not confer authority to practice medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.055. APPLICATION TO CERTAIN INDEPENDENT CONTRACTOR AGREEMENTS. This subtitle does not prohibit a hospital from entering into an independent contractor agreement with a physician to provide services at the hospital or at another health care facility owned or operated by the hospital and:

(1) paying the physician a minimum guaranteed amount to ensure the physician's availability;

(2) billing and collecting from patients the physician's professional fees; or

(3) retaining the collected professional fees up to the amount of the minimum guaranteed amount plus a reasonable collection fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 151.056. APPLICATION TO TELEMEDICINE. (a) A person who is physically located in another jurisdiction but who, through the use of any medium, including an electronic medium, performs an act that is part of a patient care service initiated in this state, including the taking of an x-ray examination or the preparation of pathological material for examination, and that would affect the diagnosis or treatment of the patient, is considered to be engaged in the practice of medicine in this state and is subject to appropriate regulation by the board.

(b) This section does not apply to the act of:

(1) a medical specialist located in another jurisdiction who provides only episodic consultation services on request to a physician licensed in this state who practices in the same medical specialty;

(2) a physician located in another jurisdiction who is providing consultation services to a medical school as defined by Section 61.501, Education Code;

(3) a physician located in another jurisdiction who is providing consultation services to an institution subject to:

(A) Subchapter C, Chapter 73, Education Code; or

(B) Subchapter K, Chapter 74, Education Code; or

(4) a physician located in another jurisdiction of a state having borders contiguous with the borders of this state who is the treating physician of a patient and orders home health or hospice services for a resident of this state to be delivered by a home and community support services agency licensed in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.022(a), eff. Sept. 1, 2001.

CHAPTER 152. STATE BOARD OF MEDICAL EXAMINERS

SUBCHAPTER A. ORGANIZATION OF BOARD

Sec. 152.001. TEXAS MEDICAL BOARD. (a) The Texas Medical Board is an agency of the executive branch of state government with the power to regulate the practice of medicine.

(b) A reference in any other law to the former Texas State Board of Medical Examiners means the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.03, eff. September 1, 2005.

Sec. 152.002. BOARD MEMBERSHIP. (a) The board consists of 19 members appointed by the governor with the advice and consent of the senate as follows:

(1) twelve members who are learned and eminent physicians licensed in this state for at least three years before the appointment, nine of whom must be graduates of a reputable medical school or college with a degree of doctor of medicine (M.D.) and three of whom must be graduates of a reputable medical school or college with a degree of doctor of osteopathic medicine (D.O.); and

(2) seven members who represent the public.

(b) Appointments to the board shall be made without regard to race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 26.01, eff. Sept. 1, 2003.

Sec. 152.003. ADDITIONAL MEMBERSHIP REQUIREMENTS. (a) In this section:

(1) "Direct provider of health care" includes:

(A) an athletic trainer;

(B) a chiropractor;

(C) a dentist;

(D) a hospital administrator;

(E) a licensed vocational nurse;
(F) a nursing home administrator;
(G) an optometrist;
(H) a pharmacist;
(I) a physical therapist;
(J) a physician assistant;
(K) a podiatrist;
(L) a psychologist;
(M) a registered nurse; and
(N) a social psychotherapist.

(2) "Fiduciary position or interest" means a position or interest with respect to an entity that has the character of a trust. The term includes:

(A) a member of a board of directors;
(B) an officer;
(C) a majority shareholder;
(D) an agent; and
(E) a person who, directly or through that person's spouse, receives more than one-tenth of the person's annual income from compensation for research into or instruction in the provision of health care received from:

(i) a health care entity or other person, association, or organization engaged in the provision of health care; or

(ii) a person, association, or organization engaged in producing drugs or analogous products.

(3) "Immediate family member" means the parent, spouse, child, or sibling of a person who resides in the same household as the person.

(4) "Provider of health care" means:

(A) a direct provider of health care:

(i) whose primary current activity is the provision of health care to persons or the administration of facilities or institutions in which that care is provided, including hospitals, long-term care facilities, out-patient facilities, and health maintenance organizations;

(ii) who, if required by law or otherwise, has received professional or other training in the provision of that care or administration; and

(iii) who is licensed or certified or otherwise

claims the authority to provide that care or administration;

(B) a person who is an indirect provider of health care in that the person holds a fiduciary position with or has a fiduciary interest in a health care entity;

(C) a member of the immediate family of a person described by this subdivision;

(D) a person who is engaged in or employed by an entity issuing a policy or contract of individual or group health insurance or hospital or medical service benefits; or

(E) a person who is employed by, on the board of directors of, or holds elective office by or under the authority of a unit of federal, state, or local government or any organization that receives a significant part of its funding from a unit of federal, state, or local government.

(b) A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board;

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses; or

(5) is a provider of health care.

(c) Each public member must be a resident of this state for at least the five years preceding appointment.

(d) Each physician board member must be actively engaged in:

(1) the practice of medicine for at least the five years preceding appointment; and

(2) medical peer review at a health care entity for at least the three years preceding appointment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.04, eff.

September 1, 2005.

Sec. 152.004. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person is ineligible for appointment to the board if, at the time of appointment, the person is younger than 18 years of age or is a stockholder or a member of the board of trustees of a medical school.

(c) A person may not be a member of the board and may not be a board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care or a national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(f) A person may not serve as a member of the board or act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.05, eff. September 1, 2005.

Sec. 152.0041. RESTRICTION ON USE OF INFORMATION. A board member who is a physician or a physician acting as an agent of the

board, including a member of an expert physician panel appointed under Section 154.056(e), may not use information to which the person has access solely by virtue of the person's position as a member or agent of the board for the benefit of the person's practice or for the benefit of another physician or person affiliated with the physician.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.06, eff. September 1, 2005.

Sec. 152.005. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the vacancy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.006. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 152.002;

(2) does not maintain during service on the board the qualifications required by Section 152.002;

(3) is ineligible for membership under Sections 152.003 and 152.004;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal

involves the president of the board, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.07, eff. September 1, 2005.

Sec. 152.007. PER DIEM. (a) Each board member is entitled to receive a per diem as set by legislative appropriation for each day that the member engages in the business of the board.

(b) If the General Appropriations Act does not prescribe the amount of the per diem, the per diem consists of actual expenses for meals, lodging, and transportation, plus $100.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.008. OFFICERS. Not later than December after each regular session of the legislature, the governor shall appoint from the members of the board a president, to serve in that capacity at the pleasure of the governor, and the board shall elect from its members a vice president, secretary-treasurer, and other officers as are required, in the board's opinion, to carry out the board's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.08, eff. September 1, 2005.

Sec. 152.009. MEETINGS; QUORUM REQUIREMENTS. (a) The board shall conduct regular meetings at least four times a year at the times and places the board considers most convenient for applicants and board members.

(b) The board may hold special meetings in accordance with rules adopted by the board.

(c) After hearing all evidence and arguments in an open meeting, the board may conduct deliberations relating to license applications and disciplinary actions in executive sessions. The board shall vote and announce its decisions in open session.

(d) A majority of the appointed board members constitutes a quorum for all purposes except for a board activity related to examining the credentials of license applicants as provided by Section 155.053.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.010. TRAINING; GUIDELINES. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. Each board member shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.09, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.49(1), eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. EXECUTIVE DIRECTOR AND OTHER PERSONNEL

Sec. 152.051. EXECUTIVE DIRECTOR. (a) The board shall appoint an executive director. The executive director serves as the chief executive and administrative officer of the board.

(b) The executive director serves at the pleasure of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.052. EXECUTIVE DIRECTOR POWERS AND DUTIES. The executive director shall administer and enforce this subtitle under the supervision and at the direction of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.054. CHIEF OPERATING OFFICER; MEDICAL DIRECTOR. (a) The executive director may employ a chief operating officer to:

(1) administer, implement, and monitor systems and necessary measures to promote the quality and efficiency of board operations; and

(2) perform other duties as assigned by the executive director.

(b) If the executive director is not a physician licensed to practice in this state, the executive director shall appoint a medical director who is:

(1) a physician licensed to practice in this state; and

(2) primarily responsible for implementing and maintaining policies, systems, and measures regarding clinical and professional issues and determinations.

(c) The chief operating officer or medical director acts under the supervision and at the direction of the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.055. PERSONNEL. (a) The board shall employ, compensate, and provide persons as determined necessary by the board to administer this subtitle, including administrators, clerks, employees, consultants, and professionals.

(b) The board shall reimburse those persons for actual and necessary expenses, including investigation expenses, travel expenses, and other incidental expenses, incurred in the performance of official duties as determined by the board.

(c) An employee of the board may not be employed by or paid a fee for services provided by a statewide or national organization incorporated to represent the entire profession licensed to practice medicine in this state or the United States, including an organization representing the practice of osteopathic medicine.

(d) A person is not eligible to serve as an employee of the board if the person is related within the second degree by affinity or within the third degree by consanguinity, as determined under Chapter 573, Government Code, to a person who is employed by or paid

a fee for services provided by an organization described by Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.056. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.10, eff. September 1, 2005.

Sec. 152.057. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.058. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry-level positions concurrently with any public posting.

(b) The board shall develop a system of annual performance evaluations of the board's employees based on measurable job tasks. Any merit pay authorized by the board must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 152.059. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of an equal employment opportunity program under which all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with requirements adopted under Chapter 21, Labor Code;

(2) a comprehensive analysis of the board's workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board's workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually and reviewed by the Commission on Human Rights for compliance with requirements adopted under Chapter 21, Labor Code; and

(3) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 153. POWERS AND DUTIES

SUBCHAPTER A. GENERAL POWERS AND DUTIES OF BOARD

Sec. 153.001. ADOPTION OF RULES. The board may adopt rules and bylaws as necessary to:

(1) govern its own proceedings;

(2) perform its duties;

(3) regulate the practice of medicine in this state; and

(4) enforce this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.0015. GUIDELINES FOR INPUT IN RULEMAKING. (a) The board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction, including input from the Texas Physician Assistant Board and the Texas State Board of Acupuncture Examiners. The guidelines must provide an opportunity for those individuals and groups to provide input before the board provides notice of the proposed rule under Section 2001.023, Government Code.

(b) The guidelines adopted under this section shall also include procedures for the board to receive comments on rules recommended by the physician assistant board or acupuncture board for adoption by the board.

(c) A rule adopted by the board may not be challenged on the grounds that the board did not comply with this section. If the board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why the board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.11, eff. September 1, 2005.

Sec. 153.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.003. RULES REGARDING MAINTENANCE OF PATIENT RECORDS. (a) The board by rule shall establish the period for which patient records must be maintained.

(b) The rules adopted under this section must prohibit a physician from destroying a medical record from the forensic medical examination of a sexual assault victim conducted under Subchapter G, Chapter 56A, Code of Criminal Procedure, until the 20th anniversary of the date the record was created.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 357 (H.B. 531), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 14.002, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 206 (S.B. 1401), Sec. 24, eff. September 1, 2023.

Sec. 153.004. RULES REGARDING TELEMEDICINE MEDICAL SERVICES. (a) In consultation with the Health and Human Services Commission and the commissioner of insurance, the board may adopt rules as necessary to:

(1) ensure that appropriate care is provided to Medicaid and Medicare patients who receive telemedicine medical services; and

(2) prevent abuse and fraud in the use of telemedicine medical services for Medicaid and Medicare patients.

(b) The rules adopted under Subsection (a)(2) may include rules relating to filing of claims and records required to be maintained in relation to telemedicine medical services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1255, Sec. 10, eff. June 15, 2001.

Sec. 153.0045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this

subtitle are stricter than the requirements of that chapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.12, eff. September 1, 2005.

Sec. 153.005. EXECUTIVE COMMITTEE; APPOINTMENT OF OTHER COMMITTEES. (a) Except as otherwise provided by this subtitle, the board may act under its rules through the executive director, the executive committee, or another committee. Except as otherwise provided by this subtitle, the executive committee consists of the president, vice president, and secretary-treasurer of the board.

(b) The board may appoint committees from its membership. A committee appointed from the board membership shall:

(1) consider matters relating to the enforcement of this subtitle and the rules adopted under this subtitle as referred to the committee; and

(2) make recommendations to the board regarding those matters.

(c) Each committee must have at least one member who meets the qualifications for a physician member under Sections 152.002 and 152.003 and holds the degree of doctor of osteopathic medicine and one member who meets the qualifications for a public member under Section 152.003. If a member appointed to a committee declines to accept the appointment or is determined to not be qualified under this subtitle to serve on the committee, the vacancy on the committee may be filled by any other board member regardless of qualification.

(d) If members who meet the qualifications of Subsection (c) are not elected to the executive committee, the board shall appoint additional members to that committee so that at least one executive committee member meets the qualifications for a physician member under Sections 152.002 and 152.003 and holds the degree of doctor of osteopathic medicine and one executive committee member meets the qualifications for a public member under Section 152.003.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.006. CRIMINAL RECORD REPORT. (a) The board may receive criminal record reports from any law enforcement agency or another source regarding a license holder or license applicant.

(b) Each criminal record report received from the Department of Public Safety is for the exclusive use of the board and is privileged. The report may not be released or otherwise disclosed to any person or agency by the board except on court order.

(c) Repealed by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(d), eff. Sept. 1, 2001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(d), eff. Sept. 1, 2001.

Sec. 153.007. AUTHORITY TO ISSUE SUBPOENA OR ADMINISTER OATH; SUBPOENA ENFORCEMENT. (a) The board may issue a subpoena or a subpoena duces tecum to compel the attendance of a witness and the production of books, records, and documents. The board may administer oaths and take testimony regarding any matter within its jurisdiction.

(b) The board may delegate the authority granted under Subsection (a) to the executive director or the secretary-treasurer of the board.

(c) A subpoena issued at the request of the board staff may be served either personally by the board's investigators or by certified mail.

(d) The board shall pay, for photocopies subpoenaed at the request of the board's staff, a reasonable fee in an amount not to exceed the amount the board may charge for copies of its records.

(e) If a person fails to comply with a subpoena issued under this section, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

(f) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 2, eff. September 1, 2017.

Sec. 153.008. BOARD RECORDS. (a) The board shall maintain a record of its proceedings. The record maintained under this subsection is public information.

(b) The board's records must indicate whether an applicant was issued or denied a license. The record constitutes prima facie evidence of each matter contained in the record.

(c) A certified copy of a record maintained under this section, under the hand and seal of the executive director of the board, is admissible in evidence in all courts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(a), eff. Sept. 1, 2001.

Sec. 153.010. ADOPTION OF FEE SCHEDULE BY BOARD PROHIBITED. The board may not establish a fee schedule for medical services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.011. WAIVER OF FEE OR PENALTY BY BOARD PROHIBITED. The board may not waive collection of a fee or penalty assessed under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.012. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.013. REPRESENTATION BY ATTORNEY GENERAL. The board shall be represented in court proceedings by the attorney general.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.014. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 1, eff. Sept. 1, 2003.

Sec. 153.015. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 1, eff. Sept. 1, 2003.

Sec. 153.016. EXPERT TESTIMONY. A member of the board may not serve as an expert witness in a suit involving a health care liability claim against a physician for injury to or death of a patient.

Added by Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. FEES AND FUNDS

Sec. 153.051. FEES; BUDGET. (a) The board by rule shall set reasonable and necessary fees in amounts sufficient to cover the cost of administering this subtitle.

(b) The board may not adjust a fee established on or before September 1, 1993, to an amount less than the amount of the fee on September 1, 1993.

(c) The board shall by annual budget determine the manner of handling the funds received under this subtitle and the purposes for which those funds may be used. The budgeted expenses authorized by the board shall be paid from the funds received by the board and are not a charge on the general revenue of the state.

(d) The board may not set, charge, collect, receive, or deposit any of the following fees in excess of:

(1) $900 for a license;

(2) $400 for a first registration permit;

(3) $200 for a temporary license;

(4) $400 for renewal of a registration permit;

(5) $200 for a physician-in-training permit;

(6) $600 for the processing of an application and the issuance of a registration for anesthesia in an outpatient setting;

(7) $200 for an endorsement to other state medical boards;

(8) $200 for a duplicate license;

(9) $700 for a reinstated license after cancellation for cause; or

(10) $15 for a surcharge under Section 153.053 to administer the Texas Physician Health Program, due at the time of license issuance and registration permit renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.024(b), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 2, eff. June 10, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(b), eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 1, eff. September 1, 2023.

Sec. 153.052. DEPOSIT AND EXPENDITURE OF RECEIPTS. (a) The board shall deposit all receipts collected by the board in the state

treasury.

(b) The money collected by the board may be spent only as provided by the General Appropriations Act, this subtitle, or other applicable law for the:

(1) enforcement of this subtitle;

(2) prohibition of the unlawful practice of medicine;

(3) dissemination of information to prevent the violation of the laws; and

(4) prosecution of those who violate the laws.

(c) Distributions may be made only on the written approval of the executive director of the board or the executive director's designated representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.024(c), eff. Sept. 1, 2001.

Sec. 153.053. SURCHARGE TO ADMINISTER TEXAS PHYSICIAN HEALTH PROGRAM. (a) The board shall collect an additional surcharge not to exceed $15 for each of the following fees:

(1) first registration permit; and

(2) renewal of a registration permit.

(b) The board shall deposit each surcharge collected under this section to the credit of the Texas physician health program account. The Texas physician health program account is a special account in the general revenue fund. Money in the special account shall be appropriated only to the board to pay for administration of the Texas Physician Health Program under Chapter 167, including paying for an initial evaluation by the program's medical director or the director's designee. Money in the special account may not be used to pay for program participant costs incurred for monitoring or for a program participant's own medical costs, including any further required evaluations, primary treatment, or continuing care.

Added by Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 2, eff. September 1, 2023.

Sec. 153.0535. SURCHARGE FOR REGISTRATION PERMIT. (a) The board shall collect an additional $80 surcharge for each of the

following fees:

(1) first registration permit; and

(2) renewal of a registration permit.

(b) The board shall deposit each surcharge collected to the credit of the public assurance account. The public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's licensure and enforcement programs, including the expert physician panel.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 4, eff. June 10, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 30, eff. September 1, 2015.

Sec. 153.054. CHARGES FOR CERTAIN RECORDS AND OTHER MATERIAL. The board may set and collect a fee for:

(1) each copy made of a record in the office of the board; or

(2) any material published by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.024(d), eff. Sept. 1, 2001.

Sec. 153.055. SURCHARGE FOR CERTAIN SEARCHES RELATED TO LICENSE STATUS. (a) The board shall set and collect an additional surcharge to cover the cost of administering a continuous query on the National Practitioner Data Bank as required by Section 154.006(m). The surcharge shall be collected from each license holder for:

(1) issuance of a first registration permit; and

(2) renewal of a registration permit.

(b) The board shall deposit each surcharge collected under this section to the credit of the public assurance account described by Section 153.0535(b).

Added by Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 3, eff. September 1, 2023.

Sec. 153.056. REPORT ON PENDING COMPLAINTS. The board shall include with its annual financial report information regarding any investigations that remain pending after one year, including the reasons the investigations remain pending. Information in the report under this section may not identify a patient for any purpose unless proper consent to the release is given by the patient.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 5, eff. June 10, 2003.

Sec. 153.057. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.13, eff. September 1, 2005.

Sec. 153.058. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of any rules by the board; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.13, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 3, eff. September 1, 2019.

CHAPTER 154. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES
SUBCHAPTER A. PUBLIC INTEREST INFORMATION

Sec. 154.001. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.002. INFORMATION FOR PUBLIC DISSEMINATION. (a) The board shall prepare:

(1) an alphabetical list of the names of the license holders;

(2) an alphabetical list of the names of the license holders by the county in which the license holder's principal place of practice is located;

(3) a summary of the board's functions;

(4) a copy of this subtitle and a list of other laws relating to the practice of medicine;

(5) a copy of the board's rules;

(6) a statistical report each fiscal year to the legislature and the public that provides aggregate information about all complaints received by the board categorized by type of complaint, including administrative, quality of care, medical error, substance abuse, other criminal behavior, and the disposition of those complaints by category; and

(7) other information considered appropriate by the board.

(b) The board shall provide:

(1) a copy of the information prepared under Subsection (a) to each person who requests a copy; and

(2) copies of the information prepared under Subsection (a) to each public library in this state that requests the copies.

(c) The board shall make available on the board's Internet website a consumer guide to health care. The board shall include information in the guide concerning the billing and reimbursement of health care services provided by physicians, including information that advises consumers that:

(1) the charge for a health care service or supply will vary based on:

(A) the person's medical condition;

(B) any unknown medical conditions of the person;

(C) the person's diagnosis and recommended treatment protocols; and

(D) other factors associated with performance of the health care service;

(2) the charge for a health care service or supply may differ from the amount to be paid by the consumer or the consumer's third-party payor;

(3) the consumer may be personally liable for payment for the health care service or supply depending on the consumer's health benefit plan coverage; and

(4) the consumer should contact the consumer's health benefit plan for accurate information regarding the plan structure, benefit coverage, deductibles, copayments, coinsurance, and other plan provisions that may impact the consumer's liability for payment for the health care services or supplies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 6, eff. June 10, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 997 (S.B. 1731), Sec. 7, eff. September 1, 2007.

Sec. 154.003. INFORMATION FOR PHYSICIANS. (a) The board shall disseminate at least twice a year and at other times determined necessary by the board information of significant interest to the physicians of this state. The information must include summaries of:

(1) disciplinary orders made against physicians licensed in this state;

(2) board activities and functions;
(3) pertinent changes in this subtitle or board rules; and
(4) attorney general opinions.

(b) The requirements of this section are in addition to the reporting requirements imposed under Section 164.060.

(c) The board shall disseminate the information to:
(1) each physician practicing in this state;
(2) each health care entity and other board-designated health care institution operating in this state;
(3) each member of a health-related legislative committee;
(4) a member of the public who submits a written request; and
(5) public libraries throughout this state.

(d) Except as provided by this subsection, the board shall publish information regarding errors in and reversals of disciplinary actions taken by the board. The information to be published under this subsection includes instances in which a disciplinary action initiated by the board is overturned by a court. The board shall disseminate the information under this subsection in the same format, size, style, and manner as the information regarding the original action by the board was disseminated. The board may not publish information under this subsection if the physician who was the subject of the disciplinary action requests that the information not be published.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.14, eff. September 1, 2005.

Sec. 154.004. DISCLOSURE OF DISCIPLINARY ORDERS. (a) On written request the board shall make available to the general public on payment of a reasonable fee to cover expenses and to appropriate state agencies information that includes:
(1) a summary of any previous disciplinary order by the board against a specific physician licensed in this state;
(2) the date of the order; and
(3) the current status of the order.

(b) If the board is not required under other state law to

establish a toll-free telephone number, the board shall establish an eight-hour toll-free telephone number to make the information required by this section immediately available to any caller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.005. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.006. PHYSICIAN PROFILES. (a) The board shall create a profile of each physician licensed under this subtitle. The profile must:

(1) include the information required by Subsection (b); and

(2) be compiled in a format that makes the information contained in the profile easily available to the public.

(b) Except as otherwise provided by this section, a profile must contain the following information on each physician:

(1) the name of each medical school attended and the dates of:

(A) graduation; or

(B) Fifth Pathway designation and completion of the Fifth Pathway Program;

(2) a description of all graduate medical education in the United States or Canada;

(3) any specialty certification held by the physician and issued by a medical licensing board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists;

(4) the number of years the physician has actively practiced medicine in:

(A) the United States or Canada; and

(B) this state;

(5) the name of each hospital in this state in which the physician has privileges;

(6) the physician's primary practice location;

(7) the type of language translating services, including translating services for a person with impairment of hearing, that the physician provides at the physician's primary practice location;

(8) whether the physician participates in the Medicaid program;

(9) a description of any conviction for a felony, a Class A or Class B misdemeanor, or a Class C misdemeanor involving moral turpitude;

(10) a description of any charges reported to the board to which the physician has pleaded no contest, for which the physician is the subject of deferred adjudication or pretrial diversion, or in which sufficient facts of guilt were found and the matter was continued by a court;

(11) a description of any disciplinary action against the physician by the board;

(12) a description of any disciplinary action against the physician by a medical licensing board of another state;

(13) a description of the final resolution taken by the board on medical malpractice claims or complaints required to be opened by the board under Section 164.201;

(14) whether the physician's patient service areas are accessible to disabled persons, as defined by federal law;

(15) a description of any formal complaint against the physician initiated and filed under Section 164.005 and the status of the complaint; and

(16) a description of any medical malpractice claim against the physician, not including a description of any offers by the physician to settle the claim, for which the physician was found liable, a jury awarded monetary damages to the claimant, and the award has been determined to be final and not subject to further appeal.

(b-1) On or after the fifth anniversary of the date a remedial plan is issued under Section 164.0015, the board may remove from the profile of the physician subject to the plan any information regarding the plan and the complaint resolved by the plan unless:

(1) the complaint was related to the delivery of health

care; or

(2) more than one remedial plan has been issued to resolve complaints alleging the same violation by the physician, including a complaint not related to the delivery of health care.

(c) Information required to be included under Subsection (b) that is not maintained by the board in the ordinary course of the board's duties shall be obtained from a physician at the time the physician renews the physician's license. In requesting information from the physician, the board shall:

(1) inform the physician that compliance with the request for information is mandatory;

(2) inform the physician of the date the information will be made available to the public; and

(3) instruct the physician about the requirements under Subsection (f) for the physician to obtain a copy of the physician's profile to make corrections.

(d) This section does not:

(1) prevent the board from providing explanatory information regarding the significance of categories in which malpractice settlements are reported; or

(2) require the board to disclose confidential settlement information.

(e) A pending malpractice claim or complaint, other than a claim disclosed under Subsection (b)(13), may not be disclosed to the public by the board. This subsection does not prevent the board from investigating and disciplining a physician on the basis of a pending medical malpractice claim or complaint.

(f) The board shall provide a physician with a copy of the physician's profile if the physician requests a copy at the time the physician renews the physician's license. If a copy is requested by a physician, the board shall provide the physician one month from the date the copy is provided to the physician to correct factual errors in the physician's profile.

(g) Except as otherwise provided by this section, the board shall update the information contained in a physician's profile annually. The board shall adopt a form that allows a physician to update information contained in a physician's profile. The form shall be made available on the Internet and in other formats as prescribed by board rule. The board may adopt rules concerning the type and content of additional information that may be included in a

physician's profile.

(h) The board shall adopt rules as necessary to implement this section.

(i) In addition to the information required by Subsection (b) and except as otherwise provided by this section, a profile must be updated to contain the text of a formal complaint filed under Section 164.005 against the physician or of a board order related to the formal complaint not later than the 10th working day after the date the complaint is filed.

(i-1) Not later than the 10th working day after the date the board issues a final order related to a formal complaint filed under Section 164.005 against a physician, the board shall:

(1) remove from the physician's profile any record of the formal complaint or any prior disciplinary action related to the formal complaint; and

(2) update the physician's profile to contain the board's final order.

(j) Information included in a physician's profile under Subsections (b), (i), and (i-1) may not include any patient identifying information.

(k) Not later than the 10th working day after the date the board dismisses a formal complaint against a physician required to be included in the physician's profile under Subsection (b)(15) or (i) as baseless, unfounded, or not supported by sufficient evidence that a violation occurred, or resolves the complaint and takes no action against the physician's license as a result of the complaint, the board shall:

(1) remove from the physician's profile any record of the formal complaint or any prior disciplinary action related to the formal complaint; and

(2) update the physician's profile to contain the board's final order dismissing or resolving the complaint.

(l) If no action is taken against a physician's license as a result of an investigation of medical malpractice claims or complaints required to be investigated by the board under Section 164.201, the board shall, not later than the 10th working day after the date the board resolves the investigation, remove any record of the investigation from the physician's profile.

(m) The board shall run a continuous query on the National Practitioner Data Bank and, not later than the 10th working day after

the date any new information is found, update a physician's profile to:

(1) include any new report or correction to a report of disciplinary action against the physician; and

(2) remove any report of disciplinary action against the physician that has been dismissed or otherwise voided.

(n) Information included in a physician's profile under Subsection (m) may not include any patient identifying information or information that may reasonably be used to identify any person or entity other than the physician.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.026(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 7, eff. June 10, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 607 (H.B. 732), Sec. 1, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 4, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 4, eff. September 1, 2023.

SUBCHAPTER B. COMPLAINT PROCEDURES

Sec. 154.051. COMPLAINT INITIATION. (a) The board by rule shall establish methods by which members of the public and license holders are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person or entity regulated under this subtitle;

(2) on a sign prominently displayed in the place of business of each person or entity regulated under this subtitle; or

(3) in a bill for service provided by a person or entity regulated under this subtitle.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) A person, including a partnership, association,

corporation, or other entity, may file a complaint against a license holder with the board. The board may file a complaint on its own initiative.

(d) The board may not consider or act on a complaint involving care provided more than seven years before the date on which the complaint is received by the board unless the care was provided to a minor or the care involves a complaint under Subsection (d-1). If the care was provided to a minor, the board may not consider or act on a complaint involving the care after the later of:

(1) the date the minor is 21 years of age; or

(2) the seventh anniversary of the date of the care.

(d-1) The board may not consider or act on a complaint involving an alleged violation of Section 22.011(b)(12), Penal Code, that occurred more than seven years before the date on which the complaint is received by the board or more than 2 years from the date the complainant knew or should have known of the facts giving rise to the complaint, whichever is later.

(e) On receipt of a complaint, the board may consider a previously investigated complaint to determine whether there is a pattern of practice violating this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 1, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 620 (S.B. 1895), Sec. 1, eff. September 1, 2021.

Sec. 154.052. RECORDS OF COMPLAINTS. The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about:

(1) the parties to the complaint;

(2) the subject matter of the complaint;

(3) a summary of the results of the review or investigation of the complaint; and

(4) the disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.15, eff.

September 1, 2005.

Sec. 154.053. NOTIFICATION CONCERNING COMPLAINT. (a) The board shall notify a physician who is the subject of a complaint filed with the board that a complaint has been filed and shall notify the physician of the nature of the complaint unless the notice would jeopardize an investigation.

(b) Each party shall be notified of the projected time requirements for pursuing the complaint. Each party to the complaint must be notified of a change in the schedule not later than the 14th day after the date the change is made unless the notice would jeopardize an investigation.

(c) The board shall periodically notify the parties to the complaint of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.16, eff. September 1, 2005.

Sec. 154.0535. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, this subtitle, or rules adopted under this subtitle, a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator

against a physician must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint. Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the physician who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 2, eff. September 1, 2011.

Sec. 154.054. COMPLAINT INFORMATION TO HEALTH CARE ENTITY. On written request, the board shall provide information to a health care entity regarding:

(1) a complaint filed against a license holder that was resolved after investigation by:

(A) a disciplinary order of the board; or

(B) an agreed settlement; and

(2) the basis of and current status of any complaint under active investigation that has been assigned by the executive director to a person authorized by the board to pursue legal action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 8, eff. June 10, 2003.

Sec. 154.055. RELEASE OF COMPLAINT INFORMATION TO LEGISLATIVE COMMITTEE. (a) On request from a legislative committee created under Subchapter B, Chapter 301, Government Code, the board shall release all information regarding a complaint against a physician to aid in a legitimate legislative inquiry. The board may release the information only to the members of the committee.

(b) In complying with a request under Subsection (a), the board may not identify the complainant or the patient and may reveal the identity of the affected physician only to the members of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 154.056. GENERAL RULES REGARDING COMPLAINT INVESTIGATION; DISPOSITION. (a) The board shall adopt rules concerning the investigation and review of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish among categories of complaints and give priority to complaints that involve sexual misconduct, quality of care, and impaired physician issues;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the board be advised of the dismissal of a complaint and that a letter be sent to the person who filed the complaint and to the physician who was the subject of the complaint explaining the action taken on the complaint;

(4) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator;

(6) provide for an expert physician panel authorized under Subsection (e) to assist with complaints and investigations relating to medical competency; and

(7) require the review of reports filed with the National Practitioner Data Bank for any report of the termination, limitation, suspension, limitation in scope of practice, or probation of clinical or hospital staff privileges of a physician by:

(A) a hospital;

(B) a health maintenance organization;

(C) an independent practice association;

(D) an approved nonprofit health corporation certified under Section 162.001; or

(E) a physician network.

(b) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The executive director shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary

action on the complaint.

(d) The board shall adopt other rules as appropriate to administer this subchapter.

(e) The board by rule shall provide for an expert physician panel appointed by the board to assist with complaints and investigations relating to medical competency by acting as expert physician reviewers. Each member of the expert physician panel must be licensed to practice medicine in a member state, as defined by Section 171.002. The rules adopted under this subsection must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected physician and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel. The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board. The board's rules governing appointment of expert physician panel members to act as expert physician reviewers must include a requirement that the board randomly select, to the extent permitted by Section 154.058(b) and the conflict of interest provisions adopted under this subsection, panel members to review a complaint who are:

(1) licensed to practice medicine in this state; or

(2) licensed to practice medicine in a member state, as defined by Section 171.002, if there are no panel members licensed to practice medicine in this state available to review the complaint in a timely manner.

(f) In the board rules adopted under Subsection (a)(3), the board shall require that the letter informing the person who filed the complaint of the dismissal of the complaint include an explanation of the reason the complaint was dismissed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 9, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.17, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 5, eff. September 1, 2023.

Sec. 154.0561. PROCEDURES FOR EXPERT PHYSICIAN REVIEW. (a) A physician on the expert physician panel authorized by Section 154.056(e) who is selected to review a complaint shall:

(1) determine whether the physician who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second expert physician reviewer shall review the first physician's preliminary report and other information associated with the complaint. If the second expert physician agrees with the first expert physician, the first physician shall issue a final written report on the matter.

(c) If the second expert physician does not agree with the conclusions of the first expert physician, a third expert physician reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two expert physicians. The final written report shall be issued by the third physician or the physician with whom the third physician concurs.

(d) In reviewing a complaint, the expert physician reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.18, eff. September 1, 2005.

Sec. 154.057. CONDUCT OF INVESTIGATION; USE OF INVESTIGATORS AS PEACE OFFICERS. (a) Except as otherwise provided by this subchapter, each investigation of a complaint filed under this subtitle shall be conducted by the board or by a person authorized by the board to conduct the investigation.

(b) Except as provided by Subsection (b-1), the board shall complete a preliminary investigation of the complaint not later than the 45th day after the date of receiving the complaint. The board shall first determine whether the physician constitutes a continuing threat to the public welfare. On completion of the preliminary

investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.

(b-1) The board, for good cause, may extend a preliminary investigation under Subsection (b) for not more than 15 days after the date required for completion under that subsection.

(c) The board may commission investigators as peace officers to enforce this subtitle. An investigator commissioned as a peace officer under this subsection may not carry a firearm or exercise the powers of arrest.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.19, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 3, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 5, eff. September 1, 2019.

Sec. 154.058. DETERMINATION OF MEDICAL COMPETENCY. (a) Each complaint against a physician that requires a determination of medical competency shall be reviewed initially by a board member, consultant, or employee with a medical background considered sufficient by the board.

(b) If the initial review under Subsection (a) indicates that an act by a physician falls below an acceptable standard of care, the complaint shall be reviewed by an expert physician panel authorized under Section 154.056(e) consisting of physicians who practice in the same specialty as the physician who is the subject of the complaint or in another specialty that is similar to the physician's specialty.

(c) The expert physician panel shall report in writing the panel's determinations based on the review of the complaint under Subsection (b). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 10, eff. June 10, 2003.

CHAPTER 155. LICENSE TO PRACTICE MEDICINE

SUBCHAPTER A. LICENSE REQUIREMENTS

Sec. 155.001. LICENSE REQUIRED. A person may not practice medicine in this state unless the person holds a license issued under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.002. ISSUANCE OF LICENSE. (a) The board, at its sole discretion, may issue a license to practice medicine to a person who:

(1) submits to the board a license application as required by this chapter;

(2) presents satisfactory proof that the person meets the eligibility requirements established by this chapter; and

(3) satisfies the examination requirements of Section 155.051.

(b) The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this subsection does not require formal board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.20, eff. September 1, 2005.

Sec. 155.003. GENERAL ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, an applicant must present proof satisfactory to the board that the applicant:

(1) is at least 21 years of age;

(2) is of good professional character and has not violated Section 164.051, 164.052, or 164.053;

(3) has completed:

(A) at least 60 semester hours of college courses, other than courses in medical school, that are acceptable to The University of Texas at Austin for credit on a bachelor of arts degree or a bachelor of science degree;

(B) the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or

(C) substantially equivalent courses as determined by board rule;

(4) is a graduate of a medical school located in the United States or Canada and approved by the board;

(5) has either:

(A) successfully completed one year of graduate medical training approved by the board in the United States or Canada; or

(B) graduated from a medical school located outside the United States or Canada and has successfully completed two years of graduate medical training approved by the board in the United States or Canada;

(6) has passed an examination accepted or administered by the board; and

(7) has passed a Texas medical jurisprudence examination as determined by board rule.

(b) All medical or osteopathic medical education an applicant receives in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. This subsection does not apply to postgraduate medical education or training.

(c) An applicant who is unable to meet the requirement established by Subsection (b) may be eligible for an unrestricted license if the applicant:

(1) received medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the board in the same subject as the medical or osteopathic medical

education as defined by board rule; or

(2) is specialty board certified by a specialty board approved by the American Osteopathic Association or the American Board of Medical Specialties.

(d) Except as provided by Subsection (d-1), in addition to the other requirements prescribed by this subtitle, the board may require an applicant to comply with other requirements that the board considers appropriate.

(d-1) The board may not require maintenance of certification by an applicant for the applicant to be eligible for a license under this chapter.

(e) An applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, or suspended for cause by a state, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation in a state, a province of Canada, or a uniformed service of the United States;

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude; or

(4) the applicant held a license to practice medicine that has been revoked by the licensing authority in another state or a province of Canada for a reason that would be grounds for the board to revoke a license to practice medicine in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.21, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 498 (H.B. 1380), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 4, eff. January 1, 2018.

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 6, eff.

September 1, 2023.

Sec. 155.0031. APPLICATION PROCEDURES AND REQUIREMENTS. (a) An application for a license must be in writing and on forms prescribed by the board. The board may allow or require applicants, by board rule, to use the Federation Credentials Verification Service offered by the Federation of State Medical Boards of the United States.

(b) The application forms must be accompanied by all fees, documents, and photographs required by board rule.

(c) Applicants for a license must subscribe to an oath. The written oath is part of the application.

(d) An applicant must present proof satisfactory to the board that:

(1) each medical school attended by the applicant is substantially equivalent to a Texas medical school as determined by board rule; or

(2) the applicant is specialty board certified by a specialty board organization acceptable to the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(c), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1406 (H.B. 3674), Sec. 1, eff. September 1, 2009.

Sec. 155.004. ADDITIONAL ELIGIBILITY REQUIREMENTS FOR GRADUATES OF CERTAIN FOREIGN MEDICAL SCHOOLS. A license applicant who is a graduate of a medical school that is located outside the United States and Canada must present proof satisfactory to the board that the applicant:

(1) is a graduate of a school whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board;

(2) has successfully completed at least two years of graduate medical training in the United States or Canada that was approved by the board;

(3) holds a valid certificate issued by the Educational Commission for Foreign Medical Graduates; and

(4) is able to communicate in English.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(d), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1406 (H.B. 3674), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 498 (H.B. 1380), Sec. 2, eff. September 1, 2011.

Sec. 155.005. ELIGIBILITY REQUIREMENTS OF FOREIGN MEDICAL SCHOOL STUDENTS IN FIFTH PATHWAY PROGRAM. (a) To be eligible for a license under this chapter, an applicant who has been a student of a foreign medical school must present proof satisfactory to the board that the applicant:

(1) meets the requirements of Section 155.003;

(2) has studied medicine in a medical school located outside the United States and Canada that is acceptable to the board;

(3) has completed all of the didactic work of the foreign medical school but has not graduated from the school;

(4) has attained a score satisfactory to a medical school in the United States approved by the Liaison Committee on Medical Education on a qualifying examination and has satisfactorily completed one academic year of supervised clinical training for foreign medical students, as defined by the American Medical Association Council on Medical Education (Fifth Pathway Program), under the direction of the medical school in the United States;

(5) has attained a passing score on the Educational Commission for Foreign Medical Graduates examination or another examination, if required by the board;

(6) has successfully completed at least two years of graduate medical training in the United States or Canada that was approved by the board as of the date the training was completed; and

(7) has passed the license examination under Subchapter B required by the board of each applicant.

(b) An applicant who satisfies the requirements of this section

is not required to:

(1) meet any requirement of the foreign medical school beyond completion of the didactic work; or

(2) be certified by the Educational Commission for Foreign Medical Graduates.

(c) A hospital that is licensed by this state, that is operated by this state or a political subdivision of this state, or that directly or indirectly receives state financial assistance may not require a person who has been a student of a foreign medical school but has not graduated from the school to satisfy any requirements other than those listed in Subsection (a) before beginning an internship or residency.

(d) For purposes of licensing under this chapter, a document granted by a medical school located outside the United States issued after the completion of all the didactic work of the medical school is considered the equivalent of a degree of doctor of medicine or doctor of osteopathy on certification by the medical school in the United States in which the training was received that the person to whom the document was issued satisfactorily completed the requirements listed in Subsection (a)(4).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(e), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 498 (H.B. 1380), Sec. 3, eff. September 1, 2011.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 269 (S.B. 419), Sec. 1.22

For text of section as added by Acts 2005, 79th Leg., Ch. 799 (S.B. 423), Sec. 1, see other Sec. 155.006.

Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board may adopt rules and prescribe fees related to the issuance of a license under this section that is limited in scope to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

(b) An applicant is eligible for a limited license under this section on presenting proof satisfactory to the board that the

applicant:

(1) is recommended to the board by the dean, president, or chief academic officer of:

(A) a school of medicine in this state;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M. D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under Subdivision (1);

(3) has not failed a licensing examination that would prevent the applicant from obtaining a full license not limited in scope in this state;

(4) has passed a Texas medical jurisprudence examination as determined by board rule;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, is not subject to denial of a license under Section 164.051, and has not engaged in conduct described by Section 164.052 or 164.053; and

(7) meets any other requirements prescribed by board rule adopted under this section.

(c) In adopting rules under this section, the board may adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements, conditions of employment, and application procedures. The board by rule may qualify, restrict, or otherwise limit a license issued under this section.

(d) The board by rule may define "conceded eminence and authority in the applicant's specialty." In adopting rules under this subsection, the board shall consider criteria that include a person's:

(1) academic appointments;

(2) length of time in a profession;

(3) scholarly publications; and

(4) professional accomplishments.

(e) The board may require that the holder of a license under this section serve a six-month probationary period during which medical services provided by the license holder are supervised by another licensed physician.

(f) The holder of a license under this section shall be limited to the practice of only a specialty of medicine for which the license holder has trained and qualified, as determined by the board. The license holder may not practice medicine outside of the setting of the institution or program that recommended the license holder under Subsection (b)(1).

(g) The holder of a license under this section may not change the license holder's practice setting to a new institution or program unless the license holder applies for a new license under this section with the recommendation of that institution or program as required by Subsection (b)(1).

(h) A license holder under this section may obtain a full license not limited in scope to practice medicine in this state by meeting all applicable eligibility requirements for that license.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.22, eff. September 1, 2005.

Text of section as added by Acts 2005, 79th Leg., R.S., Ch. 799 (S.B. 423), Sec. 1

For text of section as added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.22, see other Sec. 155.006.

Sec. 155.006. ISSUANCE OF LIMITED LICENSE. (a) The board may adopt rules and prescribe fees related to the issuance of a license under this section that is limited in scope to an applicant by virtue of the applicant's conceded eminence and authority in the applicant's specialty.

(b) An applicant is eligible for a limited license under this section on presenting proof satisfactory to the board that the applicant:

(1) is recommended to the board by the dean, president, or chief academic officer of:

(A) a school of medicine in this state;

(B) The University of Texas Health Center at Tyler;

(C) The University of Texas M. D. Anderson Cancer Center; or

(D) a program of graduate medical education, accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, that exceeds the requirements for eligibility for first board certification in the discipline;

(2) is expected to receive an appointment at the institution or program making the recommendation under Subdivision (1);

(3) has not failed a licensing examination that would prevent the applicant from obtaining a full license not limited in scope in this state;

(4) has passed a Texas medical jurisprudence examination as determined by board rule;

(5) has successfully completed at least one year of approved subspecialty training accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(6) is of good professional character, is not subject to denial of a license under Section 164.051, and has not engaged in conduct described by Section 164.052 or 164.053; and

(7) meets any other requirements prescribed by board rule adopted under this section.

(c) In adopting rules under this section, the board may adopt rules that prescribe additional qualifications for an applicant, including education and examination requirements, conditions of employment, and application procedures. The board by rule may qualify, restrict, or otherwise limit a license issued under this section.

(d) The board by rule may define "conceded eminence and authority in the applicant's specialty." In adopting rules under this subsection, the board shall consider criteria that include a person's:

(1) academic appointments;

(2) length of time in a profession;

(3) scholarly publications; and

(4) professional accomplishments.

(e) The board may require that the holder of a license under this section serve a six-month probationary period during which

medical services provided by the license holder are supervised by another licensed physician.

(f) The holder of a license under this section shall be limited to the practice of only a specialty of medicine for which the license holder has trained and qualified, as determined by the board. The license holder may not practice medicine outside of the setting of the institution or program, or an affiliate of the institution or program, that recommended the license holder under Subsection (b)(1).

(g) The holder of a license under this section may not change the license holder's practice setting to a new institution or program unless the license holder applies for a new license under this section with the recommendation of that institution or program as required by Subsection (b)(1).

(h) A license holder under this section may obtain a full license not limited in scope to practice medicine in this state by meeting all applicable eligibility requirements for such license.

Added by Acts 2005, 79th Leg., Ch. 799 (S.B. 423), Sec. 1, eff. September 1, 2005.

Sec. 155.007. APPLICATION PROCESS. (a) The executive director shall review each application for a license and shall:

(1) recommend to the board each applicant eligible for a license; and

(2) report to the board the name of each applicant determined to be ineligible for a license, together with the reasons for that determination.

(b) An applicant determined to be ineligible for a license by the executive director may request review of that determination by a committee of the board. The applicant must request the review not later than the 20th day after the date the applicant receives notice of the determination.

(c) The executive director may refer an application to the board committee for a recommendation concerning eligibility. If the committee determines that the applicant is ineligible for a license, the committee shall submit that determination, together with the reasons for the determination, to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination.

(d) The committee may refer an application for determination of eligibility to the full board.

(e) A hearing requested under Subsection (c) shall be held before an administrative law judge of the State Office of Administrative Hearings and must comply with:

(1) Chapter 2001, Government Code; and

(2) the rules of:

(A) the State Office of Administrative Hearings; and

(B) the board.

(f) After receipt of the administrative law judge's proposed findings of fact and conclusions of law, the board shall determine the applicant's eligibility. The board shall provide an applicant who is denied a license a written statement containing the reasons for the board's action.

(g) Each report received or gathered by the board on a license applicant is confidential and is not subject to disclosure under Chapter 552, Government Code. The board may disclose a report to an appropriate licensing authority in another state. The board shall report all licensing actions to appropriate licensing authorities in other states and to the Federation of State Medical Boards of the United States.

(h) Not later than January 1 of each year:

(1) the executive director shall review the policy and procedures the board uses to issue licenses; and

(2) the board shall perform a needs assessment to enable the board to determine the performance goals that the board must meet to reduce any unreasonable delays in the timely completion of the licensing process and to ensure the process is completed in a reasonable number of days.

(i) Not later than August 1 of each even-numbered year, the executive director shall issue a report to the governor, the Legislative Budget Board, and the relevant committees of the senate and the house of representatives on the state of the board's licensing process.

(j) The report required under Subsection (i) must include a projected yearly budget for board staffing and technology improvements that will allow the board to issue licenses within a reasonable number of days.

(k) The board and the executive director shall ensure that any change in licensing policies or procedures is made only to increase

the number of licenses issued under this chapter, reduce unreasonable delays in the licensing process, and maintain public safety.

(l) The report required under Subsection (i) must include:

(1) any specialty certification information collected from applicants, including any information similar to information collected under Section 154.006;

(2) the location where each applicant intends to practice; and

(3) in aggregate form, data collected since the prior report relating to felony convictions, Class A and Class B misdemeanor convictions, and deferred adjudications for felonies and Class A and Class B misdemeanors.

(m) Not later than August 31, 2008, the board shall ensure that the average time to process license applications under this chapter does not exceed 51 days. The board shall include the board's progress toward this performance measure target in the report required under Subsection (i).

(n) The board shall make an effort to give priority to an application submitted by an applicant who informs the board that the applicant intends to practice in a medically underserved area of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(f), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 2, eff. June 15, 2007.

Sec. 155.008. CRIMINAL RECORD CHECK. (a) The board shall submit to the Department of Public Safety a complete set of fingerprints of each license applicant, and the department shall classify and check the fingerprints against those in the department's fingerprint records. The department shall certify to the board its findings regarding the criminal record of the applicant or the applicant's lack of a criminal record.

(b) Each applicant shall submit information to the board detailing any conviction for a felony or a Class A or Class B misdemeanor or a deferred adjudication for a felony or Class A or

Class B misdemeanor for a violation relating to:

(1) Medicare, Medicaid or insurance fraud;

(2) the Texas Controlled Substances Act or intoxication or alcoholic beverage offenses;

(3) sexual or assaultive offenses; and

(4) tax fraud or evasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(b), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 3, eff. June 15, 2007.

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 7, eff. September 1, 2023.

Sec. 155.009. LIMITED LICENSE FOR PRACTICE OF ADMINISTRATIVE MEDICINE. (a) The board shall adopt rules for the issuance of a license that limits the license holder to the practice of administrative medicine. The board's rules under this section must include provisions for eligibility for the license, issuance and renewal of the license, the fees applicable to the license, continuing education requirements, and the scope of practice of a person who holds the license.

(b) An applicant for a license under this section must meet all of the requirements for issuance of a license under Section 155.002.

(c) A license holder under this section who seeks to practice medicine under an unrestricted license that is not limited to the practice of administrative medicine must provide proof to the board that the license holder has the clinical competence to practice medicine under that license and must meet all applicable eligibility requirements for that license. The board may require the license holder to pass any examination the board determines necessary.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.23, eff. September 1, 2005.

Sec. 155.011. EXPEDITED LICENSING PROCESS FOR CERTAIN OUT-OF-STATE APPLICANTS. The board by rule shall develop and implement an

expedited licensing process for an applicant who is considered to have satisfied the examination requirements of this chapter under Section 155.0561(d).

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 6, eff. September 1, 2019.

SUBCHAPTER B. LICENSE EXAMINATION

Sec. 155.051. EXAMINATION REQUIRED. (a) Except as provided by Subsection (b), an applicant for a license to practice medicine in this state must pass each part of an examination described by Section 155.0511(2), (3), (4), (6), or (7) within seven years.

(b) An applicant who is a graduate of a program designed to lead to both a doctor of philosophy degree and a doctor of medicine degree or doctor of osteopathy degree must pass each part of an examination described by Section 155.0511(2), (3), (4), (6), or (7) not later than the earlier of the second anniversary of the date the applicant completed all graduate medical training undertaken by the applicant, including internship, residency, and fellowship, or the 12th anniversary of the date the applicant began the graduate medical training.

(c) The time frame to pass each part of the examination described by Subsection (a) is extended to 10 years and the anniversary date to pass each part of the examination described by Subsection (b) is extended to the 10th anniversary if the applicant:

(1) is specialty board certified by a specialty board that:

(A) is a member of the American Board of Medical Specialties; or

(B) is a member of the Bureau of Osteopathic Specialists; or

(2) has been issued a faculty temporary license, as prescribed by board rule, and has practiced under such a license for a minimum of 12 months and, at the conclusion of the 12-month period, has been recommended to the board by the chief administrative officer and the president of the institution in which the applicant practiced under the faculty temporary license.

(d) The time frame to pass each part of the examination does not apply to an applicant who:

(1) is licensed and in good standing as a physician in

another state;

(2) has been licensed for at least five years;

(3) does not hold a medical license in the other state that has or has ever had any restrictions, disciplinary orders, or probation; and

(4) will practice in a medically underserved area or a health manpower shortage area, as those terms are defined by Section 157.052.

(e) The board may by rule establish a process to verify that a person, after meeting the requirements of Subsection (d), practices only in an area described by Subsection (d)(4).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(g), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 79 (S.B. 424), Sec. 1, eff. May 17, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1180 (S.B. 949), Sec. 2, eff. June 14, 2013.

Acts 2021, 87th Leg., R.S., Ch. 398 (S.B. 1414), Sec. 1, eff. June 7, 2021.

Sec. 155.0511. EXAMINATIONS ADMINISTERED OR ACCEPTED BY BOARD. The board may administer or accept the following examinations for licensing as determined by rule:

(1) a state board licensing examination;

(2) the Medical Council of Canada Examination (LMCC) or its successor;

(3) the National Board of Osteopathic Medical Examiners (NBOME) examination or its successor;

(4) the National Board of Medical Examiners (NBME) examination or its successor;

(5) the Federation Licensing Examination (FLEX) with a weighted average in one sitting before June 1985;

(6) the Federation Licensing Examination (FLEX) after May 1985;

(7) the United States Medical Licensing Examination (USMLE) or its successor;

(8) a combination of the examinations described by Subdivisions (3) and (6) as determined by board rule; or

(9) a combination of the examinations described by Subdivisions (4), (6), and (7) as determined by board rule.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(h), eff. Sept. 1, 2001.

Sec. 155.052. GENERAL EXAMINATION PROCEDURES. (a) Each examination administered to evaluate basic medical knowledge and clinical competency must be prepared by a national testing service or the board and validated by qualified independent testing professionals. The examination must be in writing and in English.

(b) A license examination must be entirely fair and impartial to all persons and to each school or system of medicine.

(c) An applicant who wishes to request reasonable accommodations due to a disability must submit the request on filing the application.

(d) The board by rule shall determine the passing grade for each examination used by the board.

(e) The board shall give each license applicant notice of the date and place of the examination, if administered by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(i), eff. Sept. 1, 2001.

Sec. 155.053. PUBLIC MEMBER PARTICIPATION IN EXAMINATION. (a) A public member of the board may not participate in the preparation of an examination used to examine the academic and professional credentials of a license applicant or to examine the applicant orally or in writing.

(b) Each public member shall be given notice of, and may be present at, each examination or deliberation concerning the results of an examination and may participate in the development and establishment of the procedures and criteria for each examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.054. EXAMINATION SUBJECTS. (a) Each license examination must include subjects generally taught by medical schools, a knowledge of which is commonly and generally required of each candidate for the degree of doctor of medicine or doctor of osteopathy conferred by schools in this state.

(b) The board shall administer the Texas medical jurisprudence examination to all applicants.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(j), eff. Sept. 1, 2001.

Sec. 155.055. NOTICE OF EXAMINATION RESULTS. The board shall notify each examinee of the results of a licensing examination not later than the 120th day after the date the examination is administered by the board. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 30th day after the date the board receives the results from the testing service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(k), eff. Sept. 1, 2001.

Sec. 155.056. EXAMINATION ATTEMPT LIMITS. (a) Except as otherwise provided by Subsection (a-1) and Section 155.0561, an applicant must pass each part of an examination within three attempts.

(a-1) The limit on the number of examination attempts under Subsection (a) does not apply to the Texas medical jurisprudence examination.

(b) The board shall adopt rules that prescribe how the limit on the number of examination attempts under Subsection (a) shall apply to an applicant who seeks a license and who attempts more than one type of examination.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 29, eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504

), Sec. 29, eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(l), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.24, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 796 (S.B. 36), Sec. 1, eff. June 15, 2007.
Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 2, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 7, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 29, eff. September 1, 2019.

Sec. 155.0561. EXCEPTIONS TO EXAMINATION ATTEMPT LIMITS FOR CERTAIN OUT-OF-STATE APPLICANTS. (a) In this section:
(1) "Active practice" means the practice of medicine by a person after successful completion of a residency, fellowship, or other supervised training program.
(2) "Full license" means a license to practice medicine that is not a training license, a permit, or any other form of authority to practice medicine issued to a person while the person is completing or enrolled in a residency, fellowship, or other supervised training program.
(b) This section applies only to an applicant who:
(1) has successfully completed a graduate medical education program approved by the board;
(2) holds a full license and is in good standing as a physician in another state or Canada;
(3) does not hold and has never held a medical license subject to any restriction, disciplinary order, or probation;
(4) is not and has never been the subject of a peer review that has resulted or may result in limitation, restriction, suspension, or other adverse impact on the applicant's hospital or other medical facility privileges; and
(5) is not under investigation by any licensing or law

enforcement agency.

(c) An applicant described by Subsection (b) who has held a full license and been in active practice for at least one year but less than five years and has passed within three attempts all but one part of the examination approved by the board is considered to have satisfied the examination requirements of this chapter if the applicant passed the remaining part of the examination within:

(1) one additional attempt; or

(2) three additional attempts, if the applicant is specialty board certified by a specialty board that is:

(A) a member of the American Board of Medical Specialties; or

(B) approved by the American Osteopathic Association.

(d) An applicant described by Subsection (b) who has held a full license and been in active practice for at least five years is considered to have satisfied the examination requirements of this chapter regardless of the type of examination the applicant passed or the number of attempts within which the applicant passed the examination or any part of the examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 8, eff. September 1, 2019.

Sec. 155.057. PRESERVATION OF EXAMINATION MATERIALS. The board shall preserve all examination questions, answers, and grades as directed by board rule until the first anniversary of the date of the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(m), eff. Sept. 1, 2001.

Sec. 155.058. APPLICATION OF OPEN RECORDS AND OPEN MEETINGS LAW TO EXAMINATION PROCEDURES. (a) The following are exempt from Chapters 551 and 552, Government Code:

(1) examination questions that may be used in the future;

(2) examinations; and

(3) deliberations and records relating to the professional character and fitness of applicants.

(b) Subsection (a)(2) does not prohibit the board from providing an examination to an applicant who has taken that examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(n), eff. Sept. 1, 2001.

SUBCHAPTER C. CERTAIN TEMPORARY OR LIMITED LICENSES OR PERMITS

Sec. 155.101. PROVISIONAL LICENSE TO PRACTICE IN CERTAIN AREAS. (a) On application, the board shall grant a provisional license to practice medicine in a location described by Subsection (e) to an applicant for a license under this subtitle who is licensed in good standing as a physician in another state.

(b) The board may not grant a provisional license under this section to an applicant who:

(1) has had a medical license suspended or revoked by another state or a Canadian province; or

(2) holds a medical license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order.

(c) The provisional license applicant must:

(1) have passed a national or other examination recognized by the board relating to the practice of medicine within the number of attempts allowed under Section 155.056;

(2) submit information to enable the board to conduct a criminal background check as required by the board; and

(3) be sponsored by a person licensed under this subtitle with whom the provisional license holder may practice under this section.

(d) The board may excuse an applicant for a provisional license from the requirement of Subsection (c)(3) if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(e) A person who holds a provisional license issued under this section may only practice medicine in a location:

(1) designated by the federal government as a health professional shortage area; or

(2) designated by the federal or state government as a

medically underserved area.

(f) A provisional license expires on the earlier of:

(1) the date the board issues the provisional license holder a license under this subtitle or denies the provisional license holder's application for a license; or

(2) the 270th day after the date the provisional license was issued.

(g) The board shall issue a license under this subtitle to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 155.051; and

(2) the provisional license holder satisfies all other license requirements under this subtitle.

Added by Acts 2009, 81st Leg., R.S., Ch. 463 (S.B. 202), Sec. 1, eff. September 1, 2009.

Sec. 155.1025. EXPEDITED PROCESS FOR CERTAIN APPLICANTS. (a) The board shall adopt rules for expediting any application for a license under this subtitle made by a person who submits an affidavit with the application stating that:

(1) the applicant intends to practice in a rural community; or

(2) the applicant intends to practice medicine in a medically underserved area or health professional shortage area, designated by the United States Department of Health and Human Services, that has a current shortage of physicians.

(b) The board shall notify the Texas Department of Health on receipt of an application for expedited processing under Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1293, Sec. 1, eff. June 16, 2001. Amended by Acts 2003, 78th Leg., ch. 143, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 609, Sec. 17, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 9.006(o), eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 5, eff. June 15, 2007.

Sec. 155.103. MILITARY LIMITED VOLUNTEER LICENSE. (a) The board shall adopt rules relating to the issuance of a military limited volunteer license under this section.

(b) The board may issue a military limited volunteer license to practice medicine to an applicant who:

(1) is licensed and in good standing, or was licensed and retired in good standing, as a physician in another state;

(2) is or was authorized as a physician to treat personnel enlisted in a branch of the United States armed forces or veterans; and

(3) meets any other requirement prescribed by board rule.

(c) The board may not issue a license under this section to an applicant who:

(1) holds a medical license that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction;

(2) holds a license to prescribe, dispense, administer, supply, or sell a controlled substance that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction; or

(3) has been convicted of, is on deferred adjudication community supervision or deferred disposition for, or is under active investigation for the commission of:

(A) a felony; or

(B) a misdemeanor involving moral turpitude.

(d) A physician may practice medicine under a license issued under this section only at a clinic that primarily treats indigent patients. The physician may not receive compensation for medical services rendered at the clinic.

(e) A military limited volunteer license holder is subject to board rules, including rules regarding disciplinary action, license registration and renewal, and continuing medical education.

Added by Acts 2013, 83rd Leg., R.S., Ch. 185 (S.B. 61), Sec. 2, eff. September 1, 2013.

Sec. 155.104. TEMPORARY LICENSES. (a) The board may adopt

rules and set fees relating to granting temporary licenses and extending the expiration dates of temporary licenses. The board by rule shall set a time limit for the term of a temporary license.

(b) The board may issue a faculty temporary license to practice medicine to a physician as provided by this section. The physician:

(1) must hold a current medical license that is unrestricted and not subject to a disciplinary order or probation in another state or a Canadian province or have completed at least three years of postgraduate residency;

(2) may not hold a medical license in another state or a Canadian province that has any restrictions, disciplinary orders, or probation;

(3) must pass the Texas medical jurisprudence examination; and

(4) must hold a salaried faculty position equivalent to at least the level of assistant professor and be working full-time at one of the following institutions:

(A) The University of Texas Medical Branch at Galveston;

(B) The University of Texas Southwestern Medical Center;

(C) The University of Texas Health Science Center at Houston;

(D) The University of Texas Health Science Center at San Antonio;

(E) The University of Texas Health Center at Tyler;

(F) The University of Texas M. D. Anderson Cancer Center;

(G) Texas A&M University College of Medicine;

(H) the Schools of Medicine at Texas Tech University Health Sciences Center;

(I) Baylor College of Medicine;

(J) the University of North Texas Health Science Center at Fort Worth;

(K) an institutional sponsor of a graduate medical education program accredited by the Accreditation Council for Graduate Medical Education; or

(L) a nonprofit health corporation certified under Section 162.001 and affiliated with a program described by Paragraph (K).

(c) A physician is eligible for a temporary license under Subsection (b) if the physician holds a faculty position of at least the level of assistant professor and works at least part-time at an institution listed in Subsection (b)(4) and:

(1) the physician is on active duty in the United States armed forces; and

(2) the physician's practice under the temporary license will fulfill critical needs of the citizens of this state.

(d) A physician who is issued a temporary license under Subsection (b) must sign an oath on a form prescribed by the board swearing that the physician:

(1) has read and is familiar with this subtitle and board rules;

(2) will abide by the requirements of this subtitle and board rules while practicing under the physician's temporary license; and

(3) will be subject to the disciplinary procedures of the board.

(e) A physician holding a temporary license under Subsection (b) and the physician's institution must file affidavits with the board affirming acceptance of the terms and limits imposed by the board on the medical activities of the physician.

(f) A temporary license issued under Subsection (b) is valid for one year.

(g) The holder of a temporary license issued under Subsection (b) is limited to the teaching confines of the applying institution as a part of the physician's duties and responsibilities assigned by the institution and may not practice medicine outside of the setting of the institution or an affiliate of the institution. The physician may participate in the full activities of the department of any hospital for which the physician's institution has full responsibility for clinical, patient care, and teaching activities.

(h) The application for a temporary license under Subsection (b) must be made by the chairman of the department of the institution in which the physician teaches, or the person holding the equivalent position at the institution where the physician teaches, and must contain the information and documentation requested by the department. The application must be endorsed by the dean of the medical school or the president of the institution.

(i) Three years in a teaching faculty position at an

institution listed in Subsection (b)(4) may be treated as equivalent to three years of an approved postgraduate residency program if, at the conclusion of the three-year period, the physician presents recommendations on the physician's behalf from the chief administrative officer and the president of the institution.

(j) A physician who holds a temporary license issued under Subsection (b) and who wishes to receive a permanent unrestricted license must meet the requirements for issuance of a permanent unrestricted license, including any examination requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.028(b), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.25, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 792 (S.B. 1225), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 179 (H.B. 1844), Sec. 16, eff. September 1, 2013.

Sec. 155.105. PHYSICIAN-IN-TRAINING PERMIT. (a) The board as provided by board rule may issue a physician-in-training permit to a physician not otherwise licensed by the board who is participating in a graduate medical education training program approved by the board.

(b) A physician-in-training permit does not authorize the performance of a medical act by the permit holder unless the act is performed:

(1) as a part of the graduate medical education training program; and

(2) under the supervision of a physician.

(c) The board has jurisdiction to discipline a permit holder whose permit has expired if the violation of the law occurred during the time the permit was valid. If an investigation is open when the permit expires, the permit shall be executory and the board may retain jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(o), eff. Sept. 1, 2001.

Sec. 155.106. CERTIFICATION OF LICENSE TO OTHER STATES. On the request of a license holder, the board shall issue a certificate that endorses the license issued by the board to other states. The board shall charge a fee for the issuance of the certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.107. CERTIFICATION OF EXAMINATION GRADES. On the request of a license holder, the board shall issue certification of state board examination grades to the Federation of State Medical Boards of the United States. The board shall charge a reasonable fee for the issuance.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.023(c), eff. Sept. 1, 2001.

SUBCHAPTER D. ISSUANCE OF NEW OR DUPLICATE LICENSE

Sec. 155.151. DUPLICATE LICENSE. (a) If a license issued under this subtitle is lost or destroyed, the license holder may apply to the board for a duplicate license. The application must be on a form prescribed by the board, accompanied by an affidavit of the loss or destruction that states that the applicant is the person to whom the license was issued and other information concerning the loss or destruction of the license as required by the board.

(b) On payment of a fee set by the board, the board shall issue a duplicate license to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 155.152. ISSUANCE OF NEW LICENSE ON CHANGE OF NAME. The board may issue a new license to a license holder if the license holder changes the license holder's name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 156. REGISTRATION OF PHYSICIANS
SUBCHAPTER A. RENEWAL AND REGISTRATION

Sec. 156.001. REGISTRATION REQUIREMENTS AND PROCEDURES. (a) Each person licensed to practice medicine in this state must register with the board every two years. The initial registration permit shall be issued with the license. The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) Except as provided by Section 156.002, the application for registration must be accompanied by a registration permit fee in an amount set by the board regardless of whether the person is practicing medicine in this state.

(c) A license holder may renew the registration permit by submitting to the board, on or before the expiration date of the registration permit, the required renewal application and registration renewal fee. Each registration permit renewal application must include:

(1) the license holder's name, mailing address, and, if one is available, address for receipt of electronic mail;

(2) the primary place at which the license holder is engaged in the practice of medicine; and

(3) other necessary information as prescribed by board rule.

(d) If the license holder is licensed to practice medicine by another state or country or by the uniformed services of the United States, the registration renewal application must include a description of any investigation the license holder knows is in progress and any sanction imposed by or disciplinary matter pending in the state, country, or service regarding the license holder.

(e) In addition to the information required by Subsection (c), a license holder shall submit to the board with the registration permit renewal application information not reported on a license application or a previous permit renewal application relating to a felony conviction, a conviction for a Class A or Class B misdemeanor, or a deferred adjudication for a felony offense or Class A or Class B misdemeanor offense for:

(1) Medicare, Medicaid or insurance fraud;

(2) the Texas Controlled Substances Act or intoxication or alcoholic beverage offenses;

(3) sexual or assaultive offenses; and

(4) tax fraud or evasion.

(f) The board may not adopt a rule requiring maintenance of certification by a license holder for the license holder to be eligible for an initial or renewal registration permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(p), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 12, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.26, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 880 (H.B. 1973), Sec. 4, eff. June 15, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1121 (S.B. 1148), Sec. 5, eff. January 1, 2018.

Sec. 156.0015. CRIMINAL RECORD CHECK. (a) In addition to the information required by Section 156.001, a license holder shall submit to the board with the registration permit renewal application a complete set of fingerprints. The board shall submit to the Department of Public Safety each set of fingerprints received under this section for the purpose of completing the criminal record check described by Section 155.008.

(b) The board may suspend or refuse to renew the registration of a license holder who fails to submit a complete set of fingerprints under this section.

(c) This section does not apply to a license holder who previously submitted a complete set of fingerprints:

(1) as part of an application for a license; or

(2) as part of a previous application to renew a registration permit under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 8, eff. September 1, 2023.

Sec. 156.002. EXEMPTION FOR CERTAIN PHYSICIANS. (a) The board by rule may exempt a retired physician from the registration permit fee requirement.

(b) A physician licensed by the board whose only practice is voluntary charity care, as defined by board rule, is exempt from the

registration permit fee requirement.

(c) A retired physician whose only practice is voluntary medical care for a disaster relief organization is exempt from the registration permit fee requirement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(q), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 13, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 246 (H.B. 655), Sec. 4, eff. May 30, 2005.

Acts 2005, 79th Leg., Ch. 1096 (H.B. 2158), Sec. 1, eff. September 1, 2005.

Sec. 156.003. STAGGERED RENEWAL SYSTEM. (a) The board by rule may adopt a system under which registration permits expire on various dates during the two-year registration period.

(b) For the registration period in which the expiration date is changed, registration permit fees shall be prorated. On renewal of the registration on the new expiration date, the total registration permit fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(r), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 14, eff. June 10, 2003.

Sec. 156.004. NOTICE OF EXPIRATION. (a) At least 60 days before the date on which a physician's registration permit expires, the board shall send to each physician at the physician's last known address according to the board's records:

(1) a registration permit renewal application notice; and

(2) a renewal notice for the physician's registration with the Department of Public Safety under Subchapter C, Chapter 481, Health and Safety Code.

(b) The board shall provide for a 30-day grace period for renewing the registration permit from the date of the expiration of the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(s), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 15, eff. June 10, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 6, eff. January 1, 2014.

Sec. 156.005. RENEWAL OF CERTAIN REGISTRATION PERMITS. (a) If a person's registration permit has been expired for 90 days or less, the person may renew the permit by submitting to the board the required registration renewal application, the registration renewal fee, and a $75 penalty fee.

(b) If the person's registration permit has been expired for longer than 90 days but less than one year, the person may renew the permit by submitting to the board the required registration renewal application, the registration renewal fee, and a $150 penalty fee.

(c) If the person's registration permit has been expired for one year or longer, the person's license is automatically canceled, unless an investigation is pending, and the person may not renew the registration permit.

(d) A physician whose license is automatically canceled may obtain a new license by complying with the requirements, fees, and procedures for obtaining a new license. The board may issue a new license without examination to a person whose license is automatically canceled for less than two years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(t), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 16, eff. June 10, 2003.

Sec. 156.006. EMERGENCY CONTACT INFORMATION. (a) Each license holder shall submit to the board telephone numbers, fax numbers, and e-mail addresses, if available and as appropriate, that the board may use to contact the license holder in an emergency.

(b) A license holder who receives an initial registration permit shall provide the information required under Subsection (a) not later than the 30th day after the date the permit is issued. Each license holder who applies to renew a registration permit shall submit the information required under Subsection (a) with the renewal

application.

(c) A license holder shall report to the board any change in the information required under Subsection (a) not later than the 45th day after the date of the change.

(d) The information provided by a license holder under this section is confidential and is not subject to disclosure under Chapter 552, Government Code. The board may not publish, release, or make available information provided by a license holder under this section except as provided by Subsection (e).

(e) In the event of a public health emergency declared or invoked by the governor, the Department of State Health Services, or a federal agency, the board may publish, release, or make available information provided by a license holder under this section for the sole purpose of disseminating information to:

(1) a license holder;

(2) a designated city, county, state, or federal public health or emergency management official; or

(3) the Federation of State Medical Boards.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 1, eff. September 1, 2009.

Sec. 156.007. ISSUANCE OF REGISTRATION PERMIT. (a) On receipt of a registration renewal application and all required fees, the board, after ascertaining from the records of the board or from other sources considered reliable by the board that the applicant is a physician in this state and meets all other requirements for registration, shall issue to the applicant a registration permit certifying that the applicant has filed the application, has paid the registration permit fee for the registration period, and has completed the requirements for registration.

(b) The filing of the registration renewal application, the payment of the required fees, and the issuance of the permit do not entitle the permit holder to practice medicine in this state unless:

(1) the permit holder has been previously licensed as a physician by the board, as prescribed by law;

(2) the license to practice medicine is in effect;

(3) the permit holder has met the continuing medical education requirements; and

(4) the permit holder has submitted a current complete physician profile.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.027(u), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 17, eff. June 10, 2003.

Sec. 156.008. PRACTICING MEDICINE WITHOUT REGISTRATION PROHIBITED. (a) Practicing medicine after the expiration of the 30-day grace period under Section 156.004 following expiration of a registration permit that has not been renewed for the current registration period as provided by this subchapter has the same effect as, and is subject to all penalties of, practicing medicine without a license.

(b) In a prosecution for the unlawful practice of medicine, the receipt showing payment of the registration fee required by this chapter does not constitute evidence that the receipt holder is lawfully entitled to practice medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 753, Sec. 1, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 18, eff. June 10, 2003.

Sec. 156.009. INACTIVE STATUS. The board may adopt rules and set reasonable fees relating to placing license holders on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 19, eff. June 10, 2003.

Sec. 156.010. REFUSAL FOR VIOLATION OF BOARD ORDER. The board may refuse to renew a registration permit issued under this chapter if the license holder is in violation of a board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 3, eff. September 1, 2017.

SUBCHAPTER B. CONTINUING MEDICAL EDUCATION REQUIREMENTS

Sec. 156.051. REPORTING PROGRAM; RULES; EXEMPTION. (a) The board by rule shall adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. The board shall adopt and administer rules that:

(1) establish the number of hours of continuing medical education the board determines appropriate as a prerequisite to the registration of a license under this subtitle;

(2) require at least one-half of the hours of continuing medical education established under Subdivision (1) to be board approved; and

(3) adopt a process to assess a license holder's participation in continuing medical education courses.

(b) In approving continuing medical education hours under Subsection (a)(2), the board shall consider the standards of:

(1) the American Medical Association adopted by that association for its Physician's Recognition Award; or

(2) the American Osteopathic Association.

(c) The board shall permit the hours that are not subject to board approval under Subsection (a)(2) to consist of self-study or equivalent self-directed continuing medical education according to guidelines determined by the board.

(d) This section does not apply to a license holder who is exempt by rule from paying the registration fee under Section 156.002(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 20, eff. June 10, 2003.

Sec. 156.052. PRESUMPTION OF COMPLIANCE FOR CERTAIN LICENSE HOLDERS. A license holder is presumed to be in compliance with the requirements of this subchapter if, during the 36 months preceding the date of the required registration, the license holder becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties or the American Osteopathic Association Bureau of Osteopathic Specialists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 21, eff. June 10, 2003.

Sec. 156.053. TEMPORARY EXEMPTION. (a) The board may temporarily exempt a license holder from the continuing medical education requirement on the basis of:

(1) catastrophic illness;

(2) military service outside this state for longer than one year;

(3) medical practice and residence outside the United States for longer than one year; or

(4) good cause shown on the written application of the license holder that provides evidence satisfactory to the board that the license holder is unable to comply with the requirement.

(b) A temporary exemption granted under Subsection (a) may not exceed one year but may be renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 22, eff. June 10, 2003.

Sec. 156.054. AUTHORITY OF BOARD TO REQUIRE ADDITIONAL HOURS. This subchapter does not prevent the board from taking disciplinary action with respect to a license holder or license applicant by requiring additional hours of continuing medical education, including education in specific course subjects.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 156.055. CONTINUING EDUCATION IN PAIN MANAGEMENT AND PRESCRIPTION OF OPIOIDS. (a) A physician licensed under this subtitle who submits an application for renewal of a license that designates a direct patient care practice must complete, in accordance with this section, not less than two hours of continuing medical education regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding:

(1) reasonable standards of care;

(2) the identification of drug-seeking behavior in patients; and

(3) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(b) A physician must complete the hours required by Subsection

(a) in each of the first two renewal periods following the issuance of the physician's initial registration permit under this chapter, with two of those hours to be completed not later than the first anniversary of the date of issuance.

(c) After the period described by Subsection (b), a physician must complete not less than two hours of continuing medical education described by Subsection (a) every eight years.

(d) The hours required by this section may be completed in any continuing medical education activity approved by the board, including medical ethics or professional responsibility education, and may be counted toward the hours of continuing medical education completed to comply with Section 156.051(a)(2).

(e) The hours required by this section may not be used to satisfy any education required by board rule for certified pain clinic personnel.

(f) The board shall adopt rules to implement this section.

(g) Notwithstanding Subsections (b) and (c), a physician who on January 1, 2021, holds a license to practice medicine under this subtitle shall complete not less than two hours of continuing medical education described by Subsection (a) in each of the two renewal periods occurring after that date. This subsection expires January 1, 2026.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 818 (H.B. 2454), Sec. 1, eff. September 1, 2019.

Sec. 156.056. CERTAIN VOLUNTEER SERVICES. (a) In this section, "practice serving a medically underserved population" has the meaning assigned by Section 157.051.

(b) The board by rule shall permit a license holder to complete half of any informal continuing medical education hours required under this subchapter by providing volunteer medical services at a practice serving a medically underserved population other than a site that is a primary practice site of the license holder.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.029(a), eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 10, eff. November 1, 2013.

Sec. 156.057. CONTINUING EDUCATION IN FORENSIC EVIDENCE COLLECTION. (a) A physician licensed under this subtitle who submits an application for renewal of a license to practice medicine and whose practice includes treating patients in an emergency room setting may complete two hours of continuing medical education relating to forensic evidence.

(b) The board shall adopt rules to establish the content of continuing medical education relating to forensic evidence collection. The board may adopt other rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 782 (S.B. 39), Sec. 1, eff. September 1, 2005.

Sec. 156.059. CONTINUING EDUCATION IN TICK-BORNE DISEASES. (a) A physician licensed under this subtitle who submits an application for renewal of a license to practice medicine and whose practice includes the treatment of tick-borne diseases is encouraged to include continuing medical education in the treatment of tick-borne diseases among the hours of continuing medical education completed for purposes of rules adopted under Section 156.051(a)(2).

(b) The board shall adopt rules to establish the content of and approval requirements for continuing medical education relating to the treatment of tick-borne diseases. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide for the identification and approval of accredited continuing medical education courses that represent an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases.

(c) If relevant, the board shall consider a physician's participation in a continuing medical education course approved under Subsection (b) if:

(1) the physician is being investigated by the board regarding the physician's selection of clinical care for the

treatment of tick-borne diseases; and

(2) the physician completed the course not more than two years before the start of the investigation.

(d) The board may adopt other rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1092 (S.B. 1360), Sec. 2, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1306 (H.B. 2975), Sec. 2, eff. September 1, 2011.

Sec. 156.060. CONTINUING EDUCATION REGARDING THE IDENTIFICATION AND ASSISTANCE OF TRAFFICKED PERSONS. (a) This section applies only to a physician who designates a direct patient care practice on an application for renewal of a registration permit.

(b) A physician licensed under this subtitle who submits an application for renewal of a registration permit must complete at least one hour of continuing medical education under this section regarding the identification and assistance of trafficked persons:

(1) in the first renewal period following the issuance of the physician's initial registration permit under this chapter; and

(2) if the board approves more than one course under Subsection (d), at least once in every third renewal period following the renewal period described by Subdivision (1).

(c) The hours required by Subsection (b):

(1) must be designated by the board as medical ethics or professional responsibility education; and

(2) may be counted toward the hours of continuing medical education required by Section 156.051(a)(2).

(d) The board shall adopt rules to implement this section, including rules to establish the content of and approval requirements for continuing medical education relating to the identification and assistance of trafficked persons. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide for the identification and approval of accredited continuing medical education courses that represent an appropriate spectrum of relevant information relating to the identification and assistance of trafficked persons.

(e) A physician may satisfy the requirement of Subsection

(b)(1) by completing at least one hour of a training course approved by the executive commissioner of the Health and Human Services Commission under Section 116.002. This subsection expires September 1, 2025.

(f) Notwithstanding Subsection (b), a physician who on September 1, 2023, holds a license to practice medicine under this subtitle shall complete at least one hour of continuing medical education under this section regarding the identification and assistance of trafficked persons. This subsection expires January 1, 2024.

Added by Acts 2019, 86th Leg., R.S., Ch. 796 (H.B. 2059), Sec. 2, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 70 (S.B. 415), Sec. 1, eff. September 1, 2023.

CHAPTER 157. AUTHORITY OF PHYSICIAN TO DELEGATE CERTAIN MEDICAL ACTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 157.001. GENERAL AUTHORITY OF PHYSICIAN TO DELEGATE. (a) A physician may delegate to a qualified and properly trained person acting under the physician's supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician:

(1) the act:

(A) can be properly and safely performed by the person to whom the medical act is delegated;

(B) is performed in its customary manner; and

(C) is not in violation of any other statute; and

(2) the person to whom the delegation is made does not represent to the public that the person is authorized to practice medicine.

(b) The delegating physician remains responsible for the medical acts of the person performing the delegated medical acts.

(c) The board may determine whether:

(1) an act constitutes the practice of medicine, not inconsistent with this chapter; and

(2) a medical act may be properly or safely delegated by

physicians.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.002. GENERAL DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS. (a) In this section:

(1) "Administering" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or any other means.

(2) "Provision" means the supply of one or more unit doses of a drug, medicine, or dangerous drug.

(b) A physician may delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs in the physician's office, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration or provision of the dangerous drugs must be performed in compliance with laws relating to the practice of medicine and state and federal laws relating to those dangerous drugs.

(c) A physician may also delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs through a facility licensed by the Texas State Board of Pharmacy, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration of those dangerous drugs must be in compliance with laws relating to the practice of medicine, professional nursing, and pharmacy and state and federal drug laws. The provision of those dangerous drugs must be in compliance with:

(1) laws relating to the practice of medicine, professional nursing, and pharmacy;

(2) state and federal drug laws; and

(3) rules adopted by the Texas State Board of Pharmacy.

(d) In the provision of services and the administration of therapy by public health departments, as officially prescribed by the Texas Department of Health for the prevention or treatment of specific communicable diseases or health conditions for which the Texas Department of Health is responsible for control under state law, a physician may delegate to any qualified and properly trained

person acting under the physician's supervision the act of administering or providing dangerous drugs, as ordered by the physician, that are used or required to meet the needs of the patients. The provision of those dangerous drugs must be in compliance with laws relating to the practice of medicine, professional nursing, and pharmacy. An order for the prevention or treatment of a specific communicable disease or health condition for which the Texas Department of Health is responsible for control under state law may not be inconsistent with this chapter and may not be used to perform an act or duty that requires the exercise of independent medical judgment.

(e) The administration or provision of the drugs may be delegated through a physician's order, a standing medical order, a standing delegation order, or another order defined by the board.

(f) Subsections (b) and (c) do not authorize a physician or a person acting under the supervision of a physician to keep a pharmacy, advertised or otherwise, for the retail sale of dangerous drugs, other than as authorized under Section 158.003, without complying with the applicable laws relating to the dangerous drugs.

(g) A drug or medicine provided under Subsection (b) or (c) must be supplied in a suitable container labeled in compliance with applicable drug laws. A qualified and trained person, acting under the supervision of a physician, may specify at the time of the provision of the drug the inclusion on the container of the date of the provision and the patient's name and address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.003. EMERGENCY CARE. The authority to delegate medical acts to a properly qualified person as provided by this subchapter applies to emergency care provided by emergency medical personnel certified by the Texas Department of Health.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.004. DELEGATION REGARDING CERTAIN CARE FOR NEWBORNS; LIABILITY. (a) It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of the children of this

state.

(b) The authority to delegate medical acts to a midwife under Chapter 203 applies to the possession and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.

(c) A physician who issues a standing delegation order to a midwife under Chapter 203 is not liable in connection with an act performed under that standing delegation order if the midwife provides proof of licensure under that chapter before the order is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 53, eff. September 1, 2005.

Sec. 157.005. PERFORMANCE OF DELEGATED ACT NOT PRACTICING WITHOUT MEDICAL LICENSE. A person to whom a physician delegates the performance of a medical act is not considered to be practicing medicine without a license by performing the medical act unless the person acts with knowledge that the delegation and the action taken under the delegation is a violation of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.006. LIMITATION ON BOARD RULES REGARDING DELEGATION. The board shall promote a physician's exercise of professional judgment to decide which medical acts may be safely delegated by not adopting rules containing, except as absolutely necessary, global prohibitions or restrictions on the delegation of medical acts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.007. APPLICABILITY OF OTHER LAWS. An act delegated by a physician under this chapter must comply with other applicable laws.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. DELEGATION TO ADVANCED PRACTICE REGISTERED NURSES AND PHYSICIAN ASSISTANTS

Sec. 157.051. DEFINITIONS. In this subchapter:

(1) "Advanced practice registered nurse" has the meaning assigned to that term by Section 301.152. The term includes an advanced nurse practitioner and advanced practice nurse.

(2) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(3) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(4) "Device" has the meaning assigned by Section 551.003, and includes durable medical equipment.

(5) "Health professional shortage area" means:

(A) an urban or rural area of this state that:

(i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;

(ii) the secretary of health and human services determines has a health professional shortage; and

(iii) is not reasonably accessible to an adequately served area;

(B) a population group that the secretary of health and human services determines has a health professional shortage; or

(C) a public or nonprofit private medical facility or other facility that the secretary of health and human services determines has a health professional shortage, as described by 42 U.S.C. Section 254e(a)(1).

(6) "Hospital" means a facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by Section 241.003, Health and Safety Code, including a hospital maintained or operated by the state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(7) "Medication order" has the meanings assigned by Section 551.003 of this code and Section 481.002, Health and Safety Code.

(8) "Nonprescription drug" has the meaning assigned by Section 551.003.

(9) "Physician assistant" means a person who holds a

license issued under Chapter 204.

(10) "Physician group practice" means an entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:

(A) owned and operated by two or more physicians; or

(B) a freestanding clinic, center, or office of a nonprofit health organization certified by the board under Section 162.001(b) that complies with the requirements of Chapter 162.

(11) "Practice serving a medically underserved population" means:

(A) a practice in a health professional shortage area;

(B) a clinic designated as a rural health clinic under 42 U.S.C. Section 1395x(aa);

(C) a public health clinic or a family planning clinic under contract with the Health and Human Services Commission or the Department of State Health Services;

(D) a clinic designated as a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B);

(E) a county, state, or federal correctional facility;

(F) a practice:

(i) that either:

(a) is located in an area in which the Department of State Health Services determines there is an insufficient number of physicians providing services to eligible clients of federally, state, or locally funded health care programs; or

(b) is a practice that the Department of State Health Services determines serves a disproportionate number of clients eligible to participate in federally, state, or locally funded health care programs; and

(ii) for which the Department of State Health Services publishes notice of the department's determination in the Texas Register and provides an opportunity for public comment in the manner provided for a proposed rule under Chapter 2001, Government Code; or

(G) a practice at which a physician was delegating prescriptive authority to an advanced practice registered nurse or physician assistant on or before March 1, 2013, based on the practice qualifying as a site serving a medically underserved population.

(12) "Prescribe or order a drug or device" means

prescribing or ordering a drug or device, including the issuing of a prescription drug order or a medication order.

(13) "Prescription drug" has the meaning assigned by Section 551.003.

(14) "Prescriptive authority agreement" means an agreement entered into by a physician and an advanced practice registered nurse or physician assistant through which the physician delegates to the advanced practice registered nurse or physician assistant the act of prescribing or ordering a drug or device.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 88, Sec. 1, eff. May 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.27, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 2, eff. November 1, 2013.

Sec. 157.0511. DELEGATION OF PRESCRIBING AND ORDERING DRUGS AND DEVICES. (a) A physician's authority to delegate the prescribing or ordering of a drug or device under this subchapter is limited to:

(1) nonprescription drugs;

(2) dangerous drugs; and

(3) controlled substances to the extent provided by Subsections (b) and (b-1).

(b) Except as provided by Subsection (b-1), a physician may delegate the prescribing or ordering of a controlled substance only if:

(1) the prescription is for a controlled substance listed in Schedule III, IV, or V as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code;

(2) the prescription, including a refill of the prescription, is for a period not to exceed 90 days;

(3) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and

(4) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the

delegating physician and the consultation is noted in the patient's chart.

(b-1) A physician may delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, only:

(1) in a hospital facility-based practice under Section 157.054, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws to ensure patient safety, and as part of the care provided to a patient who:

(A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or

(B) is receiving services in the emergency department of the hospital; or

(2) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

(b-2) The board shall adopt rules that require a physician who delegates the prescribing or ordering of a drug or device to register with the board the name and license number of the physician assistant or advanced practice registered nurse to whom a delegation is made. The board may develop and use an electronic online delegation registration process for registration under this subsection.

(c) This subchapter does not modify the authority granted by law for a licensed registered nurse or physician assistant to administer or provide a medication, including a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, that is authorized by a physician under a physician's order, standing medical order, standing delegation order, or protocol.

Added by Acts 2003, 78th Leg., ch. 88, Sec. 2, eff. May 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.28, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 746 (S.B. 532), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 3, eff. November 1, 2013.

Sec. 157.0512. PRESCRIPTIVE AUTHORITY AGREEMENT. (a) A physician may delegate to an advanced practice registered nurse or physician assistant, acting under adequate physician supervision, the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advanced practice registered nurse or physician assistant, as applicable.

(b) A physician and an advanced practice registered nurse or physician assistant are eligible to enter into or be parties to a prescriptive authority agreement only if:

(1) if applicable, the Texas Board of Nursing has approved the advanced practice registered nurse's authority to prescribe or order a drug or device as authorized under this subchapter;

(2) the advanced practice registered nurse or physician assistant:

(A) holds an active license to practice in this state as an advanced practice registered nurse or physician assistant, as applicable, and is in good standing in this state; and

(B) is not currently prohibited by the Texas Board of Nursing or the Texas Physician Assistant Board, as applicable, from executing a prescriptive authority agreement; and

(3) before executing the prescriptive authority agreement, the physician and the advanced practice registered nurse or physician assistant disclose to the other prospective party to the agreement any prior disciplinary action by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, as applicable.

(c) Except as provided by Subsection (d), the combined number of advanced practice registered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement may not exceed seven advanced practice registered nurses and physician assistants or the full-time equivalent of seven advanced practice registered nurses and physician assistants.

(d) Subsection (c) does not apply to a prescriptive authority agreement if the prescriptive authority is being exercised in:

(1) a practice serving a medically underserved population; or

(2) a facility-based practice in a hospital under Section 157.054.

(e) A prescriptive authority agreement must, at a minimum:

(1) be in writing and signed and dated by the parties to the agreement;

(2) state the name, address, and all professional license numbers of the parties to the agreement;

(3) state the nature of the practice, practice locations, or practice settings;

(4) identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed;

(5) provide a general plan for addressing consultation and referral;

(6) provide a plan for addressing patient emergencies;

(7) state the general process for communication and the sharing of information between the physician and the advanced practice registered nurse or physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients;

(8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:

(A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of this subchapter; and

(B) participate in the prescriptive authority quality assurance and improvement plan meetings required under this section; and

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that include the following:

(A) chart review, with the number of charts to be reviewed determined by the physician and advanced practice registered nurse or physician assistant; and

(B) periodic meetings between the advanced practice registered nurse or physician assistant and the physician.

(f) The periodic meetings described by Subsection (e)(9)(B) must:

(1) include:

(A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and

(B) discussion of patient care improvement;

(2) be documented; and

(3) take place at least once a month in a manner determined by the physician and the advanced practice registered nurse or physician assistant.

(f-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 38 (H.B. 278), Sec. 2, eff. September 1, 2019.

(g) The prescriptive authority agreement may include other provisions agreed to by the physician and advanced practice registered nurse or physician assistant.

(h) If the parties to the prescriptive authority agreement practice in a physician group practice, the physician may appoint one or more alternate supervising physicians designated under Subsection (e)(8), if any, to conduct and document the quality assurance meetings in accordance with the requirements of this subchapter.

(i) The prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific condition, disease, or symptom.

(j) A physician, advanced practice registered nurse, or physician assistant who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(k) A party to a prescriptive authority agreement may not by contract waive, void, or nullify any provision of this section or Section 157.0513.

(l) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(m) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement and any amendments must be made available to the board, the Texas Board of Nursing, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of request, if any.

(n) The prescriptive authority agreement should promote the exercise of professional judgment by the advanced practice registered nurse or physician assistant commensurate with the advanced practice registered nurse's or physician assistant's education and experience and the relationship between the advanced practice registered nurse or physician assistant and the physician.

(o) This section shall be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of advanced practice registered nurses and physician assistants.

(p) The board may not adopt rules pertaining to the elements of a prescriptive authority agreement that would impose requirements in addition to the requirements under this section. The board may adopt other rules relating to physician delegation under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 4, eff. November 1, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 38 (H.B. 278), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 38 (H.B. 278), Sec. 2, eff. September 1, 2019.

Sec. 157.0513. PRESCRIPTIVE AUTHORITY AGREEMENT: INFORMATION. (a) The board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop a process:

(1) to exchange information regarding the names, locations, and license numbers of each physician, advanced practice registered nurse, and physician assistant who has entered into a prescriptive authority agreement;

(2) by which each board shall immediately notify the other boards when a license holder of the board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation;

(3) by which each board shall maintain and share a list of the board's license holders who have been subject to a final adverse

disciplinary action for an act involving the delegation and supervision of prescriptive authority; and

(4) to ensure that each advanced practice registered nurse or physician assistant who has entered into a prescriptive authority agreement authorizing the prescribing of opioids is required to complete not less than two hours of continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding:

(A) reasonable standards of care;

(B) the identification of drug-seeking behavior in patients; and

(C) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(b) If the board, the Texas Board of Nursing, or the Texas Physician Assistant Board receives a notice under Subsection (a)(2), the board that received notice may open an investigation against a license holder of the board who is a party to a prescriptive authority agreement with the license holder who is under investigation by the board that provided notice under Subsection (a)(2).

(c) The board shall maintain and make available to the public a searchable online list of physicians, advanced practice registered nurses, and physician assistants who have entered into a prescriptive authority agreement authorized under Section 157.0512 and identify the physician, advanced practice registered nurse, or physician assistant with whom each physician, advanced practice registered nurse, and physician assistant has entered into a prescriptive authority agreement.

(d) The board shall collaborate with the Texas Board of Nursing and the Texas Physician Assistant Board to maintain and make available to the public a list of physicians, advanced practice registered nurses, and physician assistants who are prohibited from entering into or practicing under a prescriptive authority agreement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 4, eff. November 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 818 (H.B. 2454), Sec. 2, eff. September 1, 2019.

Sec. 157.0514. PRESCRIPTIVE AUTHORITY AGREEMENT: INSPECTIONS. If the board receives a notice under Section 157.0513(a)(2), the board or an authorized board representative may enter, with reasonable notice and at a reasonable time, unless the notice would jeopardize an investigation, a site where a party to a prescriptive authority agreement practices to inspect and audit any records or activities relating to the implementation and operation of the agreement. To the extent reasonably possible, the board and the board's authorized representative shall conduct any inspection or audit under this section in a manner that minimizes disruption to the delivery of patient care.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 4, eff. November 1, 2013.

Sec. 157.054. PRESCRIBING AT FACILITY-BASED PRACTICE SITES. (a) One or more physicians licensed by the board may delegate, to one or more physician assistants or advanced practice registered nurses acting under adequate physician supervision whose practice is facility-based at a hospital or licensed long-term care facility, the administration or provision of a drug and the prescribing or ordering of a drug or device if each of the delegating physicians is:

(1) the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice registered nurse practices;

(2) the chair of the facility's credentialing committee;

(3) a department chair of a facility department in which the physician assistant or advanced practice registered nurse practices; or

(4) a physician who consents to the request of the medical director or chief of medical staff to delegate the prescribing or ordering of a drug or device at the facility in which the physician assistant or advanced practice registered nurse practices.

(a-1) The limits on the number of advanced practice registered nurses or physician assistants to whom a physician may delegate under Section 157.0512 do not apply to a physician under Subsection (a) whose practice is facility-based under this section, provided that

the physician is not delegating in a freestanding clinic, center, or practice of the facility.

(b) A physician's authority to delegate under Subsection (a) is limited as follows:

(1) the delegation must be made under a physician's order, standing medical order, standing delegation order, or another order or protocol developed in accordance with policies approved by the facility's medical staff or a committee of the facility's medical staff as provided by the facility bylaws;

(2) the delegation must occur in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, a department chair, or a physician who consents to delegate under Subsection (a)(4);

(3) the delegation may not permit the prescribing or ordering of a drug or device for the care or treatment of the patients of any other physician without the prior consent of that physician; and

(4) delegation in a long-term care facility must be by the medical director and is limited to the prescribing or ordering of a drug or device to not more than seven advanced practice registered nurses or physician assistants or their full-time equivalents.

(b-1) A facility-based physician may not delegate at more than one hospital or more than two long-term care facilities under this section unless approved by the board. The facility-based physician may not be prohibited from delegating the prescribing or ordering of drugs or devices under Section 157.0512 at other practice locations, including hospitals or long-term care facilities, provided that the delegation at those locations complies with all the requirements of Section 157.0512.

(c) Physician supervision of the prescribing or ordering of a drug or device must conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the particular advanced practice registered nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

(d) An alternate physician may provide appropriate supervision on a temporary basis as defined and established by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 88, Sec. 5, eff. May 20, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 746 (S.B. 532), Sec. 3, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 5, eff. November 1, 2013.

Sec. 157.055. ORDERS AND PROTOCOLS. A protocol or other order shall be defined in a manner that promotes the exercise of professional judgment by the advanced practice registered nurse and physician assistant commensurate with the education and experience of that person. Under this section, an order or protocol used by a reasonable and prudent physician exercising sound medical judgment:

(1) is not required to describe the exact steps that an advanced practice registered nurse or a physician assistant must take with respect to each specific condition, disease, or symptom; and

(2) may state the types or categories of medications that may be prescribed or the types or categories of medications that may not be prescribed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 6, eff. November 1, 2013.

Sec. 157.056. PRESCRIPTION INFORMATION. The following information must be provided on each prescription subject to this subchapter:

(1) the patient's name and address;

(2) the drug to be dispensed;

(3) directions to the patient regarding the taking of the drug and the dosage;

(4) the intended use of the drug, if appropriate;

(5) the name, address, and telephone number of the physician;

(6) the name, address, telephone number, and identification number of the registered nurse or physician assistant completing or signing the prescription drug order;

(7) the date; and
(8) the number of refills permitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.057. ADDITIONAL IMPLEMENTATION METHODS. The board may adopt additional methods to implement:
(1) a physician's prescription; or
(2) the delegation of prescriptive authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 7, eff. November 1, 2013.

Sec. 157.058. DELEGATION TO CERTIFIED REGISTERED NURSE ANESTHETIST. (a) In a licensed hospital or ambulatory surgical center, a physician may delegate to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by the physician.

(b) The physician's order for anesthesia or anesthesia-related services is not required to specify a drug, dose, or administration technique.

(c) Pursuant to the physician's order and in accordance with facility policies or medical staff bylaws, the nurse anesthetist may select, obtain, and administer those drugs and apply the medical devices appropriate to accomplish the order and maintain the patient within a sound physiological status.

(d) This section shall be liberally construed to permit the full use of safe and effective medication orders to use the skills and services of certified registered nurse anesthetists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 157.059. DELEGATION REGARDING CERTAIN OBSTETRICAL SERVICES. (a) In this section, "provide" means to supply, for a term not to exceed 48 hours, one or more unit doses of a controlled

substance for the immediate needs of a patient.

(b) A physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice registered nurse recognized by the Texas Board of Nursing as a nurse midwife the act of administering or providing controlled substances to the physician assistant's or nurse midwife's clients during intrapartum and immediate postpartum care.

(c) The physician may not delegate:

(1) the use of a prescription sticker or the use or issuance of an official prescription form; or

(2) the authority to issue an electronic prescription under Section 481.075, Health and Safety Code.

(d) The delegation of authority to administer or provide controlled substances under Subsection (b) must be under a physician's order, medical order, standing delegation order, prescriptive authority agreement, or protocol that requires adequate and documented availability for access to medical care.

(e) The physician's orders, medical orders, standing delegation orders, prescriptive authority agreements, or protocols must require the reporting of or monitoring of each client's progress, including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

(f) The authority of a physician to delegate under this section is limited to:

(1) seven nurse midwives or physician assistants or their full-time equivalents; and

(2) the designated facility at which the nurse midwife or physician assistant provides care.

(g) The controlled substance must be supplied in a suitable container that is labeled in compliance with the applicable drug laws and must include:

(1) the patient's name and address;

(2) the drug to be provided;

(3) the name, address, and telephone number of the physician;

(4) the name, address, and telephone number of the nurse midwife or physician assistant; and

(5) the date.

(h) This section does not authorize a physician, physician

assistant, or nurse midwife to operate a retail pharmacy as defined under Subtitle J.

(i) This section authorizes a physician to delegate the act of administering or providing a controlled substance to a nurse midwife or physician assistant but does not require physician delegation of:

(1) further acts to a nurse midwife; or

(2) the administration of medications by a physician assistant or registered nurse other than as provided by this section.

(j) This section does not limit the authority of a physician to delegate the prescribing or ordering of a controlled substance under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 88, Sec. 7, eff. May 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 33, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 746 (S.B. 532), Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1228 (S.B. 594), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 8, eff. November 1, 2013.

Sec. 157.060. PHYSICIAN LIABILITY FOR DELEGATED ACT. Unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to perform the act, a physician is not liable for an act of a physician assistant or advanced practice registered nurse solely because the physician signed a standing medical order, a standing delegation order, or another order or protocol, or entered into a prescriptive authority agreement, authorizing the physician assistant or advanced practice registered nurse to administer, provide, prescribe, or order a drug or device.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 9, eff. November 1, 2013.

SUBCHAPTER C. DELEGATION TO PHARMACISTS

Sec. 157.101. DELEGATION TO PHARMACIST. (a) In this section, "pharmacist" has the meaning assigned by Section 551.003.

(b) A physician may delegate to a properly qualified and trained pharmacist acting under adequate physician supervision the performance of specific acts of drug therapy management authorized by the physician through the physician's order, standing medical order, standing delegation order, or other order or protocol as defined by board rule.

(b-1) A delegation under Subsection (b) may include:

(1) the implementation or modification of a patient's drug therapy under a protocol if:

(A) the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician; and

(B) the pharmacist maintains a copy of the protocol for inspection until at least the seventh anniversary of the expiration date of the protocol; or

(2) the authority to sign a prescription drug order for dangerous drugs for a patient if:

(A) the delegation follows a diagnosis, initial patient assessment, and drug therapy order by the physician;

(B) the pharmacist practices in a federally qualified health center, a hospital, a hospital-based clinic, or an academic health care institution;

(C) the federally qualified health center, hospital, hospital-based clinic, or academic health care institution in which the pharmacist practices has bylaws and a medical staff policy that permit a physician to delegate to a pharmacist the management of a patient's drug therapy;

(D) the pharmacist provides the name, address, and telephone number of the pharmacist and of the delegating physician on each prescription signed by the pharmacist; and

(E) the pharmacist provides a copy of the protocol to the Texas State Board of Pharmacy.

(c) Physician supervision is considered to be adequate for the purposes of this section if a delegating physician:

(1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or protocol and periodically reviews the order or protocol and the services provided to a patient under the order or

protocol;

(2) has established a physician-patient relationship with each patient who is provided drug therapy management by a delegated pharmacist;

(3) is geographically located so as to be able to be physically present daily to provide medical care and supervision;

(4) receives, as appropriate, a periodic status report on each patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(d) This section does not restrict the use of a preestablished health care program or restrict a physician from authorizing the provision of patient care by use of a preestablished health care program if the patient is institutionalized and the care is to be delivered in a licensed hospital with an organized medical staff that has authorized standing delegation orders, standing medical orders, or protocols.

(e) This section does not limit, expand, or change any provision of law relating to therapeutic drug substitution or administration of medication, including Section 554.004.

(f) The board by rule shall establish the minimum content of a written order or protocol. The order or protocol may not permit the delegation of medical diagnosis.

Text of subsection effective until April 1, 2025

(g) In this section, "federally qualified health center" has the meaning assigned by Section 531.02192, Government Code.

Text of subsection effective on April 1, 2025

(g) In this section, "federally qualified health center" has the meaning assigned by 42 U.S.C. Section 1396d(l)(2)(B).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 271 (S.B. 381), Sec. 1, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 197 (H.B. 2425), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 976 (S.B. 1056), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.144, eff. April 1, 2025.

CHAPTER 158. AUTHORITY OF PHYSICIAN TO PROVIDE CERTAIN DRUGS AND SUPPLIES

Sec. 158.001. PROVISION OF DRUGS AND OTHER SUPPLIES. (a) A physician licensed under this subtitle may supply a patient with any drug, remedy, or clinical supply necessary to meet the patient's immediate needs.

(b) This section does not permit a physician to operate a retail pharmacy without complying with Chapter 558.

(c) This chapter does not prohibit a physician from supplying to a patient, free of charge, a drug provided to the physician by a drug manufacturer for an indigent pharmaceutical program if, in the physician's opinion, it is advantageous to the patient, in adhering to a course of treatment prescribed by the physician, to receive the drug.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 700, Sec. 1, eff. June 13, 2001.

Sec. 158.002. PROVISION OF FREE SAMPLES. (a) This chapter does not prohibit a physician from supplying a pharmaceutical sample to a patient free of charge if, in the physician's opinion, it is advantageous to the patient, in adhering to a course of treatment prescribed by the physician, to receive the sample.

(b) A pharmaceutical sample provided under this section must be:

(1) provided to the physician from the manufacturer free of charge and delivered to a patient free of any direct or indirect charge;

(2) prepackaged by the original manufacturer and not repackaged; and

(3) marked on the immediate container to indicate that it is a sample or recorded in records that indicate it is a sample.

(c) Each state and federal labeling and recordkeeping requirement must be followed and documented. A record maintained under Subsection (b)(3) must be accessible as provided under state and federal law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 158.003. DISPENSING OF DANGEROUS DRUGS IN CERTAIN RURAL AREAS. (a) In this section, "reimbursement for cost" means an additional charge, separate from that imposed for the physician's professional services, that includes the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service. The term does not include a separate fee imposed for the act of dispensing the drug itself.

(b) This section applies to an area located in a county with a population of 5,000 or less, or in a municipality or an unincorporated town with a population of less than 2,500, that is within a 15-mile radius of the physician's office and in which a pharmacy is not located. This section does not apply to a municipality or an unincorporated town that is adjacent to a municipality with a population of 2,500 or more.

(c) A physician who practices medicine in an area described by Subsection (b) may:

(1) maintain a supply of dangerous drugs in the physician's office to be dispensed in the course of treating the physician's patients; and

(2) be reimbursed for the cost of supplying those drugs without obtaining a license under Chapter 558.

(d) A physician who dispenses dangerous drugs under Subsection (c) shall:

(1) comply with each labeling provision under Subtitle J applicable to that class of drugs; and

(2) oversee compliance with packaging and recordkeeping provisions applicable to that class of drugs.

(e) A physician who desires to dispense dangerous drugs under this section shall notify both the Texas State Board of Pharmacy and the board that the physician practices in an area described by Subsection (b). The physician may continue to dispense dangerous drugs in the area until the Texas State Board of Pharmacy determines, after notice and hearing, that the physician no longer practices in an area described by Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 159. PHYSICIAN-PATIENT COMMUNICATION

Sec. 159.001. DEFINITIONS. In this chapter:

(1) "Billing record" means a record that describes charges for services provided to a patient by a physician.

(2) "Medical record" does not include a billing record.

(3) "Patient" means a person who, to receive medical care, consults with or is seen by a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 1, eff. June 15, 2001.

Sec. 159.002. CONFIDENTIAL COMMUNICATIONS. (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(c-1) No exception to the privilege of confidentiality under Section 159.003 or 159.004 may be construed to create an independent duty or requirement to disclose the confidential information to which the exception applies.

(d) The prohibitions of this chapter continue to apply to a confidential communication or record relating to a patient regardless of when the patient receives the services of a physician, except for medical records at least 75 years old that are requested for historical research purposes.

(e) The privilege of confidentiality may be claimed by the patient or by the physician. The physician may claim the privilege of confidentiality only on behalf of the patient. The physician's authority to claim the privilege is presumed in the absence of

evidence to the contrary.

(f) Notwithstanding any other provision of this chapter other than Sections 159.003(a)(10) and (c), a communication or record that is otherwise confidential and privileged under this section may be disclosed or released by a physician without the patient's authorization or consent if the disclosure or release is related to a judicial proceeding in which the patient is a party and the disclosure or release is requested under a subpoena issued under:

(1) the Texas Rules of Civil Procedure;

(2) the Code of Criminal Procedure; or

(3) Chapter 121, Civil Practice and Remedies Code.

(g) Subsection (f) does not prevent a physician from claiming, or otherwise limit the authority of a physician to claim, the privilege of confidentiality on behalf of a patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 462 (S.B. 1907), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 354 (H.B. 1779), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 633 (H.B. 549), Sec. 3, eff. September 1, 2021.

Sec. 159.003. EXCEPTIONS TO CONFIDENTIALITY IN COURT OR ADMINISTRATIVE PROCEEDINGS. (a) An exception to the privilege of confidentiality in a court or administrative proceeding exists:

(1) in a proceeding brought by a patient against a physician, including:

(A) a malpractice proceeding; or

(B) a criminal proceeding or license revocation proceeding in which the patient is a complaining witness and disclosure is relevant to a claim or defense of the physician;

(2) if the patient or a person authorized to act on the patient's behalf submits a written consent to the release of confidential information as provided by Section 159.005;

(3) in a proceeding to substantiate and collect on a claim for medical services provided to the patient;

(4) in a civil action or administrative proceeding, if

relevant, brought by the patient or a person on the patient's behalf, if the patient or person is attempting to recover monetary damages for a physical or mental condition including the patient's death;

(5) in a disciplinary investigation or proceeding conducted under this subtitle, if the board protects the identity of any patient whose billing or medical records are examined other than a patient:

(A) for whom an exception exists under Subdivision (1); or

(B) who has submitted written consent to the release of the billing or medical records as provided by Section 159.005;

(6) in a criminal investigation of a physician in which the board is participating, or assisting in the investigation or proceeding by providing certain billing or medical records obtained from the physician, if the board protects the identity of a patient whose billing or medical records are provided in the investigation or proceeding other than a patient:

(A) for whom an exception exists under Subdivision (1); or

(B) who has submitted written consent to the release of the billing or medical records as provided by Section 159.005;

(7) in an involuntary civil commitment proceeding, proceeding for court-ordered treatment, or probable cause hearing under Chapter 462, 574, or 593, Health and Safety Code;

(8) if the patient's physical or mental condition is relevant to the execution of a will;

(9) if the information is relevant to a proceeding brought under Section 159.009;

(10) in a criminal prosecution in which the patient is a victim, witness, or defendant;

(11) to satisfy a request for billing or medical records of a deceased or incompetent person under Section 74.051(e), Civil Practice and Remedies Code; or

(12) to a court or a party to an action under a court order.

(b) This section does not authorize the release of confidential information to investigate or substantiate criminal charges against a patient.

(c) Records or communications are not discoverable under Subsection (a)(10) until the court in which the prosecution is

pending makes an in camera determination as to the relevancy of the records or communications or any portion of the records or communications. That determination does not constitute a determination as to the admissibility of the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 2, eff. June 15, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 139 (H.B. 742), Sec. 1, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 354 (H.B. 1779), Sec. 2, eff. September 1, 2015.

Sec. 159.004. EXCEPTIONS TO CONFIDENTIALITY IN OTHER SITUATIONS. (a) An exception to the privilege of confidentiality in a situation other than a court or administrative proceeding, allowing disclosure of confidential information by a physician, exists only with respect to the following:

(1) a governmental agency, if the disclosure is required or authorized by law;

(2) medical, mental health, or law enforcement personnel, if the physician determines that there is a probability of:

(A) imminent physical injury to the patient, the physician, or another person; or

(B) immediate mental or emotional injury to the patient;

(3) qualified personnel for research or for a management audit, financial audit, or program evaluation, but the personnel may not directly or indirectly identify a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;

(4) those parts of the medical records reflecting specific services provided if necessary in the collection of fees for medical services provided by a physician, professional association, or other entity qualified to provide or arrange for medical services;

(5) a person who has consent, as provided by Section 159.005;

(6) a person, corporation, or governmental agency involved in the payment or collection of fees for medical services provided by

a physician;

(7) another physician or other personnel acting under the direction of the physician who participate in the diagnosis, evaluation, or treatment of the patient;

(8) an official legislative inquiry regarding state hospitals or state schools, if:

(A) information or a record that identifies a patient or client is not released for any purpose unless proper consent to the release is given by the patient; and

(B) only records created by the state hospital or school or its employees are included; or

(9) health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient.

(b) No civil, criminal, or administrative cause of action exists against a physician for the disclosure of confidential information in accordance with Subsection (a)(2). A cause of action brought against a physician for the disclosure of the confidential information must be dismissed with prejudice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 3, eff. June 15, 2001. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 633 (H.B. 549), Sec. 4, eff. September 1, 2021.

Sec. 159.005. CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION. (a) Consent for the release of confidential information must be in writing and signed by:

(1) the patient;

(2) a parent or legal guardian of the patient if the patient is a minor;

(3) a legal guardian of the patient if the patient has been adjudicated incapacitated to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Subtitle C, Title 7, Health and Safety Code;

(B) Subtitle D, Title 7, Health and Safety Code;

(C) Title 3, Estates Code; or

(D) Chapter 107, Family Code; or

(5) a personal representative of the patient if the patient is deceased.

(b) The written consent must specify:

(1) the billing records, medical records, or other information to be covered by the release;

(2) the reasons or purposes for the release; and

(3) the person to whom the information is to be released.

(c) The patient, or other person authorized to consent, is entitled to withdraw the consent to the release of any information. Withdrawal of consent does not affect any information disclosed before the written notice of the withdrawal.

(d) A patient may not bring an action against a physician for a disclosure made by the physician in good faith reliance on an authorized consent if the physician did not have written notice that the authorization was revoked.

(e) A person who receives information made confidential by this subtitle may disclose the information only to the extent consistent with the authorized purposes for which consent to release the information is obtained.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 4, eff. June 15, 2001. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.052, eff. September 1, 2017.

Sec. 159.006. INFORMATION FURNISHED BY PHYSICIAN. (a) Unless the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, a physician who receives a written consent for release of information as provided by Section 159.005 shall furnish copies of the requested billing or medical records, or a summary or narrative of the records, including records received from a physician or other health care provider involved in the care or treatment of the patient.

(b) The physician may delete confidential information about another patient or a family member of the patient who has not consented to the release.

(c) In accordance with Section 159.005, on receipt of a written

request by a subsequent or consulting physician of a patient of the requested physician, the requested physician shall furnish a copy of the complete billing or medical records of the patient to the subsequent or consulting physician. The duty to provide billing or medical records to a subsequent or consulting physician may not be nullified by contract.

(d) A physician shall provide the information requested under this section not later than the 15th business day after the date of receipt of the written consent for release under Subsection (a) or the written request under Subsection (c).

(e) If the physician denies the request, in whole or in part, the physician shall:

(1) furnish the patient with a written statement, signed and dated, providing the reason for the denial; and

(2) place a copy of the statement denying the request in the patient's:

(A) billing records, if the request was for billing records; or

(B) medical records, if the request was for medical records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 5, eff. June 15, 2001.

Sec. 159.0061. APPOINTMENT OF CUSTODIAN OF PHYSICIAN'S RECORDS. (a) The board by rule shall establish conditions under which the board may temporarily or permanently appoint a person as a custodian of a physician's billing or medical records. In adopting rules under this section, the board shall consider the death of a physician, the mental or physical incapacitation of a physician, and the abandonment of billing or medical records by a physician.

(b) The rules adopted under this section must provide for:

(1) the release of the billing or medical records by an appointed custodian in compliance with this chapter; and

(2) a fee charged by the appointed custodian that is in addition to the copying fee governed by Section 159.008.

Added by Acts 2001, 77th Leg., ch. 984, Sec. 6, eff. June 15, 2001.

Sec. 159.007. MEDIUM BY WHICH INFORMATION IS PROVIDED. A person who is authorized to provide a copy of a record or a summary or narrative of the record to another person under this chapter may provide the copy, summary, or narrative on paper or using any other appropriate medium to which the person who is to provide and the person who is to receive the copy, summary, or narrative agree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 159.008. PHYSICIAN FEES FOR INFORMATION. (a) Except as provided by Subsection (b), a physician:

(1) may charge a reasonable fee, as prescribed by board rule, for copying billing or medical records; and

(2) is not required to permit examination or copying of the records until the fee is paid unless there is a medical emergency.

(b) A physician may not charge a fee for copying billing or medical records under Subsection (a) to the extent the fee is prohibited under Subchapter M, Chapter 161, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 984, Sec. 7, eff. June 15, 2001.

Sec. 159.009. INJUNCTION; CAUSE OF ACTION FOR UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION. (a) A person aggrieved by a violation of this chapter relating to the unauthorized release of confidential and privileged communications may petition the district court of the county in which the person resides, or in the case of a nonresident of the state, the district court of Travis County, for appropriate injunctive relief. The petition takes precedence over all civil matters on the docketed court except those matters to which equal precedence on the docket is granted by law.

(b) The aggrieved person may prove a cause of action for civil damages.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 159.010. NOTICE OF BENEFITS UNDER STATE CHILD HEALTH PLAN. A physician who provides Medicaid health care services to a pregnant

woman shall inform the woman of the health benefits for which the woman or the woman's child may be eligible under the state child health plan under Chapter 62, Health and Safety Code.

Added by Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 24, eff. September 1, 2005.

Sec. 159.011. INFORMATION ABOUT EMBRYO DONATION. (a) In this section:

(1) "Assisted reproduction" has the meaning assigned by Section 160.102, Family Code.

(2) "Embryo donation" means the act of transferring to another person a human embryo for implantation in any person who is not a genetic parent of the human embryo or the spouse of a genetic parent of the human embryo.

(3) "Human embryo" means a genetically complete living organism of the species Homo sapiens, from the single-cell fertilized egg to the blastocyst stage.

(b) A physician who performs on a patient an assisted reproduction procedure that involves the creation of a human embryo shall inform the patient of the option of embryo donation for unused human embryos.

Added by Acts 2017, 85th Leg., R.S., Ch. 331 (H.B. 785), Sec. 1, eff. September 1, 2017.

CHAPTER 160. REPORT AND CONFIDENTIALITY REQUIREMENTS

SUBCHAPTER A. REQUIREMENTS RELATING TO MEDICAL PEER REVIEW

Sec. 160.001. APPLICATION OF FEDERAL LAW. The Health Care Quality Improvement Act of 1986 (42 U.S.C. Section 11101 et seq.) applies to a professional review action or medical peer review conducted by a professional review body or medical peer review committee in this state on or after September 1, 1987.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.002. REPORT OF MEDICAL PEER REVIEW. (a) A medical peer review committee or health care entity shall report in writing

to the board the results and circumstances of a medical peer review that:

(1) adversely affects the clinical privileges of a physician for a period longer than 14 days;

(2) accepts a physician's surrender of clinical privileges either:

(A) while the physician is under an investigation by the medical peer review committee relating to possible incompetence or improper professional conduct; or

(B) in return for not conducting an investigation or proceeding relating to possible incompetence or improper professional conduct; or

(3) adversely affects the membership of a physician in a professional society or association, if the medical peer review is conducted by that society or association.

(b) The duty to report under this section may not be nullified through contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 9, eff. September 1, 2023.

Sec. 160.003. REPORT BY CERTAIN PRACTITIONERS. (a) This section applies to:

(1) a medical peer review committee in this state;

(2) a physician licensed in this state or otherwise lawfully practicing medicine in this state;

(3) a physician engaged in graduate medical education or training;

(4) a medical student;

(5) a physician assistant or acupuncturist licensed in this state or otherwise lawfully practicing in this state; and

(6) a physician assistant student or acupuncturist student.

(b) A person or committee subject to this section shall report relevant information to the board relating to the acts of a physician in this state if, in the opinion of the person or committee, that physician poses a continuing threat to the public welfare through the practice of medicine.

(c) The duty to report under this section may not be nullified through contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.004. REPORT REGARDING CERTAIN IMPAIRED PHYSICIANS. (a) This section applies to:

(1) a committee of a professional medical society or association operating under written bylaws approved by the policymaking body or governing board of the society or association and composed primarily of physicians;

(2) the staff of that committee; or

(3) a district or local intervenor participating in a program established to aid physicians whose ability to practice medicine is impaired, or reasonably believed to be impaired, by drug or alcohol abuse or mental or physical illness.

(b) A person or committee subject to this section:

(1) may report to the board or to a health care entity in which an affected physician has clinical privileges the name of the impaired physician together with pertinent information relating to that impairment; and

(2) shall report to the board and any known health care entity in which the physician has clinical privileges if the person or committee determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.

(c) Except as otherwise provided by this subtitle, each proceeding and record of a person described by Subsection (a) is confidential, and any communication made to the person or committee is privileged from disclosure in the manner provided under this subchapter for information submitted by a medical peer review committee. This confidentiality and privilege from disclosure applies to all information developed under this section, including information developed before September 1, 1991.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.005. REPORT CONFIDENTIAL; COMMUNICATION NOT PRIVILEGED. (a) A report made under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) In a proceeding brought under this chapter or Chapter 158, 159, or 162, evidence may not be excluded on the ground that it consists of a privileged communication unless it is a communication between attorney and client.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.006. BOARD CONFIDENTIALITY. (a) A record, report, or other information received and maintained by the board under this subchapter or Subchapter B, including any material received or developed by the board during an investigation or hearing and the identity of, and reports made by, a physician performing or supervising compliance monitoring for the board, is confidential. The board may disclose this information only:

(1) in a disciplinary hearing before the board or State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order;

(2) to the physician licensing or disciplinary authority of another jurisdiction, to a local, state, or national professional medical society or association, or to a medical peer review committee located inside or outside this state that is concerned with granting, limiting, or denying a physician hospital privileges;

(3) under a court order;

(4) to qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any physician or other individual is first deleted; or

(5) to the division of workers' compensation of the Texas Department of Insurance as provided by Section 413.0514, Labor Code.

(b) Any known hospital suspension of a physician for a term of 30 days or longer relating to the physician's competence and a disciplinary order of the board against a physician are not confidential.

(c) A record or report disclosed by the board under this subchapter, a record or report received, maintained, or developed by the board, a medical peer review committee, a member of the committee, or a health care entity, and a record or report received or maintained by the State Office of Administrative Hearings under this subchapter are not available for discovery or court subpoena and may not be introduced into evidence in any action for damages,

including a medical professional liability action that arises out of the provision of or failure to provide a medical or health care service.

(d) Medical peer review documents remain confidential at the board and at the State Office of Administrative Hearings. If medical peer review documents are admitted into evidence for any purpose at a proceeding before the State Office of Administrative Hearings, the documents must be admitted under seal to protect the confidentiality of the records as provided by this section and Section 160.007. In the event that a decision of the board or the State Office of Administrative Hearings is appealed to district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue.

(e) The confidentiality requirements of this section do not apply to records used by a medical peer review committee, including a patient's medical records or records made or maintained in the regular course of business, if the records are not considered confidential under this chapter or any other law and are otherwise available to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1201, Sec. 1, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 963, Sec. 5, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 6.102, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.29, eff. September 1, 2005.

Sec. 160.007. CONFIDENTIALITY RELATING TO MEDICAL PEER REVIEW COMMITTEE. (a) Except as otherwise provided by this subtitle, each proceeding or record of a medical peer review committee is confidential, and any communication made to a medical peer review committee is privileged.

(b) If a judge makes a preliminary finding that a proceeding or record of a medical peer review committee or a communication made to the committee is relevant to an anticompetitive action, or to a civil rights proceeding brought under 42 U.S.C. Section 1983, the proceeding, record, or communication is not confidential to the

extent it is considered relevant.

(c) A record or proceeding of a medical peer review committee or a written or oral communication made to the committee may be disclosed to:

(1) another medical peer review committee;

(2) an appropriate state or federal agency;

(3) a national accreditation body;

(4) the board; or

(5) the state board of registration or licensing of physicians of another state.

(d) If a medical peer review committee takes action that could result in censure, suspension, restriction, limitation, revocation, or denial of membership or privileges in a health care entity, the affected physician shall be provided a written copy of the recommendation of the medical peer review committee and a copy of the final decision, including a statement of the basis for the decision. Disclosure to the affected physician of confidential peer review committee information relevant to the matter under review does not constitute waiver of the confidentiality requirements established under this subtitle.

(e) Unless disclosure is required or authorized by law, a record or determination of or a communication to a medical peer review committee is not subject to subpoena or discovery and is not admissible as evidence in any civil judicial or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee. The evidentiary privileges created by this subtitle may be invoked by a person or organization in a civil judicial or administrative proceeding unless the person or organization secures a waiver of the privilege executed in writing by the chair, vice chair, or secretary of the affected medical peer review committee.

(f) If, under Sections 160.008(a) and (b), a person participating in peer review, a medical peer review committee, or a health care entity named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential information in the defendant's own defense, a plaintiff in the proceeding may disclose a record or determination of or a communication to a medical peer review committee in rebuttal to information supplied by the defendant.

(g) A person seeking access to privileged information must

plead and prove waiver of the privilege. A member, employee, or agent of a medical peer review committee who provides access to an otherwise privileged communication or record in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived any privilege established under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.008. USE OF CERTAIN CONFIDENTIAL INFORMATION. (a) This section applies to a person participating in peer review, a medical peer review committee, or a health care entity named as a defendant in a civil action filed as a result of participation in peer review.

(b) A defendant subject to this section may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in the defendant's own defense. Use of confidential information under this subsection does not constitute a waiver of the confidential and privileged nature of medical peer review committee proceedings.

(c) A defendant subject to this section may file a counterclaim in a pending action or may prove a cause of action in a subsequent action to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original action is determined to be frivolous or brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.009. COMPLIANCE WITH SUBPOENA. (a) The governing body and medical staff of each health care entity and any other person shall comply with a subpoena for documents or information issued by the board under Section 153.007 or 204.308. The disclosure of documents or information under such a subpoena does not constitute a waiver of the privilege associated with medical peer review committee proceedings.

(b) Failure to comply with a subpoena under Subsection (a) constitutes grounds for disciplinary action against the person or entity by the appropriate licensing board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.010. IMMUNITY FROM CIVIL LIABILITY. (a) The following are immune from civil liability:

(1) a person who, in good faith, reports or furnishes information to a medical peer review committee or the board;

(2) a member, employee, or agent of the board, a medical peer review committee, or a medical organization committee, or a medical organization district or local intervenor, who takes an action or makes a recommendation within the scope of the functions of the board, committee, or intervenor program, if that member, employee, agent, or intervenor acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that person; and

(3) a member or employee of the board or any person who assists the board in carrying out its duties or functions provided by law.

(b) A cause of action does not accrue against a member, agent, or employee of a medical peer review committee or against a health care entity from any act, statement, determination or recommendation made, or act reported, without malice, in the course of medical peer review.

(c) A person, medical peer review committee, or health care entity that, without malice, participates in medical peer review or furnishes records, information, or assistance to a medical peer review committee or the board is immune from any civil liability arising from that act.

(d) A person or health care entity required to report to the board may not be found liable in a civil action for failure to report to the board unless the failure was committed knowingly or wilfully, except that the appropriate state licensing body may take action against a licensed person or entity for not reporting as required under this subtitle.

(e) A member of an expert panel under Section 154.056(e) and a person serving as a consultant to the board are immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of performing the person's duties in evaluating a medical competency

case. The attorney general shall represent a member of an expert panel or consultant in any suit resulting from a duty provided by the person in good faith to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.30, eff. September 1, 2005.

Sec. 160.011. NOT STATE ACTION. The reporting or assistance provided for in this subchapter does not constitute state action on the reporting or assisting medical peer review committee or its parent organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.012. DISCIPLINE OR DISCRIMINATION PROHIBITED. (a) A person may not suspend, terminate, or otherwise discipline or discriminate against a person who reports to the board under this subtitle.

(b) A person has a cause of action against a health care entity, or an owner or employee of a health care entity, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting to the board under Section 160.002, 160.003, or 160.004. The person may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish regardless of whether other injury is shown; or

(B) $1,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(c) In addition to amounts recovered under Subsection (b), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) either:

(A) reinstatement in the person's former position; or

(B) severance pay in an amount equal to three months of

the person's most current salary; and

(2) compensation for wages lost during the period of suspension or termination.

(d) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for reporting an act that imperils the welfare of a patient if:

(1) the person is suspended or terminated not later than the 90th day after the date of making a report in good faith; and

(2) the board or a court determines that the reported case made the subject of the cause of action was a case in which the person was required to report under Section 160.002, 160.003, or 160.004.

(e) An action under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.013. EXPUNGEMENT OF REPORT MADE IN BAD FAITH. If a court makes a final determination that a report or complaint made to the board was made in bad faith, the complaint shall be expunged from the physician's or applicant's individual historical record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.014. ACTION BY HEALTH CARE ENTITY NOT PRECLUDED. The filing of a report with the board under this subchapter, or an investigation or disposition by the board, does not in itself preclude any action by a health care entity to suspend, restrict, or revoke the privileges or membership of the physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.015. IMMUNITY OF HOSPITAL DISTRICT OR HOSPITAL AUTHORITY. This subchapter does not impose liability or waive

immunity for a hospital district or hospital authority that has common law, statutory, or other immunity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.031(a), eff. Sept. 1, 2001.

SUBCHAPTER B. REQUIREMENTS RELATING TO INSURERS

Sec. 160.051. DEFINITIONS. In this subchapter:

(1) "Commissioner" means the commissioner of insurance.

(2) "Insurer" means an insurer or other entity that provides medical professional liability insurance covering a physician in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.052. REPORT FROM INSURER OR PHYSICIAN. (a) Each insurer shall submit to the board the report or other information described by Section 160.053 at the time prescribed. The insurer shall provide the report or information with respect to:

(1) a complaint filed against an insured in a court, if the complaint seeks damages relating to the insured's conduct in providing or failing to provide a medical or health care service; and

(2) settlement of a claim without the filing of a lawsuit or settlement of a lawsuit made on behalf of the insured involving damages relating to the insured's conduct in providing or failing to provide a medical or health care service.

(b) A physician practicing medicine in this state shall report the information required under Section 160.053 if the physician:

(1) does not carry or is not covered by medical professional liability insurance; or

(2) is insured by a nonadmitted carrier or other entity providing medical liability insurance that is not reporting under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 23, eff. June 10, 2003.

Sec. 160.053. CONTENTS OF REPORT; ADDITIONAL INFORMATION. (a) Not later than the 30th day after the date an insurer receives from an insured a complaint filed in a lawsuit, a settlement of a claim without the filing of a lawsuit, or a settlement of a lawsuit against the insured, the insurer shall furnish to the board:

(1) the name of the insured and the insured's Texas medical license number;

(2) the policy number;

(3) a copy of the complaint or settlement; and

(4) a copy of any expert report filed under Section 74.351, Civil Practice and Remedies Code.

(b) The board, in consultation with the commissioner, shall adopt rules for reporting additional information as the board requires. In adopting the rules, the board shall consider other claim reports required under state and federal statutes in determining the information to be reported, form of the report, and frequency of reporting. The rules adopted by the board under this subsection must require that the following additional information be reported:

(1) the date of a judgment, dismissal, or settlement;

(2) whether an appeal has been taken and by which party; and

(3) the amount of the settlement or judgment against the insured.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 24, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 140 (H.B. 743), Sec. 1, eff. September 1, 2005.

Sec. 160.054. REPORT NOT EVIDENCE. In the trial of an action against a physician based on the physician's conduct in providing or failing to provide a medical or health care service, a report or other information submitted to the board under this subchapter and the fact that the report or information has been submitted to the board may not be offered in evidence or used in any manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 160.055. SANCTIONS FOR FAILURE TO REPORT. The commissioner may impose sanctions authorized by Chapter 82, Insurance Code, on an insurer who fails to report information as required by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.543, eff. Sept. 1, 2003.

Sec. 160.056. CIVIL LIABILITY. A person or entity is not liable for any action taken by the person or entity under this subchapter, and a cause of action does not arise against that person or entity, if the person or entity is:

(1) an insurer reporting under this subchapter;

(2) an agent or employee of that insurer; or

(3) a member, employee, or representative of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. REQUIREMENTS RELATING TO CERTAIN CONVICTIONS OR ADJUDICATIONS

Sec. 160.101. REPORT BY COURT TO DEPARTMENT OF PUBLIC SAFETY. (a) This section applies to a person known to be a physician who is licensed or otherwise lawfully practicing in this state or applying to be licensed and who is convicted of or placed on deferred adjudication for:

(1) a felony;

(2) a Class A or Class B misdemeanor;

(3) a Class C misdemeanor involving moral turpitude;

(4) a violation of a state or federal narcotics or controlled substances law; or

(5) an offense involving fraud or abuse under the Medicare or Medicaid program.

(b) Not later than the 30th day after the date a person described by Subsection (a) is convicted of an offense listed in that subsection or is placed on deferred adjudication for an offense listed in that subsection, the clerk of the court in which the person is convicted or placed on deferred adjudication shall prepare and forward to the Department of Public Safety the information required by Chapter 66, Code of Criminal Procedure.

(c) The duty of a clerk to prepare and forward information under Subsection (b) is not affected by:

(1) any subsequent appeal of the conviction for the offense reported; or

(2) any subsequent dismissal of proceedings related to the placement on deferred adjudication for the offense reported.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.032(a), eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 4.16, eff. January 1, 2019.

Sec. 160.102. REPORT BY COURT TO BOARD. Not later than the 30th day after the date a court finds that a physician is mentally ill or mentally incompetent, the clerk of the court of record in which the finding is entered shall prepare and forward to the board a certified abstract of record, regardless of whether the adjudication or finding is subsequently withheld or appealed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 162. REGULATION OF PRACTICE OF MEDICINE

SUBCHAPTER A. REGULATION BY BOARD OF CERTAIN NONPROFIT HEALTH CORPORATIONS

Sec. 162.001. CERTIFICATION BY BOARD. (a) The board by rule shall certify a health organization that:

(1) applies for certification on a form approved by the board; and

(2) presents proof satisfactory to the board that the organization meets the requirements of Subsection (b) or (c).

(b) The board shall approve and certify a health organization that:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) organized to:

(A) conduct scientific research and research projects in the public interest in the field of medical science, medical

economics, public health, sociology, or a related area;

(B) support medical education in medical schools through grants and scholarships;

(C) improve and develop the capabilities of individuals and institutions studying, teaching, and practicing medicine;

(D) deliver health care to the public; or

(E) instruct the general public in medical science, public health, and hygiene and provide related instruction useful to individuals and beneficial to the community;

(2) is organized and incorporated solely by persons licensed by the board; and

(3) has as its directors and trustees persons who are:

(A) licensed by the board; and

(B) actively engaged in the practice of medicine.

(c) The board shall certify a health organization to contract with or employ physicians licensed by the board if the organization:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Sec. 501(c)(3)); and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B).

(c-4) The board shall certify a health organization to contract with or employ physicians licensed by the board if the organization:

(1) is a hospital district:

(A) recognized by a federal agency as a public entity eligible to receive a grant related to a community or federally qualified health center described by Subdivision (2); and

(B) created in a county with a population of more than 1.2 million that was not included in the boundaries of a hospital district before September 1, 2003; and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C.

Section 1396d(l)(2)(B).

(c-5) This section applies to a hospital district described by Subsection (c-4) only in relation to the hospital district's operations as a community or federally qualified health center described by Subsection (c-4)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 601 (H.B. 1924), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 164 (S.B. 1107), Sec. 8, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 204, eff. September 1, 2023.

Sec. 162.002. LIMITATION ON PHYSICIAN FEES. A physician who provides professional medical services for a health organization certified under Section 162.001(c) shall provide those services free of charge, or at a reduced fee commensurate with the patient's ability to pay, in compliance with 42 U.S.C. Section 254b or 254c.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.0021. INTERFERENCE WITH PHYSICIAN'S PROFESSIONAL JUDGMENT PROHIBITED. A health organization certified under Section 162.001(b) may not interfere with, control, or otherwise direct a physician's professional judgment in violation of this subchapter or any other provision of law, including board rules.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. September 1, 2011.

Sec. 162.0022. HEALTH ORGANIZATION POLICIES. (a) A health organization certified under Section 162.001(b) shall adopt,

maintain, and enforce policies to ensure that a physician employed by the health organization exercises independent medical judgment when providing care to patients.

(b) The policies adopted under this section must include policies relating to:

(1) credentialing;

(2) quality assurance;

(3) utilization review; and

(4) peer review.

(c) The policies adopted under this section, including any amendments to the policies, must be developed by the board of directors or board of trustees, as applicable, of the health organization and approved by an affirmative vote.

(d) The policies of the health organization must be drafted and interpreted in a manner that reserves the sole authority to engage in the practice of medicine to a physician participating in the health organization, regardless of the physician's employment status with the health organization.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. January 1, 2012.

Sec. 162.0023. DISCIPLINARY ACTION RESTRICTION. A physician employed by a health organization certified under Section 162.001(b) retains independent medical judgment in providing care to patients, and the health organization may not discipline the physician for reasonably advocating for patient care.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. September 1, 2011.

Sec. 162.0024. CONTRACTUAL WAIVER PROHIBITED. (a) The requirements of this subchapter may not be voided or waived by contract.

(b) Notwithstanding Subsection (a), a member of a health organization certified under Section 162.001(b) may establish ethical and religious directives and a physician may contractually agree to comply with those directives.

Added by Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 1, eff. September 1, 2011.

Sec. 162.003. REFUSAL TO CERTIFY; REVOCATION; PENALTY. On a determination that a health organization commits a violation of this subtitle or is established, organized, or operated in violation of or with the intent to violate this subtitle, the board may:

(1) refuse to certify the health organization on application for certification by the organization under Section 162.001;

(2) revoke a certification made under Section 162.001 to that organization; or

(3) impose an administrative penalty against the health organization under Subchapter A, Chapter 165.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 670 (S.B. 1661), Sec. 2, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 771 (H.B. 1532), Sec. 1, eff. September 1, 2019.

Sec. 162.004. PROCEDURES FOR AND DISPOSITION OF COMPLAINTS AGAINST CERTAIN HEALTH ORGANIZATIONS. (a) The board shall accept and process complaints against a health organization certified under Section 162.001(b) for alleged violations of this subchapter or any other provision of this subtitle applicable to a health organization in the same manner as provided under Subchapter B, Chapter 154, and the rules adopted under that subchapter, including the requirements to:

(1) maintain a system to promptly and efficiently act on complaints filed with the board;

(2) with respect to a health organization that is the subject of a complaint, notify the health organization that a complaint has been filed, disclose the nature of the complaint, and provide the health organization with an opportunity to respond to the

complaint;

(3) ensure that a complaint is not dismissed without appropriate consideration; and

(4) establish methods by which physicians employed by a health organization are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints under this section to the board.

(b) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or the board's employees or agents relating to a health organization certified under Section 162.001(b) is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or the board's employees or agents involved in the investigation or discipline of a health organization certified under Section 162.001(b).

(c) The board may dispose of a complaint or resolve the investigation of a complaint under this section in a manner provided under Subchapter A, Chapter 164, to the extent the board determines the provisions of that subchapter can be made applicable to a health organization certified under Section 162.001.

(d) This section does not require an individual to file or prohibit an individual from filing a complaint against a health organization certified under Section 162.001(b) directly with the health organization, alone or in connection with a complaint filed with the board under this section, relating to:

(1) the care or services provided by, or the policies of, the health organization; or

(2) an alleged violation by the health organization of this subchapter or any other provision of this subtitle applicable to the health organization.

Added by Acts 2019, 86th Leg., R.S., Ch. 771 (H.B. 1532), Sec. 2, eff. September 1, 2019.

Sec. 162.005. ANTI-RETALIATION POLICY. (a) A health organization certified under Section 162.001(b) shall develop, implement, and comply with an anti-retaliation policy for physicians under which the health organization may not terminate, demote,

retaliate against, discipline, discriminate against, or otherwise penalize a physician for:

(1) filing in good faith a complaint under Section 162.004;

(2) cooperating in good faith with an investigation or proceeding of the board relating to a complaint filed under Section 162.004; or

(3) communicating to a patient in good faith what the physician reasonably believes to be the physician's best, independent medical judgment.

(b) On a determination that a health organization certified under Section 162.001(b) has failed to develop, implement, or comply with a policy described by Subsection (a), the board may take any action allowed under this subtitle or board rule applicable to a health organization.

Added by Acts 2019, 86th Leg., R.S., Ch. 771 (H.B. 1532), Sec. 2, eff. September 1, 2019.

Sec. 162.006. BIENNIAL REPORT REQUIRED FOR CERTAIN HEALTH ORGANIZATIONS. (a) Each health organization certified under Section 162.001(b) shall file with the board a biennial report in September of each odd-numbered year if the organization was certified in an odd-numbered year or in September of each even-numbered year if the organization was certified in an even-numbered year. The biennial report must include:

(1) a statement signed and verified by the president or chief executive officer of the health organization that:

(A) provides the name and mailing address of:

(i) the health organization;

(ii) each member of the health organization, except that if the health organization has no members, a statement indicating that fact;

(iii) each member of the board of directors of the health organization; and

(iv) each officer of the health organization; and

(B) discloses any change in the composition of the board of directors since the date of the most recent biennial report;

(2) a statement signed and verified by the president or chief executive officer of the health organization that:

(A) indicates whether the health organization's certificate of formation or bylaws were amended since the date of the most recent biennial report;

(B) if applicable, provides a concise explanation of the amendments and states whether the amendments were recommended or approved by the board of directors; and

(C) has attached to the statement a copy of the organization's current certificate of formation and bylaws if a copy is not already on file with the board;

(3) a statement from each current director of the health organization, signed and verified by the director:

(A) stating that the director is licensed by the board to practice medicine, is actively engaged in the practice of medicine, and has no restrictions on the director's license;

(B) stating that the director will, as a director:

(i) exercise independent judgment in all matters, specifically including matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(ii) exercise best efforts to cause the health organization to comply with all relevant provisions of this subtitle and board rules; and

(iii) immediately report to the board any action or event the director reasonably and in good faith believes constitutes a violation or attempted violation of this subtitle or board rules;

(C) identifying and concisely explaining the nature of each financial relationship the director has, if any, with a member, another director, or a supplier of the health organization or an affiliate of those persons; and

(D) stating that the director has disclosed all financial relationships described by Paragraph (C); and

(4) a statement signed and verified by the president or chief executive officer of the health organization indicating that the health organization is in compliance with the requirements for continued certification provided by this subtitle and board rules.

(b) A health organization required to submit a biennial report under Subsection (a) shall submit with the report a fee in the amount prescribed by board rule.

(c) Not later than January 1 of each year, the board shall publish on the board's Internet website the information provided to

the board in each statement under Subsection (a)(1).

(d) Information provided to the board in each statement under Subsections (a)(2), (3), and (4) is public information subject to disclosure under Chapter 552, Government Code.

(e) The board may adopt rules necessary to implement this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 771 (H.B. 1532), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. AUTHORITY TO FORM CERTAIN ENTITIES

Sec. 162.051. AUTHORITY TO FORM CERTAIN JOINTLY OWNED ENTITIES. (a) Except as provided by Section 165.155, a physician and an optometrist or therapeutic optometrist may, for a purpose described by Subsection (b), organize, jointly own, and manage any legal entity, including:

(1) a partnership under the Texas Revised Partnership Act (Article 6132b-1.01 et seq., Vernon's Texas Civil Statutes);

(2) a limited partnership under the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); and

(3) a limited liability company under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(b) An entity authorized under Subsection (a) may:

(1) own real property, other physical facilities, or equipment for the delivery of health care services or management;

(2) lease, rent, or otherwise acquire the use of real property, other physical facilities, or equipment for the delivery of health care services or management; or

(3) employ or otherwise use a person who is not a physician, optometrist, or therapeutic optometrist for the delivery of health care services or management.

(c) Only a physician, optometrist, or therapeutic optometrist may own an interest in an entity authorized under Subsection (a). This subsection does not prohibit an entity from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept.

1, 2001.

Sec. 162.052. NOTICE OF CERTAIN OWNERSHIP INTERESTS. (a) In this section, "niche hospital" has the meaning assigned by Section 105.002.

(b) A physician shall notify the Department of State Health Services of any ownership interest held by the physician in a niche hospital.

(c) Subsection (b) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The board, in consultation with the Department of State Health Services, shall adopt rules governing the form and content of the notice required by Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 836 (S.B. 872), Sec. 2, eff. September 1, 2005.

Sec. 162.053. JOINTLY OWNED ENTITIES WITH PHYSICIAN ASSISTANTS. (a) A physician who jointly owns an entity with a physician assistant shall report annually to the board the ownership interest and other information required by board rule.

(b) The board shall assess a fee for processing each report required by Subsection (a).

(c) A report filed under Subsection (a) is public information for purposes of Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 4, eff. June 17, 2011.

SUBCHAPTER C. ANESTHESIA IN OUTPATIENT SETTING

Sec. 162.101. DEFINITION. In this subchapter, "outpatient setting" means a facility, clinic, center, office, or other setting that is not part of a licensed hospital or a licensed ambulatory surgical center.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.102. RULES. (a) The board by rule shall establish the minimum standards for anesthesia services provided in an outpatient setting by a person licensed by the board.

(b) The rules adopted under this section must be designed to protect the health, safety, and welfare of the public and include requirements relating to:

(1) general anesthesia, regional anesthesia, and monitored anesthesia care;

(2) patient evaluation, diagnosis, counseling, and preparation;

(3) patient monitoring to be performed and equipment to be used during a procedure and during post-procedure monitoring;

(4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;

(5) the documentation necessary to demonstrate compliance with this subchapter; and

(6) the period in which protocols or procedures covered by rules of the board shall be reviewed, updated, or amended.

(c) The board shall cooperate with the Texas Board of Nursing in the adoption of rules under this subchapter to eliminate, to the extent possible, conflicts between the rules adopted by each board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 34, eff. September 1, 2007.

Sec. 162.103. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used in a total dosage amount that does not exceed 50 percent of the recommended maximum safe dosage per outpatient visit;

(2) a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;

(3) a licensed ambulatory surgical center;

(4) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;

(5) a facility maintained or operated by a state or local governmental entity;

(6) a clinic directly maintained or operated by the United States; or

(7) an outpatient setting accredited by:

(A) The Joint Commission relating to ambulatory surgical centers;

(B) the American Association for Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.31, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 596 (S.B. 978), Sec. 1, eff. September 1, 2013.

Sec. 162.104. REGISTRATION REQUIRED. (a) The board shall require each physician who administers anesthesia or performs a surgical procedure for which anesthesia services are provided in an outpatient setting to register with the board on a form prescribed by the board and to pay a fee to the board in an amount established by the board.

(b) The board shall coordinate the registration required under this section with the registration required under Chapter 156 so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to physicians.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 25, eff. June 10, 2003.

Sec. 162.105. COMPLIANCE WITH ANESTHESIA RULES. (a) A physician who practices medicine in this state and who administers anesthesia or performs a surgical procedure for which anesthesia services are provided in an outpatient setting shall comply with the rules adopted under this subchapter.

(b) The board may require a physician to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the physician's provision of anesthesia in an outpatient setting in accordance with this subtitle or rules of the board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.106. INSPECTIONS. (a) The board may conduct inspections of a physician's equipment and office procedures that relate to the provision of anesthesia in an outpatient setting as necessary to enforce this subchapter.

(b) The board may establish a risk-based inspection process in which the board conducts inspections based on the length of time since:

(1) the equipment and outpatient setting were last inspected; and

(2) the physician submitted to inspection.

(c) The board may contract with another state agency or qualified person to conduct the inspections.

(d) Unless it would jeopardize an ongoing investigation, the board shall provide at least five business days' notice before conducting an on-site inspection under this section.

(e) The board shall maintain a record of the outpatient settings in which physicians provide anesthesia.

(f) A physician who provides anesthesia in an outpatient setting shall inform the board of any other physician with whom the physician shares equipment used to administer anesthesia.

(g) This section does not require the board to make an on-site inspection of a physician's office.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 9, eff. September 1, 2019.

Sec. 162.107. REQUESTS FOR INSPECTION AND ADVISORY OPINION. (a) The board may consider a request by a physician for an on-site inspection. The board, on payment of a fee established by the board, may conduct the inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section is not binding on the board. Except as provided by Subsection (c), the board may take any action under this subtitle relating to the situation addressed by the advisory opinion that the board considers appropriate.

(c) A physician who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding to impose an administrative penalty or assess a civil penalty under this subtitle. On receipt of proof of reliance on an advisory opinion, the board or court, as appropriate, shall consider the reliance and mitigate imposition of an administrative penalty or assessment of a civil penalty accordingly.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

SUBCHAPTER D. PHYSICIAN CREDENTIALING

Sec. 162.151. DEFINITIONS. In this subchapter:

(1) "Core credentials data" means:

(A) name and other demographic data;

(B) professional education;

(C) professional training;

(D) licenses; and

(E) Educational Commission for Foreign Medical Graduates certification.

(2) "Credentials verification organization" means an

organization that is certified or accredited and organized to collect, verify, maintain, store, and provide to health care entities a health care practitioner's verified credentials data, including all corrections, updates, and modifications to that data. For purposes of this subdivision, "certified" or "accredited" includes certification or accreditation by a nationally recognized accreditation organization.

(3) "Health care entity" means:

(A) a health care facility or other health care organization licensed or certified to provide approved medical and allied health services in this state;

(B) an entity licensed by the Texas Department of Insurance as a prepaid health care plan or health maintenance organization or as an insurer to provide coverage for health care services through a network of providers; or

(C) a health care provider entity accepting delegated credentialing functions from a health maintenance organization.

(4) "Physician" means a holder of or applicant for a license under this subtitle as a medical doctor or doctor of osteopathy.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.152. ASSOCIATIONS. Each provision of this subchapter that applies to a health care entity also applies to an association that represents federally qualified health centers. For purposes of this section, "federally qualified health center" has the meaning assigned by 42 U.S.C. Section 1396d(l)(2)(B), as amended.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.153. STANDARDIZED CREDENTIALS VERIFICATION PROGRAM. (a) The board shall develop standardized forms and guidelines for and administer:

(1) the collection, verification, correction, updating, modification, maintenance, and storage of information relating to physician credentials; and

(2) the release of that information to health care entities or designated credentials verification organizations authorized by the physician to receive that information.

(b) Except as provided by Subsection (c), a physician whose core credentials data is submitted to the board is not required to resubmit the data when applying for practice privileges with a health care entity.

(c) A physician shall:

(1) provide to the board any correction, update, or modification of the physician's core credentials data not later than the 30th day after the date the data on file is no longer accurate; and

(2) resubmit the physician's core credentials data annually if the physician did not submit a correction, update, or modification during the preceding year.

(d) A health care entity that employs, contracts with, or credentials physicians must use the board to obtain core credentials data for items for which the board is designated or accepted as a primary source by a national accreditation organization. A health care entity may act through its designated credentials verification organization.

(e) This section does not restrict the authority of a health care entity to approve or deny an original or renewal application for hospital staff membership, clinical privileges, or managed care network participation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.154. FURNISHING OF DATA TO HEALTH CARE ENTITY. Not later than the 15th business day after the date the board receives a request for the data, the board shall make available to a health care entity or its designated credentials verification organization all core credentials data it collects on a physician, including any correction, update, or modification of that data, if authorized by the physician.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.155. REVIEW OF DATA BY PHYSICIAN. (a) Before releasing a physician's core credentials data from its data bank for the first time, the board shall provide to the affected physician 15 business days to review the data and request reconsideration or resolution of errors in or omissions from the data. The board shall include with the data any change or clarification made by the physician.

(b) The board shall notify a physician of any change to the physician's core credentials data when a change is made or initiated by a person other than the physician.

(c) A physician may request to review the physician's core credentials data collected at any time after the initial release of information. The board is not required to hold, release, or modify any information because of the request.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.156. DATA DUPLICATION PROHIBITED. (a) A health care entity may not collect or attempt to collect duplicate core credentials data from a physician if the information is already on file with the board. This section does not restrict the right of a health care entity to request additional information not included in the core credentials data on file with the board that is necessary for the entity to credential the physician. A health care entity or its designated credentials verification organization may collect any additional information required by the health care entity's credentialing process from a primary source of that information.

(b) A state agency may not collect or attempt to collect duplicate core credentials data from a physician if the information is already on file with the board. This section does not restrict the right of a state agency to request additional information not included in the core credentials data on file with the board that the agency considers necessary for its specific credentialing purposes.

(c) The board by rule may except from Subsections (a) and (b) a request for core credentials data that is necessary for a health care entity to provide temporary privileges during the credentialing process.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept.

1, 2001.

Sec. 162.157. IMMUNITY. A health care entity or its designated credentials verification organization is immune from liability arising from its reliance on data furnished by the board under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.158. RULES. The board shall adopt rules as necessary to develop and implement the standardized credentials verification program established by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.159. CONFIDENTIALITY. The information collected, maintained, or stored by the board under this subchapter is privileged and confidential and not subject to discovery, subpoena, or other means of legal compulsion for its release or to disclosure under Chapter 552, Government Code, except as otherwise provided by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.160. USE OF INDEPENDENT CONTRACTOR. The board may contract with an independent contractor to collect, verify, maintain, store, or release information. The contract must provide for board oversight and for the confidentiality of the information. If the board contracts with an independent entity that is not a governmental unit to carry out this subchapter, the independent entity is not immune from liability.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.161. FEES. (a) The board shall prescribe and assess fees in amounts necessary to cover its cost of operating under and administering this subchapter.

(b) The board may waive a fee for a state agency that is required to obtain core credentials data from the board and that Section 162.156 prohibits from collecting duplicate data.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.162. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the board or money appropriated to the board, the board may receive and accept a gift, grant, donation, or other thing of value from any source, including the United States or a private source.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

SUBCHAPTER E. EMPLOYMENT OF PHYSICIAN BY PRIVATE MEDICAL SCHOOL

Sec. 162.201. EMPLOYMENT OF PHYSICIAN PERMITTED. A private nonprofit medical school that is certified under Section 162.203, that is accredited by the Liaison Committee on Medical Education, and that was appropriated funds by the legislature in the 75th Legislature, Regular Session, 1997, may retain, in fulfilling its educational mission, all or part of the professional income generated by a physician for medical services if the physician is employed as a faculty member of the school and provides medical services as part of the physician's responsibilities.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.202. COMMITTEE ESTABLISHED BY SCHOOL. (a) A private medical school subject to this subchapter shall establish a committee consisting of at least five actively practicing physicians who

provide care in the clinical program of the private medical school. The committee shall approve existing policies, or adopt new policies if none exist, to ensure that a physician whose professional income is retained under Section 162.201 is exercising the physician's independent medical judgment in providing care to patients in the school's clinical programs.

(b) The policies adopted under this section must include policies relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, governance of the committee, and due process.

(c) Each member of a committee under this section shall provide to the board biennially a signed and verified statement indicating that the member:

(1) is licensed by the board;

(2) will exercise independent medical judgment in all committee matters, specifically in matters relating to credentialing, quality assurance, utilization review, peer review, medical decision-making, and due process;

(3) will exercise the member's best efforts to ensure compliance with the private medical school's policies that are adopted or established by the committee; and

(4) shall report immediately to the board any action or event that the member reasonably and in good faith believes constitutes a compromise of the independent judgment of a physician in caring for a patient in the private medical school's clinical program or in carrying out the member's duties as a committee member.

(d) The board shall adopt rules requiring the disclosure of financial conflicts of interest by a committee member.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.203. CERTIFICATION OF SCHOOL BY BOARD. (a) A private school that retains a physician's professional income under Section 162.201 must be certified by the board as being in compliance with this subchapter.

(b) The board shall prescribe an application form to be provided to the school and may adopt rules as necessary to administer this subchapter.

(c) The board may prescribe and assess a fee for the certification of a school and for investigation and review of the school in an amount not to exceed the fee assessed on an organization described by Section 162.001.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.204. BIENNIAL REPORT. A private medical school certified under Section 162.203 shall provide to the board a biennial report certifying that the school is in compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.205. SUSPENSION OR REVOCATION OF CERTIFICATION. If the board determines at any time that a private medical school certified under Section 162.203 has failed to comply with this subchapter, the board may suspend or revoke the school's certification.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.206. LIMITATION ON SCHOOL'S AUTHORITY. A private medical school's authority to retain a physician's professional income does not apply to a physician providing care in a facility owned or operated by the school that is established outside the school's historical geographical service area as it existed June 19, 1999.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

Sec. 162.207. APPLICATION OF SUBCHAPTER. This subchapter does not:

(1) affect the reporting requirements under Section 160.003; or

(2) apply to a private medical school certified under this subchapter if all or substantially all of the school's assets are sold.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.033(a), eff. Sept. 1, 2001.

SUBCHAPTER F. DIRECT PRIMARY CARE

Sec. 162.251. DEFINITIONS. In this subchapter:

(1) "Direct fee" means a fee charged by a physician to a patient or a patient's designee for primary medical care services provided by, or to be provided by, the physician to the patient. The term includes a fee in any form, including a:

(A) monthly retainer;

(B) membership fee;

(C) subscription fee;

(D) fee paid under a medical service agreement; or

(E) fee for a service, visit, or episode of care.

(2) "Direct primary care" means a primary medical care service provided by a physician to a patient in return for payment in accordance with a direct fee. The term includes telemedicine medical services and telehealth services, as those terms are defined by Section 111.001, provided using a technology platform.

(3) "Medical service agreement" means a signed written agreement under which a physician agrees to provide direct primary care services for a patient in exchange for a direct fee for a period of time that is entered into by the physician and:

(A) the patient;

(B) the patient's legal representative, guardian, or employer on behalf of the patient; or

(C) the patient's legal representative's or guardian's employer on behalf of the patient.

(4) "Physician" includes a professional association or professional limited liability company owned entirely by an individual licensed under this subtitle.

(5) "Primary medical care service" means a routine or general health care service of the type provided at the time a

patient seeks preventive care or first seeks health care services for a specific health concern, is a patient's main source for regular health care services, and includes:

(A) promoting and maintaining mental and physical health and wellness;

(B) preventing disease;

(C) screening, diagnosing, and treating acute or chronic conditions caused by disease, injury, or illness;

(D) providing patient counseling and education; and

(E) providing a broad spectrum of preventive and curative health care over a period of time.

Added by Acts 2015, 84th Leg., R.S., Ch. 165 (H.B. 1945), Sec. 1, eff. May 28, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 964 (S.B. 670), Sec. 4, eff. September 1, 2019.

Sec. 162.252. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to workers' compensation insurance coverage as defined by Section 401.011, Labor Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 165 (H.B. 1945), Sec. 1, eff. May 28, 2015.

Sec. 162.253. DIRECT PRIMARY CARE NOT INSURANCE. (a) A physician providing direct primary care is not an insurer or health maintenance organization, and the physician is not subject to regulation by the Texas Department of Insurance for the direct primary care.

(b) A medical service agreement is not health or accident insurance or coverage under Title 8, Insurance Code, and is not subject to regulation by the Texas Department of Insurance.

(c) A physician is not required to obtain a certificate of authority under the Insurance Code to market, sell, or offer a medical service agreement or provide direct primary care.

(d) A physician providing direct primary care does not violate Section 1204.055, Insurance Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 165 (H.B. 1945), Sec. 1, eff. May 28, 2015.

Sec. 162.254. BILLING INSURER OR HEALTH MAINTENANCE ORGANIZATION PROHIBITED. A physician may not bill an insurer or health maintenance organization for direct primary care that is paid under a medical service agreement.

Added by Acts 2015, 84th Leg., R.S., Ch. 165 (H.B. 1945), Sec. 1, eff. May 28, 2015.

Sec. 162.255. INTERFERENCE PROHIBITED. (a) The board or another state agency may not prohibit, interfere with, initiate a legal or administrative proceeding against, or impose a fine or penalty against:

(1) a physician solely because the physician provides direct primary care; or

(2) a person solely because the person pays a direct fee for direct primary care.

(b) A health insurer, health maintenance organization, or health care provider as that term is defined by Section 105.001 may not prohibit, interfere with, or initiate a legal proceeding against:

(1) a physician solely because the physician provides direct primary care; or

(2) a person solely because the person pays a direct fee for direct primary care.

Added by Acts 2015, 84th Leg., R.S., Ch. 165 (H.B. 1945), Sec. 1, eff. May 28, 2015.

Sec. 162.256. REQUIRED DISCLOSURE. A physician providing direct primary care shall provide written or electronic notice to the patient that a medical service agreement for direct primary care is not insurance, prior to entering into the agreement.

Added by Acts 2015, 84th Leg., R.S., Ch. 165 (H.B. 1945), Sec. 1, eff. May 28, 2015.

CHAPTER 163. DISTRICT REVIEW COMMITTEES

Sec. 163.001. DEFINITIONS. In this chapter:

(1) "Committee" means a district review committee.

(2) "District" means a district established under Section 163.002.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 163.002. DESIGNATION OF DISTRICTS. (a) The board shall designate:

(1) the number of districts; and

(2) the geographic area of a district composed of various counties.

(b) The board may revise, as it considers appropriate and after a public hearing, the number of districts and the designation of the counties located in a district.

(c) If the number of districts or a county's designation in a district is revised, the board shall follow the same procedure that applied to the initial designation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 163.003. COMMITTEE. (a) A committee consists of seven members appointed by the governor, as follows:

(1) three physician members who are doctors of medicine (M.D.);

(2) one physician member who is a doctor of osteopathic medicine (D.O.); and

(3) three public members.

(b) A member must:

(1) have resided in the district for longer than three years before the date of the appointment; and

(2) meet the qualifications for:

(A) physician members of the board under Section 152.002, if the member is a physician member; or

(B) public members of the board under Section 152.002, if the member is a public member.

(c) A member of the committee serves a six-year term.

(d) If a vacancy occurs during a member's term, the governor

shall appoint a replacement to fill the unexpired term.

(e) A member of the committee is entitled to receive a per diem for actual duty in the same manner provided for board members.

(f) A member of a committee is subject to law and the rules of the board, including Sections 152.004, 152.006, and 152.010, as if the committee member were a member of the board, except that a committee member is not subject to Chapter 572, Government Code. The training program a committee member must complete under Section 152.010 shall be an abbreviated version of the program under that section that is limited to training relevant to serving on a committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.32, eff. September 1, 2005.

Sec. 163.004. BOARD RULES REGARDING COMMITTEES. The board may adopt rules reasonably necessary to implement this chapter relating to:

(1) per diem and expenses of committee members;

(2) matters to be heard or considered by a committee;

(3) the conduct of committee hearings;

(4) the authority the board may delegate to a committee; and

(5) other matters regarding the actions, duties, and responsibilities of a committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 163.0045. ASSISTANCE TO BOARD. The board may request members of a committee to participate in an informal meeting under Section 164.003. A physician committee member who participates in an informal meeting on a complaint relating to medical competency must have the qualifications of a member of an expert panel under Section 154.056(e).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.33, eff. September 1, 2005.

Sec. 163.005. COMMITTEE AUTHORITY LIMITED. A committee may not finally dispose of a complaint against a person licensed by the board or issue a final order or rule. The board shall finally dispose of each complaint against a person licensed by the board and has the sole authority to issue final orders and rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 164. DISCIPLINARY ACTIONS AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 164.001. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE. (a) Except for good cause shown, the board, on determining a violation of this subtitle or a board rule or for any cause for which the board may refuse to admit a person to its examination or to issue or renew a license, including an initial conviction or the initial finding of the trier of fact of guilt of a felony or misdemeanor involving moral turpitude, shall:

(1) revoke or suspend a license;

(2) place on probation a person whose license is suspended; or

(3) reprimand a license holder.

(b) Except as otherwise provided by Sections 164.057 and 164.058, the board, on determining that a person committed an act described by Sections 164.051 through 164.054, shall enter an order to:

(1) deny the person's application for a license or other authorization to practice medicine;

(2) administer a public reprimand;

(3) suspend, limit, or restrict the person's license or other authorization to practice medicine, including:

(A) limiting the practice of the person to or excluding one or more specified activities of medicine; or

(B) stipulating periodic board review;

(4) revoke the person's license or other authorization to practice medicine;

(5) require the person to submit to care, counseling, or treatment of physicians designated by the board as a condition for:

(A) the issuance or renewal of a license or other authorization to practice medicine; or

(B) continued practice under a license;

(6) require the person to participate in an educational or counseling program prescribed by the board;

(7) require the person to practice under the direction of a physician designated by the board for a specified period;

(8) require the person to perform public service considered appropriate by the board; or

(9) assess an administrative penalty against the person as provided by Section 165.001.

(c) Notwithstanding Subsection (b), the board shall revoke, suspend, or deny a physician's license if the board determines that, through the practice of medicine, the physician poses a continuing threat to the public welfare.

(d) In addition to any other disciplinary action authorized by this section, the board may issue a written reprimand to a license holder who violates this subtitle or require that a license holder who violates this subtitle participate in continuing education programs. The board shall specify the continuing education programs to be attended and the number of hours that must be completed by the license holder to fulfill the requirements of this subsection.

(e) For any sanction imposed under this chapter as the result of a hearing conducted by the State Office of Administrative Hearings, that office shall use the schedule of sanctions adopted by board rule.

(f) The board by rule shall adopt a schedule of the disciplinary sanctions that the board may impose under this subchapter. In adopting the schedule of sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(g) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider whether the person:

(1) is being disciplined for multiple violations of this subtitle or a rule or order adopted under this subtitle; or

(2) has previously been the subject of disciplinary action by the board.

(h) In the case of a person described by:

(1) Subsection (g)(1), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

(2) Subsection (g)(2), the board shall consider revoking the person's license if the person has repeatedly been the subject of disciplinary action by the board.

(i) If the board chooses not to revoke the license of a person described by Subsection (g)(2), the board shall consider taking a more severe disciplinary action than the disciplinary action previously taken.

(j) In determining the appropriate disciplinary action, including the amount of any administrative penalty to impose, the board shall consider whether the violation relates directly to patient care or involves only an administrative violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 26, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.34, eff. September 1, 2005.

Sec. 164.0015. REMEDIAL PLAN. (a) In addition to the authority under Sections 164.001 and 164.002, the board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice medicine; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a patient death;

(B) the commission of a felony; or

(C) a matter in which the physician engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or

(2) in which the appropriate resolution may involve a

restriction on the manner in which a license holder practices medicine.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding five years.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering this plan.

(f) The board shall adopt rules necessary to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 600 (S.B. 227), Sec. 1, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 4, eff. September 1, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 10, eff. September 1, 2019.

Sec. 164.002. BOARD DISPOSITION OF COMPLAINTS, CONTESTED CASES, AND OTHER MATTERS. (a) Unless precluded by law, the board may dispose of any complaint or matter relating to this subtitle or of any contested case by a stipulation, agreed settlement, or consent order.

(b) The board shall dispose of a complaint, contested case, or other matter in writing. If appropriate, the affected physician shall sign the writing.

(c) An agreed disposition is a disciplinary order for purposes of reporting under this subtitle and of administrative hearings and proceedings by state and federal regulatory agencies regarding the practice of medicine. An agreed disposition or a remedial plan under Section 164.0015 is public information.

(d) In civil litigation, an agreed disposition or a remedial plan under Section 164.0015 is a settlement agreement under Rule 408, Texas Rules of Evidence. This subsection does not apply to a license holder who has previously entered into an agreed disposition with the board of a different disciplinary matter or whose license the board is seeking to revoke.

(e) The board may not dismiss a complaint solely on the grounds

that the case has not been scheduled for an informal meeting within the time required by Section 164.003(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.35, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 600 (S.B. 227), Sec. 2, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 5, eff. September 1, 2011.

Sec. 164.0025. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 164.003 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected physician requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.36, eff. September 1, 2005.

Sec. 164.003. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day

after the date the board's official investigation of the complaint is commenced as provided by Section 154.057(b), unless good cause is shown by the board for scheduling the informal meeting after that date;

(2) the board give notice to the license holder of the time and place of the meeting not later than the 45th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's staff;

(6) a member of the board's staff be at the meeting to present to the board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing; and

(7) if the complaint includes an allegation that the license holder has violated the standard of care, the panel conducting the informal proceeding consider whether the physician was practicing complementary and alternative medicine.

(c) An affected physician is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the physician reasonably believes the physician could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the board, the board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

(f) The notice required by Subsection (b)(2) must be accompanied by a written statement of the nature of the allegations and the information the board intends to use at the meeting. If the board does not provide the statement or information at that time, the

license holder may use that failure as grounds for rescheduling the informal meeting. If the complaint includes an allegation that the license holder has violated the standard of care, the notice must include a copy of each report prepared by an expert physician reviewer under Section 154.0561. The license holder must provide to the board the license holder's rebuttal at least 15 business days before the date of the meeting in order for the information to be considered at the meeting.

(f-1) Before providing a report to a license holder under Subsection (f), the board must redact any identifying information of an expert physician reviewer other than the specialty of the expert physician reviewer.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b)(1), including the extended illness of a board investigator and an expert physician reviewer's delinquency in reviewing and submitting a report to the board.

(h) Section 164.007(c) applies to the board's investigation file used in an informal meeting under this section.

(i) On request by a physician under review, the board shall make a recording of the informal settlement conference proceeding. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the physician a fee to cover the cost of recording the proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 27, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.37, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 6, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 11, eff. September 1, 2019.

Sec. 164.0031. BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 164.003 or an informal hearing under Section 164.103, at least two panelists shall be appointed to determine whether an informal disposition is

appropriate. At least one of the panelists must be a physician.

(b) Notwithstanding Subsection (a) and Section 164.003(b)(4), an informal proceeding may be conducted by one panelist if the affected physician waives the requirement that at least two panelists conduct the informal proceeding. If the physician waives that requirement, the panelist may be either a physician or a member who represents the public.

(c) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the board under Section 164.003 to show compliance with an order of the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.38, eff. September 1, 2005.

Sec. 164.0032. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A board member or district review committee member that serves as a panelist at an informal meeting under Section 164.003 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a board employee at any time.

(b) Board employees shall present a summary of the allegations against the affected physician and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the affected physician have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(d) The panel and board employees shall provide an opportunity for the affected physician and the physician's authorized

representative to reply to the board employees' presentation and to present oral and written statements and facts that the physician and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician, the physician's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician has violated a statute or board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician and the physician's authorized representative. The physician may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

(h) If the board rejects the panel's recommendation for settlement or dismissal, the board shall notify the physician and state in the board's minutes the reason for rejecting the recommendation and specify further action to be considered. In determining the appropriate further action to be taken, the board shall consider previous attempts to resolve the matter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.38, eff. September 1, 2005.

Sec. 164.0035. DISMISSAL OF BASELESS COMPLAINT. If, during the 180-day period prescribed by Section 164.003(b)(1), the board determines that the complaint is a baseless or unfounded complaint, the board shall dismiss the complaint and include a statement in the records of the complaint that the reason for the dismissal is because

the complaint was baseless or unfounded. The board shall adopt rules that establish criteria for determining that a complaint is baseless or unfounded.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 28, eff. June 10, 2003.

Sec. 164.0036. NOTICE REGARDING CERTAIN COMPLAINTS. (a) If an informal meeting is not scheduled for a complaint before the 180th day after the date the board's official investigation of the complaint is commenced under Section 154.057(b), the board shall provide notice to all parties to the complaint. The notice must include an explanation of the reason why the informal meeting has not been scheduled. The notice under this subsection is not required if the notice would jeopardize an investigation.

(b) The board must include in its annual report to the legislature information about any complaint for which notice is required under Subsection (a), including the reason for failing to schedule the informal meeting before the 180-day deadline. The information provided under this subsection must also list any complaint in which the investigation has extended beyond the first anniversary of the date the complaint was filed with the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.39, eff. September 1, 2005.

Sec. 164.004. COMPLIANCE WITH DUE PROCESS REQUIREMENTS. (a) Except in the case of a suspension under Section 164.059 or under the terms of an agreement between the board and a license holder, a revocation, suspension, involuntary modification, or other disciplinary action relating to a license is not effective unless, before board proceedings are instituted:

(1) the board gives notice, in a manner consistent with the notice requirements under Section 154.053, to the affected license holder of the facts or conduct alleged to warrant the intended action; and

(2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license, at the license holder's option, either in writing or through personal appearance at an informal meeting with one or more

representatives of the board.

(b) If the license holder chooses to personally appear and an informal meeting is held, the board's staff and the board's representatives are subject to the ex parte provisions of Chapter 2001, Government Code, with regard to contacts with board members and administrative law judges concerning the case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.005. INITIATION OF CHARGES; FORMAL COMPLAINT. (a) In this section, "formal complaint" means a written statement made by a credible person that is filed and presented by a board representative charging a person with having committed an act that, if proven, could affect the legal rights or privileges of a license holder or other person under the board's jurisdiction.

(b) Unless otherwise specified, a proceeding under this subtitle or other applicable law and a charge against a license holder may be instituted by an authorized representative of the board.

(c) A charge must:

(1) be filed with the board's records custodian or assistant records custodian; and

(2) detail the nature of the charge as required by this subtitle or other applicable law.

(d) The board president or a designee shall ensure a copy of the charges is served on the respondent or the respondent's counsel of record.

(e) The president or designee shall notify the State Office of Administrative Hearings of a formal complaint.

(f) A formal complaint must allege with reasonable certainty each specific act relied on by the board to constitute a violation of a specific statute or rule. The formal complaint must be specific enough to:

(1) enable a person of common understanding to know what is meant by the formal complaint; and

(2) give the person who is the subject of the formal complaint notice of each particular act alleged to be a violation of a specific statute or rule.

(g) The board shall adopt rules to promote discovery by each

party to a contested case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 12, eff. September 1, 2019.

Sec. 164.006. SERVICE OF NOTICE. (a) Notice to the respondent of a hearing about the charges against the person must be served:

(1) in accordance with Chapter 2001, Government Code; and

(2) by certified mail.

(b) If notice described by Subsection (a) is impossible or cannot be effected, the board shall publish once a week for two successive weeks a notice of the hearing in a newspaper published in the county of the last known place of practice in this state of the person, if known.

(c) If the license holder is not currently practicing in this state as evidenced by information in the board files, or if the last county of practice is unknown, the notice shall be published in a newspaper in Travis County.

(d) If publication of notice is used, the date of hearing may not be earlier than the 10th day after the date of the last publication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 13, eff. September 1, 2019.

Sec. 164.007. ADMINISTRATIVE HEARINGS; CONFIDENTIALITY ISSUES. (a) The board by rule shall adopt procedures governing formal disposition of a contested case under Chapter 2001, Government Code. A formal hearing shall be conducted by an administrative law judge employed by the State Office of Administrative Hearings. After receiving the administrative law judge's findings of fact and conclusions of law, the board shall:

(1) dispose of the contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law; or

(2) appeal the administrative law judge's findings of fact and conclusions of law in the manner provided by Section 164.0072.

(a-1) Notwithstanding Section 2001.058(e), Government Code, the board may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. For each case, the board has the sole authority and discretion to determine the appropriate action or sanction. The administrative law judge may not make any recommendation regarding the appropriate action or sanction.

(b) Notwithstanding this subtitle or other law, the board may employ, retain, and compensate:

(1) attorneys, consultants, and other professionals as necessary and appropriate to serve as board consultants or special counsel to prosecute complaints filed with the board on behalf of the hearings division and investigating division; and

(2) court reporters and other staff necessary to prepare for or represent the board in the hearings authorized by this section.

(c) Each complaint, adverse report, investigation file, other investigation report, and other investigative information in the possession of or received or gathered by the board or its employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or its employees or agents involved in discipline of a license holder. For purposes of this subsection, investigative information includes information relating to the identity of, and a report made by, a physician performing or supervising compliance monitoring for the board.

(d) Not later than the 30th day after the date of receipt of a written request from a license holder who is the subject of a formal complaint initiated and filed under Section 164.005 or from the license holder's counsel of record, and subject to any other privilege or restriction set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall provide the license holder with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. The board is not required to provide:

(1) a board investigative report or memorandum;

(2) the identity of a nontestifying complainant; or

(3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(e) Furnishing information under Subsection (d) does not constitute a waiver of privilege or confidentiality under this subtitle or other applicable law.

(f) Investigative information in the possession of the board or an employee or agent relating to discipline of a license holder may be disclosed to:

(1) the appropriate licensing authority of:

(A) another state; or

(B) a territory or country in which the license holder is licensed or has applied for a license; or

(2) a medical peer review committee reviewing an application for privileges or the qualifications of the license holder with respect to retaining privileges.

(g) If investigative information in the possession of the board or its employees or agents indicates that a crime may have been committed, the board shall report the information to the appropriate law enforcement agency.

(h) The board shall cooperate with and assist a law enforcement agency conducting a criminal investigation of a license holder by providing information that is relevant to the criminal investigation to the investigating agency. Information disclosed by the board to an investigative agency remains confidential and may not be disclosed by the investigating agency except as necessary to further the investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1201, Sec. 2, eff. June 15, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.40, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1349 (H.B. 680), Sec. 7, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 14, eff. September 1, 2019.

Sec. 164.0071. HEARINGS ON CERTAIN COMPLAINTS. (a) In a formal hearing described by Section 164.007 in which the sole basis for disciplinary action is the basis described by Section 164.051(a)(7), the board shall provide evidence from the board's investigation that shows the basis for the board's findings required by that subdivision.

(b) In any formal hearing described by Section 164.007, information obtained as a result of peer review may not be used as evidence except as the basis for the opinion of an expert witness called by the board. When admitted into evidence, this information shall be admitted under seal to protect the confidentiality of the documents. In the event that a decision of the board or the State Office of Administrative Hearings is appealed to a district court or other court, the confidentiality protections relating to the medical peer review committee documents shall continue.

(c) A member of a peer review committee is not subject to subpoena and may not be compelled to provide evidence in a formal hearing.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.41, eff. September 1, 2005.

Sec. 164.0072. BOARD APPEAL OF FINDINGS OF FACT AND CONCLUSIONS OF LAW. (a) The board may, before disposing of a contested case by issuing a final order, obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge by filing suit in a Travis County district court not later than the 30th day after the date the findings of fact and conclusions of law are issued.

(b) The board shall join in a suit filed under this section the respondent in the contested case for which the board seeks to obtain judicial review.

(c) The scope of judicial review under this section is the same as the scope of judicial review provided for an appeal under Section 164.009.

(d) After the court issues a final order in a suit filed under this section, the board shall dispose of the contested case by issuing a final order based on the court's final order. The respondent may not appeal a sanction ordered by the board unless the

sanction exceeds the board's published sanctions guidelines.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 15, eff. September 1, 2019.

Sec. 164.008. RIGHT TO COUNSEL. In a hearing involving a disciplinary action under this subtitle, the respondent is entitled to appear personally, by counsel, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.009. JUDICIAL REVIEW. A person whose license to practice medicine has been revoked or who is subject to other disciplinary action by the board may appeal to a Travis County district court not later than the 30th day after the date the board decision is final.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.010. MONITORING OF LICENSE HOLDER. (a) The board by rule shall develop a system to monitor compliance with the requirements of this subtitle of license holders who are the subject of disciplinary action.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder ordered by the board to perform certain acts; and

(2) identify and monitor license holders who are the subject of disciplinary action and who present a continuing threat to the public welfare through the practice of medicine.

(c) The board shall immediately investigate:

(1) a violation of a disciplinary order by a license holder described by Subsection (a); or

(2) a complaint filed against a license holder described by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 29, eff. June 10, 2003.

Sec. 164.011. LICENSE STATUS PENDING APPEAL. (a) The board's decision on a disciplinary matter may not be enjoined or stayed except on application to the appropriate court after notice to the board.

(b) A person may not practice medicine or deliver health care services in violation of a disciplinary order or action of the board while an appeal is pending unless the order or action is stayed by the appropriate court.

(c) A stay or injunction may not be granted if the license holder's continued practice presents a danger to the public. A stay or injunction may not be granted for a term that exceeds 120 days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 30, eff. June 10, 2003.

SUBCHAPTER B. LICENSE DENIAL AND DISCIPLINARY ACTIONS

Sec. 164.051. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. (a) The board may refuse to admit a person to its examination or refuse to issue a license to practice medicine and may take disciplinary action against a person if the person:

(1) commits an act prohibited under Section 164.052;

(2) is convicted of, or is placed on deferred adjudication community supervision or deferred disposition for:

(A) a felony; or

(B) a misdemeanor involving moral turpitude;

(3) commits or attempts to commit a direct or indirect violation of a rule adopted under this subtitle, either as a principal, accessory, or accomplice;

(4) is unable to practice medicine with reasonable skill and safety to patients because of:

(A) illness;

(B) drunkenness;

(C) excessive use of drugs, narcotics, chemicals, or another substance; or

(D) a mental or physical condition;

(5) is found by a court judgment to be of unsound mind;

(6) fails to practice medicine in an acceptable

professional manner consistent with public health and welfare;

(7) is removed, suspended, or is subject to disciplinary action taken by the person's peers in a local, regional, state, or national professional medical association or society, or is disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the board finds that the action:

(A) was based on unprofessional conduct or professional incompetence that was likely to harm the public; and

(B) was appropriate and reasonably supported by evidence submitted to the board;

(8) is subject to repeated or recurring meritorious health care liability claims that in the board's opinion evidence professional incompetence likely to injure the public; or

(9) except as provided by Subsections (d) and (e), holds a license to practice medicine subject to disciplinary action by another state, or subject to disciplinary action by the uniformed services of the United States, based on acts by the person that are prohibited under Section 164.052 or are similar to acts described by this subsection.

(b) Action taken by a professional medical association, society, or hospital medical staff under Subsection (a)(7) does not constitute state action.

(c) A certified copy of the record of another state that takes action described by Subsection (a)(9) or (d) is conclusive evidence of that action.

(d) The board shall refuse to issue a license under this subtitle if the applicant held a license to practice medicine in another state that has been revoked by the licensing authority in that state for a reason that would be grounds for the board to revoke a license to practice medicine in this state.

(e) The board shall revoke a license issued under this subtitle if the license holder, while holding the license under this subtitle, held a license to practice medicine in another state that has been revoked by the licensing authority in that state for a reason that would be grounds for the board to revoke a license to practice medicine in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 31, eff. June 10, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 10, eff. September 1, 2023.

Sec. 164.052. PROHIBITED PRACTICES BY PHYSICIAN OR LICENSE APPLICANT. (a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;

(3) commits fraud or deception in taking or passing an examination;

(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;

(6) uses an advertising statement that is false, misleading, or deceptive;

(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;

(8) purchases, sells, barters, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;

(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;

(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:

(A) fraudulently purchased or issued;

(B) counterfeited; or

(C) materially altered;

(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;

(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;

(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;

(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;

(15) associates in the practice of medicine with a person:

(A) whose license to practice medicine has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of medicine in this state or elsewhere;

(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion;

(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board;

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:

(A) the abortion is necessary to prevent the death of the woman;

(B) the viable unborn child has a severe, irreversible brain impairment; or

(C) the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis;

(19) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, unless the abortion is necessary due to a medical emergency, as defined by Section 171.002, Health and Safety Code;

(20) otherwise performs an abortion on an unemancipated minor in violation of Chapter 33, Family Code;

(21) performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, F, or G, Chapter 171, Health and Safety Code;

(22) in complying with the procedures outlined in Sections 166.045 and 166.046, Health and Safety Code, wilfully fails to make a reasonable effort to transfer a patient to a physician who is willing to comply with a directive;

(23) performs or delegates to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Section 167A.002, Health and Safety Code; or

(24) performs a gender transitioning or gender reassignment procedure or treatment in violation of Section 161.702, Health and Safety Code.

(b) For purposes of Subsection (a)(12), conduct that subverts or attempts to subvert the medical licensing examination process includes, as prescribed by board rules, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

(c) The board shall adopt the forms necessary for physicians to obtain the consent required for an abortion to be performed on an unemancipated minor under Subsection (a). The form executed to obtain consent or any other required documentation must be retained by the physician until the later of the fifth anniversary of the date of the minor's majority or the seventh anniversary of the date the physician received or created the documentation for the record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.42, eff. September 1, 2005.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 6, eff. October 29, 2013.

Acts 2015, 84th Leg., R.S., Ch. 436 (H.B. 3994), Sec. 13, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 14, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 16, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 4, eff. September 1, 2023.

Sec. 164.053. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 164.052(a)(5), unprofessional or dishonorable conduct likely to deceive or defraud the public includes conduct in which a physician:

(1) commits an act that violates any state or federal law if the act is connected with the physician's practice of medicine;

(2) fails to keep complete and accurate records of purchases and disposals of:

(A) drugs listed in Chapter 481, Health and Safety Code; or

(B) controlled substances scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(3) writes prescriptions for or dispenses to a person who:

(A) is known to be an abuser of narcotic drugs, controlled substances, or dangerous drugs; or

(B) the physician should have known was an abuser of narcotic drugs, controlled substances, or dangerous drugs;

(4) writes false or fictitious prescriptions for:

(A) dangerous drugs as defined by Chapter 483, Health and Safety Code; or

(B) controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(5) prescribes or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(6) prescribes, administers, or dispenses in a manner inconsistent with public health and welfare:

(A) dangerous drugs as defined by Chapter 483, Health and Safety Code; or

(B) controlled substances scheduled in Chapter 481, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(7) violates Section 311.0025, Health and Safety Code;

(8) fails to supervise adequately the activities of those acting under the supervision of the physician; or

(9) delegates professional medical responsibility or acts

to a person if the delegating physician knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation of law is not necessary for the enforcement of Subsection (a)(1). Proof of the commission of the act while in the practice of medicine or under the guise of the practice of medicine is sufficient for the board's action.

(c) Subsection (a)(3) does not apply to a person the physician is treating for:

(1) the person's use of narcotics after the physician notifies the board in writing of the name and address of the person being treated; or

(2) intractable pain under the Intractable Pain Treatment Act (Article 4495c, Revised Statutes).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.034(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 202, Sec. 32, eff. June 10, 2003.

Sec. 164.054. ADDITIONAL REQUIREMENTS REGARDING DRUG RECORDS. (a) Each physician shall keep a record of the physician's purchase and disposal of drugs and controlled substances described by Section 164.053(a)(2) that includes:

(1) the date of purchase and the date of the sale or disposal of the drugs and controlled substances by the physician;

(2) the name and address of the person receiving the drugs or controlled substances; and

(3) the reason for the disposing or dispensing of the drugs or controlled substances to the person.

(b) Failure to keep the records required by this section for a reasonable time constitutes grounds for revoking, canceling, suspending, or placing on probation the physician's license.

(c) The board or its representative may enter and inspect a physician's place of practice during reasonable business hours to:

(1) verify the accuracy of the records; and

(2) perform an inventory of the prescription drugs on hand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.055. PROHIBITED ACTS REGARDING ABORTION. (a) The board shall take an appropriate disciplinary action against a physician who violates Section 170.002 or Chapter 171, Health and Safety Code. The board shall refuse to admit to examination or refuse to issue a license or renewal license to a person who violates that section or chapter.

(b) The sanctions provided by Subsection (a) are in addition to any other grounds for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice medicine under this subtitle. The criminal penalties provided by Section 165.152 do not apply to a violation of Section 170.002, Health and Safety Code, or Subchapter C, F, or G, Chapter 171, Health and Safety Code.

(c) Notwithstanding Subsection (a), the board may not take disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by Section 74.552, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 10, eff. September 1, 2011.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 7, eff. October 29, 2013.

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 15, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 913 (H.B. 3058), Sec. 2, eff. September 1, 2023.

Sec. 164.0551. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A physician shall comply with Subchapter B, Chapter 171, Health and Safety Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 73 (H.B. 15), Sec. 11, eff. September 1, 2011.

Sec. 164.0552. PROHIBITED ACTS REGARDING GENDER TRANSITIONING OR GENDER REASSIGNMENT PROCEDURES AND TREATMENTS ON CERTAIN CHILDREN. (a) The board shall revoke the license or other authorization to

practice medicine of a physician who violates Section 161.702, Health and Safety Code. The board shall refuse to admit to examination or refuse to issue a license or renewal license to a person who violates that section.

(b) The sanctions provided by Subsection (a) are in addition to any other grounds for revocation of a license or other authorization to practice medicine or for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice medicine under this subtitle.

Added by Acts 2023, 88th Leg., R.S., Ch. 335 (S.B. 14), Sec. 5, eff. September 1, 2023.

Sec. 164.056. PHYSICAL OR MENTAL EXAMINATION; HEARING. (a) In enforcing Section 164.051(a)(4), the board, on probable cause, shall request the affected physician or applicant to submit to a mental or physical examination by physicians designated by the board. The board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which a physician or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) If the affected physician refuses to submit to the examination, the board shall issue an order requiring the physician to show cause why the physician should not be required to submit to the examination and shall schedule a hearing on the order not later than the 30th day after the date on which notice is served on the physician. The physician shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the physician and the physician's attorney are entitled to present testimony and other evidence showing that the physician should not be required to submit to the examination. After a hearing, the board shall issue an order either requiring the physician to submit to the examination or withdrawing the request for examination.

(d) The board shall refer a physician or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The board may not require a physician or

applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The board may not require a physician or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(e) The guidelines adopted under this section do not impair or remove the board's power to make an independent licensing decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.43, eff. September 1, 2005.

Sec. 164.057. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a physician's license on proof that the physician has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the physician's license.

(c) The board shall revoke the license of a physician placed on deferred adjudication community supervision for an offense under:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child); or

(3) Section 21.11, Penal Code (indecency with a child).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 33, eff. June 10, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 883 (S.B. 263), Sec. 1, eff. September 1, 2011.

Sec. 164.058. REQUIRED SUSPENSION OF LICENSE OF INCARCERATED PHYSICIAN. Regardless of the offense, the board shall suspend the license of a physician serving a prison term in a state or federal penitentiary during the term of the incarceration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.059. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE. (a) The president of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a person's license to practice medicine should be temporarily suspended or restricted.

(b) If the disciplinary panel determines from the evidence presented to the panel that a person licensed to practice medicine would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license of that person.

(c) A license may be suspended or restricted by a disciplinary panel under this section without notice or hearing if:

(1) the board immediately provides notice of the suspension or restriction to the license holder; and

(2) a hearing on the temporary suspension or restriction before a disciplinary panel of the board is scheduled for the earliest possible date after 10 days' notice of hearing.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(e) After the hearing before the disciplinary panel described

by Subsection (c), if the disciplinary panel affirms the temporary suspension or restriction of the license holder's license, the board shall schedule an informal compliance meeting that meets the requirements of Section 2001.054(c), Government Code, and Section 164.004 of this code to be held as soon as practicable, unless the license holder waives the informal meeting or an informal meeting has already been held with regard to the issues that are the basis for the temporary suspension or restriction.

(f) If the license holder is unable to show compliance at the informal meeting described by Subsection (e) regarding the issues that are the basis for the temporary suspension or restriction, a board representative shall file a formal complaint under Section 164.005 as soon as practicable.

(g) If, after the hearing described by Subsection (c), the disciplinary panel does not temporarily suspend or restrict the license holder's license, the facts that were the basis for the temporary suspension or restriction may not be the sole basis of another proceeding to temporarily suspend or restrict the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension or restriction of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension or restriction of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 34, eff. June 10, 2003.

Sec. 164.0595. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE FOR CERTAIN ARRESTS. (a) A disciplinary panel appointed under Section 164.059 may suspend or restrict the license of a person arrested for an offense under:

(1) Chapter 19, Penal Code (criminal homicide);

(2) Chapter 20A, Penal Code (trafficking of persons); or

(3) Chapter 21 or 22, Penal Code (sexual or assaultive offenses), if the offense is:

(A) sexual, lewd, or indecent in nature;

(B) not a misdemeanor punishable by fine only; and

(C) committed against:

(i) a patient of the license holder;

(ii) a child;

(iii) an elderly individual; or

(iv) an individual with a disability.

(b) Before suspending or restricting a license under this section, the disciplinary panel must determine that the person arrested for an offense listed in Subsection (a) is the same person who holds a license issued by the board.

(c) A suspension or restriction under this section remains in effect until the final disposition of the case.

(d) Sections 164.059(c), (d), (e), (f), and (g) apply to a suspension or restriction under this section.

(e) The board shall adopt rules to implement this section, including rules regarding evidence that serves as proof of final disposition of a case.

Added by Acts 2011, 82nd Leg., R.S., Ch. 883 (S.B. 263), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.23, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 11, eff. September 1, 2023.

Sec. 164.060. REPORT OF BOARD ACTIONS. (a) Not later than the first working day after the date a board order is issued taking disciplinary action against a physician, the board shall report the action to the appropriate health care facilities and hospitals, if known by the board.

(b) Not later than the 30th day after the date the board takes disciplinary action against a physician, the board shall report that action, in writing, to:

(1) the appropriate health care facilities and hospitals, if not previously notified in writing;

(2) professional societies of physicians in this state;

(3) the entity responsible for the administration of Medicare and Medicaid in this state;

(4) the United States Secretary of Health and Human Services or the secretary's designee; and

(5) the complainant.

(c) If the board, during its review of a complaint against a physician, discovers an act or omission that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, an offense involving fraud or abuse under the Medicare or Medicaid programs, or a violation of the workers' compensation laws under Subtitle A, Title 5, Labor Code, the board shall immediately report that act or omission to the appropriate prosecuting and regulatory authorities.

(d) Notwithstanding Subsection (c), the board may exercise discretion in the case of an impaired physician who is actively participating in board-approved or sanctioned care, counseling, or treatment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 35, eff. June 10, 2003.

Sec. 164.061. SURRENDER OF LICENSE. (a) The board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned unless the board determines, under board rules, that the license holder is competent to resume practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PROBATION OF LICENSE

Sec. 164.101. PROBATION. (a) The board on majority vote may probate an order canceling, revoking, or suspending a license or imposing any other method of discipline if the probationer conforms to each order, condition, and rule the board establishes as a term of probation.

(b) At the time probation is granted the board shall establish the term of the probationary period.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.102. PERSONS INELIGIBLE FOR PROBATION. (a) The board may not grant probation to a physician who constitutes, through the practice of medicine, a continuing threat to the public welfare.

(b) Except on an express determination, based on substantial evidence, that granting probation is in the best interests of the public and of the person whose license has been suspended, revoked, or canceled, the board may not grant probation to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code;

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(4) any of the following sections of the Penal Code:

(A) Section 22.011(a)(2) (sexual assault of a child);

(B) Section 22.021(a)(1)(B) (aggravated sexual assault of a child);

(C) Section 21.02 (continuous sexual abuse of young child or disabled individual); or

(D) Section 21.11 (indecency with a child).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 883 (S.B. 263), Sec. 3, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.24, eff. September 1, 2021.

Sec. 164.103. RESCISSION OF PROBATION. (a) At any time during a probation term, on a showing of adequate grounds, the board may hold a hearing and, on proof of a violation of the probation order,

may:

(1) rescind the probation and enforce the board's original order; and

(2) impose any disciplinary action permitted under Section 164.001 in addition to or instead of enforcing the original order.

(b) The board shall revoke or suspend a probationer's license if the board determines that the probationer constitutes, through the practice of medicine, a continuing threat to the public welfare.

(c) A hearing to rescind probation is subject to the requirements established under this chapter for other charges.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. LICENSE REINSTATEMENT

Sec. 164.151. APPLICATION FOR LICENSE REINSTATEMENT. (a) On application, the board may reissue a license to practice medicine to a person whose license has been canceled, revoked, or suspended.

(b) The application must be:

(1) accompanied by the fees set by the board; and

(2) made in the manner and form and under the conditions required by the board.

(c) In addition to the other requirements imposed under this subchapter, to be eligible for reinstatement or reissuance of a license an applicant must prove that the reinstatement or reissuance is in the best interests of:

(1) the public; and

(2) the person whose license has been canceled, revoked, or suspended.

(d) A decision by the board to deny an application to reinstate or reissue a license is subject to judicial review in the manner provided by Section 164.009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.152. APPLICATION PERIOD. (a) A person may not apply for reinstatement of a license that was revoked before the first anniversary of the date on which the revocation was issued or became final.

(b) If the board denies the application for reinstatement, the

applicant may not reapply more frequently than annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.153. CERTAIN PERSONS INELIGIBLE FOR REINSTATEMENT. Except on an express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissue of the license is in the best interests of the public and of the person whose license has been canceled, revoked, or suspended, the board may not reinstate or reissue a license to a person whose license has been canceled, revoked, or suspended because of a felony conviction under:

(1) Chapter 481 or 483, Health and Safety Code;

(2) Section 485.033, Health and Safety Code; or

(3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 164.154. EFFECT OF LICENSE REINSTATEMENT ON CERTAIN PROSECUTIONS OR PENALTIES. If a physician has had charges filed against the physician during a period in which the physician's license was not in force or was suspended, revoked, or canceled, or if penalties have been incurred by the physician during that period, the reinstatement of the physician's license does not abate the prosecution or penalties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. OTHER ACTIONS

Sec. 164.201. REVIEW BY BOARD IF THREE OR MORE MALPRACTICE CLAIMS. The board shall review the medical competency of a physician against whom three or more expert reports under Section 74.351, Civil Practice and Remedies Code, have been filed in three separate lawsuits within a five-year period in the same manner as if a complaint against the physician had been made to the board under Section 154.051.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 36, eff. June 10, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 141 (H.B. 744), Sec. 1, eff. September 1, 2005.

Sec. 164.206. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Chapter 165.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this subtitle. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.46, eff. September 1, 2005.

CHAPTER 165. PENALTIES

SUBCHAPTER A. ADMINISTRATIVE PENALTIES

Sec. 165.001. IMPOSITION OF ADMINISTRATIVE PENALTY. The board by order may impose an administrative penalty against a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.002. PROCEDURE. (a) The board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.035, eff. Sept. 1, 2001.

Sec. 165.003. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.004. NOTICE OF VIOLATION AND PENALTY. (a) If the board by order determines that a violation has occurred and imposes an administrative penalty, the board shall notify the affected person of the board's order.

(b) The notice must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.005. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order imposing the administrative penalty is final, the person shall:

(1) pay the penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under

Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.006. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.007. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.008. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. INJUNCTIVE RELIEF AND OTHER ENFORCEMENT PROVISIONS

Sec. 165.051. INJUNCTION AUTHORITY. In addition to any other action authorized by law, the board may institute an action in its own name to enjoin a violation of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this subtitle is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of medicine, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 1.48, eff.

September 1, 2005.

SUBCHAPTER C. CIVIL PENALTIES

Sec. 165.101. CIVIL PENALTY. (a) If it appears that a person is in violation of or is threatening to violate this subtitle or a rule or order adopted by the board, the attorney general may institute an action for a civil penalty of $1,000 for each violation.

(b) Each day a violation continues constitutes a separate violation.

(c) An action filed under this section must be filed in a district court in Travis County or the county in which the violation occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.102. LIMITATION ON CIVIL PENALTY. The attorney general may not institute an action for a civil penalty against a person described by Section 151.053 or 151.054 if the person is not in violation of or threatening to violate this subtitle or a rule or order adopted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.103. RECOVERY OF EXPENSES BY ATTORNEY GENERAL; DEPOSIT. (a) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this subchapter, including:

(1) court costs;

(2) reasonable attorney's fees;

(3) investigative costs;

(4) witness fees; and

(5) deposition expenses.

(b) A civil penalty recovered by the attorney general under this subchapter shall be deposited in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. CRIMINAL PENALTIES

Sec. 165.151. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subtitle or a rule of the board.

(b) If another penalty is not specified for the offense, an offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.152. PRACTICING MEDICINE IN VIOLATION OF SUBTITLE. (a) A person commits an offense if the person practices medicine in this state in violation of this subtitle.

(b) Each day a violation continues constitutes a separate offense.

(c) An offense under Subsection (a) is a felony of the third degree.

(d) On final conviction of an offense under this section, a person forfeits all rights and privileges conferred by virtue of a license issued under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 202, Sec. 37, eff. June 10, 2003.

Sec. 165.153. CRIMINAL PENALTIES FOR ADDITIONAL HARM. (a) A person commits an offense if the person practices medicine without a license or permit and causes another person:

(1) physical or psychological harm; or

(2) financial harm.

(b) An offense under Subsection (a)(1) is a felony of the third degree.

(c) An offense under Subsection (a)(2) is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.1535. PERFORMING SURGERY WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or

regulated under this subtitle, performs surgery on a patient while intoxicated, and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) An offense under this section is a state jail felony.

(d) It is an affirmative defense to prosecution under this section that the actor performed the surgery in an emergency. In this subsection, "emergency" means a condition or circumstance in which a reasonable person with education and training similar to that of the actor would assume that the person on whom the surgery was performed was in imminent danger of serious bodily injury or death.

Added by Acts 2003, 78th Leg., ch. 565, Sec. 1, eff. Sept. 1, 2003.

Sec. 165.154. FALSE STATEMENT; OFFENSE. (a) A person commits an offense if the person knowingly makes a false statement:

(1) in the person's application for a license; or

(2) under oath to obtain a license or to secure the registration of a license to practice medicine.

(b) An offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 827 (H.B. 1998), Sec. 12, eff. September 1, 2023.

Sec. 165.155. SOLICITATION OF PATIENTS; PENALTY. (a) A physician commits an offense if the physician employs or agrees to employ, pays or promises to pay, or rewards or promises to reward any person, firm, association, partnership, or corporation for securing or soliciting a patient or patronage.

(b) Each payment, reward, or fee or agreement to pay or accept a reward or fee constitutes a separate offense.

(c) A physician commits an offense if the physician accepts or agrees to accept a payment or other thing of value for securing or soliciting patronage for another physician.

(d) This section does not prohibit advertising except that which:

(1) is false, misleading, or deceptive; or

(2) advertises professional superiority or the performance of professional service in a superior manner and which is not readily subject to verification.

(e) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.156. MISREPRESENTATION REGARDING ENTITLEMENT TO PRACTICE MEDICINE. A person, partnership, trust, association, or corporation commits an offense if the person, partnership, trust, association, or corporation, through the use of any letters, words, or terms affixed on stationery or on advertisements, or in any other manner, indicates that the person, partnership, trust, association, or corporation is entitled to practice medicine if the person, partnership, trust, association, or corporation is not licensed to do so.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.157. DUTY TO ASSIST IN CERTAIN PROSECUTIONS. (a) The board and the board's employees shall assist the local prosecuting officers of each county in the enforcement of:

(1) state laws prohibiting the unlawful practice of medicine;

(2) this subtitle; and

(3) other matters.

(b) Except as otherwise provided by law, a prosecution is subject to the direction and control of the prosecuting officers. This subtitle does not deprive those officers of any authority vested by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.158. UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION. (a) A person commits an offense if the person unlawfully discloses confidential information described by Section 160.006 that is possessed by the board.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.159. PRACTICING MEDICINE WITHOUT REGISTRATION. (a) A person commits an offense if the person practices medicine without complying with the registration requirements imposed by this subtitle.

(b) An offense under Subsection (a) constitutes the offense of practicing medicine without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 165.160. EFFECT ON CRIMINAL PROSECUTION. This subtitle does not bar a criminal prosecution for a violation of this subtitle or a rule adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 166. BILLING OF ANATOMIC PATHOLOGY SERVICES

Sec. 166.001. DEFINITION. In this chapter, "anatomic pathology services" means:

(1) histopathology or surgical pathology, which is the gross and microscopic examination and histologic processing of organ tissue performed by a physician or under the supervision of a physician;

(2) cytopathology, which is the microscopic examination of cells from the following:

(A) fluids;

(B) aspirates;

(C) washings;

(D) brushings; or

(E) smears, including a Pap smear, performed by a physician or under the supervision of a physician;

(3) hematology, which is the microscopic evaluation of bone marrow aspirates and biopsies performed by a physician, or under the supervision of a physician, and peripheral blood smears when the attending or treating physician or technologist requests that a blood

smear be reviewed by a pathologist;

(4) sub-cellular pathology and molecular pathology; or

(5) a blood-banking service performed by a pathologist.

Added by Acts 2007, 80th Leg., R.S., Ch. 144 (S.B. 1832), Sec. 1, eff. September 1, 2007.

Sec. 166.002. ANATOMIC PATHOLOGY BILLING. Notwithstanding any other law, a person, including a physician and an entity, violates this subtitle and is subject to disciplinary action and penalties under this subtitle if the person:

(1) does not directly supervise or perform anatomic pathology services for a patient; and

(2) fails to disclose in the bill presented by the person to the patient or the insurer or other third party payor, or in an itemized statement to the patient:

(A) the name and address of the physician or laboratory that provided the anatomic pathology services; and

(B) the net amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory.

Added by Acts 2007, 80th Leg., R.S., Ch. 144 (S.B. 1832), Sec. 1, eff. September 1, 2007.

CHAPTER 167. TEXAS PHYSICIAN HEALTH PROGRAM

Sec. 167.001. DEFINITIONS. In this chapter:

(1) "Committee" means the Physician Health and Rehabilitation Advisory Committee established under this chapter.

(2) "Governing board" means the governing board of the program.

(3) "Medical director" means a person appointed under Section 167.002 to oversee the program.

(4) "Physician assistant board" means the Texas Physician Assistant Board established under Chapter 204.

(5) "Program" means the Texas Physician Health Program established under this chapter.

(6) "Program participant" means a physician or physician assistant who receives services under the program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.002. MEDICAL DIRECTOR. (a) The board shall appoint a medical director for the program.

(b) The medical director must:

(1) be a physician licensed by the board; and

(2) have expertise in a field of medicine relating to disorders commonly affecting physicians or physician assistants, including substance abuse disorders.

(c) The medical director shall provide clinical and policy oversight for the program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.003. GOVERNING BOARD. (a) The president of the board shall appoint persons to serve on the governing board of the program. The appointees shall include physicians, physician assistants, and other related professionals with experience addressing health conditions commonly found in the population of monitored physicians or physician assistants.

(b) The governing board shall:

(1) provide advice and counsel to the board; and

(2) establish policy and procedures for the operation and administration of the program.

(c) The board, with the advice and in consultation with the physician assistant board and Texas-based professional associations of physicians and physician assistants, shall adopt rules relating to the appointment of members to the governing board, including length of terms, procedures for filling a vacancy, and conflict-of-interest provisions.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.004. PHYSICIAN HEALTH AND REHABILITATION ADVISORY COMMITTEE. (a) The governing board shall appoint physicians to the

Physician Health and Rehabilitation Advisory Committee who have experience in disorders commonly affecting physicians or physician assistants.

(b) The committee shall assist the governing board by making recommendations on the request of the governing board.

(c) The board, with the advice and in consultation with the physician assistant board and Texas-based professional associations of physicians and physician assistants, shall adopt rules relating to the appointment of members to the committee, including length of terms, procedures for filling a vacancy, and conflict-of-interest provisions.

(d) Chapter 2110, Government Code, does not apply to the committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.005. TEXAS PHYSICIAN HEALTH PROGRAM. (a) The Texas Physician Health Program is established to promote:

(1) physician and physician assistant wellness; and

(2) treatment of all health conditions that have the potential to compromise the physician's or physician assistant's ability to practice with reasonable skill and safety, including mental health issues, substance abuse issues, and addiction issues.

(b) The program is a confidential, nondisciplinary therapeutic program for physicians and physician assistants.

(c) The program is administratively attached to the board.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.006. RULES. The board, with the advice of and in consultation with the governing board, committee, and Texas-based professional associations of physicians and physician assistants, shall:

(1) adopt rules and policies as necessary to implement the program, including:

(A) policies for assessments under the program and guidelines for the validity of a referral to the program;

(B) policies and guidelines for initial contacts used to determine if there is a need for a physician or physician assistant to complete a clinically appropriate evaluation or to enter treatment, including policies and guidelines for arrangements for that evaluation or treatment; and

(C) policies and guidelines for interventions conducted under the program; and

(2) define applicable guidelines for the management of substance abuse disorders, psychiatric disorders, and physical illnesses and impairments.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.007. OPERATION OF PROGRAM. (a) The program must include provisions for:

(1) continuing care, monitoring, and case management of potentially impairing health conditions, including provisions for cooperation with the evaluating or treating facility;

(2) ongoing monitoring for relapse, including random drug testing, consultations with other physician health and rehabilitation committees, work site monitors, and treating health professionals, including mental health professionals; and

(3) other physician and physician assistant health and rehabilitation programs to operate under an agreement with the program, using established guidelines to ensure uniformity and credibility of services throughout this state.

(b) The program must ensure appropriate communications with the board, the physician assistant board, other state licensing boards, and physician health and rehabilitation programs.

(c) The program shall use physicians or other health care professional experts or consultants, as appropriate, when necessary to evaluate, recommend solutions for, or resolve a medical dispute.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.008. REFERRALS TO PROGRAM. (a) The program shall accept a self-referral from a physician or physician assistant and

referrals from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a hospital or hospital system licensed in this state, a residency program, the board, or the physician assistant board.

(b) A physician or physician assistant may refer the physician or physician assistant to the program.

(c) The program may not accept a referral, except as provided by board rules, for a violation of the standard of care as a result of drugs or alcohol or boundary violations with a patient or a patient's family.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.009. REFERRAL BY BOARD OR PHYSICIAN ASSISTANT BOARD AS PREREQUISITE FOR ISSUING OR MAINTAINING A LICENSE. (a) The board or the physician assistant board, through an agreed order or after a contested proceeding, may make a referral to the program and require participation in the program by a specified physician or physician assistant as a prerequisite for issuing or maintaining a license under Chapter 155 or 204.

(b) The board or the physician assistant board may discipline a physician or physician assistant required to participate in the program under Subsection (a) who does not participate in the program.

(c) Each program participant is individually responsible for payment of the participant's own medical costs, including any required evaluations, primary treatment, and continuing care.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.0091. REFERRALS FOR CERTAIN PROFESSIONS. Notwithstanding any other provision of this chapter, the board, the Texas Board of Medical Radiologic Technology, or the Texas Board of Respiratory Care, as appropriate, may make a referral to the program and require participation in the program as a prerequisite for issuing or maintaining a license, certificate, permit, or other authorization under Chapter 601, 602, 603, or 604.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.002, eff. September 1, 2015.

Sec. 167.010. CONFIDENTIALITY. (a) Each referral, proceeding, report, investigative file, record, or other information received, gathered, created, or maintained by the program or its employees, consultants, work site monitors, or agents relating to a physician or physician assistant is privileged and confidential and is not subject to disclosure under Chapter 552, Government Code, or to discovery, subpoena, or other means of legal compulsion for release to any person except as provided by this chapter.

(b) Notwithstanding Subsection (a), the program may report to the board or the physician assistant board, as appropriate, the name and pertinent information relating to impairment of a physician or physician assistant.

(c) Notwithstanding Subsection (a), the program shall make a report to the board or the physician assistant board, as appropriate, regarding a physician or physician assistant if the medical director or the governing board determines that the physician or physician assistant poses a continuing threat to the public welfare. If requested by the board or the physician assistant board, a report under this subsection must include all information in the possession or control of the program.

Added by Acts 2009, 81st Leg., R.S., Ch. 1345 (S.B. 292), Sec. 2(a), eff. September 1, 2009.

Sec. 167.012. MEMORANDUM OF UNDERSTANDING WITH BOARD. The governing board and the board shall enter into a memorandum of understanding to better coordinate services and operations of the program. The memorandum of understanding must be adopted by rule and:

(1) establish performance measures for the program, including the number of participants who successfully complete the program;

(2) include a list of services the board will provide for the program; and

(3) require that an internal audit of the program be

conducted at least once every three years to ensure the program is properly documenting and referring all noncompliance to the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 17, eff. September 1, 2019.

Sec. 167.013. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the board or money appropriated to the board for the program, the governing board may receive and accept a gift, grant, donation, or other thing of value from any source, including the United States or a private source, for the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 17, eff. September 1, 2019.

CHAPTER 168. REGULATION OF PAIN MANAGEMENT CLINICS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 168.001. DEFINITIONS. In this chapter:

(1) "Pain management clinic" means a publicly or privately owned facility for which a majority of patients are issued on a monthly basis a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.

(2) "Operator" means an owner, medical director, or physician affiliated or associated with the pain management clinic in any capacity. Each of these individuals is considered to be operating at the pain management clinic.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 478 (S.B. 1235), Sec. 1, eff. September 1, 2015.

Sec. 168.002. EXEMPTIONS. This chapter does not apply to:

(1) a medical or dental school or an outpatient clinic associated with a medical or dental school;

(2) a hospital, including any outpatient facility or clinic

of a hospital;

(3) a hospice established under 40 T.A.C. Section 97.403 or defined by 42 C.F.R. Section 418.3;

(4) a facility maintained or operated by this state;

(5) a clinic maintained or operated by the United States;

(6) a health organization certified by the board under Section 162.001; or

(7) a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who personally uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 7, eff. January 1, 2014.

Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 10, eff. September 1, 2019.

Sec. 168.003. LEGISLATIVE FINDING. The legislature finds that deaths resulting from the use of opioids and other controlled substances constitute a public health crisis and that there is a compelling state interest in the board closely regulating the prescribing of opioids and other controlled substances by physicians and their delegates. Accordingly, the legislature finds that inspections and investigations conducted by the board, including the board's use of subpoenas for immediate production, inspection, and copying of medical and billing records, are necessary to adequately regulate the prescribing of opioids and other controlled substances in order to protect the public health and welfare.

Added by Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 3, eff. September 1, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 168.051. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including rules to address, for

a pain management clinic:

(1) the operation of the clinic;

(2) personnel requirements for the clinic, including requirements for a physician who practices at a clinic;

(3) standards to ensure quality of patient care;

(4) certificate application and renewal procedures and requirements;

(5) inspections and complaint investigations; and

(6) patient billing procedures.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.052. INSPECTIONS. (a) The board may inspect a pain management clinic certified under this chapter, including the documents of a physician practicing at the clinic, as necessary to ensure compliance with this chapter.

(b) The board may inspect a clinic or facility that is not certified under this chapter to determine whether the clinic or facility is required to be certified under Section 168.101. The board by rule shall establish the grounds for conducting an inspection under this subsection, including grounds based on:

(1) the population of patients served by the clinic or facility;

(2) the volume or combination of drugs prescribed to patients served by the clinic or facility; and

(3) any other criteria the board considers sufficient to require an inspection of the clinic or facility.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 4, eff. September 1, 2017.

Sec. 168.053. COMPLAINTS. The board shall investigate a complaint alleging a violation of this chapter or a rule adopted

under this chapter by a pain management clinic certified under this chapter or a physician who owns or operates a clinic in the same manner as other complaints under this subtitle.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

SUBCHAPTER C. CERTIFICATION OF CLINIC

Sec. 168.101. CERTIFICATE REQUIRED. (a) A pain management clinic may not operate in this state unless the clinic is certified under this chapter.

(b) A certificate issued under this chapter is not transferable or assignable.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.102. CERTIFICATE APPLICATION AND ISSUANCE. (a) A physician who owns or operates a pain management clinic shall apply for a certificate for the clinic under this chapter. A pain management clinic must be owned and operated by a medical director who is a physician who practices in this state under an unrestricted license.

(b) An applicant for a certificate under this chapter must submit an application to the board on a form prescribed by the board.

(c) The board shall issue a certificate if the board finds that the pain management clinic meets the requirements of this chapter and the standards adopted by the board under this chapter.

(d) If an applicant for a certificate under this chapter is under investigation by the board for a violation of this subtitle, board rules, or other law relating to the prescription, dispensation, administration, supply, or sale of a controlled substance, the board may not make a decision on the application until the board has reached a final decision on the matter under investigation.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1,

2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 5, eff. September 1, 2013.

SUBCHAPTER D. CERTIFICATE RENEWAL

Sec. 168.151. EXPIRATION OF CERTIFICATE. (a) A certificate issued under this chapter expires on the second anniversary of the date it is issued.

(b) The board shall grant a 180-day grace period from the expiration date of a certificate to renew the certificate.

(c) The owner or operator of a pain management clinic for which a certificate has expired may not continue to operate the clinic until the clinic's certificate is renewed.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Sec. 168.152. REQUIREMENTS FOR RENEWAL. (a) The owner or operator of a pain management clinic may apply to renew a certificate issued to the clinic under this chapter by:

(1) submitting a renewal application to the board on the form prescribed by the board before the expiration of the grace period under Section 168.151; and

(2) complying with any other requirements adopted by board rule.

(b) If a certificate is not renewed before the expiration of the grace period under Section 168.151, the pain management clinic must reapply for an original certificate to operate the clinic.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.002(14), eff. September 1, 2011.

SUBCHAPTER E. REGULATION OF CLINICS; ENFORCEMENT

Sec. 168.201. REGULATION OF PERSON AFFILIATED WITH CLINIC. (a) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(1) have been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(2) have held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(3) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(a-1) For the purposes of this section, inappropriate prescribing includes nontherapeutic prescribing or other conduct as specified by board rule.

(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(1) an offense that constitutes a felony; or

(2) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Section 551.003(11).

(c) The owner or operator of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic's total number of operating hours; and

(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic.

(d) A person who owns or operates a pain management clinic is engaged in the practice of medicine. This shall include, but is not limited to, all supervision and delegation activities related to the pain management clinic.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 956 (H.B. 1803), Sec. 8, eff. January 1, 2014.
Acts 2015, 84th Leg., R.S., Ch. 478 (S.B. 1235), Sec. 2, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 5, eff. September 1, 2017.

Sec. 168.202. DISCIPLINARY ACTION. (a) A violation of this chapter or a rule adopted under this chapter is grounds for disciplinary action, including a temporary suspension or restriction under Section 164.059, against a pain management clinic certified under this chapter or an owner or operator of a clinic certified under this chapter.
(b) A violation of this chapter may be enforced in the same manner as any other violation of this subtitle.
(c) A violation of this chapter is subject to criminal prosecution under Section 165.152.

Redesignated from Occupations Code, Chapter 167 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(45), eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1226 (S.B. 1643), Sec. 6, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 478 (S.B. 1235), Sec. 3, eff. September 1, 2015.

CHAPTER 169. AUTHORITY TO PRESCRIBE LOW-THC CANNABIS TO CERTAIN PATIENTS FOR COMPASSIONATE USE

Sec. 169.001. DEFINITIONS. In this chapter:
(1) "Department" means the Department of Public Safety.
(1-a) "Incurable neurodegenerative disease" means a disease designated as an incurable neurodegenerative disease by rule of the executive commissioner of the Health and Human Services Commission, adopted in consultation with the National Institutes of Health.
(2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1300 (H.B. 3703), Sec. 3, eff. June 14, 2019.

(3) "Low-THC cannabis" means the plant Cannabis sativa L., and any part of that plant or any compound, manufacture, salt, derivative, mixture, preparation, resin, or oil of that plant that contains not more than one percent by weight of tetrahydrocannabinols.

(4) "Medical use" means the ingestion by a means of administration other than by smoking of a prescribed amount of low-THC cannabis by a person for whom low-THC cannabis is prescribed under this chapter.

(5) "Smoking" means burning or igniting a substance and inhaling the smoke.

(6) Repealed by Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 5, eff. September 1, 2021.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 4, eff. June 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1300 (H.B. 3703), Sec. 1, eff. June 14, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1300 (H.B. 3703), Sec. 3, eff. June 14, 2019.
Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 2, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 5, eff. September 1, 2021.

Sec. 169.0011. PRESCRIPTION FOR MEDICAL USE. A reference in this chapter, Chapter 487, Health and Safety Code, or other law to a prescription for medical use or a prescription for low-THC cannabis means an entry in the compassionate-use registry established under Section 487.054, Health and Safety Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1300 (H.B. 3703), Sec. 2, eff. June 14, 2019.

Sec. 169.002. PHYSICIAN QUALIFIED TO PRESCRIBE LOW-THC CANNABIS TO PATIENTS WITH CERTAIN MEDICAL CONDITIONS. (a) Only a physician qualified with respect to a patient's particular medical condition as provided by this section may prescribe low-THC cannabis in accordance

with this chapter to treat the applicable medical condition.

(b) A physician is qualified to prescribe low-THC cannabis with respect to a patient's particular medical condition if the physician:

(1) is licensed under this subtitle;

(2) is board certified in a medical specialty relevant to the treatment of the patient's particular medical condition by a specialty board approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists; and

(3) dedicates a significant portion of clinical practice to the evaluation and treatment of the patient's particular medical condition.

(c) A physician is qualified to prescribe low-THC cannabis for the treatment of a patient with a medical condition approved by rule of the executive commissioner of the Health and Human Services Commission for treatment in an approved research program conducted under Subchapter F, Chapter 487, Health and Safety Code, if the physician is:

(1) licensed under this subtitle; and

(2) certified by a compassionate-use institutional review board created under Section 487.253, Health and Safety Code, that oversees patient treatment undertaken as part of that approved research program.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 4, eff. June 1, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1300 (H.B. 3703), Sec. 2, eff. June 14, 2019.

Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 3, eff. September 1, 2021.

Sec. 169.003. PRESCRIPTION OF LOW-THC CANNABIS. A physician described by Section 169.002 may prescribe low-THC cannabis to a patient if:

(1) the patient is a permanent resident of the state;

(2) the physician complies with the registration requirements of Section 169.004; and

(3) the physician certifies to the department that:

(A) the patient is diagnosed with:

(i) epilepsy;
(ii) a seizure disorder;
(iii) multiple sclerosis;
(iv) spasticity;
(v) amyotrophic lateral sclerosis;
(vi) autism;
(vii) cancer;
(viii) an incurable neurodegenerative disease;
(ix) post-traumatic stress disorder; or
(x) a medical condition that is approved for a research program under Subchapter F, Chapter 487, Health and Safety Code, and for which the patient is receiving treatment under that program; and

(B) the physician determines the risk of the medical use of low-THC cannabis by the patient is reasonable in light of the potential benefit for the patient.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 4, eff. June 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1300 (H.B. 3703), Sec. 2, eff. June 14, 2019.
Acts 2021, 87th Leg., R.S., Ch. 660 (H.B. 1535), Sec. 4, eff. September 1, 2021.

Sec. 169.004. LOW-THC CANNABIS PRESCRIBER REGISTRATION. (a) Before a physician qualified to prescribe low-THC cannabis under Section 169.002 may prescribe or renew a prescription for low-THC cannabis for a patient under this chapter, the physician must register as the prescriber for that patient in the compassionate-use registry maintained by the department under Section 487.054, Health and Safety Code. The physician's registration must indicate:

(1) the physician's name;
(2) the patient's name and date of birth;
(3) the dosage prescribed to the patient;
(4) the means of administration ordered for the patient; and
(5) the total amount of low-THC cannabis required to fill the patient's prescription.

(b) The department may not publish the name of a physician registered under this section unless permission is expressly granted by the physician.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 4, eff. June 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1300 (H.B. 3703), Sec. 2, eff. June 14, 2019.

Sec. 169.005. PATIENT TREATMENT PLAN. A physician described by Section 169.002 who prescribes low-THC cannabis for a patient's medical use under this chapter must maintain a patient treatment plan that indicates:

(1) the dosage, means of administration, and planned duration of treatment for the low-THC cannabis;

(2) a plan for monitoring the patient's symptoms; and

(3) a plan for monitoring indicators of tolerance or reaction to low-THC cannabis.

Added by Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 4, eff. June 1, 2015.

CHAPTER 170. PRESCRIPTION OF OPIOID ANTAGONISTS

Sec. 170.001. DEFINITIONS. In this chapter, "opioid antagonist" and "opioid-related drug overdose" have the meanings assigned by Section 483.101, Health and Safety Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 386 (S.B. 584), Sec. 1, eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 6, eff. September 1, 2017.

Sec. 170.002. GUIDELINES. (a) The board shall adopt guidelines for the prescription of opioid antagonists.

(b) The guidelines must address:

(1) prescribing an opioid antagonist to a patient to whom an opioid medication is also prescribed; and

(2) identifying patients at risk of an opioid-related drug overdose and prescribing an opioid antagonist to that patient or to a person in a position to administer the opioid antagonist to that patient.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 386 (S.B. 584), Sec. 1

(c) In adopting guidelines under this section, the board:

(1) shall consult with the Texas State Board of Pharmacy;

(2) shall consult materials published by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services; and

(3) may consult other appropriate materials, including medical journals subject to peer review and publications by medical professional associations.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 6

(c) In adopting guidelines under this section, the board:

(1) shall consult materials published by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services; and

(2) may consult other appropriate materials, including medical journals subject to peer review and publications by medical professional associations.

Added by Acts 2017, 85th Leg., R.S., Ch. 386 (S.B. 584), Sec. 1, eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 6, eff. September 1, 2017.

Sec. 170.003. LIABILITY FOR ACT OR OMISSION WITH RESPECT TO PRESCRIBING AN OPIOID ANTAGONIST. A physician who acts in good faith and with reasonable care, regardless of whether the physician follows the guidelines adopted under this chapter, is not subject to criminal or civil liability or any professional disciplinary action for:

(1) prescribing or failing to prescribe an opioid antagonist; or

(2) any outcome resulting from the eventual administration of an opioid antagonist prescribed by the physician.

Added by Acts 2017, 85th Leg., R.S., Ch. 386 (S.B. 584), Sec. 1, eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 534 (S.B. 315), Sec. 6, eff. September 1, 2017.

CHAPTER 171. INTERSTATE MEDICAL LICENSURE COMPACT

Sec. 171.001. PURPOSE. In order to strengthen access to health care, and in recognition of the advances in the delivery of health care, the member states of the Interstate Medical Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. The compact creates another pathway for licensure and does not otherwise change a state's existing medical practice act. The compact also adopts the prevailing standard for licensure and affirms that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and therefore, requires the physician to be under the jurisdiction of the state medical board where the patient is located. State medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.002. DEFINITIONS. In this chapter:

(1) "Bylaws" means those bylaws established by the interstate commission pursuant to Section 171.011 for its governance, or for directing and controlling its actions and conduct.

(2) "Commissioner" means the voting representative appointed by each member board pursuant to Section 171.011.

(3) "Conviction" means a finding by a court that an individual is guilty of a criminal offense through adjudication, or entry of a plea of guilt or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the

court shall be considered final for purposes of disciplinary action by a member board.

(4) "Expedited license" means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact.

(5) "Interstate commission" means the interstate commission created pursuant to Section 171.011.

(6) "License" means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization.

(7) "Medical practice act" means laws and regulations governing the practice of allopathic and osteopathic medicine within a member state.

(8) "Member board" means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government.

(9) "Member state" means a state that has enacted the compact.

(10) "Offense" means a felony, gross misdemeanor, or crime of moral turpitude.

(11) "Physician" means any person who:

(A) is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(B) passed each component of the United States Medical Licensing Examination (USMLE) or the Comprehensive Osteopathic Medical Licensing Examination (COMLEX-USA) within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(C) successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(D) holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(E) possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(F) has never been convicted or received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(G) has never held a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(H) has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(I) is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction.

(12) "Practice of medicine" means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medical practice act of a member state.

(13) "Rule" means a written statement by the interstate commission promulgated pursuant to Section 171.012 that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(14) "State" means any state, commonwealth, district, or territory of the United States.

(15) "State of principal license" means a member state where a physician holds a license to practice medicine and that has been designated as such by the physician for purposes of registration and participation in the compact.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.003. ELIGIBILITY. (a) A physician must meet the eligibility requirements as defined in Section 171.002(11) to receive an expedited license under the terms and provisions of the compact.

(b) A physician who does not meet the requirements of Section 171.002(11) may obtain a license to practice medicine in a member

state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.004. DESIGNATION OF STATE OF PRINCIPAL LICENSE. (a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

(1) the state of primary residence for the physician;

(2) the state where at least 25 percent of the practice of medicine occurs;

(3) the location of the physician's employer; or

(4) if no state qualifies under Subdivision (1), (2), or (3), the state designated as state of residence for purpose of federal income tax.

(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in Subsection (a).

(c) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.005. APPLICATION AND ISSUANCE OF EXPEDITED LICENSURE. (a) A physician seeking licensure through the compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(b) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.

(1) Static qualifications, which include verification of

medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(2) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. Section 731.202.

(3) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(c) Upon verification in Subsection (b), physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to Subsection (a), including the payment of any applicable fees.

(d) After receiving verification of eligibility under Subsection (b) and any fees under Subsection (c), a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medical practice act and all applicable laws and regulations of the issuing member board and member state.

(e) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(f) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(g) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff.

September 1, 2021.

Sec. 171.006. FEES FOR EXPEDITED LICENSURE. (a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the compact.

(b) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.007. RENEWAL AND CONTINUED PARTICIPATION. (a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(1) maintains a full and unrestricted license in a state of principal license;

(2) has not been convicted or received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(3) has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(4) has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(b) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(c) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(d) Upon receipt of any renewal fees collected in Subsection (c), a member board shall renew the physician's license.

(e) Physician information collected by the interstate commission during the renewal process will be distributed to all

member boards.

(f) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the compact.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.008. COORDINATED INFORMATION SYSTEM. (a) The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under Section 171.005.

(b) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied for or received an expedited license through the compact.

(c) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(d) Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by Subsection (c) to the interstate commission.

(e) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(f) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(g) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.009. JOINT INVESTIGATIONS. (a) Licensure and disciplinary records of physicians are considered investigative.

(b) In addition to the authority granted to a member board by its respective medical practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(c) A subpoena issued by a member state shall be enforceable in

other member states.

(d) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the compact.

(e) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.010. DISCIPLINARY ACTIONS. (a) Any disciplinary action taken by any member board against a physician licensed through the compact shall be considered unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medical practice act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medical practice act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may consider the action conclusive as to matter of law and fact decided, and:

(1) impose the same or lesser sanction against the physician so long as such sanction is consistent with the medical practice act of that state; or

(2) pursue separate disciplinary action against the physician under its respective medical practice act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or

suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for 90 days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the medical practice act of that state. A member board may terminate the automatic suspension of the license it issued before the completion of the 90-day suspension period in a manner consistent with the medical practice act of that state.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.011. INTERSTATE MEDICAL LICENSURE COMPACT COMMISSION. (a) The member states hereby create the Interstate Medical Licensure Compact Commission.

(b) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(d) The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:

(1) an allopathic or osteopathic physician appointed to a member board;

(2) an executive director, executive secretary, or similar executive of a member board; or

(3) a member of the public appointed to a member board.

(e) The interstate commission shall meet at least once each

calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(g) Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of Subsection (d).

(h) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

(1) relate solely to the internal personnel practices and procedures of the interstate commission;

(2) discuss matters specifically exempted from disclosure by federal statute;

(3) discuss trade secrets or commercial or financial information that is privileged or confidential;

(4) involve accusing a person of a crime, or formally censuring a person;

(5) discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) discuss investigative records compiled for law enforcement purposes; or

(7) specifically relate to the participation in a civil action or other legal proceeding.

(i) The interstate commission shall keep minutes that shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any

roll call votes.

(j) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(k) The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

(l) The interstate commission may establish other committees for governance and administration of the compact.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.012. POWERS AND DUTIES OF INTERSTATE COMMISSION. The interstate commission shall have the duty and power to:

(1) oversee and maintain the administration of the compact;

(2) promulgate rules that shall be binding to the extent and in the manner provided for in the compact;

(3) issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;

(4) enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(5) establish and appoint committees, including, but not limited to, an executive committee as required by Section 171.011, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

(6) pay or provide for the payment of the expenses related to the establishment, organization, and ongoing activities of the interstate commission;

(7) establish and maintain one or more offices;

(8) borrow, accept, hire, or contract for services of personnel;

(9) purchase and maintain insurance and bonds;

(10) employ an executive director who shall have such powers to employ, select, or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;

(11) establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(12) accept donations and grants of money, equipment, supplies, materials and services, and receive, utilize, and dispose of them in a manner consistent with the conflict-of-interest policies established by the interstate commission;

(13) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve or use, any property, real, personal, or mixed;

(14) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(15) establish a budget and make expenditures;

(16) adopt a seal and bylaws governing the management and operation of the interstate commission;

(17) report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year, including reports of financial audits and any recommendations that may have been adopted by the interstate commission;

(18) coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;

(19) maintain records in accordance with the bylaws;

(20) seek and obtain trademarks, copyrights, and patents; and

(21) perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.013. FINANCE POWERS. (a) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(b) The interstate commission shall not incur obligations of any kind before securing the funds adequate to meet the same.

(c) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(d) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.014. ORGANIZATION AND OPERATION OF INTERSTATE COMMISSION. (a) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact within 12 months of the first interstate commission meeting.

(b) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission.

(c) Officers selected in Subsection (b) shall serve without remuneration from the interstate commission.

(d) The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or

arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities. However, such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such person.

(e) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such persons' employment or duties for acts, errors, or omissions occurring within such persons' state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such persons from suit or liability for damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of such persons.

(f) The interstate commission shall defend the executive director and its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such person.

(g) To the extent not covered by the state involved, the member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or

responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or wilful and wanton misconduct on the part of such persons.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.015. RULEMAKING FUNCTIONS OF INTERSTATE COMMISSION. (a) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(b) Rules considered appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the Revised Model State Administrative Procedure Act of 2010, and subsequent amendments thereto.

(c) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices, provided that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.016. OVERSIGHT OF INTERSTATE COMPACT. (a) The executive, legislative, and judicial branches of state government in each member state shall enforce the compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules

promulgated hereunder shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact that may affect the powers, responsibilities, or actions of the interstate commission.

(c) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.017. ENFORCEMENT OF INTERSTATE COMPACT. (a) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the compact.

(b) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.018. DEFAULT PROCEDURES. (a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the compact, or the rules and bylaws of the interstate commission promulgated under the compact.

(b) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall provide:

(1) written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the interstate commission and in which the interstate commission specifies the conditions by which the defaulting state must cure its default; and

(2) remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.

(f) The member state that has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination, including obligations, the performance of which extends beyond the effective date of termination.

(g) The interstate commission shall not bear any costs relating to any state has been found to be in default or that has been terminated from the compact, unless otherwise mutually agreed upon in

writing between the interstate commission and the defaulting state.

(h) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.019. DISPUTE RESOLUTION. (a) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and that may arise among member states or member boards.

(b) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.020. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT. (a) Any state is eligible to become a member state of the compact.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(c) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis before adoption of the compact by all states.

(d) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.021. WITHDRAWAL. (a) Once effective, the compact shall continue in force and remain binding upon each and every member state. A member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(b) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of notice provided under Subsection (c).

(e) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(g) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.022. DISSOLUTION. (a) The compact shall dissolve effective upon the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded

and surplus funds shall be distributed in accordance with the bylaws.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.023. SEVERABILITY AND CONSTRUCTION. (a) The provisions of the compact shall be severable, and if any phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of the compact shall be liberally construed to effectuate its purposes.

(c) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

Sec. 171.024. BINDING EFFECT OF COMPACT AND OTHER LAWS. (a) Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(b) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(c) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(d) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Added by Acts 2021, 87th Leg., R.S., Ch. 322 (H.B. 1616), Sec. 1, eff. September 1, 2021.

SUBTITLE C. OTHER PROFESSIONS PERFORMING MEDICAL PROCEDURES
CHAPTER 201. CHIROPRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Chiropractic Examiners.

(2) "Chiropractor" means a person licensed to practice chiropractic by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.002. PRACTICE OF CHIROPRACTIC. (a) In this section:

(1) "Controlled substance" has the meaning assigned to that term by Section 481.002, Health and Safety Code.

(2) "Dangerous drug" has the meaning assigned to that term by Section 483.001, Health and Safety Code.

(3) "Incisive or surgical procedure" includes making an incision into any tissue, cavity, or organ by any person or implement. The term does not include the use of a needle for the purpose of drawing blood for diagnostic testing.

(4) "Surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

(b) A person practices chiropractic under this chapter if the person:

(1) uses objective or subjective means to diagnose, analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body;

(2) performs nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system;

(3) represents to the public that the person is a chiropractor; or

(4) uses the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms or initials in connection with the person's name.

(c) The practice of chiropractic does not include:

(1) incisive or surgical procedures;

(2) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or

(3) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 1, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 1, eff. September 1, 2017.

Sec. 201.003. APPLICATIONS AND EXEMPTIONS. (a) This chapter does not apply to a registered nurse licensed under Chapter 301, a vocational nurse licensed under Chapter 301, a person who provides spinal screening services as authorized by Chapter 37, Health and Safety Code, a physical therapist licensed under Chapter 453, or a massage therapist or a massage therapy instructor qualified and registered under Chapter 455 if:

(1) the person does not represent to the public that the person is a chiropractor or use the term "chiropractor," "chiropractic," "doctor of chiropractic," "D.C.," or any derivative of those terms or initials in connection with the person's name or practice; and

(2) the person practices strictly within the scope of the license or registration held in compliance with all laws relating to the license and registration.

(b) This chapter does not limit or affect the rights and powers of a physician licensed in this state to practice medicine.

(c) This section does not affect or prevent a student enrolled in a college of chiropractic in this state from engaging in all phases of clinical practice if the practice is:

(1) part of the curriculum; and

(2) conducted under the supervision of a licensed chiropractor or a licensed physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.014, eff. Feb. 1, 2004.

Sec. 201.004. APPLICATION OF SUNSET ACT. The Texas Board of Chiropractic Examiners is subject to Chapter 325, Government Code

(Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 2, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 2, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.03, eff. June 18, 2023.

SUBCHAPTER B. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

Sec. 201.051. BOARD; MEMBERSHIP. (a) The Texas Board of Chiropractic Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six chiropractors who are reputable practicing chiropractors and who have resided in this state for at least five years preceding appointment; and

(2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.052. MEMBERSHIP ELIGIBILITY. (a) A person is not eligible to serve as a member of the board if the person:

(1) is a member of the faculty or board of trustees of a chiropractic school or a doctor of chiropractic degree program;

(2) is a stockholder in a chiropractic school or college; or

(3) has a financial interest in a chiropractic school or college.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 1, eff. June 15, 2007.

Sec. 201.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) Repealed by Acts 2005, 79th Leg., Ch. 1020, Sec. 36, eff. September 1, 2005.

(d) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 36, eff. September 1, 2005.

Sec. 201.054. TERMS; VACANCY. (a) Members of the board are appointed for staggered six-year terms. The terms of one-third of the members expire on February 1 of each odd-numbered year.

(b) A person may not be appointed to serve more than two terms.

(c) If a vacancy occurs because of the death or resignation of a board member, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.055. OFFICERS. (a) The governor shall designate a chiropractic member of the board as the board's president. The president serves in that capacity at the will of the governor.

(b) The board shall elect one of its members as vice president and one of its members as secretary-treasurer at the first board meeting after the biennial appointment of board members.

(c) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(31).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 31(31), eff. Sept. 1, 2003.

Sec. 201.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 201.051 and 201.052(b);

(2) does not maintain during service on the board the qualifications required by Sections 201.051 and 201.052(b);

(3) is ineligible for membership under Section 201.052 or 201.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly

scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the potential ground. The president shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the president, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 4, eff. September 1, 2005.

Sec. 201.057. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(b) A member may not receive reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.058. MEETINGS. (a) The board shall hold regular meetings to examine applicants and transact business at least twice each year at the times and places determined by the board.

(b) A special meeting may be held at the call of three board members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.060. BOARD SEAL. The seal of the board consists of a five-point star with the words, "The State of Texas," and the words, "Texas Board of Chiropractic Examiners," around the margin.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) the board's programs, functions, rules, and budget;

(3) the scope of and limitations on the board's rulemaking authority;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a profession or business the board regulates;

(B) restrict advertising by persons in a profession or business the board regulates;

(C) affect the price of goods or services provided by persons in a profession or business the board regulates; and

(D) restrict participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or

the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 5, eff. September 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 3, eff. September 1, 2017.

SUBCHAPTER C. BOARD PERSONNEL

Sec. 201.101. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 6, eff. September 1, 2005.

Sec. 201.102. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide as often as necessary to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.104. EQUAL EMPLOYMENT OPPORTUNITY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of the significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must be:

(1) prepared to cover an annual period;

(2) updated annually;

(3) reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) filed with the governor.

(c) The governor shall deliver a biennial report to the

legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 201.151. GENERAL POWERS AND DUTIES. The board shall administer the purposes of and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.152. RULES. (a) The board may adopt rules and bylaws:

(1) necessary to:

(A) perform the board's duties; and

(B) regulate the practice of chiropractic; and

(2) relating to the board's proceedings and the board's examination of an applicant for a license to practice chiropractic.

(b) The board shall adopt rules for the enforcement of this chapter. The board shall issue all rules based on a vote of a majority of the board at a regular or special meeting. The issuance of a disciplinary action or disciplinary order of the board is not limited by this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 7, eff. September 1, 2005.

Sec. 201.1525. RULES CLARIFYING SCOPE OF PRACTICE OF CHIROPRACTIC. The board shall adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside of that scope. The rules:

(1) must clearly specify the procedures that chiropractors may perform;

(2) must clearly specify any equipment and the use of that equipment that is prohibited; and

(3) may require a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 8, eff. September 1, 2005.

Sec. 201.1526. DEVELOPMENT OF PROPOSED RULES REGARDING SCOPE OF PRACTICE OF CHIROPRACTIC. (a) This section applies to the process by which the board develops proposed rules under Section 201.1525 before the proposed rules are published in the Texas Register and before the board complies with the rulemaking requirements of Chapter 2001, Government Code. This section does not affect the duty of the board to comply with the rulemaking requirements of that law.

(b) The board shall establish methods under which the board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will be most affected by a proposed rule. Methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons. Methods may include negotiated rulemaking, informal conferences, advisory committees, and any other appropriate method.

(c) A rule adopted by the board under Section 201.1525 may not be challenged on the grounds that the board did not comply with this section. If the board was unable to solicit a significant amount of advice and opinion from the public or from affected persons early in the rule development process, the board shall state in writing the reasons why the board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 8, eff. September 1, 2005.

Sec. 201.153. FEES. (a) The board by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 448 , Sec. 31(l)(2), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 448 , Sec. 31(l)(2), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 899, Sec. 2.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(l)(2), eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 4, eff. September 1, 2017.

Sec. 201.154. CERTIFICATION FOR MANIPULATION UNDER ANESTHESIA PROHIBITED. Notwithstanding any other provision of this chapter, the board may not adopt a process to certify chiropractors to perform manipulation under anesthesia.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.155. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.
(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:
(1) restricts the use of any advertising medium;
(2) restricts the person's personal appearance or use of the person's voice in an advertisement;
(3) relates to the size or duration of an advertisement by the person; or
(4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.1555. FRAUD. (a) The board shall strictly and vigorously enforce the provisions of this chapter prohibiting fraud.
(b) The board shall adopt rules to prevent fraud in the practice of chiropractic, including rules relating to:
(1) the filing of workers' compensation and insurance claims; and

(2) records required to be maintained in connection with the practice of chiropractic.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 9, eff. September 1, 2005.

Sec. 201.156. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(c) The board by rule shall adopt procedures concerning:

(1) the retention of information files on license holders; and

(2) the expunction of files on license holders, including complaints, adverse reports, and other investigative information on license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.157. IMMUNITY. In the absence of fraud, conspiracy, or malice, a member or employee of the board, a witness called to testify by the board, or a consultant or hearing officer is not liable in a civil action for any alleged injury, wrong, loss, or damage for any investigation, report, recommendation, statement, evaluation, finding, order, or award made in the course of performing the person's official duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.158. BOARD COMMITTEES. (a) The board may appoint committees from its own members.

(b) A committee appointed from the members of the board shall:

(1) consider matters referred to the committee relating to the enforcement of this chapter and the rules adopted by the board;

and

(2) make recommendations to the board.

(c) The board may delegate to a committee of the board an authority granted to the board under Section 201.505(c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.159. RECORDS. (a) The board shall preserve a record of its proceedings in a register that contains:

(1) the name, age, place, and duration of residence of each applicant for a license;

(2) the amount of time spent by the applicant in the study of chiropractic in respective doctor of chiropractic degree programs; and

(3) other information the board desires to record.

(b) The register shall show whether an applicant was rejected or licensed.

(c) The information recorded in the register is prima facie evidence of the matters contained in the register. A certified copy of the register with the seal of the board is admissible as evidence in any court of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.051(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 2, eff. June 15, 2007.

Sec. 201.160. PAYMENT OF OTHER EXPENSES. The board shall pay the necessary expenses of an employee of the board incurred in the performance of the employee's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 24, eff. Sept. 1, 2003.

Sec. 201.161. APPROPRIATION FROM STATE TREASURY PROHIBITED. The legislature may not appropriate money, other than fees, from the

state treasury for an expenditure made necessary by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.163. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 10, eff. September 1, 2005.

Sec. 201.164. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 10, eff. September 1, 2005.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 201.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.202. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.203. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the board; or

(2) on a sign prominently displayed in the place of business of each person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.204. RECORDS OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the board. The board's information file must be kept current and contain a record for each complaint of:

(1) each person contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed;

(4) the schedule required under Section 201.205 and a notification of any change in the schedule; and

(5) other relevant information.

(b) Except as provided by Subsection (c), if a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) If a written complaint that the board has authority to resolve is referred to the enforcement committee, the board at least semiannually and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) require the board to prioritize complaints for purposes of determining the order in which they are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending;

(3) ensure that a complaint is not dismissed without appropriate consideration;

(4) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(5) ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(6) prescribe guidelines concerning the categories of

complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall:

(1) dispose of a complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the complaint process that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify the parties to the complaint of the projected time requirements for pursuing the complaint.

(d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.

(e) The executive director shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 11, eff. September 1, 2005.

Sec. 201.206. CONFIDENTIALITY OF COMPLAINTS, INVESTIGATION FILES, AND OTHER INFORMATION. (a) Each complaint, adverse report, investigation file, and other investigation report and all other investigative information in the possession of or received or gathered by the board or the board's employees or agents relating to a license holder, an application for a license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or any other means of legal compulsion for release to anyone other than the board or an employee or agent of the board involved in any disciplinary action relating to a license holder.

(b) The board shall share information in investigation files, on request, with another state or federal regulatory agency or with a local, state, or federal law enforcement agency regardless of whether the investigation has been completed. The board is not required to disclose under this subsection information that is an attorney-client

communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) On the completion of the investigation and before a hearing under Section 201.505, the board shall provide to the license holder, subject to any other privilege or restriction set forth by rule, statute, or legal precedent, access to all information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested case hearing on the complaint. The board is not required to provide:

(1) a board investigative report or memorandum;

(2) the identity of a nontestifying complainant; or

(3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c-1) The board's providing of information under Subsection (c) does not constitute a waiver of a privilege or confidentiality under this chapter or any other law.

(d) Notwithstanding Subsection (a), the board may:

(1) disclose a complaint to the affected license holder; and

(2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

(e) This section does not prohibit the board or another party in a disciplinary action from offering into evidence in a contested case under Chapter 2001, Government Code, a record, document, or other information obtained or created during an investigation.

(f) The board shall protect the identity of a complainant to the extent possible.

Added by Acts 2003, 78th Leg., ch. 329, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 6, eff. September 1, 2017.

Sec. 201.2065. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In

this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, or this chapter, a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint.

(d) Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the license holder who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 7, eff. September 1, 2017.

Sec. 201.207. INSPECTIONS. (a) The board, during reasonable business hours, may:

(1) conduct an on-site inspection of a chiropractic facility to investigate a complaint filed with the board; and

(2) examine and copy records of the chiropractic facility pertinent to the inspection or investigation.

(b) The board is not required to provide notice before conducting an inspection under this section.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 12, eff. September 1, 2005.

Sec. 201.208. COOPERATION WITH TEXAS DEPARTMENT OF INSURANCE. (a) In this section, "department" means the Texas Department of Insurance.

(b) This section applies only to information held by or for the department or the board that relates to a person who is licensed or otherwise regulated by the department or the board.

(c) The department and the board, on request or on the department or board's own initiative, may share confidential information or information to which access is otherwise restricted by law. The department and the board shall cooperate with and assist each other when either agency is conducting an investigation by providing information that is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law, and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. The provision of information by the board to the department or by the department to the board under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(d) The department and the board shall develop and maintain a system for tracking investigations conducted by each agency with the cooperation and assistance of the other agency, including information on all disciplinary actions taken.

(e) The department and the board shall collaborate on taking appropriate disciplinary actions to the extent practicable.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 12, eff. September 1, 2005.

Sec. 201.209. INFORMATION ON STATUS OF CERTAIN INVESTIGATIONS. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all investigations conducted by the board with the cooperation and assistance of the Texas Department of Insurance and the Texas Workers' Compensation Commission during the preceding fiscal year.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 12, eff. September 1, 2005.

Sec. 201.210. EXPERT REVIEW PROCESS. (a) The board by rule shall develop an expert review process to assist the board with the investigation of complaints filed with the board that require additional chiropractic expertise.

(b) The board shall:

(1) determine the type of complaints that require potential expert review, including standard of care complaints;

(2) create a list of qualified experts to review complaints that require additional chiropractic expertise; and

(3) establish a method for assigning an expert to a complaint that ensures unbiased assignments of complaints, maintains confidentiality of complaints, and avoids conflicts of interest related to complaints.

(c) The rules adopted under this section must address:

(1) the qualifications of the experts who may review complaints;

(2) the grounds for removal of an expert who is assigned to review a complaint;

(3) the time in which a complaint that requires expert review must be resolved; and

(4) the content and format of expert review documents.

(d) The board may contract with a qualified expert on the list created under this section to assist the board in the investigation of a complaint that requires additional chiropractic expertise.

Added by Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 8, eff. September 1, 2017.

SUBCHAPTER G. LICENSE REQUIREMENTS

Sec. 201.301. LICENSE REQUIRED. A person may not practice chiropractic unless the person holds a license issued by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.302. LICENSING EXAMINATION APPLICATION. (a) An applicant for a license by examination must present satisfactory evidence to the board that the applicant:

(1) is at least 18 years of age;

(2) has completed 90 semester hours of college courses

other than courses included in a doctor of chiropractic degree program; and

(3) is either a graduate or a final semester student of a bona fide reputable doctor of chiropractic degree program.

(b) An application for examination must be:

(1) made in writing;

(2) verified by affidavit;

(3) filed with the secretary-treasurer of the board on a form prescribed by the board; and

(4) accompanied by a fee.

(c) Each applicant shall be given reasonable notice of the time and place of the examination.

(d) Notwithstanding Subsection (a)(3), if the Council on Chiropractic Education or another national chiropractic education accreditation organization recognized by the board requires a number of semester hours of college courses other than courses included in a doctor of chiropractic degree program that is greater or less than the number of hours specified by that subsection to qualify for admission to a doctor of chiropractic degree program, the board may adopt the requirement of that organization if the board determines that requirement to be appropriate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 20, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 3, eff. June 15, 2007.

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 9, eff. September 1, 2017.

Sec. 201.303. EDUCATIONAL REQUIREMENTS. (a) To comply with the requirements of Section 201.302, the applicant must submit to the board a transcript of credits that certifies that the applicant has satisfactorily completed at least the number of semester hours of college credits required by that section at a college or university that issues credits accepted by The University of Texas at Austin for a bachelor of arts or bachelor of science degree.

(b) Repealed by Acts 2003, 78th Leg., ch. 329, Sec. 5.

(c) The board may charge a fee of not more than $50 for verifying that the applicant has satisfied the requirements of this section.

(d) A bona fide reputable doctor of chiropractic degree program that satisfies Section 201.302(a)(3) is one that:

(1) has entrance requirements and a course of instruction as high as those of a better class of doctor of chiropractic degree programs in the United States;

(2) maintains a resident course of instruction equivalent to:

(A) not less than four terms of eight months each; or

(B) not less than the number of semester hours required by The University of Texas for a bachelor of arts or bachelor of science degree;

(3) provides a course of instruction in the fundamental subjects listed in Section 201.305(b); and

(4) has the necessary teaching staff and facilities for proper instruction in all of the fundamental subjects listed in Section 201.305(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 329, Sec. 5.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 21, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 4, eff. June 15, 2007.

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 10, eff. September 1, 2017.

Sec. 201.304. EXAMINATION REQUIREMENTS. (a) To receive a license, an applicant for a license by examination must pass:

(1) the required and optional parts of the examination given by the National Board of Chiropractic Examiners, as required by and under conditions established by board rule; and

(2) an examination prepared by the board that tests the applicant's knowledge and understanding of the laws relating to the practice of chiropractic in this state.

(b) The board shall periodically determine whether applicants

who hold National Board of Chiropractic Examiners certificates have been adequately examined. If the board determines that those applicants have not been adequately examined, the board shall require those applicants to submit to an additional examination prepared by the board.

(c) The board may give an examination during the applicant's last semester of college if the board receives evidence indicating the applicant has satisfactory grades. Immediately after the applicant graduates from chiropractic college, the applicant must forward to the board evidence of satisfactory completion of the applicant's course of study.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 1, eff. Sept. 1, 2001.

Sec. 201.305. EXAMINATION PROCEDURE. (a) Each examination for a license to practice chiropractic shall be conducted in the English language and in a fair and impartial manner.

(b) An examination given under Section 201.304(a)(1) shall be conducted on practical and theoretical chiropractic and in the subjects of anatomy-histology, chemistry, bacteriology, physiology, symptomatology, pathology and analysis of the human spine, and hygiene and public health.

(c) Applicants may be known to the examiners only by numbers, without a name or another method of identification on examination papers by which members of the board could identify an applicant, until after the general averages of the applicants' numbers in the class are determined and the licenses are granted or refused.

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 22, eff. September 1, 2005.

Sec. 201.306. EXAMINATION RESULTS. (a) The board shall notify each applicant of the results of an examination given by the board not later than the 30th day after the date the licensing examination is administered.

(b) If requested by a person who fails an examination given by the board, the board shall review with the person the circumstances surrounding the adverse score.

(c) To pass the examination under Section 201.304(a)(2), an applicant must score a grade of at least 75 percent.

(d) All questions and answers from an examination given by the board, with the grades attached, authenticated by the signature of the examiner, shall be preserved in the executive office of the board for at least one year.

(e) Each license shall be attested by the seal of the board and signed by all members of the board or a quorum of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 3, eff. Sept. 1, 2001.

Sec. 201.307. REEXAMINATION. (a) An applicant who fails to pass a required examination may take another examination.

(b) The board by rule shall establish the number of times an applicant may retake the examination required by Section 201.304(a)(1) or (b), as applicable. The board by rule shall establish the conditions under which an applicant may retake an examination. The board may require an applicant to fulfill additional educational requirements.

(c) If the applicant makes a satisfactory grade on reexamination, the board shall grant to the applicant a license to practice chiropractic.

(d) The board's decision under this section is final.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 721, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 23, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 11, eff. September 1, 2017.

Sec. 201.308. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license.

(b) The board by rule shall provide a time limit for the period a temporary license is valid.

(c) The board may issue a temporary faculty license to practice chiropractic to a person as provided by this section. The person:

(1) must hold a current chiropractic license that is unrestricted and not subject to a disciplinary order or probation in another state or a Canadian province;

(2) may not hold a chiropractic license in another state or a Canadian province that has any restrictions, disciplinary orders, or probation;

(3) must pass the examination required under Section 201.304(a)(2);

(4) must have been engaged in the practice of chiropractic:

(A) for at least the three years preceding the date of the application under this section; or

(B) as a chiropractic educator in a doctor of chiropractic degree program accredited by the Council on Chiropractic Education for at least the three years preceding the date of the application under this section; and

(5) must hold a salaried faculty position of at least the level of assistant professor and be working full-time at:

(A) Parker College of Chiropractic; or

(B) Texas Chiropractic College.

(d) A person is eligible for a temporary license under Subsection (c) if the person holds a faculty position of at least the level of assistant professor, the person works at least part-time at an institution listed in Subsection (c)(5), and:

(1) the person is on active duty in the United States armed forces; and

(2) the person's practice under the temporary license will fulfill critical needs of the citizens of this state.

(e) A chiropractor who is issued a temporary license under Subsection (c) must sign an oath on a form prescribed by the board swearing that the person:

(1) has read and is familiar with this chapter and board rules;

(2) will abide by the requirements of this chapter and board rules while practicing under the chiropractor's temporary

license; and

(3) will be subject to the disciplinary procedures of the board.

(f) A chiropractor holding a temporary license under Subsection (c) and the chiropractor's chiropractic school must file affidavits with the board affirming acceptance of the terms and limits imposed by the board on the chiropractic activities of the chiropractor.

(g) A temporary license issued under Subsection (c) is valid for one year.

(h) The holder of a temporary license issued under Subsection (c) is limited to the teaching confines of the applying chiropractic school as a part of the chiropractor's duties and responsibilities assigned by the program and may not practice chiropractic outside of the setting of the chiropractic school or an affiliate of the chiropractic school.

(i) The application for a temporary license under Subsection (c) must be made by the chiropractic school in which the chiropractor teaches and must contain the information and documentation requested by the board. The application must be endorsed by the dean of the chiropractic school or the president of the institution.

(j) A chiropractor who holds a temporary license issued under Subsection (c) and who wishes to receive a permanent unrestricted license must meet the requirements for issuance of a permanent unrestricted license, including any examination requirements.

(k) The board shall adopt:

(1) rules governing the issuance of a renewal temporary faculty license, including a rule that permits a person licensed under Subsection (c) to continue teaching while an application for a renewal temporary license is pending;

(2) fees for the issuance of a temporary license and a renewal temporary license; and

(3) an application form for temporary licenses and renewal temporary licenses to be issued under this section.

(l) The fee for a renewal temporary license issued under Subsection (k)(1) must be less than the amount of the fee for a temporary license issued under Subsection (c).

(m) A chiropractic school shall notify the board not later than 72 hours after the time:

(1) except as provided by Subdivision (2), a chiropractor licensed under Subsection (c) ceases to hold a full-time salaried

position of at least the level of assistant professor at the school; and

(2) a chiropractor described by Subsection (d) ceases to hold a part-time salaried position of at least the level of assistant professor at the school.

(n) The board shall revoke a license issued under this section if the license holder no longer satisfies the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 957 (H.B. 3450), Sec. 1, eff. September 1, 2009.

Sec. 201.309. LICENSE ISSUANCE TO CERTAIN OUT-OF-STATE APPLICANTS. The board shall issue a license to practice chiropractic to an out-of-state applicant who:

(1) submits a written application to the board on a form prescribed by the board, accompanied by the application fee set by the board and any other information requested by the board;

(2) is licensed in good standing to practice chiropractic in another state or foreign country that has licensing requirements substantially equivalent to the requirements of this chapter;

(3) has not been the subject of a disciplinary action and is not the subject of a pending investigation in any jurisdiction in which the applicant is or has been licensed;

(4) has graduated from a doctor of chiropractic degree program accredited by the Council on Chiropractic Education and approved by rule by the board;

(5) has passed a national or other examination recognized by the board relating to the practice of chiropractic;

(6) has passed the board's jurisprudence examination;

(7) has practiced chiropractic:

(A) for at least the three years immediately preceding the date of the application under this section; or

(B) as a chiropractic educator in a doctor of chiropractic degree program accredited by the Council on Chiropractic Education for at least the three years immediately preceding the date of the application under this section; and

(8) meets any other requirements adopted by rule by the board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 899, Sec. 1.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 802 (S.B. 776), Sec. 5, eff. June 15, 2007.

Sec. 201.311. INACTIVE STATUS. (a) The board by rule shall adopt a system by which a license holder may place the license on inactive status. A license holder must apply for inactive status, on a form prescribed by the board, before the expiration date of the license.

(b) A license holder whose license is on inactive status:

(1) is not required to pay license renewal fees; and

(2) may not perform an activity regulated under this chapter.

(c) A license holder whose license is on inactive status may return to active practice by notifying the board in writing. The board shall remove the license holder's license from inactive status after the holder pays an administrative fee and complies with any educational or other requirements established by board rules.

(d) The board by rule shall establish a rule setting a limit on the time a license holder's license may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.313. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 12, eff. September 1, 2017.

Sec. 201.314. SEARCH OF NATIONAL PRACTITIONER DATABASE. The board shall establish a process to search at least one national practitioner database to determine whether another state has taken any disciplinary action against an applicant or license holder before issuing an initial or renewal license under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 12, eff. September 1, 2017.

SUBCHAPTER H. REGISTRATION AND LICENSE RENEWAL

Sec. 201.351. REGISTRATION. A chiropractor may not practice chiropractic in this state unless the chiropractor registers with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 14, eff. September 1, 2017.

Sec. 201.352. APPLICATION FOR REGISTRATION. (a) A person required to register shall:

(1) file with the board a written application for registration; and

(2) pay, with the application, a registration fee to the board.

(b) The application must include:

(1) the person's full name, age, post office address, and place of residence;

(2) each place where the person is engaged in the practice of chiropractic;

(3) the college of chiropractic from which the person graduated; and

(4) the number and date of the person's license.

(c) On receipt of the application and registration fee, the board shall determine whether the applicant is licensed to practice chiropractic in this state based on the records of the board or other sources the board considers reliable.

(c-1) On receipt of a renewal application, the board shall check the national practitioner database with respect to the license holder as provided by Section 201.314.

(d) If the board determines that the applicant is licensed to practice chiropractic in this state, the board shall issue a registration receipt certifying that the applicant has filed an application and paid the registration fee.

(e) The registration receipt is not evidence in a prosecution for the unlawful practice of chiropractic under Section 201.605 that the person is lawfully entitled to practice chiropractic.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 15, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 16, eff. September 1, 2017.

Sec. 201.353. LICENSE EXPIRATION DATE. (a) A license under this chapter is valid for a term of two or more years as determined by board rule.

(a-1) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) For a year in which the license expiration date is changed, license fees payable on January 1 shall be prorated on a monthly

basis so that each license holder pays only the portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 17, eff. September 1, 2017.

Sec. 201.354. LICENSE RENEWAL. (a) A person may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license.

(b) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

(c) The renewal fee applies to each person licensed by the board, even if the person is not practicing chiropractic in this state.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the renewal fee set by the board under Section 201.153(a). If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to two times the renewal fee set by the board under Section 201.153(a).

(e) Except as provided by Subsection (g) and Section 201.355, a person may not renew a license that has been expired for one year or more. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) A person who practices chiropractic without a renewal receipt for the current year practices chiropractic without a license.

(g) A person may renew a license that has been expired for at least one year but not more than three years if:

(1) the board determines according to criteria adopted by board rule that the person has shown good cause for the failure to

renew the license; and

(2) the person pays to the board:

(A) the renewal fee set by the board under Section 201.153(a) for each year in which the license was expired; and

(B) an additional fee in an amount equal to the sum of:

(i) the renewal fee set by the board under Section 201.153(a), multiplied by the number of years the license was expired, prorated for fractional years; and

(ii) two times the renewal fee set by the board under Section 201.153(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 230, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 24, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(a), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 18, eff. September 1, 2017.

Sec. 201.3545. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 201.313.

(b) The board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 201.313 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 19, eff. September 1, 2017.

Sec. 201.355. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state or foreign country, and is currently licensed in good standing and has been in practice in the other state or foreign country for the two years preceding application.

(b) The person must pay to the board a fee that is equal to the normally required renewal fee for the license.

(c) For purposes of this section, a person is currently licensed if the person is licensed by another chiropractic licensing board recognized by the board. The board shall adopt requirements for recognizing another chiropractic licensing board that:

(1) has licensing requirements substantially equivalent to the requirements of this chapter; and

(2) maintains professional standards considered by the board to be equivalent to the standards under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 329, Sec. 3.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 25, eff. September 1, 2005.

Sec. 201.356. CONTINUING EDUCATION. (a) The board by rule shall:

(1) assess the continuing education needs of license holders;

(2) adopt requirements for mandatory continuing education for license holders in subjects relating to the practice of chiropractic;

(3) establish a minimum number of hours of continuing education required to renew a license; and

(4) develop a process to evaluate and approve continuing education courses.

(b) The board may require license holders to attend continuing education courses specified by the board. The board shall adopt a procedure to assess a license holder's participation and performance in continuing education programs.

(c) The board shall identify the key factors for the competent

performance by a license holder of the license holder's professional duties.

(d) The board shall notify license holders of approved continuing education courses at least annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. PATIENT CONFIDENTIALITY

Sec. 201.401. DEFINITION OF PATIENT. In this subchapter, "patient" means any person who consults or is seen by a chiropractor to receive chiropractic care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.402. PATIENT CONFIDENTIALITY. (a) Communications between a chiropractor and a patient relating to or in connection with any professional services provided by a chiropractor to the patient are confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a chiropractor that are created or maintained by a chiropractor are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from the confidential communications or records, excluding a person listed in Section 201.404(a) who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section apply to confidential communications or records concerning any patient regardless of when the patient received the services of a chiropractor.

(e) The privilege of confidentiality may be claimed by the patient or chiropractor acting on the patient's behalf. The authority of a chiropractor to claim the privilege of confidentiality on behalf of a patient is presumed in the absence of evidence to the contrary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.403. EXCEPTIONS TO CONFIDENTIALITY FOR ADMINISTRATIVE PROCEDURE. (a) Section 201.402 does not apply in a court or administrative proceeding:

(1) brought by a patient against a chiropractor, including:

(A) a malpractice proceeding; and

(B) any criminal or license revocation proceeding in which the patient is a complaining witness and disclosure is relevant to the claims or defense of the chiropractor;

(2) in which the patient or a person authorized to act on the patient's behalf submits a written consent to the release of confidential information, as provided by Section 201.405;

(3) brought to substantiate and collect on a claim for chiropractic services rendered to the patient;

(4) brought by the patient or a person on the patient's behalf who is attempting to recover monetary damages for any physical or mental condition, including death of the patient;

(5) brought in connection with a disciplinary investigation of a chiropractor under this chapter, except as provided by Subsection (b);

(6) brought in connection with a criminal investigation of a chiropractor if the board is participating or assisting in the investigation or proceeding by providing certain records obtained from the chiropractor, except as provided by Subsection (c); and

(7) brought in connection with a criminal prosecution in which the patient is a victim, witness, or defendant except as provided by Subsection (d).

(b) The board shall protect the identity of any patient whose chiropractic records are examined in connection with an investigation or proceeding described by Subsection (a)(5), excluding patients described by Subsection (a)(1) and patients who have submitted written consent to the release of their chiropractic records as provided by Section 201.405.

(c) The board shall protect the identity of any patient whose records are provided in connection with an investigation or proceeding described by Subsection (a)(6), excluding patients described by Subsection (a)(1) and patients who have submitted written consent to the release of their chiropractic records as provided by Section 201.405. The board does not authorize the

release of any confidential information for the purpose of instigating or substantiating criminal charges against a patient.

(d) In a proceeding described by Subsection (a)(7), records or communications are not discoverable until the court in which the prosecution is pending makes an in camera determination of relevancy. A determination of relevancy by a court under this subsection is not a determination of the admissibility of any record or communication.

(e) Information is discoverable in a court or administrative proceeding in this state if the court or administrative body has jurisdiction over the subject matter of the proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.404. EXCEPTIONS TO CONFIDENTIALITY FOR OTHER CIRCUMSTANCES. (a) In circumstances other than court or administrative proceedings, exceptions to Section 201.402 exist only for:

(1) a governmental agency, if the disclosure is required or permitted by law except as provided by Subsection (b);

(2) medical or law enforcement personnel, if the chiropractor determines that a probability of imminent physical injury to the patient, the chiropractor, or others exists or a probability of immediate mental or emotional injury to the patient exists;

(3) qualified personnel for the purpose of management audits, financial audits, program evaluations, or research, under the conditions provided by Subsection (c);

(4) those parts of the records reflecting charges and specific services performed, if necessary to collect fees for services provided by a chiropractor, a professional association, or another entity qualified to render or arrange for services;

(5) any person who possesses a written consent described by Section 201.405;

(6) an individual, corporation, or governmental agency involved in paying or collecting fees for services performed by a chiropractor;

(7) another chiropractor or personnel under the direction of the chiropractor who participate in the diagnosis, evaluation, or treatment of the patient; or

(8) an official legislative inquiry of state hospitals or state schools under the conditions provided under Subsection (d).

(b) A governmental agency shall protect the identity of any patient whose chiropractic records are examined under Subsection (a)(1).

(c) Personnel described by Subsection (a)(3) may not directly or indirectly identify a patient in any report of research, audit, or evaluation or otherwise disclose a patient's identity in any manner.

(d) Information released under Subsection (a)(8) may not include:

(1) information or records that identify a patient or client for any purpose without proper consent given by the patient; and

(2) records that were not created by the state hospital or school or its employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.405. CONSENT FOR RELEASE. (a) In this section, "chiropractic records" means any record relating to the history, diagnosis, treatment, or prognosis of a patient.

(b) Consent for the release of confidential information must be in writing and signed by:

(1) the patient;

(2) a parent or legal guardian if the patient is a minor;

(3) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Subtitle B, Title 6, Health and Safety Code;

(B) Subtitle C, D, or E, Title 7, Health and Safety Code;

(C) Title 3, Estates Code;

(D) Chapter 107, Family Code; or

(E) another applicable provision; or

(5) a personal representative if the patient is deceased.

(c) The written consent must specify:

(1) the information records covered by the release;

(2) the reason or purpose for the release; and

(3) the person to whom the information is to be released.

(d) The patient or the person authorized to consent to disclosure under this section may withdraw consent to the release of any information. Withdrawal of consent does not affect any information disclosed before written notice of the withdrawal.

(e) A person who receives information made confidential by this chapter may disclose the information to another only to the extent that disclosure is consistent with the authorized purposes for which consent to release the information was obtained.

(f) A chiropractor shall furnish copies of chiropractic records or a summary or narrative of the records requested under a written consent for release of the information. The chiropractor shall furnish the information within a reasonable time. The patient or a person acting on the patient's behalf shall pay a reasonable fee for the information provided by the chiropractor. The chiropractor may delete confidential information about another person who has not consented to the release.

(g) A chiropractor who determines that access to information requested under Subsection (f) would be harmful to the physical, mental, or emotional health of the patient may refuse to release the information requested under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.053, eff. September 1, 2017.

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER

Sec. 201.451. DELEGATION TO ASSISTANTS. (a) The board by rule shall establish guidelines relating to the tasks and procedures that a chiropractor may delegate to an assistant.

(b) A chiropractor who delegates a task or procedure under this section retains full responsibility for the task or procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.452. USE OF X-RAY. (a) The board may require evidence of proper training and safety in the use of analytical and diagnostic x-ray in conformity with:

(1) Chapter 401, Health and Safety Code; and

(2) rules of the Texas Radiation Control Agency and the Texas Department of Health.

(b) This section does not modify or amend:

(1) Section 201.002 by enlarging the scope of the practice of chiropractic or the acts that a chiropractor is authorized to perform; or

(2) Chapter 151.

(c) The board shall implement any federal and state requirements relating to radiologic training of the employees of a chiropractor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.453. MALPRACTICE SETTLEMENT INFORMATION AND EXPERT REPORTS. (a) The Texas Department of Insurance shall provide to the board any information received by the department regarding a settlement of a malpractice claim against a chiropractor.

(b) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a chiropractor who practices in this state shall provide to the board a copy of any expert report served under Section 74.351, Civil Practice and Remedies Code, in a malpractice action against the chiropractor.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 27, eff. September 1, 2005.

SUBCHAPTER K. DISCIPLINARY PROCEDURES

Sec. 201.501. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a person has violated this chapter or a rule adopted by the board under this chapter, the board:

(1) shall revoke or suspend the person's license, place on probation a person whose license has been suspended, or reprimand a license holder; or

(2) may impose an administrative penalty.

(b) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) In addition to other disciplinary actions authorized by this chapter, the board may require a license holder who violates this chapter to participate in a continuing education program. The board shall specify the continuing education programs that the license holder may attend and the number of hours that the license holder must complete.

(d) Disciplinary proceedings of the board are governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.502. GROUNDS FOR REFUSAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The board may refuse to admit a person to examinations and may revoke or suspend a license or place a license holder on probation for a period determined by the board for:

(1) violating this chapter or a rule adopted under this chapter, including committing an act prohibited under Section 201.5025;

(2) engaging in deception or fraud in the practice of chiropractic;

(3) presenting to the board or using a license, certificate, or diploma or a transcript of a license, certificate, or diploma that was illegally or fraudulently obtained, counterfeited, or materially altered;

(4) presenting to the board an untrue statement or a document or testimony that was illegally used to pass the examination;

(5) being convicted of a crime involving moral turpitude or a felony;

(6) procuring or assisting in the procuring of an abortion;

(7) engaging in grossly unprofessional conduct or dishonorable conduct of a character likely to deceive or defraud the public;

(8) having a habit of intemperance or drug addiction or

another habit that, in the opinion of the board, endangers the life of a patient;

(9) using an advertising statement that is false or that tends to mislead or deceive the public;

(10) directly or indirectly employing or associating with a person who, in the course of the person's employment, commits an act constituting the practice of chiropractic when the person is not licensed to practice chiropractic;

(11) advertising professional superiority, or advertising the performance of professional services in a superior manner, if that advertising is not readily subject to verification;

(12) purchasing, selling, bartering, using, or offering to purchase, sell, barter, or use a chiropractic degree, license, certificate, or diploma or transcript of a license, certificate, or diploma in or relating to an application to the board for a license to practice chiropractic;

(13) altering with fraudulent intent a chiropractic license, certificate, or diploma or transcript of a chiropractic license, certificate, or diploma;

(14) impersonating or acting as proxy for another in an examination required by this chapter for a chiropractic license;

(15) impersonating a licensed chiropractor;

(16) allowing one's chiropractic license to be used by another person to practice chiropractic;

(17) being proved insane by a person having authority to make that determination;

(18) failing to use proper diligence in the practice of chiropractic or using gross inefficiency in the practice of chiropractic;

(19) failing to clearly differentiate a chiropractic office or clinic from another business or enterprise;

(20) personally soliciting a patient or causing a patient to be solicited by the use of a case history of another patient of another chiropractor;

(21) using for the purpose of soliciting patients an accident report prepared by a peace officer in a manner prohibited by Section 38.12, Penal Code;

(22) advertising using the term "physician" or "chiropractic physician" or any combination or derivation of the term "physician"; or

(23) failing to submit fingerprints to the board or Department of Public Safety to enable the board to obtain criminal history record information as required by Section 201.313.

(b) Notwithstanding Subsection (a)(22), the term "chiropractic physician" may be used for the express purpose of filing a claim for necessary services within the definition of chiropractic under this chapter if the billing for the services has universally applied, predetermined coding or description requirements that are a prerequisite to appropriate reimbursement.

(c) The board may refuse to admit a person to an examination and may revoke or suspend a license or place a license holder on probation for a period determined by the board because of the person's or license holder's violation of a law of this state, other than this chapter, or a rule of another licensing board in this state, or of a statute or rule of another state as determined through a search conducted as provided by Section 201.314, if the violation constitutes a violation of the laws of this state or a board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 28, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 294 (S.B. 304), Sec. 20, eff. September 1, 2017.

Sec. 201.5025. PROHIBITED PRACTICES BY CHIROPRACTOR OR LICENSE APPLICANT. (a) A chiropractor or an applicant for a license to practice chiropractic commits a prohibited practice if that person:

(1) submits to the board a false or misleading statement, document, or certificate in an application for a license;

(2) commits fraud or deception in taking or passing an examination;

(3) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 201.5026, or injure the public;

(4) engages in conduct that subverts or attempts to subvert an examination process required by this chapter for a chiropractic license;

(5) directly or indirectly employs a person whose license

to practice chiropractic has been suspended, canceled, or revoked;

(6) associates in the practice of chiropractic with a person:

(A) whose license to practice chiropractic has been suspended, canceled, or revoked; or

(B) who has been convicted of the unlawful practice of chiropractic in this state or elsewhere; or

(7) directly or indirectly aids or abets the practice of chiropractic by a person that is not licensed to practice chiropractic by the board.

(b) For purposes of Subsection (a)(4), conduct that subverts or attempts to subvert the chiropractic licensing examination process includes, as prescribed by board rule, conduct that violates:

(1) the security of the examination materials;

(2) the standard of test administration; or

(3) the accreditation process.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 29, eff. September 1, 2005.

Sec. 201.5026. UNPROFESSIONAL OR DISHONORABLE CONDUCT. (a) For purposes of Section 201.5025(a)(3), unprofessional or dishonorable conduct that is likely to deceive or defraud the public includes conduct in which a chiropractor:

(1) commits an act that violates any state or federal law if the act is connected with the chiropractor's practice of chiropractic;

(2) prescribes or administers a treatment that is nontherapeutic in nature or nontherapeutic in the manner the treatment is prescribed or administered;

(3) violates Section 311.0025, Health and Safety Code;

(4) fails to supervise adequately the activities of those acting under the supervision of the chiropractor; or

(5) delegates professional chiropractic responsibility or acts to a person if the delegating chiropractor knows or has reason to know that the person is not qualified by training, experience, or licensure to perform the responsibility or acts.

(b) A complaint, indictment, or conviction of a violation is not necessary for the enforcement of Subsection (a)(1). Proof of the

commission of the act while in the practice of chiropractic or under the guise of the practice of chiropractic is sufficient for the board's action.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 29, eff. September 1, 2005.

Sec. 201.503. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of the maximum amount of sanctions that may be assessed against a license holder for each category of violation of this chapter. In establishing the schedule of sanctions or in imposing the amount of an administrative penalty under this chapter, the board shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, or gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(b) The State Office of Administrative Hearings shall use the schedule of sanctions for any sanction imposed as the result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.504. INFORMAL PROCEEDINGS; REFUNDS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of the

attorney general or the board's legal counsel to advise the board or the board's employees.

(c) Subject to Subsection (d), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(d) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 30, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 31, eff. September 1, 2005.

Sec. 201.505. HEARINGS. (a) A person is entitled to a hearing before the board if the board proposes to:

(1) refuse the person's application for a license;

(2) suspend or revoke the person's license; or

(3) place on probation or reprimand the person.

(b) The board is not bound by strict rules of evidence or procedure in conducting its proceedings and hearings, but the board must base its determination on sufficient legal evidence.

(c) The board may:

(1) issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and other documents;

(2) administer oaths; and

(3) take testimony concerning all matters within its jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.506. ENFORCEMENT COMMITTEE. (a) The board shall appoint an enforcement committee to:

(1) oversee and conduct the investigation of complaints filed with the board under this chapter; and

(2) perform other enforcement duties as directed by the board.

(b) The enforcement committee consists of three board members. Two members must be chiropractors, and one member must be a representative of the public.

(c) The attorney general shall provide legal counsel to the enforcement committee concerning enforcement matters, including the investigation and disposition of complaints.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.5065. REQUIRED SUSPENSION OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a chiropractor's license on proof that the chiropractor has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the chiropractor's license.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 32, eff. September 1, 2005.

Sec. 201.507. TEMPORARY LICENSE SUSPENSION. (a) The enforcement committee may temporarily suspend the license of a

license holder on an emergency basis if the enforcement committee determines from the evidence or information presented to the committee that the continued practice of chiropractic by the license holder constitutes a continuing or imminent threat to the public welfare.

(b) The board by rule shall adopt procedures for the temporary suspension of a license under this section.

(c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether disciplinary proceedings under this chapter should be initiated against the license holder is scheduled to be held not later than the 14th day after the date of the suspension.

(d) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension is ordered. If the second hearing is not held in the time required by this subsection, the suspended license is automatically reinstated.

(e) A temporary suspension may also be ordered on a vote of two-thirds of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.508. POWERS OF DISTRICT COURTS; DUTIES OF DISTRICT AND COUNTY ATTORNEYS. (a) A district court may revoke or suspend a chiropractor's license on proof of a violation of the law relating to the practice of chiropractic.

(b) On the request of the board, a district or county attorney shall represent the state by filing and prosecuting a judicial proceeding for the revocation, cancellation, or suspension of the chiropractor's license.

(c) The district or county attorney may institute the judicial proceeding by filing a petition that:

(1) is in writing;

(2) states the grounds for prosecution; and

(3) is signed officially by the prosecuting officer.

(d) Citation must be issued in the name of the state in the manner and form as in other cases and shall be served on the defendant, who is required to answer within the time and manner provided by law in civil cases.

(e) If a chiropractor, after proper citation, is found guilty or fails to appear and deny the charge, the court shall:

(1) enter an order to suspend or revoke the chiropractor's license; and

(2) give proper judgment for costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.509. REPRESENTATION BY ATTORNEY GENERAL. (a) The board may apply to the attorney general for representation by stating that the board previously requested the representation of a district or county attorney under Section 201.508 and the district or county attorney failed to prosecute or proceed against the person accused of violating this chapter.

(b) The attorney general shall institute a civil or criminal proceeding against the person in the county of the person's residence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.510. RIGHT TO APPEAL. (a) A person whose license to practice chiropractic has been revoked or suspended or against whom the board has imposed an administrative penalty may appeal to a Travis County district court.

(b) The decision of the board may not be enjoined or stayed unless the person appeals the board's decision as provided by Subsection (a) and provides notices to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 228, Sec. 1, eff. Sept. 1, 2001.

Sec. 201.511. REISSUANCE OF LICENSE. (a) On application, the board may reissue a license to practice chiropractic to a person whose license has been canceled or suspended.

(b) An applicant whose license has been canceled or revoked:

(1) may not apply for reissuance before the first anniversary of the date the license was canceled or revoked; and

(2) must apply for reissuance in the manner and form

required by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER L. ADMINISTRATIVE PENALTY

Sec. 201.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter if the person violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.552. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $1,000.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.553. ENFORCEMENT COMMITTEE RECOMMENDATIONS. (a) On a determination by the enforcement committee that a violation of this chapter or a rule or order adopted under this chapter occurred, the committee may issue a report to the board stating:

(1) the facts on which the determination is based; and

(2) the enforcement committee's recommendation on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the violation by certified mail to the person on whom the penalty may be imposed.

(c) The notice issued under this section must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date a person receives the notice under Section 201.553, the person may:

(1) accept in writing the enforcement committee's determination and recommended administrative penalty; or

(2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the enforcement committee's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.0515, eff. Sept. 1, 2001.

Sec. 201.555. HEARING ON ENFORCEMENT COMMITTEE RECOMMENDATIONS. (a) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) A hearing set by the executive director under Subsection (a) shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of a proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.556. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may determine that:

(1) a violation has occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right

of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the director may, at the direction of the enforcement committee, file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is

financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.558. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may, at the direction of the enforcement committee, refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.559. DETERMINATION BY COURT. (a) If a court sustains the finding that a violation occurred after the court reviews the order of the board imposing an administrative penalty, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that an administrative penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.560. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.561. ADMINISTRATIVE PROCEDURE. All proceedings under this subchapter are subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 201.601. INJUNCTIVE RELIEF. (a) The board may institute in the board's name an action to restrain a violation of this chapter. An action under this subsection is in addition to any other action authorized by law.

(b) The state may sue for an injunction to restrain the practice of chiropractic in violation of this chapter.

(c) The state shall be represented in suits for injunction by:

(1) the attorney general;

(2) the district attorney of the district in which the defendant resides; or

(3) the county attorney of the county in which the defendant resides.

(d) A suit for injunction under Subsection (b) may not be filed before the final conviction for a violation of this chapter of the party sought to be enjoined.

(e) The state is not required to show that a person is personally injured by the defendant's unlawful practice of chiropractic.

(f) A court may not grant a temporary or permanent injunction until a hearing of the complaint on its merits. A court may not issue an injunction or restraining order until the final trial and final judgment on the merits of the suit.

(g) If the defendant is shown to have been unlawfully practicing chiropractic or to have been about to unlawfully practice chiropractic, the court shall perpetually enjoin the defendant from practicing chiropractic in the manner that was the subject of the suit.

(h) A defendant who disobeys the injunction is subject to the penalties provided by law for the violation of an injunction. The remedy by injunction is in addition to a criminal prosecution.

(i) A suit for injunction under this section shall be advanced for trial on the docket of the trial court and advanced and tried in the appellate courts in the same manner as other suits for injunction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.6015. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of chiropractic without a license or registration under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter L.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 33, eff. September 1, 2005.

Sec. 201.602. MONITORING LICENSE HOLDER. The board by rule shall develop a system for monitoring compliance with the requirements of this chapter of a license holder who is the subject of disciplinary action. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor each license holder who is the subject of disciplinary action and who presents a continuing threat to the public welfare through the practice of chiropractic.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.603. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted by the board under this chapter is liable to the state for a civil penalty of $1,000 for each day of violation.

(b) At the request of the board, the attorney general shall bring an action to recover a civil penalty authorized by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.604. GENERAL CRIMINAL PENALTY. A person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $50 or more than $500 or by confinement in the county jail for not more than 30 days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 34, eff. September 1, 2005.

Sec. 201.605. CRIMINAL PENALTY: PRACTICE WITHOUT LICENSE. (a) A person commits an offense if the person violates Section 201.301.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) If it is shown on the trial of the offense that the defendant has been previously convicted under Subsection (a), the offense is a felony of the third degree.

(d) Each day of violation constitutes a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.606. CRIMINAL PENALTY: PROVIDING CHIROPRACTIC TREATMENT OR SERVICES WHILE INTOXICATED. (a) In this section, "intoxicated" has the meaning assigned by Section 49.01, Penal Code.

(b) A person commits an offense if the person is licensed or regulated under this chapter, provides chiropractic treatment or services to a patient while intoxicated, and, by reason of that conduct, places the patient at a substantial and unjustifiable risk of harm.

(c) An offense under this section is a state jail felony.

Added by Acts 2005, 79th Leg., Ch. 1020 (H.B. 972), Sec. 35, eff. September 1, 2005.

CHAPTER 202. PODIATRISTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 202.001. DEFINITIONS. (a) In this chapter:

(1) "Advisory board" means the Podiatric Medical Examiners Advisory Board.

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

(1-b) "Department" means the Texas Department of Licensing and Regulation.

(2) "Executive director" means the executive director of the Texas Department of Licensing and Regulation.

(3) "Podiatrist" means a person who:

(A) is licensed under this chapter to practice podiatry and who directly or indirectly charges money or other compensation for podiatric services; or

(B) publicly professes or claims to be a podiatrist, foot specialist, or doctor or uses any title, degree, letter, syllable, or word that would lead the public to believe that the person is a practitioner authorized to practice or assume the duties incident to the practice of podiatry.

(4) "Podiatry" means the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot by any system or method. The term includes podiatric medicine.

(b) In the laws of this state:

(1) "chiropody" means podiatry; and

(2) "chiropodist" means podiatrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 3, eff. September 1, 2017.

Sec. 202.003. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) a physician licensed by the Texas State Board of Medical Examiners;

(2) a surgeon of the United States Army, United States Navy, or United States Public Health Service, when performing that

person's official duties; or

(3) a bona fide member of an established church in ministering or offering to minister to the sick or suffering by prayer, as set forth in the principles, tenets, or teachings of the church of which the person is a bona fide member.

(b) This chapter does not prohibit the recommendation, advertising, or sale of corrective shoes, arch supports or similar mechanical appliances, or foot remedies by a manufacturer, wholesaler, or retail dealer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PODIATRIC MEDICAL EXAMINERS ADVISORY BOARD

Sec. 202.051. BOARD MEMBERSHIP. (a) The Podiatric Medical Examiners Advisory Board consists of nine members appointed by the governor as follows:

(1) six members who are licensed in this state to practice podiatry and have been actively engaged in the practice of podiatry for the five years preceding appointment; and

(2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 2, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 5, eff. September 1, 2017.

Sec. 202.053. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the advisory board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than reimbursement authorized by law for advisory board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 6, eff. September 1, 2017.

Sec. 202.054. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the advisory board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 3, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 7, eff. September 1, 2017.

Sec. 202.055. TERMS; VACANCIES. (a) Members of the advisory

board serve staggered six-year terms, with the term of three members expiring on February 1 of each odd-numbered year. At the expiration of the term of each member, the governor shall appoint a successor.

(b) If a vacancy occurs during a term, the governor shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 8, eff. September 1, 2017.

Sec. 202.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory board that a member:

(1) does not have at the time of taking office the qualifications required by Section 202.051 or 202.053;

(2) does not maintain during service on the advisory board the qualifications required by Section 202.051 or 202.053;

(3) is ineligible for membership under Section 202.054;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that the action is taken when a ground for removal of an advisory board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 4, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 9, eff. September 1, 2017.

Sec. 202.057. COMPENSATION; REIMBURSEMENT OF EXPENSES. An advisory board member may not receive compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 5, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 10, eff. September 1, 2017.

Sec. 202.058. PRESIDING OFFICER. The governor shall appoint one of the advisory board members to serve as presiding officer of the advisory board at the pleasure of the governor. The presiding officer may vote on any matter before the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 6, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 11, eff. September 1, 2017.

Sec. 202.059. MEETINGS. (a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.
(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(3), eff. September 1, 2017.
(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(3), eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 12, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(3), eff. September 1, 2017.

Sec. 202.061. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) the department's programs, functions, and rules with respect to this chapter;

(3) the results of the most recent formal audit of the department with respect to this chapter;

(4) the scope and limitations on the rulemaking authority of the advisory board;

(5) the types of rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated under this chapter, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a profession or business regulated under this chapter;

(B) restrict advertising by persons in a profession or business regulated under this chapter;

(C) affect the price of goods or services provided by persons in a profession or business regulated under this chapter; and

(D) restrict participation in a profession or business regulated under this chapter;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of the advisory board in performing the members' duties; and

(7) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each advisory board member. On receipt of the training manual, each

advisory board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 7, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 13, eff. September 1, 2017.

Sec. 202.062. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 14, eff. September 1, 2017.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 202.1515. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.
(b) The commission shall adopt rules necessary to administer and enforce this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 16, eff. September 1, 2017.

Sec. 202.153. FEES. The commission by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 17, eff. September 1, 2017.

Sec. 202.160. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the department shall provide to license

holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 18, eff. September 1, 2017.

Sec. 202.161. POISON CONTROL CENTER INFORMATION. The department shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 19, eff. September 1, 2017.

SUBCHAPTER E. COMPLAINT PROCEDURES

Sec. 202.2031. NOTIFICATION TO PARTIES REGARDING COMPLAINT. (a) The department shall notify a license holder who is the subject of a complaint filed with the department that a complaint has been filed and shall notify the license holder of the nature of the complaint.

(b) The department is not required to provide notice under this section if the notice would jeopardize an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 22, eff. September 1, 2017.

Sec. 202.2032. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The department may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, Chapter 51, or this chapter, a complaint filed with the department by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint.

(d) The department shall notify the license holder who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 22, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.005, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 8.001, eff. September 1, 2019.

Sec. 202.204. EXPERT WITNESS. (a) In this section, "expert witness" means a podiatrist or other qualified individual with whom the department contracts to assist the department with reviewing, investigating, or prosecuting complaints filed under this chapter.

(b) The department may contract with an expert witness,

including an advisory board member under Section 202.051(a)(1), to assist the department with reviewing, investigating, or prosecuting a complaint filed under this chapter.

(c) Except for an act by an expert witness involving fraud, conspiracy, or malice, an expert witness is immune from liability and may not be subject to a suit for damages for any act arising from the performance of the expert witness's duties in:

(1) participating in an informal conference to determine the facts of a complaint;

(2) evaluating evidence in a complaint and offering an opinion or technical guidance on an alleged violation of this chapter or a rule adopted under this chapter;

(3) testifying at a hearing regarding a complaint; or

(4) making an evaluation, report, or recommendation regarding a complaint.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 8.002, eff. September 1, 2019.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 202.251. LICENSE REQUIRED. A person may not practice podiatry or hold the person out as a podiatrist unless the person is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.252. LICENSE APPLICATION. (a) An application for a license under this chapter must be submitted in the manner and on a form prescribed by the executive director.

(b) The commission by rule shall establish the information and documentation required to be submitted as part of an application for a license under this chapter, including evidence satisfactory to the commission or department that the applicant:

(1) is at least 21 years of age;

(2) has completed at least 90 semester hours of college courses acceptable at the time of completion for credit toward a bachelor's degree at an institution of higher education determined by the department to have acceptable standards;

(3) is a graduate of a reputable school of podiatry or

chiropody; and

(4) has successfully completed any other course of training reasonably required by commission rule relating to the safe care and treatment of patients.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(22), eff. September 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(22), eff. September 1, 2017.

(e) All educational attainments or credits for evaluation under this chapter must be completed within the United States. The department may not accept educational credits attained in a foreign country that are not approved by the department.

(f) For purposes of this section, a podiatry or chiropody school is reputable if:

(1) the course of instruction consists of four terms of approximately eight months each, or the substantial equivalent; and

(2) the school is approved by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 23, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(22), eff. September 1, 2017.

Sec. 202.2525. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The department shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the executive director, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The department may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The department shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other

criminal justice agency under Chapter 411, Government Code.

(d) The department may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 24, eff. September 1, 2017.

Sec. 202.253. GROUNDS FOR DENIAL OF LICENSE. (a) The commission may refuse to issue a license or certificate to a person who violates this chapter, a rule adopted under this chapter, or an order of the commission or executive director.

(a-1) The commission or department may refuse to admit a person to an examination, and may refuse to issue a license to practice podiatry to a person, for:

(1) presenting a license, certificate, or diploma that was illegally or fraudulently obtained or engaging in fraud or deception in passing the examination;

(2) being convicted of an offense under Section 202.606;

(3) engaging in habits of intemperance or drug addiction that in the department's opinion would endanger the health, well-being, or welfare of patients;

(4) engaging in grossly unprofessional or dishonorable conduct of a character that in the department's opinion is likely to deceive or defraud the public;

(5) directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice;

(6) using any advertising statement of a character tending to mislead or deceive the public;

(7) advertising professional superiority or the performance of professional service in a superior manner;

(8) purchasing, selling, bartering, or using or offering to purchase, sell, barter, or use a podiatry degree, license, certificate, diploma, or a transcript of a license, certificate, or

diploma, in or incident to an application for a license to practice podiatry;

(9) altering, with fraudulent intent, a podiatry license, certificate, diploma, or a transcript of a podiatry license, certificate, or diploma;

(10) using a podiatry license, certificate, or diploma, or a transcript of a podiatry license, certificate, or diploma, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(11) impersonating, or acting as proxy for, another person in a podiatry license examination;

(12) impersonating a license holder, or permitting another person to use the license holder's license to practice podiatry in this state, to treat or offer to treat, by any method, conditions and ailments of human feet;

(13) directly or indirectly employing a person whose license to practice podiatry has been suspended or associating in the practice of podiatry with a person whose license to practice podiatry has been suspended or who has been convicted of the unlawful practice of podiatry in this state or elsewhere;

(14) wilfully making in the application for a license to practice podiatry a material misrepresentation or material untrue statement;

(15) being unable to practice podiatry with reasonable skill and safety to a patient because of age, illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or other substances or as a result of a mental or physical condition;

(16) failing to practice podiatry in an acceptable manner consistent with public health and welfare;

(17) being removed, suspended, or disciplined in another manner by the podiatrist's peers in a professional podiatry association or society, whether local, regional, state, or national in scope, or being disciplined by a licensed hospital or the medical staff of a hospital, including removal, suspension, limitation of hospital privileges, or other disciplinary action, if the commission or department determines that the action was:

(A) based on unprofessional conduct or professional incompetence likely to harm the public; and

(B) appropriate and reasonably supported by evidence submitted to the association, society, hospital, or medical staff; or

(18) having repeated or recurring meritorious health care liability claims filed against the podiatrist that in the commission's or department's opinion are evidence of professional incompetence likely to injure the public.

(b) In enforcing Subsection (a-1)(15), the department, on probable cause, shall request the affected podiatrist to submit to a mental or physical examination by a physician designated by the department. If the podiatrist refuses to submit to the examination, the commission or executive director shall issue an order requiring the podiatrist to show cause why the podiatrist will not submit to the examination and shall schedule a hearing on the order not later than the 30th day after the date notice is served on the podiatrist. The podiatrist shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the podiatrist and the podiatrist's attorney may present testimony and other evidence to show why the podiatrist should not be required to submit to the examination. After a complete hearing, the commission or executive director shall issue an order either requiring the podiatrist to submit to the examination or withdrawing the request for examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 25, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 400 (S.B. 1531), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 8.003, eff. September 1, 2019.

Sec. 202.254. EXAMINATION. (a) Except as provided by Section 202.261, each applicant for a license to practice podiatry in this state must pass an examination approved by the department.

(b) The department shall recognize, prepare, administer, or arrange for the administration of an examination under this chapter.

(c) The license examination must consist of a written and practical component. The department shall determine the passing score for the examination using accepted criterion-referenced methods. The department shall have the examination validated by an

independent testing professional.

(d) The examination must cover the subjects of anatomy, chemistry, dermatology, diagnosis, pharmacology, pathology, physiology, microbiology, orthopedics, and podiatry, as related to ailments of the human foot.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(23), eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 26, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(23), eff. September 1, 2017.

Sec. 202.256. REEXAMINATION. (a) An applicant who fails an examination and is refused a license based on that failure may retake the examination. The applicant must pay the regular examination fee for any reexamination.

(b) Each reexamination must cover each subject tested in Section 202.254(d).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.257. ISSUANCE OF LICENSE. The department shall issue a license to each applicant who possesses the qualifications required for a license and passes the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 27, eff. September 1, 2017.

Sec. 202.258. REFUSAL OF ADMITTANCE TO EXAMINATION. An applicant who is refused admittance to examination may try the issue in a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.259. TEMPORARY LICENSE. (a) The commission by rule may adopt a procedure for the issuance of a temporary license to an applicant other than an applicant for a provisional license under Section 202.260.

(b) Rules adopted under this section must establish:

(1) the criteria for issuance of a temporary license; and

(2) a maximum period during which a temporary license is valid.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 28, eff. September 1, 2017.

Sec. 202.260. PROVISIONAL LICENSE. (a) On application, the department shall grant a provisional license to practice podiatry to an applicant who:

(1) is licensed in good standing as a podiatrist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the department relating to the practice of podiatry; and

(3) is sponsored by a person licensed under this chapter with whom the provisional license holder may practice under this section.

(b) The department may excuse an applicant for a provisional license from the requirement of Subsection (a)(3) if the department determines that compliance with that subdivision constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license. Except as provided by Subsection (e), the department shall issue a license under this chapter to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 202.254;

(2) the department verifies that the provisional license

holder has the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

(d) The department shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend that deadline to allow for the receipt of pending examination results.

(e) A provisional license holder is not required to pass a part of an examination related to the testing of clinical skills that an applicant for an original license under this chapter with substantially equivalent experience is not required to pass.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 14, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 29, eff. September 1, 2017.

Sec. 202.261. LIMITED LICENSE FOR PODIATRY FACULTY MEMBERS. (a) The department may issue a license to practice podiatry without administering the examination under Section 202.254 to a podiatrist who:

(1) at the time of applying for a license has accepted an appointment or is serving as a full-time member of the faculty of an educational institution in this state offering an approved or accredited course of study or training leading to a degree in podiatry;

(2) is licensed to practice podiatry in another state that has licensing requirements substantially equivalent to those established by this state; and

(3) otherwise satisfies the requirements of Section 202.252.

(b) For purposes of Subsection (a)(1), a course of study, training, or education is considered to be approved or accredited if it is approved or accredited by the department as constituting a reputable course of study, training, or education. In deciding

whether to approve or accredit a course of study, training, or education, the department shall consider whether the course is approved or accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association or its successor organization.

(c) Except for the examination requirement, an applicant for a license under this section must comply with all application, license, and license renewal requirements relating to podiatry and is subject to all laws relating to the practice of podiatry.

(d) A license issued under this section permits the practice of podiatry only for purposes of instruction in the educational institution.

(e) A license issued under this section terminates when the faculty appointment of a podiatrist licensed under this section is terminated. This section does not:

(1) prohibit the podiatrist from applying for and obtaining a license; or

(2) affect a license obtained by the podiatrist by complying with Section 202.254 and other applicable laws relating to the practice of podiatry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 30, eff. September 1, 2017.

Sec. 202.262. DISPLAY OF LICENSE. (a) A person licensed under this chapter must conspicuously display both the license and an unexpired renewal certificate at the location where the person practices.

(b) The person shall exhibit the license and renewal certificate to a department representative on the representative's official request for examination or inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 31, eff. September 1, 2017.

Sec. 202.263. ISSUANCE OF DUPLICATE OR AMENDED LICENSE. (a) If a license issued by the department is lost, destroyed, or stolen from the person to whom it was issued, the license holder shall report the fact to the department and include detailed information as to the loss, destruction, or theft, giving dates, place, and circumstances.

(b) A license holder may apply to the department for an amended license because of a lawful change in the person's name or degree designation or for any other lawful and sufficient reason. The license holder must state the reasons that the issuance of an amended license is requested.

(c) The department shall issue a duplicate or amended license on application by a license holder and payment of a fee set by the commission for the duplicate or amended license. The department may not issue a duplicate or amended license unless:

(1) the license holder submits sufficient evidence to prove the license has been lost, destroyed, or stolen or establishes the lawful reason that an amended license should be issued; and

(2) the department's records show a license had been issued and was in effect at the time of the loss, destruction, or theft or on the date of the request for an amended license.

(d) If an amended license is issued, the license holder shall return the original license to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 32, eff. September 1, 2017.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 202.3015. TERM AND RENEWAL. (a) A license issued under this chapter is valid for one or two years as determined by commission rule.

(b) The commission by rule shall establish the requirements for renewing a license and issuing a renewal certificate under this chapter, including payment of applicable fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 33, eff. September 1, 2017.

Sec. 202.3025. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 202.2525.

(b) The department may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 202.2525 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 34, eff. September 1, 2017.

Sec. 202.303. PRACTICE WITHOUT RENEWING LICENSE. A person who practices podiatry with an expired renewal certificate is considered to be practicing without a license and is subject to all the penalties of the practice of podiatry without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 35, eff. September 1, 2017.

Sec. 202.304. RENEWAL AFTER MILITARY SERVICE. (a) Except as provided by Subsection (c), this section applies to a podiatrist whose license has been suspended or revoked, or whose most recently issued renewal certificate has expired, while the podiatrist has been:

(1) engaged in federal service or on active duty with:

(A) the United States Army;

(B) the United States Navy;

(C) the United States Marine Corps;

(D) the United States Coast Guard; or

(E) the United States Air Force;

(2) called into service or training of the United States; or

(3) in training or education under the supervision of the United States before induction into military service.

(b) A podiatrist subject to this section may renew the podiatrist's license without paying a renewal fee for the expired license or passing an examination if, not later than the first anniversary of the date of the termination of service, training, or education described by Subsection (a), other than by dishonorable discharge, the podiatrist furnishes to the department an affidavit stating that the podiatrist has been so engaged and that the service, training, or education has terminated.

(c) This section does not apply to a podiatrist whose license is revoked under Section 202.502.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 36, eff. September 1, 2017.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 202.351. PODIATRY SERVICES FOR CERTAIN HEALTH ORGANIZATIONS. A licensed podiatrist may contract with a health organization approved by the Texas State Board of Medical Examiners under Chapter 162 to provide podiatry services for the health organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.352. APPROVAL OF NAMES UNDER WHICH PODIATRIST MAY PRACTICE. (a) The commission may adopt rules establishing standards or guidelines for the name, including a trade name or assumed name, under which a podiatrist may conduct a practice in this state. In its rules, the commission may also establish procedures to review and make determinations approving or disapproving a specific name submitted to the department by one or more podiatrists desiring to practice under a particular name.

(b) The authority granted to the commission and department by this section includes any form of business organization under which a

podiatrist conducts a practice, including:

(1) a sole proprietorship;

(2) an association;

(3) a partnership;

(4) a professional corporation;

(5) a clinic;

(6) a health maintenance organization; and

(7) a group practice with a practitioner of another branch of the healing art.

(c) A podiatrist may not practice podiatry in this state under any name, including a trade name or assumed name, unless the name is in compliance with the applicable rules adopted or determinations made under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 38, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 39, eff. September 1, 2017.

Sec. 202.353. MALPRACTICE CLAIM REPORTS. (a) An insurer who delivers or issues for delivery in this state professional liability insurance coverage to a podiatrist who practices in this state shall furnish to the department the information specified in Subsection (b) relating to:

(1) a notice of claim letter or a complaint filed against the insured in a court, if the notice of claim letter or the complaint seeks the recovery of damages based on the insured's conduct in providing or failing to provide medical or health care services; or

(2) a settlement of a claim or other legal action made by the insurer on behalf of the insured.

(b) The insurer shall furnish the following information not later than the 30th day after the date the insurer receives the notice of claim letter or complaint against the insured:

(1) the name of the insured;

(2) the number of the insured's license to practice podiatry in this state;

(3) the insured's insurance policy number; and

(4) a copy of the notice of claim letter or complaint.

(c) If a podiatrist who practices in this state is not covered by professional liability insurance or is insured by an insurer who is not authorized to write professional liability insurance for podiatrists in this state, the affected podiatrist shall submit information to the department relating to any malpractice action brought against that podiatrist. The podiatrist shall submit the information as required by rules adopted by the commission under Subsections (d)-(f).

(d) In consultation with the commissioner of insurance, the commission shall adopt rules for reporting the information required under Subsections (a) and (b) and any additional information required by the department.

(e) The department shall consider other claim reports required under state or federal law in determining:

(1) any additional information to be reported;

(2) the form of the report; and

(3) reasonable reporting intervals.

(f) The department may require additional information, including:

(1) the date of a judgment, dismissal, or settlement of a malpractice action;

(2) whether an appeal has been taken and the identity of the party appealing; and

(3) the amount of any judgment or settlement.

(g) An insurer, an agent or employee of the insurer, a commission member, or an employee or representative of the department is not liable or subject to a cause of action for an action taken as required under this section.

(h) A report or information submitted to the department under this section or the fact that a report or information has been submitted may not be offered in evidence or in any manner used in the trial of an action brought against a podiatrist based on the podiatrist's conduct in providing or failing to provide medical or health care services.

(i) The department shall review the information relating to a podiatrist against whom three or more malpractice claims have been reported during any five-year period in the same manner as if a complaint against that podiatrist had been made to the department

under Subchapter E.

(j) The commissioner of insurance may impose the sanctions authorized by Chapter 82, Insurance Code, against an insurer subject to this section who fails to report as prescribed by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.544, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 40, eff. September 1, 2017.

Sec. 202.354. DELEGATION OF CERTAIN ACTS. (a) A podiatrist may delegate to a qualified and properly trained podiatric medical assistant acting under the podiatrist's supervision any podiatric medical act that a reasonable and prudent podiatrist would find within the scope of sound medical judgment to delegate if:

(1) in the opinion of the delegating podiatrist, the medical act:

(A) can be properly and safely performed by the podiatric medical assistant to whom the podiatric medical act is delegated; and

(B) is performed in a customary manner and not in violation of any other statute; and

(2) the podiatric medical assistant to whom the podiatric medical act is delegated does not represent to the public that the medical assistant is authorized to practice podiatry.

(b) A delegating podiatrist is responsible for a podiatric medical act performed by the podiatric medical assistant to whom the podiatrist delegates the act.

(c) The department may determine whether:

(1) an act constitutes the practice of podiatric medicine; and

(2) a podiatric medical act may be properly or safely delegated by podiatrists.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 8.004, eff. September 1, 2019.

SUBCHAPTER I. PRIVILEGE AND CONFIDENTIALITY REQUIREMENTS

Sec. 202.401. DEFINITIONS. In this subchapter:

(1) "Patient" means a person who consults or is seen by a podiatrist to receive podiatric care.

(2) "Podiatric record" means a record relating to the history, diagnosis, treatment, or prognosis of a patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.402. SCOPE OF PRIVILEGE. (a) A communication that relates to or is in connection with professional services provided by a podiatrist for a patient is confidential and privileged and may not be disclosed except as provided by this subchapter.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a podiatrist that are created or maintained by a podiatrist are confidential and privileged and may not be disclosed except as provided by this subchapter.

(c) A person who receives information from confidential communications or podiatric records, other than a person listed under Section 202.405 or 202.406 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

(d) The prohibitions of this section continue to apply to confidential communications or records concerning a patient without regard to when the patient received the services of a podiatrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.403. CLAIM OF PRIVILEGE. (a) The privilege of confidentiality under this subchapter may be claimed by the patient or by a podiatrist acting on the patient's behalf.

(b) A podiatrist may claim the privilege of confidentiality only on behalf of the podiatrist's patient. The authority to claim the privilege is presumed in the absence of evidence to the contrary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.404. EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY IN

CERTAIN PROCEEDINGS. (a) The privilege and confidentiality requirements under this subchapter do not apply in a court or administrative proceeding if:

(1) the proceeding is brought by a patient against a podiatrist, including a malpractice proceeding, a criminal proceeding, or a license revocation proceeding in which the patient is a complaining witness and in which disclosure is relevant to the claims or defense of a podiatrist;

(2) a patient or a person authorized to act on the patient's behalf submits written consent to the release of confidential information, as provided by Section 202.406; or

(3) the purpose of the proceeding is to substantiate and collect on a claim for podiatric services provided to a patient.

(b) The privilege and confidentiality requirements under this subchapter do not apply in a civil litigation or administrative proceeding brought by a patient or a person authorized to act on the patient's behalf if the plaintiff is attempting to recover monetary damages for a physical or mental condition, including the patient's death. Information that is otherwise confidential under this subchapter is discoverable in a court or administrative proceeding in this state if the information is relevant to the proceeding and the court or administrative body has jurisdiction over the subject matter under the applicable rules of procedure specified for that matter.

(c) The privilege and confidentiality requirements under this subchapter do not apply in a disciplinary investigation or proceeding against a podiatrist conducted under this chapter.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(1), eff. September 1, 2019.

(e) The department shall protect the identity of a patient whose podiatric records are examined or provided under Subsection (c), other than a patient who:

(1) is covered under Subsection (a)(1); or

(2) has submitted written consent to the release of the patient's podiatric records as provided by Section 202.406.

(f) The privilege and confidentiality requirements under this subchapter do not apply in a criminal prosecution in which the patient is a victim, witness, or defendant. Records or communications are not discoverable under this subsection until the court in which the prosecution is pending makes an in camera determination as to the relevancy of the records or communications or

part of the records or communications. The court's determination does not constitute a determination as to the admissibility of the records or communications or part of the records or communications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 41, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.006, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(1), eff. September 1, 2019.

Sec. 202.405. OTHER EXCEPTIONS TO PRIVILEGE AND CONFIDENTIALITY REQUIREMENTS. (a) The privilege and confidentiality requirements of this subchapter do not apply to, and a podiatrist may disclose information made confidential under this subchapter to:

(1) a government agency, if:

(A) the disclosure is required or permitted by law; and

(B) the agency protects the identity of a patient whose podiatric records are examined;

(2) medical or law enforcement personnel, if the podiatrist determines that there is a probability of:

(A) imminent physical injury to the patient, the podiatrist, or another person; or

(B) immediate mental or emotional injury to the patient;

(3) qualified personnel for a management audit, financial audit, program evaluation, or research;

(4) a person who presents the written consent of the patient or a person authorized to act on the patient's behalf for the release of confidential information, as provided by Section 202.406;

(5) an individual, corporation, or governmental entity involved in the payment or collection of fees for services provided by a podiatrist; or

(6) another podiatrist and a person under the direction of the podiatrist who is participating in the diagnosis, evaluation, or treatment of the patient.

(b) A person who receives information under Subsection (a)(3) may not directly or indirectly identify the patient in any report of the research, audit, or evaluation or otherwise disclose the patient's identity.

(c) Records reflecting charges and specific services provided may be disclosed only when necessary to collect fees for services provided by a podiatrist, professional association, or another entity qualified to provide or arrange for services.

(d) Records created by a state hospital, a state school, or an employee of the state hospital or state school that are otherwise confidential under this subchapter may be disclosed in an official legislative inquiry regarding the state hospital or state school. Information or records that identify a patient or client may not be released for any purpose unless proper consent to the release is given by the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.406. CONSENT FOR RELEASE OF CONFIDENTIAL INFORMATION. (a) Consent for the release of information made confidential under this subchapter must be made in writing and signed by:

(1) the patient;

(2) the patient's parent or legal guardian if the patient is a minor;

(3) a legal guardian if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Subtitle B, Title 6, Health and Safety Code;

(B) Subtitle C, D, or E, Title 7, Health and Safety Code;

(C) Title 3, Estates Code;

(D) Chapter 107, Family Code; or

(E) another applicable law; or

(5) the patient's personal representative if the patient is deceased.

(b) The written consent required under this section must specify:

(1) the information and records covered by the release;

(2) the reason or purpose for the release; and

(3) the person to whom the information is to be released.

(c) A patient or other person authorized to consent may withdraw consent to the release of any information. Withdrawal of consent does not affect information disclosed before the written notice of the withdrawal.

(d) A podiatrist shall furnish copies of podiatric records requested or a summary or narrative of the records under a written consent for release of the information as provided by this section unless the podiatrist determines that access to the information would be harmful to the physical, mental, or emotional health of the patient. The podiatrist may delete confidential information about another person who has not consented to the release.

(e) The podiatrist shall furnish the information within a reasonable period of time. The patient or another person acting on the patient's behalf shall pay a reasonable fee charged by the podiatrist for furnishing the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.054, eff. September 1, 2017.

Sec. 202.407. DISCLOSURE OF RELEASED INFORMATION. A person who receives information made confidential by this subchapter may disclose the information to another person only to the extent consistent with the authorized purposes for which consent to release the information was obtained.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER J. PEER REVIEW

Sec. 202.451. DEFINITIONS. In this subchapter:

(1) "Podiatric medical society or association" means a membership organization of podiatrists:

(A) incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its

subsequent amendments by being listed as an exempt entity under Section 501(c) of that code.

(2) "Podiatric peer review committee" means the podiatric peer review, judicial, or grievance committee of a podiatric medical society or association that is authorized to evaluate the quality of podiatry services or the competence of a podiatrist. A committee includes the members, employees, and agents of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.452. DISCLOSURE OF COMMUNICATIONS MADE TO PEER REVIEW COMMITTEE. (a) Written or oral communications made to a podiatric peer review committee and the records and proceedings of a peer review committee may be disclosed to:

(1) another podiatric peer review committee;

(2) an appropriate state or federal agency;

(3) a national accreditation body; or

(4) the department or the state board of registration or licensing of podiatrists in another state.

(b) The disclosure of confidential podiatric peer review committee information to the affected podiatrist that is relevant to the matter under review by the committee does not constitute a waiver of the confidentiality provisions of this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 42, eff. September 1, 2017.

Sec. 202.453. INFORMATION PROVIDED TO AFFECTED PODIATRIST. A podiatric peer review committee that takes action that could result in censure or suspension, restriction, limitation, or revocation of a license by the commission or executive director or a denial of a podiatrist's membership or privileges in a health care entity shall provide the affected podiatrist a written copy of the committee's recommendation and a copy of the final decision, including a statement of the basis for the decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 43, eff. September 1, 2017.

Sec. 202.454. CONFIDENTIALITY REQUIREMENTS. (a) Except as otherwise provided by this subchapter, the proceedings and records of a podiatric peer review committee are confidential and all communications made to a podiatric peer review committee are privileged.

(b) If a court makes a preliminary finding that the proceedings, records, or communications of a podiatric peer review committee are relevant to an anticompetitive action or to an action brought under federal civil rights laws, the proceedings, records, or communications are not considered to be confidential to the extent the proceedings, records, or communications are determined to be relevant to that action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.455. PRIVILEGE OF CONFIDENTIALITY; WAIVER. (a) The records or determinations of a podiatric peer review committee or communications made to a committee are not subject to subpoena or discovery and are not admissible as evidence in a civil or administrative proceeding unless disclosure is required or authorized by law. A committee may in writing waive the privilege of confidentiality.

(b) The evidentiary privilege under this subchapter may be invoked by any person in a civil or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the chairman, vice chairman, or secretary of the affected podiatric peer review committee.

(c) If a podiatric peer review committee, a person participating in peer review, or an organization named as a defendant in a civil action filed as a result of participating in peer review is permitted to use confidential information in the defendant's defense or in a claim or suit under Section 202.457, the plaintiff in that proceeding also may disclose the records or determinations of a peer review committee or communications made to a peer review

committee to rebut the defendant.

(d) A person who seeks access to privileged information must plead and prove waiver of the privilege.

(e) A member, employee, or agent of a podiatric peer review committee who provides access to otherwise privileged communications or records in cooperation with a law enforcement authority in a criminal investigation does not waive a privilege established under this subchapter.

(f) The disclosure of documents or information under a subpoena issued by the department does not constitute a waiver of the confidentiality privilege associated with a podiatric peer review committee proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 44, eff. September 1, 2017.

Sec. 202.456. IMMUNITY. (a) Except for an action involving fraud, conspiracy, or malice, a podiatric peer review committee is immune from liability and may not be subject to a suit for damages for any act arising from the performance of the committee's duties in:

(1) investigating a disagreement or complaint;

(2) holding a hearing to determine facts; or

(3) making an evaluation, recommendation, decision, or award involving:

(A) a podiatrist who is a member of the podiatric medical society or association; or

(B) another podiatrist, podiatric patient, or third party who requests the services of the committee.

(b) A person, including a health care entity or podiatric peer review committee, that participates in podiatric peer review activity or furnishes records, information, or assistance to a podiatric peer review committee or to the department is immune from civil liability arising from those acts if the person acted in good faith and without malice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 45, eff. September 1, 2017.

Sec. 202.457. CLAIMS FOR DEFENSE COSTS. A podiatric peer review committee, a person participating in peer review, or another entity named as a defendant in a civil action filed as a result of the defendant's participation in peer review may file a counterclaim in the pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous or to have been brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER K. DISCIPLINARY ACTIONS AND PROCEDURES

Sec. 202.501. DISCIPLINARY POWERS; ADMINISTRATIVE PROCEDURE. (a) The commission or executive director shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the commission under this chapter.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(28), eff. September 1, 2017.

(c) Proceedings for the suspension or revocation of a license under this section are subject to Chapter 2001, Government Code.

(d) A person whose license to practice podiatry has been revoked or suspended by order of the commission or executive director may appeal the action to a district court in Travis County. The decision of the commission or the executive director may not be enjoined or stayed except on application to the district court after notice to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 46, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 47, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(28), eff. September 1, 2017.

Sec. 202.5015. CERTAIN CONDUCT CONSTITUTING CHAPTER VIOLATION. A license holder who engages in conduct described by Section 202.253 violates this chapter.

Added by Acts 2001, 77th Leg., ch. 1259, Sec. 2, eff. Sept. 1, 2001.

Sec. 202.502. REVOCATION AND SUSPENSION OF LICENSE FOR DRUG-RELATED FELONY CONVICTION. (a) The commission or executive director shall suspend a person's license after an administrative hearing conducted in accordance with Chapter 2001, Government Code, in which the commission or executive director determines that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.033, Health and Safety Code.

(b) On the person's final conviction, the commission or executive director shall revoke the person's license.

(c) The department may not reinstate or reissue a license to a person whose license is suspended or revoked under this section except on an express determination based on substantial evidence contained in an investigative report indicating that the reinstatement or reissuance of the license is in the best interests of the public and of the person whose license has been suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 48, eff. September 1, 2017.

Sec. 202.503. PROBATION. (a) The commission or executive director may probate an order revoking a podiatrist's license conditioned on the podiatrist conforming to any order or rule the commission adopts as the condition of probation. The commission or executive director, at the time of probation, shall set the term of the probationary period.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078

), Sec. 62(29), eff. September 1, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(29), eff. September 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(29), eff. September 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(29), eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 49, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 50, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 62(29), eff. September 1, 2017.

Sec. 202.504. REISSUANCE OF LICENSE. (a) On application, the department may reissue a license to practice podiatry to a person whose license has been revoked or suspended.

(b) A person whose license has been revoked may not apply for a reissued license before the first anniversary of the date of the revocation. The person shall apply for the license in the manner and form required by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 51, eff. September 1, 2017.

Sec. 202.505. REEXAMINATION IF LICENSE SUSPENDED OR REVOKED. The department may refuse to reinstate a license or to issue a new license until a podiatrist has passed the regular license examination if the commission or executive director suspended or revoked the license for:

(1) failure to satisfy continuing education requirements; or

(2) nonpayment of the license renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 52, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.14, eff. September 1, 2021.

Sec. 202.506. APPLICATION TO CERTAIN DRUG OFFENSES. A person convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.033, Health and Safety Code, is not eligible for:

(1) probation of a license suspension or revocation under Section 202.503; or

(2) reissuance of a license under Section 202.504.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.5071. SUBPOENA AUTHORITY. The department may issue a subpoena as provided by Section 51.3512.

Added by Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 53, eff. September 1, 2017.

Sec. 202.509. CONFIDENTIALITY AND DISCLOSURE OF INVESTIGATIVE INFORMATION.

(a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(2), eff. September 1, 2019.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(2), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(2), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(2), eff. September 1, 2019.

(e) The department shall report to the appropriate law enforcement agency information obtained by the department in the course of an investigation that indicates that a crime may have been committed. The department shall cooperate and assist a law

enforcement agency conducting a criminal investigation of a license holder by providing relevant information to the agency. Information provided to a law enforcement agency by the department is confidential and may not be disclosed except as necessary to conduct the investigation.

(f) The department shall provide information to a health care entity on the written request of the entity concerning:

(1) a complaint filed against a license holder that was resolved after an investigation by the department or resolved by an agreed settlement; and

(2) the basis for and status of an active investigation concerning a license holder.

(g) The department's disclosure of information under Subsection (f) of this section, Section 202.2031, or Section 202.2032 does not constitute a waiver of privilege or confidentiality under this chapter or any other law.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(2), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 55, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.007, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 7.008(2), eff. September 1, 2019.

SUBCHAPTER M. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 202.602. MONITORING AND INSPECTION OF LICENSE HOLDER. (a) The department shall develop a system to identify and monitor a podiatrist's compliance with this chapter and any order issued by the commission or executive director under this chapter.

(b) The department, during reasonable business hours, may enter the business premises of a person regulated by the department under this chapter without notice to:

(1) investigate a complaint filed with the department; or

(2) determine compliance with an order of the commission or executive director issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 26 (S.B. 402), Sec. 21, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 58, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 8.005, eff. September 1, 2019.

Sec. 202.603. PROSECUTION OF VIOLATION. The department shall take action to ensure the prosecution of each person who violates this chapter and may incur reasonably necessary related expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 59, eff. September 1, 2017.

Sec. 202.604. CIVIL PENALTY: USE OF TRADE NAME; INJUNCTION. (a) A person who violates Section 202.352 or a rule adopted or a determination made by the commission under that section is subject to a civil penalty of not less than $50 or more than $500 for each day of violation.

(b) If it appears that a person has violated or is violating Section 202.352 or a rule adopted or determination made by the commission under that section, the department may institute a civil action in district court for:

(1) injunctive relief to restrain the person from continuing the violation;

(2) the assessment and recovery of a civil penalty under Subsection (a); or

(3) both injunctive relief and the civil penalty.

(c) At the request of the department, the attorney general shall institute and conduct the action in the name of the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 282 (H.B. 3078), Sec. 60, eff. September 1, 2017.

Sec. 202.605. GENERAL CRIMINAL PENALTY: PRACTICING WITHOUT LICENSE. (a) A person commits an offense if the person professes to be a podiatrist or practices or assumes the duties incident to the practice of podiatry without holding a license to practice podiatry.

(b) An offense under this section is punishable by:

(1) a fine of not less than $50 or more than $500;

(2) confinement in the county jail for not less than 30 days or more than six months; or

(3) both the fine and confinement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 202.606. CRIMINAL PENALTY: AMPUTATION OF FOOT. (a) A podiatrist commits an offense if the podiatrist amputates a human foot.

(b) An offense under this section is punishable by:

(1) a fine of not less than $100 or more than $500;

(2) confinement in the county jail for not less than 30 days or more than six months; or

(3) both the fine and confinement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 203. MIDWIVES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 203.001. SHORT TITLE. This chapter may be cited as the Texas Midwifery Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Midwives Advisory Board.

(2) "Certified nurse-midwife" means a person who is:

(A) a registered nurse under Chapter 301;

(B) recognized as an advanced nurse practitioner by the Texas Board of Nursing; and

(C) certified by the American College of Nurse-Midwives.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

(5) "Local health department" means a department of health created by the governing body of a municipality or a county under Section 121.031, Health and Safety Code.

(6) "Midwife" means a person who practices midwifery and has met the licensing requirements established by this chapter and commission rules.

(7) "Midwifery" means the practice of:

(A) providing the necessary supervision, care, and advice to a woman during normal pregnancy, labor, and the postpartum period;

(B) conducting a normal delivery of a child; and

(C) providing normal newborn care.

(8) "Newborn" means an infant from birth through the first six weeks of life.

(9) "Normal" means, as applied to pregnancy, labor, delivery, the postpartum period, and the newborn period, and as defined by commission rule, circumstances under which a midwife has determined that a client is at a low risk of developing complications.

(10) "Postpartum period" means the first six weeks after a woman has given birth.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 56(1), eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 35, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.002, eff. September 1, 2015.

Sec. 203.003. FINDINGS. The legislature finds:

(1) a parent has the responsibility and right to give birth where and with whom the parent chooses;

(2) childbirth is a natural process of the human body and not a disease; and

(3) midwifery has been practiced in this state since the days of the Republic.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.004. APPLICABILITY. This chapter does not apply to:

(1) a certified nurse-midwife, a physician, or another health care professional licensed by the state and operating within the scope of the person's license;

(2) a natural childbirth trainer; or

(3) a person other than a midwife who assists childbirth in an emergency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.005. EFFECT ON LOCAL ORDINANCES. This chapter does not prohibit a municipality from adopting a local ordinance or rule to regulate the practice of midwifery in the municipality if the ordinance or rule is compatible with and at least as strict as this chapter and commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.003, eff. September 1, 2015.

SUBCHAPTER B. MIDWIVES ADVISORY BOARD

Sec. 203.052. ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of nine members appointed by the presiding officer of

the commission with the approval of the commission as follows:

(1) five licensed midwife members each of whom has at least three years' experience in the practice of midwifery;

(2) one physician member who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists;

(3) one physician member who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians; and

(4) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.005, eff. September 1, 2015.

Sec. 203.0521. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.006, eff. September 1, 2015.

Sec. 203.055. TERMS; VACANCIES. (a) Members of the advisory board serve for staggered terms of six years. The terms of three members expire on January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.007, eff. September 1, 2015.

Sec. 203.056. PRESIDING OFFICER. The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board to serve for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 7, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.008, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 9.001, eff. September 1, 2019.

Sec. 203.059. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 10, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.009, eff. September 1, 2015.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 203.151. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(a-1) The commission shall:

(1) adopt rules prescribing the standards for the practice of midwifery in this state, including standards for:

(A) the delineation of findings that preclude a woman or newborn from being classified as having a normal pregnancy, labor,

delivery, postpartum period, or newborn period; and

(B) administration of oxygen by a midwife to a mother or newborn;

(2) adopt rules prescribing:

(A) the type of courses and number of hours required to meet the basic midwifery education course and continuing midwifery education course requirements; and

(B) minimum standards for the approval and revocation of approval of:

(i) basic midwifery education courses and continuing midwifery education courses; and

(ii) instructors or facilities used in basic midwifery education courses and continuing midwifery education courses; and

(3) adopt rules as necessary to establish eligibility for reciprocity for initial licensing under this chapter.

(a-2) The department shall:

(1) implement rules governing:

(A) basic midwifery education courses and continuing midwifery education courses; and

(B) approval of instructors or facilities used in offering basic midwifery education courses and continuing midwifery education courses;

(2) prepare and distribute basic midwifery information and instructor manuals;

(3) enter into agreements necessary to carry out this chapter; and

(4) establish a program for licensure as a midwife as prescribed by commission rules.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(9), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 15, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.011, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.012, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(9), eff. September 1, 2015.

Sec. 203.153. MANUALS. (a) The department shall issue basic information manuals for the practice of midwifery and instructor manuals that may be used in basic midwifery education courses.

(b) The department shall provide the manuals to each licensed midwife and to any other person on request.

(c) A basic information manual must include information about:

(1) the knowledge necessary to practice as a midwife;

(2) the basic education and continuing education requirements for a midwife;

(3) the legal requirements and procedures relating to midwifery;

(4) the standards of practice as a midwife; and

(5) other information or procedures required by the commission or the department.

(d) The department may charge a fee for each manual not to exceed $10. The department shall make the manual available in English and Spanish.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 18, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.014, eff. September 1, 2015.

Sec. 203.154. REPORTS ON MIDWIFERY. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(15), eff. September 1, 2021.

(b) The Department of State Health Services shall publish a statistical report of infant fetal morbidity and mortality.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 19, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(138),

eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.015, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(15), eff. September 1, 2021.

Sec. 203.155. COMPLAINTS. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(12), eff. September 1, 2015.

(b) For purposes of Section 51.252, the commission must adopt rules to provide for the release of any relevant midwifery or medical record to the department, without the necessity of consent by the midwife's client, as necessary to conduct an investigation of a complaint.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(12), eff. September 1, 2015.

(d) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.016, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.017, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(12), eff. September 1, 2015.

Sec. 203.157. ROSTER; NOTICE TO COUNTY OFFICIALS. (a) The department shall maintain a roster of each person licensed as a midwife in this state.

(b) The roster shall contain for each person the information required on the licensure form under this chapter and other information the department determines necessary to accurately identify each licensed midwife. The information is public information as defined by Chapter 552, Government Code.

(c) The department shall post a list of licensed midwives on the department's Internet website.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 22, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 1.001, eff. September 1, 2017.

SUBCHAPTER F. LICENSURE REQUIREMENTS

Sec. 203.251. LICENSE REQUIRED. (a) A person may not practice midwifery unless the person holds a license issued under this chapter.

(b) The department shall provide a license to each person who fulfills the licensing requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 27, eff. September 1, 2005.

Sec. 203.252. QUALIFICATIONS FOR INITIAL LICENSE. (a) A person qualifies to become a licensed midwife under this chapter if the person provides the department with documentary evidence that the person has:

(1) satisfied each requirement for basic midwifery education; and

(2) passed the comprehensive midwifery examination and jurisprudence examination required by this chapter.

(b) The initial license must be issued before the midwife begins to practice midwifery and may be issued at any time during the year.

(c) The term of the initial license begins on the date the requirements are met and extends through March 1 of the second year after the year in which the initial license is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 28, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.013, eff.

April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.018, eff. September 1, 2015.

Sec. 203.253. LICENSE APPLICATION. A person who practices midwifery must apply to the department to be licensed as a midwife in the manner and on a form prescribed by the executive director. The application must:

(1) be accompanied by a nonrefundable application fee; and

(2) include information required by commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 29, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.019, eff. September 1, 2015.

Sec. 203.254. BASIC MIDWIFERY EDUCATION. The commission shall establish requirements for basic midwifery education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 30, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.020, eff. September 1, 2015.

Sec. 203.255. EXAMINATION. (a) The department shall:

(1) adopt a comprehensive midwifery examination for persons regulated under this chapter that must be passed before the initial license may be issued; and

(2) establish eligibility requirements for persons taking a comprehensive midwifery examination.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(19), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 31, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.021, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(19), eff. September 1, 2015.

Sec. 203.2555. JURISPRUDENCE EXAMINATION. (a) The department shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, commission rules under this chapter, and any other applicable laws of this state affecting the applicant's midwifery practice.

(b) The commission shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 32, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.022, eff. September 1, 2015.

Sec. 203.256. TRAINING IN NEWBORN SCREENING AND BASIC LIFE SUPPORT CARDIOPULMONARY RESUSCITATION. A person who practices midwifery in this state must provide the department with satisfactory evidence that the person:

(1) is trained to perform the newborn screening tests under Section 203.354 or has made arrangements for the performance of those tests; and

(2) holds:

(A) a current certificate issued by the American Heart Association in basic life support cardiopulmonary resuscitation; or

(B) another form of certification acceptable to the department that demonstrates proficiency in basic life support cardiopulmonary resuscitation for adults and children.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.023, eff. September 1, 2015.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 203.301. APPLICATION FOR LICENSE RENEWAL. An applicant for renewal of a license under this chapter must apply biennially as provided in Section 203.253.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 34, eff. September 1, 2005.

Sec. 203.305. REQUIRED ATTENDANCE AT SPECIFIC MIDWIFERY EDUCATION COURSES. The department may assess the continuing education needs of licensed midwives and may require licensed midwives to attend continuing midwifery education courses specified by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 38, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.025, eff. September 1, 2015.

Sec. 203.306. GROUNDS FOR REFUSING RENEWAL. The department may refuse to renew the license of a person who fails to pay an administrative penalty unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 39, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.026, eff. September 1, 2015.

SUBCHAPTER H. PRACTICE BY MIDWIFE

Sec. 203.351. INFORMED CHOICE AND DISCLOSURE REQUIREMENTS. (a) A midwife shall disclose in oral and written form to a prospective client the limitations of the skills and practices of a midwife.

(b) The department shall prescribe the form of the informed choice and disclosure statement required to be used by a midwife under this chapter. The form must include:

(1) statistics of the midwife's experience as a midwife;

(2) the date the midwife's license expires;

(3) the date the midwife's cardiopulmonary resuscitation certification expires;

(4) the midwife's compliance with continuing education requirements;

(5) a description of medical backup arrangements; and

(6) the legal responsibilities of a midwife, including statements concerning newborn blood screening, ophthalmia neonatorum prevention, and prohibited acts under Sections 203.401-203.403.

(c) The informed choice statement must include a statement that state law requires a newborn child to be tested for certain heritable diseases and hypothyroidism. The midwife shall disclose to a client whether the midwife is approved to collect blood specimens to be used to perform the tests. If the midwife is not approved to collect the blood specimens, the disclosure must inform the client of the midwife's duty to refer the client to an appropriate health care facility or physician for the collection of the specimens.

(d) The disclosure of legal requirements required by this section may not exceed 500 words and must be in English and Spanish.

(e) A midwife shall disclose to a prospective or actual client the procedure for reporting complaints to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 40, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.027, eff. September 1, 2015.

Sec. 203.352. PRENATAL AND CERTAIN MEDICAL CARE ENCOURAGED. A midwife shall encourage a client to seek:

(1) prenatal care; and

(2) medical care through consultation or referral, as specified by commission rules, if the midwife determines that the pregnancy, labor, delivery, postpartum period, or newborn period of a woman or newborn may not be classified as normal for purposes of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.028, eff. September 1, 2015.

Sec. 203.353. PREVENTION OF OPHTHALMIA NEONATORUM. (a) Subject to Subsection (b), unless the newborn child is immediately transferred to a hospital because of an emergency, a midwife who attends the birth of the child shall comply with Section 81.091, Health and Safety Code.

(b) A midwife in attendance at childbirth who is unable to apply prophylaxis as required by Section 81.091, Health and Safety Code, due to the objection of the parent, managing conservator, or guardian of the newborn child does not commit an offense under that section and is not subject to any criminal, civil, or administrative liability or any professional disciplinary action for failure to administer the prophylaxis. The midwife in attendance at childbirth shall ensure that the objection of the parent, managing conservator, or guardian is entered into the medical record of the child.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 1.002, eff. September 1, 2017.

Sec. 203.354. NEWBORN SCREENING. (a) Each midwife who attends the birth of a child shall cause the newborn screening tests to be performed on blood specimens taken from the child as required by Chapter 33, Health and Safety Code.

(b) A midwife may collect blood specimens for the newborn

screening tests if the midwife has been approved by the department to collect the specimen. The commission shall adopt rules establishing the standards for approval. The standards must recognize completion of a course of instruction that includes the blood specimen collection procedure or verification by appropriately trained health care providers that the midwife has been instructed in the blood collection procedures.

(c) A midwife who is not approved to collect blood specimens for newborn screening tests shall refer a client and her newborn to an appropriate health care facility or physician for the collection of the blood specimen and submission of the specimen to the department.

(d) If the midwife has been approved by the department to collect blood specimens under this section, the collection by the midwife of blood specimens for the required newborn screening tests does not constitute the practice of medicine as defined by Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 41, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.029, eff. September 1, 2015.

Sec. 203.355. SUPPORT SERVICES. (a) In this section:

(1) "Clinical services" include prenatal, postpartum, child health, and family planning services.

(2) "Local health unit" means a division of a municipal or county government that provides limited public health services under Section 121.004, Health and Safety Code.

(3) "Public health district" means a district created under Subchapter E, Chapter 121, Health and Safety Code.

(b) The Department of State Health Services and a local health department, a public health district, or a local health unit shall provide clinical and laboratory support services to a pregnant woman or a newborn who is a client of a midwife if the midwife is required to provide the services under this chapter.

(c) The laboratory services must include the performance of the

standard serological tests for syphilis and the collection of blood specimens for newborn screening tests for phenylketonuria, hypothyroidism, and other heritable diseases as required by law.

(d) The provider may charge a reasonable fee for the services. A person may not be denied the services because of inability to pay.

(e) If available, appropriately trained personnel from local health departments, public health districts, and local health units shall instruct licensed midwives in the approved techniques for collecting blood specimens to be used to perform newborn screening tests.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 42, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.030, eff. September 1, 2015.

Sec. 203.356. IMMUNITY. (a) A physician, a registered nurse, or other person who, on the order of a physician, instructs a midwife in the approved techniques for collecting blood specimens to be used for newborn screening tests is immune from liability arising out of the failure or refusal of the midwife to:

(1) collect the specimens in the approved manner; or

(2) submit the specimens to the Department of State Health Services in a timely manner.

(b) A physician who issues an order directing or instructing a midwife is immune from liability arising out of the failure or refusal of the midwife to comply with the order if, before the issuance of the order, the midwife provided the physician with evidence satisfactory to the department of compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 43, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.031, eff. September 1, 2015.

Sec. 203.357. ADDITIONAL INFORMATION REQUIRED. (a) The department may require information in addition to that required by Section 203.253 if it determines the additional information is necessary and appropriate to ascertain the nature and extent of midwifery in this state. The department may not require information regarding any act that is prohibited under this chapter.

(b) The department shall prescribe forms for the additional information and shall distribute those forms directly to each midwife. Each midwife must complete and return the forms to the department as requested.

(c) Information received under this section may not be made public in a manner that discloses the identity of any person to whom the information relates. The information is not public information as defined by Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.032, eff. September 1, 2015.

SUBCHAPTER I. PROHIBITED PRACTICES AND GROUNDS FOR DISCIPLINARY ACTION

Sec. 203.401. PROHIBITED PRACTICES. A midwife may not:

(1) provide midwifery care in violation of commission rule, except in an emergency that poses an immediate threat to the life of a woman or newborn;

(2) administer a prescription drug to a client other than:

(A) a drug administered under the supervision of a licensed physician in accordance with state law;

(B) prophylaxis approved by the Department of State Health Services to prevent ophthalmia neonatorum; or

(C) oxygen administered in accordance with commission rule;

(3) use forceps or a surgical instrument for a procedure other than cutting the umbilical cord or providing emergency first aid during delivery;

(4) remove placenta by invasive techniques;

(5) use a mechanical device or medicine to advance or retard labor or delivery; or

(6) make on a birth certificate a false statement or false record in violation of Section 195.003, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 44, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.033, eff. September 1, 2015.

Sec. 203.402. PROHIBITED REPRESENTATION. A midwife may not:
(1) except as provided by Section 203.403, use in connection with the midwife's name a title, abbreviation, or designation tending to imply that the midwife is a "registered" or "certified" midwife as opposed to one who is licensed under this chapter;
(2) advertise or represent that the midwife is a physician or a graduate of a medical school unless the midwife is licensed to practice medicine by the Texas Medical Board;
(3) use advertising or an identification statement that is false, misleading, or deceptive; or
(4) except as authorized by rules adopted by the Texas Board of Nursing, use in combination with the term "midwife" the term "nurse" or another title, initial, or designation that implies that the midwife is licensed as a registered nurse or vocational nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.015, eff. Feb. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 45, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 36, eff. September 1, 2007.

Sec. 203.403. PROHIBITED USE OF TITLE. (a) A midwife certified by the North American Registry of Midwives who uses "certified" as part of the midwife's title in an identification statement or advertisement must include in the statement or advertisement a statement that the midwife is certified by the North

American Registry of Midwives.

(b) A midwife may not use an identification statement or advertisement that would lead a reasonable person to believe that the midwife is certified by a governmental entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 203.404. GROUNDS FOR DISCIPLINARY ACTION. (a) The commission or executive director may discipline a licensed midwife, refuse to renew a midwife's license, or refuse to issue a license to an applicant if the person:

(1) violates this chapter or a rule adopted under this chapter;

(2) submits false or misleading information to the department;

(3) uses alcohol or drugs intemperately;

(4) engages in unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(5) is unable to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(6) is determined by a court judgment to be mentally impaired;

(7) submits a birth or death certificate known by the person to be false or fraudulent or engages in another act that violates Title 3, Health and Safety Code, or a rule adopted under that title;

(8) violates Chapter 244, Health and Safety Code, or a rule adopted under that chapter; or

(9) fails to practice midwifery in a manner consistent with the public health and safety.

(b) The commission or executive director may discipline a licensed midwife and may refuse to issue a license to an applicant for a disciplinary action taken by another jurisdiction that affects the person's authority to practice midwifery, including a suspension, a revocation, or another action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 46, eff.

September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.034, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 400 (S.B. 1531), Sec. 2, eff. September 1, 2019.

SUBCHAPTER K. ENFORCEMENT PROVISIONS

Sec. 203.502. INJUNCTIONS. (a) In this section, "health authority" means a physician who administers state and local laws regulating public health under Chapter 121, Health and Safety Code.

(b) If the executive director or a health authority determines that a person has violated this chapter, the executive director may institute an action described by Section 51.352.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(25), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.015, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.037, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(25), eff. September 1, 2015.

Sec. 203.503. VENUE. (a) Venue for a civil action arising out of the imposition of an administrative penalty is in the county in which the defendant resides or in the county in which the violation occurred.

(b) Venue for the civil action may be changed only after a good faith effort has been made to address the violation in the county in which venue is proper.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.038, eff. September 1, 2015.

Sec. 203.505. CEASE AND DESIST ORDER. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(26), eff. September 1, 2015.

(b) A violation of a cease and desist order issued by the executive director constitutes grounds for imposing an administrative penalty.

Added by Acts 2005, 79th Leg., Ch. 1240 (H.B. 1535), Sec. 52, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.039, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(26), eff. September 1, 2015.

CHAPTER 204. PHYSICIAN ASSISTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 204.001. SHORT TITLE. This chapter may be cited as the Physician Assistant Licensing Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.002. DEFINITIONS. In this chapter:

(1) "Medical board" means the Texas Medical Board.

(2) "Physician assistant board" means the Texas Physician Assistant Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.01, eff. September 1, 2005.

Sec. 204.003. APPLICABILITY. (a) A person is not required to hold a license issued under this chapter to practice as:

(1) a technician, assistant, or employee of a physician who performs delegated tasks but does not act as a physician assistant or represent that the person is a physician assistant; or

(2) any other licensed health care worker acting within the

scope of that person's license if the person:

(A) does not use the title "physician assistant" or the initials "P.A."; or

(B) is not represented or designated as a physician assistant.

(b) This chapter does not limit the employment arrangement of a physician assistant licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. TEXAS PHYSICIAN ASSISTANT BOARD

Sec. 204.051. TEXAS PHYSICIAN ASSISTANT BOARD. (a) The Texas Physician Assistant Board is an advisory board to the Texas State Board of Medical Examiners.

(b) A reference in any other law to the former Texas State Board of Physician Assistant Examiners means the Texas Physician Assistant Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.03, eff. September 1, 2005.

Sec. 204.052. APPOINTMENT OF BOARD. (a) The physician assistant board consists of 13 members appointed by the governor with the advice and consent of the senate as follows:

(1) seven practicing physician assistant members who each have at least five years of clinical experience as a physician assistant;

(2) three physician members who are licensed in this state and who supervise physician assistants; and

(3) three public members who are not licensed as a physician or physician assistant.

(b) Appointments to the physician assistant board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.04, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 87 (S.B. 622), Sec. 1, eff. September 1, 2015.

Sec. 204.053. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or profession problems and in promoting their common interest.

(b) A person may not be a public member of the physician assistant board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the medical board or physician assistant board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the medical board or physician assistant board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board or physician assistant board other than compensation or reimbursement authorized by law for physician assistant board membership, attendance, or expenses.

(c) A person may not be a member of the physician assistant board and may not be a medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) A person may not be a member of the physician assistant board or act as the general counsel to the physician assistant board

if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the medical board or physician assistant board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.05, eff. September 1, 2005.

Sec. 204.054. TERMS; VACANCIES. (a) Members of the physician assistant board are appointed for staggered six-year terms. The terms of four or five members, as applicable, expire on February 1 of each odd-numbered year.

(b) A member may not serve more than:

(1) two consecutive full terms; or

(2) a total of three full terms.

(c) If a vacancy occurs during a member's term, the governor shall appoint a new member to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 87 (S.B. 622), Sec. 2, eff. September 1, 2015.

Sec. 204.055. OFFICERS. The governor shall designate a physician assistant member of the physician assistant board as the presiding officer of the board to serve in that capacity at the will of the governor. The physician assistant board shall select from its membership a secretary to serve a one-year term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.06, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 87 (S.B. 622), Sec. 3, eff. September 1, 2015.

Sec. 204.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the physician assistant board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 204.052 and 204.053;

(2) does not maintain during service on the physician assistant board the qualifications required by Sections 204.052 and 204.053;

(3) is ineligible for membership under Section 204.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled physician assistant board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the physician assistant board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director of the medical board has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the physician assistant board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the physician assistant board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.07, eff. September 1, 2005.

Sec. 204.057. PER DIEM. A member of the physician assistant board is entitled to receive a per diem as set by legislative appropriation for each day that the member engages in the business of the board. If the General Appropriations Act does not prescribe the amount of the per diem, the per diem is equal to a member's actual expenses for meals, lodging, and transportation plus $100.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.058. OPEN MEETINGS; ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, the physician assistant board is subject to Chapters 551 and 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.0585. EXECUTIVE SESSION. After hearing all evidence and arguments in an open meeting, the physician assistant board may conduct deliberations relating to a license application or disciplinary action in an executive session. The board shall vote and announce its decision in open session.

Added by Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 2, eff. September 1, 2017.

Sec. 204.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the physician assistant board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing physician assistant board operations;

(2) the programs, functions, rules, and budget of the physician assistant board;

(3) the scope of and limitations on the rulemaking authority of the physician assistant board;

(4) the results of the most recent formal audit of the physician assistant board;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of the physician assistant board in performing their duties; and

(6) any applicable ethics policies adopted by the physician assistant board or the Texas Ethics Commission.

(c) A person appointed to the physician assistant board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the medical board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each physician assistant board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.08, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 3, eff. September 1, 2017.

SUBCHAPTER C. POWERS AND DUTIES OF PHYSICIAN ASSISTANT BOARD AND MEDICAL BOARD

Sec. 204.101. GENERAL POWERS AND DUTIES OF BOARD. The physician assistant board shall:

(1) adopt rules that are reasonable and necessary for the performance of the physician assistant board's duties under this chapter, as provided by Chapter 2001, Government Code, including rules to establish:

(A) licensing and other fees;

(B) license renewal dates; and

(C) procedures for disciplinary actions;

(2) review and approve or reject each application for the issuance or renewal of a license;

(3) issue each license;

(4) deny, suspend, or revoke a license or otherwise discipline a license holder; and

(5) take any action necessary to carry out the functions and duties of the physician assistant board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.1015. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The physician assistant board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the physician assistant board submits the rule to the medical board for approval.

(b) A rule adopted by the medical board may not be challenged on the grounds that the physician assistant board did not comply with this section. If the physician assistant board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the physician assistant board shall state in writing the reasons why the physician assistant board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.09, eff. September 1, 2005.

Sec. 204.102. POWERS AND DUTIES OF MEDICAL BOARD RELATING TO PHYSICIAN ASSISTANTS. (a) The medical board shall adopt rules consistent with this chapter to regulate physician assistants and physicians who supervise physician assistants.

(b) The medical board, by a majority vote, shall approve or reject each rule adopted by the physician assistant board. If approved, the rule may take effect. If the rule is rejected, the medical board shall return the rule to the physician assistant board for revision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.1025. DUTIES REGARDING PRESCRIPTIVE AUTHORITY AGREEMENTS. The physician assistant board shall in conjunction with the Texas Medical Board and the Texas Board of Nursing perform the functions and duties relating to prescriptive authority agreements assigned to the physician assistant board in Sections 157.0512 and 157.0513.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 11, eff.

November 1, 2013.

Sec. 204.103. FEES. The physician assistant board shall establish and collect fees in amounts that are reasonable and necessary to cover the cost of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.104. RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM. (a) A program shall be established to provide student loan reimbursement for graduates of physician assistant training programs from any state who practice in rural health professional shortage areas and medically underserved areas identified by the Texas Department of Health. The physician assistant board shall fund the program by designating annually a portion of the revenue generated under this chapter from physician assistant licensing fees.

(b) The Texas Department of Rural Affairs shall establish policies for and adopt rules to administer the loan program.

(c) The physician assistant board shall authorize and the medical board shall transfer annually the funds designated under Subsection (a) to the Texas Department of Rural Affairs to administer the loan program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1424, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 112 (H.B. 1918), Sec. 100, eff. September 1, 2009.

Sec. 204.105. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The physician assistant board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.10, eff. September 1, 2005.

Sec. 204.106. DIVISION OF RESPONSIBILITIES. Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement policies that clearly separate the policy-making responsibilities of the physician assistant board and the management responsibilities of the executive director and the staff of the medical board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.11, eff. September 1, 2005.

Sec. 204.107. PUBLIC PARTICIPATION. Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the physician assistant board and to speak on any issue under the jurisdiction of the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.12, eff. September 1, 2005.

Sec. 204.108. RECORDS OF COMPLAINTS. (a) The physician assistant board shall maintain a system to promptly and efficiently act on complaints filed with the physician assistant board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

(b) The physician assistant board shall make information available describing its procedures for complaint investigation and resolution.

(c) The physician assistant board shall periodically notify the parties of the status of the complaint until final disposition of the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.13, eff. September 1, 2005.

Sec. 204.109. USE OF TECHNOLOGY. Subject to the advice and approval of the medical board, the physician assistant board shall implement a policy requiring the physician assistant board to use appropriate technological solutions to improve the physician assistant board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.14, eff. September 1, 2005.

Sec. 204.110. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the physician assistant board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of physician assistant board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the physician assistant board's jurisdiction.

(b) The physician assistant board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The physician assistant board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.15, eff. September 1, 2005.

SUBCHAPTER D. LICENSE REQUIREMENTS, EXEMPTIONS, AND RENEWAL

Sec. 204.151. LICENSE REQUIRED. A person may not practice as a physician assistant in this state unless the person holds a physician assistant license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.152. ISSUANCE OF LICENSE. (a) The physician assistant board shall issue a license to an applicant who:

(1) meets the eligibility requirements of Section 204.153;

(2) submits an application on a form prescribed by the board;

(3) pays the required application fee;

(4) certifies that the applicant is mentally and physically able to function safely as a physician assistant; and

(5) submits to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) The physician assistant board may delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the physician assistant board. A license issued under this subsection does not require formal physician assistant board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.16, eff. September 1, 2005.

Sec. 204.1525. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The physician assistant board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The physician assistant board may not issue a license to a

person who does not comply with the requirement of Subsection (a).

(c) The physician assistant board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The physician assistant board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 4, eff. September 1, 2017.

Sec. 204.153. ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, an applicant must:

(1) successfully complete an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation or by that committee's predecessor or successor entities;

(2) pass the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(3) hold a certificate issued by the National Commission on Certification of Physician Assistants;

(4) meet any other requirement established by physician assistant board rule; and

(5) pass a jurisprudence examination approved by the physician assistant board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the physician assistant profession in this state. The physician assistant board shall establish rules for the jurisprudence examination under Subsection (a)(6) regarding:

(1) the development of the examination;
(2) applicable fees;
(3) administration of the examination;
(4) reexamination procedures;
(5) grading procedures; and
(6) notice of results.

(b) In addition to the requirements of Subsection (a), an applicant is not eligible for a license, unless the physician assistant board takes the fact into consideration in determining whether to issue the license, if the applicant:

(1) has been issued a license, certificate, or registration as a physician assistant in this state or from a licensing authority in another state that is revoked or suspended; or

(2) is subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.17, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 5, eff. September 1, 2017.

Sec. 204.154. EXEMPTIONS FROM LICENSING REQUIREMENT FOR CERTAIN PHYSICIAN ASSISTANTS. A person is not required to hold a license issued under this chapter to practice as:

(1) a physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association or by successor entities as approved and designated by physician assistant board rule; or

(2) a physician assistant employed in the service of the federal government while performing duties related to that employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.155. TEMPORARY LICENSE. (a) The physician assistant

board may issue a temporary license to an applicant who:

(1) meets all the qualifications for a license under this chapter but is waiting for the license to be issued at the next scheduled meeting of the board;

(2) seeks to temporarily substitute for a licensed physician assistant during the license holder's absence, if the applicant:

(A) is licensed or registered in good standing in another state;

(B) submits an application on a form prescribed by the board; and

(C) pays the appropriate fee prescribed by the board; or

(3) has graduated from an educational program for physician assistants or surgeon assistants described by Section 204.153(a)(1) not later than six months before applying for a temporary license and is waiting for examination results from the National Commission on Certification of Physician Assistants.

(b) A temporary license may be valid for not more than one year after the date issued as determined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 578, Sec. 1, eff. Sept. 1, 2001.

Sec. 204.156. LICENSE RENEWAL. (a) A license issued under this chapter is valid for a term of two or more years, as determined by physician assistant board rule.

(a-1) On notification from the physician assistant board, a person who holds a license under this chapter may renew the license by:

(1) paying the required renewal fee;

(2) submitting the appropriate form; and

(3) meeting any other requirement established by board rule.

(b) The physician assistant board by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the physician assistant board before the expiration date of the license.

A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the physician assistant board a fee that is equal to 1-1/2 times the renewal fee for the license.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the physician assistant board a fee equal to two times the renewal fee for the license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of the application may obtain a new license without reexamination. The person must pay to the physician assistant board a fee that is equal to two times the normally required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.18, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 6, eff. September 1, 2017.

Sec. 204.1561. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant for renewal of a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 204.1525.

(b) The physician assistant board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the holder has previously submitted fingerprints under:

(1) Section 204.1525 for the initial issuance of the license; or

(2) this section as part of a prior renewal of a license.

Added by Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 7, eff. September 1, 2017.

Sec. 204.1562. CONTINUING MEDICAL EDUCATION REQUIREMENTS. (a) The physician assistant board by rule shall adopt, monitor, and enforce a reporting program for the continuing medical education of license holders. The physician assistant board shall adopt and administer rules that:

(1) establish the number of hours of continuing medical education the physician assistant board determines appropriate as a prerequisite to the renewal of a license under this chapter;

(2) require at least one-half of the hours of continuing medical education established under Subdivision (1) to be approved by the physician assistant board; and

(3) adopt a process to assess a license holder's participation in continuing medical education courses.

(b) The physician assistant board may require that a specified number of continuing medical education hours be completed informally, including through self-study and self-directed education.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.19, eff. September 1, 2005.

Sec. 204.1565. INFORMAL CONTINUING MEDICAL EDUCATION. (a) In this section, "practice serving a medically underserved population" has the meaning assigned by Section 157.051.

(b) The physician assistant board by rule shall permit a license holder to complete half of any informal continuing medical education hours required to renew a license under this chapter by providing volunteer medical services at a practice serving a medically underserved population, other than a site that is a primary practice site of the license holder.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.053(a), eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 12, eff. November 1, 2013.

Sec. 204.157. INACTIVE STATUS. (a) A person licensed under

this chapter may place the person's license on inactive status by applying to the physician assistant board. A person whose license is on inactive status is excused from paying renewal fees for the license.

(b) The holder of a license on inactive status may not practice as a physician assistant. A violation of this subsection is considered to be practicing without a license.

(c) A person whose license is on inactive status under this section may return the person's license to active status by:

(1) applying to the physician assistant board;

(2) satisfying the requirements of Section 204.156; and

(3) paying the fee established by the physician assistant board for returning a license to active status.

(d) The physician assistant board by rule shall establish a limit on the length of time a physician assistant's license may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.20, eff. September 1, 2005.

Sec. 204.158. REFUSAL FOR VIOLATION OF BOARD ORDER. The physician assistant board may refuse to renew a license issued under this chapter if the license holder is in violation of a physician assistant board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 8, eff. September 1, 2017.

SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 204.201. NOTICE OF INTENT TO PRACTICE. (a) Before beginning practice, each physician assistant licensed under this chapter shall submit on a form prescribed by the physician assistant board notice of the license holder's intent to practice. The notice must include:

(1) the name, business address, license number, and telephone number of the physician assistant; and

(2) the name, business address, Texas license number, and

telephone number of the physician assistant's supervising physician.

(b) A physician assistant shall notify the physician assistant board of any change in, or addition to, the person acting as a supervising physician for the physician assistant not later than the 30th day after the date the change or addition occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.202. SCOPE OF PRACTICE. (a) The practice of a physician assistant includes providing medical services delegated by a supervising physician that are within the education, training, and experience of the physician assistant.

(b) Medical services provided by a physician assistant may include:

(1) obtaining patient histories and performing physical examinations;

(2) ordering or performing diagnostic and therapeutic procedures;

(3) formulating a working diagnosis;

(4) developing and implementing a treatment plan;

(5) monitoring the effectiveness of therapeutic interventions;

(6) assisting at surgery;

(7) offering counseling and education to meet patient needs;

(8) requesting, receiving, and signing for the receipt of pharmaceutical sample prescription medications and distributing the samples to patients in a specific practice setting in which the physician assistant is authorized to prescribe pharmaceutical medications and sign prescription drug orders as provided by Section 157.0512 or 157.054;

(9) prescribing or ordering a drug or device as provided by Subchapter B, Chapter 157; and

(10) making appropriate referrals.

(c) The activities listed by Subsection (b) may be performed in any place authorized by a supervising physician, including a clinic, hospital, ambulatory surgical center, patient home, nursing home, or other institutional setting.

(d) A physician assistant's signature attesting to the

provision of a service the physician assistant is legally authorized to provide satisfies any documentation requirement for that service established by a state agency.

(e) A physician assistant is the agent of the physician assistant's supervising physician for any medical services that are delegated by that physician and that:

(1) are within the physician assistant's scope of practice; and

(2) are delineated by protocols, practice guidelines, or practice directives established by the supervising physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 3, eff. May 11, 2001; Acts 2001, 77th Leg., ch. 178, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.054(a), eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 13, eff. November 1, 2013.

Sec. 204.203. IDENTIFICATION REQUIREMENTS. A physician assistant shall:

(1) keep the physician assistant's license available for inspection at the physician assistant's primary place of business; and

(2) when engaged in the physician assistant's professional activities, wear a name tag identifying the license holder as a physician assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.204. SUPERVISION REQUIREMENTS. (a) A physician assistant shall be supervised by a supervising physician. A physician assistant may have more than one supervising physician. The supervising physician oversees the activities of, and accepts responsibility for, medical services provided by the physician assistant.

(b) Supervision of a physician assistant by a supervising physician must be continuous. The supervision does not require the constant physical presence of the supervising physician where

physician assistant services are being performed, but, if a supervising physician is not present, the supervising physician and the physician assistant must be, or must be able to easily be, in contact with one another by radio, telephone, or another telecommunication device.

(c) The number of physician assistants a physician may supervise in a practice setting may not be less than the number of physician assistants to whom a physician may delegate the authority to prescribe or order a drug or device in that practice setting under Subchapter B, Chapter 157.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 14, eff. November 1, 2013.

Sec. 204.2045. VOLUNTEER CARE AND SERVICES PERFORMED DURING DISASTER. (a) The supervision and delegation requirements of this chapter and Subtitle B do not apply to medical tasks performed by a physician assistant:

(1) during a disaster under the state emergency management plan adopted under Section 418.042, Government Code;

(2) during a disaster declared by the governor or United States government; or

(3) as a volunteer for a charitable organization or at a public or private event, including a religious event, sporting event, community event, or health fair.

(a-1) This section does not apply to medical tasks performed by a physician assistant for compensation or other remuneration.

(b) A physician assistant performing medical tasks under this section:

(1) is entitled to the immunity from liability provided by Section 74.151, Civil Practice and Remedies Code; and

(2) is acting within the scope of the physician assistant's license for purposes of immunity under Section 84.004(c), Civil Practice and Remedies Code.

(c) A physician assistant may perform tasks described by this section:

(1) under the supervision of any physician who is also

performing volunteer work in the disaster, for the charitable organization, or at the public or private event; or

(2) without the supervision of a physician, if a physician is not available to provide supervision.

(d) A physician assistant employed by the United States government or licensed in another state may perform medical tasks in this state in circumstances described by Subsection (a)(1) or (2) without holding a license in this state.

Added by Acts 2005, 79th Leg., Ch. 580 (H.B. 1577), Sec. 1, eff. June 17, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1053 (H.B. 1978), Sec. 1, eff. September 1, 2017.

Sec. 204.205. REQUIREMENTS FOR SUPERVISING PHYSICIAN. A supervising physician must:

(1) hold an unrestricted and active license as a physician in this state;

(2) notify the medical board of the physician's intent to supervise a physician assistant;

(3) submit to the medical board a statement that the physician will:

(A) supervise the physician assistant according to medical board rule; and

(B) retain professional and legal responsibility for the care provided by the physician assistant; and

(4) receive approval from the medical board to supervise the physician assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.206. ESTABLISHMENT OF CERTAIN FUNCTIONS AND STANDARDS. Each physician assistant and the physician assistant's supervising physician shall ensure that:

(1) the physician assistant's scope of function is identified;

(2) delegation of medical tasks is appropriate to the physician assistant's level of competence;

(3) the relationship between the physician assistant and the supervising physician and the access of the physician assistant to the supervising physician are defined; and

(4) a process is established for evaluating the physician assistant's performance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.207. ASSUMPTION OF PROFESSIONAL LIABILITY. (a) Each supervising physician retains legal responsibility for a physician assistant's patient care activities, including the provision of care and treatment to a patient in a health care facility.

(b) If a physician assistant is employed by an entity, including a health care facility, the entity shares the legal responsibility for the physician assistant's acts or omissions with the physician assistant's supervising physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.208. DUTY TO REPORT; MEDICAL PEER REVIEW. (a) A medical peer review committee in this state, physician assistant, physician assistant student, or physician lawfully practicing medicine in this state shall report relevant information to the physician assistant board related to the acts of a physician assistant in this state if, in the person's opinion, a physician assistant poses a continuing threat to the public welfare through practice as a physician assistant. The duty to report under this section may not be nullified through contract.

(b) Sections 160.002, 160.003, 160.006, 160.007(d), 160.009, 160.013, 160.014, and 160.015 apply to medical peer review relating to the practice of a physician assistant.

(c) A person, including a health care entity or medical peer review committee, that without malice furnishes records, information, or assistance to the physician assistant board is immune from any civil liability arising from that act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.055, eff. Sept. 1, 2001.

Sec. 204.209. JOINTLY OWNED ENTITIES WITH PHYSICIANS. (a) A physician assistant who jointly owns an entity with a physician shall report annually to the physician assistant board the ownership interest and other information required by physician assistant board rule.

(b) The physician assistant board shall assess a fee for processing each report required by Subsection (a).

(c) A report filed under Subsection (a) is public information for purposes of Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 782 (H.B. 2098), Sec. 5, eff. June 17, 2011.

Sec. 204.210. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against:

(1) a physician assistant who refuses to engage in an act or omission as provided by Subsection (b); or

(2) a person who advises a physician assistant of the physician assistant's rights under this section.

(b) A physician assistant may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the physician assistant to the physician assistant board under Section 204.208 or that violates this chapter or a rule adopted under this chapter if the physician assistant notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

(1) constitutes grounds for reporting the physician assistant to the physician assistant board; or

(2) is a violation of this chapter or a rule adopted under this chapter.

(c) An act by a person under Subsection (a) does not constitute a violation of this section if a medical peer review committee determines:

(1) that the act or omission the physician assistant refused to engage in was not:

(A) conduct reportable to the physician assistant board under Section 204.208; or

(B) a violation of this chapter or a rule adopted under

this chapter; or

(2) that:

(A) the act or omission in which the physician assistant refused to engage was conduct reportable to the physician assistant board or a violation of this chapter or a rule adopted under this chapter; and

(B) the person:

(i) rescinds any disciplinary or discriminatory action taken against the physician assistant;

(ii) compensates the physician assistant for any lost wages; and

(iii) restores to the physician assistant any lost benefits.

(d) A physician assistant's rights under this section may not be nullified by a contract.

(e) An appropriate licensing agency may take action against a person who violates this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 9, eff. September 1, 2017.

SUBCHAPTER F. COMPLAINTS AND INVESTIGATIVE INFORMATION

Sec. 204.251. COMPLAINT INFORMATION AND STATUS. (a) The physician assistant board shall keep information on file about each complaint filed with the board.

(b) If a written complaint is filed with the physician assistant board relating to a person licensed by the board, the board, as often as quarterly and until final determination of the action to be taken on the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.2511. CONDUCT OF INVESTIGATION. The physician assistant board shall complete a preliminary investigation of a complaint filed with the physician assistant board not later than the 30th day after the date of receiving the complaint. The physician assistant board shall first determine whether the physician assistant

constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the physician assistant board shall determine whether to officially proceed on the complaint. If the physician assistant board fails to complete the preliminary investigation in the time required by this section, the physician assistant board's official investigation of the complaint is considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.21, eff. September 1, 2005.

Sec. 204.252. LICENSE HOLDER ACCESS TO COMPLAINT INFORMATION. (a) The physician assistant board shall provide a license holder who is the subject of a formal complaint filed under this chapter with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. The board shall provide the information not later than the 30th day after receipt of a written request from the license holder or the license holder's counsel, unless good cause is shown for delay.

(b) Notwithstanding Subsection (a), the board is not required to provide:

(1) board investigative reports;

(2) investigative memoranda;

(3) the identity of a nontestifying complainant;

(4) attorney-client communications;

(5) attorney work product; or

(6) other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.253. HEALTH CARE ENTITY REQUEST FOR INFORMATION. On the written request of a health care entity, the physician assistant board shall provide to the entity:

(1) information about a complaint filed against a license

holder that was resolved after investigation by:

(A) a disciplinary order of the board; or

(B) an agreed settlement; and

(2) the basis of and current status of any complaint under active investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.254. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the physician assistant board or a board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the board or a board employee or agent involved in license holder discipline.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.255. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Investigative information in the possession of a physician assistant board employee or agent that relates to the discipline of a license holder may be disclosed to:

(1) a licensing authority in another state or country in which the license holder is licensed or has applied for a license; or

(2) a peer review committee reviewing:

(A) an application for privileges; or

(B) the qualifications of the license holder with respect to retaining privileges.

(b) If investigative information in the possession of the physician assistant board or a board employee or agent indicates that a crime may have been committed, the board shall report the information to the proper law enforcement agency. The board shall cooperate with and assist each law enforcement agency conducting a criminal investigation of a license holder by providing information relevant to the investigation. Confidential information disclosed by the board to a law enforcement agency under this subsection remains

confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. DISCIPLINARY PROCEEDINGS

Sec. 204.301. DISCIPLINARY AUTHORITY OF BOARD. (a) Except as provided by Section 204.305, on a determination that an applicant or license holder committed an act described in Section 204.302, 204.303, or 204.304, the physician assistant board by order shall take any of the following actions:

(1) deny the person's application for a license or license renewal or revoke the person's license or other authorization;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the physician assistant board;

(3) stay enforcement of an order and place the person on probation;

(4) require the person to complete additional training;

(5) suspend, limit, or restrict the person's license, including:

(A) limiting the practice of the person to, or excluding from the practice, one or more specified activities of the practice as a physician assistant; or

(B) stipulating periodic physician assistant board review;

(6) assess an administrative penalty against the person under Section 204.351;

(7) order the person to perform public service; or

(8) administer a public reprimand.

(b) If the physician assistant board stays enforcement of an order and places a person on probation, the board retains the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section.

(c) The physician assistant board may restore or reissue a license or remove any disciplinary or corrective measure that the board has imposed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.22, eff. September 1, 2005.

Sec. 204.3011. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The physician assistant board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the physician assistant board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 204.312 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected physician assistant requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.23, eff. September 1, 2005.

Sec. 204.302. CONDUCT RELATED TO FRAUD OR MISREPRESENTATION. The physician assistant board may take action under Section 204.301 against an applicant or license holder who:

(1) fraudulently or deceptively obtains or attempts to obtain a license;

(2) fraudulently or deceptively uses a license;

(3) falsely represents that the person is a physician;

(4) acts in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure the public;

(5) fraudulently alters a physician assistant license, certificate, or diploma;

(6) uses a physician assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(7) directly or indirectly aids or abets a person not

licensed to practice as a physician assistant in practicing as a physician assistant; or

(8) unlawfully advertises in a false, misleading, or deceptive manner, as described by Section 101.201.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.303. CONDUCT RELATED TO VIOLATION OF LAW. (a) The physician assistant board may take action under Section 204.301 against an applicant or license holder who:

(1) violates this chapter or a rule adopted under this chapter;

(2) is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program;

(3) violates state law if the violation is connected with practice as a physician assistant;

(4) fails to keep complete and accurate records of the purchase and disposal of drugs as required by Chapter 483, Health and Safety Code, or any subsequent rules; or

(5) writes a false or fictitious prescription for a dangerous drug as defined by Chapter 483, Health and Safety Code.

(b) A complaint, indictment, or conviction of a law violation is not necessary for the physician assistant board to act under Subsection (a)(3). Proof of the commission of the act while in practice as a physician assistant or under the guise of practice as a physician assistant is sufficient for action by the physician assistant board.

(c) A failure to keep the records described under Subsection (a)(4) for a reasonable time is grounds for disciplinary action against a physician assistant. The physician assistant board or its representative may enter and inspect a physician assistant's place or places of practice during reasonable business hours to:

(1) verify the correctness of the records; and

(2) inventory the drugs on hand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.304. CONDUCT INDICATING LACK OF FITNESS. (a) The physician assistant board may take action under Section 204.301

against an applicant or license holder who:

(1) habitually uses drugs or intoxicating liquors to the extent that, in the board's opinion, the person cannot safely perform as a physician assistant;

(2) has been adjudicated as mentally incompetent;

(3) has a mental or physical condition that renders the person unable to safely perform as a physician assistant;

(4) has committed an act of moral turpitude;

(5) has failed to practice as a physician assistant in an acceptable manner consistent with public health and welfare;

(6) has had the person's license to practice as a physician assistant suspended, revoked, or restricted;

(7) has had other disciplinary action taken by another state or by the uniformed services of the United States regarding practice as a physician assistant;

(8) prescribes, dispenses, or administers a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is prescribed, dispensed, or administered;

(9) is removed or suspended from, or has had disciplinary action taken by the person's peers in, any professional association or society, or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if the reason for the discipline, in the board's opinion, is unprofessional conduct or professional incompetence likely to harm the public;

(10) has repeated or recurring meritorious health care liability claims that, in the board's opinion, are evidence of professional incompetence likely to harm the public; or

(11) sexually abuses or exploits another person through the license holder's practice as a physician assistant.

(b) A certified copy of the record of the state or uniformed services of the United States taking an action described by Subsection (a)(7) is conclusive evidence of the action.

(c) An action described by Subsection (a)(9) does not constitute state action on the part of the association, society, or hospital medical staff.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.3045. PHYSICAL OR MENTAL EXAMINATION. (a) The physician assistant board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the physician assistant board to evaluate circumstances in which a physician assistant or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) The physician assistant board shall refer a physician assistant or applicant with a physical or mental health condition to the most appropriate medical specialist for evaluation. The physician assistant board may not require a physician assistant or applicant to submit to an examination by a physician having a specialty specified by the physician assistant board unless medically indicated. The physician assistant board may not require a physician assistant or applicant to submit to an examination to be conducted an unreasonable distance from the person's home or place of business unless the physician assistant or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(c) The guidelines adopted under this section do not impair or remove the physician assistant board's power to make an independent licensing decision.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.24, eff. September 1, 2005.

Sec. 204.308. SUBPOENA. (a) The executive director or the secretary-treasurer of the medical board may issue a subpoena or subpoena duces tecum for the physician assistant board to:

(1) conduct an investigation or a contested proceeding related to:

(A) alleged misconduct by a physician assistant;

(B) an alleged violation of this chapter or other law related to practice as a physician assistant; or

(C) the provision of health care under this chapter;

(2) issue, suspend, restrict, or revoke a license under this chapter; or

(3) deny or grant an application for a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the physician assistant board or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of a license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.309. PROTECTION OF PATIENT IDENTITY. In a disciplinary investigation or proceeding conducted under this chapter, the physician assistant board shall protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or

(2) submits a written release in regard to the patient's records or identity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.310. REQUIRED SUSPENSION OF LICENSE OF INCARCERATED PHYSICIAN ASSISTANT. Regardless of the offense, the physician assistant board shall suspend the license of a physician assistant serving a prison term in a state or federal penitentiary during the term of the incarceration.

Added by Acts 2001, 77th Leg., ch. 578, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.311. TEMPORARY SUSPENSION. (a) The presiding officer of the physician assistant board, with board approval, shall appoint a three-member disciplinary panel consisting of board members to determine whether a person's license to practice as a physician assistant should be temporarily suspended.

(b) If the disciplinary panel determines from the evidence or information presented to the panel that a person licensed to practice as a physician assistant would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that

person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the physician assistant board is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

Added by Acts 2001, 77th Leg., ch. 578, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.312. INFORMAL PROCEEDINGS. (a) The physician assistant board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is filed with the physician assistant board, unless good cause is shown by the physician assistant board for scheduling the informal meeting after that date;

(2) the physician assistant board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the physician assistant board members participating in the informal meeting as a panelist be a member who represents the public;

(5) the physician assistant board's legal counsel or a representative of the attorney general be present to advise the physician assistant board or the medical board's staff; and

(6) a member of the medical board's staff be at the meeting

to present to the physician assistant board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected physician assistant is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the physician assistant reasonably believes the physician assistant could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the physician assistant board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the physician assistant board, the physician assistant board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.27, eff. September 1, 2005.

Sec. 204.313. PHYSICIAN ASSISTANT BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 204.312, at least two panelists shall be appointed to determine whether an informal disposition is appropriate. At least one of the panelists must be a licensed physician assistant.

(b) Notwithstanding Subsection (a) and Section 204.312(b)(4), an informal proceeding may be conducted by one panelist if the affected physician assistant waives the requirement that at least two panelists conduct the informal proceeding. If the physician assistant waives that requirement, the panelist may be any member of the physician assistant board.

(c) The panel requirements described by Subsections (a) and (b) apply to an informal proceeding conducted by the physician assistant board under Section 204.312, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsections (a) and (b) do not apply to an informal proceeding conducted by the physician assistant board under Section 204.312 to show compliance with an order of the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.28, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 928 (S.B. 1625), Sec. 10, eff. September 1, 2017.

Sec. 204.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A physician assistant board member that serves as a panelist at an informal meeting under Section 204.312 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected physician assistant and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A physician assistant board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the physician assistant board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected physician assistant have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the physician assistant board or medical board.

(d) The panel and medical board employees shall provide an

opportunity for the affected physician assistant and the physician assistant's authorized representative to reply to the medical board employees' presentation and to present oral and written statements and facts that the physician assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected physician assistant, the physician assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected physician assistant has violated a statute or physician assistant board rule, the panel may recommend physician assistant board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected physician assistant and the physician assistant's authorized representative. The physician assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the physician assistant rejects the proposed settlement or does not act within the required time, the physician assistant board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.29, eff. September 1, 2005.

Sec. 204.3145. LIMIT ON ACCESS TO INVESTIGATION FILES. The physician assistant board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.29, eff. September 1, 2005.

Sec. 204.315. SURRENDER OF LICENSE. (a) The physician assistant board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned to the license holder unless the physician assistant board determines, under physician assistant board rules, that the former holder of the license is competent to resume practice.

(c) The physician assistant board by rule shall establish guidelines for determining the competency of a former license holder to return to practice.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.30, eff. September 1, 2005.

Sec. 204.316. REFUND. (a) Subject to Subsection (b), the physician assistant board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Section 204.351.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The physician assistant board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.31, eff. September 1, 2005.

Sec. 204.317. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The physician assistant board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the physician assistant board makes a determination required by Section 2001.058(e), Government Code.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.32, eff. September 1, 2005.

Sec. 204.318. EXPERT IMMUNITY. An expert who assists the

physician assistant board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the person in good faith to the physician assistant board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.33, eff. September 1, 2005.

SUBCHAPTER H. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 204.351. ADMINISTRATIVE PENALTY. (a) The physician assistant board by order may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The physician assistant board shall base the amount of the penalty on:

(1) the severity of patient harm;

(2) the severity of economic harm to any person;

(3) the severity of any environmental harm;

(4) increased potential for harm to the public;

(5) any attempted concealment of misconduct;

(6) any premeditated or intentional misconduct;

(7) the motive for the violation;

(8) prior misconduct of a similar or related nature;

(9) the license holder's disciplinary history;

(10) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations relating to the misconduct;

(11) violation of a board order;

(12) failure to implement remedial measures to correct or mitigate harm from the misconduct;

(13) lack of rehabilitative potential or likelihood of future misconduct of a similar nature;

(14) relevant circumstances increasing the seriousness of

the misconduct; and

(15) any other matter that justice may require.

(d) The physician assistant board by rule shall prescribe the procedure by which it may impose an administrative penalty. A proceeding under this section is subject to Chapter 2001, Government Code.

(e) If the physician assistant board by order determines that a violation has occurred and imposes an administrative penalty, the board shall give notice to the person of the board's order. The notice must include a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.352. CRIMINAL PENALTY. (a) A person commits an offense if, without holding a license issued under this chapter, the person:

(1) holds the person out as a physician assistant;

(2) uses any combination or abbreviation of the term "physician assistant" to indicate or imply that the person is a physician assistant; or

(3) acts as a physician assistant.

(b) An offense under this section is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.353. CEASE AND DESIST ORDER. (a) If it appears to the physician assistant board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to physician assistant practice, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 2.35, eff. September 1, 2005.

CHAPTER 205. ACUPUNCTURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 205.001. DEFINITIONS. In this chapter:

(1) "Acudetox specialist" means a person certified under Section 205.303.

(2) "Acupuncture" means:

(A) the nonsurgical, nonincisive insertion of an acupuncture needle and the application of moxibustion to specific areas of the human body as a primary mode of therapy to treat and mitigate a human condition, including evaluation and assessment of the condition; and

(B) the administration of thermal or electrical treatments or the recommendation of dietary guidelines, energy flow exercise, or dietary or herbal supplements in conjunction with the treatment described by Paragraph (A).

(3) "Acupuncture board" means the Texas State Board of Acupuncture Examiners.

(4) "Acupuncturist" means a person who:

(A) practices acupuncture; and

(B) directly or indirectly charges a fee for the performance of acupuncture services.

(5) "Chiropractor" means a person licensed to practice chiropractic by the Texas Board of Chiropractic Examiners.

(6) "Executive director" means the executive director of the Texas Medical Board.

(7) "Medical board" means the Texas Medical Board.

(8) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 719, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.01, eff. September 1, 2005.

Sec. 205.003. EXEMPTION; LIMITATION. (a) This chapter does not apply to a health care professional licensed under another

statute of this state and acting within the scope of the license.

(b) This chapter does not:

(1) limit the practice of medicine by a physician;

(2) permit the unauthorized practice of medicine; or

(3) permit a person to dispense, administer, or supply a controlled substance, narcotic, or dangerous drug unless the person is authorized by other law to do so.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. TEXAS STATE BOARD OF ACUPUNCTURE EXAMINERS

Sec. 205.051. BOARD; MEMBERSHIP. (a) The Texas State Board of Acupuncture Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four acupuncturist members who have at least five years of experience in the practice of acupuncture in this state and who are not physicians;

(2) two physician members experienced in the practice of acupuncture; and

(3) three members of the general public who are not licensed or trained in a health care profession.

(b) Appointments to the acupuncture board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.02, eff. September 1, 2005.

Sec. 205.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the acupuncture board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the medical board or receiving funds from the medical board or acupuncture board;

(3) owns or controls, directly or indirectly, more than a

10 percent interest in a business entity or other organization regulated by the medical board or acupuncture board or receiving funds from the medical board;

(4) uses or receives a substantial amount of tangible goods, services, or funds from the medical board or acupuncture board, other than compensation or reimbursement authorized by law for acupuncture board membership, attendance, or expenses; or

(5) owns, operates, or has a financial interest in a school of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.056(a), eff. Sept. 1, 2001.

Sec. 205.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, board member, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the acupuncture board or an employee of the medical board who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person may not be a member of the acupuncture board and may not be a medical board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) A person may not be a member of the acupuncture board or act as general counsel to the acupuncture board or the medical board

if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the medical board or acupuncture board.

(e) A person may not serve on the acupuncture board if the person owns, operates, or has a financial interest in a school of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.056(b), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.03, eff. September 1, 2005.

Sec. 205.054. TERMS; VACANCIES. (a) Members of the acupuncture board serve staggered six-year terms. The terms of three members expire on January 31 of each odd-numbered year.

(b) A vacancy on the acupuncture board shall be filled by appointment of the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.055. PRESIDING OFFICER. The governor shall designate an acupuncturist member of the acupuncture board as presiding officer. The presiding officer serves in that capacity at the will of the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.04, eff. September 1, 2005.

Sec. 205.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the acupuncture board that a member:

(1) does not have at the time of appointment the qualifications required by Sections 205.051 and 205.052;

(2) does not maintain during service on the acupuncture

board the qualifications required by Sections 205.051 and 205.052;

(3) violates a prohibition established by Section 205.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled acupuncture board meetings that the member is eligible to attend during a calendar year.

(b) The validity of an action of the acupuncture board is not affected by the fact that it is taken when a ground for removal of an acupuncture board member exists.

(c) If the executive director has knowledge that a potential ground for removal of an acupuncture board member exists, the executive director shall notify the presiding officer of the acupuncture board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the acupuncture board, who shall notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the acupuncture board may not vote, deliberate, or be counted as a member in attendance at a meeting of the acupuncture board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing acupuncture board operations;

(2) the programs, functions, rules, and budget of the acupuncture board;

(3) the scope of and limitations on the rulemaking authority of the acupuncture board;

(4) the types of acupuncture board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the acupuncture board regulates,

including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the acupuncture board regulates;

(B) restricts advertising by persons in a profession or business the acupuncture board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the acupuncture board regulates; or

(D) restricts participation in a profession or business the acupuncture board regulates;

(5) the results of the most recent formal audit of the acupuncture board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the acupuncture board in performing their duties; and

(7) any applicable ethics policies adopted by the acupuncture board or the Texas Ethics Commission.

(c) A person appointed to the acupuncture board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each acupuncture board member. Each board member shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.05, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 18, eff. September 1, 2019.

Sec. 205.058. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to members of the acupuncture board information regarding their:

(1) qualifications for office under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.059. COMPENSATION; PER DIEM. An acupuncture board member may not receive compensation for service on the acupuncture board but is entitled to receive a per diem as set by legislative appropriation for transportation and related expenses incurred for each day that the member engages in the acupuncture board's business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.060. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS. Except as provided by this chapter, the acupuncture board is subject to Chapters 551, 552, and 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. POWERS AND DUTIES OF ACUPUNCTURE BOARD AND MEDICAL BOARD

Sec. 205.101. GENERAL POWERS AND DUTIES OF ACUPUNCTURE BOARD. (a) Subject to the advice and approval of the medical board, the acupuncture board shall:

(1) establish qualifications for an acupuncturist to practice in this state;

(2) establish minimum education and training requirements necessary for the acupuncture board to recommend that the medical board issue a license to practice acupuncture;

(3) administer an examination that is validated by independent testing professionals for a license to practice acupuncture;

(4) develop requirements for licensure by endorsement of other states;

(5) prescribe the application form for a license to practice acupuncture;

(6) recommend rules to establish licensing and other fees;

(7) establish the requirements for a tutorial program for acupuncture students who have completed at least 48 semester hours of college; and

(8) recommend additional rules as are necessary to administer and enforce this chapter.

(b) The acupuncture board does not have independent rulemaking authority. A rule adopted by the acupuncture board is subject to medical board approval.

(c) The acupuncture board shall:

(1) review and approve or reject each application for the issuance or renewal of a license;

(2) issue each license; and

(3) deny, suspend, or revoke a license or otherwise discipline a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.06, eff. September 1, 2005.

Sec. 205.102. ASSISTANCE BY MEDICAL BOARD. (a) The medical board shall provide administrative and clerical employees as necessary to enable the acupuncture board to administer this chapter.

(b) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement policies that clearly separate the policy-making responsibilities of the acupuncture board and the management responsibilities of the executive director and the staff of the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.103. FEES. The medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter without the use of any

other funds generated by the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.104. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The medical board may not adopt rules under this chapter restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the medical board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.1041. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The acupuncture board shall develop guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the acupuncture board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the acupuncture board submits the rule to the medical board for approval.

(b) A rule adopted by the acupuncture board may not be challenged on the grounds that the board did not comply with this section. If the acupuncture board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the board shall state in writing the reasons why the board was unable to do so.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.07, eff. September 1, 2005.

Sec. 205.1045. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The acupuncture board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.08, eff. September 1, 2005.

Sec. 205.106. USE OF TECHNOLOGY. Subject to the advice and approval of the medical board, the acupuncture board shall implement a policy requiring the acupuncture board to use appropriate technological solutions to improve the acupuncture board's ability to perform its functions. The policy must ensure that the public is able to interact with the acupuncture board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.09, eff. September 1, 2005.

Sec. 205.107. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of acupuncture board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the acupuncture board's jurisdiction.

(b) The acupuncture board procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The acupuncture board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those

procedures, as implemented by the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.10, eff. September 1, 2005.

SUBCHAPTER D. PUBLIC ACCESS AND INFORMATION AND COMPLAINT PROCEDURES

Sec. 205.151. PUBLIC INTEREST INFORMATION. (a) The acupuncture board shall prepare information of public interest describing the functions of the acupuncture board and the procedures by which complaints are filed with and resolved by the acupuncture board.

(b) The acupuncture board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.152. COMPLAINTS. (a) The acupuncture board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the acupuncture board for the purpose of directing a complaint to the acupuncture board. The acupuncture board may provide for that notification:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The acupuncture board shall keep information about each complaint filed with the acupuncture board. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the acupuncture board took no

action, an explanation of the reason the complaint was closed without action.

(c) The acupuncture board shall keep a file about each written complaint filed with the acupuncture board that the acupuncture board has authority to resolve. The acupuncture board shall provide to the person filing the complaint and each person who is the subject of the complaint the acupuncture board's policies and procedures pertaining to complaint investigation and resolution.

(d) The acupuncture board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint unless the notice would jeopardize an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.1521. CONDUCT OF INVESTIGATION. The acupuncture board shall complete a preliminary investigation of a complaint received by the acupuncture board not later than the 30th day after the date of receiving the complaint. The acupuncture board shall first determine whether the acupuncturist constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the acupuncture board shall determine whether to officially proceed on the complaint. If the acupuncture board fails to complete the preliminary investigation in the time required by this section, the acupuncture board's official investigation of the complaint is considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.11, eff. September 1, 2005.

Sec. 205.153. PUBLIC PARTICIPATION. (a) Subject to the advice and approval of the medical board, the acupuncture board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the acupuncture board and to speak on any issue under the acupuncture board's jurisdiction.

(b) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the acupuncture board's programs and

services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. LICENSE REQUIREMENTS

Sec. 205.201. LICENSE REQUIRED. Except as provided by Section 205.303, a person may not practice acupuncture in this state unless the person holds a license to practice acupuncture issued by the acupuncture board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.12, eff. September 1, 2005.

Sec. 205.202. ISSUANCE OF LICENSE. (a) The acupuncture board shall issue a license to practice acupuncture in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The acupuncture board may delegate authority to medical board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the acupuncture board. A license issued under this subsection does not require formal acupuncture board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.13, eff. September 1, 2005.

Sec. 205.2025. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The acupuncture board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and

the Federal Bureau of Investigation.

(b) The acupuncture board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The acupuncture board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The acupuncture board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 19, eff. September 1, 2019.

Sec. 205.203. LICENSE EXAMINATION. (a) An applicant for a license to practice acupuncture must pass an acupuncture examination and a jurisprudence examination approved by the acupuncture board as provided by this section.

(b) To be eligible for the examination, an applicant must:

(1) be at least 21 years of age;

(2) have completed at least 60 semester hours of college courses, including basic science courses as determined by the acupuncture board; and

(3) be a graduate of an acupuncture school with entrance requirements and a course of instruction that meet standards set under Section 205.206.

(c) The acupuncture examination shall be conducted on practical and theoretical acupuncture and other subjects required by the acupuncture board.

(c-1) The jurisprudence examination shall be conducted on the licensing requirements and other laws, rules, or regulations applicable to the professional practice of acupuncture in this state.

(d) The examination may be in writing, by a practical demonstration of the applicant's skill, or both, as required by the acupuncture board.

(e) The medical board shall notify each applicant of the time and place of the examination.

(f) The acupuncture board shall adopt rules for the jurisprudence examination under Subsection (c-1) regarding:

(1) the development of the examination;

(2) applicable fees;

(3) administration of the examination;

(4) reexamination procedures;

(5) grading procedures; and

(6) notice of results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.057(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.14, eff. September 1, 2005.

Sec. 205.204. APPLICATION FOR EXAMINATION. An application for examination must be:

(1) in writing on a form prescribed by the acupuncture board;

(2) verified by affidavit;

(3) filed with the executive director; and

(4) accompanied by a fee in an amount set by the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.2045. APPEARANCE OF APPLICANT BEFORE ACUPUNCTURE BOARD. An applicant for a license to practice acupuncture may not be required to appear before the acupuncture board or a committee of the acupuncture board unless the application raises questions concerning:

(1) a physical or mental impairment of the applicant;

(2) a criminal conviction of the applicant; or

(3) revocation of a professional license held by the

applicant.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.057(b), eff. Sept. 1, 2001.

Sec. 205.205. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a licensing examination is administered under this chapter, the acupuncture board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the acupuncture board shall notify examinees of the results of the examination not later than the 14th day after the date the acupuncture board receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the acupuncture board shall notify the examinee of the reason for the delay before the 90th day. The acupuncture board may require a testing service to notify examinees of the results of an examination.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the acupuncture board shall furnish the person with an analysis of the person's performance on the examination if an analysis is available from the national testing service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.206. ACUPUNCTURE SCHOOLS. (a) A reputable acupuncture school, in addition to meeting standards set by the acupuncture board, must:

(1) maintain a resident course of instruction equivalent to not less than six terms of four months each for a total of not less than 1,800 instructional hours;

(2) provide supervised patient treatment for at least two terms of the resident course of instruction;

(3) maintain a course of instruction in anatomy-histology, bacteriology, physiology, symptomatology, pathology, meridian and point locations, hygiene, and public health; and

(4) have the necessary teaching force and facilities for

proper instruction in required subjects.

(b) In establishing standards for the entrance requirements and course of instruction of an acupuncture school, the acupuncture board may consider the standards set by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

(c) In addition to the other requirements of this section, an acupuncture school or degree program is subject to approval by the Texas Higher Education Coordinating Board unless the school or program qualifies for an exemption under Section 61.303, Education Code.

(d) In reviewing an acupuncture school or degree program as required by Subsection (c), the Texas Higher Education Coordinating Board shall seek input from the acupuncture board regarding the standards to be used for assessing whether a school or degree program adequately prepares an individual for the practice of acupuncture.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.15, eff. September 1, 2005.

Sec. 205.207. RECIPROCAL LICENSE. The medical board may waive any license requirement for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license from another state that has license requirements substantially equivalent to those of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.208. TEMPORARY LICENSE. (a) The acupuncture board may, through the executive director, issue a temporary license to practice acupuncture to an applicant who:

(1) submits an application on a form prescribed by the acupuncture board;

(2) has passed a national or other examination recognized by the acupuncture board relating to the practice of acupuncture;

(3) pays the appropriate fee;

(4) if licensed in another state, is in good standing as an

acupuncturist; and

(5) meets all the qualifications for a license under this chapter but is waiting for the next scheduled meeting of the medical board for the license to be issued.

(b) A temporary license is valid for 100 days after the date issued and may be extended only for another 30 days after the date the initial temporary license expires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. LICENSE RENEWAL

Sec. 205.251. RENEWAL REQUIRED. (a) The medical board by rule shall provide for the annual or biennial renewal of a license to practice acupuncture.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 5, eff. September 1, 2017.

Sec. 205.2515. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant for renewal of a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 205.2025.

(b) The acupuncture board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the holder has

previously submitted fingerprints under:

(1) Section 205.2025 for the initial issuance of the license; or

(2) this section as part of a prior renewal of a license.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 20, eff. September 1, 2019.

Sec. 205.252. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the expiration date of a person's license, the medical board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.253. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section or Section 205.254.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board a fee in an amount equal to one and one-half times the required renewal fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the medical board a fee in an amount equal to two times the required renewal fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.254. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE

PRACTITIONER. (a) The medical board may renew without reexamination the license of a person who was licensed to practice acupuncture in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

(b) The person must pay to the medical board a fee in an amount equal to two times the required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.255. CONTINUING EDUCATION. (a) The acupuncture board by rule may require a license holder to complete a certain number of hours of continuing education courses approved by the acupuncture board to renew a license.

(a-1) The acupuncture board shall establish written guidelines for granting continuing education credit that specify:

(1) procedural requirements;

(2) the qualifications needed to be considered a preferred provider of continuing education; and

(3) course content requirements.

(b) The acupuncture board shall consider the approval of a course conducted by:

(1) a knowledgeable health care provider; or

(2) a reputable school, state, or professional organization.

(c) After guidelines are established under Subsection (a-1), the acupuncture board shall delegate to medical board employees the authority to approve course applications for courses that clearly meet the guidelines. Medical board employees shall refer any courses that are not clearly within the guidelines to the acupuncture board for review and approval.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.058(a), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.16, eff. September 1, 2005.

Sec. 205.256. REFUSAL FOR VIOLATION OF BOARD ORDER. The

acupuncture board may refuse to renew a license issued under this chapter if the license holder is in violation of an acupuncture board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 6, eff. September 1, 2017.

SUBCHAPTER G. PRACTICE BY LICENSE HOLDER

Sec. 205.301. REFERRAL BY OTHER HEALTH CARE PRACTITIONER REQUIRED. (a) A license holder may perform acupuncture on a person only if the person was:

(1) evaluated by a physician or dentist, as appropriate, for the condition being treated within six months before the date acupuncture is performed; or

(2) referred by a chiropractor within 30 days before the date acupuncture is performed.

(b) A license holder acting under Subsection (a)(1) must obtain reasonable documentation that the required evaluation has taken place. If the license holder is unable to determine that an evaluation has taken place, the license holder must obtain a written statement signed by the person on a form prescribed by the acupuncture board that states the person has been evaluated by a physician or dentist within the prescribed time. The form must contain a clear statement that the person should be evaluated by a physician or dentist for the condition being treated by the license holder.

(c) A license holder acting under Subsection (a)(2) shall refer the person to a physician after performing acupuncture 20 times or for 30 days, whichever occurs first, if substantial improvement does not occur in the person's condition for which the referral was made.

(d) The medical board, with advice from the acupuncture board, by rule may modify:

(1) the scope of the evaluation under Subsection (a)(1);

(2) the period during which treatment must begin under Subsection (a)(1) or (2); or

(3) the number of treatments or days before referral to a physician is required under Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.302. AUTHORIZED PRACTICE WITHOUT REFERRAL. (a) After notice and public hearing, the medical board shall determine by rule whether an acupuncturist may treat a patient for alcoholism or chronic pain without a referral from a physician, dentist, or chiropractor. The medical board shall make the determination based on clinical evidence and what the medical board determines to be in the best interest of affected patients.

(b) Notwithstanding Section 205.301, a license holder may, without a referral from a physician, dentist, or chiropractor, perform acupuncture on a person for:

(1) smoking addiction;

(2) weight loss; or

(3) substance abuse, to the extent permitted by medical board rule adopted with advice from the acupuncture board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 719, Sec. 2, eff. Sept. 1, 2001.

Sec. 205.303. ACUDETOX SPECIALIST. (a) The medical board may certify a person as an acudetox specialist under this section if the person:

(1) provides to the medical board documentation that the person:

(A) is a licensed social worker, licensed professional counselor, including a person licensed under Section 503.308, licensed psychologist, licensed chemical dependency counselor, licensed marriage and family therapist, licensed marriage and family therapist associate, licensed vocational nurse, licensed registered nurse, licensed physician assistant, or other licensed or certified professional approved by the medical board; and

(B) has successfully completed a training program in auricular acudetox that meets or exceeds the training approved by the medical board; and

(2) pays a certification fee in an amount set by the medical board.

(b) An acudetox specialist may practice five-point auricular acupuncture only to the extent allowed by rules adopted by the medical board for the treatment of addiction, trauma, or physical, emotional, or psychological stress.

(c) An acudetox specialist shall:

(1) obtain informed consent from each client and notify each client of the qualifications of the acudetox specialist and of the procedure for registering a complaint regarding the acudetox specialist with the medical board; and

(2) keep a record of each client's name and the date the client received the acudetox specialist's services, accompanied by the signature and printed name of the acudetox specialist.

(d) The certification of an acudetox specialist expires on the third anniversary of the date of issuance and may be renewed before the expiration of the certification if the person:

(1) provides to the medical board documentation that:

(A) the certification or license required under Subsection (a)(1)(A) is in effect; and

(B) the person has successfully met continuing education requirements established by the medical board under Subsection (e); and

(2) pays a certification renewal fee in an amount set by the medical board.

(e) The medical board by rule shall establish continuing education requirements for an acudetox specialist. The board shall require in rules adopted under this subsection that the certification of an acudetox specialist may not be renewed unless the person completes at least three hours of continuing education in the licensing period before applying for the renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.059(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 33, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 397 (H.B. 1106), Sec. 1, eff. September 1, 2023.

Sec. 205.304. PROFESSIONAL REVIEW ACTION. Sections 160.002, 160.003, 160.006, 160.007(d), 160.013, 160.014, and 160.015 apply to professional review actions relating to the practice of acupuncture by an acupuncturist or acupuncturist student.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.060, eff. Sept. 1, 2001.

Sec. 205.305. LICENSE HOLDER INFORMATION. (a) Each license holder shall file with the acupuncture board:

(1) the license holder's mailing address;

(2) the address of the license holder's residence;

(3) the mailing address of each office of the license holder; and

(4) the address for the location of each office of the license holder that has an address different from the office's mailing address.

(b) A license holder shall:

(1) notify the acupuncture board of a change of the license holder's residence or business address; and

(2) provide the acupuncture board with the license holder's new address not later than the 30th day after the date the address change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. DISCIPLINARY PROCEDURES

Sec. 205.351. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. (a) A license to practice acupuncture may be denied or, after notice and hearing, a license holder may be subject to disciplinary action under Section 205.352 if the license applicant or license holder:

(1) intemperately uses drugs or intoxicating liquors to an extent that, in the opinion of the board, could endanger the lives of patients;

(2) obtains or attempts to obtain a license by fraud or deception;

(3) has been adjudged mentally incompetent by a court;

(4) has a mental or physical condition that renders the person unable to perform safely as an acupuncturist;

(5) fails to practice acupuncture in an acceptable manner consistent with public health and welfare;

(6) violates this chapter or a rule adopted under this chapter;

(7) has been convicted of a crime involving moral turpitude

or a felony or is the subject of deferred adjudication or pretrial diversion for such an offense;

(8) holds the person out as a physician or surgeon or any combination or derivative of those terms unless the person is also licensed by the medical board as a physician or surgeon;

(9) fraudulently or deceptively uses a license;

(10) engages in unprofessional or dishonorable conduct that is likely to deceive, defraud, or injure a member of the public;

(11) commits an act in violation of state law if the act is connected with the person's practice as an acupuncturist;

(12) fails to adequately supervise the activities of a person acting under the supervision of the license holder;

(13) directly or indirectly aids or abets the practice of acupuncture by any person not licensed to practice acupuncture by the acupuncture board;

(14) is unable to practice acupuncture with reasonable skill and with safety to patients because of illness, drunkenness, or excessive use of drugs, narcotics, chemicals, or any other type of material or because of any mental or physical condition;

(15) is the subject of repeated or recurring meritorious health-care liability claims that in the opinion of the acupuncture board evidence professional incompetence likely to injure the public;

(16) has had a license to practice acupuncture suspended, revoked, or restricted by another state or has been subject to other disciplinary action by another state or by the uniformed services of the United States regarding practice as an acupuncturist; or

(17) sexually abuses or exploits another person through the license holder's practice as an acupuncturist.

(b) If the acupuncture board proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(c) A complaint, indictment, or conviction of a violation of law is not necessary for an action under Subsection (a)(11). Proof of the commission of the act while in the practice of acupuncture or under the guise of the practice of acupuncture is sufficient for action by the acupuncture board.

(d) A certified copy of the record of the state or uniformed services of the United States taking an action is conclusive evidence of the action for purposes of Subsection (a)(16).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.17, eff. September 1, 2005.

Sec. 205.352. DISCIPLINARY POWERS OF ACUPUNCTURE BOARD. (a) On finding that grounds exist to deny a license or take disciplinary action against a license holder, the acupuncture board by order may:

(1) deny the person's application for a license, license renewal, or certificate to practice acupuncture or revoke the person's license or certificate to practice acupuncture;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the acupuncture board as a condition for the issuance, continuance, or renewal of a license or certificate to practice acupuncture;

(3) require the person to participate in a program of education or counseling prescribed by the acupuncture board;

(4) suspend, limit, or restrict the person's license or certificate to practice acupuncture, including limiting the practice of the person to, or excluding from the practice, one or more specified activities of acupuncture or stipulating periodic review by the acupuncture board;

(5) require the person to practice under the direction of an acupuncturist designated by the acupuncture board for a specified period of time;

(6) assess an administrative penalty against the person as provided by Subchapter J;

(7) require the person to perform public service considered appropriate by the acupuncture board;

(8) stay enforcement of an order and place the person on probation with the acupuncture board retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section;

(9) require the person to continue or review professional education until the person attains a degree of skill satisfactory to the acupuncture board in those areas that are the basis of the probation under Subdivision (8);

(10) require the person to report regularly to the

acupuncture board on matters that are the basis of the probation under Subdivision (8); or

(11) administer a public reprimand.

(b) The acupuncture board may reinstate or reissue a license or remove any disciplinary or corrective measure that the acupuncture board has imposed under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.18, eff. September 1, 2005.

Sec. 205.3522. SURRENDER OF LICENSE. (a) The acupuncture board may accept the voluntary surrender of a license.

(b) A surrendered license may not be returned to the license holder unless the acupuncture board determines, under acupuncture board rules, that the former holder of the license is competent to resume practice.

(c) The acupuncture board shall recommend rules to the medical board for determining the competency of a former license holder to return to practice.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.19, eff. September 1, 2005.

Sec. 205.3523. PHYSICAL OR MENTAL EXAMINATION. (a) The acupuncture board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which an acupuncturist or applicant may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) The acupuncture board shall refer an acupuncturist or applicant with a physical or mental health condition to the most appropriate medical specialist. The acupuncture board may not require an acupuncturist or applicant to submit to an examination by a physician having a specialty specified by the board unless medically indicated. The acupuncture board may not require an acupuncturist or applicant to submit to an examination to be

conducted an unreasonable distance from the person's home or place of business unless the acupuncturist or applicant resides and works in an area in which there are a limited number of physicians able to perform an appropriate examination.

(c) The guidelines adopted under this section do not impair or remove the acupuncture board's power to make an independent licensing decision.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.20, eff. September 1, 2005.

Sec. 205.354. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of practice adopted by the medical board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.3541. INFORMAL PROCEEDINGS. (a) The acupuncture board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the complaint is filed with the acupuncture board, unless good cause is shown by the acupuncture board for scheduling the informal meeting after that date;

(2) the acupuncture board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the acupuncture board members participating in the informal meeting as a panelist be a member who represents the public;

(5) the acupuncture board's legal counsel or a representative of the attorney general be present to advise the acupuncture board or the medical board's staff; and

(6) an employee of the medical board be at the meeting to present to the acupuncture board's representative the facts the medical board staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected acupuncturist is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the acupuncturist reasonably believes the acupuncturist could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the acupuncture board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the acupuncture board, the acupuncture board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.21, eff. September 1, 2005.

Sec. 205.3542. ACUPUNCTURE BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 205.3541, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 205.3541(b)(4), an informal proceeding may be conducted by one panelist if the affected acupuncturist waives the requirement that at least two panelists conduct the informal proceeding. If the acupuncturist waives that requirement, the panelist may be any member of the acupuncture board.

(c) The panel requirements described by Subsection (a) apply to an informal proceeding conducted by the acupuncture board under Section 205.3541, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the acupuncture board under Section 205.3541 to show compliance with an order of the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.22, eff. September 1, 2005.

Sec. 205.3543. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) An acupuncture board member that serves as a panelist at an informal meeting under Section 205.3541 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected acupuncturist and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) An acupuncture board or medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the acupuncture board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected acupuncturist have an opportunity to present information related to the case. During the panel's deliberation, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the acupuncture board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected acupuncturist and the acupuncturist's authorized representative to reply to the board employees'

presentation and to present oral and written statements and facts that the acupuncturist and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected acupuncturist, the acupuncturist's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected acupuncturist has violated a statute or acupuncture board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected acupuncturist and the acupuncturist's authorized representative. The acupuncturist may accept the proposed settlement within the time established by the panel at the informal meeting. If the acupuncturist rejects the proposed settlement or does not act within the required time, the acupuncture board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.23, eff. September 1, 2005.

Sec. 205.3544. LIMIT ON ACCESS TO INVESTIGATION FILES. The acupuncture board shall prohibit or limit access to an investigation file relating to a license holder in an informal proceeding in the manner provided by Section 164.007(c).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.24, eff. September 1, 2005.

Sec. 205.355. REQUIRED DISCIPLINARY ACTION FOR FAILURE TO OBTAIN REFERRAL. Except as provided by Section 205.301(a)(2), a license to practice acupuncture shall be denied or, after notice and

hearing, revoked if the applicant or license holder violates Section 205.301(a)(1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.356. REHABILITATION ORDER. (a) The acupuncture board, through an agreed order or after a contested proceeding, may impose a nondisciplinary rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as an acupuncturist, if the person:

(A) reported the use;

(B) has not previously been the subject of a substance abuse related order of the acupuncture board; and

(C) did not violate the standard of care as a result of the impairment;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as an acupuncturist with reasonable skill and safety by reason of illness or as a result of any physical or mental condition.

(b) The acupuncture board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The acupuncture board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The acupuncture board may disclose a rehabilitation order to a local or statewide private acupuncture association only as provided by Section 205.3562.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.25, eff. September 1, 2005.

Sec. 205.3561. EXPERT IMMUNITY. An expert who assists the acupuncture board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken without fraud or malice in the course of assisting the board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the expert in good faith to the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.26, eff. September 1, 2005.

Sec. 205.3562. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 205.356 requires a license holder to participate in activities or programs provided by a local or statewide private acupuncture association, the acupuncture board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the acupuncturist's rehabilitation.

(b) The acupuncture board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the acupuncture board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.26, eff. September 1, 2005.

Sec. 205.357. EFFECT OF REHABILITATION ORDER. (a) A rehabilitation order imposed under Section 205.356 is a

nondisciplinary private order. If entered by agreement, the order is an agreed disposition or settlement agreement for purposes of civil litigation and is exempt from the open records law.

(b) A rehabilitation order imposed under Section 205.356 must contain findings of fact and conclusions of law. The order may impose a revocation, cancellation, suspension, period of probation or restriction, or any other term authorized by this chapter or agreed to by the acupuncture board and the person subject to the order.

(c) A violation of a rehabilitation order may result in disciplinary action under the provisions of this chapter for contested matters or the terms of the agreed order.

(d) A violation of a rehabilitation order is grounds for disciplinary action based on:

(1) unprofessional or dishonorable conduct; or

(2) any provision of this chapter that applies to the conduct resulting in the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.358. AUDIT OF REHABILITATION ORDER. (a) The acupuncture board shall keep rehabilitation orders imposed under Section 205.356 in a confidential file. The file is subject to an independent audit to ensure that only qualified license holders are subject to rehabilitation orders. The audit shall be conducted by a state auditor or private auditor with whom the acupuncture board contracts to perform the audit.

(b) An audit may be performed at any time at the direction of the acupuncture board. The acupuncture board shall ensure that an audit is performed at least once in each three-year period.

(c) The audit results are a matter of public record and shall be reported in a manner that maintains the confidentiality of each license holder who is subject to a rehabilitation order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.359. SUBPOENA. (a) On behalf of the acupuncture board, the executive director of the medical board or the presiding officer of the acupuncture board may issue a subpoena or subpoena duces tecum:

(1) for purposes of an investigation or contested proceeding related to:

(A) alleged misconduct by an acupuncturist; or

(B) an alleged violation of this chapter or other law related to practice as an acupuncturist or to the provision of health care under the authority of this chapter; and

(2) to determine whether to:

(A) issue, suspend, restrict, revoke, or cancel a license authorized by this chapter; or

(B) deny or grant an application for a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the acupuncture board or any other licensing or regulatory agency with jurisdiction over the individual or entity subject to the subpoena; and

(2) denial of a license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.360. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The acupuncture board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the acupuncture board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 205.3541 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected acupuncturist requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.27, eff. September 1, 2005.

Sec. 205.361. TEMPORARY SUSPENSION. (a) The presiding officer of the acupuncture board, with that board's approval, shall appoint a three-member disciplinary panel consisting of acupuncture board members to determine whether a person's license to practice as an acupuncturist should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice as an acupuncturist would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the acupuncture board is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.28, eff. September 1, 2005.

Sec. 205.362. CEASE AND DESIST ORDER. (a) If it appears to the acupuncture board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of acupuncture, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Section 205.352.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.29, eff. September 1, 2005.

Sec. 205.363. REFUND. (a) Subject to Subsection (b), the acupuncture board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this subchapter.

(b) The amount of a refund ordered under Subsection (a) may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The acupuncture board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.30, eff. September 1, 2005.

Sec. 205.364. MODIFICATION OF FINDINGS OR RULINGS BY ADMINISTRATIVE LAW JUDGE. The acupuncture board may change a finding of fact or conclusion of law or vacate or modify an order of an administrative law judge only if the acupuncture board makes a determination required by Section 2001.058(e), Government Code.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.31, eff. September 1, 2005.

SUBCHAPTER I. CRIMINAL PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 205.401. CRIMINAL PENALTY. (a) Except as provided by Section 205.303, a person commits an offense if the person practices acupuncture in this state without a license issued under this chapter.

(b) Each day a person practices acupuncture in violation of Subsection (a) constitutes a separate offense.

(c) An offense under Subsection (a) is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 205.402. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The acupuncture board, the attorney general, or a district or county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

(b) In addition to injunctive relief or any other remedy provided by law, a person who violates this chapter or a rule adopted under this chapter is liable to the state for a civil penalty in an amount not to exceed $2,000 for each violation.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a civil penalty.

(d) The attorney general, at the request of the acupuncture board or on the attorney general's own initiative, may bring a civil action to collect a civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.32, eff. September 1, 2005.

SUBCHAPTER J. ADMINISTRATIVE PENALTIES

Sec. 205.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The acupuncture board by order may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.452. PROCEDURE. (a) The acupuncture board by rule shall prescribe the procedure by which it may impose an administrative penalty.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.453. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.454. NOTICE OF VIOLATION AND PENALTY. (a) If the acupuncture board by order determines that a violation has occurred and imposes an administrative penalty, the acupuncture board shall notify the affected person of the board's order.

(b) The notice must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.455. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the acupuncture board's order imposing the administrative penalty is final, the person shall:

(1) pay the penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an

escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the acupuncture board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the presiding officer of the acupuncture board by certified mail.

(c) If the presiding officer of the acupuncture board receives a copy of an affidavit under Subsection (b)(2), the presiding officer may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.456. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the presiding officer of the acupuncture board may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.457. DETERMINATION BY COURT. (a) If on appeal the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

Sec. 205.458. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 3.34, eff. September 1, 2005.

CHAPTER 206. SURGICAL ASSISTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 206.001. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the advisory committee created under this chapter.

(2) "Delegating physician" means a physician who is licensed by the medical board either as a doctor of medicine or doctor of osteopathic medicine and who delegates, to a licensed surgical assistant, surgical assisting and oversees and accepts responsibility for that surgical assisting.

(3) "Direct supervision" means supervision by a delegating physician who is physically present and who personally directs delegated acts and remains immediately available to personally respond to any emergency until the patient is released from the operating room or care and has been transferred, as determined by medical board rule, to another physician.

(4) "Executive director" means the executive director of the medical board.

(5) "Medical board" means the Texas Medical Board.

(6) "Surgical assisting" means providing aid under direct supervision in exposure, hemostasis, and other intraoperative technical functions that assist a physician in performing a safe operation with optimal results for the patient, including the delegated authority to provide local infiltration or the topical application of a local anesthetic at the operation site. This term is synonymous with "first assisting."

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.01, eff. September 1, 2005.

Sec. 206.002. APPLICABILITY. (a) A person is not required to hold a license under this chapter if the person is:

(1) a student enrolled in a surgical assistant education program approved by the medical board who is assisting in a surgical operation that is an integral part of the program of study;

(2) a surgical assistant employed in the service of the federal government while performing duties related to that employment;

(3) a person acting under the delegated authority of a licensed physician;

(4) a licensed health care worker acting within the scope of the person's license;

(5) a registered nurse; or

(6) a licensed physician assistant.

(b) This chapter does not affect the authority of a licensed physician to delegate acts under Subtitle B.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. ADVISORY COMMITTEE

Sec. 206.051. ADVISORY COMMITTEE. (a) The advisory committee is an informal advisory committee to the medical board and is not subject to Chapter 2110, Government Code.

(b) The advisory committee has no independent rulemaking authority.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.052. APPOINTMENT OF ADVISORY COMMITTEE. (a) The advisory committee consists of six members appointed by the president of the medical board. One member must be a registered perioperative nurse with at least five years of clinical experience as a registered perioperative nurse. Each of the remaining members must be:

(1) a practicing surgical assistant who has at least five years of clinical experience as a surgical assistant; or

(2) a physician licensed in this state who supervises a surgical assistant.

(b) Appointments to the advisory committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the advisory committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of surgical assisting; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of surgical assisting.

(c) A person may not be a member of the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the field of surgical assisting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.054. TERMS; VACANCY. (a) Members of the advisory committee are appointed for two-year terms. The terms of the members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the president of the medical board shall appoint a new member to fill the unexpired term.

(c) An advisory committee member may not serve more than two consecutive full terms.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory committee that a member:

(1) does not have at the time of appointment the qualifications required by Section 206.052;

(2) does not maintain during service on the advisory committee the qualifications required by Section 206.052;

(3) is ineligible for membership under Section 206.053; or

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term.

(b) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.056. OFFICERS. The president of the medical board shall designate biennially a committee member as the presiding officer of the advisory committee to serve in that capacity at the will of the president.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.057. PER DIEM. An advisory committee member is not entitled to reimbursement for travel expenses or compensation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.058. MEETINGS. (a) The advisory committee shall meet as requested by the medical board.

(b) A meeting may be held by telephone conference call.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. POWERS AND DUTIES OF MEDICAL BOARD

Sec. 206.101. GENERAL POWERS AND DUTIES. The medical board shall:

(1) establish qualifications for a surgical assistant to practice in this state;

(2) establish requirements for an examination for a license to practice as a surgical assistant;

(3) establish minimum education and training requirements necessary for a license to practice as a surgical assistant;

(4) prescribe the application form for a license to practice as a surgical assistant; and

(5) develop an approved program of mandatory continuing education and the manner in which attendance at all approved courses, clinics, forums, lectures, programs, or seminars is monitored and recorded.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.103. GIFTS, GRANTS, AND DONATIONS. In addition to any fees paid to the medical board or money appropriated to the medical board, the medical board may receive and accept under this chapter a gift, grant, donation, or other item of value from any source, including the United States or a private source.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. PUBLIC INTEREST INFORMATION; COMPLAINT AND INVESTIGATIVE INFORMATION

Sec. 206.151. PUBLIC PARTICIPATION. (a) The medical board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the medical board and speak on any issue relating to surgical assistants.

(b) The executive director of the medical board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the medical board's programs and services under this chapter.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.152. PUBLIC INTEREST INFORMATION. (a) The medical board shall prepare information of public interest describing the functions of the medical board and the procedures by which complaints are filed and resolved under this chapter.

(b) The medical board shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.153. COMPLAINTS. (a) The medical board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the medical board for the purpose of directing complaints about licensed surgical assistants to the medical board.

(b) The medical board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.154. RECORDS OF COMPLAINTS. (a) The medical board shall maintain a file on each written complaint filed with the medical board under this chapter. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the medical board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation

of the complaint; and

(6) an explanation of the reason the file was closed, if the medical board closed the file without taking action other than to investigate the complaint.

(b) The medical board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the medical board's policies and procedures relating to complaint investigation and resolution. A person who reports a complaint by phone shall be given information on how to file a written complaint.

(c) The medical board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.155. LICENSE HOLDER ACCESS TO COMPLAINT INFORMATION. (a) The medical board shall provide a license holder who is the subject of a formal complaint filed under this chapter with access to all information in its possession that the medical board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. The medical board shall provide the information not later than the 30th day after receipt of a written request from the license holder or the license holder's counsel, unless good cause is shown for delay.

(b) Notwithstanding Subsection (a), the medical board is not required to provide:

(1) medical board investigative reports;

(2) investigative memoranda;

(3) the identity of a nontestifying complainant;

(4) attorney-client communications;

(5) attorney work product; or

(6) other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.156. HEALTH CARE ENTITY REQUEST FOR INFORMATION. On the written request of a health care entity, the medical board shall provide to the entity:

(1) information about a complaint filed against a license holder that was resolved after investigation by:

(A) a disciplinary order of the medical board; or

(B) an agreed settlement; and

(2) the basis of and current status of any complaint under active investigation that has been referred by the executive director or the director's designee for legal action.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.157. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. A complaint, adverse report, investigation file, or other report, the identity of and reports made by a physician or surgical assistant performing or supervising compliance monitoring for the medical board, or other investigative information in the possession of or received or gathered by the medical board, medical board employee or agent relating to a license holder, a license application, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the medical board or medical board employee or agent involved in license holder discipline.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.1575. CONDUCT OF INVESTIGATION. The medical board shall complete a preliminary investigation of a complaint not later than the 30th day after the date of receiving the complaint. The medical board shall first determine whether the surgical assistant constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the medical board shall determine whether to officially proceed on the complaint. If the medical board fails to complete the preliminary investigation in the time required by this section, the medical board's official investigation is

considered to commence on that date.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.02, eff. September 1, 2005.

Sec. 206.158. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Investigative information in the possession of the medical board, medical board employee, or agent that relates to the discipline of a license holder may be disclosed to:

(1) a licensing authority in another state or a territory or country in which the license holder is licensed or has applied for a license; or

(2) a peer review committee reviewing:

(A) an application for privileges; or

(B) the qualifications of the license holder with respect to retaining privileges.

(b) If the investigative information in the possession of the medical board or a medical board employee or agent indicates a crime may have been committed, the medical board shall report the information to the proper law enforcement agency. The medical board shall cooperate with and assist all law enforcement agencies conducting criminal investigations of a license holder by providing information relevant to the investigation. Confidential information disclosed by the medical board to a law enforcement agency remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.159. IMMUNITY AND REPORTING REQUIREMENTS. (a) A medical peer review committee in this state, a quality assurance committee in this state, a surgical assistant, a surgical assistant student, a physician practicing medicine in this state, or any person usually present in an operating room, including a nurse or surgical technologist, shall report relevant information to the advisory committee related to the acts of a surgical assistant in this state if, in that person's opinion, a surgical assistant poses a continuing threat to the public welfare through the person's practice as a surgical assistant. The duty to report under this section may not be

nullified through contract.

(b) A person who, without malice, furnishes records, information, or assistance to the advisory committee under this section is immune from any civil liability arising from that action in a suit against the person brought by or on behalf of a surgical assistant who is reported under this section.

(c) Sections 160.002, 160.003, 160.006, 160.007, 160.009, 160.013, and 160.014 apply to medical peer review regarding a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER E. LICENSE REQUIREMENTS

Sec. 206.201. LICENSE REQUIRED. (a) Except as provided by Section 206.002, a person may not practice as a surgical assistant unless the person is licensed under this chapter.

(b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

(1) the title "Licensed Surgical Assistant"; or

(2) any other designation that would imply that the person is a licensed surgical assistant.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.202. LICENSE APPLICATION. An applicant for a license must:

(1) file a written application with the medical board on a form prescribed by the medical board; and

(2) pay the application fee set by the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.2025. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The medical board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and

the Federal Bureau of Investigation.

(b) The medical board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The medical board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The medical board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 21, eff. September 1, 2019.

Sec. 206.203. LICENSE ELIGIBILITY. (a) Except as provided by Section 206.206, to be eligible for a license, a person must:

(1) have not been convicted of a felony or a crime involving moral turpitude;

(2) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(3) not have had a license or certification revoked by a licensing agency or by a certifying professional organization; and

(4) not have engaged in fraud or deceit in applying for a license under this chapter.

(b) In addition to meeting the requirements of Subsection (a), a person must:

(1) pass the examination required by Section 206.204;

(2) hold at least an associate's degree based on completion of an educational program that is substantially equivalent to the education required for a registered nurse or physician assistant who specializes in surgical assisting;

(3) demonstrate to the satisfaction of the medical board the completion of full-time work experience performed in this country

under the direct supervision of a physician licensed in this country and consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of application; and

(4) possess a current certification by a national certifying body approved by the medical board.

(c) A degree program described by Subsection (b)(2) must contain a clinical component and must include courses in anatomy, physiology, basic pharmacology, aseptic techniques, operative procedures, chemistry, microbiology, and pathophysiology.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 22, eff. September 1, 2019.

Sec. 206.204. EXAMINATION. An applicant for a surgical assistant license must pass a surgical assistant examination approved by the medical board. Any written portion of the examination must be validated by an independent testing professional.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.205. SPECIAL ELIGIBILITY FOR LICENSE. (a) A person who is otherwise eligible for a license under Section 206.203 is not required to take the examination required by Section 206.203(b)(1) if the person:

(1) passed a surgical assistant examination required for certification under Section 206.203(b)(4) that the medical board determines is substantially equivalent to the examination required by the medical board under this chapter; and

(2) applies for a license under this section before September 1, 2002.

(b) A person who is otherwise eligible for a license under Section 206.203 is not required to meet the educational requirements under Section 206.203(b)(2) if the person applies for a license under this section before September 1, 2002, and:

(1) will complete before the third anniversary of the date the license is issued under this subsection the following academic

courses approved by the medical board:

(A) anatomy;

(B) physiology;

(C) basic pharmacology;

(D) aseptic techniques;

(E) operative procedures;

(F) chemistry; and

(G) microbiology; or

(2) has been continuously certified since September 30, 1995, as a surgical assistant by a national certifying body approved by the medical board and has practiced full-time as a surgical assistant under the direct supervision of a physician licensed in this country.

(c) A license issued under Subsection (b)(1) may not be renewed after the third anniversary of the date of issuance unless the license holder completes the academic courses described by Subsection (b)(1).

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.206. TEMPORARY LICENSE. (a) The medical board may, through the executive director, issue a temporary license to an applicant who:

(1) submits an application on a form prescribed by the medical board;

(2) has passed an examination required by the medical board relating to the practice of surgical assisting;

(3) pays the appropriate fee set by the medical board;

(4) if licensed in another state, is licensed in good standing; and

(5) meets all the qualifications for a license under this chapter and is waiting for the next scheduled meeting of the medical board for the license to be issued.

(b) A temporary license is valid until the 100th day after the date issued and may be extended until the 130th day after the date issued.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.207. ASSISTANCE BY MEDICAL BOARD. The medical board shall provide administrative and clerical employees as necessary to administer this subchapter.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.208. FEES. (a) The medical board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering and enforcing this chapter without the use of any other funds generated by the medical board.

(b) Fees collected by the medical board under this chapter shall be deposited by the medical board in the state treasury to the credit of an account in the general revenue fund and may be spent to cover the costs of administering and enforcing this chapter. At the end of each fiscal biennium, the comptroller shall transfer any surplus money remaining in the account to the general revenue fund.

(c) All money paid to the medical board under this chapter is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.209. ISSUANCE AND RENEWAL OF LICENSE. (a) The medical board shall issue a surgical assistant license in this state to a person who meets the requirements of this chapter and the rules adopted under this chapter.

(b) The medical board may delegate authority to board employees to issue licenses under this chapter to applicants who clearly meet all licensing requirements. If the medical board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the medical board. A license issued under this subsection does not require formal medical board approval.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.03, eff. September 1, 2005.

Sec. 206.210. LICENSE RENEWAL. (a) A surgical assistant license expires on the second anniversary of the date of issuance. The medical board by rule shall provide for the renewal of a surgical assistant license.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 886, Sec. 1, eff. Sept. 1, 2003.

Sec. 206.2105. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant for renewal of a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 206.2025.

(b) The medical board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the holder has previously submitted fingerprints under:

(1) Section 206.2025 for the initial issuance of the license; or

(2) this section as part of a prior renewal of a license.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 23, eff. September 1, 2019.

Sec. 206.211. NOTICE OF LICENSE RENEWAL. At least 30 days before the expiration of a person's license, the medical board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.212. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed under this section.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board one and one-half times the required renewal fee.

(c) If the person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the medical board two times the required renewal fee.

(d) If the person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.213. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) If the person was licensed as a surgical assistant in this state, moved to another state, and is currently licensed as a surgical assistant and has been in practice as a surgical assistant in the other state for the two years preceding application, the person may renew an expired surgical assistant license without reexamination.

(b) The person must pay to the medical board a fee that is equal to two times the required renewal fee for the license.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.214. LICENSE HOLDER INFORMATION. (a) Each license holder shall file with the medical board:

(1) the license holder's mailing address;

(2) the address of the license holder's residence;

(3) the mailing address of each of the license holder's

offices; and

(4) the address for the location of each of the license holder's offices if that address is different from the office's mailing address.

(b) A license holder shall:

(1) notify the medical board of a change of the license holder's residence or business address; and

(2) provide the medical board with the license holder's new address not later than the 30th day after the date the address change occurs.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.215. REFUSAL FOR VIOLATION OF BOARD ORDER. The medical board may refuse to renew a license issued under this chapter if the license holder is in violation of a medical board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 7, eff. September 1, 2017.

SUBCHAPTER F. SCOPE OF PRACTICE

Sec. 206.251. SCOPE OF PRACTICE. (a) The practice of a surgical assistant is limited to surgical assisting performed under the direct supervision of a physician who delegated the acts.

(b) The practice of a surgical assistant may be performed in any place authorized by a delegating licensed physician, including a clinic, hospital, ambulatory surgical center, or other institutional setting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.252. SERVICE CONTRACTS. This chapter does not:

(1) limit the employment arrangement of a surgical assistant licensed under this chapter;

(2) require a surgeon or hospital to contract with a surgical assistant;

(3) authorize a health maintenance organization, preferred provider organization, or health benefit plan to require a surgeon to

contract with a surgical assistant; or

(4) require a hospital to use a licensed surgical assistant for surgical assisting.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.2525. REIMBURSEMENT FOR SERVICES. (a) This chapter does not limit the way in which a surgical assistant licensed under this chapter may be reimbursed for services.

(b) A surgical assistant licensed under this chapter may directly bill a patient or third-party payor for services provided by the surgical assistant.

Added by Acts 2003, 78th Leg., ch. 886, Sec. 2, eff. Sept. 1, 2003.

Sec. 206.253. CERTAIN PROHIBITED PRACTICES. (a) This chapter does not authorize a person who holds a license issued under this chapter to engage in the practice of:

(1) medicine, as defined by Subtitle B; or

(2) nursing, as defined by Chapter 301.

(b) A health maintenance organization, preferred provider organization, or health benefit plan may not require a registered nurse or physician assistant to be licensed as a surgical assistant as a condition for reimbursement.

(c) A clinic, hospital, ambulatory surgical center, or other facility may not require a registered nurse or physician assistant to be licensed as a surgical assistant as a condition for assisting at surgery at the facility.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.016, eff. Feb. 1, 2004.

Sec. 206.254. ESTABLISHMENT OF CERTAIN FUNCTIONS AND STANDARDS. A surgical assistant and the surgical assistant's delegating physician shall ensure that:

(1) the surgical assistant's scope of function is identified;

(2) the delegation of medical tasks is appropriate to the surgical assistant's level of competence;

(3) the relationship between the surgical assistant and the delegating physician and the access of the surgical assistant to the delegating physician are defined; and

(4) a process is established for evaluating the surgical assistant's performance.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. DISCIPLINARY PROCEEDINGS

Sec. 206.301. DISCIPLINARY ACTIONS BY THE MEDICAL BOARD. (a) Except as provided by Section 206.305, on a determination that an applicant or license holder committed an act described by Section 206.302, 206.303, or 206.304, the medical board by order shall take any of the following actions:

(1) deny the person's license application or revoke the person's license;

(2) require the person to submit to the care, counseling, or treatment of a health care practitioner designated by the medical board;

(3) stay enforcement of an order and place the person on probation;

(4) require the person to complete additional training;

(5) suspend, limit, or restrict the person's license, including:

(A) limiting the practice of the person to, or excluding from the person's practice, one or more specified activities of surgical assisting; or

(B) stipulating periodic medical board review;

(6) assess an administrative penalty against the person as provided by Section 206.351;

(7) order the person to perform public service; or

(8) administer a public reprimand.

(b) If the medical board stays enforcement of an order and places a person on probation, the medical board retains the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation or impose any other remedial measure or sanction authorized by this section.

(c) The medical board may restore or reissue a license or remove any disciplinary or corrective measure that the medical board has imposed.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.302. CONDUCT RELATED TO FRAUD OR MISREPRESENTATION. The medical board may take action under Section 206.301 against an applicant or license holder who:

(1) fraudulently or deceptively obtains or attempts to obtain a license;

(2) fraudulently or deceptively uses a license;

(3) falsely represents that the person is a physician;

(4) acts in an unprofessional or dishonorable manner that is likely to deceive, defraud, or injure the public;

(5) fraudulently alters any surgical assistant license, certificate, or diploma;

(6) uses any surgical assistant license, certificate, or diploma that has been fraudulently purchased, issued, or counterfeited or that has been materially altered;

(7) directly or indirectly aids or abets the practice as a surgical assistant by any person not licensed by the medical board to practice as a surgical assistant; or

(8) unlawfully advertises in a false, misleading, or deceptive manner as defined by Section 101.201.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.303. CONDUCT RELATED TO VIOLATION OF LAW. (a) The medical board may take action under Section 206.301 against an applicant or license holder who:

(1) violates this chapter or a rule adopted under this chapter;

(2) is convicted of a felony, placed on deferred adjudication, or placed in a pretrial diversion program; or

(3) violates state law if the violation is connected with practice as a surgical assistant.

(b) A complaint, indictment, or conviction of a law violation is not necessary for the medical board to act under Subsection

(a)(3). Proof of the commission of the act while in practice as a surgical assistant or under the guise of practice as a surgical assistant is sufficient for action by the medical board.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.304. CONDUCT INDICATING LACK OF FITNESS. (a) The medical board may take action under Section 206.301 against an applicant or license holder who:

(1) habitually uses drugs or intoxicating liquors to the extent that, in the medical board's opinion, the person cannot safely perform as a surgical assistant;

(2) has been adjudicated as mentally incompetent;

(3) has a mental or physical condition that renders the person unable to safely perform as a surgical assistant;

(4) has committed an act of moral turpitude;

(5) has failed to practice as a surgical assistant in an acceptable manner consistent with public health and welfare;

(6) has had the person's license or other authorization to practice as a surgical assistant suspended, revoked, or restricted;

(7) has had other disciplinary action taken by another state or by the uniformed services of the United States regarding practice as a surgical assistant;

(8) is removed or suspended or has disciplinary action taken by the person's peers in any professional association or society or is being disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, limitation of privileges, or other disciplinary action, if that action, in the opinion of the medical board, was based on unprofessional conduct or professional incompetence that was likely to harm the public;

(9) has repeated or recurring meritorious health care liability claims that, in the medical board's opinion, are evidence of professional incompetence likely to harm the public; or

(10) sexually abuses or exploits another person during the license holder's practice as a surgical assistant.

(b) For the purpose of Subsection (a)(7), a certified copy of the record of the state or uniformed services of the United States taking the action constitutes conclusive evidence of that action.

(c) An action described by Subsection (a)(8) does not

constitute state action on the part of the association, society, or hospital medical staff.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.305. REHABILITATION ORDER. (a) The medical board, through an agreed order or after a contested case proceeding, may impose a rehabilitation order on an applicant, as a prerequisite for issuing a license, or on a license holder based on:

(1) the person's intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the person's intemperate use of drugs or alcohol during the five years preceding the date of the report that could adversely affect the person's ability to safely practice as a surgical assistant, if the person:

(A) reported the use;

(B) has not previously been the subject of a substance abuse related order of the medical board; and

(C) has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(3) a judgment by a court that the person is of unsound mind; or

(4) the results of a mental or physical examination, or an admission by the person, indicating that the person suffers from a potentially dangerous limitation or an inability to practice as a surgical assistant with reasonable skill and safety because of illness or any other physical or mental condition.

(b) The medical board may not issue an order under this section if, before the individual signs the proposed order, the board receives a valid complaint with regard to the individual based on the individual's intemperate use of drugs or alcohol in a manner affecting the standard of care.

(c) The medical board must determine whether an individual has committed a standard of care violation described by Subsection (a)(2) before imposing an order under this section.

(d) The medical board may disclose a rehabilitation order to a local or statewide private medical or surgical assistant association only as provided by Section 206.3075.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.04, eff. September 1, 2005.

Sec. 206.306. EFFECT OF REHABILITATION ORDER. (a) A rehabilitation order imposed under Section 206.305 is a nondisciplinary private order. If entered into by agreement, the order is an agreed disposition or settlement agreement for purposes of civil litigation and is exempt from Chapter 552, Government Code.

(b) The rehabilitation order must contain findings of fact and conclusions of law. The order may impose a license revocation or suspension, a period of probation or restriction, or any other sanction authorized by this chapter or agreed to by the medical board and the person subject to the order.

(c) A violation of a rehabilitation order may result in disciplinary action under this chapter or under the terms of the agreed order.

(d) A violation of a rehabilitation order is grounds for disciplinary action based on:

(1) unprofessional or dishonorable conduct; or

(2) any provision of this chapter that applies to the conduct that resulted in the violation.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.307. AUDIT OF REHABILITATION ORDER. (a) The medical board shall maintain a rehabilitation order imposed under Section 206.305 in a confidential file. The file is subject to an independent audit by the state auditor or a private auditor with whom the board contracts to perform the audit to ensure that only qualified license holders are subject to rehabilitation orders.

(b) An audit may be performed at any time at the direction of the medical board. The medical board shall ensure that an audit is performed at least once in each three-year period.

(c) The audit results are a matter of public record and shall be reported in a manner that maintains the confidentiality of each license holder who is the subject of a rehabilitation order.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.3075. RESPONSIBILITIES OF PRIVATE ASSOCIATIONS. (a) If a rehabilitation order imposed under Section 206.305 requires a license holder to participate in activities or programs provided by a local or statewide private medical or surgical assistant association, the medical board shall inform the association of the license holder's duties under the order. The information provided under this section must include specific guidance to enable the association to comply with any requirements necessary to assist in the surgical assistant's rehabilitation.

(b) The medical board may provide to the association any information that the board determines to be necessary, including a copy of the rehabilitation order. Any information received by the association remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the medical board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.05, eff. September 1, 2005.

Sec. 206.308. SUBPOENA. (a) The executive director, the director's designee, or the secretary-treasurer of the board may issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to:

(A) alleged misconduct by a surgical assistant;

(B) an alleged violation of this chapter or another law related to the practice of a surgical assistant; or

(C) the provision of health care under this chapter;

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a license under this chapter; or

(3) for purposes of determining whether to issue or deny a license under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the medical board or another licensing or regulatory agency with jurisdiction over the person

subject to the subpoena; and

(2) denial of a license application.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.309. PROTECTION OF PATIENT IDENTITY. In a disciplinary investigation or proceeding conducted under this chapter, the medical board shall protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or

(2) submits a written release in regard to the patient's records or identity.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.310. RULES FOR DISCIPLINARY PROCEEDINGS. Rules of practice adopted under this chapter by the medical board under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.311. REQUIRED SUSPENSION OF INCARCERATED SURGICAL ASSISTANT. Regardless of the offense, the medical board shall suspend the license of a surgical assistant serving a prison term in a state or federal penitentiary during the term of the incarceration.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.312. TEMPORARY SUSPENSION. (a) The president of the medical board, with medical board approval, shall appoint a three-member disciplinary panel consisting of medical board members to determine whether a surgical assistant's license should be temporarily suspended.

(b) If the disciplinary panel determines from the evidence or

information presented to the panel that a person licensed to practice as a surgical assistant would, by the person's continuation in practice, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the medical board is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the disciplinary panel at one location is inconvenient for any member of the panel.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

Sec. 206.313. INFORMAL PROCEEDINGS. (a) The medical board by rule shall adopt procedures under this chapter governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled not later than the 180th day after the date the medical board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the informal meeting after that date;

(2) the medical board give notice to the license holder of the time and place of the meeting not later than the 30th day before the date the meeting is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) at least one of the medical board members or district review committee members participating in the informal meeting as a panelist be a member who represents the public;

(5) the medical board's legal counsel or a representative of the attorney general be present to advise the medical board or the board's staff; and

(6) a member of the medical board's staff be at the meeting to present to the panel the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing.

(c) An affected surgical assistant is entitled, orally or in writing, to:

(1) reply to the staff's presentation; and

(2) present the facts the surgical assistant reasonably believes the surgical assistant could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the medical board panel shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the license holder has previously been the subject of disciplinary action by the medical board, the board shall schedule the informal meeting as soon as practicable but not later than the deadline prescribed by Subsection (b)(1).

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.06, eff. September 1, 2005.

Sec. 206.314. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) A medical board or district review committee member that serves as a panelist at an informal meeting under Section 206.313 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the affected surgical assistant and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) A medical board attorney shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on

legal issues that arise during the proceeding. The attorney may ask questions of participants in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the affected surgical assistant have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the medical board.

(d) The panel and medical board employees shall provide an opportunity for the affected surgical assistant and the surgical assistant's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the surgical assistant and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the affected surgical assistant, the surgical assistant's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the medical board attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the affected surgical assistant has violated a statute or medical board rule, the panel may recommend board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected surgical assistant and the surgical assistant's authorized representative. The surgical assistant may accept the proposed settlement within the time established by the panel at the informal meeting. If the surgical assistant rejects the proposed settlement or does not act within the required time, the medical board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.06, eff. September 1, 2005.

Sec. 206.315. MEDICAL BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal proceeding under Section 206.313, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) The medical board may request members of a committee under Chapter 163 to participate in an informal meeting under Section 206.313.

(c) Notwithstanding Subsection (a) and Section 206.313(b)(4), an informal proceeding may be conducted by one panelist if the affected surgical assistant waives the requirement that at least two panelists conduct the informal proceeding. If the surgical assistant waives that requirement, the panelist may be either a physician or a member who represents the public.

(d) The panel requirements described by Subsection (a) do not apply to an informal proceeding conducted by the medical board under Section 206.313 to show compliance with an order of the board.

Added by Acts 2005, 79th Leg., Ch. 269 (S.B. 419), Sec. 4.06, eff. September 1, 2005.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 206.351. ADMINISTRATIVE PENALTY. (a) The medical board by order may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The medical board shall base the amount of the penalty on:

(1) the severity of patient harm;

(2) the severity of economic harm to any person;

(3) the severity of any environmental harm;

(4) the increased potential for harm to the public;

(5) any attempted concealment of misconduct;

(6) any premeditated or intentional misconduct;

(7) the motive for the violation;

(8) any prior misconduct of a similar or related nature;

(9) the license holder's disciplinary history;

(10) any prior written warnings or written admonishments from any government agency or official regarding statutes or rules relating to the misconduct;

(11) whether the violation is of a board order;

(12) the person's failure to implement remedial measures to correct or mitigate harm from the misconduct;

(13) the person's lack of rehabilitative potential or likelihood of future misconduct of a similar nature;

(14) any relevant circumstances increasing the seriousness of the misconduct; and

(15) any other matter that justice may require.

(d) The medical board by rule shall prescribe the procedures by which it may impose an administrative penalty. A proceeding under this section is subject to Chapter 2001, Government Code.

(e) If the medical board by order determines that a violation has occurred and imposes an administrative penalty, the medical board shall give notice to the person of the order. The notice must include a statement of the person's right to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 2001.

SUBTITLE D. DENTISTRY

CHAPTER 251. GENERAL PROVISIONS RELATING TO PRACTICE OF DENTISTRY

Sec. 251.001. SHORT TITLE. This subtitle may be cited as the Dental Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 251.002. DEFINITIONS. In this subtitle:

(1) "Board" means the State Board of Dental Examiners.

(2) "Executive director" means the executive director of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 251.003. PRACTICE OF DENTISTRY. (a) For purposes of this subtitle, a person practices dentistry if the person:

(1) represents to the public that the person is a dentist or dental surgeon or uses or permits to be used for the person or another person the title of "Doctor," "Dr.," "Doctor of Dental Surgery," "D.D.S.," "Doctor of Dental Medicine," "D.M.D.," or another description, including the use of the terms "denturist" or "denturism," that, directly or indirectly, represents that the person is able to:

(A) diagnose, treat, or remove stains or concretions from human teeth; or

(B) provide surgical and adjunctive treatment for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, jaws, or directly related and adjacent masticatory structures;

(2) performs or offers to perform by any means the:

(A) cleaning of human teeth;

(B) removal of stains, concretions, or deposits from teeth in the human mouth; or

(C) diagnosis, treatment, operation, or prescription for a disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, oral cavity, alveolar process, gums, or jaws;

(3) prescribes, makes, or causes to be made or offers to prescribe, make, or cause to be made by any means an impression of any portion of the human mouth, teeth, gums, or jaws:

(A) to diagnose, prescribe, or treat, or aid in the diagnosis, prescription, or treatment, of a physical condition of the human mouth, teeth, gums, or jaws; or

(B) to construct or aid in the construction of a dental appliance, denture, dental bridge, false teeth, dental plate of false teeth, or another substitute for human teeth;

(4) owns, maintains, or operates an office or place of business in which the person employs or engages under any type of contract another person to practice dentistry;

(5) fits, adjusts, repairs, or substitutes or offers to fit, adjust, repair, or substitute in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;

(6) aids in the fitting, adjusting, repairing, or

substituting or causes to be fitted, adjusted, repaired, or substituted in the human mouth or directly related and adjacent masticatory structures a dental appliance, structure, prosthesis, or denture;

(7) without a written prescription or work order signed by a dentist legally practicing dentistry in this state or in the jurisdiction in which the dentist maintains the dentist's office:

(A) makes, processes, reproduces, repairs, or relines a full or partial denture, fixed or removable dental bridge or appliance, dental plate of false teeth, artificial dental restoration, or a substitute or corrective device or appliance for the human teeth, gums, jaws, mouth, alveolar process, or any part for another; or

(B) offers, undertakes, aids, abets, or causes another person to engage in an activity described by Paragraph (A);

(8) directly or indirectly offers, undertakes, or causes another to perform for any person an act, service, or part of an act or service in the practice of dentistry, including:

(A) inducing, administering, prescribing, or dispensing anesthesia or an anesthetic drug, medicine, or an agent in any way related to the practice of dentistry;

(B) permitting or allowing another to use the person's license or certificate to practice dentistry in this state; or

(C) aiding or abetting the practice of dentistry by a person not licensed by the board to practice dentistry;

(9) controls, influences, attempts to control or influence, or otherwise interferes with the exercise of a dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder, or physical condition; or

(10) represents that the person is a denturist or uses another title that is intended to convey to the public that the services offered by the person are included within the practice of dentistry.

(b) The practice of dentistry under Subsection (a)(9) does not:

(1) require an entity to pay for services that are not provided for in an agreement; or

(2) exempt a dentist who is a member of a hospital staff from following hospital bylaws, medical staff bylaws, or established policies approved by the governing board and the medical and dental staff of the hospital.

(c) In this subtitle, the practice of the dental specialty of oral and maxillofacial surgery includes the diagnosis of and the surgical and adjunctive treatment of diseases, injuries, and defects involving the functional and aesthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(d) For purposes of this subtitle, a person located in another state practices dentistry in this state and is required to hold a license to practice dentistry in this state if the person through the use of any medium, including an electronic medium, performs an act that constitutes the practice of dentistry on a patient in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 12, eff. September 1, 2021.

Sec. 251.004. EXEMPTION FROM PRACTICE OF DENTISTRY. (a) A person does not practice dentistry as provided by Section 251.003 if the person is:

(1) a faculty member of a reputable dental or dental hygiene school in which the member performs services for the sole benefit of the school;

(2) a student of a reputable dental school who performs the student's operations without pay, except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who is a faculty member of a reputable dental school;

(3) a person:

(A) who performs laboratory work only on inert matter; and

(B) who does not solicit or obtain work by any means from a person who is not a licensed dentist engaged in the practice of dentistry and does not act as the agent or solicitor of, and does not have any interest in, a dental office or practice or the receipts of a dental office or practice;

(4) a physician licensed in this state who does not represent that the person is practicing dentistry, including a physician who extracts teeth or applies pain relief in the regular

practice of the physician's profession;

(5) a dental hygienist:

(A) who is authorized to practice dental hygiene in this state; and

(B) who practices dental hygiene in strict conformity with the state law regulating the practice of dental hygiene;

(6) a person who is a member of an established church and practices healing by prayer only;

(7) an employee of a licensed dentist in this state who makes dental x-rays in the dental office under the supervision of the dentist;

(8) a Dental Health Service Corporation chartered under Section A(1), Article 2.01, Texas Non-Profit Corporation Act (Article 1396-2.01, Vernon's Texas Civil Statutes);

(9) a dental intern or dental resident as defined and regulated by board rules;

(10) a student:

(A) who is in a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association and operated at an accredited institution of higher education;

(B) who practices dental hygiene without pay under the general supervision of a dentist and under the supervision of a demonstrator or teacher who is a faculty member of the program:

(i) in a clinic operated for the sole benefit of the program's institution of higher education; or

(ii) in a clinic operated by a government or nonprofit organization that serves underserved populations as determined by board rule; and

(C) who practices in strict conformity with state law regulating the practice of dental hygiene;

(11) a dental assistant who performs duties permitted under Chapter 265, in strict conformity with state law;

(12) a dentist or dental hygienist licensed by another state or a foreign country who performs a clinical procedure only as a demonstration for professional and technical education purposes, if the dentist or dental hygienist first obtains from the board a temporary license for that purpose;

(13) a dental hygienist who is a faculty member of a dental or dental hygiene school while practicing dental hygiene:

(A) under the supervision of a dentist licensed in this state or of a teacher or demonstrator who is a dentist faculty member of the school; and

(B) in strict conformity with state law regulating the practice of dental hygiene;

(14) a dentist who is in a remedial training program sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school;

(15) a dental hygienist who is in a remedial training program sponsored by the Commission on Dental Accreditation of the American Dental Association at an accredited dental or dental hygiene school and who acts in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a demonstrator or teacher who is a dentist member of the program;

(16) a dentist who is not licensed in this state and who is taking the dental clinical examination offered in this state by an examining body designated by the board;

(17) a dental hygienist who is not licensed in this state and who is taking the dental hygiene clinical examination offered in this state by an examining body designated by the board if participation is in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a dentist whose services are secured by the examining body;

(18) a dentist whose license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association; or

(19) a dental hygienist whose dental hygienist license is in retired status or who is licensed in another state and is attending a continuing education clinical program offered at a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association if tasks are performed in strict conformity with state law regulating the practice of dental hygiene, except that supervision may be provided by a dentist member of the program.

(b) A person's activities described by Subsections (a)(14), (15), and (18) are considered not to be the practice of dentistry only to the extent the person is participating in the specified

program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.071(a), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 1, eff. September 1, 2005.

Sec. 251.005. APPLICATION OF SUNSET ACT. The State Board of Dental Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 1, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1481, Sec. 1.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.06, eff. June 17, 2011.
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 1, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.04, eff. June 18, 2023.

CHAPTER 252. STATE BOARD OF DENTAL EXAMINERS

Sec. 252.001. BOARD MEMBERSHIP. (a) The State Board of Dental Examiners consists of 11 members appointed by the governor with the advice and consent of the senate as follows:

(1) six reputable dentist members who reside in this state and have been actively engaged in the practice of dentistry for at least the five years preceding appointment;

(2) three reputable dental hygienist members who reside in this state and have been actively engaged in the practice of dental hygiene for at least the five years preceding appointment; and

(3) two members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin

of the appointee.

(c) In making an appointment under this section, the governor shall attempt to appoint members of different minority groups, including females, African Americans, Hispanic Americans, Native Americans, and Asian Americans.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 8.01, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 2, eff. September 1, 2017.

Sec. 252.002. MEMBER ELIGIBILITY. (a) A person is not eligible for appointment as a member if:

(1) the person's license to practice dentistry or dental hygiene has been revoked by the board for a violation of a statute of this state relating to the practice of dentistry or dental hygiene and the revocation is not overturned by final order of a court; or

(2) the person is an adverse party in civil litigation against the board.

(b) A person is not eligible for appointment as a dentist or dental hygienist member of the board if the person has a financial interest in any dental, dental hygiene, or medical school.

(c) A person is not eligible for appointment as a dental hygienist member of the board if the person is licensed to practice dentistry in this state.

(d) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board;

(4) uses or receives a substantial amount of tangible goods, services, or money from the board, other than compensation or

reimbursement authorized by law for board membership, attendance, or expenses; or

(5) is employed by a board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 1, eff. September 1, 2009.

Sec. 252.003. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.072(a), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 3, eff. September 1, 2017.

Sec. 252.004. TERMS OF OFFICE. (a) Members of the board serve

staggered six-year terms. The terms of one-third of the members expire February 1 of each odd-numbered year.

(b) A member may not serve more than two consecutive full terms. The completion of the unexpired portion of a term does not constitute service for a full term for purposes of this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 2, eff. September 1, 2009.

Sec. 252.005. PRIVILEGES OF OFFICE. Members of the board have full and identical privileges, except that only dentist members may participate in the decision to pass or fail an applicant for a license to practice dentistry during the clinical portion of the board examinations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.006. OFFICERS. (a) The board shall elect a secretary from its members to serve for a one-year term.

(b) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The presiding officer must be a dentist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 4, eff. Sept. 1, 2003.

Sec. 252.007. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Sections 252.001 and 252.002;

(2) does not maintain during the service on the board the qualifications required by Sections 252.001 and 252.002;

(3) is ineligible for membership under Section 252.003;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly

scheduled board meetings the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 5, eff. Sept. 1, 2003.

Sec. 252.008. PER DIEM; REIMBURSEMENT. (a) Each board member is entitled to a per diem set by legislative appropriation for each day the member engages in board business.

(b) A board member may receive reimbursement for travel expenses, including expenses for meals and lodging, incurred in performing an official duty as prescribed by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 252.009. MEETINGS. The board shall hold meetings at least twice a year at times and places the board determines are most convenient for applicants for examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 1, eff. Sept. 1, 2001.

Sec. 252.010. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may

not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a profession or business the board regulates;

(B) restrict advertising by persons in a profession or business the board regulates;

(C) affect the price of goods or services provided by persons in a profession or business the board regulates; and

(D) restrict participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director shall create a training manual that includes the information required by Subsection (b). The executive

director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 6, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 4, eff. September 1, 2017.

Sec. 252.011. OATH OF OFFICE. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 253. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 253.001. EXECUTIVE DIRECTOR. (a) The board may employ an executive director to assist the board in performing its duties.
(b) The board shall set the executive director's salary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 253.003. PERSONNEL. (a) The executive director, with the board's consent, may employ an assistant executive director to perform the executive director's duties when the executive director is absent or unable to act.
(b) The board may employ:
(1) committees, clerks, advisors, consultants, dentists, hygienists, or examiners to assist the board in performing its duties; and
(2) other persons determined necessary:
(A) to assist the local prosecuting officers of a county in the enforcement of state laws prohibiting the unlawful practice of dentistry; and
(B) to carry out other purposes for which funds are appropriated.

(c) The board shall employ other employees as needed to assist the executive director in performing the executive director's duties and in carrying out the purposes of this subtitle.

(d) A person assisting a local prosecuting officer under this section is subject to the direction and control of the prosecuting officer. This subsection does not change the authority granted by law to the prosecuting officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.073(a), eff. Sept. 1, 2001.

Sec. 253.004. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the responsibilities of the board and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 253.005. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 253.006. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require the intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 253.007. EQUAL OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 254. BOARD POWERS AND DUTIES

Sec. 254.001. GENERAL RULEMAKING AUTHORITY. (a) The board may adopt and enforce rules necessary to:

(1) perform its duties; and

(2) ensure compliance with state laws relating to the

practice of dentistry to protect the public health and safety.

(b) The board may adopt rules governing:

(1) the board's proceedings; and

(2) the examination of applicants for a license to practice dentistry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.0011. RULES RELATING TO CONTROL OF DENTAL PRACTICE. (a) The board may adopt rules relating to the practice of dentistry as described by Section 251.003(a)(9) to prohibit a dentist from engaging in contracts that allow a person who is not a dentist to influence or interfere with the exercise of the dentist's independent professional judgment.

(b) Rules adopted by the board under this subtitle may not preclude a dentist's right to contract with a management service organization. Rules affecting contracts for provision of management services apply the same to dentists contracting with management service organizations and to dentists otherwise contracting for management services.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.074(a), eff. Sept. 1, 2001.

Sec. 254.002. RULES REGARDING ADVERTISING AND COMPETITIVE BIDDING. (a) Except as provided by Section 259.005, the board may not adopt rules restricting advertising or competitive bidding except to prohibit false, misleading, and deceptive practices by the license holder.

(b) The board may adopt and enforce reasonable restrictions to regulate advertising relating to the practice of dentistry by a person engaged in the practice of dentistry as provided by Section 259.005.

(c) The board may not include in the board's rules to prohibit false, misleading, or deceptive advertising under Subsection (a) a rule that:

(1) restricts the use of any advertising medium;

(2) restricts a person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of a person's advertisement; or

(4) restricts the person's advertisement under a trade name, except the board may require that a trade name advertisement include the name of each dental owner of the practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.003. RULES REGARDING INFECTION CONTROL. The board shall investigate infection control in the dental profession and may adopt and enforce rules to control the spread of infection in the practice of dentistry as necessary to protect the public health and safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.0035. RULES REGARDING CALL COVERAGE AGREEMENTS. The board shall adopt rules governing a call coverage agreement between dentists.

Added by Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 13, eff. September 1, 2021.

Sec. 254.004. FEES. (a) The board shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this subtitle.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 448 , Sec. 31(l)(3), eff. September 1, 2015.

(c) The board shall collect an additional $55 surcharge for each of the following fees:

(1) the fee for the issuance of a dental license; and

(2) the fee for the renewal of a dental license.

(d) The board shall deposit each surcharge collected to the credit of the dental public assurance account. The dental public assurance account is an account in the general revenue fund that shall be appropriated only to the board to pay for the board's enforcement program, including an expert panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.075(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(l)(3), eff. September 1, 2015.

Sec. 254.005. SIGNATURE AND SEAL ON LICENSE REQUIRED. A license issued to a dentist must be signed by each board member and imprinted with the board's seal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.006. BOARD RECORDS AND CONFIDENTIALITY OF RECORDS. (a) Except as provided by this section, the investigation files and other records of the board are public records and open to inspection at reasonable times.
(b) Investigation files and other records are confidential, except the board shall inform the license holder of the specific allegations against the license holder. The board may share investigation files and other records with another state regulatory agency or a local, state, or federal law enforcement agency.
(c) The exception from public disclosure of investigation files and records provided by this section does not apply to the disclosure of a disciplinary action of the board, including:
(1) the revocation or suspension of a license;
(2) the imposition of a fine on a license holder;
(3) the placement on probation with conditions of a license holder whose license has been suspended;
(4) the reprimand of a license holder; or
(5) the issuance of a warning letter to a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.076(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 2, eff.

January 1, 2014.

Sec. 254.0065. CONFIDENTIALITY OF CERTAIN INFORMATION REGARDING APPLICANT OR LICENSE HOLDER. (a) In this section, "license" has the meaning assigned by Section 263.0001.

(b) Except as provided by Subsection (c), all information, records, and proceedings of the board or an authorized agent of the board relating to the participation of an applicant for or holder of a license in a peer assistance program or the evaluation of an applicant or license holder under Section 263.0025 are confidential and not subject to disclosure under Chapter 552, Government Code.

(c) The board may disclose a disciplinary action taken against a license holder in the enforcement of Section 263.002(a)(1), (7), or (11). The board may not disclose the nature of the impairment or condition that resulted in the board's action.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 5, eff. September 1, 2017.

Sec. 254.007. RECORDS REGARDING PERSONS AUTHORIZED TO PRACTICE. (a) The board shall keep records of the name, permanent address, and place of business of each person authorized under this subtitle to practice dentistry, dental hygiene, or another profession or business under the board's jurisdiction as provided by law.

(b) The board shall collect annually from each licensed dentist the dentist's name, age, practice locations, hours worked each week, weeks worked each year, and number and type of auxiliaries employed.

(c) The information collected under Subsection (b) shall be compiled in report form by practice composition and by county reflecting the overall full-time equivalency tabulations as defined by the federal Department of Health and Human Services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.076(b), eff. Sept. 1, 2001.

Sec. 254.008. CIVIL LIABILITY. (a) In the absence of fraud, conspiracy, or malice, a member of the board, a full-time or part-

time employee of the board, a person who contracts with the board, a witness called to testify by the board, or a consultant or hearing officer appointed by the board is not liable or subject to suit in a civil action for any damage caused by the person for an investigation, report, recommendation, statement, evaluation, finding, order, or award made in the performance of the person's official duties.

(b) The purpose of this section is to protect the persons designated by Subsection (a) from being harassed and threatened with legal action while performing official duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.077(a), eff. Sept. 1, 2001.

Sec. 254.009. ASSISTANCE OF PROSECUTOR. (a) The board shall aid in the enforcement of state law regulating the practice of dentistry.

(b) A board member may present to a prosecuting officer a complaint relating to a violation of state law regulating the practice of dentistry.

(c) The board and its members, officers, counsel, and agents may assist the prosecuting officer in the trial of a case involving an alleged violation of state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 254.010. MONITORING OF LICENSE HOLDER. (a) The board by rule shall develop a system to monitor a license holder's compliance with this subtitle.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform a certain act;

(2) identify and monitor each license holder who represents a risk to the public; and

(3) periodically review reports filed with the National Practitioner Data Bank for any report of disciplinary action taken against a license holder by another state that would constitute

grounds for disciplinary action under Section 263.002.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 6, eff. September 1, 2017.

Sec. 254.011. AGREEMENT WITH HEALTH AND HUMAN SERVICES COMMISSION. The board shall enter into an agreement with the Health and Human Services Commission to improve coordination on issues relating to the state Medicaid program. The agreement must require each agency to:

(1) refer to the other agency, as appropriate, cases involving fraud, abuse, or insufficient quality of care under the state Medicaid program;

(2) maintain a log of cases referred to the other agency;

(3) share information with the other agency, subject to confidentiality requirements, including investigative reports on cases within the jurisdiction of both agencies; and

(4) collaborate with the other agency in the investigation of cases and the initiation of appropriate disciplinary action whenever possible.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 8, eff. Sept. 1, 2003.

Sec. 254.012. INCLUSION OF MEDICAID-RELATED INFORMATION IN ANNUAL FINANCIAL REPORT. The board shall include in the annual financial report required by Section 2101.011, Government Code, information on all cases handled by the board during the preceding fiscal year involving fraud, abuse, or insufficient quality of care under the state Medicaid program, including:

(1) the number of cases handled;

(2) an explanation of the legal basis and reason for each case;

(3) the action taken in each case; and

(4) for each case the board closed without taking action, an explanation of the reason the case was closed without action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 17, Sec. 9, eff. Sept. 1, 2003.

Sec. 254.013. PEACE OFFICERS. (a) The board may commission as a peace officer to enforce this subtitle an employee who has been certified as qualified to be a peace officer by the Texas Commission on Law Enforcement.

(b) An employee commissioned as a peace officer under this subtitle has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle.

Added by Acts 2003, 78th Leg., ch. 474, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.56, eff. May 18, 2013.

Sec. 254.014. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 10, eff. Sept. 1, 2003.

Sec. 254.015. USE OF TECHNOLOGY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the board's planning processes.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 10, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 254.013 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(70), eff. September 1, 2005.

Sec. 254.016. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 3, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 254.013 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(71), eff. September 1, 2005.

Sec. 254.017. POISON CONTROL CENTER INFORMATION. The board

shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 3, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 254.014 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(72), eff. September 1, 2005.

Sec. 254.018. TESTIMONY. A member of the board may not express an oral or written opinion or serve as an expert witness in a civil action that is:

(1) related to an administrative matter within the board's jurisdiction;

(2) brought against or for a person licensed or registered under this subtitle; and

(3) for the injury to or death of a patient or for a violation of the standard of care or the commission of malpractice.

Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 3, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 3, eff. January 1, 2014.

Sec. 254.019. DEFINITIONS. (a) In this section:

(1) "Business support services" has the meaning assigned by Section 73.001, Business & Commerce Code.

(2) "Dental support organization" has the meaning assigned by Section 73.001, Business & Commerce Code.

(b) The board shall collect the following information from dentists licensed by the board in conjunction with the issuance and renewal of each dental license:

(1) the number and type of dentists employed by the license holder, if any;

(2) the name under which the license holder provides dental services and each location at which those services are provided by that license holder;

(3) whether the license holder is a participating provider under the Medicaid program operated under Chapter 32, Human Resources Code, or the child health plan program operated under Chapter 62,

Health and Safety Code;

(4) whether the license holder contracts or enters into an agreement for business support services with a dental support organization and, if so, the name and address of the dental support organization;

(5) whether the license holder owns all or part of a dental support organization and, if so, the name and address of the dental support organization and of each dental office at which the dental support organization provides services to patients;

(6) whether the license holder is a party to a dental support agreement and, if so, the name and address of the dental support organization that provides services under the agreement; and

(7) if the license holder owns all or part of a dental support organization, whether the license holder's practice is a party to a dental support agreement and, if so, the name and address of the dental support organization that provides services under the agreement.

(c) If requested by the board, a dental support organization shall provide to the board the address of the locations where the organization provides business support services in this state and the name of each dentist providing dental services at each location.

(d) The board shall provide an option for the electronic submission of the information required under this section.

(e) Not later than November 1 of each even-numbered year, the board shall provide a report to the legislature on the information collected under this section and on the board's use of the information in the exercise of the board's statutory authority to regulate the practice of dentistry.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 4, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 603 (S.B. 519), Sec. 2, eff. September 1, 2015.

CHAPTER 255. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 255.001. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and procedures by which complaints are filed with and

resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.002. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, brochure, or written contract for services of a person regulated under this subtitle;

(2) on a sign prominently displayed in the place of business of each person regulated under this subtitle; or

(3) in a bill for service provided by a person regulated under this subtitle.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.003. ASSISTANCE WITH COMPLAINT. The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.004. RECORDS OF COMPLAINTS. (a) The board shall maintain a file on each written complaint filed with the board.

(b) The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint was received by the board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint

(c) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 11, eff. Sept. 1, 2003.

Sec. 255.005. NOTIFICATION OF INVESTIGATION STATUS. If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 11, eff. Sept. 1, 2003.

Sec. 255.0055. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, or this subtitle, a complaint filed

with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint. Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the license holder who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 7, eff. September 1, 2017.

Sec. 255.006. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) A complaint received under this chapter must be filed with and reviewed by the board to determine jurisdiction. If the board has jurisdiction, the board shall complete a preliminary investigation of the complaint not later than the 60th day after the date of receiving the complaint. The board shall first determine whether the person regulated under this subtitle who is the subject of the complaint constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the board shall determine whether to officially proceed on the complaint. If the board fails to complete the preliminary investigation in the time required by this subsection, the board's official investigation of the complaint is considered to commence on that date.

(b) The board may not consider a complaint that is filed with the board after the fourth anniversary of the date:

(1) the act that is the basis of the complaint occurred; or

(2) the complainant discovered, or in the exercise of reasonable diligence should have discovered, the occurrence of the act that is the basis of the complaint.

(c) The board by rule shall:

(1) adopt a form to standardize information concerning complaints filed with the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection must:

(1) distinguish between categories of complaints;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) require that investigators used by the board be state employees; and

(6) establish procedures by which a board employee may dismiss a complaint if the investigation does not reveal a violation.

(d-1) Procedures established under Subsection (d)(6) must:

(1) ensure that the decision to dismiss a complaint is made with the appropriate level of review and necessary expertise and experience; and

(2) require the dismissal of a complaint to be reported to the board at a public meeting of the board.

(d-2) Repealed by Acts 2005, 79th Leg., Ch. 810, Sec. 10, eff. September 1, 2005.

(e) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 10, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 5, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 8, eff. September 1, 2017.

Sec. 255.0065. COMPOSITION OF EXPERT PANELS. (a) The board by rule shall provide for expert panels appointed by the board to assist with complaints and investigations relating to professional competency by acting as expert dentist and dental hygienist reviewers.

(b) Each member of the expert dentist panel must be licensed to practice dentistry in this state. Each member of the expert dental hygienist panel must be licensed to practice dental hygiene in this state.

(c) The rules adopted under this section must include provisions governing the composition of the panel, qualifications for membership on the panel, length of time a member may serve on the panel, grounds for removal from the panel, the avoidance of conflicts of interest, including situations in which the affected license holder and the panel member live or work in the same geographical area or are competitors, and the duties to be performed by the panel.

(d) The board's rules governing grounds for removal from the panel must include providing for the removal of a panel member who is repeatedly delinquent in reviewing complaints and in submitting reports to the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 6, eff. January 1, 2014.

Sec. 255.0066. DETERMINATION OF COMPETENCY. (a) If the preliminary investigation under Section 255.006(a) indicates that an act by a license holder falls below an acceptable standard of care, the complaint shall be reviewed by an expert panel authorized under Section 255.0065 consisting of license holders who practice in the same specialty as the license holder who is the subject of the complaint or in another specialty that is similar to the license holder's specialty.

(b) The expert panel shall report in writing the panel's determinations based on the review of the complaint under Subsection (a). The report must specify the standard of care that applies to the facts that are the basis of the complaint and the clinical basis for the panel's determinations, including any reliance on peer-reviewed journals, studies, or reports.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 6, eff.

January 1, 2014.

Sec. 255.0067. REPORTS; PROCEDURES FOR EXPERT REVIEW. (a) A license holder on an expert panel authorized by Section 255.0065 who is initially selected to review a complaint shall:

(1) determine whether the license holder who is the subject of the complaint has violated the standard of care applicable to the circumstances; and

(2) issue a preliminary written report of that determination.

(b) A second expert reviewer shall review the first expert reviewer's preliminary report and other information associated with the complaint. If the second reviewer agrees with the first reviewer, the first reviewer shall issue a final written report on the matter.

(c) If the second expert reviewer does not agree with the conclusions of the first expert reviewer, a third expert reviewer shall review the preliminary report and information and decide between the conclusions reached by the first two reviewers. The final written report shall be issued by the third reviewer or the reviewer with whom the third reviewer concurs.

(d) In reviewing a complaint, the expert reviewers assigned to examine the complaint may consult and communicate with each other about the complaint in formulating their opinions and reports.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 6, eff. January 1, 2014.

Sec. 255.007. NOTICE TO BOARD CONCERNING COMPLAINTS. (a) The executive director shall notify the board of a complaint that is unresolved after the second anniversary of the date the complaint is filed.

(b) The executive director shall explain to the board the reasons that the complaint has not been resolved. The executive director shall periodically provide the notice and explanation required by this section at regularly scheduled board meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 255.008. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction, except to the extent the communication would be ex parte under any law.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.078(a), eff. Sept. 1, 2001.

CHAPTER 256. LICENSING OF DENTISTS AND DENTAL HYGIENISTS

SUBCHAPTER A. ISSUANCE OF LICENSE TO PRACTICE DENTISTRY

Sec. 256.001. LICENSE REQUIRED. A person may not practice or offer to practice dentistry or dental surgery or represent that the person practices dentistry unless the person holds a license issued by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.002. MINIMUM QUALIFICATIONS OF DENTAL APPLICANT. (a) An applicant for a license to practice dentistry must:

(1) be at least 21 years of age; and

(2) present proof of:

(A) graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association; or

(B) graduation from a dental school that is not accredited by the commission and successful completion of training in an American Dental Association approved specialty in an education program accredited by the commission that consists of at least two years of training as specified by the Council on Dental Education.

(b) The board shall grant a dental license to an applicant who:

(1) meets the qualifications of this section;

(2) pays an application fee set by the board; and

(3) satisfactorily passes the examination required by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(a), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 9, eff. September 1, 2017.

Sec. 256.003. EXAMINATION. (a) The board shall provide for the examination of an applicant for a dental license.

(b) The examination must consist of subjects and operations relating to dentistry, including:

(1) anatomy;
(2) physiology;
(3) anaesthesia;
(4) biochemistry;
(5) dental materials;
(6) diagnosis;
(7) treatment planning;
(8) ethics;
(9) jurisprudence;
(10) hygiene;
(11) pharmacology;
(12) operative dentistry;
(13) oral surgery;
(14) orthodontia;
(15) periodontia;
(16) prosthetic dentistry;
(17) pathology;
(18) microbiology; and
(19) any other subject regularly taught in reputable dental schools that the board may require.

(c) The board shall contract with one or more independent or regional testing services for any required clinical examination. If the board uses one or more regional testing services, the board may contract for or otherwise use licensed dentists to provide assistance to the regional testing service or services.

(d) The board shall have the written portion of the board's jurisprudence examination validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(b), eff. Sept. 1, 2001.

Sec. 256.005. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the board shall provide to the person an analysis of the person's performance on the examination as prescribed by board rule.

(d) If the board contracts with an independent or regional testing service, this section does not apply. The contract with the testing service must provide for the notification of results as provided by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(c), eff. Sept. 1, 2001.

Sec. 256.006. REEXAMINATION. (a) The board by rule shall establish the conditions under which and the number of times an applicant may retake an examination.

(b) The board may require an applicant who fails the examination to meet additional education requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. ISSUANCE OF LICENSE TO DENTAL HYGIENIST

Sec. 256.051. DEFINITION. In this chapter, "dental hygienist" means a person who practices dental hygiene under a license issued

under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.052. LICENSE REQUIRED. A person may not practice or offer to practice dental hygiene in this state unless the person is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.053. ELIGIBILITY FOR LICENSE. (a) An applicant for a license to practice dental hygiene in this state must be:

(1) at least 18 years of age;

(2) a graduate of an accredited high school or hold a certificate of high school equivalency; and

(3) a graduate of a recognized school of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board or an alternative dental hygiene training program.

(b) A school of dentistry or dental hygiene described by Subsection (a)(3) must include at least two full academic years of instruction or its equivalent at the postsecondary level.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.080(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1470, Sec. 3.01, eff. Sept. 1, 2001. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 10, eff. September 1, 2017.

Sec. 256.0531. ALTERNATIVE DENTAL HYGIENE TRAINING PROGRAMS. (a) It is the intent of the legislature that programs approved by the board under this section provide hygiene training that is substantially equivalent to training provided under traditional programs.

(b) An alternative dental hygiene training program must meet the following requirements:

(1) the program must be determined to be eligible for

accreditation by the Commission on Dental Accreditation of the American Dental Association before students can enroll in the program;

(2) the program must require hygiene students to complete four semesters of didactic education from a school of dentistry, dental hygiene school, or other educational institution approved by the board;

(3) didactic education shall be provided by instruction in the classroom or by distance learning, remote coursework, or similar modes of instruction offered by an institution accredited by the Commission on Dental Accreditation of the American Dental Association;

(4) didactic education shall include instruction in anatomy, pharmacology, x-ray, ethics, jurisprudence, hygiene, and any other subject regularly taught in reputable schools of dentistry and dental hygiene that the board may require;

(5) the program must require hygiene students to complete not less than 1,000 hours of clinical training under the direct supervision of a dentist qualified under Subsection (d) or a dental hygienist qualified under Subsection (f) during a 12-month period. Students must satisfactorily complete 75 full-mouth prophylaxes and demonstrate the ability to accurately record the location and extent of dental restorations, chart mobility, furcations, gingival recession, keratinized gingiva, and pocket depth on six aspects of each tooth; and

(6) clinical training may occur simultaneously with didactic education.

(c) Prior to commencing training, a hygiene student must have completed no less than two years of full-time employment in a position involving clinical duties with dental patients.

(d) To be qualified to train a hygiene student under this section, a dentist must:

(1) be licensed in Texas and have practiced in Texas for at least five years;

(2) have completed a certification or calibration course approved by the board for purposes of this section;

(3) meet recertification requirements at intervals of no more than three years;

(4) also practice in a dental office located outside a standard metropolitan statistical area, as defined by the United

States Census Bureau, or practice in an area that the Texas Department of Health has determined is underserved or an area that has been designated by the United States as having a shortage of dental professionals; and

(5) have posted a notice visible to patients stating: "This practice has been approved as an alternative dental hygiene training program. Students in the program may be performing services."

(e) A hygiene student who completes the requirements of a program under this section must satisfactorily pass the examination required for all hygiene license applicants under this chapter.

(f) A dental hygienist may train hygiene students under this section if:

(1) the dental hygienist is employed by a dentist who provides training under this section and the hygienist works under the direct supervision of the dentist in the same office as the dentist;

(2) the dental hygienist has practiced full-time dental hygiene for the five years immediately preceding the time the training is provided; and

(3) the dental hygienist has completed a certification or calibration course approved by the board and meets recertification requirements at intervals of no more than five years.

(g) A dentist who supervises a dental hygienist trained under this section has the same liability for acts performed by the hygienist as if the hygienist were trained in a different manner.

(h) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(1), eff. September 1, 2017.

(i) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(1), eff. September 1, 2017.

(j) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(1), eff. September 1, 2017.

(k) A student in an alternative dental hygiene training program is not considered to be practicing dentistry as described by Section 251.003.

(l) The board shall adopt rules requiring the dentist to give written notice to patients, where applicable, that services will be performed by a student in an alternative dental hygiene training program, and requiring the dentist or the dentist's staff to give oral notice to patients, where applicable, at the time the patient's

hygiene appointment is made or confirmed, that services will be performed by a student in an alternative dental hygiene training program.

(m) The board may adopt rules necessary to implement this section. The board shall adopt a rule requiring notification to dental hygiene students that accreditation of the alternative dental hygiene training program is a requirement for obtaining a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 3.02, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(1), eff. September 1, 2017.

Sec. 256.054. APPLICATION FOR EXAMINATION. To take the examination under Section 256.055, an applicant for a license must:

(1) submit an application on a form prescribed by the board;

(2) pay the application fee set by the board;

(3) attach to the application:

(A) proof of current certification in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross; or

(B) if the applicant is not physically able to comply with the certification requirements of Paragraph (A), a written statement describing the person's physical incapacity executed by a licensed physician or an instructor in cardiopulmonary resuscitation approved by the American Heart Association or American Red Cross; and

(4) provide any other information the board requires to determine the applicant's qualifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(a), eff. Sept. 1, 2001.

Sec. 256.055. LICENSE EXAMINATION. (a) The board shall provide for the examination of an applicant for a dental hygienist

license.

(b) The examination must include subjects and operations relating to dentistry and dental hygiene, including:

(1) anatomy;

(2) pharmacology;

(3) x-ray;

(4) ethics;

(5) jurisprudence;

(6) hygiene;

(7) dental hygiene treatment planning;

(8) dental materials;

(9) physiology;

(10) pathology;

(11) microbiology; and

(12) any other subject regularly taught in reputable schools of dentistry and dental hygiene that the board may require.

(c) The board shall contract with one or more independent or regional testing services for any required clinical examination. If the board uses one or more regional testing services, the board may contract for or otherwise use licensed dental hygienists to provide assistance to the regional testing service or services.

(d) The board shall have the written portion of the board's jurisprudence examination validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(b), eff. Sept. 1, 2001.

Sec. 256.056. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination within a reasonable time after the date of the examination.

(b) If the board contracts with an independent or regional testing service, the contract with the service must provide for the notification of results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.081(c), eff. Sept. 1, 2001.

Sec. 256.057. REEXAMINATION. (a) The board by rule shall establish the conditions under which and the number of times an applicant may retake an examination.

(b) The board may require an applicant who fails the examination to meet additional education requirements set by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.058. ISSUANCE OF LICENSE. The board shall issue a license to practice dental hygiene to an applicant who has passed all phases of the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. GENERAL LICENSE PROVISIONS

Sec. 256.101. ISSUANCE OF LICENSE TO CERTAIN OUT-OF-STATE APPLICANTS. (a) The board shall issue a license to practice dentistry to a reputable dentist or a license to practice dental hygiene to a reputable dental hygienist who:

(1) pays the fee set by the board;

(2) is licensed in good standing as a dentist or dental hygienist in another state that has licensing requirements substantially equivalent to the requirements of this subtitle;

(3) has not been the subject of a final disciplinary action and is not the subject of a pending disciplinary action in any jurisdiction in which the dentist or dental hygienist is or has been licensed;

(4) has graduated from a dental or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board under board rule;

(5) has passed a national or other examination relating to dentistry or dental hygiene and recognized by the board;

(6) has passed the board's jurisprudence examination;

(7) has submitted documentation of current cardiopulmonary resuscitation certification;

(8) has practiced dentistry or dental hygiene:

(A) for at least the three years preceding the date of application for a license under this section; or

(B) as a dental educator at a dental school or dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association for at least the five years preceding the date of application for a license under this section;

(9) has been endorsed by the board of dentistry in the jurisdiction in which the applicant practices at the time of application; and

(10) meets any additional criteria established by board rule.

(a-1) The board by rule shall specify the circumstances under which the board may waive the requirement under Subsection (a)(8) that an applicant for a license under this section has been continuously engaged in the practice of dentistry or dental hygiene during the period required by that subsection if the applicant has engaged in the practice of dentistry or dental hygiene for a cumulative total of at least three years before the date of application for a license under this section.

(b) If the board does not complete the processing of an application under this section before the 181st day after the date all documentation and examination results required by this section have been received, the board shall issue a license to the applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 4, 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 13, eff. Sept. 1, 2003.

Sec. 256.1013. PROVISIONAL LICENSE. (a) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as a dentist or dental hygienist for at least two years in another jurisdiction that has licensing requirements substantially equivalent to the requirements of this subtitle;

(2) is a graduate of a recognized school of dentistry or dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the board;

(3) has passed a national or other examination recognized by the board relating to the practice of dentistry or dental hygiene, as appropriate; and

(4) is sponsored by a person who holds an appropriate license under this subtitle and with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The board may waive the requirement of Subsection (a)(4) for an applicant if the board determines that compliance with that subdivision would be a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this subtitle to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 256.101; or

(2) the provisional license holder passes the part of the examination under Section 256.003 or 256.055 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of dentistry or dental hygiene, as appropriate, in this state and:

(A) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this subtitle; and

(B) the provisional license holder satisfies any other licensing requirements under this subtitle.

(d) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(e) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 14, eff. Sept. 1, 2003.

Sec. 256.1015. TEMPORARY LICENSE. (a) The board, upon payment by the applicant of a fee set by the board, shall grant a temporary license to practice dentistry to any reputable dentist or a temporary license to practice dental hygiene to any reputable dental hygienist who:

(1) meets all requirements of Section 256.101 except those of Subsection (a)(8); and

(2) is employed by a nonprofit corporation that accepts Medicaid reimbursement.

(b) A license granted under this section expires immediately when a licensee fails to meet the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 5.01, eff. Sept. 1, 2001.

Sec. 256.1016. TEMPORARY LICENSE FOR CHARITABLE PURPOSE. (a) In this section, "voluntary charity care" has the meaning assigned by board rule under Section 256.102.

(b) The board shall grant a temporary license for a dentist whose practice consists only of voluntary charity care to a reputable dentist who meets the requirements of Sections 256.101(a)(3), (4), and (5) and who:

(1) ceased practicing dentistry in another state that the board has determined has licensing requirements that are substantially similar to the requirements of this state not more than two years before the date the dentist applies for a license under this section and was licensed in good standing at the time the dentist ceased practicing dentistry; or

(2) is currently licensed in another state that the board has determined has licensing requirements that are substantially similar to the requirements of this state.

(c) A dentist issued a license under this section shall:

(1) confine the dentist's practice to voluntary charity care;

(2) practice only in a geographic area specified by the license; and

(3) practice only for the period specified by the license.

(d) The board shall adopt rules as necessary to implement this section.

(e) The board shall take disciplinary action against a dentist licensed under this section for a violation of this subtitle or board rules in the same manner as against a dentist licensed under Subchapter A.

Added by Acts 2013, 83rd Leg., R.S., Ch. 306 (H.B. 1491), Sec. 1, eff.

June 14, 2013.

Sec. 256.1017. MILITARY LIMITED VOLUNTEER LICENSE. (a) The board shall adopt rules relating to the issuance of a military limited volunteer license under this section.

(b) The board may issue a military limited volunteer license to practice dentistry to a dentist or a military limited volunteer license to practice dental hygiene to a dental hygienist who:

(1) is licensed and in good standing, or was licensed and retired in good standing, as a dentist or dental hygienist in another state;

(2) is or was authorized as a dentist or dental hygienist to treat personnel enlisted in a branch of the United States armed forces or veterans; and

(3) meets any other requirement prescribed by board rule.

(c) The board may not issue a license under this section to an applicant who:

(1) holds a dental or dental hygienist license that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction;

(2) holds a license to prescribe, dispense, administer, supply, or sell a controlled substance that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction; or

(3) has been convicted of, is on deferred adjudication community supervision or deferred disposition for, or is under active investigation for the commission of:

(A) a felony; or

(B) a misdemeanor involving moral turpitude.

(d) A dentist or dental hygienist may practice dentistry or dental hygiene under a license issued under this section only at a clinic that primarily treats indigent patients. The dentist or dental hygienist may not receive compensation for dental or dental hygiene services rendered at the clinic.

(e) A military limited volunteer license holder is subject to board rules, including rules regarding disciplinary action, license registration and renewal, and continuing education.

Added by Acts 2017, 85th Leg., R.S., Ch. 270 (H.B. 2007), Sec. 1, eff. September 1, 2017.

Sec. 256.102. RETIRED STATUS. (a) The board by rule may allow a license holder to place the person's license on retired status. A license holder must apply to the board for retired status, on a form prescribed by the board, before the expiration date of the person's license.

(b) In determining whether to grant retired status, the board shall consider the age, years of practice, and the status of the license holder at the time of the application.

(c) A license holder on retired status:

(1) is not required to pay license renewal fees; and

(2) except as provided by Subsection (f), may not perform any activity regulated under this subtitle.

(d) To reinstate a license placed on retired status, the license holder must submit a written request for reinstatement to the board. The board may return the license to active status and issue a renewal license if the license holder complies with any education or other requirement established by board rule and pays the renewal fee in effect at the time of the requested reinstatement.

(e) The board may charge a reasonable administrative fee to cover the cost of research and the preparation of documentation for the board's consideration of a request for reinstatement of a license on retired status.

(f) A dentist on retired status may perform an activity regulated under this subtitle if the dentist's practice consists only of voluntary charity care, as defined by board rule. The board's rules under this subsection must prescribe the scope of practice permitted for the retired dentist, the retired dentist's authority to prescribe and administer drugs, and any continuing education requirements applicable to the retired dentist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 3, eff. September 1, 2005.

Sec. 256.103. DISPLAY OF REGISTRATION CERTIFICATE. (a) A licensed dentist or dental hygienist shall display the person's current registration certificate in each office in which the person provides dental services. If the dentist or dental hygienist provides dental services at more than one location, the person may display a duplicate of the original registration certificate obtained from the board on payment of a duplicate certificate fee set by the board.

(b) A licensed dentist may not operate on a patient's mouth or treat lesions of the mouth or teeth unless the dentist displays the dentist's registration certificate.

(c) A person may practice without displaying the person's current registration certificate as required by Subsection (a) for not more than 30 days after the date the person receives from the board written confirmation that the person's original license was issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.083(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 4, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 11, eff. September 1, 2017.

Sec. 256.104. DUPLICATE LICENSE. (a) The board may issue a duplicate license to a person whose license is lost or destroyed if the person:

(1) pays a reasonable fee; and

(2) presents to the board an application for a duplicate license, including an affidavit explaining the loss or destruction and stating that the person is the same person originally granted the license.

(b) If board records do not show that the person was previously licensed, the board may refuse to issue a duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 256.105. NOTIFICATION OF CHANGE OF INFORMATION. (a) Each

dentist, dental hygienist, and owner or manager of a dental laboratory licensed or registered with the board shall timely notify the board of:

(1) any change of address of the person's place of business;

(2) any change of employers for the dentist or dental hygienist and any change of owners or managers for the dental laboratory; and

(3) any change of the person's mailing address.

(b) Notification under Subsection (a) is timely if the board receives the notice not later than the 60th day after the date the change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 6, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 3, eff. September 1, 2009.

Sec. 256.106. DELEGATED AUTHORITY TO ISSUE LICENSES. The board may delegate authority to board employees to issue licenses under this subtitle to applicants who clearly meet all licensing requirements. If the board employees determine that the applicant does not clearly meet all licensing requirements, the application shall be returned to the board. A license issued under this section does not require formal board approval.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 7, eff. January 1, 2014.

CHAPTER 257. LICENSE RENEWAL

Sec. 257.001. LICENSE EXPIRATION; TERM. (a) A license issued under this subtitle is valid for a term of one or two years, as determined by board rule.

(a-1) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) Dates of license suspension and reinstatement after failure to pay the license fee shall be adjusted accordingly.

(c) For the year in which the expiration date is changed,

license fees payable shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license fee is payable.

(d) An initial license issued under this subtitle expires on the 30th day after the date the license is issued if the holder of the license fails to pay the required license fee on or before that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 4, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 12, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 13, eff. September 1, 2017.

Sec. 257.002. LICENSE RENEWAL. (a) A person required to hold a license as a practitioner under this subtitle who fails or refuses to apply for renewal of a license and pay the required fee on or before the specified date is:

(1) suspended from practice; and

(2) subject to the penalties imposed by law on any person unlawfully engaging in a practice regulated under this subtitle.

(b) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c-1) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) Except as provided by Subsection (d-1) or (d-2), a person

whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(d-1) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

(d-2) The board may renew the license of a person whose license has been expired for one year or more without requiring the person to comply with the requirements and procedures for an original license if the person places the person's renewed license on retired status and confines the person's practice solely to voluntary charity care under Section 256.102(f).

(e) Not later than the 30th day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the board's records.

(f) The requirements prescribed by this section relating to the payment of license fees and penalties for the failure to timely renew a license do not apply to license holders who are on active duty with the armed forces of the United States and are not engaged in private or civilian practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.084(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 17, Sec. 15, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 456 (H.B. 643), Sec. 1, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 14, eff. September 1, 2017.

Sec. 257.003. REFUSAL FOR VIOLATION OF BOARD ORDER. The board may refuse to renew a license issued under this subtitle if the license holder is in violation of a board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 15, eff.

September 1, 2017.

Sec. 257.004. CARDIOPULMONARY RESUSCITATION REQUIREMENTS. (a) A person holding a dental or dental hygienist license must submit at the time the person applies for renewal of the license:

(1) a written statement executed by the person stating that the person has successfully completed a current program or course in cardiopulmonary resuscitation that includes a demonstration of skills and a written evaluation; or

(2) if the person is not physically able to comply with the requirements of Subdivision (1), a written statement describing the person's physical incapacity executed by a licensed physician.

(b) Repealed by Acts 2003, 78th Leg., ch. 17, Sec. 28, eff. Sept. 1, 2003.

(c) A dentist or dental hygienist licensed by the board who resides in a country other than the United States on the renewal date of the person's license and has not practiced dentistry or dental hygiene in the United States during the license period preceding the renewal date is exempt from the requirements of Subsection (a) if the person submits proof of foreign residence with the person's renewal application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 7, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 17, Sec. 16, 28, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 16, eff. September 1, 2017.

Sec. 257.005. CONTINUING EDUCATION FOR DENTIST AND DENTAL HYGIENIST. (a) The board shall develop a mandatory continuing education program for licensed dentists and dental hygienists. The board by rule shall establish the minimum number of hours of continuing education a license holder is required to complete for each registration period to renew the license for a subsequent registration period.

(b) The board may:

(1) assess the continuing education needs of license

holders; and

(2) require license holders to attend continuing education courses specified by the board.

(b-1) The board shall require a licensed dentist whose practice includes direct patient care to complete not less than two hours of board-approved continuing education annually regarding safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding:

(1) reasonable standards of care;

(2) the identification of drug-seeking behavior in patients; and

(3) effectively communicating with patients regarding the prescription of an opioid or other controlled substance.

(c) The board by rule shall:

(1) identify the key factors required for competent performance of professional duties under this subtitle;

(2) develop a process to evaluate and approve continuing education courses; and

(3) develop a process to assess a license holder's participation and performance in continuing education courses to evaluate the overall effectiveness of the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.079(d), eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 17, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 818 (H.B. 2454), Sec. 3, eff. September 1, 2019.

CHAPTER 258. PRACTICE BY DENTIST

SUBCHAPTER A. DELEGATION BY DENTIST

Sec. 258.001. IMPERMISSIBLE DELEGATIONS. A dentist may not delegate:

(1) an act to an individual who, by board order, is prohibited from performing the act;

(2) any of the following acts to a person not licensed as a dentist or dental hygienist:

(A) the removal of calculus, deposits, or accretions from the natural and restored surfaces of exposed human teeth and restorations in the human mouth;

(B) root planing or the smoothing and polishing of roughened root surfaces or exposed human teeth; or

(C) any other act the delegation of which is prohibited by board rule;

(3) any of the following acts to a person not licensed as a dentist:

(A) comprehensive examination or diagnosis and treatment planning;

(B) a surgical or cutting procedure on hard or soft tissue;

(C) the prescription of a drug, medication, or work authorization;

(D) the taking of an impression for a final restoration, appliance, or prosthesis;

(E) the making of an intraoral occlusal adjustment;

(F) direct pulp capping, pulpotomy, or any other endodontic procedure;

(G) the final placement and intraoral adjustment of a fixed or removable appliance; or

(H) the placement of any final restoration;

(4) the authority to an individual to administer a local anesthetic agent, inhalation sedative agent, parenteral sedative agent, or general anesthetic agent, including as a teledentistry dental service as that term is defined by Section 111.001, if the individual is not licensed as:

(A) a dentist with a permit issued by the board for the procedure being performed, if a permit is required;

(B) a certified registered nurse anesthetist licensed by the Texas Board of Nursing, only if the delegating dentist holds a permit issued by the board for the procedure being performed, if a permit is required; or

(C) a physician anesthesiologist licensed by the Texas Medical Board; or

(5) the authority to a dental hygienist to administer a local anesthetic agent unless:

(A) the dental hygienist:

(i) administers the local anesthetic agent by

infiltration for purposes of a procedure the dental hygienist is authorized to perform;

(ii) has passed a board-approved certification examination relating to the administration of a local anesthetic agent;

(iii) either:

(a) has completed a board-approved course of study designed to train dental hygienists to administer a local anesthetic agent by infiltration; or

(b) during the preceding year, was authorized to administer a local anesthetic agent by:

(1) a branch of the United States armed forces; or

(2) another state with clinical and didactic education requirements substantially equivalent to the requirements of a course approved by the board under Sub-subparagraph (a); and

(iv) complies with any applicable rules adopted by the board establishing minimum standards for the administration of a local anesthetic agent;

(B) the delegating dentist is physically present in the facility where the procedure is occurring and is continuously aware of the patient's physical status and well-being; and

(C) the patient to whom the local anesthetic agent is administered is:

(i) at least 18 years of age; and

(ii) not sedated, or is sedated using only nitrous oxide-oxygen inhalation.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 37, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 14, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 868 (H.B. 3824), Sec. 1, eff. September 1, 2023.

Sec. 258.002. DELEGATION TO DENTAL ASSISTANT. (a) A licensed

dentist may delegate to a qualified and trained dental assistant acting under the dentist's general or direct supervision any dental act that a reasonable and prudent dentist would find is within the scope of sound dental judgment to delegate if:

(1) in the opinion of the delegating dentist, the act:

(A) can be properly and safely performed by the person to whom the dental act is delegated; and

(B) is performed in a customary manner and is not in violation of this subtitle or any other statute;

(2) the person to whom the dental act is delegated does not represent to the public that the person is authorized to practice dentistry; and

(3) the person to whom the dental act is delegated is registered under Chapter 265, if registration is required to perform the act.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 476, Sec. 8(1), eff. September 1, 2009.

(c) The board by rule shall establish guidelines regarding the types of dental acts that may be properly or safely delegated by a dentist, including a determination of which delegated dental acts, if any, require competency testing before a person may perform the act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1470, Sec. 4.01, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1144, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 8(1), eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 18, eff. September 1, 2018.

Sec. 258.003. RESPONSIBILITY OF DELEGATING DENTIST. A delegating dentist is responsible for a dental act performed by the person to whom the dentist delegates the act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. GENERAL PRACTICE PROVISIONS

Sec. 258.051. DENTIST RECORDS. (a) The records of a diagnosis made and treatment performed for and on a dental patient are the property of the dentist performing the dental service.

(b) A dentist's records may not be sold, pledged as collateral, or transferred to any person other than the patient unless the transfer is made in compliance with Subchapter C and board rules.

(c) This section does not prevent the voluntary submission of records to an insurance company to determine benefits when consent for the disclosure has been granted under Section 258.104.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(a), eff. Sept. 1, 2001.

Sec. 258.0511. ACCESS TO DENTAL RECORDS. (a) An owner, shareholder, partner, or executive officer of a clinic or other entity that provides dental services for the public shall designate a license holder as the dental custodian of records to provide records to the board or a dentist who has provided dental treatment and to comply with other law regulating dental patient records.

(a-1) The board by rule shall establish conditions under which the board may temporarily or permanently appoint a person as custodian of a dentist's billing or dental patient records. In adopting rules under this subsection, the board shall consider the death of a dentist, the mental or physical incapacitation of a dentist, and the abandonment of billing or dental patient records by a dentist as conditions for appointment of a custodian.

(b) On demand, the dental custodian of records shall give access to the board and produce for the board all records or other evidence related to the investigation or prosecution of an alleged violation of this subtitle or another law regulating the practice of dentistry in this state.

(c) The board shall adopt rules regarding the designation and duties of a dental custodian of records.

(d) Section 264.101 applies to a violation of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 1, eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 19, eff. September 1, 2017.

Sec. 258.052. CASE HISTORIES AND PHYSICAL EVALUATIONS. (a) A dentist may take a complete case history and perform a complete physical evaluation that may be used to admit a patient to a hospital for the practice of dentistry if the activity is necessary in the exercise of due care in the practice of dentistry.

(b) A dentist is not automatically entitled to membership on a hospital's medical staff or to exercise clinical privileges at a hospital solely because the dentist is licensed in this state or because the dentist is authorized to take a case history and perform a physical evaluation.

(c) A dentist may not be denied membership on a hospital's medical staff or the right to the exercise of clinical privileges at a hospital solely because the person is a dentist rather than a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 258.053. USE OF CERTAIN DRUGS. (a) In this section, "narcotic drugs," "dangerous drugs," and "controlled substances" have the meanings defined or recognized by federal law or the law of this state.

(b) A dentist may not:

(1) prescribe, provide, obtain, order, administer, possess, dispense, give, or deliver to or for any person a narcotic drug, dangerous drug, or controlled substance:

(A) that is not necessary or required; or

(B) the use or possession of which would promote addiction to the drug or substance; or

(2) aid, abet, or cause another person to engage in an action described by Subdivision (1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 258.054. USE OF X-RAY EQUIPMENT. (a) A dentist may authorize a qualified person to perform beam calibration and

characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for a procedure that involves the diagnosis or treatment of disease or another dental condition in humans.

(b) A dentist's authorization and the performance of authorized activities by a qualified person does not constitute the practice of medical physics under Chapter 602.

(c) A dentist may not authorize a dental assistant, other than a dental assistant described by Section 265.001(d), to make a dental x-ray unless the dental assistant is registered under Chapter 265.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 5, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 20, eff. September 1, 2018.

Sec. 258.055. PRACTICE OF DENTISTRY ON CERTAIN CHILDREN. (a) The parent or guardian of a child younger than 18 years of age may be present in the treatment room during the child's dental treatment or procedure, unless the dentist determines in the dentist's professional judgment that the presence of the parent or guardian in the treatment room is likely to have an adverse effect on the treatment or the child.

(b) In this section, "parent or guardian" includes a person authorized by law to consent for the medical or dental treatment of a child younger than 18 years of age.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 8, eff. January 1, 2014.

SUBCHAPTER C. DENTAL PRIVILEGE

Sec. 258.101. DEFINITIONS. In this subchapter:

(1) "Dental record" means dental information about a patient:

(A) created or maintained by a dentist; and

(B) relating to the history or treatment of the

patient.

(2) "Dentist" means a person licensed to practice dentistry.

(3) "Patient" means a person who consults with a dentist to receive dental care.

(4) "Privilege" means the confidentiality privilege created by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.102. SCOPE OF PRIVILEGE. (a) The following information is privileged and may not be disclosed except as provided by this subchapter:

(1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and

(2) a dental record.

(b) The privilege described by this section applies regardless of when the patient received the professional service from the dentist.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.103. HOLDER OF PRIVILEGE. (a) The patient is the holder of the privilege.

(b) The following persons may claim the privilege on the patient's behalf:

(1) a person authorized to act on the patient's behalf;

(2) a dentist acting on the patient's behalf; and

(3) an agent or employee of a person listed in Subdivision (1) or (2).

(c) A person's authority to claim the privilege is presumed in the absence of evidence to the contrary.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.104. CONSENT TO DISCLOSURE OF PRIVILEGED INFORMATION. (a) A person may disclose privileged information if the patient consents to the disclosure as provided in this section.

(b) Consent for the release of privileged information must be in writing and be signed by:

(1) the patient;

(2) a parent or legal guardian of the patient, if the patient is a minor;

(3) a legal guardian of the patient, if the patient has been adjudicated incompetent to manage the patient's personal affairs;

(4) an attorney ad litem appointed for the patient, as authorized by:

(A) Chapter 107, Family Code;

(B) Subtitle B, Title 6, Health and Safety Code;

(C) Subtitle C, Title 7, Health and Safety Code;

(D) Subtitle D, Title 7, Health and Safety Code;

(E) Subtitle E, Title 7, Health and Safety Code;

(F) Chapter 1054, Estates Code; or

(G) any other law; or

(5) a personal representative of the patient, if the patient is deceased.

(c) The consent required under this section must specify:

(1) the information covered by the release;

(2) the person to whom the information is to be released; and

(3) the purpose for the release.

(d) A person may withdraw consent granted under this section by notifying in writing the person who maintains the information. Withdrawal of consent does not affect information disclosed before the written notice of the withdrawal is delivered.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 11, eff. September 1, 2019.

Sec. 258.105. EXCEPTION TO PRIVILEGE FOR CERTAIN PROCEEDINGS.

(a) The privilege does not apply in a court or administrative proceeding if the proceeding is:

(1) brought by the patient against a dentist, including a malpractice, criminal, or license revocation proceeding, and the disclosure is relevant to a claim or defense of the dentist; or

(2) to collect on a claim for dental services rendered to the patient.

(b) The privilege does not apply to the disclosure of a dental record:

(1) to the board in a disciplinary investigation or proceeding against a dentist conducted under this subtitle; or

(2) in a criminal investigation or proceeding against a dentist in which the board is participating or assisting by providing a record obtained from the dentist.

(c) The board may not reveal the identity of a patient whose dental record is disclosed under Subsection (b).

(d) Privileged information is discoverable in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant for discovery purposes.

(e) Privileged information is admissible in a criminal prosecution if:

(1) the patient is a victim, witness, or defendant; and

(2) the court in which the prosecution is pending rules, after an in camera review, that the information is relevant.

(f) The privilege does not apply to a grand jury subpoena.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.106. EXCEPTION TO PRIVILEGE FOR CERTAIN DISCLOSURES BY DENTIST. (a) The privilege does not apply to the disclosure of information by a dentist to:

(1) a governmental agency, if:

(A) the disclosure is required by another law; and

(B) the agency agrees to keep confidential the identity of a patient whose dental record is disclosed;

(2) medical or law enforcement personnel, if the dentist determines that it is more likely than not that the following will occur:

(A) imminent physical injury to the patient, the dentist, or others; or

(B) immediate mental or emotional injury to the patient;

(3) a person in relation to a management or financial audit, program evaluation, or research, if the person agrees to keep confidential the identity of a patient whose dental record is disclosed;

(4) a person involved in the payment or collection of fees for services rendered by a dentist, if necessary; or

(5) another dentist, or a person under the direction of the dentist, who participates in the diagnosis, evaluation, or treatment of the patient.

(b) A person who receives information under Subsection (a)(3) may not disclose a patient's identity in writing.

(c) A record reflecting a charge or specific service provided may be disclosed only when necessary in the collection of fees for a service provided by a dentist, professional association, or other entity qualified to provide or arrange for a service.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.107. EXCEPTION TO PRIVILEGE FOR CERTAIN LEGISLATIVE INQUIRIES. A state hospital or state school may disclose a dental record if:

(1) the state hospital or state school created the record;

(2) an inquiry authorized by the legislature requests the information; and

(3) the entity receiving the record agrees not to disclose a patient's identity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.108. LIMIT ON DISCLOSURE. A person who receives

privileged information may disclose the information to another person only to the extent consistent with the purpose for which the information was obtained.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

Sec. 258.109. REQUEST FOR DENTAL RECORD: TIMING; EXCEPTION. (a) If disclosure of a dental record is authorized under this subchapter, a dentist shall disclose the dental record within a reasonable period after it is requested but not later than:

(1) the 30th day after the date on which it is requested from the dentist; or

(2) a date ordered by a court.

(b) A dentist may refuse to disclose the requested record if the dentist determines that providing the information would be harmful to the physical, mental, or emotional health of the patient, except that requests from the board may not be refused. If the dentist determines that disclosing the record would be harmful, the dentist shall notify the person requesting the record and explain why the information would be harmful. The person requesting the record may challenge in court the dentist's refusal to disclose the record. If the court finds that the dentist made the refusal in bad faith, the court may order the disclosure of the record and award costs and attorney's fees incurred by the person to obtain the information.

(c) In disclosing a dental record under this section, a dentist shall redact privileged information about another person.

(d) A dentist may charge a reasonable fee for providing a dental record under this section. For purposes of this subsection, a fee established under Section 241.154, Health and Safety Code, is a reasonable fee.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.086(b), eff. Sept. 1, 2001.

SUBCHAPTER D. ADMINISTRATION OF ANESTHESIA

Sec. 258.151. DEFINITIONS. In this subchapter:

(1) "High-risk patient" means a patient who has a level 3 or 4 classification according to the American Society of

Anesthesiologists Physical Status Classification System.

(2) "Pediatric patient" means a patient younger than 13 years of age.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 22, eff. September 1, 2017.

Sec. 258.152. APPLICABILITY. Rules adopted by the board under this subchapter do not apply to:

(1) the regional injection of an anesthetic to reduce or eliminate sensation, especially pain, in one part of the body; or

(2) the administration of anxiolytics and analgesics that are not being used in conjunction with the administration of nitrous oxide and that are administered in doses that do not have the probability of placing the dental patient at risk for loss of the dental patient's life-preserving protective reflexes.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

Sec. 258.153. RULES. (a) The board shall adopt rules to administer this subchapter, including rules to establish the minimum standards for the administration of anesthesia by a dentist.

(b) The rules must be designed to protect the health, safety, and welfare of the public and must include requirements relating to:

(1) for each type of permit held, the methods that may be used to administer an anesthetic and the anesthetic agents that may be used;

(2) dental patient evaluation, diagnosis, counseling, and preparation;

(3) dental patient monitoring to be performed and equipment to be used during a procedure and during postprocedure monitoring;

(4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;

(5) the documentation necessary to demonstrate compliance with this subchapter;

(6) the period in which protocols or procedures covered by

rules of the board shall be reviewed, updated, or amended; and

(7) the minimum components required to be included in a preoperative checklist to be used before administering anesthesia to a patient and retained in the patient's dental record.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 23, eff. September 1, 2017.

Sec. 258.154. COMPLIANCE WITH ANESTHESIA RULES. (a) A dentist who practices dentistry in this state and who administers anesthesia or performs a procedure for which anesthesia is administered shall comply with the rules adopted under this subchapter.

(b) The board may require a dentist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the dentist's administration of anesthesia in accordance with this subtitle or rules of the board.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 23, eff. September 1, 2017.

Sec. 258.155. PERMIT REQUIRED. (a) The board shall issue permits to administer anesthesia in the following categories based on the extent to which the intended procedure will alter the patient's mental status and the method of anesthetic delivery:

(1) nitrous oxide;

(2) level 1: minimal sedation;

(3) level 2: moderate sedation (enteral administration);

(4) level 3: moderate sedation (parenteral administration); and

(5) level 4: deep sedation or general anesthesia.

(b) A dentist may not administer anesthesia unless the dentist obtains the appropriate permit issued under this section.

(c) The board shall set and impose a fee for issuance of a permit in an amount designed to recover the costs of regulating a permit holder under this subchapter.

(d) The board shall coordinate the times at which a permit must be renewed with the times at which a dentist's license must be renewed under Chapter 257 so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimum of administrative burden to the board and to dentists.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 23, eff. March 1, 2018.

Sec. 258.1551. PERMIT QUALIFICATIONS. (a) The board by rule shall establish the qualifications to obtain each permit described by Section 258.155, including the education and training required to obtain the permit.

(b) The rules adopted under Subsection (a) must require an applicant for a level 2, level 3, or level 4 permit to complete training on:

(1) pre-procedural patient evaluation, including the evaluation of a patient's airway and physical status as classified by the American Society of Anesthesiologists;

(2) the continuous monitoring of a patient's level of sedation during the administration of anesthesia; and

(3) the management of emergency situations.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 24, eff. September 1, 2017.

Sec. 258.1552. JURISPRUDENCE EXAMINATION. (a) The board shall develop and administer an online jurisprudence examination to determine a permit holder's knowledge of this subchapter, board rules, and other applicable laws of this state relating to the administration of anesthesia.

(b) A permit holder must pass the online jurisprudence examination developed by the board once every five years.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 24, eff. September 1, 2017.

Sec. 258.1553. PORTABILITY OF ANESTHESIA SERVICES. The board by rule shall require a dentist who applies for the issuance or renewal of a permit under this subchapter to include in the application a statement indicating whether the dentist provides or will provide a permitted anesthesia service in more than one location.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 24, eff. September 1, 2017.

Sec. 258.1554. ADMINISTRATION OF ANESTHESIA TO CERTAIN PATIENTS. (a) A permit holder under this subchapter may not administer anesthesia under a level 2, level 3, or level 4 permit to a pediatric or high-risk patient unless the permit holder has:

(1) demonstrated to the satisfaction of the board that the permit holder has advanced didactic and clinical training; and

(2) obtained authorization from the board under this section.

(b) The board by rule may establish limitations on the administration of anesthesia by a permit holder to a pediatric or high-risk patient.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 24, eff. March 1, 2018.

Sec. 258.1555. CAPNOGRAPHY REQUIRED FOR CERTAIN ANESTHESIA SERVICES. A permit holder who is administering anesthesia for which a level 4 permit is required shall use capnography during the administration of anesthesia.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 24, eff. September 1, 2017.

Sec. 258.1556. MINIMUM EMERGENCY PREPAREDNESS STANDARDS. (a) The board shall adopt rules to establish minimum emergency preparedness standards and requirements for the administration of

anesthesia under a permit issued under this subchapter. The rules must require a permit holder to:

(1) have available at any time the permit holder administers anesthesia:

(A) an adequate and unexpired supply of drugs and anesthetic agents necessary for the safe administration of anesthesia; and

(B) an automated external defibrillator, as defined by Section 779.001, Health and Safety Code;

(2) conduct periodic inspections of the permit holder's equipment in the manner and on the schedule determined by the board;

(3) maintain and make available to the board on request an equipment readiness log; and

(4) develop and annually update written policies, procedures, and training requirements, specific to the permit holder's equipment and drugs, for responding to emergency situations involving anesthesia.

(b) Rules adopted under Subsection (a)(4) must require a holder of a level 2, level 3, or level 4 permit to develop policies and procedures that include:

(1) advanced cardiac life support rescue protocols;

(2) advanced airway management techniques; and

(3) if the permit holder is authorized to administer anesthesia to pediatric patients, pediatric advanced life support rescue protocols.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 24, eff. September 1, 2017.

Sec. 258.1557. EMERGENCY PREPAREDNESS PROTOCOLS. (a) A permit holder shall develop emergency preparedness protocols, specific to the permit holder's practice setting, that establish a plan for the management of medical emergencies in each practice setting in which the dentist administers anesthesia.

(b) The board shall adopt rules prescribing the content that a permit holder must include in the emergency preparedness protocols developed under Subsection (a). The rules must require a permit holder to include in the permit holder's emergency preparedness protocols the written policies, procedures, and training requirements

described by Section 258.1556(a)(4).

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 24, eff. September 1, 2017.

Sec. 258.156. INSPECTIONS. (a) Except as provided by Subsection (h), the board may conduct inspections of a dentist who applies for or holds a permit issued under this subchapter as necessary to enforce this subchapter, including inspections of an office site, equipment, a facility, and any document of the dentist. During an inspection under this section, the board may evaluate a dentist's competency in the administration of anesthesia.

(b) The board shall conduct an inspection with respect to a dentist who holds a level 2, level 3, or level 4 permit not later than the first anniversary of the date the permit is issued.

(c) The board by rule shall adopt a risk-based inspection policy for conducting inspections under this section. The policy must require the board to take into consideration any previous disciplinary action taken against a permit holder for an anesthesia-related violation when determining whether an inspection is necessary.

(d) The board may contract with another state agency or qualified person to conduct these inspections.

(e) The board is not required to give notice before conducting an inspection under this section.

(f) The board shall maintain records of inspections conducted under this section.

(g) The board by rule may establish education and training requirements for inspectors who conduct inspections under this section.

(h) The board may not conduct an inspection under this section with respect to a dentist who administers anesthesia exclusively in a state-licensed hospital or state-licensed ambulatory surgical center. The board may by rule except from inspection under this section a dentist who administers anesthesia exclusively in any other facility that is subject to inspection by the Department of State Health Services or an accrediting body under state law. The board retains all other authority provided by this subtitle over a dentist described by this subsection.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 25, eff. March 1, 2018.

Sec. 258.157. REQUESTS FOR INSPECTION AND ADVISORY OPINION. (a) The board may consider a request by a dentist for an on-site inspection. The board may, in its discretion and on payment of a fee in an amount established by the board, conduct the inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section is not binding on the board, and the board, except as provided by Subsection (c), may take any action under this subtitle in relation to the situation addressed by the advisory opinion that the board considers appropriate.

(c) A dentist who requests and relies on an advisory opinion of the board may use the opinion as mitigating evidence in an action or proceeding to impose an administrative or civil penalty under this subtitle. The board or court, as appropriate, shall take proof of reliance on an advisory opinion into consideration and mitigate the imposition of administrative or civil penalties accordingly.

Added by Acts 2001, 77th Leg., ch. 349, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER E. ADVISORY COMMITTEE ON DENTAL ANESTHESIA

Sec. 258.201. DEFINITION. In this subchapter, "health care provider" means a person who provides services under a license, certificate, registration, or other authority issued by this state or another state to diagnose, prevent, alleviate, or cure a human illness or injury.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.202. ADVISORY COMMITTEE. (a) The board shall establish an advisory committee to analyze and report on data and associated trends concerning anesthesia-related deaths or incidents as provided by this subchapter. The advisory committee consists of

six members appointed by the board in the manner provided by Section 258.203 and must include:

(1) a general dentist;

(2) a dentist anesthesiologist;

(3) an oral and maxillofacial surgeon;

(4) a pediatric dentist;

(5) a physician anesthesiologist; and

(6) a periodontist.

(b) In appointing members to the advisory committee, the board shall maintain a balanced representation of general dentists and specialists to ensure the advisory committee has expertise with respect to each permit category.

(c) A board member may not serve as a member of the advisory committee. A former board member may not be appointed to the advisory committee until the second anniversary of the expiration of the member's term on the board.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.203. APPLICATION PROCESS; APPOINTMENT OF COMMITTEE MEMBERS. (a) The board by rule shall develop and implement a process by which a person may apply to be appointed to the advisory committee and shall post the application and information regarding the application process on the board's Internet website.

(b) The presiding officer of the board shall review each application received and nominate for appointment to the advisory committee persons who meet the requirements of Section 258.202. A person nominated under this subsection may not be appointed to the advisory committee except on the affirmative vote of at least seven members of the board.

(c) The presiding officer of the board shall designate one of the nominated members as presiding officer of the advisory committee, subject to approval of the board.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.204. TERMS; VACANCIES. The board by rule shall establish:

(1) the length of a term of a member of the advisory committee and the staggering of the terms of the members; and

(2) the manner in which a vacancy occurring during a member's term is filled.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.205. MEETINGS. The advisory committee is subject to Chapter 551, Government Code, except that the advisory committee may conduct a closed meeting to review confidential investigative files provided by the board under Section 258.206.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.206. COMPILATION AND ANALYSIS OF INFORMATION. (a) The board shall identify complaints resolved by the board that involve anesthesia-related deaths or incidents and compile confidential, de-identified information derived from the investigative files on each complaint identified under this subsection.

(b) The board shall provide information compiled under Subsection (a) to the advisory committee. The advisory committee shall analyze the information compiled under Subsection (a) to identify any trends and submit a report to the board at least annually on:

(1) the advisory committee's findings; and

(2) any recommendations for changes to board rules or this subtitle based on the advisory committee's analysis.

(c) On request of the advisory committee, the board may provide confidential, de-identified investigative files for review by the advisory committee.

(d) The data provided to the advisory committee under this section may not include identifying information of a patient or health care provider, including:

(1) the name, address, or date of birth of the patient or a

member of the patient's family; or

(2) the name or specific location of a health care provider that treated the patient.

(e) The board shall post on the board's Internet website any recommendations or findings reported by the advisory committee.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.207. COUNSEL FOR ADVISORY COMMITTEE. The board shall designate an attorney employed by the board to:

(1) act as counsel and provide legal advice to the advisory committee; and

(2) be present during the advisory committee's meetings and deliberations.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.208. CONFIDENTIALITY; PRIVILEGE. (a) Any information pertaining to the investigation of an anesthesia-related death or incident is confidential.

(b) Confidential information that is acquired by the board and that includes identifying information of an individual or health care provider is privileged and may not be disclosed to any person. Information that may not be disclosed under this subsection includes:

(1) the name and address of a patient or a member of the patient's family; and

(2) the identity of a health care provider that provided any services to the patient or a member of the patient's family.

(c) Advisory committee work product or information obtained or provided by the board under this subchapter is confidential. This subsection does not prevent the advisory committee or board from releasing information described by Subsection (d) or (e).

(d) Information is not confidential under this section if the information is:

(1) general information that cannot be connected with any specific individual, case, or health care provider; and

(2) presented as aggregate statistical information that

describes a single data point.

(e) The advisory committee may publish statistical studies and research reports based on information that is confidential under this section, provided that the information:

(1) is published in the aggregate;

(2) does not identify a patient or the patient's family;

(3) does not include any information that could be used to identify a patient or the patient's family; and

(4) does not identify a health care provider.

(f) The board shall adopt and implement practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

(g) Information that is confidential under this section is excepted from disclosure under Chapter 552, Government Code, as provided by Section 552.101 of that chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.209. SUBPOENA AND DISCOVERY. Advisory committee work product or information that is confidential under Section 258.208 is privileged, is not subject to subpoena or discovery, and may not be introduced into evidence in any administrative, civil, or criminal proceeding against a patient, a member of the family of a patient, or a health care provider.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.210. IMMUNITY. (a) A member of the advisory committee or a person employed by the board or acting in an advisory capacity to the advisory committee and who provides information, counsel, or services to the advisory committee is not liable for damages for an action taken within the scope of the functions of the advisory committee.

(b) Subsection (a) does not apply if the person acts with malice or without the reasonable belief that the action is warranted by the facts known to the person.

(c) This section does not provide immunity to a person

described by Subsection (a) for a violation of a state or federal law or rule relating to the privacy of health information or the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

Sec. 258.211. FUNDING. The board may accept gifts and grants from any source to fund the duties of the board and the advisory committee under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 26, eff. September 1, 2017.

CHAPTER 259. PROHIBITED OR RESTRICTED COMMERCIAL OR PROFESSIONAL ACTIVITIES

Sec. 259.001. FALSE STATEMENTS TO PATIENTS. A dentist may not, in the practice of dentistry, make a misrepresentation or a false or misleading statement to a patient or prospective patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.002. NOTIFICATION OF QUALIFICATIONS. Each dental office shall post at or near the entrance of the office the name of, each degree received by, and each school attended by each dentist practicing in the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.003. USE OF TRADE NAME. (a) A person may use a corporation, company, association, or trade name, provided that each patient shall be given the name of the treating dentist, in writing, either before or after each office visit.

(b) An advertisement under a corporation, company, association, or trade name must include prominently the name of at least one

dentist practicing under the name.

(c) A person using a business or trade name described by Subsection (b) shall file with the board a list of each dentist who practices under that name and a list of each trade name used if that name is different from the name described by Subsection (b).

(d) If information provided under Subsection (c) changes, the person must file updated information with the board not later than the 30th day after the date of the change.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.087(a), eff. Sept. 1, 2001.

Sec. 259.004. DUTIES OF DENTIST IN CERTAIN EMPLOYMENT OR CONTRACTUAL ARRANGEMENTS. (a) A person providing dental services under an agreement that allows another person to control or influence any aspect of the delivery of dental services, including a business or professional aspect, shall report to the board on request and in accordance with board rules:

(1) information concerning the agreement;

(2) the manner in which patients are billed;

(3) the manner in which the dental service provider is paid and any information provided to patients concerning payment agreements; and

(4) information concerning the service provider agreement provided to shareholders of organizations contracting with a dental service provider.

(b) A person who practices dentistry and has another dentist practicing with or under the person is responsible for all professional acts performed under the name of the person, regardless of whether the dentist has an ownership interest or an employment or contractual relationship. This section does not affect an individual license holder's responsibilities and rights under this subtitle.

(c) A statute relating to the practice of dentistry in this state may not be construed to prohibit a licensed dentist from maintaining more than one office in this state if the dentist:

(1) assumes full legal responsibility and liability for the dental services provided in each office; and

(2) complies with the requirements prescribed by board

rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.005. AUTHORIZED ADVERTISING RESTRICTIONS. Board rules adopted under Section 254.002 to regulate advertising may include restrictions that prohibit communications to the public that:

(1) are false, misleading, or deceptive;

(2) state an opinion regarding the quality of dental services;

(3) appeal to an individual's anxiety in an excessive or unfair way;

(4) intimidate or exert undue pressure or undue influence over a prospective patient;

(5) create unjustified expectations concerning the potential result of a dental treatment;

(6) refer to benefits or other attributes of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products;

(7) contain statistical data, representations, or other information that is not susceptible to reasonable verification by the public;

(8) refer to a fee for dental services without disclosing that additional fees may be involved in individual cases, if the possibility of additional fees may be reasonably predicted;

(9) offer a discount for dental services without disclosing the total fee to which the discount will apply; or

(10) fail to make truthful disclosure of the source and authorship of any message published under a dentist's byline.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.006. UNLAWFUL ADVERTISING IN GENERAL. (a) A person may not engage in false, misleading, or deceptive advertising in connection with the practice of dentistry.

(b) A person regulated by the board may not engage in advertising that does not comply with the reasonable restrictions adopted by the board under Section 259.005.

(c) For the first violation of the board's advertising restrictions, a person may not be prosecuted under this subtitle before the 31st day after the date the person has been given notice by certified or registered mail, return receipt requested, of the alleged violation. The notice must:

(1) include a copy of the applicable portions of this subtitle and all board rules relating to advertising;

(2) describe the alleged unlawful advertising;

(3) identify the board restriction violated; and

(4) include a statement informing the person that the person has 30 days from the date of the notice to cure the violation.

(d) A person may be prosecuted if the violation is not cured within the prescribed time.

(e) Subsection (c) does not apply to a subsequent violation of the board's advertising restrictions.

(f) This section does not authorize the board to discipline a dentist for an act of an advertising agent that results in a communication to the public that violates the restrictions adopted by the board under Section 259.005 if the advertisement does not specify the name of the dentist or the name under which the dentist practices unless:

(1) the advertising agent is owned or controlled by the dentist;

(2) the dentist provided to the advertising agent for distribution to the public any information that does not comply with the board's restrictions; or

(3) the content of the advertising is determined by the dentist.

(g) The board may bring an action in district court to enjoin an advertising agent from using any advertisement, marketing scheme, or practice that violates the restrictions adopted by the board under Section 259.005. Notwithstanding any other provision of this subtitle, an injunction under this section is the board's sole remedy against an advertising or marketing agent for a violation of this section.

(h) The remedies provided in this section are in addition to the procedures and remedies provided for in Subchapter E, Chapter 17, Business & Commerce Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.007. UNLAWFUL ADVERTISING: OUT-OF-STATE PROVIDER. A person who is not domiciled and located in this state and subject to the laws of this state may not advertise or cause or permit to be advertised, published, directly or indirectly, printed, or circulated in this state a notice, statement, or offer of any service, drug, or fee relating to the practice of dentistry, unless the advertising conspicuously discloses that the person is not licensed to practice dentistry in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 259.008. UNPROFESSIONAL CONDUCT. A person may not directly or indirectly engage in unprofessional conduct relating to dentistry, including:

(1) obtaining or attempting to collect a fee by fraud or misrepresentation;

(2) orally soliciting dental business if the solicitation is:

(A) directed to an individual or a group of less than five individuals; and

(B) made for the primary purpose of attracting the individual or the group to a particular dental practice;

(3) employing, directly or indirectly, or permitting an unlicensed person to perform dental services on a person, except as authorized by law;

(4) claiming or circulating a statement of:

(A) professional superiority; or

(B) performance of professional services in a superior manner;

(5) forging, altering, or changing a legal document relating to the practice of dentistry, including a diploma, license, registration certificate, or transcript;

(6) being a party to or benefiting from the forgery, alteration, or changing of a legal document relating to the practice of dentistry;

(7) making a false statement or misusing a legal document relating to the practice of dentistry;

(8) accepting employment as a dentist under a false, misleading, or deceptive referral scheme;

(9) advertising the performance of dental work without pain or discomfort to the patient; or

(10) advertising a prediction of future satisfaction or success of a dental service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.088(a), eff. Sept. 1, 2001.

CHAPTER 260. OPERATION OF CERTAIN DENTAL PRACTICES

Sec. 260.001. EMPLOYMENT BY ESTATE OF DENTIST OR PERSON ACTING FOR MENTALLY INCOMPETENT DENTIST. (a) This subtitle does not prevent a person who is the administrator or executor of the estate of a dentist or a person who is legally authorized to act for a dentist adjudicated to be mentally incompetent from employing a licensed dentist to:

(1) carry on the deceased or mentally incompetent dentist's practice for a reasonable period, as determined by the board; or

(2) conclude the affairs of the practice, including the sale of any assets.

(b) This subtitle does not prevent a licensed dentist from working for a person described by Subsection (a) during the administration of the estate or the period of incompetency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 260.002. EMPLOYMENT BY CERTAIN NONPROFIT HEALTH ORGANIZATIONS. (a) The board shall, on a form and under rules adopted by the board, approve and certify a health organization to contract with or employ dentists licensed by the board if the organization, in its application to the board, presents satisfactory proof to the board that the organization:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B).

(b) A dentist providing dental services under Subsection (a) shall provide those services free of charge or at a reduced fee equal to the patient's ability to pay in strict compliance with 42 U.S.C. Section 254b or 254c.

(c) The board may refuse to approve or certify a health organization that applies to the board under this section if the board determines that the nonprofit corporation is established, organized, or operated in violation of or with the intent to circumvent this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 260.003. EMPLOYMENT BY ORGANIZATIONS SERVING UNDERSERVED POPULATIONS. A dentist licensed by the board may be employed by or contract with an organization if:

(1) the organization is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501); and

(2) the organization is:

(A) approved by the board as an organization that provides services to underserved populations for no fee or a reduced fee; or

(B) a clinic that provides dental services primarily to individuals who have acquired immune deficiency syndrome or the human immunodeficiency virus.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 260.004. EMPLOYMENT BY GOVERNMENTAL ENTITY. A dentist licensed by the board may be employed by or contract with a governmental entity that provides dental services under federal or state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 261. CONFIDENTIALITY AND IMMUNITY OF DENTAL PEER REVIEW COMMITTEE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 261.001. DEFINITIONS. In this chapter:

(1) "Dental association" means an organization that is composed of members who are dentists and incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 as an organization described by Section 501(c) of the Internal Revenue Code of 1986.

(2) "Dental peer review committee" means a peer review, judicial, or grievance committee of a dental association authorized to evaluate the quality of dental services or the competence of dentists. The term includes a member, employee, assistant, investigator, attorney, or other agent serving the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

Sec. 261.051. CONFIDENTIALITY OF PROCEEDINGS. (a) Except as otherwise provided by this chapter:

(1) a dental peer review committee's proceedings and records are confidential; and

(2) communications made to a dental peer review committee are privileged.

(b) If a court makes a preliminary finding that the proceedings or records of or the communications made to a dental peer review committee are relevant to an anticompetitive action or an action brought under federal civil rights provisions (42 U.S.C. Section 1983), the proceedings, records, or communications are not confidential to the extent they are relevant to the action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.052. DISCLOSURE OF INFORMATION. Communications made to a dental peer review committee and the records and proceedings of

the committee may be disclosed to:

(1) another dental peer review committee;

(2) an appropriate state or federal agency;

(3) a national accreditation body; or

(4) the registration or licensing entity in any state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.053. DISCLOSURE TO AFFECTED DENTIST. (a) Disclosure to the affected dentist of confidential peer review committee information pertinent to the matter under review does not waive the confidentiality provisions of this chapter.

(b) If a dental peer review committee takes action that may result in censure or a license suspension, restriction, limitation, or revocation by the board or in the denial of membership or privileges in a health care entity, the committee shall give the affected dentist:

(1) a written copy of the recommendation of the committee; and

(2) a copy of the final decision, including a statement of the basis for the decision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.054. COMMITTEE'S EVIDENTIARY PRIVILEGE. (a) Unless disclosure is required or authorized by law, records or determinations of or communications to a dental peer review committee are not subject to subpoena or discovery and are not admissible as evidence in a civil judicial or administrative proceeding unless the committee executes in writing a waiver of the confidentiality privilege.

(b) The evidentiary privilege created by this chapter may be invoked by any person in any civil judicial or administrative proceeding unless the person has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the affected dental peer review committee.

(c) If a dental peer review committee or a person participating in peer review named as a defendant in a civil action filed as a result of participation in peer review may use otherwise confidential

information in the person's defense or in a claim or suit under Section 261.104, the plaintiff in the proceeding may disclose the records or determinations of a peer review committee or communications made to a peer review committee in rebuttal to information supplied by the defendant.

(d) A person seeking access to privileged information must plead and prove waiver of the privilege.

(e) A member, employee, or agent of a dental peer review committee who provides access to privileged communications or records in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived a privilege established under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.055. COMPLIANCE WITH BOARD SUBPOENAS. (a) A person, including the governing body and medical staff of a health care entity, shall comply with a subpoena for a document or information issued by the board as authorized by law.

(b) The disclosure of a document or information under a board subpoena does not constitute a waiver of the privilege established under this chapter.

(c) Failure to comply with a board subpoena constitutes grounds for disciplinary action against the facility or individual by the appropriate licensing board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CIVIL LIABILITY

Sec. 261.101. COMMITTEE IMMUNITY FROM SUIT. (a) In the absence of fraud, conspiracy, or malice, a dental peer review committee is not subject to a suit for damages arising from investigating a disagreement or complaint, holding a hearing to determine facts, or making an evaluation, recommendation, decision, or award involving a dentist who is a member of a dental association or another dentist, a dental patient, or a third party requesting the committee's services.

(b) The purpose of this section is to protect a dental peer review committee from being harassed and threatened with legal action

in performing official duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.102. COMMITTEE PARTICIPANTS' IMMUNITY FROM SUIT. A cause of action does not accrue against a member, agent, or employee of a dental peer review committee for an act, statement, determination, or recommendation made or an act reported, without malice, in the course of peer review under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.103. IMMUNITY FROM SUIT. A person is immune from civil liability if:

(1) the person reports or furnishes information to a dental peer review committee or the board in good faith;

(2) the person:

(A) is a member, employee, or agent of the board, of a dental peer review committee, or of a dental organization committee or a dental organization who takes an action or makes a recommendation within the scope of the functions of a peer review program; and

(B) acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the person; or

(3) the person, including a health care entity or dental peer review committee, without malice participates in a dental peer review activity or furnishes a record, information, or assistance to a dental peer review committee or the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 261.104. COUNTERCLAIM FOR FRIVOLOUS SUIT. A dental peer review committee, a person participating in peer review, or any other person named as a defendant in a civil action filed as a result of participation in peer review may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages

incurred as a result of the civil action, if the plaintiff's original suit is determined:

(1) to be frivolous; or

(2) to have been brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 262. REGULATION OF DENTAL HYGIENISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 262.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(2), eff. September 1, 2017.

(2) "Dental hygienist" means a person who practices dental hygiene under a license issued by the board under Chapter 256.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(2), eff. September 1, 2017.

Sec. 262.002. PRACTICE OF DENTAL HYGIENE. (a) A person practices dental hygiene if the person:

(1) removes accumulated matter, tartar, deposits, accretions, or stains, other than mottled enamel stains, from the natural and restored surface of exposed human teeth and restorations in the human mouth;

(2) smoothes roughened root surfaces;

(3) polishes exposed human teeth, restorations in the human mouth, or roughened root surfaces;

(4) topically applies drugs to the surface tissues of the human mouth or the exposed surface of human teeth;

(5) makes dental x-rays;

(6) administers a local anesthetic agent under the authorization and supervision of a dentist in compliance with Section 258.001(5); and

(7) performs any other service, task, or procedure prescribed by board rule.

(b) A person legally practicing dental hygiene does not violate state law regulating the practice of dentistry.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 868 (H.B. 3824), Sec. 2, eff. September 1, 2023.

Sec. 262.003. EXEMPTIONS. This chapter does not apply to:
(1) a licensed dentist practicing dentistry in this state, except as provided by Subchapter D;
(2) a physician authorized to practice medicine in this state; or
(3) an employee of a licensed dentist who makes dental x-rays in the office of and under the supervision of a dentist practicing dentistry in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD RELATING TO DENTAL HYGIENISTS

Sec. 262.101. BOARD POWERS AND DUTIES. The board shall:
(1) administer this chapter; and
(2) regulate all matters concerning dental hygienists and the practice of dental hygiene.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.102. RULEMAKING AUTHORITY OF BOARD. (a) The board shall adopt and enforce rules that are necessary and advisable to carry out the purposes of and to enforce this chapter, including rules relating to professional conduct for dental hygienists.
(b) As necessary to protect public health and safety, the board may adopt and enforce a rule to establish the number of dental hygienists a dentist may employ.
(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(4), eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(4), eff.

September 1, 2017.

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 262.151. DELEGATION OF DUTIES BY DENTIST. (a) A licensed dentist may delegate orally or in writing a service, task, or procedure to a dental hygienist who is under the supervision and responsibility of the dentist, if:

(1) the dental hygienist is licensed to perform the service, task, or procedure;

(2) the supervising dentist examines the patient:

(A) at the time the service, task, or procedure is performed by the dental hygienist; or

(B) during the 12 calendar months preceding the date of performance of the service, task, or procedure by the dental hygienist; and

(3) the dental hygienist does not:

(A) diagnose a dental disease or ailment;

(B) prescribe a treatment or a regimen;

(C) prescribe, order, or dispense medication; or

(D) perform any procedure that is irreversible or involves the intentional cutting of soft or hard tissue by any means.

(b) A licensed dentist may delegate to a dental hygienist any act that a dentist may delegate to a dental assistant.

(c) A dentist is not required to be on the premises when the dental hygienist performs a delegated act.

(d) This chapter does not prevent a dentist from authorizing a dental hygienist employed by the dentist to:

(1) instruct and educate a patient in proper oral hygiene; or

(2) provide to a patient a medication ordered by the dentist.

(e) This chapter does not prevent a dental hygienist from incidentally removing cementum during root planing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.1515. DELEGATION OF DUTIES TO DENTAL HYGIENIST PRACTICING IN CERTAIN FACILITIES. (a) A licensed dentist may

delegate a service, task, or procedure, pursuant to this section, to a dental hygienist, without complying with Section 262.151(a)(2) if:

(1) the dental hygienist has at least two years' experience in the practice of dental hygiene; and

(2) the service, task, or procedure is performed in one of the following locations:

(A) a nursing facility as defined in Section 242.301, Health and Safety Code;

(B) a school-based health center established under Subchapter B, Chapter 38, Education Code; or

(C) a community health center as defined by Section 136.002, Human Resources Code.

(b) The patient must be referred to a licensed dentist after the completion of a service, task, or procedure performed under Subsection (a).

(c) A dental hygienist may only perform delegated tasks or procedures with respect to a patient for six months unless the patient has been examined by a dentist in compliance with Section 262.151(a)(2).

(d) A dental hygienist may not perform any service, task, or procedure under this section without the express authorization of a dentist.

(e) The facility under Subsection (a)(2) shall note each delegated service, task, or procedure performed by the dental hygienist under this section in the patient's medical records.

Added by Acts 2001, 77th Leg., ch. 1470, Sec. 4.02, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.0045, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 2, eff. September 1, 2009.

Sec. 262.152. PERFORMANCE OF DELEGATED DUTIES. (a) Except as provided by Section 262.1515, a dental hygienist shall practice dental hygiene:

(1) in the dental office of a supervising dentist licensed by the board; or

(2) in an alternate setting, including a nursing home, the patient's home, a school, a hospital, a state institution, a public health clinic, or another institution, under the supervision of a supervising dentist.

(b) For purposes of this section, a dental hygienist who practices dental hygiene as a teledentistry dental service, as defined by Section 111.001, is practicing in an alternate setting in compliance with Subsection (a)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.091(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 270 (S.B. 97), Sec. 3, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 15, eff. September 1, 2021.

SUBCHAPTER E. PROHIBITED PRACTICES; CIVIL LIABILITY; PENALTIES

Sec. 262.201. PROHIBITED PRACTICE. A dental hygienist may not practice or offer to practice dental hygiene under a name other than the name appearing on the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 262.202. CIVIL LIABILITY. A dental hygienist who administers to a person cardiopulmonary resuscitation or other emergency care in an emergency situation is not liable to the person for damages unless the emergency care is performed in a wilfully or wantonly negligent manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 263. LICENSE DENIAL AND DISCIPLINARY PROCEEDINGS

Sec. 263.0001. DEFINITION. In this chapter, "license" means a license, certificate, registration, permit, or other authorization

that is issued under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 27, eff. September 1, 2017.

Sec. 263.001. GROUNDS FOR REFUSAL TO ISSUE LICENSE; APPLICATION OF OPEN MEETINGS LAW. (a) The board may refuse to issue a license to an applicant under this subtitle if the person:

(1) presents to the board fraudulent or false evidence of the person's qualification for examination or license;

(2) is guilty of any illegality, fraud, or deception during the examination or the process to secure a license;

(3) is habitually intoxicated or is addicted to drugs;

(4) commits a dishonest or illegal practice in or connected to dentistry or dental hygiene;

(5) is convicted of a felony under a federal law or law of this state; or

(6) is found to have violated a law of this state relating to the practice of dentistry within the 12 months preceding the date the person filed an application for a license to practice dentistry or dental hygiene.

(b) The board's deliberations with regard to an application for a license under this subtitle are exempt from Chapter 551, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(a), eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 28, eff. September 1, 2017.

Sec. 263.002. GROUNDS FOR DISCIPLINARY ACTION IN GENERAL. (a) The board, after notice and hearing, may reprimand a person who holds a license issued under this subtitle, issue a warning letter to a person licensed under this subtitle, impose a fine on a person licensed under this subtitle, impose an administrative penalty under Subchapter A, Chapter 264, on a person who holds a license under this subtitle, place on probation with conditions a person whose license

has been suspended, or revoke or suspend a person's license issued under this subtitle if the person:

(1) is adjudged under the law to be insane;

(2) is convicted of a misdemeanor involving fraud or a felony under federal law or the law of any state;

(3) practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct;

(4) fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene;

(5) engages in deception or misrepresentation in soliciting or obtaining patronage;

(6) obtains a license by fraud or misrepresentation;

(7) is addicted to or habitually intemperate in the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics;

(8) holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management;

(9) fails to use proper diligence in the person's practice or fails to safeguard the person's patients against avoidable infections;

(10) violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists;

(11) is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients;

(12) is negligent in performing dental services and that negligence causes injury or damage to a dental patient;

(13) holds a license or certificate to practice dentistry or dental hygiene in another state and that state, based on an act by the person that is the same as an act described in this section:

(A) reprimands the person;

(B) suspends or revokes the person's license or certificate or places the person on probation; or

(C) imposes another restriction on the person's practice; or

(14) knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that:

(A) regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or

(B) regulates the business of insurance.

(b) If a person holds a license to practice dentistry or dental hygiene, the board may reprimand or impose a fine on the person, issue a warning letter to the person, place the person's license on probation, or suspend or revoke the person's license under Subsection (a)(10) only if a majority of the board determines that the person has committed an act described by Subsection (a)(10).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(b), eff. Sept. 1, 2001.

Sec. 263.0025. SUBMISSION TO MENTAL OR PHYSICAL EVALUATION. (a) In enforcing Section 263.001(a)(3) or Section 263.002(a)(1), (7), or (11), the board or an authorized agent of the board, on probable cause, as determined by the board or agent, may request an applicant for or holder of a license to submit to a mental or physical evaluation by a physician or other health care professional designated by the board.

(b) If the applicant or license holder refuses to submit to the evaluation under Subsection (a), the board shall issue an order requiring the applicant or license holder to show cause why the applicant or license holder will not submit to the evaluation. The board shall schedule a hearing on the order not later than the 30th day after the date notice is served on the applicant or license holder. The board shall notify the applicant or license holder of the order and hearing by personal service or certified mail, return receipt requested.

(c) At the hearing, the applicant or license holder and the applicant's or license holder's attorney are entitled to present testimony or other evidence to show why the applicant or license holder should not be required to submit to the evaluation. The applicant or license holder has the burden of proof to show why the applicant or license holder should not be required to submit to the evaluation.

(d) After the hearing, the board by order shall require the applicant or license holder to submit to the evaluation not later than the 60th day after the date of the order or withdraw the request for an evaluation, as applicable.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 29, eff. September 1, 2017.

Sec. 263.003. HEARING. A person is entitled to a hearing under Chapter 2001, Government Code, if the board proposes to:

(1) refuse to issue a license to the person;

(2) reprimand or impose a fine on the person;

(3) place the person on probation after the person's license has been suspended; or

(4) suspend or revoke the license of the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.092(c), eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 30, eff. September 1, 2017.

Sec. 263.004. TEMPORARY SUSPENSION IN EMERGENCY. (a) If the board or an executive committee of the board determines from the evidence or information presented that the continued practice by a person licensed under this subtitle, or the continued performance by a person licensed under this subtitle of a procedure for which the person holds a permit issued by the board, would constitute a clear, imminent, or continuing threat to a person's physical health or well-being, the board or the executive committee shall temporarily suspend the person's license or permit, as applicable.

(b) The board may not temporarily suspend a license or permit under this section without notice or hearing unless at the time of the temporary suspension the board or the executive committee requests the State Office of Administrative Hearings to set a date for a hearing on the temporary suspension.

(c) The State Office of Administrative Hearings shall hold a hearing not later than the 30th day after the date the license or permit is suspended unless the license or permit holder requests a continuance. The State Office of Administrative Hearings shall hold a second hearing on the suspension and on any other action to be taken against the license or permit holder not later than the 60th

day after:

(1) the date the license or permit is temporarily suspended; or

(2) the date specified in the continuance requested by the license or permit holder.

(d) If the State Office of Administrative Hearings does not hold a hearing within the time provided by Subsection (c), the suspended license or permit is automatically reinstated.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1249, Sec. 9, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 6, eff. September 1, 2005.

Sec. 263.005. PROBATION. If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 263.006. SUSPENSION OR REVOCATION REQUIRED FOR CERTAIN DRUG OFFENSES. (a) The board shall suspend a license holder's license issued under this subtitle on proof that the person has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact of guilt of a felony under:

(A) Chapter 481 or 483, Health and Safety Code;

(B) Section 485.033, Health and Safety Code; or

(C) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) On final conviction for an offense described by Subsection (a), the board shall revoke the person's license.

(c) The board may not reinstate or reissue a license suspended or revoked under this section unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the person whose license was suspended or revoked. The board must base that determination on substantial evidence contained in an investigative report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 810 (S.B. 610), Sec. 7, eff. September 1, 2005.

Sec. 263.0065. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The board may delegate to a committee of board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations.

(b) The disposition determined by the committee must be approved by the board at a public meeting.

(c) A complaint delegated under this section shall be referred for informal proceedings under Section 263.007 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected license holder requests that the complaint be referred for informal proceedings.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 9, eff. January 1, 2014.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 31, eff.

September 1, 2017.

Sec. 263.007. INFORMAL PROCEEDING. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) not later than the 180th day after the date the board's official investigation of a complaint is commenced, the board schedule an informal settlement conference unless good cause is shown by the board for not scheduling the conference by that date;

(2) the board give notice to the license holder of the time and place of the conference not later than the 45th day before the date the conference is held;

(3) the complainant and the license holder be provided an opportunity to be heard;

(4) the board's legal counsel or a representative of the attorney general be present to advise the board or the board's staff; and

(5) a member of the board's staff be at the conference to present the facts the staff reasonably believes the board could prove at a hearing by competent evidence or qualified witnesses.

(c) The license holder is entitled at the conference to:

(1) reply to the staff's presentation; and

(2) present the facts the license holder reasonably believes the license holder could prove at a hearing by competent evidence or qualified witnesses.

(d) After ample time is given for the presentations, the informal settlement conference panel shall recommend that the investigation be closed or make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) The board shall prioritize scheduling an informal settlement conference in accordance with Subsection (b)(1) to resolve a complaint against a license holder who has previously been the subject of disciplinary action by the board.

(f) A notice under Subsection (b)(2) must be accompanied by a

written statement of the nature of the allegations and the information the board intends to use at the informal settlement conference. If the board does not provide the statement or information at that time, the license holder may use that failure as grounds for rescheduling the conference. If the complaint includes an allegation that the license holder has violated the standard of care in the practice of dentistry or dental hygiene, the notice must include a copy of the report by the expert reviewer. The license holder must provide to the board the license holder's rebuttal not later than the 15th day before the date of the conference in order for that information to be considered at the conference.

(g) The board by rule shall define circumstances constituting good cause for purposes of Subsection (b)(1), including:

(1) an expert reviewer's delinquency in reviewing and submitting a report to the board under Section 255.0067;

(2) a temporary suspension of the license holder's license under Section 263.004; or

(3) the filing of a contested case against the license holder with the State Office of Administrative Hearings.

(h) The board by rule shall define circumstances constituting good cause to grant a request by a license holder for a continuance of the informal settlement conference.

(i) Information presented by the board or board staff in an informal settlement conference is confidential and not subject to disclosure under Chapter 552, Government Code.

(j) On request by the license holder under review, the board shall make a recording of the informal settlement conference proceeding. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the proceeding.

(k) The board shall provide a copy of the recording to the license holder on the license holder's request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 32, eff. September 1, 2017.

Sec. 263.0071. DENTAL REVIEW COMMITTEE. (a) The dental review committee consists of nine members appointed by the governor as follows:

(1) six dentist members;

(2) two dental hygienist members; and

(3) one registered dental assistant member.

(b) Members of the committee serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year.

(c) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

(d) A member of the committee is entitled to receive a per diem for actual duty in the same manner provided for board members.

(e) A member of the committee is subject to law and the rules of the board, including Sections 252.003, 252.007, and 252.010, as if the committee member were a member of the board, except that a committee member is not subject to Chapter 572, Government Code. The training program a committee member must complete under Section 252.010 must be an abbreviated version of the program under that section that is limited to training relevant to serving on a committee.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0072. INFORMAL SETTLEMENT CONFERENCE PANEL. (a) The board shall appoint members of the board and the dental review committee to serve, on a rotating basis, as panelists on an informal settlement conference panel for purposes of this section.

(b) In an informal settlement conference under Section 263.007, the board shall appoint at least two panelists to determine whether an informal disposition is appropriate. At least one of the panelists must be a dentist.

(c) The board by rule shall require that at least one panelist be physically present at the informal settlement conference and may authorize another panelist to appear by video conference.

(d) Notwithstanding Subsection (b), an informal settlement conference may be conducted by one panelist if the license holder who is the subject of the complaint waives the requirement that at least

two panelists conduct the conference. If the license holder waives that requirement, the panelist may be a dentist, a dental hygienist, or a member who represents the public.

(e) Notwithstanding Subsections (b) and (d), an informal settlement conference conducted under Section 263.007 to show compliance with an order or remedial plan of the board may be conducted by one panelist.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0073. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL SETTLEMENT CONFERENCE. (a) At an informal settlement conference under Section 263.007, the panel shall make recommendations for the disposition of the complaint or allegation. The panel may request the assistance of a board employee at any time.

(b) Board employees shall present a summary of the allegations against the license holder and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) An attorney for the board shall act as counsel to the panel and shall be present during the informal settlement conference and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of participants in the conference to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the board, keep the proceedings focused on the case being discussed, and ensure that the board's employees and the license holder have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the board.

(d) The panel and board employees shall provide an opportunity for the license holder and the license holder's authorized representative to reply to the board employees' presentation and to present oral and written statements and facts that the license holder and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the license holder, the license holder's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) During the deliberations, the panel may not reconsider an expert panel's determinations that are included in a final written report issued under Section 255.0067.

(g) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the license holder has violated a statute or board rule, may recommend board action and terms for an informal settlement of the case.

(h) The panel's recommendations under Subsection (g) must be made in writing and presented to the license holder and the license holder's authorized representative. The license holder may accept the proposed settlement within the time established by the panel at the informal settlement conference. If the license holder rejects the proposed settlement or does not act within the required time, the board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0074. DISMISSAL OF BASELESS COMPLAINT. If, during the 180-day period prescribed by Section 263.007(b)(1), the board determines that the complaint is a baseless or unfounded complaint, the board shall dismiss the complaint and include a statement in the records of the complaint that the reason for the dismissal is because the complaint was baseless or unfounded. The board shall adopt rules that establish criteria for determining that a complaint is baseless or unfounded.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 33, eff. September 1, 2017.

Sec. 263.0076. INFORMAL SETTLEMENT CONFERENCE NOTICE REGARDING

CERTAIN COMPLAINTS. If an informal settlement conference is not scheduled for a complaint before the 180-day period prescribed by Section 263.007(b)(1), the board shall provide notice to all parties to the complaint. The notice must include an explanation of the reason why the informal settlement conference has not been scheduled. The notice under this section is not required if the notice would jeopardize an investigation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 9, eff. January 1, 2014.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 34, eff. September 1, 2017.

Sec. 263.0077. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this subtitle.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice dentistry or dental hygiene; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a patient death;

(B) the commission of a felony; or

(C) a matter in which the license holder engaged in inappropriate sexual behavior or contact with a patient or became financially or personally involved with a patient in an inappropriate manner; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices dentistry or dental hygiene.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding five years.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) A remedial plan is public information.

(f-1) On or after the fifth anniversary of the date a remedial plan is issued under this section, the board may remove from the board's public Internet website any public information regarding the dentist or dental hygienist with respect to the plan and the complaint resolved by the plan, unless:

(1) the complaint was related to the delivery of health care; or

(2) more than one remedial plan has been issued to resolve complaints alleging the same violation by the dentist or dental hygienist, including a complaint not related to the delivery of health care.

(g) In civil litigation, a remedial plan is a settlement agreement under Rule 408, Texas Rules of Evidence.

(h) The board shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 709 (H.B. 3201), Sec. 9, eff. January 1, 2014.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 403 (S.B. 1534), Sec. 1, eff. September 1, 2021.

Sec. 263.008. SUBPOENA. (a) The board may issue a subpoena or a subpoena duces tecum to compel the attendance of a witness for examination under oath and the production, for examination and copying, of books, accounts, records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or another state law relating to the practice of dentistry. The board may administer oaths and take testimony regarding any matter within the board's jurisdiction.

(a-1) The board may delegate the authority granted under Subsection (a) to the executive director or the secretary of the board.

(a-2) A subpoena issued at the request of board staff may be served by certified mail or personally by the board's investigators.

(b) The board may request the attorney general to file suit against a person who fails to comply with a subpoena issued by the board to enforce the subpoena. The suit must be filed in a Travis

County district court.

(c) The court on finding that good cause exists for the issuance of the subpoena shall order the person to comply with the subpoena.

(d) The board shall pay, for photocopies subpoenaed at the request of the board's staff, a reasonable fee in an amount not to exceed the amount the board may charge for copies of the board's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.093(a), eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 35, eff. September 1, 2017.

Sec. 263.009. APPEAL. A person aggrieved by a decision of the board under this chapter is entitled to appeal as provided by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 264. PENALTIES AND ENFORCEMENT PROVISIONS

SUBCHAPTER A. ADMINISTRATIVE PENALTY

Sec. 264.001. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.002. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The executive director or a board subcommittee, of which, at least one member is a public member of the board, shall determine the amount of the penalty based on a standardized penalty schedule.

The board by rule shall develop the schedule based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) the economic damage to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.003. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director or a board subcommittee determines that a violation has occurred, the executive director or board subcommittee may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the recommendation of the executive director or the subcommittee on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is approved by the board, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

(1) include a notice of each alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.004. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept, in writing, the executive director's or

subcommittee's determination and recommended administrative penalty; or

(2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.005. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.006. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.007. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that is:

(i) for the amount of the penalty; and

(ii) effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) On receipt of a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.008. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the

attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.009. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation has occurred after the court reviews the board's order imposing an administrative penalty, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.010. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest is paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.011. INFORMAL ASSESSMENT OF ADMINISTRATIVE PENALTY. This subchapter does not prevent the board from assessing an administrative penalty using an informal proceeding under Section 263.007.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 36, eff.

September 1, 2017.

Sec. 264.0115. ALTERNATIVE INFORMAL ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) The board by rule may establish procedures for the alternative informal assessment of administrative penalties for violations of this subtitle that do not involve the provision of direct patient care by a person licensed or regulated under this subtitle.

(b) A penalty assessed under this section may consist only of a monetary penalty that does not exceed $1,000 for each violation. The total amount of penalties assessed against a person under this section may not exceed $3,000 in a calendar year. If the board establishes penalties under this section, the board by rule shall adopt a standardized schedule of the penalties.

(c) The assessment of a penalty under this section is not valid unless the person against whom the penalty is assessed receives a notice of violation that contains at a minimum:

(1) a clear statement of the violation, including a citation to the relevant section of this subtitle;

(2) the amount of the penalty assessed for each violation; and

(3) a statement that the person may either pay the penalty or appeal the penalty in writing.

(d) If the board establishes penalties under this section, the board shall establish procedures for categorizing the penalties.

(e) A person who is assessed an administrative penalty under this section is entitled to a hearing under Chapter 2001, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 6, eff. September 1, 2009.

Sec. 264.012. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. INJUNCTION; CEASE AND DESIST ORDER

Sec. 264.051. INJUNCTION. (a) The state shall file suit for injunction against a person who practices or intends to practice dentistry in violation of state law. The suit shall be filed in the county in which the defendant practices or intends to practice dentistry.

(b) The state is not required to demonstrate that any person was injured by the alleged prohibited practice.

(c) If the defendant is found to have been unlawfully practicing dentistry or to be about to provide services in a manner that is the unlawful practice of dentistry, the court shall permanently enjoin the defendant from practicing dentistry in violation of law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.052. REPRESENTATION OF STATE. The attorney general or the district attorney or county attorney of the county in which the unlawful acts occurred shall represent the state in a suit under Section 264.051.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 22, eff. Sept. 1, 2003.

Sec. 264.0525. CEASE AND DESIST ORDER. (a) The board may serve a proposed cease and desist order on a person the board believes is engaging or is likely to engage in an activity without a license or registration certificate required by this subtitle. The order must:

(1) be delivered by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the acts or practices alleged to be an unauthorized activity; and

(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is delivered or mailed.

(b) Unless the person against whom the proposed order is directed requests a hearing in writing before the effective date of the order, the order takes effect and is final and nonappealable as

to that person.

(c) A requested hearing on a proposed order shall be held not later than the 30th day after the date the board receives the written request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.

(d) After the hearing, the board shall issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the findings at the hearing. An order issued under this subsection:

(1) is immediately final for purposes of enforcement and appeal; and

(2) must require the person to immediately cease and desist from the unauthorized activity.

(e) The board may release to the public a final cease and desist order issued under this section or information relating to the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.

Sec. 264.0526. EMERGENCY CEASE AND DESIST ORDER. (a) The board may issue an emergency cease and desist order to a person if the board reasonably believes that:

(1) the person is engaging or is likely to engage in an activity without a license or registration certificate required by this subtitle; and

(2) the unauthorized activity constitutes a clear, imminent, or continuing threat to a person's physical health or well-being.

(b) The order must:

(1) be delivered on issuance to the person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the acts or practices alleged to be an unauthorized activity and require the person immediately to cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be

filed under this section.

(c) Unless the person against whom the emergency order is directed requests a hearing in writing before the 11th day after the date it is served on the person, the emergency order is final and nonappealable as to that person. A request for a hearing must:

(1) be in writing and directed to the board; and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the board shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the board receives the request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.

(e) After the hearing, the board shall affirm, modify, or set aside in whole or in part the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(f) An order continues in effect unless the order is stayed by the board. The board may impose any condition before granting a stay of the order.

(g) The board may release to the public a final cease and desist order issued under this section or information regarding the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.

Sec. 264.0527. APPEAL OF CEASE AND DESIST ORDER. (a) A person affected by a cease and desist order issued, affirmed, or modified after a hearing may file a petition for judicial review.

(b) A filed petition for judicial review does not stay or vacate the order unless the court, after hearing, specifically stays or vacates the order.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 23, eff. Sept. 1, 2003.

Sec. 264.053. REMEDIES CUMULATIVE. The remedies provided by this subchapter are in addition to criminal prosecution and cumulative of other remedies provided to prevent the unlawful practice of dentistry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 17, Sec. 24, eff. Sept. 1, 2003.

SUBCHAPTER C. CIVIL PENALTY

Sec. 264.101. CIVIL PENALTY. (a) A person who violates a provision of this subtitle is liable to the state for a civil penalty in an amount not to exceed $5,000.

(b) Each day a violation continues or occurs is a separate violation for the purpose of imposing the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 264.102. COLLECTION OF CIVIL PENALTY. At the board's request, the attorney general or the district attorney or county attorney of the county in which the violation is alleged to have occurred shall file suit to collect the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. CRIMINAL PENALTY

Sec. 264.151. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 256.001. An offense under this subsection is a felony of the third degree. Each day of a violation is a separate offense.

(b) A person commits an offense if the person violates Section 256.052. An offense under this subsection is a Class A misdemeanor. If it is shown at the trial of an offense under this subsection that the defendant has previously been convicted of an offense for a violation of Section 256.052, the offense is a felony of the third degree.

(c) A person commits an offense if the person violates Subchapter D, Chapter 262. An offense under this subsection is a Class A misdemeanor. Each day of a violation is a separate offense.

(d) A person commits an offense if the person is a dentist or dental hygienist and violates an injunction or cease and desist order issued under Subchapter B. An offense under this subsection is a Class A misdemeanor. If it is shown at the trial of an offense under this subsection that the defendant was previously convicted of an offense for a violation of an injunction or cease and desist order issued under Subchapter B, the offense is a felony of the third degree. Each day of a violation is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 7, eff. September 1, 2009.

Sec. 264.152. CRIMINAL PENALTY: DENTAL RECORDS ACCESS. (a) A person commits an offense if the person violates Section 258.0511.
(b) Notwithstanding Section 264.151, an offense under this section is a Class B misdemeanor.
(c) If it is shown at the trial of an offense under this section that the defendant was previously convicted under this section, the offense is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1119 (H.B. 3876), Sec. 2, eff. September 1, 2007.

CHAPTER 265. REGULATION OF DENTAL ASSISTANTS

Sec. 265.0001. DEFINITIONS. In this chapter:
(1) "Coronal polishing" means the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces using an appropriate rotary instrument with rubber cup or brush and polishing agent, including the use of a toothbrush.
(2) "Interim treatment of a minor emergency dental condition" means treatment of a condition that:
(A) arises unexpectedly;
(B) causes pain or discomfort to the patient;
(C) is considered reversible;
(D) does not require cutting hard or soft tissue; and
(E) in the opinion of the treating dentist, may be performed by a properly trained dental assistant.

Added by Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 2, eff. September 1, 2009.

Sec. 265.001. REGISTRATION REQUIRED FOR CERTAIN DENTAL ACTS. (a) Unless the dental assistant is registered under this chapter, a dental assistant may not:

(1) make a dental x-ray; or

(2) monitor the administration of nitrous oxide.

(b) The board may adopt and enforce rules requiring a dental assistant to register with the board to perform other dental acts as necessary to protect the public health and safety.

(c) The board shall maximize the efficient administration of this chapter by:

(1) developing a system to track the number of registrations held by a dental assistant under this chapter; and

(2) coordinating the times at which a dental assistant's registrations must be renewed so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and the administrative burden to the board and to the dental assistant is reduced.

(d) Notwithstanding Subsection (a)(1), a dental assistant who is hired as a dental assistant for the first time and who has not previously been issued a registration to make dental x-rays may make dental x-rays without complying with this chapter until the first anniversary of the date the dental assistant is hired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 37, eff. September 1, 2018.

Sec. 265.0015. ELIGIBILITY REQUIREMENTS FOR REGISTRATION. (a) The board by rule shall establish the requirements for each type of registration issued under this chapter, including requiring a dental assistant to:

(1) hold a high school diploma or its equivalent;

(2) complete an educational program approved by the board that provides instruction on:

(A) a dental act that requires a registration under this chapter;

(B) basic life support;

(C) infection control; and

(D) jurisprudence;

(3) pass an examination approved or administered by the board; and

(4) meet any additional qualifications established by the board.

(b) The board may approve courses of instruction and examinations that are provided by private entities for the purposes of this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 38, eff. September 1, 2017.

Sec. 265.0016. FEES. The board shall set and collect fees in amounts that are reasonable and necessary to cover the costs of administering this chapter, including registration and renewal fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 38, eff. September 1, 2017.

Sec. 265.0017. REGISTRATION EXPIRATION AND RENEWAL. (a) A registration under this chapter is valid for two years.

(b) A dental assistant may renew a registration by paying the required renewal fee and complying with any other renewal requirements established by the board.

(c) A dental assistant whose registration has expired may not engage in an activity that requires registration until the registration has been renewed.

(d) The board by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the expiration date is changed, the board shall prorate registration fees on a monthly basis so that each registration holder pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total renewal fee is payable.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 38, eff. September 1, 2017.

Sec. 265.002. SUPERVISION, DIRECTION, AND RESPONSIBILITY. (a) In this subtitle, a dental assistant is under the direct supervision, direction, and responsibility of a dentist if the dentist:

(1) employs the dental assistant or is in charge of the dental assistant; and

(2) is physically present in the dental office when the dental assistant performs a delegated dental act.

(b) For purposes of Subsection (a)(2), physical presence does not require that the supervising dentist be in the treatment room when the dental assistant performs the service as long as the dentist is in the dental office.

(c) In this subtitle, a dental assistant is under the general supervision, direction, and responsibility of a dentist if the dentist:

(1) employs the dental assistant or is in charge of the dental assistant; and

(2) is responsible for supervising the services to be performed by the dental assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 3, eff. September 1, 2009.

Sec. 265.003. PERMITTED DUTIES. (a) A dental assistant who is not registered under this chapter may be employed by and work in the office of a licensed and practicing dentist and perform one or more delegated dental acts under:

(1) the direct supervision, direction, and responsibility of the dentist, including the application of fluoride varnish; or

(2) the general supervision, direction, and responsibility of the dentist, limited to:

(A) the making of dental x-rays in compliance with Section 265.001(d); and

(B) the provision of interim treatment of a minor

emergency dental condition to an existing patient of the treating dentist.

(a-1) A treating dentist who delegates the provision of interim treatment of a minor emergency dental condition to a dental assistant under Subsection (a)(2) shall:

(1) delegate the procedure orally or in writing before the dental assistant performs the procedure;

(2) retain responsibility for the procedure; and

(3) schedule a follow-up appointment with the patient within a reasonable time.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(8), eff. September 1, 2017.

(c) A delegating dentist remains responsible for the dental acts of a registered or nonregistered dental assistant performing the delegated dental acts.

(d) A dental assistant to whom a delegation is made may not represent to the public that the dental assistant is authorized to practice dentistry or dental hygiene.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1470, Sec. 4.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1144, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 476 (S.B. 455), Sec. 4, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 39, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(8), eff. September 1, 2017.

Sec. 265.008. CONTINUING EDUCATION REQUIRED FOR REGISTRATION RENEWAL. The board by rule shall establish continuing education requirements for dental assistants registered under this chapter, including a minimum number of hours of continuing education required to renew a registration.

Added by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 42, eff. September 1, 2017.

CHAPTER 266. REGULATION OF DENTAL LABORATORIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 266.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(11), eff. September 1, 2017.

(2) "Dental laboratory" means a place in which a person performs or offers to perform a dental laboratory service.

(3) "Dental laboratory service" means:

(A) the making, assembly, processing, production, repair, relining, or adjustment of a prosthetic or orthodontic dental appliance, a full or partial denture, a fixed or removable dental bridge, a dental plate of false teeth, an artificial restoration, or a substitute or corrective device for any part of the human teeth, gums, jaws, or alveolar process; or

(B) the fitting of a dental appliance, a denture, a bridge, a plate, false teeth, an artificial restoration, or a substitute or corrective device for the human teeth, gums, or jaws to or on a dental model, impression, or cast of any part of the human teeth, gums, jaws, or alveolar process.

(4) "Dental technician" means a person who performs, offers to perform, or aids, abets, or causes another to perform or offer to perform a dental laboratory service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(11), eff. September 1, 2017.

Sec. 266.002. EXEMPTIONS. This chapter does not apply to:

(1) a student enrolled in a program of a school of dentistry;

(2) a licensed dentist engaged in the practice of dentistry in this state who performs a dental laboratory service for compensation or an employee of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee if the service is performed:

(A) for a patient of the dentist or of the professional corporation or partnership in which the dentist is an officer, partner, or employee; and

(B) on the premises in which the dentist practices dentistry; or

(3) a manufacturer of materials or component parts, used in the fabrication of a dental prosthetic appliance and for sale or use by a dental laboratory, that are not directly fitted to a dental model or cast of the human teeth, gums, jaws, or alveolar process.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. BOARD POWERS AND DUTIES

Sec. 266.102. BOARD POWERS AND DUTIES. (a) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(14), eff. September 1, 2017.

(b) The board may adopt rules regarding dental laboratories in only the following areas:

(1) processing registration applications;

(2) prescribing:

(A) requirements for registration;

(B) the form and content of registration applications and other forms required to administer this chapter;

(C) procedures for renewal of certificates of registration; and

(D) fees necessary to administer this chapter;

(3) monitoring records necessary to administer this chapter;

(4) establishing continuing education requirements for dental technicians employed by dental laboratories, including prescribing the content of continuing education courses; and

(5) regulating:

(A) infection control;

(B) shade-taking procedures authorized by a prescription from a licensed dentist;

(C) computer-imaging procedures for an oral cavity authorized by a prescription from a licensed dentist;

(D) referral of dental prescriptions to out-of-state laboratories to be filled; and

(E) the transportation and manufacture of dental prosthetic devices or other dental work performed by a dental

laboratory located in another state or a foreign country for use in this state.

(c) In prescribing the content of continuing education courses under Subsection (b)(4), the board shall require the course content to be at least as comprehensive as a course approved by a recognized board of certification for dental technology.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(14), eff. September 1, 2017.

(e) The board shall provide annually to each dentist licensed in this state a list of dental laboratories registered under this chapter. The list must include the expiration date of each laboratory's registration certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 48(14), eff. September 1, 2017.

SUBCHAPTER D. CERTIFICATION, REGISTRATION, AND RENEWAL REQUIREMENTS

Sec. 266.151. REGISTRATION REQUIRED. (a) In this section, "person" means an individual or a private legal entity, including a corporation, association, or partnership.

(b) A person may not operate or offer to operate a dental laboratory or provide or offer to provide dental laboratory services unless the person holds a registration certificate issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.152. CERTIFIED DENTAL TECHNICIAN. (a) A dental laboratory must have at least one dental technician working on the laboratory's premises who is certified by a recognized board of certification for dental technology.

(b) A dental laboratory is exempt from Subsection (a) if the laboratory is:

(1) owned by a licensed dentist engaged in the practice of dentistry in this state or by a professional corporation or partnership in which that dentist is an officer, partner, or

employee; and

(2) located on the premises within which the dentist practices dentistry.

(c) The exemption under Subsection (b) does not apply to a dental laboratory if the laboratory employs three or more dental technicians.

(d) The owner of a dental laboratory registered with the board on September 1, 1987, is exempt from Subsection (a) if:

(1) the registration of the laboratory has been timely renewed since that date, and all registration fees have been paid;

(2) the beneficial ownership of at least 51 percent of the laboratory has not been transferred; and

(3) the owner is employed on the laboratory's premises for not less than 30 hours each week.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.094(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1240, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 44, eff. September 1, 2017.

Sec. 266.153. APPLICATION FOR REGISTRATION; TERM. (a) An owner or manager of a dental laboratory shall:

(1) apply to the board for the registration of each dental laboratory doing business in this state to which the owner or manager is connected or in which the owner or manager has an interest; and

(2) pay the application fee set by the board.

(b) The application must include:

(1) evidence satisfactory to the board that the dental laboratory meets the requirements prescribed by Section 266.152(a), if applicable; and

(2) any other information required by the board.

(c) The board may issue a certificate of registration only to a dental laboratory that complies with the requirements of this section.

(d) A dental laboratory registration issued under this chapter is valid for a term of one or two years, as determined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 1240, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 45, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 46, eff. September 1, 2017.

Sec. 266.154. REGISTRATION RENEWAL. (a) An applicant for renewal of a dental laboratory registration must provide evidence satisfactory to the board that at least one employee who works on the dental laboratory's premises:

(1) has completed the minimum number of hours of continuing education during the previous registration period as required by board rule; or

(2) is certified as required by Section 266.152(a), if applicable.

(b) An owner or manager of a dental laboratory may renew an unexpired registration certificate for a dental laboratory if the owner or manager:

(1) pays the required renewal fee to the board on or before the expiration date; and

(2) complies with any other renewal requirements.

(c) If the owner or manager of a dental laboratory fails to renew the dental laboratory's registration and pay the renewal fee before the date the registration expires, the board shall suspend the registration certificate of the laboratory.

(d) An owner or manager of a dental laboratory whose registration certificate has been expired for 90 days or less may renew the registration certificate if the person pays to the board the required renewal fee and a fee equal to one-half of the amount of the renewal fee. If the registration certificate has been expired for more than 90 days but less than one year, the owner or manager may renew the certificate by paying to the board all unpaid renewal fees and a fee equal to the amount of the initial registration fee.

(e) An owner or manager of a dental laboratory may not renew a registration certificate that has been expired for one year or more. The owner or manager may obtain a new certificate by complying with the requirements for obtaining an original certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.094(b), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 295 (S.B. 313), Sec. 47, eff. September 1, 2017.

Sec. 266.155. INITIAL REGISTRATION CERTIFICATE FEE. An initial registration certificate issued under this subchapter expires on the 30th day after the date the registration certificate is issued if the holder of the registration certificate fails to pay the required registration certificate fee on or before that date.

Added by Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 10, eff. September 1, 2009.

SUBCHAPTER E. PRACTICE BY REGISTRATION HOLDER

Sec. 266.201. PRESCRIPTION REQUIRED. (a) A dentist who orders a dental laboratory service shall prepare and deliver to the dental laboratory a prescription or work order for the service to be performed.

(b) The prescription or work order must contain:

(1) the signature and Texas dental license number of the dentist;

(2) the date the prescription or work order is signed;

(3) the patient's name; and

(4) a description of the dental laboratory service ordered.

(c) A dentist shall keep a copy of each prescription or work order at the dentist's office in a separate file for two years for inspection by the board's officers, agents, or employees.

(d) A dentist shall label as provided by board rule a removable dental prosthesis fabricated in this state by the dentist or by a person under a prescription or work order prepared by the dentist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1240, Sec. 5, eff. Sept. 1, 2003.

Sec. 266.202. RELIANCE ON PRESCRIPTION. (a) The owner,

manager, or employee of a dental laboratory or a dental technician may not perform or aid or abet another person in performing a dental laboratory service unless:

(1) the service was ordered by and any resulting item will be delivered to:

(A) a dentist engaged in the practice of dentistry in this state or in a jurisdiction in which the dentist maintains a dental office and engages in the practice of dentistry; or

(B) an employee of the dentist, if the service is performed for and on behalf of the dentist; and

(2) the dental laboratory receives a prescription or work order for the service in accordance with Section 266.201.

(b) If a dental laboratory receives a prescription or work order for dental laboratory services and refers the work to another laboratory, the referral must be accompanied by a written statement that the prescription or work order is on file with the original laboratory.

(c) A dental laboratory owner or manager shall maintain on the premises of a dental laboratory as a part of the laboratory's records a record of each prescription or work order completed at the dental laboratory until the second anniversary of the date the prescription or work order is furnished. The owner or manager shall also maintain the record in an alphabetized file in a separate place.

(d) The premises of a dental laboratory, the records of a dental laboratory or a dental technician employed by the dental laboratory pertaining to dental prescriptions or work orders, and records relating to the referral of work to a dental technician or the owner or manager of a dental laboratory shall be open and available for inspection by a member, officer, employee, investigator, or agent of the board during regular office hours.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.203. TRANSPORTATION OF DENTAL MATERIAL PERMITTED. This chapter does not prohibit a person who is subject to and complies with this chapter from using the United States mail, a railway express agency, Western Union, or a messenger or common or contract carrier to handle, accept from, or transport or deliver to a dentist or dental laboratory an item in any form or state of

completion on which a dental laboratory service will be or has been offered or ordered to be performed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. DISCIPLINARY ACTIONS

Sec. 266.251. GROUNDS FOR DISCIPLINARY ACTION. (a) The board may refuse to issue a registration certificate, may impose a fine on a person who holds a registration certificate, may suspend or revoke a person's registration certificate, or may probate any portion of the suspension if, after a hearing, the board determines that the applicant or certificate holder has:

(1) violated or aided another person in violating a law regulating the practice of dentistry; or

(2) required or allowed a person under the direction or control of the person to violate a law regulating the practice of dentistry.

(b) In this section, an applicant for or holder of a registration certificate includes a person who has at least a 20 percent ownership interest in or is the general partner or managing partner in a dental laboratory that is registered under this chapter or for which an application for registration has been filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.252. PROCEDURES FOR DISCIPLINARY ACTION. The board shall follow the procedures under Chapter 263 in a complaint or disciplinary action under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. PROHIBITED PRACTICES, ENFORCEMENT, AND PENALTIES

Sec. 266.301. DENTAL PROSTHETIC APPLIANCE. (a) In this section, "person" means an individual or a private legal entity, including a corporation, association, or partnership.

(b) A person may not fill a prescription to prepare or repair a dental prosthetic appliance that is to be delivered to a dental patient by a licensed dentist unless the person is a dental

laboratory or dental technician.

(c) A dental laboratory that prepares or repairs a dental prosthetic appliance for a dentist shall provide to the dentist in writing at the time of the delivery the dental laboratory's assigned registration number and the expiration date of the dental laboratory's registration certificate.

(d) A dentist may not knowingly prescribe, order, or receive a dental prosthetic appliance that is to be prepared or has been prepared by an unregistered dental laboratory.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.302. INJUNCTION. The board may apply for a restraining order or injunction to enforce this chapter or a board rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 266.303. CRIMINAL PENALTIES. (a) A person commits an offense if the person:

(1) is a dentist and provides a dental laboratory service without being exempt under Section 266.002(2); or

(2) violates Section 266.151 or 266.301.

(b) An offense for a violation of Section 266.151 or Section 266.301(b) is a felony of the third degree.

(c) An offense for a violation of Section 266.301(c) is a Class C misdemeanor. If it is shown on the trial of an offense under this section that the defendant has previously been convicted for an offense for a violation of Section 266.301(c), the offense is a Class A misdemeanor.

(d) An offense for a violation of Section 266.301(d) is a Class B misdemeanor. If it is shown on the trial of an offense under this section that the defendant has previously been convicted of an offense for a violation of Section 266.301(d), the offense is a Class A misdemeanor.

(e) Each day of a violation is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 772 (S.B. 887), Sec. 11, eff. September 1, 2009.

CHAPTER 267. LICENSING OF FACULTY MEMBERS OF DENTAL OR DENTAL HYGIENE SCHOOLS

Sec. 267.001. LICENSE REQUIRED. (a) A person may not serve as a faculty member of a dental school unless the person holds a dental school faculty member license issued under this chapter.

(b) A person may not serve as a faculty member of a dental hygiene school unless the person holds a dental school faculty member license or dental hygiene school faculty member license issued under this chapter.

(c) This section does not apply to a person who does not have direct patient contact.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. March 1, 2004.

Sec. 267.002. EXEMPTIONS. (a) A person is exempt from the requirements of Section 267.001(a) if the person is licensed to practice dentistry in this state.

(b) A person is exempt from the requirements of Section 267.001(b) if the person is licensed to practice dentistry or dental hygiene in this state.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.003. QUALIFICATIONS FOR LICENSE. (a) To qualify for a dental school faculty member license, a person must:

(1) file an application with the board that presents proof that the applicant holds:

(A) a degree from a dental school; and

(B) a full-time or part-time salaried faculty position at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) submit an endorsement of the application from the dean, department chair, or program director of the school described by Subdivision (1)(B);

(3) pay the application fee set by the board; and

(4) pass an examination covering jurisprudence administered by the board or by a testing service under an agreement with the board.

(b) To qualify for a dental hygiene school faculty member license, a person must:

(1) file an application with the board that presents proof that the applicant holds:

(A) a degree from a dental hygiene school; and

(B) a full-time or part-time salaried faculty position at a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) submit an endorsement of the application from the dean, department chair, or program director of the school described by Subdivision (1)(B);

(3) pay the application fee set by the board; and

(4) pass an examination covering jurisprudence administered by the board.

(c) An applicant for a license under this chapter must:

(1) file an application for the license not later than the 30th day after the date the person begins employment with the dental or dental hygiene school; and

(2) pass the examination not later than the sixth month after the date the person begins employment with the school.

(d) The board shall set the application fee in an amount sufficient to cover the cost of administering this chapter.

(e) Notwithstanding Section 267.001, an applicant may have direct patient contact before the applicant passes the examination.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.004. LICENSE RENEWAL. A license issued under this chapter must be renewed annually.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.005. LICENSE EXPIRATION. (a) A license issued under this chapter expires on the termination of the license holder's employment with the dental or dental hygiene school.

(b) A license holder whose employment with a dental or dental

hygiene school terminates and who is subsequently employed by the same or a different dental or dental hygiene school must comply with the requirements for obtaining an original license, except that the person is not required to retake the examination.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

Sec. 267.006. PRACTICE OF DENTISTRY OR DENTAL HYGIENE PROHIBITED. A license issued under this chapter does not authorize the license holder to engage in the practice of dentistry or dental hygiene.

Added by Acts 2003, 78th Leg., ch. 17, Sec. 26, eff. Sept. 1, 2003.

SUBTITLE E. REGULATION OF NURSING
CHAPTER 301. NURSES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. SHORT TITLE. This chapter may be cited as the Nursing Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Nursing.

(1-a) "Chief nursing officer" means the registered nurse who is administratively responsible for the nursing services at a facility.

(1-b) "Patient safety committee" has the meaning assigned by Section 303.001.

(2) "Professional nursing" means the performance of an act that requires substantial specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of professional nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Professional nursing involves:

(A) the observation, assessment, intervention,

evaluation, rehabilitation, care and counsel, or health teachings of a person who is ill, injured, infirm, or experiencing a change in normal health processes;

(B) the maintenance of health or prevention of illness;

(C) the administration of a medication or treatment as ordered by a physician, podiatrist, or dentist;

(D) the supervision or teaching of nursing;

(E) the administration, supervision, and evaluation of nursing practices, policies, and procedures;

(F) the requesting, receiving, signing for, and distribution of prescription drug samples to patients at practices at which an advanced practice registered nurse is authorized to sign prescription drug orders as provided by Subchapter B, Chapter 157;

(G) the performance of an act delegated by a physician under Section 157.0512, 157.054, 157.058, or 157.059; and

(H) the development of the nursing care plan.

(3) "Nurse" means a person required to be licensed under this chapter to engage in professional or vocational nursing.

(4) "Nursing" means professional or vocational nursing.

(5) "Vocational nursing" means a directed scope of nursing practice, including the performance of an act that requires specialized judgment and skill, the proper performance of which is based on knowledge and application of the principles of biological, physical, and social science as acquired by a completed course in an approved school of vocational nursing. The term does not include acts of medical diagnosis or the prescription of therapeutic or corrective measures. Vocational nursing involves:

(A) collecting data and performing focused nursing assessments of the health status of an individual;

(B) participating in the planning of the nursing care needs of an individual;

(C) participating in the development and modification of the nursing care plan;

(D) participating in health teaching and counseling to promote, attain, and maintain the optimum health level of an individual;

(E) assisting in the evaluation of an individual's response to a nursing intervention and the identification of an individual's needs; and

(F) engaging in other acts that require education and

training, as prescribed by board rules and policies, commensurate with the nurse's experience, continuing education, and demonstrated competency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 4, eff. May 11, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.002, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 3, eff. May 20, 2005.
Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 1, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 15, eff. November 1, 2013.

Sec. 301.003. APPLICATION OF SUNSET ACT. The Texas Board of Nursing is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.003, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 2, eff. September 1, 2007.
Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 4, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.05, eff. June 18, 2023.

Sec. 301.004. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) gratuitous nursing care of the sick that is provided by a friend;

(2) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not hold the person out

as a nurse unless the person is licensed in another state;

(3) nursing care in which treatment is solely by prayer or spiritual means;

(4) an act performed by a person under the delegated authority of a person licensed by the Texas Medical Board;

(5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed except that if the person also holds a license under this chapter and the act is within the practice of nursing, the board may take action against that license based on that act;

(6) the practice of nursing that is incidental to a program of study by a student enrolled in a nursing education program approved under Section 301.157(d) leading to an initial license as a nurse; or

(7) the practice of nursing by a person licensed in another state who is in this state on a nonroutine basis for a period not to exceed 72 hours to:

(A) provide care to a patient being transported into, out of, or through this state;

(B) provide nursing consulting services; or

(C) attend or present a continuing nursing education program.

(b) This chapter does not authorize the practice of medicine as defined by Chapter 151.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.004, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 3, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 1, eff. September 1, 2013.

Sec. 301.005. REFERENCE IN OTHER LAW. (a) A reference in any other law to the former Board of Nurse Examiners means the Texas Board of Nursing.

(b) A reference in any other law to an "advanced nurse practitioner" or "advanced practice nurse" means an advanced practice registered nurse.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 4, eff. September 1, 2007.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 16, eff. November 1, 2013.

Sec. 301.006. CLAIM OR DEFENSE FOR PROHIBITED RULE OR POLICY. (a) The board may not adopt a rule, regulation, or policy that violates Chapter 110, Civil Practice and Remedies Code.

(b) A person may assert a violation of Subsection (a) as an affirmative defense in an administrative hearing or as a claim or defense in a judicial proceeding under Chapter 37, Civil Practice and Remedies Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 5, eff. September 1, 2017.

SUBCHAPTER B. TEXAS BOARD OF NURSING

Sec. 301.051. BOARD MEMBERSHIP. (a) The Texas Board of Nursing consists of 15 members appointed by the governor with the advice and consent of the senate as follows:

(1) seven nurse members, including:

(A) two advanced practice registered nurses;

(B) two registered nurses who are not advanced practice registered nurses or members of a nurse faculty; and

(C) three vocational nurses who are not members of a nurse faculty;

(2) three members who are nurse faculty members of schools of nursing:

(A) one of whom is a nurse faculty member of a school of nursing offering a baccalaureate degree program in preparing registered nurses;

(B) one of whom is a nurse faculty member of a school of nursing offering an associate degree program in preparing registered nurses; and

(C) one of whom is a nurse faculty member of a school of nursing at an institution of higher education preparing vocational nurses; and

(3) five members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.006, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 6, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 158 (S.B. 1343), Sec. 1, eff. September 1, 2023.

Sec. 301.052. MEMBER ELIGIBILITY. (a) A person is not eligible for appointment as a registered nurse or vocational nurse member of the board unless the person has practiced nursing in the role for which the member was appointed for at least three of the five years preceding the date of appointment.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.007, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 7, eff. September 1, 2007.

Sec. 301.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for the purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the board's operation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 8, eff. September 1, 2007.

Sec. 301.054. TERMS. Members of the board serve staggered six-year terms, with the terms of as near to one-third of the members as possible expiring on January 31 of each odd-numbered year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.008, eff. Sept. 1, 2003.

Sec. 301.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 301.051(a);

(2) does not maintain during service on the board the qualifications required by Section 301.051(a);

(3) is ineligible for membership under Section 301.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 9, eff. September 1, 2007.

Sec. 301.056. PER DIEM; REIMBURSEMENT. (a) Each board member is entitled to receive a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(b) A board member is entitled to reimbursement for travel expenses incurred while conducting board business, including expenses for transportation, meals, and lodging, as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 10, eff. September 1, 2007.

Sec. 301.057. OFFICERS. (a) The governor shall designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) The board shall elect other officers from its members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.058. MEETINGS. The presiding officer shall call a special board meeting on the written request of at least two board members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing the board's operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the board's rulemaking authority;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a profession or business the board regulates;

(B) restrict advertising by persons in a profession or

business the board regulates;

(C) affect the price of goods or services provided by persons in a profession or business the board regulates; and

(D) restrict participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 74(1), eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 6, eff. September 1, 2017.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 301.101. EXECUTIVE DIRECTOR. (a) The board shall employ an executive director. The executive director may not be a member of the board.

(b) Under the direction of the board, the executive director shall perform the duties required by this chapter or designated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.103. PUBLIC RECORDS; REGISTRY. (a) The executive director shall keep:

(1) a record of each meeting of the board; and

(2) a registry of the name of each nurse registered under this chapter.

(b) Information maintained under this section is open to public inspection at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.104. PERSONNEL; EMPLOYMENT PRACTICES. The board shall employ persons as necessary to carry on the work of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.105. DIVISION OF RESPONSIBILITIES. (a) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

(b) The board shall determine the salaries and compensation to be paid to employees and persons retained by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.106. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.108. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD

Sec. 301.151. GENERAL RULEMAKING AUTHORITY. The board may adopt and enforce rules consistent with this chapter and necessary to:

(1) perform its duties and conduct proceedings before the board;

(2) regulate the practice of professional nursing and vocational nursing;

(3) establish standards of professional conduct for license holders under this chapter; and

(4) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.009, eff. Sept. 1, 2003.

Sec. 301.152. RULES REGARDING SPECIALIZED TRAINING. (a) In this section, "advanced practice registered nurse" means a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(b) The board shall adopt rules to:

(1) license a registered nurse as an advanced practice registered nurse;

(2) establish:

(A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054;

(B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under Section 157.0512 or 157.054 on the receipt of evidence of completing the specialized education and training requirement under Paragraph (A); and

(C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under Paragraph (B); and

(3) concurrently renew any license or approval granted to an advanced practice registered nurse under this subsection and a license renewed by the advanced practice registered nurse under Section 301.301.

(c) At a minimum, the rules adopted under Subsection (b)(2) must:

(1) require completion of pharmacology and related pathophysiology education for initial approval; and

(2) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under Section 301.303.

(d) The signature of an advanced practice registered nurse attesting to the provision of a legally authorized service by the advanced practice registered nurse satisfies any documentation requirement for that service established by a state agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.121(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 17, eff. November 1, 2013.

Sec. 301.153. RULES REGARDING ADVERTISING AND COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the person's use of any medium for

advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.154. RULES REGARDING DELEGATION OF CERTAIN MEDICAL ACTS. (a) The board may recommend to the Texas State Board of Medical Examiners the adoption of rules relating to the delegation by physicians of medical acts to registered nurses and vocational nurses licensed by the board. In making a recommendation, the board may distinguish between nurses on the basis of special training and education.

(b) A recommendation under Subsection (a) shall be treated in the same manner as a petition for the adoption of a rule by an interested party under Chapter 2001, Government Code.

(c) The board in recommending a rule and the Texas State Board of Medical Examiners in acting on a recommended rule shall, to the extent allowable under state and federal statutes, rules, and regulations, act to enable the state to obtain its fair share of the federal funds available for the delivery of health care in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.010, eff. Sept. 1, 2003.

Sec. 301.1545. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION OR DEFERRED ADJUDICATION. (a) The board shall adopt rules and guidelines necessary to comply with Chapter 53, except to the extent the requirements of this subtitle are stricter than the requirements of that chapter.

(b) In its rules under this section, the board shall list the offenses for which a conviction would constitute grounds for the board to take action under Section 53.021 or for which placement on deferred adjudication community supervision would constitute grounds

for the board to take action under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 12, eff. September 1, 2007.

Sec. 301.155. FEES. (a) The board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering this chapter. The board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

(b) The board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required under Section 301.158.

(c) The board shall assess a surcharge of not less than $3 or more than $5 for a registered nurse and a surcharge of not less than $2 or more than $3 for a vocational nurse to the fee established by the board under Subsection (a) for a license holder to renew a license under this chapter. The board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. The board quarterly shall transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under Section 105.002, Health and Safety Code. The board is not required to collect the surcharge if the board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 728, Sec. 12, eff. June 20, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 4, eff. May 20, 2005.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 1, eff. June 19, 2009.

Sec. 301.156. GIFTS AND GRANTS. The board may receive gifts, grants, or other funds or assets.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.157. PROGRAMS OF STUDY AND APPROVAL. (a) The board shall prescribe three programs of study to prepare a person to receive an initial license as a registered nurse under this chapter as follows:

(1) a baccalaureate degree program that is conducted by an educational unit in nursing that is a part of a senior college or university and that leads to a baccalaureate degree in nursing;

(2) an associate degree program that is conducted by an educational unit in nursing within the structure of a college or a university and that leads to an associate degree in nursing; and

(3) a diploma program that is conducted by a single-purpose school, usually under the control of a hospital, and that leads to a diploma in nursing.

(a-1) A diploma program of study in this state that leads to an initial license as a registered nurse under this chapter and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(b) The board shall:

(1) prescribe two programs of study to prepare a person to receive an initial vocational nurse license under this chapter as follows:

(A) a program conducted by an educational unit in nursing within the structure of a school, including a college, university, or proprietary school; and

(B) a program conducted by a hospital;

(2) prescribe and publish the minimum requirements and standards for a course of study in each program that prepares registered nurses or vocational nurses;

(3) prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses;

(4) approve schools of nursing and educational programs that meet the board's requirements;

(5) select one or more national nursing accrediting

agencies, recognized by the United States Department of Education and determined by the board to have acceptable standards, to accredit schools of nursing and educational programs; and

(6) deny or withdraw approval from a school of nursing or educational program that:

(A) fails to meet the prescribed course of study or other standard under which it sought approval by the board;

(B) fails to meet or maintain accreditation with the national nursing accrediting agency selected by the board under Subdivision (5) under which it was approved or sought approval by the board; or

(C) fails to maintain the approval of the state board of nursing of another state and the board under which it was approved.

(b-1) The board may not require accreditation of the governing institution of a school of nursing. The board shall accept the requirements established by the Texas Higher Education Coordinating Board for accrediting the governing institution of a school of nursing. The governing institution of a professional nursing school, not including a diploma program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board or hold a certificate of authority from the Texas Higher Education Coordinating Board under provisions leading to accreditation of the institution in due course.

(c) A program approved to prepare registered nurses may not be less than two academic years or more than four calendar years.

(d) A person may not be certified as a graduate of any school of nursing or educational program unless the person has completed the requirements of the prescribed course of study, including clinical practice, of a school of nursing or educational program that:

(1) is approved by the board;

(2) is accredited by a national nursing accreditation agency determined by the board to have acceptable standards; or

(3) is approved by a state board of nursing of another state and the board, subject to Subsection (d-4).

(d-1) A school of nursing or educational program is considered approved by the board and, except as provided by Subsection (d-7), is exempt from board rules that require ongoing approval if the school or program:

(1) is accredited and maintains accreditation through a

national nursing accrediting agency selected by the board under Subsection (b)(5); and

(2) maintains an acceptable pass rate as determined by the board on the applicable licensing examination under this chapter.

(d-2) A school of nursing or educational program that fails to meet or maintain an acceptable pass rate on applicable licensing examinations under this chapter is subject to review by the board. The board may assist the school or program in its effort to achieve compliance with the board's standards.

(d-3) A school or program from which approval has been withdrawn under this section may reapply for approval.

(d-4) The board may recognize and accept as approved under this section a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state. The board shall adopt rules to ensure that the other state's standards are substantially equivalent to the board's standards. The board by rule shall develop a process for students enrolled in a school of nursing or educational program operated in another state that does not meet standards substantially equivalent to the board's standards to apply for an initial license under this chapter.

(d-5) The board shall streamline the process for initially approving a school of nursing or educational program under this section by identifying and eliminating tasks performed by the board that duplicate or overlap tasks performed by the Texas Higher Education Coordinating Board or the Texas Workforce Commission.

(d-6) The board, in cooperation with the Texas Higher Education Coordinating Board and the Texas Workforce Commission, shall establish guidelines for the initial approval of schools of nursing or educational programs. The guidelines must:

(1) identify the approval processes to be conducted by the Texas Higher Education Coordinating Board or the Texas Workforce Commission;

(2) require the approval process identified under Subdivision (1) to precede the approval process conducted by the board; and

(3) be made available on the board's Internet website and in a written form.

(d-7) A school of nursing or educational program approved under Subsection (d-1) shall:

(1) provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the board;

(2) notify the board of any change in accreditation status; and

(3) provide other information required by the board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d-8) For purposes of Subsection (d-4), a nursing program is considered to meet standards substantially equivalent to the board's standards if the program:

(1) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state;

(2) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation;

(3) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation;

(4) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and

(5) graduates students who:

(A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse;

(B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

(C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the board's required passage rate for students of approved in-state programs.

(d-9) A graduate of a clinical competency assessment program operated in another state and approved by a state board of nursing or other regulatory body of another state is eligible to apply for an initial license under this chapter if:

(1) the program does not make any substantial changes in the length or content of its clinical competency assessment without the board's approval; and

(2) the program remains in good standing with the state board of nursing or other regulatory body in the other state.

(d-10) In this section, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by Section 105.008, Health and Safety Code.

(d-11) If a clinical competency assessment program operated in another state graduates students who pass the National Council Licensure Examination for Registered Nurses at a rate lower than the board's required passage rate for graduating students of approved in-state programs, not later than May 31 of the next school year the program shall:

(1) for the first year the student passage rate is lower than the board's required passage rate for students of approved in-state programs, complete and submit to the board for review and comment a self-study of the program in accordance with the board's guidelines;

(2) for the second consecutive year the student passage rate is lower than the board's required passage rate for students of approved in-state programs, allow the board to conduct a desk review to evaluate the program using the criteria typically used in an on-site visit and make recommendations to improve the program; and

(3) for the third consecutive year the student passage rate is lower than the board's required passage rate for students of approved in-state programs, provide notice on the program's Internet website that prospective students of the program may need to complete additional requirements to apply for an initial license in this state because the program has failed to meet the board's standards related to the required passage rate on the National Council Licensure Examination for Registered Nurses.

(d-12) A clinical competency assessment program operated in another state is not considered to meet standards substantially equivalent to the board's standards if the program fails to meet the

applicable requirements under Subsection (d-11) or if the program's graduating student passage rate on the National Council Licensure Examination for Registered Nurses is lower than the board's required passage rate for graduating students of approved in-state programs for four consecutive years. A student enrolled in a program described by this subsection before December 31 of the fourth consecutive year is eligible to apply for an initial license under this chapter. The program shall notify a student who enrolls in the program after December 31 of the fourth consecutive year that the student is required to complete additional requirements established by the board under Subsection (d-4) to apply for an initial license under this chapter.

(e) The board shall give each person, including an organization, affected by an order or decision of the board under this section reasonable notice of not less than 20 days and an opportunity to appear and be heard regarding the order or decision. The board shall hear each protest or complaint from a person affected by a rule or decision regarding:

(1) the inadequacy or unreasonableness of any rule or order the board adopts; or

(2) the injustice of any order or decision of the board.

(f) Not later than the 30th day after the date an order is entered and approved by the board, a person is entitled to bring an action against the board in a district court of Travis County to have the rule or order vacated or modified, if that person:

(1) is affected by the order or decision;

(2) is dissatisfied with any rule or order of the board; and

(3) sets forth in a petition the principal grounds of objection to the rule or order.

(g) An appeal under this section shall be tried de novo as if it were an appeal from a justice court to a county court.

(h) The board, in collaboration with the nursing educators, the Texas Higher Education Coordinating Board, and the Texas Health Care Policy Council, shall implement, monitor, and evaluate a plan for the creation of innovative nursing education models that promote increased enrollment in this state's nursing programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.011, 1.012, eff. Sept. 1,

2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 13, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 2, eff. June 19, 2009.
Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 7, eff. September 1, 2017.

Sec. 301.1571. USE OF STANDARDIZED EXAMINATIONS. (a) The board shall adopt rules related to the use by a school of nursing or educational program offered in this state of a standardized examination prepared by a private entity. The rules must prohibit the use of a standardized examination as a graduation requirement or to deny students an affidavit of graduation. The rules may authorize the use of a standardized examination only to:
(1) familiarize students with computerized testing;
(2) assess potential or enrolled students for purposes of:
(A) serving as one component of admissions criteria;
(B) evaluating a student's strengths and weaknesses for remediation purposes; or
(C) identifying students experiencing academic difficulties who require early remediation; or
(3) assess the effectiveness of the school of nursing or educational program by providing:
(A) trend data on student performance;
(B) a comparison of student performance with nationwide averages;
(C) feedback of student knowledge of program content;
(D) data to monitor the effectiveness of specific course, level, and program curriculum revisions;
(E) a measure of student mastery of content; or
(F) an evaluation of the effectiveness of curriculum content for revision purposes.
(b) The rules adopted under Subsection (a) must provide that a score on a standardized examination may not account for more than 10 percent of a course grade for a course in a school of nursing or educational program.
(c) A school of nursing or educational program that determines

a student is in need of academic remediation on the basis of a standardized examination may not require the student to attend any course offered by the examination provider.

(d) Failure to comply with the rules adopted under Subsection (a) may subject the school of nursing or educational program to disciplinary action, including removal of the school's or program's approval status, as determined by the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 286 (S.B. 1429), Sec. 1, eff. September 1, 2023.

Sec. 301.158. DISSEMINATION OF INFORMATION. The board shall disseminate, at least twice a year and at other times the board determines necessary, information that is of significant interest to nurses and employers of nurses in this state, including summaries of final disciplinary action taken against nurses by the board since its last dissemination of information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.013, eff. Sept. 1, 2003.

Sec. 301.1581. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 4, eff. Sept. 1, 2003.

Sec. 301.1582. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 4, eff. Sept. 1, 2003.

Sec. 301.1583. DISCIPLINARY ACTION. (a) The board shall remove a disciplinary action from the nurse licensure verification page on the board's Internet website if:

(1) the disciplinary action is the only disciplinary action taken against the nurse;

(2) the disciplinary action was taken by the board for a violation that is not related to the practice of nursing;

(3) the disciplinary action did not result in the suspension or revocation of, or the probation of the suspension or revocation of, the nurse's license;

(4) the disciplinary action does not provide any indication that continued practice by the nurse may risk harm to a patient; and

(5) the nurse has successfully completed the requirements imposed by the board in the disciplinary order related to the disciplinary action.

(b) A disciplinary action that is removed from the nurse licensure verification page on the board's Internet website under Subsection (a) shall be removed from the public portion of the coordinated licensure information system, as defined by Section 304.0015 in Article II of the Nurse Licensure Compact.

Added by Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 8, eff. September 1, 2017.

Sec. 301.159. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.1595. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to perform the advisory functions assigned by the board.

(b) An advisory committee shall provide independent expertise on board functions and policies, but may not be involved in setting board policy.

(c) The board shall adopt rules regarding the purpose, structure, and use of advisory committees, including rules on:

(1) the purpose, role, responsibility, and goal of an advisory committee;

(2) the size and quorum requirements for an advisory committee;

(3) the composition and representation of an advisory committee;

(4) the qualifications of advisory committee members, such as experience or area of residence;

(5) the appointment procedures for advisory committees;

(6) the terms of service for advisory committee members;

(7) the training requirements for advisory committee members, if necessary;

(8) the method the board will use to receive public input on issues addressed by an advisory committee; and

(9) the development of board policies and procedures to ensure advisory committees meet the requirements for open meetings under Chapter 551, Government Code, including notification requirements.

(d) A board member may not serve as a member of an advisory committee, but may serve as a liaison between an advisory committee and the board. A board member liaison that attends advisory committee meetings may attend only as an observer and not as a participant. A board member liaison is not required to attend advisory committee meetings. The role of a board member liaison is limited to clarifying the board's charge and intent to the advisory committee.

(e) To the extent of any conflict with Chapter 2110, Government Code, this section and board rules adopted under this section control.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 14, eff. September 1, 2007.

Sec. 301.1605. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS. (a) The board may approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing.

(b) The board shall specify the procedures to be followed in applying for approval of a pilot program. The board may condition approval of a program on compliance with this section and rules adopted under this section.

(c) In approving a pilot program, the board may grant the program an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of nursing, including education and reporting requirements for nurses. The board may not grant an exception to:

(1) the education requirements of this chapter unless the program includes alternate but substantially equivalent requirements; or

(2) the mandatory reporting requirements unless the program:

(A) is designed to evaluate the efficiency of alternative reporting methods; and

(B) provides consumers adequate protection from nurses whose continued practice is a threat to public safety.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 5, eff. June 19, 2009.

Sec. 301.1606. PILOT PROGRAMS ON NURSE REPORTING SYSTEMS. (a) The board may solicit proposals for pilot programs designed to evaluate the efficacy and effect on protection of the public of reporting systems designed to encourage identification of system errors.

(b) The board may grant a pilot program approved under this section an exception to the mandatory reporting requirements of

Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of nursing, including education and reporting requirements for nurses. If the board grants an exception, the board may require that the program:

(1) provide for the remediation of the deficiencies of a nurse who has knowledge or skill deficiencies that unless corrected may result in an unreasonable risk to public safety;

(2) provide for supervision of the nurse during remediation of deficiencies under Subdivision (1);

(3) require reporting to the board of a nurse:

(A) who fails to satisfactorily complete remediation, or who does not make satisfactory progress in remediation, under Subdivision (1);

(B) whose incompetence in the practice of nursing would pose a continued risk of harm to the public; or

(C) whose error contributed to a patient death or serious patient injury; or

(4) provide for a nursing peer review committee to review whether a nurse is appropriate for remediation under Subdivision (1).

(c) The board may require that the entity conducting a pilot program under this section reimburse the board for the cost of monitoring and evaluating the pilot program.

(d) The board may contract with a third party to perform the monitoring and evaluation.

(e) The board may limit the number of pilot programs that it approves under this section.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 6, eff. June 19, 2009.

Sec. 301.161. ENFORCEMENT. (a) The board shall aid in the enforcement of this chapter.

(b) The board may:

(1) issue a subpoena;

(2) compel the attendance of a witness;

(3) administer an oath to a person giving testimony at hearings; and

(4) cause the prosecution of each person violating this chapter.

(c) The attorney general shall provide legal assistance necessary to enforce this chapter. This subsection does not relieve a local prosecuting officer of any duty under the law.

(d) The board may establish a criminal investigations unit to investigate suspected criminal acts relating to the practice of nursing as authorized by this chapter.

(e) The board may assist federal, state, or local law enforcement agencies in the investigation and prosecution of crimes related to the practice of nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 1, eff. September 1, 2005.

Sec. 301.1615. OBTAINING CRIMINAL HISTORY RECORD INFORMATION; HEARING. (a) In addition to the information to which the board is entitled under Section 411.125, Government Code, the board may request and receive criminal history record information from the Federal Bureau of Investigation as provided by Section 411.087, Government Code.

(b) Criminal history record information received by the board may be used only by the board and is privileged. The information may not be disclosed to any person other than:

(1) as required under a court order; or

(2) to a nursing board that is a member of the nurse licensure compact under Chapter 304.

(c) If, on the basis of criminal history record information obtained by the board, the board proposes to deny an application for a license, refuse to renew a license, or suspend or revoke a license or temporary permit, the applicant or license holder is entitled to a hearing under Section 301.454.

Added by Acts 2003, 78th Leg., ch. 1102, Sec. 1, eff. Sept. 1, 2003.

Sec. 301.162. LEGAL COUNSEL. The board may retain legal counsel to represent the board if first:

(1) the board requests the attorney general to represent the board; and

(2) the attorney general certifies to the board that the attorney general cannot provide those services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.164. ASSISTANCE OF PROSECUTOR. A board member may present to a prosecuting officer a complaint relating to a violation of this chapter. The board, through its members, officers, counsel, or agents, shall assist in the trial of a case involving an alleged violation of this chapter, subject to the control of the prosecuting officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.166. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 15, eff. September 1, 2007.

Sec. 301.167. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 15, eff. September 1, 2007.

Sec. 301.168. DUTIES REGARDING PRESCRIPTIVE AUTHORITY AGREEMENTS. The board shall in conjunction with the Texas Medical Board and the Texas Physician Assistant Board perform the functions and duties relating to prescriptive authority agreements assigned to the board in Sections 157.0512 and 157.0513.

Added by Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 18, eff. November 1, 2013.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 301.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.202. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the board;

(2) on a sign prominently displayed in the place of

business of each person regulated by the board; or

(3) in a bill for service provided by a person regulated by the board.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 999, Sec. 17, eff. June 19, 2009.

(c) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 17, eff. June 19, 2009.

Sec. 301.203. RECORDS AND ANALYSIS OF COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about:

(1) parties to the complaint;

(2) the subject matter of the complaint;

(3) a summary of the results of the review or investigation of the complaint; and

(4) the complaint's disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the parties to the complaint of the status of the complaint until final disposition unless notice would jeopardize an undercover investigation.

(d) The board shall develop a method for analyzing the sources and types of complaints and violations and establish categories for the complaints and violations. The board shall use the analysis to focus its information and education efforts on specific problem areas identified through the analysis.

(e) The board shall analyze complaints filed with the board to identify any trends or issues related to certain violations, including:

(1) the reason for each complaint;

(2) how each complaint was resolved; and

(3) the subject matter of each complaint that was not

within the jurisdiction of the board and how the board responded to the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 16, eff. September 1, 2007.

Sec. 301.204. GENERAL RULES, POLICIES, AND PROCEDURES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules, policies, and procedures concerning the investigation of a complaint filed with the board. The rules, policies, or procedures adopted under this subsection must:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and

(6) by rule allow appropriate employees of the board to dismiss a complaint if an investigation demonstrates that:

(A) a violation did not occur; or

(B) the subject of the complaint is outside the board's jurisdiction.

(b) The board shall:

(1) dispose of all complaints in a timely manner; and

(2) establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify the parties of the projected time requirements for pursuing the complaint.

(d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date

the change is made.

(e) The executive director of the board shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

(f) At each public meeting of the board, the executive director shall report to the board each complaint dismissed under Subsection (a)(6) since the board's last public meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 18, eff. September 1, 2007.

Sec. 301.205. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR EMERGENCY RELIEF PROGRAMS. (a) In this section, "emergency relief program" means a program operated or sponsored by the federal government, the state, or a nonprofit organization to provide nurses to assist in providing health care to victims or potential victims of a disaster or state or local emergency.

(b) A nurse's personal contact information, including e-mail addresses, telephone numbers, and fax numbers, collected by the board for use by an emergency relief program is:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than for

the purpose of contacting the nurse to assist in an emergency relief program.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 7, eff. June 19, 2009.

Sec. 301.207. CONFIDENTIALITY OF INFORMATION PROVIDED FOR LICENSURE. The following information that a person submits to the board for a petition for a declaratory order of eligibility for a license or for an application for an initial license or a license renewal under this chapter is confidential to the same extent information collected on a nurse as part of an investigation of a complaint is confidential under Section 301.466:

(1) information, including diagnosis and treatment, regarding a person's physical or mental condition, intemperate use of drugs or alcohol, or chemical dependency;

(2) information regarding a person's criminal history; and

(3) any other information in the petition for declaratory order of eligibility.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 7, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 1, eff. September 1, 2011.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 301.251. LICENSE REQUIRED. (a) A person may not practice or offer to practice professional nursing or vocational nursing in this state unless the person is licensed as provided by this chapter.

(b) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

(1) the title "Registered Nurse," "Professional Nurse," "Licensed Vocational Nurse," "Vocational Nurse," "Licensed Practical Nurse," "Practical Nurse," or "Graduate Nurse";

(2) the abbreviation "R.N.," "L.V.N.," "V.N.," "L.P.N.," or "P.N."; or

(3) any other designation tending to imply that the person is a licensed registered nurse or vocational nurse.

(c) This section does not apply to a person entitled to practice nursing in this state under Chapter 304.

(d) Unless the person holds a license under this chapter, a person may not use, in connection with the person's name:

(1) the title "nurse"; or

(2) any other designation tending to imply that the person is licensed to provide nursing care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.122(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.014, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 5, eff. May 20, 2005.

Sec. 301.2511. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE APPLICANTS. (a) An applicant for a vocational, registered, or advanced practice registered nurse license must submit to the board, in addition to satisfying the other requirements of this subchapter, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may deny a license to an applicant who does not comply with the requirement of Subsection (a). Issuance of a license by the board is conditioned on the board obtaining the applicant's criminal history record information under this section.

(c) The board by rule shall develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for licensure as a vocational, registered, or advanced practice registered nurse by requiring the person to submit to the board a set of fingerprints that meets the requirements of Subsection (a). The board may develop a similar system for an applicant for enrollment in a nursing educational program. The board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

Added by Acts 2003, 78th Leg., ch. 1102, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 66, eff. June 13, 2023.

Sec. 301.252. LICENSE APPLICATION. (a) Each applicant for a registered nurse license or a vocational nurse license must submit to the board a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant:

(1) has good professional character related to the practice of nursing;

(2) has successfully completed a program of professional or vocational nursing education approved under Section 301.157(d); and

(3) has passed the jurisprudence examination approved by the board as provided by Subsection (a-1).

(a-1) The jurisprudence examination shall be conducted on the licensing requirements under this chapter and board rules and other laws, rules, or regulations applicable to the nursing profession in this state. The board shall adopt rules for the jurisprudence examination under Subsection (a)(3) regarding:

(1) the development of the examination;

(2) applicable fees;

(3) administration of the examination;

(4) reexamination procedures;

(5) grading procedures; and

(6) notice of results.

(a-2) An applicant who provides satisfactory evidence that the applicant has not committed a violation of this chapter or a rule adopted under this chapter is considered to have good professional character related to the practice of nursing. A determination by the board that an applicant does not have good professional character related to the practice of nursing must be based on a showing by the board of a clear and rational connection between a violation of this chapter or a rule adopted under this chapter and the applicant's ability to effectively practice nursing.

(b) The board may waive the requirement of Subsection (a)(2) for a vocational nurse applicant if the applicant provides

satisfactory sworn evidence that the applicant has completed an acceptable level of education in:

(1) a professional nursing school approved under Section 301.157(d); or

(2) a school of professional nurse education located in another state or a foreign country.

(c) The board by rule shall determine acceptable levels of education under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.015, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 19, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 9, eff. September 1, 2017.

Sec. 301.253. EXAMINATION. (a) Except as provided by Section 301.452, an applicant is entitled to take the examination prescribed by the board if:

(1) the board determines that the applicant meets the qualifications required by Section 301.252; and

(2) the applicant pays the fees required by the board.

(b) Each examination administered under this section must be prepared by a national testing service or the board. The board shall ensure that the examination is administered in various cities throughout the state.

(c) The examination shall be designed to determine the fitness of the applicant to practice professional nursing or vocational nursing.

(c-1) The board shall:

(1) adopt policies and guidelines detailing the procedures for the testing process, including test admission, test administration, and national examination requirements; and

(2) post on the board's Internet website the policies that reference the testing procedures by the national organization selected by the board to administer an examination.

(d) The board shall determine the criteria that determine a passing score on the examination. The criteria may not exceed those

required by the majority of the states.

(e) A written examination prepared, approved, or offered by the board, including a standardized national examination, must be validated by an independent testing professional.

(f) The board shall develop a written refund policy regarding examination fees that:

(1) defines the reasonable notification period and the emergencies that would qualify for a refund; and

(2) does not conflict with any examination fee or refund policy of the testing service involved in administering the examination.

(g) The board may recommend to a national testing service selected by the board to offer examinations under this section the board's written policy for refunding an examination fee for an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.016, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 20, eff. September 1, 2007.

Sec. 301.254. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the

person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.255. REEXAMINATION. The board by rule shall establish conditions under which an applicant who fails an examination may retake the examination. For an applicant who fails the examination two or more times, the board may:

(1) require the applicant to fulfill additional educational requirements; or

(2) deny the applicant the opportunity to retake the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.256. ISSUANCE OF LICENSE. If the results of an examination taken under Section 301.253 or 301.255 satisfy the criteria established by the board under that section, the board shall issue to the applicant a license to practice professional nursing or vocational nursing in this state. The license must be signed by the board's presiding officer and the executive director and attested by the board's seal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.017, eff. Sept. 1, 2003.

Sec. 301.257. DECLARATORY ORDER OF LICENSE ELIGIBILITY. (a) A person may petition the board for a declaratory order as to the person's eligibility for a license under this chapter if the person has reason to believe that the person is ineligible for the license and:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse; or

(2) is an applicant for a license.

(b) The petition must state the basis for the person's potential ineligibility.

(c) The board has the same powers to investigate the petition

and the person's eligibility that it has to investigate a person applying for a license.

(d) The petitioner or the board may amend the petition to include additional grounds for potential ineligibility at any time before a final determination is made.

(e) If the board determines that a ground for ineligibility does not exist, instead of issuing an order, the board shall notify the petitioner in writing of the board's determination on each ground of potential ineligibility. If the board proposes to find that the petitioner is ineligible for a license, the petitioner is entitled to a hearing before the State Office of Administrative Hearings.

(f) The board's order must set out each basis for potential ineligibility and the board's determination as to eligibility. In the absence of new evidence known to but not disclosed by the petitioner or not reasonably available to the board at the time the order is issued, the board's ruling on the petition determines the person's eligibility with respect to the grounds for potential ineligibility set out in the written notice or order.

(g) The board may require an individual accepted for enrollment or enrolled in an educational program preparing a student for initial licensure as a registered nurse or vocational nurse to submit information to the board to permit the board to determine whether the person is aware of the conditions that may disqualify the person from licensure as a registered nurse or vocational nurse on graduation and of the person's right to petition the board for a declaratory order under this section. Instead of requiring the person to submit the information, the board may require the educational program to collect and submit the information on each person accepted for enrollment or enrolled in the program.

(h) The information required under Subsection (g) must be submitted in a form approved by the board.

(i) If, as a result of information provided under Subsection (g), the board determines that a person may not be eligible for a license on graduation, the board shall notify the educational program of its determination.

(j) The board may file a petition under this section based on the results of a criminal history record information check conducted under Section 301.2511. The board by rule shall adopt requirements for the petition and determination under this subsection. The rules must:

(1) identify the criminal offenses that constitute grounds for the board to file the petition; and

(2) describe the documents required by the board to make a determination of license eligibility.

(k) The board shall make a determination of license eligibility under Subsection (j) not later than the 120th day after the date the person submits the required documents to the board under that subsection.

(l) The board may require in a declaratory order under this section that a person begin participation in a peer assistance program at the time of receipt of an initial license under this chapter. The board shall notify the person that, on issuance of the person's initial license, the person may request reevaluation of the person's required participation in the peer assistance program.

(m) The board by rule shall develop a process to determine whether a person should continue to be required to participate in a peer assistance program. In making the determination, the board shall:

(1) review the person's criminal history record information and, if applicable, determine whether participation in the program is warranted based on the time that has elapsed since the conviction or end of community supervision;

(2) reevaluate or require a contractor administering a peer assistance program to reevaluate the treatment plan or the time the person is required to participate in the peer assistance program based on the person's individualized needs; and

(3) authorize, as appropriate, a waiver of peer assistance program completion if the board is satisfied the person has achieved a satisfactory period of treatment or documented sobriety, as defined by board rules, and continued participation is not necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.123(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.018, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 8, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 10, eff.

September 1, 2017.

Sec. 301.258. TEMPORARY PERMIT. (a) Pending the results of a licensing examination, the board may issue to an applicant who is a graduate of an approved educational program a permit to practice professional nursing under the direct supervision of a registered nurse or to practice vocational nursing under the direct supervision of a registered nurse or vocational nurse.

(b) The board may not issue a permit under this section to an applicant who has previously failed an examination administered by the board or another state.

(c) A permit issued under Subsection (a) expires on the date of receipt of:

(1) a permanent license; or

(2) a notice from the board that the permit holder has failed the examination.

(d) The board may issue a temporary permit to practice professional nursing or vocational nursing for the limited purpose of allowing a nurse to satisfy a requirement imposed by the board necessary for:

(1) renewal of an expired license;

(2) reactivation of an inactive license; or

(3) reissuance of a suspended, revoked, or surrendered license.

(e) A permit issued under Subsection (d) expires on the earlier of:

(1) the date of receipt of a permanent license; or

(2) six months after the date the permit is issued.

(f) A person who holds a temporary permit issued under this section is considered to be a licensed registered nurse or vocational nurse for all purposes except to the extent of any stipulation or limitation on practice imposed by the board as a condition of issuing the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.019, eff. Sept. 1, 2003.

Sec. 301.259. RECIPROCAL LICENSE BY ENDORSEMENT FOR CERTAIN

FOREIGN APPLICANTS. On payment of a fee established by the board, the board may issue a license to practice as a registered nurse or vocational nurse in this state by endorsement without examination to an applicant who holds a registration certificate as a registered nurse or vocational nurse, as applicable, issued by a territory or possession of the United States or a foreign country if the board determines that the issuing agency of the territory or possession of the United States or foreign country required in its examination the same general degree of fitness required by this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.020, eff. Sept. 1, 2003.

Sec. 301.260. TEMPORARY LICENSE BY ENDORSEMENT. (a) An applicant for a license under this chapter who is licensed as a registered nurse or vocational nurse by another state may qualify for a temporary license by endorsement to practice as a registered nurse or vocational nurse, as applicable, by submitting to the board:

(1) an endorsement fee as determined by the board and a completed sworn application in the form prescribed by the board;

(2) evidence that the person possessed, at the time of initial licensing as a nurse, the other qualifications necessary at that time to have been eligible for licensing in this state; and

(3) proof of initial licensing by examination and proof that the license and any other license issued to the applicant by another state have not been suspended, revoked, canceled, surrendered, or otherwise restricted.

(b) A holder of a temporary license under this section is entitled to receive a permanent license if the applicant:

(1) verifies the applicant's academic and professional credentials; and

(2) satisfies any other requirement established by statute.

(c) The board shall grant or deny an application for a permanent license not later than the 180th day after the date the board receives all required forms or information. The board may extend that deadline to allow for the receipt and tabulation of examination results.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.021, eff. Sept. 1, 2003.

Sec. 301.261. INACTIVE STATUS. (a) The board may place on inactive status the license of a person under this chapter who is not actively engaged in the practice of professional nursing or vocational nursing if the person submits a written request to the board in the form and manner determined by the board. The inactive status begins on the expiration date of the person's license.

(b) The board shall maintain a list of each person whose license is on inactive status.

(c) A person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.

(d) The board shall remove a person's license from inactive status if the person:

(1) requests that the board remove the person's license from inactive status;

(2) pays each appropriate fee; and

(3) meets the requirements determined by the board.

(e) The board by rule shall permit a person whose license is on inactive status and who was in good standing with the board on the date the license became inactive to use, as applicable, the title "Registered Nurse Retired," "R.N. Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse Retired," "L.V.N. Retired," or "V.N. Retired" or another appropriate title approved by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.022, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 2, eff. September 1, 2011.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 301.301. LICENSE RENEWAL. (a) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) A person may renew an unexpired license issued under this chapter on payment to the board of the required renewal fee before the expiration date of the license and compliance with any other

renewal requirements adopted by the board. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required renewal fee and a late fee in the amount considered appropriate by the board to encourage timely renewal.

(c-1) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board all unpaid renewal fees and a late fee that is equal to twice the amount of a late fee under Subsection (c).

(d) The board by rule shall set a length of time beyond which an expired license may not be renewed. The board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the board beyond which a license may not be renewed. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(e) At least 30 days before the expiration of the person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the board.

(f) A registered nurse who practices professional nursing or a vocational nurse who practices vocational nursing after the expiration of the nurse's license is an illegal practitioner whose license may be revoked or suspended.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.023, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 21, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 11, eff. September 1, 2017.

Sec. 301.3011. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT

FOR RENEWAL. (a) The board may require that an applicant for renewal of an unexpired license submit to the board, in addition to satisfying any other requirements for license renewal, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may refuse to renew the license of a person who does not comply with the requirement of Subsection (a). Renewal of a license by the board is conditioned on the board obtaining the person's criminal history record information under this section.

Added by Acts 2003, 78th Leg., ch. 1102, Sec. 3, eff. Sept. 1, 2003.

Sec. 301.302. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed to practice professional nursing or vocational nursing in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application may obtain a new license without examination.

(b) The person must pay to the board a fee that is equal to the amount of the initial fee for the license and the renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.024, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 22, eff. September 1, 2007.

Sec. 301.303. CONTINUING COMPETENCY. (a) The board may recognize, prepare, or implement continuing competency programs for license holders under this chapter and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including:

(1) completion of targeted continuing education programs; and

(2) consideration of a license holder's professional portfolio, including certifications held by the license holder.

(b) The board may not require participation in more than a

total of 20 hours of continuing education in a two-year licensing period.

(c) If the board requires participation in continuing education programs as a condition of license renewal, the board by rule shall establish a system for the approval of programs and providers of continuing education.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(1), eff. September 1, 2007.

(e) The board may adopt other rules as necessary to implement this section.

(f) The board may assess each program and provider under this section a fee in an amount that is reasonable and necessary to defray the costs incurred in approving programs and providers.

(g) The board by rule may establish guidelines for targeted continuing education required under this chapter. The rules adopted under this subsection must address:

(1) the nurses who are required to complete the targeted continuing education program;

(2) the type of courses that satisfy the targeted continuing education requirement;

(3) the time in which a nurse is required to complete the targeted continuing education;

(4) the frequency with which a nurse is required to meet the targeted continuing education requirement; and

(5) any other requirement considered necessary by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 876, Sec. 3, 4, eff. June 20, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(1), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 23, eff. September 1, 2007.

Sec. 301.304. CONTINUING EDUCATION IN TICK-BORNE DISEASES. (a) As part of the continuing education requirements under Section

301.303, a license holder whose practice includes the treatment of tick-borne diseases shall be encouraged to participate, during each two-year licensing period, in continuing education relating to the treatment of tick-borne diseases.

(b) The board shall adopt rules to identify the license holders who are encouraged to complete continuing education under Subsection (a) and establish the content of that continuing education. In adopting rules, the board shall seek input from affected parties and review relevant courses, including courses that have been approved in other states. Rules adopted under this section must provide that continuing education courses representing an appropriate spectrum of relevant medical clinical treatment relating to tick-borne diseases qualify as approved continuing education courses for license renewal.

(c) If relevant, the board shall consider a license holder's participation in a continuing education course approved under Subsection (b) if:

(1) the license holder is being investigated by the board regarding the license holder's selection of clinical care for the treatment of tick-borne diseases; and

(2) the license holder completed the course not more than two years before the start of the investigation.

(d) The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1092 (S.B. 1360), Sec. 3, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1306 (H.B. 2975), Sec. 3, eff. September 1, 2011.

Sec. 301.305. CONTINUING EDUCATION IN NURSING JURISPRUDENCE AND NURSING ETHICS. (a) As part of a continuing competency program under Section 301.303, a license holder shall complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period.

(b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).

(c) The board may not require a license holder to complete more than four hours of continuing education under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 4, eff. September 1, 2013.

Sec. 301.306. FORENSIC EVIDENCE COLLECTION COMPONENT IN CONTINUING EDUCATION. (a) As part of continuing education requirements under Section 301.303, a license holder who is employed to work in an emergency room setting and who is required under board rules to comply with this section shall complete at least two hours of continuing education relating to forensic evidence collection not later than:

(1) September 1, 2008; or

(2) the second anniversary of the initial issuance of a license under this chapter to the license holder.

(b) The continuing education required under Subsection (a) must be part of a program approved under Section 301.303(c).

(c) The board shall adopt rules to identify the license holders who are required to complete continuing education under Subsection (a) and to establish the content of that continuing education. The board may adopt other rules to implement this section, including rules under Section 301.303(c) for the approval of education programs and providers.

Added by Acts 2005, 79th Leg., Ch. 782 (S.B. 39), Sec. 2, eff. September 1, 2005.

Sec. 301.307. CONTINUING EDUCATION IN OLDER ADULT OR GERIATRIC CARE. (a) As part of a continuing competency program under Section 301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations.

(b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).

(c) The board may not require a license holder to complete more

than six hours of continuing education under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 4, eff. September 1, 2013.

Sec. 301.308. CONTINUING EDUCATION IN HUMAN TRAFFICKING PREVENTION. (a) As part of a continuing competency program under Section 301.303, a license holder who provides direct patient care shall complete a human trafficking prevention course approved by the executive commissioner of the Health and Human Services Commission under Section 116.002.

(b) The board shall adopt rules to implement this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 796 (H.B. 2059), Sec. 3, eff. September 1, 2019.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 301.351. DESIGNATIONS. (a) A person who holds a license as a registered nurse under this chapter:

(1) is referred to as a registered nurse; and

(2) may use the abbreviation "R.N."

(b) A person who holds a license as a vocational nurse under this chapter:

(1) is referred to as a licensed vocational nurse or vocational nurse; and

(2) may use the abbreviation "L.V.N." or "V.N."

(c) While interacting with the public in a nursing role, each nurse shall wear a clearly legible insignia identifying the nurse as a registered or vocational nurse. The insignia may not contain information other than:

(1) the registered or vocational nurse designation;

(2) the nurse's name, certifications, academic degrees, or practice position;

(3) the name of the employing facility or agency, or other employer;

(4) a picture of the nurse; or

(5) any other information authorized by the board.

(d) The board may adopt rules establishing specifications for the insignia.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.027, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 5, eff. June 20, 2003. Reenacted and amended by Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 6, eff. May 20, 2005.

Sec. 301.352. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) A person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against:

(1) a nurse who refuses to engage in an act or omission as provided by Subsection (a-1); or

(2) a person who advises a nurse of the nurse's rights under this section.

(a-1) A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I, that constitutes a minor incident, or that violates this chapter or a board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

(1) constitutes grounds for reporting the nurse to the board; or

(2) is a violation of this chapter or a rule of the board.

(b) An act by a person under Subsection (a) does not constitute a violation of this section if a nursing peer review committee under Chapter 303 determines:

(1) that the act or omission the nurse refused to engage in was not:

(A) conduct reportable to the board under Section 301.403;

(B) a minor incident; or

(C) a violation of this chapter or a board rule; or

(2) that:

(A) the act or omission in which the nurse refused to engage was conduct reportable to the board, a minor incident, or a violation of this chapter or a board rule; and

(B) the person:

(i) rescinds any disciplinary or discriminatory action taken against the nurse;

(ii) compensates the nurse for lost wages; and

(iii) restores to the nurse any lost benefits.

(c) A nurse's rights under this section may not be nullified by a contract.

(d) An appropriate licensing agency may take action against a person who violates this section.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(2), eff. September 1, 2007.

(f) A violation of this section is subject to Section 301.413.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.028, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 7, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(2), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 3, eff. September 1, 2011.

Sec. 301.353. SUPERVISION OF VOCATIONAL NURSE. The practice of vocational nursing must be performed under the supervision of a registered nurse, physician, physician assistant, podiatrist, or dentist.

Added by Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 8, eff. May 20, 2005.

Sec. 301.354. NURSE FIRST ASSISTANTS; ASSISTING AT SURGERY BY OTHER NURSES. (a) In this section, "nurse first assistant" means a registered nurse who:

(1) has completed a nurse first assistant educational program approved or recognized by an organization recognized by the board; and

(2) is either:

(A) certified in perioperative nursing by an

organization recognized by the board; or

(B) recognized by the board as an advanced practice nurse and qualified by education, training, or experience to perform the tasks involved in perioperative nursing.

(b) Unless the person is a nurse first assistant, the person may not use:

(1) the title "nurse first assistant" or "registered nurse first assistant";

(2) the abbreviation "R.N.F.A."; or

(3) any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under this section.

(c) A health maintenance organization or an insurer, including an insurer offering a preferred provider benefit plan, may not, by contract or any other method, require a physician to use the services of a nurse first assistant.

(d) A nurse who is not a nurse first assistant may assist a physician, podiatrist, or dentist in the performance of surgery if the nurse:

(1) assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;

(2) is in the same sterile field as the physician, podiatrist, or dentist;

(3) is employed by:

(A) the physician, podiatrist, or dentist;

(B) a group to which the physician, podiatrist, or dentist belongs; or

(C) a hospital licensed or owned by the state; and

(4) is qualified by education, training, or experience to perform the tasks assigned to the nurse.

(e) A patient or third-party insurer may not be billed separately for the services performed by a nurse described by Subsection (d).

Added by Acts 2005, 79th Leg., Ch. 966 (H.B. 1718), Sec. 1, eff. September 1, 2005.
Renumbered from Occupations Code, Section 301.353 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(57), eff. September 1, 2007.

Sec. 301.356. REFUSAL OF MANDATORY OVERTIME. The refusal by a nurse to work mandatory overtime as authorized by Chapter 258, Health and Safety Code, does not constitute patient abandonment or neglect.

Added by Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 2, eff. September 1, 2009.

SUBCHAPTER I. REPORTING VIOLATIONS AND PATIENT CARE CONCERNS

Sec. 301.401. DEFINITIONS. In this subchapter:

(1) "Conduct subject to reporting" means conduct by a nurse that:

(A) violates this chapter or a board rule and contributed to the death or serious injury of a patient;

(B) causes a person to suspect that the nurse's practice is impaired by chemical dependency or drug or alcohol abuse;

(C) constitutes abuse, exploitation, fraud, or a violation of professional boundaries; or

(D) indicates that the nurse lacks knowledge, skill, judgment, or conscientiousness to such an extent that the nurse's continued practice of nursing could reasonably be expected to pose a risk of harm to a patient or another person, regardless of whether the conduct consists of a single incident or a pattern of behavior.

(2) "Minor incident" means conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person. This term is synonymous with "minor error" or "minor violation of this chapter or board rule."

(3) "Nursing educational program" means an educational program that is considered approved by the board that may lead to an initial license as a registered nurse or vocational nurse.

(4) "Nursing student" means an individual who is enrolled in a nursing educational program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.029, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 6, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 9, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 9, eff. June 19, 2009.

Sec. 301.4011. GOOD FAITH REPORT BY NURSE. In this subchapter, a report is considered to be made in good faith if:

(1) the person reporting believed that the report was required or authorized; and

(2) there was a reasonable factual or legal basis for that belief.

Added by Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 2, eff. September 1, 2011.

Sec. 301.402. MANDATORY REPORT BY NURSE. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(3), eff. September 1, 2007.

(b) A nurse shall report to the board in the manner prescribed under Subsection (d) if the nurse has reasonable cause to suspect that:

(1) another nurse has engaged in conduct subject to reporting; or

(2) the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(3), eff. September 1, 2007.

(d) A report by a nurse under Subsection (b) must:

(1) be written and signed; and

(2) include the identity of the nurse or student and any additional information required by the board.

(e) Instead of reporting to the board under Subsection (b), a nurse may make a report required under:

(1) Subsection (b)(1) to a nursing peer review committee under Chapter 303; or

(2) Subsection (b)(2) to the nursing educational program in which the student is enrolled.

(f) A person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who:

(1) reports in good faith under this section; or

(2) advises a nurse of the nurse's rights and obligations under this section.

(g) A violation of Subsection (f) is subject to Section 301.413.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.030, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 7, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 10, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 7, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(3), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 3, eff. September 1, 2011.

Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) In a written, signed report to the appropriate licensing board or accrediting body, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:

(1) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or

(2) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.

(b) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(c) A person may not suspend or terminate the employment of, or otherwise discipline, discriminate against, or retaliate against, a person who:

(1) reports in good faith under this section; or

(2) advises a nurse of the nurse's right to report under this section.

(d) A violation of Subsection (c) is subject to Section 301.413.

Added by Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 9, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 4, eff. September 1, 2011.

Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. (a) Except as provided by Subsection (b), a nursing peer review committee operating under Chapter 303 that determines that a nurse has engaged in conduct subject to reporting shall file with the board a written, signed report that includes:

(1) the identity of the nurse;

(2) a description of any corrective action taken against the nurse;

(3) a recommendation whether the board should take formal disciplinary action against the nurse and the basis for the recommendation;

(4) a description of the conduct subject to reporting;

(5) the extent to which any deficiency in care provided by the reported nurse was the result of a factor beyond the nurse's control; and

(6) any additional information the board requires.

(b) A report under Subsection (a) is not required if:

(1) the nursing peer review committee determines that the reported conduct was a minor incident that is not required to be reported under board rule; or

(2) the nurse has been reported to the board for the conduct under Section 301.405.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.031, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 11, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 10, eff. September 1, 2007.

Sec. 301.404. DUTY OF NURSING EDUCATIONAL PROGRAM TO REPORT. A nursing educational program that has reasonable cause to suspect that the ability of a nursing student to perform the services of the nursing profession would be, or would reasonably be expected to be, impaired by chemical dependency shall file with the board a written, signed report that includes the identity of the student and any additional information the board requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.032, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 11, eff. September 1, 2007.

Sec. 301.405. DUTY OF PERSON EMPLOYING NURSE TO REPORT. (a) This section applies only to a person who employs, hires, or contracts for the services of a nurse, including:

(1) a health care facility, including a hospital, health science center, nursing home, or home health agency;

(2) a state agency;

(3) a political subdivision;

(4) a school of nursing; and

(5) a temporary nursing service.

(b) A person that terminates, suspends for more than seven days, or takes other substantive disciplinary action, as defined by the board, against a nurse, or a substantially equivalent action against a nurse who is a staffing agency nurse, because the nurse engaged in conduct subject to reporting shall report in writing to the board:

(1) the identity of the nurse;

(2) the conduct subject to reporting that resulted in the termination, suspension, or other substantive disciplinary action or

substantially equivalent action; and

(3) any additional information the board requires.

(c) If a person who makes a report required under Subsection (b) is required under Section 303.0015 to establish a nursing peer review committee, the person shall submit a copy of the report to the nursing peer review committee. The nursing peer review committee shall review the conduct to determine if any deficiency in care by the reported nurse was the result of a factor beyond the nurse's control. A nursing peer review committee that determines that there is reason to believe that the nurse's deficiency in care was the result of a factor beyond the nurse's control shall report the conduct to the patient safety committee at the facility where the reported conduct occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

(e) The requirement under Subsection (c) that a nursing peer review committee review the nurse and the incident does not subject a person's administrative decision to discipline a nurse to the peer review process.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(4), eff. September 1, 2007.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.033, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 12, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 12, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(4), eff. September 1, 2007.

Sec. 301.406. DUTY OF CERTAIN PROFESSIONAL ASSOCIATIONS AND ORGANIZATIONS TO REPORT. A professional association of nurses or an

organization that conducts a certification or accreditation program for nurses and that expels, decertifies, or takes any other substantive disciplinary action, as defined by the board, against a nurse as a result of the nurse's failure to conform to the minimum standards of acceptable nursing practice shall report in writing to the board the identity of the nurse and any additional information the board requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.034, eff. Sept. 1, 2003.

Sec. 301.407. DUTY OF STATE AGENCY TO REPORT. (a) This section applies only to a state agency that:

(1) licenses, registers, or certifies:

(A) a hospital;

(B) a nursing home;

(C) a health science center;

(D) a home health agency; or

(E) another health care facility or agency; or

(2) surveys a facility or agency listed in Subdivision (1) regarding the quality of nursing care provided by the facility or agency.

(b) Unless expressly prohibited by state or federal law, a state agency that has reason to believe that a nurse has engaged in conduct subject to reporting shall report the nurse in writing to the board or to a nursing peer review committee under Chapter 303.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.035, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 13, eff. September 1, 2007.

Sec. 301.408. DUTY OF LIABILITY INSURER TO REPORT. (a) Each insurer that provides to a nurse liability insurance that covers claims arising from providing or failing to provide nursing care shall submit to the board the report or data required by this section at the time prescribed.

(b) The report or data must be provided for:

(1) a complaint filed in court against a nurse that seeks damages related to the nurse's conduct in providing or failing to provide nursing care; and

(2) a settlement of a claim or lawsuit made on behalf of a nurse.

(c) Not later than the 30th day after the date the insurer receives a complaint subject to Subsection (b), the insurer shall provide to the board:

(1) the name of the nurse against whom the claim is filed;

(2) the policy number;

(3) the policy limits;

(4) a copy of the petition;

(5) a copy of the answer; and

(6) other relevant information known by the insurer, as required by the board.

(d) Not later than the 30th day after the date of a judgment, dismissal, or settlement of a suit involving an insured nurse or settlement of a claim on behalf of the nurse without the filing of a lawsuit, the insurer shall provide to the board information regarding the date of the judgment, dismissal, or settlement and, if appropriate:

(1) whether an appeal has been taken from the judgment and by which party;

(2) the amount of the settlement or judgment against the nurse; and

(3) other relevant information known by the insurer, as required by the board.

(e) A nurse shall report the information required to be reported under this section if the nurse is named as a defendant in a claim arising from providing or failing to provide nursing care and the nurse:

(1) does not carry or is not covered by liability insurance; or

(2) is insured by a nonadmitted carrier.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.036, eff. Sept. 1, 2003.

Sec. 301.409. DUTY OF PROSECUTING ATTORNEY TO REPORT. (a) The

attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding is entered to prepare and forward to the board a certified true and correct abstract of the court record of the case not later than the 30th day after the date:

(1) a person known to be a nurse who is licensed, otherwise lawfully practicing in this state, or applying to be licensed to practice is convicted of:

(A) a felony;

(B) a misdemeanor involving moral turpitude;

(C) a violation of a state or federal narcotics or controlled substance law; or

(D) an offense involving fraud or abuse under the Medicare or Medicaid program; or

(2) a court finds that a nurse is mentally ill or mentally incompetent.

(b) A prosecuting attorney shall comply with Subsection (a) even if the conviction, adjudication, or finding is entered, withheld, or appealed under the laws of this state.

(c) The abstract required under Subsection (a) must include:

(1) the name and address of the nurse or applicant;

(2) a description of the nature of the offense committed, if any;

(3) the sentence, if any; and

(4) the judgment of the court.

(d) The board shall prepare the form of the abstract and distribute a copy to each district attorney and county attorney in this state with appropriate instructions for preparation and filing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.037, eff. Sept. 1, 2003.

Sec. 301.410. REPORT REGARDING IMPAIRMENT BY CHEMICAL DEPENDENCY, MENTAL ILLNESS, OR DIMINISHED MENTAL CAPACITY. (a) A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or mental illness may report to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, instead of reporting to the board or requesting review by a

nursing peer review committee.

(b) A person who is required to report a nurse under this subchapter because the nurse is impaired or suspected of being impaired by chemical dependency or diminished mental capacity must report to the board if the person believes that an impaired nurse committed a practice violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.038, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 24, eff. September 1, 2007.

Sec. 301.4105. BOARD RESPONSIBILITY FOLLOWING REPORT. The board shall determine whether a nurse violated this chapter or a rule adopted under this chapter for any case reported to the board in which the nurse's ability to perform the practice of nursing was impaired or suspected of being impaired by chemical dependency or diminished mental capacity and in which the nurse is suspected of committing a practice violation. The board, in deciding whether to take disciplinary action against the nurse for a violation of this chapter or board rules, shall balance the need to protect the public and the need to ensure the impaired nurse seeks treatment.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 25, eff. September 1, 2007.

Sec. 301.4106. PEER ASSISTANCE PROGRAMS. The board by rule shall develop guidelines to:

(1) outline the roles and responsibilities of the board and a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code;

(2) outline the process for a peer assistance program to refer to the board complaints alleging a violation of the practice of nursing;

(3) establish requirements for successfully completing a peer assistance program and for notification of the board of the successful completion by a nurse the board has ordered to attend or referred to the program;

(4) establish a clear procedure based on meaningful performance goals for evaluating the success of a peer assistance program established or approved by the board under Chapter 467, Health and Safety Code;

(5) establish individualized requirements for participants in a peer assistance program, including the duration of participation in a peer assistance program for substance use, based on the individual's diagnosis and needs; and

(6) ensure that participation requirements and treatment plans for peer assistance program participants who are referred to peer assistance for similar reasons are administered consistently.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 25, eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 12, eff. September 1, 2017.

Sec. 301.411. EFFECT OF FAILURE TO REPORT. (a) A person is not liable in a civil action for failure to file a report required by this subchapter.

(b) The appropriate state licensing agency may take action against a person regulated by the agency for a failure to report as required by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.412. REPORTING IMMUNITY. A person who in good faith makes a report required or authorized under this subchapter, or a person who advises a nurse of the nurse's right or obligation to report under this subchapter:

(1) is immune from civil and criminal liability that, in the absence of the immunity, might result from making the report or giving the advice; and

(2) may not be subjected to other retaliatory action as a result of making the report or giving the advice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 5, eff. September 1, 2011.

Sec. 301.413. RETALIATORY ACTION. (a) A person may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if:

(1) the person is named as a defendant in a civil action or subjected to other retaliatory action as a result of:

(A) filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352;

(B) requesting in good faith a nursing peer review committee determination under Section 303.005; or

(C) providing advice to a person regarding:

(i) filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352; or

(ii) requesting in good faith a nursing peer review committee determination under Section 303.005; and

(2) the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(b) A person may not suspend, terminate, or otherwise discipline, discriminate against, or retaliate against a person who:

(1) reports in good faith under this subchapter;

(2) requests, in good faith, a nursing peer review committee determination under Section 303.005;

(3) refuses to engage in conduct as authorized by Section 301.352; or

(4) advises a nurse of the nurse's right to:

(A) report under this subchapter;

(B) request a nursing peer review committee determination under Section 303.005; or

(C) refuse to engage in conduct as authorized by Section 301.352.

(b-1) A person suspected of violating Subsection (b) may be reported to the appropriate licensing agency and, notwithstanding any

other provision, that agency may impose an administrative penalty not to exceed $25,000 against the person if the agency finds a violation of Subsection (b). An administrative penalty imposed under this subsection is in addition to other penalties the agency is authorized to impose and is subject to the procedural requirements applicable to the appropriate licensing agency.

(c) A person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review committee determination under Section 303.005, or a person who advises a nurse of the nurse's right to report under this subchapter, refuse to engage in conduct as authorized by Section 301.352, or request a nursing peer review committee determination under Section 303.005, has a cause of action against a person who violates Subsection (b), and may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) $5,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amount recovered under Subsection (c), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and

(2) compensation for wages lost during the period of suspension or termination.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, for requesting a peer review committee determination under Section 303.005, or for providing advice to a person regarding reporting under this subchapter, refusing to engage in conduct as authorized by Section 301.352, or requesting a peer review committee determination under Section 303.005 if:

(1) the person was suspended, terminated, or otherwise

disciplined, discriminated against, or retaliated against within 60 days after the date the report, refusal, or request was made or the advice was given; and

(2) the board or a court determines that:

(A) the report that is the subject of the cause of action was:

(i) authorized or required under Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and

(ii) made in good faith;

(B) the request for a peer review committee determination that is the subject of the cause of action was:

(i) authorized under Section 303.005; and

(ii) made in good faith;

(C) the refusal to engage in conduct was authorized by Section 301.352; or

(D) the advice that is the subject of the cause of action was given in good faith.

(f) An action under this section may be brought in a district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

(g) Subject to Subsection (h), a nurse employed by a hospital operated by or on behalf of a state or local governmental entity who alleges a violation of Subsection (b) may sue the state or local governmental entity for relief under this section, and the sovereign immunity of the state or local governmental entity from suit and from liability is waived for the limited purpose of allowing the nurse to maintain a lawsuit in state court to obtain that relief. Relief under this section is in addition to any other remedies a nurse may have under state or federal law as a public employee. In this subsection:

(1) "Local governmental entity," "public employee," and "state governmental entity" have the meanings assigned by Section 554.001, Government Code.

(2) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code, and includes a mental hospital licensed under Chapter 577, Health and Safety Code.

(h) Relief may be granted in a lawsuit brought under Subsection

(g) for an alleged violation of Subsection (b)(1) based on a report made by a nurse under Section 301.4025(b) only if the nurse:

(1) made the report:

(A) in writing, which may be provided electronically; or

(B) verbally, if authorized by the nurse's employer or another entity at which the nurse is authorized to practice;

(2) made the report to:

(A) the nurse's supervisor;

(B) a committee authorized under state or federal law to receive reports under Section 301.4025(b); or

(C) an individual or committee authorized by the nurse's employer or another entity at which the nurse is authorized to practice; and

(3) made the report not later than:

(A) the fifth day after the date the nurse became aware of the situation if the situation involves a single incident; or

(B) the fifth day after the date the nurse became aware of the most recent occurrence of the situation if the situation involves multiple incidents or a pattern of behavior.

(i) For purposes of Subsection (h), "supervisor" means an individual who has authority over the responsibilities of the nurse making the report or an individual who is in the nurse's chain of command.

(j) The following provisions of Chapter 554, Government Code, apply to a lawsuit under Subsection (g):

(1) the type of relief and the amount of damages available to a public employee under Section 554.003;

(2) the time during which a public employee must seek relief under Section 554.005; and

(3) the requirement that a public employee use the grievance or appeal procedures of the state or local governmental entity before suing for relief under Section 554.006.

(k) A lawsuit under Subsection (g) against a state governmental entity shall be brought in a district court in Travis County or a county in which all or part of the acts or omissions giving rise to the cause of action occurred.

(l) A lawsuit under Subsection (g) against a local governmental entity shall be brought in a district court in a county in which all or part of the entity is located.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 14, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 742 (S.B. 476), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1258 (H.B. 581), Sec. 1, eff. September 1, 2013.

Sec. 301.414. NOTICE AND REVIEW OF REPORT. (a) The board shall notify each nurse who is reported to the board under Section 301.402, 301.403, 301.405, 301.406, 301.407, 301.408, or 301.409 of the filing of the report unless the notification would jeopardize an active investigation.

(b) The nurse or the nurse's authorized representative is entitled on request to review any report submitted to the board under a section specified under Subsection (a) unless doing so would jeopardize an active investigation. The board may not reveal the identity of the person making or signing the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.039, eff. Sept. 1, 2003.

Sec. 301.415. REBUTTAL STATEMENT. (a) A nurse who is entitled to receive notice under Section 301.414 or the authorized representative of the nurse may file with the board a statement of reasonable length containing the nurse's rebuttal of any information in the report to the board.

(b) The statement made under Subsection (a) must accompany the part of the report being rebutted.

(c) In investigating the report, the board shall:

(1) review the statement made under Subsection (a); and

(2) evaluate each reason asserted by the nurse to justify the nurse's conduct.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.040, eff. Sept. 1, 2003.

Sec. 301.416. INVESTIGATION. (a) Except as provided by Subsections (b) and (c), a report under this subchapter shall be treated as a complaint under Section 301.457.

(b) If the board determines that the reported conduct does not indicate that the continued practice of nursing by the nurse poses a risk of harm to a client or other person, the board, with the written consent of the nurse and the person making the report, may elect not to proceed with an investigation or to file formal charges. The board shall:

(1) maintain a record of the report; and

(2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

(c) The board is not required to investigate a report filed by an insurer under Section 301.408, but shall:

(1) maintain a record of the report; and

(2) investigate the report if it receives two or more reports involving separate incidents regarding the nurse in any five-year period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.041, eff. Sept. 1, 2003.

Sec. 301.417. CONFIDENTIALITY REQUIREMENTS; DISCLOSURE OF INFORMATION. (a) A report required or authorized under this subchapter and the identity of the person making the report are confidential and may not be disclosed except as provided by this section and Section 301.414.

(b) The board may disclose the information to the same extent that the board may disclose information relating to a complaint under Section 301.466.

(c) Repealed by Acts 2005, 79th Leg., Ch. 113, Sec. 18, eff. May 20, 2005.

(d) In addition to the other authorizations of this section, the information may be disclosed in:

(1) a civil action in which a reporting person is named as a defendant as a result of making the report; or

(2) the prosecution of a cause of action based on a claim that the reporting person was subject to retaliatory action as a result of making the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 13, eff. May 20, 2005.
Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 18, eff. May 20, 2005.

Sec. 301.418. DISCLOSURE OF CHARGES OR DISCIPLINARY ACTION. (a) This subchapter does not prevent disclosure under Section 301.466 of formal charges filed by the board or a final disciplinary action taken by the board as a result, in whole or in part, of submission of a report under this subchapter.

(b) A report or information submitted as required or authorized by this subchapter arising out of the provision or failure to provide nursing services may not be made available in a liability action for:

(1) discovery;

(2) court subpoena; or

(3) introduction into evidence.

(c) A person is not prevented from taking disciplinary action against a nurse by:

(1) the filing of a report under this subchapter with the board;

(2) an investigation by the board; or

(3) the disposition of a matter by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.042, eff. Sept. 1, 2003.

Sec. 301.419. GENERAL PROVISIONS REGARDING DUTY TO REPORT; MINOR INCIDENTS. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch. 803, Sec. 21(5), eff. September 1, 2007.

(b) The board shall adopt rules governing reporting required under this subchapter to minimize:

(1) unnecessary duplicative reporting; and

(2) the reporting of a minor incident.

(c) If the board determines that a report submitted under this subchapter is without merit, the board shall expunge the report from the nurse's file.

(d) The board shall inform, in the manner the board determines appropriate, nurses, facilities, agencies, and other persons of their duty to report under this subchapter.

(e) The reporting required under this subchapter does not constitute state action on behalf of the person reporting.

(f) The duty to report or any other requirement of this subchapter may not be nullified by a contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.043, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(5), eff. September 1, 2007.

SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY ACTIONS

Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may not:

(1) sell, fraudulently obtain, or fraudulently furnish a nursing diploma, license, renewal license, or record;

(2) assist another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record;

(3) practice nursing under a diploma, license, or record that was:

(A) obtained unlawfully or fraudulently; or

(B) signed or issued unlawfully or under false representation; or

(4) practice nursing in a period in which the person's license is suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.044, eff. Sept. 1, 2003.

Sec. 301.4515. USE OF CERTAIN NURSING TITLES. Unless the person is practicing under the delegated authority of a registered nurse or is otherwise authorized by state or federal law, a person may not use, in connection with the person's name:

(1) the title "nurse aide," "nurse assistant," or "nurse technician"; or

(2) any other similar title.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 8, eff. June 20, 2003.

Sec. 301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) In this section, "intemperate use" includes practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

(1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

(2) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;

(3) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;

(4) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;

(5) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6) impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;

(7) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;

(8) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction or under federal law;

(9) intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;

(10) unprofessional conduct in the practice of nursing that is likely to deceive, defraud, or injure a patient or the public;

(11) adjudication of mental incompetency;

(12) lack of fitness to practice because of a mental or

physical health condition that could result in injury to a patient or the public;

(13) performing or delegating to another individual the performance of a pelvic examination on an anesthetized or unconscious patient in violation of Section 167A.002, Health and Safety Code; or

(14) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

(c) The board may refuse to admit a person to a licensing examination for a ground described under Subsection (b).

(d) The board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the board under this section is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

(e) The board shall adopt rules to ensure that license denials and disciplinary action under Subsection (b)(10) are based on the application of objective criteria that are clearly and rationally connected to the applicant's or license holder's conduct and that any negative outcome resulting from that conduct is determined to affect the person's ability to effectively practice nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.124(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 1.045, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 26, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 13, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 251 (H.B. 1434), Sec. 3, eff. September 1, 2021.

Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a) In this section:

(1) "Applicant" means:

(A) a petitioner for a declaratory order of eligibility for a license; or

(B) an applicant for an initial license or renewal of a license.

(2) "Evaluation" means a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

(b) The board may require a nurse or applicant to submit to an evaluation only if the board has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of:

(1) physical impairment;

(2) mental impairment; or

(3) chemical dependency or abuse of drugs or alcohol.

(c) A demand for an evaluation under Subsection (b) must be in writing and state:

(1) the reasons probable cause exists to require the evaluation; and

(2) that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

(d) If the nurse or applicant refuses to submit to the evaluation, the board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the board's demand for an evaluation. The order may not be vacated or modified under Section 2001.058, Government Code.

(e) If a nurse or applicant refuses to submit to an evaluation

after an order requiring the evaluation is entered under Subsection (d), the board may:

(1) refuse to issue or renew a license;

(2) suspend a license; or

(3) issue an order limiting the license.

(f) The board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the board for a reason other than a reason listed in Subsection (b). A request for an evaluation under this subsection must be in writing and state:

(1) the reasons for the request;

(2) the type of evaluation requested;

(3) how the board may use the evaluation;

(4) that the nurse or applicant may refuse to submit to an evaluation; and

(5) the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

(g) If a nurse or applicant refuses to consent to an evaluation under Subsection (f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant:

(1) not later than the 30th day before the date of the hearing, notifies the board that an evaluation will be introduced into evidence at the hearing;

(2) provides the board the results of that evaluation;

(3) informs the board of any other evaluations by any other practitioners; and

(4) consents to an evaluation by a practitioner that meets board standards established under Subsection (h).

(h) The board shall establish by rule the qualifications for a licensed practitioner to conduct an evaluation under this section. The board shall maintain a list of qualified practitioners. The board may solicit qualified practitioners located throughout the state to be on the list.

(i) A nurse or applicant shall pay the costs of an evaluation conducted under this section.

(j) The results of an evaluation under this section are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be:

(A) introduced as evidence in a proceeding before the board or a hearing conducted by the State Office of Administrative Hearings under this chapter;

(B) included in the findings of fact and conclusions of law in a final board order; and

(C) disclosed to a peer assistance program approved by the board under Chapter 467, Health and Safety Code, and to which the board has referred the nurse.

(k) If the board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the board's records.

(l) The board shall adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under this section.

(m) The authority granted to the board under this section is in addition to the board's authority to make licensing decisions under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 10, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 4, eff. September 1, 2011.

Sec. 301.453. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE. (a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:

(1) denial of the person's application for a license, license renewal, or temporary permit;

(2) issuance of a written warning;

(3) administration of a public reprimand;

(4) limitation or restriction of the person's license, including:

(A) limiting to or excluding from the person's practice

one or more specified activities of nursing; or

(B) stipulating periodic board review;

(5) suspension of the person's license;

(6) revocation of the person's license; or

(7) assessment of a fine.

(b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:

(1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;

(2) participate in a program of education or counseling prescribed by the board, including a program of remedial education;

(3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board;

(4) perform public service the board considers appropriate; or

(5) abstain from the consumption of alcohol or the use of drugs and submit to random periodic screening for alcohol or drug use.

(c) The board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

(d) If the board suspends, revokes, or accepts surrender of a license, the board may impose conditions for reinstatement that the person must satisfy before the board may issue an unrestricted license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.046, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 11, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 6, eff. September 1, 2013.

Sec. 301.4531. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of the disciplinary sanctions that the board may impose under this chapter. In adopting the schedule of

sanctions, the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(b) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider:

(1) whether the person:

(A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or

(B) has previously been the subject of disciplinary action by the board and has previously complied with board rules and this chapter;

(2) the seriousness of the violation;

(3) the threat to public safety; and

(4) any mitigating factors.

(c) In the case of a person described by:

(1) Subsection (b)(1)(A), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and

(2) Subsection (b)(1)(B), the board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 27, eff. September 1, 2007.

Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:

(1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;

(2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;

(3) sexual assault under Section 22.011, Penal Code;

(4) aggravated sexual assault under Section 22.021, Penal Code;

(5) continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code, or indecency with a child under Section 21.11, Penal Code;

(6) aggravated assault under Section 22.02, Penal Code;

(7) intentionally, knowingly, or recklessly injuring a child, elderly individual, or disabled individual under Section 22.04, Penal Code;

(8) intentionally, knowingly, or recklessly abandoning or endangering a child, elderly individual, or disabled individual under Section 22.041, Penal Code;

(9) aiding suicide under Section 22.08, Penal Code, and the offense was punished as a state jail felony;

(10) an offense involving a violation of certain court orders or conditions of bond under Section 25.07, 25.071, or 25.072, Penal Code, punished as a felony;

(11) an agreement to abduct a child from custody under Section 25.031, Penal Code;

(12) the sale or purchase of a child under Section 25.08, Penal Code;

(13) robbery under Section 29.02, Penal Code;

(14) aggravated robbery under Section 29.03, Penal Code;

(15) an offense for which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

(16) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense listed in this subsection.

(a-1) An applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) is not eligible for a probationary, stipulated, or otherwise encumbered license unless the board establishes by rule criteria that would permit the issuance or renewal of the license.

(b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall revoke a license.

(c) A person is not eligible for an initial license or for reinstatement or endorsement of a license to practice nursing in this state before the fifth anniversary of the date the person successfully completed and was dismissed from community supervision or parole for an offense described by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 4, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.46, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 12, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. 743), Sec. 8, eff. September 1, 2013.
Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.25, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 830 (H.B. 2187), Sec. 8, eff. September 1, 2023.

Sec. 301.454. NOTICE AND HEARING. (a) Except in the case of a temporary suspension authorized under Section 301.455 or 301.4551 or an action taken in accordance with an agreement between the board and a license holder, the board may not take any disciplinary action relating to a license unless:

(1) the board has served notice to the license holder of the facts or conduct alleged to warrant the intended action; and

(2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.

(b) If an informal meeting is held, a board member, staff member, or board representative who attends the meeting is considered to have participated in the hearing of the case for the purposes of ex parte communications under Section 2001.061, Government Code.

(c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the board proposes to:

(1) refuse to admit the person to examination;

(2) refuse to issue a license or temporary permit;

(3) refuse to renew a license; or

(4) suspend or revoke the person's license or permit.

(d) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board for any sanction imposed as the result of a hearing conducted by that office.

(e) Notwithstanding Subsection (a), a person is not entitled to a hearing on a refusal to renew a license if the person:

(1) fails to submit a renewal application; or

(2) submits an application that:

(A) is incomplete;

(B) shows on its face that the person does not meet the renewal requirements; or

(C) is not accompanied by the correct fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 7, eff. September 1, 2013.

Sec. 301.455. TEMPORARY LICENSE SUSPENSION OR RESTRICTION. (a) The license of a nurse shall be temporarily suspended or restricted on a determination by a majority of the board or a three-member committee of board members designated by the board that, from the evidence or information presented, the continued practice of the nurse would constitute a continuing and imminent threat to the public welfare.

(b) A license may be temporarily suspended or restricted under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension or determination to restrict; and

(2) a hearing is held as soon as possible under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 17th day after the date of the temporary suspension or restriction to determine whether probable cause exists that a continuing and imminent threat to the public welfare exists. The probable cause hearing shall be conducted as a de novo hearing.

(d) A final hearing on the matter shall be held not later than

the 61st day after the date of the temporary suspension or restriction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.047, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1058 (H.B. 1366), Sec. 5, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 5, eff. September 1, 2011.

Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR ALCOHOL USE. (a) The board shall temporarily suspend the license of a nurse as provided by Section 301.455 if the nurse is under a board order prohibiting the use of alcohol or a drug or requiring the nurse to participate in a peer assistance program, and the nurse:

(1) tests positive for alcohol or a prohibited drug;

(2) refuses to comply with a board order to submit to a drug or alcohol test; or

(3) fails to participate in the peer assistance program and the program issues a letter of dismissal and referral to the board for noncompliance.

(b) For the purposes of Section 301.455(c), proof of the elements required for the board to suspend a license under this section is proof that probable cause of a continuing and imminent threat to the public welfare exists.

Added by Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 13, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 6, eff. September 1, 2011.

Sec. 301.456. EVIDENCE. A certified copy of the order of the denial, suspension, or revocation or other action under Section 301.452(b)(8) is conclusive evidence of that action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.124(b), eff. Sept. 1,

2001.

Sec. 301.457. COMPLAINT AND INVESTIGATION. (a) The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a nurse. The complaint must be in writing and signed by the complainant.

(b) Except as otherwise provided by this section, the board or a person authorized by the board shall conduct each investigation. Each complaint against a nurse that requires a determination of nursing competency shall be reviewed by a board member, consultant, or employee with a nursing background the board considers sufficient.

(b-1) The board by rule shall provide for the appointment by the board of advanced practice registered nurses to act as expert reviewers and assist with complaints and investigations relating to alleged standard of care violations by advanced practice registered nurses.

(c) On the filing of a complaint, the board:

(1) may conduct a preliminary investigation into the identity of the nurse named or described in the complaint;

(2) shall make a timely and appropriate preliminary investigation of the complaint; and

(3) may issue a warning or reprimand to the nurse.

(d) After any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, the board shall notify the nurse that a complaint has been filed and the nature of the complaint. If the investigation reveals probable cause to take further disciplinary action, the board shall either attempt an informal disposition of the complaint or file a formal charge against the nurse stating the provision of this chapter or board rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.

(e) The board shall conduct an investigation of the complaint to determine:

(1) whether the nurse's continued practice of nursing poses a risk of harm to clients or other persons; and

(2) whether probable cause exists that a nurse committed an act listed in Section 301.452(b) or that violates other law.

(f) In making a determination under Subsection (e), the board

shall review the evidence to determine the extent to which a deficiency in care by the registered nurse was the result of deficiencies in the registered nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a registered nurse must be based on the extent to which the registered nurse's conduct was the result of a deficiency in the registered nurse's judgment, knowledge, training, or skill.

(g) If the board determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse's deficiency in care was the result of a factor beyond the nurse's control, the board shall report that determination to the patient safety committee at the facility where the nurse's deficiency in care occurred, or if the facility does not have a patient safety committee, to the chief nursing officer.

(h) Except as provided by Subsection (i), if the board determines under Subsection (e) that an act by an advanced practice registered nurse falls below an acceptable standard of care, the board shall refer the complaint for review by an expert reviewer appointed under Subsection (b-1) who practices in the same advanced practice role and population focus as the nurse who is the subject of the complaint.

(i) The board may not refer a complaint against an advanced practice registered nurse to an expert reviewer under Subsection (h) if the act alleged in the complaint is:

(1) within the scope of practice applicable to a nurse who is not an advanced practice registered nurse; or

(2) considered unprofessional conduct.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.048, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 9, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 15, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 158 (S.B. 1343), Sec. 2, eff. September 1, 2023.

Sec. 301.4575. PROCEDURES FOR EXPERT ADVANCED PRACTICE

REGISTERED NURSE REVIEW. An expert advanced practice registered nurse reviewing a complaint against an advanced practice registered nurse under Section 301.457(h) shall:

(1) determine whether the advanced practice registered nurse who is the subject of the complaint has violated the standard of care applicable to the circumstances of the complaint; and

(2) issue a preliminary written report of that determination to the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 158 (S.B. 1343), Sec. 3, eff. September 1, 2023.

Sec. 301.458. INITIATION OF FORMAL CHARGES; DISCOVERY. (a) Unless there is an agreed disposition of the complaint under Section 301.463, if probable cause is found under Section 301.457(e)(2), the board or the board's authorized representative shall file formal charges against the nurse.

(b) A formal charge must:

(1) be written;

(2) be specific enough to enable a person of common understanding to know what is meant by the formal charge; and

(3) contain a degree of certainty that gives the person who is the subject of the formal charge notice of each particular act alleged to violate a specific statute, board rule, or board order.

(c) A copy of the formal charge shall be served on the nurse or the nurse's counsel of record.

(d) The board shall adopt reasonable rules to promote discovery by each party to a contested case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.049, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 8, eff. September 1, 2013.

Sec. 301.459. FORMAL HEARING. (a) The board by rule shall adopt procedures under Chapter 2001, Government Code, governing formal disposition of a contested case. An administrative law judge employed by the State Office of Administrative Hearings shall conduct

a formal hearing. After receiving the administrative law judge's findings of fact and conclusions of law for a contested case, the board shall dispose of the case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law.

(a-1) Notwithstanding Section 2001.058(e), Government Code, the board in a contested case may not change a finding of fact or conclusion of law or vacate or modify an order of the administrative law judge. The board may obtain judicial review of any finding of fact or conclusion of law issued by the administrative law judge as provided by Section 2001.058(f)(5), Government Code. For each case, the administrative law judge may make a recommendation regarding an appropriate action or sanction. The board has the sole authority and discretion to determine the appropriate action or sanction.

(b) In any hearing under this section, a nurse is entitled to appear in person or by counsel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.050, eff. Sept. 1, 2003. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 14, eff. September 1, 2017.

Sec. 301.460. ACCESS TO INFORMATION. (a) Except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, the board shall, not later than the 30th day after the date the board receives a written request from a license holder who is the subject of a formal charge filed under Section 301.458 or from the license holder's counsel of record, provide the license holder with access to:

(1) all known exculpatory information in the board's possession; and

(2) information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint.

(b) The board is not required to provide:

(1) board investigative reports or investigative memoranda;

(2) the identity of nontestifying complainants;

(3) attorney-client communications;

(4) attorney work product; or

(5) other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) The provision of information under Subsection (a) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.461. ASSESSMENT OF COSTS PROHIBITED. The board may not assess a person who is found to have violated this chapter the administrative costs of conducting a hearing to determine the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 15, eff. September 1, 2017.

Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE. The board may revoke a nurse's license without formal charges, notice, or opportunity of hearing if the nurse voluntarily surrenders the nurse's license to the board and executes a sworn statement that the nurse does not desire to be licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.051, eff. Sept. 1, 2003.

Sec. 301.463. AGREED DISPOSITION. (a) Unless precluded by this chapter or other law, the board may dispose of a complaint by:

(1) stipulation;

(2) agreed settlement;

(3) agreed order; or

(4) dismissal.

(b) An agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under this chapter and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.

(c) An agreed order is a public record.

(d) In civil or criminal litigation an agreed disposition is a settlement agreement under Rule 408, Texas Rules of Evidence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.052, eff. Sept. 1, 2003.

Sec. 301.464. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder an opportunity to be heard;

(2) require the presence of a representative of the board's legal staff or of the attorney general to advise the board or the board's employees; and

(3) if the complaint includes an allegation that an advanced practice registered nurse has violated the standard of care, require that notice of the informal proceeding includes a copy of the report prepared by the expert reviewer under Section 301.4575, with any identifying information other than the role and population focus of the expert reviewer redacted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 158 (S.B. 1343), Sec. 4, eff. September 1, 2023.

Sec. 301.465. SUBPOENAS; REQUEST FOR INFORMATION. (a) Notwithstanding Section 2001.089, Government Code, the board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator or by certified mail.

(b) Each person shall respond promptly and fully to a request for information by the board or to a subpoena issued by the board. A request or subpoena may not be refused, denied, or resisted unless

the request or subpoena calls for information within the attorney-client privilege. No other privilege applies to a board proceeding.

(c) The board may pay a reasonable fee for photocopies subpoenaed at the board's request. The amount paid may not exceed the amount the board charges for copies of its records.

(d) The board shall protect, to the extent possible, the identity of each patient named in information received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 9, eff. September 1, 2013.

Sec. 301.466. CONFIDENTIALITY. (a) A complaint and investigation concerning a nurse under this subchapter, all information and material compiled by the board in connection with the complaint and investigation, and the information described by Subsection (d) are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or a board employee or agent involved in license holder discipline.

(b) Notwithstanding Subsection (a), information regarding a complaint and an investigation may be disclosed to:

(1) a person involved with the board in a disciplinary action against the nurse;

(2) a nursing licensing or disciplinary board in another jurisdiction;

(3) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;

(4) a law enforcement agency; or

(5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) The filing of formal charges against a nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in

accordance with Chapter 552, Government Code.

(d) Notwithstanding Subsection (c), if the board orders a nurse to participate in a peer assistance program approved by the board under Section 467.003, Health and Safety Code, the complaint, filing of formal charges, nature of those charges, final board order, and disciplinary proceedings are subject to disclosure:

(1) only to the same extent as information regarding a complaint is subject to disclosure under Subsection (b); or

(2) in a subsequent matter relating to the board order or a subsequent violation of this chapter or a board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.053, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 10, eff. September 1, 2013.

Sec. 301.467. REINSTATEMENT. (a) On application, the board may reinstate a license to practice professional nursing or vocational nursing to a person whose license has been revoked, suspended, or surrendered.

(b) An application to reinstate a revoked license:

(1) may not be made before the first anniversary of the date of the revocation; and

(2) must be made in the manner and form the board requires.

(c) If the board denies an application for reinstatement, it may set a reasonable waiting period before the applicant may reapply for reinstatement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.054, eff. Sept. 1, 2003.

Sec. 301.468. PROBATION. (a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:

(1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or

vocational nursing;

(2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board; or

(3) requiring the person to submit to random drug or alcohol tests in the manner prescribed by the board.

(b) At the time the probation is granted, the board shall establish the term of the probationary period.

(c) At any time while the person remains subject to the probation order, the board may hold a hearing and rescind the probation and enforce the board's original action in denying or suspending the license. The hearing shall be called by the presiding officer of the board, who shall issue a notice to be served on the person or the person's counsel not later than the 20th day before the date scheduled for the hearing that:

(1) sets the time and place for the hearing; and

(2) contains the charges or complaints against the probationer.

(d) Notice under Subsection (c) is sufficient if sent by registered or certified mail to the affected person at the person's most recent address as shown in the board's records.

(e) A hearing under this section is limited to a determination of whether the person violated the terms of the probation order under Subsection (a) and whether the board should:

(1) continue, rescind, or modify the terms of probation, including imposing an administrative penalty; or

(2) enter an order denying, suspending, or revoking the person's license.

(f) If one of the conditions of probation is the prohibition of using alcohol or a drug or participation in a peer assistance program, violation of that condition is established by:

(1) a positive drug or alcohol test result;

(2) refusal to submit to a drug or alcohol test as required by the board; or

(3) a letter of noncompliance from the peer assistance program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.055, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 999 (H.B. 3961), Sec. 14, eff. June 19, 2009.

Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a final disciplinary action, including a warning or reprimand, against a nurse under this subchapter, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 1.056, eff. Sept. 1, 2003.

Sec. 301.470. REFUND. (a) Subject to Subsection (b), the board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to a nurse for a service regulated by this chapter or the actual amount stolen or defrauded from a patient by the nurse. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 28, eff. September 1, 2007.

Sec. 301.471. EMERGENCY CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of professional nursing or vocational nursing and the board determines that the unauthorized activity constitutes a clear, imminent, or continuing threat to the public health and safety, the board may:

(1) issue an emergency cease and desist order prohibiting the person from engaging in the activity; and

(2) report the activity to a local law enforcement agency or the attorney general for prosecution.

(b) An order issued under Subsection (a) must:

(1) be delivered on issuance to the person affected by the order by personal delivery or registered or certified mail, return receipt requested, to the person's last known address;

(2) state the acts or practices alleged to be an unauthorized activity and require the person immediately to cease and desist from the unauthorized activity; and

(3) contain a notice that a request for hearing may be filed under this section.

(c) Unless the person against whom the emergency cease and desist order is directed requests a board hearing in writing before the 11th day after the date it is served on the person, the order is final and nonappealable as to that person. A request for a board hearing must:

(1) be in writing and directed to the board; and

(2) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the board shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the board receives the request for a hearing unless the parties agree to a later hearing date. A hearing under this subsection is subject to Chapter 2001, Government Code.

(e) After the hearing, the board shall affirm, modify, or set aside wholly or partly the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is immediately final for purposes of enforcement and appeal.

(f) An order under this section continues in effect unless the order is stayed by the board. The board may impose any condition before granting a stay of the order.

(g) The board may release to the public a final cease and desist order issued under this section or information regarding the existence of the order if the board determines that the release would enhance the effective enforcement of the order or will serve the public interest.

(h) A violation of an order issued under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 28, eff. September 1, 2007.

SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 301.501. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.502. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 29, eff. September 1, 2007.

Sec. 301.503. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation has occurred, the executive director may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the director's recommendation on the imposition of the

administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.1245, eff. Sept. 1, 2001.

Sec. 301.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the executive director's determination and recommended administrative penalty in writing; or

(2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive director's determination and recommended penalty, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.505. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.506. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may:

(1) find that a violation occurred and impose an administrative penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.508. COLLECTION OF PENALTY. If the person does not pay the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.509. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.510. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is

not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.511. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 301.551. INJUNCTION. (a) In addition to any other action authorized by law, the board may institute an action in its name to enjoin a violation of this chapter or a board rule.

(b) To obtain an injunction under this section, it is not necessary to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

(c) Notwithstanding Subsection (b), in a proceeding for an injunction under Subsection (a), the defendant may assert and prove as a complete defense to the action that the board's actions or proceedings were:

(1) arbitrary or capricious;

(2) contrary to legal requirements; or

(3) conducted without due process of law.

(d) Either party to an action under Subsection (a) may appeal. The board is not required to give an appeal bond in a cause arising under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.552. MONITORING OF LICENSE HOLDER. The board by rule

shall develop a system for monitoring the compliance of license holders with the requirements of this chapter. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.553. CIVIL PENALTY. (a) A person who violates Section 301.451 or Section 301.251 is liable to the state for a civil penalty not to exceed $1,000 a day.

(b) The civil penalty may be collected in a suit initiated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.554. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 301.451 or Section 301.251.

(b) An offense under Subsection (a) is a Class A misdemeanor, except that if it is shown on the trial of the offense that the defendant has been previously convicted under Subsection (a), the offense is a felony of the third degree.

(c) Each day of violation constitutes a separate offense.

(d) On final conviction of an offense under Subsection (a), the defendant forfeits all rights and privileges conferred by a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 301.555. APPEAL. (a) A person against whom the board has taken adverse action under this chapter may appeal to a district court in the county of the person's residence or in Travis County.

(b) The board's decision may not be enjoined or stayed except on application to the district court after notice to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER M. ANESTHESIA IN OUTPATIENT SETTING

Sec. 301.601. DEFINITION. In this subchapter, "outpatient setting" means a facility, clinic, center, office, or other setting that is not part of a licensed hospital or a licensed ambulatory surgical center.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.602. RULES. (a) The board by rule shall establish minimum standards for anesthesia services provided in an outpatient setting by a person licensed by the board.

(b) The rules adopted under this section must be designed to protect the health, safety, and welfare of the public and include requirements relating to:

(1) general anesthesia, regional anesthesia, and monitored anesthesia care;

(2) patient assessment, counseling, and preparation;

(3) patient monitoring to be performed and equipment to be used during a procedure and during post-procedure monitoring;

(4) emergency procedures, drugs, and equipment, including education, training, and certification of personnel, as appropriate, and including protocols for transfers to a hospital;

(5) the documentation necessary to demonstrate compliance with this subchapter; and

(6) the period in which protocols or procedures covered by rules of the board shall be reviewed, updated, or amended.

(c) The board shall cooperate with the Texas State Board of Medical Examiners in adopting rules under this subchapter to eliminate, to the extent possible, conflicts between the rules adopted by each board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.603. APPLICABILITY. Rules adopted by the board under Section 301.602 do not apply to:

(1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;

(2) a licensed hospital, including an outpatient facility of the hospital that is located separate from the hospital;

(3) a licensed ambulatory surgical center;

(4) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. Section 479a-1 or as listed under a successor federal statute or regulation;

(5) a facility maintained or operated by a state or local governmental entity;

(6) a clinic directly maintained or operated by the United States; or

(7) an outpatient setting accredited by:

(A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

(B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or

(C) the Accreditation Association for Ambulatory Health Care.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 14, eff. May 20, 2005.

Sec. 301.604. REGISTRATION REQUIRED. (a) The board shall require each certified registered nurse anesthetist who provides anesthesia services in an outpatient setting to register biennially by applying to the board on a form prescribed by the board and paying to the board a fee in an amount established by the board.

(b) The board shall coordinate the registration required under this section with the license renewal requirements of Subchapter G so that the times of registration, payment, notice, and imposition of penalties for late payment are similar and provide a minimal administrative burden for the board and certified registered nurse anesthetists.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.605. COMPLIANCE WITH RULES. (a) A certified registered nurse anesthetist providing anesthesia services in an outpatient setting shall comply with the rules adopted by the board under Section 301.602.

(b) The board may require a certified registered nurse anesthetist to submit and comply with a corrective action plan to remedy or address any current or potential deficiencies with the nurse anesthetist's provision of anesthesia in an outpatient setting in accordance with this chapter or board rule.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.606. INSPECTIONS. (a) The board may conduct inspections to enforce this subchapter, including inspections of the equipment owned or leased by a certified registered nurse anesthetist and of documents of a certified registered nurse anesthetist's practice that relate to providing anesthesia in an outpatient setting. The board may contract with another state agency or qualified person to conduct these inspections.

(b) Unless it would jeopardize an ongoing investigation, the board must provide notice at least five business days before the date of conducting an on-site inspection under this section.

(c) This section does not require the board to make an on-site inspection of an outpatient setting in which a certified registered nurse anesthetist provides anesthesia.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

Sec. 301.607. REQUESTS FOR INSPECTION AND ADVISORY OPINIONS. (a) The board may consider a request by a certified registered nurse anesthetist for an inspection of equipment owned or leased by the nurse anesthetist and of documents of the nurse anesthetist's practice that relate to the provision of anesthesia in an outpatient

setting. The board, on payment of a fee set by the board, may conduct the requested inspection and issue an advisory opinion.

(b) An advisory opinion issued by the board under this section is not binding on the board. Except as provided by Subsection (c), the board may take any action under this chapter relating to the situation addressed by the advisory opinion as the board considers appropriate.

(c) A certified registered nurse anesthetist who requests and relies on a board advisory opinion may use the opinion as mitigating evidence in an action or proceeding by the board to impose an administrative penalty or to assess a fine under this chapter. On receipt of proof of reliance on an advisory opinion, the board shall consider the reliance and mitigate imposition of an administrative penalty or assessment of a fine accordingly.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.125(a), eff. Sept. 1, 2001.

SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

Sec. 301.651. DEFINITIONS. In this subchapter:

(1) "Corrective action" means a fine or remedial education imposed under Section 301.652.

(2) "Deferred action" means an action against a person licensed or regulated under this chapter that is deferred by the board as provided by this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 12, eff. September 1, 2013.

Sec. 301.652. IMPOSITION OF CORRECTIVE ACTION. (a) The board may impose a corrective action on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. The corrective action:

(1) may be a fine, remedial education, or any combination of a fine or remedial education;

(2) is not a disciplinary action under Subchapter J; and

(3) is subject to disclosure only to the extent a complaint is subject to disclosure under Section 301.466.

(b) The board by rule shall adopt guidelines for the types of violations for which a corrective action may be imposed.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Sec. 301.653. REPORT AND NOTICE OF VIOLATION AND CORRECTIVE ACTION. If the executive director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under Section 301.652(b), the executive director may give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the recommended corrective action; and

(3) inform the person of the person's options in responding to the notice.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Sec. 301.654. RESPONSE. Not later than the 20th day after the date the person receives the notice under Section 301.653, the person may:

(1) accept in writing the executive director's determination and recommended corrective action; or

(2) reject the executive director's determination and recommended corrective action.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.

Sec. 301.655. ACTION FOLLOWING RESPONSE. (a) If the person accepts the executive director's determination and satisfies the recommended corrective action, the case is closed.

(b) If the person does not accept the executive director's determination and recommended corrective action as originally proposed or as modified by the board or fails to respond in a timely manner to the executive director's notice as provided by Section 301.654, the executive director shall:

(1) terminate corrective action proceedings; and

(2) dispose of the matter as a complaint under Subchapter J.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 13, eff. September 1, 2013.

Sec. 301.6555. DEFERRED ACTION. (a) For any action or complaint for which the board proposes to impose on a person a sanction other than a reprimand or a denial, suspension, or revocation of a license, the board may:

(1) defer the final action the board has proposed if the person conforms to conditions imposed by the board, including any condition the board could impose as a condition of probation under Section 301.468; and

(2) if the person successfully meets the imposed conditions, dismiss the complaint.

(b) Except as provided by this subsection, a deferred action by the board is not confidential and is subject to disclosure in accordance with Chapter 552, Government Code. If the person successfully meets the conditions imposed by the board in deferring final action and the board dismisses the action or complaint, the deferred action of the board is confidential to the same extent as a complaint is confidential under Section 301.466.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 14, eff. September 1, 2013.

Sec. 301.656. REPORT TO BOARD. The executive director shall report periodically to the board on the corrective or deferred actions imposed under this subchapter, including:

(1) the number of actions imposed; and

(2) the types of violations for which actions were imposed.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 15, eff. September 1, 2013.

Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR DEFERRED ACTION. (a) Except to the extent provided by this section, a person's acceptance of a corrective or deferred action under this subchapter does not constitute an admission of a violation but does constitute a plea of nolo contendere.

(b) The board may treat a person's acceptance of corrective or deferred action as an admission of a violation if the board imposes a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

(c) The board may consider a corrective or deferred action taken against a person to be a prior disciplinary action under this chapter when imposing a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 144 (S.B. 1415), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1189 (S.B. 1058), Sec. 16, eff. September 1, 2013.

CHAPTER 303. NURSING PEER REVIEW

Sec. 303.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Nursing.

(2) "Nurse" means a registered nurse or a vocational nurse licensed under Chapter 301.

(3) "Nursing" has the meaning assigned by Section 301.002.

(4) "Nursing peer review committee" means a committee established under the authority of the governing body of a national, state, or local nursing association, a school of nursing, the nursing

staff of a hospital, health science center, nursing home, home health agency, temporary nursing service, or other health care facility, or state agency or political subdivision for the purpose of conducting peer review. The committee includes an employee or agent of the committee, including an assistant, an investigator, an intervenor, an attorney, and any other person who serves the committee in any capacity.

(4-a) "Patient safety committee" means a committee established by an association, school, agency, health care facility, or other organization to address issues relating to patient safety, including:

(A) the entity's medical staff composed of individuals licensed under Subtitle B; or

(B) a medical committee under Subchapter D, Chapter 161, Health and Safety Code.

(5) "Peer review" means the evaluation of nursing services, the qualifications of a nurse, the quality of patient care rendered by a nurse, the merits of a complaint concerning a nurse or nursing care, and a determination or recommendation regarding a complaint. The term includes:

(A) the evaluation of the accuracy of a nursing assessment and observation and the appropriateness and quality of the care rendered by a nurse;

(B) a report made to a nursing peer review committee concerning an activity under the committee's review authority;

(C) a report made by a nursing peer review committee to another committee or to the board as permitted or required by law;

(D) implementation of a duty of a nursing peer review committee by a member, an agent, or an employee of the committee; and

(E) the provision of information, advice, and assistance to nurses and other persons relating to:

(i) the rights and obligations of and protections for nurses who raise care concerns or report under Chapter 301 or other state or federal law;

(ii) the rights and obligations of and protections for nurses who request nursing peer review under this chapter;

(iii) nursing practice and patient care concerns; and

(iv) the resolution of workplace and practice questions relating to nursing and patient care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.018, eff. Feb. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 16, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 38, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 7, eff. September 1, 2011.

Sec. 303.0015. REQUIRED ESTABLISHMENT OF NURSING PEER REVIEW COMMITTEE. (a) A person shall establish a nursing peer review committee to conduct nursing peer review under this chapter and Chapter 301:

(1) for vocational nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses; and

(2) for professional nurses, if the person regularly employs, hires, or contracts for the services of eight or more nurses, at least four of whom are registered nurses.

(b) A person required to establish a nursing peer review committee under this section may contract with another entity to conduct the peer review for the person.

Added by Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 17, eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1074 (H.B. 3296), Sec. 1, eff. September 1, 2017.

Sec. 303.002. GENERAL PROVISIONS REGARDING PEER REVIEW. (a) Repealed by Acts 2003, 78th Leg., ch. 553, Sec. 3.001.

(b) The board shall enter into a memorandum of understanding with each state agency that licenses, registers, or certifies a facility required by law to have a nursing peer review committee. The memorandum of understanding must:

(1) state the actions the board and agency are to take to encourage compliance with the requirement to have a nursing peer review committee; and

(2) be adopted as a rule of the board and the agency.

(c) A court may not enjoin the activities of a nursing peer review committee under this chapter.

(d) This chapter may not be nullified by a contract.

(e) The committee shall give the nurse being reviewed at least minimum due process, including notice and opportunity for a hearing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.019, 3.001(2), eff. Feb. 1, 2004.

Sec. 303.003. COMMITTEE MEMBERSHIP. (a) A nursing peer review committee must have nurses as three-fourths of its members.

(b) A nursing peer review committee that conducts a peer review that involves the practice of vocational nursing, to the extent feasible, must include vocational nurses as members and may have only registered nurses and vocational nurses as voting members.

(c) A nursing peer review committee that conducts a peer review that involves the practice of professional nursing must have registered nurses as two-thirds of its members and may have only registered nurses as voting members.

(d) The committee shall include to the extent feasible at least one nurse who has a working familiarity with the area of nursing practice in which the nurse being reviewed practices.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.020, eff. Feb. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 15, eff. May 20, 2005.

Sec. 303.004. PEER REVIEW BY TWO ENTITIES. (a) A nurse who, as a temporary agency nurse, faculty member, or similar staff member, practices nursing for an educational institution, health care facility, agency, or entity, or a person other than the person who employs or directly compensates the nurse is subject to peer review by both the employer and the other person.

(b) For the purposes of exchanging information, the peer review committee reviewing the nurse's conduct is considered to be

established under the authority of both entities.

(c) The two entities may contract as to which entity will conduct peer review of the nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.005. REQUEST FOR PEER REVIEW COMMITTEE DETERMINATION. (a) In this section, "duty to a patient" means conduct required by standards of practice or professional conduct adopted by the board for nurses. The term includes administrative decisions directly affecting a nurse's ability to comply with that duty.

(a-1) For purposes of this section, a nurse or nurse administrator acts in good faith in connection with a request made or an action taken by the nurse or nurse administrator if there is a reasonable factual or legal basis for the request or action.

(b) Except as provided by Subsection (b-1), if a person who is required to establish a nursing peer review committee under Section 303.0015 requests a nurse to engage in conduct that the nurse believes violates a nurse's duty to a patient, the nurse may request, on a form developed by the board or on another form that meets standards developed by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a nurse's duty to a patient.

(b-1) If a nurse is unable to complete a form required by Subsection (b) due to immediate patient care needs, the nurse may request a nursing peer review committee determination by orally notifying the nurse's supervisor of the request. After receiving oral notification of a request, the nurse's supervisor shall record in writing:

(1) the name of the nurse making the request;

(2) the date and time of the request;

(3) the location where the conduct or assignment that is the subject of the request occurred;

(4) the name of the person who requested the nurse engage in the conduct or made the assignment that is the subject of the request;

(5) the name of the supervisor recording the request;

(6) a brief explanation of why the nurse is requesting a nursing peer review committee determination; and

(7) a description of the collaboration between the nurse and the supervisor.

(b-2) To be a valid request for a nursing peer review committee determination, the written record prepared under Subsection (b-1) must be signed and attested to by the requesting nurse and the nurse's supervisor who prepared the written record.

(c) A nurse who in good faith requests a peer review determination under Subsection (b):

(1) may not be disciplined or discriminated against for making the request;

(2) may engage in the requested conduct pending the peer review;

(3) is not subject to the reporting requirement under Subchapter I, Chapter 301; and

(4) may not be disciplined by the board for engaging in that conduct while the peer review is pending.

(d) If a nurse requests a peer review determination under Subsection (b) or (b-1) and refuses to engage in the requested conduct pending the peer review, the determination of the peer review committee shall be considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct, but the determination is not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. This subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.

(e) If the conduct for which the peer review is requested under Subsection (b) involves the medical reasonableness of a physician's order, the medical staff or medical director shall be requested to make a determination as to the medical reasonableness of the physician's order, and that determination is determinative of that issue.

(f) A nurse's rights under this section may not be nullified by a contract.

(g) An appropriate licensing agency may take action against a person who violates this section.

(h) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a nurse who in good faith requests a peer review determination under this section or a person who advises a nurse of the nurse's right to request a

determination or of the procedures for requesting a determination. A violation of this subsection is subject to Section 301.413.

(i) A person who is required to provide, on request, a nursing peer review committee determination under Subsection (b) shall adopt and implement a policy to inform nurses of the right to request a nursing peer review committee determination and the procedure for making a request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.021, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 876, Sec. 10, eff. Feb. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 16, eff. May 20, 2005.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 18, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 21(6), eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.001, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 877 (S.B. 192), Sec. 8, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 816 (H.B. 2410), Sec. 1, eff. September 1, 2019.

Sec. 303.006. CONFIDENTIALITY OF PEER REVIEW PROCEEDINGS. (a) Except as otherwise provided by this chapter, a nursing peer review committee proceeding is confidential and any communication made to a nursing peer review committee is privileged.

(b) A member, agent, or employee of a nursing peer review committee or a participant in a proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.

(c) A person who attends a nursing peer review committee proceeding may not disclose or be required to disclose:

(1) information acquired in connection with the proceeding; or

(2) an opinion, recommendation, or evaluation of the committee or a committee member.

(d) A nursing peer review committee member and a person who provides information to the committee may not be questioned about:

(1) the person's testimony before the committee; or

(2) an opinion formed as a result of the committee proceedings.

(e) Except as permitted by this chapter, information that is confidential under this section:

(1) is not subject to subpoena or discovery in any civil matter;

(2) is not admissible as evidence in a judicial or administrative proceeding; and

(3) may not be introduced into evidence in a nursing liability suit arising out of the provision of or a failure to provide nursing services.

(f) If a peer review committee determines that a nurse has not engaged in conduct required to be reported to the nurse's licensing board, a member of the peer review committee whose knowledge of the nurse's conduct was acquired only through the peer review may not report that nurse to the licensing board for that conduct. A committee member is not prohibited from reporting:

(1) the nurse, if the member has knowledge of the nurse's conduct independently of peer review; or

(2) the peer review committee to the licensing board, if the member believes the committee made its determination in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 876, Sec. 11, eff. June 20, 2003.

Sec. 303.007. DISCLOSURE OF INFORMATION. (a) A nursing peer review committee on request shall disclose written or oral communications made to the committee and the records and proceedings of the committee to:

(1) a licensing authority of any state; or

(2) a law enforcement agency investigating a criminal matter.

(b) A nursing peer review committee may disclose written or oral communications made to the committee and the records and proceedings of the committee to:

(1) a licensing agency of any state;

(2) a law enforcement agency investigating a criminal matter;

(3) the association, school, agency, facility, or other organization under whose authority the committee is established;

(4) another nursing peer review committee;

(5) a peer assistance program approved by the board under Chapter 467, Health and Safety Code;

(6) an appropriate state or federal agency or accrediting organization that accredits a health care facility or school of nursing or surveys a facility for quality of care; or

(7) a person engaged in bona fide research, if all information that identifies a specific individual is deleted.

(c) If a committee discloses information under this section, the committee does not by that action waive the privilege of nondisclosure of committee information and proceedings.

(d) A peer review committee that discloses information under this section and each person who receives the information shall protect, to the extent possible, the identity of each patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.0075. SHARING OF INFORMATION. (a) A nursing peer review committee and a patient safety committee established by the same entity may share information.

(b) A record or determination of a patient safety committee, or a communication made to a patient safety committee, is not subject to subpoena or discovery and is not admissible in any civil or administrative proceeding, regardless of whether the information has been provided to a nursing peer review committee. The privileges under this subsection may be waived only through a written waiver signed by the chair, vice chair, or secretary of the patient safety committee. This subsection does not affect the application of Section 303.007 to a nursing peer review committee.

(c) A committee that receives information from another committee shall forward any request to disclose the information to the committee that provided the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 19, eff. September 1, 2007.

Sec. 303.008. REBUTTAL STATEMENT. (a) If a nursing peer review committee makes an adverse finding against a nurse, the committee shall provide the nurse with a detailed description of the basis of its finding.

(b) The peer review committee shall give the nurse the opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. Any rebuttal statement must be included with any information disclosed by the committee under Section 303.007.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 113 (S.B. 1000), Sec. 17, eff. May 20, 2005.

Sec. 303.009. RETALIATORY ACTIONS. (a) A nursing peer review committee, a person participating in peer review, or an organization named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including court costs, reasonable attorney's fees, and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.

(b) A nursing peer review committee member or a person participating in peer review under this chapter named as a defendant in a civil action or subjected to other retaliatory action as a result of participation in peer review may use information that is otherwise confidential under this chapter to defend the civil action or a civil action that alleges retaliation for the person's participation in peer review.

(c) A person who discloses information under Subsection (b) does not by that action waive the privilege of nondisclosure of all other information privileged under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.010. CIVIL LIABILITY. (a) A cause of action does not accrue for an act, statement, determination, or recommendation made, or act reported, without malice, in the course of peer review against:

(1) a member, agent, or employee of a nursing peer review committee; or

(2) a school of nursing, hospital, nursing home, home health agency, health science center, or other health care facility, the nursing staff of such a facility, or a nursing association or other organization.

(b) A person who, without malice, provides records, information, or assistance to a nursing peer review committee:

(1) is not liable in a civil action based on the person's participation or assistance in peer review; and

(2) may not be subjected to retaliatory action as a result of that act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.011. EVALUATION BY COMMITTEE. (a) In evaluating a nurse's conduct, the nursing peer review committee shall review the evidence to determine the extent to which a deficiency in care by the nurse was the result of deficiencies in the nurse's judgment, knowledge, training, or skill rather than other factors beyond the nurse's control. A determination that a deficiency in care is attributable to a nurse must be based on the extent to which the nurse's conduct was the result of a deficiency in the nurse's judgment, knowledge, training, or skill.

(b) The nursing peer review committee shall report a deficiency in care that the committee determines was the result of a factor beyond the nurse's control to a patient safety committee for evaluation. The patient safety committee shall evaluate the influence of the factors on the conduct of the nurse being evaluated and on the practice of other nurses within the entity that established the committee. The committee shall report its findings to the nursing peer review committee.

Added by Acts 2003, 78th Leg., ch. 876, Sec. 12, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 803 (S.B. 993), Sec. 20, eff.

September 1, 2007.

Sec. 303.012. ERROR CLASSIFICATION SYSTEM. (a) The board may develop a standardized error classification system for use by a nursing peer review committee in evaluating the conduct of a nurse. The board shall make the system available to the committee at no cost.

(b) Information collected as part of an error classification system is a record of the nursing peer review committee and is confidential under Section 303.006.

(c) A nursing peer review committee may report the information collected using the error classification system to the board. The committee may not report to the board under this section information that includes the identity of an individual nurse or patient.

(d) Information the board receives under this section that contains information identifying a specific patient, nurse, or health care facility, the committee, or the sponsoring organization of the committee is confidential and is not subject to disclosure under Chapter 552, Government Code. The board must remove the identifying information from the information before making the remaining information available to the public.

(e) This section does not affect the obligation or authority of a nursing peer review committee to disclose information under Section 303.007.

Added by Acts 2011, 82nd Leg., R.S., Ch. 878 (S.B. 193), Sec. 7, eff. September 1, 2011.

CHAPTER 304. NURSE LICENSURE COMPACT

Sec. 304.0015. NURSE LICENSURE COMPACT. The Nurse Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which reads as follows:

NURSE LICENSURE COMPACT

ARTICLE I. FINDINGS AND DECLARATION OF PURPOSE

(a) The party states find that:

(1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

(6) uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

(b) The general purposes of this compact are to:

(1) facilitate the states' responsibility to protect the public's health and safety;

(2) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

(6) decrease redundancies in the consideration and issuance of nurse licenses; and

(7) provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization

to practice, including issuance of a cease and desist action.

(b) "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.

(d) "Current significant investigative information" means:

(1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proven true, would indicate more than a minor infraction; or

(2) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.

(f) "Home state" means the party state which is the nurse's primary state of residence.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.

(i) "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.

(j) "Nurse" means RN or LPN/VN, as those terms are defined by each party state's practice laws.

(k) "Party state" means any state that has adopted this compact.

(l) "Remote state" means a party state, other than the home state.

(m) "Single-state license" means a nurse license issued by a

party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

(n) "State" means a state, territory, or possession of the United States and the District of Columbia.

(o) "State practice laws" means a party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III. GENERAL PROVISIONS AND JURISDICTION

(a) A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

(b) A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(c) Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

(1) meets the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

(2)(i) has graduated or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or

(ii) has graduated from a foreign RN or LPN/VN prelicensure education program that (a) has been approved by the authorized accrediting body in the applicable country and (b) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

(3) has, if a graduate of a foreign prelicensure education

program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;

(4) has successfully passed an NCLEX-RN or NCLEX-PN Examination or a recognized predecessor, as applicable;

(5) is eligible for or holds an active, unencumbered license;

(6) has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

(7) has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

(8) has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

(9) is not currently enrolled in an alternative program;

(10) is subject to self-disclosure requirements regarding current participation in an alternative program; and

(11) has a valid United States social security number.

(d) All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(e) A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the

licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.

(f) Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this compact shall affect the requirements established by a party state for the issuance of a single-state license.

(g) Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that:

(1) a nurse, who changes primary state of residence after this compact's effective date, must meet all applicable Article III(c) requirements to obtain a multistate license from the new home state; or

(2) a nurse who fails to satisfy the multistate licensure requirements in Article III(c) due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license, and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators ("commission").

ARTICLE IV. APPLICATIONS FOR LICENSURE IN A PARTY STATE

(a) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

(b) A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

(c) If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.

(1) The nurse may apply for licensure in advance of a change in primary state of residence.

(2) A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

(d) If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

ARTICLE V. ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

(a) In addition to the other powers conferred by state law, a licensing board shall have the authority to:

(1) take adverse action against a nurse's multistate licensure privilege to practice within that party state.

(i) Only the home state shall have the power to take adverse action against a nurse's license issued by the home state.

(ii) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

(2) issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.

(3) complete any pending investigation of a nurse who changes primary state of residence during the course of such investigation. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(4) issue subpoenas for both hearings and investigations that require the attendance and testimony of a witness, as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to

the practice and procedures of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(5) obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.

(6) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

(7) take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

(b) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

(c) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

ARTICLE VI. COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE OF INFORMATION

(a) All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) The commission, in consultation with the administrator of

the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

(c) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials), and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

(d) Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(e) Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(f) Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(g) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(h) The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which shall include, at a minimum:

(1) identifying information;

(2) licensure data;

(3) information related to alternative program participation; and

(4) other information that may facilitate the administration of this compact, as determined by commission rules.

(i) The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII. ESTABLISHMENT OF INTERSTATE COMMISSION OF NURSE LICENSURE COMPACT ADMINISTRATORS

(a) The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

(1) The commission is an instrumentality of the party states.

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

(b) Membership, Voting, and Meetings

(1) Each party state shall have and be limited to one administrator. The head of the state licensing board or a designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.

(2) Each administrator shall be entitled to one (1) vote with regard to the promulgation of rules and the creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article VIII.

(5) The commission may convene in a closed, nonpublic meeting if the commission must discuss:

(i) noncompliance of a party state with its obligations under this compact;

(ii) the employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(iii) current, threatened, or reasonably anticipated litigation;

(iv) negotiation of contracts for the purchase or sale of goods, services, or real estate;

(v) accusing any person of a crime or formally censuring any person;

(vi) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(vii) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(viii) disclosure of investigatory records compiled for law enforcement purposes;

(ix) disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or

(x) matters specifically exempted from disclosure by federal or state statute.

(6) If a meeting or portion of a meeting is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(c) The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including but not limited to:

(1) establishing the fiscal year of the commission;

(2) providing reasonable standards and procedures:

(i) for the establishment and meeting of other

committees; and

(ii) governing any general or specific delegation of any authority or function of the commission;

(3) providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

(4) establishing the titles, duties and authority, and reasonable procedures for the election of the officers of the commission;

(5) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission; and

(6) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

(e) The commission shall maintain its financial records in accordance with the bylaws.

(f) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(g) The commission shall have the following powers:

(1) to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states;

(2) to bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any

licensing board to sue or be sued under applicable law shall not be affected;

(3) to purchase and maintain insurance and bonds;

(4) to borrow, accept, or contract for services of personnel, including, but not limited to, employees of a party state or nonprofit organizations;

(5) to cooperate with other organizations that administer state compacts related to the regulation of nursing, including, but not limited to, sharing administrative or staff expenses, office space, or other resources;

(6) to hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(7) to accept any and all appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(8) to lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(9) to sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;

(10) to establish a budget and make expenditures;

(11) to borrow money;

(12) to appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other such interested persons;

(13) to provide and receive information from, and to cooperate with, law enforcement agencies;

(14) to adopt and use an official seal; and

(15) to perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

(h) Financing of the Commission

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.

(3) The commission shall not incur an obligation of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the party states, except by and with the authority of such party state.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

(i) Qualified Immunity, Defense, and Indemnification

(1) The compact administrators, officers, executive directors, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property, or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities; provided that nothing in this subdivision shall be construed to protect any such person from suit or liability for any damages, loss, injury, or liability caused by the intentional, wilful, or wanton misconduct of that person.

(2) The commission shall defend any administrator, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that

the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, wilful, or wanton misconduct.

(3) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional, wilful, or wanton misconduct of that person.

ARTICLE VIII. RULEMAKING

(a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this compact.

(b) Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

(c) Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(1) on the website of the commission; and

(2) on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

(d) The notice of proposed rulemaking shall include:

(1) the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) the text of the proposed rule or amendment, and the reason for the proposed rule;

(3) a request for comments on the proposed rule from any interested person; and

(4) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

(e) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(f) The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

(g) The commission shall publish the place, time, and date of the scheduled public hearing.

(1) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(2) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

(h) If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.

(i) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

(j) The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

(k) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing; provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, and in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

(1) meet an imminent threat to public health, safety, or welfare;

(2) prevent a loss of commission or party state funds; or

(3) meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

(l) The commission may direct revisions to a previously adopted

rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE IX. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

(a) Oversight

(1) Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

(2) The commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

(b) Default, Technical Assistance, and Termination

(1) If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(i) provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

(ii) provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.

(4) A state whose membership in this compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of the termination, including obligations that extend beyond the effective date of termination.

(5) The commission shall not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(c) Dispute Resolution

(1) Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(3) In the event the commission cannot resolve disputes among party states arising under this compact:

(i) the party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(ii) the decision of a majority of the arbitrators shall be final and binding.

(d) Enforcement

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal

action in the U.S. District Court for the District of Columbia or in the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE X. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENTS

(a) This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six (26) states or December 31, 2018. All party states to this compact that also were parties to the prior Nurse Licensure Compact, superseded by this compact ("prior compact"), shall be deemed to have withdrawn from said prior compact within six (6) months after the effective date of this compact.

(b) Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until the party state has withdrawn from the prior compact.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

(d) A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

(e) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(f) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

(g) Representatives of nonparty states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

ARTICLE XI. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held to be contrary to the constitution of any party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Added by Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 16, eff. September 1, 2017.

Sec. 304.002. ADMINISTRATION OF COMPACT. The executive director of the Texas Board of Nursing is the Nurse Licensure Compact administrator for this state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.022, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 39, eff. September 1, 2007.

Sec. 304.0025. RULES ADOPTED UNDER COMPACT. The Interstate Commission of Nurse Licensure Compact Administrators established under the Nurse Licensure Compact under Section 304.0015 may not adopt rules that alter the requirements or scope of practice of a license issued under Chapter 301. Any rule adopted by the Interstate Commission of Nurse Licensure Compact Administrators that purports to alter the requirements or scope of practice of a license issued under

Chapter 301 is not enforceable.

Added by Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 17, eff. September 1, 2017.

Sec. 304.003. RULES. The Texas Board of Nursing may adopt rules necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.023, eff. Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 39, eff. September 1, 2007.

Sec. 304.004. GENERAL PROVISIONS. (a) The terms "nurse," "registered nurse," and "vocational nurse" include nurses licensed as registered nurses or vocational nurses by a state that is a party to the Nurse Licensure Compact.

(b) Unless the context indicates otherwise or doing so would be inconsistent with the Nurse Licensure Compact, nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact have the same rights and obligations as imposed by the laws of this state on license holders of the Texas Board of Nursing.

(c) The Texas Board of Nursing has the authority to determine whether a right or obligation imposed on license holders applies to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact unless that determination is inconsistent with the Nurse Licensure Compact.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.024, eff. Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 40, eff. September 1, 2007.

Sec. 304.005. ENFORCEMENT. The Texas Board of Nursing is the state agency responsible for taking action against registered and vocational nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact as authorized by the Nurse Licensure Compact. The action shall be taken in accordance with the same procedures for taking action against registered and vocational nurses licensed by this state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.025, eff. Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 41, eff. September 1, 2007.

Sec. 304.006. INFORMATION MAINTAINED UNDER COMPACT. (a) On request and payment of a reasonable fee, the Texas Board of Nursing shall provide a registered or vocational nurse licensed by this state with a copy of information regarding the nurse maintained by the coordinated licensure information system under Article VI of the Nurse Licensure Compact.

(b) A board is not obligated to provide information not available to the board or information that is not available to the nurse under the laws of the state contributing the information to the coordinated licensure information system.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.026, eff. Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 42, eff. September 1, 2007.
Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 18, eff. September 1, 2017.

Sec. 304.007. ACCESS TO PRACTICE-RELATED INFORMATION. Practice-related information provided by the Texas Board of Nursing to registered or vocational nurses licensed by this state shall be made available by the board on request and at a reasonable cost to

nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.027, eff. Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 43, eff. September 1, 2007.

Sec. 304.008. DISCLOSURE OF PERSONAL INFORMATION. (a) In reporting information to the coordinated licensure information system under Article VI of the Nurse Licensure Compact, the Texas Board of Nursing may disclose personally identifiable information about the nurse, including the nurse's social security number.

(b) The coordinated licensure information system may not share personally identifiable information with a state not a party to the compact unless the state agrees not to disclose that information to other persons.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.130(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 553, Sec. 2.028, eff. Feb. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 44, eff. September 1, 2007.
Acts 2017, 85th Leg., R.S., Ch. 509 (H.B. 2950), Sec. 19, eff. September 1, 2017.

SUBTITLE F. PROFESSIONS RELATED TO EYES AND VISION
CHAPTER 351. OPTOMETRISTS AND THERAPEUTIC OPTOMETRISTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 351.001. SHORT TITLE. This chapter may be cited as the Texas Optometry Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.002. DEFINITIONS. In this chapter:

(1) "Adnexa" means the lids and drainage system of the eye.

(2) "Board" means the Texas Optometry Board.

(3) "Dispensing optician" or "ophthalmic dispenser" means a person who:

(A) is not an optometrist, therapeutic optometrist, or licensed physician; and

(B) sells or delivers to the consumer ophthalmic devices, including fabricated and finished spectacle lenses, frames, and contact lenses, prescribed by an optometrist, therapeutic optometrist, or licensed physician.

(4) "Optometrist" means a person licensed under this chapter and authorized to practice optometry.

(5) "Person" means an individual, association of individuals, trustee, receiver, partnership, corporation, or organization or the manager, agent, servant, or employee of any of those entities.

(6) "Practice of optometry" means using objective or subjective means, with or without the use of topical ocular pharmaceutical agents, to:

(A) determine or measure the powers of vision of the human eye as provided by Section 351.355;

(B) examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa; or

(C) prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision as provided by Section 351.356.

(7) "Practice of therapeutic optometry" means using objective or subjective means, not including surgery or laser surgery, to:

(A) determine or measure the powers of vision of the human eye as provided by Section 351.355;

(B) examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa;

(C) prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision as provided by Section 351.356;

(D) administer or prescribe a drug or physical treatment in the manner authorized by this chapter; or

(E) treat the visual system, including the eye or adnexa as authorized by this chapter.

(8) "Surgery" means a procedure using instruments, including lasers, scalpels, or needles, in which human tissue is cut, burned, vaporized, or otherwise altered by any mechanical means, laser, or ionizing radiation. The term includes procedures using instruments that require closing by suturing, clamping, or another device. The term does not include a noninvasive procedure to remove a superficial foreign body in the conjunctiva, eyelid, or corneal epithelium that has not perforated the Bowman's membrane.

(9) "Therapeutic optometrist" means a person licensed under this chapter and authorized to practice therapeutic optometry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.151(a), eff. Sept. 1, 2001.

Sec. 351.003. REFERENCE IN OTHER LAW. A reference in another law of this state or in a law of a subdivision of this state to "optometrist" means an optometrist or therapeutic optometrist, unless the context clearly indicates otherwise.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.004. SUNSET PROVISION. The Texas Optometry Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.001, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 1, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.06, eff. June 18, 2023.

Sec. 351.005. APPLICATION OF CHAPTER; EXEMPTIONS. (a) This chapter does not:

(1) apply to an officer or agent of the United States or this state in performing official duties;

(2) prevent or interfere with the right of a physician licensed by the Texas Medical Board to:

(A) treat or prescribe for a patient; or

(B) direct or instruct a person under the physician's control, supervision, or direction to aid or attend to the needs of a patient according to the physician's specific direction, instruction, or prescription;

(3) prevent a person from selling ready-to-wear eyeglasses as merchandise at retail;

(4) prevent an unlicensed person from making simple repairs to eyeglasses;

(5) prevent an ophthalmic dispenser who does not practice optometry or therapeutic optometry from measuring interpupillary distances or making facial measurements to dispense or adapt an ophthalmic prescription, lens, product, or accessory in accordance with the specific directions of a written prescription signed by an optometrist, therapeutic optometrist, or licensed physician;

(6) prevent the administrator or executor of the estate of a deceased optometrist or therapeutic optometrist from employing an optometrist or therapeutic optometrist to continue the practice of the deceased during estate administration; or

(7) prevent an optometrist or therapeutic optometrist from working for the administrator or executor of the estate of a deceased optometrist or therapeutic optometrist to continue the practice of the deceased during estate administration.

(b) A direction, instruction, or prescription described by Subsection (a)(2)(B) must be in writing if it is to be followed, performed, or filled outside the physician's office.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.031(1), eff. September 1, 2015.

(d) Continuation of the practice of a deceased optometrist or therapeutic optometrist by an estate under Subsections (a)(6) and (7) must:

(1) be authorized by the county judge; and

(2) terminate before the first anniversary of the date of death of the optometrist or therapeutic optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.023, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.031(1), eff. September 1, 2015.

SUBCHAPTER B. TEXAS OPTOMETRY BOARD

Sec. 351.051. TEXAS OPTOMETRY BOARD; MEMBERSHIP. (a) The Texas Optometry Board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six optometrists or therapeutic optometrists; and

(2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, age, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 2, eff. Sept. 1, 2001.

Sec. 351.052. MEMBERSHIP ELIGIBILITY. (a) An optometrist or therapeutic optometrist member of the board must have been a resident of this state engaged in the practice of optometry or therapeutic optometry in this state for the five years preceding the date of the member's appointment.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of or is an officer or paid consultant of a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment;

(3) owns, controls, or has, directly or indirectly, a financial interest in a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or

reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 3, eff. Sept. 1, 2001.

Sec. 351.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS; CONFLICTS OF INTEREST. (a) A member or employee of the board may not:

(1) be a member of the faculty of a college of optometry or an agent, paid consultant, officer, or employee of a wholesale optical company;

(2) have a financial interest in a college of optometry or wholesale optical company;

(3) be an officer, employee, or paid consultant of a trade association in the field of health care; or

(4) be related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a trade association in the field of health care.

(b) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(c) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.002, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.003, eff. September 1, 2005.

Sec. 351.054. TERMS. (a) Members of the board serve staggered six-year terms. The terms of two optometrist or therapeutic optometrist members and one public member expire on January 31 of each odd-numbered year.

(b) A member may not serve more than two complete terms. Service on the board before September 1, 1981, does not count toward that limitation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 4, eff. Sept. 1, 2001.

Sec. 351.055. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) The board shall elect an assistant presiding officer and a secretary-treasurer every two years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 5, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.004, eff. September 1, 2005.

Sec. 351.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 351.051 and 351.052;

(2) does not maintain during service on the board the qualifications required by Sections 351.051 and 351.052;

(3) is ineligible for membership under Section 351.051 or 351.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) without an excuse approved by a majority vote of the board, is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) A board member who no longer has the qualifications required by Sections 351.051, 351.052, and 351.053 shall immediately inform the governor and the attorney general of that fact and shall resign from the board.

(d) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.005, eff. September 1, 2005.

Sec. 351.057. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board.

(b) A board member may be reimbursed for actual travel expenses, including expenses for meals, lodging, and transportation. A board member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

(c) At the time a board member applies for reimbursement under this section, the member shall make a sworn statement of the number of days the member engaged in the business of the board and the amount of the member's expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.058. MEETINGS. (a) At least twice a year the board shall hold regular meetings.

(b) The board shall hold special meetings on the request of five members of the board or on the call of the presiding officer.

(c) If a quorum is not present on the day set for a meeting, the members present may adjourn from day to day until a quorum is present, but that period may not exceed three successive days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.0585. CERTAIN REPORTS REQUIRED AT REGULAR MEETINGS. The board shall receive a report regarding complaints at each board meeting.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.006, eff. September 1, 2005.

Sec. 351.059. TRAINING. (a) The board shall establish a training program for the members of the board in consultation with the governor, the attorney general, and the Texas Ethics Commission.

(b) A person who is appointed to and qualifies for office as a board member may not vote, deliberate, or be counted as a member in attendance at a board meeting until the person completes a training program that complies with this section.

(c) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the board's programs, functions, rules, and budget;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a

profession or business the board regulates;

(B) restrict advertising by persons in a profession or business the board regulates;

(C) affect the price of goods or services provided by persons in a profession or business the board regulates; and

(D) restrict participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedures, and disclosure of conflicts-of-interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(d) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending a training program under this section, regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(e) The executive director of the board shall create a training manual that includes the information required by Subsection (c). The executive director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.007, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 2, eff. September 1, 2017.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

Sec. 351.101. EXECUTIVE DIRECTOR. The board may employ an executive director as the executive head of the agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.103. STAFF ATTORNEY. The board is authorized to employ a staff attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.104. OTHER PERSONNEL. The board may employ personnel necessary to administer this chapter, including stenographers, secretaries, inspectors, and legal assistants.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.105. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.008, eff. September 1, 2005.

Sec. 351.106. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable law relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee

shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.108. EQUAL OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 351.151. RULES. (a) The board by a majority vote of a quorum may adopt procedural and substantive rules.

(b) The board may not adopt a substantive rule before submitting the proposed rule to the attorney general for a ruling on the proposed rule's validity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 6, eff. Sept. 1, 2001.

Sec. 351.152. FEES. (a) The board shall set fees in amounts reasonable and necessary so that in the aggregate the fees produce sufficient revenue to cover the cost of administering this chapter. The board shall set fee amounts so as not to maintain an unnecessary fund balance.

(b) The board shall set fees under this section only for acts or services performed or provided by the board, including:

(1) an examination;

(2) a re-examination;

(3) an issuance of a license;

(4) a renewal of a license; and

(5) an issuance of a duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1092, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 19, eff. September 1, 2017.

Sec. 351.154. APPLICATION OF FEES. (a) Except as otherwise provided by this section, the board shall apply the funds realized from all fees payable under this chapter first to pay all necessary expenses of the board and then, by order of the board, to compensate members of the board.

(b) The board shall deposit in the University of Houston development fund 15 percent of each renewal fee collected by the board under Section 351.152. The money paid to that fund under this subsection may be used solely for scholarships or improvements in the physical facilities, including library facilities, of the College of

Optometry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 3, eff. September 1, 2017.

Sec. 351.155. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the board except to prohibit a false, misleading, or deceptive practice.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person;

(4) restricts the person's advertisement under a trade name;

(5) restricts a truthful statement regarding:

(A) the address or telephone number of an office maintained by the person;

(B) office hours regularly maintained by the person;

(C) languages, other than English, fluently spoken in the person's office;

(D) whether the person provides services under a specified private or public insurance plan or health care plan;

(E) publications authored by the person;

(F) a teaching position held or formerly held by the person and the dates the position was held;

(G) an affiliation with a hospital or clinic;

(H) the fact that the person regularly accepts installment payment of fees;

(I) the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised; or

(J) other factual information that is not false, fraudulent, misleading, or likely to deceive; or

(6) restricts a truthful statement that relates to public health or that encourages preventive or corrective care.

(c) Subsection (b) does not prevent the board from restricting advertising that is false, fraudulent, misleading, or likely to deceive.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.156. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.157. ENFORCEMENT. (a) The board, a committee of the board, or a member of the board or a committee may:

(1) issue a subpoena or subpoena duces tecum to compel the attendance of a witness or the production of books, records, or documents;

(2) administer an oath; or

(3) take testimony on all matters in the jurisdiction of the board, committee, or member.

(b) The board is not bound by strict rules of procedure or by the laws of evidence in conducting board proceedings but shall base a determination on sufficient legal evidence to sustain the determination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.1575. INSPECTION OF PREMISES AND REVIEW OF RECORDS AUTHORIZED. (a) The board, at any time and without notice during regular business hours, may:

(1) enter and inspect a facility operated by a person

engaged in any activity regulated under this chapter; and

(2) to the extent allowed by federal law, inspect and review any record, including a patient record, maintained by a person engaged in any activity regulated under this chapter.

(b) The board may enter and inspect a facility or inspect and review any record under Subsection (a) as necessary to:

(1) ensure compliance with this chapter; or

(2) investigate a complaint made to the board.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.009, eff. September 1, 2005.

Sec. 351.158. LEGAL REPRESENTATION. (a) In a hearing before the board or in a suit in which the board is a party, the board may appoint the board's staff attorney as an attorney of record for the board, except that the staff attorney is subordinate to a county attorney, district attorney, or attorney general if one of those attorneys is also an attorney of record in the proceeding.

(b) In a suit in which the board is a party, the board may appoint the staff attorney as special assistant to the county attorney, district attorney, or attorney general. The board must pay the staff attorney.

(c) This section does not limit or exclude the right of the county attorney, district attorney, or attorney general to appear as the board's attorney in the court to which that attorney is entitled or required under the constitution to represent the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.159. COMMITTEE APPOINTMENTS AND RECOMMENDATIONS. (a) The board may appoint committees from its own membership.

(b) A committee shall consider any matter referred to the committee relating to the enforcement of this chapter and rules adopted under this chapter. The committee shall make a recommendation on the matter to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.160. PHARMACEUTICAL AGENTS. The board by rule shall designate classifications of pharmaceutical agents that therapeutic optometrists may use in the practice of therapeutic optometry as authorized by this chapter. Additional classifications of medications authorized by Section 351.165(c)(3) may only be approved as provided by that section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(a), eff. Sept. 1, 2001.

Sec. 351.161. SEAL; DESIGN OF LICENSE. The board shall adopt an official seal and a license of suitable design.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.162. OFFICE. The board shall maintain an office in which it keeps all permanent records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.163. BOARD RECORDS. (a) The board shall keep a record of its proceedings.

(b) The board may keep a record of any information the board wants to record. The board shall keep a record of:

(1) the name, age, and present legal and mailing address of each applicant for examination;

(2) the name and location of the school of optometry from which the applicant holds credentials;

(3) the time devoted by the applicant to the study and practice of optometry; and

(4) whether the board rejects or licenses the applicant.

(c) A certified copy of the record described by Subsection (b), marked with the hand and seal of the executive director, is:

(1) admissible evidence in all courts; and

(2) prima facie evidence of all matters contained in the record.

(d) The executive director shall number and record each license

or renewal certificate issued by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.153(a), eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 4, eff. September 1, 2017.

Sec. 351.166. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 6, eff. Sept. 1, 2003.

Sec. 351.167. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 6, eff. Sept. 1, 2003.

Sec. 351.168. TECHNOLOGICAL SOLUTIONS POLICY REQUIRED. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.010, eff. September 1, 2005.

Sec. 351.169. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.010, eff. September 1, 2005.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 351.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.202. PUBLIC PARTICIPATION. (a) The board shall

develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.203. COMPLAINTS. (a) The board by rule shall establish methods by which a consumer or service recipient is notified of the name, mailing address, and telephone number of the board for the purpose of directing a complaint to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for service provided by a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of a person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) The board shall make information available describing the procedures established by the board relating to complaint investigation and resolution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.011, eff. September 1, 2005.

For expiration of this section, see Subection (g).

Sec. 351.2034. COMPLAINTS RESULTING FROM GLAUCOMA TREATMENT. (a) The board, in collaboration with the Texas Medical Board, shall adopt rules for investigating and reviewing complaints filed with the board regarding a therapeutic optometrist's treatment of a patient

for glaucoma. The rules must ensure that:

(1) a person who files a complaint has the opportunity to explain the allegations made in the complaint;

(2) a complaint is not dismissed without appropriate consideration by the board;

(3) a complaint is resolved within six months after the date the complaint is filed;

(4) the board notifies the Texas Medical Board of the receipt and disposition of a complaint; and

(5) a complaint is reviewed as provided by this section.

(b) After a complaint regarding a therapeutic optometrist's treatment of a patient for glaucoma is filed with the board, the board shall select at least one physician licensed in this state who specializes in ophthalmology to:

(1) review the complaint and determine if the therapeutic optometrist's treatment of the patient for glaucoma violated the standard of care applicable to a physician specializing in ophthalmology; and

(2) submit to the board a written report on the physician's determination.

(c) If the report under Subsection (b) states that the standard of care was violated, the board shall forward the complaint and report to an expert panel appointed by the board and the Texas Medical Board. The panel must be composed of an equal number of physicians who specialize in ophthalmology and therapeutic optometrists. Each member of the expert panel must be licensed to practice medicine or therapeutic optometry, as applicable, in this state. A physician who serves on an expert panel may also serve as an expert physician for the Texas Medical Board.

(d) An expert panel selected to review a complaint under Subsection (c) shall:

(1) review the physician's determination made under Subsection (b); and

(2) recommend to the board whether the therapeutic optometrist should be subject to disciplinary action and, if so, whether the disciplinary action should include suspension or revocation of the therapeutic optometrist's certificate issued under Section 351.3581(a).

(e) A person is not eligible to review a complaint under Subsection (b) or serve on an expert panel under Subsection (c) if:

(1) the person or the person's spouse is an officer, employee, or paid consultant of a Texas trade association, as defined by Section 351.053, in the field of health care; or

(2) the person is a member of the faculty or board of trustees of an optometry school or an institution of higher education with an affiliated school of optometry.

(f) The board shall maintain and make publicly available online:

(1) information regarding the number of complaints filed with the board regarding the treatment of patients for glaucoma by therapeutic optometrists and the disposition of those complaints; and

(2) a searchable list of each therapeutic optometrist whose certificate under Section 351.3581(a) was suspended or revoked by the board.

(g) This section expires September 1, 2027.

Added by Acts 2021, 87th Leg., R.S., Ch. 523 (S.B. 993), Sec. 1, eff. September 1, 2021.

Sec. 351.2035. COMPLAINTS RESULTING FROM INSPECTIONS. (a) The board shall handle as a complaint any violation of this chapter or a rule adopted by the board that is discovered during an inspection conducted under Section 351.1575(b)(1).

(b) The board shall investigate and dispose of a complaint described by Subsection (a) in the same manner that the board investigates and disposes of other complaints made under this chapter.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.012, eff. September 1, 2005.

Sec. 351.2036. PROCEDURE FOR PROCESSING COMPLAINTS. (a) The board may delegate to board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not directly relate to patient care and the investigation or disposition of which does not require expertise in optometry or therapeutic optometry. The disposition determined by board staff must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred

to an informal settlement conference under Section 351.507 if:

(1) the board staff determines that the complaint should not be dismissed or settled; or

(2) the board staff is unable to reach an agreed settlement.

(c) A complaint that is directly related to patient care or the investigation or disposition of which requires expertise in optometry or therapeutic optometry shall be reviewed by two board members who are optometrists or therapeutic optometrists who shall:

(1) dismiss the complaint if both board members agree that the complaint should be dismissed; or

(2) refer the complaint to an informal settlement conference under Section 351.507.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.012, eff. September 1, 2005.

Sec. 351.204. RECORDS OF COMPLAINTS. (a) The board shall maintain a system to act promptly and efficiently on each complaint filed with the board. The board shall maintain information concerning:

(1) parties to the complaint;

(2) the subject matter of the complaint;

(3) a summary of the results of the review or investigation of the complaint;

(4) the disposition of the complaint; and

(5) other relevant information.

(b) The board shall periodically notify parties to the complaint of the status of the complaint until the board finally disposes of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.013, eff. September 1, 2005.

Sec. 351.2045. CONFIDENTIALITY OF COMPLAINTS, ADVERSE REPORTS, INVESTIGATION FILES, AND OTHER INFORMATION. (a) Each complaint, adverse report, investigation file, and other investigation report

and all other investigative information in the possession of or received or gathered by the board or the board's employees or agents relating to a license holder, an application for a license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or any other means of legal compulsion for release to anyone other than the board or an employee or agent of the board involved in any disciplinary action relating to a license holder.

(b) The board shall share information in investigation files, on request, with another state or federal regulatory agency or with a local, state, or federal law enforcement agency regardless of whether the investigation has been completed. The board is not required to disclose under this subsection information that is an attorney-client communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) On the completion of the investigation and before a hearing under Section 351.503, the board shall provide to the license holder, subject to any other privilege or restriction set forth by rule, statute, or legal precedent, access to all information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested case hearing on the complaint. The board is not required to provide:

(1) a board investigative report or memorandum;

(2) the identity of a nontestifying complainant; or

(3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c-1) The board's providing of information under Subsection (c) does not constitute a waiver of a privilege or confidentiality under this chapter or any other law.

(d) Notwithstanding Subsection (a), the board may:

(1) disclose a complaint to the affected license holder; and

(2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

(e) This section does not prohibit the board or another party in a disciplinary action from offering into evidence in a contested case under Chapter 2001, Government Code, a record, document, or

other information obtained or created during an investigation.

(f) The board shall protect the identity of a complainant to the extent possible.

Added by Acts 2003, 78th Leg., ch. 329, Sec. 4.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 6, eff. September 1, 2017.

Sec. 351.2046. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance agent" means a person licensed under Chapter 4054, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Subtitle C, Title 6, Insurance Code.

(4) "Third-party administrator" means a person required to have a certificate of authority under Chapter 4151, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, or this chapter, a complaint filed with the board by an insurance agent, insurer, pharmaceutical company, or third-party administrator against a license holder must include the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator filing the complaint.

(d) Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the license holder who is the subject of the complaint of the name and address of the insurance agent, insurer, pharmaceutical company, or third-party administrator who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 7, eff. September 1, 2017.

Sec. 351.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and prescribe the procedures for the board to obtain the services of a private investigator.

(a-1) The board shall adopt rules that prescribe a method for prioritizing complaints for purposes of complaint investigation and disposition. The rules adopted under this subsection must:

(1) place the highest priority on complaints that allege conduct that:

(A) violates the standard of professional care and judgment of an optometrist or therapeutic optometrist, as applicable;

(B) involves professional misconduct; or

(C) potentially threatens public health or safety; and

(2) place a lower priority on complaints that are not described by Subdivision (1).

(b) The board shall:

(1) dispose of a complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the disposition of the complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) The board shall notify the parties to the complaint of the projected time requirements for pursuing the complaint.

(d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.

(e) The executive director shall notify the board of a complaint that is unresolved after the time prescribed by the board

for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.014, eff. September 1, 2005.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 351.251. LICENSE REQUIRED. A person may not practice optometry or therapeutic optometry unless the person holds a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.252. EDUCATION REQUIREMENTS FOR THERAPEUTIC OPTOMETRIST. (a) A person must satisfactorily complete the education requirements established by board rule to be licensed as a therapeutic optometrist.

(b) The education necessary to meet the requirements must:

(1) be provided by an entity approved by the board; and

(2) include an emphasis on the examination, diagnosis, and treatment of conditions of the human eye and adnexa.

(c) The board by rule shall require successful completion of accredited academic and clinical courses in pharmacology and related pathology that are:

(1) approved by the board; and

(2) determined by the board to be equivalent in the total number of classroom hours to the requirements for other health care professionals in this state who are licensed to use pharmaceutical agents, including dentists, podiatrists, and physicians.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.2525. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public

Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 9, eff. September 1, 2017.

Sec. 351.2526. REVIEW OF NATIONAL PRACTITIONER DATABASE. The board shall establish a process to review at least one national practitioner database to determine whether another state has taken any disciplinary or other legal action against an applicant or license holder before issuing an initial or renewal license under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 9, eff. September 1, 2017.

Sec. 351.253. EXAMINATION REQUIREMENT FOR THERAPEUTIC OPTOMETRIST. A person must pass the examination given by the board to be licensed to practice therapeutic optometry in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.254. EXAMINATION APPLICATION. (a) An applicant is eligible to take the licensing examination if the applicant provides to the executive director, on a form provided by the board, information the board considers necessary to enforce this chapter, including satisfactory evidence that the applicant:

(1) has attained the age of majority;

(2) has a preliminary education equivalent to one that would permit the applicant to enroll in The University of Texas; and

(3) has attended and graduated from a reputable college of optometry that meets board requirements.

(b) For purposes of Subsection (a)(4), a college of optometry is reputable if the college has:

(1) entrance requirements that are as high as those adopted by the better class of universities and schools of optometry; and

(2) a course of instruction that is:

(A) as demanding as that adopted by the better class of universities and schools of optometry;

(B) equivalent to not less than six terms of eight months each; and

(C) approved by the board.

(c) An applicant who meets the other requirements of this section may take the examination without having graduated as required by Subsection (a) if the dean of a college of optometry that meets the requirements of the board notifies the board in writing that the applicant is enrolled in good standing in the college and is in the final semester before graduation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.155(a), eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 8, eff. September 1, 2017.

Sec. 351.255. CONDUCT OF EXAMINATION. (a) The board shall give an applicant notice of the date and place of the examination. The examination shall be given at least twice a year at the board's regular meetings.

(b) The board shall conduct the examination:

(1) in writing and by other means that the board considers adequate to determine applicant qualifications; and

(2) in a manner that is fair and impartial to each applicant and recognized school of optometry.

(c) If a national testing organization does not prepare the written portion of the examination, the board shall have an independent testing professional validate that portion.

(d) The board shall give the same written examination to each applicant examined at the same time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.256. EXAMINATION SUBJECTS. (a) The examination must consist of written or practical tests in subjects regularly taught in recognized accredited colleges of optometry, including:

(1) practical, theoretical, and physiological optics;

(2) theoretical and practical optometry; and

(3) the anatomy, physiology, and pathology of the eye as applied to optometry.

(b) The examination must also include examination in pharmacology and related pathology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.015, eff. September 1, 2005.

Sec. 351.257. EXAMINATION RESULTS. (a) The board shall notify each examinee of the examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the examination results not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the

person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.258. ISSUANCE OF LICENSE TO THERAPEUTIC OPTOMETRIST; FEE. (a) The board shall:

(1) register as qualified under this chapter an applicant who passes the examination and meets all board requirements; and

(2) issue to the applicant a license to practice therapeutic optometry in this state.

(b) A person who passes the examination and meets board requirements must pay a fee for issuance of a license not later than the 90th day after the date the person receives notice, by registered mail at the address given on the examination papers or given at the time of the examination, that the person is eligible for a license.

(c) A person described by Subsection (a) who fails to pay the fee in a timely manner waives the right to obtain a license. The board may refuse to issue a license to the person until the person passes another examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.259. PROVISIONAL LICENSE. (a) The board shall issue a provisional license to practice optometry or therapeutic optometry to an applicant who:

(1) is licensed in good standing as an optometrist or therapeutic optometrist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of optometry or therapeutic optometry; and

(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder may practice.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance is a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a

license. The board shall issue a license under this chapter to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 351.253 and satisfies other license requirements under this chapter; and

(2) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the board issues the provisional license. The board may extend the 180-day limit if the results of an examination administered or graded by a testing organization have not been received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.2595. LICENSE WITHOUT EXAMINATION. The board may issue a license to practice therapeutic optometry without requiring the applicant to pass all or part of the examination required by Section 351.253 if:

(1) the applicant is licensed in good standing as a therapeutic optometrist in another state;

(2) the applicant has passed an examination that is equivalent or superior to the examination required by Section 351.253;

(3) during at least five of the seven years preceding the application date, the applicant has been:

(A) actively engaged in the practice of therapeutic optometry; or

(B) engaged in full-time teaching at an accredited college of optometry or medicine;

(4) there are no pending disciplinary actions against the applicant in the state in which the applicant is licensed; and

(5) the applicant's license has never been suspended or revoked.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.156(a), eff. Sept. 1, 2001.

Sec. 351.260. LIMITED LICENSE FOR CLINICAL FACULTY. (a) The board by rule may issue a limited license to a full-time clinical faculty member of an institution of higher education of this state who provides instruction in optometry or therapeutic optometry.

(b) A license issued under this section may authorize the faculty member to practice optometry or therapeutic optometry only on the premises of the institution of higher education and its affiliated teaching clinics and only as part of the institution's teaching program.

(c) The board by rule may adopt criteria and fees for issuance and renewal of a license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.261. DISPLAY OF LICENSE OR CERTIFICATE. A person practicing optometry or therapeutic optometry in this state shall:

(1) display the person's license or certificate in a conspicuous place in the principal office in which the person practices optometry or therapeutic optometry; and

(2) whenever required, exhibit the license or certificate to the board or the board's authorized representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.262. INFORMATION PRESENTED TO PATIENT. (a) An optometrist or therapeutic optometrist shall, within a reasonable time after completing an examination of a patient, present to the patient a prescription, bill, or receipt containing the license number and name of the optometrist or therapeutic optometrist. This subsection does not affect the individual professional liability of the optometrist or therapeutic optometrist.

(b) Notwithstanding Subsection (a), a person practicing optometry or therapeutic optometry outside of the principal office in which the person practices optometry or therapeutic optometry shall deliver to a patient fitted with eyeglasses a specification of and the prices charged for the lenses and material provided to the patient, with a bill containing:

(1) the person's signature;

(2) the person's mailing address; and

(3) the number of the person's license or certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.263. LOST OR DESTROYED LICENSE. The board shall issue a license under this chapter to a license holder whose license has been lost or destroyed on:

(1) submission of an affidavit stating:

(A) that the license has been lost or destroyed;

(B) that the person making the affidavit is the person to whom the license was issued; and

(C) any other information required by the board; and

(2) payment of a fee for issuance of a duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.264. INACTIVE STATUS. The board by rule may provide for a license holder's license to be placed on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.265. RETIRED STATUS. (a) The board by rule may allow a license holder to place the person's license on retired status. A license holder must apply to the board for retired status, on a form prescribed by the board, before the expiration date of the person's license.

(b) In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application.

(c) A license holder on retired status:

(1) must pay a license renewal fee in an amount equal to the renewal fee for a license on inactive status; and

(2) except as provided by Subsection (f), may not perform any activity regulated under this chapter.

(d) To reinstate a license placed on retired status, the license holder must submit a written request for reinstatement to the board. The board may return the license to active status and issue a renewal license if the license holder complies with any education or

other requirement established by board rule and pays the renewal fee in effect at the time of the requested reinstatement.

(e) The board may charge a reasonable administrative fee to cover the cost of research and the preparation of documentation for the board's consideration of a request for reinstatement of a license on retired status.

(f) A license holder on retired status may perform an activity regulated under this chapter if the license holder's practice consists only of voluntary charity care, as defined by board rule. The board's rules under this subsection must prescribe the scope of practice permitted for the license holder, the license holder's authority to prescribe and administer drugs, and any continuing education requirements applicable to the license holder. The scope of practice of a license holder on retired status may not be greater than the scope of practice of the same license holder on active status.

Added by Acts 2009, 81st Leg., R.S., Ch. 324 (H.B. 675), Sec. 1, eff. September 1, 2009.

Sec. 351.266. MILITARY LIMITED VOLUNTEER LICENSE. (a) The board shall adopt rules relating to the issuance of a military limited volunteer license under this section.

(b) The board may issue a military limited volunteer license to practice optometry or therapeutic optometry to an applicant who:

(1) is licensed and in good standing, or was licensed and retired in good standing, as an optometrist or therapeutic optometrist in another state;

(2) is or was authorized as an optometrist or therapeutic optometrist to treat personnel enlisted in a branch of the United States armed forces or veterans; and

(3) meets any other requirement prescribed by board rule.

(c) The board may not issue a license under this section to an applicant who:

(1) holds an optometry or therapeutic optometry license that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction;

(2) holds a license to prescribe, dispense, administer, supply, or sell a controlled substance that:

(A) is currently under active investigation; or

(B) is or was subject to a disciplinary order or action or to denial by another jurisdiction; or

(3) has been convicted of, is on deferred adjudication community supervision or deferred disposition for, or is under active investigation for the commission of:

(A) a felony; or

(B) a misdemeanor involving moral turpitude.

(d) An optometrist or therapeutic optometrist may practice optometry or therapeutic optometry under a license issued under this section only at a clinic that primarily treats indigent patients. The optometrist or therapeutic optometrist may not directly or indirectly receive compensation or anything of monetary value for optometric services rendered at the clinic.

(e) A military limited volunteer license holder is subject to board rules, including rules regarding disciplinary action, license registration and renewal, and continuing medical education.

Added by Acts 2017, 85th Leg., R.S., Ch. 169 (H.B. 2933), Sec. 1, eff. September 1, 2017.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 351.301. RENEWAL CERTIFICATE. (a) A person required by this subchapter to hold a renewal certificate may not practice optometry or therapeutic optometry without the certificate.

(b) A violation of this section has the same effect as, and is subject to the penalties for, practicing optometry or therapeutic optometry without holding a license as required by Subchapter F.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 10, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 11, eff. September 1, 2017.

Sec. 351.302. LICENSE RENEWAL. (a) A license under this

chapter is valid for a term of one or two years as determined by board rule.

(a-1) The board by rule may adopt a system under which licenses expire on various dates during the year. The board shall adjust the final dates for payment, the dates for notice of nonpayment, and the dates for license cancellation accordingly.

(b) For the year in which the license expiration date is changed, license renewal fees payable not later than January 1 shall be prorated on a monthly basis so that each license holder pays only that portion of the license renewal fee allocable to the number of months during which the license is valid.

(c) On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 12, eff. September 1, 2017.

Sec. 351.303. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license is to expire, the board shall send written notice of the impending license expiration to the person at the person's last known address according to board records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.304. PROCEDURE FOR RENEWAL. (a) Not later than the date provided under Section 351.302, an optometrist or therapeutic optometrist shall pay to the board a renewal fee for the renewal of a license to practice optometry or therapeutic optometry. A person may renew an unexpired license by paying the required renewal fee to the board before the license expiration date.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to one and one-half times the renewal fee set by the board under Section 351.152. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to two times the renewal fee set by the board under Section 351.152.

(c) Except as otherwise provided by this subchapter, a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.016, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(b), eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 13, eff. September 1, 2017.

Sec. 351.3045. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 351.2525.

(b) The board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 351.2525 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 14, eff. September 1, 2017.

Sec. 351.305. ISSUANCE OF CERTIFICATE. On receipt of the required fees, the board shall issue a renewal certificate containing information from board records that the board considers necessary for the proper enforcement of this chapter, including the license number and the period for which the license is renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 15, eff. September 1, 2017.

Sec. 351.306. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without examination the expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

(b) The person must pay to the board a fee that is equal to the amount of the renewal fee set by the board under Section 351.152.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.017, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(c), eff. September 1, 2015.

Sec. 351.3065. RENEWAL OF EXPIRED LICENSE BY RETIRED OPTOMETRIST OR THERAPEUTIC OPTOMETRIST. The board may renew the license of a person whose license has been expired for one year or more without requiring the person to comply with the requirements and procedures for an original license if the person places the person's renewed license on retired status and confines the person's practice solely to voluntary charity care under Section 351.265(f).

Added by Acts 2009, 81st Leg., R.S., Ch. 324 (H.B. 675), Sec. 2, eff. September 1, 2009.

Sec. 351.307. GOVERNMENTAL SERVICE, TRAINING, OR EDUCATION. An optometrist or therapeutic optometrist may obtain reinstatement of an expired license without paying a lapsed renewal fee or other fee and without passing an examination if:

(1) the license holder's license expired while the license holder was engaged in:

(A) active duty with a United States military service

or with the United States Public Health Service;

(B) full-time federal service; or

(C) training or education under the supervision of the United States, before induction into a United States military service;

(2) termination of the license holder's service, training, or education occurred other than by dishonorable discharge; and

(3) not later than the first anniversary of the date of termination of the service, training, or education, the license holder provides the board with an affidavit stating that:

(A) the license holder was engaged in the service, training, or education; and

(B) termination of the service, training, or education occurred other than by dishonorable discharge.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.308. CONTINUING EDUCATION. (a) An optometrist or therapeutic optometrist must take annual courses in subjects relating to the use and application of scientific, technical, and clinical advances in subjects relating to the practice of optometry or therapeutic optometry regularly taught in recognized optometric universities and schools, including:

(1) vision care;

(2) vision therapy; and

(3) visual training.

(b) An optometrist or therapeutic optometrist must complete 16 hours of study each calendar year, of which at least six hours must be in the diagnosis or treatment of ocular disease.

(c) An optometrist or therapeutic optometrist shall fulfill the continuing education requirements by attending continuing education courses sponsored by an accredited college of optometry or a course approved by the board. Course attendance must be certified to the board on a form approved by the board. The license holder shall submit the certification with the license renewal application and fee.

(d) The board may take action necessary to qualify for federal funds or grants made available to establish or maintain continuing education programs.

(e) The board may not issue a renewal certificate to a license holder who has not complied with the requirements of this section unless the license holder:

(1) provides the board with evidence acceptable to the board that the license holder has, since the license expiration, completed sufficient hours of approved continuing education courses to satisfy any deficiency for the previous year; and

(2) pays to the board in addition to the license renewal fee a penalty that is equal to the amount of the license renewal fee.

(f) Continuing education hours used by a license holder to satisfy a deficiency for the previous year under Subsection (e)(1) may not be used to satisfy the requirements for the year in which the hours are earned.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.309. CONTINUING EDUCATION EXEMPTIONS. A person is exempt from the continuing education requirements of Section 351.308 if the person:

(1) holds a license but does not practice optometry or therapeutic optometry in this state;

(2) served in the regular armed forces of the United States during part of the most recent license term;

(3) submits proof to the board that the person suffered a serious or disabling illness or physical disability preventing the person from complying with the requirements during the most recent license term; or

(4) was first licensed during the period preceding the license renewal date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 16, eff. September 1, 2017.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 351.351. LICENSE HOLDER INFORMATION. (a) A license holder shall file with the board:

(1) the license holder's mailing address;

(2) the address of the license holder's residence;

(3) the mailing address of each office of the license holder; and

(4) the address for the location of each office of the license holder that has an address different from the office's mailing address.

(b) Not later than the 10th day after the date of a change in the information required to be filed with the board under Subsection (a), the license holder shall file with the board a written notice of the change.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.352. OPTOMETRIC FILES AND RECORDS. (a) All prescription files, patient records, and business records of an optometric practice are the sole property of the optometrist or therapeutic optometrist.

(b) A patient may obtain a copy of the patient's optometric records, or may have the records forwarded to another doctor, by making a signed, written request to the optometrist or therapeutic optometrist for the records.

(c) An optometrist or therapeutic optometrist may charge a reasonable processing fee for providing optometric records to a patient. The optometrist or therapeutic optometrist may provide the records in summary form unless the patient specifically requests otherwise.

(d) This section does not affect a patient's right of access to the patient's contact lens prescription under Chapter 353.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.353. INITIAL EXAMINATION OF PATIENT. To ensure adequate examination of a patient for whom an optometrist or therapeutic optometrist signs or causes to be signed an ophthalmic lens prescription, in the initial examination of the patient the optometrist or therapeutic optometrist shall make and record, if possible, the following findings concerning the patient's condition:

(1) case history, consisting of ocular, physical, occupational, and other pertinent information;

(2) visual acuity;

(3) the results of a biomicroscopy examination, including an examination of lids, cornea, and sclera;

(4) the results of an internal ophthalmoscopic examination, including an examination of media and fundus;

(5) the results of a static retinoscopy, O.D., O.S., or autorefractor;

(6) subjective findings, far point and near point;

(7) assessment of binocular function;

(8) amplitude or range of accommodation;

(9) tonometry; and

(10) angle of vision, to right and to left.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.354. CERTAIN OPTOMETRIC SERVICES AUTHORIZED. An optometrist or therapeutic optometrist may:

(1) perform:

(A) vision therapy;

(B) hand-eye coordination exercises;

(C) visual training; and

(D) developmental vision therapy; and

(2) evaluate and remedy a learning or behavioral disability associated with or caused by a defective or abnormal condition of vision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.355. DETERMINING OR MEASURING VISION. In determining or measuring the powers of vision of the human eye, an optometrist or therapeutic optometrist may:

(1) examine the eye to diagnose the presence of a defect or abnormal condition, the presence or effect of which may be corrected, remedied, or relieved by the use of lenses or prisms;

(2) determine the accommodative or refractive condition or the range or powers of vision or muscular equilibrium of the eye; or

(3) examine the human vision system to determine a departure from the normal, measure the system's powers of vision, or adapt lenses or prisms for the system's aid or relief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.356. FITTING LENSES OR PRISMS. In fitting lenses or prisms, an optometrist or therapeutic optometrist may:

(1) directly or indirectly prescribe or supply lenses or prisms;

(2) make measurements involving the eyes or the optical requirements of the eyes; or

(3) adapt or supply lenses or prisms to:

(A) correct, remedy, or relieve a defect or abnormal condition of the human eye; or

(B) correct, remedy, or relieve or attempt to correct, remedy, or relieve the effect of a defect or abnormal condition of the human eye.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.357. FITTING AND DISPENSING CONTACT LENSES. (a) Contact lenses may be fitted only by an optometrist, therapeutic optometrist, or licensed physician.

(b) An ophthalmic dispenser may dispense contact lenses on a fully written contact lens prescription issued by an optometrist, therapeutic optometrist, or licensed physician. The ophthalmic dispenser may:

(1) fabricate or order the contact lenses and dispense them to the patient with appropriate instructions for the care and handling of the lenses; and

(2) mechanically adjust the lenses.

(c) The ophthalmic dispenser may not measure the eye or cornea or evaluate the physical fit of the contact lenses in any way.

(d) Notwithstanding Subsection (b), an optometrist, therapeutic optometrist, or licensed physician who issues a contact lens prescription remains professionally responsible to the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.358. OPHTHALMIC DEVICES, ORAL MEDICATIONS, AND PHARMACEUTICAL AGENTS. (a) An optometrist may not treat the eye for

a defect or administer or prescribe a drug or physical treatment unless the optometrist is a therapeutic optometrist or licensed physician.

(b) A therapeutic optometrist may:

(1) administer, perform, or prescribe ophthalmic devices, procedures, and appropriate medications administered by topical or oral means, in accordance with this section and Section 351.3581, to diagnose or treat visual defects, abnormal conditions, or diseases of the human vision system, including the eye and adnexa; or

(2) administer medication by parenteral means for a purpose and in a manner prescribed by Subsection (e).

(c) A therapeutic optometrist may prescribe not more than one three-day supply of any medication classified as a controlled substance under Schedule III, IV, or V of 21 U.S.C. Section 812.

(d) A therapeutic optometrist may independently administer oral carbonic anhydrase inhibitors for emergency purposes only and shall immediately refer the patient to an ophthalmologist.

(e) A therapeutic optometrist may inject appropriate medication for a patient who has an anaphylactic reaction to counteract the anaphylaxis. The therapeutic optometrist shall immediately refer the patient to a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(b), eff. Sept. 1, 2001.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 523 (S.B. 993), Sec. 2, eff. September 1, 2021.

Sec. 351.3581. TREATMENT OF GLAUCOMA. (a) A therapeutic optometrist may not administer or prescribe an oral or parenteral medication or treat glaucoma unless the therapeutic optometrist holds a certificate issued by the board. A therapeutic optometrist certified under this section shall be known as an optometric glaucoma specialist. To obtain a certificate, a therapeutic optometrist must:

(1) complete an instructional clinical review course; and

(2) pass an examination approved by the board.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 523 (S.B. 993), Sec. 6, eff. September 1, 2021.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 523 (S.B. 993), Sec. 6, eff. September 1, 2021.

(d) A therapeutic optometrist shall refer a patient to an ophthalmologist if:

(1) the patient is younger than 16 years of age and has been diagnosed as having glaucoma;

(2) the patient has been diagnosed as having acute closed angle glaucoma;

(3) the patient has been diagnosed as having malignant glaucoma or neovascular glaucoma;

(4) the patient has definite optic disc, retinal nerve fiber layer, or macular imaging abnormalities consistent with glaucoma and visual field abnormalities in both hemifields, or loss within five degrees of fixation in at least one hemifield as tested with standard automated perimetry; or

(5) the therapeutic optometrist determines that a patient's glaucoma is not responding to nonsurgical intervention.

(e) A therapeutic optometrist who refers a patient to a physician or specialist shall inform the patient that the patient may go to any physician or specialist the patient chooses. This subsection does not prevent a therapeutic optometrist from recommending a physician or specialist.

(f) On making an initial diagnosis of glaucoma, a therapeutic optometrist shall set a target pressure that is not more than 80 percent of the initial intraocular pressure. The patient's glaucoma is not considered to be appropriately responding to treatment if the patient fails to achieve the target pressure within an appropriate time.

(g) Before a therapeutic optometrist may prescribe a beta blocker, the therapeutic optometrist must take a complete case history of the patient and determine whether the patient has had a physical examination within the 180 days preceding the date of taking the history. If the patient has not had a physical examination or if the patient has a history of congestive heart failure, bradycardia, heart block, asthma, or chronic obstructive pulmonary disease, the therapeutic optometrist must refer the patient to a physician for a physical examination before initiating beta blocker therapy.

(h) A therapeutic optometrist who diagnoses acute closed angle glaucoma may initiate appropriate emergency treatment for a patient but shall refer the patient to a physician in a timely manner.

(i) A physician may charge a reasonable consultation fee for a consultation given as provided by this section.

(j) A physician to whom a patient is referred by a therapeutic optometrist under this section shall forward to the therapeutic optometrist, not later than the 30th day after first seeing the patient, a written report on the results of the referral. The therapeutic optometrist shall maintain the report in the patient's records. A physician who, for a medically appropriate reason, does not return a patient to the therapeutic optometrist who referred the patient shall state in the physician's report to the therapeutic optometrist the specific medical reason for failing to return the patient.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(c), eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 523 (S.B. 993), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 523 (S.B. 993), Sec. 4, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 523 (S.B. 993), Sec. 6, eff. September 1, 2021.

Sec. 351.359. PRESCRIPTION. (a) An ophthalmic lens prescription must include:

(1) the signature of the optometrist or therapeutic optometrist; and

(2) the information and parameters the optometrist or therapeutic optometrist considers relevant or necessary.

(b) The prescription may not contain a restriction that limits the parameters to a private label not available to the optical industry as a whole.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.360. PROFESSIONAL STANDARD OF THERAPEUTIC OPTOMETRIST. A therapeutic optometrist, including an optometric glaucoma specialist, is subject to the same standard of professional care and judgment as a person practicing as an ophthalmologist under Subtitle

B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(d), eff. Sept. 1, 2001.

Sec. 351.361. LEASE; PAYMENT BASIS; ACCOUNTS RECEIVABLE. (a) An optometrist or therapeutic optometrist may:

(1) lease space from an establishment;

(2) pay for franchise fees or other services on a percentage or gross receipts basis; or

(3) sell, transfer, or assign accounts receivable.

(b) Subsection (a)(2) does not authorize activity prohibited by Section 351.408.

(c) The purpose of this section is to protect the public in the practice of optometry or therapeutic optometry, better enable the public to assign professional responsibility, and further safeguard the doctor-patient relationship.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.362. PROFESSIONAL RESPONSIBILITY; NAME OF PRACTICE. (a) An optometrist or therapeutic optometrist may practice under a trade name, an assumed name, or the name of a professional corporation or association.

(b) An optometrist or therapeutic optometrist practicing in this state shall display the actual name under which the optometrist or therapeutic optometrist is licensed by the board, so that the name is visible to the public before entry into the optometrist's or therapeutic optometrist's office reception area.

(c) Section 351.361(c) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.363. MERCANTILE ESTABLISHMENT. (a) To safeguard the visual welfare of the public and the doctor-patient relationship, assign professional responsibility, establish standards of professional surroundings, more nearly secure to the patient the

optometrist's or therapeutic optometrist's undivided loyalty and service, and carry out the prohibitions of this chapter against placing an optometric or therapeutic optometric license in the service or at the disposal of an unlicensed person, this section applies to an optometrist or therapeutic optometrist who leases space from and practices optometry or therapeutic optometry on the premises of a mercantile establishment.

(b) The optometric practice must be owned by an optometrist or therapeutic optometrist. Every phase of the practice and the leased space of the optometric practice must be controlled exclusively by an optometrist or therapeutic optometrist.

(c) The prescription files and business records of the optometric practice are the sole property of the optometrist or therapeutic optometrist and may not be involved with a mercantile establishment or unlicensed person.

(d) The lessor of the optometric practice space may inspect business records that are essential to the successful initiation or continuation of a lease of space based on a percentage of gross receipts.

(e) The leased space of the optometric practice must be definite and apart from space used by other occupants of the premises. Solid, opaque partitions or walls from floor to ceiling must separate the optometric practice space from space used by other occupants. Railings, curtains, or other similar arrangements do not satisfy the requirements of this subsection.

(f) The leased space must have a patient's entrance opening on a public thoroughfare, such as a public street, hall, lobby, or corridor. An aisle of a mercantile establishment does not satisfy the requirement of this subsection. An entrance is not considered a patient's entrance unless actually used as an entrance by the optometrist's or therapeutic optometrist's patients.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.364. RELATIONSHIPS WITH DISPENSING OPTICIANS. (a) If an optometrist or therapeutic optometrist occupies space for the practice of optometry or therapeutic optometry on premises on which a person engages in the business of a dispensing optician, solid partitions or walls from floor to ceiling must separate the space

occupied by the optometrist or therapeutic optometrist from the space occupied by the dispensing optician.

(b) The space occupied by the optometrist or therapeutic optometrist must have a patient's entrance opening on a public thoroughfare, such as a public street, hall, lobby, or corridor. An entrance is not considered a patient's entrance unless actually used as an entrance by the optometrist's or therapeutic optometrist's patients.

(c) An optometrist or therapeutic optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the records and accounts of the business of a dispensing optician must be kept separate from those of the optometric practice.

(d) The purpose of this section is to ensure that the practices of optometry and therapeutic optometry are carried out in a manner completely separate from the business of a dispensing optician, with no control of one by the other and no solicitation for one by the other, except as described by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.365. PATIENT RIGHTS REGARDING SPECTACLE PRESCRIPTION. (a) If, after examining a patient, an optometrist or therapeutic optometrist believes that lenses are required to correct or remedy a defect or abnormal condition of vision, the optometrist or therapeutic optometrist shall:

(1) inform the patient; and

(2) provide the patient with a copy of the patient's spectacle prescription.

(b) The optometrist or therapeutic optometrist shall expressly indicate verbally or by other means that the patient has the following alternatives for the preparation of the lenses according to the prescription:

(1) the optometrist or therapeutic optometrist will prepare or have the lenses prepared; or

(2) the patient may have the prescription filled by a dispensing optician but should return for an optometrical examination of the lenses.

(c) This section does not require an optometrist or therapeutic optometrist to provide a prescription to a patient before the patient has paid the examination fee.

(d) Section 351.364(d) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.366. AUTHORITY TO FORM CERTAIN JOINTLY OWNED ENTITIES. (a) Except as provided by Section 351.361 or 351.457, an optometrist or therapeutic optometrist and a physician may, for the purposes described by Subsection (b), organize, jointly own, and manage any legal entity, including:

(1) a partnership under the Texas Revised Partnership Act (Article 6132b-1.01 et seq., Vernon's Texas Civil Statutes);

(2) a limited partnership under the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); or

(3) a limited liability company under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(b) An entity authorized under Subsection (a) may:

(1) own real property, other physical facilities, or equipment for the delivery of health care services or management;

(2) lease, rent, or otherwise acquire the use of real property, other physical facilities, or equipment for the delivery of health care services or management; or

(3) employ or otherwise use a person who is not an optometrist, therapeutic optometrist, or physician for the delivery of health care services or management.

(c) Only an optometrist, therapeutic optometrist, or physician may have an ownership interest in an entity authorized under Subsection (a). This subsection does not prohibit an entity from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.157(a), eff. Sept. 1, 2001.

Sec. 351.367. CONTRACT OR EMPLOYMENT WITH COMMUNITY HEALTH CENTERS. (a) In this section, "community health center" means a

health organization that:

(1) is a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and Section 501(c)(3), Internal Revenue Code of 1986; and

(2) is organized and operated as:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. Section 254b or 254c; or

(B) a federally qualified health center under 42 U.S.C. Section 1396d(l)(2)(B).

(b) The board by rule shall certify a health organization to contract with or employ an optometrist or therapeutic optometrist if the organization:

(1) applies for certification on a form approved by the board; and

(2) presents proof satisfactory to the board that the organization is a community health center.

(c) A community health center that contracts with or employs an optometrist or therapeutic optometrist under this section may not control or attempt to control the professional judgment of the optometrist or therapeutic optometrist.

Added by Acts 2009, 81st Leg., R.S., Ch. 227 (S.B. 1476), Sec. 1, eff. May 27, 2009.

SUBCHAPTER I. PROHIBITED PRACTICES IN GENERAL

Sec. 351.401. PROHIBITED OFFER, REPRESENTATION, OR DESIGNATION. Unless a person is licensed to practice under this chapter, the person may not:

(1) offer to practice optometry or therapeutic optometry;

(2) represent to others that the person is authorized to practice optometry or therapeutic optometry; or

(3) use in connection with the person's name a designation implying that the person practices optometry or therapeutic optometry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.402. IMPERSONATION PROHIBITED. A person may not:

(1) impersonate an optometrist or therapeutic optometrist or falsely assume another name; or

(2) buy, sell, or fraudulently obtain an optometry diploma, an optometry or therapeutic optometry license, or a record of registration, or aid or abet in that purchase, sale, or acquisition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.403. FALSE, DECEPTIVE, OR MISLEADING ADVERTISING. (a) A person may not publish or display, or cause or permit to be published or displayed, by any means, including by newspaper, radio, television, billboard, or window display, a false, deceptive, or misleading statement or advertisement concerning ophthalmic services or materials. In this subsection, "ophthalmic materials" include lenses, frames, eyeglasses, or contact lenses, or parts of lenses, frames, eyeglasses, or contact lenses.

(b) An advertisement of prescription eyeglasses or contact lenses must contain language to the effect that an eye doctor's prescription is required to purchase prescription eyeglasses or contact lenses.

(c) An advertisement of the price of prescription eyeglasses or contact lenses must contain the following information:

(1) a statement of whether the cost of an examination, prescription services, and follow-up care by an eye doctor is included in the price;

(2) if the advertised goods are to be available to the public at the advertised price for less than 30 days after the date of publication of the advertisement, a statement of the time limitation on the offer;

(3) if the advertised goods are to be available to the public in limited quantities and if no rainchecks are to be given on total depletion of the inventory of the advertised goods, a statement of the total quantity available to all customers;

(4) if the advertised goods are to be available to the public at a limited number for each customer, a statement of the limit for each customer; and

(5) for contact lenses, a statement of the number of lenses included for the price specified.

(d) A person who fails to satisfy the requirements of

Subsection (b) or (c) is considered to have published a false, deceptive, or misleading statement within the meaning of this section.

(e) A statement required by Subsection (b) or (c) must be readily audible or readable by a person of average comprehension or reading speed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.404. EYEGLASSES AS PRIZE OR INDUCEMENT. A person in this state may not give or deliver, or cause to be given or delivered, in any manner, eyeglasses as:

(1) a prize or premium; or

(2) an inducement to sell an item of merchandise, including a book, paper, magazine, or work of literature or art.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.405. ALTERATION OF PRESCRIPTION. A person may not alter the specifications of an ophthalmic lens prescription without the prescribing doctor's consent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.406. EXPIRED CONTACT LENS PRESCRIPTION. A person may not fill an expired contact lens prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.407. GOVERNMENTAL DISCRIMINATION PROHIBITED. (a) A program supported by the state or by a political subdivision of the state may not discriminate against a health care practitioner because the practitioner is an optometrist or therapeutic optometrist.

(b) A law or policy of the state or of a political subdivision of the state that requires or encourages a person to obtain vision care or medical eye care that is within the scope of practice of an optometrist or therapeutic optometrist may not discriminate against a

health care practitioner because the practitioner is an optometrist or therapeutic optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.408. CONTROL OF OPTOMETRY. (a) This section and Sections 351.602(c)(2), 351.603(b), 351.604(3), and 351.605 shall be liberally construed to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist.

(b) In this section, "control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist" includes:

(1) setting or attempting to influence the professional fees or office hours of an optometrist or therapeutic optometrist;

(2) restricting or attempting to restrict an optometrist's or therapeutic optometrist's freedom to see a patient by appointment;

(3) terminating or threatening to terminate an agreement, including a lease, or other relationship in an attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(4) providing, hiring, or sharing employees, business services, or similar items to or with an optometrist or therapeutic optometrist; and

(5) making or guaranteeing a loan to an optometrist or therapeutic optometrist in excess of the value of the collateral securing the loan.

(c) A manufacturer, wholesaler, or retailer of ophthalmic goods may not directly or indirectly:

(1) control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(2) employ or contract for the services of an optometrist or therapeutic optometrist if part of the optometrist's or therapeutic optometrist's duties involves the practice of optometry or therapeutic optometry; or

(3) pay an optometrist or therapeutic optometrist for a service not provided.

(d) This section does not apply to a manufacturer, wholesaler, or retailer of ophthalmic goods who is an optometrist, therapeutic optometrist, or licensed physician or a legal entity wholly owned and controlled by at least one optometrist, therapeutic optometrist, or licensed physician, unless the optometrist, therapeutic optometrist, or legal entity has offices at more than three locations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.409. PROHIBITED ACTIVITY BY UNLICENSED PERSON. An unlicensed person may not engage in any activity prohibited by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER J. PROHIBITED PRACTICES BY LICENSE HOLDER

Sec. 351.451. PROHIBITED TREATMENT BY LICENSE HOLDER. (a) An optometrist or therapeutic optometrist may not provide a person with treatment except as authorized by law.

(b) An optometrist or therapeutic optometrist who violates Subsection (a) is considered to be practicing medicine without a license and, in addition to the penalties prescribed for a violation of this chapter, is subject to the penalty for the practice of medicine without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.452. PROHIBITED USE OF PHARMACEUTICAL AGENT. A therapeutic optometrist may not use a pharmaceutical agent not authorized by the board or by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.4521. PERFORMANCE OF SURGERY PROHIBITED. A therapeutic optometrist may not perform surgery or laser surgery.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.152(e), eff. Sept.

1, 2001.

Sec. 351.453. EXAMINATION REQUIRED FOR PRESCRIPTION. An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.454. CONTAGIOUS OR INFECTIOUS DISEASE. (a) An optometrist or therapeutic optometrist may not practice optometry or therapeutic optometry while knowingly suffering from a contagious or infectious disease, as defined by the Texas Department of Health, if the disease is one that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.

(b) The board by rule shall adopt guidelines that define, according to guidelines issued by the Texas Department of Health and specific to the practice of optometry or therapeutic optometry, each disease or type of disease that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.455. PRACTICE PROHIBITED FROM HOUSE TO HOUSE. (a) A person may not practice optometry or therapeutic optometry from house to house or on the streets or highways, notwithstanding any laws for the licensing of peddlers.

(b) Subsection (a) does not prohibit an optometrist, therapeutic optometrist, or licensed physician from attending, prescribing for, or providing eyeglasses or ophthalmic lenses to a person:

(1) who, because of illness or physical or mental infirmity, is confined to the place the person resides; or

(2) in response to an unsolicited request or call for those services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.456. PRACTICE PROHIBITED DURING LICENSE SUSPENSION OR REVOCATION. A person may not practice optometry or therapeutic optometry while the person's license is suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.457. PROFESSIONAL RESPONSIBILITY; FEES. (a) An optometrist or therapeutic optometrist may not directly or indirectly divide, share, split, or allocate a fee for optometric services or materials with:

(1) a layperson, firm, or corporation; or

(2) another optometrist, therapeutic optometrist, or licensed physician, except on the basis of a division of service or responsibility.

(b) Subsection (a) does not:

(1) prevent an optometrist or therapeutic optometrist from paying an employee in the regular course of employment;

(2) prevent establishment of a partnership for the practice of optometry or therapeutic optometry; or

(3) prohibit an optometrist or therapeutic optometrist from being employed on a salary, with or without a bonus arrangement, by an optometrist, therapeutic optometrist, or licensed physician, regardless of the amount of supervision exerted by the employer over the office in which the employee works.

(c) A bonus arrangement described by Subsection (b)(3) may not be based on the business or income of an optical company.

(d) Section 351.361(c) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.458. PROFESSIONAL RESPONSIBILITY; USE OF NAME OR PROFESSIONAL IDENTIFICATION. (a) An optometrist or therapeutic optometrist may not use, or cause or allow to be used, the optometrist's or therapeutic optometrist's name or professional identification, as authorized by Chapter 104, on or near the door, window, wall, directory, sign, or listing of an office or place of practice, unless the optometrist or therapeutic optometrist is actually present and practicing optometry or therapeutic optometry in that office or place during the hours it is open to the public for

the practice of optometry or therapeutic optometry.

(b) An optometrist or therapeutic optometrist may not practice in an office or place where a name or professional identification on or near the door, window, wall, directory, sign, or listing of the office or place, or where a name or professional identification used in connection with the office or place, indicates that it is owned, operated, supervised, staffed, directed, or attended by a person not actually present and practicing optometry or therapeutic optometry in that office or place during the hours it is open to the public for the practice of optometry or therapeutic optometry.

(c) To be actually present for purposes of Subsections (a) and (b), the optometrist or therapeutic optometrist must be physically present in the office or place of practice:

(1) for more than half of the total number of hours the office or place is open to the public for the practice of optometry or therapeutic optometry in each calendar month for at least nine months in each calendar year; or

(2) for at least half of the time the optometrist or therapeutic optometrist conducts or supervises the practice of optometry or therapeutic optometry.

(d) To be practicing optometry or therapeutic optometry for purposes of Subsections (a) and (b), the optometrist or therapeutic optometrist must regularly and personally in the office or place of practice:

(1) examine the eyes of some of the persons for whom prescriptions have been issued in that office or place; or

(2) supervise those eye examinations.

(e) This section does not require the physical presence of a person who is ill, injured, or otherwise temporarily incapacitated.

(f) Section 351.361(c) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.459. MERCANTILE ESTABLISHMENT; PROHIBITED ACTS. (a) This section applies to an optometrist or therapeutic optometrist who leases space from and practices optometry or therapeutic optometry on the premises of a mercantile establishment.

(b) An optometrist or therapeutic optometrist may not:

(1) conduct a phase of practice as a department or

concession of a mercantile establishment; or

(2) display a legend or sign stating "Optical Department," "Optometrical Department," or a similar message on the premises of a mercantile establishment or in advertising.

(c) An optometrist or therapeutic optometrist may not permit the optometrist's or therapeutic optometrist's name or practice to be directly or indirectly used in connection with a mercantile establishment in any manner, including in advertising, displays, or signs.

(d) The credit account of a patient of an optometrist or therapeutic optometrist must be with the optometrist or therapeutic optometrist and not with the credit department of the mercantile establishment. This subsection does not prevent the optometrist or therapeutic optometrist from subsequently selling, transferring, or assigning that account.

(e) Section 351.363(a) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.460. RELATIONSHIPS WITH DISPENSING OPTICIANS; PROHIBITED ACTS. (a) A person who is engaged in the business of a dispensing optician, other than an optometrist, therapeutic optometrist, or licensed physician, may not have:

(1) an interest in the practice, books, records, files, equipment, or materials of an optometrist or therapeutic optometrist; or

(2) except as provided by Subsection (c), an interest in the premises or space occupied by an optometrist or therapeutic optometrist for the practice of optometry or therapeutic optometry.

(b) An optometrist, therapeutic optometrist, or licensed physician who is engaged in the business of a dispensing optician and who owns an interest in the practice, books, records, files, equipment, or materials of another optometrist or therapeutic optometrist shall maintain a separate set of books, records, files, and accounts in connection with that interest.

(c) Subsection (a)(2) does not apply if the interest is a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician.

(d) Section 351.364(d) applies to this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER K. DISCIPLINARY PROCEDURES

Sec. 351.501. DENIAL OF LICENSE AND DISCIPLINARY ACTION BY BOARD. (a) The board may refuse to issue a license to an applicant, revoke or suspend a license, place on probation a person whose license has been suspended, impose a fine, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a license holder if the board determines that:

(1) the applicant or license holder is guilty of fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or therapeutic optometry or in seeking admission to that practice;

(2) the applicant or license holder is unfit or incompetent by reason of negligence;

(3) the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony;

(4) the applicant or license holder has developed an incapacity that prevents or could prevent the applicant or license holder from practicing optometry or therapeutic optometry with reasonable skill, competence, and safety to the public;

(5) the license holder has directly or indirectly employed, hired, procured, or induced a person to practice optometry or therapeutic optometry in this state without a license;

(6) the license holder has directly or indirectly aided or abetted an unlicensed person in the practice of optometry or therapeutic optometry;

(7) the license holder has placed the holder's license at the disposal or service of, including lending, leasing, or renting to, a person not licensed to practice optometry or therapeutic optometry in this state;

(8) the applicant or license holder has wilfully or repeatedly violated this chapter or a board rule adopted under this chapter;

(9) the license holder has wilfully or repeatedly represented to a member of the public that the license holder is authorized or competent to cure or treat an eye disease beyond the authorization granted by this chapter;

(10) the license holder has had the right to practice optometry or therapeutic optometry suspended or revoked by a federal agency for a cause that the board believes warrants that action;

(11) the applicant or license holder has acted to deceive, defraud, or harm the public;

(12) the applicant or license holder is guilty of gross incompetence in the practice of optometry or therapeutic optometry;

(13) the applicant or license holder has engaged in a pattern of practice or other behavior demonstrating a wilful provision of substandard care;

(14) the applicant or license holder has committed an act of sexual abuse, misconduct, or exploitation with a patient or has otherwise unethically or immorally abused the doctor-patient relationship;

(15) the applicant or license holder has prescribed, sold, administered, distributed, or given a drug legally classified as a controlled substance or as an addictive or dangerous drug for other than an accepted diagnostic or therapeutic purpose;

(16) the applicant or license holder has failed to report to the board the relocation of the applicant's or license holder's office not later than the 30th day after the date of relocation, whether in or out of this state; or

(17) the license holder has practiced or attempted to practice optometry while the license holder's license was suspended.

(b) A violation of this chapter is not a violation for purposes of disciplinary action under Subsections (a)(8) and (9) if the violation occurs at least four years before the date a complaint is filed that results in a disciplinary hearing before the board on that complaint.

(c) Notwithstanding Subsection (a), the board may not, as part of a disciplinary action, order a license holder to acquire a license or certificate of a different or higher class or type than the license holder holds at the time of the disciplinary action.

(d) The board may refuse to issue a license to an applicant or may revoke or suspend a license or place a license holder on probation for a period determined by the board because of the applicant's or license holder's violation of a law of this state, other than this chapter, or a rule of another licensing board in this state, or of a statute or rule of another state as determined by a review conducted as provided by Section 351.2526, if the violation

constitutes a violation of the laws of this state or a board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.018, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 17, eff. September 1, 2017.

Sec. 351.5014. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION. (a) In enforcing Section 351.501(a)(4), the board or an authorized agent of the board on probable cause, as determined by the board or agent, shall request an applicant or license holder to submit to a mental or physical examination by a physician or other health care professional designated by the board. The board shall adopt guidelines, in conjunction with persons interested in or affected by this section, to enable the board to evaluate circumstances in which an applicant or license holder may be required to submit to an examination for mental or physical health conditions, alcohol and substance abuse, or professional behavior problems.

(b) If the applicant or license holder refuses to submit to the examination under Subsection (a), the board shall issue an order requiring the applicant or license holder to show cause why the applicant or license holder will not submit to the examination. The board shall schedule a hearing on the order not later than the 30th day after the date notice is served on the applicant or license holder. The board shall notify the applicant or license holder of the order and hearing by personal service or certified mail, return receipt requested.

(c) At the hearing, the applicant or license holder and the applicant's or license holder's attorney are entitled to present testimony or other evidence to show why the applicant or license holder should not be required to submit to the examination. The applicant or license holder has the burden of proof to show why the applicant or license holder should not be required to submit to the examination.

(d) After the hearing, the board, as applicable, by order shall require the applicant or license holder to submit to the examination not later than the 60th day after the date of the order or withdraw

the request for examination.

Added by Acts 2017, 85th Leg., R.S., Ch. 385 (S.B. 314), Sec. 18, eff. September 1, 2017.

Sec. 351.5015. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE. (a) The board shall appoint a three-member disciplinary panel consisting of board members to determine whether a license issued to a person under this chapter should be temporarily suspended or restricted.

(b) If the disciplinary panel determines from the evidence presented to the panel that a license holder would, by the person's continuation in the practice of optometry or therapeutic optometry, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license holder's license.

(c) The disciplinary panel may temporarily suspend or restrict a license under this section without notice or hearing if:

(1) the board immediately provides notice of the suspension or restriction to the license holder; and

(2) a hearing before the disciplinary panel concerning the temporary suspension or restriction is scheduled for the earliest possible date following the suspension or restriction.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(e) After the hearing described by Subsection (c)(2), if the disciplinary panel affirms the temporary suspension or restriction of the license holder's license, the board shall schedule an informal settlement conference that meets the requirements of Section 2001.054(c), Government Code, to be held as soon as practicable, unless the license holder waives the informal settlement conference or an informal settlement conference has already been held with regard to the issues that are the basis for the temporary suspension or restriction.

(f) If the license holder is unable to show compliance at the informal settlement conference regarding the issues that are the basis for the temporary suspension or restriction, a board

representative shall file a charge under Section 351.503 as soon as practicable.

(g) If after the hearing described by Subsection (c)(2) the disciplinary panel does not temporarily suspend or restrict the license holder's license, the facts that were the basis for the temporary suspension or restriction may not be the sole basis for another proceeding to temporarily suspend or restrict the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension or restriction of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension or restriction of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.019, eff. September 1, 2005.

Sec. 351.502. WILFUL OR REPEATED NONCOMPLIANCE. (a) The board shall consider the wilful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with the requirements of Sections 351.353, 351.359, and 351.405 as prima facie evidence that the optometrist or therapeutic optometrist is unfit or incompetent by reason of negligence within the meaning of Section 351.501(a)(2) and as sufficient ground for the filing of charges to revoke or suspend a license.

(b) The board shall consider the wilful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with the requirements of Sections 351.361, 351.362, 351.457, and 351.458 as prima facie evidence that the optometrist or therapeutic optometrist has violated this chapter and as sufficient ground for the filing of charges to revoke or suspend a license.

(c) Section 351.361(c) applies to Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.503. DISCIPLINARY PROCEEDINGS. (a) A person may initiate disciplinary proceedings under Section 351.501 by filing a

charge with the board in writing and under oath.

(b) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if:

(1) a charge is filed against the person; or

(2) the board proposes to:

(A) refuse the person's application for a license; or

(B) suspend or revoke the person's license.

(c) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(d) A charge filed under Section 351.502(a) must state each specific instance of alleged noncompliance. At a hearing on the charge, the person charged has the burden of establishing, in each instance in which proof of noncompliance is adduced, that compliance was not necessary to a proper examination of the patient in that particular case.

(e) A charge filed under Section 351.502(b) must state each specific instance of alleged noncompliance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.504. JUDICIAL REVIEW. A petition for judicial review of a board action may be filed in a district court in the county of residence of the person against whom the original charge was filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.505. REISSUANCE OF LICENSE AFTER REVOCATION. (a) A person whose license has been revoked:

(1) may not apply for reissuance under Subsection (b) before the first anniversary of the date of revocation; and

(2) must apply in any manner required by the board.

(b) On application, the board may reissue a license to practice optometry or therapeutic optometry to a person whose license has been revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.506. PROBATION. If a license suspension is probated,

the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.507. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE AND REFUNDS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) The board by rule shall establish procedures by which a panel of board members may conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.

(c) Procedures established under Subsection (b) must:

(1) require that at least one board member who represents the public be included in the panel conducting the conference;

(2) require that the two board members who reviewed and investigated a complaint under Section 351.2036(c) be included in the panel conducting the conference;

(3) require the panel conducting the conference to use the standardized penalty schedule adopted by the board under Section 351.552(c) to determine the appropriate disciplinary action, if any, to recommend to the board;

(4) require a complaint settlement recommended by the panel to be approved by the board; and

(5) require the panel conducting the conference to:

(A) recommend settlement of the complaint to the board; or

(B) refer the complaint to the State Office of Administrative Hearings for a formal hearing and notify the board of the referral.

(d) The board may order a person licensed under this chapter to issue a refund to a patient as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty against the person under Subchapter L. The amount of a refund ordered under this subsection may not exceed the amount the patient paid to the license holder for an examination. The board may not require payment of other damages or estimate harm in a restitution order.

(e) Rules adopted under this section must:

(1) provide the complainant and the license holder with an opportunity to be heard; and

(2) require the presence of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.020, eff. September 1, 2005.

Sec. 351.508. RECUSAL REQUIRED. A member of the board who reviews and investigates a complaint under Section 351.2036(c) or participates in an informal settlement conference under Section 351.507 may not vote on any disciplinary action following the informal settlement conference concerning the complaint and shall recuse himself or herself from voting on any disciplinary action following the informal settlement conference concerning the complaint.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.021, eff. September 1, 2005.

Sec. 351.509. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this chapter.

(b) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license or other authorization to practice optometry or therapeutic optometry; or

(2) assesses an administrative penalty against a person.

(c) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a death;

(B) a hospitalization; or

(C) the commission of a felony; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices optometry or therapeutic optometry.

(d) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding 24 months for the resolution of a different complaint filed under this chapter.

(e) If a license holder complies with and successfully completes the terms of a remedial plan, the board shall remove all records of the remedial plan from the board's records on the second anniversary of the date the license holder successfully completes the remedial plan.

(f) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(g) The board shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1022 (H.B. 2627), Sec. 1, eff. September 1, 2013.

SUBCHAPTER L. ADMINISTRATIVE PENALTY

Sec. 351.551. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.552. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $2,500 for each violation. Each day a violation continues or occurs is a separate violation.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature,

circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule shall develop and publish a standardized penalty schedule based on the criteria listed in Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.022, eff. September 1, 2005.

Sec. 351.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director or a subcommittee of the board appointed for that purpose determines that a violation has occurred, the executive director or subcommittee may issue a report to the board stating:

(1) the facts on which the determination is based; and

(2) the recommendation of the executive director or subcommittee on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) A subcommittee of the board appointed under Subsection (a) must include at least one public member of the board.

(c) Not later than the 14th day after the date the report is issued, the executive director or subcommittee shall give written notice of the report to the person. The notice may be given by certified mail.

(d) The notice issued under this section must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 351.553, the person in writing may:

(1) accept the determination and recommended administrative penalty of the executive director or subcommittee; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director or subcommittee, the board by order shall approve the determination and impose the recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.555. HEARING ON RECOMMENDATIONS. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing. The administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.556. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.558. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.559. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.560. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.561. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 351.601. MONITORING LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.602. INJUNCTION; DAMAGES. (a) The board may sue in the board's own name to enjoin a violation of this chapter. This remedy is in addition to any other action authorized by law.

(b) A person injured by another person who violates Section 351.251, 351.409, or 351.607 may institute an action in district court in Travis County or in the county in which the violation is alleged to have occurred for injunctive relief or damages plus court costs and reasonable attorney's fees.

(c) A person may institute an action in a district court in the county in which the violation is alleged to have occurred for injunctive relief or damages plus court costs and reasonable attorney's fees if the person is injured by another person who violates:

(1) Section 351.403; or

(2) Section 351.408.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.603. ENFORCEMENT BY ATTORNEY GENERAL OR BOARD; CIVIL PENALTY. (a) The attorney general or board may institute an action in a district court in the county in which a violation of Section 351.251, 351.403, 351.409, or 351.607 is alleged to have occurred for injunctive relief and a civil penalty not to exceed $10,000 for each violation plus court costs and reasonable attorney's fees.

(b) The attorney general or board may institute an action

against a manufacturer, wholesaler, or retailer of ophthalmic goods in a district court in the county in which a violation of Section 351.408 is alleged to have occurred for injunctive relief and a civil penalty not to exceed $1,000 for each day of a violation plus court costs and reasonable attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.604. DECEPTIVE TRADE PRACTICES. A violation of any of the following sections is actionable under Subchapter E, Chapter 17, Business & Commerce Code:

(1) Section 351.251;

(2) Section 351.403;

(3) Section 351.408;

(4) Section 351.409; or

(5) Section 351.607.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.605. LESSEE ENTITLED TO REMEDIES. A person injured as a result of a violation of Section 351.408, including an optometrist who is a lessee of a manufacturer, wholesaler, or retailer, is entitled to the remedies in Sections 351.602(c)(2), 351.603(b), and 351.604(3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.606. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under Subsection (a) is a misdemeanor punishable by:

(1) a fine of not less than $100 or more than $1,000;

(2) confinement in county jail for a term of not less than two months or more than six months; or

(3) both the fine and confinement.

(c) A separate offense is committed each day a violation of this chapter occurs or continues.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.607. DISPENSING CONTACT LENSES; PENALTY. (a) A person commits an offense if the person dispenses a contact lens by mail or otherwise to a patient in this state without having a valid prescription signed by an optometrist, therapeutic optometrist, or licensed physician.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of $1,000 for each lens dispensed. The fine is in addition to any other penalty imposed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 351.608. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of optometry or therapeutic optometry without a license or certificate under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) Notwithstanding Section 351.551, the board may impose an administrative penalty under Subchapter L against a person who violates an order issued under this section.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 1.023, eff. September 1, 2005.

CHAPTER 353. CONTACT LENS PRESCRIPTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 353.001. SHORT TITLE. This chapter may be cited as the Contact Lens Prescription Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(3), eff. April 2, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec.

3.031(3), eff. September 1, 2015.

(2-a) "Direct communication" includes communication by telephone, facsimile, or electronic mail.

(3) "Disposable contact lenses" means soft contact lenses that:

(A) are dispensed in sealed packages;

(B) are sterilized and sealed by the manufacturer; and

(C) according to the physician's, optometrist's, or therapeutic optometrist's instructions concerning wear, have a recommended lens replacement interval of less than three months.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.031(3), eff. September 1, 2015.

(5) "Optometrist" means a person licensed to practice optometry or therapeutic optometry by the Texas Optometry Board.

(6) "Pharmacist" means a person licensed to practice pharmacy by the Texas State Board of Pharmacy.

(7) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

(8) "Therapeutic optometrist" means a person licensed to practice therapeutic optometry by the Texas Optometry Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.001, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.035, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(3), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.031(3), eff. September 1, 2015.

Sec. 353.003. EFFECT OF CHAPTER. This chapter does not prevent or restrict a physician from:

(1) treating or prescribing for a patient; or

(2) directing or instructing a person under the physician's control or supervision who assists a patient according to a specific

direction, order, instruction, or prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.004. PUBLIC INFORMATION ON PRESCRIPTION RELEASE. The Texas Optometry Board shall prepare and provide to the public and appropriate state agencies information regarding the release and verification of contact lens prescriptions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.002, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.036, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.024, eff. September 1, 2015.

SUBCHAPTER C. SALE OR DELIVERY OF CONTACT LENSES

Sec. 353.101. PROHIBITED SELLING OR DISPENSING. (a) A person, other than the prescribing physician, optometrist, or therapeutic optometrist, may not fill a contact lens prescription or sell or dispense contact lenses to a consumer in this state unless the person:

(1) receives from the prescribing physician, optometrist, or therapeutic optometrist or the consumer, directly or by facsimile, a contact lens prescription that has not expired and that conforms to the requirements of this chapter; or

(2) verifies by direct communication a contact lens prescription to be filled.

(b) A person receiving a direct communication under Subsection (a)(2) shall maintain a record of the communication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.004, eff. September 1, 2005.

Sec. 353.1015. VERIFICATION PROCEDURE. (a) When seeking verification of a contact lens prescription, a person dispensing contact lenses shall provide the prescribing physician, optometrist, or therapeutic optometrist with the following information:

(1) the patient's full name and address;

(2) contact lens power, manufacturer, base curve or appropriate designation, and diameter, as appropriate;

(3) quantity of lenses ordered;

(4) the date on which the patient requests lenses to be dispensed;

(5) the date and time of the verification request; and

(6) the name, telephone number, and facsimile number of a person at the contact lens dispenser's company with whom to discuss the verification.

(b) A prescription is considered verified under this section if:

(1) the prescribing physician, optometrist, or therapeutic optometrist by a direct communication confirms that the prescription is accurate;

(2) the prescribing physician, optometrist, or therapeutic optometrist informs the person dispensing the contact lenses that the prescription is inaccurate and provides the correct prescription information; or

(3) the prescribing physician, optometrist, or therapeutic optometrist fails to communicate with the person dispensing the contact lenses not later than the eighth business hour after the prescribing physician, optometrist, or therapeutic optometrist receives from the person dispensing the contact lenses the request for verification.

(c) If a prescribing physician, optometrist, or therapeutic optometrist timely informs the person dispensing the contact lenses that the prescription is inaccurate or invalid, the person may not dispense the contact lenses.

(d) If a prescribing physician, optometrist, or therapeutic optometrist notifies the person dispensing the contact lenses that the prescription is inaccurate or invalid, the prescribing physician, optometrist, or therapeutic optometrist shall:

(1) specify the basis for the inaccuracy or invalidity of the prescription; and

(2) correct the prescription.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.005, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.025, eff. September 1, 2015.

Sec. 353.102. ACCURACY REQUIRED. A person who dispenses contact lenses under this chapter from a contact lens prescription shall fill the prescription accurately subject to Section 353.103.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.103. AUTHORIZED MODIFICATION OF PRESCRIPTION. (a) If a patient presents a contact lens prescription to be filled or asks a person who dispenses contact lenses to verify a contact lens prescription under Section 353.1015, but requests that fewer than the total number of lenses authorized by the prescription be dispensed, the person dispensing the lenses shall note on the prescription or verification:

(1) the number of lenses dispensed;

(2) the number of lenses that remain eligible to be dispensed under the prescription; and

(3) the name, address, and telephone number of the person dispensing the lenses.

(b) A notation under Subsection (a) is a permanent modification of the prescription. Except as provided by this subsection, a contact lens prescription may not be modified.

(c) The person dispensing the lenses shall:

(1) maintain a photocopy of the prescription or verification, as modified, in the person's records as if the copy were the prescription to be filled; and

(2) return a prescription to the patient so that the patient may have the additional lenses dispensed elsewhere.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.006, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.026, eff.

September 1, 2015.

Sec. 353.104. EMERGENCY REFILL. (a) If a patient needs an emergency refill of the patient's contact lens prescription, a physician, optometrist, or therapeutic optometrist may telephone or fax the prescription to a person who dispenses contact lenses or may verify a prescription under Section 353.1015.

(b) A fax or telephone record received under Subsection (a) must include the name, address, telephone number, and license number of the physician, optometrist, or therapeutic optometrist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.006, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.027, eff. September 1, 2015.

Sec. 353.105. ALTERATION OF PRESCRIPTION PROHIBITED. (a) Except as provided by Subsection (b) and Section 353.103, a person dispensing contact lenses may not alter a contact lens prescription.

(b) A person dispensing contact lenses may fill a contact lens prescription that requires a contact lens manufactured by a particular company with another lens manufactured by that company if the lens required by the prescription and the lens with which the prescription is filled are the same lens but are sold by the company under multiple labels to different contact lens dispensers.

Added by Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.007, eff. September 1, 2005.

SUBCHAPTER D. CONTACT LENS PRESCRIPTIONS

Sec. 353.151. DIRECTIONS FOR INDEPENDENT DISPENSER; DELEGATION. (a) If a physician's directions, instructions, or orders are to be performed or a physician's prescription is to be filled by a person who is independent of the physician's office, the directions, instructions, orders, or prescription must be:

(1) in writing or verified under Section 353.1015;

(2) of a scope and content and communicated to the person in a form and manner that, in the professional judgment of the physician, best serves the health, safety, and welfare of the physician's patient; and

(3) in a form and detail consistent with the person's skill and knowledge.

(b) A person who dispenses contact lenses may measure the eye or cornea and may evaluate the physical fit of lenses for a particular patient of a physician if the physician has delegated in writing those responsibilities regarding that patient to the person in accordance with Subsection (a) and Section 351.005.

(c) If a physician notes on a spectacle prescription "fit for contacts" or similar language and has, as required by Subsections (a) and (b), specifically delegated to a specific person the authority to make the additional measurements and evaluations necessary for a fully written contact lens prescription, the person may dispense contact lenses to the patient even though the prescription is less than a fully written contact lens prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.008, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.028, eff. September 1, 2015.

Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION. (a) A contact lens prescription must contain, at a minimum:

(1) the patient's name;

(2) the date the prescription was issued;

(3) the manufacturer of the contact lens to be dispensed, if needed;

(4) the expiration date of the prescription;

(5) the signature of the physician, optometrist, or therapeutic optometrist or a verification of the prescription described by Section 353.1015;

(6) if the prescription is issued by an optometrist, specification information required by Texas Optometry Board rule; and

(7) if the prescription is issued by a physician,

specification information required by Texas Medical Board rule.

(b) The Texas Optometry Board and the Texas Medical Board may adopt rules regarding the contents of a prescription for contact lenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.009, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.042, eff. April 2, 2015.

Sec. 353.153. TERM OF PRESCRIPTION. A physician, optometrist, or therapeutic optometrist may not issue a contact lens prescription that expires before the first anniversary of the date the patient's prescription parameters are determined, unless a shorter prescription period is warranted by the patient's ocular health or by potential harm to the patient's ocular health.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.154. SHORT-TERM PRESCRIPTION. If a physician, optometrist, or therapeutic optometrist writes a contact lens prescription for a period of less than one year, the physician, optometrist, or therapeutic optometrist shall:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) maintain in the patient's records a written explanation of the reason.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.155. EXTENSION OF PRESCRIPTION. (a) A physician, optometrist, or therapeutic optometrist may extend the expiration date for a contact lens prescription without completing another eye examination.

(b) On request by a patient, a prescribing physician, optometrist, or therapeutic optometrist shall authorize at least once

a two-month extension of the patient's contact lens prescription. The physician, optometrist, or therapeutic optometrist may extend the prescription in accordance with Section 353.104.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.156. PATIENT ACCESS TO PRESCRIPTION; TIMING. (a) A physician, optometrist, or therapeutic optometrist who performs an eye examination and fits a patient for contact lenses shall:

(1) prepare and give a contact lens prescription to the patient; and

(2) as directed by any person designated to act on behalf of the patient, provide the prescription or verify the prescription as provided by Section 353.1015.

(b) If the contact lens prescription results from an initial or annual eye examination, the physician, optometrist, or therapeutic optometrist shall prepare and give the prescription to the patient at the time the physician, optometrist, or therapeutic optometrist determines the parameters of the prescription.

(c) On receipt of a prescription request from a patient who did not receive an original contact lens prescription during an initial or annual eye examination, the physician, optometrist, or therapeutic optometrist shall provide the patient with the prescription at any time during which the prescription is valid. Except as provided by Section 353.158(1), if the patient requests the physician, optometrist, or therapeutic optometrist to deliver the prescription to the patient or to another person, the physician, optometrist, or therapeutic optometrist may charge to the patient the cost of delivery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.010, eff. September 1, 2005.

Sec. 353.157. LIMITATIONS ON OR REFUSAL TO GIVE PRESCRIPTION. (a) A physician, optometrist, or therapeutic optometrist may exclude categories of contact lenses from a contact lens prescription if the exclusion is clinically indicated.

(b) Notwithstanding Section 353.156, a physician, optometrist, or therapeutic optometrist may refuse to give a contact lens prescription to a patient if:

(1) the patient's ocular health presents a contraindication for contact lenses;

(2) refusal is warranted due to potential harm to the patient's ocular health;

(3) the patient has a medical condition indicating that:

(A) the patient's ocular health would be damaged if the prescription were released to the patient; or

(B) further monitoring of the patient is needed;

(4) the patient has not paid for the examination and fitting or has not paid other financial obligations to the physician, optometrist, or therapeutic optometrist if the patient would have been required to make an immediate or similar payment if the examination revealed that ophthalmic goods were not required; or

(5) the request is made after the first anniversary of the date of the patient's last eye examination.

(c) If a physician, optometrist, or therapeutic optometrist refuses to give a patient the patient's contact lens prescription for a reason permitted under Subsection (b), the physician, optometrist, or therapeutic optometrist must:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) maintain in the patient's records a written explanation of the reason.

(d) Subsection (b) does not prohibit a physician, optometrist, or therapeutic optometrist from giving a patient the patient's contact lens prescription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.158. PROHIBITED ACTION BY PHYSICIAN, OPTOMETRIST, OR THERAPEUTIC OPTOMETRIST. A physician, optometrist, or therapeutic optometrist may not:

(1) charge a patient a fee in addition to or as part of the examination fee and fitting fee as a condition for issuing or verifying a contact lens prescription; or

(2) condition the availability to a patient of an eye

examination, a fitting for contact lenses, the issuance or verification of a contact lens prescription, or a combination of those services on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods from the physician, optometrist, or therapeutic optometrist or from a specific ophthalmic dispenser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 101 (H.B. 1025), Sec. 2.011, eff. September 1, 2005.

Sec. 353.159. WAIVER OR DISCLAIMER OF LIABILITY PROHIBITED. A contact lens prescription may not contain, and a physician, optometrist, or therapeutic optometrist may not require a patient to sign, a form or notice that waives or disclaims the liability of the physician, optometrist, or therapeutic optometrist for the accuracy of:

(1) the eye examination on which a contact lens prescription provided to the patient is based; or

(2) a contact lens prescription provided to the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. LIABILITY AND ENFORCEMENT

Sec. 353.201. LIABILITY FOR USE OF PRESCRIPTION. A physician, optometrist, or therapeutic optometrist is not liable for a patient's subsequent use of a contact lens prescription if:

(1) the physician, optometrist, or therapeutic optometrist does not reexamine the patient; and

(2) the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in the patient no longer being a proper candidate for the contact lens prescribed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.204. ENFORCEMENT PROCEEDINGS. (a) The appropriate

regulatory agency, the attorney general, or the district or county attorney for the county in which an alleged violation of this chapter occurs shall, on receipt of a verified complaint, initiate an appropriate administrative or judicial proceeding to enforce this chapter and the rules adopted under this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 3.031(9), eff. September 1, 2015.

(c) The Texas Medical Board is responsible for enforcing this chapter with regard to a violation of this chapter by a physician. A violation of this chapter by a physician is considered to be a violation of Subtitle B.

(d) The Texas Optometry Board is responsible for enforcing this chapter with regard to a violation of this chapter by an optometrist or a therapeutic optometrist. A violation of this chapter by an optometrist or a therapeutic optometrist is considered to be a violation of Chapter 351.

(e) The Texas State Board of Pharmacy is responsible for enforcing this chapter with regard to a violation of this chapter by a pharmacist. A violation of this chapter by a pharmacist is considered to be a violation of Subtitle J.

(f) The attorney general or an attorney representing the state may bring an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.044, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 3.031(9), eff. September 1, 2015.

Sec. 353.206. CIVIL PENALTY. In addition to granting injunctive or other relief provided by law, a court may impose a civil penalty for a violation of this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 353.207. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBTITLE G. PROFESSIONS RELATED TO HEARING, SPEECH, AND DYSLEXIA

CHAPTER 401. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 401.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Speech-Language Pathologists and Audiologists Advisory Board.

(1-a) "Audiologist" means a person who meets the qualifications of this chapter to practice audiology.

(2) "Audiology" means the application of nonmedical principles, methods, and procedures for measurement, testing, appraisal, prediction, consultation, counseling, habilitation, rehabilitation, or instruction related to disorders of the auditory or vestibular systems for the purpose of providing or offering to provide services modifying communicative disorders involving speech, language, or auditory or vestibular function or other aberrant behavior relating to hearing loss.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

(4-b) "Fitting and dispensing hearing instruments," "hearing instrument," "over-the-counter hearing aid," and "sale" have the meanings assigned to those terms by Section 402.001.

(5) "Speech-language pathologist" means a person who meets the qualifications of this chapter to practice speech-language pathology.

(6) "Speech-language pathology" means the application of nonmedical principles, methods, and procedures for measurement, testing, evaluation, prediction, counseling, habilitation, rehabilitation, or instruction related to the development and disorders of communication, including speech, voice, language, oral

pharyngeal function, or cognitive processes, for the purpose of evaluating, preventing, or modifying or offering to evaluate, prevent, or modify those disorders and conditions in an individual or a group.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.040, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 1, eff. June 18, 2023.

SUBCHAPTER B. APPLICATION OF CHAPTER

Sec. 401.051. PHYSICIANS. (a) This chapter does not prevent or restrict a physician from engaging in the practice of medicine in this state.

(b) This chapter does not restrict a licensed physician from personally conducting a speech or hearing test or evaluation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.052. NURSES. This chapter does not prevent or restrict a communication, speech, language, or hearing screening, as defined by commission rule, from being conducted by a registered nurse:

(1) licensed in this state; and

(2) practicing in accordance with the standards of professional conduct and ethics established by rules adopted by the Texas Board of Nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 46, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.041, eff. September 1, 2015.

Sec. 401.053. PERSONS TRAINED BY DEPARTMENT OF STATE HEALTH SERVICES. (a) This chapter does not apply to a person who shows evidence of having received training by the Department of State Health Services in a communication, speech, language, or hearing screening training program approved by that department if the person's activity is limited to screening as defined by commission rule.

(b) A person who has received training by the Department of State Health Services in a program under Subsection (a) may not:

(1) practice speech-language pathology or audiology; or

(2) represent that the person is a speech-language pathologist or audiologist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.042, eff. September 1, 2015.

Sec. 401.054. PERSONS CERTIFIED BY TEXAS EDUCATION AGENCY. (a) This chapter does not prevent or restrict the activities and services or the use of an official title by a person who is certified in speech-language pathology by the Texas Education Agency if the person only performs speech-language pathology or audiology services as part of the person's duties within an agency, institution, or organization under the jurisdiction of the Texas Education Agency.

(b) The Texas Education Agency certificate in speech-language pathology must require an applicant to:

(1) hold a master's degree in communicative disorders or the equivalent from a university program accredited by the American Speech-Language-Hearing Association; and

(2) pass a national examination in speech-language pathology or audiology approved by the department.

(c) A person affected by this section who performs work as a speech-language pathologist or audiologist in addition to performing the person's duties within an agency, institution, or organization under the jurisdiction of the Texas Education Agency is required to hold a license issued by the department unless that work is limited to speech and hearing screening procedures performed without compensation.

(d) For the purposes of Subsection (b)(1), an applicant's educational credentials are equivalent to a master's degree in communicative disorders if the credentials:

(1) consist of graduate-level course work and practicum from a program accredited by the American Speech-Language-Hearing Association; and

(2) meet requirements that are the same as those established by the department for a license in speech-language pathology or audiology.

(e) The clinical fellowship year experience or internship may not be a requirement for the Texas Education Agency certificate in speech-language pathology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.043, eff. September 1, 2015.

Sec. 401.055. UNIVERSITY OR COLLEGE TEACHERS. This chapter does not restrict the use of an official title by a person teaching in a university or college training program, if the person:

(1) is not engaged in the practice of speech-language pathology or audiology; and

(2) does not supervise a person engaged in the practice of speech-language pathology or audiology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.056. STUDENTS. This chapter does not restrict the activities and services of a student pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university accredited by the Southern Association of Colleges and Universities or its equivalent if:

(1) the activities and services are part of the student's supervised course of study;

(2) the student is supervised by a person licensed under this chapter; and

(3) the student is designated as a "Speech-Language Pathology Trainee," an "Audiology Trainee," or by another title that

clearly indicates the student's professional preparation status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.057. HEARING CONSERVATION PROGRAM. This chapter does not prevent a person in an industrial setting from engaging in hearing testing as a part of a hearing conservation program in compliance with federal Occupational Safety and Health Administration regulations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 1, eff. September 1, 2013.

Sec. 401.058. APPLICATION TO HEARING INSTRUMENT FITTERS AND DISPENSERS. (a) This chapter does not prohibit, prevent, or restrict a person licensed under Chapter 402 from engaging in the practice of fitting and dispensing hearing instruments.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 9, eff. June 18, 2023.

(c) A person who is not an audiologist who is licensed to fit and dispense hearing instruments under Chapter 402 may not:

(1) practice speech-language pathology or audiology; or

(2) represent that the person is a speech-language pathologist or audiologist by the use of any term restricted by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 2, eff. June 18, 2023.
Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 9, eff. June 18, 2023.

Sec. 401.059. APPLICATION TO OTHER LICENSED PROFESSIONALS. This chapter does not prevent a person licensed in this state under another law from engaging in the profession for which the person is

licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.060. MEDICAL PRACTICE. This chapter does not permit a person to perform an act that violates Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.061. OVER-THE-COUNTER HEARING AIDS. (a) Except as provided by this section, this chapter does not apply to servicing, marketing, selling, dispensing, providing customer support for, acquiring, or distributing over-the-counter hearing aids, regardless of whether the transaction occurs in person, online, or through other means.

(b) A person is not required to obtain a license under this chapter or Chapter 402 to engage in an activity described by Subsection (a).

(c) A person may not use the title "licensed dispenser" or "licensed seller" with respect to over-the-counter hearing aids or otherwise represent that the person holds a license to sell or dispense over-the-counter hearing aids unless the person is licensed as an audiologist or audiologist intern under this chapter or as a hearing instrument fitter and dispenser under Chapter 402.

(d) The supervision, prescription, order, involvement, or intervention of a person licensed in this state is not required under this chapter for a consumer to access over-the-counter hearing aids.

(e) A person licensed under this chapter may service, market, sell, dispense, provide customer support for, or distribute over-the-counter hearing aids. These activities do not exempt a person licensed under this chapter from any applicable provision of this chapter or Chapter 402.

Added by Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 3, eff. June 18, 2023.

SUBCHAPTER C. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

Sec. 401.102. ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three audiologist members;

(2) three speech-language pathologist members; and

(3) three members who represent the public.

(b) Advisory board members must:

(1) be from the various geographic regions of the state; and

(2) be from varying employment settings.

(c) The advisory board members appointed under Subsections (a)(1) and (2) must:

(1) have been engaged in teaching, research, or providing services in speech-language pathology or audiology for at least five years; and

(2) be licensed under this chapter.

(d) One of the public advisory board members must be a physician licensed in this state and certified in otolaryngology or pediatrics.

(e) Appointments to the advisory board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.045, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 2.001, eff. September 1, 2017.

Sec. 401.10205. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.046, eff. September 1, 2015.

Sec. 401.105. TERMS; VACANCIES. (a) Members are appointed for staggered six-year terms. The terms of three members expire

September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.047, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.048, eff. September 1, 2015.

Sec. 401.107. PRESIDING OFFICER. (a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year.

(b) The presiding officer of the advisory board may vote on any matter before the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.049, eff. September 1, 2015.

Sec. 401.108. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.050, eff. September 1, 2015.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 401.201. GENERAL POWERS AND DUTIES. (a) The executive

director shall administer and enforce this chapter.

(a-1) The department shall:

(1) evaluate the qualifications of license applicants;

(2) provide for the examination of license applicants;

(3) in connection with a hearing under this chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and

(4) investigate persons engaging in practices that violate this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(35), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.171(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.052, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(35), eff. September 1, 2015.

Sec. 401.202. STANDARDS OF ETHICAL PRACTICE. The commission shall adopt rules under this chapter that establish standards of ethical practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.053, eff. September 1, 2015.

Sec. 401.2021. RULES FOR HEARING INSTRUMENTS. With the assistance of the advisory board and the Hearing Instrument Fitters and Dispensers Advisory Board, the commission shall adopt rules to establish requirements for each sale of a hearing instrument for purposes of this chapter and Chapter 402. The rules must:

(1) address:

(A) the information and other provisions required in each written contract for the purchase of a hearing instrument;

(B) records that must be retained under this chapter or

Chapter 402; and

(C) guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument; and

(2) require that the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be in plain language designed to be easily understood by the average consumer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 8, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.054, eff. September 1, 2015.

Sec. 401.203. ASSISTANCE FILING COMPLAINT. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(36), eff. September 1, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(36), eff. September 1, 2015.

(c) The department shall provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.056, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.057, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(36), eff. September 1, 2015.

SUBCHAPTER F. PUBLIC ACCESS AND INFORMATION

Sec. 401.251. TELEPHONE NUMBER FOR COMPLAINTS. The department shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.058, eff. September 1, 2015.

SUBCHAPTER G. LICENSE REQUIREMENTS

Sec. 401.301. LICENSE REQUIRED. A person may not practice speech-language pathology or audiology or represent that the person is a speech-language pathologist or audiologist in this state unless the person holds a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.302. ISSUANCE OF LICENSE. (a) The department shall issue a license to an applicant who meets the requirements of this chapter and who pays to the department the initial nonrefundable license fee.

(b) The department may issue to an applicant a license in either speech-language pathology or audiology.

(c) The department may issue a license in both speech-language pathology and audiology to an applicant.

(d) The commission by rule shall establish qualifications for dual licensing in speech-language pathology and audiology and may develop a full range of licensing options and establish rules for qualifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.063, eff. September 1, 2015.

Sec. 401.303. LICENSE APPLICATION. (a) A person who desires a license under this chapter must apply to the department on a form and in the manner prescribed by the executive director.

(b) The application must be accompanied by a nonrefundable application fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.064, eff. September 1, 2015.

Sec. 401.304. APPLICANT ELIGIBILITY. (a) To be eligible for licensing as a speech-language pathologist or audiologist, an applicant must:

(1) if the application is for a license in:

(A) speech-language pathology, possess at least a master's degree with a major in at least one of the areas of communicative sciences or disorders from a program accredited by a national accrediting organization that is approved by the commission or department and recognized by the United States secretary of education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.) in an accredited or approved college or university; or

(B) audiology, possess at least a doctoral degree in audiology or a related hearing science from a program accredited by a national accrediting organization that is approved by the commission or department and recognized by the United States secretary of education under the Higher Education Act of 1965 (20 U.S.C. Section 1001 et seq.) in an accredited or approved college or university;

(2) submit a transcript from a public or private institution of higher learning showing successful completion of course work in amounts set by the commission by rule in:

(A) normal development and use of speech, language, and hearing;

(B) evaluation, habilitation, and rehabilitation of speech, language, and hearing disorders; and

(C) related fields that augment the work of clinical practitioners of speech-language pathology and audiology;

(3) have successfully completed at least 36 semester hours in courses that are acceptable toward a graduate degree by the college or university in which the courses are taken, at least 24 of which must be in the professional area for which the license is requested;

(4) have completed the minimum number of hours, established by the commission by rule, of supervised clinical experience with persons who present a variety of communication disorders; and

(5) have completed the full-time supervised professional experience, as defined by commission rule, in which clinical work has

been accomplished in the major professional area for which the license is being sought.

(b) Clinical experience required under Subsection (a)(4) must be obtained:

(1) in the applicant's educational institution or in one of the institution's cooperating programs; and

(2) under the supervision of a person holding a license to practice speech-language pathology or audiology.

(c) Supervised professional experience under Subsection (a)(5) must:

(1) be under the supervision of a qualified person acceptable to the department under guidelines approved by the commission; and

(2) begin after completion of the academic and clinical experience required by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 617 (S.B. 613), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 40 (S.B. 312), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.065, eff. September 1, 2015.

Sec. 401.3041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The department shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The department may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The department shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other

criminal justice agency under Chapter 411, Government Code.

(d) The department may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 9, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.066, eff. September 1, 2015.

Sec. 401.305. EXAMINATION. (a) To obtain a license, an applicant must:

(1) pass an examination approved by the commission by rule; and

(2) pay fees in a manner prescribed by the commission by rule.

(b) The department shall administer or provide for the administration of an examination at least twice each year.

(b-1) The commission by rule shall determine standards for acceptable performance on the examination.

(c) The commission by rule may:

(1) establish procedures for the administration of the examination; and

(2) require a written or oral examination, or both.

(d) The commission by rule may require the examination of an applicant in any theoretical or applied field of speech-language pathology or audiology it considers appropriate. The commission by rule may require the examination of an applicant on professional skills and judgment in the use of speech-language pathology or audiology techniques or methods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.067, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 2.002, eff. September 1, 2017.

Sec. 401.308. PROVISIONAL LICENSE; CERTIFICATE OF CLINICAL COMPETENCE WAIVER. (a) The department may grant a provisional license to an applicant who:

(1) is licensed in good standing as a speech-language pathologist or an audiologist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the department relating to speech-language pathology or audiology; and

(3) is sponsored by a license holder with whom the provisional license holder may practice under this section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) if the department determines that compliance with that requirement is a hardship to the applicant.

(c) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license.

(d) The department shall issue a license under this chapter to a provisional license holder:

(1) who passes the examination required by Section 401.305;

(2) for whom the department verifies satisfaction of the academic and experience requirements for a license under this chapter; and

(3) who satisfies any other license requirements under this chapter.

(e) The department shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

(f) The department may waive the examination requirement and issue a license to an applicant who holds the Certificate of Clinical Competence of the American Speech-Language-Hearing Association.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.069, eff.

September 1, 2015.

Sec. 401.311. INTERN LICENSE. (a) A license applicant who has completed only the requirements of Sections 401.304(a)(1)-(4) may be licensed as an intern under this chapter.

(b) An applicant who has successfully completed the academic and clinical requirements of Sections 401.304(a)(1)-(4) but who has not had the degree officially conferred on the applicant may be licensed as an intern under this chapter.

(c) The commission by rule shall:

(1) prescribe the terms governing a person's practice as an intern under this section; and

(2) establish general guidelines and renewal procedures for the holder of an intern license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.071, eff. September 1, 2015.

Sec. 401.312. LICENSED ASSISTANTS. (a) The commission by rule may establish minimum qualifications for licensed assistants in speech-language pathology and in audiology.

(b) A licensed assistant in speech-language pathology or in audiology must meet the minimum qualifications established by the commission.

(c) A licensed assistant in speech-language pathology shall work under the direction of a licensed speech-language pathologist.

(d) The qualifications for licensing as a licensed assistant in speech-language pathology must be uniform and be less stringent than the requirements under this chapter for a speech-language pathologist license.

(e) A licensed assistant in audiology shall work under the direction of a licensed audiologist.

(f) The qualifications for licensing as a licensed assistant in audiology must be uniform and be less stringent than the requirements under this chapter for an audiologist license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.072, eff. September 1, 2015.

SUBCHAPTER H. LICENSE EXPIRATION AND RENEWAL

Sec. 401.351. LICENSE TERM. A license issued under this chapter is valid for two years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.048, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.073, eff. September 1, 2015.

Sec. 401.352. LICENSE RENEWAL. (a) Each licensed speech-language pathologist or audiologist must pay the nonrefundable fee for license renewal.
(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(49), eff. September 1, 2015.
(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(49), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.049, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.074, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(49), eff. September 1, 2015.

SUBCHAPTER I. PRACTICE BY LICENSE HOLDER

Sec. 401.401. AUDIOMETRIC TESTING. (a) If audiometric testing is not conducted in a stationary acoustical enclosure, sound-level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most recent American National

Standards Institute "ears covered" octave band criteria for permissible ambient noise levels during audiometric testing.

(b) A dBa equivalent level may be used to determine compliance.

(c) The commission shall adopt rules necessary to enforce this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.076, eff. September 1, 2015.

Sec. 401.402. PRACTICE BY SPEECH-LANGUAGE PATHOLOGISTS. (a) A speech-language pathologist may perform basic audiometric screening tests and aural habilitation or rehabilitation.

(b) A person licensed as a speech-language pathologist under this chapter may not fit or dispense hearing instruments unless the person meets the specific requirements for fitting and dispensing hearing instruments under this chapter or Chapter 402.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 2.003, eff. September 1, 2017.

Sec. 401.403. PRACTICE BY AUDIOLOGISTS. (a) An audiologist may:

(1) engage in any act necessary to:

(A) evaluate hearing;

(B) train in the use of amplification, including hearing instruments;

(C) make earmolds for hearing instruments;

(D) fit, dispense, and sell hearing instruments; or

(E) manage cerumen;

(2) participate in consultation regarding noise control and hearing conservation;

(3) provide evaluations of environment or equipment, including calibration of equipment used in testing auditory functioning and hearing conservation; and

(4) perform basic speech and language screening tests and

procedures consistent with the audiologist's training.

(b) A person who holds a license as an audiologist or audiologist intern and who fits and dispenses hearing instruments must:

(1) comply with rules adopted under this chapter related to fitting and dispensing hearing instruments;

(2) comply with the federal Food and Drug Administration rules and guidelines for fitting and dispensing hearing instruments;

(3) when providing services in this state, use a written contract that contains the information prescribed by commission rule; and

(4) follow the guidelines adopted by commission rule for a 30-day trial period on every hearing instrument purchased.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.077, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 10.001, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 4, eff. June 18, 2023.

Sec. 401.404. HEARING INSTRUMENT SALES TO MINORS. A licensed audiologist may not sell a hearing instrument to a person under 18 years of age unless the person or the parent or guardian of the person presents to the audiologist a written statement signed by a licensed physician who specializes in diseases of the ear stating that:

(1) the person's hearing loss has been medically evaluated during the six-month period preceding the date the statement is presented; and

(2) the person may be considered a candidate for a hearing instrument.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER J. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 401.451. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY

ACTION. (a) After a hearing, the commission or executive director may deny a license to an applicant or may suspend or revoke a person's license or place on probation a license holder if the applicant or license holder:

(1) violates this chapter or an order issued or rule adopted under this chapter;

(2) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;

(3) sells, barters, or offers to sell or barter a license or certificate of registration; or

(4) engages in unprofessional conduct that:

(A) endangers or is likely to endanger the health, welfare, or safety of the public as defined by commission rule; or

(B) violates the code of ethics adopted and published by the commission.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(53), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.078, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(53), eff. September 1, 2015.

SUBCHAPTER K. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 401.501. DECEPTIVE TRADE PRACTICE. A violation of Section 401.301 is a deceptive trade practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 401.5021. REFUND. The commission or executive director may order an audiologist to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period required by rules adopted under Section 401.2021.

Added by Acts 2011, 82nd Leg., R.S., Ch. 619 (S.B. 662), Sec. 12, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.080, eff. September 1, 2015.

CHAPTER 402. HEARING INSTRUMENT FITTERS AND DISPENSERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Hearing Instrument Fitters and Dispensers Advisory Board.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(3-a) "Executive director" means the executive director of the department.

(4) "Fitting and dispensing hearing instruments" means the measurement of human hearing by the use of an audiometer or other means to make selections, adaptations, or sales of hearing instruments. The term includes prescribing, ordering, or authorizing the use of hearing instruments, the making of impressions for earmolds to be used as a part of the hearing instruments, and providing any necessary postfitting counseling for the purpose of fitting and dispensing hearing instruments.

(4-a) "Hearing aid" means any wearable device designed for, offered for the purpose of, or represented as aiding persons with or compensating for impaired hearing. The term includes hearing instruments and over-the-counter hearing aids.

(5) "Hearing instrument" means a prescription hearing aid as that term is defined by 21 C.F.R. Section 800.30.

(6) "License" means a license issued by the department under this chapter to a person authorized to fit and dispense hearing instruments.

(6-a) "Over-the-counter hearing aid" has the meaning assigned by 21 C.F.R. Section 800.30.

(7) "Sale" includes a lease, rental, or any other purchase or exchange for value. The term does not include a sale at wholesale by a manufacturer to a person licensed under this chapter or to a distributor for distribution and sale to a person licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.054, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(4), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.082, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 5, eff. June 18, 2023.

Sec. 402.003. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsections (a-1) and (b) and Section 402.451(a), this chapter applies only to a person who engages or offers to engage in fitting and dispensing hearing instruments.

(a-1) This chapter does not apply to:

(1) a person engaged in the practice of measuring human hearing as a part of the academic curriculum of an accredited institution of higher learning if the person or the person's employees do not sell hearing instruments;

(2) a physician licensed by the Texas Medical Board;

(3) a person with a master's degree or doctorate in audiology from an accredited college or university who does not sell hearing instruments, to the extent the person engages in the measurement of human hearing by the use of an audiometer or by any other means to make selections and adaptations of or recommendations for a hearing instrument and to make impressions for earmolds to be used as part of a hearing instrument;

(4) an audiologist or an audiology intern licensed under Chapter 401, except as may otherwise be provided by the following provisions, which refer to Chapter 401:

(A) Section 402.051(a)(1);

(B) Section 402.202(b);

(C) Section 402.252; and

(D) Section 402.255(a); and

(5) a student of audiology in an accredited college or university program, if the student's activities and services are part

of the student's supervised course of study or practicum experience.

(b) A student described by Subsection (a-1)(5) is subject to Chapter 401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 1, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.001, eff. September 1, 2017.

Sec. 402.004. OVER-THE-COUNTER HEARING AIDS. (a) Except as provided by this section, this chapter does not apply to servicing, marketing, selling, dispensing, providing customer support for, acquiring, or distributing over-the-counter hearing aids, regardless of whether the transaction occurs in person, online, or through other means.

(b) A person is not required to obtain a license under this chapter or Chapter 401 to engage in an activity described by Subsection (a).

(c) A person may not use the title "licensed dispenser" or "licensed seller" with respect to over-the-counter hearing aids or otherwise represent that the person holds a license to sell or dispense over-the-counter hearing aids unless the person is licensed as a hearing instrument fitter and dispenser under this chapter or as an audiologist or audiologist intern under Chapter 401.

(d) The supervision, prescription, order, involvement, or intervention of a person licensed in this state is not required under this chapter for a consumer to access over-the-counter hearing aids.

(e) A person licensed under this chapter may service, market, sell, dispense, provide customer support for, or distribute over-the-counter hearing aids. These activities do not exempt a person licensed under this chapter from any applicable provision of this chapter or Chapter 401.

Added by Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 6, eff. June 18, 2023.

SUBCHAPTER B. HEARING INSTRUMENT FITTERS AND DISPENSERS ADVISORY BOARD

Sec. 402.051. ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) six members licensed under this chapter who have been engaged in fitting and dispensing hearing instruments for at least five years preceding appointment, not more than one of whom may be licensed under Chapter 401;

(2) one member who is actively practicing as a physician licensed by the Texas Medical Board and who:

(A) is a citizen of the United States; and

(B) specializes in the practice of otolaryngology; and

(3) two members of the public.

(b) Appointments to the advisory board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.055, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.083, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.084, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.002, eff. September 1, 2017.

Sec. 402.0511. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.083, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.085, eff. September 1, 2015.

Sec. 402.055. TERMS; VACANCIES. (a) Members of the advisory board serve staggered six-year terms. The terms of three members

expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.083, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.086, eff. September 1, 2015.

Sec. 402.057. PRESIDING OFFICER. The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.083, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.087, eff. September 1, 2015.

Sec. 402.058. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 7, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.083, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.088, eff.

September 1, 2015.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 402.101. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b) The department shall:

(1) evaluate the qualifications of applicants;

(2) examine applicants; and

(3) in connection with a hearing under this chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.173(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.089, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.090, eff. September 1, 2015.

Sec. 402.1021. RULES FOR HEARING INSTRUMENTS. With the assistance of the advisory board and the Speech-Language Pathologists and Audiologists Advisory Board, the commission shall adopt rules to establish requirements for each sale of a hearing instrument for purposes of this chapter and Chapter 401. The rules must:

(1) address:

(A) the information and other provisions required in each written contract for the purchase of a hearing instrument;

(B) records that must be retained under this chapter or Chapter 401; and

(C) guidelines for the 30-day trial period during which a person may cancel the purchase of a hearing instrument; and

(2) require that the written contract and 30-day trial period information provided to a purchaser of a hearing instrument be in plain language designed to be easily understood by the average consumer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 9,

eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.089, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.091, eff. September 1, 2015.

Sec. 402.103. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(86), eff. September 1, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(86), eff. September 1, 2015.

(c) For purposes of Section 51.204, an advertisement is false, misleading, or deceptive if the advertisement:

(1) contains a misrepresentation of fact;

(2) contains a false statement as to the license holder's professional achievements, education, skills, or qualifications in the hearing instrument dispensing profession;

(3) makes a partial disclosure of relevant fact, including the advertisement of:

(A) a discounted price of an item without identifying in the advertisement or at the location of the item:

(i) the specific product being offered at the discounted price; or

(ii) the usual price of the item; and

(B) the price of a specifically identified hearing instrument, if more than one hearing instrument appears in the same advertisement without an accompanying price;

(4) contains a representation that a product innovation is new, if the product was first offered by the manufacturer to the general public in this state not less than 12 months before the date of the advertisement;

(5) states that the license holder manufactures hearing instruments at the license holder's office location unless the next statement discloses that the instruments are manufactured by a specified manufacturer and remanufactured by the license holder; or

(6) contains any other representation, statement, or claim that is inherently misleading or deceptive.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.089, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.093, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.094, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(86), eff. September 1, 2015.

Sec. 402.104. POWERS AND DUTIES REGARDING EXAMINATION. (a) The department shall develop and maintain an examination that may include a written or practical test. The department shall administer or arrange for the administration and validation of the examination.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 6(1), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 6(1), eff. September 1, 2019.

(d) The practical test must be administered by one or more qualified proctors selected and assigned by the department.

(e) The commission by rule shall establish the qualifications for a proctor. The rules must:

(1) require a proctor to be licensed in good standing as a hearing instrument fitter and dispenser;

(2) specify the number of years a proctor must be licensed as a hearing instrument fitter and dispenser; and

(3) specify the disciplinary actions or other actions that disqualify a person from serving as a proctor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.089, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.095, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 1, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 6(1), eff. September 1, 2019.

SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 402.152. COMPLAINTS. (a) Each license or permit holder under this chapter shall at all times prominently display in the person's place of business a sign containing information about filing a complaint as prescribed by commission rule.

(b) Each written contract for services in this state of a license holder must contain the information prescribed by commission rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.096, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 7, eff. June 18, 2023.

SUBCHAPTER E. LICENSE AND PERMIT REQUIREMENTS

Sec. 402.201. LICENSE OR PERMIT REQUIRED. A person may not represent that the person is authorized to fit and dispense hearing instruments, or use in connection with the person's name any designation tending to imply that the person is authorized to engage in the fitting and dispensing of hearing instruments, unless the person holds a license or is otherwise authorized to do so under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.202. EXAMINATION REQUIRED. (a) To engage in fitting and dispensing hearing instruments in this state a person must pass an examination required by the department.

(b) A person licensed under Chapter 401 as an audiologist or an audiology intern who is applying for a license under this chapter is exempt from the examination required under this chapter but must comply with all other requirements under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 2, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 14, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.099, eff. September 1, 2015.

Sec. 402.203. APPLICATION FOR EXAMINATION. (a) An applicant for examination must:

(1) apply to the department in the manner and on a form prescribed by the executive director;

(2) provide:

(A) documentation that the applicant is at least 18 years of age and has graduated from an accredited high school or equivalent; and

(B) other information determined necessary by the department; and

(3) pay any required fees for application and examination.

(b) A permit holder may not take the examination until the satisfactory completion of the requirements of Subchapter F by the supervisor and permit holder is verified.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 6(2), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.100, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 6(2), eff. September 1, 2019.

Sec. 402.204. CONTENTS OF EXAMINATION. (a) The examination must consist of written and practical tests that are objective in method and applied in a consistent manner.

(b) The examination must cover the following subjects as they relate to the fitting and dispensing of hearing instruments:

(1) basic physics of sound;
(2) structure and function of hearing instruments;
(3) fitting of hearing instruments;
(4) pure tone audiometry, including air conduction testing and bone conduction testing;
(5) live voice and recorded voice speech audiometry;
(6) masking when indicated for air conduction, bone conduction, and speech;
(7) recording and evaluation of audiograms and speech audiometry to determine the hearing instrument candidacy;
(8) selection and adaptation of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;
(9) taking of earmold impressions;
(10) verification of hearing instrument fitting and functional gain measurements using a calibrated system;
(11) anatomy and physiology of the ear;
(12) counseling and aural rehabilitation of the hearing impaired for the purpose of fitting and dispensing hearing instruments;
(13) use of an otoscope for the visual observation of the entire ear canal; and
(14) laws, rules, and regulations of this state and the United States.

(c) The examination may not test knowledge of the diagnosis or treatment of any disease of or injury to the human body.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 2, eff. September 1, 2019.

Sec. 402.205. EXAMINATION PROCEDURES. (a) The department or the department's authorized representative shall give each applicant due notice of the date and place of the examination and the subjects, areas, and skills that will be included in the examination. A change may not be made in those subjects, areas, and skills after the date of the examination has been announced and publicized.

(b) An examination shall be conducted in writing and by other

means the department determines adequate to ascertain the qualifications of applicants.

(c) An applicant who previously failed an examination or test may retake the examination or test.

(d) An applicant who previously failed a practical test may be retested only on those portions of the practical test that the applicant failed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 15, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.101, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(93), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 3, eff. September 1, 2019.

Sec. 402.207. ISSUANCE OF APPRENTICE PERMIT. (a) The department shall issue an apprentice permit to fit and dispense hearing instruments to a temporary training permit holder who has:

(1) passed the required examination;

(2) paid the required fees; and

(3) met all requirements of this chapter.

(b) An apprentice permit is valid for one year. The department may extend the apprentice permit for an additional period not to exceed one year.

(c) An apprentice permit holder shall work under the supervision of a license holder for at least one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.102, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 4, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.15, eff.

September 1, 2021.

Sec. 402.208. ISSUANCE OF LICENSE. The department shall issue a license to an apprentice permit holder when the department has received sufficient evidence that the apprentice permit holder has met all the licensing requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.103, eff. September 1, 2015.

Sec. 402.209. APPLICATION BY LICENSE HOLDER FROM ANOTHER STATE. (a) A person licensed to fit and dispense hearing instruments in another state may apply for a license under this chapter by submitting a completed application on a form prescribed by the department.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(95), eff. September 1, 2015.

(c) An applicant for a license under this section shall provide as part of the application:

(1) written verification that the applicant is licensed in good standing as a fitter and dispenser of hearing instruments in another state;

(2) written verification that:

(A) the requirements to obtain a license to fit and dispense hearing instruments in the state in which the applicant is licensed include passing an examination approved by the commission by rule; or

(B) the applicant holds a certification from a professional organization approved by the commission by rule;

(3) a written statement from the licensing entity in the state in which the applicant is licensed that details any disciplinary action taken by the entity against the applicant; and

(4) a statement of the applicant's criminal history acceptable to the department.

(d) The department may deny an application under this section based on the applicant's criminal history or history of disciplinary

action.

(e) If the department approves an application, the applicant may take the practical test and a written test of Texas law administered by the department or the department's authorized representative.

(f) The department may allow an applicant under this section who satisfies all application requirements other than the requirement under Subsection (c)(2) to take the examination.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(95), eff. September 1, 2015.

(h) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.010(1), eff. September 1, 2017.

(i) The department may not issue a license under this section to an applicant who is a licensed audiologist in another state. The department shall inform the applicant of the licensing requirements of Chapter 401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.104, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(95), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.003, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.010(1), eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 377 (H.B. 2699), Sec. 5, eff. September 1, 2019.

Sec. 402.210. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The department shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department or to the Department of Public Safety for the purpose of

obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The department may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The department shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The department may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 17, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.105, eff. September 1, 2015.

SUBCHAPTER F. TEMPORARY TRAINING PERMIT

Sec. 402.251. TEMPORARY TRAINING PERMIT QUALIFICATIONS. (a) The department shall issue a temporary training permit to a person who:

(1) possesses the qualifications required under Section 402.203(a);

(2) submits a written application on a form prescribed by the department furnishing documentation that the applicant satisfies the requirements of Subdivision (1); and

(3) pays any required fee.

(b) The commission by rule may provide for the issuance of a new temporary training permit under this section after a person's temporary training permit expires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.106, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.004, eff. September 1, 2017.

Sec. 402.252. SUPERVISION STATEMENT. (a) An application for a temporary training permit must be accompanied by the statement of a person licensed to fit and dispense hearing instruments under this chapter or Chapter 401, other than a person licensed under Section 401.311 or 401.312.

(b) The statement must be on a form prescribed by the department and state that:

(1) the person will supervise the applicant in all work done by the applicant under the temporary training permit;

(2) the person will notify the department not later than the 10th day after the date of the applicant's termination of supervision by the person; and

(3) if the person is licensed under Chapter 401, the person will comply with all provisions of this chapter and rules adopted under this chapter that relate to the supervision and training of a temporary training permit holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.107, eff. September 1, 2015.

Sec. 402.253. EXPIRATION OF TEMPORARY TRAINING PERMIT. (a) A temporary training permit authorizes the permit holder to fit and dispense hearing instruments until the earlier of:

(1) the date the permit expires; or

(2) the date the permit holder passes the examination required for a license under this chapter.

(b) A temporary training permit automatically expires on the

first anniversary of the date of issuance unless the department extends the permit for an additional period not to exceed one year.

(c) The department may not extend a temporary training permit more than once.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.108, eff. September 1, 2015.

Sec. 402.254. GUIDELINES FOR TRAINING OF TEMPORARY TRAINING PERMIT HOLDERS. (a) The commission by rule shall establish formal and practical education guidelines for the training of temporary training permit holders.

(b) The guidelines must include directions to the supervisor about:

(1) the subject matter to be taught;

(2) the length of the training;

(3) the extent of a temporary training permit holder's contact with the public; and

(4) the responsibility of the supervisor for direct and indirect supervision of all aspects of the training.

(c) The training period begins on the date of issuance of the temporary permit. A temporary training permit holder must complete at least 150 hours of directly supervised practicum that includes:

(1) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry, recorded and live voice, with 15 of the required hours being with actual clients;

(2) 25 client contact hours of hearing instrument evaluations, including sound-field measurements with recorded and live voice;

(3) 20 contact hours of instrument fittings with actual clients;

(4) 10 contact hours of earmold orientation types, uses, and terminology;

(5) five contact hours of earmold impressions and otoscopic examinations of the ear;

(6) 15 contact hours of troubleshooting of defective hearing instruments;

(7) 20 contact hours of case history with actual clients;

(8) 10 contact hours regarding the laws governing the licensing of persons fitting and dispensing hearing instruments and federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and

(9) 20 contact hours of supplemental work in one or more of the areas described by Subdivisions (1) through (8).

(d) A contact hour consists of 55 minutes.

(e) On completion of the directly supervised practicum required under Subsection (c), the temporary training permit holder shall complete the permit holder's training under the indirect supervision of the permit holder's supervisor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.109, eff. September 1, 2015.

Sec. 402.255. SUPERVISOR REQUIREMENTS. (a) A supervisor of a temporary training permit holder must:

(1) be licensed to fit and dispense hearing instruments under this chapter or Chapter 401, other than Section 401.311 or 401.312;

(2) currently practice in this state under a license described by Subdivision (1); and

(3) be responsible for the direct supervision and education of a temporary training permit holder.

(b) A supervisor as appropriate shall directly and indirectly supervise a temporary training permit holder. A supervisor shall provide direct supervision by being located on the premises and available to the temporary training permit holder for prompt consultation. A supervisor shall provide indirect supervision by reviewing daily a temporary training permit holder's patient contact and daily work.

(c) A supervisor shall:

(1) be responsible for day-to-day supervision of the temporary training permit holder and be ultimately responsible for the service to a client treated by the permit holder;

(2) provide to the permit holder materials and equipment necessary for appropriate audiometric and hearing instrument evaluation and fitting procedures;

(3) supplement the permit holder's background information with reading lists and other references;

(4) conduct in-service training for the permit holder;

(5) act as a consultant to the permit holder by providing time for conferences for the permit holder and providing a variety of resource materials, approaches, and techniques that are based on sound theory, successful practice, or documented research;

(6) establish goals with the permit holder that are realistic, easily understandable, and directed toward the successful completion of the training requirements;

(7) observe the permit holder during the practicum, confer with the permit holder after the permit holder's contact with clients, and provide an opportunity for comment on the practicum experience in writing or through conferences, during and after the practicum experience;

(8) establish that the supervisor is solely responsible for the practicum and daily supervision of the permit holder;

(9) assist and encourage the permit holder's use of supportive professional sources;

(10) know and adhere to state and federal laws relating to hearing instrument fitting and dispensing; and

(11) assist the permit holder in fulfilling licensing requirements of this chapter.

(d) The supervisor shall maintain a log of the contact hours by practicum category on a form prescribed by the department. After the temporary training permit holder has completed 150 contact hours, the supervisor and the permit holder shall submit verification of compliance to the department.

(e) A supervisor may not supervise more than two temporary training permit holders at one time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 7, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.110, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.005, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 210 (S.B. 40), Sec. 2, eff. June 3, 2021.

Sec. 402.256. AUTHORITY OF TEMPORARY TRAINING PERMIT HOLDER. (a) A temporary training permit holder may provide routine fitting and dispensing of hearing instruments that have been ordered by the supervisor. The supervisor is the sole judge of whether the permit holder has the qualifications necessary to perform routine fitting and dispensing. A supervisor is accountable to the department for the actions and misdeeds of a temporary training permit holder acting at the supervisor's discretion.

(b) A temporary training permit holder may not:

(1) own, manage, or independently operate a business that engages in the fitting or sale of hearing instruments; or

(2) advertise or otherwise represent that the permit holder holds a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.111, eff. September 1, 2015.

Sec. 402.257. TRANSFER TO ANOTHER SUPERVISOR. (a) On the request of a supervisor or temporary training permit holder, the department may approve a transfer of a permit holder from the permit holder's supervisor to another eligible supervisor before completion of the training.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(96), eff. September 1, 2015.

(c) The department may approve a second transfer request before completion of the training only under exceptional circumstances. The department may not approve more than two transfers.

(d) If a transfer is approved, credit may be transferred at the discretion of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.112, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(96), eff. September 1, 2015.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 402.301. LICENSE RENEWAL. (a) A license under this chapter is valid for two years. The department shall renew the license every two years on payment of the renewal fee unless the license is suspended or revoked.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(97), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(97), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(97), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(97), eff. September 1, 2015.

(f) The department may not renew a license unless the license holder provides proof that all equipment that is used by the license holder to produce a measurement in the testing of hearing acuity has been properly calibrated or certified by a qualified technician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 8, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.113, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(97), eff. September 1, 2015.

Sec. 402.304. ALTERNATIVE TO CONTINUING EDUCATION REQUIREMENT. A license holder may be credited with continuing education credit hours for a published book or article written by the license holder that contributes to the license holder's professional competence. The department may grant credit hours based on the degree to which the published book or article advances knowledge regarding the

fitting and dispensing of hearing instruments. A license holder may claim in a reporting period not more than five credit hours for preparation of a publication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 20, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.115, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.006, eff. September 1, 2017.

Sec. 402.305. CONTINUING EDUCATION EXEMPTIONS. The department may renew the license of a license holder who does not comply with the applicable continuing education requirements if the license holder:

(1) was licensed for the first time during the 24 months before the reporting date; or

(2) submits proof from an attending physician that the license holder suffered a serious or disabling illness or physical disability that prevented compliance with the continuing education requirements during the 24 months before the reporting date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 21, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.116, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.007, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.16, eff. September 1, 2021.

Sec. 402.306. DUPLICATE LICENSE. The department shall issue a duplicate license to a license holder whose license has been lost or destroyed. The department may prescribe the procedure and requirements for issuance of a duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.117, eff. September 1, 2015.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 402.351. DISPLAY OF LICENSE. A person engaged in fitting and dispensing hearing instruments shall display the person's license in a conspicuous place in the person's principal office and, when required, shall exhibit the license to the department or its authorized representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.118, eff. September 1, 2015.

Sec. 402.352. INFORMATION ON PROSPECTIVE AMPLIFICATION CANDIDATES. A license holder shall try to obtain, personally or through a proper referral, at least the following information on each prospective candidate for amplification:

(1) the candidate's pertinent case history;

(2) otoscopic inspection of the outer ear, including canal and drumhead;

(3) evaluation of hearing acuity using pure tone techniques through air and bone conduction pathways through a calibrated system;

(4) an aided and unaided speech reception threshold and ability to differentiate between the phonemic elements of language through speech audiometry, using a calibrated system or other acceptable verification techniques; and

(5) verification of satisfactory aided instrument performance by use of appropriate sound-field speech, noise, or tone testing, using a calibrated system.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.353. SOUND-LEVEL MEASUREMENTS. (a) If audiometric testing is not conducted in a stationary acoustical enclosure, sound-

level measurements must be conducted at the time of the testing to ensure that ambient noise levels meet permissible standards for testing threshold to 20 dB based on the most current American National Standards Institute "ears covered" octave band criteria for Permissible Ambient Noise Levels During Audiometric Testing.

(b) A dBA equivalent level may be used to determine compliance.

(c) The commission shall adopt rules necessary to enforce this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.119, eff. September 1, 2015.

Sec. 402.354. CLIENT ACCESS TO RECORDS. A client of a person licensed to fit and dispense hearing instruments or of a hearing instrument fitting and dispensing practice is entitled to obtain a copy of the client's records that pertain to the testing for, and fitting and dispensing of, hearing instruments by making a signed, written request to the license holder or practice for the records.

Added by Acts 2017, 85th Leg., R.S., Ch. 1023 (H.B. 1543), Sec. 1, eff. September 1, 2017.

SUBCHAPTER I. GENERAL BUSINESS REGULATIONS

Sec. 402.401. TRIAL PERIOD. The commission by rule shall establish guidelines for a 30-day trial period during which a person may cancel the purchase of a hearing instrument.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.120, eff. September 1, 2015.

Sec. 402.402. SALE TO MINOR. (a) A licensed hearing instrument fitter and dispenser may not sell a hearing instrument to a person under 18 years of age unless the prospective user or a parent or guardian of the prospective user has presented to the

hearing instrument fitter and dispenser a written statement, signed by a licensed physician specializing in diseases of the ear, that states that the patient's hearing loss has been medically evaluated and that the patient may be considered a candidate for a hearing instrument.

(b) The physician's evaluation must have taken place within the preceding six months.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 402.403. WRITTEN CONTRACT. The owner of a hearing instrument fitting and dispensing practice shall ensure that each client receives a written contract at the time of purchase of a hearing instrument that contains the information prescribed by commission rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 9, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.121, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 960 (S.B. 2017), Sec. 8, eff. June 18, 2023.

Sec. 402.404. SURETY BONDING. (a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments shall file with the department security in a form provided by Subsection (b) in the amount of $10,000 and conditioned on the promise to pay all:

(1) taxes and contributions owed to the state and political subdivisions of the state by the entity; and

(2) judgments that the entity may be required to pay for:

(A) negligently or improperly dispensing hearing instruments; or

(B) breaching a contract relating to the dispensing of hearing instruments.

(b) The security may be a bond, a cash deposit, or another negotiable security acceptable to the department.

(c) A bond required by this section remains in effect until canceled by action of the surety, the principal, or the department. A person must take action on the bond not later than the third anniversary of the date the bond is canceled.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.122, eff. September 1, 2015.

Sec. 402.405. RECOVERY ON SURETY BOND. The purchaser of a hearing instrument may rescind the purchase and recover as provided by Section 402.404 for:

(1) a material misstatement of fact or misrepresentation by a license holder employed by an entity subject to Section 402.404 regarding the instrument or services to be provided by the license holder that was relied on by the purchaser or that induced the purchaser to purchase the instrument;

(2) the failure by the entity subject to Section 402.404 to provide the purchaser with an instrument or with fitting and dispensing services that conform to the specifications of the purchase agreement;

(3) the diagnosis of a medical condition unknown to the purchaser at the time of the purchase that precludes the purchaser's use of the instrument;

(4) the failure by the entity subject to Section 402.404 to remedy a significant material defect of the instrument within a reasonable time;

(5) the provision by the entity subject to Section 402.404 of fitting and dispensing services that are not in accordance with accepted industry practices; or

(6) the failure by a license holder employed by the entity subject to Section 402.404 to meet the standards of conduct prescribed by this chapter or under rules adopted under this chapter that adversely affects the transactions between the purchaser and the license holder or the entity subject to Section 402.404.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER J. PROHIBITED PRACTICES

Sec. 402.451. PROHIBITED ACTS. (a) A person may not:

(1) buy, sell, or fraudulently obtain a license or aid another person to do so;

(2) alter a license with the intent to defraud;

(3) wilfully make a false statement in an application to the department for a license, a temporary training permit, or the renewal of a license;

(4) falsely impersonate a license holder; or

(5) engage in the fitting and dispensing of hearing instruments when the person's license is suspended or revoked.

(b) A license or permit holder may not:

(1) solicit a potential customer by telephone unless the license or permit holder clearly discloses the holder's name and business address and the purpose of the communication;

(2) use or purchase for use a list of names of potential customers compiled by telephone by a person other than the license or permit holder, the license or permit holder's authorized agent, or another license or permit holder; or

(3) perform any act that requires a license from the Texas Optometry Board or the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.060, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.123, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 3.008, eff. September 1, 2017.

Sec. 402.453. TREATMENT OF EAR DEFECTS; ADMINISTRATION OF DRUGS. (a) A license holder may not treat the ear in any manner for any defect or administer any drug or physical treatment unless the license holder is a physician licensed to practice by the Texas Medical Board.

(b) This chapter does not affect a law regulating the practice of medicine as defined by Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.062, eff. April 2, 2015.

SUBCHAPTER K. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 402.501. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION. The commission or executive director may refuse to issue or renew a license, revoke or suspend a license or permit, place on probation a person whose license or permit has been suspended, or reprimand a license or permit holder who:

(1) makes a material misstatement in furnishing information to the department or to another state or federal agency;

(2) violates this chapter or a rule adopted under this chapter;

(3) is convicted of a felony or misdemeanor that includes dishonesty as an essential element or of a crime directly related to the practice of fitting and dispensing hearing instruments;

(4) makes a misrepresentation for the purpose of obtaining or renewing a license, including falsifying the educational requirements under this chapter;

(5) is professionally incompetent or engages in malpractice or dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public;

(6) aids or assists another person in violating this chapter or a rule adopted under this chapter;

(7) does not provide information in response to a written request made by the department within 60 days;

(8) directly or indirectly knowingly employs, hires, procures, or induces a person not licensed under this chapter to fit and dispense hearing instruments unless the person is exempt under this chapter;

(9) aids a person not licensed under this chapter in the fitting or dispensing of hearing instruments unless the person is exempt under this chapter;

(10) is habitually intoxicated or addicted to a controlled substance;

(11) directly or indirectly gives to or receives from a person a fee, commission, rebate, or other form of compensation for a service not actually provided;

(12) violates a term of probation;

(13) wilfully makes or files a false record or report;

(14) has a physical illness that results in the inability to practice the profession with reasonable judgment, skill, or safety, including the deterioration or loss of motor skills through aging;

(15) solicits a service by advertising that is false or misleading;

(16) participates in subterfuge or misrepresentation in the fitting or dispensing of a hearing instrument;

(17) knowingly advertises for sale a model or type of hearing instrument that cannot be purchased;

(18) falsely represents that the service of a licensed physician or other health professional will be used or made available in the fitting, adjustment, maintenance, or repair of a hearing instrument;

(19) falsely uses the term "doctor," "audiologist," "clinic," "clinical audiologist," "state licensed," "state certified," "licensed hearing instrument dispenser," "board certified hearing instrument specialist," "hearing instrument specialist," or "certified hearing aid audiologist," or uses any other term, abbreviation, or symbol that falsely gives the impression that:

(A) a service is being provided by a person who is licensed or has been awarded a degree or title; or

(B) the person providing a service has been recommended by a government agency or health provider;

(20) advertises a manufacturer's product or uses a manufacturer's name or trademark in a way that implies a relationship between a license or permit holder and a manufacturer that does not exist;

(21) directly or indirectly gives or offers to give, or permits or causes to be given, money or another thing of value to a person who advises others in a professional capacity as an inducement to influence the person to influence the others to:

(A) purchase or contract to purchase products sold or offered for sale by the license or permit holder; or

(B) refrain from purchasing or contracting to purchase products sold or offered for sale by another license or permit holder under this chapter;

(22) with fraudulent intent fits and dispenses a hearing

instrument under any name, including a false name or alias;

(23) does not adequately provide for the service or repair of a hearing instrument fitted and sold by the license holder; or

(24) violates a regulation of the federal Food and Drug Administration or the Federal Trade Commission relating to hearing instruments.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 315 (H.B. 594), Sec. 11, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.063, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.124, eff. September 1, 2015.

SUBCHAPTER L. ENFORCEMENT PROVISIONS

Sec. 402.5521. REFUND FOR HEARING INSTRUMENT. The commission or executive director may order a license holder to pay a refund to a consumer who returns a hearing instrument during the 30-day trial period required by rules adopted under Section 402.1021.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1062 (S.B. 663), Sec. 23, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.127, eff. September 1, 2015.

CHAPTER 403. LICENSED DYSLEXIA PRACTITIONERS AND LICENSED DYSLEXIA THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 403.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Executive director" means the executive director of the department.

(4) "License holder" means a person who holds a license

issued under this chapter.

(5) "Multisensory structured language education" means a program described by the International Multisensory Structured Language Education Council for the treatment of individuals with dyslexia and related disorders that provides instruction in the skills of reading, writing, and spelling:

(A) through program content that includes:

(i) phonology and phonological awareness;

(ii) sound and symbol association;

(iii) syllables;

(iv) morphology;

(v) syntax; and

(vi) semantics; and

(B) following principles of instruction that include:

(i) simultaneous multisensory instruction, including visual-auditory-kinesthetic-tactile instruction;

(ii) systematic and cumulative instruction;

(iii) explicit instruction;

(iv) diagnostic teaching to automaticity; and

(v) synthetic and analytic instruction.

(6) "Qualified instructor" means a person described by Section 403.110.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(5), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.129, eff. September 1, 2015.

Sec. 403.003. APPLICABILITY. This chapter does not:

(1) require a school district to employ a person licensed under this chapter;

(2) require an individual who is licensed under Chapter 501 to obtain a license under this chapter; or

(3) authorize a person who is not licensed under Chapter 401 to practice audiology or speech-language pathology.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1,

eff. September 1, 2009.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 403.051. ADVISORY COMMITTEE. The department shall appoint an advisory committee to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.130, eff. September 1, 2015.

Sec. 403.0511. GENERAL POWERS AND DUTIES. The executive director shall administer and enforce this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.131, eff. September 1, 2015.

Sec. 403.052. STANDARDS OF ETHICAL PRACTICE. The commission shall adopt rules that establish standards of ethical practice.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.132, eff. September 1, 2015.

Sec. 403.053. PUBLISHING LICENSE HOLDER HOME ADDRESS PROHIBITED. (a) The department may not include the home address of a person licensed under this chapter in a roster, registry, or other database the department publishes on the department's Internet website unless the person requests that the person's home address appear in the roster, registry, or other database on the website. A request under this subsection must be made in the manner prescribed by the department.

(b) The home address of a person licensed under this chapter that is included in a roster, registry, or other database the department maintains is public information and is not excepted from required disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 91 (H.B. 125), Sec. 1, eff. September 1, 2019.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 403.101. LICENSE REQUIRED. A person may not use the title "licensed dyslexia practitioner" or "licensed dyslexia therapist" in this state unless the person holds the appropriate license under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.

Sec. 403.102. ISSUANCE OF LICENSE. The department shall issue a licensed dyslexia practitioner or licensed dyslexia therapist license to an applicant who meets the requirements of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.1025. TERM OF LICENSE. A license issued under this chapter is valid for two years.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.066, eff. April 2, 2015.

Sec. 403.103. LICENSE APPLICATION. (a) A license applicant must apply to the department on a form and in the manner prescribed by the executive director.

(b) The application must be accompanied by a nonrefundable application fee.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1,

eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.133, eff. September 1, 2015.

Sec. 403.104. ELIGIBILITY FOR LICENSED DYSLEXIA PRACTITIONER LICENSE. (a) To be eligible for a licensed dyslexia practitioner license, an applicant must have:

(1) earned a bachelor's degree from an accredited public or private institution of higher education;

(2) successfully completed at least 45 hours of course work in multisensory structured language education from a training program that meets the requirements of Section 403.106;

(3) completed at least 60 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least five demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of Section 403.106 and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by a national certifying professional organization.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

(1) the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of Section 403.106; and

(2) guidelines approved by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.105. ELIGIBILITY FOR LICENSED DYSLEXIA THERAPIST LICENSE. (a) To be eligible for a licensed dyslexia therapist license, an applicant must have:

(1) earned at least a master's degree from an accredited

public or private institution of higher education;

(2) successfully completed at least 200 hours of course work in multisensory structured language education from a training program that meets the requirements of Section 403.106;

(3) completed at least 700 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least 10 demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of Section 403.106 and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by a national certifying professional organization.

(b) Clinical experience required under Subsection (a)(3) must be obtained under:

(1) the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of Section 403.106; and

(2) guidelines approved by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

Sec. 403.106. REQUIREMENTS FOR TRAINING PROGRAMS. (a) For purposes of determining whether an applicant satisfies the training requirements for a license under this chapter, a multisensory structured language education training program completed by the applicant must:

(1) be accredited by a nationally recognized accrediting organization;

(2) have in writing defined goals and objectives, areas of authority, and policies and procedures;

(3) have the appropriate financial and management resources to operate the training program, including a knowledgeable administrator and standard accounting and reporting procedures;

(4) have a physical site, equipment, materials, supplies, and environment suitable for the training program;

(5) have a sufficient number of instructional personnel who have completed the requirements for certification in multisensory structured language education;

(6) have been reviewed by multisensory structured language education professionals who are not affiliated with the training program;

(7) have developed and followed procedures to maintain and improve the quality of training provided by the program;

(8) have provided direct instruction in the principles and in each element of multisensory structured language education for a minimum of:

(A) 200 contact hours of course work for training program participants who seek a licensed dyslexia therapist license; and

(B) 45 contact hours of course work for training program participants who seek a licensed dyslexia practitioner license;

(9) have required training program participants to complete a program of supervised clinical experience in which the participants provided multisensory structured language education to students or adults, either individually or in small groups for a minimum of:

(A) 700 hours for training program participants who seek a licensed dyslexia therapist license; and

(B) 60 hours for training program participants who seek a licensed dyslexia practitioner license;

(10) have required training program participants to demonstrate the application of multisensory structured language education principles of instruction by completing demonstration lessons observed by an instructor and followed by a conference with and a written report by the instructor; and

(11) have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (2007)," or a revised version of that publication approved by the department.

(b) A training program must require a training program participant who seeks a licensed dyslexia practitioner license to have completed at least five demonstration lessons described by Subsection (a)(10) and a participant who seeks a licensed dyslexia therapist license to have completed at least 10 demonstration lessons.

(c) The department shall determine whether a training program meets the requirements of this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 4.001, eff. September 1, 2017.

Sec. 403.107. EXAMINATION. (a) To obtain a license, an applicant must:

(1) pass a written examination approved by the department under Subsection (b); and

(2) pay the required fees.

(b) The department shall:

(1) identify and designate a competency examination that is related to multisensory structured language education and that will be administered at least twice each year by a professional organization that issues national certifications; and

(2) maintain a record of all examinations for at least two years after the date of examination.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.067, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.134, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.135, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 4.002, eff. September 1, 2017.

Sec. 403.108. WAIVER OF EXAMINATION REQUIREMENT. The department may waive the examination requirement and issue a license to an applicant who holds an appropriate certificate or other accreditation from a nationally accredited multisensory structured language education organization recognized by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 4.003, eff. September 1, 2017.

Sec. 403.110. QUALIFIED INSTRUCTOR. To be considered a qualified instructor under this chapter, a person must:

(1) be a licensed dyslexia therapist;

(2) have at least 1,400 hours of clinical teaching experience in addition to the hours required to obtain a licensed dyslexia therapist license; and

(3) have completed a two-year course of study dedicated to the administration and supervision of multisensory structured language education programs taught by a nationally accredited training program that meets the requirements of Section 403.106.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 403.151. PRACTICE SETTING. (a) A licensed dyslexia practitioner may practice only in, or provide telehealth services from a remote location only to, an educational setting, including a school, learning center, or clinic.

(b) A licensed dyslexia therapist may practice in, or provide telehealth services from a remote location to, a school, learning center, clinic, or private practice setting.

(c) A license holder may provide telehealth services only in a practice setting described by this section, regardless of the physical location of the license holder or the recipient of the telehealth services.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 210 (S.B. 40), Sec. 3, eff. June 3, 2021.

SUBCHAPTER E. LICENSE DENIAL; DISCIPLINARY PROCEDURES

Sec. 403.202. PROHIBITED ACTIONS. A license holder may not:

(1) obtain a license by means of fraud, misrepresentation, or concealment of a material fact;

(2) sell, barter, or offer to sell or barter a license; or

(3) engage in unprofessional conduct that endangers or is likely to endanger the health, welfare, or safety of the public as defined by commission rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.068, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.138, eff. September 1, 2015.

Sec. 403.203. GROUNDS FOR DISCIPLINARY ACTION. If a license holder violates this chapter or a rule or code of ethics adopted by the commission, the commission or executive director shall:

(1) revoke or suspend the license;

(2) place on probation the person if the person's license has been suspended;

(3) reprimand the license holder; or

(4) refuse to renew the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.139, eff. September 1, 2015.

Sec. 403.209. MONITORING OF LICENSE HOLDER. (a) The commission by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter.

(b) Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the commission or executive director to perform certain acts; and

(2) identify and monitor license holders who represent a risk to the public.

Added by Acts 2009, 81st Leg., R.S., Ch. 1255 (H.B. 461), Sec. 1, eff. September 1, 2010.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.142, eff. September 1, 2015.

SUBTITLE H. PROFESSIONS RELATED TO CERTAIN TYPES OF THERAPY
CHAPTER 451. ATHLETIC TRAINERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 451.001. DEFINITIONS. In this chapter:

(1) "Athletic injury" means an injury sustained by a person as a result of physical activity or exercise or the person's participation in an organized sport or sport-related exercise or activity, including interscholastic, intercollegiate, intramural, recreational, semiprofessional, and professional sports activities.

(2) "Athletic trainer" means a person who practices athletic training, is licensed by the department, and may use the initials "LAT," "LATC," and "AT" to designate the person as an athletic trainer. The terms "sports trainer" and "licensed athletic trainer" are equivalent to "athletic trainer."

(3) "Athletic training" means the form of health care that includes principles and methods for managing and treating athletic injuries for athletic individuals in good general health under the direction of a physician licensed in this state or another qualified, licensed health professional who is authorized to refer for health care services within the scope of the person's license, and consists of:

(A) managing the risk of an athletic injury or illness;

(B) preventing an athletic injury or illness;

(C) assessing an athletic injury or illness;

(D) providing immediate emergency care;

(E) providing therapeutic intervention for an athletic injury; and

(F) reconditioning an athletic injury or illness.

(4) "Board" means the Advisory Board of Athletic Trainers.

(5) "Commission" means the Texas Commission of Licensing

and Regulation.

(6) "Department" means the Texas Department of Licensing and Regulation.

(7) "Executive director" means the executive director of the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.201(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.072, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.146, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 835 (H.B. 2512), Sec. 1, eff. September 1, 2023.

Sec. 451.002. INTERPRETATION; PRACTICE OF MEDICINE. This chapter does not authorize the practice of medicine by a person not licensed by the Texas Medical Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.073, eff. April 2, 2015.

Sec. 451.003. APPLICABILITY. This chapter does not apply to:

(1) a physician licensed by the Texas Medical Board or engaged in the practice of medicine as authorized by Section 151.0521;

(2) a dentist, licensed under the laws of this state, engaged in the practice of dentistry;

(3) a licensed optometrist or therapeutic optometrist engaged in the practice of optometry or therapeutic optometry as defined by statute;

(4) an occupational therapist engaged in the practice of occupational therapy;

(5) a nurse engaged in the practice of nursing;

(6) a licensed podiatrist engaged in the practice of

podiatry as defined by statute;

(7) a physical therapist engaged in the practice of physical therapy;

(8) a registered massage therapist engaged in the practice of massage therapy;

(9) a commissioned or contract physician, physical therapist, or physical therapist assistant in the United States Army, Navy, Air Force, or Public Health Service; or

(10) an athletic trainer who does not live in this state, who is licensed, registered, or certified by an authority recognized by the department, and who provides athletic training in this state for a period determined by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.201(b), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.074, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.147, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 376 (H.B. 2299), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. ADVISORY BOARD OF ATHLETIC TRAINERS

Sec. 451.051. BOARD; MEMBERSHIP. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(120), eff. September 1, 2015.

(b) The board consists of five members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three members who are athletic trainers; and

(2) two members who represent the public.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 5.002(1), eff. September 1, 2017.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.202(a), eff. Sept. 1,

2001; Acts 2003, 78th Leg., ch. 1170, Sec. 4.01, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.148, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(120), eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 5.002(1), eff. September 1, 2017.

Sec. 451.0521. DUTIES OF BOARD. The board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.149, eff. September 1, 2015.

Sec. 451.053. TERMS; VACANCY. (a) Board members serve staggered six-year terms with the terms of one or two members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the unexpired portion of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 4.02, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.150, eff. September 1, 2015.

Sec. 451.055. PRESIDING OFFICER. The presiding officer of the commission shall designate a member of the board to serve as the presiding officer of the board for a one-year term. The presiding officer of the board may vote on any matter before the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.203(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 285, Sec. 31(36), eff. Sept. 1,

2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.151, eff. September 1, 2015.

Sec. 451.056. MEETINGS. The board shall meet at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.152, eff. September 1, 2015.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 451.101. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(a-1) The department shall:

(1) prescribe the application form for a license applicant;

(2) prescribe a suitable form for a license certificate;

(3) prepare and conduct an examination for license applicants; and

(4) maintain a complete record of all licensed athletic trainers.

(a-2) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 5.002(2), eff. September 1, 2017.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(127), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(127), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.204(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.154, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(127), eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 5.002(2),

eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 724 (H.B. 2495), Sec. 2, eff. June 12, 2023.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 451.151. LICENSE REQUIRED. A person may not hold the person out as an athletic trainer or perform any activity of an athletic trainer unless the person holds a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 451.152. LICENSE APPLICATION. An applicant for an athletic trainer license must submit to the department:

(1) an application in the manner and on a form prescribed by the executive director; and

(2) the required examination fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.157, eff. September 1, 2015.

Sec. 451.153. APPLICANT QUALIFICATIONS. (a) An applicant for an athletic trainer license must:

(1) have met the athletic training curriculum requirements of a college or university approved by the commission and give proof of graduation; or

(2) hold a degree or certificate in physical therapy and have completed:

(A) a basic athletic training course from an accredited college or university; and

(B) an apprenticeship described by Subsection (b).

(b) The apprenticeship required to be completed by an applicant consists of 720 hours completed in two years under the direct supervision of a licensed athletic trainer acceptable to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.158, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 724 (H.B. 2495), Sec. 3, eff. June 12, 2023.

Sec. 451.156. REQUIREMENTS FOR LICENSE ISSUANCE. An applicant for an athletic trainer license is entitled to receive the license if the applicant:

(1) satisfies the requirements of Section 451.153;
(2) passes the examination required by the department; and
(3) pays the required license fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.159, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 5.001, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 724 (H.B. 2495), Sec. 4, eff. June 12, 2023.

Sec. 451.157. TEMPORARY LICENSE. (a) The department may issue a temporary license to an applicant if the applicant satisfies:

(1) the requirements of Section 451.153; and
(2) any other requirement established by the commission.

(b) The commission by rule shall prescribe the time during which a temporary license is valid.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.160, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 724 (H.B. 2495), Sec. 5, eff. June 12, 2023.

SUBCHAPTER E. LICENSE RENEWAL

Sec. 451.201. LICENSE EXPIRATION; RENEWAL. (a) A license issued under Section 451.156 expires on the second anniversary of the date of issuance and may be renewed biennially.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(140), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.076, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.161, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.162, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(140), eff. September 1, 2015.

CHAPTER 452. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 452.001. DEFINITIONS. In this chapter:

(1) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(2) "Occupational therapy board" means the Texas Board of Occupational Therapy Examiners.

(3) "Physical therapy board" means the Texas Board of Physical Therapy Examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.002. APPLICATION OF SUNSET ACT. The Executive Council of Physical Therapy and Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the executive council is abolished and the following laws expire September 1, 2033:

(1) this chapter;

(2) Chapter 453; and

(3) Chapter 454.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.06, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.05, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.07, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.01, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.07, eff. June 18, 2023.

SUBCHAPTER B. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

Sec. 452.051. APPOINTMENT OF EXECUTIVE COUNCIL. (a) The Executive Council of Physical Therapy and Occupational Therapy Examiners consists of:

(1) an occupational therapist member of the occupational therapy board appointed by that board;

(2) a public member of the occupational therapy board appointed by that board;

(3) a physical therapist member of the physical therapy board appointed by that board;

(4) a public member of the physical therapy board appointed by that board; and

(5) a public member appointed by the governor.

(b) The occupational therapy board and the physical therapy board may designate an alternate to attend an executive council meeting if a member appointed by that board cannot attend. The alternate has the same powers and duties and is subject to the same qualifications as the appointed member.

(c) Appointments to the executive council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.052. ELIGIBILITY OF PUBLIC MEMBER APPOINTED BY

GOVERNOR. A person is not eligible for appointment by the governor as a public member of the executive council if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the executive council, the occupational therapy board, or the physical therapy board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the executive council, the occupational therapy board, or the physical therapy board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council, the occupational therapy board, or the physical therapy board, other than compensation or reimbursement authorized by law for executive council, occupational therapy board, or physical therapy board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the executive council and may not be an employee of the executive council employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not serve as a member of the executive council

or act as the general counsel to the executive council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council, the occupational therapy board, or the physical therapy board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.02, eff. September 1, 2017.

Sec. 452.054. TERMS; VACANCY. (a) Members of the executive council are appointed for two-year terms that expire on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy holds office for the unexpired portion of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.055. PRESIDING OFFICER. The member appointed by the governor is the presiding officer of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the executive council that a member:

(1) does not have at the time of taking office the qualifications required by Section 452.051;

(2) does not maintain during service on the executive council the qualifications required by Section 452.051;

(3) is ineligible for membership under Section 452.052 or 452.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled executive council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the executive council.

(b) The validity of an action of the executive council is not affected by the fact that it is taken when a ground for removal of an executive council member exists.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the executive council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the executive council, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.03, eff. September 1, 2017.

Sec. 452.057. COMPENSATION; REIMBURSEMENT. (a) The presiding officer of the executive council is entitled to a per diem as provided by the General Appropriations Act for each day that the presiding officer engages in the business of the executive council.

(b) A member of the executive council, other than the presiding officer, may not receive compensation for service on the executive council. A member may receive reimbursement for transportation expenses as provided by the General Appropriations Act. A member may not receive reimbursement for any other travel expenses, including expenses for meals and lodging.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.058. MEETINGS; QUORUM. (a) The executive council shall hold at least two regular meetings each year.

(b) The executive council may hold additional meetings on the request of the presiding officer or on the written request of three members of the executive council.

(c) A quorum of the executive council exists if both therapist members and one public member are present.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the executive council may not vote, deliberate, or be counted as a member in attendance at a meeting of the executive council until the person completes a training program that complies with this section.

(b) The training program required under this section must provide the person with information regarding:

(1) the law governing the operations of the executive council, physical therapy board, and occupational therapy board;

(2) the programs, functions, rules, and budgets of the executive council, physical therapy board, and occupational therapy board;

(3) the scope of and limitations on the rulemaking authority of the executive council, physical therapy board, and occupational therapy board;

(4) the types of executive council, physical therapy board, and occupational therapy board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board;

(B) restrict advertising by persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board;

(C) affect the price of goods or services provided by persons engaged in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board; or

(D) restrict participation in a profession or business regulated by the executive council, physical therapy board, or occupational therapy board;

(5) the results of the most recent formal audit of the executive council, physical therapy board, and occupational therapy

board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the executive council, physical therapy board, and occupational therapy board in performing their duties; and

(7) any applicable ethics policies adopted by the executive council or the Texas Ethics Commission.

(c) A person appointed to the executive council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the person's attendance at the program occurs before or after the person qualifies for office.

(d) The director of the executive council shall create a training manual that includes the information required by Subsection (b). The director shall distribute a copy of the training manual annually to each member of the executive council. On receipt of the training manual, each member of the executive council shall sign and submit to the director a statement acknowledging receipt of the training manual.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.04, eff. September 1, 2017.

SUBCHAPTER C. DIRECTOR AND OTHER EXECUTIVE COUNCIL PERSONNEL

Sec. 452.101. DIRECTOR; PERSONNEL. (a) The executive council shall employ a director and administrative and clerical employees as necessary to carry out the functions of the executive council, the occupational therapy board, and the physical therapy board.

(b) The director shall employ a coordinator of occupational therapy programs and a coordinator of physical therapy programs to carry out the functions of the respective boards. The coordinators may request the executive council to assign additional employees to carry out the duties of the coordinators.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.102. DIVISION OF RESPONSIBILITIES. The executive council shall develop and implement policies that clearly separate the policymaking responsibilities of the executive council and the management responsibilities of the director and the staff of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.05, eff. September 1, 2017.

Sec. 452.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The director or the director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The director or the director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for executive council employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.104. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The director or the director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the executive council workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the executive council workforce of all persons for whom federal or state guidelines encourage a more

equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Texas Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 452.151. GENERAL POWERS AND DUTIES. (a) Except as otherwise provided by this chapter, the executive council shall administer and enforce Chapters 453 and 454.

(b) The executive council shall:

(1) develop and prepare a budget for the executive council, the occupational therapy board, and the physical therapy board; and

(2) manage all physical property used by the executive council, the occupational therapy board, or the physical therapy board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.152. ADMINISTRATIVE FUNCTIONS. (a) In administering Chapters 453 and 454, the executive council shall:

(1) perform data processing functions; and

(2) administer records relating to payroll, personnel files, and employee leave, benefits, and applications.

(b) The executive council shall perform the administrative functions relating to issuing and renewing licenses, including the ministerial functions of preparing and delivering licenses, obtaining material and information in connection with the renewal of a license, and receiving and forwarding complaints to the appropriate board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.06, eff. September 1, 2017.

Sec. 452.153. LIMITATION ON EXECUTIVE COUNCIL AUTHORITY. (a) The executive council may not exercise discretionary authority in the review of an applicant's qualifications for a license.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.08, eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.08, eff. September 1, 2017.

Sec. 452.154. FEES. The executive council shall set all fees for a license issued or service performed by a board represented on the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.155. RULES. Subject to Section 452.156, the appropriate professional board shall adopt rules concerning the qualifications, licensing, regulation, or practice of a profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.156. REVIEW OF RULES. (a) Before submitting a rule for publication in the Texas Register, a board represented on the executive council shall forward the proposed rule to the executive council for review.

(b) The executive council may review the rule and shall approve the rule for submission for publication unless the rule exceeds the rulemaking authority of the board.

(c) If the executive council fails to approve a rule, it shall return the rule to the board with an explanation of the reasons for

the denial.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.157. REVIEW OF BOARDS. (a) The executive council shall routinely examine and evaluate the operations of the boards represented on the executive council.

(b) The executive council may structure the examination in a manner that the executive council considers appropriate to produce an efficient and thorough review.

(c) Each board represented on the executive council shall cooperate with the examination conducted by the executive council under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.158. DISBURSEMENT OF FUNDS. The executive council may authorize from its appropriated funds all necessary disbursements to carry out:

(1) this chapter;

(2) Chapter 453; and

(3) Chapter 454.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.160. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The executive council shall develop a policy to encourage the use of:

(1) negotiated rulemaking under Chapter 2008, Government Code, for the adoption of rules by the executive council or the occupational therapy or physical therapy boards; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the executive council's jurisdiction.

(b) The executive council's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for

the use of alternative dispute resolution by state agencies.

(c) The executive council shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 1.07, eff. September 1, 2017.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 452.201. PUBLIC INTEREST INFORMATION. (a) The executive council shall prepare information of public interest describing the functions of the executive council and the procedures by which complaints are filed with and resolved by the executive council, the occupational therapy board, or the physical therapy board.

(b) The executive council shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.202. COMPLAINTS. (a) The executive council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the executive council for the purpose of directing complaints to the executive council. The executive council may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the executive council, the occupational therapy board, or the physical therapy board;

(2) on a sign prominently displayed in the place of business of each person regulated by the executive council, the occupational therapy board, or the physical therapy board; or

(3) in a bill for service provided by a person regulated by the executive council, the occupational therapy board, or the physical therapy board.

(b) The executive council shall list with its regular telephone

number any toll-free telephone number established under other state law for presenting a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 452.203. PUBLIC PARTICIPATION. (a) The executive council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive council and to speak on any issue under the jurisdiction of the executive council.

(b) The executive council shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the executive council's programs and services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 453. PHYSICAL THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 453.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Physical Therapy Examiners.

(2) "Coordinator of physical therapy programs" is the person employed in that position under Section 452.101.

(3) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(4) "Physical therapist" means a person who is licensed by the board as a physical therapist and practices physical therapy. The term includes a hydrotherapist, physiotherapist, mechano-therapist, functional therapist, physical therapy practitioner, physical therapist specialist, physical therapy specialist, physiotherapy practitioner, kinesiotherapist, physical rehabilitation specialist, and myofunctional therapist.

(5) "Physical therapist assistant" means a person licensed by the board as a physical therapist assistant:

(A) who assists and is supervised by a physical therapist in the practice of physical therapy; and

(B) whose activities require an understanding of physical therapy.

(6) "Physical therapy" means a form of health care that

prevents, identifies, corrects, or alleviates acute or prolonged movement dysfunction or pain of anatomic or physiologic origin.

(7) "Physical therapy aide" or "physical therapy technician" means a person:

(A) who aids in the practice of physical therapy under the on-site supervision of a physical therapist or a physical therapist assistant; and

(B) whose activities require on-the-job training.

(8) Repealed by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.26(1), eff. September 1, 2019.

(9) "Referring practitioner" means a qualified licensed health care professional who, within the scope of professional licensure, may refer a person for health care services. The term includes:

(A) a physician licensed to practice medicine by a state board of medical examiners;

(B) a dentist licensed by a state board of dental examiners;

(C) a chiropractor licensed by a state board of chiropractic examiners; and

(D) a podiatrist licensed by a state board of podiatric medical examiners.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.26(1), eff. September 1, 2019.

Sec. 453.002. APPLICATION OF SUNSET ACT. The Texas Board of Physical Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.07, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.06, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.08, eff.

June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.01, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.08, eff. June 18, 2023.

Sec. 453.003. CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Chapter 452, Chapter 452 controls.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.004. EFFECT OF CHAPTER; APPLICABILITY. (a) This chapter does not restrict the holder of a license issued by another state agency from performing health care services within the scope of the applicable licensing act if the license holder:

(1) does not represent to another that the license holder is a physical therapist;

(2) does not violate Sections 453.201(a) and (c) and 453.304; and

(3) practices strictly in conformity with the statutes and rules relating to the license holder's license.

(b) This chapter does not apply to:

(1) a physical therapy aide;

(2) a physical therapy student or physical therapist assistant student:

(A) participating in an accredited physical therapy or physical therapist assistant educational program; and

(B) being supervised by a license holder under this chapter;

(3) a student:

(A) participating in an accredited allied health science program leading to licensure by another state agency; and

(B) being supervised by properly licensed, certified, or registered personnel;

(4) a physical therapist who is licensed in another jurisdiction of the United States if the person is engaging, for not more than 90 days in a 12-month period and under the supervision of a physical therapist licensed in this state, in a special project or

clinic required for completion of a post-professional degree in physical therapy from an accredited college or university, and the person notifies the board of the person's intent to practice in this state; or

(5) a person who practices physical therapy or as a physical therapy assistant and who is:

(A) practicing physical therapy in the United States armed services, United States Public Health Service, or Veterans Administration in compliance with federal regulations for licensure of health care providers;

(B) licensed in another jurisdiction of the United States or credentialed to practice physical therapy in another country if the person:

(i) is teaching, demonstrating, or practicing physical therapy in an educational seminar in this state for not more than 60 days in a 12-month period, and the person notifies the board of the person's intent to practice in this state; or

(ii) by contract or employment, is practicing physical therapy in this state for not more than 60 days in a 12-month period for an athletic team or organization or a performing arts company temporarily competing or performing in this state; or

(C) licensed in another jurisdiction of the United States, if the person notifies the board of the person's intent to practice in this state, and:

(i) is practicing physical therapy for not more than 60 days during a declared local, state, or national disaster or emergency; or

(ii) is displaced from the person's residence or place of employment due to a declared local, state, or national disaster and is practicing physical therapy in this state for not more than 60 days after the date the disaster is declared.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1188 (H.B. 3717), Sec. 1, eff. June 19, 2009.

Sec. 453.005. PRACTICE OF PHYSICAL THERAPY. (a) The practice of physical therapy requires that a person practicing have education,

training, and experience in physical therapy.

(b) The practice of physical therapy includes:

(1) measurement or testing of the function of the musculoskeletal, neurological, pulmonary, or cardiovascular system;

(2) rehabilitative treatment concerned with restoring function or preventing disability caused by illness, injury, or birth defect;

(3) treatment, consultative, educational, or advisory services to reduce the incidence or severity of disability or pain to enable, train, or retrain a person to perform the independent skills and activities of daily living; and

(4) delegation of selective forms of treatment to support personnel while a physical therapist retains the responsibility for caring for the patient and directing and supervising the support personnel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.006. PRACTICE OF MEDICINE. (a) A person may not engage in diagnosing diseases or in practicing medicine as defined by law on the basis of a license issued under this chapter.

(b) A person may not use an affix indicating or implying that the person is a physician on the basis of a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

Sec. 453.051. BOARD MEMBERSHIP. (a) The Texas Board of Physical Therapy Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six physical therapist members; and

(2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, creed, sex, religion, disability, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.052. PURPOSE OF BOARD. The board shall regulate the practice of physical therapy in this state to safeguard the public health and welfare.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.053. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the executive council or board or receiving funds from the executive council or board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council or board or receiving funds from the executive council or board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council or board, other than compensation or reimbursement authorized by law for executive council or board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.054. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government

Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.02, eff. September 1, 2017.

Sec. 453.055. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms with the terms of two physical therapist members and one public member expiring January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired part of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 453.051(a);

(2) does not maintain during service on the board the qualifications required by Section 453.051(a);

(3) is ineligible for membership under Section 453.053 or 453.054;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the coordinator of physical therapy programs has knowledge that a potential ground for removal exists, the coordinator shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the

potential ground for removal involves the presiding officer, the coordinator shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.03, eff. September 1, 2017.

Sec. 453.057. PER DIEM REIMBURSEMENT. (a) A member of the board is entitled to a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(b) A member may receive reimbursement for meals, lodging, and transportation expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.058. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) After the appointment of members every two years, the members of the board shall elect from among its members a secretary and other officers required to conduct the business of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.04, eff. September 1, 2017.

Sec. 453.059. MEETINGS. (a) A special meeting of the board:

(1) may be called jointly by the presiding officer and secretary; or

(2) shall be called on the written request of any two members.

(b) The secretary shall keep a record of each meeting of the board. The record shall be open to public inspection at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.060. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board and executive council operations;

(2) the programs, functions, rules, and budgets of the board and executive council;

(3) the scope of and limitations on the rulemaking authority of the board and executive council;

(4) the types of board and executive council rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated by the board, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons engaged in a profession or business regulated by the board;

(B) restrict advertising by persons engaged in a profession or business regulated by the board;

(C) affect the price of goods or services provided by persons engaged in a profession or business regulated by the board; or

(D) restrict participation in a profession or business regulated by the board;

(5) the results of the most recent formal audit of the board and executive council;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the person's attendance at the program occurs before or after the person qualifies for office.

(d) The director of the executive council shall create a training manual that includes the information required by Subsection (b). The director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the director a statement acknowledging receipt of the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.05, eff. September 1, 2017.

Sec. 453.061. CIVIL LIABILITY. A member of the board is not liable in a civil action for an act performed in good faith in executing duties as a board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 453.101. GENERAL POWERS AND DUTIES. Except as provided by Chapter 452, the board shall administer and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.102. RULES. (a) The board may adopt rules necessary to implement this chapter.

(b) The board may adopt bylaws and rules necessary to govern its proceedings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.103. RULES REGARDING ADVERTISING OR COMPETITIVE

BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.104. FEES. (a) The board may recommend to the executive council reasonable and necessary fees for licenses issued or services performed under this chapter that in the aggregate produce sufficient revenue to cover the cost of administering this chapter.

(b) The board may not recommend to the executive council a fee that existed on September 1, 1993, for an amount less than the amount of that fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.105. EMPLOYEES; DIVISION OF RESPONSIBILITIES. (a) The board may request the executive council to assign administrative and clerical employees as necessary to carry out the board's functions.

(b) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the director and staff of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.06, eff.

September 1, 2017.

Sec. 453.106. LIST OF LICENSE HOLDERS. (a) The secretary shall maintain a list of the names of each physical therapist licensed under this chapter.

(b) The list shall be open to public inspection at all times.

(c) On March 1 of each year, the coordinator of physical therapy programs shall transmit an official copy of the list to the executive council.

(d) A certified copy of the list of license holders is admissible as evidence in a court of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.209(a), eff. Sept. 1, 2001.

Sec. 453.1061. PLACE OF EMPLOYMENT. The board may require that a license holder provide current information in a readily accessible and usable format regarding the license holder's place of employment as a physical therapist or physical therapist assistant.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.07, eff. September 1, 2019.

Sec. 453.107. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.108. PROSECUTING VIOLATIONS. The board shall assist the proper legal authorities in prosecuting a person who violates

this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.109. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop a policy to encourage the use of:

(1) negotiated rulemaking under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.07, eff. September 1, 2017.

SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 453.151. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) Information maintained by the executive council or the board under this chapter regarding the home address or personal telephone number of a person licensed under this chapter is confidential and not subject to disclosure under Chapter 552, Government Code. A person licensed under this chapter must provide

the board with a business address or address of record that will be subject to disclosure under Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 1, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.08, eff. September 1, 2019.

Sec. 453.152. COMPLAINTS. A license holder shall at all times prominently display in the license holder's place of business a sign containing:

(1) the board's name, mailing address, and telephone number; and

(2) a statement informing consumers that a complaint against a license holder can be directed to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.153. RECORD OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the executive council and referred to the board. The board's information file must be kept current and contain a record for each complaint of:

(1) each person contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed;

(4) the schedule required under Section 453.154 and a notation about a change in the schedule; and

(5) other relevant information.

(b) If a written complaint is received by the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.154. GENERAL RULES INVOLVING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules relating to the investigation of a complaint received by the board. The rules shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and

(6) require the board to advise the executive council of complaints that have been disposed of.

(b) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the investigation of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party shall be notified of the projected time requirements for the complaint.

(d) Each party to the complaint must be notified of a change in the schedule not later than the seventh day after the date the change is made.

(e) The staff of the executive council shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.09, eff. September 1, 2017.

Sec. 453.155. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. LICENSE REQUIREMENTS

Sec. 453.201. LICENSE REQUIRED; USE OF TITLE. (a) A person may not practice physical therapy or practice as a physical therapist assistant, unless the person is an individual who holds a license issued by the board.

(b) A person, including the person's employee or other agent or representative, may not extend or provide physical therapy services unless the services are provided by a physical therapist.

(c) A person is considered to be practicing physical therapy if the person:

(1) performs, offers to perform, or attempts to perform physical therapy; or

(2) publicly professes to be or holds the person out to be a physical therapist or as providing physical therapy.

(d) Unless the person is a physical therapist, a person, including the person's employee or other agent or representative, may not use in connection with the person's name or business activity:

(1) the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "licensed physical therapist," "registered physical therapist," or "physical therapist assistant";

(2) the letters "PT," "PhT," "LPT," "RPT," "DPT," "MPT," or "PTA"; or

(3) any other words, letters, abbreviations, or insignia indicating or implying, by any means or in any way, that physical therapy is provided or supplied.

(e) A person may not use the title "Physical Therapist" unless the person is a physical therapist.

(f) A person may not use the title "Physical Therapist Assistant" unless the person is a physical therapist assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.2095, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 474 (S.B. 1099), Sec. 1, eff. September 1, 2013.

Sec. 453.202. LICENSE APPLICATION. (a) An applicant for a physical therapist license or a physical therapist assistant license must submit to the board a written application on a form provided by the board.

(b) The application must be accompanied by a nonrefundable application fee prescribed by the executive council.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.26(2), eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.11, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.26(2), eff. September 1, 2017.

Sec. 453.203. QUALIFICATIONS FOR PHYSICAL THERAPIST OR PHYSICAL THERAPIST ASSISTANT LICENSE. (a) An applicant for a physical therapist license must, in addition to other requirements and qualifications established by the board, present:

(1) evidence satisfactory to the board that the applicant has completed an accredited physical therapy educational program; or

(2) official documentation from an educational credentials review agency approved by the board certifying that the applicant has completed a program equivalent to a Commission on Accreditation in Physical Therapy Education accredited program.

(b) An applicant for a physical therapist assistant license must, in addition to other requirements and qualifications established by the board, present evidence satisfactory to the board that the applicant has completed an accredited physical therapist assistant program or an accredited physical therapy educational program.

(c) A physical therapy educational program or physical therapist assistant program is an accredited program if the program is accredited by the Commission on Accreditation in Physical Therapy Education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.12, eff. September 1, 2017.

Sec. 453.204. FOREIGN-TRAINED APPLICANTS. (a) To obtain a license under this chapter, an applicant who is foreign-trained must satisfy the examination requirements of Section 453.208.

(b) Before allowing a foreign-trained applicant to take the examination, the board shall require the applicant to furnish proof of completion of requirements substantially equal to those under Section 453.203.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.13, eff. September 1, 2017.

Sec. 453.205. LICENSE EXAMINATION. (a) The board by rule shall recognize a national testing entity to administer the examination required to obtain a physical therapist or physical therapist assistant license.

(b) The physical therapist examination is a national examination that tests entry-level competence related to physical therapy theory, examination and evaluation, prognosis, treatment intervention, prevention, and consultation.

(c) The physical therapist assistant examination is a national examination that tests for required knowledge and skills in the technical application of physical therapy services.

(d) An applicant for a license must agree to comply with the security and copyright provisions of the national examination. If the board has knowledge of a violation of the security or copyright provisions or a compromise or attempted compromise of the provisions, the board shall report the matter to the testing entity.

(e) The board may disqualify an applicant from taking or retaking an examination for a period specified by the board if the board determines that the applicant engaged or attempted to engage in conduct that compromises or undermines the integrity of the examination process, including a violation of security or copyright provisions related to the national examination.

(f) If the board enters into a contract with a national testing entity under Subsection (a), the contract must include a provision requiring the national testing entity to provide to the board an examination score report for each applicant for a license under this chapter who took the examination.

(g) The board may require an applicant for a physical therapist or physical therapist assistant license to pass a jurisprudence examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.14, eff. September 1, 2017.

Sec. 453.207. REEXAMINATION. (a) An applicant who fails to pass an examination under Section 453.205 may retake the examination under the policies of the national testing entity.

(b) Before retaking an examination, the applicant must:

(1) submit to the board a reexamination application prescribed by the board; and

(2) pay a nonrefundable application fee prescribed by the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.15, eff. September 1, 2017.

Sec. 453.208. ISSUANCE OF LICENSE. (a) The board shall issue a license to an applicant who:

(1) passes the examination under Section 453.205;

(2) meets the qualifications prescribed by Section 453.203; and

(3) has not committed an act that constitutes a ground for denial of a license under Section 453.351.

(b) The board may issue a physical therapist assistant license to a person who has not completed an accredited physical therapist assistant program if the person:

(1) meets the requirements under Section 453.203(a); and

(2) has not been the subject of disciplinary action in another state or nation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.209. PROVISIONAL LICENSE. (a) The board may issue a provisional license to an applicant licensed in another state that maintains professional standards considered by the board to be equivalent to and has licensing requirements that are substantially equivalent to the requirements under this chapter. An applicant for a provisional license under this section must:

(1) present proof to the board that the applicant is licensed in good standing as a physical therapist or physical therapist assistant in that state;

(2) have passed a national examination or other examination recognized by the board relating to the practice of physical therapy; and

(3) be sponsored by a person licensed under this chapter with whom the provisional license holder may practice.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance with that requirement constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a physical therapist or physical therapist assistant license.

(d) The board shall issue a physical therapist or physical therapist assistant license to the provisional license holder if:

(1) the provisional license holder passes a jurisprudence examination, if required;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a physical therapist or physical therapist assistant license; and

(3) the provisional license holder satisfies any other

requirements for a physical therapist or physical therapist assistant license.

(e) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend that deadline if the results on an examination have not been received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.210. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license.

(b) The holder of a temporary license must practice under the supervision of a physical therapist.

(c) A rule adopted under this section must include a time limit for a person to hold a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.211. INACTIVE STATUS. (a) The board by rule may provide for a license holder to place the holder's license under this chapter on inactive status.

(b) A rule adopted under this section must include a time limit for a license holder's license to remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.212. DISPLAY OF LICENSE. A license holder under this chapter shall display the license holder's license in a conspicuous place in the principal office in which the license holder practices physical therapy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 2, eff. September 1, 2013.

Sec. 453.214. LICENSE BY ENDORSEMENT. (a) The board shall issue a physical therapist license or a physical therapist assistant license, as applicable, to an applicant who holds a current, unrestricted license in another jurisdiction that maintains licensing requirements that are substantially equivalent to the requirements under this chapter. An applicant for a license under this section must:

(1) present proof to the board that the applicant is licensed in good standing as a physical therapist or physical therapist assistant in that jurisdiction;

(2) provide to the board information regarding the status of any other professional license that the applicant holds or has held in this state or another jurisdiction;

(3) present proof to the board that the applicant has passed a jurisprudence examination required by the board;

(4) meet the qualifications required by Section 453.203 or 453.204, as applicable;

(5) not have committed an act that is grounds for denial of a license under Section 453.351;

(6) submit to the board a current photograph that meets the requirements for a United States passport; and

(7) meet any additional requirements provided by board rule.

(b) The board shall adopt rules for issuing a provisional license under Section 453.209 to an applicant for a license by endorsement who encounters a delay that is outside the applicant's control in submitting to the board the documentation required by this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.16, eff. September 1, 2017.

Sec. 453.215. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.16, eff. September 1, 2017.

SUBCHAPTER F. LICENSE RENEWAL

Sec. 453.251. LICENSE EXPIRATION. (a) A physical therapist or physical therapist assistant license expires on the later of:

(1) the second anniversary of the date the license is issued; or

(2) another date determined by the board.

(b) The board may adopt a system under which licenses expire on various dates during the year. For the term in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.17, eff. September 1, 2017.

Sec. 453.252. RENEWAL OF LICENSE. (a) A person may renew an

unexpired license by paying the required renewal fee to the executive council before the expiration date of the license.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the executive council the renewal fee and a late fee set by the executive council in an amount that does not exceed one-half of the amount charged for renewal of the license. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the executive council all unpaid renewal fees and a late fee set by the executive council in an amount that does not exceed the amount charged for renewal of the license.

(c) A person whose license has been expired for one year or longer must comply with the board's requirements and procedures to reinstate the license and pay a reinstatement fee in the amount set by the executive council. If the person is unable to comply with the board's requirements to reinstate the license, the person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(d) At least 30 days before the expiration of a person's license, the executive council shall provide the person with notice of the impending license expiration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.18, eff. September 1, 2017.

Sec. 453.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination the expired license of a person who was licensed to practice as a physical therapist or physical therapist assistant in this state, moved to another state, is currently licensed and in good standing in the other state, and meets the board's requirements for renewal.

(b) The person must pay to the executive council a renewal fee set by the executive council under this section in an amount that does not exceed the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 867 (H.B. 588), Sec. 4, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.19, eff. September 1, 2017.

Sec. 453.254. CONTINUING COMPETENCE. (a) The board by rule shall:

(1) adopt requirements for continuing competence for license holders in subjects pertaining to the practice of physical therapy;

(2) establish a minimum number of continuing competence units required to renew a license; and

(3) develop a process to approve continuing competence activities.

(b) The board may require license holders to complete continuing competence activities specified by the board. The board shall adopt a procedure to assess a license holder's participation and performance in continuing competence activities.

(c) The board may identify the key factors for the competent performance by a license holder of the license holder's professional duties.

(d) In developing a process under Subsection (a) for the approval of continuing competence activities, the board may authorize appropriate organizations to approve the activities.

(e) The board by rule shall establish a process for selecting an appropriate organization to approve continuing competence activities under Subsection (d). The selection process must include a request for proposal and bidding process. If the board authorizes an organization to approve continuing competence activities under Subsection (d), the board shall request bids and proposals from that organization and other organizations at least once every four years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.210(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1021 (H.B. 4281), Sec. 1, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.20, eff. September 1, 2017.

Sec. 453.255. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 453.215.

(b) The board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 453.215 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.21, eff. September 1, 2017.

SUBCHAPTER G. PRACTICE BY LICENSE HOLDER

Sec. 453.301. PRACTICE BY PHYSICAL THERAPIST. (a) A physical therapist may treat a patient for an injury or condition in a manner described by Section 453.005 without a referral if the physical therapist:

(1) has been licensed to practice physical therapy for at least one year;

(2) is covered by professional liability insurance in the minimum amount required by board rule; and

(3) either:

(A) possesses a doctoral degree in physical therapy from:

(i) a program that is accredited by the Commission on Accreditation in Physical Therapy Education; or

(ii) an institution that is accredited by an agency or association recognized by the United States secretary of education; or

(B) has completed at least 30 hours of continuing competence activities in the area of differential diagnosis.

(a-1) Except as provided by Subsection (a-2), a physical therapist may treat a patient under Subsection (a) for not more than 10 consecutive business days.

(a-2) A physical therapist may treat a patient under Subsection (a) for not more than 15 consecutive business days if the physical therapist:

(1) possesses a doctoral degree described by Subsection (a)(3)(A); and

(2) either:

(A) has completed a residency or fellowship; or

(B) is certified by an entity approved by the board.

(b) The physical therapist must obtain a referral from a referring practitioner before the physical therapist may continue treatment that exceeds treatment authorized under Subsection (a-1) or (a-2), as applicable.

(c) A physical therapist who treats a patient without a referral shall obtain from the patient a signed disclosure on a form prescribed by the board in which the patient acknowledges that:

(1) physical therapy is not a substitute for a medical diagnosis by a physician;

(2) physical therapy is not based on radiological imaging;

(3) a physical therapist cannot diagnose an illness or disease; and

(4) the patient's health insurance may not include coverage for the physical therapist's services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1021 (H.B. 29), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 140 (H.B. 1363), Sec. 1, eff. September 1, 2021.

Sec. 453.302. TREATING PATIENT WITHOUT REFERRAL. (a) In this section:

(1) "Emergency circumstance" means an instance in which emergency medical care is necessary.

(2) "Emergency medical care" means a bona fide emergency service provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) serious jeopardy to the patient's health;

(B) serious dysfunction of any bodily organ or part; or

(C) serious impairment to bodily functions.

(b) In an emergency circumstance, including a minor emergency, a physical therapist may provide emergency medical care to a person to the best of the therapist's ability without a referral from a referring practitioner.

(c) A physical therapist may provide physical assessments or instructions to an asymptomatic person without a referral from a referring practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.303. PROHIBITED USE OF CERTAIN PROCEDURES. In practicing physical therapy, a person may not use:

(1) roentgen rays or radium for a diagnostic or therapeutic purpose; or

(2) electricity for a surgical purpose, including cauterization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.304. PROHIBITED PRACTICE. It is a violation of this chapter for an individual licensed by the board to violate Section 102.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.826, eff. Sept. 1, 2001.

SUBCHAPTER H. DISCIPLINARY ACTION AND PROCEDURE

Sec. 453.351. GROUNDS FOR DENIAL OF LICENSE OR DISCIPLINE OF LICENSE HOLDER. (a) The board may deny a license or suspend or

revoke a license, place a license holder on probation, reprimand a license holder, impose an administrative penalty, or otherwise discipline a license holder if the applicant or license holder has:

(1) except as provided by Section 453.302, provided care to a person outside the scope of the physical therapist's practice;

(2) used drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;

(3) been convicted of a felony, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state or nation;

(4) obtained or attempted to obtain a license by fraud or deception;

(5) been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant;

(6) been found to be mentally incompetent by a court;

(7) practiced physical therapy in a manner detrimental to the public health and welfare;

(8) had a license to practice physical therapy revoked or suspended or had other disciplinary action taken against the license holder or applicant;

(9) had the license holder's or applicant's application for a license refused, revoked, or suspended by the proper licensing authority of another state or nation; or

(10) in the case of a physical therapist assistant, treated a person other than under the direction of a physical therapist.

(b) The board shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule adopted by the board.

(c) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1021 (H.B. 29), Sec. 2, eff. September 1, 2019.

Sec. 453.352. PROCEDURE FOR LICENSE DENIAL OR DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) A person whose application for a license is denied is entitled to a hearing before the State Office of Administrative Hearings if the applicant submits a written request for a hearing to the board.

(b) A proceeding to take action under Section 453.351 or an appeal from the proceeding is a contested case for the purposes of Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board by rule for a sanction imposed as the result of a hearing conducted by the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.3525. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of administrative penalties and other sanctions that the board may impose under this chapter. In adopting the schedule of sanctions, the board shall ensure that the amount of the penalty or severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

(5) the economic harm to the public interest or public confidence caused by the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice may require.

(b) The board shall make the schedule of sanctions adopted under Subsection (a) available to the public on request.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.22, eff. September 1, 2017.

Sec. 453.353. SUBPOENAS. (a) The board may request or compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection or copying of evidence relevant to an investigation of an alleged violation of this chapter.

(b) If a person fails to comply with the subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(c) If the court determines that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish for contempt a person who fails to obey the court order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.354. TEMPORARY LICENSE SUSPENSION. (a) The board may temporarily suspend a license issued under this chapter on an emergency basis if the board, by at least a two-thirds vote, determines from the evidence or information presented to the board that the continued practice by the license holder constitutes a continuing or imminent threat to the public health or welfare.

(b) The board may suspend a license under this section without notice or a hearing if, at the time the suspension is ordered, a hearing on whether to institute disciplinary proceedings against the license holder is scheduled to be held not later than the 14th day after the date of the temporary suspension.

(c) The board shall hold a second hearing on the license suspension not later than the 60th day after the date the temporary suspension was ordered. If the second hearing is not held within the required time, the suspended license is automatically reinstated.

(d) The board shall adopt rules that establish procedures and standards for the temporary suspension of a license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.355. REISSUANCE OF LICENSE; ISSUANCE OF LICENSE AFTER DENIAL. (a) On application by the person, the board may reissue a license to a person whose license has been revoked.

(b) An application to reinstate a revoked license:

(1) may not be made before the 180th day after the date the revocation order became final; and

(2) must be made in the manner and form the board requires.

(c) On application by the person, the board may issue a license to a person whose license application has been denied. The application may not be made before the first anniversary of the date of the denial.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.356. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) A rule adopted under this section must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of the board's legal counsel or a representative of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. ADMINISTRATIVE PENALTY

Sec. 453.401. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed or regulated under this

chapter who violates this chapter or a rule or order adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.23, eff. September 1, 2019.

Sec. 453.402. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $200 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be determined according to the sanctions schedule adopted under Section 453.3525.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.24, eff. September 1, 2017.

Sec. 453.403. ADMINISTRATIVE PROCEDURE. (a) The board shall adopt rules that establish procedures for assessing an administrative penalty and that provide for notice and a hearing for a license holder that may be subject to a penalty under this subchapter.

(b) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 2.25, eff. September 1, 2019.

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 453.451. INJUNCTIVE RELIEF. The attorney general, a district attorney, a county attorney, or any other person may institute a proceeding to enforce this chapter, including a suit to enjoin or restrain a person from practicing physical therapy without complying with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.452. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with this chapter. The rules must include procedures for:

(1) monitoring for compliance a license holder who is ordered by the board to perform a certain act; and

(2) identifying and monitoring each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.453. CIVIL PENALTY. (a) A person found by a court to have violated this chapter is liable to the state for a civil penalty of $200 for each day the violation continues.

(b) A civil penalty may be recovered in a suit brought by the attorney general, a district attorney, a county attorney, or any other person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.454. RECOVERY OF COSTS AND FEES. A person other than the attorney general, a district attorney, or a county attorney who brings an action to enforce this chapter or for injunctive relief may recover the person's court costs and attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 453.455. CRIMINAL OFFENSE. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER K. PHYSICAL THERAPY LICENSURE COMPACT

Sec. 453.501. PHYSICAL THERAPY LICENSURE COMPACT. The Physical Therapy Licensure Compact is enacted and entered into with all other jurisdictions that legally join in the compact, which reads as follows:

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

2. Enhance the states' ability to protect the public's health and safety;

3. Encourage the cooperation of member states in regulating multi-state physical therapy practice;

4. Support spouses of relocating military members;

5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

1. "Active Duty Military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.

2. "Adverse Action" means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. "Alternative Program" means a non-disciplinary monitoring or practice remediation process

approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. "Compact privilege" means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient/client is located at the time of the patient/client encounter.

5. "Continuing competence" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

6. "Data system" means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

7. "Encumbered license" means a license that a physical therapy licensing board has limited in any way.

8. "Executive Board" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

9. "Home state" means the member state that is the licensee's primary state of residence.

10. "Investigative information" means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

11. "Jurisprudence Requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

12. "Licensee" means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

13. "Member state" means a state that has enacted the Compact.

14. "Party state" means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

15. "Physical therapist" means an individual who is licensed by a state to practice physical therapy.

16. "Physical therapist assistant" means an individual who is licensed/certified by a state and who assists the physical therapist in selected components of physical therapy.

17. "Physical therapy," "physical therapy practice," and "the practice of physical therapy" mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

18. "Physical Therapy Compact Commission" or "Commission" means the national administrative body whose membership consists of all states that have enacted the Compact.

19. "Physical therapy licensing board" or "licensing board" means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. "Remote State" means a member state other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. "Rule" means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of physical therapy.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a state must:

1. Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action

or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with Section 3.B.;

5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.

B. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. Section 534 and 42 U.S.C. Section 14616.

C. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

D. Member states may charge a fee for granting a compact privilege.

SECTION 4. COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the licensee shall:

1. Hold a license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with Section 4D, G and H;

4. Have not had any adverse action against any license or compact privilege within the previous 2 years;

5. Notify the Commission that the licensee is seeking the compact privilege within a remote state(s);

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state(s) in which the licensee is seeking a compact privilege; and

8. Report to the Commission adverse action taken by any non-member state within 30 days from the date the adverse action is taken.

B. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of Section 4.A. to maintain the compact privilege in the remote state.

C. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

D. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

E. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

F. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of Section 4.A. to obtain a compact privilege in any remote state.

G. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two years have elapsed from the date of the adverse action.

H. Once the requirements of Section 4G have been met, the license must meet the requirements in Section 4A to obtain a compact privilege in a remote state.

SECTION 5. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an

individual who is active duty military may designate one of the following as the home state:

A. Home of record;

B. Permanent Change of Station (PCS); or

C. State of current residence if it is different than the PCS state or home of record.

SECTION 6. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

B. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

C. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

D. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

E. A remote state shall have the authority to:

1. Take adverse actions as set forth in Section 4.D. against a licensee's compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state

where the witnesses and/or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

F. Joint Investigations

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

SECTION 7. ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

A. The Compact member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one (1) delegate selected by that member state's licensing board.

2. The delegate shall be a current member of the licensing board, who is a physical therapist, physical therapist assistant, public member, or the board administrator.

3. Any delegate may be removed or suspended from office as provided by the law of the state from

which the delegate is appointed.

4. The member state board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest,

qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of physical therapy licensure and practice.

D. The Executive Board

The Executive Board shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be composed of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex-officio, nonvoting member from the recognized national physical therapy

professional association; and

c. One ex-officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

2. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following Duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Section 9.

2. The Commission or the Executive Board or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Board or other committees of the Commission must discuss:

a. Non-compliance of a member state with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in

connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in

their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 8. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Adverse actions against a license or compact privilege;
4. Non-confidential information related to alternative program participation;
5. Any denial of application for licensure, and the reason(s) for such denial; and
6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state will only be available to other party states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

SECTION 9. RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within 4 years of the date of adoption of the rule, then such rule shall have no further force and

effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty (30) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the

defaulting state and other member states of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to

the Compact that arise among member states and between member and non-member states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

SECTION 11. DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a non-member state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

SECTION 12. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Added by Acts 2017, 85th Leg., R.S., Ch. 497 (H.B. 2765), Sec. 1, eff. September 1, 2017.

Sec. 453.502. ADMINISTRATION OF COMPACT. The board is the Physical Therapy Licensure Compact administrator for this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 497 (H.B. 2765), Sec. 1, eff. September 1, 2017.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 3.01, eff. September 1, 2017.

Sec. 453.503. RULES. The board may adopt rules necessary to implement this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 497 (H.B. 2765), Sec. 1, eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 3.01, eff. September 1, 2017.

Sec. 453.504. PHYSICAL THERAPY LICENSURE COMPACT; DISCLOSURE OF PERSONAL INFORMATION. (a) In reporting information to the coordinated database and reporting system under Section 8 of the Physical Therapy Licensure Compact, the board may disclose personally identifiable information about a physical therapist or a physical therapist assistant, including the person's social security number.

(b) The coordinated database and reporting system may not share personally identifiable information with a state that is not a party to the compact unless the state agrees to not disclose that information to any other person.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 3.01, eff. September 1, 2017.

CHAPTER 454. OCCUPATIONAL THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 454.001. SHORT TITLE. This chapter may be cited as the Occupational Therapy Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Occupational Therapy Examiners.

(2) "Coordinator of occupational therapy programs" is the person employed in that position under Section 452.101.

(3) "Executive council" means the Executive Council of Physical Therapy and Occupational Therapy Examiners.

(4) "Occupational therapist" means a person licensed to practice occupational therapy.

(5) "Occupational therapy aide" means a person:

(A) who aids in the practice of occupational therapy; and

(B) whose activities require on-the-job training and on-site supervision by an occupational therapist or an occupational therapy assistant.

(6) "Occupational therapy assistant" means a person licensed by the board as an occupational therapy assistant who assists in the practice of occupational therapy under the general supervision of an occupational therapist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.003. APPLICATION OF SUNSET ACT. The Texas Board of Occupational Therapy Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 3.08, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.07, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 3.09, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.01, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.09, eff. June 18, 2023.

Sec. 454.004. CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Chapter 452, Chapter 452 controls.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.005. APPLICABILITY. (a) This chapter does not apply to a holder of a license issued by another state agency who is performing health care services within the scope of the applicable licensing act.

(b) The licensing provisions of this chapter do not apply to:

(1) an occupational therapy aide assisting a license holder under this chapter;

(2) a person engaged in a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if:

(A) the activities and services constitute a part of a supervised course of study; and

(B) the person is designated by a title that clearly indicates the person's status as a student or trainee;

(3) a person fulfilling the supervised field work experience requirements of Section 454.203, if those activities and services constitute a part of the experience necessary to meet the requirement of that section;

(4) an occupational therapist performing a special project in patient care while working toward an advanced degree from an accredited college or university;

(5) an occupational therapist or occupational therapy assistant who does not live in this state and who:

(A) is licensed by another state or who meets the requirements for certification established by the National Board for Certification in Occupational Therapy as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA); and

(B) comes into this state for not more than four consecutive months to:

(i) provide or attend an educational activity;

(ii) assist in a case of medical emergency; or

(iii) engage in a special occupational therapy project; or

(6) a qualified and properly trained person acting under a physician's supervision under Section 157.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.02, eff. September 1, 2017.

Sec. 454.006. PRACTICE OF OCCUPATIONAL THERAPY. (a) In this section, "diagnosis" means the identification of a disease from its symptoms.

(b) A person practices occupational therapy if the person:

(1) evaluates or treats a person whose ability to perform the tasks of living is threatened or impaired by developmental deficits, the aging process, environmental deprivation, sensory impairment, physical injury or illness, or psychological or social dysfunction;

(2) uses therapeutic goal-directed activities to:

(A) evaluate, prevent, or correct physical or emotional dysfunction; or

(B) maximize function in a person's life; or

(3) applies therapeutic goal-directed activities in treating patients on an individual basis, in groups, or through social systems, by means of direct or monitored treatment or consultation.

(c) The practice of occupational therapy does not include diagnosis or psychological services of the type typically performed by a licensed psychologist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.007. USE OF TITLE OF DOCTOR. An occupational therapist or occupational therapy assistant may not use the abbreviation "Dr.," the word "Doctor," or any suffix or affix indicating or implying that the person is a physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

Sec. 454.051. BOARD MEMBERSHIP. (a) The Texas Board of Occupational Therapy Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four occupational therapist members who have practiced occupational therapy for at least the three years preceding appointment to the board;

(2) two occupational therapy assistant members, each of whom has practiced as an occupational therapy assistant for at least the three years preceding appointment to the board; and

(3) three members who represent the public and who are not occupational therapists.

(b) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.211(a), eff. Sept. 1, 2001.

Sec. 454.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the executive council or the board or that receives funds from the executive council or the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the executive council or the board or that receives funds from the executive council or the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the executive council or the board, other than compensation or reimbursement authorized by law for executive council or board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.053. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession

in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council or the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.03, eff. September 1, 2017.

Sec. 454.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of two members licensed under this chapter and one member who represents the public expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.211(b), eff. Sept. 1, 2001.

Sec. 454.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 454.051(a);

(2) does not maintain during service on the board the qualifications required by Section 454.051(a);

(3) is ineligible for membership under Section 454.052 or 454.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the coordinator of occupational therapy programs has knowledge that a potential ground for removal exists, the coordinator shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the coordinator shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.04, eff. September 1, 2017.

Sec. 454.056. PER DIEM; REIMBURSEMENT. (a) A member of the board is entitled to a per diem as set by the General Appropriations Act for each day the member engages in board business.

(b) A member may receive reimbursement for meals, lodging, and transportation expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.212(a), eff. Sept. 1, 2001.

Sec. 454.057. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) After the appointment of members every two years, the members of the board shall elect from among its members a secretary and other officers required to conduct the business of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.05, eff. September 1, 2017.

Sec. 454.058. MEETINGS. (a) The board shall hold at least two regular meetings each year.

(b) Additional meetings may be held on the call of the presiding officer or on the written request of three members of the board.

(c) The coordinator of occupational therapy programs shall keep a record of each meeting of the board. The record must be open to public inspection at all times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board and executive council operations;

(2) the programs, functions, rules, and budgets of the board and executive council;

(3) the scope of and limitations on the rulemaking authority of the board and executive council;

(4) the types of board and executive council rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business regulated by the board, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons engaged in a profession or business regulated by the board;

(B) restrict advertising by persons engaged in a profession or business regulated by the board;

(C) affect the price of goods or services provided by persons engaged in a profession or business regulated by the board; or

(D) restrict participation in a profession or business regulated by the board;

(5) the results of the most recent formal audit of the board and executive council;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the person's attendance at the program occurs before or after the person qualifies for office.

(d) The director of the executive council shall create a training manual that includes the information required by Subsection (b). The director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the director a statement acknowledging receipt of the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.06, eff. September 1, 2017.

Sec. 454.060. CIVIL LIABILITY. A member of the board is not liable in a civil action for an act performed in good faith while performing duties as a board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 454.101. GENERAL POWERS AND DUTIES. Except as provided by Chapter 452, the board shall administer and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.102. RULES. The board shall adopt rules consistent with this chapter to carry out its duties in administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.103. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.104. FEES. (a) The board may recommend to the executive council reasonable and necessary fees for licenses issued or services performed under this chapter that in the aggregate provide sufficient revenue to cover the cost of administering this chapter.

(b) The board may not recommend to the executive council a fee that existed on September 1, 1993, for an amount less than the amount of the fee on that date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.105. EMPLOYEES; DIVISION OF RESPONSIBILITIES. (a) The board may request the executive council to assign administrative and clerical employees as necessary to carry out the board's functions.

(b) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the director and staff of the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.07, eff. September 1, 2017.

Sec. 454.106. LIST OF LICENSE HOLDERS. (a) The coordinator of occupational therapy programs shall maintain a list of the names of each person licensed under this chapter.

(b) The list shall be open to public inspection at all times.

(c) On March 1 of each year, the coordinator of occupational therapy programs shall transmit an official copy of the list to the executive council.

(d) A certified copy of the list is admissible as evidence in a court of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.213(a), eff. Sept. 1, 2001.

Sec. 454.1061. PLACE OF EMPLOYMENT. The board may require that a license holder provide current information in a readily accessible and usable format regarding the license holder's current place of employment as an occupational therapist or occupational therapy assistant.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.08, eff. September 1, 2019.

Sec. 454.107. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information concerning complaints made to the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.108. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop a policy to encourage the use of:

(1) negotiated rulemaking under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.08, eff. September 1, 2017.

SUBCHAPTER D. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 454.151. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.152. RECORD OF COMPLAINTS. (a) The board shall keep an information file about each complaint filed with the executive council and referred to the board. The board's information file shall be kept current and contain a record for each complaint of:

(1) each person contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed;

(4) the schedule required under Section 454.153 and a notation about a change in the schedule; and

(5) other relevant information.

(b) If a written complaint is received by the board that the board has authority to resolve, the board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.153. GENERAL RULES INVOLVING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules relating to the investigation of a complaint received by the board. The rules shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private

investigator; and

(6) require the board to advise the executive council of complaints that have been disposed of.

(b) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of an investigation of a complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(c) Each party shall be notified of the projected time requirements for the complaint.

(d) Each party to the complaint must be notified of a change in the schedule not later than the seventh day after the date the change is made.

(e) The staff of the executive council shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.09, eff. September 1, 2017.

Sec. 454.154. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. LICENSE REQUIREMENTS

Sec. 454.201. LICENSE REQUIRED; USE OF TITLE. (a) A person may not practice occupational therapy or practice as an occupational therapy assistant unless the person is an individual licensed under this chapter.

(b) A person who is not licensed under this chapter as an occupational therapist or an occupational therapy assistant or whose license has been suspended or revoked may not:

(1) use in connection with the person's practice or place of business:

(A) the words "occupational therapy," "occupational therapist," "licensed occupational therapist," "occupational therapist registered," "occupational therapy assistant," "licensed occupational therapy assistant," or "certified occupational therapy assistant";

(B) the letters "O.T.," "O.T.R.," "L.O.T.," "O.T.R./L.," "O.T.A.," "L.O.T.A.," or "C.O.T.A."; or

(C) any other words, letters, abbreviations, or insignia indicating or implying that the person is an occupational therapist or an occupational therapy assistant;

(2) in any way directly or by implication represent that the person is an occupational therapist or an occupational therapy assistant; or

(3) in any way directly or indirectly represent that occupational therapy is provided, or extend or provide occupational therapy services unless the services are provided by an occupational therapist or an occupational therapy assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.202. APPLICATION. (a) An applicant for an occupational therapist license or an occupational therapy assistant license must submit to the board a written application on a form provided by the board, showing to the satisfaction of the board that the applicant meets the requirements of Section 454.203.

(b) The board shall approve applicants for licenses at least once each year at reasonable times and places designated by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.203. QUALIFICATIONS FOR OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT LICENSE. An applicant for an occupational therapist license or an occupational therapy assistant

license must present evidence satisfactory to the board that the applicant has:

(1) successfully completed the academic and supervised field work experience requirements of an educational program in occupational therapy recognized by the board, as provided by Section 454.204; and

(2) passed an examination as provided by Section 454.207.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.11, eff. September 1, 2017.

Sec. 454.204. EDUCATIONAL REQUIREMENTS. To satisfy Section 454.203(1):

(1) an applicant applying for an occupational therapist license must have, from an educational program approved by the Accreditation Council for Occupational Therapy Education, its predecessor organization, or another national credentialing agency approved by the board:

(A) an entry-level degree in occupational therapy, or a degree that exceeds the requirements for an entry-level degree in occupational therapy, from an educational program that prepares a person for entry into the field as an occupational therapist; or

(B) a certificate evidencing successful completion of required undergraduate occupational therapy course work awarded to persons with a baccalaureate degree that is not in occupational therapy, if the applicant graduated before January 1, 2007; and

(2) an applicant applying for an occupational therapy assistant license must have, from an educational program approved by the Accreditation Council for Occupational Therapy Education, its predecessor organization, or another national credentialing agency approved by the board:

(A) an entry-level degree in occupational therapy, or a degree that exceeds the requirements for an entry-level degree in occupational therapy, from an educational program that prepares a person for entry into the field as an occupational therapy assistant; or

(B) an entry-level certificate in occupational therapy,

or a certificate that exceeds the requirements for an entry-level certificate in occupational therapy, from an educational program that prepares a person for entry into the field as an occupational therapy assistant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 1, eff. June 19, 2009.
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.12, eff. September 1, 2017.

Sec. 454.205. FOREIGN-TRAINED APPLICANTS. (a) To obtain a license under this chapter, an applicant who is foreign-trained must satisfy the examination requirements and complete academic and supervised field work requirements substantially equivalent to those under Section 454.203.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.22(1), eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.13, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.22(1), eff. September 1, 2017.

Sec. 454.207. LICENSE EXAMINATION. (a) The board by rule shall recognize a national testing entity to administer the examinations required to obtain an occupational therapist or occupational therapy assistant license.

(b) The examination must test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy, occupational therapy techniques and methods, and other subjects the board may require to determine the applicant's fitness to practice.

(c) If the board enters into a contract with a national testing entity under Subsection (a), the contract must include a provision requiring that the national testing entity be responsible for overseeing the examination process, including responsibility for:

(1) specifying application requirements for the examination;

(2) specifying reexamination requirements for the examination;

(3) verifying that an applicant meets the educational and supervised field work experience requirements established by the board; and

(4) notifying an applicant and the board of the applicant's examination results.

(d) The rules adopted under this section may require that an applicant authorize the national testing entity to directly provide to the board the applicant's examination results.

(e) The board may require an applicant for an occupational therapist or occupational therapy assistant license to pass a jurisprudence examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.14, eff. September 1, 2017.

Sec. 454.210. PROVISIONAL LICENSE. (a) On application, the board shall issue a provisional license for the practice of occupational therapy to an applicant who:

(1) is licensed in good standing as an occupational therapist or occupational therapy assistant in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter; and

(2) has passed a national examination or other examination recognized by the board relating to the practice of occupational therapy.

(b) A provisional license is valid until the date the board approves or denies the provisional license holder's application for an occupational therapist or occupational therapy assistant license.

(c) The board shall issue an occupational therapist or occupational therapy assistant license to the provisional license holder if:

(1) the provisional license holder passes a jurisprudence examination, if required;

(2) the board verifies that the provisional license holder has the academic and experience requirements for an occupational therapist or occupational therapy assistant license; and

(3) the provisional license holder satisfies any other requirements for an occupational therapist or occupational therapy assistant license.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend that deadline if the results of an examination have not been received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.214(a), eff. Sept. 1, 2001.

Sec. 454.211. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license.

(b) The holder of a temporary license must practice under the supervision of an occupational therapist.

(c) A rule adopted under this section must include a time limit for a person to hold a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.212. INACTIVE STATUS. (a) The board by rule may provide for a license holder to place the holder's license under this chapter on inactive status.

(b) A rule adopted under this section must include a time limit for a license holder's license to remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.213. ACCEPTED PRACTICE; PRACTITIONER'S REFERRAL. (a) An occupational therapist may enter a case to:

(1) provide consultation and monitored services; or

(2) evaluate a person for the need for services.

(b) Implementation of direct occupational therapy to a person

for a specific health care condition must be based on a referral from:

(1) a physician licensed by a state board of medical examiners;

(2) a dentist licensed by a state board of dental examiners;

(3) a chiropractor licensed by a state board of chiropractic examiners;

(4) a podiatrist licensed by a state board of podiatric medical examiners; or

(5) another qualified, licensed health care professional who is authorized to refer for health care services within the scope of the professional's license.

(c) The professional who takes action under this section is a referring practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.215(a), eff. Sept. 1, 2001.

Sec. 454.214. DISPLAY OF LICENSE AND RENEWAL CERTIFICATE. A license holder under this chapter shall display the license holder's license and renewal certificate in a conspicuous place in the principal office in which the license holder practices occupational therapy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.216. LICENSE BY ENDORSEMENT. (a) The board shall issue an occupational therapist license or an occupational therapy assistant license, as applicable, to an applicant who holds a current, unrestricted license in another jurisdiction that maintains licensing requirements that are substantially equivalent to the requirements under this chapter. An applicant for a license under this section must:

(1) present proof to the board that the applicant is licensed in good standing as an occupational therapist or occupational therapy assistant in that jurisdiction;

(2) provide to the board information regarding the status

of any other professional license that the applicant holds or has held in this state or another jurisdiction;

(3) present proof to the board that the applicant has passed a jurisprudence examination required by the board;

(4) meet the qualifications required by Section 454.203 or 454.205, as applicable;

(5) not have committed an act that is grounds for denial of a license under Section 454.301;

(6) submit to the board a current photograph that meets the requirements for a United States passport; and

(7) meet any additional requirements provided by board rule.

(b) The board shall adopt rules for issuing a provisional license under Section 454.210 to an applicant for a license by endorsement who encounters a delay that is outside the applicant's control in submitting to the board the documentation required by this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.15, eff. September 1, 2017.

Sec. 454.217. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check

required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.15, eff. September 1, 2017.

SUBCHAPTER F. LICENSE RENEWAL

Sec. 454.251. LICENSE EXPIRATION. (a) The board by rule may adopt a system under which licenses expire on various dates during the year.

(b) For the term in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.252. RENEWAL OF LICENSE. (a) A person may renew an unexpired license by paying the required renewal fee to the executive council before the expiration date of the license.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the executive council the renewal fee and a late fee set by the executive council that may not exceed one-half of the renewal fee for the license. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the executive council all unpaid renewal fees and a late fee set by the executive council that may not exceed the amount of the renewal fee.

(c) A person whose license has been expired for one year or longer must comply with the board's requirements and procedures to reinstate the license, and pay a reinstatement fee set by the executive council. If the board requirements cannot be met, the person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(d) At least 30 days before the expiration of a person's license, the executive council shall send written notice of the impending license expiration to the license holder at the person's last known address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 2, eff. June 19, 2009.
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.16, eff. September 1, 2017.

Sec. 454.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The board may renew without reexamination the expired license of a person who was licensed to practice as an occupational therapist or occupational therapy assistant in this state, moved to another state, is currently licensed and in good standing in the other state, and meets the board's requirements.

(b) The person must pay to the executive council a renewal fee set by the executive council under this section in an amount that may not exceed the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 3, eff. June 19, 2009.
Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.17, eff. September 1, 2017.

Sec. 454.254. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall:

(1) assess the continuing education needs of license holders;

(2) establish a minimum number of hours of continuing education required to renew a license; and

(3) develop a process to evaluate and approve continuing education courses.

(b) The board may require license holders to attend continuing education courses specified by the board. The board shall adopt a

procedure to assess a license holder's participation in continuing education programs.

(c) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties.

(d) In adopting rules under Subsection (a)(3), the board may authorize license holder peer organizations in this state to evaluate and approve continuing education courses in accordance with the board's evaluation and approval process.

(e) The board by rule shall establish a process for selecting a license holder peer organization in this state to evaluate and approve continuing education courses under Subsection (d). The selection process must include a request for proposal and bidding process. If the board authorizes a peer organization to evaluate and approve continuing education courses under Subsection (d), the board shall request bids and proposals from that organization and other organizations at least once every four years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 166, Sec. 1, eff. May 18, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 401 (H.B. 1785), Sec. 4, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.18, eff. September 1, 2017.

Sec. 454.255. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 454.217.

(b) The board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 454.217 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.19, eff. September 1, 2017.

SUBCHAPTER G. DISCIPLINARY ACTION AND PROCEDURE

Sec. 454.301. GROUNDS FOR DENIAL OF LICENSE OR DISCIPLINE OF LICENSE HOLDER. (a) The board may deny, suspend, or revoke a license or take other disciplinary action against a license holder if the applicant or license holder has:

(1) used drugs or intoxicating liquors to an extent that affects the applicant's or license holder's professional competence;

(2) been convicted of a crime, other than a minor offense defined as a "minor misdemeanor," "violation," or "offense," in any court if the act for which the applicant or license holder was convicted is determined by the board to have a direct bearing on whether the applicant or license holder should be entrusted to serve the public in the capacity of an occupational therapist or occupational therapy assistant;

(3) obtained or attempted to obtain a license by fraud or deception;

(4) been grossly negligent in the practice of occupational therapy or in acting as an occupational therapy assistant;

(5) been found mentally incompetent by a court;

(6) practiced occupational therapy in a manner detrimental to the public health and welfare;

(7) advertised in a manner that in any way tends to deceive or defraud the public;

(8) had a license to practice occupational therapy revoked or suspended or had other disciplinary action taken against the applicant or license holder by the proper licensing authority of another state, territory, or nation; or

(9) had the applicant's or license holder's application for a license refused, revoked, or suspended by the proper licensing authority of another state, territory, or nation.

(b) If a license suspension is probated, the board may require the license holder to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.302. PROCEDURES FOR DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) Proceedings for disciplinary action against a license holder and appeals from those proceedings are governed by Chapter 2001, Government Code.

(b) After a hearing by the State Office of Administrative Hearings, the board may deny or refuse to renew a license, suspend or revoke a license, reprimand a license holder, or impose probationary conditions.

(c) The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the board by rule for a sanction imposed as the result of a hearing conducted by the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.3025. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of administrative penalties and other sanctions that the board may impose under this chapter. In adopting the schedule of sanctions, the board shall ensure that the amount of the penalty or severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the board shall consider:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the violation; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation;

(5) the economic harm to the public interest or public confidence caused by the violation;

(6) whether the violation was intentional; and

(7) any other matter that justice requires.

(b) The board shall make the schedule of sanctions adopted under Subsection (a) available to the public on request.

Added by Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.20, eff. September 1, 2017.

Sec. 454.303. ISSUANCE OF LICENSE AFTER DENIAL; REISSUANCE OF LICENSE. On application by the person, the board may issue a license to a person whose license has been denied or reissue a license to a person who has been disciplined by the board. The application:

(1) may not be made before the 180th day after the date the denial or discipline order became final; and

(2) must be made in the manner and form the board requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.304. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) A rule adopted under this section must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of the board's legal counsel or a representative of the attorney general to advise the board or the board's employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.305. EMERGENCY SUSPENSION. (a) The board may temporarily suspend a license issued under this chapter on an emergency basis if the board determines that the continued practice

by the license holder constitutes a continuing or imminent threat to the public health or welfare.

(b) A temporary suspension under this section requires a two-thirds vote by the board.

(c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether to institute a disciplinary proceeding against the license holder is scheduled to be held not later than the 14th day after the date of the temporary suspension. A second hearing on the suspended license must be held not later than the 60th day after the date the temporary suspension was ordered. If the second hearing is not held within the required time, the suspended license is automatically reinstated.

(d) The board shall adopt rules that establish procedures and standards for the temporary suspension of a license under this section.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.216(a), eff. Sept. 1, 2001.

Sec. 454.306. SUBPOENA. (a) The board may request or compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) If a person fails to comply with a subpoena issued under this section, the board, acting through the attorney general, may bring an action to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held. If the court determines that good cause exists for the subpoena, the court shall order compliance. The court may punish for contempt a person who does not obey the order.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.217(a), eff. Sept. 1, 2001.

SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROCEDURES

Sec. 454.351. INJUNCTIVE RELIEF. The attorney general, a district attorney, a county attorney, or any other person may institute a proceeding to enforce this chapter, including a suit to enjoin a person from practicing occupational therapy without complying with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.352. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with this chapter. The rules must include procedures for:

(1) monitoring for compliance a license holder who is ordered by the board to perform a certain act; and

(2) identifying and monitoring each license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.3521. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

(b) The penalty may not exceed $200, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be determined according to the sanctions schedule under Section 454.3025.

(c) The person may stay enforcement during the time the order is under judicial review if the person pays the penalty to the court clerk or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay enforcement by filing an affidavit like that required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, except that the board may contest the affidavit as provided by those rules.

(d) A proceeding to impose an administrative penalty is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.218(a), eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.21, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 535 (S.B. 317), Sec. 4.21, eff. September 1, 2019.

Sec. 454.353. CIVIL PENALTY. (a) A person found by a court to have violated this chapter is liable to this state for a civil penalty of $200 for each day the violation continues.

(b) A civil penalty may be recovered in a suit brought by the attorney general, a district attorney, a county attorney, or any other person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.354. RECOVERY OF COSTS AND FEES. A person other than the attorney general, a district attorney, or a county attorney who brings an action to enforce this chapter or for injunctive relief may recover the person's court costs and attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 454.355. CRIMINAL OFFENSE. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 455. MASSAGE THERAPY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 455.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(1-a) "Department" means the Texas Department of Licensing and Regulation.

(2) "Executive director" means the executive director of

the department.

(3) "Instructor" means a person who instructs a student in any section of the course of instruction required for a massage therapist license.

(4) "Internship program" means a program supervised by a massage therapy instructor in which a student provides massage therapy to the public.

(5) "Massage establishment" means a place of business that advertises or offers massage therapy or other massage services. The term includes a place of business that advertises or offers any service described by a derivation of the terms "massage therapy" or "other massage services."

(6) "Massage school" means an entity that:

(A) teaches at a minimum the course of instruction required for a massage therapist license; and

(B) has at least two instructors.

(7) "Massage therapist" means a person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist, therapeutic massage practitioner, massage technician, masseur, masseuse, myotherapist, body massager, body rubber, or any derivation of those titles.

(8) "Massage therapy" means the manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage and includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. The terms "massage," "therapeutic massage," "massage technology," "myotherapy," "body massage," "body rub," or any derivation of those terms are synonyms for "massage therapy."

(9) "Massage therapy instructor" means a licensed massage therapist who provides to one or more students instruction approved by the department in massage therapy.

(10) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code, unless another meaning applies under local law.

(11) "Other massage services" include any services offered or performed for compensation at a massage establishment that involve physical contact with a client, and may include the use of oil, lubricant, salt glow, a heat lamp, a hot and cold pack, or a tub,

shower, jacuzzi, sauna, steam, or cabinet bath.

(12) "Advisory board" means the Massage Therapy Advisory Board.

Text of subdivision effective until January 1, 2025

(13) "Peace officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

Text of subdivision effective on January 1, 2025

(13) "Peace officer" means a person who is a peace officer under Article 2A.001, Code of Criminal Procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.239, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.001, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.145, eff. January 1, 2025.

Sec. 455.002. MASSAGE THERAPY AS HEALTH CARE SERVICE. (a) Massage therapy constitutes a health care service if the massage therapy is for therapeutic purposes. Massage therapy does not constitute the practice of chiropractic.

(b) In this chapter, therapy or therapeutic procedures do not include:

(1) the diagnosis or treatment of illness or disease; or

(2) a service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.003. PRACTICES INCLUDED IN MASSAGE THERAPY. Massage therapy includes the use of oil, salt glows, heat lamps, hot and cold packs, and tub, shower, or cabinet baths.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 455.004. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) a person licensed in this state as a physician, chiropractor, occupational therapist, physical therapist, nurse, cosmetologist, or athletic trainer or as a member of a similar profession subject to state licensing while the person is practicing within the scope of the license;

(2) a school approved by the Texas Education Agency or otherwise approved by the state; or

(3) an instructor otherwise approved by the state to teach in an area of study included in the required course of instruction for issuance of a massage therapist license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 2, eff. September 1, 2005.

Sec. 455.005. EFFECT ON LOCAL LAW. (a) Except as provided by Subsection (b), this chapter supersedes any regulation adopted by a political subdivision of this state relating to the licensing or regulation of massage therapists.

(b) Subject to Subsections (b-1), (c), (c-1), and (c-2), this chapter does not affect a local regulation that:

(1) relates to:

(A) zoning requirements, including conditional use permits;

(B) hours of operation; or

(C) other regulations similar to those described by Paragraph (A) or (B) for massage establishments;

(2) authorizes or requires an investigation into the background of an owner or operator of, or an investor in, a massage establishment; or

(3) does not relate directly to the practice of massage therapy as performed by a licensed massage therapist, including a regulation related to a license holder listed in Section 455.004,

while the therapist:

(A) performs under the applicable licensing law; and

(B) works with a licensed massage therapist.

(b-1) Except as provided by Chapter 243, Local Government Code, a political subdivision may not adopt a regulation of the type described by Subsection (b) that is more restrictive for massage therapists than for other health care professionals.

(c) A political subdivision may not adopt a regulation of the type described by Subsection (b) that is more restrictive for massage establishments than for other health care establishments, except that a more restrictive regulation of the type described by Subsection (b) may be adopted:

(1) as provided by Chapter 243, Local Government Code; or

(2) if the regulation relates to the location, ownership, hours of operation, or operation of a massage establishment:

(A) where three or more arrests have occurred or citations in lieu of arrest have been issued for an offense under Section 43.02, 43.021, 43.03, 43.04, 43.05, or 71.02, Penal Code, that was committed at the massage establishment;

(B) where an offense under Chapter 20A, or Section 34.02, 43.02, 43.021, 43.03, 43.04, 43.05, or 71.02, Penal Code, was committed that resulted in a conviction;

(C) that is operating at a location where another massage establishment against which a sanction was imposed for a violation of this chapter previously operated; or

(D) that is operating at a location where another massage establishment owned or operated by an individual against whom a sanction was imposed for a violation of this chapter previously operated.

(c-1) The owner or operator of a massage establishment subject to a regulation adopted under Subsection (c)(2)(C) may submit a request to the applicable political subdivision for an exemption from the regulation. The request must include documentation sufficient to demonstrate the owner or operator has undertaken or implemented procedures and controls to prevent the commission of any offense listed in Subsection (c)(2)(A) or (B).

(c-2) The governing body of a political subdivision that receives a request under Subsection (c-1) shall:

(1) consider, but is not required to approve, the requested exemption at the governing body's next regularly scheduled meeting to

be held on a date after the date on which the request is received and that allows sufficient time to comply with Chapter 551, Government Code, if:

(A) the ownership of the massage establishment subject to a regulation adopted under Subsection (c)(2)(C) changed less than two years before the date of the request under Subsection (c-1); and

(B) the current owner of the massage establishment is not an individual against whom a sanction has been imposed for a violation of this chapter; or

(2) approve the requested exemption as soon as practicable after the date on which the request is received if:

(A) the ownership of the massage establishment subject to a regulation adopted under Subsection (c)(2)(C) changed at least two years before the date of the request under Subsection (c-1);

(B) in the two-year period preceding the date of the request under Subsection (c-1), an arrest has not occurred for, a citation in lieu of arrest has not been issued for, and a conviction has not resulted from an offense listed in Subsection (c)(2)(A) or (B) committed at the massage establishment; and

(C) the current owner of the massage establishment is not an individual against whom a sanction has been imposed for a violation of this chapter.

(d) This chapter may not be construed to limit a municipality's authority to regulate establishments that offer bathing or showering services.

(e) In this section, "sanction" has the meaning assigned by Section 51.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 3, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 743 (H.B. 3579), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 455.0511. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b) The department shall:

(1) investigate a person who may be engaging in or offering to engage in a practice that violates this chapter;

(2) regulate the number of school hours and the content of the coursework provided by a massage school or a massage therapy instructor; and

(3) prepare, recognize, administer, or arrange for the administration of an examination under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.002, eff. September 1, 2017.

Sec. 455.052. RULES REGARDING MASSAGE ESTABLISHMENTS. Rules adopted under this chapter relating to a massage establishment must contain minimum standards for:

(1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;

(2) the qualifications of professional personnel;

(3) the supervision of professional personnel;

(4) the equipment essential to the health and safety of massage establishment personnel and the public;

(5) the sanitary and hygienic conditions of a massage establishment;

(6) the provision of massage therapy or other massage services by a massage establishment;

(7) the records kept by a massage establishment;

(8) the organizational structure of a massage establishment, including the lines of authority and the delegation of responsibility;

(9) fire prevention and safety in a massage establishment;

(10) the inspection of a massage establishment; and

(11) any other aspect of the operation of a massage establishment necessary to protect massage establishment personnel or the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 4, eff. September 1, 2005.

Sec. 455.053. RULES REGARDING MASSAGE SCHOOLS. Rules adopted under this chapter relating to a massage school must contain minimum standards for:

(1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;

(2) the qualifications of professional personnel;

(3) the supervision of professional personnel;

(4) the equipment essential to the education, health, and safety of students, massage school personnel, and the public;

(5) the sanitary and hygienic conditions of a massage school;

(6) the provision of massage therapy or other massage services by a massage school or student;

(7) the maximum number of hours a student may accumulate in a massage school's internship program before the student is required to be licensed under this chapter;

(8) the educational and clinical records kept by a massage school;

(9) the organizational structure of a massage school, including the lines of authority and the delegation of responsibility;

(10) fire prevention and safety in a massage school;

(11) the massage school's curriculum and educational material;

(12) massage school inspections; and

(13) any other aspect of the operation of a massage school that the commission considers necessary to protect students, massage school personnel, or the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.241, eff. September 1, 2017.

Sec. 455.054. RULES REGARDING MASSAGE THERAPISTS. Rules adopted under this chapter relating to a massage therapist must contain minimum standards for:

(1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;

(2) the qualifications of a massage therapist;

(3) the sanitary and hygienic conditions of the physical environment in which a massage therapist practices massage therapy;

(4) the records kept by a massage therapist;

(5) the inspection of the records, equipment, and sanitary and hygienic conditions of the physical environment used by a massage therapist in practicing massage therapy; and

(6) any other aspect of the practice of a massage therapist necessary to protect the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 4, eff. September 1, 2005.

Sec. 455.055. RULES REGARDING MASSAGE THERAPY INSTRUCTORS. Rules adopted under this chapter relating to a massage therapy instructor must contain minimum standards for:

(1) the issuance, denial, renewal, suspension, revocation, or probation of a license under this chapter;

(2) the qualifications of a massage therapy instructor;

(3) the supervision of a student by a massage therapy instructor;

(4) the maximum number of hours a student may accumulate in an internship program under the supervision of a massage therapy instructor before the student is required to be licensed under this chapter;

(5) the equipment essential to the education, health, and safety of students and the public;

(6) the sanitary and hygienic conditions of the physical environment in which a massage therapy instructor teaches;

(7) the provision of massage therapy or other massage services by a student or a massage therapy instructor;

(8) the educational and clinical records kept by a massage therapy instructor;

(9) the curriculum taught and educational material used by a massage therapy instructor;

(10) the inspection of the records, equipment, and physical environment of a massage therapy instructor; and

(11) any other aspect of a massage therapy instructor's instruction or operation of any portion of the course of instruction required for a massage therapist license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 4, eff. September 1, 2005.

Sec. 455.059. INSPECTIONS; INVESTIGATIONS. The department, the department's authorized representative, or a peace officer may enter the premises of a massage establishment or massage school at:

(1) reasonable times to conduct an inspection incidental to the issuance of a license; and

(2) other times that the department, the department's authorized representative, or a peace officer considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.004, eff. September 1, 2017.

SUBCHAPTER C. MASSAGE THERAPY ADVISORY BOARD

Sec. 455.101. ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are licensed massage therapists;

(2) two members who represent licensed massage schools;

(3) two members who represent licensed massage establishments;

(4) one member who is a peace officer with expertise in the enforcement of Chapter 20A, Penal Code, and Subchapter A, Chapter 43, Penal Code; and

(5) two members of the public.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.243, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.005, eff. September 1, 2017.

Sec. 455.102. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.005, eff. September 1, 2017.

Sec. 455.103. TERMS; VACANCIES. (a) Members of the advisory board are appointed for staggered six-year terms. The terms of three members expire September 1 of each odd-numbered year.
(b) If a vacancy occurs on the advisory board during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 5, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.079, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.244, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.005, eff. September 1, 2017.

Sec. 455.104. PRESIDING OFFICER. (a) The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year.
(b) The presiding officer of the advisory board may vote on any

matter before the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 6, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 1, eff. September 1, 2007.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.005, eff. September 1, 2017.

Sec. 455.105. MEETINGS. The advisory board shall meet at the call of the executive director or the presiding officer of the commission.

Added by Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 7, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.005, eff. September 1, 2017.

SUBCHAPTER D. LICENSING

Sec. 455.151. LICENSE REQUIRED. (a) Unless the person is exempt from the licensing requirement, a person may not act as a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate license issued under this chapter.

(b) Unless the person is exempt from the licensing requirement, a person may not represent that the person is a massage therapist, massage school, massage therapy instructor, or massage establishment unless the person holds an appropriate license under this chapter.

(c) A person may not for compensation perform or offer to perform any service with a purported health benefit that involves physical contact with a client unless the person:

(1) holds an appropriate license issued under this chapter; or

(2) is licensed or authorized under other law to perform the service.

(d) The department may issue one or more types of licenses not

otherwise provided for by this chapter that authorize the license holder to perform a service described by Subsection (c). The commission may adopt rules governing a license issued under this subsection.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 9, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 2, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.080, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.245, eff. September 1, 2017.

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 13 (S.B. 483), Sec. 2

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 440 (H.B. 2016), Sec. 1, see other Sec. 455.152.

Sec. 455.152. INELIGIBILITY FOR LICENSE. A person is not eligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor if the person is an individual and has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for:

(1) an offense under Chapter 20A, Penal Code, or Section 43.021, 43.03, 43.031, 43.04, 43.041, or 43.05, Penal Code; or

(2) an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense described by Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 9, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.006, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 787 (H.B. 1865), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 13 (S.B. 483), Sec. 2, eff. May 13, 2023.

Text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 440 (H.B. 2016), Sec. 1

For text of section as amended by Acts 2023, 88th Leg., R.S., Ch. 13 (S.B. 483), Sec. 2, see other Sec. 455.152.

Sec. 455.152. INELIGIBILITY FOR LICENSE. A person is not eligible for a license as a massage establishment, massage school, massage therapist, or massage therapy instructor if the person is an individual and has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication for:

(1) an offense under Chapter 20A, Section 22.011 or 22.021, or Subchapter A, Chapter 43, Penal Code; or

(2) another sexual offense.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 9, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.006, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 787 (H.B. 1865), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 440 (H.B. 2016), Sec. 1, eff. September 1, 2023.

Sec. 455.1525. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) The department shall require an applicant for a license to submit a complete and legible set of fingerprints, on a form prescribed by the department, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The department may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The department shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The department may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

(e) For purposes of this section, if the applicant for a license is an entity, the applicant must submit fingerprints as required by Subsection (a) for each individual who:

(1) personally or constructively holds, including as the beneficiary of a trust:

(A) at least 10 percent of the entity's outstanding stock; or

(B) more than $25,000 of the fair market value of the entity;

(2) has the controlling interest in the entity;

(3) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights are included, of more than 10 percent of the profits, proceeds, or capital gains of the entity;

(4) is a member of the board of directors or other governing body of the entity; or

(5) serves as:

(A) an elected officer of the entity; or

(B) a general manager of the entity.

Added by Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 10, eff. September 1, 2005.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.007, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 787 (H.B. 1865), Sec. 2, eff. September 1, 2019.

Sec. 455.153. APPLICATION FOR LICENSE. An applicant for a license under this chapter must:

(1) submit an application in the manner and on a form prescribed by the executive director;

(2) pass any required examination; and

(3) include with the application the application fee set by the commission by rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.081, eff. April 2, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.008, eff. September 1, 2017.

Sec. 455.154. GENERAL PROVISIONS RELATING TO LICENSES. (a) The holder of a license may exercise all professional rights, honors, and privileges relating to the practice of massage therapy.

(b) A license is the property of the department and must be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Sec. 455.155. LICENSE EXEMPTION. (a) Section 455.151 does not apply to an establishment or person that:

(1) holds a license, permit, certificate, or other credential issued by this state under another law; and

(2) offers or performs massage therapy under the scope of that credential.

(b) A licensed massage therapist who practices as a solo practitioner is not required to hold a license as a massage establishment.

(c) A place of business is not required to hold a license under this chapter if:

(1) the place of business is owned by the federal government, the state, or a political subdivision of the state;

(2) at the place of business, a licensed massage therapist practices as a solo practitioner and:

(A) does not use a business name or assumed name; or

(B) uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing;

(3) at the place of business, an acupuncturist, athletic trainer, chiropractor, cosmetologist, midwife, nurse, occupational therapist, perfusionist, physical therapist, physician, physician assistant, podiatrist, respiratory care practitioner, or surgical assistant licensed or certified in this state employs or contracts with a licensed massage therapist to provide massage therapy as part of the person's practice; or

(4) at the place of business, a person offers to perform or performs massage therapy:

(A) for not more than 72 hours in any six-month period; and

(B) as part of a public or charity event, the primary purpose of which is not to provide massage therapy.

(d) A sexually oriented business may not:

(1) hold a license under this chapter; or

(2) operate as a massage establishment under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 3, eff. September 1, 2007.

Sec. 455.156. LICENSE REQUIREMENTS FOR MASSAGE THERAPIST. (a) The department shall issue a license to each qualified applicant who applies for a massage therapist license.

(b) An applicant for a license under this section must be an individual and:

(1) present evidence satisfactory to the department that

the person has satisfactorily completed massage therapy studies in a 500-hour minimum, supervised course of instruction in a manner provided by Subsection (c), in which at least:

(A) 200 hours are taught by a licensed massage therapy instructor and dedicated to the study of massage therapy techniques and theory and the practice of manipulation of soft tissue, with at least 125 hours dedicated to the study of Swedish massage therapy techniques;

(B) 50 hours are dedicated to the study of anatomy;

(C) 25 hours are dedicated to the study of physiology;

(D) 50 hours are dedicated to the study of kinesiology;

(E) 40 hours are dedicated to the study of pathology;

(F) 20 hours are dedicated to the study of hydrotherapy;

(G) 45 hours are dedicated to the study of massage therapy laws and rules, business practices, and professional ethics standards;

(H) 20 hours are dedicated to the study of health, hygiene, first aid, universal precautions, and cardiopulmonary resuscitation (CPR); and

(I) 50 hours are spent in an internship program;

(2) pass the required examinations; and

(3) be at least 18 years of age.

(c) The hours of instruction required by Subsection (b) must be provided by a massage therapy instructor at a massage school, licensed massage school, state-approved educational institution, or any combination of instructors or schools. The hours of instruction required by Subsections (b)(1)(B)-(H) may be provided using distance learning. Distance learning is not limited to live instruction.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.220(a), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 4, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 6.009, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 163 (S.B. 1130), Sec. 1, eff. May 28, 2021.

Sec. 455.159. STUDENT INTERNSHIP PROGRAM. (a) An internship program must:

(1) meet the qualifications established by the department;

(2) provide a student with a minimum of 40 hours of hands-on massage therapy experience; and

(3) be conducted on the school grounds or in a clinic or classroom setting provided by the massage school or massage therapy instructor.

(b) A student must complete the first 250 hours of required training at a massage school or with a massage therapy instructor before the student is eligible to enter an internship program.

(c) A student who is participating in an internship program must be under the supervision and direction of a massage therapy instructor during the hours that the student is working in the program.

(d) A student who is participating in an internship program may:

(1) make an appointment with a client;

(2) interview a client;

(3) provide massage therapy, including providing massage therapy for compensation in an amount set by the massage school or massage therapy instructor and paid to the school or instructor;

(4) collect and review a client evaluation with the student's supervisor; and

(5) perform other tasks necessary to the business of providing massage therapy to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 14, eff. September 1, 2005.

Sec. 455.160. LICENSE TERM AND RENEWAL. (a) A license issued under this chapter is valid for two years. A license holder must renew the license biennially.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.298(7), eff. September 1, 2017.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.298(7), eff. September 1, 2017.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.298(7), eff. September 1, 2017.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.298(7), eff. September 1, 2017.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.298(7), eff. September 1, 2017.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.298(7), eff. September 1, 2017.

(h) On receipt of a request for a renewal of a license issued under this chapter, the department shall conduct a criminal background check under Section 455.1525.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.222(a), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 15, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.084, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.248, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.249, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.298(7), eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 787 (H.B. 1865), Sec. 3, eff. September 1, 2019.

Sec. 455.161. STUDENT PERMIT; ELIGIBILITY. (a) The department shall require a student enrolled in a massage school in this state to hold a permit stating the student's name and the name of the school. The permit must be displayed in a reasonable manner at the school.

(b) The department shall issue a student permit to an applicant who submits an application to the department for a student permit

accompanied by any required fee.

(c) An applicant for a student permit described by this section shall:

(1) submit an enrollment application to the department in a form and manner prescribed by the department; and

(2) satisfy other requirements specified by the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 787 (H.B. 1865), Sec. 4, eff. September 1, 2019.

SUBCHAPTER E. PRACTICE BY LICENSE HOLDERS

Sec. 455.201. REFERRAL FROM PHYSICIAN. A person issued a license may receive referrals from a physician to administer massage therapy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 17, eff. September 1, 2005.

Sec. 455.202. PRACTICE BY MASSAGE ESTABLISHMENT. (a) A massage establishment may employ only licensed massage therapists to perform massage therapy or other massage services.

(b) A massage establishment may not:

(1) employ an individual who is not a United States citizen or a legal permanent resident with a valid work permit;

(2) employ a minor unless the minor's parent or legal guardian authorizes in writing the minor's employment by the establishment;

(3) allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(4) allow any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment;

(5) allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual; or

(6) allow any individual, including a student, license

holder, or employee, to reside on the premises of the massage establishment.

(c) A massage establishment shall:

(1) properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records; and

(2) make available to the department on request the information kept as provided by Subdivision (1).

(d) For purposes of this section:

(1) "Nude" means a person who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.

(2) "Sexual contact" includes:

(A) any touching of any part of the genitalia or anus;

(B) any touching of the breasts of a female without the written consent of the female;

(C) any offer or agreement to engage in any activity described in Paragraph (A) or (B);

(D) kissing without the consent of both persons;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, solicitation of prostitution, and promotion of prostitution as described in Chapters 21, 22, and 43, Penal Code, or any offer or agreement to engage in such activities;

(F) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments about or to a client, including sexual comments about a person's body.

(e) Subsection (b)(6) does not apply to:

(1) a place of business exempted under Section 455.155(c)(2) from the requirement to hold a license as a massage establishment; or

(2) a licensed massage therapist who practices as a solo practitioner and who is exempted under Section 455.155(b) from the requirement to hold a license as a massage establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 17, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1136 (H.B. 2747), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 50, eff. September 1, 2021.

Sec. 455.203. PRACTICE BY MASSAGE SCHOOL OR INSTRUCTOR AT SCHOOL. (a) A massage school must meet the minimum standards of operation established by commission rule.

(b) An instructor must meet the minimum requirements established by commission rule.

(c) A massage school or massage therapy instructor licensed under this chapter shall give each prospective student a notice that clearly states the number of course hours that the student must successfully complete before the student is eligible to hold a massage therapist license under this chapter.

(d) The notice under Subsection (c) must be given to the prospective student at a time and in a manner that provides the student with a sufficient opportunity to read the notice and, if necessary for understanding and clarity, discuss the notice with massage school officials or with the massage therapy instructor before:

(1) the student signs an enrollment contract; and

(2) the massage school or the massage therapy instructor accepts the student in a course of study.

(e) The course of instruction in massage therapy provided by a licensed massage school is a postsecondary education program.

(f) A massage school that provides instruction to persons beyond the age of compulsory education is authorized to operate educational programs in massage therapy at the postsecondary level.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 18, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.085, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 482 (H.B. 1049), Sec. 1, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.250, eff. September 1, 2017.

Sec. 455.2035. REPORTS TO DEPARTMENT. (a) A massage school shall maintain a monthly progress report regarding each student attending the school. The report must certify the daily attendance record of each student and the number of credit hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify the department that the student has completed the required number of hours and is eligible to take the appropriate examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 787 (H.B. 1865), Sec. 5, eff. July 1, 2020.

Sec. 455.204. DISPLAY OF LICENSE. (a) A person who holds a license shall publicly display the license as specified by the department.

(b) Each massage establishment must post in plain sight the license for each massage therapist who practices in the massage establishment.

(b-1) The license of a massage therapist that is posted under Subsection (b) must have attached to the front of the license a photograph of the massage therapist.

(c) Each massage school, massage establishment, massage therapy instructor, or massage therapist shall present the person's license on the request of the department, an authorized representative of the department, or a peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 19, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1136 (H.B. 2747), Sec. 2, eff. September 1, 2019.

Sec. 455.205. PROHIBITED PRACTICES. (a) A massage therapist may not perform massage therapy for compensation or without compensation at or for a sexually oriented business.

(b) A massage school or a massage therapy instructor may not require the successful completion of more course hours than the number of hours required for licensing as a massage therapist under this chapter.

(c) A person who is not licensed under this chapter may not use the word "massage" on any form of advertising unless the person is expressly exempt from the licensing requirements of this chapter.

(d) A sexually oriented business may not use the word "massage" or "bath" on a sign or any form of advertising.

(e) A person advertising massage therapy or other massage services is presumed to be engaging in conduct regulated by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 20, eff. September 1, 2005.

Sec. 455.206. ESTABLISHMENT CHANGE OF LOCATION PROHIBITED. A massage establishment may not change the location of the establishment without obtaining a new massage establishment license under this chapter.

Added by Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 21, eff. September 1, 2005.

Sec. 455.207. POSTING OF CERTAIN NOTICES REQUIRED. (a) Each massage establishment and massage school shall display in the form and manner prescribed by the commission a sign concerning services and assistance available to victims of human trafficking.

(b) The sign required by this section must:

(1) be in English, Spanish, Korean, Mandarin, and any other language required by commission rule;

(2) include a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking;

(3) include the contact information for reporting suspicious activity to the Department of Public Safety; and

(4) be displayed in a conspicuous place clearly visible to the public.

(c) The commission by rule shall establish requirements regarding the posting of signs under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1136 (H.B. 2747), Sec. 3, eff. September 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 280 (H.B. 3721), Sec. 6, eff. September 1, 2021.

SUBCHAPTER F. LICENSE DENIAL OR DISCIPLINARY PROCEDURES

Sec. 455.251. GROUNDS FOR LICENSE DENIAL, DISCIPLINARY ACTION, OR ADMINISTRATIVE PENALTY. (a) The commission or executive director may refuse to issue a license to a person, suspend, revoke, or refuse to renew the license of a person, or impose an administrative penalty under Subchapter F, Chapter 51, on a person licensed under this chapter if the person:

(1) obtains or attempts to obtain a license by fraud, misrepresentation, or concealment of material facts;

(2) sells, barters, or offers to sell or barter a license;

(3) violates a rule adopted by the commission under this chapter;

(4) engages in unprofessional conduct as defined by commission rule that endangers or is likely to endanger the health, welfare, or safety of the public;

(5) violates an order or ordinance adopted by a political subdivision under Chapter 243, Local Government Code; or

(6) violates this chapter.

(b) The commission or executive director shall revoke the license of a person licensed as a massage therapist or massage therapy instructor if:

(1) the person is convicted of, enters a plea of nolo contendere or guilty to, or receives deferred adjudication for:

(A) an offense under Chapter 20A, Penal Code, or Section 43.021, 43.03, 43.031, 43.04, 43.041, or 43.05, Penal Code; or

(B) an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense described by Paragraph (A); or

(2) the commission or executive director determines the person has practiced or administered massage therapy at or for a sexually oriented business.

(c) The commission or executive director shall revoke the license of a person licensed as a massage school or massage establishment if the commission or executive director determines that:

(1) the school or establishment is a sexually oriented business; or

(2) an offense involving prostitution or another sexual offense that resulted in a conviction for the offense, a plea of nolo contendere or guilty to the offense, or a grant of deferred adjudication for the offense occurred on the premises of the school or establishment.

Added by Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.222(c), eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 23, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.086, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.251, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 13 (S.B. 483), Sec. 3, eff. May 13, 2023.

Acts 2023, 88th Leg., R.S., Ch. 13 (S.B. 483), Sec. 4, eff. May 13, 2023.

Sec. 455.252. EMERGENCY ORDER. The executive director may issue an emergency order under Section 51.3511 halting the operation of a massage establishment if:

(1) a law enforcement agency gives notice to the department, or the department otherwise learns, that the law enforcement agency is investigating the massage establishment for an

offense under Chapter 20A, Penal Code; or

(2) the department has reasonable cause to believe that an offense under Chapter 20A, Penal Code, is being committed at the massage establishment.

Added by Acts 2023, 88th Leg., R.S., Ch. 743 (H.B. 3579), Sec. 2, eff. September 1, 2023.

SUBCHAPTER H. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 455.351. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general, a district or county attorney, a municipal attorney, or the department may institute an action for injunctive relief to restrain a violation by a person who:

(1) appears to be in violation of or threatening to violate this chapter or a rule adopted under this chapter; or

(2) is the owner or operator of an establishment that offers massage therapy or other massage services regulated by this chapter and is not licensed under this chapter.

(b) The attorney general, a district or county attorney, a municipal attorney, or the department may institute an action to collect a civil penalty from a person who appears to be in violation of this chapter or a rule adopted under this chapter. The amount of a civil penalty shall be not less than $1,000 or more than $10,000 for each violation.

(c) Each day a violation occurs or continues to occur is a separate violation.

(d) An action filed under this section by the attorney general or the department must be filed in a district court in Travis County or the county in which the violation occurred.

(e) The attorney general, district and county attorney, municipal attorney, and the department may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(f) A civil penalty recovered in an action by the attorney general or the department under this section shall be deposited in the state treasury.

(g) In an injunction issued under this section, a court may include reasonable requirements to prevent further violations of this

chapter.

(h) Notwithstanding Section 22.004, Government Code:

(1) a person may not continue the enjoined activity pending appeal or trial on the merits of an injunctive order entered in a suit brought under this subchapter;

(2) not later than the 90th day after the date of the injunctive order, the appropriate court of appeals shall hear and decide an appeal taken by a party enjoined under this subchapter; and

(3) if an appeal is not taken by a party temporarily enjoined under this article, the parties are entitled to a full trial on the merits not later than the 90th day after the date of the temporary injunctive order.

(i) In this section:

(1) "Operator" means a person who is supervising a massage establishment or massage school at the time a violation occurs or the establishment or school is inspected. If no person is supervising, then any employee, contractor, or agent of the owner who is present at the establishment or school is the operator.

(2) "Owner" includes a person:

(A) in whose name a certificate of occupancy has been issued for a massage establishment or massage school and any person having control over that person; or

(B) who operates a massage establishment or massage school under a lease, operating agreement, or other arrangement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 31, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1399 (H.B. 2644), Sec. 5, eff. September 1, 2007.

Sec. 455.352. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to be licensed under this chapter and the person:

(1) knowingly violates Section 455.151, 455.159, 455.202(b), 455.203(a) or (c), 455.204(b) or (c), or 455.205(b), (c), or (d); or

(2) collects a fee or any other form of compensation for

massage therapy without being licensed under this chapter.

(a-1) A person commits an offense if the person is required to be licensed under this chapter and the person knowingly violates Section 455.205(a). An offense under this subsection is a Class B misdemeanor, unless the actor has previously been convicted one or two times of an offense under this subsection, in which event it is a Class A misdemeanor. If the actor has previously been convicted three or more times of an offense under this subsection, the offense is a state jail felony.

(b) An owner or operator of a massage establishment commits an offense if the person knowingly violates Section 455.151(a), 455.155(d), 455.202(a), 455.204(b) or (c), or 455.205(d). An offense under this subsection is a Class B misdemeanor, unless the actor has previously been convicted one or two times of an offense under this subsection, in which event it is a Class A misdemeanor. If the actor has previously been convicted three or more times of an offense under this subsection, the offense is a state jail felony.

(c) An owner or operator of a massage school commits an offense if the person knowingly violates Section 455.151(a), 455.159, 455.203(a) or (c), 455.204(b) or (c), or 455.205(b), (c), or (d).

(d) Except as provided by Subsections (a-1), (b), and (e), an offense under this section is a Class C misdemeanor.

(e) If it is shown at the trial of an offense under this section that the defendant has been previously convicted of an offense under this section, the offense is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1300 (H.B. 2696), Sec. 32, eff. September 1, 2005.

Sec. 455.353. ENFORCEMENT BY PEACE OFFICERS. A peace officer of this state, including a peace officer employed by a political subdivision of the state, may enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBTITLE I. REGULATION OF PSYCHOLOGY AND COUNSELING
CHAPTER 501. PSYCHOLOGISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. SHORT TITLE. This chapter may be cited as the Psychologists' Licensing Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Psychologists.

(1-a) "Executive council" means the Texas Behavioral Health Executive Council.

(2) "Licensed specialist in school psychology" means a person who holds a license to engage in the practice of psychology under Section 501.260.

(3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(1), eff. September 1, 2019.

(4) "Psychological associate" means a person who holds a license to engage in the practice of psychology issued under Section 501.259.

(5) "Psychologist" means a person who holds a license to engage in the practice of psychology issued under Section 501.252.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.001, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(1), eff. September 1, 2019.

Sec. 501.003. DEFINITION: PRACTICE OF PSYCHOLOGY. (a) In this chapter:

(1) "Practice of psychology" means:

(A) the observation, description, diagnosis, evaluation, assessment, interpretation, or treatment of and intervention in human behavior by applying education, training, methods, and procedures for the purpose of:

(i) preventing, predicting, treating, remediating, or eliminating:

(a) symptomatic, maladaptive, or undesired

behavior;

(b) emotional, interpersonal, learning, substance use, neuropsychological, cognitive, or behavioral disorders or disabilities, including those that accompany medical problems; or

(c) mental illness;

(ii) evaluating, assessing, or facilitating, by a license holder or a person who represents the person to the public by a title or description of services that includes the word "psychological," "psychologist," or "psychology," the enhancement of individual, group, or organizational effectiveness, including evaluating, assessing, or facilitating:

(a) personal effectiveness;

(b) adaptive behavior;

(c) interpersonal relationships;

(d) academic, vocational, and life adjustment;

(e) health; or

(f) individual, group, or organizational performance;

(iii) providing psychological, neuropsychological, and psychoeducational evaluation, therapy, and remediation as well as counseling, psychoanalysis, psychotherapy, hypnosis, and biofeedback; or

(iv) consulting with others, including other mental health professionals, physicians, school personnel, or organizations within the scope of the provider's competency and training with respect to services provided for a specific individual; or

(B) the supervision of an activity or service described by Paragraph (A).

(2) "Psychological services" means acts or behaviors that are included within the purview of the practice of psychology.

(b) A person is engaged in the practice of psychology if the person:

(1) when providing or offering to provide psychological services to another in a professional relationship, represents the person to the public by a title or description of services that includes the word "psychological," "psychologist," or "psychology";

(2) provides or offers to provide psychological services to individuals, groups, organizations, or the public in a professional relationship;

(3) is a psychologist or psychological associate employed

as described by Section 501.004(a)(1) who offers or provides psychological services, other than lecture services, to the public for consideration separate from the salary that person receives for performing the person's regular duties; or

(4) is employed as a psychologist or psychological associate by an organization that sells psychological services, other than lecture services, to the public for consideration.

(c) A person is not engaged in the practice of psychology based solely on the person offering, regardless of whether the person is solicited, advice, counsel, or guidance addressing or affecting the mental, emotional, or behavioral health of another, if the person does not represent that the person is licensed under this chapter or engaged in the delivery of psychological services and does not represent that the advice, counsel, or guidance is psychological in nature, and:

(1) the advice, counsel, or guidance is not offered in the context of a professional relationship;

(2) if the person is offering the advice, counsel, or guidance in connection with the person's occupation, the primary focus of the occupation is not the delivery of mental, emotional, or behavioral health care services; or

(3) the advice, counsel, or guidance is offered through an organized or structured program or peer support service that is designed to support or assist a person with a self-identified goal of changing or improving certain aspects of the person's mental, emotional, or behavioral health.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1101 (H.B. 3808), Sec. 5, eff. September 1, 2017.

Sec. 501.004. APPLICABILITY. (a) This chapter does not apply to:

(1) the activity or service of a person, or the use of an official title by the person, who is employed as a psychologist or psychological associate by a regionally accredited institution of higher education if the person performs duties the person is employed by the institution to perform within the confines of the institution;

(2) the activity or service of a student, intern, or resident in psychology if:

(A) the person is pursuing a course of study to prepare for the profession of psychology under qualified supervision in a recognized training institution or facility;

(B) the activity or service is part of the person's supervised course of study; and

(C) the person is designated as a "psychological intern," as a "psychological trainee," or by another title that clearly indicates the person's training status;

(3) the activity or service of a licensed professional, other than a person licensed under this chapter, if:

(A) the activity or service is permitted under the person's license; and

(B) the person does not represent that the person is a psychologist or describe the service provided by using the term "psychological";

(4) the activity or service of a recognized member of the clergy who is acting within the person's ministerial capabilities if the person does not:

(A) represent that the person is a psychologist; or

(B) describe the service provided by using the term "psychological";

(5) the voluntary activity or service of a person employed by or working on behalf of a charitable nonprofit organization if the person does not:

(A) represent that the person is a psychologist; or

(B) describe the service provided by using the term "psychological"; or

(6) the activity or service of a person who is employed by a governmental agency if the person:

(A) performs duties the person is employed by the agency to perform within the confines of the agency; and

(B) does not represent that the person is a psychologist.

(b) For purposes of Subsection (a)(3), a licensed professional includes:

(1) a physician;

(2) an attorney;

(3) a registered nurse;

(4) a licensed vocational nurse;
(5) an occupational therapist;
(6) a licensed social worker;
(7) a licensed professional counselor;
(8) a career counselor;
(9) a licensed marriage and family therapist; and
(10) a licensed chemical dependency counselor.

(c) This chapter does not authorize the practice of medicine as defined by the laws of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 883 (H.B. 807), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

Sec. 501.051. BOARD MEMBERSHIP. (a) The Texas State Board of Examiners of Psychologists consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four psychologist members who have engaged in independent practice, teaching, or research in psychology for at least five years;
(2) two psychological associate members who have been licensed as psychological associates under this chapter for at least five years; and
(3) three members who represent the public.

(a-1) One of the members appointed under Subsection (a)(1) or (a)(2) must practice as a licensed specialist in school psychology under Section 501.260.

(b) To ensure adequate representation on the board of the diverse fields of psychology, the governor in making appointments under Subsection (a)(1) shall appoint:

(1) at least two members who provide psychological services;
(2) at least one member who conducts research in the field of psychology; and
(3) at least one member who teaches as a member of the faculty of a psychological training institution.

(c) Each member of the board must be a citizen of the United

States.

(d) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 869 (H.B. 646), Sec. 1, eff. June 14, 2013.

Sec. 501.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if:

(1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health services;

(2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or

(3) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(C) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 2, eff. September 1, 2005.

Sec. 501.053. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in

promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

(c) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 3, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.002, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.003, eff. September 1, 2019.

Sec. 501.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of three members expiring October 31 of each odd-numbered year.

(b) A member who is appointed for a term of less than six years may be reappointed to one successive full six-year term. A member who is appointed for a full six-year term may not be reappointed for the six years following the expiration of the member's term.

(c) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 501.051 and 501.052;

(2) does not maintain during service on the board the qualifications required by Sections 501.051 and 501.052;

(3) is ineligible for membership under Section 501.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director of the executive council has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 4, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.004, eff. September 1, 2019.

Sec. 501.056. PER DIEM; REIMBURSEMENT. (a) Each board member is entitled to a per diem set by legislative appropriation for each day the member engages in board business.

(b) A member may not receive reimbursement for travel expenses, including expenses for meals and lodging. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

(c) All per diem and reimbursement for expenses authorized by this section shall be paid only from fees collected under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.057. OFFICERS; MEETINGS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor. The board shall hold an annual meeting during which the board shall select from its members an assistant presiding officer.

(b) The board may hold other regular meetings as provided by board rule. The board shall hold meetings at least twice each year. Special meetings may be called as necessary or by a majority of the board members.

(c) The board shall give reasonable notice of all meetings in the manner provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 5, eff. September 1, 2005.

Sec. 501.058. OATH OF OFFICE. Before entering office, a board member must file with the secretary of state the constitutional oath taken by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.059. TRAINING PROGRAM FOR MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule,

interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the executive council shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 6, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.005, eff. September 1, 2019.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 501.151. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL. (a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(4), eff. September 1, 2019.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(4), eff. September 1, 2019.

(c) The executive council shall adopt and publish a code of ethics under this chapter.

(d) The executive council may certify the specialty of health service providers under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.007, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.008, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(4), eff. September 1, 2019.

Sec. 501.1515. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(A) the qualifications necessary to obtain a license, including rules limiting an applicant's eligibility for a license based on the applicant's criminal history;

(B) the scope of practice of and standards of care and ethical practice for psychology; and

(C) continuing education requirements for license holders; and

(2) a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.009, eff. September 1, 2019.

Sec. 501.155. VOLUNTARY GUIDELINES. (a) The executive council may cooperate with an agency that is not subject to this chapter to formulate voluntary guidelines to be observed in the training,

activities, and supervision of persons who perform psychological services.

(b) Except as provided by Subsection (a), the executive council may not adopt a rule that relates to the administration of an agency that is not subject to this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.010, eff. September 1, 2019.

Sec. 501.158. COMPETENCY REQUIREMENTS. (a) This section applies to a person who is:

(1) applying to take the license examination;

(2) applying for a license or license renewal;

(3) currently licensed under this chapter; or

(4) otherwise providing psychological services under a license approved by the executive council under this chapter.

(b) On a determination by the executive council based on the executive council's reasonable belief that a person is not physically and mentally competent to provide psychological services with reasonable skill and safety to patients or has a physical or mental disease or condition that would impair the person's competency to provide psychological services, the executive council may request the person to submit to:

(1) a physical examination by a physician approved by the executive council; or

(2) a mental examination by a physician or psychologist approved by the executive council.

(c) The executive council shall issue an order requiring a person who refuses to submit to an examination under this section to show cause for the person's refusal at a hearing on the order scheduled for not later than the 30th day after the date notice is served on the person. The executive council shall provide notice under this section by personal service or by registered mail, return receipt requested.

(d) At the hearing, the person may appear in person and by counsel and present evidence to justify the person's refusal to submit to examination. After the hearing, the executive council

shall issue an order requiring the person to submit to examination under this section or withdrawing the request for the examination.

(e) Unless the request is withdrawn, the executive council may take disciplinary action against a person who refuses to submit to the physical or mental examination.

(f) An appeal from the executive council's order under this section is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.011, eff. September 1, 2019.

SUBCHAPTER F. GENERAL LICENSE REQUIREMENTS

Sec. 501.251. LICENSE REQUIRED. A person may not engage in or represent that the person is engaged in the practice of psychology unless the person is licensed under this chapter or exempt under Section 501.004.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.252. PSYCHOLOGIST LICENSE APPLICATION. (a) To be licensed under this chapter, a person must apply to the executive council for a license. The executive council shall issue a license to an applicant who:

(1) is qualified for the license under Section 501.2525; and

(2) pays the fee set by the executive council.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(13), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(13), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(13), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.012, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(13), eff. September 1, 2019.

Sec. 501.2525. LICENSE QUALIFICATIONS. (a) An applicant is qualified for a license under this chapter if the applicant:

(1) has received:

(A) a doctoral degree in psychology from a regionally accredited educational institution conferred on or after January 1, 1979; or

(B) a doctoral degree in psychology, or the substantial equivalent of a doctoral degree in psychology in both subject matter and extent of training, from a regionally accredited educational institution conferred before January 1, 1979;

(2) except as provided by Subsection (c) and Section 501.253, has:

(A) at least two years of supervised experience in the field of psychological services, one year of which may be as part of the doctoral program and at least one year of which began after the date the person's doctoral degree was conferred by an institution of higher education; and

(B) passed any examination required by Section 501.256;

(3) has attained the age of majority;

(4) is physically and mentally competent to provide psychological services with reasonable skill and safety, as determined by the executive council;

(5) is not afflicted with a mental or physical disease or condition that would impair the applicant's competency to provide psychological services;

(6) has not been convicted of a crime involving moral turpitude or a felony;

(7) does not use drugs or alcohol to an extent that affects the applicant's professional competency;

(8) has not engaged in fraud or deceit in making the application; and

(9) except as provided by Section 501.263, has not:

(A) aided or abetted the practice of psychology by a person not licensed under this chapter in representing that the person is licensed under this chapter;

(B) represented that the applicant is licensed under

this chapter to practice psychology when the applicant is not licensed; or

(C) practiced psychology in this state without a license under this chapter or without being exempt under this chapter.

(b) In determining under Subsection (a)(1)(B) whether a degree is substantially equivalent to a doctoral degree in psychology, the executive council shall consider whether, at the time the degree was conferred, the doctoral program met the prevailing standards for training in the area of psychology, including standards for training in clinical, school, and industrial counseling.

(c) Subsection (a)(2)(A) does not apply to an applicant who:

(1) is licensed in good standing in another state to independently practice psychology; and

(2) has independently practiced psychology in that state for at least five years.

(d) For purposes of Subsection (a)(2)(A), experience is supervised only if the experience is supervised by a psychologist in the manner provided by the executive council's supervision guidelines. To determine the acceptability of an applicant's experience, the executive council may require documentary evidence of the quality, scope, and nature of the applicant's experience. The executive council may count toward the supervised experience an applicant is required to obtain after the applicant's degree is conferred any hours of supervised experience the applicant completed as part of a degree program accredited by the American Psychological Association, the Canadian Psychological Association, or a substantially equivalent degree program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Redesignated and amended from Occupations Code, Section 501.255 by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.013, eff. September 1, 2019.

Sec. 501.253. PROVISIONAL STATUS FOR CERTAIN APPLICANTS. (a) The executive council may issue a license with a provisional status to an applicant who has not satisfied the experience or examination requirements of Section 501.2525(a)(2) but is otherwise qualified for the license under Section 501.2525.

(b) A license holder described by Subsection (a) is entitled to practice psychology under the supervision of a psychologist to meet the requirements for issuance of a license under Section 501.2525, except that if the license holder is licensed in another state to independently practice psychology and is in good standing in that state, the license holder is entitled to practice psychology without the supervision of a psychologist.

(c) The executive council shall adopt rules that apply to a license holder described by Subsection (a) identifying:

(1) the activities that the license holder may engage in; and

(2) services that may be provided by the license holder.

(d) The executive council may refuse to renew a license issued under Subsection (a) if the license holder does not meet the requirements prescribed by Section 501.2525(a)(2).

(e) The executive council may not restrict the issuance of a license to an applicant who is licensed in another state to independently practice psychology and is in good standing in that state based on the number of years the applicant has been licensed in good standing in that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 14, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.014, eff. September 1, 2019.

Sec. 501.256. EXAMINATIONS. (a) The executive council shall administer to qualified applicants at least annually any written examination required by executive council rules. An examination must be validated by an independent testing professional.

(b) The board shall determine the subject and scope of each examination. The examination must test the applicant's knowledge of:

(1) the discipline and profession of psychology; and

(2) the laws and rules governing the profession of psychology in this state.

(b-1) The executive council shall establish appropriate fees for examinations administered under this chapter.

(c) The executive council may waive the discipline and professional segment of the examination requirement for an applicant who:

(1) is a specialist of the American Board of Professional Psychology; or

(2) in the executive council's judgment, has demonstrated competence in the areas covered by the examination.

(d) The contents of the examination described by Subsection (b)(2) are the jurisprudence examination. The executive council shall administer and each applicant must pass the jurisprudence examination before the executive council may issue a license.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(15), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(15), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(15), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 15, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.015, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(15), eff. September 1, 2019.

Sec. 501.259. LICENSING OF PSYCHOLOGICAL ASSOCIATE. (a) The executive council shall set standards for the issuance of licenses to psychological personnel who hold a master's degree from an accredited university or college in a program that is primarily psychological in nature.

(b) The executive council shall designate a person who holds a license authorized by this section by a title that includes the adjective "psychological" followed by a noun such as "associate," "assistant," "examiner," or "technician."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 17, eff.

September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.016, eff. September 1, 2019.

Sec. 501.260. LICENSED SPECIALIST IN SCHOOL PSYCHOLOGY. (a) The executive council by rule shall issue a license to a licensed specialist in school psychology. A license issued under this section constitutes the appropriate credential for a person who provides psychological services as required by Section 21.003(b), Education Code.

(b) The executive council shall set the standards to qualify for a license under this section. The standards must include:

(1) satisfaction of minimum recognized graduate degree requirements;

(2) completion of graduate course work at a regionally accredited institution of higher education in:

(A) psychological foundations;

(B) educational foundations;

(C) interventions;

(D) assessments; and

(E) professional issues and ethics;

(3) completion of at least 1,200 hours of supervised experience;

(4) receipt of a passing score on a nationally recognized qualifying examination determined to be appropriate by the executive council and on any other examination required by the executive council; and

(5) satisfaction of the requirements under Sections 501.2525(a)(3)-(9).

(c) The rules of practice for a licensed specialist in school psychology must comply with nationally recognized standards for the practice of school psychology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.017, eff. September 1, 2019.

Sec. 501.261. FORM OF LICENSE. (a) A license issued under this chapter must include the full name of the license holder and a unique number assigned to that license.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(19), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(19), eff. September 1, 2019.

Sec. 501.262. RECIPROCAL LICENSE. The executive council may enter into and implement agreements with other jurisdictions for the issuance of a license by reciprocity if the other jurisdiction's requirements for licensing, certification, or registration are substantially equal to the requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.018, eff. September 1, 2019.

Sec. 501.263. TEMPORARY LICENSE. (a) The executive council may issue a temporary license to an applicant seeking to practice in this state for a limited time and limited purpose if the applicant:

(1) pays the required application fee;

(2) submits an application to the executive council in the form prescribed by the executive council;

(3) is licensed, certified, or registered as a psychologist or psychological associate by another state having requirements substantially equal to those prescribed by this chapter;

(4) is in good standing with the regulatory agency of the jurisdiction in which the person is licensed, certified, or registered;

(5) is supervised by a person licensed under this chapter with whom the temporary license holder may consult during the time the person holds a temporary license; and

(6) has passed an examination recognized by the executive council as equivalent to the examination required for a permanent

license under this chapter.

(b) A temporary license is valid only for the period specified by the executive council and for the limited purpose approved by the executive council.

(c) The executive council may adopt rules to issue a temporary license to a person who holds a license or the equivalent from another country.

(d) A temporary license issued under this section is not a vested property right.

(e) A person holding a temporary license issued under this chapter shall display a sign indicating that the license is temporary. The sign must be approved by the executive council and displayed in every room in which the person provides psychological services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 18, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.019, eff. September 1, 2019.

Sec. 501.264. INACTIVE STATUS. (a) A psychologist may place the psychologist's license on inactive status by applying to the executive council and paying a fee established by the executive council.

(b) A psychologist whose license is on inactive status does not accrue a penalty for late payment of the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.020, eff. September 1, 2019.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 501.301. LICENSE EXPIRATION AND RENEWAL. (a) The executive council shall adopt rules providing for the expiration and renewal of a license issued under this chapter. The rules must require a license be renewed annually or biennially.

(b) The executive council by rule may adopt a system under which licenses expire on various dates during the year. For a year in which the expiration date is changed, the executive council shall prorate the licensing fee so that each license holder pays only the portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the entire licensing fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.021, eff. September 1, 2019.

SUBCHAPTER H. PRACTICE BY PSYCHOLOGIST

Sec. 501.351. GENERAL AUTHORITY TO DELEGATE. (a) A psychologist licensed under this chapter may delegate to a psychologist who holds a license described by Section 501.253, a newly licensed psychologist who is not eligible for managed care panels, a person who holds a temporary license issued under Section 501.263, or a person enrolled in a formal internship as provided by executive council rules any psychological test or service that a reasonable and prudent psychologist could delegate within the scope of sound psychological judgment if the psychologist determines that:

(1) the test or service can be properly and safely performed by the person;

(2) the person does not represent to the public that the person is authorized to practice psychology; and

(3) the test or service will be performed in the customary manner and in compliance with any other law.

(b) The delegating psychologist remains responsible for the psychological test or service performed by the person to whom the test or service is delegated, and the test or service is considered to be delivered by the delegating psychologist for billing purposes, including bills submitted to third-party payors. The person must inform each patient on whom the test or service is performed that the person is being supervised by a licensed psychologist.

(c) The executive council may determine whether:

(1) a psychological test or service may be properly and safely delegated under this section; and

(2) a delegated act constitutes the practice of psychology under this chapter.

(d) A person who is a licensed psychologist and to whom another psychologist delegates a psychological test or service under this section may represent that the person is engaged in the practice of psychology.

Added by Acts 2013, 83rd Leg., R.S., Ch. 276 (H.B. 808), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 754 (H.B. 1924), Sec. 1, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.022, eff. September 1, 2019.

Sec. 501.352. PERFORMANCE OF DELEGATED ACT DOES NOT CONSTITUTE PRACTICE OF PSYCHOLOGY. A person to whom a psychologist delegates a psychological test or service under Section 501.351(a) is not considered to be engaged in the independent practice of psychology without a license issued under this chapter unless the person acts with the knowledge that the delegation and the action taken under the delegation violate this subtitle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 276 (H.B. 808), Sec. 1, eff. September 1, 2013.

SUBCHAPTER I. DISCIPLINARY PROCEDURES

Sec. 501.401. GROUNDS FOR DISCIPLINARY ACTION. The executive council shall take disciplinary action under Subchapter G, Chapter 507, against a license holder who:

(1) violates this chapter or a rule adopted under this chapter;

(2) is convicted of a felony or of any offense that would be a felony under the laws of this state, or of a violation of a law involving moral turpitude;

(3) uses drugs or alcohol to an extent that affects the person's professional competency;

(4) engages in fraud or deceit in connection with services provided as a psychologist;

(5) except as provided by Section 501.263:

(A) aids or abets the practice of psychology by a person not licensed under this chapter in representing that the person is licensed under this chapter;

(B) represents that the person is licensed under this chapter to practice psychology when the person is not licensed; or

(C) practices psychology in this state without a license under this chapter or without being qualified for an exemption under Section 501.004; or

(6) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.023, eff. September 1, 2019.

Sec. 501.407. REMEDIAL CONTINUING EDUCATION. The executive council may require a license holder who violates this chapter to participate in a continuing education program. The executive council shall specify the continuing education program that the person may attend and the number of hours that the person must complete to fulfill the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.024, eff. September 1, 2019.

Sec. 501.408. CORRECTIVE ADVERTISING. The executive council may order corrective advertising if a psychologist, individually or under an assumed name, engages in false, misleading, or deceptive advertising.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.025, eff. September 1, 2019.

Sec. 501.411. REMEDIAL PLAN. (a) The executive council may issue and establish the terms of a remedial plan to resolve the investigation of a complaint filed under this chapter.

(b) The executive council by rule shall establish the types of complaints or violations that may be resolved with a remedial plan. The rules must provide that a remedial plan may not be imposed to resolve a complaint:

(1) involving conduct that poses a significant risk of harm to a patient; or

(2) in which the appropriate resolution may involve revoking, suspending, limiting, or restricting a person's license.

(c) A remedial plan may not contain a provision that:

(1) revokes, suspends, limits, or restricts a person's license; or

(2) assesses an administrative penalty against a person.

(d) The executive council may not issue a remedial plan to resolve a complaint against a license holder if the license holder has previously entered into a remedial plan with the executive council for the resolution of a different complaint filed under this chapter.

(e) The executive council may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.026, eff. September 1, 2019.

SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 501.503. CRIMINAL PENALTY. (a) A person commits an offense if the person engages in the practice of psychology or represents that the person is a psychologist in violation of this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day a violation occurs is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 501.505. OPTION TO ORDER REFUND. (a) Under an agreement resulting from an informal settlement conference, the executive

council may order a license holder to refund to the person who paid for the psychological services at issue an amount not to exceed the amount the person paid to the license holder for a service regulated by this chapter instead of or in addition to imposing an administrative penalty under Subchapter H, Chapter 507.

(b) The executive council may not include an estimation of other damages or harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 143 (H.B. 1015), Sec. 22, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.027, eff. September 1, 2019.

SUBCHAPTER L. PSYCHOLOGY INTERJURISDICTIONAL COMPACT

Sec. 501.601. PSYCHOLOGY INTERJURISDICTIONAL COMPACT. The Psychology Interjurisdictional Compact is enacted and entered into as follows:

PSYCHOLOGY INTERJURISDICTIONAL COMPACT

ARTICLE I. PURPOSE

Whereas, states license psychologists, in order to protect the public through verification of education, training and experience and ensure accountability for professional practice; and

Whereas, this Compact is intended to regulate the day to day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority; and

Whereas, this Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for 30 days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority;

Whereas, this Compact is intended to authorize State Psychology Regulatory Authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state;

Whereas, this Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing

and regulation of psychologists and that such state regulation will best protect public health and safety;

Whereas, this Compact does not apply when a psychologist is licensed in both the Home and Receiving States; and

Whereas, this Compact does not apply to permanent in-person, face-to-face practice, it does allow for authorization of temporary psychological practice.

Consistent with these principles, this Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;

2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;

3. Encourage the cooperation of Compact States in the areas of psychology licensure and regulation;

4. Facilitate the exchange of information between Compact States regarding psychologist licensure, adverse actions and disciplinary history;

5. Promote compliance with the laws governing psychological practice in each Compact State; and

6. Invest all Compact States with the authority to hold licensed psychologists accountable through the mutual recognition of Compact State licenses.

ARTICLE II. DEFINITIONS

A. "Adverse Action" means: Any action taken by a State Psychology Regulatory Authority which finds a violation of a statute or regulation that is identified by the State Psychology Regulatory Authority as discipline and is a matter of public record.

B. "Association of State and Provincial Psychology Boards (ASPPB)" means: the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

C. "Authority to Practice Interjurisdictional Telepsychology" means: a licensed psychologist's authority to practice telepsychology, within the limits authorized under this Compact, in another Compact State.

D. "Bylaws" means: those Bylaws established by the Psychology Interjurisdictional Compact Commission pursuant to Section X for its governance, or for directing and controlling its actions and conduct.
E. "Client/Patient" means: the recipient of psychological services, whether psychological services are delivered in the context of healthcare, corporate, supervision, and/or consulting services.
F. "Commissioner" means: the voting representative appointed by each State Psychology Regulatory Authority pursuant to Section X.
G. "Compact State" means: a state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to Article XIII, Section C or been terminated pursuant to Article XII, Section B.
H. "Coordinated Licensure Information System" also referred to as "Coordinated Database" means: an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.
I. "Confidentiality" means: the principle that data or information is not made available or disclosed to unauthorized persons and/or processes.
J. "Day" means: any part of a day in which psychological work is performed.
K. "Distant State" means: the Compact State where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services.
L. "E.Passport" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.
M. "Executive Board" means: a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.
N. "Home State" means: a Compact State where a psychologist is

licensed to practice psychology. If the psychologist is licensed in more than one Compact State and is practicing under the Authorization to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to Practice, the Home State is any Compact State where the psychologist is licensed.

O. "Identity History Summary" means: a summary of information retained by the FBI, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

P. "In-Person, Face-to-Face" means: interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

Q. "Interjurisdictional Practice Certificate (IPC)" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that grants temporary authority to practice based on notification to the State Psychology Regulatory Authority of intention to practice temporarily, and verification of one's qualifications for such practice.

R. "License" means: authorization by a State Psychology Regulatory Authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

S. "Non-Compact State" means: any State which is not at the time a Compact State.

T. "Psychologist" means: an individual licensed for the independent practice of psychology.

U. "Psychology Interjurisdictional Compact Commission" also referred to as "Commission" means: the national administration of which all Compact States are members.

V. "Receiving State" means: a Compact State where the client/patient is physically located when the telepsychological services are delivered.

W. "Rule" means: a written statement by the Psychology Interjurisdictional Compact Commission promulgated pursuant to Section XI of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the

Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a Compact State, and includes the amendment, repeal or suspension of an existing rule.

X. "Significant Investigatory Information" means:

1. investigative information that a State Psychology Regulatory Authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

2. investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.

Y. "State" means: a state, commonwealth, territory, or possession of the United States, the District of Columbia.

Z. "State Psychology Regulatory Authority" means: the Board, office or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. "Telepsychology" means: the provision of psychological services using telecommunication technologies.

BB. "Temporary Authorization to Practice" means: a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this Compact, in another Compact State.

CC. "Temporary In-Person, Face-to-Face Practice" means: where a psychologist is physically present (not through the use of telecommunications technologies), in the Distant State to provide for the practice of psychology for 30 days within a calendar year and based on notification to the Distant State.

ARTICLE III. HOME STATE LICENSURE

A. The Home State shall be a Compact State where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist is physically present when the services are delivered as authorized by the Authority to Practice Interjurisdictional

Telepsychology under the terms of this Compact.

C. Any Compact State may require a psychologist not previously licensed in a Compact State to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

D. Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in a Compact State under circumstances not authorized by Temporary Authorization to Practice under the terms of this Compact.

E. A Home State's license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:

1. Currently requires the psychologist to hold an active E.Passport;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation FBI, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the Bylaws and Rules of the Commission.

F. A Home State's license grants Temporary Authorization to Practice to a psychologist in a Distant State only if the Compact State:

1. Currently requires the psychologist to hold an active IPC;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the

requirements of the Federal Bureau of Investigation FBI, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the Bylaws and Rules of the Commission.

ARTICLE IV. COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

B. To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR

b. A foreign college or university deemed to be equivalent to 1 (a) above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated,

organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degree and a minimum of one academic year of full-time graduate study for master's degree;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

4. Have no history of adverse action that violate the Rules of the Commission;

5. Have no criminal record history reported on an Identity History Summary that violates the Rules of the Commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

D. A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accordance with that state's due process law, limit

or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State, another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State, is restricted, suspended or otherwise limited, the E.Passport shall be revoked and therefore the psychologist shall not be eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.

ARTICLE V. COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

A. Compact States shall also recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice temporarily in other Compact States (Distant States) in which the psychologist is not licensed, as provided in the Compact.

B. To exercise the Temporary Authorization to Practice under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR

b. A foreign college or university deemed to be equivalent to 1 (a) above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent

to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degree;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

4. No history of adverse action that violate the Rules of the Commission;

5. No criminal record history that violates the Rules of the Commission;

6. Possess a current, active IPC;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. A psychologist practicing into a Distant State under the Temporary Authorization to Practice shall practice within the

scope of practice authorized by the Distant State.

D. A psychologist practicing into a Distant State under the Temporary Authorization to Practice will be subject to the Distant State's authority and law. A Distant State may, in accordance with that state's due process law, limit or revoke a psychologist's Temporary Authorization to Practice in the Distant State and may take any other necessary actions under the Distant State's applicable law to protect the health and safety of the Distant State's citizens. If a Distant State takes action, the state shall promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State, another Compact State, or any Temporary Authorization to Practice in any Distant State, is restricted, suspended or otherwise limited, the IPC shall be revoked and therefore the psychologist shall not be eligible to practice in a Compact State under the Temporary Authorization to Practice.

ARTICLE VI. CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE

A. A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the Rules of the Commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State;

2. Other conditions regarding telepsychology as determined by Rules promulgated by the Commission.

ARTICLE VII. ADVERSE ACTIONS

A. A Home State shall have the power to impose adverse action against a psychologist's license issued by the Home State. A Distant State shall have the power to take adverse action on a psychologist's Temporary Authorization to Practice within that Distant State.

B. A Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State. A Home State may take adverse action against a psychologist based on an adverse action taken by a Distant State regarding temporary in-person, face-to-face practice.

C. If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's Temporary Authorization to Practice is terminated and the IPC is revoked.

1. All Home State disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the Rules promulgated by the Commission. A Compact State shall report adverse actions in accordance with the Rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the Rules of the Commission.

3. Other actions may be imposed as determined by the Rules promulgated by the Commission.

D. A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a Receiving State as it would if such conduct had occurred by a licensee within the Home State. In such cases, the Home State's law shall control in determining any adverse action against a psychologist's license.

E. A Distant State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under Temporary Authorization Practice which occurred in that Distant State as it would if such conduct had occurred by a licensee within the Home State. In such cases, Distant State's law shall control in determining any adverse action against a psychologist's Temporary Authorization to Practice.

F. Nothing in this Compact shall override a Compact State's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the Compact State's law. Compact States must require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology or provide temporary psychological services under the Temporary Authorization to Practice in any other Compact State during the

term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a Compact State imposes an adverse action pursuant to subsection C, above.

ARTICLE VIII. ADDITIONAL AUTHORITIES INVESTED IN A COMPACT STATE'S PSYCHOLOGY REGULATORY AUTHORITY

A. In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority shall have the authority under this Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses, and/or the production of evidence from another Compact State shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice.

3. During the course of any investigation, a psychologist may not change his/her Home State licensure. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her Home State licensure. The Commission shall promptly notify the new Home State of any such decisions as provided in the Rules of the Commission. All information provided to the Commission or distributed by Compact States pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The Commission may

create additional rules for mandated or discretionary sharing of information by Compact States.

ARTICLE IX. COORDINATED LICENSURE INFORMATION SYSTEM

A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists individuals to whom this Compact is applicable in all Compact States as defined by the Rules of the Commission.

B. Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated Database on all licensees as required by the Rules of the Commission, including:

1. Identifying information;
2. Licensure data;
3. Significant investigatory information;
4. Adverse actions against a psychologist's license;
5. An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice is revoked;
6. Non-confidential information related to alternative program participation information;
7. Any denial of application for licensure, and the reasons for such denial; and
8. Other information which may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.

D. Compact States reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the Compact State reporting the information.

E. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information shall be removed from the Coordinated Database.

ARTICLE X. ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION

A. The Compact States hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

1. The Commission is a body politic and an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. The Commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's Commissioner. The State Psychology Regulatory Authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the Compact State. This delegate shall be limited to:

a. Executive Director, Executive Secretary or similar executive;

b. Current member of the State Psychology Regulatory Authority of a Compact State; OR

c. Designee empowered with the appropriate delegate authority to act on behalf of the Compact State.

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.

3. Each Commissioner shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of Bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

4. The Commission shall meet at least once during each

calendar year. Additional meetings shall be held as set forth in the Bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.

6. The Commission may convene in a closed, non-public meeting if the Commission must discuss:

a. Non-compliance of a Compact State with its obligations under the Compact;

b. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation against the Commission;

d. Negotiation of contracts for the purchase or sale of goods, services or real estate;

e. Accusation against any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person

participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the Commissioners, prescribe Bylaws and/or Rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:

a. for the establishment and meetings of other committees; and

b. governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any Compact State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

6. Promulgating a Code of Ethics to address permissible and prohibited activities of Commission members and employees;

7. Providing a mechanism for concluding the operations of

the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

8. The Commission shall publish its Bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compact States;

9. The Commission shall maintain its financial records in accordance with the Bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

D. The Commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rule shall have the force and effect of law and shall be binding in all Compact States;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Psychology Regulatory Authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compact State;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times

the Commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of Members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice and telepsychology practice.

E. The Executive Board

The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be comprised of six members:

a. Five voting members who are elected from the current membership of the Commission by the Commission;

b. One ex-officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

2. The ex-officio member must have served as staff or member on a State Psychology Regulatory Authority and will be selected by its respective organization.

3. The Commission may remove any member of the Executive Board as provided in Bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or Bylaws, changes to this Compact legislation, fees paid by Compact States such as annual dues, and any

other applicable fees;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or Bylaws.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.

3. The Commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all Compact States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Compact States, except by and with the authority of the Compact State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its Bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, Executive Director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, Executive Director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, Executive Director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE XI. RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant

to the criteria set forth in this Article and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or Rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission; and

2. On the website of each Compact States' Psychology Regulatory Authority or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons who submit comments independently of each other;

2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Compact State funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE XII. OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight

1. The Executive, Legislative and Judicial branches of state government in each Compact State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of remedying the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States, and all rights, privileges and benefits conferred by this Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.

4. A Compact State which has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the state of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a Compact State, the Commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a Compact State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and Bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XIII. DATE OF IMPLEMENTATION OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENTS

A. The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any Compact State may withdraw from this Compact by enacting a statute repealing the same.

1. A Compact State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a Non-Compact State which does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Compact States. No amendment to this Compact shall become effective and binding upon any Compact State until it is enacted into the law of all Compact States.

ARTICLE XIV. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining Compact States.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.028, eff. September 1, 2019.

Sec. 501.602. RULES ADOPTED UNDER COMPACT. The Psychology Interjurisdictional Compact Commission established under the Psychology Interjurisdictional Compact under Section 501.601 may not adopt rules that alter the requirements or scope of practice of a license issued under this chapter. Any rule adopted by the Psychology Interjurisdictional Compact Commission that purports to alter the requirements or scope of practice of a license issued under this chapter is not enforceable.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.028, eff. September 1, 2019.

Sec. 501.603. DISCLOSURE OF PERSONAL INFORMATION. (a) In

reporting information to the Coordinated Licensure Information System under Article IX of the Psychology Interjurisdictional Compact, the executive council may disclose personally identifiable information about a person who holds a license under this chapter, including the person's social security number.

(b) The Coordinated Licensure Information System may not share personally identifiable information with a state that is not a party to the compact unless the state agrees to not disclose that information to any other person.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.028, eff. September 1, 2019.

CHAPTER 502. MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. SHORT TITLE. This chapter may be cited as the Licensed Marriage and Family Therapist Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Marriage and Family Therapists.

(2) "Executive council" means the Texas Behavioral Health Executive Council.

(3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(34), eff. September 1, 2019.

(4) "Licensed marriage and family therapist" means a person who offers marriage and family therapy for compensation.

(5) "Licensed marriage and family therapist associate" means an individual who offers to provide marriage and family therapy for compensation under the supervision of a supervisor approved by the executive council.

(6) "Marriage and family therapy" means providing professional therapy services to individuals, families, or married couples, alone or in groups, that involve applying family systems theories and techniques. The term includes the evaluation, diagnostic assessment, and remediation of mental, cognitive, affective, behavioral, or relational dysfunction, disease, or

disorder in the context of marriage or family systems and may include the use of the Diagnostic and Statistical Manual of Mental Disorders and the International Classification of Diseases. The practice of marriage and family therapy does not constitute the practice of medicine and does not include prescribing medication, treating a physical disease, or providing any service outside the scope of practice of a licensed marriage and family therapist or a licensed marriage and family therapist associate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.252(a), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 1, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 501 (H.B. 2818), Sec. 1, eff. June 9, 2017.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.029, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(1), eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(34), eff. September 1, 2019.

Sec. 502.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) the activities, within the scope of a person's employment, of a person employed to perform marriage and family therapy by a federal, state, county, or municipal agency or, except as provided by Section 21.003(b), Education Code, by a public or private educational institution;

(2) the activities of a student, intern, or trainee in marriage and family therapy in a recognized course of study in marriage and family therapy at an accredited institution of higher education or other training institution, if:

(A) the activities constitute a part of the course of study; and

(B) the person is called a "marriage and family therapist intern" or similar title;

(3) the activities and services of a person licensed to practice another profession, including a physician, attorney, registered nurse, occupational therapist, psychologist, social worker, or licensed professional counselor; or

(4) the activities and services of a recognized religious practitioner, including a pastoral counselor or Christian Science practitioner recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal, if the practitioner practices marriage and family therapy in a manner consistent with the laws of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 34, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1134 (H.B. 1386), Sec. 6, eff. June 17, 2011.

SUBCHAPTER B. BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

Sec. 502.051. BOARD; MEMBERSHIP. (a) The Texas State Board of Examiners of Marriage and Family Therapists consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) five marriage and family therapist members; and

(2) four members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) In making appointments under Subsection (a)(1), the governor shall consider recommendations made by recognized professional associations of marriage and family therapists in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.052. MEMBERSHIP; RESTRICTIONS. (a) A board member appointed under Section 502.051(a)(1) must:

(1) be eligible for a license under this chapter; and

(2) have been engaged in the practice or education of marriage and family therapy for at least five years or have 5,000 hours of clinical experience in the practice of marriage and family therapy.

(b) One member appointed under Section 502.051(a)(1) must be a professional educator in marriage and family therapy.

(c) A person is not eligible for appointment as a public member of the board under Section 502.051(a)(2) if:

(1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or

(3) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the board; or

(C) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 4, eff. September 1, 2005.

Sec. 502.053. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health services; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

(c) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 5, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.030, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.031, eff. September 1, 2019.

Sec. 502.054. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.055. OFFICERS. (a) The governor shall designate a board member as the presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) At the meeting of the board held closest to August 31 of each year, the board shall elect one of its members as the assistant presiding officer. The assistant presiding officer serves as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the

qualifications required by Section 502.052;

(2) does not maintain during service on the board the qualifications required by Section 502.052;

(3) is ineligible for membership under Section 502.052(c) or 502.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term;

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board; or

(6) violates a prohibition established by Section 502.159.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director of the executive council has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 6, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.032, eff. September 1, 2019.

Sec. 502.057. COMPENSATION; REIMBURSEMENT. (a) A board member may not receive compensation for service on the board.

(b) A board member is entitled to reimbursement for expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 7, eff.

September 1, 2005.

Sec. 502.058. MEETINGS. (a) The board shall meet at least twice during each year.

(b) The board may meet at other times at the call of the presiding officer or as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 502.059. TRAINING REQUIREMENTS. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information,

administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the executive council shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 8, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.033, eff. September 1, 2019.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 502.151. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL. The executive council shall:

(1) determine the qualifications and fitness of a license applicant under this chapter; and

(2) adopt a code of professional ethics for license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.035, eff. September 1, 2019.

Sec. 502.1515. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(A) the qualifications necessary to obtain a license, including rules limiting an applicant's eligibility for a license based on the applicant's criminal history;

(B) the scope of practice of and standards of care and ethical practice for marriage and family therapy; and

(C) continuing education requirements for license holders; and

(2) a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.036, eff. September 1, 2019.

Sec. 502.155. POWERS AND DUTIES REGARDING EXAMINATION. The executive council shall:

(1) determine the times and places for licensing examinations;

(2) offer examinations at least semiannually; and

(3) give reasonable public notice of the examinations in the manner provided by executive council rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.037, eff. September 1, 2019.

Sec. 502.159. EX PARTE COMMUNICATION PROHIBITED. A member of the executive council or board or an employee of the executive council who is assigned to make a decision, a finding of fact, or a conclusion of law in a proceeding pending before the executive council may not directly or indirectly communicate with a party to the proceeding or the party's representative unless notice and an opportunity to participate are given to each party to the proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.038, eff. September 1, 2019.

SUBCHAPTER F. LICENSE REQUIREMENTS AND EXEMPTIONS

Sec. 502.251. LICENSE REQUIRED. (a) A person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Section 502.004.

(b) A person may not use the title "licensed marriage and family therapist" or "licensed marriage and family therapist associate," as appropriate, unless the person is licensed under this chapter.

(c) A person may not use a title that implies that the person is licensed or certified in marriage and family therapy unless the person is:

(1) licensed under this chapter; or

(2) authorized to perform marriage and family therapy in the course and scope of another license issued under a law of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.254(a), eff. Sept. 1, 2001.

Sec. 502.252. LICENSE APPLICATION. (a) An applicant for a license must:

(1) file a written application with the executive council on a form prescribed by the executive council; and

(2) pay the appropriate application fee.

(b) To qualify for a license as a licensed marriage and family therapist associate, a person must:

(1) be at least 18 years of age;

(2) have completed a graduate internship in marriage and family therapy, or an equivalent internship, as approved by the executive council;

(3) pass the license examination and jurisprudence examination determined by the board;

(4) hold a master's or doctoral degree in marriage and family therapy or in a related mental health field with coursework

and training determined by the executive council to be substantially equivalent to a graduate degree in marriage and family therapy from a regionally accredited institution of higher education or an institution of higher education approved by the executive council;

(5) have not been convicted of a felony or a crime involving moral turpitude;

(6) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(7) not have had a license or certification revoked by a licensing agency or by a certifying professional organization; and

(8) not have engaged in fraud or deceit in applying for a license under this chapter.

(c) An applicant is eligible to apply for a license as a licensed marriage and family therapist if the person:

(1) meets the requirements of Subsection (b);

(2) after receipt of a degree described by Subsection (b)(4), has completed two years of work experience in marriage and family therapist services that includes at least 3,000 hours of clinical practice consisting of at least 1,500 hours of direct clinical services, including a minimum number of hours providing direct clinical services to couples or families as required by executive council rule; and

(3) has completed, in a manner acceptable to the executive council, at least 200 hours of supervised provision of direct clinical services by the applicant, 100 hours of which must be supervised on an individual basis.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.255(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 13, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.039, eff. September 1, 2019.

Sec. 502.253. APPLICATION REVIEW; ELIGIBILITY EXAMINATION. (a) The executive council shall investigate each application and any other information submitted by the applicant.

(b) Not later than the 90th day after the date the executive council receives the completed application from a person seeking a license as a licensed marriage and family therapist associate, the executive council shall notify the applicant whether the application has been accepted or rejected.

(c) An applicant for a license as a licensed marriage and family therapist associate is eligible to take the examination if the applicant:

(1) is enrolled in a graduate internship described by Section 502.252(b)(2) and provides proof to the executive council that the applicant is a student in good standing in an educational program described by Section 502.252(b)(4); or

(2) has completed the internship described by Subdivision (1).

(d) A notice that an application is rejected must state the reason for the rejection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.255(a), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.040, eff. September 1, 2019.

Sec. 502.254. LICENSE EXAMINATION. (a) Each applicant for a license under this chapter must pass an examination described by Section 502.252(b)(3).

(b) An applicant for a license as a licensed marriage and family therapist associate under Section 502.252(b) must:

(1) file an application on a form prescribed by the executive council not later than the 90th day before the date of the examination; and

(2) pay the examination fee.

(c) The examination consists of a written examination.

(d) The executive council shall have any written portion of an examination validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.255(a), eff. Sept. 1, 2001.

Amended by:
Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 14, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 15, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.094, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.041, eff. September 1, 2019.

Sec. 502.2541. JURISPRUDENCE EXAMINATION. (a) The board shall develop a jurisprudence examination to determine an applicant's knowledge of this chapter, rules adopted under this chapter, and any other applicable laws of this state affecting the applicant's practice of marriage and family therapy. The executive council shall administer the examination at least twice each calendar year.

(b) The executive council shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 16, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.042, eff. September 1, 2019.

Sec. 502.2545. WAIVER OF EXAMINATION FOR CERTAIN APPLICANTS. (a) The executive council may waive the requirement that an applicant for a license as a licensed marriage and family therapist pass the examination required by Section 502.254 if the applicant:

(1) is a provisional license holder under Section 502.259 and the executive council determines that the applicant possesses sufficient education and professional experience to receive a license without further examination; or

(2) holds a license issued by another licensing agency in a profession related to the practice of marriage and family therapy and

the executive council determines that the applicant possesses sufficient education and professional experience to receive a license without satisfying the examination requirements of this chapter.

(b) The executive council may adopt rules necessary to administer this section, including rules under Subsection (a)(2) prescribing the professions that are related to the practice of marriage and family therapy.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.256(a), eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.043, eff. September 1, 2019.

Sec. 502.257. ISSUANCE OF LICENSE. The executive council shall issue a license as a licensed marriage and family therapist associate or licensed marriage and family therapist, as appropriate, to an applicant who:

(1) complies with the requirements of this chapter;

(2) passes the licensing examination, unless the executive council exempts the person from the examination requirement; and

(3) pays the required fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.257(a), eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.044, eff. September 1, 2019.

Sec. 502.258. TEMPORARY LICENSE. (a) The executive council by rule may provide for the issuance of a temporary license.

(b) Rules adopted under this section must include a time limit for temporary licenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.045, eff. September 1, 2019.

Sec. 502.259. PROVISIONAL LICENSE. (a) The executive council may grant a provisional license to practice as a marriage and family therapist in this state without examination to an applicant who is licensed or otherwise registered as a marriage and family therapist by another state or jurisdiction if the requirements to be licensed or registered in the other state or jurisdiction were, on the date the person was licensed or registered, substantially equal to the requirements of this chapter.

(b) An applicant for a provisional license must:

(1) be licensed in good standing as a marriage and family therapist in another state or jurisdiction that has licensing requirements that are substantially equal to the requirements of this chapter;

(2) have passed a national or other examination that:

(A) is recognized by the executive council; and

(B) relates to marriage and family therapy; and

(3) be sponsored by a person licensed by the executive council with whom the provisional license holder may practice under this section.

(c) An applicant may be excused from the requirement of Subsection (b)(3) if the executive council determines that compliance with that subsection constitutes a hardship to the applicant.

(d) A provisional license is valid until the date the executive council approves or denies the provisional license holder's application for a license under Section 502.257. The executive council shall complete processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The executive council may extend this period to allow for the receipt and tabulation of pending examination results.

(e) The executive council shall issue a license under Section 502.257 to a provisional license holder if:

(1) the provisional license holder passes the examination required by Section 502.254;

(2) the executive council verifies that the provisional license holder satisfies the academic and experience requirements of this chapter; and

(3) the provisional license holder satisfies any other

license requirements under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.046, eff. September 1, 2019.

Sec. 502.260. INACTIVE STATUS. (a) The executive council may place a license holder's license under this chapter on inactive status if the holder is not actively engaged in the practice of marriage and family therapy and the holder submits a written request to the executive council before the expiration of the holder's license.

(b) The executive council shall maintain a list of each license holder whose license is on inactive status.

(c) A license holder whose license is on inactive status:

(1) is not required to pay a renewal fee; and

(2) may not perform an activity regulated under this chapter.

(d) The executive council shall remove the license holder's license from inactive status if the person:

(1) notifies the executive council in writing that the person intends to return to active practice;

(2) pays an administrative fee; and

(3) complies with educational or other requirements the executive council adopts by rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.095, eff. April 2, 2015.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.047, eff. September 1, 2019.

Sec. 502.261. DUTIES OF LICENSE HOLDER. (a) A license holder shall display the license holder's license in a conspicuous manner in the person's principal place of practice.

(b) Each license holder shall notify the executive council of the license holder's current address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.048, eff. September 1, 2019.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 502.301. RENEWAL OF LICENSE. (a) A license issued under this chapter is subject to biennial renewal. The executive council shall adopt a system under which licenses expire on various dates during the year.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(50), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(50), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(50), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(50), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 17, eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.049, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(50), eff. September 1, 2019.

SUBCHAPTER H. DISCIPLINARY ACTIONS

Sec. 502.351. GROUNDS FOR DISCIPLINARY ACTIONS. The executive council shall take disciplinary action under Subchapter G, Chapter 507, against a license holder who:

(1) is convicted of a misdemeanor involving moral turpitude or a felony;

(2) obtains or attempts to obtain a license by fraud or deception;

(3) uses drugs or alcohol to an extent that affects the license holder's professional competence;

(4) performs professional duties in a grossly negligent manner;

(5) is adjudicated as mentally incompetent by a court;

(6) practices in a manner that is detrimental to the public health or welfare;

(7) advertises in a manner that tends to deceive or defraud the public;

(8) has a license or certification revoked by a licensing agency or a certifying professional organization;

(9) violates this chapter or a rule or code of ethics adopted under this chapter; or

(10) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 19, eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.051, eff. September 1, 2019.

Sec. 502.357. GROUNDS FOR REFUSING RENEWAL. The executive council may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter H, Chapter 507, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 20, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.052, eff. September 1, 2019.

Sec. 502.358. REFUND. (a) Subject to Subsection (b), the executive council may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Subchapter H, Chapter 507.

(b) The amount of a refund ordered as provided in an agreement

resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The executive council may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 1061 (H.B. 1413), Sec. 20, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.053, eff. September 1, 2019.

SUBCHAPTER J. CRIMINAL PENALTY

Sec. 502.454. CRIMINAL PENALTY. (a) A person required to hold a license under this chapter commits an offense if the person knowingly acts as a marriage and family therapist without holding a license issued under this chapter.

(b) An offense under Subsection (a) is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 503. LICENSED PROFESSIONAL COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 503.001. SHORT TITLE. This chapter may be cited as the Licensed Professional Counselor Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.002. GENERAL DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Examiners of Professional Counselors.

(1-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(6), eff. April 2, 2015.

(2) "Executive council" means the Texas Behavioral Health Executive Council.

(3) "Graduate semester hour" means a semester hour or the quarter hour equivalent as defined by regional accrediting educational associations when applied only to domestic training programs.

(4) "Licensed professional counselor" means a person who holds a license issued under this chapter and who:

(A) represents the person to the public by any title or description of services incorporating the words "licensed counselor" and offers to provide professional counseling services to any individual, couple, family, group, or other entity for compensation, implying that the person offering the services is licensed and trained, experienced, or expert in counseling; or

(B) engages in any practice of counseling.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(6), eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.055, eff. September 1, 2019.

Sec. 503.003. DEFINITION: PRACTICE OF PROFESSIONAL COUNSELING. (a) In this chapter, "practice of professional counseling" means the application of mental health, psychotherapeutic, and human development principles to:

(1) facilitate human development and adjustment throughout life;

(2) prevent, assess, evaluate, and treat mental, emotional, or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement, and evaluate treatment plans using counseling treatment interventions that include:

(A) counseling;

(B) assessment;

(C) consulting; and

(D) referral.

(b) In this section:

(1) "Assessment" means the selection, administration, scoring, and interpretation of an instrument designed to assess an

individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics, disabilities, and mental, emotional, and behavioral disorders, and the use of methods and techniques for understanding human behavior that may include the evaluation, assessment, and treatment by counseling methods, techniques, and procedures for mental and emotional disorders, alcoholism and substance abuse, and conduct disorders. The term does not include the use of standardized projective techniques or permit the diagnosis of a physical condition or disorder.

(2) "Consulting" means applying scientific principles and procedures in counseling and human development to assist in understanding and solving current or potential problems that the person seeking consultation may have with regard to another person, including an individual, group, or organization.

(3) "Counseling" means assisting a client through a therapeutic relationship, using a combination of mental health and human development principles, methods, and techniques, including the use of psychotherapy, to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(4) "Counseling treatment intervention" means the application of cognitive, affective, behavioral, psychodynamic, and systemic counseling strategies, including strategies for developmental, wellness, and psychological dysfunction that reflect a pluralistic society. The term does not permit or include the diagnosis or treatment of a physical condition or disorder. The term includes:

(A) an intervention specifically implemented in the context of a professional counseling relationship;

(B) individual, group, or family counseling or psychotherapy;

(C) the assessment, evaluation, and treatment of a person with a mental, emotional, or behavioral disorder;

(D) guidance and consulting to facilitate normal growth and development, including educational and career development;

(E) the use of functional assessment and counseling for a person requesting assistance in adjustment to a disability or handicapping condition;

(F) research; and

(G) referrals.

(5) "Referral" means:

(A) evaluating and identifying the needs of a person being counseled to determine the advisability of referral to another specialist;

(B) informing the person of that judgment; and

(C) communicating to the person to whom the referral is made as requested by the person being counseled or as appropriate.

(c) The use of specific methods, techniques, or modalities within the practice of professional counseling is limited to professional counselors appropriately trained in the use of those methods, techniques, or modalities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.004. PRACTICE OF MEDICINE NOT AUTHORIZED. This chapter does not authorize the practice of medicine as defined by the law of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. APPLICATION OF CHAPTER

Sec. 503.051. COUNSELING FOR GOVERNMENT OR EDUCATIONAL INSTITUTION. This chapter does not apply to an activity, service, or use of an official title by a person employed as a counselor by a federal, state, county, or municipal agency or, except as provided by Section 21.003(b), Education Code, by a public or private educational institution if the person is performing counseling or counseling-related activities within the scope of the person's employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 443 (S.B. 715), Sec. 40, eff. June 14, 2013.

Sec. 503.052. COUNSELOR INTERN. This chapter does not apply to an activity or service of a student, intern, or trainee in counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution if:

(1) the activity or service is a part of the supervised course of study; and

(2) the person is designated as a "counselor intern."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.054. COUNSELING BY OTHER LICENSED OR CERTIFIED PROFESSIONAL OR BY RELIGIOUS PRACTITIONER. This chapter does not apply to an activity or service of any of the following persons performing counseling consistent with the law of this state, the person's training, and any code of ethics of the person's profession if the person does not represent the person by any title or description as described by the definition of "licensed professional counselor" in Section 503.002:

(1) a member of another profession licensed or certified by this state, including:

(A) a physician, registered nurse, psychologist, social worker, marriage and family therapist, chemical dependency counselor, physician assistant, or occupational therapist; or

(B) an optometrist engaged in the evaluation and remediation of learning or behavioral disabilities associated with or caused by a defective or abnormal condition of vision; or

(2) a recognized religious practitioner, including a Christian Science practitioner recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.055. PERSON LICENSED TO PRACTICE LAW. This chapter does not apply to an activity, service, title, or description of a person licensed to practice law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.056. COUNSELING FOR NONPROFIT ORGANIZATION OR CHARITY. This chapter does not apply to an activity, service, title, or description of a person who is employed as a professional by or who

volunteers in the practice of counseling for a public or private nonprofit organization or charity if the person:

(1) is accountable to the person's sponsoring organization; and

(2) does not use the title or hold the person out to be a licensed counselor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.057. COUNSELING UNDER OTHER CERTIFICATION. This chapter does not apply to an activity, service, title, or description of a person certified by the Commission on Rehabilitation Counselor Certification or the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists who:

(1) is performing counseling consistent with state law, the person's training, and any code of ethics of the person's profession; and

(2) does not use the title or hold the person out to be a licensed counselor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.059. EXEMPT PERSON VOLUNTARILY LICENSED UNDER CHAPTER. A person otherwise exempt under this subchapter who obtains a license under this chapter is subject to this chapter to the same extent as any other person licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.060. MUSICAL THERAPY SERVICES. This chapter does not apply to an activity, service, title, or description of a person who:

(1) is certified by the Certification Board for Music Therapists or listed with the National Music Therapy Registry;

(2) performs a music therapy service consistent with:

(A) state law;

(B) the person's training; and

(C) the code of ethics of the person's profession; and

(3) does not engage in the use of psychotherapy or use the

title of licensed counselor or represent that the person is a licensed counselor.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.258(a), eff. Sept. 1, 2001.

SUBCHAPTER C. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

Sec. 503.101. BOARD MEMBERSHIP. (a) The Texas State Board of Examiners of Professional Counselors consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) five licensed professional counselor members, at least three of whom are in private practice and at least one of whom is a counselor educator; and

(2) four members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 3, eff. September 1, 2005.

Sec. 503.102. MEMBERSHIP QUALIFICATIONS. (a) To be qualified for appointment as a licensed professional counselor member of the board, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months preceding appointment;

(2) have engaged in the field of counseling for at least 24 months or 2,000 hours; and

(3) be licensed under this chapter.

(b) To be qualified for appointment as a public member of the board, a person must:

(1) be a citizen of the United States and a resident of this state for the 30 months preceding appointment; and

(2) be at least 18 years old.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.103. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if:

(1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or

(3) the person or the person's spouse:

(A) is employed by or participates in the management of a business entity or other organization receiving funds from the board;

(B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the board; or

(C) uses or receives a substantial amount of funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 4, eff. September 1, 2005.

Sec. 503.104. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, manager, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

(c) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 5, eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.056, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.057, eff. September 1, 2019.

Sec. 503.105. TERMS. Board members serve staggered six-year terms with the terms of three members expiring on February 1 of each odd-numbered year. In making an appointment to the board, the governor shall specify which member the new appointee succeeds.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.106. OFFICERS. (a) The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the will of the governor.
(b) The board shall elect an assistant presiding officer to serve as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.107. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:
(1) does not have at the time of taking office the qualifications required by Section 503.102;
(2) does not maintain during the service on the board the qualifications required by Section 503.102;
(3) is ineligible for membership under Section 503.103 or 503.104;
(4) cannot, because of illness or disability, discharge the

member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a member of the board exists.

(c) If the executive director of the executive council has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.260(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 6, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.058, eff. September 1, 2019.

Sec. 503.108. REIMBURSEMENT. A board member may receive reimbursement for expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 7, eff. September 1, 2005.

Sec. 503.109. MEETINGS. The board shall hold at least two regular meetings each year as provided by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.110. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the

travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the executive council shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 8, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 25(2), eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.059, eff. September 1, 2019.

Sec. 503.111. OFFICIAL OATH. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 503.201. GENERAL POWERS AND DUTIES OF EXECUTIVE COUNCIL. (a) The executive council shall:

(1) determine the qualifications and fitness of an applicant for a license, license renewal, or provisional license;

(2) examine for, deny, approve, issue, revoke, suspend, suspend on an emergency basis, place on probation, and renew the license of an applicant or license holder under this chapter;

(3) adopt and publish a code of ethics; and

(4) by rule adopt a list of authorized counseling methods or practices that a license holder may undertake or perform.

(b) The executive council may request and shall receive the assistance of a state educational institution or other state agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.061, eff. September 1, 2019.

Sec. 503.2015. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(A) the qualifications necessary to obtain a license, including rules limiting an applicant's eligibility for a license based on the applicant's criminal history;

(B) the scope of practice of and standards of care and ethical practice for professional counseling; and

(C) continuing education requirements for license holders; and

(2) a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.062, eff. September 1, 2019.

Sec. 503.208. COMPETENT PERFORMANCE OF PROFESSIONAL DUTIES. The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. LICENSE REQUIREMENTS

Sec. 503.301. LICENSE REQUIRED. A person may not engage in the practice of professional counseling unless the person is:

(1) licensed under this chapter; or

(2) exempt from this chapter under Subchapter B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.302. QUALIFICATIONS FOR LICENSE. (a) A person

qualifies for a license under this chapter if the person:

(1) is at least 18 years old;

(2) has a master's or doctoral degree in counseling or a related field;

(3) has successfully completed a graduate degree at a regionally accredited institution of higher education and the number of graduate semester hours required by executive council rule, which may not be less than 48 hours and must include 300 clock hours of supervised practicum that:

(A) is primarily counseling in nature; and

(B) meets the specific academic course content and training standards established by the executive council;

(4) has completed the number of supervised experience hours required by executive council rule, which may not be less than 3,000 hours working in a counseling setting that meets the requirements established by the executive council after the completion of the graduate program described by Subdivision (3);

(5) passes the license examination and jurisprudence examination required by this chapter;

(6) submits an application as required by the executive council, accompanied by the required application fee; and

(7) meets any other requirement prescribed by the executive council.

(b) In establishing the standards described by Subsection (a)(3)(B), the executive council shall review and consider the standards as developed by the appropriate professional association.

(c) The executive council may require the statements on a license application to be made under oath.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.263(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 15, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 25(3), eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.063, eff. September 1, 2019.

Sec. 503.3025. EXPERIENCE REQUIRED TO ACT AS SUPERVISOR. The executive council shall allow a license holder who has practiced as a licensed counselor in another state to count that out-of-state experience toward any experience that the license holder is required by executive council rule to obtain to act as a supervisor under this chapter if the executive council determines that the other state has license requirements substantially equivalent to the requirements of this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.064, eff. September 1, 2019.

Sec. 503.303. SPECIALIZATION IN ART THERAPY. (a) A person qualifies for a license as a professional counselor with a specialization in art therapy if the person:

(1) meets the requirements for a license under Section 503.302;

(2) holds:

(A) a master's or doctoral degree in art therapy that includes at least 700 hours of supervised practicum from an accredited institution; or

(B) a master's degree in a counseling-related field if the person has completed at least:

(i) 21 semester hours of sequential course work in the history, theory, and practice of art therapy; and

(ii) 700 hours of supervised practicum from an accredited institution;

(3) completes the following postgraduate experience in addition to the requirements of Subdivision (2) under the supervision of a licensed professional counselor with a specialization in art therapy:

(A) at least 1,000 client contact hours, if the applicant holds a degree described by Subdivision (2)(A); or

(B) at least 2,000 client contact hours, if the applicant holds a degree described by Subdivision (2)(B); and

(4) demonstrates successful completion of the national Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The executive council shall accept an individual course

from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements under Section 503.302(a)(3) if at least 75 percent of the course content is substantially equivalent to the content of a course required by executive council rule.

(c) Repealed by Acts 2005, 79th Leg., Ch. 561, Sec. 25(4), eff. September 1, 2005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 25(4), eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.065, eff. September 1, 2019.

Sec. 503.304. REVIEW OF APPLICATION. (a) Not later than the 30th day before the examination date, after investigation of a license application and review of other evidence submitted, the executive council shall notify the applicant that the application and evidence submitted are:

(1) satisfactory and accepted; or

(2) unsatisfactory and rejected.

(b) If the executive council rejects an application, the executive council shall state in the notice the reasons for the rejection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.066, eff. September 1, 2019.

Sec. 503.305. LICENSE EXAMINATION. (a) The executive council shall administer examinations to determine the competence of qualified applicants at least twice each calendar year.

(b) The executive council shall contract with a nationally recognized testing organization to develop and administer a written professional counselor licensing examination to applicants who apply for a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 16, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 25(5), eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.067, eff. September 1, 2019.

Sec. 503.3055. JURISPRUDENCE EXAMINATION. (a) The board shall develop a jurisprudence examination to determine an applicant's knowledge of this chapter, executive council rules, and any other applicable laws of this state affecting the applicant's professional counseling practice. The executive council shall administer the examination at least twice each calendar year.

(b) The executive council shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 17, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.068, eff. September 1, 2019.

Sec. 503.308. TEMPORARY LICENSE. (a) The executive council by rule may provide for the issuance of a temporary license. Rules adopted under this subsection must provide a time limit for the period a temporary license is valid.

(b) The executive council by rule may adopt a system under which a temporary license may be issued to a person who:

(1) meets all of the academic requirements for licensing; and

(2) enters into a supervisory agreement with a supervisor approved by the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.069, eff. September 1, 2019.

Sec. 503.310. PROVISIONAL LICENSE. (a) On application and payment of applicable fees, the executive council may issue a provisional license to a person who holds a license as a counselor or art therapist issued by another state or by a jurisdiction acceptable to the executive council.

(b) An applicant for a provisional license must:

(1) be licensed in good standing as a counselor or art therapist in another state, territory, or jurisdiction that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) have passed the required license examination; and

(3) be sponsored by a person licensed under this chapter with whom the applicant may practice under a provisional license.

(c) An applicant is not required to comply with Subsection (b)(3) if the executive council determines that compliance with that subsection is a hardship to the applicant.

(d) A provisional license is valid until the date the executive council approves or denies the provisional license holder's application for a license under Section 503.311.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 19, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.070, eff. September 1, 2019.

Sec. 503.311. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. (a) The executive council shall issue a license to the holder of a provisional license who applies for a license if:

(1) the executive council verifies that the applicant has the academic and experience requirements for a regular license under this chapter; and

(2) the applicant satisfies any other license requirements

under this chapter.

(b) The executive council must complete the processing of a provisional license holder's application for a license not later than the later of:

(1) the 180th day after the date the provisional license is issued; or

(2) the date licenses are issued following completion of the next licensing and jurisprudence examinations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.071, eff. September 1, 2019.

Sec. 503.312. INACTIVE STATUS. (a) On request of a person licensed under this chapter, the executive council shall place the person's license on inactive status.

(b) A person whose license is inactive:

(1) foregoes the licensing rights granted under this chapter; and

(2) is not required to pay a license renewal fee or any penalty fee.

(c) A person whose license is inactive may apply to reactivate the license. The executive council shall reactivate the license if the applicant:

(1) pays a license fee;

(2) is not in violation of this chapter when the applicant applies to reactivate the license; and

(3) fulfills the requirements provided by executive council rule for the holder of an inactive license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.072, eff. September 1, 2019.

Sec. 503.313. RETIREMENT STATUS. The executive council by rule may adopt a system for placing a person licensed under this chapter on retirement status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.073, eff. September 1, 2019.

Sec. 503.314. DISPLAY AND SURRENDER OF LICENSE CERTIFICATE. (a) A person licensed under this chapter shall display the person's license certificate in an appropriate and public manner.

(b) A license certificate issued by the executive council is the property of the executive council and must be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.074, eff. September 1, 2019.

SUBCHAPTER H. LICENSE RENEWAL

Sec. 503.351. RENEWAL; ELIGIBILITY. A person licensed under this chapter may renew the license biennially if the person:

(1) is not in violation of this chapter when the person applies for renewal; and

(2) fulfills the continuing education requirements established by the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 20, eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.075, eff. September 1, 2019.

Sec. 503.352. LICENSE EXPIRATION DATE. The executive council shall adopt a system under which licenses expire on various dates during the year. On renewal of the license on the expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.264(a), eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.076, eff. September 1, 2019.

Sec. 503.353. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the expiration date of a person's license, the executive council shall send written notice of the impending license expiration to the person at the person's last known address according to the executive council's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.077, eff. September 1, 2019.

SUBCHAPTER I. DISCIPLINARY ACTIONS

Sec. 503.401. DISCIPLINARY ACTIONS. (a) A person licensed under this chapter is subject to disciplinary action under Subchapter G, Chapter 507, if the person:

(1) violates this chapter or a rule or code of ethics adopted under this chapter;

(2) commits an act for which the license holder would be liable under Chapter 81, Civil Practice and Remedies Code;

(3) is legally committed to an institution because of mental incompetence from any cause; or

(4) directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a patient or patronage.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(80), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(80), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(80), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.079, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(80), eff. September 1, 2019.

Sec. 503.407. REFUND. (a) Subject to Subsection (b), the executive council may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Subchapter H, Chapter 507.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The executive council may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 561 (H.B. 1283), Sec. 22, eff. September 1, 2005.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.080, eff. September 1, 2019.

SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 503.452. CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly:

(1) engages in the practice of professional counseling without holding a license under this chapter;

(2) represents the person by the title "Licensed Professional Counselor" or "Licensed Counselor" without holding a license under this chapter;

(3) represents the person by the title "Licensed Professional Counselor -- Art Therapist," "Art Therapist," or by the initials "L.P.C. -- A.T." or "A.T." without:

(A) holding a license with a specialization in art therapy under Section 503.303; or

(B) holding a license under Section 503.309; or

(4) uses any title, words, letters, or abbreviations that imply that the person is licensed under this chapter if the person is

not licensed under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 503.453. REPORT OF ALLEGED OFFENSE. The executive council shall notify the appropriate prosecuting attorney of an alleged offense committed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.081, eff. September 1, 2019.

CHAPTER 504. CHEMICAL DEPENDENCY COUNSELORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITIONS. In this chapter:

(1) "Certified clinical supervisor" means a person certified in accordance with Section 504.1521.

(2) "Chemical dependency counseling" means assisting an individual or group to:

(A) develop an understanding of chemical dependency problems;

(B) define goals; and

(C) plan action reflecting the individual's or group's interest, abilities, and needs as affected by claimed or indicated chemical dependency problems.

(3) "Chemical dependency counselor" means a person licensed under this chapter.

(4) "Clinical training institution" means a person registered with the department in accordance with Section 504.1521 to supervise a counselor intern.

(5) "Commissioner" means the commissioner of state health services.

(6) "Counselor intern" means a person registered with the department in accordance with Section 504.1515.

(7) "Department" means the Department of State Health Services.

(8) "Executive commissioner" means the executive

commissioner of the Health and Human Services Commission.

(9) "Peer assistance program" means a program approved by the department under Section 504.057.

(10) "Person" means an individual, corporation, partnership, association, or other business or professional entity.

(11) "Practice of chemical dependency counseling" means providing or offering to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency counseling profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1172, Sec. 1, eff. Sept. 1, 2004. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 1, eff. September 1, 2007.

Sec. 504.002. EXEMPTIONS; APPLICABILITY. (a) A person is exempt from this chapter if the person does not:

(1) directly or indirectly represent to the public that the person is licensed under this chapter; and

(2) use any name, title, or designation indicating that the person is licensed under this chapter.

(b) This chapter does not apply to an activity or service of a person who:

(1) is employed as a counselor by a federal institution and is providing chemical dependency counseling within the scope of the person's employment;

(2) except as provided by Section 504.1515, is a student, intern, or trainee pursuing a supervised course of study in counseling at a regionally accredited institution of higher education or training institution, if the person:

(A) is designated as a "counselor intern"; and

(B) is engaging in the activity or providing the service as part of the course of study;

(3) is not a resident of this state, if the person:

(A) engages in the activity or provides the service in this state for not more than 30 days during any year; and

(B) is authorized to engage in the activity or provide the service under the law of the state of the person's residence;

(4) is a licensed physician, psychologist, professional counselor, or social worker;

(5) is a religious leader of a congregation providing pastoral chemical dependency counseling within the scope of the person's duties;

(6) is working for or providing counseling with a program exempt under Subchapter C, Chapter 464, Health and Safety Code;

(7) is a school counselor certified by the State Board for Educator Certification; or

(8) provides chemical dependency counseling through a program or in a facility that receives funding from the Texas Department of Criminal Justice and who is credentialed as:

(A) a certified criminal justice addictions professional by the International Certification and Reciprocity Consortium; or

(B) having certified criminal justice professional applicant status issued by the Texas Certification Board of Addiction Professionals.

(c) A person exempt under this section who obtains a license under this chapter is subject to this chapter to the same extent as any other person who obtains a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1107, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 2, eff. June 17, 2011.

SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT

Sec. 504.051. GENERAL POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. The executive commissioner shall:

(1) adopt rules as necessary for the performance of its duties under this chapter;

(2) establish standards of conduct and ethics for persons licensed under this chapter; and

(3) establish any additional criteria for peer assistance

programs for chemical dependency counselors that the executive commissioner determines necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.0515. GENERAL POWERS AND DUTIES OF DEPARTMENT. The department shall:

(1) enforce rules as necessary for the performance of its duties under this chapter; and

(2) ensure strict compliance with and enforcement of this chapter.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.052. DISCRIMINATION PROHIBITED. In taking an action or making a decision under this chapter, the executive commissioner, commissioner, and department shall do so without regard to the sex, race, religion, national origin, color, or political affiliation of the person affected. For purposes of this section, taking an action or making a decision under this chapter includes:

(1) considering a license application;

(2) conducting an examination;

(3) adopting or enforcing a rule; and

(4) conducting a disciplinary proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.053. FEES; ACCOUNT. (a) The executive commissioner by rule shall set application, examination, license renewal, and other fees in amounts sufficient to cover the costs of administering

this chapter. The fees for the issuance or renewal of a license under this chapter shall be set in amounts designed to allow the department to recover from the license holders all of the direct and indirect costs to the department in administering and enforcing this chapter.

(b) General revenue taxes may not be used to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.108, eff. April 2, 2015.

Sec. 504.054. COLLECTION ACTION. A district court in Travis County has exclusive jurisdiction of an action to collect an obligation owed to the department, including an administrative penalty assessed under Subchapter G.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.055. OFFICIAL ROSTER. (a) The department may prepare and publish a roster showing the name and address, as reflected by the department's records, of each chemical dependency counselor.

(b) If the department publishes a roster under this section, the department shall mail a copy of the roster to each person licensed by the department and shall file a copy of the roster with the secretary of state.

(c) A person's name and address may appear in the roster only if each fee assessed against the person under this chapter is current and paid in full at the time the roster is sent to the printer or publisher.

(d) The department may charge a fee in an amount set by the executive commissioner by rule for the roster published under this section.

(e) The department may not include the home address of a person licensed by the department in a roster the department publishes on the department's Internet website unless the person requests that the person's home address appear in the roster on the website. A request under this subsection must be made in the manner prescribed by the department.

(f) The home address of a person licensed under this chapter that is included in a roster the department prepares under this section is public information and is not excepted from required disclosure under Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.109, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 91 (H.B. 125), Sec. 3, eff. September 1, 2019.

Sec. 504.056. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt a rule restricting advertising or competitive bidding by a person regulated by the department under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) The executive commissioner may not include in rules adopted under this chapter a rule that:

(1) restricts the person's use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.057. APPROVAL OF PEER ASSISTANCE PROGRAMS. (a) The department shall approve one or more peer assistance programs established by the department or a professional association in accordance with Chapter 467, Health and Safety Code, from which persons licensed under this chapter may seek assistance.

(b) The department shall approve a peer assistance program that:

(1) meets the minimum criteria established by the executive commissioner or department under Chapter 467, Health and Safety Code;

(2) meets any additional criteria established by the executive commissioner or department for chemical dependency counselors licensed under this chapter; and

(3) is designed to assist a chemical dependency counselor whose ability to perform a professional service is impaired by abuse of or dependency on drugs or alcohol.

(c) The department shall maintain a list of approved peer assistance programs for licensed chemical dependency counselors on the department's Internet website.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.058. FUNDING FOR CHEMICAL DEPENDENCY COUNSELOR PROGRAMS. (a) The executive commissioner shall add a surcharge of not more than $10 to the license or license renewal fee for a license under this chapter to fund approved peer assistance programs for chemical dependency counselors. Money collected from the surcharge shall be remitted to the comptroller for deposit to the credit of the chemical dependency counselor account. The chemical dependency counselor account is an account in the general revenue fund.

(b) Subject to the General Appropriations Act, the department may use the money from the surcharge collected under this section and deposited in the chemical dependency counselor account only to fund approved peer assistance programs and to pay the administrative costs incurred by the department that are related to the programs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 3, eff. June 17, 2011.

SUBCHAPTER C. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 504.101. CONSUMER INTEREST INFORMATION. (a) The department shall prepare information of consumer interest describing the regulatory functions of the department and the procedures by which consumer complaints are filed with and resolved by the department.

(b) The department shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.102. CONSUMER INFORMATION FOR FILING COMPLAINTS. Each person licensed under this chapter shall display prominently at all times in the person's place of business a sign containing:

(1) the name, mailing address, and telephone number of the department; and

(2) a statement informing a consumer that a complaint against a person licensed under this chapter may be directed to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

Sec. 504.103. RECORDS OF COMPLAINTS. (a) The department shall keep information about each complaint filed with the department. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the department took no action, an explanation of the reason the complaint was closed without action.

(b) The department shall keep an information file about each complaint filed with the department that the department has authority to resolve.

(c) The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person or entity that is the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 3, eff. September 1, 2007.

SUBCHAPTER D. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 504.151. LICENSE REQUIRED; USE OF TITLE. (a) A person may not engage in the practice of chemical dependency counseling unless the person is licensed as a chemical dependency counselor under this chapter.

(b) A person, other than a person licensed under this chapter or exempt from the application of this chapter, may not use:

(1) the term "chemical dependency counselor" or any combination, variation, or abbreviation of that term as a professional, business, or commercial identification, name, title, or representation; or

(2) any letter, abbreviation, work symbol, slogan, sign, or any combination or variation likely to create the impression that the person is authorized to practice chemical dependency counseling or is a licensed chemical dependency counselor.

(c) Unless a person is engaged in the practice of chemical dependency counseling in accordance with this chapter, the person may not:

(1) hold the person out to the public as engaged in the practice of chemical dependency counseling;

(2) offer chemical dependency counseling services, including offering those services under an assumed, trade, business,

professional, partnership, or corporate name or title; or

(3) use the term "licensed chemical dependency counselor," the abbreviation "LCDC," or any combination or variation of that term or abbreviation in connection with the person's practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.1511. OTHER CERTIFICATIONS INCLUDED ON LICENSE. A license issued under this chapter must include an area on which a license holder may apply an adhesive label issued by the Texas Certification Board of Addiction Professionals with the designation and expiration date of any other related certification held by the license holder that is approved by the International Certification Reciprocity Consortium or another entity approved by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 4, eff. September 1, 2007.

Sec. 504.1515. COUNSELOR INTERNS. (a) A person seeking a license as a chemical dependency counselor shall register with the department as a counselor intern by submitting, in a form acceptable to the department, the following:

(1) an application fee and a background investigation fee;

(2) a completed, signed, dated, and notarized application on a form prescribed by the department;

(3) a recent full-face wallet-sized photograph of the applicant;

(4) two sets of fingerprints completed in accordance with department instructions on cards issued by the department;

(5) documentation verifying the applicant successfully completed:

(A) 270 total hours of approved curricula described by Section 504.152(3)(A); and

(B) 300 hours of approved supervised field work practicum described by Section 504.152(3)(C); and

(6) documentation verifying the applicant received a high school diploma or its equivalent.

(b) The department may obtain criminal history record information relating to a counselor intern or an applicant for

registration as a counselor intern from the Department of Public Safety and the Federal Bureau of Investigation.

Acts 2003, 78th Leg., ch. 1172, Sec. 3, eff. Sept. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 5, eff. September 1, 2007.

Sec. 504.152. ELIGIBILITY REQUIREMENTS. (a) To be eligible for a license under this chapter, a person must:

(1) be at least 18 years of age;

(2) hold an associate degree or a more advanced degree;

(3) have completed:

(A) 135 hours, or nine semester hours, specific to substance abuse disorders and treatment and an additional 135 hours, or nine semester hours, specific or related to chemical dependency counseling;

(B) 4,000 hours of approved supervised experience working with chemically dependent persons; and

(C) 300 hours of approved supervised field work practicum;

(4) provide two letters of reference from chemical dependency counselors;

(5) pass a written examination approved by the department;

(6) submit a case presentation to the test administrator;

(7) be determined by the department to be worthy of the public trust and confidence;

(8) successfully complete the chemical dependency counselor examination under Section 504.156;

(9) sign a written agreement to comply with the standards of ethics approved by the department; and

(10) provide to the department written assurance that the applicant has access to a peer assistance program.

(b) The department may waive the requirement under Subsection (a)(10) if the department determines that a peer assistance program is not reasonably available to the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1172, Sec. 4, eff. Sept. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 4, eff. June 17, 2011.

Sec. 504.1521. SUPERVISED WORK EXPERIENCE. (a) A counselor intern shall obtain the supervised work experience required under Section 504.152 that is obtained in this state at a clinical training institution or under the supervision of a certified clinical supervisor.

(b) The executive commissioner shall adopt rules necessary to:

(1) register clinical training institutions that meet the criteria established by the executive commissioner to protect the safety and welfare of the people of this state; and

(2) certify clinical supervisors who hold certification credentials approved by the department or by a person designated by the department, such as the International Certification and Reciprocity Consortium or another person that meets the criteria established by the executive commissioner to protect the safety and welfare of the people of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 6, eff. September 1, 2008.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.110, eff. April 2, 2015.

Sec. 504.1525. CERTAIN GROUNDS FOR LICENSE, REGISTRATION, OR CERTIFICATION REFUSAL; EXCEPTION. (a) Except as provided by Subsection (b), the department may not issue a license, registration, or certification under this chapter to an applicant who has been:

(1) convicted or placed on community supervision during the three years preceding the date of application in any jurisdiction for an offense equal to a Class B misdemeanor specified by department rule;

(2) convicted or placed on community supervision in any jurisdiction for an offense equal to or greater than a Class A misdemeanor specified by department rule; or

(3) found to be incapacitated by a court on the basis of a mental defect or disease.

(b) The department may issue a license, registration, or certification to a person convicted or placed on community supervision in any jurisdiction for a drug or alcohol offense described by Subsection (a)(1) or (2) if the department determines that the applicant has successfully completed participation in an approved peer assistance program.

(c) Subsection (a) does not apply to an applicant who has, with respect to Subsection (a)(1) or (2), received a full pardon based on the person's wrongful conviction or, with respect to Subsection (a)(3), been found by a court to no longer be incapacitated.

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 3, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 7, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 564 (H.B. 3145), Sec. 5, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.111, eff. April 2, 2015.

Sec. 504.153. ALTERNATIVE QUALIFICATIONS AND EVIDENCE OF LICENSE REQUIREMENT SATISFACTION. (a) An applicant is exempt from the requirements of Sections 504.152(3)(A) and (C) if the applicant holds a baccalaureate degree or a more advanced degree in:

(1) chemical dependency counseling; or

(2) psychology, sociology, or any other related program approved by the department.

(b) On presentation of documentation by an applicant who holds a degree described by Subsection (a), the department may waive any portion of the requirement established by Section 504.152(3)(B) that the department determines has been satisfied as evidenced by the documentation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1172, Sec. 5, eff. Sept. 1, 2004. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 7, eff. September 1, 2007.

Sec. 504.155. LICENSE APPLICATION. (a) An application for a license under this chapter must:

(1) be on a form prescribed and furnished by the department; and

(2) contain a statement made under oath of the applicant's education, experience, and other qualifications established by the department as required for a license under this chapter.

(b) The department may require additional information regarding the quality, scope, and nature of the experience and competence of the applicant if the department determines that a person's application lacks sufficient information for consideration by the department.

(c) The department may obtain criminal history record information relating to an applicant for a license under this chapter from the Department of Public Safety and the Federal Bureau of Investigation. The department may deny an application for a license if the applicant fails to provide two complete sets of fingerprints on a form prescribed by the department.

(d) The issuance of a license by the department is conditioned on the receipt by the department of the applicant's criminal history record information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1107, Sec. 4, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 7, eff. September 1, 2007.

Sec. 504.156. LICENSE EXAMINATION. (a) At least twice each year, the department may prepare and administer or contract with an organization approved by the International Certification Reciprocity Consortium to prepare and administer an examination to determine the qualifications of an applicant for a license under this chapter. The examination shall be conducted as determined by the department and in a manner that is fair and impartial to and takes into consideration each school or system of chemical dependency counseling.

(b) An examiner may know an applicant only by number until

after the examination has been graded and the licenses have been granted or denied.

(c) The scope and content of the examination must be sufficient to ensure professional competence in keeping with the highest standards of the chemical dependency counseling profession.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 8, eff. September 1, 2007.

Sec. 504.157. EXAMINATION RESULTS; REEXAMINATION. (a) The department shall notify each examinee of the results of the examination not later than the 45th day after the date the examination is administered.

(b) If requested by an applicant who fails the examination, the department shall furnish the applicant with an analysis of the applicant's performance on the examination.

(c) An applicant who fails the examination may take a subsequent examination on payment of the required examination fee.

(d) The executive commissioner by rule shall establish the criteria under which an applicant may take a subsequent examination under Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 949, Sec. 1, eff. June 14, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Sec. 504.158. PROVISIONAL LICENSE. (a) The department may issue a provisional license to an applicant who is licensed in another state. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a chemical dependency counselor at least two years in another state or country that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized

by the department relating to the practice of chemical dependency counseling; and

(3) be sponsored by a person licensed by the department under this chapter with whom the provisional license holder may practice.

(b) The department may waive the requirement of Subsection (a)(3) if the department determines that compliance with that subsection would constitute a hardship to the applicant.

(c) The executive commissioner by rule may establish a fee for a provisional license.

(d) A provisional license is valid until the date the department approves or denies the provisional license holder's application for a license under Section 504.159.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.112, eff. April 2, 2015.

Sec. 504.159. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. (a) The department shall issue a license under this chapter to a provisional license holder who satisfies the eligibility requirements established by Section 504.152. When issuing a license under this subsection, the department may waive the requirements established by Sections 504.152(6), (7), and (9).

(b) The department shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day period if the department has not received information necessary to determine whether the applicant is eligible for a license as provided by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Sec. 504.160. ISSUANCE OF LICENSE TO CERTAIN OUT-OF-STATE APPLICANTS. (a) The department may, on application and payment of the appropriate fee, issue a license to a person who is licensed or certified by another state as a chemical dependency counselor if the department determines that the license or certificate requirements of that state are substantially equivalent to the requirements of this chapter.

(b) The department may waive any license requirement for an applicant with a license or certificate issued by another state with which this state has a reciprocity agreement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Sec. 504.161. CRIMINAL HISTORY RECORD INFORMATION. (a) The department may obtain criminal history record information as provided by Section 411.1105, Government Code, and consider that information in determining a person's license, registration, or certification status under this chapter.

(b) The department may charge a person on whom criminal history record information is sought a fee in an amount set by the executive commissioner by rule as reasonably necessary to cover the costs of administering this section. A fee collected under this subsection may be appropriated only to the department to administer this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 9, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.113, eff. April 2, 2015.

SUBCHAPTER E. LICENSE EXPIRATION AND RENEWAL

Sec. 504.201. LICENSE EXPIRATION. (a) A license issued under this chapter expires on the second anniversary of the date of issuance. The executive commissioner by rule shall adopt a system

under which licenses expire on various dates during the year.

(b) A person may not engage in activities that require a license if the person's license has expired and is not renewed as provided by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 10, eff. September 1, 2007.

Sec. 504.202. NOTICE OF LICENSE EXPIRATION AND REQUIREMENTS TO RENEW. Not later than the 31st day before the expiration date of a person's license, the department shall send to the license holder at the license holder's last known address according to department records written notice of:

(1) the impending license expiration;
(2) the amount of the renewal fee; and
(3) any continuing education required to renew the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 11, eff. September 1, 2007.

Sec. 504.2025. CERTAIN GROUNDS FOR REFUSAL TO RENEW LICENSE, REGISTRATION, OR CERTIFICATION. (a) Except as provided by Subsection (b), the department shall refuse to renew a license, registration, or certification under this chapter on receipt of information from the Department of Public Safety or another law enforcement agency that the person has been convicted, placed on community supervision, or found to be incapacitated as described by Section 504.1525.

(b) The department may renew a license under this chapter if the department determines that the person has successfully completed participation in an approved peer assistance program subsequent to the conviction or placement on community supervision for an offense described by Section 504.1525(b).

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 5, eff. Sept. 1, 2001.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 11, eff. September 1, 2008.

Sec. 504.2026. REFUSAL TO RENEW LICENSE: ACCESS TO PEER ASSISTANCE PROGRAM. (a) Except as provided by Subsection (b), the department may not renew a license under this chapter unless the license holder provides to the department written documentation that the license holder has access to an approved peer assistance program.

(b) The department may waive the requirement of Subsection (a) if the department determines that a peer assistance program is not reasonably available to the license holder.

Added by Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 12, eff. September 1, 2007.

Sec. 504.203. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the department a fee in an amount equal to one and one-half times the required renewal fee.

(c) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the department a fee in an amount equal to two times the required renewal fee.

(d) If the person's license has been expired for one year or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 13, eff. September 1, 2007.

Sec. 504.204. RENEWAL OF EXPIRED LICENSE OF OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the department a fee in an amount equal to two times the required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 14, eff. September 1, 2007.

Sec. 504.205. CONTINUING EDUCATION REQUIREMENTS. (a) The department shall recognize, prepare, or administer a continuing education program for chemical dependency counselors. The executive commissioner by rule shall provide for the administration of the continuing education requirements established under this section.

(b) As a prerequisite for renewal of a license issued under this chapter, a license holder, other than a license holder subject to Subsection (c), must participate in the continuing education program and complete continuing education hours in each two-year licensing period as follows:

(1) 40 hours if the license holder holds an associate's or bachelor's degree; and

(2) 24 hours if the license holder holds a master's degree or a more advanced degree.

(c) A license holder must complete at least 24 hours of continuing education in each two-year licensing period as a requirement for renewal of the license if the license holder is also licensed as:

(1) a licensed master social worker under Chapter 505;

(2) a licensed marriage and family therapist under Chapter 502;

(3) a licensed professional counselor under Chapter 503;

(4) a physician practicing medicine under Subtitle B; or

(5) a psychologist under Chapter 501.

(d) Except for the number of hours required, the executive

commissioner may not adopt a rule under Subsection (a) that distinguishes between the continuing education requirements for a license holder subject to Subsection (b) and a license holder subject to Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.266(a), eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 15, eff. September 1, 2007.

Sec. 504.206. CONTINUING EDUCATION RELATING TO HIV, HEPATITIS C, AND SEXUALLY TRANSMITTED DISEASES. (a) The continuing education required under Section 504.205 must include six hours of training during each two-year licensing period relating to HIV, hepatitis C, and sexually transmitted diseases.

(b) The department shall recognize, prepare, or administer a training component that satisfies the requirement of Subsection (a) for use in continuing education for chemical dependency counselors.

(c) The training component must address HIV, hepatitis C, and sexually transmitted diseases in the context of chemical dependency counseling and must provide information relating to the special needs of persons with positive test results, including the importance of prevention, early intervention, and treatment and recognition of psychosocial needs. The training component must prepare a chemical dependency counselor to provide appropriate information to educate clients about HIV, hepatitis C, and sexually transmitted diseases.

(d) In developing the training component, the department may, to the extent appropriate, consider the training course relating to hepatitis C developed by the department under Section 94.002, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 194, Sec. 1, eff. May 21, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 16, eff. September 1, 2007.

SUBCHAPTER F. DISCIPLINARY PROCEEDINGS

Sec. 504.251. GROUNDS FOR LICENSE, REGISTRATION, OR CERTIFICATION DENIAL OR DISCIPLINARY ACTION. The department shall refuse to issue a license, registration, or certification issued by the department to an applicant, refuse to renew a license, registration, or certification holder's license, registration, or certification issued by the department, or take disciplinary action against the holder of a license, registration, or certification issued by the department if the applicant or license, registration, or certification holder:

(1) violates or assists another to violate this chapter or a rule adopted under this chapter;

(2) circumvents or attempts to circumvent this chapter or a rule adopted under this chapter;

(3) directly or indirectly participates in a plan to evade this chapter or a rule adopted under this chapter;

(4) has a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the department determines would constitute a violation of this chapter or a rule adopted under this chapter;

(5) engages in false, misleading, or deceptive conduct as defined by Section 17.46, Business & Commerce Code;

(6) engages in conduct that discredits or tends to discredit the profession of chemical dependency counseling;

(7) directly or indirectly reveals a confidential communication made to the person by a client or recipient of services, except as required by law;

(8) refuses to perform an act or service the person is licensed, registered, or certified to perform under this chapter on the basis of the client's or recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(9) commits an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.252. DISCIPLINARY POWERS OF DEPARTMENT. (a) On a

determination that grounds exist to deny a license, registration, or certification issued by the department or license, registration, or certification renewal issued by the department or to take disciplinary action against the holder of a license, registration, or certification issued by the department, the department may:

(1) refuse to issue or renew a license, registration, or certification;

(2) revoke or suspend a license, registration, or certification;

(3) place on probation a license, registration, or certification holder whose license, registration, or certification is suspended; or

(4) reprimand a license, registration, or certification holder.

(b) If the department places on probation a license, registration, or certification holder whose license, registration, or certification issued by the department is suspended, the department may require the license, registration, or certification holder to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the license, registration, or certification holder attains a degree of skill satisfactory to the department in the areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.2525. SUMMARY LICENSE, REGISTRATION, OR CERTIFICATION SUSPENSION. (a) The department shall suspend the license, registration, or certification issued by the department of a license, registration, or certification holder if the department receives written notice from the Department of Public Safety or another law enforcement agency that the license, registration, or certification holder has been charged, indicted, placed on deferred adjudication,

community supervision, or probation, or convicted of an offense described by Section 504.1525.

(b) To initiate a proceeding to take action under Subsection (a), the department must serve notice on the license, registration, or certification holder. The notice must:

(1) state the grounds for summary suspension; and

(2) be personally served on the license, registration, or certification holder or sent to the license, registration, or certification holder by certified or registered mail, return receipt requested, to the license, registration, or certification holder's mailing address as it appears in the department's records.

(c) The suspension is effective at the time notice is served. The license, registration, or certification holder is entitled to appeal the suspension as provided by Section 504.255.

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.253. COMPLAINT AND INVESTIGATION. (a) A person may file a complaint with the department alleging a violation of this chapter. The complaint must be in writing and under oath.

(b) The department shall provide to the person filing the complaint and to each person or entity that is the subject of the complaint the department's policies and procedures pertaining to complaint investigation and resolution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.254. RIGHT TO ADMINISTRATIVE HEARING. (a) If the department proposes to suspend, revoke, or refuse to renew a person's license, registration, or certification issued by the department, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Procedures for disciplinary action are governed by Chapter

2001, Government Code. Rules of practice adopted by the executive commissioner under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.

Sec. 504.255. APPEAL OF CERTAIN DENIALS, REFUSALS TO RENEW, AND SUSPENSIONS. (a) A person whose license, registration, or certification application is denied under Section 504.1525, whose license, registration, or certification renewal is refused under Section 504.2025, or whose license, registration, or certification is suspended under Section 504.2525 may appeal the denial, refusal to renew, or suspension on the grounds that:

(1) the sole basis for the department's determination is a conviction or placement on community supervision for an offense described by Section 504.1525; and

(2) sufficient time, as determined by department rule, has expired since the date of the conviction or placement.

(b) A proceeding under this section is governed by Chapter 2001, Government Code.

(c) After a hearing under this section, the department may determine that the person is entitled to a license, registration, or certification under this chapter.

Added by Acts 2001, 77th Leg., ch. 1107, Sec. 7, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 17, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.114, eff. April 2, 2015.

SUBCHAPTER G. ADMINISTRATIVE PENALTY

Sec. 504.301. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.302. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed $1,000 for each violation. Each day of a continuing violation is a separate violation.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the department determines that a violation occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the proposed administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 504.303, the person may:

(1) accept the department's determination and proposed

administrative penalty; or

(2) make a written request for a hearing on that determination.

(b) If the person accepts the department's determination, the department by order shall approve the determination and assess the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.115, eff. April 2, 2015.

Sec. 504.305. HEARING. (a) If the person requests a hearing in a timely manner, the department shall set a hearing and give written notice of the hearing to the person.

(b) The department may employ a hearings examiner for this purpose.

(c) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the department a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.116, eff. April 2, 2015.

Sec. 504.306. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and recommendations of the hearings examiner, the department by order may determine that:

(1) a violation occurred and assess an administrative penalty; or

(2) a violation did not occur.

(b) The department shall give notice of the order to the

person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.117, eff. April 2, 2015.

Sec. 504.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the department's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 18, eff. September 1, 2007.

Sec. 504.308. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.309. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount be remitted to the person if the person paid the penalty, plus accrued interest if the person paid the penalty under Section 504.307(a)(2); or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on

the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 504.310. COLLECTION OF PENALTY. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed under Section 504.307, the department may refer the matter to the attorney general for collection of the penalty.

(c) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the department requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of expenses and costs.

(d) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for the administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 19, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.118, eff. April 2, 2015.

Sec. 504.311. ADMINISTRATIVE PROCEDURE. A proceeding to assess an administrative penalty under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 504.351. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the department or the attorney general at the request of the department may institute an action in district court for an injunction, a civil penalty, or both.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter or a rule adopted under this chapter, the district court may grant injunctive relief as the facts warrant. The department is not required to give an appeal bond in an appeal of an action seeking injunctive relief under this section.

(c) The amount of a civil penalty imposed under this section may not be less than $50 or more than $500 for each day of the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1373 (S.B. 155), Sec. 20, eff. September 1, 2007.

CHAPTER 505. SOCIAL WORKERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 505.001. SHORT TITLE. This chapter may be cited as the Social Work Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 1, eff. Sept. 1, 2003.

Sec. 505.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Social Worker Examiners.

(2) "Council on Social Work Education" means the national organization that is primarily responsible for the accreditation of schools of social work in the United States or its successor approved

by the executive council.

(3) "Executive council" means the Texas Behavioral Health Executive Council.

(4) "Licensed baccalaureate social worker" means a person who holds a baccalaureate social worker license issued under this chapter.

(5) "Licensed clinical social worker" means a person who holds a clinical social worker license issued under this chapter.

(6) "Licensed master social worker" means a person who holds a master social worker license issued under this chapter.

(7) "Licensed social worker" means a person who holds a social worker license issued under this chapter.

(8) "Social worker" means a person who holds any license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 2, 37, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(8), eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.082, eff. September 1, 2019.

Sec. 505.0025. PRACTICE OF SOCIAL WORK. (a) The practice of social work is the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, or communities.

(b) The practice of social work may include the provision of individual, conjoint, family, and group psychotherapy using the Diagnostic and Statistical Manual of Mental Disorders, the International Classification of Diseases, and other diagnostic classification systems in assessment, diagnosis, treatment, and other activities by a person licensed under this chapter.

Added by Acts 2003, 78th Leg., ch. 892, Sec. 3, eff. Sept. 1, 2003.

Sec. 505.003. APPLICATIONS AND EXEMPTIONS. (a) This chapter does not apply to:

(1) an activity conducted or a service performed by a person who is licensed, certified, or registered in a profession other than social work, including a physician, attorney, registered nurse, licensed vocational nurse, psychologist, occupational therapist, licensed marriage and family therapist, licensed chemical dependency counselor, or licensed professional counselor, if:

(A) the activity or service is conducted or performed within the scope of the person's license, certificate, or registration;

(B) the person does not use a title listed in Section 505.351; and

(C) the person does not:

(i) represent the service as social work;

(ii) represent that the person is a social worker; or

(iii) use a title that implies that the person is licensed in social work;

(2) a service performed by a person as a volunteer or staff member if the person does not:

(A) represent the service as social work;

(B) represent the person as a social worker; or

(C) use a title that implies that the person is licensed in social work;

(3) an activity conducted by a social work student, intern, or trainee in connection with an institution of higher education accredited by the Council on Social Work Education; or

(4) an activity conducted or a service performed by a pastoral care counselor who is acting within the person's ministerial capabilities and who does not use a title that implies that the counselor is licensed in social work, including:

(A) a Christian Science practitioner who is recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal; and

(B) any other recognized religious practitioner.

(b) This chapter does not require a public agency or private employer, including a nonprofit corporation, to employ a person licensed under this chapter.

(c) A person who teaches social work at an institution of

higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, is not required to hold a license under this chapter to the extent the person confines the person's activities to teaching and does not otherwise engage in the practice of social work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 2, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1141 (H.B. 1797), Sec. 1, eff. June 17, 2011.

Sec. 505.004. NONDISCRIMINATORY ACTIONS AND DECISIONS. An action taken or a decision made under this chapter, including an action or a decision relating to a license application, examination, regulation, or disciplinary proceeding, shall be taken or made without regard to sex, race, religion, national origin, color, or political affiliation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

Sec. 505.101. BOARD; MEMBERSHIP. (a) The Texas State Board of Social Worker Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) two members who are licensed master social workers;

(2) two members who are licensed baccalaureate social workers;

(3) two members who are licensed clinical social workers; and

(4) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 5, eff. Sept. 1, 2003.

Amended by:
Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 4, eff. September 1, 2005.

Sec. 505.102. PUBLIC MEMBERSHIP ELIGIBILITY. (a) A public member of the board may not:
(1) be licensed under this chapter; or
(2) have an interest in the practice of social work other than as a consumer.
(b) A person is not eligible for appointment as a public member of the board if:
(1) the person is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
(2) the person's spouse is registered, certified, or licensed by an occupational regulatory agency in the field of mental health; or
(3) the person or the person's spouse:
(A) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board or executive council;
(B) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the board or executive council; or
(C) uses or receives a substantial amount of tangible goods, services, or funds from the board or executive council, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 5, eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.083, eff. September 1, 2019.

Sec. 505.103. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined

statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of mental health.

(c) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 6, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.084, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.085, eff. September 1, 2019.

Sec. 505.104. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms. The terms of one-third of the members expire February 1 of each odd-numbered year.

(b) A person who is appointed to fill a vacancy on the board shall serve as a board member for the remainder of the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.105. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 505.101 and 505.102(a);

(2) does not maintain during service on the board the qualifications required by Sections 505.101 and 505.102(a);

(3) is ineligible for membership under Section 505.103;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 7, eff. September 1, 2005.

Sec. 505.106. EXPENSE REIMBURSEMENT. Each board member is entitled to reimbursement for expenses incurred in traveling to and from the business of the board at the rates provided in the General Appropriations Act for state employees. A member may not receive actual or necessary expenses except for travel to and from meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.107. OFFICERS. (a) The governor shall designate one board member as presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) The board shall elect other officers at the first regular meeting of the board each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.108. MEETINGS. (a) The board shall hold a meeting at least once a year.

(b) The board may hold other regular meetings as provided by board rule and special meetings as determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 505.109. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information,

administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the executive council shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 8, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.086, eff. September 1, 2019.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 505.201. GENERAL RULEMAKING AND ENFORCEMENT AUTHORITY OF EXECUTIVE COUNCIL. (a) The executive council may:

(1) adopt and enforce rules necessary to perform the executive council's duties under this chapter;

(2) establish standards of conduct and ethics for license holders; and

(3) ensure strict compliance with and enforcement of this chapter.

(b) The executive council by rule may define a term not defined under Section 505.002 if a definition is necessary to administer or enforce this chapter.

(c) For each type of license issued under this chapter, the

executive council shall establish:

(1) the minimum eligibility requirements;

(2) educational requirements;

(3) professional experience criteria;

(4) supervision requirements; and

(5) independent practice criteria.

(d) The executive council shall establish procedures for recognition of independent practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 431, Sec. 1, eff. May 28, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.119, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.087, eff. September 1, 2019.

Sec. 505.2015. BOARD DUTIES. The board shall propose to the executive council:

(1) rules regarding:

(A) the qualifications necessary to obtain a license or order of recognition of specialty, including rules limiting an applicant's eligibility for a license or order based on the applicant's criminal history;

(B) the scope of practice of and standards of care and ethical practice for social work; and

(C) continuing education requirements for license holders or holders of orders of recognition of specialty; and

(2) a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.088, eff. September 1, 2019.

Sec. 505.206. ROSTER OF INDEPENDENT SOCIAL WORKERS. The executive council shall publish a roster of persons recognized under Section 505.307 as qualified for the independent practice of social work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.089, eff. September 1, 2019.

SUBCHAPTER F. SPECIALTY AREAS OF SOCIAL WORK

Sec. 505.301. ESTABLISHMENT OF SPECIALTY AREA. (a) The executive council may establish within the scope of social work practice and this chapter specialty areas of social work for license holders under this chapter who are licensed in good standing if establishment of the specialty areas:

(1) is necessary to promote the public interest; and

(2) assists the public in identifying qualified persons in a social work practice specialty.

(b) The executive council may not authorize a specialty area within the practice of social work unless the executive council sets the minimum qualifications for social work practice with appropriate supervision and examination, as determined by the executive council.

(c) The executive council may not establish a specialty area of social work or a specialty area identification that conflicts with a state licensing law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 11, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.090, eff. September 1, 2019.

Sec. 505.302. REGULATION OF SPECIALTY AREAS. (a) In establishing a specialty area of social work, the executive council shall:

(1) define the scope of the specialty;

(2) establish qualifications for specialty area practitioners that describe, in accordance with Subdivision (1), the scope of the specialty area;

(3) adopt rules of conduct to ensure strict compliance with and enforcement of this chapter; and

(4) adopt rules for the suspension or revocation of an order of recognition of specialty.

(b) A person who is not recognized as satisfying the qualifications for a specialty area may not practice in the specialty area.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.091, eff. September 1, 2019.

Sec. 505.303. CLINICAL SOCIAL WORK SPECIALTY. (a) The executive council shall establish a specialty area for the practice of clinical social work that is available only to a licensed master social worker who satisfies the minimum number of years of active social work practice with appropriate supervision and clinical examination, as determined by the executive council.

(b) A person may not use the title "Licensed Clinical Social Worker" or the initials "LCSW" unless the person is recognized as qualified for the independent practice of clinical social work.

(c) For purposes of Subchapter C, Chapter 1451, Insurance Code:

(1) a person recognized as qualified for the independent practice of clinical social work may use the title "Licensed Clinical Social Worker" or another title approved by the executive council; and

(2) a title approved by the executive council under this subsection has the same meaning and effect as the title "Licensed Clinical Social Worker."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 12, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.148, eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.092, eff. September 1, 2019.

Sec. 505.304. ORDER OF RECOGNITION OF SPECIALTY. (a) The executive council shall prescribe the name, design, and content of an

order of recognition of specialty.

(b) An order of recognition of specialty must:

(1) state the full name of the person recognized in the order; and

(2) state the official specialty serial number.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.093, eff. September 1, 2019.

Sec. 505.305. RECOGNITION OF SPECIALTY; ISSUANCE OF ORDER. (a) The executive council shall recognize a social worker as qualified for the practice of a specialty area of social work if the social worker satisfies the recognition requirements established by the executive council and the executive council determines that the person is worthy of the public trust in performing services within the scope of the specialty area.

(b) The executive council shall issue an order of recognition of specialty to a social worker who is recognized as qualified for the practice of a specialty area of social work. The order of recognition of specialty evidences the state's recognition of the social worker as a specialty social work practitioner under the identification or title designated by the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.094, eff. September 1, 2019.

Sec. 505.306. PROHIBITED USE OF SPECIALTY AREA IDENTIFICATION OR TITLE. If the executive council establishes a specialty area of social work, a social worker may not use the specialty area identification or title designated by the executive council unless the person is recognized as qualified for the practice of the specialty area under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.095, eff. September 1, 2019.

Sec. 505.307. INDEPENDENT PRACTICE RECOGNITION; MINIMUM QUALIFICATIONS. (a) The executive council shall establish procedures for recognizing a social worker qualified for the independent practice of social work.

(b) A social worker may not be recognized as qualified for the independent practice of social work unless the person satisfies the requirements of social work education, experience, and supervision as determined by the executive council.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.096, eff. September 1, 2019.

SUBCHAPTER G. LICENSE REQUIREMENTS

Sec. 505.351. LICENSE REQUIRED. (a) A person may not use or cause to be used the title "social worker," "licensed baccalaureate social worker," "licensed master social worker," "licensed clinical social worker," or "licensed social worker," or any combination, variation, or abbreviation of those titles, as a professional or business identification, representation, asset, or means of obtaining a benefit unless the person holds an appropriate license issued under this chapter.

(b) A person may not use a title that implies that the person holds a license in social work unless the person holds an appropriate license issued under this chapter.

(c) A person who engages in or attempts to engage in conduct described by this section is considered to be engaged in the practice of social work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 13, eff. Sept. 1, 2003.

Sec. 505.352. LICENSE APPLICATION. A person may apply for a license under this chapter by submitting an application to the executive council. The application must:

(1) be on a form prescribed by the executive council; and

(2) contain statements made under oath regarding the applicant's education and experience and any other information required by the executive council that qualifies the applicant for a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.097, eff. September 1, 2019.

Sec. 505.353. ELIGIBILITY. (a) To be eligible for a license under this chapter, an applicant must:

(1) be at least 18 years of age;

(2) be worthy of the public trust and confidence;

(3) satisfy the education and experience requirements under this section; and

(4) pass the licensing examination conducted by the executive council under Section 505.354 and the jurisprudence examination conducted by the executive council under Section 505.3545.

(b) An applicant may take the licensing examination conducted by the executive council under Section 505.354 for:

(1) a master social worker license if the applicant possesses a doctoral or master's degree in social work from a graduate program that is accredited by or is in candidacy for accreditation by the Council on Social Work Education;

(2) a baccalaureate social worker license if the applicant possesses a baccalaureate degree in social work from an educational program that is accredited by or is in candidacy for accreditation by the Council on Social Work Education; or

(3) a clinical social worker license if the applicant possesses a doctoral or master's degree in social work from an accredited graduate program approved by the executive council and meets the qualifications for clinical social work practice as determined by the executive council under this chapter.

(c) The executive council may require an applicant to submit documentary evidence of the quality, scope, and nature of the applicant's experience and competence to:

(1) determine the credibility and acceptability of the applicant's professional or technical experience or competence; and

(2) ensure the public safety, health, and welfare.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.269(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 892, Sec. 14, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 18, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1141 (H.B. 1797), Sec. 2, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.098, eff. September 1, 2019.

Sec. 505.354. EXAMINATION. (a) The board shall prepare an examination to assess an applicant's qualifications for a license under this chapter. The executive council shall administer the examination at least once each calendar year.

(b) Each license examination shall be conducted in a manner that is determined by the executive council and is fair and impartial to each applicant and school or system of social work.

(c) Applicants may be known to the examiners only by numbers until after the general averages of the applicants' numbers in the class are determined and licenses are issued or denied.

(d) To maintain the highest standards in the social work profession, the scope and content of each examination must be sufficient to ensure professional efficacy and competence.

(e) The executive council shall have the written portion of the examination, if any, validated by an independent testing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.099, eff. September 1, 2019.

Sec. 505.3545. JURISPRUDENCE EXAMINATION. (a) The board shall develop a jurisprudence examination to determine an applicant's knowledge of this chapter, rules adopted under this chapter, and any other applicable laws of this state affecting the applicant's social work practice. The executive council shall administer the examination at least twice each calendar year.

(b) The executive council shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 19, eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.100, eff. September 1, 2019.

Sec. 505.357. TEMPORARY LICENSE. (a) The executive council shall issue a temporary license to an applicant who:

(1) has not taken the licensing examination under Section 505.354 or the jurisprudence examination under Section 505.3545; and

(2) satisfies the requirements for obtaining a license under this chapter other than passing the licensing and jurisprudence examinations.

(b) A temporary license is valid until the results of the first appropriate licensing and jurisprudence examinations given after the date the license is issued are available.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 20, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.101, eff. September 1, 2019.

Sec. 505.3575. ISSUANCE OF LICENSES TO CERTAIN OUT-OF-STATE APPLICANTS. (a) Notwithstanding any other licensing requirement of this subchapter:

(1) the executive council may not require an applicant who is licensed in good standing in another state to pass a licensing examination conducted by the executive council under Section 505.354 if an applicant with substantially equivalent experience who resides in this state would not be required to take the licensing examination; and

(2) the executive council may issue a license to an applicant who is currently licensed in another state to independently practice social work if:

(A) after an assessment, the executive council determines that the applicant:

(i) demonstrates sufficient experience and competence;

(ii) has passed the jurisprudence examination conducted by the executive council under Section 505.3545; and

(iii) at the time of the application, is in good standing with the regulatory agency of the state in which the applicant is licensed; and

(B) the applicant presents to the executive council credentials that the applicant obtained from a national accreditation organization and the executive council determines that the requirements to obtain the credentials are sufficient to minimize any risk to public safety.

(b) When assessing the experience and competence of an applicant for the purposes of this section, the executive council may take into consideration any supervision received by the applicant in another state or jurisdiction if the executive council determines that the supervision would be taken into consideration for the purpose of licensing or certification in the state or jurisdiction in which the applicant received the supervision.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 21, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.102, eff. September 1, 2019.

Sec. 505.358. PROVISIONAL LICENSE. (a) A person may apply for a provisional license as a social worker by paying the appropriate

fee and filing an application with the executive council. The executive council may issue a provisional license to a person who meets the requirements of this section.

(b) An applicant for a provisional license must:

(1) be licensed or certified in good standing as a social worker in another state or jurisdiction that has licensing or certification requirements determined by the executive council to be substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized by the executive council relating to the practice of social work; and

(3) be sponsored by a person licensed under this chapter with whom the provisional license holder may practice social work.

(c) An applicant is not required to comply with Subsection (b)(3) if the executive council determines that compliance constitutes a hardship to the applicant.

(d) A provisional license is valid until the date the executive council approves or denies the provisional license holder's application for a license under Section 505.359.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 15, eff. Sept. 1, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.103, eff. September 1, 2019.

Sec. 505.359. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. (a) The executive council shall issue an appropriate license to a provisional license holder:

(1) who passes the licensing examination under Section 505.354 and the jurisprudence examination under Section 505.3545;

(2) for whom the executive council verifies that the person satisfies the academic and experience requirements under Section 505.353; and

(3) who satisfies any other license requirements under this chapter.

(b) The executive council shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued or the date licenses are issued after successful completion of the next

licensing and jurisprudence examinations, whichever date is later.

(c) The executive council may waive a license requirement for an applicant who is licensed or certified in another state if this state has entered into a reciprocity agreement with that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 22, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.104, eff. September 1, 2019.

Sec. 505.360. PROFESSIONAL IDENTIFICATION. (a) A license holder shall use an identification provided by this section:

(1) in the professional use of the license holder's name; and

(2) in connection with any sign, directory, contract, document, pamphlet, stationery, advertisement, signature, or other means of written professional identification.

(b) A licensed master social worker shall use the identification "licensed master social worker" or the initials "LMSW."

(c) A licensed baccalaureate social worker shall use the identification "licensed baccalaureate social worker" or the initials "LBSW."

(d) Repealed by Acts 2003, 78th Leg., ch. 892, Sec. 37.

(e) A licensed clinical social worker shall use the identification "licensed clinical social worker" or the initials "LCSW."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 16, 37, eff. Sept. 1, 2003.

SUBCHAPTER H. RENEWAL OF LICENSE AND ORDER OF RECOGNITION OF SPECIALTY

Sec. 505.401. TERM OF LICENSE; STAGGERED EXPIRATION DATES. (a) A license issued under this chapter is valid for two years.

(a-1) The executive council by rule shall adopt a system under which licenses and orders of recognition of specialty expire on

various dates during the year.

(b) In the year in which the expiration date of an order of recognition of specialty is changed, the total renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.122, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.105, eff. September 1, 2019.

Sec. 505.405. GROUNDS FOR REFUSING RENEWAL. The executive council may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter H, Chapter 507, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 25, eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.106, eff. September 1, 2019.

SUBCHAPTER I. DISCIPLINARY ACTION

Sec. 505.451. GROUNDS FOR DISCIPLINARY ACTION. The executive council shall take disciplinary action under Subchapter G, Chapter 507, against a person for:

(1) violating this chapter or a rule adopted under this chapter;

(2) circumventing or attempting to circumvent the requirements of this chapter or a rule adopted under this chapter;

(3) directly or indirectly participating in a scheme to evade the requirements of this chapter or a rule adopted under this chapter;

(4) engaging in unethical conduct;

(5) engaging in conduct that discredits or tends to discredit the social work profession;

(6) performing an act, allowing an omission, or making an

assertion or representation that is fraudulent, deceitful, or misleading or that tends to create a misleading impression;

(7) knowingly associating with or permitting the use of a license holder's professional services or identification in connection with an enterprise that the person knows or should have known in the exercise of reasonable diligence violates this chapter or a rule adopted under this chapter;

(8) knowingly associating with or permitting the use of a license holder's name, professional services or identification, or endorsement in connection with an enterprise that the person knows or should have known in the exercise of reasonable diligence is a trade, business, or professional practice of a fraudulent, deceitful, or misleading nature;

(9) directly or indirectly revealing or causing to be revealed a confidential communication transmitted to the license holder by a client or other recipient of the license holder's services unless revealing the communication is required by law;

(10) having been denied an application for a license or certificate to practice social work in another jurisdiction for a reason that the executive council determines would be a violation of this chapter or a rule adopted under this chapter;

(11) holding a license or certificate in another jurisdiction that is suspended or revoked for a reason that the executive council determines would be a violation of this chapter or a rule adopted under this chapter;

(12) having been convicted of a felony in this state, another state, or the United States;

(13) refusing to perform an act or service within the scope of the license holder's license solely because of the recipient's age, sex, race, religion, national origin, color, or political affiliation; or

(14) committing an act for which liability exists under Chapter 81, Civil Practice and Remedies Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 26, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.108, eff. September 1, 2019.

Sec. 505.454. SANCTIONS FOR HOLDER OF EXPIRED LICENSE OR ORDER OF RECOGNITION OF SPECIALTY. (a) A person who holds an expired license or order of recognition of specialty under this chapter is subject to a sanction under this chapter if the executive council determines that the person violated this chapter or a rule adopted under this chapter during the period in which the license or order was valid.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(107), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.109, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.113(107), eff. September 1, 2019.

Sec. 505.458. REFUND. (a) Subject to Subsection (b), the executive council may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The executive council may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 707 (S.B. 415), Sec. 27, eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.110, eff. September 1, 2019.

SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 505.502. PROHIBITED CONDUCT BY BUSINESS OR PROFESSIONAL ENTITY. (a) Except as provided by Subsection (b), a business or

professional entity may not:

(1) represent itself or another to the public as being engaged in the practice of social work or as offering social work services under an assumed, trade, business, professional, partnership, or corporate name or title;

(2) directly or indirectly use or cause to be used the term "social work," "social work services," "social work, inc.," "social workers," "licensed social workers," "licensed baccalaureate social workers," "licensed master social workers," "licensed clinical social workers," "LMSW," "LSW," "LBSW," or "LCSW," or any combination, abbreviation, or variation of those terms; or

(3) directly or indirectly use or cause to be used a term listed in Subdivision (2) in combination with any other word, letter, initial, sign, legend, or symbol on, in, or directly or indirectly as a part of:

(A) any sign, directory, contract, pamphlet, stationery, advertisement, or other document;

(B) a signature; or

(C) a trade, assumed, corporate, or other business or professional name.

(b) A business or professional entity may engage in conduct described by Subsection (a) if:

(1) the entity is actively engaged in the practice of social work; and

(2) the social work services that constitute the entity's practice are:

(A) personally performed by a social worker who is practicing in accordance with this chapter; or

(B) performed under the supervision of a licensed baccalaureate social worker, licensed master social worker, or licensed clinical social worker.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 892, Sec. 18, eff. Sept. 1, 2003.

Sec. 505.505. APPEAL BOND NOT REQUIRED. The executive council is not required to post an appeal bond in any action arising under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.111, eff. September 1, 2019.

Sec. 505.506. REPRESENTATION BY ATTORNEY GENERAL. The attorney general shall represent the executive council in an action brought to enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 2.112, eff. September 1, 2019.

Text of section as added by Acts 2003, 78th Leg., ch. 892, Sec. 19

For text of section as added by Acts 2003, 78th Leg., ch. 326, Sec. 12, see other Sec. 505.507.

Sec. 505.507. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly acts as a social worker without holding a license required under this chapter.

(b) An offense under Subsection (a) is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 892, Sec. 19, eff. Sept. 1, 2003.

Text of section as added by Acts 2003, 78th Leg., ch. 326, Sec. 12

For Text of section as added by Acts 2003, 78th Leg., ch. 892, Sec. 19, see other Sec. 505.507.

Sec. 505.507. CRIMINAL PENALTY. (a) A person required to hold a license under this chapter commits an offense if the person knowingly acts as a social worker without holding a license issued under this chapter.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 12, eff. Sept. 1, 2003.

SUBCHAPTER L. REPORTS OF CERTAIN VIOLATIONS

Sec. 505.601. REPORT OF VIOLATION. In a written, signed report to the appropriate licensing board, agency, or facility, a person licensed under this chapter may report an incident that the person has reasonable cause to believe has exposed a client to substantial risk of harm, including:

(1) a failure to provide care that conforms to the minimum standards of acceptable and prevailing professional practice;

(2) illegal billing practices; or

(3) falsification of records.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.272(a), eff. Sept. 1, 2001.

Sec. 505.602. REPORTING IMMUNITY. A person who, without malice, makes a report authorized, or reasonably believed to be authorized, under this subchapter:

(1) is immune from civil liability; and

(2) may not be subjected by the person's employer to other retaliatory action as a result of making the report.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.272(a), eff. Sept. 1, 2001.

Sec. 505.603. CAUSE OF ACTION FOR RETALIATION. (a) A person named as a defendant in a civil action or subjected by the person's employer to other retaliatory action as a result of filing a report authorized, or reasonably believed to be authorized, under this subchapter may file a counterclaim in the pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(b) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who makes a report, without malice, under this subchapter.

(c) A person who makes a report under this subchapter has a cause of action against a person who violates Subsection (b) and may recover:

(1) the greater of:

(A) actual damages, including damages for mental anguish even if no other injury is shown; or

(B) $1,000;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(d) In addition to the amount recovered under Subsection (c), a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most recent salary; and

(2) compensation for wages lost during the period of suspension or termination.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for making a report under this subchapter if:

(1) the person was suspended or terminated within 60 days after the date the report was made; and

(2) the person to whom the report that is the subject of the cause of action was made or the court determines that the report was:

(A) authorized under this subchapter; and

(B) made without malice.

(f) An action under this section may be brought in a district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.272(a), eff. Sept. 1, 2001.

CHAPTER 506. BEHAVIOR ANALYSTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 506.001. SHORT TITLE. This chapter may be cited as the Behavior Analyst Licensing Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2,

eff. September 1, 2017.

Sec. 506.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Behavior Analyst Advisory Board.

(2) "Certifying entity" means the nationally accredited Behavior Analyst Certification Board or another entity that is accredited by the National Commission for Certifying Agencies or the American National Standards Institute to issue credentials in the professional practice of applied behavior analysis and approved by the department.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Executive director" means the executive director of the department.

(6) "License holder" means a person licensed under this chapter.

(7) "Licensed assistant behavior analyst" means a person who is certified by the certifying entity as a Board Certified Assistant Behavior Analyst or who has an equivalent certification issued by the certifying entity and who meets the requirements specified by Sections 506.252 and 506.254.

(8) "Licensed behavior analyst" means a person who is certified by the certifying entity as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst--Doctoral or who has an equivalent certification issued by the certifying entity and who meets the requirements specified by Sections 506.252 and 506.253.

(9) "Physician" means a person licensed to practice medicine by the Texas Medical Board.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.003. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. (a) The practice of applied behavior analysis is the design, implementation, and evaluation of instructional and environmental modifications to

produce socially significant improvements in human behavior.

(b) The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment or functional analysis.

(c) Applied behavior analysis interventions:

(1) are based on scientific research and the direct observation and measurement of behavior and environment; and

(2) use contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and elicit or evoke behaviors under specific environmental conditions.

(d) The practice of applied behavior analysis does not include:

(1) psychological testing, psychotherapy, cognitive therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities; or

(2) the diagnosis of disorders.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B. APPLICATION OF CHAPTER; USE OF TITLE

Sec. 506.051. LICENSED PSYCHOLOGISTS. This chapter does not apply to a person licensed to practice psychology in this state if the applied behavior analysis services provided are within the scope of the licensed psychologist's education, training, and competence.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.052. OTHER LICENSED PROFESSIONALS. This chapter does not apply to a person licensed to practice another profession in this state if the applied behavior analysis services provided are within:

(1) the scope of practice of the person's license under state law; and

(2) the scope of the person's education, training, and competence.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.053. FAMILY MEMBERS AND GUARDIANS. This chapter does not apply to a family member or guardian of a recipient of applied behavior analysis services who is implementing a behavior analysis treatment plan for the recipient under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.054. PARAPROFESSIONALS. This chapter does not apply to a paraprofessional technician who delivers applied behavior analysis services if:

(1) the applied behavior analysis services are provided under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst; and

(2) the person is designated as an "applied behavior analysis technician," "behavior technician," "tutor," or "front-line therapist."

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.055. STUDENTS, INTERNS, AND FELLOWS. This chapter does not apply to an applied behavior analysis activity or service of a college or university student, intern, or fellow if:

(1) the activity or service is part of a defined behavior analysis program of study, course, practicum, internship, or postdoctoral fellowship;

(2) the activity or service is directly supervised by a licensed behavior analyst or an instructor in a course sequence approved by the certifying entity; and

(3) the person is designated as a "student," "intern," "fellow," or "trainee."

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.056. SUPERVISED EXPERIENCE. This chapter does not apply to an unlicensed person pursuing supervised experience in applied behavior analysis if the supervised experience is consistent with the requirements of the certifying entity and commission rules.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.057. TEMPORARY SERVICES OF BEHAVIOR ANALYST FROM ANOTHER STATE. (a) This chapter does not apply to a behavior analyst licensed in another jurisdiction or certified by the certifying entity if the activities and services conducted in this state:

(1) are within the behavior analyst's customary area of practice;

(2) are conducted not more than 20 days in a calendar year; and

(3) are not otherwise in violation of this chapter.

(b) A behavior analyst described by Subsection (a) shall inform the recipient of applied behavior analysis services, or a parent or guardian of the recipient if the recipient is under 18 years of age, that:

(1) the behavior analyst is not licensed in this state; and

(2) the activities and services provided by the behavior analyst are time-limited.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.058. TEACHER OR EMPLOYEE OF SCHOOL DISTRICT. (a) This chapter does not apply to a teacher or employee of a private or public school who provides applied behavior analysis services if the teacher or employee is performing duties within the scope of the teacher's or employee's employment.

(b) A person described by Subsection (a) may not:

(1) represent that the person is a behavior analyst, unless the applied behavior analysis services provided are within the person's education, training, and competence;

(2) offer applied behavior analysis services to any person, other than within the scope of the person's employment duties for the school; or

(3) receive compensation for providing applied behavior analysis services, other than the compensation that the person receives from the person's school employer.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.059. PERSONS WHO DO NOT PROVIDE DIRECT SERVICES. (a) This chapter does not apply to a person who:

(1) is a behavior analyst who practices with nonhumans, including an applied animal behaviorist or an animal trainer;

(2) teaches behavior analysis or conducts behavior analytic research if the teaching or research activities do not involve the delivery or supervision of applied behavior analysis services; or

(3) is a professional who provides general applied behavior analysis services to organizations if those services:

(A) are for the benefit of the organization; and

(B) do not involve direct services to individuals.

(b) A person described by Subsection (a) may use the title "behavior analyst."

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER C. BEHAVIOR ANALYST ADVISORY BOARD

Sec. 506.101. ADVISORY BOARD MEMBERSHIP. (a) The advisory board is composed of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) four licensed behavior analysts, at least one of whom must be certified as a Board Certified Behavior Analyst--Doctoral or hold an equivalent certification issued by the certifying entity;

(2) one licensed assistant behavior analyst;

(3) one physician who has experience providing mental

health or behavioral health services; and

(4) three members who represent the public and who are either former recipients of applied behavior analysis services or the parent or guardian of a current or former recipient of applied behavior analysis services.

(b) To be qualified for appointment under Subsection (a)(1), a person must have at least five years of experience as a licensed behavior analyst after being certified by the certifying entity.

(c) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.102. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.103. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member may not serve more than two consecutive six-year terms.

(c) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.104. PRESIDING OFFICER. The presiding officer of the commission shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year.

The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.106. GROUNDS FOR REMOVAL. A member of the advisory board may be removed as provided by Section 51.209.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.107. COMPENSATION; REIMBURSEMENT. (a) A member of the advisory board may not receive compensation for service on the advisory board.

(b) A member of the advisory board is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 506.151. GENERAL POWERS AND DUTIES. (a) The commission shall adopt rules consistent with this chapter for the administration and enforcement of this chapter.

(b) The department shall:

(1) administer and enforce this chapter;

(2) evaluate the qualifications of license applicants;

(3) provide for the examination of license applicants;

(4) issue licenses;

(5) in connection with a hearing under this chapter, issue subpoenas, examine witnesses, and administer oaths under the laws of this state; and

(6) investigate persons engaging in practices that violate this chapter.

(c) The commission or executive director may deny, revoke, or

suspend a license or may otherwise discipline a license holder in accordance with Section 51.353.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.152. STANDARDS OF ETHICAL PRACTICE. The commission shall adopt rules under this chapter that establish standards of ethical practice.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.153. ASSISTANCE FILING COMPLAINT. The department, in accordance with Section 51.252, shall provide reasonable assistance to a person who wishes to file a complaint with the department regarding a person or activity regulated under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.154. FEES. The commission by rule shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 506.201. TELEPHONE NUMBER FOR COMPLAINTS. The department shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 506.251. LICENSE REQUIRED. (a) Except as provided by Subchapter B, a person may not engage in the practice of applied behavior analysis unless the person holds a license under this chapter.

(b) A person may not use the title "licensed behavior analyst" or "licensed assistant behavior analyst," as appropriate, unless the person is licensed under this chapter.

(c) Except as provided by Subchapter B, a person may not use the title "behavior analyst" unless the person is licensed under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.252. LICENSE APPLICATION. Each applicant for a license under this chapter must submit an application and the required fees to the department. The application must include sufficient evidence, as defined by commission rules, that the applicant has successfully completed a state-approved criminal background check.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.253. REQUIREMENTS FOR LICENSED BEHAVIOR ANALYST. An applicant for a license as a licensed behavior analyst must present evidence to the department that the applicant:

(1) is currently certified by the certifying entity as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst--Doctoral or an equivalent certification issued by the certifying entity;

(2) has met the educational requirements of the Board Certified Behavior Analyst standard or the Board Certified Behavior Analyst--Doctoral standard or an equivalent standard adopted by the certifying entity;

(3) has passed the Board Certified Behavior Analyst

examination, or an equivalent examination offered by the certifying entity, in applied behavior analysis;

(4) is in compliance with all professional, ethical, and disciplinary standards established by the certifying entity; and

(5) is not subject to any disciplinary action by the certifying entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.254. REQUIREMENTS FOR LICENSED ASSISTANT BEHAVIOR ANALYST. An applicant for a license as a licensed assistant behavior analyst must present evidence to the department that the applicant:

(1) is currently certified by the certifying entity as a Board Certified Assistant Behavior Analyst or an equivalent certification issued by the certifying entity;

(2) has met the educational requirements of the Board Certified Assistant Behavior Analyst standard or an equivalent standard adopted by the certifying entity;

(3) has passed the Board Certified Assistant Behavior Analyst examination, or an equivalent examination offered by the certifying entity, in applied behavior analysis;

(4) is in compliance with all professional, ethical, and disciplinary standards established by the certifying entity;

(5) is not subject to any disciplinary action by the certifying entity; and

(6) is currently supervised by a licensed behavior analyst in accordance with the requirements of the certifying entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.255. ISSUANCE OF LICENSE. The department shall issue a license as a licensed behavior analyst or a licensed assistant behavior analyst, as appropriate, to an applicant who:

(1) complies with the requirements of this chapter;

(2) meets any additional requirements the commission establishes by rule; and

(3) pays the required fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.256. RECIPROCITY. (a) The department shall issue a license to a person who is currently licensed as a behavior analyst or as an assistant behavior analyst from another state or jurisdiction that imposes licensure requirements similar to those specified in this chapter.

(b) An applicant for a reciprocal license shall:

(1) submit evidence to the department that the applicant:

(A) is in good standing as determined by the department;

(B) holds a valid license from another state or jurisdiction; and

(C) is in compliance with other requirements established by Section 506.252, 506.253, 506.254, or 506.255, as appropriate; and

(2) pay the required fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.257. RETIREMENT STATUS. The commission by rule may adopt a system for placing a person licensed under this chapter on retirement status.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 506.301. LICENSE EXPIRATION. A license issued under this chapter expires on the second anniversary of the date of issuance.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

Sec. 506.302. LICENSE RENEWAL. Before the expiration of a

license, a license may be renewed by:

(1) submitting an application for renewal;

(2) paying the renewal fee imposed by the commission; and

(3) providing verification to the department of continued certification by the certifying entity, which signifies that the applicant for renewal has met any continuing education requirements established by the certifying entity.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER H. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 506.351. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY ACTION. After a hearing, the commission or executive director may deny a license to an applicant, suspend or revoke a person's license, or place on probation a license holder if the applicant or license holder:

(1) violates this chapter, a commission rule, or an order of the commission or the executive director;

(2) obtains a license by means of fraud, misrepresentation, or concealment of a material fact;

(3) sells, barters, or offers to sell or barter a license; or

(4) engages in unprofessional conduct that:

(A) endangers or is likely to endanger the health, welfare, or safety of the public as defined by commission rule; or

(B) violates the code of ethics adopted and published by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2, eff. September 1, 2017.

SUBCHAPTER I. ENFORCEMENT PROCEDURES

Sec. 506.401. ENFORCEMENT PROCEEDINGS. The commission, department, or executive director may enforce this chapter, a rule adopted under this chapter, or an order of the commission or executive director as provided by Subchapters F and G, Chapter 51.

Added by Acts 2017, 85th Leg., R.S., Ch. 1156 (S.B. 589), Sec. 2,

eff. September 1, 2017.

CHAPTER 507. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 507.001. DEFINITIONS. In this chapter:

(1) "Executive council" means the Texas Behavioral Health Executive Council.

(2) "License" means a license, certification, registration, or other authorization that is issued by the executive council.

(3) "Marriage and family therapy board" means the Texas State Board of Examiners of Marriage and Family Therapists.

(4) "Professional counseling board" means the Texas State Board of Examiners of Professional Counselors.

(5) "Psychology board" means the Texas State Board of Examiners of Psychologists.

(6) "Social work board" means the Texas State Board of Social Worker Examiners.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.002. APPLICATION OF SUNSET ACT. The Texas Behavioral Health Executive Council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the executive council is abolished and this chapter and Chapters 501, 502, 503, and 505 expire September 1, 2033.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.10, eff. June 18, 2023.

SUBCHAPTER B. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

Sec. 507.051. EXECUTIVE COUNCIL MEMBERSHIP. (a) The Texas Behavioral Health Executive Council consists of nine members as follows:

(1) one marriage and family therapist member and one public

member of the marriage and family therapy board, each appointed by that board;

(2) one licensed professional counselor member and one public member of the professional counseling board, each appointed by that board;

(3) one psychologist member and one public member of the psychology board, each appointed by that board;

(4) one social worker member and one public member of the social work board, each appointed by that board; and

(5) one public member appointed by the governor.

(b) Appointments to the executive council shall be made without regard to the race, color, disability, sex, age, religion, or national origin of the appointee.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.052. ELIGIBILITY OF PUBLIC MEMBER APPOINTED BY GOVERNOR. A person is not eligible for appointment by the governor as a public member of the executive council if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the executive council, the marriage and family therapy board, the professional counseling board, the psychology board, or the social work board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the executive council, the marriage and family therapy board, the professional counseling board, the psychology board, or the social work board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the executive council, the marriage and family therapy board, the professional counseling board, the psychology board, or the social work board, other than compensation or reimbursement authorized by law for executive council, marriage and family therapy board, professional counseling board, psychology

board, or social work board membership, attendance, or expenses.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the executive council and may not be an executive council employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the executive council or act as the general counsel to the executive council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the executive council, the marriage and family therapy board, the professional counseling board, the psychology board, or the social work board.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.054. TERMS; VACANCY. (a) The member appointed by the governor serves a six-year term. The remaining members serve two-year terms with the terms of four of those members expiring February 1 of each year.

(b) A member appointed to fill a vacancy holds office for the unexpired portion of the term.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.055. PRESIDING OFFICER. The member appointed by the governor is the presiding officer of the executive council.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the executive council that a member:

(1) does not have at the time of taking office the qualifications required by Section 507.051;

(2) does not maintain during service on the executive council the qualifications required by Section 507.051;

(3) is ineligible for membership under Section 507.052 or 507.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled executive council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the executive council.

(b) The validity of an action of the executive council is not affected by the fact that it is taken when a ground for removal of an executive council member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the executive council of the potential ground. The presiding officer shall then notify the appointing authority and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the executive council, who shall then notify the appointing authority and the attorney general that a potential ground for removal exists.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.057. REIMBURSEMENT. A member of the executive council may receive reimbursement for travel expenses as provided by the General Appropriations Act.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.058. MEETINGS. (a) The executive council shall hold at least two regular meetings each year.

(b) The executive council may hold additional meetings on the request of the presiding officer or on the written request of three members of the executive council.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the executive council may not vote, deliberate, or be counted as a member in attendance at a meeting of the executive council until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing executive council operations;

(2) the programs, functions, rules, and budget of the executive council;

(3) the scope of and limitations on the rulemaking authority of the executive council;

(4) the types of executive council rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the executive council regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the executive council regulates;

(B) restricts advertising by persons in a profession or business the executive council regulates;

(C) affects the price of goods or services provided by persons in a profession or business the executive council regulates;

or

(D) restricts participation in a profession or business the executive council regulates;

(5) the results of the most recent formal audit of the executive council;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the executive council in performing their duties; and

(7) any applicable ethics policies adopted by the executive council or the Texas Ethics Commission.

(c) A person appointed to the executive council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the executive council shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each executive council member. Each member of the executive council shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER PERSONNEL

Sec. 507.101. EXECUTIVE DIRECTOR; PERSONNEL. The executive council shall employ an executive director and other personnel as necessary to administer this chapter and carry out the functions of the executive council.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.102. DIVISION OF RESPONSIBILITIES. The executive

council shall develop and implement policies that clearly separate the policymaking responsibilities of the executive council and the management responsibilities of the executive director and the staff of the executive council.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.103. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for executive council employees must be based on the system established under this subsection.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.104. EQUAL OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, age, religion, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the executive council workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the executive council workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Texas Workforce Commission for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 507.151. GENERAL POWERS AND DUTIES. (a) The executive council shall administer and enforce this chapter and Chapters 501, 502, 503, and 505.

(b) In carrying out its duties under this section, the executive council may request input or assistance from the board for the applicable profession.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.152. GENERAL RULEMAKING AUTHORITY. The executive council shall adopt rules as necessary to perform its duties and implement this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.153. LIMITATION REGARDING CERTAIN RULES. (a) Unless the rule has been proposed by the applicable board for the profession, the executive council may not adopt under this chapter or Chapter 501, 502, 503, or 505:

(1) a rule regarding:

(A) the qualifications necessary to obtain a license,

including limiting an applicant's eligibility for a license based on the applicant's criminal history;

(B) the scope of practice of and standards of care and ethical practice for the profession; or

(C) continuing education requirements for license holders; or

(2) a schedule of sanctions for violations of the laws and rules applicable to the profession.

(b) For each rule proposed under Subsection (a), the executive council shall either adopt the rule as proposed or return the rule to the applicable board for revision. On the return of a rule under this subsection, the executive council shall include an explanation of the executive council's reasons for not adopting the rule as proposed.

(c) The executive council retains authority for final adoption of all rules and is responsible for ensuring compliance with all laws regarding the rulemaking process.

(d) The executive council shall adopt rules prescribing the procedure by which rules described by Subsection (a) may be proposed to the executive council.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.154. FEES. The executive council shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter and Chapters 501, 502, 503, and 505, including fees for:

(1) licenses issued by the executive council;

(2) license renewals and late renewals;

(3) examinations; and

(4) any other program or activity administered by the executive council for which a fee is authorized.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.155. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive council may not adopt rules restricting advertising or competitive bidding by a person regulated by the

executive council except to prohibit false, misleading, or deceptive practices.

(b) The executive council may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the executive council a rule that:

(1) restricts the person's use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.156. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The executive council shall adopt rules and guidelines as necessary to comply with Chapter 53.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.157. CONTINUING EDUCATION. The executive council shall recognize, prepare, or administer continuing education programs for license holders. A license holder must participate in the programs to the extent required by the executive council to keep the person's license.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.158. USE OF TECHNOLOGY. The executive council shall implement a policy requiring the executive council to use appropriate technological solutions to improve the executive council's ability to perform its functions. The policy must ensure that the public is able to interact with the executive council on the Internet.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.159. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The executive council shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of executive council rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the executive council's jurisdiction.

(b) The executive council's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The executive council shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking and alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.160. ANNUAL REGISTRY. (a) The executive council shall annually prepare a registry of all license holders.

(b) The executive council shall make the registry available to the public, license holders, and other state agencies.

(c) The executive council may not include the home address of a license holder in a registry the executive council publishes on the executive council's Internet website unless the person requests that the person's home address appear in the registry on the website. A request under this subsection must be made in the manner prescribed by the executive council.

(d) The home address of a license holder that is included in a

registry the executive council prepares under this section is public information and is not excepted from required disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.161. CONFIDENTIALITY OF HOME ADDRESS AND TELEPHONE NUMBER. Except as provided by Section 507.160(d), the home address and telephone number of a license holder are confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 73 (S.B. 510), Sec. 3, eff. September 1, 2023.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 507.201. PUBLIC INTEREST INFORMATION. (a) The executive council shall prepare information of public interest describing the functions of the executive council and the procedures by which complaints are filed with and resolved by the executive council.

(b) The executive council shall make the information available to the public and appropriate state agencies.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.202. COMPLAINTS. (a) The executive council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the executive council for the purpose of directing complaints to the executive council. The executive council may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the executive council;

(2) on a sign prominently displayed in the place of business of a person regulated by the executive council; or

(3) in a bill for services provided by a person regulated by the executive council.

(b) The executive council shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a person regulated by the executive council.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.203. INFORMATION ABOUT COMPLAINT ACTIONS. (a) The executive council shall maintain a system to promptly and efficiently act on complaints filed with the executive council. The executive council shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The executive council shall make information available describing its procedures for complaint investigation and resolution.

(c) The executive council shall periodically notify the parties to a complaint of the status of the complaint until final disposition of the complaint.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION. (a) The executive council shall adopt rules concerning the investigation of a complaint filed with the executive council. The rules adopted under this section must:

(1) distinguish between categories of complaints;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that the executive council be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;

(4) ensure that the person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and prescribe the procedures for the executive council to obtain the services of a private investigator.

(b) The executive council shall:

(1) dispose of a complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the disposition of a complaint that is under the control of the executive council not later than the 30th day after the date the executive council receives the complaint.

(c) The executive council shall notify the parties to a complaint of the projected time requirements for pursuing the complaint.

(d) The executive council shall notify the parties to a complaint of any change in the schedule not later than the seventh day after the date the change is made.

(e) The executive director shall notify the executive council of a complaint that is unresolved after the time prescribed by the executive council for resolving the complaint so that the executive council may take necessary action on the complaint.

(f) The executive council shall assign priorities and investigate complaints based on:

(1) the severity of the conduct alleged in the complaint; and

(2) the degree of harm to public health and safety.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.205. CONFIDENTIALITY OF COMPLAINT INFORMATION. (a) Except as provided by Subsection (b), a complaint and investigation and all information and materials compiled by the executive council in connection with the complaint and investigation are not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) disclosure, discovery, subpoena, or other means of legal compulsion for release of information to any person.

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the executive council in connection with the complaint may be disclosed to:

(1) the executive council and executive council employees or agents involved in license holder discipline;

(2) a party to a disciplinary action against the license

holder or that party's designated representative;

(3) the board for the applicable profession;

(4) a law enforcement agency;

(5) a governmental agency, if:

(A) the disclosure is required or permitted by law; and

(B) the agency obtaining the disclosure protects the identity of any patient whose records are examined; or

(6) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

(c) Unless good cause for delay is shown to the presiding officer at the hearing, the executive council shall provide the license holder with access to all information that the executive council intends to offer into evidence at the hearing not later than the 30th day after the date the executive council receives a written request from a license holder who is entitled to a hearing under this chapter or from the license holder's attorney of record.

(d) The executive council shall protect the identity of any patient whose records are examined in connection with a disciplinary investigation or proceeding against a license holder, except a patient who:

(1) initiates the disciplinary action; or

(2) has submitted a written consent to release the records.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.206. SUBPOENAS. (a) In the investigation of a complaint filed with the executive council, the executive director or presiding officer of the executive council may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the executive council, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the executive council may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The

court may punish a person who fails to obey the court order.

(e) The executive council shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the executive council may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

(g) Information and materials subpoenaed or compiled by the executive council in connection with the investigation of a complaint may be disclosed only as provided by Section 507.205.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.207. PUBLIC PARTICIPATION. The executive council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive council and to speak on any issue under the jurisdiction of the executive council.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

SUBCHAPTER F. GENERAL LICENSING PROVISIONS

Sec. 507.251. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The executive council shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the executive council, to the executive council or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The executive council may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The executive council shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the executive council by the Department of Public Safety, the Federal Bureau of Investigation, and

any other criminal justice agency under Chapter 411, Government Code.

(d) The executive council may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.252. EXAMINATION RESULTS. (a) The executive council shall notify each examinee of the results of an examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the executive council shall notify each examinee of the results of the examination not later than the 14th day after the date the executive council receives the results from the testing service.

(b) If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the executive council shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the executive council shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.253. REEXAMINATION. The executive council by rule shall establish:

(1) a limit on the number of times an applicant for a license who fails an examination may retake the examination; and

(2) the requirements for retaking an examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.254. FORM OF LICENSE. A license issued by the executive council must include the name of the board applicable to the license holder.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.255. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the executive council before the expiration date of the license.

(b) If the person's license has been expired for 90 days or less, the person may renew the license by paying to the executive council a fee in an amount equal to one and one-half times the required renewal fee.

(c) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the executive council a fee in an amount equal to two times the required renewal fee.

(d) If the person's license has been expired for one year or more, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.256. RENEWAL OF EXPIRED LICENSE OF OUT-OF-STATE PRACTITIONER. (a) The executive council may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the executive council a fee in an amount equal to two times the required renewal fee for the license.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.257. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 507.251.

(b) The executive council may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of a license if the license holder has previously submitted fingerprints under:

(1) Section 507.251 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.258. SEARCH OF NATIONAL PRACTITIONER DATABASE. The executive council shall establish a process to search at least one national practitioner database to determine whether another state has taken any disciplinary or other legal action against an applicant or license holder before issuing an initial or renewal license.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.259. ASSISTANCE IN LICENSING DETERMINATIONS. The executive council shall adopt rules establishing the manner in which the executive council will solicit input from and request the assistance of the applicable board for a profession regulated by the executive council when the executive council is considering an application for the issuance or renewal of a license that involves an issue related to standards of care or an applicant's professional qualifications.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

SUBCHAPTER G. DISCIPLINARY ACTIONS AND PROCEDURES

Sec. 507.301. DISCIPLINARY ACTIONS. (a) The executive council may deny, revoke, suspend, or refuse to renew a license or may reprimand a license holder if the applicant or license holder violates:

(1) this chapter;

(2) a law of this state regulating the license holder's profession;

(3) an executive council rule; or

(4) a statute or rule of another state as determined through a search conducted as provided by Section 507.258 if the violation would constitute a violation described by Subdivision (1), (2), or (3) had it occurred in this state.

(b) The executive council may place on probation a person whose license is suspended. If a license suspension is probated, the executive council may require the person to:

(1) report regularly to the executive council on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the executive council; or

(3) continue or review continuing professional education until the person attains a degree of skill satisfactory to the executive council in those areas that are the basis for the probation.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.302. TEMPORARY SUSPENSION. (a) The executive council or a three-member committee of executive council members designated by the executive council shall temporarily suspend the license of a license holder if the executive council or committee determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously

with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.303. HEARING; ADMINISTRATIVE PROCEDURE. (a) A license holder is entitled to a hearing before the State Office of Administrative Hearings before a sanction is imposed under this subchapter.

(b) A proceeding under this subchapter is governed by Chapter 2001, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.304. SCHEDULE OF SANCTIONS. (a) The executive council by rule shall adopt a broad schedule of sanctions.

(b) The State Office of Administrative Hearings shall use the schedule for any sanction imposed under this subchapter as the result of a hearing conducted by that office.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.305. INFORMAL PROCEEDINGS. (a) The executive council by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder with an opportunity to be heard; and

(2) require the presence of a member of the executive council's legal staff or an attorney employed by the attorney general to advise the executive council or the executive council's employees.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.306. ASSISTANCE IN DISCIPLINARY PROCEEDINGS. (a) The executive council shall adopt rules establishing the manner in which the executive council will solicit input from and request the assistance of the applicable board for a profession regulated by the executive council, regarding a disciplinary proceeding before the executive council involving an issue or complaint related to standards of care or ethical practice.

(b) Rules adopted under this section must include a process for referring a complaint to the applicable board if the complaint alleges:

(1) a substantive violation of a standard of care or ethical guideline for the profession; or

(2) an act of a license holder that violates the profession's scope of practice.

(c) On receiving a recommended disposition of a complaint from the applicable board, the executive council shall adopt the recommended disposition unless the executive council determines that:

(1) the recommended disposition would:

(A) have an anti-competitive effect;

(B) result in an administrative inconsistency; or

(C) raise concerns relating to good governance practices; or

(2) any recommended disciplinary penalty would deviate substantially from the schedule of sanctions for the applicable profession.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 507.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The executive council may impose an administrative penalty on a person licensed or regulated by the executive council if the person violates this chapter, a law regulating the applicable profession, or an executive council rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.352. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty must be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.353. NOTICE OF VIOLATION AND PENALTY. If the executive council determines that a violation occurred, the executive council shall give written notice of the violation to the person alleged to have committed the violation. The notice may be given by certified mail. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the administrative penalty recommended by the executive council; and

(3) inform the person of the person's right to a hearing on

the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.354. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 507.353, the person may in writing:

(1) accept the executive council's determination and recommended administrative penalty; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive council's determination and recommended penalty, the executive council shall issue an order and impose the recommended penalty.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.355. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice under Section 507.353, the executive council shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the executive council a proposal for a decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.356. DECISION BY EXECUTIVE COUNCIL. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the executive council by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The executive council shall give notice of the order to the person. The notice must include a statement of the right of the person to judicial review of the order.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.357. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the executive council's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court that is:

(i) for the amount of the penalty; and

(ii) effective until judicial review of the executive council's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive council by certified mail.

(c) If the executive council receives a copy of an affidavit under Subsection (b)(2), the executive council may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is

financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.358. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and enforcement of the penalty is not stayed, the executive council may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.359. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation has occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.360. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond:

(A) if the person gave a supersedeas bond and the penalty is not imposed; or

(B) after the person pays the penalty if the person gave a supersedeas bond and the penalty is reduced.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on

the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.361. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 507.401. INJUNCTION. (a) In addition to any other action authorized by law, the executive council may institute an action to enjoin a violation of this chapter, a law regulating the applicable profession, or an executive council rule.

(b) An action filed under this section must be filed in Travis County, the county of the defendant's residence, or the county in which any part of the violation occurred.

(c) The attorney general or the appropriate county or district attorney shall represent the executive council in an action under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.402. CIVIL PENALTY. (a) A person who violates this chapter, a law regulating the applicable profession, or an executive council rule is liable to the state for a civil penalty not to exceed $1,000 for each day of violation.

(b) At the request of the executive council, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.403. CEASE AND DESIST ORDER. (a) If it appears to the executive council that an unlicensed person is violating this chapter, a law regulating the applicable profession, or an executive council rule, the executive council, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter H.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

Sec. 507.404. MONITORING OF LICENSE HOLDER. The executive council by rule shall develop a system to monitor a license holder's compliance with applicable laws and executive council rules. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the executive council to perform certain acts; and

(2) identify and monitor each license holder who represents a risk to the public.

Added by Acts 2019, 86th Leg., R.S., Ch. 768 (H.B. 1501), Sec. 1.001, eff. September 1, 2019.

SUBTITLE J. PHARMACY AND PHARMACISTS

CHAPTER 551. GENERAL PROVISIONS

Sec. 551.001. SHORT TITLE. This subtitle may be cited as the Texas Pharmacy Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 2, eff. June 14, 2013.

Sec. 551.002. LEGISLATIVE DECLARATION; PURPOSE. (a) This subtitle shall be liberally construed to regulate in the public interest the practice of pharmacy in this state as a professional practice that affects the public health, safety, and welfare.

(b) It is a matter of public interest and concern that the practice of pharmacy merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in this state.

(c) The purpose of this subtitle is to promote, preserve, and protect the public health, safety, and welfare through:

(1) effectively controlling and regulating the practice of pharmacy; and

(2) licensing pharmacies engaged in the sale, delivery, or distribution of prescription drugs and devices used in diagnosing and treating injury, illness, and disease.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 551.003. DEFINITIONS. In Chapters 551-566:

(1) "Administer" means to directly apply a prescription drug to the body of a patient by any means, including injection, inhalation, or ingestion, by:

(A) a person authorized by law to administer the drug, including a practitioner or an authorized agent under a practitioner's supervision; or

(B) the patient at the direction of a practitioner.

(2) "Board" means the Texas State Board of Pharmacy.

(3) "Class A pharmacy license" or "community pharmacy license" means a license described by Section 560.051.

(4) "Class B pharmacy license" or "nuclear pharmacy license" means a license described by Section 560.051.

(5) "Class C pharmacy license" or "institutional pharmacy license" means a license described by Section 560.051.

(6) "Class D pharmacy license" or "clinic pharmacy license" means a license described by Section 560.051.

(7) "Class E pharmacy license" or "nonresident pharmacy license" means a license described by Section 560.051.

(8) "College of pharmacy" means a school, university, or college of pharmacy that:

(A) satisfies the accreditation standards of the American Council on Pharmaceutical Education as adopted by the board; or

(B) has degree requirements that meet the standards of

accreditation set by the board.

(9) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of a prescription drug order based on a routine, regularly observed prescribing pattern; or

(D) for or as an incident to research, teaching, or chemical analysis and not for selling or dispensing, except as allowed under Section 562.154 or Chapter 563.

(10) "Confidential record" means a health-related record, including a patient medication record, prescription drug order, or medication order, that:

(A) contains information that identifies an individual; and

(B) is maintained by a pharmacy or pharmacist.

(11) "Controlled substance" means a substance, including a drug:

(A) listed in Schedule I, II, III, IV, or V, as established by the commissioner of public health under Chapter 481, Health and Safety Code, or in Penalty Group 1, 1-A, 1-B, 2, 3, or 4, Chapter 481; or

(B) included in Schedule I, II, III, IV, or V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(12) "Dangerous drug" means a drug or device that:

(A) is not included in Penalty Group 1, 1-B, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, with or without consideration.

(14) "Designated agent" means:

(A) an individual, including a licensed nurse, physician assistant, or pharmacist:

(i) who is designated by a practitioner and authorized to communicate a prescription drug order to a pharmacist; and

(ii) for whom the practitioner assumes legal responsibility;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom a practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to administer a prescription drug order for a dangerous drug under Subchapter B, Chapter 157.

(15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(15-a) "Direct supervision" means supervision by a pharmacist who directs the activities of a pharmacist-intern, pharmacy technician, or pharmacy technician trainee to a sufficient degree to ensure the activities are performed accurately, safely, and without risk of harm to patients, as specified by board rule.

(16) "Dispense" means to prepare, package, compound, or label, in the course of professional practice, a prescription drug or device for delivery to an ultimate user or the user's agent under a practitioner's lawful order.

(17) "Distribute" means to deliver a prescription drug or device other than by administering or dispensing.

(18) "Drug" means:

(A) a substance recognized as a drug in a drug compendium, including the current official United States Pharmacopoeia, official National Formulary, or official Homeopathic Pharmacopoeia, or in a supplement to a drug compendium;

(B) a substance intended for use in the diagnosis,

cure, mitigation, treatment, or prevention of disease in a human or another animal;

(C) a substance, other than food, intended to affect the structure or a function of the body of a human or another animal;

(D) a substance intended for use as a component of a substance specified in Paragraph (A), (B), or (C);

(E) a dangerous drug; or

(F) a controlled substance.

(19) "Drug regimen review" includes evaluation of prescription drug or medication orders and a patient medication record for:

(A) a known allergy;

(B) a rational therapy-contraindication;

(C) a reasonable dose and route of administration;

(D) reasonable directions for use;

(E) duplication of therapy;

(F) a drug-drug interaction;

(G) drug-food interaction;

(H) drug-disease interaction;

(I) adverse drug reaction; and

(J) proper use, including overuse or underuse.

(20) "Internship" means a practical experience program that is approved by the board.

(21) "Label" means written, printed, or graphic matter on the immediate container of a drug or device.

(22) "Labeling" means the process of affixing a label, including all information required by federal and state statute or regulation, to a drug or device container. The term does not include:

(A) the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device; or

(B) unit dose packaging.

(23) "Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from a substance of natural origin or independently by a chemical or biological synthesis. The term includes packaging or repackaging a substance or labeling or relabeling a container and promoting and marketing the drug or device and preparing and promoting a commercially available product from a

bulk compound for resale by a person, including a pharmacy or practitioner. The term does not include compounding.

(24) "Medication order" means an order from a practitioner or a practitioner's designated agent for administration of a drug or device.

(25) "Nonprescription drug" means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with state or federal law.

(26) "Patient counseling" means communication by a pharmacist of information, as specified by board rule, to a patient or caregiver to improve therapy by ensuring proper use of a drug or device.

(27) "Pharmaceutical care" means providing drug therapy and other pharmaceutical services defined by board rule and intended to assist in curing or preventing a disease, eliminating or reducing a patient's symptom, or arresting or slowing a disease process.

(28) "Pharmacist" means a person licensed by the board to practice pharmacy.

(29) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with statutes and rules relating to the practice of pharmacy.

(30) "Pharmacist-intern" means:

(A) an undergraduate student who is enrolled in the professional sequence of a college of pharmacy approved by the board and who is participating in a board-approved internship program; or

(B) a graduate of a college of pharmacy who is participating in a board-approved internship.

(31) "Pharmacy" means a facility at which a prescription drug or medication order is received, processed, or dispensed under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.). The term does not include a narcotic drug treatment program that is regulated under Chapter 466, Health and Safety Code.

(32) "Pharmacy technician" means an individual employed by a pharmacy whose responsibility is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. The term does not include a pharmacy

technician trainee.

(32-a) "Pharmacy technician trainee" means an individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy technician training program.

(33) "Practice of pharmacy" means:

(A) providing an act or service necessary to provide pharmaceutical care;

(B) interpreting or evaluating a prescription drug order or medication order;

(C) participating in drug or device selection as authorized by law, and participating in drug administration, drug regimen review, or drug or drug-related research;

(D) providing patient counseling;

(E) being responsible for:

(i) dispensing a prescription drug order or distributing a medication order;

(ii) compounding or labeling a drug or device, other than labeling by a manufacturer, repackager, or distributor of a nonprescription drug or commercially packaged prescription drug or device;

(iii) properly and safely storing a drug or device; or

(iv) maintaining proper records for a drug or device;

(F) performing for a patient a specific act of drug therapy management delegated to a pharmacist by a written protocol from a physician licensed in this state in compliance with Subtitle B; or

(G) administering an immunization or vaccination under a physician's written protocol.

(34) "Practitioner" means:

(A) a person licensed or registered to prescribe, distribute, administer, or dispense a prescription drug or device in the course of professional practice in this state, including a physician, dentist, podiatrist, or veterinarian but excluding a person licensed under this subtitle;

(B) a person licensed by another state, Canada, or the United Mexican States in a health field in which, under the law of this state, a license holder in this state may legally prescribe a

dangerous drug;

(C) a person practicing in another state and licensed by another state as a physician, dentist, veterinarian, or podiatrist, who has a current federal Drug Enforcement Administration registration number and who may legally prescribe a Schedule II, III, IV, or V controlled substance, as specified under Chapter 481, Health and Safety Code, in that other state; or

(D) an advanced practice registered nurse or physician assistant to whom a physician has delegated the authority to prescribe or order a drug or device under Section 157.0511, 157.0512, or 157.054.

(35) "Preceptor" has the meaning assigned by Section 558.057.

(36) "Prescription drug" means:

(A) a substance for which federal or state law requires a prescription before the substance may be legally dispensed to the public;

(B) a drug or device that under federal law is required, before being dispensed or delivered, to be labeled with the statement:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(C) a drug or device that is required by federal or state statute or regulation to be dispensed on prescription or that is restricted to use by a practitioner only.

(37) "Prescription drug order" means:

(A) an order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed; or

(B) an order under Subchapter B, Chapter 157.

(38) "Prospective drug use review" means the review of a patient's drug therapy and prescription drug order or medication order, as defined by board rule, before dispensing or distributing a drug to the patient.

(39) "Provide" means to supply one or more unit doses of a nonprescription drug or dangerous drug to a patient.

(40) "Radioactive drug" means a drug that exhibits

spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons, including a nonradioactive reagent kit or nuclide generator that is intended to be used in the preparation of the substance.

(41) "Substitution" means the dispensing of a drug or a brand of drug other than the drug or brand of drug ordered or prescribed.

(42) "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(42-a) "Therapeutic contact lens" means a contact lens that contains one or more drugs and that delivers the drugs into the wearer's eye.

(43) "Ultimate user" means a person who obtains or possesses a prescription drug or device for the person's own use or for the use of a member of the person's household or for administering to an animal owned by the person or by a member of the person's household.

(44) "Unit dose packaging" means the ordered amount of drug in a dosage form ready for administration to a particular patient, by the prescribed route at the prescribed time, and properly labeled with the name, strength, and expiration date of the drug.

(45) "Written protocol" means a physician's order, standing medical order, standing delegation order, or other order or protocol as defined by rule of the Texas Medical Board under Subtitle B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 112, Sec. 5, eff. May 11, 2001; Acts 2001, 77th Leg., ch. 1188, Sec. 10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1254, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 88, Sec. 8, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 396 (H.B. 1740), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 418 (S.B. 406), Sec. 19, eff. November 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 3, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 929 (S.B. 1633), Sec. 1, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 18, eff. September 1, 2021.

Sec. 551.004. APPLICABILITY OF SUBTITLE. (a) This subtitle does not apply to:

(1) a practitioner licensed by the appropriate state board who supplies a patient of the practitioner with a drug in a manner authorized by state or federal law and who does not operate a pharmacy for the retailing of prescription drugs;

(2) a member of the faculty of a college of pharmacy recognized by the board who is a pharmacist and who performs the pharmacist's services only for the benefit of the college;

(3) a person who procures prescription drugs for lawful research, teaching, or testing and not for resale;

(4) a home and community support services agency that possesses a dangerous drug as authorized by Section 142.0061, 142.0062, or 142.0063, Health and Safety Code; or

(5) a dispensing organization, as defined by Section 487.001, Health and Safety Code, that cultivates, processes, and dispenses low-THC cannabis, as authorized by Chapter 487, Health and Safety Code, to a patient listed in the compassionate-use registry established under that chapter.

(b) This subtitle does not prevent a practitioner from administering a drug to a patient of the practitioner.

(c) This subtitle does not prevent the sale by a person, other than a pharmacist, firm, joint stock company, partnership, or corporation, of:

(1) a nonprescription drug that is harmless if used according to instructions on a printed label on the drug's container and that does not contain a narcotic;

(2) an insecticide, a fungicide, or a chemical used in the arts if the insecticide, fungicide, or chemical is properly labeled; or

(3) an insecticide or fungicide that is mixed or compounded only for an agricultural purpose.

(d) A wholesaler or manufacturer may distribute a prescription drug as provided by state or federal law.

(e) This subtitle does not prevent a physician or therapeutic optometrist from dispensing and charging for therapeutic contact lenses. This subsection does not authorize a therapeutic optometrist to prescribe, administer, or dispense a drug that is otherwise outside the therapeutic optometrist's scope of practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 396 (H.B. 1740), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 301 (S.B. 339), Sec. 5, eff. June 1, 2015.

Sec. 551.005. APPLICATION OF SUNSET ACT. The Texas State Board of Pharmacy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle expires September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 1, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 8, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.11, eff. June 18, 2023.

Sec. 551.006. EXCLUSIVE AUTHORITY. Notwithstanding any other law, a pharmacist has the exclusive authority to determine whether or not to dispense a drug.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 9, eff. September 1, 2017.

Sec. 551.008. PROHIBITION ON RULE VIOLATING SINCERELY HELD RELIGIOUS BELIEF. (a) All rules, regulations, or policies adopted by the board may not violate Chapter 110, Civil Practice and Remedies Code.

(b) A person may assert a violation of Subsection (a) as an affirmative defense in an administrative hearing or as a claim or defense in a judicial proceeding under Chapter 37, Civil Practice and Remedies Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 9, eff. September 1, 2017.

CHAPTER 552. TEXAS STATE BOARD OF PHARMACY

Sec. 552.001. MEMBERSHIP. (a) The Texas State Board of Pharmacy consists of 11 members appointed by the governor with the advice and consent of the senate as follows:

(1) seven members who are pharmacists;

(2) one member who is a pharmacy technician; and

(3) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 1, eff. September 1, 2013.

Sec. 552.002. QUALIFICATIONS. (a) The board must include representation for pharmacists who are primarily employed in Class A pharmacies and Class C pharmacies.

(b) A pharmacist board member must, at the time of appointment:

(1) be a resident of this state;

(2) have been licensed for the five years preceding appointment;

(3) be in good standing to practice pharmacy in this state; and

(4) be practicing pharmacy in this state.

(b-1) A pharmacy technician board member must, at the time of

appointment:

(1) be a resident of this state;

(2) have been registered as a pharmacy technician for the five years preceding appointment;

(3) be in good standing to act as a pharmacy technician in this state; and

(4) be acting as a pharmacy technician in this state.

(c) Each person appointed to the board shall, not later than the 15th day after the date of appointment, qualify by taking the constitutional oath of office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 2, eff. September 1, 2013.

Sec. 552.003. PUBLIC MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 552.004. MEMBERSHIP RESTRICTIONS. (a) A person may not be a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(b) A person may not be a member of the board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 3, eff. September 1, 2005.

Sec. 552.005. TERMS; VACANCY. (a) Members of the board are appointed for staggered six-year terms, with either three or four members' terms, as applicable, expiring every other year at midnight on the last day of the state fiscal year in the last year of the member's term.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

(c) A board member may not serve more than two consecutive full terms. The completion of the unexpired portion of a full term is not service for a full term for purposes of this subsection.

(d) A person appointed by the governor to a full term before the expiration of the term of the member being succeeded becomes a member of the board on the first day of the next state fiscal year following the appointment.

(e) A person appointed to an unexpired portion of a full term becomes a member of the board on the day after the date of appointment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 3, eff. September 1, 2013.

Sec. 552.006. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing the board's operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a profession or business the board regulates;

(B) restrict advertising by persons in a profession or business the board regulates;

(C) affect the price of goods or services provided by persons in a profession or business the board regulates; and

(D) restrict participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual. The board shall

publish a copy of each signed statement on the board's Internet website.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 4, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 10, eff. September 1, 2017.

Sec. 552.007. OFFICERS. (a) The governor shall designate a member of the board as the president of the board to serve in that capacity at the pleasure of the governor. The board shall elect from its members for one-year terms a vice president, treasurer, and other officers the board considers appropriate and necessary to conduct board business.

(b) The board's president shall preside at each board meeting and is responsible for the performance of the board's duties and functions under this subtitle.

(c) An officer, other than the president, shall perform the duties normally associated with the officer's position and other duties assigned to the officer by the board.

(d) The term of an officer begins on the first day of the state fiscal year following the officer's election and ends on election of a successor.

(e) A member elected as an officer may not serve more than two consecutive full terms in each office to which the member is elected.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 5, eff. September 1, 2005.

Sec. 552.008. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required for appointment to the board;

(2) does not maintain during service on the board the qualifications required for appointment to the board;

(3) violates a prohibition established by Section 552.004;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings the member is eligible to attend during a calendar year, unless the absence is excused by majority vote of the board.

(b) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the president of the board of the ground. The president shall then notify the governor that a potential ground for removal exists.

(c) The validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 552.009. PER DIEM; REIMBURSEMENT. (a) Each member of the board is entitled to a per diem set by legislative appropriation for each day the member engages in board business.

(b) A member is entitled to reimbursement for travel expenses as prescribed by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 6, eff. September 1, 2005.

Sec. 552.010. MEETINGS. (a) The board shall meet at least once every four months to transact board business.

(b) The board may meet at other times at the call of the board's president or two-thirds of the board's members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 26 (S.B. 500), Sec. 4, eff. September 1, 2013.

Sec. 552.011. EXECUTIVE SESSION. (a) The board may, in accordance with Chapter 551, Government Code, conduct a portion of a board meeting in executive session.

(b) The board may conduct in executive session a deliberation relating to discipline of a license holder. At the conclusion of the deliberation, in open session the board shall vote and announce the board's decision relating to the license holder.

(c) The board may conduct in executive session a disciplinary hearing relating to a pharmacist or pharmacy student who is impaired because of chemical abuse or mental or physical illness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 552.012. QUORUM; VALIDITY OF BOARD ACTION. Except when a greater number is required by this subtitle or by board rule, an action of the board must be by a majority of a quorum.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 553. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

Sec. 553.001. EXECUTIVE DIRECTOR. The board shall employ an executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.002. QUALIFICATIONS OF EXECUTIVE DIRECTOR. The executive director must be a pharmacist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.003. GENERAL DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director is an ex officio member of the board without vote.

(b) The executive director is a full-time employee of the board and shall:

(1) serve as secretary to the board;

(2) perform the regular administrative functions of the board and any other duty as the board directs; and

(3) under the direction of the board, perform the duties required by this subtitle or designated by the board.

(c) The executive director may not perform a discretionary or decision-making function for which the board is solely responsible.

(d) The executive director shall keep the seal of the board. The executive director may affix the seal only in the manner prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 11, eff. September 1, 2017.

Sec. 553.004. PERSONNEL. The board may employ persons in positions or capacities the board considers necessary to properly conduct the board's business and fulfill the board's responsibilities under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.005. EMPLOYEE RESTRICTIONS. (a) A person may not be an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(b) A person may not act as general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 7, eff. September 1, 2005.

Sec. 553.006. POSSESSION BY EMPLOYEE OF REGULATED SUBSTANCE. A board employee may possess a dangerous drug or controlled substance when acting in the employee's official capacity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.007. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the responsibilities of the board and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.008. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.009. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 553.010. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 554. BOARD POWERS AND DUTIES; RULEMAKING AUTHORITY

SUBCHAPTER A. POWERS AND DUTIES

Sec. 554.001. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) administer and enforce this subtitle and rules adopted under this subtitle and enforce other laws relating to the practice of pharmacy and other powers and duties granted under other law;

(2) cooperate with other state and federal agencies in the enforcement of any law relating to the practice of pharmacy or any

drug or drug-related law;

(3) maintain an office in which permanent records are kept; and

(4) preserve a record of the board's proceedings.

(b) The board may:

(1) join a professional organization or association organized to promote the improvement of the standards of the practice of pharmacy for protecting the health and welfare of the public; and

(2) appoint committees from the board's membership, an advisory committee from the pharmacy profession, and any other group to assist in administering this subtitle.

(c) The board may:

(1) issue a duplicate copy of a license to practice pharmacy or a license renewal certificate on a request from the holder and on payment of a fee determined by the board; and

(2) inspect a facility licensed under this subtitle for compliance with this subtitle.

(d) The board may be represented by counsel, including the attorney general, district attorney, or county attorney, if necessary in a legal action taken under this subtitle.

(e) The board shall develop formal policies outlining the structure, role, and responsibilities of each committee established under Subsection (b)(2) that contains board members. The board may adopt rules to implement this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 8, eff. September 1, 2005.

Sec. 554.0011. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The board shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute

resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 12, eff. September 1, 2017.

Sec. 554.002. REGULATION OF PRACTICE OF PHARMACY. The board shall regulate the practice of pharmacy in this state by:

(1) issuing a license after examination or by reciprocity to an applicant qualified to practice pharmacy and issuing a license to a pharmacy under this subtitle;

(2) renewing a license to practice pharmacy and a license to operate a pharmacy;

(3) determining and issuing standards for recognizing and approving degree requirements of colleges of pharmacy whose graduates are eligible for a license in this state;

(4) specifying and enforcing requirements for practical training, including an internship;

(5) enforcing the provisions of this subtitle relating to:

(A) the conduct or competence of a pharmacist practicing in this state and the conduct of a pharmacy operating in this state; and

(B) the suspension, revocation, retirement, or restriction of a license to practice pharmacy or to operate a pharmacy or the imposition of an administrative penalty or reprimand on a license holder;

(6) regulating the training, qualifications, and employment of a pharmacist-intern, pharmacy technician, and pharmacy technician trainee; and

(7) determining and issuing standards for recognizing and approving a pharmacy residency program for purposes of Subchapter W,

Chapter 61, Education Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.301(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 4, eff. June 14, 2013.

Sec. 554.0021. RECOGNITION AND APPROVAL OF PHARMACIST CERTIFICATION PROGRAMS. (a) The board shall determine and issue standards for recognizing and approving pharmacist certification programs.

(b) In adopting standards under Subsection (a), the board shall include a requirement that a pharmacist may not use the designation "board certified" unless the pharmacist has successfully completed a certification program that meets the board's standards.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.301(c), eff. Sept. 1, 2001.

Sec. 554.003. PROCEDURES. The board by rule shall specify:

(1) the licensing procedures to be followed, including specification of forms to be used, in applying for a pharmacy license; and

(2) fees for filing an application for a pharmacy license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.004. ADMINISTRATION OF MEDICATION. (a) The board shall specify conditions under which a pharmacist may administer medication, including an immunization and vaccination. The conditions must ensure that:

(1) a licensed health care provider authorized to administer the medication is not reasonably available to administer the medication;

(2) failure to administer the medication, other than an immunization or vaccination, might result in a significant delay or

interruption of a critical phase of drug therapy;

(3) the pharmacist possesses the necessary skill, education, and certification as specified by the board to administer the medication;

(4) within a reasonable time after administering medication, the pharmacist notifies the licensed health care provider responsible for the patient's care that the medication was administered;

(5) the pharmacist may not administer medication to a patient at the patient's residence, except at a licensed nursing home or hospital;

(6) the pharmacist administers an immunization or vaccination under a physician's written protocol and meets the standards established by the board; and

(7) the authority of a pharmacist to administer medication may not be delegated.

(b) This section does not prohibit a pharmacist from preparing or manipulating a biotechnological agent or device.

(c) This section does not prohibit a pharmacist from performing an act delegated by a physician in accordance with Chapter 157. The pharmacist performing a delegated medical act under that chapter is considered to be performing a medical act and not to be engaging in the practice of pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.005. PRESCRIPTION DRUGS AND DEVICES. (a) In regulating the practice of pharmacy and the use in this state of prescription drugs and devices in the diagnosis, mitigation, or treatment or prevention of injury, illness, or disease, the board shall:

(1) regulate the delivery or distribution of a prescription drug or device;

(2) specify minimum standards for the professional environment, technical equipment, and security in a prescription dispensing area;

(3) specify minimum standards for:

(A) drug storage;

(B) maintenance of prescription drug records; and

(C) procedures for the:

(i) delivering and dispensing in a suitable, appropriately labeled container;

(ii) providing of prescription drugs or devices;

(iii) monitoring of drug therapy; and

(iv) counseling of patients on proper use of a prescription drug or device in the practice of pharmacy;

(4) adopt rules regulating a prescription drug order or medication order transmitted by electronic means; and

(5) register a balance used for compounding drugs in a pharmacy licensed in this state and periodically inspect the balance to verify accuracy.

(b) In implementing Subsection (a)(1), the board may, after notice and hearing, seize any prescription drug or device that poses a hazard to the public health and welfare.

(c) In implementing Subsection (a)(1), the board may not regulate:

(1) any manufacturer's representative or employee acting in the normal course of business;

(2) a person engaged in the wholesale drug business and licensed by the commissioner of public health as provided by Chapter 431, Health and Safety Code; or

(3) an employee of a person described by Subdivision (2) if the employee is acting in the normal course of business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.301(d), eff. Sept. 1, 2001.

Sec. 554.006. FEES. (a) The board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this subtitle.

(b) The board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of establishing and maintaining the program described by Sections 481.075, 481.076, and 481.0761, Health and Safety Code.

(c) The board may assess the fee described by Subsection (b) on

individuals or entities authorized to prescribe or dispense controlled substances under Chapter 481, Health and Safety Code, and to access the program described by Sections 481.075, 481.076, and 481.0761, Health and Safety Code.

(d) Each agency that licenses individuals or entities authorized to prescribe or dispense controlled substances under Chapter 481, Health and Safety Code, and to access the program described by Sections 481.075, 481.076, and 481.0761, Health and Safety Code, shall increase the occupational license, permit, or registration fee of the license holders or use available excess revenue in an amount sufficient to operate that program as specified by the board.

(e) A fee collected by an agency under Subsection (d) shall be transferred to the board for the purpose of establishing and maintaining the program described by Sections 481.075, 481.076, and 481.0761, Health and Safety Code.

(f) Grants received by the board to implement or operate the program described by Sections 481.075, 481.076, and 481.0761, Health and Safety Code, may be used by the board to offset or reduce the amount of fees paid by each agency that licenses individuals or entities who are or may be authorized to prescribe or dispense controlled substances under Chapter 481, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 23, eff. September 1, 2016.

Sec. 554.007. FUNDS. (a) The board shall deposit revenue collected under this subtitle to the credit of the general revenue fund.

(b) The board may receive and spend money, or use gifts, grants, and other funds and assets, in addition to money collected under Subsection (a), in accordance with state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 9, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 5, eff. June

14, 2013.

Sec. 554.009. LEASE OR PURCHASE OF VEHICLES. (a) The board may lease or purchase vehicles for use in official board business.

(b) A vehicle acquired under Subsection (a) is exempt from a requirement to bear state government identification.

(c) The board may register a vehicle with the Texas Department of Motor Vehicles in an alias name only for investigative personnel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.01, eff. September 1, 2009.

Sec. 554.010. PEACE OFFICERS. (a) The board may commission as a peace officer to enforce this subtitle an employee who has been certified as qualified to be a peace officer by the Texas Commission on Law Enforcement.

(b) An employee commissioned as a peace officer under this subtitle has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1361 (S.B. 650), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.57, eff. May 18, 2013.

Sec. 554.011. PILOT AND DEMONSTRATION RESEARCH PROJECTS. (a) The board may approve pilot and demonstration research projects for innovative applications in the practice of pharmacy.

(b) The board shall specify the procedures to be followed in applying for approval of a project.

(c) The approval may include a provision granting an exception to any rule adopted under this subtitle. The board may extend the time an exception to a rule is granted as necessary for the board to

adopt an amendment or modification of the rule. The board may condition approval of a project on compliance with this section and rules adopted under this section.

(d) A project may not include therapeutic substitution or substitution of a medical device used in patient care.

(e) This section does not expand the definition of pharmacy under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.302(a), eff. Sept. 1, 2001.

Sec. 554.012. NOTIFICATION RELATING TO THERAPEUTIC OPTOMETRISTS. The board shall inform each holder of a license to practice pharmacy and each holder of a license to operate a pharmacy of the authority of a therapeutic optometrist to prescribe a drug under Section 351.357 by annually mailing to each license holder a notice that:

(1) describes the authority of a therapeutic optometrist to prescribe a drug; and

(2) lists each drug that a therapeutic optometrist may lawfully prescribe.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.014. INFORMATION PROVIDED TO LICENSE HOLDERS. At least once each biennium, the board shall provide to license holders information on:

(1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

(2) abusive and addictive behavior of certain persons who use prescription pain medications;

(3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and

(4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 7, eff. Sept. 1, 2003.

Sec. 554.015. POISON CONTROL CENTER INFORMATION. The board shall provide to license holders information regarding the services provided by poison control centers.

Added by Acts 2003, 78th Leg., ch. 1163, Sec. 7, eff. Sept. 1, 2003.

Sec. 554.017. LIST OF PHARMACISTS AUTHORIZED TO SIGN PRESCRIPTION DRUG ORDERS. The board shall provide on its Internet website a list of pharmacists who are authorized to sign a prescription drug order under Section 157.101(b-1), including the name of the pharmacist's delegating physician under the protocol required under that subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 271 (S.B. 381), Sec. 2, eff. September 1, 2009.

Sec. 554.018. COMPREHENSIVE SUBSTANCE USE DISORDER APPROACH. The board shall encourage pharmacists to participate in a program that provides a comprehensive approach to the delivery of early intervention and treatment services for persons with substance use disorders and persons who are at risk of developing substance use disorders, such as a program promoted by the Substance Abuse and Mental Health Services Administration within the United States Department of Health and Human Services.

Added by Acts 2019, 86th Leg., R.S., Ch. 1167 (H.B. 3285), Sec. 11, eff. September 1, 2019.

SUBCHAPTER B. RULEMAKING

Sec. 554.051. RULEMAKING: GENERAL POWERS AND DUTIES. (a) The board shall adopt rules consistent with this subtitle for the administration and enforcement of this subtitle.

(a-1) The board may adopt rules to administer Sections 481.074, 481.075, 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.07636, 481.0764, 481.0765, 481.0766, 481.0767,

481.0768, and 481.0769, Health and Safety Code.

(b) If the board determines it necessary to protect the health and welfare of the citizens of this state, the board may make a rule concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state.

(c) The board shall adopt rules regarding records to be maintained by a pharmacist performing a specific act under a written protocol.

(d) The board by rule shall specify minimum standards for professional responsibility in the conduct of a pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1268 (S.B. 195), Sec. 24, eff. September 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 13, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 14, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 8, eff. September 1, 2019.

Sec. 554.052. IMMUNIZATIONS AND VACCINATIONS; PHYSICIAN SUPERVISION. (a) The board by rule shall require a pharmacist to notify a physician who prescribes an immunization or vaccination within 24 hours after the pharmacist administers the immunization or vaccination.

(b) The board shall establish minimum education and continuing education standards for a pharmacist who administers an immunization or vaccination. The standards must include Centers for Disease Control and Prevention training, basic life support training, and hands-on training in techniques for administering immunizations and vaccinations.

(c) Supervision by a physician is adequate if the delegating physician:

(1) is responsible for formulating or approving an order or protocol, including the physician's order, standing medical order, or standing delegation order, and periodically reviews the order or

protocol and the services provided to a patient under the order or protocol;

(2) except as provided by Subsection (c-1), has established a physician-patient relationship with each patient under 14 years of age and referred the patient to the pharmacist;

(3) is geographically located to be easily accessible to the pharmacy where an immunization or vaccination is administered;

(4) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and

(5) is available through direct telecommunication for consultation, assistance, and direction.

(c-1) A pharmacist may administer an influenza vaccination to a patient over seven years of age without an established physician-patient relationship.

(d) The Texas Medical Board by rule shall establish the minimum content of a written order or protocol. The order or protocol may not permit delegation of medical diagnosis.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 375 (H.B. 1409), Sec. 1, eff. September 1, 2009.

Sec. 554.053. RULEMAKING: PHARMACY TECHNICIAN AND PHARMACY TECHNICIAN TRAINEE. (a) The board shall establish rules for the use and the duties of a pharmacy technician and pharmacy technician trainee employed by a pharmacy licensed by the board. A pharmacy technician and pharmacy technician trainee shall be responsible to and must be directly supervised by a pharmacist.

(b) The board may not adopt a rule establishing a ratio of pharmacists to pharmacy technicians and pharmacy technician trainees in a Class C pharmacy or limiting the number of pharmacy technicians or pharmacy technician trainees that may be used in a Class C pharmacy.

(c) The board shall determine and issue standards for recognition and approval of a training program for pharmacy technicians and maintain a list of board-approved training programs that meet those standards.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.303(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 6, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 7, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 929 (S.B. 1633), Sec. 2, eff. September 1, 2017.

Sec. 554.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices by that person.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement used by the person; or

(4) restricts the use of a trade name in advertising by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 554.055. RULEMAKING; ELECTRONIC MEDIA. The board shall adopt rules regarding the sale and delivery of drugs by use of electronic media, including the Internet.

Added by Acts 2001, 77th Leg., ch. 972, Sec. 1, eff. Sept. 1, 2001.

Sec. 554.056. RULEMAKING; ADDITION OF FLAVORING TO COMMERCIAL PRODUCT. The board may adopt rules governing the procedures for a pharmacist, as part of compounding, to add flavoring to a commercial product at the request of a patient or a patient's agent.

Added by Acts 2007, 80th Leg., R.S., Ch. 550 (S.B. 1274), Sec. 1, eff. September 1, 2007.

Sec. 554.057. RULEMAKING; IMPLEMENTATION OF DRUG THERAPY UNDER PROTOCOL. The board, with the advice of the Texas Medical Board, shall adopt rules that allow a pharmacist to implement or modify a patient's drug therapy pursuant to a physician's delegation under Section 157.101(b-1).

Added by Acts 2009, 81st Leg., R.S., Ch. 271 (S.B. 381), Sec. 3, eff. September 1, 2009.

CHAPTER 555. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 555.001. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) The board shall provide on its website a list of all Internet pharmacies licensed by the board and shall provide information about each pharmacy, including the pharmacy's name, license number, and state of physical location. In this subsection, an Internet pharmacy is a pharmacy physically located in this state or another state that:

(1) dispenses a prescription drug or device under a prescription drug order in response to a request received by way of the Internet to dispense the drug or device; and

(2) delivers the drug or device to a patient in this state by United States mail, common carrier, or delivery service.

(d) Information regarding the home address or home telephone number of a person licensed or registered under this subtitle, including a pharmacy owner, is confidential and not subject to disclosure under Chapter 552, Government Code, but each person licensed or registered must provide the board with a business address or address of record that is subject to disclosure under Chapter 552, Government Code, and that may be posted on the board's Internet site or in the board's licensure verification database.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 10, eff. September 1, 2005.

Sec. 555.002. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated by the board;

(2) on a sign prominently displayed in the place of business of each person regulated by the board;

(3) on an electronic messaging system in a font specified by board rule prominently displayed in the place of business of each person regulated by the board; or

(4) in a bill for service provided by a person regulated by the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) Any person who has knowledge relating to an action or omission of a pharmacist or pharmacy licensed by the board that constitutes a ground for disciplinary action under Section 565.001 or 565.002, or a rule adopted under one of those sections, may provide relevant records, report relevant information, or provide assistance to the board.

(d) A complaint directed to the board under this section may be made through the Internet.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 972, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 2, eff. September 1, 2015.

Sec. 555.003. COMPLAINT FORM. The board by rule shall adopt a

form on which a person may file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.004. ASSISTANCE WITH COMPLAINT. The board shall provide reasonable assistance to a person who wants to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.005. RECORDS OF COMPLAINTS. For each complaint received by the board, the board shall maintain information about parties to the complaint, including the complainant's identity, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 11, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 1, eff. September 1, 2013.

Sec. 555.006. NOTIFICATION CONCERNING COMPLAINT. (a) The board shall notify the complainant not later than the 30th day after the date the board receives the complaint and shall provide an estimated time for resolution of the complaint.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least every four months and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.007. GENERAL RULES REGARDING COMPLAINT INVESTIGATION

AND DISPOSITION. (a) The board shall adopt policies and procedures concerning the investigation of a complaint filed with the board. The policies and procedures must:

(1) determine the seriousness of the complaint;

(2) ensure that a complaint is not closed without appropriate consideration;

(3) ensure that a letter is sent to the person who filed the complaint explaining the action taken on the complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) prescribe guidelines concerning the types of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator; and

(6) allow appropriate employees of the board to dismiss a complaint if an investigation shows that:

(A) no violation occurred; or

(B) the subject of the complaint is outside the board's jurisdiction.

(b) The board shall:

(1) dispose of a complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the investigation or disposition that is under the control of the board.

(c) At each public meeting of the board, the executive director shall report to the board each complaint dismissed under Subsection (a)(6) since the board's last public meeting.

(d) The board may not consider or act on a complaint involving a violation alleged to have occurred more than seven years before the date the complaint is received by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 12, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 2, eff. September 1, 2013.

Sec. 555.008. NOTICE TO BOARD CONCERNING COMPLAINTS. (a) The executive director shall notify the board of the number of complaints that are unresolved after two years after the date of the filing of

the complaint. The executive director shall provide the board with an explanation of the reason that a complaint has not been resolved.

(b) The executive director shall provide the notice and explanation required under Subsection (a) periodically at regularly scheduled board meetings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.009. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on an issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.010. CONFIDENTIALITY. The identity of a person who reports to or assists the board under Section 555.002(c) and a document that could disclose the identity of that person are confidential and are not considered public information for the purposes of Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.011. IMMUNITY. (a) A person who provides information or assistance under Section 555.002(c) is immune from civil liability arising from providing the information or assistance.

(b) Subsection (a) shall be liberally construed to accomplish the purposes of this chapter, and the immunity provided under that subsection is in addition to any other immunity provided by law.

(c) A person who provides information or assistance to the board under this chapter is presumed to have acted in good faith. A person who alleges a lack of good faith has the burden of proof on that issue.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 555.012. COUNTERCLAIM OR SUIT. (a) A person who provides information or assistance under Section 555.002(c) and who is named as a defendant in a civil action filed as a result of the information or assistance may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous, unreasonable, without foundation, or brought in bad faith.

(b) A board employee or member or an agent of the board who is named as a defendant in a civil action filed as a result of an action taken in the person's official capacity or in the course and scope of employment may file a counterclaim in a pending action or may prove a cause of action in a subsequent suit to recover defense costs, including court costs, attorney's fees, and damages incurred as a result of the civil action, if the plaintiff's original suit is determined to be frivolous, unreasonable, without foundation, or brought in bad faith.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 556. ADMINISTRATIVE INSPECTIONS AND WARRANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 556.001. DEFINITION. In this chapter, "facility" means a place:

(1) for which an application has been made for a pharmacy license under this subtitle;

(2) at which a pharmacy licensed under this subtitle is located;

(3) at which a pharmacy is being operated in violation of this subtitle; or

(4) where the practice of pharmacy occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. INSPECTIONS

Sec. 556.051. AUTHORIZATION TO ENTER AND INSPECT. (a) The

board or a representative of the board may enter and inspect a facility relative to the following:

(1) drug storage and security;

(2) equipment;

(3) components used in compounding, finished and unfinished products, containers, and labeling of any item;

(4) sanitary conditions;

(5) records, reports, or other documents required to be kept or made under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under one of those laws; or

(6) subject to Subsection (b), financial records relating to the operation of the facility.

(b) The board or a representative of the board may inspect financial records under Subsection (a) only in the course of the investigation of a specific complaint. The board or representative may inspect only records related to the specific complaint. The inspection is subject to Section 565.055.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 3, eff. September 1, 2015.

Sec. 556.052. REQUIREMENTS BEFORE ENTRY AND INSPECTION. (a) Before an entry and inspection of the facility, the person authorized to represent the board must:

(1) state the purpose for the inspection; and

(2) present to the owner, pharmacist, or agent in charge of the facility:

(A) appropriate credentials; and

(B) written notice of the authority for the inspection.

(b) If an inspection is required by or is supported by an administrative inspection warrant, the warrant is the notice for purposes of Subsection (a)(2)(B).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.053. EXTENT OF INSPECTION; CONFIDENTIALITY. (a) Except as otherwise provided in an inspection warrant, the person authorized to represent the board may:

(1) inspect and copy documents, including records or reports, required to be kept or made under this subtitle, Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under one of those laws;

(2) inspect, within reasonable limits and in a reasonable manner, a facility's storage, equipment, security, prescription drugs or devices, components used in compounding, finished and unfinished products, or records; or

(3) perform an inventory of any stock of prescription drugs or devices, components used in compounding, or finished and unfinished products in a facility and obtain samples of those substances.

(b) Reports, records, formulas, and test results of samples of products compounded by pharmacies obtained by the board may be provided to the pharmacy that compounded the product but otherwise are confidential and do not constitute public information for purposes of Chapter 552, Government Code. The board may create, use, or disclose statistical information from the test results of samples of compounded products.

(c) The board may disclose information confidential under Subsection (b):

(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(2) to a pharmacist licensing or disciplinary authority of another jurisdiction; or

(3) under a court order.

(d) The board shall require a pharmacy to recall a compounded product and may release the results of the tests of the samples of the compounded product if the board determines that:

(1) the test results indicate a patient safety problem that may involve potential harm to a patient; and

(2) the release of the test results is necessary to protect the public.

(e) The board shall release the test results described by

Subsection (d) if a pharmacy is unable to or does not recall the compounded product within 48 hours after the board's request under that subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 3, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 785 (S.B. 1127), Sec. 1, eff. June 19, 2009.

Sec. 556.054. CONFIDENTIALITY OF CERTAIN INFORMATION. The following information obtained by the board during an inspection of a facility is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) financial data;
(2) sales data, other than shipment data; and
(3) pricing data.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 4, eff. September 1, 2015.

Sec. 556.055. INSPECTIONS WITH WARNING NOTICE. Before a complaint may be filed with the board as the result of a written warning notice that is issued during an inspection authorized by this chapter and that lists a specific violation of this subtitle or a rule adopted under this subtitle, the license holder must be given a reasonable time, as determined by the board, to comply with this subtitle or rules adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.0551. INSPECTION OF LICENSED NONRESIDENT PHARMACY. (a) The board may inspect a nonresident pharmacy licensed by the board that compounds sterile preparations as necessary to ensure compliance with the safety standards and other requirements of this

subtitle and board rules.

(b) A nonresident pharmacy shall reimburse the board for all expenses, including travel, incurred by the board in inspecting the pharmacy as provided by Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 1, eff. September 1, 2013.

Sec. 556.056. CODE OF PROFESSIONAL RESPONSIBILITY. (a) The board shall adopt a code of professional responsibility to regulate the conduct of a representative of the board authorized to inspect and survey a pharmacy.

(b) The code must contain:

(1) a procedure to be followed by a person authorized to represent the board:

(A) on entering a pharmacy;

(B) during inspection of the pharmacy; and

(C) during an exit conference; and

(2) standards of conduct that the person must follow in dealing with the staff and management of the pharmacy and the public.

(c) The board shall establish a procedure for receiving and investigating a complaint of a code violation. The board shall investigate each complaint of a code violation. The board shall forward results of an investigation to the complainant.

(d) The board may adopt rules establishing sanctions for code violations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.057. INSPECTION OF PHARMACIST RECORDS. A pharmacist shall provide to the board, on request, records of the pharmacist's practice that occurs outside of a pharmacy. The pharmacist shall provide the records at a time specified by board rule.

Added by Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 5, eff. September 1, 2015.

SUBCHAPTER C. WARRANTS

Sec. 556.101. WARRANT NOT REQUIRED. A warrant is not required under this chapter to:

(1) inspect books or records under an administrative subpoena issued under this subtitle; or

(2) enter a facility or conduct an administrative inspection of a facility if:

(A) the owner, pharmacist, or agent in charge of the facility consents to the inspection;

(B) the situation presents imminent danger to the public health and safety;

(C) the situation involves inspection of a conveyance, if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant; or

(D) any other exceptional situation or emergency exists involving an act of God or natural disaster in which time or opportunity to apply for a warrant is lacking.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.102. COMPLIANCE WITH CHAPTER. An administrative inspection warrant may be issued and executed only in accordance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.103. ISSUANCE OF WARRANT. (a) In this section, "probable cause" means a valid public interest exists in the effective enforcement of this subtitle or a rule adopted under this subtitle that is sufficient to justify an administrative inspection of the facility, area, building, or conveyance, or its contents in the circumstances specified in the application for the warrant.

(b) A district judge may, on proper oath or affirmation that shows probable cause, issue a warrant to:

(1) conduct an administrative inspection authorized by this chapter or rules adopted under this subtitle; and

(2) seize property appropriate to the inspection.

(c) A warrant may be issued only on an affidavit that:

(1) is given by a board representative who has knowledge of the facts alleged;

(2) is sworn to before the judge; and

(3) establishes the grounds for issuance of the warrant.

(d) The judge shall issue a warrant if the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.104. CONTENTS OF WARRANT. The warrant must:

(1) identify:

(A) the facility, area, building, or conveyance to be inspected;

(B) the purpose of the inspection;

(C) the type of property to be inspected, if appropriate; and

(D) each item or type of property to be seized, if any;

(2) state the grounds for issuance of the warrant and the name of each person whose affidavit has been taken in support of the warrant;

(3) be directed to a person authorized under this chapter to execute the warrant;

(4) command the person to whom the warrant is directed to inspect the facility, area, building, or conveyance identified for the purpose specified;

(5) direct the seizure of the property specified, if appropriate;

(6) direct that the warrant be served during normal business hours; and

(7) designate the judge to whom the warrant is to be returned.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.105. EXECUTION AND RETURN OF WARRANT. (a) A warrant issued under this chapter must be executed and returned not later than the 10th day after the date of the warrant's issuance unless the judge allows additional time in the warrant after a showing by the board of a need for additional time.

(b) A person who seizes property under a warrant shall provide

a copy of the warrant and a receipt for the property taken by:

(1) giving the copy and receipt to the person from whom or from whose facility the property was taken; or

(2) leaving the copy and receipt at the facility from which the property was taken.

(c) The return of the warrant shall be made promptly and be accompanied by a written inventory of any property taken. The inventory shall be:

(1) prepared in the presence of the person executing the warrant and of:

(A) the person from whose possession or facility the property was taken, if present; or

(B) at least one credible person other than the person preparing the inventory; and

(2) verified by the person executing the warrant.

(d) The judge, on request, shall deliver a copy of the inventory to:

(1) the person from whose possession or facility the property was taken; and

(2) the applicant for the warrant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.106. FILING WITH DISTRICT COURT. (a) A judge who issues a warrant under this chapter shall attach to the warrant:

(1) a copy of the return; and

(2) the papers filed in connection with the warrant.

(b) The judge shall file the copy of the return and the papers with the clerk of the district court with jurisdiction of the area in which the inspection was conducted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 556.107. DISPOSAL OF SEIZED PROPERTY. Property seized under this chapter must be disposed of in a manner considered appropriate by the board if the board has jurisdiction over the property or the district court if the court has jurisdiction over the property.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 557. PHARMACIST-INTERNS

Sec. 557.001. PHARMACIST-INTERN REGISTRATION. A person must register with the board before beginning a board-approved internship in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 557.002. APPLICATION FOR REGISTRATION. An application for registration as a pharmacist-intern must be on a form prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 557.003. DURATION OF REGISTRATION. A person's registration as a pharmacist-intern remains in effect as long as the person meets the qualifications for an internship specified by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 557.004. LIMITATIONS ON REGISTRATION. (a) The board may:

(1) refuse to issue a registration to an applicant; or

(2) restrict, suspend, or revoke a pharmacist-intern registration for a violation of this subtitle.

(b) The board may take disciplinary action against an applicant for a pharmacist-intern registration or the holder of a current or expired pharmacist-intern registration in the same manner as against an applicant for a license or a license holder by imposing a sanction authorized under Section 565.051 if the board finds that the applicant or registration holder has engaged in conduct described by Section 565.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 8, eff. June

14, 2013.

CHAPTER 558. LICENSE TO PRACTICE PHARMACY

SUBCHAPTER A. LICENSE

Sec. 558.001. LICENSE REQUIRED. (a) A person may not practice pharmacy unless the person holds a license to practice pharmacy under this subtitle.

(b) A person may not:

(1) impersonate a pharmacist; or

(2) use the title "Registered Pharmacist" or "R.Ph.," or words of similar intent, unless the person is licensed to practice pharmacy in this state.

(c) A person may not dispense or distribute prescription drugs unless the person:

(1) is a pharmacist; or

(2) is otherwise authorized by this subtitle to dispense or distribute prescription drugs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.002. UNAUTHORIZED ACQUISITION OF LICENSE. A person may not:

(1) impersonate before the board an applicant applying for a license under this subtitle; or

(2) acquire, with the intent to fraudulently acquire the license, a license in a manner other than the manner provided by this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. LICENSING BY EXAMINATION

Sec. 558.051. QUALIFICATIONS FOR LICENSE BY EXAMINATION. (a) To qualify for a license to practice pharmacy, an applicant for licensing by examination must submit to the board:

(1) a license fee set by the board; and

(2) a completed application on a form prescribed by the board with satisfactory sworn evidence that the applicant:

(A) is at least 18 years of age;

(B) has completed a minimum of a 1,000-hour internship or other program that has been approved by the board or has demonstrated, to the board's satisfaction, experience in the practice of pharmacy that meets or exceeds the board's minimum internship requirements;

(C) has graduated and received a professional practice degree, as defined by board rule, from an accredited pharmacy degree program approved by the board;

(D) has passed the examination required by the board; and

(E) has not had a pharmacist license granted by another state restricted, suspended, revoked, or surrendered, for any reason.

(b) Each applicant must obtain practical experience in the practice of pharmacy concurrent with college attendance or after college graduation, or both, under conditions the board determines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 14, eff. September 1, 2017.

Sec. 558.052. CONTENT, PREPARATION, AND VALIDATION OF EXAMINATION. (a) The board shall determine the content and subject matter of a licensing examination.

(b) The examination shall be prepared to measure the competence of the applicant to practice pharmacy.

(c) The board may employ and cooperate with an organization or consultant in preparing an appropriate examination.

(d) A written examination prepared or offered by the board, including a standardized national examination, must be validated by an independent testing professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.053. GRADING OF EXAMINATION. (a) The board may employ and cooperate with an organization or consultant in grading the examination.

(b) The board shall determine whether an applicant has passed the examination. The board has sole discretion and responsibility

for that determination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.054. FREQUENCY OF OFFERING EXAMINATION. The board shall give the examination at least two times during each state fiscal year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.055. FAILURE TO PASS; REEXAMINATION. (a) An applicant who on the applicant's first attempt fails the examination may take the examination four additional times.

(b) Before an applicant who has failed the examination five times is allowed to retake the examination, the applicant must provide documentation from a college of pharmacy that the applicant has successfully completed additional college course work in each examination subject area the applicant failed.

(c) If requested in writing by a person who fails the examination, the board shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 6, eff. September 1, 2015.

Sec. 558.056. NOTIFICATION. The board shall notify each person taking an examination of the results of the examination not later than the 30th day after the date the board receives the results from a national testing service if the board uses a national testing service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.057. INTERNSHIP OR OTHER PROGRAM TO QUALIFY FOR EXAMINATION. (a) In this section, "preceptor" means a pharmacist

licensed in this state to practice pharmacy or another health care professional who meets the preceptor requirements specified by rule and who is recognized by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in an internship program.

(b) The board shall:

(1) establish standards for an internship or other program necessary to qualify an applicant for the licensing examination; and

(2) determine the qualifications necessary for a preceptor used in the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 13, eff. September 1, 2005.

Sec. 558.058. ACCESSIBILITY OF EXAMINATION. The board by rule shall ensure that an examination under this subchapter is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 14, eff. September 1, 2005.

Sec. 558.059. EXAMINATION FEE REFUND. (a) The board may retain all or part of an examination fee paid by an applicant who is unable to take the examination.

(b) The board shall adopt policies allowing the board to refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

(c) The board's policy must establish the required notification period and the emergencies that warrant a refund.

(d) The board shall make efforts to ensure that the policy does not conflict with the policy of a national testing body involved in administering the examination.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 15, eff. September 1, 2005.

SUBCHAPTER C. LICENSING BY RECIPROCITY

Sec. 558.101. QUALIFICATIONS FOR LICENSE BY RECIPROCITY. (a) To qualify for a license to practice pharmacy, an applicant for licensing by reciprocity must:

(1) submit to the board:

(A) a reciprocity fee set by the board; and

(B) a completed application in the form prescribed by the board, given under oath;

(2) have graduated and received a professional practice degree, as defined by board rule, from an accredited pharmacy degree program approved by the board;

(3) have presented to the board:

(A) proof of current or initial licensing by examination; and

(B) proof that the current license and any other license granted to the applicant by another state has not been restricted, suspended, revoked, or surrendered for any reason; and

(4) pass the Texas Pharmacy Jurisprudence examination.

(b) An applicant is not eligible for licensing by reciprocity unless the state in which the applicant is currently or was initially licensed as a pharmacist grants reciprocal licensing to pharmacists licensed by examination in this state, under like circumstances and conditions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 16, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 15, eff. September 1, 2017.

SUBCHAPTER D. PROVISIONAL AND TEMPORARY LICENSING

Sec. 558.151. QUALIFICATIONS FOR PROVISIONAL LICENSE. (a) The board may grant a provisional license to practice pharmacy to an applicant licensed in another state who seeks a license in this

state. An applicant for a provisional license under this section must:

(1) pay a fee set by the board;

(2) be licensed in good standing as a pharmacist in another state that has professional standards and licensing requirements that the board considers to be substantially equivalent to the requirements of this subtitle;

(3) have passed a national or other examination recognized by the board relating to pharmacy; and

(4) be sponsored by a person licensed under this subtitle with whom the provisional license holder may practice under this subchapter.

(b) The board may waive the requirement of Subsection (a)(4) for an applicant if the board determines that compliance with that subsection constitutes a hardship to the applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.152. DURATION OF PROVISIONAL LICENSE. A provisional license is valid until the date the board approves or denies the license application under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.153. PROCESSING OF LICENSE APPLICATION. The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever date is later.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.154. ISSUANCE OF LICENSE TO PROVISIONAL LICENSE HOLDER. The board shall issue a license to practice pharmacy under this subtitle to the holder of a provisional license if:

(1) the provisional license holder passes the jurisprudence examination required under this subtitle;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license to practice pharmacy under this subtitle; and

(3) the provisional license holder satisfies all other requirements for a license to practice pharmacy under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.155. TEMPORARY LICENSE. The board by rule may provide for the issuance of a temporary license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. CERTAIN PROHIBITED PRACTICES

Sec. 558.201. DUPLICATING LICENSE OR CERTIFICATE. Except as expressly provided under this subtitle, a person may not in any manner duplicate a license to practice pharmacy or a license renewal certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 558.202. FALSE AFFIDAVIT. A person who falsely makes the affidavit prescribed by Section 558.051 or 558.101 is guilty of fraudulent and dishonorable conduct and malpractice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 559. RENEWAL OF LICENSE TO PRACTICE PHARMACY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 559.001. EXPIRATION OF LICENSE. (a) Except as provided by Subsection (b), a license to practice pharmacy expires December 31 of each year or of every other year, as determined by the board.

(b) The board may adopt a system under which licenses to practice pharmacy expire on various dates during the year.

(c) If the board changes the expiration date of a license, the board shall prorate the license renewal fee to cover the months for which the license is valid for the year in which the date is changed.

The total license renewal fee is due on the new expiration date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.002. RENEWAL PERIOD. A license to practice pharmacy may be renewed for one or two years, as determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.003. REQUIREMENTS FOR RENEWAL. (a) To renew a license to practice pharmacy, the license holder must before the expiration date of the license:

(1) pay a renewal fee as determined by the board;

(2) comply with the continuing education requirements prescribed by the board; and

(3) file with the board a completed application for a license renewal certificate that:

(A) is given under oath; and

(B) is accompanied by a certified statement executed by the license holder that attests that the license holder has satisfied the continuing education requirements during the preceding license period.

(b) A person whose license has been expired for 90 days or less may renew the expired license by paying to the board a renewal fee that is equal to one and one-half times the normally required renewal fee for the license.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the expired license by paying to the board a renewal fee that is equal to two times the normally required renewal fee for the license.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license, including the examination requirement.

(e) A person may not renew a license to practice pharmacy if the person holds a license to practice pharmacy in another state that has been suspended, revoked, canceled, or subject to an action that prohibits the person from practicing pharmacy in that state.

(f) The board may refuse to renew a license to practice

pharmacy for a license holder who is in violation of a board order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 17, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 9, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 16, eff. September 1, 2017.

Sec. 559.004. ISSUANCE OF LICENSE RENEWAL CERTIFICATE. (a) The board shall issue a license renewal certificate to an applicant after the board has received, in a time prescribed by Section 559.003:

(1) the completed application;

(2) the renewal fee; and

(3) proof of completion of the continuing education requirements prescribed by Subchapter B.

(b) The renewal certificate must contain:

(1) the pharmacist's license number;

(2) the period for which the license is renewed; and

(3) other information the board determines necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.005. ISSUANCE OF NEW LICENSE. (a) The board may issue a new license to practice pharmacy to a person who is prohibited under Section 559.003(d) from renewing a license if the person has not had a license granted by any other state restricted, suspended, revoked, canceled, or surrendered for any reason and qualifies under this section.

(b) A person qualifies for a license under this section if the person:

(1) was licensed as a pharmacist in this state, moved to another state, and is licensed and has been practicing pharmacy in the other state for the two years preceding the date the application for a new license is submitted;

(2) pays to the board an amount equal to the examination fee for the license; and

(3) passes the Texas Pharmacy Jurisprudence examination.

(c) A person qualifies for a license under this section if the person:

(1) was licensed as a pharmacist in this state;

(2) pays to the board an amount equal to the examination fee for the license; and

(3) passes the Texas Pharmacy Jurisprudence examination and any other examination required by the board and in addition to or instead of passing the examination as required by the board, participates in continuing pharmacy education and practices under conditions set by the board.

(d) A person qualifies for a license under this section if the person:

(1) submits to reexamination; and

(2) complies with the requirements and procedures for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.006. LICENSE EXPIRATION NOTICE. At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the board's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.007. PRACTICING PHARMACY WITHOUT RENEWAL CERTIFICATE. A person who practices pharmacy without a current license renewal certificate as required by this chapter is practicing pharmacy without a license and is subject to all penalties for practicing pharmacy without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. MANDATORY CONTINUING EDUCATION

Sec. 559.051. SATISFACTION OF CONTINUING EDUCATION REQUIREMENT. (a) A holder of a license to practice pharmacy may meet the continuing education requirement by:

(1) completing continuing education programs approved by the board; or

(2) passing a standardized pharmacy examination approved by the board.

(b) A license holder who takes the examination under Subsection (a)(2) must pay the examination fee assessed by the board under Section 554.006.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.052. RULES RELATING TO CONTINUING EDUCATION. (a) The board shall adopt rules relating to:

(1) the adoption or approval of mandatory continuing education programs;

(2) the approval of providers and the operation of continuing education programs; and

(3) the evaluation of the effectiveness of continuing education programs and a license holder's participation and performance in those programs.

(b) In establishing the requirement for continuing education, the board shall consider:

(1) factors that lead to the competent performance of professional duties; and

(2) the continuing education needs of license holders.

(c) In adopting rules relating to the approval of continuing education programs or providers, the board may consider:

(1) programs approved by the Texas Pharmacy Foundation; and

(2) providers approved by the American Council on Pharmaceutical Education.

(d) The board shall approve home study courses, correspondence courses, or other similar programs.

(e) The board by rule may grant an extension for the completion of a continuing education requirement for good cause.

(f) The board by rule may exempt a person from all or part of the continuing education requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.0525. CONTINUING EDUCATION RELATING TO OPIOID DRUGS. (a) The board shall develop a continuing education program regarding opioid drug abuse and the delivery, dispensing, and provision of tamper-resistant opioid drugs after considering input from interested persons.

(b) The board by rule may require a license holder to satisfy a number of the continuing education hours required by Section 559.053 through attendance of a program developed under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 518 (S.B. 316), Sec. 1, eff. June 14, 2013.

Sec. 559.053. PROGRAM HOURS REQUIRED. A license holder satisfies the continuing education requirement by presenting evidence satisfactory to the board of completion of at least 30 hours of continuing education during the preceding 24 months of the person's license period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.304(a), eff. Sept. 1, 2001.

Sec. 559.054. CERTIFICATE OF COMPLETION. Each continuing education program approved by the board shall issue a certificate of completion to a license holder who satisfactorily completes the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.055. RECORDS. Each license holder shall maintain records for three years showing the continuing education programs completed by the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.056. DEMONSTRATION OF COMPLIANCE. On an audit by the board, a license holder is in compliance with the continuing education requirements if the license holder submits to the board:

(1) an affidavit stating that the license holder has complied with those requirements; and

(2) records showing completion of the continuing education programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. INACTIVE STATUS

Sec. 559.101. ELIGIBILITY FOR INACTIVE STATUS. The board by rule shall adopt a system for placing on inactive status a license held by a person who:

(1) is licensed by the board to practice pharmacy;

(2) is not eligible to renew the license because of failure to comply with the continuing education requirements under Subchapter B; and

(3) is not practicing pharmacy in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.102. RESTRICTION ON LENGTH OF INACTIVE STATUS. The board may restrict the length of time a license may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.103. APPLICATION FOR INACTIVE STATUS. A license holder may place the holder's license on inactive status by:

(1) applying for inactive status on a form prescribed by the board before the expiration date of the license; and

(2) complying with all other requirements for renewal of a license other than the continuing education requirements under Subchapter B.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.104. RETURN TO ACTIVE STATUS. A holder of a license that is on inactive status may return the license to active status by:

(1) applying for active status on a form prescribed by the board; and

(2) providing evidence satisfactory to the board that the license holder has completed the number of hours of continuing education, up to 36 hours, that would otherwise have been required for renewal of the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 559.105. PRACTICING PHARMACY DURING INACTIVE STATUS. (a) A holder of a license that is on inactive status may not practice pharmacy in this state.

(b) A license holder who practices pharmacy while the holder's license is on inactive status is practicing pharmacy without a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 560. LICENSING OF PHARMACIES

SUBCHAPTER A. LICENSE REQUIRED

Sec. 560.001. LICENSE REQUIRED. (a) A person may not operate a pharmacy in this state unless the pharmacy is licensed by the board.

(b) A pharmacy located in another state may not ship, mail, or deliver to this state a prescription drug or device dispensed under a prescription drug order, or dispensed or delivered as authorized by Subchapter D, Chapter 562, unless the pharmacy is licensed by the board or is exempt under Section 560.004.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 7(1), and Ch. 1144 (H.B. 2847), Sec. 4.006(1), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 39, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 7(1), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.006(1), eff. September 1, 2019.

Sec. 560.002. USE OF "PHARMACY"; PROVIDING PHARMACY SERVICES WITHOUT LICENSE. (a) A person may not display in or on a place of business the word "pharmacy" or "apothecary" in any language, any word or combination of words of the same or similar meaning, or a graphic representation that would lead or tend to lead the public to believe that the business is a pharmacy unless the facility is a pharmacy licensed under this chapter.

(b) A person may not advertise a place of business as a pharmacy or provide pharmacy services unless the facility is a pharmacy licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 4, eff. Sept. 1, 2001.

Sec. 560.003. PROHIBITED ADVERTISING OF PHARMACY. (a) A pharmacy that is not licensed under this chapter may not advertise the pharmacy's services in this state.

(b) A person who is a resident of this state may not advertise the pharmacy services of a pharmacy that is not licensed by the board if the pharmacy or person makes the advertisement with the knowledge that the advertisement will or is likely to induce a resident of this state to use the pharmacy to dispense a prescription drug order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 560.004. EXEMPTION. The board may grant an exemption from the licensing requirements of this chapter on the application of a pharmacy located in another state that restricts to isolated transactions the pharmacy's dispensing of a prescription drug or device to a resident of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PHARMACY CLASSIFICATION

Sec. 560.051. LICENSE CLASSIFICATIONS. (a) Each applicant for a pharmacy license shall apply for a license in one or more of the following classifications:

(1) Class A;

(2) Class B;

(3) Class C;

(4) Class D;

(5) Class E; or

(6) another classification established by the board under Section 560.053.

(b) A Class A pharmacy license or community pharmacy license authorizes a pharmacy to dispense a drug or device to the public under a prescription drug order.

(c) A Class B pharmacy license or nuclear pharmacy license authorizes a pharmacy to dispense a radioactive drug or device for administration to an ultimate user.

(d) A Class C pharmacy license or institutional pharmacy license may be issued to a pharmacy located in:

(1) an inpatient facility, including a hospital, licensed under Chapter 241 or 577, Health and Safety Code;

(2) a hospital maintained or operated by the state;

(3) a hospice inpatient facility licensed under Chapter 142, Health and Safety Code; or

(4) an ambulatory surgical center licensed under Chapter 243, Health and Safety Code.

(e) A Class D pharmacy license or clinic pharmacy license authorizes a pharmacy to dispense a limited type of drug or device under a prescription drug order.

(f) A Class E pharmacy license or nonresident pharmacy license may be issued to a pharmacy located in another state whose primary business is to:

(1) dispense a prescription drug or device under a prescription drug order and deliver the drug or device to a patient, including a patient in this state, by United States mail, common carrier, or delivery service;

(2) process a prescription drug order for a patient,

including a patient in this state; or

(3) perform another pharmaceutical service, as defined by board rule.

(g) The board may determine the classification under which a pharmacy may be licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.305(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 941, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.005, eff. September 1, 2019.

Sec. 560.052. QUALIFICATIONS. (a) The board by rule shall establish the standards that each pharmacy and the pharmacy's employees involved in the practice of pharmacy must meet to qualify for licensing as a pharmacy in each classification.

(b) To qualify for a pharmacy license, an applicant must submit to the board:

(1) a license fee set by the board, except as provided by Subsection (d);

(2) a completed application that:

(A) is on a form prescribed by the board;

(B) includes notice that a surety bond may be required under Section 565.0551;

(C) is given under oath;

(D) includes proof that:

(i) a pharmacy license held by the applicant in this state or another state, if applicable, has not been restricted, suspended, revoked, or surrendered for any reason; and

(ii) no owner of the pharmacy for which the application is made has held a pharmacist license in this state or another state, if applicable, that has been restricted, suspended, revoked, or surrendered for any reason; and

(E) includes a statement of:

(i) the ownership;

(ii) the location of the pharmacy;

(iii) the license number of each pharmacist who is employed by the pharmacy, if the pharmacy is located in this state, or who is licensed to practice pharmacy in this state, if the pharmacy is located in another state;

(iv) the pharmacist license number of the pharmacist-in-charge; and

(v) any other information the board determines necessary; and

(3) a disclosure statement required under Section 560.0521, unless:

(A) the pharmacy for which the application is made is operated by a publicly traded company;

(B) the pharmacy for which the application is made is wholly owned by a retail grocery store chain; or

(C) the applicant is applying for a Class B or Class C pharmacy license.

(c) A pharmacy located in another state that applies for a license, in addition to satisfying the other requirements of this chapter, must provide to the board:

(1) evidence that the applicant holds a pharmacy license, registration, or permit in good standing issued by the state in which the pharmacy is located;

(2) the name of the owner and pharmacist-in-charge of the pharmacy for service of process;

(3) evidence of the applicant's ability to provide to the board a record of a prescription drug order dispensed or delivered as authorized by Subchapter D, Chapter 562, by the applicant to a resident of or practitioner in this state not later than 72 hours after the time the board requests the record;

(4) an affidavit by the pharmacist-in-charge that states that the pharmacist has read and understands the laws and rules relating to the applicable license;

(5) proof of creditworthiness;

(6) an inspection report issued:

(A) not more than two years before the date the license application is received; and

(B) by the pharmacy licensing board in the state of the pharmacy's physical location, except as provided by Subsection (f); and

(7) any other information the board determines necessary.

(d) A pharmacy operated by the state or a local government that qualifies for a Class D pharmacy license is not required to pay a fee to obtain a license.

(e) With respect to a Class C pharmacy license, the board may issue a license to a pharmacy on certification by the appropriate agency that the facility in which the pharmacy is located has substantially completed the requirements for licensing.

(f) A Class E pharmacy may submit an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if:

(1) the state's licensing board does not conduct inspections;

(2) the inspection is substantively equivalent to an inspection conducted by the board, as determined by board rule; and

(3) the inspecting entity meets specifications adopted by the board for inspecting entities.

(g) A license may not be issued to a pharmacy that compounds sterile preparations unless the pharmacy has been inspected by the board to ensure the pharmacy meets the safety standards and other requirements of this subtitle and board rules.

(h) The board may accept, as satisfying the inspection requirement in Subsection (g) for a pharmacy located in another state, an inspection report issued by the pharmacy licensing board in the state in which the pharmacy is located if:

(1) the board determines that the other state has comparable standards and regulations applicable to pharmacies, including standards and regulations related to health and safety; and

(2) the pharmacy provides to the board any requested documentation related to the inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.306(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 18, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 10, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 3, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 7, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 1, eff. January 1, 2020.

Sec. 560.0521. SWORN DISCLOSURE STATEMENT. (a) A disclosure statement included with an application under Section 560.052(b)(3) must include:

(1) the name of the pharmacy;

(2) the name of each person who has a direct financial investment in the pharmacy;

(3) the name of each person who:

(A) is not an individual;

(B) has any financial investment in the pharmacy; and

(C) is not otherwise disclosed under Subdivision (2);

(4) the total amount or percentage of the financial investment made by each person described by Subdivision (2); and

(5) the name of each of the following persons, if applicable, connected to the pharmacy if the person is not otherwise disclosed under Subdivision (2) or (3):

(A) a partner;

(B) an officer;

(C) a director;

(D) a managing employee;

(E) an owner or person who controls the owner; and

(F) a person who acts as a controlling person of the pharmacy through the exercise of direct or indirect influence or control over the management of the pharmacy, the expenditure of money by the pharmacy, or a policy of the pharmacy, including:

(i) a management company, landlord, marketing company, or similar person who operates or contracts for the operation of a pharmacy and, if the pharmacy is a publicly traded corporation or is controlled by a publicly traded corporation, an officer or director of the corporation but not a shareholder or lender of the corporation;

(ii) an individual who has a personal, familial, or other relationship with an owner, manager, landlord, tenant, or provider of a pharmacy that allows the individual to exercise actual control of the pharmacy; and

(iii) any other person the board by rule requires to be included based on the person's exercise of direct or indirect influence or control.

(b) An applicant shall notify the board not later than the 60th day after the date any administrative sanction or criminal penalty is imposed against a person described by Subsection (a).

(c) The board may adopt rules regarding the disclosure of the source of a financial investment under Subsection (a).

(d) A disclosure statement under this section shall be given under oath as prescribed by board rule.

(e) Information contained in a disclosure statement under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 2, eff. January 1, 2020.

Sec. 560.053. ESTABLISHMENT OF ADDITIONAL PHARMACY CLASSIFICATIONS. The board by rule may establish classifications of pharmacy licenses in addition to the classifications under Section 560.051 if the board determines that:

(1) the practice setting will provide pharmaceutical care services to the public;

(2) the existing classifications of pharmacy licenses are not appropriate for that practice setting; and

(3) establishment of a new classification of pharmacy license is necessary to protect the public health, safety, and welfare.

Added by Acts 2003, 78th Leg., ch. 941, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER C. RESTRICTIONS ON LICENSE

Sec. 560.101. LICENSE NOT TRANSFERABLE. A pharmacy license issued under this chapter is not transferable or assignable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 560.102. SEPARATE LICENSE FOR EACH LOCATION. (a) A

separate pharmacy license is required for each principal place of business of a pharmacy.

(b) Only one pharmacy license may be issued for a specific location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. CERTAIN PROHIBITED PRACTICES

Sec. 560.103. FALSE AFFIDAVIT. A person who falsely makes the affidavit prescribed by Section 560.052 is guilty of fraudulent and dishonorable conduct and malpractice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 561. RENEWAL OF PHARMACY LICENSE

Sec. 561.001. EXPIRATION OF LICENSE. (a) A pharmacy license expires May 31 of each year.

(b) The board may adopt a system under which pharmacy licenses expire on various dates during the year or every other year, as appropriate.

(c) If the board changes the expiration date of a license, the board shall prorate the license renewal fee to cover the number of months for which the license is valid for the year in which the date is changed. The total license renewal fee is due on the new expiration date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.307(a), eff. Sept. 1, 2001.

Sec. 561.002. PHARMACY LICENSE RENEWAL. A pharmacy license must be renewed annually or biennially as determined by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.306(b), eff. Sept. 1, 2001.

Sec. 561.003. REQUIREMENTS FOR RENEWAL. (a) The board by rule shall establish:

(1) procedures to be followed for renewal of a pharmacy license;

(2) the fees to be paid for renewal of a pharmacy license; and

(3) the standards in each classification that each pharmacy and the pharmacy's employees involved in the practice of pharmacy must meet to qualify for relicensing as a pharmacy.

(b) A pharmacy license may be renewed by:

(1) payment of a renewal fee set by the board; and

(2) filing with the board a completed application for a license renewal certificate given under oath before the expiration date of the license or license renewal certificate.

(c) A pharmacy whose license has been expired for 90 days or less may renew the expired license by paying to the board a renewal fee that is equal to one and one-half times the normally required renewal fee for the license.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 599 , Sec. 14(1), eff. September 1, 2015.

(e) If a pharmacy's license has been expired for 91 days or more, the pharmacy may not renew the license. The pharmacy may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 7(1), and Ch. 1144 (H.B. 2847), Sec. 4.006(1), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 19, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 11, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 14(1), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 7(1), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.006(1), eff. September 1, 2019.

Sec. 561.0031. ADDITIONAL RENEWAL REQUIREMENT FOR CLASS E PHARMACY. (a) In addition to the renewal requirements under Section 561.003, the board shall require that a Class E pharmacy have on file with the board an inspection report issued:

(1) not more than three years before the date the renewal application is received; and

(2) by the pharmacy licensing board in the state of the pharmacy's physical location, except as provided by Subsection (b).

(b) A Class E pharmacy may have on file with the board an inspection report issued by an entity other than the pharmacy licensing board of the state in which the pharmacy is physically located if the requirements of Section 560.052(f) are met.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 20, eff. September 1, 2005.

Sec. 561.0032. ADDITIONAL RENEWAL REQUIREMENT FOR COMPOUNDING PHARMACY. (a) In addition to the renewal requirements under Section 561.003, a pharmacy that compounds sterile preparations may not renew a pharmacy license unless the pharmacy:

(1) has been inspected as provided by board rule; and

(2) if the pharmacy is located in another state, has reimbursed the board for all expenses, including travel, incurred by the board in inspecting the pharmacy during the term of the expiring license.

(b) The board may accept, as satisfying the inspection requirement in Subsection (a) for a pharmacy located in another state, an inspection report issued by the pharmacy licensing board in the state in which the pharmacy is located if:

(1) the board determines that the other state has comparable standards and regulations applicable to pharmacies, including standards and regulations related to health and safety; and

(2) the pharmacy provides to the board any requested documentation related to the inspection.

Added by Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 4, eff.

September 1, 2013.

Sec. 561.004. ISSUANCE OF LICENSE RENEWAL CERTIFICATE. On timely receipt of a completed application and renewal fee, the board shall issue a license renewal certificate that contains:

(1) the pharmacy license number;

(2) the period for which the license is renewed; and

(3) other information the board determines necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 561.005. SUSPENSION OF PHARMACY LICENSE FOR NONRENEWAL. (a) The board shall suspend the license and remove from the register of licensed pharmacies the name of a pharmacy that does not file a completed application and pay the renewal fee on or before the date the license expires.

(b) After review by the board, the board may determine that Subsection (a) does not apply if the license is the subject of a pending investigation or disciplinary action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.307(b), eff. Sept. 1, 2001.

CHAPTER 562. PRACTICE BY LICENSE HOLDER

SUBCHAPTER A. PRESCRIPTION AND SUBSTITUTION REQUIREMENTS

Sec. 562.001. DEFINITIONS. In this subchapter:

(1) "Biological product" has the meaning assigned by Section 351, Public Health Service Act (42 U.S.C. Section 262).

(1-a) "Generically equivalent" means a drug that is pharmaceutically equivalent and therapeutically equivalent to the drug prescribed.

(1-b) "Interchangeable," in reference to a biological product, has the meaning assigned by Section 351, Public Health Service Act (42 U.S.C. Section 262), or means a biological product that is designated as therapeutically equivalent to another product by the United States Food and Drug Administration in the most recent edition or supplement of the United States Food and Drug

Administration's Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book.

(2) "Pharmaceutically equivalent" means drug products that have identical amounts of the same active chemical ingredients in the same dosage form and that meet the identical compendial or other applicable standards of strength, quality, and purity according to the United States Pharmacopoeia or another nationally recognized compendium.

(3) "Therapeutically equivalent" means pharmaceutically equivalent drug products that, if administered in the same amounts, will provide the same therapeutic effect, identical in duration and intensity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 1, eff. September 1, 2015.

Sec. 562.002. LEGISLATIVE INTENT. It is the intent of the legislature to save consumers money by allowing the substitution of lower-priced generically equivalent drug products for certain brand name drug products and the substitution of interchangeable biological products for certain biological products and for pharmacies and pharmacists to pass on the net benefit of the lower costs of the generically equivalent drug product or interchangeable biological product to the purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 2, eff. September 1, 2015.

Sec. 562.003. DISCLOSURE OF PRICE; PATIENT'S OPTION. If the price of a drug or biological product to a patient is lower than the amount of the patient's copayment under the patient's prescription drug insurance plan, the pharmacist shall offer the patient the option of paying for the drug or biological product at the lower price instead of paying the amount of the copayment.

Added by Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 3, eff. September 1, 2015.

Sec. 562.004. PRESCRIPTION TRANSMITTED ORALLY BY PRACTITIONER. A pharmacist to whom a prescription is transmitted orally shall:

(1) note on the file copy of the prescription the dispensing instructions of the practitioner or the practitioner's agent; and

(2) retain the prescription for the period specified by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.005. RECORD OF DISPENSED DRUG OR BIOLOGICAL PRODUCT. A pharmacist shall record on the prescription form the name, strength, and manufacturer or distributor of a drug or biological product dispensed as authorized by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 4, eff. September 1, 2015.

Sec. 562.0051. COMMUNICATION REGARDING CERTAIN DISPENSED BIOLOGICAL PRODUCTS. (a) Not later than the third business day after the date of dispensing a biological product, the dispensing pharmacist or the pharmacist's designee shall communicate to the prescribing practitioner the specific product provided to the patient, including the name of the product and the manufacturer or national drug code number.

(b) The communication must be conveyed by making an entry into an interoperable electronic medical records system or through electronic prescribing technology or a pharmacy benefit management system or a pharmacy record, which may include information submitted for the payment of claims, that a pharmacist reasonably concludes is

electronically accessible by the prescribing practitioner. Otherwise, the pharmacist or the pharmacist's designee shall communicate the biological product dispensed to the prescribing practitioner, using facsimile, telephone, electronic transmission, or other prevailing means, provided that communication is not required if:

(1) there is no interchangeable biological product approved by the United States Food and Drug Administration for the product prescribed; or

(2) a refill prescription is not changed from the product dispensed on the prior filling of the prescription.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 13 (H.B. 1264), Sec. 1, eff. May 7, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 5, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 13 (H.B. 1264), Sec. 1, eff. May 7, 2019.

Sec. 562.006. LABEL. (a) Unless otherwise directed by the practitioner, the label on the dispensing container must indicate the actual drug or biological product dispensed, indicated by either:

(1) the brand name; or

(2) if there is not a brand name, the drug's generic name or the name of the biological product, the strength of the drug or biological product, and the name of the manufacturer or distributor of the drug or biological product.

(b) In addition to the information required by Subsection (a), the label on the dispensing container of a drug or biological product dispensed by a Class A or Class E pharmacy must indicate:

(1) the name, address, and telephone number of the pharmacy;

(2) the date the prescription is dispensed;

(3) the name of the prescribing practitioner;

(4) the name of the patient or, if the drug or biological product was prescribed for an animal, the species of the animal and the name of the owner;

(5) instructions for use;

(6) the quantity dispensed;

(7) if the drug or biological product is dispensed in a container other than the manufacturer's original container, the date after which the prescription should not be used, determined according to criteria established by board rule based on standards in the United States Pharmacopeia-National Formulary; and

(8) any other information required by board rule.

(c) The information required by Subsection (b)(7) may be recorded on any label affixed to the dispensing container.

(d) Subsection (b) does not apply to a prescription dispensed to a person at the time of release from prison or jail if the prescription is for not more than a 10-day supply of medication.

(e) If a drug or biological product has been selected other than the one prescribed, the pharmacist shall place on the container the words "Substituted for brand prescribed" or "Substituted for 'brand name'" where "brand name" is the name of the brand name drug or biological product prescribed.

(f) The board shall adopt rules requiring the label on a dispensing container to be in plain language and printed in an easily readable font size for the consumer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 457 (H.B. 948), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 289 (H.B. 19), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 6, eff. September 1, 2015.

Sec. 562.0061. OTHER PRESCRIPTION INFORMATION. The board shall adopt rules specifying the information a pharmacist must provide to a consumer when dispensing a prescription to the consumer for self-administration. The information must be:

(1) written in plain language;

(2) relevant to the prescription; and

(3) printed in an easily readable font size.

Added by Acts 2007, 80th Leg., R.S., Ch. 457 (H.B. 948), Sec. 2, eff. September 1, 2007.

Sec. 562.0062. REQUIRED STATEMENT REGARDING MEDICATION DISPOSAL. The board by rule shall require pharmacists, when dispensing certain drugs, to include on the dispensing container label or in the information required by Section 562.0061 the statement "Do not flush unused medications or pour down a sink or drain."

Added by Acts 2009, 81st Leg., R.S., Ch. 289 (H.B. 19), Sec. 2, eff. September 1, 2009.

Sec. 562.007. REFILLS. Except as provided by Section 562.0545, a properly authorized prescription refill shall follow the original dispensing instruction unless otherwise indicated by the practitioner or the practitioner's agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 303 (H.B. 2069), Sec. 1, eff. September 1, 2011.

Sec. 562.008. GENERIC EQUIVALENT OR INTERCHANGEABLE BIOLOGICAL PRODUCT AUTHORIZED. (a) If a practitioner certifies on the prescription form that a specific prescribed brand is medically necessary, the pharmacist shall dispense the drug or biological product as written by the practitioner. The certification must be made as required by the dispensing directive adopted under Section 562.015. This subchapter does not permit a pharmacist to substitute a generically equivalent drug or interchangeable biological product unless the substitution is made as provided by this subchapter.

(b) Except as otherwise provided by this subchapter, a pharmacist who receives a prescription for a drug or biological product for which there is one or more generic equivalents or one or more interchangeable biological products may dispense any of the generic equivalents or interchangeable biological products.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 7, eff. September 1, 2015.

Sec. 562.009. REQUIREMENTS CONCERNING SELECTION OF GENERICALLY EQUIVALENT DRUG OR INTERCHANGEABLE BIOLOGICAL PRODUCT. (a) Before delivery of a prescription for a generically equivalent drug or interchangeable biological product, a pharmacist must personally, or through the pharmacist's agent or employee:

(1) inform the patient or the patient's agent that a less expensive generically equivalent drug or interchangeable biological product is available for the brand prescribed; and

(2) ask the patient or the patient's agent to choose between the generically equivalent drug or interchangeable biological product and the brand prescribed.

(a-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 599 , Sec. 14(2), eff. September 1, 2015.

(b) A pharmacy is not required to comply with the provisions of Subsection (a):

(1) in the case of the refill of a prescription for which the pharmacy previously complied with Subsection (a) with respect to the same patient or patient's agent; or

(2) if the patient's physician or physician's agent advises the pharmacy that:

(A) the physician has informed the patient or the patient's agent that a less expensive generically equivalent drug or interchangeable biological product is available for the brand prescribed; and

(B) the patient or the patient's agent has chosen either the brand prescribed or the less expensive generically equivalent drug or interchangeable biological product.

(c) A pharmacy that supplies a prescription by mail is considered to have complied with the provisions of Subsection (a) if the pharmacy includes on the prescription order form completed by the patient or the patient's agent language that clearly and conspicuously:

(1) states that if a less expensive generically equivalent drug or interchangeable biological product is available for the brand prescribed, the patient or the patient's agent may choose between the

generically equivalent drug or interchangeable biological product and the brand prescribed; and

(2) allows the patient or the patient's agent to indicate the choice between the generically equivalent drug or interchangeable biological product and the brand prescribed.

(d) If the patient or the patient's agent fails to indicate otherwise to a pharmacy on the prescription order form under Subsection (c), the pharmacy may dispense a generically equivalent drug or interchangeable biological product.

(e) If the prescription is for an immunosuppressant drug, as defined by Section 562.0141(a)(1), the pharmacist must comply with the provisions of Section 562.0141. This subsection expires if Section 562.0141 expires under the requirements of Section 562.0142.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 943 (H.B. 836), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 3, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 14(2), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 9, eff. September 1, 2015.

Sec. 562.010. RESPONSIBILITY CONCERNING GENERICALLY EQUIVALENT DRUG OR INTERCHANGEABLE BIOLOGICAL PRODUCT; LIABILITY. (a) A pharmacist who selects a generically equivalent drug or interchangeable biological product to be dispensed under this subchapter assumes the same responsibility for selecting the generically equivalent drug or interchangeable biological product as

the pharmacist does in filling a prescription for a drug prescribed by generic or biological product name.

(b) The prescribing practitioner is not liable for a pharmacist's act or omission in selecting, preparing, or dispensing a drug or biological product under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 10, eff. September 1, 2015.

Sec. 562.011. RESTRICTION ON SELECTION OF AND CHARGING FOR GENERICALLY EQUIVALENT DRUG OR INTERCHANGEABLE BIOLOGICAL PRODUCT. (a) A pharmacist may not select a generically equivalent drug or interchangeable biological product unless the generically equivalent drug or interchangeable biological product selected costs the patient less than the prescribed drug or biological product.

(b) A pharmacist may not charge for dispensing a generically equivalent drug or interchangeable biological product a professional fee higher than the fee the pharmacist customarily charges for dispensing the brand name drug or biological product prescribed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 11, eff. September 1, 2015.

Sec. 562.012. SUBSTITUTION OF DOSAGE FORM PERMITTED. With the patient's consent, a pharmacist may dispense a dosage form of a drug different from that prescribed, such as a tablet instead of a capsule or a liquid instead of a tablet, if the dosage form dispensed:

(1) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(2) is not an enteric-coated or timed release product; and

(3) does not alter desired clinical outcomes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 12, eff.

June 14, 2013.

Sec. 562.013. APPLICABILITY OF SUBCHAPTER. Unless a drug is determined to be generically equivalent to, or a biological product is determined to be interchangeable with, the brand prescribed, drug or biological product selection as authorized by this subchapter does not apply to:

(1) an enteric-coated tablet;

(2) a controlled release product;

(3) an injectable suspension, other than an antibiotic;

(4) a suppository containing active ingredients for which systemic absorption is necessary for therapeutic activity; or

(5) a different delivery system for aerosol or nebulizer drugs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 12, eff. September 1, 2015.

Sec. 562.014. NARROW THERAPEUTIC INDEX DRUGS. (a) Except as provided by this section, drug selection as authorized by this subchapter does not apply to the refill of a prescription for a narrow therapeutic index drug. The board, in consultation with the Texas Medical Board, shall by rule establish a list of narrow therapeutic index drugs to which this subsection applies. A prescription for a narrow therapeutic index drug may be refilled only by using the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless otherwise agreed to by the prescribing practitioner. If a pharmacist does not have the same drug product by the same manufacturer in stock to refill the prescription, the pharmacist may dispense a drug product that is generically equivalent if the pharmacist, before dispensing the generically equivalent drug product, notifies:

(1) the patient, at the time the prescription is dispensed, that a substitution of the prescribed drug product has been made; and

(2) the prescribing practitioner of the drug product substitution by telephone, facsimile, or mail, at the earliest

reasonable time, but not later than 72 hours after dispensing the prescription.

(b) The board and the Texas Medical Board shall establish a joint committee to recommend to the board a list of narrow therapeutic index drugs and the rules, if any, by which this section applies to those drugs. The committee must consist of an equal number of members from each board. The committee members shall select a member of the committee to serve as presiding officer for a one year term. The presiding officer may not represent the same board as the presiding officer's predecessor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 1, eff. June 15, 2007.

For contingent effect of this section, see Subsection (e).

Sec. 562.0141. TRANSPLANT IMMUNOSUPPRESSANT DRUG PRODUCT SELECTION PROHIBITED. (a) In this section:

(1) "Immunosuppressant drug" means any drug prescribed for immunosuppressant therapy following a transplant.

(2) "Interchange" means the substitution of one version of the same immunosuppressant drug, including a generic version for the prescribed brand, a brand version for the prescribed generic version, a generic version by one manufacturer for a generic version by a different manufacturer, a different formulation of the prescribed immunosuppressant drug, or a different immunosuppressant drug for the immunosuppressant drug originally prescribed.

(b) A pharmacist may not interchange an immunosuppressant drug or formulation of an immunosuppressant drug, brand or generic, for the treatment of a patient following a transplant without prior consent to the interchange from the prescribing practitioner.

(c) To comply with Subsection (b), a pharmacist shall notify a prescribing practitioner orally or electronically to secure permission to interchange an immunosuppressant drug or formulation of an immunosuppressant drug, brand or generic. The practitioner's authorization or denial of authorization must be documented by the pharmacist and by the practitioner.

(d) If a pharmacist does not have the same drug product by the

same manufacturer in stock to refill the prescription, or if the practitioner is unavailable to give authorization, the pharmacist may dispense a drug product that is generically equivalent if the pharmacist, before dispensing the generally equivalent drug product:

(1) notifies and receives consent from the patient, at the time the prescription is dispensed, to substitute the prescribed drug product; and

(2) notifies the prescribing practitioner of the drug product substitution orally or electronically at the earliest reasonable time, but not later than 24 hours after dispensing the prescription.

(e) This section is only effective subject to the conditions established by Section 562.0142.

Added by Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 2, eff. June 15, 2007.

Sec. 562.0142. ADOPTION OF RULES. (a) If, not later than October 1, 2007, a drug manufacturer requests that the joint committee under Section 562.014 conduct a hearing and make a recommendation to include a drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs, the joint committee shall make a recommendation to the board to enable the board to adopt a rule and issue findings not later than July 1, 2008.

(b) If, not later than October 1, 2007, no drug manufacturer requests that the joint committee conduct a hearing and make recommendations to the board to include a drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs, Section 562.0141 expires October 1, 2007.

(c) If all drug manufacturers that request, before October 1, 2007, the joint committee to conduct a hearing and make a recommendation to the board to include a drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs subsequently withdraw those requests before the date the joint committee makes a recommendation to include the drug on that list, Section 562.0141 expires effective on the date of the manufacturers' withdrawal of those requests.

(d) If the joint committee receives a request under Subsection (a), the recommendation of the joint committee under that subsection

may include the drugs listed in Section 562.014(c) or the joint committee may recommend that no drug should be added to the list of narrow therapeutic index drugs following the review by the joint committee.

(e) If the joint committee receives a request under Subsection (a) and, not later than July 1, 2008, the board adopts a rule to include any drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs or determines by rule that no drug should be added to the list of narrow therapeutic index drugs, Section 562.0141 expires on July 1, 2008.

(f) If the joint committee receives a request under Subsection (a) and the board does not before July 1, 2008, adopt a rule to include any drug listed in Section 562.014(c) on the list of narrow therapeutic index drugs or determine by rule that no drug should be added to the list of narrow therapeutic index drugs, Section 562.0141 takes effect July 1, 2008.

(g) If the joint committee receives a request under Subsection (a) and litigation or a request for an attorney general's opinion regarding this section, Section 562.014, or Section 562.0141 is filed by a drug manufacturer between the effective date of this section and July 1, 2008, the time limits established by Subsections (e) and (f) are tolled until the litigation is resolved or the attorney general renders an opinion.

(h) For purposes of this section, notice of the following must be published in the Texas Register not later than the third business day after the date of occurrence:

(1) a request by a drug manufacturer for inclusion of a drug on the list of narrow therapeutic index drugs;

(2) withdrawal of a request described by Subdivision (1);

(3) litigation described by Subsection (g);

(4) resolution of litigation described by Subsection (g); and

(5) a request for an attorney general's opinion described by Subsection (g).

Added by Acts 2007, 80th Leg., R.S., Ch. 385 (S.B. 625), Sec. 2, eff. June 15, 2007.

Sec. 562.015. DISPENSING DIRECTIVE; COMPLIANCE WITH FEDERAL

LAW. (a) The board shall adopt rules to provide a dispensing directive to instruct pharmacists on the manner in which to dispense a drug or biological product according to the contents of a prescription. The rules adopted under this section must:

(1) require the use of the phrase "brand necessary" or "brand medically necessary" on a prescription form to prohibit the substitution of a generically equivalent drug or interchangeable biological product for a brand name drug or biological product;

(2) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and its subsequent amendments;

(3) comply with federal and state law, including rules, with regard to formatting and security requirements;

(4) be developed to coordinate with 42 C.F.R. Section 447.512; and

(5) include an exemption for electronic prescriptions as provided by Subsection (b).

(b) The board shall provide an exemption from the directive adopted under this section for prescriptions transmitted electronically. The board may regulate the use of electronic prescriptions in the manner provided by federal law, including rules.

Added by Acts 2001, 77th Leg., ch. 1254, Sec. 7, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 13, eff. September 1, 2015.

Sec. 562.016. LIST OF APPROVED INTERCHANGEABLE BIOLOGICAL PRODUCTS. The board shall maintain on the board's Internet website a link to the United States Food and Drug Administration's list of approved interchangeable biological products.

Added by Acts 2015, 84th Leg., R.S., Ch. 1007 (H.B. 751), Sec. 14, eff. September 1, 2015.

SUBCHAPTER B. OTHER PRACTICE BY PHARMACIST

Sec. 562.052. RELEASE OF CONFIDENTIAL RECORDS. A confidential record is privileged and a pharmacist may release a confidential record only to:

(1) the patient or the patient's agent;

(2) a practitioner or another pharmacist if, in the pharmacist's professional judgment, the release is necessary to protect the patient's health and well-being;

(3) the board or to a person or another state or federal agency authorized by law to receive the confidential record;

(4) a law enforcement agency engaged in investigation of a suspected violation of Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(5) a person employed by a state agency that licenses a practitioner, if the person is performing the person's official duties; or

(6) an insurance carrier or other third party payor authorized by the patient to receive the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.053. REPORTS TO BOARD. A pharmacist shall report in writing to the board not later than the 10th day after the date of a change of address or place of employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.054. EMERGENCY REFILLS. (a) A pharmacist may exercise the pharmacist's professional judgment in refilling a prescription for a prescription drug, other than a controlled substance listed in Schedule II as established by the commissioner of state health services under Chapter 481, Health and Safety Code, without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) either:

(A) a natural or manmade disaster has occurred that prohibits the pharmacist from being able to contact the practitioner; or

(B) the pharmacist is unable to contact the practitioner after reasonable effort;

(3) the quantity of prescription drug dispensed does not

exceed a 72-hour supply;

(4) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without the practitioner's authorization and that authorization of the practitioner is required for a future refill; and

(5) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time.

(b) Notwithstanding Subsection (a), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a prescription drug, other than a controlled substance listed in Schedule II as established by the commissioner of state health services under Chapter 481, Health and Safety Code, without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(2) the natural or manmade disaster prohibits the pharmacist from being able to contact the practitioner;

(3) the governor has declared a state of disaster under Chapter 418, Government Code; and

(4) the board, through the executive director, has notified pharmacies in this state that pharmacists may dispense up to a 30-day supply of a prescription drug.

(c) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a prescription drug under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 567 (S.B. 1658), Sec. 1, eff. September 1, 2007.

Sec. 562.0541. EMERGENCY REFILLS OF INSULIN AND INSULIN-RELATED EQUIPMENT OR SUPPLIES. (a) In this section:

(1) "Insulin" includes an insulin analog and an insulin-like medication, regardless of the activation period or whether the solution is mixed before the prescription is dispensed.

(2) "Insulin-related equipment or supplies" includes needles, syringes, cartridge systems, prefilled pen systems, glucose meters, continuous glucose monitor supplies, and test strips, but

excludes insulin pumps.

(b) A pharmacist may provide an emergency refill of insulin or insulin-related equipment or supplies if the pharmacist complies with this section and rules adopted under this section.

(c) Notwithstanding Section 562.054(a) and subject to Subsection (b) of this section, a pharmacist may exercise the pharmacist's professional judgment in refilling a prescription for insulin or insulin-related equipment or supplies without the authorization of the prescribing practitioner if the pharmacist:

(1) is unable to contact the practitioner after reasonable effort;

(2) is provided with documentation showing that the patient was previously prescribed insulin or insulin-related equipment or supplies by a practitioner;

(3) assesses the patient to determine whether the emergency refill is appropriate;

(4) creates a record that documents the patient's visit that includes a notation describing the documentation provided under Subdivision (2); and

(5) makes a reasonable attempt to inform the practitioner of the emergency refill at the earliest reasonable time.

(d) The quantity of an emergency refill of insulin may not exceed a 30-day supply. The quantity of an emergency refill of insulin-related equipment or supplies may not exceed the lesser of a 30-day supply or the smallest available package.

(e) The prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing an emergency refill of insulin or insulin-related equipment or supplies under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 679 (H.B. 1935), Sec. 1, eff. September 1, 2021.

Sec. 562.0545. 90-DAY SUPPLY AND ACCELERATED REFILLS. A pharmacist may dispense up to a 90-day supply of a dangerous drug pursuant to a valid prescription that specifies the dispensing of a lesser amount followed by periodic refills of that amount if:

(1) the total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the original prescription, including refills;

(2) the patient consents to the dispensing of up to a 90-day supply and the physician has been notified electronically or by telephone;

(3) the physician has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary;

(4) the dangerous drug is not a psychotropic drug; and

(5) the patient is at least 18 years of age.

Added by Acts 2011, 82nd Leg., R.S., Ch. 303 (H.B. 2069), Sec. 2, eff. September 1, 2011.

Sec. 562.055. REPORT TO TEXAS DEPARTMENT OF HEALTH. A pharmacist shall report to the Texas Department of Health any unusual or increased prescription rates, unusual types of prescriptions, or unusual trends in pharmacy visits that may be caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agents or biological toxins that might pose a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Prescription-related events that require a report include:

(1) an unusual increase in the number of:

(A) prescriptions to treat respiratory or gastrointestinal complaints or fever;

(B) prescriptions for antibiotics; and

(C) requests for information on over-the-counter pharmaceuticals to treat respiratory or gastrointestinal complaints or fever; and

(2) any prescription that treats a disease that is relatively uncommon and has bioterrorism potential.

Added by Acts 2003, 78th Leg., ch. 1312, Sec. 8, eff. June 21, 2003.

Sec. 562.056. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED. (a) Before dispensing a prescription, a pharmacist shall determine, in the exercise of sound professional judgment, that the prescription is a valid prescription. A pharmacist may not dispense a prescription drug if the pharmacist knows or should know that the prescription was issued without a valid practitioner-patient relationship.

(a-1) To be a valid prescription, a prescription must be issued for a legitimate medical purpose by a practitioner acting in the usual course of the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of prescription drugs is on the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

(b) This section does not prohibit a pharmacist from dispensing a prescription when a valid practitioner-patient relationship is not present in an emergency.

(c) For purposes of this section and Section 562.112, a valid practitioner-patient relationship is present between a practitioner providing telemedicine medical services or teledentistry dental services and the patient receiving the services if the practitioner has complied with the requirements for establishing such a relationship in accordance with Section 111.005.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 21, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 13, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 9, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 205 (S.B. 1107), Sec. 4, eff. May 27, 2017.

Acts 2021, 87th Leg., R.S., Ch. 811 (H.B. 2056), Sec. 16, eff. September 1, 2021.

Sec. 562.057. ADMINISTRATION OF EPINEPHRINE. (a) A pharmacist may administer epinephrine through an auto-injector device in accordance with this section.

(b) The board shall adopt rules designed to protect the public health and safety to implement this section. The rules must provide that a pharmacist may administer epinephrine through an auto-injector device to a patient in an emergency situation.

(c) A pharmacist may maintain, administer, and dispose of epinephrine auto-injector devices only in accordance with rules adopted by the board under this section.

(d) A pharmacist who administers epinephrine through an auto-injector device to a patient shall report the use to the patient's primary care physician, as identified by the patient, if the patient has a primary care physician.

(e) A pharmacist who in good faith administers epinephrine through an auto-injector device in accordance with the requirements of this section is not liable for civil damages for an act performed in the administration unless the act is wilfully or wantonly negligent. A pharmacist may not receive remuneration for the administration of epinephrine through an auto-injector device but may seek reimbursement for the cost of the epinephrine auto-injector device.

(f) The administration of epinephrine through an auto-injector device to a patient in accordance with the requirements of this section does not constitute the unlawful practice of any health care profession.

Added by Acts 2015, 84th Leg., R.S., Ch. 1253 (H.B. 1550), Sec. 1, eff. January 1, 2016.

SUBCHAPTER C. PRACTICE BY PHARMACY

Sec. 562.101. SUPERVISION OF PHARMACY. (a) A pharmacy is required to be under the supervision of a pharmacist as provided by this section.

(b) A Class A or Class B pharmacy is required to be under the continuous on-site supervision of a pharmacist during the time the pharmacy is open for pharmacy services.

(c) A Class C pharmacy that is in an institution with more than 100 beds is required to be under the continuous on-site supervision of a pharmacist during the time the pharmacy is open for pharmacy services.

(d) A Class C pharmacy that is in an institution with 100 beds or fewer is required to have the services of a pharmacist on a part-time or consulting basis according to the needs of the institution.

(e) A Class D pharmacy is required to be under the continuous supervision of a pharmacist whose services are required according to the needs of the pharmacy.

(f) A Class E pharmacy is required to be under the continuous on-site supervision of a pharmacist and shall designate one

pharmacist licensed to practice pharmacy by the regulatory or licensing agency of the state in which the Class E pharmacy is located to serve as the pharmacist-in-charge of the Class E pharmacy.

(f-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 7(1), and Ch. 1144 (H.B. 2847), Sec. 4.006(1), eff. September 1, 2019.

(g) For a pharmacy license classification established under Section 560.053, the board shall adopt rules that provide for the supervision of the pharmacy by a pharmacist. Supervision under the board rules must require at least continuous supervision by a pharmacist according to the needs of the pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 941, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 41, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 7(1), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 4.006(1), eff. September 1, 2019.

Sec. 562.1011. OPERATION OF CLASS C PHARMACY IN CERTAIN RURAL HOSPITALS. (a) In this section:

(1) "Nurse" has the meaning assigned by Section 301.002. The term includes a nurse who is also registered as a pharmacy technician.

(2) "Rural hospital" means a licensed hospital with 75 beds or fewer that:

(A) is located in a county with a population of 50,000 or less; or

(B) has been designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital.

(b) If a practitioner orders a prescription drug or device for a patient in a rural hospital when the hospital pharmacist is not on duty or when the institutional pharmacy is closed, a nurse or practitioner may withdraw the drug or device from the pharmacy in sufficient quantity to fill the order.

(c) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (b) and perform a drug regimen review not later than the seventh day after the date of the withdrawal.

(d) In a rural hospital that uses a floor stock method of drug distribution, a nurse or practitioner may withdraw a prescription drug or device from the institutional pharmacy in the original manufacturer's container or a prepackaged container.

(e) The hospital pharmacist shall verify the withdrawal of a drug or device under Subsection (d) and perform a drug regimen review not later than the seventh day after the date of the withdrawal.

(f) A rural hospital may allow a pharmacy technician to perform the duties specified in Subsection (g) if:

(1) the pharmacy technician is registered and meets the training requirements specified by the board;

(2) a pharmacist is accessible at all times to respond to any questions and needs of the pharmacy technician or other hospital employees, by telephone, answering or paging service, e-mail, or any other system that makes a pharmacist accessible; and

(3) a nurse or practitioner or a pharmacist by remote access verifies the accuracy of the actions of the pharmacy technician.

(g) If the requirements of Subsection (f) are met, the pharmacy technician may, during the hours that the institutional pharmacy in the hospital is open, perform the following duties in the pharmacy without the direct supervision of a pharmacist:

(1) enter medication order and drug distribution information into a data processing system;

(2) prepare, package, or label a prescription drug according to a medication order if a licensed nurse or practitioner verifies the accuracy of the order before administration of the drug to the patient;

(3) fill a medication cart used in the rural hospital;

(4) distribute routine orders for stock supplies to patient care areas;

(5) access and restock automated medication supply cabinets; and

(6) perform any other duty specified by the board by rule.

(h) The pharmacist-in-charge of an institutional pharmacy in a rural hospital shall develop and implement policies and procedures for the operation of the pharmacy when a pharmacist is not on-site.

(i) On or after September 1, 2011, the board may establish, by rule, a requirement for prospective and retrospective drug use review by a pharmacist for each new drug order. A drug use review is not required when a delay in administration of the drug would harm the patient in an urgent or emergency situation, including sudden changes in a patient's clinical status.

(j) Rural hospitals may establish standing orders and protocols, to be developed jointly by the pharmacist and medical staff, that may include additional exceptions to instances in which prospective drug use review is required.

(k) This section does not restrict or prohibit the board from adopting a rule related to authorizing the withdrawal of a drug or device by a nurse or practitioner from, or the supervision of a pharmacy technician in, an institutional pharmacy not located in a rural hospital. As part of the rulemaking process, the board shall consider the effect that a proposed rule, if adopted, would have on access to pharmacy services in hospitals that are not rural hospitals.

(l) The board shall adopt rules to implement this section, including rules specifying:

(1) the records that must be maintained under this section;

(2) the requirements for policies and procedures for operation of a pharmacy when a pharmacist is not on-site; and

(3) the training requirements for pharmacy technicians.

Added by Acts 2009, 81st Leg., R.S., Ch. 1128 (H.B. 1924), Sec. 1, eff. June 19, 2009.

Sec. 562.102. CONFIDENTIAL RECORD. A pharmacy shall comply with Section 562.052 concerning the release of a confidential record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.103. DISPLAY OF LICENSES BY PHARMACY. (a) A pharmacy shall display in the pharmacy in full public view the license under which the pharmacy operates.

(b) A Class A or Class C pharmacy that serves the public shall:

(1) display the word "pharmacy" or a similar word or symbol as determined by the board in a prominent place on the front of the

pharmacy; and

(2) display in public view the license of the pharmacist-in-charge of the pharmacy.

(c) A pharmacy shall maintain and make available to the public on request proof that each pharmacist, pharmacist-intern, pharmacy technician, and pharmacist technician trainee working in the pharmacy holds the appropriate license or registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 14, eff. June 14, 2013.

Sec. 562.104. TOLL-FREE TELEPHONE NUMBER REQUIRED. A pharmacy whose primary business is to dispense a prescription drug or device under a prescription drug order to a patient located outside the area covered by the pharmacy's telephone area code shall provide a toll-free telephone line that is answered during normal business hours to enable communication between a patient or the patient's physician and a pharmacist at the pharmacy who has access to the patient's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.1045. LINKING INTERNET SITES. (a) This section applies only to a pharmacy that:

(1) maintains a generally accessible Internet site; and

(2) sells or distributes drugs through the Internet.

(b) A pharmacy subject to this section shall link its site to the Internet site maintained by the board. The link must be:

(1) on the pharmacy's initial home page; and

(2) if the pharmacy sells drugs through its site, on the page where the sale occurs.

(c) A pharmacy subject to this section shall post:

(1) on its initial home page general information on how to file a complaint about the pharmacy with the board; and

(2) specific information on how to file a complaint with the board not more than two links away from its initial home page.

(d) Information under Subsection (c) must include the board's telephone number, mailing address, and Internet website address.

Added by Acts 2001, 77th Leg., ch. 972, Sec. 3, eff. Nov. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 23, eff. September 1, 2005.

Sec. 562.105. MAINTENANCE OF RECORDS. A pharmacy shall maintain a permanent record of:

(1) any civil litigation initiated against the pharmacy by a resident of this state; or

(2) a complaint that arises out of a prescription for a resident of this state that was lost during delivery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.106. NOTIFICATION. (a) A pharmacy shall report in writing to the board not later than the 10th day after the date of:

(1) a permanent closing of the pharmacy;

(2) a change of ownership of the pharmacy;

(3) a change of the person designated as the pharmacist-in-charge of the pharmacy;

(4) a sale or transfer of any controlled substance or dangerous drug as a result of the permanent closing or change of ownership of the pharmacy;

(5) any matter or occurrence that the board requires by rule to be reported;

(6) as determined by the board, an out-of-state purchase of any controlled substance;

(7) a final order against the pharmacy license holder by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state; or

(8) a final order against a pharmacist who is designated as the pharmacist-in-charge of the pharmacy by the regulatory or licensing agency of the state in which the pharmacy is located if the pharmacy is located in another state.

(a-1) A pharmacy shall report in writing to the board not later than the 30th day before the date of a change of location of the pharmacy.

(b) A pharmacy shall report in writing to the board a theft or

significant loss of any controlled substance immediately on discovery of the theft or loss. The pharmacy shall include with the report a list of all controlled substances stolen or lost.

(c) A pharmacy shall report in writing to the board a disaster, accident, or emergency that may affect the strength, purity, or labeling of a drug, medication, device, or other material used in the diagnosis or treatment of injury, illness, or disease, immediately on the occurrence of the disaster, accident, or emergency.

(d) The reporting pharmacy shall maintain a copy of any notification required by this section or Section 562.053 for two years and make the copy available for inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 5, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 10, eff. September 1, 2015.

Sec. 562.107. WRITTEN CONSUMER INFORMATION REQUIRED. (a) Each pharmacy shall make available to a consumer written information designed for the consumer that provides at a minimum:

(1) the therapeutic use of a drug; and

(2) the names of generically equivalent drugs.

(b) The information must be in a conspicuous location that is easily accessible to pharmacy customers. The information shall be periodically updated, as necessary, to reflect a change in the information.

(c) On request by a consumer, the pharmacy shall make available to the consumer the cost index ratio of the prescribed drug and any generic equivalents of the prescribed drug.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 562.108. EMERGENCY MEDICATION KITS. (a) A Class A or Class C pharmacy, or a Class E pharmacy located not more than 20 miles from any institution in this state that is licensed under Chapter 242 or 252, Health and Safety Code, may maintain controlled substances and dangerous drugs in an emergency medication kit used at

an institution licensed under those chapters. A United States Department of Veterans Affairs pharmacy or another federally operated pharmacy may maintain controlled substances and dangerous drugs in an emergency medication kit used at an institution licensed under Chapter 242, Health and Safety Code, that is a veterans home, as defined by Section 164.002, Natural Resources Code. The controlled substances and dangerous drugs may be used only for the emergency medication needs of a resident at the institution. A Class E pharmacy may not maintain drugs in an emergency medication kit for an institution that is located more than 20 miles from a pharmacy.

(b) The board shall adopt rules relating to emergency medication kits, including:

(1) the amount and type of dangerous drugs and controlled substances that may be maintained in an emergency medication kit;

(2) procedures regarding the use of drugs from an emergency medication kit;

(3) recordkeeping requirements; and

(4) security requirements.

Added by Acts 2001, 77th Leg., ch. 1254, Sec. 8, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 582, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 914, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.006, eff. September 1, 2005.

Sec. 562.1085. UNUSED DRUGS RETURNED BY CERTAIN PHARMACISTS. (a) A pharmacist who practices in or serves as a consultant for a health care facility or a licensed health care professional responsible for administration of drugs in a penal institution, as defined by Section 1.07, Penal Code, in this state may return to a pharmacy certain unused drugs, other than a controlled substance as defined by Chapter 481, Health and Safety Code, purchased from the pharmacy as provided by board rule. The unused drugs must:

(1) be approved by the federal Food and Drug Administration and be:

(A) sealed in unopened tamper-evident packaging and either individually packaged or packaged in unit-dose packaging;

(B) oral or parenteral medication in sealed single-dose

containers approved by the federal Food and Drug Administration;

(C) topical or inhalant drugs in sealed units-of-use containers approved by the federal Food and Drug Administration; or

(D) parenteral medications in sealed multiple-dose containers approved by the federal Food and Drug Administration from which doses have not been withdrawn; and

(2) not be the subject of a mandatory recall by a state or federal agency or a voluntary recall by a drug seller or manufacturer.

(b) A pharmacist for the pharmacy shall examine a drug returned under this section to ensure the integrity of the drug product. A health care facility or penal institution may not return a drug that:

(1) has been compounded;

(2) appears on inspection to be adulterated;

(3) requires refrigeration; or

(4) has less than 120 days until the expiration date or end of the shelf life.

(c) The pharmacy may restock and redistribute unused drugs returned under this section.

(d) The pharmacy shall reimburse or credit the state Medicaid program for an unused drug returned under this section.

(e) The board shall adopt the rules, policies, and procedures necessary to administer this section, including rules that require a health care facility to inform the Health and Human Services Commission of medicines returned to a pharmacy under this section.

(f) The tamper-evident packaging required under Subsection (a)(1) for the return of unused drugs is not required to be the manufacturer's original packaging unless that packaging is required by federal law.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.126, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 1, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 349 (S.B. 1188), Sec. 14, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 820 (S.B. 1896), Sec. 1, eff. June 15, 2007.

Sec. 562.1086. LIMITATION ON LIABILITY. (a) A pharmacy that

returns unused drugs and a manufacturer that accepts the unused drugs under Section 562.1085 and the employees of the pharmacy or manufacturer are not liable for harm caused by the accepting, dispensing, or administering of drugs returned in strict compliance with Section 562.1085 unless the harm is caused by:

(1) wilful or wanton acts of negligence;

(2) conscious indifference or reckless disregard for the safety of others; or

(3) intentional conduct.

(b) This section does not limit, or in any way affect or diminish, the liability of a drug seller or manufacturer under Chapter 82, Civil Practice and Remedies Code.

(c) This section does not apply if harm results from the failure to fully and completely comply with the requirements of Section 562.1085.

(d) This section does not apply to a pharmacy or manufacturer that fails to comply with the insurance provisions of Chapter 84, Civil Practice and Remedies Code.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.126, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 321, Sec. 1, eff. June 18, 2003.

Sec. 562.109. AUTOMATED PHARMACY SYSTEMS. (a) In this section, "automated pharmacy system" means a mechanical system that:

(1) dispenses prescription drugs; and

(2) maintains related transaction information.

(b) A Class A or Class C pharmacy may provide pharmacy services through an automated pharmacy system in a facility that is not at the same location as the Class A or Class C pharmacy. The pharmacist in charge of the Class A or Class C pharmacy is responsible for filling and loading the storage containers for medication stored in bulk at the facility.

(c) An automated pharmacy system is required to be under the continuous supervision of a pharmacist as determined by board rule. To qualify as continuous supervision for an automated pharmacy system, the pharmacist is not required to be physically present at the site of the automated pharmacy system and may supervise the system electronically.

(d) An automated pharmacy system may be located only at a

health care facility regulated by the state.

(e) The board shall adopt rules regarding the use of an automated pharmacy system under this section, including:

(1) the types of health care facilities at which an automated pharmacy system may be located, which shall include a facility regulated under Chapter 142, 242, or 252, Health and Safety Code;

(2) recordkeeping requirements; and

(3) security requirements.

Added by Acts 2001, 77th Leg., ch. 92, Sec. 1, eff. May 11, 2001.

Sec. 562.110. TELEPHARMACY SYSTEMS. (a) In this section:

(1) "Provider pharmacy" means a Class A pharmacy that provides pharmacy services through a telepharmacy system at a remote dispensing site.

(2) "Remote dispensing site" means a location licensed as a telepharmacy that is authorized by a provider pharmacy through a telepharmacy system to store and dispense prescription drugs and devices, including dangerous drugs and controlled substances.

(3) "Telepharmacy system" means a system that monitors the dispensing of prescription drugs and provides for related drug use review and patient counseling services by an electronic method, including the use of the following types of technology:

(A) audio and video;

(B) still image capture; and

(C) store and forward.

(b) A Class A or Class C pharmacy located in this state may provide pharmacy services, including the dispensing of drugs, through a telepharmacy system at locations separate from the Class A or Class C pharmacy.

(c) A telepharmacy system is required to be under the continuous supervision of a pharmacist as determined by board rule. To qualify as continuous supervision for a telepharmacy system, the pharmacist is not required to be physically present at the site of the telepharmacy system. The pharmacist shall supervise the system electronically by audio and video communication.

(d) A telepharmacy system may be located only at:

(1) a health care facility in this state that is regulated

by this state or the United States; or

(2) a remote dispensing site.

(e) The board shall adopt rules regarding the use of a telepharmacy system under this section, including:

(1) the types of health care facilities at which a telepharmacy system may be located under Subsection (d)(1), which must include the following facilities:

(A) a clinic designated as a rural health clinic regulated under 42 U.S.C. Section 1395x(aa);

(B) a health center as defined by 42 U.S.C. Section 254b; and

(C) a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B);

(2) the locations eligible to be licensed as remote dispensing sites, which must include locations in medically underserved areas, areas with a medically underserved population, and health professional shortage areas determined by the United States Department of Health and Human Services;

(3) licensing and operating requirements for remote dispensing sites, including:

(A) a requirement that a remote dispensing site license identify the provider pharmacy that will provide pharmacy services at the remote dispensing site;

(B) a requirement that a provider pharmacy be allowed to provide pharmacy services at not more than two remote dispensing sites;

(C) a requirement that a pharmacist employed by a provider pharmacy make at least monthly on-site visits to a remote dispensing site or more frequent visits if specified by board rule;

(D) a requirement that each month the perpetual inventory of controlled substances at the remote dispensing site be reconciled to the on-hand count of those controlled substances at the site by a pharmacist employed by the provider pharmacy;

(E) a requirement that a pharmacist employed by a provider pharmacy be physically present at a remote dispensing site when the pharmacist is providing services requiring the physical presence of the pharmacist, including immunizations;

(F) a requirement that a remote dispensing site be staffed by an on-site pharmacy technician who is under the continuous supervision of a pharmacist employed by the provider pharmacy;

(G) a requirement that all pharmacy technicians at a remote dispensing site be counted for the purpose of establishing the pharmacist-pharmacy technician ratio of the provider pharmacy, which, notwithstanding Section 568.006, may not exceed three pharmacy technicians for each pharmacist providing supervision;

(H) a requirement that, before working at a remote dispensing site, a pharmacy technician must:

(i) have worked at least one year at a retail pharmacy during the three years preceding the date the pharmacy technician begins working at the remote dispensing site; and

(ii) have completed a board-approved training program on the proper use of a telepharmacy system;

(I) a requirement that pharmacy technicians at a remote dispensing site may not perform extemporaneous sterile or nonsterile compounding but may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics; and

(J) any additional training or practice experience requirements for pharmacy technicians at a remote dispensing site;

(4) the areas that qualify under Subsection (f);

(5) recordkeeping requirements; and

(6) security requirements.

(f) Except as provided by Subsection (f-1), a telepharmacy system located at a health care facility under Subsection (d)(1) may not be located in a community in which a Class A or Class C pharmacy is located as determined by board rule. If a Class A or Class C pharmacy is established in a community in which a telepharmacy system has been located under this section, the telepharmacy system may continue to operate in that community.

(f-1) A telepharmacy system located at a federally qualified health center as defined by 42 U.S.C. Section 1396d(l)(2)(B) may be located in a community in which a Class A or Class C pharmacy is located as determined by board rule.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 17

(g) A telepharmacy system located at a remote dispensing site under Subsection (d)(2) may not dispense a controlled substance listed in Schedule II as established by the commissioner of state health services under Chapter 481, Health and Safety Code, and may not be located within 22 miles by road of a Class A pharmacy.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 929 (S.B. 1633), Sec. 3

(g) A telepharmacy system located at a remote dispensing site under Subsection (d)(2) may not dispense a controlled substance listed in Schedule II as established by the commissioner of state health services under Chapter 481, Health and Safety Code.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 17

(h) If a Class A pharmacy is established within 22 miles by road of a remote dispensing site that is currently operating, the remote dispensing site may continue to operate at that location.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 929 (S.B. 1633), Sec. 3

(h) Except as provided by Subsection (j), a telepharmacy system located at a remote dispensing site under Subsection (d)(2) may not be located within 25 miles by road of a Class A pharmacy.

(i) Except as provided by Subsection (j), if a Class A pharmacy is established within 25 miles by road of a remote dispensing site that is currently operating, the remote dispensing site may continue to operate at that location.

(j) A telepharmacy system located at a remote dispensing site under Subsection (d)(2) in a county with a population of at least 13,000 but not more than 14,000 may not be located within 22 miles by road of a Class A pharmacy. If a Class A pharmacy is established within 22 miles by road of a remote dispensing site described by this subsection that is currently operating, the remote dispensing site may continue to operate at that location.

(k) The board by rule shall require and develop a process for a remote dispensing site to apply for classification as a Class A pharmacy if the average number of prescriptions dispensed each day the remote dispensing site is open for business is more than 125, as calculated each calendar year.

Added by Acts 2001, 77th Leg., ch. 1220, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 17, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 929 (S.B. 1633), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 12.001,

eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 964 (S.B. 670), Sec. 5, eff. September 1, 2019.

Sec. 562.112. PRACTITIONER-PATIENT RELATIONSHIP REQUIRED. (a) A pharmacy shall ensure that its agents and employees, before dispensing a prescription, determine in the exercise of sound professional judgment that the prescription is a valid prescription. A pharmacy may not dispense a prescription drug if an agent or employee of the pharmacy knows or should know that the prescription was issued on the basis of an Internet-based or telephonic consultation without a valid practitioner-patient relationship.

(b) Subsection (a) does not prohibit a pharmacy from dispensing a prescription when a valid practitioner-patient relationship is not present in an emergency.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 22, eff. September 1, 2005.
Renumbered from Occupations Code, Section 562.111 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(58), eff. September 1, 2007.

SUBCHAPTER D. COMPOUNDED AND PREPACKAGED DRUGS

Sec. 562.151. DEFINITIONS. In this subchapter:

(1) "Office use" means the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy in accordance with Chapter 563.

(2) "Prepackaging" means the act of repackaging and relabeling quantities of drug products from a manufacturer's original container into unit dose packaging or a multiple dose container for distribution within a facility licensed as a Class C pharmacy or to other pharmacies under common ownership for distribution within those facilities. The term as defined does not prohibit the prepackaging of drug products for use within other pharmacy classes.

(3) "Reasonable quantity" with reference to drug compounding means an amount of a drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office before the expiration date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

Added by Acts 2003, 78th Leg., ch. 890, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.152. COMPOUNDING FOR OFFICE USE. A pharmacy may dispense and deliver a reasonable quantity of a compounded drug to a practitioner for office use by the practitioner in accordance with this chapter.

Amended by:
Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.153. REQUIREMENTS FOR OFFICE USE COMPOUNDING. To dispense and deliver a compounded drug under Section 562.152, a pharmacy must:

(1) verify the source of the raw materials to be used in a compounded drug;

(2) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(3) comply with all applicable competency and accrediting standards as determined by the board; and

(4) comply with board rules, including rules regarding the reporting of adverse events by practitioners and recall procedures

for compounded products.

Amended by:
Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.154. DISTRIBUTION OF COMPOUNDED AND PREPACKAGED PRODUCTS TO CERTAIN PHARMACIES. (a) A Class A pharmacy licensed under Chapter 560 is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute compounded pharmaceutical products to a Class C pharmacy licensed under Chapter 560.

(b) A Class C pharmacy licensed under Chapter 560 is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute compounded and prepackaged pharmaceutical products that the Class C pharmacy has compounded or prepackaged to other Class C pharmacies licensed under Chapter 560 and under common ownership.

Amended by:
Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.155. COMPOUNDING SERVICE AND COMPOUNDED DRUG PRODUCTS. A compounding pharmacist or pharmacy may advertise or promote:

(1) nonsterile prescription compounding services provided by the pharmacist or pharmacy; and

(2) specific compounded drug products that the pharmacy or pharmacist dispenses or delivers.

Amended by:
Acts 2005, 79th Leg., Ch. 28 (S.B. 492), Sec. 4, eff. September 1, 2005.

Sec. 562.156. COMPOUNDED STERILE PREPARATION; NOTICE TO BOARD. (a) A pharmacy may not compound and dispense a sterile preparation unless the pharmacy holds a license as required by board rule.

(b) A pharmacy that compounds a sterile preparation shall

notify the board:

(1) immediately of any adverse effects reported to the pharmacy or that are known by the pharmacy to be potentially attributable to a sterile preparation compounded by the pharmacy; and

(2) not later than 24 hours after the pharmacy issues a recall for a sterile preparation compounded by the pharmacy.

Added by Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 6, eff. September 1, 2013.

CHAPTER 563. PRESCRIPTION REQUIREMENTS; DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS

SUBCHAPTER B. DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS

Sec. 563.051. GENERAL DELEGATION OF ADMINISTRATION AND PROVISION OF DANGEROUS DRUGS. (a) A physician may delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs in the physician's office, as ordered by the physician, that are used or required to meet the immediate needs of the physician's patients. The administration or provision of the dangerous drugs must be performed in compliance with laws relating to the practice of medicine and state and federal laws relating to those dangerous drugs.

(b) A physician may also delegate to any qualified and properly trained person acting under the physician's supervision the act of administering or providing dangerous drugs through a facility licensed by the board, as ordered by the physician, that are used or required to meet the needs of the physician's patients. The administration of those dangerous drugs must be in compliance with laws relating to the practice of medicine, professional nursing, and pharmacy and state and federal drug laws. The provision of those dangerous drugs must be in compliance with:

(1) laws relating to the practice of medicine, professional nursing, and pharmacy;

(2) state and federal drug laws; and

(3) rules adopted by the board.

(c) The administration or provision of the drugs may be delegated through a physician's order, a standing medical order, a

standing delegation order, or another order defined by the Texas State Board of Medical Examiners.

(d) This section does not authorize a physician or a person acting under the supervision of a physician to keep a pharmacy, advertised or otherwise, for the retail sale of dangerous drugs, other than as authorized under Section 158.003, without complying with the applicable laws relating to the dangerous drugs.

(e) A practitioner may designate a licensed vocational nurse or a person having education equivalent to or greater than that required for a licensed vocational nurse to communicate the prescriptions of an advanced practice nurse or physician assistant authorized by the practitioner to sign prescription drug orders under Subchapter B, Chapter 157.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.308(a), eff. Sept. 1, 2001.

Sec. 563.052. SUITABLE CONTAINER REQUIRED. A drug or medicine provided under this subchapter must be supplied in a suitable container labeled in compliance with applicable drug laws. A qualified and trained person, acting under the supervision of a physician, may specify at the time of the provision of the drug the inclusion on the container of the date of the provision and the patient's name and address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 563.053. DISPENSING OF DANGEROUS DRUGS IN CERTAIN RURAL AREAS. (a) In this section, "reimbursement for cost" means an additional charge, separate from that imposed for the physician's professional services, that includes the cost of the drug product and all other actual costs to the physician incidental to providing the dispensing service. The term does not include a separate fee imposed for the act of dispensing the drug itself.

(b) This section applies to an area located in a county with a population of 5,000 or less, or in a municipality or an unincorporated town with a population of less than 2,500, that is within a 15-mile radius of the physician's office and in which a

pharmacy is not located. This section does not apply to a municipality or an unincorporated town that is adjacent to a municipality with a population of 2,500 or more.

(c) A physician who practices medicine in an area described by Subsection (b) may:

(1) maintain a supply of dangerous drugs in the physician's office to be dispensed in the course of treating the physician's patients; and

(2) be reimbursed for the cost of supplying those drugs without obtaining a license under Chapter 558.

(d) A physician who dispenses dangerous drugs under Subsection (c) shall:

(1) comply with each labeling provision under this subtitle applicable to that class of drugs; and

(2) oversee compliance with packaging and recordkeeping provisions applicable to that class of drugs.

(e) A physician who desires to dispense dangerous drugs under this section shall notify both the board and the Texas State Board of Medical Examiners that the physician practices in an area described by Subsection (b). The physician may continue to dispense dangerous drugs in the area until the board determines, after notice and hearing, that the physician no longer practices in an area described by Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 563.054. ADMINISTRATION OF DANGEROUS DRUGS. (a) A veterinarian may:

(1) administer or provide dangerous drugs to a patient in the veterinarian's office, or on the patient's premises, if the drugs are used or required to meet the needs of the veterinarian's patients;

(2) delegate the administration or provision of dangerous drugs to a person who:

(A) is qualified and properly trained; and

(B) acts under the veterinarian's supervision; and

(3) itemize and receive compensation for the administration or provision of the dangerous drugs under Subdivision (1).

(b) This section does not permit a veterinarian to maintain a

pharmacy for the retailing of drugs without complying with applicable laws.

(c) The administration or provision of dangerous drugs must comply with:

(1) laws relating to the practice of veterinary medicine; and

(2) state and federal laws relating to dangerous drugs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 564. PROGRAM TO AID IMPAIRED PHARMACISTS AND PHARMACY STUDENTS; PHARMACY PEER REVIEW

SUBCHAPTER A. REPORTING AND CONFIDENTIALITY

Sec. 564.001. REPORTS. (a) An individual or entity, including a pharmaceutical peer review committee, who has knowledge relating to an action or omission of a pharmacist in this state or a pharmacy student who is enrolled in the professional sequence of an accredited pharmacy degree program approved by the board that might provide grounds for disciplinary action under Section 565.001(a)(4) or (7) may report relevant facts to the board.

(b) A committee of a professional society composed primarily of pharmacists, the staff of the committee, or a district or local intervenor participating in a program established to aid pharmacists or pharmacy students impaired by chemical abuse or mental or physical illness may report in writing to the board the name of an impaired pharmacist or pharmacy student and the relevant information relating to the impairment.

(c) The board may report to a committee of the professional society or the society's designated staff information that the board receives relating to a pharmacist or pharmacy student who may be impaired by chemical abuse or mental or physical illness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 1, eff. June 17, 2011.

Sec. 564.002. CONFIDENTIALITY. (a) All records and proceedings of the board, an authorized agent of the board, or a

pharmaceutical organization committee relating to the administration of this chapter are confidential and are not considered public information for purposes of Chapter 552, Government Code. Records considered confidential under this section include:

(1) information relating to a report made under Section 564.001, including the identity of the individual or entity making the report;

(2) the identity of an impaired pharmacist or pharmacy student participating in a program administered under this chapter, except as provided by Section 564.003;

(3) a report, interview, statement, memorandum, evaluation, communication, or other information possessed by the board, an authorized agent of the board, or a pharmaceutical organization committee, related to a potentially impaired pharmacist or pharmacy student;

(4) a policy or procedure of an entity that contracts with the board relating to personnel selection; and

(5) a record relating to the operation of the board, an authorized agent of the board, or a pharmaceutical organization committee, as the record relates to a potentially impaired pharmacist or pharmacy student.

(b) A record or proceeding described by this section is not subject to disclosure, subpoena, or discovery, except to a member of the board or an authorized agent of the board involved in the discipline of an applicant or license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 2, eff. June 17, 2011.

Sec. 564.003. DISCLOSURE OF CERTAIN INFORMATION. (a) The board may disclose information confidential under Section 564.002 only:

(1) during a proceeding conducted by the State Office of Administrative Hearings, the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a pharmacist licensing or disciplinary authority of another jurisdiction;

(3) under a court order;

(4) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, if the information is necessary for preparation for, or a presentation in, the proceeding; or

(5) as provided by Subsection (b).

(a-1) Information that is disclosed under Subsection (a) remains confidential and is not subject to discovery or subpoena in a civil suit and may not be introduced as evidence in any action other than an appeal of a board action.

(a-2) Information that is confidential under Section 564.002 and that is admitted under seal in a proceeding conducted by the State Office of Administrative Hearings is confidential information for the purpose of a subsequent trial or appeal.

(b) The board may disclose that the license of a pharmacist who is the subject of an order of the board that is confidential under Section 564.002 is suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any other manner limited in the practice of pharmacy. The board may not disclose the nature of the impairment or other information that resulted in the board's action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(a-1), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 3, eff. June 17, 2011.

Sec. 564.004. IMMUNITY. (a) Any person, including a board employee or member, peer review committee member, pharmaceutical organization committee member, or pharmaceutical organization district or local intervenor, who provides information, reports, or records under Section 564.001 to aid an impaired pharmacist or pharmacy student is immune from civil liability if the person provides the information in good faith.

(b) Subsection (a) shall be liberally construed to accomplish the purposes of this subchapter, and the immunity provided under that

subsection is in addition to any other immunity provided by law.

(c) A person who provides information or assistance to the board under this subchapter is presumed to have acted in good faith. A person who alleges a lack of good faith has the burden of proof on that issue.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 4, eff. June 17, 2011.

Sec. 564.005. RECORD OF REPORT. On a determination by the board that a report submitted by a peer review committee or pharmaceutical organization committee under Section 564.001(a) or (b) is without merit, the board shall expunge the report from the pharmacist's or pharmacy student's individual record in the board's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 564.006. EXAMINATION OF REPORT. A pharmacist, a pharmacy student, or an authorized representative of the pharmacist or student is entitled on request to examine the peer review or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's or pharmacy student's view concerning information in the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PROGRAM ADMINISTRATION

Sec. 564.051. PROGRAM AUTHORIZATION; FUNDING. (a) The board may add a surcharge of not more than $10 for each 12 months in a license period to a license or license renewal fee authorized under this subtitle to fund a program to aid impaired pharmacists and pharmacy students.

(b) The board may accept, transfer, and spend funds from the federal or state government, from another public source, or from a

private source to be used in the program authorized by this section.

(c) Funds and surcharges collected under this section shall be deposited in the general revenue fund and may only be used by the board to administer the program authorized by this section, including providing for initial evaluation and referral of an impaired pharmacist or pharmacy student by a qualified health professional and paying the administrative costs incurred by the board in connection with that funding. The money may not be used for costs incurred for treatment or rehabilitation after initial evaluation and referral.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.309(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 24, eff. September 1, 2005.

Sec. 564.052. RULES OR CRITERIA. In administering and enforcing this subchapter, the board shall adopt rules or minimum criteria that are at least as strict as the rules or minimum criteria for the administration or enforcement of a peer assistance program adopted by the Texas Commission on Alcohol and Drug Abuse under Chapter 467, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PHARMACY PEER REVIEW

Sec. 564.101. DEFINITIONS. In this subchapter:

(1) "Pharmacy peer review committee" means:

(A) a pharmacy peer review, judicial, or grievance committee of a pharmacy society or association that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care; or

(B) a pharmacy peer review committee established by a person who owns a pharmacy or employs pharmacists that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.

(2) "Pharmacy society or association" means a membership organization of pharmacists that is incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or that is exempt from the payment of federal income taxes under Section 501(c) of the Internal Revenue Code of 1986.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.102. PHARMACY PEER REVIEW COMMITTEE. (a) A pharmacy peer review committee may be established to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.

(b) The committee may review documentation of quality-related activities in a pharmacy, assess system failures and personnel deficiencies, determine facts, and make recommendations or issue decisions in a written report that can be used for continuous quality improvement purposes.

(c) A pharmacy peer review committee includes the members, employees, and agents of the committee, including assistants, investigators, attorneys, and any other agent that serves the committee in any capacity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.103. CONFIDENTIALITY. (a) Except as otherwise provided by this subchapter, all proceedings and records of a pharmacy peer review committee are confidential and all communications made to a pharmacy peer review committee are privileged.

(b) If a court makes a preliminary finding that a proceeding, record, or communication described by Subsection (a) is relevant to an anticompetitive action or an action brought under federal civil rights provisions under 42 U.S.C. Section 1983, then the proceeding, record, or communication is not confidential to the extent it is considered to be relevant.

(c) The final report of, and any written or oral communication made to, a pharmacy peer review committee and the records and

proceedings of the committee may be disclosed to another pharmacy peer review committee, appropriate state or federal agencies, national accreditation bodies, or the state board of registration or licensure of this or any other state.

(d) Disclosure to the affected pharmacist of confidential pharmacy peer review committee information pertinent to the matter under review does not constitute waiver of the confidentiality provisions provided by this section.

(e) If a pharmacy peer review committee takes action that could result in censure, license suspension, restriction, limitation, or revocation by the board or denial of membership or privileges in a health care entity, the affected pharmacist must be provided a written copy of the recommendation of the pharmacy peer review committee and a copy of the pharmacy peer review committee's final decision, including a statement of the basis for the decision.

(f) Unless disclosure is required or authorized by law, records or determinations of, or communications to, a pharmacy peer review committee are not subject to subpoena or discovery and are not admissible as evidence in any civil, judicial, or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee. The evidentiary privilege created by this section may be invoked by any person or organization in any civil, judicial, or administrative proceeding unless the person or organization has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the affected pharmacy peer review committee.

(g) Reports, information, or records received and maintained by the board under this subchapter are considered investigative files and are confidential and may only be released as specified in Section 565.055.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.104. USE OF INFORMATION IN CIVIL AND CRIMINAL ACTIONS. (a) If a pharmacy peer review committee, a person participating in peer review, or any organization named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information in the committee's, person's, or

organization's own defense or in a claim or suit under Section 564.106(b), a plaintiff in the proceeding may disclose records or determinations of, or communications to, a peer review committee in rebuttal to information supplied by the defendant.

(b) Any person seeking access to privileged information must plead and prove waiver of the privilege.

(c) A member, employee, or agent of a pharmacy peer review committee who provides access to otherwise privileged communications or records in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived any privilege established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.105. COMPLIANCE WITH SUBPOENA. All persons, including governing bodies and medical staffs of health care entities, shall comply fully with a subpoena issued by the board for documents or information as otherwise authorized by law. The disclosure of documents or information under the subpoena does not constitute a waiver of the privilege associated with a pharmacy peer review committee proceeding. Failure to comply with the subpoena is grounds for disciplinary action against the facility or individual by the appropriate licensing board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.106. IMMUNITY. (a) A cause of action does not accrue against the members, agents, or employees of a pharmacy peer review committee from any act, statement, determination, or recommendation made or act reported, without malice, in the course of peer review according to this subchapter.

(b) A pharmacy peer review committee, a person participating in peer review, or a health care entity named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in the committee's, person's, or entity's own defense. The use of the

information does not waive the confidential and privileged nature of pharmacy peer review committee proceedings.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

CHAPTER 565. DISCIPLINARY ACTIONS AND PROCEDURES; REINSTATEMENT OF LICENSE

SUBCHAPTER A. GROUNDS FOR DISCIPLINE OF APPLICANT OR LICENSE HOLDER

Sec. 565.001. APPLICANT FOR OR HOLDER OF LICENSE TO PRACTICE PHARMACY. (a) The board may discipline an applicant for or the holder of a current or expired license to practice pharmacy if the board finds that the applicant or license holder has:

(1) violated this subtitle or a board rule adopted under this subtitle;

(2) engaged in unprofessional conduct as defined by board rule;

(3) engaged in gross immorality as defined by board rule;

(4) developed an incapacity that prevents or could prevent the applicant or license holder from practicing pharmacy with reasonable skill, competence, and safety to the public;

(5) engaged in fraud, deceit, or misrepresentation, as defined by board rule, in practicing pharmacy or in seeking a license to practice pharmacy;

(6) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(A) a misdemeanor:

(i) involving moral turpitude; or

(ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(7) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(8) failed to maintain records required by this subtitle or failed to maintain complete and accurate records of purchases or disposals of drugs listed in Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of

1970 (21 U.S.C. Section 801 et seq.);

(9) violated any provision of:

(A) Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.), or rules relating to one of those laws; or

(B) Section 485.031, 485.032, 485.033, or 485.034, Health and Safety Code;

(10) aided or abetted an unlicensed person in the practice of pharmacy if the pharmacist knew or reasonably should have known that the person was unlicensed at the time;

(11) refused entry into a pharmacy for an inspection authorized by this subtitle if the pharmacist received notification from which the pharmacist knew or reasonably should have known that the attempted inspection was authorized;

(12) violated any pharmacy or drug statute or rule of this state, another state, or the United States;

(13) been negligent in the practice of pharmacy;

(14) failed to submit to an examination after hearing and being ordered to do so by the board under Section 565.052;

(15) dispensed a prescription drug while acting outside the usual course and scope of professional practice;

(16) been disciplined by a pharmacy board or by another health regulatory board of this state or another state for conduct substantially equivalent to conduct described under this subsection;

(17) violated a disciplinary order, including a confidential order or contract under the program to aid impaired pharmacists and pharmacy students under Chapter 564;

(18) failed to adequately supervise a task delegated to a pharmacy technician or pharmacy technician trainee;

(19) inappropriately delegated a task delegated to a pharmacy technician or pharmacy technician trainee;

(20) been responsible for a drug audit shortage; or

(21) been convicted or adjudicated of a criminal offense that requires registration as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) A certified copy of the record of the state taking action described by Subsection (a)(16) is conclusive evidence of the action taken by that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1463, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 25, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 15, eff. June 14, 2013.

Sec. 565.002. APPLICANT FOR OR HOLDER OF PHARMACY LICENSE. (a) The board may discipline an applicant for or the holder of a pharmacy license, including a Class E pharmacy license subject to Section 565.003, if the board finds that the applicant or license holder has:

(1) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(A) a misdemeanor:

(i) involving moral turpitude; or

(ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(2) advertised a prescription drug or device in a deceitful, misleading, or fraudulent manner;

(3) violated any provision of this subtitle or any rule adopted under this subtitle or that an owner or employee of a pharmacy has violated any provision of this subtitle or any rule adopted under this subtitle;

(4) sold without legal authorization a prescription drug or device to a person other than:

(A) a pharmacy licensed by the board;

(B) a practitioner;

(C) a person who procures a prescription drug or device for lawful research, teaching, or testing, and not for resale;

(D) a manufacturer or wholesaler licensed by the commissioner of public health as required by Chapter 431, Health and Safety Code; or

(E) a carrier or warehouseman;

(5) allowed an employee who is not a pharmacist to practice

pharmacy;

(6) sold an adulterated or misbranded prescription or nonprescription drug;

(7) failed to engage in or ceased to engage in the business described in the application for a license;

(8) failed to maintain records as required by this subtitle, Chapter 481 or 483, Health and Safety Code, the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle or Chapter 483, Health and Safety Code;

(9) failed to establish and maintain effective controls against diversion of prescription drugs into other than a legitimate medical, scientific, or industrial channel as provided by this subtitle, another state statute or rule, or a federal statute or rule;

(10) engaged in fraud, deceit, or misrepresentation as defined by board rule in:

(A) operating a pharmacy;

(B) applying for a license to operate a pharmacy; or

(C) dispensing drugs for nontherapeutic purposes;

(11) violated a disciplinary order;

(12) been responsible for a drug audit shortage;

(13) been disciplined by the regulatory board of another state for conduct substantially equivalent to conduct described under this subsection; or

(14) waived, discounted, or reduced, or offered to waive, discount, or reduce, a patient copayment or deductible for a compounded drug in the absence of:

(A) a legitimate, documented financial hardship of the patient; or

(B) evidence of a good faith effort to collect the copayment or deductible from the patient.

(b) This subsection applies only to an applicant or license holder that is a legal business entity. The board may discipline an applicant for or the holder of a pharmacy license, including a Class E pharmacy license, if the board finds that a managing officer of the applicant or license holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(1) a misdemeanor:

(A) involving moral turpitude; or

(B) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(2) a felony.

(c) A certified copy of the record of the state taking action described by Subsection (a)(13) is conclusive evidence of the action taken by that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 26, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 11, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 3, eff. January 1, 2020.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 15

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 9, see other Sec. 565.003.

Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless compliance would violate the pharmacy or drug statutes or rules in the state in which the pharmacy is located, the board may discipline an applicant for or the holder of a nonresident pharmacy license if the board finds that the applicant or license holder has failed to comply with:

(1) Section 481.074, 481.075, 481.0755, 481.0756, 481.076, 481.0761, 481.0762, 481.0763, 481.07635, 481.07636, 481.0764, 481.0765, or 481.0766, Health and Safety Code;

(2) Texas substitution requirements regarding:

(A) the practitioner's directions concerning generic substitution;

(B) the patient's right to refuse generic substitution; or

(C) notification to the patient of the patient's right to refuse substitution;

(3) any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or

(4) any board rule adopted under Section 554.051(a) and determined by the board to be applicable under Section 554.051(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 45, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 7, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 15, eff. September 1, 2019.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 9

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 15, see other Sec. 565.003.

Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless compliance would violate the pharmacy or drug statutes or rules in the state in which the pharmacy is located, the board may discipline an applicant for or the holder of a nonresident pharmacy license if the board finds that the applicant or license holder has failed to comply with:

(1) Subchapter C, Chapter 481, Health and Safety Code;

(2) Texas substitution requirements regarding:

(A) the practitioner's directions concerning generic substitution;

(B) the patient's right to refuse generic substitution; or

(C) notification to the patient of the patient's right to refuse substitution;

(3) any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or

(4) any board rule adopted under Section 554.051(a) and determined by the board to be applicable under Section 554.051(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 45, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 7, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 9, eff. September 1, 2019.

SUBCHAPTER B. DISCIPLINARY ACTIONS AND PROCEDURES

Sec. 565.051. DISCIPLINE AUTHORIZED. On a determination that a ground for discipline exists under Subchapter A, or that a violation of this subtitle or a rule adopted under this subtitle has been committed by a license holder or applicant for a license or renewal of a license, the board may:

(1) suspend the person's license;

(2) revoke the person's license;

(3) restrict the person's license to prohibit the person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the board;

(4) impose an administrative penalty under Chapter 566;

(5) refuse to issue or renew the person's license;

(6) place the offender's license on probation and supervision by the board for a period determined by the board and impose a requirement that the license holder:

(A) report regularly to the board on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the board;

(C) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in each area that is the basis of the probation; or

(D) pay the board a probation fee to defray the costs of monitoring the license holder during the period of probation;

(7) reprimand the person;

(8) retire the person's license as provided by board rule; or

(9) impose more than one of the sanctions listed in this

subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 27, eff. September 1, 2005.

Sec. 565.052. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION. (a) In enforcing Section 565.001(a)(4) or (7), the board or an authorized agent of the board on probable cause, as determined by the board or agent, shall request a pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to submit to a mental or physical examination by a physician or other health care professional designated by the board.

(b) If the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant refuses to submit to the examination, the board or the executive director of the board shall issue an order requiring the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to show cause why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant will not submit to the examination and shall schedule a hearing before a panel of three members of the board appointed by the president of the board on the order not later than the 30th day after the date notice is served on the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant. The pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant and an attorney are entitled to present testimony or other evidence to show why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant should not be required to submit to the examination. The pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant has the burden of proof to show why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant should not be required to submit to the examination.

(d) After the hearing, the panel shall by order require the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-

intern applicant to submit to the examination not later than the 60th day after the date of the order or withdraw the request for examination, as applicable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 5, eff. June 17, 2011.

Sec. 565.053. DISCIPLINE OF NONRESIDENT PHARMACY; NOTICE TO RESIDENT STATE. The board shall give notice of a disciplinary action by the board against a license holder located in another state to the regulatory or licensing agency of the state in which the pharmacy is located.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 28, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 8, eff. September 1, 2013.

Sec. 565.054. SERVICE OF PROCESS ON NONRESIDENT PHARMACY. (a) Service of process on a nonresident pharmacy under Section 565.058 or 566.051 or for disciplinary action taken by the board under Section 565.061 shall be on the owner and pharmacist-in-charge of the pharmacy, as designated on the pharmacy's license application.

(b) The complaining party shall mail by certified mail, return receipt requested and postage prepaid, a copy of the process served to the license holder at the address of the license holder designated on the license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 9, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 10, eff. September 1, 2013.

Sec. 565.055. INVESTIGATION; CONFIDENTIALITY OF INFORMATION. (a) The board or the board's authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

(1) during any proceeding conducted by the State Office of Administrative Hearings, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

(2) to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that:

(A) licenses or disciplines pharmacists or pharmacies; or

(B) registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(5) to a law enforcement agency;

(6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or

(7) to an entity that administers a board-approved pharmacy technician certification examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.311(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 16, eff. June 14, 2013.

Sec. 565.0551. SURETY BOND. (a) The executive director of the board may require a license holder to submit a surety bond to the board in an amount as prescribed by board rule, not to exceed $25,000.

(b) The board may use a pharmacy's surety bond to secure the payment of a fine, fee, or penalty imposed on the pharmacy or costs incurred by the board in conducting an investigation of the pharmacy only under Section 565.002(a)(7) or (10) if the pharmacy fails to pay the fine, fee, penalty, or cost as prescribed by board rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 4, eff. January 1, 2020.

Sec. 565.056. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt a procedure governing:

(1) informal disposition of a contested case under Chapter 2001, Government Code; and

(2) an informal proceeding held in compliance with Chapter 2001, Government Code.

(b) A rule adopted under this section must:

(1) provide the complainant, if applicable and permitted by law, and the license holder an opportunity to be heard;

(2) require the presence of an attorney to advise the board or a board employee; and

(3) if an informal meeting will be held, require notice of the time and place of the informal meeting to be given to the license holder not later than the 45th day before the date the informal meeting is held.

(c) The attorney must be a member of the board's legal staff, if the board has a legal staff. If the board does not have a legal staff, the attorney must be an employee of the office of the attorney general.

(d) The notice required by Subsection (b)(3) must be accompanied by a written statement of the nature of the allegations against the license holder and the information the board intends to use at the informal meeting. If the board does not provide the statement or information when the notice is provided, the license holder may use that failure as grounds for rescheduling the informal meeting. The license holder must provide to the board the license holder's rebuttal not later than the 15th day before the date of the meeting in order for that information to be considered at the meeting.

(e) On request by a license holder under review, the board shall make a recording of the informal meeting. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the meeting. The board shall provide a copy of the recording to the license holder on the license holder's request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 3, eff. September 1, 2013.

Sec. 565.057. MONITORING OF LICENSE HOLDER. (a) The board shall develop a policy and procedure for monitoring a license holder's compliance with this subtitle.

(b) A policy or procedure adopted under this section must include a procedure to:

(1) monitor for compliance a license holder who is ordered by the board to perform a certain act; and

(2) identify and monitor a license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.058. SUBPOENA AUTHORITY. (a) The board or an officer of the board may:

(1) issue subpoenas ad testificandum or subpoenas duces tecum to compel the attendance of witnesses or the production of

items, including books, records, or documents;

(2) administer oaths; and

(3) take testimony concerning matters in the board's or officer's jurisdiction.

(b) A person designated in the subpoena may serve the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.059. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE. (a) The president of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a license under this subtitle should be temporarily suspended or restricted. If a majority of the disciplinary panel determines from evidence or information presented to the panel that the holder of a license by continuation in the practice of pharmacy or in the operation of a pharmacy would constitute a continuing threat to the public welfare, the panel shall temporarily suspend or restrict the license as provided by Subsection (b).

(b) The disciplinary panel may temporarily suspend or restrict the license:

(1) after a hearing conducted by the panel after the 10th day after the date notice of the hearing is provided to the license holder; or

(2) without notice or hearing if, at the time the suspension or restriction is ordered, a hearing before the panel is scheduled to be held not later than the 14th day after the date of the temporary suspension or restriction to determine whether the suspension or restriction should be continued.

(c) Not later than the 90th day after the date of the temporary suspension or restriction, the board shall initiate a disciplinary action against the license holder, and a contested case hearing shall be held by the State Office of Administrative Hearings. If the State Office of Administrative Hearings does not hold the hearing in the time required by this subsection, the suspended or restricted license is automatically reinstated.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 29, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 7, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 8, eff. June 17, 2011.

Sec. 565.0591. REVOCATION OF PHARMACY LICENSE FOR FAILURE TO OPERATE. (a) On discovery by the board that a pharmacy licensed under Chapter 560 has ceased to operate for a period of 30 days or longer, the board shall notify the pharmacy that the license will be revoked.

(b) The notice must:

(1) include a statement that the pharmacy license is being revoked for violation of Section 565.002(a)(7); and

(2) inform the license holder of the license holder's right to a hearing to contest the revocation.

(c) Not later than the 20th day after the date the license holder receives the notice of revocation under this section, the license holder may submit a written request for a hearing to contest the revocation.

(d) If the license holder does not request a hearing within the period prescribed by Subsection (c), the board shall:

(1) enter an order revoking the license; and

(2) notify the license holder of the order.

(e) If the license holder requests a hearing within the period prescribed by Subsection (c), a panel of three board members appointed by the president of the board shall conduct the hearing. At the hearing the panel shall determine whether the license holder has violated Section 565.002(a)(7).

(f) If the panel determines that the license holder committed the violation, the board shall promptly:

(1) enter an order revoking the license; and

(2) notify the license holder of the order.

(g) Chapter 2001, Government Code, does not apply to a determination under Subsection (e).

Added by Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 4, eff. January 1, 2020.
Added by Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 6, eff. September 1, 2019.

Sec. 565.060. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

(b) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a death;

(B) a hospitalization;

(C) the commission of a felony; or

(D) any other matter designated by board rule; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices pharmacy.

(c) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding 24 months for the resolution of a different complaint relating to this subtitle.

(d) If a license holder complies with and successfully completes the terms of a remedial plan, the board shall remove all records of the remedial plan from the board's records at the end of the state fiscal year in which the fifth anniversary of the date the board issued the terms of the remedial plan occurs.

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) The board shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 4, eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 12, eff. September 1, 2015.

Sec. 565.061. ADMINISTRATIVE PROCEDURE. (a) Except as provided by Chapter 564, a disciplinary action taken by the board on the basis of a ground for discipline under Subchapter A is governed by Chapter 2001, Government Code, and the rules of practice and procedure before the board.

(b) A final decision of the board under this chapter is subject to judicial review under Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 13, eff. September 1, 2015.

Sec. 565.062. BURDEN OF PROOF. (a) In a proceeding under this subtitle, including a trial or hearing, the state is not required to negate an exemption or exception set forth by this subtitle in a pleading, including in a complaint, information, or indictment.

(b) The burden of going forward with the evidence with respect to an exemption or exception is on the person claiming the benefit of the exemption or exception.

(c) In the absence of proof that a person is the authorized holder of an appropriate license issued under this subtitle, the person is presumed not to be the holder of the license. The presumption is subject to rebuttal by a person charged with an offense under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.063. LIABILITY. This subtitle does not impose liability on an authorized board employee or person acting under the supervision of a board employee, or on a state, county, or municipal officer, engaged in the lawful enforcement of this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 565.064. CONSTRUCTION. This subtitle does not bar a criminal prosecution for a violation of this subtitle if the violation is a criminal offense under another law of this state or a

law of the United States.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PETITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION

Sec. 565.101. PETITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION. (a) A person whose pharmacy license, license to practice pharmacy, pharmacy technician registration, or pharmacy technician trainee registration in this state has been revoked or restricted under this subtitle, whether voluntarily or by board action, may, after the first anniversary of the effective date of the revocation or restriction, petition the board for reinstatement or removal of the restriction of the license or registration.

(b) The petition must be in writing and in the form prescribed by the board.

(c) A person petitioning for reinstatement or removal of a restriction has the burden of proof.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 17, eff. June 14, 2013.

Sec. 565.102. ACTION BY BOARD. (a) On investigation and review of a petition under this subchapter, the board may grant or deny the petition or may modify the board's original finding to reflect a circumstance that has changed sufficiently to warrant the modification.

(b) If the board denies the petition, the board may not consider a subsequent petition from the petitioner until the first anniversary of the date of denial of the previous petition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

Sec. 565.103. CONDITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION. The board may require a person to pass one or more examinations to reenter the practice of pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

CHAPTER 566. PENALTIES AND ENFORCEMENT PROVISIONS

SUBCHAPTER A. ADMINISTRATIVE PENALTY

Sec. 566.001. IMPOSITION OF PENALTY. The board may impose an administrative penalty on:

(1) a person licensed or regulated under this subtitle who violates this subtitle or a rule or order adopted under this subtitle; and

(2) an applicant who fails to submit a sworn disclosure statement with an application if required by Section 560.052(b)(3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 5, eff. January 1, 2020.

Sec. 566.002. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed $5,000 for each violation, including a violation involving the diversion of a controlled substance.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing the penalty.

(c) The amount, to the extent possible, shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The board by rule shall adopt an administrative penalty schedule for violations of this subtitle or board rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 30, eff. September 1, 2005.

Sec. 566.003. NOTICE OF VIOLATION. (a) If the board by order determines that a violation occurred and imposes an administrative penalty, the board shall give notice of the board's order to the person found to have committed the violation.

(b) The notice must include a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.004. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the

board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.005. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.006. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred on appeal, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.007. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or is

not upheld by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not upheld or order the release of the bond after the person pays the penalty imposed if the person gave a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.008. EFFECT OF SUBCHAPTER. This subchapter does not limit the board's ability to impose an administrative penalty under a consent order entered in accordance with board rules and requirements adopted under Section 565.056.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.009. ADMINISTRATIVE PROCEDURE. (a) The board by rule shall prescribe procedures, consistent with provisions of Chapter 2001, Government Code, relating to contested cases, by which the board may impose an administrative penalty.

(b) Chapter 2001, Government Code, applies to a proceeding under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. INJUNCTIVE RELIEF

Sec. 566.051. INJUNCTIVE RELIEF. (a) The attorney general at the request of the board may petition a district court for an injunction to prohibit a person who is violating this subtitle from continuing the violation.

(b) Venue in a suit for injunctive relief is in Travis County.

(c) After application and a finding that a person is violating this subtitle, the district court shall grant the injunctive relief the facts warrant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 31, eff. September 1, 2005.

Sec. 566.052. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of pharmacy without a license or registration under this subtitle, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order issued under this section constitutes grounds for imposing an administrative penalty under Subchapter A.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 32, eff. September 1, 2005.

SUBCHAPTER C. CIVIL PENALTY

Sec. 566.101. CIVIL PENALTY. (a) A person who violates the license requirements of this subtitle is liable to the state for a civil penalty not to exceed $1,000 for each day the violation continues.

(b) A person found by the board to have unlawfully engaged in the practice of pharmacy or unlawfully operated a pharmacy is subject to a civil penalty under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.102. COLLECTION BY ATTORNEY GENERAL. At the request of the board, the attorney general shall institute an action to collect a civil penalty from a person who has violated this subtitle or any rule adopted under this subtitle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.103. COLLECTION BY DISTRICT, COUNTY, OR CITY ATTORNEY. (a) If the attorney general fails to take action before the 31st day after the date of referral from the board under Section 566.102, the board shall refer the case to the local district attorney, county attorney, or city attorney.

(b) The district attorney, county attorney, or city attorney shall file suit in a district court to collect and retain the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 566.104. VENUE. Venue for a suit under this subchapter is in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. CRIMINAL OFFENSES

Sec. 566.151. OFFENSES; CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subtitle or any rule adopted under this subtitle relating to unlawfully engaging in the practice of pharmacy or unlawfully operating a pharmacy.

(b) A person commits an offense if the person knowingly violates the licensing requirements of this subtitle or Section 558.001, 558.002, or 560.002.

(c) A person commits an offense if the person violates Section 560.001 or 560.003.

(d) Each day of violation under Subsection (b) or (c) is a separate offense.

(e) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 568. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

Sec. 568.001. RULES; QUALIFICATIONS. (a) In establishing rules under Section 554.053(c), the board shall require that:

(1) a pharmacy technician:

(A) have a high school diploma or a high school equivalency certificate or be working to achieve an equivalent diploma or certificate; and

(B) have passed a board-approved pharmacy technician certification examination; and

(2) a pharmacy technician trainee have a high school diploma or a high school equivalency certificate or be working to achieve an equivalent diploma or certificate.

(b) The board shall adopt rules that permit a pharmacy technician and pharmacy technician trainee to perform only nonjudgmental technical duties under the direct supervision of a pharmacist.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 19, eff. June 14, 2013.

Sec. 568.002. REGISTRATION REQUIRED. (a) A person must register with the board before beginning work in a pharmacy in this state as a pharmacy technician or a pharmacy technician trainee.

(b) The board may allow a pharmacy technician to petition the board for a special exemption from the pharmacy technician certification requirement if the pharmacy technician is in a county with a population of less than 50,000.

(c) An applicant for registration as a pharmacy technician or a pharmacy technician trainee must submit an application on a form prescribed by the board.

(d) A person's registration as a pharmacy technician or pharmacy technician trainee remains in effect as long as the person meets the qualifications established by board rule.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 20, eff. June 14, 2013.
Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 18, eff.

September 1, 2017.

Sec. 568.003. GROUNDS FOR DISCIPLINARY ACTION. (a) The board may take disciplinary action under Section 568.0035 against an applicant for or the holder of a current or expired pharmacy technician or pharmacy technician trainee registration if the board determines that the applicant or registrant has:

(1) violated this subtitle or a rule adopted under this subtitle;

(2) engaged in gross immorality, as that term is defined by the rules of the board;

(3) engaged in any fraud, deceit, or misrepresentation, as those terms are defined by the rules of the board, in seeking a registration to act as a pharmacy technician or pharmacy technician trainee;

(4) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(A) a misdemeanor:

(i) involving moral turpitude; or

(ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(5) developed an incapacity that prevents the applicant or registrant from practicing as a pharmacy technician or pharmacy technician trainee with reasonable skill, competence, and safety to the public;

(6) violated:

(A) Chapter 481 or 483, Health and Safety Code, or rules relating to those chapters;

(B) Sections 485.031-485.034, Health and Safety Code; or

(C) a rule adopted under Section 485.002, Health and Safety Code;

(7) violated the pharmacy or drug laws or rules of this state, another state, or the United States;

(8) performed duties in a pharmacy that only a pharmacist may perform, as defined by the rules of the board;

(9) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(10) engaged in negligent, unreasonable, or inappropriate conduct when working in a pharmacy;

(11) violated a disciplinary order;

(12) been convicted or adjudicated of a criminal offense that requires registration as a sex offender under Chapter 62, Code of Criminal Procedure; or

(13) been disciplined by a pharmacy or other health regulatory board of this state or another state for conduct substantially equivalent to conduct described by this subsection.

(b) A certified copy of the record of a state taking action described by Subsection (a)(13) is conclusive evidence of the action taken by the state.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 33, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 837 (S.B. 1853), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 21, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 16.002, eff. September 1, 2023.

Sec. 568.0035. DISCIPLINE AUTHORIZED; EFFECT ON TRAINEE. (a) On a determination that a ground for discipline exists under Section 568.003, the board may:

(1) suspend the person's registration;

(2) revoke the person's registration;

(3) restrict the person's registration to prohibit the person from performing certain acts or from practicing as a pharmacy technician or pharmacy technician trainee in a particular manner for a term and under conditions determined by the board;

(4) impose an administrative penalty under Chapter 566;

(5) refuse to issue or renew the person's registration;

(6) place the offender's registration on probation and

supervision by the board for a period determined by the board and impose a requirement that the registrant:

(A) report regularly to the board on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the board;

(C) continue or review professional education until the registrant attains a degree of skill satisfactory to the board in each area that is the basis of the probation; or

(D) pay the board a probation fee to defray the costs of monitoring the registrant during the period of probation;

(7) reprimand the person;

(8) retire the person's registration as provided by board rule; or

(9) impose more than one of the sanctions listed in this section.

(b) A disciplinary action affecting the registration of a pharmacy technician trainee remains in effect if the trainee obtains registration as a pharmacy technician.

Added by Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 34, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 837 (S.B. 1853), Sec. 2, eff. June 19, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 22, eff. June 14, 2013.

Sec. 568.0036. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION. (a) This section applies to a pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant.

(b) In enforcing Section 568.003(a)(5) or (7), the board or an authorized agent of the board on probable cause, as determined by the board or agent, may request a person subject to this section to submit to a mental or physical examination by a physician or other health care professional designated by the board.

(c) If the person refuses to submit to the examination, the board or the executive director of the board shall:

(1) issue an order requiring the person to show cause why the person will not submit to the examination; and

(2) schedule a hearing before a panel of three members of the board appointed by the president of the board on the order not later than the 30th day after the date notice of the order is served on the person under Subsection (d).

(d) The person shall be notified by either personal service or certified mail, return receipt requested.

(e) At the hearing, the person and the person's counsel may present testimony or other evidence to show why the person should not be required to submit to the examination. The person has the burden of proof to show why the person should not be required to submit to the examination.

(f) After the hearing, as applicable, the panel shall, by order:

(1) require the person to submit to the examination not later than the 60th day after the date of the order; or

(2) withdraw the request for examination.

Added by Acts 2009, 81st Leg., R.S., Ch. 837 (S.B. 1853), Sec. 3, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 9, eff. June 17, 2011.

Sec. 568.0037. TEMPORARY SUSPENSION OR RESTRICTION OF REGISTRATION. (a) The president of the board shall appoint a disciplinary panel consisting of three board members to determine whether a registration under this chapter should be temporarily suspended or restricted. If a majority of the panel determines from evidence or information presented to the panel that the registrant by continuation in practice as a pharmacy technician or pharmacy technician trainee would constitute a continuing threat to the public welfare, the panel shall temporarily suspend or restrict the registration as provided by Subsection (b).

(b) A disciplinary panel may temporarily suspend or restrict the registration:

(1) after a hearing conducted by the panel after the 10th day after the date notice of the hearing is provided to the

registrant; or

(2) without notice or hearing if, at the time the suspension or restriction is ordered, a hearing before the panel is scheduled to be held not later than the 14th day after the date of the temporary suspension or restriction to determine whether the suspension or restriction should be continued.

(c) Not later than the 90th day after the date of the temporary suspension or restriction, the board shall initiate a disciplinary action under this chapter, and a contested case hearing shall be held by the State Office of Administrative Hearings. If the State Office of Administrative Hearings does not hold the hearing in the time required by this subsection, the suspended or restricted registration is automatically reinstated.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the disciplinary panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 10, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 23, eff. June 14, 2013.

Sec. 568.004. RENEWAL OF REGISTRATION. (a) The board may adopt a system in which the registrations of pharmacy technicians and pharmacy technician trainees expire on various dates during the year.

(b) To renew a pharmacy technician registration, the registrant must, before the expiration date of the registration:

(1) pay a renewal fee as determined by the board under Section 568.005; and

(2) comply with the continuing education requirements prescribed by the board in accordance with Section 568.0045.

(c) A person whose pharmacy technician registration has been expired for 90 days or less may renew the expired registration by paying to the board a renewal fee that is equal to one and one-half times the normally required renewal fee for the registration.

(d) A person whose pharmacy technician registration has been expired for more than 90 days but less than one year may renew the

expired registration by paying to the board a renewal fee that is equal to two times the normally required renewal fee for the registration.

(e) A person whose pharmacy technician registration has been expired for one year or more may not renew the registration. The person may register by complying with the requirements and procedures for initially registering, including the examination requirement.

(f) The board may refuse to renew a pharmacy technician registration for a registrant who is in violation of a board order.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 24, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 19, eff. September 1, 2017.

Sec. 568.0045. RULES RELATING TO CONTINUING EDUCATION. The board shall adopt rules relating to the continuing education required for pharmacy technicians. The rules must include requirements for:

(1) the number of hours of continuing education;

(2) the methods for meeting the continuing education requirements;

(3) the approval of continuing education programs;

(4) reporting completion of continuing education;

(5) records of completion of continuing education; and

(6) board audits to ensure compliance with the continuing education requirements.

Added by Acts 2017, 85th Leg., R.S., Ch. 485 (H.B. 2561), Sec. 20, eff. September 1, 2017.

Sec. 568.005. FEES. The board may adopt fees as necessary for the registration of pharmacy technicians and pharmacy technician trainees.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.313(a), eff. Sept. 1, 2001.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 25, eff. June 14, 2013.

Sec. 568.006. RATIO OF PHARMACISTS TO PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES. The ratio of pharmacists to pharmacy technicians and pharmacy technician trainees in a Class A pharmacy must be at least one pharmacist for every five pharmacy technicians or pharmacy technician trainees if the Class A pharmacy dispenses not more than 20 different prescription drugs and does not produce intravenous or intramuscular drugs on-site.

Added by Acts 2003, 78th Leg., ch. 1198, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 26, eff. June 14, 2013.

Sec. 568.008. PHARMACY TECHNICIANS IN HOSPITALS WITH CLINICAL PHARMACY PROGRAM. (a) In this section, "clinical pharmacy program" means a program that provides pharmaceutical care services as specified by board rule.

(b) A Class C pharmacy that has an ongoing clinical pharmacy program may allow a pharmacy technician to verify the accuracy of work performed by another pharmacy technician relating to the filling of floor stock and unit dose distribution systems for a patient admitted to the hospital if the patient's orders have previously been reviewed and approved by a pharmacist.

(c) The pharmacist-in-charge of the clinical pharmacy program shall adopt policies and procedures for the verification process authorized by this section.

(d) A hospital must notify the board before implementing the verification process authorized by this section.

(e) The board shall adopt rules to implement this section, including rules specifying:

(1) the duties that may be verified by another pharmacy technician;

(2) the records that must be maintained for the verification process; and

(3) the training requirements for pharmacy technicians who verify the accuracy of the work of other pharmacy technicians.

Added by Acts 2009, 81st Leg., R.S., Ch. 1128 (H.B. 1924), Sec. 2, eff. June 19, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 27, eff. June 14, 2013.

Sec. 568.009. CHANGE OF ADDRESS OR EMPLOYMENT. Not later than the 10th day after the date of a change of address or employment, a pharmacy technician or a pharmacy technician trainee shall notify the board in writing of the change.

Added by Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 28, eff. June 14, 2013.

CHAPTER 569. REPORTING REQUIREMENTS FOR PROFESSIONAL LIABILITY INSURERS

Sec. 569.001. DUTY TO REPORT. (a) Every insurer or other entity providing pharmacist's professional liability insurance, pharmacy technician professional and supplemental liability insurance, or druggist's professional liability insurance covering a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder in this state shall submit to the board the information described in Section 569.002 at the time prescribed.

(b) The information shall be provided with respect to a notice of claim letter or complaint filed against an insured in a court, if the notice or complaint seeks damages relating to the insured's conduct in providing or failing to provide appropriate service within the scope of pharmaceutical care or services, and with respect to settlement of a claim or lawsuit made on behalf of the insured.

(c) If a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy licensed in this state does not carry or is not covered by pharmacist's professional liability insurance, pharmacy technician professional and supplemental liability insurance, or druggist's professional liability insurance and is insured by a nonadmitted carrier or other entity providing pharmacy professional liability insurance that does not report under this subtitle, the

duty to report information under Section 569.002 is the responsibility of the pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 29, eff. June 14, 2013.

Sec. 569.002. INFORMATION TO BE REPORTED. (a) The following information must be furnished to the board not later than the 30th day after receipt by the insurer of the notice of claim letter or complaint from the insured:

(1) the name of the insured and the insured's state pharmacy technician registration number, pharmacy technician trainee registration number, or pharmacist or pharmacy license number;

(2) the policy number; and

(3) a copy of the notice of claim letter or complaint.

(b) The board shall, in consultation with the Texas Department of Insurance, adopt rules for reporting additional information as the board may require. Other claim reports required under state and federal law shall be considered in determining the information to be reported, the form of the report, and frequency of reporting under the rules. Additional information that the board may require may include:

(1) the date of any judgment, dismissal, or settlement; and

(2) whether an appeal has been taken and by which party.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 30, eff. June 14, 2013.

Sec. 569.003. IMMUNITY FROM LIABILITY. An insurer reporting under this subchapter, its agents or employees, or the board or its employees or representatives are not liable for damages in a suit

brought by any person or entity for reporting as required by this subchapter or for any other action taken under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Sec. 569.004. RESTRICTION ON USE OF INFORMATION REPORTED. (a) Information submitted to the board under this subchapter and the fact that the information has been submitted to the board may not be:

(1) offered in evidence or used in any manner in the trial of a suit described in this subchapter; or

(2) used in any manner to determine the eligibility or credentialing of a pharmacy to participate in a health insurance plan defined by the Insurance Code.

(b) Information submitted under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

(c) The board shall adopt rules to ensure the confidentiality of information submitted under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Sec. 569.005. INVESTIGATION OF REPORT. (a) Except as otherwise provided in this section, a report received by the board under this subchapter is not a complaint for which a board investigation is required.

(b) The board shall review the information relating to a pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder against whom at least three professional liability claims have been reported within a five-year period in the same manner as if a complaint against the pharmacist, pharmacy technician, pharmacy technician trainee, or pharmacy license holder had been made under Chapter 555.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 31, eff. June 14, 2013.

Sec. 569.006. SANCTIONS IMPOSED ON INSURER. The Texas Department of Insurance may impose on any insurer subject to this subtitle sanctions authorized by Chapter 82, Insurance Code, if the insurer fails to report information as required by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.314(a), eff. Sept. 1, 2001.

SUBTITLE K. PROFESSIONS RELATED TO USE OF CERTAIN MEDICAL EQUIPMENT

CHAPTER 601. MEDICAL RADIOLOGIC TECHNOLOGISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 601.001. SHORT TITLE. This chapter may be cited as the Medical Radiologic Technologist Certification Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Texas Board of Medical Radiologic Technology.

(1-a) "Authorized person" means a person who meets or exceeds the minimum educational standards of the advisory board under Section 601.201.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(1), eff. September 1, 2015.

(3) "Direct supervision" means supervision and control by a medical radiologic technologist or a practitioner who:

(A) assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a program that meets the requirements adopted under Section 601.052; and

(B) is physically present during the performance of the radiologic procedure to provide consultation or direct the action of the student.

(4) "Education program" means clinical training or any other program offered by an organization approved by the advisory board that:

(A) has a specified objective;

(B) includes planned activities for participants; and

(C) uses an approved method for measuring the progress of participants.

(4-a) "Hospital" has the meaning assigned by Section 157.051.

(4-b) "Medical board" means the Texas Medical Board.

(5) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(1), eff. September 1, 2015

(6) "Medical radiologic technologist" means a person certified under this chapter who, under the direction of a practitioner, intentionally administers radiation to another for a medical purpose. The term does not include a practitioner.

(7) "Practitioner" means a person who:

(A) is licensed in this state as a doctor of:

(i) medicine;

(ii) osteopathy;

(iii) podiatry;

(iv) dentistry; or

(v) chiropractic; and

(B) prescribes radiologic procedures for other persons.

(8) "Radiation" means ionizing radiation:

(A) in amounts beyond normal background levels; and

(B) from a source such as a medical or dental radiologic procedure.

(9) "Radiologic procedure" means a procedure or article, including a diagnostic X-ray or a nuclear medicine procedure, that:

(A) is intended for use in:

(i) the diagnosis of disease or other medical or dental conditions in humans; or

(ii) the cure, mitigation, treatment, or prevention of disease in humans; and

(B) achieves its intended purpose through the emission of radiation.

(10) "Radiologic technology" means the administration of radiation to a person for a medical purpose.

(10-a) "Radiologist" means a physician specializing in radiology certified by or board-eligible for the American Board of Radiology, the American Osteopathic Board of Radiology, the Royal College of Radiologists, or the Royal College of Physicians and Surgeons of Canada.

(10-b) "Radiologist assistant" means an advanced-level

medical radiologic technologist who is certified as:

(A) a registered radiologist assistant by the American Registry of Radiologic Technologists; or

(B) a radiology practitioner assistant by the Certification Board for Radiology Practitioner Assistants.

(11) "Registered nurse" means a person licensed by the Texas Board of Nursing to practice professional nursing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 47, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.127, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.003, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(1), eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 24, eff. September 1, 2019.

SUBCHAPTER A-1. TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY

Sec. 601.021. TEXAS BOARD OF MEDICAL RADIOLOGIC TECHNOLOGY. The Texas Board of Medical Radiologic Technology is an advisory board to the Texas Medical Board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.022. APPOINTMENT OF ADVISORY BOARD. (a) The advisory board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four medical radiologic technologists who each have at least five years of experience as a medical radiologic technologist;

(2) two physicians licensed in this state who supervise medical radiologic technologists; and

(3) three members who represent the public.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or

national origin of the appointee.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.023. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a public member of the advisory board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in a health care profession;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the medical board or advisory board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the medical board or advisory board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board or advisory board other than compensation or reimbursement authorized by law for advisory board membership, attendance, or expenses.

(c) A person may not be a member of the advisory board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) A person may not be a member of the advisory board or act as the general counsel to the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the medical board or advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.024. TERMS; VACANCIES. (a) Members of the advisory board are appointed for staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) A member may not serve more than:

(1) two consecutive full terms; or

(2) a total of three full terms.

(c) If a vacancy occurs during a member's term, the governor shall appoint a new member to fill the unexpired term.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.025. OFFICERS. The governor shall designate a member of the advisory board as the presiding officer of the advisory board to serve in that capacity at the will of the governor. The advisory board shall select from its membership an assistant presiding officer and other officers as the advisory board considers necessary to carry out the advisory board's duties.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.026. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 601.022 and 601.023;

(2) does not maintain during service on the advisory board the qualifications required by Sections 601.022 and 601.023;

(3) is ineligible for membership under Section 601.023;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that it is taken when a ground for removal of an

advisory board member exists.

(c) If the executive director of the medical board has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the advisory board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the advisory board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.027. PER DIEM. A member of the advisory board is entitled to receive a per diem as set by legislative appropriation for each day that the member engages in the business of the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.028. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS. Except as otherwise provided by this chapter, the advisory board is subject to Chapters 551, 552, and 2001, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.029. MEETINGS; QUORUM REQUIREMENTS. (a) The advisory board shall conduct regular meetings at least three times a year at the times and places the advisory board considers most convenient for applicants and advisory board members.

(b) The advisory board may hold special meetings in accordance with rules adopted by the advisory board and approved by the medical board.

(c) A majority of the advisory board members constitutes a

quorum for all purposes except for an advisory board activity related to examining the credentials of applicants, acting as a panel for disciplinary action under Section 601.306, or conducting an informal meeting under Section 601.311.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.

Sec. 601.030. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing advisory board operations;

(2) the programs, functions, rules, and budget of the advisory board;

(3) the scope of and limitations on the rulemaking authority of the advisory board;

(4) the types of advisory board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the advisory board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the advisory board regulates;

(B) restricts advertising by persons in a profession or business the advisory board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the advisory board regulates; or

(D) restricts participation in a profession or business the advisory board regulates;

(5) the results of the most recent formal audit of the advisory board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the advisory board in performing their duties; and

(7) any applicable ethics policies adopted by the advisory board or the Texas Ethics Commission.

(c) A person appointed to the advisory board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the medical board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each advisory board member. Each board member shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.004, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 25, eff. September 1, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF ADVISORY BOARD AND MEDICAL BOARD

Sec. 601.052. GENERAL POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall:

(1) adopt rules that are reasonable and necessary for the performance of the advisory board's duties under this chapter, as provided by Chapter 2001, Government Code, including rules to establish:

(A) the certification program required by Subchapter C, including minimum standards for issuing, renewing, suspending, canceling, or revoking a certificate;

(B) certification renewal dates;

(C) the registry required by Subchapter E;

(D) grounds for disciplinary actions;

(E) procedures for disciplinary proceedings;

(F) procedures for non-disciplinary remedial plans;

(G) minimum standards for approving and rescinding

approval of curricula and education programs to train medical radiologic technologists to perform radiologic procedures;

(H) minimum standards for approving and rescinding approval of instructors to teach approved curricula or education programs to train medical radiologic technologists to perform radiologic procedures;

(I) procedures for requiring an applicant for or holder of a certificate to submit to:

(i) an examination of the applicant's or holder's physical or mental health; and

(ii) screening for alcohol or substance abuse or behavioral issues; and

(J) procedures for making a confidential referral to the Texas Physician Health Program established under Chapter 167, and for requiring participation in the program as a prerequisite for issuing or maintaining a certificate under this chapter or approval under Section 601.054 or 601.055;

(2) review and approve or reject each application for the issuance or renewal of a certificate;

(3) issue each certificate;

(4) deny, suspend, or revoke a certificate or otherwise discipline a certificate holder; and

(5) take any action necessary to carry out the functions and duties of the advisory board under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.128, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.006, eff. September 1, 2015.

Sec. 601.0521. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The advisory board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the advisory board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the advisory board submits the rule to the medical board for

approval.

(b) A rule adopted under this chapter may not be challenged on the grounds that the advisory board did not comply with this section. If the advisory board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the advisory board shall state in writing the reasons why it was unable to do so.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.007, eff. September 1, 2015.

Sec. 601.0522. POWERS AND DUTIES OF MEDICAL BOARD RELATING TO RADIOLOGIC PROCEDURES. (a) The medical board shall adopt rules consistent with this chapter to regulate individuals who:

(1) perform radiologic procedures; and

(2) are licensed by the medical board and supervise an individual who performs radiologic procedures.

(b) The medical board, by a majority vote, shall approve or reject each rule adopted by the advisory board. If approved, the rule may take effect. If the rule is rejected, the medical board shall return the rule to the advisory board for revision.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.007, eff. September 1, 2015.

Sec. 601.054. APPROVAL AND REVIEW OF CURRICULA AND TRAINING PROGRAMS. (a) An applicant for approval of a curriculum or training program must apply to the advisory board on a form and under rules adopted by the advisory board.

(b) The advisory board shall approve a curriculum or training program that meets the minimum standards adopted under Section 601.052. The advisory board may review the approval annually.

(c) The advisory board may set a fee for approval of a curriculum or training program not to exceed the estimated amount that the advisory board projects to be required for the evaluation of the curriculum or training program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.128, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.008, eff. September 1, 2015.

Sec. 601.055. APPROVAL AND REVIEW OF INSTRUCTOR APPROVAL. (a) An applicant for approval of an instructor must apply to the advisory board on a form and under rules adopted by the advisory board.

(b) The advisory board shall approve an instructor who meets the minimum standards adopted under Section 601.052. The advisory board may review the approval annually.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.128, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.009, eff. September 1, 2015.

Sec. 601.056. DANGEROUS OR HAZARDOUS PROCEDURES. (a) The medical board, with the assistance of the Texas Board of Nursing, the Texas Physician Assistant Board, and other appropriate state agencies, shall identify by rule radiologic procedures, other than radiologic procedures described by Subsection (c), that are dangerous or hazardous and that may be performed only by a practitioner, medical radiologic technologist certified under this chapter, registered nurse, or licensed physician assistant.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(4), eff. September 1, 2015.

(c) Subsection (a) does not apply to a radiologic procedure involving a dental X-ray machine, including a panarex or other equipment designed and manufactured only for use in dental radiography.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.128, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.010, eff.

September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(4), eff. September 1, 2015.

Sec. 601.057. FEES. The advisory board by rule may set fees for examination, certificate issuance, registration of a person under Section 601.202, and application processing under Section 601.203 in amounts that are reasonable to cover the costs of administering this chapter without the use of additional general revenue.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.321(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.128, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.011, eff. September 1, 2015.

Sec. 601.0571. FEE REFUND ON CANCELLATION. The advisory board may adopt rules relating to the refund of a fee for the issuance or renewal of a certificate after the cancellation of a certificate.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.012, eff. September 1, 2015.

Sec. 601.0572. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The advisory board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.012, eff. September 1, 2015.

Sec. 601.058. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The advisory board may not adopt rules restricting advertising or competitive bidding by a medical radiologic

technologist except to prohibit false, misleading, or deceptive practices.

(b) In adopting rules to prohibit false, misleading, or deceptive practices, the advisory board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a medical radiologic technologist's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the medical radiologic technologist; or

(4) restricts the medical radiologic technologist's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.322(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.128, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.013, eff. September 1, 2015.

Sec. 601.059. ASSISTANCE BY MEDICAL BOARD; DIVISION OF RESPONSIBILITIES. (a) The medical board shall provide administrative and clerical employees as necessary to enable the advisory board to administer this chapter.

(b) Subject to the advice and approval of the medical board, the advisory board shall develop and implement policies that clearly separate the policy-making responsibilities of the advisory board and the management responsibilities of the executive director and staff of the medical board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.014, eff. September 1, 2015.

Sec. 601.060. PUBLIC PARTICIPATION. Subject to the advice and approval of the medical board, the advisory board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.014, eff. September 1, 2015.

SUBCHAPTER C. CERTIFICATION REQUIREMENTS

Sec. 601.101. CERTIFICATION REQUIRED. A person may not perform a radiologic procedure unless the person holds a certificate issued under this chapter, except as otherwise provided by Subchapter D.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.102. CLASSES OF CERTIFICATES. (a) The advisory board shall establish classes of certificates to include all radiologic procedures used in the course and scope of the practice of practitioners licensed in this state.

(b) The advisory board may issue to a person:

(1) a general certificate to perform radiologic procedures;

(2) a limited certificate that authorizes the person to perform radiologic procedures only on specific parts of the human body; or

(3) a radiologist assistant certificate to a person who meets the requirements established under Section 601.1021.

(c) The advisory board may issue to a person a temporary general certificate, a temporary limited certificate, or a temporary radiologist assistant certificate that authorizes the person to perform radiologic procedures for a period not to exceed one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.129, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.015, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 26, eff. September 1, 2019.

Sec. 601.1021. RADIOLOGIST ASSISTANT CERTIFICATE. (a) The advisory board by rule shall establish the education and training required for a person to obtain a radiologist assistant certificate.

(b) A radiologist assistant certificate holder:

(1) may perform radiologic procedures only under the supervision of a radiologist; and

(2) may not interpret images, make diagnoses, or prescribe any medication or therapy.

Added by Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 27, eff. September 1, 2019.

Sec. 601.1031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR REGISTRATION. (a) The advisory board shall require that an applicant for a certificate submit a complete and legible set of fingerprints, on a form prescribed by the advisory board, to the advisory board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The advisory board may not issue a certificate to a person who does not comply with the requirement of Subsection (a).

(c) The advisory board shall conduct a criminal history check of each applicant for a certificate using information:

(1) provided by the individual under this section; and

(2) made available to the advisory board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The advisory board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.016, eff. September 1, 2015.

Sec. 601.104. EXAMINATION. (a) The advisory board may adopt rules providing for the preparation and administration of an examination for applicants for a certificate.

(b) An applicant for a certificate must pass a jurisprudence

examination approved by the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.131, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.017, eff. September 1, 2015.

Sec. 601.1041. NOTIFICATION OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes an examination for a certificate under this chapter, the advisory board shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service, the advisory board shall notify the person of the results of the examination not later than the 14th day after the date the advisory board receives the results from the testing service. If notice of the examination results will be delayed for longer than 90 days after the examination date, the advisory board shall notify the person of the reason for the delay before the 90th day.

(c) The advisory board may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination for a certificate administered under this chapter, the advisory board shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.018, eff. September 1, 2015.

Sec. 601.105. ISSUANCE OF CERTIFICATE; TERM. (a) The advisory board shall issue a certificate to an applicant who:

(1) meets the minimum standards for certification established under Section 601.052;

(2) passes the required examinations;

(3) complies with the criminal history record information

requirement of Section 601.1031;

(4) submits an application on a form prescribed by the advisory board;

(5) pays the required application fee;

(6) certifies that the applicant is mentally and physically able to perform radiologic procedures; and

(7) submits to the advisory board any other information the advisory board considers necessary to evaluate the applicant's qualifications.

(b) A certificate is valid for two years from the date of issuance.

(c) The advisory board may delegate authority to medical board employees to issue certificates under this chapter to applicants who clearly meet all certification requirements. If the medical board employees determine that the applicant does not clearly meet all certification requirements, the application must be returned to the advisory board. A certificate issued under this subsection does not require formal advisory board approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.132, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.133, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.019, eff. September 1, 2015.

Sec. 601.106. TRANSFER OF CERTIFICATE PROHIBITED. A certificate issued under this chapter is not transferable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.107. CERTIFICATION BY ENDORSEMENT. In adopting minimum standards for certifying medical radiologic technologists, the advisory board may establish criteria for issuing a certificate to a person licensed or otherwise registered as a medical radiologic technologist by the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or

another state whose requirements for licensure or registration were on the date of licensing or registration substantially equal to the requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.134, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.020, eff. September 1, 2015.

Sec. 601.108. CONTINUING EDUCATION AND OTHER GUIDELINES. (a) The advisory board may establish guidelines.

(b) The advisory board shall provide for the preparation, recognition, or administration of continuing education programs for medical radiologic technologists in which participation is required, to the extent required by the advisory board, to keep the person's certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.324(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.135, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.021, eff. September 1, 2015.

Sec. 601.109. PROVISIONAL CERTIFICATE. (a) The advisory board may issue a provisional certificate to an applicant currently licensed or certified in another jurisdiction who seeks certification in this state and who:

(1) has been licensed or certified in good standing as a medical radiologic technologist for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the advisory board relating to the practice of radiologic

technology; and

(3) is sponsored by a medical radiologic technologist certified by the advisory board under this chapter with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(b) The advisory board may waive the requirement of Subsection (a)(3) for an applicant if the advisory board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional certificate is valid until the date the advisory board approves or denies the provisional certificate holder's application for a certificate. The advisory board shall issue a certificate under this chapter to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under Section 601.107; or

(2) the provisional certificate holder passes the part of the examination under Section 601.104 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of radiologic technology in this state and:

(A) the advisory board verifies that the provisional certificate holder meets the academic and experience requirements for a certificate under this chapter; and

(B) the provisional certificate holder satisfies any other licensing requirements under this chapter.

(d) The advisory board must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The advisory board may extend the 180-day period if the results of an examination have not been received by the advisory board before the end of that period.

(e) The advisory board by rule may establish a fee for a provisional certificate in an amount reasonable and necessary to cover the cost of issuing the certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.325(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.136, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.022, eff.

September 1, 2015.

Sec. 601.110. CERTIFICATE EXPIRATION. (a) Not later than the 30th day before the date a person's certificate is scheduled to expire, the advisory board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the advisory board.

(b) The advisory board by rule may adopt a system under which certificates expire on various dates during the year. For the year in which the certificate expiration date is changed, the advisory board shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(b), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.137, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.023, eff. September 1, 2015.

Sec. 601.111. CERTIFICATE RENEWAL. (a) On notification from the advisory board, a person who is otherwise eligible to renew a certificate may renew an unexpired certificate by:

(1) paying the required renewal fee to the advisory board before the expiration date of the certificate;

(2) submitting the appropriate form; and

(3) meeting any other requirement established by advisory board rule.

(a-1) A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the advisory board a renewal fee that is equal to 1-1/2 times the normally required

renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the advisory board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for an original certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(c), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.024, eff. September 1, 2015.

Sec. 601.1111. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant for renewal of a certificate shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 601.1031.

(b) The advisory board may not renew the certificate of a person who does not comply with the requirement of Subsection (a).

(c) A certificate holder is not required to submit fingerprints under this section for the renewal of the certificate if the holder has previously submitted fingerprints under:

(1) Section 601.1031 for the initial issuance of the certificate of registration; or

(2) this section as part of a prior renewal of a certificate of registration.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.025, eff. September 1, 2015.

Sec. 601.112. RENEWAL OF CERTIFICATE BY OUT-OF-STATE PERSON. (a) A person who held a certificate in this state, moved to another state, and currently holds a certificate or license and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination.

(b) The person must pay to the advisory board a fee that is equal to two times the normally required renewal fee for the certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.323(c), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.026, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.027, eff. September 1, 2015.

Sec. 601.113. REFUSAL FOR VIOLATION OF BOARD ORDER. The advisory board may refuse to renew a certificate issued under this chapter if the certificate holder is in violation of an advisory board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 8, eff. September 1, 2017.

SUBCHAPTER D. EXEMPTIONS FROM CERTIFICATION AND REGISTRATION REQUIREMENTS

Sec. 601.151. PRACTITIONERS. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure if the person is a practitioner and performs the procedure in the course and scope of the profession for which the person holds a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.152. PERSON SUPERVISED BY PRACTITIONER. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure if:

(1) the person performs the procedure under the instruction or direction of a practitioner; and

(2) the person and the practitioner comply with rules adopted under Section 601.252.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.153. PERSON SUPERVISED BY DENTIST. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure if:

(1) the procedure is performed under the supervision of a dentist; and

(2) the person:

(A) is registered with the State Board of Dental Examiners; and

(B) complies with rules adopted by that board under Section 601.252.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.154. HOSPITAL PROCEDURES. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure in a hospital if:

(1) the hospital participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Hospitals; and

(2) the person has completed a training program approved by the advisory board under Section 601.201.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.138, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.028, eff. September 1, 2015.

Sec. 601.155. STUDENTS. A person is not required to hold a certificate issued under this chapter if the person:

(1) is a student enrolled in a training program that meets the minimum standards adopted under Section 601.201; and

(2) is performing a radiologic procedure in an academic or clinical setting as part of the training program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 9, eff. September 1, 2017.

Sec. 601.156. PROCEDURE PERFORMED AS PART OF CONTINUING EDUCATION PROGRAM. A person is not required to hold a certificate issued under this chapter if the person is:

(1) licensed or otherwise registered as a medical radiologic technologist by another state, the American Registry of Radiologic Technologists, the American Registry of Clinical Radiography Technologists, or a professional organization or association recognized by the advisory board;

(2) enrolled in a continuing education program that meets the requirements adopted under Section 601.108; and

(3) performing a radiologic procedure as part of the continuing education program for not more than 10 days.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.139, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.029, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 10, eff. September 1, 2017.

Sec. 601.157. PERSON SUPERVISED BY PODIATRIST. A person is not required to hold a certificate issued under this chapter to perform a radiologic procedure if:

(1) the procedure is performed under the supervision of a podiatrist; and

(2) the person:

(A) is registered with the Texas Department of Licensing and Regulation to assist a podiatrist; and

(B) complies with rules adopted under Section 601.252(e).

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec.

8.006, eff. September 1, 2019.

SUBCHAPTER E. MANDATORY TRAINING FOR CERTAIN AUTHORIZED PERSONS

Sec. 601.201. MANDATORY TRAINING. (a) The minimum standards of the advisory board for approval of a curriculum or an education program under Section 601.052 must include mandatory training guidelines for a person, other than a practitioner, medical radiologic technologist, registered nurse, or licensed physician assistant, who intentionally uses radiologic technology, including a person who does not hold a certificate issued under this chapter and who is performing a radiologic procedure at a hospital or under the direction of a practitioner, other than a dentist.

(b) The training program approved by the advisory board must contain an appropriate number of hours of education that must be completed before the person may perform a radiologic procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.140, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.030, eff. September 1, 2015.

Sec. 601.202. REGISTRY. The advisory board by rule shall establish a registry of persons required to comply with this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.141, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.030, eff. September 1, 2015.

Sec. 601.203. HARDSHIP EXEMPTION. (a) On application to the advisory board by a hospital, a federally qualified health center as defined by 42 U.S.C. Section 1396d, or a practitioner, the advisory board shall exempt the applicant from the requirements of Section

601.201 in employing a person certified under this chapter or trained as required by Section 601.201 if the applicant shows a hardship in employing a person certified under this chapter or trained as required by Section 601.201.

(b) The following conditions are considered to be a hardship for the purposes of Subsection (a):

(1) that the applicant:

(A) reports an inability to attract and retain medical radiologic technologists; and

(B) is located in a county with a population of less than 50,000;

(2) that the applicant is located at a great distance from a school of medical radiologic technology;

(3) that there is a list of qualified persons who have applied to a school of medical radiologic technology whose admissions are pending because of a lack of faculty or space;

(4) that the school of medical radiologic technology produces an insufficient number of graduates in medical radiologic technology to meet the needs of the applicant; or

(5) any other criteria determined by advisory board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.030, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 11, eff. September 1, 2017.

SUBCHAPTER F. OTHER LICENSING AGENCIES; RULEMAKING AND REGISTRATION REQUIREMENTS

Sec. 601.251. APPLICABILITY. This subchapter applies to the:

(1) Texas Board of Nursing;

(2) Texas Board of Chiropractic Examiners;

(3) State Board of Dental Examiners;

(4) Texas Medical Board;

(5) Texas Department of Licensing and Regulation, with respect to the department's authority to regulate podiatrists; and

(6) Texas Physician Assistant Board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 48, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.031, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 19.020, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 8.007, eff. September 1, 2019.

Sec. 601.252. REQUIREMENT TO ADOPT RULES. (a) Each agency subject to this subchapter, other than the Texas Board of Nursing and the Texas Physician Assistant Board, shall adopt rules to regulate the manner in which a person who holds a license issued by the agency may order, instruct, or direct another authorized person in the performance of a radiologic procedure.

(b) Rules adopted under Subsection (a) must allow a practitioner the right to delegate certain designated radiologic procedures to a person not certified under this chapter if the delegation is allowed by the regulatory board that licenses the practitioner.

(c) Rules adopted under this section by the State Board of Dental Examiners must:

(1) require an authorized person who performs radiologic procedures under the delegation of a dentist, other than a registered nurse, to register with the dental board;

(2) establish reasonable and necessary fees to cover the administrative costs incurred by the dental board in administering a registration program created under this subsection;

(3) establish grounds for the suspension, revocation, or nonrenewal of a registration issued under this subsection; and

(4) establish standards, in addition to those required by this chapter, for training and supervising the operators of the equipment.

(d) In adopting rules under Subsection (c), the State Board of Dental Examiners may take into account whether the radiologic procedure will be performed by a registered nurse.

(e) Rules adopted under this section by the Texas Commission of Licensing and Regulation must:

(1) require an authorized person who performs radiologic procedures under the delegation of a podiatrist, other than a registered nurse, to register with the Texas Department of Licensing and Regulation;

(2) establish reasonable and necessary fees to cover the administrative costs incurred by the Texas Department of Licensing and Regulation in administering a registration program created under this subsection;

(3) establish grounds for the suspension, revocation, or nonrenewal of a registration issued under this subsection; and

(4) establish standards for training and supervising the operators of podiatric equipment, including standards for curricula and instructors.

(f) In adopting rules under Subsection (e), the Texas Commission of Licensing and Regulation may take into account whether the radiologic procedure will be performed by a registered nurse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 49, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.032, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 12, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 8.008, eff. September 1, 2019.

Sec. 601.253. TEXAS BOARD OF NURSING. (a) The Texas Board of Nursing shall adopt rules governing registered nurses performing radiologic procedures under Section 601.151 or 601.154, including rules:

(1) establishing mandatory training guidelines; and

(2) requiring registered nurses performing radiologic procedures under Section 601.151 to register with the Texas Board of Nursing and to identify the practitioner ordering the procedures.

(b) The Texas Board of Nursing shall notify the agency licensing the practitioner that the nurse has registered under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 50, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.033, eff. September 1, 2015.

Sec. 601.254. TEXAS PHYSICIAN ASSISTANT BOARD. (a) The Texas Physician Assistant Board shall adopt rules governing licensed physician assistants performing radiologic procedures under Section 601.151 or 601.154, including rules:

(1) establishing mandatory training guidelines; and

(2) requiring licensed physician assistants performing radiologic procedures under Section 601.151 to register with the Texas Physician Assistant Board and to identify the practitioner ordering the procedures.

(b) The Texas Physician Assistant Board shall notify the agency licensing the practitioner that the physician assistant has registered under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.034, eff. September 1, 2015.

SUBCHAPTER F-1. COMPLAINTS AND INVESTIGATIVE INFORMATION

Sec. 601.271. COMPLAINT INFORMATION AND STATUS. (a) The advisory board shall maintain a system to promptly and efficiently act on complaints filed with the advisory board. The advisory board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

(b) The advisory board shall make information available describing its procedures for complaint investigation and resolution.

(c) If a written complaint is filed with the advisory board relating to a certificate holder or a person approved under Section 601.054 or 601.055, the advisory board, as often as quarterly and

until final determination of the action to be taken on the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.035, eff. September 1, 2015.

Sec. 601.272. CONDUCT OF INVESTIGATION. The advisory board shall complete a preliminary investigation of a complaint filed with the advisory board not later than the 45th day after the date of receiving the complaint. The advisory board shall first determine whether the person constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the advisory board shall determine whether to officially proceed on the complaint. If the advisory board fails to complete the preliminary investigation in the time required by this section, the advisory board's official investigation of the complaint is considered to commence on that date.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.035, eff. September 1, 2015.

Sec. 601.273. ACCESS TO COMPLAINT INFORMATION. (a) Except as provided by Subsection (b), the advisory board shall provide a person who is the subject of a formal complaint filed under this chapter with access to all information in its possession that the advisory board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. The advisory board shall provide the information not later than the 30th day after receipt of a written request from the person or the person's counsel, unless good cause is shown for delay.

(b) The advisory board is not required to provide:

(1) advisory board investigative reports;

(2) investigative memoranda;

(3) the identity of a nontestifying complainant;

(4) attorney-client communications;

(5) attorney work product; or

(6) other material covered by a privilege recognized by the

Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) Providing information under this section does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.035, eff. September 1, 2015.

Sec. 601.274. HEALTH CARE ENTITY REQUEST FOR INFORMATION. On the written request of a health care entity, the advisory board shall provide to the entity:

(1) information about a complaint filed against a person that was resolved after investigation by:

(A) a disciplinary order of the advisory board; or

(B) an agreed settlement; and

(2) the basis of and current status of any complaint that has been referred by the executive director of the medical board for enforcement action.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.035, eff. September 1, 2015.

Sec. 601.275. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the advisory board, the medical board, or an employee or agent of the medical board relating to a certificate holder, a person approved under Section 601.054 or 601.055, an application for certification or approval, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the advisory board, the medical board, or an employee or agent of the advisory board or medical board involved in discipline under this chapter. For purposes of this section, "investigative information" includes information related to the identity of a person performing or supervising compliance monitoring for the advisory board or medical board and a report prepared by the person related to compliance monitoring.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.035, eff. September 1, 2015.

Sec. 601.276. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Investigative information in the possession of the advisory board, the medical board, or an employee or agent of the medical board that relates to the discipline of a certificate holder or a person approved under Section 601.054 or 601.055, may be disclosed to:

(1) a licensing authority in another state or country in which the certificate holder or person is licensed, certified, or permitted or has applied for a license, certification, or permit; or

(2) a medical peer review committee reviewing:

(A) an application for privileges; or

(B) the qualifications of the certificate holder or person with respect to retaining privileges.

(b) If investigative information in the possession of the advisory board, the medical board, or an employee or agent of the medical board indicates that a crime may have been committed, the advisory board or medical board, as appropriate, shall report the information to the proper law enforcement agency. The advisory board and medical board shall cooperate with and assist each law enforcement agency conducting a criminal investigation of a certificate holder or a person approved under Section 601.054 or 601.055 by providing information relevant to the investigation. Confidential information disclosed to a law enforcement agency under this subsection remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.035, eff. September 1, 2015.

SUBCHAPTER G. CERTIFICATE DENIAL AND DISCIPLINARY ACTION

Sec. 601.301. CERTIFICATE DENIAL AND DISCIPLINARY ACTION. The advisory board may, for a violation of this chapter or a rule adopted under this chapter:

(1) suspend, restrict, revoke, or refuse to renew a

certificate;

(2) rescind approval of a curriculum, training program, or instructor;

(3) deny an application for certification or approval;

(4) issue a reprimand; or

(5) place the offender's certificate on probation and require compliance with a requirement of the advisory board, including requiring the offender to:

(A) submit to medical or psychological treatment;

(B) meet additional education requirements;

(C) pass an examination; or

(D) work under the supervision of a medical radiologic technologist or other practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.302. GROUNDS FOR CERTIFICATE DENIAL OR DISCIPLINARY ACTION. The advisory board may take action under Section 601.301 against a person subject to this chapter for:

(1) obtaining or attempting to obtain a certificate issued under this chapter by bribery or fraud;

(2) making or filing a false report or record made in the person's capacity as a medical radiologic technologist;

(3) intentionally or negligently failing to file a report or record required by law;

(4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;

(5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the advisory board;

(6) developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness;

(7) failing to report to the advisory board the violation of this chapter by another person;

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with this chapter;

(9) violating this chapter, a rule adopted under this chapter, an order of the advisory board previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the advisory board;

(10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or

(11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.142, eff. April 2, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.303. STUDENT PRACTICING WITHOUT DIRECT SUPERVISION. The advisory board may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.304. ADMINISTRATIVE PROCEDURE FOR CONTESTED CASE HEARING. For a contested case hearing in which a formal complaint has been filed under this chapter, the procedure by which the advisory board takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by:

(1) advisory board rules for a contested case hearing; and

(2) Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.305. SURRENDER OF CERTIFICATE. (a) The advisory board may accept the voluntary surrender of a certificate. A person who has surrendered a certificate may not engage in activities that require a certificate, and the advisory board may not return the certificate to the person, until the person demonstrates to the satisfaction of the advisory board that the person is able to resume the practice of radiologic technology.

(b) The advisory board shall by rule establish guidelines for determining when a person is competent to resume the practice of radiologic technology.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.143, eff. April 2, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.306. EMERGENCY SUSPENSION. (a) The presiding officer of the advisory board shall appoint a three-member disciplinary panel consisting of advisory board members to determine whether a certificate should be temporarily suspended.

(a-1) The disciplinary panel shall temporarily suspend the certificate of a certificate holder if the panel determines from the evidence or information presented to it that continued practice by the certificate holder would constitute a continuing threat to the public welfare.

(b) A certificate may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the advisory board simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the panel.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 13, eff. Sept. 1, 2003.
Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.307. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The advisory board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the advisory board at a public meeting.

(b) A complaint delegated under this section shall be referred for an informal proceeding under Section 601.311 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected person requests that the complaint be referred for an informal proceeding.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.308. SUBPOENA. (a) The executive director of the medical board, the director's designee, or the secretary-treasurer of the medical board may issue a subpoena or subpoena duces tecum for the advisory board:

(1) to conduct an investigation or a contested proceeding related to:

(A) alleged misconduct by a certificate holder or a person approved under Section 601.054 or 601.055;

(B) an alleged violation of this chapter or other law related to radiologic technology; or

(C) the provision of health care under this chapter; or

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a certificate or approval under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the advisory board or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of an application for certification or approval.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.309. PROTECTION OF PATIENT IDENTITY. In a disciplinary investigation or proceeding conducted under this chapter, the advisory board shall protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or

(2) submits a written release in regard to the patient's records or identity.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.310. REQUIRED SUSPENSION OF LICENSE OF INCARCERATED CERTIFICATE HOLDER. Regardless of the offense, the advisory board shall suspend the certificate or approval of a person serving a prison term in a state or federal penitentiary during the term of the incarceration.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.311. INFORMAL PROCEEDINGS. (a) The advisory board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section

2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled and the advisory board give notice to the person who is the subject of a complaint of the time and place of the meeting not later than the 45th day before the date the meeting is held;

(2) the complainant and the person who is the subject of the complaint be provided an opportunity to be heard;

(3) at least one of the advisory board members participating in the informal meeting as a panelist be a member who represents the public;

(4) a member of the medical board's staff be at the meeting to present to the advisory board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing; and

(5) the advisory board's legal counsel or a representative of the attorney general be present to advise the advisory board or the medical board's staff.

(c) The person who is the subject of the complaint is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the person reasonably believes the person could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the advisory board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the person who is the subject of the complaint has previously been the subject of disciplinary action by the advisory board, the advisory board shall schedule the informal meeting as soon as practicable.

(f) Section 601.275 applies to an investigation file and investigative information in the possession of or used by the advisory board in an informal proceeding under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.312. ADVISORY BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 601.311, at least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 601.311(b)(3), an informal proceeding may be conducted by one panelist if the person who is the subject of the complaint waives the requirement that at least two panelists conduct the informal proceeding. If the person waives that requirement, the panelist may be any member of the advisory board.

(c) Except as provided by Subsection (d), the panel requirements described by Subsections (a) and (b) apply to an informal proceeding conducted by the advisory board under Section 601.311, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsections (a) and (b) do not apply to an informal proceeding conducted by the advisory board under Section 601.311 to show compliance with an order of the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.313. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) An advisory board member who serves as a panelist at an informal meeting under Section 601.311 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the person who is the subject of the complaint and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) An attorney for the advisory board or medical board shall

act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of a participant in the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the advisory board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the person who is the subject of the complaint have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the advisory board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the person who is the subject of the complaint and the person's authorized representative to reply to the medical board employees' presentation and to present oral and written statements and facts that the person and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the person who is the subject of the complaint, the person's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the person has violated a statute or advisory board rule, the panel may recommend advisory board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected person and the person's authorized representative. The person may accept the proposed settlement within the time established by the panel at the informal meeting. If the person rejects the proposed settlement or does not act within the required time, the advisory board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.314. LIMIT ON ACCESS TO INVESTIGATION FILES. The advisory board shall prohibit or limit access to an investigation file relating to a person subject to an informal proceeding in the manner provided by Sections 164.007(c) and 601.275.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.315. REFUND. (a) Subject to Subsection (b), the advisory board may order a certificate holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Subchapter H.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the certificate holder for a service regulated by this chapter. The advisory board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

Sec. 601.316. EXPERT IMMUNITY. An expert who assists the advisory board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken in the course of assisting the advisory board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the person in good faith to the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.036, eff. September 1, 2015.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 601.351. IMPOSITION OF PENALTY. The advisory board may impose an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.037, eff. September 1, 2015.

Sec. 601.352. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed $1,000 for each violation. Each day of a continuing violation is a separate violation.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.353. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the advisory board determines that a violation occurred, the advisory board shall give written notice of the violation to the person alleged to have committed the violation.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the proposed administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.038, eff. September 1, 2015.

Sec. 601.354. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the determination, including the proposed administrative penalty; or

(2) make a written request for a hearing on that determination.

(b) If the person accepts the determination, the advisory board by order shall approve the determination and impose the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.144, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.039, eff. September 1, 2015.

Sec. 601.355. HEARING. (a) If the person timely requests a hearing, the advisory board shall:

(1) set a hearing;

(2) give written notice of the hearing to the person; and

(3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the advisory board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.145, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.040, eff. September 1, 2015.

Sec. 601.356. DECISION BY ADVISORY BOARD. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the advisory board by order may determine that:

(1) a violation has occurred and may impose an administrative penalty; or

(2) a violation did not occur.

(b) The advisory board shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed; and

(3) a statement of the right of the person to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.147, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.041, eff. September 1, 2015.

Sec. 601.357. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date on which the order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the

person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the advisory board by certified mail.

(c) If the advisory board receives a copy of an affidavit as provided by Subsection (b)(2), the advisory board may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.042, eff. September 1, 2015.

Sec. 601.358. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the advisory board may refer the matter to the attorney general for collection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.043, eff. September 1, 2015.

Sec. 601.359. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 601.360. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person by the advisory board if the person paid the penalty under Section 601.357(a)(2); or

(2) if the person paid the penalty under Section 601.357(b)(1)(A) or posted a supersedeas bond, order the advisory board to:

(A) execute a complete release of the escrow account or bond, as appropriate, if the penalty is not imposed; or

(B) release the escrow account or bond, as appropriate, after the reduced penalty has been paid from the account or by the person.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.044, eff. September 1, 2015.

Sec. 601.361. EXPENSES AND COSTS. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the advisory board and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) The advisory board may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the advisory board requiring the payment of expenses and costs is final. The advisory board may refer the matter to the attorney

general for collection of the expenses and costs.

(c) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this chapter and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and the advisory board, reasonable expenses and costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.148, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.045, eff. September 1, 2015.

Sec. 601.362. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. ENFORCEMENT AND OTHER PENALTY PROVISIONS

Sec. 601.401. INJUNCTION; CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the advisory board may bring an action to enjoin the continued or threatened violation.

(b) A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty in an amount not to exceed $1,000 for each day of violation.

(c) At the request of the advisory board, the attorney general shall bring an action in the name of the state for the injunctive relief, to recover the civil penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.149, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.046, eff. September 1, 2015.

Sec. 601.402. CRIMINAL OFFENSES. (a) A person who is required to be certified under this chapter commits an offense if the person:

(1) knowingly administers a radiologic procedure to another person without holding a valid certificate issued by the advisory board;

(2) practices radiologic technology without holding a certificate under this chapter;

(3) uses or attempts to use a suspended or revoked certificate;

(4) knowingly allows a student enrolled in an education program to perform a radiologic procedure without direct supervision;

(5) obtains or attempts to obtain a certificate through bribery or fraudulent misrepresentation;

(6) uses the title or name "certified medical radiologic technologist" or any other name or title that implies the person is certified to practice radiologic technology, unless the person is certified under this chapter;

(7) knowingly conceals information relating to enforcement of this chapter or a rule adopted under this chapter; or

(8) employs a person not certified by or in compliance with this chapter for the purpose of applying ionizing radiation to a person.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.047, eff. September 1, 2015.

CHAPTER 602. MEDICAL PHYSICISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 602.001. SHORT TITLE. This chapter may be cited as the Medical Physics Practice Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.002. DEFINITIONS. In this chapter:

(1) "Advisory committee" means the Medical Physicist Licensure Advisory Committee.

(1-a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(6), eff. September 1, 2015.

(2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(6), eff. September 1, 2015.

(3) "Diagnostic radiological physics" means the branch of medical physics that deals with:

(A) the diagnostic application of:

(i) roentgen rays;

(ii) gamma rays from sealed sources;

(iii) ultrasonic radiation; or

(iv) radiofrequency radiation; and

(B) the use of equipment associated with the production and use of those types of radiation.

(4) "License" means a certificate issued by the medical board that authorizes the holder to engage in the practice of medical physics.

(5) "Licensed medical physicist" means a person who holds a license.

(5-a) "Medical board" means the Texas Medical Board.

(6) "Medical health physics" means the branch of medical physics that deals with the safe use of roentgen rays, gamma rays, electron or other charged particle beams, neutrons, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements.

(7) "Medical nuclear physics" means the branch of medical physics that deals with:

(A) the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes; and

(B) the use of equipment associated with the production and use of radionuclides.

(8) "Medical physics" means the branch of physics that is associated with the practice of medicine, including the field of radiological physics.

(9) "Practice of medical radiological physics" means the use of principles and accepted protocols of physics to assure the correct quality, quantity, and placement of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful excessive

radiation. The term includes:

(A) radiation beam calibration and characterization;

(B) quality assurance;

(C) instrument specification;

(D) acceptance testing;

(E) shielding design;

(F) protection analysis on radiation-emitting equipment and radiopharmaceuticals; and

(G) consultation with a physician to assure accurate radiation dosage to a specific patient.

(10) "Practitioner" means a person who:

(A) is licensed in this state as a doctor of:

(i) medicine;

(ii) osteopathy;

(iii) podiatry;

(iv) dentistry; or

(v) chiropractic; and

(B) prescribes radiologic procedures for other persons.

(11) "Radiation" means ionizing or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure.

(12) "Radiological physics" means the branch of medical physics that includes:

(A) diagnostic radiological physics;

(B) medical health physics;

(C) medical nuclear physics; and

(D) therapeutic radiological physics.

(13) "Radiological procedure" means a test, measurement, calculation, or radiation exposure that:

(A) is used to diagnose or treat a disease or another human medical or dental condition; and

(B) includes the use of:

(i) diagnostic radiation;

(ii) nuclear magnetic resonance;

(iii) nuclear medicine procedures; or

(iv) therapeutic radiation.

(14) "Therapeutic radiological physics" means the branch of medical physics that deals with:

(A) the therapeutic application of:

(i) roentgen rays;

(ii) gamma rays;
(iii) electron and other charged particle beams;
(iv) neutrons; or
(v) radiation from a radionuclide source; and
(B) the use of equipment associated with the production and use of those types of radiation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.150, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.048, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(6), eff. September 1, 2015.

SUBCHAPTER B. MEDICAL PHYSICIST LICENSURE ADVISORY COMMITTEE

Sec. 602.051. ADVISORY COMMITTEE. (a) The advisory committee is an informal advisory committee to the medical board and is not subject to Chapter 2110, Government Code.
(b) The advisory committee has no independent rulemaking authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.050, eff. September 1, 2015.

Sec. 602.052. APPOINTMENT OF ADVISORY COMMITTEE. (a) The advisory committee consists of seven members appointed by the president of the medical board as follows:
(1) four medical physicists licensed in this state who each have at least five years of experience as a medical physicist;
(2) two physicians licensed in this state who each have at least five years of clinical experience related to medical physics; and
(3) one member who represents the public.
(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(7), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(7), eff. September 1, 2015.

(d) Appointments to the advisory committee shall be made without regard to the race, color, disability, creed, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.326(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.051, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.052, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(7), eff. September 1, 2015.

Sec. 602.053. PUBLIC MEMBER ELIGIBILITY. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(8), eff. September 1, 2015.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(8), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(8), eff. September 1, 2015.

(d) An advisory committee member representing the public must be a resident of this state for a period of not less than four years preceding appointment. A person may not be a member of the advisory committee representing the public if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in a health care profession;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the medical board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the medical board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board other than

compensation or reimbursement authorized by law for medical board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.327(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.053, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.054, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(8), eff. September 1, 2015.

Sec. 602.054. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the advisory committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of medicine; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of medicine.

(c) A person may not serve as a member of the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory committee or medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.328(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.055, eff. September 1, 2015.

Sec. 602.055. TERMS; VACANCY. (a) Members of the advisory

committee serve two-year terms. The terms of the members expire on February 1 of each odd-numbered year.

(b) A person is not eligible to serve more than two consecutive full terms.

(c) If a vacancy occurs during a member's term, the president of the medical board shall appoint a person to serve for the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.056, eff. September 1, 2015.

Sec. 602.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory committee that a member:

(1) does not have at the time of appointment the qualifications required by Section 602.052 for appointment to the advisory committee;

(2) does not maintain during service on the advisory committee the qualifications required by Section 602.052 for appointment to the advisory committee;

(3) is ineligible for membership under Section 602.053(d) or Section 602.054; or

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term.

(b) The validity of an action of the advisory committee is not affected by the fact that it is taken while a ground for removal of a member of the advisory committee exists.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(9), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.329(a), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.151, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.057, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(9),

eff. September 1, 2015.

Sec. 602.057. COMPENSATION. A member of the advisory committee is entitled to a per diem in an amount set by the legislature for each day that the member engages in the business of the advisory committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.058, eff. September 1, 2015.

Sec. 602.058. ADVISORY COMMITTEE OFFICERS; MEETINGS. (a) The president of the medical board shall biennially designate a member of the advisory committee as the presiding officer of the advisory committee to serve in that capacity at the will of the president. The advisory committee may elect from its members additional officers as necessary.

(b) The advisory committee shall meet as requested by the medical board. A meeting may be held by telephone conference call.

(c) Except as otherwise provided by this chapter, the advisory committee is subject to Chapters 551, 552, and 2001, Government Code.

(d) A majority of the advisory committee members constitutes a quorum for all purposes except when advisory committee members are participating in a proceeding of the medical board as described by Section 602.151(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.330(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.059, eff. September 1, 2015.

SUBCHAPTER D. MEDICAL BOARD POWERS AND DUTIES

Sec. 602.151. GENERAL POWERS AND DUTIES. (a) The medical board shall:

(1) adopt rules reasonably necessary to properly perform

its duties under this chapter, including:

(A) procedural rules governing investigations, informal hearings, the issuance of cease and desist orders, and disciplinary sanctions; and

(B) rules governing character and conduct for applicants or license holders and fitness to practice medical physics in this state;

(2) establish qualifications for a medical physicist to practice in this state and the fitness of each applicant for a license or license renewal;

(3) establish minimum education and training requirements necessary for a license under this chapter;

(4) establish requirements for examinations for licensure;

(5) prescribe the application form for a license under this chapter;

(6) issue, deny, renew, revoke, cancel, restrict, suspend, or accept the surrender of a license;

(7) charge fees that are reasonable and necessary to cover the costs of administering this chapter;

(8) conduct informal hearings concerning violations of this chapter or rules adopted under this chapter;

(9) issue disciplinary sanctions, including agreed orders and non-disciplinary remedial plans; and

(10) establish procedures for making a confidential referral to the Texas Physician Health Program established under Chapter 167, and for requiring participation in the program as a prerequisite for issuing or maintaining a license under this chapter.

(b) The medical board may include any member of the advisory committee in a proceeding of the medical board related to a power or duty described by Subsection (a) if the medical board considers the expertise of the advisory committee member to be beneficial in the proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.155, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.061, eff. September 1, 2015.

Sec. 602.152. CONSUMER INTEREST INFORMATION; COMPLAINTS. (a) The medical board shall prepare information of consumer interest describing the regulatory functions of the medical board and the procedures by which complaints are filed with and resolved by the medical board.

(b) The medical board shall maintain a file on each written complaint filed with the medical board. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the medical board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the medical board closed the file without taking action other than to investigate the complaint.

(c) The medical board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the medical board's policies and procedures relating to complaint investigation and resolution.

(d) The medical board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.332(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.062, eff. September 1, 2015.

Sec. 602.1521. PUBLIC PARTICIPATION. The medical board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the medical board and to speak on any issue relating to medical physicists.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.330(b), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.063, eff. September 1, 2015.

Sec. 602.1525. SUBPOENAS; CONFIDENTIALITY OF INFORMATION. (a) The executive director of the medical board, the director's designee, or the secretary-treasurer of the medical board may issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to:

(A) alleged misconduct by a medical physicist;

(B) an alleged violation of this chapter or another law related to the practice of medical physics; or

(C) the provision of health care under this chapter; or

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a license under this chapter.

(a-1) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the medical board or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of a license application.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(12), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(12), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(12), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(12), eff. September 1, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(12), eff. September 1, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(12), eff. September 1, 2015.

(h) All information and materials subpoenaed or compiled by the medical board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552,

Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the medical board or its agents or employees who are involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the medical board in a disciplinary action against the holder of a license;

(2) professional medical physics licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the medical board under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the medical board against a holder of a license, the nature of those charges, disciplinary proceedings of the medical board, and final disciplinary actions, including warnings and reprimands, by the medical board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.332(b), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.156, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.064, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.065, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(12), eff. September 1, 2015.

Sec. 602.153. CONTINUING EDUCATION. The medical board shall recognize, prepare, or administer continuing education programs for persons licensed under this chapter. A license holder must participate in the programs to the extent required by the medical board to keep the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.331(b), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.066, eff. September 1, 2015.

Sec. 602.154. RULES RELATING TO ADVERTISING OR COMPETITIVE BIDDING. (a) The medical board may not adopt rules restricting advertising or competitive bidding by a license holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the medical board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.332(c), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.067, eff. September 1, 2015.

Sec. 602.156. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The medical board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.068, eff. September 1, 2015.

SUBCHAPTER E. LICENSE REQUIREMENTS

Sec. 602.201. LICENSE REQUIRED; SPECIALTY LICENSE. (a) A person may not practice medical physics without a license.

(b) A medical physicist may not practice the following

specialties unless the person holds a license for that specialty:

(1) diagnostic radiological physics;

(2) medical health physics;

(3) medical nuclear physics; or

(4) therapeutic radiological physics.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.202. EXEMPTIONS FROM LICENSE REQUIREMENT. This chapter does not apply to:

(1) a practitioner engaged in the performance of radiological procedures;

(2) a person certified as a medical radiological technologist practicing under Chapter 601;

(3) a person who performs radiological procedures under a practitioner's instruction or supervision;

(4) a person performing beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, or protection analysis on radiation-emitting equipment or radiopharmaceuticals for procedures not involved with the diagnosis or treatment of a disease or another human medical or dental condition; or

(5) a person who is:

(A) employed by a state or federal regulatory agency; and

(B) performing duties in the scope of the person's employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 602.203. LICENSE APPLICATION. (a) A person may apply for a license by filing an application with the medical board.

(b) An application must be on a form prescribed by the medical board and must include:

(1) evidence of relevant work experience, including a description of the duties performed;

(2) an official transcript from the college or university granting the applicant's degree;

(3) a statement of the medical physics specialty for which

the application is submitted;

(4) three professional references; and

(5) any additional information required by medical board rule.

(c) The applicant must submit with the application the fee prescribed by the medical board.

(d) The medical board may require an applicant to appear before the medical board to present additional information in support of the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.069, eff. September 1, 2015.

Sec. 602.205. TEMPORARY LICENSE. The medical board may issue a temporary license to an applicant who has satisfied the educational requirements for a license but who has not yet completed the experience and examination requirements of Section 602.207. A temporary license is valid for one year from the date of issuance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.158, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.070, eff. September 1, 2015.

Sec. 602.206. EXAMINATION. (a) The medical board shall administer a written examination for a license to qualified applicants at least two times each year.

(b) Each applicant shall take the examination for the medical physics specialty requested by the applicant in the license application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.071, eff. September 1, 2015.

Sec. 602.207. ELIGIBILITY FOR EXAMINATION. (a) To be eligible to take an examination for a license, an applicant must:

(1) have a master's or doctoral degree from an accredited college or university that signifies the completion of courses approved by the medical board in physics, medical physics, biophysics, radiological physics, medical health physics, or equivalent courses;

(2) have demonstrated, to the medical board's satisfaction, completion of at least two years of full-time work experience in the five years preceding the date of application in the medical physics specialty for which application is made; and

(3) submit a completed application as required by Section 602.203.

(b) Work experience in more than one specialty must include six additional months for each additional specialty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.072, eff. September 1, 2015.

Sec. 602.208. EXAMINATION RESULTS; REEXAMINATION. (a) The medical board shall notify each examinee of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national or state testing service, the medical board shall notify each examinee of the results of the examination not later than the 14th day after the date the medical board receives the results from the testing service.

(b) If the medical board learns that the notice of the examination results will be delayed for more than 90 days after the examination date, the medical board shall notify each examinee of the reason for the delay not later than the 90th day.

(c) If requested by a person who fails the examination, the medical board shall provide to the person an analysis of the person's performance on the examination.

(d) The medical board by rule shall establish procedures and

requirements for reexamination of an applicant who fails the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.073, eff. September 1, 2015.

Sec. 602.2081. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The medical board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the medical board, to the medical board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The medical board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The medical board shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the medical board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The medical board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.074, eff. September 1, 2015.

Sec. 602.209. LICENSE ISSUANCE. (a) The medical board may issue a license to an eligible applicant who:

(1) passes the examination under Section 602.206; and

(2) meets all other license requirements.

(b) Not later than the 30th day after the date the medical

board makes a decision on an application submitted under Section 602.203, the medical board shall notify the applicant of the decision.

(c) If the medical board approves the application, the medical board shall issue a license to the applicant. If the medical board denies the application, the medical board shall include in the notice of decision a description of the areas of deficiency.

(d) Each license issued under this chapter must be uniform, except that each license must indicate:

(1) the license holder's name;

(2) the serial number assigned to the license holder; and

(3) the medical physics specialty the license holder may practice.

(e) A license certificate is the medical board's property and must be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.075, eff. September 1, 2015.

Sec. 602.210. LICENSE TERM AND RENEWAL. (a) A license is valid for two years from the date of issuance and may be renewed.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by paying the required renewal fee to the medical board before the expiration date of the license.

(d) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the medical board the required renewal fee and a penalty fee in an amount equal to one-half of the amount of the renewal fee.

(e) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the medical board the renewal fee that was due at expiration and a penalty fee in an amount equal to the amount of the renewal fee.

(f) If a person's license has been expired for one year or longer, the person may not renew the license. To obtain a new

license, a person must comply with the requirements and procedures for obtaining an original license, including the examination requirement.

(g) Not later than the 30th day before the date a person's license expires, the medical board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.159, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.076, eff. September 1, 2015.

Sec. 602.2101. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant renewing a license shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 602.2081.

(b) The medical board may not renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 602.2081 for the initial issuance of the license; or

(2) this section as part of a prior renewal of the license.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.077, eff. September 1, 2015.

Sec. 602.211. LICENSE BY ENDORSEMENT OR RECIPROCITY. (a) On receipt of an application and fee under Section 602.203, the medical board may waive any prerequisite for obtaining a license to a person who holds a license to practice medical or radiological physics in another state, territory, or jurisdiction acceptable to the medical board that has requirements for the licensing of medical or radiological physicists that are substantially the same as the

requirements of this chapter.

(b) The medical board may waive any prerequisite for obtaining a license to practice medical physics in this state for an applicant who holds a license issued by another jurisdiction with which this state has a reciprocity agreement. The medical board may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.334(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.078, eff. September 1, 2015.

Sec. 602.212. LICENSE HOLDER DUTIES. A license holder shall:

(1) publicly display the license holder's license in an appropriate manner; and

(2) report immediately to the medical board any change in the license holder's address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.079, eff. September 1, 2015.

Sec. 602.213. PROVISIONAL LICENSE. (a) The medical board may issue a provisional license to an applicant currently licensed or certified in another jurisdiction who seeks a license in this state and who:

(1) has been licensed or certified in good standing as a practitioner of medical or radiologic physics for at least two years in another jurisdiction, including a foreign country, that has licensing or certification requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the medical board relating to the practice of medical or radiologic physics; and

(3) is sponsored by a person licensed by the medical board

under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The medical board may waive the requirement of Subsection (a)(3) for an applicant if the medical board determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the medical board approves or denies the provisional license holder's application for a license. The medical board shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be certified under Section 602.211; or

(2) the provisional license holder passes the part of the examination under Section 602.206 that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of medical physics in this state and:

(A) the medical board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(B) the provisional license holder satisfies any other licensing requirements under this chapter.

(d) The medical board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The medical board may extend the 180-day period if the results of an examination have not been received by the medical board before the end of that period.

(e) The medical board may establish a fee for provisional licenses.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.335(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.160, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.080, eff. September 1, 2015.

Sec. 602.214. REFUSAL FOR VIOLATION OF BOARD ORDER. The medical board may refuse to renew a license issued under this chapter

if the license holder is in violation of a medical board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 13, eff. September 1, 2017.

SUBCHAPTER F. LICENSE DENIAL AND DISCIPLINARY ACTION

Sec. 602.251. GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. The medical board may refuse to issue or renew a license, suspend, restrict, or revoke a license, or reprimand a license holder for:

(1) obtaining or renewing a license by means of fraud, misrepresentation, or concealment of a material fact;

(2) having previously applied for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(3) engaging in unprofessional conduct that endangered or is likely to endanger the health, safety, or welfare of the public as defined by medical board rule;

(4) violating this chapter, a lawful order or rule of the medical board, or the medical board's code of ethics; or

(5) being convicted of:

(A) a felony; or

(B) a misdemeanor involving moral turpitude or that directly relates to the person's duties as a licensed medical physicist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.336(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.081, eff. September 1, 2015.

Sec. 602.252. ADMINISTRATIVE PROCEDURE FOR CONTESTED CASE HEARING. Chapter 2001, Government Code, and medical board rules for a contested case hearing apply to a proceeding by the medical board under this chapter in which a formal complaint has been filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.082, eff. September 1, 2015.

Sec. 602.2521. INFORMAL PROCEDURES. (a) The medical board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant, if applicable and permitted by law, an opportunity to be heard;

(2) provide the license holder an opportunity to be heard; and

(3) require the medical board's legal counsel or a representative of the attorney general to be present to advise the medical board or the medical board's employees.

(c) Chapters 551 and 552, Government Code, do not apply to an investigation file and investigative information in the possession of or used by the medical board in an informal proceeding under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.083, eff. September 1, 2015.

Sec. 602.253. PROBATION. The medical board may place on probation a person whose license is suspended. If a license suspension is probated, the medical board may require the person to:

(1) report regularly to the medical board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the medical board; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the medical board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.336(b), eff. Sept.

1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.084, eff. September 1, 2015.

Sec. 602.254. EMERGENCY SUSPENSION. (a) The medical board or a three-member panel of medical board members designated by the president of the medical board shall temporarily suspend the license of a license holder if the medical board or panel determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 14, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.085, eff. September 1, 2015.

SUBCHAPTER G. ENFORCEMENT

Sec. 602.301. INJUNCTION. The medical board shall prosecute or file suit to enjoin a violation of this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.086, eff.

September 1, 2015.

Sec. 602.3015. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted or order issued under this chapter is liable for a civil penalty not to exceed $5,000 a day.

(b) At the request of the medical board, the attorney general shall bring an action to recover a civil penalty authorized under this section.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 15, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.087, eff. September 1, 2015.

Sec. 602.302. OFFENSE. (a) A person commits an offense if the person:

(1) practices medical physics without holding a license under this chapter;

(2) practices a specialty of medical physics without holding a license for the specialty;

(3) practices medical physics in violation of this chapter; or

(4) uses in any manner letters, terminology, symbols, or signs to indicate or imply that the person is qualified or licensed to practice medical physics in a manner for which the person is not licensed under this chapter.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 326, Sec. 16, eff. Sept. 1, 2003.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 602.351. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The medical board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule adopted or order issued under this chapter. A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

(b) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(c) The amount of the penalty may not exceed $500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed $2,500.

(d) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) If the medical board determines that a violation occurred, the medical board shall give written notice by certified mail to the person.

(f) The notice under Subsection (e) must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) Within 20 days after the date the person receives the notice under Subsection (e), the person in writing may:

(1) accept the determination and recommended penalty; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(h) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the medical board by order shall approve the determination and impose the recommended penalty.

(i) If the person requests a hearing, the medical board shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(j) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the medical board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(k) Based on the findings of fact, conclusions of law, and proposal for a decision, the medical board by order may determine that:

(1) a violation occurred and impose a penalty; or

(2) a violation did not occur.

(l) The notice of the medical board's order under Subsection (k) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.337(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.088, eff. September 1, 2015.

Sec. 602.352. PAYMENT AND COLLECTION OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW. (a) Within 30 days after the date an order of the medical board under Section 602.351(k) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the medical board's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that is:

(i) for the amount of the penalty; and

(ii) effective until all judicial review of the medical board's order is final; or

(2) request the court to stay enforcement of the penalty

by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the medical board by certified mail.

(c) If the medical board receives a copy of an affidavit under Subsection (b)(2), the medical board may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(d) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected. The attorney general may sue to collect the penalty.

(e) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(f) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

(g) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(h) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.337(a), eff. Sept. 1, 2001.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.089, eff. September 1, 2015.

CHAPTER 603. PERFUSIONISTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 603.001. SHORT TITLE. This chapter may be cited as the Licensed Perfusionists Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.002. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(15), eff. September 1, 2015.

(2) "Advisory committee" means the Perfusionist Licensure Advisory Committee.

(3) "Medical board" means the Texas Medical Board.

(4) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(15), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 1, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.090, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(15), eff. September 1, 2015.

Sec. 603.003. PRACTICE OF PERFUSION. (a) In this section:

(1) "Extracorporeal circulation" means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, or both.

(2) "Perfusion protocol" means a perfusion-related policy or protocol developed or approved by a licensed health facility or a physician through collaboration with administrators, licensed

perfusionists, and other health professionals.

(b) A person practices perfusion under this chapter when the person performs activities necessary to:

(1) support, treat, measure, or supplement the cardiovascular, circulatory, or respiratory system, or a combination of those activities; or

(2) ensure the safe management of physiologic functions by monitoring the parameters of the systems under the order and supervision of a licensed physician.

(c) The practice of perfusion includes:

(1) using extracorporeal circulation, cardiopulmonary support techniques, and other therapeutic and diagnostic technologies;

(2) performing counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, administration of cardioplegia, and isolated limb perfusion;

(3) using techniques involving blood management, advanced life support, and other related functions; and

(4) in performing the acts described in this subdivision:

(A) administering:

(i) pharmacological and therapeutic agents; or

(ii) blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(B) performing and using anticoagulation analysis, physiologic analysis, blood gas and chemistry analysis, hematocrit analysis, hypothermia, hyperthermia, hemoconcentration, and hemodilution; and

(C) observing signs and symptoms related to perfusion services, determining whether the signs and symptoms exhibit abnormal characteristics, and implementing appropriate reporting, perfusion protocols, or changes in or the initiation of emergency procedures.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) a qualified perfusionist employed by the United States government while discharging official duties;

(2) a person licensed by another health professional licensing board if the person:

(A) does not directly or indirectly represent to the public that the person is licensed under this chapter and does not use a name, title, or other designation indicating that the person is licensed under this chapter; and

(B) confines the scope of the person's practice to that authorized by the law under which the person is licensed as a health professional;

(3) a student enrolled in an accredited perfusion education program if the perfusion services performed by the student:

(A) are an integral part of the student's course of study; and

(B) are directly supervised by a licensed perfusionist who:

(i) is assigned to supervise the student; and

(ii) is on duty and immediately available in the assigned patient care area;

(4) a person who successfully completes an approved perfusion education program but has not been issued a provisional license under Section 603.259 if the person:

(A) complies with Section 603.259(c); and

(B) receives a provisional license not later than the 180th day after the date the person successfully completes the program; or

(5) a person performing autotransfusion or blood conservation techniques under the supervision of a licensed physician.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 2, eff. September 1, 2005.

Sec. 603.006. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory committee.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 4, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.091, eff. September 1, 2015.

SUBCHAPTER B. PERFUSIONIST LICENSURE ADVISORY COMMITTEE

Sec. 603.051. ADVISORY COMMITTEE MEMBERSHIP. (a) The advisory committee is an informal advisory committee to the medical board. The advisory committee has no independent rulemaking authority.

(a-1) The advisory committee consists of seven members appointed by the president of the medical board as follows:

(1) four perfusionists licensed in this state who each have at least five years of experience as a perfusionist;

(2) two physicians licensed in this state who supervise perfusionists; and

(3) one member who represents the public.

(b) Appointments to the advisory committee shall reflect the historical and cultural diversity of the inhabitants of this state.

(c) Appointments to the advisory committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.161, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.093, eff. September 1, 2015.

Sec. 603.0511. PUBLIC MEMBER ELIGIBILITY. A person may not be a public member of the advisory committee if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in a health care profession;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the medical board;

(3) owns or controls, directly or indirectly, more than a

10 percent interest in a business entity or other organization regulated by or receiving money from the medical board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board other than compensation or reimbursement authorized by law for advisory committee membership, attendance, or expenses.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 7, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.094, eff. September 1, 2015.

Sec. 603.052. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(b) A person may not be an advisory committee member if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(c) A person may not be a member of the advisory committee or act as the general counsel to the advisory committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the advisory committee or medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 8, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.095, eff. September 1, 2015.

Sec. 603.053. TERMS; VACANCY. (a) Members of the advisory

committee serve two-year terms. The terms of the members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the president of the medical board shall appoint a person to serve for the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 9, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.096, eff. September 1, 2015.

Sec. 603.054. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory committee that a member:

(1) does not have at the time of taking office the qualifications required by Section 603.051;

(2) does not maintain during service on the advisory committee the qualifications required by Section 603.051;

(3) is ineligible for membership under Section 603.0511 or 603.052; or

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term.

(b) The validity of an action of the advisory committee is not affected by the fact that it is taken when a ground for removal of a member of the advisory committee exists.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(17), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 10, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.097, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(17), eff. September 1, 2015.

Sec. 603.055. REIMBURSEMENT. A member is entitled to

reimbursement for expenses as provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 11, eff. September 1, 2005.

Sec. 603.056. OFFICERS. (a) The president of the medical board shall designate biennially an advisory committee member as the presiding officer of the advisory committee to serve in that capacity at the will of the president.

(b) The advisory committee may appoint additional officers as necessary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 12, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.098, eff. September 1, 2015.

Sec. 603.057. MEETINGS. The advisory committee shall meet as requested by the medical board. A meeting may be held by telephone conference call.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 13, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.099, eff. September 1, 2015.

SUBCHAPTER D. MEDICAL BOARD POWERS AND DUTIES

Sec. 603.151. GENERAL POWERS AND DUTIES. The medical board shall:

(1) establish the qualifications for a perfusionist to practice in this state, including rules governing character and

conduct for applicants or license holders and fitness of applicants or license holders to practice;

(2) issue, revoke, restrict, suspend, deny, cancel, or accept the surrender of a license;

(3) charge fees that are reasonable and necessary to cover the costs of administering this chapter;

(4) establish requirements for an examination for a license under this chapter;

(5) establish minimum education and training requirements necessary for a license under this chapter;

(6) prescribe the application form for a license under this chapter;

(7) adopt and publish a code of ethics;

(8) establish procedural rules governing investigations, informal hearings, the issuance of cease and desist orders, and disciplinary sanctions;

(9) conduct informal hearings concerning violations of this chapter or rules adopted under this chapter;

(10) issue disciplinary sanctions, including agreed orders and non-disciplinary remedial plans; and

(11) establish procedures for making a confidential referral to the Texas Physician Health Program established under Chapter 167, and for requiring participation in the program as a prerequisite for issuing or maintaining a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 20, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.165, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.101, eff. September 1, 2015.

Sec. 603.152. GENERAL RULEMAKING AUTHORITY. The medical board may adopt rules necessary to:

(1) regulate the practice of perfusion;

(2) enforce this chapter; and

(3) perform medical board duties under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 21, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.102, eff. September 1, 2015.

Sec. 603.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The medical board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the medical board under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) The medical board may not include in rules to prohibit a false, misleading, or deceptive practice by a person regulated by the medical board under this chapter a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of any advertisement by the person; or

(4) restricts the use by the person of a trade name in advertising.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 22, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.166, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.103, eff. September 1, 2015.

Sec. 603.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) The medical board shall adopt rules necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

(b) In rules under this section, the medical board shall list

the specific offenses for which a conviction would constitute grounds for the medical board to take action under Section 53.021.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 23, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.167, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.104, eff. September 1, 2015.

Sec. 603.154. FEES. (a) The medical board shall set fees in amounts reasonable and necessary to cover the costs of administering this chapter.
(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(20), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 24, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.168, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.105, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(20), eff. September 1, 2015.

Sec. 603.155. DUTIES REGARDING COMPLAINTS. (a) The medical board by rule shall:
(1) adopt a form to standardize information concerning complaints made to the medical board; and
(2) prescribe information to be provided to a person when the person files a complaint with the medical board.
(b) The medical board shall provide reasonable assistance to a person who wishes to file a complaint with the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 25, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.106, eff. September 1, 2015.

Sec. 603.156. REGISTRY. The medical board shall prepare a registry of licensed perfusionists and provisionally licensed perfusionists that is available to the public, license holders, and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 26, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.107, eff. September 1, 2015.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 603.201. PUBLIC INTEREST INFORMATION. (a) The medical board shall prepare information of consumer interest describing the profession of perfusion, the regulatory functions of the medical board, and the procedures by which consumer complaints are filed with and resolved by the medical board.

(b) The medical board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 29, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.108, eff. September 1, 2015.

Sec. 603.202. COMPLAINTS. (a) The medical board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the medical board for the purpose of directing complaints under this chapter to the medical board. The medical board may provide for that

notice:

(1) on each license form, application, or written contract for services of a person licensed under this chapter;

(2) on a sign prominently displayed in the place of business of each person licensed under this chapter; or

(3) in a bill for services provided by a person licensed under this chapter.

(b) The medical board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 30, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.170, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.109, eff. September 1, 2015.

Sec. 603.203. RECORDS OF COMPLAINTS. (a) The medical board shall maintain a system to promptly and efficiently act on complaints filed under this chapter. The medical board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

(b) The medical board shall make information available describing its procedures for complaint investigation and resolution.

(c) The medical board shall periodically notify the parties of the status of the complaint until final disposition of the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 31, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.171, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.110, eff. September 1, 2015.

Sec. 603.204. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The medical board shall adopt rules concerning the investigation of a complaint filed under this chapter. The rules shall:

(1) distinguish among categories of complaints;

(2) ensure that a complaint is not dismissed without appropriate consideration;

(3) require that if a complaint is dismissed, a letter shall be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the medical board to obtain the services of a private investigator.

(b) The medical board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish, not later than the 30th day after the date the medical board receives a complaint, a schedule for conducting each phase of the complaint resolution process that is under the control of the medical board.

(c) Each party to the complaint shall be notified of the projected time requirements for pursuing the complaint. Each party shall be notified of any change in the schedule established under Subsection (b)(2) not later than the seventh day after the date the change is made.

(d) The executive director of the medical board shall notify the president of the medical board of a complaint that is not resolved within the time prescribed by the medical board for resolving the complaint so that the president may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 32, eff. September

1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.172, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.111, eff. September 1, 2015.

Sec. 603.2041. SUBPOENAS; CONFIDENTIALITY OF INFORMATION. (a) The executive director of the medical board, the director's designee, or the secretary-treasurer of the medical board may issue a subpoena or subpoena duces tecum:

(1) to conduct an investigation or a contested case proceeding related to:

(A) alleged misconduct by a perfusionist;

(B) an alleged violation of this chapter or another law related to the practice of perfusion; or

(C) the provision of health care under this chapter; or

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a license under this chapter.

(a-1) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the medical board or another licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of a license application.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(23), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(23), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(23), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(9), eff. April 2, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(23), eff. September 1, 2015.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197(23), eff. September 1, 2015.

(h) All information and materials subpoenaed or compiled by the medical board in connection with a complaint and investigation under this chapter are confidential and not subject to disclosure under

Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the medical board or its agents or employees involved in discipline of the holder of a license, except that this information may be disclosed to:

(1) persons involved with the medical board in a disciplinary action against the holder of a license under this chapter;

(2) professional perfusionist licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the medical board under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(i) The filing of formal charges by the medical board against a holder of a license under this chapter, the nature of those charges, disciplinary proceedings of the medical board, and final disciplinary actions, including warnings and reprimands, by the medical board are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.338(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 33, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.173, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(9), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.112, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.113, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(23), eff. September 1, 2015.

Sec. 603.205. PUBLIC PARTICIPATION. (a) The medical board

shall develop and implement policies that provide the public with a reasonable opportunity to appear before the medical board and to speak on any issue related to the practice of perfusion.

(b) The medical board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the medical board's programs under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 34, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.174, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.114, eff. September 1, 2015.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 603.251. LICENSE REQUIRED. (a) A person may not engage or offer to engage in perfusion for compensation unless the person holds an appropriate license issued under this chapter.

(b) A person may not, unless the person holds an appropriate license issued under this chapter:

(1) use the title or represent or imply that the person has the title "licensed perfusionist" or "provisional licensed perfusionist" or use the letters "LP" or "PLP"; or

(2) use a facsimile of those titles to represent or imply that the person is a licensed perfusionist or provisionally licensed perfusionist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.252. LICENSE APPLICATION. (a) An applicant for a perfusionist license must submit an application accompanied by the application fee.

(b) The medical board shall prescribe the application form and by rule may establish dates by which applications and fees must be received.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 35, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.175, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.115, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 14, eff. September 1, 2017.

Sec. 603.253. COMPETENCY EXAMINATION. (a) An applicant must pass a competency examination to qualify for a license under this chapter.

(b) The medical board shall prepare or approve an examination. The medical board may prescribe an examination that consists of or includes a written examination given by the American Board of Cardiovascular Perfusion or by a national or state testing service.

(c) The medical board shall have any written portion of the examination validated by an independent testing professional.

(d) The medical board shall administer an examination to qualified applicants at least once each calendar year.

(e) On receipt of an application and application fee, the medical board shall waive the examination requirement for an applicant who, at the time of application:

(1) is licensed or certified by another state that has licensing or certification requirements the medical board determines to be substantially equivalent to the requirements of this chapter; or

(2) holds a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion before January 1, 1994, authorizing the holder to practice perfusion in a state that does not license or certify perfusionists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 36, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.116, eff.

September 1, 2015.

Sec. 603.2535. JURISPRUDENCE EXAMINATION. (a) An applicant must pass a jurisprudence examination to qualify for a license under this chapter.

(b) The medical board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, rules adopted under this chapter, and any other applicable laws of this state affecting the applicant's practice of perfusion.

(c) The medical board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 37, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.117, eff. September 1, 2015.

Sec. 603.254. QUALIFICATION FOR EXAMINATION. (a) To qualify for the licensing examinations under this chapter, an applicant must have successfully completed a perfusion education program approved by the medical board.

(b) The medical board may approve a perfusion education program only if the program has educational standards that are:

(1) at least as stringent as those established by the Accreditation Committee for Perfusion Education of the American Medical Association or its successor; and

(2) approved by the Commission on Accreditation of the Allied Health Education Program of the American Medical Association or its successor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 38, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.118, eff. September 1, 2015.

Sec. 603.255. INVESTIGATION OF APPLICANT. (a) The medical board shall notify an applicant in writing of the receipt and investigation of the applicant's application and any other relevant evidence relating to qualifications established by rule not later than:

(1) the 45th day after the date a properly submitted and timely application is received; and

(2) the 30th day before the next examination date.

(b) The notice must state whether the applicant has qualified for examination based on the application and other submitted evidence. If the applicant is not qualified, the notice must state the reasons for the applicant's failure to qualify.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 39, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.176, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.119, eff. September 1, 2015.

Sec. 603.256. EXAMINATION RESULTS. (a) The medical board shall notify each examinee of the examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national or state testing service, the medical board shall notify each examinee of the examination results not later than the 14th day after the date the medical board receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national or state testing service will be delayed for longer than 90 days after the examination date, the medical board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the

examination, the medical board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.120, eff. September 1, 2015.

Sec. 603.257. REEXAMINATION AND ALTERNATIVES TO EXAMINATION. The medical board by rule shall establish:

(1) a limit on the number of times an applicant who fails an examination may retake the examination;

(2) requirements for retaking an examination; and

(3) alternative methods of examining competency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 40, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.121, eff. September 1, 2015.

Sec. 603.2571. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The medical board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the medical board, to the medical board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The medical board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The medical board shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the medical board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The medical board may:

(1) enter into an agreement with the Department of Public

Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.122, eff. September 1, 2015.

Sec. 603.258. ISSUANCE OF LICENSE. A person who meets the qualifications for a license under this chapter is entitled to a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.259. PROVISIONAL LICENSE. (a) The medical board may issue a provisional license to an applicant who files an application, pays an application fee, and submits evidence satisfactory to the medical board of successful completion of the education requirement under Section 603.254.

(b) A person who meets the qualifications for a provisional license under this chapter is entitled to a provisional license.

(c) A provisionally licensed perfusionist must practice under the supervision and direction of a licensed perfusionist while performing perfusion. If the medical board finds that a licensed perfusionist is not reasonably available to provide supervision and direction and if the medical board approves an application submitted by the provisionally licensed perfusionist, supervision and direction may be provided by a physician who is licensed by the medical board and certified by the American Board of Thoracic Surgery or certified in cardiovascular surgery by the American Osteopathic Board of Surgery.

(d) The medical board may not adopt a rule governing supervision and direction that requires the immediate physical presence of the supervising person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 41, eff. September

1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.177, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.123, eff. September 1, 2015.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 603.301. LICENSE RENEWAL. (a) A license is valid for two years from the date of issuance and may be renewed biennially.

(b) The medical board by rule may adopt a system under which licenses expire on various dates during the year.

(c) A person may renew an unexpired license by paying the required renewal fee to the medical board before the license expiration date.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the medical board a fee that is equal to 1-1/4 times the amount of the renewal fee. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the medical board a fee that is equal to 1-1/2 times the amount of the renewal fee.

(e) Except as provided by Section 603.303, a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

(f) Before the 30th day before a person's license expiration date, the medical board shall send written notice of the impending license expiration to the person at the person's last known address according to medical board records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 42, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.124, eff. September 1, 2015.

Sec. 603.302. PROVISIONAL LICENSE RENEWAL. A provisional

license expires on the first anniversary of the date of issuance and, if the supervising licensed perfusionist or physician described by Section 603.259(c) signs the renewal application, the license may be renewed annually not more than five times by complying with the renewal procedures under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.303. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The medical board may renew without reexamination an expired license of a person who was licensed as a perfusionist in this state, moved to another state, and is licensed or certified and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the medical board a fee that is equal to the amount of the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 43, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.125, eff. September 1, 2015.

Sec. 603.3031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant renewing a license shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 603.2571.

(b) The medical board may not renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 603.2571 for the initial issuance of the license; or

(2) this section as part of a prior renewal of the license.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.126,

eff. September 1, 2015.

Sec. 603.304. CONTINUING EDUCATION. (a) To renew a license under this chapter, a person must submit proof satisfactory to the medical board that the person has complied with the continuing education requirements prescribed by the medical board.

(b) The medical board shall establish continuing education programs for licensed perfusionists and provisionally licensed perfusionists under this chapter. The standards of the programs must be at least as stringent as the standards of the American Board of Cardiovascular Perfusion or its successor.

(c) The medical board shall:

(1) establish a minimum number of hours of continuing education required for license renewal under this chapter; and

(2) develop a process to evaluate and approve continuing education courses.

(d) The medical board shall identify key factors for a license holder's competent performance of professional duties. The medical board shall adopt a procedure to assess a license holder's participation in continuing education programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 44, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.178, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.127, eff. September 1, 2015.

Sec. 603.305. GROUNDS FOR REFUSING RENEWAL. The medical board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 45, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.128, eff. September 1, 2015.

Sec. 603.306. REFUSAL FOR VIOLATION OF BOARD ORDER. The medical board may refuse to renew a license issued under this chapter if the license holder is in violation of a medical board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 15, eff. September 1, 2017.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 603.351. DISPLAY OF LICENSE. A person licensed under this chapter shall:

(1) display the person's license certificate in an appropriate and public manner; or

(2) maintain a copy of the person's license certificate in the appropriate records of any health care facility in which the license holder provides services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.352. LICENSE HOLDER INFORMATION. A person licensed under this chapter shall keep the medical board informed of any change in the license holder's address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.129, eff. September 1, 2015.

Sec. 603.353. SURRENDER OF LICENSE. A license certificate issued by the medical board is the property of the medical board and shall be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 46, eff. September

1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.130, eff. September 1, 2015.

Sec. 603.354. CERTIFICATION FROM AMERICAN BOARD OF CARDIOVASCULAR PERFUSION. Unless a person holds a certificate as a certified clinical perfusionist issued by the American Board of Cardiovascular Perfusion, the person may not:

(1) use the title or represent or imply that the person has the title "certified clinical perfusionist" or use the letters "CCP"; or

(2) use a facsimile of that title to represent or imply that the person is a clinical perfusionist certified by that board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. DISCIPLINARY PROCEDURES

Sec. 603.401. GROUNDS FOR DISCIPLINARY ACTION. If a license holder violates this chapter or a rule or code of ethics adopted under this chapter, the medical board may:

(1) revoke, restrict, or suspend the license;

(2) place on probation the person if the person's license has been suspended;

(3) reprimand the license holder; or

(4) refuse to renew the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 47, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.131, eff. September 1, 2015.

Sec. 603.402. CONTESTED CASE HEARING. Chapter 2001, Government Code, and medical board rules for a contested case hearing apply to a proceeding by the medical board under this chapter in which a formal complaint has been filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 48, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.179, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.132, eff. September 1, 2015.

Sec. 603.403. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter to suspend, revoke, or refuse to renew a license is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 49, eff. September 1, 2005.

Sec. 603.404. SANCTIONS. (a) The medical board by rule shall adopt a broad schedule of sanctions for a violation of this chapter.
(b) The State Office of Administrative Hearings shall use the schedule of sanctions for a sanction imposed as the result of a hearing conducted by that office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 50, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.133, eff. September 1, 2015.

Sec. 603.405. PROBATION. The medical board may require a person whose license suspension is probated to:
(1) report regularly to the medical board on matters that are the basis of the probation;
(2) limit practice to areas prescribed by the medical board; or
(3) continue the person's professional education until the

license holder attains a degree of skill satisfactory to the medical board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 51, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.134, eff. September 1, 2015.

Sec. 603.406. MONITORING OF LICENSE HOLDER. (a) The medical board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter.
(b) Rules adopted under this section must include procedures to:
(1) monitor for compliance a license holder who is ordered by the medical board to perform certain acts; and
(2) identify and monitor license holders who represent a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 52, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.135, eff. September 1, 2015.

Sec. 603.407. INFORMAL PROCEDURES. (a) The medical board by rule shall adopt procedures governing:
(1) informal disposition of a contested case under Section 2001.056, Government Code; and
(2) an informal proceeding held in compliance with Section 2001.054, Government Code.
(b) Rules adopted under Subsection (a) must:
(1) provide the complainant, if applicable and permitted by law, an opportunity to be heard;
(2) provide the license holder an opportunity to be heard; and
(3) require the presence of a representative of the

attorney general or the medical board's legal counsel to advise the medical board or the medical board's employees.

(c) Chapters 551 and 552, Government Code, do not apply to an investigation file and investigative information in the possession of or used by the medical board in an informal proceeding under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 53, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.136, eff. September 1, 2015.

Sec. 603.408. EMERGENCY SUSPENSION. (a) The medical board or a three-member panel of medical board members designated by the president of the medical board shall temporarily suspend the license of a license holder if the medical board or panel determines from the evidence or information presented to it that continued practice by the license holder would constitute a continuing and imminent threat to the public welfare.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 17, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 54, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.137, eff.

September 1, 2015.

Sec. 603.409. REFUND. (a) Subject to Subsection (b), the medical board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The medical board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 55, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.138, eff. September 1, 2015.

SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 603.451. INJUNCTION. (a) The medical board may request the attorney general or the appropriate county or district attorney to commence an action to enjoin a violation of this chapter.

(b) The remedy provided by this section is in addition to any other action authorized by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 56, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.139, eff. September 1, 2015.

Sec. 603.4515. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted or an order issued under this chapter is liable for a civil penalty not to exceed $5,000 a day.

(b) At the request of the medical board, the attorney general shall bring an action to recover a civil penalty authorized under

this section.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 18, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 57, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.180, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.140, eff. September 1, 2015.

Sec. 603.452. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 603.251 or 603.354.
(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 603.453. CEASE AND DESIST ORDER. (a) If it appears to the medical board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of perfusion, the medical board after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.
(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Added by Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 58, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.181, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.141, eff. September 1, 2015.

SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 603.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The medical board may impose an administrative penalty on a person

licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 59, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.142, eff. September 1, 2015.

Sec. 603.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than $50 or more than $5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The medical board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or applicable rules to ensure that the amounts of penalties imposed are appropriate to the violation. The medical board shall provide the administrative penalty schedule to the public on request.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 60, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.182, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.143, eff. September 1, 2015.

Sec. 603.503. NOTICE OF VIOLATION AND PENALTY. If the medical

board determines that a violation occurred, the medical board shall give written notice of the violation to the person. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 61, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.183, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.144, eff. September 1, 2015.

Sec. 603.504. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 10 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended administrative penalty of the medical board; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the medical board, the medical board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 62, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.184, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.145, eff. September 1, 2015.

Sec. 603.505. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the medical

board shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(c) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the medical board a proposal for a decision about the occurrence of the violation and the amount of a proposed administrative penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 63, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.185, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.146, eff. September 1, 2015.

Sec. 603.506. DECISION BY MEDICAL BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the medical board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the medical board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 64, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.186, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.147, eff. September 1, 2015.

Sec. 603.507. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Within 30 days after the date the medical board's order becomes

final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the medical board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the medical board by certified mail.

(c) If the medical board receives a copy of an affidavit under Subsection (b)(2), the medical board may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 231 (S.B. 403), Sec. 65, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.187, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.148, eff. September 1, 2015.

Sec. 603.508. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Sec. 603.509. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Sec. 603.510. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

Sec. 603.511. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 326, Sec. 19, eff. Sept. 1, 2003.

CHAPTER 604. RESPIRATORY CARE PRACTITIONERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 604.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Texas Board of Respiratory Care.

(2) "Medical board" means the Texas Medical Board.

(3) "Respiratory care" means the treatment, management, control, diagnostic evaluation, or care of a patient who has a deficiency or abnormality associated with the cardiorespiratory system.

(4) "Respiratory care practitioner" means a person who holds a certificate or temporary permit under this chapter to practice respiratory care.

(5) "Respiratory care procedure" means respiratory care provided by the therapeutic and diagnostic use of medical gases, humidifiers, and aerosols, the administration of drugs and medications to the cardiorespiratory system, ventilatory assistance and ventilatory control, postural drainage, chest drainage, chest percussion or vibration, breathing exercises, respiratory rehabilitation, cardiopulmonary resuscitation, the maintenance of natural airways, and the insertion and maintenance of artificial airways. The term includes a technique used to assist in diagnosis, monitoring, treatment, and research, as ordered by a patient's physician, including:

(A) the measurement of ventilatory volumes, pressures, and flows;

(B) the specimen collection of blood and other materials;

(C) pulmonary function testing; and

(D) hemodynamic and other related physiological forms of monitoring or treating the cardiorespiratory system.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.188, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.149, eff.

September 1, 2015.

Sec. 604.002. INTERPRETATION: PRACTICE OF MEDICINE. This chapter does not permit the practice of medicine, as defined by Subtitle B, by a respiratory care practitioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.003. EFFECT OF CHAPTER. This chapter does not prohibit:

(1) the practice of respiratory care as an integral part of the program of study by a student enrolled in a respiratory care education program approved by the advisory board;

(2) the employment by a health care facility of a person to deliver limited respiratory care support services under the supervision of another person who holds a certificate issued under this chapter, if the person delivering the services does not perform an invasive procedure related to critical respiratory care, including a therapeutic, diagnostic, or palliative procedure, as part of the person's employment and if that person:

(A) is enrolled for credit in the clinical portion of an approved respiratory care education program; or

(B) has completed all of the clinical portion of an approved respiratory care education program within the preceding 12 months and is actively pursuing a course of study leading to graduation from the program;

(3) the care of an ill person provided without charge by a friend or family member;

(4) care provided in an emergency by a person who does not claim to be a respiratory care practitioner;

(5) the performance by a respiratory care practitioner of an advance in the art and techniques of respiratory care learned through formal or specialized training;

(6) the practice of respiratory care by health care personnel who have been formally trained in the care used and who are:

(A) licensed under the law regulating their professions; or

(B) acting under the delegated authority of a licensed physician;

(7) the practice of a legally qualified respiratory care practitioner who is discharging the practitioner's official duties as an employee of the United States government; or

(8) the practice by a person of a profession or occupation for which the person is licensed, registered, or certified under another law of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.150, eff. September 1, 2015.

SUBCHAPTER A-1. TEXAS BOARD OF RESPIRATORY CARE

Sec. 604.021. TEXAS BOARD OF RESPIRATORY CARE. The Texas Board of Respiratory Care is an advisory board to the Texas Medical Board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.022. APPOINTMENT OF ADVISORY BOARD. (a) The advisory board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four respiratory care practitioners who each have at least five years of experience as a respiratory care practitioner;

(2) two physicians licensed in this state who supervise respiratory care practitioners; and

(3) three members who represent the public.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.023. MEMBERSHIP ELIGIBILITY AND RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and

voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a public member of the advisory board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in a health care profession;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the medical board or advisory board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the medical board or advisory board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the medical board or advisory board other than compensation or reimbursement authorized by law for advisory board membership, attendance, or expenses.

(c) A person may not be a member of the advisory board if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) A person may not be a member of the advisory board or act as the general counsel to the advisory board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the medical board or advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.024. TERMS; VACANCIES. (a) Members of the advisory board are appointed for staggered six-year terms. The terms of three members expire on February 1 of each odd-numbered year.

(b) A member may not serve more than:

(1) two consecutive full terms; or

(2) a total of three full terms.

(c) If a vacancy occurs during a member's term, the governor shall appoint a new member to fill the unexpired term.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.025. OFFICERS. The governor shall designate a member of the advisory board as the presiding officer of the advisory board to serve in that capacity at the will of the governor. The advisory board shall select from its membership an assistant presiding officer and other officers as the advisory board considers necessary to carry out the advisory board's duties.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.026. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the advisory board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 604.022 and 604.023;

(2) does not maintain during service on the advisory board the qualifications required by Sections 604.022 and 604.023;

(3) is ineligible for membership under Section 604.023;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled advisory board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the advisory board.

(b) The validity of an action of the advisory board is not affected by the fact that it is taken when a ground for removal of an advisory board member exists.

(c) If the executive director of the medical board has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the advisory board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding

officer, the executive director shall notify the next highest ranking officer of the advisory board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.027. PER DIEM. A member of the advisory board is entitled to receive a per diem as set by legislative appropriation for each day that the member engages in the business of the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.028. APPLICATION OF OPEN MEETINGS, OPEN RECORDS, AND ADMINISTRATIVE PROCEDURE LAWS. Except as otherwise provided by this chapter, the advisory board is subject to Chapters 551, 552, and 2001, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.029. MEETINGS; QUORUM REQUIREMENTS. (a) The advisory board shall conduct regular meetings at least three times a year at the times and places the advisory board considers most convenient for applicants and advisory board members.

(b) The advisory board may hold special meetings in accordance with rules adopted by the advisory board and approved by the medical board.

(c) A majority of the advisory board members constitutes a quorum for all purposes except for an advisory board activity related to examining the credentials of applicants, acting as a panel for disciplinary action under Section 604.202, or conducting an informal meeting under Section 604.209.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.

Sec. 604.030. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the advisory board may not vote, deliberate, or be counted as a member in attendance at a meeting of the advisory board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing advisory board operations;

(2) the programs, functions, rules, and budget of the advisory board;

(3) the scope of and limitations on the rulemaking authority of the advisory board;

(4) the types of advisory board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the advisory board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the advisory board regulates;

(B) restricts advertising by persons in a profession or business the advisory board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the advisory board regulates; or

(D) restricts participation in a profession or business the advisory board regulates;

(5) the results of the most recent formal audit of the advisory board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the advisory board in performing their duties; and

(7) any applicable ethics policies adopted by the advisory board or the Texas Ethics Commission.

(c) A person appointed to the advisory board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless

of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the medical board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each advisory board member. Each board member shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.151, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1231 (H.B. 1504), Sec. 28, eff. September 1, 2019.

SUBCHAPTER B. POWERS AND DUTIES OF ADVISORY BOARD AND MEDICAL BOARD

Sec. 604.052. GENERAL POWERS AND DUTIES OF ADVISORY BOARD. (a) The advisory board shall:

(1) adopt rules that are reasonable and necessary for the performance of the advisory board's duties under this chapter, as provided by Chapter 2001, Government Code, including rules to establish:

(A) the certification and permitting program;

(B) minimum qualifications for respiratory care practitioners;

(C) standards of conduct and fitness for respiratory care practitioners;

(D) grounds for disciplinary actions;

(E) procedures for disciplinary proceedings;

(F) guidelines for the issuance of sanctions;

(G) procedures for non-disciplinary remedial plans; and

(H) procedures for requiring an applicant for or holder of a certificate or temporary permit to submit to:

(i) an examination of the applicant's or holder's physical or mental health; and

(ii) screening for alcohol or substance abuse or behavioral issues;

(2) review and approve or reject each application for the

issuance or renewal of a certificate or temporary permit;

(3) adopt procedures for the issuance or renewal of each certificate or permit;

(4) deny, suspend, restrict, cancel, or revoke a certificate or temporary permit or otherwise discipline a certificate or permit holder; and

(5) take any other action necessary to carry out the functions and duties of the advisory board under this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197, eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 2.197, eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.191, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.153, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.154, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.197(25), eff. September 1, 2015.

Sec. 604.0521. GUIDELINES FOR EARLY INVOLVEMENT IN RULEMAKING PROCESS. (a) The advisory board shall adopt guidelines to establish procedures for receiving input during the rulemaking process from individuals and groups that have an interest in matters under the advisory board's jurisdiction. The guidelines must provide an opportunity for those individuals and groups to provide input before the advisory board submits the rule to the medical board for approval.

(b) A rule adopted under this chapter may not be challenged on the grounds that the advisory board did not comply with this section. If the advisory board was unable to solicit a significant amount of input from the public or affected persons early in the rulemaking process, the advisory board shall state in writing the reasons why it

was unable to do so.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.155, eff. September 1, 2015.

Sec. 604.0522. POWERS AND DUTIES OF MEDICAL BOARD RELATING TO RESPIRATORY CARE PRACTITIONERS. (a) The medical board shall adopt rules consistent with this chapter to regulate:

(1) respiratory care practitioners; and

(2) physicians who supervise respiratory care practitioners.

(b) The medical board, by a majority vote, shall approve or reject each rule adopted by the advisory board. If approved, the rule may take effect. If the rule is rejected, the medical board shall return the rule to the advisory board for revision.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.155, eff. September 1, 2015.

Sec. 604.053. FEES. (a) The advisory board by rule shall set fees for an application, examination, certificate, temporary permit, permit and certificate renewal, and certificate reinstatement.

(b) The advisory board by rule shall set fees in reasonable amounts that are sufficient to cover the costs of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.192, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.156, eff. September 1, 2015.

Sec. 604.054. APPROVAL OF EDUCATION PROGRAMS. In determining whether to approve a respiratory care education program, the advisory board shall consider relevant information about the quality of the program, including accreditation of the program by a professional medical association, such as the Commission on Accreditation of

Allied Health Education Programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.157, eff. September 1, 2015.

Sec. 604.055. PEER ASSISTANCE PROGRAM. The advisory board may use the Texas Physician Health Program established under Chapter 167 as the advisory board's peer assistance program. The advisory board by rule may establish procedures for making a confidential referral to the Texas Physician Health Program and for requiring participation in the program as a prerequisite for issuing or maintaining a certificate or temporary permit under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.193, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.158, eff. September 1, 2015.

Sec. 604.057. RULES REGARDING ADVERTISING OR COMPETITIVE BIDDING. (a) The advisory board may not adopt rules restricting advertising or competitive bidding by a temporary permit or certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In adopting rules to prohibit false, misleading, or deceptive practices, the advisory board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a temporary permit or certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the temporary permit or certificate holder; or

(4) restricts the temporary permit or certificate holder's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(b), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.194, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.159, eff. September 1, 2015.

Sec. 604.058. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The advisory board shall adopt rules and guidelines as necessary to comply with Chapter 53, except to the extent the requirements of this chapter are stricter than the requirements of Chapter 53.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.160, eff. September 1, 2015.

Sec. 604.059. ASSISTANCE BY MEDICAL BOARD; DIVISION OF RESPONSIBILITIES. (a) The medical board shall provide administrative and clerical employees as necessary to enable the advisory board to administer this chapter.

(b) Subject to the advice and approval of the medical board, the advisory board shall develop and implement policies that clearly separate the policy-making responsibilities of the advisory board and the management responsibilities of the executive director and staff of the medical board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.160, eff. September 1, 2015.

Sec. 604.060. PUBLIC PARTICIPATION. Subject to the advice and approval of the medical board, the advisory board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the advisory board and to speak on any issue under the jurisdiction of the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.160, eff. September 1, 2015.

SUBCHAPTER C. CERTIFICATE AND TEMPORARY PERMIT REQUIREMENTS

Sec. 604.101. CERTIFICATE OR TEMPORARY PERMIT REQUIRED; SUPERVISION. (a) A person may not represent that the person is able to practice respiratory care or that the person is a respiratory care practitioner unless the person holds a certificate or temporary permit issued under this chapter.

(b) A person may not practice respiratory care other than under the direction of a qualified medical director or other physician licensed by the medical board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.195, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.161, eff. September 1, 2015.

Sec. 604.102. USE OF TITLE. (a) A person who does not hold a certificate or temporary permit under this chapter as a respiratory care practitioner or whose certificate or permit has been suspended or revoked may not:

(1) use in connection with the person's practice:

(A) the words "respiratory care," "respiratory therapist," "respiratory care practitioner," "certified respiratory care practitioner," or "respiratory therapy technician";

(B) the letters "R.C.P."; or

(C) any other words, letters, abbreviations, or insignia indicating or implying that the person is a respiratory care practitioner; or

(2) directly or by implication represent in any way that the person is a respiratory care practitioner.

(b) A person who holds a certificate or temporary permit to practice respiratory care under this chapter may use the title "respiratory care practitioner" and the abbreviation "R.C.P."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.103. APPLICATION; APPLICATION FEE. An applicant for a certificate or temporary permit must:

(1) apply to the advisory board on a form prescribed by and

under rules adopted by the advisory board; and

(2) submit a nonrefundable application fee with the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.196, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.162, eff. September 1, 2015.

Sec. 604.1031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR CERTIFICATE OR TEMPORARY PERMIT. (a) The advisory board shall require that an applicant for a certificate or temporary permit submit a complete and legible set of fingerprints, on a form prescribed by the advisory board, to the advisory board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The advisory board may not issue a certificate or temporary permit to a person who does not comply with the requirement of Subsection (a).

(c) The advisory board shall conduct a criminal history check of each applicant for a certificate or temporary permit using information:

(1) provided by the individual under this section; and

(2) made available to the advisory board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The advisory board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.163, eff. September 1, 2015.

Sec. 604.104. REQUIREMENT FOR CERTIFICATE. An applicant for a certificate must submit to the advisory board written evidence, verified by oath, that the applicant has completed:

(1) an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency; and

(2) a respiratory care education program approved by the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.164, eff. September 1, 2015.

Sec. 604.1041. EXAMINATION. (a) The advisory board by rule shall establish examination requirements for a certificate under this chapter. The advisory board may use the entry level examination prepared by the National Board for Respiratory Care or an equivalent examination.

(b) An applicant for a certificate or temporary permit must pass a jurisprudence examination approved by the advisory board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(c), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.197, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.165, eff. September 1, 2015.

Sec. 604.1042. NOTIFICATION OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a certification examination under this chapter, the advisory board shall notify the person of the results of the examination.

(b) If the examination is graded or reviewed by a testing service, the advisory board shall notify the person of the results of the examination not later than the 14th day after the date the advisory board receives the results from the testing service. If notice of the examination results will be delayed for longer than 90

days after the examination date, the advisory board shall notify the person of the reason for the delay before the 90th day.

(c) The advisory board may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a certification examination administered under this chapter, the advisory board shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.339(c), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.166, eff. September 1, 2015.

Sec. 604.105. ISSUANCE OF CERTIFICATE. The advisory board shall issue a certificate to an applicant who:

(1) meets the minimum qualifications adopted under Section 604.052(a);

(2) passes the required examinations;

(3) complies with the criminal history record information requirement of Section 604.1031;

(4) submits an application on a form prescribed by the advisory board;

(5) certifies that the applicant is mentally and physically able to be a respiratory care practitioner;

(6) submits to the advisory board any other information the advisory board considers necessary to evaluate the applicant's qualifications; and

(7) pays the certificate fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.167, eff. September 1, 2015.

Sec. 604.106. ISSUANCE OF CERTIFICATE BY RECIPROCITY. The advisory board may issue a certificate to a person who is licensed or certified to practice respiratory care by another state whose

requirements for licensure or certification were on the date the license or certificate was issued substantially equal to the requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.168, eff. September 1, 2015.

Sec. 604.107. REQUIREMENTS FOR TEMPORARY PERMIT. An applicant for a temporary permit to practice respiratory care must submit to the advisory board:

(1) written evidence, verified by oath, that the applicant is:

(A) practicing or has within the 12-month period preceding the application date practiced respiratory care in another state or country and is licensed to practice respiratory care in that state or country;

(B) a student in an approved respiratory care education program who expects to graduate from the program not later than the 30th day after the date the temporary permit is issued; or

(C) a graduate of an approved respiratory care education program; and

(2) any additional information required by advisory board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.169, eff. September 1, 2015.

Sec. 604.108. ISSUANCE OF TEMPORARY PERMIT; RENEWAL. (a) The advisory board shall issue a temporary permit to an applicant who:

(1) meets the requirements of Sections 604.103 and 604.107;

(2) complies with the criminal history record information requirement of Section 604.1031; and

(3) pays the permit fee.

(b) A temporary permit is valid for the period set by advisory board rule. The period may not be less than six months or more than

12 months.

(c) A person whose certificate or temporary permit has expired may not engage in activities that require a certificate or temporary permit until the certificate or temporary permit has been renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.340(a), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.198, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.170, eff. September 1, 2015.

Sec. 604.109. TRANSFER OF CERTIFICATE OR TEMPORARY PERMIT PROHIBITED. A certificate or temporary permit issued under this chapter may not be transferred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.110. DELEGATION OF AUTHORITY TO ISSUE CERTIFICATE OR TEMPORARY PERMIT. The advisory board may delegate authority to medical board employees to issue certificates or temporary permits under this chapter to applicants who clearly meet all applicable requirements. If the medical board employees determine that the applicant does not clearly meet all applicable requirements, the application must be returned to the advisory board. A certificate or temporary permit issued under this section does not require formal advisory board approval.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.171, eff. September 1, 2015.

SUBCHAPTER D. RENEWAL OF CERTIFICATE OR TEMPORARY PERMIT

Sec. 604.151. CERTIFICATE RENEWAL. (a) A certificate to practice respiratory care must be renewed biennially.

(b) The advisory board by rule may adopt a system under which certificates expire on various dates during the year. For the year

in which the certificate expiration date is changed, the advisory board shall prorate certificate fees on a monthly basis so that each certificate holder pays only that portion of the certificate fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date, the total certificate renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.341(a), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 167 (H.B. 102), Sec. 1, eff. May 27, 2005.
Acts 2005, 79th Leg., Ch. 167 (H.B. 102), Sec. 2, eff. May 27, 2005.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.199, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.172, eff. September 1, 2015.

Sec. 604.152. NOTICE OF CERTIFICATE RENEWAL. (a) Not later than the 30th day before the expiration date of a person's certificate, the advisory board shall mail a renewal notice to the person at the person's last known address.
(b) To renew a certificate, the certificate holder must:
(1) complete the renewal notice and return the notice with the renewal fee to the advisory board on or before the expiration date; and
(2) meet any other requirement established by advisory board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.173, eff. September 1, 2015.

Sec. 604.1521. PROCEDURE FOR RENEWAL. (a) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the advisory board a renewal fee that is

equal to 1-1/2 times the normally required renewal fee.

(b) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the advisory board a renewal fee that is equal to two times the normally required renewal fee.

(c) A person whose certificate has been expired for one year or more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.340(b), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.174, eff. September 1, 2015.

Sec. 604.1522. RENEWAL OF CERTIFICATE BY OUT-OF-STATE PRACTITIONER. (a) A person who was certified in this state, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination.

(b) The person must pay to the advisory board a fee that is equal to two times the normally required renewal fee for the certificate.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.340(b), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.175, eff. September 1, 2015.

Sec. 604.1523. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant for renewal of a certificate or temporary permit shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 604.1031.

(b) The advisory board may not renew the certificate or temporary permit of a person who does not comply with the requirement

of Subsection (a).

(c) A person is not required to submit fingerprints under this section for the renewal of a certificate or temporary permit if the person has previously submitted fingerprints under:

(1) Section 604.1031 for the initial issuance of the certificate or permit; or

(2) this section as part of a prior renewal of a certificate or permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.176, eff. September 1, 2015.

Sec. 604.153. ISSUANCE OF RENEWAL CERTIFICATE. (a) The advisory board shall issue to the certificate holder a certificate for the renewal period on receipt of the completed renewal notice and other information required by advisory board rule and payment of the renewal fee.

(b) The renewal is valid for the period stated on the renewal certificate.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.177, eff. September 1, 2015.

Sec. 604.154. CONTINUING EDUCATION REQUIREMENTS. (a) The advisory board shall establish for the renewal of a certificate uniform continuing education requirements of not less than 12 or more than 24 continuing education hours for each renewal period.

(b) The advisory board may adopt rules relating to meeting the continuing education requirements in a hardship situation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 167 (H.B. 102), Sec. 3, eff. May 27, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.200, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.178, eff.

September 1, 2015.

Sec. 604.156. INACTIVE STATUS. (a) A respiratory care practitioner who does not practice respiratory care during a renewal period and who notifies the advisory board that the practitioner is not practicing respiratory care is not required to pay the renewal fee until the practitioner resumes practice.

(b) To resume the practice of respiratory care, the practitioner must:

(1) notify the advisory board;

(2) satisfy requirements adopted by the advisory board; and

(3) pay the reinstatement fee and the renewal fee for the renewal period in which the practitioner will resume practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.201, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.179, eff. September 1, 2015.

Sec. 604.157. RENEWAL OF TEMPORARY PERMIT. (a) Before the expiration of a temporary permit, the permit holder may apply for renewal of the temporary permit.

(b) The advisory board may renew a temporary permit for not more than one additional period, pending compliance with this chapter and advisory board rules. The additional period may not be less than six months or more than 12 months.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.202, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.180, eff. September 1, 2015.

Sec. 604.158. REFUSAL FOR VIOLATION OF BOARD ORDER. The advisory board may refuse to renew a certificate or temporary permit

issued under this chapter if the certificate or permit holder is in violation of an advisory board order.

Added by Acts 2017, 85th Leg., R.S., Ch. 567 (S.B. 674), Sec. 16, eff. September 1, 2017.

SUBCHAPTER D-1. COMPLAINTS AND INVESTIGATIVE INFORMATION

Sec. 604.171. COMPLAINT INFORMATION AND STATUS. (a) The advisory board shall maintain a system to promptly and efficiently act on complaints filed with the advisory board. The advisory board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or investigation of the complaint; and

(3) information about the disposition of the complaint.

(b) The advisory board shall make information available describing its procedures for complaint investigation and resolution.

(c) If a written complaint is filed with the advisory board relating to a certificate or temporary permit holder, the advisory board, as often as quarterly and until final determination of the action to be taken on the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an active investigation.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.181, eff. September 1, 2015.

Sec. 604.172. CONDUCT OF INVESTIGATION. The advisory board shall complete a preliminary investigation of a complaint filed with the advisory board not later than the 45th day after the date of receiving the complaint. The advisory board shall first determine whether the person constitutes a continuing threat to the public welfare. On completion of the preliminary investigation, the advisory board shall determine whether to officially proceed on the complaint. If the advisory board fails to complete the preliminary investigation in the time required by this section, the advisory board's official investigation of the complaint is considered to commence on that date.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.181, eff. September 1, 2015.

Sec. 604.173. ACCESS TO COMPLAINT INFORMATION. (a) Except as provided by Subsection (b), the advisory board shall provide a person who is the subject of a formal complaint filed under this chapter with access to all information in its possession that the advisory board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint, subject to any other privilege or restriction established by rule, statute, or legal precedent. The advisory board shall provide the information not later than the 30th day after receipt of a written request from the person or the person's counsel, unless good cause is shown for delay.

(b) The advisory board is not required to provide:

(1) advisory board investigative reports;

(2) investigative memoranda;

(3) the identity of a nontestifying complainant;

(4) attorney-client communications;

(5) attorney work product; or

(6) other material covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) Providing information under this section does not constitute a waiver of privilege or confidentiality under this chapter or other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.181, eff. September 1, 2015.

Sec. 604.174. HEALTH CARE ENTITY REQUEST FOR INFORMATION. On the written request of a health care entity, the advisory board shall provide to the entity:

(1) information about a complaint filed against a person that was resolved after investigation by:

(A) a disciplinary order of the advisory board; or

(B) an agreed settlement; and

(2) the basis of and current status of any complaint that has been referred by the executive director of the medical board for enforcement action.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.181, eff. September 1, 2015.

Sec. 604.175. CONFIDENTIALITY OF INVESTIGATIVE INFORMATION. A complaint, adverse report, investigation file, other report, or other investigative information in the possession of or received or gathered by the advisory board, the medical board, or an employee or agent of the medical board relating to a certificate or temporary permit holder, an application for a certificate or temporary permit, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the advisory board, the medical board, or an employee or agent of the advisory board or medical board involved in discipline under this chapter. For purposes of this section, "investigative information" includes information related to the identity of a person performing or supervising compliance monitoring for the advisory board or medical board and a report prepared by the person related to compliance monitoring.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.181, eff. September 1, 2015.

Sec. 604.176. PERMITTED DISCLOSURE OF INVESTIGATIVE INFORMATION. (a) Investigative information in the possession of the advisory board, the medical board, or an employee or agent of the medical board that relates to the discipline of a certificate or temporary permit holder may be disclosed to:

(1) a licensing authority in another state or country in which the certificate or temporary permit holder is licensed, certified, or permitted or has applied for a license, certification, or permit; or

(2) a medical peer review committee reviewing:

(A) an application for privileges; or

(B) the qualifications of the certificate holder or person with respect to retaining privileges.

(b) If investigative information in the possession of the advisory board, the medical board, or an employee or agent of the

medical board indicates that a crime may have been committed, the advisory board or medical board, as appropriate, shall report the information to the proper law enforcement agency. The advisory board and medical board shall cooperate with and assist each law enforcement agency conducting a criminal investigation of a certificate or temporary permit holder by providing information relevant to the investigation. Confidential information disclosed to a law enforcement agency under this subsection remains confidential and may not be disclosed by the law enforcement agency except as necessary to further the investigation.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.181, eff. September 1, 2015.

SUBCHAPTER E. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 604.201. DISCIPLINARY ACTION. (a) For a violation of this chapter or a rule adopted under this chapter, the advisory board may:

(1) deny, suspend, suspend on an emergency basis, restrict, revoke, or refuse to renew a certificate or temporary permit;

(2) place the certificate or permit holder on probation under conditions set by the advisory board; or

(3) reprimand the certificate or permit holder.

(b) The advisory board shall take disciplinary action authorized under Subsection (a) if the advisory board determines that a person who holds a certificate or temporary permit:

(1) is guilty of fraud or deceit in procuring, renewing, or attempting to procure a certificate or temporary permit;

(2) is unfit or incompetent because of negligence or another cause of incompetency;

(3) is addicted to or has improperly obtained, possessed, used, or distributed a habit-forming drug or narcotic or is habitually intemperate in the use of alcoholic beverages;

(4) is guilty of dishonest or unethical conduct as determined by the advisory board;

(5) has practiced respiratory care after the person's certificate or temporary permit has expired;

(6) has practiced respiratory care under a certificate or temporary permit illegally or fraudulently obtained or issued;

(7) has practiced respiratory care without the direction of a qualified medical director or other licensed physician;

(8) has violated this chapter or aided or abetted another in violating this chapter; or

(9) has violated:

(A) a rule adopted under this chapter;

(B) an order of the advisory board previously entered in a disciplinary proceeding; or

(C) an order to comply with a subpoena issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.182, eff. September 1, 2015.

Sec. 604.2011. SURRENDER OF CERTIFICATE OR TEMPORARY PERMIT. (a) The advisory board may accept the voluntary surrender of a certificate or temporary permit. A person who has surrendered a certificate or temporary permit may not engage in activities that require a certificate or permit, and the advisory board may not return the certificate or permit to the person, until the person demonstrates to the satisfaction of the advisory board that the person is able to resume practice as a respiratory care practitioner.

(b) The advisory board shall by rule establish guidelines for determining when a person is competent to resume practice as a respiratory care practitioner.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.183, eff. September 1, 2015.

Sec. 604.202. EMERGENCY SUSPENSION. (a) The presiding officer of the advisory board shall appoint a three-member disciplinary panel consisting of advisory board members to determine whether a certificate or permit should be temporarily suspended.

(a-1) The disciplinary panel shall temporarily suspend a certificate or temporary permit issued under this chapter on a determination that continued practice by a certificate or temporary permit holder would constitute a continuing threat to the public

welfare.

(b) A certificate or temporary permit may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the advisory board simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the panel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.184, eff. September 1, 2015.

Sec. 604.203. ADMINISTRATIVE PROCEDURE FOR CONTESTED CASE HEARING. For a contested case hearing in which a formal complaint has been filed under this chapter, the procedure by which the advisory board takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by:

(1) advisory board rules for a contested case hearing; and

(2) Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.203, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.185, eff. September 1, 2015.

Sec. 604.204. EFFECT OF DENIAL OF APPLICATION OR REVOCATION OF CERTIFICATE OR TEMPORARY PERMIT. A person whose application for a certificate or temporary permit is denied or whose certificate or permit is revoked is ineligible for a certificate or permit under this chapter until the first anniversary of the date of the denial or revocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.205. DELEGATION OF CERTAIN COMPLAINT DISPOSITIONS. (a) The advisory board may delegate to a committee of medical board employees the authority to dismiss or enter into an agreed settlement of a complaint that does not relate directly to patient care or that involves only administrative violations. The disposition determined by the committee must be approved by the advisory board at a public meeting.

(b) A complaint delegated under this section shall be referred for an informal proceeding under Section 604.209 if:

(1) the committee of employees determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the affected person requests that the complaint be referred for an informal proceeding.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.206. SUBPOENA. (a) The executive director of the medical board, the director's designee, or the secretary-treasurer of the medical board may issue a subpoena or subpoena duces tecum for the advisory board:

(1) to conduct an investigation or a contested proceeding related to:

(A) alleged misconduct by a certificate or temporary permit holder;

(B) an alleged violation of this chapter or other law related to respiratory care; or

(C) the provision of health care under this chapter; or

(2) for purposes of determining whether to issue, suspend, restrict, or revoke a certificate or temporary permit under this chapter.

(b) Failure to timely comply with a subpoena issued under this section is a ground for:

(1) disciplinary action by the advisory board or another

licensing or regulatory agency with jurisdiction over the person subject to the subpoena; and

(2) denial of an application for a certificate or temporary permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.207. PROTECTION OF PATIENT IDENTITY. In a disciplinary investigation or proceeding conducted under this chapter, the advisory board shall protect the identity of each patient whose medical records are examined and used in a public proceeding unless the patient:

(1) testifies in the public proceeding; or

(2) submits a written release in regard to the patient's records or identity.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.208. REQUIRED SUSPENSION OF LICENSE OF INCARCERATED CERTIFICATE OR TEMPORARY PERMIT HOLDER. Regardless of the offense, the advisory board shall suspend the certificate or temporary permit of a person serving a prison term in a state or federal penitentiary during the term of the incarceration.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.209. INFORMAL PROCEEDINGS. (a) The advisory board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) informal proceedings held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under this section must require that:

(1) an informal meeting in compliance with Section 2001.054, Government Code, be scheduled and the advisory board give

notice to the person who is the subject of a complaint of the time and place of the meeting not later than the 45th day before the date the meeting is held;

(2) the complainant and the person who is the subject of the complaint be provided an opportunity to be heard;

(3) at least one of the advisory board members participating in the informal meeting as a panelist be a member who represents the public;

(4) a member of the medical board's staff be at the meeting to present to the advisory board's representative the facts the staff reasonably believes it could prove by competent evidence or qualified witnesses at a hearing; and

(5) the advisory board's legal counsel or a representative of the attorney general be present to advise the advisory board or the medical board's staff.

(c) The person who is the subject of the complaint is entitled to:

(1) reply to the staff's presentation; and

(2) present the facts the person reasonably believes the person could prove by competent evidence or qualified witnesses at a hearing.

(d) After ample time is given for the presentations, the advisory board representative shall recommend that the investigation be closed or shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under applicable law concerning contested cases.

(e) If the person who is the subject of the complaint has previously been the subject of disciplinary action by the advisory board, the advisory board shall schedule the informal meeting as soon as practicable.

(f) Section 604.175 applies to an investigation file and investigative information in the possession of or used by the advisory board in an informal proceeding under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.210. ADVISORY BOARD REPRESENTATION IN INFORMAL PROCEEDINGS. (a) In an informal meeting under Section 604.209, at

least two panelists shall be appointed to determine whether an informal disposition is appropriate.

(b) Notwithstanding Subsection (a) and Section 604.209(b)(3), an informal proceeding may be conducted by one panelist if the person who is the subject of the complaint waives the requirement that at least two panelists conduct the informal proceeding. If the person waives that requirement, the panelist may be any member of the advisory board.

(c) Except as provided by Subsection (d), the panel requirements described by Subsections (a) and (b) apply to an informal proceeding conducted by the advisory board under Section 604.209, including a proceeding to:

(1) consider a disciplinary case to determine if a violation has occurred; or

(2) request modification or termination of an order.

(d) The panel requirements described by Subsections (a) and (b) do not apply to an informal proceeding conducted by the advisory board under Section 604.209 to show compliance with an order of the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.211. ROLES AND RESPONSIBILITIES OF PARTICIPANTS IN INFORMAL PROCEEDINGS. (a) An advisory board member who serves as a panelist at an informal meeting under Section 604.209 shall make recommendations for the disposition of a complaint or allegation. The member may request the assistance of a medical board employee at any time.

(b) Medical board employees shall present a summary of the allegations against the person who is the subject of the complaint and of the facts pertaining to the allegation that the employees reasonably believe may be proven by competent evidence at a formal hearing.

(c) An attorney for the advisory board or medical board shall act as counsel to the panel and, notwithstanding Subsection (e), shall be present during the informal meeting and the panel's deliberations to advise the panel on legal issues that arise during the proceeding. The attorney may ask questions of a participant in

the informal meeting to clarify any statement made by the participant. The attorney shall provide to the panel a historical perspective on comparable cases that have appeared before the advisory board or medical board, keep the proceedings focused on the case being discussed, and ensure that the medical board's employees and the person who is the subject of the complaint have an opportunity to present information related to the case. During the panel's deliberations, the attorney may be present only to advise the panel on legal issues and to provide information on comparable cases that have appeared before the advisory board or medical board.

(d) The panel and medical board employees shall provide an opportunity for the person who is the subject of the complaint and the person's authorized representative to reply to the medical board employees' presentation and to present oral and written statements and facts that the person and representative reasonably believe could be proven by competent evidence at a formal hearing.

(e) An employee of the medical board who participated in the presentation of the allegation or information gathered in the investigation of the complaint, the person who is the subject of the complaint, the person's authorized representative, the complainant, the witnesses, and members of the public may not be present during the deliberations of the panel. Only the members of the panel and the attorney serving as counsel to the panel may be present during the deliberations.

(f) The panel shall recommend the dismissal of the complaint or allegations or, if the panel determines that the person has violated a statute or advisory board rule, the panel may recommend advisory board action and terms for an informal settlement of the case.

(g) The panel's recommendations under Subsection (f) must be made in a written order and presented to the affected person and the person's authorized representative. The person may accept the proposed settlement within the time established by the panel at the informal meeting. If the person rejects the proposed settlement or does not act within the required time, the advisory board may proceed with the filing of a formal complaint with the State Office of Administrative Hearings.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.212. LIMIT ON ACCESS TO INVESTIGATION FILES. The advisory board shall prohibit or limit access to an investigation file relating to a person subject to an informal proceeding in the manner provided by Sections 164.007(c) and 604.175.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.213. REFUND. (a) Subject to Subsection (b), the advisory board may order a certificate or temporary permit holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under Subchapter F.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the certificate or temporary permit holder for a service regulated by this chapter. The advisory board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

Sec. 604.214. EXPERT IMMUNITY. An expert who assists the advisory board is immune from suit and judgment and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding, or other action taken in the course of assisting the advisory board in a disciplinary proceeding. The attorney general shall represent the expert in any suit resulting from a service provided by the person in good faith to the advisory board.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.186, eff. September 1, 2015.

SUBCHAPTER F. ADMINISTRATIVE PENALTIES

Sec. 604.301. IMPOSITION OF PENALTY. The advisory board may impose an administrative penalty on a person who violates this

chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.187, eff. September 1, 2015.

Sec. 604.302. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $1,000 for each violation. Each day a violation continues is a separate violation.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.303. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts surrounding the possible violation, the advisory board determines that a violation occurred, the advisory board shall give written notice of the violation to the person alleged to have committed the violation. The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the proposed administrative penalty based on the factors set forth in Section 604.302(b); and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.188, eff. September 1, 2015.

Sec. 604.304. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the

notice under Section 604.303, the person may:

(1) accept the advisory board's determination and proposed administrative penalty; or

(2) make a written request for a hearing on that determination.

(b) If the person accepts the determination, the advisory board by order shall approve the determination and assess the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.204, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.189, eff. September 1, 2015.

Sec. 604.305. HEARING. (a) If the person requests a hearing in a timely manner, the advisory board shall:

(1) set a hearing; and

(2) give written notice of the hearing to the person.

(b) The hearings examiner shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the advisory board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.205, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.190, eff. September 1, 2015.

Sec. 604.306. DECISION BY ADVISORY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the advisory board by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The advisory board shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed; and

(3) a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.207, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.191, eff. September 1, 2015.

Sec. 604.307. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the

penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the advisory board by certified mail.

(c) If the advisory board receives a copy of an affidavit under Subsection (b)(2), the advisory board may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.192, eff. September 1, 2015.

Sec. 604.308. COLLECTION OF PENALTY. If the person does not pay the penalty and enforcement of the penalty is not stayed, the advisory board may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.193, eff. September 1, 2015.

Sec. 604.309. DETERMINATION OF COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.310. REMITTANCE OF PENALTY AND INTEREST. (a) If

after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty;

(2) order the release of the escrow account in full if the penalty is not imposed or order that the amount of a reduced penalty be paid from the escrow account and that the remainder of the account be released if the person paid the penalty into an escrow account; or

(3) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.311. ADMINISTRATIVE PENALTY EXPENSES AND COSTS. (a) In this section, "reasonable expenses and costs" includes expenses incurred by the advisory board or the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

(b) The advisory board may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, an administrative penalty is assessed against the person. The person shall pay expenses and costs assessed under this subsection not later than the 30th day after the date the order of the advisory board requiring the payment of expenses and costs is final. The advisory board may refer the matter to the attorney general for collection of the expenses and costs.

(c) If the attorney general brings an action against a person to enforce an administrative penalty assessed under this subchapter and the person is found liable for an administrative penalty, the attorney general may recover, on behalf of the attorney general and

the advisory board, reasonable expenses and costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.208, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.194, eff. September 1, 2015.

Sec. 604.312. ADMINISTRATIVE PROCEDURES. A proceeding relating to the assessment of an administrative penalty under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. CRIMINAL PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 604.351. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 604.101 or 604.102.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 604.352. OTHER CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly:

(1) sells, fraudulently obtains, or furnishes a respiratory care diploma, certificate, temporary permit, or record;

(2) practices respiratory care under a respiratory care diploma, certificate, temporary permit, or record illegally or fraudulently obtained or issued;

(3) impersonates in any manner a respiratory care practitioner;

(4) practices respiratory care while the person's certificate or temporary permit is suspended, revoked, or expired;

(5) conducts a formal respiratory care education program to prepare respiratory care personnel other than a program approved by the advisory board;

(6) employs a person as a respiratory care practitioner who

does not hold a certificate or temporary permit in the practice of respiratory care; or

(7) otherwise practices medicine in violation of Section 604.002.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 2.196, eff. September 1, 2015.

CHAPTER 605. ORTHOTISTS AND PROSTHETISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 605.001. SHORT TITLE. This chapter may be cited as the Orthotics and Prosthetics Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Orthotists and Prosthetists Advisory Board.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Custom-fabricated" means an orthosis or prosthesis designed, prescribed, fabricated, fitted, and aligned for a specific individual in accordance with sound biomechanical principles.

(4) "Custom-fitted" means an orthosis or prosthesis adjusted, prescribed, fitted, and aligned for a specific individual in accordance with sound biomechanical principles.

(5) "Department" means the Texas Department of Licensing and Regulation.

(5-a) "Executive director" means the executive director of the department.

(6) "Licensed orthotist" or "LO" means a person licensed under this chapter who practices orthotics and represents the person to the public by a title or description of services that includes the term "orthotics," "orthotist," "brace," "orthoses," "orthotic," or a similar title or description of services.

(7) "Licensed orthotist assistant" or "LOA" means a person

licensed under this chapter who assists at an orthotic or prosthetic facility and is under the supervision of a licensed orthotist responsible for the acts of the assistant.

(8) "Licensed prosthetist" or "LP" means a person licensed under this chapter who practices prosthetics and represents the person to the public by a title or description of services that includes the term "prosthetics," "prosthetist," "prostheses," "prosthetic," "artificial limb," or a similar title or description of services.

(9) "Licensed prosthetist assistant" or "LPA" means a person licensed under this chapter who assists at an orthotic or prosthetic facility and is under the supervision of a licensed prosthetist responsible for the acts of the assistant.

(10) "Licensed prosthetist orthotist" or "LPO" means a person licensed under this chapter who practices both orthotics and prosthetics and represents the person to the public by a title or description of services that includes the terms "prosthetics orthotics," "prosthetist orthotist," "prosthetic orthotic," "artificial limb," "brace," or a similar title or description of services.

(11) "Licensed prosthetist orthotist assistant" or "LPOA" means a person licensed under this chapter who assists at an orthotic or prosthetic facility and is under the supervision of a licensed prosthetist orthotist or a licensed prosthetist and licensed orthotist responsible for the acts of the assistant.

(12) "Orthosis" means a custom-fabricated or custom-fitted medical device designed to provide for the support, alignment, prevention, or correction of a neuromuscular or musculoskeletal disease, injury, or deformity. The term does not include a fabric or elastic support, corset, arch support, low-temperature plastic splint, truss, elastic hose, cane, crutch, soft cervical collar, orthosis for diagnostic or evaluation purposes, dental appliance, or any other similar device carried in stock and sold by a drugstore, department store, or corset shop.

(13) "Orthotic or prosthetic facility" means a location, including a building or office, where the profession and practice of orthotics or prosthetics normally takes place.

(14) "Orthotics" means the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed physician,

chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board, for the correction or alleviation of a neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

(15) "Person" means an individual, corporation, partnership, association, or other organization.

(16) "Profession of orthotics or prosthetics" means allied health care medical services used to identify, prevent, correct, or alleviate acute or chronic neuromuscular or musculoskeletal dysfunctions of the human body that support and provide rehabilitative health care services concerned with the restoration of function, prevention, or progression of disabilities resulting from disease, injury, or congenital anomalies. Orthotic and prosthetic services include direct patient care, including consultation, evaluation, treatment, education, and advice to maximize the rehabilitation potential of disabled individuals.

(17) "Prosthesis" means a custom-fabricated or custom-fitted medical device used to replace a missing limb, appendage, or other external human body part but that is not surgically implanted. The term includes an artificial limb, hand, or foot. The term does not include:

(A) an artificial eye, ear, finger, or toe;

(B) a dental appliance;

(C) a cosmetic device, including an artificial breast, eyelash, or wig; or

(D) another device that does not have a significant impact on the musculoskeletal functions of the body.

(18) "Prosthetics" means the science and practice of measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board.

(19) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 11.001(1), eff. September 1, 2019.

(20) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 11.001(1), eff. September 1, 2019.

(21) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 11.001(1), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 545 (H.B. 2703), Sec. 1, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.209, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(10), eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.166, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 11.001(1), eff. September 1, 2019.

SUBCHAPTER B. ORTHOTISTS AND PROSTHETISTS ADVISORY BOARD

Sec. 605.052. ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of seven members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two licensed orthotist members who each have practiced orthotics for the five years preceding the date of appointment;

(2) two licensed prosthetist members who each have practiced prosthetics for the five years preceding the date of appointment;

(3) one licensed prosthetist orthotist member who has practiced orthotics and prosthetics for the five years preceding the date of appointment;

(4) one member who is a representative of the public who uses an orthosis; and

(5) one member who is a representative of the public who uses a prosthesis.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 30.01, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.168, eff.

September 1, 2015.

Sec. 605.0521. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.169, eff. September 1, 2015.

Sec. 605.055. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms. The terms of two or three members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 30.02, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.170, eff. September 1, 2015.

Sec. 605.056. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall designate a member of the advisory board to serve as the presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.171, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 7.001, eff. September 1, 2017.

Sec. 605.059. MEETINGS. (a) Repealed by Acts 2015, 84th Leg.,

R.S., Ch. 838 , Sec. 1.222(157), eff. September 1, 2015.

(b) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(c) Four or more advisory board members may call a special meeting of the advisory board by providing written notice not less than 14 days before the date of the meeting to:

(1) the presiding officer of the commission;

(2) the executive director; and

(3) all other members of the advisory board.

(d) Not more than two special meetings of the advisory board may be called under Subsection (c) in a calendar year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.172, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(157), eff. September 1, 2015.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 605.151. GENERAL POWERS AND DUTIES. The executive director shall administer and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.343(a), eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.173, eff. September 1, 2015.

Sec. 605.155. EXAMINATIONS. The department must approve any examination required for a license under this chapter. Each examination shall be offered at least once each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.174, eff. September 1, 2015.

SUBCHAPTER F. LICENSE, REGISTRATION, AND ACCREDITATION REQUIREMENTS

Sec. 605.251. LICENSE REQUIRED. A person may not practice, attempt to practice, or offer to practice orthotics or prosthetics, act as an assistant to a person who practices orthotics or prosthetics, or in any way hold the person out as being able to practice orthotics or prosthetics unless the person holds a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.178, eff. September 1, 2015.

Sec. 605.2515. ADDITIONAL LICENSE: DEVICE MANUFACTURER. A person licensed to practice orthotics or prosthetics who measures, designs, fabricates, fits, assembles, adjusts, or services an orthosis or a prosthesis under an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board, for a specific patient is exempt from licensing as a device manufacturer under Subchapter L, Chapter 431, Health and Safety Code. A person licensed to practice orthotics or prosthetics who fabricates or assembles an orthosis or a prosthesis without an order from a licensed physician, chiropractor, or podiatrist, or an advanced practice nurse or physician assistant acting under the delegation and supervision of a licensed physician as provided by Subchapter B, Chapter 157, and rules adopted by the Texas Medical Board, for a specific patient is required to be licensed as a device manufacturer under Subchapter L, Chapter 431, Health and Safety Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 220 (S.B. 1271), Sec. 1, eff. May 27, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 545 (H.B. 2703), Sec. 2, eff. September 1, 2011.

Sec. 605.252. LICENSE ELIGIBILITY. (a) To be eligible for a

license to practice orthotics or prosthetics in this state, a person must:

(1) submit an application in the manner and on the form prescribed by the executive director;

(2) pay the nonrefundable application fee;

(3) have completed formal training, including the required hours of classroom education and clinical practice, in an area of study the commission by rule determines to be necessary and appropriate;

(4) have completed a clinical residency in the professional area for which a license is sought that complies with the standards, guidelines, or procedures established by the department for a clinical residency that is offered in this state or another state; and

(5) have passed each written and practical examination approved and required by the department.

(b) The requirements for a license established by commission rule must include the requirement that the applicant hold:

(1) a bachelor's or graduate degree in orthotics and prosthetics from:

(A) an education program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs that is offered at an institution of higher education; or

(B) a practitioner education program that has education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(2) a bachelor's degree in another subject and an orthotic or prosthetic certificate issued by a practitioner education program:

(A) recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; or

(B) that has education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs.

(c) To meet the clinical residency requirements for a license, the applicant must complete a professional clinical residency that meets the requirements established by commission rule and is conducted under the direct supervision of a licensed orthotist, licensed prosthetist, or a licensed prosthetist orthotist in the discipline for which licensure is sought. The clinical residency

requirements adopted by the commission must be equivalent to or exceed the standards set by the National Commission on Orthotic and Prosthetic Education.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 7.006(1), eff. September 1, 2017.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 511 (S.B. 141), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.179, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 7.002, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 7.006(1), eff. September 1, 2017.

Sec. 605.254. EXEMPTIONS FROM OR SUBSTITUTES FOR LICENSE REQUIREMENTS. (a) A person is entitled to an exemption from the license requirements established under Section 605.252 if the person presents evidence satisfactory to the department that the person possesses unique qualifications to practice orthotics, prosthetics, or orthotics and prosthetics.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(169), eff. September 1, 2015.

(c) The department shall issue a license to a person who is determined to be eligible for a license under Subsection (a). A person to whom a license is issued under this subsection is entitled to the same license privileges as if the person met the educational and vocational requirements of Section 605.252. The license holder is subject to the license renewal requirements established by the commission, other than the academic, clinical training, and examination requirements, which the commission may not impose as a condition of the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.180, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(169),

eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 7.003, eff. September 1, 2017.

Sec. 605.255. ASSISTANT LICENSE. (a) An applicant for a license as an orthotist assistant or prosthetist assistant must:

(1) submit an application in the manner and on a form prescribed by the executive director;

(2) pay the nonrefundable application fee established by the commission by rule; and

(3) present evidence satisfactory to the department that the applicant has completed an education program, including courses in the anatomical, biological, and physical sciences, and a clinical residency as prescribed and adopted by the commission by rule.

(b) An assistant licensed under this section may provide only ancillary patient care services, as defined by the commission by rule, in the discipline in which the assistant's supervisor is licensed under this chapter.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(170), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.181, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(170), eff. September 1, 2015.

Sec. 605.256. ISSUANCE OF LICENSE OR REGISTRATION CERTIFICATE; TERM. (a) The department may issue a license or registration certificate under this chapter only to an individual.

(b) The department shall issue a license in orthotics or prosthetics to an applicant who meets the requirements provided under this chapter. A license may be granted in either orthotics or prosthetics, or in both, if the person meets the requirements established by the department.

(c) A license is valid for two years from the date issued and may be renewed before expiration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.182, eff. September 1, 2015.

Sec. 605.257. TEMPORARY LICENSE. (a) The department may issue a temporary license to an individual who:

(1) has applied for a license as an orthotist, prosthetist, or both;

(2) has regularly practiced orthotics, prosthetics, or both for the five years preceding the date of the application; and

(3) has been licensed by a state that has license requirements that are equal to or exceed the requirements of this chapter.

(b) A temporary license is valid for one year from the date issued. A temporary license may be renewed for not more than one additional year if the applicant presents evidence sufficient to the department of good cause for renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.183, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 7.004, eff. September 1, 2017.

Sec. 605.258. STUDENT REGISTRATION CERTIFICATE. (a) The department may issue a student registration certificate to an individual who is working toward fulfilling the requirements for a license as an orthotist, prosthetist, or prosthetist orthotist and:

(1) holds either:

(A) a bachelor's or graduate degree in orthotics and prosthetics from:

(i) an education program recognized and accredited by the Commission on Accreditation of Allied Health Education Programs that is offered at an institution of higher education; or

(ii) a practitioner education program that has education standards that are equivalent to or exceed the standards

adopted by the Commission on Accreditation of Allied Health Education Programs; or

(B) a bachelor's degree in another subject and an orthotic or prosthetic certificate issued by a practitioner education program:

(i) recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; or

(ii) that has education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(2) is a student who:

(A) is currently enrolled in a graduate program in this state in orthotics and prosthetics that:

(i) is recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; and

(ii) incorporates a professional clinical residency that meets the requirements of rules adopted under Section 605.252(c); and

(B) submits to the department a written certification from the graduate program in which the student is enrolled that the student has successfully completed the academic prerequisites to enter a professional clinical residency.

(b) A student registrant may work only under the direct supervision of a licensed orthotist, licensed prosthetist, or licensed prosthetist orthotist who is responsible for the acts of the student registrant and licensed in the discipline of the student registrant's clinical residency.

(c) A student registration certificate is valid for two years from the date issued and may be renewed once for an additional two years.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 511 (S.B. 141), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.184, eff. September 1, 2015.

Sec. 605.260. ACCREDITATION OF FACILITIES. (a) The commission

by rule shall establish requirements for the accreditation and the renewal of an accreditation of an orthotic or prosthetic facility in which orthotics or prosthetics are conducted. The department may issue an accreditation only to an orthotic or prosthetic facility.

(b) If a person owns more than one facility, the department may require only one application for the accreditation of each of the person's facilities. Each orthotic or prosthetic facility must meet the requirements established by commission rule.

(c) An orthotic or prosthetic facility must be under the on-site direction of an orthotist or prosthetist licensed by the department in the discipline for which accreditation is sought.

(d) The rules adopted under this section may not prohibit a licensed individual from practicing in an orthotic or prosthetic facility within the scope of the individual's license.

(e) This section does not apply to a facility licensed under Subtitle B, Title 4, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.186, eff. September 1, 2015.

SUBCHAPTER G. EXEMPTIONS

Sec. 605.301. EXEMPTION FOR LICENSE HOLDERS OF OTHER STATE AGENCIES. This chapter does not restrict a person who holds a license issued by another state agency from performing health care services within the scope of the license holder's applicable licensing act if the license holder:

(1) practices in conformance with the applicable laws and rules relating to the person's license; and

(2) does not:

(A) violate Section 605.251;

(B) represent to others that the license holder practices orthotics or prosthetics; or

(C) use the terms "prosthetist," "prosthesis," "prosthetic," "artificial limb," "orthotist," "orthosis," "orthotic," or "brace" or the letters "LP," "LPA," "LO," "LOA," "LPO," or "LPOA" or any derivative of those terms or letters in connection with the license holder's name or practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.302. EXEMPTION FOR STUDENTS IN ORTHOTICS OR PROSTHETICS. This chapter does not apply to the activities and services of a student in orthotics or prosthetics who is:

(1) pursuing a course of study in:

(A) an orthotic or prosthetic program at a college or university recognized and accredited by the Commission on Accreditation of Allied Health Education Programs; or

(B) an orthotic or prosthetic education program having education standards that are equivalent to or exceed the standards adopted by the Commission on Accreditation of Allied Health Education Programs; or

(2) working in a recognized training center or research facility, if the activities and services provided by the person at the training center or research facility constitute a part of the person's course of study in the discipline in which the person's supervisor is licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.303. EXEMPTION FOR CERTAIN LICENSE HOLDERS. This chapter does not apply to:

(1) a podiatrist practicing under Chapter 202;

(2) a chiropractor practicing under Chapter 201;

(3) an occupational therapist practicing under Chapter 454; or

(4) a physical therapist practicing under Chapter 453.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.304. EXEMPTION FOR PEDORTHISTS. (a) In this section:

(1) "Certified pedorthist" means a person certified by the Board for Certification in Pedorthics in the design, manufacture, fit, and modification of shoes and related foot orthoses below the anatomical ankle joint as prescribed by a licensed doctor of medicine or a doctor of podiatry for the amelioration of a painful or disabling condition of the foot; and

(2) "Foot orthosis" includes prosthetic toe fillers or orthoses for use below the ankle.

(b) This chapter does not apply to a certified pedorthist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.305. EXEMPTION FOR PHARMACISTS. A pharmacist licensed by the Texas State Board of Pharmacy or a person who is working under the direct supervision of a pharmacist may practice orthotics. This chapter does not preclude a pharmacist from being reimbursed by a state-funded program for providing orthotic services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. PROHIBITED PRACTICES

Sec. 605.351. USE OF TITLE. A person or an employee, agent, or representative of the person may not use in connection with the person's name or business activities the terms or a combination of the terms or letters described in Section 605.301(2), indicate orally or in writing, directly or by implication, that an orthotic or prosthetic service is provided or supplied, or extend or provide orthotic or prosthetic services unless the person is an orthotist or prosthetist or an assistant to an orthotist or prosthetist licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 605.352. VIOLATION OF SECTION 102.001. A person licensed under this chapter is considered to have violated this chapter if the person violates Section 102.001.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.827, eff. Sept. 1, 2001.

SUBTITLE L. CREMATORY SERVICES, FUNERAL DIRECTING, AND EMBALMING

CHAPTER 651. CREMATORY SERVICES, FUNERAL DIRECTING, AND EMBALMING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 651.001. DEFINITIONS. In this chapter:

(1) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum.

(2) "Commission" means the Texas Funeral Service Commission.

(3) "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(4) "Embalmer" means a person licensed under this chapter who for compensation, wholly or partly, disinfects or preserves a dead human body by:

(A) using chemical substances, fluids, or gases, including by introducing those substances, fluids, or gases into the body by:

(i) vascular or hypodermic injection; or

(ii) direct application into the organs or cavities; or

(B) another method intended to disinfect or preserve a dead human body or to restore body tissues and structures.

(5) "First call" means the beginning of the relationship and duty of a funeral director to take charge of a dead human body and have the body prepared for burial or disposition by embalming, cremation, or another method. The term does not include an ambulance call if the person dispatching the ambulance does not know whether a dead human body is to be picked up.

(6) "Funeral director" means a person licensed under this chapter who engages in for compensation, or represents to the public as being engaged in for compensation, the preparation, other than by embalming, of a dead human body for burial or other disposition.

(7) "Funeral directing" means acts associated with or arranging for the disposition of a dead human body, performed by a person for compensation, from the time of first call until:

(A) inurnment, interment, or entombment services are complete; or

(B) the body is permanently transported out of this state.

(8) "Funeral establishment" means:

(A) a place of business used in the care and preparation for burial or transportation of a dead human body; or

(B) any other place in which a person engages in, or

represents the person to be engaged in, the business of embalming or funeral directing.

(9) "Funeral merchandise" means merchandise sold primarily for use in:

(A) a funeral ceremony;

(B) embalming; or

(C) the care and preparation of a dead human body for burial, cremation, or other disposition.

(10) "Funeral service" means a service performed incident to a funeral ceremony or for the care and preparation of a dead human body for burial, cremation, or other disposition. The term includes embalming.

(11) "Mortuary science" means the scientific, professional, and practical aspects, with consideration given to accepted practices, of the care, preparation for burial, or transportation of a dead human body. The term includes the preservation and sanitation of a dead human body and restorative art.

(12) "Outer enclosure" means an enclosure or container placed in a grave above or around the casket. The term includes a burial vault, grave box, or grave liner.

(12-a) "Perpetual care cemetery" means a cemetery regulated under Chapter 712, Health and Safety Code.

(13) "Prospective customer" means a consumer who enters a funeral establishment and inquires about a funeral service, cremation, or merchandise.

(14) "Provisional license holder" means a person who:

(A) is engaged in learning the practice of funeral directing or embalming under the instruction, direction, and personal supervision of a funeral director or embalmer; and

(B) holds a provisional license issued by the commission under this chapter.

(15) "Purchase agreement" means a written statement that itemizes the cost of funeral services or merchandise selected by a customer from the retail price list.

(16) "Solicitation" means a direct or indirect contact by a funeral director, embalmer, or employee, agent, or representative of a licensed funeral establishment or any other entity with a person near death or the family of, next of kin of, or person responsible for making funeral arrangements for a person who is deceased or near death, if the contact is not initiated by the person near death or

the family, next of kin, or person responsible for making funeral arrangements and the contact is to secure the right to provide funeral services or merchandise or occurs in a situation that might influence the contacted person to choose a particular funeral establishment. The term does not include:

(A) except in the case of contact with a person near death or the person responsible for making funeral arrangements for a person near death, an attempt to secure funeral business under a permit issued under Chapter 154, Finance Code; or

(B) any method of advertising by publication or broadcasting.

(17) "Unit pricing" means a method of pricing that offers a discount to a purchaser who buys various funeral services and merchandise as a package.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.03, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 1, eff. Sept. 1, 2003.

Sec. 651.002. APPLICATION OF SUNSET ACT. The Texas Funeral Service Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2031.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.04, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.06, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 8, eff. September 1, 2019.

Sec. 651.003. CONSTRUCTION WITH OTHER LAW. (a) This chapter does not affect the authority of the Texas Department of Banking to enforce Chapter 154, Finance Code, or to regulate perpetual care cemeteries.

(b) The authority of the commission under Chapter 154, Finance

Code, is limited to:

(1) imposing an administrative penalty;

(2) issuing a reprimand; or

(3) suspending, revoking, or probating a license issued by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 3, eff. Sept. 1, 2003.

Sec. 651.004. REGULATION OF CREMATORY SERVICES. (a) The commission shall regulate crematory services as provided by this chapter and Chapter 716, Health and Safety Code.

(b) The commission may not regulate crematory services that occur after burial or inurnment unless the services relate to the care and treatment of the remains in an urn, casket, or outer enclosure.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 4, eff. Sept. 1, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 9, eff. September 1, 2019.

Sec. 651.005. REGULATION OF WILLED BODY PROGRAMS, NON-TRANSPLANT ANATOMICAL DONATION ORGANIZATIONS, AND ANATOMICAL FACILITIES. The commission shall regulate willed body programs, non-transplant anatomical donation organizations, and anatomical facilities as provided by Chapter 691, Health and Safety Code, and in accordance with the powers and duties granted by this chapter to the extent necessary to regulate the programs, organizations, and facilities under that chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.21, eff. September 1, 2023.

SUBCHAPTER B. TEXAS FUNERAL SERVICE COMMISSION

Sec. 651.051. COMMISSION MEMBERSHIP. (a) The Texas Funeral Service Commission consists of seven members appointed by the governor, with the advice and consent of the senate as follows:

(1) two members who are licensed as both an embalmer and a funeral director for at least the five years preceding appointment to the commission;

(2) one member who is a crematory owner or operator; and

(3) four members who represent the public and who:

(A) are not regulated under this chapter; and

(B) have consistently shown an interest in supporting consumer protection.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) Each member of the commission must be a United States citizen.

(d) Before entering on the duties of office, each commissioner shall take and subscribe to the oath of office prescribed for other state officials. The oath shall be filed in the office of the secretary of state after having been administered under proper authority.

(e) Each person appointed to the commission shall be furnished with a certificate of appointment by the governor that evidences that the person took the official oath of office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.05, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 10, eff. September 1, 2019.

Sec. 651.0511. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing commission operations;

(2) the programs, functions, rules, and budget of the commission;

(3) the scope of and limitations on the rulemaking

authority of the commission;

(4) the results of the most recent formal audit of the commission;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(6) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the commission shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the commission. Each member of the commission shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.06, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 11, eff. September 1, 2019.

Sec. 651.052. ELIGIBILITY OF PUBLIC MEMBERS. (a) A person may not be a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the funeral service industry;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization

regulated by or receiving money from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) A public member of the commission may not, except as a consumer:

(1) have a financial interest in a funeral establishment; or

(2) be related to a person within the second degree by affinity or third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, who has a financial interest in a funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.07, eff. Sept. 1, 2001.

Sec. 651.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the funeral service industry; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the funeral service industry.

(c) A person may not be a member of the commission or act as the general counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.08, eff. Sept. 1, 2001.

Sec. 651.054. TERMS; VACANCY. (a) Members of the commission serve staggered six-year terms, with the terms of one-third of the members expiring in each odd-numbered year.

(b) The governor shall appoint a person to fill a vacancy on the commission to serve for the remainder of the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.374(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 514 (S.B. 221), Sec. 1, eff. June 14, 2013.

Sec. 651.055. GROUNDS FOR REMOVAL. (a) The governor shall remove from the commission a commissioner whose license to practice funeral directing or embalming has been revoked or suspended.

(b) The governor may remove a commissioner for neglect of duty, incompetence, or fraudulent or dishonest conduct.

(c) It is a ground for removal from the commission that a member:

(1) does not have at the time of appointment the qualifications required by Sections 651.051(a) and (c) and 651.052(a);

(2) does not maintain during service on the commission the qualifications required by Sections 651.051(a) and (c) and 651.052(a);

(3) violates a prohibition established by Sections 651.053(a)-(e) or 651.506(h);

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5) is absent for more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(d) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(e) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.056. REIMBURSEMENT; PER DIEM. (a) A commissioner shall be reimbursed for necessary travel expenses incurred in performing the business of the commission.

(b) In addition to reimbursement under Subsection (a), a commissioner shall receive a per diem allowance for each day spent by the commissioner on business of the commission not to exceed 60 days in any calendar year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.057. OFFICERS. (a) The governor shall designate one member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) After 30 days' written notice is given to the commissioners, the commission shall elect from its public members an assistant presiding officer. The assistant presiding officer serves in that capacity for one year.

(c) The presiding officer shall preside at all meetings of the commission, unless otherwise ordered, and shall exercise all duties and performances incident to the office of presiding officer. In the absence of the presiding officer, the assistant presiding officer shall preside.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.375(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 5, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 961 (S.B. 2040), Sec. 1.22, eff.

September 1, 2023.

Sec. 651.058. OFFICE LOCATION. The commission's offices are located in Austin, Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.059. MEETINGS; NOTICE. (a) The commission shall meet in regular session in Austin at least once each calendar quarter to transact business.

(b) The commission may hold a special meeting or hearing on the call of the presiding officer, assistant presiding officer, or three members. The person calling the special meeting or hearing shall determine the time and place of the meeting or hearing.

(c) Notice of the time, place, and purpose of a regular meeting of the commission must be filed with the Texas Register at least seven days before the date of the meeting. All meetings, including meetings of the committees of the members, are open and public.

(d) The commission's duties under Chapter 551, Government Code, include the requirement under Sections 551.021 and 551.022 of that code to prepare and maintain the minutes of each open meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.376(a), eff. Sept. 1, 2001.

Sec. 651.060. LEGAL REPRESENTATION. (a) The attorney general shall designate at least one employee of the attorney general's office to advise the commission and to represent the commission in legal proceedings.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 514, Sec. 2, and Ch. 364, Sec. 1, eff. June 14, 2013.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.377(a), eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 364 (H.B. 2710), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 514 (S.B. 221), Sec. 2, eff. June 14, 2013.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 651.101. EXECUTIVE DIRECTOR; BOND. (a) The commission shall employ and supervise an executive director to manage the administrative affairs of the commission under this chapter. The commission shall determine the terms and conditions of the executive director's employment and set the executive director's salary at an amount not to exceed the maximum salary for the position as set in the General Appropriations Act. In the absence of an executive director, the commission may appoint an acting executive director.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(38).

(c) The commission may delegate the commissioners' duties to the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.377(b), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 285, Sec. 31(38), eff. Sept. 1, 2003.

Sec. 651.102. PERSONNEL. The commission may employ inspectors and clerical and technical assistants as the commission determines to be necessary to administer this chapter. The commission shall determine the terms and expenses of its employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.377(c), eff. Sept. 1, 2001.

Sec. 651.103. INVESTIGATORS. The commission shall employ one or more persons to investigate complaints received by the commission, including consumer interest complaints.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.378(a), eff. Sept. 1, 2001.

Sec. 651.104. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.09, eff. Sept. 1, 2001.

Sec. 651.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commission shall provide to its members and employees, as often as necessary, information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to the standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.106. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry-level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(c) The programs required under Subsections (a) and (b) must cover an annual period, be updated at least annually, and be filed with the governor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.379(a), eff. Sept. 1, 2001.

Sec. 651.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee

shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with federal and state law and a description of reasonable methods to achieve compliance with federal and state law.

(c) The policy statement must:

(1) be updated at least annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.10, eff. Sept. 1, 2001.

SUBCHAPTER D. COMMISSION POWERS AND DUTIES

Sec. 651.151. GENERAL POWERS AND DUTIES. (a) The commission shall establish proficiency, professionalism, ethics, and qualification standards for individuals issued a license under this chapter.

(b) The commission shall examine each applicant for a funeral director's license, embalmer's license, or provisional license and shall issue the appropriate license to a person who meets the licensing requirements.

(c) The commission may appoint a committee from its members to consider and make a recommendation on a matter referred to the committee by the commission.

(d) The commission may appoint advisory committees to perform the advisory functions assigned to the committees by the commission. An advisory committee appointed under this subsection is subject to Chapter 2110, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 6, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 12, eff. September 1, 2019.

Sec. 651.152. RULES; PROCEDURES; FORMS. The commission shall adopt rules, establish procedures, and prescribe forms necessary to administer and enforce this chapter and Chapters 714 and 715, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 7, eff. Sept. 1, 2003.

Sec. 651.1525. EARLY PARTICIPATION IN RULEMAKING PROCESS; GUIDELINES. (a) Before publishing a proposed rule for public comment, the commission shall seek advice and opinions from persons who will be most affected by the rule. At a minimum, those persons must include consumer groups and trade associations that represent persons from each group regulated by the commission, including funeral directors and crematory operators.
(b) The commission shall develop guidelines to implement this section. The guidelines must establish a method to determine who will be most affected by a proposed rule.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 13, eff. September 1, 2019.

Sec. 651.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a person regulated by the commission except to prohibit false, misleading, or deceptive practices by the person.
(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.154. FEES. (a) The commission by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 36(1), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 36(1), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 19, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 14, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 36(1), eff. September 1, 2019.

Sec. 651.155. FEE EXEMPTION FOR MILITARY SERVICE. (a) On presentation to the commission of evidence as prescribed by the commission, a license holder or provisional license holder actively engaged in the military service of the United States is exempt from the payment of license fees for the duration of the holder's military service or from the amount of fees and for the time the commission considers advisable.

(b) The commission may not consider the period of military service in determining whether a funeral director's license or embalmer's license is revoked, suspended, or lapsed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.156. SUBPOENA. (a) The commission may issue a subpoena or subpoena duces tecum.

(b) The subpoena or subpoena duces tecum must be served by personal service or certified mail, return receipt requested.

(c) The commission by rule shall establish standards that enable the executive director to issue subpoenas and subpoenas duces tecum in connection with a complaint under investigation by the commission.

(d) A subpoena or subpoena duces tecum issued under this section is not effective unless it is issued in compliance with:

(1) state and federal law; and

(2) commission rules adopted under Subsection (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.380(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 20, eff. September 1, 2009.

Sec. 651.157. INSPECTION OF CREMATORY OR FUNERAL ESTABLISHMENT. (a) Except as provided by Subsection (b), a licensed crematory or funeral establishment shall be inspected at least once every three years by an agent of the commission or by an agent of the state or a political subdivision authorized by the commission to make inspections on its behalf.

(b) If the commission finds a violation of this chapter or of Chapter 193, 361, 711, 714, 715, or 716, Health and Safety Code, the commission shall inspect the crematory or funeral establishment annually until the commission determines that the establishment is free of violations.

(c) A report of each inspection made under this section shall be filed with the commission.

(d) The commission by rule shall establish:

(1) procedures for the inspection of a crematory or funeral establishment required by this section; and

(2) criteria, including consideration of the establishment's inspection and complaint history, regarding when the commission should inspect an establishment based on the risk of a violation at an establishment.

(e) A premises on which funeral directing, interment, cremation, or embalming is practiced shall be open at all times to inspection for any violation of this chapter or of Chapter 193, 361, or 716, Health and Safety Code, by:

(1) an agent of the commission;

(2) an authorized agent of the state; or

(3) an authorized agent of the county or municipality in which the premises is located.

(f) Before a commission agent inspects a crematory or funeral establishment, the agent shall review the inspection reports filed with the commission on the establishment. During the inspection, the agent shall determine whether previously identified problems have been corrected and whether a pattern of violations exists. The commission shall consider the information from the inspection reports in determining whether a penalty should be imposed against an establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.11, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 15, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 16, eff. September 1, 2019.

Sec. 651.158. INSPECTION OF CERTAIN FACILITIES. (a) The commission may require a funeral establishment that has solid waste disposal and sanitation facilities that have not been inspected by the Texas Department of Health to obtain inspection of those facilities by an entity other than the Texas Department of Health.

(b) The commission by rule shall establish procedures for an inspection required under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.159. MEMORANDUM OF UNDERSTANDING: PREPAID FUNERAL SERVICES. (a) The commission, the Texas Department of Insurance, and the Texas Department of Banking shall adopt a joint memorandum of understanding relating to prepaid funeral services and transactions. The memorandum must:

(1) outline the responsibilities of each agency in regulating prepaid funeral services and transactions;

(2) establish procedures to be used by each agency in:

(A) referring a complaint to one of the other agencies;

(B) investigating a complaint; and

(C) notifying the other agencies of a complaint or a complaint investigation;

(3) specify:

(A) an action the agencies regard as a deceptive trade practice; and

(B) the information the agencies provide consumers and when that information is to be provided; and

(4) set the administrative penalty each agency imposes for a violation.

(b) Not later than the last month of each state fiscal year, the commission and the other agencies shall review and update the memorandum of understanding.

(c) Each agency by rule shall adopt the memorandum of understanding and any revision to the memorandum.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.160. MEMORANDUM OF UNDERSTANDING: FUNERAL ESTABLISHMENT REQUIREMENTS. (a) The commission and the Texas Department of Health shall adopt a joint memorandum of understanding that:

(1) outlines the responsibilities of each agency in enforcing requirements under Chapters 193 and 361, Health and Safety Code, that affect funeral establishments;

(2) establishes procedures by which each agency:

(A) may refer a complaint to the other; and

(B) will notify the other of a violation by a funeral establishment of Chapter 193 or 361, Health and Safety Code; and

(3) coordinates inspection and enforcement efforts by both

agencies for measures that a funeral establishment is required to implement under Chapters 193 and 361, Health and Safety Code.

(b) Not later than the last month of each state fiscal year, the commission and the Texas Department of Health shall review and update the memorandum of understanding.

(c) Each agency by rule shall adopt the memorandum of understanding and any revision to the memorandum.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.162. ANNUAL REPORT. (a) The commission shall prepare a written annual report describing the activities of the commission during the preceding fiscal year. The report must include information regarding:

(1) licensing, inspection, and enforcement activities;

(2) changes to commission policies; and

(3) complaint information.

(b) The commission shall post the report on the commission's Internet website.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.382(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(154), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 89, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 17, eff. September 1, 2020.

Sec. 651.163. REQUEST FOR ATTORNEY GENERAL'S OPINION. A request for an opinion under Subchapter C, Chapter 402, Government Code, must be approved by the commissioners.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.383(a), eff. Sept. 1, 2001.

Sec. 651.164. LICENSE EXPIRATION; TERM. (a) A license issued under this chapter, other than a provisional license, is valid for a term of one or two years as provided by commission rule.

(b) The commission by rule shall adopt a system under which licenses expire on various dates during the year. For a license that is issued for less than a full term, the commission shall prorate license fees on a monthly basis so that the license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Renumbered from Sec. 651.262 and amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.17, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 18, eff. September 1, 2019.

Sec. 651.165. RENEWAL OR REINSTATEMENT OF LICENSE. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may renew the license by:

(1) retaking and passing the applicable examination;

(2) paying any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(3) completing any continuing education required under Section 651.266.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f) At least 30 days before the expiration of a person's license, the commission shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Renumbered from Sec. 651.263 and amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.18, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 21, eff. September 1, 2009.

Sec. 651.1655. REINSTATEMENT OF SUSPENDED LICENSE. A person whose license has been suspended may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee in addition to any penalty assessed by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 22, eff. September 1, 2009.

Sec. 651.166. USE OF TECHNOLOGY. The commission shall develop and implement a policy requiring the executive director and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the commission on the Internet;

(2) ensure that persons who want to use the commission's services are able to:

(A) interact with the commission through the Internet; and

(B) access any service that can be provided effectively

through the Internet; and

(3) be cost-effective and developed through the commission's planning processes.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 13, eff. Sept. 1, 2003.

Sec. 651.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 13, eff. Sept. 1, 2003.

SUBCHAPTER E. PUBLIC INTEREST AND COMPLAINT INFORMATION

Sec. 651.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare a brochure with information of public interest:

(1) explaining matters relating to funerals; and

(2) describing:

(A) the functions of the commission; and

(B) the commission's procedures for filing and resolving a public complaint.

(b) The commission shall:

(1) provide each licensed funeral establishment with the

number of brochures the commission considers appropriate; and

(2) make the brochure available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.202. COMPLAINTS. (a) The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notice:

(1) on each license form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The commission shall adopt rules concerning a complaint filed under this section. The rules adopted under this subsection must:

(1) establish procedures regarding the receipt, investigation, and disposition of complaints;

(2) allow for an informal hearing process;

(3) establish a formal hearing process;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint;

(5) ensure that the license holder who is the subject of the complaint has an opportunity to be heard regarding the complaint; and

(6) establish procedures by which a commission employee may dismiss a complaint, subject to approval by the executive director or the executive director's designee, if the investigation does not reveal a violation.

(c) The commission shall investigate each complaint received by the commission relating to a funeral director, embalmer, provisional license holder, funeral establishment, or other person licensed or registered under this chapter.

(d) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy

of the commission's policies and procedures relating to complaint investigation and resolution, including an explanation of the remedies that are available to the person under this chapter and information about other appropriate state or local agencies or officials with which the person may file a complaint.

(e) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(f) The person who filed the complaint is entitled to attend any proceeding resulting from the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 14, eff. Sept. 1, 2003.

Sec. 651.203. RECORD OF COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the subject matter of the complaint;

(2) the date the complaint is received by the commission;

(3) the name of the person who filed the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 36(3), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.14, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.378(b), eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 36(3), eff. September 1, 2019.

Sec. 651.2035. CONFIDENTIALITY OF COMPLAINT INFORMATION. (a) Except as provided by Subsection (b), a complaint and investigation and all information and materials compiled by the commission in connection with the complaint and investigation are not subject to:

(1) disclosure under Chapter 552, Government Code; or

(2) disclosure, discovery, subpoena, or other means of legal compulsion for release of information to any person.

(b) A complaint or investigation subject to Subsection (a) and all information and materials compiled by the commission in connection with the complaint may be disclosed to:

(1) the commission and commission employees or agents involved in license holder discipline;

(2) a party to a disciplinary action against the license holder or that party's designated representative;

(3) a law enforcement agency; or

(4) a governmental agency, if the disclosure is required or permitted by law.

(c) The commission is not required under Subsection (b) to release the identity of a complainant who will not testify at the hearing.

(d) Notwithstanding Subsection (a), on the dismissal or final resolution of a complaint or investigation, a final order of the commission is subject to disclosure under Chapter 552, Government Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 19, eff. September 1, 2019.

Sec. 651.204. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

(c) A member of the public is not required to provide notice to the commission before appearing and speaking before the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.376(b), eff. Sept. 1, 2001.

SUBCHAPTER F. LICENSE REQUIREMENTS: FUNERAL DIRECTORS AND EMBALMERS

Sec. 651.251. LICENSE REQUIRED. (a) Funeral directing may be performed only by a funeral director or a provisional license holder or qualified mortuary student under the supervision and direction of a funeral director. A person may not engage or profess to be engaged in the business of funeral directing or hold the person out to the public as a funeral director unless the person is licensed as a funeral director.

(b) Embalming may be performed only by an embalmer or a provisional license holder or qualified mortuary student under the supervision and direction of an embalmer. A person may not engage or profess to be engaged in the business of embalming or hold the person out to the public as an embalmer unless the person is licensed as an embalmer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.252. LICENSE APPLICATION. (a) An applicant for a funeral director's license or an embalmer's license must submit a written license application to the commission and pay the application fee.

(b) The commission may require an applicant to appear before at least one member of the commission for approval of the person's application. The approval is subject to review by the entire commission.

(c) The commission shall keep a permanent, alphabetical record of each license application and the action taken on the application. The record must indicate the current status of each application and license issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.253. GENERAL LICENSE REQUIREMENTS. (a) To be eligible for a funeral director's license or an embalmer's license, an applicant must:

(1) be at least 18 years of age;

(2) have graduated from an accredited high school or passed an examination prescribed by the Texas Education Agency;

(3) have graduated from an accredited school or college of mortuary science;

(4) unless the applicant holds a reciprocal license, have completed the requirements of the provisional license program; and

(5) have successfully completed the applicable written examination described by Section 651.255 or 651.256.

(b) An applicant for a funeral director's license or an embalmer's license may not be considered for that license until the applicant:

(1) completes all of the requirements of the provisional license program; and

(2) attains a grade of at least 75 percent on the written examination given by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 1, eff. September 1, 2015.

Sec. 651.254. LICENSE EXAMINATIONS; RESULTS. (a) The examinations for a funeral director's license and an embalmer's license shall be held at least annually. The examinations shall be given at the time and place designated by the commission. The commission shall give notice of the examinations.

(b) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the commission shall notify the person of the results of the examination.

(c) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(d) The commission may require a testing service to notify a person of the results of the person's examination.

(e) If requested in writing by a person who fails a licensing examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 651.255. EXAMINATIONS REQUIRED FOR FUNERAL DIRECTOR'S LICENSE. The commission shall administer or arrange for the administration of:

(1) a written professionally prepared examination on:

(A) the art and technique of funeral directing;

(B) the signs of death;

(C) the manner by which death may be determined;

(D) sanitation and hygiene;

(E) mortuary management and mortuary law;

(F) business and professional ethics; and

(G) other subjects that may be taught in a recognized school or college of mortuary science; and

(2) a written examination developed by the commission or developed for the commission by contract on:

(A) laws applicable to vital statistics pertaining to dead human bodies; and

(B) local and state rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.256. EXAMINATIONS REQUIRED FOR EMBALMER'S LICENSE. The commission shall administer or arrange for the administration of:

(1) a written professionally prepared examination on:

(A) the anatomy of the human body, including:

(i) the cavities of the human body; and

(ii) the arterial and venous system of the human body;

(B) blood and discoloration;
(C) bacteriology and hygiene;
(D) pathology;
(E) chemistry and embalming;
(F) arterial and cavity embalming;
(G) restorative art;
(H) disinfecting;
(I) embalming special cases;
(J) contagious and infectious diseases;
(K) mortuary management;
(L) care, preservation, transportation, and disposition of dead human bodies;
(M) sanitary science; and
(N) other subjects that may be taught in a recognized school or college of mortuary science; and
(2) a written examination developed by the commission or developed for the commission by contract on:
(A) laws applicable to vital statistics pertaining to dead human bodies; and
(B) local and state rules and laws relating to the care and disposition of dead human bodies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.257. FOREIGN STUDENTS; CERTIFICATE OF MERIT. (a) A citizen of a country other than the United States who has completed a full course of mortuary science at a commission-approved college in this state may take the commission examination in embalming, funeral directing, or both after:
(1) applying to the commission; and
(2) paying the examination fee required of other applicants.
(b) The commission may award the applicant a certificate of merit if the applicant successfully makes the minimum grades required of other applicants. The certificate of merit does not authorize the holder of the certificate to practice embalming or funeral directing in this state unless the holder is otherwise licensed as an embalmer or funeral director under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.258. LICENSE ISSUANCE. On issuance of a funeral director's license or an embalmer's license under this chapter, a majority of the commission members shall sign the license. The license authorizes the license holder to practice embalming, funeral directing, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.259. APPLICATION BY OUT-OF-STATE LICENSE HOLDER. (a) The commission shall waive any requirement for a funeral director's license or an embalmer's license for an applicant who holds a license issued by another state, country, or territory that has license requirements substantially equivalent to the requirements of this state and who meets the requirements of this section. The commission may waive any license requirement for an applicant who holds a license issued by another state that does not have license requirements substantially equivalent to those of this state and who meets the requirements of this section. The applicant shall pay a license fee in an amount set by the commission.

(b) Any applicant for a license under this section shall file a sworn application that includes:

(1) a statement that:

(A) the applicant is the person to whom the license was issued;

(B) no proceeding has been instituted against the applicant for the cancellation, suspension, or revocation of the license in the state, country, or territory that issued the license; and

(C) no prosecution is pending against the applicant in a state or federal court for an offense that, under the laws of this state, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing; and

(2) an affidavit of a person described by Subsection (c) verifying that:

(A) the accompanying license has not been canceled, suspended, or revoked; and

(B) the statement of the qualifications made in the

application for licensure in this state is correct.

(c) The affidavit must be made by:

(1) the presiding officer or secretary of the governmental entity that issued the license; or

(2) a registration officer of the state, country, or territory that issued the license.

(d) The applicant must affirm in the statement that the license under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant moved was, at the time the applicant left, in effect.

(e) The commission shall conduct a criminal background check on each applicant.

(f) An applicant for a license under this section must:

(1) provide proof that:

(A) the license is in good standing;

(B) the applicant has practiced under the license for at least:

(i) one year in the state that issued the license if that state has license requirements substantially equivalent to those of this state; or

(ii) five years in the state that issued the license if that state does not have license requirements substantially equivalent to those of this state; and

(C) the applicant has graduated from an accredited college of mortuary science; and

(2) pass a written examination of not more than 50 questions on applicable state laws and commission rules.

(g) The commission shall conduct the examination under Subsection (f)(2) at each regularly scheduled meeting of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.384(a), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 20, eff. September 1, 2019.

Sec. 651.260. DUPLICATE LICENSE. (a) A license holder may

apply to the commission for a duplicate license:

(1) if a license issued under this chapter is lost or destroyed; or

(2) as needed to comply with Section 651.261.

(b) The license holder must submit the application on a form prescribed by the commission and must submit with the application an affidavit verifying:

(1) for an applicant under Subsection (a)(1), the loss or destruction of the license;

(2) that the license holder is the person to whom the license was issued; and

(3) for an applicant under Subsection (a)(1), any other information concerning the loss or destruction of the license the commission requires.

(c) The commission shall issue a duplicate license after receipt of the information and payment of the fee set by the commission for the duplicate license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 21, eff. September 1, 2019.

Sec. 651.261. POSTING OF LICENSE. A license holder shall conspicuously display the holder's license in each place of business at which the license holder practices.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 16, eff. Sept. 1, 2003.

Sec. 651.264. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The commission may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is licensed and has been in practice in the other state for the two years before the person applied for a renewal license.

(b) The person must pay to the commission a fee equal to the renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.265. RENEWAL FOR CERTAIN RETIRED APPLICANTS; INACTIVE STATUS. (a) A license holder who is at least 65 years of age or who has a disability of 75 percent or greater at the time an application for renewal is submitted may apply for renewal of the license in the category of retired, inactive status, or the category of retired, active status.

(b) On application, the commission may renew the license of a retired license holder who does not provide funeral or embalming services in the category of retired, inactive status. The commission may not charge a fee for the renewal of a license for retired, inactive status.

(c) On application, the commission may renew in the category of retired, active status, the license of a retired license holder who participates in any manner, nominal or otherwise, in the provision of funeral or embalming services. The commission shall charge a fee equal to one-half of the amount of the license renewal fee charged other active license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.266. CONTINUING EDUCATION. The commission by rule may require continuing education as a condition for license renewal except for a license holder described by Section 651.155 or an applicant for renewal described by Section 651.265. If the commission requires continuing education, the commission shall require completion of a minimum number of hours of ethics training as a required part of that education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.19, eff. Sept. 1, 2001.

Sec. 651.267. REISSUANCE OF REVOKED LICENSE. (a) On application, the commission may reissue a license issued under this subchapter to a person whose license has been revoked. An application to reissue a license may not be made before the third anniversary of the date of the revocation.

(b) The application shall be made in the manner and form required by the commission.

(c) A hearing to determine whether to reissue a license shall be held before the commission unless the commission requires the hearing to be held before a hearings officer.

(d) A license that has been revoked may be reinstated only after the applicant:

(1) retakes and passes the applicable examination;

(2) pays a fee that is equal to two times the normally required renewal fee; and

(3) satisfies any other commission requirements, including any continuing education requirements under Section 651.266.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 17, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 23, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 24, eff. September 1, 2009.

SUBCHAPTER G. LICENSE REQUIREMENTS: PROVISIONAL LICENSE HOLDERS

Sec. 651.301. PROVISIONAL LICENSE REQUIRED. A person must obtain a provisional license before the person may engage in learning the practice of funeral directing or embalming under the instruction, direction, and personal supervision in this state of a licensed funeral director or embalmer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.302. APPLICATION; ISSUANCE OF PROVISIONAL LICENSE. (a) The commission shall issue a provisional license to practice funeral directing to an applicant who:

(1) is at least 18 years of age;

(2) has completed the educational requirements of Section 651.253 or is enrolled in an accredited school or college of mortuary science;

(3) is employed by a funeral establishment to learn funeral directing under the instruction and supervision of a funeral

director;

(4) files an application for a provisional license on a form provided by the commission and verified under oath by the applicant;

(5) pays any required application or license fee; and

(6) complies with the requirements of this chapter and of the commission.

(b) The commission shall issue a provisional license to practice embalming to an applicant who:

(1) is at least 18 years of age;

(2) has completed the educational requirements of Section 651.253 or is enrolled in an accredited school or college of mortuary science;

(3) is employed by a funeral establishment or commercial embalming facility to learn embalming under the instruction and supervision of an embalmer;

(4) files an application for a provisional license on a form provided by the commission and verified under oath by the applicant;

(5) pays any required application or license fee; and

(6) complies with the requirements of this chapter and of the commission.

(c) The commission shall waive the requirements of Subsection (a)(2) or (b)(2) for a period not to exceed 12 months for an applicant who is otherwise qualified and shall issue to the applicant a provisional license that expires at the end of that period.

(d) An applicant must submit to a criminal background check before submitting an application for a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 18, 42(2), eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 2, eff. September 1, 2015.

Sec. 651.303. PROVISIONAL LICENSE PROGRAM. (a) The commission shall prescribe and supervise the course of instruction received by a provisional license holder while participating in a provisional license program.

(a-1) A provisional license holder may work only:

(1) in a funeral establishment or commercial embalming facility licensed by the commission; and

(2) under the direct and personal supervision of a funeral director or embalmer, as applicable.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 50 , Sec. 10(1), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 50 , Sec. 10(1), eff. September 1, 2015.

(d) The provisional license program must include assisting with at least 45 cases. Not more than two provisional license holders may receive credit for work done on any one body. The commission by rule shall:

(1) define the standards for a case;

(2) set the number of cases a provisional license holder is required to complete during the program; and

(3) establish guidelines for supervision under which a provisional license holder is granted increased responsibilities during the course of the provisional license program.

(e) The standards required for a complete case include:

(1) for an embalmer, all the duties and activities necessary for embalming; and

(2) for a funeral director, all the activities necessary from the time the body is obtained until final disposition.

(e-1) The commission by rule shall prescribe case reporting requirements for provisional license holders. The commission shall provide case report forms to be used by a provisional license holder.

(f) The funeral director provisional license program may be served concurrently with the embalmer provisional license program.

(g) When conducting funeral arrangements, a provisional license holder shall inform family members and other persons with whom the arrangements are being made that the license holder has a provisional license and works under the personal supervision of a licensed funeral director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 19, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 634 (S.B. 864), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 10(1), eff. September 1, 2015.

Sec. 651.3035. MORTUARY COLLEGE CREDIT FOR PROVISIONAL LICENSE PROGRAM. (a) A funeral directing or embalming case completed for credit while attending an accredited mortuary school or college may serve as credit toward the provisional license holder program.

(b) A mortuary school or college may designate a funeral director or embalmer who is supervising a provisional license holder under Section 651.303 as a clinical instructor for the provisional license holder.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 20, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 4, eff. September 1, 2015.

Sec. 651.304. EMPLOYMENT NOTIFICATION. (a) On entering employment with a funeral establishment or commercial embalming facility, a provisional license holder shall immediately notify the commission of the name of the establishment or facility where the provisional license holder will train. The funeral director or embalmer in charge must sign the notification.

(b) A provisional license holder must be employed by a funeral establishment or commercial embalming facility, as applicable, during the term of the provisional license. If a provisional license holder is not employed as required by this subsection, the commission shall cancel the provisional license.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(2), eff. September 1, 2009.

(d) If a provisional license holder leaves the employment of the funeral establishment or commercial embalming facility, the funeral director or embalmer in charge shall prepare an affidavit showing the length of time the provisional license holder was employed and the number of cases handled while employed by the establishment or facility. The funeral director or embalmer shall

file the original affidavit with the commission as a matter of record. The funeral director or embalmer shall provide a copy of the affidavit to the provisional license holder.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 50 , Sec. 10(2), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 21, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 25, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(2), eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 10(2), eff. September 1, 2015.

Sec. 651.3045. TERM OF PROVISIONAL LICENSE. (a) Except as provided by Subsection (c), a provisional license is valid for 12 consecutive months and may be renewed only once for a period not to exceed an additional 12 consecutive months.

(b) The commission shall cancel a provisional license if the license holder fails to complete the licensing requirements of the provisional license program within 24 consecutive months.

(c) If a provisional license holder holds a provisional license issued under Section 651.302(c), the provisional license may be renewed for a period not to exceed 24 consecutive months and the provisional license holder must complete the licensing requirements of the provisional license program within 36 consecutive months.

(d) A provisional license holder who completes the requirements of the provisional license program and is otherwise eligible for a funeral director's or embalmer's license may receive that license regardless of the date the provisional license is due to expire.

Added by Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 7, eff. September 1, 2015.

Sec. 651.305. RENEWAL OR REINSTATEMENT OF PROVISIONAL LICENSE. (a) , (b) Repealed by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001.

(c) If a provisional license holder fails to renew the provisional license, the commission shall:

(1) impose a late payment penalty equal to the amount of the license renewal fee;

(2) suspend the license for nonpayment; and

(3) notify the provisional license holder of the suspension.

(d) If the renewal fee and penalty are not paid before the 91st day after the date of the notice of suspension, the commission shall cancel the license.

(d-1) If the license is canceled under Subsection (d), the provisional license holder may apply for reinstatement not later than the date the license would have expired if the license had been renewed. The commission may reinstate the canceled license if:

(1) all other commission requirements are satisfied; and

(2) the license fee and a late payment penalty equal to the amount of the license fee for the period of the cancellation are paid.

(d-2) A reinstated license expires on the date the license would have expired if the license had been timely renewed.

(d-3) A provisional license holder may not work as a funeral director or embalmer while the license is suspended or canceled.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 50 , Sec. 10(3), eff. September 1, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 50 , Sec. 10(3), eff. September 1, 2015.

(g) The commission may adopt rules relating to the reinstatement of a provisional license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 10(3), eff. September 1, 2015.

Sec. 651.3055. REAPPLICATION FOR PROVISIONAL LICENSE. (a) A person who does not complete the provisional license program within the prescribed period may reapply for a provisional license.

(b) A person who reapplies for a provisional license must comply with the requirements of Section 651.303. Casework performed under a previous provisional license may not be counted toward the requirements for the new provisional license. The commission may adopt rules to allow casework performed under a previous provisional license to transfer to a new provisional license if the license holder requests a hardship exemption.

(c) A person may reapply for a provisional license under this section only once.

Added by Acts 2015, 84th Leg., R.S., Ch. 50 (H.B. 1219), Sec. 9, eff. September 1, 2015.

Sec. 651.306. PERSONAL SUPERVISION. For the purposes of this chapter, personal supervision requires the physical presence of a funeral director or embalmer at the specified place and time a funeral service is provided.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. LICENSE REQUIREMENTS: FUNERAL AND COMMERCIAL EMBALMER ESTABLISHMENTS

Sec. 651.351. FUNERAL ESTABLISHMENT LICENSE REQUIREMENTS. (a) A funeral establishment may not conduct a funeral business unless it is licensed by the commission.

(b) This chapter does not require a funeral establishment to be owned by a person licensed under this chapter.

(c) To obtain an initial funeral establishment license, an applicant must apply for a license and pay the licensing fee. The commission shall issue an initial funeral establishment license on determining that the applicant satisfies the requirements of this section.

(d) A funeral establishment must:

(1) meet the building, fire safety, and health standards and health ordinances of this state and of the municipality in which the establishment is located;

(2) except as provided by Subsection (i), be located at a fixed place that is not tax-exempt property or a cemetery;

(3) include facilities in which funeral services may be conducted;

(4) have access to rolling stock consisting of at least one motor hearse;

(5) include a preparation room containing the facilities, equipment, and supplies required by commission rule to ensure the provision of adequate embalming services;

(6) include other facilities as necessary to comply with the sanitary codes of this state and of the municipality in which the room is located; and

(7) include a display containing sufficient merchandise to permit reasonable selection, including at least five adult caskets, two of which must be full-size and displayed in a casket showroom.

(e) Each funeral establishment must have sufficient licensed personnel to conduct the operation of the funeral establishment.

(f) The least expensive casket displayed under Subsection (d)(7) must be a full-size casket displayed in the same general manner as the other full-size caskets are displayed. The three adult caskets that are not required to be full-size under Subsection (d)(7) may be displayed:

(1) in a partial panel display; or

(2) by video or brochure, online, or in any other manner.

(g) The commission may exempt a funeral establishment from the requirements of Subsection (d)(5) if the establishment meets the requirements for the exemption provided by commission rule.

(h) The executive director shall notify the petitioner of the commission's decision. The exemption remains in effect until:

(1) the establishment is no longer located within 50 miles of a facility owned by the exempt establishment or at which embalming services may be performed; or

(2) an embalming service has been performed at the establishment.

(i) Subsection (d)(2) does not apply to a funeral establishment that is:

(1) located on the real property of a public junior college; and

(2) operated in connection with an accredited educational program in funeral services offered by the public junior college.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(a), eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 26, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 492 (S.B. 755), Sec. 1, eff. June 19, 2009.
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 23, eff. September 1, 2019.

Sec. 651.352. COMMERCIAL EMBALMERS ESTABLISHMENT LICENSE REQUIREMENTS. (a) In this section, "commercial embalmers establishment" means an establishment that:

(1) embalms for licensed funeral establishments;

(2) does not sell services or merchandise directly or at retail to the public; and

(3) meets the requirements for an embalmers license.

(b) An establishment that functions solely as a commercial embalmers establishment is required to hold a commercial embalmers establishment license but is not required to comply with the requirements for a funeral establishment license under Sections 651.351(d)(3), (d)(6), and (f).

(c) A commercial embalmers establishment may employ an embalmer only if the embalmer is licensed under this chapter.

(d) An embalming service, whether provided at a funeral establishment or other embalming facility licensed under this chapter, must comply with this chapter or a rule adopted under this chapter.

(e) A licensed commercial embalmers establishment that meets the licensing requirements under Subchapter N may hold a crematory establishment license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(b), eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 596 (H.B. 56), Sec. 2, eff. September 1, 2007.

Sec. 651.354. RENEWAL OF FUNERAL ESTABLISHMENT LICENSE. (a) The commission shall mail written notice to a funeral establishment of the impending expiration of the establishment's license not later than the 30th day before the expiration date of the license. The notice must state that:

(1) to renew the license, the funeral establishment must pay the renewal fee in an amount provided by rule not later than the license expiration date; and

(2) the license is automatically renewed on receipt of the renewal fee.

(b) A funeral establishment that fails to pay the license renewal fee by the due date is subject to a late payment penalty in an amount determined by rule.

(c) If the license is expired for longer than 30 days, the funeral establishment may not operate as a funeral establishment until the renewal fee and the late payment penalty are paid.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 24, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 28, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 24, eff. September 1, 2019.

SUBCHAPTER I. PRACTICE BY LICENSE HOLDER

Sec. 651.401. FIRST CALL; REMOVAL OF BODY. (a) First call occurs at the beginning of a relationship between a funeral director and a person authorized by Section 711.002, Health and Safety Code, to control the disposition of the decedent's remains.

(b) Notwithstanding Subsection (c), a funeral director must direct the pickup of a dead human body under this chapter.

(c) A dead human body may be transferred without a funeral director directing the transfer at the direction of a justice of the peace or other law enforcement official.

(d) A funeral director may direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead

human body. A funeral director who directs the removal of a dead human body by an unlicensed person is strictly accountable for compliance with the requirements of this chapter. If an unlicensed person, a provisional license holder, or an embalmer inadvertently encounters a family member or other person with whom funeral arrangements are normally made, the person shall restrict communication with the family member or other person to:

(1) identifying the person's employer; and

(2) making any disclosure to the family member or other person that is required by federal or state law or regulation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.386(a), eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 25, eff. September 1, 2019.

Sec. 651.402. RELATIONSHIP OF FUNERAL DIRECTOR TO FUNERAL ESTABLISHMENT. A person may act as a funeral director in directly or indirectly providing funeral services for compensation only if the person:

(1) is acting as a licensed employee of a licensed funeral establishment that has contracted to provide those funeral services; or

(2) is a licensed agent, subcontractor, or assignee of the licensed funeral establishment that has contracted to provide those funeral services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.403. DESIGNATION OF FUNERAL DIRECTOR IN CHARGE; EFFECT OF VIOLATION. (a) A funeral establishment shall:

(1) designate to the commission a funeral director in charge; and

(2) promptly notify the commission of any change in that designation.

(b) The funeral director in charge is directly responsible for the funeral directing and embalming business of the funeral

establishment.

(c) The funeral director in charge is ultimately responsible for compliance with the mortuary laws. The funeral director in charge may be charged with a violation of this chapter if a violation occurs in the funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.404. CONSUMER BROCHURE. When funeral services are discussed, a funeral director or agent of the funeral establishment shall provide each prospective customer with a copy of the brochure prepared by the commission under Section 651.201. The funeral establishment shall print additional copies of the brochure if the commission is unable to provide the number of brochures needed by the funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.405. RETAIL PRICE LIST; FUNERAL ESTABLISHMENT. (a) "Retail price list" means a printed or typewritten list of the retail price of items or services provided by a funeral establishment and must include the retail price of:

(1) transferring a deceased person to the funeral establishment;

(2) embalming;

(3) using a funeral establishment facility for viewing the deceased;

(4) using a funeral establishment facility for funeral services;

(5) using a hearse;

(6) using a limousine;

(7) caskets;

(8) outer enclosures;

(9) filing a claim seeking life insurance proceeds on behalf of the beneficiaries; and

(10) other itemized services provided by the funeral establishment staff.

(b) A retail price list must contain the name, address, and telephone number of the funeral establishment, the effective date for

the stated prices, and the following printed notice: "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. However, any funeral arrangements you select will include a charge for our basic services and overhead. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.20, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 634 (S.B. 864), Sec. 2, eff. September 1, 2011.

Sec. 651.4055. RETAIL PRICE LIST; CREMATORY. (a) In this section, "retail price list" means a printed or typewritten list of the retail price of items or services provided by a crematory.

(b) A retail price list must contain:

(1) the name, address, and telephone number of the crematory;

(2) the effective date for the stated prices;

(3) notice required by Subsection (c); and

(4) any other items that the commission may by rule require.

(c) The retail price list must contain the following printed notice: "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the goods and services you selected."

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.21, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 26, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 27, eff. September 1, 2019.

Sec. 651.406. PURCHASE AGREEMENT; FUNERAL ESTABLISHMENT. (a) A purchase agreement must state:

(1) the name, address, and telephone number of the funeral establishment;

(2) the amount paid or owed to another person by the funeral establishment on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer;

(3) the printed notice required by Subsection (b);

(4) the name, mailing address, and telephone number of the commission; and

(5) a statement that complaints may be directed to the commission.

(b) The purchase agreement must contain the following printed notice: "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(c) The purchase agreement shall be signed by the funeral director making the arrangements.

(d) If the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a purchase agreement that itemizes the discount provided by the package arrangement.

(e) A funeral establishment that receives a dead human body transferred from another funeral establishment shall include in the purchase agreement any amount owed by the customer to the transferring funeral establishment. The recipient funeral establishment shall remit to the transferring funeral establishment any amount collected on behalf of the transferring funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.22, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1076 (H.B. 1731), Sec. 1, eff. September 1, 2019.

Sec. 651.4065. PURCHASE AGREEMENT; CREMATORY. (a) A purchase

agreement must state:

(1) the name, address, and telephone number of the crematory;

(2) the amount paid or owed to another person by the crematory on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer;

(3) the printed notice required by Subsection (b);

(4) the name, mailing address, and telephone number of the commission;

(5) a statement that complaints may be directed to the commission; and

(6) any other items that the commission may by rule require.

(b) The purchase agreement must contain the following printed notice: "Charges are only for those items that you selected or that are required. If we are required by law to use any items, we will explain the reasons in writing below."

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 36(7), eff. September 1, 2019.

(d) If the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a purchase agreement that itemizes the discount provided by the package arrangement.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.23, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 25, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 28, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 29, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 36(7), eff. September 1, 2019.

Sec. 651.407. USE OF BODY BY SCHOOL OF MORTUARY SCIENCE. (a) A school or college of mortuary science may not use a dead human body for educational or instructional purposes without the written consent

of a person authorized to consent to the use.

(b) A funeral director or embalmer may not release a dead human body for delivery to a school or college of mortuary science, and a school or college of mortuary science may not accept a dead human body, without possession of the written consent required by Subsection (a).

(c) The funeral establishment shall retain a copy of the written consent for at least two years and shall make the records of the funeral establishment reasonably available for inspection by:

(1) the commission;

(2) the person who provided the consent; and

(3) the next of kin of the deceased person.

(d) The school or college of mortuary science shall retain a copy of the written consent permanently and shall make the records of the school or college of mortuary science reasonably available for inspection by the commission.

(e) A written consent form used under this section must contain, in the same size print as the remainder of the form, the following statement immediately above the signature line for the form:

"The undersigned authorizes and directs the funeral establishment, including apprentices, and mortuary students under the direct supervision of a licensed embalmer, and the funeral establishment's employees, independent contractors, and agents to care for, embalm, and prepare the body of the decedent. The undersigned acknowledges that this authorization encompasses permission to embalm at the funeral establishment or at another facility equipped for embalming, including a school or college of mortuary science."

(f) This section does not apply to a dead human body obtained by a school or college of mortuary science under Chapter 691 or 692A, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 186 (H.B. 2027), Sec. 10, eff. September 1, 2009.

Sec. 651.408. USE OF CEMETERY AND CREMATORY SERVICES. The fact

that a funeral director contracts for cemetery or crematory services, including as part of a package arrangement, does not limit the director's liability to the customer for those services.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.24, eff. Sept. 1, 2001.

Sec. 651.4085. INTERMENT OR ENTOMBMENT. (a) A funeral director who contracts with a customer to perform funeral directing under this chapter, or an agent of the funeral establishment, shall be present when the casket containing the human body to which the contract applies is placed in a grave, crypt, or burial vault unless interment or entombment takes place at a location outside this state.

(b) The funeral directing duties related to interment or entombment services are complete when the casket is placed in a grave, crypt, or burial vault.

Added by Acts 2011, 82nd Leg., R.S., Ch. 312 (H.B. 2286), Sec. 1, eff. June 17, 2011.

Sec. 651.409. NOTICE TO NEXT OF KIN OF DECEASED PEACE OFFICER. A funeral director who prepares a deceased peace officer for burial or other disposition shall make every effort to advise the next of kin of the officer that the next of kin of a person who at the time of death was a peace officer or an honorably retired peace officer who voluntarily terminated employment with a law enforcement agency of this state or a political subdivision of this state is eligible on request to receive a state flag from the Texas Commission on Law Enforcement at no cost to the next of kin.

Added by Acts 2001, 77th Leg., ch. 476, Sec. 4, eff. Sept. 1, 2001.
Renumbered from Occupations Code Sec. 651.408 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(115), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 744 (H.B. 2769), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.58, eff. May 18, 2013.

Sec. 651.410. AUTHORIZED RELEASE OF INFORMATION. Nothing in this chapter prohibits a funeral director or establishment from releasing information under Chapter 696, Health and Safety Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 373 (H.B. 3064), Sec. 2, eff. September 1, 2013.

SUBCHAPTER J. PROHIBITED PRACTICES

Sec. 651.451. CERTAIN FRAUDULENT AND DECEPTIVE ACTS. A person violates this chapter if the person:

(1) presents to the commission a license, certificate, registration, or diploma that was illegally or fraudulently obtained;

(2) uses fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination;

(3) purchases, sells, barters, or uses, or offers to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the commission for a license or registration issued under this chapter;

(4) alters, with fraudulent intent, a license, registration, or certificate issued under this chapter or a transcript of a license, registration, or certificate;

(5) uses a license, registration, certificate, or diploma issued under this chapter or a transcript of a license, registration, certificate, or diploma that has been fraudulently purchased, issued, counterfeited, or materially altered;

(6) impersonates a funeral director, embalmer, or other person regulated under this chapter;

(7) permits another to use the person's license or registration to perform an activity regulated under this chapter; or

(8) presents false certification of work done as a provisional license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.25, eff. Sept. 1, 2001.

Sec. 651.452. LACK OF FITNESS TO PRACTICE. A person violates this chapter if the person is:

(1) convicted of:

(A) a misdemeanor related to the practice of embalming, funeral directing, or another activity regulated under this chapter; or

(B) a felony;

(2) unfit to practice as a funeral director or embalmer because of insanity and determined by a court to be of unsound mind; or

(3) unfit to practice because of current substance abuse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.26, eff. Sept. 1, 2001.

Sec. 651.453. UNETHICAL ADVERTISING. A person violates this chapter if the person uses an advertising statement of a character that misleads or deceives the public or uses, in connection with an advertisement, the name of a person who is falsely represented to be a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.454. OTHER UNETHICAL CONDUCT IN SOLICITING CUSTOMERS. (a) A person violates this chapter if the person, in arranging for funeral services or merchandise, fails to:

(1) provide a prospective customer at the beginning of the arrangement process with a copy of the brochure required by Section 651.404;

(2) provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep;

(3) explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer; or

(4) provide general price information by telephone within a reasonable time.

(b) A person violates this chapter if the person restricts, hinders, or attempts to restrict or hinder:

(1) advertising or disclosure of prices and other

information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers; or

(2) an agreement for funeral services between a consumer and a funeral director or embalmer.

(c) A person associated with a funeral establishment violates this chapter if the person solicits business or offers an inducement to secure or attempt to secure business for the funeral establishment unless the solicitation is made under a permit issued under Chapter 154, Finance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.455. FALSE OR MISLEADING STATEMENTS REGARDING FUNERAL MERCHANDISE OR FUNERAL, CEMETERY, OR CREMATORY SERVICES. (a) A person violates this chapter if the person uses a statement that misleads or deceives the public, including a fraudulent statement or any other type of a false or misleading statement regarding:

(1) a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services;

(2) the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains;

(3) the airtight or watertight properties of a casket or outer enclosure;

(4) the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment; or

(5) an activity regulated under this chapter, including the sale of funeral-related goods or services.

(b) Repealed by Acts 2003, 78th Leg., ch. 562, Sec. 42(3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.27, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 26, 42(3), eff. Sept. 1, 2003.

Sec. 651.456. UNETHICAL CONDUCT REGARDING CUSTODY OF DEAD HUMAN BODY. A person violates this chapter if the person:

(1) takes custody of a dead human body without the permission of:

(A) the person or the agent of the person authorized to

make funeral arrangements for the deceased; or

(B) a medical examiner or a justice of the peace who has jurisdiction over the body under Articles 49.02-49.05, Code of Criminal Procedure;

(2) refuses to promptly surrender a dead human body to a person or agent authorized to make funeral arrangements for the deceased; or

(3) violates any state law governing the transportation, storage, refrigeration, inurnment, interment, or disinterment of a dead human body.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 27, eff. Sept. 1, 2003.

Sec. 651.457. UNETHICAL CONDUCT REGARDING EMBALMING. (a) A person violates this chapter if the person:

(1) embalms a body without:

(A) receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or

(B) making a documented reasonable effort over a period of at least three hours to obtain the permission;

(2) embalms or attempts to embalm a dead human body without proper authority, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body;

(3) allows the presence or participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with Section 651.407; or

(4) places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license.

(b) Notwithstanding Subsection (a)(4), a provisional license holder does not violate this chapter if the provisional license holder places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures under the supervision of an embalmer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.458. UNETHICAL CONDUCT BY FUNERAL ESTABLISHMENT. A person violates this chapter if the person makes a distinction in providing funeral information to a customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.459. OTHER UNETHICAL CONDUCT IN PROVIDING FUNERAL SERVICES. (a) A person violates this chapter if the person:

(1) wilfully makes a false statement on:

(A) a death certificate, including forgery of a physician's signature; or

(B) a document required by this chapter or a rule adopted under this chapter;

(2) engages in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer;

(3) engages in dishonest conduct, wilful conduct, or negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public;

(4) causes the execution of a document by the use of fraud, deceit, or misrepresentation;

(5) directly or indirectly employs a person to solicit individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, embalmer, or funeral establishment;

(6) misappropriates funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that create an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund; or

(7) performs acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performs acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts.

(b) A funeral director or embalmer violates this chapter if the

funeral director or embalmer states or implies that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased.

(c) A funeral director in charge violates this chapter if the funeral director in charge fails to provide a funeral director or an embalmer for direction or personal supervision for a first call.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 28, eff. Sept. 1, 2003.

Sec. 651.460. PROHIBITED PRACTICES RELATED TO FAILURE TO COMPLY WITH OTHER LEGAL REQUIREMENTS. (a) A person violates this chapter if the person:

(1) arranges for funeral services or merchandise and fails to provide a customer with a purchase agreement as required by Section 651.406;

(2) fails to retain and make available to the commission, on request, copies of all price lists, written notices, embalming documents, and memoranda of agreement required by this chapter for two years after the date of distribution or signing;

(3) violates this chapter, a rule adopted under this chapter, an order by the commission revoking, suspending, or probating a license, an order assessing an administrative penalty, or an agreement to pay an administrative penalty;

(4) allows the use of a dead human body by an embalming establishment for research or educational purposes without complying with Section 651.407;

(5) is associated with a funeral establishment, whether as an employee, agent, subcontractor, assignee, owner, or otherwise, and fails to comply with this chapter or a rule adopted under this chapter; or

(6) knowingly violates Section 711.002(l), Health and Safety Code.

(b) A funeral establishment violates this chapter if:

(1) the funeral establishment fails to substantially comply with Section 651.351;

(2) the funeral establishment or a person acting on behalf of the funeral establishment violates Chapter 193 or 361, Health and Safety Code;

(3) the funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violates Chapter 154, Finance Code, or a rule adopted under that chapter; or

(4) the funeral establishment or a person acting on behalf of a funeral establishment allows or assists an unlicensed person to engage in an activity for which a person is required to hold a license under this chapter.

(c) A crematory violates this chapter if the crematory or a person acting on behalf of the crematory allows or assists an unlicensed person to engage in an activity for which a person is required to hold a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(c), eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 619 (S.B. 988), Sec. 3, eff. June 16, 2015.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 30, eff. September 1, 2019.

Sec. 651.461. DEFENSE TO VIOLATION. A person licensed under this chapter does not violate this chapter by engaging in conduct regarding funeral arrangements under the direction of a person who:

(1) represents to the license holder that the person is authorized to make funeral arrangements for the deceased; and

(2) provides written directions to the license holder in the manner provided by Section 711.002, Health and Safety Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 30, eff. September 1, 2009.

SUBCHAPTER K. DISCIPLINARY ACTIONS AND PROCEDURES AND LICENSE DENIALS

Sec. 651.501. GENERAL DISCIPLINARY POWERS OF COMMISSION. (a) After a hearing as provided by this subchapter, the commission may issue a reprimand, assess an administrative penalty, revoke, suspend, or probate the suspension of a license or provisional license, order a license holder to pay a refund under Section 651.603, or impose any

combination of those penalties for a violation of this chapter or a rule adopted under this chapter.

(b) With respect to a violation of Section 651.453, 651.454(c), 651.459(c), 651.460(a)(5), 651.460(b)(2), or 651.460(b)(3), the commission may not initiate action against a funeral establishment if the complaint is based on the conduct of an employee, agent, or representative of the establishment:

(1) performed outside the scope and authority of employment; or

(2) contrary to the instructions of the funeral establishment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 31, eff. September 1, 2019.

Sec. 651.5011. CHARGING FUNERAL DIRECTOR IN CHARGE WITH VIOLATION. In determining whether to charge a funeral director in charge with a violation based on conduct for which a licensed employee of the funeral establishment was directly responsible, the commission may consider:

(1) the nature and seriousness of the violation;

(2) the extent to which the licensed employee of the funeral establishment whose conduct is the basis of the violation was under the direct supervision of the funeral director in charge or another person at the time the licensed employee engaged in the conduct; and

(3) the causal connection between the supervision of the licensed employee of the funeral establishment by the funeral director in charge and the conduct engaged in by the licensed employee that is the basis of the violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 634 (S.B. 864), Sec. 3, eff. September 1, 2011.

Sec. 651.502. LICENSE DENIAL; EFFECT OF CRIMINAL CONVICTION. (a) The commission may, before a hearing or a waiver of a right to a hearing, refuse to issue:

(1) a license or provisional license to a person who has violated this chapter or a rule adopted under this chapter; or

(2) an establishment license to an individual, partnership, or corporation if the individual, a partner, or an officer or director of the corporation:

(A) has violated this chapter or a rule adopted under this chapter;

(B) previously held an establishment license that was suspended or revoked; or

(C) attempts to avoid a revocation, suspension, or license refusal by subterfuge or other evasive means.

(b) A person to whom the commission refuses to issue a license under Subsection (a) may appeal the decision by submitting a written request for a hearing in accordance with Chapter 2001, Government Code, not later than the 30th day after the date of the refusal.

(c) The commission and the person to whom the commission refuses to issue a license may agree to the issuance of a probationary license, or the commission may, after a hearing, order that a license be issued on a probationary basis.

(d) A person applying for a funeral director's or embalmer's license who has a criminal conviction described by Section 651.452 may request a hearing on whether the conviction prevents the commission from issuing a license or a provisional license. A hearing under this subsection must be requested before the person enters mortuary school and shall be conducted as required by Section 651.506. A decision made in a hearing under this subsection, unless modified on appeal, is binding on the commission and on the person who requests the hearing when the person applies to the commission for the license or provisional license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.385(d), eff. Sept. 1, 2001.

Sec. 651.5025. IMMEDIATE LICENSE REVOCATION; EFFECT OF CERTAIN FELONY CONVICTIONS. (a) The commission may revoke the license of a license holder without a hearing if the commission determines from the information presented to it that the license holder has been convicted of a felony related to the practice of embalming, funeral

directing, or another activity regulated by the commission under this chapter. The commission shall notify the license holder if it decides to revoke the license.

(b) The license holder may appeal the decision by submitting a written request for a hearing in accordance with this chapter and Chapter 2001, Government Code, not later than the 30th day after the date of the revocation.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.28, eff. Sept. 1, 2001.

Sec. 651.5026. TEMPORARY LICENSE SUSPENSION OR RESTRICTION; DISCIPLINARY PANEL. (a) The presiding officer of the commission shall appoint a three-member disciplinary panel composed of two funeral industry members and one public member of the commission to determine whether a funeral director's or embalmer's license should be temporarily suspended or restricted.

(b) Chapter 551, Government Code, does not prohibit the disciplinary panel from holding a meeting by telephone conference call if convening the panel at one location is inconvenient for any member of the panel.

(c) The disciplinary panel shall temporarily suspend or restrict the license if the panel determines from the information presented to it with or without a hearing, that the license holder has violated this chapter or a rule adopted under this chapter and would, by the license holder's continued unrestricted activity, constitute a continuing threat to the public welfare.

(d) The suspension or restriction may be without notice or hearing if:

(1) the commission immediately provides notice of the suspension or restriction to the funeral director or embalmer;

(2) proceedings for a hearing under Section 651.506 are initiated simultaneously with the suspension or restriction; and

(3) the hearing is held as required by Chapter 2001, Government Code, and this chapter not later than 48 hours after the suspension or restriction.

(e) If the disciplinary panel affirms the temporary suspension or restriction at a hearing, the commission shall schedule an informal compliance meeting that meets the requirements of Section

2001.054(c), Government Code, and this chapter to be held as soon as practicable unless:

(1) it is evident from the determination of the panel that the funeral director or embalmer would be unable to show compliance at the informal meeting regarding the issues that are the basis for the temporary suspension or restriction; or

(2) an informal meeting has already been held regarding the issues that are the basis for the temporary suspension or restriction.

(f) If the funeral director or embalmer is unable to show compliance at the informal meeting under Subsection (e), the commission shall file a formal complaint under this chapter as soon as practicable.

(g) If the disciplinary panel does not temporarily suspend or restrict the license after considering the information presented to it at a hearing under Subsection (c), the facts that were the basis for the temporary suspension or restriction may not be the sole basis of another proceeding to temporarily suspend or restrict the funeral director's or embalmer's license. The commission may use those same facts in a later investigation to obtain new information that may be the basis for the temporary suspension or restriction of a funeral director's or embalmer's license, including facts presented to the disciplinary panel and facts known to the commission at the time evidence was presented to the disciplinary panel.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 29, eff. Sept. 1, 2003.

Sec. 651.503. WARNING; REPORT BY LICENSE HOLDER. (a) The commission shall issue a written warning to a license holder if the commission:

(1) conducts an investigation that identifies a violation of this chapter by the license holder; and

(2) does not issue a reprimand, assess an administrative penalty, or impose any other penalty against the license holder.

(b) The warning must:

(1) describe the identified violation; and

(2) state the date by which the license holder must file with the commission a written report that describes:

(A) the measures implemented by the license holder to

correct the violation; and

(B) the dates those measures were implemented.

(c) The commission shall assess an administrative penalty against a license holder who fails to timely file the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.504. REPRIMAND. The commission may, after a hearing as provided by Section 651.506 or without a hearing if the person waives a hearing, reprimand a person regulated under this chapter if the commission determines that the person violated this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.387(a), eff. Sept. 1, 2001.

Sec. 651.505. PROBATION. (a) If the commission places on probation a person whose license has been suspended, the commission may impose conditions on the probation that are reasonable and related to the violation for which the license was suspended. If the commission orders probation, the commission may require the license holder to:

(1) report regularly to the commission on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the commission; or

(3) continue or renew professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(b) The commission shall notify in writing a license holder placed on probation of the probation. The commission shall furnish the license holder with written probationary orders that detail the actions required by the commission of the license holder during the probation period.

(c) The commission shall develop and adopt a system to:

(1) monitor the actions of a license holder during the probation period; and

(2) determine whether the license holder has complied with

the probationary orders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.506. DISCIPLINARY PROCEEDINGS; HEARING PROCEEDINGS. (a) A proceeding conducted by the commission relating to the denial of a license or provisional license, the suspension or revocation of a license, the issuance of a reprimand, or the imposition of an administrative penalty assessed after a hearing as provided by Section 651.551 and judicial review of the proceeding are governed by Chapter 2001, Government Code.

(b) A proceeding brought under Subsection (a) shall be held before an administrative law judge employed by the State Office of Administrative Hearings.

(c) In the course of a proceeding, the administrative law judge may:

(1) administer an oath;

(2) take testimony;

(3) rule on a question of evidence;

(4) make a determination of fact; or

(5) order compliance with a proper discovery request.

(d) The commission shall provide the administrative law judge with a written statement of all commission rules or policies that govern the proceeding.

(e) At the conclusion of the proceeding, the administrative law judge shall make a ruling on the matter accompanied by written findings of fact and conclusions of law.

(f) The commission shall review the findings of fact, conclusions of law, and ruling of the administrative law judge before making its final ruling in the proceeding. The commission may also review a transcript of the proceeding before making its final ruling. The commission shall adopt the ruling of the administrative law judge as its ruling unless it finds good cause to issue a different ruling. The commission shall explain in writing the reasons for adopting a ruling other than the one issued by the administrative law judge.

(g) The commission shall inform each interested person, including a person filing the complaint, of the right to obtain at that person's cost a tape or transcript of a hearing or proceeding under this section.

(h) A member or agent of the commission who carries out the functions of the commission and is assigned to make a decision, finding of fact, or conclusion of law in a proceeding pending before the commission may not communicate directly or indirectly with a party to the proceeding or a party's representative unless notice and an opportunity to participate is given to all parties to the proceeding.

(i) Repealed by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001.

(j) Repealed by Acts 2003, 78th Leg., ch. 562, Sec. 42(4).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 3.01(a), eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.388, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 562, Sec. 42(4), eff. Sept. 1, 2003.

Sec. 651.5061. WAIVER OF HEARING BY FUNERAL OR CREMATORY ESTABLISHMENT. A funeral or crematory establishment alleged to have violated this chapter or a rule adopted under this chapter may waive the right to a hearing as provided by Section 651.506 by written notification to the commission.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.388(b), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 178, Sec. 3, eff. Sept. 1, 2003.

Sec. 651.507. EFFECT OF MULTIPLE VIOLATIONS. (a) The commission or an administrative law judge employed by the State Office of Administrative Hearings shall review each disciplinary proceeding to determine whether the license holder has previously violated the same provision of this chapter or rule adopted under this chapter. If it is determined that the license holder has previously violated the same provision of this chapter or rule adopted under this chapter, the commission or administrative law judge shall impose a disciplinary action that is more severe than that imposed on the previous occasion.

(b) In a disciplinary proceeding involving multiple violations of this chapter, the commission or the administrative law judge shall impose a disciplinary action that is more severe than the

disciplinary action that would be imposed cumulatively for each of the individual violations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.390(a), eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 31, eff. September 1, 2009.

Sec. 651.508. ENFORCEMENT OF LAW REGULATING CREMATORIES. For purposes of this subchapter, a person regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER L. ADMINISTRATIVE PENALTIES

Sec. 651.551. ASSESSMENT OF ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person regulated under this chapter if the commission determines that the person has violated this chapter or a rule adopted under this chapter.

(b) The penalty may be assessed in the manner provided by this subchapter or after a hearing under Section 651.506. If an administrative penalty is assessed after a hearing under Section 651.506, the commission shall follow the procedures described in Sections 651.555 through 651.558.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.5515. PENALTY GUIDELINES. (a) The commission by rule shall adopt guidelines that define and summarize the violations that occur under this subchapter to assist the commission in maintaining consistency in determining the amount of an administrative penalty assessed under Section 651.552. Using those guidelines and the summary, the commission shall establish and maintain a chart that lists:

(1) the most common violations;
(2) the penalty amounts assessed for those violations; and
(3) the factors used to grade each type of violation before determining the penalty amount under Section 651.552.

(b) The commission shall consider using focus groups to obtain business and consumer input to match appropriate penalties to violations before proposing the rules under this section.

(c) The commission shall post the guidelines on the commission's Internet site.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.29, eff. Sept. 1, 2001.

Sec. 651.552. AMOUNT OF PENALTY. (a) The amount of the administrative penalty shall be not less than $100 or more than $5,000 for each violation.

(b) In determining the amount of the penalty, the commission shall base its decision on:
(1) the seriousness of the violation;
(2) the threat the violation poses to health and safety;
(3) the history of previous violations;
(4) the amount necessary to deter a future violation;
(5) efforts made to correct the violation;
(6) the guidelines adopted under Section 651.5515; and
(7) any other matter that justice requires.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.30, eff. Sept. 1, 2001.

Sec. 651.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If, after examining a possible violation and the facts relating to that violation, the commission determines that a violation has occurred, the commission shall issue a preliminary report stating:
(1) the facts on which the determination is based;
(2) that an administrative penalty is to be imposed; and
(3) the amount of the penalty.

(b) Not later than the 10th day after the date the report is issued, the commission shall send to the person charged with the violation:

(1) a copy of the report;

(2) a statement of the right of the person to a hearing relating to the alleged violation;

(3) a statement of the amount of the penalty; and

(4) an explanation for any significant deviation from the penalty amount assessed for similar violations.

(c) Until a hearing has been held on the possible violation, the amount to be assessed may be disclosed only to the person charged with the violation, unless that person has waived the right to a hearing or paid the amount to the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 682, Sec. 1.31, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.389(a), eff. Sept. 1, 2001.

Sec. 651.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 30th day after the date the preliminary report is sent, the person charged may:

(1) make a written request for a hearing; or

(2) pay the administrative penalty to the commission.

(b) Failure to request a hearing or pay the penalty within the time provided by this section waives the right to a hearing under this chapter. If the right to a hearing is waived, the penalty is due not later than the 30th day after the date the preliminary report is sent.

(c) If the person fails to timely pay the penalty, the person's license is automatically suspended for six months.

(d) If the person requests a hearing, the hearing shall be conducted in the manner provided by Section 651.506.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.555. OPTIONS AFTER DECISION: PAY OR APPEAL. (a) If an administrative penalty is assessed after a hearing conducted under Section 651.506, not later than the 30th day after the date the order is sent or a motion for rehearing is denied, the person charged shall:

(1) pay the penalty; or

(2) without paying the penalty, file a petition for

judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Not later than the 30-day period, a person who acts under Subsection (a)(2) must, if the penalty that the person wishes to contest is greater than $5,000:

(1) post a supersedeas bond in a form approved by the commission for the amount of the penalty; or

(2) if the person cannot afford to pay the penalty or file the bond, file an affidavit in the manner required by the Texas Rules of Civil Procedure for a person who cannot afford to file security for costs.

(c) The commission may file a contest, as provided by the Texas Rules of Civil Procedure, to an affidavit filed under Subsection (b)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.389(b), eff. Sept. 1, 2001.

Sec. 651.556. COLLECTION OF PENALTY. On the commission's request, the attorney general shall bring a civil action to recover an administrative penalty owed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.557. REMITTANCE OF PENALTY. If, after judicial review, the court determines that a violation did not occur, the court shall order, when the court's judgment becomes final, the release of the bond if the person gave a supersedeas bond. If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.389(c), eff. Sept. 1, 2001.

Sec. 651.558. LICENSE SUSPENSION FOR FAILURE TO COMPLY. (a)

The commission shall suspend for six months the license of a person who fails to pay an administrative penalty or post a supersedeas bond within the time required by Section 651.555, or within a longer period agreed to by the commission.

(b) After notice and a hearing, the commission may extend the license suspension for a longer period or may revoke the license for failure to pay the penalty or post a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.559. ENFORCEMENT OF LAW REGULATING CREMATORIES. For purposes of this subchapter, a person regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 5, eff. Sept. 1, 2003.

SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 651.601. INJUNCTION. (a) The commission in its own name or an adversely affected party may bring an action for appropriate injunctive relief against a funeral establishment, an embalmer, or a funeral director who violates this chapter or a rule adopted under this chapter.

(a-1) The commission may bring an action for appropriate injunctive relief against a crematory establishment that violates this chapter or a rule adopted under this chapter.

(a-2) The commission may bring an action for appropriate injunctive relief against a person who is not licensed under this chapter to enjoin a violation of this chapter or a rule adopted under this chapter.

(b) In an action brought by the commission, the commission shall be represented by the attorney general or a county or district attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.391(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 178, Sec. 6, eff. Sept. 1, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 32, eff.

September 1, 2019.

Sec. 651.602. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) acts or holds the person out as a funeral director, embalmer, or provisional license holder without being licensed under this chapter;

(2) makes a first call in a manner that violates Section 651.401;

(3) is a funeral director, embalmer, or provisional license holder and engages in a funeral practice that violates this chapter or a rule adopted under this chapter; or

(4) violates Chapter 154, Finance Code, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 651.603. REFUND. (a) The commission may order a license holder to pay a refund to a person harmed by the license holder's violation of this chapter or failure to fulfill the terms of a purchase agreement with the person.

(b) The amount of a refund ordered under this section may not exceed the actual amount paid by the person to the license holder.

Added by Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 33, eff. September 1, 2019.

SUBCHAPTER N. LICENSING REQUIREMENTS: CREMATORIES

Sec. 651.651. DEFINITIONS. In this subchapter:

(1) "Cremation" means the irreversible process of reducing human remains to bone fragments through direct flame, extreme heat, and evaporation. The term may include pulverization, which is the process of reducing identifiable bone fragments after cremation and processing granulated particles by manual or mechanical means.

(2) "Crematory establishment" means a business licensed

under this subchapter to operate a crematory and to perform cremation services.

(3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(2), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.32, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 178, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(2), eff. September 1, 2009.

Sec. 651.652. APPLICABILITY. (a) This subchapter applies only to a crematory that sells goods or services related to the burial or final disposition of a body.

(b) Repealed by Acts 2003, 78th Leg., R.S., Ch. 562, Sec. 44, eff. March 1, 2004.

Added by Acts 2001, 77th Leg., ch. 682, Sec. 1.32, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 178, Sec. 9, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 31, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 44, eff. March 1, 2004.

Sec. 651.656. CREMATORY ESTABLISHMENT LICENSE REQUIRED. (a) A person may not conduct a crematory business in this state unless the person who is the owner or operator of the crematory holds a crematory establishment license issued by the commission.

(b) A person may not hold a crematory establishment license unless the person:

(1) holds a funeral establishment or commercial embalmers establishment license; or

(2) owns or operates a perpetual care cemetery.

(c) Subsection (b) does not apply to the owner or operator of a crematory registered with the commission on September 1, 2003.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(2), eff. September 1, 2009.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 14, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 596 (H.B. 56), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 33(2), eff. September 1, 2009.

Sec. 651.657. CREMATORY ESTABLISHMENT LICENSE APPLICATION. (a) An applicant for a crematory establishment license must:

(1) submit a written license application to the commission;

(2) pay the application fee; and

(3) provide proof satisfactory to the commission that the owner or operator of the crematory is trained and certified by a reputable organization approved by the commission, such as the Cremation Association of North America.

(b) An application for a license or renewal of a license as a crematory establishment must include:

(1) the full business name of the crematory establishment;

(2) the address of:

(A) the applicant if the business is owned by an individual;

(B) each partner if the business is a partnership;

(C) each member of the board of directors if the business is an association; or

(D) each shareholder who owns more than 25 percent of the corporate stock and each officer and director if the business is a corporation;

(3) a statement from each individual named under Subdivision (2) that details:

(A) the individual's business experience for the previous 10 years;

(B) any felony or misdemeanor conviction of the individual;

(C) any involvement of the individual as a defendant in a civil action involving allegations of fraud; and

(D) a suspension by this state or any other state of any license related to funeral directing or the operation of a cemetery or crematory;

(4) the location of the crematory; and

(5) the date the business was established.

(c) An application for a license or renewal of a license must

be on a form furnished by the commission.

(d) The application form for renewal of a license as a crematory establishment must allow the applicant to provide a written statement that the information previously provided to the commission under Subsection (b) has not changed, if applicable.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 14, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 34, eff. September 1, 2019.

Sec. 651.658. CREMATORY ESTABLISHMENT LICENSE RENEWAL AND ANNUAL REPORT; PENALTY. (a) A crematory establishment must annually file a report with the commission that lists the number of cremations performed at the crematory during the previous year.

(a-1) An applicant for renewal of a crematory establishment license shall apply to the commission and pay the required fee.

(b) The commission shall mail written notice to a license holder of the impending expiration of the license not later than the 30th day before the expiration date of the license. The notice must state that to renew the license, the license holder must pay the renewal fee not later than the date on which the license expires.

(c) A license holder who fails to pay the renewal fee on or before the expiration date is subject to a late payment penalty equal to the amount of the renewal fee.

(d) If the license is expired for longer than 30 days, the crematory establishment may not operate a crematory until the renewal fee and late payment penalty are paid.

(e) The commission shall grant an extension for filing the annual report required by this section on the written request of a crematory establishment for good cause. An extension may not exceed 60 days. The commission may grant additional extensions for good cause.

(f) The commission shall impose a late fee in an amount provided by rule for each day a crematory establishment fails to submit the annual report required by this section if an extension has not been granted.

Added by Acts 2003, 78th Leg., ch. 178, Sec. 14, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 32, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 124 (H.B. 1540), Sec. 35, eff. September 1, 2019.

SUBTITLE M. REGULATION OF OTHER HEALTH PROFESSIONS
CHAPTER 701. DIETITIANS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 701.001. SHORT TITLE. This chapter may be cited as the Licensed Dietitian Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Dietitians Advisory Board.

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

(3) "Dietetics" means the professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions for the proper nourishment, care, and education of an individual or group throughout the life cycle to achieve and maintain human health. The term includes the development, management, and provision of nutrition services.

(4) "Executive director" means the executive director of the department.

(5) "Licensed dietitian" means a person licensed under this chapter.

(6) "Nutrition assessment" means evaluating the nutritional needs of an individual or group based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake, including enteral and parenteral nutrition.

(7) "Nutrition counseling" means advising and assisting an individual or group on appropriate nutritional intake by integrating

information from a nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

(8) "Nutrition services" means:

(A) assessing the nutritional needs of an individual or group and determining constraints and resources in the practice;

(B) establishing priorities and goals that meet nutritional needs and are consistent with constraints and available resources;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutritional care systems; or

(E) evaluating, changing, and maintaining appropriate quality standards in food and nutritional care services.

(9) "Provisional licensed dietitian" means a person provisionally licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.191, eff. September 1, 2015.

SUBCHAPTER B. DIETITIANS ADVISORY BOARD

Sec. 701.051. DIETITIANS ADVISORY BOARD MEMBERSHIP. (a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) six licensed dietitian members, each of whom has been licensed under this chapter for not less than three years before the member's date of appointment; and

(2) three members who represent the public.

(b) In appointing dietitian members to the advisory board, the presiding officer of the commission shall attempt to maintain balanced representation among the following primary areas of expertise included in the professional discipline of dietetics:

(1) clinical;

(2) educational;
(3) management;
(4) consultation; and
(5) community.

(c) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.193, eff. September 1, 2015.

Sec. 701.0511. DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.194, eff. September 1, 2015.

Sec. 701.054. TERMS; VACANCIES. (a) Members of the advisory board serve staggered six-year terms. The terms of three members begin on September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.195, eff. September 1, 2015.

Sec. 701.057. PRESIDING OFFICER. The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 7, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.196, eff. September 1, 2015.

Sec. 701.058. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.197, eff. September 1, 2015.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 701.151. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b) The commission or the department, as appropriate, shall:

(1) adopt and publish a code of ethics;

(2) establish the qualifications and fitness of applicants for licenses, including renewed and reciprocal licenses; and

(3) request and receive any necessary assistance from state educational institutions or other state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.198, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 12.001, eff. September 1, 2019.

Sec. 701.1511. REGISTRY. The department shall prepare a registry of licensed dietitians and provisional licensed dietitians and make the registry available to the public, license holders, and appropriate state agencies.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.199, eff. September 1, 2015.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 701.251. LICENSE REQUIRED; COMMISSION REGISTRATION. (a) In this section, "Commission on Dietetic Registration" means the commission that is a member of the National Commission on Health Certifying Agencies.

(b) Unless the person holds an appropriate license issued under this chapter, a person may not:

(1) use the title or represent or imply that the person has the title "licensed dietitian" or "provisional licensed dietitian" or use the letters "LD" or "PLD"; or

(2) use a facsimile of those titles to indicate or imply that the person is a licensed dietitian or provisional licensed dietitian.

(c) Unless the person is a dietitian registered by the Commission on Dietetic Registration, a person may not:

(1) use the title or represent or imply that the person has the title "registered dietitian" or use the letters "RD"; or

(2) use a facsimile of that title to indicate or imply that the person is a dietitian registered by the Commission on Dietetic Registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 701.252. LICENSE APPLICATION. (a) Each applicant for a dietitian license must submit an application in the manner and on a form prescribed by the executive director accompanied by the application fee.

(b) The commission by rule shall determine the information and documentation required to be submitted as part of an application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.205, eff. September 1, 2015.

Sec. 701.253. LICENSE EXAMINATION. (a) In this section, "Commission on Dietetic Registration" has the meaning assigned by Section 701.251(a).

(b) Except as provided by Subsection (f), an applicant must pass a license examination to qualify for a license under this chapter.

(c) The department shall prepare or approve an examination. An examination prescribed by the department may be or may include an examination given by the Commission on Dietetic Registration or by a national or state testing service instead of an examination prepared by the department or the department's designee.

(d) Any written portion of the examination must be validated by an independent testing professional.

(e) The department shall administer an examination to qualified applicants at least twice each calendar year.

(f) The department shall waive the examination requirement for an applicant who, at the time of application, is a dietitian registered by the Commission on Dietetic Registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 14, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 15, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.206, eff. September 1, 2015.

Sec. 701.254. QUALIFICATIONS FOR EXAMINATION. To qualify for the licensing examination under this chapter, an applicant must:

(1) possess a baccalaureate or postbaccalaureate degree, conferred by a college or university regionally accredited at the time of conferral, with:

(A) a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management; or

(B) an equivalent major course of study approved by the department; and

(2) have completed an internship or preplanned, documented,

professional experience program in dietetics practice of not less than 900 hours under the supervision of a licensed dietitian or a registered dietitian approved by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.207, eff. September 1, 2015.

Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The department shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, commission rules under this chapter, and any other applicable laws of this state affecting the applicant's dietetics practice.

(b) In addition to the license examination required by Section 701.253, an applicant must pass a jurisprudence examination to qualify for a license under this chapter.

(c) The commission shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 19, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.209, eff. September 1, 2015.

Sec. 701.258. QUALIFIED PERSON ENTITLED TO LICENSE. The department shall issue a license as a licensed dietitian to a person qualified for a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.210, eff. September 1, 2015.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 701.301. LICENSE RENEWAL. (a) A license is valid for two years after the date of issuance and may be renewed biennially.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(208), eff. September 1, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(208), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(208), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(208), eff. September 1, 2015.

(f) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.222(208), eff. September 1, 2015.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 20, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.222, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.222(208), eff. September 1, 2015.

Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

Added by Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 21, eff. September 1, 2005.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.214, eff. September 1, 2015.

SUBCHAPTER H. PRACTICE BY LICENSE HOLDER

Sec. 701.351. DISPLAY OF LICENSE. (a) A license holder shall display the person's license in an appropriate and public manner as prescribed by commission rule.

(b) A license issued by the department is the property of the department and shall be surrendered on demand.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.215, eff. September 1, 2015.

Sec. 701.352. LICENSE HOLDER INFORMATION. A license holder shall keep the department informed of the license holder's current address as provided by commission rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.216, eff. September 1, 2015.

SUBCHAPTER I. DISCIPLINARY PROCEDURES

Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The commission or executive director shall refuse to renew a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter, a rule or code of ethics adopted under this chapter, or an order of the commission or executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 147 (H.B. 1155), Sec. 22, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.218, eff. September 1, 2015.

Sec. 701.403. SANCTIONS. The State Office of Administrative Hearings shall use the schedule of sanctions adopted by the commission by rule for a sanction imposed as the result of a hearing conducted by the office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.219, eff. September 1, 2015.

CHAPTER 702. HEALTH SPAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 702.001. SHORT TITLE. This chapter may be cited as the Health Spa Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.002. PURPOSE AND CONSTRUCTION. (a) The purpose of this chapter is to protect the public against fraud, deceit, imposition, and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of health spa operations and services by prohibiting or restricting injurious practices involving:

(1) health spa contracts; and

(2) the marketing of health spa services.

(b) This chapter shall be liberally construed and applied to promote its purpose and to provide efficient and economical procedures to protect the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.003. DEFINITIONS. In this chapter:

(1) "Closed" means a condition in which:

(A) the facilities of a health spa are no longer available to the health spa's members and equivalent facilities located not more than 10 miles from the health spa have not been made available to the members;

(B) a certificate holder sells a registered location and the security filed or posted by the certificate holder under Subchapter D is:

(i) canceled;

(ii) withdrawn; or

(iii) otherwise unavailable to the members of the health spa; or

(C) a certificate holder sells a registered location and the buyer does not adopt or honor the contracts of existing members of the health spa.

(2) "Contract" means an agreement between a seller and purchaser by which the purchaser becomes a member of a health spa.

(3) "Facilities" means the equipment, physical structures, improvements, including improvements to leasehold premises, and other tangible property, including saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment, that are located at a health spa and used to conduct the business of the health spa.

(4) "Health spa" means a business that offers for sale, or sells, memberships that provide the members instruction in or the use of facilities for a physical exercise program. The term does not include:

(A) an organization that is tax exempt under Section 501 et seq., Internal Revenue Code (26 U.S.C. Section 501 et seq.);

(B) a private club owned and operated by its members;

(C) an entity operated exclusively to:

(i) teach dance or aerobic exercise; or

(ii) provide physical rehabilitation activity related to an individual's injury or disease;

(D) a person engaged in an activity authorized under a license issued by the state;

(E) an activity conducted or sanctioned by a school under the Education Code; or

(F) a hospital or clinic owned or operated by an agency of the state or federal government or by a political subdivision of this state.

(5) "Location" means the physical site of the facilities of a health spa.

(6) "Member" means a person who is entitled to the benefits of membership in a health spa.

(7) "Membership" means the status of a person under a contract that entitles the person to use a health spa's services or facilities.

(8) "Obligor" means a person, other than a surety, who is obligated to perform if a certificate holder defaults.

(9) "Open" means the date each service of a health spa that was advertised before the opening, or promised to be made available,

are available for use by its members.

(10) "Prepayment" means consideration paid by a purchaser for membership in a health spa before the date the health spa opens.

(11) "Purchaser" means a person who purchases, or applies to purchase, the right to use a health spa's services or facilities.

(12) "Registered location" means a health spa location for which a health spa operator's certificate of registration is issued under this chapter.

(13) "Seller" means a person who:

(A) owns or operates a health spa; or

(B) offers for sale, or sells, the right to use a health spa's services or facilities.

(14) "Services" means the programs, plans, guidance, or instruction that a health spa provides for its members. The term includes diet planning, exercise instruction and programs, and instructional classes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 887 (S.B. 335), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. POWERS AND DUTIES OF SECRETARY OF STATE

Sec. 702.051. ADMINISTRATIVE AND RULEMAKING AUTHORITY. (a) The secretary of state shall administer this chapter.

(b) In administering this chapter, the secretary of state shall:

(1) adopt rules;

(2) issue administrative orders; and

(3) take action necessary to ensure compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.052. RULES RELATING TO SECURITY CLAIMS AND PROCEEDS. The secretary of state shall adopt rules necessary to:

(1) determine the disposition of a security claim filed under Section 702.251; and

(2) ensure the prompt and fair distribution of security

proceeds.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.053. REGISTRATION AND RENEWAL FEES. The secretary of state may charge each applicant for a certificate of registration, or renewal of a certificate, a reasonable fee not to exceed $100 to cover the cost of issuance or renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CERTIFICATE OF REGISTRATION

Sec. 702.101. CERTIFICATE OF REGISTRATION REQUIRED. A person may not operate a health spa or offer for sale, or sell, a membership in a health spa unless the person holds a health spa operator's certificate of registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.102. APPLICATION REQUIREMENTS. (a) An applicant for a health spa operator's certificate of registration must file with the secretary of state an application stating:

(1) the applicant's name, address, and telephone number;

(2) the applicant's business trade name;

(3) for an applicant whose business is incorporated:

(A) the applicant's business name registered with the secretary of state;

(B) the location of the applicant's registered business office; and

(C) the name and address of each person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the applicant's business;

(4) the date the applicant became the owner and operator of the applicant's business;

(5) the address of the health spa; and

(6) the type of available or proposed facilities and services offered at the health spa location.

(b) An application for a certificate of registration must be

accompanied by:

(1) a sample of each contract used to sell a membership in the applicant's health spa;

(2) proof of security filed or posted by the applicant under Subchapter D; and

(3) the required registration fee.

(c) An applicant must comply with the application requirements of this section for each location where the applicant operates a health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.103. CERTIFICATE OF REGISTRATION NONTRANSFERABLE; APPLICATION BY NEW OWNER. (a) A health spa operator's certificate of registration is not transferable.

(b) A person who obtains ownership of a health spa by purchase or other transfer shall file an application for a certificate of registration under Section 702.102 not later than the fifth day after the date the person obtains ownership.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.104. TERM; RENEWAL. (a) A health spa operator's certificate of registration expires on the first anniversary of the date of issuance.

(b) A certificate of registration may be renewed as provided by the secretary of state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.105. CERTIFICATE POSTING. A certificate holder shall post a health spa operator's certificate of registration in a conspicuous place at each registered location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.106. CHANGE OF INFORMATION. If the information

provided in an application for a certificate of registration changes, the certificate holder shall amend the application not later than the 90th day after the date the change occurs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.107. SALES TAX PERMIT; PROOF OF REGISTRATION REQUIRED. (a) A health spa operator shall submit to the comptroller a copy of the operator's certificate of registration at the time the operator applies for a sales tax permit.

(b) The comptroller may not issue a sales tax permit to a health spa operator who fails to comply with this section. The secretary of state shall assist the comptroller in determining whether a business is a health spa under this chapter.

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 1, eff. September 1, 2005.

SUBCHAPTER D. SECURITY REQUIREMENTS

Sec. 702.151. SECURITY REQUIRED. (a) Except as provided by Subchapter E, the secretary of state may not issue a health spa operator's certificate of registration to an applicant unless the applicant files a surety bond, or posts other security as prescribed by the secretary, in the amount prescribed by the secretary under Subsection (b).

(b) The secretary of state shall prescribe the amount of security required for an applicant in the amount determined sufficient by the secretary to protect the health spa's total membership. The amount may not be less than $20,000 or more than $50,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 2, eff. September 1, 2005.

Sec. 702.152. SURETY BOND REQUIREMENTS. If a surety bond is filed under Section 702.151, the bond must:

(1) remain in effect until canceled by the surety company;

(2) be issued by a company authorized to do business in this state; and

(3) conform to the requirements of the Insurance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.153. REQUIREMENTS FOR SECURITY OTHER THAN SURETY BOND. An applicant who posts under Section 702.151 security other than a surety bond is:

(1) not required to post other security annually if the applicant maintains security in the amount of $20,000; and

(2) entitled to receive the interest that accumulates on the other security posted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.154. BENEFICIARY OF SECURITY. The security filed or posted by a certificate holder under this subchapter must be payable to the state and held for the benefit of:

(1) the state; and

(2) each member of the certificate holder's health spa who has been administratively adjudicated to have suffered actual financial loss as a result of the closing of the certificate holder's health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.155. DURATION OF SECURITY. A certificate holder shall maintain the security filed or posted under Section 702.151 in effect until the earlier of:

(1) the second anniversary of the date the certificate holder's health spa closes; or

(2) the date the secretary of state determines that each claim filed against the security has been satisfied or foreclosed by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 1, eff. September 1, 2011.

Sec. 702.156. NOTICE OF CANCELLATION OF SECURITY. A surety or obligor of security filed or posted under this subchapter shall provide to the secretary of state, not later than the 60th day before the date the security is canceled, written notice of the cancellation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 2, eff. September 1, 2011.

Sec. 702.157. LIMIT ON LIABILITY OF SURETY OR OBLIGOR. (a) The limit of a surety's or obligor's liability stated in the security filed or posted under this subchapter may not be cumulative from year to year or period to period, regardless of the number of:

(1) years that the security continues in force; or

(2) premiums paid or payable.

(b) The liability of a surety or obligor is exclusively conditioned on a final administrative order issued by the secretary of state.

(c) Security filed or posted under this subchapter is subject to a claim only as provided by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.158. REVIEW OF SECURITY AMOUNT. (a) At least once every three years, the secretary of state shall review the amount of security a health spa operator is required to post under Section 702.151 to determine whether the amount is sufficient to protect the health spa's total membership. The secretary may increase the amount required if the secretary determines that the increase is necessary to protect that membership but may not increase the amount above the maximum amount allowed under Section 702.151(b).

(b) The secretary of state may adopt procedures necessary to

implement this section, including:

(1) establishing a schedule to review the amount of security posted by each health spa operator; and

(2) requiring each health spa operator to submit periodically a written statement of the health spa's total membership.

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 3, eff. September 1, 2005.

SUBCHAPTER E. EXEMPTION FROM SECURITY REQUIREMENTS

Sec. 702.201. APPLICATION FOR EXEMPTION. A certificate holder may apply for an exemption from the security requirements of Subchapter D by filing with the secretary of state a sworn application for the exemption on a form prescribed by the secretary of state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.202. QUALIFICATIONS FOR EXEMPTION. A certificate holder may apply for an exemption under Section 702.201 if:

(1) the certificate holder does not require, or solicit or offer a plan or program that requires, a health spa consumer to:

(A) execute a membership contract for a term that exceeds 31 days;

(B) execute a note or retail installment contract;

(C) authorize a draw or other recurring debit on a financial institution in favor of the certificate holder or the certificate holder's assignee;

(D) pay an initiation fee or other fee, not including monthly dues; or

(E) prepay for a term that exceeds 31 days; or

(2) the certificate holder submits a sworn statement every three years with the secretary of state stating that the certificate holder:

(A) has assets based on net book value that exceed $50,000 per registered location;

(B) has operated under substantially the same ownership or management for at least five years; and

(C) has not been the subject of a complaint relating to the closing of a health spa owned by the certificate holder or the failure of a health spa owned by the certificate holder to open that has been initiated or filed by a member of the health spa with a governmental authority in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 4, eff. September 1, 2005.

Sec. 702.205. ISSUANCE OF EXEMPTION. (a) On approval of an application for an exemption under Section 702.201, the secretary of state shall issue a certificate of exemption.

(b) A certificate holder to whom a certificate of exemption is issued is not required to file a surety bond or post other security under Subchapter D.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.206. NONTRANSFERABILITY OF EXEMPTION. (a) A certificate of exemption is not transferable.

(b) A person who by purchase or other transfer obtains ownership of a health spa for which a certificate of exemption has been issued shall, not later than the fifth day after the date the person obtains ownership:

(1) file a surety bond, or post other security, as required by Section 702.151; or

(2) file a new application for an exemption under Section 702.201.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.207. DENIAL AND REVOCATION OF EXEMPTION. After notice and opportunity for hearing, the secretary of state may deny an application for an exemption or permanently revoke a certificate holder's certificate of exemption if the secretary finds that the applicant or certificate holder:

(1) provided false information on the application for an exemption; or

(2) is no longer eligible for an exemption.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 3, eff. September 1, 2011.

SUBCHAPTER F. CLAIM ON SECURITY

Sec. 702.251. FILING OF SECURITY CLAIM. A member may file a claim against the security filed or posted under this subchapter by providing to the secretary of state a copy of the contract between the member and certificate holder who filed or posted the security, accompanied by proof of payment made under the contract, if the certificate holder's health spa:

(1) closes and fails to provide alternative facilities not more than 10 miles from the location of the health spa; or

(2) relocates more than 10 miles from its location preceding the relocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 4, eff. September 1, 2011.

Sec. 702.252. COMPUTATION OF CLAIM. (a) Recovery on a claim filed under Section 702.251 is limited to the amount of actual financial loss suffered by the member as a result of the closing or relocating of the certificate holder's health spa.

(b) For purposes of this section, actual financial loss is computed by:

(1) rounding the date of the health spa's closing or relocation and the contract's expiration date to the nearest full month;

(2) subtracting the date of closing or relocation determined under Subdivision (1) from the expiration date determined under that subdivision, with the result expressed in whole months and representing the number of months remaining on a contract;

(3) computing the gross monthly payment by adding all payments made under the contract, including any down payment and initiation fee, and dividing the resulting amount by the total number of months in the term of the contract; and

(4) multiplying the number of months remaining on the contract computed under Subdivision (2) by the gross monthly payment computed under Subdivision (3).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.253. ADJUDICATION ON PRO RATA BASIS. If the total amount of actual financial losses computed under Section 702.252 for all claims filed under Section 702.251 exceeds the amount of available security, the secretary of state shall reduce the amount of each recovery under Section 702.252 on a pro rata basis and shall compute the amount of each recovery by:

(1) dividing the amount of available security by the total amount of actual financial losses computed under Section 702.252 for all claims; and

(2) multiplying the results computed under Subdivision (1) by the amount of the recovery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 1, eff. Sept. 1, 2001.

Sec. 702.254. CLAIM BARRED. The secretary of state may not consider a claim filed under Section 702.251 if the claim is received later than the 90th day after the date notice of the closure or relocation is first posted on the secretary of state's Internet website under Section 702.452(c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 5, eff. September 1, 2011.

SUBCHAPTER G. CONTRACT REQUIREMENTS

Sec. 702.301. GENERAL REQUIREMENTS. (a) A contract:

(1) must be:

(A) in writing; and

(B) signed by the purchaser;

(2) must state the proposed opening date of the health spa that is the subject of the contract, if the health spa is not open on the contract date; and

(3) must include the health spa operator's certificate of registration number or an identification number as provided by Subsection (b).

(b) The secretary of state shall adopt procedures for the issuance of an identification number that may be used in a contract for purposes of Subsection (a) by health spas with more than one location in this state.

(c) A contract under Subsection (a) constitutes the entire agreement between the seller and purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 5, eff. September 1, 2005.

Sec. 702.302. DISCLOSURE REQUIREMENTS. (a) A health spa shall prepare a comprehensive list that includes each membership plan the health spa offers for sale. The health spa shall disclose the list to a prospective purchaser on request.

(b) A certificate holder who is not exempt under Section 702.202 from the security requirements of Subchapter D must deliver to a purchaser a complete copy of the contract, accompanied by a written receipt for any payment made by the purchaser under the contract before entering into the contract with the purchaser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.303. CONTRACT TERM. (a) Except as provided by Subsection (b), the term of a contract may not exceed three years.

(b) A contract that is financed through a retail installment contract or note may not require the purchaser to make payments or finance the contract for more than five years after the contract

date.

(c) If, after a health spa opens, the health spa is rendered unusable for 30 consecutive days or longer because of an event beyond the control of the owner or operator of the health spa, including a natural disaster, the health spa shall extend the term of each affected member's contract for a period equal to the time that the health spa is rendered unusable.

(d) If the term of a contract overlaps the term of another contract between the same seller and purchaser, the contracts are considered to be one contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.304. CANCELLATION AND REFUND NOTICE. (a) Except as provided by Subsection (b), a contract must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

(1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

(2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY:

(A) CANCEL THIS CONTRACT BY MAILING BY CERTIFIED MAIL A WRITTEN NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT TO THE HEALTH SPA AT THE FOLLOWING ADDRESS:

(Address of the health spa home office); AND

(B) FILE A CLAIM FOR A REFUND OF YOUR UNUSED MEMBERSHIP FEES AGAINST THE BOND OR OTHER SECURITY POSTED BY THE HEALTH SPA WITH THE TEXAS SECRETARY OF STATE. TO MAKE A CLAIM AGAINST THE SECURITY PROVIDE A COPY OF YOUR CONTRACT TOGETHER WITH PROOF OF PAYMENTS MADE

ON THE CONTRACT TO THE TEXAS SECRETARY OF STATE. THE REQUIRED CLAIM INFORMATION MUST BE RECEIVED BY THE SECRETARY OF STATE NOT LATER THAN THE 90TH DAY AFTER THE DATE NOTICE OF THE CLOSURE OR RELOCATION IS FIRST POSTED ON THE SECRETARY OF STATE'S INTERNET WEBSITE."

(4) "IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(b) A health spa operator is required to include the statement under Subsection (a)(3)(B) in a contract only if the operator is required to post security with the secretary of state under Subchapter D.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 6, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 6, eff. September 1, 2011.

Sec. 702.305. PREPAYMENT REFUND NOTICE. If a certificate holder offers for sale, or sells, memberships in a health spa before the date the health spa opens, the contract for the health spa must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

"IF THE HEALTH SPA DOES NOT OPEN BEFORE (insert: the date that is the 181st day after the date the membership is prepaid) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR THIRTY DAYS, YOU ARE ENTITLED TO A FULL REFUND OF THE MONEY YOU PREPAID. HOWEVER, IF ANOTHER HEALTH SPA, OPERATED BY (insert: the name of the health spa registration holder), IS LOCATED WITHIN 10 MILES OF (insert: the address of the proposed location of the new spa) AND IF YOU ARE AUTHORIZED TO USE THE OTHER FACILITIES, YOU ARE ENTITLED TO RECEIVE A FULL REFUND OF YOUR MEMBERSHIP FEES ONLY IF THIS LOCATION DOES NOT FULLY OPEN FOR

BUSINESS BEFORE (insert: the date that is the 361st day after the date the new spa first sells memberships) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR 30 DAYS."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.306. FINANCE CHARGE NOTICE. A contract that contains a finance charge as defined by the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or Regulation Z (12 C.F.R. Part 226) must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

"ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.307. CANCELLATION OF CONTRACT FOR FULL REFUND. (a) A member may cancel a contract and receive a full refund of the payments made under the contract by sending, not later than midnight of the third business day after the contract date, written notice of cancellation, accompanied by proof of payment made under the contract, by certified mail to the certificate holder's home office.

(b) A certificate holder who receives notice under Subsection (a) shall refund the payments made under the contract not later than the 30th day after the date notice is received.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.308. CANCELLATION OF CONTRACT FOR PARTIAL REFUND. (a) A member may cancel a contract and receive a refund of unearned payments made under the contract by sending written notice of cancellation, accompanied by proof of payment made under the contract, by certified mail to the certificate holder's home office if the certificate holder:

(1) closes the health spa and fails to provide alternative facilities not more than 10 miles from the location of the health spa;

(2) relocates the health spa more than 10 miles from its location preceding the relocation; or

(3) fails to provide advertised services.

(b) A member who dies or becomes totally and permanently disabled after the date a contract is entered into, or the member's estate, may cancel the contract and receive a refund of the unearned payments made under the contract by sending written notice of cancellation by certified mail to the certificate holder's home office. The certificate holder may require the member, or the member's estate, to provide reasonable proof of the member's death or disability.

(c) A certificate holder who receives notice under Subsection (a) or (b) shall refund the unearned payments made under the contract to the member, or the member's estate, as appropriate, not later that the 30th day after the date notice is received.

(d) In this section, the unearned payments are computed in the same manner as a member's actual financial loss is computed under Section 702.252, except that the date a contract is canceled is substituted for the date a health spa closes or relocates.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.309. PROOF OF PAYMENT. A receipt given to a purchaser by a health spa when the purchaser makes a payment under a contract constitutes proof of the payment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.310. EFFECT OF CONTRACT ON THIRD-PARTY RIGHTS. A contract may not require the purchaser to execute a note or series of notes if separate negotiation of the notes cuts off as to third parties a right of action or defense that the purchaser may assert against the seller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.311. VOID CONTRACT. A contract is void if:

(1) the contract or an assignment of the contract does not comply with this chapter;

(2) the seller does not hold a certificate of registration issued under this chapter at the time of contract; or

(3) the purchaser enters into the contract in reliance on false, fraudulent, or misleading information wilfully provided by, or a false, fraudulent, or misleading representation, notice, or advertisement wilfully made by, the seller or the health spa owner or operator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. PREPAYMENTS AND ESCROW

Sec. 702.351. MEMBERSHIP PREPAYMENT. A certificate holder may offer for sale, or sell, a membership in a health spa before the date the health spa opens.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.352. ESCROW DEPOSIT REQUIRED. (a) A certificate holder or an assignee or agent of a certificate holder who accepts a prepayment for a membership in the certificate holder's health spa shall deposit the prepayment in an escrow account established with a financial institution insured by the Federal Deposit Insurance Corporation.

(b) A person required to make a deposit under Subsection (a) shall:

(1) not later than the 14th day after the date the person first accepts a prepayment:

(A) deposit the prepayments received; and

(B) submit to the secretary of state:

(i) a notarized statement that identifies the financial institution and the name in which the escrow account is held; and

(ii) a signed statement on a form approved by the secretary of state that authorizes the secretary to direct inquiries to the financial institution regarding the escrow account; and

(2) after the first deposit is made under this section,

deposit subsequent prepayments not less frequently than biweekly.

(c) A certificate holder shall maintain an escrow account under this section until the 30th day after the date the certificate holder's health spa opens.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.353. EXEMPTION FROM ESCROW REQUIREMENT. (a) A certificate holder is not required to deposit prepayments in an escrow account under Section 702.352 if:

(1) the certificate holder has operated at least one health spa in the state for not less than two years before the date the certificate holder first sells a membership in the health spa that is the subject of the exemption; and

(2) except as provided by Subsection (b):

(A) litigation has not been initiated against the certificate holder by a member of a health spa owned or operated by the certificate holder relating to the closing of the health spa or the failure of the health spa to open; and

(B) a member of a health spa has not filed a complaint with a governmental authority in this state against the certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, relating to the closing of the health spa or the failure of the health spa to open.

(b) The initiation of litigation or filing of a complaint against a certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, does not preclude the certificate holder from claiming an exemption under Subsection (a) if the basis of the litigation or complaint is that the certificate holder's health spa closed:

(1) as a result of a natural disaster and the closing did not exceed one month; or

(2) to relocate the health spa to a location not more than 10 miles from its location preceding the relocation and the closing did not exceed one month.

(c) The number of exemptions that a certificate holder may claim under Subsection (a) during a two-year period may not exceed twice the number of health spas operated by the certificate holder on the first day of that two-year period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.354. DUTY OF FINANCIAL INSTITUTION. A financial institution in which an escrow account is established under Section 702.352 shall hold each prepayment in the account as escrow agent for the benefit of the member who made the prepayments.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.355. REFUND OF ESCROWED PREPAYMENT. (a) Except as provided by Subsection (b), a member is entitled to receive a full refund of the prepayment made under a contract if the health spa that is the subject of the contract does not open before the 181st day after the date the health spa first sells a membership in the health spa or does not remain open for at least 30 days unless:

(1) an alternative health spa operated by the seller is located not more than 10 miles from the location of the health spa that is the subject of the contract; and

(2) the member is authorized to use the facilities of the alternative health spa.

(b) A member who is authorized to use the facilities of an alternative health spa under Subsection (a) is entitled to receive a full refund of the prepayment made under the contract if the health spa that is the subject of the contract does not open before the 361st day after the date the health spa first sells a membership in the health spa or does not remain open for at least 30 days.

(c) For purposes of this section, the date a health spa opens does not depend on whether the services of the health spa that were advertised before the opening, or promised to be made available, are included in the contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.356. WITHDRAWAL OF ESCROW FUNDS. A certificate holder may withdraw prepayments deposited in an escrow account under Section 702.352 if:

(1) the health spa for which the prepayments are made remains open for not less than 30 days;

(2) the certificate holder files with the secretary of state an affidavit certifying that all obligations of the health spa for which a lien may be claimed under Chapter 53, Property Code, have been paid; and

(3) no person is eligible to claim a lien under Chapter 53, Property Code, during the period the certificate holder or an assignee or agent of the certificate holder accepts prepayments for memberships in the certificate holder's health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. PROHIBITED PRACTICES

Sec. 702.401. WAIVER PROHIBITED. A person, including a person who buys a health spa membership from a former member, may not waive a provision of this chapter by contract or other means. A purported waiver of this chapter is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.402. PROHIBITED ACTS. (a) A seller or certificate holder may not:

(1) offer a special offer or discount to fewer than all prospective members of the health spa, except that a seller or certificate holder may offer a special group price or discount; or

(2) make a material misrepresentation to a member, prospective member, or purchaser regarding:

(A) the qualifications of the health spa staff;

(B) the availability, quality, or extent of the facilities or services of the health spa;

(C) the results obtained through exercise, diet, weight control, or physical fitness conditioning programs;

(D) membership rights; or

(E) the period during which a special offer or discount will be available.

(b) A certificate holder may not:

(1) fail or refuse to:

(A) file or amend an application for registration as required by Subchapter C;

(B) file or post, or maintain, the security required by

Subchapter D; or

(C) deposit prepayments in an escrow account as required by Subchapter H;

(2) advertise that the certificate holder is bonded by the state; or

(3) sell a membership plan that is not included in the list required by Section 702.302(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.403. APPLICATION OF DECEPTIVE TRADE PRACTICES ACT. (a) A person who violates this chapter commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code.

(b) A public or private right or remedy under Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.404. INFORMATION REQUIRED IN ADVERTISEMENT. A health spa operator may not advertise in any print or electronic medium unless the advertisement includes the health spa operator's certificate of registration number or an identification number issued as provided by Section 702.301(b).

Added by Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 7, eff. September 1, 2005.

SUBCHAPTER J. ADMINISTRATIVE ENFORCEMENT AND DISCIPLINARY ACTIONS

Sec. 702.451. DISCIPLINARY ACTIONS. (a) After notice and opportunity for hearing, the secretary of state may deny an application for a certificate of registration, or may permanently revoke a health spa operator's certificate of registration, on a finding by the secretary that the applicant or certificate holder:

(1) provided false information on an application or other document filed with the secretary;

(2) failed to file or post, or maintain, the security for each health spa location as required by Subchapter D; or

(3) failed to provide the contract disclosure language required by Subchapter G.

(b) The secretary of state may permanently revoke a certificate of registration under Subsection (a) based on the certificate holder's failure to maintain the required security only after a finding by the secretary that, within the 30-day period following the cancellation or lapse of the security, the certificate holder failed to file or post replacement security in the required amount.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 7, eff. September 1, 2011.

Sec. 702.452. NOTICE REQUIREMENT BEFORE HEALTH SPA CLOSING. (a) At least 30 days before the date a health spa is scheduled to close or relocate, the certificate holder shall contemporaneously:

(1) post, inside and outside each entrance to the health spa, a notice stating:

(A) the date the health spa is scheduled to close or relocate;

(B) that a member of the health spa may, not later than the 90th day after the date notice of the closure or relocation is first posted on the secretary of state's Internet website, file with the secretary of state a claim to recover actual financial loss suffered by the member as a result of the health spa closing; and

(C) the procedures for perfecting a security claim; and

(2) notify the secretary of state in writing of the health spa closing or relocation and the date that the notice was first posted.

(b) The notice posted under Subsection (a)(1) must be:

(1) at least 8-1/2 by 11 inches in size; and

(2) posted continuously for at least 30 days.

(c) After receiving a notice under Subsection (a)(2) or otherwise discovering that a health spa is closed, the secretary of state shall post on the secretary of state's Internet website a notice containing the information specified in Subsection (a)(1). The notice must be posted continuously for at least 30 days.

(d) The secretary of state shall, not later than the 10th day

after the date the secretary receives notice or otherwise discovers that a health spa is closed, notify the appropriate surety company or obligor of the administrative proceedings pending under Subsection (a)(1).

(e) The notice required under Subsection (a) is not required in the case of a fire, flood, or act of God that is not within the reasonable control of a health spa.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 756, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 908 (H.B. 135), Sec. 9, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1340 (S.B. 1231), Sec. 7, eff. September 1, 2011.

SUBCHAPTER K. CIVIL REMEDY

Sec. 702.501. FILING OF SUIT; VENUE. (a) A member may file suit against a seller if:

(1) the seller violates this chapter; and

(2) the seller's violation causes injury to the member.

(b) Venue for a suit filed under Subsection (a) is in a court located in:

(1) Travis County; or

(2) the county in which:

(A) the seller resides;

(B) the seller's principal place of business is located;

(C) the seller is doing business;

(D) the member resides; or

(E) the transaction that is the subject of the suit occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.502. STATUTE OF LIMITATIONS. A member must file a suit under Section 702.501 not later than the later of:

(1) the first anniversary of the date the attorney general or district or county attorney concludes a suit filed under Section

702.552; or

(2) the second anniversary of the date the seller's violation of this chapter is discovered.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.503. RECOVERY. In a suit filed under Section 702.501, a court may award:

(1) actual damages;

(2) equitable relief;

(3) punitive damages; or

(4) reasonable attorney's fees and court costs to the prevailing party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.504. TEMPORARY CLOSING. For purposes of this subchapter, the closing of a health spa is not a violation of this chapter if the closing does not exceed one month and:

(1) is a result of a natural disaster; or

(2) is to relocate the health spa not more than 10 miles from its location preceding the relocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER L. ENFORCEMENT AND PENALTIES

Sec. 702.551. INVESTIGATIVE AND ENFORCEMENT AUTHORITY. (a) The attorney general or a district or county attorney may:

(1) investigate an alleged violation of this chapter; and

(2) enforce any penalty or remedy authorized by this chapter.

(b) The attorney general, a district or county attorney, or the secretary of state may recover reasonable expenses, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses, incurred in obtaining an injunction or recovering a civil penalty under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.552. SUIT FOR ENFORCEMENT. (a) The attorney general or a district or county attorney may file suit against a person who violates, or threatens to violate, this chapter to:

(1) obtain an injunction to enjoin the person from violating this chapter; or

(2) recover a civil penalty under Section 702.553.

(b) Venue for a suit filed under this section is in a district court located in:

(1) Travis County; or

(2) the county in which the defendant resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.553. AMOUNT OF CIVIL PENALTY. (a) Except as provided by Subsection (b) and Section 702.554, a person who violates this chapter is subject to a civil penalty in an amount not to exceed $1,000 for a single violation.

(b) If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed may not exceed $25,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.554. VIOLATION OF INJUNCTION. (a) The attorney general or a district or county attorney may file suit to recover a civil penalty against a person who violates an injunction issued under this subchapter in an amount not to exceed $25,000 for a single violation. If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed under this section may not exceed $50,000.

(b) Venue for a suit filed under this section is in the district court that issued the injunction that is the subject of the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.555. DEPOSIT IN COUNTY FUND. A civil penalty collected under this subchapter by a district or county attorney shall be deposited to the credit of the general fund of the county.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.556. CRIMINAL OFFENSE: VIOLATION OF CHAPTER. (a) A person commits an offense if the person knowingly operates, or attempts to operate, a health spa in violation of Subchapter C, D, or H.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.557. CRIMINAL OFFENSE: INTERFERENCE WITH INVESTIGATION. (a) A person commits an offense if with actual notice that the attorney general, or a district or county attorney, has initiated, or plans to initiate, an investigation under this chapter the person intentionally conceals, alters, destroys, or falsifies a document or record that is relevant or material to the investigation.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 702.558. CRIMINAL OFFENSE: NONCOMPLIANCE WITH SUBPOENA OR INVESTIGATIVE DEMAND. (a) A person commits an offense if, after receiving a subpoena or civil investigative demand issued under Section 17.61, Business & Commerce Code, the person intentionally falsifies or withholds relevant material, including a document or record, that is not privileged.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $2,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

TITLE 4. PROFESSIONS RELATED TO ANIMALS

CHAPTER 801. VETERINARIANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 801.001. SHORT TITLE. This chapter may be cited as the Veterinary Licensing Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.002. DEFINITIONS. In this chapter:

(1) "Board" means the State Board of Veterinary Medical Examiners.

(1-a) "Certified veterinary assistant" means a person who has been certified as a certified veterinary assistant by the Texas Veterinary Medical Association and is employed by a licensed veterinarian.

(2) "Compensation" includes a fee, monetary reward, discount, or emolument, whether received directly or indirectly.

(3) "Direct supervision" means supervision of a person by a responsible veterinarian who is physically present on the premises.

(3-a) "Equine dentistry" means any diagnosis, treatment, or surgical procedure performed on the head or oral cavity of an equine animal. The term includes:

(A) any procedure that invades the tissues of the oral cavity, including a procedure to:

(i) remove sharp enamel projections;

(ii) treat malocclusions of the teeth;

(iii) reshape teeth; and

(iv) extract one or more teeth;

(B) the treatment or extraction of damaged or diseased teeth;

(C) the treatment of diseased teeth through restoration and endodontic procedures;

(D) periodontal treatments, including:

(i) the removal of calculus, soft deposits, plaque, and stains above the gum line; and

(ii) the smoothing, filing, and polishing of tooth surfaces; and

(E) dental radiography.

(4) "General supervision" means supervision of a person by a responsible veterinarian who is readily available to communicate

with the person.

(4-a) "Immediate supervision" means supervision by a person who is within audible and visual range of both the animal patient and the person under supervision.

(4-b) "Licensed equine dental provider" means a person who holds a license to practice equine dentistry issued under this chapter.

(4-c) "Licensed veterinary technician" means a person licensed as a veterinary technician by the board.

(5) "Practice of veterinary medicine" means:

(A) the diagnosis, treatment, correction, change, manipulation, relief, or prevention of animal disease, deformity, defect, injury, or other physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique;

(B) the representation of an ability and willingness to perform an act listed in Paragraph (A);

(C) the use of a title, a word, or letters to induce the belief that a person is legally authorized and qualified to perform an act listed in Paragraph (A); or

(D) the receipt of compensation for performing an act listed in Paragraph (A).

(6) "Veterinarian" means a person licensed by the board under this chapter to practice veterinary medicine.

(6-a) "Veterinary assistant" means a person who:

(A) is employed by a licensed veterinarian;

(B) performs tasks related to animal care; and

(C) is not a certified veterinary assistant or a licensed veterinary technician.

(7) "Veterinary medicine" includes veterinary surgery, reproduction and obstetrics, dentistry, ophthalmology, dermatology, cardiology, and any other discipline or specialty of veterinary medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 1, eff. September 1, 2013.

Sec. 801.003. APPLICATION OF SUNSET ACT. The State Board of Veterinary Medical Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2027.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 1, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 3, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 4.02(a), eff. June 16, 2021.
Acts 2023, 88th Leg., R.S., Ch. 1103 (S.B. 1414), Sec. 1, eff. September 1, 2023.

Sec. 801.004. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) the treatment or care of an animal in any manner by the owner of the animal, an employee of the owner, or a designated caretaker of the animal, unless the ownership, employment, or designation is established with the intent to violate this chapter;

(2) a person who performs an act prescribed by the board as an accepted livestock management practice, including:

(A) castrating a male animal raised for human consumption;

(B) docking or earmarking an animal raised for human consumption;

(C) dehorning cattle;

(D) aiding in the nonsurgical birth process of a large animal, as defined by board rule;

(E) treating an animal for disease prevention with a nonprescription medicine or vaccine;

(F) branding or identifying an animal in any manner;

(G) artificially inseminating an animal, including training, inseminating, and compensating for services related to artificial insemination; and

(H) shoeing a horse;

(3) the performance of a cosmetic or production technique to reduce injury in poultry intended for human consumption;

(4) the performance of a duty by a veterinarian's employee if:

(A) the duty involves food production animals;

(B) the duty does not involve diagnosis, prescription, or surgery;

(C) the employee is under the direction and general supervision of the veterinarian; and

(D) the veterinarian is responsible for the employee's performance;

(5) the performance of an act by a person who is a full-time student of an accredited college of veterinary medicine if the act is performed under the direct supervision of a veterinarian;

(6) an animal shelter employee who performs euthanasia in the course and scope of the person's employment if the person has successfully completed training in accordance with Chapter 829, Health and Safety Code;

(7) a person who is engaged in a recognized state-federal cooperative disease eradication or control program or an external parasite control program while the person is performing official duties required by the program;

(8) a person who, without expectation of compensation, provides emergency care in an emergency or disaster;

(9) a consultation given to a veterinarian in this state by a person who:

(A) resides in another state; and

(B) is lawfully qualified to practice veterinary medicine under the laws of that state; or

(10) a licensed health care professional who, without expectation of compensation and under the direct supervision of a veterinarian on staff, provides treatment or care to an animal owned by or in the possession, control, or custody of an entity accredited by the Association of Zoos and Aquariums or one of the following organizations that has a veterinarian on staff:

(A) the Global Federation of Animal Sanctuaries; or

(B) the Zoological Association of America.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 717 (S.B. 721), Sec. 1, eff. June 12, 2017.

For expiration of this subchapter, see Section 801.026.

SUBCHAPTER A-1. TEMPORARY REGULATION BY TEXAS DEPARTMENT OF LICENSING AND REGULATION

Sec. 801.021. DEFINITIONS. In this subchapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Department" means the Texas Department of Licensing and Regulation.

Added by Acts 2023, 88th Leg., R.S., Ch. 1103 (S.B. 1414), Sec. 2, eff. September 1, 2023.

Sec. 801.022. TEMPORARY ADMINISTRATION OF CHAPTER BY DEPARTMENT; RULES. (a) Notwithstanding any other law, the department shall assume all policy-making powers of the board and administer this chapter. The department may contract as necessary to administer this chapter.

(b) A power or duty granted to the board under this chapter is a power or duty of the executive director of the department, the department, or the commission, as applicable.

(c) The commission or executive director of the department may delegate, or withdraw any delegation of, any power or duty under this chapter to the board or the executive director of the board. The delegation or withdrawal of delegation must be in writing.

(d) Except as provided by Section 801.024(c), the commission shall adopt all rules necessary to implement this chapter.

(e) Not later than December 31, 2026, the department shall conduct a review under Section 2001.039, Government Code, of each

rule under 22 T.A.C. Part 24. In conducting the review under this subsection, the department shall ensure that license holders and the public have a meaningful opportunity to provide input and recommend changes to the rules.

(f) The department shall propose necessary amendments to a rule, or the repeal of a rule, for which the department determines the board lacks a sufficient reason or authority to adopt or enforce.

(g) For any rulemaking or contested case for which an expert witness is necessary, the commission or department, as applicable, may have a member of the board who is a veterinarian licensed in good standing in this state serve as the expert witness.

Added by Acts 2023, 88th Leg., R.S., Ch. 1103 (S.B. 1414), Sec. 2, eff. September 1, 2023.

Sec. 801.023. SEPARATION OF ADMINISTRATIVE FUNCTIONS OF BOARD. (a) The executive director of the department shall direct and may dismiss the executive director of the board. The presiding officer of the commission shall appoint a replacement executive director of the board if necessary.

(b) Subject to Subsection (a), the executive director of the board is responsible for the administration of financial services, human resources, and workforce development duties of the board, including:

(1) accounts payable and accounts receivable;

(2) budgeting, inventory, and asset management;

(3) payroll;

(4) personnel and labor issues;

(5) purchasing;

(6) recruitment, evaluation, selection, training, and promotion of personnel;

(7) submitting required reports regarding finances, performance measures, strategic planning, legislative appropriations requests, operating budgets, and similar information as required by law;

(8) legal support services, including responding to requests for public information; and

(9) information technology and support.

(c) If the department provides any of the functions listed in

Subsection (b), the board shall reimburse the department for administrative costs incurred in providing those services.

Added by Acts 2023, 88th Leg., R.S., Ch. 1103 (S.B. 1414), Sec. 2, eff. September 1, 2023.

Sec. 801.024. ADVISORY BOARD. (a) Notwithstanding Subchapter D, the board is an advisory board to the department.

(b) The board, the equine dental provider advisory committee, and any advisory committee appointed under Section 801.163 shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

(c) The board shall adopt rules relating to the scope of practice of or a health-related standard of care for the practice of the profession of veterinary medicine.

(d) The commission shall review each rule adopted under Subsection (c) and, if the commission determines that the rule is not authorized by this chapter or other law or is an unauthorized anticompetitive rule, issue an order stating that determination. A rule for which an order is issued under this subsection may not take effect or be enforced.

Added by Acts 2023, 88th Leg., R.S., Ch. 1103 (S.B. 1414), Sec. 2, eff. September 1, 2023.

Sec. 801.025. CONFLICT WITH OTHER LAW. (a) Notwithstanding Section 51.003, to the extent of any conflict between this chapter and Chapter 51, this chapter controls.

(b) To the extent of any conflict between this subchapter and another provision of this chapter, this subchapter controls.

Added by Acts 2023, 88th Leg., R.S., Ch. 1103 (S.B. 1414), Sec. 2, eff. September 1, 2023.

Sec. 801.026. EXPIRATION. This subchapter expires September 1, 2027.

Added by Acts 2023, 88th Leg., R.S., Ch. 1103 (S.B. 1414), Sec. 2,

eff. September 1, 2023.

SUBCHAPTER B. STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Sec. 801.051. BOARD; MEMBERSHIP. (a) The State Board of Veterinary Medical Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) five veterinarian members, including:

(A) one veterinarian member who is associated with an animal shelter; and

(B) one veterinarian member who has at least three years of experience practicing veterinary medicine in this state on horses, livestock, or other large animals;

(2) one licensed veterinary technician member; and

(3) three members who represent the public.

(b) The board may include not more than one veterinarian member who is a faculty member of a college of veterinary medicine.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 5, eff. September 1, 2017.

Sec. 801.052. MEMBERSHIP ELIGIBILITY. (a) A person is eligible for appointment as a veterinarian member of the board if the person:

(1) has resided and practiced veterinary medicine in this state for the six years preceding the date of appointment;

(2) is of good repute; and

(3) is not the holder of a special license issued under Section 801.256.

(b) A person is not eligible for appointment as a public member of the board if the person:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a

business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides health care services;

(B) sells, manufactures, or distributes health care supplies or equipment; or

(C) is regulated by or receives funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(c) A person is not eligible for appointment as a public member of the board if the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of veterinary medicine;

(2) is employed by or participates in the management of a business entity or other organization that:

(A) provides veterinary health care services;

(B) sells, manufactures, or distributes veterinary health care supplies or equipment; or

(C) is regulated by or receives funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that:

(A) provides veterinary health care services;

(B) sells, manufactures, or distributes veterinary health care supplies or equipment; or

(C) is regulated by or receives funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 2, eff. September 1, 2005.

Sec. 801.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be an employee of the board employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of veterinary medicine.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 3, eff. September 1, 2005.

Sec. 801.054. TERMS; VACANCY. (a) Members of the board are appointed for staggered six-year terms.

(b) If a vacancy occurs because of the death or resignation of a board member, the governor shall appoint a replacement to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.055. OFFICERS. (a) The governor shall designate a veterinarian member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) At the first meeting of the board each year, the board shall elect from its members any other officer the board considers necessary or convenient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 4, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 259 (S.B. 1850), Sec. 1, eff. September 1, 2023.

Sec. 801.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 801.052;

(2) does not maintain during service on the board the qualifications required by Section 801.052;

(3) is ineligible for membership under Section 801.052 or 801.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a

potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 5, eff. September 1, 2005.

Sec. 801.057. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including rules, interpretations, and enforcement actions that:

(A) regulate the scope of practice of persons in a profession or business the board regulates;

(B) restrict advertising by persons in a profession or business the board regulates;

(C) affect the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restrict participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each board member. On receipt of the training manual, each board member shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 6, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 6, eff. September 1, 2017.

Sec. 801.058. PER DIEM; REIMBURSEMENT. A board member is entitled to receive:

(1) a per diem, as set by legislative appropriation, for each day that the member engages in board business; and

(2) reimbursement for travel expenses, as prescribed by the General Appropriations Act, including expenses for meals and lodging.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.059. OATH OF OFFICE. Before assuming the duties of office, each board member shall file with the secretary of state a signed copy of the constitutional oath of office taken by the member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 801.101. EXECUTIVE DIRECTOR. The board may employ an

executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.102. CERTAIN DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director is responsible for:

(1) safekeeping the money collected under this chapter; and

(2) properly disbursing the veterinary fund account established by this chapter.

(b) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(39).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 25, 31(39), eff. Sept. 1, 2003.

Sec. 801.103. PERSONNEL. The board may employ personnel to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.104. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 7, eff. September 1, 2005.

Sec. 801.105. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide as often as necessary to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to

standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.106. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.107. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel, that are in compliance with Chapter 21, Labor Code;

(2) a comprehensive analysis of the board workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of the significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must be:

(1) prepared to cover an annual period;

(2) updated annually;

(3) reviewed by the Commission on Human Rights for

compliance with Subsection (a)(1); and

(4) filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 801.151. RULES. (a) The board may adopt rules as necessary to administer this chapter.

(b) The board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

(c) The board shall adopt rules to:

(1) protect the public;

(2) ensure that alternate therapies, including ultrasound diagnosis and therapy, magnetic field therapy, holistic medicine, homeopathy, chiropractic treatment, acupuncture, and laser therapy, are performed only by a veterinarian or under the supervision of a veterinarian;

(3) ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian who is active and in good standing and who has established a veterinarian-client-patient relationship with the owner or other caretaker of an animal in accordance with Section 801.351; and

(4) provide for the licensing and regulation of licensed veterinary technicians.

(d) The board may adopt rules regarding the work of a person who works under the supervision of a veterinarian.

(e) The board shall adopt rules to implement a jurisprudence examination for licensed equine dental providers and licensed veterinary technicians, including rules relating to the development and administration of the examination, examination fees, guidelines for reexamination, examination grading, and provision of notice of examination results.

(f) The board may not adopt rules that unreasonably restrict the selection by the owner or other caretaker of an animal of a licensed equine dental provider who is in good standing to provide equine dental services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 2, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 2, eff. September 1, 2013.

Sec. 801.152. EXCEPTIONS TO RULE. (a) The board may consider an exception to a rule adopted by the board on the request of a person subject to board regulation.
(b) After notice and hearing, the board may approve an exception to a board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the board except to prohibit a false, misleading, or deceptive practice by that person.
(b) In its rules to prohibit a false, misleading, or deceptive practice, the board may not include a rule that:
(1) restricts the person's use of any advertising medium;
(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
(3) relates to the size or duration of an advertisement by the person; or
(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.154. FEES. The board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the

aggregate, cover the costs of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 3, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(l)(6), eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 7, eff. September 1, 2017.

Sec. 801.155. PAYMENT OF ADMINISTRATIVE COSTS. Costs incurred by the board in administrating this chapter, including the compensation and expenses of board members and employees, may be paid only from fees collected under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.156. REGISTRY. (a) The board shall maintain a record of each license holder's:

(1) name;
(2) residence address; and
(3) business address.

(b) A license holder shall notify the board of a change of business address or employer not later than the 60th day after the date the change takes effect.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 4, eff. September 1, 2011.

Sec. 801.157. PEER ASSISTANCE PROGRAM. (a) The board shall establish or approve a peer assistance program for veterinarians. The peer assistance program must comply with Chapter 467, Health and Safety Code.

(b) The board may order a veterinarian who is subject to disciplinary action under this chapter based on a finding that the

veterinarian is impaired by chemical dependency or mental illness to submit to care, counseling, or treatment through the peer assistance program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 2, eff. September 1, 2011.

Sec. 801.158. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection or copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to an investigation of an alleged violation of this chapter.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) any county in which the board may hold a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(a), eff. Sept. 1, 2001.

Sec. 801.159. BOARD DUTIES REGARDING COMPLAINTS. (a) The board by rule shall:

(1) adopt a form to standardize information relating to complaints filed with the board; and

(2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.160. ANNUAL REPORT. (a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.161. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 8, eff. September 1, 2005.

Sec. 801.162. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted

under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 8, eff. September 1, 2005.

Sec. 801.163. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to perform advisory functions as assigned by the board.

(b) An advisory committee shall provide independent expertise on board functions and policies, but may not be involved in setting board policy.

(c) The board shall adopt rules regarding the purpose, structure, and use of an advisory committee, including rules on:

(1) the purpose, role, responsibility, and goal of an advisory committee;

(2) the size and quorum requirements for an advisory committee;

(3) the composition and representation of an advisory committee;

(4) the qualifications of advisory committee members, including any experience requirements or requirements that members represent specific geographic regions of the state;

(5) the appointment procedures for an advisory committee;

(6) the terms of service for advisory committee members;

(7) the training requirements for advisory committee members, if necessary;

(8) the method the board will use to receive public input on issues addressed by an advisory committee; and

(9) the development of board policies and procedures to ensure that an advisory committee meets the requirements for open meetings under Chapter 551, Government Code, including notice requirements.

(d) To the extent of any conflict with Chapter 2110, Government Code, this section and board rules adopted under this section

control.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 3, eff. September 1, 2013.

Sec. 801.164. RISK-BASED INSPECTIONS RELATED TO CONTROLLED SUBSTANCES PRACTICES. The board may conduct a risk-based inspection of a veterinarian's practice based on information obtained from the veterinarian or another source concerning the veterinarian's use, handling, prescribing, dispensing, or delivery of controlled substances.

Added by Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 8, eff. September 1, 2017.

SUBCHAPTER E. PUBLIC ACCESS AND INFORMATION; COMPLAINT PROCEDURES

Sec. 801.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.202. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.203. COMPLAINTS. (a) The board by rule shall establish methods by which consumers and service recipients are

notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law for presenting a complaint about a license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 5, eff. September 1, 2011.

Sec. 801.204. RECORDS OF COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 9, eff. September 1, 2005.

Sec. 801.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. The board shall adopt rules relating to the investigation of complaints filed with the board. The rules must:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed;

(4) ensure that the person who filed the complaint has the opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the

procedures for the board to obtain the services of a private investigator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 9, eff. September 1, 2017.

Sec. 801.2051. PRIORITY OF COMPLAINTS. The board shall prioritize complaints to resolve the more serious complaints first.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 10, eff. September 1, 2005.

Sec. 801.2052. DISMISSAL OF BASELESS OR UNFOUNDED COMPLAINT. (a) If, before the 180th day after the date the board's official investigation of a complaint is commenced, the board determines in accordance with rules adopted under this section that a complaint filed with the board is baseless or unfounded, the board shall:

(1) dismiss the complaint; and

(2) include a statement in the record of the complaint that the complaint was dismissed because the complaint was baseless or unfounded.

(b) The board shall adopt rules to implement this section and establish criteria for determining that a complaint is baseless or unfounded.

Added by Acts 2023, 88th Leg., R.S., Ch. 60 (S.B. 1523), Sec. 1, eff. September 1, 2023.

Sec. 801.2055. COMPLAINTS REQUIRING MEDICAL EXPERTISE. (a) A complaint that requires medical expertise to review must be reviewed by one or more veterinarians designated by the board. The veterinarian reviewers shall determine whether to dismiss the complaint or refer it to an informal proceeding under Section 801.408.

(b) If the veterinarian reviewers determine to:

(1) dismiss the complaint, the dismissal must be approved

by the board at a public meeting; or

(2) refer the complaint to an informal proceeding, the complaint is referred to an informal proceeding under Section 801.408.

(c) If the board designates more than one veterinarian reviewer and the reviewers do not agree to dismiss or refer the complaint to an informal proceeding, the complaint is referred to an informal proceeding under Section 801.408.

(d) A veterinarian board member who reviews a complaint under this section may not participate in any subsequent disciplinary proceeding related to the complaint.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 10, eff. September 1, 2005.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 10, eff. September 1, 2017.

Sec. 801.2056. COMPLAINTS NOT REQUIRING MEDICAL EXPERTISE. (a) The board may delegate to a committee of board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not require medical expertise. The disposition determined by the committee must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred for informal proceedings under Section 801.408 if:

(1) the committee determines that the complaint should not be dismissed or settled;

(2) the committee is unable to reach an agreed settlement; or

(3) the license holder who is the subject of the complaint requests that the complaint be referred for informal proceedings.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 10, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 6, eff. September 1, 2011.

Sec. 801.206. DISPOSITION OF COMPLAINT. (a) The board shall:

(1) dispose of each complaint in a timely manner; and

(2) establish a schedule for conducting each phase of the complaint process that is under the control of the board not later than the 30th day after the date the board receives the complaint.

(b) Each party to the complaint shall be notified of the projected time requirements for the complaint. Each party shall be notified of a change in the schedule not later than the seventh day after the date the change is made.

(c) The executive director shall notify the board of a complaint that is not resolved within the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.207. PUBLIC RECORD; EXCEPTION. (a) Except as provided by Subsection (b), a board record is a public record and is available for public inspection during normal business hours.

(b) Except as provided by Subsection (b-1), each complaint, investigation file and record, and other investigation report and all other investigative information in the possession of or received or gathered by the board or the board's employees or agents relating to a license holder, an application for license, or a criminal investigation or proceeding is privileged and confidential and is not subject to discovery, subpoena, or other means of legal compulsion for release to anyone other than the board or the board's employees or agents involved in discipline of a license holder.

(b-1) Not later than the 14th day before the date of an informal proceeding under Section 801.408, the board shall provide to the license holder who is the subject of the complaint a copy of the record of any review conducted under Section 801.2055 of a complaint requiring medical expertise. The board shall redact the name of each veterinarian who conducted the review.

(c) Except as provided by Subsection (b-1), the board shall protect the identity of a complainant to the extent possible.

(d) Not later than the 30th day after the date of receipt of a written request from a license holder who is the subject of a formal complaint initiated and filed under this subchapter or from the license holder's counsel of record, and subject to any other

privilege or restriction set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall provide the license holder with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. The board is not required to provide:

(1) a board investigative report or memorandum;

(2) the identity of a nontestifying complainant; or

(3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(e) Furnishing information under Subsection (d) does not constitute a waiver of privilege or confidentiality under this chapter or other applicable law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 11, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 419 (H.B. 3442), Sec. 1, eff. September 1, 2021.

Sec. 801.208. NOTIFICATION TO COMPLAINANT REGARDING COMPLAINT DISPOSITION. (a) The board shall promptly notify a complainant of the final disposition of the complaint, including notice:

(1) that the complaint was dismissed;

(2) that a penalty, disciplinary action, or other sanction was imposed; or

(3) that the complaint was disposed of in another manner and the nature of that disposition.

(b) The board shall include with the notification a copy of any public sanction imposed by the board.

(c) The board shall include in the notification an explanation of each reason for the disposition, including, as applicable, in plain, easily understandable language, each reason the conduct alleged in the complaint did or did not constitute grounds for the imposition of a penalty, disciplinary action, or other sanction.

(d) The notification may not include information that is confidential under Section 801.207(b).

Added by Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 12, eff. September 1, 2017.

Sec. 801.209. REQUIREMENTS FOR CERTAIN COMPLAINTS. (a) In this section:

(1) "Anonymous complaint" means a complaint that lacks sufficient information to identify the source or the name of the person who filed the complaint.

(2) "Insurance professional" means a person licensed under Title 13, Insurance Code.

(3) "Insurer" means an insurance company or other entity authorized to engage in the business of insurance under Title 6, Insurance Code.

(b) The board may not accept anonymous complaints.

(c) Notwithstanding any confidentiality requirements under Chapter 552, Government Code, or this chapter, a complaint filed with the board against a license holder by a pharmaceutical company or by an insurance professional or insurer relating to insurance covering veterinary services must include the name and address of the pharmaceutical company, insurance professional, or insurer filing the complaint. Not later than the 15th day after the date the complaint is filed with the board, the board shall notify the license holder who is the subject of the complaint of the name and address of the pharmaceutical company, insurance professional, or insurer who filed the complaint, unless the notice would jeopardize an investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 13, eff. September 1, 2017.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 801.251. LICENSE REQUIRED FOR PRACTICE OF VETERINARY MEDICINE. Except as provided by Section 801.004, a person may not practice, or offer or attempt to practice, veterinary medicine unless the person holds a license to practice veterinary medicine issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 7, eff.

September 1, 2011.

Sec. 801.252. ELIGIBILITY REQUIREMENTS FOR LICENSE TO PRACTICE VETERINARY MEDICINE. The board shall issue a license to practice veterinary medicine to a person who is qualified to be licensed to practice veterinary medicine under this chapter. A person is qualified to be licensed to practice veterinary medicine if:

(1) the person has attained the age of majority;

(2) the person is a graduate of a board-approved school or college of veterinary medicine;

(3) the person successfully completes the licensing examination for veterinarians conducted by the board; and

(4) the board does not refuse to issue a license to the person under Section 801.401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 7, eff. September 1, 2011.

Sec. 801.253. LICENSING EXAMINATIONS FOR VETERINARIANS.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 3

(a) The board shall conduct licensing examinations at least twice each year as provided by board rule. The examination shall be conducted at a time and place the board determines is convenient for applicants.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 9

(a) The board shall conduct licensing examinations for veterinarians as provided by board rule. The board shall conduct the examination at a time and place the board determines is convenient for applicants.

(b) The board shall provide notice of a licensing examination by publication in a newspaper or periodical.

(c) The board shall examine each qualified applicant who attends the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 3, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 8, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 9, eff. September 1, 2011.

Sec. 801.254. CONTENT AND CONDUCT OF EXAMINATION. (a) The board shall conduct, or may contract with a board-approved entity to conduct, the licensing examination on subjects relating to veterinary medicine, including anatomy, pathology, chemistry, obstetrics, public health, veterinary practice, veterinary jurisprudence, physiology and bacteriology, and other subjects regularly taught in reputable schools of veterinary medicine. In this chapter, a reference to an examination conducted by the board includes an examination conducted by a board-approved entity as permitted by this subsection.

(b) The board may conduct a licensing examination in writing, by a practical demonstration of the applicant's skill, or by a combination of those methods. The board shall arrange for the written portion of the examination, if any, to be validated by an independent testing professional.

(c) To pass the licensing examination, an applicant must demonstrate the standard of proficiency the board determines is essential for a qualified veterinarian.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 11, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 4, eff. September 1, 2011.

Sec. 801.255. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of the examination not later than the 30th day after the date the licensing examination is administered. If an examination is graded or reviewed by a national testing

service, the board shall notify the examinee of the results of the examination not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results graded or reviewed by a national testing service will be delayed longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.2555. EXAMINATION FEE REFUND. (a) The board shall refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

(b) The board shall adopt rules that establish the required notification period and the emergency situations that warrant a refund.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 12, eff. September 1, 2005.

Sec. 801.256. SPECIAL LICENSE TO PRACTICE VETERINARY MEDICINE. (a) The board may issue a special license to practice veterinary medicine to an applicant who is:

(1) a member of the faculty or staff of a board-approved veterinary program at an institution of higher education;

(2) a veterinarian employee of the Texas Animal Health Commission;

(3) a veterinarian employee of the Texas Veterinary Medical Diagnostic Laboratory; or

(4) a person licensed to practice veterinary medicine in another jurisdiction, if the board determines that the person's specialty practice is unrepresented or underrepresented in this state.

(b) An applicant is eligible for a special license if:

(1) the applicant:

(A) is at least 21 years of age and a graduate of a board-approved veterinary medicine program at an institution of higher education; or

(B) provides to the board a written affirmation by a person described under Subsection (f) that the applicant meets a critical need for staffing at the person's institution and is certified by a nationally recognized veterinary speciality board or is eligible for that certification; and

(2) the applicant passes the jurisprudence section of the licensing examination.

(c) The board shall adopt rules relating to the issuance of a special license.

(d) A special license is valid only for the performance of duties within the scope of the special license holder's employment or practice.

(e) The board may suspend or revoke a special license if:

(1) the special license holder's employment is terminated; or

(2) the special license holder practices outside of the scope of the license.

(f) The following people may provide a statement under Subsection (b)(1)(B):

(1) the dean of a board-approved veterinary medicine program at an institution of higher education in this state;

(2) the executive director of the Texas Animal Health Commission; or

(3) the executive director of the Texas Veterinary Medical Diagnostic Laboratory.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1114, Sec. 1, eff. June 15, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 11, eff. September 1, 2011.

Sec. 801.257. PROVISIONAL LICENSE TO PRACTICE VETERINARY MEDICINE. (a) The board may grant a provisional license to practice veterinary medicine to an applicant who presents proof that the applicant:

(1) is licensed in good standing as a veterinarian in another state that:

(A) has licensing requirements substantially equivalent to the requirements of this chapter; and

(B) maintains professional standards the board considers equivalent to the professional standards of this chapter; and

(2) has passed a national or other examination recognized by the board relating to veterinary medicine.

(b) Repealed by Acts 2005, 79th Leg., Ch. 27, Sec. 27(1), eff. September 1, 2005.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to a provisional license holder if:

(1) the provisional license holder passes the licensing examination under Section 801.253;

(2) the board verifies that the provisional license holder has the academic and experience requirements to qualify for a license; and

(3) the provisional license holder satisfies any other license requirement under this chapter.

(d) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 13, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 27(1), eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 13, eff. September 1, 2011.

Sec. 801.258. TEMPORARY LICENSE TO PRACTICE VETERINARY MEDICINE. The board by rule may provide for the issuance of a temporary license to practice veterinary medicine to an applicant who:

(1) is licensed in good standing as a veterinarian in another state or foreign country;

(2) meets the eligibility requirements under Sections 801.252(1) and (2); and

(3) is not subject to denial of a license or to disciplinary action for a ground listed in Section 801.402.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 14, eff. September 1, 2011.

Sec. 801.259. LICENSED EQUINE DENTAL PROVIDER DESIGNATIONS. (a) A person may not represent to the public that the person is authorized to perform equine dentistry or use the titles "dentist," "certified equine dental provider," "equine dental provider," "CEDP," or "EDP" unless specifically authorized by Subsection (b).

(b) Only a licensed equine dental provider who is certified in accordance with Section 801.261(a)(3) may use the title "certified equine dental provider" or the designation "CEDP." Only a licensed equine dental provider who is licensed before September 1, 2013, and who is not certified in accordance with Section 801.261(a)(3) may use the title "equine dental provider" or the designation "EDP."

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.260. REQUIREMENTS TO PERFORM EQUINE DENTISTRY. A person may not perform equine dentistry or offer or attempt to act as an equine dental provider unless the person is:

(1) a veterinarian who is active and in good standing;

(2) a licensed equine dental provider who is active and in good standing performing under the supervision of a veterinarian who is active and in good standing; or

(3) a student of an equine dental provider certification program approved by the board who:

(A) is completing the practical requirements of the certification program; and

(B) performs equine dentistry under the direct supervision of a veterinarian who is active and in good standing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 271 (H.B. 3132), Sec. 1, eff. September 1, 2021.

Sec. 801.261. LICENSED EQUINE DENTAL PROVIDER: APPLICATION, QUALIFICATIONS, AND ISSUANCE. (a) The board shall issue an equine dental provider license to a person who is qualified under this section. A person is qualified to be licensed as an equine dental provider if the person:

(1) passes a jurisprudence examination conducted by the board in accordance with Section 801.264;

(2) is not disqualified under this chapter or board rule; and

(3) is certified by the International Association of Equine Dentistry or another board-approved certification entity or organization.

(b) An applicant for an equine dental provider license must submit to the board:

(1) an application on the form prescribed by the board;

(2) information to enable the board to conduct a criminal background check as required by the board; and

(3) any other information required by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.262. SCOPE OF PRACTICE OF LICENSED EQUINE DENTAL

PROVIDER. (a) A licensed equine dental provider may not perform equine dentistry unless the provider is active and in good standing and performs equine dentistry under the general supervision of a veterinarian who is active and in good standing.

(b) A licensed equine dental provider may perform only the following equine dental procedures:

(1) removing sharp enamel points;

(2) removing small dental overgrowths;

(3) rostral profiling of the first cheek teeth;

(4) reducing incisors;

(5) extracting loose, deciduous teeth;

(6) removing supragingival calculus;

(7) extracting loose, mobile, or diseased teeth or dental fragments with minimal periodontal attachments by hand and without the use of an elevator; and

(8) removing erupted, non-displaced wolf teeth.

(c) Subsection (b) may not be construed to prohibit an employee of a veterinarian who is not a licensed equine dental provider from performing the equine dental procedures described in Subsection (b) if the employee is under the direct supervision of a veterinarian.

(d) A copy of the dental chart of an equine animal is to be left with the person who authorizes an equine dental procedure and is to be made available to the supervising veterinarian upon request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.263. LICENSED EQUINE DENTAL PROVIDER RESPONSIBILITY. A licensed equine dental provider shall be held to the same standard of care as a veterinarian when the provider performs the equine dental procedures described in Section 801.262(b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.

Sec. 801.264. JURISPRUDENCE EXAMINATION. (a) The board shall develop and administer a jurisprudence examination for licensed equine dental providers to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state

affecting the applicant's practice.

(b) The board shall develop and administer a jurisprudence examination for licensed veterinary technicians to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's employment as a licensed veterinary technician.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 15, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 4, eff. September 1, 2013.

Sec. 801.265. LICENSED VETERINARY TECHNICIAN: APPLICATION, QUALIFICATIONS, AND ISSUANCE. (a) The board shall issue a veterinary technician license to a person who is qualified under this section. A person is qualified to be licensed as a licensed veterinary technician if the person:

(1) passes a jurisprudence examination conducted by the board in accordance with Section 801.264;

(2) is at least 18 years old;

(3) has graduated from a program accredited by the American Veterinary Medical Association;

(4) has passed the Veterinary Technician National Examination; and

(5) is not disqualified under this chapter or board rule.

(b) An applicant for a veterinary technician license must submit to the board:

(1) an application on the form prescribed by the board;

(2) information to enable the board to conduct a criminal background check if required by the board; and

(3) any other information required by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 5, eff. September 1, 2013.

Sec. 801.266. LICENSED VETERINARY TECHNICIAN LICENSE REQUIRED; DISPLAY OF LICENSE. (a) A person may not use the title "Licensed Veterinary Technician" or "LVT" or advertise or offer services in a

manner to lead other people to believe that the person is licensed as a licensed veterinary technician unless the person holds a license under Section 801.265.

(b) If employed by a veterinary hospital, a licensed veterinary technician shall display at that facility the person's license issued by the board or a legible photocopy of the license.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 5, eff. September 1, 2013.

Sec. 801.267. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 14, eff. September 1, 2017.

SUBCHAPTER G. LICENSE EXPIRATION AND RENEWAL

Sec. 801.301. LICENSE TERM AND RENEWAL. (a) The board shall provide:

(1) that each type of license under this chapter is valid for a term of one year or two years; and

(2) for the renewal of a license.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year.

(c) For a year in which the license expiration date is changed, the board shall prorate license fees on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 15, eff. September 1, 2017.

Sec. 801.302. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the expiration date of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the board's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.303. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1-1/2 times the renewal fee set by the board under Section 801.154(a).

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the renewal fee set by the board under Section 801.154(a).

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 14, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 16, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(d), eff. September 1, 2015.

Sec. 801.304. FEE EXEMPTION. A veterinarian is exempt from the fee requirements imposed under Section 801.303 if the veterinarian:
(1) is on active duty with the Armed Forces of the United States and does not engage in private or civilian practice; or
(2) is permanently and totally retired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 17, eff. September 1, 2011.

Sec. 801.305. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed to practice veterinary medicine in this state, moved to another state, and is currently licensed in good standing and has been in practice in the other state for the two years preceding the date of application may obtain a new license to practice veterinary medicine without reexamination.
(b) The person must pay to the board a fee that is equal to the amount of the renewal fee set by the board under Section 801.154(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 15, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 18, eff.

September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(e), eff. September 1, 2015.

Sec. 801.306. INACTIVE STATUS. The board by rule may provide for the placement of a license holder on inactive status. The rules adopted under this section may not include a limit on the time a license holder may remain on inactive status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 19, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 16, eff. September 1, 2017.

Sec. 801.307. CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license to practice veterinary medicine or work as a licensed veterinary technician. The board shall require six hours of continuing education annually to renew an equine dental provider license.

Text of subsection as added by Acts 2019, 86th Leg., R.S., Ch. 449 (S.B. 1947), Sec. 2

(a-1) The board shall require a veterinarian to complete two hours of continuing education related to opioid abuse and controlled substance diversion, inventory, and security every two years to renew a license to practice veterinary medicine.

Text of subsection as added by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 4

(a-1) The board by rule shall require a veterinarian to complete two hours of continuing education related to opioid abuse and controlled substance diversion, inventory, and security every two years to renew a license to practice veterinary medicine.

(b) The board may:

(1) establish general categories of continuing education that meet the needs of license holders;

(2) require a license holder to successfully complete

continuing education courses; and

(3) for a license valid for two years, provide a one year or two year period for the completion of continuing education.

(c) The board may require a license holder who does not complete the required number of hours of continuing education in a period to make up the missed hours in a later period. Hours required to be made up in a later period are in addition to the hours normally required to be completed in that period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 16, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 20, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 6, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 17, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 449 (S.B. 1947), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 4, eff. September 1, 2019.

Sec. 801.308. CONTINUING EDUCATION AUDITS. (a) The board shall monitor compliance with continuing education requirements by conducting random audits of license holders seeking renewal. The board staff may conduct an audit at any time. The board may perform additional compliance monitoring by other means.

(b) A license holder who is audited shall provide proof of course completion to the board, including certificates of completion.

(c) A list of completed continuing education courses from the license holder on one presigned form does not establish compliance.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 17, eff. September 1, 2005.

Sec. 801.309. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) An applicant renewing a license issued

under this chapter shall submit a complete and legible set of fingerprints for purposes of performing a criminal history record information check of the applicant as provided by Section 801.267.

(b) The board may administratively suspend or refuse to renew the license of a person who does not comply with the requirement of Subsection (a).

(c) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 801.267 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 18, eff. September 1, 2017.

SUBCHAPTER H. PRACTICE BY VETERINARIAN

Sec. 801.351. EXISTENCE OF VETERINARIAN-CLIENT-PATIENT RELATIONSHIP. (a) A person may not practice veterinary medicine unless a veterinarian-client-patient relationship exists. A veterinarian-client-patient relationship exists if the veterinarian:

(1) assumes responsibility for medical judgments regarding the health of an animal and a client, who is the owner or other caretaker of the animal, agrees to follow the veterinarian's instructions;

(2) possesses sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition; and

(3) is readily available to provide, or has provided, follow-up medical care in the event of an adverse reaction to, or a failure of, the regimen of therapy provided by the veterinarian.

(b) A veterinarian possesses sufficient knowledge of the animal for purposes of Subsection (a)(2) if the veterinarian has recently seen, or is personally acquainted with, the keeping and care of the animal by:

(1) examining the animal; or

(2) making medically appropriate and timely visits to the premises on which the animal is kept.

(c) A veterinarian-client-patient relationship may not be

established solely by telephone or electronic means.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 1, eff. September 1, 2005.

Sec. 801.352. PROHIBITION AGAINST INTERFERENCE OR INTERVENTION. (a) The professional services of a veterinarian may not be controlled or exploited by a person who:

(1) is not a veterinarian; and

(2) intervenes between the veterinarian and the veterinarian's client.

(b) A veterinarian may not:

(1) allow a person who does not hold a license to practice veterinary medicine issued under this chapter to interfere with or intervene in the veterinarian's practice of veterinary medicine; or

(2) submit to interference or intervention by a person who does not hold a license to practice veterinary medicine issued under this chapter.

(c) A veterinarian shall avoid a relationship that may result in interference with or intervention in the veterinarian's practice of veterinary medicine by a person who does not hold a license to practice veterinary medicine issued under this chapter.

(d) A veterinarian is responsible for the veterinarian's actions. The veterinarian is directly responsible to the client and for the care and treatment of the patient.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 21, eff. September 1, 2011.

Sec. 801.353. CONFIDENTIALITY; WAIVER. (a) A veterinarian may not violate the confidential relationship between the veterinarian and the veterinarian's client.

(b) A veterinarian may not be required to release information concerning the veterinarian's care of an animal, except on the veterinarian's receipt of:

(1) a written authorization or other form of waiver executed by the client; or

(2) an appropriate court order or subpoena.

(c) A veterinarian who releases information as required under Subsection (b) is not liable to any person, including the client, for an action resulting from the disclosure.

(d) The privilege provided by this section is waived by the client or the owner of an animal treated by the veterinarian to the extent the client or owner places at issue in a civil or criminal proceeding:

(1) the nature and extent of the animal's injuries; or

(2) the care and treatment of the animal provided by the veterinarian.

(d-1) The privilege provided by this section is waived by the client or the owner of the animal treated by the veterinarian in a proceeding to substantiate and collect on a claim for the provision of or a debt incurred for veterinary services.

(d-2) The privilege provided by this section is waived by the client or the owner of the animal treated by the veterinarian with respect to information regarding the animal's care and treatment by the veterinarian that the client or owner publishes in a public forum if:

(1) the information shared by the client or owner in the public forum is false with respect to the veterinarian;

(2) any information shared by the veterinarian in response is limited to factual information of which the veterinarian has knowledge that directly refutes the false information shared by the client or owner in the public forum; and

(3) the veterinarian does not share any personally identifiable information of a client or owner other than the full name of the client or owner.

(e) This section does not apply to an inspection or investigation conducted by the board or an agent of the board.

(f) A veterinarian does not violate this section by providing the name or address of a client, or the rabies vaccination status of a specific client's specific animal, to a public health authority, veterinarian, physician, or other licensed health care professional who requests the identity of the client to obtain information for:

(1) the verification of a rabies vaccination;

(2) other treatment involving a life-threatening situation;

or

(3) a public health purpose.

(f-1) A veterinarian does not violate this section by providing to a veterinarian or an appropriate governmental entity information regarding:

(1) the prescribing, dispensing, or requesting of a controlled substance; or

(2) cruelty to or an attack of an animal.

(g) A public health authority or other governmental entity that receives information under Subsection (f) or (f-1) shall maintain the confidentiality of the information, may not disclose the information under Chapter 552, Government Code, and may not use the information for a purpose that does not directly relate to law enforcement or the protection of public health and safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 231 (H.B. 413), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 411 (S.B. 811), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 14.003, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 827 (H.B. 2850), Sec. 2, eff. September 1, 2021.

Sec. 801.354. AUTHORIZED BUSINESS PRACTICES. It is not a violation of this chapter for a veterinarian, or a business entity authorized under this chapter to render veterinary services, to:

(1) lease space for the purpose of providing veterinary services;

(2) pay for franchise fees or other services on a percentage-of-receipts basis; or

(3) sell, transfer, or assign accounts receivable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.3541. LOCATION OF VETERINARY PRACTICE. The premises on which a veterinary practice is located may be owned by a person or other legal entity that does not hold a license to practice veterinary medicine issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(d), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 22, eff. September 1, 2011.

Sec. 801.355. LEASING SPACE FROM MERCANTILE ESTABLISHMENT. (a) The practice of a veterinarian who leases space from a mercantile establishment and practices veterinary medicine on the premises of the mercantile establishment must be owned by a veterinarian. The practice and the leased space must be under the exclusive control of a veterinarian.

(b) The leased space must be definite and apart from the space occupied by other occupants of the premises. The leased space must be separated from the space used by other occupants by solid and opaque partitions or walls that extend from the floor to the ceiling. The requirement of this subsection is not satisfied by the use of railings, curtains, or other similar arrangements.

(c) The leased space must have a patient's entrance that:

(1) opens to a public street, hall, lobby, corridor, or other public thoroughfare other than the aisle of a mercantile establishment; and

(2) is actually used as an entrance by the veterinarian's patients.

(d) The leased space may have an additional patient's entrance, that may be nonopaque, that opens from the inside of the mercantile establishment directly into the leased space.

(e) The practice of the veterinarian may not be conducted in any part as a department or concession of the mercantile establishment. A legend or sign that states "Veterinary Department," or that contains other words implying that the practice is not an independent veterinary practice, may not be displayed on the premises or in an advertisement for the premises. The use of the veterinarian's name must clearly indicate that the practice is

independent and not under the ownership or control of the mercantile establishment.

(f) The patient and business records of the practice of the veterinarian are the sole property of the veterinarian. The mercantile establishment or a person who is not a veterinarian may not control the records, except that:

(1) business records that are essential to the initiation or continuation of a percentage of gross receipts lease of space may be inspected by the lessor; and

(2) a veterinarian may enter into a management agreement that permits an employee or agent of the management company to access or copy patient records as necessary to perform management functions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.356. EXEMPTIONS FROM REQUIREMENTS RELATED TO MERCANTILE ESTABLISHMENT. (a) Section 801.355(c) does not apply to the practice of a veterinarian, or the legal successor of the practice, if the practice is operating in space that was opened, designed, or engineered in accordance with plans for a specific facility submitted to the board before December 31, 2009.

(b) Section 801.355 does not prohibit the delivery of temporary limited-service veterinary activities, including preventive veterinary services such as vaccinations and testing, at a mercantile establishment that is not owned or under the exclusive control of a veterinarian if the services are periodic and delivered by a veterinarian. The board by rule may establish the conditions under which a veterinarian may provide the services described by this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 41 (H.B. 1615), Sec. 1, eff. May 19, 2009.

Sec. 801.357. RESPONSIBILITY OF VETERINARIAN TOWARD ABANDONED ANIMALS. (a) A veterinarian may dispose of an animal that is abandoned in the veterinarian's care if the veterinarian:

(1) gives the client, by certified mail to the client's

last known address, notice of the veterinarian's intention to dispose of the animal; and

(2) allows the client to retrieve the animal during the 10 days after the date the veterinarian mails the notice.

(b) A veterinarian may not dispose of an animal under Subsection (a) if:

(1) a contract between the veterinarian and client provides otherwise; or

(2) after notice is given under Subsection (a), the veterinarian and client agree to extend the veterinarian's care of the animal.

(c) The client's contact of the veterinarian by mail, telephone, or personal communication does not extend the veterinarian's obligation to treat, board, or care for an animal unless the veterinarian and client agree to extend the veterinarian's care of the animal.

(d) An animal is considered abandoned on the 11th day after the date the veterinarian mails the notice under Subsection (a) unless an agreement is made to extend the care for the animal.

(e) Notice given by a veterinarian under Subsection (a) does not relieve a client of liability to pay for treatment, boarding, or care provided by the veterinarian.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 3, eff. September 1, 2005.

Sec. 801.358. LIABILITY OF VETERINARIAN FOR EMERGENCY TREATMENT; EUTHANASIA PRESUMPTION. (a) A veterinarian who provides emergency treatment to an ill or injured animal on the veterinarian's own initiative, or at the request of a person other than the animal's owner, is not liable to the owner for damages to the animal unless the veterinarian commits gross negligence.

(b) If the veterinarian performs euthanasia on the animal, the veterinarian is presumed to have performed a humane act necessary to relieve the animal's pain and suffering.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.3581. PRICE TRANSPARENCY FOR EMERGENCY CARE. (a) The board shall adopt rules to require a veterinarian to disclose to the owner or other caretaker of an animal the following information before providing emergency treatment to an ill or injured animal:

(1) a description of the proposed treatment; and

(2) the estimated price of the proposed treatment.

(b) Rules adopted under this section must ensure the veterinarian has a reasonable opportunity to:

(1) assess the animal's condition and develop proposed options for treatment before providing the information described by Subsection (a); and

(2) propose additional treatment options and price estimates based on changes in the animal's medical condition.

Added by Acts 2023, 88th Leg., R.S., Ch. 620 (H.B. 4069), Sec. 1, eff. September 1, 2023.

Sec. 801.3585. LIABILITY FOR REPORTING ANIMAL CRUELTY; IMMUNITY. A veterinarian who in good faith and in the normal course of business reports to the appropriate governmental entity a suspected incident of animal cruelty under Section 42.09 or 42.092, Penal Code, is immune from liability in a civil or criminal action brought against the veterinarian for reporting the incident.

Added by Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 4, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 5, eff. September 1, 2007.

Sec. 801.359. CONTROLLED SUBSTANCES RECORDS. (a) The board shall require each veterinarian to maintain a recordkeeping system for controlled substances as required by Chapter 481, Health and Safety Code.

(b) The records are subject to review by a law enforcement agency or board representative.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.360. DEATH OF VETERINARIAN. On the death of a veterinarian, the veterinarian's practice ownership and patient records become the property of the veterinarian's heirs to dispose of as necessary not later than the second anniversary of the date of the veterinarian's death.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.361. DISPOSAL OF ANIMAL REMAINS. (a) In this section, " medical waste" includes animal waste, blood, gloves, sleeves, newspapers, and plastic bags, but does not include sharps.

(b) A veterinarian may dispose of the remains of an animal and medical waste associated with the animal by burial or burning if:

(1) the burial or burning occurs on property owned by the veterinarian that is located:

(A) outside the corporate boundaries of a municipality; or

(B) within the corporate boundaries of a municipality as a result of an annexation that occurs on or after September 1, 2003; and

(2) at least one of the following requirements is met:

(A) a veterinarian-client-patient relationship existed between the veterinarian, the owner or other caretaker of the animal, and the animal before the animal's death;

(B) the veterinarian diagnosed, treated, boarded, or otherwise cared for the animal before its death; or

(C) the veterinarian performed euthanasia or an autopsy on the animal.

(c) Notwithstanding any other law, the Texas Commission on Environmental Quality may not adopt a rule that prohibits conduct authorized by this section.

(d) The Texas Commission on Environmental Quality may not adopt a rule that relates to the disposal of animal remains under this section unless the rule is developed in cooperation with and is approved by the Texas Animal Health Commission.

(e) This section prevails over any other law that authorizes a governmental entity to:

(1) prohibit or restrict outdoor burning; or

(2) abate a public nuisance.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 17.01, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 806, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1333, Sec. 3, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(74), eff. September 1, 2005.

Sec. 801.362. AUTHORITY TO DISPENSE DRUGS PRESCRIBED BY ANOTHER VETERINARIAN IN EMERGENCY. (a) A veterinarian may dispense a drug, other than a controlled substance, prescribed by another veterinarian, including a veterinarian licensed in another state, if:

(1) failure to dispense the drug could interrupt a therapeutic regimen or cause a patient to suffer;

(2) the prescribing veterinarian informs the dispensing veterinarian that the drug is appropriate and necessary for the animal;

(3) the quantity of the dispensed drug does not exceed a five-day supply for each animal annually;

(4) the annual total of dosage units of drugs dispensed under this subsection is not more than five percent of the total dosage units of drugs the veterinarian dispenses in a year; and

(5) the veterinarian maintains records of dispensing activities under this section consistent with board rules.

(b) A veterinarian does not violate Section 801.402 by ordering a prescription drug in compliance with this section for the treatment of an animal without first establishing a veterinarian-client-patient relationship.

(c) The board may adopt rules to implement this section.

Added by Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 5, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 699 (H.B. 2765), Sec. 1, eff. June 19, 2009.

Sec. 801.363. DELEGATION AND SUPERVISION OF ANIMAL CARE TASKS. (a) Decisions relating to the diagnosis, treatment, management, and future disposition of an animal patient must be made by a supervising

veterinarian.

(b) A supervising veterinarian shall determine the appropriate level of supervision and protocol for a task that is delegated to a licensed veterinary technician, certified veterinary assistant, or veterinary assistant. In determining the appropriate level of supervision, the veterinarian must consider the level of training and experience of the person to whom the task is delegated.

(c) According to the judgment of the supervising veterinarian, a veterinarian may delegate greater responsibility to a licensed veterinary technician than to a certified veterinary assistant or a veterinary assistant. A veterinarian may provide greater supervision for a task performed by a certified veterinary assistant or a veterinary assistant than for the same task performed by a licensed veterinary technician.

(d) A satellite office or mobile facility may not be operated without a supervising veterinarian.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 7, eff. September 1, 2013.

Sec. 801.364. SCOPE OF PRACTICE OF LICENSED VETERINARY TECHNICIANS, CERTIFIED VETERINARY ASSISTANTS, AND VETERINARY ASSISTANTS. (a) A licensed veterinary technician may:

(1) under the direct or immediate supervision of a veterinarian:

(A) suture to close existing surgical skin incisions and skin lacerations;

(B) induce anesthesia; and

(C) extract loose teeth or dental fragments of companion animals with minimal periodontal attachments by hand and without the use of an elevator;

(2) under the direct, immediate, or general supervision of a veterinarian:

(A) draw blood; and

(B) take samples for the purpose of testing and diagnosis;

(3) perform a task assigned by the supervising veterinarian under a level of supervision determined by the supervising veterinarian; and

(4) immediately supervise a certified veterinary assistant or veterinary assistant who is performing a task described by Subdivision (1)(A) or (B) or (2) or other tasks related to animal care as assigned by the supervising veterinarian according to the protocol established by the supervising veterinarian.

(b) A licensed veterinary technician who is immediately supervising a task performed by a certified veterinary assistant or a veterinary assistant is responsible for conduct that violates laws, including board rules, related to the practice of veterinary medicine.

(c) In addition to tasks described by Subsection (a)(4), a certified veterinary assistant or veterinary assistant may:

(1) under the immediate supervision of a veterinarian:

(A) suture to close existing surgical skin incisions and skin lacerations; and

(B) induce anesthesia; and

(2) perform other tasks assigned by the supervising veterinarian under a level of supervision determined by the supervising veterinarian.

(d) A licensed veterinary technician, certified veterinary assistant, or veterinary assistant may not:

(1) perform surgery;

(2) perform an invasive dental procedure, except as provided by Subsection (a)(1)(C);

(3) diagnose or determine a prognosis for an animal disease or condition;

(4) prescribe a drug or appliance; or

(5) initiate treatment without prior instruction by a veterinarian, except in the case of an emergency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 7, eff. September 1, 2013.

SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 801.401. DISCIPLINARY POWERS OF BOARD. (a) If an applicant or license holder is subject to denial of a license or to disciplinary action under Section 801.402, the board may:

(1) refuse to examine an applicant or to issue or renew a license;

(2) revoke or suspend a license;

(3) place on probation a license holder or person whose license has been suspended;

(4) reprimand a license holder; or

(5) impose an administrative penalty.

(b) The board may take action under Subsection (a) after notice and hearing under Section 801.407 or as provided by board rule.

(c) The board may require a license holder whose license suspension is probated to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(d) In addition to other disciplinary actions authorized by this subchapter, the board may require a license holder who violates this chapter to participate in a continuing education program. The board shall specify the continuing education programs that the license holder may attend and the number of hours that the license holder must complete. A continuing education program specified by the board must be relevant to the violation committed by the license holder.

(e) The board may issue a disciplinary order directing a veterinarian to participate in the peer assistance program under Section 801.157 if the board determines that the veterinarian is an impaired professional as defined by Section 467.001, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 18, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 697 (H.B. 412), Sec. 1, eff. September 1, 2011.

Sec. 801.402. GENERAL GROUNDS FOR LICENSE DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license or

to disciplinary action under Section 801.401 if the person:

(1) presents to the board dishonest or fraudulent evidence of the person's qualifications;

(2) commits fraud or deception in the examination process or to obtain a license;

(3) is chronically or habitually intoxicated, chemically dependent, or addicted to drugs;

(4) engages in dishonest or illegal practices in, or connected with, the practice of veterinary medicine or the practice of equine dentistry;

(5) is convicted of a felony under the laws of this state, another state, or the United States;

(6) engages in practices or conduct that violates the board's rules of professional conduct;

(7) permits another to use the person's license to practice veterinary medicine or to practice equine dentistry in this state;

(8) fraudulently issues a health certificate, vaccination certificate, test chart, or other form used in the practice of veterinary medicine or the practice of equine dentistry that relates to the presence or absence of animal disease;

(9) issues a false certificate relating to the sale for human consumption of inedible animal products;

(10) commits fraud in connection with the application or reporting of a test of animal disease;

(11) pays or receives a kickback, rebate, bonus, or other remuneration for treating an animal or for referring a client to another provider of veterinary or equine dental services or goods;

(12) performs or prescribes unnecessary or unauthorized treatment;

(13) orders a prescription drug or controlled substance for the treatment of an animal without first establishing a veterinarian-client-patient relationship;

(14) refuses to admit a board representative to inspect the person's client and patient records and business premises during regular business hours;

(15) fails to keep the person's equipment and business premises in a sanitary condition;

(16) commits gross malpractice or a pattern of acts that indicate consistent malpractice, negligence, or incompetence in the practice of veterinary medicine or the practice of equine dentistry;

(17) is subject to disciplinary action in another jurisdiction, including the suspension, probation, or revocation of a license to practice veterinary medicine or to practice equine dentistry issued by another jurisdiction;

(18) is convicted for an offense under Section 42.09, 42.091, or 42.092, Penal Code;

(19) represents the person as a veterinarian without a license issued under this chapter;

(20) practices veterinary medicine or assists in the practice of veterinary medicine without a license issued under this chapter; or

(21) violates Section 801.353 or a rule adopted by the board related to confidentiality.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 23, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 481 (S.B. 1312), Sec. 8, eff. September 1, 2013.

Sec. 801.403. FAILURE TO REPORT DISEASE. The board may suspend or revoke a license to practice veterinary medicine, place a veterinarian on probation, or reprimand a veterinarian if the veterinarian knowingly fails to report a disease to the Texas Animal Health Commission as required by Section 161.101, Agriculture Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 23, eff. September 1, 2011.

Sec. 801.404. FAILURE TO MAINTAIN RECORDS. The board may suspend or revoke a license to practice veterinary medicine issued under this chapter or place on probation a veterinarian if the veterinarian fails to maintain records as required by Section 801.359.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 23, eff. September 1, 2011.

Sec. 801.405. MENTAL INCOMPETENCE. (a) The board may suspend or revoke a license if a court finds that the license holder is mentally incompetent.

(b) If a court determines that a person whose license is suspended or revoked under this section is mentally competent, the board may reinstate the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.406. REQUIRED DISCIPLINARY ACTION FOR CERTAIN FELONY CONVICTIONS. (a) On conviction of a license holder of a felony under Section 485.033, Health and Safety Code, or Chapter 481 or 483 of that code, the board shall, after conducting an administrative hearing in which the fact of conviction is determined, impose a penalty as provided by Section 801.401. The board shall set the amount of the penalty to match the seriousness of the conviction.

(b) Repealed by Acts 2005, 79th Leg., Ch. 27, Sec. 27(2), eff. September 1, 2005.

(c) The board may reinstate or reissue a license suspended or revoked under this section only on an express determination based on substantial evidence contained in an investigative report indicating that reinstatement or reissuance of the license is in the best interests of:

(1) the public; and

(2) the person whose license has been suspended or revoked.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 19, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 27(2), eff. September 1, 2005.

Sec. 801.407. RIGHT TO HEARING. (a) A person is entitled to a

hearing before the State Office of Administrative Hearings if the board:

(1) refuses to examine the person;

(2) denies the person's application for a license;

(3) revokes or suspends the person's license;

(4) places the person on probation;

(5) reprimands the person; or

(6) assesses an administrative penalty against the person.

(b) A hearing conducted under this section is governed by Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall use the schedule of sanctions under Section 801.411 for any sanction imposed as the result of a hearing conducted by that office.

(d) The board may conduct deliberations relating to a disciplinary action during executive session. At the conclusion of those deliberations, the board shall vote and announce its decision to the license holder in open session.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 20, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 19, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 20, eff. September 1, 2017.

Sec. 801.408. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 2001.056, Government Code; and

(2) an informal proceeding held in compliance with Section 2001.054, Government Code.

(b) Rules adopted under Subsection (a) must:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of the board's general counsel or a representative of the attorney general during an informal proceeding to advise the board or the board's employees.

(c) A committee of two or more veterinarian board members and one or more public board members must be present at an informal proceeding for a complaint that requires medical expertise. The committee shall recommend enforcement action at the informal proceeding.

(d) A committee of board staff may recommend enforcement action at an informal proceeding for a complaint that does not require medical expertise or may refer the complaint to the committee of board members under Subsection (c).

(e) At an informal proceeding under this section, and on agreement with the license holder, the board may order the license holder to refund an amount not to exceed the amount a client paid to the license holder instead of or in addition to imposing an administrative penalty under this chapter. The board may not require payment of other damages or estimate harm under this subsection.

(f) Before an informal disposition is effective, the board must review and approve at a public meeting an informal disposition of the complaint recommended by board members or board staff.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 21, eff. September 1, 2005.

Sec. 801.409. TEMPORARY LICENSE SUSPENSION. (a) An executive committee of the board consisting of the president and two other board members appointed by the president may temporarily suspend the license of a license holder if the executive committee determines from the evidence or information presented to the committee that continued practice by the license holder constitutes a continuing or imminent threat to the public welfare. A temporary suspension may also be ordered on a majority vote of the board.

(b) The board by rule shall adopt procedures for the temporary suspension of a license under this section.

(c) A license temporarily suspended under this section may be suspended without notice or hearing if, at the time the suspension is ordered, a hearing on whether disciplinary proceedings under this chapter should be initiated against the license holder is scheduled to be held not later than the 14th day after the date of the

suspension.

(d) A second hearing on the suspended license shall be held not later than the 60th day after the date the suspension is ordered. If the second hearing is not held in the time required by this subsection, the suspended license is automatically reinstated.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.410. VENUE FOR APPEAL. An appeal of an action of the board must be filed in a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.411. SCHEDULE OF SANCTIONS. (a) The board by rule shall adopt a schedule of penalties, disciplinary actions, and other sanctions that the board may impose under this chapter.

(b) In adopting the schedule of sanctions under Subsection (a), the board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action. The schedule must provide that the type of disciplinary action or other sanction and the amount of a penalty imposed under this chapter must be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount of penalty or type of disciplinary action or sanction necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 21, eff. September 1, 2017.

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 801.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who violates this chapter or a rule adopted or order issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.423(a), eff. Sept. 1, 2001.

Sec. 801.452. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation per day.

(b) The amount of the penalty shall be based on the schedule of sanctions adopted under Section 801.411.

(c) A committee described by Section 801.408(c) or (d) shall recommend the amount of the administrative penalty based on the schedule of sanctions adopted under Section 801.411.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 22, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 22, eff. September 1, 2017.

Sec. 801.453. COMMITTEE RECOMMENDATIONS. (a) On a determination by a committee described by Section 801.408(c) or (d) that a violation of this chapter or a rule adopted or order issued under this chapter occurred, the committee may issue a report to the board stating:

(1) the facts on which the determination is based; and

(2) the committee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the committee's report to the person on whom the penalty may be imposed.

The notice may be given by certified mail.

(c) The notice given under this section must:

(1) include a notice of each alleged violation;

(2) state the amount of any recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 23, eff. September 1, 2005.

Sec. 801.454. PENALTY TO BE PAID OR HEARING REQUESTED ON COMMITTEE'S RECOMMENDATIONS. (a) Not later than the 20th day after the date a person receives the notice, the person may in writing:

(1) accept the committee's determination and recommended administrative penalty; or

(2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the committee's determination and recommended penalty, the board by order may:

(1) approve the determination and impose the recommended penalty;

(2) modify the determination or recommended penalty; or

(3) reject the determination or recommended penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 24, eff. September 1, 2005.

Sec. 801.455. HEARING ON COMMITTEE'S RECOMMENDATIONS. (a) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) A hearing set by the executive director under Subsection (a) shall be held by an administrative law judge of the State Office of Administrative Hearings.

(c) The administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the board a proposal for a decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 25, eff. September 1, 2005.

Sec. 801.456. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision under Section 801.455(c), the board by order may determine that:

(1) a violation has occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond that is approved by the court and that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and stay enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give the supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.458. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.459. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.460. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.461. ADMINISTRATIVE PROCEDURE. (a) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

(b) This subchapter does not prohibit the board from assessing an administrative penalty by using an informal proceeding under Section 801.408.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 801.501. MONITORING LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter. The rules must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor a license holder who represents a risk to the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.5011. MONITORING HARMFUL PRESCRIBING AND DISPENSING PATTERNS. (a) The board shall periodically check the prescribing

and dispensing information submitted to the Texas State Board of Pharmacy as authorized by Section 481.076(a)(1), Health and Safety Code, to determine whether a veterinarian is engaging in potentially harmful prescribing or dispensing patterns or practices.

(b) The board, in coordination with the Texas State Board of Pharmacy, shall determine the conduct that constitutes a potentially harmful prescribing or dispensing pattern or practice for purposes of Subsection (a). In determining the conduct that constitutes a potentially harmful prescribing or dispensing pattern or practice, the board, at a minimum, shall consider:

(1) the number of times a veterinarian prescribes or dispenses:

(A) opioids;

(B) benzodiazepines;

(C) barbiturates; or

(D) carisoprodol; and

(2) for prescriptions and dispensations described by Subdivision (1), patterns of prescribing or dispensing combinations of those drugs and other dangerous combinations of drugs identified by the board.

(c) If the board suspects that a veterinarian may be engaging in potentially harmful prescribing or dispensing patterns or practices, the board may notify the veterinarian of the potentially harmful prescribing or dispensing pattern or practice.

(d) The board may initiate a complaint against a veterinarian based on information obtained under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 536 (S.B. 319), Sec. 23, eff. September 1, 2017.

Sec. 801.502. INJUNCTIVE RELIEF. (a) The board, through the attorney general or a district or county attorney, may bring an action for an injunction, or a proceeding incident to an injunction, to:

(1) enforce this chapter; or

(2) enjoin a person, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, from practicing veterinary medicine or equine dentistry in violation of this chapter.

(b) Venue for an action under this section is in:

(1) the county in which the person against whom the action is brought resides, if the person is an individual who resides in this state;

(2) the county of the defendant's principal office in this state if the defendant is not an individual; or

(3) Travis County, if the person:

(A) is an individual who does not reside in this state; or

(B) is an entity that does not have its principal office in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.424(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 24, eff. September 1, 2011.

Sec. 801.503. ASSESSMENT OF CIVIL PENALTY AGAINST PERSON NOT LICENSED. (a) A person not licensed under this chapter, including a corporation, organization, business trust, estate, trust, partnership, association, or other legal entity, who violates this chapter or a rule adopted by the board under this chapter is subject to a civil penalty of $1,000 for each day of violation.

(b) At the request of the board, the attorney general shall bring an action to recover a civil penalty authorized by this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.422(a), eff. Sept. 1, 2001.

Sec. 801.504. GENERAL CRIMINAL PENALTY. (a) A person, including an entity, commits an offense if the person violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

(c) Venue for the prosecution of an offense under this section that consists of the violation of Section 801.251 is in a district

court in Travis County or the county in which the offense occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(b), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 971 (H.B. 1767), Sec. 6, eff. September 1, 2005.

Sec. 801.505. BOARD MEMBER OR EMPLOYEE; FINE. A board member or employee shall pay a fine of not less than $1,000 or more than $5,000 if the member or employee:

(1) issues a license other than as provided by this chapter; or

(2) provides to an applicant for examination a list of questions to be propounded at the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.506. PROHIBITED PRACTICES RELATING TO CERTAIN ENTITIES. (a) A sole proprietorship, partnership, or corporation may not engage in veterinary medicine unless the owner, each partner, or each shareholder, as appropriate, holds a license to practice veterinary medicine issued under this chapter.

(b) A corporation, organization, business trust, estate, trust, partnership, association, or other legal entity not owned exclusively by one or more persons licensed to practice veterinary medicine under this chapter may not engage in veterinary medicine.

(c) A veterinarian may not form or continue a partnership with a member of another profession or a person who is not a member of a profession if a part of the partnership employment consists of the practice of veterinary medicine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.421(c), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 25, eff. September 1, 2011.

Sec. 801.507. NONAPPLICABILITY OF DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT. Subchapter E, Chapter 17, Business & Commerce Code, does not apply to a claim against a veterinarian for damages alleged to have resulted from veterinary malpractice or negligence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 801.508. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of veterinary medicine without a license or the practice of equine dentistry without a license under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter J.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 26, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 26, eff. September 1, 2011.

Sec. 801.509. ENFORCEMENT POLICY. The board shall adopt a formal policy to focus enforcement efforts toward investigating complaints.

Added by Acts 2005, 79th Leg., Ch. 27 (S.B. 407), Sec. 26, eff. September 1, 2005.

SUBCHAPTER L. EQUINE DENTAL PROVIDER ADVISORY COMMITTEE

Sec. 801.551. EQUINE DENTAL PROVIDER ADVISORY COMMITTEE. (a) The equine dental provider advisory committee is an informal advisory committee to the board and is not subject to Chapter 2110, Government Code.

(b) The advisory committee does not have any independent rulemaking authority but shall advise and assist the board in adopting rules relating to licensed equine dental providers.

(c) The board shall consult the advisory committee regarding matters relating to a disciplinary action that involves a licensed equine dental provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.552. APPOINTMENT OF ADVISORY COMMITTEE. (a) The equine dental provider advisory committee is composed of three members appointed by the presiding officer of the board as follows:

(1) two members who are licensed equine dental providers, have resided in and engaged in the practice of smoothing or filing teeth by floating in this state for the five years immediately preceding the date of appointment, and are of good repute; and

(2) one veterinarian member who is active and in good standing and who supervises a licensed equine dental provider.

(c) Appointments to the advisory committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.553. TERMS; VACANCY. (a) Members of the equine dental provider advisory committee are appointed for staggered six-year terms. The terms of the members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the board shall appoint a new member to fill the unexpired term.

(c) An advisory committee member may not serve more than two consecutive full terms.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.554. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the equine dental provider advisory committee that a member:

(1) does not have at the time of appointment the qualifications required by Section 801.552;

(2) does not maintain during service on the advisory committee the qualifications required by Section 801.552; and

(3) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term.

(b) The validity of an action of the advisory committee is not affected by the fact that it is taken when a ground for removal of an advisory committee member exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.555. OFFICERS. The presiding officer of the board shall designate biennially an equine dental provider advisory committee member as the presiding officer of the advisory committee to serve in that capacity at the will of the presiding officer of the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.556. REIMBURSEMENT; COMPENSATION. An equine dental provider advisory committee member is not entitled to reimbursement for travel expenses or compensation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff. September 1, 2011.

Sec. 801.557. MEETINGS. (a) The equine dental provider advisory committee shall meet at the call of the presiding officer of the board.

(b) A meeting may be held by telephone conference call.

Added by Acts 2011, 82nd Leg., R.S., Ch. 940 (H.B. 414), Sec. 27, eff.

September 1, 2011.

CHAPTER 802. DOG OR CAT BREEDERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001. SHORT TITLE. This chapter may be cited as the Dog or Cat Breeders Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.002. DEFINITIONS. In this chapter:

(1) "Adult animal" means an animal six months of age or older.

(2) "Animal" means a dog or a cat.

(3) "Cat" means a mammal that is wholly or partly of the species Felis domesticus.

(4) "Commission" means the Texas Commission of Licensing and Regulation under Chapter 51.

(5) "Controlling person" means an individual who:

(A) is a partner, manager, director, officer, or member of a dog or cat breeder;

(B) possesses the authority to set policy or direct management of a dog or cat breeder; or

(C) possesses a direct or indirect control of 25 percent or more of a dog or cat breeder.

(6) "Department" means the Texas Department of Licensing and Regulation under Chapter 51.

(7) "Dog" means a mammal that is wholly or partly of the species Canis familiaris.

(8) "Dog or cat breeder" means a person who possesses five or more adult intact female animals and is engaged in the business of breeding those animals for direct or indirect sale or for exchange in return for consideration.

(9) "Facility" means the premises used by a dog or cat breeder for keeping or breeding animals. The term includes all buildings, property, and confinement areas used to conduct the breeding business.

(10) "Federal regulations" means the specifications for the

humane handling, care, treatment, and transportation of dogs and cats set forth in 9 C.F.R. Part 3, Subpart A.

(11) "Intact female animal" means a female animal that has not been spayed and is capable of reproduction.

(12) "Kitten" means a cat less than six months old.

(13) "Licensed breeder" means a dog or cat breeder who holds a license issued under this chapter.

(14) "Possess" means to have custody of or control over.

(15) "Primary enclosure" means any structure used to restrict an animal to a limited amount of space. The term includes a room, pen, run, cage, or compartment.

(16) "Puppy" means a dog less than six months old.

(17) "Third-party inspector" means any of the following entities with which the department contracts under Section 802.061, including an employee of the entity:

(A) a state agency; or

(B) a local law enforcement agency or fire department.

(18) "Veterinarian" means a veterinarian in good standing and licensed to practice veterinary medicine in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 276 (S.B. 876), Sec. 1, eff. September 1, 2023.

Sec. 802.003. APPLICABILITY OF CHAPTER. (a) This chapter does not affect the applicability of any other law, rule, order, ordinance, or other legal requirement of the federal government, this state, or a political subdivision of this state.

(b) This chapter does not prevent a municipality or county from prohibiting or further regulating by order or ordinance the possession, breeding, or selling of dogs or cats.

(c) This chapter does not apply to an animal regulated under Subtitle A-1, Title 13 (Texas Racing Act).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.06, eff.

April 1, 2019.

Sec. 802.004. PRESUMPTION OF USE FOR BREEDING. For purposes of this chapter, each adult intact female animal possessed by a person engaged in the business of breeding animals for direct or indirect sale or for exchange in return for consideration is presumed to be used for breeding purposes unless the person establishes to the satisfaction of the department, based on the person's breeding records or other evidence reasonably acceptable to the department, that the animal is not used for breeding.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.005. EXEMPTION FOR CERTAIN PERSONS WHO BREED SPECIAL PURPOSE DOGS. (a) This section applies only to a dog bred with the intent that it be used primarily for:

(1) herding livestock, as defined by Section 1.003, Agriculture Code, or other agricultural uses;

(2) hunting, including tracking, chasing, pointing, flushing, or retrieving game; or

(3) competing in field trials, hunting tests, breed or conformation shows, or similar organized performance events.

(b) This chapter does not apply to a person to the extent the person breeds dogs described by Subsection (a) for a use described by Subsection (a). A person described by this subsection may conduct direct or indirect sales or exchanges in return for consideration of dogs described by Subsection (a).

(c) Notwithstanding Subsection (b), a person described by Subsection (b) may be subject to the requirements of this chapter based on the person's activities with respect to animals other than dogs that are bred and used as described by this section.

(d) Dogs described by Subsection (a) may not be counted for purposes of determining the number of adult intact female animals possessed by a person as described by Section 802.002(8).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 276 (S.B. 876), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 802.051. GENERAL POWERS AND DUTIES; RULES. (a) The department shall administer and enforce this chapter.

(b) The commission shall adopt rules necessary to administer and enforce this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.052. FEES. The commission by rule shall establish reasonable and necessary fees in amounts sufficient to cover the costs of administering and enforcing this chapter. In setting the fee for inspecting or licensing a facility, the commission may consider the number of adult intact female animals used for breeding at the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.053. PERSONNEL. The department may employ personnel necessary to carry out the functions and duties of the department under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.054. EXPENSES. The department may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.055. CRIMINAL BACKGROUND CHECKS. The department shall conduct a criminal background check on each applicant who submits an application for a license under this chapter and on any controlling person of the applicant. The department may, as permitted by law:

(1) examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person; and

(2) obtain any criminal history or record of the applicant or controlling person.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.056. DIRECTORY. (a) The department shall maintain a directory of licensed breeders and of third-party inspectors registered under this chapter.

(b) The department shall make the directory available to the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.057. DISCIPLINARY DATABASE. (a) The department shall maintain a database of dog or cat breeders who have been subject to disciplinary action as provided by Subchapter F.

(b) The department shall make the information maintained in the database available to the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.058. CONSUMER INTEREST INFORMATION. (a) The department shall prepare information of consumer interest describing:

(1) the functions performed by the department under this chapter; and

(2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the department.

(c) The department shall make the information available to the

public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.059. DOG OR CAT BREEDER TRAINING AND ENFORCEMENT ACCOUNT. (a) The dog or cat breeder training and enforcement account is an account in the general revenue fund. Administrative penalties collected under Subchapter F shall be deposited to the credit of the account.

(b) Funds in the account may be appropriated only to the department for:

(1) promoting consumer awareness of this chapter and rules adopted under this chapter;

(2) supporting educational seminars, training activities, or other actions designed to benefit the department's ability to administer and enforce this chapter; and

(3) paying for information resulting in disciplinary action under Subchapter F against a person for acting as a dog or cat breeder without holding a license issued under this chapter.

(c) The commission by rule may provide for a system to pay for information described by Subsection (b)(3). Rules adopted under this subsection must ensure that a public purpose is accomplished through the use of the payment system.

(d) The department may solicit and accept gifts, grants, and other donations from any source for deposit into the account.

(e) The account is exempt from the application of Section 403.095, Government Code.

(f) The executive director of the department must approve any expenditure from the account.

(g) The department shall report its use of the account in its quarterly financial report to the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.060. REGULATION OF THIRD-PARTY INSPECTORS. The commission by rule shall establish:

(1) training requirements for a third-party inspector;

(2) registration procedures for a third-party inspector; and

(3) policies governing the acts of a third-party inspector in conducting an inspection or investigation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.061. CONTRACTS FOR ENFORCEMENT. The department may contract with a third-party inspector to enforce or assist in the enforcement of this chapter and rules adopted under this chapter, including the performance of inspections and investigations required under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.062. INSPECTIONS. (a) The department shall inspect each facility of a licensed breeder at least once in every 18-month period and at other times as necessary to ensure compliance with this chapter and rules adopted under this chapter.

(b) An inspection by the department must be conducted during the facility's normal business hours, and the licensed breeder or a representative of the licensed breeder must be given a reasonable opportunity to be present during the inspection.

(c) If necessary to adequately perform the inspection, the department or third-party inspector may determine it is appropriate to not provide advance notice to the licensed breeder or a representative of the licensed breeder before arriving at the facility. The licensed breeder or its representative shall, on request of an inspector, assist the inspector in performing the inspection.

(d) In conducting an inspection under this section, an inspector may not enter or access any portion of a private residence of a licensed breeder except as necessary to access animals or other property relevant to the care of the animals. The inspector may request that relevant documents or records be provided for inspection.

(e) The inspector shall submit an inspection report to the

department not later than the 10th day after the date of the inspection on a form prescribed by the department and provide a copy of the report to the licensed breeder or its representative.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.17, eff. September 1, 2021.

Sec. 802.063. INVESTIGATIONS. On receipt of a complaint alleging a violation of this chapter or a rule adopted under this chapter, the department or a third-party inspector designated by the department shall investigate the alleged violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.064. REPORTING ANIMAL CRUELTY. A person conducting an inspection under Section 802.062 or 802.103 or an investigation under Section 802.063 shall notify the appropriate local law enforcement agency not later than 24 hours after discovering evidence of animal cruelty or neglect during the inspection or investigation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.065. ADVISORY COMMITTEE. (a) The commission shall establish an advisory committee to advise the commission and make recommendations on matters related to the administration and enforcement of this chapter, including licensing fees and standards adopted under Subchapter E.

(b) The advisory committee consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are licensed breeders;

(2) two members who are veterinarians;

(3) two members who represent animal welfare organizations

each of which has an office based in this state;

(4) two members who represent the public; and

(5) one member who is an animal control officer as defined in Section 829.001, Health and Safety Code.

(c) Members of the advisory committee serve staggered four-year terms. The terms of four or five members expire on February 1 of each odd-numbered year. If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement member to serve for the remainder of the unexpired term.

(d) The presiding officer of the commission shall designate one member of the advisory committee to serve as presiding officer of the advisory committee for a two-year term. A member may serve more than one term as presiding officer.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(20), eff. September 1, 2021.

(f) Except for the members described by Subsection (b)(1), a person may not be a member of the advisory committee if the person or a member of the person's household:

(1) is required to be licensed under this chapter;

(2) is an officer, employee, or paid consultant of an entity required to be licensed under this chapter;

(3) owns or controls, either directly or indirectly, more than a 10 percent interest in an entity required to be licensed under this chapter; or

(4) is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an entity required to be licensed under this chapter.

(g) The presiding officer of the commission may remove from the advisory committee a member who is ineligible for membership under Subsection (f).

(h) A member may not receive compensation for service on the advisory committee. Subject to the department's budget and any limitation provided by the General Appropriations Act, a committee member may receive reimbursement for the actual and necessary expenses incurred while performing advisory committee duties.

(i) A decision of the advisory committee is effective only on a majority vote of the members present.

(j) Chapter 2110, Government Code, does not apply to the size,

composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(20), eff. September 1, 2021.

SUBCHAPTER C. LICENSING OF DOG OR CAT BREEDERS

Sec. 802.101. LICENSE REQUIRED. (a) A person may not act as, offer to act as, or represent that the person is a dog or cat breeder in this state unless the person holds a license under this chapter for each facility that the person owns or operates in this state. A license for a single facility may cover more than one building on the same premises.

(b) The commission by rule may establish requirements for issuance or renewal of a license issued to a dog or cat breeder under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.102. APPLICATION. An applicant for a license under this chapter must:

(1) submit to the department a completed application on a form prescribed by the department;

(2) submit to the department the information regarding the applicant's facilities and operations requested by the department;

(3) demonstrate that the applicant has satisfied the requirements of this chapter and rules adopted under this chapter; and

(4) pay to the department the required fee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.103. PRELICENSE INSPECTION. (a) Except as provided

by Subsection (e), the department must inspect a facility before a license is issued for the facility.

(b) The department may not issue a license to a dog or cat breeder until the department receives a prelicense inspection report from the inspector in a format approved by the department certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

(c) Before the prelicense inspection may be conducted, each applicant must pay to the department the required inspection fee to be used to pay third-party inspectors and the reasonable expenses of the department related to its licensing and inspection duties under this chapter.

(d) An applicant whose facility does not meet the requirements of this chapter and rules adopted under this chapter as revealed by a prelicense inspection may, after correcting deficiencies noted in the inspection report, request another prelicense inspection by paying the required fee to the department.

(e) The department may not require a prelicense inspection of a facility for an applicant who:

(1) holds a current Class A animal dealers license issued under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.); and

(2) submits to the department:

(A) a copy of the license; and

(B) on a form prescribed by the department, a statement certifying that the facility meets the requirements of this chapter and rules adopted under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.104. INITIAL LICENSE. The department shall issue a license to each dog or cat breeder who:

(1) meets the requirements of this chapter and rules adopted under this chapter;

(2) applies to the department on the form prescribed by the department; and

(3) pays the required fee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.105. TERM; NONTRANSFERABILITY. A license issued under this chapter is valid until the first anniversary of the date of issuance and is nontransferable. The department shall include the expiration date on each license issued under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.106. LICENSE RENEWAL. (a) A licensed breeder may renew the person's license by:

(1) submitting a renewal application to the department on the form prescribed by the department;

(2) complying with any other renewal requirements adopted by the department; and

(3) paying the required fee.

(b) A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(c) The department may not renew the license of a person if the person is in violation of this chapter or any rule adopted under this chapter at the time of renewal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.107. LICENSE DENIAL, REVOCATION, AND SUSPENSION. (a) The department shall deny issuance of a license to, or refuse to renew the license of, a person if the person or a controlling person of the dog or cat breeder has pled guilty or nolo contendere to, been convicted of, or received deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction in the five years preceding the person's initial or renewal application for a license.

(b) Subject to Subsection (b-1), the license of a licensed breeder is revoked by operation of law if, after the license is issued, the licensed breeder or a controlling person of the licensed breeder pleads guilty or nolo contendere to, is convicted of, or receives deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction.

(b-1) Before a license is revoked under Subsection (b), the department must issue a notice of the revocation under the grounds prescribed by that subsection to the licensed breeder stating that the licensed breeder or the licensed breeder's representative may, not later than the 20th day after the date the licensed breeder receives the notice, submit to the department proof that the licensed breeder or controlling person of the licensed breeder, as applicable, did not plead guilty or nolo contendere to, was not convicted of, or did not receive deferred adjudication for animal cruelty or neglect in this state or any other jurisdiction as described by Subsection (b).

(c) The department may deny issuance of a license to, refuse to renew the license of, or revoke or suspend a license held by a person who:

(1) fails to meet the requirements of this chapter and rules adopted under this chapter;

(2) has had a similar license issued by a federal, state, or local authority denied, revoked, or suspended;

(3) has falsified any material information requested by the department;

(4) has failed to meet a standard adopted by rule under this chapter; or

(5) has failed to comply with any corrective action required under an inspection report in the time provided by the report.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 400 (S.B. 1531), Sec. 3, eff. September 1, 2019.

SUBCHAPTER D. PRACTICE BY LICENSED BREEDER

Sec. 802.151. DISPLAY OF LICENSE; APPLICABLE LAWS AND RULES; INCLUSION OF LICENSE NUMBER AND DEPARTMENT INFORMATION. A licensed breeder shall:

(1) prominently display a copy of the license at the breeder's facility;

(2) maintain at the breeder's facility a printed copy of

this chapter and rules adopted under this chapter as made available by the department;

(3) include the license number in each advertisement of the licensed breeder; and

(4) include in each contract for the sale or transfer of an animal by the licensed breeder:

(A) the license number; and

(B) the following statement: "Dog and cat breeders are regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599, www.license.state.tx.us" or a similar statement adopted by commission rule that includes the department's name, mailing address, telephone numbers, and Internet website address.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.152. CHANGE IN LICENSE INFORMATION. A licensed breeder shall notify the department in a manner prescribed by the department not later than the 10th day after the date any change occurs in the address, name, management, or controlling person of the business or operation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.153. ANNUAL INVENTORY. (a) Not later than February 1 of each year, a licensed breeder shall submit to the department, on a form prescribed by the department, an accounting of all animals held at the facility at any time during the preceding calendar year.

(b) The licensed breeder shall keep copies of the items described by Subsection (a) at the licensed breeder's facility and shall make them available on request to the department or a third-party inspector designated by the department.

(c) A licensed breeder that has more than one facility shall:

(1) keep separate records for each facility; and

(2) submit a separate accounting of animals for each facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

Sec. 802.154. ANIMAL RECORDS. (a) The commission shall adopt rules establishing the minimum information that a licensed breeder must maintain for each animal in the breeder's facility. A licensed breeder shall maintain a separate record for each animal in the breeder's facility documenting the animal's care.

(b) The licensed breeder shall make the animal records available on request to the department or a third-party inspector designated by the department.

(c) The commission by rule shall establish the retention period for records required under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

SUBCHAPTER E. STANDARDS OF CARE AND CONFINEMENT

Sec. 802.201. ADOPTION OF STANDARDS. (a) The commission shall adopt rules establishing minimum standards for the humane handling, care, housing, and transportation of dogs and cats by a dog or cat breeder to ensure the overall health, safety, and well-being of each animal in the breeder's possession.

(b) The standards adopted under this section must:

(1) at a minimum, meet federal regulations;

(2) require that, unless otherwise certified by a veterinarian in the manner prescribed by the department, a licensed breeder, if applicable, provide each dog 12 weeks of age and older with at least one hour of daily exercise in an area that:

(A) has a surface that has adequate drainage and that will not adversely affect the dog's health or well-being, and that may be composed of natural turf or soil;

(B) provides adequate protection against harsh weather, including exposure to the sun; and

(C) has at least three times more square feet than the dog's primary enclosure;

(3) require that an adequate period consistent with breed standards elapse between the breeding cycles of each adult intact

female animal;

(4) require that a dog or cat breeder provide basic grooming to each animal, including bathing and nail trimming, to the extent required to maintain the animal in a state of good health;

(5) require that all primary enclosures:

(A) be composed of materials that are safe for the animal based on the animal's breed, size, and age;

(B) have adequate space to allow the animal to comfortably stand, sit, turn around, and lie down in a natural position;

(C) have adequate drainage; and

(D) if any portion of the floor surface is composed of wire or a slatted material, be free from any protruding, sharp surfaces and be designed so the animal's paws are unable to extend through, or become caught in, the floor;

(6) prohibit the placement of a primary enclosure of an animal on top of the primary enclosure of another animal, unless an impervious barrier designed to prevent the transfer of any liquid or animal waste from one enclosure to the other is placed between the enclosures;

(7) prohibit the stacking of the primary enclosures of dogs above three vertical levels;

(8) require at least one regular veterinary examination a year for a breeding animal;

(9) require that a dog or cat breeder maintain at each of the breeder's facilities a written health care management protocol that addresses routine and preventive care;

(10) ensure that necessary routine and preventive care is provided to each animal and that each animal receives appropriate care and treatment for any disease or illness, to the extent required to maintain the animal in a state of good health;

(11) prohibit a person from euthanizing an adult animal or performing a surgical birth of an animal unless the person is a veterinarian;

(12) require appropriate training for any person whose duties and responsibilities include the handling of or caring for an animal in a dog or cat breeder's facility; and

(13) prohibit a dog or cat breeder from selling, trading, or giving away an animal before the animal is eight weeks of age.

(c) The commission by rule may modify existing standards as

necessary to protect or improve the health and well-being of animals or to protect the health and safety of the public.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

SUBCHAPTER F. ENFORCEMENT

Sec. 802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. If a person violates this chapter or a rule adopted under this chapter, the person is subject to any action or penalty under Subchapter F or G, Chapter 51.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1284 (H.B. 1451), Sec. 2, eff. June 17, 2011.

TITLE 5. REGULATION OF FINANCIAL AND LEGAL SERVICES

SUBTITLE A. FINANCIAL SERVICES

CHAPTER 901. ACCOUNTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 901.001. SHORT TITLE. (a) This chapter may be cited as the Public Accountancy Act.

(b) A reference in law to the Public Accountancy Act of 1979 or the Public Accountancy Act of 1991 means this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.002. GENERAL DEFINITIONS. (a) In this chapter:

(1) "Attest service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(B) an engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by

the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

(2) "Board" means the Texas State Board of Public Accountancy.

(3) "Certificate" means a certificate issued to a certified public accountant.

(4) "Certified public accountant" means a person who holds a certificate issued under this chapter or who practices in this state under Section 901.462.

(5) "Certified public accountancy firm" means a person who holds a firm license or a firm that practices in this state under Section 901.461.

(6) "Client" means a person who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service.

(7) "Corporation" has the meaning assigned by Section 1.002, Business Organizations Code. The term includes an entity authorized by an equivalent law of another state or a foreign country.

(8) "Firm" means a sole proprietorship, partnership, corporation, limited liability company, or other business entity engaged in the practice of public accountancy.

(9) "Firm license" means a license issued under Subchapter H.

(10) "License" means a license issued under Subchapter I.

(11) "Peer review" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm.

(12) "Professional accounting services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statements;

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns; and

(D) providing advice in tax matters.

(13) "Public accountant" means a person authorized to practice public accountancy under the Public Accountancy Act of 1945 (Article 41a, Vernon's Texas Civil Statutes).

(b) The board by rule may define "financial statement" to comply with the standards adopted by generally recognized bodies responsible for setting accounting standards.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 1, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 1, eff. June 9, 2023.

Sec. 901.0021. MEANING AND IMPLICATION OF REPORT. (a) In this chapter, a reference to a report used with respect to a financial statement means an opinion, report, or other document, including an assurance prepared in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board, that:

(1) states or implies assurance as to the reliability of the financial statement; and

(2) includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing.

(b) A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication.

(c) A statement or implication of special knowledge or competence in accounting or auditing may arise from:

(1) the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an

accountant or auditor; or

(2) the language of the opinion, report, or other document itself.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 2, eff. Sept. 1, 2001.

Sec. 901.003. PRACTICE OF PUBLIC ACCOUNTANCY. (a) In this chapter, "practice of public accountancy" means:

(1) the performance for a client by a person who is certified, licensed, or registered under this chapter of a service that involves the use of accounting, attesting, or auditing skills;

(2) the performance or offer of performance for a client or potential client by a person who represents to the public that the person is certified, licensed, or registered under this chapter of a service that involves the use of accounting, attesting, or auditing skills;

(3) the performance of activities of a person or practice unit licensed under this chapter in:

(A) preparing or reporting on a financial statement or report that is to be used by an investor, the management of an organization, a third party, or a financial institution, unless the report is prepared for internal use only; or

(B) preparing a tax return that is filed with a taxing authority; or

(4) the supervision of an activity described by Subdivision (3).

(b) For purposes of this section, a service that involves the use of accounting, attesting, or auditing skills includes:

(1) issuing a report on or preparing a financial statement;

(2) providing management or financial advisory or consulting services; and

(3) preparing a tax return or advising or consulting on a tax matter.

(c) For purposes of this section, a person represents to the public that the person is certified, licensed, or registered under this chapter if the person makes an oral or written representation that the person is certified, licensed, or registered. A written representation includes a representation communicated by office sign, business card, letterhead, or advertisement. A representation does

not include:

(1) the display of an original certificate or registration unless a license is also displayed;

(2) a representation made by a faculty member of an educational institution solely in connection with the duties of the person as a faculty member; or

(3) a representation in a book, article, or other publication, or a representation made in connection with the promotion of the publication, unless the representation includes an offer to perform a service or to sell a product other than the publication.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 3, eff. Sept. 1, 2001.

Sec. 901.004. CONSTRUCTION; LIMITATIONS. (a) This chapter does not:

(1) restrict an official act of a person acting in the person's capacity as:

(A) an officer of the state or of a county, municipality, or other political subdivision, including a county auditor;

(B) an officer of a federal department or agency; or

(C) an assistant, deputy, or employee of a person described by Paragraph (A) or (B);

(2) prohibit a person who is not a certified public accountant or public accountant from serving as an employee of:

(A) a certified public accountant or public accountant licensed by the board; or

(B) a firm composed of certified public accountants or public accountants licensed by the board;

(3) prohibit a person licensed by the federal government as an enrolled agent from performing an act or using a designation authorized by federal law;

(4) prohibit an attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's or firm's professional work in the practice of law; or

(5) prohibit an employee, officer, or director of a

financial institution, as defined by Section 201.101, Finance Code, from preparing or presenting records or documents when lawfully acting within the scope of the activities of the institution.

(b) A person who serves as an employee as described by Subsection (a)(2) may not issue an accounting or financial statement over the employee's name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 4, eff. Sept. 1, 2001.

Sec. 901.005. FINDINGS; PUBLIC POLICY; PURPOSE. (a) The practice of public accountancy is a learned profession that requires specialized education and experience. That practice has historically been defined to include a broad range of financial, advisory, and attest services, including:

(1) issuing a report on a financial statement;

(2) preparing a tax return;

(3) providing advice in a tax matter;

(4) providing management or financial advisory or consulting services;

(5) recommending the sale of a product if the recommendation requires or implies accounting or auditing skill; and

(6) providing litigation support services.

(b) The attest service is part of the practice of public accountancy. That service provides assurance to the public, especially the public markets, that the management of commercial entities has reasonably described the financial status of those entities. That assurance contributes to the strength of the economy and public markets of this state and to the soundness and reliability of the financial system. The strength of the financial system in this state is supported by the competence, integrity, and expertise of the persons who attest to financial statements in this state.

(c) Notwithstanding Subsection (b), the public relies on the competence and integrity of certified public accountants in all of its dealings with certified public accountants and not merely in connection with their performance of the attest service.

(d) The terms "accountant" and "auditor," and derivations, combinations, and abbreviations of those terms, have an implication of competence in the profession of public accountancy on which the

public relies in personal, business, and public activities and enterprises.

(e) The policy of this state and the purpose of this chapter are to provide that:

(1) the admission of persons to the practice of public accountancy require education and experience commensurate with the requirements of the profession;

(2) a person who represents that the person practices public accountancy be qualified to do so;

(3) a person licensed as a certified public accountant:

(A) maintain high standards of professional competence, integrity, and learning; and

(B) demonstrate competence and integrity in all dealings with the public that rely on or imply the special skills of a certified public accountant and not merely in connection with the performance of the attest service;

(4) areas of specialized practice require special training; and

(5) the activities and competitive practices of persons practicing public accountancy be regulated to be free of commercial exploitation to provide the public with a high level of professional competence at reasonable fees by independent, qualified persons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 5, eff. Sept. 1, 2001.

Sec. 901.006. APPLICATION OF SUNSET ACT. The Texas State Board of Public Accountancy is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 3.08, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.12, eff.

June 18, 2023.

SUBCHAPTER B. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

Sec. 901.051. BOARD MEMBERSHIP. (a) The Texas State Board of Public Accountancy consists of 15 members appointed by the governor with the advice and consent of the senate as follows:

(1) 10 certified public accountant members, at least eight of whom are, on the date of appointment:

(A) a sole practitioner; or

(B) an owner or employee of a certified public accountancy firm; and

(2) five public members who are not:

(A) licensed under this chapter; or

(B) financially involved in an organization subject to board regulation.

(b) Each member of the board must be a United States citizen.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 6, eff. Sept. 1, 2001.

Sec. 901.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of public accountancy;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy; or

(2) the person's spouse is acting in the capacity of an officer, executive board or executive committee member, manager, or paid consultant of a Texas trade association in the field of public accountancy.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 2, eff. Sept. 1, 2003.

Sec. 901.054. TERMS. (a) Board members serve staggered six-year terms.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(1), eff. June 9, 2023.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(1), eff.

June 9, 2023.

Sec. 901.055. OFFICERS; EXECUTIVE COMMITTEE. (a) The governor shall designate a member of the board as presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) The board shall annually elect from its members an assistant presiding officer, secretary, treasurer, and other officers the board considers necessary to serve with the presiding officer on the executive committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 901.051;

(2) does not maintain during service on the board the qualifications required by Section 901.051;

(3) is ineligible for membership under Section 901.052 or 901.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a

potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 3, eff. Sept. 1, 2003.

Sec. 901.057. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to receive:

(1) $100 for each day that the member conducts board business; and

(2) reimbursement for actual and necessary expenses incurred in performing board functions.

(b) The board by rule may determine the activities that constitute board business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.058. MEMBER EQUALITY. A board member who is not a certified public accountant has the same authority, responsibility, and duties as any other board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule,

interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of the board in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 2, eff. September 1, 2019.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

Sec. 901.101. EXECUTIVE DIRECTOR AND PERSONNEL. The board shall employ an executive director, independent contractors, and

personnel selected by the executive director as necessary to assist the board in performing its duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.102. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 5, eff. Sept. 1, 2003.

Sec. 901.103. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The board shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.104. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.105. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with federal and state law and a description of reasonable methods to achieve compliance with federal and state law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 901.151. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) administer this chapter;

(2) adopt rules the board determines are necessary or advisable to administer this chapter;

(3) keep a record of each proceeding conducted before or action taken by the board; and

(4) keep an official seal.

(b) On its own motion or on the complaint of any person, the board may initiate:

(1) proceedings to determine the eligibility of a person for examination, certification, registration, or licensing under this chapter; or

(2) disciplinary proceedings under Subchapter K.

(c) The board may solicit, contract for, and accept money and

other assistance from any source to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.152. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to perform the advisory functions assigned to the committees by the board.

(b) A member of an advisory committee who is not a member of the board may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.1525. APPOINTMENT OF BOARD COMMITTEES. (a) The board may appoint policy-making and working committees to assist the board in performing its responsibilities under this chapter. The board's policy-making committees shall assist the board in establishing policies, drafting rules, setting budgets, representing the board, and performing other oversight duties necessary to administer this chapter. The board's working committees shall assist the board in carrying out the board's functions, including reviewing enforcement cases and other licensing matters. In establishing committees, the board shall maintain the distinction between the types of committees authorized by this section.

(b) A person may not serve on a policy-making committee unless the person is a board member. A working committee may consist of members who are members of the board and members who are not board members. A member of a working committee who is not a board member may participate as a full voting member of the committee.

(c) A person may not be a non-board member of a committee if:

(1) the person is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy;

(2) the person's spouse is acting in the capacity of an

officer, executive board or executive committee member, manager, or paid consultant of a Texas trade association in the field of public accountancy; or

(3) the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(d) For purposes of Subsection (c), "Texas trade association" has the meaning assigned by Section 901.053.

(e) A committee member who is not a member of the board is subject to the same financial disclosure requirements that apply to a member of the board, except that the financial disclosures shall be maintained by the executive director.

(f) A committee member who is not a member of the board may not serve on the committee if the member:

(1) violates Subsection (c);

(2) cannot, because of illness or disability, discharge the member's duties for a substantial time;

(3) is absent from more than half of the regularly scheduled meetings of the committee that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the committee; or

(4) does not comply with Subsection (e).

(g) The board shall adopt rules that provide that a committee member shall refrain from participating in the discussion of and may not vote on an issue before a committee in which the member has a personal or financial interest. A committee member who is not permitted to vote on a matter described by this subsection shall state at the time of the vote the reason why the member is not voting on the matter.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 8, eff. Sept. 1, 2003.

Sec. 901.153. ENFORCEMENT COMMITTEES. (a) The board may appoint enforcement committees. An enforcement committee operates as a board working committee. The membership of each enforcement committee must include at least one public member of the board.

(b) An enforcement committee shall consider and make recommendations to the board on matters relating to the enforcement

of this chapter and board rules.

(c) The board may adopt rules necessary for the performance of each enforcement committee's duties.

(d) In appointing the members of an enforcement committee, the board must determine whether a prospective committee member who is a license holder under this chapter has been the subject of any disciplinary action under this chapter. A license holder who has been found in violation of this chapter may not serve on an enforcement committee.

(e) A board member who serves on an enforcement committee that participates in the investigation of a specific complaint may not participate in any subsequent disciplinary proceeding of the board that pertains to the complaint and may not vote on the final disposition of the case. The board shall adopt rules necessary to implement the requirements of this subsection.

(f) An enforcement committee may hold a closed meeting as provided by Section 551.090, Government Code, to investigate and deliberate a disciplinary action under Subchapter K relating to the enforcement of this chapter or board rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. 228), Sec. 1, eff. September 1, 2013.

Sec. 901.154. FEES. (a) The board shall set the fee for the issuance of a certificate under this chapter and the fee for the issuance or renewal of a license under this chapter in an amount not to exceed $250.

(b) The board may increase the fee for the issuance or renewal of a license as necessary to cover the costs of enforcing this chapter.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 36, Sec. 4(1), eff. September 1, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. 228), Sec. 4(1), eff. September 1, 2013.

Sec. 901.155. SCHOLARSHIP TRUST FUND FOR ACCOUNTING STUDENTS. (a) The fee for the issuance or renewal of a license under this chapter consists of:

(1) the amount of the fee set by the board under Section 901.154; and

(2) an additional $10 annual fee to be deposited to the credit of the scholarship trust fund for accounting students.

(b) The scholarship trust fund for accounting students is held by the board outside the state treasury and may be used only to:

(1) provide scholarships under Subchapter N to accounting students in a program designed to qualify each student to apply for certification as a certified public accountant; and

(2) pay administrative costs under Subsection (c).

(c) The administrative costs incurred to collect the fee imposed under Subsection (a)(2) and to disburse the money may not exceed 10 percent of the total money collected.

(d) Notwithstanding Section 404.071, Government Code, interest earned on amounts in the scholarship trust fund for accounting students shall be credited to that fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 33 (S.B. 777), Sec. 1, eff. May 9, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 33 (S.B. 777), Sec. 2, eff. May 9, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 33 (S.B. 777), Sec. 3, eff. May 9, 2011.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(f), eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 2, eff. June 9, 2023.

Sec. 901.156. RULES OF PROFESSIONAL CONDUCT. The board shall adopt rules of professional conduct to:

(1) establish and maintain high standards of competence and integrity in the practice of public accountancy; and

(2) ensure that the conduct and competitive practices of license holders serve the purposes of this chapter and the best interest of the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.1565. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) The board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the board shall list the specific misdemeanor offenses for which a conviction would constitute grounds for the board to take action under Section 53.021. With regard to a misdemeanor conviction in another state, the board shall develop a process for determining whether the conviction is for an offense listed in the rules required by this subsection.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 10, eff. Sept. 1, 2003.

Sec. 901.157. RULES FOR SPECIALIZATION. The board by rule may recognize an area of specialization in the practice of public accountancy if the area of specialization is generally recognized by other bodies that regulate or issue authoritative pronouncements in the field of public accountancy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.158. RULES RESTRICTING COMPETITIVE PRACTICES. The board in its rules of professional conduct may regulate the competitive practices of a license holder as necessary to ensure that the license holder does not engage in a competitive practice that:

(1) impairs the independence or quality of a service provided by a license holder;

(2) impairs or restricts the public's opportunity to obtain professional accounting services of high quality at a reasonable price; or

(3) unreasonably restricts competition among license holders.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 7, eff. Sept. 1, 2001.

Sec. 901.159. PEER REVIEW. (a) The board by rule shall provide for a peer review program to review the work product of a license holder or of the certified public accountancy firm in which the license holder is a member, in lieu of the license holder, to the extent necessary to comply with any applicable standards adopted by generally recognized bodies responsible for setting accounting standards. Peer review must include a verification that each individual in a certified public accountancy firm who is responsible for supervising attest services and who signs or authorizes another person to sign an accountant's reports on financial statements on behalf of the firm meets the competency requirements of the professional standards that apply to those services.

(b) The board by rule shall establish a fee in an amount not to exceed $200 to be paid by a certified public accountancy firm, or by a license holder who is not a member of a certified public accountancy firm, for each peer review required by the board under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 7, eff. Sept. 1, 2001.

Sec. 901.160. AVAILABILITY AND CONFIDENTIALITY OF CERTAIN BOARD FILES. (a) The board shall make available at the board's offices in Austin any file maintained or information gathered or received by the board from a third party regarding a license applicant or current or former license holder for inspection by the applicant or license holder during normal business hours.

(b) A license applicant or current or former license holder may authorize the board in writing to make available for inspection by a designated person or by the public any information gathered or received by the board from a third party regarding the applicant or license holder.

(c) Except on written authorization as provided by Subsection (b), the following information gathered or received by the board is confidential and not subject to disclosure under Chapter 552,

Government Code:

(1) information regarding the qualifications of an applicant or license holder to be certified as a certified public accountant;

(2) information regarding the qualifications of an applicant or firm license holder to be issued a firm license as a certified public accountancy firm; and

(3) information regarding a disciplinary action under Subchapter K against a license holder or an applicant to take the uniform CPA examination, before a public hearing on the matter.

(d) A final order of the board relating to a disciplinary action against a license holder, including a reprimand, that results from an informal proceeding or a formal public hearing is subject to disclosure to the public and is available on request.

(e) The board may disclose information that is confidential under this section to another governmental, regulatory, or law enforcement agency engaged in an enforcement action. The board by rule shall adopt guidelines to assist the board in exercising its authority to share information under this subsection. Subsections (a) and (c) do not apply to information disclosed under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 11, eff. Sept. 1, 2003.

Sec. 901.161. PRIVILEGE FOR CERTAIN INFORMATION. (a) Any statement or record prepared or an opinion formed in connection with a positive enforcement or peer review is privileged and is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to a person other than the board; or

(2) admissible as evidence in a judicial or administrative proceeding other than a board hearing.

(b) The privilege provided by Subsection (a) does not apply to information involved in a dispute between a reviewer and the person, including an entity, who is the subject of the review.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 9, eff. Sept. 1, 2001.

Sec. 901.162. IMMUNITY FROM LIABILITY. (a) Each board member and each officer, director, or employee of a state agency, board, or commission is immune from liability arising out of a disclosure made to the board in connection with a complaint filed with the board.

(b) The board and each board member is immune from liability to a person for damages incident to:

(1) the board's investigation of the person; or

(2) any complaint, charge, or proceeding that results from the investigation.

(c) The state shall hold each board member, employee or agent of the board, and volunteer member of a constructive enforcement committee of the board harmless from any cost, damage, or attorney's fees arising from a claim or suit against that person for an action taken by the person in good faith in the discharge of the board's responsibilities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 10, eff. Sept. 1, 2001.

Sec. 901.164. OUTSIDE LEGAL COUNSEL. The board may not contract with outside legal counsel to provide legal services to the board, including representation of the board in a matter referred to the State Office of Administrative Hearings, unless the contract is approved by the attorney general as provided by Section 402.0212, Government Code, regardless of the source of money to be used to pay the outside counsel.

Added by Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 3, eff. September 1, 2019.

Sec. 901.165. RULES FOR ATTEST SERVICES. (a) The board by rule shall specify those services that constitute attest services.

(b) Attest services are required to be performed in accordance with professional standards. The board may adopt by reference the standards developed for general application by the American Institute of Certified Public Accountants or another nationally recognized accountancy organization.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 12, eff. Sept. 1, 2001.

Sec. 901.166. AUTHORITY TO ISSUE SUBPOENA, ADMINISTER OATH, AND RECEIVE EVIDENCE. (a) The board may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection and copying, of relevant documents, records, and other evidence, maintained by electronic or other means, that is in this state.

(b) The board may administer oaths and take testimony and other evidence regarding any matter under the board's jurisdiction.

(c) If a person fails to comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in a county in which a hearing conducted by the board may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The board shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the board may charge for copies of its own records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 12, eff. Sept. 1, 2003.

Sec. 901.167. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted

under Subsection (a);

(2) serve as a resource for any training necessary for implementation of the negotiated rulemaking or alternative dispute resolution procedures; and

(3) collect data on the effectiveness of the procedures implemented by the board.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 13, eff. Sept. 1, 2003.

Sec. 901.168. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the board's planning processes.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 14, eff. Sept. 1, 2003.

Sec. 901.169. CRIMINAL HISTORY RECORD INFORMATION. (a) The board shall require an individual to submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation if:

(1) the individual has not previously submitted fingerprints for the purpose of the board obtaining criminal history record information; and

(2) the individual:

(A) is an applicant to take the uniform CPA examination;

(B) is an applicant for a certificate;

(C) is an owner or seeks to become an owner of a certified public accountancy firm and the individual is not a license holder, if requested by the board under Section 901.354(e);

(D) is an applicant for a license under Subchapter I; or

(E) is an applicant for renewal of a license under Subchapter I, unless the applicant is an individual who does not engage in the practice of public accountancy because of retirement or permanent disability.

(b) The board may not allow an individual to take the uniform CPA examination or issue a certificate or license to an individual who does not comply with the requirement of Subsection (a).

(c) The board may administratively suspend or refuse to renew the license of an individual who is an applicant for renewal of a license under Subchapter I and who does not comply with the requirement of Subsection (a).

(d) The board shall require a license holder who qualified for an exemption described by Subsection (a)(2)(E) to comply with the requirement of Subsection (a) if the license holder no longer qualifies for the exemption.

(e) The board shall conduct a criminal history record information check of each individual required to submit fingerprints under Subsection (a) using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(f) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 3, eff. September 1, 2019.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 901.201. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.202. COMPLAINTS. The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing a complaint to the board. The board may require that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter; or

(2) in a bill for service provided by a person regulated under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.203. COMPLAINT INFORMATION. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 15, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 4, eff. September 1, 2019.

Sec. 901.204. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's programs.

(c) The board shall include on the agenda of each regular board meeting an opportunity for public comment on each agenda item or other issue before the board makes a decision on the item or issue, except as otherwise provided by Subsection (d).

(d) The board may prohibit public comment at a meeting of the board regarding an active investigation or enforcement proceeding by the board.

(e) The board may not require a person who wishes to make a public comment at a meeting of the board to notify the board in advance of the meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 5, eff. September 1, 2019.

SUBCHAPTER F. CERTIFICATE REQUIREMENTS

Sec. 901.251. CERTIFICATE REQUIRED. (a) A person who is an individual may not engage in the practice of public accountancy unless the person holds a certificate issued under this chapter or practices in this state under a privilege under Section 901.462.

(b) The board shall issue a certificate to a person who meets the applicable requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 2, eff. September 1, 2007.

Sec. 901.252. ELIGIBILITY REQUIREMENTS. To be eligible to receive a certificate, a person must:

(1) satisfy the requirements of Section 901.253;

(2) complete at least 150 semester hours or quarter-hour equivalents in board-recognized courses, including an accounting concentration or equivalent courses that meet the education requirements established under Section 901.254, as determined by board rule;

(3) pass the uniform CPA examination;

(4) meet the work experience requirements established under Section 901.256; and

(5) pass an examination on the rules of professional conduct as determined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 6, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 11 (S.B. 159), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 3, eff. June 9, 2023.

Sec. 901.253. BACKGROUND INVESTIGATION. (a) The board shall ensure that an applicant to take the uniform CPA examination or to receive a certificate lacks a history of dishonest or felonious acts. The board shall require each applicant to comply with the requirements of Section 901.169(a).

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 21(2), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 21(2), eff. September 1, 2019.

(d) The board may require the applicant to submit a complete set of fingerprints. If an applicant does not provide a complete set of fingerprints on request of the board, the board may:

(1) deny the applicant's application to take the uniform CPA examination; or

(2) refuse to issue a certificate to the applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 13, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 7, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 8, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 21(2), eff. September 1, 2019.

Sec. 901.254. EDUCATION REQUIREMENTS. To be eligible to take the uniform CPA examination, an applicant must:

(1) hold a baccalaureate or graduate degree, or its equivalent as determined by board rule, conferred by a board-recognized institution of higher education; and

(2) complete at least 120 semester hours or quarter-hour equivalents in board-recognized courses, including at least 24 semester hours of accounting or equivalent courses as determined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 14, eff. Sept. 1, 2001. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 11 (S.B. 159), Sec. 2, eff. September 1, 2023.

Sec. 901.256. WORK EXPERIENCE REQUIREMENTS. (a) To be eligible to receive a certificate, a person must complete at least one year of work experience acceptable to the board, including experience providing a service or advice involving accounting, attest services, management or financial advisory or consulting services, tax services, or other services the board considers appropriate for an accountant, if the person:

(1) has completed at least 150 semester hours of college credits; or

(2) holds a graduate degree.

(b) The board by rule shall define the work experience that is acceptable for purposes of this section.

(c) The board is the final authority regarding work experience. The board may not consider a petition from another entity in resolving a dispute under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 15, eff. Sept. 1, 2001. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 11 (S.B. 159), Sec. 3, eff. September 1, 2023.

Sec. 901.257. OATH AND CERTIFICATE FEE. Before the board issues a certificate to a person, the person must:

(1) take an oath, administered by a board member or by another person authorized to administer oaths, to support:

(A) the constitution and laws of this state and the United States; and

(B) the board's rules; and

(2) pay a fee for the certificate in an amount set by board rule not to exceed $50.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.258. TRANSFER OF COMPLETE EXAMINATION CREDIT BETWEEN STATES. (a) The board may accept the completion of the uniform CPA examination given by the licensing authority of another state if:

(1) the examination was prepared and graded by the American Institute of Certified Public Accountants or, if doing so would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of Accountancy; and

(2) the applicant met the requirements in effect in this state at the time the credit was earned.

(b) The board may transfer to the licensing authority of another state active credits earned as a result of completing the uniform CPA examination in this state.

(c) The board by rule shall establish:

(1) a fee in an amount not to exceed $100 to receive credits from another licensing authority; and

(2) a fee in an amount not to exceed $50 to transfer credits to another licensing authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.259. CERTIFICATION BASED ON RECIPROCITY. (a) The board shall issue a certificate to a person who holds a certificate or license issued by another state if the person:

(1) satisfies at least one of the following:

(A) holds a certificate or license as a certified public accountant from a state that the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified as having education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter;

(B) obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter;

(C) meets the requirements for issuance of a certificate in this state other than the requirement providing the grades necessary to pass the uniform CPA examination;

(D) met the requirements in effect for issuance of a certificate in this state on the date the person was issued a certificate by the other state; or

(E) has completed at least four years of experience practicing public accountancy, if the experience:

(i) occurred after the person passed the uniform CPA examination and within the 10 years preceding the date of application; and

(ii) satisfies requirements established by board rule; and

(2) has met the continuing professional education requirements that apply to a license holder under this chapter for

the three-year period preceding the date of application.

(b) The board shall issue a certificate by reciprocity to the extent required by a United States treaty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 16, eff. Sept. 1, 2001.

Sec. 901.260. CERTIFICATE BASED ON FOREIGN CREDENTIALS. (a) The board may issue a certificate to an applicant who holds a substantially equivalent foreign credential if:

(1) the foreign jurisdiction that granted the credential has an analogous provision allowing a person who holds a certificate issued by this state to obtain that foreign jurisdiction's comparable credential;

(2) the foreign credential:

(A) entitles the holder to issue reports on financial statements;

(B) was issued by a foreign jurisdiction that regulates the practice of public accountancy on the basis of education, examination, and experience requirements established by the jurisdiction; and

(C) has not expired or been revoked, suspended, limited, or probated; and

(3) the applicant:

(A) received the credential based on education and examination requirements that are comparable to or exceed those in effect in this state on the date that the foreign credential was granted;

(B) satisfied one of the following:

(i) completed an experience requirement in the jurisdiction that granted the foreign credential that is comparable to or exceeds the experience requirements established under this chapter;

(ii) completed at least four years of professional accounting experience in this state; or

(iii) within the 10 years preceding the date of the application, has met equivalent requirements prescribed by board rule;

(C) passed a uniform qualifying examination acceptable

to the board covering national standards; and

(D) passed an examination acceptable to the board covering the laws, rules, and code of ethical conduct in effect in this state.

(b) An applicant for a certificate under Subsection (a) must list in the application each jurisdiction, foreign and domestic, in which the applicant has applied for or holds a credential to practice public accountancy. Each holder of a certificate issued under Subsection (a) shall notify the board in writing of the issuance, denial, revocation, suspension, limitation, or probation of a credential or the commencement of a disciplinary or enforcement action by any jurisdiction not later than the 30th day after the effective date of that action.

(c) The board's determination of whether a foreign credential is substantially equivalent to a certificate issued under this chapter is not subject to judicial review.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 17, eff. Sept. 1, 2001.

SUBCHAPTER G. UNIFORM CPA EXAMINATION

Sec. 901.301. ADMINISTRATION; BOARD RULES. (a) The board shall conduct or contract with another person to conduct uniform CPA examinations administered under this chapter.

(b) The board by rule may establish the:

(1) manner in which a person may apply for the examination;

(2) time, date, and place for the examination;

(3) manner in which the examination is conducted; and

(4) manner in which a person's examination score is reported to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 18, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.006(a), eff. Sept. 1, 2003.

Sec. 901.302. APPLICATION OF INTENT. (a) The board may establish an application of intent for a person pursuing a certificate.

(b) The board shall maintain an application of intent filed

under this section as an active application until the second anniversary of the date the application is filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.303. FILING FEE. The board by rule may set a filing fee in an amount not to exceed $100 to be paid by an applicant at the time the applicant files an initial application to take the uniform CPA examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.304. EXAMINATION FEE. (a) For each examination or reexamination, the board by rule shall apportion an amount of the total examination fee among the parts of the examination that an applicant is eligible to take on a particular examination date. For each examination or reexamination, the board shall collect from each applicant a fee set by board rule not to exceed the cost of administering the parts of the examination that the applicant is eligible to take.

(b) Repealed by Acts 2003, 78th Leg., ch. 525, Sec. 28.

(c) The board by rule may provide for a refund of the examination fee paid by an applicant who:

(1) fails to attend the examination; and

(2) presents the board with a satisfactory reason for that failure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 19, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 16, 28, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14.006(b), eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 4, eff. June 9, 2023.

Sec. 901.305. FREQUENCY OF EXAMINATION. A uniform CPA examination shall be administered under this chapter as often as

necessary but at least once each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 20, eff. Sept. 1, 2001.

Sec. 901.306. CONTENT AND SECURITY OF EXAMINATION. (a) The board may use or require the use of all or part of the uniform CPA examination and any related service available from:

(1) the American Institute of Certified Public Accountants; or

(2) the National Association of State Boards of Accountancy.

(b) The examination must test the person's knowledge of accounting, auditing, and any other subject the board determines is appropriate.

(c) If the examination is secured by the preparer, the board may not release a copy of any question or answer to any person.

(d) The board by rule may adopt a system to maintain the security and integrity of the examination process.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 21, eff. Sept. 1, 2001.

Sec. 901.307. GRADING EXAMINATION. (a) The board by rule shall:

(1) adopt a method for grading the examination; and

(2) establish the criteria for passing the examination.

(b) Rules adopted under this section must, to the extent possible, be uniform with those of other states.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1497, Sec. 22, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.006(c), eff. Sept. 1, 2003.

Sec. 901.308. EXAMINATION RESULTS. (a) The board shall send

to each examinee the examinee's results not later than the 30th day after the date the board receives the results.

(b) The board may withhold delivery of the examination results if:

(1) board action is pending; and

(2) the examinee is precluded from receiving the results until the action is resolved.

(c) If the notice of the examination results graded or reviewed by a national testing service will be delayed for more than 120 days after the examination date, the board shall notify the examinee of the reason for the delay before the 120th day.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 36, Sec. 4(2), eff. September 1, 2013.

(e) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 36, Sec. 4(2), eff. September 1, 2013.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 381, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. 228), Sec. 4(2), eff. September 1, 2013.

Sec. 901.309. REEXAMINATION. A person who fails all or part of an examination may apply for a subsequent examination, subject to the board's satisfaction that the person meets the requirements of this chapter relating to the person's background investigation and education.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 9, eff. September 1, 2019.

Sec. 901.310. PASSAGE OF EXAMINATION. (a) Repealed by Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(3), eff. June 9, 2023.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(3), eff. June 9, 2023.

(c) The board shall consider a person to have passed an

examination if the person receives credit for each subject within the time prescribed by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 5, eff. June 9, 2023.
Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 6, eff. June 9, 2023.
Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(3), eff. June 9, 2023.

Sec. 901.311. RESTRUCTURE OF EXAMINATION. On the restructuring of the uniform CPA examination, the board by rule shall determine the manner in which credit for a subject is integrated into the new structure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 7, eff. June 9, 2023.

Sec. 901.312. TRANSFER OF PARTIAL EXAMINATION CREDIT BETWEEN STATES. (a) The board may accept the partial completion of the uniform CPA examination given by the licensing authority of another state if:

(1) the examination was prepared and graded by the American Institute of Certified Public Accountants or, if doing so would result in a greater degree of reciprocity with the examination results of other states, the National Association of State Boards of Accountancy;

(2) the credit is active in the other state; and

(3) at the time the credit was earned, the applicant met the requirements in effect in the other state and the other state's standards are equal to or higher than the standards prescribed by this chapter.

(b) The board may transfer to the licensing authority of another state active credits earned as a result of partially completing the uniform CPA examination in this state.

(c) The board by rule shall establish:

(1) a fee in an amount not to exceed $100 to receive credits from another licensing authority; and

(2) a fee in an amount not to exceed $50 to transfer credits to another licensing authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. FIRM LICENSE REQUIREMENTS

Sec. 901.351. FIRM LICENSE REQUIRED. (a) A firm may not provide attest services or use the title "CPA's," "CPA Firm," "Certified Public Accountants," "Certified Public Accounting Firm," or "Auditing Firm" or a variation of one of those titles unless the firm holds a firm license issued under this subchapter or practices in this state under a privilege under Section 901.461.

(a-1) A firm is required to hold a firm license under this subchapter if the firm establishes or maintains an office in this state.

(b) The board shall grant or renew a firm license to practice as a certified public accountancy firm to:

(1) a firm that applies and demonstrates the necessary qualifications in accordance with this subchapter; or

(2) a firm originally licensed as a certified public accountancy firm in another state that demonstrates the necessary qualifications in accordance with this subchapter.

(c) A firm license issued under Subsection (b)(2) is automatically revoked and may not be renewed if the firm does not maintain a license as a certified public accountancy firm in the other state.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 21(3), eff. September 1, 2019.

(e) The board by rule shall specify:

(1) the form of the application for a firm license;

(2) the fee for an original or renewal firm license, which may be based on the number of owners, members, partners, shareholders, or employee license holders in this state, not to exceed $25 for each of those persons;

(3) the term of a firm license; and

(4) the requirements for renewal of a firm license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 3, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 10, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 21(3), eff. September 1, 2019.

Sec. 901.352. APPLICATION FOR FIRM LICENSE OR REGISTRATION. (a) An applicant for a firm license or registration must provide the board with satisfactory evidence of eligibility for a firm license or registration.

(b) The board may examine an application and may refuse to issue a firm license or register an applicant who does not meet the standards imposed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.

Sec. 901.353. RESIDENT MANAGER. (a) An office established or maintained in this state by a firm of certified public accountants, a firm of public accountants, or a person described by Section 901.355 must designate a resident manager who is responsible for the license of the firm or person, as applicable. The resident manager must be:

(1) an owner, member, partner, shareholder, or employee of the firm or person that occupies the office; and

(2) licensed under this chapter.

(b) A resident manager may serve in that capacity in only one office at a time except as authorized by board rule. The board by rule may establish a registration procedure under which a person may serve as resident manager of more than one office at a time.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 11, eff. September 1, 2019.

Sec. 901.354. FIRM LICENSE INFORMATION AND ELIGIBILITY. (a) An applicant for initial issuance or renewal of a firm license must show that a majority of the ownership of the firm, in terms of financial interests and voting rights, belongs to persons who hold certificates issued under this chapter or are licensed in another state. A firm and its owners shall comply with board rules regardless of whether the firm includes owners who are not license holders.

(b) A certified public accountancy firm may include individuals as owners who are not license holders if:

(1) the firm designates to the board as responsible for the firm's license a license holder who resides in this state;

(2) each owner who is not a license holder and who is a resident of this state as determined by board rule:

(A) is actively involved in the firm or an affiliated entity;

(B) lacks a history of dishonest or felonious acts;

(C) maintains any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is identified or used in an advertisement, letterhead, business card, or other firm-related communication;

(D) has passed an examination on the rules of professional conduct as determined by board rule; and

(E) complies with the rules of professional conduct as determined by board rule; and

(3) the firm and the owners who are not license holders comply with board disciplinary actions and other requirements the board may impose by rule.

(c) The board by rule may adopt a system to investigate the background of individual owners who are not license holders under this chapter.

(d) The board may obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, and other law enforcement agencies to investigate the qualifications of an individual who is not a license holder under this chapter.

(e) The board may require an individual who is not a license holder under this chapter to comply with the requirement of Section

901.169(a). If the individual does not comply with the requirement of that subsection on request, the board may refuse to allow that individual to become an owner of a certified public accountancy firm and may cancel or refuse to issue or renew a firm license to the firm.

(f) An applicant for issuance or renewal of a firm license under this section must register each office of the firm in this state and show that all attest services performed in this state are under the supervision of a person who holds a certificate issued under this chapter or by another state.

(g) An application for a firm license under this chapter must be made on an affidavit of the owner, an officer, or the general partner of the firm, as applicable, stating:

(1) the name of the firm;

(2) the firm's post office address in this state if the firm has an office in this state;

(3) the address of the firm's principal office;

(4) the address of each office of the firm in this state if the firm has an office in this state;

(5) the name of the resident manager of each office of the firm in this state; and

(6) the name, residence, and post office address of:

(A) each partner, member, shareholder, or other owner; and

(B) if the firm is a partnership, each shareholder of a partner that is a professional corporation.

(h) A sole proprietorship is eligible for a firm license if the sole proprietor and each resident manager of an office of the sole proprietorship in this state are certified public accountants in good standing.

(i) The board shall determine whether an applicant is eligible for a firm license under this section. The board by rule shall define "good standing" for purposes of this section.

(j) A certified public accountancy firm shall notify the board not later than the 31st day after the date on which information in the affidavit is changed, including information regarding the admission or withdrawal of an owner or resident manager.

(k) A certified public accountancy firm that is no longer in compliance with this section because of a change in firm ownership or personnel that occurs after the firm receives or renews a firm

license shall report that fact to the board not later than the 30th day after the date the firm ceases to be in compliance and shall take corrective action to bring the firm into compliance. Failure to bring the firm into compliance within a reasonable time as determined by board rule is grounds for the suspension or revocation of the firm's firm license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 4, eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 12, eff. September 1, 2019.

Sec. 901.355. REGISTRATION FOR CERTAIN FOREIGN APPLICANTS. (a) The holder of a certificate, license, or degree authorizing the person to practice public accountancy in a foreign country who on or before September 1, 2023, registered with the board as the holder of a certificate, license, or degree issued by the foreign country may continue to practice in this state under that registration for as long as the person stays in compliance with the provisions of this chapter and board rules applicable to the person.
(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(4), eff. June 9, 2023.
(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(4), eff. June 9, 2023.
(d) A person's registration under this section is automatically revoked and may not be renewed if the person does not maintain the authority to practice public accountancy in the other country. The board shall adopt rules to ensure that the person maintains that authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 23, eff. Sept. 1, 2001.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 8, eff. June 9, 2023.
Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 17(4), eff. June 9, 2023.

SUBCHAPTER I. LICENSE REQUIREMENTS, ISSUANCE, AND RENEWAL

Sec. 901.401. LICENSE REQUIRED. (a) An individual who holds a certificate issued under this chapter must also hold a license issued under this chapter.

(b) Each office in this state of a certified public accountancy firm or a firm of public accountants must hold a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 24, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 5, eff. September 1, 2007.

Sec. 901.402. ELIGIBILITY REQUIREMENTS; GENERAL PROHIBITION. (a) On payment of the required fees, the board shall issue a license to an applicant who complies with the requirement of Section 901.169(a) and:

(1) holds a certificate issued under this chapter; or

(2) holds a firm license issued under this chapter.

(b) The board may not issue a license to or renew the license of a person who does not meet the licensing requirements of:

(1) this chapter; or

(2) the rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 25, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 13, eff. September 1, 2019.

Sec. 901.403. APPLICATION FOR AND RENEWAL OF LICENSE. (a) The board shall specify:

(1) the form of the application for a license;

(2) the term of a license; and

(3) the requirements for renewal of a license.

(b) The board by rule may adopt a system under which licenses

expire on various dates during the year. For the year in which the license expiration date is changed, the board shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(c) The board shall require an applicant for renewal of a license to comply with the requirement of Section 901.169(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 26, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 17, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 14, eff. September 1, 2019.

Sec. 901.404. NOTICE OF LICENSE EXPIRATION. (a) Not later than the 30th day before the expiration date of a person's license, the board shall send written or electronic notice of the impending license expiration to the person at the person's last known address or e-mail address according to the board's records.

(b) The board shall determine the amount of the renewal fee and shall provide written or electronic notice of that amount to the person within the time provided by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 18, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 9, eff. June 9, 2023.

Sec. 901.405. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is

equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(e) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(f) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. A person described by this subsection whose license has been revoked under Section 901.502(3) or (4) may obtain a new license under this subsection. A person described by this subsection must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 19, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 6, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(g), eff. September 1, 2015.

Sec. 901.408. CONSEQUENCE OF FAILURE TO PAY CERTAIN FEES. (a) A person, other than a person described by Section 901.405(f), who fails to pay the license renewal fee and any late fee before the first anniversary of the due date of the renewal fee may renew the person's license only by submitting to the board an application for renewal accompanied by payment of:

(1) all accrued fees, including late fees; and

(2) the direct administrative costs incurred by the board

in renewing the person's license.

(b) The board by rule shall prescribe the information to be included in an application for renewal under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(h), eff. September 1, 2015.

Sec. 901.409. FEE REDUCTION FOR RETIRED PERSONS OR PERSONS WITH DISABILITIES. The board by rule may establish a reduced fee to issue or renew the license of a person who does not engage in the practice of public accountancy because of retirement or permanent disability.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 15, eff. September 1, 2019.

Sec. 901.411. CONTINUING PROFESSIONAL EDUCATION. (a) A license holder who is an individual shall participate in a program of continuing professional education designed to maintain professional competency. The program must comply with rules adopted by the board.

(b) The board may recognize a continuing professional education course only if the course directly contributes to the license holder's professional competence.

(c) The board by rule shall provide for the reporting of continuing professional education by a license holder to coincide with the person's license renewal date.

(d) The board by rule may exempt certain license holders, including license holders who are persons with disabilities, retired, or not associated with accounting, as defined by board rule, from all or part of the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 27, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 16, eff. September 1, 2019.

SUBCHAPTER J. PRACTICE OF PUBLIC ACCOUNTANCY

Sec. 901.451. USE OF TITLE OR ABBREVIATION FOR "CERTIFIED PUBLIC ACCOUNTANT." (a) A person may not assume or use the title or designation " certified public accountant," the abbreviation "CPA," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant unless the person holds a certificate under this chapter.

(b) A person may not provide attest services or assume or use the title "certified public accountants," the abbreviation "CPAs," or any other title, designation, word, letter, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountancy firm unless:

(1) the person holds a firm license issued under this chapter or practices in this state under a privilege under Section 901.461;

(2) ownership of the person complies with the requirements of this chapter and rules adopted by the board; and

(3) the person complies with board rules authorizing the practice.

(c) The title or designation "certified public accountant" and the abbreviation "CPA" may not be used in connection with an office that does not meet the requirements of Sections 901.353 and 901.354.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 9, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 17, eff. September 1, 2019.

Sec. 901.452. USE OF TITLE OR ABBREVIATION FOR "PUBLIC ACCOUNTANT." A person may not assume or use the title or designation "public accountant" or any other title, designation, word, letter,

abbreviation, sign, card, or device tending to indicate that the person is a public accountant, or a firm composed of public accountants, unless:

(1) the person is certified and licensed under this chapter; and

(2) each of the person's offices in this state for the practice of public accounting is maintained and practices under a firm license as required under Subchapter H.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001.

Sec. 901.453. USE OF OTHER TITLES OR ABBREVIATIONS. (a) Except as provided by Subsection (b), a person may not assume or use:

(1) a title or designation likely to be confused with "certified public accountant" or "public accountant," including "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or "accredited accountant"; or

(2) an abbreviation likely to be confused with "CPA," including "CA," "PA," "EA," "RA," "LA," or "AA."

(b) A person may hold the person out to the public as an "accountant," "auditor," or any combination of those terms or assert that the person has expertise in accounting or auditing only if:

(1) the person holds a license issued under this chapter and each of the person's offices in this state for the practice of public accounting is maintained and practices under a firm license as required under Subchapter H; or

(2) the person practices under a privilege under Section 901.461 or 901.462.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 10, eff. September 1, 2007.

Sec. 901.454. TITLE USED BY CERTAIN OUT-OF-STATE OR FOREIGN ACCOUNTANTS. (a) A person who is an accountant of another state may

use the title under which the accountant is generally known in the state from which the accountant received a certificate, license, or degree if:

(1) the person holds a license issued under this chapter or practices in this state under a privilege under Section 901.461 or 901.462; and

(2) any of the person's offices established or maintained in this state for the practice of public accountancy are licensed under this chapter.

(b) A person who holds a certification, degree, license, or other credential granted in a foreign jurisdiction that entitles the person to engage in the practice of public accountancy or its equivalent in that jurisdiction may use in this state any title or designation under which the person practices in the foreign jurisdiction, followed by a translation of the title or designation into English if it is in a different language and by the name of that jurisdiction, if:

(1) the person's activities in this state are limited to the provision of professional accounting services to persons who are residents, governments, or business entities of that foreign jurisdiction; and

(2) the person does not perform attest services or issue reports on the financial statements of any other person in this state.

(c) A person registered under Section 901.355 shall use the title held in the country from which the person received a certificate, license, or degree, and shall indicate the name of the country.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 29, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 11, eff. September 1, 2007.

Sec. 901.455. NAME REQUIREMENTS AND RESTRICTIONS. (a) The name or designation assumed or used by a license holder must include:

(1) the individual's name, if the license holder is an individual;

(2) the name of at least one current or former partner, if the license holder is a partnership; or

(3) the name of at least one current or former shareholder, if the license holder is a corporation.

(b) A license holder may not assume or use a name that is misleading as to the legal form of the license holder's firm or as to the persons who are partners, officers, or shareholders of the firm. A firm licensed under this chapter may assume or use the designation "and company" or "and associates," or any abbreviation of those terms, only if at least two persons licensed under this chapter are involved in the practice of the firm.

(c) A corporation that is licensed under this chapter may practice public accountancy under a corporate name indicating that it is engaged in that practice.

(d) A license holder may not use a trade name or descriptive words indicating the character or grade of service offered, except as authorized by board rule.

(e) A firm that practices under Section 901.461 must use the firm name that it uses in the state in which it is licensed and has its principal place of business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 30, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 12, eff. September 1, 2007.

Sec. 901.456. REPORTS ON FINANCIAL STATEMENTS; USE OF NAME OR SIGNATURE ON CERTAIN DOCUMENTS. (a) Only a license holder or a person who practices under a privilege under Section 901.461 or 901.462 may issue a report on a financial statement of another person or otherwise perform or offer to perform an attest service.

(b) A person who is not a license holder and who does not practice under a privilege under Section 901.461 or 901.462:

(1) may not use language in any statement related to the financial affairs of a person that is conventionally used by license holders in reports on financial statements;

(2) may prepare financial statements; and

(3) may issue nonattest transmittals or information

regarding nonattest transmittals if the transmittals or information do not purport to be in compliance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

(c) The following safe harbor language may be used by a person who is not a license holder without violating Subsection (b): "(I/We) have prepared the accompanying balance sheet of (client's name) as of (date) and the related statements of income, retained earnings, and cash flow changes in financial position for the (period then ended). These financial statements, which are the representation of management and which are presented to be used for federal income tax purposes, (are/are not) in agreement with the company's financial records. Management has elected to omit substantially all informative disclosures with respect to these financial statements. If the omitted disclosures were included in the above financial statements, they might influence the user's conclusion concerning the company's financial position, results of operations, and/or changes in financial position. (I/We) do not express any form of assurance with respect to these financial statements."

(d) Unless a person is in compliance with this chapter, the person may not sign on or affix to an accounting or financial statement, or an opinion on, report on, or certificate to an accounting or financial statement, the person's name or a trade or assumed name used by the person in the person's profession or business with any wording indicating that the person:

(1) is an accountant or auditor; or

(2) has expert knowledge in accounting or auditing.

(e) This section does not prohibit:

(1) a partner, officer, employee, or principal of an organization from signing a statement or report regarding the financial affairs of the organization with wording that designates the position, office, or title held by the person in the organization;

(2) any act of a public official or public employee in the performance of the person's duties as a public official or public employee; or

(3) the performance by a person who is not a license holder of a service that is not an attest service and that involves the use of bookkeeping skills, including:

(A) the preparation of tax returns;

(B) management advisory services; or

(C) the preparation of financial statements without the issuance of reports.

(f) A license holder or an individual who practices under a privilege under Section 901.462 who performs attest services must provide those services in accordance with standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 31, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 13, eff. September 1, 2007.

Sec. 901.457. ACCOUNTANT-CLIENT CONFIDENTIALITY. (a) A license holder or a partner, member, officer, shareholder, or employee of a license holder may not voluntarily disclose information communicated to the license holder or a partner, member, shareholder, or employee of the license holder by a client in connection with services provided to the client by the license holder or a partner, member, shareholder, or employee of the license holder, except with the permission of the client or the client's representative.

(b) This section does not prohibit a license holder from disclosing information that is required to be disclosed:

(1) by the professional standards for reporting on the examination of a financial statement;

(2) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, or The Securities Act (Title 12, Government Code);

(3) under a court order signed by a judge if the order:

(A) is addressed to the license holder;

(B) mentions the client by name; and

(C) requests specific information concerning the client;

(4) in an investigation or proceeding conducted by the board;

(5) in an ethical investigation conducted by a professional organization of certified public accountants;

(6) in the course of a peer review under Section 901.159 or in accordance with the requirements of the Public Company Accounting Oversight Board or its successor; or

(7) in the course of a practice review by another certified public accountant or certified public accountancy firm for a potential acquisition or merger of one firm with another, if both firms enter into a nondisclosure agreement with regard to all client information shared between the firms.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 31, eff. Sept. 1, 2001. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 36 (S.B. 228), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 491 (H.B. 4171), Sec. 2.38, eff. January 1, 2022.

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 10, eff. June 9, 2023.

Sec. 901.458. LOSS OF INDEPENDENCE. (a) In this section, "direct labor cost" means:

(1) the total compensation paid to a person who performs services; and

(2) the employer payroll expenses related to that compensation, including workers' compensation insurance premiums, social security contributions, costs of participating in retirement plans, group insurance costs, and unemployment taxes.

(b) A person creates a presumption of loss of independence if the person:

(1) holds a certificate or firm license issued under this chapter; and

(2) performs or offers to perform an attest service for compensation that is less than the direct labor cost reasonably expected to be incurred in performing the service.

(c) This section does not apply to the donation of services to

a charitable organization as defined by board rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 32, eff. Sept. 1, 2001.

Sec. 901.459. APPLICABILITY OF PARTNERSHIP REQUIREMENTS TO PARTNER. Each partner in a partnership governed by this chapter is subject to the statutory requirements and rules that apply to the partnership.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.460. PERFORMING ATTEST SERVICES. (a) A certificate holder may perform attest services only in a certified public accountancy firm.

(b) An individual who is a license holder or practices under a privilege under Section 901.462 and who is responsible for supervising attest services or signs or authorizes another person to sign an accountant's reports on financial statements on behalf of a certified public accountancy firm must meet the competency requirements of the professional standards that apply to those services.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 33, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 14, eff. September 1, 2007.

Sec. 901.461. PRACTICE BY CERTAIN OUT-OF-STATE FIRMS. (a) A certified public accountancy firm that is not licensed in this state but is licensed in another state may practice in this state without a firm license or notice to the board if the firm's practice in this state is performed by an individual who holds a license under this chapter or who practices under a privilege under Section 901.462.

(b) A firm described by Subsection (a) may exercise all the practice privileges of a firm license holder, except that the firm may perform the services described by Section 901.002(a)(1) for an entity with its home office in this state only if:

(1) the firm meets the ownership requirements of Sections 901.354(a) and (b);

(2) the firm complies with the board's peer review program under Section 901.159; and

(3) the services are performed by an individual who holds a license under this chapter or practices under a privilege under Section 901.462.

(c) A firm practicing under a privilege under this section, as a condition of the privilege of practicing without a firm license:

(1) is subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) must comply with this chapter and board rules; and

(3) is considered to have appointed the regulatory agency of the state that issued the firm's license as the firm's agent on whom process may be served in any action or proceeding by the board against the firm.

(d) A firm practicing under a privilege under this section shall promptly cease offering or rendering professional services in this state if the firm's license to practice as a certified public accountancy firm in the state in which the firm's primary place of business is no longer valid.

Added by Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 15, eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 18, eff. September 1, 2019.

Sec. 901.462. PRACTICE BY OUT-OF-STATE PRACTITIONER WITH SUBSTANTIALLY EQUIVALENT QUALIFICATIONS. (a) An individual who holds a certificate or license as a certified public accountant issued by another state and whose principal place of business is not in this state may exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if:

(1) the National Association of State Boards of Accountancy's National Qualification Appraisal Service has verified that the other state has education, examination, and experience requirements for certification or licensure that are comparable to or

exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter; or

(2) the individual obtains from the National Association of State Boards of Accountancy's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a certified public accountant of The American Institute of Certified Public Accountants/National Association of State Boards of Accountancy Uniform Accountancy Act and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter.

(b) An individual who meets the requirements of Subsection (a)(1) or (2) and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the board.

(c) An individual practicing under the privilege under this section, as a condition of the privilege of practicing without a certificate or license:

(1) is subject to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) must comply with this chapter and the board's rules; and

(3) is considered to have appointed the regulatory agency of the state that issued the individual's certificate or license as the agent on whom process may be served in any action or proceeding by the board against the individual.

(d) An individual who practices under a privilege under this section shall promptly cease offering or rendering professional services in this state if the individual's certificate or license in the state of the individual's principal place of business is no longer valid.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 21(4), eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 315 (H.B. 2144), Sec. 15,

eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 21(4), eff. September 1, 2019.

SUBCHAPTER K. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 901.501. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 901.502, after notice and hearing as provided by Section 901.509, the board may:

(1) revoke a certificate, firm license, or practice privilege issued under this chapter;

(2) suspend under any terms a certificate, firm license, practice privilege, or license issued under this chapter for a period not to exceed five years;

(3) refuse to renew a license;

(4) place a license holder on probation;

(5) reprimand a license holder;

(6) limit the scope of a license holder's practice;

(7) require a license holder to complete a peer review program conducted in the manner prescribed by the board;

(8) require a license holder to complete a continuing education program specified by the board;

(9) impose on a license holder the direct administrative costs incurred by the board in taking action under Subdivisions (1) through (8);

(10) require a license holder to pay restitution as provided by Section 901.6015;

(11) impose an administrative penalty under Subchapter L; or

(12) impose any combination of the sanctions provided by this subsection.

(b) If a person's license suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or renew professional education until the

license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 34, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 20, eff. Sept. 1, 2003.

Sec. 901.502. GROUNDS FOR DISCIPLINARY ACTION. The board may discipline a person under Section 901.501 for:

(1) fraud or deceit in obtaining a certificate, firm license, or license under this chapter;

(2) fraud, dishonesty, or gross negligence in the performance of services as a license holder, including:

(A) knowingly participating in the preparation of a false or misleading financial statement or tax return; or

(B) failing to file the license holder's own income tax return;

(3) the failure of a person who is certified or required to hold a firm license under this chapter to obtain a license not later than the third anniversary of the date on which the person was certified or required to obtain a firm license;

(4) the failure of a person who is licensed under this chapter to renew the license not later than the third anniversary of the date on which the person most recently obtained or renewed the license;

(5) a violation of Subchapter J;

(6) a violation of a rule of professional conduct adopted by the board;

(7) a revocation or suspension of the certificate or firm license or a revocation, suspension, or refusal to renew the license of the person's partner, member, or shareholder;

(8) a revocation, cancellation, placement on probation, limitation on the scope of practice, or suspension by another state, or a refusal of renewal by another state, of the authority issued by that state to the person, or to the person's partner, member, or shareholder, to engage in the practice of public accountancy for a reason other than the failure to pay the appropriate authorization fee;

(9) a revocation or suspension of, or a voluntary consent

decree concerning, the right of the person, or of the person's partner, member, or shareholder, to practice before a state or federal agency for a reason the board determines warrants its action;

(10) a final conviction of or the imposition of deferred adjudication for an offense under the laws of any state or the United States that:

(A) is a felony; or

(B) includes fraud or dishonesty as an element of the offense;

(11) conduct indicating lack of fitness to serve the public as a professional accountant; or

(12) a violation by a license holder or an owner of a certified public accountancy firm who is not a license holder of:

(A) this chapter;

(B) professional standards adopted by the board; or

(C) a rule or order adopted by the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 34, eff. Sept. 1, 2001.

Sec. 901.503. BOARD ACTION INVOLVING APPLICANT. (a) On a determination that a ground for discipline exists under Subsection (b), after notice and hearing as provided by Section 901.509, the board may:

(1) deny an individual's application to take the uniform CPA examination;

(2) prohibit an individual from taking the uniform CPA examination for a period not to exceed five years; or

(3) void an individual's uniform CPA examination grades.

(b) The board may discipline an individual under Subsection (a) for:

(1) fraud or deceit on an application for the uniform CPA examination;

(2) cheating on the uniform CPA examination;

(3) a final conviction of or the imposition of deferred adjudication for an offense under the laws of any state or the United States that:

(A) is a felony; or

(B) includes fraud or dishonesty as an element of the

offense; or

(4) conduct indicating lack of fitness to serve the public as a professional accountant.

(c) The board shall provide for the refund of the examination fee paid by a person whose application for examination is denied under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 21, eff. Sept. 1, 2003.

Sec. 901.504. LICENSE REVOCATION BASED ON VIOLATION OF CHAPTER. After notice and hearing as provided by Section 901.509, the board:

(1) may revoke a license that was issued or renewed in violation of this chapter or a rule adopted under this chapter; and

(2) shall revoke the firm license of a sole proprietorship, partnership, corporation, limited liability company, or other business entity that does not meet each qualification for a firm license prescribed by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 34, eff. Sept. 1, 2001.

Sec. 901.5045. EMERGENCY SUSPENSION. (a) On determining that a license holder is engaged in or about to engage in an act of fraud or a violation of this chapter and that the license holder's continued practice constitutes an immediate threat to the public welfare, the board may issue an order suspending the license holder's license without notice or a hearing. The board shall immediately serve notice of the suspension on the license holder.

(b) The notice required by Subsection (a) must:

(1) be personally served on the license holder or be sent by registered or certified mail, return receipt requested, to the license holder's last known address according the board's records;

(2) state the grounds for the suspension; and

(3) inform the license holder of the right to a hearing on the suspension order.

(c) A license holder whose license is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the

suspension. Not later than the fifth day after the date a hearing is requested, the board shall issue a notice of hearing as provided by Section 901.509.

(d) The hearing shall be held not later than the fifth day after the date notice of hearing is issued, unless the parties agree to a later date. A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the board whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the board. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the board shall determine whether to vacate the order not later than the second day after the date of the recommendation.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 22, eff. Sept. 1, 2003.

Sec. 901.505. PROCEDURE PENDING FINAL CONVICTION OF CERTAIN OFFENSES. (a) On conviction of a person of an offense under the laws of any state or the United States that is a felony or that includes fraud or dishonesty as an element of the offense, after notice and hearing as provided by Section 901.509, the board may:

(1) suspend a certificate or firm license issued under this chapter; or

(2) suspend or refuse to renew a license issued under this chapter.

(b) The period of the suspension or refusal to renew begins on the date of conviction and ends on the date the conviction becomes final or is reversed, set aside, or modified as provided by Subsection (d).

(c) If the conviction becomes final, the board may, without further notice and hearing, take disciplinary action under Section 901.501.

(d) If the conviction is reversed, set aside, or modified so that the underlying offense is not a felony or an offense that includes fraud or dishonesty as an element of the offense, the board shall reinstate the certificate, firm license, or license suspended

under this section. A reinstatement under this subsection does not limit the board's right to take other disciplinary action authorized by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 35, eff. Sept. 1, 2001.

Sec. 901.506. VOLUNTARY SURRENDER OF CERTIFICATE OR FIRM LICENSE. (a) Subject to board approval, a person who holds a certificate or firm license issued under this chapter may resign and surrender the certificate or firm license to the board at any time and for any reason.

(b) A person who resigns and surrenders a certificate or firm license may not apply for reinstatement of the certificate or firm license. The person may be issued a new certificate or firm license on completion of all requirements for the issuance of an original certificate or firm license. The board may not issue a certificate to an individual who previously resigned a certificate unless:

(1) after the date of resignation, the individual completes the examination requirement for a new certificate; or

(2) on application, the board waives the examination requirement.

(c) A person who applies for a new certificate or firm license must, if applicable, disclose in the application the fact that the person previously resigned and surrendered a certificate or firm license during the course of a disciplinary investigation or proceeding conducted by the board. The board shall consider that fact in determining whether to issue a new certificate or firm license to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 36, eff. Sept. 1, 2001.

Sec. 901.507. REINSTATEMENT. On receipt of a written application, and after notice and hearing, the board may:

(1) issue a new certificate to an individual whose certificate was revoked;

(2) issue a new firm license to a person whose firm license was revoked;

(3) reinstate a suspended license or modify the terms of the suspension;

(4) approve a previously denied application to take the uniform CPA examination; or

(5) reinstate an individual's previously voided uniform CPA examination grades.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 36, eff. Sept. 1, 2001.

Sec. 901.508. RIGHT TO HEARING. (a) If the board proposes to take disciplinary action against a person under this subchapter, the person is entitled to a hearing before the board or a hearings officer appointed by the board.

(b) The board shall establish procedures by which a decision to take disciplinary action under this subchapter is made by or is appealable to the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.509. NOTICE OF HEARING. (a) The board shall provide written notice of a hearing under this subchapter to the person who is the subject of the proposed disciplinary action not later than the 21st day before the date of the hearing.

(b) The notice must state:

(1) the time and place of the hearing; and

(2) the nature of each charge against the person.

(c) The notice may be served in person or by registered or certified mail to the person's last known address.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.510. LEGAL REPRESENTATION AT HEARING. The attorney general or an attorney employed by the board shall represent the board at each hearing under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.511. DISCIPLINARY ACTION FOR ACT COMMITTED IN ANOTHER STATE. (a) A license holder of this state who offers to perform or performs professional accounting services or who uses the license holder's title as a certified public accountant in another state or jurisdiction is subject to disciplinary action in this state for an act committed in the other state or jurisdiction for which the license holder would be subject to discipline as a license holder of the other state or jurisdiction.

(b) The board shall investigate any complaint made by the regulatory agency of another state or jurisdiction concerning a license holder of this state.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 37, eff. Sept. 1, 2001.

SUBCHAPTER L. ADMINISTRATIVE PENALTY

Sec. 901.551. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person regulated under this chapter who violates this chapter or a rule or order adopted under this chapter in a manner that constitutes a ground for disciplinary action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.552. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $100,000 for each violation.

(b) In determining the amount of the penalty, the board shall consider:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard to the public;

(2) the economic damage to property caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule shall adopt a schedule for purposes of this subchapter that prescribes ranges in the amounts of

administrative penalties to be imposed for specified types of conduct and circumstances.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 525, Sec. 23, eff. Sept. 1, 2003.

Sec. 901.553. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If, after examination of a possible violation and the facts relating to that violation, the board determines that a violation has occurred, the board shall issue a preliminary report stating:

(1) the facts on which the determination is based;

(2) the fact that an administrative penalty is to be imposed; and

(3) the amount of the penalty.

(b) Not later than the 10th day after the date the report is issued, the board shall send a copy of the report by certified mail to the person charged with the violation, together with a statement of the person's right to a hearing relating to the alleged violation and the amount of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.554. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the report, the person may:

(1) make a written request for a hearing; or

(2) pay the administrative penalty to the board.

(b) Failure to request a hearing or pay the penalty within the time provided by this section waives the right to a hearing under this chapter.

(c) If the board determines without a hearing that the person committed a violation and a penalty is to be imposed, the board shall:

(1) provide written notice to the person of the board's findings; and

(2) enter an order requiring the person to pay the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.555. HEARING. (a) If the person requests a hearing, the board shall conduct a hearing in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(b) If the board determines after a hearing that the person committed the alleged violation, the board shall:

(1) provide written notice to the person of the findings established by the hearing and the amount of the administrative penalty imposed; and

(2) enter an order requiring the person to pay any penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.556. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final as provided by Section 2001.144, Government Code, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may stay enforcement of the penalty by:

(1) paying the penalty to the board for placement in an escrow account;

(2) giving to the board a supersedeas bond in a form approved by the board that:

(A) is for the amount of the penalty; and

(B) is effective until judicial review of the board's order is final; or

(3) filing with the board an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond.

(c) A person who fails to take action as provided by this section waives the right to judicial review of the board's order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.557. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the board may refer the matter to the attorney general

for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 901.558. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review, the administrative penalty is reduced or is not upheld by the court, the board shall:

(1) remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty; or

(2) execute a release of the bond if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a) is paid at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 901.601. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of public accountancy without a license under this chapter, the board, after notice and an opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity.

(b) A violation of an order under this section constitutes grounds for imposition of an administrative penalty under Subchapter L. Notwithstanding Section 901.552, the amount of an administrative penalty for a violation of an order under this section may not exceed $25,000.

(c) The board by rule shall adopt a schedule for purposes of this section that prescribes ranges in the amounts of administrative penalties to be imposed for specified types of conduct and circumstances that violate an order under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 38, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 24, eff. Sept. 1, 2003.

Sec. 901.6011. INJUNCTIVE RELIEF. (a) The attorney general at the request of the board may petition a district court for an injunction to prohibit a person who is violating this chapter from continuing the violation.

(b) Venue in a suit for injunctive relief is in Travis County.

(c) After application and a finding that a person is violating this chapter, the district court shall grant the injunctive relief the facts warrant.

Added by Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 19, eff. September 1, 2019.

Sec. 901.6015. RESTITUTION. (a) The board may order a license holder to pay restitution under Section 901.501(a)(10) to a person harmed by the license holder's:

(1) violation of this chapter; and

(2) failure to fulfill the terms of a contract with the person.

(b) The amount of restitution ordered under this section may not exceed the actual amount paid by the person to the license holder under the contract.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 25, eff. Sept. 1, 2003.

Sec. 901.602. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter. Each violation is a separate offense.

(b) Except as otherwise provided by this subsection, an offense under this section is a Class B misdemeanor. An offense under this section that involves intentional fraud is punishable as:

(1) a state jail felony if it is shown on the trial of the offense that the violation resulted in a monetary loss of less than $10,000 or did not result in a monetary loss;

(2) a felony of the third degree if it is shown on the trial of the offense that the violation resulted in a monetary loss of at least $10,000 but less than $100,000; or

(3) a felony of the second degree if it is shown on the

trial of the offense that the violation resulted in a monetary loss of at least $100,000.

(c) A complaint filed under this section must be filed in a district court in:

(1) Travis County, if the complaint is filed against a person who is licensed under this chapter or is not a resident of this state; or

(2) the county in which the person resides, if the complaint is filed against a person who is a resident of this state but is not licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1497, Sec. 39, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 525, Sec. 26, eff. Sept. 1, 2003.

Sec. 901.603. INTERVENTION IN ACTION. Subject to approval by the board, a license holder or a professional organization of certified public accountants may intervene in an action by the board or may bring an action in the name of the license holder or professional organization to enforce any provision of this chapter against a person who does not hold a license or firm license.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 40, eff. Sept. 1, 2001.

Sec. 901.604. SINGLE ACT AS EVIDENCE OF PRACTICE. In an action brought under this chapter, evidence of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order, or conviction without evidence of a general course of conduct.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 40, eff. Sept. 1, 2001.

Sec. 901.605. APPOINTMENT OF SECRETARY OF STATE AS AGENT. A person who is not a resident of this state and who applies for a certificate or firm license is considered to have appointed the secretary of state as the applicant's agent for service of process in any action or proceeding against the applicant arising out of any transaction connected with or incidental to professional accounting

services performed by the applicant while the applicant holds a certificate or firm license.

Added by Acts 2001, 77th Leg., ch. 1497, Sec. 40, eff. Sept. 1, 2001.

Sec. 901.606. IMMUNITY FROM LIABILITY. (a) A person acting in good faith who voluntarily reports or assists in the investigation of a report of an alleged violation of this chapter or who testifies or otherwise participates in an administrative or judicial proceeding arising from a report or investigation of an alleged violation of this chapter is immune from civil or criminal liability that might otherwise be incurred or imposed.

(b) A person who reports the person's own violation of this chapter or who acts in bad faith or with malicious purpose in reporting an alleged violation of this chapter is not immune from civil or criminal liability.

Added by Acts 2003, 78th Leg., ch. 525, Sec. 27, eff. Sept. 1, 2003.

SUBCHAPTER N. SCHOLARSHIPS FOR ACCOUNTING STUDENTS

Sec. 901.652. PUBLIC PURPOSE. The scholarships required by this subchapter serve a public purpose of the state as described by Section 901.155.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Sec. 901.653. SCHOLARSHIPS. The board shall establish and administer, using funds collected and appropriated for that purpose and in accordance with this subchapter and board rules, scholarships for accounting students.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 12, eff.

June 9, 2023.

Sec. 901.654. FACTORS. (a) Scholarships shall be established and administered in a manner that the board determines best serves the public purpose of the scholarships.

(b) In determining what best promotes the public purpose, the board shall consider at a minimum the following factors relating to each person applying for a scholarship under this section:

(1) financial need;

(2) ethnic or racial minority status; and

(3) scholastic ability and performance in at least 15 hours of upper-level accounting coursework.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 13, eff. June 9, 2023.

Sec. 901.655. RULES. (a) The board shall adopt rules as necessary for the administration of this subchapter.

(b) The board shall adopt rules relating to the establishment of the scholarships under Section 901.653, including rules providing eligibility criteria and the determination of the amount of each scholarship.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Sec. 901.656. SCHOLARSHIP REGULATIONS. (a) The board shall determine the maximum amount of any scholarship awarded under this subchapter. The scholarship may be spent by the recipient on the expenses for tuition, fees, books, supplies, and living expenses incurred by the accounting student in connection with the student's study in an accounting program. Scholarships shall be made available to eligible students attending:

(1) any institution of higher education; or

(2) any nonprofit independent institution approved by the Texas Higher Education Coordinating Board under Section 61.222, Education Code.

(b) The board may award a scholarship under this subchapter only to an eligible student who intends to take the uniform CPA examination conducted by the board for the purpose of granting a certificate of "certified public accountant." An applicant for a scholarship under this subchapter shall state such an intent by filing a form provided by the board stating an intent to take the examination.

(c) A scholarship under this subchapter shall be paid to the recipient in the form of periodic partial payments throughout the school year. The board by rule shall determine the manner in which these payments are made.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 181 (H.B. 1520), Sec. 20, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 14, eff. June 9, 2023.

Sec. 901.658. FUNDING. The board may:

(1) use without appropriation, in accordance with this subchapter and Section 901.155, any money from the trust fund established under Section 901.155; and

(2) accept gifts, grants, and donations of real or personal property from any entity, subject to limitations or conditions set by law, for the purposes of this subchapter.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 150 (H.B. 1685), Sec. 2, eff. September 1, 2013.

Sec. 901.659. MINORITY AND DISADVANTAGED STUDENT INTERNSHIPS. (a) The board shall adopt rules to encourage internships for minority and disadvantaged students and certified public accountant examination candidates who notify the board not later than 90 days after the date of being accepted into an accounting internship program.

(b) The rules adopted by the board shall include standards for appropriate recognition of an accounting firm for its efforts in training and hiring minority or disadvantaged students.

Transferred from Education Code, Subchapter N, Chapter 61 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 2, eff. September 1, 2009.

Sec. 901.660. REPORT ON ACCOUNTANT SCHOLARSHIP PROGRAM. (a) Before January 15 of each odd-numbered year, the board shall report to the legislature concerning the scholarship program for accounting students administered by the board under this subchapter.

(b) The report expenses shall be included in the administrative costs allocated to the board under Section 901.155. The report must include:

(1) the number and amount of scholarships awarded in the two calendar years preceding the year in which the report is due; and

(2) the number of minority students, by racial or ethnic background, who have been awarded scholarships under the program in that two-year period.

Added by Acts 1991, 72nd Leg., ch. 533, Sec. 33, eff. Sept. 1, 1991. Redesignated from Education Code, Section 61.081 and amended by Acts 2009, 81st Leg., R.S., Ch. 119 (H.B. 2440), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 15, eff. June 9, 2023.

SUBTITLE B. LEGAL SERVICES

CHAPTER 951. PREPAID LEGAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 951.001. SHORT TITLE. This chapter may be cited as the

Prepaid Legal Services Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.002. DEFINITIONS. In this chapter:

(1) "Board of directors" means the board of directors of the state bar.

(2) "Client" means an eligible member or beneficiary of a sponsoring organization.

(3) "Organization" means a nonprofit organization or combination of persons, incorporated or otherwise, including a professional association, trade association, or labor union.

(4) "Prepaid legal services program" means a plan under which:

(A) a sponsoring organization offers legal services benefits to its members or beneficiaries; and

(B) the services are financed by direct financial charge in advance of need.

(5) "State bar" means the State Bar of Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.003. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to:

(1) the employment of counsel by an organization to represent its members free of direct financial charge to those members; or

(2) legal services made available incidental to a contract of insurance in which the insurer has contracted to pay all or a substantial part of a judgment, if any, and the legal services are free of direct financial charge to the insured.

(b) A law pertaining to legal service contracts under Chapter 953 or insurance does not apply to a program under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1181, Sec. 3, eff. Sept. 1, 2003.

Sec. 951.004. SUPPLEMENTARY BYLAWS; RULES. (a) The board of

directors may adopt supplementary bylaws as necessary to administer and enforce this chapter.

(b) The state bar may:

(1) adopt rules regulating the participation of a state bar member in group legal services programs; and

(2) require periodic reporting on that participation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. REGULATION OF PILOT PROGRAM

Sec. 951.051. APPROVAL OF PILOT PROGRAM. (a) The board may approve not more than five prepaid legal services pilot programs between classroom teachers associations and the state bar.

(b) A member of the state bar may provide legal services to a prepaid legal services program only if the organization sponsoring the program is approved by the board of directors.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.052. APPLICATION. (a) An applicant for approval of a prepaid legal services program must show that:

(1) the program money held by the organization sponsoring the program is secure, as evidenced by a fidelity bond for the officers of the organization authorized to manage the money;

(2) the program complies with the Disciplinary Rules of Professional Conduct;

(3) a client may obtain the services from any lawyer the client chooses; and

(4) each client is given, before entering into the program, full written information concerning:

(A) the services offered by the program;

(B) the total annual cost of the program to an individual client; and

(C) the required compliance of the program with this subsection.

(b) If the board of directors determines that an organization's application complies with this section, the board of directors shall approve the application. If the board of directors determines that the application does not substantially comply with this section, the

board of directors shall disapprove the application and provide the organization with written notice of the reasons for the disapproval.

(c) The board of directors shall approve or disapprove an application not later than the 60th day after the date the application is filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.053. APPLICATION FEE. The board of directors may set a fee, in an amount reasonable and necessary to enforce this chapter, for an organization applying for approval of a prepaid legal services program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 951.054. REVOCATION OF PROGRAM APPROVAL. (a) On written notice to an organization of the reasons for revocation, the board of directors may revoke the approval of a program sponsored by the organization for failure to:

(1) provide the services offered; or

(2) comply with Section 951.052(a).

(b) On receipt of notice of revocation, the organization shall:

(1) return to its clients the unspent money of the prepaid legal services program, including any available bond proceeds; and

(2) certify to the board of directors the manner and amount of the redistribution of the money.

(c) If necessary, the board of directors shall supervise the redistribution of money under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 952. LAWYER REFERRAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 952.001. SHORT TITLE. This chapter may be cited as the Texas Lawyer Referral Service Quality Assurance Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.002. DEFINITIONS. In this chapter:

(1) "Lawyer referral service" means a person or the service provided by the person that refers potential clients to lawyers regardless of whether the person uses the term "referral service" to describe the service provided.

(2) "State bar" means the State Bar of Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.003. APPLICABILITY OF CHAPTER. A lawyer referral service does not include:

(1) an organization that recommends, furnishes, or pays for legal services for its members or beneficiaries and that satisfies the conditions of the Disciplinary Rules of Professional Conduct or other rules adopted by the supreme court;

(2) a plan of prepaid legal services insurance;

(3) a referral made by one lawyer to another lawyer that conforms with the Disciplinary Rules of Professional Conduct or other rules adopted by the supreme court;

(4) lawyers who jointly advertise their services in a manner that clearly shows that the advertising is intended solely to solicit clients for those lawyers; or

(5) a service of a pro bono publico legal assistance program that does not accept a fee from either the lawyer or the client.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. STATE BAR POWERS AND DUTIES

Sec. 952.051. RULES; ENFORCEMENT. (a) The state bar shall adopt reasonable rules subject to the approval of the supreme court to administer this chapter.

(b) The state bar may enforce this chapter and the rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.052. FEES. The state bar may set fees, in amounts

that are reasonable and necessary to cover the costs of administering this chapter, for the issuance and renewal of a certificate under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CERTIFICATION

Sec. 952.101. CERTIFICATE REQUIRED. A person may not operate a lawyer referral service in this state unless the person holds a certificate issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.102. APPLICATION REQUIREMENTS; RENEWAL. (a) An applicant for a certificate or the renewal of a certificate issued under this chapter must:

(1) be operated by:

(A) a governmental entity; or

(B) a nonprofit entity exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c)(3), 501(c)(4), or 501(c)(6) of that code;

(2) certify on the application provided by the state bar that the applicant operates primarily for the benefit of the public; and

(3) provide the state bar with a list containing the name, firm name, address, and business telephone number of at least 25 lawyers, each from different law firms, who have contracted with the applicant to receive referral services.

(b) The list required under Subsection (a)(3) must include each lawyer or firm that is a subscriber or potential subscriber to the applicant's services.

(c) A certificate is valid for one year from the date issued and may be renewed annually on the payment of the required renewal fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. REFERRAL SERVICE REQUIREMENTS

Sec. 952.151. NOTICE REQUIREMENT. (a) A lawyer referral service shall include the following statement in any advertising or other promotional effort: "This service is certified as a lawyer referral service as required by the State of Texas under Chapter 952, Occupations Code."

(b) Advertising or other promotional materials of a lawyer referral service prepared before September 1, 1999, that comply with Section 12, Texas Lawyer Referral Service Quality Assurance Act (Article 320d, Vernon's Texas Civil Statutes), as that section existed on August 31, 1999, are not required to comply with Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.152. LAWYER PARTICIPATION. A lawyer who is licensed and in good standing in this state and who maintains an office in the geographical area served by a lawyer referral service may receive referrals of potential clients from the service if the lawyer:

(1) complies with Section 952.155; and

(2) pays a reasonable registration and membership fee not to exceed the amount set by state bar rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.153. PROOF OF FINANCIAL RESPONSIBILITY. A lawyer referral service may require a member, as a condition of membership, to:

(1) obtain a policy of errors and omissions insurance; or

(2) establish other proof of financial responsibility in an amount determined by the service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.154. SUBJECT MATTER AND OTHER PANELS. (a) A lawyer referral service shall establish specific subject matter panels.

(b) A lawyer referral service may establish:

(1) moderate-fee and no-fee panels;

(2) alternative dispute resolution panels; and

(3) other special panels that respond to the referral needs of the public.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.155. LIMITATIONS ON CLIENT FEES. (a) A lawyer may not charge a potential client referred to the lawyer by a referral service an amount that exceeds the total cost the client would have been required to pay, including legal fees and expenses, if a referral service had not referred the client.

(b) The combined amounts of any fee charged to a potential client by the lawyer or the referral service may not exceed $20 for the first 30 minutes of the initial office visit with the lawyer.

(c) An agreement between a lawyer and a referral service to eliminate or restrict the fee for the first 30 minutes of an initial office visit with the lawyer does not violate any statute or rule, including Chapter 15, Business & Commerce Code.

(d) A fee charged under Subsection (b) may be used only to pay:

(1) the reasonable operating expenses of the referral service; or

(2) the expenses of a public service program, including a pro bono publico legal program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. COMPLAINT PROCEDURES AND ENFORCEMENT

Sec. 952.201. EVALUATION AND COMPLAINT PROCEDURES. A lawyer referral service shall establish policies and procedures to:

(1) evaluate client satisfaction with its services; and

(2) address client complaints with regard to the referral service or the lawyers and firms that subscribe to the referral service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.202. SUSPENSION OR REMOVAL FROM LAWYER REFERRAL SERVICE. (a) A lawyer referral service shall establish written

policies and procedures to suspend or remove a lawyer or firm from the referral service's list of subscribers.

(b) The policies and procedures established under Subsection (a) must include the suspension and removal of a lawyer who fails to handle referred clients in a diligent and responsible manner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 952.203. INJUNCTIVE RELIEF. (a) The state bar or a lawyer referral service certified under this chapter may bring an action to enjoin a violation of this chapter and may recover costs and attorney's fees related to obtaining the injunction.

(b) Bond or other security may not be required of the state bar or a referral service as a condition for the issuance of an injunction under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 953. REGULATION OF FOR-PROFIT LEGAL SERVICE CONTRACT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 953.001. DEFINITIONS. In this chapter:

(1) "Administrator" means the person responsible for the administration of a legal service contract.

(2) "Company" means a person who:

(A) is contractually obligated to a legal service contract holder under the terms of a legal service contract;

(B) enters into a contract with a contracting attorney to provide or obtain covered legal services for a legal service contract holder; and

(C) operates as a for-profit legal service contract company.

(3) "Contracting attorney" means an attorney who has entered into a contract with a company to provide or obtain covered legal services for a legal service contract holder.

(4) Repealed by Acts 2017, 85th Leg., R.S., Ch. 161 (H.B. 2113), Sec. 5(1), and Ch. 967 (S.B. 2065), Sec. 8.005(1), eff. September 1, 2019.

(5) Repealed by Acts 2017, 85th Leg., R.S., Ch. 161 (H.B.

2113), Sec. 5(1), and Ch. 967 (S.B. 2065), Sec. 8.005(1), eff. September 1, 2019.

(6) Repealed by Acts 2017, 85th Leg., R.S., Ch. 161 (H.B. 2113), Sec. 5(1), and Ch. 967 (S.B. 2065), Sec. 8.005(1), eff. September 1, 2019.

(7) "Legal service contract" means an agreement:

(A) that is entered into for a separately stated consideration; and

(B) under which the company obtains legal services for a legal service contract holder through a contracting attorney.

(8) "Legal service contract holder" means the person who purchases or otherwise holds a legal service contract or who is covered under a group legal service contract.

(9) "Person" means an individual or a partnership, company, corporation, association, or other private group.

(10) "Sales representative" means a person who sells or solicits legal service contracts to a person on behalf of a company.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 161 (H.B. 2113), Sec. 1, eff. September 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 161 (H.B. 2113), Sec. 5(1), eff. September 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 8.001, eff. September 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 8.005(1), eff. September 1, 2019.

Sec. 953.002. EXEMPTIONS. This chapter does not apply to:

(1) a nonprofit legal services corporation under Chapter 961, Insurance Code;

(2) an automobile club supplying services under Chapter 722, Transportation Code;

(3) a prepaid legal services program under Chapter 951;

(4) a lawyer referral service under Chapter 952;

(5) a retainer contract between an attorney and a client, and similar contracts made with a group of clients involved in the same or closely related legal matters; or

(6) a contingency fee contract between an attorney and a client.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.003. EXEMPTIONS FROM CERTAIN OTHER LAWS. The acts of marketing, selling, offering for sale, issuing, making, proposing to make, and administering a legal service contract that is regulated by this chapter are exempt from the Insurance Code and other laws of this state regulating the business of insurance.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. PRACTICE BY LEGAL SERVICE CONTRACT COMPANIES

Sec. 953.151. COMPANY REQUIREMENTS. (a) A company may not sell, offer for sale, or issue a legal service contract in this state unless the company gives the legal service contract holder:

(1) a receipt for, or other written evidence of, the purchase of the contract; and

(2) a copy of the legal service contract.

(b) A company shall perform the services as stated in the legal service contract.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.152. GROUP LEGAL SERVICE CONTRACTS. A company may issue group legal service contracts. The company shall provide a legal service contract holder who obtains a group contract with a document that describes the company's services and complies with the requirements of this chapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.153. CONTRACTING ATTORNEY REQUIREMENTS. A contracting attorney must:

(1) be licensed in the jurisdiction in which the legal services are performed;

(2) be in good standing with the entity that licenses attorneys in that jurisdiction; and

(3) maintain professional liability and errors and omissions insurance with minimum annual limits of $100,000 for each occurrence and $300,000 in the aggregate.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.154. COMPANY INTERFERENCE WITH ATTORNEY'S DUTIES PROHIBITED. A company may not interfere with the attorney-client relationship or with the contracting attorney's independent exercise of professional judgment.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.156. FORM OF LEGAL SERVICE CONTRACT AND REQUIRED DISCLOSURES. A legal service contract marketed, sold, offered for sale, administered, or issued in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) include the name and full address of the company;

(3) include the purchase price of the contract and the terms under which the contract is sold;

(4) include the terms and restrictions governing cancellation of the contract by the company or the legal service contract holder;

(5) identify:

(A) any administrator, if the administrator is not the company;

(B) the sales representative; and

(C) the name of the legal service contract holder;

(6) include the amount of any deductible or copayment;

(7) specify the legal services and other benefits to be provided under the contract, and any limitation, exception, or exclusion;

(8) specify the legal services, if any, for which the company will provide reimbursement and the amount of that reimbursement;

(9) specify any restriction governing the transferability

of the contract or the assignment of benefits;

(10) include the duties of the legal service contract holder;

(11) explain the method to be used in resolving the legal service contract holder's complaints and grievances;

(12) explain how legal services may be obtained under the legal service contract;

(13) include a provision stating that no change in the contract is valid until the change has been approved by an executive officer of the company and unless the approval is endorsed or attached to the contract;

(14) include any eligibility and effective date requirements, including a definition of eligible dependents and the effective date of their coverage;

(15) include the conditions under which coverage will terminate;

(16) explain any subrogation arrangements;

(17) contain a payment provision that provides for a grace period of at least 31 days; and

(18) include conditions under which contract rates may be modified.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 161 (H.B. 2113), Sec. 2, eff. September 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 8.002, eff. September 1, 2019.

Sec. 953.157. TERMINATING A LEGAL SERVICE CONTRACT. A legal service contract holder may terminate the legal service contract if the legal service contract holder provides the company with written notice of the legal service contract holder's intention of terminating the contract not later than the seventh day after the date the legal service contract holder receives the contract.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.158. VOIDING A LEGAL SERVICE CONTRACT. (a) If a

legal service contract holder terminates a legal service contract in accordance with Section 953.157 and the holder has not sought legal services under the contract before the contract is terminated, the contract is void.

(b) A legal service contract holder may void the legal service contract at a later time as provided by the contract.

(c) If a legal service contract is voided, the company shall refund to the legal service contract holder or credit to the account of the legal service contract holder the full purchase price of the contract. If the company does not pay the refund or credit the legal service contract holder's account before the 46th day after the date the contract is voided, the company is liable to the legal service contract holder for a penalty each month an amount remains outstanding. The monthly penalty may not exceed 10 percent of the amount outstanding.

(d) The right to void a legal service contract is not transferable.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.159. CANCELING A LEGAL SERVICE CONTRACT. (a) A company may cancel a legal service contract by mailing a written notice of cancellation to the legal service contract holder at the legal service contract holder's last known address according to the records of the company. The company must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The company is not required to provide prior notice of cancellation if the legal service contract is canceled because of:

(1) nonpayment of the consideration for the contract;

(2) a material misrepresentation by the legal service contract holder to the company;

(3) a substantial breach of a duty by the legal service contract holder; or

(4) cancellation of the contract by the legal service contract holder.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.160. LIMITATIONS ON COMPANY NAME. (a) A company may not use a name that:

(1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or

(2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other company.

(b) This section does not apply to a company that, before September 1, 2003, included a word prohibited under this section in its name. A company described by this subsection must include in each legal service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.161. MISLEADING STATEMENTS PROHIBITED. A company, a sales representative, or a representative of a sales representative may not, in the company's contracts or marketing:

(1) make, permit, or cause to be made any false or misleading statement; or

(2) deliberately omit a material statement if the omission would be considered misleading.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.

Sec. 953.162. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR. A company may appoint an administrator or designate a person to be responsible for:

(1) all or any part of the administration or sale of legal service contracts; and

(2) compliance with this chapter.

Added by Acts 2003, 78th Leg., ch. 1181, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 161 (H.B. 2113), Sec. 3, eff. September 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 8.003, eff. September 1, 2019.

SUBCHAPTER F. ENFORCEMENT

Sec. 953.251. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 161 (H.B. 2113), Sec. 4, eff. September 1, 2019.
Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 8.004, eff. September 1, 2019.

CHAPTER 954. LAND SERVICES FOR PETROLEUM, MINERAL, AND OTHER ENERGY SOURCES

Sec. 954.001. DEFINITIONS. In this chapter:

(1) "Land services":

(A) means the performance or supervision of one or more of the following activities:

(i) negotiating the acquisition or divestiture of mineral rights or rights associated with other energy sources;

(ii) negotiating business agreements or easements to provide for the exploration for or development of minerals or other energy sources;

(iii) ascertaining ownership in mineral rights or rights associated with other energy sources and related real property through the research of public and private records;

(iv) reviewing the status of title, curing title defects, providing title due diligence, and otherwise reducing title risk associated with the ownership, acquisition, or divestiture of mineral rights, property associated with minerals, or rights associated with other energy sources, excluding:

(a) administrative functions;

(b) division order functions; and

(c) lease analyst functions;

(v) managing rights or obligations derived from ownership of interests in minerals or rights associated with other energy sources; or

(vi) using or pooling mineral interests or rights associated with other energy sources; and

(B) does not include determining, examining, or reviewing the status of title in connection with transactions that

are primarily for:

(i) the sale, purchase, or encumbrance of the surface of the land unassociated with mineral rights or other energy sources; or

(ii) the mortgage of real property used or intended to be used primarily for residential purposes.

(2) "Mineral" has the meaning assigned by Section 75.001, Property Code. The term includes oil, gas, related hydrocarbons, coal, lignite, uranium, and substances classified as base, industrial, precious, or strategic minerals.

(3) "Other energy source" means a natural resource other than a mineral that is necessary to produce energy, including geothermal, hydroelectric, nuclear, solar, and wind energy.

Added by Acts 2003, 78th Leg., ch. 696, Sec. 1, eff. June 20, 2003. Renumbered from Occupations Code, Section 953.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(75), eff. September 1, 2005.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 197 (S.B. 604), Sec. 1, eff. May 24, 2023.

Sec. 954.002. EXCEPTION TO PRACTICE OF LAW. For the purposes of the definition in Section 81.101, Government Code, the "practice of law" does not include engaging in land services if:

(1) the acts are performed by a person who does not hold the person out as an attorney licensed to practice law in this state or in another jurisdiction; and

(2) the person is not a licensed attorney.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 197 (S.B. 604), Sec. 1, eff. May 24, 2023.

TITLE 6. REGULATION OF ENGINEERING, ARCHITECTURE, LAND SURVEYING, AND RELATED PRACTICES

SUBTITLE A. REGULATION OF ENGINEERING AND RELATED PRACTICES

CHAPTER 1001. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. SHORT TITLE. This chapter may be cited as The Texas Engineering Practice Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Engineers and Land Surveyors.

(2) "Engineer" means a person licensed to engage in the practice of engineering in this state.

(3) "Land surveyor," "licensed state land surveyor," "professional surveying," "registered professional land surveyor," and "state land surveying" have the meanings assigned by Section 1071.002.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.02, eff. September 1, 2019.

Sec. 1001.003. PRACTICE OF ENGINEERING. (a) In this section:

(1) "Design coordination" includes the review and coordination of technical submissions prepared by others, including the work of other professionals working with or under the direction of an engineer with professional regard for the ability of each professional involved in a multidisciplinary effort.

(2) "Engineering survey" includes any survey activity required to support the sound conception, planning, design, construction, maintenance, or operation of an engineered project. The term does not include the surveying of real property or other activity regulated under Chapter 1071.

(b) In this chapter, "practice of engineering" means the performance of or an offer or attempt to perform any public or private service or creative work, the adequate performance of which requires engineering education, training, and experience in applying special knowledge or judgment of the mathematical, physical, or engineering sciences to that service or creative work.

(c) The practice of engineering includes:

(1) consultation, investigation, evaluation, analysis,

planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction or other engineering use, and mapping;

(2) design, conceptual design, or conceptual design coordination of engineering works or systems;

(3) development or optimization of plans and specifications for engineering works or systems;

(4) planning the use or alteration of land or water or the design or analysis of works or systems for the use or alteration of land or water;

(5) responsible charge of engineering teaching or the teaching of engineering;

(6) performing an engineering survey or study;

(7) engineering for construction, alteration, or repair of real property;

(8) engineering for preparation of an operating or maintenance manual;

(9) engineering for review of the construction or installation of engineered works to monitor compliance with drawings or specifications;

(10) a service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;

(11) providing an engineering opinion or analysis related to a certificate of merit under Chapter 150, Civil Practice and Remedies Code; or

(12) any other professional service necessary for the planning, progress, or completion of an engineering service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.001(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 1, eff. September 1, 2005.

Sec. 1001.0031. PRACTICES OF ENGINEERING AND ARCHITECTURE. (a) Except as provided by Subsection (d) or (e), the practice of engineering does not include, and engineers may not engage in or offer to engage in, the practice of architecture as defined by Sections 1051.001(7)(A), (B), and (C), as that definition existed on April 1, 2011, and by Section 1051.0016(a).

(b) An engineer may not prepare or provide a complete, comprehensive set of building plans for a building designed for human use or occupancy unless:

(1) the plans and specifications as described by Section 1051.001(7)(A) or (B) are prepared by, or under the supervision of, an architect;

(2) the building is part of a project described by Section 1051.601(b) or a building described by Section 1051.606(a)(4); or

(3) the engineer has received administrative approval by the Texas Board of Architectural Examiners to practice architecture under Section 1051.607.

(c) An engineer is responsible for the engineering plans and specifications of a building unless the work is exempt under Section 1001.053 or 1001.056. In this section, the term "engineering plans and specifications" means:

(1) plans for a structural, mechanical, electrical, electronic, fire suppression, or geotechnical system in a building;

(2) specifications of structural elements and connections of a building;

(3) foundation design;

(4) hydrologic management calculations and design of surface water control and detention necessary for compliance with ordinances and regulations;

(5) design of building drain and waste system plumbing, fresh water plumbing, graywater systems, and mechanical aspects of moving water in and out of a structure, other than simple roof drainage;

(6) evaluation of structural framing members before the addition of roof-mounted equipment or a heavier roof covering;

(7) design of changes in roof pitch by the addition of structural framing members;

(8) evaluation and repair of damaged roof structural framing;

(9) design of electrical and signal and control systems;

(10) shop drawings by manufacturers or fabricators of materials and products to be used in the building features designed by the engineer; and

(11) specifications listing the nature and quality of materials and products for construction of features of the building elements or systems designed by an engineer.

(d) The preparation of engineering plans and specifications for the following tasks is within the scope of practice of both engineering and architecture:

(1) site plans depicting the location and orientation of a building on the site based on:

(A) a determination of the relationship of the intended use with the environment, topography, vegetation, climate, and geographic aspects; and

(B) the legal aspects of site development, including setback requirements, zoning and other legal restrictions, and surface drainage;

(2) the depiction of the building systems, including structural, mechanical, electrical, and plumbing systems, in:

(A) plan views;

(B) cross-sections depicting building components from a hypothetical cut line through a building; and

(C) the design of details of components and assemblies, including any part of a building exposed to water infiltration or fire-spread considerations;

(3) life safety plans and sheets, including accessibility ramps and related code analyses; and

(4) roof plans and details depicting the design of roof system materials, components, drainage, slopes, and directions and location of roof accessories and equipment not involving structural engineering calculations.

(e) The following activities may be performed by either an engineer or an architect:

(1) programming for construction projects, including:

(A) identification of economic, legal, and natural constraints; and

(B) determination of the scope of functional elements;

(2) recommending and overseeing appropriate construction project delivery systems;

(3) consulting with regard to, investigating, and analyzing

the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or its environment; and

(4) providing expert opinion and testimony with respect to issues within the responsibility of the engineer or architect.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. 2284), Sec. 1, eff. September 1, 2011.

Sec. 1001.004. LEGISLATIVE PURPOSE AND INTENT; LIBERAL CONSTRUCTION OF CHAPTER. (a) The legislature recognizes the vital impact that the rapid advance of knowledge of the mathematical, physical, and engineering sciences as applied in the practice of engineering has on the lives, property, economy, and security of state residents and the national defense.

(b) The purpose of this chapter is to:

(1) protect the public health, safety, and welfare;

(2) enable the state and the public to identify persons authorized to practice engineering in this state; and

(3) fix responsibility for work done or services or acts performed in the practice of engineering.

(c) The legislature intends that:

(1) the privilege of practicing engineering be entrusted only to a person licensed and practicing under this chapter;

(2) only a person licensed under this chapter may:

(A) engage in the practice of engineering;

(B) be represented in any way as any kind of "engineer"; or

(C) make any professional use of the term "engineer"; and

(3) this chapter be strictly complied with and enforced.

(d) This chapter shall be liberally construed to carry out the intent of the legislature.

(e) This chapter does not:

(1) prevent a person from identifying the person in the name and trade of any engineers' labor organization with which the person is affiliated;

(2) prohibit or otherwise restrict a person from giving testimony or preparing an exhibit or document for the sole purpose of

being placed in evidence before an administrative or judicial tribunal, subject to the board's disciplinary powers under Subchapter J regarding negligence, incompetency, or misconduct in the practice of engineering; or

(3) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.03, eff. September 1, 2019.

Sec. 1001.005. APPLICATION OF SUNSET ACT. The Texas Board of Professional Engineers and Land Surveyors is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.05, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.04, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.13, eff. June 18, 2023.

SUBCHAPTER B. EXEMPTIONS

Sec. 1001.051. LIMITATION ON EXEMPTION. An exemption under this subchapter applies only to a person who does not offer to the public to perform engineering services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 2, eff. Sept. 1, 2003.

Sec. 1001.052. EMPLOYEE OF LICENSE HOLDER. A person who is an employee or subordinate of an engineer is exempt from the licensing requirements of this chapter if the person's practice does not include responsible charge of design or supervision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.053. PUBLIC WORKS. The following work is exempt from this chapter:

(1) a public work that involves electrical or mechanical engineering, if the contemplated expense for the completed project is $8,000 or less;

(2) a public work that does not involve electrical or mechanical engineering, if the contemplated expense for the completed project is $20,000 or less; or

(3) road maintenance or improvement undertaken by the commissioners court of a county.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 273, Sec. 1, eff. June 18, 2003.

Sec. 1001.054. FEDERAL OFFICER OR EMPLOYEE. An officer or employee of the United States is exempt from the licensing requirements of this chapter during the time the officer or employee is engaged in the practice of engineering for the United States in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.055. MECHANICAL, ELECTRICAL, OR OTHER EQUIPMENT. (a) A person is exempt from the licensing requirements of this chapter if the person is installing, operating, repairing, or servicing a locomotive or stationary engine, steam boiler, diesel engine,

internal combustion engine, refrigeration compressor or system, hoisting engine, electrical engine, air conditioning equipment or system, or mechanical, electrical, electronic, or communications equipment or apparatus.

(b) This exemption does not permit a person to:

(1) sign an engineering plan or specification if the person is not an engineer; or

(2) use the term "engineer" or "engineering" in any manner prohibited by this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.056. CONSTRUCTION OR REPAIR OF AND PLANS FOR CERTAIN BUILDINGS. (a) A person, sole proprietorship, firm, partnership, joint stock association, or private corporation is exempt from the licensing requirements of this chapter if:

(1) a representation that engineering services have been or will be offered to the public is not made or implied; and

(2) the person or entity is erecting, constructing, enlarging, altering, or repairing or is drawing plans or specifications for:

(A) a private dwelling;

(B) apartments not exceeding eight units for each building in the case of one-story buildings;

(C) apartments not exceeding four units for each building and having a maximum height of two stories;

(D) a garage or other structure pertinent to a building described by Paragraph (A), (B), or (C);

(E) a private building to be used exclusively for:

(i) farm, ranch, or agricultural purposes; or

(ii) storage of raw agricultural commodities; or

(F) a building having no more than one story that:

(i) is not a building exempt from the licensing requirements of this chapter under Section 1001.053 or subject to Section 1001.407;

(ii) has a total floor area of not more than 5,000 square feet; and

(iii) does not contain a clear span between supporting structures greater than 24 feet on the narrow side.

(b) If a structure described by Subsections (a)(2)(F)(i) and (ii) contains unsupported spans greater than 24 feet, only the trusses, beams, or other roof supporting members must be engineered or pre-engineered.

(c) The exemption provided by this section does not apply to a person or entity that is:

(1) providing engineering design or inspection services necessary to comply with windstorm certification standards for a residential dwelling under Subchapter F, Chapter 2210, Insurance Code; or

(2) providing engineering design relating to constructing, enlarging, altering, or repairing, or drawing plans or specifications for, a residential dwelling slab located on expansive soil that meets the expansive soil classification provisions of the International Residential Code as applied in the jurisdiction in which the residential dwelling is located, unless the construction, enlargement, alteration, repair, or drawing of plans or specifications meets the International Residential Code requirements as applied in the jurisdiction in which the residential dwelling is located.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1142 (H.B. 2649), Sec. 1, eff. June 19, 2009.

Sec. 1001.057. EMPLOYEE OF PRIVATE CORPORATION OR BUSINESS ENTITY. (a) This chapter shall not be construed to apply to the activities of a private corporation or other business entity, or the activities of the full-time employees or other personnel under the direct supervision and control of the business entity, on or in connection with:

(1) reasonable modifications to existing buildings, facilities, or other fixtures to real property not accessible to the general public and which are owned, leased, or otherwise occupied by the entity; or

(2) activities related only to the research, development, design, fabrication, production, assembly, integration, or service of products manufactured by the entity.

(b) A person who claims an exemption under this section and who is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

(c) This exemption does not prohibit:

(1) a licensed professional engineer who intends to incorporate manufactured products into a fixed work, system, or facility that is being designed by the licensee on public property or the property of others from requiring the manufacturer to have plans or specifications signed and sealed by a licensed professional engineer; or

(2) the board from requiring, by rule, that certain manufactured products delivered to or used by the public must be designed and sealed by a licensed professional engineer, if necessary to protect the public health, safety, and welfare.

(d) For purposes of this section, "products manufactured by the entity" also includes computer software, firmware, hardware, semiconductor devices, and the production, exploration, and transportation of oil and gas and related products.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 3, eff. Sept. 1, 2003.

Sec. 1001.058. EMPLOYEE OF CERTAIN UTILITIES OR AFFILIATES. (a) A regular full-time employee of a privately owned public utility or cooperative utility or of the utility's affiliate is exempt from the licensing requirements of this chapter if the employee:

(1) performs services exclusively for the utility or affiliate; and

(2) does not have the final authority to approve, or the ultimate responsibility for, engineering designs, plans, or specifications that are to be:

(A) incorporated into fixed works, systems, or facilities on the property of others; or

(B) made available to the public.

(b) A person who claims an exemption under this section and who

is determined to have directly or indirectly represented the person as legally qualified to engage in the practice of engineering or who is determined to have violated Section 1001.301 may not claim an exemption until the 10th anniversary of the date the person made that representation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 4, eff. Sept. 1, 2003.

Sec. 1001.059. QUALIFIED SCIENTISTS. A qualified scientist engaged in scientific research and investigation of the physical or natural sciences is exempt from the licensing requirements of this chapter. This exemption includes the usual work and activities of a meteorologist, seismologist, geologist, chemist, geochemist, physicist, or geophysicist.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.060. SOIL AND WATER CONSERVATION. Agricultural work performed in carrying out soil and water conservation practices is exempt from this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.061. TELEPHONE COMPANIES. (a) An operating telephone company, an affiliate of the company, or an employee of the company or affiliate is exempt from this chapter with respect to any plan, design, specification, or service that relates strictly to the science and art of telephony.

(b) This exemption includes the use of a job title or personnel classification by a person included under Subsection (a) if the person does not use:

(1) the title or classification in connection with an offer to the public to perform engineering services; and

(2) a name, title, or word that tends to convey the impression that a person not licensed under this chapter is offering to the public to perform engineering services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.062. CERTAIN EMPLOYEES WORKING FROM ENGINEER'S PLANS. (a) A regular full-time employee of a private business entity who is engaged in erecting, constructing, enlarging, altering, repairing, rehabilitating, or maintaining an improvement to real property in accordance with plans or specifications that have an engineer's seal is exempt from this chapter.

(b) This exemption includes the use of a job title or personnel classification by the employee if the employee does not use the title or classification in connection with an offer to the public to perform engineering services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.063. ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS. This chapter or a rule adopted under this chapter does not prevent or otherwise restrict a person licensed as an architect under Chapter 1051, a landscape architect under Chapter 1052, or an interior designer under Chapter 1053 from performing an act, service, or work that is within the definition of the person's practice under those chapters.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.064. STATE LAND SURVEYORS. A licensed state land surveyor is exempt from the requirements of this chapter regulating the practice of engineering in performing the state land surveyor's duties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.05, eff. September 1, 2019.

Sec. 1001.065. EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education" and "private

or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(b) An employee of an institution of higher education or a private or independent institution of higher education who is performing research or instructional work within the scope of the person's employment by the institution is exempt from the licensing requirements of this chapter.

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.002(a), eff. Sept. 1, 2003.

Sec. 1001.066. CERTAIN NASA-RELATED ACTIVITIES. This chapter does not:

(1) apply to a business entity or the business entity's employees to the extent that the entity's products or services consist of space vehicles or space services provided to, or space technology transfer programs required by, the National Aeronautics and Space Administration; or

(2) prohibit the use of the term "engineer" or "engineering" in a job title or personnel classification by an employee described by Subdivision (1) to the extent that the use of the title or classification is related to activities described by that subdivision.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 5, eff. Sept. 1, 2003.

Sec. 1001.067. CERTAIN FIRE DEPARTMENT EMPLOYEES. This chapter does not prohibit the professional use of the term "fire engineer" by a member of a fire department in a municipality with a population of one million or more that has adopted Chapter 143, Local Government Code, and to which Subchapter G of that chapter does not generally apply, who:

(1) holds the position of fire apparatus operator; and

(2) is not otherwise engaged in the practice of engineering.

Added by Acts 2009, 81st Leg., R.S., Ch. 1142 (H.B. 2649), Sec. 2, eff. June 19, 2009.

Sec. 1001.068. CERTAIN OUT-OF-STATE ENGINEERS ENGAGED IN EVALUATING OIL AND GAS RESOURCES. (a) In this section, "evaluation of oil and gas resources" includes:

(1) the quantification of the volume of oil and gas reserves and resources in the subsurface of the earth;

(2) the determination of production forecasts for the reserves or resources; and

(3) the evaluation of the economic impact of the production forecasts.

(b) This chapter does not apply to the evaluation of oil and gas resources if the evaluation:

(1) is done by an engineer licensed in a state that does not prohibit engineers licensed under this chapter from engaging in the evaluation of oil and gas resources in that state;

(2) does not involve design, construction, or engineering assessments on the surface; and

(3) does not present a risk to public health or safety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 161 (H.B. 2067), Sec. 1, eff. May 28, 2011.

SUBCHAPTER C. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Sec. 1001.101. BOARD MEMBERSHIP. (a) The Texas Board of Professional Engineers and Land Surveyors consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) five engineers;

(2) one land surveyor; and

(3) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.07, eff. September 1, 2019.

Sec. 1001.1011. EX OFFICIO MEMBER. The commissioner of the General Land Office or a licensed state land surveyor employee of the General Land Office designated by the commissioner as director of surveying shall serve as an ex officio, nonvoting member of the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.08, eff. September 1, 2019.

Sec. 1001.102. MEMBER ELIGIBILITY. (a) A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of engineering or land surveying;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(b) An engineer member of the board must:

(1) be a citizen of the United States and a resident of this state for at least 10 years before the date of appointment; and

(2) have been engaged in the practice of engineering for at least 10 years before the date of appointment.

(c) For purposes of Subsection (b)(2), a person who has graduated from an approved engineering school may be considered to have engaged in the practice of engineering for two years.

(d) A land surveyor member of the board:

(1) must be:

(A) a licensed state land surveyor actively engaged in the practice of state land surveying for not less than the five years preceding appointment; or

(B) a registered professional land surveyor actively

engaged in the practice of professional surveying in this state for not less than the five years preceding appointment; and

(2) may not be licensed as an engineer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 7, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.09, eff. September 1, 2019.

Sec. 1001.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(a-1) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of engineering or land surveying; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of engineering or land surveying.

(b) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 8, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.10, eff.

September 1, 2019.

Sec. 1001.104. TERMS; VACANCY. (a) Board members serve staggered six-year terms, with the terms of one-third of the members expiring each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.105. PARTICIPATION OF PUBLIC MEMBERS. (a) The board by majority vote may limit the participation of public members in evaluating license, registration, or certification applications.

(b) This section does not apply to the evaluation of license, registration, or certification applications at an official meeting of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.11, eff. September 1, 2019.

Sec. 1001.106. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Sections 1001.101 and 1001.102;

(2) does not maintain during service on the board the qualifications required by Sections 1001.101 and 1001.102;

(3) is ineligible for membership under Section 1001.102 or 1001.103;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member

exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 9, eff. Sept. 1, 2003.

Sec. 1001.107. PER DIEM. Each board member, other than the commissioner of the General Land Office, is entitled to receive a per diem as set by the General Appropriations Act for each day that the member engages in the business of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 1, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.12, eff. September 1, 2019.

Sec. 1001.108. OFFICERS. The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor. The board shall elect annually from its members an assistant presiding officer, a treasurer, and a secretary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 2, eff. September 1, 2007.

Sec. 1001.110. MEETINGS. The board shall hold at least two regular meetings each year. Special meetings shall be held at the time provided by the board's bylaws.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.111. FILING OF OATH. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.112. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and Chapter 1071;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the board or

the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.13, eff. September 1, 2019.

SUBCHAPTER D. BOARD PERSONNEL

Sec. 1001.151. PERSONNEL. (a) The board shall employ clerical or other assistants as necessary to perform the board's work.

(b) A salary paid under this section may not exceed the salary paid for similar work in other departments.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.152. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of each nonentry level position with the board at least 10 days before the date of any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations of the board's employees based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.153. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the

board.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 12, eff. Sept. 1, 2003.

Sec. 1001.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 12, eff. Sept. 1, 2003.

Sec. 1001.155. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 12, eff. Sept. 1, 2003.

SUBCHAPTER E. BOARD POWERS AND DUTIES

Sec. 1001.201. GENERAL POWERS AND DUTIES. (a) The board shall administer and enforce this chapter and Chapter 1071.

(b) The board may spend money for any purpose the board considers reasonably necessary for the proper performance of its duties under this chapter and Chapter 1071.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.14, eff. September 1, 2019.

Sec. 1001.202. RULES. The board may adopt and enforce any rule or bylaw necessary to perform its duties, govern its proceedings, and regulate the practice of engineering and land surveying.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.15, eff. September 1, 2019.

Sec. 1001.203. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board by rule shall prescribe standards for compliance with Subchapter A, Chapter 2254, Government Code.

(b) Except as provided by Subsection (a), the board may not adopt rules restricting advertising or competitive bidding by a person regulated by the board except to prohibit false, misleading, or deceptive practices.

(c) In its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board, the board may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of the person's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 13, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.16, eff. September 1, 2019.

Sec. 1001.2035. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules and guidelines as necessary to comply with Chapter 53.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 14, eff. Sept. 1, 2003.

Sec. 1001.204. FEES. (a) The board shall establish fees in amounts reasonable and necessary to cover the costs of administering this chapter and Chapter 1071, including:

(1) license, registration, and certification fees;
(2) renewal fee and late renewal fee;
(3) reciprocal license fee;
(4) duplicate license fee;
(5) roster fee;
(6) examination fee; and
(7) inactive status fee.

(b) Fee revenue may not exceed the amount reasonable and necessary to administer this chapter and Chapter 1071.

(c) General revenue of the state may not be used to pay the costs of administering this chapter and Chapter 1071 in an amount that exceeds the amount of fees received under this chapter and Chapter 1071.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 15, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 2, eff. September 1, 2005.
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.17, eff. September 1, 2019.

Sec. 1001.205. REDUCED FEES: ELDERLY, DISABLED, INACTIVE STATUS. (a) For purposes of this section, a person is disabled if the person has a mental or physical impairment that substantially limits the ability of the person to earn a living as an engineer or land surveyor, other than an impairment caused by a current addiction to the use of alcohol or an illegal drug or controlled substance.

(b) The board by rule may adopt reduced license fees and renewal fees for engineers and land surveyors who are:

(1) at least 65 years of age; or

(2) disabled and not actively engaged in the practice of engineering or land surveying.

(c) A person entitled to reduced fees under Subsection (b)(2) shall notify the board that the person has resumed the active practice of engineering or land surveying not later than the 15th day after the date the person resumes active practice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.18, eff. September 1, 2019.

Sec. 1001.207. STANDARDS OF CONDUCT AND ETHICS. The board may establish standards of conduct and ethics for engineers and land surveyors in keeping with the purposes and intent of this chapter and Chapter 1071 and to ensure strict compliance with and enforcement of this chapter and Chapter 1071.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.19, eff. September 1, 2019.

Sec. 1001.208. ROSTER OF ENGINEERS AND LAND SURVEYORS. (a) The board shall prepare and publish a roster of persons, including business entities, licensed, registered, certified, or enrolled by the board. The roster shall include the name, business address, and other identifying information required by board rule.

(b) The board shall make the roster available to the public without cost in an online computer database format.

(c) The board shall provide a physical copy of the roster on request and may charge a reproduction and shipping fee for providing a physical copy of the roster.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.20, eff. September 1, 2019.

Sec. 1001.209. REGISTER OF APPLICANTS. The board shall maintain a register of each application for a license or registration under this chapter or Chapter 1071 that shows:

(1) the name, age, and residence of each applicant;
(2) the date of the application;
(3) the applicant's place of business;
(4) the applicant's educational and other qualifications;
(5) whether an examination was required;
(6) whether the applicant was issued or denied a license or registration;
(7) the date of board action; and
(8) any other information the board considers necessary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.21, eff. September 1, 2019.

Sec. 1001.210. CONTINUING EDUCATION PROGRAMS FOR ENGINEERS. (a) The board shall recognize, prepare, or administer continuing education programs for engineers. An engineer must participate in the programs to the extent required by the board to keep the engineer's license.

(b) The board may not require an engineer to obtain more than 15 hours of continuing education annually. The board shall permit an engineer to certify at the time the license is renewed that the engineer has complied with the board's continuing education requirements.

(c) The board shall permit an engineer to receive continuing education credit for educational, technical, ethical, or professional

management activities related to the practice of engineering, including:

(1) successfully completing or auditing a course sponsored by an institution of higher education;

(2) successfully completing a course certified by a professional or trade organization;

(3) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course;

(4) participating in an in-house course sponsored by a corporation or other business entity;

(5) teaching a course described by Subdivisions (1)-(4);

(6) publishing an article, paper, or book on the practice of engineering;

(7) making or attending a presentation at a meeting of a technical or engineering management society or organization or writing a paper presented at such a meeting;

(8) participating in the activities of a professional society or association, including serving on a committee of the organization; and

(9) engaging in self-directed study.

(d) An engineer may not receive more than five continuing education credit hours annually for engaging in self-directed study.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 17, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.22, eff. September 1, 2019.

Sec. 1001.211. RECORDS. (a) The board shall maintain a record of its proceedings.

(b) The board's records shall be available to the public at all times.

(c) The board's records are prima facie evidence of the proceedings of the board set forth in the records. A transcript of the records certified by the secretary of the board under seal is admissible in evidence with the same effect as if it were the original.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.212. CONFIDENTIALITY OF CERTAIN INFORMATION RELATED TO APPLICATION. (a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the board relating to an applicant for licensing, registration, or certification under this chapter or Chapter 1071 is privileged and confidential.

(b) Information described by Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or licensing, registration, or certification process. The information is not subject to discovery, subpoena, or other disclosure.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.23, eff. September 1, 2019.

Sec. 1001.213. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection or copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or Chapter 1071.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) the county in which the board may hold a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.24, eff.

September 1, 2019.

Sec. 1001.214. TECHNOLOGY POLICY. The board shall develop and implement a policy requiring the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to find information about the board on the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the board's planning processes.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 18, eff. Sept. 1, 2003.

Sec. 1001.215. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those

procedures, as implemented by the board.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 18, eff. Sept. 1, 2003.

Sec. 1001.216. ADVISORY COMMITTEES. (a) The board shall appoint an advisory committee for the purpose of providing advice and recommendations to the board on matters related to the regulation of land surveying. The advisory committee must consist of five or more individuals appointed by the board, at least five of whom must be land surveyors.

(b) The board may not adopt a rule related to the scope of practice of, the professional or technical standards for, or the standards of conduct and ethics for land surveyors before considering advice and recommendations from the advisory committee described in Subsection (a).

(c) The board may appoint additional advisory committees to provide advice and recommendations to the board on any other matter relevant to the administration of this chapter or Chapter 1071.

Added by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.25, eff. September 1, 2019.

SUBCHAPTER F. CONSUMER INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1001.251. CONSUMER INTEREST INFORMATION. (a) The board shall prepare information of consumer interest describing:

(1) the regulatory functions of the board under this chapter and Chapter 1071; and

(2) the procedures by which consumer complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) The board shall maintain on the board's Internet website:

(1) information regarding the procedure for filing a complaint with the board; and

(2) a form that a person may use to file a complaint with the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 19, eff. Sept. 1,

2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.26, eff. September 1, 2019.

Sec. 1001.252. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules that permit the board to receive and investigate a confidential complaint against a person who may have violated this chapter or Chapter 1071. The board shall maintain the confidentiality of the complaint during the investigation.

(b) The board by rule shall specify:

(1) the manner by which a person may contact the board for assistance in filing a complaint;

(2) the place at which a complaint must be filed;

(3) the proper form of a complaint; and

(4) the information that must be included in a complaint.

(c) The board's procedures must permit a member of the public who desires to file a complaint to:

(1) speak to an investigator on the staff of the board if the person desires to do so; or

(2) easily and conveniently access the board's complaint process without being required to speak to an investigator on the staff of the board if the person does not desire to speak to an investigator.

(d) The board shall consider any written grievance against a person filed with the board as a complaint.

(e) A complaint must include information sufficient for the board to determine whether it has the authority to resolve the complaint. A complaint that contains sufficient information for the board to commence an investigation is not required to include all of the information necessary for the board to determine the validity of the complaint.

(f) On receipt of a complaint, the board shall determine whether the board has the authority to resolve the complaint. If the board does not have the authority to resolve the complaint, the board shall dismiss the complaint. If the board has the authority to resolve the complaint, the board shall initiate a disciplinary proceeding against the person who is the subject of the complaint.

(g) The board by rule shall prescribe a method for prioritizing complaints for purposes of complaint investigation. In establishing priorities:

(1) a complaint that alleges an action that could potentially harm the public takes precedence over a complaint that does not allege an action that could potentially harm the public; and

(2) with regard to complaints that do not allege an action that could potentially harm the public, a complaint filed by a member of the public takes precedence over a complaint filed by the staff of the board.

(h) The board's staff is responsible for conducting all phases of complaint investigation, including gathering evidence necessary to determine the validity of the complaint.

(i) The board may employ or contract with advisors, consultants, engineers, or other persons to provide technical assistance in investigations and disciplinary proceedings. Except for an action involving fraud, conspiracy, or malice, a person whose services are obtained by the board under this subsection is immune from civil liability and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken in the course of performing the person's official duties.

(j) The board's staff shall regularly report to the board on each complaint dismissed by board staff, including:

(1) the name of the complainant;

(2) the name of the person who is the subject of the complaint;

(3) the basis of the complaint; and

(4) the reason for the dismissal of the complaint.

(k) Except as provided by Subsection (l), a complaint filed with the board is public information.

(l) For any complaint determined to be frivolous or without merit, the complaint and other enforcement case information related to that complaint are confidential. The information may be used only by the board or by its employees or agents directly involved in the enforcement process for that complaint. The information is not subject to discovery, subpoena, or other disclosure.

(m) In this section, "frivolous complaint" means a complaint that the executive director and investigator, with board approval,

determined:

(1) was made for the purpose of harassment; and

(2) does not demonstrate harm to any person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 20, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 3, eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.27, eff. September 1, 2019.

Sec. 1001.253. COMPLAINT INFORMATION. (a) The board shall:

(1) assign a number to each complaint filed with the board; and

(2) ensure that each phase of the processing of a complaint is appropriately documented.

(b) The board shall maintain a file on each written complaint filed with the board. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(c) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(d) The board, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 20, eff. Sept. 1, 2003.

Sec. 1001.254. STATISTICAL ANALYSIS OF COMPLAINTS. (a) The board shall develop and maintain a complaint tracking system to monitor the processing of complaints filed with the board.

(b) The board shall include with the board's annual financial report under Section 2101.011, Government Code, a statistical analysis of the complaints filed with the board during the preceding year, including:

(1) the number of complaints filed;

(2) a categorization of complaints filed according to the basis of the complaint and the number of complaints in each category;

(3) the number of complaints filed by board staff;

(4) the number of complaints filed by persons other than board staff;

(5) the average length of time required to resolve a complaint;

(6) the number of complaints resolved and the manner in which they were resolved, including:

(A) the number of complaints dismissed and the reasons for dismissal; and

(B) the number of complaints resulting in disciplinary action, the disciplinary action taken, and whether the disciplinary action taken was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing; and

(7) the number of complaints filed that are unresolved, the number of those complaints filed by board staff, the number of those complaints filed by persons other than board staff, and the average length of time that the unresolved complaints have been on file.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 21, eff. Sept. 1, 2003.

Sec. 1001.255. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 21, eff. Sept. 1, 2003.

SUBCHAPTER F-1. GENERAL LICENSE, REGISTRATION, AND CERTIFICATION REQUIREMENT

Sec. 1001.271. DEFINITION. In this subchapter, "license" means a license, certification, registration, or other authorization that is issued by the board under this chapter or Chapter 1071.

Added by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.28, eff. September 1, 2019.

Sec. 1001.272. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE ISSUANCE. (a) This section applies only to an applicant for a license or registration as an engineer, licensed state land surveyor, or registered professional land surveyor.

(b) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(c) The board may not issue a license to a person who does not comply with the requirement of Subsection (b).

(d) The board shall conduct a criminal history check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(e) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 5, eff. September 1, 2013.
Transferred, redesignated and amended from Occupations Code, Section

1001.3035 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.29, eff. September 1, 2019.

Sec. 1001.2721. EXAMINATION DEVELOPMENT AND ADMINISTRATION. Notwithstanding any other law, the board may adopt, recognize, develop, or contract for an examination required by this chapter or Chapter 1071, including the administration of the examination.

Added by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.30, eff. September 1, 2019.

Sec. 1001.273. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes an examination under this chapter or Chapter 1071, the board shall notify the person of the results of the examination.

(a-1) If the examination is graded or reviewed by a testing service:

(1) the board shall notify the person of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

(b) The board may require a testing service to notify a person of the results of the person's examination.

(c) If requested in writing by a person who fails an examination administered under this chapter or Chapter 1071, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) Examination results reported under this section must include a numerical score and an indication of whether the person passed or failed the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 25, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 4, eff. September 1, 2007.

Transferred, redesignated and amended from Occupations Code, Section 1001.306 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.31, eff. September 1, 2019.

Sec. 1001.274. REEXAMINATION. The board may permit reexamination of an applicant on payment of an appropriate reexamination fee in an amount set by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Transferred and redesignated from Occupations Code, Section 1001.307 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.32, eff. September 1, 2019.

Sec. 1001.275. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 27, eff. Sept. 1, 2003.
Transferred and redesignated from Occupations Code, Section 1001.352 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.32, eff. September 1, 2019.

Sec. 1001.276. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board the required renewal fee and a late renewal fee.

(c) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the board the required renewal fee and a late renewal fee for each

delinquent year or part of a year.

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 27, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(i), eff. September 1, 2015.
Transferred, redesignated and amended from Occupations Code, Section 1001.353 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.33, eff. September 1, 2019.

Sec. 1001.277. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE RENEWAL. (a) This section applies only to an applicant for renewal of a license or registration as an engineer, licensed state land surveyor, or registered professional land surveyor.

(b) An applicant renewing a license shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 1001.272.

(c) The board may not renew the license of a person who does not comply with the requirement of Subsection (b).

(d) A license holder is not required to submit fingerprints under this section for the renewal of the license if the license holder has previously submitted fingerprints under:

(1) Section 1001.272 for the initial issuance of the license; or

(2) this section as part of a prior license renewal.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 6, eff. September 1, 2013.
Transferred, redesignated and amended from Occupations Code, Section 1001.3535 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.33, eff. September 1, 2019.

Sec. 1001.278. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination.

(b) The person must pay to the board a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 28, eff. Sept. 1, 2003. Transferred and redesignated from Occupations Code, Section 1001.354 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.34, eff. September 1, 2019.

Sec. 1001.279. INACTIVE STATUS. (a) An engineer or land surveyor may request inactive status at any time. An engineer or land surveyor on inactive status may not practice engineering or land surveying, as applicable.

(b) An engineer or land surveyor on inactive status must pay a fee in an amount and at times prescribed by the board.

(c) An engineer or land surveyor on inactive status is not required to:

(1) comply with the continuing education requirements adopted by the board under Section 1001.210 or 1071.305, as applicable; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, an engineer or land surveyor on inactive status must:

(1) file with the board a written notice requesting reinstatement to active status;

(2) pay the fee for the renewal of the license; and

(3) provide evidence satisfactory to the board that the person has complied with the continuing education requirements adopted by the board under Section 1001.210 or 1071.305, as applicable.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 28, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 5, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(j), eff.

September 1, 2015.
Transferred, redesignated and amended from Occupations Code, Section 1001.355 by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.35, eff. September 1, 2019.

SUBCHAPTER G. ENGINEERING LICENSE REQUIREMENTS

Sec. 1001.301. LICENSE REQUIRED. (a) A person may not engage in the practice of engineering unless the person holds a license issued under this chapter.

(b) Except as provided by Subsection (f), a person may not, unless the person holds a license issued under this chapter, directly or indirectly use or cause to be used as a professional, business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit any of, or a variation or abbreviation of, the following terms:

(1) "engineer";
(2) "professional engineer";
(3) "licensed engineer";
(4) "registered engineer";
(5) "registered professional engineer";
(6) "licensed professional engineer"; or
(7) "engineered."

(c) Except as provided by Subsection (f), a person may not directly or indirectly use or cause to be used an abbreviation, word, symbol, slogan, or sign that tends or is likely to create an impression with the public that the person is qualified or authorized to engage in the practice of engineering unless the person holds a license and is practicing under this chapter.

(d) A person may not receive any fee or compensation or the promise of any fee or compensation for engaging in the practice of engineering unless the person holds a license issued under this chapter.

(e) A person, sole proprietorship, firm, partnership, association, or corporation that engages in or offers or attempts to engage in conduct described by this section is conclusively presumed to be engaged in the practice of engineering.

(f) Notwithstanding the other provisions of this chapter, a regular employee of a business entity who is engaged in engineering activities but is exempt from the licensing requirements of this

chapter under Sections 1001.057 or 1001.058 is not prohibited from using the term "engineer" on a business card, cover letter, or other form of correspondence that is made available to the public if the person does not:

(1) offer to the public to perform engineering services; or

(2) use the title in any context outside the scope of the exemption in a manner that represents an ability or willingness to perform engineering services or make an engineering judgment requiring a licensed professional engineer.

(g) Subsection (f) does not authorize a person to use a term listed in Subsections (b)(2)-(6) or a variation or abbreviation of one of those terms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 22, eff. Sept. 1, 2003.

Sec. 1001.302. LICENSE ELIGIBILITY REQUIREMENTS. (a) An applicant for a license under this chapter must submit evidence satisfactory to the board showing at least that the applicant has:

(1) graduated from:

(A) an engineering curriculum approved by the board as having satisfactory standing; or

(B) an engineering or related science curriculum at a recognized institution of higher education, other than a curriculum approved by the board under Paragraph (A);

(2) passed the examination requirements prescribed by the board; and

(3) engaged in the active practice of engineering for at least:

(A) four years, if the applicant graduated from a curriculum described by Subdivision (1)(A); or

(B) eight years, if the applicant graduated from a curriculum described by Subdivision (1)(B).

(b) To satisfy the requirement of Subsection (a)(3), an applicant must submit a specific record showing engineering work of a character satisfactory to the board indicating that the applicant is competent to be placed in responsible charge of that work.

(c) For purposes of determining an applicant's qualifications under Subsection (a)(3), the board may not consider as active practice in engineering work:

(1) engineering teaching;

(2) the mere execution, as a contractor, of work designed by an engineer; or

(3) the supervision, as a foreman or superintendent, of the construction of work designed by an engineer.

(d) A person is not eligible to be licensed as an engineer unless the person is of good character and reputation.

(e) A person who has the necessary license qualifications described by this chapter is eligible for the license regardless of whether the person is practicing at the time the person applies for the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.003(a), eff. Sept. 1, 2003.

Sec. 1001.303. APPLICATION FOR LICENSE. (a) An applicant for a license under this chapter must submit an application on a form prescribed and provided by the board.

(b) The application must contain:

(1) personal information about the applicant, as required by board rule;

(2) a description of the applicant's education;

(3) a detailed summary of the applicant's actual engineering work;

(4) a description of any engineering license or registration previously issued to the applicant and any denial, revocation, or suspension of an engineering license or registration held by the applicant;

(5) a description of any criminal offense of which the applicant has been convicted; and

(6) at least three references from engineers having personal knowledge of the applicant's character, reputation, general suitability for a license, and engineering experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 23, eff. Sept. 1,

2003.

Sec. 1001.304. EXAMINATION. (a) The board shall administer examinations to determine the qualifications of applicants for a license.

(b) The board shall prescribe the scope of the examination and the methods of procedure with special reference to an applicant's ability to design and supervise engineering works to ensure the safety of life, health, and property.

(c) On payment of the examination fee, the board shall administer an oral or written examination to a qualified applicant at a time and place determined by the board.

(d) The board by rule shall ensure that the examination is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.), and its subsequent amendments.

(e) The board shall:

(1) adopt policies and guidelines detailing the procedures for the examination process, including examination admission, examination administration, and national examination requirements; and

(2) post on the board's Internet website the policies that reference the examination procedures of the board or, if applicable, the national organization selected by the board to administer an examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 24, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 3, eff. September 1, 2013.

Sec. 1001.305. WAIVER OF EXAMINATION REQUIREMENT. The board by rule may waive all or part of the examination requirement for an applicant for the issuance or reissuance of a license under this chapter. The board may not waive the requirement unless the board first determines that:

(1) the applicant possesses sufficient qualifications to justify the waiver; and

(2) issuing or reissuing the license to the applicant does not pose a threat to the public health, safety, or welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.37, eff. September 1, 2019.

Sec. 1001.308. ISSUANCE OF LICENSE. (a) On payment of the license fee, the board shall issue a license authorizing the practice of engineering to an applicant who, in the board's opinion, has met all the requirements of this subchapter.

(b) A license shall:

(1) show the full name of the license holder;

(2) have a serial number; and

(3) be signed by the presiding officer and the secretary of the board under the board's seal.

(c) A license is evidence that the person named on the license is entitled to all rights and privileges of an engineer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.309. CERTIFICATION OR ENROLLMENT OF ENGINEERS-IN-TRAINING. (a) The board shall certify or enroll as an engineer-in-training an applicant who meets the requirements of Subsection (b) if the applicant is otherwise qualified.

(b) The board shall consider as minimum evidence that an applicant is qualified for certification or enrollment as an engineer-in-training if the applicant:

(1) complies with the education and character requirements of Section 1001.302; and

(2) has passed the board's examination in the fundamentals of engineering.

(c) The fee for an engineer-in-training certificate or enrollment must accompany the application.

(d) The certification or enrollment of an engineer-in-training is valid for eight years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 4, eff. September 1, 2013.

Sec. 1001.310. TEMPORARY OR PROVISIONAL LICENSE. (a) The board by rule may adopt standards and procedures for issuing a temporary or provisional license under this chapter.

(b) The board may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing as an engineer for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the board relating to the practice of engineering; and

(3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(c) The board may waive the requirement of Subsection (b)(3) for an applicant if the board determines that compliance with that subsection would be a hardship to the applicant.

(d) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 1001.311(b); or

(2) the provisional license holder meets the following requirements:

(A) the provisional license holder passes an examination that tests the provisional license holder's knowledge and understanding of the laws and rules relating to the practice of engineering in this state;

(B) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter; and

(C) the provisional license holder satisfies any other

licensing requirements under this chapter.

(e) The board must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend the 180-day period if the results of an examination have not been received by the board before the end of that period.

(f) The board may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 25, eff. Sept. 1, 2003.

Sec. 1001.311. APPLICATION BY NONRESIDENT. (a) A person who holds a license or certificate of registration issued by another state or a foreign country may apply under this chapter for a license in this state.

(b) The board may waive any prerequisite to obtaining a license under this chapter for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 25, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.38, eff. September 1, 2019.

Sec. 1001.312. REPLACEMENT LICENSE. The board, subject to board rules, may issue a new license to replace a license issued under this chapter that is lost, destroyed, or mutilated.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.39, eff. September 1, 2019.

SUBCHAPTER H. ENGINEERING LICENSE RENEWAL

Sec. 1001.351. ANNUAL RENEWAL REQUIRED. (a) The board shall provide for the annual renewal of a license or registration issued under this chapter.

(b) The board by rule may adopt a system under which licenses and registrations expire on various dates during the year. For the year in which the license or registration expiration date is changed, the board shall prorate license or registration fees on a monthly basis so that each license or registration holder pays only that portion of the license or registration fee that is allocable to the number of months during which the license or registration is valid. On renewal of the license or registration on the new expiration date, the total license or registration renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 26, eff. Sept. 1, 2003.

SUBCHAPTER I. PRACTICE OF ENGINEERING

Sec. 1001.401. USE OF SEAL. (a) On receiving a license, a license holder shall obtain a seal in a design authorized by the board, showing the license holder's name and the legend "Licensed Professional Engineer" or "Registered Professional Engineer."

(b) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the document. A license holder is not required to use a seal required by this section if the project is to be constructed or used in another state or country.

(c) A person may not place a seal on a document if the license of the license holder named on the seal has expired or has been suspended or revoked.

(d) A license holder is not required to use a seal under this section for a project for which the license holder is not required to hold a license under an exemption provided by Subchapter B.

(e) A license holder shall not be required to provide or hold any additional certification, other than a license issued under this chapter, to seal an engineering plan, specification, plat, or report.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1142 (H.B. 2649), Sec. 3, eff. June 19, 2009.

Sec. 1001.402. ENFORCEMENT BY CERTAIN PUBLIC OFFICIALS. A public official of the state or of a political subdivision of the state who is responsible for enforcing laws that affect the practice of engineering may accept a plan, specification, or other related document only if the plan, specification, or other document was prepared by an engineer, as evidenced by the engineer's seal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.403. PROFESSIONAL IDENTIFICATION. A person licensed under this chapter shall use the term "Engineer," "Professional Engineer," or "P.E." in the professional use of the person's name on a sign, directory, listing, document, contract, pamphlet, stationery, advertisement, signature, or another similar written or printed form of identification.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.404. ELIGIBILITY FOR APPOINTED STATE POSITION. An engineer is eligible to hold any appointive engineering position with the state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.405. PRACTICE BY BUSINESS ENTITY; REGISTRATION. (a) In this section, "business entity" includes a sole proprietorship, firm, partnership, corporation, or joint stock association.

(b) A business entity may not engage in the practice of

engineering in this state unless:

(1) the business entity is registered with the board; and

(2) the practice is carried on only by engineers.

(c) A business entity may register under this section by filing an application with the board on a form provided by the board. In addition to any other information required by board rule, the application must list the name and address of each officer or director of the business entity and each engineer who engages in the practice of engineering on behalf of the business entity.

(d) The registration of a business entity issued under this section expires on the first anniversary of the date the registration is issued. The registration may be renewed by the filing of an updated application under Subsection (c).

(e) A business entity may not represent to the public that it is engaged in the practice of engineering under any business name or use or cause to be used the term "engineer," "engineering," "engineering services," "engineering company," "engineering, inc.," "professional engineers," "licensed engineer," "registered engineer," "licensed professional engineer," "registered professional engineer," or "engineered," or any abbreviation or variation of those terms, or directly or indirectly use or cause to be used any of those terms in combination with other words, letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name unless:

(1) the business entity is registered under this section;

(2) the business entity is actively engaged in the practice of engineering; and

(3) each service, work, or act performed by the business entity that is part of the practice of engineering is either personally performed by an engineer or directly supervised by an engineer who is a regular full-time employee of the business entity.

(f) This section does not prohibit an engineer from performing engineering services on a part-time basis.

(g) Notwithstanding the other provisions of this section, the board by rule may provide that a business entity that has not previously registered with the board and that is engaged in the practice of engineering in violation of Subsection (b) is not subject to disciplinary action for the violation if the business entity registers with the board not later than the 30th day after the date the board gives written notice to the business entity of the

registration requirement. This subsection does not apply to a business entity whose registration has expired.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 29, eff. Sept. 1, 2003.

Sec. 1001.406. GRADUATE ENGINEERS. (a) A graduate of a university recognized by the American Association of Colleges and Universities who has a degree from an engineering program accredited by the Accreditation Board for Engineering and Technology (ABET) has the right to:

(1) disclose any college degree received by the person; and

(2) use the term "graduate engineer" on the person's stationery or business cards or in personal communications of any character.

(b) A graduate engineer who is employed in a firm registered under this chapter and who is working under the direct supervision of a licensed professional engineer may use the term "engineer" on the person's stationery or business cards or in personal communications of any character.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1168, Sec. 30, eff. Sept. 1, 2003.

Sec. 1001.407. CONSTRUCTION OF CERTAIN PUBLIC WORKS. The state or a political subdivision of the state may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless:

(1) the engineering plans, specifications, and estimates have been prepared by an engineer; and

(2) the engineering construction is to be performed under the direct supervision of an engineer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 1001.451. DISCIPLINARY POWERS OF BOARD. On a determination that a ground for disciplinary action exists under Section 1001.452, the board may:

(1) deny an application for a license;

(2) revoke, suspend, or refuse to renew a license;

(3) probate the suspension of a license; or

(4) formally or informally reprimand a license holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.452. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1001.451 for:

(1) a violation of this chapter or a board rule adopted under this chapter;

(2) fraud or deceit in obtaining a license;

(3) a documented instance of retaliation by an applicant against an individual who has served as a reference for that applicant;

(4) gross negligence, incompetency, or misconduct in the practice of engineering; or

(5) a failure to timely provide plans or specifications to the Texas Department of Licensing and Regulation as required by Chapter 469, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.41, eff. September 1, 2019.

Sec. 1001.4525. PROBATION. (a) If a person's license suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(b) The board by rule shall adopt written guidelines to ensure that probation is administered consistently.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 31, eff. Sept. 1, 2003.

Sec. 1001.4526. RESTITUTION. (a) Subject to Subsection (b), the board may order a person licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 31, eff. Sept. 1, 2003.

Sec. 1001.4527. RECUSAL OF BOARD MEMBER. (a) A board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint:

(1) may not vote on the matter at a board meeting related to the complaint; and

(2) shall state at the meeting why the member is prohibited from voting on the matter.

(b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 31, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 837 (H.B. 899), Sec. 7, eff. September 1, 2007.

Sec. 1001.4528. EMERGENCY SUSPENSION. (a) The board or a three-member panel of board members designated by the board shall temporarily suspend the license, certificate, or registration of a person if the board or panel determines from the evidence or information presented to it that continued practice by the person

would constitute a continuing and imminent threat to the public welfare.

(b) A license, certificate, or registration may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 7, eff. September 1, 2013.

Sec. 1001.453. REVIEW OF LICENSE HOLDER'S STATUS. (a) The board by rule may review the status of a license holder the board believes:

(1) may have been issued a license through fraud or error; or

(2) may constitute a threat to the public health, safety, or welfare.

(b) The board may suspend or revoke a license held by a person whose status is reviewed under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.454. RIGHT TO HEARING. (a) If the board proposes to suspend or revoke a person's license, the person is entitled to a hearing.

(b) Proceedings for the suspension or revocation of a license are governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.455. APPEAL OF LICENSE REVOCATION. A person whose license has been revoked may file suit to annul or vacate the board's order revoking the license. The person may file the suit in the district court of the county in which:

(1) the person resides; or

(2) the alleged conduct that is the ground for revocation occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.456. REISSUANCE OF REVOKED LICENSE. The board may reissue a license to a person whose license has been revoked if the board has sufficient reason to reissue the license. At least six board members must vote for reissuance of the license. A new license may be issued in accordance with board rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. ADMINISTRATIVE PENALTY

Sec. 1001.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The board may impose an administrative penalty on a person who violates this chapter or Chapter 1071 or a rule adopted or order issued under this chapter or Chapter 1071.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.42, eff. September 1, 2019.

Sec. 1001.502. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of an administrative penalty may not exceed:

(1) $5,000 for each violation of this chapter or a rule adopted or order issued under this chapter; and

(2) $1,500 for each violation of Chapter 1071 or a rule adopted or order issued under Chapter 1071.

(a-1) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts or resistance to efforts to correct the violation; and

(6) any other matter that justice may require.

(c) The board may include in the amount of the penalty the actual costs of investigating and prosecuting the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 8, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.43, eff. September 1, 2019.

Sec. 1001.503. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court and that is:

(i) for the amount of the penalty; and

(ii) effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.504. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.505. DETERMINATION BY COURT. (a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If a court does not sustain the determination that a violation occurred, the court shall order that an administrative penalty is not owed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.506. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond:

(A) if the person gave a supersedeas bond and the penalty is not upheld by the court; or

(B) after the person pays the penalty if the person gave a supersedeas bond and the penalty is reduced.

(b) The interest paid under Subsection (a)(1) is at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1001.508. ADMINISTRATIVE PROCEDURE. (a) A proceeding under this subchapter is subject to Chapter 2001, Government Code.

(b) The board shall adopt rules of procedure for imposing an administrative penalty. The rules must conform to the requirements of Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER L. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1001.551. INJUNCTION. (a) In addition to any other action authorized by law, the board may bring an action in the board's name to enjoin a person from violating this chapter or Chapter 1071 or a board rule adopted under this chapter or Chapter 1071.

(b) An action under this section must be brought in a district court of Travis County.

(c) To sustain an action under this section, the board is not required to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

(d) In an action for an injunction under this section, the defendant may assert and prove as a complete defense to the action that the board deprived the defendant of a license, certificate, or registration by a board action or proceeding that was:

(1) arbitrary or capricious;

(2) contrary to law; or

(3) conducted without due process of law.

(e) Either party to an action under this section may appeal to the appellate court with jurisdiction of the action.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.44, eff. September 1, 2019.

Sec. 1001.5511. CEASE AND DESIST ORDER. If it appears to the board that a person who is not licensed, certified, or registered under this chapter or Chapter 1071 is violating this chapter or Chapter 1071, a rule adopted under this chapter or Chapter 1071, or another state statute or rule relating to the practice of engineering or land surveying, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

Added by Acts 2013, 83rd Leg., R.S., Ch. 402 (S.B. 204), Sec. 9, eff. September 1, 2013.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.45, eff. September 1, 2019.

Sec. 1001.552. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) engages in the practice of engineering without being licensed or exempted from the licensing requirement under this chapter;

(2) violates this chapter with respect to the regulation of engineering;

(3) presents or attempts to use as the person's own the engineering license or seal of another; or

(4) gives false evidence of any kind to the board or a board member in obtaining an engineering license.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.46, eff. September 1, 2019.

Sec. 1001.553. REPORT OF VIOLATION. A public official shall report a violation of this chapter or Chapter 1071 to the proper authorities.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.47, eff. September 1, 2019.

Sec. 1001.554. PRESENTATION OF COMPLAINTS BY BOARD; ASSISTANCE AT TRIAL. (a) A member of the board may present to a prosecuting officer a complaint relating to a violation of this chapter or Chapter 1071.

(b) The board through its members, officers, counsel, and agents and subject to the control of the prosecuting officer may assist in the trial of a case involving an alleged violation of this chapter or Chapter 1071.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.48, eff. September 1, 2019.

Sec. 1001.555. ATTORNEY GENERAL AS LEGAL ADVISOR; REPRESENTATION BY ATTORNEY GENERAL. (a) The attorney general shall:

(1) act as legal advisor of the board;

(2) provide legal assistance to the board as necessary to enforce this chapter or Chapter 1071 and make those laws effective; and

(3) represent the board in an action brought to enforce this chapter or Chapter 1071.

(b) This section does not affect the duties of local prosecuting officers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.49, eff. September 1, 2019.

Sec. 1001.556. APPEAL BOND. The board is not required to give an appeal bond in a cause arising under this chapter or Chapter 1071.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.50, eff. September 1, 2019.

SUBCHAPTER M. ADVISORY OPINIONS

Sec. 1001.601. BOARD ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion about:

(1) an interpretation of this chapter; or

(2) the application of this chapter to a person in regard to a specified existing or hypothetical factual situation.

(b) The board shall respond to requests for opinions within 180 days unless the board affirmatively states the board's reason:

(1) for not responding to the request within 180 days; or

(2) for not responding to the request at all.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 259 (H.B. 1817), Sec. 6, eff. September 1, 2005.

Sec. 1001.602. MAINTENANCE OF OPINIONS; SUMMARY. The board shall:

(1) number and classify each advisory opinion issued under

this subchapter; and

(2) annually compile a summary of the opinions in a single reference document that is available on the Internet.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.

Sec. 1001.603. ATTORNEY GENERAL'S OPINIONS. The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.

Sec. 1001.604. RELIANCE ON ADVISORY OPINION. It is a defense to prosecution or to imposition of a civil penalty that a person reasonably relied on a written advisory opinion of the board relating to:

(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

Added by Acts 2003, 78th Leg., ch. 1168, Sec. 32, eff. Sept. 1, 2003.

CHAPTER 1002. GEOSCIENTISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1002.001. SHORT TITLE. This chapter may be cited as the Texas Geoscience Practice Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Geoscientists.

(2) "Certified geoscientist" means a geoscientist who has been certified in a discipline of geoscience by a professional

organization, society, or association that maintains a certification program.

(3) "Geoscience" means the science of the earth and its origin and history, the investigation of the earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth.

(3-a) "Geoscience firm" means a firm, corporation, or other business entity as defined by the board and registered by the board to engage in the public practice of geoscience.

(4) "Geoscientist" means a person qualified to engage in the public practice of geoscience because of the person's knowledge, acquired through education and practical experience, of geoscience, mathematics, and the supporting physical, chemical, mineralogical, morphological, and life sciences.

(4-a) "Geoscientist in training" means a person registered by the board on the basis of education and who meets other requirements established by the board but who is not fully qualified to become a licensed geoscientist under this chapter.

(5) "Licensed geoscientist" or "professional geoscientist" means a person who holds a license issued by the board under this chapter.

(6) "Practice for the public":

(A) means providing professional geoscientific services:

(i) for a governmental entity in this state;

(ii) to comply with a rule established by this state or a political subdivision of this state; or

(iii) for the public or a firm or corporation in this state if the practitioner assumes the ultimate liability for the work product; and

(B) does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(7) "Public practice of geoscience" means the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks.

(8) "Responsible charge" means the independent control and

direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 1, eff. September 1, 2009.

Sec. 1002.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Geoscientists is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 4.01, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.07, eff. June 17, 2011.
Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 1, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.14, eff. June 18, 2023.

Sec. 1002.004. APPLICATION OF CHAPTER. (a) In this section:
(1) "Driller" has the meaning assigned by Section 1901.001.
(2) "Engineer" has the meaning assigned by Section 1001.002.
(3) "Installer" has the meaning assigned by Section 1902.001.
(4) "Licensed driller" means a person who holds a license issued by the state under Chapter 1902.
(5) "Licensed installer" means a person who holds a license issued under Chapter 1902.
(6) "Practice of engineering" has the meaning assigned by Section 1001.003.

(7) "Professional surveying" has the meaning assigned by Section 1071.002.

(b) This chapter does not authorize the practice of professional surveying by a licensed geoscientist. This chapter does not apply to a qualified and registered surveyor who confines the surveyor's practice to acts of surveying allowed under Chapter 1071.

(c) This chapter does not authorize the practice of engineering by a licensed geoscientist.

(d) This chapter does not require an engineer, or a person acting under the supervision of an engineer, who performs service or work that is both engineering and geoscience to be licensed as a geoscientist or to work under the supervision of a licensed geoscientist.

(e) A recommendation, design, analysis, redesign, or review and evaluation, the supervision, or a summary analysis of an engineered structure or work, the performance of which requires engineering education, training, and experience in the application of special knowledge of mathematical, physical, and engineering sciences, is engineering and is subject to Chapter 1001.

(f) This chapter does not permit a licensed geoscientist to perform an engineering analysis supporting an engineering design unless the action is under the supervision of an engineer.

(g) This chapter does not permit a licensed geoscientist to provide construction quality control and evaluation, to perform materials engineering and testing, or to design, develop, or perform engineering review and evaluation of engineering plans and engineering specifications for an engineered structure or work unless the action is under the supervision of an engineer.

(h) With regard to an environmental and pollution remediation project, this chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the project by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of a component of the project consisting of an engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(i) With regard to a geoscientific investigation of geological conditions affecting an engineered structure, work, or process, this

chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the engineered structure, work, or process by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of the engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(j) The board and the Texas Board of Professional Engineers and Land Surveyors by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 1001 or a rule adopted under that chapter.

(k) This chapter does not authorize a licensed geoscientist to act as or offer to perform services as a driller or installer. This chapter does not apply to a licensed driller or licensed installer who confines the driller's or installer's activities to activities regulated under Chapter 1901 or 1902, respectively.

(l) The board and the executive director of the Texas Department of Licensing and Regulation by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 51, 1901, or 1902 or a rule adopted under one of those chapters.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.12, eff. September 1, 2019.

SUBCHAPTER B. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

Sec. 1002.051. BOARD MEMBERSHIP. (a) The Texas Board of Professional Geoscientists shall administer this chapter.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(c) Six members of the board must be licensed geoscientists.

(d) Three members of the board must be members of the public.

(e) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.052. MEMBER ELIGIBILITY. (a) A member of the board must:

(1) be a citizen of the United States;

(2) have been a resident of this state for at least the three years preceding appointment; and

(3) be at least 25 years of age.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in a discipline of geoscience;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "society or trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a

board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used in Section 13, Fair Labor Standards Act of 1938 (29 U.S.C. Section 213), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a society or trade association in a discipline of geoscience; or

(2) the person's spouse is an officer, manager, or paid consultant of a society or trade association in a discipline of geoscience.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.054. TERMS. (a) Members of the board serve staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the board may not serve more than two consecutive full terms.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) is no longer qualified for appointment to the board;

(2) engages in misconduct, is determined to be incompetent, neglects the member's official duties, or engages in malfeasance;

(3) commits a violation of this chapter resulting in disciplinary action or a felony; or

(4) fails without excuse to attend at least half of the regularly scheduled meetings held in a calendar year while the member is a member of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member

exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the assistant presiding officer, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.056. REIMBURSEMENT FOR TRAVEL EXPENSES. A member of the board is entitled to reimbursement for the travel expenses incurred by the member while conducting the business of the board, as provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.057. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(a-1) The board shall elect biennially from its own membership an assistant presiding officer and a secretary-treasurer. A member may not hold a position described by this subsection for more than two consecutive two-year periods. A member serves in a position described by this subsection at the will of the board and may be removed from that position by a two-thirds majority vote of the board.

(b) The board may appoint an assistant secretary and other assistants who are not members of the board to assist the board and exercise its authority in carrying out the board's powers and duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 2, eff. September 1, 2019.

Sec. 1002.058. OFFICE. The board shall maintain its office in Austin.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.059. MEETINGS. The board shall hold at least two regular meetings in each calendar year. A special meeting may be held at a time permitted by board rule.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.060. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the board's programs, functions, rules, and budget;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the board shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 3, eff. September 1, 2019.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1002.101. EXECUTIVE DIRECTOR. The board shall appoint an executive director, who shall be responsible for managing the day-to-day affairs of the board, including:

(1) arranging for and supervising the necessary support, secretarial, and clerical services;

(2) obtaining space for holding examinations, meetings, and conferences;

(3) printing or purchasing examinations;

(4) printing and mailing forms, information, and licenses;
(5) sending notices, collecting fees, and issuing receipts;
(6) conducting the correspondence of the board, including replying to routine requests for information;
(7) maintaining the minutes and records of the board;
(8) keeping records of receipts and disbursements; and
(9) providing necessary investigative services.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.102. RECEIPTS AND DISBURSEMENTS. The executive director shall receive, administer, and account for all money received under this chapter and shall transfer the money to the comptroller.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement of employees within the board. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on documented employee performance. All decisions regarding merit pay for a board employee must be based on that system.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) filed with the governor.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1002.151. GENERAL RULEMAKING AUTHORITY. The board shall adopt and enforce rules consistent with this chapter and necessary for the performance of its duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.1511. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 4, eff. September 1, 2019.

Sec. 1002.152. FEES. The board may set reasonable and necessary fees to be charged applicants and license holders under this chapter, including fees for application, examination, licensure, and renewal of a license. The board shall base a fee for examination in a discipline of geoscience on the costs associated with preparing, administering, and grading that examination.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept.

1, 2003.

Sec. 1002.153. CODE OF PROFESSIONAL CONDUCT. (a) The board by rule shall adopt a code of professional conduct that is binding on all license holders under this chapter.

(b) The board may enforce the code by imposing sanctions as provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.154. ENFORCEMENT; REFERRAL OF COMPLAINTS AND INVESTIGATIONS. (a) The board shall enforce this chapter. Any member of the board may present to a prosecuting officer a complaint relating to a violation of this chapter. The board through its members, officers, counsel, or agents may assist in the trial of a case involving the violation of this chapter, subject to the control of the prosecuting officer.

(a-1) Complaints and investigations under this chapter are of two types:

(1) complaints received from a member of the public; and

(2) complaints and investigations that are initiated by the board as a result of information that becomes known to the board or board staff and that may indicate a violation.

(a-2) The board by rule shall prioritize complaints and investigations. Rules adopted under this subsection must provide that:

(1) a complaint that alleges an action that may harm the public takes precedence over a complaint that does not allege an action that may harm the public or may harm the public to a lesser degree; and

(2) with regard to complaints that do not allege an action that may harm the public, a complaint filed by a member of the public takes precedence over a complaint initiated by the board.

(b) Notwithstanding Subsection (a), the board shall refer a complaint or investigation involving the unlicensed practice of geoscience by a person who is licensed as an engineer, surveyor, driller, installer, or member of another similar profession to the

agency that issued the license to the person.

(c) The board may administer oaths and affirmations and issue subpoenas to compel the attendance of witnesses and the production of evidence.

(d) The attorney general shall act as legal advisor to the board and shall provide legal assistance as necessary in enforcing this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 2, eff. September 1, 2009.

Sec. 1002.155. RECOGNITION OF USE OF DESIGNATIONS. (a) The board by rule may recognize the use of the designations used by a professional organization, society, or association that maintains a certification program in a discipline of geoscience if:

(1) the requirements for that certification are acceptable to the board;

(2) the full name or recognized abbreviation of the organization, society, or association granting the certification is stated following or in conjunction with the use of the designation or abbreviation; and

(3) the designation or abbreviation is not used in a manner that is misleading or that creates an impression that the person is licensed to practice geoscience for the public unless the person is licensed under this chapter.

(b) The board by rule shall recognize the title "geological engineer," "geotechnical engineer," "hydraulic engineer," or "agricultural engineer" or another legitimate engineering title as a legitimate engineering title separate from geoscience, the use of which requires licensure as an engineer.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.156. ESTABLISHMENT OF DISCIPLINES. The board by rule shall establish the disciplines of geoscience in which a person may

be licensed and the requirements for eligibility for a license in each discipline.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.157. AGREEMENTS TO DEVELOP UNIFORM STANDARDS. The board may enter into agreements with licensing or registration boards in other states and other appropriate organizations, societies, associations, and agencies to develop uniform standards for:

(1) the licensing or registration of geoscientists;
(2) accrediting educational programs;
(3) establishing reciprocal and temporary licenses;
(4) developing regional or national examinations;
(5) evaluating applicants; or
(6) other purposes consistent with this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.158. AUTHORITY TO INCUR ADMINISTRATIVE EXPENSES. In administering this chapter, the board may:

(1) appoint committees;
(2) employ personnel, contractors, and consultants;
(3) lease or purchase furnishings, equipment, and supplies;
(4) lease office space; and
(5) incur other similar expenses.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.159. ROSTER OF LICENSE HOLDERS. (a) The board shall maintain a roster stating the name, discipline of geoscience, and place of business of each licensed geoscientist.

(b) The board shall maintain copies of the roster and shall provide a copy on request to a state agency, a county or municipal clerk or building official, or a license holder. The board may charge a license holder a reasonable fee set by the board for

providing the copy.

(c) The board shall provide a copy of the roster to another person on written request, subject to payment of a reasonable fee set by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.160. LIST OF GOVERNMENTAL ENTITIES WITH COMPARABLE REQUIREMENTS AND WITH WHICH RECIPROCITY AGREEMENTS EXIST. The board shall maintain a list of each state or foreign country in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1002.201. PUBLIC INTEREST INFORMATION. (a) The board shall:

(1) prepare information of public interest describing:

(A) the regulatory functions of the board; and

(B) the board's procedures by which complaints are filed with and resolved by the board; and

(2) make the information available to the public and appropriate state agencies.

(b) The board shall maintain on the board's Internet website:

(1) information regarding the procedure for filing a complaint with the board; and

(2) a means by which a person may electronically file a complaint with the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 1, eff. September 1, 2013.

Sec. 1002.202. COMPLAINTS. (a) A person may file a complaint alleging a violation of this chapter or a rule adopted under this chapter.

(b) A complaint from a member of the public must be:

(1) in writing;

(2) sworn to by the person making the complaint; and

(3) filed with the secretary-treasurer or electronically through the board's Internet website.

(c) A complaint that is initiated by the board or board staff must be:

(1) in writing; and

(2) signed by the person who became aware of information that may indicate a violation.

(d) A complaint must contain sufficient information for the board to determine whether the board has the jurisdiction and authority to resolve the complaint. If the board does not have the jurisdiction and authority, the board shall dismiss the complaint. A complaint must have sufficient information for the board to commence an investigation, though the amount of information ultimately required for the board to determine the validity of the complaint may be more than the information initially included with the complaint.

(d-1) The board shall accept a complaint regardless of whether the complaint is notarized.

(e) The board shall maintain the confidentiality of a complaint from the time of receipt through the conclusion of the investigation of the complaint. Complaint information is not confidential after the date formal charges are filed.

(f) For any complaint determined to be frivolous or without merit, the complaint and other information related to the complaint are confidential. The information is not subject to discovery, subpoena, or other disclosure. A complaint is considered to be frivolous if the executive director and investigator, with board approval, determine that the complaint:

(1) was made for the likely purpose of harassment; and

(2) does not demonstrate apparent harm to any person.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 3, eff.

September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 2, eff. September 1, 2013.

Sec. 1002.203. RECORDS OF COMPLAINTS. (a) The board shall maintain a file on each complaint filed with the board. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint was received by the board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.204. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(b) The board shall investigate all complaints brought to its attention and may employ investigators, expert witnesses, and hearing officers, appoint advisory committees, and conduct hearings to determine whether disciplinary or other action should be taken.

(c) The board may employ or contract with advisors, consultants, geoscientists, engineers, or other persons to provide

technical assistance in investigations and disciplinary proceedings. Except for an action involving fraud, conspiracy, or malice, a person whose services are obtained by the board under this subsection is immune from civil liability and may not be subjected to a suit for damages for any investigation, report, recommendation, statement, evaluation, finding made, or other action taken in the course of performing the person's official duties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 5, eff. September 1, 2019.

Sec. 1002.205. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.206. COMPLAINT EDUCATION. (a) In this section, "state agency" has the meaning assigned by Section 57.001.

(b) The board shall work with each state agency that uses the services of a person licensed under this chapter and other appropriate state agencies as determined by the board, including a state agency with which the board has entered into a memorandum of understanding that addresses the coordination of activities or complaints, to educate the agency's employees regarding the procedures by which complaints are filed with and resolved by the board.

Added by Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 3, eff. September 1, 2013.

Sec. 1002.207. DUTY OF STATE AGENCY TO REPORT POTENTIAL VIOLATION. (a) In this section, "state agency" has the meaning

assigned by Section 57.001.

(b) A state agency that becomes aware of a potential violation of this chapter or a rule adopted under this chapter shall forward any information relating to the potential violation and any subsequently obtained information to the board.

(c) Information forwarded by a state agency under this section that is privileged or confidential remains privileged or confidential following receipt by the board. The privilege or confidentiality extends to any board communication concerning the information forwarded, regardless of the form, manner, or content of the communication.

(d) The forwarding of privileged or confidential information by a state agency does not waive a privilege in or create an exception to the confidentiality of the information.

(e) A state agency's provision of information or failure to provide information under this section does not give rise to a cause of action against the agency.

Added by Acts 2013, 83rd Leg., R.S., Ch. 733 (S.B. 138), Sec. 3, eff. September 1, 2013.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 1002.251. LICENSE REQUIRED. (a) Unless exempted by this chapter, a person may not engage in the public practice of geoscience unless the person holds a license issued under this chapter.

(b) Unless the person is licensed under this chapter, a person may not:

(1) use the term "Licensed Professional Geoscientist" or the initials "P.G." as part of a professional, business, or commercial identification or title; or

(2) otherwise represent to the public that the person is qualified to:

(A) practice as a geoscientist; or

(B) engage in the public practice of geoscience.

(c) A person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by municipal or county ordinance, state or federal law, state agency rule, or federal regulation that incorporates or is based on a geoscientific study or geoscientific data unless the person is licensed under this

chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.252. EXEMPTIONS. The following activities do not require a license under this chapter:

(1) geoscientific work performed by an employee or a subordinate of a license holder under this chapter if the work does not include the responsible charge of geoscientific work and is performed under the direct supervision of a licensed geoscientist who is responsible for the work;

(2) geoscientific work performed by an officer or employee of the United States practicing solely as such an officer or employee;

(3) geoscientific work performed exclusively in exploring for and developing oil, gas, or other energy resources, base metals, or precious or nonprecious minerals, including sand, gravel, or aggregate, if the work is done in and for the benefit of private industry;

(4) geoscientific research conducted through an academic institution, local, state, or federal governmental agency, nonprofit research institution, or for-profit organization, including submission of a report on the research to a public agency, unless the work is covered by Section 1002.251(c);

(5) teaching geoscience or a related physical or natural science;

(6) work customarily performed by a cartographer, technician, or physical or natural scientist, including a geologist, geophysicist, soil scientist, chemist, archaeologist, geographer, or oceanographer, if the work does not include the public practice of geoscience;

(7) work performed by an archaeologist, geoscientist, or other person conducting a stratigraphic or historical geological investigation for archaeological purposes;

(8) testifying or preparing and presenting an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal or hearing if the testimony, exhibit, or document does not imply that the person is licensed under

this chapter;

(9) the evaluation by a state agency, as defined by Section 2001.003, Government Code, or by a hearing examiner of an exhibit or document offered or placed in evidence before an administrative tribunal; or

(10) the determination of the suitability of a site for a specific on-site sewage disposal system by a person who has successfully completed site evaluation training approved by the Texas Commission on Environmental Quality and is:

(A) registered by the commission as:

(i) an installer, if the commission recognizes only one level of installer; or

(ii) the highest level of installer recognized by the commission, if the commission recognizes more than one level of installer;

(B) a designated representative; or

(C) a registered professional sanitarian.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.253. LICENSE APPLICATION. (a) An applicant for a license under this chapter, including an applicant for a temporary or reciprocal license, must apply on a form prescribed by the board that is signed by the applicant.

(b) The application must include:

(1) information concerning the applicant's education;

(2) a detailed summary of the applicant's relevant work experience; and

(3) a signed statement that the applicant has read and will comply with the code of professional conduct adopted under this chapter.

(c) The application must be accompanied by the appropriate application fee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 6, eff. September 1, 2019.

Sec. 1002.254. EXAMINATIONS. (a) The board may prepare, administer, and grade oral and written examinations required or permitted under this chapter.

(b) The board may adopt or recognize, in whole or in part, an examination prepared, administered, or graded by another organization, on a regional or national basis, that the board determines appropriate to measure the qualifications of an applicant for a license under this chapter if:

(1) the examination questions, the correct answers, and the applicant's completed examination are available to the board; and

(2) the board retains the authority to determine a passing grade for a license in this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.255. LICENSE ELIGIBILITY. (a) To be eligible for a license under this chapter, an applicant must:

(1) have:

(A) graduated from a course of study in a discipline of geoscience satisfactory to the board that consists of at least four years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline; or

(B) satisfactorily completed other equivalent educational requirements as determined by the board;

(2) have a documented record of at least five years of qualifying work experience, as provided by Section 1002.256, that demonstrates that the applicant is qualified to assume responsible charge of geoscientific work;

(3) pass an examination required by the board covering the fundamentals and practice of the appropriate discipline of geoscience; and

(4) meet any other requirements established by the board.

(b) The board may accept qualifying work experience in lieu of the education required by Subsection (a)(1).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 7, eff. September 1, 2019.

Sec. 1002.256. QUALIFYING WORK EXPERIENCE. (a) The board shall apply the following standards in evaluating the work experience of an applicant for a license under Section 1002.255:

(1) each year of work experience acceptable to the board constitutes one year of qualifying work experience if the experience was acquired under the direct supervision of:

(A) a geoscientist who is licensed in this state or in another state under requirements for licensure or registration that are comparable to those in this chapter;

(B) a geoscientist who meets the educational and work experience requirements for licensure but is not required to be licensed under this chapter; or

(C) another professional acceptable to the board;

(2) each year of work experience acceptable to the board and acquired before September 1, 2003, constitutes one year of qualifying work experience if the experience:

(A) was acquired under the direct supervision of:

(i) a geoscientist who meets the educational and work experience requirements for a license under this chapter;

(ii) a geoscientist who is licensed or registered under comparable requirements in another state; or

(iii) another professional acceptable to the board; or

(B) would constitute the responsible charge of professional geoscientific work as determined by the board; and

(3) each year of full-time graduate study in a discipline of geoscience that is acceptable to the board constitutes one year of qualifying work experience.

(b) The board may accept research in or the teaching of a discipline of geoscience at the college or university level as qualifying work experience if the research or teaching, in the judgment of the board, is comparable to work experience obtained in the practice of geoscience.

(c) For purposes of Subsection (a)(3), the board may not accept more than two years of full-time graduate study in a discipline of geoscience as qualifying work experience.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.257. RECIPROCAL LICENSE. (a) The board by rule may authorize the licensing of a person who has not met the examination requirement of Section 1002.255(a)(3) if the person is licensed or registered to practice a discipline of geoscience under the law of another state or a foreign country.

(b) The board may issue a license to an applicant who provides proof of licensure or registration under requirements that the board determines to be substantially similar to those established by this chapter and who pays the required fees.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 8, eff. September 1, 2019.

Sec. 1002.258. TEMPORARY LICENSE. (a) The board may issue a temporary license to a person who:

(1) is not a resident of this state and does not have an established place of business in this state but who seeks to engage in the public practice of geoscience in this state for a temporary period; or

(2) applies for a reciprocal license and seeks to engage in the public practice of geoscience pending a determination on the application for the reciprocal license.

(b) An applicant for a temporary license must:

(1) apply to the board for a temporary license, provide proof of licensure or registration in another state or a foreign country and pay the required fees;

(2) agree to comply with the signature requirements of Section 1002.263(b) and to affix the person's seal from the jurisdiction in which the person is licensed or registered on all

work completed while practicing under the temporary license; and

(3) file the required information and reports and comply with other requirements established by the board concerning the person's temporary practice.

(c) A temporary license issued under Subsection (a)(1) expires on the 90th day after the date of issuance. A temporary license issued under Subsection (a)(2) expires on the date the reciprocal license is issued or denied.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.259. WAIVER OF REQUIREMENTS. (a) Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license.

(b) Each requirement waived under this section and the basis for the waiver must be recorded in the applicant's record and in the proceedings of the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.260. CONFIDENTIALITY OF CERTAIN INFORMATION. A statement made by a person who provides any information compiled by or submitted to the board relating to an applicant is privileged and confidential and may be used only by the board or an employee or agent of the board who is directly involved in the application or licensure process. Confidential information under this section is not subject to discovery, subpoena, or other disclosure in any proceeding.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 9, eff. September 1, 2019.

Sec. 1002.261. ISSUANCE OF LICENSE. (a) The board shall issue a license to an applicant who meets the requirements of this chapter on payment of the applicable license fee.

(b) The license must:

(1) show the full name of the license holder;

(2) have a serial number;

(3) state the license holder's discipline of geoscience; and

(4) be signed by an appropriate officer of the board under the board's seal.

(c) The issuance by the board of a license is prima facie evidence that during the term of the license the license holder is entitled to all the rights and privileges of a licensed geoscientist.

(d) A licensed geoscientist may engage in the practice of any discipline of geoscience regardless of the discipline of geoscience stated on the person's license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.262. LICENSE DURATION; EXPIRATION. (a) A license is valid for a period not to exceed three years and expires according to a schedule established by board rule.

(b) On expiration, a license is invalid and may not be renewed except as provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.263. SEAL. (a) On issuance of a license, the license holder must obtain a seal of a design established by the board bearing:

(1) the license holder's name;

(2) the license number;

(3) the words "Licensed Professional Geoscientist"; and

(4) the license holder's discipline of geoscience.

(b) A geoscientific report, document, or other record, as defined by the board, that is offered to the public and prepared or issued by or under the supervision of a licensed geoscientist must,

in accordance with rules adopted by the board, include the full name, signature, and license number of the license holder who prepared the report, document, or other record or under whose supervision it was prepared and bear an impression of the license holder's seal.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.264. REPLACEMENT OF LOST, DESTROYED, OR MUTILATED LICENSE. The board shall issue a new license to replace a license that has been lost, destroyed, or mutilated, subject to the rules and fees adopted by the board.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 1002.301. LICENSE RENEWAL. (a) Not later than the 60th day before the date the license expires, the board shall notify a license holder of:

(1) the date the license expires; and

(2) the amount of the fee required for renewal.

(b) The board shall renew the license of a license holder who before the date the license expires or within a period not to exceed 60 days after the expiration date:

(1) submits the required renewal application and fee and a penalty for late renewal, if required; and

(2) meets the requirements for renewal established by the board.

(c) The board by rule may establish conditions and fees for the reissuance of a license that has lapsed, expired, or been suspended or revoked.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.302. CONTINUING PROFESSIONAL EDUCATION. As a condition for renewal of a license, the board may require each

license holder to participate in continuing professional education on a periodic or other basis.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER H. PUBLIC PRACTICE OF GEOSCIENCE

Sec. 1002.351. PUBLIC PRACTICE OF GEOSCIENCE BY FIRM OR CORPORATION. (a) A firm or corporation may engage in the public practice of geoscience only if:

(1) the geoscientific work is performed by, or under the supervision of, a licensed geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) the principal business of the firm or corporation is the public practice of geoscience as determined by board rule and a principal of the firm or an officer or director of the corporation is a licensed geoscientist and has overall supervision and control of the geoscientific work performed in this state.

(b) The board may adopt rules relating to the public practice of geoscience by a firm or corporation. Rules adopted under this section must recognize that this chapter does not apply to an engineer or engineering firm that performs service or work that is both engineering and geoscience. A firm that engages in the practice of both engineering and geoscience is exempt from any firm registration requirements created under this subsection.

(c) Except as provided by this section, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscientific services or prepare a geoscientific report, document, or other record that requires the signature and seal of a license holder under Section 1002.263(b).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.352. GEOSCIENTIST IN TRAINING. The board by rule shall establish criteria by which an individual who expresses the intent to become a licensed geoscientist under this chapter may

register with the board as a geoscientist in training.

Added by Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 4, eff. September 1, 2009.

Sec. 1002.353. ADVISORY OPINIONS. (a) On its own initiative or at the request of any interested person, the board shall prepare a written advisory opinion regarding:

(1) an interpretation of this chapter; or

(2) the application of this chapter to a person with respect to a specified existing or hypothetical factual situation.

(b) The board shall respond to a request for an opinion not later than the 180th day after the date the request is submitted to the board unless the board affirmatively states the board's reason for not responding to the request within that period or not responding to the request at all.

(c) The board shall:

(1) number and classify each advisory opinion issued under this subchapter; and

(2) annually compile a summary of the opinions in a single document that is available on the Internet.

(d) The authority of the board to issue an advisory opinion under this subchapter does not affect the authority of the attorney general to issue an opinion as authorized by law.

(e) It is a defense to prosecution or to imposition of an administrative penalty that a person reasonably relied on a written advisory opinion of the board relating to:

(1) the provision of the law the person is alleged to have violated; or

(2) a fact situation that is substantially similar to the fact situation in which the person is involved.

Added by Acts 2009, 81st Leg., R.S., Ch. 504 (S.B. 940), Sec. 4, eff. September 1, 2009.

SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1002.401. DENIAL OF LICENSE. (a) The board may deny a license:

(1) to an applicant who fails to satisfy a requirement of

this chapter; or

(2) on a determination by the board that there is probable cause to believe that an applicant has violated:

(A) this chapter;

(B) a provision of this chapter to which a license holder would be subject; or

(C) a comparable provision in the licensing or registration law of another state.

(b) The board may not issue a license pending the disposition of a complaint alleging a violation in this or another state if the board has notice of the alleged violation.

(c) The board shall notify an applicant who is denied a license of the reason for denial in writing not later than the 30th day after the date of the board's decision. Not later than the 30th day after the date of receipt of the notice, the applicant may make a written request for a hearing. In the absence of a request for a hearing, the board's action is final.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.402. GROUNDS FOR DISCIPLINARY ACTION. The board may impose appropriate sanctions for:

(1) the practice of fraud or deceit in obtaining a license as a geoscientist;

(2) incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;

(3) conviction of a license holder of a crime involving moral turpitude or a felony;

(4) the imposition of an administrative or civil penalty or a criminal fine, or imprisonment or probation instead of a fine, for a misdemeanor relating to or arising out of the public practice of geoscience;

(5) the issuance of a cease and desist order or a similar sanction relating to or arising out of the public practice of geoscience;

(6) using the seal of another license holder or using or allowing the use of the license holder's seal on geoscientific work

not performed by or under the supervision of the license holder;

(7) aiding or abetting a person in a violation of this chapter;

(8) the revocation or suspension of a license, the denial of renewal of a license, or other disciplinary action taken by a state agency, board of registration, or similar licensing agency for geoscientists or a profession or occupation related to the public practice of geoscience;

(9) practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or qualified to practice geoscience if the person is not licensed under this chapter or the person's firm or corporation does not employ a licensed geoscientist as required under this chapter; or

(10) violating this chapter, a rule adopted under this chapter, including the code of professional conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.403. DISCIPLINARY ACTIONS. (a) The board may take the following disciplinary actions:

(1) refuse to issue or renew a license;

(2) permanently revoke a license;

(3) suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the board determines that the license holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;

(4) issue a public or private reprimand to an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(5) impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(6) require that a license holder participate in a peer review program under rules adopted by the board;

(7) require that a license holder obtain remedial education and training prescribed by the board;

(8) impose probation on a license holder requiring regular reporting to the board;

(9) require restitution, in whole or in part, of compensation or fees earned by a license holder, individual, firm, or corporation practicing geoscience under this chapter;

(10) impose an appropriate administrative penalty as provided by Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under this chapter; or

(11) issue a cease and desist order.

(b) The board may not impose a sanction for a ground described by Section 1002.402(8) that exceeds in severity or duration the sanction on which the board's action is based.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.404. RIGHT TO HEARING. A person is entitled to a hearing before the board may suspend or revoke the person's license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.405. REINSTATEMENT. (a) On application, the board may reinstate a license to engage in the public practice of geoscience to a person whose license has been revoked if a majority of the entire board votes in favor of the reinstatement.

(b) As a condition for reinstatement, the board may:

(1) review the applicant's qualifications and experience;

(2) require continuing professional education;

(3) conduct a reexamination on a periodic or other basis; or

(4) require other evidence of the competence of the applicant.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 1002.451. IMPOSITION OF PENALTY. The board may impose an administrative penalty against a person licensed under this chapter or any other person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.452. AMOUNT OF PENALTY. (a) The board may include in the amount of the administrative penalty the actual costs of investigating and prosecuting the violation.

(b) The amount of the penalty may not exceed $1,500 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts or resistance to efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 31 (H.B. 1311), Sec. 10, eff. September 1, 2019.

Sec. 1002.453. ADMINISTRATIVE PROCEDURE. (a) The board shall adopt rules of procedure for the imposition of an administrative

penalty.

(b) Rules adopted under this section must conform to the requirements of Chapter 2001, Government Code.

(c) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.454. OPTIONS FOLLOWING FINAL ORDER: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) On receipt of a copy of an affidavit under Subsection (b)(2), the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the

enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.455. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.456. JUDICIAL REVIEW. The order of the board is subject to judicial review.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

Sec. 1002.457. REMITTANCE OF PENALTY AND INTEREST. (a) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty. If the court does not sustain the occurrence of the violation, the court shall order that a penalty is not owed.

(b) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(c) Interest accrues under Subsection (b)(1) at the rate

charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBCHAPTER K. OTHER ENFORCEMENT PROVISIONS

Sec. 1002.501. INJUNCTION. The board may seek an injunction against a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.004(a), eff. Sept. 1, 2003.

SUBTITLE B. REGULATION OF ARCHITECTURE AND RELATED PRACTICES

CHAPTER 1051. TEXAS BOARD OF ARCHITECTURAL EXAMINERS; GENERAL PROVISIONS AFFECTING ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS; PROVISIONS AFFECTING ONLY ARCHITECTS

ARTICLE 1. GENERAL PROVISIONS; BOARD OF ARCHITECTURAL EXAMINERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1051.001. DEFINITIONS. In this subtitle:

(1) "Architect" means a person registered under this chapter to engage in the practice of architecture.

(2) "Board" means the Texas Board of Architectural Examiners.

(3) "Interior design" means the:

(A) identification, research, or development of a creative solution to a problem relating to the function or quality of an interior environment;

(B) performance of a service relating to an interior space, including programming, design analysis, space planning of non-load-bearing interior construction, and application of aesthetic principles, by using specialized knowledge of interior construction, building codes, equipment, materials, or furnishings; or

(C) preparation of an interior design plan, specification, or related document about the design of a non-load-bearing interior space.

(4) "Interior designer" means a person registered under this subtitle to practice interior design.

(5) "Landscape architect" means a person registered under this subtitle to practice landscape architecture.

(6) "Landscape architecture":

(A) means the art and science of landscape analysis, landscape planning, and landscape design;

(B) includes the performance of professional services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:

(i) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(ii) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(iii) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(a) the preparation, review, and analysis of master and site plans for landscape use and development;

(b) the analysis of environmental and physical considerations related to land use;

(c) the preparation of drawings, construction documents, and specifications; and

(d) construction observation;

(iv) design coordination and review of technical submissions, plans, and construction documents prepared by persons working under the direction of the landscape architect;

(v) the preparation of feasibility studies, statements of probable construction costs, and reports and site selection for landscape development and preservation;

(vi) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(vii) the analysis and design of:

(a) site landscape grading and drainage;

(b) systems for landscape erosion and sediment

control; and

(c) pedestrian walkway systems;

(viii) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(ix) the collaboration of landscape architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(x) field observation of landscape site construction, revegetation, and maintenance; and

(C) does not include:

(i) traffic, roadway, or pavement engineering;

(ii) the design of utilities;

(iii) the engineering or study of hydrologic management of stormwater systems or floodplains;

(iv) the making of final plats; or

(v) a service or function within the practice of architecture, engineering, or public surveying as defined by this chapter or Chapter 1001 or 1071.

(7) "Practice of architecture" means a service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters. The term includes:

(A) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(B) preparing, or supervising and controlling the preparation of, the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Section 1051.606(a)(4);

(C) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in Paragraph (B) for any building, group of buildings, or environs requiring an architect;

(D) programming for construction projects, including

identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(E) recommending and overseeing appropriate construction project delivery systems;

(F) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(G) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(H) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.04, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 208 (H.B. 1573), Sec. 1, eff. September 1, 2005.

Sec. 1051.0015. PURPOSE OF REGISTRATION REQUIREMENT. The purpose of Section 1051.701(a) is to:

(1) safeguard life, health, property, and the public welfare; and

(2) protect the public against the irresponsible practice of architecture.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.051, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 1, eff. September 1, 2007.

Sec. 1051.0016. PRACTICES OF ARCHITECTURE AND ENGINEERING. (a) In this chapter, "architectural plans and specifications" include:

(1) floor plans and details:

(A) depicting the design of:

(i) internal and external walls and floors, including simple foundations;

(ii) internal spaces of a building; and

(iii) vertical circulation systems, including accessibility ramps, stair systems, elevators, and escalators; and

(B) implementing programming, regulatory, and accessibility requirements for a building;

(2) general cross-sections and detailed wall sections depicting building components from a hypothetical cut line through a building to include the building's mechanical, electrical, plumbing, or structural systems;

(3) reflected ceiling plans and details depicting:

(A) the design of the location, materials, and connections of the ceiling to the structure; and

(B) the integration of the ceiling with electrical, mechanical, lighting, sprinkler, and other building systems;

(4) finish plans or schedules depicting surface materials on the interior and exterior of the building;

(5) interior and exterior elevations depicting the design of materials, locations, and relationships of components and surfaces;

(6) partition, door, window, lighting, hardware, and fixture schedules;

(7) manufacturer or fabricator drawings that are integrated into the construction documents; and

(8) specifications describing the nature, quality, and execution of materials for construction of the elements of the building depicted in the plans prepared by the architect.

(b) The preparation of architectural plans and specifications for the following tasks is within the scope of practice of both engineering and architecture:

(1) site plans depicting the location and orientation of a building on the site based on:

(A) a determination of the relationship of the intended use with the environment, topography, vegetation, climate, and geographic aspects; and

(B) the legal aspects of site development, including setback requirements, zoning and other legal restrictions, and surface drainage;

(2) the depiction of the building systems, including

structural, mechanical, electrical, and plumbing systems, in:

(A) plan views;

(B) cross-sections depicting building components from a hypothetical cut line through a building; and

(C) the design of details of components and assemblies, including any part of a building exposed to water infiltration or fire-spread considerations;

(3) life safety plans and sheets, including accessibility ramps and related code analyses; and

(4) roof plans and details depicting the design of roof system materials, components, drainage, slopes, and directions and location of roof accessories and equipment not involving structural engineering calculations.

(c) The following activities may be performed by either an engineer or an architect:

(1) programming for construction projects, including:

(A) identification of economic, legal, and natural constraints; and

(B) determination of the scope of functional elements;

(2) recommending and overseeing appropriate construction project delivery systems;

(3) consulting with regard to, investigating, and analyzing the design, form, materials, and construction technology used for the construction, enlargement, or alteration of a building or its environment; and

(4) providing expert opinion and testimony with respect to issues within the responsibility of the engineer or architect.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. 2284), Sec. 2, eff. September 1, 2011.

Sec. 1051.002. EFFECT ON MUNICIPALITY. This subtitle does not:

(1) preempt a municipal ordinance; or

(2) restrict or expand the authority of a municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.04, eff. Sept. 1, 2003.

Sec. 1051.003. APPLICATION OF SUNSET ACT. The Texas Board of Architectural Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this subtitle expires September 1, 2033.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.004 and amended by Acts 2003, 78th, ch. 331, Sec. 1.04, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.06, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 1, eff. September 1, 2013.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.15, eff. June 18, 2023.

SUBCHAPTER B. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

Sec. 1051.101. BOARD MEMBERSHIP. (a) The Texas Board of Architectural Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four architect members registered under this chapter;

(2) one interior designer member registered under Chapter 1053;

(3) one landscape architect member registered under Chapter 1052; and

(4) three members who represent the public, at least one of whom is a person with a physical disability.

(b) Not more than one board member may be:

(1) a stockholder or owner of an interest in a school or college that teaches architecture, interior design, or landscape architecture; or

(2) a full-time member of the faculty or administration of the architecture, interior design, or landscape architecture department of a school or college whose position is the primary employment of the board member.

(c) Except as provided by Subsection (a)(4), appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.06, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 2, eff. September 1, 2007.

Sec. 1051.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of architecture, interior design, or landscape architecture;

(2) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of architecture, interior design, or landscape architecture; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of architecture, interior design, or landscape architecture.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.07, eff. Sept. 1, 2003.

Sec. 1051.104. TERMS; VACANCY. (a) Board members serve staggered six-year terms. The terms of three members expire on January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a replacement to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.105. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 1051.101;

(2) does not maintain during service on the board the qualifications required by Section 1051.101;

(3) is ineligible for membership under Section 1051.102 or 1051.103;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by

the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.08, eff. Sept. 1, 2003.

Sec. 1051.106. PER DIEM; REIMBURSEMENT. (a) A board member is entitled to receive a per diem for each day that the member engages in board business.

(b) A board member is entitled to receive reimbursement for travel expenses, including food, lodging, and transportation expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.107. OFFICERS. (a) The governor shall designate one board member as presiding officer to serve in that capacity at the pleasure of the governor.

(b) The board annually shall elect from its members an assistant presiding officer.

(c) The board shall appoint a secretary-treasurer of the board to serve at the pleasure of the board.

(d) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(41).

(e) Repealed by Acts 2003, 78th Leg., ch. 285, Sec. 31(41).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 285, Sec. 31(41), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 3, eff. September 1, 2007.

Sec. 1051.108. MEETINGS. (a) The board shall hold at least two regular meetings each year at a time and place determined by the board to:

(1) transact its business; and

(2) examine each applicant for registration under this chapter.

(b) Special meetings of the board must be called by the presiding officer or, if the presiding officer is absent from the state or is unable to act, by the assistant presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.109. OFFICE LOCATION. The board shall maintain an office in Austin.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.110. BOARD MEMBER ACTIVITIES. Membership on the board does not prohibit a member from performing any work or providing any service on a state, county, municipal, or other public building or work for a fee or other direct compensation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.111. FILING OF OATH. Before assuming the duties of office, each board member shall file with the secretary of state a copy of the constitutional oath of office taken by the member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.112. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of

the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this subtitle;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Acts 2003, 78th Leg., ch. 331, Sec. 1.09, eff. Sept. 1, 2003.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1051.151. EXECUTIVE DIRECTOR; DUTIES REGARDING MONEY. (a) The board may employ an executive director to conduct the affairs of the board under the board's direction. The executive director shall receive a salary in an amount determined by the board.

(b) The executive director shall receive and account for any money derived, including any fee collected, under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.152. PERSONNEL. The board shall employ clerical and other assistants as necessary to properly perform the board's work.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.153. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.11, eff. Sept. 1, 2003.

Sec. 1051.154. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.11, eff. Sept. 1, 2003.

Sec. 1051.155. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.156. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with federal and state law and a description of reasonable methods to achieve compliance with federal and state law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.11, eff. Sept. 1, 2003.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1051.201. SCOPE OF ADMINISTRATIVE AUTHORITY. The powers granted and duties delegated to the board under this chapter are in addition to the powers granted and duties delegated to the board under Chapters 1052 and 1053.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.202. GENERAL RULEMAKING AUTHORITY. The board shall adopt reasonable rules and bylaws and prescribe forms as necessary to administer or enforce this subtitle, including rules regulating the

practices of architecture, landscape architecture, and interior design.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.14, eff. Sept. 1, 2003.

Sec. 1051.203. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt rules restricting advertising or competitive bidding by a certificate holder except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the board may not include a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the use of a certificate holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the certificate holder; or

(4) restricts the certificate holder's advertisement under a trade name.

(c) The board shall adopt rules to prevent a person regulated by the board from submitting a competitive bid to, or soliciting a competitive bid on behalf of, a governmental entity that is prohibited by Subchapter A, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.15, eff. Sept. 1, 2003.

Sec. 1051.204. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection or copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this subtitle.

(b) The board, acting through the attorney general, may bring

an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) any county in which the board may conduct a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.207 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.16, 1.17, eff. Sept. 1, 2003.

Sec. 1051.205. PUBLIC RECORDS. (a) The secretary-treasurer of the board shall keep records of all board proceedings and all money received or spent by the board.

(b) The records must include a record of:

(1) each issuance or renewal of a certificate of registration; and

(2) each refusal to issue or renew a certificate of registration.

(c) The records shall be open to public inspection at all reasonable times.

(d) The board shall maintain records or an official roster showing:

(1) the name and, if known, the address of each person registered under this subtitle; and

(2) the date and registration number of each certificate of registration issued under this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code, Sec. 1051.208 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 1.18, 1.19, eff. Sept. 1, 2003.

Sec. 1051.206. BOARD SEAL. (a) The board shall adopt a seal and shall use the seal on official documents.

(b) The design of the seal must include a five-pointed star with a circular border and the words "Texas Board of Architectural Examiners" within the border.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.209 by Acts 2003, 78th Leg., ch. 331, Sec. 1.20, eff. Sept. 1, 2003.

Sec. 1051.207. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The board shall adopt rules as necessary to comply with Chapter 53.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.208. STANDARDS OF CONDUCT. The board by rule shall establish standards of conduct for persons regulated under this subtitle.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.209. ATTORNEY GENERAL AS LEGAL ADVISOR. The attorney general shall act as legal advisor to the board and shall provide legal assistance to enforce this subtitle. This section does not relieve a local prosecuting attorney of any duty under the law.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.210. TECHNOLOGY POLICY. The board shall develop and implement a policy that requires the executive director and board employees to research and propose appropriate technological solutions to improve the board's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the board through the Internet;

(2) ensure that persons who want to use the board's services are able to:

(A) interact with the board through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and be developed through the board's planning process.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

Sec. 1051.211. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 1.21, eff. Sept. 1, 2003.

ARTICLE 2. GENERAL PROVISIONS APPLYING TO ARCHITECTS, LANDSCAPE ARCHITECTS, AND INTERIOR DESIGNERS

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1051.251. PUBLIC INTEREST INFORMATION; DISPLAY OF CERTIFICATE. (a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. The information must include information for prospective applicants regarding the qualifications and requirements for registration under

this subtitle.

(b) The board shall make the information available to the public and appropriate state agencies.

(c) In each written contract in which a person registered under this subtitle agrees to practice the person's profession in this state, the person shall include the name, mailing address, and telephone number of the board and a statement that the board has jurisdiction over a person registered under this subtitle.

(d) A person registered under this subtitle shall prominently display the person's certificate of registration in the person's place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.04, 2.05, eff. Sept. 1, 2003.

Sec. 1051.252. COMPLAINTS. (a) The board by rule shall establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients. The rules must address each phase of the complaint process, including complaint intake, preliminary evaluation, investigation, adjudication, sanctions, and public disclosure.

(b) The board shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this subtitle;

(2) on a sign prominently displayed in the place of business of each person regulated under this subtitle; or

(3) in a bill for service provided by a person regulated under this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.06, eff. Sept. 1, 2003.

Sec. 1051.253. COMPLAINT INFORMATION. (a) The board shall maintain a file on each complaint filed with the board that the board

has authority to resolve. The file must include:

(1) the name of the person who filed the complaint unless the complaint is filed anonymously;

(2) the date the complaint is received by the board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.06, eff. Sept. 1, 2003.

Sec. 1051.254. PUBLIC PARTICIPATION. (a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided access to the board's programs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.07, eff. Sept. 1, 2003.

SUBCHAPTER F. GENERAL REGISTRATION REQUIREMENTS

Sec. 1051.301. ADMINISTRATION OF EXAMINATION TO DISABLED APPLICANTS. The board by rule shall ensure that an examination under this subtitle is administered to applicants with disabilities in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and its subsequent amendments.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.302. EXAMINATION FEE. Notwithstanding Section 2113.203, Government Code, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.303. REFUND POLICY. The board by rule shall adopt a comprehensive refund policy for applicants who are not able to take an examination under this subtitle after paying the examination fee. The comprehensive refund policy must include:

(1) a list of the circumstances under which the board will refund the examination fee to an applicant who does not take the examination;

(2) the required documentation to support a refund request;

(3) the deadline for applying for a refund; and

(4) the amount of the examination fee the board may retain to cover administrative costs.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.304. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes an examination under this subtitle, the board shall notify the person of the results of the examination.

(b) If an examination is graded or reviewed by a testing service:

(1) the board shall notify the person of the results of the examination not later than the 14th day after the date the board receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the person of the reason for the delay before the 90th day.

(c) The board may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails an examination administered under this subtitle, the board shall provide the person with an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.3041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR REGISTRATION. (a) The board shall require that an applicant for a certificate of registration submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a certificate of registration to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history check of each applicant for a certificate of registration using information:

(1) provided by the individual under this section; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history check.

Added by Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 2, eff.

September 1, 2013.

Sec. 1051.305. RECIPROCITY. (a) The board may waive any prerequisite to obtaining a certificate of registration under this subtitle for an applicant who holds a license or certificate of registration issued by another jurisdiction:

(1) that has licensing or registration requirements substantially equivalent to those of this state; or

(2) with which this state has a reciprocity agreement.

(b) The board may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

(c) An applicant under this section must:

(1) apply in the same manner and form as any other applicant under this subtitle, except that the application must be accompanied by a fee in an amount set by the board as reasonable and necessary to cover the cost of processing and investigating the application and issuing the certificate of registration; and

(2) provide the board with documents and other evidence that substantiates the applicant's qualifications.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.306. FIRM REGISTRATION. The board by rule may require a firm, partnership, corporation, or association that engages in the practice of architecture, landscape architecture, or interior design to register with the board under this subtitle.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.307. ROSTER OF APPLICANTS. The board shall maintain a roster of all persons who apply for a certificate of registration under this subtitle. The roster must include the following information about each applicant:

(1) the applicant's name, address, and age;

(2) the date the applicant filed the application;

(3) the applicant's place of business;
(4) the applicant's educational and other qualifications;
(5) whether the applicant took the examination;
(6) whether the board issued a certificate of registration to the applicant or rejected the application;
(7) the date of the board's action on the application; and
(8) any other information the board considers necessary.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.08, eff. Sept. 1, 2003.

Sec. 1051.308. INTERN DEVELOPMENT PROGRAM. The board shall allow a graduate student engineer enrolled in an accredited architectural professional degree program in this state to enroll concurrently in the intern development program required by board rules before an applicant may take the examination under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. 2284), Sec. 3, eff. September 1, 2011.

SUBCHAPTER G. RENEWAL OF CERTIFICATE OF REGISTRATION

Sec. 1051.351. ANNUAL RENEWAL REQUIRED. (a) A person who is otherwise eligible to renew a certificate of registration under this subtitle may renew an unexpired certificate by paying the required renewal fee to the board before the expiration date of the certificate. A person whose certificate of registration has expired may not engage in activities that require registration until the certificate of registration has been renewed.

(b) The board by rule may adopt a system under which certificates of registration expire on various dates during the year.

(c) For the year in which the certificate of registration expiration date is changed, the board shall prorate renewal fees on a monthly basis so that each certificate holder pays only that portion of the registration fee that is allocable to the number of months during which the certificate is valid. On renewal of the certificate of registration on the new expiration date, the total registration renewal fee is payable.

(c-1) Notwithstanding Subsection (a), a person who holds a

certificate of registration issued under Chapter 1053 without examination may not renew the certificate on or after September 1, 2027, unless, before September 1, 2027, the person has passed the registration examination adopted by the board under Section 1053.154 and in effect on January 1, 2014. This subsection expires January 1, 2029.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 3, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 825 (H.B. 1657), Sec. 1, eff. September 1, 2017.

Sec. 1051.352. NOTICE OF EXPIRATION. Not later than the 30th day before the date a person's certificate of registration is scheduled to expire, the board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.

Sec. 1051.353. PROCEDURE FOR RENEWAL. (a) A person may renew an unexpired certificate of registration by submitting proof satisfactory to the board of compliance with the board's continuing education requirement.

(b) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the board a renewal fee that is equal to 1-1/2 times the required renewal fee set by the board under Section 1051.651(b).

(c) A person whose certificate of registration has been expired for more than 90 days but less than two years may renew the certificate by paying to the board a renewal fee equal to two times the required renewal fee set by the board under Section 1051.651(b).

(d) A person whose certificate of registration has been expired

for two years or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

(e) A person who was registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding the date of the application may obtain a new certificate of registration without reexamination. The person must pay to the board a fee that is equal to two times the required renewal fee set by the board under Section 1051.651(b) for the certificate of registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 4, eff. September 1, 2013.

Sec. 1051.3531. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR RENEWAL. (a) An applicant renewing a certificate of registration shall submit a complete and legible set of fingerprints for purposes of performing a criminal history check of the applicant as provided by Section 1051.3041.

(b) The board may not renew the certificate of registration of a person who does not comply with the requirement of Subsection (a).

(c) A holder of a certificate of registration is not required to submit fingerprints under this section for the renewal of the certificate of registration if the holder has previously submitted fingerprints under:

(1) Section 1051.3041 for the initial issuance of the certificate of registration; or

(2) this section as part of a prior renewal of a certificate of registration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 5, eff. September 1, 2013.

Sec. 1051.354. FEE EXEMPTION FOR MILITARY PERSONNEL. (a) A person required to register under this subtitle who is on active duty as a member of the United States military is exempt from the payment of any fee during the person's term of service if the person:

(1) is in good standing as an architect, landscape architect, or interior designer in this state; or

(2) was in good standing as an architect, landscape architect, or interior designer in this state at the time the person entered into military service.

(b) A person who is exempt from payment of a fee under Subsection (a):

(1) is exempt for the remainder of the fiscal year during which the person's active duty status expires; and

(2) is entitled to have the person's name continued on the list of architects, landscape architects, or interior designers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.10, eff. Sept. 1, 2003.

Sec. 1051.355. INACTIVE STATUS. (a) The board by rule shall establish a procedure by which a person who is registered under this subtitle may place the person's certificate of registration on inactive status. The person must apply for inactive status, on a form prescribed by the board, before the person's certificate of registration expires.

(b) A person whose certificate of registration is on inactive status must pay an annual renewal fee on a date and in a manner prescribed by board rule. The board shall prescribe the renewal fee under this subsection in an amount equal to the sum of:

(1) the amount determined by the board as reasonable and necessary to cover the costs of administering this section; and

(2) except as provided by Subsection (e), the additional amount required under Section 1051.651(b)(1)(B) for the examination fee scholarship program.

(c) A person whose certificate of registration is on inactive status may not perform any activity regulated under this subtitle.

(d) The board shall remove the person's certificate of registration from inactive status if the person:

(1) requests in writing that the board remove the person's certificate of registration from inactive status;

(2) pays an administrative fee; and

(3) complies with education or other requirements established by board rule.

(e) The additional amount of the renewal fee described by Subsection (b)(2) does not apply to a person registered under Chapter 1052 or 1053.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.11, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.054(a), eff. Sept. 1, 2003.

Sec. 1051.356. CONTINUING EDUCATION. (a) The board shall recognize, prepare, or administer continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by the board to keep the person's certificate of registration.

(b) The continuing education programs:

(1) must include courses relating to sustainable or energy-efficient design standards; and

(2) may include courses relating to:

(A) health, safety, or welfare; or

(B) barrier-free design.

(b-1) As part of a certificate holder's continuing education requirements for each annual registration period, the board by rule shall require the certificate holder to complete at least one hour of continuing education relating to sustainable or energy-efficient design standards.

(c) The board may recognize the continuing education programs of:

(1) a nationally acknowledged organization involved in providing, recording, or approving postgraduate education; and

(2) any other sponsoring organization or individual whose presentation is approved by the board as qualifying in design or construction health, safety, or welfare.

(d) A person is exempt from the continuing education requirements of this section if the person is, as of September 1,

1999, engaged in teaching the subject matter for which the person is registered under this subtitle as a full-time faculty member or other permanent employee of an institution of higher education, as defined by Section 61.003, Education Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.12, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 376 (S.B. 541), Sec. 1, eff. September 1, 2007.

Sec. 1051.357. EMERITUS STATUS. (a) The board by rule shall establish a procedure by which an architect may place the architect's certificate of registration on emeritus status. The architect must apply for emeritus status, on a form prescribed by the board, before the architect's certificate of registration expires.

(b) An architect is eligible for emeritus status if the architect:

(1) has been an architect for 20 years or more; and

(2) is 65 years of age or older.

(c) An architect whose certificate of registration is on emeritus status:

(1) may engage in the practice of architecture as defined by Sections 1051.001(7)(D), (E), (F), (G), and (H);

(2) may prepare plans and specifications described by Sections 1051.606(a)(3) and (4);

(3) may use the title "Emeritus Architect" or "Architect Emeritus";

(4) must pay a renewal fee on a date and in a manner prescribed by board rule; and

(5) is exempt from continuing education requirements under this chapter.

(d) The board shall change an architect's certificate of registration from emeritus status to active status if the architect:

(1) requests in writing that the board remove the architect's certificate of registration from emeritus status;

(2) pays an administrative fee; and

(3) complies with education or other requirements

established by board rule.

(e) The renewal fee charged under Subsection (c) may not exceed an amount reasonable and necessary to recover the costs to administer this section.

Added by Acts 2003, 78th Leg., ch. 1064, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 5, eff. September 1, 2007.

SUBCHAPTER H. GENERAL DISCIPLINARY PROCEDURES

Sec. 1051.401. RIGHT TO HEARING; APPEAL. (a) If the board proposes to suspend, revoke, or refuse to renew a person's certificate of registration, the person is entitled to a hearing. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings.

(b) The board shall prescribe procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by or is appealable to the board.

(c) A hearing under this section is a contested case subject to Chapter 2001, Government Code, and must be conducted under rules enacted by the State Office of Administrative Hearings under Chapter 2003, Government Code.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.13, eff. Sept. 1, 2003.

Sec. 1051.402. PUBLICATION OF DISCIPLINARY ORDERS AND SANCTIONS. The board by rule shall provide for the publication of all disciplinary orders and sanctions imposed by the board under this subtitle. A certificate holder may not negotiate with the board to keep the board from publishing the settlement of a disciplinary action.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.13, eff. Sept. 1, 2003.

Sec. 1051.403. REINSTATEMENT. The board may issue or reinstate

a certificate of registration under this section to an applicant who:

(1) pays all fees and costs incurred by the board as a result of any proceeding that led to the denial, revocation, or suspension; and

(2) presents evidence to support the issuance or reinstatement of the certificate.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.13, eff. Sept. 1, 2003.

SUBCHAPTER I. ADMINISTRATIVE PENALTY

Sec. 1051.451. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) Except as provided by Subsection (b), the board may impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under this subtitle, regardless of whether the person holds a certificate of registration issued under this subtitle.

(b) The board may not impose an administrative penalty under this subtitle on a person for conduct related to the practice of interior design unless the person holds a certificate of registration as an interior designer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.15, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 13.001, eff. September 1, 2019.

Sec. 1051.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) In determining the amount of a penalty, the board shall consider:

(1) the seriousness of the conduct that is the ground for imposing the penalty, including:

(A) the nature, circumstances, extent, and gravity of any relevant act or omission; and

(B) the hazard or potential hazard created to the health or safety of the public;

(2) the economic damage to property caused by the conduct;

(3) the history of previous grounds for imposing a penalty on the person who engaged in the conduct;

(4) the amount necessary to deter future conduct that is a ground for imposing a penalty;

(5) efforts to correct the conduct that is a ground for imposing a penalty; and

(6) any other matter that justice may require.

(c) The board by rule shall adopt an administrative penalty schedule for violations of this subtitle or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board must provide the administrative penalty schedule to the public on request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.16, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 316 (H.B. 1717), Sec. 6, eff. September 1, 2013.

Sec. 1051.453. REPORT AND NOTICE OF VIOLATION AND ADMINISTRATIVE PENALTY. (a) If, after investigating the facts surrounding an alleged ground for imposing an administrative penalty, the executive director determines that a ground exists for imposing an administrative penalty, the executive director may issue a report stating:

(1) the facts on which the determination is based; and

(2) the executive director's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) The executive director shall base the recommended amount of the penalty on the seriousness of the ground for imposing the penalty after considering the factors listed in Section 1051.452.

(c) Not later than the 14th day after the date the report is issued, the executive director shall give written notice of the report to the person on whom the penalty may be imposed. The notice

must:

(1) include a brief summary of the charges;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of a ground for imposing the penalty, the amount of the penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.454. ADMINISTRATIVE PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives notice under Section 1051.453(c), the person may:

(1) accept the executive director's determination, including the recommended administrative penalty; or

(2) request a hearing on the determination.

(b) If the person accepts the executive director's determination, the board by order shall approve the determination and impose the recommended penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.455. HEARING. (a) If the person requests a hearing or fails to respond timely to notice under Section 1051.453(c), the board shall set a hearing and give notice of the hearing to the person.

(b) A proceeding under this section relating to an architect, a landscape architect, or an interior designer is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 6, eff. September 1, 2007.

Sec. 1051.456. NOTICE OF BOARD ORDER. The executive director shall give notice of the board's order to the person on whom the penalty is imposed. The notice must include:

(1) the findings of fact and conclusions of law, separately

stated;

(2) the amount of the administrative penalty ordered, if any;

(3) a statement of the right of the person on whom the penalty is imposed to judicial review of the board's order; and

(4) other information required by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.457. OPTIONS FOLLOWING BOARD ORDER: PAY OR APPEAL. (a) If the person on whom an administrative penalty is imposed holds a certificate of registration issued by the board, the board's order becomes final as provided by Section 2001.144, Government Code. If the person does not hold a certificate of registration issued by the board, the board's order becomes final on the 20th day after the date the order is issued.

(b) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty in full; or

(2) file a petition for judicial review contesting the occurrence of the ground for imposing a penalty, the amount of the penalty, or both.

(c) Within the period prescribed by Subsection (b), a person who acts under Subsection (b)(2) shall:

(1) pay the penalty to the board for placement in an escrow account;

(2) post with the board a supersedeas bond that is in a form approved by the board for the amount of the penalty and that is effective until judicial review of the board's order is final; or

(3) file with the board an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to post the bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 7, eff. September 1, 2007.

Sec. 1051.458. COLLECTION OF ADMINISTRATIVE PENALTY. If the

person on whom an administrative penalty is imposed does not meet the requirements of Section 1051.457, the board may refer the matter to the attorney general for enforcement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.459. JUDICIAL REVIEW. Judicial review of the order of the board imposing an administrative penalty is under the substantial evidence rule and is instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1051.460. REMITTANCE OF ADMINISTRATIVE PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not imposed by the court, the board shall:

(1) remit the appropriate amount plus accrued interest to the person on whom the penalty is imposed, if the person paid the penalty; or

(2) execute a release of the bond, if the person posted a supersedeas bond.

(b) The interest remitted under Subsection (a)(1) is at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1051.501. GENERAL ENFORCEMENT AUTHORITY. (a) A violation of this subtitle shall be reported to the board.

(b) The board shall ensure that enforcement action is taken against a person who violates this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.18, eff. Sept. 1,

2003.

Sec. 1051.502. INJUNCTIVE RELIEF. (a) The board may bring an action in its name to enjoin or restrain a person from violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the professions regulated under this subtitle.

(b) An action under this section must be brought in:

(1) the county in which the defendant resides; or

(2) the county in which the violation occurred or is threatened to occur.

(c) In an action brought under this section, the board may be represented by the attorney general, the district attorney or the county attorney, and by other counsel as necessary.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.19, eff. Sept. 1, 2003.

Sec. 1051.503. CUMULATIVE EFFECT OF PROVISIONS. An action or penalty authorized by this subtitle is in addition to any other action or penalty provided by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.504 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 2.20, eff. Sept. 1, 2003.

Sec. 1051.504. CEASE AND DESIST ORDER. (a) If it appears to the board that a person who is not registered under this subtitle is violating or has violated this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the practice of architecture, landscape architecture, or interior design, the board after providing to the person notice and the opportunity for a hearing may issue a cease and desist order prohibiting the conduct described in the notice.

(b) If the person does not request a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board may:

(1) issue a cease and desist order; and

(2) refer the violation to the attorney general for further action.

(c) If the person requests a hearing before the 22nd day after the date of receiving notice under Subsection (a), the board shall hold the hearing not later than the 30th day after the date the board receives the request for the hearing.

(d) A hearing under this section is subject to Chapter 2001, Government Code.

(e) The board shall adopt rules necessary to implement this section.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.21, eff. Sept. 1, 2003.

Sec. 1051.505. RESTITUTION. (a) The board may order a person registered under this subtitle to pay restitution to a consumer instead of or in addition to assessing an administrative penalty under this chapter.

(b) The amount of restitution ordered by the board may not exceed the amount the consumer paid the person for a service regulated under this subtitle. The board may not include an estimation of other damages or harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 2.21, eff. Sept. 1, 2003.

ARTICLE 3. PROVISIONS APPLYING ONLY TO ARCHITECTS

SUBCHAPTER K. GENERAL PROVISIONS: ARCHITECTS

Sec. 1051.551. ENFORCEMENT BY CERTAIN PUBLIC OFFICIALS. (a) A public official of this state or of a political subdivision of this state who is responsible for enforcing laws that affect the practice of architecture may accept an architectural plan, specification, or other related document only if the plan, specification, or document is prepared by an architect or by a person acting under the supervision of an architect, as evidenced by the architect's seal.

(b) Subsection (a) does not apply to a plan, specification, or document that is subject to an exemption from this chapter.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.03, eff. Sept. 1, 2003.

SUBCHAPTER L. EXEMPTIONS

Sec. 1051.601. ACTIVITIES OF LICENSED ENGINEER. (a) This chapter and any rule adopted under this chapter do not limit the right of an engineer licensed under Chapter 1001 to perform an act, service, or work within the scope of the practice of engineering as defined by that chapter.

(b) This chapter does not prohibit an engineer licensed under Chapter 1001 from:

(1) planning and supervising work on:

(A) a construction project primarily intended for engineering use, including a railroad, hydroelectric work, or industrial plant; or

(B) a structure incidental to a construction project described by Paragraph (A); or

(2) planning, designing, or supervising the mechanical, electrical, or structural features of a building.

(c) This chapter does not prohibit an engineer who has an architectural engineering degree from a public or private college or university from using the title "architectural engineer." (V.A.C.S. Art. 249a, Secs. 10(b) (part), (g), (j); 16(c).)

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.051 by Acts 2003, 78th Leg., ch. 331, Sec. 3.05, eff. Sept. 1, 2003.

Sec. 1051.602. ACTIVITIES OF ARCHITECT OR ENGINEER EMPLOYEE. This chapter does not limit a drafter, clerk of the works, superintendent, or other employee of an architect or engineer from acting under the architect's or engineer's instructions, control, or supervision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.052, by Acts 2003, 78th Leg., ch. 331, Sec. 3.06, eff. Sept. 1, 2003.

Sec. 1051.603. LANDSCAPE ARCHITECTURE. This article does not:

(1) limit the practice of landscape architecture; or

(2) prohibit the use of the title "Landscape Architect" by a qualified person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.053 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.07, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.007(d), eff. September 1, 2005.

Sec. 1051.604. INTERIOR DESIGN. This article does not:

(1) limit the practice of interior design; or

(2) prohibit the use of the title "Interior Designer" by a qualified person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.054 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.08, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.007(e), eff. September 1, 2005.

Sec. 1051.605. EMPLOYEE OF CERTAIN UTILITIES OR AFFILIATES. (a) This chapter does not limit the activities of a regular full-time employee of a privately owned public utility or cooperative utility or of the utility's affiliate who performs services exclusively for the utility or the affiliate.

(b) This chapter does not limit the use of a job title or personnel classification by an employee described by Subsection (a) if the employee does not use:

(1) the title or classification in connection with an offer to the public to perform architectural services; and

(2) a name, title, or other word that tends to convey the impression that a person not registered as an architect under this chapter is offering to the public to perform architectural services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003;

Renumbered from Occupations Code Sec. 1051.055 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.09, 3.10, eff. Sept. 1, 2003.

Sec. 1051.606. ACTIVITIES OF CERTAIN PERSONS NOT REPRESENTED TO BE ARCHITECTS. (a) This chapter does not apply to a person who does not represent that the person is an architect or architectural designer, or use another business or professional title that uses a form of the word "architect," and who:

(1) engages in or is employed in the practice of architecture solely as an officer or employee of the United States;

(2) is a legally qualified architect residing in another state or country who:

(A) does not open or maintain an office in this state; and

(B) complies with the requirements of Subsection (b);

(3) prepares architectural plans and specifications for or observes or supervises the alteration of a building, unless the alteration involves a substantial structural or exitway change to the building; or

(4) prepares the architectural plans and specifications for or observes or supervises the construction, enlargement, or alteration of a privately owned building that is:

(A) a building used primarily for:

(i) farm, ranch, or agricultural purposes; or

(ii) storage of raw agricultural commodities;

(B) a single-family or dual-family dwelling or a building or appurtenance associated with the dwelling;

(C) a multifamily dwelling not exceeding a height of two stories and not exceeding 16 units per building;

(D) a commercial building that does not exceed a height of two stories or a square footage of 20,000 square feet; or

(E) a warehouse that has limited public access.

(b) A person described by Subsection (a)(2) who agrees to perform or represents that the person is able to perform a professional service involved in the practice of architecture may perform an architectural service in this state only if, in performing the service, the person:

(1) employs an architect who is a resident of this state as a consultant; or

(2) acts as a consultant of an architect in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.056 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.11, 3.12, eff. Sept. 1, 2003.

Sec. 1051.607. LIST OF ENGINEERS PERMITTED TO ENGAGE IN PRACTICE OF ARCHITECTURE. (a) The board shall maintain a list of engineers licensed under Chapter 1001 who are authorized to engage in the practice of architecture based on an administrative finding of experience under this section. The board shall post the list on the board's Internet website.

(b) An engineer may not engage or offer to engage in the practice of architecture unless:

(1) the engineer is listed under Subsection (a); and

(2) the engineer is in good standing with the Texas Board of Professional Engineers and Land Surveyors.

(c) The board shall list each engineer who:

(1) applies for placement on the list not later than January 1, 2012;

(2) was licensed to practice engineering under Chapter 1001 before January 1, 2011; and

(3) provides to the board documentation of at least three projects that:

(A) were prepared by the engineer;

(B) were adequately and safely built before January 1, 2011; and

(C) are described by Section 1051.703(a) or were not exempt under Section 1051.606(a)(4).

(d) Documentation that is sufficient to satisfy the requirement of Subsection (c)(3) includes plans, specifications, photographs, and other records establishing that the architectural design work was performed by the engineer. The documentation is subject to verification by the board. The board shall complete the verification not later than the 120th day after the date the board receives the documentation.

(e) The board shall issue written confirmation to each engineer listed under this section that, notwithstanding the requirements of Section 1051.701, the engineer may lawfully engage and offer to

engage in the practice of architecture without a license under this chapter.

(f) If the board declines to list an engineer who applies under this section, the engineer may request a contested case hearing to be conducted under Chapter 2001, Government Code. The motion for rehearing required by Chapter 2001, Government Code, shall be filed with the State Office of Administrative Hearings. The decision of the administrative law judge in the contested case is final and may be appealed in a Travis County district court.

(g) The board and the Texas Board of Professional Engineers and Land Surveyors shall pay equally the costs of a contested case.

(h) The Texas Board of Professional Engineers and Land Surveyors has exclusive regulatory oversight over an engineer listed under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. 2284), Sec. 4, eff. September 1, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.13, eff. September 1, 2019.

SUBCHAPTER M. BOARD POWERS AND DUTIES: ARCHITECTS

Sec. 1051.651. FEES. (a) The board may set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering this chapter, unless the amount of the fee is set by this chapter or by the General Appropriations Act.

(b) The board shall set the required renewal fee for:

(1) a resident of this state in an amount that is equal to the sum of:

(A) the amount determined by the board as reasonable and necessary to cover administrative costs; and

(B) an amount determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under Section 1051.653; and

(2) nonresidents in an amount determined by the board.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is

reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003.

Sec. 1051.653. EXAMINATION FEE SCHOLARSHIPS. (a) The board shall administer scholarships to applicants for examination under this article in a manner the board determines best serves the public purpose of:

(1) promoting the professional needs of the state;

(2) increasing the number of highly trained and educated architects available to serve the residents of the state;

(3) improving the state's business environment and encouraging economic development; and

(4) identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture.

(b) In determining what best serves the public purpose of the scholarships as described by Subsection (a), the board shall consider at least the financial need of each person who applies for a scholarship under this section.

(c) The amount of the scholarship is the lesser of:

(1) $500; or

(2) the amount of the required examination fee.

(d) Scholarships under this section are funded by the amount added to each renewal fee under Section 1051.651(b). The board may not use more than 15 percent of the amount appropriated to the board for scholarships under this section to pay the costs of administering the scholarships.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 15.007(f), eff. September 1, 2005.

Sec. 1051.654. DESIGN AND APPROVAL OF ARCHITECT'S SEAL. (a) The board shall prescribe and approve the seal to be used by an architect.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Architect, State of Texas" must be used instead of "Texas Board of Architectural Examiners."

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.13, eff. Sept. 1, 2003.

SUBCHAPTER N. REGISTRATION OF ARCHITECTS

Sec. 1051.701. REGISTRATION REQUIRED. (a) A person may not engage in the practice of architecture, or offer or attempt to engage in the practice of architecture, as defined in Section 1051.001(7)(A), (B), or (C) unless the person is registered as an architect under this chapter.

(b) A firm, partnership, corporation, or association, including a firm, partnership, corporation, or joint stock association engaged in the practice of engineering under Section 1001.405, may engage in the practice of architecture, represent to the public that the entity is engaged in the practice of architecture or is offering architectural services, or use the word "architect" or "architecture" in any manner in its name only if any practice of architecture or architectural service performed on behalf of the entity is performed by or through a person registered as an architect under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.301 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.15, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 208 (H.B. 1573), Sec. 3, eff. September 1, 2005.

Sec. 1051.702. USE OF ARCHITECT'S SEAL. (a) An architect shall maintain a seal as approved by the board and shall stamp or impress the seal on each drawing or specification issued from the architect's office for use in this state.

(b) A person may not use or attempt to use an architect's seal,

a similar seal, or a replica of the seal, unless the use is by or through an architect.

(c) An architect may not permit a person who is not an architect to use the architect's seal without the architect's personal supervision.

(d) A person may not present or attempt to use as the person's own the seal of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.302 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.16, 3.17, eff. Sept. 1, 2003.

Sec. 1051.703. CERTAIN PLANS OR SPECIFICATIONS TO BE PREPARED ONLY BY ARCHITECT. (a) An architectural plan or specification for any of the following may be prepared only by an architect:

(1) a new building or modification of an existing building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietor or operator of the building, regardless of the number of stories or square footage of the building;

(2) a new building having construction costs exceeding $100,000 that is to be:

(A) constructed and owned by a state agency, a political subdivision of this state, or any other public entity in this state; and

(B) used for education, assembly, or office occupancy; or

(3) an alteration or addition having construction costs exceeding $50,000 that:

(A) is to be made to an existing building that:

(i) is owned by a state agency, a political subdivision of this state, or any other public entity in this state; and

(ii) is or will be used for education, assembly, or office occupancy; and

(B) requires the removal, relocation, or addition of a wall or partition or the alteration or addition of an exit.

(b) This section does not prohibit an owner of a building from contracting with an architect or engineer as the prime design

professional for a building construction, alteration, or addition project. Designation as the prime design professional does not expand the scope of practice of an architect or engineer beyond the scope of practice that the architect or engineer is authorized to practice under Chapter 1001 or 1051.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.303 by Acts 2003, 78th Leg., ch. 331, Sec. 3.18, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1157 (H.B. 2284), Sec. 5, eff. September 1, 2011.

Sec. 1051.704. EXAMINATION; ISSUANCE OF CERTIFICATE. The board shall:

(1) examine each applicant for registration on any architectural subject or procedure the board requires; and

(2) issue a certificate of registration to each applicant who passes the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.304 by Acts 2003, 78th Leg., ch. 331, Sec. 3.19, eff. Sept. 1, 2003.

Sec. 1051.705. ELIGIBILITY AND APPLICATION FOR EXAMINATION. (a) A person may apply for an examination under this chapter if the person:

(1) is a graduate of a recognized university or college of architecture approved by the board; and

(2) has satisfactory experience in architecture, in an office or offices of one or more legally practicing architects, as prescribed by board rule.

(b) The applicant must present to the board:

(1) a diploma showing that the applicant meets the education requirement established by Subsection (a)(1); and

(2) evidence acceptable to the board that the applicant meets the experience requirement established by Subsection (a)(2).

(c) The board shall set an examination fee in an amount reasonable and necessary to cover the cost of the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.305 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.20, 3.21, eff. Sept. 1, 2003.

SUBCHAPTER O. DISCIPLINARY PROCEDURES FOR ARCHITECTS

Sec. 1051.751. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 1051.752, the board shall:

(1) revoke, suspend, or refuse to renew a certificate of registration;

(2) reprimand a certificate holder; or

(3) impose an administrative penalty on a person under Subchapter I.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension of a person's certificate is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.401 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.23, eff. Sept. 1, 2003.

Sec. 1051.752. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1051.751 for:

(1) a violation of this subtitle or a board rule adopted under this subtitle that applies to architects;

(2) a failure to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department;

(3) a cause for which the board may refuse to issue a certificate of registration;

(4) gross incompetency in the practice of architecture;

(5) recklessness in the practice of architecture, including recklessness in the construction or alteration of a building by an architect designing, planning, or observing the construction or alteration;

(6) dishonest practice in the practice of architecture by the holder of a certificate of registration;

(7) giving false or forged evidence to the board or a board member in obtaining or assisting another person to obtain a certificate of registration;

(8) aiding or abetting a person not registered under this subtitle in violating this subtitle; or

(9) using or attempting to use as the person's own the certificate of registration of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003; Renumbered from Occupations Code Sec. 1051.402 and amended by Acts 2003, 78th Leg., ch. 331, Sec. 3.23, eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.055(a), eff. Sept. 1, 2003.

SUBCHAPTER P. OTHER PENALTIES AND ENFORCEMENT PROVISIONS: ARCHITECTS

Sec. 1051.801. CRIMINAL PENALTY. (a) A person, whether acting independently or on behalf of the person's firm, commits an offense if, in violation of this chapter, the person:

(1) engages in the practice of architecture, or offers or attempts to engage in the practice of architecture;

(2) prepares architectural plans or specifications for and observes or supervises the construction, enlargement, or alteration of a building for another person; or

(3) advertises or puts out a sign, card, or drawing designating the person as an architect or architectural designer or uses another business or professional title that uses a form of the word "architect."

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $250 and not more than $1,000. Each day of violation is a separate offense.

(c) In an action brought under this section, the board may be represented by a district or county attorney or by other counsel as necessary.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 3.24, eff. Sept. 1, 2003.

CHAPTER 1052. LANDSCAPE ARCHITECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1052.003. PRACTICE OF LANDSCAPE ARCHITECTURE. (a) A person may not engage in the practice of landscape architecture unless the person holds a certificate of registration under this chapter or the person:

(1) holds a license or permit issued by the Department of Agriculture, if that license or permit authorizes the person to engage in the business of selling nursery stock in this state;

(2) is a building designer;

(3) is a landscape contractor;

(4) is a landscape designer;

(5) is a golf course designer or planner involved in services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and supervision, if the dominant purpose of the service is golf course design or planning;

(6) makes a plan, drawing, or specification for personal use, if the plan, drawing, or specification is for property that is owned by that person;

(7) makes a plan, drawing, or specification for a single-family residence;

(8) makes a plan, drawing, or specification for a multifamily residential project that is not an assisted living facility as defined by Section 247.002, Health and Safety Code;

(9) makes a plan, drawing, or specification for residential housing owned and operated by an institution of higher education as defined by Section 61.003, Education Code;

(10) is engaged in the location, arrangement, and design of any tangible objects and features that are incidental and necessary to landscape development, preservation, and aesthetic and functional enhancement, if that engagement is for:

(A) the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture; or

(B) the making of land surveys for official approval or

recording;

(11) is licensed in this state to practice:

(A) architecture;

(B) engineering; or

(C) land surveying;

(12) is primarily engaged in the business of park and recreation planning and involved in services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and supervision, if the dominant purpose of those services is park and recreation design and planning;

(13) is primarily engaged in maintaining an existing landscape;

(14) makes a plan, drawing, or specification for property primarily used for farm, ranch, agriculture, wildlife management, or habitat restoration purposes; or

(15) is a volunteer acting under the direction of a governmental entity for a public purpose.

(b) A person described by Subsection (a) may not use the term "landscape architect," "landscape architectural," or "landscape architecture," or any similar term, to describe the person or the services the person provides unless the person holds a certificate of registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.057(b), eff. Sept. 1, 2003.

Sec. 1052.004. ACTIVITIES OF LANDSCAPE ARCHITECT EMPLOYEE. This chapter does not limit the ability of an employee of a landscape architect to act under the landscape architect's instructions, control, or supervision.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 4.01, eff. Sept. 1, 2003.

Sec. 1052.005. ACTIVITIES OF CERTAIN PERSONS NOT REPRESENTED TO BE LANDSCAPE ARCHITECTS. (a) This chapter does not apply to a person:

(1) who does not represent that the person is a landscape

architect or use a business or professional title that uses a form of the phrase "landscape architect"; and

(2) who is a landscape architect licensed or registered in another state or country who:

(A) does not open or maintain a business in this state; and

(B) complies with the requirements of Subsection (b).

(b) A person described by Subsection (a) who agrees to perform or represents that the person is able to perform a professional service involved in the practice of landscape architecture may perform a landscape architectural service in this state only if, in performing the service, the person:

(1) employs a landscape architect registered under this chapter as a consultant; or

(2) acts as a consultant of a landscape architect registered in this state.

Added by Acts 2003, 78th Leg., ch. 331, Sec. 4.01, eff. Sept. 1, 2003.

SUBCHAPTER B. BOARD POWERS AND DUTIES

Sec. 1052.054. FEES. (a) The board may set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering this chapter, unless the amount of the fee is set by the General Appropriations Act.

(b) The board shall set the fee for renewal of a certificate of registration in an amount that is reasonable and necessary to defray administrative costs.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.02, eff. Sept. 1,

2003.

Sec. 1052.056. DESIGN AND APPROVAL OF LANDSCAPE ARCHITECT'S SEAL. (a) The board shall prescribe and approve the seal to be used by a landscape architect.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Landscape Architect, State of Texas" must be used instead of "Texas Board of Architectural Examiners." (V.A.C.S. Art. 249c, Sec. 8D(b).)

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.03, 4.04, eff. Sept. 1, 2003.

SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 1052.151. REGISTRATION REQUIRED; EXCEPTIONS. (a) A person may not engage in the practice of landscape architecture unless the person:

(1) holds a certificate of registration under this chapter; or

(2) is authorized under Section 1052.003 to engage in the practice of landscape architecture without holding a certificate of registration.

(b) Except as provided by Subsections (c) and (d), a person may not represent the person to be a landscape architect or use the term "landscape architect," "landscape architectural," or "landscape architecture" or any similar term to describe the person's services unless the person holds a certificate of registration under this chapter.

(c) A business entity may engage in the practice of landscape architecture without holding a certificate of registration under this chapter if:

(1) the entity is authorized under Section 1052.003 to engage in the practice of landscape architecture without holding a certificate of registration; or

(2) any landscape architecture performed on behalf of the entity is performed by or under the supervision and control of a person who:

(A) holds a certificate of registration under this chapter; and

(B) is a regular, full-time employee of the entity.

(d) A business entity may use the term "landscape architect," "landscape architectural," or "landscape architecture" or any similar term to describe the entity or the services provided by the entity without holding a certificate of registration under this chapter if any practice of landscape architecture performed on behalf of the entity is performed by or under the supervision and control of a person who:

(1) holds a certificate of registration under this chapter; and

(2) is a regular, full-time employee of the entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.057(c), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 8, eff. September 1, 2007.

Sec. 1052.1515. ACCEPTANCE OF ASSIGNMENTS. A landscape architect may not accept an assignment to engage in the practice of landscape architecture unless:

(1) the landscape architect is qualified by education, examination, or experience to adequately and competently perform the assignment; or

(2) if the landscape architect is not qualified to perform part of the assignment, that part of the assignment is to be performed by persons who are qualified.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.057(d), eff. Sept. 1, 2003.

Sec. 1052.152. USE OF LANDSCAPE ARCHITECT'S SEAL. (a) A landscape architect shall maintain a seal as described by Section 1052.056 and shall stamp or impress the seal on each drawing or specification issued from the landscape architect's office for use in this state.

(b) A person may not use or attempt to use a landscape architect's seal, a similar seal, or a replica of the seal unless the use is by or through a landscape architect.

(c) A landscape architect may not permit a person who is not a landscape architect to use the landscape architect's seal without the landscape architect's personal supervision.

(d) A person may not present or attempt to use as the person's own the seal of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1052.153. EXAMINATION. (a) A person must pass an examination prescribed by the board to receive a certificate of registration as a landscape architect.

(b) The board shall prescribe the scope of the examination and the methods of procedure with special reference to the applicant's ability that will ensure the safety of the public welfare and property rights. The board by rule may adopt the examination of the Council of Landscape Architectural Registration Boards or the examination of a nationally recognized testing organization whose examination is determined by the board to be at least as stringent as the council's examination.

(c) The board shall approve the examination.

(d) The board at least annually shall administer the examination or enter into a contract with a nationally recognized testing organization to administer the examination. The board, in the manner provided by board rule, shall provide reasonable public notice of the dates on and locations at which each portion of the examination will be administered.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 9, eff. September 1, 2007.

Sec. 1052.154. ELIGIBILITY FOR EXAMINATION; APPLICATION. (a) A person may apply for examination under this chapter if the person:

(1) is a graduate of a landscape architecture educational program recognized and approved by the board; and

(2) has satisfactory experience in landscape architecture as required by board rule.

(b) The application must be accompanied by a fee set by the board in an amount that is reasonable and necessary to defray administrative costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1052.155. EMERITUS STATUS; LANDSCAPE ARCHITECTS. (a) The board by rule shall establish a procedure by which a landscape architect may place the landscape architect's certificate of registration on emeritus status. The landscape architect must apply for emeritus status, on a form prescribed by the board, before the landscape architect's certificate of registration expires.

(b) A landscape architect is eligible for emeritus status if the landscape architect:

(1) has been a landscape architect for 20 years or more; and

(2) is 65 years of age or older.

(c) A landscape architect whose certificate of registration is on emeritus status:

(1) may engage in the practice of landscape architecture to the extent that a person who does not hold a certificate of registration as a landscape architect may under Section 1052.003(a);

(2) may use the title "Emeritus Landscape Architect" or "Landscape Architect Emeritus";

(3) must pay a renewal fee on a date and in a manner prescribed by board rule; and

(4) is exempt from continuing education requirements under this chapter.

(d) The board shall change a landscape architect's certificate of registration from emeritus status to active status if the landscape architect:

(1) requests in writing that the board change the landscape architect's certificate of registration from emeritus status to active status;

(2) pays an administrative fee; and

(3) complies with education or other requirements established by board rule.

(e) The renewal fee charged under Subsection (c) may not exceed an amount reasonable and necessary to recover the costs to administer this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 10, eff. September 1, 2007.

SUBCHAPTER F. DISCIPLINARY PROCEDURES

Sec. 1052.251. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for discipline exists under Section 1052.252, the board shall:

(1) revoke, suspend, or refuse to renew a certificate of registration;

(2) reprimand a certificate holder; or

(3) impose an administrative penalty on a person under Subchapter I, Chapter 1051.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.05, eff. Sept. 1, 2003.

Sec. 1052.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1052.251 for:

(1) violating this subtitle or a board rule adopted under this subtitle that applies to landscape architects;

(2) using fraud or deceit in obtaining a certificate of registration;

(3) giving false or forged evidence to the board or a member of the board in obtaining or assisting another person to

obtain a certificate of registration;

(4) using or attempting to use as the person's own the certificate of registration of another person;

(5) holding the person out to the public as an engineer or using the term "engineer," "engineered," "professional engineer," or "P.E." or any other term tending to create the impression that the person is authorized to practice engineering or another profession unless the person is licensed under Chapter 1001 or another licensing law of this state, as applicable;

(6) holding the person out to the public as a surveyor or using the term "surveyor," "surveyed," or "registered professional land surveyor" or any other term tending to create the impression that the person is authorized to practice surveying or another profession unless the person is licensed under Chapter 1071 or another licensing law of this state, as applicable;

(7) committing an act of recklessness, gross incompetency, or misconduct in the practice of landscape architecture;

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department;

(9) acting dishonestly in the practice of landscape architecture; or

(10) aiding or abetting a person not registered under this subtitle in violating this subtitle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 4.05, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.060(a), eff. Sept. 1, 2003.

CHAPTER 1053. INTERIOR DESIGNERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1053.002. APPLICATION. (a) This chapter does not apply to:

(1) a person who:

(A) does not use the title "interior designer" and does not use the term "interior design" to describe a service the person offers or performs; and

(B) is an interior designer licensed or registered in another state or country who:

(i) does not open or maintain a business in this state; and

(ii) complies with the requirements of Subsection (b);

(2) a person who is registered to practice architecture in this state; or

(3) a person who does not use a business or professional title that uses the phrase "registered interior designer."

(b) A person described by Subsection (a)(1) who agrees to perform or represents that the person is able to perform an interior design service may perform an interior design service in this state if, in performing the service, the person:

(1) employs an interior designer registered under this chapter as a consultant; or

(2) acts as a consultant of an interior designer registered in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.01, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 13 (H.B. 1484), Sec. 1, eff. May 12, 2009.

Sec. 1053.003. LIMITATION ON INTERIOR DESIGNERS. Registration under this chapter does not authorize an interior designer to:

(1) plan or design architectural interior construction;

(2) engineer a building system, including a structural, electrical, plumbing, heating, ventilating, air-conditioning, or mechanical system;

(3) engage in the practice of engineering as described in Chapter 1001; or

(4) engage in the practice of architecture as described in Chapter 1051.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER B. BOARD POWERS AND DUTIES

Sec. 1053.052. FEES. (a) The board shall set the following fees, unless otherwise set in the General Appropriations Act, in amounts that are reasonable and necessary to cover the costs of administering this chapter:

(1) a registration application fee;

(2) an annual registration renewal fee;

(3) a reciprocal registration fee; and

(4) an examination fee.

(b) The board may set fees for the following services, unless otherwise set in the General Appropriations Act, in amounts that are reasonable and necessary to cover the costs of administering this chapter:

(1) providing a duplicate certificate of registration;

(2) providing a roster of interior designers;

(3) reinstating a revoked or suspended certificate of registration; and

(4) performing any other board action involving an administrative expense.

(c) The board may accept payment of a fee by electronic means. The board may charge a fee to process the payment made by electronic means. The board shall set the processing fee in an amount that is reasonably related to the expense incurred by the board in processing the payment made by electronic means, not to exceed five percent of the amount of the fee for which the payment is made.

(d) A fee set by the board under this section may not be used for the purpose of earning additional revenue for the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.02, eff. Sept. 1, 2003.

Sec. 1053.053. GIFTS AND GRANTS. (a) The board may accept a gift or grant from any source to pay for any activity under this chapter.

(b) A gift or grant must be accepted in an open meeting by a majority of the board and reported in the minutes with the name of the donor and purpose of the gift or grant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.058. DESIGN AND APPROVAL OF INTERIOR DESIGNER'S SEAL. (a) The board shall prescribe and approve the seal to be used by an interior designer.

(b) The design of the seal must be the same as the design used by the board, except that the words "Registered Interior Designer, State of Texas" must be used instead of "Texas Board of Architectural Examiners."

Added by Acts 2003, 78th Leg., ch. 331, Sec. 5.03, eff. Sept. 1, 2003.

SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 1053.151. REGISTRATION REQUIRED. A person other than an interior designer may not represent that the person is a "registered interior designer" by using that title or by using words that imply that the person is a registered interior designer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 13 (H.B. 1484), Sec. 2, eff. May 12, 2009.

Sec. 1053.152. ELIGIBILITY REQUIREMENTS. (a) The board shall establish the qualifications for the issuance or renewal of a certificate of registration under this chapter.

(b) To be eligible for a certificate of registration, an applicant must:

(1) meet the qualifications established by the board under Subsection (a);

(2) pass the registration examination; and

(3) pay the required fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.153. APPLICATION FOR CERTIFICATE OF REGISTRATION. Each application for a certificate of registration must:

(1) be on a form prescribed and furnished by the board; and

(2) include a:

(A) verified statement of the applicant's education; and

(B) detailed summary of the applicant's interior design work experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.154. EXAMINATION REQUIRED. (a) An applicant for a certificate of registration must pass the examination adopted by the board.

(b) The examination must cover subjects established by and must be graded according to board rules. The board by rule may adopt the examination of the National Council for Interior Design Qualification or a comparable examination.

(c) The board shall determine the time and place for each examination. The examination shall be offered at least once a year. The board shall give reasonable public notice of the examination in the manner provided by board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.155. APPLICATION FOR ADMISSION TO EXAMINATION. (a) An applicant for a certificate of registration must apply to the board, on a form prescribed by the board, for admission to the registration examination.

(b) An application for admission to the registration examination must be accompanied by evidence satisfactory to the board that the applicant has satisfied the educational and professional experience requirements for the examination adopted by the board under Section 1053.154.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 956 (S.B. 1932), Sec. 2, eff. September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 956 (S.B. 1932), Sec. 1, eff.

September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 956 (S.B. 1932), Sec. 2, eff. September 1, 2017.

Sec. 1053.156. EMERITUS STATUS; INTERIOR DESIGNERS. (a) The board by rule shall establish a procedure by which an interior designer may place the interior designer's certificate of registration on emeritus status. The interior designer must apply for emeritus status, on a form prescribed by the board, before the interior designer's certificate of registration expires.

(b) An interior designer is eligible for emeritus status if the interior designer:

(1) has been an interior designer for 20 years or more; and

(2) is 65 years of age or older.

(c) An interior designer whose certificate of registration is on emeritus status:

(1) may use the title "Emeritus Interior Designer" or "Interior Designer Emeritus";

(2) must pay a renewal fee on a date and in a manner prescribed by board rule; and

(3) is exempt from continuing education requirements under this chapter.

(d) The board shall change an interior designer's certificate of registration from emeritus status to active status if the interior designer:

(1) requests in writing that the board change the interior designer's certificate of registration from emeritus status to active status;

(2) pays an administrative fee; and

(3) complies with education or other requirements established by board rule.

(e) The renewal fee charged under Subsection (c) may not exceed an amount reasonable and necessary to recover the costs to administer this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1360 (H.B. 2060), Sec. 11, eff. September 1, 2007.

Sec. 1053.159. ISSUANCE OF CERTIFICATE. The board shall issue a certificate of registration to an applicant who presents satisfactory evidence that the applicant complies with all registration requirements under this chapter and under board rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1053.160. USE OF INTERIOR DESIGNER'S SEAL. (a) An interior designer shall maintain a seal described by Section 1053.058 and shall stamp or impress the seal on each drawing or specification issued from the interior designer's office for use in this state.

(b) A person may not use or attempt to use an interior designer's seal, a similar seal, or a replica of the seal unless the use is by or through an interior designer.

(c) An interior designer may not permit a person who is not an interior designer to use the interior designer's seal without the interior designer's personal supervision.

(d) A person may not present or attempt to use as the person's own the seal of another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.04, eff. Sept. 1, 2003.

SUBCHAPTER F. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 1053.251. DISCIPLINARY POWERS OF BOARD. (a) On a determination that a ground for disciplinary action exists under Section 1053.252, the board shall:

(1) revoke, suspend, or refuse to renew a certification of registration;

(2) reprimand a certificate holder; or

(3) impose an administrative penalty on a certificate holder under Subchapter I, Chapter 1051.

(b) The board may place on probation a person whose certificate of registration is suspended. If the suspension is probated, the board may require the person to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board;

or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) On a determination that a ground for disciplinary action exists under Section 1053.252, the board shall deny registration of an applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.05, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 13.002, eff. September 1, 2019.

Sec. 1053.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1053.251 for:

(1) violating this subtitle or a board rule adopted under this subtitle that applies to interior designers;

(2) being convicted of a felony or of a misdemeanor involving moral turpitude;

(3) using fraud or deceit in obtaining or attempting to obtain a certificate of registration;

(4) committing an act of recklessness, gross incompetency, or misconduct in the practice of interior design;

(5) practicing in a manner detrimental to the public health, safety, or welfare;

(6) advertising in a manner that tends to deceive or defraud the public;

(7) aiding or abetting any person not registered under this subtitle in violating this subtitle;

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department;

(9) giving false or forged evidence to the board or a member of the board in obtaining or assisting another person to obtain a certificate of registration;

(10) using or attempting to use as the person's own the

certificate of registration of another person; or

(11) acting dishonestly in the practice of interior design.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 331, Sec. 5.06, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.062(a), eff. Sept. 1, 2003.

SUBTITLE C. REGULATION OF LAND SURVEYING AND RELATED PRACTICES
CHAPTER 1071. LAND SURVEYORS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1071.001. SHORT TITLE. This chapter may be cited as the Professional Land Surveying Practices Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Engineers and Land Surveyors.

(2) "Commissioner" means the commissioner of the General Land Office.

(3) "Delegated responsible charge" means the direct control of professional surveying work performed under the supervision of a registered professional land surveyor.

(4) "Land surveyor" means a registered professional land surveyor or licensed state land surveyor.

(5) "Licensed state land surveyor" means a surveyor licensed by the board to survey land in which the state or the permanent school fund has an interest or perform other original surveys for the purpose of filing field notes in the General Land Office.

(6) "Professional surveying" means the practice of land, boundary, or property surveying or other similar professional practices. The term includes:

(A) performing any service or work the adequate performance of which involves applying special knowledge of the principles of geodesy, mathematics, related applied and physical sciences, and relevant laws to the measurement or location of sites, points, lines, angles, elevations, natural features, and existing

man-made works in the air, on the earth's surface, within underground workings, and on the beds of bodies of water to determine areas and volumes for:

(i) locating real property boundaries;

(ii) platting and laying out land and subdivisions of land; or

(iii) preparing and perpetuating maps, record plats, field note records, easements, and real property descriptions that represent those surveys; and

(B) consulting, investigating, evaluating, analyzing, planning, providing an expert surveying opinion or testimony, acquiring survey data, preparing technical reports, and mapping to the extent those acts are performed in connection with acts described by this subdivision.

(7) "Registered professional land surveyor" means a person registered by the board as a registered professional land surveyor.

(8) "State land surveying" means the science or practice of land measurement according to established and recognized methods engaged in as a profession or service for the public for compensation and consisting of the following activities conducted when the resulting field notes or maps are to be filed with the General Land Office:

(A) determining by survey the location or relocation of original land grant boundaries and corners;

(B) calculating area and preparing field note descriptions of surveyed and unsurveyed land or land in which the state or the permanent school fund has an interest; and

(C) preparing maps showing the survey results.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 611 (H.B. 2179), Sec. 1, eff. June 17, 2005.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.51, eff. September 1, 2019.

Sec. 1071.004. APPLICATION OF CHAPTER. This chapter does not require the use of a registered professional land surveyor to establish an easement or a construction estimate that does not

involve the monumentation, delineation, or preparation of a metes and bounds description.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER F. REGISTRATION, LICENSING, AND CERTIFICATION REQUIREMENTS

Sec. 1071.251. REGISTRATION, LICENSE, OR CERTIFICATE REQUIRED. (a) In this section, "offer to practice" means to represent by verbal claim, sign, letterhead, card, or other method that a person is registered or licensed to perform professional surveying in this state.

(b) A person may not engage in the practice of professional surveying unless the person is registered, licensed, or certified as provided by this chapter.

(c) A person may not offer to practice professional surveying in this state unless the person is registered or licensed as provided by this chapter.

(d) A person may not use in connection with the person's name or use or advertise a title or description that tends to convey the impression that the person is a professional land surveyor unless the person is registered or licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.252. APPLICATION REQUIREMENTS. (a) An applicant for certification as a surveyor-in-training, registration as a registered professional land surveyor, or licensing as a licensed state land surveyor must file a written application with the board accompanied by an application fee in an amount determined by the board.

(b) An application must be made on a form prescribed and furnished by the board and contain statements that show the applicant's education and experience. The application must contain a detailed summary of the applicant's education and experience and references from at least three registered professional land surveyors having personal knowledge of the applicant's surveying experience. The board shall accept an application that meets board requirements regardless of whether the application is notarized.

(c) After the board determines that the applicant is qualified to take the appropriate section of the examination under Section

1071.256, the board shall set the examination section the applicant is approved to take and notify the applicant of the examination section and of the time and place of the examination. The applicant may take the examination section on payment of an examination fee in an amount determined by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 15, eff. Sept. 1, 2003.

Sec. 1071.253. SURVEYOR-IN-TRAINING CERTIFICATE. (a) An applicant for a surveyor-in-training certificate must:

(1) have earned a bachelor of science degree in surveying from an accredited institution of higher education;

(2) have:

(A) earned a bachelor's degree from an accredited institution of higher education that included at least 32 semester hours in a combination of courses acceptable to the board in:

(i) civil engineering;

(ii) land surveying;

(iii) mathematics;

(iv) photogrammetry;

(v) forestry;

(vi) land law; or

(vii) the physical sciences; and

(B) completed at least one year of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying;

(3) have:

(A) earned an associate degree in surveying from an accredited institution of higher education; and

(B) completed at least two years of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying;

(4) have:

(A) successfully completed a course of instruction consisting of 32 semester hours in land surveying or the equivalent number of semester hours in board-approved courses related to

surveying; and

(B) completed at least two years of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying; or

(5) have:

(A) graduated from an accredited high school;

(B) completed at least four years of experience acceptable to the board in delegated responsible charge as a subordinate to a registered professional land surveyor actively engaged in professional surveying; and

(C) provided evidence satisfactory to the board that the applicant is self-educated in professional surveying.

(b) On proof that an applicant has the qualifications required by Subsection (a), the board shall allow the applicant to take an examination consisting of parts of the examination under Section 1071.256, the contents of which are as determined or approved by the board.

(c) The board shall issue a surveyor-in-training certificate to an applicant who passes the applicable parts of the examination taken under Subsection (b). The certificate is valid for eight years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 53 (S.B. 1340), Sec. 1, eff. May 10, 2007.

Sec. 1071.254. QUALIFICATIONS FOR REGISTRATION AS REGISTERED PROFESSIONAL LAND SURVEYOR. (a) An applicant for registration as a registered professional land surveyor must:

(1) hold a certificate as a surveyor-in-training;

(2) have at least two years of experience satisfactory to the board as a surveyor-in-training in performing surveying in delegated responsible charge as a subordinate to a surveyor registered or licensed to engage in the practice of surveying in this state or in another state having registration or licensing requirements equivalent to the requirements of this state; and

(3) have earned an associate or bachelor's degree from an accredited institution of higher education that included at least 32

semester hours in a combination of courses acceptable to the board in:

(A) civil engineering;
(B) land surveying;
(C) mathematics;
(D) photogrammetry;
(E) forestry;
(F) land law; or
(G) the physical sciences.

(b) An applicant is entitled to registration as a registered professional land surveyor if the applicant meets the qualifications prescribed by Subsection (a) and is approved to take and passes the required sections of the examination prescribed under Section 1071.256.

(c) The board by rule may authorize the waiver of the requirement that an applicant for registration as a registered professional land surveyor have a bachelor's degree if the board determines:

(1) the applicant possesses sufficient qualifications to justify the waiver; and

(2) the applicant's registration does not pose a threat to the public health, safety, or welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.52, eff. September 1, 2019.

Sec. 1071.255. QUALIFICATIONS FOR LICENSING AS LICENSED STATE LAND SURVEYOR; OATH. (a) A registered professional land surveyor is entitled to be licensed as a licensed state land surveyor if the person is approved to take and passes the appropriate sections of the examination prescribed under Section 1071.256.

(b) The board may not issue a license to a licensed state land surveyor until the applicant takes the official oath stating that the person will faithfully, impartially, and honestly perform all the duties of a licensed state land surveyor to the best of the person's skill and ability in all matters in which the person may be employed.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523

), Sec. 1.58(6), eff. September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(6), eff. September 1, 2019.

Sec. 1071.256. EXAMINATION. (a) The board shall prescribe the scope of the written examination and examination procedures with special reference to the applicant's ability in order to protect the public safety, welfare, and property rights.

(b) The examination for an applicant for registration as a registered professional land surveyor must be developed and given as provided by this chapter under board rules designed to determine the knowledge and ability of the applicant.

(c) The examination for an applicant for licensing as a licensed state land surveyor must be developed under board rules and include examination on:

(1) the theory of surveying;

(2) the law of land boundaries;

(3) the history and functions of the General Land Office; and

(4) other matters pertaining to surveying as determined by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.259. REGISTRATION OF OUT-OF-STATE SURVEYORS. (a) The board may waive any registration requirement for an applicant who holds a license from another state having registration or licensing requirements substantially equivalent to the registration requirements of this state.

(b) The board may issue a certificate of registration as a registered professional land surveyor to an applicant under this section who meets all waived and unwaived registration requirements and who:

(1) applies to the board for a certificate of registration;

(2) pays a fee set by the board; and

(3) passes an examination on Texas surveying.

(c) The board shall determine the contents of the examination under Subsection (b)(3). The examination may not exceed four hours in duration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 18, eff. Sept. 1, 2003.

Sec. 1071.260. REGISTRATION NUMBER; FORM OF CERTIFICATE OR LICENSE. (a) The board shall issue to each registered professional land surveyor a registration number that may not be assigned to or used by any other surveyor. The number must be on the certificate of registration and recorded in the board's permanent records and is the surveyor's registration number for use on all official documents.

(b) Each certificate of registration and license issued by the board must show the full name of the registration holder or license holder and shall be signed by the presiding officer and the executive director of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.261. DISPLAY OF CERTIFICATE AND LICENSE. (a) An original or renewal certificate of registration or license is evidence that the person whose name and registration number appear on the document is qualified to practice as a registered professional land surveyor or licensed state land surveyor.

(b) A person holding a certificate of registration or license shall display the certificate or license at the person's place of business or practice. The person shall be prepared to substantiate that the certificate or license has been renewed for the current year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.262. REPLACEMENT OF REVOKED, LOST, OR DESTROYED CERTIFICATE OR LICENSE. The board may issue, on payment of a fee set by the board and subject to board rules, a new certificate of registration or license to replace a certificate or license that has been revoked, lost, destroyed, or mutilated.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 19, eff. Sept. 1, 2003.

SUBCHAPTER G. RENEWAL OF REGISTRATION AND LICENSE

Sec. 1071.301. LICENSE TERM AND RENEWAL. (a) The board by rule shall provide:

(1) that each certificate of registration or license under this chapter is valid for a term of one year or two years; and

(2) for the renewal of the certificate or license.

(a-1) The board by rule may adopt a system under which certificates of registration and licenses expire on various dates during the year.

(a-2) For the year in which the certificate or license expiration date is changed, the board shall prorate certificate and license fees on a monthly basis so that each certificate or license holder pays only that portion of the certificate or license fee that is allocable to the number of months during which the certificate or license is valid. On renewal of the certificate or license on the new expiration date, the total certificate or license renewal fee is payable.

(b) A renewal certificate must have the same registration number as the original certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 21, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.53, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.54, eff. September 1, 2019.

Sec. 1071.304. NOTICE OF FAILURE TO RENEW STATE LAND SURVEYOR LICENSE. The executive director shall immediately notify the commissioner when the license of a licensed state land surveyor expires due to the person's failure to timely renew the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.305. CONTINUING PROFESSIONAL EDUCATION. (a) As a condition for renewal of a certificate of registration, the board shall require a registered professional land surveyor to successfully complete continuing professional education courses as prescribed by board rule. The board's rules must provide that the continuing professional education requirement may be met by completing annually not more than 16 hours of professional development courses or programs.

(b) The board may also grant professional education credit for:

(1) satisfactory completion of academic work at an accredited institution;

(2) teaching or consulting in a program approved by the board; or

(3) authorship of a technical paper approved by the board.

(c) A registered professional land surveyor shall maintain records relating to the person's professional education activities. The records are subject to audit by the board on application by the person for renewal of registration.

(d) As a condition for retaining a surveyor-in-training certificate, the board shall require the certificate holder to successfully complete continuing professional education courses as prescribed by board rule. The certificate holder shall maintain records relating to the person's professional education activities. The records are subject to audit by the board as a condition for retaining the certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 53 (S.B. 1340), Sec. 2, eff. May 10, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1161 (H.B. 3114), Sec. 1, eff. September 1, 2009.

SUBCHAPTER H. PRACTICE OF LAND SURVEYING

Sec. 1071.351. PERFORMANCE OF LAND SURVEYING; OFFICIAL SEAL. (a) In this section, "employee" means a person who receives compensation for work performed under the direct supervision of a land surveyor.

(b) On receipt of a certificate of registration, a registered

professional land surveyor shall obtain an authorized seal bearing the person's name and registration number and the title "Registered Professional Land Surveyor."

(c) Each licensed state land surveyor shall obtain a seal of office. The seal must contain the license holder's official title, "Licensed State Land Surveyor," around the margin and the word "Texas" between the points of the star in the seal. A licensed state land surveyor shall attest with the seal all official acts authorized under law. An act, paper, or map of a licensed state land surveyor may not be filed in the county records of the General Land Office unless it is certified to under the surveyor's seal.

(d) A registration holder or license holder may not affix the person's name, seal, or certification to any plat, design, specification, or other professional surveying work that is prepared by a person who is not registered or licensed under this chapter unless the work is performed by an employee under the direct supervision of the registration holder or license holder.

(e) A registration holder or license holder may not allow a person who is not registered or licensed under this chapter to exert control over the end product of professional surveying work.

(f) If professional surveying is performed as a joint venture of an association of two or more firms, each firm shall use the seal of the surveyor having primary responsibility for the venture.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.352. SURVEYING BY BUSINESS ENTITY. (a) An association, partnership, or corporation may not offer professional surveying services unless the entity is registered with the board and a registered professional land surveyor is employed full-time where the services are offered.

(a-1) The board shall adopt rules prescribing the requirements for the registration of an entity described by Subsection (a).

(a-2) The board may refuse to issue or renew and may suspend or revoke the registration of a business entity and may impose an administrative penalty under Subchapter K, Chapter 1001, against the owner of a business entity for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity.

(b) A registered professional land surveyor or licensed state land surveyor may organize or engage in any form of individual or group practice of surveying allowed by state statute. The individual or group practice must properly identify the registered professional land surveyor or licensed state land surveyor who is responsible for the practice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1077 (H.B. 2820), Sec. 1, eff. June 15, 2007.
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.55, eff. September 1, 2019.

Sec. 1071.353. PRACTICE UNDER ASSUMED NAME. A person engaging in the practice of surveying in this state under any business title other than the real name of one or more persons authorized to engage in public or state land surveying, whether individually or as an association, partnership, or corporation, shall file with the board, in the manner prescribed by the board, a certificate stating the full name and place of residence of each person engaging in the practice and the place, including the street address, city, and zip code, where the practice or business is principally conducted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.354. JURISDICTION OF LICENSED STATE LAND SURVEYORS. A licensed state land surveyor may perform surveys under Section 21.011, Natural Resources Code, and is subject to the commissioner's direction in matters of land surveying in cases that come under the supervision of the commissioner. The jurisdiction of the license holder is coextensive with the limits of the state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.355. LICENSED STATE LAND SURVEYOR AS AGENT OF STATE. A licensed state land surveyor is an agent of this state when acting in that official capacity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.356. RESIGNATION OF LICENSED STATE LAND SURVEYOR. (a) A licensed state land surveyor may resign at any time by filing a written resignation with the board. On receipt of the resignation, the board shall inform the General Land Office.

(b) A licensed state land surveyor who resigns under this section is not entitled to reinstatement of the person's license. To obtain a new license, the person must meet the requirements for an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.357. COUNTY SURVEYORS. (a) A licensed state land surveyor may hold office as a county surveyor. If elected, the person must qualify as provided by law for county surveyors.

(b) The election of a licensed state land surveyor as county surveyor does not limit the jurisdiction of the license holder to that county, and the election of a county surveyor for any particular county does not prevent any licensed state land surveyor from performing the duties of a surveyor in that county.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.358. COURT ORDER FOR LICENSED STATE LAND SURVEYOR TO CROSS LAND. (a) A licensed state land surveyor engaged in surveying in the person's official capacity who is denied permission to cross land owned by a private party is entitled to a court order to enforce the license holder's authority to cross the land.

(b) The attorney general shall promptly apply for an order under this section from the district court. Venue for the action is in the county in which the land is located.

(c) The court shall grant the order on proof that the person is licensed under this chapter and acting in the person's official capacity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 158 (S.B. 1634), Sec. 1, eff. May 21, 2007.

Sec. 1071.3585. COURT ORDER FOR REGISTERED PROFESSIONAL LAND SURVEYOR TO CROSS LAND. (a) A registered professional land surveyor engaged in surveying who is denied permission to cross land owned by a person or entity may seek a court order authorizing the surveyor to cross the land.

(b) A registered professional land surveyor may apply for an order under this section from the district court. Venue for the action is in the county in which the land is located.

(c) If the registered professional land surveyor holds office as a county surveyor and is engaged in surveying in the person's official capacity, the county attorney may apply for an order under this section.

(d) The court shall grant the order on proof that:

(1) the person is a registered professional land surveyor acting in the person's official capacity as a county surveyor; or

(2) the person is a registered professional land surveyor and the issuance of a court order authorizing the person to cross the land is in the public's best interest.

Added by Acts 2007, 80th Leg., R.S., Ch. 158 (S.B. 1634), Sec. 2, eff. May 21, 2007.

Sec. 1071.359. LICENSED STATE LAND SURVEYOR FIELD NOTES. (a) Official field notes made by a licensed state land surveyor must be signed by the surveyor, followed by the designation "Licensed State Land Surveyor."

(b) Field notes and plats prepared by a licensed state land surveyor must conform to Sections 21.041 and 21.042, Natural Resources Code.

(c) Field notes made by a licensed state land surveyor in any county in this state are admissible in evidence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.360. DISCOVERY OF UNDISCLOSED LAND. A licensed state

land surveyor who discovers an undisclosed tract of public land shall:

(1) make that fact known to any person who has the tract enclosed; and

(2) forward a report of the existence of the tract and the tract's acreage to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.361. ACCESS TO COUNTY SURVEYOR RECORDS. (a) A licensed state land surveyor is entitled to access to a county surveyor's records for information and examination.

(b) An examination fee may not be charged if the investigation of the records is for the purpose of:

(1) making a survey of public land under the law regulating the sale or lease of public land; or

(2) identifying and establishing the boundaries of public land.

(c) A licensed state land surveyor who examines records under this section shall comply with any regulations prescribed by the county surveyor or the commissioners court for protecting and preserving the records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER I. DISCIPLINARY PROCEDURES

Sec. 1071.401. DISCIPLINARY POWERS OF BOARD. (a) The board shall revoke, suspend, or refuse to renew a certificate of registration or license, place on probation a person whose certificate or license has been suspended, or reprimand a registration holder or license holder for:

(1) fraud or deceit in obtaining a certificate or license under this chapter;

(2) gross negligence, incompetence, or misconduct in the practice of surveying as a land surveyor; or

(3) a violation of this chapter or a board rule adopted under this chapter.

(b) The license of a licensed state land surveyor is subject to revocation if the license holder is found to be directly or

indirectly interested in the purchase or acquisition of title to public land.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 24, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.56, eff. September 1, 2019.

Sec. 1071.402. DISCIPLINARY PROCEEDINGS. (a) The board may institute proceedings against a registration holder or license holder on the board's behalf without a formal written third-party complaint.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(12), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(12), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(12), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(12), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(12), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(12), eff. September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 25, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.58(12), eff. September 1, 2019.

Sec. 1071.403. RIGHT TO HEARING; ADMINISTRATIVE PROCEDURE. (a) If the board proposes to suspend or revoke a person's certificate of registration or license, the person is entitled to a hearing before the board or a hearings officer appointed by the board.

(b) The board shall prescribe procedures by which a decision to suspend or revoke a certificate of registration or license is made by or appealable to the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.4035. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION. (a) The board by rule shall establish guidelines for an informal settlement conference related to a complaint filed with the board regarding conduct regulated under this chapter.

(b) Subject to Subsection (c), the board may order a person licensed or registered under this chapter to pay restitution to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under Subchapter K, Chapter 1001.

(c) The amount of restitution ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the person for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 16, Sec. 26, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 1.57, eff. September 1, 2019.

Sec. 1071.404. PROBATION. (a) The board may require a person whose certificate of registration or license suspension is probated to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or renew professional education until the practitioner attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(b) The board by rule shall adopt written guidelines to ensure that probation is administered consistently.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 16, Sec. 27, eff. Sept. 1, 2003.

Sec. 1071.405. REISSUANCE OF CERTIFICATE OR LICENSE. The board for reasons the board determines sufficient may reissue a certificate of registration or license to a surveyor whose certificate or license has been revoked. At least six board members must vote in favor of reissuing the certificate or license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

SUBCHAPTER K. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1071.503. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty not to exceed $1,500 for each violation.

(b) At the request of the board, the attorney general shall bring an action to recover the civil penalty in the name of the state.

(c) A civil penalty recovered under this section shall be deposited in the state treasury.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

Sec. 1071.504. CRIMINAL PENALTY. (a) In this section, "offer to practice" has the meaning assigned by Section 1071.251.

(b) A person commits an offense if the person:

(1) engages in the practice of or offers to practice professional surveying or state land surveying in this state without being registered or licensed in accordance with this chapter;

(2) presents or attempts to use another person's certificate of registration, license, or seal issued under this chapter;

(3) gives false or forged evidence to obtain or assist another person in obtaining a certificate of registration or license; or

(4) violates this chapter or a rule adopted by the board.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 1, eff. June 1, 2003.

TITLE 7. PRACTICES AND PROFESSIONS RELATED TO REAL PROPERTY AND

HOUSING
SUBTITLE A. PROFESSIONS RELATED TO REAL ESTATE
CHAPTER 1101. REAL ESTATE BROKERS AND SALES AGENTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1101.001. SHORT TITLE. This chapter may be cited as The Real Estate License Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.002. DEFINITIONS. In this chapter:

(1) "Broker":

(A) means a person who, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, performs for another person one of the following acts:

(i) sells, exchanges, purchases, or leases real estate;

(ii) offers to sell, exchange, purchase, or lease real estate;

(iii) negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;

(iv) lists or offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(v) auctions or offers, attempts, or agrees to auction real estate;

(vi) deals in options on real estate, including a lease to purchase or buying, selling, or offering to buy or sell options on real estate;

(vii) aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease;

(viii) procures or assists in procuring a prospect to effect the sale, exchange, or lease of real estate;

(ix) procures or assists in procuring property to effect the sale, exchange, or lease of real estate;

(x) controls the acceptance or deposit of rent from a resident of a single-family residential real property unit;

(xi) provides a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:

(a) is not referred to as an appraisal;

(b) is provided in the ordinary course of the person's business; and

(c) is related to the actual or potential management, acquisition, disposition, or encumbrance of an interest in real property; or

(xii) advises or offers advice to an owner of real estate concerning the negotiation or completion of a short sale; and

(B) includes a person who:

(i) is employed by or for an owner of real estate to sell any portion of the real estate; or

(ii) engages in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate by:

(a) listing the real estate in a publication primarily used for listing real estate; or

(b) referring information about the real estate to brokers.

(1-a) "Business entity" means a "domestic entity" or "foreign entity" as those terms are defined by Section 1.002, Business Organizations Code, that is qualified to transact business in this state.

(2) "Certificate holder" means a person registered under Subchapter K.

(3) "Commission" means the Texas Real Estate Commission.

(3-a) "Easement or right-of-way agent" means a person who sells, buys, leases, or transfers an easement or right-of-way for another, for compensation or with the expectation of receiving compensation, for use in connection with telecommunication, utility, railroad, or pipeline service.

(4) "License holder" means a broker or sales agent licensed under this chapter.

(5) "Real estate" means any interest in real property, including a leasehold, located in or outside this state. The term does not include an interest given as security for the performance of an obligation.

(6) "Residential rental locator" means a person who offers for consideration to locate a unit in an apartment complex for lease to a prospective tenant. The term does not include an owner who offers to locate a unit in the owner's complex.

(7) "Sales agent" means a person who is sponsored by a licensed broker for the purpose of performing an act described by Subdivision (1).

(8) "Subagent" means a license holder who:

(A) represents a principal through cooperation with and the consent of a broker representing the principal; and

(B) is not sponsored by or associated with the principal's broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.151, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 2, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 67, eff. June 13, 2023.

Sec. 1101.003. QUALIFYING REAL ESTATE COURSES. (a) For purposes of this chapter, "qualifying real estate courses" include:

(1) agency law, which includes the following topics:

(A) the relationship between a principal and an agent;

(B) an agent's authority;

(C) the termination of an agent's authority;

(D) an agent's duties, including fiduciary duties;

(E) employment law;

(F) deceptive trade practices;

(G) listing or buying representation procedures; and

(H) the disclosure of agency;

(2) contract law, which includes the following topics:

(A) elements of a contract;

(B) offer and acceptance;

(C) statute of frauds;

(D) remedies for breach, including specific performance;

(E) unauthorized practice of law;

(F) commission rules relating to use of adopted forms;

and

(G) owner disclosure requirements;

(3) principles of real estate, which includes:

(A) an overview of:

(i) licensing as a broker or sales agent;

(ii) ethics of practice as a license holder;

(iii) titles to and conveyance of real estate;

(iv) legal descriptions;

(v) deeds, encumbrances, and liens;

(vi) distinctions between personal and real property;

(vii) appraisal;

(viii) finance and regulations;

(ix) closing procedures; and

(x) real estate mathematics; and

(B) at least three class hours of instruction on federal, state, and local laws relating to housing discrimination, housing credit discrimination, and community reinvestment;

(4) property management, which includes the following topics:

(A) the role of a property manager;

(B) landlord policies;

(C) operational guidelines;

(D) leases;

(E) lease negotiations;

(F) tenant relations;

(G) maintenance;

(H) reports;

(I) habitability laws; and

(J) the Fair Housing Act (42 U.S.C. Section 3601 et seq.);

(5) real estate appraisal, which includes the following topics:

(A) the central purposes and functions of an appraisal;

(B) social and economic determinants of the value of real estate;

(C) appraisal case studies;

(D) cost, market data, and income approaches to value estimates of real estate;

(E) final correlations; and

(F) reporting;

(6) real estate brokerage, which includes the following topics:

(A) agency law;

(B) planning and organization;

(C) operational policies and procedures;

(D) recruitment, selection, and training of personnel;

(E) records and control; and

(F) real estate firm analysis and expansion criteria;

(7) real estate finance, which includes the following topics:

(A) monetary systems;

(B) primary and secondary money markets;

(C) sources of mortgage loans;

(D) federal government programs;

(E) loan applications, processes, and procedures;

(F) closing costs;

(G) alternative financial instruments;

(H) equal credit opportunity laws;

(I) community reinvestment laws, including the Community Reinvestment Act of 1977 (12 U.S.C. Section 2901 et seq.); and

(J) state housing agencies, including the Texas Department of Housing and Community Affairs;

(8) real estate investment, which includes the following topics:

(A) real estate investment characteristics;

(B) techniques of investment analysis;

(C) the time value of money;

(D) discounted and nondiscounted investment criteria;

(E) leverage;

(F) tax shelters depreciation; and

(G) applications to property tax;

(9) real estate law, which includes the following topics:

(A) legal concepts of real estate;

(B) land description;

(C) real property rights and estates in land;

(D) contracts;

(E) conveyances;

(F) encumbrances;

(G) foreclosures;
(H) recording procedures; and
(I) evidence of titles;
(10) real estate marketing, which includes the following topics:
(A) real estate professionalism and ethics;
(B) characteristics of successful sales agents;
(C) time management;
(D) psychology of marketing;
(E) listing procedures;
(F) advertising;
(G) negotiating and closing;
(H) financing; and
(I) Subchapter E, Chapter 17, Business & Commerce Code; and
(11) real estate mathematics, which includes the following topics:
(A) basic arithmetic skills and review of mathematical logic;
(B) percentages;
(C) interest;
(D) the time value of money;
(E) depreciation;
(F) amortization;
(G) proration; and
(H) estimation of closing statements.

(b) The commission may designate a course as an equivalent of a course listed in Subsection (a).

(c) The commission by rule may prescribe:
(1) the content of the qualifying real estate courses listed in Subsection (a); and
(2) the title and content of additional qualifying real estate courses.

(d) A daily course segment for a qualifying course may not exceed 12 hours.

(e) An applicant, license holder, or education provider may not report to the commission the completion of an alternative delivery or correspondence course offered as a qualifying course until the elapsed time between the time the applicant or license holder registers for the course and the time the completion of the course is

reported exceeds twice the number of hours for which credit is claimed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(a), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 3, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 4, eff. January 1, 2016.

Sec. 1101.004. REAL ESTATE BROKERAGE. (a) A person is engaged in real estate brokerage if the person, with the expectation of receiving valuable consideration, directly or indirectly performs or offers, attempts, or agrees to perform for another person any act described by Section 1101.002(1), as a part of a transaction or as an entire transaction.

(b) A person is not engaged in real estate brokerage, regardless of whether the person is licensed under this chapter, based solely on engaging in the following activities:

(1) constructing, remodeling, or repairing a home or other building;

(2) sponsoring, promoting, or managing, or otherwise participating as a principal, partner, or financial manager of, an investment in real estate; or

(3) entering into an obligation to pay another person that is secured by an interest in real property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.153, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 5, eff. January 1, 2016.

Sec. 1101.0045. EQUITABLE INTERESTS IN REAL PROPERTY. (a) A person may acquire an option or an interest in a contract to purchase real property and then sell or offer to sell the option or assign or

offer to assign the contract without holding a license issued under this chapter if the person:

(1) does not use the option or contract to purchase to engage in real estate brokerage; and

(2) discloses in writing the nature of the equitable interest to any seller or potential buyer.

(b) A person selling or offering to sell an option or assigning or offering to assign an interest in a contract to purchase real property without disclosing the nature of that interest as provided by Subsection (a)(2) is engaging in real estate brokerage.

Added by Acts 2017, 85th Leg., R.S., Ch. 974 (S.B. 2212), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 4, eff. January 1, 2024.

Sec. 1101.005. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) an attorney licensed in this state;

(2) an attorney-in-fact authorized under a power of attorney to conduct not more than three real estate transactions annually;

(3) a public official while engaged in official duties;

(4) an auctioneer licensed under Chapter 1802 while conducting the sale of real estate by auction if the auctioneer does not perform another act of a broker;

(5) a person conducting a real estate transaction under a court order or the authority of a will or written trust instrument;

(6) a person employed by an owner in the sale of structures and land on which structures are located if the structures are erected by the owner in the course of the owner's business;

(7) an on-site manager of an apartment complex;

(8) an owner or the owner's employee who leases the owner's improved or unimproved real estate; or

(9) a transaction involving:

(A) the sale, lease, or transfer of a mineral or mining interest in real property;

(B) the sale, lease, or transfer of a cemetery lot;

(C) the lease or management of a hotel or motel; or

(D) the sale of real property under a power of sale conferred by a deed of trust or other contract lien.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 62 (H.B. 1236), Sec. 1, eff. May 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 6, eff. January 1, 2016.

Sec. 1101.0055. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. A service contract that a license holder enters into for services governed by this chapter is not a good or service governed by Chapter 601, Business & Commerce Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.27, eff. April 1, 2009.

Sec. 1101.006. APPLICATION OF SUNSET ACT. The Texas Real Estate Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter and Chapter 1102 of this code and Chapter 221, Property Code, expire September 1, 2033.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.155(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 1, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.01, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 5.01, eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.16, eff. June 18, 2023.

SUBCHAPTER B. TEXAS REAL ESTATE COMMISSION

Sec. 1101.051. COMMISSION MEMBERSHIP. (a) The Texas Real Estate Commission consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) six members who have been engaged in the brokerage business as licensed brokers as their major occupation for the five years preceding appointment; and

(2) three members who represent the public.

(b) Each member of the commission must be a qualified voter.

(c) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.052. PUBLIC MEMBER ELIGIBILITY. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the real estate industry;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than

compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the real estate industry; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the real estate industry.

(c) A person may not serve as a commission member or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 3, eff. September 1, 2007.

Sec. 1101.054. OFFICIAL OATH. Not later than the 15th calendar day after the date of appointment, each appointee must take the constitutional oath of office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 285, Sec. 27, eff. Sept. 1, 2003.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 5, eff. January 1, 2024.

Sec. 1101.055. TERMS; VACANCY. (a) Commission members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.056. OFFICERS. (a) The governor shall designate a commission member who is a licensed broker as presiding officer. The presiding officer serves in that capacity at the pleasure of the governor.

(b) At a regular meeting in February of each year, the commission shall elect an assistant presiding officer and secretary from its membership.

(c) The presiding officer, assistant presiding officer, and secretary constitute the executive committee of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 7, eff. January 1, 2016.

Sec. 1101.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of appointment the qualifications required by Section 1101.051(a) or (b) or 1101.052;

(2) does not maintain during service on the commission the qualifications required by Section 1101.051(a) or (b) or 1101.052;

(3) is ineligible for membership under Section 1101.053;

(4) cannot discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend

during each calendar year, unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 8, eff. January 1, 2016.

Sec. 1101.058. PER DIEM; REIMBURSEMENT. (a) A commission member is entitled to receive:

(1) $75 for each day the member performs the member's official duties; and

(2) reimbursement for actual and necessary expenses incurred in performing the member's official duties.

(b) For purposes of this section, the commission by rule may determine what constitutes a day or actual and necessary expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 9, eff. January 1, 2016.

Sec. 1101.059. TRAINING. (a) A person who is appointed to and

qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing commission operations;

(2) the programs, functions, rules, and budget of the commission;

(3) the scope of and limitations on the rulemaking authority of the commission;

(4) the types of commission rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the commission regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the commission regulates;

(B) restricts advertising by persons in a profession or business the commission regulates;

(C) affects the price of goods or services provided by persons in a profession or business the commission regulates; or

(D) restricts participation in a profession or business the commission regulates;

(5) the results of the most recent formal audit of the commission;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(7) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the commission shall create a

training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the commission. Each member of the commission shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 5, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 2, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 2, eff. September 1, 2019.

Sec. 1101.060. QUASI-JUDICIAL IMMUNITY. A member of the commission is entitled to quasi-judicial immunity from suit for an action that:

(1) is taken as a member of the commission; and
(2) is in compliance with the law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 10, eff. January 1, 2016.

Sec. 1101.061. EDUCATIONAL PRESENTATIONS. (a) A member of the commission or a commission employee may make a presentation to a group of license holders for which the license holders may receive credit under Section 1101.455. The commission member or employee may not receive compensation for the presentation.

(b) Notwithstanding Subsection (a), a commission member or employee may receive reimbursement for reasonable travel expenses.

Added by Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 10, eff. January 1, 2016.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER COMMISSION PERSONNEL

Sec. 1101.101. EXECUTIVE DIRECTOR AND OTHER PERSONNEL. (a) The commission shall appoint an executive director.

(b) The commission may designate a subordinate officer as deputy executive director to act for the executive director in the executive director's absence.

(c) The commission may employ other subordinate officers and employees necessary to administer and enforce this chapter and Chapter 1102, including a general counsel, attorneys, investigators, and support staff.

(d) The commission shall determine the salaries of the executive director, officers, and employees of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 12, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 13, eff. January 1, 2016.

Sec. 1101.102. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 14, eff. January 1, 2016.

Sec. 1101.103. CODE OF ETHICS; STANDARDS OF CONDUCT. Each member, officer, employee, and agent of the commission is subject to the code of ethics and standards of conduct imposed by Chapter 572, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.104. QUALIFICATIONS AND STANDARDS OF CONDUCT

INFORMATION. The commission shall provide, as often as necessary, to its members and employees information regarding their:

(1) qualifications for office or employment under this chapter and Chapter 1102; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.105. CAREER DEVELOPMENT PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career development program. The program must require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 15, eff. January 1, 2016.

Sec. 1101.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission workforce that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance;

and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover a two-year period; and

(2) be updated with each strategic plan filed as required by Chapter 2056, Government Code.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 16, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 92, eff. January 1, 2016.

SUBCHAPTER D. COMMISSION POWERS AND DUTIES

Sec. 1101.151. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission shall:

(1) administer this chapter and Chapter 1102;

(2) adopt rules and establish standards relating to permissible forms of advertising by a license holder acting as a residential rental locator;

(3) maintain a registry of certificate holders; and

(4) design and adopt a seal.

(b) The commission may:

(1) adopt and enforce rules necessary to administer this chapter and Chapter 1102; and

(2) establish standards of conduct and ethics for persons licensed under this chapter and Chapter 1102 to:

(A) fulfill the purposes of this chapter and Chapter 1102; and

(B) ensure compliance with this chapter and Chapter 1102.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 8, eff. September 1, 2007.

Sec. 1101.152. FEES. (a) The commission shall adopt rules to charge and collect fees in amounts reasonable and necessary to cover the costs of administering this chapter and the real estate recovery trust account as required by this chapter, including a fee for:

(1) filing an original application for a broker license;

(2) renewal of a broker license;

(3) filing an original application for a sales agent license;

(4) renewal of a sales agent license;

(5) registration as an easement or right-of-way agent;

(6) filing an application for a license examination;

(7) filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker;

(8) filing a request to replace a lost or destroyed license or certificate of registration;

(9) filing an application for approval of an education program under Subchapter G;

(10) annual operation of an education program under Subchapter G;

(11) transcript evaluation;

(12) preparing a license or registration history;

(13) filing a request for a determination of fitness to engage in a profession the commission regulates;

(14) conducting a criminal history check for issuing or renewing a license; and

(15) registering as a business entity under Section 1101.355(d).

(b) The commission shall adopt rules to set and collect fees in amounts reasonable and necessary to cover the costs of implementing the continuing education requirements for license holders, including a fee for:

(1) an application for approval of a continuing education provider; and

(2) an application for approval of a continuing education course of study.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 15, Sec. 1, 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 1, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 3, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 9, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 1, eff. May 12, 2009.
Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 2, eff. May 12, 2009.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 17, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 92, eff. January 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 3, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 6, eff. January 1, 2024.

Sec. 1101.154. ADDITIONAL FEE: TEXAS REAL ESTATE RESEARCH CENTER. (a) The fee for the issuance or renewal of a:

(1) broker license is the amount of the fee set under Section 1101.152 and an additional $70 fee for each year of the term for which the license is issued or renewed;

(2) sales agent license is the amount of the fee set under Section 1101.152 and an additional $20 fee for each year of the term for which the license is issued or renewed; and

(3) certificate of registration is the amount of the fee set under Section 1101.152 and an additional $20 fee for each year of the term for which the certificate is issued or renewed.

(b) The commission shall transmit, not less than quarterly, the additional fees collected under Subsection (a) to Texas A&M University for deposit in a separate banking account that may be appropriated only to support, maintain, and carry out the purposes, objectives, and duties of the Texas Real Estate Research Center.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 4, eff. May 12, 2009.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(k), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 18, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 7, eff. January 1, 2024.

Sec. 1101.155. RULES RELATING TO CONTRACT FORMS. (a) The commission may adopt rules in the public's best interest that require license holders to use contract forms prepared by the Texas Real Estate Broker-Lawyer Committee and adopted by the commission.

(b) The commission may not prohibit a license holder from using for the sale, exchange, option, or lease of an interest in real property a contract form that is:

(1) prepared by the property owner; or

(2) prepared by an attorney and required by the property owner.

(c) A listing contract form adopted by the commission that relates to the contractual obligations between a seller of real estate and a license holder acting as an agent for the seller must include:

(1) a provision informing the parties to the contract that real estate commissions are negotiable; and

(2) a provision explaining the availability of Texas coastal natural hazards information important to coastal residents, if that information is appropriate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.156. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person regulated by the commission except to prohibit a false, misleading, or deceptive practice by the person.

(b) The commission may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement used by the person;

(4) restricts the person's advertisement under an assumed or trade name that is authorized by a law of this state and registered with the commission; or

(5) requires the term "broker," "agent," or a similar designation or term, a reference to the commission, or the person's license number to be included in the person's advertisement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 19, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 974 (S.B. 2212), Sec. 2, eff. September 1, 2017.

Sec. 1101.157. SUBPOENA AUTHORITY. (a) The commission may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) A subpoena may be issued throughout the state and may be served by any person designated by the commission.

(c) If a person fails to comply with a subpoena issued under this section, the commission, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the commission may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.158. ADVISORY COMMITTEES. (a) The commission may appoint advisory committees to perform the advisory functions assigned to the committees by the commission. An advisory committee under this section is subject to Section 2110, Government Code.

(b) A member of an advisory committee who is not a member of the commission may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the commission.

(d) An advisory committee may hold a meeting by telephone conference call or other video or broadcast technology.

(e) Advisory committee meetings are subject to Chapter 551, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 10, eff. September 1, 2007.

Sec. 1101.159. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 10, eff. September 1, 2007.

Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute

resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 10, eff. September 1, 2007.

Sec. 1101.161. GIFTS, GRANTS, AND DONATIONS. The commission may solicit and accept a gift, grant, donation, or other item of value from any source to pay for any activity under this chapter, or Chapter 1102, 1103, 1104, or 1303 of this code, or Chapter 221, Property Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 3, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 20, eff. January 1, 2016.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1101.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 11, eff. September 1, 2007.

Sec. 1101.202. COMPLAINTS. (a) The commission by rule shall:

(1) prescribe a notice containing the name, mailing address, and telephone number of the commission for the purpose of directing a complaint to the commission; and

(2) establish methods by which consumers and service recipients are provided the notice by a person regulated under this chapter or Chapter 1102.

(b) The commission shall provide to a person who files a complaint with the commission relating to a license holder and to the license holder against whom the complaint is filed:

(1) an explanation of the remedies that are available to the person under this chapter; and

(2) information about appropriate state or local agencies or officials with whom the person may file a complaint.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003; Amended by Acts 2003, 78th Leg., ch. 15, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 21, eff. January 1, 2016.

Sec. 1101.203. COMPLAINT INFORMATION. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain a file on each complaint. The file must include:

(1) information relating to the parties to the complaint;

(2) the subject matter of the complaint;

(3) a summary of the results of the review or investigation of the complaint; and

(4) the disposition of the complaint.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the parties to the complaint of the status of the complaint until final disposition, unless the notice would jeopardize an undercover investigation authorized under Section 1101.204.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 12, eff.

September 1, 2007.

Sec. 1101.204. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The commission or commission staff may file a complaint and conduct an investigation as necessary to enforce this chapter, Chapter 1102, or a rule adopted under those chapters.

(b) The commission shall investigate the actions and records of a license holder if:

(1) a person submits a signed, written complaint; and

(2) the complaint and any evidence presented with the complaint provide reasonable cause for an investigation.

(c) The commission may not conduct an investigation of a person licensed under this chapter or Chapter 1102 in connection with a complaint submitted later than the fourth anniversary of the date of the incident that is the subject of the complaint.

(d) The commission shall promptly provide a written notice to a person licensed under this chapter or Chapter 1102 who is the subject of an investigation unless after deliberation the commission decides against notification.

(e) Notwithstanding any other provision of this chapter, an undercover or covert investigation may not be conducted unless the commission expressly authorizes the investigation after considering the circumstances and determining that the investigation is necessary to implement this chapter.

(f) An investigation or other action against a person licensed under this chapter or Chapter 1102 may not be initiated on the basis of an anonymous complaint.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(1), eff. September 1, 2007.

(h) The commission shall ensure that the commission gives priority to the investigation of a complaint filed by a consumer and an enforcement case resulting from the consumer complaint. The commission shall assign priorities and investigate complaints using a risk-based approach based on the:

(1) degree of potential harm to a consumer;

(2) potential for immediate harm to a consumer;

(3) overall severity of the allegations in the complaint;

(4) number of license holders potentially involved in the complaint;

(5) previous complaint history of the license holder; and

(6) number of potential violations in the complaint.

(i) If the commission determines at any time that an allegation made or formal complaint submitted by a person is inappropriate or without merit, the commission shall dismiss the complaint and no further action may be taken. The commission may delegate to commission staff the duty to dismiss complaints described by this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(b), 14A.157(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 13, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(1), eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 4, eff. September 1, 2019.

Sec. 1101.205. COMPLAINT INVESTIGATION OF CERTIFICATE HOLDER. The commission shall investigate a signed complaint received by the commission that relates to an act of a certificate holder or a person required to hold a certificate under Subchapter K. Section 1101.204 applies to an investigation under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 22, eff. January 1, 2016.

Sec. 1101.2051. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Information or material, including an investigation file, is confidential and not subject to disclosure under Chapter 552, Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena, if the information or material is prepared or compiled by the commission in connection with

a complaint, investigation, or audit of any person subject to the jurisdiction of the commission.

(b) Notwithstanding Subsection (a), information or material prepared or compiled by the commission in connection with a complaint, investigation, or audit may be disclosed:

(1) to the respondent of the complaint;

(2) to a person that is the subject of an audit;

(3) to a person providing a service to the commission, an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;

(4) to an entity in another jurisdiction that licenses, registers, credentials, or disciplines any person subject to the jurisdiction of the commission;

(5) to a law enforcement agency;

(6) to the State Office of Administrative Hearings; or

(7) to the commission, or a panel of the commission, for use during any proceeding conducted by the State Office of Administrative Hearings or in a subsequent trial or appeal of a commission action or order.

(c) The release of information under Subsection (b) does not constitute a release or disclosure for purposes of Section 552.007, Government Code.

(d) The commission may require a confidentiality agreement be signed by a person entitled to receive information under Subsection (b) before releasing the information.

(d-1) The commission shall protect the identity of a complainant to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(e) Notwithstanding Subsection (a), on the dismissal or final resolution of a complaint, investigation, or audit, information or materials prepared or compiled by the commission in connection with the complaint, investigation, or audit, including a completed audit report or a final order of the commission, is subject to disclosure under Chapter 321 or 552, Government Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 23, eff. January 1, 2016.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 5, eff. September 1, 2019.

Sec. 1101.206. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any agenda item at a regular commission meeting.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 6, eff. September 1, 2019.

SUBCHAPTER F. TEXAS REAL ESTATE BROKER-LAWYER COMMITTEE

Sec. 1101.251. DEFINITION OF COMMITTEE. In this subchapter, "committee" means the Texas Real Estate Broker-Lawyer Committee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.252. COMMITTEE MEMBERSHIP. (a) The Texas Real Estate Broker-Lawyer Committee consists of 13 members appointed as follows:

(1) six members appointed by the commission;

(2) six members of the State Bar of Texas appointed by the president of the state bar; and

(3) one public member appointed by the governor.

(b) Appointments to the committee shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 38.01, eff. Sept. 1, 2003.

Sec. 1101.253. TERMS; VACANCIES. (a) Committee members serve staggered six-year terms, with the terms of two commission appointees and two State Bar of Texas appointees expiring every two years and the term of the public member expiring every six years.

(b) A committee member shall hold office until the member's successor is appointed.

(c) If a vacancy occurs during a member's term, the entity making the original appointment shall appoint a person to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 38.02, eff. Sept. 1, 2003.

Sec. 1101.254. POWERS AND DUTIES. (a) In addition to other delegated powers and duties, the committee shall draft and revise contract forms that are capable of being standardized to expedite real estate transactions and minimize controversy.

(b) The contract forms must contain safeguards adequate to protect the principals in the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER G. APPROVAL OF REAL ESTATE EDUCATIONAL PROGRAMS AND COURSES OF STUDY

Sec. 1101.301. APPROVAL OF PROGRAMS AND COURSES OF STUDY. (a) The commission, as necessary for the administration of this chapter and Chapter 1102, may by rule:

(1) establish standards for the approval of qualifying educational programs or courses of study in real estate and real estate inspection conducted in this state, excluding programs and courses offered by accredited colleges and universities; and

(2) develop minimum education and experience requirements for an instructor of a course of study described by Subdivision (1).

(b) The commission shall determine whether a real estate or real estate inspection course satisfies the requirements of this chapter or Chapter 1102.

(b-1) For commission approval of an application to offer a course of study under this section, the applicant must ensure that

the educational program's instructors meet the minimum education and experience requirements developed by the commission under Subsection (a)(2).

(c) In establishing approval standards for an educational program under Subsection (a), the commission shall adopt rules setting an examination passage rate benchmark for each category of license issued by the commission under this chapter or Chapter 1102. The benchmark must be based on the average percentage of examinees that pass the licensing exam on the first attempt. A program must meet or exceed the benchmark for each license category before the commission may renew the program's approval to offer a program or course of study for the license category.

(d) The commission may deny approval of an application to offer a program or course of study if the applicant owns or controls, or has previously owned or controlled, an educational program or course of study for which approval to offer a program or course of study was revoked.

(e) Notwithstanding Subsection (c), the commission may renew a program's approval to offer a program or course of study on a probationary basis if the commission determines that the program is capable of meeting the benchmark under Subsection (c) within a reasonable time established by the commission.

(f) The commission may deny approval of an application to renew a program's approval to offer a program or course of study if the applicant is in violation of a commission order. The denial of an approval under this subsection is subject to the same provisions as are applicable under Section 1101.364 to the denial of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 14, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 25, eff. January 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 7, eff. September 1, 2019.

Sec. 1101.3015. FEE FOR EDUCATIONAL PROGRAM. (a) Except as provided by Subsection (b), the commission may not charge more than one fee for the approval of an application to offer an educational program or course of study under this subchapter in multiple formats, including in person, online, or as a correspondence course.

(b) The commission may adopt a fee schedule to charge a separate fee for each format in which a provider offers an educational program or course of study only if the commission by rule has adopted a policy regarding educational programs or courses of study that are offered in multiple formats.

Added by Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 26, eff. January 1, 2016.

Sec. 1101.302. BOND REQUIRED. (a) In this section, "educational institution" means a school, excluding an accredited college or university, authorized by the commission under this chapter to offer a real estate or real estate inspection educational program or course of study.

(b) An educational institution shall maintain a corporate surety bond or other security acceptable to the commission that is:

(1) in the amount of $20,000;

(2) payable to the commission; and

(3) for the benefit of a party who suffers damages caused by the failure of the institution to fulfill obligations related to the commission's approval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 4, eff. September 1, 2007.

Sec. 1101.303. APPROVAL OF CONTINUING EDUCATION PROVIDER OR COURSE OF STUDY. (a) If the commission determines that an applicant for approval as a continuing education provider satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer continuing education for a two-year period.

(b) If the commission determines that an applicant for approval of a continuing education course of study satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer the course of study for a two-year period.

(c) The commission may by rule develop minimum education and experience requirements for an instructor of a continuing education course of study. For commission approval of an application to offer the course, the applicant must ensure that the course's instructors meet the minimum education and experience requirements developed by the commission under this subsection.

(d) The commission may deny an application to renew an approval under this section if the applicant is in violation of a commission order. The denial of an approval under this subsection is subject to the same provisions as are applicable under Section 1101.364 to the denial of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 15, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 8, eff. September 1, 2019.

Sec. 1101.304. EXAMINATION PASSAGE RATE DATA. (a) The commission shall adopt rules regarding the collection and publication of data relating to examination passage rates for graduates of educational programs approved under this subchapter.

(b) Rules adopted under this section must provide for a method to:

(1) calculate the examination passage rate;

(2) collect the relevant data from the examination administrator or the approved program; and

(3) post the examination passage rate data on the commission's Internet website, in a manner aggregated by educational program and by license group.

(c) The commission shall adopt rules for determining the educational program a graduate is affiliated with for purposes of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 16, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 27, eff. January 1, 2016.

Sec. 1101.305. REVIEW COMMITTEE. (a) The commission may appoint a committee to review the performance of an educational program performing below the standards set by the commission under Section 1101.301.

(b) A committee formed under this section shall review and evaluate any factor causing an educational program's poor performance and report findings and recommendations to improve performance to the program and to the commission.

(c) A committee formed under this section may not revoke the approval of an educational program. The commission may temporarily suspend a program in the same manner as a license under Subchapter N.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 16, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 28, eff. January 1, 2016.

SUBCHAPTER H. LICENSE REQUIREMENTS

Sec. 1101.351. LICENSE REQUIRED. (a) Unless a person holds a license issued under this chapter, the person may not:

(1) act as or represent that the person is a broker or sales agent; or

(2) act as a residential rental locator.

(a-1) Unless a business entity holds a license issued under this chapter, the business entity may not act as a broker.

(b) An applicant for a broker or sales agent license may not act as a broker or sales agent until the person receives the license evidencing that authority.

(c) A licensed sales agent may not engage or attempt to engage in real estate brokerage unless the sales agent is sponsored by a licensed broker and is acting for that broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 5, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 29, eff. January 1, 2016.

Sec. 1101.352. LICENSE APPLICATION. (a) Each applicant for a broker or sales agent license must submit an application on a form prescribed by the commission.

(b) Each applicant for a broker or sales agent license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) The disclosure under Subsection (b) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

(d) At the time an application is submitted under Subsection (a), each applicant shall provide the commission with the applicant's current mailing address and telephone number, and the applicant's business e-mail address if available. The applicant shall notify the commission of any change in the applicant's mailing or e-mail address or telephone number during the time the application is pending.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003; Amended by Acts 2003, 78th Leg., ch. 15, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(a), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 6, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 30, eff. January 1, 2016.

Sec. 1101.3521. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The commission shall require that an applicant for a license or renewal of an unexpired license submit a complete and

legible set of fingerprints, on a form prescribed by the commission, to the commission or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The commission shall refuse to issue a license to or renew a license on active status of a person who does not comply with the requirement of Subsection (a).

(c) The commission shall conduct a criminal history check of each applicant for a license or renewal of a license using information:

(1) provided by the individual under this section; and

(2) made available to the commission by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The commission may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the department in conducting the criminal history check.

Added by Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 5, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 31, eff. January 1, 2016.

Sec. 1101.353. DETERMINATION OF FITNESS. (a) If before applying for a license under this chapter a person requests that the commission determine whether the person possesses the fitness to engage in the profession for which the license is required and pays the required fee, the commission shall make its determination of the person's fitness to engage in the profession.

(b) Not later than the 30th day after the date the commission makes its determination, the commission shall notify the person of the determination.

(c) If a person applies for a license after receiving notice of a determination, the commission may conduct a supplemental

determination of the person's fitness. The supplemental determination may cover only the period after the date the person requests a determination of fitness under this section.

(d) The commission may issue a provisional determination of fitness. The commission by rule shall adopt reasonable terms for issuing a provisional determination of fitness.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 9, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 10, eff. September 1, 2019.

Sec. 1101.354. GENERAL ELIGIBILITY REQUIREMENTS. To be eligible to receive a license under this chapter, a person must:

(1) at the time of application:

(A) be at least 18 years of age; and

(B) be a citizen of the United States or a lawfully admitted alien;

(2) satisfy the commission as to the applicant's honesty, trustworthiness, and integrity;

(3) demonstrate competence based on an examination under Subchapter I; and

(4) complete the required courses of study, including any required qualifying real estate courses prescribed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 33, eff. January 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 11, eff. September 1, 2019.

Sec. 1101.355. ADDITIONAL GENERAL ELIGIBILITY REQUIREMENTS FOR BUSINESS ENTITIES; REGISTRATION OF CERTAIN BUSINESS ENTITIES. (a) To be eligible for a license under this chapter, a business entity must:

(1) designate one of its managing officers as its broker for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of $1 million for each occurrence if the designated broker owns less than 10 percent of the business entity.

(b) A business entity may not act as a broker unless the entity's designated broker is a licensed individual broker in active status and good standing according to the commission's records.

(b-1) In determining whether a designated broker is in good standing under this section, the commission may consider:

(1) the disciplinary history of:

(A) the broker; or

(B) any business entity for which the broker serves or previously served as a designated broker; and

(2) the payment status of any amount owed to the commission by:

(A) the broker; or

(B) any business entity for which the broker serves or previously served as a designated broker.

(c) A business entity that receives compensation on behalf of a license holder must be licensed as a broker under this chapter.

(d) Notwithstanding Subsection (c) or any other law, a business entity is not required to be licensed under this chapter if the business entity:

(1) receives compensation on behalf of a broker or sales agent licensed under this chapter that is earned by the license holder while engaged in real estate brokerage;

(2) performs no other acts of a broker;

(3) is:

(A) a limited liability company as defined by Section 101.001, Business Organizations Code; or

(B) an S corporation as defined by 26 U.S.C. Section 1361;

(4) is registered with the commission; and

(5) is at least 51 percent owned by the license holder on whose behalf the entity receives compensation.

(e) The commission shall adopt rules providing for the registration of a business entity described by Subsection (d).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 7, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 34, eff. January 1, 2016.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 8, eff. January 1, 2024.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 9, eff. January 1, 2024.

Sec. 1101.356. BROKER LICENSE: EXPERIENCE AND EDUCATION REQUIREMENTS. (a) An applicant for a broker license must provide to the commission satisfactory evidence that the applicant:

(1) has had at least four years of active experience as a license holder during the 60 months preceding the date the application is filed; and

(2) has successfully completed the number of hours of qualifying real estate and related courses required by commission rule, not to exceed 60 semester hours or equivalent classroom hours.

(b) Subsection (a) does not apply to an applicant who, at the time of application, is licensed as a real estate broker by another state that has license requirements comparable to the requirements of this state.

(b-1) The commission by rule shall establish what constitutes active experience for purposes of this section.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1064, Sec. 24, eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(b), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 6, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 8, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 24, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 35, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 10, eff. January 1, 2024.

Sec. 1101.358. SALES AGENT LICENSE: EDUCATION REQUIREMENTS. (a) An applicant for a sales agent license must provide to the commission satisfactory evidence that the applicant has completed at least 12 semester hours, or equivalent classroom hours, of education consisting of:

(1) at least four semester hours of qualifying real estate courses on principles of real estate; and

(2) at least two semester hours of each of the following qualifying real estate courses:

(A) agency law;

(B) contract law;

(C) contract forms and addendums; and

(D) real estate finance.

(b) The commission shall waive the education requirements of Subsection (a) if the applicant has been licensed in this state as a broker or sales agent within the six months preceding the date the application is filed.

(c) If an applicant for a sales agent license was licensed as a sales agent within the six months preceding the date the application is filed and the license was issued under the conditions prescribed by Section 1101.454, the commission shall require the applicant to provide the evidence of successful completion of education requirements that would have been required if the license had been maintained without interruption during the preceding six months.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(c), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 4, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 37, eff.

January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 11, eff. January 1, 2024.

Sec. 1101.359. ALTERNATE EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS. An applicant for a broker license who is not subject to the education requirements of Section 1101.356(a)(2) and an applicant for a sales agent license who is not subject to the education requirements of Section 1101.358 or 1101.454 must provide to the commission satisfactory evidence that the applicant has completed the number of classroom hours of continuing education that would have been required for a timely renewal under Section 1101.455 during the two years preceding the date the application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 38, eff. January 1, 2016.

Sec. 1101.360. ELIGIBILITY REQUIREMENTS FOR CERTAIN NONRESIDENT APPLICANTS. (a) Repealed by Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 28(2), eff. January 1, 2024.

(b) A nonresident applicant is subject to the same license requirements as a resident. The commission may refuse to issue a license to a nonresident applicant for the same reasons that it may refuse to issue a license to a resident applicant.

(c) A nonresident applicant must submit with the application an irrevocable consent to a legal action against the applicant in the court of any county in this state in which a cause of action may arise or in which the plaintiff may reside. The action may be commenced by service of process or pleading authorized by the laws of this state or by delivery of process on the executive director or deputy executive director of the commission. The consent must:

(1) stipulate that the service of process or pleading is valid and binding in all courts as if personal service had been made on the nonresident in this state;

(2) be acknowledged; and

(3) if made by a corporation, be authenticated by its seal.

(d) A service of process or pleading served on the commission under this section shall be by duplicate copies. One copy shall be filed in the commission's office, and the other copy shall be forwarded by registered mail to the last known principal address recorded in the commission's records for the nonresident against whom the process or pleading is directed.

(e) A default judgment in an action commenced as provided by this section may not be granted:

(1) unless the commission certifies that a copy of the process or pleading was mailed to the defendant as provided by Subsection (d); and

(2) until the 21st day after the date the process or pleading is mailed to the defendant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 39, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 28(2), eff. January 1, 2024.

Sec. 1101.362. WAIVER OF LICENSE REQUIREMENTS: PREVIOUS LICENSE HOLDERS. The commission by rule may waive some or all of the requirements for a license under this chapter for an applicant who was licensed under this chapter within the two years preceding the date the application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 40, eff. January 1, 2016.

Sec. 1101.363. ISSUANCE OF LICENSE. (a) The commission shall issue an appropriate license to an applicant who meets the requirements for a license.

(b) The commission may issue an inactive sales agent license to a person who applies for a sales agent license and satisfies all requirements for the license. The person may not act as a sales agent unless the person is sponsored by a licensed broker who has

notified the commission as required by Section 1101.367(b).

(c) A license remains in effect for the period prescribed by the commission if the license holder complies with this chapter and pays the appropriate renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 5, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(b), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 41, eff. January 1, 2016.

Sec. 1101.364. DENIAL OF LICENSE. (a) The commission shall immediately give written notice to the applicant of the commission's denial of a license.

(b) A person whose license application is denied under this section is entitled to a hearing under Section 1101.657.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(2), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 17, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(2), eff. September 1, 2007.

Sec. 1101.365. PROBATIONARY LICENSE. (a) The commission may issue a probationary license.

(b) The commission by rule shall adopt reasonable terms for issuing a probationary license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.366. INACTIVE LICENSE: BROKER. (a) The commission may place on inactive status the license of a broker if the broker:

(1) is not acting as a broker;

(2) is not sponsoring a sales agent; and

(3) submits a written application to the commission before the expiration date of the broker's license.

(b) The commission may place on inactive status the license of a broker whose license has expired if the broker applies for inactive status on a form prescribed by the commission not later than six months after the expiration date of the broker's license.

(c) A broker applying for inactive status shall terminate the broker's association with each sales agent sponsored by the broker by giving written notice to each sales agent before the 30th day preceding the date the broker applies for inactive status.

(d) A broker on inactive status:

(1) may not perform any activity regulated under this chapter; and

(2) must pay renewal fees.

(e) The commission shall maintain a list of each broker whose license is on inactive status.

(f) The commission shall remove a broker's license from inactive status if the broker:

(1) submits an application to the commission;

(2) pays the required fee; and

(3) submits proof of attending continuing education as specified by Section 1101.455 during the two years preceding the date the application under Subdivision (1) is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 42, eff. January 1, 2016.

Sec. 1101.367. INACTIVE LICENSE: SALES AGENT. (a) When the relationship of a sales agent with the sales agent's sponsoring broker terminates, the terminating party shall immediately notify in writing both the other party and the commission. On receiving the written notice, the commission shall place the sales agent license on inactive status.

(b) The commission may return a sales agent license to active status under Subsection (a) if, before the expiration date of the sales agent license, a licensed broker files a request with the commission advising the commission that the broker assumes sponsorship of the sales agent, accompanied by the appropriate fee.

(c) As a condition of returning to active status, an inactive sales agent whose license is not subject to the education requirements of Section 1101.454 must provide to the commission proof of attending continuing education as specified by Section 1101.455 during the two years preceding the date the application to return to active status is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.158(c), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 43, eff. January 1, 2016.

SUBCHAPTER I. EXAMINATIONS

Sec. 1101.401. EXAMINATION REQUIRED. (a) The competency requirement prescribed under Section 1101.354(3) shall be established by an examination prepared or contracted for by the commission.

(b) The commission shall determine the time and place in the state for offering the examination.

(c) The examination must be of sufficient scope in the judgment of the commission to determine whether a person is competent to act as a broker or sales agent in a manner that will protect the public.

(d) The examination for a sales agent license must be less exacting and less stringent than the broker examination.

(e) The commission shall provide each applicant with study material and references on which the examination is based.

(f) An applicant must satisfy the examination requirement not later than one year after the date the license application is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 12, eff.

September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 44, eff. January 1, 2016.

Sec. 1101.402. WAIVER OF EXAMINATION. The commission shall waive the examination requirement for an applicant for a broker or sales agent license if:

(1) the applicant was previously licensed in this state as a broker or sales agent; and

(2) the application is filed before the second anniversary of the expiration date of the equivalent license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 45, eff. January 1, 2016.

Sec. 1101.403. ADMINISTRATION OF EXAMINATION; TESTING SERVICE. (a) The commission shall administer any examination required by this chapter or Chapter 1102 unless the commission enters into an agreement with a testing service to administer the examination.

(b) The commission may accept an examination administered by a testing service if the commission retains the authority to establish the scope and type of the examination.

(c) The commission may negotiate an agreement with a testing service relating to examination development, scheduling, site arrangements, administration, grading, reporting, and analysis.

(d) The commission may require a testing service to:

(1) correspond directly with license applicants regarding the administration of the examination;

(2) collect fees directly from applicants for administering the examination; or

(3) administer the examination at specific locations and specified frequencies.

(e) The commission shall adopt rules and standards as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.404. EXAMINATION RESULTS. (a) Not later than the 10th day after the date an examination is administered, the commission or the testing service shall notify each examinee of the results of the examination.

(b) If the notice of the results of an examination will be delayed for more than 10 days after the examination date, the commission shall notify each examinee of the reason for the delay before the 10th day.

(c) If requested in writing by a person who fails an examination, the commission shall provide to the person an analysis of the person's performance on the examination. The request must be accompanied by a statement identifying the person.

(d) The results of an examination are confidential.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 46, eff. January 1, 2016.

Sec. 1101.405. REEXAMINATION. (a) An applicant who fails an examination may apply for reexamination by filing a request accompanied by the proper fee.

(b) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the commission that the applicant has completed additional education, as prescribed by the commission, since the date of the applicant's last examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 47, eff. January 1, 2016.

SUBCHAPTER J. LICENSE RENEWAL

Sec. 1101.451. LICENSE EXPIRATION AND RENEWAL. (a) The commission may issue or renew a license for a period of 24 months.

(b) The commission by rule may adopt a system under which licenses expire on various dates during the year. The commission

shall adjust the date for payment of the renewal fees accordingly.

(c) For a year in which the license expiration date is changed, renewal fees payable shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

(d) Except as provided by Subsection (e), a renewal fee for a license under this chapter may not exceed, calculated on an annual basis, the amount of the sum of the fees established under Sections 1101.152 and 1101.154.

(e) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than six months, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(f) If a person's license has been expired for six months or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 18, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 19, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 49, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 12, eff. January 1, 2024.

Sec. 1101.452. INFORMATION REQUIRED FOR LICENSE RENEWAL. (a) To renew an active license that is not subject to the education requirements of Section 1101.454, the license holder must provide to the commission proof of compliance with the continuing education

requirements of Section 1101.455.

(b) Each applicant for the renewal of a license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) The disclosure under Subsection (b) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 14, eff. September 1, 2011.

Sec. 1101.4521. CRIMINAL HISTORY RECORD INFORMATION FOR RENEWAL. An applicant for the renewal of an unexpired license must comply with the criminal history record check requirements of Section 1101.3521.

Added by Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 7, eff. September 1, 2007.

Sec. 1101.453. ADDITIONAL RENEWAL REQUIREMENTS FOR BUSINESS ENTITIES. (a) To renew a license under this chapter, a business entity must:

(1) designate one of its managing officers as its broker for purposes of this chapter; and

(2) provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of $1 million for each occurrence if the designated broker owns less than 10 percent of the business entity.

(b) A business entity may not act as a broker unless the entity's designated broker is a licensed individual broker in active status and good standing according to the commission's records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 15, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 50, eff. January 1, 2016.

Sec. 1101.454. SALES AGENT LICENSE RENEWAL. (a) An applicant applying for the first renewal of a sales agent license must provide to the commission satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, of qualifying real estate courses, including the hours required by Section 1101.455(e).

(b) Repealed by Acts 2005, 79th Leg., Ch. 825, Sec. 15, eff. September 1, 2005.

(c) Repealed by Acts 2005, 79th Leg., Ch. 825, Sec. 15, eff. September 1, 2005.

(d) The commission may not waive the requirements for renewal under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.152(d), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 15, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 51, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 52, eff. January 1, 2016.

Sec. 1101.455. CONTINUING EDUCATION REQUIREMENTS. (a) In this section, "property tax consulting laws and legal issues" includes the Tax Code, preparation of property tax reports, the unauthorized practice of law, agency law, tax law, law relating to property tax or property assessment, deceptive trade practices, contract forms and addendums, and other legal topics approved by the commission.

(b) A license holder who is not subject to the education requirements of Section 1101.454 must attend during the term of the

current license continuing education courses approved by the commission. The commission by rule shall prescribe the number of classroom hours of continuing education courses the license holder must attend, which must be at least 15 classroom hours. The commission may not increase the number of required classroom hours by more than three over the term of a license.

(c) The commission by rule may:

(1) prescribe the title, content, and duration of continuing education courses that a license holder must attend to renew a license; and

(2) approve as a substitute for the classroom attendance required by Subsection (b):

(A) relevant educational experience; and

(B) alternative delivery or correspondence courses.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

(e) At least eight of the continuing education hours required by Subsection (b) must provide current information on the following legal topics:

(1) commission rules;

(2) fair housing laws;

(3) Property Code issues, including landlord-tenant law;

(4) agency law;

(5) antitrust laws;

(6) Subchapter E, Chapter 17, Business & Commerce Code;

(7) disclosures to buyers, landlords, tenants, and sellers;

(8) promulgated contract and addendum forms;

(9) unauthorized practice of law;

(10) case studies involving violations of laws and regulations;

(11) Federal Housing Administration and Department of Veterans Affairs regulations;

(12) tax laws;

(13) property tax consulting laws and legal issues;

(14) other legal topics approved by the commission; or

(15) the ethical requirements of engaging in real estate brokerage.

(f) The remaining hours may be devoted to other real estate-related topics and courses approved by the commission.

(g) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92,

eff. January 1, 2016.

(h) The commission shall automatically approve the following courses as courses that satisfy the mandatory continuing education requirements of Subsection (f):

(1) qualifying real estate courses; and

(2) real estate-related courses approved by the State Bar of Texas for minimum continuing legal education participatory credit.

(i) The commission may not require an examination for a course under this section unless the course is:

(1) an alternative delivery or correspondence course; or

(2) a course described by Subsection (e) or Section 1101.458.

(j) Daily classroom course segments offered under this section must be at least one hour and not more than 10 hours.

(k) Notwithstanding the number of hours required by Subsection (e), a member of the legislature licensed under this chapter is only required to complete three hours of continuing education on the legal topics under Subsection (e).

(l) An applicant, license holder, or education provider may not report to the commission the completion of an alternative delivery or correspondence course offered under this section until the elapsed time between the time the applicant or license holder registers for the course and the time the completion of the course is reported is equal to or greater than the number of hours for which credit is claimed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.159(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 8, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 20, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(72), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 17, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 53, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 92, eff. January 1, 2016.

Sec. 1101.456. EXEMPTION FROM CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN BROKERS. Notwithstanding any other provision of this chapter, a broker who, before October 31, 1991, qualified under former Section 7A(f), The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as added by Section 1.041, Chapter 553, Acts of the 72nd Legislature, Regular Session, 1991, for an exemption from continuing education requirements is not required to comply with the mandatory continuing education requirements of this subchapter to renew the broker's license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.457. DEFERRAL OF CONTINUING EDUCATION REQUIREMENTS. (a) The commission by rule may establish procedures under which an applicant may have the applicant's license issued, renewed, or returned to active status before the applicant completes continuing education requirements.

(b) The commission may require an applicant under this section to:

(1) pay a fee, not to exceed $200, in addition to any fee for late renewal of a license under this chapter; and

(2) complete the required continuing education not later than the 60th day after the date the license is issued, renewed, or returned to active status.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 21, eff. September 1, 2007.

Sec. 1101.458. ADDITIONAL EDUCATION REQUIREMENTS FOR CERTAIN LICENSE HOLDERS. (a) A designated broker for a business entity licensed under this chapter, a broker who sponsors a sales agent, or

a license holder who supervises another license holder must attend during the term of the current license at least six classroom hours of broker responsibility education courses approved by the commission.

(b) The commission by rule shall prescribe the title, content, and duration of broker responsibility education courses required under this section.

(c) Broker responsibility education course hours may be used to satisfy the hours described by Section 1101.455(f).

(d) This section does not apply to a broker who is exempt from continuing education requirements under Section 1101.456.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 18, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 54, eff. January 1, 2016.

Sec. 1101.459. DENIAL OF LICENSE RENEWAL. (a) The commission may deny the renewal of a license under this chapter if the applicant is in violation of a commission order.

(b) The denial of a license renewal is subject to the same provisions as are applicable under Section 1101.364 to the denial of a license.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 12, eff. September 1, 2019.

SUBCHAPTER K. CERTIFICATE REQUIREMENTS

Sec. 1101.501. CERTIFICATE REQUIRED. A person may not act as an easement or right-of-way agent unless the person:

(1) holds a license issued under this chapter; or

(2) holds a certificate of registration issued under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 68, eff. June 13, 2023.

Sec. 1101.502. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE. (a) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a person must:

(1) be, at the time of application:

(A) at least 18 years of age; and

(B) a citizen of the United States or a lawfully admitted alien; and

(2) successfully complete the required courses of study prescribed by this subchapter, including qualifying or continuing education requirements.

(b) To be eligible to receive a certificate of registration or a renewal certificate under this subchapter, a business entity must designate as its agent one of its managing officers who is registered under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 19, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 2, eff. January 1, 2022.

Sec. 1101.503. ISSUANCE OF CERTIFICATE. (a) The commission shall issue a certificate of registration to an applicant who meets the requirements for a certificate of registration.

(b) The certificate remains in effect for the period prescribed by the commission if the certificate holder complies with this chapter and pays the appropriate renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.504. CERTIFICATE EXPIRATION. The duration, expiration, and renewal of a certificate of registration are subject to the same provisions as are applicable under Section 1101.451 to the duration, expiration, and renewal of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.5041. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR CERTIFICATE. An applicant for an original certificate of registration as an easement or right-of-way agent or renewal of a certificate of registration as an easement or right-of-way agent must comply with the criminal history record check requirements of Section 1101.3521.

Added by Acts 2011, 82nd Leg., R.S., Ch. 676 (S.B. 1812), Sec. 1, eff. September 1, 2011.
Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 20, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 69, eff. June 13, 2023.

Sec. 1101.505. DENIAL OF CERTIFICATE ISSUANCE OR RENEWAL. (a) The denial of an original certificate of registration or renewal of a certificate of registration is subject to the same provisions as are applicable under Section 1101.364 to the denial of a license.

(b) The commission may deny the renewal of a certificate of registration if the applicant is in violation of a commission order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 13, eff. September 1, 2019.

Sec. 1101.506. CHANGE OF ADDRESS. Not later than the 10th day after the date a certificate holder moves its place of business from a previously designated address, the holder shall:

(1) notify the commission of the move; and

(2) obtain a new certificate of registration that reflects the address of the new place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.507. DISPLAY OF CERTIFICATE. A certificate holder shall prominently display at all times the holder's certificate of registration in the holder's place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.508. PROBATIONARY CERTIFICATE. (a) The commission may issue a probationary certificate of registration under this subchapter.

(b) The commission by rule shall adopt reasonable requirements for the issuance of a probationary certificate.

Added by Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 3, eff. January 1, 2022.

Sec. 1101.509. QUALIFYING AND CONTINUING EDUCATION REQUIREMENTS. (a) The commission by rule shall approve coursework that an applicant must successfully complete to be eligible for the issuance or renewal of a certificate of registration under this subchapter.

(b) An applicant for the issuance of an original certificate of registration shall submit evidence satisfactory to the commission that the applicant has completed at least 16 classroom hours of coursework approved by the commission in:

(1) the law of eminent domain, including the rights of property owners;

(2) appropriate standards of professionalism in contacting and conducting negotiations with property owners; and

(3) ethical considerations in the performance of right-of-way acquisition services.

(c) An applicant for the renewal of a certificate of registration shall submit evidence satisfactory to the commission that the applicant has, during the renewal period, completed at least 16 classroom hours of coursework approved by the commission that provides current information regarding:

(1) the subjects specified in Subsection (b); and

(2) other relevant subjects as prescribed by commission rule.

Added by Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 3, eff. January 1, 2022.

SUBCHAPTER L. PRACTICE BY LICENSE HOLDER

Sec. 1101.551. DEFINITIONS. In this subchapter:

(1) "Intermediary" means a broker who is employed to negotiate a transaction between the parties to a transaction and for that purpose may act as an agent of the parties.

(2) "Party" means a prospective buyer, seller, landlord, or tenant or an authorized representative of a buyer, seller, landlord, or tenant, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a license holder who represents a party.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.552. FIXED OFFICE REQUIRED; CHANGE OF ADDRESS. (a) A resident broker shall maintain a fixed office in this state. The address of the office shall be designated on the broker's license.

(b) Not later than the 10th day after the date a broker moves from the address designated on the broker's license, the broker shall submit an application, accompanied by the appropriate fee, for a license that designates the new location of the broker's office. The commission shall issue a license that designates the new location if the new location complies with the requirements of this section.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 45, eff. September 1, 2019.

(d) A nonresident licensed broker is not required to maintain a place of business in this state.

(e) A license holder shall provide the commission with the license holder's current mailing address and telephone number, and the license holder's business e-mail address if available. A license holder shall notify the commission of a change in the license holder's mailing or e-mail address or telephone number.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 55, eff. January 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 14, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 45, eff. September 1, 2019.

Sec. 1101.553. DISPLAY OF LICENSE. A residential rental locator shall prominently display in a place accessible to clients and prospective clients:

(1) the locator's license;

(2) a statement that the locator is licensed by the commission; and

(3) the notice required by Section 1101.202(a).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 14, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 56, eff. January 1, 2016.

Sec. 1101.554. COPY OF SALES AGENT LICENSE. The commission shall deliver a copy of each sales agent license to the broker that is sponsoring the sales agent.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 22, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 57, eff. January 1, 2016.

Sec. 1101.555. NOTICE TO BUYER REGARDING ABSTRACT OR TITLE POLICY. When an offer to purchase real estate in this state is signed, a license holder shall advise each buyer, in writing, that the buyer should:

(1) have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer; or

(2) be provided with or obtain a title insurance policy.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.556. DISCLOSURE OF CERTAIN INFORMATION RELATING TO OCCUPANTS. Notwithstanding other law, a license holder is not required to inquire about, disclose, or release information relating to whether:

(1) a previous or current occupant of real property had, may have had, has, or may have AIDS, an HIV-related illness, or an HIV infection as defined by the Centers for Disease Control and Prevention of the United States Public Health Service; or

(2) a death occurred on a property by natural causes, suicide, or accident unrelated to the condition of the property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.557. ACTING AS AGENT; REGULATION OF CERTAIN TRANSACTIONS. (a) A broker who represents a party in a real estate transaction or who lists real estate for sale under an exclusive agreement for a party is that party's agent.

(b) A broker described by Subsection (a):

(1) may not instruct another broker to directly or indirectly violate Section 1101.652(b)(22);

(2) must inform the party if the broker receives material information related to a transaction to list, buy, sell, or lease the party's real estate, including the receipt of an offer by the broker; and

(3) shall, at a minimum, answer the party's questions and present any offer to or from the party.

(c) For the purposes of this section:

(1) a license holder who has the authority to bind a party to a lease or sale under a power of attorney or a property management agreement is also a party to the lease or sale;

(2) an inquiry to a person described by Section 1101.005(6) about contract terms or forms required by the person's employer does not violate Section 1101.652(b)(22) if the person does not have the authority to bind the employer to the contract; and

(3) the sole delivery of an offer to a party does not violate Section 1101.652(b)(22) if:

(A) the party's broker consents to the delivery;

(B) a copy of the offer is sent to the party's broker, unless a governmental agency using a sealed bid process does not allow a copy to be sent; and

(C) the person delivering the offer does not engage in another activity that directly or indirectly violates Section 1101.652(b)(22).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 7, eff. September 1, 2005.

Sec. 1101.558. REPRESENTATION DISCLOSURE. (a) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

(b) A license holder who represents a party in a proposed real estate transaction shall disclose, orally or in writing, that representation at the time of the license holder's first contact with:

(1) another party to the transaction; or

(2) another license holder who represents another party to the transaction.

(b-1) At the time of a license holder's first substantive communication with a party relating to a proposed transaction regarding specific real property, the license holder shall provide to the party written notice in at least a 10-point font that:

(1) describes the ways in which a broker can represent a party to a real estate transaction, including as an intermediary;

(2) describes the basic duties and obligations a broker has to a party to a real estate transaction that the broker represents; and

(3) provides the name, license number, and contact information for the license holder and the license holder's supervisor and broker, if applicable.

(b-2) The commission by rule shall prescribe the text of the notice required under Subsections (b-1)(1) and (2) and establish the methods by which a license holder shall provide the notice.

(c) A license holder is not required to provide the notice required by Subsection (b-1) if:

(1) the proposed transaction is for a residential lease for less than one year and a sale is not being considered;

(2) the license holder meets with a party who the license holder knows is represented by another license holder; or

(3) the communication occurs at a property that is held open for any prospective buyer or tenant and the communication concerns that property.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 58, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 92, eff. January 1, 2016.

Sec. 1101.559. BROKER ACTING AS INTERMEDIARY. (a) A broker may act as an intermediary between parties to a real estate transaction if:

(1) the broker obtains written consent from each party for the broker to act as an intermediary in the transaction; and

(2) the written consent of the parties states the source of any expected compensation to the broker.

(b) A written listing agreement to represent a seller or landlord or a written agreement to represent a buyer or tenant that authorizes a broker to act as an intermediary in a real estate transaction is sufficient to establish written consent of the party to the transaction if the written agreement specifies in conspicuous bold or underlined print the conduct that is prohibited under Section 1101.651(d).

(c) An intermediary shall act fairly and impartially. Appointment by a broker acting as an intermediary of an associated license holder under Section 1101.560 to communicate with, carry out the instructions of, and provide opinions and advice to the parties to whom that associated license holder is appointed is a fair and

impartial act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.560. ASSOCIATED LICENSE HOLDER ACTING AS INTERMEDIARY. (a) A broker who complies with the written consent requirements of Section 1101.559 may appoint:

(1) a license holder associated with the broker to communicate with and carry out instructions of one party to a real estate transaction; and

(2) another license holder associated with the broker to communicate with and carry out instructions of any other party to the transaction.

(b) A license holder may be appointed under this section only if:

(1) the written consent of the parties under Section 1101.559 authorizes the broker to make the appointment; and

(2) the broker provides written notice of the appointment to all parties involved in the real estate transaction.

(c) A license holder appointed under this section may provide opinions and advice during negotiations to the party to whom the license holder is appointed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.561. DUTIES OF INTERMEDIARY PREVAIL. (a) The duties of a license holder acting as an intermediary under this subchapter supersede the duties of a license holder established under any other law, including common law.

(b) A broker must agree to act as an intermediary under this subchapter if the broker agrees to represent in a transaction:

(1) a buyer or tenant; and

(2) a seller or landlord.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 8, eff. September 1, 2005.

SUBCHAPTER M. REAL ESTATE RECOVERY TRUST ACCOUNT

Sec. 1101.601. REAL ESTATE RECOVERY TRUST ACCOUNT. (a) The commission shall maintain a real estate recovery trust account to reimburse aggrieved persons who suffer actual damages caused by an act described by Section 1101.602 committed by:

(1) a license holder;

(2) a certificate holder; or

(3) a person who does not hold a license or certificate and who is an employee or agent of a license or certificate holder.

(b) The license or certificate holder must have held the license or certificate at the time the act was committed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.6011. APPLICABILITY TO BUSINESS ENTITY. For purposes of this subchapter, a claim against a business entity license holder is also a claim against the broker who is the business entity's designated broker.

Added by Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 59, eff. January 1, 2016.

Sec. 1101.602. ENTITLEMENT TO REIMBURSEMENT. An aggrieved person is entitled to reimbursement from the trust account if a person described by Section 1101.601 engages in conduct that requires a license or certificate of registration under this chapter and is described by Section 1101.652(a-1)(1) or (b), if the person is a license holder, or Section 1101.653(1), (2), (3), or (4), if the person is a certificate holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 60, eff. January 1, 2016.

Sec. 1101.603. PAYMENTS INTO TRUST ACCOUNT. (a) Repealed by Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 28(5), eff. January 1, 2024.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

(c) Notwithstanding any other law, the commission shall deposit to the credit of the trust account an administrative penalty collected under Subchapter O.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 686 (H.B. 1363), Sec. 5(1), eff. September 1, 2023.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 28(5), eff. January 1, 2024.

(f) To ensure the availability of a sufficient amount to pay anticipated claims on the trust account, the commission by rule may provide for the collection of fees or assessments from an applicant for an original license or certificate of registration or from a license or certificate holder at the next renewal to credit to the trust account.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(a), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 61, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 92, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 13, eff. January 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 28(5), eff. January 1, 2024.

Acts 2023, 88th Leg., R.S., Ch. 686 (H.B. 1363), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 686 (H.B. 1363), Sec. 5(1), eff. September 1, 2023.

Sec. 1101.604. MANAGEMENT OF TRUST ACCOUNT. (a) The commission shall hold money credited to the trust account in trust to carry out the purpose of the trust account.

(b) Money credited to the trust account may be invested in the same manner as money of the Employees Retirement System of Texas, except that an investment may not be made that would impair the

liquidity necessary to make payments from the trust account as required by this subchapter.

(c) Interest from the investments shall be deposited to the credit of the trust account.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 28(6), eff. January 1, 2024.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 28(6), eff. January 1, 2024.

Sec. 1101.605. DEADLINE FOR ACTION; NOTICE TO COMMISSION. (a) An action for a judgment that may result in an order for payment from the trust account may not be brought after the second anniversary of the date the cause of action accrues.

(b) When an aggrieved person brings an action for a judgment that may result in an agreed judgment and order for payment from the trust account, the aggrieved person and the license or certificate holder against whom the action is brought shall notify the commission in writing before entry of the agreed judgment and deliver a copy of all petitions and pleadings and the proposed agreed judgment to the commission. The commission will notify the parties not later than the 30th day after the date of receiving the documents if the commission intends to relitigate material and relevant issues as to the applicability of the trust account to the agreed judgment as provided by Section 1101.608.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 62, eff. January 1, 2016.

Sec. 1101.606. CLAIM FOR PAYMENT FROM TRUST ACCOUNT. (a) Except as provided by Subsections (c) and (c-1), an aggrieved person who obtains a court judgment against a license or certificate holder for an act described by Section 1101.602 may, after final judgment is entered, execution returned nulla bona, and a judgment lien perfected, file a verified claim in the court that entered the

judgment.

(b) After the 20th day after the date the aggrieved person gives written notice of the claim to the commission and judgment debtor, the person may apply to the court that entered the judgment for an order for payment from the trust account of the amount unpaid on the judgment. The aggrieved person and the commission may attempt to reach a settlement of the claim before setting a hearing before the court. If the aggrieved person does not schedule a hearing before the first anniversary of the date the application was filed, recovery is waived.

(c) If an aggrieved person is precluded by action of a bankruptcy court from executing a judgment or perfecting a judgment lien as required by Subsection (a), the person shall verify to the commission that the person has made a good faith effort to protect the judgment from being discharged in bankruptcy.

(c-1) If the judgment obtained against the license holder includes multiple defendants who are jointly and severally liable or the judgment against the license holder was severed from a suit with multiple defendants, the aggrieved person may not file a verified claim in the court that entered the judgment until the aggrieved person has obtained a judgment against all defendants and received payment from or obtained a writ of execution returned nulla bona for all defendants.

(d) The commission by rule may prescribe the actions necessary for an aggrieved person to demonstrate that the person has made a good faith effort under Subsection (c) to protect a judgment from being discharged in bankruptcy.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 5, eff. May 12, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 63, eff. January 1, 2016.

Sec. 1101.607. ISSUES AT HEARING. At the hearing on the application for payment from the trust account, the aggrieved person must show:

(1) that the judgment is based on facts allowing recovery

under this subchapter;

(2) that the person is not:

(A) the spouse of the judgment debtor or the personal representative of the spouse;

(B) a license or certificate holder who is seeking to recover compensation, including a commission, in the real estate transaction that is the subject of the application for payment; or

(C) related to the judgment debtor within the first degree by consanguinity;

(3) that, according to the best information available, the judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;

(4) the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and

(5) the balance remaining due on the judgment after application of the amount under Subdivision (4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(b), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 64, eff. January 1, 2016.

Sec. 1101.608. COMMISSION RESPONSE. (a) On receipt of notice under Section 1101.606, the commission may agree to pay all or part of the claim without a hearing. If the commission and the aggrieved person do not reach a settlement or the commission does not agree that the claim meets one or more of the requirements of this subchapter, the commission may notify the attorney general of the commission's desire to schedule a hearing, enter an appearance, file a response, appear at the hearing, defend the action, or take any other action the commission considers appropriate.

(b) The commission and the attorney general may act under Subsection (a) only to:

(1) protect the trust account from spurious or unjust claims; or

(2) ensure compliance with the requirements for recovery under this subchapter.

(c) The commission may relitigate in the hearing any material and relevant issue that was determined in the action that resulted in the judgment, including an agreed judgment, in favor of the aggrieved person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 65, eff. January 1, 2016.

Sec. 1101.609. COURT ORDER FOR PAYMENT. The court shall order the commission to pay from the trust account the amount the court finds payable on the claim under this subchapter if at a hearing the court is satisfied:

(1) of the truth of each matter the aggrieved person is required by Section 1101.607 to show; and

(2) that the aggrieved person has satisfied each requirement of Sections 1101.606 and 1101.607.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.610. PAYMENT LIMITS; ATTORNEY'S FEES. (a) Payments from the trust account for claims, including attorney's fees, interest, and court costs, arising out of a single transaction may not exceed a total of $125,000, regardless of the number of claimants.

(b) Payments from the trust account for claims based on judgments against a single license or certificate holder may not exceed a total of $250,000 until the license or certificate holder has reimbursed the trust account for all amounts paid.

(c) If the court finds that the total amount of claims against a license or certificate holder exceeds the limitations in this section, the court shall proportionately reduce the amount payable on each claim.

(d) A person receiving payment from the trust account is entitled to receive reasonable attorney's fees in the amount determined by the court, subject to the limitations prescribed by this section.

(e) For purposes of this section, a business entity and the

broker who is the business entity's designated broker are considered a single license holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 66, eff. January 1, 2016.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 14, eff. January 1, 2024.

Sec. 1101.611. APPLICATION OF JUDGMENT RECOVERY. An aggrieved person who receives a recovery on a judgment against a single defendant before receiving a payment from the trust account must apply the recovery first to actual damages.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.612. SUBROGATION. (a) The commission is subrogated to all rights of a judgment creditor to the extent of an amount paid from the trust account, and the judgment creditor shall assign to the commission all right, title, and interest in the judgment up to that amount.
(b) The commission has priority for repayment from any subsequent recovery on the judgment.
(c) The commission shall deposit any amount recovered on the judgment to the credit of the trust account.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.613. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter does not limit the commission's authority to take disciplinary action against a license or certificate holder for a violation of this chapter or a commission rule.
(b) A license or certificate holder's repayment of all amounts owed to the trust account does not affect another disciplinary proceeding brought under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.614. WAIVER OF RIGHTS. An aggrieved person who does not comply with this subchapter waives the person's rights under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.615. NOTICE TO CONSUMERS AND SERVICE RECIPIENTS. (a) The commission by rule shall prescribe a notice regarding the availability of payment from the trust account for aggrieved persons and establish methods by which each license and certificate holder shall provide the notice to consumers and service recipients.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1158 , Sec. 92, eff. January 1, 2016.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 67, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 92, eff. January 1, 2016.

SUBCHAPTER N. PROHIBITED PRACTICES AND DISCIPLINARY PROCEEDINGS

Sec. 1101.651. CERTAIN PRACTICES PROHIBITED. (a) A licensed broker may not pay a commission to or otherwise compensate a person directly or indirectly for performing an act of a broker unless the person is:

(1) a license holder; or

(2) a real estate broker licensed in another state who does not conduct in this state any of the negotiations for which the commission or other compensation is paid.

(b) A sales agent may not accept compensation for a real estate transaction from a person other than the broker that is sponsoring the sales agent or was sponsoring the sales agent when the sales agent earned the compensation.

(c) A sales agent may not pay a commission to a person except through the broker that is sponsoring the sales agent at that time.

(d) A broker and any broker or sales agent appointed under Section 1101.560 who acts as an intermediary under Subchapter L may not:

(1) disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price, unless otherwise instructed in a separate writing by the seller or landlord;

(2) disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord, unless otherwise instructed in a separate writing by the buyer or tenant;

(3) disclose any confidential information or any information a party specifically instructs the broker or sales agent in writing not to disclose, unless:

(A) the broker or sales agent is otherwise instructed in a separate writing by the respective party;

(B) the broker or sales agent is required to disclose the information by this chapter or a court order; or

(C) the information materially relates to the condition of the property;

(4) treat a party to a transaction dishonestly; or

(5) violate this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 68, eff. January 1, 2016.

Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE. (a) The commission may suspend or revoke a license issued under this chapter or Chapter 1102 or take other disciplinary action authorized by this chapter or Chapter 1102 if the license holder:

(1) enters a plea of guilty or nolo contendere to or is convicted of a felony or a criminal offense involving fraud, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence;

(2) procures or attempts to procure a license under this chapter or Chapter 1102 for the license holder by fraud, misrepresentation, or deceit or by making a material misstatement of

fact in an application for a license;

(3) fails to honor, within a reasonable time, a check issued to the commission after the commission has sent by certified mail a request for payment to the license holder's last known business address according to commission records;

(4) fails to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter or Chapter 1102;

(5) fails to surrender to the owner, without just cause, a document or instrument that is requested by the owner and that is in the license holder's possession;

(6) fails to consider market conditions for the specific geographic area in which the license holder is providing a service;

(7) fails to notify the commission, not later than the 30th day after the date of a final conviction or the entry of a plea of guilty or nolo contendere, that the person has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud; or

(8) disregards or violates this chapter or Chapter 1102.

(a-1) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder:

(1) engages in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the name of:

(A) the license holder;

(B) the license holder's spouse; or

(C) a person related to the license holder within the first degree by consanguinity;

(2) fails or refuses to produce on request, within a reasonable time, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's possession and relates to a real estate transaction conducted by the license holder; or

(3) fails to use a contract form required by the commission under Section 1101.155.

(b) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while engaged in real estate brokerage:

(1) acts negligently or incompetently;

(2) engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;

(3) makes a material misrepresentation to a potential buyer concerning a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property;

(4) fails to disclose to a potential buyer a defect described by Subdivision (3) that is known to the license holder;

(5) makes a false promise that is likely to influence a person to enter into an agreement when the license holder is unable or does not intend to keep the promise;

(6) pursues a continued and flagrant course of misrepresentation or makes false promises through an agent or sales agent, through advertising, or otherwise;

(7) fails to make clear to all parties to a real estate transaction the party for whom the license holder is acting;

(8) receives compensation from more than one party to a real estate transaction without the full knowledge and consent of all parties to the transaction;

(9) fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person;

(10) commingles money that belongs to another person with the license holder's own money;

(11) pays a commission or a fee to or divides a commission or a fee with a person other than a license holder or a real estate broker or sales agent licensed in another state for compensation for services as a real estate agent;

(12) fails to specify a definite termination date that is not subject to prior notice in a contract, other than a contract to perform property management services, in which the license holder agrees to perform services for which a license is required under this chapter;

(13) accepts, receives, or charges an undisclosed commission, rebate, or direct profit on an expenditure made for a principal;

(14) solicits, sells, or offers for sale real property by means of a lottery;

(15) solicits, sells, or offers for sale real property by means of a deceptive practice;

(16) acts in a dual capacity as broker and undisclosed principal in a real estate transaction;

(17) guarantees or authorizes or permits a person to guarantee that future profits will result from a resale of real property;

(18) places a sign on real property offering the real property for sale or lease without obtaining the written consent of the owner of the real property or the owner's authorized agent;

(19) offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent;

(20) offers to sell or lease real property on terms other than those authorized by the owner of the real property or the owner's authorized agent;

(21) induces or attempts to induce a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract;

(22) negotiates or attempts to negotiate the sale, exchange, or lease of real property with an owner, landlord, buyer, or tenant with knowledge that that person is a party to an outstanding written contract that grants exclusive agency to another broker in connection with the transaction;

(23) publishes or causes to be published an advertisement that:

(A) misleads or is likely to deceive the public;

(B) tends to create a misleading impression;

(C) implies that a sales agent is responsible for the operation of the broker's real estate brokerage business; or

(D) fails to include the name of the broker for whom the license holder acts, which name may be the licensed name, assumed name, or trade name of the broker as authorized by a law of this state and registered with the commission;

(24) withholds from or inserts into a statement of account or invoice a statement that the license holder knows makes the statement of account or invoice inaccurate in a material way;

(25) publishes or circulates an unjustified or unwarranted threat of a legal proceeding or other action;

(26) establishes an association by employment or otherwise

with a person other than a license holder if the person is expected or required to act as a license holder;

(27) aids, abets, or conspires with another person to circumvent this chapter;

(28) fails or refuses to provide, on request, a copy of a document relating to a real estate transaction to a person who signed the document;

(29) fails to advise a buyer in writing before the closing of a real estate transaction that the buyer should:

(A) have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer; or

(B) be provided with or obtain a title insurance policy;

(30) fails to deposit, within a reasonable time, money the license holder receives as escrow or trust funds in a real estate transaction:

(A) in trust with a title company authorized to do business in this state; or

(B) in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;

(31) disburses money deposited in a custodial, trust, or escrow account, as provided in Subdivision (30), before the completion or termination of the real estate transaction;

(32) discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of race, color, religion, sex, disability, familial status, national origin, or ancestry, including directing a prospective buyer or tenant interested in equivalent properties to a different area based on the race, color, religion, sex, disability, familial status, national origin, or ancestry of the potential owner or tenant; or

(33) disregards or violates this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.154(c), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 9, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 23 (S.B. 862), Sec. 6, eff. May 12, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 69, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 974 (S.B. 2212), Sec. 3, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 15, eff. September 1, 2019.

Sec. 1101.653. GROUNDS FOR SUSPENSION OR REVOCATION OF CERTIFICATE. The commission may suspend or revoke a certificate of registration issued under this chapter if the certificate holder:

(1) engages in dishonest dealing, fraud, unlawful discrimination, or a deceptive act;

(2) makes a misrepresentation;

(3) acts in bad faith;

(4) demonstrates untrustworthiness;

(5) fails to honor, within a reasonable time, a check issued to the commission after the commission has mailed a request for payment to the certificate holder's last known address according to the commission's records;

(6) fails to provide to a party to a transaction a written notice prescribed by the commission that:

(A) must be given before the party is obligated to sell, buy, lease, or transfer a right-of-way or easement; and

(B) contains:

(i) the name of the certificate holder;

(ii) the certificate number;

(iii) the name of the person the certificate holder represents;

(iv) a statement advising the party that the party may seek representation from a lawyer or broker in the transaction; and

(v) a statement generally advising the party that the right-of-way or easement may affect the value of the property;

(7) directly or indirectly accepts a financial incentive to make an initial offer that the certificate holder knows or should

know is lower than the adequate compensation required under the Texas Constitution; or

(8) disregards or violates this chapter or a commission rule relating to certificate holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 4, eff. January 1, 2022.

Sec. 1101.654. SUSPENSION OR REVOCATION OF LICENSE OR CERTIFICATE FOR UNAUTHORIZED PRACTICE OF LAW. (a) The commission shall suspend or revoke the license or certificate of registration of a license or certificate holder who is not a licensed attorney in this state and who, for consideration, a reward, or a pecuniary benefit, present or anticipated, direct or indirect, or in connection with the person's employment, agency, or fiduciary relationship as a license or certificate holder:

(1) drafts an instrument, other than a form described by Section 1101.155, that transfers or otherwise affects an interest in real property; or

(2) advises a person regarding the validity or legal sufficiency of an instrument or the validity of title to real property.

(b) Notwithstanding any other law, a license or certificate holder who completes a contract form for the sale, exchange, option, or lease of an interest in real property incidental to acting as a broker is not engaged in the unauthorized or illegal practice of law in this state if the form was:

(1) adopted by the commission for the type of transaction for which the form is used;

(2) prepared by an attorney licensed in this state and approved by the attorney for the type of transaction for which the form is used; or

(3) prepared by the property owner or by an attorney and required by the property owner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.655. REVOCATION OF LICENSE OR CERTIFICATE FOR CLAIM ON ACCOUNT. (a) The commission shall revoke a license, approval, or registration issued under this chapter or Chapter 1102 if:

(1) the commission makes a payment from the real estate recovery trust account under Subchapter M on behalf of a license or registration holder; and

(2) the license or registration holder does not repay the real estate recovery trust account the full amount of a payment made on the license or registration holder's behalf before the 31st day after the date the commission provides notice to the license or registration holder.

(b) The commission may probate an order revoking a license, approval, or registration under this section.

(c) A person is not eligible for a license or certificate until the person has repaid in full the amount paid from the account for the person, plus interest at the legal rate.

(d) For the purposes of this section, if payment is made from the real estate recovery trust account on behalf of a business entity license holder or a designated broker of a business entity license holder, the commission shall proceed under Subsection (a) against both the business entity and designated broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 10, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 10, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 70, eff. January 1, 2016.

Sec. 1101.656. ADDITIONAL DISCIPLINARY AUTHORITY OF COMMISSION. (a) In addition to any other authority under this chapter, the commission may suspend or revoke a license, place on probation a person whose license has been suspended, or reprimand a license holder if the license holder violates this chapter or a commission rule.

(b) The commission may probate a suspension, revocation, or cancellation of a license under reasonable terms determined by the

commission.

(c) The commission may require a license holder whose license suspension or revocation is probated to:

(1) report regularly to the commission on matters that are the basis of the probation;

(2) limit practice to an area prescribed by the commission; or

(3) continue to renew professional education until the license holder attains a degree of skill satisfactory to the commission in the area that is the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.6561. SUSPENSION OR REVOCATION OF EDUCATIONAL PROGRAM. The commission may suspend or revoke the approval to offer a program or course of study issued under Subchapter G or take any other disciplinary action authorized by this chapter if the provider of an educational program or course of study violates this chapter or a rule adopted under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1064 (S.B. 747), Sec. 23, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 71, eff. January 1, 2016.

Sec. 1101.657. HEARING. (a) If the commission proposes to deny, suspend, or revoke a person's license or certificate of registration, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(3), eff. September 1, 2007.

(e) A hearing under this section is governed by the contested case procedures under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 22, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(3), eff. September 1, 2007.

Sec. 1101.658. APPEAL. (a) A person aggrieved by a ruling, order, or decision under this subchapter is entitled to appeal to a district court in the county in which the administrative hearing was held.

(b) An appeal is governed by the procedures under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 23, eff. September 1, 2007.

Sec. 1101.659. REFUND. (a) Subject to Subsection (b), the commission may order a person regulated by the commission to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference or an enforcement order may not exceed the amount the consumer paid to the person for a service or accommodation regulated by this commission. The commission may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.

Sec. 1101.660. INFORMAL PROCEEDINGS. (a) The commission by rule shall adopt procedures governing informal disposition of a contested case.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder, certificate holder, or regulated entity an opportunity to be heard; and

(2) require the presence of:

(A) a public member of the commission for a case involving a consumer complaint; and

(B) at least two staff members of the commission with experience in the regulatory area that is the subject of the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.

Sec. 1101.661. FINAL ORDER. The commission may issue a final order in a proceeding under this subchapter or Subchapter O regarding a person whose license has expired.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 72, eff. January 1, 2016.

Sec. 1101.662. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code,

and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 24, eff. September 1, 2007.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 73, eff. January 1, 2016.

Sec. 1101.663. REAPPLYING AFTER REVOCATION, SURRENDER, OR DENIAL. A person whose license or registration has been revoked, a person who has surrendered a license or registration issued by the commission, or a person whose application for a license or registration has been denied after a hearing under Section 1101.657 may not apply to the commission for a license or registration before the second anniversary of the date of the revocation, surrender, or denial.

Added by Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 74, eff. January 1, 2016.

Sec. 1101.664. FAILURE TO APPEAR; COSTS. (a) If a respondent receives proper notice of a contested case hearing but does not appear in person at the hearing, the administrative law judge may conduct the hearing or enter an order, as the administrative law judge determines appropriate.

(b) The respondent is bound by the results of the hearing to the same extent as if the respondent had appeared.

(c) The administrative law judge may award reasonable costs to the commission on a request for and proof of costs incurred if the respondent fails to appear at the hearing. In this subsection, the term "costs" means all costs associated with the hearing, including the costs charged by the State Office of Administrative Hearings and any costs related to hearing preparation, discovery, depositions, subpoenas, service of process, witness expenses, travel expenses, and investigation expenses.

Added by Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 75, eff. January 1, 2016.

SUBCHAPTER O. ADMINISTRATIVE PENALTY

Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The commission shall periodically review the commission's enforcement procedures and ensure that administrative penalty and disciplinary proceedings are combined into a single enforcement procedure.

(c) The commission may combine a proceeding to impose an administrative penalty with another disciplinary proceeding, including a proceeding to suspend or revoke a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(c), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 25, eff. September 1, 2007.

Sec. 1101.7015. DELEGATION OF EXECUTIVE DIRECTOR'S AUTHORITY. The commission may authorize the executive director to delegate to another commission employee the executive director's authority to act under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(d), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 76, eff. January 1, 2016.

Sec. 1101.702. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the executive director shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(c) The commission by rule shall adopt a schedule of administrative penalties based on the criteria listed in Subsection (b) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation. The rules adopted under this subsection must provide authority for the commission to suspend or revoke a license in addition to or instead of imposing an administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(e), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 26, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 77, eff. January 1, 2016.

Sec. 1101.703. NOTICE OF VIOLATION AND PENALTY. If, after investigation of a possible violation and the facts relating to that violation, the executive director determines that a violation has occurred, the executive director may issue a notice of violation stating:

(1) a brief summary of the alleged violation;

(2) the executive director's recommendation on the imposition of the administrative penalty or another disciplinary sanction, including a recommendation on the amount of the penalty; and

(3) that the respondent has the right to a hearing to contest the alleged violation, the recommended penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 28, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(4), eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 78, eff. January 1, 2016.

Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 1101.703, the person may:

(1) accept the executive director's determination, including the recommended administrative penalty; or

(2) request in writing a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the executive director's determination, or fails to respond in a timely manner to the notice, the commission by order shall approve the determination and order payment of the recommended penalty or impose the recommended sanction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 29, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 79, eff. January 1, 2016.

Sec. 1101.705. HEARING; DECISION. (a) If the person requests a hearing, the administrator shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing. The administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commission a proposal for decision regarding the occurrence of the violation and the amount of any proposed administrative penalty.

(c) Based on the findings of fact, conclusions of law, and

proposal for decision of the administrative law judge, the commission by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(d) A proceeding under this section is subject to Chapter 2001, Government Code.

(e) The notice of the commission's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(f), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 30, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 31, eff. September 1, 2007.

Sec. 1101.706. NOTICE OF ORDER. The executive director shall give notice of the commission's order to the person. The notice must:

(1) include the findings of fact and conclusions of law, separately stated;

(2) state the amount of any penalty imposed;

(3) inform the person of the person's right to judicial review of the order; and

(4) include other information required by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 80, eff. January 1, 2016.

Sec. 1101.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commission's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond in a form approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until judicial review of the order is final; or

(2) request the court to stay enforcement by:

(A) filing with the court an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 32, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 81, eff. January 1, 2016.

Sec. 1101.708. COLLECTION OF PENALTY. (a) If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

(b) If the attorney general notifies the commission that the attorney general will not pursue collection of the penalty, the commission may pursue collection of the penalty by any lawful means.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 82, eff. January 1, 2016.

Sec. 1101.7085. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.
(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 33, eff. September 1, 2007.

Sec. 1101.709. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or is not upheld by the court, the court shall remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty.
(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.
(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.
(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.
(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 34, eff. September 1, 2007.

Sec. 1101.710. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 35, eff. September 1, 2007.

SUBCHAPTER P. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1101.751. INJUNCTIVE ACTION BROUGHT BY COMMISSION. (a) In addition to any other action authorized by law, the commission may bring an action in its name to enjoin a violation of this chapter or a commission rule.

(b) To obtain an injunction under this section, the commission is not required to allege or prove that:

(1) an adequate remedy at law does not exist; or

(2) substantial or irreparable damage would result from the continued violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.752. ADDITIONAL INJUNCTIVE AUTHORITY. (a) In addition to any other action authorized by law, the commission, acting through the attorney general, may bring an action to abate a violation or enjoin a violation or potential violation of this chapter or a commission rule if the commission determines that a person has violated or is about to violate this chapter.

(b) The action shall be brought in the name of the state in the district court in the county in which:

(1) the violation occurred or is about to occur; or

(2) the defendant resides.

(c) An injunctive action may be brought to abate or temporarily or permanently enjoin an act or to enforce this chapter.

(d) The commission is not required to give a bond in an action under Subsection (a), and court costs may not be recovered from the commission.

(e) If the commission determines that a person has violated or is about to violate this chapter, the attorney general or the county attorney or district attorney in the county in which the violation

has occurred or is about to occur or in the county of the defendant's residence may bring an action in the name of the state in the district court of the county to abate or temporarily or permanently enjoin the violation or to enforce this chapter. The plaintiff in an action under this subsection is not required to give a bond, and court costs may not be recovered from the plaintiff.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.753. CIVIL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR CERTIFICATE HOLDER. (a) In addition to injunctive relief under Sections 1101.751 and 1101.752, a person who receives a commission or other consideration as a result of acting as a broker or sales agent without holding a license or certificate of registration under this chapter is liable to the state for a civil penalty of not less than the amount of money received or more than three times the amount of money received.

(b) The commission may recover the civil penalty, court costs, and reasonable attorney's fees on behalf of the state.

(c) The commission is not required to give a bond in an action under this section, and court costs may not be recovered from the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 83, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 84, eff. January 1, 2016.

Sec. 1101.754. PRIVATE CAUSE OF ACTION FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR CERTIFICATE HOLDER. (a) A person who receives a commission or other consideration as a result of acting as a broker or sales agent without holding a license or certificate of registration under this chapter is liable to an aggrieved person for a penalty of not less than the amount of money received or more than three times the amount of money received.

(b) The aggrieved person may file suit to recover a penalty under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 85, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 86, eff. January 1, 2016.

Sec. 1101.755. APPEAL BOND EXEMPTION. The commission is not required to give an appeal bond in an action to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.756. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully violates or fails to comply with this chapter or a commission order.
(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.757. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY RESIDENTIAL RENTAL LOCATOR. (a) A person commits an offense if the person engages in business as a residential rental locator in this state without a license issued under this chapter.
(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.161(a), eff. Sept. 1, 2003.

Sec. 1101.758. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS BY BROKER, SALES AGENT, OR CERTIFICATE HOLDER. (a) A person commits an offense if the person acts as a broker or sales agent without holding a license under this chapter or engages in an activity for which a certificate of registration is required under this chapter without holding a certificate.
(b) An offense under this section is a Class A misdemeanor.
(c) to (e) Repealed by Acts 2003, 78th Leg., ch. 1276, Sec.

14A.162(b).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.162(a), (b), eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 87, eff. January 1, 2016.
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 88, eff. January 1, 2016.

Sec. 1101.759. CEASE AND DESIST ORDER. (a) If it appears to the commission that a person is violating this chapter or Chapter 1102 or a rule adopted under this chapter or Chapter 1102, the commission, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter O.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 36, eff. September 1, 2007.

SUBCHAPTER Q. GENERAL PROVISIONS RELATING TO LIABILITY ISSUES

Sec. 1101.801. EFFECT OF DISCIPLINARY ACTION ON LIABILITY. Disciplinary action taken against a person under Section 1101.652 does not relieve the person from civil or criminal liability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.802. LIABILITY RELATING TO HIV INFECTION OR AIDS. Notwithstanding Section 1101.801, a person is not civilly or criminally liable because the person failed to inquire about, make a disclosure relating to, or release information relating to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, an HIV-related illness, or HIV infection as defined by the Centers for Disease Control and Prevention of the United States Public Health Service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.803. GENERAL LIABILITY OF BROKER. A licensed broker is liable to the commission, the public, and the broker's clients for any conduct engaged in under this chapter by the broker or by a sales agent associated with or acting for the broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 89, eff. January 1, 2016.

Sec. 1101.804. LIABILITY FOR PROVIDING CERTAIN INFORMATION. A license holder or nonprofit real estate board or association that provides information about real property sales prices or the terms of a sale for the purpose of facilitating the listing, selling, leasing, financing, or appraisal of real property is not liable to another person for providing that information unless the disclosure of that information is specifically prohibited by statute.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1101.805. LIABILITY FOR MISREPRESENTATION OR CONCEALMENT. (a) In this section, "party" has the meaning assigned by Section 1101.551.

(b) This section prevails over any other law, including common law.

(c) This section does not diminish a broker's responsibility for the acts or omissions of a sales agent associated with or acting for the broker.

(d) A party is not liable for a misrepresentation or a concealment of a material fact made by a license holder in a real estate transaction unless the party:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the party's knowledge of the falsity of the misrepresentation or concealment.

(e) A license holder is not liable for a misrepresentation or a

concealment of a material fact made by a party to a real estate transaction unless the license holder:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the license holder's knowledge of the falsity of the misrepresentation or concealment.

(f) A party or a license holder is not liable for a misrepresentation or a concealment of a material fact made by a subagent in a real estate transaction unless the party or license holder:

(1) knew of the falsity of the misrepresentation or concealment; and

(2) failed to disclose the party's or license holder's knowledge of the falsity of the misrepresentation or concealment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 90, eff. January 1, 2016.

Sec. 1101.806. LIABILITY FOR PAYMENT OF COMPENSATION OR COMMISSION. (a) This section does not:

(1) apply to an agreement to share compensation among license holders; or

(2) limit a cause of action among brokers for interference with business relationships.

(b) A person may not maintain an action to collect compensation for an act as a broker or sales agent that is performed in this state unless the person alleges and proves that the person was:

(1) a license holder at the time the act was commenced; or

(2) an attorney licensed in any state.

(c) A person may not maintain an action in this state to recover a commission for the sale or purchase of real estate unless the promise or agreement on which the action is based, or a memorandum, is in writing and signed by the party against whom the action is brought or by a person authorized by that party to sign the document.

(d) A license holder who fails to advise a buyer as provided by Section 1101.555 may not receive payment of or recover any commission

agreed to be paid on the sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1158 (S.B. 699), Sec. 91, eff. January 1, 2016.

CHAPTER 1102. REAL ESTATE INSPECTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1102.001. DEFINITIONS. In this chapter:

(1) "Apprentice inspector" means a person who is in training under the direct supervision of a professional inspector or a real estate inspector to become qualified to perform real estate inspections.

(2) "Broker" has the meaning assigned by Section 1101.002.

(3) "Commission" means the Texas Real Estate Commission.

(4) "Committee" means the Texas Real Estate Inspector Committee.

(5) "Core real estate inspection course" means an educational course approved by the commission that relates to real estate inspection, including a course on structural items, electrical items, mechanical systems, plumbing systems, roofing, business, law, standards of practice, report writing, appliances, or ethics.

(6) "Inspector" means a person who holds a license under this chapter.

(7) "License" means an apprentice inspector license, real estate inspector license, or professional inspector license.

(8) "Professional inspector" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection and who accepts employment to perform a real estate inspection for a buyer or seller of real property.

(9) "Real estate inspection" means a written or oral opinion as to the condition of the improvements to real property, including structural items, electrical items, mechanical systems, plumbing systems, or equipment.

(10) "Real estate inspector" means a person who represents to the public that the person is trained and qualified to perform a real estate inspection under the indirect supervision of a professional inspector and who accepts employment to perform a real

estate inspection for a buyer or seller of real property.

(11) "Salesperson" has the meaning assigned by Section 1101.002.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.002. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to a person who repairs, maintains, or inspects improvements to real property, including an electrician, plumber, carpenter, or person in the business of structural pest control in compliance with Chapter 1951, if the person does not represent to the public through personal solicitation or public advertising that the person is in the business of inspecting those improvements.

(b) This chapter does not prevent a person from performing an act the person is authorized to perform under a license or registration issued by this state or a governmental subdivision of this state under a law other than this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.003. RULES; INSPECTION FORMS. The commission by rule shall prescribe standard forms and require inspectors to use the forms to reduce discrepancies and create consistency in preparing reports of real estate inspections.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER B. TEXAS REAL ESTATE INSPECTOR COMMITTEE

Sec. 1102.051. COMMITTEE MEMBERSHIP. (a) The Texas Real Estate Inspector Committee is an advisory committee appointed by the commission.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(5), eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(5), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(5), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 37, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(5), eff. September 1, 2007.

Sec. 1102.058. GENERAL POWERS AND DUTIES OF COMMITTEE; RECOMMENDATIONS. (a) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(12), eff. September 1, 2007.

(b) The committee shall recommend:

(1) rules for licensing inspectors in this state, including rules relating to:

(A) education and experience requirements;

(B) any qualifying examination;

(C) continuing education requirements; and

(D) granting or denying a license application;

(2) the form of any required application or other document;

(3) reasonable fees to implement this chapter, including application fees, examination fees, fees for renewal of a license, and any other fee required by law;

(4) rules relating to standards of practice for real estate inspection;

(5) rules establishing a code of professional conduct and ethics for an inspector; and

(6) any other commission action to provide a high degree of service to and protection of the public in dealing with an inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(12), eff. September 1, 2007.

Sec. 1102.060. CONSIDERATION OF COMMITTEE RECOMMENDATIONS. The commission shall consider the committee's recommendations relating to qualifications and licensing of inspectors to assure the public of a quality professional inspection system in real estate transactions in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 1102.101. APPRENTICE INSPECTOR LICENSE REQUIRED. A person may not act or attempt to act as an apprentice inspector in this state for a buyer or seller of real property unless the person:

(1) holds an apprentice inspector license under this chapter; and

(2) is under the direct supervision of a real estate inspector or professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.102. REAL ESTATE INSPECTOR LICENSE REQUIRED. A person may not act or attempt to act as a real estate inspector in this state for a buyer or seller of real property unless the person:

(1) holds a real estate inspector license under this chapter; and

(2) is under the indirect supervision of a professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.103. PROFESSIONAL INSPECTOR LICENSE REQUIRED. A person may not act as a professional inspector in this state for a buyer or seller of real property unless the person holds a professional inspector license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.104. SUPERVISION. For the purposes of this chapter, a person performing a real estate inspection or preparing a report of a real estate inspection is under:

(1) direct supervision if the person is instructed and controlled by a professional inspector or real estate inspector who is:

(A) responsible for the actions of the person;

(B) available if needed to consult with or assist the person; and

(C) physically present at the time and place of the inspection; and

(2) indirect supervision if the person is instructed and controlled by a professional inspector who is:

(A) responsible for the actions of the person; and

(B) available if needed to consult with or assist the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.105. APPLICATION. An applicant for a license under this chapter must file with the commission an application on a form prescribed by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.1051. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The commission shall require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the commission, to the commission or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The commission shall refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The commission shall conduct a criminal history check of each applicant for a license or renewal of a license using information:

(1) provided by the individual under this section; and

(2) made available to the commission by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The commission may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the department in conducting the criminal history check.

Added by Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 1, eff. September 1, 2013.

Sec. 1102.106. DETERMINATION OF FITNESS. As prescribed by Section 1101.353, the commission shall determine, on request, whether a person possesses the fitness to engage in a profession licensed under this chapter and may conduct a supplemental determination of the person's fitness.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 16, eff. September 1, 2019.

Sec. 1102.107. ELIGIBILITY FOR APPRENTICE INSPECTOR LICENSE. To be eligible for an apprentice inspector license, an applicant must:

(1) at the time of application be:

(A) at least 18 years of age; and

(B) a citizen of the United States or a lawfully admitted alien;

(2) be sponsored by a professional inspector; and

(3) satisfy the commission as to the applicant's honesty, trustworthiness, and integrity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 17, eff. September 1, 2019.

Sec. 1102.108. ELIGIBILITY FOR REAL ESTATE INSPECTOR LICENSE. (a) To be eligible for a real estate inspector license, an applicant must:

(1) at the time of application have:

(A) held an apprentice inspector license for at least three months; and

(B) performed at least 25 real estate inspections under direct supervision;

(2) submit evidence satisfactory to the commission of successful completion of at least 90 classroom hours of core real estate inspection courses;

(3) demonstrate competence based on the examination under Subchapter D;

(4) be sponsored by a professional inspector; and

(5) satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competence.

(b) The commission by rule may specify the length and content of the courses required by Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.109. ELIGIBILITY FOR PROFESSIONAL INSPECTOR LICENSE. To be eligible for a professional inspector license, an applicant must:

(1) at the time of application have:

(A) held a real estate inspector license for at least 12 months; and

(B) performed at least 175 real estate inspections under indirect supervision;

(2) submit evidence satisfactory to the commission of successful completion of at least 40 classroom hours of core real estate inspection courses, in addition to the hours required by Section 1102.108;

(3) demonstrate competence based on the examination under Subchapter D; and

(4) satisfy the commission as to the applicant's honesty, trustworthiness, integrity, and competence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 2, eff. September 1, 2013.

Sec. 1102.110. ELIGIBILITY OF PREVIOUS LICENSE HOLDERS. (a) Notwithstanding Section 1102.108, an applicant is eligible for and has satisfied all requirements for a real estate inspector license if the applicant:

(1) held a real estate inspector license during the 24-month period preceding the date the application is filed;

(2) is sponsored by a professional inspector;

(3) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity; and

(4) submits evidence satisfactory to the commission of successful completion of not less than the number of hours of continuing education courses that would have been required for the applicant to renew the license described by Subdivision (1).

(b) Notwithstanding Section 1102.109, an applicant is eligible for and has satisfied all requirements for a professional inspector license if the applicant:

(1) held a professional inspector license during the 24-month period preceding the date the application is filed;

(2) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity; and

(3) submits evidence satisfactory to the commission of successful completion of not less than the number of hours of continuing education courses that would have been required for the applicant to renew the license described by Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 3, eff. September 1, 2013.

Sec. 1102.111. SUBSTITUTE REQUIREMENTS. (a) The commission by rule shall provide for substitution of relevant experience and additional education in place of:

(1) the number of real estate inspections required for licensing; and

(2) the requirement that an applicant be:

(A) licensed as an apprentice inspector before being licensed as a real estate inspector; or

(B) licensed as a real estate inspector before being

licensed as a professional inspector.

(b) Rules adopted under Subsection (a) may not require an applicant to:

(1) complete more than 320 additional hours of core real estate inspection courses;

(2) complete more than 40 hours of field work, if the applicant completes correspondence or other course provided by alternative means; or

(3) have more than seven years of relevant experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 11, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 4, eff. September 1, 2013.

Sec. 1102.112. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission may waive any license requirement for an applicant who holds a license from another state having license requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.113. ELIGIBILITY AS SPONSOR. A professional inspector may sponsor an apprentice inspector or a real estate inspector only if the professional inspector provides sufficient proof to the commission that the professional inspector has completed at least 200 real estate inspections as a professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.114. ISSUANCE OF LICENSE. The commission shall issue the appropriate license to an applicant who:

(1) meets the required qualifications; and

(2) submits proof of financial responsibility as required by Section 1102.1141.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 38, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 5, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 686 (H.B. 1363), Sec. 2, eff. September 1, 2023.

Sec. 1102.1141. FINANCIAL RESPONSIBILITY REQUIREMENT. (a) An inspector must maintain financial responsibility in the form of:

(1) a liability insurance policy with a minimum limit of $100,000 per occurrence and an aggregate annual total of at least $100,000, and that:

(A) is written by an insurer authorized to engage in the business of insurance in this state, a risk retention group as defined by Chapter 2201, Insurance Code, or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code; and

(B) specifically provides for professional liability coverage to protect the public against a violation of Subchapter G; or

(2) a bond or other security accepted by the commission.

(b) A bond posted as security under Subsection (a)(2) must:

(1) be issued by a carrier admitted in this state;

(2) be in an amount not less than $100,000;

(3) be continuous; and

(4) be cancellable by the surety only after the surety has provided at least 90 days' written notice to the commission before the effective date of the cancellation.

(c) Any security provided under this section in a form other than a bond must be convertible to cash by the commission for the benefit of a person who contracts with an inspector in this state, without requiring approval of a court, if the commission determines that the inspector has violated Subchapter G. Any amount remaining after an inspector's license has expired shall be returned to the inspector not later than the 180th day after the date the license expires.

(d) An inspector who posts a bond or other security under this section must designate an unaffiliated third party to handle the

processing of any claim regarding the bond or other security.

Added by Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 6, eff. September 1, 2013.

Sec. 1102.115. DENIAL OF LICENSE. The provisions of Section 1101.364 governing the commission's denial of a license under that chapter apply to the commission's denial of a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.116. PROBATIONARY LICENSE. The commission may issue a probationary license under this chapter as prescribed by Section 1101.365.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.117. INACTIVE LICENSE. The commission by rule may adopt terms by which:

(1) an inspector may apply for, renew, or place a license on inactive status; and

(2) an inactive inspector may return to active status.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.118. CONTACT INFORMATION. (a) An inspector shall provide the commission with a current mailing address, telephone number, and, if available, e-mail address.

(b) Not later than the 30th day after the date of a change in the mailing address, telephone number, or e-mail address of an inspector, the inspector shall notify the commission of the change and pay any required fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 7, eff.

September 1, 2013.

SUBCHAPTER D. LICENSE EXAMINATION

Sec. 1102.151. CONTENT OF EXAMINATION. (a) A license examination must evaluate competence in the subject matter of each required core real estate inspection course.

(b) The commission shall:

(1) prescribe each license examination; and

(2) prepare or contract for the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.152. OFFERING OF EXAMINATION. The commission shall offer each license examination at least once every two months in Austin.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.153. DEADLINE FOR COMPLETION. A license applicant who does not satisfy the examination requirement before the first anniversary of the date the application is filed must submit a new application and pay another examination fee to be eligible for examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 8, eff. September 1, 2013.

Sec. 1102.154. EXAMINATION RESULTS. (a) Not later than the 30th day after the date an examination is administered, the commission shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the commission shall notify each examinee of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service.

(b) If the notice of the results of an examination graded or

reviewed by a national testing service will not be given before the 91st day after the examination date, the commission shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the commission shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.155. REEXAMINATION. (a) An applicant who fails the examination may apply for reexamination by filing a request with the commission and paying another examination fee.

(b) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless after the date of the third failed examination the applicant completes additional educational requirements as prescribed by the commission and submits evidence satisfactory to the commission of successful completion of those requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 9, eff. September 1, 2013.

SUBCHAPTER E. LICENSE RENEWAL

Sec. 1102.201. LICENSE TERM AND EXPIRATION. (a) The commission may issue or renew a license for a period not to exceed 24 months.

(b) A renewal fee for a license under this chapter may not exceed, calculated on an annual basis, the amount of the fee established under Section 1102.251.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 15, Sec. 12, eff. Sept. 1, 2003.

Sec. 1102.202. NOTICE OF LICENSE EXPIRATION. Not later than the 31st day before the expiration date of a person's license, the commission shall provide notice of the expiration to the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 10, eff. September 1, 2013.

Sec. 1102.203. RENEWAL OF LICENSE; INFORMATION REQUIRED. (a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license and providing proof of financial responsibility as required by Section 1102.1141.

(a-1) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than six months, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(b) If the person's license has been expired for six months or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination, if required, and complying with the requirements and procedures for obtaining an original license.

(c) Each applicant for renewal of a license must disclose to the commission whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(d) The disclosure under Subsection (c) must be provided even if an order has granted community supervision suspending the imposition of the sentence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.163(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 39, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 11, eff. September 1, 2013.

Sec. 1102.205. CONTINUING EDUCATION REQUIREMENTS. (a) The commission shall approve, recognize, prepare, or administer a continuing education program for inspectors.

(b) As a prerequisite for renewal of a real estate inspector license, professional inspector license, or apprentice inspector license, the inspector must participate in the continuing education program and submit evidence satisfactory to the commission of successful completion of at least 16 classroom hours of core real estate inspection courses or continuing education courses for each year of the license period preceding the renewal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.164(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 12, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 40, eff. September 1, 2007.

Sec. 1102.206. DENIAL OF LICENSE RENEWAL. (a) The commission may deny the renewal of a license if the applicant is in violation of a commission order.

(b) The provisions of Section 1101.459 governing the commission's denial of a license renewal under that chapter apply to the commission's denial of a license renewal under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 18, eff. September 1, 2019.

SUBCHAPTER F. LICENSE FEES

Sec. 1102.251. FEES. The commission shall charge and collect reasonable and necessary fees to cover the cost of administering this chapter for:

(1) filing an original application for an apprentice inspector license;

(2) filing an original application for a real estate

inspector license;

(3) filing an original application for a professional inspector license;

(4) renewal of an apprentice inspector license;

(5) renewal of a real estate inspector license;

(6) renewal of a professional inspector license;

(7) a license examination;

(8) a request to change a place of business or to replace a lost or destroyed license; and

(9) filing a request for issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.165(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 41, eff. September 1, 2007.

SUBCHAPTER G. PROHIBITED ACTS

Sec. 1102.301. NEGLIGENCE OR INCOMPETENCE. An inspector may not perform a real estate inspection in a negligent or incompetent manner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.302. AGREEMENT FOR SPECIFIC REPORT; DISHONESTY. An inspector may not:

(1) accept an assignment for real estate inspection if the employment or a fee is contingent on the reporting of:

(A) a specific, predetermined condition of the improvements to real property; or

(B) specific findings other than those that the inspector knows to be true when the assignment is accepted; or

(2) act in a manner or engage in a practice that:

(A) is dishonest or fraudulent; or

(B) involves deceit or misrepresentation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.303. ACTING IN CONFLICTING CAPACITIES. An inspector may not act in a transaction in the dual capacity of inspector and:

(1) undisclosed principal; or

(2) broker or salesperson.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.304. REPAIRS AND MAINTENANCE. An inspector may not perform or agree to perform repairs or maintenance in connection with a real estate inspection under an earnest money contract, lease, or exchange of real property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.305. VIOLATION OF LAW. An inspector may not violate this chapter or a rule adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER I. DISCIPLINARY PROCEEDINGS, PENALTIES, AND ENFORCEMENT PROVISIONS

Sec. 1102.401. DISCIPLINARY POWERS OF COMMISSION. (a) The commission may investigate an action of an inspector and, after notice and hearing as provided by Section 1101.657, reprimand the inspector, place the inspector's license on probation, or suspend or revoke the inspector's license for a violation of this chapter or a commission rule.

(b) An inspector whose license is revoked under this section may not apply to the commission for a new license until after the first anniversary of the date of the revocation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.402. LICENSE INELIGIBILITY FOR CLAIM ON FUND. A

person is not eligible for a license under this chapter until the person has reimbursed the commission in full for any amount paid on the person's behalf from the real estate inspection recovery fund under former Subchapter H, as that subchapter existed on August 31, 2023, or the real estate recovery trust account under Subchapter M, Chapter 1101, plus interest at the legal rate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 297 (H.B. 1530), Sec. 12, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 698 (H.B. 2911), Sec. 12, eff. September 1, 2013.
Acts 2023, 88th Leg., R.S., Ch. 686 (H.B. 1363), Sec. 3, eff. September 1, 2023.

Sec. 1102.403. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty as provided by Subchapter O, Chapter 1101, on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter or Chapter 1101.

(b) An administrative penalty collected under this section for a violation by an inspector shall be deposited to the credit of the general revenue fund. A penalty collected under this section for a violation by a person who is not licensed under this chapter or Chapter 1101 shall be deposited to the credit of the real estate recovery trust account or the general revenue fund, as determined by the commission. Any amounts deposited to the credit of the general revenue fund under this section shall offset any amount required to be remitted to that fund by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.160(g), eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 686 (H.B. 1363), Sec. 4, eff. September 1, 2023.

Sec. 1102.404. INJUNCTIVE RELIEF. The commission, the attorney general, a county attorney, or a district attorney, as applicable,

may bring an action to enforce this chapter or to abate or enjoin a violation of this chapter or a rule adopted under this chapter as prescribed by Sections 1101.751 and 1101.752.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.405. APPEAL BOND EXEMPTION. The commission is not required to give an appeal bond in an action to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.406. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person wilfully violates or fails to comply with this chapter or a commission order.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1102.407. CRIMINAL PENALTY FOR PRACTICING WITHOUT LICENSE. (a) A person commits an offense if the person does not hold a license under this chapter and knowingly engages in the business of real estate inspecting, including performing an inspection while the person's license is revoked or suspended.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.167(a), eff. Sept. 1, 2003.

Sec. 1102.408. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a

continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 43, eff. September 1, 2007.

CHAPTER 1103. REAL ESTATE APPRAISERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1103.001. SHORT TITLE. This chapter may be cited as the Texas Appraiser Licensing and Certification Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.002. PURPOSE. The purpose of this chapter is to:

(1) conform state law relating to the regulation of real estate appraisers to the requirements adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(2) enforce standards for the appraisal of real property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 1, eff. May 27, 2011.

Sec. 1103.003. DEFINITIONS. In this chapter:

(1) "Appraisal" means, regardless of whether prepared for a

federally related transaction:

(A) an opinion of value; or

(B) the act or process of developing an opinion of value.

(2) "Appraisal Foundation" means The Appraisal Foundation, as defined by 12 U.S.C. Section 3350, or its successor.

(2-a) "Appraisal review" has the meaning assigned by Section 1104.003.

(2-b) "Appraisal Standards Board" means the Appraisal Standards Board of the Appraisal Foundation, or its successor.

(3) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, or its successor.

(4) "Appraiser Qualifications Board" means the Appraiser Qualifications Board of the Appraisal Foundation, or its successor.

(4-a) "Appraiser trainee" means an appraiser trainee licensed under this chapter.

(4-b) "Automated valuation model" means an automated system used to derive the value of real property through publicly available property records and various analytic methodologies, including comparable sales prices, home characteristics, and historical home price appreciations.

(5) "Board" means the Texas Appraiser Licensing and Certification Board.

(5-a) "Certified appraiser" means a person who is certified under this chapter to practice as a certified general or certified residential appraiser.

(6) "Executive director" means the executive director of the board.

(6-a) "Federally related transaction" means a real estate-related transaction that:

(A) requires the services of an appraiser; and

(B) is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

(6-b) "Federal financial institution regulatory agency" means:

(A) the Board of Governors of the Federal Reserve System;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of the Comptroller of the Currency;

(D) the Consumer Financial Protection Bureau;

(E) the National Credit Union Administration; or

(F) the successors of any of those agencies.

(6-c) "Federally regulated financial institution" means:

(A) a depository institution as defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813) or a subsidiary of a depository institution; or

(B) a federal credit union or a state credit union as defined by Section 101, Federal Credit Union Act (12 U.S.C. Section 1752), a subsidiary of a credit union, or a credit union service organization.

(7) "Licensed appraiser" means a person who is licensed under this chapter to practice as a residential real estate appraiser.

(7-a) "Non-bank financial institution" means:

(A) a residential mortgage loan company licensed under Chapter 156, Finance Code;

(B) a mortgage banker regulated under Chapter 157, Finance Code; or

(C) a regulated lender licensed under Chapter 342, Finance Code.

(8) "Supervisory appraiser" means a supervisory appraiser as defined by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 2, eff. May 27, 2011.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 1, eff. January 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 700 (H.B. 2533), Sec. 1, eff. June 15, 2021.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 15, eff. January 1, 2024.

Sec. 1103.004. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to:

(1) a person who is authorized by law to perform an evaluation of real property for or to provide an evaluation of real property to another person;

(2) a real estate broker licensed under Chapter 1101 or a sales agent acting under the authority of a sponsoring broker who provides to another person a written analysis, opinion, or conclusion relating to the estimated price of real property if the analysis, opinion, or conclusion:

(A) is not referred to as an appraisal;

(B) is given in the ordinary course of the broker's business; and

(C) is related to the actual or potential acquisition, disposition, encumbrance, or management of an interest in real property;

(3) an appraiser certified by a jurisdiction other than this state who performs an appraisal review of an appraisal performed on real property in this state, if the appraiser does not offer an opinion of value as part of the appraisal review;

(4) an employee of a federally regulated financial institution or any other person engaged by the institution who performs an evaluation of real property for use by the institution in a transaction for which the institution is not required to use the services of a licensed or certified appraiser under federal regulations adopted under Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. Section 1833e) or under applicable state law;

(5) an employee of a non-bank financial institution or any other person engaged by the institution who provides an analysis, assessment, opinion, conclusion, notation, or compilation of data concerning the value of an interest in real property for use by the institution;

(6) the procurement or use of an automated valuation model; or

(7) a person who:

(A) performs appraisals in connection with the Practical Applications of Real Estate Appraisal course as approved by the Appraiser Qualifications Board; and

(B) does not use a title or a reference in violation of Section 1103.201(b).

(b) Notwithstanding Subsection (a)(7), the appraisals described

by that subsection may be credited by the board toward satisfying the experience required to obtain a license or certificate under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 22, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 3, eff. May 27, 2011.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 2, eff. January 1, 2016.
Acts 2021, 87th Leg., R.S., Ch. 700 (H.B. 2533), Sec. 2, eff. June 15, 2021.
Acts 2023, 88th Leg., R.S., Ch. 55 (S.B. 1222), Sec. 1, eff. September 1, 2023.

Sec. 1103.006. APPLICATION OF SUNSET ACT. The Texas Appraiser Licensing and Certification Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter and Chapter 1104 expire September 1, 2033.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 3, eff. January 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 19, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 5.02, eff. June 16, 2021.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.17, eff. June 18, 2023.

SUBCHAPTER B. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

Sec. 1103.051. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD. The Texas Appraiser Licensing and Certification Board is an independent subdivision of the Texas Real Estate Commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.052. BOARD MEMBERSHIP. (a) The board consists of nine members as follows:

(1) the executive secretary of the Veterans' Land Board or the executive secretary's designee; and

(2) eight members appointed by the governor with the advice and consent of the senate as follows:

(A) four members who are certified or licensed appraisers actively engaged in the practice of appraising real property; and

(B) four public members who qualify for appointment based on their recognized business ability.

(b) The executive secretary of the Veterans' Land Board or the executive secretary's designee is a voting member of the board.

(c) In making appointments to the board, the governor shall ensure that:

(1) a single appraisal organization is not overrepresented on the board;

(2) the board is independent of a trade association, profession, or industry; and

(3) the board represents:

(A) the diverse geographic areas of the state; and

(B) a cross-section of disciplines in the field of real estate appraisal.

(d) Appointments to the board shall be made without regard to:

(1) the race, color, religion, sex, disability, familial status, or national origin of the appointee; or

(2) the appointee's membership in an appraisal organization.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.0521. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or

professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of real estate brokerage or appraisal; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of real estate brokerage or appraisal.

(c) A person may not serve as a board member or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 20, eff. September 1, 2019.

Sec. 1103.053. QUALIFICATIONS OF APPOINTED MEMBERS. (a) An appointed member of the board must be a qualified voter of this state.

(b) A person appointed to the board qualifies by taking the constitutional oath of office not later than the 15th day after the date of appointment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.054. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is a certified or licensed appraiser;

(2) is certified or licensed by an occupational regulatory agency in the field of real estate brokerage or appraisal;

(3) owns or controls, directly or indirectly, a business entity or other organization whose primary purpose is to engage in real estate sales, brokerage, or appraisal;

(4) is employed by or participates in the management of a business entity or other organization whose primary purpose is to engage in real estate sales, brokerage, or appraisal; or

(5) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 21, eff. September 1, 2019.

Sec. 1103.0545. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the types of board rules, interpretations, and enforcement actions that may implicate federal antitrust law by limiting competition or impacting prices charged by persons engaged in a profession or business the board regulates, including any rule, interpretation, or enforcement action that:

(A) regulates the scope of practice of persons in a profession or business the board regulates;

(B) restricts advertising by persons in a profession or business the board regulates;

(C) affects the price of goods or services provided by persons in a profession or business the board regulates; or

(D) restricts participation in a profession or business the board regulates;

(5) the results of the most recent formal audit of the

board;

(6) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(7) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 4, eff. January 1, 2016.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 22, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 16, eff. January 1, 2024.

Sec. 1103.055. TERMS; VACANCIES. (a) Appointed members of the board serve staggered six-year terms, with the terms of one or two appraiser members and one or two public members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the unexpired term.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 5, eff. January 1, 2016.

Sec. 1103.056. OFFICERS; EXECUTIVE COMMITTEE. (a) The governor shall designate a board member who is an appraiser to serve as presiding officer of the board.

(b) At a regular meeting in February of each year, the board shall elect from its members an assistant presiding officer and a secretary.

(c) The presiding officer, assistant presiding officer, and secretary constitute the executive committee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 6, eff. January 1, 2016.

Sec. 1103.057. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that an appointed member:

(1) does not have at the time of appointment the qualifications required by this subchapter for appointment to the board;

(2) does not maintain during service on the board the qualifications required by this subchapter for appointment to the board;

(3) is ineligible for membership under Section 1103.0521 or 1103.054;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of an appointed board member exists.

(c) If the executive director has knowledge that a potential ground for removal of an appointed board member exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall immediately notify the

governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall immediately notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 7, eff. January 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 23, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 17, eff. January 1, 2024.

Sec. 1103.058. PER DIEM; REIMBURSEMENT. (a) An appointed board member is entitled to receive:

(1) $75 for each day the member engages in official duties as a board member; and

(2) reimbursement for actual and necessary expenses incurred in performing official duties as a board member.

(b) For purposes of this section, the board by rule may determine what constitutes a day or actual and necessary expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 8, eff. January 1, 2016.

Sec. 1103.059. QUASI-JUDICIAL IMMUNITY. A member of the board is entitled to quasi-judicial immunity from suit for an action that:

(1) is taken as a member of the board; and

(2) is in compliance with the law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.060. EDUCATIONAL PRESENTATIONS. (a) A member of the board or a board employee may make a presentation to a group of

certificate or license holders for which the certificate or license holders may receive continuing education credit for the renewal of a certificate or license under Section 1103.211. The board member or employee may not receive compensation for the presentation.

(b) Notwithstanding Subsection (a), the board member or employee may receive reimbursement for reasonable travel expenses.

Added by Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 9, eff. January 1, 2016.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

Sec. 1103.101. EXECUTIVE DIRECTOR. (a) The administrator of the Texas Real Estate Commission shall serve as executive director.

(b) The board may delegate to the executive director the responsibility for administering this chapter and Chapter 1104, including the approval of consent orders and agreements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 44, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 4, eff. May 27, 2011.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 10, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 18, eff. January 1, 2024.

Sec. 1103.102. OTHER BOARD PERSONNEL. In addition to the executive director, the board may employ other officers and employees as necessary to administer this chapter and Chapter 1104.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 11, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 18, eff. January 1, 2024.

Sec. 1103.103. SALARIES. The executive director shall determine the salaries of the officers and employees of the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 45, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 4, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 12, eff. January 1, 2016.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 18, eff. January 1, 2024.

Sec. 1103.104. DUTIES OF EXECUTIVE DIRECTOR. The executive director shall:

(1) disseminate information;

(2) administer rules adopted by the board under this chapter or Chapter 1104;

(3) review each application for a certificate or license and make a recommendation for final action to the board;

(4) review and make recommendations to the board regarding the adoption of rules relating to:

(A) the examination required by Subchapter F;

(B) education and experience requirements for issuance of certificates and licenses;

(C) continuing education for a certified or licensed appraiser;

(D) standards of professional practice and ethics for a certified or licensed appraiser;

(E) standards for a real estate appraisal performed by a certified or licensed appraiser; and

(F) the fees established by the board under Section 1103.156 or Section 1104.052;

(5) collect fees established by the board;

(6) manage the staff and employees of the board; and

(7) perform any other duty prescribed by the board under this chapter or Chapter 1104.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 46, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 13, eff. January 1, 2016.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 18, eff. January 1, 2024.

Sec. 1103.105. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 24, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 18, eff. January 1, 2024.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1103.151. RULES RELATING TO CERTIFICATES AND LICENSES. The board may adopt:

(1) rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with this chapter and consistent with applicable federal law;

(2) rules relating to the qualifying education and experience required for certifying or licensing an appraiser or appraiser trainee that are consistent with the guidelines recognized by the Appraiser Qualifications Board;

(3) rules relating to the examination required by Subchapter F; and

(4) rules relating to procedures for the timely renewal of a certificate or license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 2, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 5, eff. May

27, 2011.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 14, eff. January 1, 2016.

Sec. 1103.152. APPRAISER CERTIFICATE AND LICENSE CATEGORIES. The board may:

(1) establish certificate and license categories that are consistent with the categories recognized by the Appraiser Qualifications Board; and

(2) prescribe qualifications for each category that are consistent with the qualifications established for that category by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 3, eff. September 1, 2005.

Sec. 1103.153. RULES RELATING TO QUALIFYING OR CONTINUING EDUCATION. (a) The board may adopt rules relating to:

(1) continuing education requirements for a certified or licensed appraiser or an appraiser trainee; and

(2) the requirements for approval of a provider or course for qualifying or continuing education.

(b) In addition to the rules adopted under Subsection (a), the board may by rule develop minimum education and experience requirements for an instructor of a course for qualifying or continuing education. For board approval of a course provider application, the applicant must ensure that the instructors meet the minimum education and experience requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 15, eff. January 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 25, eff. September 1, 2019.

Sec. 1103.154. RULES RELATING TO PROFESSIONAL CONDUCT. The board may adopt:

(1) rules as necessary to conform to the minimum written standards of the Appraisal Standards Board by incorporating the Uniform Standards of Professional Appraisal Practice;

(2) rules requiring a certified or licensed appraiser or an appraiser trainee to comply with standards of competency, professional conduct, and ethics prescribed by the Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Standards Board; and

(3) rules relating to the standards for the development of an appraisal and the conveyance of an appraisal report by a certified or licensed appraiser or an appraiser trainee that are recognized as substantially equivalent to or consistent with the Uniform Standards of Professional Appraisal Practice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 16, eff. January 1, 2016.

Sec. 1103.155. ROSTER. (a) The board shall maintain a roster of persons who are certified or licensed under this chapter.

(b) The roster must indicate the type of certificate or license held by each person listed.

(c) The board shall send a copy of the roster to the Appraisal Subcommittee at least weekly.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 17, eff. January 1, 2016.

Sec. 1103.156. FEES. (a) The board may establish reasonable fees to administer this chapter, including:

(1) an application fee for a certificate or license;
(2) an examination fee;
(3) a renewal fee for a certificate or license;
(4) a registration fee for a nonresident real estate appraiser;
(5) an application fee for an appraiser trainee;
(6) a renewal fee for an appraiser trainee;
(7) a fee for filing a request for a return to active status; and
(8) other appropriate fees.

(b) The board shall collect from each certified or licensed appraiser an annual registry fee in an amount established by the board not to exceed the amount required by the Appraisal Subcommittee. The board shall deposit the registry fees to the credit of the appraiser registry account in the general revenue fund.

(c) The fees collected under Subsection (b) shall be sent to the Appraisal Subcommittee regularly as required by federal law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 106, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 6, eff. May 27, 2011.

Sec. 1103.157. GIFTS, GRANTS, AND DONATIONS. The board may solicit, accept, and administer gifts, grants, and donations of any kind from any public or private source for the purposes of this chapter and Chapter 1104.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 7, eff. May 27, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 18, eff. January 1, 2016.

Sec. 1103.158. EXPERT WITNESS TESTIMONY BY BOARD MEMBER. Notwithstanding Section 572.051, Government Code, a board member may testify as an expert witness in an action concerning a violation of the Uniform Standards of Professional Appraisal Practice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 7, eff. May 27, 2011.

Sec. 1103.159. ADVISORY COMMITTEE ON APPRAISAL MANAGEMENT COMPANIES. (a) The board shall establish an advisory committee to advise the board and make recommendations on matters related to the regulation of appraisal management companies under Chapter 1104.

(b) The advisory committee consists of the assistant presiding officer of the board and four persons appointed by the governor as follows:

(1) two members who are each designated as the controlling person of an appraisal management company registered under Chapter 1104; and

(2) two public members with recognized business ability.

(c) The assistant presiding officer of the board shall serve as the presiding officer of the advisory committee.

(d) The members of the advisory committee appointed by the governor serve staggered two-year terms, with the terms of one appraisal management company member and one public member expiring on January 31 of each year.

(e) An appointed member may not serve more than two consecutive two-year terms.

(f) If a vacancy occurs during a member's term, the governor shall appoint a person to fill the unexpired term.

(g) The advisory committee may hold a meeting by telephone conference call or other video or broadcast technology.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 1, eff. September 1, 2011.
Redesignated from Occupations Code, Section 1103.157 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(35), eff. September 1, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 19, eff. January 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 26, eff. September 1, 2019.

Sec. 1103.160. ADVISORY COMMITTEES. (a) The board may appoint advisory committees to perform the advisory functions assigned to the committees by the board. An advisory committee under this section is subject to Chapter 2110, Government Code.

(b) A member of an advisory committee who is not a member of the board may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the board.

(d) An advisory committee may hold a meeting by telephone conference call or other video or broadcast technology.

(e) If the board appoints an advisory committee under this section, the board shall adopt rules regarding:

(1) the advisory committee's purpose, role, responsibility, and goals;

(2) size and quorum requirements;

(3) qualifications for membership, including experience requirements and geographic representation;

(4) appointment procedures;

(5) membership terms;

(6) training requirements for advisory committee members; and

(7) the advisory committee's compliance with Chapter 551, Government Code.

(f) In addition to the rules adopted under Subsection (e), the board by rule shall adopt a process to regularly evaluate the need for an advisory committee appointed under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 27, eff. September 1, 2019.

Sec. 1103.161. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any agenda item at a regular board meeting.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 27, eff. September 1, 2019.

Sec. 1103.162. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 27, eff. September 1, 2019.

Sec. 1103.163. COMPLAINT INFORMATION. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 27, eff. September 1, 2019.

SUBCHAPTER E. CERTIFICATE AND LICENSE REQUIREMENTS

Sec. 1103.201. CERTIFICATE OR LICENSE REQUIRED. (a) A person may not perform an appraisal of real estate unless the person is licensed or certified as an appraiser under this chapter, registered as a temporary out-of-state appraiser under this chapter, or acting as an appraiser trainee under the supervision of a supervisory appraiser.

(b) Unless the person holds the appropriate license or certification, a person may not:

(1) use the title "certified real estate appraiser" or "licensed real estate appraiser"; or

(2) refer to an appraisal performed by the person as a "certified appraisal" or "licensed appraisal."

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 8, eff. May 27, 2011.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 20, eff. January 1, 2016.

Sec. 1103.202. ELIGIBILITY REQUIREMENTS FOR CERTIFICATE OR LICENSE. To be eligible for a certificate or license under this chapter, an applicant must:

(1) pass the applicable examination required by Subchapter F;

(2) successfully complete the number and type of classroom hours or other educational qualifications required by the Appraiser Qualifications Board;

(3) provide evidence satisfactory to the board that the applicant has at least the minimum number of hours of experience in performing appraisals over the specified number of calendar years as required by the Appraiser Qualifications Board;

(4) satisfy the board as to the applicant's honesty, trustworthiness, and integrity; and

(5) comply with the requirements of Sections 1103.203 and 1103.2031.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 21, eff. January 1, 2016.

Sec. 1103.203. CERTIFICATE OR LICENSE APPLICATION. (a) An applicant for a certificate or license or for renewal of a certificate or license must submit an application to the board on the form prescribed by the board.

(b) The applicant must disclose in the application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) The disclosure under Subsection (b) must be provided regardless of whether a court order granted community supervision suspending the imposition of the sentence.

(d) The application must include the applicant's current mailing address and telephone number and the applicant's business e-mail address, if available. The applicant shall notify the board of any change in the applicant's mailing or e-mail address or telephone number while the application is pending.

(e) The applicant must provide any other information required by the board to comply with the Appraiser Qualifications Board's criminal history and background check requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 7, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 22, eff. January 1, 2016.

Sec. 1103.2031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT. (a) The board by rule may require that an applicant for a certificate or license or renewal of an unexpired certificate or license submit a complete and legible set of fingerprints, on a

form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety or the Federal Bureau of Investigation.

(b) If the board implements the requirement under Subsection (a), the board may not issue a certificate or license to or renew the certificate or license on active status of an applicant who does not comply with that requirement.

(c) If the board implements the requirement under Subsection (a), the board shall conduct a criminal history check of an applicant for a certificate or license or renewal of a certificate or license using information:

(1) provided by the applicant under this section and Section 1103.203; and

(2) made available to the board by the Department of Public Safety, the Federal Bureau of Investigation, or any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety or other federally authorized entity to administer a criminal history check required under this section; and

(2) authorize the Department of Public Safety or other federally authorized entity to collect from each applicant the costs incurred by the department in conducting the criminal history check.

Added by Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 23, eff. January 1, 2016.

Sec. 1103.204. FULFILLMENT OF EDUCATION REQUIREMENTS. (a) In this section, "real estate-related financial transaction" means a transaction involving:

(1) selling, leasing, purchasing, exchanging, investing in, or financing real property or an interest in real property;

(2) refinancing real property or an interest in real property; or

(3) using real property or an interest in real property as security for a loan or investment, including a mortgage-backed security.

(b) This chapter does not limit the amount of time in which an

applicant for a certificate or license is required to satisfy the education requirements under this subchapter.

(c) The board shall give an applicant for a certificate or license credit toward fulfilling the requirements of Section 1103.202(2) for classroom hours taken in the course of becoming licensed as a real estate broker or sales agent or for professional development or continuing education courses taken, whether the classroom hours or courses are taken by a person as a real estate broker or sales agent or as an employee of a financial institution engaged in real estate-related financial transactions, if the classroom hours or courses satisfy the requirements established by the guidelines recognized by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 8, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 24, eff. January 1, 2016.

Sec. 1103.205. FULFILLMENT OF EXPERIENCE REQUIREMENTS. (a) This chapter does not limit the amount of time in which an applicant for a certificate or license is required to satisfy the experience requirements under this subchapter.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 55 (S.B. 1222), Sec. 5(1), eff. September 1, 2023.

(c) For the purpose of determining the qualifications of an applicant for a certificate or license under this chapter, acceptable appraisal experience includes any one or any combination of the categories recognized by the Appraiser Qualifications Board.

(d) For purposes of this subchapter, an hour of experience means 60 minutes spent in one or more of the acceptable areas of appraisal experience recognized under this subchapter. Calculation of the hours of experience must be based solely on actual hours of experience.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 9, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 25, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 55 (S.B. 1222), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 55 (S.B. 1222), Sec. 5(1), eff. September 1, 2023.

Sec. 1103.206. VERIFICATION OF EDUCATION AND EXPERIENCE. (a) The board shall adopt a reliable method to verify the evidence of education submitted by an applicant for a certificate or license.

(b) The board shall adopt a reliable method to verify the evidence of appraisal experience submitted by an applicant for a certificate or license. The method must include the review of appraisal experience of all applicants for certification. An applicant has at least 60 days after the date notice is sent to submit any records requested by the board. The board may not require the applicant to provide more information than the information the board may obtain under Section 1103.207.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 10, eff. May 27, 2011.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 26, eff. January 1, 2016.

Sec. 1103.207. ADDITIONAL INFORMATION FROM CERTAIN APPLICANTS. (a) In addition to the information or documentation specified by this subchapter, the board may obtain other information or documentation from an applicant for a certificate or license under this chapter if the board determines that:

(1) a formal complaint against the applicant alleging fraud, incompetency, or malpractice is reasonable; or

(2) other just cause exists for requiring further information.

(b) The board may obtain the additional information or documentation by:

(1) requiring the applicant to complete a form prescribed

by the board that includes a detailed listing of the applicant's appraisal experience and states for each appraisal claimed by the applicant:

(A) the municipality or county in which the appraisal was performed;

(B) the type and description of the building or property appraised;

(C) the approach to value used in the appraisal;

(D) the actual number of hours spent on the appraisal; and

(E) any other information determined appropriate by the board; or

(2) engaging in other investigative research determined appropriate by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 27, eff. January 1, 2016.

Sec. 1103.209. RECIPROCAL CERTIFICATE OR LICENSE. (a) The board shall issue a reciprocal license or certificate to an applicant from another state if:

(1) the appraiser licensing and certification program of the other state is in compliance with 12 U.S.C. Section 3331 et seq.;

(2) the applicant holds a valid license or certificate from a state whose requirements for licensure or certification meet or exceed the licensure or certification requirements of this state;

(3) the applicant satisfies the board as to the appraiser's honesty, trustworthiness, and integrity; and

(4) the applicant complies with the requirements of Sections 1103.203 and 1103.2031.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 131, Sec. 24, eff. May 27, 2011.

(c) The application form submitted for a reciprocal certificate or license under this section must be comparable to the form required of a resident of this state applying for a similar certificate or license.

(d) The fee charged to an appraiser from another state for a

reciprocal certificate or license under this section must be comparable to the fee required of a resident of this state applying for a similar certificate or license. A person who obtains a certificate or license by reciprocity under this section must pay the federal registry fee and any other fee the board imposes.

(e) An applicant for a certificate or license under this chapter who is not a resident of this state must submit with the application an irrevocable consent that states that service of process in an action against the applicant arising out of the applicant's activities as a certified or licensed appraiser in this state may be made by delivery of the process to the executive director if the plaintiff in the action, using due diligence, cannot obtain personal service on the applicant. If process is served as provided by this subsection, the executive director shall immediately send a copy of the material served on the executive director to the certified or licensed appraiser at the appraiser's address of record.

(f) The board shall request verification from the state in which the applicant is certified or licensed to confirm that the applicant's certificate or license is valid, active, and in good standing. The board may not issue a reciprocal certificate or license without that verification.

(g) A reciprocal certificate or license expires on the second anniversary of the last day of the month in which it was issued.

(h) A reciprocal certificate or license is renewable under terms adopted by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 10, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 11, eff. May 27, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 24, eff. May 27, 2011.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 28, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 19, eff. January 1, 2024.

Sec. 1103.2091. PROBATIONARY CERTIFICATE OR LICENSE. (a) The board may issue a probationary certificate or license to an appraiser or an appraiser trainee, as applicable.

(b) The board by rule shall adopt reasonable terms for issuing a probationary certificate or license.

(c) A person who holds a probationary certificate or license under this section must disclose the probationary status to all clients before accepting an assignment.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 12, eff. May 27, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 29, eff. January 1, 2016.

Sec. 1103.210. DENIAL OF CERTIFICATE OR LICENSE. (a) The board shall immediately provide written notice to the applicant of the board's denial of a certificate or license under this chapter.

(b) An appeal of the denial of a certificate or license is governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.211. CERTIFICATE OR LICENSE RENEWAL; CONTINUING EDUCATION. (a) A certificate or license issued by the board expires on the second anniversary of the date of issuance.

(b) A person may renew a certificate or license by:

(1) paying the renewal fee;

(2) providing evidence satisfactory to the board that the person has completed continuing education requirements that comply with the guidelines recognized by the Appraiser Qualifications Board and that are imposed by rule under this chapter;

(3) satisfying the board as to the person's honesty, trustworthiness, and integrity; and

(4) complying with the requirements of Sections 1103.203 and 1103.2031.

(c) For purposes of Subsection (b)(2), the board shall accept as continuing education any educational offering that complies with the guidelines recognized by the Appraiser Qualifications Board that

a certified or licensed appraiser was awarded by a provider of qualifying appraisal education approved by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 11, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 30, eff. January 1, 2016.

Sec. 1103.2111. LATE RENEWAL OF CERTIFICATE OR LICENSE. (a) A person whose certificate or license has been expired for 90 days or less may renew the certificate or license by paying to the board a fee equal to 1-1/2 times the required renewal fee. If a certificate or license has been expired for more than 90 days but less than six months, the person may renew the certificate or license by paying to the board a fee equal to two times the required renewal fee.

(b) A certificate or license that is renewed under this section shall expire on the date that would apply had the certificate or license been timely renewed.

(c) A person may not perform an appraisal in a federally related transaction while the person is not actively licensed or certified as an appraiser or an appraiser trainee.

(d) If a person's certificate or license has been expired six months or longer, the person may not renew the certificate or license. The person may obtain a new certificate or license by complying with the requirements and procedures for an original application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 13, eff. May 27, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 31, eff. January 1, 2016.

Sec. 1103.212. EXTENSION OF TIME TO COMPLETE REQUIRED CONTINUING EDUCATION. (a) The board by rule may establish procedures under which a person may obtain an extension of time to complete continuing education required to renew the person's

certificate or license.

(b) The board may require a person under this section to:

(1) pay an additional fee, not to exceed $200, on or before the date the certificate or license is scheduled to expire; and

(2) complete the required continuing education not later than the 60th day after the date the certificate or license is scheduled to expire.

(c) Notwithstanding the other provisions of this section, a person must complete the required continuing education before performing an appraisal in a federally related transaction.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 2, eff. Sept. 1, 2003.

Sec. 1103.213. INACTIVE CERTIFICATE OR LICENSE. (a) The board may place on inactive status the certificate or license of a person who:

(1) is not acting as an appraiser or an appraiser trainee;

(2) is not acting as a supervisory appraiser of an appraiser trainee; and

(3) submits a written application to the board before the expiration date of the certificate or license.

(b) The board may place on inactive status the certificate or license of an appraiser or an appraiser trainee whose certificate or license has expired if the person:

(1) applies for inactive status on a form prescribed by the board not later than the 180th day after the expiration date of the certificate or license; and

(2) meets the requirements of Section 1103.2111.

(c) A supervisory appraiser applying for inactive status shall terminate the appraiser's association with each appraiser trainee supervised by the appraiser by giving written notice to each appraiser trainee before the 30th day preceding the date the appraiser applies for inactive status.

(d) An appraiser or an appraiser trainee on inactive status:

(1) may not perform any activity regulated under this chapter;

(2) must pay annual renewal fees; and

(3) is not required to pay the annual registry fee described by Section 1103.156(b).

(e) The board shall maintain a list of each appraiser whose certificate or license is on inactive status.

(f) The board shall return an appraiser's certificate or license to active status if the appraiser:

(1) submits an application to the board;

(2) pays the required fee;

(3) submits proof of complying with the cumulative continuing education requirements of Section 1103.211 during the period the license has been on inactive status;

(4) satisfies the board as to the person's honesty, trustworthiness, and integrity; and

(5) complies with the requirements of Sections 1103.203 and 1103.2031.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 32, eff. January 1, 2016.

Sec. 1103.214. DENIAL OF CERTIFICATE OR LICENSE RENEWAL. (a) The board may deny the renewal of a certificate or license issued under this chapter if the applicant is in violation of a board order.

(b) The denial of a certificate or license renewal under this section is subject to the same provisions as are applicable under Section 1103.210 to the denial of a certificate or license.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 28, eff. September 1, 2019.

SUBCHAPTER F. APPRAISER EXAMINATION

Sec. 1103.251. EXAMINATION REQUIRED. (a) The board shall prescribe an appraiser examination.

(b) The examination must be:

(1) written; and

(2) approved by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 12, eff. September

1, 2005.

Sec. 1103.252. TESTING SERVICE. (a) The board may contract with a testing service to administer the examination.

(b) The board or the testing service may collect an examination fee from an applicant for a certificate or license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 33, eff. January 1, 2016.

Sec. 1103.253. TIME AND PLACE OF EXAMINATION; NOTICE. The board or the testing service shall offer the examination at least once each month in Austin and at other locations and times as the board may determine or require. The board shall provide public notice of all examinations on the board's Internet website.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 34, eff. January 1, 2016.

Sec. 1103.254. EXAMINATION APPLICATION. (a) An application to take the examination must be on a form prescribed by the board.

(b) An application is active for one year beginning on the date the application is initially accepted. If an applicant does not pass the examination before the first anniversary of the date of application, the applicant must submit a new application and pay the appropriate fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 13, eff. September 1, 2005.

Sec. 1103.255. EXPERIENCE REQUIRED BEFORE TAKING EXAMINATION.

An applicant for the examination must fulfill the applicable experience requirement for a certificate or license before taking the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 35, eff. January 1, 2016.

Sec. 1103.256. MINIMUM PASSING GRADE REQUIRED. To pass the examination, an applicant for a certificate or license must achieve the minimum score required by the Appraiser Qualifications Board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 14, eff. September 1, 2005.

Sec. 1103.257. EXAMINATION RESULTS. (a) Not later than the 10th day after the date a person takes an examination, the board or the testing service shall notify the person of the examination results.

(b) If notice of the examination results will be delayed for more than 10 days after the examination date, the board shall notify each examinee of the reason for the delay not later than the 10th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination. The request must be accompanied by a statement identifying the person and a fee in an amount determined by the board. The board shall release the analysis directly to the person requesting the analysis.

(d) The examination results are confidential.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 15, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 36, eff.

January 1, 2016.

Sec. 1103.258. REEXAMINATION. (a) An applicant who fails an examination may apply to retake the examination on payment of an additional examination fee.

(b) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the board that the applicant has completed additional education, as prescribed by the board, since the date the applicant last took the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 16, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 14, eff. May 27, 2011.

SUBCHAPTER G. TEMPORARY APPRAISAL AUTHORITY FOR OUT-OF-STATE APPRAISERS

Sec. 1103.301. REGISTRATION REQUIRED. A person certified or licensed as a real estate appraiser by another state may appraise real property in this state without holding a certificate or license issued under this chapter if the person registers with the board under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.302. REGISTRATION APPLICATION. A person may register with the board by:

(1) completing a registration form prescribed by the board;

(2) meeting the requirements established under this chapter; and

(3) paying the required fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 37, eff. January 1, 2016.

Sec. 1103.303. ELIGIBILITY REQUIREMENTS FOR REGISTRATION. A person is eligible to register with the board if:

(1) the certification and licensing program under which the person is certified or licensed by another state has not been disapproved by the Appraisal Subcommittee; and

(2) the person's appraisal business in this state does not exceed six months.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 17, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 38, eff. January 1, 2016.

Sec. 1103.304. EXTENSION OF REGISTRATION. A person may obtain a 90-day extension of a temporary registration under this subchapter by completing an extension form approved by the board and paying any required fee. The board may grant only one extension for each temporary registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 15, eff. May 27, 2011.

SUBCHAPTER H. APPRAISER TRAINEES

Sec. 1103.351. SUPERVISORY APPRAISER. (a) The board may authorize a certified appraiser under this chapter to supervise an appraiser trainee if the certified appraiser meets the requirements of the board consistent with applicable federal law.

(b) An appraiser trainee may have more than one supervisory appraiser.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 39, eff.

January 1, 2016.

Sec. 1103.352. APPLICATION FOR APPRAISER TRAINEE. An applicant for a license as an appraiser trainee and each supervisory appraiser of the applicant must apply to the board using the online application on the board's Internet website or on a form prescribed by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 40, eff. January 1, 2016.

Sec. 1103.353. ELIGIBILITY REQUIREMENTS FOR APPRAISER TRAINEE. To be eligible for a license as an appraiser trainee, an applicant must:

(1) be at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) satisfy the board as to the applicant's honesty, trustworthiness, and integrity;

(4) comply with the requirements of Sections 1103.203 and 1103.2031; and

(5) meet all other qualifications established by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 18, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 41, eff. January 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 29, eff. September 1, 2019.

Sec. 1103.354. APPRAISER TRAINEE REPORTS. (a) An appraiser trainee licensed by the board may perform an appraisal under the direction of a supervisory appraiser.

(b) The supervisory appraiser shall sign each report prepared by the appraiser trainee performing an appraisal under the direction

of the supervisory appraiser. The supervisory appraiser is responsible to the public and to the board for the appraiser trainee's reports and conduct.

(c) An appraiser trainee may co-sign a report prepared under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 19, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 42, eff. January 1, 2016.

Sec. 1103.355. DISCIPLINARY PROCEDURES FOR APPRAISER TRAINEES. (a) The board may reprimand an appraiser trainee or suspend or revoke an appraiser trainee's license to act as an appraiser trainee for a violation of this chapter or a rule adopted under this subchapter.

(b) A disciplinary proceeding under this section is governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 43, eff. January 1, 2016.

Sec. 1103.356. RENEWAL OF APPRAISER TRAINEE LICENSE. A person may renew a license as an appraiser trainee by:

(1) paying the renewal fee established by the board;

(2) providing evidence satisfactory to the board of completion of any required continuing education; and

(3) meeting any other renewal requirement established by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 16, eff. May 27, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 44, eff. January 1, 2016.

SUBCHAPTER I. PRACTICE BY CERTIFIED OR LICENSED APPRAISER

Sec. 1103.401. USE OF INSIGNIA OR IDENTIFICATION. (a) A person may not use any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, or competency to perform a certified appraisal service unless the person is certified under this chapter.

(b) A person may not use any title, designation, initials, or other insignia or identification that would mislead the public as to the person's credentials, qualifications, or competency to perform licensed appraisal services unless the person is licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.402. SIGNATURE OR ENDORSEMENT ON APPRAISAL. (a) A person certified or licensed under this chapter may not sign or endorse an appraisal unless the appraisal is substantially produced by that person.

(b) For purposes of this section, an appraisal is substantially produced by a person who contributes in a material and verifiable manner to the research or analysis that results in the final opinion of value expressed in the appraisal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.403. CONTACT INFORMATION. (a) A certified or licensed appraiser who is a resident of this state shall maintain a fixed office in this state.

(b) Not later than the 10th day after the date an appraiser changes the appraiser's address, e-mail address, or telephone number, the appraiser shall notify the board of the change and pay any required fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 17, eff.

May 27, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 18, eff. May 27, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 14.004, eff. September 1, 2013.

Sec. 1103.404. BUSINESS RECORDS. A person who is certified or licensed under this chapter or who has applied for a certificate or license shall retain all business records relating to each appraisal performed by the person until at least the fifth anniversary of the date of the appraisal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.405. PROFESSIONAL STANDARDS. (a) Except as provided by Subsection (b), a person who holds a certificate, license, or registration issued under this chapter shall comply with:

(1) the most current edition of the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation; or

(2) other standards provided by board rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

(b) A certified or licensed appraiser is not required to comply with the standards described by Subsection (a) to provide:

(1) an evaluation of real property described by Section 1103.004(4); or

(2) an analysis, assessment, opinion, conclusion, notation, or compilation of data concerning the value of an interest in real property described by Section 1103.004(5) for use by a non-bank financial institution.

(c) A document provided under Section 1103.004(4) or (5) must contain on the first page of the document the following notice: "This is not an appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice."

Added by Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 20, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 45, eff. January 1, 2016.

Acts 2021, 87th Leg., R.S., Ch. 700 (H.B. 2533), Sec. 3, eff. June 15, 2021.

SUBCHAPTER J. DISCIPLINARY PROCEEDINGS GENERALLY

Sec. 1103.451. INITIATION OF COMPLAINT PROCESS. (a) Any person, including a member of the board, may initiate the complaint process under this subchapter by submitting to the board a written allegation of a violation of this chapter on a form prescribed by the board.

(b) The board, on its own motion, may file a formal complaint against:

(1) a certified or licensed appraiser, an appraiser trainee, or a registrant under Subchapter G; or

(2) a person who engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license.

(c) This subchapter and Subchapter K apply to a complaint filed under Subsection (b)(2) in the same manner as they apply to a complaint filed under Subsection (b)(1).

(d) An investigation of an alleged violation by a person licensed or certified under this chapter may not be terminated solely on the basis that the person fails to renew the certificate or license.

(e) The board may not conduct an investigation of a person certified, licensed, or registered under this chapter or Chapter 1104 for an allegation of a violation submitted to the board later than the fourth anniversary of the date the alleged violation occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 106, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 703 (S.B. 381), Sec. 21, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 1, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 46, eff. January 1, 2016.

Sec. 1103.452. REVIEW AND INVESTIGATION. (a) The board shall review and investigate an alleged act or omission that is the subject of an allegation submitted or a formal complaint filed under Section 1103.451.

(b) An investigator designated by the executive director shall investigate each allegation or formal complaint.

(c) If the board determines at any time that an allegation or formal complaint is inappropriate or without merit, the board or the executive director shall dismiss the complaint and may not take further action.

(d) For purposes of Subsection (c), a determination that the allegation or complaint is inappropriate or without merit includes a determination that the allegation or complaint:

(1) is not within the board's jurisdiction;

(2) was made in bad faith or filed for the purpose of harassment or to gain a competitive or economic advantage; or

(3) lacks sufficient basis in fact or evidence.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 47, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 20, eff. January 1, 2024.

Sec. 1103.453. PEER INVESTIGATIVE COMMITTEE. (a) The presiding officer of the board, with the advice and consent of the executive committee, may appoint a peer investigative committee.

(b) A peer investigative committee consists of two or more certified or licensed appraisers. The presiding officer of the committee must be an appraiser member of the board. Each remaining committee member shall certify to the board that the member is familiar with the appraisal process in the appraisal that is the subject of the complaint.

(c) The peer investigative committee shall:

(1) review and determine the facts of a complaint; and

(2) submit a written report regarding the complaint to the board in a timely manner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 48, eff. January 1, 2016.

Sec. 1103.454. GENERAL SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) The board may also issue a subpoena for purposes of an investigation of a complaint to determine whether the board should institute a contested case proceeding.

(c) If a person does not comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.455. REPORT OF INVESTIGATION REQUIRED. (a) At the conclusion of the investigation of a complaint, the investigator shall prepare a written report to enable the board to determine what further action is necessary.

(b) The report must contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraiser or appraiser trainee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 3, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 49, eff. January 1, 2016.

Sec. 1103.456. ACTION BASED ON REPORT. Based on the report prepared under Section 1103.455, the board may:
(1) order further investigation of the complaint;
(2) permit the appraiser or appraiser trainee who is the subject of the complaint to participate in a voluntary discussion of the facts and circumstances of the alleged violation;
(3) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or
(4) determine that there is probable cause to believe that a violation occurred and proceed as the complainant with a contested case hearing under Subchapter K.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 4, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 50, eff. January 1, 2016.

Sec. 1103.458. CONSENT ORDER. (a) The board may negotiate a settlement and enter into a consent order with an appraiser or appraiser trainee who is the subject of a complaint under this subchapter.
(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.
(c) A consent order must be:
(1) approved by the board; and
(2) signed by the executive director and the appraiser or appraiser trainee who is the subject of the complaint.
(d) A board member who participates in negotiating a consent order under this section is disqualified from participating in the adjudication of a contested case that results from the negotiation.

(e) An appraiser or appraiser trainee who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(f) If the parties agree to a consent order, a statement of charges shall be filed with the consent order.

(g) An appraiser or appraiser trainee may be disciplined for failure to comply with a consent order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 6, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 16, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 51, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 21, eff. January 1, 2024.

Sec. 1103.459. CONSENT AGREEMENT. (a) The board may enter into a consent agreement as provided by this section rather than taking action against a violator of the rules of professional conduct adopted by the board.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) A consent agreement must be:

(1) approved by the board; and

(2) signed by the executive director and the appraiser or appraiser trainee who is the subject of the complaint.

(d) An appraiser or appraiser trainee may be disciplined for failure to comply with a consent agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 7, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 16, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 52, eff. January 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 22, eff. January 1, 2024.

Sec. 1103.460. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Information or material, including any investigation file, is confidential and not subject to disclosure under Chapter 552, Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena, if the information or material is prepared or compiled by the board in connection with a complaint, investigation, or audit of any person subject to the jurisdiction of the board.

(b) Notwithstanding Subsection (a), information or material prepared or compiled by the board in connection with a complaint, investigation, or audit may be disclosed:

(1) to the respondent;

(2) to a person providing a service to the board, including a peer investigative committee appointed under Section 1103.453, an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;

(3) to an entity in another jurisdiction that licenses, registers, credentials, or disciplines any person subject to the jurisdiction of the board;

(4) to a law enforcement agency;

(5) to the State Office of Administrative Hearings; or

(6) to the board, or a panel of the board, for use during any proceeding conducted by the State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order.

(c) The release of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

(d) The board may require a confidentiality agreement be signed by a person entitled to receive information under Subsection (b) before releasing the information.

(d-1) The board shall protect the identity of a complainant to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(e) Notwithstanding Subsection (a), on the dismissal or final resolution of a complaint, investigation, or audit, information or material prepared or compiled by the board in connection with the complaint, investigation, or audit, including a completed audit report or a final order of the board, is subject to disclosure under Chapter 321 or 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 53, eff. January 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 30, eff. September 1, 2019.

SUBCHAPTER K. CONTESTED CASE HEARINGS

Sec. 1103.501. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, a proceeding under this chapter is subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.5011. NOTICE OF VIOLATION AND PENALTY. (a) The executive director may send an appraiser against whom a complaint has been filed a notice of violation including:

(1) a summary of the alleged violation;

(2) the recommended sanction, including the amount of any administrative penalty sought; and

(3) a conspicuous notice that the respondent has the right to a hearing to contest the alleged violation, the recommended sanction, or both.

(b) Not later than the 20th day after the date the person receives the notice under Subsection (a), the person may:

(1) accept the executive director's determination, including the recommended sanction; or

(2) request in writing a hearing, to be held under Chapter 2001, Government Code, on the occurrence of the violation, the sanction, or both.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 19,

eff. May 27, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 23, eff. January 1, 2024.

Sec. 1103.5012. PENALTY TO BE PAID OR HEARING REQUESTED. If the person accepts the executive director's determination, or fails to respond in a timely manner to the notice, the board by order shall approve the determination and order payment of the recommended penalty, impose the recommended sanction, or both.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 19, eff. May 27, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 24, eff. January 1, 2024.

Sec. 1103.502. NOTICE OF HEARING. (a) The board shall provide notice to the parties of a contested case hearing.

(b) The notice must:

(1) state the time and place of the hearing; and

(2) state that the appraiser or appraiser trainee must submit an answer as prescribed by Section 1103.505 not later than the 20th day after the date the appraiser or appraiser trainee receives the notice.

(c) Not later than the 30th day before the hearing date, the board shall personally deliver or send by certified mail, return receipt requested, to the appraiser or appraiser trainee:

(1) the notice prescribed by this section; and

(2) the statement of charges prescribed by Section 1103.503.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 8, eff. September 1, 2005.

Sec. 1103.503. STATEMENT OF CHARGES. (a) The attorney

representing the board shall prepare the statement of charges.

(b) The statement of charges must:

(1) state each act or omission with which the appraiser or appraiser trainee is charged, including any standard of professional practice or rule of professional conduct alleged to have been violated; and

(2) be sufficiently detailed to enable the appraiser or appraiser trainee to prepare a defense.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 9, eff. September 1, 2005.

Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. The attorney general may not represent the board in a contested case before the State Office of Administrative Hearings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 9, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 47, eff. September 1, 2007.

Sec. 1103.505. ANSWER. The appraiser's or appraiser trainee's answer must contain:

(1) the name, address, and telephone number of the appraiser or appraiser trainee;

(2) a specific statement regarding any allegation in the complaint, which must:

(A) be in the form of an admission or denial; and

(B) contain any explanation or other statement of mitigating circumstances the appraiser or appraiser trainee determines relevant; and

(3) any additional information the appraiser or appraiser trainee determines relevant to the investigation that may assist in deciding the contested case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 9, eff. September 1, 2005.

Sec. 1103.506. DISCOVERY PROCEDURES. The discovery procedures that are applicable to a civil action are applicable to a proceeding under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.507. SUBPOENA IN CONTESTED CASE. (a) The executive director shall issue a subpoena to compel the attendance of a witness or the production of records or other evidence if:

(1) a party to the proceeding requests the subpoena orally or in writing;

(2) the request specifies each item of evidence sought and the full name and address of each witness sought; and

(3) the party shows reasonable cause.

(b) A party or the board may petition the district court to enforce a subpoena issued under this section. If the party or the board makes a proper showing, the district court shall order the person to whom the subpoena is issued to obey the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 25, eff. January 1, 2024.

Sec. 1103.508. HEARING. (a) A contested case hearing shall be conducted before an administrative law judge of the State Office of Administrative Hearings.

(b) Repealed by Acts 2005, 79th Leg., Ch. 704, Sec. 16, eff. September 1, 2005.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1411, Sec. 59(16), eff. September 1, 2007.

(d) The administrative law judge shall control the proceedings and may:

(1) administer oaths;
(2) admit or exclude testimony or other evidence; and
(3) rule on all motions and objections.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 10, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 11, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 16, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 48, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 59(16), eff. September 1, 2007.

Sec. 1103.510. FAILURE TO APPEAR. (a) If an appraiser or appraiser trainee receives proper notice of a contested case hearing but does not appear in person at the hearing, the administrative law judge may conduct the hearing or enter an order, as the judge determines appropriate.

(b) The appraiser or appraiser trainee is bound by the results of the hearing to the same extent as if the appraiser or appraiser trainee had appeared.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 12, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 49, eff. September 1, 2007.

Sec. 1103.511. OPEN HEARING. A contested case hearing is open to the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1103.512. RECORD OF PROCEEDINGS. (a) Contested case proceedings shall be recorded by:

(1) mechanical or electrical means; or

(2) a certified shorthand reporter.

(b) At the request of a party, the proceedings or any part of the proceedings shall be transcribed. The expense of the transcription shall be charged to the requesting party.

(c) Before testimony may be presented, the record must:

(1) show the identities of:

(A) any board members present;

(B) the administrative law judge; and

(C) the parties and their representatives; and

(2) state that all testimony is being recorded.

(d) The recording, stenographic notes, or transcription of oral proceedings shall be filed with and maintained by the board until at least the fifth anniversary of the date of the decision in the contested case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 50, eff. September 1, 2007.

Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case hearing shall be conducted in the following order, subject to modification at the discretion of the administrative law judge:

(1) the administrative law judge shall read a summary of the charges and answers to the charges and other responsive pleadings filed by the appraiser or appraiser trainee before the hearing;

(2) the attorney representing the board shall make a brief opening statement, including a summary of the charges and a list of the witnesses and documents to support the charges;

(3) the appraiser or appraiser trainee may make an opening statement, including the names of any witnesses the appraiser or appraiser trainee may call;

(4) the attorney representing the board shall present evidence, concluding with a summary of the evidence for the state;

(5) the appraiser or appraiser trainee shall present evidence;

(6) the attorney representing the board may present rebuttal evidence;

(7) the appraiser or appraiser trainee may present rebuttal evidence; and

(8) the closing arguments shall be made in the following order:

(A) the attorney representing the board;

(B) the appraiser or appraiser trainee; and

(C) the attorney representing the board on rebuttal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 51, eff. September 1, 2007.

Sec. 1103.514. COPIES OF EVIDENCE. A copy of each document offered as evidence at a contested case hearing shall be provided to the opposing party.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September 1, 2005.

Sec. 1103.515. RESPONSE TO CERTAIN ACCUSATIONS. (a) To the extent an appraiser or appraiser trainee believes the appraiser or appraiser trainee is being asked to reply to an accusation, innuendo, or fact for the first time in a contested case hearing, the appraiser or appraiser trainee may respond to the board in writing not later than the 10th day after the last day of the hearing.

(b) If the appraiser or appraiser trainee chooses to respond as provided by this section, the attorney representing the board is entitled to continue to present evidence during the hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September

1, 2005.

Sec. 1103.516. DIRECT EXAMINATION. In a contested case hearing, the administrative law judge may conduct a direct examination of a witness at any stage of the witness's testimony.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 13, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 52, eff. September 1, 2007.

Sec. 1103.517. IMMUNITY OF WITNESSES. (a) The board in a contested case hearing may grant a witness immunity from disciplinary action by the board.
(b) The official record of the hearing must include the reason for granting immunity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 14, eff. September 1, 2005.

Sec. 1103.518. ACTION AFTER HEARING. On conclusion of a contested case hearing and on submission of all written responses allowed under Section 1103.515, the administrative law judge shall:
(1) make findings of fact and conclusions of law; and
(2) issue to the board a proposal for decision that the board take one or more of the following actions:
(A) dismiss the charges;
(B) suspend or revoke the appraiser's certificate or license or the appraiser trainee's approval;
(C) impose a period of probation with or without conditions;
(D) require the appraiser to submit to reexamination for a certificate or license;
(E) require the appraiser or appraiser trainee to

participate in additional professional education or continuing education;

(F) issue a public or private reprimand or a warning;

(G) issue a consent order; or

(H) impose an administrative penalty as prescribed by Section 1103.552.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 704 (S.B. 382), Sec. 15, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 53, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 20, eff. May 27, 2011.

Sec. 1103.519. MOTION FOR REHEARING. (a) A party may file a motion for rehearing with the board. The motion must state:

(1) the specific grounds for rehearing; and

(2) the relief sought.

(b) A motion for rehearing filed under this section is governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 54, eff. January 1, 2016.

Sec. 1103.520. DECISION ON REHEARING. (a) The decision made at the conclusion of the original contested case hearing may not be reversed or modified for a procedural, evidentiary, or other error that did not cause substantial injustice to the parties.

(b) The decision made on a rehearing may incorporate by reference any part of the decision made at the conclusion of the original hearing.

(c) On rehearing, the administrative law judge shall consider facts not presented in the original hearing if:

(1) the facts arose after the original hearing was concluded;

(2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or

(3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 54, eff. September 1, 2007.

Sec. 1103.521. DECISION; ORDER. (a) The administrative law judge shall file the judge's final decision in a contested case hearing with the executive director.

(b) A copy of the decision and order shall immediately be:

(1) sent by certified mail, return receipt requested, to the appraiser at the appraiser's last known address; or

(2) personally delivered to the appraiser.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1411 (S.B. 914), Sec. 55, eff. September 1, 2007.
Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 26, eff. January 1, 2024.

Sec. 1103.522. WAITING PERIOD. A person whose certificate or license has been revoked, a person who has surrendered a certificate or license issued by the board, or a person whose application for a certificate or license has been denied after a hearing under Section 1103.508 may not apply to the board for a certificate or license until the second anniversary of the date of revocation, surrender, or denial.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 21, eff. May 27, 2011.
Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 55, eff.

January 1, 2016.

Sec. 1103.523. COST RECOVERY. The administrative law judge may award reasonable costs to the board on a request for and proof of the costs if the respondent fails to appear for the hearing under Section 1103.510, including any costs:

(1) charged by the State Office of Administrative Hearings; and

(2) related to the preparation for the hearing, including costs of discovery, depositions, subpoenas, service of process, witness expenses, travel expenses, and investigation expenses.

Added by Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 56, eff. January 1, 2016.

SUBCHAPTER L. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 1103.551. INJUNCTION. (a) The board may institute an action in its own name against any person, including a person who is not certified or licensed under this chapter, to enjoin a violation of this chapter or a rule adopted by the board under this chapter.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 106, Sec. 4, eff. Sept. 1, 2003.

Sec. 1103.5511. TEMPORARY SUSPENSION. (a) The presiding officer of the board shall appoint a disciplinary panel consisting of three board members to determine whether a person's license or certification to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed or certified to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license or certification of that person.

(c) A license or certification may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) A temporary suspension under this section automatically expires after 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day.

(e) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 22, eff. May 27, 2011.

Sec. 1103.552. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty for a violation of this chapter or a rule adopted or order issued by the board under this chapter in an amount not to exceed:

(1) $1,500 for each violation; or

(2) $5,000 for multiple violations in a single case.

(b) The person on whom the penalty is imposed shall pay the penalty not later than the 20th day after the date the order imposing the penalty becomes final.

(c) Notwithstanding any other law, the board shall remit an administrative penalty collected under this section to the comptroller for deposit in the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 106, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 131 (H.B. 2375), Sec. 23, eff. May 27, 2011.

Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 57, eff. January 1, 2016.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 31, eff. September 1, 2019.

Sec. 1103.5525. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is violating this chapter, Chapter 1104, or a rule adopted under this chapter or Chapter 1104, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter or Chapter 1104.

Added by Acts 2015, 84th Leg., R.S., Ch. 950 (S.B. 1007), Sec. 58, eff. January 1, 2016.

Sec. 1103.5526. REFUND. (a) Subject to Subsection (b), the board may order a person regulated by the board under this chapter or Chapter 1104 to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference or an enforcement order may not exceed the amount the consumer paid to the person for a service regulated by the board. The board may not require payment of other damages or estimate harm in a refund order.

Added by Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 32, eff. September 1, 2019.

Sec. 1103.553. CIVIL PENALTY FOR FILING FRIVOLOUS COMPLAINT. (a) A certified or licensed appraiser who files against another certified or licensed appraiser a complaint that the board determines to be frivolous is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than $1,000 or more than $10,000.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action brought under this

section shall be deposited in the state treasury.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 106, Sec. 6, eff. Sept. 1, 2003.

Sec. 1103.5535. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) A person who receives consideration for engaging in an activity for which a certificate or license is required under this chapter and who does not hold a certificate or license is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received.

(c) At the request of the board, the attorney general or a district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action under this section shall be deposited in the state treasury.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 7, eff. Sept. 1, 2003.

Sec. 1103.554. CRIMINAL PENALTY FOR MISREPRESENTING QUALIFICATIONS. (a) A person commits an offense if the person knowingly violates Section 1103.401.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 106, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 55 (S.B. 1222), Sec. 3, eff. September 1, 2023.

Sec. 1103.5545. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED CERTIFICATE OR LICENSE. (a) A person commits an offense if the person engages in an activity for which a certificate or license is required under this chapter without holding a certificate or license.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 106, Sec. 9, eff. Sept. 1, 2003.

CHAPTER 1104. APPRAISAL MANAGEMENT COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1104.001. SHORT TITLE. This chapter may be cited as the Texas Appraisal Management Company Registration and Regulation Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.002. PURPOSE. The purpose of this chapter is to establish and enforce standards related to appraisal management services for appraisal reports on residential properties located in this state with fewer than five units.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.003. DEFINITIONS. (a) The definitions in Section 1103.003 apply to this chapter.

(b) In this chapter:

(1) "Appraisal management company" means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated in a securitization, an external third party authorized either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets that directly or indirectly performs appraisal management services.

(2) "Appraisal management service" means to directly or indirectly perform any of the following acts:

(A) administer an appraisal panel;

(B) recruit, retain, or select an appraiser;

(C) contract with an appraiser to perform an appraisal assignment;

(D) provide a completed appraisal performed by an appraiser to one or more clients; or

(E) manage the process of having an appraisal performed, including:

(i) receiving and assigning appraisal orders and reports;

(ii) tracking and determining the status of orders for appraisals;

(iii) conducting quality control of a completed appraisal before delivery of the appraisal to the person who ordered the appraisal;

(iv) collecting fees from creditors and underwriters for services provided; or

(v) reimbursing appraisers for services performed.

(3) "Appraisal panel" means a pool of licensed or certified appraisers who perform appraisals as independent contractors for an appraisal management company.

(4) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment. The term does not include an examination of an appraisal for grammatical, typographical, mathematical, or other similar administrative errors that do not involve the appraiser's professional judgment, including compliance with the elements of the client's statement of work.

(5) "Appraiser" means a person licensed or certified under Chapter 1103.

(6) "Controlling person" means:

(A) an owner, officer, or director of an appraisal management company;

(B) an individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and the authority to enter into agreements with appraisers for the performance of appraisals; or

(C) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(6-a) "Federally regulated appraisal management company" means an appraisal management company that is:

(A) owned and controlled by an insured depository institution, as defined by 12 U.S.C. Section 1813; and

(B) regulated by:

(i) the Board of Governors of the Federal Reserve System;

(ii) the Federal Deposit Insurance Corporation;

(iii) the Office of the Comptroller of the Currency; or

(iv) the successors to any of those agencies.

(7) "Financial institution" means:

(A) a bank, savings bank, or savings and loan association or a subsidiary or affiliate of a bank, savings bank, or savings and loan association;

(B) a state or federal credit union or a subsidiary, affiliate, or credit union service organization of a state or federal credit union;

(C) an insurance company licensed or authorized to do business in this state under the Insurance Code;

(D) a mortgage banker registered under Chapter 157, Finance Code;

(E) a person licensed under Chapter 156, Finance Code;

(F) a lender licensed under Chapter 342, Finance Code;

(G) a farm credit system institution; or

(H) a political subdivision of this state conducting an affordable home ownership program.

(8) "Uniform Standards of Professional Appraisal Practice" means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 1, eff. September 1, 2017.

Sec. 1104.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a person who exclusively employs appraisers on an employer and employee basis for the performance of appraisals;

(2) a person acting as an appraisal firm as defined by board rule that at all times during a calendar year employs on an

exclusive basis as independent contractors not more than 15 appraisers for the performance of appraisals;

(3) a financial institution, including a department or unit within the institution, that is regulated by an agency of this state or the United States government;

(4) subject to Subsection (b), a person who enters into an agreement with an appraiser for the performance of an appraisal that on completion results in a report signed by both the appraiser who completed the appraisal and the appraiser who requested completion of the appraisal;

(5) an appraisal management company:

(A) operating only in this state with an appraisal panel of not more than 15 appraisers at all times during a calendar year; or

(B) operating in multiple states, including this state, with an appraisal panel of not more than 24 appraisers in all states at all times during a calendar year;

(6) an appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to appraisal independence standards at least as stringent as those under Section 1104.203 or the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) through regulation by an agency of this state or the United States government; or

(7) subject to Section 1104.052(c), a federally regulated appraisal management company.

(b) An appraisal management company may not require an employee of the appraisal management company who is an appraiser to sign an appraisal that is completed by another appraiser who contracts with the appraisal management company in order to avoid the requirements of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B. BOARD POWERS AND DUTIES

Sec. 1104.051. RULES. The board may adopt rules necessary to

administer the provisions of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.052. FEES. (a) Subject to Subsection (b), the board by rule shall establish application, renewal, and other fees in amounts so that the sum of the fees paid by all appraisal management companies seeking registration under this chapter is sufficient for the administration of this chapter.

(b) The board shall collect from each appraisal management company registered under this chapter the national registry fee required by the appraisal subcommittee for each person who is on the appraisal panel of the company and licensed or certified as an appraiser in this state.

(c) Notwithstanding Section 1104.004, the board shall collect from each federally regulated appraisal management company operating in this state:

(1) the national registry fee required by the appraisal subcommittee;

(2) information regarding the determination of the national registry fee as required by the appraisal subcommittee;

(3) a fee in an amount that is sufficient for the administration of this subsection as established by board rule; and

(4) any other information required by state or federal law.

(d) The board shall deposit the national registry fees collected under this section to the credit of the appraiser registry account in the general revenue fund.

(e) The national registry fees collected under this section shall be sent to the appraisal subcommittee regularly as required by federal law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 3, eff. September 1, 2017.

SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 1104.101. REGISTRATION REQUIRED. Unless a person is registered under this chapter, a person may not:

(1) act or attempt to act as an appraisal management company;

(2) provide or attempt to provide appraisal management services; or

(3) advertise or represent or attempt to advertise or represent the person as an appraisal management company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.102. ELIGIBILITY FOR REGISTRATION; OWNERSHIP. (a) A person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state may not own in any manner an appraisal management company registered or applying for registration under this chapter unless:

(1) the person has subsequently had the license or certificate to act as an appraiser granted or reinstated; and

(2) the license or certificate to act as an appraiser was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 25, eff. September 1, 2017.

(c) A person owning more than 10 percent of an appraisal management company in this state must submit to a background investigation, as determined by the board.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 25, eff. September 1, 2017.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 25, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 33, eff. September 1, 2019.

Sec. 1104.103. APPLICATION FOR REGISTRATION OR RENEWAL. (a) An applicant for registration or registration renewal under this chapter must submit:

(1) an application on a form approved by the board; and

(2) the application or renewal fee established under Section 1104.052(a).

(b) The application must contain:

(1) the name, business address, and telephone contact information of the applicant seeking registration;

(2) if the applicant is not a corporation domiciled in this state, the name and contact information for the applicant's agent for service of process in this state;

(3) the name, address, and contact information for any person that owns more than 10 percent of the applicant;

(4) the name, address, and contact information for at least one controlling person;

(5) the designation of a primary contact under Section 1104.104;

(6) the name and contact information of at least one appraiser designated by the applicant to respond to and communicate with appraisers on the applicant's appraisal panel regarding appraisal assignments;

(7) a certification that the applicant has a system in place to ensure compliance with Subchapter D and Section 129E of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

(8) a written irrevocable consent to service of process; and

(9) any other information required by the board to approve the application.

(c) The board shall adopt rules regarding registration and the renewal of a registration under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 5, eff. September 1, 2017.

Sec. 1104.104. DESIGNATION OF PRIMARY CONTACT. (a) An

appraisal management company applying for registration under this chapter shall designate one controlling person as the primary contact for all communication between the board and the company.

(b) The controlling person designated under Subsection (a):

(1) must:

(A) be certified as an appraiser in at least one state at all times during the designation; or

(B) have completed:

(i) the 15-hour national Uniform Standards of Professional Appraisal Practice course; and

(ii) the seven-hour national Uniform Standards of Professional Appraisal Practice update course not more than two years before the renewal of the appraisal management company's registration;

(2) may not have had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state unless:

(A) the person has subsequently had the license or certificate to act as an appraiser granted or reinstated; and

(B) the license or certificate to act as an appraiser was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board; and

(3) shall submit to a background investigation, as determined by the board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 6, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 34, eff. September 1, 2019.

Sec. 1104.105. DENIAL OF REGISTRATION OR RENEWAL. (a) The board may deny an application for registration or registration renewal:

(1) if an applicant fails to satisfy a requirement of this chapter; or

(2) on a determination by the board that:

(A) there is reasonable evidence that any person who owns an interest in the appraisal management company or any controlling person of the company has had a license or certification as an appraiser or a registration as an appraisal management company suspended, revoked, or put on probation in any state;

(B) the applicant has, while registered under this chapter, demonstrated incompetency, untrustworthiness, or conduct or practices that render the registrant unfit to perform appraisal management services; or

(C) the applicant no longer performs appraisal management services in good faith and is a source of detriment, injury, or loss to the public.

(a-1) The board may deny an application for registration renewal if the applicant is in violation of a board order.

(b) The board shall immediately provide written notice to the applicant of the board's denial of a registration or of a registration renewal under this chapter.

(c) An appeal of the denial of a registration or of the renewal of a registration is governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 7, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 35, eff. September 1, 2019.

Sec. 1104.106. ISSUANCE AND PUBLICATION OF REGISTRATION NUMBER. The board shall:

(1) issue a unique registration number to each appraisal management company registered under this chapter; and

(2) publish annually a list of the companies registered under this chapter and the registration number of each company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.107. EXPIRATION OF REGISTRATION. Unless renewed, a

registration issued under this chapter expires on the second anniversary of the date the registration is issued.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER D. PRACTICE BY APPRAISAL MANAGEMENT COMPANY

Sec. 1104.151. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED. (a) An appraisal management company registered under this chapter may not knowingly:

(1) employ a person in a position in which the person has the responsibility to order appraisals or to review completed appraisals if the person has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state;

(2) enter into any independent contractor arrangement for the provision of appraisals or appraisal management services with any person who has had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state; or

(3) enter into any contract, agreement, or other business relationship for the provision of appraisals or appraisal management services with any entity that employs, has entered into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship with any person who has ever had a license or certificate to act as an appraiser denied, revoked, or surrendered in lieu of revocation in any state.

(b) An appraisal management company is not in violation of Subsection (a) if:

(1) the person whose license or certification was denied, revoked, or surrendered in lieu of revocation has subsequently had the license or certificate granted or reinstated;

(2) the license or certification was denied, revoked, or surrendered for a nonsubstantive reason as determined by the board; and

(3) the person maintains the license or certificate in good standing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 8, eff. September 1, 2017.

Sec. 1104.152. VERIFICATION OF LICENSURE OR CERTIFICATION. An appraisal management company registered under this chapter must verify that an individual to whom the company is making an assignment for the completion of an appraisal:

(1) is licensed or certified under Chapter 1103; and

(2) has not had a license or certificate as an appraiser denied, revoked, or surrendered in lieu of revocation since the last time the company made an assignment for an appraisal to the appraiser.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.153. APPRAISAL REVIEW. A person who performs an appraisal review for an appraisal management company as required by Section 1104.155 must be:

(1) licensed as an appraiser under Chapter 1103, unless exempt by board rule; and

(2) qualified to perform the appraisal being reviewed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 9, eff. September 1, 2017.

Sec. 1104.154. COMPETENCY OF APPRAISERS. Before making an assignment to an appraiser, an appraisal management company must verify that the appraiser receiving the assignment satisfies each provision of the competency rule of the Uniform Standards of Professional Appraisal Practice for the appraisal being assigned.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.155. PROFESSIONAL STANDARDS. An appraisal management company registered under this chapter shall on a periodic basis perform an appraisal review of the work of appraisers performing appraisal services for the company to ensure that the services comply with:

(1) the edition of the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal; or

(2) other standards prescribed by board rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.156. BUSINESS RECORDS. (a) An appraisal management company required to register under this chapter or that has applied for registration under this chapter shall retain for at least five years all business records relating to each service request that the company receives and the appraiser who performs the appraisal for the company.

(b) The board may audit the records of an appraisal management company required to register under this chapter to ensure compliance with federal law, this chapter, board rules, and the Uniform Standards of Professional Appraisal Practice.

(c) A written record of all substantive communications between an appraisal management company required to register under this chapter and an appraiser relating to inclusion on an appraisal panel or to an appraisal assignment must be maintained as provided under Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 10, eff. September 1, 2017.

Sec. 1104.157. COMPENSATION OF APPRAISERS. (a) An appraisal management company shall:

(1) except in cases of breach of contract or substandard

performance of services, pay an appraiser for the completion of an appraisal or valuation assignment not later than the 60th day after the date the appraiser provides the completed appraisal or valuation assignment to the company or its assignee; and

(2) compensate appraisers at a rate that is reasonable and customary for appraisals being performed in the market area of the property being appraised consistent with the presumptions under federal law.

(b) An appraiser who is aggrieved under this section may file a complaint with the board against the appraisal management company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.158. STATEMENT OF FEES. (a) In reporting to a client, an appraisal management company shall separately state the fees:

(1) paid to an appraiser for the completion of an appraisal; and

(2) charged by the company for appraisal management services.

(b) An appraisal management company may not:

(1) prohibit an appraiser from recording in the body of the report that is submitted by the appraiser to the company the fee that the appraiser was paid by the company for completing the appraisal; or

(2) include any fees for appraisal management services performed by the company in the amount the company reports as charges for the actual completion of an appraisal by an appraiser.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.159. DISCLOSURE OF REGISTRATION NUMBER. An appraisal management company registered under this chapter shall disclose the company's registration number on all documents used to procure appraisals in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.160. MANDATORY REPORTING. An appraisal management company that has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice in a manner that materially affects a value conclusion, violating applicable laws, or otherwise engaging in unethical or unprofessional conduct shall refer the matter to the board in the manner provided by Section 1104.204.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.161. REMOVAL OF APPRAISER FROM APPRAISAL PANEL. (a) An appraisal management company may not remove an appraiser from its panel, or otherwise refuse to assign requests for appraisal services to an appraiser without:

(1) notifying the appraiser in writing of the reasons for removal from the company's panel;

(2) if the appraiser is being removed from the panel for illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, notifying the appraiser of the nature of the alleged conduct or violation; and

(3) providing an opportunity for the appraiser to respond in writing to the notification.

(b) An appraiser who is removed from the appraisal panel of an appraisal management company for alleged illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice, or a violation of this chapter, may file a complaint with the board for a review of the decision of the company if the matter remains unresolved after the appraiser completes the company's dispute resolution process under Section 1104.162.

(c) In a review under Subsection (b), the board may not make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the grounds for the removal.

(d) The board shall hear and resolve a complaint filed under

Subsection (b) not later than the 180th day after the date the complaint is filed with the board.

(e) If after opportunity for hearing and review, the board determines that an appraiser did not commit the alleged violation, the board shall order that the appraiser be returned to the appraisal panel of the appraisal management company. The appraisal management company may not refuse to make assignments for appraisal services or otherwise penalize the appraiser after returning the appraiser to the company's appraisal panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 11, eff. September 1, 2017.

Sec. 1104.162. DISPUTE RESOLUTION. An appraisal management company shall make a dispute resolution process available to review a written request by an appraiser who:

(1) is dismissed from the company's appraisal panel for a reason stated in Section 1104.161(a)(2);

(2) is not paid as required by Section 1104.157; or

(3) alleges a violation by the company of one or more prohibitions in Section 1104.203.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER E. DISCIPLINARY ACTIONS AND PROCEDURES AND ADMINISTRATIVE PENALTIES

Sec. 1104.201. DISCIPLINARY POWERS OF BOARD. (a) The board may reprimand an appraisal management company or conditionally or unconditionally suspend or revoke any registration issued under this chapter if the board determines that the appraisal management company has:

(1) violated or attempted to violate this chapter or any rule adopted by the board under this chapter; or

(2) procured or attempted to procure a license or registration by fraud, misrepresentation, or deceit.

(b) The board may probate the suspension or revocation of a registration under reasonable terms determined by the board.

(c) The board may report to the appraisal subcommittee any disciplinary action taken by the board against an appraisal management company required to register under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 12, eff. September 1, 2017.

Sec. 1104.202. ADMINISTRATIVE PENALTY. (a) In addition to any other disciplinary action under this chapter, the board may impose an administrative penalty against a person who violates this chapter or a rule adopted under this chapter.

(b) The amount of the administrative penalty may not exceed $10,000 for each violation. Each day of a continuing violation is a separate violation.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts made to correct the violation; and

(5) any other matter that justice may require.

(d) Notwithstanding any other law, an administrative penalty collected under this section must be deposited in a restricted fund maintained and operated by the board to develop educational programs for appraisers or to conduct studies that enhance consumer protection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 13, eff. September 1, 2017.

Sec. 1104.203. PROHIBITED PRACTICES. (a) An appraisal management company or an employee, director, officer, or agent of an

appraisal management company may not:

(1) cause or attempt to cause the appraised value of a property assigned under an appraisal to be based on any factor other than the independent judgment of the appraiser;

(2) cause or attempt to cause the mischaracterization of the appraised value of a property in conjunction with a consumer credit transaction;

(3) seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of a consumer credit transaction;

(4) alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

(A) altering or removing the appraiser's signature or seal; or

(B) adding information to, removing information from, or changing information contained in the appraisal report, including any disclosure submitted by an appraiser in or with the report;

(5) condition the request for an appraisal or the payment of an appraisal fee, salary, or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary estimate or opinion requested from an appraiser;

(6) request that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or comparable sales at any time before the appraiser's completion of an appraisal;

(7) provide to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for a purchase transaction may be provided;

(8) make any part of the appraiser's fee or the appraisal management company's fee contingent on a favorable outcome, including:

(A) a loan closing; or

(B) a specific valuation being achieved by the appraiser in the appraisal report;

(9) withhold or threaten to withhold timely payment for an appraisal report or appraisal services rendered when the appraisal report or services are provided in accordance with the contract between the parties;

(10) withhold or threaten to withhold future business from

an appraiser;

(11) demote or terminate or threaten to demote or terminate an appraiser;

(12) expressly or impliedly promise future business, promotions, or increased compensation for an appraiser;

(13) provide to an appraiser, or any person related to the appraiser, stock or other financial or nonfinancial benefits;

(14) allow the removal of an appraiser from an appraisal panel, without prior written notice to the appraiser;

(15) obtain, use, or pay for a second or subsequent appraisal or order an automated valuation model in connection with a mortgage financing transaction unless:

(A) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and that basis is clearly and appropriately noted in the loan file;

(B) the subsequent appraisal or automated valuation model is done under a bona fide pre-funding or post-funding appraisal review or quality control process; or

(C) the subsequent appraisal or automated valuation model is otherwise required or permitted by federal or state law;

(16) prohibit legal and allowable communication between the appraiser and:

(A) the lender;

(B) a real estate license holder; or

(C) any other person from whom the appraiser, in the appraiser's own professional judgment, believes information would be relevant;

(17) refuse to accept an appraisal report prepared by more than one appraiser if an appraiser provides substantial assistance to another appraiser in the preparation of the report, unless the appraisal assignment names an individual appraiser or the statement of work requires an unassisted report; or

(18) require an appraiser to:

(A) prepare an appraisal report if the appraiser, in the appraiser's own professional judgment, believes the appraiser does not have the necessary expertise for the specific geographic area and the appraiser has notified the company of this belief;

(B) prepare an appraisal report under a schedule that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant

legal and professional obligations if the appraiser has notified the company of this belief;

(C) provide the appraisal management company with the appraiser's digital signature or seal;

(D) modify any aspect of an appraisal report without the appraiser's agreement that the modification is appropriate;

(E) engage in any act or practice that does not comply with:

(i) the Uniform Standards of Professional Appraisal Practice; or

(ii) any assignment conditions and certifications required by the client;

(F) engage in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality;

(G) enter into an agreement to not serve on the panel of another appraisal management company;

(H) indemnify or hold harmless the appraisal management company against liability except liability for errors and omissions by the appraiser; or

(I) pay a fee imposed on the appraisal management company under Section 1104.052.

(a-1) For purposes of Subsection (a), a fee paid by an appraisal management company to an appraiser for appraisal services is not a financial benefit.

(b) Subsection (a) may not be construed to prohibit:

(1) an appraiser from reimbursing an appraisal management company for the actual cost of discretionary services provided to the appraiser;

(2) an appraiser from voluntarily providing the appraiser's digital signature to another person;

(3) an appraisal management company from asking an appraiser, after a report is delivered, to:

(A) consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal;

(B) provide further detail, substantiation, or explanation for the appraiser's value conclusion; or

(C) correct errors in the appraisal report;

(4) an appraisal management company from requiring an

appraiser to provide advance notice of and an opportunity for the appraisal management company to participate in any legal and allowable communications between the appraiser and a lender; or

(5) a copy of an executed contract for a purchase transaction being provided to an appraiser.

(c) The board may institute a disciplinary action or impose an administrative penalty under Chapter 1103 against an appraiser who, while acting as an employee, officer, or agent of an appraisal management company, engages in conduct prohibited by Subsection (a).

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 14, eff. September 1, 2017.

Sec. 1104.204. COMPLAINT. (a) Any person, including a member of the board, may file with the board a written complaint on a form prescribed by the board.

(b) The board, on its own motion, may file a complaint against:

(1) an appraisal management company registered under this chapter;

(2) a controlling person; or

(3) a person who engages in an activity for which registration is required under this chapter without being registered.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 15, eff. September 1, 2017.

Sec. 1104.205. REVIEW AND INVESTIGATION. (a) On receipt of a complaint or on its own motion, the board shall review and investigate an alleged act or omission that the board believes is a ground for disciplinary action.

(b) An investigator designated by the presiding officer of the board or commissioner shall investigate each allegation in a complaint to determine whether probable cause exists for a hearing on

the complaint.

(c) If the board determines that a complaint does not present facts that are grounds for disciplinary action, the board or the commissioner shall dismiss the complaint and may not take further action.

(d) An investigation of an alleged violation by a person registered under this chapter may not be terminated solely on the basis that the person fails to renew the registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 16, eff. September 1, 2017.

Sec. 1104.2051. INVESTIGATIVE COMMITTEE. (a) The presiding officer of the board, with the advice and consent of the executive committee of the board, may appoint an investigative committee.

(b) An investigative committee consists of at least two members. The presiding officer of the investigative committee must be a board member.

(c) An investigative committee shall:

(1) review and determine the facts of a complaint; and

(2) submit in a timely manner a written report regarding the complaint to the board.

Added by Acts 2023, 88th Leg., R.S., Ch. 55 (S.B. 1222), Sec. 4, eff. September 1, 2023.

Sec. 1104.206. GENERAL SUBPOENA AUTHORITY. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter for inspection and copying.

(b) The board may also issue a subpoena for purposes of an investigation of a complaint to determine whether the board should institute a contested case proceeding.

(c) If a person does not comply with a subpoena, the board, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the board may be held.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists for the issuance of the subpoena.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.207. REPORT OF INVESTIGATION REQUIRED. (a) At the conclusion of the investigation of a complaint, the investigator shall submit to the board a written report to enable the board to determine what further action is necessary.

(b) The report must contain:

(1) statements of fact;

(2) the recommendations of the investigator; and

(3) the position or defense of the investigated appraisal management company.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.208. ACTION BASED ON REPORT. (a) Based on the report submitted under Section 1104.207, the board may:

(1) order further investigation of the complaint;

(2) permit the person who is the subject of the complaint to participate in a voluntary discussion of the facts and circumstances of the alleged violation;

(3) determine that there is not probable cause to believe that a violation occurred and dismiss the case; or

(4) determine that there is probable cause to believe that a violation occurred and enter into an agreed order with the respondent under Section 1104.2081 or proceed as the complainant with a contested case hearing under Chapter 2001, Government Code.

(b) The board by rule may delegate any of its authority under Subsection (a) to the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff.

September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 17, eff. September 1, 2017.

Sec. 1104.2081. AGREED ORDER. (a) The board may negotiate a settlement and enter into an agreed order with an appraisal management company or other person who is the subject of a complaint under this subchapter.

(b) An agreed order must be:

(1) approved by the board; and

(2) signed by the commissioner and the appraisal management company or other person who is the subject of the complaint.

(c) A board member who participates in negotiating an agreed order under this section is disqualified from participating in the adjudication of a contested case that results from the negotiation.

(d) An appraisal management company or other person who consents to negotiate under this section waives the right to notice and the opportunity to be heard under Chapter 2001, Government Code, during the negotiation.

(e) An appraisal management company or other person who enters into an agreed order under this section may be disciplined for failure to comply with the agreed order.

Added by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 18, eff. September 1, 2017.

Sec. 1104.2082. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Information or material, including any investigation file, is confidential and not subject to disclosure under Chapter 552, Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena, if the information or material is prepared or compiled by the board in connection with a complaint, investigation, or audit of any person subject to the jurisdiction of the board.

(b) Notwithstanding Subsection (a), information or material prepared or compiled by the board in connection with a complaint, investigation, or audit may be disclosed:

(1) to the respondent;

(2) to a person providing a service to the board, including an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;

(3) to an entity in another jurisdiction that licenses, registers, credentials, or disciplines any person subject to the jurisdiction of the board;

(4) to a law enforcement agency;

(5) to the State Office of Administrative Hearings; or

(6) to the board, or a panel of the board, for use during any proceeding conducted by the State Office of Administrative Hearings or in a subsequent trial or appeal of a board action or order.

(c) The release of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

(d) The board may require that a confidentiality agreement be signed by a person entitled to receive information under Subsection (b) before releasing the information.

(e) The board may withhold information or material described by Subsection (a) without requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

(e-1) The board shall protect the identity of a complainant to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(f) Notwithstanding Subsection (a), on the dismissal or final resolution of a complaint, investigation, or audit, information or material prepared or compiled by the board in connection with the complaint, investigation, or audit, including a completed audit report or a final order of the board, is subject to disclosure under Chapter 321 or 552, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 18, eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 36, eff. September 1, 2019.

Sec. 1104.209. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the board determines that a violation occurred, the board shall give written notice of the violation to the person alleged to have committed the violation.

(b) The notice must:

(1) include a summary of the alleged violation;

(2) state the recommended sanction, including the amount of the proposed administrative penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the board's determination, including the proposed administrative penalty; or

(2) make a written request for a hearing on that determination.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.210. PENALTY TO BE PAID. If the person accepts the board's determination or fails to respond to the notice in a timely manner, the board by order shall approve the determination and impose the proposed penalty.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 19, eff. September 1, 2017.

Sec. 1104.211. TEMPORARY SUSPENSION. (a) The presiding officer of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a person's registration under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person registered under this chapter would, by the person's continuation in practice, constitute a

continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the person's registration.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a contested case hearing is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) A temporary suspension under this section automatically expires after 45 days if the board has not scheduled a hearing to take place within that time or if, at the board's request, the hearing is continued beyond the 45th day.

(e) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.212. NOTICE OF HEARING. Not later than the 30th day before the date of a contested case hearing, the board shall personally deliver or send by certified mail notice of the hearing to the parties to the hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 20, eff. September 1, 2017.

Sec. 1104.2121. ATTORNEY GENERAL REPRESENTATION. The attorney general may not represent the board in a contested case before the State Office of Administrative Hearings.

Added by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 21, eff. September 1, 2017.

Sec. 1104.2122. IMMUNITY OF WITNESSES. (a) The board in a contested case hearing may grant a witness immunity from disciplinary action by the board.

(b) The official record of the hearing must include the reason for granting immunity.

Added by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 21, eff. September 1, 2017.

Sec. 1104.213. APPLICABILITY OF ADMINISTRATIVE PROCEDURE LAW. Except as otherwise provided by this chapter, a proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.2131. RECORD OF PROCEEDINGS. (a) Contested case proceedings shall be recorded by:

(1) mechanical or electrical means; or

(2) a certified shorthand reporter.

(b) At the request of a party, the proceedings or any part of the proceedings shall be transcribed. The expense of the transcription shall be charged to the requesting party.

(c) The recording, stenographic notes, or transcription of oral proceedings shall be maintained by the board until at least the fifth anniversary of the date of the decision in the contested case.

Added by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 21, eff. September 1, 2017.

Sec. 1104.2132. FAILURE TO APPEAR; COSTS. (a) If a respondent receives proper notice of a contested case hearing but does not appear in person at the hearing, the administrative law judge may conduct the hearing or enter an order, as the administrative law judge determines appropriate.

(b) The respondent is bound by the results of the hearing to the same extent as if the respondent had appeared.

(c) The administrative law judge may award reasonable costs to

the board on a request for and proof of costs incurred if the respondent fails to appear at the hearing. In this subsection, the term "costs" means all costs associated with the hearing, including the costs charged by the State Office of Administrative Hearings and any costs related to hearing preparation, discovery, depositions, subpoenas, service of process, witness expenses, travel expenses, and investigation expenses.

Added by Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 21, eff. September 1, 2017.

Sec. 1104.214. ACTION AFTER HEARING. On conclusion of a contested case hearing under this subchapter, the administrative law judge shall:

(1) make findings of fact and conclusions of law; and

(2) issue to the board a proposal for decision that the board take one or more of the following actions:

(A) dismiss the charges;

(B) revoke the appraisal management company's registration;

(C) suspend the registration of the appraisal management company for a period of not more than five years;

(D) impose a period of probation, with or without conditions;

(E) issue a public or private reprimand or a warning;

(F) impose an administrative penalty; or

(G) require the payment of costs expended by the board associated with the contested case, including:

(i) attorney's fees;

(ii) the costs charged by the State Office of Administrative Hearings; and

(iii) any administrative costs associated with the hearing, including witness expenses, travel expenses, and investigation expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 22, eff. September 1, 2017.

Sec. 1104.215. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for decision of the administrative law judge, the board by order may determine that:

(1) a violation has occurred and may impose an administrative penalty or another sanction; or

(2) a violation did not occur.

(b) The board shall give notice of the order to the person who is the subject of the order. The notice must include:

(1) the findings of fact and conclusions of law separately stated;

(2) the amount of any penalty imposed or a description of any sanction imposed;

(3) a statement of the right of the person to judicial review of the order; and

(4) any other information required by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 23, eff. September 1, 2017.

Sec. 1104.216. MOTION FOR REHEARING. (a) A party may file a motion for rehearing with the board. The motion must state:

(1) the specific grounds for rehearing; and

(2) the relief sought.

(b) A motion for rehearing filed under this section is governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 107 (S.B. 1516), Sec. 24, eff. September 1, 2017.

Sec. 1104.217. DECISION ON REHEARING. (a) The decision made at the conclusion of the original contested case hearing may not be

reversed or modified for a procedural, evidentiary, or other error that did not cause substantial injustice to the parties.

(b) The decision made on a rehearing may incorporate by reference any part of the decision made at the conclusion of the original hearing.

(c) On rehearing, the administrative law judge shall consider facts not presented in the original hearing if:

(1) the facts arose after the original hearing was concluded;

(2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or

(3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

SUBCHAPTER F. OTHER ENFORCEMENT PROVISIONS

Sec. 1104.251. INJUNCTION. (a) The board may institute an action in its own name against any person, including a person who is not registered under this chapter, to enjoin a violation of this chapter or a rule adopted by the board under this chapter.

(b) An action under this section must be brought in a district court in Travis County. The attorney general shall act as legal advisor to the board and provide necessary legal assistance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.252. CIVIL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person who receives consideration for engaging in an activity for which registration is required under this chapter and who is not registered is liable for a civil penalty.

(b) The amount of a civil penalty imposed under this section may not be less than the amount of money equal to the value of the consideration received or more than three times the amount of money equal to the value of the consideration received.

(c) At the request of the board, the attorney general or a

district or county attorney may bring an action in district court to recover a civil penalty under this section.

(d) A civil penalty recovered in an action under this section shall be deposited in the state treasury.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

Sec. 1104.253. CRIMINAL PENALTY FOR ENGAGING IN ACTIVITY WITHOUT REQUIRED REGISTRATION. (a) A person commits an offense if the person engages in an activity for which registration is required under this chapter without being registered.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 256 (H.B. 1146), Sec. 2, eff. September 1, 2011.

CHAPTER 1105. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF TEXAS REAL ESTATE COMMISSION

Sec. 1105.001. DEFINITIONS. In this section:

(1) "Agency" means the commission and the board.

(2) "Board" means the Texas Appraiser Licensing and Certification Board.

(3) "Commission" means the Texas Real Estate Commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. (a) Notwithstanding any other provision of law, the agency is self-directed and semi-independent as specified by this chapter. Any Act of the 82nd Legislature that relates to the agency and that is inconsistent with the agency being self-directed and semi-independent may be implemented by the administrator of the agency only on authorization by the agency.

(b) This chapter does not affect the board's status as an independent subdivision of the commission as provided by Section 1103.051.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.003. BUDGET, REVENUES, AND EXPENSES. (a) Notwithstanding any other provision of law, including the General Appropriations Act, the commission and the board shall each adopt a separate budget annually using generally accepted accounting principles.

(b) The commission shall be responsible for all direct and indirect costs of the commission's existence and operation. The board shall be responsible for all direct and indirect costs of the board's existence and operation. The agency may not directly or indirectly cause the general revenue fund to incur any cost.

(c) Notwithstanding any other provision of law, the commission and the board may each set the amounts of the respective fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the separate functions of the commission and the board and funding the respective budgets of the commission and the board adopted and approved under Subsection (a).

(d) All fees and funds collected by the commission or the board and any funds appropriated to the commission or the board shall be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. The comptroller shall contract with the commission and the board for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 448 , Sec. 31(l)(16), eff. September 1, 2015.

(f) Not later than August 31 of each fiscal year, the agency shall remit $750,000 to the general revenue fund.

(g) The fiscal year for the agency begins on September 1 and ends on August 31.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 31(l)(16), eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 32, eff. September 1, 2015.

Sec. 1105.004. AUDITS. (a) This chapter does not affect the duty of the state auditor to audit the agency. The state auditor shall enter into a contract and schedule with the agency to conduct audits.

(b) The agency shall reimburse the state auditor for all costs incurred in performing the audits and shall provide to the governor a copy of any audit performed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 37, eff. September 1, 2019.

Sec. 1105.005. RECORDS; REPORTING REQUIREMENTS. (a) The agency shall keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Before the beginning of each regular session of the legislature, the agency shall submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. The report must include:

(1) an audit as required by Section 1105.004;

(2) a financial report of the previous fiscal year, including reports on the financial condition and results of operations;

(3) a description of all changes in fees imposed on regulated persons;

(4) a report on changes in the regulatory jurisdiction of the agency;

(5) a report on the number of examination candidates, license, certificate, and registration holders, and enforcement activities and any changes in those figures; and

(6) a list of all new rules adopted or repealed.

(c) In addition to the reporting requirements of Subsection

(b), not later than November 1 of each year, the agency shall submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains:

(1) the salary for all agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees, including trend performance data for the preceding five fiscal years;

(2) the total amount of per diem expenses and travel expenses paid for each member of the agency, including trend performance data for the preceding five fiscal years;

(3) the agency's operating plan covering a period of two fiscal years;

(4) the agency's operating budget, including revenues and a breakdown of expenditures by program and administrative expense, showing:

(A) projected budget data for a period of two fiscal years; and

(B) trend performance data for the preceding five fiscal years; and

(5) trend performance data for the preceding five fiscal years regarding:

(A) the number of full-time equivalent positions at the agency;

(B) the number of complaints received from the public and the number of complaints initiated by agency staff;

(C) the number of complaints dismissed and the number of complaints resolved by enforcement action;

(D) the number of enforcement actions by sanction type;

(E) the number of enforcement cases closed through voluntary compliance;

(F) the amount of administrative penalties assessed and the rate of collection of assessed administrative penalties;

(G) the number of enforcement cases that allege a threat to public health, safety, or welfare or a violation of professional standards of care and the disposition of those cases;

(H) the average time to resolve a complaint;

(I) the number of license holders or regulated persons broken down by type of license and license status, including inactive status or retired status;

(J) the fee charged to issue and renew each type of license, certificate, or registration issued by the agency;

(K) the average time to issue a license, certificate, or registration;

(L) litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel costs; and

(M) reserve fund balances.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 38, eff. September 1, 2019.

Sec. 1105.006. ABILITY TO CONTRACT. (a) To carry out and promote the objectives of this chapter, the commission or board may enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the commission's or board's respective affairs and for the attainment of the commission's or board's respective purposes, except as limited by Subsection (b).

(b) Any indebtedness, liability, or obligation of the commission or board incurred under this section may not:

(1) create a debt or other liability of this state or another entity other than the commission or board, as appropriate; or

(2) create any personal liability on the part of the members or employees of the agency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.007. PROPERTY. The commission or board may acquire by lease and maintain, use, and operate any real, personal, or mixed property necessary to the exercise of the respective powers, rights, privileges, or functions of the commission or board.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 39, eff. September 1, 2019.

Sec. 1105.008. SUITS. (a) The office of the attorney general shall represent the agency in any litigation.

(b) The attorney general may assess and collect from the agency reasonable attorney's fees associated with any litigation under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 40, eff. September 1, 2019.

Sec. 1105.009. ADMINISTRATIVE HEARINGS. The State Office of Administrative Hearings shall enter into a contract with the agency for hearings conducted by the State Office of Administrative Hearings under a law administered by the commission or the board. The agency shall reimburse the State Office of Administrative Hearings for costs incurred in conducting the hearings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 334 (S.B. 624), Sec. 41, eff. September 1, 2019.

Sec. 1105.010. POST-PARTICIPATION LIABILITY. (a) If the agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, the agency shall be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent agency. The agency's liability under this section includes liability for any lease entered into by the agency. This state is not liable for any expense or debt covered by this subsection, and money from the general revenue fund may not be used to repay the expense or debt.

(b) If the agency no longer has status under this chapter as a

self-directed semi-independent agency for any reason, ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, shall be transferred to this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.011. DUE PROCESS; OPEN GOVERNMENT. The commission and the board are governmental bodies for purposes of Chapters 551 and 552, Government Code. The commission is a state agency for purposes of Chapters 2001 and 2005, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

Sec. 1105.012. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Employees of the agency are members of the Employees Retirement System of Texas under Chapter 812, Government Code, and the commission's and the board's transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1333 (S.B. 1000), Sec. 1, eff. September 1, 2011.

SUBTITLE B. PROFESSIONS RELATED TO PROPERTY TAXATION

CHAPTER 1151. PROPERTY TAX PROFESSIONALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1151.001. SHORT TITLE. This chapter may be cited as the Property Taxation Professional Certification Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1151.002. DEFINITIONS. In this chapter:

(1) "Appraisal" means a function described by Chapter 23 or

25, Tax Code, that:

(A) is performed by an employee of a political subdivision or by a person acting on behalf of a political subdivision; and

(B) involves an opinion of value of a property interest.

(2) "Assessment" means a function described by Chapter 26, Tax Code, performed by an employee of a political subdivision or by a person acting on behalf of a political subdivision to determine an amount of ad valorem tax for the political subdivision.

(3) "Assessor-collector" means the chief administrator of the tax office of a taxing unit who is responsible for:

(A) assessment under Chapter 26, Tax Code; and

(B) collection under Chapter 31, Tax Code.

(4) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(1), eff. September 1, 2009.

(5) "Code of ethics" means a formal statement of ethical standards of conduct adopted by the commission.

(6) "Collection" means a function described by Chapter 31, Tax Code, or Section 33.02, 33.03, or 33.04, Tax Code.

(7) "Collector" means the chief administrator of the tax office of a taxing unit who:

(A) is responsible for collection under Chapter 31, Tax Code; and

(B) is not responsible for assessment.

(7-a) "Commission" means the Texas Commission of Licensing and Regulation.

(7-b) "Committee" means the Texas Tax Professional Advisory Committee.

(7-c) "Department" means the Texas Department of Licensing and Regulation.

(8) "Governing body" means the governing body of a taxing unit as defined by Section 1.04, Tax Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(1), eff. September 1, 2009.

Sec. 1151.003. APPLICABILITY. This chapter does not apply to a county assessor-collector described by Section 14, Article VIII, Texas Constitution, or an employee of the county assessor-collector.

Added by Acts 2013, 83rd Leg., R.S., Ch. 429 (S.B. 546), Sec. 2, eff. June 14, 2013.

Sec. 1151.004. PROHIBITION AGAINST REQUIRING UNPROFESSIONAL CONDUCT. (a) An appraisal district board of directors or a governing body may not, as a necessity for employment, require an appraiser, assessor, or collector to:

(1) act in an unprofessional manner; or

(2) violate this chapter.

(b) The department shall thoroughly investigate a complaint of a violation of this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 2, eff. September 1, 2009.

SUBCHAPTER B. TEXAS TAX PROFESSIONAL ADVISORY COMMITTEE

Sec. 1151.051. MEMBERSHIP. (a) The Texas Tax Professional Advisory Committee consists of seven members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) two members who are certified under this chapter as registered professional appraisers;

(2) two members who are certified under this chapter as registered Texas collectors or registered Texas assessors; and

(3) three members who represent the public.

(b) A vacancy on the committee is filled in the same manner as the original appointment for the unexpired portion of the term.

(c) The presiding officer of the commission shall designate one member of the committee as the presiding officer.

(d) Each appointment to the committee shall be made without regard to the race, color, disability, sex, religion, age, or

national origin of the appointee.

(e) Section 2110.008, Government Code, does not apply to the committee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 2, eff. Sept. 1, 2003.
Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 43.01, eff. Sept. 1, 2003.
Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 4, eff. September 1, 2009.

Sec. 1151.0511. PUBLIC MEMBER ELIGIBILITY. A person may not be a public member of the committee if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of property tax appraisal, assessment, or collection;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department;

(4) uses or receives a substantial amount of tangible goods, services, or money from the department other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses; or

(5) at any time has served on an appraisal review board.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 5, eff. September 1, 2009.

Sec. 1151.0512. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its

industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of property tax appraisal, assessment, or collection.

(c) A person may not be a member of the committee if the person or the person's spouse is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee or the department.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 6, eff. September 1, 2009.

Sec. 1151.052. TERMS. Committee members serve six-year terms, with the terms of one or two members expiring on March 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1170, Sec. 43.02, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 7, eff. September 1, 2009.

Sec. 1151.055. COMPENSATION; REIMBURSEMENT. (a) A committee member may not receive compensation for the member's services.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(5), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 8, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(5), eff. September 1, 2009.

SUBCHAPTER C. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, DEPARTMENT, AND ADVISORY COMMITTEE

Sec. 1151.101. FEES. The commission, with the advice of the committee, shall establish fees under this chapter in amounts reasonable and necessary to cover the costs of administering the programs and activities under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 10, eff. September 1, 2009.

Sec. 1151.1015. ASSISTANCE FROM COMPTROLLER. The comptroller shall enter into a memorandum of understanding with the department under which the comptroller shall provide:

(1) information on the educational needs of and opportunities for tax professionals;

(2) review and approval of all required educational courses, examinations, and continuing education programs for registrants;

(3) a copy of any report issued by the comptroller under Section 5.102, Tax Code, and if requested by the department a copy of any work papers or other documents collected or created in connection with a report issued under that section; and

(4) information and assistance regarding administrative proceedings conducted under the commission's rules or this chapter.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 8, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 11, eff. September 1, 2009.

Sec. 1151.102. GENERAL RULEMAKING AUTHORITY. The commission may adopt and enforce rules necessary for the performance of the department's duties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 12, eff. September 1, 2009.

Sec. 1151.103. ESTABLISHMENT OF PROFESSIONAL STANDARDS. The commission shall establish standards of professional practice, conduct, education, and ethics for appraisers, assessors, and collectors consistent with the purposes and intent of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 13, eff. September 1, 2009.

Sec. 1151.104. ENFORCEMENT OF CHAPTER. The department may ensure strict compliance with and enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 14, eff. September 1, 2009.

Sec. 1151.106. CLASSIFICATION SYSTEM FOR REGISTRANTS. (a) The commission by rule shall:

(1) adopt a classification system for registrants; and

(2) establish minimum requirements for each classification.

(b) The requirements must be based on experience in property taxation administration, education and training, professional performance and achievements, and compliance with the code of ethics.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 15, eff. September 1, 2009.

Sec. 1151.107. ROSTER OF REGISTRANTS. (a) The department

shall maintain a roster of registrants that includes each registrant's name, place of employment, and classification.

(b) A copy of the roster shall be made available to a registrant and to the public on request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 16, eff. September 1, 2009.

Sec. 1151.108. COMMITTEE DUTIES. The committee shall:

(1) recommend to the commission rules and standards regarding technical issues relating to tax professionals;

(2) provide advice to the commission regarding continuing education courses and curricula for registrants;

(3) provide advice to the commission regarding the contents of any examination required by the commission under this chapter; and

(4) educate, and respond to questions from, the commission and the department regarding issues affecting tax professionals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 17, eff. September 1, 2009.

Sec. 1151.109. INFORMATION ON APPRAISAL DISTRICT REVIEWS. (a) The commission by rule shall require the department to include in the record of the registered professional appraiser who serves as chief appraiser for an appraisal district at the time the comptroller finalizes the biennial review of the appraisal district's performance under Section 5.102(c), Tax Code, an electronic link to:

(1) the comptroller's report for the review; and

(2) each property value study the comptroller conducts under Subchapter M, Chapter 403, Government Code, that is used in the review.

(b) An appraisal district may request from the department information on a registered professional appraiser whom the board of directors of the appraisal district is considering for appointment as chief appraiser of the appraisal district. The department shall

inform the requestor of the status of any compliance efforts of an appraisal district under Section 5.102(d), Tax Code, for previous reviews in which the appraiser served as chief appraiser of that appraisal district.

Added by Acts 2021, 87th Leg., R.S., Ch. 593 (S.B. 916), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. REGISTRATION AND CERTIFICATION

Sec. 1151.151. REGISTRATION REQUIRED; EXEMPTION. The following persons must register with the department:

(1) the chief appraiser of an appraisal district, an appraisal supervisor or assistant, a property tax appraiser, an appraisal engineer, and any other person authorized to render judgment on, recommend, or certify an appraised value to the appraisal review board of an appraisal district;

(2) a person who engages in appraisal of property for ad valorem tax purposes for an appraisal district or a taxing unit;

(3) an assessor-collector other than a county assessor-collector;

(4) a collector or another person designated by a governing body as the chief administrator of the taxing unit's assessment functions, collection functions, or both; and

(5) a person who performs assessment or collection functions for a taxing unit and is required to register by the chief administrator of the unit's tax office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 18, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 429 (S.B. 546), Sec. 3, eff. June 14, 2013.

Sec. 1151.152. ELIGIBILITY FOR REGISTRATION. To be eligible for registration, an applicant must:

(1) be at least 18 years of age;

(2) reside in this state;
(3) be of good moral character;
(4) be a graduate of an accredited high school or establish high school graduation equivalency; and
(5) be actively engaged in appraisal, assessment, or collection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1151.153. REGISTRATION APPLICATION. (a) An application for registration must be made on the printed form provided by the department. In prescribing the contents of an application form, the commission shall ensure that the form requires information sufficient to properly classify the applicant.

(b) Each application form the department provides must be accompanied by the code of ethics.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 19, eff. September 1, 2009.

Sec. 1151.154. SUBMISSION OF APPLICATION. An initial application for registration must be accompanied by:
(1) a nonrefundable processing fee; and
(2) a nonrefundable registration fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 19(3), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 20, eff. September 1, 2009.

Sec. 1151.155. ACTION ON APPLICATION. (a) The department shall act on an application for registration not later than the 30th day after the date the application is received.

(b) The department shall:

(1) classify and register each applicant the department approves; and

(2) notify the registrant of the requirements for:

(A) maintenance of the registrant's current registration; and

(B) professional certification by the department.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(14), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 21, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(14), eff. September 1, 2009.

Sec. 1151.156. DISCRIMINATION PROHIBITED. The department may not refuse to register an applicant because of the race, color, disability, sex, religion, age, or national origin of the applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 22, eff. September 1, 2009.

Sec. 1151.157. ISSUANCE AND POSSESSION OF IDENTIFICATION CARD REQUIRED. (a) The department shall issue an identification card to each person registered under this chapter. While on official duty, the registrant shall have the identification card in the registrant's possession.

(b) An identification card issued under Subsection (a) must:

(1) be serially numbered;

(2) describe any registration classification into which the person is placed; and

(3) state the expiration date of the person's registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 23, eff.

September 1, 2009.

Sec. 1151.158. ANNUAL FEE; EXPIRATION AND RENEWAL OF REGISTRATION. (a) Except as otherwise provided by the commission, a registration under this chapter is valid for one year and must be renewed annually. A registrant must pay an annual fee. The commission by rule may adopt a system under which registrations expire on various dates during the year.

(b) The department shall notify a registrant under this chapter of the impending expiration of the registrant's registration as provided by Section 51.401(f).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 24, eff. September 1, 2009.

Sec. 1151.1581. CONTINUING EDUCATION. (a) The comptroller must review and approve any continuing education programs for registrants.

(b) The comptroller may set fees for any continuing education courses and providers of continuing education courses in amounts reasonable and necessary to cover the comptroller's costs in administering the comptroller's duties under this section.

(c) As part of the continuing education requirements for a registered professional appraiser who is the chief appraiser of an appraisal district, the commission by rule shall require the registrant to complete:

(1) at least half of the required hours in a program devoted to one or more of the topics listed in Section 1151.164(b); and

(2) at least two of the required hours in a program of professional ethics specific to the chief appraiser of an appraisal district, including a program on the importance of maintaining the independence of an appraisal office from political pressure.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 25, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1259 (H.B. 585), Sec. 1, eff. January 1, 2014.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.18, eff. September 1, 2021.

Sec. 1151.160. CERTIFICATION LEVELS AND REQUIREMENTS; RULES. (a) The commission by rule shall adopt minimum requirements for the certification of registrants. The requirements for certification of a registrant must emphasize the areas of responsibility of the registrant in performing the registrant's duties for the taxing unit.

(b) "Registered professional appraiser" is the highest level of certification established by the commission for a person engaged in appraisal. "Registered Texas assessor" is the highest level of certification established by the commission for a person engaged in assessment. "Registered Texas collector" is the highest level of certification established by the commission for a person engaged in collection.

(c) A person registered as an appraiser shall become certified as a registered professional appraiser not later than the fifth anniversary of the date of the person's original registration. The person shall obtain certification by:

(1) successfully completing the certification requirements established by commission rule; or

(2) if the person is certified or licensed under Chapter 1103 as an appraiser by the Texas Appraiser Licensing and Certification Board, passing the appropriate examination required under Section 1151.161.

(d) A person registered as an assessor or assessor-collector other than a county assessor-collector shall become certified as a registered Texas assessor not later than the fifth anniversary of the date of the person's original registration.

(e) A person registered as a collector shall become certified as a registered Texas collector not later than the third anniversary of the date of the person's original registration.

(f) In this subsection, "break in service" means time during which a person is not employed in the type of employment for which the person is registered, other than a period resulting from termination for cause. A registrant who has a break in service is entitled to an adjustment of the applicable anniversary date

described by Subsection (c), (d), or (e) equal to the length of the break in service, as determined by commission rule. A person who has a break in service that exceeds five years must submit a new application and proof of completion of current course requirements, unless otherwise excepted under commission rule.

(g) A registrant who has not obtained the certification required by Subsection (c), (d), or (e) within the time required by the applicable subsection is entitled to a one-year extension to meet the certification requirements if:

(1) the applicant submits proof of active military status performed after the date of the applicant's original registration;

(2) the applicant submits proof of leave under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.) taken after the date of the applicant's original registration;

(3) the applicant submits proof of a death or illness in the family or an unforeseen emergency occurring after the date of the applicant's original registration that prevented the registrant from meeting certification requirements;

(4) a chief appraiser, chief administrative officer of a political subdivision, or other person authorized by the commission by rule requests the extension on behalf of an employee;

(5) the applicant requesting the extension is a chief appraiser; or

(6) the applicant meets another reasonable qualification for an extension established by the commission by rule.

(h) The commission shall establish reasonable qualifications for reapplication for a registration by an applicant who does not meet any of the requirements of Subsection (g) or Section 1151.1605.

(i) The commission shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 26, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 258 (H.B. 1179), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 258 (H.B. 1179), Sec. 2, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 429 (S.B. 546), Sec. 4, eff. June

14, 2013.

Sec. 1151.161. EXAMINATION FOR CERTIFICATION; APPLICATION; FEE. (a) The commission by rule shall require a registrant to pass one or more examinations to be certified. The commission by rule shall ensure that any examination required for certification is administered in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) An applicant for examination under this section must apply to take the examination in the manner prescribed by the department.

(c) The department may accept, develop, or contract for the examinations required by this section, including the administration of the examinations. The comptroller must approve the content of an examination accepted, developed, or contracted for by the department. The department may require a third-party vendor to collect a fee associated with the examination directly from examinees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 14, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 27, eff. September 1, 2009.

Sec. 1151.162. RULES RELATING TO RECERTIFICATION AND SPECIALIZATION. The commission may adopt rules:

(1) regarding recertification to ensure that each person certified under this chapter who is engaged in appraisal, assessment, or collection is registered and professionally competent; and

(2) establishing specialized classifications, designations, and requirements as necessary to accomplish the purposes of this chapter, including maintaining high standards of professional practice in all phases of property taxation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 28, eff. September 1, 2009.

Sec. 1151.163. REGISTRATION BY ENDORSEMENT. The department may waive any prerequisite to obtaining a certificate of registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or certificate of registration issued by another jurisdiction that has requirements substantially equivalent to those of this state.

Added by Acts 2003, 78th Leg., ch. 815, Sec. 16, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 29, eff. September 1, 2009.

Sec. 1151.164. CHIEF APPRAISER TRAINING PROGRAM. (a) The department shall implement a training program for newly appointed chief appraisers and shall prescribe the curriculum for the training program as provided by this section.

(b) The training program must provide the appointee with information regarding:

(1) this chapter;

(2) the programs operated by the department;

(3) the role and functions of the department;

(4) the rules of the commission, with an emphasis on the rules that relate to ethical behavior;

(5) the role and functions of the chief appraiser, the appraisal district board of directors, and the appraisal review board;

(6) the importance of maintaining the independence of an appraisal office from political pressure;

(7) the importance of prompt and courteous treatment of the public;

(8) the finance and budgeting requirements for an appraisal district, including appropriate controls to ensure that expenditures are proper; and

(9) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001,

Government Code;

(D) other laws relating to public officials, including conflict-of-interest laws; and

(E) the standards of ethics imposed by the Uniform Standards of Professional Appraisal Practice.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 450, Sec. 41(17), eff. September 1, 2009.

Added by Acts 2005, 79th Leg., Ch. 1111 (H.B. 2382), Sec. 1, eff. June 18, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 30, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 41(17), eff. September 1, 2009.

Sec. 1151.165. INACTIVE STATUS. The commission may adopt rules to allow a registrant to place a registration issued by the department on inactive status in the same manner as a license is placed on inactive status under Section 51.4011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 258 (H.B. 1179), Sec. 4, eff. June 17, 2011.

SUBCHAPTER E. ENFORCEMENT

Sec. 1151.202. DENIAL OF REGISTRATION; DISCIPLINARY ACTION. (a) The department may deny an application for registration of or take other disciplinary action as described by Chapter 51 against a person who violates this chapter or a commission rule.

(b) The commission by rule shall adopt written guidelines to ensure that denials of registration under this section and other disciplinary actions under Chapter 51 are administered consistently.

(c) Before imposing an administrative penalty under Subchapter F, Chapter 51, against a registrant, the department must consider evidence that the registrant:

(1) attempted in good faith to implement or execute a law, policy, rule, order, budgetary restriction, or other regulation provided by the laws of this state, the comptroller, or the governing body or the chief administrator of the appraisal district or taxing

jurisdiction that employs the registrant;

(2) acted on the advice of counsel or the comptroller; or

(3) had discretion over the matter on which the complaint is based, if the complaint is based solely on grounds that the registrant decided incorrectly or failed to exercise discretion in favor of the complainant.

(d) The department may notify the local governmental entity that employs a registrant of a complaint against the registrant by sending a copy of the complaint letter to the local governmental entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 815, Sec. 17, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 31, eff. September 1, 2009.

Sec. 1151.204. DISMISSAL OF COMPLAINTS. (a) After investigation, the department may dismiss a complaint, in part or entirely, without conducting a hearing if the complaint does not credibly allege a violation of this chapter or the standards established by the commission for registrants under this chapter.

(b) After investigation, the department shall dismiss a complaint, in part or entirely, without conducting a hearing if:

(1) the complaint challenges:

(A) the imposition of or failure to waive penalties or interest under Sections 33.01 and 33.011, Tax Code;

(B) the appraised value of a property;

(C) the appraisal methodology;

(D) the grant or denial of an exemption from taxation; or

(E) any matter for which Title 1, Tax Code, specifies a remedy, including an action that a property owner is entitled to protest before an appraisal review board under Section 41.41(a), Tax Code; and

(2) the subject matter of the complaint has not been finally resolved in the complainant's favor by an appraisal review board, a governing body, an arbitrator, a court, or the State Office

of Administrative Hearings under Section 2003.901, Government Code.

(c) This section does not apply to:

(1) a matter referred to the department by the comptroller under Section 5.102, Tax Code, or a successor statute;

(2) a complaint concerning a registrant's failure to comply with the registration and certification requirements of this chapter; or

(3) a complaint concerning a newly appointed chief appraiser's failure to complete the training program described by Section 1151.164.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 32, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 748 (S.B. 464), Sec. 1, eff. June 14, 2013.

Sec. 1151.205. SUBPOENA AUTHORITY. (a) The department may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter or a commission rule for inspection and copying.

(b) If a person does not comply with the subpoena, the department, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the department may be held.

(c) The court shall order compliance with the subpoena if the court determines that good cause exists for the issuance of the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 33, eff. September 1, 2009.

Sec. 1151.206. COMPLAINT OF VIOLATION. A person may file a

complaint with the department concerning a violation of this chapter or a rule adopted by the commission under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 36, eff. September 1, 2009.
Transferred and redesignated from Occupations Code, Section 1151.253 by Acts 2013, 83rd Leg., R.S., Ch. 110 (S.B. 972), Sec. 3, eff. May 18, 2013.

CHAPTER 1152. PROPERTY TAX CONSULTANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1152.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.201(a).

(3) "Department" means the Texas Department of Licensing and Regulation.

(3-a) "Executive director" means the executive director of the department.

(4) "Person" means an individual, partnership, corporation, or association.

(5) "Property tax consultant" means a person who performs or supervises another person in the performance of property tax consulting services for compensation.

(6) "Property tax consulting services" means:

(A) preparing for another person a rendition statement or property report under Chapter 22, Tax Code;

(B) representing another person in a protest under Subchapter C, Chapter 41, Tax Code;

(C) consulting or advising another person concerning:

(i) the preparation of a rendition statement or property report under Chapter 22, Tax Code; or

(ii) an action the other person may protest under Subchapter C, Chapter 41, Tax Code;

(D) negotiating or entering into an agreement with an appraisal district on behalf of another person concerning an action

that is or may be the subject of a protest under Subchapter C, Chapter 41, Tax Code; or

(E) acting as the agent of a property owner designated in accordance with Section 1.111, Tax Code.

(7) "Registrant" means a person who is registered as a property tax consultant or a senior property tax consultant under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.201(a), (b), eff. Sept. 1, 2003.

Sec. 1152.002. EXEMPTIONS FROM REGISTRATION. (a) A person is not required to be registered under this chapter if the person:

(1) is acting under a general power of attorney, unless the person represents that the person is a property tax consultant, agent, advisor, or representative;

(2) is licensed to practice law in this state;

(3) is an employee of a property owner or of an affiliated or subsidiary company of a property owner and performs property tax consulting services for:

(A) the property owner; or

(B) a partnership, joint venture, or corporation in which the property owner owns an interest;

(4) is a lessee of a property owner and is designated as the agent of the owner in accordance with Section 1.111, Tax Code;

(5) is a public employee or officer and assists a property owner in the course of the employee's or officer's duties;

(6) is a certified public accountant under Chapter 901;

(7) assists another person in the performance of property tax consulting services or provides testimony on behalf of the other person at a protest hearing under Subchapter C, Chapter 41, Tax Code; or

(8) provides property tax consulting services only in connection with farms, ranches, or single-family residences and:

(A) holds an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(B) is a licensed real estate appraiser or certified

real estate appraiser under Chapter 1103.

(b) A person described by Subsection (a)(7) is not exempt from the registration requirements of this chapter if:

(1) the person is designated as the agent of the other person under Section 1.111, Tax Code; or

(2) more than 50 percent of the person's employment time is devoted to, or more than 50 percent of the person's income is derived from, performing or supervising the performance of property tax consulting services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 705, Sec. 1, eff. June 20, 2003.

SUBCHAPTER B. DUTIES OF COMMISSION, EXECUTIVE DIRECTOR, AND DEPARTMENT

Sec. 1152.051. STANDARDS OF CONDUCT FOR REGISTRANTS. The commission by rule shall establish standards of practice, conduct, and ethics for registrants.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.003, eff. Sept. 1, 2003.

Sec. 1152.052. MONEY RECEIVED BY DEPARTMENT. The department shall receive and account for all money derived under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. PROPERTY TAX CONSULTANTS ADVISORY COUNCIL

Sec. 1152.101. DEFINITION. In this subchapter, "council" means the Property Tax Consultants Advisory Council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.102. COUNCIL MEMBERSHIP. (a) The council is composed of seven members appointed by the presiding officer of the commission, with the commission's approval.

(b) The presiding officer of the commission may appoint not more than two members who are qualified for an exemption under Section 1152.002(a)(3).

(c) Except as provided by Subsection (d), each person appointed for membership on the council must:

(1) be a registered senior property tax consultant;

(2) be a member of a nonprofit and voluntary trade association:

(A) whose membership consists primarily of persons who perform property tax consulting services in this state or who engage in property tax management in this state for other persons;

(B) that has written experience and examination requirements for membership; and

(C) that subscribes to a code of professional conduct or ethics;

(3) be a resident of this state for the five years preceding the date of the appointment; and

(4) have performed or supervised the performance of property tax consulting services as the person's primary occupation continuously for the five years preceding the date of the appointment.

(d) One member of the council must be a public member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.004, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 2, eff. September 1, 2009.

Sec. 1152.103. MEMBERSHIP RESTRICTIONS. A person is not eligible for appointment as a member of the council if the person is:

(1) required to register with the secretary of state under Chapter 305, Government Code;

(2) required to register with the department under Chapter 1151; or

(3) exempt from the registration requirements imposed by this chapter, except as provided by Section 1152.102.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 450 (H.B. 2447), Sec. 37, eff. September 1, 2009.

Sec. 1152.104. TERMS; VACANCY. (a) Members of the council serve staggered three-year terms, with the terms of two members expiring on February 1 of each year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint to fill the unexpired part of the term a replacement who meets the qualifications of the vacated office.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.005, eff. Sept. 1, 2003.

Sec. 1152.105. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.006, eff. Sept. 1, 2003.

Sec. 1152.106. VOTE REQUIRED FOR ACTION. A decision of the council is not effective unless it receives the affirmative vote of at least four members.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.19, eff. September 1, 2021.

Sec. 1152.107. COMPENSATION; REIMBURSEMENT. A council member is not entitled to receive compensation for serving as a member. A council member is entitled to reimbursement for reasonable expenses

incurred in performing duties as a member, subject to applicable limitations in the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.108. COUNCIL POWERS. The council shall:

(1) recommend to the commission standards of practice, conduct, and ethics for registrants to be adopted under this chapter;

(2) recommend to the commission amounts for the fees it may set under this chapter;

(3) recommend to the commission contents for the senior property tax consultant registration examination and standards of acceptable performance;

(4) assist and advise the commission in recognizing continuing education programs and educational courses for registrants; and

(5) advise the commission in establishing educational requirements for initial applicants.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.007, eff. Sept. 1, 2003.

SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 1152.151. REGISTRATION REQUIRED. (a) A person may not perform property tax consulting services for compensation unless the person holds a certificate of registration issued under this chapter.

(b) A person may not represent that a person is a registered property tax consultant, agent, advisor, or representative unless the person is a registrant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.152. ASSOCIATION WITH SENIOR PROPERTY TAX CONSULTANT REQUIRED. (a) A registered property tax consultant may not perform property tax consulting services for compensation unless the person is employed by or associated with and acting for:

(1) a registered senior property tax consultant; or

(2) an attorney who is licensed to practice law in this state and who has successfully completed the senior property tax consultant registration examination required under Section 1152.160.

(b) Subsection (a) does not apply to a person who is registered under Section 1152.156(a)(2) or 1152.158.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1064 (H.B. 2352), Sec. 1, eff. September 1, 2007.

Sec. 1152.153. VOLUNTARY REGISTRATION. (a) A person who is not required to hold a certificate of registration under this chapter may register if the person satisfies the registration requirements of this chapter.

(b) A person exempt from the registration requirements of this chapter who elects to register is subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.154. REGISTRATION APPLICATION; FEES. (a) An applicant for registration must file an application with the department on a printed form prescribed by the executive director.

(b) The application must be accompanied by:

(1) a nonrefundable application fee; and

(2) a registration fee.

(c) The department shall refund the registration fee if the executive director does not approve the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.022, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.206, eff. Sept. 1, 2003.

Sec. 1152.155. GENERAL ELIGIBILITY FOR REGISTRATION. (a) To be eligible for registration, an applicant must:

(1) be at least 18 years of age;

(2) hold a high school diploma or its equivalent;

(3) pay the fees required by the commission;

(4) have a place of business in this state or designate a resident of this state as the applicant's agent for service of process; and

(5) meet any additional qualifications required by this chapter or by the commission under this chapter or Chapter 51.

(b) Notwithstanding Subsection (a), a person is eligible for registration if the person holds:

(1) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(2) an active real estate appraiser license or certificate under Chapter 1103.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.008, eff. Sept. 1, 2003.

Sec. 1152.156. ELIGIBILITY TO REGISTER AS PROPERTY TAX CONSULTANT. (a) In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a property tax consultant must:

(1) complete at least 40 classroom hours of educational courses approved by the executive director, including at least four hours of instruction on laws and legal issues in this state related to property tax consulting services and pass a competency examination under Section 1152.160; or

(2) if the person is eligible for registration under Section 1152.155(b), submit to the commission evidence that the applicant has completed at least four classroom hours of educational programs or courses on the laws and legal issues in this state related to property tax consulting services.

(b) The executive director may give appropriate credit to an initial applicant for:

(1) educational courses on principles of law related to property tax consulting services completed by the applicant not more than two years before the date of application; and

(2) educational programs or courses completed by the applicant on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, or law as they relate to property tax consulting services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.023, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.208, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 1, eff. September 1, 2009.

Sec. 1152.157. ELIGIBILITY TO REGISTER AS SENIOR PROPERTY TAX CONSULTANT. In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a senior property tax consultant must:

(1) acquire at least 25 credits as provided by Section 1152.159;

(2) have performed or supervised the performance of property tax consulting services as the applicant's primary occupation for at least four of the seven years preceding the date of application; and

(3) pass the examination adopted under Section 1152.160 or hold a professional designation in property taxation granted by a nonprofit and voluntary trade association, institute, or organization:

(A) whose membership consists primarily of persons who represent property owners in property tax and transactional tax matters;

(B) that has written experience and examination requirements for granting the designation; and

(C) that subscribes to a code of professional conduct or ethics.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.158. REGISTRATION OF CERTAIN REAL ESTATE BROKERS.

Sections 1152.156 and 1152.157 do not apply to a person who:

(1) applied for registration before March 1, 1992;

(2) on the date of application held an active real estate broker license under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes), as that law existed on the application date; and

(3) does not perform or supervise the performance of property tax consulting services for compensation in connection with personal property.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1152.159. CREDITS FOR SENIOR PROPERTY TAX CONSULTANT APPLICANTS. (a) The executive director shall grant credit to an applicant for registration as a senior property tax consultant as follows:

(1) two credits for each year the applicant completed at an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board, not to exceed six credits;

(2) four credits to an applicant who holds a bachelor's degree or equivalent from an institution of higher education described by Subdivision (1); and

(3) one credit for each year in excess of five years that the applicant's primary occupation involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, not to exceed 10 credits.

(b) The executive director may grant additional credits to an applicant for registration as a senior property tax consultant for:

(1) successful completion of educational programs or courses on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services;

(2) completion of other educational programs or courses;

or

(3) advanced or postgraduate educational achievement, occupational experience, professional licenses, or professional designations obtained from recognized associations, institutes, or organizations.

(c) The executive director may assign not less than one credit or more than five credits to a program or course described by Subsection (b)(1). In determining the amount of credit for the program or course, the executive director shall consider:

(1) the nature of the program or course;

(2) the number of actual instructional hours in the program or course;

(3) whether an examination is required for successful completion of the program or course; and

(4) other factors the executive director determines appropriate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.024, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.208, eff. Sept. 1, 2003.

Sec. 1152.160. REGISTRATION EXAMINATIONS. (a) The executive director shall:

(1) adopt an examination for registration as a senior property tax consultant;

(2) adopt an examination for registration as a property tax consultant; and

(3) establish the standards for passing the examinations.

(b) The department shall offer the examinations at times and places designated by the executive director.

(c) To be eligible to take an examination, an applicant must pay to the department an examination fee.

(d) The examination must test the applicant's knowledge of:

(1) property taxation;

(2) the property tax system;

(3) property tax administration;

(4) ethical standards; and

(5) general principles of appraisal, accounting, and law as

they relate to property tax consulting services.

(e) An attorney who is licensed to practice law in this state may take the senior property tax consultant registration examination under this section without completing any other eligibility requirements for registration as a senior property tax consultant under this chapter.

(f) The department shall accept, develop, or contract for the examinations required by this section, including the administration of the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.009, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1064 (H.B. 2352), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 2, eff. September 1, 2009.

Sec. 1152.162. ISSUANCE OF CERTIFICATE OF REGISTRATION. (a) The executive director shall act on an initial application for registration filed under Section 1152.154 not later than the 31st day after the date the department receives the application.

(b) The executive director shall issue to an applicant who qualifies for registration the appropriate certificate of registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.025, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.208, eff. Sept. 1, 2003.

SUBCHAPTER E. RENEWAL OF CERTIFICATE OF REGISTRATION

Sec. 1152.201. TERM OF CERTIFICATE OF REGISTRATION. Except as otherwise provided by the commission, a certificate of registration expires on the first anniversary of the date of issuance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.010, eff. Sept. 1,

2003.

Sec. 1152.202. PROCEDURE FOR RENEWAL. (a) The executive director shall issue to an eligible registrant a certificate of renewal of registration on the timely receipt of the required renewal fee. The certificate expires on the second anniversary of the date of issuance.

(b) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(4).

(c) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 12.014(4).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.011, 12.014(4), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.210, eff. Sept. 1, 2003.

Sec. 1152.204. RECOGNITION OF EDUCATIONAL PROGRAMS AND COURSES. (a) The commission by rule shall recognize appropriate continuing education programs for registrants.

(b) The commission shall recognize a continuing education course, including a course on the legal issues and law related to property tax consulting services, that is:

(1) approved by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board; and

(2) completed by a registrant who also holds:

(A) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(B) an active real estate appraiser license or certificate under Chapter 1103.

(c) The commission may recognize an educational program or course:

(1) related to property tax consulting services; and

(2) offered or sponsored by a public provider or a recognized private provider, including:

(A) the comptroller;

(B) the State Bar of Texas;

(C) the Texas Real Estate Commission;

(D) an institution of higher education that meets program and accreditation standards comparable to those for public

institutions of higher education as determined by the Texas Higher Education Coordinating Board; or

(E) a nonprofit and voluntary trade association, institute, or organization:

(i) whose membership consists primarily of persons who represent property owners in property tax or transactional tax matters;

(ii) that has written experience and examination requirements for membership or for granting professional designation to its members; and

(iii) that subscribes to a code of professional conduct or ethics.

(d) The commission may recognize a private provider of an educational program or course if the provider:

(1) applies to the department on a printed form prescribed by the executive director; and

(2) pays in the amounts set by the commission:

(A) a nonrefundable application fee; and

(B) an educational provider's fee.

(e) The department shall refund the educational provider's fee if the commission does not recognize the provider's educational program or course.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.012, eff. Sept. 1, 2003.

SUBCHAPTER E-1. PROHIBITED ACTS

Sec. 1152.231. GENERAL PROHIBITED ACTS. (a) A person required to register under this chapter may not serve as a registered senior property tax consultant for more than 10 registered property tax consultants unless each additional tax consultant sponsored or supervised by the registered senior property tax consultant has for the previous six months:

(1) been employed and engaged as a tax consultant on a full-time basis;

(2) performed tax consultant related services as an employee of a property owner; or

(3) performed licensed appraisal services.

(b) Except for protests filed with the approval of a lessee under Section 41.413, Tax Code, a person required to register under this chapter may not file a protest under Chapter 41, Tax Code, without the approval of the property owner.

(c) A person required to register under this chapter may not falsify an agent appointment, exemption application, protest, or other legal document that is filed with or presented to an appraisal district, an appraisal review board, or a taxing unit.

(d) A person required to register under this chapter may not file a motion or protest concerning residential property on behalf of a person whom the registrant does not represent unless the registrant has authorization from:

(1) that person; or

(2) another person, other than the agent or the firm that employs the agent, who is authorized by the person to designate agents under Section 1.111, Tax Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3, eff. January 1, 2010.

Sec. 1152.232. PROHIBITED ACTS: SOLICITATION OF BUSINESS. A person required to register under this chapter may not solicit a property tax consulting assignment by assuring a specific outcome.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3, eff. January 1, 2010.

Sec. 1152.233. PROHIBITED ACTS: USE OF INTERNET WEBSITE. (a) A person required to register under this chapter may not maintain an Internet website for any purpose associated with the provision of tax consulting services by the registrant that has a domain name or other Internet address that implies that the website is a government website.

(b) A person required to register under this chapter may not use or maintain an Internet website for the purpose of soliciting clients if the website does not identify the company prominently on the home page of the website.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3,

eff. January 1, 2010.

Sec. 1152.234. PROHIBITED ACTS: CERTAIN LEGAL ACTIONS. A person required to register under this chapter may not engage the services of an attorney for purposes of filing an appeal under Chapter 42, Tax Code, without the prior consent of the client.

Added by Acts 2009, 81st Leg., R.S., Ch. 1313 (H.B. 2591), Sec. 3, eff. January 1, 2010.

SUBCHAPTER F. PENALTIES AND ENFORCEMENT

Sec. 1152.251. DISCIPLINARY POWERS OF COMMISSION. After a hearing, the commission may deny a certificate of registration and may impose an administrative sanction or penalty and seek injunctive relief and a civil penalty against a registrant as provided by Chapter 51 for:

(1) a violation of this chapter or a rule applicable to the registrant adopted by the commission under this chapter;

(2) gross incompetency in the performance of property tax consulting services;

(3) dishonesty or fraud committed while performing property tax consulting services; or

(4) a violation of the standards of ethics adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 12.013, eff. Sept. 1, 2003.

SUBTITLE C. REGULATION OF CERTAIN TYPES OF HOUSING AND BUILDINGS

CHAPTER 1201. MANUFACTURED HOUSING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1201.001. SHORT TITLE. This chapter may be cited as the Texas Manufactured Housing Standards Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.002. LEGISLATIVE FINDINGS AND PURPOSES; LIBERAL CONSTRUCTION. (a) The legislature finds that:

(1) there is a growing need to provide state residents with safe, affordable, and well-constructed housing;

(2) manufactured housing has become a primary housing source for many state residents;

(3) statutes and rules in effect before September 1, 1969, were inadequate to:

(A) fully protect the consumer; and

(B) prevent certain discrimination in this state regarding manufactured housing;

(4) the state is responsible for:

(A) protecting state residents who want to purchase manufactured housing by regulating the construction and installation of manufactured housing;

(B) providing economic stability to manufactured housing manufacturers, retailers, installers, and brokers; and

(C) providing fair and effective consumer remedies; and

(5) the expansion of certain regulatory powers is:

(A) necessary to address the problems described by Subdivisions (1)-(4); and

(B) the most economical and efficient means to address those problems and serve the public interest.

(b) The purposes of this chapter are to:

(1) encourage the construction of housing for state residents; and

(2) improve the general welfare and safety of purchasers of manufactured housing in this state.

(c) This chapter shall be liberally construed to promote its policies and accomplish its purposes.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.003. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message that promotes the sale or exchange of a manufactured home and that is presented on radio, television, a public-address system, or electronic media or appears in a newspaper, a magazine, a flyer, a

catalog, direct mail literature, an inside or outside sign or window display, point-of-sale literature, a price tag, or other printed material. The term does not include educational material or material required by law.

(2) "Affiliate" means a person who is under common control.

(3) "Alteration" means the replacement, addition, modification, or removal of equipment in a new manufactured home after sale by a manufacturer to a retailer but before sale and installation by a retailer to a purchaser in a manner that may affect the home's construction, fire safety, occupancy, or plumbing, heating, or electrical system. The term includes the modification of a manufactured home in a manner that may affect the home's compliance with the appropriate standards but does not include:

(A) the repair or replacement of a component or appliance that requires plug-in to an electrical receptacle, if the replaced item is of the same configuration and rating as the replacement; or

(B) the addition of an appliance that requires plug-in to an electrical receptacle and that was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which the appliance is connected.

(4) "Attached" in reference to a manufactured home means that the home has been:

(A) installed in compliance with the rules of the department; and

(B) connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(5) "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs.

(6) "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate a bargain or contract for the sale or exchange of a manufactured home for which a certificate or other document of title has been issued and is outstanding. The term does not include a person who maintains a location for the display of manufactured homes.

(7) "Business use" means the use of a manufactured home in conjunction with operating a business, for a purpose other than as a permanent or temporary residential dwelling.

(8) "Consumer" means a person, other than a person licensed under this chapter, who seeks to acquire or acquires by purchase or exchange a manufactured home.

(9) "Control" means, with respect to another person, the possession of the power, directly or indirectly, to vote an interest of 25 percent or more.

(9-a) "Credit transaction" has the meaning assigned by Section 347.002(a)(3), Finance Code.

(10) "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(11) "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs.

(12) "HUD-code manufactured home":

(A) means a structure:

(i) constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet;

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home; and

(C) does not include a recreational vehicle as defined by 24 C.F.R. Section 3282.8(g).

(13) "Installation" means the temporary or permanent construction of the foundation system and the placement of a manufactured home or manufactured home component on the foundation. The term includes supporting, blocking, leveling, securing, anchoring, and properly connecting multiple or expandable sections or components and making minor adjustments.

(14) "Installer" means a person, including a retailer or manufacturer, who contracts to perform or performs an installation function on manufactured housing.

(15) "Label" means a device or insignia that is:

(A) issued by the director to indicate compliance with the standards, rules, and regulations established by the United States Department of Housing and Urban Development; and

(B) permanently attached to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(16) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(1), eff. September 1, 2017.

(17) "License holder" or "licensee" means a person who holds a department-issued license as a manufacturer, retailer, broker, salesperson, or installer.

(18) "Manufactured home" or "manufactured housing" means a HUD-code manufactured home or a mobile home.

(19) "Manufacturer" means a person who constructs or assembles manufactured housing for sale or exchange in this state.

(20) "Mobile home":

(A) means a structure:

(i) constructed before June 15, 1976;

(ii) built on a permanent chassis;

(iii) designed for use as a dwelling with or without a permanent foundation when the structure is connected to the required utilities;

(iv) transportable in one or more sections; and

(v) in the traveling mode, at least eight body feet in width or at least 40 body feet in length or, when erected on site, at least 320 square feet; and

(B) includes the plumbing, heating, air conditioning, and electrical systems of the home.

(21) "New manufactured home" means a manufactured home that is not a used manufactured home, regardless of its age.

(21-a) "Nonresidential use" means use of a manufactured home for a purpose other than as a permanent or temporary residential dwelling.

(22) "Person" means an individual or a partnership, company, corporation, association, or other group, however organized.

(23) "Related person" means a person who:

(A) directly participates in management or policy decisions; and

(B) is designated by an entity and satisfies the

requirements of Sections 1201.104 and 1201.113 on behalf of the entity, if the entity is licensed or seeking licensure under this chapter.

(24) "Retailer" means a person who:

(A) is engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering manufactured homes for sale or exchange to consumers, including a person who maintains a location for the display of manufactured homes; and

(B) sells or exchanges at least two manufactured homes to consumers in a 12-month period.

(25) "Rules" means the rules of the department.

(26) "Salesperson" means a person who, as an employee or agent of a retailer or broker, sells or offers to sell manufactured housing to a consumer.

(26-a) "Sales purchase contract" means the contract between a retailer and a consumer for the purchase of a manufactured home from the retailer.

(27) "Salvaged manufactured home" means a manufactured home determined to be salvaged under Section 1201.461.

(28) "Seal" means a device or insignia issued by the director that, for title purposes, is to be attached to a used manufactured home as required by the director.

(29) "Standards code" means the Texas Manufactured Housing Standards Code.

(30) "Statement of ownership" means a statement issued by the department and setting forth:

(A) the ownership of a manufactured home in this state as provided by Section 1201.205; and

(B) other information required by this chapter.

(31) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(1), eff. September 1, 2017.

(32) "Used manufactured home" means a manufactured home which has been occupied for any use or for which a statement of ownership has been issued. The term does not include:

(A) a manufactured home that was used as a sales model at a licensed retail location; or

(B) a manufactured home that:

(i) was sold as a new manufactured home and installed but never occupied;

(ii) had a statement of ownership; and

(iii) was taken back from the consumer or transferee because of a first payment default or agreement to rescind or unwind the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.251(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 1, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.03, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(1), eff. September 1, 2017.

Sec. 1201.004. DEFINITIONS BINDING. The definitions of "mobile home," "HUD-code manufactured home," and "manufactured housing" provided by Section 1201.003 are binding as a matter of law on each person and agency in this state, including a home-rule municipality or other political subdivision. A mobile home is not a HUD-code manufactured home and a HUD-code manufactured home is not a mobile home for any purpose under state law. Those terms may not be defined in a manner that is not identical to the definitions provided by Section 1201.003.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.005. CONSUMER WAIVER VOID. A waiver by a consumer of this chapter is contrary to public policy and void.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.006. APPLICABILITY OF BUSINESS & COMMERCE CODE. The Business & Commerce Code applies to transactions relating to manufactured housing except to the extent that it conflicts with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.007. EXCEPTION FOR REAL ESTATE BROKERS AND SALESPERSONS. This chapter does not:

(1) modify or amend Chapter 1101 or 1102; or

(2) apply to a person who is licensed as a real estate broker or salesperson under Chapter 1101 and who, as agent of a buyer or seller, negotiates the sale or lease of a manufactured home and the real property to which the home is attached if:

(A) the same person is the record owner of both the manufactured home and the real property; and

(B) the sale or lease occurs in a single real estate transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.008. REGULATION BY MUNICIPALITY. (a) A municipality may prohibit the installation of a mobile home for use as a dwelling in the municipality. The prohibition must be prospective and may not apply to a mobile home previously legally permitted by and used as a dwelling in the municipality. If a mobile home is replaced by a HUD-code manufactured home in the municipality, the municipality shall grant a permit for use of the manufactured home as a dwelling in the municipality.

(b) On application, the municipality shall permit the installation of a HUD-code manufactured home for use as a dwelling in any area determined appropriate by the municipality, including a subdivision, planned unit development, single lot, and rental community or park. An application to install a new HUD-code manufactured home for use as a dwelling is considered to be granted unless the municipality in writing denies the application and states the reason for the denial not later than the 45th day after the date the application is received.

(c) Subsections (a) and (b) do not affect the validity of an otherwise valid deed restriction.

(d) Except as approved by the department, a local governmental unit may not require a permit, a fee, a bond, or insurance for the transportation and installation of manufactured housing by a licensed

retailer or installer. This subsection does not prohibit the collection of actual costs incurred by a local governmental unit that result from the transportation of a manufactured home.

(e) Notwithstanding any zoning or other law, in the event that a manufactured home occupies a lot in a municipality, the owner of the manufactured home may remove the manufactured home from its location and place another manufactured home on the same property, provided that the replacement is a newer manufactured home and is at least as large in living space as the prior manufactured home.

(f) An owner's ability to replace the home as a result of a fire or natural disaster cannot be restricted. Other than in the case of a fire or natural disaster, a general-rule or home-rule municipality by an ordinance or charter may limit the ability of the owner to replace his home to a single replacement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 2, eff. January 1, 2008.

Sec. 1201.009. ELECTRONIC MEANS AUTHORIZED. If feasible, any action required under this chapter may be accomplished by electronic means.

Added by Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 1, eff. September 1, 2009.

Sec. 1201.010. ELECTRONIC PUBLIC RECORDS REQUIRED. The department shall provide to the public through the department's Internet website searchable and downloadable information regarding manufactured home ownership records, lien records, installation records, license holder records, and enforcement actions.

Added by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 2, eff. September 1, 2017.

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

Sec. 1201.051. ADMINISTRATION AND ENFORCEMENT OF CHAPTER. The

director shall administer and enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.052. GENERAL RULEMAKING AUTHORITY. (a) The director shall adopt rules, issue orders, and otherwise act as necessary to ensure compliance with the purposes of this chapter to implement and provide for uniform enforcement of this chapter and the standards code.

(b) To protect the public health, safety, and welfare and to ensure the availability of low cost manufactured housing for all consumers, the director shall adopt rules to:

(1) protect the interests of consumers who occupy or want to purchase or install manufactured housing; and

(2) govern the business conduct of license holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.053. RULES RELATING TO COMPLIANCE WITH NATIONAL STANDARDS FOR MANUFACTURED HOUSING CONSTRUCTION AND SAFETY; STATE PLAN. (a) The board shall adopt rules and otherwise act as necessary to:

(1) comply with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), including adopting and enforcing rules reasonably required to implement the notification and correction procedures provided by 42 U.S.C. Section 5414; and

(2) provide for the effective enforcement of all HUD-code manufactured housing construction and safety standards in order to have the state plan authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.) approved by the secretary of housing and urban development.

(b) The state plan described by Subsection (a)(2) must provide for a third-party inspection agency approved by the United States Department of Housing and Urban Development to act as an in-plant inspection agency.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 3, eff. January 1, 2008.

Sec. 1201.054. PROCEDURE FOR ADOPTING RULES. (a) Rules must be adopted in accordance with Chapter 2001, Government Code, and with this section.

(b) If requested, the board shall, after at least 10 days' notice, hold a hearing on any rule that it proposes to adopt, other than a rule that is to be adopted under emergency rulemaking, in which case only the requirements of Chapter 2001, Government Code, shall apply.

(c) A rule takes effect on the 30th day after the date of publication of notice that the rule has been adopted, except that a rule relating to installation standards may not take effect earlier than the 60th day after the date of publication of notice unless the board has determined that an earlier effective date is required to meet an emergency and the standard was adopted under the emergency rulemaking provisions of Chapter 2001, Government Code.

(d) To maintain affordability of manufactured homes in this state, the board shall:

(1) conduct a cost benefit analysis for any rule, process, or policy change that will increase a fee or another incurred cost by more than $50 for license holders or consumers; and

(2) present at the next board meeting an analysis detailing whether the need for the rule, process, or policy change justifies the increase.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 4, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 3, eff. September 1, 2017.

Sec. 1201.055. INSPECTION, REVIEW, AND RELATED FEES. (a) With guidance from the federal Housing and Community Development Act of 1974 (42 U.S.C. Section 5301 et seq.) and from the rules and regulations adopted under the National Manufactured Housing

Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.), the board shall establish fees as follows:

(1) if the department acts as a design approval primary inspection agency, a schedule of fees for the review of HUD-code manufactured home blueprints and supporting information, to be paid by the manufacturer seeking approval of the blueprints and supporting information;

(2) except as provided by Subsection (e), a fee for the inspection of each HUD-code manufactured home manufactured or assembled in this state, to be paid by the manufacturer of the home;

(3) a fee for the inspection of an alteration made to the structure or plumbing, heating, or electrical system of a HUD-code manufactured home, to be charged on an hourly basis and to be paid by the person making the alteration;

(4) a fee for the inspection of the rebuilding of a salvaged manufactured home, to be paid by the retailer;

(5) a fee for the inspection of a used manufactured home to determine whether the home is habitable for the issuance of a new statement of ownership; and

(6) a fee for the issuance of a seal for a used mobile or HUD-code manufactured home.

(b) In addition to the fees imposed under Subsections (a)(2), (3), and (4), a manufacturer or a person making an alteration, as appropriate, shall be charged for the actual cost of travel of a department representative to and from:

(1) the manufacturing facility, for an inspection described by Subsection (a)(2); or

(2) the place of inspection, for an inspection described by Subsection (a)(3) or (4).

(c) The board shall establish a fee for the inspection of the installation of a mobile or HUD-code manufactured home, to be paid by the installer of the home.

(c-1) The department may permit the use of any device or procedure that has been reviewed and approved by a licensed engineer provided that such use or procedure complies with any instructions, conditions, or other requirements specified by that engineer.

(d) The board shall charge a fee for a consumer complaint home inspection requested by a manufacturer or retailer under Section 1201.355(b), to be paid by the manufacturer or retailer.

(e) The fee described by Subsection (a)(2) does not apply if an

inspection agency authorized by the United States Department of Housing and Urban Development, other than the department, acts as the in-plant inspection agency.

(f) The fee described by Subsection (c) must accompany notice to the department of the exact location of the mobile or HUD-code manufactured home. The department shall make an appropriate fee distribution to a local governmental unit that performs an inspection under a contract or other official designation if that unit does not collect a local inspection fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 2, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 5, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.04, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 4, eff. September 1, 2017.

Sec. 1201.056. LICENSE FEES. (a) The board shall establish fees for the issuance and renewal of licenses for:

(1) manufacturers;

(2) retailers;

(3) brokers;

(4) salespersons; and

(5) installers.

(b) The board by rule may establish a fee for reprinting a license issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.05, eff. September 1, 2013.

Sec. 1201.057. INSTRUCTION FEE. The board shall charge a fee to each person attending a course of instruction described by Section 1201.104.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.058. AMOUNT OF FEES. (a) The board shall establish reasonable fees for all matters under this chapter providing for fees. If the department's rules provide an option to file a document electronically, the department may charge a discounted fee for the electronic filing.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(2), eff. September 1, 2017.

(c) All fees established by this chapter or the rules are deemed to be earned and not subject to refund after receipt by the department.

(d) Notwithstanding Subsection (c), the director may, in limited and appropriate circumstances and in accordance with rules adopted by the board, approve the refund of fees.

(e) If the governor by executive order or proclamation declares a state of disaster under Chapter 418, Government Code, the director, in accordance with rules adopted by the board, may waive the imposition of any fee under this chapter in the affected area.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 6, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 2, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(2), eff. September 1, 2017.

Sec. 1201.060. VENUE FOR HEARING. A hearing under this chapter shall be held in Travis County unless all parties agree to another location.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.061. COOPERATION WITH LOCAL GOVERNMENTAL UNITS. The department shall cooperate with all local governmental units in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.062. SEAL PROPERTY OF DEPARTMENT. A seal is the property of the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. LICENSING

Sec. 1201.101. LICENSE REQUIRED. (a) A person may not construct or assemble in this state or ship into this state a new HUD-code manufactured home unless the person holds, at the time the home is constructed or assembled, a manufacturer's license.

(b) Except as otherwise provided by this chapter, a person may not sell or exchange, or offer to sell or exchange, two or more manufactured homes to consumers in this state in a 12-month period unless the person holds a retailer's license.

(c) A person may not offer to negotiate or negotiate for others a bargain or contract for the sale or exchange of two or more manufactured homes to consumers in this state in a 12-month period unless the person holds a broker's license.

(d) A person may not act as an installer in this state unless the person holds an installer's license.

(e) A person may not repair, rebuild, or otherwise alter a salvaged manufactured home unless the person holds a retailer's license.

(f) A person may not act as a salesperson of manufactured housing unless the person holds a salesperson's license. A retailer or broker may not employ or otherwise use the services of a salesperson who is not licensed. A licensed salesperson may not participate in a sale of a manufactured home unless the sale is through the retailer or broker who sponsored the salesperson's application as required by Section 1201.103(d).

(f-1) A retailer may not be licensed to operate more than one location under a single license.

(g) A person may not make an announcement concerning the sale or exchange of, or offer to sell or exchange, a manufactured home to a consumer in this state through an advertisement unless the person holds a manufacturer's, retailer's, or broker's license. This

subsection does not apply to:

(1) a person exempt from licensing; or

(2) an advertisement concerning real property on which there is a manufactured home that has been converted to real property in accordance with Section 1201.2055.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 4, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 7, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.06, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 5, eff. September 1, 2017.

Sec. 1201.102. EXCEPTIONS TO LICENSE REQUIREMENT. (a) A licensed installer may employ unlicensed persons to assist in performing installation functions provided that the licensed installer maintains a list of the persons so employed. The director may issue an order to prohibit a person who is not licensed as an installer from performing installation functions under the oversight of a licensed installer.

(b) A licensee may engage another person who is not licensed under this chapter but possesses another license issued by the State of Texas to provide goods and services subject to that other license. Without limiting the generality of the foregoing, this includes engaging others to install, connect, or otherwise work on air conditioning, plumbing, and electrical systems.

(c) An individual who holds a retailer's license or broker's license or who is a related person of such a licensee is not required to apply for a salesperson's license.

(c-1) An individual who is listed as an owner, principal, partner, corporate officer, registered agent, or related person of an entity that is licensed as a retailer or broker may act on behalf of that license holder in the capacity of a retailer, broker, or salesperson without holding the appropriate license if at least one

individual who is listed as an owner, principal, partner, corporate officer, registered agent, or related person of the entity has satisfied the requirements of Sections 1201.104 and 1201.113.

(d) A person who holds a real estate broker's or salesperson's license under Chapter 1101 may act as a broker or salesperson under this chapter without holding a license or filing a bond or other security as required by this chapter if negotiations for the sale or exchange of a manufactured home are conducted for a consumer for whom the person is also acting as a real estate broker or salesperson under Chapter 1101 consistent with Section 1201.007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.252(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 8, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 6, eff. September 1, 2017.

Sec. 1201.1025. EXEMPTION FROM RETAILER'S LICENSE REQUIREMENT. (a) Notwithstanding any other law, in any 12-month period a person is exempt from holding a retailer's license as required by Section 1201.101(b) if during that period the person sells or offers to sell not more than three manufactured homes.

(a-1) A person is exempt from holding a retailer's license as required by Section 1201.101(b) if all manufactured homes sold or offered for sale by the person are:

(1) located in a manufactured home community, as defined by Section 94.001, Property Code; and

(2) sold or offered for sale to the same purchaser in connection with a sale of the real property of the community.

(b) The department by rule shall develop a form necessary for a person to establish eligibility for the exemption provided by this section.

(c) A person who is eligible for an exemption under this section remains subject to the other applicable provisions of this subchapter and department rules regarding the sale or transfer of manufactured homes.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1270 (H.B. 944), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 731 (H.B. 2706), Sec. 1, eff. September 1, 2023.

Sec. 1201.103. LICENSE APPLICATION. (a) An applicant for a license as a manufacturer, retailer, broker, or installer must file with the director a license application containing:

(1) the legal name, address, and telephone number of the applicant and each person who will be a related person at the time the requested license is issued;

(2) all trade names, and the names of all other business organizations, under which the applicant does business subject to this chapter, the name of each such business organization registered with the secretary of state, and the address of such business organization;

(3) the dates on which the applicant became the owner and operator of the business; and

(4) the location to which the license will apply.

(a-1) All required records of a licensee under Subsection (a) are to be maintained at the licensee's principal office or such other location within this state as the licensee may designate.

(b) A license application must be accompanied by:

(1) proof of the security required by this subchapter;

(2) payment of the fee required for issuance of the license; and

(3) the information and the cost required under Section 1201.1031.

(c) If a change occurs in the information filed with the director under Subsection (a), the applicant shall amend the application to state the correct information.

(d) An applicant for a salesperson's license must:

(1) file with the director an application that provides any information the director considers necessary and that is sponsored by a currently licensed retailer or broker; and

(2) pay the required fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 9, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.07, eff. September 1, 2013.

Sec. 1201.1031. CRIMINAL HISTORY RECORD INFORMATION REQUIREMENT FOR LICENSE. (a) The department shall require that an applicant for a license or renewal of an unexpired license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the department or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The applicant is required to submit a set of fingerprints only once under this section unless a replacement set is otherwise needed to complete the criminal history check required by this section.

(b) The department shall refuse to issue a license to or renew the license of a person who does not comply with the requirement of Subsection (a).

(c) The department shall conduct a criminal history check of each applicant for a license or renewal of a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The department may enter into an agreement with the Department of Public Safety to administer a criminal history check required under this section.

(e) The applicant shall pay the cost of a criminal history check under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.08, eff. September 1, 2013.

Sec. 1201.104. QUALIFICATIONS FOR LICENSE. (a) Except as

provided by Subsection (g), as a requirement for a manufacturer's, retailer's, broker's, installer's, or salesperson's license, a person who was not licensed or registered with the department or a predecessor agency on September 1, 1987, must, not more than 12 months before applying for the person's first license under this chapter, attend and successfully complete eight hours of instruction in the law, including instruction in consumer protection regulations.

(a-1) If the applicant is not an individual, the applicant must have at least one related person who satisfies the requirements of Subsection (a). If that applicant is applying for a retailer's license, the related person must be a management official who satisfies the requirements of Subsections (a) and (a-2) for each retail location operated by the applicant.

(a-2) An applicant for a retailer's license must complete four hours of specialized instruction relevant to the sale and exchange of manufactured homes. The instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-3) An applicant for an installer's license must complete four hours of specialized instruction relevant to the installation of manufactured homes. The instruction under this subsection is in addition to the instruction required under Subsection (a).

(a-4) An applicant for a joint installer-retailer license must comply with Subsections (a-2) and (a-3), for a total of eight hours of specialized instruction. The instruction under this subsection is in addition to the instruction required under Subsection (a).

(b) Except in the case of an applicant for a salesperson's license, successful completion of the course of instruction is a prerequisite to obtaining the license.

(c) An applicant for a salesperson's license may apply for a license without having completed the course of instruction if the person successfully completes the course not later than the 90th day after the date of the person's licensure. If the person fails to complete such course successfully and in a timely manner, the person's license is automatically suspended until the person successfully completes the course.

(d) The course of instruction must be offered at least quarterly.

(e) The board shall adopt rules relating to course content and approval.

(f) An applicant for an initial installer's license shall

receive a license on a provisional basis. The person's provisional status remains in effect until a sufficient number of installations completed by the person have been inspected by the department and found not to have any identified material violations of the department's rules. The board, with the advice of the advisory committee to be established under Section 1201.251, shall adopt rules to establish what constitutes a sufficient number of installations under this subsection.

(g) Subsections (a), (a-2), (a-3), and (a-4) do not apply to a license holder who applies:

(1) for a license for an additional business location; or

(2) to renew or reinstate a license.

(h) An examination must be a requirement of successful completion of any initial required course of instruction under this section. The period needed to complete an examination under this subsection may not be used to satisfy the minimum education requirements under Subsection (a), (a-2), (a-3), or (a-4). If the examination failure rate exceeds 25 percent, the board shall:

(1) review the examination and the examination procedures; and

(2) adopt rules intended to maintain the historical passage rate for the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 10, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.06, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.09, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 7, eff. September 1, 2017.

Sec. 1201.105. SECURITY REQUIRED. (a) The department may not issue or renew a license unless a bond or other security in a form prescribed by the director is filed with the department as provided

by this subchapter. The bond or other security is payable to the manufactured homeowner consumer claims program.

(b) If a bond is filed, the bond must be issued by a company authorized to do business in this state and must conform to applicable provisions of the Insurance Code. If other security is filed, that security must be maintained in or by a federally insured depository institution located in this state.

(c) If the department experiences significant problems in obtaining timely reimbursements from a surety or the surety has experienced a deterioration in its financial condition, the board may direct the director to stop accepting bonds issued by the surety.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 10, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 8, eff. September 1, 2017.

Sec. 1201.106. SECURITY: AMOUNT. (a) An applicant for a license or a license holder shall file a bond or other security under Section 1201.105 for the issuance or renewal of a license in the following amount:

(1) $100,000 for a manufacturer;

(2) $50,000 for a retailer;

(3) $50,000 for a broker; or

(4) $25,000 for an installer.

(a-1) Notwithstanding the provisions of Subsection (a), the director may require additional security for the licensing, renewal, or relicensing of a person, or the sponsoring of a salesperson, who, either directly, as a related person, or through a related person, has been the subject of a license revocation, has caused the manufactured homeowner consumer claims program to incur unreimbursed costs or liabilities in excess of available surety bond coverage, or has failed to pay an administrative penalty that has been assessed by final order.

(b) To ensure the availability of prompt and satisfactory warranty service, a manufacturer that does not have a licensed manufacturing plant or other facility in this state from which

warranty service and repairs can be provided shall file a bond or other security in the additional amount of $100,000.

(c) The bond or other security is open to successive claims up to the face value of the bond or other security. The surety is not liable for successive claims in excess of the face value of the bond, regardless of the number of years the bond remains in force.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 11, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.10, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 9, eff. September 1, 2017.

Sec. 1201.107. SECURITY: LOCATION. (a) A manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the department a separate bond or other security for each location.

(b) Property used for the business that is not contiguous to, or located within 300 feet of, a bonded location requires a separate bond. A location at which a manufactured home is shown to the public or at which the home is offered for sale or exchange by a retailer to consumers requires a bond.

(c) A manufactured home installed on a permanent foundation system and offered for sale as real property does not require a bond. A temporary location for a bona fide trade show sponsored by a nonprofit corporation that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c) of that code does not require a bond.

(d) If a retailer or broker offers for sale or participates in any way in the sale of a manufactured home at a location other than an undivided parcel of real property where more than one manufactured home is located and offered for sale or exchange by a retailer or broker to the public, the retailer or broker must:

(1) identify the bond on file with the department in conjunction with that person's license; and

(2) provide contractually in the sales transaction that the identified bond applies to the sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 4, eff. June 18, 2005.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 10, eff. September 1, 2017.

Sec. 1201.108. SECURITY: CHANGE IN OWNERSHIP OR LOCATION. (a) A new bond is not required for a change in:

(1) ownership of a licensee or a business entity under which a license holder conducts business; or

(2) location.

(b) A licensee shall notify the department of a change described by Subsection (a) not later than the 10th day before the date the change occurs.

(c) After a change described by Subsection (a), the licensee shall provide to the department a proper endorsement to the original bond showing that the bond continues to apply to the license without interruption.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 12, eff. January 1, 2008.

Sec. 1201.109. SECURITY: CANCELLATION OR OTHER IMPAIRMENT. (a) If a bond required by this subchapter is canceled, the license for which the security is filed is suspended on the effective date of cancellation. The surety shall provide written notice to the director before the 60th day preceding the effective date of cancellation.

(b) If a surety files for liquidation or reorganization in bankruptcy or is placed in receivership, the license holder shall obtain other security not later than the 60th day after the date that

notice of the filing or receivership is received.

(c) If the required face amount of a security is impaired by the payment of a claim, the license holder shall restore the security to the required face amount not later than the 60th day after the date of impairment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.110. SECURITY: DURATION. The department shall maintain on file a security other than a bond canceled as provided by Section 1201.109(a) until the later of:

(1) the second anniversary of the date the manufacturer, retailer, broker, or installer ceases doing business; or

(2) the date the director determines that a claim does not exist against the security.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.11, eff. September 1, 2013.

Sec. 1201.111. EXCEPTIONS TO SECURITY AND INSTRUCTION REQUIREMENTS. (a) Notwithstanding any other provision of this chapter, a state or national bank, state or federal savings and loan association, federal savings bank, or state or federal credit union engaged in the business of selling or exchanging, or offering for sale or exchange, manufactured homes that the institution has acquired through repossession of collateral is not required to attend a course of instruction or file a bond or other security to be licensed as a retailer.

(b) A licensed retailer is not required to file a bond or other security to be licensed as a broker or installer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 11, eff. September 1, 2017.

Sec. 1201.113. CONTINUING EDUCATION PROGRAMS. (a) The board shall approve continuing education programs for licensees under this chapter. A continuing education program must be at least eight hours long and must include the current rules of the department and such other matters as the board may deem relevant.

(b) Completion of an approved continuing education program described by Subsection (a) is a prerequisite to renewal of a license.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 13

Without reference to the amendment of this subsection, this subsection was repealed by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 73(a)(3), eff. January 1, 2008.

(c) No test shall be given in relation to any continuing education program.

(d) If the approval of a continuing education program expires between regularly scheduled board meetings, the director may, on receipt of the required renewal application, fee, and necessary documentation of education material, approve the continued administration of the program until the next board meeting.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(3), eff. January 1, 2008.

(f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(3), eff. January 1, 2008.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 863, Sec. 73(a)(3), eff. January 1, 2008.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 5, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 5, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 13, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 73(a)(3), eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 4, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 12, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 13, eff. September 1, 2017.

Sec. 1201.114. LICENSE EXPIRATION. Any license under this chapter is valid for two years. A license may be renewed as provided by the director. A person whose license has been suspended or revoked or whose license has expired may not engage in activities that require a license until the license has been reinstated or renewed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 6, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 14, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 5, eff. September 1, 2009.

Sec. 1201.115. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff. Sept. 1, 2003.

Sec. 1201.116. PROCEDURE FOR LICENSE RENEWAL. (a) The department shall renew a license if, before the expiration date of the license, the department receives the renewal application and payment of the required fee as well as the cost required under Section 1201.1031.

(b) If the department needs additional information for the renewal application or verification of continuing insurance or bond coverage, the license holder must provide the requested information

or verification not later than the 20th day after the date of receipt of notice from the department.

(c) The renewal license expires on the second anniversary of the date the license was renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(f) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 6, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.12, eff. September 1, 2013.

Sec. 1201.117. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without fulfilling the instruction requirements of Section 1201.104(a).

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(a), eff. Sept. 1, 2003.

Sec. 1201.118. RULES RELATING TO CERTAIN PERSONS. The board shall adopt rules providing for additional review and scrutiny of any application for an initial or renewal license that involves a person

who has previously:

(1) been found in a final order to have participated in one or more violations of this chapter that served as grounds for the suspension or revocation of a license;

(2) been found to have engaged in activity subject to this chapter without possessing the required license;

(3) caused the manufactured homeowner consumer claims program to incur unreimbursed payments or claims; or

(4) failed to abide by the terms of a final order, including the payment of any assessed administrative penalties.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 15, eff. January 1, 2008.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 14, eff. September 1, 2017.

SUBCHAPTER D. PRACTICE

Sec. 1201.1505. DEPOSIT ON SPECIALLY ORDERED MANUFACTURED HOMES. A retailer may require a deposit on a specially ordered manufactured home.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 10, eff. June 18, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 16, eff. January 1, 2008.

Sec. 1201.151. REFUNDS. (a) Except as otherwise provided by this section, a retailer must refund a consumer's deposit not later than the 15th day after the date that a written request for the refund is received from the consumer.

(b) The deposit may be retained only if:

(1) the consumer specially orders from the manufacturer a manufactured home that is not in the retailer's inventory;

(2) the home conforms to the specifications of the special order and any representations made to the consumer;

(3) the consumer fails or refuses to accept delivery and installation of the home by the retailer; and

(4) the consumer was given conspicuous written notice of

the requirements for retaining the deposit.

(c) The retailer may not retain more than five percent of the estimated cash price of the specially ordered home and must refund any amount that exceeds five percent.

(d) This section does not apply to:

(1) a deposit held in escrow in a real estate transaction; or

(2) money stated to be a down payment in an executed retail sales contract.

(e) A deposit becomes a down payment upon execution of a sales purchase contract. Thereafter, if the consumer exercises the consumer's three-day right of rescission in accordance with Section 1201.1521, the retailer shall, not later than the 15th day after the date of the rescission, refund to the consumer all money and other consideration received from the consumer, with only the allowable deduction for real property appraisal and title work expenses in accordance with Section 1201.1511.

(f) Retention of real property appraisal and title work expenses authorized by Subsection (e) is not allowed if the consumer exercises the right of rescission in accordance with 12 C.F.R. Section 1026.23.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 7, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 17, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 18, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 15, eff. September 1, 2017.

Sec. 1201.1511. REAL PROPERTY APPRAISAL AND TITLE WORK EXPENSES. (a) Notwithstanding Section 1201.151 or 1201.1521, a retailer may collect from a consumer in advance or deduct from the consumer's deposit or down payment any expenses incurred by the retailer if, after receiving a conditional notification of approval from a lender chosen by the consumer, the consumer:

(1) contracts with the retailer to arrange for services that are performed by an appraiser of real property or a title company in connection with real property that will be included in the purchase or exchange or is intended to be pledged by the consumer as collateral for the consumer's purchase or exchange of a manufactured home;

(2) is provided notice of laws relating to rescission and real property appraisal and title work expenses before signing the contract for real property appraisal and title work services; and

(3) is provided an itemized list of the specific real property appraisal and title work expenses incurred by the retailer.

(b) A retailer may not charge to the consumer any fees or expenses other than the real property appraisal and title work expenses disclosed to the consumer under Subsection (a)(3).

(c) The department may demand copies of contracts, invoices, receipts, or other proof of any real property appraisal and title work expenses retained by a retailer.

Added by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 16, eff. September 1, 2017.

Sec. 1201.152. VOIDABLE CONTRACT. (a) If a retailer purchases a new manufactured home from an unlicensed manufacturer in violation of Section 1201.505, a consumer's contract with the retailer for the purchase or exchange of the home is voidable until the second anniversary of the date of purchase or exchange of the home.

(b) If an unlicensed retailer, broker, or installer enters into a contract with a consumer concerning a manufactured home, the consumer may void the contract until the second anniversary of the date of purchase of the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 17, eff. September 1, 2017.

Sec. 1201.1521. RESCISSION OF CONTRACT FOR SALE OR EXCHANGE OF HOME. (a) A person who acquires a manufactured home from or through a licensee by purchase or exchange may, in a cash transaction

occurring not later than the third day after the date the sales purchase contract is signed, rescind the contract without penalty or charge other than the real property appraisal and title work expenses incurred in accordance with Section 1201.1511.

(b) A person who acquires a manufactured home from or through a licensee by purchase or exchange may, in a transfer that is based wholly or partly on a credit transaction occurring not later than the third day after the date of the signing of the binding note, security agreement, or other financing credit contract with respect to which the consumer's purchased manufactured home will serve as collateral for the credit transaction, rescind the contract without penalty or charge other than the real property appraisal and title work expenses incurred in accordance with Section 1201.1511.

(c) Subject to rules adopted by the board, a consumer may waive a right of rescission in the event of a bona fide emergency. Such rules shall, to the extent practical, be modeled on the federal rules for the waiver of a right of rescission under 12 C.F.R. Part 1026.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 10, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 19, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 18, eff. September 1, 2017.

Sec. 1201.153. FORMALDEHYDE HEALTH NOTICE. (a) A retailer or manufacturer may not transfer ownership of a HUD-code manufactured home or otherwise sell, assign, or convey a HUD-code manufactured home to a consumer unless the retailer or manufacturer delivers to the consumer a formaldehyde health notice, subject to the director's rules concerning the notice.

(b) The notice must be delivered before the execution of a mutually binding sales agreement or retail installment sales contract.

(c) The notice must:

(1) contain the information required by:

(A) the United States Department of Housing and Urban Development; or

(B) the board; and

(2) be of the type, size, and format required by the director.

(d) A retailer or manufacturer may not vary the content or form of the notice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 6, eff. June 18, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 731 (H.B. 2706), Sec. 2, eff. September 1, 2023.

Sec. 1201.154. SUFFICIENCY OF FORMALDEHYDE HEALTH NOTICE; RETAILER AND MANUFACTURER COMPLIANCE. (a) The formaldehyde health notice required by Section 1201.153 is sufficient, as a matter of law, to advise a consumer of the risks of occupying a HUD-code manufactured home.

(b) The consumer's written acknowledgement of the receipt of the notice is conclusive proof of the delivery of the notice and the posting of the notice in compliance with federal regulations.

(c) A retailer's or manufacturer's compliance with United States Department of Housing and Urban Development regulations and the director's rules concerning the notice is conclusive proof that:

(1) the consumer received sufficient notice of the risks of occupying the home; and

(2) the home is habitable with respect to formaldehyde emissions.

(d) A retailer's or manufacturer's compliance, from September 1, 1981, to September 1, 1985, with Section 1201.153 and the revised formaldehyde warning as adopted by the department is conclusive proof that:

(1) the consumer received sufficient notice of the risks of occupying the home; and

(2) the home is habitable with respect to formaldehyde emissions.

(e) A retailer's or manufacturer's knowing and wilful failure to comply with the regulations and rules described by Subsection (c) is conclusive proof that:

(1) the retailer or manufacturer breached the duty to notify the consumer about formaldehyde; and

(2) the home is not habitable.

(f) A retailer's or manufacturer's knowing and wilful failure, from September 1, 1981, to September 1, 1985, to comply with Section 1201.153 and the revised formaldehyde warning as adopted by the department is conclusive proof that:

(1) the retailer or manufacturer breached the duty to notify the consumer about formaldehyde; and

(2) the home is not habitable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.155. DISCLAIMER OF IMPLIED WARRANTY. The seller's proper provision of the warranties and notices as required by Subchapter H or J is a valid disclaimer of an implied warranty of fitness for a particular purpose or of merchantability as described by Chapter 2, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.156. ADVERTISEMENT AS OFFER. An advertisement relating to manufactured housing is an offer to sell or exchange manufactured housing to consumers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 19, eff. September 1, 2017.

Sec. 1201.157. RETAILER AS WAREHOUSE. (a) With respect to the storage of manufactured homes for hire, a licensed retailer is:

(1) a "warehouse" as defined by Section 7.102, Business & Commerce Code; and

(2) a "warehouseman" under Chapter 24, Property Code.

(b) The provisions of the Business & Commerce Code relating to the storage of goods for hire apply to a licensed retailer acting as a warehouse.

(c) A licensed retailer acting as a warehouse and warehouseman satisfies all storage, bonding, insurance, public sale, and security

requirements if the storage of a manufactured home occurs on the retailer's lot and the home is secured in the same manner the retailer secures a manufactured home held on the lot as inventory.

(d) In accordance with the provisions of Section 7.210, Business & Commerce Code, a licensed retailer acting as a warehouse to enforce a warehouse's lien is considered to have sold a manufactured home in a commercially reasonable manner if the retailer sells the manufactured home in the same manner the retailer would sell a manufactured home at retail.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 20, eff. September 1, 2017.

Sec. 1201.158. SALESPERSON. A licensed salesperson may work only for the salesperson's sponsoring retailer or broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 20, eff. January 1, 2008.

Sec. 1201.159. BROKER. (a) Except as provided by Section 1201.456, a broker shall ensure that the seller gives the buyer the applicable disclosures and warranties that the buyer would have received if the buyer had purchased the manufactured home through a licensed retailer.

(b) A person is not required to be a broker licensed under this chapter but may be required to be a real estate broker or salesperson licensed under Chapter 1101 if:

(1) the manufactured home is attached; and

(2) the home is offered as real property.

(c) A broker shall provide any person who engages the broker's services with a written disclosure of which interests in the transaction, if any, the broker represents.

(d) If the seller is required to possess a license by this chapter, a broker may assist in the sale of a manufactured home only if that seller has a current license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 7, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 8, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 21, eff. January 1, 2008.

Sec. 1201.161. TRANSPORTATION OF MANUFACTURED HOUSING. (a) Notwithstanding any other statute or rule or ordinance, a licensed retailer or licensed installer is not required to obtain a permit, certificate, or license or pay a fee to transport manufactured housing to the place of installation except as required by the Texas Department of Motor Vehicles under Subchapter E, Chapter 623, Transportation Code.

(b) The department shall cooperate with the Texas Department of Motor Vehicles by providing current lists of licensed manufacturers, retailers, and installers.

(c) The Texas Department of Motor Vehicles shall provide to the department monthly a list of the permits issued in the preceding month and the information on the permits.

(d) Unless the information provided for in Subsection (c) is provided electronically, the department shall pay the reasonable cost of providing the list and information under Subsection (c).

(e) The lists to be provided under this section may be provided electronically.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 22, eff. January 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 98, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 410 (S.B. 1814), Sec. 1, eff. September 1, 2021.

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) Before the completion of a credit application or more than one day before

entering into any agreement for a sale or exchange that will not be financed, the retailer must provide to the consumer a written disclosure in the form promulgated by the board. The disclosure shall be in at least 12-point type and must address matters of concern relating to costs and obligations that may be associated with home ownership, matters to be considered in making financing decisions, related costs that may arise when purchasing a manufactured home, and such other matters as the board may deem appropriate to promote informed purchase, financing, and related decisions regarding the acquisition and ownership of a manufactured home. The form shall also conspicuously disclose the consumer's right of rescission.

(b) A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(c) The right of rescission described in Subsection (a) shall apply only to the sale transaction between the retailer and the consumer. Failure by the retailer to comply with the disclosure provisions of this section does not affect the validity of a subsequent conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position of a person other than the retailer. The consumer shall continue to have the right of rescission with regard to the retailer until the end of the third day after the retailer delivers a copy of the disclosure required by Subsection (a). The consumer's execution of a signed receipt of a copy of the disclosure required by Subsection (a) shall constitute conclusive proof of the delivery of the disclosure. If the consumer grants a person other than the retailer a lien on the manufactured home, the right of rescission shall immediately cease on the filing of the lien with the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.255(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 338, Sec. 8, 51, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 23, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 21, eff. September 1, 2017.

Sec. 1201.164. ADVANCE COPY OF SALES PURCHASE CONTRACT AND DISCLOSURE STATEMENTS; OFFER BY RETAILER. (a) In a transaction that is to be financed and that will not be subject to the federal Real Estate Settlement Procedures Act of 1974 (Pub. L. No. 93-533) and its implementing regulations, a retailer shall deliver to a consumer at least 24 hours before the sales purchase contract is fully executed the contract, with all required information included, signed by the retailer. The delivery of the contract, with all required information included, signed by the retailer constitutes a firm offer by the retailer. Except as provided for by Subsection (b), the consumer may accept the offer not earlier than 24 hours after the delivery of the contract. If the consumer has not accepted the offer within 72 hours after the delivery of the contract, the retailer may withdraw the offer.

(b) Before the execution of the sales purchase contract, the consumer may modify or waive the right to rescind and the deadlines for disclosures that are provided by Subsection (a) if the consumer determines that the purchase of the manufactured home is needed to meet a bona fide personal emergency. If the consumer has a bona fide personal emergency that necessitates the immediate purchase of the manufactured home, the consumer shall give the retailer a dated written statement that describes the emergency, specifically modifies or waives the notice periods and any right of rescission, and bears the signature of all of the consumers entitled to the disclosures and right of rescission. In such event the retailer shall immediately give the consumer all of the disclosures required by this code and sell the manufactured home without the required waiting periods or the right of rescission. The department shall verify with the consumer the consumer's bona fide personal emergency before issuing the statement of ownership.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 10, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 10, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June

18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 24, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 22, eff. September 1, 2017.

SUBCHAPTER E. MANUFACTURED HOME STATEMENTS OF OWNERSHIP

Sec. 1201.201. DEFINITIONS. In this subchapter:

(1) "Certificate of attachment" means a written instrument issued solely by and under the authority of the director before September 1, 2001, that provides the information required by former Section 19(l), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), as that subsection existed before that date. Beginning September 1, 2003, a certificate of attachment is considered to be a statement of ownership and may be exchanged for a statement of ownership as provided by Section 1201.214.

(1-a) "Debtor" has the meaning assigned by Section 9.102, Business & Commerce Code.

(2) "Document of title" means a written instrument issued solely by and under the authority of the director before September 1, 2003, that provides the information required by Section 1201.205, as that section existed before that date. Beginning September 1, 2003, a document of title is considered to be a statement of ownership and may be exchanged for a statement of ownership as provided by Section 1201.214.

(3) "First retail sale" means a consumer's initial acquisition of a new manufactured home from a retailer by purchase or exchange. The term includes a bargain, sale, transfer, or delivery of a manufactured home for which the director has not previously issued a statement of ownership, with intent to pass an interest in the home, other than a lien.

(4) "Identification number" means the number permanently attached to or imprinted on a manufactured home or section of the home as prescribed by department rule.

(5) "Inventory":

(A) has the meaning assigned by Section 9.102, Business & Commerce Code; and

(B) does not include manufactured homes used by a

retailer as equipment, as defined by Section 9.102(a)(33), Business & Commerce Code.

(6) "Lien" means:

(A) a security interest created by a lease, conditional sales contract, deed of trust, chattel mortgage, trust receipt, reservation of title, or other security agreement if an interest other than an absolute title is sought to be held or given in a manufactured home; or

(B) a lien on a manufactured home created by the constitution or a statute.

(7) "Manufacturer's certificate" means a document that meets the requirements prescribed by Section 1201.204.

(8) "Secured party" has the meaning assigned by Section 9.102, Business & Commerce Code.

(9) "Security agreement" has the meaning assigned by Section 9.102, Business & Commerce Code.

(10) "Security interest" has the meaning assigned by Section 1.201, Business & Commerce Code.

(11) "Subsequent sale" means a bargain, sale, transfer, or delivery of a manufactured home, with intent to pass an interest in the home, other than a lien, from one person to another after the first retail sale and initial issuance of a statement of ownership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 12, eff. June 18, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 24, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 731 (H.B. 2706), Sec. 3, eff. September 1, 2023.

Sec. 1201.202. APPLICATION OF CHAPTER TO CERTAIN CERTIFICATES OF TITLE OR LIENS. (a) This chapter applies to a certificate of title to a manufactured home issued before March 1, 1982, under Chapter 501, Transportation Code.

(b) A lien recorded before March 1, 1982, with the Texas Department of Transportation or a predecessor agency of that department is recorded with the department for the purposes of this

chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.203. FORMS; RULES. (a) The board shall adopt rules and forms relating to:

(1) the manufacturer's certificate;

(2) the statement of ownership;

(3) the application for a statement of ownership; and

(4) the issuance of an initial or revised statement of ownership.

(b) The board shall adopt rules for the documenting of the ownership of a manufactured home that has been previously owned in this state or another state. The rules must protect a lienholder recorded with the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 13, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 25, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 25, eff. September 1, 2017.

Sec. 1201.204. MANUFACTURER'S CERTIFICATE. (a) A manufacturer's certificate must show:

(1) on a form prescribed by the director, the original transfer of a manufactured home from the manufacturer to the retailer; and

(2) on a form prescribed by the director, each subsequent transfer of a manufactured home between retailers and from retailer to owner, if the transfer from retailer to owner involves a completed application for the issuance of a statement of ownership.

(b) At the first retail sale of a manufactured home, a manufacturer's certificate automatically converts to a document that does not evidence any ownership interest in the manufactured home described in the document. A security interest in inventory evidenced by a properly recorded inventory finance lien automatically

converts to a security interest in proceeds and cash proceeds.

(c) After the first retail sale of a manufactured home, the retailer must submit the original manufacturer's certificate for that home to the department. If an application for an initial statement of ownership is made without the required manufacturer's certificate and the retailer does not provide it as required, the department shall, on or before the issuance of the requested statement of ownership, send written notice to each party currently reflected on the department's records as having a recorded lien on the inventory of that retailer with respect to that home. Failure to include the original manufacturer's certificate with such an application does not impair a consumer's ability to obtain, on submittal of an otherwise complete application, a statement of ownership free and clear of any liens other than liens created by or consented to by the consumer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 13, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 25, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 26, eff. September 1, 2017.

Sec. 1201.205. STATEMENT OF OWNERSHIP FORM. A statement of ownership must be evidenced by a board-approved form issued by the department setting forth:

(1) the name and address of the seller and the name and, if it is different from the location of the home, the mailing address of the new owner;

(2) the manufacturer's name and address and any model designation, if available;

(3) in accordance with the board's rules:

(A) the outside dimensions of the manufactured home when installed for occupancy, as measured to the nearest one-half foot at the base of the home, exclusive of the tongue or other towing device; and

(B) the approximate square footage of the home when installed for occupancy;

(4) the identification number for each section or module of the home;

(5) the physical address where the home is installed for occupancy, including the name of the county, and, if it is different from the physical address, the mailing address of the owner of the home;

(6) in chronological order of recordation, the date of each lien, other than a tax lien, on the home and the name and address of each lienholder, or, if a lien is not recorded, a statement of that fact;

(7) a statement regarding tax liens as follows:

"On January 1st of each year, a new tax lien comes into existence on a manufactured home in favor of each taxing unit having jurisdiction where the home is actually located on January 1st. In order to be enforced, any such lien must be recorded with the Texas Department of Housing and Community Affairs - Manufactured Housing Division as provided by law. You may check that division's records through its website or contact that division to learn any recorded tax liens. To find out about the amount of any unpaid tax liabilities, contact the tax office for the county where the home was actually located on January 1st of that year.";

(8) a statement that if two or more eligible persons, as determined by Section 1201.213, file with the application for the issuance of a statement of ownership an agreement signed by all the persons providing that the home is to be held jointly with a right of survivorship, the director shall issue the statement of ownership in all the names;

(9) the location of the home;

(10) a statement of whether the owner has elected to treat the home as real property;

(11) statements of whether the home is a salvaged manufactured home and whether the home is reserved for business use only or for another nonresidential use; and

(12) any other information the board requires.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 338, Sec. 13, eff. June 18, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 25, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 27, eff. September 1, 2017.

Sec. 1201.2055. ELECTION BY OWNER. (a) In completing an application for the issuance of a statement of ownership, an owner of a manufactured home shall indicate whether the owner elects to treat the home as real property. An owner may elect to treat a manufactured home as real property only if the home is attached to:

(1) real property that is owned by the owner of the home; or

(2) land leased to the owner of the home under a long-term lease, as defined by department rule.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 77, Sec. 15(2), eff. September 1, 2009.

(c) If the department issues a statement of ownership to an owner of a manufactured home treated as personal property, the statement of ownership on file with the department is evidence of ownership of the home. A lien, charge, or other encumbrance on a home treated as personal property may be made only by filing the appropriate document with the department.

(d) If an owner elects to treat a manufactured home as real property, the department shall issue to the owner a copy of the statement of ownership that on its face reflects that the owner has elected to treat the manufactured home as real property at the location listed on the statement. Not later than the 60th day after the date the department issues a copy of the statement of ownership to the owner, the owner must:

(1) file the copy in the real property records of the county in which the home is located; and

(2) notify the department and the chief appraiser of the applicable appraisal district that the copy has been filed.

(e) A real property election for a manufactured home is not considered to be perfected until a copy of the statement of ownership has been filed and the department and the chief appraiser of the applicable appraisal district have been notified of the filing as provided by Subsection (d).

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 46, Sec. 8(1), eff. September 1, 2011.

(g) After a real property election is perfected under Subsection (e):

(1) the home is considered to be real property for all purposes; and

(2) no additional issuance of a statement of ownership is required with respect to the manufactured home, unless:

(A) the home is moved from the location specified on the statement of ownership;

(B) the real property election is changed; or

(C) the use of the property is changed as described by Section 1201.216.

(h) The provisions of this chapter relating to the construction or installation of a manufactured home or to warranties for a manufactured home apply to a home regardless of whether the home is considered to be real or personal property.

(i) Notwithstanding the 60-day deadline specified in Subsection (d), if the closing of a mortgage loan to be secured by real property including the manufactured home is held, the loan is funded, and a deed of trust covering the real property and all improvements on the property is recorded and the licensed title company or attorney who closed the loan failed to complete the conversion to real property in accordance with this chapter, the holder or servicer of the loan may apply for a statement of ownership electing real property status, obtain a copy of the statement of ownership, and make the necessary filings and notifications to complete such conversion at any time provided that:

(1) the record owner of the home, as reflected on the department's records, has been given at least 60 days' prior written notice at:

(A) the location of the home and, if it is different, the mailing address of the owner as specified in the department records; and

(B) any other location the holder or servicer knows or believes, after a reasonable inquiry, to be an address where the owner may have been or is receiving mail or is an address of record;

(2) such notification shall be given by certified mail; and

(3) the department by rule shall require evidence that the holder or servicer requesting such after-the-fact completion of a

real property election has complied with the requirements of this subsection.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 14, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 11, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 26, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 15(2), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 8(1), eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 28, eff. September 1, 2017.

Sec. 1201.206. APPLICATION FOR ISSUANCE OF STATEMENT OF OWNERSHIP. (a) At the first retail sale of a manufactured home, the retailer shall provide for the installation of the home and ensure that the application for the issuance of a statement of ownership is properly completed. The consumer shall return the completed application to the retailer. In accordance with Section 1201.204, the retailer shall surrender to the department the original manufacturer's statement of origin at the same time that the retailer applies for the first statement of ownership.

(b) Not later than the 60th day after the date of the retail sale, the retailer shall provide to the department the completed application for the issuance of a statement of ownership. If for any reason the retailer does not timely comply with the requirements of this subsection, the consumer may apply for the issuance of the statement.

(c) Not later than the 60th day after the date of each subsequent sale or transfer of a home that is considered to be personal property, the seller or transferor shall provide to the department a completed application for the issuance of a new statement of ownership. If for any reason the seller or transferor does not timely comply with the requirements of this subsection, the

consumer may apply for the issuance of the statement.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 46, Sec. 8(2), eff. September 1, 2011.

(e) Ownership of a manufactured home does not pass or vest at a sale or transfer of the home until a completed application for the issuance of a statement of ownership is filed with the department.

(f) If the owner of a manufactured home relocates the home, the owner shall apply for the issuance of a new statement of ownership not later than the 60th day after the date the home is relocated. The department shall require that the owner submit evidence that the home was relocated in accordance with the requirements of the Texas Department of Motor Vehicles.

(g) When an application is filed for the issuance of a statement of ownership for a used manufactured home that is not in a retailer's inventory or is being converted from personal property to real property in accordance with Section 1201.2075, a statement from the tax assessor-collector for the taxing unit having power to tax the manufactured home shall also be filed with the department. The statement from the tax assessor-collector must indicate that, with respect to each January 1 occurring in the 18-month period preceding the date of the sale, there are no perfected and enforceable tax liens on the manufactured home that have not been extinguished and canceled in accordance with Section 32.015, Tax Code, or personal property taxes due on the manufactured home.

(h) If a person selling a manufactured home to a consumer for residential use fails to file with the department the application for the issuance of a statement of ownership and the appropriate filing fee before the 61st day after the date of the sale, the department may assess a fee of at least $100 against the seller. The department shall have the authority to enforce the collection of any fee from the seller through judicial means. The department shall place on the application for the issuance of a statement of ownership the following legend in a clear and conspicuous manner:

"THE FILING OF AN APPLICATION FOR THE ISSUANCE OF A STATEMENT OF OWNERSHIP LATER THAN SIXTY (60) DAYS AFTER THE DATE OF A SALE TO A CONSUMER FOR RESIDENTIAL USE MAY RESULT IN A FEE OF UP TO ONE HUNDRED DOLLARS ($100.00). ANY SUCH APPLICATION THAT IS SUBMITTED LATE MAY BE DELAYED UNTIL THE FEE IS PAID IN FULL."

(i) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(3), eff. September 1, 2017.

(i-1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(3), eff. September 1, 2017.

(j) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(3), eff. September 1, 2017.

(k) Notwithstanding any provision in this chapter to the contrary, if a person has acquired a manufactured home and the owner of record or any intervening owners of liens or equitable interests cannot be located to assist in documenting the chain of title, the department may issue a statement of ownership to the person claiming ownership if the person can provide a supporting affidavit describing the chain of title and such reasonable supporting proof as the director may require.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 15, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 12, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 8(2), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 4, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 29, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 30, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(3), eff. September 1, 2017.

Sec. 1201.207. ISSUANCE OF STATEMENT OF OWNERSHIP. (a) Except as provided for in Subsection (a-1), the department shall process any completed application for the issuance of a statement of ownership

not later than the 15th working day after the date the application is received by the department. If the department rejects an application, the department shall provide a clear and complete explanation of the reason for the rejection and instructions on how to cure any defects, if possible.

(a-1) For the period immediately following June 30 of each year, the department shall, except for applications relating to new manufactured homes and applications accompanied by a tax certificate, cease issuing statements of ownership until all tax liens filed with the department before June 30 have been processed and either recorded or rejected. During this period the department will post on its Internet website a notice as to when it is anticipated that processing statements of ownership will resume and when it is anticipated that such processing will be within the 15-working-day time frame provided by Subsection (a).

(b) If the department issues a statement of ownership for a manufactured home, the department shall maintain a record of the issuance in its electronic records and shall mail a copy to the owner and each lienholder. The department shall make available to the public on the department's Internet website in a searchable and downloadable format all ownership and lienholder information contained on the statement of ownership.

(c) Except with respect to any change in use, servicing of a loan on a manufactured home, release of a lien on a manufactured home by an authorized lienholder, or change in ownership of a lien on a manufactured home, but subject to Section 1201.2075, if the department has issued a statement of ownership for a manufactured home, the department may issue a subsequent statement of ownership for the home only if all parties reflected in the department's records as having an interest in the manufactured home give their written consent or release their interest, either in writing or by operation of law, or the department has followed the procedures provided by Section 1201.206(k) to document ownership and lien status. Once the department issues a statement of ownership, the department shall not alter the record of the ownership or lien status, other than to change the record to accurately reflect the proper owner's or lienholder's identity or to release a lien if an authorized lienholder files with the department a request for that release, of a manufactured home for any activity occurring before the issuance of the statement of ownership without either the written

permission of the owner of record for the manufactured home, their legal representative, or a court order.

(d) Notwithstanding any other provision of this chapter, if the consumer purchases a new manufactured home from a licensed retailer in the ordinary course of business, whether or not a statement of ownership has been issued for the manufactured home, the consumer is a bona fide purchaser for value without notice and is entitled to ownership of the manufactured home free and clear of all liens and to a statement of ownership reflecting the same on payment by the consumer of the purchase price to the retailer. If there is an existing lien on the new manufactured home perfected with the department, the owner of the lien is entitled to recover the value of the lien from the retailer.

(e) Notwithstanding any other provision of this chapter, if the consumer purchases a used manufactured home from a retailer in the ordinary course of business, the consumer takes the manufactured home free and clear of any liens created by the selling retailer even if they are recorded.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 15, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 13, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 2, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 31, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 32, eff. September 1, 2017.

Sec. 1201.2071. EXEMPTION FOR CERTAIN EMERGENCY HOUSING. (a) Sections 1201.204, 1201.205, 1201.206, and 1201.207 do not apply to the purchase of a manufactured home that is purchased by a federal

governmental agency and used to provide temporary housing in response to a natural disaster or other declared emergency.

(b) The department shall adopt rules for the application for and automatic issuance of a statement of ownership of a manufactured home described by Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 811 (H.B. 2315), Sec. 1, eff. September 1, 2019.

Sec. 1201.2075. CONVERSION FROM PERSONAL PROPERTY TO REAL PROPERTY. (a) Except as provided by Subsection (b) or Section 1201.206(k), the department may not issue a statement of ownership for a manufactured home that is being converted from personal property to real property until:

(1) each lien on the home is released by the lienholder; or

(2) each lienholder gives written consent, to be placed on file with the department.

(b) The department may issue a statement of ownership before the release of any liens or before receiving the consent of any lienholders as required by this section, or without receiving the statement required by Section 1201.206(g), if the department releases a copy of the statement to:

(1) a licensed title insurance company that has issued a commitment to issue a title insurance policy covering all prior liens on the home in connection with a loan that the title company has closed; or

(2) a federally insured financial institution or licensed attorney who has obtained from a licensed title insurance company a title insurance policy covering all prior liens on the home.

Added by Acts 2003, 78th Leg., ch. 338, Sec. 16, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 33, eff. September 1, 2017.

Sec. 1201.2076. CONVERSION FROM REAL PROPERTY TO PERSONAL PROPERTY. (a) The department may not issue a statement of ownership

for a manufactured home that is being converted from real property to personal property until the department has inspected the home and determined that it is habitable and:

(1) each lien, including a tax lien, on the home is released by the lienholder; or

(2) each lienholder, including a taxing unit, gives written consent, to be placed on file with the department.

(a-1) Notwithstanding Subsection (a), the department may not require an inspection for habitability before issuing a statement of ownership with respect to a manufactured home if the home is being sold to or ownership is otherwise being transferred to a retailer. The department remains subject to the other requirements of Subsection (a).

(b) For the purposes of Subsection (a)(1), the department may rely on a commitment for title insurance, a title insurance policy, or a lawyer's title opinion to determine that any liens on real property have been released.

Added by Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 14, eff. June 18, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 3, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 34, eff. September 1, 2017.

Sec. 1201.208. PAYMENT OF TAXES REQUIRED FOR ISSUANCE OF STATEMENT OF OWNERSHIP. (a) Any licensee who sells or exchanges a new manufactured home to any consumer is responsible for the payment of all required sales and use tax on such home.

(b) If it is determined that a new manufactured home was sold or exchanged without the required sales and use tax being paid, the payment shall be made from the fund, up to the available penal amount of the licensee's bond or the remaining balance of the security for the license, and a claim for reimbursement shall be filed with the licensee's surety or the amount deducted from the security for the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 17, 18, eff. June 18, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 27, eff. January 1, 2008.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 35, eff. September 1, 2017.

Sec. 1201.209. GROUNDS FOR REFUSAL TO ISSUE OR FOR SUSPENSION OR REVOCATION OF STATEMENT OF OWNERSHIP. The department may not refuse to issue a statement of ownership and may not suspend or revoke a statement of ownership unless:

(1) the application for issuance of the statement of ownership contains a false or fraudulent statement, the applicant failed to provide information required by the director, or the applicant is not entitled to issuance of the statement of ownership;

(2) the director has reason to believe that the manufactured home is stolen or unlawfully converted, or the issuance of a statement of ownership would defraud the owner or a lienholder of the manufactured home;

(3) the director has reason to believe that the manufactured home is salvaged, and an application for the issuance of a new statement of ownership that indicates that the home is salvaged has not been filed;

(4) the required fee has not been paid;

(5) the state sales and use tax has not been paid in accordance with Chapter 158, Tax Code, and Section 1201.208; or

(6) a tax lien was filed and recorded under Section 1201.219 and the lien has not been extinguished.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 19, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.256(a), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 15, eff. June 18, 2005.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 36, eff.

September 1, 2017.

Sec. 1201.210. PROCEDURE FOR REFUSAL TO ISSUE OR SUSPENSION OR REVOCATION OF STATEMENT OF OWNERSHIP. (a) If the director refuses to issue or suspends or revokes a statement of ownership, the director shall give, by certified mail, written notice of that action to:

(1) the seller and purchaser or transferor and transferee, as applicable; and

(2) the holder of a lien or security interest of record.

(b) An action by the director under Subsection (a) is a contested case under Chapter 2001, Government Code.

(c) A notice of appeal and request for hearing must be filed with the director not later than the 30th day after the date of notice of the director's action. If appeal is not timely made, the revocation or suspension described in the notice of the director's action becomes final.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(4), eff. September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 20, 21, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 28, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 37, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 38, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(4), eff. September 1, 2017.

Sec. 1201.212. TRANSFER OF OWNERSHIP BY OPERATION OF LAW. (a) If the ownership of a manufactured home in this state is transferred by inheritance, devise, or bequest, by bankruptcy, receivership, judicial sale, or other involuntary divestiture of ownership, or by any other operation of law, the department shall issue a new

statement of ownership after receiving a copy of:

(1) the order or bill of sale from an officer making a judicial sale;

(2) the order appointing a temporary administrator;

(3) the probate proceedings;

(4) the letters testamentary or the letters of administration; or

(5) if administration of an estate is not necessary, an affidavit by all of the heirs at law showing:

(A) that administration is not necessary; and

(B) the name in which the statement of ownership should be issued.

(b) The department may issue a new statement of ownership in the name of the purchaser at a foreclosure sale:

(1) for a lien or security interest foreclosed according to law by nonjudicial means, if the lienholder or secured party files an affidavit showing the nonjudicial foreclosure according to law; or

(2) for a foreclosed constitutional or statutory lien, if the person entitled to the lien files an affidavit showing the creation of the lien and the resulting divestiture of title according to law.

(c) The department shall issue a new statement of ownership to a survivor if:

(1) an agreement providing for a right of survivorship is signed by two or more eligible persons, as determined under Section 1201.213; and

(2) on the death of one of the persons, the department is provided with a copy of the death certificate of that person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 22, eff. June 18, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 39, eff. September 1, 2017.

Sec. 1201.213. ELIGIBILITY TO SIGN RIGHT OF SURVIVORSHIP AGREEMENT. (a) A person is eligible to sign a right of survivorship agreement under this subchapter if the person:

(1) is married and the spouse of the signing person is the only other party to the agreement;

(2) is unmarried and attests to that unmarried status by affidavit; or

(3) is married and provides the department with an affidavit from the signing person's spouse that attests that the signing person's interest in the manufactured home is the signing person's separate property.

(b) If the statement of ownership is being issued in connection with the sale of the home, the seller is not eligible to sign a right of survivorship agreement under this subchapter unless the seller is the child, grandchild, parent, grandparent, or sibling of each other person signing the agreement. A family relationship required by this subsection may be a relationship established by adoption.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 23, eff. June 18, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 40, eff. September 1, 2017.

Sec. 1201.214. DOCUMENT OF TITLE; CERTIFICATE OF ATTACHMENT. (a) Effective September 1, 2003, all outstanding documents of title or certificates of attachment are considered to be statements of ownership.

(b) An owner or lienholder may provide to the department a document of title or certificate of attachment and any additional information required by the department and request that the department issue a statement of ownership to replace the document of title or certificate of attachment. The department shall mail to the owner or lienholder a copy of the statement of ownership issued under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 24, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 29, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 73(a)(5), eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 41, eff. September 1, 2017.

Sec. 1201.216. CHANGE IN USE. (a) If the owner of a manufactured home notifies the department that the owner intends to treat the home as real property or intends to treat the home as a salvaged manufactured home or reserve the home for a business use or another nonresidential use, the department shall indicate on the statement of ownership for the home that:

(1) the owner of the home has elected to treat the home as described by this subsection; and

(2) except as provided by Section 1201.2055(h), the home is no longer a manufactured home for purposes of regulation under this chapter or of recordation of liens, including tax liens.

(b) On application and subject to Sections 1201.2076 and 1201.209, the department shall issue for the structure described in the application a new statement of ownership restoring the structure's designation as a manufactured home only after an inspection and determination that the structure is habitable as provided by Section 1201.453.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 24, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 16, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 30, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 42, eff. September 1, 2017.

Sec. 1201.217. MANUFACTURED HOME ABANDONED. (a) The owner of real property on which a manufactured home owned by another is

located may declare the home abandoned as provided by this section if:

(1) the home has been continuously unoccupied for at least four months; and

(2) any indebtedness secured by the home or related to a lease agreement between the owner of the real property and the owner of the home is considered delinquent.

(b) Before declaring a manufactured home abandoned, the owner of real property on which the home is located must send a notice of intent to declare the home abandoned to the record owner of the home, all lienholders at the addresses listed on the home's statement of ownership on file with the department, the tax collector for each taxing unit that imposes ad valorem taxes on the real property where the home is located, and any intervening owners of liens or equitable interests. The notice must include the address where the home is currently located. If the person giving such notice knows that a person to whom the notice is being given no longer resides and is no longer receiving mail at a known address, a reasonable effort shall be made to locate the person and give the person notice at an address where the person is receiving mail. Mailing of the notice by certified mail, return receipt requested, postage prepaid, to the persons required to be notified by this subsection constitutes conclusive proof of compliance with this subsection.

(c) On receipt of a notice of intent to declare a manufactured home abandoned, the record owner of the home, a lienholder, a tax assessor-collector for a taxing unit that imposes ad valorem taxes on the real property on which the home is located, or an intervening owner of a lien or equitable interest may enter the real property on which the home is located to remove the home. The real property owner must disclose to the record owner, lienholder, tax assessor-collector, or intervening owner seeking to remove the home the location of the home and grant the person reasonable access to the home. A person removing a home is responsible to the real property owner for any damage to the real property resulting from the removal of the home.

(d) If the manufactured home remains on the real property for at least 45 days after the date the notice is postmarked:

(1) all liens on the home are extinguished; and

(2) the real property owner may declare the home abandoned and may apply to the department for a statement of ownership listing

the real property owner as the owner of the manufactured home.

(d-1) When applying for a statement of ownership under this section, the real property owner shall include with the application an affidavit stating that:

(1) the person owns the real property where the manufactured home is located; and

(2) the name of the person to whom title to the home will be transferred under this section is the same name that is listed in the real property or tax records indicating the current ownership of the real property.

(e) A new statement of ownership issued by the department under this section transfers, free of any liens, if there is evidence of United States Postal Service return receipt from all lienholders, title to the manufactured home to the real property owner.

(f) This section does not apply if the person who owns the real property on which the manufactured home is located and who is declaring that the home is abandoned, or any person who is related to or affiliated with that person, has now, or has ever owned, an interest in the manufactured home.

(g) Notwithstanding Subsection (f), an owner of real property on which a manufactured home has been abandoned may apply for a new statement of ownership with respect to a home that was previously declared abandoned and then resold and abandoned again.

Added by Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 17, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 31, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 4, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 43, eff. September 1, 2017.

Sec. 1201.219. PERFECTION, EFFECT, AND RELEASE OF LIENS. (a) A lien on manufactured homes in inventory is perfected only by filing a financing statement in accordance with Section 9.310, Business &

Commerce Code, and the other provisions of that code related to security interests for inventory. Once perfected, the lien applies to the manufactured homes in the inventory as well as to any proceeds from the sale of those homes. The department may suspend or revoke the license of a retailer who fails to satisfy a perfected inventory lien.

(b) Except as provided by Subsection (a) and subject to Subsection (d), a lien on a manufactured home is perfected only by filing with the department the notice of lien on a form provided by the department. The department shall disclose on its website the date of each lien filing. A lien recorded with the department has priority, according to the chronological order of recordation, over another lien or claim against the manufactured home.

(b-1) Notwithstanding any other law, a lien perfected with the department may be released only by filing a request for the release with the department on the form provided by the department or by following the department's procedures for electronic lien release on the department's Internet website. This subsection does not apply to the release of a tax lien perfected with the department.

(c) Notwithstanding any other provision of this section or any other law, the filing of a financing statement to perfect a lien on the inventory of a retailer as described by Subsection (a) does not prevent a buyer in the ordinary course of business, as defined by Section 1.201, Business & Commerce Code, from acquiring good and marketable title free of that lien, and the department may not consider that lien for the purpose of title issuance.

(d) A tax lien on a manufactured home not held in a retailer's inventory is perfected only by filing with the department the notice of the tax lien on a form provided by the department in accordance with the requirements of Chapter 32, Tax Code. The form must require the disclosure of the original dollar amount of the tax lien and the name and address of the person in whose name the manufactured home is listed on the tax roll. The department shall disclose on its Internet website the date of each tax lien filing, the original amount of the tax lien claimed by each filing, and the fact that the amount shown does not include additional sums, including interest, penalties, and attorney's fees. The statement required by Section 1201.205(7) is notice to all persons that the tax lien exists. A tax lien recorded with the department has priority over another lien or claim against the manufactured home. Tax liens shall be filed by the

tax collector for any taxing unit having the power to tax the manufactured home. A single filing by a tax collector is a filing for all the taxing units for which the tax collector is empowered to collect.

(e) A tax lien perfected with the department may be released only by:

(1) filing with the department a tax certificate or tax paid receipt in accordance with Section 32.015, Tax Code;

(2) filing a request for the release with the department on the form provided by the department;

(3) following the department's procedures for electronic tax lien release on the department's Internet website;

(4) a tax collector filing a tax lien release with the department as provided by Subsection (f); or

(5) the department in the manner provided by Subsection (h).

(f) On request by any person, a tax collector shall file a tax lien release with the department if the four-year statute of limitations to file a suit for collection of personal property taxes in Section 33.05(a)(1), Tax Code, has expired.

(g) The department may request that a tax collector confirm that no tax suit has been timely filed on any manufactured home tax lien more than four years in delinquency. The department may make a request under this subsection electronically, and a taxing authority may provide notice of the existence or absence of a timely filed tax suit electronically.

(h) The department shall remove from a manufactured home's statement of ownership a reference to any tax lien delinquent more than four years for which no suit has been timely filed in accordance with Section 33.05(a)(1), Tax Code, if:

(1) a tax collector confirms no suit has been filed; or

(2) the department:

(A) has submitted to a tax collector two requests under Subsection (g) sent not fewer than 15 days apart; and

(B) has not received any response from the tax collector before the 60th day after the tax collector's receipt of the second request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 25, eff. June 18,

2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 18, eff. June 18, 2005.
Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June 18, 2005.
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 32, eff. January 1, 2008.
Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 11, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 5, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1095 (H.B. 3613), Sec. 2, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1095 (H.B. 3613), Sec. 3, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 44, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 731 (H.B. 2706), Sec. 4, eff. September 1, 2023.

Sec. 1201.220. REPORT TO CHIEF APPRAISER. (a) The department shall make available in electronic format, or in hard-copy format on request, to each chief appraiser of an appraisal district in this state a monthly report that, for each manufactured home reported as having been installed during the preceding month in the county for which the district was established and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a statement of ownership during the preceding month, lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home, if available;

(3) the model designation of the home, if available;

(4) the identification number of each section or module of the home;

(5) the address or location where the home was reported as installed; and

(6) the reported date of the installation of the home.

(b) The department shall make the report required by this

section available to the public on the department's Internet website in a searchable and downloadable format.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 26, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.257(b), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 32, eff. January 1, 2008.
Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 6, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 45, eff. September 1, 2017.

Sec. 1201.221. INFORMATION ON OWNERSHIP AND TAX LIEN. (a) On written request, the department shall provide information held by the department on:

(1) the current ownership and location of a manufactured home; and

(2) the existence of all tax liens on that home for which notice has been filed with the department.

(b) A request under Subsection (a) must contain:

(1) the name of the owner of the home as reflected on the statement of ownership; or

(2) the identification number of the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 27, eff. June 18, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 19, eff. June 18, 2005.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 46, eff. September 1, 2017.

Sec. 1201.222. CERTAIN MANUFACTURED HOMES CONSIDERED REAL PROPERTY. (a) A manufactured home is treated as real property only if:

(1) the owner of the home has elected to treat the home as real property as provided by Section 1201.2055; and

(2) a copy of the statement of ownership for the home has been filed in the real property records of the county in which the home is located.

(b) Repealed by Acts 2005, 79th Leg., Ch. 1284, Sec. 34(1), eff. June 18, 2005.

(c) Installation of a manufactured home considered to be real property under this chapter must occur in a manner that satisfies the lending requirements of the Federal Housing Administration (FHA), Fannie Mae, or Freddie Mac for long-term mortgage loans or for FHA insurance. The installation of a new manufactured home must meet, in addition to applicable state standards, the manufacturer's specifications required to validate the manufacturer's warranty.

(d) A civil action to enjoin a violation of this section may be brought by:

(1) a purchaser in the county in which the violation occurs; or

(2) the county in which the violation occurs.

(e) Repealed by Acts 2003, 78th Leg., ch. 338, Sec. 51.

(f) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.258(a), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 338, Sec. 28, 51, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 34(1), eff. June 18, 2005.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 47, eff. September 1, 2017.

SUBCHAPTER F. STANDARDS

Sec. 1201.251. STANDARDS AND REQUIREMENTS ADOPTED BY BOARD. (a) The board shall adopt standards and requirements for:

(1) the installation and construction of manufactured housing that are reasonably necessary to protect the health, safety, and welfare of the occupants and the public; and

(2) the construction of HUD-code manufactured homes in

compliance with the federal standards and requirements established under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.).

(b) The standards and requirements adopted under Subsection (a)(1) are the standards code.

(c) The standards adopted under Subsection (a)(1) must ensure that manufactured housing installed on both permanent and nonpermanent foundation systems resists overturning and lateral movement, according to the design loads for the particular wind zone for which the housing was constructed.

(d) In order to ensure that the determinations required by this section are properly made by qualified persons:

(1) the board's rules may provide for the approval of foundation systems and devices that have been approved by licensed engineers; and

(2) any generic installation standards promulgated by rule shall first be reviewed by an advisory committee established by the board comprised of representatives of manufacturers, installers, and manufacturers of stabilization systems or devices, including one or more licensed engineers.

(e) The advisory committee established by Subsection (d) shall make a report to the board setting forth each comment and concern over any proposed rules. The members of the committee shall have no personal liability for providing this advice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 33, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 34, eff. January 1, 2008.

Sec. 1201.252. POWER OF LOCAL GOVERNMENTAL UNIT TO ADOPT DIFFERENT STANDARD. (a) A local governmental unit of this state may not adopt a standard for the construction or installation of manufactured housing in the local governmental unit that is different from a standard adopted by the board unless, after a hearing, the board expressly approves the proposed standard.

(b) To adopt a different standard under this section, the local

governmental unit must demonstrate that public health and safety require the different standard.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 35, eff. January 1, 2008.

Sec. 1201.253. HEARING ON STANDARD OR REQUIREMENT. The director shall publish notice and conduct a public hearing before:

(1) adopting a standard or requirement authorized by this subchapter;

(2) amending a standard authorized by this subchapter; or

(3) approving a standard proposed by a local governmental unit under Section 1201.252.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 36, eff. January 1, 2008.

Sec. 1201.254. EFFECTIVE DATE OF REQUIREMENT OR STANDARD. Each requirement or standard that is adopted, modified, amended, or repealed by the board must state its effective date.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 36, eff. January 1, 2008.

Sec. 1201.255. INSTALLATION OF MANUFACTURED HOUSING. (a) Except as authorized under Section 1201.252, manufactured housing that is installed must be installed in compliance with the standards and rules adopted and orders issued by the department. An uninstalled manufactured home may not be occupied for any purpose other than to view the home on a retailer's sales lot.

(b) An installer may not install a used manufactured home at a location on a site that has evidence of ponding, runoff under heavy

rains, or bare uncompacted soil unless the installer first obtains the owner's signature on a form promulgated by the board disclosing that such conditions may contribute to problems with the stabilization system for that manufactured home, including possible damage to that home, and the owner accepts that risk.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 36, eff. January 1, 2008.
Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 12, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 48, eff. September 1, 2017.

Sec. 1201.256. WIND ZONE REGULATIONS. (a) Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy counties are in Wind Zone II. All other counties are in Wind Zone I.

(b) To be installed in a Wind Zone II county, a manufactured home constructed on or after September 1, 1997, must meet the Wind Zone II standards adopted by the United States Department of Housing and Urban Development.

(c) A manufactured home constructed before September 1, 1997, may be installed in a Wind Zone I or II county without restriction.

(d) A retailer who sells a manufactured home constructed on or after September 1, 1997, to Wind Zone I standards must, before the execution of a mutually binding sales agreement or retail installment sales contract, give the consumer notice that:

(1) the home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area;

(2) installation of the home is not permitted in a Wind Zone II county in this state; and

(3) another state may prohibit installation of the home in a Wind Zone II or III area.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER G. INSPECTIONS AND MONITORING

Sec. 1201.301. STATE INSPECTORS. (a) The director may employ state inspectors to:

(1) carry out the functions the department is required to perform under this chapter;

(2) implement this chapter; and

(3) enforce the rules adopted and orders issued under this chapter.

(b) In enforcing this chapter, the director may authorize a state inspector to travel inside or outside of the state to inspect a licensee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 37, eff. January 1, 2008.

Sec. 1201.302. INSPECTION BY LOCAL GOVERNMENTAL UNITS. (a) To ensure that a manufactured home sold or installed in this state complies with the standards code, the director may by contract provide for a federal agency or an agency or political subdivision of this state or another state to perform an inspection or inspection program under this chapter or under rules adopted by the board.

(b) On request, the department shall authorize a local governmental unit in this state to perform an inspection or enforcement activity related to the construction of a foundation system or the erection or installation of manufactured housing at a homesite under a contract or other official designation and rules adopted by the board. The department may withdraw the authorization if the local governmental unit fails to follow the rules, interpretations, and written instructions of the department.

(c) The department:

(1) shall advise each local governmental unit biennially in writing of the program for contracting installation inspections;

(2) shall encourage local building inspection officials to perform enforcement and inspection activities for manufactured housing installed in the local governmental unit; and

(3) may establish cooperative inspection training programs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 38, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 39, eff. January 1, 2008.

Sec. 1201.303. INSPECTIONS. (a) The director may inspect manufactured homes at the state border and adopt rules necessary for the inspection of manufactured homes entering this state to ensure:

(1) compliance with:

(A) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

(B) the standards code; and

(C) the rules adopted by the director; and

(2) payment of any use tax owed to the state.

(b) The department shall establish an installation inspection program in which at least 75 percent of installed manufactured homes are inspected on a sample basis for compliance with the standards and rules adopted and orders issued by the director. The program must place priority on inspecting multisection homes and homes installed in Wind Zone II counties.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(5), eff. September 1, 2017.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(5), eff. September 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(5), eff. September 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(5), eff. September 1, 2017.

(g) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(5), eff. September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 74.07, eff. September 28, 2011.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(5), eff. September 1, 2017.

Sec. 1201.304. INSPECTION SEARCH WARRANTS. If required by law or otherwise necessary, the director may obtain an inspection search warrant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.305. PROGRAM MONITORING. The director may enter into a contract with the United States Department of Housing and Urban Development or its designee to monitor the programs of that department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER H. WARRANTIES

Sec. 1201.351. MANUFACTURER'S WARRANTY. (a) The manufacturer of a new HUD-code manufactured home shall warrant, in a separate written document, that:

(1) the home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the United States Department of Housing and Urban Development under the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) the home and all appliances and equipment included in the home are free from defects in materials or workmanship except for cosmetic defects.

(b) The manufacturer's warranty is in effect until at least the first anniversary of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of an already installed new home, whichever is later.

(c) At the time the manufacturer delivers the home to the retailer, the manufacturer shall also deliver to the retailer:

(1) the manufacturer's warranty; and

(2) the warranties given by the manufacturers of appliances or equipment installed in the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 40, eff. January 1, 2008.

Sec. 1201.352. RETAILER'S WARRANTY ON A NEW HUD-CODE MANUFACTURED HOME. (a) The retailer of a new HUD-code manufactured home shall warrant to the consumer in writing that:

(1) installation of the home at the initial homesite was or will be, as applicable, completed in accordance with all department standards, rules, orders, and requirements; and

(2) appliances and equipment included with the sale of the home and installed by the retailer are or will be:

(A) installed in accordance with the instructions or specifications of the manufacturers of the appliances or equipment; and

(B) free from defects in materials or workmanship.

The warranty may expressly disclaim or limit any warranty regarding cosmetic defects.

(b) The retailer's warranty on a new HUD-code manufactured home is in effect until the first anniversary of the later of the date of initial installation of the home at the consumer's homesite or the closing of the consumer's purchase or acquisition of the home.

(c) Before the signing of a binding retail installment sales contract or other binding purchase agreement on a new HUD-code manufactured home, the retailer must give the consumer a copy of:

(1) the manufacturer's warranty;

(2) the retailer's warranty;

(3) the warranties given by the manufacturers of appliances or equipment included with the home; and

(4) the name and address of the manufacturer or retailer to whom the consumer is to give notice of a warranty service request.

(d) Not later than the 30th day after the installation of a new HUD-code manufactured home, the retailer shall deliver to the consumer a copy of the warranty given by the licensed installer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 20, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.353. NOTICE OF NEED FOR WARRANTY SERVICE. (a) The consumer shall give written notice to the manufacturer, retailer, or installer, as applicable, of a need for warranty service or repairs.

(b) Written notice to the department is deemed to be notice to the manufacturer, retailer, or installer commencing three business days after receipt and forwarding of the notice by the department to the licensee by regular mail or electronic mail of a scanned copy of the notice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.354. CORRECTIVE ACTION REQUIRED. The manufacturer, retailer, or installer, as applicable, shall take appropriate corrective action within a reasonable period as required by department rules to fulfill the written warranty obligation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.355. CONSUMER COMPLAINT HOME INSPECTION. (a) If the manufacturer, retailer, or installer does not provide the consumer with proper warranty service, the consumer may, at any time, request the department to perform a consumer complaint home inspection. The department may not charge a fee for the inspection.

(b) On payment of the required inspection fee, the manufacturer, retailer, or installer may request the department to perform a consumer complaint home inspection if the manufacturer, retailer, or installer:

(1) believes the consumer's complaints are not covered by the warranty of the manufacturer, retailer, or installer, as applicable;

(2) believes that the warranty service was properly provided; or

(3) disputes responsibility concerning the warranty

obligation.

(c) The department shall perform a consumer complaint home inspection not later than the 30th day after the date of receipt of a request for the inspection.

(d) Notwithstanding any other provision of this section, the department may make an inspection at any time if it believes that there is a reasonable possibility that a condition exists that would present an imminent threat to health or safety.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 41, eff. January 1, 2008.

Sec. 1201.356. REPORT AND ORDER; AMENDMENT; COMPLIANCE. (a) Not later than the 10th day after the date of a consumer complaint home inspection, the department shall send a written report and any order to the consumer, manufacturer, retailer, and installer by certified mail, return receipt requested.

(b) The report shall specify:

(1) each of the consumer's complaints; and

(2) whether the complaint is covered by the manufacturer's, retailer's, or installer's warranty and, if so, which of those warranties.

(c) The director shall issue to the manufacturer, retailer, or installer an appropriate order for corrective action by the manufacturer, retailer, or installer specifying a reasonable period for completion of the corrective action. With regard to new manufactured homes, both the installer and the retailer are responsible for the warranty of installation. If the department determines that a complaint is covered by the installation warranty, the director shall issue the order to the installer for the corrective action. If the installer fails to perform the corrective action, the installer shall be subject to the provisions of Section 1201.357. In that instance, the director shall issue the same order for corrective action to the retailer with a new time frame not to exceed 10 days unless additional time is needed for compliance upon a showing of good cause. If the retailer is compelled to perform corrective action because of the failure of the installer to comply

with the director's order, the retailer may seek reimbursement from the installer. The period for the performance of any required warranty work may be shortened by the director as much as is feasible if the warranty work is believed necessary to address a possible imminent threat to health or safety.

(d) The department may issue an amended report and order if all parties receive notice of and are given an opportunity to respond to that report and order. The amended report and order supersede the initial report and order.

(e) The manufacturer, retailer, or installer shall comply with the report and order of the director.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 42, eff. January 1, 2008.

Sec. 1201.357. FAILURE TO PROVIDE WARRANTY SERVICE. (a) If the manufacturer, retailer, or installer, as applicable, fails to provide warranty service within a period specified by the director, the manufacturer, retailer, or installer must show good cause in writing as to why the manufacturer, retailer, or installer failed to provide the service.

(b) If the manufacturer, retailer, or installer, as applicable, fails or refuses to provide warranty service in accordance with the department order under Section 1201.356, the director may hold an informal meeting at which the manufacturer, retailer, or installer must show cause as to why the manufacturer's, retailer's, or installer's license should not be suspended or revoked and at which the consumer may express the person's views. Following the meeting, the director shall either resolve the matter by agreed order, dismiss the matter if no violation is found to have occurred, or institute an administrative action, which may include license suspension or revocation, the assessment of administrative penalties, or a combination of such actions.

(b-1) As authorized by Section 1201.6041, the director may order a manufacturer, retailer, or installer, as applicable, to pay a refund directly to a consumer as part of an agreed order described by Subsection (b) instead of or in addition to instituting an

administrative action under this chapter.

(c) If the manufacturer, retailer, or installer is unable to provide warranty service in accordance with the department order under Section 1201.356 as a result of an action of the consumer, the manufacturer, retailer, or installer must make that allegation in the written statement required by Subsection (a). The department shall investigate the allegation, and if the department determines that the allegation is credible, the department shall issue a new order specifying the date and time of the proposed corrective action. The department shall send the order to the consumer and the manufacturer, retailer, or installer, as applicable, by certified mail, return receipt requested. If the consumer refuses to comply with the department's new order, the manufacturer, retailer, or installer, as applicable:

(1) is discharged from the obligations imposed by the relevant department orders;

(2) has no liability to the consumer with regard to that warranty; and

(3) is not subject to an action by the department for failure to provide warranty service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 21, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 43, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.13, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 731 (H.B. 2706), Sec. 5, eff. September 1, 2023.

Sec. 1201.358. FAILURE TO SHOW GOOD CAUSE; HEARING RESULTS. (a) Failure by the manufacturer, retailer, or installer to show good cause under Section 1201.357(a) is a sufficient basis for suspension or revocation of the manufacturer's, retailer's, or installer's license.

(b) If the director determines that an order was incorrect regarding a warranty obligation, the director shall issue a final

order stating the correct warranty obligation and the right of the manufacturer, retailer, or installer to indemnification from one of the other parties.

(c) The director may issue an order:

(1) directing a manufacturer, retailer, or installer whose license is not revoked, suspended, or subject to an administrative sanction under Section 1201.357(b) and who is not out of business to perform the warranty obligation of a manufacturer, retailer, or installer whose license is revoked, suspended, or subject to an administrative sanction under Section 1201.357(b) or who is out of business; and

(2) giving the manufacturer, retailer, or installer performing the obligation the right of indemnification against another party.

(d) A manufacturer, retailer, or installer entitled to indemnification under this section is a consumer for purposes of Subchapter I and may recover actual damages from the manufactured homeowner consumer claims program.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 43, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 13, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 49, eff. September 1, 2017.

Sec. 1201.359. APPLICATION OF WARRANTIES IF HUD-CODE MANUFACTURED HOME MOVED. (a) The manufacturer's and retailer's warranties do not apply to any defect or damage caused by moving a new HUD-code manufactured home from the initial installation site.

(b) Conspicuous notice of the warranty exception under Subsection (a) must be given to the consumer at the time of sale.

(c) The warrantor has the burden of proof to show that the defect or damage is caused by the move.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.360. WARRANTY FOR HUD-CODE MANUFACTURED HOME PERMANENTLY ATTACHED TO REAL PROPERTY. (a) The seller of real property to which a new HUD-code manufactured home is permanently attached may give the initial purchaser a written warranty that combines the manufacturer's warranty and the retailer's warranty required by this subchapter if:

(1) the statement of ownership reflects that the owner has elected to treat the home as real property;

(2) the home is actually located where the statement of ownership reflects that it is located; and

(3) a copy of the statement of ownership has been filed in the real property records for the county in which the home is located.

(b) If a combination warranty is given under this section, the manufacturer and retailer are not required to give separate written warranties, but the manufacturer and retailer are jointly liable with the seller of the real property to the purchaser for the performance of their respective warranty obligations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 30, eff. June 18, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 50, eff. September 1, 2017.

Sec. 1201.361. INSTALLER'S WARRANTY. (a) For all installations, the installer shall give the manufactured home owner a written warranty that the installation of the home was performed in accordance with all department standards, rules, orders, and requirements. The warranty for the installation of a new HUD-code manufactured home is to be given by the retailer, who is responsible for installation. If the retailer subcontracts this function to a licensed installer, the retailer and installer are jointly and severally responsible for performance of the warranty.

(b) The warranty must conspicuously disclose the requirement that the consumer notify the installer of any claim in writing in accordance with the terms of the warranty. Unless the warranty provides for a longer period, the installer or retailer has no

obligation or liability under the person's warranty for any defect described in a written notice received from the consumer more than two years after the later of the date of purchase or the date of installation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 22, eff. June 18, 2005.
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 44, eff. January 1, 2008.

Sec. 1201.362. INSPECTIONS NOT LIMITED; CORRECTIONS. (a) Nothing in this chapter shall limit the ability of the department to inspect a manufactured home at any time.

(b) Notwithstanding the limitations and terms of any warranty, the director may, whenever the department identifies any aspect of an installation that does not conform to applicable requirements, order the licensee who performed the installation to correct it, or, if that licensee is no longer licensed, reassign correction to a licensed installer and reimburse the person from the fund for the costs of correction.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 45, eff. January 1, 2008.

SUBCHAPTER I. MANUFACTURED HOMEOWNER CONSUMER CLAIMS PROGRAM

Sec. 1201.401. MANUFACTURED HOMEOWNER CONSUMER CLAIMS PROGRAM. (a) The department shall administer the manufactured homeowner consumer claims program to provide a remedy for damages resulting from prohibited conduct by a person licensed under this chapter.

(b) The department may make a payment under the manufactured homeowner consumer claims program only after all other departmental operating expenses are sufficiently funded.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 52, eff. September 1, 2017.

Sec. 1201.404. CONSUMER COMPENSATION. (a) Except as otherwise provided by Subchapter C, a payment made under the manufactured homeowner consumer claims program shall be paid directly to a consumer or, at the director's option, to a third party on behalf of a consumer to compensate a consumer who sustains actual damages resulting from an unsatisfied claim against a licensed manufacturer, retailer, broker, or installer if the unsatisfied claim results from a violation of:

(1) this chapter;

(2) a rule adopted by the director;

(3) the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

(4) a rule or regulation of the United States Department of Housing and Urban Development; or

(5) Subchapter E, Chapter 17, Business & Commerce Code.

(b) The department is not liable to the consumer if the manufactured homeowner consumer claims program does not have the money necessary to pay the actual damages determined to be payable. The director shall record the date and time of receipt of each verified complaint and, as money becomes available, pay the consumer whose claim is the earliest by date and time to have been found to be verified and properly payable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 47, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 14, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 53, eff. September 1, 2017.

Sec. 1201.405. LIMITATIONS ON CLAIMS. (a) The payment of actual damages is limited to the lesser of:

(1) the amount of actual, reasonable costs, not including attorney's fees, that the consumer has incurred or will incur to resolve the act or omission found to be a violation under Section

1201.404; or

(2) $35,000.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 77, Sec. 15(3), eff. September 1, 2009.

(c) Under the manufactured homeowner consumer claims program, the department is not liable for and the director may not pay:

(1) punitive, exemplary, double, or treble damages; or

(2) damages for pain and suffering, mental anguish, emotional distress, or other analogous tort claims.

(d) Notwithstanding other provisions of this subchapter, this subchapter does not apply to, and a consumer may not recover through the manufactured homeowner consumer claims program as a result of, a claim against a license holder that results from a cause of action directly related to the sale, exchange, brokerage, or installation of a manufactured home before September 1, 1987.

(e) In determining the amount of actual damages under this section, the director shall make an independent inquiry as to the damages actually incurred, unless the damages have been previously established through a contested trial.

(f) Under the manufactured homeowner consumer claims program, the department is not liable for and the director may not pay:

(1) actual damages to reimburse an affiliate or related person of a licensee, except when the director issues an order under Sections 1201.358(b) and (c);

(2) actual damages to correct matters that are solely cosmetic in nature;

(3) for attorney's fees; or

(4) actual damages to address other matters, unless the matters involve:

(A) a breach of warranty;

(B) a failure to return or apply as agreed money received from a consumer or money for which the consumer was obligated;

(C) the breach of an agreement to provide goods or services necessary to the safe and habitable use of a manufactured home such as steps, air conditioning, access to utilities, or access to sewage and wastewater treatment; or

(D) perfected and enforceable tax liens not extinguished and canceled in accordance with Section 32.015, Tax Code.

(g) The board by rule may place reasonable limits on the costs that may be approved for payment under the manufactured homeowner consumer claims program, including the costs of reassigned warranty work, and require consumers making claims that may be subject to reimbursement under the manufactured homeowner consumer claims program to provide estimates establishing that the cost will be reasonable. Such rules may also specify such procedures and requirements as the board may deem necessary and advisable for the administration of the manufactured homeowner consumer claims program.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 23, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 48, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 77 (H.B. 2238), Sec. 15(3), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 530 (S.B. 499), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 54, eff. September 1, 2017.

Sec. 1201.406. PROCEDURE FOR RECOVERY UNDER MANUFACTURED HOMEOWNER CONSUMER CLAIMS PROGRAM. (a) To recover under the manufactured homeowner consumer claims program, a consumer must file a written, sworn complaint in the form required by the director not later than the second anniversary of:

(1) the date of the alleged act or omission causing the actual damages; or

(2) the date the act or omission is discovered or should reasonably have been discovered.

(b) On receipt of a verified complaint, the department shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the claim and issue a preliminary determination, giving the consumer, the licensee, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(c) If the matter being investigated is not resolved by agreement or is disputed by written notice to the director before the 31st day after the date of the preliminary determination, the preliminary determination shall automatically become final and the director shall make demand on the surety or deduct any payable amount of the claim from the licensee's security.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 49, eff. January 1, 2008.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 55, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 56, eff. September 1, 2017.

Sec. 1201.407. DISAGREEMENT OF PARTIES; INFORMAL DISPUTE RESOLUTION PROCESS. (a) If a preliminary determination is disputed, the department shall conduct an informal dispute resolution process, including a home inspection if appropriate, to resolve the dispute.

(b) For a preliminary determination that has been disputed to become final and valid, the department shall make any changes the director determines to be appropriate and issue another written preliminary determination as to the responsibility and liability of the manufacturer, retailer, broker, and installer.

(c) Before making a final determination, the department shall allow a license holder 10 days to comment on this preliminary determination.

(d) After consideration of the comments, if any, the director shall issue a final determination.

(e) The final determination may be appealed to the board on or before the 10th day after the date of its issuance by giving written notice to the director, who shall place the matter before the board at the next meeting held on a date for which the matter could be publicly posted as required by Chapter 551, Government Code.

(f) Any license holder or surety, as applicable, is bound by the department's final determination of responsibility and liability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 49, eff. January 1, 2008.

Sec. 1201.409. PAYMENT BY SURETY OR FROM OTHER SECURITY. (a) Except as otherwise provided by Subchapter C, the manufactured homeowner consumer claims program shall be reimbursed by the surety on a bond or from other security filed under Subchapter C for the amount of a claim that is paid out under the manufactured homeowner consumer claims program by the director to a consumer in accordance with this subchapter.

(b) Payment by the surety or from the other security must be made not later than the 30th day after the date of notice from the director that a consumer claim has been paid.

(c) If payment to the manufactured homeowner consumer claims program of a claim is not made by the surety or from the other security in a timely manner, the attorney general shall file suit for recovery of the amount due the manufactured homeowner consumer claims program. Venue for the suit is in Travis County.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 50, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 57, eff. September 1, 2017.

Sec. 1201.410. INFORMATION ON RECOVERY UNDER MANUFACTURED HOMEOWNER CONSUMER CLAIMS PROGRAM. The director shall prepare information for notifying consumers of their rights to recover under the manufactured homeowner consumer claims program, shall post the information on the department's website, and shall make printed copies available on request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 51, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 58, eff. September 1, 2017.

SUBCHAPTER J. USED OR SALVAGED MANUFACTURED HOMES

Sec. 1201.451. TRANSFER OF GOOD AND MARKETABLE TITLE REQUIRED. (a) Except as otherwise provided by this subchapter, a person may not sell or exchange a used manufactured home without the appropriate transfer of good and marketable title to the home.

(b) Not later than the 60th day after the effective date of the transfer of ownership or the date the seller or transferor obtains possession of the necessary and properly executed documents, the seller or transferor shall forward to the purchaser or transferee the necessary, executed documents. If the seller or transferor fails to forward the documents on a timely basis, the purchaser or transferee may apply directly for the documents. On receipt of the documents, the purchaser or transferee shall apply for the issuance of a statement of ownership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 31, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 24, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 52, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 59, eff. September 1, 2017.

Sec. 1201.452. SEAL OR LABEL REQUIRED. (a) Except as otherwise provided by this subchapter, a person may not sell or exchange or negotiate for the sale or exchange of a used manufactured home to a consumer unless the appropriate seal or label is attached to the home.

(b) If the home does not have the appropriate seal or label, the person must:

(1) apply to the department for a seal; and

(2) pay the fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 25, eff. June 18, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 46 (H.B. 1510), Sec. 7, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 60, eff. September 1, 2017.

Sec. 1201.453. HABITABILITY. Manufactured housing is habitable only if:

(1) there is no defect or deterioration in or damage to the home that creates a dangerous situation;

(2) the plumbing, heating, and electrical systems are in safe working order;

(3) the walls, floor, and roof are:

(A) free from a substantial opening that was not designed; and

(B) structurally sound; and

(4) all exterior doors and windows are in place and operate properly.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 53, eff. January 1, 2008.

Sec. 1201.454. HABITABILITY: PROHIBITED ALTERATION OR REPLACEMENT. A manufacturer, retailer, broker, installer, or lienholder may not repair or otherwise alter a used manufactured home or replace a component or system of a used manufactured home in a way that makes the home not habitable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.455. WRITTEN DISCLOSURE AND WARRANTY OF HABITABILITY REQUIRED. (a) Except as otherwise provided by this subchapter, a person may not sell or exchange a used manufactured home to a consumer for use as a dwelling without providing:

(1) a written disclosure, on a form not to exceed two pages

prescribed by the department, describing the condition of the home and of any appliances that are included in the home; and

(2) a written warranty that the home is and will remain habitable until the 60th day after the later of the installation date or the date of the purchase agreement.

(b) Unless, not later than the 65th day after the later of the installation date or the date of the sale or exchange, the consumer notifies the seller in writing of a defect that makes the home not habitable, any obligation or liability of the seller under this subchapter is terminated. The warranty must conspicuously disclose that notice requirement to the consumer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 26, eff. June 18, 2005.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 61, eff. September 1, 2017.

Sec. 1201.456. HABITABILITY: EXCEPTION TO WARRANTY REQUIREMENT. The warranty requirement imposed by Section 1201.455 does not apply to a sale or exchange of a used manufactured home from one consumer to another.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 62, eff. September 1, 2017.

Sec. 1201.457. HABITABILITY: CHANGE TO OR FROM NONRESIDENTIAL USE OR SALVAGE. (a) If the sale or exchange of a used manufactured home is to a purchaser for the purchaser's business use, the home is not required to be habitable unless the purchaser discloses to the retailer in writing at the time of purchase that the purchaser intends for a person to be present in the home for regularly scheduled work shifts of not less than eight hours each day. The purchaser of the home shall file with the department an application for the issuance of a statement of ownership indicating that the home is reserved for a business use.

(a-1) If the sale or exchange of a used manufactured home is for the purchaser's nonresidential use other than a business use, the home is not required to be habitable. The purchaser of the home shall file with the department an application for the issuance of a statement of ownership indicating that the home is for a nonresidential use other than a business use.

(b) If a used manufactured home is reserved for a business use or another nonresidential use or is salvaged, a person may not knowingly allow any person to occupy or use the home as a dwelling unless the director issues a new statement of ownership indicating that the home is no longer reserved for that use or is no longer salvaged. On the purchaser's application to the department for issuance of a new statement of ownership, the department shall inspect the home and, if the department determines that the home is habitable, issue a new statement of ownership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 32, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1284 (H.B. 2438), Sec. 28, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 54, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 63, eff. September 1, 2017.

Sec. 1201.458. HABITABILITY: EXCEPTION FOR CERTAIN GOVERNMENTAL OR NONPROFIT ENTITIES. (a) Notwithstanding any other provision of this subchapter and on a written application by the purchaser or transferee, the director may give express written authorization to a licensed retailer to sell or exchange a used manufactured home that is not or may not be habitable to or with a governmental housing agency or authority or to a nonprofit organization that provides housing for the homeless.

(b) As a part of the application, the purchaser or transferee must certify to the receipt of a written notice that the home is not or may not be habitable. The consumer protection division of the attorney general's office shall prepare the form of the notice, which

must be approved by the director.

(c) The purchaser or transferee may not occupy or allow occupation of the home as a dwelling until the completion of any repair necessary to make the home habitable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.459. COMPLIANCE NOT REQUIRED FOR SALE FOR COLLECTION OF DELINQUENT TAXES. (a) In selling a manufactured home to collect delinquent taxes, a tax assessor-collector is not required to comply with this subchapter or another provision of this chapter relating to the sale of a used manufactured home.

(b) If a home does not have a serial number, seal, or label, the tax appraiser or tax assessor-collector may apply to the department for a seal if the tax appraiser or assessor-collector assumes full responsibility for the affixation of a seal to the home and the seal is actually affixed on the home.

(c) A seal issued to a tax appraiser or tax assessor-collector is for identification purposes only and does not imply that:

(1) the home is habitable; or

(2) a purchaser of the home at a tax sale may obtain a new statement of ownership from the department without an inspection for habitability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 33, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 55, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 64, eff. September 1, 2017.

Sec. 1201.460. COMPLIANCE NOT REQUIRED FOR LIENHOLDER. (a) A holder of a lien recorded on the statement of ownership of a manufactured home that has not been converted to real property who sells or exchanges a repossessed manufactured home covered by that statement of ownership is not required to comply with this chapter if the sale or exchange is:

(1) to or through a licensed retailer; or

(2) to a purchaser for the purchaser's business use or another nonresidential use.

(b) If the sale or exchange of the repossessed manufactured home is to or through a licensed retailer, the retailer is responsible and liable for compliance with this chapter and department rules. The lienholder may not be joined as a party in any litigation relating to the sale or exchange of the home.

(c) If the sale or exchange of the repossessed manufactured home is to a purchaser for the purchaser's business use or another nonresidential use, the lienholder shall apply to the department for the issuance of a new statement of ownership indicating that the home is reserved for a business use or another nonresidential use.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 34, eff. June 18, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 65, eff. September 1, 2017.

Sec. 1201.461. SALVAGED MANUFACTURED HOME; CRIMINAL PENALTY. (a) For the purposes of this chapter, a manufactured home is salvaged if the home is scrapped, dismantled, or destroyed or if an insurance company pays the full insured value of the home. The reasonableness of the insurer's judgment that the cost of repairing the home would exceed the full insured value of the home does not affect whether the home is salvaged.

(b) A person who owns a used manufactured home that is salvaged shall apply to the director for the issuance of a new statement of ownership that indicates that the home is salvaged.

(c) If a new manufactured home is salvaged, the retailer shall remove the label and surrender the label and the manufacturer's certificate under Section 1201.204 to the director for issuance of a statement of ownership that indicates that the home is salvaged.

(d) A person may not sell, convey, or otherwise transfer to a consumer in this state a manufactured home that is salvaged. A salvaged manufactured home may be sold only to a licensed retailer.

(e) A person may not repair, rebuild, or otherwise refurbish a

salvaged manufactured home unless the person complies with the rules of the director relating to rebuilding a salvaged manufactured home. For purposes of this subsection, "refurbish" means any general repairs, improvements, or aesthetic changes to a manufactured home that do not constitute the rebuilding of a salvaged manufactured home.

(f) If a salvaged manufactured home is rebuilt in accordance with this chapter and the rules of the director, the director shall, on application, issue a new statement of ownership that indicates that the home is no longer salvaged.

(g) A county or other unit of local government that identifies a manufactured home within its jurisdiction that has been declared salvage may impose on that home such inspection, correction, and other requirements as it could apply if the home were not a manufactured home.

(h) A licensee may not participate in the sale, exchange, or installation for use as a dwelling of a manufactured home that is salvage and that has not been repaired in accordance with this chapter and the department's rules. An act that is prohibited by this subsection is deemed to be a practice that constitutes an imminent threat to health or safety and is subject to the imposition of penalties and other sanctions provided for by this chapter. A violation of this subsection is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 35, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 56, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 57, eff. January 1, 2008.

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.14, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 66, eff. September 1, 2017.

SUBCHAPTER K. PROHIBITED PRACTICES

Sec. 1201.501. PROHIBITED CONSTRUCTION BY MANUFACTURER. A

manufacturer may not construct a HUD-code manufactured home in this state for sale or resale unless the manufacturer:

(1) supplies the department with proof of acceptance by a design approval primary inspection agency authorized by the United States Department of Housing and Urban Development;

(2) purchases the required labels; and

(3) has the home inspected by an in-plant inspection agency authorized by the United States Department of Housing and Urban Development.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.502. PROHIBITED SHIPPING BY MANUFACTURER. A manufacturer may not ship a HUD-code manufactured home into this state for sale or resale unless the manufacturer complies with:

(1) all requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.); and

(2) all standards, rules, and regulations of the United States Department of Housing and Urban Development.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.503. PROHIBITED ALTERATION. Before the sale to a consumer of a new manufactured home to which a label has been attached and before installation of the home, a manufacturer, retailer, broker, or installer may not alter the home or cause the home to be altered without obtaining prior written approval from a licensed engineer and providing evidence of such approval to the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 58, eff. January 1, 2008.

Sec. 1201.504. PROHIBITED SALE OR EXCHANGE. (a) A manufacturer may not sell or exchange, or offer to sell or exchange,

a manufactured home to a person in this state who is not a licensed retailer.

(b) A retailer may not sell or exchange, or offer to sell or exchange, a new HUD-code manufactured home that was constructed by a manufacturer who was not licensed by the department at the time of construction.

(c) A retailer, broker, or salesperson may not sell or exchange, or offer to sell or exchange, a manufactured home to a consumer in this state for use as a dwelling unless the appropriate seal or label is attached to the home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 67, eff. September 1, 2017.

Sec. 1201.505. PROHIBITED PURCHASE. A retailer may not purchase for resale to a consumer a new HUD-code manufactured home that was constructed by a manufacturer who was not licensed by the department at the time of construction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.506. CREDIT. (a) A retailer or broker:

(1) shall comply with Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.);

(2) may not advertise an interest rate or finance charge that is not expressed as an annual percentage rate; and

(3) shall comply with all applicable provisions of the Finance Code.

(b) A violation of this section does not create a cause of action or claim for damages for a consumer. The consumer may not recover more than the penalties provided by Subtitles A and B, Title 4, Finance Code, and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 59, eff.

January 1, 2008.

Sec. 1201.507. FALSE OR MISLEADING INFORMATION. (a) A retailer or salesperson may not:

(1) assist a consumer in preparing or providing false or misleading information on a document related to the purchase or financing of a manufactured home; or

(2) submit to a credit underwriter or lending institution information known to be false or misleading.

(b) A salesperson may not submit to a retailer information known to be false or misleading.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.508. DOWN PAYMENT. (a) A retailer may not state payment of a down payment in a retail installment sales contract or other credit document unless the retailer has actually received the entire down payment at the time of execution of the document.

(b) If part of the down payment is consideration other than cash, including a loan or trade-in, the retailer must expressly state that fact in the retail installment sales contract or other credit document.

(c) A cash down payment may not be derived in any part from a rebate or other consideration received by, or to be given to, the consumer from the retailer or manufacturer.

(d) The retailer may not require a consumer to make a down payment on the acquisition of a manufactured home from the retailer's inventory until the time the installment contract is executed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 36, eff. June 18, 2003.

Sec. 1201.509. PROHIBITED RETENTION OF DEPOSIT. A retailer, salesperson, or agent of the retailer may not refuse to refund a consumer's deposit except as provided by Section 1201.151.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.510. PROHIBITED INSTALLATION OF AIR CONDITIONING EQUIPMENT. A retailer or an installer may not contract with a person for the installation of air conditioning equipment in connection with the installation of a manufactured home unless the person is licensed by the state as an air conditioning and refrigeration contractor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.511. PROHIBITED REAL ESTATE TRANSACTION. (a) This section applies to a transaction in which a manufactured home is sold as personal property.

(b) A retailer may not sell, represent for sale, or offer for sale real property in conjunction with the sale of a manufactured home except as authorized by the department consistent with Chapter 1101.

(c) A retailer, broker, or salesperson or a person acting on behalf of a retailer or broker may not receive or accept compensation or consideration of any kind from the seller of the real property or a person acting on the seller's behalf. No part of the down payment on the purchase of the manufactured home or any fees, points, or other charges or "buy-downs" may be paid from money from the seller of the real property or a person acting on the seller's behalf.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 338, Sec. 37, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.260(a), eff. Sept. 1, 2003.

Sec. 1201.512. PROHIBITED DELIVERY OR INSTALLATION OF MANUFACTURED HOME. (a) In this section, "homesite" means the land on which the foundation system for a manufactured home is or will be located.

(b) Unless the retailer, broker, or salesperson complies with the requirements of the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.), Subchapter I, Chapter 16, Water Code, and any other applicable local, state, or federal law, and ensures the consumer's compliance with applicable law by requiring the

evidence described by Subsection (c), a retailer, broker, or salesperson who sells or exchanges a new or used manufactured home to a consumer for use as a permanent dwelling in this state may not:

(1) deliver or arrange for the delivery of the home to a homesite in a special flood hazard area designated by the director of the Federal Emergency Management Agency;

(2) install or arrange for the installation of the home at a homesite in that area; or

(3) assist the consumer in the delivery or installation of, or in making arrangements for the delivery or installation of, the home to or at a homesite in that area.

(c) Before closing on the acquisition of a new or used manufactured home for use as a permanent dwelling in this state, a consumer seeking to acquire the home must provide to the retailer, broker, or salesperson selling or exchanging the home satisfactory evidence that the home will not be located, in a manner that violates local, state, or federal law, on a homesite in a special flood hazard area designated by the director of the Federal Emergency Management Agency. A consumer may satisfy the evidentiary requirement of this subsection by providing the retailer, broker, or salesperson, as applicable, with a copy of any required permit to install a septic tank on the homesite.

(d) The following are exempt from the application of this section:

(1) a manufactured home that on August 31, 2003, was inhabited and located on real property zoned before September 1, 2003, by a local political subdivision for the purpose of developing homesites in a special flood hazard area designated by the director of the Federal Emergency Management Agency, if the home will remain on or be relocated to real property zoned as described by this subsection; and

(2) real property zoned before September 1, 2003, by a local political subdivision for the purpose of developing homesites in a special flood hazard area designated by the director of the Federal Emergency Management Agency.

Added by Acts 2003, 78th Leg., ch. 1016, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 68, eff. September 1, 2017.

Sec. 1201.513. DISPOSITION OF TRADE-INS AND OCCUPANCY OF HOMES BEFORE CLOSING. (a) A retailer may not sell a trade-in manufactured home before the closing of the sale in connection with which the retailer receives the trade-in.

(b) A retailer may not knowingly permit a consumer to occupy a manufactured home that is the subject of a sale or exchange to that consumer before the closing of any required financing unless the consumer is first given a form adopted by the board disclosing that if for any reason the financing does not close, the consumer may be required to vacate the home.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 60, eff. January 1, 2008.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 69, eff. September 1, 2017.

SUBCHAPTER L. DISCIPLINARY PROCEDURES

Sec. 1201.551. DENIAL OF LICENSE; DISCIPLINARY ACTION. (a) The director may deny, permanently revoke, or suspend for a definite period and specified sales location or geographic area a license if the director determines that the applicant or license holder:

(1) knowingly and wilfully violated this chapter or a rule adopted or order issued under this chapter;

(2) unlawfully retained or converted money, property, or any other thing of value from a consumer in the form of a down payment, sales or use tax, deposit, or insurance premium;

(3) failed repeatedly to file with the department a completed application for a statement of ownership before the 61st day after the date of the sale of a manufactured home as required by Section 1201.206 or the date of the installation, whichever occurred later;

(4) failed to give or breached a manufactured home warranty required by this chapter or by the Federal Trade Commission;

(5) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code;

(6) failed to provide or file a report required by the department for the administration or enforcement of this chapter;

(7) provided false information on an application, report, or other document filed with the department;

(8) acquired a criminal record during the five-year period preceding the application date that, in the opinion of the director, makes the applicant unfit for licensing;

(9) failed to file a bond or other security for each location as required by Subchapter C;

(10) has had another license issued by this state revoked or suspended; or

(11) failed to pay the required fee to obtain or renew a license.

(b) The director may suspend or revoke a license if, after receiving notice of a claim, the license holder or the license holder's surety fails or refuses to pay a final claim paid under the manufactured homeowner consumer claims program for which demand for reimbursement was made.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 38, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 61, eff. January 1, 2008.

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 70, eff. September 1, 2017.

Sec. 1201.552. LICENSE REVOCATION, SUSPENSION, OR DENIAL; HEARING. The director may issue an order to revoke, suspend, or deny a new or renewal license. If, before the 31st day after an order revoking, suspending, or denying a license is issued, the person against whom the order is issued requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the order is issued, the order becomes final. Any administrative proceedings relating to the revocation, suspension, or denial of a license under this subsection shall be a contested case under Chapter 2001,

Government Code. The board shall issue an order after receiving a proposal for decision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 61, eff. January 1, 2008.

Sec. 1201.553. JUDICIAL REVIEW. Judicial review of any order, decision, or determination of the board is instituted by filing a petition with a district court in Travis County as provided by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 61, eff. January 1, 2008.

Sec. 1201.554. PROBATION. The department may place on probation a person whose license is suspended. If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.254(b), eff. Sept. 1, 2003.

SUBCHAPTER M. ENFORCEMENT PROVISIONS AND PENALTIES

Sec. 1201.601. ACTION AGAINST RETAILER OR MANUFACTURER: HOLDER OF DEBT INSTRUMENT. (a) If a consumer files a cause of action against a retailer or manufacturer, a claim based on an act of the retailer or manufacturer that the consumer could assert against the holder of the manufactured home debt instrument must be asserted

against the holder in the primary suit against the retailer or manufacturer.

(b) A judgment obtained in the primary suit against the retailer or manufacturer is conclusive proof as to the holder of the debt instrument and admissible in an action by the consumer against the holder only if the consumer joins the holder in the primary suit.

(c) The holder of the debt instrument is entitled to full indemnity from the retailer or manufacturer for a claim based on an act or omission of the retailer or manufacturer.

(d) If the consumer asserts against the holder of the debt instrument a claim or defense that arises from a claim or defense of the consumer against the retailer, the consumer's relief against the holder arising from claims and defenses of the consumer against the retailer is limited to recovery of an amount not to exceed the total amount paid by the consumer to the holder and to cancellation of the balance remaining on the instrument. If the balance remaining on the instrument is canceled, the manufactured home shall be returned to the holder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.602. ACTION AGAINST MANUFACTURER, INSTALLER, OR RETAILER: ABATEMENT OR BAR. (a) Notwithstanding any other law, a suit alleging that a manufacturer, installer, or retailer failed to perform warranty service or failed to comply with a written or implied warranty is abated if:

(1) a plea in abatement is filed with the court not later than the 45th day after the movant's answer date; and

(2) the manufacturer, installer, or retailer requests a consumer complaint home inspection under Section 1201.355.

(b) The abatement continues until the earlier of:

(1) the date on which the department performs a consumer complaint home inspection and the manufacturer, installer, or retailer is given an opportunity to comply with the inspection report, determinations, and orders of the director; or

(2) the expiration of a period not to exceed 150 days.

(c) A consumer's refusal to allow the manufacturer, installer, or retailer to perform warranty service in accordance with the inspection report, determinations, and orders of the director bars a

cause of action relating to an alleged failure to:

(1) comply with a written or implied warranty; or

(2) perform warranty service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.603. DECEPTIVE TRADE PRACTICES. (a) A person's violation of this chapter or the failure by a manufacturer, installer, or retailer to comply with an implied warranty is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

(b) The venue provisions of Subchapter E, Chapter 17, Business & Commerce Code, apply to a claim under Subsection (a). The remedies available under Subchapter E, Chapter 17, Business & Commerce Code, are cumulative of the remedies under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.604. CONSUMER RECOVERY FOR PROHIBITED RETENTION OF DEPOSIT. In addition to any other remedy, a consumer may recover from a retailer, salesperson, or agent of the retailer who violates Section 1201.151:

(1) three times the amount of the deposit; and

(2) reasonable attorney's fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1201.6041. DIRECT CONSUMER COMPENSATION. (a) Instead of requiring a consumer to apply for compensation under the manufactured homeowner consumer claims program under Subchapter I, the director may order a manufacturer, retailer, broker, or installer, as applicable, to pay a refund directly to a consumer who sustains actual damages resulting from an unsatisfied claim against a licensed manufacturer, retailer, broker, or installer if the unsatisfied claim results from a violation of:

(1) this chapter;

(2) a rule adopted by the director;

(3) the National Manufactured Housing Construction and

Safety Standards Act of 1974 (42 U.S.C. Section 5401 et seq.);

(4) a rule or regulation of the United States Department of Housing and Urban Development; or

(5) Subchapter E, Chapter 17, Business & Commerce Code.

(b) For purposes of this section, the refund of a consumer's actual damages is determined according to Section 1201.405.

(c) The director shall prepare information for notifying consumers of the director's option to order a direct refund under this section, shall post the information on the department's Internet website, and shall make printed copies available on request.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.15, eff. September 1, 2013.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 71, eff. September 1, 2017.

Sec. 1201.605. ADMINISTRATIVE PENALTY. (a) The director may assess against a person who fails to comply with this chapter, the rules adopted under this chapter, or any final order of the department an administrative penalty in an amount not to exceed $10,000 for each violation of this chapter and:

(1) reasonable attorney's fees;

(2) administrative costs;

(3) witness fees;

(4) investigative costs; and

(5) deposition expenses.

(b) The director may assess against a licensee who fails to provide information to a consumer as required by this chapter an administrative penalty in an amount not to exceed:

(1) $1,000 for the first violation;

(2) $2,000 for the second violation; and

(3) $4,000 for each subsequent violation.

(c) In determining the amount of an administrative penalty assessed under this section, the director shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) The director may impose an administrative penalty in accordance with this section. If, before the 31st day after the date a person receives notice of the imposition of an administrative penalty, the person requests a hearing by giving written notice to the director, the director shall set a hearing before the State Office of Administrative Hearings. If the person does not request a hearing before the 31st day after the date the person receives notice of the imposition of the administrative penalty, the penalty becomes final. Any administrative proceedings relating to the imposition of an administrative penalty under this subsection shall be a contested case under Chapter 2001, Government Code. The board shall issue an order after receiving a proposal for decision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 338, Sec. 39, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 62, eff. January 1, 2008.

Sec. 1201.606. CRIMINAL PENALTY. (a) A person or a director, officer, or agent of a corporation commits an offense if the person, director, officer, or agent knowingly and wilfully violates this chapter or a rule adopted or order issued by the department in a manner that threatens consumer health or safety.

(b) An offense under this section is a Class A misdemeanor punishable by:

(1) a fine of not more than $4,000;

(2) confinement in county jail for a term of not more than one year; or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.261(a), eff. Sept. 1, 2003.

Sec. 1201.607. ISSUANCE OF ORDERS AND REQUESTS FOR HEARINGS. Any order issued by the director under this chapter, if not appealed

before the 31st day after the date the order was issued, shall automatically become a final order. If the person made the subject of the order files a written request for a hearing with the director, the order shall be deemed to have been appealed and shall be a contested case under Chapter 2001, Government Code. The director shall set any appealed order for a hearing before the State Office of Administrative Hearings, and the board shall issue a final order after receiving and reviewing the proposal for decision issued pursuant to such hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.

Sec. 1201.608. INSPECTION OF LICENSEE RECORDS. (a) The department may inspect a licensee's records during normal business hours without advance notice if the director believes that such inspection is necessary to prevent a violation of this chapter, to protect a consumer or another licensee, or to assist another state or federal agency in an investigation.

(b) The director may request or issue subpoenas for a licensee's records.

(c) The department may carry out "sting" or undercover investigations in accordance with board-adopted rules if the director believes such action to be appropriate in order to detect and address suspected violations of this chapter.

(d) While an investigation is pending, information obtained by the department in connection with that investigation is confidential unless disclosure of the information is specifically permitted or required by other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.

Sec. 1201.609. ACTING WITHOUT LICENSE; CRIMINAL PENALTY. A person who is not exempt under this chapter and who, without first obtaining a license required under this chapter, performs an act that requires a license under this chapter commits an offense. An offense under this section is a Class B misdemeanor. A second or subsequent conviction for an offense under this section is a Class A

misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.

Sec. 1201.610. CEASE AND DESIST. (a) The director may issue without notice and hearing an order to cease and desist from continuing a particular action or an order to take affirmative action, or both, to enforce compliance with this chapter if the director has reasonable cause to believe that a person has violated or is about to violate any provision of this chapter or a rule adopted under this chapter.

(b) The director may issue an order to any person to cease and desist from violating any law, rule, or written agreement or to take corrective action with respect to any such violations if the violations in any way are related to the sale, financing, or installation of a manufactured home or the providing of goods or services in connection with the sale, financing, or installation of a manufactured home unless the matter that is the basis of such violation is expressly subject to inspection and regulation by another state agency; provided, however, that if any matter involves a law that is subject to any other administration or interpretation by another agency, the director shall consult with the person in charge of the day-to-day administration of that agency before issuing an order.

(c) An order issued under Subsection (a) or (b) must contain a reasonably detailed statement of the facts on which the order is based. If a person against whom the order is issued requests a hearing before the 31st day after the date the order is issued, the director shall set and give notice of a hearing. The hearing shall be governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the board by order may find that a violation has occurred or has not occurred.

(d) If a hearing is not requested under Subsection (c) before the 31st day after the date an order is issued, the order is considered final and not appealable.

(e) The director, after giving notice, may impose against a person who violates a cease and desist order an administrative

penalty in an amount not to exceed $1,000 for each day of the violation. In addition to any other remedy provided by law, the director may institute in district court a suit for injunctive relief and for the collection of the administrative penalty. A bond is not required of the director with respect to injunctive relief granted under this subsection.

(f) If a person licensed under this chapter fails to pay an administrative penalty that has become final or fails to comply with an order of the director that has become final, in addition to any other remedy provided by law, the director, after not less than 10 days' notice to the person, may without a prior hearing suspend the person's license. The suspension shall continue until the person has complied with the cease and desist order or paid the administrative penalty. During the period of suspension, the person may not perform any act requiring a license under this chapter, and all compensation received by the person during the period of suspension is subject to forfeiture to the person from whom it was received.

(g) An order of suspension under Subsection (f) may be appealed. An appeal is a contested case governed by Chapter 2001, Government Code. A hearing of an appeal of an order of suspension issued under Subsection (f) shall be held not later than the 15th day after the date of receipt of the notice of appeal. The appellant shall be provided at least three days' notice of the time and place of the hearing.

(h) An order revoking the license of a retailer, broker, installer, or salesperson may provide that the person is prohibited, without obtaining prior written consent of the director, from being a related person of a licensee.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.16, eff. September 1, 2013.

Sec. 1201.611. SANCTIONS AND PENALTIES. (a) The board shall adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department.

(b) If a person charged with the violation accepts the

determination of the director, the director shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(c) Not later than the 30th day after the date on which the decision is final, the person charged shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account;

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the director and effective until judicial review of the decision is final; or

(C) without paying the amount of the penalty or posting the supersedeas bond, pursue judicial review.

(d) A person charged with a penalty who is financially unable to comply with Subsection (c)(2) is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(e) If the person charged does not pay the penalty and does not pursue judicial review, the department or the attorney general may bring an action for the collection of the penalty.

(f) Judicial review of the order of the director assessing the penalty is subject to the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County.

(g) If, after judicial review, the penalty is reduced or not assessed, the director shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the director under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the assessed penalty is paid to the director and ending on the date the penalty is remitted.

(h) Repealed by Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019

), Sec. 85(8), eff. September 1, 2017.

(i) All proceedings conducted under this section and any review or appeal of those proceedings are subject to Chapter 2001, Government Code.

(j) If it appears that a person is in violation of, or is threatening to violate, any provision of this chapter or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general, on behalf of the director, may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate. A civil action filed under this subsection shall be filed in district court in Travis County. The attorney general and the director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 863 (H.B. 1460), Sec. 63, eff. January 1, 2008.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 85(8), eff. September 1, 2017.

CHAPTER 1202. INDUSTRIALIZED HOUSING AND BUILDINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1202.001. GENERAL DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Construction site building" means a commercial structure that is:

(A) not open to the public; and

(B) used for any purpose at a commercial site by a person constructing a building, road, bridge, utility, or other infrastructure or improvement to real property.

(3) "Council" means the Texas Industrialized Building Code Council.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

(5) "Modular component" means a structural part of housing or a building constructed at a location other than the building site in a manner that prevents the construction from being adequately inspected for code compliance at the building site without:

(A) damage; or

(B) removal and reconstruction of a part of the housing or building.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.001, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.263(b), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 1, eff. September 1, 2005.

Sec. 1202.002. DEFINITION OF INDUSTRIALIZED HOUSING. (a) Industrialized housing is a residential structure that is:

(1) designed for the occupancy of one or more families;

(2) constructed in one or more modules or constructed using one or more modular components built at a location other than the permanent site; and

(3) designed to be used as a permanent residential structure when the module or the modular component is transported to the permanent site and erected or installed on a permanent foundation system.

(b) Industrialized housing includes the structure's plumbing, heating, air conditioning, and electrical systems.

(c) Industrialized housing does not include:

(1) housing constructed of a sectional or panelized system that does not use a modular component; or

(2) a ready-built home constructed in a manner in which the entire living area is contained in a single unit or section at a temporary location for the purpose of selling and moving the home to another location.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 45 (S.B. 1264), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 176 (H.B. 1385), Sec. 1, eff. September 1, 2019.

Sec. 1202.003. DEFINITION OF INDUSTRIALIZED BUILDING. (a) An industrialized building is a commercial structure that is:

(1) constructed in one or more modules or constructed using one or more modular components built at a location other than the commercial site; and

(2) designed to be used as a commercial building when the module or the modular component is transported to the commercial site and erected or installed.

(b) An industrialized building includes the structure's plumbing, heating, air conditioning, and electrical systems.

(c) Repealed by Acts 2005, 79th Leg., Ch. 714, Sec. 5, eff. September 1, 2005.

(d) An industrialized building includes a permanent commercial structure and a commercial structure designed to be transported from one commercial site to another commercial site but does not include a commercial building or structure that is:

(1) installed in a manner other than on a permanent foundation; and

(2) either:

(A) not open to the public; or

(B) less than 1,500 square feet in total area and used other than as a school or a place of religious worship.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.002, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 5, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 2, eff.

September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 45 (S.B. 1264), Sec. 2, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 176 (H.B. 1385), Sec. 2, eff. September 1, 2019.

Sec. 1202.004. RELOCATABLE EDUCATIONAL FACILITIES. (a) In this section, "relocatable educational facility" means a portable, modular building capable of being relocated, regardless of whether the facility is built at the installation site, that is used primarily as an educational facility for teaching the curriculum required under Section 28.002, Education Code.

(b) A relocatable educational facility that is purchased or leased on or after January 1, 2010, must comply with all provisions applicable to industrialized buildings under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 3, eff. September 1, 2009.

SUBCHAPTER B. TEXAS INDUSTRIALIZED BUILDING CODE COUNCIL

Sec. 1202.051. COUNCIL MEMBERSHIP. The Texas Industrialized Building Code Council consists of 12 members appointed by the governor as follows:

(1) three members who represent the industrialized housing and building industries;

(2) three members who represent municipal building officials from municipalities with a population of more than 25,000;

(3) three members who represent general contractors who construct housing or buildings on-site;

(4) one member who is an engineer licensed in this state who acts as a structural engineer;

(5) one member who is an engineer licensed in this state who acts as an electrical engineer; and

(6) one member who is an architect registered in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.052. MEMBERSHIP RESTRICTIONS. An engineer or architect member of the council may not:

(1) be designated as, be employed by, or have an ownership interest in, an entity that is a third-party inspector or design review agency;

(2) have an ownership interest in a business that manufactures or builds industrialized housing or buildings;

(3) in a capacity relating to a matter subject to council review, be employed by or be a paid consultant to a manufacturer or builder of industrialized housing or buildings; or

(4) be an officer, employee, or paid consultant of a trade association that represents the industrialized housing or building industry.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.053. TERMS. Council members serve staggered two-year terms, with the terms of half of the members expiring on February 1 of each even-numbered year and the terms of the other half of the members expiring on February 1 of each odd-numbered year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.054. PRESIDING OFFICER. The council shall annually elect one of its members as the council's presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.055. SECRETARY; PERSONNEL. The executive director shall:

(1) act as secretary of the council; and

(2) provide personnel from the department necessary to perform staff functions for the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.026, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.264, eff. Sept. 1, 2003.

Sec. 1202.056. REIMBURSEMENT. (a) A council member may be reimbursed for actual costs of travel to attend meetings but may not receive a per diem allowance for food or lodging.

(b) The travel costs shall be paid out of fees collected by the department under Section 1202.104.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.057. QUORUM. The vote of at least seven members present at a meeting or the written approval of at least seven members is required for the council to take an action or make a decision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER C. COUNCIL AND COMMISSION POWERS AND DUTIES

Sec. 1202.101. RULES; ORDERS. (a) The commission shall adopt rules and issue orders as necessary to:

(1) ensure compliance with the purposes of this chapter; and

(2) provide for uniform enforcement of this chapter.

(b) The commission shall adopt rules as appropriate to implement the council's actions, decisions, interpretations, and instructions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.003, eff. Sept. 1, 2003.

Sec. 1202.102. RULES PROVIDING FOR REGISTRATION AND REGULATION. The commission by rule shall provide for registration and regulation of manufacturers or builders of industrialized housing or buildings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.004, eff. Sept. 1, 2003.

Sec. 1202.104. FEES. (a) The commission shall set fees, in amounts sufficient to cover the costs of the inspections described by this chapter and the administration of this chapter, for:

(1) the registration of manufacturers or builders of industrialized housing or buildings;

(2) the inspection of industrialized housing or buildings; and

(3) the issuance of decals or insignia required under Section 1202.204.

(b) The fees shall be paid to the comptroller and placed in the general revenue fund, except that a fee for an inspection may be paid directly to an approved third-party inspector who performs the inspection.

(c) The building and permit fees charged by a municipality for an inspection of industrialized housing or buildings to be located in the municipality may not exceed the fees charged for the equivalent inspection of a building constructed on-site.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.005, eff. Sept. 1, 2003.

Sec. 1202.105. APPROVAL OF THIRD-PARTY INSPECTORS AND DESIGN REVIEW AGENCIES. (a) The council shall establish criteria for the approval of, and approve accordingly, all third-party inspectors and design review agencies.

(b) The executive director shall recommend qualified third-party inspectors and design review agencies to the council.

(c) The executive director shall publish a list of all approved inspectors and design review agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.027, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.266, eff. Sept. 1, 2003.

Sec. 1202.106. APPLICABILITY OF OTHER LAW. Sections 51.401 and

51.4041 do not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 10.006, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 586 (H.B. 3742), Sec. 5, eff. September 1, 2015.

Sec. 1202.107. LIMITATION ON CERTAIN ACTIONS. (a) Notwithstanding any other law, the commission, executive director, or department may not perform an inspection or investigation, open a complaint, or initiate an administrative or enforcement action against a manufacturer, builder, or third-party inspector of industrialized housing after the second anniversary of the date of the final on-site inspection of the industrialized housing conducted under Section 1202.203.

(b) The commission or executive director may impose a penalty or sanction in an enforcement action against a manufacturer, builder, or third-party inspector of industrialized housing only if the commission, executive director, or department initiates the enforcement action during the period prescribed by Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 27 (S.B. 672), Sec. 1, eff. September 1, 2013.

SUBCHAPTER D. REQUIREMENTS AND STANDARDS FOR INDUSTRIALIZED HOUSING AND BUILDINGS

Sec. 1202.151. BUILDING CODES. (a) In addition to complying with Subsection (b) or (c), as applicable, industrialized housing and buildings must be constructed to meet or exceed the requirements and standards of the National Electrical Code, published by the National Fire Protection Association, as that code existed on January 1, 1985.

(b) Industrialized housing and buildings erected or installed in a municipality must be constructed to meet or exceed the requirements and standards of whichever of the following two groups of codes is used by the municipality:

(1) the Uniform Building Code, Uniform Plumbing Code, and Uniform Mechanical Code, published by the International Conference of Building Officials, as those codes existed on January 1, 1985; or

(2) the Standard Building Code, Standard Mechanical Code, Standard Plumbing Code, and Standard Gas Code, published by the Southern Building Code Congress International, Inc., as those codes existed on January 1, 1985.

(c) Industrialized housing and buildings erected or installed outside a municipality or in a municipality that does not use a building code group described by Subsection (b)(1) or (2) must be constructed to meet or exceed the requirements and standards of whichever of those building code groups is selected by the manufacturer of the housing or buildings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.152. BUILDING CODE AMENDMENT. If a code described by Section 1202.151 is amended after January 1, 1985, the requirements and standards of the amended code shall be used in place of the January 1, 1985, edition if the council determines that use of the amended code is:

(1) in the public interest; and

(2) consistent with the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.153. BUILDING CODE AMENDMENT: MUNICIPALITY OR OTHER POLITICAL SUBDIVISION. (a) A municipality or other political subdivision may not require or enforce, as a prerequisite for granting or approving a building or construction permit or certificate of occupancy, an amendment to a code described by Section 1202.151.

(b) On the petition of a local building official and after a hearing, the council may require a reasonable amendment to a building code group described by Section 1202.151(b)(1) or (2) that the council determines to be essential for public health and safety. The amendment shall be applied uniformly on a statewide basis.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.1535. EFFECT OF BUILDING CODE AMENDMENT. (a) An

industrialized building that bears an approved decal or insignia indicating that the building complies with the mandatory building codes and that has not been modified or altered is considered to be in compliance with a new mandatory building code adopted by the council or an amendment to a code approved by the council under Section 1202.152 or 1202.153.

(b) The owner of an industrialized building designed to be transported from one commercial site to another that bears an approved decal or insignia indicating the building complies with the mandatory building codes and that is modified or altered after the date the council adopts a new mandatory building code or the council approves a building code amendment must ensure that the modified or altered building complies with the requirements and standards of the new building code or amendment to the extent required by the most recent edition of the International Existing Building Code adopted by the council.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 10.007, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 698 (H.B. 2763), Sec. 4, eff. September 1, 2009.

Sec. 1202.1536. OPTION TO CONSTRUCT CERTAIN INDUSTRIALIZED HOUSING IN ACCORDANCE WITH CERTAIN ENERGY EFFICIENCY PERFORMANCE STANDARDS. (a) Notwithstanding any other provision of this subchapter related to energy efficiency performance standards, a manufacturer or builder of industrialized housing may construct single-family industrialized housing in accordance with the energy efficiency performance standards outlined in:

(1) the energy code adopted by the council; or

(2) the energy code in this state for single-family residential construction with any local amendments or alternative compliance paths described by Section 388.003, Health and Safety Code, that are:

(A) requested by a municipality, county, or group of counties located in the climate zone in which the single-family industrialized housing will be located; and

(B) determined by the laboratory, as defined by Section

388.002, Health and Safety Code, to be equally or more stringent than the energy code described by Section 388.003(a), Health and Safety Code.

(b) A manufacturer or builder of industrialized housing shall maintain and, on request, make available to the department, to a design review agency, or to another entity authorized to evaluate industrialized housing under this chapter all documentation necessary to evaluate single-family industrialized housing constructed by the manufacturer or builder in accordance with the energy efficiency performance standards described by Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 1125 (H.B. 2546), Sec. 1, eff. September 1, 2019.

Sec. 1202.154. DESIGN REVIEW. To ensure compliance with the mandatory building codes, the department or approved design review agency shall review all designs, plans, and specifications of industrialized housing and buildings in accordance with council interpretations and instructions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.008, eff. Sept. 1, 2003.

Sec. 1202.155. COUNCIL STAMP OF APPROVAL. (a) The department or approved design review agency shall place the council's stamp of approval on each page of the designs, plans, and specifications of industrialized housing and buildings that:

(1) meet or exceed the code standards and requirements under council interpretations and instructions; and

(2) are approved by the department or design review agency.

(b) Each page of the designs, plans, and specifications must bear the council's stamp of approval if the designs, plans, and specifications satisfy the requirements of Subsection (a)(1) and are approved in accordance with Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.156. COUNCIL DETERMINATION OF CERTAIN QUESTIONS RELATED TO INDUSTRIALIZED HOUSING AND BUILDINGS. (a) The council shall determine all questions raised by a municipality in connection with the review of designs, plans, and specifications of industrialized housing and buildings, as authorized by Section 1202.252.

(b) With reference to the standards and requirements of the mandatory building codes, the council shall determine, from an engineering performance standpoint, all questions concerning:

(1) code equivalency; or

(2) alternative materials or methods of construction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.009, eff. Sept. 1, 2003.

Sec. 1202.157. COUNCIL DECISIONS BINDING. The decisions, actions, and interpretations of the council are binding on the department, third-party inspectors, design review agencies, and municipalities and other political subdivisions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

SUBCHAPTER E. INSPECTIONS

Sec. 1202.201. INSPECTION PROCEDURES. The council may issue instructions to establish procedures for inspecting the construction and installation of industrialized housing and buildings to ensure compliance with approved designs, plans, and specifications.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Sec. 1202.202. DEPARTMENT INSPECTIONS. (a) To ensure compliance with the mandatory building codes or approved designs, plans, and specifications, the department shall inspect the construction of industrialized housing and buildings. The executive director may designate approved third-party inspectors to perform the inspections subject to the rules of the commission.

(b) Local building officials may witness department inspections

to enable the local officials to make recommendations on inspection procedures to the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.010, eff. Sept. 1, 2003.

Sec. 1202.203. ON-SITE INSPECTIONS. (a) A municipal building official shall inspect all construction involving industrialized housing and buildings to be located in the municipality to ensure compliance with designs, plans, and specifications, including inspection of:

(1) the construction of the foundation system; and

(2) the erection and installation of the modules or modular components on the foundation.

(b) An approved third-party inspector shall perform on-site inspections of industrialized housing to be located outside the municipality.

(c) An inspection under Subsection (a) shall be conducted:

(1) at the permanent site, if the inspection is of industrialized housing; and

(2) at the commercial site, if the inspection is of industrialized buildings.

(d) If required by commission rule, an approved third-party inspector shall perform on-site inspections of industrialized buildings to be located outside the municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.011, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 3, eff. September 1, 2005.

Sec. 1202.204. RULES PROVIDING FOR DECALS OR INSIGNIA. (a) The commission by rule shall provide for the placement of decals or insignia on each transportable modular section or modular component to indicate compliance with the mandatory building codes.

(b) The commission by rule shall exempt a construction site

building from the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.012, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 714 (S.B. 443), Sec. 4, eff. September 1, 2005.

Sec. 1202.205. RECIPROCITY. (a) The commission by rule may authorize an inspection of industrialized housing or buildings constructed in another state to be performed by an inspector of the equivalent regulatory agency of the other state.

(b) The commission by rule may authorize an inspection of industrialized housing or buildings constructed in this state for use in another state.

(c) The commission shall enter into a reciprocity agreement with the equivalent regulatory agency of the other state as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.013, eff. Sept. 1, 2003.

SUBCHAPTER F. MUNICIPAL AUTHORITY

Sec. 1202.251. RESERVATION OF MUNICIPAL AUTHORITY. (a) Municipal authority is specifically and entirely reserved to a municipality, including, as applicable:

(1) land use and zoning requirements;

(2) building setback requirements;

(3) side and rear yard requirements;

(4) site planning and development and property line requirements;

(5) subdivision control; and

(6) landscape architectural requirements.

(b) Except as provided by Section 1202.253, requirements and regulations not in conflict with this chapter or with other state law relating to transportation, erection, installation, or use of industrialized housing or buildings must be reasonably and uniformly

applied and enforced without distinctions as to whether the housing or buildings are manufactured or are constructed on-site.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 363, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 816, Sec. 10.014, eff. Sept. 1, 2003.

Sec. 1202.252. MUNICIPAL REGULATION OF INDUSTRIALIZED HOUSING AND BUILDINGS. (a) A municipality that regulates the on-site construction or installation of industrialized housing and buildings may:

(1) require and review, for compliance with mandatory building codes, a complete set of designs, plans, and specifications bearing the council's stamp of approval for each installation of industrialized housing or buildings in the municipality;

(2) require that all applicable local permits and licenses be obtained before construction begins on a building site;

(3) require, in accordance with commission rules, that all modules or modular components bear an approved decal or insignia indicating inspection by the department; and

(4) establish procedures for the inspection of:

(A) the erection and installation of industrialized housing or buildings to be located in the municipality, to ensure compliance with mandatory building codes and commission rules; and

(B) all foundation and other on-site construction, to ensure compliance with approved designs, plans, and specifications.

(b) Procedures described by Subsection (a)(4) may require:

(1) before occupancy, a final inspection or test in accordance with mandatory building codes; and

(2) correction of any deficiency identified by the test or discovered in the final inspection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.015, eff. Sept. 1, 2003.

Sec. 1202.253. MUNICIPAL REGULATION OF SINGLE-FAMILY AND DUPLEX INDUSTRIALIZED HOUSING. (a) Single-family or duplex industrialized housing must have all local permits and licenses that are applicable

to other single-family or duplex dwellings.

(b) For purposes of this section, single-family or duplex industrialized housing is real property.

(c) A municipality may adopt regulations that require single-family or duplex industrialized housing to:

(1) have a value equal to or greater than the median taxable value for each single-family dwelling located within 500 feet of the lot on which the industrialized housing is proposed to be located, as determined by the most recent certified tax appraisal roll for each county in which the properties are located;

Text of subsec. (c)(2) as added by Acts 2003, 78th Leg., ch. 816, Sec. 10.016

(2) have exterior siding, roofing, roofing pitch, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located;

Text of subsec. (c)(2) as added by Acts 2003, 78th Leg., ch. 363, Sec. 2

(2) have exterior siding, roofing, roof pitch, foundation fascia, and fenestration compatible with the single-family dwellings located within 500 feet of the lot on which the industrialized housing is proposed to be located;

(3) comply with municipal aesthetic standards, building setbacks, side and rear yard offsets, subdivision control, architectural landscaping, square footage, and other site requirements applicable to single-family dwellings; or

(4) be securely fixed to a permanent foundation.

(d) For purposes of Subsection (c), "value" means the taxable value of the industrialized housing and the lot after installation of the housing.

(e) Except as provided by Subsection (c), a municipality may not adopt a regulation under this section that is more restrictive for industrialized housing than that required for a new single-family or duplex dwelling constructed on-site.

(f) This section does not:

(1) limit the authority of a municipality to adopt regulations to protect historic properties or historic districts; or

(2) affect deed restrictions.

Added by Acts 2003, 78th Leg., ch. 363, Sec. 2, eff. June 18, 2003;

Acts 2003, 78th Leg., ch. 816, Sec. 10.016, eff. Sept. 1, 2003.

SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 1202.301. PROHIBITED PRACTICES. (a) In this section, "person" means an individual, partnership, company, corporation, association, or other group, however organized.

(b) A person may not construct, sell or offer to sell, lease or offer to lease, or transport over a street or highway of this state any industrialized housing or building, or modular section or component of a modular section, in violation of this chapter or a rule of the commission or order of the commission or executive director.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.017, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.270, eff. Sept. 1, 2003.

Sec. 1202.302. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. In addition to imposing sanctions allowed under Section 51.353, the commission may deny, permanently revoke, or suspend for a definite period and specified location or geographic area a certificate of registration if the commission finds that the applicant or registrant:

(1) provided false information on an application or other document filed with the department;

(2) failed to pay a fee or file a report required by the department for the administration or enforcement of this chapter;

(3) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code; or

(4) violated:

(A) this chapter;

(B) a rule adopted by the commission or order issued by the commission or the executive director under this chapter; or

(C) a decision, action, or interpretation of the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 2, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 10.018, eff. Sept. 1, 2003.

TITLE 8. REGULATION OF ENVIRONMENTAL AND INDUSTRIAL TRADES
CHAPTER 1301. PLUMBERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1301.001. SHORT TITLE. This chapter may be cited as the Plumbing License Law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Plumbing Examiners.

(1-a) "Control valve" means a valve that operates each time water is supplied to, or shut off from, a receptacle or plumbing fixture. The term does not include a stop valve that may be installed in the water supply branch to the control valve.

(1-b) "Executive director" means the executive director of the Texas State Board of Plumbing Examiners.

(2) "Drain cleaner" means a person who:

(A) has completed at least 4,000 hours working under the supervision of a responsible master plumber as a drain cleaner-restricted registrant;

(B) has fulfilled the requirements of and is registered with the board; and

(C) installs cleanouts and removes and resets p-traps to eliminate obstructions in building drains and sewers under the supervision of a responsible master plumber.

(3) "Drain cleaner-restricted registrant" means a person who:

(A) has worked as a plumber's apprentice under the supervision of a responsible master plumber;

(B) has fulfilled the requirements of and is registered with the board; and

(C) clears obstructions in sewer and drain lines through any code-approved existing opening under the supervision of a responsible master plumber.

(4) "Journeyman plumber" means a person licensed under this chapter who:

(A) has met the qualifications for registration as a plumber's apprentice or for licensing as a tradesman plumber-limited license holder;

(B) has completed at least 8,000 hours working under the supervision of a responsible master plumber;

(C) installs, changes, repairs, services, or renovates plumbing or supervises any of those activities under the supervision of a responsible master plumber;

(D) has passed the required examination; and

(E) has fulfilled the other requirements of the board.

(5) "Master plumber" means a person licensed under this chapter who:

(A) is skilled in the design, planning, and superintending of plumbing and in the practical installation, repair, and servicing of plumbing;

(B) has worked as a journeyman plumber:

(i) for at least four years; or

(ii) for at least one year and has successfully completed a training program approved by the United States Department of Labor Office of Apprenticeship or another nationally recognized apprentice training program accepted by the board;

(C) performs or supervises plumbing work;

(D) has passed the required examination; and

(E) has fulfilled the other requirements of the board.

(5-a) "Multipurpose residential fire protection sprinkler specialist" means a person who holds an endorsement issued under Section 1301.3565.

(6) "Plumber's apprentice" means a person other than a master plumber, journeyman plumber, or tradesman plumber-limited license holder who, as the person's principal occupation, learns about and assists in the installation of plumbing, has fulfilled the requirements of and is registered by the board, and works under the supervision of a responsible master plumber and the direct supervision of a licensed plumber.

(7) "Plumbing" means:

(A) a fixture, appurtenance, appliance, or piping, including a disposal system, used to:

(i) supply, distribute, circulate, or recirculate

water, other liquid, or gas; or

(ii) eliminate sewage for a personal or domestic purpose;

(B) a fixture, appurtenance, appliance, or piping used outside a building to connect the building to:

(i) a supply of water, other liquid, medical gases and vacuum, or other gas on the premises; or

(ii) the main in the street or alley or at the curb;

(C) a fixture, appurtenance, appliance, or piping, including a drain or waste pipe, used to carry wastewater or sewage from or within a building to:

(i) a sewer service lateral at the curb or in the street or alley; or

(ii) a disposal or septic terminal that holds private or domestic sewage; or

(D) the installation, repair, service, or maintenance of a fixture, appurtenance, appliance, or piping described by Paragraph (A), (B), or (C).

(8) "Plumbing inspector" means a person who:

(A) is employed by a political subdivision or state agency, or contracts as an independent contractor with a political subdivision or state agency, to inspect plumbing in connection with health and safety laws, including ordinances, and plumbing and gas codes;

(B) has passed the required examination; and

(C) has fulfilled the other requirements of the board.

(9) "Residential utilities installer" means a person who:

(A) has completed at least 2,000 hours working under the supervision of a master plumber as a plumber's apprentice;

(B) has fulfilled the requirements of and is registered with the board; and

(C) constructs and installs yard water service piping for one-family or two-family dwellings and building sewers under the supervision of a responsible master plumber.

(9-a) "Responsible master plumber" means a person licensed as a master plumber under this chapter who:

(A) allows the person's master plumber license to be used by one plumbing company for the purpose of offering and performing plumbing work under the person's master plumber license;

(B) is authorized to obtain permits for plumbing work;

(C) assumes responsibility for plumbing work performed under the person's license; and

(D) has submitted a certificate of insurance as required by Section 1301.3576.

(10) "Tradesman plumber-limited license holder" means a person who:

(A) has:

(i) completed at least 4,000 hours working under the direct supervision of a journeyman or master plumber as a plumber's apprentice; or

(ii) successfully completed a coherent sequence of courses in the plumbing trade that are offered through a career and technology education program, as described by Section 1301.3542;

(B) has passed the required examination;

(C) constructs and installs plumbing for one-family or two-family dwellings under the supervision of a responsible master plumber; and

(D) has fulfilled the other requirements of the board.

(11) "Water supply protection specialist" means a person who holds an endorsement issued by the board to engage in:

(A) customer service inspections, as defined by rule of the Texas Commission on Environmental Quality; and

(B) the installation, service, and repair of plumbing associated with the treatment, use, and distribution use of rainwater to supply a plumbing fixture or appliance.

(12) "Water treatment" means a business conducted under contract that requires ability, experience, and skill in analyzing water to determine how to treat influent and effluent water to change or purify the water or to add or remove minerals, chemicals, or bacteria. The term does not include treatment of rainwater or the repair of systems for rainwater harvesting. The term includes:

(A) installing and servicing fixed or portable water treatment equipment in a public or private water treatment system; or

(B) making connections necessary to install a water treatment system.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 819, Sec. 1(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.301(a), eff. Sept. 1,

2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 1, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 1, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.002, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.003, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 973 (H.B. 2255), Sec. 1, eff. September 1, 2015.
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 1, eff. May 26, 2021.
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 2, eff. May 26, 2021.

Sec. 1301.003. APPLICATION OF SUNSET ACT. The Texas State Board of Plumbing Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2033.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.09, eff. June 17, 2011.
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 3, eff. May 26, 2021.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 2.18, eff. June 18, 2023.

Sec. 1301.004. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION

OF CERTAIN TRANSACTIONS. Except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

Added by Acts 2009, 81st Leg., R.S., Ch. 937 (H.B. 3129), Sec. 1, eff. June 19, 2009.

SUBCHAPTER B. EXEMPTIONS

Sec. 1301.051. PLUMBING BY PROPERTY OWNER IN HOMESTEAD. A property owner is not required to be licensed under this chapter to perform plumbing in the property owner's homestead.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.052. WORK INSIDE COUNTIES OR INSIDE OR OUTSIDE MUNICIPALITIES. A person is not required to be licensed under this chapter to perform plumbing, other than plumbing performed in conjunction with new construction, repair, or remodeling, on a property that is:

(1) located in a subdivision or on a tract of land that is not required to be platted under Section 232.0015, Local Government Code;

(2) not connected to a public water system and is located outside a municipality;

(3) located outside a municipality and connected to a public water system that does not require a license to perform plumbing; or

(4) located inside a municipality that is within a county that has fewer than 50,000 inhabitants and that:

(A) has fewer than 5,000 inhabitants; and

(B) by municipal ordinance has authorized a person who is not licensed under this chapter to perform plumbing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 819, Sec. 3(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 2, eff. September 1, 2009.

Sec. 1301.053. WORK INCIDENTAL TO OTHER PROFESSIONS. (a) A person is not required to be licensed under this chapter to perform:

(1) plumbing incidental to and in connection with the business in which the person is employed or engaged if the person:

(A) is regularly employed as or acting as a maintenance person or maintenance engineer; and

(B) does not engage in plumbing for the public;

(2) construction, installation, or maintenance on the premises or equipment of a railroad if the person is an employee of the railroad who does not engage in plumbing for the public;

(3) plumbing if the person is engaged by a public service company to:

(A) lay, maintain, or operate its service mains or lines to the point of measurement; and

(B) install, change, adjust, repair, remove, or renovate appurtenances, equipment, or appliances;

(4) appliance installation and service work, other than installation and service work on water heaters, that involves connecting appliances to existing openings with a code-approved appliance connector if the person performs the work as an appliance dealer or an employee of an appliance dealer; or

(5) water treatment installations, exchanges, services, or repairs, other than the treatment of rainwater to supply a plumbing fixture or appliance.

(b) Work described by this section is subject to inspection and approval as provided by applicable state law or municipal ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.303(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 2, eff. September 1, 2013.

Sec. 1301.054. IRRIGATORS AND WATER WELL PUMP INSTALLERS. A person is not required to be licensed under this chapter to perform plumbing if the person holds a:

(1) certificate of registration as an irrigator issued under Chapter 1903; or

(2) license as a water well pump installer issued under Chapter 1902.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.055. LP GAS INSTALLERS. A person is not required to be licensed under this chapter to perform LPG system installation if the person performs the LPG system installation as an LP gas installer licensed under Subchapter D, Chapter 113, Natural Resources Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.303(a), eff. Sept. 1, 2003.

Sec. 1301.056. LAWN IRRIGATION SYSTEMS. A person licensed by the board is not required to be licensed by another board or agency to install or work on a lawn irrigation system.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.057. SELF-HELP PROJECT. (a) A person is not required to be licensed under this chapter to perform plumbing, limited to the provision of a residential potable water supply or residential sanitary sewer connection, for a project that:

(1) is in a county a part of which is within 50 miles of an international border; and

(2) is performed by an organization that:

(A) is certified by the Texas Natural Resource

Conservation Commission to provide self-help project assistance; and

(B) provides the board with the following information before the 30th day before the date the project begins:

(i) the exact location of the project;

(ii) the intended duration of the project; and

(iii) other information the board requires.

(b) The board may require under Subsection (a)(2)(B)(iii) that the organization provide a post-construction report signed by a plumbing inspector stating that the plumbing is safe.

(c) The board may provide training to an organization that provides self-help project assistance under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.058. TESTING OF MEDICAL GAS AND VACUUM PIPING. A person is not required to be licensed under this chapter to verify medical gas and vacuum piping integrity and content.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.303(a), eff. Sept. 1, 2003.

Sec. 1301.059. WORK PERFORMED ON CERTAIN PRIVATE PROPERTY. (a) A person is not required to be licensed under this chapter to perform work consisting of installing, servicing, or repairing service mains or service lines that provide water, sewer, or storm drainage services on private property in an area that extends from a public right-of-way or public easement to not less than five feet from a building or structure.

(b) This section does not apply to plumbing work performed on private property designated for use as a one-family or two-family dwelling.

Added by Acts 2023, 88th Leg., R.S., Ch. 715 (H.B. 2334), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. TEXAS STATE BOARD OF PLUMBING EXAMINERS

Sec. 1301.151. TEXAS STATE BOARD OF PLUMBING EXAMINERS MEMBERSHIP. (a) The Texas State Board of Plumbing Examiners

consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) one member who has at least 10 years' practical experience and is licensed as a master plumber;

(2) one member who has at least five years' practical experience and is licensed as a journeyman plumber;

(3) one member who has at least five years' practical experience and is licensed as a plumbing inspector;

(4) one member who has been a responsible master plumber for at least five years with at least 10 years' experience as a licensed journeyman plumber or master plumber;

(5) one member who is a licensed engineer practicing in the field of plumbing engineering;

(6) two members who are building contractors with at least five years' contracting experience, one of whom is principally engaged in home building and one of whom is principally engaged in commercial building; and

(7) two members who represent the public.

(b) Each member of the board must be a United States citizen.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 819, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.304(a), eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 973 (H.B. 2255), Sec. 2, eff. September 1, 2015.

Sec. 1301.152. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the building construction industry;

(2) is employed by or participates in the management of an agency or business entity related to the building construction industry; or

(3) has, other than as a consumer, a financial interest in

a business entity related to the building construction industry.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.153. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of building construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of building construction.

(c) A person may not be a member of the board or act as the general counsel to the board or the agency if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the agency.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 5, eff. Sept. 1, 2003.

Sec. 1301.154. TERMS. Board members serve staggered six-year terms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.155. ISSUANCE OF COMMISSION. On presentation of the constitutional oath of office and a certificate of appointment, the

secretary of state shall issue a commission to a board member as evidence of the person's authority to act as a board member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.156. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 1301.151 or 1301.152;

(2) does not maintain during service on the board the qualifications required by Section 1301.151 or 1301.152;

(3) is ineligible for membership under Section 1301.153;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 6, eff. Sept. 1, 2003.

Sec. 1301.157. OFFICERS. (a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) The board shall elect a secretary from its membership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 7, eff. Sept. 1, 2003.

Sec. 1301.158. PER DIEM; REIMBURSEMENT. (a) A board member may not receive a fixed salary for service on the board.

(b) A board member is entitled to receive a per diem as set by the General Appropriations Act for each day the member engages in the business of the board.

(c) A board member may not receive reimbursement for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.159. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) the programs operated by the agency;

(3) the role and functions of the agency;

(4) the rules of the agency, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the agency;

(6) the results of the most recent formal audit of the agency;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the agency or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 8, eff. Sept. 1, 2003.

SUBCHAPTER D. EXECUTIVE DIRECTOR AND OTHER BOARD PERSONNEL

Sec. 1301.201. EXECUTIVE DIRECTOR AND STAFF. (a) The board shall employ an executive director as the executive head of the agency.

(b) The board may employ personnel as necessary to administer this chapter. The board may determine the compensation and duties of its employees and the terms of their employment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 819, Sec. 10, eff. Sept. 1, 2003.

Sec. 1301.202. CERTAIN PLUMBING EXAMINERS. (a) If an examination required for the issuance of a license, registration, or endorsement under this chapter contains a practical component, the board shall employ or contract with one or more plumbing examiners to administer that portion of the examination. A plumbing examiner must:

(1) hold a license as a plumber issued under this chapter;

(2) be knowledgeable of this chapter and municipal ordinances relating to plumbing; and

(3) be qualified by experience and training in plumbing practice.

(b) A plumbing examiner shall:

(1) examine the fitness and qualifications of a person applying to the board for a license as a master plumber, journeyman plumber, tradesman plumber-limited license holder, or plumbing

inspector; and

(2) promptly certify the result of the examination to the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(a), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 973 (H.B. 2255), Sec. 3, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 4, eff. May 26, 2021.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 5, eff. May 26, 2021.

Sec. 1301.203. FIELD REPRESENTATIVE; INSPECTIONS. (a) The board may employ a field representative to assist the board in enforcing this chapter and rules adopted under this chapter. A field representative must:

(1) hold a license as a plumber under this chapter;

(2) be knowledgeable of this chapter and municipal ordinances relating to plumbing; and

(3) be qualified by experience and training in plumbing practice.

(b) A field representative may:

(1) conduct on-site license checks to determine compliance with this chapter;

(2) investigate consumer complaints filed under Section 1301.303;

(3) assist municipal plumbing inspectors in enforcing this chapter; and

(4) in the performance of the field representative's other duties under this chapter, check the license, registration, or endorsement of a person regulated by the Texas Department of Licensing and Regulation in accordance with the memorandum of understanding adopted under Section 1301.259 and report any noncompliance to that agency.

(c) The board by rule shall assign priorities and prescribe procedures for conducting checks described by Subsection (b)(1) based

on:

(1) the degree of potential harm to public health, safety, or property;

(2) the history of previous violations of this chapter or a rule adopted under this chapter by a person regulated under this chapter; and

(3) any other indication of increased risk to public health, safety, or property, as determined by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 4, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 6, eff. May 26, 2021.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 7, eff. May 26, 2021.

Sec. 1301.204. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The presiding officer of the board or the presiding officer's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of each nonentry level position at least 10 days before the date of any public posting.

(b) The presiding officer of the board or the presiding officer's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.205. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the agency to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the agency's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 12, eff. Sept. 1, 2003.

Sec. 1301.207. STANDARDS OF CONDUCT. The executive director or the executive director's designee shall provide to members of the board and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 12, eff. Sept. 1, 2003.

Sec. 1301.208. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the agency.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 12, eff. Sept. 1, 2003.

SUBCHAPTER E. BOARD POWERS AND DUTIES

Sec. 1301.251. GENERAL DUTIES OF BOARD. The board shall:

(1) administer this chapter;

(2) adopt and enforce rules necessary to administer this chapter; and

(3) keep a record of each proceeding conducted before and action taken by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.252. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule restricting advertising or competitive bidding by a person licensed under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.253. FEES. The board shall set fees in amounts that are reasonable and necessary to cover the cost of administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.254. SEAL. The board shall have an official seal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.255. ADOPTION OF PLUMBING CODES. (a) The board shall adopt the following plumbing codes, as those codes existed on

May 31, 2001:

(1) the Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and

(2) the International Plumbing Code, as published by the International Code Council.

(b) The board by rule may adopt later editions of the plumbing codes listed in Subsection (a).

(c) Plumbing installed in an area not otherwise subject to regulation under this chapter by a person licensed under this chapter must be installed in accordance with a plumbing code adopted by the board under Subsection (a) or (b).

(d) In adopting a code for the design, installation, and maintenance of a plumbing system under this section, a municipality or an owner of a public water system may amend any provisions of the code to conform to local concerns that do not substantially vary from board rules or other rules of this state.

(e) Plumbing installed in compliance with a code adopted under Subsection (a), (b), or (d) must be inspected by a plumbing inspector. To perform the inspection, the political subdivision may contract with any plumbing inspector or qualified plumbing inspection business, as determined by the political subdivision, that is paid directly by the political subdivision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.306(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1212 (H.B. 1850), Sec. 1, eff. September 1, 2007.

Sec. 1301.256. SUBPOENA. (a) The board may request and, if necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) The board, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a

person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) any county in which the board may hold a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Text of section as added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(b)

For text of section as added by Acts 2003, 78th Leg., ch. 819, Sec. 13, see Sec. 1301.258, ante.

Sec. 1301.258. ADVISORY COMMITTEES. The board may appoint advisory committees as it considers necessary. An advisory committee shall serve without compensation or reimbursement and is subject to Section 2110.008, Government Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(b), eff. Sept. 1, 2003.

Text of section as added by Acts 2003, 78th Leg., ch. 819, Sec. 13

For text of section as added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(b), see Sec. 1301.258, post.

Sec. 1301.258. BOARD COMMITTEES. (a) The board may create committees to assist the board in exercising its powers and duties.

(b) The presiding officer of the board shall appoint the members of the committees.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(1), eff. May 26, 2021.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 8, eff. May 26, 2021.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(1), eff.

May 26, 2021.

Sec. 1301.259. MEMORANDUM OF UNDERSTANDING. (a) The board and the Texas Department of Licensing and Regulation shall enter into a memorandum of understanding to improve services and coordinate the functions of each agency.

(b) The memorandum of understanding must:

(1) require each agency to share:

(A) information technology to support the regulation and enforcement of occupational licenses; and

(B) information on regulatory practices for licensed occupations, including policy issues that affect the regulation of licensed occupations, standardization of complaint and enforcement techniques, and model licensing techniques;

(2) authorize enforcement officers from each agency to check licenses, registrations, or endorsements held by persons practicing occupations regulated by the other agency and report noncompliance to that agency; and

(3) state the circumstances when a joint investigation between the board and the Texas Department of Licensing and Regulation is appropriate.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.260. POLICY ON TECHNOLOGICAL SOLUTIONS. The board shall develop and implement a policy requiring the executive director and agency employees to research and propose appropriate technological solutions to improve the agency's ability to perform its functions. The technological solutions must:

(1) ensure that the public is able to easily find information about the agency on the Internet;

(2) ensure that persons who want to use the agency's services are able to:

(A) interact with the agency through the Internet; and

(B) access any service that can be provided effectively through the Internet; and

(3) be cost-effective and developed through the agency's planning processes.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.261. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of agency rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the agency's jurisdiction.

(b) The agency's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the agency.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.262. PLUMBING INSPECTOR CODE OF CONDUCT. The board by rule shall establish a code of conduct for licensed plumbing inspectors. The code of conduct shall require a plumbing inspector to enforce this chapter and board rules in a consistent manner across job sites.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 13, eff. Sept. 1, 2003.

Sec. 1301.263. EXAMINATION ADMINISTRATION AND CONTENT. (a) The board may adopt, recognize, develop, or contract for an examination required by this chapter, including the administration of the examination.

(b) For each examination required by this chapter, the board

shall, to the extent feasible, adopt, recognize, develop, or contract for an examination that includes components that may be administered:

(1) in writing or online; and

(2) by a person other than a plumbing examiner described by Section 1301.202.

(c) The board shall determine the passing score for an examination required by this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 9, eff. May 26, 2021.

SUBCHAPTER F. CONSUMER INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1301.301. CONSUMER INTEREST INFORMATION. (a) The board shall prepare information of consumer interest describing the regulatory functions of the board and the procedures by which consumer complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.3015. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the agency.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 14, eff. Sept. 1, 2003.

Sec. 1301.302. CONTRACT INFORMATION; REQUIRED DOCUMENTS. A written proposal, invoice, or contract relating to plumbing services performed by or under the direction of a plumber licensed under this chapter must contain the name and license number of the responsible master plumber and the name, mailing address, and telephone number of the board. The person who performed the services shall give the customer an invoice or completed contract document on completion of the job, regardless of whether the person charged a fee for performing the services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.308(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 2, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 3, eff. September 1, 2013.

Sec. 1301.303. COMPLAINTS. (a) The board may investigate an alleged violation of this chapter by a person who:

(1) is licensed under this chapter;

(2) is the owner of a plumbing company subject to this chapter; or

(3) performs plumbing without holding a license under this chapter.

(b) The board shall maintain a file on each written complaint filed with the board. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the agency;

(3) the subject matter of the complaint;

(4) the name of any municipality and the county in which the conduct that is the subject of the complaint occurred;

(5) the name of each person contacted in relation to the complaint;

(6) a summary of the results of the review or investigation of the complaint; and

(7) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(c) The agency shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the agency's policies and procedures relating to complaint investigation and resolution.

(d) The board, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(e) The board by rule shall assign priorities and prescribe investigative procedures for investigations of complaints based on:

(1) the severity of the conduct alleged in the complaint;

(2) the degree of harm to public health, safety, or property;

(3) the history of previous violations of this chapter by the person who is the subject of the complaint; and

(4) any other indication of increased risk to public health, safety, or property, as determined by the board.

(f) The board shall maintain information about complaints, including source, type, and geographical area, to identify and address regulatory problem areas and focus enforcement in those areas.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 15, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 4, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 10, eff. May 26, 2021.

Sec. 1301.304. INVESTIGATION OF COMPLAINTS. (a) The board or an employee designated by the board may investigate an alleged violation of this chapter or a board rule.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(2), eff. May 26, 2021.

(c) The board shall conduct joint investigations with the Texas Department of Licensing and Regulation as circumstances require.

(d) Unless a threat to health or safety exists, the board may choose to not investigate a complaint in which the person filing the complaint and the person who is the subject of the complaint are engaged in litigation related to the subject matter of the complaint until the outcome of the litigation is finally determined if the board determines the complaint process is being abused.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 16, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 2, eff.

September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 11, eff. May 26, 2021.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(2), eff. May 26, 2021.

Sec. 1301.305. PUBLIC ACCESS TO INFORMATION RELATING TO DISCIPLINARY ACTIONS. (a) The board shall make available to the public through a toll-free telephone number, Internet website, or other easily accessible medium determined by the board the following information relating to a disciplinary action taken regarding a person regulated under this chapter:

(1) the identity of the person;

(2) the nature of the complaint that was the basis of the disciplinary action; and

(3) the disciplinary action taken by the board.

(b) The board may not include the name of the person who filed the complaint in the information made available under Subsection (a).

(c) The board shall present the information made available under Subsection (a) in an impartial manner using commonly understood language.

(d) The board shall regularly update the information made available under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 12, eff. May 26, 2021.

SUBCHAPTER G. LICENSE, ENDORSEMENT, AND REGISTRATION REQUIREMENTS

Sec. 1301.351. LICENSE, ENDORSEMENT, OR REGISTRATION REQUIRED. (a) A person, other than a responsible master plumber, may not engage in plumbing unless:

(1) the person holds the proper license, registration, or endorsement required by this chapter; and

(2) the person's work is supervised and controlled by a person licensed under this chapter.

(a-1) A person may not act as a responsible master plumber unless the person holds the appropriate license and meets the requirements for a responsible master plumber under this chapter.

(a-2) A person that advertises or otherwise offers to perform or provide plumbing must secure the services of a responsible master plumber.

(b) A person may not serve as a plumbing inspector unless the person is licensed under this chapter as a plumbing inspector.

(c) A license holder who is supervising and controlling under Subsection (a)(2) the work of a person engaged in the business of plumbing in the construction of a new one-family or two-family dwelling in an unincorporated area of the state must have training and management responsibility for, and shall review and inspect, the person's work. The license holder is not required to provide continuous or uninterrupted on-the-job oversight of the person's work.

(d) A person who holds a license or registration issued under this chapter shall carry the license or registration on his or her person while engaged in plumbing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 17, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.309(b), (c), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 5, eff. September 1, 2013.

Sec. 1301.3515. CRIMINAL HISTORY RECORD INFORMATION FOR LICENSE ISSUANCE. (a) The board shall require that an applicant for a license submit a complete and legible set of fingerprints, on a form prescribed by the board, to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation.

(b) The board may not issue a license to a person who does not comply with the requirement of Subsection (a).

(c) The board shall conduct a criminal history record information check of each applicant for a license using information:

(1) provided by the individual under this section; and

(2) made available to the department by the Department of Public Safety, the Federal Bureau of Investigation, and any other criminal justice agency under Chapter 411, Government Code.

(d) The board may:

(1) enter into an agreement with the Department of Public Safety to administer a criminal history record information check required under this section; and

(2) authorize the Department of Public Safety to collect from each applicant the costs incurred by the Department of Public Safety in conducting the criminal history record information check.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 13, eff. May 26, 2021.

Sec. 1301.352. EXAMINATION REQUIRED. The board shall issue a license or endorsement as a master plumber, journeyman plumber, plumbing inspector, tradesman plumber-limited license holder, medical gas piping installation endorsement holder, water supply protection specialist, or multipurpose residential fire protection sprinkler specialist to a person who demonstrates the fitness, competence, and qualifications to receive the license or endorsement by passing a uniform, reasonable examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.310(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 4, eff. September 1, 2009.

Sec. 1301.3521. EXAMINATION FEE REFUND. (a) The board shall refund the examination fee paid by an applicant who:

(1) provides advance notice of the applicant's inability to take the examination; or

(2) is unable to take the examination because of an emergency.

(b) The board shall adopt rules that establish the required notification period and the emergency situations that warrant a refund.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 18, eff. Sept. 1, 2003.

Sec. 1301.3522. EXAMINATION REVIEW COURSE. (a) The board shall develop a review course in English and Spanish to assist license applicants in preparation for each license examination offered by the board. If the board provides the review course, the board may charge a fee to an applicant who applies to take the review course.

(b) The board may provide the review course training materials to private course providers for a fee determined by the board.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 18, eff. Sept. 1, 2003.

Sec. 1301.353. INSPECTOR CONFLICTS PROHIBITED. The board may not issue a plumbing inspector license to a person who has a financial or advisory interest in a plumbing company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.354. PLUMBER'S APPRENTICE. (a) A person who desires to learn the trade of plumbing must register as a plumber's apprentice before assisting a person licensed under this chapter in the trade of plumbing.

(b) A person who has worked as a plumber's apprentice for a period established by law or board rule may apply to take an examination for a license as a journeyman plumber or tradesman plumber-limited license holder. Before the applicant may take the examination, the applicant must complete classroom training provided by a board-approved instructor in a board-approved training program in the areas of health and safety, applicable plumbing codes, and water conservation for at least:

(1) 24 hours if the applicant is applying to take a tradesman plumber-limited license holder examination; or

(2) 48 hours if the applicant is applying to take a journeyman plumber examination.

(b-1) At the applicant's request, the board may credit an applicant under Subsection (b) with a number of hours determined by board rule against the number of hours of work experience required to

take an examination if the applicant has received an associate of applied science degree from a plumbing technology program that:

(1) includes a combination of classroom and on-the-job training; and

(2) is approved by the board and the Texas Higher Education Coordinating Board.

(c) At the applicant's request, the board may credit an applicant under Subsection (b) with up to 1,000 hours of the work experience required before taking an examination if the applicant has completed the classroom portion of a training program:

(1) approved by the United States Department of Labor, Office of Apprenticeship; or

(2) provided by a person approved by the board and based on course materials approved by the board.

(c-1) At the applicant's request, the board may credit an applicant under Subsection (b) with up to 250 hours of the work experience required before taking an examination if the applicant has completed a coherent sequence of courses in the construction trade that are offered through a career and technical education program that is approved by the State Board of Education.

(d) Notwithstanding the classroom training required by Subsection (b), a plumber's apprentice may apply for and take an examination for a license as a journeyman plumber or tradesman plumber-limited license holder if the apprentice has received an associate of applied science degree from a plumbing technology program that:

(1) includes a combination of classroom and on-the-job training; and

(2) is approved by the board and the Texas Higher Education Coordinating Board.

(e) Notwithstanding Subsection (b), a plumber's apprentice who is enrolled in good standing in a training program approved by the United States Department of Labor, Office of Apprenticeship, may take an examination without completing the classroom training required by Subsection (b)(1) or (2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.311(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 181 (H.B. 1758), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 973 (H.B. 2255), Sec. 4, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 281 (H.B. 3049), Sec. 1, eff. May 29, 2017.

Sec. 1301.3541. APPRENTICE REGISTRATION REQUIREMENTS. The board by rule may adopt registration requirements for plumber's apprentices, including training and education requirements.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 19, eff. Sept. 1, 2003.

Sec. 1301.3542. CAREER AND TECHNOLOGY EDUCATION PROGRAM FOR TRADESMAN PLUMBER-LIMITED LICENSE; INSTRUCTORS. (a) Notwithstanding Section 1301.354, a person who successfully completes a coherent sequence of courses in the plumbing trade that are offered through a career and technology education program may apply for and take an examination for a license as a tradesman plumber-limited license holder. The board may not require the person to register as a plumber's apprentice, pay any fee, or comply with Section 1301.354 or any other requirement of this chapter that applies to a person's eligibility to apply for and take the examination.

(b) A student of any age enrolled in a high school or institution of higher education is eligible to take the sequence of courses described by Subsection (a) without registering as a plumber's apprentice, paying any registration fee to the board, or complying with Section 1301.354 or any other requirement of this chapter that applies to enrolling or participating in those courses.

(c) If an applicant described by Subsection (a) successfully passes the examination for a license as a tradesman plumber-limited license holder, the board shall issue the applicant the license.

(d) The board shall develop the courses described by Subsection (a). If the courses are to be offered at a high school, the courses must be approved by the State Board of Education.

(e) The courses must include an appropriate number of hours of

classroom instruction and a practical component. The board may credit on-the-job training toward meeting the requirements under the practical component.

(f) A person may not provide instruction in a career and technology education program described by this section unless the person is licensed under this chapter as a master plumber, journeyman plumber, or plumbing inspector.

(g) A person described by Subsection (f) may provide the instruction in a full-time or part-time capacity as an employee, contractor, or volunteer of a high school or institution of higher education.

(h) The board may adopt rules necessary to implement this section, including procedures to verify a student's successful completion of the sequence of courses described by Subsection (a).

(i) In this section:

(1) "Career and technology education program" means a career and technology education program under Subchapter F, Chapter 29, Education Code, or similar program offered by an institution of higher education.

(2) "Institution of higher education" means an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003, Education Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 14, eff. May 26, 2021.

Sec. 1301.355. EXAMINATION RESULTS. (a) The board shall notify each examinee of the results of an examination not later than the 30th day after the date the examination is administered.

(b) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.356. ENDORSEMENT: MEDICAL GAS PIPING INSTALLATION. (a) A person may not install pipe used solely to transport gas for medical purposes or a vacuum used for medical purposes unless the

person:

(1) is licensed under this chapter as a master plumber or journeyman plumber; and

(2) holds an endorsement issued under this section.

(b) A person is eligible to receive a medical gas piping installation endorsement if the person performs satisfactorily on a separate examination related to the endorsement.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(3), eff. May 26, 2021.

(d) An endorsement under this section coincides with rules adopted by the Texas Department of Health.

(e) A plumbing inspector who meets the requirements of the board may hold a medical gas endorsement and inspect medical gas piping installations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.312(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 5, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(3), eff. May 26, 2021.

Sec. 1301.3565. ENDORSEMENT: MULTIPURPOSE RESIDENTIAL FIRE PROTECTION SPRINKLER SPECIALIST. (a) A person may not engage in the installation of a multipurpose residential fire protection sprinkler system that uses a single piping system to provide potable water for fire protection sprinklers and for domestic plumbing fixtures and appliances unless the person:

(1) is licensed under this chapter as a master plumber or journeyman plumber; and

(2) holds an endorsement issued under this section.

(a-1) A person may not design a multipurpose residential fire protection sprinkler system for installation under this section unless the person:

(1) is licensed under this chapter as a master plumber; and

(2) holds an endorsement issued under this section.

(b) The board shall issue an endorsement as a multipurpose

residential fire protection sprinkler specialist to a person who:

(1) holds the license described by Subsection (a);

(2) applies to the board on a form prescribed by the board;

(3) pays a fee set by the board;

(4) presents evidence satisfactory to the board of successful completion of a training program approved by the board that provides the training necessary for the proper design and installation of a multipurpose residential fire protection sprinkler system as required by the applicable codes and standards recognized by the state; and

(5) passes an examination required by the board.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(4), eff. May 26, 2021.

(d) A person who holds an endorsement under this section may represent to the public that the person is a multipurpose residential fire protection sprinkler specialist.

(e) Notwithstanding any other law, a person who holds an endorsement under this section is not required to hold a license or registration issued by another state agency in order to install a multipurpose residential fire protection sprinkler system.

(e-1) Notwithstanding any other law, a master plumber who holds an endorsement under this section is not required to hold a license or registration issued by another state agency in order to design a multipurpose residential fire protection sprinkler system for installation under this section.

(f) A plumbing inspector who meets the requirements of the board may inspect a multipurpose residential fire protection sprinkler installation.

Added by Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 6, eff. September 1, 2009; Subsec. (a) eff. June 1, 2010.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 3, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(4), eff. May 26, 2021.

Sec. 1301.357. ENDORSEMENT: WATER SUPPLY PROTECTION SPECIALIST. (a) A person licensed under this chapter may not act as

a water supply protection specialist unless the person holds an endorsement issued under this section.

(b) The board shall issue an endorsement as a water supply protection specialist to a person who:

(1) is licensed under this chapter as a master plumber or journeyman plumber;

(2) applies to the board on a form prescribed by the board;

(3) pays a fee set by the board;

(4) presents evidence satisfactory to the board of successful completion of a certification program approved by the board for water supply protection specialists; and

(5) passes an examination required by the board.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(5), eff. May 26, 2021.

(d) A person who holds an endorsement under this section may represent to the public that the person is a water supply protection specialist.

(e) A person is not required to hold a water supply protection specialist endorsement if the person is employed by:

(1) a political subdivision; or

(2) an electric utility as defined by Section 31.002, Utilities Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 6, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(5), eff. May 26, 2021.

Sec. 1301.3575. REGISTRATION OF CERTAIN PERSONS. The board shall register a person who complies with this chapter as a drain cleaner, drain cleaner-restricted registrant, residential utilities installer, or plumber's apprentice.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(c), eff. Sept. 1, 2003.

Sec. 1301.3576. CERTIFICATE OF INSURANCE FOR RESPONSIBLE MASTER

PLUMBER. Before a master plumber works as a responsible master plumber, the master plumber must provide the board with a certificate of insurance that meets the requirements of Section 1301.552.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.315(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 7, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 4, eff. September 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 15, eff. May 26, 2021.

Sec. 1301.3581. RECIPROCITY. (a) The board may waive any prerequisite to obtaining a license, registration, or endorsement issued under this chapter for an applicant who holds a similar license, registration, or endorsement issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(b) The board may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity if the other state has requirements for a license, registration, or endorsement substantially equivalent to those of this state.

(c) An applicant under this section must:

(1) apply in the same manner and form as any other applicant under this chapter; and

(2) provide the board with documents and other evidence that substantiate the applicant's qualifications.

(d) An applicant for a license, registration, or endorsement issued under this section may not be required to undergo an examination to obtain the license, registration, or endorsement if the applicant has held an equivalent license, registration, or endorsement in another jurisdiction for at least two years. The board may adopt rules for determining whether a license, registration, or endorsement issued by another jurisdiction is equivalent to a license, registration, or endorsement issued under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 16, eff. May 26, 2021.

Sec. 1301.3585. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, the board shall credit verified military service, training, or education toward the licensing requirements, other than examination requirements, for a license issued under this chapter by the board.

(b) The board shall expedite the issuance of a provisional license or a license by endorsement or reciprocity under this chapter to an applicant who:

(1) has verified military experience; and

(2) holds a current license issued by another jurisdiction that has license requirements that are substantially equivalent to the license requirements of this state.

(c) The board shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 976 (H.B. 2028), Sec. 1, eff. June 14, 2013.

Sec. 1301.359. STATEWIDE VALIDITY OF LICENSE, ENDORSEMENT, OR REGISTRATION; NONTRANSFERABILITY. (a) A license, endorsement, or registration issued under this chapter is valid throughout this state.

(b) Except as provided by Section 1301.406, the number of a license, endorsement, or registration issued under this chapter is not assignable or transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.307(a), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1074 (H.B. 2464), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 273 (H.B. 2095), Sec. 1, eff. September 1, 2017.

Sec. 1301.360. TEMPORARY LICENSE. (a) The board by rule may provide for the issuance of a temporary license to an applicant who:

(1) submits to the board an application on a form prescribed by the board;

(2) meets preliminary qualifications established by board rule; and

(3) pays a fee set by the board.

(b) A temporary license issued under this section expires on the 30th day after the date of issuance and may not be renewed.

(c) A temporary license holder is subject to:

(1) this chapter;

(2) any law applicable to the activity for which the license is required, including municipal rules, orders, or ordinances; and

(3) any rule of the board applicable to the license.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 17, eff. May 26, 2021.

SUBCHAPTER H. LICENSE, ENDORSEMENT, AND REGISTRATION EXPIRATION AND RENEWAL

Sec. 1301.401. ANNUAL RENEWAL REQUIRED; EXCEPTION. (a) A license, registration, or endorsement under this chapter is valid for one year. Except as provided by Subsection (d), on payment of the required fee, a license, registration, or endorsement may be renewed annually.

(b) The board by rule may adopt a system under which licenses, endorsements, and registrations expire on various dates during the year.

(c) An endorsement issued under Section 1301.356, 1301.3565, or 1301.357 expires on the date the master plumber or journeyman plumber license of the endorsement holder expires. The board shall adopt rules to provide for the license holder to renew the endorsement in the same transaction as the license if the license holder:

(1) has completed any continuing education requirement established by rule and applicable to the endorsement; and

(2) complies with other requirements prescribed by board rule.

(d) A person who is employed by, under contract with, or

engaged as a volunteer by a school or institution of higher education to provide instruction in a career and technology education program described by Section 1301.3542 and provides meaningful course instruction in the program, as determined under rules adopted under Section 1301.407, is not required to pay a fee to renew the person's license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.307(c), eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 18, eff. May 26, 2021.

Sec. 1301.402. NOTICE OF LICENSE, ENDORSEMENT, OR REGISTRATION EXPIRATION. (a) Not later than the 31st day before the expiration date of a person's license, endorsement, or registration, the board shall send written notice of the impending expiration to the person at the person's last known address according to board records.

(b) The person shall notify the board not later than the 30th day after the date of receipt of the written notice of any change of name or address.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.307(c), eff. Sept. 1, 2003.

Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) A person who is otherwise eligible to renew a license, endorsement, or registration may renew an unexpired license, endorsement, or registration by paying the required renewal fee to the agency before the expiration date of the license, endorsement, or registration. A person whose license, endorsement, or registration has expired may not engage in activities that require a license, endorsement, or registration until the license, endorsement, or registration has been renewed.

(b) A person whose license or endorsement has been expired for 90 days or less may renew the license or endorsement by paying to the agency a renewal fee that is equal to 1-1/2 times the normally required renewal fee. A person whose registration has been expired

for 90 days or less may renew the registration by paying to the board a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license or endorsement has been expired for more than 90 days but less than two years may renew the license or endorsement by paying to the agency a renewal fee that is equal to two times the normally required renewal fee. A person whose registration has been expired for more than 90 days but less than two years may renew the registration by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license, endorsement, or registration has been expired for two years or more may not renew the license, endorsement, or registration. The person may obtain a new license, endorsement, or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license, endorsement, or registration.

(e) A person who held a license, endorsement, or registration in this state, moved to another state, and is currently holding a license, endorsement, or registration and has been in practice in the other state for the two years preceding the date of application may obtain a new license, endorsement, or registration without reexamination. The person must pay to the agency a fee that is equal to two times the normally required renewal fee for the license, endorsement, or registration.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(7), eff. May 26, 2021.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 21(a), eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(7), eff. May 26, 2021.

Sec. 1301.404. MANDATORY CONTINUING PROFESSIONAL EDUCATION. (a) The board by rule shall establish:

(1) minimum curriculum standards for continuing education programs and courses for persons who hold a license or endorsement issued under this chapter; and

(2) minimum qualifications for an instructor of the continuing education programs and courses described by Subdivision (1).

(b) A person who holds a license or endorsement under this chapter must complete at least six hours of continuing professional education annually to renew the person's license or endorsement. Three of the six hours must be in the subjects of health protection, energy conservation, and water conservation.

(c) The executive director shall approve:

(1) a program or course that meets the minimum curriculum standards established by the board under Subsection (a); and

(2) an instructor who meets the minimum qualifications established by the board under Subsection (a).

(d) A person may receive credit for participating in a continuing professional education program or course only if the program or course is approved by the executive director.

(e) A person may complete the continuing professional education requirement of this section through a correspondence course as approved by the executive director.

(f) The board by rule may exempt certain persons from the requirements of this section if the board determines that the exemption is in the public interest.

(g) A person who is employed by, under contract with, or engaged as a volunteer by a school or institution of higher education to provide instruction in a career and technology education program described by Section 1301.3542 and provides meaningful course instruction in the program, as determined under rules adopted under Section 1301.407, may renew the person's license and any endorsement without complying with Subsection (b) if the person completes the hours of continuing professional education required by that subsection every three years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.305(d), eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 19, eff. May 26, 2021.

Sec. 1301.405. MANDATORY TRAINING FOR DRAIN CLEANER, DRAIN CLEANER-RESTRICTED REGISTRANT, AND RESIDENTIAL UTILITIES INSTALLER. (a) To renew the certificate of registration, a person who holds a certificate of registration under this chapter as a drain cleaner, drain cleaner-restricted registrant, or residential utilities installer must annually complete at least six hours of approved training that includes training in health and safety requirements, board-approved plumbing codes, and water conservation.

(a-1) The board by rule shall establish:

(1) minimum curriculum standards for a training program described by Subsection (a) for persons who hold a registration under this chapter; and

(2) minimum qualifications for an instructor of the training program.

(a-2) The executive director shall approve:

(1) a training program that meets the minimum curriculum standards established by the board under Subsection (a-1); and

(2) an instructor who meets the minimum qualifications established by the board under Subsection (a-1).

(b) A person may receive credit for participating in a training program only if the program is approved by the executive director.

(c) The board by rule may exempt certain persons from the requirements of this section if the board determines that the exemption is in the public interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 6, eff. September 1, 2009.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 20, eff. May 26, 2021.

Sec. 1301.4055. PERIOD FOR COMPLETING CONTINUING EDUCATION. The board shall adopt rules to ensure that each holder of a license, registration, or endorsement has at least 12 months to complete any continuing education required for the renewal of the license, registration, or endorsement.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 21, eff. May 26, 2021.

Sec. 1301.406. TRANSFER OF LICENSE NUMBER. (a) On approval by the board, a person who holds an unexpired license under this chapter and whose license has been held continuously for at least 35 consecutive years may transfer the license number on the date of the person's retirement or death to another person who:

(1) is related within the second degree by consanguinity to the transferor; and

(2) holds a license issued under this chapter that is the same type of license as the license held by the transferor.

(b) The application for a transfer of a license number under this section must include the transferor's consent and a designation of whether the license number will transfer on the retirement or death of the transferor.

(c) The board shall transfer a license number to a person who submits an application and presents evidence satisfactory to the board that:

(1) the person meets the requirements under Subsections (a)(1) and (a)(2); and

(2) the transferor is retired or dead.

Added by Acts 2015, 84th Leg., R.S., Ch. 1074 (H.B. 2464), Sec. 2, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 273 (H.B. 2095), Sec. 2, eff. September 1, 2017.

Sec. 1301.407. PROCEDURES FOR VERIFYING CERTAIN EXEMPTIONS. The board, in consultation with the State Board of Education and the Texas Higher Education Coordinating Board, as appropriate, may adopt rules as necessary to verify whether a person qualifies for an exemption from the required renewal fee, as described by Section 1301.401(c), or an exemption from required continuing professional education, as described by Section 1301.404(g), including rules providing for obtaining and evaluating written verification from the applicable school or institution of higher education of the person's provision of meaningful course instruction in a career and technology education program described by Section 1301.3542.

Added by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 22, eff. May 26, 2021.

SUBCHAPTER I. DISCIPLINARY PROCEDURES

Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) The board shall revoke, suspend, deny, or refuse to renew a license, endorsement, or registration or shall reprimand a holder of a license, endorsement, or registration for a violation of this chapter, an order issued by the board, or a rule of the board.

(b) A person whose license, endorsement, or registration has been revoked may not apply for a new license, endorsement, or registration before the first anniversary of the date of revocation.

(c) The board may place on probation a person whose license, endorsement, or registration is suspended. If a license, endorsement, or registration suspension is probated, the board may require the person:

(1) to report regularly to the agency on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the board; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(d) The board by rule shall:

(1) adopt written guidelines to ensure that probation is administered consistently; and

(2) develop a system to track compliance with the probation requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 22(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 8, eff. September 1, 2009.

Sec. 1301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) A person is subject to disciplinary action under Section 1301.451 if the person violates this chapter, an order issued by the board, or a board rule. A violation of this chapter includes:

(1) attempting to obtain or obtaining a license, endorsement, or registration through fraud;

(2) wilfully, negligently, or arbitrarily violating a municipal rule or ordinance that regulates sanitation, drainage, or plumbing;

(3) making a misrepresentation of services provided or to be provided;

(4) making a false promise with the intent to induce a person to contract for a service;

(5) employing a person who does not hold a license or endorsement or who is not registered to engage in an activity for which a license, endorsement, or registration is required under this chapter;

(6) performing plumbing without holding the proper license, endorsement, or registration required by this chapter; or

(7) performing plumbing in violation of a plumbing code adopted under Section 1301.255.

(b) Retesting procedures may be used to determine whether grounds exist for suspension or revocation of a license, endorsement, or registration due to incompetence or a wilful violation by a person licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.313(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 9, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 23, eff. May 26, 2021.

Sec. 1301.4521. CONSEQUENCES OF CRIMINAL CONVICTION. (a) The board shall adopt rules in compliance with the guidelines authorized by Chapter 53 relating to criminal convictions.

(b) The board shall adopt a method to review the agency's compliance with Chapter 53 and the rules adopted under this section.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 23, eff. Sept. 1, 2003.

Sec. 1301.453. HEARING. A person is entitled to a hearing before the board if the board proposes to:

(1) deny the person's application for a license, endorsement, or registration; or

(2) suspend or revoke the person's license, endorsement, or registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.313(a), eff. Sept. 1, 2003.

Sec. 1301.454. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case for purposes of Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

SUBCHAPTER J. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1301.501. BACKFLOW PREVENTION. (a) A person may not sell, donate, or transfer a water closet plumbing fixture or other equipment that uses water if the fixture or equipment:

(1) does not comply with a state-approved plumbing code; and

(2) may permit the backflow of a nonpotable substance into a potable water supply.

(b) The board shall adopt rules under this section that include a list describing the types of plumbing to which this section applies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.502. CITATION. (a) A water district plumbing inspector or, within the jurisdiction of the municipality, municipal plumbing inspector may issue a citation to a person who engages in conduct described by Section 1301.508.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(9), eff. May 26, 2021.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 819, Sec. 24, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 24, eff. May 26, 2021.
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 32(9), eff. May 26, 2021.

Sec. 1301.503. ENFORCEMENT BY PLUMBING INSPECTOR. Each plumbing inspector shall enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.314(a), eff. Sept. 1, 2003.

Sec. 1301.504. INJUNCTION. (a) In addition to any other action authorized by law, the board may bring an action in the board's name to enjoin a person from violating this chapter or a board rule.
(b) To sustain an action under this section, the board is not required to allege or prove that:
(1) an adequate remedy at law does not exist; or
(2) substantial or irreparable damage would result from the continued violation.
(c) Any party to an action under this section may appeal.
(d) Venue for an action brought under this section is in a district court in Travis County.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 10, eff. September 1, 2009.

Sec. 1301.5045. CEASE AND DESIST ORDER. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect

public health and safety.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter N.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 25, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 11, eff. September 1, 2009.

Sec. 1301.506. APPEAL BOND NOT REQUIRED. The board is not required to post an appeal bond in an action arising under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.507. CIVIL PENALTY. A person who violates this chapter or a rule, permit, or order of the board is subject to a civil penalty of not less than $50 or more than $1,000 for each act of violation and for each day of violation after notice is provided to the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1301.5071. INFORMAL SETTLEMENT CONFERENCE; RESTITUTION. (a) The board by rule shall establish procedures under which an informal settlement conference is conducted to resolve a complaint against a person licensed under this chapter.

(a-1) The procedures established under Subsection (a) must:

(1) identify the types of complaints for which an informal settlement conference may be used; and

(2) require appropriate documentation of each informal settlement conference that is conducted, including the outcome of the conference.

(b) Subject to Subsection (c), the board may order a person licensed under this chapter to pay restitution to a person as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty under Subchapter N.

(c) The amount of restitution ordered as provided by an agreement resulting from an informal settlement conference may not exceed the amount the person paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a restitution order.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 25, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 25, eff. May 26, 2021.

Sec. 1301.508. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) violates this chapter or a rule adopted under this chapter;

(2) does not hold a license or endorsement or is not registered under this chapter and engages in an activity for which a license, endorsement, or registration is required; or

(3) employs a person who does not hold a license or endorsement or who is not registered to engage in an activity for which a license, endorsement, or registration is required under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.313(b), eff. Sept. 1, 2003.

SUBCHAPTER K. REGULATION BY CERTAIN POLITICAL SUBDIVISIONS

Sec. 1301.551. MUNICIPAL PLUMBING ORDINANCES AND PERMITS. (a) A municipality with more than 5,000 inhabitants shall regulate by ordinance or bylaw the material, construction, alteration, and inspection of any pipe, faucet, tank, valve, water heater, or other fixture by or through which a supply of water, gas, or sewage is used or carried.

(b) Any other municipality may regulate by ordinance or bylaw the matters described by Subsection (a).

(c) A municipality that adopts an ordinance or bylaw under this section shall provide by ordinance or bylaw that a person must obtain

a permit before the person performs plumbing, other than the repairing of leaks, the replacement of lavatory or kitchen faucets, the replacement of ballcocks or water control valves, the replacement of garbage disposals, or the replacement of water closets. The municipality may prescribe the terms on which the permit is issued.

(d) A plumbing inspection in a municipality that adopts an ordinance or bylaw under this section must be performed by a plumbing inspector.

(e) A municipality or other political subdivision in this state that requires a plumbing contractor to obtain a permit before the person performs plumbing shall by telephone, fax, or e-mail:

(1) accept permit applications;

(2) collect required fees; and

(3) issue the required permits.

(f) If drawings of proposed plumbing work are required by the municipality or other political subdivision, the municipality or political subdivision shall specify how permit drawings are to be submitted.

(g) A responsible master plumber, plumbing contractor, or other person who is required to obtain a permit under this section is not required to pay a plumbing registration fee or administrative fee in a municipality or any other political subdivision.

(h) A plumbing contractor must register, electronically or in person, with a municipality or other political subdivision that requires registration before performing plumbing regulated by the municipality or other political subdivision.

(i) Notwithstanding any other provision of state law, after January 1, 2009, a municipality may not enact an ordinance, bylaw, order, building code, or rule requiring the installation of a multipurpose residential fire protection sprinkler system or any other fire sprinkler protection system in a new or existing one- or two-family dwelling. A municipality may adopt an ordinance, bylaw, order, or rule allowing a multipurpose residential fire protection sprinkler specialist or other contractor to offer, for a fee, the installation of a fire sprinkler protection system in a new one- or two-family dwelling.

(j) A multipurpose residential fire protection sprinkler specialist may install a multipurpose residential fire protection sprinkler system in a new or existing one- or two-family dwelling in a municipality described by Subsection (a) or (b).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.315(b), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 12, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(46), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 981 (H.B. 2062), Sec. 7, eff. September 1, 2013.

Sec. 1301.552. CERTIFICATE OF INSURANCE FOR PLUMBING PERMIT IN POLITICAL SUBDIVISION. A political subdivision that requires a responsible master plumber or an agent of a responsible master plumber to obtain a permit before performing plumbing in the political subdivision shall verify through the board's Internet website, or by contacting the board by telephone, that the responsible master plumber has on file with the board a certificate of insurance. The certificate of insurance must:

(1) be written by an insurer authorized to engage in the business of insurance in this state or an eligible surplus lines insurer, as defined by Section 981.002, Insurance Code;

(2) provide for commercial general liability insurance for the responsible master plumber for a claim for property damage or bodily injury, regardless of whether the claim arises from negligence or on a contract; and

(3) provide coverage of not less than $300,000 for all claims arising in a one-year period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 526 (H.B. 2376), Sec. 5, eff. September 1, 2011.

Sec. 1301.553. PLUMBING INSPECTIONS IN MUNICIPALITY THAT OVERLAPS ANOTHER POLITICAL SUBDIVISION. If the boundaries of a municipality and another political subdivision overlap, only the affected municipality may perform a plumbing inspection and collect a permit fee.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.315(c), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1380 (S.B. 1354), Sec. 8, eff. September 1, 2009.

SUBCHAPTER M. INTERAGENCY COOPERATION AND REGULATION

Sec. 1301.651. DEFINITION. In this subchapter, "local workforce development board" means a board created under Subchapter F, Chapter 2308, Government Code.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.652. PUBLIC EDUCATION EFFORT. (a) The board and the Texas Workforce Commission shall, through the local workforce development boards, coordinate efforts to educate the public about the plumbing profession and the resources available to employers for the recruitment and training of plumbers, including providing:

(1) each local workforce development board with:

(A) information about the licensing requirements for the plumbing profession; and

(B) available statistical data regarding plumbing; and

(2) a link to each agency's Internet site and to the Internet sites of other local workforce development boards.

(b) The board may, during public and industry awareness seminars, raise awareness of the career ladder in the plumbing industry and the opportunities that plumbing apprenticeships offer.

(c) This section applies to the extent that the plumbing profession is designated as an occupation in demand by a local workforce development board.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

SUBCHAPTER N. ADMINISTRATIVE PENALTY

Sec. 1301.701. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.702. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $5,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstance, extent, and gravity of any prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts made to correct the violation; and

(6) any other matter that justice may require.

(c) The board by rule or through procedures adopted by the board and published in the Texas Register shall develop a standardized penalty schedule based on the criteria listed in Subsection (b).

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.703. NOTICE OF VIOLATION AND PENALTY. (a) If the board determines that a violation occurred, the board shall give written notice of the violation to the person alleged to have committed the violation.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 26, eff. May 26, 2021.
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 27, eff. May 26, 2021.

Sec. 1301.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended penalty of the board; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the board, the board by order shall approve the determination and impose the recommended penalty.

(c) Failure to request a hearing or accept the determination and recommended penalty within the time provided by this section waives the right to a hearing under this chapter.

(d) If the board determines without a hearing that the person committed a violation and a penalty is to be imposed, the board shall:

(1) provide written notice to the person of the board's findings; and

(2) enter an order requiring the person to pay the recommended penalty.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 9.001, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 28, eff. May 26, 2021.

Sec. 1301.705. HEARING. (a) If the person requests a hearing, the board shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of

Administrative Hearings shall hold the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 9.002, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 29, eff. May 26, 2021.

Sec. 1301.706. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Failure by the person to pay the penalty is grounds for the board to refuse to renew the person's license or registration and to refuse to issue a new license or registration to the person.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 804 (S.B. 1410), Sec. 13, eff. September 1, 2009.

Sec. 1301.708. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 1301.707, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the board by certified mail.

(b) If the board receives a copy of an affidavit under Subsection (a)(2), the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit.

(c) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 137 (H.B. 636), Sec. 30, eff. May 26, 2021.

Sec. 1301.709. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.710. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.711. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.712. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

Sec. 1301.713. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter

2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 819, Sec. 26, eff. Sept. 1, 2003.

CHAPTER 1302. AIR CONDITIONING AND REFRIGERATION CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1302.001. SHORT TITLE. This chapter may be cited as the Air Conditioning and Refrigeration Contractor License Law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the air conditioning and refrigeration contractors advisory board.

(2) "Air conditioning and refrigeration contracting" means performing or offering to perform the design, installation, construction, repair, maintenance, service, or modification of equipment or a product in an environmental air conditioning system, a commercial refrigeration system, or a process cooling or heating system. Notwithstanding any other provision of this chapter, the term does not include the performance of or an offer to perform the installation, repair, replacement, or modification of a thermostat or other temperature control interface by a person licensed or registered under Chapter 1702.

(3) "Air conditioning and refrigeration contracting company" means a person who or business entity that engages in air conditioning and refrigeration contracting for the public.

(4) "Air conditioning and refrigeration contractor" means a person who engages in air conditioning and refrigeration contracting.

(5) "Air conditioning and refrigeration maintenance work" means all work, including repair work, required for the continued normal performance of an environmental air conditioning system, a process cooling or heating system, a commercial refrigeration system, or commercial refrigeration equipment. The term does not include:

(A) the total replacement of a system; or

(B) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted by the commission under Chapter 755, Health and Safety Code.

(5-a) "Air conditioning and refrigeration technician" means

a person who assists a licensed air conditioning and refrigeration contractor in performing air conditioning and refrigeration maintenance work.

(5-b) "Apprenticeship program" means an air conditioning and refrigeration training program that is:

(A) recognized by the Texas Workforce Commission or the Texas Higher Education Coordinating Board;

(B) registered with the United States Department of Labor; or

(C) a competency-based standardized craft training program that meets the standards of the United States Department of Labor Office of Apprenticeship.

(5-c) "Certification training program" means:

(A) a career and technology education program described by Section 1302.5037; or

(B) a program of education and training that is accepted or approved by the department and consists of at least 2,000 hours of a combination of:

(i) classroom instruction:

(a) at a secondary school;

(b) at an institution of higher education, as defined by Section 61.003, Education Code; or

(c) in an apprenticeship program accepted by the department; and

(ii) practical experience in air conditioning and refrigeration-related work under the supervision of a licensed air conditioning and refrigeration contractor.

(5-d) "Certified technician" means an air conditioning and refrigeration technician who is certified by the department.

(6) "Commercial refrigeration" means the use of mechanical or absorption equipment to control temperature or humidity to satisfy the intended use of a specific space.

(7) "Commission" means the Texas Commission of Licensing and Regulation.

(8) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 2.012(1) and Acts 2003, 78th Leg., ch. 1276, Sec. 14A.318(b).

(9) "Cooling capacity" means the nominal tonnage of compression equipment based on 40 degrees Fahrenheit suction temperature and 105 degrees Fahrenheit condensing temperature.

(10) "Department" means the Texas Department of Licensing

and Regulation.

(11) "Environmental air conditioning" means treating air to control temperature, humidity, cleanliness, ventilation, and circulation to meet human comfort requirements.

(11-a) "Executive director" means the executive director of the department.

(12) "Mechanical integrity" means the condition of a product, a system, or equipment installed in accordance with its intended purpose and according to:

(A) standards at least as strict as the standards provided by:

(i) the Uniform Mechanical Code; and

(ii) the International Mechanical Code;

(B) all other applicable codes; and

(C) the manufacturer's specifications.

(13) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(1), eff. June 14, 2013.

(14) "Person" means an individual.

(15) "Process cooling or heating" includes controlling temperature, humidity, or cleanliness solely for production requirements or the proper operation of equipment.

(16) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(1), eff. June 14, 2013.

(17) "Registered technician" means an air conditioning and refrigeration technician who is registered with the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.001, 2.012(1), 26.028, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.318(b), (c), (d), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 5, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 3(1), eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 997 (H.B. 2294), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 1, eff.

September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 321 (H.B. 1859), Sec. 1, eff. September 1, 2023.

Sec. 1302.003. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

Added by Acts 2009, 81st Leg., R.S., Ch. 937 (H.B. 3129), Sec. 2, eff. June 19, 2009.

SUBCHAPTER B. EXEMPTIONS

Sec. 1302.052. APPLICATION OF MUNICIPAL ORDINANCES. Work performed by a person who is exempt from this chapter is subject to any permit, inspection, or approval required by a municipal ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.053. HOMEOWNERS. This chapter does not apply to a person who engages in air conditioning and refrigeration contracting in a building owned solely by the person as the person's home.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.054. CERTAIN MAINTENANCE PERSONNEL. This chapter does not apply to a person who performs air conditioning and refrigeration maintenance work if:

(1) the person is a maintenance person or maintenance engineer and is a regular employee of the owner, lessee, or management company of the property where the work is being performed;

(2) the person performs the work in connection with the business in which the person is employed; and

(3) the person and the person's employer do not engage in air conditioning and refrigeration contracting for the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.055. CERTAIN UTILITIES PERSONNEL. This chapter does not apply to a person who engages in air conditioning and refrigeration contracting and is regularly employed by a regulated electric or gas utility.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.056. ENGINEERS. This chapter does not apply to a person who is licensed as an engineer under Chapter 1001 and engages in air conditioning and refrigeration contracting work in connection with the business in which the person is employed but does not engage in that work for the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.057. INDUSTRIAL OPERATION PERSONNEL. This chapter does not apply to a person who is employed by an industrial operation, including a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treating plant, and performs process cooling or heating work for the operation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.058. CERTAIN PRODUCTS OR EQUIPMENT. This chapter does not apply to a person who engages in air conditioning and refrigeration contracting on:

(1) a portable or self-contained ductless air conditioning product that has a cooling capacity of three tons or less;

(2) a portable or self-contained heating product that does not require the forced movement of air outside the heating unit;

(3) environmental air conditioning equipment that is intended for temporary use and is not fixed in place; or

(4) a residential refrigerator, freezer, or ice machine.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.059. MOTOR VEHICLES. This chapter does not apply to a person who engages in or employs a person who engages in air conditioning services only on a motor vehicle or an MVAC-like appliance as defined by 40 C.F.R. Section 82.152.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 1, eff. June 14, 2013.

Sec. 1302.060. VENT HOODS. This chapter does not apply to a person who installs, repairs, or removes a vent hood of the type commonly used in residential or commercial kitchens.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.061. MANUFACTURED HOMES. This chapter does not apply to a person or entity licensed as a manufacturer, retailer, or installer under Chapter 1201 and engaged exclusively in air conditioning and refrigeration contracting for manufactured homes if the installation of air conditioning components at the site where the home will be occupied is performed by a person licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1079 (H.B. 3361), Sec. 3.17, eff. September 1, 2013.

Sec. 1302.063. NO EXEMPTION FOR CERTAIN PERSONS LICENSED UNDER OTHER LAW. A person who is licensed and engaged in business in this

state as a plumber or who is regulated under Chapter 113, Natural Resources Code, may not engage or offer or attempt to engage in air conditioning and refrigeration contracting without a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.064. TECHNOLOGY INTEGRATION. This chapter does not apply to a person licensed under Chapter 1702 of this code or Chapter 6002, Insurance Code, who sells, designs, or offers to sell or design a product or technology, including a burglar alarm or fire alarm, that is integrated with an air conditioning or refrigeration system if the sale, design, or offer does not include the installation of any part of an air conditioning or refrigeration system by that person.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 15, eff. June 14, 2013.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND DEPARTMENT POWERS AND DUTIES

Sec. 1302.101. GENERAL POWERS AND DUTIES. (a) The commission shall adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by:

(1) the Uniform Mechanical Code; and

(2) the International Mechanical Code.

(b) The executive director shall prescribe the design of an original and a renewal license.

(c) The commission shall maintain a record of the commission's proceedings under this chapter.

(d) The executive director may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

(e) The department may examine any criminal conviction, guilty plea, or deferred adjudication of an applicant for issuance or renewal of a license, including by obtaining any criminal history record information permitted by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.003, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 2, eff. September 1, 2007.

Sec. 1302.1011. RULES. The commission shall adopt rules:

(1) providing for the licensing, certification, and registration of persons under this chapter, including requirements for the issuance and renewal of a contractor license, a technician certification, and a technician registration;

(2) establishing fees necessary for the administration of this chapter, including fees for issuance and renewal of a contractor license, a technician certification, and a technician registration; and

(3) implementing the requirements of this chapter as applicable to persons, entities, and activities regulated under this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 6, eff. June 17, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 2, eff. September 1, 2017.

Sec. 1302.1015. RULES REGARDING RENEWAL FEE AND CONTINUING EDUCATION EXEMPTIONS FOR CERTAIN LICENSE OR CERTIFICATION HOLDERS. The commission shall adopt rules waiving any applicable renewal fee and providing for a reduction in the number of hours of continuing education required to renew an air conditioning and refrigeration contractor license or air conditioning and refrigeration technician certification for a person who provides instruction in a career and technology education program described by Section 1302.5037.

Added by Acts 2023, 88th Leg., R.S., Ch. 321 (H.B. 1859), Sec. 2, eff. September 1, 2023.

Sec. 1302.102. INSURANCE REQUIREMENTS. (a) The commission by

rule shall set insurance requirements for a license holder under this chapter.

(b) The executive director may waive the insurance requirements for a license holder who does not engage in air conditioning and refrigeration contracting for the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.029, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.321, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 7, eff. June 17, 2011.

Sec. 1302.103. RULES REGARDING USE AND DISPLAY OF LICENSE. The commission, with the advice of the advisory board, shall adopt rules relating to the use, display, and advertisement of a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.004, eff. Sept. 1, 2003.

Sec. 1302.104. CONTRACTS FOR ENFORCEMENT. The department may contract with another state agency or a political subdivision of the state to enforce this chapter and rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.105. PERSONNEL. The department may employ personnel necessary to administer this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 8, eff. June 17, 2011.

SUBCHAPTER D. CONSUMER INTEREST INFORMATION AND COMPLAINTS

Sec. 1302.151. CONSUMER INTEREST INFORMATION. (a) The executive director shall prepare information of consumer interest describing:

(1) the functions performed by the executive director under this chapter; and

(2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the executive director.

(c) The executive director shall make the information available to the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.030, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.323, eff. Sept. 1, 2003.

SUBCHAPTER E. AIR CONDITIONING AND REFRIGERATION CONTRACTORS ADVISORY BOARD

Sec. 1302.201. ADVISORY BOARD MEMBERSHIP. The air conditioning and refrigeration contractors advisory board consists of nine members appointed by the presiding officer of the commission, with the commission's approval, and two ex officio nonvoting members. One member of the advisory board must be a public member.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.005, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 926 (H.B. 1503), Sec. 1, eff. June 14, 2013.

Sec. 1302.202. APPOINTED MEMBERS. (a) Except for the public member and the building contractor member, each appointed advisory board member must be experienced in the design, installation, construction, maintenance, service, repair, or modification of equipment used for environmental air conditioning, commercial

refrigeration, or process cooling or heating. Other than the public member, of the appointed members:

(1) one must be an official of a municipality with a population of more than 250,000;

(2) one must be an official of a municipality with a population of not more than 250,000;

(3) five must be full-time licensed air conditioning and refrigeration contractors, as follows:

(A) one member who holds a Class A license and practices in a municipality with a population of more than 250,000;

(B) one member who holds a Class B license and practices in a municipality with a population of more than 250,000;

(C) one member who holds a Class A license and practices in a municipality with a population of more than 25,000 but not more than 250,000;

(D) one member who holds a Class B license and practices in a municipality with a population of not more than 25,000; and

(E) one member who holds a license of any classification under this chapter, is principally engaged in air conditioning and refrigeration contracting, and practices in a municipality; and

(4) one must be a building contractor who is principally engaged in home construction and is a member of a statewide building trade association.

(b) At least one advisory board member appointed under Subsection (a)(3) must be an air conditioning and refrigeration contractor who employs organized labor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 9, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 926 (H.B. 1503), Sec. 2, eff. June 14, 2013.

Sec. 1302.203. EX OFFICIO MEMBERS. The executive director and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.031, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.323, eff. Sept. 1, 2003.

Sec. 1302.204. ADVISORY BOARD DUTIES. (a) The advisory board shall advise the commission in adopting rules and in administering and enforcing this chapter.

(b) The advisory board shall advise the commission in setting fees under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.006, eff. Sept. 1, 2003.

Sec. 1302.205. TERMS; VACANCY. (a) Appointed advisory board members serve staggered six-year terms. The terms of two appointed members expire on February 1 of each odd-numbered year.

(b) If a vacancy occurs during an appointed member's term, the presiding officer of the commission, with the commission's approval, shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.007, eff. Sept. 1, 2003.

Sec. 1302.206. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall designate one member of the advisory board to serve as presiding officer of the board for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.008, eff. Sept. 1, 2003.

Sec. 1302.207. COMPENSATION; REIMBURSEMENT. An appointed

advisory board member serves without compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as an advisory board member, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.208. MEETINGS. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(21), eff. September 1, 2021.

(b) The advisory board shall meet in this state at a place designated by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(21), eff. September 1, 2021.

SUBCHAPTER F. AIR CONDITIONING AND REFRIGERATION CONTRACTORS

Sec. 1302.251. LICENSE REQUIRED. (a) A person may not engage in air conditioning and refrigeration contracting unless the person holds an air conditioning and refrigeration contractor license under this subchapter or Subchapter G.

(b) An air conditioning and refrigeration contractor license issued under this subchapter is valid throughout the state. A person who holds a license issued under this subchapter is not required to hold a municipal license under Subchapter G to engage in air conditioning and refrigeration contracting in any municipality in this state.

(c) A person holding an air conditioning and refrigeration contractor license may assign that license to only one permanent office of one air conditioning and refrigeration contracting company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 11, eff. June 17, 2011.

Sec. 1302.252. REQUIREMENT FOR AIR CONDITIONING AND REFRIGERATION CONTRACTING COMPANY. (a) An air conditioning and refrigeration contracting company must employ full-time in each permanent office a license holder who holds an appropriate license assigned to that company.

(b) A company that does not employ a license holder as required by Subsection (a) at the time a contract for air conditioning and refrigeration contracting services is signed and at the time the services are performed may not collect a fee or otherwise enforce the contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.253. LICENSE CLASSIFICATIONS. (a) The executive director shall issue a Class A or Class B air conditioning and refrigeration contractor license.

(b) A Class A license entitles the license holder to engage in each type of air conditioning and refrigeration contracting that is endorsed on the license in relation to a system, a product, or equipment of any size or capacity.

(c) A Class B license entitles the license holder to engage in each type of air conditioning and refrigeration contracting that is endorsed on the license in relation to a system, a product, or equipment of not more than:

(1) 25 tons cooling capacity; or

(2) 1.5 million British thermal units per hour output heating capacity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.032, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.325, eff. Sept. 1, 2003.

Sec. 1302.254. LICENSE ENDORSEMENTS. (a) An air conditioning and refrigeration contractor license must be endorsed with one or both of the following endorsements:

(1) an environmental air conditioning endorsement; or

(2) a commercial refrigeration and process cooling or heating endorsement.

(b) An environmental air conditioning endorsement entitles the license holder to engage in air conditioning and refrigeration contracting for environmental air conditioning within the class of license held.

(c) A commercial refrigeration and process cooling or heating endorsement entitles the license holder to engage in air conditioning and refrigeration contracting for commercial refrigeration and process cooling or heating within the class of license held.

(d) A license holder may not engage in a type of air conditioning and refrigeration contracting for which the person's license is not endorsed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.255. ELIGIBILITY REQUIREMENTS. (a) An applicant for a license under this subchapter must:

(1) be at least 18 years old; and

(2) have:

(A) at least 48 months of practical experience in air conditioning and refrigeration-related work under the supervision of a licensed air conditioning and refrigeration contractor in the preceding 72 months; or

(B) held a technician certification issued under this chapter for the preceding 12 months and have at least 36 months of practical experience in air conditioning and refrigeration-related work under the supervision of a licensed air conditioning and refrigeration contractor in the preceding 48 months.

(a-1) An applicant who has equivalent experience in another state or who held an equivalent license in another state may receive credit for the experience as determined by the executive director.

(b) Notwithstanding the requirements of Subsection (a)(2), an applicant may satisfy a portion of the practical experience requirement as provided by Subsection (c).

(c) An applicant who obtains a degree or diploma or completes a certification program from an institution of higher education that holds a certificate of authority issued by the Texas Higher Education Coordinating Board, or an equivalent governing body in another state as approved by the executive director, may satisfy a portion of the practical experience requirement as follows:

(1) completing a four-year degree or diploma in air conditioning engineering or technology, refrigeration engineering or technology, or mechanical engineering is equivalent to 24 months of practical experience;

(2) completing a two-year associate's degree, a two-year diploma, or a two-year certification program primarily focused on air conditioning and refrigeration-related work is equivalent to 12 months of practical experience;

(3) completing a one-year certification program, or a program of at least two semesters, in air conditioning and refrigeration-related work is equivalent to six months of practical experience; and

(4) completing a program resulting in another applicable degree, diploma, or certification shall be equivalent to the amount of practical experience determined by the department under commission rule.

(d) Every 2,000 hours of on-the-job training in an apprenticeship program is equivalent to 12 months of practical experience under Subsection (a)(2).

(e) Notwithstanding the requirements of Subsection (a)(2), each of the following qualifies as practical experience for purposes of satisfying the 48-month requirement:

(1) verified military service in which the person was trained in or performed air conditioning and refrigeration-related work as part of the person's military occupational specialty; and

(2) experience performing air conditioning and refrigeration-related work as described by Section 1302.055, 1302.056, or 1302.057 or while employed by a governmental entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 12, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 3, eff. September 1, 2017.

Sec. 1302.256. APPLICATION; FEE. (a) An applicant for an air conditioning and refrigeration contractor license must submit a verified application on a form prescribed by the executive director.

(b) The application must specify the class of license and each endorsement for which the applicant is applying.

(c) The application must be accompanied by:

(1) a statement containing evidence satisfactory to the executive director of the applicant's practical experience required by Section 1302.255; and

(2) the required fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.033, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.326, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 13, eff. June 17, 2011.

Sec. 1302.257. EXAMINATIONS. (a) The executive director shall prescribe:

(1) a separate examination for each class of license; and

(2) within each class of license, a separate examination for:

(A) an environmental air conditioning endorsement; and

(B) a commercial refrigeration and process cooling or heating endorsement.

(b) The executive director shall prescribe the method and content of an examination administered under this subchapter and shall set compliance requirements for the examination. To obtain an endorsement, an applicant must pass the examination for the endorsement.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1017, Sec. 23(4), eff. June 17, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1017, Sec. 23(4), eff. June 17, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.034, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.327, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 14, eff.

June 17, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 23(4), eff. June 17, 2011.

Sec. 1302.260. ISSUANCE AND TERM OF LICENSE. (a) The department shall issue an air conditioning and refrigeration contractor license to an applicant who:

(1) submits a verified application;

(2) passes the applicable examination;

(3) meets the requirements of this chapter and rules adopted under this chapter;

(4) pays the required fees; and

(5) provides evidence of insurance coverage required by rule in accordance with this chapter.

(b) A license issued under this chapter expires on the first anniversary of the date of issuance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.035, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.330, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 15, eff. June 17, 2011.

Sec. 1302.261. TEMPORARY LICENSE. The commission by rule may provide for the issuance of a temporary air conditioning and refrigeration contracting license to an applicant who:

(1) submits to the executive director an application on a form prescribed by the executive director; and

(2) pays the required fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 2.009, eff. Sept. 1, 2003.

Sec. 1302.262. NOTICE TO MUNICIPALITIES. (a) A person who obtains a license under this subchapter shall provide a notice to the

municipal authority that enforces air conditioning and refrigeration contracting regulations in the municipality in which the person engages in air conditioning and refrigeration contracting, if the municipality requires the notice.

(b) The notice must inform the municipality that the person has obtained a license under this subchapter and must be in the form required by the municipality.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 16, eff. September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 16, eff. September 1, 2017.

Sec. 1302.263. LIMITATION ON LICENSE HOLDER. A person licensed as a contractor under this chapter may not:

(1) perform or offer or attempt to perform an act, service, or function that is:

(A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;

(B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license or is exempt by rule under that chapter; or

(C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or

(2) use the services of a person to assist in the performance of air conditioning and refrigeration maintenance work unless the person is a:

(A) registered or certified technician;

(B) licensed air conditioning and refrigeration contractor; or

(C) student described by Section 1302.502 who performs the work in that capacity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 3, eff.

September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 16, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 5, eff. September 1, 2017.

SUBCHAPTER G. MUNICIPAL LICENSING AND REGULATION

Sec. 1302.301. MUNICIPAL LICENSE. An air conditioning and refrigeration contractor license issued by a municipality of this state and that complies with the requirements of this subchapter is valid under the terms of the license within the municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.302. MUNICIPAL LICENSE: ELIGIBILITY REQUIREMENTS. An applicant for a municipal license must:

(1) pass an examination that covers the same subjects as the examination required under Subchapter F for a license of the class that entitles the holder of the license to perform the work the applicant proposes to perform; and

(2) meet experience requirements that are at least as strict as the requirements under Section 1302.255(a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1302.303. MUNICIPAL AIR CONDITIONING AND REFRIGERATION STANDARDS. (a) A municipality may by ordinance adopt and enforce standards for air conditioning and refrigeration contractors that are consistent with the standards established under this chapter.

(b) The municipality shall report a violation of the ordinance to the executive director not later than the 10th day after the date the municipality acts to enforce the ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.036, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.332, eff. Sept. 1, 2003.

Sec. 1302.304. MUNICIPAL FEES. (a) A municipality may not charge a registration fee to a person who holds a license issued under Subchapter F for:

(1) work performed in the municipality; or

(2) notice provided under Section 1302.262.

(b) This section does not prohibit a municipality from charging a building permit fee.

Added by Acts 2021, 87th Leg., R.S., Ch. 229 (H.B. 871), Sec. 1, eff. September 1, 2021.

SUBCHAPTER I. DISCIPLINARY ACTION AND PROCEDURES

Sec. 1302.401. DISCIPLINARY ACTION. (a) A person is subject to the denial of an application, imposition of an administrative penalty under Subchapter F, Chapter 51, or disciplinary action under Section 51.353 if the person:

(1) violates this chapter or a rule adopted under this chapter; or

(2) violates a municipal ordinance adopted under Section 1302.303.

(b) A violation of this chapter includes:

(1) failing to provide proper installation, service, or mechanical integrity;

(2) intentionally or knowingly misrepresenting a necessary service, service to be provided, or service that has been provided; or

(3) making a fraudulent promise to induce a person to contract for services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 4, eff. September 1, 2007.

Sec. 1302.402. ADMINISTRATIVE PROCEDURES. A proceeding for the denial of a license, certification, or registration application or disciplinary action and an appeal from that proceeding are governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 5, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 6, eff. September 1, 2017.

SUBCHAPTER J. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1302.451. EMERGENCY AND CEASE AND DESIST ORDERS. (a) The executive director may issue an emergency order as necessary to enforce this chapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director may issue the emergency order without notice and hearing or with any notice and hearing the executive director considers practicable under the circumstances. The executive director shall set the time and place for a hearing to affirm, modify, or set aside an emergency order that was issued without a hearing.

(c) The executive director may issue a cease and desist order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.037, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.335, eff. Sept. 1, 2003.

Sec. 1302.452. CITATIONS FOR CERTAIN VIOLATIONS. (a) A municipal or county official may issue a citation to an air conditioning and refrigeration contracting company that engages in air conditioning and refrigeration contracting without complying with Section 1302.252.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(3), eff. June 14, 2013.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 3(3), eff. June 14, 2013.

Sec. 1302.453. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) knowingly engages in air conditioning and refrigeration contracting without holding a license issued under this chapter; or

(2) is not a student described by Section 1302.502 and knowingly engages in air conditioning and refrigeration maintenance work without holding a contractor license or a technician registration or certification issued under this chapter.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 415, Sec. 3(4), eff. June 14, 2013.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 365 (S.B. 1290), Sec. 1, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 17, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 415 (S.B. 383), Sec. 3(4), eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 7, eff. September 1, 2017.

SUBCHAPTER K. AIR CONDITIONING AND REFRIGERATION TECHNICIANS

Sec. 1302.501. REGISTRATION OR CERTIFICATION REQUIRED. (a) Except as otherwise provided by this subchapter, a person may not act or offer to act as an air conditioning and refrigeration technician unless the person is registered or certified under this subchapter.

(b) An air conditioning and refrigeration technician registration or certification is valid throughout the state.

(c) A person is not required to obtain an air conditioning and refrigeration technician registration or certification if the person only assists a licensed contractor in performing:

(1) the total replacement of a system; or

(2) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted under Chapter 755, Health and Safety Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. June 30, 2008.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 18, eff. June 17, 2011.
Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 8, eff. September 1, 2017.

Sec. 1302.502. EXEMPTION FOR CERTAIN STUDENTS. A person is not required to be registered or certified under this subchapter to act or offer to act as an air conditioning and refrigeration technician if the person:

(1) is a student in a certification training program who acts or offers to act as an air conditioning and refrigeration technician solely as part of the program; and

(2) is enrolled at a secondary school or an institution of higher education, as that term is defined by Section 1302.5037.

Added by Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 9, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 321 (H.B. 1859), Sec. 3, eff. September 1, 2023.

Sec. 1302.503. SUPERVISION REQUIREMENTS FOR TECHNICIANS AND MINORS. (a) An air conditioning and refrigeration technician must be supervised by an air conditioning and refrigeration contractor licensed under this chapter.

(b) A person who is younger than 18 years of age and acting or offering to act as an air conditioning and refrigeration technician must at all times work under the direct supervision of a licensed air conditioning and refrigeration contractor or a certified air conditioning and refrigeration technician.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. June 30, 2008.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 321 (H.B. 1859), Sec. 4, eff. September 1, 2023.

Sec. 1302.5035. REGISTRATION ELIGIBILITY REQUIREMENTS. (a) An applicant for a technician registration under this subchapter must be at least 16 years old.

(b) An applicant for a technician registration is not required to have practical experience or to take an examination to obtain the registration.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 19, eff. June 17, 2011.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 11, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 321 (H.B. 1859), Sec. 5, eff. September 1, 2023.

Sec. 1302.5036. CERTIFICATION ELIGIBILITY REQUIREMENTS. To be eligible for an air conditioning and refrigeration technician certification, an applicant must:

(1) be at least 18 years old;

(2) have completed:

(A) a certification training program; or

(B) 24 months of air conditioning and refrigeration-related work:

(i) under the supervision of a licensed air conditioning and refrigeration contractor; or

(ii) as part of the applicant's military occupational specialty within the armed forces of the United States; and

(3) have passed a competency examination administered, recognized, or accepted by the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 12, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 321 (H.B. 1859), Sec. 6, eff. September 1, 2023.

Sec. 1302.5037. CAREER AND TECHNOLOGY EDUCATION PROGRAM FOR TECHNICIAN CERTIFICATION; INSTRUCTORS. (a) In this section:

(1) "Career and technology education program" means:

(A) a career and technology education program under Subchapter F, Chapter 29, Education Code; or

(B) a program determined by the department to be similar to that described by Paragraph (A) and offered by:

(i) an institution of higher education; or

(ii) a private school, as defined by Section 5.001, Education Code.

(2) "Institution of higher education" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003, Education Code.

(b) The department shall recognize a career and technology education program as a certification training program for purposes of Section 1302.5036.

(c) The commission by rule shall establish standards for the essential knowledge and skills of a career and technology education program described by Subsection (a), subject to the approval of the State Board of Education if the courses are to be offered in a high school. The rules must:

(1) require the program to consist of an appropriate number of hours of classroom instruction and a practical component; and

(2) provide for crediting appropriate on-the-job training toward meeting the requirements of the practical component.

(d) A person may not provide instruction in a career and technology education program unless the person is:

(1) a licensed air conditioning and refrigeration contractor; or

(2) a certified air conditioning and refrigeration technician whose certification was issued on or after September 1, 2018.

(e) A career and technology education program offered by an institution of higher education may not be more stringent than a program offered by a public high school.

Added by Acts 2023, 88th Leg., R.S., Ch. 321 (H.B. 1859), Sec. 7, eff. September 1, 2023.

Sec. 1302.504. APPLICATION; FEE. (a) An applicant for an air conditioning and refrigeration technician registration or certification must submit a verified application on a form prescribed by the executive director.

(b) The completed application must be accompanied by the required fees.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 20, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 13, eff. September 1, 2017.

Sec. 1302.505. ISSUANCE AND TERM OF REGISTRATION. (a) The department shall issue an air conditioning and refrigeration technician registration to an applicant who:

(1) submits a verified application;

(2) meets the requirements of this chapter and rules adopted under this chapter; and

(3) pays the required fees.

(b) A registration issued under this subchapter is valid for one year from the date of issuance.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 21, eff. June 17, 2011.

Sec. 1302.5055. ISSUANCE AND TERM OF CERTIFICATION. (a) The department shall issue an air conditioning and refrigeration technician certification to an applicant who:

(1) submits a verified application;

(2) passes a competency examination;

(3) meets the requirements of this chapter and the rules adopted under this chapter; and

(4) pays the required fees.

(b) An applicant who receives a certification under this subchapter may use the designation "certified technician."

(c) A certification issued under this subchapter expires on the first anniversary of the date of issuance.

Added by Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 14, eff. September 1, 2017.

Sec. 1302.506. TEMPORARY REGISTRATION. (a) An applicant for registration may request a temporary registration. The executive director shall issue a temporary registration that expires on the 21st day after the date of issuance to an applicant who meets the qualifications for temporary registration.

(b) The commission shall adopt rules providing for the issuance of a temporary registration under this section, including the qualifications and fee required for the registration.

Added by Acts 2007, 80th Leg., R.S., Ch. 1174 (H.B. 463), Sec. 6, eff. September 1, 2007.

Sec. 1302.509. LIMITATIONS ON TECHNICIAN. A person registered or certified under this subchapter may not:

(1) perform, offer to perform, or attempt to perform an act that is:

(A) defined as the practice of engineering under Chapter 1001, unless the person holds a license under that chapter;

(B) regulated under Chapter 113, Natural Resources Code, unless the person holds a license under that chapter or is exempt by a rule adopted under that chapter; or

(C) defined as plumbing under Chapter 1301, unless the person holds a license under that chapter; or

(2) assist a person who is not a licensed air conditioning and refrigeration contractor in the performance of air conditioning and refrigeration maintenance work.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 22, eff. June 17, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 880 (H.B. 3029), Sec. 15, eff.

September 1, 2017.

CHAPTER 1304. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1304.001. SHORT TITLE. This chapter may be cited as the Service Contract Regulatory Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.002. DEFINITIONS. In this chapter:

(1) "Administrator" means a person, other than the provider of the service contract or an employee of the provider, who is responsible for the third-party administration of a service contract.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 13.010(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.337(a).

(4) "Consumer" means an individual who, for a purpose other than resale, buys tangible personal property that is:

(A) distributed in commerce; and

(B) normally used for personal, family, or household purposes and not for business or research purposes.

(5) "Department" means the Texas Department of Licensing and Regulation.

(5-a) "Executive director" means the executive director of the department.

(6) "Person" means an individual or an association, company, corporation, partnership, or other group.

(7) "Provider" means a person who is contractually obligated to a service contract holder under the terms of a service contract.

(8) "Reimbursement insurance policy" means a policy of insurance issued to a provider to:

(A) reimburse the provider under a service contract the provider issued or sold; or

(B) pay on behalf of the provider all covered contractual obligations that are incurred by the provider under a service contract the provider issued or sold and that the provider

does not perform.

(8-a) "Seller" means a person, other than the provider or administrator of a service contract, who markets, sells, offers to sell, negotiates, or issues a service contract to a consumer on behalf of a provider, but who is not contractually obligated to a service contract holder under the terms of a service contract.

(9) "Service contract holder" means a person who purchases or otherwise holds a service contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.001, 13.010(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.337(a), (b), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 2, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.01, eff. September 1, 2011.

Sec. 1304.003. SERVICE CONTRACT. (a) In this chapter:

(1) "Identity recovery" means a process, through a limited power of attorney and the assistance of an identity recovery expert, that returns the identity of an identity theft victim to pre-identity theft event status.

(2) "Service contract" means an agreement that is entered into for a separately stated consideration and for a specified term under which a provider agrees to:

(A) repair, replace, or maintain a product, or provide indemnification for the repair, replacement, or maintenance of a product, for operational or structural failure or damage caused by a defect in materials or workmanship or by normal wear;

(B) provide identity recovery, if the service contract is financed under Chapter 348 or 353, Finance Code;

(C) provide compensation to the lessee or buyer of a vehicle on the total constructive loss under a depreciation benefit optional member program; or

(D) provide a service, reimbursement, or payment under a residential service contract.

(3) "Depreciation benefit optional member program" means a

service contract for a vehicle, regardless of whether the vehicle is purchased for cash, financed, or leased, that pays to the lessee or buyer a specified amount, as a credit that may be used toward the lease or purchase of a replacement vehicle at a participating dealer after a total constructive loss of the vehicle.

(4) "Residential service contract" means a service contract of any duration under which a provider agrees to, in the event of the operational or structural failure of, damage caused by a power surge to, a defect in materials or workmanship of, or damage caused by normal wear to a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a residential property that is attached to or located on the residential property:

(A) service, maintain, repair, or replace all or any part of the structural component, appliance, or electrical, plumbing, heating, cooling, or air-conditioning system;

(B) provide incidental payment of indemnity under limited circumstances, including food spoilage; or

(C) provide reimbursement or payment instead of service, repair, or replacement when a part, structural component, appliance, or service provider or technician is unavailable.

(b) A service contract described by Subsection (a)(2)(A) may provide for:

(1) incidental payment or indemnity under limited circumstances, including towing, rental, and emergency road service;

(2) the repair or replacement of a product for damage resulting from a power surge or for accidental damage incurred in handling the product;

(3) identity recovery, if the service contract is financed under Chapter 348 or 353, Finance Code; or

(4) the replacement of a motor vehicle key or key fob in the event the key or key fob is inoperable, lost, or stolen.

(c) For purposes of Subsection (a), normal wear for a motor vehicle may include minor and reasonable wear and tear that a vehicle sustains in everyday ordinary operation including:

(1) small dents, dings, and creases repairable by the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels or sanding, bonding, or painting;

(2) small windshield chips and cracks repairable without

replacement of the entire windshield;

(3) worn tire tread;

(4) worn interior fabric or carpet items; and

(5) tire and wheel damage resulting from ordinary road hazards such as potholes, rocks, wood debris, metal parts, glass, plastic, or composite scraps.

(d) Subsection (c)(5) does not apply to tire damage covered under an agreement sold by a tire manufacturer.

(e) A service contract described by Subsection (a)(2)(C):

(1) may not be required as a condition of approval of a lease of a vehicle or a loan for the purchase of a vehicle;

(2) may not be offered by a dealer who requires a loan for the purchase of a vehicle to be financed exclusively with the dealer;

(3) may be canceled by the buyer of the service contract not later than the 30th day after the buyer enters into the contract, without a penalty;

(4) may be canceled by the buyer of the service contract later than the 30th day after the buyer enters into the contract, with a pro rata refund to be provided to the buyer; and

(5) may only charge a fee that is reasonable in relation to the benefit provided by the service contract.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1059 (H.B. 2261), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 36 (S.B. 778), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 19, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 3, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 401 (S.B. 1199), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 473 (H.B. 2275), Sec. 1, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 13 (H.B. 735), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 13 (H.B. 735), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.02, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.03, eff. September 1, 2021.

Sec. 1304.0035. CONTROLLING PERSON. (a) In this chapter, "controlling person" means an individual who:

(1) possesses direct or indirect control of at least 25 percent of the voting securities of a corporation;

(2) possesses the authority to set policy and direct the management of a business entity;

(3) is the president, the secretary, or a director of a corporation; or

(4) is a general partner of a partnership.

(b) An individual who is a controlling person of a corporation or other business entity that is the general partner of a limited partnership is a controlling person of the limited partnership.

Added by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 3, eff. January 1, 2006.

Sec. 1304.004. EXEMPTIONS. (a) In this section:

(1) "Maintenance agreement" means an agreement that provides only for scheduled maintenance for a limited period.

(2) "Warranty" means an undertaking made solely by the manufacturer or importer of a product or the seller of a product or service that:

(A) guarantees indemnity for a defective part, mechanical or electrical breakdown, or labor cost or guarantees another remedial measure, including the repair or replacement of the product or the repetition of service;

(B) is made without payment of additional consideration;

(C) is not negotiated or separated from the sale of the product or service; and

(D) is incidental to the sale of the product or service.

(b) This chapter does not apply to:

(1) a warranty;

(2) a maintenance agreement;

(3) a service contract sold or offered for sale to a person who is not a consumer;

(4) an agreement issued by an automobile service club that holds a certificate of authority under Chapter 722, Transportation Code;

(5) a service contract sold by a motor vehicle dealer on a motor vehicle sold by that dealer, if the dealer:

(A) is the provider;

(B) is licensed as a motor vehicle dealer under Chapter 2301; and

(C) covers its obligations under the service contract with a reimbursement insurance policy; or

(6) a contract offered by a local exchange telephone company that provides for the repair of inside telephone wiring, if:

(A) the contract term does not exceed one month; and

(B) the consumer can terminate the contract before a new contract term begins without liability except for payment of charges for the term that has begun.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.04, eff. September 1, 2021.

Sec. 1304.0041. CERTAIN EXEMPT AGREEMENTS. This chapter does not apply to:

(1) a performance guarantee offered by:

(A) the builder of a residential property; or

(B) the manufacturer or seller of an appliance or other system or component of a residential property;

(2) a residential service contract executed before August 28, 1979;

(3) a guarantee or warranty that is:

(A) designed to guarantee or warrant the repair or service of an appliance, system, or component of a residential property; and

(B) issued by a person who sells, services, repairs, or

replaces the appliance, system, or component at the time or before the guarantee or warranty is issued;

(4) a service or maintenance agreement or a warranty that:

(A) is sold, offered for sale, or issued by a manufacturer or merchant who manufactures or sells a product or part of a product, including a structural component, an appliance, or an electrical, plumbing, heating, cooling, or air-conditioning system of a building or residence; and

(B) provides for, warrants, or guarantees the maintenance, repair, replacement, or performance of the product or part of the product; or

(5) home warranty insurance as defined by Section 2005.001, Insurance Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.05, eff. September 1, 2021.

Sec. 1304.005. EXEMPTIONS FROM CERTAIN OTHER LAWS. Marketing, selling, offering for sale, issuing, making, proposing to make, and administering a service contract are exempt from:

(1) Chapter 722, Transportation Code; and

(2) the Insurance Code and other laws of this state regulating the business of insurance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.06, eff. September 1, 2021.

Sec. 1304.0051. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) The following information submitted to or maintained by the department under this chapter that pertains to an applicant for registration or a seller, provider, or administrator is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) the financial condition of the applicant, seller, provider, or administrator;

(2) the identity or number of service contract holders; or

(3) documents that are claimed, in a manner determined by the department, proprietary or confidential for competitive purposes.

(b) The department may withhold the information described by Subsection (a) without requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 622 (H.B. 4316), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

Sec. 1304.051. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR. (a) The executive director may investigate a provider, administrator, seller, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the executive director, a provider shall make the records required by Section 1304.155 available to the executive director as necessary to enable the executive director to reasonably determine compliance with this chapter.

Transferred, redesignated and amended from Occupations Code, Section 1304.007 by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.03, eff. September 1, 2011.

Sec. 1304.052. RULES. The commission shall adopt rules necessary to implement and administer this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.02, eff. September 1, 2011.

SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 1304.101. REGISTRATION REQUIRED; EXEMPTION FROM OTHER LICENSING REQUIREMENTS. (a) A person may not operate as a provider or administrator of service contracts sold or issued in this state unless the person is registered with the department.

(b) Except for the registration requirement of this chapter, a provider, seller, administrator, or other person who markets, sells, issues, or offers to sell service contracts is exempt from any licensing requirement of this state that relates to an activity regulated under this chapter.

(c) A provider or administrator may not contract with or use the services of a person to perform an activity that requires registration with the department as a provider or administrator unless that person is appropriately registered.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 4, eff. March 1, 2006.
Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.04, eff. September 1, 2011.

Sec. 1304.102. APPLICATION FOR REGISTRATION OR RENEWAL; GENERAL REQUIREMENTS. (a) An applicant for registration or registration renewal must submit an application to the executive director.

(b) The application must:

(1) be in the form prescribed by the executive director; and

(2) include evidence satisfactory to the executive director of compliance with the applicable financial security requirements prescribed by Section 1304.151, if the application is for a provider registration or renewal.

(c) The department may refuse to issue or renew a registration, suspend or revoke a registration, or take any other disciplinary action under Subchapter E if the applicant or a controlling person of the applicant:

(1) has violated this chapter or a rule adopted or order issued by the commission or executive director under this chapter;

(2) has made a material misrepresentation or false statement in an application or in any document accompanying an application;

(3) has had a license issued under Title 13, Insurance Code, revoked as provided by that code; or

(4) has had a license or registration as a provider, administrator, or seller revoked in this state or another state.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1081, Sec. 1.20(a)(2), eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.039, eff. Sept. 1,

2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.341, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 5, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.05, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.20(a)(2), eff. September 1, 2011.

Sec. 1304.1025. ADDITIONAL REGISTRATION AND RENEWAL REQUIREMENTS FOR PROVIDERS. (a) In addition to the requirements of Section 1304.102, an applicant for issuance or renewal of a provider registration must file with the application:

(1) the reimbursement insurance policy, if the provider is using a reimbursement insurance policy to meet the financial security requirements of Section 1304.151;

(2) the financial security deposit and the documentation required by the department demonstrating adequate funding of the reserve account, if the provider is using a funded reserve account and financial security deposit to meet the financial security requirements of Section 1304.151;

(3) the proof necessary to demonstrate the applicant or its parent company maintains at least $100 million net worth, if the applicant is using net worth to meet the financial security requirements of Section 1304.151; and

(4) information about each controlling person of the applicant in a form prescribed by the executive director.

(b) The executive director may not issue or renew a registration to a provider unless the provider provides evidence to the executive director that:

(1) each controlling person of the provider is trustworthy and can competently manage the affairs of the provider in compliance with this chapter; and

(2) the provider can meet the provider's obligations under service contracts and this chapter.

(c) Not later than the 30th day after the date of a provider's initial registration, the provider must provide to the department a list of any Internet website address through which a consumer may

purchase the provider's service contracts and the name, assumed name, street address, and telephone number of:

(1) any administrator appointed by the provider under Section 1304.153; and

(2) any seller of the provider's service contracts, other than a seller that is:

(A) an employee of the provider; or

(B) a business with a physical location in this state at which a consumer may purchase a service contract.

(d) The provider shall update the list required by Subsection (c) with each renewal.

Added by Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 6, eff. January 1, 2006.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.06, eff. September 1, 2011.

Sec. 1304.103. REGISTRATION AND RENEWAL FEES. (a) The executive director shall develop a tiered schedule of registration and renewal fees under which a provider's fee is based on the number of service contracts the provider sold or issued in this state during the preceding 12-month period.

(b) The commission shall set fees to cover the costs of administering this chapter, including registration and renewal fees for administrators.

(c) To register or renew a registration, a provider or administrator must pay the appropriate fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.006, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.342, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 7, eff. January 1, 2006.
Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.07, eff. September 1, 2011.

Sec. 1304.1035. IDENTITY RECOVERY SERVICE CONTRACT REPORT; FEE. Not later than the 30th day after the date each calendar quarter ends, a provider must report to the department the number of service contracts described by Section 1304.003(a)(2)(B) that were sold or issued to consumers in this state during the most recent calendar quarter and must submit a fee of $1 for each of those service contracts to the department. The report and fee are required only for a service contract that provides only for identity recovery services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 4, eff. September 1, 2013.

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD OR ISSUED. Information concerning the number of service contracts sold or issued by a provider that is submitted under Section 1304.103 or 1304.1035 is a trade secret to which Section 552.110, Government Code, applies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.040, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.343, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.08, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1207 (S.B. 1388), Sec. 5, eff. September 1, 2013.

Sec. 1304.105. RENEWAL. The commission shall adopt rules regarding the renewal of a registration issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 13.007, eff. Sept. 1, 2003.

SUBCHAPTER D. PRACTICE BY SERVICE CONTRACT PROVIDERS, ADMINISTRATORS, AND SELLERS

Sec. 1304.151. FINANCIAL SECURITY REQUIREMENTS; DISTRIBUTION OF

FUNDS HELD IN TRUST. (a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

(1) insure the provider's service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director a financial security deposit consisting of:

(A) a statutory deposit of cash;

(B) a letter of credit issued by a qualified financial institution; or

(C) a certificate of deposit issued by a qualified financial institution; or

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least $100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may not be less than an amount computed by subtracting the amount of any claims paid from the product of 40 percent and the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state. The department shall prescribe a calculation form to be used by a provider to calculate the minimum amount required to be maintained in the provider's reserve account under this subsection. The executive director may review and examine the reserve account. Except as provided by Subsections (b-1) and (b-4), the amount of the security deposit may not be less than $250,000. The provider must submit to the executive director on request a copy of the provider's financial statements that must be prepared in accordance with generally accepted accounting principles, be without qualification as to the going concern status of the provider, and be audited by an independent certified public accountant. The commission by rule may require the provider to submit additional financial reports.

(b-1) Subject to Subsection (b-2), the amount of the security deposit required under Subsection (b) may not be less than $25,000 if the provider:

(1) is a motor vehicle dealer licensed under Chapter 2301; and

(2) offers to sell service contracts only on motor vehicles sold by the provider.

(b-2) The amount of the security deposit required under Subsection (b-1) is:

(1) $25,000 for a motor vehicle dealer that generated $1,125,000 or less in annual gross revenue in this state from the sale of service contracts in the preceding year;

(2) $50,000 for a motor vehicle dealer that generated more than $1,125,000 and not more than $2,500,000 in annual gross revenue in this state from the sale of service contracts in the preceding year; and

(3) $75,000 for a motor vehicle dealer that generated more than $2,500,000 in annual gross revenue in this state from the sale of service contracts in the preceding year.

(b-3) If a motor vehicle dealer described by Subsection (b-1) has no gross revenue in this state from the sale of service contracts in the preceding year, the security deposit shall be $25,000.

(b-4) The amount of the security deposit required under Subsection (b) may not be less than $25,000 for a provider of a residential service contract.

(c) If the provider ensures its obligations under Subsection (a)(3), the provider must give to the executive director on request:

(1) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the preceding calendar year; or

(2) if the provider or the provider's parent company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements showing a net worth of the provider or its parent company of at least $100 million.

(d) If the provider's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to show that the provider meets the financial security requirement, the parent company shall agree to guarantee the obligations of the provider relating to service contracts sold by the provider in this state.

(e) The executive director may not require a provider to meet any additional financial security requirement.

(f) In the event of a provider's bankruptcy or a similar event affecting the ability of the provider to faithfully perform its obligations to its service contract holders, the executive director may distribute any funds held in trust as financial security for the provider under this section to eligible service contract holders as payment for claims. The executive director must distribute the funds in an equitable and cost-effective manner as determined by the executive director.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.008, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.10, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.11, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 1319 (H.B. 4120), Sec. 1, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.07, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 622 (H.B. 4316), Sec. 2, eff. September 1, 2023.

Sec. 1304.152. REIMBURSEMENT INSURANCE POLICY. (a) A reimbursement insurance policy that a provider uses to comply with Sections 1304.1025 and 1304.151(a)(1) must state that:

(1) the insurer that issued the policy shall:

(A) reimburse or pay on behalf of the provider any covered amount the provider is legally obligated to pay; or

(B) provide the service that the provider is legally obligated to perform according to the provider's contractual obligations under the insured service contract;

(2) if the covered service is not provided to a service contract holder not later than the 60th day after the date of proof of loss, the insurer shall pay the covered amount directly to the service contract holder or provide the required service; and

(3) if a refund is not paid to the service contract holder or credited to the service contract holder's account as required by

Section 1304.158, the insurer, after receiving written notice, shall pay the refund amount directly to the service contract holder.

(a-1) For a reimbursement insurance policy to comply with Section 1304.151(a)(1), the insurer issuing the policy must:

(1) maintain surplus as to policyholders and paid-in capital of at least $15 million and annually file with the executive director copies of the insurer's audited financial statements, National Association of Insurance Commissioners annual statement, and actuarial certification if the certification is required and filed in the insurer's state of domicile; or

(2) maintain surplus as to policyholders and paid-in capital of at least $10 million but not more than $15 million, demonstrate to the satisfaction of the executive director that the insurer maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not more than three to one, and annually file with the executive director copies of the insurer's audited financial statements, National Association of Insurance Commissioners annual statement, and actuarial certification if the certification is required and filed in the insurer's state of domicile.

(b) The insurer may not cancel the reimbursement insurance policy until the insurer delivers to the provider and the executive director a written notice of cancellation that complies with the notice requirements prescribed by Subchapters B and C, Chapter 551, Insurance Code, for cancellation of an insurance policy under those subchapters. Cancellation of the policy does not affect the insurer's liability for a service contract issued by the provider and insured under the policy before the effective date of the cancellation.

(b-1) If the insurer or provider cancels the reimbursement insurance policy, the provider named on the policy may not issue a new service contract after the effective date of the cancellation unless:

(1) the provider files with the executive director a copy of a new policy that meets the requirements of this section and that provides coverage after that date; or

(2) the provider complies with other financial security requirements provided by Section 1304.151(a).

(c) A provider is considered the agent of an insurer that issues a reimbursement insurance policy for purposes of obligating

the insurer to the service contract holder in accordance with the service contract and this chapter. The insurer issuing the reimbursement insurance policy is considered to have received the premium for the policy on the date the service contract holder pays the purchase price of the service contract.

(d) This chapter does not prevent or limit the right of the insurer to seek indemnification or subrogation against a provider for any amount the insurer pays or is obligated to pay to a service contract holder on behalf of the provider.

(e) In this section, "net written premiums" means the sum of direct written premiums and assumed reinsurance premiums, minus ceded reinsurance premiums.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.041, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.345, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 9, eff. January 1, 2006.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.150, eff. September 1, 2005.

Sec. 1304.1521. FINANCIAL SECURITY TRANSITION. (a) In this section, "provider that maintained a funded reserve account" means a provider that, in order to ensure the faithful performance of the provider's obligations to service contract holders, maintained a funded reserve account covering the provider's obligations under service contracts that were issued and outstanding in this state and placed in trust with the executive director a financial security deposit consisting of:

(1) a surety bond issued by an authorized surety;

(2) securities of the type eligible for deposit by an authorized insurer in this state;

(3) a statutory deposit of cash or cash equivalents;

(4) a letter of credit issued by a qualified financial institution; or

(5) another form of security prescribed by commission rules.

(b) This section applies only to a provider that maintained a funded reserve account on August 31, 2011.

(c) Not later than September 1, 2012, a provider that maintained a funded reserve account shall submit to the executive director documentation that the provider is in compliance with the financial security requirements provided by Section 1304.151 for service contracts sold or issued in this state on or after September 1, 2012. A provider that maintained a funded reserve account may not sell or issue a service contract on or after September 1, 2012, unless the provider is in compliance with this subsection.

(d) A provider that maintained a funded reserve account shall:

(1) continue to maintain the funded reserve account and security deposit at appropriate levels for service contracts that were sold or issued in this state before September 1, 2012, until the contracts are no longer in effect; or

(2) provide financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151.

(e) If a provider provides financial security for service contracts sold or issued before September 1, 2012, by complying with the financial security requirements of Section 1304.151, the provider shall give to the executive director satisfactory documentation that the reimbursement insurance policy, funded reserve account and security deposit, or net worth covers all outstanding service contracts issued before September 1, 2012.

(f) A service contract that is sold or issued before September 1, 2012, and is covered under a funded reserve account and security deposit may not be extended or renewed at the end of the service contract term unless the provider provides financial security for those service contracts by complying with the financial security requirements of Section 1304.151 before the extension or renewal.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.12, eff. September 1, 2011.

Sec. 1304.153. APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATOR. (a) A provider may appoint an administrator registered under this chapter to be responsible for:

(1) all or any part of the administration or sale of

service contracts; and

(2) compliance with this chapter, except for Section 1304.151.

(b) The appointment of an administrator under this section does not affect a provider's responsibility to comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 10, eff. March 1, 2006.

Sec. 1304.1531. SERVICE CONTRACT SELLERS; RESPONSIBILITIES. (a) A provider may employ or contract with a seller to be responsible for:

(1) all or any part of the sale or marketing of service contracts for the provider; and

(2) compliance with this chapter in connection with the sale or marketing of service contracts.

(b) The hiring of or contracting with a seller under this section does not affect a provider's responsibility to comply with this chapter.

(c) Unless registered as a provider or administrator, a seller is prohibited from engaging in activities that would require registration as a provider or administrator.

(d) A seller shall process a service contract application and a payment from a consumer in accordance with this chapter and with any sales agreement or contract between the provider and the seller.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.12, eff. September 1, 2011.

Sec. 1304.154. PROVIDER REQUIREMENTS. A provider may not sell, offer for sale, or issue a service contract in this state unless the provider gives the service contract holder:

(1) a receipt for, or other written evidence of, the purchase of the contract; and

(2) a copy of the contract within a reasonable period after the date of purchase.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.155. PROVIDER RECORDS. (a) A provider shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The provider's records must include:

(1) a copy of each unique form of service contract sold;

(2) the name and address of each service contract holder who provided the holder's name and address;

(3) a list of each location at which the provider's service contracts are marketed, sold, or offered for sale; and

(4) written claims files that contain at least the date and a description of each claim related to the service contracts.

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the provider must be able to reformat the record into a legible hard copy at the request of the executive director.

(c) Except as provided by Subsection (d), a provider shall retain the records required by this section until at least the first anniversary of the expiration date of the specified period of coverage under the service contract.

(d) A provider that discontinues business in this state shall retain its records until the provider furnishes the executive director with proof satisfactory to the executive director that the provider has discharged all obligations to service contract holders in this state.

(e) An administrator appointed to maintain the provider's records is responsible for compliance with this section to the same extent as the provider.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.042, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.346, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 11, eff. January 1, 2006.

Sec. 1304.156. FORM OF SERVICE CONTRACT AND REQUIRED DISCLOSURES. (a) A service contract marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must:

(1) be written, printed, or typed in clear, understandable language that is easy to read;

(2) state the name and address of the provider;

(3) state the purchase price of the contract and the terms under which the contract is sold;

(4) state the terms and restrictions governing cancellation of the contract by the provider or the service contract holder before the expiration date of the contract;

(5) identify:

(A) any administrator and any registration number issued to the administrator under this chapter;

(B) the seller; and

(C) the service contract holder, if the service contract holder provides the holder's name;

(6) state the amount of any deductible;

(7) specify the products and services to be provided under the contract and any limitation, exception, or exclusion;

(8) specify any restriction governing the transferability of the contract;

(9) state the duties of the service contract holder, including any duty to protect against any further damage and any requirement to follow the instructions in the owner's manual; and

(10) state whether the contract provides for or excludes consequential damages or preexisting conditions, if applicable.

(b) The identity and, if applicable, registration number issued under this chapter of a person described by Subsection (a)(5) is not required to be preprinted on the service contract and may be added to the contract at the time of sale.

(c) The purchase price is not required to be preprinted on the service contract and may be negotiated with the service contract holder at the time of sale.

(d) A service contract insured under a reimbursement insurance policy under Section 1304.152 must:

(1) state the name and address of the insurer;

(2) state that the service contract holder may apply for reimbursement directly to the insurer if:

(A) a covered service is not provided to the service contract holder by the provider before the 61st day after the date of proof of loss; or

(B) a refund or credit is not paid before the 46th day after the date on which the contract is canceled under Section 1304.1581; and

(3) contain a statement substantially similar to the following: "Obligations of the provider under this service contract are insured under a service contract reimbursement insurance policy."

(e) A service contract that is not insured under a reimbursement insurance policy must contain a statement substantially similar to the following: "Obligations of the provider under this service contract are backed by the full faith and credit of the provider." (V.A.C.S. Art. 9034, Secs. 10(a), (b), (c), (d), (e), (f) (part), (g), as added Acts 76th Leg., R. S., Ch. 1559.)

(f) A residential service contract must state that the provider agrees that, under normal circumstances, the provider will initiate the performance of services not later than 48 hours after the contract holder requests the services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 63 (H.B. 1286), Sec. 12, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.13, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.08, eff. September 1, 2021.

Sec. 1304.157. RESIDENTIAL SERVICE CONTRACTS. (a) A person may not sell, offer to sell, arrange or solicit the sale of, or receive an application for a residential service contract unless the person is:

(1) employed by a provider or administrator of a residential service contract who is licensed under this chapter; or

(2) licensed as a real estate sales agent, real estate broker, mobile home dealer, or insurance agent in this state.

(b) Notwithstanding Subsection (a), a person compensated by a provider or administrator, but who is not employed by that provider

or administrator, may sell, offer to sell, arrange or solicit the sale of, or receive an application for a residential service contract if the contract contains the following statement in at least 10-point boldface type: "NOTICE: THIS COMPANY PAYS PERSONS NOT EMPLOYED BY THE PROVIDER FOR THE SALE, ADVERTISING, INSPECTION, OR PROCESSING OF A RESIDENTIAL SERVICE CONTRACT UNDER CHAPTER 1304, OCCUPATIONS CODE." For purposes of Subsection (a) and this subsection, a person is employed by a provider or administrator if, in connection with the person selling, offering to sell, arranging or soliciting the sale of, or receiving applications for residential service contracts, the provider or administrator:

(1) directs and controls the person's performance; and

(2) is responsible for representations made by the person when acting within the scope of the person's employment.

(c) Notwithstanding Section 1304.151(a)(1), a provider of a residential service contract may use a reimbursement insurance policy issued by a captive insurance company as defined by Section 964.001, Insurance Code, to insure the provider's residential service contracts if the provider maintains a funded reserve equal to not less than an amount computed by subtracting the amount of any claims paid from the product of 25 percent and the gross consideration the provider received from consumers from the sale of all the provider's service contracts issued and outstanding in this state. The department shall prescribe a calculation form to be used by a provider to calculate the minimum amount required to be maintained in the provider's reserve account under this subsection. A reimbursement insurance policy issued to a residential service contract provider in accordance with this subsection:

(1) is not subject to Section 1304.152; and

(2) is considered to satisfy the requirements of Sections 1304.1025 and 1304.151(a)(1) for purposes of this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 4.09, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 622 (H.B. 4316), Sec. 3, eff. September 1, 2023.

Sec. 1304.1581. CANCELLATION BY SERVICE CONTRACT HOLDER;

REFUND. (a) A service contract must allow the service contract holder to cancel the service contract at any time.

(b) If a service contract holder cancels a service contract before the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the full purchase price of the contract, decreased by the amount of any claims paid under the contract; and

(2) may not impose a cancellation fee.

(c) If a service contract holder cancels a service contract on or after the 31st day after the date of purchase, the provider:

(1) shall refund to the service contract holder or credit to the account of the service contract holder the prorated purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract; and

(2) may impose a reasonable cancellation fee not to exceed $50.

(d) A provider may allow a service contract holder to cancel a service contract on other terms included in the contract, provided the terms do not conflict with this section.

(e) A provider who does not pay the refund or credit the service contract holder's account before the 46th day after the date notice of cancellation is received by the provider is liable to the service contract holder for a penalty for each month an amount remains outstanding equal to 10 percent of the amount outstanding. The penalty is in addition to the full or prorated purchase price of the contract that is owed to the service contract holder under this section or the terms of the contract.

(f) The right to cancel a service contract is not transferable to a subsequent holder of the contract.

(g) Notwithstanding Subsection (b)(1) or (c)(1), a provider is not required to deduct the amount of any claims paid under a service contract from the amount of a refund required under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.14, eff. September 1, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 473 (H.B. 2275), Sec. 2, eff.

September 1, 2017.

Sec. 1304.159. CANCELLATION BY PROVIDER; REFUND. (a) A provider may cancel a service contract by mailing a written notice of cancellation to the service contract holder at the service contract holder's last known address according to the records of the provider. The provider must mail the notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

(b) The provider is not required to provide prior notice of cancellation if the service contract is canceled because of:

(1) nonpayment of the consideration for the contract;

(2) fraud or a material misrepresentation by the service contract holder to the provider or the provider's administrator; or

(3) a substantial breach of a duty by the service contract holder relating to the covered product or its use.

(c) A service contract holder whose contract is canceled by the provider in accordance with this section is entitled to a prorated refund of the purchase price of the contract reflecting the remaining term of the contract, based on mileage, time, or another reasonably applicable measure of the remaining term that must be disclosed in the contract, decreased by the amount of any claims paid under the contract. A provider who cancels a contract under this section may not impose a cancellation fee.

(d) Notwithstanding Subsection (c), a provider is not required to deduct the amount of any claims paid under a service contract from the amount of a refund a service contract holder is entitled to under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.16, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 473 (H.B. 2275), Sec. 3, eff. September 1, 2017.

Sec. 1304.160. LIMITATIONS ON PROVIDER NAME. (a) A provider may not use a name that:

(1) includes "insurance," "casualty," "surety," or "mutual" or any other word descriptive of the insurance, casualty, or surety business; or

(2) is deceptively similar to the name or description of an insurance or surety corporation or to the name of any other provider.

(b) A provider may include in its name "guaranty" or a similar word.

(c) This section does not apply to a provider that, before September 1, 1999, included a word prohibited under this section in its name. A provider described by this subsection must include in each service contract a statement substantially similar to the following: "This agreement is not an insurance contract."

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.161. PROHIBITED ACTS. (a) A provider, administrator, seller, or other representative of the provider may not, in the provider's service contracts or literature or in any written communication:

(1) make, permit, or cause to be made any false, deceptive, or misleading statement; or

(2) deliberately omit a material statement if the omission would be considered misleading.

(b) A person, including a bank, a savings and loan association, a lending institution, or the manufacturer or seller of a product, may not require the purchase of a service contract as a condition of a loan or the sale of property.

(c) A provider, administrator, seller, or other representative of the provider may not make a telemarketing call to a consumer as provided by Sections 304.002 and 304.003, Business & Commerce Code, unless the provider, administrator, seller, or representative has an established business relationship, as defined by Section 304.002, Business & Commerce Code, with the consumer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.17, eff. September 1, 2011.

SUBCHAPTER E. DISCIPLINARY ACTION

Sec. 1304.201. DISCIPLINARY ACTION. On a finding that a ground for disciplinary action exists under this chapter, the commission or executive director may impose an administrative sanction or administrative penalty or seek a civil penalty or any other remedy as provided by this chapter and Chapter 51.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 13.009, 13.010(2), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.347(a), eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.18, eff. September 1, 2011.

Sec. 1304.202. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The executive director may institute an action under Section 51.352 for injunctive relief to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the executive director may institute an action for a civil penalty as provided by Section 51.352. The amount of a civil penalty assessed under this section may not exceed:

(1) $2,500 for each violation; or

(2) $50,000 in the aggregate for all violations of a similar nature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.043, eff. Sept. 1, 2003.

Sec. 1304.203. MULTIPLE VIOLATIONS. For purposes of this subchapter, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003.

Sec. 1304.204. ADMINISTRATIVE PROCEDURE. Sections 51.305, 51.310, and 51.354 apply to disciplinary action taken under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 3, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.347(b), eff. Sept. 1, 2003.

Sec. 1304.205. REMEDY FOR SERVICE CONTRACT HOLDERS. (a) If the commission by order, including an agreed order, determines that a person has operated as a provider or administrator in this state without holding the appropriate registration under this chapter, the person shall offer to a service contract holder who holds a service contract sold or issued by the person during the period that the person was not registered under this chapter the right to:

(1) cancel the contract and obtain a refund of the full purchase price of the contract; or

(2) retain the contract.

(b) If a seller fails to process a service contract application or a payment from a consumer in accordance with this chapter and any sales agreement or contract between the provider and the seller, the commission or executive director may, by commission order, including an agreed order, require the seller to refund the full purchase price of the contract to the consumer.

(c) The remedies described in this section are in addition to any administrative penalty, administrative sanction, civil penalty, or other disciplinary or enforcement action sought under this chapter or Chapter 51.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1081 (S.B. 1169), Sec. 1.19, eff. September 1, 2011.

CHAPTER 1305. ELECTRICIANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1305.001. SHORT TITLE. This chapter may be cited as the Texas Electrical Safety and Licensing Act.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Electrical Safety and Licensing Advisory Board.

(1-a) "Agricultural use" means a use or activity involving agriculture, as defined by Section 11.002, Water Code, other than the processing of an agricultural commodity.

(1-b) "Apprenticeship training program" means an electrical training program that is:

(A) recognized by the Texas Workforce Commission or the Texas Higher Education Coordinating Board;

(B) registered with the United States Department of Labor; or

(C) a competency-based standardized craft training program that meets the training program standards of the United States Department of Labor Office of Apprenticeship.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Electrical code" means the National Electrical Code published by the National Fire Protection Association as adopted by the commission.

(5) "Electrical contracting" means the business of designing, installing, erecting, repairing, or altering electrical wires or conductors to be used for light, heat, power, or signaling purposes. The term includes the installation or repair of ducts, raceways, or conduits for the reception or protection of wires or conductors and the installation or repair of any electrical machinery, apparatus, or system used for electrical light, heat, power, or signaling.

(6) "Electrical contractor" means a person engaged in electrical contracting.

(7) "Electrical engineer" means a person licensed under Chapter 1001 who possesses the necessary qualifications, training, and technical knowledge to perform electrical engineering work in this state.

(8) "Electrical inspector" means a person certified by the

International Association of Electrical Inspectors or International Code Council.

(9) "Electrical sign contracting" means the business of designing, manufacturing, installing, connecting, reconnecting, or servicing an electric sign, cold cathode, neon gas tubing, or outline gas tubing, or altering electric sign wiring or conductors either inside or outside of a building.

(10) "Electrical sign contractor" means a person engaged in electrical sign contracting.

(11) "Electrical work" means any labor or material used in installing, maintaining, or extending an electrical wiring system and the appurtenances, apparatus, or equipment used in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises. The term includes service entrance conductors as defined by the National Electrical Code.

(11-a) "Executive director" means the executive director of the department.

(11-b) "Journeyman industrial electrician" means an individual who engages in electrical work exclusively at a business that operates a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation.

(12) "Journeyman lineman" means an individual who engages in electrical work involving the maintenance and operation of equipment associated with the transmission and distribution of electricity from the electricity's original source to a substation for further distribution.

(12-a) "Residential appliance" means:

(A) equipment that:

(i) is installed as a unit in a single-family or multifamily dwelling that does not exceed four stories;

(ii) is directly connected to an electrical circuit; and

(iii) performs a specific function; or

(B) a pool-related electrical device.

(12-b) "Residential appliance installation" means electrical work that is limited to the connection or disconnection of a residential appliance, including a pool-related electrical device, to an existing electrical circuit other than by inserting or removing

a plug from an electrical outlet.

(12-c) "Residential appliance installation contracting" means the business of residential appliance installation, including pool-related electrical maintenance.

(12-d) "Residential appliance installation contractor" means a business entity, other than an electrical contractor or electrical sign contractor, that is engaged in residential appliance installation contracting, including pool-related electrical maintenance.

(12-e) "Residential appliance installer" means a person, other than a licensed electrician, who is licensed to perform residential appliance installation, including pool-related electrical maintenance.

(13) "Residential wireman" means a person licensed under this chapter who may only perform electrical installations in single-family and multifamily dwellings not exceeding four stories.

(14) "Pool" means an outdoor or indoor structure that is located at a residential property, a business property, or a property owned by a municipality and that is intended for swimming or recreational bathing, including an inground structure, aboveground structure, hot tub, spa, portable spa, or non-portable wading pool.

(15) "Pool-related electrical device" means equipment for a pool that:

(A) is installed as a unit;

(B) is directly connected to an electrical circuit;

(C) performs a specific function; and

(D) uses single-phase power of 240 volts or less.

(16) "Pool-related electrical maintenance" means electrical work that is limited to the connection or disconnection of a pool-related electrical device to an existing electrical circuit other than by inserting or removing a plug from an electrical outlet.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 416 (H.B. 1973), Sec. 1, eff. March 1, 2010.

Acts 2009, 81st Leg., R.S., Ch. 741 (S.B. 470), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1392 (S.B. 1982), Sec. 1, eff. March 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 452 (S.B. 1630), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 882 (H.B. 796), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 826 (H.B. 1698), Sec. 1, eff. September 1, 2017.

Sec. 1305.003. EXEMPTIONS; APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) the installation of electrical equipment in a ship, watercraft other than a floating building, railway rolling stock, aircraft, motor vehicle, or recreational vehicle;

(2) the installation of electrical equipment underground in a mine and in self-propelled mobile surface mining machinery and its attendant electrical trailing cable;

(3) the installation of electrical equipment for generation, transformation, transmission, or distribution of power used exclusively to operate railway rolling stock or exclusively for signaling and communications purposes;

(4) the installation, maintenance, alteration, or repair of communications equipment provided by a telecommunications provider;

(5) the installation, maintenance, alteration, or repair of electrical equipment under the exclusive control of an electric utility, power generation company as defined by Sections 31.002(1) and (10), Utilities Code, electric cooperative, or municipally owned utility and used for communications or metering, or for the generation, control, transformation, transmission, and distribution of electrical energy, and located:

(A) in a building used exclusively by a utility or power generation company for those purposes;

(B) outdoors on property owned or leased by the utility or power generation company;

(C) on public highways, streets, roads, or other public rights-of-way; or

(D) outdoors by established rights in vaults or on

private property;

(6) work not specifically regulated by a municipal ordinance that is performed in or on a dwelling by a person who owns and resides in the dwelling;

(7) work involved in the manufacture of electrical equipment that includes the on-site and off-site manufacturing, commissioning, testing, calibrating, coordinating, troubleshooting, or evaluating of electrical equipment, the repairing or retrofitting of electrical equipment with components of the same ampacity, and the maintenance and servicing of electrical equipment within the equipment's enclosure that is performed by an authorized employee or authorized representative of an electrical equipment manufacturer and limited to the type of products manufactured by the manufacturer;

(8) electrical work if:

(A) the work is performed by a person who does not engage in electrical work for the public;

(B) the work is performed by a person regularly employed as a maintenance person or maintenance electrician for a business; and

(C) the electrical work does not involve the installation of electrical equipment during new construction as defined by rules adopted under Chapter 151, Tax Code;

(9) the installation, maintenance, alteration, or repair of electrical equipment or associated wiring under the exclusive control of a gas utility and used for communications or metering or for the control, transmission, or distribution of natural gas;

(10) thoroughfare lighting, traffic signals, intelligent transportation systems, and telecommunications controlled by a governmental entity;

(11) electrical connections supplying heating, ventilation, and cooling and refrigeration equipment, including any required disconnect exclusively for the equipment, if the service is performed by a licensed air conditioning and refrigeration contractor under Chapter 1302;

(12) the design, installation, erection, repair, or alteration of Class 1, Class 2, or Class 3 remote control, signaling, or power-limited circuits, fire alarm circuits, optical fiber cables, or communications circuits, including raceways, as defined by the National Electrical Code;

(13) landscape irrigation installers, as necessary to

perform the installation and maintenance of irrigation control systems, and landscapers, as necessary to perform the installation and maintenance of low-voltage exterior lighting and holiday lighting excluding any required power source;

(14) electrical work performed at a business that operates:

(A) a chemical plant, petrochemical plant, refinery, natural gas plant, natural gas treating plant, pipeline, or oil and gas exploration and production operation by a person who works solely for and is employed by that business; or

(B) a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treatment plant by a person who under a contract of at least 12 months' duration performs electrical work for that plant and:

(i) the electrical work is not performed during new construction as defined by rules adopted under Chapter 151, Tax Code; or

(ii) the person is not working for a contractor that has a principal place of business in another state or territory of the United States or a foreign country;

(15) the installation, maintenance, alteration, or repair of elevators, escalators, or related equipment, excluding any required power source, regulated under Chapter 754, Health and Safety Code;

(16) the installation, maintenance, alteration, or repair of equipment or network facilities provided or utilized by a cable operator, as that term is defined by 47 U.S.C. Section 522, as amended;

(17) the location, design, construction, extension, maintenance, and installation of on-site sewage disposal systems in accordance with Chapter 366, Health and Safety Code, or an on-site sewage facility installer licensed under Chapter 37, Water Code;

(18) electrical work performed on a building, structure, or equipment in agricultural use as defined by Section 11.002, Water Code, other than the processing of an agricultural commodity;

(19) the installation, maintenance, alteration, or repair of well pumps and equipment in accordance with Chapter 1902;

(20) electrical work required for the construction and assembly of HUD-code manufactured housing or modular housing and building units, other than the installation of service entrance conductors, that is performed by a licensed manufacturer or installer

under Chapter 1201 or 1202, as applicable, if work performed is within the scope of the license as defined by applicable statutes and administrative rules;

(21) work performed by a plumber who holds a license or endorsement or is registered under Chapter 1301 that is necessary to install, service, maintain, repair, or replace any type of plumbing fixture or appliance, as described by Section 1301.002(7), including a water heater, food disposer, garbage disposal, water softener, dishwashing machine, and clothes washing machine on existing electrical circuits only;

(22) the maintenance or repair of a residential appliance by a residential appliance dealer or manufacturer or a person authorized by a residential appliance dealer or manufacturer using only components of the same type and ampacity as the original components; and

(23) the maintenance, alteration, or repair of a pool-related electrical device by, or pool-related electrical maintenance performed by, an employee of a municipality on a pool owned or operated by the municipality.

(b) This chapter applies to all premises wiring that originates where an electric utility's facilities end and a nonutility customer's electric facilities begin, except as permitted by Section 161.123(2)(A), Utilities Code.

(c) This chapter applies to an installation in a building used by a utility for purposes other than a purpose listed in this section, including an office building, warehouse, garage, machine shop, or recreational building that is not an integral part of a generating plant, substation, or control center.

(d) This chapter does not require a political subdivision of this state, including a school district or a municipality, to hold an electrical contractor license or an electrical sign contractor license under this chapter to be authorized to employ a person to perform electrical work for the political subdivision.

(e) Subsection (d) does not exempt an employee of a political subdivision from the requirement of holding the appropriate license under this chapter to perform electrical work.

(f) For purposes of Subsection (a)(21), any installation or replacement of a plumbing fixture or appliance must meet the requirements of existing electrical circuits.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 794 (S.B. 343), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 649 (H.B. 1029), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 17.002, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 416 (H.B. 1973), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1392 (S.B. 1982), Sec. 2, eff. September 1, 2009.

Sec. 1305.004. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. Except as otherwise provided by this section, Chapter 601, Business & Commerce Code, does not apply to a good or service provided by a license holder under this chapter if the transaction involving the good or service is initiated by the consumer. Chapter 601, Business & Commerce Code, does apply to a transaction that involves a breach of express warranty or a negligent installation in violation of a building code applicable to the good or service sold to the consumer.

Added by Acts 2009, 81st Leg., R.S., Ch. 937 (H.B. 3129), Sec. 3, eff. June 19, 2009.

SUBCHAPTER B. ADVISORY BOARD

Sec. 1305.051. ELECTRICAL SAFETY AND LICENSING ADVISORY BOARD. (a) The advisory board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) three master electrician members;

(2) three journeyman electrician members;

(3) one master sign electrician member; and

(4) two public members.

(b) The advisory board members must include:

(1) two members who are affiliated with a statewide association of electrical contractors not affiliated with a labor organization;

(2) three members who are affiliated with a labor organization;

(3) one member who is not affiliated with a statewide association of electrical contractors or with a labor organization;

(4) one member who is affiliated with a historically underutilized business, as that term is defined by Section 2161.001, Government Code; and

(5) one public member who is a building contractor principally engaged in home construction and is a member of a statewide building trade association.

(c) A licensed electrical engineer or an electrical inspector may be appointed as a public member of the advisory board.

(d) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 926 (H.B. 1503), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 156 (H.B. 1077), Sec. 1, eff. September 1, 2015.

Sec. 1305.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) A member may not consecutively serve more than two full terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1305.101. GENERAL POWERS AND DUTIES. (a) The executive director or commission, as appropriate, shall:

(1) by rule establish the financial responsibility requirements for electrical contractors; and

(2) after publication of the National Electrical Code by the National Fire Protection Association every three years, adopt the revised National Electrical Code as the electrical code for the state.

(b) The executive director or commissioner, as appropriate, may:

(1) establish reciprocity agreements with other states that have licensing requirements substantially equivalent to the requirements of this chapter; and

(2) take other action as necessary to administer and enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.102. RULES. (a) The commission shall adopt rules for the licensing of electricians, sign electricians, electrical sign contractors, electrical contractors, journeyman industrial

electricians, journeyman linemen, residential appliance installers, and residential appliance installation contractors as prescribed by this chapter.

(b) The executive director by rule shall prescribe descriptions of the types of activities that may be performed by each class of license holder under this chapter.

(c) The executive director by rule shall adopt standards of conduct requirements for license holders under this chapter.

(d) The commission may adopt rules regarding the registration of apprenticeship training programs and to require registered programs to report the names of persons enrolled in the programs.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 3, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 741 (S.B. 470), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 882 (H.B. 796), Sec. 2, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 826 (H.B. 1698), Sec. 2, eff. September 1, 2017.

Sec. 1305.103. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.104. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, electrical code requirements, and continuing education requirements.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.105. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter. The department shall employ an electrical occupations and code specialist to oversee the electrical licensing and safety program.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1305.151. LICENSE REQUIRED. Except as provided by Section 1305.003, a person or business may not perform or offer to perform electrical work or residential appliance installation unless the person or business holds an appropriate license issued or recognized under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 3, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 4, eff. March 1, 2008.

Sec. 1305.152. APPLICATION REQUIREMENTS. (a) An applicant for a license under this chapter must:

(1) submit to the department a completed application on a form prescribed by the executive director;

(2) submit to the department any other information required by executive director rule;

(3) demonstrate to the satisfaction of the executive director the appropriate amount of electrical work experience as required by this subchapter; and

(4) pay the application and examination fees.

(b) The executive director shall adopt rules to establish a process by which the department shall evaluate the experience required of applicants for a license under this chapter.

(c) The department may conduct an examination of any criminal conviction of an applicant, including obtaining any criminal history record information permitted by law.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Amended by:
Acts 2019, 86th Leg., R.S., Ch. 400 (S.B. 1531), Sec. 4, eff. September 1, 2019.

Sec. 1305.153. MASTER ELECTRICIAN. (a) An applicant for a license as a master electrician must:
(1) have at least 12,000 hours of on-the-job training under the supervision of a master electrician;
(2) have held a journeyman electrician license for at least two years; and
(3) pass a master electrician examination administered under this chapter.
(b) A master electrician may:
(1) perform all electrical work, including electrical work performed by a master sign electrician;
(2) supervise an electrician;
(3) verify compliance with on-the-job training requirements for issuance of a master electrician license, master sign electrician license, journeyman electrician license, or journeyman sign electrician license; and
(4) serve as master of record for an electrical sign contractor.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 4, eff. June 18, 2005.

Sec. 1305.154. MASTER SIGN ELECTRICIAN. An applicant for a license as a master sign electrician must:
(1) have at least 12,000 hours of on-the-job training under the supervision of a master sign electrician; and
(2) pass a master sign electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.155. JOURNEYMAN ELECTRICIAN. An applicant for a

license as a journeyman electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master electrician; and

(2) pass a journeyman electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.156. JOURNEYMAN SIGN ELECTRICIAN. An applicant for a license as a journeyman sign electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master sign electrician; and

(2) pass a journeyman sign electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.157. RESIDENTIAL WIREMAN. An applicant for a license as a residential wireman must:

(1) either:

(A) have at least 4,000 hours of on-the-job training under the supervision of a master electrician or residential wireman; or

(B) successfully complete a career and technology education program described by Section 1305.1575; and

(2) pass a residential wireman examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 402 (H.B. 1391), Sec. 1, eff. September 1, 2023.

Sec. 1305.1575. CAREER AND TECHNOLOGY EDUCATION PROGRAM FOR RESIDENTIAL WIREMAN LICENSE; INSTRUCTORS. (a) In this section:

(1) "Career and technology education program" means:

(A) a career and technology education program under Subchapter F, Chapter 29, Education Code; or

(B) a program determined by the department to be similar to that described by Paragraph (A) and offered by:

(i) an institution of higher education; or

(ii) a private school, as defined by Section 5.001, Education Code.

(2) "Institution of higher education" means an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003, Education Code.

(b) A person who successfully completes a sequence of courses in the electrical trade that are offered through a career and technology education program may apply for and take an examination for a license as a residential wireman, regardless of whether the person has completed the number of hours of on-the-job training required by Section 1305.157(1).

(c) The commission by rule shall establish standards for the essential knowledge and skills of a career and technology education program described by Subsection (b), subject to the approval of the State Board of Education if the courses are to be offered in a high school. The rules must:

(1) require the program to consist of an appropriate number of hours of classroom instruction and a practical component; and

(2) provide for crediting appropriate on-the-job training toward meeting the requirements of the practical component.

(d) A student of any age enrolled in a career and technology education program is eligible to take the sequence of courses described by Subsection (b) without being licensed under this chapter. This subsection does not authorize a person to perform electrical work without the appropriate license outside of a program described by this section.

(e) A person may not provide instruction in a program described by this section unless the person is licensed as a master electrician, journeyman electrician, or residential wireman.

(f) A career and technology education program offered under this section by an institution of higher education may not be more stringent than a program offered by a public high school.

(g) Hours spent completing a program described by this section may not be credited toward any on-the-job training required to apply for a license under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 402 (H.B. 1391), Sec. 2, eff. September 1, 2023.

Sec. 1305.158. MAINTENANCE ELECTRICIAN. An applicant for a license as a maintenance electrician must:

(1) have at least 8,000 hours of on-the-job training under the supervision of a master electrician or maintenance electrician; and

(2) pass a maintenance electrician examination administered under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.159. ELECTRICAL CONTRACTOR. (a) An applicant for a license as an electrical contractor must:

(1) be licensed under this chapter as a master electrician or employ a person licensed under this chapter as a master electrician;

(2) establish proof of financial responsibility in the manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a master electrician license issued or recognized under this chapter may only be assigned to a single electrical contractor, unless the master electrician owns more than 50 percent of the electrical contracting business.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.160. ELECTRICAL SIGN CONTRACTOR. (a) An applicant for a license as an electrical sign contractor must:

(1) be licensed under this chapter as a master sign electrician or employ a person licensed under this chapter as a master sign electrician;

(2) establish proof of financial responsibility in the

manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a master sign electrician license issued or recognized under this chapter may only be assigned to a single electrical sign contractor, unless the master sign electrician owns more than 50 percent of the electrical sign contracting business.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 5, eff. June 18, 2005.

Sec. 1305.1601. JOURNEYMAN INDUSTRIAL ELECTRICIAN. An applicant for a license as a journeyman industrial electrician must:

(1) have at least 8,000 hours of on-the-job training as a licensed electrical apprentice under the supervision of a master electrician; and

(2) pass a journeyman industrial electrician examination administered under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 826 (H.B. 1698), Sec. 3, eff. September 1, 2017.

Sec. 1305.1605. JOURNEYMAN LINEMAN. (a) An applicant for a license as a journeyman lineman must:

(1) have at least:

(A) 7,000 hours of training in an apprenticeship program approved by the United States Department of Labor; or

(B) 3-1/2 years of experience as a journeyman lineman for an electric utility, electric cooperative, municipally owned utility, or electrical contractor in this state; and

(2) pass a journeyman lineman examination administered under this chapter.

(b) A journeyman lineman license is not required for:

(1) a person performing work exempt under Section

1305.003(a)(5); or

(2) a person who:

(A) is performing journeyman lineman work;

(B) possesses a journeyman electrician license; and

(C) is employed by an institution of higher education, as defined by Section 61.003, Education Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 882 (H.B. 796), Sec. 3, eff. June 14, 2013.

Sec. 1305.161. APPRENTICE; TEMPORARY APPRENTICE. (a) Except as provided by Subsection (b), an applicant for a license as an electrical apprentice must be at least 16 years of age and be engaged in the process of learning and assisting in the installation of electrical work under the supervision of a licensed master electrician.

(b) An applicant for a license as an electrical sign apprentice must be at least 18 years of age and be engaged in the process of learning and assisting in the performance of electrical sign work under the supervision of a licensed master sign electrician.

(c) On the request of an applicant for an apprentice license, the executive director shall issue a temporary apprentice license that expires on the 21st day after the date of issuance to an applicant who meets the qualifications established by the executive director.

(d) The commission by rule shall set the fee, establish the qualifications, and provide for the issuance of a temporary apprentice license under this section.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 6, eff. June 18, 2005.

Sec. 1305.1615. EMERGENCY ELECTRICIAN LICENSE. (a) The commission by rule shall establish criteria and procedures for the issuance of an emergency electrician license following a disaster, as that term is defined by Section 418.004, Government Code, to a person licensed as an electrician in another state of the United States.

(b) An emergency license issued under this section expires on the 90th day after the date of issuance.

(c) The commission, with the advice of the advisory board, may adopt rules that provide for the extension of an emergency license issued under this section.

Added by Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 7, eff. June 18, 2005.

Sec. 1305.1617. RESIDENTIAL APPLIANCE INSTALLER. An applicant for a license as a residential appliance installer must pass a residential appliance installer examination administered under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 5, eff. September 1, 2007.

Sec. 1305.1618. RESIDENTIAL APPLIANCE INSTALLATION CONTRACTOR. (a) An applicant for a license as a residential appliance installation contractor must:

(1) be licensed under this chapter as a residential appliance installer or employ a person licensed under this chapter as a residential appliance installer;

(2) establish proof of financial responsibility in the manner prescribed by the executive director; and

(3) maintain workers' compensation coverage for the contractor's employees through an insurance company authorized to engage in the business of insurance in this state or through self-insurance, or elect not to obtain workers' compensation coverage, as provided by Subchapter A, Chapter 406, Labor Code.

(b) A person who holds a residential appliance installer's license issued or recognized under this chapter may only be assigned to a single residential appliance installation contractor, unless the residential appliance installer owns more than 50 percent of the residential appliance installation contracting business.

Added by Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 5, eff. September 1, 2007.

Sec. 1305.162. EXAMINATIONS. (a) Examinations required by this subchapter shall be conducted throughout the state.

(b) The department shall accept, develop, or contract for the examinations required by this chapter, including the administration of the examinations. Each examination must test the knowledge of the applicant about materials and methods used in electrical installations related to the activities that may be performed within each class of license under this chapter and the standards prescribed by the National Electrical Code as adopted by the executive director.

(c) The executive director shall determine uniform standards for acceptable performance on an examination.

(d) In addition to the other requirements of this section, the department shall accept, develop, or contract for a residential appliance installer examination that tests an applicant's knowledge of the materials and methods used in the installation of residential appliances and pool-related devices under this chapter and the National Electrical Code standards as adopted by the executive director.

(e) Notwithstanding Subsection (b), an examination required for a license as a journeyman industrial electrician under Section 1305.1601 may only test an applicant regarding activities performed by a journeyman industrial electrician at a location described by Section 1305.002(11-b).

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 416 (H.B. 1973), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1392 (S.B. 1982), Sec. 3, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 826 (H.B. 1698), Sec. 4, eff. September 1, 2017.

Sec. 1305.163. EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which an examination is administered under this chapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the department shall notify examinees of the result of the examination not later than the 14th day after

the date on which the department receives the results from the testing service.

(b) If the notice of the examination results will be delayed for more than 60 days after the examination date, the department shall notify each examinee of the reason for the delay before the 60th day.

(c) If requested in writing by a person who fails an examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.164. NONRESIDENT LICENSE APPLICANT. The executive director may issue a license under this chapter to an applicant who holds a license in another state and who submits a proper application and pays the required fees if the executive director determines that the applicant is licensed in a state with which there is an agreement to recognize licenses issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.1645. LICENSE ELIGIBILITY REQUIREMENTS FOR APPLICANTS WITH MILITARY EXPERIENCE. (a) Notwithstanding any other law, the department shall credit verified military service, training, or education toward the licensing requirements, other than examination requirements, for a license issued under this chapter by the department.

(b) The department shall expedite the issuance of a temporary license or a license by endorsement or reciprocity under this chapter to an applicant who:

(1) has verified military experience; and

(2) holds a current license issued by another jurisdiction that has license requirements that are substantially equivalent to the license requirements of this state.

(c) The commission shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 977 (H.B. 2029), Sec. 1, eff.

June 14, 2013.

Sec. 1305.165. LICENSE ISSUANCE; NONTRANSFERABILITY. (a) Not later than the 30th day after the date on which the department determines that an applicant has passed the examination required under this chapter, the executive director shall issue a license to the applicant if the applicant has complied with the application requirements and paid the fees required by this chapter.

(b) A license issued by the executive director is valid throughout this state and is not transferable.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.166. DISPLAY OF LICENSE. (a) An electrical contractor, electrical sign contractor, and residential appliance installation contractor shall display the contractor's business name and the number of the license issued by the executive director on each vehicle owned by the contractor.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides of the vehicle.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 6, eff. September 1, 2007.

Sec. 1305.167. LICENSE RENEWAL; FEE EXEMPTION. (a) Except as provided by Subsection (b), a license expires annually on December 31 and may be renewed annually on payment of the required renewal fee.

(b) The executive director by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, renewal fees payable on or before December 31 shall be prorated on a monthly basis so that each license holder pays only that portion of the renewal fee that is

applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is due.

(c) Not later than the 30th day preceding the expiration date of a person's license, the department shall notify the person in writing, at the person's last known mailing address, of the impending license expiration. A person may renew an unexpired license by paying to the department, before the license expiration date, the required renewal fee.

(d) A license holder who provides instruction in a career and technology education program described by Section 1305.1575 is not required to pay a fee to renew the license.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 11, eff. June 18, 2005.

Acts 2023, 88th Leg., R.S., Ch. 402 (H.B. 1391), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 402 (H.B. 1391), Sec. 4, eff. September 1, 2023.

SUBCHAPTER E. REGULATION OF ELECTRICIANS BY LOCAL GOVERNMENTS

Sec. 1305.201. MUNICIPAL OR REGIONAL REGULATION. (a) This chapter does not prohibit a municipality or region from regulating electricians or residential appliance installers by:

(1) enacting an ordinance requiring inspections;

(2) offering examinations;

(3) issuing municipal or regional licenses; or

(4) collecting permit fees for municipal or regional licenses and examinations from appliance installers for work performed in the municipality or region.

(b) A municipality or region may not require a person to take a municipal or regional examination if that person holds the appropriate license issued under this chapter and is working within the scope of that license.

(c) A municipality may adopt procedures for the:

(1) adoption of local amendments to the National Electrical Code; and

(2) administration and enforcement of that code.

(d) Electrical work performed within the corporate limits of a municipality must be installed in accordance with all applicable local ordinances.

(e) Electrical work performed in an unincorporated area of the state must be installed in accordance with standards at least as stringent as the requirements of the state electrical code as adopted under Section 1305.101.

(f) A municipality or region may not collect a permit fee, registration fee, administrative fee, or any other fee from an electrician who holds a license issued under this chapter for work performed in the municipality or region. This subsection does not prohibit a municipality or region from collecting a building permit fee.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 418 (S.B. 1222), Sec. 7, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 285 (H.B. 3329), Sec. 1, eff. September 1, 2017.

Sec. 1305.202. SCOPE OF MUNICIPAL OR REGIONAL LICENSE. (a) A license to perform electrical work issued by a municipality or region is valid only in the municipality or region or in another municipality or region under a reciprocal agreement.

(b) A person who holds a license to perform electrical work or electrical sign work issued by a municipality or region that elects to discontinue issuing or renewing licenses may apply for an equivalent license under this chapter without complying with the applicable examination requirement if the person:

(1) held the municipal or regional license for the preceding year; and

(2) submits an application for a license under this chapter within 90 days of the date the municipality or region stops issuing or renewing licenses.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1052 (H.B. 1317), Sec. 9, eff. June 18,

2005.

SUBCHAPTER F. LICENSE DENIAL AND DISCIPLINARY ACTIONS

Sec. 1305.251. GROUNDS FOR DENIAL OR DISCIPLINARY ACTION. A person is subject to denial of a license application or disciplinary action under Section 51.353 if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.252. REQUESTED SUSPENSION BY LOCAL GOVERNMENT. A municipality or region may request suspension for just cause of the license under this chapter of a license holder working in its jurisdiction.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.253. HEARINGS; ADMINISTRATIVE PROCEDURE. (a) If the department proposes to deny a license or take disciplinary action against a license holder, the license holder is entitled to a hearing.

(b) The proceedings relating to a license denial and disciplinary action by the department under this chapter are governed by Chapter 2001, Government Code. A hearing under this chapter may be conducted by a hearings officer designated by the commission.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.254. NEW APPLICATION BY HOLDER OF REVOKED LICENSE. A license holder whose license has been revoked may apply for a new license after the first anniversary of the date of the revocation.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER G. ENFORCEMENT

Sec. 1305.301. ADMINISTRATIVE PENALTY. (a) The executive director may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.302. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2003.

Sec. 1305.303. CRIMINAL PENALTY.

(a) A person subject to this chapter commits an offense if the person:

(1) violates the licensing requirements of this chapter;

(2) performs electrical work without a license to perform electrical work in this state;

(3) employs an individual who does not hold the appropriate license required by this chapter; or

(4) falsifies a certification of on-the-job training.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1062, Sec. 1, eff. Sept. 1, 2004.

TITLE 9. REGULATION OF BARBERS, COSMETOLOGISTS, AND RELATED OCCUPATIONS

CHAPTER 1603. REGULATION OF BARBERING AND COSMETOLOGY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1603.001. GENERAL DEFINITIONS. In this chapter:

(1) "Advisory board" means the Barbering and Cosmetology Advisory Board.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Establishment" means a place:

(A) in which barbering or cosmetology is practiced; and

(B) that is required to hold a license issued under Subchapter E-2.

(5) "Executive director" means the executive director of the department.

(6) "Manager" means the person who controls or directs the business of an establishment or directs the work of a person employed in an establishment.

(7) "School" means a public secondary school, public postsecondary school, or private postsecondary school:

(A) in which barbering or cosmetology is taught; and

(B) that is required to hold a license issued under Subchapter E-3.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.01, eff. September 1, 2021.

Sec. 1603.0011. PRACTICE OF BARBERING OR COSMETOLOGY. (a) The practices of barbering and cosmetology consist of performing or offering to perform for compensation any of the following services:

(1) treating a person's hair by:

(A) providing any method of treatment as a primary service, including arranging, beautifying, bleaching, cleansing, coloring, cutting, dressing, dyeing, processing, shaping, singeing,

straightening, styling, tinting, or waving;

(B) providing a necessary service that is preparatory or ancillary to a service under Paragraph (A), including bobbing, clipping, cutting, or trimming a person's hair or shaving a person's neck with a safety razor; or

(C) cutting the person's hair as a separate and independent service for which a charge is directly or indirectly made separately from charges for any other service;

(2) treating a person's mustache or beard by arranging, beautifying, coloring, processing, styling, trimming, or shaving with a safety razor;

(3) cleansing, stimulating, or massaging a person's scalp, face, neck, shoulders, or arms:

(A) by hand or by using a device, apparatus, or appliance; and

(B) with or without the use of any cosmetic preparation, antiseptic, tonic, lotion, or cream;

(4) beautifying a person's face, neck, shoulders, or arms using a cosmetic preparation, antiseptic, tonic, lotion, powder, oil, clay, cream, or appliance;

(5) administering facial treatments;

(6) removing superfluous hair from a person's body using depilatories, preparations or chemicals, tweezers, or other devices or appliances of any kind or description;

(7) treating a person's nails by:

(A) cutting, trimming, polishing, tinting, coloring, cleansing, manicuring, or pedicuring; or

(B) attaching false nails;

(8) massaging, cleansing, treating, or beautifying a person's hands or feet; or

(9) weaving a person's hair by using any method to attach commercial hair to a person's hair or scalp.

(b) In addition to the services described by Subsection (a), the practice of barbering includes performing or offering to perform for compensation the service of shaving a person's face, neck, mustache, or beard with a razor of any type.

(c) In addition to the services described by Subsection (a), the practice of cosmetology includes performing or offering to perform for compensation the service of applying semipermanent, thread-like extensions composed of single fibers to a person's

eyelashes.

(d) Advertising or representing to the public in any manner that a person is licensed to perform a barbering or cosmetology service under this chapter, or that a location or place of business is an establishment or school, constitutes the practice of barbering or cosmetology.

(e) In this section, "safety razor" means a razor that is fitted with a guard close to the cutting edge of the razor that is intended to:

(1) prevent the razor from cutting too deeply; and

(2) reduce the risk and incidence of accidental cuts.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.02, eff. September 1, 2021.

Sec. 1603.0012. SERVICES NOT CONSTITUTING BARBERING OR COSMETOLOGY. Barbering and cosmetology do not include:

(1) threading, which involves removing unwanted hair from a person by using a piece of thread that is looped around the hair and pulled to remove the hair and includes the incidental trimming of eyebrow hair; or

(2) servicing a person's wig, toupee, or artificial hairpiece on a person's head or on a block after the initial retail sale in any manner described by Section 1603.0011(a)(1).

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.02, eff. September 1, 2021.

Sec. 1603.0013. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) does not represent or advertise to the public directly or indirectly that the person is authorized by the department to practice barbering or cosmetology and the person is:

(A) licensed in this state to practice medicine, dentistry, podiatry, chiropractic, or nursing and operating within the scope of the person's license;

(B) a commissioned or authorized medical or surgical officer of the United States armed forces; or

(C) an inmate in the institutional division of the

Texas Department of Criminal Justice who performs barbering or cosmetology during the person's incarceration;

(2) provides a service in an emergency;

(3) is in the business of or receives compensation for makeup applications only;

(4) provides a cosmetic service as a volunteer or an employee performing regular duties at a licensed nursing or convalescent custodial or personal care home to a patient residing in the home;

(5) owns, operates, or manages a licensed nursing or convalescent custodial or personal care home that allows a person with an operator license to perform cosmetic services for patients residing in the home on an occasional but not daily basis;

(6) provides an incidental cosmetic service, or owns, operates, or manages the location where that service is provided, if the primary purpose of the service is to enable or assist the recipient of the service to participate as the subject of:

(A) a photographic sitting at a permanent establishment that charges a fee exclusively for a photographic sitting;

(B) a television appearance; or

(C) the filming of a motion picture; or

(7) performs only natural hair braiding, including braiding a person's hair, trimming hair extensions only as applicable to the braiding process, and attaching commercial hair by braiding and without the use of chemicals or adhesives.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.02, eff. September 1, 2021.

Sec. 1603.002. REGULATION OF BARBERING AND COSMETOLOGY BY DEPARTMENT OF LICENSING AND REGULATION. The department shall administer this chapter. This chapter does not limit the department's or commission's general powers under Chapter 51.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.03, eff. September 1, 2021.

SUBCHAPTER B. BARBERING AND COSMETOLOGY ADVISORY BOARD

Sec. 1603.051. ADVISORY BOARD; MEMBERSHIP. The Barbering and Cosmetology Advisory Board consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) four members who each hold an individual practitioner license under Subchapter E-1, including:

(A) at least one holder of a Class A barber license; and

(B) at least one holder of a cosmetology operator license;

(2) two members who each hold an establishment license;

(3) two members who each hold a school license; and

(4) one member who represents the public.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.04, eff. September 1, 2021.

Sec. 1603.052. DUTIES OF ADVISORY BOARD. (a) The advisory board shall advise the commission and the department on:

(1) education and curricula for applicants;

(2) the content of examinations;

(3) proposed rules and standards on technical issues related to barbering and cosmetology; and

(4) other issues affecting barbering and cosmetology.

(b) The advisory board shall respond to questions from the commission and the department regarding barbering and cosmetology.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.04, eff. September 1, 2021.

Sec. 1603.053. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall

appoint a replacement to fill the unexpired term.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.04, eff. September 1, 2021.

Sec. 1603.054. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as the presiding officer of the advisory board for a term of two years.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.04, eff. September 1, 2021.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 1603.101. RULES. The commission shall adopt rules consistent with this chapter for the administration of this chapter and the operations of the department in regulating barbering and cosmetology.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.05, eff. September 1, 2021.

Sec. 1603.102. SANITATION RULES. The commission shall establish sanitation rules to prevent the spread of an infectious or contagious disease.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.103. INSPECTION OF SCHOOLS BEFORE OPERATION. (a) Until the department determines, by inspection, that the person has established the school in compliance with this chapter, a person may not operate a school licensed under this chapter.

(b) A school that is not approved by the department on initial

inspection may be reinspected.

(c) The department may charge the school a fee for each inspection. The commission shall by rule set the amount of the fee.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 15, eff. June 15, 2007.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.06, eff. September 1, 2021.

Sec. 1603.104. INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license or permit holder is practicing in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.33(2), eff. September 1, 2021.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.33(2), eff. September 1, 2021.

(c-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.33(2), eff. September 1, 2021.

(d) An inspector who discovers a violation of this chapter or of a rule or order of the commission or executive director shall provide written notice of the violation to the license or permit holder on a form prescribed by the department.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 496 (H.B. 2739), Sec. 4, eff. September 1, 2017.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 16, eff. June 15, 2007.

Acts 2017, 85th Leg., R.S., Ch. 496 (H.B. 2739), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 14.006, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.07, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.08, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.33(2), eff. September 1, 2021.

Sec. 1603.1045. CONTRACT TO PERFORM INSPECTIONS. The department may contract with a person to perform for the department inspections of a school or establishment.

Added by Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 17, eff. June 15, 2007.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.09, eff. September 1, 2021.

Sec. 1603.105. RETENTION OF STUDENT RECORDS. The department may not retain student records, including student transcripts, beyond the time required by state law.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.106. CERTAIN BUILDING AND FACILITY STANDARDS PROHIBITED. The commission may not establish building or facility standards for a school that are not related to health and safety, including a requirement that a building or facility of the school have a specific:

(1) square footage of floor space;

(2) number of chairs; or

(3) number of sinks.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.10, eff. September 1, 2021.

SUBCHAPTER D. PUBLIC PARTICIPATION AND COMPLAINT PROCEDURES

Sec. 1603.151. NOTIFICATION OF PUBLIC INTEREST INFORMATION AND PARTICIPATION. The commission by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department regarding barbering and cosmetology. The department may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.11, eff. September 1, 2021.

Sec. 1603.152. COMPLAINT JURISDICTION; NOTIFICATION. If the department determines that it lacks jurisdiction to resolve the complaint, the department shall notify the complainant in writing that the department is closing the complaint because it lacks jurisdiction.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Sec. 1603.154. INFORMAL SETTLEMENT CONFERENCE. The department shall establish guidelines for an informal settlement conference related to a complaint filed with the department.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

SUBCHAPTER E. GENERAL LICENSE AND PERMIT PROVISIONS

Sec. 1603.2001. RULES FOR ISSUANCE OF LICENSE OR PERMIT. (a) The commission by rule shall establish requirements for the issuance of:

(1) a license for an individual practitioner, establishment, or school; and

(2) a student permit.

(b) Requirements established by the commission under Subsection (a) for an individual practitioner may include requirements regarding an applicant's:

(1) minimum age;

(2) education level; and

(3) completed hours of instruction.

(c) In establishing a requirement under this section for the issuance of a license, the commission shall consider whether the requirement is the least restrictive requirement possible to ensure public safety without creating a barrier to entry into the licensed occupation.

(d) Requirements established under this section:

(1) for an individual practitioner specialty license may not be more stringent than requirements for a Class A barber license or a cosmetology operator license; and

(2) for a specialty establishment license may not be more stringent than requirements for an establishment license.

(e) The commission shall establish standardized requirements within license categories.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.13, eff. September 1, 2021.

Sec. 1603.201. APPLICATION FORM. An application for a license or permit under this chapter must be made on a form prescribed by the department.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.14, eff. September 1, 2021.

Sec. 1603.202. DUPLICATE LICENSE OR PERMIT. The department shall issue a duplicate license or permit to an applicant who:

(1) submits an application for a duplicate license or permit to the department; and

(2) pays the required fee.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.14, eff. September 1, 2021.

Sec. 1603.2025. TEMPORARY LICENSE. (a) The department may issue a temporary license.

(b) The commission by rule may establish requirements for the issuance of a temporary license.

(c) A temporary license expires on the 60th day after the date the license is issued. A temporary license may not be renewed.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.15, eff. September 1, 2021.

Sec. 1603.203. PROVISIONAL LICENSE. (a) The department may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing in the profession for which the person seeks the license for at least two years in another jurisdiction, including a foreign country, that has requirements substantially equivalent to the requirements of this chapter; and

(2) has passed a national or other examination recognized by the department relating to the practice of that profession.

(b) A provisional license is valid until the date the department approves or denies the provisional license holder's application. The department shall issue a license to the provisional license holder if:

(1) the provisional license holder is eligible to hold a license under this chapter; or

(2) the provisional license holder passes the part of the

examination that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of the profession in this state and:

(A) the department verifies that the provisional license holder meets the education and experience requirements for the license; and

(B) the provisional license holder satisfies any other license requirements.

(c) The department must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.16, eff. September 1, 2021.

Sec. 1603.204. SUBSTANTIALLY EQUIVALENT LICENSE. (a) A person who holds a license to practice barbering or cosmetology from another state or country that has standards or work experience requirements that are substantially equivalent to the requirements of this chapter may apply for a license to perform the same acts of barbering or cosmetology in this state that the person practiced in the other state or country.

(b) The person must:

(1) submit an application for the license to the department; and

(2) pay fees in an amount prescribed by the commission, including any applicable license fee.

(c) A person issued a license under this section:

(1) may perform the acts of barbering or cosmetology authorized by the license; and

(2) is subject to the renewal procedures and fees provided in this chapter for the performance of those acts of barbering or cosmetology.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff.

September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.16, eff. September 1, 2021.

Sec. 1603.208. DIGITALLY PREARRANGED REMOTE SERVICES. (a) In this section:

(1) "Digital network" means any online-enabled application, Internet website, or system offered or used by a remote service business that allows a client to arrange for a digitally prearranged remote service.

(2) "Digitally prearranged remote service" means a barbering or cosmetology service performed for compensation by a person holding a license under Subchapter E-1 that is:

(A) prearranged through a digital network; and

(B) performed at a location other than an establishment licensed under Subchapter E-2.

(3) "Remote service business" means a corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a client to schedule a digitally prearranged remote service with a person holding a license under Subchapter E-1.

(b) The commission shall adopt rules to administer this section, including rules that:

(1) set minimum standards for:

(A) the operation of a remote service business; and

(B) the sanitation requirements for performing a digitally prearranged remote service;

(2) determine activities within the scope of barbering and cosmetology that may be performed as a digitally prearranged remote service; and

(3) establish procedures for inspecting and auditing the records of a remote service business and of a person who performs a digitally prearranged remote service.

(c) Sections 1603.2108 and 1603.2109 do not apply to a digitally prearranged remote service scheduled through a remote service business.

(d) A person who holds a license to practice barbering or cosmetology and who performs a digitally prearranged remote service shall:

(1) comply with this section and the rules adopted under this section; and

(2) practice within the scope of the person's license.

(e) A remote service business may not offer a barbering or cosmetology service that requires treating or removing a person's hair by:

(1) coloring;

(2) processing;

(3) bleaching;

(4) dyeing;

(5) tinting; or

(6) using a cosmetic preparation.

(f) Before a person licensed to practice barbering or cosmetology performs a digitally prearranged remote service for a client requesting the service, a remote service business must provide through the entity's digital network:

(1) the following information regarding the person who will perform the service:

(A) the person's first and last name;

(B) the person's license number; and

(C) a photograph of the person;

(2) the following information regarding the business:

(A) Internet website address; and

(B) telephone number; and

(3) the department's Internet website address and telephone number and notice that the client may contact the department to file a complaint against the business or person.

(g) Within a reasonable time after completion of a digitally prearranged remote service, the remote service business shall issue to the client who requested the service a receipt that includes:

(1) the date the service was provided;

(2) a description of the service;

(3) the first and last name of the person who performed the service;

(4) the person's license number;

(5) the following information regarding the business:

(A) Internet website address; and

(B) telephone number; and

(6) the department's Internet website address and telephone number and notice that the client may contact the department to file

a complaint against the business or person.

(h) A remote service business shall maintain each record showing compliance with this section and the rules adopted under this section until at least the fifth anniversary of the date the record was generated.

(i) A remote service business shall terminate a person's access to the business's digital network if the business or department determines the person violated:

(1) this chapter; or

(2) a rule adopted under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 14.007, eff. September 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.17, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.18, eff. September 1, 2021.

Sec. 1603.209. INFECTIOUS AND CONTAGIOUS DISEASES. (a) A person holding a license or permit issued under Subchapter E-1 may not perform any practice of barbering or cosmetology if the person knows the person is suffering from an infectious or contagious disease for which the person is not entitled to protection under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(b) A person holding an establishment or school license may not employ a person to perform any practice of barbering or cosmetology or to instruct in the practice of barbering or cosmetology if the license holder knows that the person is suffering from an infectious or contagious disease for which the person is not entitled to protection under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.19, eff. September 1, 2021.

SUBCHAPTER E-1. INDIVIDUAL PRACTITIONER LICENSES; STUDENT PERMIT; PRACTICE

Sec. 1603.2101. INDIVIDUAL PRACTITIONER LICENSE OR STUDENT PERMIT REQUIRED; USE OF CERTAIN TERMS WITHOUT LICENSE PROHIBITED. (a) A person may not perform or offer or attempt to perform any act of barbering or cosmetology unless the person holds a license or permit issued under this subchapter to perform that act.

(b) Unless the person holds an appropriate license issued under this subchapter, a person may not directly or indirectly use or cause to be used as a professional or business identification, title, name, representation, asset, or means of advantage or benefit:

(1) the term "barber" or "barbering";

(2) the term "cosmetologist" or "cosmetology"; or

(3) any combination, variation, or abbreviation of the terms listed in Subdivisions (1) and (2).

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2102. ISSUANCE OF INDIVIDUAL PRACTITIONER LICENSE. The department shall issue an individual practitioner license to an applicant who:

(1) meets the applicable eligibility requirements;

(2) passes the applicable examination;

(3) pays the required fee;

(4) has not committed an act that constitutes a ground for denial of the license; and

(5) submits an application on a form prescribed by the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2103. INDIVIDUAL PRACTITIONER LICENSES. (a) A person holding:

(1) a Class A barber license may perform any barbering service;

(2) a cosmetology operator license may perform any cosmetology service;

(3) a manicurist license may perform any service described by Section 1603.0011(a)(7) or (8);

(4) an esthetician license may perform any service described by Section 1603.0011(a)(3), (4), (5), or (6) or (c);

(5) a manicurist/esthetician license may perform any service described by Section 1603.0011(a)(3), (4), (5), (6), (7), or (8) or (c);

(6) a hair weaving specialist license may perform any service described by Section 1603.0011(a)(9);

(7) a hair weaving specialist/esthetician license may perform any service described by Section 1603.0011(a)(3), (4), (5), (6), or (9) or (c); and

(8) an eyelash extension specialist license may perform any service described by Section 1603.0011(c).

(b) The commission by rule shall provide for the issuance of:

(1) a Class A barber license to a person who holds a cosmetology operator license; and

(2) a cosmetology operator license to a person who holds a Class A barber license.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2104. WAIVER OF CERTAIN LICENSE REQUIREMENTS. (a) The department may waive any requirement for a license issued under this subchapter for an applicant holding a license from another jurisdiction that has license requirements substantially equivalent to those of this state.

(b) The department shall issue a license to an applicant under Subsection (a) if the applicant:

(1) submits an application on a form prescribed by the department;

(2) pays the application fee; and

(3) provides proof that the applicant holds a current license to engage in the same or a similar activity issued by another jurisdiction that has license requirements substantially equivalent to those of this state.

(c) The department may not require a personal interview as part of the application process under this section.

(d) A license issued under this section may be renewed as provided by Subchapter G.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2105. STUDENT PERMIT. (a) A student enrolled in a school licensed under Subchapter E-3 must hold a permit stating the student's name and the name of the school.

(b) The department shall issue a student permit to an applicant who submits an application to the department for a student permit accompanied by the required fee.

(c) A separate application is required for each enrollment. The application fee applies only to the first enrollment. The department may not charge the application fee for any later enrollment.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2106. TRANSFER OF LICENSE OR PERMIT PROHIBITED. A license or permit issued under this subchapter is not transferable.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2107. DISPLAY OF LICENSE OR PERMIT. (a) The holder of a license issued under this subchapter shall:

(1) display the original license and an attached photograph of the license holder in a conspicuous place near the license holder's work chair in the establishment in which the holder is working; or

(2) make available at the reception desk of the establishment in which the holder is working, in the manner prescribed by the department:

(A) the original license and an attached photograph of the license holder; or

(B) a digital image of the license and photograph of the license holder.

(b) The holder of a student permit issued under this subchapter shall display the permit in a reasonable manner at the school in

which the permit holder is enrolled.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2108. LOCATION OF PRACTICE. A person holding a license or permit issued under this subchapter may practice barbering or cosmetology only at a licensed establishment or school.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2109. SERVICE AT UNLICENSED LOCATION. (a) In this section, "licensed facility" means:

(1) an establishment licensed under Subchapter E-2; or

(2) a school licensed under Subchapter E-3.

(b) A person holding a license under this subchapter may perform a service within the scope of the license at a location other than a licensed facility for a client:

(1) who, because of illness or physical or mental incapacitation, is unable to receive the service at a licensed facility; or

(2) in preparation for and at the location of a special event, including a wedding.

(c) An appointment for a service performed under this section must be made through a licensed facility.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

SUBCHAPTER E-2. ESTABLISHMENT LICENSES; OPERATION

Sec. 1603.2201. LICENSE REQUIRED. (a) A person may not own, operate, or manage an establishment in which an act of barbering or cosmetology is practiced unless the person holds a license issued under this subchapter to operate the establishment.

(b) A person may not lease space on the premises of a licensed establishment to engage in the practice of barbering or cosmetology as an independent contractor unless the person holds a license issued

under Subchapter E-1.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2202. ISSUANCE OF LICENSE. The department shall issue the applicable establishment license under this subchapter to an applicant if:

(1) the applicant:

(A) owns or rents the establishment;

(B) verifies the application;

(C) complies with the application requirements of this chapter;

(D) pays the required inspection and license fees; and

(E) has not committed an act that constitutes a ground for denial of a license; and

(2) the establishment:

(A) meets the commission's minimum health standards for an establishment; and

(B) complies with all commission rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2203. ESTABLISHMENT LICENSES. (a) An establishment licensed as:

(1) an establishment may provide any barbering or cosmetology service;

(2) a manicurist specialty establishment may provide any service described by Section 1603.0011(a)(7) or (8);

(3) an esthetician specialty establishment may provide any service described by Section 1603.0011(a)(3), (4), (5), or (6) or (c);

(4) a manicurist/esthetician specialty establishment may provide any service described by Section 1603.0011(a)(3), (4), (5), (6), (7), or (8) or (c);

(5) a hair weaving specialty establishment may provide any service described by Section 1603.0011(a)(9);

(6) an eyelash extension specialty establishment may

provide any service described by Section 1603.0011(c);

(7) a mini-establishment may provide any barbering or cosmetology service; and

(8) a mobile establishment may provide any barbering or cosmetology service.

(b) In this section:

(1) "Mini-establishment" includes a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or another configuration of operations as authorized by the department in which a person practices under a license issued under Subchapter E-1.

(2) "Mobile establishment" means a facility that is readily movable and where barbering, cosmetology, or both are practiced other than at a fixed location.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2204. TRANSFER OF LICENSE PROHIBITED. A license issued under this subchapter is not transferable.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2205. USE OF ESTABLISHMENT AS SLEEPING QUARTERS PROHIBITED. (a) An owner or manager of a licensed establishment may not permit a person to sleep in a room used as part of the establishment.

(b) A person may not perform an act for which a license is required in a room in an establishment that is used as sleeping quarters.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

SUBCHAPTER E-3. SCHOOL LICENSES; OPERATION

Sec. 1603.2301. LICENSE REQUIRED. A person may not operate a school for instruction in the practice of barbering or cosmetology

unless the person holds a license issued under this subchapter to operate the school.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2302. ISSUANCE OF LICENSE. The department shall issue a license under this subchapter to an applicant who, as applicable:

(1) submits an application on a form prescribed by the department;

(2) pays the required fee;

(3) provides to the department adequate proof of financial responsibility;

(4) meets the health and safety standards established by the commission; and

(5) satisfies any other requirements of this chapter or commission rule.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2303. SCHOOL LICENSES; INSTRUCTORS; ENFORCEMENT. (a) The holder of a public secondary school license, public postsecondary school license, or private postsecondary school license:

(1) may provide instruction in the barbering or cosmetology services for which the license holder has been approved by the department; and

(2) may only employ to provide the instruction described by Subdivision (1) a person who holds a license issued under Subchapter E-1 to perform the acts of barbering or cosmetology for which the person will provide instruction.

(b) The department may take any disciplinary or other enforcement action against a person who violates Subsection (a)(2).

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2304. CHANGE OF SCHOOL OWNERSHIP OR LOCATION. (a) If a licensed school changes ownership:

(1) the outgoing owner shall notify the department of the change not later than the 10th day before the date the change takes effect; and

(2) the new owner shall obtain a license under this subchapter in accordance with commission rule.

(b) A school may not change the location of the school unless the school obtains approval from the department before the change by showing that the proposed location meets the requirements of this chapter and commission rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2305. SIGNS REQUIRED. The holder of a school license shall place a sign on the front outside portion of the school's building in a prominent place that reads "SCHOOL--STUDENT PRACTITIONERS" in:

(1) at least 10-inch block letters; or

(2) a manner prescribed by the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2306. INFORMATION PROVIDED TO PROSPECTIVE STUDENT. The holder of a school license shall provide to each prospective student, as applicable:

(1) a course outline;

(2) a schedule of the tuition and other fees assessed;

(3) the school's refund policy required under Section 1603.3602;

(4) the school's grading policy and rules relating to incomplete grades;

(5) the school's rules of operation and conduct, including rules relating to absences;

(6) the department's name, mailing address, and telephone number for the purpose of directing complaints to the department; and

(7) the current job placement rates and employment rates of

students who complete a course of instruction.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2307. COURSE LENGTH AND CURRICULUM CONTENT. (a) A school shall design course length and curriculum content to reasonably ensure that a student develops the job skills and knowledge necessary for employment.

(b) A school must submit to the department for approval the course length and curriculum content for each course offered by the school. The school may not implement a course length and curriculum content without the approval of the department.

(c) Before issuing or renewing a license under this subchapter, the department must require the school to account for each course length and curriculum content.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2308. REQUIRED COURSES. (a) A school shall instruct students in the theory and practice of subjects necessary and beneficial to the practice of barbering and cosmetology.

(b) The commission by rule shall establish the subjects in which students shall receive instruction.

(c) A school may not increase, decrease, or withhold for any reason the number of hours earned by a student.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2309. DAILY ATTENDANCE RECORDS. (a) A school shall maintain an attendance record showing the students' daily attendance.

(b) The department may inspect a school's attendance records at any time.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2310. INSTRUCTOR-TO-STUDENT RATIO. A licensed school must have at least one instructor for every 25 students on the school's premises.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2311. REPORTS TO DEPARTMENT. (a) A licensed school shall maintain a monthly progress report regarding each student attending the school. The report must certify the daily attendance record of each student and the number of hours earned by each student during the previous month.

(b) On a student's completion of a prescribed course of instruction, the school shall notify the department that the student has completed the required number of hours and is eligible to take the appropriate examination.

(c) The holder of a school license shall provide to the department on request:

(1) the current course completion rates of students who attend a course of instruction offered by the school; and

(2) job placement rates and employment rates of students who complete a course of instruction.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2312. ADDITIONAL DUTIES OF LICENSE HOLDER. The holder of a school license shall:

(1) maintain a sanitary premises;

(2) establish regular class and instruction hours and grades;

(3) hold examinations before issuing diplomas; and

(4) maintain a copy of the school's curriculum in a conspicuous place and verify that the curriculum is being followed.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2313. TRANSFER OF HOURS OF INSTRUCTION. (a) A student at a licensed school may transfer completed hours of instruction to another licensed school in this state.

(b) In order for the hours of instruction to be transferred, a transcript showing the completed courses and number of hours certified by the school in which the instruction was given must be submitted to the department.

(c) In evaluating a student's transcript, the department shall determine whether the agreed tuition has been paid. If the tuition has not been paid, the department shall notify the student that the student's transcript cannot be certified to the school to which the student seeks a transfer until proof is provided that the tuition has been paid.

(d) On evaluation and approval, the department shall certify in writing to the student and to the school to which the student seeks a transfer that:

(1) the stated courses and hours have been successfully completed; and

(2) the student is not required to repeat the hours of instruction.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

Sec. 1603.2314. IDENTIFICATION OF AND WORK PERFORMED BY STUDENT. (a) Each licensed school shall maintain in a conspicuous place a list of the names and identifying pictures of the students who are enrolled in the school's courses.

(b) A school may not receive compensation for work done by a student unless the student has completed 10 percent of the required number of hours for a license under Subchapter E-1.

(c) If a school violates this section, the license of the school may be revoked or suspended.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.20, eff. September 1, 2021.

SUBCHAPTER F. EXAMINATION REQUIREMENTS

Sec. 1603.252. GENERAL EXAMINATION REQUIREMENTS. (a) The department may accept, approve, develop, or contract for the examinations required by this chapter, including the administration of the examinations.

(b) The executive director shall determine uniform standards for acceptable performance on an examination for a license under Subchapter E-1.

(c) The examination must include a written examination as provided by Section 1603.253 and may include a practical examination as provided by Section 1603.256.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 841 (H.B. 2698), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.21, eff. September 1, 2021.

Sec. 1603.253. WRITTEN EXAMINATION. The department shall select an examination for each written examination required under this chapter. The written examination must be:

(1) validated by an independent testing professional; or

(2) purchased from a national testing service.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.22, eff. September 1, 2021.

Sec. 1603.255. EARLY EXAMINATION. The commission by rule may allow for the early written examination of a student.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 24, eff.

September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 14.008, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.22, eff. September 1, 2021.

Sec. 1603.256. PRACTICAL EXAMINATION. (a) The commission may require a practical examination as it considers necessary for a license issued under Subchapter E-1.

(b) The department shall prescribe the method and content of any practical examination.

(c) The following persons may administer a practical examination:

(1) the department;

(2) a person with whom the department contracts under Section 1603.252;

(3) a licensed school that is approved by the department to administer the examination under Section 1603.252; or

(4) the Windham School District.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 22, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 841 (H.B. 2698), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 14.009, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.23, eff. September 1, 2021.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 1603.3001. LICENSE TERMS. (a) Except as provided by Subsection (b), a license other than a temporary license expires on the second anniversary of the date the license is issued.

(b) A school license expires on the first anniversary of the date the license is issued.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.24, eff. September 1, 2021.

Sec. 1603.3002. RENEWAL RULES. (a) The commission by rule may establish requirements for the renewal of a license issued under this chapter, including continuing education requirements.

(b) The commission may establish separate requirements for:

(1) the initial renewal of a license; and

(2) subsequent renewals of a license.

(c) Before establishing continuing education requirements under this section, the commission must consider the potential impact of continuing education with respect to:

(1) identifying and assisting trafficked persons; and

(2) providing license holders with opportunities to acquire new skills.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.24, eff. September 1, 2021.

Sec. 1603.3003. ISSUANCE OF RENEWAL LICENSE. The department shall issue a renewal license on receipt of:

(1) a renewal application in the form prescribed by the department; and

(2) any renewal fee.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.24, eff. September 1, 2021.

Sec. 1603.3004. RENEWAL WHILE IN ARMED FORCES. (a) The department may not require the holder of a license issued under Subchapter E-1 who is serving on active duty in the United States armed forces to renew the person's license.

(b) The department shall issue a renewal license on application and payment of the required renewal fee not later than the 90th day after the date the person is released or discharged from active duty in the United States armed forces.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.24,

eff. September 1, 2021.

Sec. 1603.301. DENIAL OF RENEWAL DUE TO ADMINISTRATIVE PENALTY. The department may deny a person's request to renew a license issued under this chapter if the person has not paid an administrative penalty imposed under Subchapter F, Chapter 51. This section does not apply if:

(1) the person's time to pay or request a hearing has not expired under Section 51.304;

(2) the person has requested a hearing under Section 51.304, but the person's time to pay has not expired under Section 51.307; or

(3) the penalty is stayed.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.24, eff. September 1, 2021.

SUBCHAPTER H. PRACTICE PROVISIONS APPLICABLE TO MORE THAN ONE LICENSE TYPE

Sec. 1603.351. MINIMUM CURRICULUM FOR SCHOOLS; DISTANCE EDUCATION. (a) The commission shall prescribe the minimum curriculum, including the subjects and the number of hours in each subject, taught by a licensed school.

(a-1) Notwithstanding any other law, the commission may adopt rules to:

(1) authorize a licensed school to account for any hours of instruction completed under this chapter on the basis of clock hours or credit hours; and

(2) establish standards for determining the equivalency and conversion of clock hours to credit hours and credit hours to clock hours.

(b) The commission may adopt rules allowing distance education only for the theory portion of the curriculum taught by a licensed school.

(c) Distance education does not satisfy the requirements of the

practical portion of the curriculum taught by a licensed school.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 62 (H.B. 2095), Sec. 23, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 495 (H.B. 2738), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 10.018, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.26, eff. September 1, 2021.

Sec. 1603.352. STERILIZATION REQUIREMENTS FOR CERTAIN SERVICES. (a) A person who holds a license or permit issued under this chapter and who performs a service described by Section 1603.0011(a)(7) or (8) shall, before performing the service, clean, disinfect, and sterilize with an autoclave or dry heat sterilizer or sanitize with an ultraviolet sanitizer, in accordance with the sterilizer or sanitizer manufacturer's instructions, each metal instrument, including metal nail clippers, cuticle pushers, cuticle nippers, and other metal instruments, used to perform the service.

(b) The owner or manager of a licensed establishment or school is responsible for providing an autoclave, a dry heat sterilizer, or an ultraviolet sanitizer for use in the establishment or school as required by Subsection (a).

(c) Each sterilized or sanitized instrument must be stored in accordance with the manufacturer's instructions.

(d) This section does not apply to:

(1) single-use instruments; or

(2) nonmetal nail files, buffer blocks, pumice stones, nail brushes, or other similar instruments.

(e) The commission may adopt rules to administer this section.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1049 (H.B. 2106), Sec. 19, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1241 (S.B. 1170), Sec. 25, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 413 (H.B. 2717), Sec. 17, eff. June 10, 2015.

Acts 2017, 85th Leg., R.S., Ch. 920 (S.B. 1503), Sec. 14, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 10.019, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.27, eff. September 1, 2021.

Sec. 1603.353. EMPLOYMENT OF LICENSE HOLDER. (a) A licensed school may not employ a person holding a license issued under Subchapter E-1 solely to perform the practices of barbering or cosmetology for which the person is licensed.

(b) A person holding a license for an establishment may not employ or lease to a person to practice barbering or cosmetology at the establishment unless the person holds a license issued under Subchapter E-1.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.28, eff. September 1, 2021.

Sec. 1603.354. NECESSARY EQUIPMENT. The owner, operator, or manager of a licensed establishment or school shall equip the establishment or school with the facilities, supplies, appliances, furnishings, and materials necessary to enable a person employed on the premises to comply with this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.28, eff. September 1, 2021.

Sec. 1603.355. DISPLAY OF LICENSE. A licensed school or establishment shall display the license in a conspicuous place in the school or establishment for which the license is issued.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.28, eff. September 1, 2021.

Sec. 1603.356. DISPLAY OF HUMAN TRAFFICKING INFORMATION. (a) A licensed school or establishment shall display a sign approved by or acceptable to the commission or the department concerning services and assistance available to victims of human trafficking.

(b) The sign required by this section must:

(1) be in English, Spanish, Vietnamese, and any other language required by commission rule; and

(2) include a toll-free telephone number of a nationally recognized information and referral hotline for victims of human trafficking.

(c) The commission by rule shall establish requirements regarding the posting of signs under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.28, eff. September 1, 2021.

Sec. 1603.357. DISPLAY OF SANITATION RULES. A licensed school or establishment shall display a copy of the commission's sanitation rules.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.28, eff. September 1, 2021.

Sec. 1603.358. OPERATION OF ESTABLISHMENT AND SCHOOL ON SINGLE PREMISES. A person may not operate an establishment on the same premises as a school unless the facilities are separated by walls of permanent construction without an opening between the facilities.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.28, eff. September 1, 2021.

SUBCHAPTER H-1. FINANCIAL PROVISIONS APPLICABLE TO PRIVATE POSTSECONDARY SCHOOLS

Sec. 1603.3601. CANCELLATION AND SETTLEMENT POLICY. The holder of a private postsecondary school license shall maintain a cancellation and settlement policy that provides a full refund of

money paid by a student if the student:

(1) cancels the enrollment agreement or contract not later than midnight of the third day after the date the agreement or contract is signed by the student, excluding Saturdays, Sundays, and legal holidays; or

(2) entered into the enrollment agreement or contract because of a misrepresentation made:

(A) in the advertising or promotional materials of the school; or

(B) by an owner or representative of the school.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3602. REFUND POLICY. (a) The holder of a private postsecondary school license shall maintain a refund policy to provide for the refund of any unused parts of tuition, fees, and other charges paid by a student who, at the expiration of the cancellation period established under Section 1603.3601:

(1) fails to enter the course of training;

(2) withdraws from the course of training; or

(3) is terminated from the course of training before completion of the course.

(b) The refund policy must provide that:

(1) the refund is based on the period of the student's enrollment, computed on the basis of course time expressed in scheduled hours, as specified by an enrollment agreement, contract, or other document acceptable to the department;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last date of attendance, if the student is terminated by the school;

(B) the date the license holder receives the student's written notice of withdrawal; or

(C) 10 school days after the last date of attendance; and

(3) the school may retain not more than $100 if:

(A) tuition is collected before the course of training begins; and

(B) the student does not begin the course of training before the cancellation period established under Section 1603.3601 expires.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3603. WITHDRAWAL OR TERMINATION OF STUDENT. (a) If a student at a private postsecondary school begins a course of training that is scheduled to run not more than 12 months and, during the last 50 percent of the course, withdraws from the course or is terminated by the school, the school:

(1) may retain 100 percent of the tuition and fees paid by the student; and

(2) is not obligated to refund any additional outstanding tuition.

(b) If a student at a private postsecondary school begins a course of training that is scheduled to run not more than 12 months and, before the last 50 percent of the course, withdraws from the course or is terminated by the school, the school shall refund:

(1) 90 percent of any outstanding tuition for a withdrawal or termination that occurs during the first week or first 10 percent of the course, whichever period is shorter;

(2) 80 percent of any outstanding tuition for a withdrawal or termination that occurs after the first week or first 10 percent of the course, whichever period is shorter, but within the first three weeks of the course;

(3) 75 percent of any outstanding tuition for a withdrawal or termination that occurs after the first three weeks of the course but not later than the completion of the first 25 percent of the course; and

(4) 50 percent of any outstanding tuition for a withdrawal or termination that occurs not later than the completion of the first 50 percent of the course.

(c) A refund owed under this section must be paid not later than the 30th day after the date the student becomes eligible for the refund.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3604. INTEREST ON REFUND. (a) If tuition is not refunded within the period required by Section 1603.3603, the private postsecondary school shall pay interest on the amount of the refund for the period beginning the first day after the date the refund period expires and ending the day preceding the date the refund is made.

(b) If tuition is refunded to a lending institution, the interest shall be paid to that institution and applied against the student's loan.

(c) The commissioner of education shall annually set the interest rate at a rate sufficient to deter a school from retaining money paid by a student.

(d) The department may exempt a school from the payment of interest if the school makes a good faith effort to refund the tuition but is unable to locate the student. The school shall provide to the department on request documentation of the effort to locate the student.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3605. REENTRY OF STUDENT AFTER WITHDRAWAL. If a student voluntarily withdraws or is terminated after completing 50 percent of the course at a private postsecondary school, the school shall allow the student to reenter at any time during the 48-month period following the date of withdrawal or termination unless the student presents a danger to the other students or staff of the school.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3606. EFFECT OF STUDENT WITHDRAWAL. (a) A private postsecondary school shall record a grade of incomplete for a student who withdraws but is not entitled to a refund under Section 1603.3603 if the student:

(1) requests the grade at the time the student withdraws;

and

(2) withdraws for an appropriate reason unrelated to the student's academic status.

(b) A student who receives a grade of incomplete may reenroll in the program during the 48-month period following the date the student withdraws and complete the subjects without payment of additional tuition.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3607. EFFECT OF PRIVATE POSTSECONDARY SCHOOL CLOSURE. (a) If a private postsecondary school closes, the department shall attempt to arrange for students enrolled in the closed school to attend another private postsecondary school.

(b) If a student from a closed school is placed in another private postsecondary school, the expense incurred by the school in providing training directly related to educating the student, including the applicable tuition for the period for which the student paid tuition, shall be paid from the barbering and cosmetology school tuition protection account.

(c) If a student from a closed private postsecondary school cannot be placed in another private postsecondary school, the student's tuition and fees shall be refunded as provided by Section 1603.3602. If a student from a closed private postsecondary school does not accept a place that is available and reasonable in another private postsecondary school, the student's tuition and fees shall be refunded as provided by Section 1603.3603. A refund under this subsection shall be paid from the barbering and cosmetology school tuition protection account. The amount of the refund may not exceed $35,000.

(d) If another private postsecondary school assumes responsibility for the closed school's students and there are no significant changes in the quality of the training, the student from the closed school is not entitled to a refund under Subsection (c).

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3608. BARBERING AND COSMETOLOGY SCHOOL TUITION PROTECTION ACCOUNT. (a) If on January 1 of any year the amount in the barbering and cosmetology school tuition protection account is less than $225,000, the department shall collect a fee from each private postsecondary school during that year by applying a percentage to the school's renewal fee at a rate that will bring the balance of the account to $225,000.

(b) The department shall administer claims made against the account.

(c) The comptroller shall invest the account in the same manner as other state funds.

(d) Sufficient money from the account shall be appropriated to the department for the purpose described by Section 1603.3607.

(e) Attorney's fees, court costs, or damages may not be paid from the account.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

Sec. 1603.3609. RULES. The commission by rule may:

(1) adjust any tuition reimbursement limit established under this subchapter; and

(2) adopt procedures regarding the collection of fees from private postsecondary schools under Section 1603.3608.

Added by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.29, eff. September 1, 2021.

SUBCHAPTER I. DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1603.401. DENIAL, SUSPENSION, OR REVOCATION. The department may deny an application for issuance or renewal of, or may suspend or revoke, a license or permit if the applicant or person holding the license or permit:

(1) engages in gross malpractice;

(2) knowingly continues to practice while having an infectious or contagious disease;

(3) knowingly makes a false or deceptive statement in advertising;

(4) advertises, practices, or attempts to practice under

another person's name or trade name;

(5) engages in fraud or deceit in obtaining a license or permit; or

(6) engages in an act that violates this chapter or Chapter 51 or a rule or order adopted or issued under this chapter or Chapter 51.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.30, eff. September 1, 2021.

SUBCHAPTER J. OTHER ENFORCEMENT PROVISIONS

Sec. 1603.453. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in a cause arising under this chapter.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.32, eff. September 1, 2021.

Sec. 1603.454. ENFORCEMENT BY ATTORNEY GENERAL. The attorney general shall represent the department in an action to enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 798 (S.B. 411), Sec. 1.01, eff. September 1, 2005.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 3.32, eff. September 1, 2021.

TITLE 10. OCCUPATIONS RELATED TO LAW ENFORCEMENT AND SECURITY

CHAPTER 1701. LAW ENFORCEMENT OFFICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1701.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Law Enforcement.

(2) "County jailer" means a person employed as a county jail guard under Section 85.005, Local Government Code.

(2-a) "Misconduct" means:

(A) a violation of law; or

(B) any of the following that have been sustained by a law enforcement agency employing a license holder:

(i) a violation of a law enforcement agency policy for which the agency may suspend, demote, or terminate a license holder's employment; or

(ii) an allegation of untruthfulness against a license holder.

(3) "Officer" means a peace officer or reserve law enforcement officer.

Text of subdivision effective until January 1, 2025

(4) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

Text of subdivision effective on January 1, 2025

(4) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2A.001, Code of Criminal Procedure, or other law.

(5) "Public security officer" means a person employed or appointed as an armed security officer by this state or a political subdivision of this state. The term does not include a security officer employed by a private security company that contracts with this state or a political subdivision of this state to provide security services for the entity.

(6) "Reserve law enforcement officer" means a person designated as a reserve law enforcement officer under Section 85.004, 86.012, or 341.012, Local Government Code, or Section 60.0775, Water Code.

(7) "Telecommunicator" means a person acknowledged by the commission and employed by or serving a law enforcement agency that performs law enforcement services on a 24-hour basis who receives, processes, and transmits public safety information and criminal justice data for the agency by using a base radio station on a public safety frequency regulated by the Federal Communications Commission

or by another method of communication.

Text of subdivision effective until January 1, 2025

(8) "School marshal" means a person who:

(A) is appointed to serve as a school marshal by:

(i) the board of trustees of a school district or the governing body of an open-enrollment charter school under Section 37.0811, Education Code;

(ii) the governing body of a private school under Section 37.0813, Education Code; or

(iii) the governing board of a public junior college under Section 51.220, Education Code;

(B) is licensed under Section 1701.260; and

(C) has powers and duties described by Article 2.127, Code of Criminal Procedure.

Text of subdivision effective on January 1, 2025

(8) "School marshal" means a person who:

(A) is appointed to serve as a school marshal by:

(i) the board of trustees of a school district or the governing body of an open-enrollment charter school under Section 37.0811, Education Code;

(ii) the governing body of a private school under Section 37.0813, Education Code; or

(iii) the governing board of a public junior college under Section 51.220, Education Code;

(B) is licensed under Section 1701.260; and

(C) has powers and duties described by Article 2A.008, Code of Criminal Procedure.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 173 (H.B. 340), Sec. 2, eff. May 27, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.01, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 655 (H.B. 1009), Sec. 6, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1144 (S.B. 386), Sec. 4, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 988 (H.B. 867), Sec. 6, eff. June 15, 2017.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.146, eff. January 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 1, eff. September 1, 2023.

Sec. 1701.002. APPLICATION OF SUNSET ACT. The Texas Commission on Law Enforcement is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2031.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.02, eff. May 18, 2013.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 1.05(a), eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 2, eff. September 1, 2023.

Sec. 1701.003. APPLICATION OF CHAPTER. (a) Except as expressly provided by this chapter, this chapter does not:

(1) limit the powers or duties of a municipality or county; or

(2) affect Chapter 143, Local Government Code.

(b) This chapter does not affect a constable or other officer or county jailer elected under the Texas Constitution before September 1, 1985, and does not affect a person who held the office of sheriff before January 1, 1994.

(c) This chapter does not prevent an employing agency from establishing qualifications and standards for hiring or training officers, county jailers, or telecommunicators that exceed the commission's minimum standards.

(d) A provision of this chapter applying to issuance or

revocation of a peace officer license applies to issuance or revocation of a public security officer license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 2, eff. September 1, 2011.

Sec. 1701.004. REFERENCE TO COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION. A reference in law to the Commission on Law Enforcement Officer Standards and Education or the Texas Commission on Law Enforcement Officer Standards and Education means the Texas Commission on Law Enforcement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.03, eff. May 18, 2013.

SUBCHAPTER B. TEXAS COMMISSION ON LAW ENFORCEMENT

Sec. 1701.051. COMMISSION MEMBERSHIP. (a) The Texas Commission on Law Enforcement is an agency of this state and consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) three members who are sheriffs, constables, or chiefs of police;

(2) three members who:

(A) are licensed under this chapter, two of whom are peace officers who, at the time of appointment, hold nonsupervisory positions with a law enforcement agency; and

(B) have been licensed under this chapter for the five years preceding the date of appointment; and

(3) three members who represent the public.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(c) A public officer appointed to the commission serves on the commission as an additional duty of the office.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1172, Sec. 35(1), eff. September 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 35(1), eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 1.05, eff. May 18, 2013.

Sec. 1701.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in the field of law enforcement;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission;

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(5) is an officer, employee, or paid consultant of a law enforcement labor union.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a commission member and may not be an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201

et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of law enforcement or county corrections; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of law enforcement or county corrections.

(c) A person may not be a member of the commission or act as the general counsel to the commission or the agency if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the commission's operation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 2, eff. September 1, 2009.

Sec. 1701.054. TERMS; VACANCY. (a) Appointed commission members serve staggered six-year terms. Every two years:

(1) the term of one of the members appointed under Section 1701.051(a)(1) expires;

(2) the term of one of the members appointed under Section 1701.051(a)(2) expires; and

(3) the term of one of the members appointed under Section 1701.051(a)(3) expires.

(b) A vacancy in an office of a member of the commission shall be filled for the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.055. OFFICERS; QUORUM; VOTING. (a) The governor shall designate a commission member to serve as the commission's presiding officer. The presiding officer serves in that capacity at the will of the governor.

(b) At its first meeting after appointment of members to serve regular terms, the commission shall elect an assistant presiding officer and a secretary from its appointed members.

(c) Five members constitute a quorum.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1224, Sec. 6, eff. September 1, 2011.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 1, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 6, eff. September 1, 2011.

Sec. 1701.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 1701.051(a) or 1701.052;

(2) does not maintain during service on the commission the qualifications required by Section 1701.051(a) or 1701.052;

(3) is ineligible for membership under Section 1701.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the commission's presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 3, eff. September 1, 2009.

Sec. 1701.057. COMPENSATION; REIMBURSEMENT. (a) A commission member may not receive compensation for service on the commission.

(b) A commission member is entitled to reimbursement for actual and necessary expenses incurred in performing functions under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.058. MEETINGS. (a) The commission shall meet at least once during each biennium to receive public comment on training and standards for officers and county jailers. Within a reasonable time after the meeting, the commission shall report to the governor and legislature findings and recommendations resulting from the meeting.

(b) The commission may meet at other times and places in this state that the commission considers proper. The presiding officer may call a meeting on the officer's own motion and shall call a meeting on the written request of five members.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing commission operations;

(2) the programs, functions, rules, and budget of the commission;

(3) the scope of and limitations on the rulemaking authority of the commission;

(4) the results of the most recent formal audit of the commission;

(5) the requirements of:

(A) laws relating to open meetings, public information,

administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties; and

(6) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director of the commission shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the commission. Each commission member shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 4, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 3, eff. September 1, 2023.

Sec. 1701.060. APPLICATION OF OPEN RECORDS LAW AND ADMINISTRATIVE PROCEDURE LAW. Except as provided by Sections 1701.502 and 1701.503, the commission is subject to Chapters 551 and 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1701.101. EXECUTIVE DIRECTOR. The commission may employ an executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.102. PERSONNEL. The commission may employ personnel necessary to perform commission functions.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.103. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly define the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to the commission's members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the agency. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on this system.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY; REPORT. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission workforce that meets federal and state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations;

(3) procedures by which a determination can be made of underuse in the commission workforce of all persons for whom federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(b) A policy statement prepared under Subsection (a) must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and

(4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as a part of other biennial reports to the legislature.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. POWERS AND DUTIES OF COMMISSION

Sec. 1701.151. GENERAL POWERS OF COMMISSION; RULEMAKING AUTHORITY. The commission may:

(1) adopt rules for the administration of this chapter and

for the commission's internal management and control;

(2) establish minimum standards relating to competence and reliability, including education, training, physical, and mental standards, for licensing as an officer, county jailer, public security officer, or telecommunicator;

(3) report to the governor and legislature on the commission's activities, with recommendations on matters under the commission's jurisdiction, and make other reports that the commission considers desirable;

(4) require a state agency or a county, special district, or municipality in this state that employs officers, telecommunicators, or county jailers to submit reports and information;

(5) contract as the commission considers necessary for services, facilities, studies, and reports required for:

(A) cooperation with municipal, county, special district, state, and federal law enforcement agencies in training programs; and

(B) performance of the commission's other functions; and

(6) conduct research and stimulate research by public and private agencies to improve law enforcement and police administration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 1, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 4, eff. September 1, 2023.

Sec. 1701.152. RULES RELATING TO HIRING DATE OF PEACE OFFICER. The commission may not adopt or enforce a rule that sets the date of appointment of a peace officer at a later date than the date that appears on employment records of the hiring law enforcement agency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.1521. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.1522. ALTERNATIVE DISPUTE RESOLUTION. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.1523. ELECTRONIC SUBMISSION OF FORMS, DATA, AND DOCUMENTS. The commission by rule shall:

(1) develop and establish a system for the electronic submission of forms, data, and documents required to be submitted to the commission under this chapter; and

(2) once that system is established, require law

enforcement agencies to submit to the commission electronically any form, data, or document required to be submitted to the commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.1524. RULES RELATING TO CONSEQUENCES OF CRIMINAL CONVICTION OR DEFERRED ADJUDICATION. (a) The commission by rule shall establish guidelines consistent with this chapter that are necessary to comply with Chapter 53 to the extent that chapter applies to persons licensed under this chapter.

(b) In its rules under this section, the commission shall list the offenses for which a conviction would constitute grounds for the commission to take action under Section 53.021 or for which placement on deferred adjudication community supervision would constitute grounds for the commission to take action under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.1525. RULES RELATED TO ACCEPTANCE OF CREDIT HOURS FOR COMPLETION OF CERTAIN HIGH SCHOOL COURSES. (a) The commission shall adopt rules that establish a procedure under which credit hours earned for the successful completion of high school courses that directly relate to law enforcement can be counted toward the hours of training required of an applicant for a peace officer license issued under Section 1701.307.

(b) The rules adopted under this section must require that an applicant submit to the commission a high school transcript that indicates the applicant earned an endorsement in the public services category, as described by Section 28.025(c-1), Education Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1024 (H.B. 1545), Sec. 1, eff. September 1, 2017.

Sec. 1701.153. REPORTS FROM AGENCIES AND SCHOOLS. (a) The commission shall establish reporting standards and procedures for:

(1) the appointment or employment and the termination of officers, county jailers, and telecommunicators by law enforcement agencies;

(2) the activities of licensed training schools; and

(3) other matters the commission considers necessary for the administration of this chapter.

(b) The commission shall furnish each agency and licensed training school with the required reporting forms, including access to electronic submission forms when the system under Section 1701.1523 is established.

(c) The chief administrative officer of a law enforcement agency or licensed training school is responsible for compliance with the reporting standards and procedures prescribed by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 4, eff. September 1, 2011.

Sec. 1701.154. FEES. The commission may establish reasonable and necessary fees for the administration of this chapter, including reasonable and necessary fees for the administration of Section 1701.257.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.155. GIFTS AND GRANTS. The commission may accept grants or gifts from private individuals, foundations, or the federal government.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.156. LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION FUND. (a) The law enforcement officer standards and education fund account is in the general revenue fund.

(b) The commission shall use the account in administering this

chapter and performing other commission duties established by law.

(c) The Department of Public Safety may use money appropriated to the department from the account to award grants to local law enforcement agencies for training on incident-based reporting systems to be used for reporting information and statistics concerning criminal offenses committed in this state. The department shall adopt rules governing the award of grants by the department under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 87, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 35(2), eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 33, eff. September 1, 2015.

Sec. 1701.157. MONEY ALLOCATED AND USED FOR TRAINING OR CONTINUING EDUCATION. (a) Not later than March 1 of each calendar year, the comptroller shall allocate money deposited during the preceding calendar year in the general revenue fund to the credit of the law enforcement officer standards and education fund account for expenses related to the continuing education of persons licensed under this chapter as follows:

(1) 20 percent of the money is allocated to all local law enforcement agencies in this state in equal shares; and

(2) 80 percent of the money is allocated to all local law enforcement agencies in this state in a share representing a fixed amount for each position in the agency, as of January 1 of the preceding calendar year, that is reserved to a person who:

(A) is licensed under this chapter;

(B) works as a peace officer or telecommunicator, as defined by Section 1701.001, on the average of at least 32 hours a week; and

(C) is compensated by a political subdivision of this state at least at the minimum wage and is entitled to all employee benefits offered to a peace officer or telecommunicator, as applicable, by the political subdivision.

(a-1) Subsection (a) does not apply to money appropriated to

the Department of Public Safety from the account for the purpose of awarding grants to local law enforcement agencies for training on incident-based reporting systems under Section 1701.156(c).

(b) To provide the necessary information for an allocation of money under Subsection (a), a local law enforcement agency must report to the comptroller not later than November 1 of the preceding calendar year:

(1) the number of agency positions described by Subsection (a)(2) authorized as of January 1 of the year the report is due;

(2) the number of agency positions described by Subsection (a)(2) filled as of January 1 of the year the report is due;

(3) the percentage of the money received by the agency under Subsection (a) pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due that was used by the agency before the date of the allocation made by the comptroller under Subsection (a) on or before March 1 of the year the report is due;

(4) the number of training hours received during the 12-month or approximately 12-month period described by Subdivision (3) that were funded by money received by the agency pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due; and

(5) that the agency has complied with the requirements of this section regarding the use of any money received by the agency pursuant to the allocation made by the comptroller on or before March 1 of the year preceding the year in which the report is due.

(c) The head of a law enforcement agency shall maintain a complete and detailed record of money received and spent by the agency under this section. Money received under this section is subject to audit by the comptroller. Money spent under this section is subject to audit by the state auditor.

(d) A local law enforcement agency shall use money received under Subsection (a) only as necessary to ensure the continuing education of persons licensed under this chapter or to provide necessary training, as determined by the agency head, to full-time fully paid law enforcement support personnel in the agency.

(e) A local law enforcement agency may not use money received under Subsection (a) to replace funds that are provided to the agency by the county or municipality having jurisdiction over the agency on a recurring basis for training law enforcement officers and support

personnel.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 6, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 34, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 792 (H.B. 2680), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 792 (H.B. 2680), Sec. 2, eff. September 1, 2015.

Sec. 1701.159. ACTIVE AND INACTIVE PEACE OFFICERS. (a) The commission shall establish a list of active licensed peace officers and a list of inactive licensed peace officers who leave the employment of a law enforcement agency.

(b) A retired peace officer as defined by Section 1701.3161 continues to hold as an inactive license the license the retired officer held at the time the retired officer last served as an elected, appointed, or employed peace officer unless the license was revoked for cause under Section 1701.501.

(c) A retired peace officer who holds an inactive license may not serve as a peace officer unless the person reactivates the license as provided by Section 1701.316 or 1701.3161.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 878 (H.B. 1955), Sec. 1, eff. June 15, 2007.

Sec. 1701.160. AUTHORITY TO COMMISSION INVESTIGATORS AS PEACE OFFICERS. The commission may commission certified peace officers as investigators employed by the commission for the limited purpose of assisting the commission in administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.501(a), eff. Sept. 1, 2001.

Sec. 1701.161. PROVISION OF STATE FLAG TO NEXT OF KIN OF DECEASED PEACE OFFICER. (a) If the next of kin of a deceased peace officer requests a state flag, the commission shall:

(1) provide a state flag, at no cost to the next of kin, if the peace officer was:

(A) a current peace officer at the time of the officer's death; or

(B) an honorably retired peace officer who voluntarily terminated employment with a law enforcement agency of this state or a political subdivision of this state; and

(2) notify the office of the governor of the death of the peace officer.

(b) The commission may apply for and accept gifts and grants from public and private entities on behalf of the Texas peace officer flag account.

(c) The commission shall deposit any gift or grant accepted by the commission under Subsection (b) to the credit of the Texas peace officer flag account. The Texas peace officer flag account is a special account in the general revenue fund. Money in the account may be appropriated only to the commission for the purpose of implementing this section. Interest earned on money in the Texas peace officer flag account shall be credited to the account.

Added by Acts 2001, 77th Leg., ch. 476, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 744 (H.B. 2769), Sec. 4, eff. September 1, 2005.

Sec. 1701.162. RECORDS AND AUDIT REQUIREMENTS. (a) The commission is entitled to access records maintained under Sections 1701.303, 1701.306, and 1701.310 by an agency hiring a person to be an officer or county jailer, including records that relate to age, education, physical standards, citizenship, experience, and other matters relating to competence and reliability, as evidence of qualification for licensing of an officer or county jailer.

(b) The commission shall audit the records described by Subsection (a) of each law enforcement agency at least once every five years.

(c) The commission by rule shall develop and establish a

framework for the audits conducted by the commission under Subsection (b) that:

(1) addresses the types of documents subject to audit;

(2) provides a schedule for additional risk-based inspections based on:

(A) whether there has been a prior violation by the law enforcement agency;

(B) the inspection history of the agency; and

(C) any other factor the commission by rule considers appropriate;

(3) provides timelines for complying with an audit request or correcting a violation found during the audit process; and

(4) establishes sanctions for failing to comply with an audit request or to correct a violation found during the audit process.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.

Sec. 1701.163. MINIMUM STANDARDS FOR LAW ENFORCEMENT AGENCIES. The commission, with input from an advisory committee, shall by rule establish minimum standards with respect to the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency, including:

(1) a determination regarding the public benefit of creating the agency in the community;

(2) the sustainable funding sources for the agency;

(3) the physical resources available to officers, including:

(A) all standard duty firearms;

(B) less lethal force weapons, including a requirement of at least one per officer on duty;

(C) effective communications equipment;

(D) protective equipment, including a requirement of at least one bullet-resistant vest per officer on duty;

(E) officer uniforms; and

(F) patrol vehicles and associated equipment;

(4) the physical facilities of the agency, including any evidence room, dispatch area, or public area;

(5) the policies of the agency, including policies on:
(A) use of force;
(B) vehicle pursuit;
(C) professional conduct of officers;
(D) domestic abuse protocols;
(E) response to missing persons;
(F) supervision of part-time officers;
(G) impartial policing;
(H) active shooters; and
(I) barricaded subjects;
(6) the administrative structure of the agency;
(7) liability insurance; and
(8) any other standard the commission considers necessary.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 7, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 5, eff. September 1, 2023.

Text of section effective until January 1, 2025

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2.134, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2.133 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2.134, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 8, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.147, eff. January 1, 2025.

Text of section effective on January 1, 2025

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. The commission shall collect and maintain incident-based data submitted to the commission under Article 2B.0055, Code of Criminal Procedure, including incident-based data compiled by a law enforcement agency from reports received by the law enforcement agency under Article 2B.0054 of that code. The commission in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth, Jr., Police Institute at Dallas, and the Texas Police Chiefs Association shall develop guidelines for submitting in a standard format the report containing incident-based data as required by Article 2B.0055, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 8, eff. September 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.147, eff. January 1, 2025.

Sec. 1701.165. ADVISORY COMMITTEES. (a) The commission by rule may establish advisory committees to make recommendations to the commission on programs, rules, and policies administered by the commission.

(b) In establishing an advisory committee under this section, the commission shall adopt rules, including rules regarding:

(1) the purpose, role, responsibility, goals, and duration of the committee;

(2) the size of and quorum requirement for the committee;

(3) qualifications for committee membership;

(4) appointment procedures for members;

(5) terms of service for members;

(6) training requirements for members;

(7) policies to avoid conflicts of interest by members;

(8) a periodic review process to evaluate the continuing need for the committee; and

(9) policies to ensure the committee does not violate any

provision of Chapter 551, Government Code, applicable to the commission or the committee.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 6, eff. September 1, 2023.

Sec. 1701.166. SUBPOENA. (a) The commission may compel by subpoena the production for inspection or copying of a record described by Section 1701.162(a) that is relevant to the investigation of an alleged violation of this chapter or a commission rule.

(b) The commission, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) any county in which the commission may conduct a hearing.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 6, eff. September 1, 2023.

Sec. 1701.167. POLICY REGARDING EXAMINATION OF LICENSE HOLDER OR APPLICANT. (a) The commission, with input from an advisory committee, shall adopt a model policy prescribing standards and procedures for the medical and psychological examination of a license holder or person for whom a license is sought by a law enforcement agency to ensure the license holder or person is able to perform the duties for which the license is required. The model policy must:

(1) apply to examinations of:

(A) a person to whom Section 1701.306 applies;

(B) a person licensed as an officer or county jailer who is appointed as an officer or county jailer after the 180th day after the person's last date of service as an officer or county jailer;

(C) school marshals, as described by Section 1701.260;

and

(D) a license holder, if ordered by the law enforcement agency employing the license holder for just cause;

(2) require, for an examination described by Subdivision (1)(D), that the employing agency:

(A) provide to the license holder written notice of the examination that includes the reasons for the examination not later than the 10th business day before the deadline to submit to the examination; and

(B) report to the commission, in the manner prescribed by the commission, the refusal of the license holder to submit to the examination within the period provided by Paragraph (A); and

(3) require the reporting to the commission, in the manner prescribed by the commission, of a license holder's failed examination, unless the license holder submits to and successfully completes an applicable treatment program within a reasonable time, as prescribed by the commission.

(b) Each law enforcement agency in this state shall adopt the model policy described by Subsection (a) or a substantively similar policy. A policy adopted by a law enforcement agency under this section must be submitted to the commission, and the commission shall maintain a copy of the policy.

(c) The providing of notice by a law enforcement agency to the commission of a license holder's refusal to submit to an examination does not preclude the agency employing the license holder from taking disciplinary action against the license holder, including termination of the license holder's employment with the agency.

(d) The commission shall issue an order requiring a license holder who refuses to submit to an examination required by a policy adopted under Subsection (b) to show cause for the license holder's refusal at a hearing on the order scheduled for not later than the 30th day after the date notice is served on the license holder. The commission shall provide notice under this section by personal service or by registered mail, return receipt requested.

(e) At the hearing, the license holder may appear in person and by counsel and present evidence to justify the license holder's refusal to submit to examination. After the hearing, the commission shall issue an order requiring the license holder to submit to an examination under this section or withdrawing the request for the examination.

(f) Unless the request is withdrawn, the commission may suspend or otherwise restrict the license of a license holder who refuses to submit to the examination.

(g) An appeal from the commission's order under this section is governed by Chapter 2001, Government Code.

(h) If the results of an examination under this section show that the license holder does not meet the standards of the policy adopted under Subsection (b), the commission shall suspend the license holder's license.

(i) Records relating to a request or order of the commission or a hearing or examination conducted under this section, including, if applicable, the identity of the person notifying the commission that a license holder may not meet the standards required by the policy adopted under Subsection (b), are confidential and not subject to disclosure under Chapter 552, Government Code.

(j) An order issued by the commission regarding a license holder that is based on information obtained during an examination under this section may only reference the statutory basis for the order and may not disclose the reason for the examination.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 6, eff. September 1, 2023.

Sec. 1701.168. LICENSING STATUS DATABASE. (a) The commission shall establish a database containing, for each officer licensed under this chapter:

(1) the officer's license status, including a record of any action taken against the officer by the commission; and

(2) personnel files, as described by Section 1701.4535, provided by each law enforcement agency that employs the officer.

(b) The commission shall make available to a law enforcement agency on request any relevant information maintained in the database for purposes of Sections 1701.303 and 1701.451(a).

(c) On request of an officer, the commission shall provide to the officer free of charge any information maintained in the database regarding the officer, including any information relating to an investigation of misconduct by a law enforcement agency under the policy described by Section 1701.4522.

(d) Except as provided by Subsections (b) and (c), information

maintained in the database established under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 6, eff. September 1, 2023.

Sec. 1701.169. LAW ENFORCEMENT DATABASE. The commission shall designate one or more national law enforcement databases that a law enforcement agency must access to complete the preemployment background check required under Sections 1701.303(a), 1701.3035, and 1701.451(a). A database designated under this section must be as comprehensive as possible.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 6, eff. September 1, 2023.

Sec. 1701.170. SUBMISSION OF REVOKED LICENSE TO NATIONAL DATABASE. (a) The commission shall designate for purposes of this section a national database that serves as a registry for the revocation of officer licenses in several jurisdictions based on misconduct committed by the officer.

(b) The commission shall submit to the designated database information necessary to create a record in the database for each officer license the commission revokes under Section 1701.501, 1701.502, or 1701.503.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 6, eff. September 1, 2023.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1701.201. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the regulatory functions of the commission and the procedures by which public complaints are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.202. COMPLAINTS. (a) The commission by rule shall establish a comprehensive procedure for each phase of the commission's jurisdictional complaint enforcement process, including:

(1) complaint intake;

(2) investigation;

(3) adjudication and relevant hearings;

(4) appeals;

(5) the imposition of sanctions; and

(6) public disclosure.

(b) Except as provided by Subsection (d), on request, a license holder is entitled to obtain information regarding a complaint made against the license holder under this chapter, including a complete copy of the complaint file. On receipt of a request under this subsection, the commission shall provide the requested information in a timely manner to allow the license holder time to respond to the complaint.

(c) The commission shall ensure that detailed information regarding the commission's complaint enforcement process described by this section is available on any publicly accessible Internet website and in any appropriate printed materials maintained by the commission.

(d) The commission is not required to provide the identity of any nontestifying complainant in response to a request under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 9, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 7, eff. September 1, 2023.

Sec. 1701.203. RECORDS OF COMPLAINTS. (a) The commission shall maintain a system to promptly and efficiently act on jurisdictional complaints filed with the commission. The commission shall maintain information about parties to the complaint, the

subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 10, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 8, eff. September 1, 2023.

Sec. 1701.2035. TRACKING AND ANALYSIS OF COMPLAINT AND VIOLATION DATA. (a) The commission shall develop and implement a method for:

(1) tracking complaints filed with the commission through their final disposition, including:

(A) the reason for each complaint;

(B) how each complaint was resolved; and

(C) the subject matter of each complaint that was not within the jurisdiction of the commission and how the commission responded to the complaint; and

(2) tracking and categorizing the sources and types of complaints filed with the commission and of violations of this chapter or a rule adopted under this chapter.

(b) The commission shall analyze the complaint and violation data maintained under Subsection (a) to identify trends and areas that may require additional regulation or enforcement.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 11, eff. September 1, 2009.

Sec. 1701.204. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction.

(b) The commission shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the commission's programs and services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.205. OFFICER PERSONAL SERVICE REPORTS. (a) The commission shall establish a public database containing personal service reports of each officer licensed under this chapter. A service report must:

(1) include the information required by Subsection (b); and

(2) be compiled in a format that makes the information readily available to the public.

(b) Except as otherwise provided by this section, a service report must contain the following information with respect to each officer:

(1) the date the officer completed the basic training course;

(2) whether the officer is in compliance with continuing education requirements and the continuing education courses completed;

(3) the total hours of training the officer has completed; and

(4) the date the officer's license was issued.

(c) The commission shall adopt rules to exclude from the database personal service reports for certain officers if including the service report would create a safety risk for an undercover officer or an officer involved in an active sensitive operation. Rules adopted under this section must allow an officer described by this subsection or the law enforcement agency employing the officer to request, in a manner prescribed by the commission, the service report of the officer to be excluded from the database. A request to exclude an officer's personal service report under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) The commission shall:

(1) require a person accessing information in the database to register as a user before accessing the database; and

(2) track each user's activity on the database, including

the personal service reports the user accesses.

(e) The user information collected and maintained by the commission under Subsection (d) is confidential and not subject to disclosure under Chapter 552, Government Code, except as required to comply with a court order.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 9, eff. September 1, 2023.

SUBCHAPTER F. TRAINING PROGRAMS, SCHOOLS, AND POLICIES

Sec. 1701.251. TRAINING PROGRAMS; INSTRUCTORS. (a) The commission shall establish and maintain training programs for officers, county jailers, and telecommunicators. The training shall be conducted by the commission staff or by other agencies and institutions the commission considers appropriate.

(b) The commission may authorize reimbursement for a political subdivision or state agency as authorized by the legislature for expenses incurred in attending a training program.

(c) The commission may:

(1) issue or revoke the license of a school operated by or for this state or a political subdivision of this state specifically for training officers, county jailers, recruits, or telecommunicators;

(2) operate schools and conduct preparatory, in-service, basic, and advanced courses in the schools, as the commission determines appropriate, for officers, county jailers, recruits, and telecommunicators;

(3) issue a license to a person to act as a qualified instructor under conditions that the commission prescribes; and

(4) consult and cooperate with a municipality, county, special district, state agency or other governmental agency, or a university, college, junior college, or other institution, concerning the development of schools and training programs for officers, county jailers, and telecommunicators.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 2, eff. January 1, 2014.

Sec. 1701.2515. CERTIFICATE REQUIRED TO PROVIDE ACTIVE SHOOTER TRAINING AT PUBLIC SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) An individual or a legal entity may not provide active shooter training to peace officers of students or employees at a public primary or secondary school or an institution of higher education unless:

(1) the individual providing the instruction is certified by the commission under this section to provide the training; and

(2) if the training is provided by a legal entity, both the legal entity and the individual providing the instruction on behalf of the legal entity are certified by the commission under this section to provide the training.

(c) The commission shall:

(1) establish a certification program for providers of active shooter training, including for individuals and legal entities; and

(2) issue a certificate to a provider who meets the qualifications of the program established under Subdivision (1).

(d) The commission shall adopt rules for the renewal of a certificate issued under this section. The commission may require continuing education for the renewal of the certificate.

Added by Acts 2023, 88th Leg., R.S., Ch. 1152 (S.B. 999), Sec. 3, eff. September 1, 2023.

Sec. 1701.252. PROGRAM AND SCHOOL REQUIREMENTS; ADVISORY BOARD. (a) Unless a school has created an advisory board for developing a curriculum, the commission may not issue a license to the school or approve a training program or course for officers or county jailers other than a program created by the Bill Blackwood Law Enforcement Management Institute of Texas.

(b) At least one-third of the members of an advisory board under Subsection (a) must be public members who meet the qualifications required of a public member of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.253. SCHOOL CURRICULUM. (a) The commission shall establish minimum curriculum requirements for preparatory and advanced courses and programs for schools subject to approval under Section 1701.251(c)(1).

(a-1) The commission by rule shall establish deadlines for an officer to complete any minimum curriculum requirements that are not completed as part of the officer's basic training course.

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the recognition, investigation, and documentation of cases that involve child abuse and neglect, family violence, and sexual assault, including the use of best practices and trauma-informed response techniques to effectively recognize, investigate, and document those cases;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56A, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(b-1) The commission shall consult with the Sexual Assault Survivors' Task Force established under Section 772.0064, Government Code, regarding minimum curriculum requirements for training in the investigation and documentation of cases that involve sexual assault or other sex offenses.

(b-2) Repealed by Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 6, eff. September 1, 2023.

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity for persons licensed under this chapter.

(d) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries;

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made; and

(4) recognizing and recording circumstances indicating that

a victim may have been assaulted in the manner described by Section 22.01(b)(2)(B), Penal Code.

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

(f) Training for officers and recruits in investigation of cases required by Subsection (b)(1)(B) shall include instruction in preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more opposing persons are received arising from the same incident.

(g) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter.

(h) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter.

(i) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on identity theft under Section 32.51, Penal Code, for officers licensed under this chapter.

(j) As part of the minimum curriculum requirements, the commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. The program must include instruction on interacting with persons with Alzheimer's disease and other dementias, including instruction on techniques for recognizing symptoms, communicating effectively, employing alternatives to physical restraints, and identifying signs of abuse, neglect, or exploitation. An officer may not satisfy the requirements of this subsection or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(k) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program for officers licensed under this chapter that covers the laws of this state and of the United States pertaining to peace officers.

(l) As part of the minimum curriculum requirements, the commission shall require an officer licensed by the commission on or after January 1, 2016, to complete a canine encounter training program established by the commission under Section 1701.261.

(m) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on procedures for interacting with drivers who are deaf or hard of hearing, as defined by Section 81.001, Human Resources Code, including identifying specialty license plates issued to individuals who are deaf or hard of hearing under Section 504.204, Transportation Code.

(n) As part of the minimum curriculum requirements, the commission shall require an officer to complete a statewide education and training program on de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury.

(o) As part of the minimum curriculum requirements, the commission shall require an officer to complete the civilian interaction training program developed under Section 1701.268.

(p) As part of the minimum curriculum requirements, the commission shall require an officer to complete the basic education and training program on the trafficking of persons developed under Section 1701.258(a).

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 102 (S.B. 1852), Sec. 1

(q) As part of the minimum curriculum requirements, the commission shall require an officer to complete a training program of not less than 16 hours on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University--San Marcos. An officer shall complete the program not later than the last day of the first full continuing education training period that begins on or after the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course. Completion of a training program under this subsection satisfies any

other requirement, other than a continuing education requirement under Section 1701.3525, for the officer to complete a training program on responding to active shootings, including under Section 37.0812(a), Education Code.

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 4

(q) As part of the minimum curriculum requirements, the commission shall require an officer to complete the basic education and training program developed under Section 1701.272. An officer shall complete the program not later than the last day of the first full continuing education training period after the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 979 (S.B. 2429), Sec. 6, and Ch. 729 (H.B. 2660), Sec. 7

(q) As part of the minimum curriculum requirements, the commission shall establish a basic education and training program on missing children and missing persons, including instruction on the associated reporting requirements under Chapter 63, Code of Criminal Procedure. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 1070 (S.B. 533), Sec. 1

(q) As part of the minimum curriculum requirements, the commission shall require an officer to complete a training program on responding to and investigating child fatalities, including the protocols for reporting and investigating child fatalities developed under Subchapter F, Chapter 264, Family Code, the differences between sudden unexpected infant death and sudden infant death syndrome, and the relevant regulations applicable to child-care facilities. An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 657, Sec. 4, eff. Sept. 1, 2001; Acts

2001, 77th Leg., ch. 897, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 929, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 947, Sec. 4, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1034, Sec. 14, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.007, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1326, Sec. 8, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 393 (S.B. 1473), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 12, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 31 (H.B. 593), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 642 (S.B. 1987), Sec. 2, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(31), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 513 (S.B. 30), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.02, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 76 (S.B. 971), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 107 (S.B. 586), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 411 (H.B. 1590), Sec. 4, eff. June 4, 2019.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(38), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.57, eff. January 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 715 (H.B. 292), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 102 (S.B. 1852), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 307 (H.B. 568), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 6, eff.

September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 729 (H.B. 2660), Sec. 7, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 979 (S.B. 2429), Sec. 6, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1070 (S.B. 533), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 10, eff. September 1, 2023.

Sec. 1701.254. RISK ASSESSMENT AND INSPECTIONS. (a) The commission may visit and inspect a school conducting a training course for officers, county jailers, telecommunicators, or recruits and make necessary evaluations to determine if the school complies with this chapter and commission rules.

(b) The commission shall develop a risk assessment method to determine the relative performance of schools conducting training courses for officers, county jailers, telecommunicators, or recruits. The commission shall base its schedule for inspection of schools on the results of the risk assessment.

(c) The risk assessment method must:

(1) consider the scores of students enrolled in a school on the basic peace officer examination;

(2) consider the past inspection records of a school;

(3) consider a self-assessment performed by a school in a noninspection year; and

(4) include a random element to ensure periodic inspection of each school.

(d) The commission by rule shall establish a system for placing a training provider on at-risk probationary status. The rules must prescribe:

(1) the criteria to be used by the commission in determining whether to place a training provider on at-risk probationary status;

(2) a procedure and timeline for imposing corrective conditions on a training provider placed on at-risk probationary status and for notifying the provider regarding those conditions; and

(3) a procedure for tracking a training provider's progress toward compliance with any corrective conditions imposed on the

provider by the commission under this subsection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 13, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 5, eff. September 1, 2011.

Sec. 1701.255. ENROLLMENT QUALIFICATIONS. (a) The commission by rule shall establish minimum qualifications for a person to enroll in a training program under Section 1701.251(a) that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes.

(b) A person who is disqualified by law to be an officer or county jailer may not enroll in a training program described by Subsection (a).

(c) A person may not enroll in a peace officer training program under Section 1701.251(a) unless the person has received:

(1) a high school diploma;

(2) a high school equivalency certificate; or

(3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1441, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 14, eff. September 1, 2009.

Sec. 1701.2551. BASIC PEACE OFFICER TRAINING COURSE. (a) The basic peace officer training course required as part of a peace officer training program under Section 1701.251(a) may be no less than 720 hours.

(b) The basic peace officer training course must include training on:

(1) the prohibition against the intentional use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer in searching or arresting a person, unless the officer

reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person;

(2) the duty of a peace officer to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:

(A) the amount of force exceeds that which is reasonable under the circumstances; and

(B) the officer knows or should know that the other officer's use of force:

(i) violates state or federal law;

(ii) puts a person at risk of bodily injury, as that term is defined by Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and

(iii) is not required to apprehend the person suspected of committing an offense; and

(3) the duty of a peace officer who encounters an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services personnel to provide the person with emergency medical services and, while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment.

Added by Acts 2021, 87th Leg., R.S., Ch. 722 (H.B. 3712), Sec. 2, eff. September 1, 2021.

Sec. 1701.256. INSTRUCTION IN WEAPONS PROFICIENCY REQUIRED. A peace officer training program under Section 1701.251(a) must provide instruction in weapons proficiency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.2561. FIREARMS TRAINING FOR COUNTY JAILERS. (a) The commission shall develop a basic training program in the use of

firearms by county jailers. The program must provide instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of jailers;

(2) range firing and procedure;

(3) firearms safety and maintenance; and

(4) other topics determined by the commission to be necessary for the responsible use of firearms by jailers.

(b) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each county jailer the commission determines has successfully completed the program.

(c) A county jailer who is issued a certificate of firearms proficiency and who maintains weapons proficiency in accordance with Section 1701.355 may carry a firearm:

(1) during the course of performing duties as a county jailer, including while transporting persons confined in the county jail; and

(2) while traveling to or from the jailer's place of assignment.

Added by Acts 2019, 86th Leg., R.S., Ch. 1234 (H.B. 1552), Sec. 1, eff. September 1, 2019.
Added by Acts 2019, 86th Leg., R.S., Ch. 1368 (H.B. 3503), Sec. 1, eff. June 15, 2019.

Sec. 1701.257. FIREARMS TRAINING PROGRAM FOR SUPERVISION OFFICERS. (a) The commission and the Texas Department of Criminal Justice by rule shall adopt a memorandum of understanding that establishes each agency's respective responsibilities in developing a basic training program in the use of firearms by community supervision and corrections department officers and parole officers. The program established under the memorandum of understanding must provide instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of the officers;

(2) range firing and procedure;

(3) firearms safety and maintenance; and

(4) other topics determined by each agency to be necessary for the responsible use of firearms by the officers.

(b) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each community supervision and corrections department officer or parole officer the commission determines has successfully completed the program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.258. EDUCATION AND TRAINING PROGRAMS ON TRAFFICKING OF PERSONS. (a) The commission by rule shall require an officer to complete a one-time basic education and training program on the trafficking of persons. The program must:

(1) consist of at least four hours of training; and

(2) include a review of the substance of Sections 20A.02 and 43.05, Penal Code.

(b) The commission shall make available to each officer a voluntary advanced education, instruction, and training program on the trafficking of persons and compelling prostitution prohibited under Sections 20A.02 and 43.05, Penal Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 5, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 715 (H.B. 292), Sec. 2, eff. September 1, 2019.

Sec. 1701.2581. VOLUNTARY ADVANCED EDUCATION AND TRAINING PROGRAM ON MISSING CHILDREN AND MISSING PERSONS. The commission shall make available to each officer a voluntary advanced education and training program on missing children and missing persons. The program must include instruction on the associated reporting requirements under Chapter 63, Code of Criminal Procedure.

Added by Acts 2023, 88th Leg., R.S., Ch. 729 (H.B. 2660), Sec. 8, eff. September 1, 2023.
Added by Acts 2023, 88th Leg., R.S., Ch. 979 (S.B. 2429), Sec. 7, eff. September 1, 2023.

Sec. 1701.259. FIREARMS TRAINING PROGRAM FOR JUVENILE PROBATION

OFFICERS. (a) The commission and the Texas Juvenile Justice Department by rule shall adopt a memorandum of understanding that establishes a training program in the use of firearms by juvenile probation officers. The memorandum of understanding must establish a program that provides instruction in:

(1) legal limitations on the use of firearms and on the powers and authority of juvenile probation officers;

(2) range firing and procedure, and firearms safety and maintenance; and

(3) other topics determined by the commission and the department to be necessary for the responsible use of firearms by juvenile probation officers.

(b) The commission shall administer the training program and shall issue a certificate of firearms proficiency to each juvenile probation officer the commission determines has successfully completed the program described by Subsection (a).

(c) The commission may establish reasonable and necessary fees for the administration of this section.

(d) This section does not affect the sovereign immunity of the state, an agency of the state, or a political subdivision of the state.

Added by Acts 2009, 81st Leg., R.S., Ch. 794 (S.B. 1237), Sec. 5, eff. June 19, 2009.
Redesignated from Occupations Code, Section 1701.258 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(47), eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 141, eff. September 1, 2015.

Sec. 1701.260. TRAINING FOR HOLDERS OF LICENSE TO CARRY A HANDGUN; CERTIFICATION OF ELIGIBILITY FOR APPOINTMENT AS SCHOOL MARSHAL. (a) The commission shall establish and maintain a training program open to any employee of a school district, open-enrollment charter school, private school, or public junior college who holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code. The training may be conducted only by the commission staff or a provider approved by the commission.

Text of subsection effective until January 1, 2025

(a-1) In this section, "private school" has the meaning assigned by Article 2.127, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(a-1) In this section, "private school" has the meaning assigned by Article 2A.008, Code of Criminal Procedure.

(b) The commission shall collect from each person who participates in the training program identifying information that includes the person's name, the person's date of birth, the license number of the license issued to the person under Subchapter H, Chapter 411, Government Code, and the address of the person's place of employment.

(c) The training program shall include 80 hours of instruction designed to:

(1) emphasize strategies for preventing school shootings and for securing the safety of potential victims of school shootings;

(2) educate a trainee about legal issues relating to the duties of peace officers and the use of force or deadly force in the protection of others;

(3) introduce the trainee to effective law enforcement strategies and techniques;

(4) improve the trainee's proficiency with a handgun; and

(5) enable the trainee to respond to an emergency situation requiring deadly force, such as a situation involving an active shooter.

(d) The commission, in consultation with psychologists, shall devise and administer to each trainee a psychological examination to determine whether the trainee is psychologically fit to carry out the duties of a school marshal in an emergency shooting or situation involving an active shooter. The commission may license a person under this section only if the results of the examination indicate that the trainee is psychologically fit to carry out those duties.

(e) The commission shall charge each trainee a reasonable fee to cover the cost to the commission of conducting the program. The commission shall charge each person seeking renewal of a school marshal license a reasonable fee to cover the cost to the commission of renewing the person's license.

(f) The commission shall license a person who is eligible for appointment as a school marshal who:

(1) completes training under this section to the

satisfaction of the commission staff; and

(2) is psychologically fit to carry out the duties of a school marshal as indicated by the results of the psychological examination administered under this section.

(g) A person's license under this section expires on August 31 following the second anniversary of the date the commission licenses the person. A renewed school marshal license expires on August 31, two years after the expiration of the previous license.

(h) A person may renew the school marshal license under this section by:

(1) successfully completing a renewal course designed and administered by the commission, which such license renewal training will not exceed 16 hours combined of classroom and simulation training;

(2) demonstrating appropriate knowledge on an examination designed and administered by the commission;

(3) demonstrating handgun proficiency to the satisfaction of the commission staff; and

(4) demonstrating psychological fitness on the examination described in Subsection (d).

(i) The commission shall revoke a person's school marshal license if the commission is notified by the Department of Public Safety that the person's license to carry a handgun issued under Subchapter H, Chapter 411, Government Code, has been suspended or revoked. A person whose school marshal license is revoked may obtain recertification by:

(1) furnishing proof to the commission that the person's handgun license has been reinstated; and

(2) completing the initial training under Subsection (c) to the satisfaction of the commission staff, paying the fee for the training, and demonstrating psychological fitness on the psychological examination described in Subsection (d).

(j) The commission shall submit the identifying information collected under Subsection (b) for each person licensed by the commission under this section to:

(1) the director of the Department of Public Safety;

(2) the person's employer, if the person is employed by a school district, open-enrollment charter school, private school, or public junior college;

(3) the chief law enforcement officer of the local

municipal law enforcement agency if the person is employed at a campus of a school district, open-enrollment charter school, private school, or public junior college located within a municipality;

(4) the sheriff of the county if the person is employed at a campus of a school district, open-enrollment charter school, private school, or public junior college that is not located within a municipality; and

(5) the chief administrator of any peace officer commissioned under Section 37.081 or 51.203, Education Code, if the person is employed at a school district or public junior college that has commissioned a peace officer under either section.

(k) The commission shall immediately report the expiration or revocation of a school marshal license to the persons listed in Subsection (j).

(l) All information collected or submitted under this section is confidential, except as provided by Subsection (j), and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 655 (H.B. 1009), Sec. 5, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 35, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 36, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1144 (S.B. 386), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1176 (S.B. 996), Sec. 2, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 988 (H.B. 867), Sec. 7, eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 90 (S.B. 785), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.148, eff. January 1, 2025.

Sec. 1701.261. CANINE ENCOUNTER TRAINING PROGRAM. (a) The commission shall establish a statewide comprehensive education and training program on canine encounters and canine behavior. The

training program must consist of at least four hours of classroom instruction and practical training, developed and approved by the commission, that addresses:

(1) handling canine-related calls, anticipating unplanned encounters with canines, and using humane methods and tools in handling canine encounters;

(2) recognizing and understanding canine behavior;

(3) state laws related to canines;

(4) canine conflict avoidance and de-escalation;

(5) use of force continuum principles in relation to canines;

(6) using nonlethal methods, tools, and resources to avoid and defend against a canine attack; and

(7) a general overview of encounters with other animals.

(b) At least once every four years, the commission shall review the content of the training program under this section and update the program as necessary.

(c) Notwithstanding Sections 1701.253(l) and 1701.402(l), an officer who has completed at least four hours of a canine encounter training program is not required to complete the program under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 31 (H.B. 593), Sec. 2, eff. September 1, 2015.

Sec. 1701.262. TRAINING FOR SCHOOL DISTRICT PEACE OFFICERS AND SCHOOL RESOURCE OFFICERS. (a) In this section:

(1) "Center" means the Texas School Safety Center at Texas State University.

(2) "Institute" means an institute dedicated to providing training to law enforcement and the development of law enforcement policies, such as the Law Enforcement Management Institute of Texas at Sam Houston State University or the Caruth Police Institute.

(3) "School district peace officer" means a peace officer commissioned under Section 37.081, Education Code.

(4) "School resource officer" has the meaning assigned by Section 1701.601.

(b) The commission, in consultation with an institute or the center, shall create, adopt, and distribute a model training

curriculum for school district peace officers and school resource officers.

(c) The curriculum developed under this section must incorporate learning objectives regarding:

(1) child and adolescent development and psychology;

(2) positive behavioral interventions and supports, conflict resolution techniques, and restorative justice techniques;

(3) de-escalation techniques and techniques for limiting the use of force, including the use of physical, mechanical, and chemical restraints;

(4) the mental and behavioral health needs of children with disabilities or special needs; and

(5) mental health crisis intervention.

(d) Before adopting and distributing any curriculum under this section, the commission shall provide a 30-day period for public comment.

(e) The commission shall provide the curriculum developed under this section and any supplemental education materials created for the curriculum to:

(1) school district police departments;

(2) law enforcement agencies that place peace officers in a school as school resource officers under a memorandum of understanding; and

(3) any entity that provides training to school district peace officers or school resource officers.

(f) The commission shall review curriculum developed and adopted under this section and update subject matter contained in the curriculum as needed at least once every four years.

Added by Acts 2015, 84th Leg., R.S., Ch. 1258 (H.B. 2684), Sec. 2, eff. June 20, 2015.

Sec. 1701.263. EDUCATION AND TRAINING PROGRAM FOR SCHOOL DISTRICT PEACE OFFICERS AND SCHOOL RESOURCE OFFICERS. (a) In this section:

(1) "School district peace officer" has the meaning assigned by Section 1701.262.

(2) "School resource officer" has the meaning assigned by Section 1701.601.

(b) The commission by rule shall require a school district peace officer or a school resource officer who is commissioned by or who provides law enforcement at a school district to successfully complete an education and training program described by this section before or within 180 days of the officer's commission by or placement in the district or a campus of the district. The program must:

(1) consist of at least 16 hours of training;

(2) be approved by the commission; and

(3) provide training in accordance with the curriculum developed under Section 1701.262 in each subject area listed in Subsection (c) of that section.

(b-1) Notwithstanding Subsection (b) or a rule adopted under that section, a school district peace officer or school resource officer is not required to successfully complete the education and training program required by this section if the officer has successfully completed the advanced training course conducted by the National Association of School Resource Officers or a training course equivalent to that advanced training course, as determined by the commission.

(c) The education and training program required under this section may not require a peace officer to pass an examination, except that the commission shall administer an examination to qualify officers to provide the education and training to other officers. The examination to qualify officers to provide the education and training must test the officer's knowledge and recognition of the subject areas listed in Section 1701.262(c).

(d) The commission shall issue a professional achievement or proficiency certificate to a peace officer who completes the education and training program under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1258 (H.B. 2684), Sec. 2, eff. June 20, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 464 (S.B. 11), Sec. 24, eff. June 6, 2019.

Sec. 1701.264. ACQUIRED AND TRAUMATIC BRAIN INJURIES TRAINING. (a) In this section, "first responder" has the meaning assigned by Section 421.095, Government Code.

(b) The commission, in collaboration with the office of acquired brain injury of the Health and Human Services Commission and the Texas Traumatic Brain Injury Advisory Council, shall establish and maintain a training program for peace officers and first responders that provides information on:

(1) the effects of an acquired brain injury and of a traumatic brain injury; and

(2) techniques to interact with persons who have an acquired brain injury or a traumatic brain injury.

Added by Acts 2015, 84th Leg., R.S., Ch. 725 (H.B. 1338), Sec. 1, eff. September 1, 2015.
Redesignated from Occupations Code, Section 1701.261 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(32), eff. September 1, 2017.

Sec. 1701.265. TRAUMA AFFECTED VETERANS TRAINING. (a) In this section, "veteran" means a person who has served in:

(1) the army, navy, air force, coast guard, or marine corps of the United States; or

(2) the Texas National Guard as defined by Section 431.001, Government Code.

(b) The commission, in collaboration with the Texas Veterans Commission, shall establish and maintain a training program for peace officers that provides information on veterans with combat-related trauma, post-traumatic stress, post-traumatic stress disorder, or a traumatic brain injury. An officer may not complete the training under this subsection by taking an online course.

Added by Acts 2015, 84th Leg., R.S., Ch. 725 (H.B. 1338), Sec. 1, eff. September 1, 2015.
Redesignated from Occupations Code, Section 1701.262 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(32), eff. September 1, 2017.

Sec. 1701.266. TRAINING PROGRAM RELATING TO CHILD SAFETY CHECK ALERT LIST. (a) The commission by rule shall establish an education and training program on the Texas Crime Information Center's child safety check alert list. The program must include instruction

relating to:

(1) the procedures for placing a child or other person on the child safety check alert list;

(2) the manner in which an officer should interact with a child or other person on the child safety check alert list whom the officer locates; and

(3) the procedures for removing a child or other person from the child safety check alert list.

(b) The commission shall make the training program available to employees in the child protective services division of the Department of Family and Protective Services, including caseworkers, supervisors, and special investigators.

Added by Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 7, eff. September 1, 2015.
Redesignated from Occupations Code, Section 1701.262 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(33), eff. September 1, 2017.

Sec. 1701.267. TRAINING PROGRAM FOR COURT SECURITY OFFICERS. (a) The commission, in consultation with the Office of Court Administration of the Texas Judicial System, shall develop a model court security curriculum for court security officers, as required by Chapter 158, Government Code, and provide the curriculum to any training program the commission approves to provide training to court security officers.

(b) The commission shall issue a certificate to each court security officer who completes the training program under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 190 (S.B. 42), Sec. 24, eff. September 1, 2017.

Sec. 1701.268. CIVILIAN INTERACTION TRAINING PROGRAM. (a) In this section, "board" means the State Board of Education.

(b) The commission and the board shall enter into a memorandum of understanding that establishes each agency's respective responsibilities in developing a training program, including training and testing materials, on proper interaction with civilians during

traffic stops and other in-person encounters. The training program must include information regarding:

(1) the role of law enforcement and the duties and responsibilities of peace officers;

(2) a person's rights concerning interactions with peace officers;

(3) proper behavior for civilians and peace officers during interactions;

(4) laws regarding questioning and detention by peace officers, including any law requiring a person to present proof of identity to a peace officer, and the consequences for a person's or officer's failure to comply with those laws; and

(5) how and where to file a complaint against or a compliment on behalf of a peace officer.

(c) In developing the training program under this section, the commission and the board may consult with any interested party, including a volunteer work group convened for the purpose of making recommendations regarding the training program.

(d) Before finalizing a training program under this section, the commission and the board shall provide a reasonable period for public comment.

Added by Acts 2017, 85th Leg., R.S., Ch. 513 (S.B. 30), Sec. 6, eff. September 1, 2017.

Sec. 1701.269. TRAINING PROGRAM AND POLICIES FOR PEACE OFFICERS. (a) The commission, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas and other interested parties chosen by the commission, shall develop and maintain a model training curriculum and model policies for law enforcement agencies and peace officers.

(b) The model training curriculum and model policies developed under Subsection (a) must include:

(1) curriculum and policies for banning the use of a choke hold, carotid artery hold, or similar neck restraint by a peace officer in searching or arresting a person, unless the officer reasonably believes the restraint is necessary to prevent serious bodily injury to or the death of the peace officer or another person;

(2) curriculum and policies regarding the duty of a peace

officer to intervene to stop or prevent another peace officer from using force against a person suspected of committing an offense if:

(A) the amount of force exceeds that which is reasonable under the circumstances; and

(B) the officer knows or should know that the other officer's use of force:

(i) violates state or federal law;

(ii) puts a person at risk of bodily injury, as that term is defined by Section 1.07, Penal Code, and is not immediately necessary to avoid imminent bodily injury to a peace officer or other person; and

(iii) is not required to apprehend the person suspected of committing an offense; and

(3) curriculum and policies regarding the duty of a peace officer who encounters an injured person while discharging the officer's official duties to immediately and as necessary request emergency medical services personnel to provide the person with emergency medical services and, while waiting for emergency medical services personnel to arrive, provide first aid or treatment to the person to the extent of the officer's skills and training, unless the request for emergency medical services personnel or the provision of first aid or treatment would expose the officer or another person to a risk of bodily injury or the officer is injured and physically unable to make the request or provide the treatment.

Added by Acts 2021, 87th Leg., R.S., Ch. 722 (H.B. 3712), Sec. 3, eff. September 1, 2021.

Sec. 1701.270. REQUIRED POLICIES FOR LAW ENFORCEMENT AGENCIES. Not later than the 180th day after the date the commission provides the model policies described by Section 1701.269(b), each law enforcement agency in this state shall adopt a policy on the topics described by that subsection. A law enforcement agency may adopt the model policies developed by the commission under that subsection.

Added by Acts 2021, 87th Leg., R.S., Ch. 722 (H.B. 3712), Sec. 3, eff. September 1, 2021.

Sec. 1701.271. TRAINING PROGRAM RELATING TO COUNTY JAILER

INTERACTIONS WITH PERSONS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES. (a) The commission and the Commission on Jail Standards shall jointly develop, with the assistance of the advisory committee established under Section 511.022, Government Code, a training program for county jailers that consists of at least four hours of education and training on interacting with a person with an intellectual or developmental disability who is confined in a county jail, including techniques to assess a person for an intellectual or developmental disability.

(b) A county jailer who completes the training program may count the hours toward the jailer's continuing education requirements under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 708 (H.B. 2831), Sec. 3, eff. September 1, 2021.
Redesignated from Occupations Code, Section 1701.269 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(33), eff. September 1, 2023.

Sec. 1701.272. TRAINING PROGRAM ON RESPONDING TO SEXUAL ABUSE OR ASSAULT. (a) The commission shall, in consultation with the Sexual Assault Survivors' Task Force established under Section 772.0064, Government Code, establish a basic education and training program on child sexual abuse and adult sexual assault, including the use of best practices and techniques to effectively recognize, investigate, and document those cases. The training program must consist of at least eight hours of instruction.

(b) The commission shall require an officer to complete the training program unless the officer has completed the training under Section 1701.253(q) or other training equivalent to the training program as determined by the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 460 (S.B. 1402), Sec. 5, eff. September 1, 2023.

SUBCHAPTER G. LICENSE REQUIREMENTS; DISQUALIFICATIONS AND EXEMPTIONS

Sec. 1701.301. LICENSE REQUIRED. Except as provided by Sections 1701.310, 1701.311, and 1701.405, a person may not appoint or employ a person to serve as an officer, county jailer, school

marshal, public security officer, or telecommunicator unless the person holds an appropriate license issued by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 655 (H.B. 1009), Sec. 7, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 3, eff. January 1, 2014.

Sec. 1701.302. CERTAIN ELECTED LAW ENFORCEMENT OFFICERS; LICENSE REQUIRED. (a) Except as provided by Section 85.0011, Local Government Code, an officer, including a sheriff, elected under the Texas Constitution or a statute or appointed to fill a vacancy in an elective office must obtain a license from the commission not later than the second anniversary of the date the officer takes office.

(b) The commission shall establish requirements for issuing the license and for revocation, suspension, or denial of the license.

(c) An officer to whom this section applies who does not obtain the license by the required date or does not remain licensed is incompetent and is subject to removal from office under Section 665.052, Government Code, or another removal statute.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 201 (S.B. 1124), Sec. 2, eff. September 1, 2023.

Sec. 1701.303. LICENSE APPLICATION; DUTIES OF APPOINTING ENTITY. (a) Before a law enforcement agency or governmental entity hires a person for whom a license is sought, the agency or entity must:

(1) review any information relating to the person available:

(A) in a database established under Section 1701.168;

(B) in a database designated under Section 1701.169; and

(C) if applicable, in a file provided to the commission under Section 1701.3035; and

(2) file an application with the commission as provided by commission rule.

(b) A person who appoints an officer or county jailer licensed by the commission shall notify the commission not later than the 30th day after the date of the appointment. If the person appoints an individual who previously served as an officer or county jailer and the appointment occurs after the 180th day after the last date of service as an officer or county jailer, the person must have on file for the license holder in a form readily accessible to the commission:

(1) new criminal history record information;

(2) a new declaration of psychological and emotional health and lack of drug dependency or illegal drug use; and

(3) new documentation that the license holder has been fingerprinted and subjected to a search of local, state, and national records and fingerprint files to disclose any criminal record of the license holder.

(c) A person who appoints or employs a telecommunicator licensed by the commission shall notify the commission not later than the 30th day after the date of the appointment or employment. If the person appoints or employs an individual who previously served as a telecommunicator and the appointment or employment occurs after the 180th day after the last date of service as a telecommunicator, the person must have on file in a form readily accessible to the commission:

(1) new criminal history record information; and

(2) new documentation that the license holder has been fingerprinted and subjected to a search of local, state, and national records and fingerprint files to disclose any criminal record of the license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 4, eff. January 1, 2014.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 11, eff. September 1, 2023.

Sec. 1701.3035. OUT-OF-STATE LICENSE HOLDERS. (a) Before

issuing an officer license under this chapter to an applicant who holds or previously held an equivalent license in another state, the commission must request from the licensing authority of the other state the personnel file and any other relevant record regarding the applicant.

(b) An applicant for an officer license may not be denied a license for the sole reason that the licensing authority of another state did not provide a record requested by the commission under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 12, eff. September 1, 2023.

Sec. 1701.304. EXAMINATION. (a) The commission shall conduct an examination for each type of license issued by the commission at least four times each year at times and places designated by the commission. The commission shall:

(1) prescribe the content of an examination for each type of license;

(2) include in each examination a written examination that tests the applicant's knowledge of the appropriate occupation; and

(3) prescribe standards for acceptable performance on each examination.

(b) The commission by rule shall establish minimum qualifications for a person to be examined under this section. A person who is disqualified by law to be an officer or county jailer may not take an examination under this section.

(c) A law enforcement agency may request the commission to conduct examinations required by this chapter in the jurisdiction served by the agency. The commission may conduct the examinations in the jurisdiction if:

(1) the commission determines that doing so will not place a significant hardship on the commission's resources; and

(2) the requesting law enforcement agency reimburses the commission for additional costs incurred in conducting the examination in the agency's jurisdiction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.305. EXAMINATION RESULTS. (a) The commission shall notify each examinee of the examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the commission shall notify each examinee of the examination results not later than the 14th day after the date the commission receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the commission shall provide to the person an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.306. PSYCHOLOGICAL AND PHYSICAL EXAMINATION. (a) The commission may not issue a license to a person unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a blood test or other medical test.

(b) An agency hiring a person for whom a license is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

(c) The commission shall adopt rules that:

(1) relate to appropriate standards and measures to be used by a law enforcement agency in reporting the declarations made under Subsection (a); and

(2) provide for exceptional circumstances in the administration of the examination of the applicant's psychological

and emotional health, including permitting the examination to be made by a qualified licensed physician instead of a psychologist or psychiatrist.

(d) The commission may order an applicant to submit to an examination described by Subsection (a) by a psychologist, psychiatrist, or physician appointed by the commission if the commission:

(1) has cause to believe that a law enforcement agency failed to follow commission rules relating to an examination; or

(2) discovers that the applicant has submitted a false declaration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 2, eff. September 1, 2011.

Sec. 1701.307. ISSUANCE OF OFFICER OR COUNTY JAILER LICENSE. (a) The commission shall issue an appropriate officer or county jailer license to a person who, as required by this chapter:

(1) submits an application;

(2) completes the required training;

(3) passes the required examination;

(4) is declared to be in satisfactory psychological and emotional health and free from drug dependency or illegal drug use; and

(5) demonstrates weapons proficiency.

(b) The commission may issue a permanent license to a person who meets the requirements of this chapter and the rules prescribed by the commission to serve as an officer.

(c) The commission may issue a temporary or permanent license to a person to serve as a county jailer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 878 (H.B. 1955), Sec. 2, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 5, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 6, eff.

January 1, 2014.

Sec. 1701.3071. ISSUANCE OF TELECOMMUNICATOR LICENSE. (a) The commission shall issue a telecommunicator license to a person who:

(1) submits an application;

(2) completes the required training;

(3) passes the required examination; and

(4) meets any other requirement of this chapter and the rules prescribed by the commission to qualify as a telecommunicator.

(a-1) The training required by Subsection (a)(2) must include telecommunicator cardiopulmonary resuscitation training that:

(1) uses the most current nationally recognized emergency cardiovascular care guidelines;

(2) incorporates recognition protocols for out-of-hospital cardiac arrest; and

(3) provides information on best practices for relaying compression-only cardiopulmonary resuscitation instructions to callers.

(b) The commission may issue a temporary or permanent license to a person to act as a telecommunicator.

Added by Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 7, eff. January 1, 2014.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 15 (H.B. 786), Sec. 1, eff. September 1, 2021.

Sec. 1701.3075. QUALIFIED APPLICANT AWAITING APPOINTMENT. (a) A person who meets the requirements set forth in Section 1701.307(a) has the same reporting responsibilities toward the commission under rules adopted by the commission as a license holder who has already been appointed as a peace officer.

(b) The commission may determine that a person who meets the requirements under Section 1701.307(a) is ineligible for appointment as a peace officer based on events that occur after the person meets the requirements in Section 1701.307(a) but before the person is appointed.

Added by Acts 2009, 81st Leg., R.S., Ch. 701 (H.B. 2799), Sec. 1, eff.

September 1, 2009.

Sec. 1701.308. WEAPONS PROFICIENCY. The commission shall require a person applying for a peace officer license to demonstrate weapons proficiency.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.309. AGE REQUIREMENT. The commission by rule shall set 21 years of age as the minimum age for obtaining a license as an officer. The rules must provide that a person at least 18 years of age may be issued a license as an officer if the person has:

(1) completed and received credit for at least 60 hours of study at an accredited college or university or received an associate degree from an accredited college or university; or

(2) received an honorable discharge from the United States armed forces after at least two years of service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.3095. LICENSING OF CERTAIN VETERANS WHO ARE LEGAL PERMANENT RESIDENTS. The commission shall issue a license the commission is authorized to issue to a person who is a legal permanent resident of the United States if the person:

(1) meets the requirements of this chapter and the commission's rules for the license;

(2) is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge; and

(3) presents evidence satisfactory to the commission that the person has applied for United States citizenship.

Added by Acts 2023, 88th Leg., R.S., Ch. 1049 (S.B. 252), Sec. 3, eff. September 1, 2023.

Sec. 1701.310. APPOINTMENT OF COUNTY JAILER; TRAINING REQUIRED. (a) Except as provided by Subsection (e), a person may

not be appointed as a county jailer, except on a temporary basis, unless the person has satisfactorily completed a preparatory training program, as required by the commission, in the operation of a county jail at a school operated or licensed by the commission. The training program must consist of at least eight hours of mental health training approved by the commission and the Commission on Jail Standards.

(b) A county jailer appointed on a temporary basis who does not satisfactorily complete the preparatory training program before the first anniversary of the date that the person is appointed shall be removed from the position. A county jailer appointed on a temporary basis shall be enrolled in the preparatory training program on or before the 90th day after their temporary appointment. A temporary appointment may not be renewed, except that the sheriff may petition the commission to extend the temporary appointment for a period not to exceed six months.

(b-1) A person who has previously been appointed on a temporary basis as a county jailer and separated from that position may be subsequently appointed on a temporary basis as a county jailer under Subsection (b) at the same or a different county jail only if the person was in good standing at the time the person separated from the position.

(b-2) A person who has cumulatively served as a county jailer on a temporary basis under Subsection (b) for two years may continue to serve for the remainder of that temporary appointment, not to exceed the first anniversary of the date of the most recent appointment. The person is not eligible for an extension of that appointment or for a subsequent appointment on a temporary basis as a county jailer under that subsection at the same or a different county jail until the first anniversary of the date the person separates from the temporary appointment during which the person reached two years of cumulative service.

(b-3) A person whose county jailer license has become inactive may be appointed as a county jailer on a temporary basis under Subsection (b).

(c) A county jailer serving under permanent appointment before September 1, 1979, regardless of whether the person's employment was terminated before that date because of failure to satisfy standards adopted under Chapter 511, Government Code, is not required to meet a requirement of this section as a condition of continued employment or

promotion unless:

(1) in an attempt to meet the standards the person took an examination and failed or was not allowed to finish the examination because the person acted dishonestly in regard to the examination;

(2) the person forged a document purporting to show that the person meets the standards; or

(3) the person seeks a new appointment as a county jailer on or after September 1, 1984.

(d) A county jailer serving under permanent appointment before September 1, 1979, is eligible to attend training courses in the operation of a county jail, subject to commission rules.

(e) A person trained and certified by the Texas Department of Criminal Justice to serve as a corrections officer in that agency's correctional institutions division is not required to complete the training requirements of this section to be appointed a part-time county jailer. Examinations under Section 1701.304 and psychological examinations under Section 1701.306 apply.

(f) A county jailer appointed on a temporary basis may not be promoted to a supervisory position in a county jail.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.502(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.142, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 3, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.03, eff. January 1, 2018.

Acts 2019, 86th Leg., R.S., Ch. 1252 (H.B. 4468), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1252 (H.B. 4468), Sec. 6, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 134 (H.B. 2183), Sec. 1, eff. September 1, 2023.

Sec. 1701.311. PROVISIONAL LICENSE FOR WORKFORCE SHORTAGE. (a) The commission shall adopt rules to allow a law enforcement agency to

petition for issuance of a provisional license for an officer if the agency proves that it has a workforce shortage.

(b) Except in an emergency, a peace officer holding a provisional license may not be required to work at the peace officer's employing agency and attend a commission-approved basic preparatory school for more than a total of 40 hours a week.

(c) An agency employing a peace officer who holds a provisional license may contract with the peace officer for reimbursement of the cost of a basic preparatory training course if the peace officer voluntarily resigns from the agency before a date specified in the contract that is not later than the first anniversary of the date the officer is appointed. The contract must state the cost of the course.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.312. DISQUALIFICATION: FELONY CONVICTION OR PLACEMENT ON COMMUNITY SUPERVISION. (a) A person who has been convicted of a felony is disqualified to be an officer, public security officer, telecommunicator, or county jailer, and the commission may not issue a license to, and a law enforcement agency may not appoint or employ, the person.

(b) For purposes of this section and Section 1701.502, a person is convicted of a felony if a court enters an adjudication of guilt against the person on a felony offense under the laws of this or another state or the United States, regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

(c) The commission, on receipt of a certified copy of a court's judgment under Article 42.011, Code of Criminal Procedure, shall note on the person's licensing records the conviction or community supervision indicated by the judgment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 6, eff. September 1, 2011.

Sec. 1701.313. DISQUALIFICATION: CONVICTION OF BARRATRY. (a) A person who has been convicted of barratry under Section 38.12, Penal Code, is disqualified to be an officer, telecommunicator, or county jailer, and the commission may not issue a license to the person.

(b) For purposes of this section and Section 1701.503, a person is convicted of barratry if a court enters an adjudication of guilt against the person regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed following community supervision; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 7, eff. September 1, 2011.

Sec. 1701.3135. DISQUALIFICATION: REVOCATION OR SUSPENSION IN ANOTHER STATE. A person is disqualified to be an officer, and the commission may not issue an officer license to the person, if the person has been issued a license or other authorization to act as an officer in another state and, at the time the person applies for a license in this state, that license or authorization is revoked or suspended for a reason that would be grounds for the commission to revoke or suspend a license in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 12, eff. September 1, 2023.

Sec. 1701.314. EXEMPTION: OFFICER APPOINTED BEFORE SEPTEMBER 1, 1970. A peace officer serving under a permanent appointment before September 1, 1970, is not required to obtain a license as a

condition of tenure, continued employment, or promotion unless the officer seeks a new appointment. The officer is eligible to attend peace officer training courses subject to commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.315. LICENSE REQUIREMENTS FOR PERSONS WITH MILITARY SPECIAL FORCES TRAINING. (a) In this section, "special forces" means a special forces component of the United States armed forces, including:

(1) the United States Army Special Forces;

(2) the United States Navy SEALs;

(3) the United States Air Force Pararescue;

(4) the United States Marine Corps Force Reconnaissance; and

(5) any other component of the United States Special Operations Command approved by the commission.

(b) The commission shall adopt rules to allow an applicant to qualify to take an examination described by Section 1701.304 if the applicant:

(1) has served in the special forces;

(2) has successfully completed a special forces training course and provides to the commission documentation verifying completion of the course;

(3) completes a supplemental peace officer training course; and

(4) completes any other training required by the commission after the commission has reviewed the applicant's military training.

(c) Commission rules adopted under Subsection (b) shall include rules:

(1) to determine acceptable forms of documentation that satisfy the requirements of Subsection (b);

(2) under which the commission may waive any other license requirement for an applicant described by Subsection (b) based on other relevant military training the applicant has received, as determined by the commission, including intelligence or medical training; and

(3) to establish an expedited application process for an applicant described by Subsection (b).

(d) The commission shall review the content of the training course for each special forces component described by Subsection (a) and in adopting rules under Subsection (b) specify the training requirements an applicant who has completed that training course must complete and the training requirements from which an applicant who has completed that training course is exempt.

Added by Acts 2013, 83rd Leg., R.S., Ch. 66 (S.B. 162), Sec. 4, eff. May 18, 2013.

Sec. 1701.316. REACTIVATION OF PEACE OFFICER LICENSE. (a) The commission shall adopt rules establishing requirements for reactivation of a peace officer's license after a break in employment.

(b) The commission may consider employment as a peace officer in another state in determining whether the person is required to obtain additional training or testing.

(c) The commission shall reactivate a peace officer's license after a break in employment if the former license holder:

(1) completed at least 10 years of full-time service as a peace officer in good standing before the break in employment;

(2) meets current licensing standards;

(3) successfully completes:

(A) an online or in-person supplemental peace officer course of not more than 120 hours; and

(B) other in-person training requirements of not more than 40 hours;

(4) passes a peace officer reactivation examination;

(5) files an application; and

(6) pays any required fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 347 (H.B. 872), Sec. 1, eff. September 1, 2015.

Sec. 1701.3161. REACTIVATION OF PEACE OFFICER LICENSE: RETIRED PEACE OFFICERS.

Text of subsection effective until January 1, 2025

(a) In this section, "retired peace officer" means a person who served as a peace officer in this state who:

(1) is not currently serving as an elected, appointed, or employed peace officer under Article 2.12, Code of Criminal Procedure, or other law;

(2) was eligible to retire from a law enforcement agency in this state or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the law enforcement agency; and

(3) is eligible to receive a pension or annuity for service as a law enforcement officer in this state or is ineligible to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

Text of subsection effective on January 1, 2025

(a) In this section, "retired peace officer" means a person who served as a peace officer in this state who:

(1) is not currently serving as an elected, appointed, or employed peace officer under Article 2A.001, Code of Criminal Procedure, or other law;

(2) was eligible to retire from a law enforcement agency in this state or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the law enforcement agency; and

(3) is eligible to receive a pension or annuity for service as a law enforcement officer in this state or is ineligible to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

(b) The commission shall adopt rules for the reactivation of a retired peace officer's license after a break in employment. The rules must allow a retired peace officer to reactivate the officer's license by completing the continuing education requirements prescribed by Section 1701.351 and completing any other continuing education requirement imposed by law in lieu of successfully completing any examination required by the commission for reactivation.

(c) The commission may waive the reinstatement fee established for the reactivation of a peace officer's license for a retired peace

officer who is eligible for reactivation as provided by Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 878 (H.B. 1955), Sec. 3, eff. June 15, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.149, eff. January 1, 2025.

Sec. 1701.317. LIMITATION ON INFORMATION REQUIRED FOR LICENSE RENEWAL.The requirements and procedures adopted by the commission for the renewal of a license issued under this chapter:

(1) may not require an applicant to provide unchanged criminal history information already included in one or more of the applicant's previous applications for licensure or for license renewal filed with the commission; and

(2) may require the applicant to provide only information relevant to the period occurring since the date of the applicant's last application for licensure or for license renewal, as applicable, including information relevant to any new requirement applicable to the license held by the applicant.

Added by Acts 2009, 81st Leg., R.S., Ch. 332 (H.B. 846), Sec. 2, eff. September 1, 2009.

SUBCHAPTER H. CONTINUING EDUCATION AND YEARLY WEAPONS PROFICIENCY

Sec. 1701.351. CONTINUING EDUCATION REQUIRED FOR PEACE OFFICERS. (a) Each peace officer shall complete at least 40 hours of continuing education programs once every 24 months. The commission may suspend the license of a peace officer who fails to comply with this requirement.

(a-1) As part of the continuing education programs under Subsection (a), a peace officer must complete a training and education program that covers recent changes to the laws of this state and of the United States pertaining to peace officers.

(a-2) Before the first day of each 24-month training unit during which peace officers are required to complete 40 hours of continuing education programs under Subsection (a), the commission shall specify the mandated topics to be covered in up to 16 of the

required hours.

(b) The commission by rule shall provide for waiver of the requirements of this section when mitigating circumstances exist.

(c) The commission shall credit a peace officer with meeting the continuing education requirements of this section if during the relevant 24-month period the peace officer serves on active duty as a member of the United States military for at least 12 months or serves as an elected member of the legislature. Credit for continuing education under this subsection does not affect any requirement to demonstrate continuing weapons proficiency under Section 1701.355.

(d) A peace officer who is second in command to a police chief of a law enforcement agency and who attends a continuing education program for command staff provided by the Bill Blackwood Law Enforcement Management Institute of Texas under Section 96.641, Education Code, is exempt from the continuing education requirements of this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1157, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1236 (H.B. 1438), Sec. 1, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 15, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 602 (S.B. 244), Sec. 3, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 722 (H.B. 3712), Sec. 4, eff. September 1, 2021.

Sec. 1701.352. CONTINUING EDUCATION PROGRAMS. (a) The commission shall recognize, prepare, or administer continuing education programs for officers and county jailers.

(b) The commission shall require a state, county, special district, or municipal agency that appoints or employs peace officers to provide each peace officer with a training program at least once every 48 months that is approved by the commission and consists of:

(1) topics selected by the agency; and

(2) for an officer holding only a basic proficiency certificate, not more than 20 hours of education and training that

contain curricula incorporating the learning objectives developed by the commission regarding:

(A) civil rights, racial sensitivity, and cultural diversity;

(B) de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments;

(C) de-escalation techniques to facilitate interaction with members of the public, including techniques for limiting the use of force resulting in bodily injury; and

(D) unless determined by the agency head to be inconsistent with the officer's assigned duties:

(i) the recognition, documentation, and investigation of cases that involve child abuse or neglect, family violence, and sexual assault, including the use of best practices and trauma-informed techniques to effectively recognize, document, and investigate those cases; and

(ii) issues concerning sex offender characteristics.

(c) A course provided under Subsection (b) may use instructional materials developed by the agency or its trainers or by entities having training agreements with the commission in addition to materials included in curricula developed by the commission.

(d) A peace officer who is appointed or will be appointed to the officer's first supervisory position must receive in-service training on supervision as part of the course provided for the officer under Subsection (b) not earlier than the 12th month before the date of that appointment or later than the first anniversary of the date of that appointment.

(e) The commission may require a state, county, special district, or municipal agency that appoints or employs a reserve law enforcement officer, county jailer, or public security officer to provide each of those persons with education and training in civil rights, racial sensitivity, and cultural diversity at least once every 48 months.

(f) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries;

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made; and

(4) recognizing and recording circumstances indicating that a victim may have been assaulted in the manner described by Section 22.01(b)(2)(B), Penal Code.

(g) The training and education program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments under Subsection (b)(2)(B) may not be provided as an online course. The commission shall:

(1) determine best practices for interacting with persons with mental impairments, in consultation with the Bill Blackwood Law Enforcement Management Institute of Texas; and

(2) review the education and training program under Subsection (b)(2)(B) at least once every 24 months.

(h) The commission shall require a state, county, special district, or municipal agency that employs telecommunicators to provide each telecommunicator with 24 hours of crisis communications instruction approved by the commission. The instruction must be provided on or before the first anniversary of the telecommunicator's first day of employment.

(i) A state agency, county, special district, or municipality that appoints or employs a telecommunicator shall provide training to the telecommunicator of not less than 20 hours during each 24-month period of employment that includes:

(1) telecommunicator cardiopulmonary resuscitation as described by Section 1701.3071(a-1); and

(2) other topics selected by the commission and the employing entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1157, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 8, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 8, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 418 (H.B. 3211), Sec. 1, eff.

September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.04, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 76 (S.B. 971), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 107 (S.B. 586), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 15 (H.B. 786), Sec. 2, eff. September 1, 2021.

Sec. 1701.3525. ACTIVE SHOOTER RESPONSE TRAINING REQUIRED FOR OFFICERS. (a) As part of the continuing education programs under Section 1701.351(a), an officer must complete not less than 16 hours of training on responding to an active shooter as developed by the Advanced Law Enforcement Rapid Response Training Center at Texas State University--San Marcos.

(b) The exemptions under Sections 1701.351(b), (c), and (d) do not apply to the training required by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 102 (S.B. 1852), Sec. 2, eff. September 1, 2023.

Sec. 1701.353. CONTINUING EDUCATION PROCEDURES. (a) The commission by rule shall adopt procedures to:

(1) ensure the timely and accurate reporting by agencies and persons licensed under this chapter of information related to training programs offered under this subchapter, including procedures for creating training records for license holders; and

(2) provide adequate notice to agencies and license holders of impending noncompliance with the training requirements of this subchapter so that the agencies and license holders may comply within the 24-month period or 48-month period, as appropriate.

(b) The commission shall require agencies to report to the commission in a timely manner the reasons that a license holder is in noncompliance after the agency receives notice by the commission of the license holder's noncompliance. The commission shall, following receipt of an agency's report or on a determination that the agency has failed to report in a timely manner, notify the license holder by

certified mail of the reasons the license holder is in noncompliance and that the commission at the request of the license holder will hold a hearing as provided by this subsection if the license holder fails to obtain the required training within 60 days after the date the license holder receives notice under this subsection. The commission shall conduct a hearing consistent with Section 1701.504 if the license holder claims that:

(1) mitigating circumstances exist; or

(2) the license holder failed to complete the required training because the license holder's employing agency did not provide an adequate opportunity for the license holder to attend the required training course.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1236 (H.B. 1438), Sec. 2, eff. June 18, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 4, eff. September 1, 2011.

Sec. 1701.354. CONTINUING EDUCATION FOR DEPUTY CONSTABLES. (a) If the commission requires a state, county, special district, or municipal agency that employs a deputy constable to provide the deputy constable with a training program under Section 1701.352, the commission shall require the deputy constable to attend at least 20 hours of instruction in civil process.

(b) The commission shall adopt rules and procedures concerning a civil process course, including rules providing for:

(1) approval of course content and standards; and

(2) issuance of course credit.

(c) The commission may waive the instruction requirements for a deputy constable under this section:

(1) if a constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities; or

(2) if the deputy constable requests a waiver because of hardship and the commission determines that a hardship exists.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 735 (H.B. 2574), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 954 (H.B. 1588), Sec. 3, eff. June 18, 2005.

Reenacted by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 12.001, eff. September 1, 2007.

Sec. 1701.3545. INITIAL TRAINING AND CONTINUING EDUCATION FOR CONSTABLES. (a) A public institution of higher education selected by the commission shall establish and offer a program of initial training and a program of continuing education for constables. The curriculum for each program must relate to law enforcement management. The institution selected under this subsection shall develop the curriculum for the programs. The curriculum must be approved by the commission.

(b) Each constable must complete at least 40 hours of continuing education provided by the selected institution under Subsection (a) each 48-month period. The commission by rule shall establish a uniform 48-month continuing education training period.

(b-1) In addition to the requirements of Subsection (b), during each 48-month continuing education training period each constable must complete at least 20 hours of continuing education instruction on civil process to be provided by a public institution of higher education selected by the commission under this subsection. The commission shall establish minimum curriculum requirements for the continuing education course on civil process required by this subsection. The commission may waive the continuing education requirements of this subsection if:

(1) a constable requests a waiver because of hardship; and

(2) the commission determines that a hardship exists.

(c) An individual appointed or elected to that individual's first position as constable must complete at least 40 hours of initial training for new constables in accordance with Subsections (d) and (e).

(d) A newly appointed or elected constable shall complete the initial training program for new constables not later than the second anniversary of that individual's appointment or election as constable. The initial training program for new constables is in addition to the initial training required by this chapter. The

commission by rule shall establish that the first continuing education training period for an individual under Subsection (b) begins on the first day of the first uniform continuing education training period that follows the date the individual completed the initial training program.

(e) The institution selected under Subsection (a) by rule may provide for the waiver of:

(1) all or part of the required 40 hours of initial training for new constables to the extent the new constable has satisfactorily completed equivalent training during the 24 months preceding the individual's appointment or election; or

(2) the continuing education requirements of Subsection (b) for an individual who has satisfactorily completed equivalent continuing education during the preceding 24 months.

(f) An individual who is subject to the continuing education requirements of Subsections (b) and (b-1) is exempt from other continuing education requirements under this subchapter.

(g) The commission shall establish procedures to annually determine the status of the peace officer license of each elected constable and to ensure that constables comply with this section. The commission shall forward to the attorney general's office documentation for each constable who does not comply with this section. A constable who does not comply with this section forfeits the office and the attorney general shall institute a quo warranto proceeding under Chapter 66, Civil Practice and Remedies Code, to remove the constable from office.

(h) To the extent of a conflict between this section and any other law, this section controls.

Added by Acts 2005, 79th Leg., Ch. 954 (H.B. 1588), Sec. 2, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 622 (H.B. 487), Sec. 1, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 177 (H.B. 1415), Sec. 1, eff. September 1, 2019.

Sec. 1701.355. CONTINUING DEMONSTRATION OF WEAPONS PROFICIENCY. (a) An agency that employs one or more peace officers shall

designate a firearms proficiency officer and require each peace officer the agency employs to demonstrate weapons proficiency to the firearms proficiency officer at least annually. The agency shall maintain records of the weapons proficiency of the agency's peace officers.

(a-1) An agency that employs one or more county jailers who have been issued a certificate of firearms proficiency under Section 1701.2561 shall designate a firearms proficiency officer and require the jailers to demonstrate weapons proficiency to the firearms proficiency officer at least annually. The agency shall maintain records of the weapons proficiency of the agency's jailers. A county jailer's failure to demonstrate weapons proficiency does not affect the county jailer's license under this chapter.

(b) On request, the commission may waive the requirement that a peace officer or county jailer demonstrate weapons proficiency on a determination by the commission that the requirement causes a hardship.

(c) The commission by rule shall define weapons proficiency for purposes of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 222 (S.B. 1303), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 18, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1234 (H.B. 1552), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1368 (H.B. 3503), Sec. 2, eff. June 15, 2019.

Sec. 1701.356. CERTAIN OFFICERS: REACTIVATION AND CONTINUING EDUCATION NOT REQUIRED. (a) An officer is not subject to Section 1701.351 or 1701.352 if the officer is:

(1) an honorably retired commissioned officer of the Department of Public Safety who is:

(A) a special ranger under Section 411.023, Government Code; or

(B) a special Texas Ranger under Section 411.024,

Government Code;

(2) an honorably retired commissioned officer of the Parks and Wildlife Department who is a special game warden under Section 11.0201, Parks and Wildlife Code; or

(3) an honorably retired commissioned officer of the Texas Alcoholic Beverage Commission who is a special inspector or representative under Section 5.142, Alcoholic Beverage Code.

(b) A person who is an honorably retired commissioned officer described by Subsection (a) or a retired state employee and who holds a permanent license issued before January 1981 and that was current on January 1, 1995:

(1) has the same rights and privileges as any other peace officer of this state;

(2) holds, notwithstanding Section 1701.316, an active license unless the license is revoked, suspended, or probated by the commission for a violation of this chapter; and

(3) is not subject to Section 1701.351.

(c) An honorably retired commissioned officer described by Subsection (a) may not be required to undergo training under Section 1701.253.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14.009, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 920 (H.B. 2991), Sec. 2, eff. June 19, 2009.

Acts 2019, 86th Leg., R.S., Ch. 627 (S.B. 1397), Sec. 1, eff. August 26, 2019.

Sec. 1701.357. WEAPONS PROFICIENCY FOR QUALIFIED RETIRED LAW ENFORCEMENT OFFICERS. (a) In this section:

(1) "Qualified handgun instructor" means a person certified as a qualified handgun instructor under Section 411.190, Government Code.

(2) "Qualified retired law enforcement officer" has the meaning assigned by 18 U.S.C. Section 926C.

(a-1) This section applies only to a qualified retired law enforcement officer who is entitled to carry a concealed firearm under 18 U.S.C. Section 926C.

(b) The head of a state or local law enforcement agency may allow a qualified retired law enforcement officer who is a retired commissioned peace officer an opportunity to demonstrate weapons proficiency if the officer provides to the agency a sworn affidavit stating that:

(1) the officer:

(A) honorably retired after not less than a total of 10 years of cumulative service as a commissioned officer with one or more state or local law enforcement agencies; or

(B) before completing 10 years of cumulative service as a commissioned officer with one or more state or local law enforcement agencies, separated from employment with the agency or agencies and is a qualified retired law enforcement officer;

(2) the officer's license as a commissioned officer was not revoked or suspended for any period during the officer's term of service as a commissioned officer; and

(3) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun.

(b-1) The commission shall issue a certificate of proficiency to a qualified retired law enforcement officer who:

(1) satisfactorily demonstrates weapons proficiency to a qualified handgun instructor under Subsection (b-2);

(2) provides to the commission a sworn affidavit stating that:

(A) the officer meets the requirements for a qualified retired law enforcement officer under 18 U.S.C. Section 926C;

(B) the officer's license as a qualified law enforcement officer was not revoked or suspended for any period during the officer's term of service; and

(C) the officer has no psychological or physical disability that would interfere with the officer's proper handling of a handgun; and

(3) otherwise satisfies the applicable procedures established by the commission under Subsection (c-1).

(b-2) A qualified handgun instructor may allow any qualified retired law enforcement officer an opportunity to demonstrate weapons proficiency if the officer provides to the instructor a copy of the sworn affidavit described by Subsection (b-1)(2).

(c) The state or local law enforcement agency shall establish written procedures for the issuance or denial of a certificate of

proficiency under this subsection. The agency shall issue the certificate to a retired commissioned peace officer who satisfactorily demonstrates weapons proficiency under Subsection (b) and satisfies the written procedures established by the agency. The agency shall maintain records of any person who holds a certificate issued under this subsection.

(c-1) The commission shall establish written procedures and forms for qualified handgun instructors regarding the manner in which demonstrations are conducted and the communication of demonstration results to the commission and for the issuance or denial of certificates of proficiency to qualified retired law enforcement officers. The commission shall maintain records of any person who holds a certificate issued under Subsection (b-1).

(c-2) For purposes of this section, proof that an individual is a qualified retired law enforcement officer may include a retired peace officer identification card issued under Subchapter H, Chapter 614, Government Code, or other form of identification as described by 18 U.S.C. Section 926C(d).

(d) A certificate issued under this section expires on the first anniversary of the date the certificate was issued.

(e) The head of a state or local law enforcement agency may set and collect fees to recover the expenses the agency incurs in performing duties under this section.

(f) The amount of a fee set by a county law enforcement agency under Subsection (e) is subject to the approval of the commissioners court of the county. A county law enforcement agency that collects a fee under Subsection (e) shall deposit the amounts collected to the credit of the general fund of the county.

(f-1) A qualified handgun instructor may collect a reasonable fee for the purpose of evaluating a demonstration of weapons proficiency under this section.

(g) A county law enforcement agency must obtain approval of the program authorized by this section from the commissioners court of the county before issuing a certificate of proficiency under this section.

(h) The head of a state law enforcement agency may allow a qualified retired law enforcement officer, other than a retired commissioned peace officer, an opportunity to demonstrate weapons proficiency in the same manner as, and subject to the same requirements applicable to, a retired commissioned peace officer as

described by Subsection (b). The agency shall establish written procedures for the issuance or denial of a certificate of proficiency under this subsection. The agency shall issue a certificate of proficiency to a qualified retired law enforcement officer who satisfactorily demonstrates weapons proficiency under this subsection and satisfies the written procedures established by the agency. The agency shall maintain records regarding the issuance of that certificate.

(i) On request of a qualified retired law enforcement officer who holds a certificate of proficiency under this section, the head of the state or local law enforcement agency from which the officer retired or most recently separated shall issue to the officer identification that indicates that the officer honorably retired or separated from the agency. An identification under this subsection must include a photograph of the officer.

(j) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1234 (H.B. 1552), Sec. 7(2), eff. September 1, 2019.

Added by Acts 2003, 78th Leg., ch. 325, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1093 (H.B. 2110), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179 (S.B. 578), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1187 (H.B. 638), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1187 (H.B. 638), Sec. 2, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1234 (H.B. 1552), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1234 (H.B. 1552), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1234 (H.B. 1552), Sec. 7(2), eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 544 (S.B. 198), Sec. 1, eff. September 1, 2021.

Sec. 1701.358. INITIAL TRAINING AND CONTINUING EDUCATION FOR POLICE CHIEFS. A police chief shall complete the initial training

and continuing education required under Section 96.641, Education Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1224 (S.B. 542), Sec. 5, eff. September 1, 2011.

Sec. 1701.359. BORDER OPERATIONS TRAINING PROGRAM. The commission may:

(1) recognize, or with the consent of the Department of Public Safety administer or assist in administering, the border operations training program established under Section 411.02093, Government Code, as a continuing education program for officers; and

(2) credit an officer who successfully completes the program described by Subdivision (1) with the appropriate number of continuing education hours.

Added by Acts 2023, 88th Leg., R.S., Ch. 208 (S.B. 1484), Sec. 2, eff. September 1, 2023.

SUBCHAPTER I. PROFESSIONAL TRAINING AND RECOGNITION

Sec. 1701.401. PROFESSIONAL ACHIEVEMENT. (a) In this section:

(1) "Professional achievement" includes an instance in which an individual through personal initiative, fixity of purpose, persistence, or endeavor creates a program or system that has a significant positive impact on the law enforcement profession that exceeds the normal expectations of job performance.

(2) "Public service" includes an instance in which an individual through initiative creates or participates in a program or system that has a significant positive impact on the general population of a community that exceeds the normal expectations of job performance.

(3) "Valor" includes an act of personal heroism or bravery that exceeds the normal expectations of job performance, including placing one's own life in jeopardy to save another person's life, to prevent serious bodily injury to another, or to prevent the consequences of a criminal act.

(b) The commission shall issue certificates that recognize professional achievement. For this purpose the commission shall use the employment records of the employing agency.

(c) The commission shall adopt rules for issuing achievement awards to peace officers, reserve peace officers, jailers, custodial officers, or telecommunicators who are licensed by the commission. The commission's rules shall require recommendations from an elected official of this state or a political subdivision, an administrator of a law enforcement agency, or a person holding a license issued by the commission.

(d) The awards shall be given in the name of this state and presented at the State Capitol during May of each year. At a minimum the award shall consist of a document, an appropriate medal, and a ribbon suitable for wearing on a uniform.

(e) The awards shall be issued in three areas: valor, public service, and professional achievement.

(f) The commission may present awards relating to not more than a total of 20 incidents and accomplishments each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 174 (H.B. 1492), Sec. 1, eff. May 27, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 9, eff. January 1, 2014.

Sec. 1701.402. PROFICIENCY CERTIFICATES. (a) The commission shall issue certificates that recognize proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency.

(b) As a requirement for a basic proficiency certificate, the commission shall require completion of local courses or programs of instruction on federal and state statutes that relate to employment issues affecting peace officers, telecommunicators, and county jailers, including:

(1) civil service;

(2) compensation, including overtime compensation, and vacation time;

(3) personnel files and other employee records;

(4) management-employee relations in law enforcement organizations;

(5) work-related injuries;

(6) complaints and investigations of employee misconduct; and

(7) disciplinary actions and the appeal of disciplinary actions.

(c) An employing agency is responsible for providing the training required by this section.

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on asset forfeiture established by the commission under Section 1701.253(g).

(e) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(h).

(f) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on identity theft established by the commission under Section 1701.253(i).

(g) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program described by Section 1701.253 regarding de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(h) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on investigative topics established by the commission under Section 1701.253(b).

(i) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on civil rights, racial sensitivity, and cultural diversity established by the commission under Section 1701.253(c).

(j) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2011, an officer must complete the basic education and training program on the trafficking of persons described by Section 1701.258(a).

(k) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2015, an officer must complete an education and training program

on missing and exploited children. The commission by rule shall establish the program. The program must:

(1) consist of at least four hours of training;

(2) include instruction on reporting an attempted child abduction to the missing children and missing persons information clearinghouse under Chapter 63, Code of Criminal Procedure;

(3) include instruction on responding to and investigating situations in which the Internet is used to commit crimes against children; and

(4) include a review of the substance of Chapters 20 and 43, Penal Code.

(l) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2016, an officer must complete the canine encounter training program established by the commission under Section 1701.261.

(m) As a requirement for an intermediate or advanced proficiency certificate issued by the commission on or after January 1, 2016, an officer must complete an education and training program on the Texas Crime Information Center's child safety check alert list established by the commission under Section 1701.266.

(n) As a requirement for an intermediate proficiency certificate or an advanced proficiency certificate, an officer must complete the education and training program regarding de-escalation techniques to facilitate interaction with members of the public established by the commission under Section 1701.253(n).

(o) The commission shall adopt rules to allow an officer who has served in the military to receive credit toward meeting any training hours required for an intermediate, advanced, or master proficiency certificate based on that military service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 929, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 947, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14.008, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1326, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 393 (S.B. 1473), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(48), eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 9, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 571 (S.B. 742), Sec. 9, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 31 (H.B. 593), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1056 (H.B. 2053), Sec. 8, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.002(12), eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 950 (S.B. 1849), Sec. 4.05, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 222 (H.B. 971), Sec. 1, eff. September 1, 2019.

Sec. 1701.403. INVESTIGATIVE HYPNOSIS. (a) The commission may establish minimum requirements for the training, testing, and certification of peace officers who use investigative hypnosis.

(b) A peace officer may not use a hypnotic interview technique unless the officer:

(1) completes a training course approved by the commission; and

(2) passes an examination administered by the commission that is designed to test the officer's knowledge of investigative hypnosis.

(c) The commission may issue a professional achievement or proficiency certificate to an officer who meets the requirements of Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.404. CERTIFICATION OF OFFICERS FOR MENTAL HEALTH ASSIGNMENTS. (a) The commission by rule may establish minimum requirements for the training, testing, and certification of special

officers for offenders with mental impairments.

(b) The commission may certify a sheriff, sheriff's deputy, constable, other peace officer, county jailer, or justice of the peace as a special officer for offenders with mental impairments if the person:

(1) completes a training course in emergency first aid and lifesaving techniques approved by the commission;

(2) completes a training course administered by the commission on mental health issues and offenders with mental impairments; and

(3) passes an examination administered by the commission that is designed to test the person's:

(A) knowledge and recognition of the characteristics and symptoms of mental illness, intellectual disabilities, and developmental disabilities; and

(B) knowledge of mental health crisis intervention strategies for people with mental impairments.

(c) The commission may issue a professional achievement or proficiency certificate to an officer, county jailer, or justice of the peace who meets the requirements of Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1131 (H.B. 2093), Sec. 1, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 30 (H.B. 446), Sec. 11.01, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 13, eff. September 1, 2023.

Sec. 1701.4045. CERTIFICATION OF OFFICERS FOR FAMILY VIOLENCE AND SEXUAL ASSAULT ASSIGNMENTS. (a) The commission by rule shall establish minimum requirements for the training, testing, and certification of special officers for responding to allegations of family violence or sexual assault.

(b) The commission may certify a peace officer as a special officer for responding to allegations of family violence or sexual assault if the person:

(1) completes an advanced training course administered by

the commission on recognizing, documenting, and investigating family violence and sexual assault using best practices and trauma-informed techniques; and

(2) passes an examination administered by the commission that is designed to test the person's:

(A) knowledge and recognition of the signs of family violence and sexual assault; and

(B) skill at documenting and investigating family violence and sexual assault using best practices and trauma-informed techniques.

(c) The commission may issue a professional achievement or proficiency certificate to a peace officer who meets the requirements of Subsection (b).

Added by Acts 2019, 86th Leg., R.S., Ch. 107 (S.B. 586), Sec. 3, eff. September 1, 2019.

Sec. 1701.405. TELECOMMUNICATORS. (a) In this section:

(1) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 855, Sec. 12, eff. September 1, 2011.

(2) "Emergency" means the occurrence or imminent threat of damage, injury, or loss of life or property resulting from an extraordinary natural or man-made cause.

(3) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 855, Sec. 12, eff. September 1, 2011.

(b) This state or a political subdivision of this state may not employ a person to act as a telecommunicator unless the person:

(1) has had at least 40 hours of telecommunicator training as determined by the commission;

(2) is at least 18 years of age;

(3) holds a high school diploma or high school equivalency certificate; and

(4) holds a license to act as a telecommunicator or agrees to obtain the license not later than the first anniversary of the date of employment.

(b-1) A person employed to act as a telecommunicator who has not obtained a license to act as a telecommunicator under this chapter may not continue to act as a telecommunicator after the first anniversary of the date of employment unless the person obtains the

license.

(b-2) Notwithstanding this section, an officer is not required to obtain a telecommunicator license to act as a telecommunicator.

(c) The commission shall accredit telecommunicator training programs that fulfill the minimum requirements for a telecommunicator. The commission shall adopt rules providing for the accreditation of telecommunicator training programs developed and taught by the Department of Public Safety, an institution of higher education, including a junior college, community college, or technical school, or any other entity approved by the commission.

(d) A person who completes an accredited training program under this section may, by letter to the commission, request a written acknowledgment from the commission that the person has met the minimum requirements for a telecommunicator as determined by the commission. The request must be accompanied, in accordance with commission rules, by evidence of satisfactory completion of an accredited telecommunicator training program. On a determination by the commission that the person meets the minimum requirements for a telecommunicator, the commission shall issue the written acknowledgment to the person.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 855, Sec. 12, eff. September 1, 2011.

(f) A person performing the duties of a telecommunicator and serving under permanent appointment on and before September 1, 1987, is not required to meet the requirements of this section as a condition of continued employment.

(g) Notwithstanding this section, a person may be appointed or serve as a telecommunicator on a temporary or probationary basis or may perform the duties of a telecommunicator in an emergency.

(h) A person appointed on a temporary or probationary basis after September 1, 1987, who does not satisfactorily complete an accredited telecommunicator training program before the first anniversary of the date the person is originally appointed shall be removed from the position. The person's temporary or probationary appointment may not be extended for more than one year except that not earlier than the first anniversary of the date the person is removed under this subsection, the employing agency may petition the commission for reinstatement of the person to temporary or probationary employment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 12, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 10, eff. January 1, 2014.

SUBCHAPTER J. EMPLOYMENT RECORDS AND PREEMPLOYMENT PROCEDURE

Sec. 1701.451. PREEMPLOYMENT PROCEDURE. (a) Before a law enforcement agency may hire a person licensed under this chapter, the agency must, on a form and in the manner prescribed by the commission:

(1) obtain the person's written consent for the agency to review the information required to be reviewed under this section;

(2) request from the commission and any other applicable person information required to be reviewed under this section; and

(3) submit to the commission confirmation that the agency, to the best of the agency's ability before hiring the person:

(A) contacted each entity or individual necessary to obtain the information required to be reviewed under this section; and

(B) except as provided by Subsection (b), obtained and reviewed as related to the person, as applicable:

(i) personnel files, as described by Section 1701.4535, and other employee records from each previous law enforcement agency employer, including the employment application submitted to the previous employer;

(ii) employment termination reports and misconduct investigation reports maintained by the commission under this subchapter;

(iii) service records maintained by the commission;

(iv) proof that the person meets the minimum qualifications for enrollment in a training program under Section 1701.251(a);

(v) a military veteran's United States Department of Defense Form DD-214 or other military discharge record;

(vi) criminal history record information;

(vii) information on pending warrants as available through the Texas Crime Information Center and National Crime Information Center;

(viii) evidence of financial responsibility as required by Section 601.051, Transportation Code;

(ix) a driving record from the Department of Public Safety;

(x) proof of United States citizenship or, if the person is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge, proof of legal permanent residence and proof that the person has applied for United States citizenship;

(xi) information on the person's background from at least three personal references and at least two professional references; and

(xii) information on the person's law enforcement background as available through a database designated by the commission under Section 1701.169 and, if applicable, a file or record obtained by the commission under Section 1701.3035.

(a-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 834 (S.B. 24), Sec. 6, eff. September 1, 2021.

(b) If an entity or individual contacted for information required to be reviewed under this section refused to provide the information or did not respond to the request for information, the confirmation submitted to the commission must document the manner of the request and the refusal or lack of response.

(c) If the commission or a law enforcement agency receives from a law enforcement agency a request for information under this section and the person's consent on the forms and in the manner prescribed by the commission, the commission or agency shall provide the information to the requesting agency.

(d) The confirmation form submitted to the commission under this section is not confidential and is subject to disclosure under Chapter 552, Government Code.

(e) The commission shall:

(1) by rule establish the forms and procedures required by this section, including:

(A) the process by which a law enforcement agency shall make a person's employment records electronically available to a law enforcement agency hiring a person licensed under this chapter;

(B) appropriate privacy and security protections for the process described by Paragraph (A); and

(C) a rule prohibiting a confirmation form submitted to the commission under this section from containing confidential information described by Section 552.1175(b), Government Code, regarding the person who is the subject of the confirmation form;

(2) post the forms and procedures on the commission's Internet website; and

(3) retain a record of each confirmation form submitted under this section.

(f) The head of a law enforcement agency or the agency head's designee shall review and sign each confirmation form required under this section before submission to the commission. The failure of an agency head or the agency head's designee to comply with this subsection constitutes grounds for suspension of the agency head's license under Section 1701.501.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1298 (H.B. 2677), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. 2445), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 19, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 834 (S.B. 24), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 834 (S.B. 24), Sec. 4, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 834 (S.B. 24), Sec. 6, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1049 (S.B. 252), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 14, eff. September 1, 2023.

Sec. 1701.452. EMPLOYMENT TERMINATION REPORT. (a) The head of a law enforcement agency or the head's designee shall submit a report to the commission on a form prescribed by the commission regarding a

person licensed under this chapter who resigns or retires from employment with the law enforcement agency, whose appointment with the law enforcement agency is terminated, or who separates from the law enforcement agency for any other reason. The report must be submitted by the head or the designee not later than the seventh business day after the date the license holder:

(1) resigns, retires, is terminated, or separates from the agency; and

(2) exhausts all administrative appeals available to the license holder, if applicable.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 22(1), eff. September 1, 2023.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 22(1), eff. September 1, 2023.

(d) The head of the law enforcement agency from which a license holder resigns, retires, is terminated, or separates for reasons other than death, or the head's designee, shall provide to the license holder a copy of the report. The report must be provided to the license holder not later than the seventh business day after the date the license holder:

(1) resigns, retires, is terminated, or separates from the agency; and

(2) exhausts all administrative appeals available to the license holder, if applicable.

(e) If the person who is the subject of the employment termination report is deceased, the head of the law enforcement agency or the head's designee on request shall provide a copy of the report to the person's next of kin not later than the seventh business day after the date of the request.

(f) The head of a law enforcement agency or the head's designee satisfies the obligation to provide the report required under Subsection (d) or (e) by sending by certified mail:

(1) the report required under Subsection (d) to the last known address of the license holder if the license holder is not otherwise available; or

(2) the report required under Subsection (e) to the last known address of the next of kin if the next of kin who requested the report is not otherwise available.

(g) The head of a law enforcement agency or the head's designee must submit a report under this section each time a person licensed

under this chapter resigns, retires, is terminated, or separates for any other reason from the agency. The report is an official government document.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1298 (H.B. 2677), Sec. 2, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. 2445), Sec. 2, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. 545), Sec. 1, eff. September 1, 2011.
Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 22(1), eff. September 1, 2023.

Sec. 1701.4522. MISCONDUCT INVESTIGATION AND HIRING PROCEDURES. (a) The commission shall adopt a model policy establishing procedures applicable to a law enforcement agency:

(1) investigating alleged misconduct by a license holder employed by the agency; and

(2) hiring a license holder.

(b) The policy adopted under this section must:

(1) require a law enforcement agency to:

(A) initiate an appropriate administrative or criminal investigation into alleged misconduct of a license holder employed by the law enforcement agency at the time the agency becomes aware of the alleged misconduct;

(B) complete the investigation described by Paragraph (A) in a timely manner, as prescribed by the commission;

(C) report an investigation into alleged criminal misconduct for which criminal charges are filed against the license holder to the commission in a timely manner after the investigation is completed;

(D) complete an administrative investigation of alleged misconduct and prepare and submit to the commission a summary report on the investigation, including the disposition of the investigation and any informational findings, in a format prescribed by the commission, in a timely manner but not later than the 30th day after the date of the license holder's separation from the agency, if

applicable;

(E) include documentation of the completed investigation in the personnel file, as described by Section 1701.4535, of the license holder maintained by the agency; and

(F) submit to the commission each report of a completed investigation;

(2) provide that an investigation into the alleged misconduct of a license holder may not be terminated by the resignation, retirement, termination, death, or separation from employment of the license holder;

(3) specify that a license holder under investigation for misconduct is entitled to any internal due process procedures provided by the investigating agency to contest the investigation or completed report;

(4) require a law enforcement agency to request and review any information regarding an applicant for employment maintained by the commission in the licensing status database established under Section 1701.168 as part of the preemployment procedures required under Section 1701.451(a);

(5) establish a provisional hiring period of at least 45 days for any license holder employed by a law enforcement agency and allow a law enforcement agency to terminate the employment of the license holder if information relating to an investigation of alleged misconduct by the license holder is made available to the agency by the commission as part of the preemployment procedures required under Section 1701.451(a) within the provisional period; and

(6) take into account the variation in size, function, and jurisdiction of law enforcement agencies in this state.

(c) A law enforcement agency shall adopt the model policy described by Subsection (a) or a substantively similar policy. A policy adopted by a law enforcement agency under this section must be submitted to the commission and the commission shall maintain a copy of the policy.

(d) The commission shall maintain each report received under a policy adopted under this section as part of the license holder's record in the licensing status database established under Section 1701.168.

(e) The commission shall notify a law enforcement agency seeking to appoint a license holder of a completed investigation report submitted to the commission with respect to the license holder

not later than the fifth business day after the date the commission receives the report.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 15, eff. September 1, 2023.

Sec. 1701.453. MAINTENANCE OF REPORTS. The commission shall maintain a copy of each report submitted to the commission under this subchapter until at least the 10th anniversary of the date on which the report is submitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 21, eff. September 1, 2009.
Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 16, eff. September 1, 2023.

Sec. 1701.4535. PERSONNEL FILE. (a) The commission shall adopt a model policy regarding personnel files maintained with respect to a license holder. The policy must:

(1) require the head of a law enforcement agency or the head's designee to maintain a personnel file on each license holder employed by the agency that contains any letter, memorandum, or document relating to:

(A) a commendation, congratulation, or honor bestowed on the license holder by a member of the public or by the employing agency for an action, duty, or activity that relates to the license holder's official duties;

(B) any misconduct by the license holder if the letter, memorandum, or document is from the employing agency and the misconduct resulted in disciplinary action by the employing agency; and

(C) the periodic evaluation of the license holder by a supervisor; and

(2) provide that:

(A) a letter, memorandum, or document relating to alleged misconduct by the license holder may not be placed in the license holder's personnel file if the employing agency determines

that there is insufficient evidence to sustain the charge of misconduct;

(B) if a negative letter, memorandum, document, or other notation of negative impact is included in a license holder's personnel file:

(i) the agency head or the head's designee shall, not later than the 30th day after the date of the inclusion, notify the affected license holder by certified mail; and

(ii) the license holder may, on or before the 30th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation;

(C) information contained in a license holder's personnel file may not be released without the license holder's written permission, unless the release is required by law;

(D) a license holder is entitled, on request, to a copy of any letter, memorandum, or document placed in the license holder's personnel file; and

(E) an employing agency may charge the license holder a reasonable fee not to exceed the actual cost of any copies described by Paragraph (D).

(b) A law enforcement agency shall adopt the model policy described by Subsection (a) or a substantively similar policy. A policy adopted by a law enforcement agency under this section must be submitted to the commission, and the commission shall maintain a copy of the policy.

(c) Except as provided by Subsections (d) and (e), a law enforcement agency may not release any information contained in a license holder's personnel file to any other agency or person requesting information relating to the license holder unless required by law. The agency shall refer the person or agency requesting the information to the agency head or the head's designee.

(d) A law enforcement agency shall provide a license holder's personnel file to the commission:

(1) not later than the 30th day after the date the license holder separates from the agency; or

(2) on request by the commission as part of an ongoing investigation relating to the license holder.

(e) As provided by Section 1701.451, a law enforcement agency hiring a license holder is entitled to view the contents of the

license holder's personnel file.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 17, eff. September 1, 2023.

Sec. 1701.454. CONFIDENTIALITY. (a) All information submitted to the commission under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a commission member or other person may not release information submitted under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 182, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 1298 (H.B. 2677), Sec. 4, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. 545), Sec. 4, eff. September 1, 2011.

Sec. 1701.455. SUBPOENA. Information submitted to the commission under this subchapter is subject to subpoena only in a judicial proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 399 (S.B. 545), Sec. 5, eff. September 1, 2011.

Sec. 1701.456. IMMUNITY FROM LIABILITY. (a) The commission is not liable for civil damages for providing information contained in a report maintained by the commission under this subchapter if the commission released the information as provided by this subchapter.

(b) A law enforcement agency, agency head, or other law enforcement official is not liable for civil damages for:

(1) a report made by that agency or person if the report is

made in good faith; or

(2) making a person's information available to a hiring law enforcement agency under Section 1701.451.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1298 (H.B. 2677), Sec. 5, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 834 (S.B. 24), Sec. 5, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 18, eff. September 1, 2023.

Sec. 1701.457. LIMITATION ON COMMISSION AUTHORITY. This subchapter does not authorize the commission to review disciplinary action taken by a law enforcement agency against a person licensed under this chapter or to issue a subpoena to compel the production of a document prepared or maintained by the agency in connection with a disciplinary matter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.458. VENUE. Venue for the prosecution of an offense under Section 37.10, Penal Code, that arises from a report required under this subchapter lies in the county where the offense occurred or in Travis County.

Added by Acts 2007, 80th Leg., R.S., Ch. 1068 (H.B. 2445), Sec. 5, eff. September 1, 2007.

SUBCHAPTER K. DISCIPLINARY GROUNDS AND PROCEDURES

Sec. 1701.501. DISCIPLINARY ACTION.

Text of subsection effective until January 1, 2025

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

(1) this chapter;

(2) the reporting requirements provided by Articles 2.132 and 2.134, Code of Criminal Procedure; or

(3) a commission rule.

Text of subsection effective on January 1, 2025

(a) Except as provided by Subsection (d), the commission shall revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of:

(1) this chapter;

(2) the reporting requirements provided by Articles 2B.0053 and 2B.0055, Code of Criminal Procedure; or

(3) a commission rule.

(a-1) Except with respect to an officer elected under the Texas Constitution, the commission shall revoke or suspend a law enforcement agency's authority to employ a license holder, place on probation an agency whose authority to employ a license holder has been suspended, or reprimand a law enforcement agency for a violation described by Subsection (a).

(b) The commission may establish procedures for the revocation of a license issued under this chapter.

(c) The commission by rule may adopt other necessary enforcement procedures.

(d) The commission may revoke a license issued under this chapter to an officer elected under the Texas Constitution only if the officer is convicted of:

(1) a felony; or

(2) a criminal offense directly involving the person's duties as an officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 279 (H.B. 488), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 22, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.150, eff. January 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 20, eff. September 1, 2023.

Sec. 1701.5011. EMERGENCY SUSPENSION. (a) The commission shall adopt rules specifying the circumstances under which the commission may issue an emergency order, without a hearing, suspending a person's license for a period not to exceed 90 days after determining that the person constitutes an imminent threat to the public health, safety, or welfare.

(b) An order suspending a license under this section must state the length of the suspension in the order.

(c) If an emergency order is issued without a hearing under this section, the commission shall, not later than the 10th day after the date the order was issued, set the time and place for a hearing on the order. The hearing must be conducted as soon as practicable. A hearing under this section to affirm, modify, or set aside the emergency order shall be conducted by the State Office of Administrative Hearings. The order shall be affirmed to the extent that good cause existed to issue the order.

(d) The commission by rule may prescribe procedures for the determination and appeal of an emergency order issued under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

(e) A proceeding under this section is a contested case under Chapter 2001, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1104 (S.B. 1445), Sec. 21, eff. September 1, 2023.

Sec. 1701.502. FELONY CONVICTION OR PLACEMENT ON COMMUNITY SUPERVISION. (a) The commission shall immediately revoke the license of a person licensed under this chapter who is convicted of a felony.

(b) The commission shall immediately suspend the license of a person licensed under this chapter who is charged with a felony and is placed on community supervision regardless of whether the court defers further proceedings without entering an adjudication of guilt.

(c) The commission may reinstate, as provided by commission rules, a license that is suspended under Subsection (b) when the

license holder is released from community supervision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.503. BARRATRY CONVICTION. The commission shall immediately revoke the license of a person licensed under this chapter who is convicted of barratry under Section 38.12, Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.504. HEARING. (a) Except as provided by Sections 1701.502 and 1701.503, if the commission proposes to suspend or revoke a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) If the commission proposes to refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.505. ADMINISTRATIVE PROCEDURE. (a) Proceedings for a disciplinary action are governed by Chapter 2001, Government Code.

(b) Rules of practice adopted by the commission under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.506. APPEAL. (a) A person dissatisfied with an action of the commission may appeal the action under Chapter 2001, Government Code. The court shall set the matter for hearing not earlier than 10 days after written notice of the appeal is given to the commission and the commission's attorney.

(b) The court may suspend an action of the commission pending a hearing. The order suspending the action takes effect when served on the commission. The commission shall provide its attorney a copy of

the petition and order.

(c) The attorney general or the district or county attorney shall represent the commission in the appeal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.507. ADMINISTRATIVE PENALTIES. (a) In addition to other penalties imposed by law, a law enforcement agency or governmental entity that violates this chapter or a rule adopted under this chapter is subject to an administrative penalty in an amount set by the commission not to exceed $1,000 per day per violation. The administrative penalty shall be assessed in a proceeding conducted in accordance with Chapter 2001, Government Code.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the respondent's history of violations;

(3) the amount necessary to deter future violations;

(4) efforts made by the respondent to correct the violation; and

(5) any other matter that justice may require.

(c) The commission by rule shall establish a written enforcement plan that provides notice of the specific ranges of penalties that apply to specific alleged violations and the criteria by which the commission determines the amount of a proposed administrative penalty.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 23, eff. September 1, 2009.

SUBCHAPTER L. CRIMINAL PENALTY

Sec. 1701.551. CRIMINAL PENALTY FOR APPOINTMENT OR RETENTION OF CERTAIN PERSONS. (a) A person commits an offense if the person appoints or retains another person as an officer, county jailer, or telecommunicator in violation of Section 1701.301, 1701.303, 1701.306, or 1701.405.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than $100 and not more than $1,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 968 (H.B. 1951), Sec. 11, eff. January 1, 2014.

Sec. 1701.552. CRIMINAL PENALTY FOR APPOINTMENT OF PERSON NOT CERTIFIED FOR INVESTIGATIVE HYPNOSIS. (a) A person commits an offense if the person appoints or retains another person in violation of Section 1701.403.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of not less than $100 and not more than $1,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1701.553. CRIMINAL PENALTY FOR APPOINTMENT OR RETENTION OF PERSONS WITH CERTAIN CONVICTIONS. (a) A person commits an offense if the person appoints, employs, or retains an individual as an officer, public security officer, telecommunicator, or county jailer in violation of Section 1701.312 or 1701.313.

(b) An offense under Subsection (a) is a state jail felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 855 (H.B. 3823), Sec. 11, eff. September 1, 2011.

Sec. 1701.554. VENUE. Venue for the prosecution of an offense that arises from a violation of this chapter or in connection with the administration of this chapter lies in the county where the offense occurred or in Travis County.

Added by Acts 2009, 81st Leg., R.S., Ch. 1172 (H.B. 3389), Sec. 24, eff. September 1, 2009.

SUBCHAPTER M. VISITING RESOURCE OFFICER IN PUBLIC SCHOOL

Sec. 1701.601. DEFINITION. In this subchapter, "school resource officer" means a peace officer who is assigned by the

officer's employing political subdivision to provide a police presence at a public school, safety or drug education to students of a public school, or other similar services. The term does not include a peace officer who provides law enforcement at:

(1) a public school only for extracurricular activities; or

(2) a public school event only for extracurricular activities.

Added by Acts 2001, 77th Leg., ch. 923, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 606 (S.B. 1191), Sec. 1, eff. September 1, 2021.

Sec. 1701.602. LICENSE REQUIRED. A peace officer who is a visiting school resource officer in a public school must be licensed as provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 923, Sec. 2, eff. Sept. 1, 2001.

Sec. 1701.603. FIREARMS ACCIDENT PREVENTION PROGRAM. (a) A peace officer who is a visiting school resource officer in a public elementary school shall at least once each school year offer to provide instruction to students in a firearms accident prevention program, as determined by the school district.

(b) A firearms accident prevention program must include the safety message, "Stop! Don't Touch. Leave the Area. Tell an Adult.", and may include instructional materials from the National Rifle Association Eddie Eagle GunSafe Program, including animated videos and activity books.

Added by Acts 2001, 77th Leg., ch. 923, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER M-1. PEER SUPPORT NETWORK FOR LAW ENFORCEMENT OFFICERS

Sec. 1701.621. DEFINITIONS. In this subchapter:

(1) "Law enforcement officer" means a person identified as a peace officer under Article 2.12(1), (2), (3), or (4), Code of Criminal Procedure.

(2) "Peer" means a person who is a law enforcement officer

or retired law enforcement officer.

Added by Acts 2021, 87th Leg., R.S., Ch. 508 (S.B. 64), Sec. 1, eff. June 14, 2021.

Sec. 1701.622. GENERAL POWERS AND DUTIES. (a) The commission shall develop a peer support network for law enforcement officers. The network must include:

(1) peer-to-peer support;

(2) training for peer service coordinators and peers that includes suicide prevention training;

(3) technical assistance for program development, peer service coordinators, licensed mental health professionals, and peers; and

(4) identification, retention, and screening of licensed mental health professionals.

(b) As part of the peer support network for law enforcement officers, the commission shall ensure law enforcement officers have support in both urban and rural jurisdictions.

(c) The commission shall solicit and ensure that specialized training is provided to persons who are peers and who want to provide peer-to-peer support and other peer-to-peer services under the network.

(d) The commission may adopt rules necessary to implement this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 508 (S.B. 64), Sec. 1, eff. June 14, 2021.

Sec. 1701.623. CONTRACT WITH INSTITUTION OF HIGHER EDUCATION. The commission may contract with an institution of higher education that has appropriate expertise in mental health or law enforcement to develop the peer support network under this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 508 (S.B. 64), Sec. 1, eff. June 14, 2021.

Sec. 1701.624. CONFIDENTIALITY OF PARTICIPANT INFORMATION.

Information relating to a law enforcement officer's participation in peer-to-peer support and other peer-to-peer services under the network is confidential and may not be disclosed under Chapter 552, Government Code, by:

(1) the commission;

(2) a law enforcement agency that employs a law enforcement officer participant; or

(3) any other state agency or political subdivision in this state that employs a law enforcement officer participant.

Added by Acts 2021, 87th Leg., R.S., Ch. 508 (S.B. 64), Sec. 1, eff. June 14, 2021.

Sec. 1701.625. PROTECTIONS RELATED TO LICENSURE. A law enforcement officer's participation in peer-to-peer support and other peer-to-peer services under the network may not:

(1) serve as the basis for a revocation, suspension, or denial of a license issued under this chapter; or

(2) be considered in any proceeding related to the officer's licensure under this chapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 508 (S.B. 64), Sec. 1, eff. June 14, 2021.

Sec. 1701.626. ANNUAL REPORT. Not later than December 1 of each year, the commission shall submit a report to the governor and the legislature that includes:

(1) the number of law enforcement officers who received peer support through the peer support network for law enforcement officers;

(2) the number of peers and peer service coordinators trained;

(3) an evaluation of the services provided under this subchapter; and

(4) recommendations for program improvements.

Added by Acts 2021, 87th Leg., R.S., Ch. 508 (S.B. 64), Sec. 1, eff. June 14, 2021.

Text of subchapter effective until January 1, 2025

SUBCHAPTER N. BODY WORN CAMERA PROGRAM

Text of section effective until January 1, 2025

Sec. 1701.651. DEFINITIONS. In this subchapter:

(1) "Body worn camera" means a recording device that is:

(A) capable of recording, or transmitting to be recorded remotely, video or audio; and

(B) worn on the person of a peace officer, which includes being attached to the officer's clothing or worn as glasses.

(2) "Department" means the Department of Public Safety of the State of Texas.

(3) "Private space" means a location in which a person has a reasonable expectation of privacy, including a person's home.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.652. GRANTS FOR BODY WORN CAMERAS. (a) A police department of a municipality in this state, a sheriff of a county in this state who has received the approval of the commissioners court for the purpose, or the department may apply to the office of the governor for a grant to defray the cost of implementing this subchapter and to equip peace officers with body worn cameras if that law enforcement agency employs officers who:

(1) are engaged in traffic or highway patrol or otherwise regularly detain or stop motor vehicles; or

(2) are primary responders who respond directly to calls for assistance from the public.

(b) The office of the governor shall set deadlines for applications for grants under this chapter.

(c) Except as provided by Subsection (d), the office of the governor shall create and implement a matching grant program under which matching funds from federal, state, local, and other funding sources may be required as a condition of the grant. A law enforcement agency that receives a grant under this section is required to match 25 percent of the grant money.

(d) The department is eligible for grants under this subchapter but may not be made subject to any requirement for matching funds.

(e) The governor's office may conditionally award a grant to a law enforcement agency that has not adopted and implemented the policy under Section 1701.655 or implemented the training required under Section 1701.656, but money may not be disbursed to a law enforcement agency until the agency fully complies with those sections.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.6521. GRANTS FOR BODY WORN CAMERA DATA STORAGE. (a) A law enforcement agency in this state that provides body worn cameras to its peace officers may apply to the office of the governor for a grant to defray the cost of data storage for recordings created with the body worn cameras.

(b) The grant program established by this section may be funded by federal funds or by gifts, grants, and donations.

Added by Acts 2021, 87th Leg., R.S., Ch. 327 (H.B. 1938), Sec. 1, eff. September 1, 2021.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.653. REPORTING. (a) As a condition of receiving a grant under this subchapter, a law enforcement agency annually shall report to the commission regarding the costs of implementing a body worn camera program, including all known equipment costs and costs for data storage.

(b) The commission shall compile the information submitted under Subsection (a) into a report and submit the report to the office of the governor and the legislature not later than December 1 of each year.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.654. INTERAGENCY OR INTERLOCAL CONTRACTS. A law enforcement agency in this state may enter into an interagency or interlocal contract to receive body worn camera services and have the identified operations performed through a program established by the Department of Information Resources.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.655. BODY WORN CAMERA POLICY. (a) A law enforcement agency that receives a grant to provide body worn cameras to its peace officers or that otherwise operates a body worn camera program shall adopt a policy for the use of body worn cameras.

(b) A policy described by Subsection (a) must ensure that a body worn camera is activated only for a law enforcement purpose and must include:

(1) guidelines for when a peace officer should activate a camera or discontinue a recording currently in progress, considering the need for privacy in certain situations and at certain locations;

(2) provisions relating to data retention, including a provision requiring the retention of video for a minimum period of 90 days;

(3) provisions relating to storage of video and audio, creation of backup copies of the video and audio, and maintenance of data security;

(4) provisions relating to the collection of a body worn camera, including the applicable video and audio recorded by the camera, as evidence;

(5) guidelines for public access, through open records

requests, to recordings that are public information;

(6) provisions entitling an officer to access any recording of an incident involving the officer before the officer is required to make a statement about the incident;

(7) procedures for supervisory or internal review; and

(8) the handling and documenting of equipment and malfunctions of equipment.

(c) A policy described by Subsection (a) may not require a peace officer to keep a body worn camera activated for the entire period of the officer's shift.

(c-1) A policy described by Subsection (a) must require a peace officer who is equipped with a body worn camera and actively participating in an investigation to keep the camera activated for the entirety of the officer's active participation in the investigation unless the camera has been deactivated in compliance with that policy.

(d) A policy adopted under this section must be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 798 (H.B. 929), Sec. 2, eff. September 1, 2021.

Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.656. TRAINING. (a) Before a law enforcement agency may operate a body worn camera program, the agency must provide training to:

(1) peace officers who will wear the body worn cameras; and

(2) any other personnel who will come into contact with video and audio data obtained from the use of body worn cameras.

(b) The commission, in consultation with the department, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth Jr. Police Institute at Dallas, and the Texas Police Chiefs Association, shall develop or approve a curriculum for a training program under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.657. RECORDING INTERACTIONS WITH THE PUBLIC. (a) A peace officer equipped with a body worn camera shall act in a manner that is consistent with the policy of the law enforcement agency that employs the officer with respect to when and under what circumstances a body worn camera must be activated.

(b) A peace officer equipped with a body worn camera may choose not to activate a camera or may choose to discontinue a recording currently in progress for any encounter with a person that is not related to an investigation.

(c) A peace officer who does not activate a body worn camera in response to a call for assistance must include in the officer's incident report or otherwise note in the case file or record the reason for not activating the camera.

(d) Any justification for failing to activate the body worn camera because it is unsafe, unrealistic, or impracticable is based on whether a reasonable officer under the same or similar circumstances would have made the same decision.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 798 (H.B. 929), Sec. 3, eff. September 1, 2021.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.658. USE OF PERSONAL EQUIPMENT. (a) If a law enforcement agency receives a grant under Section 1701.652, a peace officer who is employed by the agency and who is on duty may only use a body worn camera that is issued and maintained by that agency.

(b) Notwithstanding any previous policies, an agency may not

allow its peace officers to use privately owned body worn cameras after receiving a grant described by this section.

(c) A peace officer who is employed by a law enforcement agency that has not received a grant described by this section or who has not otherwise been provided with a body worn camera by the agency that employs the officer may operate a body worn camera that is privately owned only if permitted by the employing agency.

(d) An agency that authorizes the use of privately owned body worn cameras under Subsection (c) must make provisions for the security and compatibility of the recordings made by those cameras.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 327 (H.B. 1938), Sec. 2, eff. September 1, 2021.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.659. OFFENSE. (a) A peace officer or other employee of a law enforcement agency commits an offense if the officer or employee releases a recording created with a body worn camera under this subchapter without permission of the applicable law enforcement agency.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.660. RECORDINGS AS EVIDENCE. (a) Except as provided by Subsections (a-1) and (b), a recording created with a body worn camera and documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be

deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

(a-1) A law enforcement agency may permit a person who is depicted in a recording of an incident described by Subsection (a) or, if the person is deceased, the person's authorized representative, to view the recording, provided that the law enforcement agency determines that the viewing furthers a law enforcement purpose and provided that any authorized representative who is permitted to view the recording was not a witness to the incident. A person viewing a recording may not duplicate the recording or capture video or audio from the recording. A permitted viewing of a recording under this subsection is not considered to be a release of public information for purposes of Chapter 552, Government Code.

(b) A law enforcement agency may release to the public a recording described by Subsection (a) if the law enforcement agency determines that the release furthers a law enforcement purpose.

(c) This section does not affect the authority of a law enforcement agency to withhold under Section 552.108, Government Code, information related to a closed criminal investigation that did not result in a conviction or a grant of deferred adjudication community supervision.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 921 (H.B. 4236), Sec. 1, eff. September 1, 2019.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.661. RELEASE OF INFORMATION RECORDED BY BODY WORN CAMERA. (a) A member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

(1) the date and approximate time of the recording;

(2) the specific location where the recording occurred; and

(3) the name of one or more persons known to be a subject of the recording.

(b) A failure to provide all of the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.

(c) Except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021, Government Code.

(d) Information that is or could be used as evidence in a criminal prosecution is subject to the requirements of Section 552.021, Government Code.

(e) A law enforcement agency may:

(1) seek to withhold information subject to Subsection (d) in accordance with procedures provided by Section 552.301, Government Code;

(2) assert any exceptions to disclosure in Chapter 552, Government Code, or other law; or

(3) release information requested in accordance with Subsection (a) after the agency redacts any information made confidential under Chapter 552, Government Code, or other law.

(f) A law enforcement agency may not release any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

(g) The attorney general shall set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this section. The fee amount must be sufficient to cover the cost of reviewing and making the recording. A law enforcement agency may provide a copy without charge or at a reduced charge if the agency determines that waiver or reduction of the charge is in the public interest.

(h) A recording is confidential and excepted from the requirements of Chapter 552, Government Code, if the recording:

(1) was not required to be made under this subchapter or another law or under a policy adopted by the appropriate law

enforcement agency; and

(2) does not relate to a law enforcement purpose.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.662. BODY WORN CAMERA RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION. (a) Notwithstanding Section 552.301(b), Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(b) Notwithstanding Section 552.301(d), Government Code, a governmental body's response to a requestor regarding a requested body worn camera recording is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(c) Notwithstanding Section 552.301(e), Government Code, a governmental body's submission to the attorney general of the information required by that subsection regarding a requested body worn camera recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

(d) Notwithstanding Section 552.301(e-1), Government Code, a governmental body's submission to a requestor of the information required by that subsection regarding a requested body worn camera recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

Text of section effective until January 1, 2025

Sec. 1701.663. PRODUCTION OF BODY WORN CAMERA RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Notwithstanding Section 552.221(d), Government Code, an officer for public information who is employed by a governmental body and who receives a voluminous request in accordance with Section 1701.661(a) is considered to have promptly produced the information for purposes of Section 552.221, Government Code, if the officer takes the actions required under Section 552.221 before the 21st business day after the date of receipt of the written request.

(b) For purposes of this section, "voluminous request" includes:

(1) a request for body worn camera recordings from more than five separate incidents;

(2) more than five separate requests for body worn camera recordings from the same person in a 24-hour period, regardless of the number of incidents included in each request; or

(3) a request or multiple requests from the same person in a 24-hour period for body worn camera recordings that, taken together, constitute more than five total hours of video footage.

Added by Acts 2015, 84th Leg., R.S., Ch. 1134 (S.B. 158), Sec. 1, eff. September 1, 2015.
Repealed by Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 3.001(7), eff. January 1, 2025.

SUBCHAPTER O. EMERGENCY ADMINISTRATION OF EPINEPHRINE

Sec. 1701.701. DEFINITIONS. In this subchapter:

(1) "Anaphylaxis" means a sudden, severe, and potentially life-threatening allergic reaction that occurs when a person is exposed to an allergen.

(2) "Epinephrine auto-injector" means a disposable medical drug delivery device that contains a premeasured single dose of epinephrine intended for use to treat anaphylaxis.

(3) "Physician" means a person who holds a license to practice medicine in this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.702. ADMINISTRATION OF EPINEPHRINE. (a) A law enforcement agency may acquire and possess epinephrine auto-injectors and a peace officer may possess and administer an epinephrine auto-injector in accordance with this subchapter.

(b) A peace officer may possess and administer an epinephrine auto-injector only if the peace officer has successfully completed training in the use of the device in a course approved by the commission.

(c) The commission, in consultation with the Department of State Health Services, shall approve a training course on the administration of an epinephrine auto-injector.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.703. PRESCRIPTION OF EPINEPHRINE. (a) A physician, or a person who has been delegated prescriptive authority under Chapter 157, Occupations Code, may prescribe epinephrine auto-injectors in the name of a law enforcement agency.

(b) A physician or other person who prescribes epinephrine auto-injectors under Subsection (a) shall provide the law enforcement agency with a standing order for the administration of an epinephrine auto-injector to a person reasonably believed to be experiencing anaphylaxis.

(c) A standing order under Subsection (b) is not required to be patient-specific. An epinephrine auto-injector may be administered under this subchapter to a person without a previously established physician-patient relationship.

(d) Notwithstanding any other law, supervision or delegation by a physician is considered adequate if the physician:

(1) periodically reviews the order; and

(2) is available through direct telecommunication as needed for consultation, assistance, and direction.

(e) An order issued under this section must contain:

(1) the name and signature of the prescribing physician or other person;

(2) the name of the law enforcement agency to which the order is issued;

(3) the quantity of epinephrine auto-injectors to be

obtained and maintained under the order; and

(4) the date the order was issued.

(f) A pharmacist may dispense an epinephrine auto-injector to a law enforcement agency without requiring the name of or any other identifying information relating to the user.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.704. MAINTENANCE AND ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS. A law enforcement agency that acquires and possesses epinephrine auto-injectors under this subchapter shall adopt and implement a policy regarding the maintenance, administration, and disposal of the epinephrine auto-injectors. The policy must:

(1) establish a process for the agency to check the inventory of epinephrine auto-injectors at regular intervals for expiration and replacement; and

(2) require that the epinephrine auto-injectors be stored in a secure location.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.705. NOTIFICATION OF ADMINISTRATION OF EPINEPHRINE AUTO-INJECTOR. After an officer administers an epinephrine auto-injector under this subchapter, the law enforcement agency shall notify the physician or other person who prescribed the epinephrine auto-injector of:

(1) the age of the person to whom the epinephrine auto-injector was administered; and

(2) the number of epinephrine auto-injector doses administered to the person.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.706. GIFTS, GRANTS, AND DONATIONS. A law enforcement agency may accept gifts, grants, donations, and federal and local

money to implement this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.707. NOT PRACTICE OF HEALTH CARE. The administration by a peace officer of an epinephrine auto-injector to a person in accordance with the requirements of this subchapter or commission rules does not constitute the unlawful practice of any health care profession.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.708. IMMUNITY FROM LIABILITY. (a) A person who in good faith takes, or fails to take, action relating to the prescription of an epinephrine auto-injector to a law enforcement agency or the administration of an epinephrine auto-injector by a peace officer is immune from civil or criminal liability or disciplinary action resulting from that action or failure to act, including:

(1) issuing an order for epinephrine auto-injectors;

(2) supervising or delegating the administration of an epinephrine auto-injector;

(3) possessing, maintaining, storing, or disposing of an epinephrine auto-injector;

(4) prescribing an epinephrine auto-injector;

(5) dispensing an epinephrine auto-injector;

(6) administering, or assisting in administering, an epinephrine auto-injector;

(7) providing, or assisting in providing, training, consultation, or advice in the development, adoption, or implementation of policies, guidelines, rules, or plans; or

(8) undertaking any other act permitted or required under this subchapter.

(b) The immunities and protections provided by this subchapter are in addition to other immunities or limitations of liability provided by law.

(c) Notwithstanding any other law, this subchapter does not

create a civil, criminal, or administrative cause of action or liability or create a standard of care, obligation, or duty that provides a basis for a cause of action for an act or omission under this subchapter.

(d) An act or omission described by this subchapter does not create a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

Sec. 1701.709. GOVERNMENTAL IMMUNITY NOT WAIVED. This subchapter does not waive governmental immunity from suit or liability.

Added by Acts 2019, 86th Leg., R.S., Ch. 653 (S.B. 1827), Sec. 1, eff. September 1, 2019.

CHAPTER 1702. PRIVATE SECURITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1702.001. SHORT TITLE. This chapter may be cited as the Private Security Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.551(b), eff. Sept. 1, 2001.

Sec. 1702.002. DEFINITIONS. In this chapter:

(1) "Alarm system" means:

(A) electronic equipment and devices designed to detect or signal:

(i) an unauthorized entry or attempted entry of a person or object into a residence, business, or area monitored by the system; or

(ii) the occurrence of a robbery or other emergency;

(B) electronic equipment and devices using a computer or data processor designed to control the access of a person, vehicle, or object through a door, gate, or entrance into the

controlled area of a residence or business; or

(C) a television camera or still camera system that:

(i) records or archives images of property or individuals in a public or private area of a residence or business; or

(ii) is monitored by security personnel or services.

(1-a) For purposes of Subdivision (1), the term "alarm system" does not include a telephone entry system, an operator for opening or closing a residential or commercial gate or door, or an accessory used only to activate a gate or door, if the system, operator, or accessory is not monitored by security personnel or a security service and does not send a signal to which law enforcement or emergency services respond.

(1-b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(1), eff. September 1, 2019.

(2) "Branch office" means an office that is:

(A) identified to the public as a place from which business is conducted, solicited, or advertised; and

(B) at a place other than the principal place of business as shown in department records.

(3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(2), eff. September 1, 2019.

(4) "Commission" means the Public Safety Commission.

(5) "Commissioned security officer" means a security officer to whom a security officer commission has been issued by the department.

(5-a) "Committee" means the Texas Private Security Advisory Committee established under this chapter.

(5-b) "Company license" means a license issued by the department that entitles a person to operate as a security services contractor or investigations company.

(5-c) "Department" means the Department of Public Safety of the State of Texas.

(6) "Detection device" means an electronic device used as a part of an alarm system, including a control, communications device, motion detector, door or window switch, sound detector, vibration detector, light beam, pressure mat, wiring, or similar device.

(6-a) "Electronic access control device" means an electronic, electrical, or computer-based device, including a

telephone entry system, that allows access to a controlled area of a business, but that is not monitored by security personnel or services and does not send a signal to which law enforcement or emergency services respond. The term does not include:

(A) a mechanical device, such as a deadbolt or lock; or

(B) an operator for opening or closing a commercial gate or door or an accessory, such as a fixed or portable transmitter, card-reader, or keypad, if the operator or accessory is used only to activate the gate or door and is not connected to an alarm system.

(6-b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(3), eff. September 1, 2019.

(7) "Extra job coordinator" means a peace officer who:

(A) is employed full-time by the state or a political subdivision of the state; and

(B) schedules other peace officers to provide guard, patrolman, or watchman services in a private capacity who are:

(i) employed full-time by the state or a political subdivision of the state; and

(ii) not employed by the extra job coordinator.

(8) "Firearm" has the meaning assigned by Section 46.01, Penal Code.

(8-a) "Individual license" means a license issued by the department that entitles an individual to perform a service regulated by this chapter for a company license holder, including a personal protection officer license.

(9) "Insurance agent" means:

(A) a person licensed under Subchapter B, C, D, or E, Chapter 4051, or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; or

(C) a person authorized to represent an insurance fund or pool created by a local government under Chapter 791, Government Code.

(10) "Investigations company" means a person who performs the activities described by Section 1702.104.

(11) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(4), eff. September 1, 2019.

(12) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(5), eff. September 1, 2019.

(13) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B.

616), Sec. 5.114(b)(6), eff. September 1, 2019.

(14) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(7), eff. September 1, 2019.

Text of subdivision effective until January 1, 2025

(15) "Peace officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

Text of subdivision effective on January 1, 2025

(15) "Peace officer" means a person who is a peace officer under Article 2A.001, Code of Criminal Procedure.

(16) "Person" includes an individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity. Section 311.005(2), Government Code, does not apply to this subdivision.

(16-a) "Personal protection officer" means a person who performs the activities described by Section 1702.202.

(17) "Personal protection officer license" means a license issued by the department that entitles an individual to act as a personal protection officer.

(18) "Private investigator" means an individual who performs one or more services described by Section 1702.104.

(19) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(8), eff. September 1, 2019.

(20) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(9), eff. September 1, 2019.

(20-a) "Security officer" means a person who performs the activities described by Section 1702.222.

(21) "Security officer commission" means an authorization issued by the department that entitles a security officer to carry a firearm.

(22) "Security services contractor" means a person who performs the activities described by Section 1702.102.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.552, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 898, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 936, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.545, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.01, eff. Oct. 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.151, eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 1155 (H.B. 3140), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(58-a), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.01, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.102(1), eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.01, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 1, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.001, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(1), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(2), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(3), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(4), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(5), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(6), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(7), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(8), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(9), eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.151, eff. January 1, 2025.

Sec. 1702.004. GENERAL SCOPE OF REGULATION. (a) The department:

(1) licenses investigations companies and security services

contractors;

(2) issues commissions to certain security officers;

(3) licenses certain security officers engaged in the personal protection of individuals;

(4) licenses:

(A) certain individuals connected with a company license holder; and

(B) certain individuals employed in a field connected to private investigation or private security; and

(5) regulates company license holders, security officers, and individual license holders under this chapter.

(b) The commission shall adopt rules necessary to comply with Chapter 53. In its rules under this section, the commission shall list the specific offenses for each category of regulated persons for which a conviction would constitute grounds for the department to take action under Section 53.021.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.554, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.02, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.002, eff. September 1, 2019.

Sec. 1702.005. DEPARTMENT OF PUBLIC SAFETY; REFERENCES. (a) The department shall administer this chapter.

(b) A reference in this chapter or another law to the Texas Commission on Private Security or the Texas Private Security Board means the department.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.02, eff. Oct. 20, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.003, eff. September 1, 2019.

Sec. 1702.006. FOREIGN ENTITY REGISTRATION. Licensure under this chapter does not exempt a foreign entity from the registration requirements of Chapter 9, Business Organizations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.04, eff. September 1, 2009.

SUBCHAPTER B. TEXAS PRIVATE SECURITY ADVISORY COMMITTEE

Sec. 1702.021. COMMITTEE MEMBERSHIP; APPLICABILITY OF OTHER LAW. (a) The Texas Private Security Advisory Committee consists of seven members appointed by the commission as follows:

(1) three public members, each of whom is a citizen of the United States;

(2) one member who is licensed under this chapter as a private investigator;

(3) one member who is licensed under this chapter as an alarm systems company;

(4) one member who is licensed under this chapter as the owner or operator of a guard company; and

(5) one member who is licensed under this chapter as a locksmith.

(b) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.556, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 34.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.03, eff. Oct. 20, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.04, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 657 (H.B. 1093), Sec. 1, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.005, eff. September 1, 2019.

Sec. 1702.023. ELIGIBILITY OF PUBLIC MEMBERS. The committee's public members must be representatives of the general public. A person may not be a public member of the committee if the person or the person's spouse:

(1) is registered, commissioned, certified, or licensed by a regulatory agency in the field of private investigations or private security;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the department other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.558, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.05, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.006, eff. September 1, 2019.

Sec. 1702.024. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interests.

(b) A person may not be a committee member, and may not be a department employee whose primary duties include private security regulation and who is employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of private investigation or private security; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of private investigation or private security.

(c) A person may not be a committee member or act as general counsel to the committee or department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.559, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.06, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.007, eff. September 1, 2019.

Sec. 1702.025. TERMS; VACANCIES. (a) The committee members serve staggered six-year terms, with the terms of two or three members expiring on January 31 of each odd-numbered year.

(b) If a vacancy occurs during the term of a committee member, the commission shall appoint a new member to fill the unexpired term.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.560(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 34.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.04, eff. Oct. 20, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.008, eff. September 1, 2019.

Sec. 1702.026. OFFICERS. (a) The commission shall designate one committee member as presiding officer to serve in that capacity at the will of the commission. The commission shall designate the presiding officer without regard to race, creed, color, disability,

sex, religion, age, or national origin.

(b) The committee shall elect from among its members an assistant presiding officer and a secretary to serve two-year terms beginning on September 1 of each odd-numbered year.

(c) The presiding officer of the committee or, in the absence of the presiding officer, the assistant presiding officer shall preside at each committee meeting and perform the other duties prescribed by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.561(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 2.04, eff. Oct. 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.009, eff. September 1, 2019.

Sec. 1702.027. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the committee that a member:

(1) does not have the qualifications required by Section 1702.021 at the time of appointment;

(2) does not maintain the qualifications required by Section 1702.021 during service on the committee;

(3) is ineligible for membership under Section 1702.023 or 1702.024;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled committee meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the committee.

(b) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a committee member exists.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(10), eff. September 1, 2019.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.562, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.07, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.010, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(10), eff. September 1, 2019.

Sec. 1702.028. REIMBURSEMENT. A committee member may not receive compensation for service on the advisory committee but is entitled to reimbursement for actual and necessary expenses incurred in performing the functions as a member of the committee, subject to the General Appropriations Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.563, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.08, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.011, eff. September 1, 2019.

Sec. 1702.029. MEETINGS. The committee shall meet at least quarterly.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.564, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.09, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.012, eff. September 1, 2019.

Sec. 1702.031. DUTIES OF ADVISORY COMMITTEE. The committee shall provide advice and recommendations to the department and commission on technical matters relevant to the administration of this chapter and the regulation of private security industries.

Added by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.013,

eff. September 1, 2019.

Sec. 1702.032. COMMISSION LIAISON. The commission shall designate a commission member to serve as a liaison to the committee.

Added by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.013, eff. September 1, 2019.

SUBCHAPTER C. CHIEF ADMINISTRATOR AND PERSONNEL

Sec. 1702.041. CHIEF ADMINISTRATOR. (a) The chief administrator is responsible for the administration of this chapter under the direction of the public safety director. The chief administrator shall perform duties as prescribed by the public safety director.

(b) The chief administrator is a full-time employee of the department. A committee member may not serve as chief administrator.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.566, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.12, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.014, eff. September 1, 2019.

Sec. 1702.042. PERSONNEL; CONFLICT OF INTEREST. An employee of the department whose primary duties include private security regulation may not:

(1) have a financial or business interest, contingent or otherwise, in a security services contractor or investigations company; or

(2) be licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.567, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.13, eff. September 1, 2009.

Sec. 1702.044. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The chief administrator or the chief administrator's designee shall provide to committee members and to department employees, as often as necessary, information regarding the requirements for service as a committee member or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.569, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.15, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.015, eff. September 1, 2019.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 1702.061. GENERAL POWERS AND DUTIES. (a) The commission shall adopt rules and general policies to guide the department in the administration of this chapter.

(b) The rules and policies adopted by the commission under Subsection (a) must be consistent with this chapter and other commission rules adopted under this chapter and with any other applicable law, state rule, or federal regulation.

(c) The commission has the powers and duties to:

(1) determine the qualifications of company license holders, individual license holders, and commissioned security officers;

(2) investigate alleged violations of this chapter and of commission rules;

(3) adopt rules necessary to implement this chapter; and

(4) establish and enforce standards governing the safety and conduct of each person regulated under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.573(a), eff. Sept. 1, 2001.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.17, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.017, eff. September 1, 2019.

Sec. 1702.062. FEES. (a) The commission by rule shall establish reasonable and necessary fees that produce sufficient revenue to administer this chapter. The fees may not produce unnecessary fund balances.
(b) The department may charge a fee each time the department requires a person regulated under this chapter to resubmit a set of fingerprints for processing by the department during the application process for a company license, individual license, or security officer commission. The commission shall set the fee in an amount that is reasonable and necessary to cover the administrative expenses related to processing the fingerprints.
(c) A person whose pocket card has not expired is not eligible to receive from the department another pocket card in the same classification in which the pocket card is held.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.574, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 593, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 3, eff. September 1, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.19, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.018, eff. September 1, 2019.

Sec. 1702.063. USE OF FINES. The fines collected under this chapter may not be used to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.575, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.019, eff.

September 1, 2019.

Sec. 1702.0635. RESTRICTIONS ON CERTAIN RULES. The commission may not adopt rules or establish unduly restrictive experience or education requirements that limit a person's ability to be licensed as an electronic access control device company or be licensed as an electronic access control device installer.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.21, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.020, eff. September 1, 2019.

Sec. 1702.064. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt rules restricting advertising or competitive bidding by a person regulated under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated under this chapter a rule that:

(1) restricts the person's use of any medium for advertising;

(2) restricts the person's personal appearance or use of the person's personal voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.576, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.22, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.021, eff. September 1, 2019.

Sec. 1702.0645. PAYMENT OF FEES AND FINES. (a) The commission may adopt rules regarding the method of payment of a fee or a fine assessed under this chapter.

(b) Rules adopted under this section may:

(1) authorize the use of electronic funds transfer or a valid credit card issued by a financial institution chartered by a state or the federal government or by a nationally recognized credit organization approved by the department; and

(2) require the payment of a discount or a reasonable service charge for a credit card payment in addition to the fee or the fine.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.577(a), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.23, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.022, eff. September 1, 2019.

Sec. 1702.067. RECORDS; EVIDENCE. An official record of the department related to this chapter or an affidavit by the chief administrator as to the content of the record is prima facie evidence of a matter required to be kept by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.580, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.25, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.023, eff. September 1, 2019.

Sec. 1702.068. APPEAL BOND NOT REQUIRED. The department is not required to give an appeal bond in any cause arising under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.581, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.26, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.024, eff. September 1, 2019.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION

Sec. 1702.084. PUBLIC ACCESS TO CERTAIN RECORDS OF DISCIPLINARY ACTIONS. (a) The department shall make available to the public through a toll-free telephone number, Internet website, or other easily accessible medium determined by the department the following information relating to a disciplinary action taken during the preceding three years regarding a person regulated under this chapter:

(1) the identity of the person;

(2) the nature of the complaint that was the basis of the disciplinary action taken against the person; and

(3) the disciplinary action taken by the commission.

(b) In providing the information, the department shall present the information in an impartial manner, use language that is commonly understood, and, if possible, avoid jargon specific to the security industry.

(c) The department shall update the information on a monthly basis.

(d) The department shall maintain the confidentiality of information regarding the identification of a complainant.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.586(a), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.30, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.026, eff. September 1, 2019.

Sec. 1702.085. CONFIDENTIALITY OF RECORDS. Records maintained

by the department under this chapter on the home address, home telephone number, driver's license number, or social security number of an applicant or a company license holder, individual license holder, or security officer commission holder are confidential and are not subject to mandatory disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.027, eff. September 1, 2019.

SUBCHAPTER F. LICENSING AND DUTIES OF INVESTIGATIONS COMPANIES AND SECURITY SERVICES CONTRACTORS

Sec. 1702.101. INVESTIGATIONS COMPANY LICENSE REQUIRED. Unless the person holds a license as an investigations company, a person may not:

(1) act as an investigations company;

(2) offer to perform the services of an investigations company; or

(3) engage in business activity for which a license is required under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.102. SECURITY SERVICES CONTRACTOR LICENSE REQUIRED; SCOPE OF LICENSE. (a) Unless the person holds a license as a security services contractor, a person may not:

(1) act as an alarm systems company, armored car company, courier company, guard company, or locksmith company;

(2) offer to perform the services of a company in Subdivision (1); or

(3) engage in business activity for which a license is required under this chapter.

(b) A person licensed only as a security services contractor may not conduct an investigation other than an investigation incidental to the loss, misappropriation, or concealment of property that the person has been engaged to protect.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 3, eff. September 1, 2007.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.028, eff. September 1, 2019.

Sec. 1702.1025. ELECTRONIC ACCESS CONTROL DEVICE COMPANY LICENSE REQUIRED; SCOPE OF LICENSE. (a) Unless the person holds a license as an electronic access control device company, a person may not:

(1) act as an electronic access control device company;

(2) offer to perform the services of an electronic access control device company; or

(3) engage in business activity for which a license is required under this chapter.

(b) A person licensed as an electronic access control device company may not install alarm systems unless otherwise licensed to install alarm systems under this chapter.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 3, eff. Jan. 1, 2004.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.029, eff. September 1, 2019.

Sec. 1702.103. CLASSIFICATION AND LIMITATION OF COMPANY LICENSES. (a) The company license classifications are:

(1) Class A: investigations company license, covering operations of an investigations company;

(2) Class B: security services contractor license, covering operations of a security services contractor;

(3) Class C: covering the operations included within Class A and Class B;

(4) Class F: level III training school license; and

(5) Class O: alarm level I training school license.

(b) A company license described by this chapter does not authorize the company license holder to perform a service for which the company license holder has not qualified. A person may not

engage in an operation outside the scope of that person's company license. The department shall indicate on the company license the services the company license holder is authorized to perform. The company license holder may not perform a service unless it is indicated on the company license.

(c) A company license is not assignable unless the assignment is approved in advance by the department.

(d) The commission shall prescribe by rule the procedure under which a company license may be terminated.

(e) The commission by rule may establish other company license classifications for activities expressly regulated by this chapter and may establish qualifications and practice requirements consistent with this chapter for those company license classifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.587, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.31, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.030, eff. September 1, 2019.

Sec. 1702.104. INVESTIGATIONS COMPANY. (a) A person acts as an investigations company for the purposes of this chapter if the person:

(1) engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to:

(A) crime or wrongs done or threatened against a person, state, or the United States;

(B) the identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person;

(C) the location, disposition, or recovery of lost or stolen property; or

(D) the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property;

(2) engages in the business of securing, or accepts

employment to secure, evidence for use before a court, board, officer, or investigating committee;

(3) engages in the business of securing, or accepts employment to secure, the electronic tracking of the location of an individual or motor vehicle other than for criminal justice purposes by or on behalf of a governmental entity; or

(4) engages in the business of protecting, or accepts employment to protect, an individual from bodily harm through the use of a personal protection officer.

(b) For purposes of Subsection (a)(1), obtaining or furnishing information includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public. The repair or maintenance of a computer does not constitute an investigation for purposes of this section and does not require licensing under this chapter if:

(1) the review or analysis of computer-based data is performed only to diagnose a computer or software problem;

(2) there is no intent to obtain or furnish information described by Subsection (a)(1); and

(3) the discovery of any information described by Subsection (a)(1) is inadvertent.

(c) The review and analysis of computer-based data for the purpose of preparing for or responding to a cybersecurity event does not constitute an investigation for purposes of this section and does not require licensing under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.32, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 509 (S.B. 64), Sec. 20, eff. September 1, 2019.

Sec. 1702.105. ALARM SYSTEMS COMPANY. (a) A person acts as an alarm systems company for the purposes of this chapter if the person sells, installs, services, monitors, or responds to an alarm system

or detection device.

(b) An alarm systems company may sell, install, maintain, or service, or offer to sell, install, maintain, or service, an electronic access control device or a mechanical security device that is capable of activation through a wireless signal. An alarm systems company may not rekey an electronic access control device or mechanical security device that can be activated by a key. This subsection does not apply to a mechanical security device or electronic access control device installed in a motor vehicle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 2, eff. June 14, 2013.

Sec. 1702.1055. ELECTRONIC ACCESS CONTROL DEVICE COMPANY. A person acts as an electronic access control device company for the purposes of this chapter if the person installs or maintains an electronic access control device.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 5, eff. Sept. 1, 2003.

Sec. 1702.1056. LOCKSMITH COMPANY. (a) A person acts as a locksmith company for the purposes of this chapter if the person:

(1) sells, installs, services, or maintains, or offers to sell, install, service, or maintain, mechanical security devices, including deadbolts and locks;

(2) advertises services offered by the company using the term "locksmith"; or

(3) includes the term "locksmith" in the company's name.

(b) This section does not apply to a hotel, as that term is defined by Section 156.001, Tax Code.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 5, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1102 (H.B. 2243), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.05, eff. September 1, 2009.

Sec. 1702.106. ARMORED CAR COMPANY. A person acts as an armored car company for the purposes of this chapter if the person provides secured and protected transportation of valuables, including money, coins, bullion, securities, bonds, or jewelry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.107. COURIER COMPANY. A person acts as a courier company for purposes of this chapter if the person transports or offers to transport under armed guard an item that requires expeditious delivery, including a document, map, stock, bond, or check.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.108. GUARD COMPANY. A person acts as a guard company for the purposes of this chapter if the person employs an individual described by Section 1702.323(d) or engages in the business of or undertakes to provide a private watchman, guard, or street patrol service on a contractual basis for another person to:

(1) prevent entry, larceny, vandalism, abuse, fire, or trespass on private property;

(2) prevent, observe, or detect unauthorized activity on private property;

(3) control, regulate, or direct the movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to ensure the protection of property;

(4) protect an individual from bodily harm including through the use of a personal protection officer; or

(5) perform a function similar to a function listed in this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.588, eff. Sept. 1, 2001.

Sec. 1702.110. APPLICATION FOR COMPANY LICENSE. (a) An application for a company license under this chapter must be in the form prescribed by the department and include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification for which the applicant requests qualification;

(5) if the applicant is an entity other than an individual, the full name and residence address of each partner, officer who oversees the security-related aspects of the business, and director of the applicant;

(6) if the applicant is an individual, the fingerprints of the applicant or, if the applicant is an entity other than an individual, of each officer who oversees the security-related aspects of the business and of each partner or shareholder who owns at least a 25 percent interest in the applicant, provided in the manner prescribed by the department;

(7) a verified statement of the applicant's experience qualifications in the particular classification in which the applicant is applying;

(8) a report from the department stating the applicant's record of any convictions for a Class B misdemeanor or equivalent offense or a greater offense;

(9) the social security number of the individual making the application; and

(10) other information, evidence, statements, or documents required by the department.

(b) An applicant for a company license as a security services contractor shall maintain a physical address within this state and provide that address to the department. The commission shall adopt rules to enable an out-of-state company license holder to comply with this subsection.

(c) The department may return an application for a company license as incomplete if the applicant submits payment of a fee that is returned for insufficient funds and the applicant has received notice and an opportunity to provide payment in full.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.589, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.06, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 3, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.031, eff. September 1, 2019.

Sec. 1702.112. FORM OF COMPANY LICENSE. The department shall prescribe the form of a company license. The company license must include:

(1) the name of the company license holder;

(2) the name under which the company license holder is to operate;

(3) the company license number and the date the company license was issued; and

(4) a photograph of the company license holder, affixed to the company license at the time the company license is issued by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.591, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.07, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.032, eff. September 1, 2019.

Sec. 1702.113. GENERAL QUALIFICATIONS FOR COMPANY LICENSE OR SECURITY OFFICER COMMISSION. (a) An applicant for a company license or security officer commission must be at least 18 years of age and must not:

(1) at the time of application be charged under an information or indictment with the commission of a Class A or Class B misdemeanor or felony offense determined to be disqualifying by commission rule;

(2) have been found by a court to be incompetent by reason of a mental defect or disease and not have been restored to competency;

(3) have been dishonorably discharged from the United States armed services, discharged from the United States armed services under other conditions determined by the commission to be prohibitive, or dismissed from the United States armed services if a commissioned officer in the United States armed services; or

(4) be required to register in this or any other state as a sex offender.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1084, Sec. 17, eff. June 14, 2013.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1084, Sec. 17, eff. June 14, 2013.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(23), eff. September 1, 2019.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1146, Sec. 4.102(7), eff. September 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.592(a), eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.34, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.102(7), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 4, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 17, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.033, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.034, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(23), eff. September 1, 2019.

Sec. 1702.114. ADDITIONAL QUALIFICATIONS FOR INVESTIGATIONS COMPANY LICENSE. (a) An applicant for a company license to engage in the business of an investigations company must have, before the date of the application, three consecutive years' experience in the investigative field as an employee or owner of an investigations company or satisfy other requirements set by the commission.

(b) The applicant's experience must be:

(1) reviewed by the department; and

(2) determined to be adequate to qualify the applicant to engage in the business of an investigations company.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.593, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.35, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.035, eff. September 1, 2019.

Sec. 1702.115. ADDITIONAL QUALIFICATIONS FOR SECURITY SERVICES CONTRACTOR LICENSE. (a) An applicant for a company license to engage in the business of a security services contractor must have, before the date of the application, two consecutive years' experience in each security services field for which the person applies as an employee or owner of a security services contractor or satisfy other requirements set by the commission.

(b) The applicant's experience must have been obtained legally and must be:

(1) reviewed by the department; and

(2) determined to be adequate to qualify the applicant to engage in the business of a security services contractor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.594, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.36, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.036, eff. September 1, 2019.

Sec. 1702.117. EXAMINATION. (a) The department shall require an applicant for a company license under this chapter to demonstrate qualifications in the person's company license classification, including knowledge of applicable state laws and commission rules, by taking an examination to be determined by the commission.

(b) Payment of the application fee entitles the applicant to take one examination without additional charge. A person who fails the examination must pay a reexamination fee to take a subsequent examination.

(c) The commission shall set the reexamination fee in an amount not to exceed the amount of the renewal fee for the company license classification for which application was made.

(d) The department shall develop and provide to a person who applies to take the examination under Subsection (a) material containing all applicable state laws and commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.596(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.38, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.037, eff. September 1, 2019.

Sec. 1702.118. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the department shall notify the person of the examination results.

(b) If an examination is graded or reviewed by a testing service:

(1) the department shall notify the person of the examination results not later than the 14th day after the date the department receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a

person of the results of the person's examination.

(d) If requested in writing by a person who fails a licensing examination administered under this chapter, the department shall furnish the person with an analysis of the person's performance on the examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.597, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.39, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.038, eff. September 1, 2019.

Sec. 1702.1183. RECIPROCAL COMPANY LICENSE FOR CERTAIN APPLICANTS. (a) The department may waive any prerequisite to obtaining a company license for an applicant who holds a company license issued by another jurisdiction with which this state has a reciprocity agreement.

(b) The commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

(c) The commission shall adopt rules under which the commission may waive any prerequisite to obtaining a company license for, and credit experience for a company license requirement to, an individual who the commission determines has acceptable experience gained during service in a branch of the United States armed forces, including the United States Coast Guard.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.598, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.40, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 989 (H.B. 2135), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.039, eff. September 1, 2019.

Sec. 1702.1186. PROVISIONAL COMPANY LICENSE. (a) The department may issue a provisional company license to an applicant currently licensed in another jurisdiction who seeks an equivalent company license in this state and who:

(1) has been licensed in good standing as an investigations company or security services contractor for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the practice of private investigations or security services contracting; and

(3) is sponsored by a person licensed by the department under this chapter with whom the provisional company license holder will practice during the time the person holds a provisional company license.

(b) A provisional company license is valid until the date the department approves or denies the provisional company license holder's application for a company license. The department shall issue a company license under this chapter to the provisional company license holder if:

(1) the provisional company license holder is eligible to be licensed under Section 1702.1183; or

(2) the provisional company license holder:

(A) passes the part of the examination under Section 1702.117(a) that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of an investigations company or security services contractor in this state;

(B) is verified by the department as meeting the academic and experience requirements for a company license under this chapter; and

(C) satisfies any other licensing requirements under this chapter.

(c) The department must approve or deny a provisional company license holder's application for a company license not later than the 180th day after the date the provisional company license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(d) The commission may establish a fee for provisional company

licenses in an amount reasonable and necessary to cover the cost of issuing the company license.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.598, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.41, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.040, eff. September 1, 2019.

Sec. 1702.122. TEMPORARY CONTINUATION OF COMPANY LICENSE HOLDER'S BUSINESS. Under the terms provided by commission rule, a company license holder's business may continue for a temporary period if the individual on the basis of whose qualifications a company license under this chapter has been obtained ceases to be connected with the company license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.602, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.43, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.041, eff. September 1, 2019.

Sec. 1702.123. INSURANCE; BOND. (a) A company license holder shall maintain on file with the department at all times the surety bond and certificate of insurance required by this chapter.
(b) The commission shall immediately suspend the company license of a company license holder who violates Subsection (a).
(c) The commission may rescind the company license suspension if the company license holder provides proof to the commission that the bond or the insurance coverage is still in effect. The company license holder must provide the proof in a form satisfactory to the commission not later than the 10th day after the date the company license is suspended.
(d) After suspension of the company license, the commission may not reinstate the company license until an application, in the form

prescribed by the commission, is filed accompanied by a proper bond, insurance certificate, or both. The commission may deny the application notwithstanding the applicant's compliance with this section:

(1) for a reason that would justify suspending, revoking, or denying a company license; or

(2) if, during the suspension, the applicant performs a practice for which a company license is required.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.603, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.44, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.042, eff. September 1, 2019.

Sec. 1702.124. INSURANCE REQUIREMENT. (a) An applicant is not eligible for a company license unless the applicant provides as part of the application:

(1) a certificate of insurance or other documentary evidence of a general liability insurance policy countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state.

(b) The general liability insurance policy must be conditioned to pay on behalf of the company license holder damages that the company license holder becomes legally obligated to pay because of bodily injury, property damage, or personal injury, caused by an event involving the principal, or an officer, agent, or employee of the principal, in the conduct of any activity or service for which the company license holder is licensed under this chapter.

(c) The insurance policy must contain minimum limits of:

(1) $100,000 for each occurrence for bodily injury and property damage;

(2) $50,000 for each occurrence for personal injury; and

(3) a total aggregate amount of $200,000 for all occurrences.

(d) A person who is licensed to install and service fire alarms under Article 5.43-2, Insurance Code, complies with the insurance requirements of this section by complying with the insurance requirement of that article if the insurance held by the applicant complies with the requirements of this section in amounts and types of coverage.

(e) An insurance certificate executed and filed with the department under this chapter remains in effect until the insurer terminates future liability by providing to the department at least 10 days' notice of the intent to terminate liability.

(f) In addition to the requirements of this section, an applicant or company license holder shall provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the applicant or company license holder related to private security.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.604, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.546, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 7, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 6, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.043, eff. September 1, 2019.

Sec. 1702.125. BOND REQUIREMENT. A bond executed and filed with the department under this chapter remains in effect until the surety terminates future liability by providing to the department at least 30 days' notice of the intent to terminate liability.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.605, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.45, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.044, eff. September 1, 2019.

Sec. 1702.127. COMPANY LICENSE HOLDER EMPLOYEES; RECORDS. (a) A company license holder may be legally responsible for the conduct in the company license holder's business of each employee of the company license holder while the employee is performing assigned duties for the company license holder.

(b) A company license holder shall maintain a record containing information related to the company license holder's employees as required by the commission.

(c) A company license holder shall maintain for inspection by the department at the company license holder's principal place of business or branch office two recent color photographs, of a type required by the commission, of each applicant, individual license holder, commissioned security officer, and employee of the company license holder.

(d) A company license holder shall maintain records required under this chapter at a physical address within this state and provide that address to the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.607, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.09, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.045, eff. September 1, 2019.

Sec. 1702.128. POSTING OF COMPANY LICENSE REQUIRED. A company license holder shall at all times post the person's license in a conspicuous place in:

(1) the principal place of business of the company license holder; and

(2) each branch office of the company license holder.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.046, eff. September 1, 2019.

Sec. 1702.129. NOTICE OF CERTAIN CHANGES; BRANCH OFFICES. (a) A company license holder shall notify the department not later than the 14th day after the date of:

(1) a change of address for the company license holder's principal place of business;

(2) a change of a name under which the company license holder does business; or

(3) a change in the company license holder's officers or partners.

(b) A company license holder shall notify the department in writing not later than the 14th day after the date a branch office:

(1) is established;

(2) is closed; or

(3) changes address or location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.608, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.46, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.047, eff. September 1, 2019.

Sec. 1702.130. USE OF CERTAIN TITLES, UNIFORMS, INSIGNIA, OR IDENTIFICATIONS PROHIBITED. (a) A company license holder, or an officer, director, partner, or employee of a company license holder, may not:

(1) use a title, an insignia, or an identification card, wear a uniform, or make a statement with the intent to give an impression that the person is connected with the federal government, a state government, or a political subdivision of a state government; or

(2) use a title, an insignia, or an identification card or wear a uniform containing the designation "police."

(b) Subsection (a) does not prohibit a commissioned security officer employed by a political subdivision of this state from using a title, insignia, or identification card, wearing a uniform, or making a statement indicating the employment of that individual by the political subdivision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.048, eff. September 1, 2019.

Sec. 1702.131. ADVERTISING. An advertisement by a company license holder soliciting or advertising business must contain the company license holder's company name and address as stated in department records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.609, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.47, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.049, eff. September 1, 2019.

Sec. 1702.132. REPORTS TO EMPLOYER OR CLIENT. (a) A written report submitted to a company license holder's employer or client may only be submitted by the company license holder or a person authorized by a company license holder. The person submitting the report shall exercise diligence in determining whether the information in the report is correct.
(b) A company license holder or an officer, director, partner, or employee of a company license holder may not knowingly make a false report to the employer or client for whom information is obtained.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.050, eff. September 1, 2019.

Sec. 1702.133. CONFIDENTIALITY; INFORMATION RELATING TO CRIMINAL OFFENSE. (a) A company license holder or an officer, director, or partner of a company license holder may not disclose to another information obtained by the person for an employer or client

except:

(1) at the direction of the employer or client; or

(2) as required by state law or court order.

(b) A company license holder or an officer, director, or partner of a company license holder shall disclose to a law enforcement officer or a district attorney, or that individual's representative, information the person obtains that relates to a criminal offense. A private investigator who is working under the direct supervision of a licensed attorney satisfies this requirement by disclosing the information to the supervising attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 8, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.051, eff. September 1, 2019.

Sec. 1702.134. COMPANY LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL REGULATIONS. (a) A company license holder or an employee of a company license holder is not required to obtain an authorization, permit, franchise, or license from, pay another fee or franchise tax to, or post a bond in a municipality, county, or other political subdivision of this state to engage in business or perform a service authorized under this chapter.

(b) A municipality, county, or other political subdivision of this state may not require a payment for the use of municipal, county, or other public facilities in connection with a business or service provided by a company license holder, except that a municipality may impose and collect:

(1) a reasonable charge for the use of a central alarm installation located in a police office that is owned, operated, or monitored by the municipality; and

(2) reasonable inspection and reinspection fees in connection with a device that causes at least five false alarms in a 12-month period.

(c) A municipality may require, until the device is repaired to the satisfaction of the appropriate municipal official, discontinuation of service of an alarm signal device that, because of

mechanical malfunction or faulty equipment, causes at least five false alarms in a 12-month period.

(d) For the purposes of Subsection (c), a false alarm caused by human error or an act of God is not considered a mechanical malfunction or faulty equipment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.052, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.053, eff. September 1, 2019.

SUBCHAPTER G. SECURITY OFFICER COMMISSION REQUIREMENTS

Sec. 1702.161. SECURITY OFFICER COMMISSION REQUIRED. (a) An individual may not accept employment as a security officer to carry a firearm in the course and scope of the individual's duties unless the individual holds a security officer commission.

(b) An individual employed as a security officer may not knowingly carry a firearm during the course of performing duties as a security officer unless the department has issued a security officer commission to the individual.

(c) A person may not hire or employ an individual as a security officer to carry a firearm in the course and scope of the individual's duties unless the individual holds a security officer commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.610, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.48, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.054, eff. September 1, 2019.

Sec. 1702.162. EMPLOYER'S APPLICATION FOR SECURITY OFFICER COMMISSION. The employer of a security officer who applies for a security officer commission for the officer must submit an application to the department on a form provided by the department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.611, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.49, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.055, eff. September 1, 2019.

Sec. 1702.163. QUALIFICATIONS FOR SECURITY OFFICER COMMISSION. (a) An applicant employed by a company license holder is not eligible for a security officer commission unless the applicant submits as part of the application satisfactory evidence that the applicant has:

(1) completed the basic training course at a school or under an instructor approved by the department;

(2) met each qualification established by this chapter and administrative rule;

(3) achieved the score required by the department on the examination under Section 1702.1685;

(4) demonstrated to the satisfaction of the firearm training instructor that the applicant has complied with other department standards for minimum marksmanship competency with a handgun; and

(5) provided proof of completion by and the results of the Minnesota Multiphasic Personality Inventory test for the applicant.

(b) An individual is not eligible for a security officer commission if the individual:

(1) is disqualified by state or federal law from owning or possessing a firearm;

(2) is incapable of exercising sound judgment in the proper use and storage of a handgun;

(3) is a fugitive from justice for a felony or a Class A or Class B misdemeanor;

(4) is a chemically dependent person; or

(5) is currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests.

(c) An individual who has been convicted twice in the 10-year period preceding the date on which the person applies for a security

officer commission of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense is a chemically dependent person for purposes of this section and is not qualified to receive a security officer commission under this subchapter. This subsection does not preclude the disqualification of an individual for being a chemically dependent person if other evidence exists to demonstrate that the person is a chemically dependent person.

(d) For purposes of Subsection (b)(2), a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person:

(1) has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;

(2) suffers from a psychiatric disorder or condition described by Subdivision (1) that:

(A) is in remission but is reasonably likely to redevelop at a future time; or

(B) requires continuous medical treatment to avoid redevelopment;

(3) has been diagnosed by a licensed physician or declared by a court as incompetent to manage the person's own affairs; or

(4) has entered a plea of not guilty by reason of insanity in a criminal proceeding.

(d-1) For the purposes of determining eligibility under Subsection (b)(2), the department may require the applicant to authorize the release to the department of any relevant medical records.

(e) The following constitutes evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1):

(1) involuntary psychiatric hospitalization in the five years preceding the date of the application;

(2) psychiatric hospitalization in the two years preceding the date of the application;

(3) inpatient or residential substance abuse treatment in the five years preceding the date of the application;

(4) diagnosis in the five years preceding the date of the application by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(5) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:

(A) schizophrenia or delusional disorder;

(B) bipolar disorder;

(C) chronic dementia, whether caused by illness, brain defect, or brain injury;

(D) dissociative identity disorder;

(E) intermittent explosive disorder; or

(F) antisocial personality disorder.

(f) Notwithstanding Subsection (d), a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subsection (d) or listed in Subsection (e) is not because of that disorder or condition incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person provides the department with a certificate from a licensed physician whose primary practice is in the field of psychiatry stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop at a future time.

(g) An individual's eligibility under this section is not affected by a relationship or lack of relationship between the nature of a criminal charge or conviction and the regulated occupation.

(h) The commission by rule shall require an applicant for a security officer commission to complete the Minnesota Multiphasic Personality Inventory test. The department may use the results of the test to evaluate the applicant's psychological fitness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.612, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1035 (H.B. 1132), Sec. 1.01, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 4, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 9, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.10, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.056, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1015 (H.B. 3424), Sec. 1, eff. September 1, 2023.

Sec. 1702.165. ISSUANCE OF SECURITY OFFICER COMMISSION; POCKET CARD. (a) The department:

(1) may issue a security officer commission to an individual employed as a uniformed security officer; and

(2) shall issue a security officer commission to a qualified employee of an armored car company that is a carrier conducting the armored car business under a federal or state permit or certificate.

(b) A security officer commission issued under this section must be in the form of a pocket card designed by the department that identifies the security officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.614, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.50, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.057, eff. September 1, 2019.

Sec. 1702.167. TERMINATION OF EMPLOYMENT AS COMMISSIONED SECURITY OFFICER; TRANSFER OF COMMISSION. The holder of a security officer commission who terminates employment with one employer may transfer the individual's commission to a new employer if, not later than the 14th day after the date the individual begins the new employment, the new employer notifies the department of the transfer of employment on a form prescribed by the department, accompanied by payment of the employee information update fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.616(a), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.51, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.058, eff.

September 1, 2019.

Sec. 1702.1675. TRAINING PROGRAMS. (a) The commission shall establish a basic training course for commissioned security officers. The course must include, at a minimum:

(1) general security officer training issues;

(2) classroom instruction on handgun proficiency and self-defense tactics; and

(3) range instruction on handgun proficiency.

(b) The course must be offered and taught by schools and instructors approved by the department. To receive department approval, a school or an instructor must submit an application to the department on a form provided by the department.

(c) The basic training course established under this section must consist of a minimum of 30 hours.

(d) The general security officer training portion of the course must include instruction on:

(1) applicable rules and state laws;

(2) field note taking and report writing; and

(3) any other topics of security officer training curriculum the department considers necessary.

(e) The department shall develop a commissioned security officer training manual that contains applicable state laws and rules to be used in the instruction and training of commissioned security officers.

(f) The commission shall adopt rules necessary to administer the provisions of this section concerning the training requirements of this chapter.

(g) The handgun proficiency and self-defense course must include at least 10 hours and not more than 15 hours of in-person instruction with an on-site instructor approved by the department on:

(1) the laws that relate to weapons and to the use of deadly force;

(2) handgun use, proficiency, and safety;

(3) nonviolent dispute resolution;

(4) proper storage practices for handguns, with an emphasis on storage practices that eliminate the possibility of accidental injury to a child; and

(5) self-defense tactics.

(h) The range instruction on handgun proficiency must include an actual demonstration by the applicant of the applicant's ability to safely and proficiently use a handgun. The applicant must demonstrate, at a minimum, the degree of proficiency that is required to effectively operate a 9-millimeter or .38-caliber handgun.

(i) The commission by rule shall establish minimum standards for handgun proficiency that are at least as stringent as the standards for handgun proficiency developed under Section 411.188, Government Code.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.617, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.52, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.059, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1015 (H.B. 3424), Sec. 2, eff. September 1, 2023.

Sec. 1702.168. FIREARM REQUIREMENTS. (a) In addition to the requirements of Section 1702.163(a), the commission by rule shall establish other qualifications for individuals who are employed in positions requiring the carrying of firearms. The qualifications may include:

(1) physical and mental standards; and

(2) other requirements that relate to the competency and reliability of individuals to carry firearms.

(b) The commission shall prescribe appropriate forms and adopt rules by which evidence is presented that the requirements are fulfilled.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.618, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.53, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.060, eff. September 1, 2019.

Sec. 1702.1685. HANDGUN PROFICIENCY EXAMINATION. (a) The proficiency examination required to obtain or renew a security officer commission must include:

(1) a written section on the subjects listed in Sections 1702.1675(g)(1)-(4); and

(2) a physical demonstration of handgun proficiency that meets the minimum standards established under Section 1702.1675(h) or (i).

(b) Only a department-approved instructor may administer the handgun proficiency examination.

(c) An applicant for a security officer commission must demonstrate the required proficiency within the 90-day period before the date the security officer commission is issued.

(d) The school shall maintain the records of the required proficiency and make the records available for inspection by the department.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.619, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.54, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.061, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1015 (H.B. 3424), Sec. 3, eff. September 1, 2023.

Sec. 1702.169. FIREARM RESTRICTIONS. A commissioned security officer other than a person acting as a personal protection officer may not carry a firearm unless:

(1) the security officer is:

(A) engaged in the performance of duties as a security officer; or

(B) traveling to or from the place of assignment;

(2) the security officer wears a distinctive uniform indicating that the individual is a security officer; and

(3) the firearm is in plain view.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1048 (H.B. 2101), Sec. 1, eff. September 1, 2007.

Sec. 1702.170. NONAPPLICABILITY OF FIREARM RESTRICTIONS. Sections 1702.161, 1702.169, and 1702.206 do not apply to the holder of a temporary security officer commission who:

(1) is in uniform;

(2) possesses only one firearm; and

(3) is performing the individual's duties.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.171. SECURITY OFFICER COMMISSION RECORDS. The commission shall adopt rules for the maintenance of records relating to an individual to whom the department has issued a security officer commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.620, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.55, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.062, eff. September 1, 2019.

SUBCHAPTER H. EMPLOYMENT OF COMMISSIONED SECURITY OFFICER BY CERTAIN PERSONS; REQUIREMENTS

Sec. 1702.181. NOTICE AND REGISTRATION REQUIRED; REGISTRY. (a) The security department of a private business or a political subdivision may not employ a commissioned security officer unless the security department provides notice to the department in the form prescribed by the commission of:

(1) the security department's intent to employ a commissioned security officer and register with the department under this section;

(2) the name, title, and contact information of the person serving in the security department as the contact for the department; and

(3) any change in the information provided in Subdivision (1) or (2).

(b) The department shall maintain a registry of security departments that provide notice under Subsection (a) and the name, title, and contact information of the person serving as contact for each security department.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.064, eff. September 1, 2019.

Sec. 1702.182. SECURITY DEPARTMENT OF PRIVATE BUSINESS. (a) A security department acts as the security department of a private business if it:

(1) has as its general purpose the protection and security of its own property and grounds; and

(2) does not offer or provide security services to another person.

(b) For purposes of this subchapter, a hospital licensed under Chapter 241 or 577, Health and Safety Code, may provide security services to:

(1) buildings, grounds, and tenants located on the hospital's property or campus, regardless of who owns the building; and

(2) a parent entity or member entity of the hospital or hospital corporation, or an affiliated entity or business with whom the hospital shares common ownership or control.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 5, eff. September 1, 2005.

Sec. 1702.184. LOCAL REGULATION OF CERTAIN SECURITY SERVICES FOR PRIVATE BUSINESSES. (a) Except as provided by Subsection (b), a political subdivision of this state may not require a private business to contract with or employ a peace officer to provide security services for the business.

(b) This section does not apply to:

(1) a requirement that a private business contract with or employ a peace officer to:

(A) provide security services for a public event;

(B) provide security services for a private event held at a public facility that is owned or leased by a political subdivision of this state;

(C) conduct a public escort; or

(D) direct traffic on a public roadway; or

(2) an order or determination made by a court under Chapter 125, Civil Practice and Remedies Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 408 (S.B. 949), Sec. 1, eff. June 15, 2007.

SUBCHAPTER I. PERSONAL PROTECTION OFFICER LICENSE REQUIREMENTS

Sec. 1702.201. PERSONAL PROTECTION OFFICER LICENSE REQUIRED. An individual may not act as a personal protection officer unless the individual holds a personal protection officer license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.11, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.066, eff. September 1, 2019.

Sec. 1702.202. PERSONAL PROTECTION OFFICER. An individual acts as a personal protection officer if the individual, while carrying a firearm, provides to another individual personal protection from bodily harm.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.12, eff. September 1, 2009.

Sec. 1702.203. APPLICATION FOR PERSONAL PROTECTION OFFICER

LICENSE. An applicant for a personal protection officer license must submit a written application on a form prescribed by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.622, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.58, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.067, eff. September 1, 2019.

Sec. 1702.204. PERSONAL PROTECTION OFFICER LICENSE; QUALIFICATIONS. (a) An applicant for a personal protection officer license must be at least 21 years of age and must provide:

(1) a certificate of completion of the basic security officer training course;

(2) proof that the applicant:

(A) has been issued a security officer commission;

(B) is employed at the time of application by an investigations company or guard company licensed by the department; and

(C) has completed the required training in nonlethal self-defense or defense of a third person; and

(3) proof of completion and the results of the Minnesota Multiphasic Personality Inventory psychological testing.

(b) The commission by rule shall require an applicant for a personal protection officer license to complete the Minnesota Multiphasic Personality Inventory test. The department may use the results of the test to evaluate the applicant's psychological fitness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.623, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.59, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.068, eff. September 1, 2019.

Sec. 1702.205. PERSONAL PROTECTION OFFICER TRAINING. (a) The commission shall establish a 15-hour course for a personal protection officer consisting of training in nonlethal self-defense or defense of a third person.

(b) The training required by this section:

(1) must be provided in-person; and

(2) is in addition to the basic training course for security officers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.624, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.60, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.069, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1015 (H.B. 3424), Sec. 4, eff. September 1, 2023.

Sec. 1702.206. LIMITED AUTHORITY TO CARRY FIREARMS. (a) An individual acting as a personal protection officer may not carry a firearm unless the officer:

(1) is either:

(A) engaged in the exclusive performance of the officer's duties as a personal protection officer for the employer under whom the officer's personal protection officer license is issued; or

(B) traveling to or from the officer's place of assignment; and

(2) carries the officer's security officer commission and personal protection officer license on the officer's person while performing the officer's duties or traveling as described by Subdivision (1) and presents the commission and license on request.

(b) An individual who is acting as a personal protection officer and is wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), may not conceal any firearm the individual is carrying and shall carry the firearm in plain view. An individual who is acting as a personal protection officer and is not wearing the uniform of a security

officer shall conceal the firearm, regardless of whether the individual is authorized to openly carry the firearm under any other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1048 (H.B. 2101), Sec. 2, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.13, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 37, eff. January 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.070, eff. September 1, 2019.

SUBCHAPTER J. LICENSING AND DUTIES OF INDIVIDUALS

Sec. 1702.221. INDIVIDUAL LICENSE REQUIRED. (a) To perform any activity regulated by this chapter, the individual must:

(1) obtain the proper individual license under Subsection (b); and

(2) be employed by a company license holder.

(b) An individual must obtain the appropriate individual license in accordance with the requirements of this chapter and related administrative rules if the individual:

(1) is employed as:

(A) an alarm instructor;

(B) an alarm systems installer;

(C) an alarm systems monitor;

(D) an electronic access control device installer;

(E) a level 3 classroom or firearm instructor;

(F) a locksmith;

(G) a noncommissioned security officer;

(H) a level 4 personal protection instructor;

(I) a private investigator; or

(J) an individual whose duties include performing another activity for which an individual license is required under Subsection (e); or

(2) is an owner who owns at least a 51 percent interest in a company license holder.

(c) Licensure under this chapter does not preclude an individual from performing additional duties or services authorized by the individual's employer that are not regulated by this chapter. An individual who performs more than one of the services that require an individual license under this section must obtain an individual license for each service.

(d) In addition to the services listed in Subsection (b), a person holding a security officer commission must also obtain an individual license for personal protection if the individual performs the services described by Section 1702.202.

(e) The commission by rule may require a person to hold an individual license for performing any other activity expressly regulated by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.625, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.61, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.072, eff. September 1, 2019.

Sec. 1702.222. SECURITY OFFICER. An individual acts as a security officer for purposes of this chapter if the individual is:

(1) employed by a security services contractor or the security department of a private business; and

(2) employed to perform the duties of an alarm systems response runner who responds to the first signal of entry, a security guard, security watchman, security patrolman, armored car guard, or courier guard.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.2226. ELECTRONIC ACCESS CONTROL DEVICE INSTALLER. (a) An individual acts as an electronic access control device installer for purposes of this chapter if the individual installs,

maintains, or repairs an electronic access control device.

(b) A person licensed as an electronic access control device installer may not install alarm systems unless the person holds an individual license under this chapter as an alarm systems installer.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.62, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.073, eff. September 1, 2019.

Sec. 1702.2227. LOCKSMITH. (a) An individual acts as a locksmith for the purposes of this chapter if the person:

(1) sells, installs, services, or maintains mechanical security devices, including deadbolts and locks; or

(2) advertises or offers services to the public or represents to the public that the person is a locksmith.

(b) This section does not apply to a hotel, as that term is defined by Section 156.001, Tax Code.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 9, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1102 (H.B. 2243), Sec. 2, eff. September 1, 2005.

Sec. 1702.223. ALARM SYSTEMS INSTALLER. (a) An individual acts as an alarm systems installer for purposes of this chapter if the individual installs, maintains, or repairs an alarm system or detection device.

(b) An alarm systems installer may sell, install, maintain, repair, or service an electronic access control device or a mechanical security device that is capable of activation through a wireless signal. An alarm systems installer may not rekey an electronic access control device or mechanical security device that can be activated by a key. This subsection does not apply to a mechanical security device or electronic access control device installed in a motor vehicle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 936, Sec. 11, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 7, eff. June 14, 2013.

Sec. 1702.224. ALARM SYSTEMS MONITOR. (a) An individual acts as an alarm systems monitor for purposes of this chapter if the individual monitors an alarm system or detection device.

(b) This section does not apply to an individual employed exclusively and regularly by an employer, other than a license holder, in connection with the affairs of that employer and with whom the individual has an employee-employer relationship.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.229. QUALIFICATIONS FOR INDIVIDUAL LICENSE. (a) An applicant for an individual license must meet the qualifications required under Section 1702.113 for a company license applicant.

(b) The commission by rule may adopt additional qualifications for an individual to obtain an individual license under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.628, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 12, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.074, eff. September 1, 2019.

Sec. 1702.230. APPLICATION FOR INDIVIDUAL LICENSE. (a) An application for an individual license must be verified and include:

(1) the applicant's full name, residence address, residence telephone number, date and place of birth, and social security number;

(2) a statement that:

(A) lists each name used by the applicant, other than

the name by which the applicant is known at the time of application, and an explanation stating each place where each name was used, the date of each use, and a full explanation of the reasons the name was used; or

(B) states that the applicant has never used a name other than the name by which the applicant is known at the time of application;

(3) the name and address of the applicant's employer;

(4) the date the employment described by Subdivision (3) commenced;

(5) a letter from the company license holder requesting that the applicant be issued an individual license;

(6) the title of the position occupied by the applicant and a description of the applicant's duties;

(7) the required fees, including the criminal history check fee established under Section 1702.282;

(8) fingerprints of the applicant provided in the manner prescribed by the department; and

(9) any other information, evidence, statement, or document required by the department.

(b) The employer of the applicant shall make a reasonable attempt to verify the information required under Subsection (a)(1) before the earlier of:

(1) the date the application is submitted; or

(2) the date the applicant begins to perform the duties of employment that require an individual license.

(c) An applicant must submit an application that substantially meets the requirements of this section before employment in a capacity for which an individual license is required.

(d) For purposes of Subsection (a), an application is not considered to be verified until the department has received electronic verification from the department or the Federal Bureau of Investigation, as applicable, that the applicant has submitted the applicant's fingerprints.

(e) The department shall make information available to the public concerning whether an applicant for an individual license has met the requirements under this chapter for performing a service for which the individual license is required.

(f) If information concerning an applicant is not made available under Subsection (e) before the 48th hour after the time

the applicant's fingerprints are submitted in accordance with Subsection (a), the applicant may begin performing the duties of employment for which the individual license is required, other than duties as a commissioned security officer, if the employer or its agent:

(1) verifies through the department's publicly accessible website that the applicant is:

(A) not disqualified for the individual license based on the applicant's criminal history; and

(B) not required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) maintains in the applicant's employee file a copy of the search results obtained under Subdivision (1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.629, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.66, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.14, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 827 (H.B. 4030), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.075, eff. September 1, 2019.

Sec. 1702.2305. PROVISIONAL INDIVIDUAL LICENSE. (a) The department may issue a provisional individual license to an applicant currently licensed in another jurisdiction who seeks an equivalent license in this state and who:

(1) has been licensed in good standing in the field in which the individual license is sought for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to practice in the field in which the individual license is sought; and

(3) is employed by a company license holder with whom the

provisional individual license holder will practice during the time the person holds a provisional individual license.

(b) A provisional individual license is valid until the date the department approves or denies the provisional individual license holder's application for an individual license. The department shall issue an individual license under this chapter to the provisional individual license holder if the provisional individual license holder is eligible to be licensed under this chapter.

(c) The department must approve or deny a provisional individual license holder's application for an individual license not later than the 180th day after the date the provisional individual license is issued. The department may extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(d) The commission may establish a fee for a provisional individual license in an amount reasonable and necessary to cover the cost of issuing the individual license.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.630(a), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.67, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.076, eff. September 1, 2019.

Sec. 1702.232. POCKET CARDS. (a) The department shall issue a pocket card for each individual license holder under this chapter. A pocket card for an owner of a company license holder shall be issued to the company license holder.

(b) The department shall determine the size, design, and content of the pocket card.

(c) The pocket card must:

(1) state the name of the individual license holder;

(2) contain a photograph, affixed to the pocket card by the department at the time the card is issued, and the signature of the individual license holder; and

(3) state the date the card was issued and the card's expiration date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.632, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.68, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.077, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 918 (H.B. 4195), Sec. 2, eff. September 1, 2019.

Sec. 1702.233. DURATION OF POCKET CARDS. A pocket card issued for an individual license holder expires on the date the individual license expires under Section 1702.301(b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.633, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.078, eff. September 1, 2019.

Sec. 1702.234. TRANSFER OF INDIVIDUAL LICENSE. An individual license holder may transfer the holder's license from one employer to another employer if, not later than the 14th day after the date the individual license holder begins the new employment, the new employer notifies the department of the transfer of employment on a form prescribed by the commission accompanied by payment of the employee information update fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.634(a), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.69, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.079, eff. September 1, 2019.

Sec. 1702.235. PREEMPLOYMENT CHECK FOR NONCOMMISSIONED SECURITY

OFFICERS. A person may not hire a noncommissioned security officer unless the person conducts a preemployment check as required by commission rule.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.635, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.70, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.080, eff. September 1, 2019.

Sec. 1702.236. EXAMINATION AND TRAINING REQUIREMENTS FOR ELECTRONIC ACCESS CONTROL DEVICE INSTALLERS. (a) The department shall require an individual who applies for an individual license as an electronic access control device installer to pass an examination given by the department or a person approved by the department. The examination must cover material related to access control.

(b) The commission by rule may allow an electronic access control device installer to obtain or renew an individual license by fulfilling the requirements of a commission-approved, industry-based educational training program.

Added by Acts 2003, 78th Leg., ch. 936, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.71, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.081, eff. September 1, 2019.

Sec. 1702.239. TRAINING REQUIREMENTS FOR ALARM SYSTEMS INSTALLER; EXAMINATION. (a) The commission may require that an individual employed as an alarm systems installer hold a certification by a commission-approved training program to renew an individual license. The commission may approve only nationally recognized training programs that consist of at least 16 hours of classroom study in the areas of work allowed by the individual license. To be approved, a training program must offer at least two certification programs each year, sufficient to complete the

requirements of this subsection, within 100 miles of each county in the state that has a population of more than 500,000.

(b) The commission may require an individual who has completed a training program under Subsection (a) to pass an examination given by the department or by a person approved by the department. The commission may approve examinations in conjunction with training programs approved under Subsection (a). The individual's performance on the examination must demonstrate the individual's qualifications to perform the duties allowed by the individual's individual license.

(c) If the commission requires certification or examination under this section, the commission shall adopt rules to require that to renew an individual license, an individual who is employed as an alarm systems installer and who has already once renewed the individual license must obtain continuing education credits related to the line of work for which the individual is licensed. If the commission requires the continuing education, the chief administrator must approve classes offered by nationally recognized organizations, and participants in the classes must qualify according to commission rules.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.639, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.72, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.082, eff. September 1, 2019.

Sec. 1702.240. EXEMPTIONS FOR UNDERCOVER AGENT. (a) For the purposes of this section, "undercover agent" means an individual hired by a person to perform a job in or for that person, and while performing that job, to act as an undercover agent, an employee, or an independent contractor of a company license holder, but supervised by a company license holder.

(b) An employee of a company license holder who is employed exclusively as an undercover agent is not required to obtain an individual license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.640, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.73, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.083, eff. September 1, 2019.

Sec. 1702.241. JURISPRUDENCE EXAMINATION. (a) The commission may develop and the department may administer at least twice each calendar year a jurisprudence examination to determine the knowledge that an applicant for an individual license has of this chapter, commission rules, and any other applicable laws of this state affecting the applicant's activities regulated under this chapter.

(b) Before the department may administer a jurisprudence examination under this section, the commission shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results. The department may design different examinations for different types of individual licenses.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.74, eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.084, eff. September 1, 2019.

SUBCHAPTER L. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS

Sec. 1702.282. CRIMINAL HISTORY CHECK. (a) The department shall conduct a criminal history check, including a check of any criminal history record information maintained by the Federal Bureau of Investigation, in the manner provided by Subchapter F, Chapter 411, Government Code, on each applicant for a license or security officer commission issued under this chapter. As part of its criminal history check, the department may request that the applicant provide certified copies of relevant court documents or other records. The failure to provide the requested records within a reasonable time as determined by the department may result in the

application being considered incomplete. An applicant is not eligible for a license or security officer commission issued under this chapter if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license or commission. Except as provided by Subsection (d), each applicant shall submit at the time of application, including an application for the renewal of a license or security officer commission issued under this chapter, fingerprints in the manner prescribed by the department accompanied by the fee set by the commission.

(b) Before beginning employment as a commissioned security officer, the applicant must be approved by the department based on the results of the check under Subsection (a). To continue employment in a capacity regulated under this chapter other than as a commissioned security officer, the applicant must be approved by the department based on the results of the check under Subsection (a) not later than the 120th day after the date the applicant begins employment in that capacity.

(c) A license or security officer commission issued by the department is conditional on the department's review of criminal history record information.

(d) An applicant who is a peace officer is not required to submit fingerprints with the applicant's application. On request, the law enforcement agency or other entity that employs the peace officer or the entity that maintains the peace officer's fingerprints shall provide the fingerprints for the peace officer to the department. The applicant shall provide sufficient information to the department to enable the department to obtain the fingerprints under this subsection.

(e) On receipt of notice that a check of the applicant's criminal record has uncovered an unresolved and potentially disqualifying arrest that occurred before the 10th anniversary of the date the application is filed, the applicant must provide a letter of reference from the county sheriff, prosecuting attorney, or judge of the county in which the applicant was arrested stating that a record of a disposition related to the arrest does not exist, and to the best of the county sheriff's, prosecuting attorney's, or judge's knowledge the applicant is free of any disqualifying convictions. If the applicant fails to provide either the letter of reference or documentary proof of the final disposition of the arrest, the application is considered incomplete and the applicant may not be

issued a license or security officer commission under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.645(a), eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 1035 (H.B. 1132), Sec. 1.02, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 6, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 13, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.75, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.15, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 8, eff. June 14, 2013.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.085, eff. September 1, 2019.

Sec. 1702.283. CRUELTY TO ANIMALS. A person who has been convicted of cruelty to animals under Section 42.09 or 42.092, Penal Code, may not be employed to work with dogs as a security officer by a security services contractor or security department of a private business that uses dogs to protect individuals or property or to conduct investigations.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 6, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.76, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.086, eff. September 1, 2019.

Sec. 1702.284. ALARM SYSTEMS RECORDS CONFIDENTIAL. (a) Information contained in alarm systems records maintained by a

governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the department, to the alarm company to which the confidential records relate, or as otherwise required by state law or court order.

(b) Information described by Subsection (a) may be used by the governmental body to inform the occupant of:

(1) the governmental body's alarm system response policy and any proposed change to that policy; and

(2) the option of the occupant to contract with a security services provider to respond to the occupant's alarm.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.646, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 232 (H.B. 1784), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 14, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.087, eff. September 1, 2019.

Sec. 1702.285. FALSE REPRESENTATION. A person may not represent falsely that the person:

(1) is employed by a company license holder; or

(2) has a license or security officer commission under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.77, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.088, eff. September 1, 2019.

Sec. 1702.286. DUTIES OF ALARM SYSTEMS COMPANY. (a) On the installation or activation of an alarm system, an alarm systems company shall distribute to the occupant of the alarm system location information summarizing:

(1) the applicable law relating to false alarms, including the potential for penalties and revocation or suspension of a permit;

(2) how to prevent false alarms; and

(3) how to operate the alarm system.

(b) An alarm systems company shall notify the municipality in which the alarm system is located of an installation or activation of an alarm system not later than the 30th day after the date of the installation or activation. The alarm systems company shall provide to the municipality:

(1) the alarm systems company name;

(2) the alarm systems company license number;

(3) the name of the occupant of the alarm system location;

(4) the address of the alarm system location; and

(5) the date of installation or activation.

(c) Information provided to a governmental body under this section is confidential and subject to disclosure only as provided under Section 1702.284.

(d) An alarm systems company commits an offense if the company violates Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

(e) The duties imposed by this section on an alarm systems company do not apply to the installation or activation of a personal emergency response system, as defined under Section 1702.331.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 7, eff. September 1, 2005.

Sec. 1702.2865. CUSTOMER AUTHORIZATION REQUIRED FOR CERTAIN LOCKSMITH SERVICES. (a) A locksmith company or locksmith may not perform services for a customer who seeks entry to a structure, motor vehicle, or other property unless the customer, in the course of the transaction:

(1) shows the locksmith company or locksmith a government-issued identification; and

(2) provides a signed authorization stating that the customer owns or is otherwise entitled to legal access to the structure, motor vehicle, or other property.

(b) A locksmith company or locksmith is exempt from Subsection (a) if the locksmith is requested to perform services in a case of

imminent threat to a person or property.

Added by Acts 2005, 79th Leg., Ch. 1102 (H.B. 2243), Sec. 3, eff. September 1, 2005.
Renumbered from Occupations Code, Section 1702.286 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(73), eff. September 1, 2009.
Renumbered from Occupations Code, Section 1702.286 by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.16, eff. September 1, 2009.

Sec. 1702.287. DETECTION DEVICE CONTROL PANELS; MINIMUM STANDARDS. An alarm systems company may not install any alarm system on or after January 1, 2007, that includes a detection device control panel unless the control panel meets or exceeds the standards of the American National Standards Institute for false alarm reduction.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 7, eff. September 1, 2005.

Sec. 1702.288. NOTICE OF CERTAIN INFORMATION TO RECIPIENT OF ALARM SYSTEM SERVICES. (a) The commission shall adopt rules in accordance with this section that require a company license holder acting as an alarm systems company under this chapter to inform each of the license holder's clients that the client is entitled to receive a written contract for alarm system services that contains the client's fee arrangement and other relevant information about services to be rendered.

(b) The rules shall require that a written contract for alarm system services shall be furnished to a client in accordance with Subsection (a) not later than the seventh day after the date the client requests the written contract.

(c) The rules shall require that the written contract for services shall be dated and signed by the owner or manager of an alarm systems company or a person expressly authorized by the owner or manager to sign written contracts on behalf of the company.

(d) The rules shall require that, not later than the seventh day after the date of entering into a contract for services regulated by the department with another alarm systems company or alarm systems monitor, an alarm systems company shall:

(1) notify the recipient of those services of the name, address, and telephone number and individual to contact at the company that purchased the contract;

(2) notify the recipient of services at the time the contract is negotiated that another licensed company may provide any of the services requested by subcontracting or outsourcing those services; and

(3) if any of the services are subcontracted or outsourced to a licensed third party, notify the recipient of services, by mail, of the name, address, phone number, and license number of the company providing those services.

(e) The rules shall require that notice provided to a recipient of services under Subsection (d) shall:

(1) be mailed to the recipient in a written form that emphasizes the required information; and

(2) include stickers or other materials to be affixed to an alarm system indicating the alarm systems company's or alarm systems monitor's new telephone number.

(f) A company license holder acting as an alarm systems company does not have to provide the notice required under Subsection (d) if the contact information, including the address and the telephone numbers for the alarm systems company, has not changed.

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 7, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 9, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.089, eff. September 1, 2019.

Sec. 1702.289. INSPECTIONS. (a) An employee or agent of the department who enters the place of business of a person regulated under this chapter for the purpose of conducting an inspection or audit must:

(1) notify the manager or owner of the business of the presence of the person conducting the inspection or audit; and

(2) present the manager or owner of the business with credentials that identify the person conducting the inspection or

audit as an employee or agent of the department.

(b) This section does not prohibit the department from conducting an undercover investigation or covert audit in order to determine compliance with this chapter or a rule adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 10, eff. June 14, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.090, eff. September 1, 2019.

SUBCHAPTER M. EXPIRATION; RENEWAL

Sec. 1702.301. EXPIRATION. (a) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(32), eff. September 1, 2019.

(b) A company license, individual license, and security officer commission expire on the dates determined by the commission under Section 411.511, Government Code, but not later than the second anniversary of the date the license or commission is issued.

(c) A personal protection officer license expires on the date determined by the commission under Section 411.511, Government Code, but not later than the expiration date of the security officer commission under which the license is issued.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(32), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(32), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(32), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(32), eff. September 1, 2019.

(h) A license issued under this chapter, other than one specified in this section, expires on the date determined by the commission under Section 411.511, Government Code, but not later than the second anniversary of the date the license is issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.647(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.78, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.091, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(32), eff. September 1, 2019.

Sec. 1702.302. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for longer than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the department's records.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.648, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.79, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.092, eff. September 1, 2019.

Sec. 1702.303. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE

PRACTITIONER. A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal may obtain a new license without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.649(a), eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.80, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.093, eff. September 1, 2019.

Sec. 1702.305. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY ACTION. Renewal of a license does not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.306. EFFECT OF SUSPENSION ON LICENSE RENEWAL REQUIREMENTS. A suspended license expires on the license's expiration date and may be renewed as provided by this chapter, but the renewal does not entitle the license holder, while the license remains suspended and until the license is reinstated, to engage in the licensed activity or in conduct in violation of the order or judgment by which the license was suspended.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.308. CONTINUING EDUCATION. (a) This section does not apply to a noncommissioned security officer.
(b) The department shall recognize, prepare, or administer continuing education programs for company license holders, commissioned security officers, and individual license holders. The

commission shall set the minimum number of hours that must be completed and the types of programs that may be offered.

(c) A company license holder, commissioned security officer, or individual license holder must participate in the programs to the extent required by the commission to keep the person's license or commission. A company license holder, commissioned security officer, or individual license holder shall submit evidence of compliance with the commission's continuing education requirements in a manner prescribed by the department.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.652(a), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.83, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.094, eff. September 1, 2019.

Sec. 1702.309. SECURITY OFFICER COMMISSION RENEWAL. (a) The commission by rule shall develop a continuing education course required for renewal of a security officer commission. Only a department-approved instructor may administer the continuing education course. The course must include at least six hours of instruction determined by the department.

(b) A commissioned security officer must demonstrate the proficiency required under Section 1702.1685 within the 90-day period before the date the commission is renewed.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.652(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 593, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.84, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.095, eff. September 1, 2019.

SUBCHAPTER N. EXCEPTIONS

Sec. 1702.321. GOVERNMENT EMPLOYEES. (a) Except as provided

by this section, this chapter does not apply to an officer or employee of the United States, this state, or a political subdivision of this state while the employee or officer is performing official duties.

(b) The provisions of this chapter relating to security officer commissions apply to a person employed by a political subdivision whose duties include serving as a security guard, security watchman, or security patrolman on property owned or operated by the political subdivision if the governing body of the political subdivision files a written request with the department for the department to issue a commission to the political subdivision's employees with those duties.

(c) The department may not charge a fee for issuing a commission to an officer under Subsection (b). The department shall issue to the officer a pocket card designating the political subdivision that employs the officer.

(d) The commission expires at the time the officer's employment as a security officer by the political subdivision is terminated.

(e) The department may approve a security officer training program conducted by the political subdivision in accordance with Sections 1702.1675 and 1702.168.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.653, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.85, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.096, eff. September 1, 2019.

Sec. 1702.322. LAW ENFORCEMENT PERSONNEL. This chapter does not apply to:

(1) a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer:

(A) is employed in an employee-employer relationship or employed on an individual contractual basis:

(i) directly by the recipient of the services; or

(ii) by a company licensed under this chapter;

(B) is not in the employ of another peace officer;

(C) is not a reserve peace officer; and

(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and is being compensated solely by that county;

(3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.654, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1247 (S.B. 1600), Sec. 1, eff. June 17, 2011.

Sec. 1702.323. SECURITY DEPARTMENT OF PRIVATE BUSINESS. (a) Except as provided by Subsections (b) and (d), this chapter does not apply to an individual employed in an employee-employer relationship exclusively and regularly by one employer in connection with the affairs of the employer.

(b) An individual described by Subsection (a) who carries a firearm in the course of employment must obtain a private security officer commission under this chapter.

(c) The security department of a private business may not hire or employ an individual to perform a duty described by Section 1702.222 if the individual has been convicted of a crime that would otherwise preclude the individual from being licensed under this

chapter. The private business shall maintain the individual's criminal history record on file at the business and shall make the record available for inspection by the department.

(c-1) Although the security department of a private business that hires or employs an individual as a private security officer to possess a firearm in the course and scope of the individual's duties is required to apply for a security officer commission for the individual under this chapter, the security department of a private business is not required to apply for any license under this chapter.

(d) This chapter applies to an individual described by Subsection (a) who in the course of employment:

(1) comes into contact with the public;

(2) wears:

(A) a uniform commonly associated with security personnel or law enforcement;

(B) any type of badge commonly associated with security personnel or law enforcement; or

(C) a patch or apparel containing the word "security" or a substantially similar word that is intended to or is likely to create the impression that the individual is performing security services; and

(3) performs a duty described by Section 1702.108 or 1702.222.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.655, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 593, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 65 (H.B. 1393), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 663 (H.B. 1241), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 15, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 17.003, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.097, eff. September 1, 2019.

Sec. 1702.324. CERTAIN OCCUPATIONS. (a) For the purposes of this section, "landman" means an individual who, in the course and scope of the individual's business:

(1) acquires, divests, or manages petroleum or mineral interests;

(2) performs title or contract functions related to the exploration, exploitation, or disposition of petroleum or mineral interests; or

(3) otherwise engages in land services as defined by Section 954.001.

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor while selling equipment intended for resale;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) a person who is engaged in the business of psychological testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes;

(5) a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(6) a licensed engineer practicing engineering or directly supervising engineering practice under Chapter 1001, including forensic analysis, burglar alarm system engineering, and necessary data collection;

(7) an employee of a cattle association who inspects

livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(8) a landman performing activities in the course and scope of the landman's business;

(9) an attorney while engaged in the practice of law;

(10) a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition;

(11) an admitted insurer, insurance adjuster, agent, or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person;

(12) a person who on the person's own property or on property owned or managed by the person's employer:

(A) installs, changes, or repairs a mechanical security device;

(B) repairs an electronic security device; or

(C) cuts or makes a key for a security device;

(13) security personnel, including security contract personnel, working at a commercial nuclear power plant licensed by the United States Nuclear Regulatory Commission;

(14) a person or firm licensed as an accountant or accounting firm under Chapter 901, an owner of an accounting firm, or an employee of an accountant or accounting firm while performing services regulated under Chapter 901;

(15) a retailer, wholesaler, or other person who sells mechanical security devices, including locks and deadbolts, but who does not:

(A) service mechanical security devices for the public outside of the person's premises; or

(B) claim to act as a locksmith;

(16) an employee while performing investigative services that would otherwise be subject to this chapter for an entity regulated by the:

(A) Texas Department of Insurance;

(B) Office of Thrift Supervision;

(C) Securities and Exchange Commission;

(D) Federal Deposit Insurance Corporation; or

(E) Financial Industry Regulatory Authority;

(17) a social worker who holds a license issued under

Chapter 505 who is engaged in the practice of social work;

(18) persons licensed under Chapter 1101, an association thereof, their authorized agents, or a multiple listing service, engaged in the business of selling, maintaining, repairing, programming, or placing lockboxes used for accessing real property; or

(19) an automobile club that holds a certificate of authority under Chapter 722, Transportation Code, its subcontractor, or a business that provides similar services, that unlocks a vehicle at the request of the owner or operator of the vehicle and that does not otherwise perform a locksmith service.

(c) The exemptions provided by Subsection (b) apply only to a person described in that subsection while the person is performing services directly related to and dependent on the provision of the exempted service that does not otherwise require licensing under this chapter. The exemptions do not apply to activities or services that are independent of the service or profession that is the basis for the exemption.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.656, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 936, Sec. 13, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1237, Sec. 2, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.801, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 518 (H.B. 808), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1102 (H.B. 2243), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1155 (H.B. 3140), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 16, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.86, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 509 (H.B. 1779), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 11, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 197 (S.B. 604), Sec. 2, eff. May

24, 2023.

Sec. 1702.325. COMMON CARRIERS. This chapter does not apply to:

(1) a common carrier by rail engaged in interstate commerce, regulated by state and federal authorities, and transporting commodities essential to the national defense and to the general welfare and safety of the community; or

(2) an officer, employee, or agent of a common carrier, as defined by Section 153 of the federal Communications Act of 1934 (47 U.S.C. Section 153), and its subsequent amendments, while protecting the carrier or a user of the carrier's long-distance services from a fraudulent, unlawful, or abusive use of those long-distance services.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.657, eff. Sept. 1, 2001.

Sec. 1702.326. MEDICAL ALERT SERVICES. (a) This chapter does not apply to an entity that:

(1) provides medical alert services for persons who are sick or disabled;

(2) does not provide any other service that requires a license under this chapter; and

(3) is:

(A) a hospital or a wholly owned subsidiary or an affiliate of a hospital licensed under Chapter 241, Health and Safety Code; or

(B) a charitable or a nonprofit entity that provides the services in the manner required by Subsection (b) and that is exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c)(3) of that code.

(b) A charitable or nonprofit entity that provides medical alert services must provide those services through a licensed person, licensed nurse, licensed physician assistant or by a hospital, subsidiary, or affiliate described by Subsection (a)(3)(A).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.327. NONPROFIT AND CIVIC ORGANIZATIONS. This chapter does not apply to:

(1) a nonprofit business or civic organization that:

(A) employs a peace officer who meets the qualifications of Section 1702.322(1) as a patrolman, guard, or watchman;

(B) provides the services of the peace officer only to:

(i) the organization's members; or

(ii) if the organization does not have members, the members of the communities served by the organization as described in the organization's articles of incorporation or other organizational documents;

(C) devotes the net receipts from all charges for the services exclusively to the cost of providing the services or to the costs of other services for the enhancement of the security or safety of:

(i) the organization's members; or

(ii) if the organization does not have members, the members of the communities served by the organization as described in the organization's articles of incorporation or other organizational documents; and

(D) does not perform any other service that requires a license under this chapter; or

(2) a charitable, nonprofit organization that maintains a system of records to aid in the location of missing children and that:

(A) is exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986 and its subsequent amendments by being listed as an exempt entity under Section 501(c)(3) of that code;

(B) exclusively provides services related to locating missing children; and

(C) does not perform any other service that requires a license under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.328. SECURITY SYSTEMS SALES AND INSTALLATION. This chapter does not apply to:

(1) a person who owns and installs a burglar detection or alarm device on the person's own property or, if the person does not charge for the device or the installation, installs the device for the protection of the person's personal property located on another person's property and does not, as a normal business practice, install the devices on the property of another;

(2) a person in the business of building construction that installs electrical wiring and devices that may include in part the installation of a burglar alarm or detection device if:

(A) the person is a party to a contract that provides that:

(i) the installation will be performed under the direct supervision of, and inspected and certified by, a person licensed to install and certify the alarm or detection device; and

(ii) the license holder assumes full responsibility for the installation of the alarm or detection device; and

(B) the person does not service or maintain alarm systems, electronic access control devices, locks, or detection devices;

(3) a person who sells or installs automobile burglar alarm devices and who does not perform any other act that requires a license under this chapter; or

(4) a person who sells exclusively by e-commerce, over the counter transactions, or mail order, alarm systems, electronic access control devices, locks, or detection devices.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 936, Sec. 14, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1155 (H.B. 3140), Sec. 3, eff. June 18, 2005.

Sec. 1702.329. FIRE ALARM AND DETECTION SALES AND INSTALLATION. This chapter does not apply to:

(1) a person whose activities are regulated under Article 5.43-2, Insurance Code, except to the extent those activities are specifically regulated under this chapter; or

(2) a person who holds a license or other credential issued by a municipality to practice as an electrician and who installs fire or smoke detectors only in single-family or multifamily residences.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.330. SECURITY PERSONNEL OF PRIVATE INSTITUTION OF HIGHER EDUCATION. This chapter does not apply to:

(1) a person who is employed full-time by and is commissioned as a campus security personnel employee by a private institution of higher education under Section 51.212, Education Code; or

(2) a peace officer commissioned by an incorporated municipality who is hired under Section 51.212, Education Code, on a regular basis by a private institution of higher education while that peace officer is operating within the scope of the peace officer's employment with the institution of higher education.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.658(a), eff. Sept. 1, 2001.

Sec. 1702.331. PERSONAL EMERGENCY RESPONSE SYSTEMS. (a) In this section, "personal emergency response system" means an alarm system that is:

(1) installed in the residence of a person;

(2) monitored by an alarm systems company;

(3) designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and

(4) not part of a combination of alarm systems that includes a burglar alarm or fire alarm.

(b) This chapter does not apply to:

(1) an alarm systems company that sells, installs, services, monitors, or responds to only personal emergency response systems;

(2) an alarm systems installer who installs, maintains, or repairs only personal emergency response systems; and

(3) an owner of an alarm systems company described by Subdivision (1).

Added by Acts 2005, 79th Leg., Ch. 808 (S.B. 568), Sec. 8, eff. September 1, 2005.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.098, eff. September 1, 2019.

Sec. 1702.332. TELEMATICS SERVICE PROVIDERS. (a) In this section, "telematics service" means:

(1) a service that:

(A) is provided to owners, operators, and occupants of consumer vehicles or commercial fleet vehicles through the remote access of in-vehicle data that may rely on global positioning system satellite data to fix the exact location of the vehicle, including:

(i) location-specific emergency and roadside vehicle breakdown assistance;

(ii) automatic collision notification;

(iii) real-time traffic and navigation information;

(iv) remote vehicle diagnostics; and

(v) stolen vehicle recovery;

(B) is enabled through the two-way communication of voice or data, often with an interactive voice response technology interface, between a service subscriber's vehicle and a telematics company's response center; and

(C) is provided to:

(i) enhance vehicle service, safety, and convenience while driving for vehicle owners;

(ii) enable automakers and automobile dealerships to achieve greater service and customer management efficiencies and to increase customer retention; and

(iii) enable fleet operators to remotely manage their vehicles and other mobile assets; and

(2) a related service provided to consumers, automakers, automobile dealerships, and commercial fleet operators by a telematics company as part of the emerging technology industry that delivers telematics services on a national basis to service subscribers.

(b) Except as otherwise provided by this section, this chapter does not apply to a person who provides a telematics service in this state.

(c) To qualify for the exemption provided by Subsection (b), a telematics service provider shall establish business practices and procedures that are at least as stringent as the guidelines established by the Association of Public Safety Communications Officials International regarding the communication of information from telematics service providers to public safety agencies.

(d) The commission may adopt rules necessary to carry out the purposes of this section, including rules to determine whether a telematics service provider is complying with Subsection (c).

Added by Acts 2005, 79th Leg., Ch. 207 (H.B. 1531), Sec. 1, eff. September 1, 2005.
Renumbered from Occupations Code, Section 1702.331 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(59), eff. September 1, 2007.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.099, eff. September 1, 2019.

Sec. 1702.333. CERTAIN VOLUNTEERS. (a) In this section, "volunteer security services" means services or activities that are:

(1) regulated under this chapter; and

(2) provided without compensation or remuneration.

(b) This chapter does not apply to a person who is providing volunteer security services on:

(1) the premises of a church, synagogue, or other established place of religious worship; or

(2) premises where an event sponsored or sanctioned by a public primary or secondary school is taking place.

(c) Except as provided by Subsection (d), while providing volunteer security services under Subsection (b), a person may not wear a uniform or badge that:

(1) contains the word "security"; or

(2) gives the person the appearance of being a peace officer, personal protection officer, or security officer.

(d) A peace officer providing volunteer security services under Subsection (b) may:

(1) with the consent of the head of the employing or appointing law enforcement agency, wear the uniform of the agency; or

(2) wear another uniform or badge that gives the person the appearance of being a peace officer.

(e) The reimbursement for or payment of an insurance policy insuring a peace officer who provides volunteer security services under Subsection (b) for civil liability arising from acts occurring while providing those services is not considered compensation or reimbursement.

Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 11.001, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 812 (H.B. 1133), Sec. 1, eff. September 1, 2023.

SUBCHAPTER O. PROHIBITED PRACTICES AND GROUNDS FOR DENIAL AND DISCIPLINARY ACTION

Sec. 1702.361. DENIAL AND DISCIPLINARY ACTIONS; GROUNDS. (a) The commission, for conduct described by Subsection (b), may:

(1) deny an application or revoke, suspend, or refuse to renew a license or security officer commission;

(2) reprimand a license holder or commissioned security officer; or

(3) place on probation a person whose license or security officer commission has been suspended.

(b) The commission shall take disciplinary action described by Subsection (a) on proof:

(1) that the applicant, license holder, majority owner of a license holder, or commissioned security officer has:

(A) violated this chapter or a rule adopted under this chapter;

(B) become ineligible for licensure or a security officer commission under Section 1702.163, if applicable, other than an action for which the department has taken summary action under Section 1702.364;

(C) engaged in fraud, deceit, or misrepresentation;

(D) made a material misstatement in an application for or renewal of a license or commission;

(E) failed to pay in full an administrative penalty assessed under Subchapter R, Chapter 411, Government Code, for which

the commission has issued a final order; or

(F) performed any service for which an individual license is required under this chapter and either:

(i) was not employed with a company licensed under this chapter at the time the service was performed; or

(ii) performed the service for a company licensed under this chapter that was not listed on the individual's individual license without informing the department of the individual's employment with the company within a reasonable period; or

(2) that the company license holder employing an individual license holder or commissioned security officer has submitted to the department sufficient evidence that the individual license holder or commissioned security officer:

(A) engaged in fraud or deceit while employed by the company license holder; or

(B) committed theft while performing work as an individual license holder or commissioned security officer.

(c) The commission may place on probation a person whose license is suspended. If a person's suspension of a license is probated, the commission may require the person:

(1) to report regularly to the department on matters that are the basis of the suspension;

(2) to limit practice to the areas prescribed by the commission; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(d) The commission may revoke a license or security officer commission if the person holding that credential under this chapter submits payment of a fee or penalty that is returned for insufficient funds and the person has received notice and an opportunity to provide payment in full.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.659, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 17, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.87, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.18, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 12, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.100, eff. September 1, 2019.

Sec. 1702.363. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Except as provided by Section 1702.364, a person regulated under this chapter against whom the commission has taken action is entitled to a hearing before the State Office of Administrative Hearings. A proceeding under this section is a contested case that is governed by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.662, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.89, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.101, eff. September 1, 2019.

Sec. 1702.364. SUMMARY ACTIONS. (a) On receiving written notice from a law enforcement agency that a person has been charged with or convicted of an offense that would make the person ineligible for a license or security officer commission under Section 1702.113 or 1702.163, or a rule adopted under Section 1702.004(b), the commission shall:

(1) summarily deny the person's application for a license or security officer commission;

(2) in the event of pending charges, summarily suspend the person's license or security officer commission; or

(3) in the event of a conviction, summarily revoke the person's license or security officer commission.

(b) To initiate a proceeding to take action under Subsection (a), the department must serve notice to the person. The notice must:

(1) inform the person of the person's right to a hearing

before the department or the department's designee;

(2) state the basis for the summary action; and

(3) be personally served on the person or the person's authorized representative, or sent to the person by certified or registered mail, return receipt requested, to the person's mailing address as it appears in the department's records.

(c) The action is effective at the time notice is served. The person shall immediately surrender to the department any security officer commission, pocket card, or other form of identification issued by the department.

(d) At a hearing under this section, the person must show cause why:

(1) the application should not have been denied;

(2) the license or security officer commission should not have been suspended; or

(3) the license or commission should not have been revoked.

(e) Chapter 2001, Government Code, applies to a proceeding under this section for the summary denial of an application for or the summary suspension or revocation of a license or security officer commission.

(f) The dismissal of a complaint, information, or indictment or an acquittal releases the person from automatic grounds for a summary denial of an application or summary suspension of a license or security officer commission under this section. A conviction for the offense giving rise to a summary suspension is automatic grounds for immediate, summary revocation.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(37), eff. September 1, 2019.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(37), eff. September 1, 2019.

(i) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(37), eff. September 1, 2019.

(j) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1146, Sec. 4.102(8), eff. September 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.663, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 19, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.90, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.102(8), eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 13, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.102, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.114(b)(37), eff. September 1, 2019.

Sec. 1702.365. ABDUCTION OF CHILD. The commission shall revoke a person's license or security officer commission or deny a person's application for, or renewal of, a license or security officer commission on proof that the person or an agent of the person has, after the date of application for a license or security officer commission, abducted or attempted to abduct by force or the threat of force or by misrepresentation, stealth, or unlawful entry a child who at the time of the abduction or attempt is under the care and control of a person who:

(1) has custody or physical possession of the child under a court order; or

(2) is exercising the care and control with the consent of a person who has custody or physical possession of the child under a court order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.664, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.91, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.103, eff. September 1, 2019.

Sec. 1702.367. COMPLAINT INVESTIGATION; SUBPOENA; WITNESS. (a) For an investigation conducted under this chapter, if necessary to enforce this chapter or the commission rules adopted under this chapter, the department may issue an administrative subpoena to any

person in this state compelling:

(1) the production of information or documents; or

(2) the attendance and testimony of a witness.

(b) A witness is not privileged to refuse to testify to a fact or to produce a record or document with respect to which the witness is properly examined by the hearings officer.

(c) A person required to testify or to produce a record or document on any matter properly under inquiry by the department who refuses to testify or to produce the record or document on the ground that the testimony or the production of the record or document would incriminate or tend to incriminate the person is nonetheless required to testify or to produce the record or document. A person who is required to testify or to produce a record or document under this subsection is not subject to indictment or prosecution for a transaction, matter, or thing concerning which the person truthfully testifies or produces evidence.

(d) If a witness refuses to obey a subpoena or to give evidence relevant to proper inquiry by the department, the department may petition a district court of the county in which the hearing is held to compel the witness to obey the subpoena or to give the evidence. The court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible.

(e) An investigator employed by the department may take statements under oath in an investigation of a matter covered by this chapter.

(f) A person licensed or otherwise regulated under this chapter who fails without good cause to comply with a subpoena issued under this section may be subject to suspension of a license under Section 1702.361.

(g) If a subpoena issued under this section relates to an ongoing criminal investigation by the department and the department determines that disclosure could significantly impede the investigation, the subpoena may provide that the person to whom the subpoena is directed may not:

(1) disclose that the subpoena has been issued;

(2) identify or describe any records requested by the subpoena; or

(3) disclose whether records have been furnished in response to the subpoena.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.666, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.92, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.19, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.104, eff. September 1, 2019.

Sec. 1702.368. NOTIFICATION OF CONVICTION FOR CERTAIN OFFENSES. The department shall notify the police department of the municipality and the sheriff's department of the county in which a person licensed or commissioned under this chapter resides of the conviction of the person for a Class B misdemeanor or equivalent offense or a greater offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.667(a), eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.93, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.105, eff. September 1, 2019.

Sec. 1702.369. NO REINSTATEMENT AFTER REVOCATION. A revoked license may not be reinstated.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.370. EFFECT OF SUSPENSION; MONITORING OF EXISTING ALARM CONTRACTS. Subject to expiration of the license under Section 1702.306, a license holder may continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.3705. PROHIBITION AGAINST CERTAIN POLITICAL SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. (a) Except as provided by Subsection (b), a political subdivision may not offer residential alarm system sales, service, installation, or monitoring unless it has been providing monitoring services to residences within the boundaries of the political subdivision as of September 1, 1999. Any fee charged by the political subdivision may not exceed the cost of the monitoring.

(b) A political subdivision may:

(1) offer service, installation, or monitoring for property owned by the political subdivision or another political subdivision;

(2) allow for the response of an alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity;

(3) offer monitoring in connection with a criminal investigation; or

(4) offer monitoring to a financial institution, as defined by Section 59.301, Finance Code, that requests, in writing, that the political subdivision provide monitoring service to the financial institution.

(c) The limitations of Subsection (a) do not apply to a political subdivision in a county with a population of less than 80,000 or in a political subdivision where monitoring is not otherwise provided or available.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.668(a), eff. Sept. 1, 2001.

Sec. 1702.372. RECUSAL OF COMMISSION MEMBER. (a) A commission member who participated in the investigation of a complaint of a violation of this chapter or in informal settlement negotiations regarding the complaint:

(1) may not vote on the matter at a commission meeting related to the complaint; and

(2) shall state at the meeting the reason for which the member is prohibited from voting on the matter.

(b) A statement under Subsection (a)(2) shall be entered into the minutes of the meeting.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.94, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.106, eff. September 1, 2019.

SUBCHAPTER P. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1702.381. CIVIL PENALTY. (a) A person who is not licensed under this chapter, who does not have a license application pending, and who violates this chapter may be assessed a civil penalty to be paid to the state not to exceed $10,000 for each violation.

(b) A person who contracts with or employs a person who is required to hold a license or security officer commission under this chapter knowing that the person does not hold the required license or commission or who otherwise, at the time of contract or employment, is in violation of this chapter may be assessed a civil penalty to be paid to the state in an amount not to exceed $10,000 for each violation.

(c) A civil penalty under this section may be assessed against a person on proof that the person has received at least 30 days' notice of the requirements of this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.670, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 21, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.95, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.107, eff. September 1, 2019.

Sec. 1702.382. INJUNCTION. (a) An attorney for the department, the attorney general's office, or any criminal prosecutor in this state may institute an action against a person to enjoin a

violation by the person of this chapter or an administrative rule.

(b) An injunction action instituted under this section does not require an allegation or proof that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation to sustain an action under this section. A bond is not required for an injunction action instituted under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.671, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 22, eff. September 1, 2007.

Sec. 1702.383. ACTION FOR CIVIL PENALTY OR INJUNCTION. If a person has violated a provision of this chapter for which a penalty is imposed under Section 1702.381, an attorney for the department, the attorney general's office, or any criminal prosecutor in this state may institute a civil suit in a Travis County district court or in a district court in the county in which the violation occurred for injunctive relief under Section 1702.382 or for assessment and recovery of the civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.672, eff. Sept. 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 906 (H.B. 2833), Sec. 23, eff. September 1, 2007.

Sec. 1702.3835. DECEPTIVE TRADE PRACTICE. (a) A person who performs or offers to perform an activity regulated under this chapter, but who is not licensed or otherwise authorized under this chapter to perform the activity, commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code.

(b) A public or private right or remedy under Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec.

4B.20, eff. September 1, 2009.

Sec. 1702.384. FALSIFICATION OF CERTAIN DOCUMENTS; OFFENSE. (a) A person commits an offense if the person knowingly falsifies fingerprints or photographs submitted under Section 1702.110.

(b) An offense under this section is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1702.3841. INSUFFICIENT INSURANCE COVERAGE; OFFENSE. (a) A person commits an offense if the person is subject to Section 1702.124 and knowingly fails to provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the person related to private security. A person is presumed to have acted knowingly for purposes of this subsection if the person received reasonable notice from the department and an opportunity to provide or maintain the documentation required by Section 1702.124 and failed to do so.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1084 (H.B. 3433), Sec. 14, eff. June 14, 2013.

Sec. 1702.386. UNAUTHORIZED EMPLOYMENT; OFFENSE. (a) A person commits an offense if the person contracts with or employs a person who is required to hold a license or commission under this chapter knowing that the person does not hold the required license or commission or who otherwise, at the time of contract or employment, is in violation of this chapter.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.96, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.108, eff. September 1, 2019.

Sec. 1702.3863. UNAUTHORIZED CONTRACT WITH BAIL BOND SURETY; OFFENSE. (a) A person commits an offense if the person contracts with or is employed by a bail bond surety as defined by Chapter 1704 to secure the appearance of a person who has violated Section 38.10, Penal Code, unless the person is:

(1) a peace officer;

(2) an individual licensed as a private investigator; or

(3) a commissioned security officer employed by a licensed guard company.

(b) An offense under Subsection (a) is a state jail felony.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.673(a), eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.97, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.109, eff. September 1, 2019.

Sec. 1702.3867. EXECUTION OF CAPIAS OR ARREST WARRANT; OFFENSE. (a) A private investigator executing a capias or an arrest warrant on behalf of a bail bond surety may not:

(1) enter a residence without the consent of the occupants;

(2) execute the capias or warrant without written authorization from the surety;

(3) wear, carry, or display any uniform, badge, shield, or other insignia or emblem that implies that the private investigator is an employee, officer, or agent of the federal government, the state, or a political subdivision of the state; or

(4) notwithstanding Section 9.51, Penal Code, use deadly force.

(b) Notwithstanding Subsection (a)(3), a private investigator may display identification that indicates that the person is acting on behalf of a bail bond surety.

(c) A private investigator executing a capias or an arrest warrant on behalf of a bail bond surety shall immediately take the person arrested to:

(1) if the arrest is made in the county in which the capias or warrant was issued:

(A) the county jail for that county if:

(i) the offense is a Class A or Class B misdemeanor or a felony; or

(ii) the offense is a Class C misdemeanor and the capias or warrant was issued by a magistrate of that county; or

(B) the municipal jail for the appropriate municipality if the offense is a Class C misdemeanor and the capias or warrant was issued by a magistrate of the municipality; or

(2) if the arrest is made in a county other than the county in which the capias or warrant was issued, the county jail for the county in which the arrest is made.

(d) A person commits an offense if the person violates this section. An offense under this section is a state jail felony.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.674(a), eff. Sept. 1, 2001.

Sec. 1702.387. FAILURE TO SURRENDER CERTAIN DOCUMENTS; OFFENSE. (a) A person commits an offense if the person fails to surrender or immediately return to the department the person's commission, pocket card, or other identification issued to the person by the department under this chapter on notification of a summary suspension or summary denial under Section 1702.364.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.675, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.98, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.110, eff. September 1, 2019.

Sec. 1702.3875. IMPERSONATING SECURITY OFFICER; OFFENSE. (a) A person commits an offense if the person:

(1) impersonates a commissioned or noncommissioned security officer with the intent to induce another to submit to the person's

pretended authority or to rely on the person's pretended acts of a security officer; or

(2) knowingly purports to exercise any function that requires licensure as a noncommissioned security officer or a security officer commission.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 822, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.111, eff. September 1, 2019.

Sec. 1702.3876. IMPERSONATING PRIVATE INVESTIGATOR; OFFENSE. (a) A person commits an offense if the person:

(1) impersonates a private investigator with the intent to induce another to submit to the person's pretended authority or to rely on the person's pretended acts of a private investigator; or

(2) knowingly purports to exercise any function that requires licensure as a private investigator.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 656 (H.B. 1400), Sec. 1, eff. September 1, 2021.

Sec. 1702.388. VIOLATION OF CHAPTER; OFFENSE. (a) A person commits an offense if the person violates a provision of this chapter for which a specific criminal penalty is not prescribed.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this chapter of failing to hold a license, certificate of insurance, or commission that the person is required to hold under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4.99, eff.

September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 5.112, eff. September 1, 2019.

Sec. 1702.389. VENUE. An offense under this chapter may be prosecuted in Travis County or in the county in which the offense occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 1704. REGULATION OF BAIL BOND SURETIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1704.001. DEFINITIONS. In this chapter:

(1) "Bail bond" means a cash deposit, or similar deposit or written undertaking, or a bond or other security, given to guarantee the appearance of a defendant in a criminal case.

(2) "Bail bond surety" means a person who:

(A) executes a bail bond as a surety or cosurety for another person; or

(B) for compensation deposits cash to ensure the appearance in court of a person accused of a crime.

(3) "Board" means a county bail bond board.

(4) "Bonding business" or "bail bond business" means the solicitation, negotiation, or execution of a bail bond by a bail bond surety.

(4-a) "Final judgment" means a judgment that disposes of all issues and parties in a case.

(5) "Person" means an individual or corporation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 6, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 316 (S.B. 624), Sec. 1, eff. September 1, 2005.

Sec. 1704.002. APPLICATION OF CHAPTER. This chapter applies only in a county with a population of:

(1) 110,000 or more; or

(2) less than 110,000 in which a board is created.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. COUNTY BAIL BOND BOARDS

Sec. 1704.051. MANDATORY CREATION OF BOARD. A board is created in each county with a population of 110,000 or more.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.052. DISCRETIONARY CREATION OF BOARD. A board may be created in a county with a population of less than 110,000 if:

(1) a majority of the persons who would serve as members of the board under Section 1704.053, or who would designate the persons who would serve as members of the board, determine to create a board; and

(2) the commissioners court approves the creation of the board by a majority vote.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 923 (H.B. 3003), Sec. 1, eff. June 19, 2009.

Sec. 1704.053. BOARD COMPOSITION. A board consists of:

(1) the sheriff or a designee from the sheriff's office who must be the sheriff's administrator or a deputy sheriff of the rank of at least sergeant;

(2) a district judge of the county having jurisdiction over criminal matters and designated by the presiding judge of the administrative judicial district or a designee of the district judge who is approved by the presiding judge;

(3) the county judge, a member of the commissioners court designated by the county judge, or a designee approved by the commissioners court;

(4) a judge of a county court or county court at law in the county having jurisdiction over criminal matters and designated by

the commissioners court or a designee of the judge who is approved by the commissioners court;

(5) the district attorney or an assistant district attorney designated by the district attorney;

(6) a licensed bail bond surety or agent for a corporate surety in the county elected under Section 1704.0535, or a bail bond surety or agent for a corporate surety licensed in the county who is designated by the elected surety or agent;

(7) a justice of the peace;

(8) the district clerk or the clerk's designee;

(9) the county clerk or the clerk's designee, if the county clerk has responsibility over criminal matters;

(10) if appointed by the board, a presiding judge of a municipal court in the county;

(11) if the county's principal municipality designates a presiding judge in the municipal court system, the presiding judge or a municipal judge from the system designated by the presiding judge;

(12) the county treasurer or the treasurer's designee or, if appointed by the commissioners court in a county that does not have a county treasurer, the person designated by the county commissioners court to perform the duties of the county treasurer; and

(13) a criminal defense attorney practicing in the county and elected by other attorneys whose principal places of business are located in the county and who are not legally prohibited from representing criminal defendants or the designee of the criminal defense attorney.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.503(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 7, eff. June 20, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 353 (S.B. 235), Sec. 1, eff. September 1, 2007.

Sec. 1704.0535. ELECTION OF CERTAIN BAIL BOND BOARD MEMBERS. (a) The board shall annually conduct a secret ballot election to elect the members of the board who serve as the representative of licensed bail bond sureties and the representative of the criminal

defense attorneys by electing:

(1) a licensed bail bond surety or agent for a corporate surety board member; and

(2) a criminal defense attorney who is practicing in the county.

(b) Each individual licensed in the county as a bail bond surety or agent for a corporate surety is entitled to cast one vote for each license held to elect the board member who is a surety or agent for a corporate surety.

(c) Each attorney who has a principal place of business located in the county and who is not legally prohibited from representing criminal defendants in the county is entitled to cast one vote to elect the board member who is a criminal defense attorney.

(d) Each elected justice of the peace in the county who is not legally prohibited from voting in an election for the purpose is entitled to cast one vote to elect the board member who is a justice of the peace.

Added by Acts 2003, 78th Leg., ch. 942, Sec. 8, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 234 (H.B. 2894), Sec. 1, eff. September 1, 2015.

Sec. 1704.054. PRESIDING OFFICER. (a) A board shall initially elect one of its members as presiding officer.

(b) The presiding officer shall preside over board meetings.

(c) The presiding officer may vote on any board matter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 9, eff. June 20, 2003.

Sec. 1704.055. MEETINGS. (a) A board shall hold its initial meeting not later than the 60th day after the date the board is created.

(b) Except as provided by Subsection (c), a board shall meet:

(1) at least once a month; and

(2) at other times at the call of the presiding officer.

(c) A board in a county with a population of less than 150,000 shall meet:

(1) at least four times each year during the months of January, April, July, and October at the call of the presiding officer; and

(2) at other times at the call of the presiding officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 899 (H.B. 383), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1011 (H.B. 885), Sec. 1, eff. September 1, 2015.

Sec. 1704.056. QUORUM; MAJORITY VOTE. (a) Four members of a board constitute a quorum.

(b) A board may take action only on a majority vote of the board members present.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. BOARD POWERS AND DUTIES

Sec. 1704.101. ADMINISTRATIVE AUTHORITY. A board shall:

(1) exercise powers incidental or necessary to the administration of this chapter;

(2) deposit fees collected under this chapter in the general fund of the county or in a separate county fund established for this purpose;

(3) supervise and regulate each phase of the bonding business in the county;

(4) adopt and post rules necessary to implement this chapter;

(5) conduct hearings and investigations and make determinations relating to the issuance, denial, or renewal of licenses;

(6) issue licenses to qualified applicants;

(7) deny licenses to unqualified applicants;

(8) employ persons necessary to assist in board functions; and

(9) conduct board business, including maintaining records and minutes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 921 (H.B. 1442), Sec. 1, eff. June 14, 2013.

Sec. 1704.102. ENFORCEMENT AUTHORITY. (a) A board shall:

(1) enforce this chapter in the county;

(2) conduct hearings and investigations and make determinations relating to license suspension and revocation;

(3) suspend or revoke a license for a violation of this chapter or a rule adopted by the board under this chapter; and

(4) require a record and transcription of each board proceeding.

(b) A board may:

(1) compel the appearance before the board of an applicant or license holder; and

(2) during a hearing conducted by the board, administer oaths, examine witnesses, and compel the production of pertinent records and testimony by a license holder or applicant.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.103. DISBURSEMENTS FROM COUNTY FUND. (a) Fees deposited in the general fund of a county or in a separate county fund under Section 1704.101(2) may be used only to administer and enforce this chapter, including reimbursement for:

(1) reasonable expenses incurred by the board in enforcing this chapter; and

(2) actual expenses incurred by a board member in serving on the board.

(b) For purposes of this section, serving on a board is an additional duty of a board member's office. A board member may not receive compensation for serving on a board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 921 (H.B. 1442), Sec. 2, eff. June 14, 2013.

Sec. 1704.104. POSTING OF BOARD RULE OR ACTION. A board shall post a rule adopted or an action taken by the board in an appropriate place in the county courthouse for the 10 days preceding the date the rule or action takes effect.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.105. LICENSED BAIL BOND SURETY LIST. (a) A board shall post in each court having criminal jurisdiction in the county, and shall provide to each local official responsible for the detention of prisoners in the county, a current list of each licensed bail bond surety and each licensed agent of a corporate surety in the county.

(b) A list of each licensed bail bond surety and each licensed agent of a corporate surety in a county must be displayed at each location where prisoners are examined, processed, or confined.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 10, eff. June 20, 2003.

Sec. 1704.107. NOTIFICATION OF LICENSE SUSPENSION OR REVOCATION. A board shall immediately notify each court and each local official responsible for the detention of prisoners in the county of:

(1) the suspension or revocation of a license issued under this chapter; and

(2) the revocation of the authority of a license holder's agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.108. NOTIFICATION OF DEFAULT BY CORPORATION. A board shall promptly notify the Texas Department of Insurance if a corporation fails to pay a judgment of forfeiture as provided by Section 1704.204(a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 11, eff. June 20, 2003.

Validity

This section has been declared unconstitutional. See Pruett v. Harris County Bail Bond Bd., 400 F. Supp. 2d 967 (S.D. Tex. 2005).

Sec. 1704.109. SOLICITATION AND ADVERTISEMENT. (a) A board by rule may regulate solicitations or advertisements by or on behalf of bail bond sureties to protect:

(1) the public from:

(A) harassment;

(B) fraud;

(C) misrepresentation; or

(D) threats to public safety; or

(2) the safety of law enforcement officers.

(b) A bail bond surety, an agent of a corporate surety, or an employee of the surety or agent may not make, cause to be made, or benefit from unsolicited contact:

(1) through any means, including in person, by telephone, by electronic methods, or in writing, to solicit bonding business related to an individual with an outstanding arrest warrant that has not been executed, unless the bail bond surety or agent for a corporate surety has an existing bail bond on the individual; or

(2) in person or by telephone to solicit bonding business:

(A) that occurs between the hours of 9 p.m. and 9 a.m.; or

(B) within 24 hours after:

(i) the execution of an arrest warrant on the individual; or

(ii) an arrest without a warrant on the individual.

(c) This section does not apply to a solicitation or unsolicited contact related to a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1262, Sec. 2, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 12, eff. June 20, 2003.

SUBCHAPTER D. LICENSING REQUIREMENTS

Sec. 1704.151. LICENSE REQUIRED. Except as provided by Section 1704.163, a person may not act as a bail bond surety or as an agent

for a corporate surety in the county unless the person holds a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 13, eff. June 20, 2003.

Sec. 1704.152. ELIGIBILITY. (a) To be eligible for a license under this chapter, an individual, including an agent designated by a corporation in an application, must:

(1) be a resident of this state and a citizen of the United States;

(2) be at least 18 years of age;

(3) possess the financial resources required to comply with Section 1704.160, unless the individual is acting only as agent for a corporation holding a license under this chapter; and

(4) submit documentary evidence that, in the two years preceding the date a license application is filed, the individual:

(A) has been continuously employed by a person licensed under this chapter for at least one year and for not less than 30 hours per week, excluding annual leave, and has performed duties that encompass all phases of the bonding business; and

(B) completed in person at least eight hours of continuing legal education in criminal law courses or bail bond law courses that are approved by the State Bar of Texas and that are offered by an accredited institution of higher education in the state.

(b) To be eligible for a license under this chapter, a corporation must be:

(1) chartered or admitted to do business in this state; and

(2) qualified to write fidelity, guaranty, and surety bonds under the Insurance Code.

(c) Subsection (a)(4) does not apply to the issuance of an original license:

(1) in a county before the first anniversary of the date a board is created in the county; or

(2) to an individual who applies to operate the bail bond business of a license holder who has died if the individual is related to the decedent within the first degree by consanguinity or

is the decedent's surviving spouse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 14, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 316 (S.B. 624), Sec. 2, eff. September 1, 2005.

Sec. 1704.153. INELIGIBILITY BECAUSE OF CRIMINAL CONVICTION. A person is not eligible for a license under this chapter if, after August 27, 1973, the person commits and is finally convicted of a misdemeanor involving moral turpitude or a felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.154. APPLICATION REQUIREMENTS. (a) To be licensed under this chapter, a person must apply for a license by filing a sworn application with the board.

(b) The application must:

(1) be in a form and contain the information prescribed by the board;

(2) state:

(A) the applicant's name, age, and address;

(B) if the applicant is a corporation, whether the applicant is:

(i) chartered or admitted to do business in this state; and

(ii) qualified to write fidelity, guaranty, and surety bonds under the Insurance Code;

(C) the name under which the bail bond business will be conducted, including a bail bond business that is conducted by an agent of a corporation;

(D) each place, including the street address and municipality, at which the business will be conducted; and

(E) the amount of cash or the cash value of a certificate of deposit or cashier's check that the applicant intends to deposit with the county treasurer if the applicant's application is approved or, if the applicant is an individual intending to

execute nonexempt real property in trust to the board, the value of the real property;

(3) if the applicant is an individual, be accompanied by a list, as required by Section 1704.155, of nonexempt real property owned by the applicant that the applicant intends to execute in trust to the board if the applicant's application is approved; and

(4) be accompanied by:

(A) the applicant's complete, sworn financial statement;

(B) the applicant's declaration that the applicant will comply with this chapter and the rules adopted by the board;

(C) three letters of recommendation, each from a person who:

(i) is reputable; and

(ii) has known the applicant or, if the applicant is a corporation, the agent designated by the corporation in the application for at least three years;

(D) a $500 filing fee;

(E) a photograph of the applicant or, if the applicant is a corporation, of the agent designated by the corporation in the application;

(F) a set of fingerprints of the applicant or, if the applicant is a corporation, of the agent designated by the corporation in the application taken by a law enforcement officer designated by the board;

(G) if the applicant is or has been licensed under this chapter in another county:

(i) a list of each county in which the applicant holds a license; and

(ii) a statement by the applicant, as of the date of the application, of any final judgments that have been unpaid for more than 30 days and that arose directly or indirectly from a bail bond executed by the applicant as a surety or as an agent for a surety; and

(H) if the applicant is a corporation, a statement by the designated agent, as of the date of the application, of any final judgments that have been unpaid for more than 30 days and that arose directly or indirectly from any bond executed by the agent as a surety or as an agent for a surety.

(c) A letter of recommendation submitted under Subsection

(b)(4)(C) must:

(1) state that the applicant or, if the applicant is a corporation, the agent designated by the corporation in the application has a reputation for honesty, truthfulness, fair dealing, and competency; and

(2) recommend that the board issue the license.

(d) Until payment of the final judgment, an unpaid final judgment disclosed under Subsection (b)(4)(G)(ii) or (b)(4)(H) bars licensure for the applicant unless the applicant has deposited with the court cash or a supersedeas bond in the amount of the final judgment pending:

(1) a ruling on a timely filed motion for a new trial; or

(2) an appeal.

(e) A corporation must file a separate corporate application for each agent the corporation designates in the county.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 15, eff. June 20, 2003.

Sec. 1704.155. REAL PROPERTY LIST. A list of nonexempt real property required under Section 1704.154(b)(3) must, for each parcel listed, include:

(1) a legal description of the property that would be sufficient to convey the property by general warranty deed;

(2) a current statement from each taxing unit authorized to impose taxes on the property showing that there is no outstanding tax lien against the property;

(3) at the option of the applicant, either the property's:

(A) net value according to a current appraisal made by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program; or

(B) value according to a statement from the county from the county's most recent certified tax appraisal roll;

(4) a statement by the applicant that, while the property remains in trust, the applicant:

(A) agrees to pay the taxes on the property;

(B) will not further encumber the property unless the applicant notifies the board of the applicant's intent to encumber the property and the board permits the encumbrance; and

(C) agrees to maintain insurance on any improvements on the property against damage or destruction in the full amount of the value claimed for the improvements;

(5) a statement of whether the applicant is married; and

(6) if the applicant is married, a sworn statement from the applicant's spouse agreeing to transfer to the board, as a part of the trust, any right, title, or interest that the spouse may have in the property.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 16, eff. June 20, 2003.

Sec. 1704.156. REAPPRAISAL OF REAL PROPERTY. (a) An appraisal district may not reappraise real property solely because the property owner is a license holder or an applicant for a license under this chapter.

(b) An appraisal district is not prohibited from reappraising real property in connection with the appraisal of real property in the same general area or if the reappraisal is requested by the board, a license holder, or an applicant for a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.157. PRELIMINARY DETERMINATIONS. Before a hearing on an application, a board or a board's authorized representative shall determine whether the applicant:

(1) possesses the financial resources to comply with Section 1704.160; and

(2) satisfies the other requirements of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.158. HEARING ON APPLICATION. (a) After making the determinations required by Section 1704.157, a board shall conduct a

hearing on the application.

(b) During the hearing:

(1) the board may submit to the applicant or the applicant's agent any questions relevant to the board's decision on the application; and

(2) the applicant may present oral and documentary evidence.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.159. DECISION ON APPLICATION; BOARD ORDER. (a) After the hearing under Section 1704.158, the board shall enter an order conditionally approving the application unless the board determines that a ground exists to deny the application. If the board determines that a ground exists to deny the application, the board shall enter an order denying the application.

(b) An order issued under Subsection (a) conditionally approving an application becomes final on the date the applicant complies with the security requirements of Section 1704.160.

(c) A board shall give written notice to an applicant of the board's decision on the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 17, eff. June 20, 2003.

Sec. 1704.160. SECURITY REQUIREMENTS. (a) On receipt of notice under Section 1704.159 that an application has been conditionally approved, the applicant, not later than the 90th day after the date of receipt of the notice, must:

(1) if the applicant is an individual:

(A) subject to Subsection (b), deposit with the county treasurer a cashier's check, certificate of deposit, or cash in the amount stated on the application under Section 1704.154(b)(2)(E); or

(B) subject to Subsections (c)-(f), execute in trust to the board each deed to the property listed on the application under Section 1704.154(b)(3); or

(2) if the applicant is a corporation, subject to Subsection (b), deposit with the county treasurer a cashier's check, certificate of deposit, or cash in the amount stated on the

application under Section 1704.154(b)(2)(E).

(b) A deposit made under Subsection (a)(1)(A) or (a)(2) may not be less than $50,000. A corporation must make a separate deposit for each license granted to it in a county. A deposit made to a county with a population of less than 250,000 shall be placed in a fund known as a bail security fund.

(c) At the option of the applicant, the property executed in trust under Subsection (a)(1)(B) must be valued in the amount indicated by:

(1) an appraisal by a real estate appraiser who is a member in good standing of a nationally recognized professional appraiser society or trade organization that has an established code of ethics, educational program, and professional certification program; or

(2) the county's most recent certified tax appraisal roll.

(d) The total value of the property executed in trust under Subsection (a)(1)(B) may not be less than $50,000.

(e) A trust created under Subsection (a)(1)(B) is subject to the condition that the property executed in trust may, after notice is provided and under the conditions required by the Code of Criminal Procedure, be sold to satisfy a final judgment on a forfeiture on a bail bond executed by the applicant.

(f) If an applicant is married, the applicant's spouse must execute each deed of trust under Subsection (a)(1)(B) that involves community property.

(g) A board shall file each deed of trust in the records of each county in which the property is located. The applicant shall pay the filing fee.

(h) The certificate of authority to do business in this state issued under Section 861.102, Insurance Code, to an applicant that is a corporation is conclusive evidence of:

(1) the sufficiency of the applicant's security; and

(2) the applicant's solvency and credits.

(i) A license holder must maintain the amount of security required by this section during the time the person holds the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.504, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 18, eff. June 20, 2003; Acts 2003,

78th Leg., ch. 1276, Sec. 10A.547, eff. Sept. 1, 2003.

Sec. 1704.161. LICENSE FORM. (a) Each license issued under this chapter must show on its face the license expiration date and the license number.

(b) The same license number must appear on each subsequent renewal license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.162. LICENSE EXPIRATION AND RENEWAL. (a) A license issued or renewed under this chapter expires on the second anniversary after the date the license is issued or is to expire, as appropriate, if the license:

(1) has been issued for less than eight consecutive years; or

(2) has been suspended.

(b) To renew a license, a license holder must file with the board an application for renewal not later than the 31st day before the license expiration date.

(c) An application for renewal must comply with the requirements for an original license application under Section 1704.154, including the $500 filing fee requirement.

(d) A board shall approve an application for renewal if:

(1) the applicant's current license is not suspended or revoked;

(2) the application complies with the requirements of this chapter; and

(3) the board does not determine that a ground exists to deny the application.

(e) A person who applies to renew a license that has been held by the person for at least eight consecutive years without having been suspended or revoked under this chapter and who complies with the requirements of this chapter may renew the license for a period of 36 months from the date of expiration if the board:

(1) knows of no legal reason why the license should not be renewed; and

(2) determines that the applicant has submitted an annual

financial report to each county bail bond board before the anniversary date of the issuance of the applicant's license.

(f) A license renewed under Subsection (e) may be renewed subsequently each 36 months in a similar manner.

(g) The board may disapprove an application only by entering an order.

(h) Notwithstanding the expiration date of a license issued under this chapter, if a board to which Section 1704.055(c) applies tables a license holder's application for renewal or otherwise does not take action to approve or deny the application, the applicant's current license continues in effect until the next meeting of the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.505(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 19, eff. June 20, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1011 (H.B. 885), Sec. 2, eff. September 1, 2015.

Sec. 1704.163. ATTORNEY EXEMPTION. (a) Except as provided by this section, a person not licensed under this chapter may execute a bail bond or act as a surety for another person in any county in this state if the person:

(1) is licensed to practice law in this state; and

(2) at the time the bond is executed or the person acts as a surety, files a notice of appearance as counsel of record in the criminal case for which the bond was executed or surety provided or submits proof that the person has previously filed with the court in which the criminal case is pending the notice of appearance as counsel of record.

(b) A person executing a bail bond or acting as a surety under this section may not engage in conduct involved with that practice that would subject a bail bond surety to license suspension or revocation. If the board determines that a person has violated this subsection, the board may suspend or revoke the person's authorization to post a bond under this section or may bar the person from executing a bail bond or acting as a surety under this section until the person has remedied the violation.

(c) A person executing a bail bond or acting as a surety under this section is not relieved of liability on the bond solely because the person is later replaced as attorney of record in the criminal case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 7, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 316 (S.B. 624), Sec. 3, eff. September 1, 2005.

SUBCHAPTER E. BONDING BUSINESS

Sec. 1704.201. ACCEPTANCE OF LICENSE HOLDER BAIL BONDS. A sheriff shall accept or approve a bail bond executed by a license holder in the county in which the license holder is licensed if:

(1) the bond is for a county or district case;

(2) the bond is executed in accordance with this chapter and the rules adopted by the board; and

(3) a bail bond is required as a condition of release of the defendant for whom the bond is executed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.202. RECORD REQUIREMENTS. (a) A license holder shall maintain:

(1) a record of each bail bond executed by the license holder; and

(2) a separate set of records for each county in which the license holder is licensed.

(b) The records required to be maintained under this section must include for each bail bond executed and enforced:

(1) the style and number of the case and the court in which the bond is executed;

(2) the name of the defendant released on bond;

(3) the amount of bail set in the case;

(4) the amount and type of security held by the license holder; and

(5) a statement of:

(A) whether the security held by the license holder is:

(i) for the payment of a bail bond fee; or

(ii) to assure the principal's appearance in court; and

(B) the conditions under which the security will be returned.

(c) Repealed by Acts 2003, 78th Leg., ch. 942, Sec. 28.

(d) The records required under this section shall be:

(1) made available for inspection and copying at the board's expense on demand by the board or an authorized representative of the board;

(2) maintained at the license holder's office location in the county; and

(3) maintained for not less than four years after the conclusion of the case for which the bond was given.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 20, 28, eff. June 20, 2003.

Sec. 1704.203. BAIL BOND LIMIT; ADDITIONAL SECURITY. (a) Except as provided by Subsection (d), a license holder who holds a license originally issued before September 1, 1999, may not execute, and a person may not accept from the license holder, a bail bond that, in the aggregate with other bail bonds executed by the license holder in that county, results in a total amount that exceeds 10 times the value of the security deposited or executed by the license holder under Section 1704.160.

(b) A county officer or an employee designated by the board shall maintain for each license holder the total amount of the license holder's current liability on bail bonds.

(c) A license holder may not execute a bail bond if the amount of the license holder's current total liability on judgments nisi in that county equals or exceeds twice the amount of security deposited or executed by the license holder under Section 1704.160.

(d) A license holder, at any time, may increase the limits prescribed by this section by depositing or executing additional security.

(e) This section does not apply to a license holder that is a corporation.

(f) A bail bond surety who holds a license originally issued on

or after September 1, 1999, and who:

(1) has been licensed for fewer than two years or has had a license under this chapter suspended or revoked may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus five times the value of property held in trust under Section 1704.160(a)(1)(B);

(2) has been licensed for at least two years and fewer than four years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus six times the value of property held in trust under Section 1704.160(a)(1)(B);

(3) has been licensed for at least four years and fewer than six years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus eight times the value of property held in trust under Section 1704.160(a)(1)(B); or

(4) has been licensed for at least six years may not execute, and a person may not accept from the license holder, bail bonds that in the aggregate exceed 10 times the value of property held as security under Section 1704.160(a)(1)(A) plus 10 times the value of property held in trust under Section 1704.160(a)(1)(B).

(g) If a bail bond surety is subject to Subsection (f)(1) because the person has had a license under this chapter suspended or revoked and is also subject to Subsection (f)(2), (3), or (4), the prohibition imposed by Subsection (f)(1) controls.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.506(a), eff. Sept. 1, 2001.

Sec. 1704.204. PAYMENT OF FINAL JUDGMENT. (a) A person shall pay a final judgment on a forfeiture of a bail bond executed by the person not later than the 31st day after the date of the final judgment unless a timely motion for a new trial has been filed. If a timely motion for a new trial or a notice of appeal has been filed, the person shall:

(1) pay the judgment not later than the 31st day after the date the motion is overruled, if the motion is overruled; or

(2) deposit with the court cash or a supersedeas bond in the amount of the final judgment, if an appeal is filed.

(b) If a license holder fails to pay a final judgment as required by Subsection (a), the judgment shall be paid from the security deposited or executed by the license holder under Section 1704.160.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 21, eff. June 20, 2003.

Sec. 1704.205. BAIL BOND SETTLEMENT. Before a final judgment on a forfeiture of a bail bond:

(1) the prosecuting attorney may recommend to the court a settlement in an amount less than the amount stated in the bond; or

(2) the court may, on its own motion, approve a settlement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.206. REPLACEMENT OF SECURITY. If a final judgment on a forfeiture of a bail bond is paid from the security deposited or executed by a license holder under Section 1704.160, the license holder shall deposit or execute additional security in an amount sufficient to comply with that section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.207. SURRENDER OF PRINCIPAL; CONTEST. (a) A person executing a bail bond may surrender the principal for whom the bond is executed by:

(1) if the principal is represented by an attorney, notifying the principal's attorney of the person's intention to surrender the principal in a manner provided by Rule 21a, Texas Rules of Civil Procedure; and

(2) filing an affidavit with the court or magistrate before which the prosecution is pending that states:

(A) the person's intention to surrender the principal;

(B) the court and cause number of the case;
(C) the name of the defendant;
(D) the offense with which the defendant is charged;
(E) the date of the bond;
(F) the reason for the intended surrender; and
(G) that notice of the person's intention to surrender the principal has been provided as required by this subsection.

(b) If a principal is surrendered under Subsection (a) and the principal or an attorney representing the state or an accused in the case determines that a reason for the surrender was without reasonable cause, the person may contest the surrender in the court that authorized the surrender.

(c) If the court finds that a contested surrender was without reasonable cause, the court may require the person who executed the bond to refund to the principal all or part of the fees paid for execution of the bond. The court shall identify the fees paid to induce the person to execute the bond regardless of whether the fees are described as fees for execution of the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 22, eff. June 20, 2003.

Sec. 1704.208. BOND LIABILITY. (a) A person executing a bail bond is relieved of liability on the bond on the date of disposition of the case for which the bond is executed.

(b) For purposes of this section, disposition of a case occurs on the date the case is dismissed or the principal is acquitted or convicted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.209. BOND DISCHARGED ON APPEAL. (a) A bail bond shall be discharged if:

(1) the principal appeals the case for which the bond is executed; and
(2) the person who executed the bond does not agree to continue during the appeal as surety.

(b) A court may not require a person who executes a bail bond

to continue as surety while the principal appeals the case for which the bond is executed unless the person agrees to continue during the appeal as surety.

(c) This section does not prohibit a principal from obtaining an appeal bond under the Code of Criminal Procedure.

(d) This section prevails over any provision contained in the bail bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.210. WITHDRAWAL OF SECURITY. (a) A license holder may withdraw the security or a portion of the security deposited or executed under Section 1704.160, and the security shall be returned to the license holder or the license holder's heirs or assigns, if the person requesting the withdrawal is:

(1) a license holder in good standing and the amount of the security remaining after the withdrawal is:

(A) at least the minimum amount required by Section 1704.160; and

(B) an amount sufficient to maintain the ratios required by Section 1704.203; or

(2) a former license holder who has ceased to engage in the bonding business, or a former license holder's heir or assign, and the amount of the security remaining after the withdrawal is sufficient to:

(A) pay any outstanding judgments; and

(B) secure any unexpired obligation on a bail bond executed by the former license holder.

(b) The board may adopt rules to limit the number of times in a year security may be returned to a license holder under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1143 (H.B. 1822), Sec. 1, eff. September 1, 2011.

Sec. 1704.211. CORPORATE POWER OF ATTORNEY. (a) A corporation shall, before executing any bail bond, file with the county clerk of the county in which the corporation intends to execute the bond a

power of attorney designating an agent of the corporation authorized to execute bail bonds on behalf of the corporation.

(b) An agent designated by a power of attorney under Subsection (a) for a corporation holding a license under this chapter must be designated by the corporation in the corporation's application for a license.

(c) An agent designated by a power of attorney under Subsection (a) is not required under this chapter to obtain a general property and casualty agent license under Chapter 4051, Insurance Code.

(d) A corporation may limit the authority of an agent designated under Subsection (a) by specifying the limitation in the power of attorney that is filed with the county clerk and the board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 9, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.152, eff. September 1, 2005.

Sec. 1704.212. EFFECT OF DEFAULT BY CORPORATION; NOTICE REQUIRED. (a) A corporation may not act as a bail bond surety in a county in which the corporation is in default on five or more bail bonds.

(b) If a corporation defaults on a bail bond, the clerk of the court in which the corporation executed the bond shall deliver a written notice of the default to:

(1) the sheriff;

(2) the chief of police; or

(3) another appropriate peace officer.

(c) For purposes of this section:

(1) a corporation is considered in default on a bail bond beginning on the 11th day after the date the trial court enters a final judgment on the scire facias and ending on the date the judgment is satisfied, set aside, or superseded; and

(2) a corporation is not considered in default on a bail bond if, pending appeal, the corporation deposits cash or a supersedeas bond in the amount of the final judgment with the court in which the bond is executed.

(d) A deposit made under Subsection (c)(2) shall be applied to

the payment of a final judgment in the case.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 10, eff. Sept. 1, 2001.

Sec. 1704.213. OFFICE LOCATION. (a) A license holder shall maintain an office in the county in which the license holder holds a license.

(b) Not later than the seventh day after the date a license holder opens a new office or moves an office to a new location, the license holder shall notify the board of the location of the office.

Added by Acts 2001, 77th Leg., ch. 1262, Sec. 11, eff. Sept. 1, 2001.

SUBCHAPTER F. ENFORCEMENT PROVISIONS

Sec. 1704.251. INVESTIGATION. (a) A board, on its own motion, may investigate an action of or a record maintained by a license holder that relates to a complaint that the license holder has violated this chapter.

(b) A board shall investigate an action of or a record maintained by a license holder if:

(1) the board receives a sworn complaint providing reasonable cause to believe that a violation of this chapter has occurred; or

(2) a court requests an investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.252. DISCRETIONARY LICENSE SUSPENSION OR REVOCATION: GROUNDS. After notice and hearing, a board may revoke or suspend a license if the license holder:

(1) violates this chapter or a rule adopted by the board under this chapter;

(2) fraudulently obtains a license under this chapter;

(3) makes a false statement or misrepresentation:

(A) in an application for an original or renewal license; or

(B) during a hearing conducted by the board;

(4) refuses to answer a question submitted by the board during a hearing relating to the license holder's license, conduct, or qualifications;

(5) is finally convicted under the laws of this state, another state, or the United States of an offense that:

(A) is a misdemeanor involving moral turpitude or a felony; and

(B) is committed after August 27, 1973;

(6) is found by a court to be bankrupt or is insolvent;

(7) is found by a court to be mentally incompetent;

(8) fails to pay a judgment in accordance with Section 1704.204;

(9) pays commissions or fees to or divides commissions or fees with, or offers to pay commissions or fees to or divide commissions or fees with, a person or business entity not licensed under this chapter;

(10) solicits bonding business in a building in which prisoners are processed or confined;

(11) recommends to a client the employment of a particular attorney or law firm in a criminal case;

(12) falsifies or fails to maintain a record required under this chapter;

(13) fails to promptly permit the board, or a representative or an agent of the board, of the county in which the license holder is licensed to inspect a record required under this chapter;

(14) acts as a bail bond surety under a suspended or expired license;

(15) fails two or more times to maintain the amount of security required by Section 1704.160; or

(16) misrepresents to an official or an employee of the official the amount for which the license holder may execute a bail bond for purposes of obtaining the release of a person on bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.253. MANDATORY LICENSE SUSPENSION OR REVOCATION: GROUNDS. (a) A board shall immediately suspend a license if the license holder fails to maintain the amount of security required by

Section 1704.160. A board is not required to provide notice or a hearing before suspending a license under this subsection. A license suspended under this subsection shall be immediately reinstated if the license holder deposits or executes the amount of security required by Section 1704.160.

(b) After notice and hearing as provided by Section 1704.254, a board shall revoke a license if:

(1) the license holder fails to pay a judgment in accordance with Section 1704.204; and

(2) the amount of security maintained by the license holder under Section 1704.160 is insufficient to pay the judgment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.2535. FAILURE TO PAY FINAL JUDGMENT BY BAIL BOND SURETY. (a) The board or its authorized representative shall immediately notify the sheriff if a bail bond surety fails to pay a final judgment of forfeiture as provided by Section 1704.204(a).

(b) After receiving notification, the sheriff may not accept any bonds from the bail bond surety until the surety pays the judgment.

(c) The bail bond surety's privilege to post bonds is reinstated when the bail bond surety pays the judgment.

(d) A board is not required to provide notice or a hearing before making the notification required by this section.

Added by Acts 2003, 78th Leg., ch. 942, Sec. 23, eff. June 20, 2003.

Sec. 1704.254. NOTICE AND HEARING. (a) Notice of a hearing to suspend or revoke a license under this chapter must:

(1) be sent by certified mail to the last known address of the license holder not later than the 11th day before the date of the hearing;

(2) state each alleged violation of this chapter; and

(3) include a copy of any written complaint on which the hearing will be based.

(b) The hearing is limited to each alleged violation stated in the notice.

(c) During the hearing, the license holder:

(1) is entitled to an opportunity to be heard; and
(2) may present and cross-examine witnesses.

(d) The hearing must be recorded. A license holder may obtain a copy of the record on request and payment of the reasonable costs of transcription.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 24, eff. June 20, 2003.

Sec. 1704.255. APPEAL; VENUE. (a) An applicant or a license holder may appeal an order of a board denying an application for a license or renewal of a license, or suspending or revoking a license, by filing a petition in a district court in the county not later than the 30th day after the date the person receives notice of the denial, suspension, or revocation.

(b) An appeal filed under this section is an action against the board. An applicant or a license holder may not bring the action against an individual board member.

(c) The board may not assert a reason on appeal for an action by the board that differs from the reasons specified in the board's notice of hearing under Section 1704.254.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 25, eff. June 20, 2003.

Sec. 1704.256. STANDARD OF JUDICIAL REVIEW. Judicial review of an appeal filed under Section 1704.255 is by trial de novo in the same manner as an appeal from a justice court to a county court.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.257. EFFECT OF BOARD ORDER. (a) A board order denying an application for a license or renewal of a license, or suspending or revoking a license, becomes final on the 31st day after the date the applicant or license holder receives notice of the order unless the applicant or license holder files an appeal under Section 1704.255.

(b) A board order appealed under Section 1704.255 has full

force and effect pending determination of the appeal.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. PROHIBITED CONDUCT AND CRIMINAL PENALTIES

Sec. 1704.301. RETURN OF SECURITY. A bail bond surety may not hold security for the payment of a bail bond fee or to assure the principal's appearance in court for more than 30 days after the date on which the owner of the security:

(1) requests return of the security in writing; and

(2) submits to the bail bond surety written evidence of the conclusion of:

(A) the payment agreement; or

(B) all of the criminal cases for which the security was given.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 942, Sec. 26, eff. June 20, 2003.

Sec. 1704.302. PROHIBITED REFERRALS OF OR EMPLOYMENTS WITH BONDING BUSINESS; OFFENSE. (a) A person in the bonding business may not directly or indirectly give, donate, lend, or contribute, or promise to give, donate, lend, or contribute, money or property to an attorney, police officer, sheriff, deputy, constable, jailer, or employee of a law enforcement agency for the referral of bonding business.

(b) A person may not accept or receive from a license holder money, property, or any other thing of value as payment for the referral of bonding business unless the records of the board show that the person is an agent or employee of the license holder.

(c) A person may not accept or receive from a license holder money, property, or any other thing of value as payment for employment with a bonding business if, within the preceding 10 years, the person has been convicted of a misdemeanor involving moral turpitude or of a felony.

(d) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1262, Sec. 13, eff. Sept. 1, 2001.

Sec. 1704.303. BAIL BOND SURETY ACTIVITY; OFFENSE. (a) A person required to be licensed under this chapter may not execute a bail bond unless the person holds a license issued under this chapter.

(b) A person may not advertise as a bail bond surety in a county unless the person holds a license issued under this chapter by a bail bond board in that county. A person does not violate this subsection if the person places an advertisement that appears in more than one county and:

(1) the advertisement clearly indicates the county or counties in which the person holds a license issued under this chapter; and

(2) any local telephone number in the advertisement is a local number only for a county in which the person holds a license issued under this chapter.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 14, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1461, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 942, Sec. 27, eff. June 20, 2003.

Sec. 1704.304. PROHIBITED RECOMMENDATIONS OR SOLICITATIONS; OFFENSE. (a) A bail bond surety or an agent of a bail bond surety may not recommend or suggest to a person for whom the bail bond surety executes a bond the employment of an attorney or law firm in connection with a criminal offense.

(b) The following persons may not recommend a particular bail bond surety to another person:

(1) a police officer, sheriff, or deputy;

(2) a constable, jailer, or employee of a law enforcement agency;

(3) a judge or employee of a court;

(4) another public official; or

(5) an employee of a related agency.

(c) A bail bond surety or an agent of a bail bond surety may not solicit bonding business in a police station, jail, prison, detention facility, or other place of detainment for persons in the custody of law enforcement.

(d) A person may not place a device in a place of detention, confinement, or imprisonment that dispenses a bail bond in exchange for a fee.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1262, Sec. 15, eff. Sept. 1, 2001.

Sec. 1704.305. BAIL BOND RECEIPT AND INSPECTION; OFFENSE. (a) A bail bond surety or an agent of a bail bond surety may not receive money or other consideration or thing of value from a person for whom the bail bond surety executes a bond unless the bail bond surety or agent issues a receipt to the person as provided by Subsection (b).

(b) The receipt must state:

(1) the name of the person who pays the money or transfers the consideration or thing of value;

(2) the amount of money paid or the estimated amount of value transferred;

(3) if the person transfers consideration or a thing of value, a brief description of the consideration or thing of value;

(4) the style and number of the case and the court in which the bond is executed; and

(5) the name of the person receiving the money, consideration, or thing of value.

(c) A bail bond surety or an agent of a bail bond surety shall retain a duplicate copy of a receipt issued under Subsection (a). The copy of the receipt shall be made available for inspection by:

(1) a representative of the board in any county in which the bail bond surety is licensed; and

(2) an appointed representative of a court in which the bail bond surety agrees to execute bail bonds.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1704.306. RECORDS; OFFENSE. (a) A person commits an offense if the person falsifies a record required to be maintained under this chapter.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

TITLE 11. REGULATION OF SALES AND SOLICITATION

CHAPTER 1801. COMMISSION MERCHANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1801.001. DEFINITIONS. In this chapter:

(1) "Commission merchant" means a person engaged in the business of selling any goods on consignment and for a commission.

(2) "Goods" includes produce, wares, merchandise, sugar, and cotton.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.002. APPLICATION OF CHAPTER. A commission merchant shall meet the requirements of this chapter except to the extent that the person's business as a commission merchant is regulated by another provision of law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. BOND

Sec. 1801.051. BOND REQUIRED. A commission merchant shall file a bond with the county judge of each county in which the commission merchant maintains an office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.052. BOND TERMS AND CONDITIONS. (a) A bond filed under this subchapter must:

(1) be in the amount of $3,000;

(2) be conditioned on the commission merchant performing duties required by Subchapter C, except Sections 1801.103(a), (c), and (d); and

(3) be payable to the county judge of each county in which the commission merchant maintains an office as trustee for any person who may be entitled to recover under the bond.

(b) The bond must be made with:

(1) a solvent surety company doing business in this state; or

(2) two or more good and sufficient sureties, each of whom:

(A) is a resident of this state; and

(B) makes an affidavit stating that the surety has assets, not subject to exemption, that are at least equal to the amount of the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.053. BOND APPROVAL. The bond must be approved by the county judge of each county in which the commission merchant maintains an office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.054. RECORDING OF BOND. The county judge shall file the bond with the county clerk in the same manner as an instrument to perfect a security interest under Chapter 9, Business & Commerce Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.055. SUIT ON BOND. (a) A person damaged by a breach of a condition of the bond may bring suit and recover under the bond.

(b) The suit shall be filed in the county in which the bond is filed.

(c) A bond is not void on first recovery and may be sued on until the total amount is exhausted.

(d) If the amount of the bond is reduced to $1,500 or less, the commission merchant shall file a new bond in an amount equal to

$3,000. The new bond is liable for all future contracts entered into by the commission merchant and a consignor.

(e) A commission merchant who does not file a new bond under Subsection (d) may not do business in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. COMMISSION MERCHANT DUTIES

Sec. 1801.101. CONTRACT PERFORMANCE. A commission merchant shall perform all contracts with a consignor of goods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.102. SALE OF GOODS. On shipment of a consignment, a commission merchant shall promptly receive and sell the goods under the terms of the consignment contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.103. STATEMENTS AND RECEIPTS REGARDING CONSIGNMENT. (a) A person who consigns goods to a commission merchant shall send to the commission merchant a written statement stating the quantity, the quality or class, and the condition of the consigned goods.

(b) On receipt of the statement, the commission merchant shall promptly notify the consignor of any objection the commission merchant has to the stated class, quality, or quantity and the condition of the consigned goods. If the commission merchant fails to object, the statement is prima facie evidence of the class, quality, or quantity and the condition of the consigned goods.

(c) On receipt by the commission merchant of the goods, the commission merchant shall give to the agent of the carrier delivering the goods a receipt for the goods. The receipt must state the quality, quantity, grade, and condition of the goods.

(d) The agent of the carrier shall keep the receipt on file in the carrier's office for six months from the date of receiving the receipt. The receipt may be inspected by a person interested in the shipment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.104. ACCOUNTING. (a) As soon as the goods are sold, the commission merchant shall send to the consignor a complete itemized account of the sale.

(b) The itemized account must include the price received and the date of the sale.

(c) If the commission merchant sells cotton, sugar, or other produce by weight, the itemized account must:

(1) include the weight of the cotton, sugar, or other produce in gross and the tare allowed; and

(2) be accompanied by the certificate or memorandum of the weight and condition of the cotton, sugar, or other produce required by law, signed by the weigher who weighed the cotton, sugar, or other produce.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.105. REMITTANCE OF SALE PROCEEDS. Not later than the fifth day after the date of the sale of consigned goods, a commission merchant shall send to the consignor the total amount received from the sale less the commission merchant's commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. ACTIONS AGAINST COMMISSION MERCHANTS

Sec. 1801.151. REQUIREMENT TO OBTAIN WRITTEN LICENSE. (a) A commission merchant must obtain the express written license from the owner or consignor of goods, or a person authorized by the owner or consignor, before the commission merchant may, directly or indirectly, purchase or reserve an interest in the consigned goods in the merchant's name or in the name or through the instrumentality of another, for the merchant's benefit or for the benefit of another, or as an agent of any other person.

(b) On violation by a commission merchant of Subsection (a), the owner of the goods is entitled to recover from the commission merchant a penalty in an amount equal to half of the value of the goods.

(c) An action for a penalty under Subsection (b) must be brought in the county in which:

(1) the sale took place; or

(2) the commission merchant resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.152. FALSE CHARGES. (a) A commission merchant may not charge for mending or patching, roping bales, cooperage or repairing bales, labor, hauling, cartage, storage, or marking or weighing unless the work is actually done.

(b) A charge specifically describing work performed must be made on a bill regardless of any contrary usage or custom to make the charge by rate or average.

(c) A person who violates this section is subject to a penalty of not less than $100 or more than $500. The owner or consignor may recover the penalty by filing suit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.153. SALE WITHOUT BOND. A person who sells any consigned goods for commission without first making and filing the bond required by Section 1801.051 shall be fined not less than $100 or more than $500.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1801.154. CONSIGNOR'S REMEDIES. (a) If a commission merchant fails to comply with a provision of Subchapter C, except Section 1801.103(a), (c), or (d), the commission merchant and the surety company or sureties required by Section 1801.052 are:

(1) liable for all actual damages incurred by the consignor resulting from the failure; and

(2) subject to a penalty of not less than $100 or more than $500.

(b) The consignor may recover the damages and penalty by filing suit for the actual damages and penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 1802. AUCTIONEERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1802.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Auctioneer Advisory Board.

(2) "Associate auctioneer" means an individual who, for compensation, sells or offers to sell property at an auction under the direct supervision of a licensed auctioneer.

(3) "Auction" means the sale of property by competitive bid using any method, format, or venue.

(4) "Auction company" means a person who engages in the business of arranging, managing, sponsoring, advertising, or conducting auctions.

(5) "Auctioneer" means any individual who sells or offers to sell property of another person by live bid at auction, with or without receiving consideration.

(6) "Commission" means the Texas Commission of Licensing and Regulation.

(7) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 4.019(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.351(a).

(8) "Department" means the Texas Department of Licensing and Regulation.

(8-a) "Executive director" means the executive director of the department.

(9) "Fund" means the auctioneer education and recovery fund.

(10) "Personal property" means any property other than real property.

(11) "Real property" means land, including improvements, fixtures, and other property appurtenant to or used in connection with the land, and any other estate, interest, or legal or equitable right in the land, improvement, fixture, or appurtenant property.

(12) Repealed by Acts 2015, 84th Leg., R.S., Ch. 777 , Sec. 15, eff. September 1, 2015.

(13) "Sealed bid auction" means a sealed bidding procedure that incorporates or allows for the competitive increasing or decreasing of bids after the opening of sealed bids.

(14) "Security instrument," "substitute trustee," and

"trustee" have the meanings assigned by Section 51.0001, Property Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.001, 4.019(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14.010, 14A.351, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 1, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 17, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 15, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. 1470), Sec. 2, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 1, eff. September 1, 2023.

Sec. 1802.002. APPLICABILITY. (a) This chapter does not apply to:

(1) a sale conducted by order of a United States court under Title 11, United States Code;

(2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;

(3) a sale conducted by a charitable, religious, or civic organization, including an organization having a tax exempt status under Section 501(c), Internal Revenue Code of 1986, or organized as a nonprofit entity, if the person organizing, arranging, or conducting the auction receives no compensation;

(4) a foreclosure auction involving the sale of real property personally conducted by a trustee or substitute trustee under a security instrument;

(5) a foreclosure sale of personal property personally conducted by:

(A) a person who holds a security interest in the

property, including a mortgage; or

(B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:

(i) the employee or agent is not otherwise engaged in the auction business; and

(ii) all property for sale in the auction is subject to a security agreement;

(6) a sale conducted by sealed bid without the option of increasing or decreasing the amount of a bid;

(7) an auction conducted only for student training purposes as part of a course of study approved by the department;

(8) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;

(9) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association;

(10) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:

(A) is part of a fair that is organized under state, county, or municipal authority; and

(B) involves only the sale of property owned by the organization's members;

(11) a sale or auction conducted by an auctioneer while the auctioneer is physically located outside of this state;

(12) a sale of motor vehicles at auction by a person licensed under Chapter 2301 or 2302;

(13) a sale of motor vehicles at auction by a person who holds a wholesale motor vehicle auction general distinguishing number or an independent motor vehicle general distinguishing number issued by the Texas Department of Motor Vehicles; or

(14) an auction of property through the Internet.

(b) This chapter applies to a sealed bid auction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.044, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.352, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 201 (H.B. 365), Sec. 1, eff. May

24, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 2, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1230 (S.B. 1982), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 14.002, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1012 (H.B. 1470), Sec. 3, eff. September 1, 2017.

Sec. 1802.003. PREEMPTION. A political subdivision of this state may not levy on or collect from an auctioneer a license tax or fee as a regulatory or revenue measure or require the licensing of an auctioneer, if the auctioneer holds a license under this chapter and is in compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 2, eff. June 14, 2013.

Sec. 1802.004. ADVERTISEMENT OF AUCTION. The commission, by rule, may adopt standards for the advertisement of an auction by an auctioneer or associate auctioneer licensed under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 3, eff. September 1, 2015.

Sec. 1802.005. RULES. The commission shall adopt rules necessary to administer and enforce this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 2, eff. September 1, 2023.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 1802.051. LICENSE REQUIRED. (a) A person may not act as an auctioneer or associate auctioneer in this state unless the person holds a license issued by the department under this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 15, eff. September 1, 2015.

(c) Except as provided by Subsection (d), an individual who is licensed under this chapter may not act as an auctioneer or associate auctioneer for an entity unless the entity:

(1) is an auction company owned or operated by an individual who is licensed under this chapter; or

(2) is a real estate brokerage firm that is operated by a broker licensed by the Texas Real Estate Commission.

(d) An individual who is licensed under this chapter may conduct an auction to sell motor vehicles, as defined by Section 501.002 or 502.001, Transportation Code, for a person who holds:

(1) a dealer general distinguishing number or a wholesale motor vehicle auction general distinguishing number issued under Subchapter B, Chapter 503, Transportation Code; or

(2) a license issued under Subchapter C, Chapter 2302.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.045, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.353, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 325 (H.B. 2519), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 3, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 15, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1230 (S.B. 1982), Sec. 2, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 14.003, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 3, eff. September 1, 2023.

Sec. 1802.052. ELIGIBILITY FOR AUCTIONEER'S LICENSE. (a) An individual is eligible for an auctioneer's license if the individual:

(1) is at least 18 years of age;

(2) is a citizen of the United States or a legal alien;

(3) either:

(A) passes a written or oral examination demonstrating knowledge of the auction business and of the laws of this state relating to the auction business; or

(B) shows proof of employment as a licensed associate auctioneer for at least two years and participation in at least 10 auctions during that employment;

(4) holds a high school diploma or a high school equivalency certificate; and

(5) has completed at least 80 hours of classroom instruction at an auction school with a curriculum approved by the department in accordance with the standards and procedures established by rule adopted under this chapter.

(b) The department, as provided by rule, may charge an auction school a reasonable fee for approving the curriculum as required under Subsection (a)(5).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 395, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 4, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 400 (S.B. 1531), Sec. 5, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 4, eff. September 1, 2023.

Sec. 1802.053. ELIGIBILITY FOR ASSOCIATE AUCTIONEER LICENSE. An individual is eligible for an associate auctioneer license if the individual:

(1) is a citizen of the United States or a legal alien; and

(2) works under the direct supervision of an auctioneer licensed under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 6, eff. September 1, 2015.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 5, eff. September 1, 2023.

Sec. 1802.054. APPLICATION FOR LICENSE. (a) An applicant for a license must apply to the department on a form and in a manner prescribed by the department. The application must be accompanied by:

(1) any fee required for the auctioneer education and recovery fund authorized under Section 1802.153;

(2) the required application fee; and

(3) either:

(A) the permit number of a sales tax permit issued to the applicant by the comptroller under Subchapter F, Chapter 151, Tax Code; or

(B) proof of exemption from the tax permit requirement under Chapter 151, Tax Code.

(b) A nonresident applicant must submit with an application for a license under this chapter a written irrevocable consent to service of process. The consent must:

(1) be in the form and supported by additional information that the commission by rule requires;

(2) provide that an action relating to any transaction governed by this chapter may be commenced against the license holder in the proper court of any county of this state in which the cause of action may arise or in which the plaintiff may reside by service of process on the executive director as the license holder's agent; and

(3) include a statement stipulating and agreeing that service provided by this section is as valid and binding as if service had been made on the person according to the laws of this or any other state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.046, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.354, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 5, eff.

June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 7, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 6, eff. September 1, 2023.

Sec. 1802.055. APPLICATION FOR EXAMINATION. An individual who meets the requirements for an auctioneer's license may apply to the department to take the license examination. The application must be accompanied by the application fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.047, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.355, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 8, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 7, eff. September 1, 2023.

Sec. 1802.056. LICENSE EXAMINATION. (a) The department shall prepare, recognize, administer, or arrange for the administration of a license examination designed to establish:

(1) an applicant's general knowledge of the auction business;

(2) the principles of conducting an auction; and

(3) the laws of this state relating to auctioneers.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 26(1), eff. September 1, 2023.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 26(1), eff. September 1, 2023.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.048, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.356, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 8, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 26(1), eff.

September 1, 2023.

Sec. 1802.058. REEXAMINATION. An applicant who fails the license examination may reapply to take the examination. If the applicant fails the examination twice during a one-year period, the applicant may not reapply for one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. AUCTIONEER ADVISORY BOARD

Sec. 1802.101. AUCTIONEER ADVISORY BOARD. The advisory board shall advise the commission on educational matters, operational matters, and common practices within the auction industry.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.003, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.359, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 6, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 11, eff. September 1, 2015.

Sec. 1802.102. APPOINTMENT OF ADVISORY BOARD; MEMBERSHIP; ELIGIBILITY. (a) The advisory board consists of seven members appointed as follows:

(1) four members who are licensed auctioneers appointed by the presiding officer of the commission, with the commission's approval;

(2) the administrative head, or the administrative head's designee, of any state agency or office that is selected by the commission; and

(3) two public members.

(b) In appointing advisory board members, the presiding officer of the commission shall consider the geographical diversity of the members.

(c) Appointments to the advisory board shall be made without regard to the race, color, handicap, sex, religion, age, or national

origin of the appointees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.004, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1176 (H.B. 3278), Sec. 10, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 7, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 9, eff. September 1, 2023.

Sec. 1802.103. TERMS; VACANCIES. (a) Advisory board members serve six-year terms that expire on September 1 of each odd-numbered year. Members may not serve more than two consecutive terms. If a vacancy occurs during the term of such a member, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to serve for the remainder of the term.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 26(4), eff. September 1, 2023.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.005, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 8, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 10, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 26(4), eff. September 1, 2023.

Sec. 1802.104. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the advisory board to serve as presiding officer of the board. The presiding officer serves for two years and may not serve more than two consecutive terms.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.006, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 9, eff. June 14, 2013.

Sec. 1802.106. COMPENSATION. A member of the advisory board may not receive compensation from the department for serving on the advisory board.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 12, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 11, eff. September 1, 2023.

Sec. 1802.107. MEETINGS. The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 10, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 13, eff. September 1, 2015.

Sec. 1802.108. CIVIL LIABILITY. A member of the advisory board is not liable in a civil action for an act performed in good faith while performing duties as an advisory board member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C-1. PRACTICE STANDARDS

Sec. 1802.121. WRITTEN CONTRACTS. (a) An auctioneer who agrees to provide services to a person shall provide to the person a

written contract with the terms of the agreement.

(b) Each contract for the services of an auctioneer must include information required by the commission by rule.

(c) Before any auction, the auctioneer and client must agree in writing to an itemized inventory of property to be sold or offered for sale by the auctioneer at auction. An amendment to the inventory must be in writing and signed by both parties.

Added by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 12, eff. September 1, 2023.

Sec. 1802.122. STANDARDS OF PRACTICE. The commission by rule shall adopt standards for the practice of auctioneers and associate auctioneers, including standards for:

(1) the maintenance and use of a trust or escrow account for funds belonging or owed to another; and

(2) required consumer notices.

Added by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 12, eff. September 1, 2023.

SUBCHAPTER D. AUCTIONEER EDUCATION AND RECOVERY FUND

Sec. 1802.151. FUND. The auctioneer education and recovery fund is a trust fund with the comptroller for the payment of claims against auctioneers licensed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1802.152. MANAGEMENT OF FUND. (a) The department is the manager of the fund and shall maintain books and records of the fund.

(b) The department, as manager, is entitled to compensation for reasonable and necessary costs and expenses for the management of the fund. The department shall be compensated from the earnings from the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.049, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.363, eff. Sept. 1, 2003.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 13, eff. September 1, 2023.

Sec. 1802.153. ADDITIONAL FEES. (a) In addition to any other fees required by this chapter, an applicant entitled to receive a license under this chapter must pay a fee before the department issues the license.

(b) If the balance in the fund on August 31 of a year is less than $350,000, each license holder at the next license renewal shall pay, in addition to the renewal fee, a fee that is equal to the greater of $50 or a pro rata share of the amount necessary to obtain a balance in the fund of $350,000.

(c) The fees paid under this section shall be deposited in the fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.008, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.364, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 11, eff. June 14, 2013.
Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 14, eff. September 1, 2023.

Sec. 1802.155. LIABILITY. (a) The fund or the department is not liable to a consumer for a recovery from the fund if the assets of the fund are insufficient to pay the amount awarded.

(b) If the fund contains insufficient assets to pay the consumer:

(1) the department shall record the time and date an order for payment to a consumer was received; and

(2) the department shall pay consumers for whom an order is recorded under Subdivision (1) as funds become available in the order of the recorded time and date of the order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.050, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.365, eff. Sept. 1, 2003.

Amended by:
Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 15, eff. September 1, 2023.

SUBCHAPTER E. COMPLAINT PROCEDURES

Sec. 1802.202. CONSUMER CLAIMS. (a) A person who deals with an auctioneer licensed under this chapter and who is aggrieved by an action of the auctioneer as a result of a violation of a contract made with the auctioneer may initiate a claim against the fund by filing with the department a complaint against the auctioneer.

(b) The department may not pay a claim against an auctioneer who was not licensed at the time of the transaction on which the claim is based.

(c) The department shall investigate a complaint filed under this section and determine the amount owed to the aggrieved party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.010, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.367, eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 16, eff. September 1, 2023.

Sec. 1802.203. HEARING. If the amount determined by the department under Section 1802.202 is disputed by the auctioneer, the department shall refer the matter to the State Office of Administrative Hearings for a hearing on the disputed claim.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.011, eff. Sept. 1, 2003.
Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1215, Sec. 13, eff. Sept. 1, 2003.
Reenacted and amended by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 17, eff. September 1, 2023.

Sec. 1802.204. APPEAL. A party may appeal a decision of the commission in the manner provided for a contested case under Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.012, eff. Sept. 1, 2003.

Sec. 1802.205. PAYMENT OF CLAIM. (a) If the department's determination under Section 1802.202 is not disputed by the auctioneer, the department shall pay the claim from the fund, subject to Section 1802.206.

(b) If a hearing is held on the department's determination, the department shall pay to the aggrieved party the amount of actual damages as determined by an administrative law judge with the State Office of Administrative Hearings who presided over the hearing, subject to Section 1802.206.

(c) The amount of actual damages may not include attorney's fees, speculative damages, or lost profits.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.052, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.370, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 18, eff. September 1, 2023.

Sec. 1802.206. PAYMENT LIMITS. (a) The department may not pay a single aggrieved party more than $15,000 for all claims arising from a single auction.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 26(9), eff. September 1, 2023.

(c) The total payment of claims against a single auctioneer arising from a single auction may not exceed $100,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.053, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.371, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 13, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 19, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 26(9), eff.

September 1, 2023.

Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the department pays a claim against an auctioneer, the auctioneer shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the commission; and

(2) immediately pay the aggrieved party any amount due to that party or agree in writing to pay the party on a schedule to be determined by rule of the commission.

(b) Payments made by an auctioneer to the fund or to an aggrieved party under this section include interest accruing at the rate of eight percent a year beginning on the date the department pays the claim.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.013, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 20, eff. September 1, 2023.

Sec. 1802.208. SUBROGATION. If the department pays a claim against an auctioneer, the department is subrogated to all rights of the aggrieved party against the auctioneer to the extent of the amount paid to the aggrieved party.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.054, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.372, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 21, eff. September 1, 2023.

Sec. 1802.209. EFFECT ON DISCIPLINARY PROCEEDINGS. (a) This subchapter and Section 1802.252 do not limit the commission's or executive director's authority to take disciplinary action against a license holder for a violation of this chapter or a rule adopted under this chapter.

(b) A license holder's repayment of all amounts owed to the fund does not nullify or modify the effect of another disciplinary proceeding brought under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.014, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 14, eff. June 14, 2013.

SUBCHAPTER F. DENIAL OF LICENSE AND DISCIPLINARY PROCEDURES

Sec. 1802.251. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. The commission or executive director may take any action or impose a penalty under Subchapter F or G, Chapter 51, against an auctioneer or associate auctioneer for:

(1) violating this chapter or a rule adopted under this chapter;

(2) obtaining a license through false or fraudulent representation;

(3) making a substantial misrepresentation in an application for an auctioneer's license;

(4) engaging in a continued and flagrant course of misrepresentation or making false promises through an agent, advertising, or otherwise;

(5) failing to account for or remit, within a reasonable time, money or property belonging to another that is in the auctioneer's possession or commingling funds of another with the auctioneer's funds or failing to keep the funds of another in an escrow or trust account;

(6) violating a provision of the Business & Commerce Code in conducting an auction; or

(7) violating a rule or order of the commission or executive director.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.015, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 15, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 22, eff.

September 1, 2023.

Sec. 1802.252. REVOCATION FOR CLAIM ON FUND. (a) The commission may revoke a license issued under this chapter if the department makes a payment from the fund as the result of an action of the license holder.

(b) The commission may probate an order revoking a license.

(c) An auctioneer or associate auctioneer is not eligible for a new license until the auctioneer or associate auctioneer has repaid in full the amount paid from the fund on the auctioneer's account, including interest.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.016, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 23, eff. September 1, 2023.

Sec. 1802.253. HEARING BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) If the department proposes to deny an application for a license or take a disciplinary action or impose an administrative penalty against a license holder, the applicant or license holder is entitled to a hearing.

(b) At a hearing under this section, the applicant may:

(1) be present and be heard in person or by counsel; and

(2) have an opportunity to offer evidence by oral testimony, affidavit, or deposition.

(c) Written notice may be served by personal delivery to the applicant or by certified mail to the last known mailing address of the applicant.

(d) A proceeding relating to a license denial or disciplinary action by the department under this chapter is a contested case under Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 4.017, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1215, Secs. 14, 15, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.004, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 16, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1048 (H.B. 3038), Sec. 17, eff. June 14, 2013.

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 24, eff. September 1, 2023.

SUBCHAPTER G. CRIMINAL PENALTIES

Sec. 1802.301. PRACTICING WITHOUT LICENSE; OFFENSE. (a) A person commits an offense if the person acts as an auctioneer or an associate auctioneer without a license.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 626 (H.B. 4416), Sec. 25, eff. September 1, 2023.

Sec. 1802.302. FRIVOLOUS CLAIM; OFFENSE. (a) A person commits an offense if the person intends to benefit personally or to harm another and the person:

(1) institutes under this chapter a claim in which the person knows the person has no interest; or

(2) institutes under this chapter a frivolous suit or a claim that the person knows is false.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 1803. SOLICITATION FOR PUBLIC SAFETY ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1803.001. DEFINITIONS. In this chapter:

(1) "Law enforcement personnel" means commissioned peace officers who are employees of government law enforcement agencies.

(2) "Public safety entity" means a public safety promoter or public safety organization.

(3) "Public safety organization" means a nongovernmental

organization that, in a manner that reasonably implies that the organization is composed of law enforcement or public safety personnel or that a contribution, purchase, or membership will benefit public safety personnel, uses the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," "fireman," "firefighter," "volunteer fireman," "emergency medical service provider," "civilian employee," or any other term:

(A) in its name;

(B) in a publication of the organization; or

(C) in a solicitation for:

(i) contributions to the organization;

(ii) membership in the organization;

(iii) the purchase of advertising in a publication of the organization; or

(iv) the purchase of products or tickets to an event sponsored by or for the benefit of the organization by a solicitor.

(4) "Public safety personnel" means employees or volunteers of a public safety organization, including:

(A) firefighters;

(B) emergency medical service providers; or

(C) civilian employees of a public safety organization.

(5) "Public safety promoter" means a person who:

(A) is not affiliated with a public safety organization; and

(B) in the name of public safety or in a name associated with public safety makes a request for a donation or the sale of tickets or advertising.

(6) "Public safety publication" means a nongovernmental publication with a name that includes the term "officer," "peace officer," "police officer," "police," "law enforcement," "reserve officer," "deputy," "deputy sheriff," "constable," "deputy constable," "fireman," "firefighter," "volunteer fireman," "emergency medical service provider," "civilian employee," or any other term in a manner that reasonably implies that the publication is published by a public safety organization or benefits public safety.

(7) "Public safety solicitor" means a person who:

(A) contracts for or receives money for providing solicitation services for a public safety entity or public safety

publication; and

(B) solicits:

(i) contributions in person, by telephone, by electronic media, or by mail;

(ii) membership in a public safety organization from an individual not employed by a public safety agency of the United States, this state, or a political subdivision of this state; or

(iii) the purchase of:

(a) advertising; or

(b) goods, services, or tickets to an event sponsored by or for the benefit of a public safety organization or for the cause of public safety.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.002. EFFECT ON MUNICIPAL ORDINANCE. This chapter preempts any municipal ordinance applicable to public safety entities, public safety publications, public safety solicitors, or solicitations related to a person registered under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. REGISTRATION AND BOND REQUIREMENTS

Sec. 1803.051. REGISTRATION. (a) A public safety entity or public safety publication may not solicit unless the entity or publication:

(1) files a registration statement under Section 1803.053; and

(2) pays a registration fee under Section 1803.054.

(b) A public safety entity or public safety publication may not use a public safety solicitor, and a person may not act as a public safety solicitor unless the solicitor:

(1) files a registration statement and pays the registration fee under Section 1803.055; and

(2) files and maintains a bond under Section 1803.056.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.052. ELIGIBILITY TO USE SOLICITOR. (a) A public safety organization may register under Section 1803.053 and use a public safety solicitor only if the organization is a bona fide membership organization consisting of individual members:

(1) of whom at least five percent or 500 members, whichever is less, are employed as law enforcement personnel or public safety personnel by a public safety agency of the United States, this state, or a political subdivision of this state; and

(2) who have signed membership agreements with the organization and paid an annual membership fee of at least $10.

(b) A public safety promoter may register under Section 1803.053 and use a public safety solicitor if the disclosure required by Section 1803.101 is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.053. REGISTRATION STATEMENT BY PUBLIC SAFETY ENTITY OR PUBLICATION. (a) Before beginning solicitations, a public safety entity or public safety publication shall file with the secretary of state:

(1) a registration statement signed by two of its officers or directors; and

(2) if the public safety entity or publisher of the publication, as applicable, is a nonresident, an irrevocable written consent appointing the secretary of state as agent for service of process on the entity or publisher for any action relating to a violation of this chapter.

(b) The registration statement must disclose:

(1) the name, street address, and telephone number of any public safety solicitor for the registering entity;

(2) the name, street address, and telephone number of each public safety organization, public safety publication, or fund for which any part of the contributions will be used, or if there is no organization, publication, or fund, a statement describing how the contributions will be used;

(3) whether the registering entity or fund that the contributions are being solicited for has a federal and state charitable tax exemption;

(4) the name and public safety agency or former agency of

each active and retired public safety officer serving on the board of directors or governing body of the registering entity;

(5) the number of members and the percentage of members who are active and retired public safety officers of the United States, this state, or a political subdivision of this state, as determined on December 31 of the year preceding the year in which the registration is made and the contributions are solicited, if the registering entity is a public safety organization;

(6) the name of the local chapter, lodge, association, or group of licensed public safety officers of the public safety organization for which contributions are being solicited, if the registering entity is a public safety organization;

(7) a copy of the most recent tax or informational return filed with the Internal Revenue Service by the registering entity;

(8) the amount of money collected during the previous year by the registering entity by solicitations of nonmembers of the public safety organization for which the funds were collected and the amount of funds paid as expenses to maintain the solicitation operation;

(9) the amount of money, if known or projected, expected to be collected during the year of filing by the registering entity by nonmember solicitations described by Subdivision (8);

(10) a copy of any contract or agreement between the registering entity and a solicitor; and

(11) if the registering entity is a public safety publication, information on:

(A) the total number of copies of each issue of the publication printed during the previous year;

(B) the frequency of the publication; and

(C) the date and circulation of the most recent issue of the publication.

(c) A registration statement takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Section 1803.054.

(d) A public safety entity or public safety publication shall file an updated statement with the secretary of state not later than the 30th day after the date of a change of street address, phone number, or name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.054. PUBLIC SAFETY ENTITY REGISTRATION FEE. (a) Except as provided by Subsection (b), a public safety entity registering under Section 1803.053 shall pay to the secretary of state an annual registration fee of $250.

(b) A public safety organization consisting of members who are volunteer firefighters for a local political subdivision and that solicits only in the area of the firefighters' jurisdiction is not required to pay a registration fee.

(c) Subsection (b) does not apply to a statewide association of volunteer firefighters.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.055. SOLICITOR REGISTRATION STATEMENT AND FEE. (a) Before beginning solicitations for a public safety entity or public safety publication, a public safety solicitor shall file with the secretary of state a registration statement containing:

(1) the name, street and mailing address, and telephone number of the solicitor;

(2) the name, street and mailing address, and telephone number of each public safety entity or public safety publication for whom the solicitor solicits or will solicit in this state; and

(3) if the solicitor is a nonresident, an irrevocable written consent appointing the secretary of state as agent for service of process on the solicitor for any action pertaining to a violation of this chapter.

(b) The registration statement required by Subsection (a) must be accompanied by:

(1) a $500 registration fee; and

(2) a bond as required by Section 1803.056.

(c) A registration statement takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Subsection (b).

(d) A solicitor shall file an updated statement with the

secretary of state not later than the 30th day after the date of a change of street address, mailing address, phone number, or name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.056. SOLICITOR BOND. (a) A public safety solicitor shall post with the secretary of state a $10,000 surety bond issued by a surety company authorized to do business in this state.

(b) The bond must be payable to the state and conditioned on compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. SOLICITATION RESTRICTIONS

Sec. 1803.101. SOLICITATION DISCLOSURE. (a) An oral or a written disclosure shall be given to each person before the person delivers any consideration to a public safety entity, public safety publication, or public safety solicitor.

(b) A written disclosure must be in contrasting eight-point type or larger.

(c) A disclosure must include:

(1) the name of the public safety organization registered under Section 1803.053, if an organization is involved;

(2) a statement that the promotion is independent of affiliation with any public safety organization, if a public safety promoter is involved;

(3) the name of any public safety solicitor employed;

(4) a general statement of the use of net funds received; and

(5) the name, street address, and statewide telephone number established under Section 1803.102 that a person may use to obtain from the secretary of state additional information on the public safety entity, public safety publication, or public safety solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.102. SOLICITATION INFORMATION HOTLINE. The secretary

of state shall establish and operate a toll-free telephone line known as the Solicitation Information Hotline that enables a person to call the hotline number to:

(1) obtain information concerning a public safety entity, public safety publication, or public safety solicitor that has filed a registration statement with the secretary of state under this chapter; or

(2) report an alleged violation of this chapter by a public safety entity, public safety publication, or public safety solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.103. PROHIBITED PRACTICES. In soliciting for a public safety entity or public safety publication, a person may not:

(1) use, unless authorized in writing by a public safety agency or public safety organization:

(A) any representation that implies that the contribution is for or on behalf of the agency or organization; or

(B) any emblem, device, or printed matter belonging to or associated with the agency or organization;

(2) use a name, symbol, or statement similar to a name, symbol, or statement used by a public safety agency or organization in a manner intended to confuse or mislead a person being solicited;

(3) knowingly represent or imply that the solicitation proceeds are being used for a purpose other than the purpose for which the funds are actually used;

(4) represent or imply that the solicitor is a peace officer or member of a public safety agency or public safety organization if the solicitor is not an officer or a member;

(5) use or exploit the fact of filing with the secretary of state in a manner leading a person to believe that filing, in any way, constitutes an endorsement by or approval of the state;

(6) knowingly file incomplete, false, or misleading information in a document required to be filed with the secretary of state under this chapter;

(7) solicit for a public safety entity or public safety publication, or represent that those responding affirmatively to the solicitation will receive favored treatment by public safety personnel;

(8) collect a contribution or membership fee solicited at a person's residence by an in-person or telephone solicitation by means other than payment through the United States mail or parcel post courier;

(9) solicit for a public safety organization in a county in which members of the organization do not have jurisdiction; or

(10) commit another unfair or deceptive act or practice.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.104. FAILURE TO FILE TIMELY REPORT. A public safety entity or public safety publication that fails to timely file the information required by this chapter or that files information required by this chapter that is found to contain material misrepresentation may not use a public safety solicitor until it provides or corrects the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 1803.151. AUDIT BY ATTORNEY GENERAL. (a) The attorney general may make a written request for information from a public safety entity, public safety publication, or public safety solicitor to audit or verify a representation contained in a registration statement.

(b) A public safety entity, public safety publication, or public safety solicitor shall provide information requested by the attorney general under Subsection (a) not later than the 10th working day after the date of the attorney general's request.

(c) Wilful failure to provide timely information under this section is a ground for bond forfeiture or suspension of registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.152. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this chapter is a Class A misdemeanor.

(c) A corporation or association may be held criminally responsible for conduct by a person acting on its behalf if the person's conduct:

(1) constitutes an offense under this chapter; and

(2) is done with the knowledge and approval of the corporation or association.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.153. CIVIL PENALTY AND INJUNCTION. (a) The attorney general may bring an action in a Travis County district court:

(1) for a civil penalty for a violation of this chapter; and

(2) to enjoin a person from violating this chapter.

(b) The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the action is commenced.

(c) Notice is not required if the attorney general intends to request that the court issue a temporary restraining order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.154. CIVIL PENALTIES. (a) A person who violates this chapter or an injunction issued under Section 1803.153 is liable to the state for a civil penalty of not more than:

(1) $2,500 for a single violation; or

(2) $10,000 for all of the violations.

(b) If a person found to have violated this chapter or an injunction has filed a bond under this chapter, the suit may be brought against the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1803.155. SERVICE ON SECRETARY OF STATE. (a) A service of process or pleading served on the secretary of state as the agent for a nonresident public safety solicitor, public safety entity, or public safety publication must be served in triplicate.

(b) The secretary of state shall file one copy in the secretary

of state's office and immediately forward the other copies by certified mail, return receipt requested, to the address of the nonresident, as shown on the nonresident's registration statement.

(c) Service on the secretary of state shall be returned not later than the 30th day after the date of service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 1804. SOLICITATION FOR VETERANS ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1804.001. DEFINITIONS. In this chapter:

(1) "Veteran" means a person who has served on active duty in the armed forces of the United States or in the state military forces as defined by Section 437.001, Government Code.

(2) "Veterans organization" means a formally or informally formed nongovernmental entity that:

(A) purports to include or represent veterans; or

(B) includes a term in its name leading a reasonable person to assume the organization is associated with veterans or concerned with veterans' issues.

(3) "Veterans organization solicitor" means a person who receives monetary compensation for solicitation services for a veterans organization and who solicits:

(A) a contribution of financial support or a purchase of goods or services for a veterans organization in person, by telephone, or by mail; or

(B) membership in a veterans organization from an individual who is not a veteran.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.17, eff. September 1, 2013.

Sec. 1804.002. EFFECT ON MUNICIPAL ORDINANCE. This chapter does not preempt a municipal ordinance applicable to a veterans organization or a veterans organization solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. REGISTRATION REQUIREMENTS

Sec. 1804.051. REQUIREMENTS FOR SOLICITATION. (a) A veterans organization may not use a veterans organization solicitor unless:

(1) the organization:

(A) files a registration statement under Section 1804.053; and

(B) files and maintains a bond under Section 1804.101; and

(2) the solicitor complies with the requirements of Subsection (b).

(b) A person may not act as a veterans organization solicitor unless the person:

(1) files a registration statement under Section 1804.054; and

(2) files and maintains a bond under Section 1804.102.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.052. ELIGIBILITY TO USE SOLICITOR. (a) A veterans organization may register under Section 1804.053 and use a veterans organization solicitor only if the organization consists of individual members:

(1) of whom at least 90 percent or 500, whichever is less, are veterans; and

(2) who have signed membership agreements with the organization.

(b) A veterans organization may not use a veterans organization solicitor and a veterans organization solicitor may not solicit for a veterans organization if the organization or the solicitor has on three or more occasions forfeited a bond filed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.053. REGISTRATION STATEMENT BY VETERANS ORGANIZATION. (a) Before beginning solicitations, a veterans organization must file with the secretary of state a registration statement containing:

(1) the name, street address, and telephone number of each

solicitor that solicits for the veterans organization;

(2) the name, street address, and telephone number of each veterans organization or fund for which any part of the contributions will be used, or, if there is no organization or fund, a statement describing how the contributions will be used;

(3) a statement of whether the veterans organization or fund for which the contributions are solicited has a federal and state charitable tax exemption;

(4) the name of each veteran serving on the board of directors or governing body of the veterans organization or fund for which the contributions are solicited;

(5) a statement of the number of members who are veterans and the percentage of members of the veterans organization that are veterans, as determined on December 31 preceding the year in which the statement is filed;

(6) the name of each local chapter, lodge, association, or group of veterans that is a member of the veterans organization for which contributions are solicited;

(7) a copy of the Internal Revenue Service Form 990, or its successor, the veterans organization most recently filed; and

(8) the name, address, and telephone number of the surety for the bond filed under Section 1804.101.

(b) The registration statement must be accompanied by a $150 registration fee and the original copy of the bond required under Section 1804.101.

(c) A registration statement issued under this section takes effect on the date the secretary of state issues a certificate and is valid for one year. The statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.054. SOLICITOR REGISTRATION STATEMENT. Before beginning solicitations for a veterans organization, a veterans organization solicitor must file with the secretary of state a registration statement containing:

(1) the name, address, and telephone number of the solicitor;

(2) the name, address, and telephone number of each veterans organization on whose behalf the solicitor solicits or will solicit; and

(3) the name of any other state in which the solicitor is registered as a veterans organization solicitor and the registration's status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.055. SOLICITOR REGISTRATION FEE. (a) A registration statement under Section 1804.054 must be accompanied by:

(1) a $500 registration fee; and

(2) a bond required under Section 1804.102.

(b) A registration statement issued under this section takes effect on the date the secretary of state issues a certificate and is valid for one year. A registration statement may be renewed annually by filing a renewal registration statement and paying the registration fee required by Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. BONDING AND REPORTING REQUIREMENTS

Sec. 1804.101. VETERANS ORGANIZATION BOND. (a) A veterans organization using a veterans organization solicitor shall post a surety bond with the secretary of state:

(1) in the amount of $1,000 if the organization is a veterans organization chartered by the United States Congress; or

(2) if the organization is not chartered by the United States Congress, in the amount of:

(A) $5,000 if the organization solicits in only one county;

(B) $10,000 if the organization solicits in more than one county but fewer than six counties; or

(C) $25,000 if the organization solicits in six or more counties.

(b) The bond must be payable to the state and conditioned on compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.102. SOLICITOR BOND. (a) A veterans organization solicitor shall post a surety bond with the secretary of state in the amount of:

(1) $5,000 if the solicitor solicits in only one county;

(2) $10,000 if the solicitor solicits in more than one county but fewer than six counties; or

(3) $25,000 if the solicitor solicits in six or more counties.

(b) The bond must be payable to the state and conditioned on compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.103. VETERANS ORGANIZATION REPORTS. (a) Before January 15 of each year, each veterans organization that received more than $500 in solicitations during the preceding calendar year shall file with the secretary of state a report that includes:

(1) the name and address of the veterans organization and each officer authorized to spend the organization's funds; and

(2) the total amounts from all sources spent by the organization for each of the following:

(A) administrative expenses;

(B) travel expenses of officers of the organization;

(C) travel expenses of each member of the organization;

(D) gifts to veterans or other veterans organizations;

(E) gifts to nonveterans;

(F) payments for the purchase, rental, or lease of and repairs to facilities used by the organization; and

(G) any other expenditures.

(b) A $50 filing fee must accompany each report filed under this section.

(c) A veterans organization that is chartered by the United States Congress and that has subsidiary organizations may:

(1) collect the reports of the subsidiary organizations; and

(2) file its report and the reports of its subsidiary organizations together and pay a single filing fee.

(d) A veterans organization shall require an individual to sign a receipt for the funds given to the individual for the individual's personal use before the funds are delivered. The organization shall keep a receipt for the expenditure for seven years after the date of the expenditure.

(e) The reports and receipts are public records and the veterans organization shall make them available to any person who requests them in writing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.104. SOLICITOR REPORTS. (a) At the end of each calendar quarter, a solicitor who raises more than $5,000 for a veterans organization during that period shall file with the secretary of state a report that includes:

(1) the name, address, and telephone number of the solicitor;

(2) the gross amount raised by the solicitor for the veterans organization;

(3) the amount paid to the veterans organization; and

(4) the name and address of the person representing the veterans organization to which the amount was paid.

(b) A $50 filing fee must accompany each report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. SOLICITATION RESTRICTIONS

Sec. 1804.151. SOLICITATION DISCLOSURE. (a) A veterans organization solicitor shall disclose at the time each solicitation is made the following information: "The secretary of state has on file important information about persons that seek contributions in the name of veterans, and the number to call about that information is the Solicitation Information Hotline (the number maintained by the secretary of state)."

(b) The disclosure must be made:

(1) orally if the solicitation is in person or by telephone; and

(2) by printed notice in any printed matter distributed by the solicitor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.152. SOLICITATION INFORMATION HOTLINE. The secretary of state shall establish and operate a toll-free telephone line known as the Solicitation Information Hotline that enables a person to call the hotline number to:

(1) obtain information concerning a veterans organization or solicitor that has filed a statement with the secretary of state under this chapter; or

(2) report an alleged violation of this chapter by a solicitor or a veterans organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.153. PROHIBITED PRACTICES. (a) A veterans organization solicitor may not solicit on behalf of a veterans organization in a county other than a county that the veterans organization serves unless the solicitor discloses to the person being solicited the county or counties actually served by the organization.

(b) A contribution or membership fee solicited at a person's residence in person or by telephone may not be collected except through the United States mail or parcel post courier.

(c) A veterans organization solicitor may not make a materially false or misleading statement of fact during a solicitation that would lead a responsible person to believe that proceeds of the solicitation are being used or will be used for a purpose other than the purpose for which the proceeds are actually used.

(d) A veterans organization solicitor or a veterans organization may not make a material misrepresentation in a registration statement.

(e) For purposes of Subsection (d), overstating the number of veterans who are members of the veterans organization by more than three percent of the organization's total membership is a material misrepresentation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 1804.201. AUDIT BY ATTORNEY GENERAL. (a) The attorney general may request reasonable and necessary information from a veterans organization or a veterans organization solicitor for the purpose of auditing or verifying the representations contained in a registration statement.

(b) The attorney general may audit representations made by a veterans organization solicitor during a solicitation to determine whether the solicitation complies with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.202. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class B misdemeanor, except that if it is shown on trial of the offense that the defendant has been convicted previously under this section, the offense is a Class A misdemeanor.

(c) A corporation or association may be held criminally responsible for the conduct of a person acting on its behalf if the person's conduct constitutes an offense under this section.

(d) It is a defense to prosecution under this section that:

(1) the defendant is a veterans organization;

(2) the person whose conduct constitutes the offense was acting on behalf of a corporation or association with which the veterans organization had contracted for services; and

(3) the person committed the conduct without the knowledge of the veterans organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.203. ENFORCEMENT AND INJUNCTION. (a) The attorney general may bring an action in a Travis County district court to enjoin a person from violating this chapter.

(b) The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the action is commenced.

(c) Notice is not required if the attorney general intends to request that the court issue a temporary restraining order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.204. CIVIL PENALTIES. (a) A person who violates this chapter is liable to the state for a civil penalty of not more than $10,000 for each violation.

(b) A person who violates an injunction issued under this chapter is liable to the state for a civil penalty of not less than $100,000.

(c) The attorney general shall bring an action to recover a civil penalty.

(d) If the violator has filed a bond under this chapter, the suit may be brought against the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.205. SUIT ON BOND. (a) A person injured by a violation of this chapter may bring an action or join an action brought by the state to recover against a bond filed under this chapter.

(b) The court may assess costs of litigation and reasonable attorney's fees incurred by a plaintiff other than the state or by a defendant who substantially prevails.

(c) In an action brought by a private plaintiff and the state under this chapter, if the amount claimed exceeds the amount of the bond, money derived from a bond forfeiture first applies to pay the private plaintiff's damages and attorney's fees, and any remaining amount is forfeited to the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1804.206. AVAILABILITY OF OTHER REMEDIES. This chapter does not:

(1) prevent the state or an injured party from bringing an action to recover a contribution obtained by misrepresentation; or

(2) limit other causes of action available to a plaintiff by statute or common law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 1805. SALE OF SECONDHAND BUSINESS MACHINES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1805.001. DEFINITIONS. In this chapter:

(1) "Business machine" includes an adding machine, addressing machine, calculator, cash register, check-writing device, computer or peripheral device to a computer, letter-sorting or folding device, item of recording, copying, or accounting equipment, or typewriter. The term does not include office furniture or fixtures.

(2) "Secondhand dealer" means a person who:

(A) engages in the business of buying, selling, trading, accepting for sale on consignment, accepting for auction, or auctioning business machines; or

(B) owns or operates an auction or another event at which:

(i) two or more persons offer business machines for sale or exchange; and

(ii) a fee is charged for:

(a) offering or displaying property for sale or exchange; or

(b) admission to the area in which the property is offered or displayed for sale or exchange.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.002. APPLICATION TO BUSINESS MACHINES. (a) This chapter applies only to a business machine that has previously been sold at retail.

(b) This chapter does not apply to a business machine:

(1) acquired in good faith in a transaction involving the stock in trade of another secondhand dealer who previously made the reports on the machine required by this chapter if:

(A) the selling dealer delivers to the acquiring dealer a written document stating that the reports have been made;

(B) the acquiring dealer submits a copy of the statement to the chief of police of the municipality or the sheriff of the county in which the selling dealer is located; and

(C) each secondhand dealer involved in the transaction retains a copy of the statement required by this subdivision for three years after the date of the transaction;

(2) acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock in trade, in bulk, or a substantial part of those assets, of an industrial or commercial enterprise, other than a secondhand dealer, for the voluntary dissolution or liquidation of the seller's business, or for disposing of an excessive quantity of personal property, or property that has been acquired in a nonjudicial sale or transfer from an owner other than a secondhand dealer, the seller's entire household of personal property, or a substantial part of that property, if the secondhand dealer:

(A) gives written notice to the chief of police of the municipality or the sheriff of the county in which the dealer's business is located that a reporting exemption is being claimed under this subdivision;

(B) retains in the dealer's place of business, for three years after the date of the transaction, a copy of the bill of sale, receipt, inventory list, or other transfer document; and

(C) makes the record retained available for inspection by any peace officer;

(3) acquired in a sale made:

(A) by any public officer in the officer's official capacity as a trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority; or

(B) on the execution of, or by virtue of, any process issued by a court;

(4) acquired as surplus property from the United States, a state, a subdivision of a state, or a municipal corporation;

(5) reported by a secondhand dealer as an acquisition or a purchase, or reported as destroyed or otherwise disposed of, to:

(A) a state agency under another law of this state; or

(B) a municipal or county officer or agency under another law of this state or a municipal ordinance; or

(6) acquired by a person licensed under Chapter 371, Finance Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.003. APPLICATION TO SECONDHAND DEALERS. This chapter does not apply to a person:

(1) acting as a dealer for the exclusive benefit of any community chest, fund, foundation, or nonprofit corporation organized and operated for religious, hospital, or charitable purposes if none of the gross receipts or net earnings of the sale or exchange of business machines benefits a private shareholder or a person participating in the organization or the conduct of the sale or exchange;

(2) who owns the land on which an auction or event involving the sale or exchange of business machines occurs if the person:

(A) does not have control over the auction or event; and

(B) does not have personal knowledge of any facts arising from the auction or event constituting a violation of this chapter; or

(3) whose primary business includes the manufacture, sale, or service of computers or devices peripheral to computers.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.004. EFFECT ON OTHER LAWS AND ORDINANCES. (a) This chapter does not excuse noncompliance with another state law or municipal ordinance relating to the reporting, holding, or releasing of business machines.

(b) This chapter does not prohibit the enactment, amendment, or enforcement by any municipality of any ordinance relating to a secondhand dealer.

(c) This chapter does not supersede any municipal ordinance except to the extent that the ordinance does not require any reporting for transactions involving business machines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. REPORTING REQUIREMENTS

Sec. 1805.051. REPORT OF PURCHASE. (a) A secondhand dealer

shall report each business machine that the dealer purchases, takes in trade, accepts for sale on consignment, or accepts for auction.

(b) The report required by Subsection (a) must:

(1) meet the requirements of Section 1805.052; and

(2) be made not later than 48 hours after the time the business machine is received.

(c) Before a business machine is offered for sale or exchange, a secondhand dealer shall notify each person intending to sell or exchange a business machine that, before the dealer may accept any of the person's business machines, the person must file with the secondhand dealer a list describing each of the person's machines to be accepted by the dealer.

(d) The list required by Subsection (c) must contain:

(1) the proposed seller's driver's license number or Department of Public Safety identification card number, as recorded by the dealer on physical presentation of the license or identification card by the seller;

(2) a complete and accurate description of each business machine, including its serial number or other identifying marks or symbols;

(3) the proposed seller's certification that the information is true and complete; and

(4) if the business machine is delivered to the secondhand dealer for sale or exchange at an auction, the make, year, model, color, and registration number of the vehicle in which the business machine is transported to the auction.

(e) The secondhand dealer shall:

(1) provide, on demand, the list required by Subsection (c) to any peace officer; and

(2) mail or deliver the list to the chief of police or the sheriff as provided by Section 1805.052 not later than 48 hours after the list is filed with the secondhand dealer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.052. FORM OF REPORT; FILING. (a) A report required by this chapter must comply with this section unless a similar report is required by another state law or a municipal ordinance, in which event the required report must comply with the applicable law or

ordinance.

(b) Except as provided by Section 1805.053, a report required by this chapter must contain:

(1) the name and address of the seller of the business machine;

(2) a complete and accurate description of the business machine for which the report is made, including the serial number or other identifying marks or symbols;

(3) the seller's certification that the information is true and complete; and

(4) the seller's driver's license number or Department of Public Safety identification card number, as recorded by the dealer on physical presentation of the license or identification card by the seller.

(c) If a transaction regulated by this chapter occurs in a municipality, the original report required by this chapter and a copy must be submitted to the municipality's chief of police. If the transaction does not occur in a municipality or occurs in a municipality that does not maintain a police department, the original report and a copy must be submitted to the sheriff of the county in which the transaction occurred.

(d) The person submitting the report shall:

(1) submit the report on a form prescribed by the district attorney or person performing the duties of district attorney of the county in which the transaction occurs if no other state law or municipal ordinance requires a report of property acquired by a secondhand dealer as provided by Section 1805.051(a);

(2) retain a copy of the report in the person's place of business for three years from the date the report is filed; and

(3) make the report available for inspection by any peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.053. SERIAL NUMBER. (a) A secondhand dealer may not knowingly purchase a business machine, and a person in the business of repairing or servicing business machines may not knowingly service or repair a business machine, if another person has tampered with a serial number on the machine.

(b) A secondhand dealer or person in the business of repairing or servicing business machines shall file a report not later than the second day after the date a business machine is brought to the secondhand dealer or person if a person has tampered with the serial number on the business machine that is sought to be sold, serviced, or repaired.

(c) The report must contain:

(1) a complete and accurate description of the business machine; and

(2) if available, the name and address of the person attempting to sell the machine or have it serviced or repaired.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.054. REQUIRED RETENTION OF PROPERTY. (a) If a report is required under this chapter, other than a report under Section 1805.053, a secondhand dealer may not dispose of the business machine that is the subject of the report before the 11th day after the date the report is filed unless:

(1) the peace officer to whom the report is submitted, for good cause, authorizes disposition of any property described in a specific report; or

(2) the secondhand dealer obtains the name, address, and description of the buyer of the property and retains this information.

(b) A secondhand dealer who retains certain information under Subsection (a)(2) shall make that information available for inspection by any peace officer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. REQUIREMENTS FOR CERTAIN PURCHASES; PENALTY

Sec. 1805.101. PURCHASE FROM MINOR. (a) A secondhand dealer may not purchase a business machine from a person younger than 18 years of age unless the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction.

(b) The dealer shall retain the statement with the records required to be kept under this chapter. The dealer may destroy the

statement when the business machine is sold or one year from the date of purchase, whichever date is later.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.102. PURCHASE AT TEMPORARY LOCATION OF SECONDHAND DEALER. (a) A secondhand dealer conducting business from a temporary location may not engage in the business of buying business machines unless the person has filed within a 12-month period at least 30 days before the date on which each purchase is made:

(1) a registration statement with the Department of Public Safety; and

(2) a copy of the registration statement with the local law enforcement agency of:

(A) the municipality in which the temporary location is located; or

(B) the county in which the temporary location is located if the temporary location is not located in a municipality.

(b) The statement must contain:

(1) the secondhand dealer's name and address;

(2) the business's location; and

(3) other relevant information required by the department.

(c) If the secondhand dealer is an association or corporation, the statement must set forth the name and address of:

(1) each member of the association; or

(2) each officer and director of the corporation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 1805.103. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) disposes of property in violation of Section 1805.054;

(2) purchases, services, or repairs a business machine in violation of Section 1805.053 or fails to timely file a report required by that section;

(3) fails to obtain or retain a statement as required by Section 1805.101;

(4) fails to make a report or record available for inspection by a peace officer as required by this chapter; or

(5) is a secondhand dealer and:

(A) fails to make a report as required by Section 1805.051; or

(B) fails to file a registration statement as required by Section 1805.102.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

TITLE 12. PRACTICES AND TRADES RELATED TO WATER, HEALTH, AND SAFETY

SUBTITLE A. OCCUPATIONS RELATED TO WATER

CHAPTER 1901. WATER WELL DRILLERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1901.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 19.017(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.401(a).

(3) "Council" means the Texas Water Well Drillers Advisory Council.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Dewatering well" means an artificial excavation that is constructed to produce groundwater to lower the water table or potentiometric surface and that is not used to produce or to facilitate the production of minerals under a state regulatory program.

(6) "Dewatering well driller" means a person who drills, bores, cores, or constructs a dewatering well. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who acts under the direct supervision of a dewatering well driller and is not primarily responsible for the drilling operation.

(7) "Driller" means a water well driller, injection well driller, dewatering well driller, or monitoring well driller.

(7-a) "Executive director" means the executive director of the department.

(7-b) "Groundwater conservation district" means a district to which Chapter 36, Water Code, applies.

(8) "Injection well" includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(9) "Injection well driller" means a person who drills, bores, cores, or constructs an injection well. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who acts under the direct supervision of an injection well driller and is not primarily responsible for the drilling operation.

(10) "Monitoring well" means an artificial excavation that is constructed to measure or monitor the quantity or movement of substances below the surface of the ground and that is not used in conjunction with the production of oil, gas, or other minerals.

(11) "Monitoring well driller" means a person who drills, bores, cores, or constructs a monitoring well. The term includes the owner or operator of a well or the contractor or drilling supervisor.

(12) "Person" means an individual, firm, partnership, association, corporation, or other private legal entity.

(13) "Pollution" means a change to the physical, thermal, chemical, or biological quality of water in a way that:

(A) makes the water harmful to humans, animals,

vegetation, or property; or

(B) impairs the public enjoyment of the water for a reasonable purpose.

(14) "Water well" means an artificial excavation constructed to explore for or produce groundwater. The term does not include:

(A) a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals unless the hole is also used to produce groundwater; or

(B) an injection water source well regulated under Section 91.101, Natural Resources Code.

(15) "Water well driller" means a person who drills, bores, cores, or constructs a water well in this state. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who:

(A) drills, bores, cores, or constructs a water well on the person's own property for the person's own use; or

(B) assists in constructing a water well under the direct supervision of a driller and is not primarily responsible for the drilling operation.

(16) "Well" means a water well, injection well, dewatering well, or monitoring well.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.001, 19.017(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.401, eff. Sept. 1, 2003.

Sec. 1901.002. EFFECT ON GROUNDWATER RIGHTS. This chapter does not affect the ownership of or the rights of landowners in groundwater.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.003. LIABILITY UNDER LAW. A person is not relieved from liability under law by obtaining a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER B. ADMINISTRATION AND LICENSING PROGRAMS

Sec. 1901.051. LICENSING. (a) The department shall provide for the examination of license applicants.

(b) The department shall evaluate the qualifications of license applicants.

(c) The executive director shall issue licenses to applicants who qualify.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.002, 26.055, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 1, eff. September 1, 2023.

Sec. 1901.052. RULES. (a) The commission shall adopt rules as necessary to enforce this chapter, including rules governing:

(1) license applications;

(2) qualifications of applicants;

(3) standards of conduct for drillers, including standards for marking well drilling rigs and equipment; and

(4) procedures and practices before the department.

(b) The commission may not adopt a rule under this chapter that:

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A); or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.003, eff. Sept. 1, 2003.

Sec. 1901.053. WATER WELL DRILLERS ACCOUNT. (a) The department shall deposit money collected under this chapter to the credit of the water well drillers account in the general revenue fund. Money deposited in that account under this section may be used only to administer this chapter.

(b) The department shall allocate not more than 20 percent of the money in the account to cover the department's administrative costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.055. TRANSFER OF FUNCTIONS. If the functions necessary to the proper implementation of duties under this chapter are transferred to another entity, the powers and duties under this chapter are transferred to that entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER C. TEXAS WATER WELL DRILLERS ADVISORY COUNCIL

Sec. 1901.101. COUNCIL MEMBERSHIP. (a) The Texas Water Well Drillers Advisory Council consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:

(1) six members who are drillers experienced in the well drilling business and familiar with well drilling, completion, and plugging methods and techniques; and

(2) three public members.

(b) One member appointed under Subsection (a)(1) must be selected from the state at large and the remaining five driller members must be selected from each of the following geographic areas of the state:

(1) Gulf Coast area;

(2) Trans-Pecos area;

(3) Central Texas area;

(4) Northeast Texas area; and

(5) Panhandle-South Plains area.

(c) Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.004, eff. Sept. 1, 2003.

Sec. 1901.102. ELIGIBILITY OF MEMBERS. (a) A person is not eligible to serve as a member under Section 1901.101(a)(1) if:

(1) the person is employed by or owns an interest in a company, firm, or business association engaged in any phase of the well drilling business; and

(2) a member serving under Section 1901.101(a)(1) is employed by or owns an interest in the same company, firm, or business association.

(b) A person is not eligible for appointment as a public member of the council if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of well drilling; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of well drilling.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.103. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) An officer, employee, or paid consultant of a trade association in the well drilling industry may not be a council member or an employee of the department connected with the administration of this chapter.

(b) A council member or an employee of the department connected with the administration of this chapter may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the well drilling industry.

(c) A person may not serve as a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities on behalf of a

trade or professional association in the well drilling industry.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.104. TERMS. Council members serve six-year terms expiring September 15.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.105. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.005, eff. Sept. 1, 2003.

Sec. 1901.106. GROUNDS FOR REMOVAL. It is a ground for removal from the council that a member:

(1) does not have at the time of appointment the qualifications required by Section 1901.101 or 1901.102;

(2) does not maintain during service on the council the qualifications required by Section 1901.101 or 1901.102;

(3) violates a prohibition established by Section 1901.103; or

(4) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend each year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.107. MEETINGS; QUORUM. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(24), eff. September 1, 2021.

(b) The council shall conduct meetings in compliance with Chapter 551, Government Code.

(c) A majority of the council constitutes a quorum.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(24), eff. September 1, 2021.

Sec. 1901.108. REIMBURSEMENT. A council member may be reimbursed for travel expenses, including expenses for meals and lodging. A member is entitled to reimbursement for transportation expenses as prescribed by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.404(a), eff. Sept. 1, 2003.

Sec. 1901.109. COUNCIL POWERS AND DUTIES. (a) The council may propose rules for adoption by the commission relating to the regulation of drillers registered under this chapter.

(b) The council shall advise the department on the contents of licensing examinations.

(c) The council may:

(1) recommend standards for continuing education programs, including standards relating to:

(A) the qualifications of program providers and instructors; and

(B) the amount of program fees; and

(2) recommend topics to be covered in a continuing education course.

(d) The council shall assist the commission in evaluating continuing education programs.

(e) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 19.017(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.006, 19.017(2), eff. Sept. 1, 2003.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1901.151. LICENSE REQUIRED. A person may not act or offer to act as a driller unless the person holds a license issued by the executive director under this chapter and rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.056, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.406, eff. Sept. 1, 2003.

Sec. 1901.152. LICENSE APPLICATION. An applicant for a license must submit to the department:

(1) an application that includes:

(A) the applicant's name;

(B) the applicant's business address;

(C) the applicant's permanent mailing address; and

(D) any other relevant information required by the department; and

(2) an application fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.007, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1013 (H.B. 930), Sec. 1, eff. September 1, 2015.

Sec. 1901.153. APPRENTICE DRILLER PROGRAM. The commission by rule shall establish an apprentice driller program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1013 (H.B. 930), Sec. 2, eff. September 1, 2015.

Sec. 1901.154. LICENSE FEE. A person who qualifies for a license must pay to the department the license fee set by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.155. LICENSE EXPIRATION. A license issued under this chapter is valid for one or two years as determined by commission rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.017(3), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.407(a), eff. Sept. 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 2, eff. September 1, 2023.

Sec. 1901.158. LICENSE NOT TRANSFERABLE. A license is not transferable or assignable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.159. REPLACEMENT OF LOST OR DESTROYED LICENSE. On application and payment of a fee, the department shall issue a duplicate license to replace a lost or destroyed license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.161. EXEMPTION: DEWATERING WELL. The licensing requirements of this subchapter do not apply to a person who drills, bores, cores, or constructs a dewatering well or system to remove water for the purpose of constructing a highway, road, bridge, drainage, or underground utility project.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this

state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.008, eff. Sept. 1, 2003.

SUBCHAPTER E. EXAMINATION

Sec. 1901.201. EXAMINATION. The department may prepare, recognize, administer, or arrange for the administration of an examination required under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1013 (H.B. 930), Sec. 3, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 3, eff. September 1, 2023.

Sec. 1901.202. CONTENTS OF EXAMINATION. (a) The department shall ensure that examinations are designed to disqualify a person who lacks the necessary knowledge of drilling, of completion and plugging methods and techniques, and of groundwater formations to the extent that drilling by the person would create a serious risk of polluting fresh water.

(b) The department may prescribe additional requirements:

(1) for the examination of monitoring well drillers; and

(2) that relate to water conservation for the examination of dewatering well drillers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 4, eff. September 1, 2023.

Sec. 1901.206. REEXAMINATION. A person who fails an examination may apply to take a subsequent examination on payment of the examination fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER F. PRACTICE BY LICENSE HOLDER

Sec. 1901.251. WELL LOG. (a) Each driller who drills, deepens, or otherwise alters a water well in this state shall make and keep a legible and accurate well log in accordance with rules adopted by the commission and on forms prescribed by the executive director. The well log shall be recorded at the time of drilling, deepening, or otherwise altering the well and must contain:

(1) the depth, thickness, and character of the strata penetrated;

(2) the location of water-bearing strata;

(3) the depth, size, and character of casing installed; and

(4) any other information required by rules adopted by the commission.

(b) Not later than the 60th day after the date of the completion or cessation of drilling, deepening, or otherwise altering the well, the driller shall deliver, send by first class mail, or provide electronically a copy of the well log to:

(1) the department;

(2) the Texas Commission on Environmental Quality; and

(3) the owner of the well or the person for whom the well was drilled.

(c) If the department receives, by certified mail, a written request from the owner of the well or from the person for whom the well was drilled that the well log be made confidential, the department shall protect the contents of the well log as confidential and not a matter of public record.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.009, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1013 (H.B. 930), Sec. 4, eff. September 1, 2015.

Sec. 1901.252. MARKING RIG. (a) A driller shall legibly mark

the license number that appears on the driller's license on each rig used by the driller or the driller's employees in the well drilling business.

(b) The commission shall adopt rules specifying the manner for marking a rig.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.010, eff. Sept. 1, 2003.

Sec. 1901.253. COMPLETING WATER WELL. A driller shall complete a well under standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.011, eff. Sept. 1, 2003.

Sec. 1901.254. NOTICE REGARDING INJURIOUS WATER; PLUGGING, REPAIR, OR COMPLETION OF WELL. (a) A driller shall notify the department and the landowner or person having a well drilled on encountering water injurious to vegetation, land, or other water and determining that the well must be plugged, repaired, or properly completed in order to avoid injury or pollution.

(b) The driller shall ensure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.012, eff. Sept. 1, 2003.

Sec. 1901.255. PLUGGING WATER WELL. (a) In this section:

(1) "Abandoned well" means a well that is not in use. A well is considered to be in use if:

(A) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;

(B) the well is not a deteriorated well and has been capped;

(C) the water from the well has been put to an authorized beneficial use, as defined by the Water Code;

(D) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or

(E) the owner is participating in the Conservation Reserve Program authorized by Sections 1231-1236, Food Security Act of 1985 (16 U.S.C. Sections 3831-3836), or a similar governmental program.

(2) "Deteriorated well" means a well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.

(b) A driller who knows of an abandoned or deteriorated well shall notify the landowner or person who possesses the well that the well must be plugged or capped to avoid injury or pollution.

(c) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the commission.

(d) Not later than the 30th day after the date the well is plugged, a driller, licensed pump installer, or well owner who plugs an abandoned or deteriorated well shall submit a plugging report to:

(1) the board of directors of the groundwater conservation district in which the well is located, if the well is located in the boundaries of a groundwater conservation district; and

(2) the executive director.

(e) The department or the groundwater conservation district in which the well is located shall furnish plugging report forms on request. The executive director shall prescribe the content of the forms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.013, eff. Sept. 1, 2003.

Sec. 1901.256. ENFORCEMENT BY GROUNDWATER CONSERVATION DISTRICT. (a) This section applies only to a violation related to a well located in the boundaries of the groundwater conservation

district seeking to bring an action under this section.

(b) A groundwater conservation district shall enforce compliance with Section 1901.255 related to wells located in the boundaries of the district.

(c) A groundwater conservation district may bring an action to enjoin a person from violating Section 1901.255.

(d) A groundwater conservation district may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter that is related to Section 1901.255.

(e) A groundwater conservation district may bring an action to recover a civil penalty under Section 1901.401 for a violation of this chapter or a rule adopted under this chapter related to Section 1901.255.

(f) The groundwater conservation district may bring the action in the county in which:

(1) the offending activity occurred; or

(2) the person engaging in the activity resides.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 19.014, eff. Sept. 1, 2003.

Sec. 1901.257. MEMORANDUM OF UNDERSTANDING REGARDING ABANDONED WELLS. (a) In this section, "abandoned well" and "deteriorated well" have the meanings assigned by Section 1901.255.

(b) The Texas Commission on Environmental Quality and the department shall by rule adopt or revise a joint memorandum of understanding to coordinate the efforts of the department, groundwater conservation districts, and the field offices of the Texas Commission on Environmental Quality relating to investigative procedures for referrals of complaints regarding abandoned and deteriorated wells.

(c) Each groundwater conservation district in which an abandoned or deteriorated well is located shall join the memorandum of understanding adopted under Subsection (b).

Added by Acts 2003, 78th Leg., ch. 816, Sec. 19.015, eff. Sept. 1, 2003.

SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 1901.301. GROUNDS FOR DISCIPLINARY ACTION. The commission may discipline a person under Section 51.353 for a violation of this chapter or a rule adopted under this chapter, including:

(1) an intentional misstatement or misrepresentation of a fact on an application or well log or to a person for whom a well is being drilled, deepened, or otherwise altered;

(2) the failure to keep, deliver, or send a well log as required by Section 1901.251;

(3) the failure to advise a person for whom a well is being drilled that:

(A) injurious water has been encountered;

(B) the water is a pollution hazard; and

(C) the well must be immediately plugged in an acceptable manner; or

(4) the failure to complete a well in accordance with standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 19.016, eff. Sept. 1, 2003.

SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1901.401. CIVIL PENALTY. A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty of not less than $200 or more than $1,000 for each day of noncompliance or each act of noncompliance as determined by the court.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1901.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS. (a) The executive director may bring an action to enjoin a person from violating this chapter.

(b) The executive director may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.057, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.418, eff. Sept. 1, 2003.

Sec. 1901.403. VENUE. The executive director may bring an action in:

(1) Travis County; or

(2) the county in which:

(A) the offending activity occurred; or

(B) the person engaging in the activity resides.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.058, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.418, eff. Sept. 1, 2003.

Sec. 1901.404. ACTION BY ATTORNEY GENERAL. (a) On request, the attorney general shall represent the department in an action under Section 1901.402.

(b) At the request of the executive director, the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.059, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.419, eff. Sept. 1, 2003.

CHAPTER 1902. WATER WELL PUMP INSTALLERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1902.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 20.008(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.421.

(3) "Council" means the Texas Water Well Drillers Advisory Council.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Executive director" means the executive director of the department.

(5) "Installer" means a person who installs or repairs well pumps and equipment. The term does not include a person who:

(A) installs or repairs well pumps and equipment on the person's own property for the person's own use; or

(B) assists in pump installation under the direct supervision of an installer and is not primarily responsible for the installation.

(6) "Person" means an individual, firm, partnership, association, corporation, or other private legal entity.

(7) "Pollution" means a change to the physical, thermal, chemical, or biological quality of water in a way that:

(A) makes the water harmful to humans, animals, vegetation, or property; or

(B) impairs the public enjoyment of water for a reasonable purpose.

(8) "Pump installation" means the procedures employed in the placement and preparation for operation of equipment and materials used to obtain water from a well, including:

(A) construction involved in making the well and establishing seals and safeguards as necessary to protect the water from contamination; and

(B) repairs to an existing pump.

(9) "Well" means a water well, injection well, dewatering well, or monitoring well, as those terms are defined by Section 1901.001. The term does not include an injection water source well regulated under Section 91.101, Natural Resources Code.

(10) "Well pumps and equipment" means equipment and materials used to obtain water from a well, including the seals and safeguards necessary to protect the water from contamination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.001, 20.008(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.421(a), (b), eff. Sept. 1, 2003.

Sec. 1902.002. LIABILITY UNDER LAW. A person is not relieved from liability under law by obtaining a license under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER B. ADMINISTRATION AND LICENSING PROGRAMS

Sec. 1902.051. LICENSING. (a) The department shall provide for the examination of license applicants.

(b) The department shall evaluate the qualifications of license applicants.

(c) The executive director shall issue licenses to applicants who qualify.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2003, 78th Leg., Ch. 816, Sec. 20.002, eff. September 1, 2003.

Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 5, eff. September 1, 2023.

Sec. 1902.052. RULES. (a) The commission shall adopt rules as necessary to enforce this chapter.

(b) The commission may not adopt a rule under this chapter that:

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A); or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.003, eff. Sept. 1, 2003.

Sec. 1902.053. WATER WELL DRILLERS ACCOUNT. (a) The department shall deposit money collected under this chapter to the credit of the water well drillers account in the general revenue fund. Money deposited in that account under this section may be used only to administer this chapter.

(b) The department shall allocate not more than 20 percent of the money in the account to cover the department's administrative costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.055. TRANSFER OF FUNCTIONS. If the functions necessary to the proper implementation of duties under this chapter are transferred to another entity, the powers and duties under this chapter are transferred to that entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1902.151. LICENSE REQUIRED. A person may not act or offer to act as an installer unless the person holds a license issued by the executive director under rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.060, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.423, eff. Sept. 1, 2003.

Sec. 1902.152. LICENSE APPLICATION; EXAMINATION FEE. (a) An application for a license must contain:

(1) the applicant's name;

(2) the applicant's business address;

(3) the applicant's permanent mailing address; and

(4) any other information required by the department.

(b) An applicant must pay to the department an examination fee at the time the application is submitted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.004, eff. Sept. 1, 2003.

Sec. 1902.153. APPRENTICE PUMP INSTALLER PROGRAM. The commission by rule shall establish an apprentice pump installer program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1013 (H.B. 930), Sec. 5, eff. September 1, 2015.

Sec. 1902.154. LICENSE FEE. A person who qualifies for a license must pay to the department the license fee set by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.155. LICENSE EXPIRATION. A license issued under this chapter is valid for one or two years as determined by commission rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2003, 78th Leg., ch. 816, Sec. 20.008(3), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.424(a), eff. Sept. 1, 2003.
Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 6, eff. September 1, 2023.

Sec. 1902.158. LICENSE NOT TRANSFERABLE. A license is not transferable or assignable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.159. REPLACEMENT OF LOST OR DESTROYED LICENSE. On application and payment of a fee, the department shall issue a duplicate license to replace a lost or destroyed license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.161. EXEMPTION: DEWATERING WELL PUMPS AND EQUIPMENT. The licensing requirements of this subchapter do not apply to a person who installs or repairs well pumps and equipment to remove water for the purpose of constructing a highway, road, bridge, drainage, or underground utility project.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The commission may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.005, eff. Sept. 1, 2003.

SUBCHAPTER E. EXAMINATION

Sec. 1902.201. EXAMINATION. The department may prepare, recognize, administer, or arrange for the administration of an examination required under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1013 (H.B. 930), Sec. 6, eff. September 1, 2015.
Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 7, eff. September 1, 2023.

Sec. 1902.202. CONTENTS OF EXAMINATION. The department shall

ensure that examinations are designed to disqualify a person who lacks the knowledge of pump installation to the extent that pump installation by the person would create a serious risk of polluting fresh water.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 745 (H.B. 3744), Sec. 8, eff. September 1, 2023.

SUBCHAPTER F. PRACTICE BY LICENSE HOLDER

Sec. 1902.251. INSTALLING AND REPAIRING PUMPS. An installer shall install or repair pumps under standards and procedures adopted by the commission with the advice of the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.006, eff. Sept. 1, 2003.

Sec. 1902.252. NOTICE REGARDING INJURIOUS WATER; REPAIR OR COMPLETION OF WELL. (a) An installer shall notify the department and the landowner or person having a pump installed or repaired on encountering water injurious to vegetation, land, or other water.

(b) To avoid injury or pollution, the installer shall repair or properly complete the well under standards and procedures adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 20.007, eff. Sept. 1, 2003.

Sec. 1902.253. NOTICE REGARDING ABANDONED OR DETERIORATED WELL. An installer who knows of an abandoned or deteriorated well as defined by Section 1901.255 shall notify the landowner or person who possesses the well that the well must be plugged or capped to avoid injury or pollution.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1902.401. CIVIL PENALTY. A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty of not less than $200 or more than $1,000 for each day of noncompliance or each act of noncompliance as determined by the court.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1902.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS. (a) The executive director may bring an action to enjoin a person from violating this chapter.

(b) The executive director may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.061, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.431, eff. Sept. 1, 2003.

Sec. 1902.403. VENUE. The executive director may bring an action in:

(1) Travis County; or

(2) the county in which:

(A) the offending activity occurred; or

(B) the person engaging in the activity resides.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.062, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.431, eff. Sept. 1, 2003.

Sec. 1902.404. ACTION BY ATTORNEY GENERAL. (a) On request, the attorney general shall represent the department in an action under Section 1902.402.

(b) At the request of the executive director, the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.063, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.432, eff. Sept. 1, 2003.

CHAPTER 1903. IRRIGATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1903.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality.

(2) "Council" means the Irrigator Advisory Council.

(3) "Executive director" means the executive director of the commission.

(4) "Irrigation system" means an assembly of component parts permanently installed for the controlled distribution and conservation of water to irrigate landscape vegetation, reduce dust, or control erosion. The term does not include a system used on or by an agricultural operation as defined by Section 251.002, Agriculture Code.

(5) "Person" means an individual.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.434(a), eff. Sept. 1, 2003.

Sec. 1903.002. EXEMPTIONS. (a) In this section, "property owners' association" has the meaning assigned by Section 202.001, Property Code.

(b) The licensing requirements of this chapter do not apply to a person who is:

(1) licensed by the Texas State Board of Plumbing Examiners; or

(2) a licensed engineer, registered architect, or registered landscape architect to the extent the person's acts are

incidental to the pursuit of the person's profession.

(c) The licensing requirements of this chapter do not apply to:

(1) irrigation or yard sprinkler work performed by a property owner in a building or on premises owned or occupied by the person as the person's home;

(2) irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system, that is:

(A) performed by a maintenance person who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) incidental to and on premises owned by the business in which the person is regularly employed or engaged;

(3) irrigation or yard sprinkler work performed:

(A) by a regular employee of a railroad who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) on the premises or equipment of the railroad;

(4) irrigation or yard sprinkler work performed on public property by a person who is regularly employed by a political subdivision of this state;

(5) irrigation or yard sprinkler work performed by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by the person;

(6) irrigation or yard sprinkler work performed by a member of a property owners' association on real property owned by the association or in common by the association's members if the irrigation or yard sprinkler system waters real property that:

(A) is less than one-half acre in size; and

(B) is used for aesthetic or recreational purposes;

(7) irrigation or yard sprinkler work performed by a person using a garden hose, hose sprinkler, hose-end product, or agricultural irrigation system;

(8) activities involving a commercial agricultural irrigation system;

(9) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of an individual described by Subchapter F of this chapter who is licensed under Chapter 37, Water Code; or

(10) an owner of a business that employs an individual described by Subchapter F of this chapter who is licensed under Chapter 37, Water Code, to supervise the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems.

(d) A person who is exempt from the licensing requirements of this chapter shall comply with the standards established by this chapter and the rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.435(a), eff. Sept. 1, 2003.

SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 1903.053. STANDARDS. (a) The commission shall adopt by rule and enforce standards governing:

(1) the connection of irrigation systems to any water supply;

(2) the design, installation, and operation of irrigation systems;

(3) water conservation; and

(4) the duties and responsibilities of licensed irrigators.

(b) The commission may not require or prohibit the use of any irrigation system, component part, or equipment of any particular brand or manufacturer.

(c) In adopting standards under this section, the commission shall consult the council.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.436(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352 (H.B. 4), Sec. 13, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430 (S.B. 3), Sec. 2.34, eff. September 1, 2007.

SUBCHAPTER D. IRRIGATOR ADVISORY COUNCIL

Sec. 1903.151. COUNCIL MEMBERSHIP. (a) The Irrigator Advisory

Council consists of nine members appointed by the commission as follows:

(1) six members who are irrigators, residents of this state, experienced in the irrigation business, and familiar with irrigation methods and techniques; and

(2) three public members.

(b) Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(a), eff. Sept. 1, 2003.

Sec. 1903.152. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the council if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of irrigation; or

(2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1903.155. PRESIDING OFFICER. The council shall elect a presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(b), eff. Sept. 1, 2003.

Sec. 1903.157. MEETINGS. The council shall hold meetings at the call of the commission or presiding officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(c), eff. Sept. 1, 2003.

Sec. 1903.158. PER DIEM; REIMBURSEMENT. A council member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the council. A council member is entitled to reimbursement for travel expenses, including expenses for meals and lodging, as prescribed by the General Appropriations Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1903.159. COUNCIL DUTIES. The council shall provide advice to the commission and the commission's staff concerning matters relating to irrigation.

Acts 2003, 78th Leg., ch. 1276, Sec. 14A.438(d), eff. Sept. 1, 2003.

SUBCHAPTER F. LICENSING REQUIREMENTS

Sec. 1903.251. LICENSE REQUIRED. (a) A person must hold a license issued by the commission under Chapter 37, Water Code, if the person:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system;

(3) connects an irrigation system to a private or public, raw or potable water supply system or any water supply; or

(4) inspects an irrigation system for a municipality or water district.

(b) A person is ineligible for a license under Subsection (a)(4) if the person engages in or has a financial or advisory interest in an entity that engages in an activity under Subsection (a)(1), (2), or (3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.435(c), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 874 (H.B. 1656), Sec. 1, eff. June 15, 2007.

Sec. 1903.252. LICENSING OF LANDSCAPE ARCHITECT. The commission may not require a person who on August 27, 1979, held a license as a landscape architect under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes), to pass an examination in order to be licensed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.435(c), eff. Sept. 1, 2003.

Sec. 1903.255. RECIPROCAL LICENSING. The commission may waive any prerequisite for obtaining a license for an applicant who is registered or licensed as an irrigator or installer by another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for licensing by reciprocity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.439(a), eff. Sept. 1, 2003.

Sec. 1903.256. INSTALLATION OF IRRIGATION SYSTEM WITHOUT LICENSE; OFFENSE. (a) Unless exempt under Section 1903.002, a person commits an offense if the person installs an irrigation system without holding a license issued by the commission under Chapter 37, Water Code.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 324 (H.B. 2507), Sec. 1, eff. September 1, 2011.

CHAPTER 1904. WATER TREATMENT SPECIALISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1904.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Installation of water treatment appliances" includes connecting the appliances to all necessary utility connections in

residential, commercial, or industrial facilities.

(3) "Water treatment" means a business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system.

(4) "Water treatment equipment" includes appliances used to alter or purify water or to alter a mineral, chemical, or bacterial content or substance.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. CERTIFICATION REQUIREMENTS

Sec. 1904.051. WATER TREATMENT SPECIALIST CERTIFICATION PROGRAM. (a) The commission by rule shall establish a program to certify persons qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment equipment and appliances.

(b) The rules must establish:

(1) standards for certification to ensure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment;

(2) classes of certification;

(3) duration of certification; and

(4) reasonable annual certification fees in an amount sufficient to pay the administrative costs of the certification program, but not to exceed $150 a year for any class of certification.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

Sec. 1904.052. CERTIFICATION REQUIRED. A person may not engage

in water treatment unless the person first obtains a certificate from the commission under the program established under this chapter.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

Sec. 1904.053. APPLICATION FOR CERTIFICATION. A person desiring to obtain certification under the program established under this chapter shall file with the commission:

(1) an application in the form prescribed by the commission and containing the information required by the commission; and

(2) the appropriate certification fee.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

Sec. 1904.054. ISSUANCE OF CERTIFICATE. (a) On receipt of an application that meets commission requirements and the required fee, the commission shall issue to a person who meets commission standards for certification a certificate stating that the person is qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment facilities.

(b) All fees received by the commission under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341 and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

Sec. 1904.055. EXEMPTIONS. (a) A person who holds a license under Chapter 1301 is exempt from the requirements of this chapter.

(b) This chapter does not apply to an employee of an industrial facility installing or servicing water treatment equipment.

Redesignated from Health and Safety Code, Subchapter G, Chapter 341

and amended by Acts 2007, 80th Leg., R.S., Ch. 1084 (H.B. 3017), Sec. 1, eff. June 15, 2007.

SUBTITLE B. PRACTICES RELATED TO HEALTH AND SAFETY
CHAPTER 1951. STRUCTURAL PEST CONTROL
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1951.001. SHORT TITLE. This chapter may be cited as the Texas Structural Pest Control Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.002. DEFINITIONS. In this chapter:

(1) "Apartment building" means a building that contains at least two dwelling units that are rented primarily for nontransient permanent dwelling purposes, with rental paid by intervals of one week or longer.

(2) Repealed by Acts 2007, 80th Leg., R.S., Ch. 890, Sec. 1.79(1), eff. September 1, 2007.

(3) "Certified applicator" means a certified commercial applicator or a certified noncommercial applicator.

(4) "Certified commercial applicator" means a person who holds a certified commercial applicator's license.

(5) "Certified noncommercial applicator" means a person who holds a certified noncommercial applicator's license.

(5-a) "Commissioner" means the commissioner of agriculture.

(5-b) "Committee" means the structural pest control advisory committee.

(6) "Day-care center" has the meaning assigned by Section 42.002, Human Resources Code.

(6-a) "Department" means the Department of Agriculture.

(7) "Device" means an instrument or contrivance that is designed for trapping, destroying, repelling, or mitigating the effects of a pest or another form of plant or animal life, other than human beings or bacteria, viruses, or other microorganisms that live on or in human beings or animals. The term does not include:

(A) a firearm; or

(B) equipment used for the application of pesticides that is sold separately from a device.

(8) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code.

(9) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(10) "Nursing home" means an institution as that term is defined by Section 242.002, Health and Safety Code.

(11) "Person" means an individual, firm, partnership, corporation, association, or other organization, any combination of those persons, or any type of business entity.

(12) "Restricted-use pesticide" means a pesticide classified for restricted or limited use by the administrator of the United States Environmental Protection Agency.

(13) "School" means a:

(A) public primary or secondary school; or

(B) private or parochial primary or secondary school that is accredited by an accreditation body that is a member of the Texas Private School Accreditation Commission.

(14) "State-limited-use pesticide" means a pesticide classified for restricted or limited use by the commissioner.

(15) "Structural pest control business license" means a license issued under Section 1951.301.

(16) "Technician" means a person who holds a license under this chapter and who, under direct supervision of a certified noncommercial applicator or, as an employee of a holder of a structural pest control business license, performs supervised pesticide applications, maintains or uses structural pest control devices, makes sales presentations, or identifies pest infestation or damage. The term does not include a person whose duties are solely clerical or are otherwise completely disassociated with pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.79(1), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.02, eff. September 1, 2009.

Sec. 1951.0021. STRUCTURAL PEST CONTROL SERVICE. The Structural Pest Control Service is a service of the department responsible for the regulation and licensing of persons engaged in the business of structural pest control. The service is established to provide exceptional customer service to the public and the industry, enhance the educational and professional standards of license holders, and ensure the health, safety, and welfare of the public.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.02, eff. September 1, 2007.

Sec. 1951.003. BUSINESS OF STRUCTURAL PEST CONTROL. (a) In this chapter, a person is engaged in the "business of structural pest control" if the person performs, offers to perform, or advertises for or solicits the person's performance of any of the following services for compensation, including services performed as a part of the person's employment:

(1) identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations of:

(A) arthropods, including insects, spiders, mites, ticks, and related pests, wood-infesting organisms, rodents, weeds, nuisance birds, and any other obnoxious or undesirable animals that may infest households, railroad cars, ships, docks, trucks, airplanes, or other structures or their contents; or

(B) pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street;

(2) making oral or written inspection reports, recommendations, estimates, or bids with respect to an infestation described by Subdivision (1); or

(3) making contracts, or submitting bids based on an inspection for services or performing services designed to prevent, control, or eliminate an infestation described by Subdivision (1) by the use of insecticides, pesticides, rodenticides, fumigants, allied chemicals or substances, or mechanical devices.

(b) A person is not engaged in the business of structural pest control if the person is a clerical employee or a manual laborer and the person does not:

(1) identify pests;

(2) make inspections, recommendations, estimates, bids, or contracts;

(3) provide estimates, bids, or contracts based on an inspection; or

(4) apply insecticides, pesticides, rodenticides, fumigants, allied chemicals, or other related substances regulated by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.03, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 332 (H.B. 2742), Sec. 1, eff. June 17, 2011.

Sec. 1951.004. DIRECT SUPERVISION. In this chapter, a pesticide is applied under direct supervision if the application is made by a person acting under the instructions and control of a certified commercial applicator responsible for the actions of the person and available if needed for consultation or assistance. The certified commercial applicator is not required to be physically present at the time and place of the pesticide application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.005. LOCAL REGULATION OF PESTICIDE SALE OR USE. (a) Except as provided by this section, a municipality or other political subdivision of this state may not adopt an ordinance or rule regarding pesticide sale or use.

(b) This section does not limit the authority of a municipality or county to:

(1) encourage locally approved and provided educational material concerning a pesticide;

(2) zone for the sale or storage of pesticide products;

(3) adopt fire or building regulations, including regulations governing the storage of pesticide products or governing fumigation and thermal insecticidal fogging operations, as preventative measures to protect the public and emergency services

personnel from an accident or emergency involving pesticide products;

(4) provide or designate sites for the disposal of pesticide products;

(5) route hazardous materials; or

(6) regulate discharge to sanitary sewer systems.

(c) A municipality or other political subdivision may take any action otherwise prohibited by this section to:

(1) comply with any federal or state requirements;

(2) avoid a federal or state penalty or fine; or

(3) attain or maintain compliance with federal or state environmental standards, including state water quality standards.

(d) This section does not affect Subchapter G, Chapter 76, Agriculture Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.006. APPLICABILITY OF FEES TO GOVERNMENT EMPLOYEES. A person employed by a governmental entity is not exempt from a fee imposed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.007. APPLICABILITY OF AGRICULTURE CODE LICENSING PROVISIONS. A provision of the Agriculture Code that applies generally to licensing or regulatory programs administered by the department, including a provision that refers generally to licensing or regulatory programs under the Agriculture Code, applies to this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.04, eff. September 1, 2009.

SUBCHAPTER B. EXEMPTIONS

Sec. 1951.051. INDIVIDUAL PERFORMING PEST CONTROL WORK ON OWN OR EMPLOYER'S PREMISES. (a) An individual who does not hold a license under this chapter may use insecticides, pesticides, rodenticides, fumigants, or allied chemicals or substances or mechanical devices designed to prevent, control, or eliminate pest

infestations unless:

(1) that use is prohibited by state law or rule;

(2) that use is prohibited by rule of the United States Environmental Protection Agency; or

(3) the substance used is labeled as a restricted-use pesticide or a state-limited-use pesticide.

(b) An individual may act under Subsection (a) only on premises:

(1) owned by the individual;

(2) in which the individual owns a partnership or joint venture interest; or

(3) of a person who employs the individual primarily to perform services other than pest control.

(c) Subsection (b)(3) does not apply to:

(1) an apartment building;

(2) a day-care center;

(3) a hospital;

(4) a nursing home;

(5) a hotel, motel, or lodge;

(6) a warehouse;

(7) a food-processing establishment;

(8) a facility owned by the state or a political subdivision of the state, except as provided by Section 1951.303(b)(1); or

(9) a school.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.052. PERSON PERFORMING PEST CONTROL WORK ON PERSON'S DWELLING. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person who performs pest control work on property that the person owns or leases as the person's dwelling.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.053. PERSON PERFORMING PEST CONTROL WORK OTHERWISE

REGULATED BY DEPARTMENT. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to:

(1) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants if the person holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers the pest control work or is under the direct supervision of a person who holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers pest control work; or

(2) a person who performs pest control work on growing plants, trees, shrubs, grass, or other horticultural plants or rights-of-way if the person:

(A) is employed by a political subdivision or a cemetery;

(B) is engaged in pest control work or vegetation management for the political subdivision or cemetery;

(C) holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers pest control work or is under the direct supervision of a person who holds a commercial or noncommercial applicator license from the department and issued under Chapter 76, Agriculture Code, that covers pest control work; and

(D) complies with annual continuing education required by the department.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

(c) Neither this section nor any other law shall prohibit a political subdivision from reducing the number of hours of training or other requirements for an employee conducting larval mosquito control on property owned or controlled by the political subdivision using biological pesticides approved for general use by the Department of State Health Services, provided the employee is given instructions adequate to ensure the safe and effective use of such pesticides.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 884, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.03, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.05, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 17 (H.B. 1070), Sec. 1, eff. May 15, 2021.

Sec. 1951.054. PERSON PERFORMING PEST CONTROL WORK ON AGRICULTURAL LAND. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person or the person's employee who is engaged in the business of agriculture or aerial application or custom application of pesticides to agricultural lands.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.055. PERSON USING PEST CONTROL CHEMICALS FOR HOUSEHOLD USE. (a) Except as provided by Sections 1951.212 and 1951.457(c), this chapter does not apply to a person who uses pest control chemicals that are for household use and are available for purchase in retail food stores, such as aerosol bombs and spray cans, if the insecticide is used in accordance with the label directions on the insecticide or with department rules or guidelines or as provided by Section 1951.303 and is:

(1) used by the owner of a building or the owner's employee or agent in an area occupied by the owner in a residential building; or

(2) used in a place that is vacant, unused, and unoccupied.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.04, eff. September 1, 2007.

Sec. 1951.056. BEEKEEPERS. (a) Except as provided by Sections

1951.212 and 1951.457(c), this chapter does not apply to a person acting as a beekeeper, as defined by Section 131.001, Agriculture Code, who:

(1) is registered with the chief apiary inspector as provided by Subchapter C, Chapter 131, Agriculture Code;

(2) does not use pesticides or electrical devices other than conventional bee smokers or equipment as defined by Section 131.001, Agriculture Code; and

(3) collects, removes, or destroys honey bees.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.05, eff. September 1, 2007.

Sec. 1951.057. FALCONERS. (a) This chapter does not apply to a person engaged in falconry, as defined by Section 49.001, Parks and Wildlife Code, who:

(1) is the holder of a falconer's permit as provided by Chapter 49, Parks and Wildlife Code; and

(2) uses a raptor to control or relocate other birds.

(b) A person described by Subsection (a) is not considered to be engaged in the business of structural pest control.

Added by Acts 2009, 81st Leg., R.S., Ch. 325 (H.B. 693), Sec. 1, eff. June 19, 2009.

Sec. 1951.058. ACTIVITIES NOT INVOLVING PESTICIDES. When performed without the use of a pesticide, this chapter does not apply to the:

(1) use of a raptor to control or relocate other birds;

(2) physical removal of pests or the habitat of pests while cleaning a chimney;

(3) use of a live trap to remove an animal from the premises of a residence, agricultural operation, or business structure;

(4) removal by mechanical means of weeds or other

obstructing vegetation from a sewer, drainage system, body of water, or similar area; or

(5) installation, maintenance, or use of a nonpesticidal barrier to remove or prevent infestation by nuisance animals.

Added by Acts 2009, 81st Leg., R.S., Ch. 762 (S.B. 768), Sec. 1, eff. June 19, 2009.

Sec. 1951.059. ACTIVITIES INVOLVING MINIMAL RISK OF HARM. (a) The department by rule may exempt an activity from all or part of the requirements of this chapter, other than a requirement under Section 1951.212, if the department determines that the activity presents only a minimal risk of harm to the health, safety, and welfare of the public, the person performing the activity, pets and other domesticated animals, and the environment.

(b) A business that performs an activity exempted from regulation under this section and that is not otherwise required to hold a license issued under this chapter shall provide to each customer a written notice, as prescribed by department rule, that:

(1) informs the customer of the customer's rights under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code);

(2) provides contact information for the consumer protection division of the office of the attorney general; and

(3) contains other information required by the department.

(c) Failure to provide the notice required by Subsection (b) is a violation of this chapter. The department may impose an administrative penalty or take any other enforcement action provided by this chapter or the Agriculture Code to deter, restrain, or punish a person who violates this section. An enforcement action by the department under this section is in addition to remedies and penalties provided by the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Added by Acts 2009, 81st Leg., R.S., Ch. 762 (S.B. 768), Sec. 1, eff. June 19, 2009.

SUBCHAPTER C. STRUCTURAL PEST CONTROL ADVISORY COMMITTEE

Sec. 1951.101. COMMITTEE MEMBERSHIP. (a) The committee

consists of 11 members appointed by the commissioner as follows:

(1) one member who is an employee of a school district and associated with a school integrated pest management program;

(2) three members who represent the public;

(3) one member from an institution of higher education who is knowledgeable in the science of pests and pest control;

(4) three members who represent the interests of structural pest control operators and who are appointed based on recommendations provided by a trade association of operators;

(5) one member who represents the interests of consumers;

(6) the commissioner of state health services or the commissioner's designee; and

(7) one member who is a structural pest control operator with experience in natural, organic, or holistic pest control.

(b) Members of the committee serve staggered four-year terms. The terms of five or six members, as appropriate, expire on February 1 of each odd-numbered year.

(c) Service on the committee by a state officer or employee is an additional duty of the member's office or employment.

(d) Appointments to the committee shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.07, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.06, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 718 (H.B. 3567), Sec. 1, eff. September 1, 2013.

Sec. 1951.102. ELIGIBILITY OF PUBLIC MEMBERS. A person is not eligible for appointment as a public member of the committee if:

(1) the person is licensed under this chapter; or

(2) the person or the person's spouse:

(A) is registered, certified, or licensed by an occupational regulatory agency in the field of pest control;

(B) is employed by or participates in the management of

a business entity or other organization regulated by the department or receiving funds from the department;

(C) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(D) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for committee membership, attendance, or expenses.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.08, eff. September 1, 2007.

Sec. 1951.103. MEMBERSHIP RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the committee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of pest control except as provided by Section 1951.101(a)(4); or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of pest control.

(c) A person may not be a member of the committee if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.09, eff. September 1, 2007.

Sec. 1951.104. DUTIES OF COMMITTEE. (a) The committee shall:

(1) gather and provide information relating to the practice of structural pest control at the request of the department or the commissioner; and

(2) advise the department and the commissioner on:

(A) the education and curricula requirements for applicants;

(B) the content of examinations under this chapter;

(C) proposed rules and standards on technical issues related to structural pest control and rules related to enforcement;

(D) standards and criteria for the issuance of licenses under this chapter;

(E) fees for license applications and examinations under this chapter; and

(F) other issues affecting the practice of structural pest control.

(b) Before the department proposes a rule for adoption, the department must submit the proposed rule to the committee to provide advice as described by Subsection (a)(2)(C). The committee shall:

(1) vote on whether to recommend that the rule be proposed for adoption; and

(2) provide the recommendation under Subdivision (1) to the department not later than the 60th day after the date the proposed rule was submitted to the committee for review.

(c) For the purpose of advising the department on rules related to enforcement under Subsection (a), on request of the presiding officer of the committee, the department shall allow the committee to review a completed disciplinary investigation file.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.10, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 1069 (H.B. 3243), Sec. 1, eff. September 1, 2017.

Sec. 1951.105. RULES GOVERNING COMMITTEE; COMMITTEE MEETINGS. (a) The department shall adopt rules for the operation of the committee, including rules governing:

(1) the purpose, role, responsibility, and goals of the

committee;

(2) the quorum requirements for the committee;

(3) the qualifications required for members of the committee, which may include experience and geographic representation requirements;

(4) the appointment process for the committee;

(5) the members' terms;

(6) the training requirements;

(7) a process to regularly evaluate the effectiveness of the committee; and

(8) a requirement that the committee comply with Chapter 551, Government Code.

(b) The committee shall:

(1) at the first meeting of each year, elect from the committee's members a presiding officer and an assistant presiding officer to serve a term of one year;

(2) meet quarterly;

(3) operate under Robert's Rules of Order; and

(4) record the minutes of each meeting.

(c) The rules adopted under Subsection (a) must provide that the presiding officer of the committee:

(1) is responsible for setting an agenda for each committee meeting; and

(2) may add an item to an agenda on request by the department or commissioner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.11, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.07, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1069 (H.B. 3243), Sec. 2, eff. September 1, 2017.

Sec. 1951.106. APPLICABILITY OF OTHER LAW TO COMMITTEE. (a) Section 2110.008, Government Code, does not apply to the committee.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 890, Sec. 1.79(3), eff. September 1, 2007.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 890, Sec. 1.79(3), eff. September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.12, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.13, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.79(3), eff. September 1, 2007.

SUBCHAPTER E. POWERS AND DUTIES OF DEPARTMENT RELATING TO STRUCTURAL PEST CONTROL

Sec. 1951.201. SOLE LICENSING AUTHORITY; FEES. (a) The department is the sole authority in this state for licensing persons engaged in the business of structural pest control.

(b) The department, with the advice of the committee, shall establish fees under this chapter in amounts reasonable and necessary to cover the costs of administering the department's programs and activities under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.15, eff. September 1, 2007.

Sec. 1951.203. STANDARDS AND CRITERIA FOR LICENSES. The department, with the advice of the committee, shall develop standards and criteria for issuing:

(1) a structural pest control business license to a person engaged in the business of structural pest control;

(2) a certified commercial applicator's license to an individual engaged in the business of structural pest control;

(3) a certified noncommercial applicator's license to an individual; and

(4) a technician license to an individual.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.17, eff. September 1, 2007.

Sec. 1951.204. SUBPOENA AUTHORITY. (a) As part of an investigation under this chapter, the commissioner may request and, if necessary, compel by subpoena:

(1) the attendance of witnesses for examination under oath; and

(2) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of this chapter.

(b) The commissioner, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c) Venue for an action brought under Subsection (b) is in a district court in:

(1) Travis County; or

(2) the county in which the alleged violation occurred.

(d) The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.18, eff. September 1, 2007.

Sec. 1951.205. ENVIRONMENTAL RULES. (a) The department, with the advice of the committee, shall adopt rules as authorized under this chapter governing the methods and practices of structural pest control that the department determines are necessary to protect the public's health and welfare and prevent adverse effects on human life and the environment. Each rule adopted must cite the section of this chapter that authorizes the rule.

(b) A rule relating to the use of economic poisons must comply with applicable standards of the federal government and the commissioner governing the use of such substances.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.19, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.08, eff. September 1, 2009.

Sec. 1951.206. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), the department may not adopt a rule restricting advertising or competitive bidding by a person subject to regulation by the department under this chapter.

(b) The department may adopt rules restricting advertising or competitive bidding to prohibit false, misleading, or deceptive practices by a person subject to regulation by the department under this chapter. A rule adopted under this subsection may not:

(1) restrict the use of any medium for advertising;

(2) restrict a person's personal appearance or use of a person's voice in an advertisement;

(3) relate to the size or duration of an advertisement by a person; or

(4) restrict a person's advertisement under a trade name.

(c) Subsection (b)(4) does not prohibit the department from adopting a rule regulating the use of the name of a business or license holder in an advertisement for a structural pest control business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.20, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 717 (H.B. 3566), Sec. 1, eff. June 14, 2013.

Sec. 1951.207. INSPECTION OF LICENSE HOLDERS. (a) The department by rule shall adopt a policy that requires a business holding a structural pest control business license to be inspected by a field inspector at least once:

(1) in the business's first year of operation; and

(2) every four years after the first year of operation.

(b) The department by rule shall adopt a policy and guidelines for conducting an investigation under this chapter, including:

(1) procedures for investigating a complaint concerning misuse of pesticides, including contamination by pesticides and human exposure to pesticides;

(2) the circumstances in which a case should be referred to the:

(A) Department of State Health Services;

(B) Texas Commission on Environmental Quality; or

(C) United States Environmental Protection Agency;

(3) recommendations to consumers and applicators regarding cleanup after a spill or misapplication; and

(4) procedures for residue sampling, including the circumstances in which to take a residue sample and the time in which the sample should be taken.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.21, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.09, eff. September 1, 2009.

Sec. 1951.208. MISAPPLICATION OF PESTICIDES. (a) If an investigation shows that a misapplication of pesticides has occurred on the premises of a consumer, the department shall immediately notify the consumer and the applicator of the misapplication.

(b) On a finding of misapplication, the department shall keep records of health injuries and property damages resulting from the misapplication reported to the department by a:

(1) certified applicator;

(2) physician;

(3) person holding a structural pest control business license;

(4) technician;

(5) consumer; or

(6) state agency.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.22, eff. September 1, 2007.

Sec. 1951.209. AVAILABILITY OF CERTAIN INFORMATION. The department may make available to the Department of State Health Services under the occupational condition reporting program established under Chapter 84, Health and Safety Code, any information the department receives concerning an exposure to a pesticide caused by a person licensed under this chapter that results in a medically verifiable illness. The department and the executive commissioner of the Health and Human Services Commission shall adopt joint rules for making that information available to the Department of State Health Services. The rules must require the department to make that information available to an institution of higher education that conducts research in urban entomology, epidemiology, or other areas related to structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.23, eff. September 1, 2007.

Sec. 1951.210. PRETREATMENT INSPECTION SERVICE; FEES; LIABILITY. (a) The department may provide a pretreatment inspection service to consumers. A pretreatment inspection is limited to a determination of whether there is an infestation of pests on the premises inspected.

(b) On the request of a consumer, the department may make available an inspector employed by the department to inspect the premises of the consumer if the consumer has obtained, from at least two pest control companies:

(1) a determination that there is an infestation of pests on the premises; and

(2) an estimate of the cost of the treatment.

(c) The department shall charge a fee for a pretreatment inspection in an amount sufficient to pay the cost of providing the service.

(d) The department is not liable for any damages that may arise as a result of an inspection made under this section that is subsequently found to be incorrect.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.24, eff. September 1, 2007.

Sec. 1951.211. CONSULTATION WITH INTEGRATED PEST MANAGEMENT TECHNIQUES EXPERT. The department may contract with an institution of higher education for the services of an expert in integrated pest management to consult with the department, department staff, license holders, and the public regarding integrated pest management techniques.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.25, eff. September 1, 2007.

Sec. 1951.212. INTEGRATED PEST MANAGEMENT PROGRAMS FOR SCHOOL DISTRICTS. (a) The department shall establish standards for an integrated pest management program for the use of pesticides, herbicides, and other chemical agents to control pests, rodents, insects, and weeds at the school buildings and other facilities of school districts.

(b) The department shall use the structural pest control advisory committee to assist the department in developing the standards for the integrated pest management program. In developing the standards, the advisory committee shall consult with a person knowledgeable in the area of integrated pest management in schools.

(c) The department shall include in standards adopted under this section a requirement to use the least toxic methods available to control pests, rodents, insects, and weeds.

(d) The department by rule shall establish categories of pesticides that a school district is allowed to apply. For each category, the department shall specify:

(1) the minimum distance a school district must maintain

between an area where pesticides are being applied and an area where students are present at the time of application;

(2) the minimum amount of time a school district is required to wait before allowing students to enter an indoor or outdoor area in a school building or on school grounds for normal academic instruction or organized extracurricular activities after pesticides have been applied;

(3) the requirements for posting notice of the indoor and outdoor use of pesticides;

(4) the requirements for obtaining approval before applying the pesticide; and

(5) the requirements for maintaining records of the application of pesticides.

(e) Each school district shall:

(1) adopt an integrated pest management program that incorporates the standards established by the department under this section;

(2) designate an integrated pest management coordinator for the district; and

(3) report to the department not later than the 90th day after the date the district designates or replaces an integrated pest management coordinator the name, address, telephone number, and e-mail address of the district's current coordinator.

(f) Each person who is designated as the integrated pest management coordinator for a school district shall successfully complete six hours of continuing education in integrated pest management every three years.

(g) The department shall inspect each school district at least once every five years for compliance with this section and may conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) whether there has been a prior violation by the school district;

(2) the inspection history of the school district;

(3) any history of complaints involving the school district; and

(4) any other factor determined by the department by rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.26, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.10, eff. September 1, 2009.

SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1951.251. PUBLIC INTEREST INFORMATION. (a) The department, with the advice of the committee, shall prepare information of public interest describing the functions of the department under this chapter and the procedures by which complaints are filed with and resolved by the department under this chapter.

(b) The department shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.27, eff. September 1, 2007.

Sec. 1951.252. COMPLAINTS. (a) The department by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department under this chapter. The department may provide for that notice:

(1) on each license form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for services provided by a person regulated under this chapter.

(b) The department shall keep an information file about each complaint filed with the department under this chapter that the department has authority to resolve.

(c) If a written complaint is filed with the department under this chapter that the department has authority to resolve, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover

investigation.

(d) The department shall provide to a license holder against whom a complaint has been filed under this chapter:

(1) the allegations made against the license holder in the complaint; and

(2) on the license holder's request, any information obtained by the department in its investigation of the complaint.

(e) The department shall provide the information required under Subsection (d) in a timely manner to allow the license holder time to respond to the complaint.

(f) The commissioner may allow an authorized employee of the department to dismiss a complaint if an investigation demonstrates that:

(1) a violation did not occur; or

(2) the subject of the complaint is outside the department's jurisdiction under this chapter.

(g) An employee who dismisses a complaint under Subsection (f) shall report the dismissal to the commissioner. The report must include a sufficient explanation of the reason the complaint was dismissed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.28, eff. September 1, 2007.

Sec. 1951.253. PUBLIC PARTICIPATION. (a) The department shall develop and implement policies that provide the public with a reasonable opportunity to appear before the committee and to speak on any issue for which the committee has a duty under this chapter to advise the department.

(b) The department shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the department's programs under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.29, eff. September 1, 2007.

Sec. 1951.254. PUBLIC INFORMATION PROGRAM. (a) The department shall establish a public information program as provided by this section and Sections 1951.453-1951.456 to inform the public about the practice and regulation of structural pest control.

(b) The department may create a public information program advisory committee to assist in the development of a public information program.

(c) The department shall make available to the public and other appropriate state agencies the information compiled as part of the program.

(d) The public information program must:

(1) include the adoption and distribution, in a manner that the department considers appropriate, of a standard form for complaints under this chapter;

(2) inform prospective applicants for licensing under this chapter about the qualifications and requirements for licensing;

(3) inform applicants, license holders, and the public on the department's Internet website, in department brochures, and on any other available information resource about the department's enforcement process under this chapter, including each step in the complaint investigation and resolution process, from initial filing thorough final appeal; and

(4) inform license holders that a license holder may obtain information about a complaint made against the license holder and may obtain on request a copy of the complaint file.

(e) The department shall develop a clear, factual, and balanced information sheet of one or more pages containing information on:

(1) the pest control industry;

(2) chemicals used in structural pest control;

(3) general health and safety issues relating to structural pest control;

(4) precautions to take before, during, and after application;

(5) steps to take if a misapplication, including an underapplication or an overapplication, is suspected; and

(6) any other matters determined by the department.

(f) The information sheet must include:

(1) the names and telephone numbers of the department and

the Department of State Health Services;

(2) the telephone number of any pesticide hotline established by a state or federal agency or by a state university;

(3) a statement of a consumer's rights under Chapter 601, Business & Commerce Code, to cancel a home solicitation transaction; and

(4) information concerning the availability of any pretreatment inspection service that may be provided by the department under Section 1951.210.

(g) The department shall develop a sign to be posted in the area of an indoor treatment that contains:

(1) the date of the planned treatment; and

(2) any other information required by the department.

(h) The department shall make available a consumer and industry telephone hotline to provide direct access to the Structural Pest Control Service to ensure timely and efficient assistance with industry and consumer needs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.29, eff. April 1, 2009.

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.30, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.11, eff. September 1, 2009.

Sec. 1951.255. ENFORCEMENT INFORMATION. (a) The department shall make available to the public information about each final enforcement action taken by the department against a person under this chapter. The department shall provide this information on its Internet website and in other appropriate publications.

(b) The department may determine the format in which it will provide the information required under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.31, eff. September 1, 2007.

SUBCHAPTER G. LICENSE REQUIREMENTS, ISSUANCE, AND RENEWAL

Sec. 1951.301. STRUCTURAL PEST CONTROL BUSINESS LICENSE REQUIRED. (a) In this section, "branch office" means any place of business, other than the primary office or a facility serving solely as a telephone answering service, that has at least one employee during normal business hours who is capable of:

(1) answering customers' normal questions;

(2) scheduling normal inspections or work; or

(3) performing structural pest control functions.

(b) A person may not engage in the business of structural pest control unless the person:

(1) meets the standards set by the department under this chapter; and

(2) holds a structural pest control business license issued under this chapter.

(c) A structural pest control business license entitles a person and the person's employees to engage in the business of structural pest control under the direct supervision of a certified commercial applicator.

(d) A person engaged in the business of structural pest control must hold a structural pest control business license for each place of business, including each branch office. A certified commercial applicator, certified noncommercial applicator, or licensed technician is not required to obtain a separate license for each branch office of an employer.

(e) Each structural pest control business license holder shall employ a certified commercial applicator at all times.

(f) A certified commercial applicator or technician license must be associated with a business license holder. The name of the employer of a licensed commercial applicator or technician must be printed on the face of the license issued to a commercial applicator or technician.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.32, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.12, eff. September 1, 2009.

Sec. 1951.302. CERTIFIED COMMERCIAL APPLICATOR'S LICENSE. The department must determine that an individual is competent to use or supervise the use of a restricted-use pesticide or state-limited-use pesticide covered by the individual's certified commercial applicator's license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.33, eff. September 1, 2007.

Sec. 1951.303. CERTIFIED NONCOMMERCIAL APPLICATOR'S LICENSE. (a) In this section, "incidental use situation" means a pesticide application, including treating wasps in an area adjacent to a utility meter, treating fire ants in a transformer box, or the treating of ants by a janitor or clerical employee in a break area, that:

(1) is on an occasional, isolated, site-specific basis;

(2) is incidental to the performance of a primary duty that is not pest control by an employee; and

(3) involves the use of general use pesticides after instruction, as provided by rules adopted by the department.

(b) An individual who does not hold a certified commercial applicator's license may not engage in the business of structural pest control unless the individual holds a certified noncommercial applicator's or technician license and:

(1) is employed by the state or a political subdivision of the state and engages in the business of structural pest control other than by applying a general use pesticide in an incidental use situation; or

(2) engages in the business of structural pest control as an employee of a person who owns, operates, or maintains a building that is:

(A) an apartment building;

(B) a day-care center;

(C) a hospital;

(D) a nursing home;

(E) a hotel, motel, or lodge;

(F) a warehouse;

(G) a food-processing establishment, other than a restaurant, retail food, or food service establishment; or

(H) a school.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.34, eff. September 1, 2007.

Sec. 1951.304. TECHNICIAN LICENSE. The department may designate different classes or categories for technicians.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.35, eff. September 1, 2007.

Sec. 1951.305. APPLICATION. (a) A person must apply for a license under this chapter on a form prescribed and provided by the department.

(b) Each applicant must provide the information the department requires to determine the applicant's qualifications.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.36, eff. September 1, 2007.

Sec. 1951.306. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. (a) The department may waive any license requirement under this chapter for an applicant who holds a license issued by another state that has license requirements substantially equivalent to those of this state. The department may enter into reciprocal licensing agreements with other states that have license requirements substantially equivalent to those of this state.

(b) The department may issue an endorsement of license to a person who:

(1) establishes residence in this state; and

(2) has been determined by the department to meet the qualifications of a certified applicator by taking the appropriate examination in another state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.37, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.13, eff. September 1, 2009.

Sec. 1951.307. LICENSE RENEWAL. A person may renew a license by submitting an application to the department and paying the required renewal fees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.38, eff. September 1, 2007.

Sec. 1951.308. LICENSE EXPIRATION. A license issued under this chapter expires at the end of the license period as determined by department rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.39, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.14, eff. September 1, 2009.

Sec. 1951.309. FEE FOR INITIAL OR RENEWAL LICENSE. (a) An applicant for an initial or renewal structural pest control business license or for an initial or renewal endorsement of license under Section 1951.306 must submit with the person's application a fee in an amount established by department rule for:

(1) a license or endorsement; and

(2) a license for each technician the applicant employs.

(b) An applicant for an initial or renewal certified applicator's license must deliver with the person's application a fee in an amount established by department rule for:

(1) a license; and

(2) a license for each technician the applicant employs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.40, eff. September 1, 2007.

Sec. 1951.312. LIABILITY INSURANCE; EXCEPTIONS. (a) The department may not issue or renew a structural pest control business license until the license applicant:

(1) files with the department a policy or contract of insurance, approved as sufficient by the department, in an amount not less than $200,000 for bodily injury and property damage coverage, with a minimum total aggregate of $300,000 for all occurrences, insuring the applicant against liability for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control on premises or any other property under the applicant's care, custody, or control;

(2) in the case of an applicant who has an unexpired and uncanceled insurance policy or contract on file with the department, files with the department a certificate or other evidence from an insurance company stating that:

(A) the policy or contract insures the applicant against liability for acts and damage as described in Subdivision (1); and

(B) the amount of insurance coverage is in the amount approved by the department;

(3) files with the department a bond, certificate of deposit, or other proof acceptable to the department of sufficient funds in an amount not less than $300,000 for payment of claims of damage to persons or property occurring as a result of operations performed negligently in the course of the business of structural pest control on premises or any other property under the applicant's care, custody, or control; or

(4) files with the department evidence satisfactory to the

department of coverage under a general liability insurance policy, in an amount not less than $200,000 for bodily injury and property damage coverage, with a minimum total aggregate of $300,000 for all occurrences, if the applicant operates solely as a wood treater who treats wood on commercial property owned by the applicant.

(b) A structural pest control business license holder shall at all times maintain the insurance policy or contract or the security described by Subsection (a)(3) in the amount approved by the department. Failure to renew the policy or contract or maintain it or the security in the required amount is a ground for suspension or revocation of the license and a violation of this section.

(c) The department by rule may require different amounts of insurance coverage for different classifications of operations under this chapter.

(d) The department may adopt insurance requirements for certified noncommercial applicators or technicians.

(e) An applicant who files proof under Subsection (a)(3) must designate a third party not affiliated with the applicant to handle the processing of damage claims regarding that security.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 537, Sec. 1, 2, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.43, eff. September 1, 2007.

Sec. 1951.313. MEMORANDUM OF AGREEMENT. The department may enter into a memorandum of agreement with a political subdivision other than an institution of public or private education concerning licensing requirements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.44, eff. September 1, 2007.

Sec. 1951.314. LICENSE NOT TRANSFERABLE. A license issued by the department under this chapter is not transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.45, eff. September 1, 2007.

Sec. 1951.315. CONTINUING EDUCATION REQUIREMENTS. The department shall administer a mandatory continuing education program for all license holders. Each license holder must comply with the continuing education requirements established by department rule in order to retain or renew a license.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.46, eff. September 1, 2007.

SUBCHAPTER H. TRAINING

Sec. 1951.351. TECHNICIAN TRAINING PROGRAM. (a) The department shall:

(1) develop or approve a training program for licensed technicians and for applicants to become licensed technicians; and

(2) require that an applicant for a technician license complete the training program.

(b) The department shall develop the educational and training materials for the training program with the Texas Agricultural Extension Service or any other institution of higher education. The department shall publish and distribute, in conjunction with the Texas Agricultural Extension Service, the materials developed as a part of the training program.

(c) The training program must include instruction in:

(1) recognition of pests and pest damage;

(2) pesticide labels and label comprehension;

(3) pesticide safety;

(4) environmental protection;

(5) procedures for the immediate reporting of spills and misapplications;

(6) application equipment and techniques;

(7) pesticide formulations and actions;

(8) emergency procedures and pesticide cleanup;

(9) state and federal law relating to structural pest

control;

(10) basic principles of mathematics, chemistry, toxicology, and entomology;

(11) nonchemical pest control techniques, including biological, mechanical, and prevention techniques; and

(12) any other topic the department considers necessary.

(d) The department may create a technician training program advisory committee to assist the department in developing the training program required by this section.

(e) The department may approve a training program that has not been developed by the department if the program meets the standards adopted by the department for the program. Completion of a training program approved by the department under this subsection satisfies Subsection (a)(2).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.47, eff. September 1, 2007.

Sec. 1951.352. NEW DEVELOPMENTS; PROOF OF STUDY. If the department determines that new developments in pest control have occurred that are so significant that proper knowledge of the developments is necessary to protect the public, the department may require of each applicant proof of study by:

(1) attending approved training courses; or

(2) taking additional examinations on the new developments only.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.48, eff. September 1, 2007.

Sec. 1951.353. FEES RELATED TO TRAINING PROGRAMS. (a) The department may charge a fee to a person to purchase or borrow materials developed for the technician training program under Section 1951.351. The department shall set the fee in an amount that will recover the costs of the program.

(b) The department may charge a fee in an amount established by rule for each course considered for approval under Section 1951.352.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.49, eff. September 1, 2007.

SUBCHAPTER I. EXAMINATIONS

Sec. 1951.401. EXAMINATION FOR CERTIFIED APPLICATOR'S LICENSE. The department may require a person to qualify for a certified applicator's license by passing an examination demonstrating the person's competence in the field of structural pest control.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.50, eff. September 1, 2007.

Sec. 1951.402. EXAMINATION FOR TECHNICIAN LICENSE. The department shall require an applicant for a technician license to pass an examination developed and administered by the department or a person designated by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.51, eff. September 1, 2007.

Sec. 1951.403. EXAMINATION FEE. Each time a person applies to take an examination for a license, the person shall pay the department an examination fee, in an amount established by department rule, for each category of examination to be taken. Except as provided by department rule, an examination fee is not refundable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.52, eff.

September 1, 2007.

Sec. 1951.404. LIST OF STUDY MATERIALS AND SEMINARS. The department shall make public a list of study materials and educational seminars that are available to help applicants successfully complete any examination administered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.53, eff. September 1, 2007.

Sec. 1951.405. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a licensing examination is administered under this chapter, the department shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national testing service, the department shall notify each examinee of the results of the examination not later than the 14th day after the date the department receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails a licensing examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.54, eff. September 1, 2007.

Sec. 1951.406. EXAMINATION POLICY. (a) The department shall develop a written policy governing licensing examinations under this subchapter that prescribes:

(1) procedures to improve the design and construction of examinations;

(2) procedures for administering the examinations; and

(3) the process for evaluating examinations in use.

(b) The policy must include:

(1) a procedure for seeking assistance in the development of examinations from experts in:

(A) structural pest control;

(B) structural pest control education; and

(C) examination creation and validation;

(2) a schedule that provides for examination revision and maintenance, including the regular update of examinations;

(3) a procedure to routinely analyze and validate examinations;

(4) a procedure for the development of a bank of questions for each examination;

(5) guidelines for developing examinations from the bank of questions;

(6) the number and type of questions for each examination; and

(7) a requirement that the person responsible for examination development make periodic reports on examination issues to the commissioner.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.55, eff. September 1, 2007.

SUBCHAPTER J. PRACTICE BY LICENSE HOLDER

Sec. 1951.451. CONTRACT FOR PEST CONTROL SERVICES. A written contract under which a license holder under this chapter agrees to perform structural pest control services in this state must include:

(1) the department's mailing address and telephone number; and

(2) a statement that the department has jurisdiction over individuals licensed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.56, eff. September 1, 2007.

Sec. 1951.452. RECORDS OF LICENSE HOLDER. (a) The department may require each license holder to make records, as prescribed by the department, of the license holder's use of pesticides.

(b) Subject to Subsection (c), a record required under Subsection (a) shall be:

(1) maintained for at least two years on the license holder's business premises; and

(2) made available for inspection by the department and its authorized agents during normal business hours.

(c) A certified noncommercial applicator shall maintain required records on the premises of the person's employer for at least two years. The records shall be made available for inspection by the department and its authorized agents during the employer's normal operating hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.57, eff. September 1, 2007.

Sec. 1951.453. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: RESIDENTIAL PROPERTY. (a) For an indoor treatment at a private residence that is not rental property, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 to the owner of the residence before each treatment begins.

(b) For an indoor treatment at a residential rental property with fewer than five rental units, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 to the tenant of each unit.

(c) For an indoor treatment at a residential rental property with five or more rental units, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 and a pest control sign developed under that section to the owner or manager of the property. The owner or manager or an employee or agent of the owner or manager, other than the certified applicator or technician, shall notify residents who live in the

direct area of the treatment or in an adjacent area by:

(1) posting the sign in an area of common access at least 48 hours before each planned treatment; or

(2) leaving the information sheet on the front door of each unit or in a conspicuous place inside each unit at least 48 hours before each planned treatment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.15, eff. September 1, 2009.

Sec. 1951.454. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: WORKPLACE. For an indoor treatment at a workplace, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 and a pest control sign developed under that section to the employer or the building manager. The employer or building manager or an employee or agent of the owner or manager, other than the certified applicator or technician, shall notify the persons who work at the workplace of the date of the planned treatment by:

(1) posting the sign in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and

(2) providing the information sheet to any person working in the building on a request made by the person during normal business hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.16, eff. September 1, 2009.

Sec. 1951.455. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS: CERTAIN OTHER BUILDINGS. (a) For an indoor treatment at a building that is a hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school, or day-care center, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 and a pest

control sign developed under that section to the chief administrator or building manager. The chief administrator or building manager shall notify the persons who work in the building of the treatment by:

(1) posting the sign in an area of common access that the persons are likely to check on a regular basis at least 48 hours before each planned treatment; and

(2) providing the information sheet to a person working in the building on request of the person.

(b) Personnel at a school or day-care center shall inform the parent, guardian, or managing conservator of each child attending the school or center, at the time the child is registered, that:

(1) the school or center periodically applies pesticides indoors; and

(2) information on the application of the pesticides is available at the request of the parent, guardian, or managing conservator.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.17, eff. September 1, 2009.

Sec. 1951.456. PEST CONTROL INFORMATION FOR INDOOR TREATMENTS; RULES; EXCEPTION. (a) The department shall develop a policy to implement and enforce Sections 1951.453-1951.455.

(b) Under rules adopted by the department, a requirement under Sections 1951.453-1951.455 that notice of a treatment be given at least 48 hours before the treatment may be waived for emergency treatments.

(c) A person is not considered in violation of Section 1951.453, 1951.454, or 1951.455 or a rule adopted under this section for not posting a pest control sign developed under Section 1951.254 if the sign is posted as required by Section 1951.453, 1951.454, or 1951.455 or a rule adopted under this section but is removed by an unauthorized person.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 7.19(4), eff. September 1, 2009.

(e) The signage, advance notice, and information sheet

requirements of Sections 1951.453-1951.455 do not apply to space that is vacant, unused, and unoccupied as a residence, workplace, or other use covered by Sections 1951.453-1951.455.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.58, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.19(4), eff. September 1, 2009.

Sec. 1951.457. PEST CONTROL INFORMATION FOR OUTDOOR TREATMENTS. (a) For an outdoor treatment at a private residence that is not rental property, a certified applicator or technician shall make available a pest control information sheet developed under Section 1951.254 at the residence before the treatment begins.

(b) For an outdoor treatment at a residential rental property with fewer than five rental units, a certified applicator or technician shall make available a pest control information sheet at each unit at the time of treatment.

(c) The department may adopt rules to require the distribution of a pest control information sheet for an outdoor treatment other than an outdoor treatment described by this section if the department determines that the distribution or posting, or both, would protect the public's health, safety, and welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.59, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.18, eff. September 1, 2009.

Sec. 1951.458. PRACTICE BY NONCOMMERCIAL APPLICATOR OR TECHNICIAN. (a) A person who holds a certified noncommercial applicator's or technician license may not engage in the business of structural pest control outside the scope of the employment for which the person is licensed as a certified noncommercial applicator or technician unless the person becomes licensed as otherwise provided

by this chapter.

(b) A person who holds a certified noncommercial applicator's or technician license may engage in the business of structural pest control without association with a business that holds a structural pest control business license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1951.459. PEST CONTROL SERVICES FOR CERTAIN BUILDINGS. The owner of a building that is an apartment building, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, school, or food-processing establishment, other than a restaurant, retail food, or food service establishment, may obtain pest control services for that building from a person only by:

(1) contracting with a person who holds a license to perform the services; or

(2) requiring a person employed by the owner who is licensed as a certified noncommercial applicator or technician to perform the services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER K. DISCIPLINARY PROCEDURES

Sec. 1951.501. DISCIPLINARY POWERS OF COMMISSIONER RELATING TO STRUCTURAL PEST CONTROL. (a) In this section, "parent company" means an individual or a partnership, corporation, or other business entity holding one or more structural pest control business licenses.

(b) On a determination that an applicant or structural pest control business license holder under a parent company has substantially failed to comply with the standards and rules established by the department under this chapter, after notice and a hearing, the commissioner may refuse to:

(1) examine the applicant;

(2) issue a license to the applicant; or

(3) issue a business license to the parent company.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 7.19(5), eff. September 1, 2009.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 7.19(5), eff. September 1, 2009.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.60, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 7.19(5), eff. September 1, 2009.

Sec. 1951.502. RIGHT TO HEARING. (a) If the commissioner proposes to suspend or revoke a person's license, the person is entitled to a hearing before the commissioner or a hearings officer appointed by the commissioner.

(b) The commissioner shall establish procedures by which a decision to suspend or revoke a license is made by or is appealable to the commissioner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.61, eff. September 1, 2007.

Sec. 1951.503. JUDICIAL REVIEW. (a) An applicant or license holder may appeal from an order or other action of the commissioner under this chapter by bringing an action in a district court of Travis County.

(b) Notice of appeal must be filed not later than the 30th day after the date the commissioner issues the order.

(c) The hearing in district court is under the substantial evidence rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.62, eff. September 1, 2007.

Sec. 1951.504. SETTLEMENT OF CONTESTED CASES. (a) A settlement of a contested case under Chapter 2001, Government Code, must be approved by the commissioner.

(b) The department by rule shall establish guidelines for the

settlement of a contested case under Chapter 2001, Government Code.

(c) The commissioner may authorize the department to conduct informal settlement negotiations between the department and a license holder to resolve a complaint, other than a complaint involving a misapplication, by a consumer against the license holder.

(d) An informal settlement reached under Subsection (c):

(1) may not require the license holder to:

(A) refund money to the consumer in an amount greater than the amount provided under the original contract for services by the license holder; or

(B) perform any services that the license holder did not agree to perform in the original contract; and

(2) does not release the license holder from any liability for a misapplication.

(e) The department by rule shall establish guidelines for the informal settlement of consumer complaints as provided by Subsections (c) and (d).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.63, eff. September 1, 2007.

Sec. 1951.505. EFFECT OF REVOCATION. (a) A license revoked under Section 1951.501 may not be renewed.

(b) A person whose license is revoked may not apply for a new license until the first anniversary of the effective date of the revocation. A new license may not be issued without the approval of the department.

(c) If the commissioner revokes the license of a certified applicator in one category, the commissioner may place the applicator on probation for any other category in which the applicator is licensed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.64, eff. September 1, 2007.

Sec. 1951.506. EMERGENCY SUSPENSION. (a) The commissioner shall temporarily suspend the license of a person licensed under this chapter if the commissioner determines from the evidence or information presented to the commissioner that continued practice by the person would constitute a continuing and imminent threat to the public welfare or environment.

(b) A license may be suspended under this section without notice or hearing on the complaint if:

(1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings simultaneously with the temporary suspension; and

(2) a hearing is held as soon as practicable under this chapter and Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare or environment still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

Added by Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.65, eff. September 1, 2007.

SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1951.601. ENFORCEMENT ACTION FOR MISAPPLICATION OF PESTICIDES. If the commissioner finds that an applicator has misapplied pesticides, the commissioner shall institute an enforcement action against the applicator. The department by rule shall adopt a policy to implement this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.75, eff. September 1, 2007.

Sec. 1951.602. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule, license, or order of the commissioner is subject to a civil penalty of not less than $50 or

more than $2,000 for each act of violation and for each day of violation.

(b) If it appears that a person has violated or is threatening to violate this chapter or a rule, license, or order of the commissioner, the commissioner may have a civil action instituted in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty under Subsection (a); or

(3) both injunctive relief and the civil penalty.

(c) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter or a rule, license, or order of the commissioner, the district court shall grant injunctive relief as the facts warrant.

(d) At the request of the commissioner, the attorney general shall institute and conduct an action in the name of the state for the injunctive relief, to recover the civil penalty, or both.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 890 (H.B. 2458), Sec. 1.76, eff. September 1, 2007.

Sec. 1951.603. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) violates this chapter;

(2) violates a rule adopted under Section 1951.205 or 1951.206; or

(3) intentionally makes a false statement in an application for a license or otherwise fraudulently obtains or attempts to obtain a license.

(b) Each day a violation occurs is a separate offense.

(c) Except as otherwise provided by this subsection, an offense under this section is a Class C misdemeanor. An offense under this section is a Class B misdemeanor if the person has been convicted previously of an offense under this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

CHAPTER 1952. CODE ENFORCEMENT OFFICERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1952.001. DEFINITIONS. In this chapter:

(1) "Code enforcement" means the inspection of public or private premises for the purpose of:

(A) identifying environmental hazards, including:

(i) fire or health hazards;

(ii) nuisance violations;

(iii) unsafe building conditions; and

(iv) violations of any fire, health, or building regulation, statute, or ordinance; and

(B) improving and rehabilitating those premises with regard to those hazards.

(2) "Code enforcement officer" means an agent of this state or a political subdivision of this state who engages in code enforcement.

(2-a) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.227, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.254, eff. September 1, 2017.

Sec. 1952.002. EXEMPTION FROM REGISTRATION. A person is not required to be registered under this chapter if the person:

(1) is required to be licensed or registered under another law of this state; and

(2) engages in code enforcement under that license or registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.003. EMPLOYMENT OF REGISTERED PERSON NOT REQUIRED. This state or a political subdivision of this state may engage in code enforcement without employing a person registered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 1952.051. GENERAL POWERS AND DUTIES. (a) The executive director shall administer and enforce this chapter.

(b) The commission by rule shall adopt standards and education requirements consistent with those established under Chapter 654, Government Code, for the registration of:

(1) code enforcement officers; and

(2) code enforcement officers in training.

(c) The education requirements adopted under Subsection (b) must include education regarding the principles and procedures to be followed when possessing or carrying an instrument used specifically for deterring an animal bite.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.229, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.256, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1126 (H.B. 2584), Sec. 2, eff. September 1, 2019.

Sec. 1952.055. ADVISORY COMMITTEE. The department may establish an advisory committee to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.258, eff. September 1, 2017.

SUBCHAPTER C. REGISTRATION REQUIREMENTS

Sec. 1952.101. REGISTRATION REQUIRED. Except as permitted by Section 1952.002, a person may not claim to be a code enforcement officer or use the title "code enforcement officer" unless the person holds a certificate of registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.102. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT OFFICER. To be eligible to receive a certificate of registration as a code enforcement officer, a person must:

(1) submit an application in the manner and on the form prescribed by the executive director;

(2) have at least one year of full-time experience in the field of code enforcement;

(3) pass the examination required by the department;

(4) pay the application, examination, and registration fees; and

(5) meet any other requirements prescribed by this chapter or by commission rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.232, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.259, eff. September 1, 2017.

Sec. 1952.103. ELIGIBILITY TO REGISTER AS CODE ENFORCEMENT OFFICER IN TRAINING. (a) An applicant for a certificate of registration under this chapter who has less than one year of full-time experience in code enforcement is entitled to receive a certificate of registration as a code enforcement officer in training on:

(1) passing the examination described by Section 1952.102(3);

(2) paying the required fees; and

(3) meeting any other requirement prescribed by this chapter or by commission rule.

(b) A certificate issued under this section expires on the

first anniversary of the date of issuance.

(c) A code enforcement officer in training may engage in code enforcement under the supervision of a registered code enforcement officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.260, eff. September 1, 2017.

Sec. 1952.104. RECIPROCAL REGISTRATION. On proper application, the department shall issue a certificate of registration to a license holder or registrant of another state that has requirements for the licensing or registration of a code enforcement officer that are at least equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1952.105. TERM OF CERTIFICATE; RENEWAL. (a) A certificate of registration issued under this chapter expires on the second anniversary of the date of issuance and may be renewed biennially on payment of the required renewal fee and on completion of the continuing education requirements prescribed by commission rule.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 838 , Sec. 1.298(24), eff. September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.452(a), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.233, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.261, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.262, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.298(24), eff. September 1, 2017.

Sec. 1952.106. STATEWIDE VALIDITY OF CERTIFICATE; NONTRANSFERABILITY. (a) A certificate of registration issued under this chapter is valid throughout this state.

(b) A certificate of registration issued under this chapter is not assignable or transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER D. CERTIFICATE DENIAL AND DISCIPLINARY ACTION

Sec. 1952.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. (a) The commission or executive director may deny a person's application for a certificate of registration if the person's certificate or license to engage in code enforcement or a related profession has been revoked by another licensing entity in this state or another state for:

(1) unprofessional conduct;

(2) fraud, deceit, or negligence; or

(3) misconduct in the practice of code enforcement or a related profession.

(b) The commission or executive director shall suspend or revoke a certificate of registration issued under this chapter if the commission or executive director determines that the certificate holder:

(1) engaged in fraud or deceit in obtaining a certificate; or

(2) is grossly negligent, incompetent, or guilty of misconduct in the practice of code enforcement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.264, eff. September 1, 2017.

CHAPTER 1953. SANITARIANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1953.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing

and Regulation.

(1-a) "Department" means the Texas Department of Licensing and Regulation.

(2) "Executive director" means the executive director of the department.

(3) "Sanitarian" means a person trained in sanitary science to perform duties relating to education and inspections in environmental sanitation.

(4) "Sanitation" means the study, art, and technique of applying scientific knowledge to improve the human environment for the purpose of promoting public health and welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.240, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.266, eff. September 1, 2017.

Sec. 1953.002. EMPLOYMENT OF SANITARIAN. This chapter does not require a person, including a municipality or governmental agency, to employ a sanitarian.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.003. EXEMPTIONS. This chapter does not apply to a person, including a physician, dentist, engineer, or veterinarian, who is licensed by an agency of this state other than the department and who, by nature of the person's employment or duties, might be construed as being subject to this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.241, eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 1953.051. GENERAL POWERS AND DUTIES. (a) The executive

director shall administer and enforce this chapter.

(b) The department shall:

(1) administer continuing education requirements; and

(2) prescribe necessary forms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.242, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.268, eff. September 1, 2017.

Sec. 1953.0512. ADVISORY COMMITTEE. The department may establish an advisory committee to provide advice and recommendations to the department on technical matters relevant to the administration of this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.269, eff. September 1, 2017.

SUBCHAPTER C. CERTIFICATE OF REGISTRATION

Sec. 1953.101. REGISTRATION REQUIRED. A person who engages or offers to engage in work in sanitation may not represent that the person is a sanitarian or use a title containing the word "sanitarian" unless the person holds a certificate of registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1953.102. ELIGIBILITY REQUIREMENTS. (a) To be eligible to receive a certificate of registration as a professional sanitarian, a person must:

(1) hold at least a bachelor's degree from an accredited college or university that includes at least 30 semester hours in basic or applied science;

(2) complete any additional training in the basic sciences or public health the department determines necessary to effectively serve as a professional sanitarian; and

(3) have at least two years of full-time experience in sanitation.

(b) The commission by rule may establish other qualifications for registration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.243, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.270, eff. September 1, 2017.

Sec. 1953.104. ISSUANCE OF CERTIFICATE: PROFESSIONAL SANITARIAN; TERM. (a) The department shall issue a certificate of registration as a professional sanitarian to a person who:

(1) applies in the manner and on the form prescribed by the executive director;

(2) pays the registration fee set by the commission by rule;

(3) meets the eligibility requirements prescribed by Section 1953.102; and

(4) passes an examination under Subchapter D.

(b) A certificate of registration is valid for two years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.243, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.271, eff. September 1, 2017.

Sec. 1953.105. ISSUANCE OF CERTIFICATE: SANITARIAN IN TRAINING. (a) The department shall issue a certificate of registration as a sanitarian in training to a person who:

(1) is employed in sanitation;

(2) meets the eligibility requirements prescribed by Section 1953.102, other than the requirements relating to experience;

(3) pays a registration fee prescribed by the commission by rule for a sanitarian in training; and

(4) passes an examination under Subchapter D.

(b) A certificate issued under this section is valid for a period not to exceed two years after the date of issuance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.244, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.272, eff. September 1, 2017.

Sec. 1953.106. RENEWAL OF CERTIFICATE. To renew a certificate of registration under this chapter, a professional sanitarian must:

(1) pay to the department a renewal fee prescribed by the commission by rule; and

(2) provide proof of completion of any applicable continuing education requirements prescribed by the commission by rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.245, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.274, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.298(41), eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.20, eff. September 1, 2021.

SUBCHAPTER D. EXAMINATION

Sec. 1953.151. EXAMINATION. (a) To obtain a certificate of registration under this chapter, an applicant must pass a written examination prescribed by the department that provides evidence satisfactory to the department that the applicant is qualified for registration under this chapter.

(b) An applicant for a certificate of registration may not take the examination unless the applicant pays the examination fee prescribed by the commission by rule.

(c) In evaluating an applicant's performance on the examination, the department shall carefully consider the applicant's knowledge and understanding of the principles of sanitation and the physical, biological, and social sciences.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.246, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.275, eff. September 1, 2017.

SUBCHAPTER E. CERTIFICATE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1953.201. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. (a) The commission or executive director may deny a person's application for a certificate of registration if:

(1) the person's certificate or license to engage in a profession in this state or elsewhere has been revoked for unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of the profession; or

(2) satisfactory proof is presented to the commission or executive director establishing that the person has been found guilty of unprofessional conduct, fraud, deceit, negligence, or misconduct in the practice of a profession.

(b) The commission or executive director may suspend or revoke a certificate of registration if the certificate holder:

(1) practiced fraud or deceit in obtaining the certificate; or

(2) acted in a manner constituting gross negligence, incompetency, or misconduct in the practice of sanitation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.246, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.276, eff. September 1, 2017.

CHAPTER 1954. ASBESTOS HEALTH PROTECTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1954.001. SHORT TITLE. This chapter may be cited as the Texas Asbestos Health Protection Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.002. DEFINITIONS. In this chapter:

(1) "Air monitoring" means the collection of airborne samples for analysis of asbestos fibers.

(2) "Asbestos" means:

(A) an asbestiform variety of chrysotile, amosite, crocidolite, tremolite, anthophyllite, or actinolite; or

(B) a material that contains one percent or more of a substance described by Paragraph A.

(3) "Asbestos abatement" means a removal, encapsulation, or enclosure of asbestos to reduce or eliminate or that has the effect of reducing or eliminating:

(A) a concentration of asbestos fibers; or

(B) an asbestos-containing material.

(4) "Asbestos-related activity" means:

(A) the removal, encapsulation, or enclosure of asbestos;

(B) the performance of an asbestos survey;

(C) the development of an asbestos management plan or response action;

(D) the collection or analysis of an asbestos sample; or

(E) the performance of another activity for which a license is required under this chapter.

(5) "Asbestos removal" means an action that disturbs, dislodges, strips, or otherwise takes away asbestos fibers.

(6) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(11), eff. April 2, 2015.

(7) "Commissioner" means the commissioner of state health services.

(8) "Department" means the Department of State Health Services.

(9) "Encapsulation" means a method of control of asbestos fibers in which the surface of an asbestos-containing material is

penetrated by or covered with a coating prepared for that purpose.

(10) "Enclosure" means the construction of an airtight wall and ceiling around an asbestos-containing material.

(10-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(11) "Public building" means a building used or to be used for a purpose that involves public access or occupancy and includes a building that is vacant at any time, including during preparation for actual demolition. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of a process or function that is hazardous to human health or safety;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building that has not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.252, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(11), eff. April 2, 2015.

SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT

Sec. 1954.051. GENERAL RULEMAKING AUTHORITY. The executive commissioner shall adopt substantive and procedural rules as necessary or desirable for the executive commissioner, the department, and the commissioner to discharge their powers and duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.254, eff. April 2, 2015.

Sec. 1954.052. RULES REGARDING ASBESTOS CONCENTRATION LEVELS. (a) The executive commissioner may adopt rules defining the maximum airborne asbestos concentrations that are:

(1) permissible outside of a regulated containment area during an abatement activity; and

(2) acceptable for final clearance.

(b) The executive commissioner may not by rule identify any level of asbestos concentration as a safe exposure level because any exposure to airborne asbestos is considered to involve some risk.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.255, eff. April 2, 2015.

Sec. 1954.053. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The executive commissioner may adopt rules specifying:

(1) performance standards at least as stringent as applicable federal standards; and

(2) work practices that affect asbestos removal or encapsulation in a public building.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.256, eff. April 2, 2015.

Sec. 1954.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt a rule restricting advertising or competitive bidding by a person licensed or registered under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) In adopting rules to prohibit a false, misleading, or deceptive practice, the executive commissioner may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of the personal appearance or voice of the person in an advertisement;

(3) relates to the size or duration of an advertisement by

the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.257, eff. April 2, 2015.

Sec. 1954.055. RECIPROCITY AGREEMENT. The executive commissioner may adopt rules under this chapter to effect reciprocity agreements with other states.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.258, eff. April 2, 2015.

Sec. 1954.056. FEES. (a) The executive commissioner shall set fees under this chapter in amounts that are reasonable and necessary. The executive commissioner shall set fees for issuing or renewing a license in amounts designed to allow the department to recover from the license holders all of the department's direct and indirect costs in administering and enforcing this chapter.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(12), eff. April 2, 2015.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(12), eff. April 2, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 5.318(12), eff. April 2, 2015.

(e) The fees collected by the department under this chapter shall be deposited to the credit of the asbestos removal licensure fund account in the general revenue fund. The fees may be used only by the department for the purposes of this chapter. Not more than 25 percent of the fees collected may be applied for administrative costs necessary to implement this chapter. The remainder shall be used for enforcement personnel necessary to investigate compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.259, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.318(12), eff. April 2, 2015.

Sec. 1954.057. GENERAL INVESTIGATIVE AUTHORITY. (a) The department may conduct any inspection or cause the production of any documentary or other evidence that the department considers necessary to determine whether a license should be:

(1) issued, delayed, or denied; or

(2) modified, suspended, or revoked.

(b) The department may require additional written information and assurances from the applicant or license holder at any time after the filing of an application for a license and before the expiration of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.058. AUTHORITY TO CONTRACT FOR INSPECTIONS. The department may contract with any person to perform inspections necessary to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.059. ASBESTOS SITE INSPECTIONS. (a) The department shall inspect:

(1) an asbestos abatement contractor during an abatement project at least annually; and

(2) other licensed organizations in accordance with department rules.

(b) The department shall require a building or facility owner or the owner's authorized representative to complete an immediate inspection for asbestos if the department determines after an asbestos site inspection that there appears to be a danger or potential danger to:

(1) the occupants of the building;

(2) workers in the building or facility; or

(3) the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.260, eff. April 2, 2015.

Sec. 1954.060. DEMOLITION AND RENOVATION ACTIVITIES; INSPECTIONS. (a) The executive commissioner may adopt and the department may enforce rules regarding demolition and renovation activities to protect the public from asbestos emissions. At a minimum, the rules must be sufficient to permit the department to obtain authority from the United States Environmental Protection Agency to implement and enforce in this state the provisions of 40 C.F.R. Part 61, Subpart M, that establish the requirements applicable to the demolition and renovation of a facility, including the disposal of asbestos-containing waste materials.

(b) An employee or agent of the department may enter a facility, as that term is defined by 40 C.F.R. Section 61.141, to inspect and investigate conditions to determine compliance with the rules adopted under Subsection (a).

(c) The department may exempt a demolition or renovation project from the rules relating to demolition and renovation activities adopted under Subsection (a) if:

(1) the project has received an exemption from the United States Environmental Protection Agency exempting the project from federal regulations; or

(2) the department determines that:

(A) the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection provided by the procedures required under department rule for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.454(a), eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.261, eff. April 2, 2015.

Sec. 1954.061. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN SOLID WASTE FACILITIES. The executive commissioner and the Texas Commission on Environmental Quality by rule shall adopt a joint memorandum of understanding regarding the inspection of solid waste facilities that receive asbestos.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.262, eff. April 2, 2015.

Sec. 1954.062. DISSEMINATION OF INFORMATION; EDUCATIONAL PROGRAMS OR EXHIBITS. (a) The department may:

(1) develop and distribute to the public information regarding asbestos;

(2) conduct educational programs regarding asbestos; and

(3) assemble or sponsor informational or educational exhibits regarding asbestos.

(b) The department may respond to a request for information or assistance relating to asbestos control and abatement from a federal facility or another facility not included within the scope of this chapter. The department may collect fees for those services in the manner provided by Subchapter D, Chapter 12, Health and Safety Code, for public health services.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.063. COMPLAINTS; RAPID RESPONSE TASK FORCE. (a) The department shall investigate any complaint involving the control and abatement of asbestos.

(b) The department shall maintain a rapid response task force to investigate each complaint received by the department regarding:

(1) possible health hazards to workers or the public; or

(2) contamination of the environment.

(c) The rapid response task force shall investigate a complaint

not later than 48 hours after the time of the complaint to the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER C. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 1954.101. LICENSE REQUIRED FOR CERTAIN ACTIVITIES. (a) Unless a person is licensed under this chapter, the person may not:

(1) remove asbestos from or encapsulate or enclose asbestos in a public building or supervise that removal, encapsulation, or enclosure;

(2) perform or supervise maintenance, repair, installation, renovation, or cleaning that dislodges, breaks, cuts, abrades, or impinges on asbestos materials in a public building;

(3) perform an asbestos survey or inspection of a public building, including the sampling and assessment of exposure;

(4) provide plans, instructions, or schedules for the management of asbestos in a public building;

(5) provide monitoring services for airborne asbestos dust using:

(A) transmission electron microscopy;

(B) phase contrast microscopy; or

(C) another analytical method approved by the department;

(6) provide an analysis of:

(A) a bulk material sample for asbestos content or asbestos concentration; or

(B) an airborne sample using:

(i) transmission electron microscopy;

(ii) phase contrast microscopy;

(iii) polarized light microscopy;

(iv) scanning electron microscopy; or

(v) another analytical method approved by the department;

(7) design and prepare abatement project plans and specifications for asbestos abatement in a public building;

(8) handle an asbestos abatement contract on behalf of another person;

(9) transport an asbestos-containing material from a

facility for disposal; or

(10) sponsor or certify an initial or refresher training course required for licensing or registration under this chapter.

(b) In accordance with a schedule established by department rules, a person may not sponsor or certify an asbestos training course required for licensing or registration under this chapter unless the person is licensed as a training sponsor.

(c) The department may waive the requirement for a license on receipt of notice of an emergency that results from a sudden unexpected event that is not a planned renovation or demolition.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.263, eff. April 2, 2015.

Sec. 1954.102. LICENSE CLASSIFICATIONS. (a) The executive commissioner shall determine and specify the scope, purpose, eligibility, qualifications, and compliance requirements for each class of license and any other license necessary for the executive commissioner and department to carry out their duties under this chapter.

(b) A person must be licensed as:

(1) an asbestos abatement supervisor, if the person is an individual who:

(A) supervises the removal, encapsulation, or enclosure of asbestos; and

(B) is designated as the competent person, as that term is defined by 29 C.F.R. Section 1926.1101;

(2) an asbestos abatement contractor, if the person is designated as the contractor for a project:

(A) in which asbestos abatement, encapsulation, or enclosure will be conducted; and

(B) that is not designated as a small-scale, short-duration activity;

(3) an inspector, if the person is an individual who performs an asbestos survey of a facility;

(4) a management planner, if the person develops a management plan or an inspection or survey report;

(5) an air-monitoring technician, if the person is a technician who performs air monitoring for an asbestos abatement project or related activity;

(6) a consultant, if the person designs specifications for an asbestos abatement project;

(7) a transporter, if the person engages in the transportation of asbestos-containing materials from a facility in this state; or

(8) a training sponsor, if the person sponsors or certifies an asbestos training or refresher course.

(c) A laboratory may be licensed as an asbestos laboratory only if the laboratory:

(1) is accredited by the National Voluntary Laboratory and Analytical Proficiency Accreditation or is enrolled in the EPA Proficiency Analytical Testing rounds, as appropriate; or

(2) has similar qualifications as required by the executive commissioner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.264, eff. April 2, 2015.

Sec. 1954.103. REGISTRATION REQUIRED FOR CERTAIN ACTIVITIES. An individual must be registered as an asbestos abatement worker if the individual:

(1) removes, encapsulates, encloses, loads, or unloads asbestos in the scope of employment; or

(2) performs maintenance, repair, installation, renovation, or cleaning activities that may dislodge, break, cut, abrade, or impinge on asbestos-containing materials.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.104. RESILIENT FLOOR-COVERING MATERIAL. (a) For purposes of this section, "resilient floor-covering material" includes sheet vinyl flooring, resilient tile such as vinyl composition tile, asphalt tile, rubber tile, and associated adhesives.

(b) The licensing and registration requirements of this chapter do not apply to an activity that involves resilient floor-covering material if the removal of the material is performed consistently with:

(1) work practices published by the resilient floor-covering industry; or

(2) other methods determined by the commissioner to provide public health protection from asbestos exposure.

(c) A person who removes resilient floor-covering material must have completed a training course on the work practices described by Subsection (b) for a minimum of eight hours.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.455(a), eff. Sept. 1, 2003.

Sec. 1954.105. APPLICATION FOR LICENSE. (a) An applicant for a license to engage in asbestos abatement or in another asbestos-related activity for which a license is required under this chapter must:

(1) submit an application to the department on a form prescribed by the department; and

(2) pay to the department a nonrefundable application fee in the amount set by the executive commissioner by rule.

(b) An application for a license must be signed by the applicant and must include, as applicable:

(1) the applicant's business name and address;

(2) a written respiratory protection plan;

(3) a list of the asbestos-related activities that the applicant has performed during the preceding 12 months; and

(4) additional information the department requires.

(c) To be issued a license, an applicant must also provide to the department, as applicable:

(1) a certificate of good standing issued by the secretary of state, if the applicant is a corporation or other business entity;

(2) a certificate from the secretary of state authorizing the applicant to conduct business in this state, if the applicant is a foreign corporation;

(3) a state sales tax number; and

(4) a certificate of insurance, issued for the purpose of licensing under this chapter, that demonstrates:

(A) asbestos abatement liability coverage for an asbestos abatement contractor performing work for hire;

(B) professional liability insurance coverage for errors and omissions for a consultant, inspector, or asbestos laboratory performing work for hire;

(C) liability insurance to transport for hire asbestos-containing materials for purposes of disposal; and

(D) if workers' compensation insurance is required by the owner of the public building or by the specifications for the asbestos-related activity, either:

(i) proof of workers' compensation insurance issued by a company licensed to issue workers' compensation insurance in this state and written in this state on the Texas form; or

(ii) evidence of self-insurance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.265, eff. April 2, 2015.

Sec. 1954.106. ELIGIBILITY FOR LICENSE. (a) To qualify for a license under this chapter, an applicant must meet the requirements of this section and any other requirements established by the executive commissioner, including asbestos-related education or experience requirements.

(b) A person engaged in removing, encapsulating, or enclosing asbestos must demonstrate to the department that the person:

(1) completed in the preceding 12 months:

(A) a thorough and detailed training course on asbestos removal, encapsulation, and enclosure approved by the United States Environmental Protection Agency or the department; and

(B) a physical examination that meets the requirements stated in the asbestos regulations of the United States Environmental Protection Agency or the United States Occupational Safety and Health Administration;

(2) is capable of complying with all applicable standards of the department, the United States Environmental Protection Agency,

the United States Occupational Safety and Health Administration, and any other state or federal agency authorized to regulate activities affecting the control and abatement of asbestos; and

(3) has access to at least one appropriate disposal site for deposit of any asbestos waste the person generates during the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.266, eff. April 2, 2015.

Sec. 1954.107. RESTRICTED LICENSE FOR CERTAIN APPLICANTS. (a) An individual may apply for a restricted license as an asbestos abatement supervisor without the experience the executive commissioner by rule may require to be licensed as an asbestos abatement supervisor if the individual:

(1) is an employee of a building owner or manager; and

(2) meets all other qualifications or requirements for a license.

(b) The authority granted by a license issued under this section is restricted to supervising those practices and procedures described by 40 C.F. R. Part 763, Subpart E, Appendix B, relating to small-scale, short-duration operations, maintenance, and repair activities involving asbestos-containing materials, for buildings under the control of the license holder's employer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.267, eff. April 2, 2015.

Sec. 1954.108. APPLICATION FOR REGISTRATION OR RENEWAL; ELIGIBILITY. (a) An application for registration or the renewal of registration as an asbestos abatement worker must be made on a form provided by the department. An application for registration must be accompanied by a nonrefundable fee set by the executive commissioner by rule.

(b) The executive commissioner shall determine the criteria for

registration or the renewal of registration as an asbestos abatement worker.

(c) A physical examination for an asbestos abatement worker must be conducted in accordance with the physical examination requirements described by Section 1954.106(b)(1)(B).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.268, eff. April 2, 2015.

Sec. 1954.109. EXAMINATIONS. The executive commissioner may:

(1) require or authorize the use of standardized examinations for licensing or registration under this chapter; and

(2) set fees for the administration of the examinations.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.269, eff. April 2, 2015.

Sec. 1954.110. EXAMINATION RESULTS. (a) The department shall notify each person who takes a licensing or registration examination under this chapter of the results of the examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a testing service, the department shall notify the person of the results of the examination not later than the 14th day after the date the department receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a testing service will be delayed for more than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the results of the person's examination.

(d) If requested in writing by a person who fails a licensing or registration examination, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.111. TERMS OF LICENSE OR REGISTRATION; NONASSIGNABILITY. (a) The terms of a license or registration are subject to amendment or modification by a rule adopted or order issued under this chapter.

(b) A license or registration may not be assigned to another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.112. REPLACEMENT LICENSE. A license holder may request a replacement license certificate by completing an appropriate application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER D. PROVISIONAL LICENSE OR REGISTRATION

Sec. 1954.151. PROVISIONAL LICENSE OR REGISTRATION. (a) The department may grant a provisional license or registration to an applicant for a license or registration in this state who:

(1) has been licensed or registered in good standing to perform the relevant asbestos-related activity for at least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) is currently licensed or registered in that jurisdiction;

(3) has passed a national or other examination recognized by the executive commissioner relating to the relevant asbestos-related activity, if the executive commissioner requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity; and

(4) is sponsored by a person licensed under this chapter with whom the provisional license or registration holder will practice during the time the person holds the provisional license or registration.

(b) The department may waive the requirement of Subsection

(a)(4) if the department determines that compliance with the requirement would be a hardship to the applicant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.270, eff. April 2, 2015.

Sec. 1954.152. TERM OF LICENSE OR REGISTRATION. A provisional license or registration is valid until the date the department approves or denies the provisional license or registration holder's application for a license or registration under Subchapter C.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.153. ELIGIBILITY FOR LICENSE OR REGISTRATION. The department shall issue a license or registration under Subchapter C to a provisional license or registration holder who is eligible to be licensed or registered under rules adopted under Section 1954.055 or who:

(1) passes the part of the examination under Section 1954.109 that relates to the applicant's knowledge and understanding of the laws and rules relating to the performance of the relevant asbestos-related activity in this state, if the executive commissioner requires an examination under Section 1954.109 to obtain the license or registration required to perform that activity;

(2) meets the relevant academic and experience requirements for the license or registration, as verified by the department; and

(3) satisfies any other applicable license or registration requirement under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.271, eff. April 2, 2015.

Sec. 1954.154. DECISION ON APPLICATION. (a) The department shall approve or deny a provisional license or registration holder's

application for a license or registration not later than the 180th day after the date the provisional license or registration is issued.

(b) The department may extend the 180-day period if the department has not received the results of an examination before the end of that period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER E. LICENSE OR REGISTRATION EXPIRATION AND RENEWAL

Sec. 1954.201. LICENSE EXPIRATION AND RENEWAL. (a) A license issued under this chapter expires on the second anniversary of its effective date and may be renewed as provided by this subchapter. A person whose license has expired may not engage in an activity for which a license is required until the license is renewed.

(b) The executive commissioner by rule may adopt a system under which licenses expire on various dates during the year. For a year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.272, eff. April 2, 2015.

Sec. 1954.202. NOTICE OF LICENSE EXPIRATION. At least one month before a license issued under this chapter expires, the department shall send by first-class mail to the license holder at the license holder's last known address a notice that states:

(1) the date on which the license expires;

(2) the date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and

(3) the amount of the renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.203. PROCEDURE FOR LICENSE RENEWAL. (a) A person may renew an unexpired license for an additional two-year term if the person:

(1) is otherwise entitled to be licensed;

(2) submits to the department a renewal application on the form required by the department;

(3) pays to the department a nonrefundable renewal fee;

(4) has successfully completed:

(A) the requirements for renewal; and

(B) a current physical examination; and

(5) has complied with any final order resulting from a violation of this chapter.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including any examination requirements, for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.273, eff. April 2, 2015.

Sec. 1954.204. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.205. TERM OF REGISTRATION; PROCEDURE FOR REGISTRATION RENEWAL. (a) The executive commissioner shall set the term of registration of an asbestos abatement worker.

(b) The procedures provided by this subchapter for the renewal of a license apply to the renewal of an asbestos abatement worker registration.

(c) An asbestos abatement worker who is required to complete periodic retraining must submit evidence of that retraining with the worker's application for renewal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.274, eff. April 2, 2015.

SUBCHAPTER F. PRACTICE BY HOLDER OF LICENSE OR REGISTRATION

Sec. 1954.251. RECORDS. (a) A license holder shall keep an appropriate record of each asbestos-related activity the license holder performs in a public building. The record must include, as applicable:

(1) the name and address of each individual who supervised the asbestos-related activity;

(2) the location and a description of the project and the approximate amount of asbestos material that was removed or encapsulated;

(3) the date on which the asbestos-related activity began and the date on which it was completed;

(4) a summary of the procedures used to comply with all applicable standards;

(5) the name and address of each disposal site where the asbestos-containing waste was deposited; and

(6) any other information the department requires.

(b) The license holder shall keep the records required by this section for at least 30 years, or as long as required by federal law or regulation.

(c) The license holder shall make the records available to the department at any reasonable time.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.252. NOTICE OF ASBESTOS REMOVAL, ENCAPSULATION, OR ENCLOSURE. (a) A person engaged in removing asbestos from or encapsulating or enclosing asbestos in a public building shall notify the department in writing at least 10 days before the date the person begins the removal, encapsulation, or enclosure project according to applicable laws.

(b) Notwithstanding Subsection (a), a person may give the required notice orally if the removal, encapsulation, or enclosure project is of an emergency nature.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.253. SUPERVISION BY ASBESTOS ABATEMENT SUPERVISOR. The removal of asbestos from or the encapsulation or enclosure of asbestos in a public building must be supervised by an individual licensed as an asbestos abatement supervisor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.254. CONFLICT OF INTEREST FOR CERTAIN LICENSE HOLDERS. A person licensed under this chapter to perform asbestos inspections or surveys, write management plans, or design abatement specifications for an asbestos abatement project may also engage in the removal of asbestos from the building or facility at which an asbestos abatement project takes place only if the person is retained to remove the asbestos by a municipality.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.255. CONFLICT OF INTEREST FOR INDEPENDENT THIRD-PARTY MONITOR. (a) In this section, "independent third-party monitor" means a person retained to collect area air samples for analysis by and for the owner of the building or facility being abated.

(b) An independent third-party monitor may not be employed by the asbestos abatement contractor to analyze an area sample collected

during the abatement project.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.256. APPROVAL OF ASBESTOS TRAINING; RECORD OF ATTENDEES. (a) The executive commissioner shall adopt an asbestos training approval plan to approve the training required for a person to be licensed or registered under this chapter. In adopting the plan, the executive commissioner shall adopt by reference the Model Accreditation Plan developed by the United States Environmental Protection Agency.

(b) The executive commissioner may establish other requirements or change the number, design, or content of the plan adopted under Subsection (a) as the executive commissioner determines desirable, provided that the plan is at least as comprehensive and stringent as the Model Accreditation Plan.

(c) A licensed training sponsor may sponsor an asbestos training course only if the course is approved by the department for that purpose.

(d) A licensed training sponsor shall provide to the department in accordance with department rules a record of the persons who attend an asbestos training course for licensing or registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.275, eff. April 2, 2015.

Sec. 1954.257. DUTIES REGARDING EMPLOYEE OR AGENT. A person engaged in an asbestos-related activity shall ensure that each employee or agent who will come in contact with asbestos or who will be responsible for the activity:

(1) is familiar with federal, state, and local standards for asbestos removal, encapsulation, and enclosure;

(2) has completed the applicable training course relating to asbestos control and abatement developed and approved by the United States Environmental Protection Agency or the department under Section 1954.256; and

(3) is supplied with approved equipment in good working order for the protection of the person, the public, and the environment.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.258. COMPLIANCE WITH STANDARDS NOT A DEFENSE TO CIVIL LIABILITY. Compliance with any minimum standards adopted by the executive commissioner under this chapter does not constitute a defense to a civil action for damages arising from a work activity affecting asbestos.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.276, eff. April 2, 2015.

Sec. 1954.259. SURVEY REQUIRED. (a) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(b) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey; or

(2) a certification from a licensed engineer or registered architect, stating that:

(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this chapter; and

(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.456(a), eff. Sept. 1, 2003.

Sec. 1954.260. DURATION OF ASBESTOS SURVEY. An asbestos survey performed for a public building as required by this chapter and any other law is valid if the survey was performed in compliance with the laws in effect at the time the survey was completed and the survey identifies any asbestos-containing building material, the location of that material, and any other asbestos condition in the building. Any renovation, construction, or other activity for which an asbestos survey is required shall be conducted without the requirement of obtaining a new asbestos survey if a valid asbestos survey exists.

Acts 2003, 78th Leg., ch. 1072, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER G. PROHIBITED PRACTICES AND DISCIPLINARY PROCEDURES

Sec. 1954.301. DISCIPLINARY POWERS OF DEPARTMENT. (a) If an act or omission of a person licensed under this chapter constitutes grounds prescribed for disciplinary action under Section 1954.302, the department, after providing the person with notice and an opportunity for a hearing, shall:

(1) revoke or suspend the person's license;

(2) suspend the license on an emergency basis;

(3) modify the license; or

(4) reprimand the person.

(b) If an act or omission of a person registered under this chapter constitutes grounds for disciplinary action under Section 1954.303, the department, after providing the person with notice and an opportunity for a hearing, shall:

(1) refuse to renew the person's registration;

(2) revoke or suspend the registration;

(3) suspend the registration on an emergency basis; or

(4) reprimand the person.

(c) After providing the sponsor of an asbestos training course with notice and an opportunity for a hearing, the department may:

(1) revoke or suspend the approval of the course; or

(2) suspend the approval of the course on an emergency basis.

(d) The department may place on probation a person whose license or registration is suspended. If a suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.277, eff. April 2, 2015.

Sec. 1954.302. GROUNDS FOR DISCIPLINE OF LICENSE HOLDER. The executive commissioner by rule shall adopt the criteria for the department to take disciplinary action against a license holder under Section 1954.301. At a minimum, the criteria must require disciplinary action against a license holder who:

(1) commits fraud or deception in obtaining or attempting to obtain a license or a contract to perform an asbestos-related activity;

(2) fails at any time to meet the qualifications for a license;

(3) violates a rule adopted under this chapter;

(4) violates an applicable federal or state standard for asbestos-related activities; or

(5) falsifies or fails to maintain a record of an asbestos-related activity required by a federal agency or by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.278, eff. April 2, 2015.

Sec. 1954.303. GROUNDS FOR DISCIPLINE OF REGISTERED PERSON. The department shall take disciplinary action under Section 1954.301 against a person registered under this chapter who:

(1) fraudulently or deceptively assigns, obtains, or attempts to assign or obtain a registration or the renewal of a registration; or

(2) violates:

(A) a federal, state, or local asbestos law or rule; or

(B) an order issued by the executive commissioner or department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.279, eff. April 2, 2015.

Sec. 1954.304. ACTION BASED ON COMPLAINTS AGAINST ASBESTOS ABATEMENT SUPERVISOR. (a) If the department receives three validated complaints against an asbestos abatement supervisor regarding noncompliance with this chapter, the department shall:

(1) revoke the supervisor's license; and

(2) issue to the supervisor a registration.

(b) A registration issued under this section expires six months from the date of issuance. The asbestos abatement supervisor may reapply for a license after the registration expires.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.305. PROCEDURE FOR EMERGENCY SUSPENSION. (a) The suspension on an emergency basis of a license or registration or of the approval of an asbestos training course is effective immediately.

(b) The department shall provide to the person whose license, registration, or asbestos training course approval is suspended on an emergency basis an opportunity for a hearing not later than the 20th day after the date of the suspension.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.306. ADMINISTRATIVE PROCEDURE. A notice and hearing required under this subchapter and judicial review of a final administrative decision issued under this subchapter are governed by Chapter 2001, Government Code, and the department rules for contested case hearings.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.280, eff. April 2, 2015.

Sec. 1954.307. REAPPLICATION FOLLOWING LICENSE REVOCATION OR SUSPENSION. A person whose license is revoked or suspended may not reapply for a license until after the period stated in a schedule established by department rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.281, eff. April 2, 2015.

SUBCHAPTER H. ADMINISTRATIVE PENALTY

Sec. 1954.351. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.352. AMOUNT OF PENALTY. (a) The amount of an administrative penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation;
(2) any hazard created to the health and safety of the public;
(3) the person's history of previous violations; and
(4) any other matter that justice may require.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.353. OPPORTUNITY FOR HEARING; ORDER. (a) The department may impose an administrative penalty under this subchapter only after the person charged with a violation is given the opportunity for a hearing.

(b) If a hearing is held, the department shall make findings of fact and issue a written decision as to:
(1) the occurrence of the violation; and
(2) the amount of any penalty that is warranted.

(c) If the person charged with a violation fails to exercise the opportunity for a hearing, the department, after determining that a violation occurred and the amount of the penalty that is warranted, may impose a penalty and shall issue an order requiring the person to pay any penalty imposed.

(d) Not later than the 30th day after the date an order is issued after determining that a violation occurred, the department shall inform the person charged with the violation of the amount of any penalty imposed.

(e) The department may consolidate a hearing under this section with another proceeding.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.354. OPTIONS FOLLOWING DECISION. (a) Not later than the 30th day after the date the department's decision or order becomes final as provided by Section 2001.144, Government Code, the

person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(2) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) posting with the court a supersedeas bond in a form approved by the court that is for the amount of the penalty and is effective until judicial review of the department's decision or order is final; or

(2) request that the department stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the department.

(c) If the department receives a copy of an affidavit under Subsection (b)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.355. COLLECTION OF PENALTY. At the request of the department, the attorney general may bring a civil action to recover an administrative penalty imposed under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.356. JUDICIAL REVIEW. Judicial review of a decision or order of the department imposing a penalty under this subchapter is instituted by filing a petition with a district court in Travis County and is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

Sec. 1954.357. REMITTANCE OF PENALTY AND INTEREST OR RELEASE OF BOND. If after judicial review the administrative penalty is reduced or is not upheld by the court, the department shall:

(1) remit the appropriate amount, plus accrued interest, to the person not later than the 30th day after the date of the determination, if the person paid the penalty; or

(2) execute a release of the bond, if the person gave a bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.282, eff. April 2, 2015.

SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1954.401. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The commissioner may request the attorney general or the district, county, or city attorney having jurisdiction to bring a civil suit for injunctive relief, the assessment and recovery of a civil penalty, or both, against a person who:

(1) appears to have violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter; or

(2) owns a public building or is the owner's agent and has

contracted with or otherwise permitted a person who is not licensed or registered under this chapter to perform in the building an activity for which a license or registration is required.

(b) A civil penalty may not exceed $10,000 a day for each violation. Each day a violation occurs or continues to occur is a separate violation for purposes of imposing a penalty.

(c) In determining the amount of a civil penalty, the court shall consider:

(1) the seriousness of the violation;

(2) any hazard created to the health and safety of the public;

(3) the person's history of previous violations; and

(4) the demonstrated good faith of the person charged with the violation.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the state treasury. A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1954.402. CRIMINAL PENALTY. (a) A person required to be licensed under this chapter commits an offense if the person:

(1) removes asbestos from a public building or encapsulates the asbestos without a license after having been previously assessed a civil or administrative penalty for removing or encapsulating asbestos without a license; or

(2) fails to keep records as required by Section 1954.251 after having been previously assessed a civil or administrative penalty for failing to keep records.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $20,000, unless the defendant has been previously convicted under this section, in which event the offense is punishable by:

(1) a fine not to exceed $25,000;

(2) confinement in jail for not more than two years; or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

CHAPTER 1955. LEAD-BASED PAINT ABATEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1955.001. DEFINITIONS. In this chapter:

(1) "Child-occupied facility" means a building or part of a building constructed before 1978, including a day-care center, preschool, or kindergarten classroom, that is visited regularly by the same child, six years of age or younger, at least two days in any calendar week if the visits are for at least:

(A) three hours each day; and

(B) 60 hours each year.

(2) "Department" means the Department of State Health Services.

(3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Federal law and rules" means:

(A) Title IV, Toxic Substances Control Act (15 U.S.C. Section 2681 et seq.), and the rules adopted by the United States Environmental Protection Agency under that law for authorization of state programs;

(B) any regulations or requirements adopted by the United States Department of Housing and Urban Development regarding eligibility for grants to states and local governments; and

(C) any other requirements adopted by a federal agency with jurisdiction over lead hazards.

(5) "Lead-based paint activity" means inspection, testing, risk assessment, risk reduction, lead abatement project design or planning, abatement or removal, or creation of lead-based paint hazards.

(6) "Person" means an individual, corporation, company, contractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals.

(7) "Target housing" means any housing constructed before 1978, other than:

(A) housing for the elderly or persons with disabilities, unless a child six years of age or younger resides or is expected to reside in the housing; or

(B) a dwelling without bedrooms.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.283, eff. April 2, 2015.

Sec. 1955.002. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The executive commissioner may not adopt rules restricting advertising or competitive bidding by a certified or accredited person except to prohibit false, misleading, or deceptive practices.

(b) The executive commissioner may not include in the rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the use of a certified or accredited person's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the certified or accredited person; or

(4) restricts the certified or accredited person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.284, eff. April 2, 2015.

SUBCHAPTER B. CERTIFICATION AND ACCREDITATION

Sec. 1955.051. CERTIFICATION AND ACCREDITATION PROGRAM. (a) The department shall establish a program in compliance with federal law and rules for:

(1) certification of a person involved in a lead-based paint activity in target housing or in a child-occupied facility; and

(2) accreditation of a training provider.

(b) The program may not exceed the minimum requirements of federal law and rules for authorization of a state program and receipt of federal funding by a state or local government.

(c) The department shall make any changes to the program that are:

(1) consistent with this chapter; and

(2) necessary to comply with federal law and rules.

(d) Rules adopted by the executive commissioner under this section must:

(1) set minimum training requirements for use by accredited training providers;

(2) set standards for the reliability, effectiveness, and safety of lead-based paint activities in target housing;

(3) set standards for accrediting training providers;

(4) require the use of certified and accredited personnel in a lead-based paint activity in target housing or in a child-occupied facility;

(5) be revised as necessary to:

(A) comply with federal law and rules; and

(B) maintain eligibility for federal funding;

(6) facilitate reciprocity and communication with other states having a certification and accreditation program;

(7) provide for the revocation of the certification or accreditation of a person certified or accredited by the department; and

(8) provide for financial assurance for a person certified or accredited by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.285, eff. April 2, 2015.

Sec. 1955.052. CERTIFICATION REQUIREMENT. (a) The executive commissioner by rule may require a person involved in a lead-based paint activity in target housing or a public area that the department determines creates a public health hazard to be certified. The department shall delay implementation of the certification requirement for six months after the date the rule is adopted.

(b) A rule adopted under this section must be consistent with federal law and rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.286, eff. April 2, 2015.

Sec. 1955.053. FEES. The executive commissioner by rule may impose a fee to cover the cost of administering the program. The executive commissioner shall set fees for issuing or renewing a certification or accreditation in amounts designed to allow the department to recover from the certification and accreditation holders all of the department's direct and indirect costs in administering and enforcing this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.287, eff. April 2, 2015.

Sec. 1955.054. EXAMINATION RESULTS. (a) Not later than the 30th day after the date a person takes any certification or accreditation examination under this chapter, the department shall notify the person of the examination results. If an examination is graded or reviewed by a testing service, the department shall notify the person of the examination results not later than the 14th day after the date the department receives the results from the testing service.

(b) If notice of the results of an examination graded or reviewed by a testing service will be delayed for more than 90 days after the examination date, the department shall notify the person of the reason for the delay before the 90th day.

(c) The department may require a testing service to notify a person of the person's examination results.

(d) If requested in writing by a person who fails an examination, the department shall provide to the person an analysis of the person's performance on the examination.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.055. TERM OF CERTIFICATION OR ACCREDITATION; EXPIRATION. (a) A certification or accreditation is valid for two years.

(b) The executive commissioner by rule may adopt a system under

which certifications or accreditations expire on various dates during the year. For the year in which the expiration date is changed, the department shall prorate certification or accreditation fees on a monthly basis so that each certified or accredited person pays only that portion of the certification or accreditation fee that is allocable to the number of months during which the certification or accreditation is valid. On renewal of the certification or accreditation on the new expiration date, the total certification or accreditation renewal fee is payable.

(c) A person whose certification or accreditation has expired may not engage in activities that require certification or accreditation until the certification or accreditation has been renewed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.288, eff. April 2, 2015.

Sec. 1955.056. NOTICE OF EXPIRATION. Not later than the 30th day before the expiration date of a person's certification or accreditation, the department shall send written notice of the impending expiration to the person at the person's last known address according to department records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.057. CERTIFICATION OR ACCREDITATION RENEWAL. (a) A person who is otherwise eligible to renew a certification or accreditation may renew an unexpired certification or accreditation by paying the required renewal fee to the department before the expiration date of the certification or accreditation.

(b) A person whose certification or accreditation has been expired for 90 days or less may renew the certification or accreditation by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certification or accreditation has been expired for more than 90 days but less than one year may renew the certification or accreditation by paying to the department a renewal

fee that is equal to two times the normally required renewal fee.

(d) A person whose certification or accreditation has been expired for one year or more may not renew the certification or accreditation. The person may be recertified or reaccredited by complying with the requirements and procedures, including any examination requirements, for obtaining an original certification or accreditation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.058. RENEWAL BY OUT-OF-STATE PRACTITIONER. (a) The department may renew without reexamination an expired certification or accreditation of a person who was certified or accredited in this state, moved to another state, and is currently certified or accredited and has been in practice in the other state for the two years preceding the date the person applies for renewal.

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER C. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1955.101. DISCIPLINARY ACTION BY DEPARTMENT. The department shall revoke, suspend, or refuse to renew a certification or accreditation or shall reprimand a certified or accredited person for a violation of this chapter or a department rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.289, eff. April 2, 2015.

Sec. 1955.102. PROBATION. (a) The department may place on probation a person whose certification or accreditation is suspended.

(b) The department may require a person whose certification or accreditation suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.290, eff. April 2, 2015.

Sec. 1955.103. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter. The amount of the penalty may not exceed $5,000 for each day of the violation.

(b) The executive commissioner shall adopt rules relating to the imposition and collection of an administrative penalty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.291, eff. April 2, 2015.

Sec. 1955.104. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or certification issued under this chapter, the state may bring an action in the manner prescribed by Section 7.105(a), Water Code, for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty.

(b) Venue for an action brought under this section is in the county prescribed by Section 7.105(c), Water Code.

(c) The amount of a civil penalty imposed under this section may not exceed:

(1) $2,000 for the first violation; or

(2) $10,000 for a subsequent violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1955.105. CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person knowingly violates this chapter or a rule adopted or certification issued under this chapter; and

(2) the violation endangers the public health and safety.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed $10,000;

(2) confinement for a term not to exceed six months; or

(3) both the fine and the confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

CHAPTER 1956. METAL RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1956.001. DEFINITIONS. In this chapter:

(1) "Aluminum material" means a product made from aluminum, an aluminum alloy, or an aluminum by-product. The term includes aluminum wiring and an aluminum malt beverage keg but does not include another type of aluminum can used to contain a food or beverage.

(2) "Bronze material" means:

(A) a cemetery vase, receptacle, or memorial made from bronze;

(B) bronze statuary; or

(C) material readily identifiable as bronze, including bronze wiring.

(2-a) "Catalytic converter" includes any material removed from a catalytic converter.

(3) "Commission" means the Public Safety Commission.

(4) "Copper or brass material" means:

(A) a power inverter or insulated or noninsulated copper wire or cable that contains copper or an alloy of copper or zinc and is of the type used by:

(i) a public utility or common carrier;

(ii) a telecommunications provider as defined by Section 51.002, Utilities Code;

(iii) a cable service provider as defined by Section 66.002, Utilities Code; or

(iv) a video service provider as defined by Section 66.002, Utilities Code;

(B) a copper or brass item of a type commonly used in construction or by:

(i) a public utility;

(ii) a telecommunications provider as defined by Section 51.002, Utilities Code;

(iii) a cable service provider as defined by Section 66.002, Utilities Code; or

(iv) a video service provider as defined by Section 66.002, Utilities Code; or

(C) copper pipe or copper tubing.

(5) "Department" means the Texas Department of Public Safety.

(6) "Director" means the public safety director.

(6-a) "Explosive device" means a device or material that contains explosive powder, primer, fluid, or gas or a detonator. The term does not include:

(A) a device that is designed, made, or adapted for delivering or shooting ammunition of.50 caliber or less and that is purchased for personal or security reasons recognized under state or federal law;

(B) a component of a motor vehicle or mechanical equipment, including equipment that is used in the exploration or production of minerals;

(C) any type of compressed cylinder that is commonly used in a residence or commercial business; or

(D) any type of scrap metal that is routinely purchased in the metal recycling industry and that is not associated with military weaponry.

(6-b) "Fixed location" means a structure or facility that:

(A) is attached to real property;

(B) has a fixed geographic location with a physical address; and

(C) is used wholly or partly to conduct an activity described by Subdivision (7).

(6-c) "Lead material" means:

(A) a commercial grade lead battery, lead-acid battery, or spiral cell battery; or

(B) a material or an item readily identifiable as being

made of or containing lead.

(7) "Metal recycling entity" means a business that is predominantly engaged in:

(A) performing the manufacturing process by which scrap, used, or obsolete ferrous or nonferrous metal is converted into raw material products consisting of prepared grades and having an existing or potential economic value, by a method that in part requires the use of powered tools and equipment, including processes that involve processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form of that metal;

(B) the use of raw material products described under Paragraph (A) in the manufacture of producer or consumer goods; or

(C) purchasing or otherwise acquiring scrap, used, or obsolete ferrous or nonferrous metals for the eventual use of the metal for the purposes described by Paragraph (A) or (B).

(8) "Personal identification document" means:

(A) a valid driver's license issued by a state in the United States;

(B) a United States military identification card; or

(C) a personal identification certificate issued by the department under Section 521.101, Transportation Code, or a corresponding card or certificate issued by another state.

(9) "Regulated material" means:

(A) aluminum material;

(B) bronze material;

(C) copper or brass material;

(D) lead material; or

(E) regulated metal.

(10) "Regulated metal" means:

(A) manhole covers;

(B) guardrails;

(C) metal cylinders designed to contain compressed air, oxygen, gases, or liquids;

(D) malt beverage kegs made from metal other than aluminum;

(E) historical markers or cemetery vases, receptacles, or memorials made from metal other than aluminum;

(F) unused rebar;

(G) street signs;

(H) drain gates;

(I) safes;

(J) communication, transmission, and service wire or cable;

(K) condensing or evaporator coils for central heating or air conditioning units;

(L) utility structures, including the fixtures and hardware;

(M) aluminum or stainless steel containers designed to hold propane for fueling forklifts;

(N) metal railroad equipment, including tie plates, signal houses, control boxes, signs, signals, traffic devices, traffic control devices, traffic control signals, switch plates, e-clips, and rail tie functions;

(O) catalytic converters not attached to a vehicle;

(P) fire hydrants;

(Q) metal bleachers or other seating facilities used in recreational areas or sporting arenas;

(R) any metal item clearly and conspicuously marked with any form of the name, initials, or logo of a governmental entity, utility, cemetery, or railroad;

(S) insulated utility, communications, or electrical wire that has been burned in whole or in part to remove the insulation;

(T) backflow valves;

(U) metal in the form of commonly recognized products of the industrial metals recycling process, including bales, briquettes, billets, sows, ingots, pucks, and chopped or shredded metals; and

(V) commercial grade lead batteries or lead-acid batteries.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 191 (S.B. 208), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 394, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.01, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.01, eff. July 1, 2023.

Sec. 1956.002. EXCEPTION. This chapter does not apply to:

(1) a purchase of regulated material from a public utility, a telecommunications provider as defined by Section 51.002, Utilities Code, a cable service provider as defined by Section 66.002, Utilities Code, a video service provider as defined by Section 66.002, Utilities Code, or a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of the seller's business;

(2) a purchase of regulated material by a manufacturer whose primary business is the manufacture of iron and steel products made from melting scrap iron and scrap steel; or

(3) the transport or hauling of recyclable materials to or from the metal recycling entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 2, eff. September 1, 2015.

Sec. 1956.003. LOCAL LAW; CRIMINAL PENALTY. (a) A county, municipality, or political subdivision of this state may adopt a rule, charter, or ordinance or issue an order or impose standards that are more stringent than but do not conflict with this chapter or rules adopted under this chapter.

(a-1) A county, municipality, or other political subdivision

may require the record of purchase described under Section 1956.033 to contain a clear and legible thumbprint of a seller of regulated material.

(a-2) A county, municipality, or other political subdivision that, as authorized under Subsection (a), requires a metal recycling entity to report to the county, municipality, or political subdivision information relating to a sale of regulated material shall:

(1) include in any contract entered into by the county, municipality, or political subdivision relating to the reporting of the information a provision that:

(A) requires any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information relating to a sale of regulated material to maintain the confidentiality of all information received, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(B) allows the county, municipality, or political subdivision to terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Paragraph (A); and

(2) investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

(b) A county, municipality, or political subdivision of this state may issue a license or permit to a business to allow the business to act as a metal recycling entity in that county or municipality and may impose a fee not to exceed $250 for the issuance or renewal of the license or permit.

(c) A county, municipality, or political subdivision of this state that issues a license or permit to a business as authorized under Subsection (b) shall submit to the department in the manner required by the department information on each business that is issued a license or permit, including inspection reports for the business, information regarding violations of this chapter by the business, and information regarding disciplinary actions initiated against the business.

(d) A municipality or political subdivision of this state, other than a county, may not increase the local license or permit fee

imposed on a metal recycling facility unless the increase is approved by the local governing body. A request for an increase in the local license or permit fee must be based on the costs associated with law enforcement and administration of the licensing or permitting program. The municipality or political subdivision must submit a report to the department on the law enforcement and administrative costs associated with the fee increase.

(e) A county may increase the local license or permit fee imposed on a metal recycling facility one additional time before the second anniversary of the date of the initial fee increase. The fee increase must be based on the average cost charged by municipalities statewide.

(f) A person commits an offense if the person owns or operates a metal recycling entity and does not hold a license or permit required by a county, municipality, or other political subdivision as authorized under Subsection (b). An offense under this subsection is a Class B misdemeanor unless it is shown on the trial of the offense that the person has been previously convicted under this subsection, in which event the offense is a Class A misdemeanor.

(g) Notwithstanding any other law, a county, municipality, or other political subdivision must provide a minimum 30-day notice followed by a public hearing prior to enacting a prohibition on the sale or use of a recyclable product.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 3, eff. March 1, 2012.

Acts 2017, 85th Leg., R.S., Ch. 191 (S.B. 208), Sec. 2, eff. September 1, 2017.

Sec. 1956.004. CIVIL PENALTY. (a) A person who owns or operates a metal recycling entity and does not hold a license or

permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b) is subject to a civil penalty of not more than $1,000 for each violation. In determining the amount of the civil penalty, the court shall consider:

(1) any other violations by the person; and

(2) the amount necessary to deter future violations.

(b) A district attorney, county attorney, or municipal attorney may institute an action to collect the civil penalty provided by this section.

(c) Each day a violation occurs or continues to occur is a separate violation.

(d) The district attorney, county attorney, or municipal attorney may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 4, eff. March 1, 2012.

SUBCHAPTER A-1. POWERS AND DUTIES

Sec. 1956.011. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.012. DEPARTMENT STAFF. The department may employ administrative and clerical staff as necessary to carry out this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.013. RULES. The commission may adopt rules to administer this chapter, including rules:

(1) establishing minimum requirements for registration

under this chapter; and

(2) adopting forms required by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.014. FEES; REPORTS. (a) The commission by rule shall prescribe fees in reasonable amounts sufficient to cover the costs of administering this chapter, including fees for:

(1) an initial application for a certificate of registration;

(2) issuance of a certificate of registration;

(3) issuance of a renewal certificate of registration; and

(4) issuance of a duplicate certificate of registration or duplicate renewal certificate of registration.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(1), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(1), eff. September 1, 2019.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(1), eff. September 1, 2019.

Sec. 1956.015. STATEWIDE ELECTRONIC REPORTING SYSTEM. (a) The department shall establish a statewide electronic reporting system to track the sales of regulated metal reported to the department under Section 1956.036.

(b) The department shall post a summary of the reports provided to the department under Section 1956.036 on the department's Internet website. The summary must include by county or region the frequency with which a person presents regulated materials for sale to a metal recycling entity. The summary may not identify any person to which the metal recycling entity sells the regulated materials.

(c) Subsection (b) does not apply to regulated material sold by a utility company, municipality, manufacturer, railroad, cemetery, cable or satellite entity, or other business entity that routinely

has access to regulated metal.

(d) Information provided under this section is not subject to disclosure under Chapter 552, Government Code. The department may use information provided under this section for law enforcement purposes. Except as provided by this subsection, the department shall maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased.

(e) The department may enter into contracts relating to the operation of the statewide electronic reporting system established by this section. A contract under this subsection must:

(1) require that any contractor, subcontractor, or third party that has access to, comes into possession of, or otherwise obtains information provided under this section maintain the confidentiality of all information provided under this section, including the name of the seller, the price paid for a purchase of regulated material, and the quantity of regulated material purchased; and

(2) provide that the department may terminate the contract of any contractor, subcontractor, or third party that violates the confidentiality provision required by Subdivision (1).

(f) The department shall investigate a complaint alleging that a contractor, subcontractor, or third party has failed to maintain the confidentiality of information relating to a sale of regulated material.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 5, eff. September 1, 2011.

Sec. 1956.016. REGISTRATION DATABASE. The department shall make available on its Internet website a publicly accessible list of all registered metal recycling entities. The list must contain the following for each registered metal recycling entity:

(1) the entity's name;

(2) the entity's physical address;

(3) the name of and contact information for a representative of the entity; and

(4) a description of the extent to which the entity engages in transactions involving catalytic converters based on the entity's most recent declaration submitted under Section 1956.022(a) or 1956.127, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 6, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.02, eff. May 29, 2023.

Sec. 1956.017. ADVISORY COMMITTEE. (a) The department shall establish an advisory committee to advise the department on matters related to the department's regulation of metal recycling entities under this chapter.

(b) The advisory committee consists of 15 members appointed by the director as follows:

(1) one representative of the department;

(2) two representatives of local law enforcement agencies located in different municipalities, each with a population of 500,000 or more;

(3) two representatives of local law enforcement agencies located in different municipalities, each with a population of 200,000 or more but less than 500,000;

(4) one representative of a local law enforcement agency located in a municipality with a population of less than 200,000;

(5) five representatives of metal recycling entities, at least one of whom must have substantial business experience with transactions involving the purchase or acquisition of catalytic converters;

(6) two members who represent industries that are impacted by theft of regulated material;

(7) one sheriff of a county with a population of 500,000 or more; and

(8) one sheriff of a county with a population of less than 500,000.

(c) The director shall ensure that the members of the advisory

committee reflect the diverse geographic regions of this state.

(d) The advisory committee shall elect a presiding officer from among its members to serve a two-year term. A member may serve more than one term as presiding officer.

(e) The advisory committee shall meet annually and at the call of the presiding officer or the director.

(f) An advisory committee member is not entitled to compensation or reimbursement of expenses.

(g) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee or to the appointment of the committee's presiding officer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 6, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 3, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.03, eff. May 29, 2023.

SUBCHAPTER A-2. CERTIFICATE OF REGISTRATION

Sec. 1956.021. REGISTRATION REQUIRED. A person may not act as a metal recycling entity or represent to the public that the person is a metal recycling entity unless the person is registered under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.022. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a) The department shall issue a certificate of registration to an applicant who:

(1) applies and pays a registration fee;

(2) presents any relevant evidence relating to the applicant's qualifications as required by commission rule;

(3) submits a declaration describing the extent to which the applicant intends to engage in transactions involving catalytic converters removed from motor vehicles in the course of the applicant's business activity;

(4) presents evidence satisfactory to the department that the applicant intends to act as a metal recycling entity and use a fixed location to wholly or partly conduct an activity described by Section 1956.001(7); and

(5) provides the physical address of the fixed location described by Subdivision (4).

(a-1) If the applicant's business activity involves catalytic converters removed from motor vehicles, the declaration described by Subsection (a)(3) must state:

(1) whether the applicant will engage in a business activity described by Section 1956.001(7)(A) or (B) with respect to catalytic converters removed from motor vehicles;

(2) whether the applicant will engage in a business activity described by Section 1956.001(7)(C) but not a business activity described by Section 1956.001(7)(A) or (B), with respect to catalytic converters removed from motor vehicles; or

(3) that the applicant will deal only incidentally with catalytic converters removed from motor vehicles.

(a-2) An applicant who intends to conduct an activity described by Section 1956.001(7) at more than one fixed location must complete an application and obtain a certificate of registration for each fixed location.

(b) The commission by rule may establish qualifications for the holder of a certificate of registration under this chapter, which may include accepting copies of a license or permit issued by a county or municipality authorizing a metal recycling entity to conduct business in that county or municipality. The qualifications may differ for a holder of a certificate of registration under this chapter based on the extent to which the person engages in transactions involving catalytic converters removed from motor vehicles as stated on the person's declaration submitted under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.04, eff. May 29, 2023.

Sec. 1956.023. TERM OF CERTIFICATE. (a) A certificate of

registration is valid for two years after the date of issuance.

(b) The department shall adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Not later than the 45th day before the date a person's certificate of registration is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

(d) A person whose certificate of registration has expired may not make a representation for which a certificate of registration is required under Section 1956.021 or perform collections services until the certificate has been renewed.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.024. RENEWAL OF CERTIFICATE. (a) To renew a certificate of registration, a person must:

(1) submit an application for renewal in the manner prescribed by the department; and

(2) update the person's declaration submitted under Section 1956.022(a).

(b) A person who is otherwise eligible to renew a certificate of registration may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate.

(c) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose certificate of registration has been expired for one year or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures, including the examination requirements, for an original certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.05, eff. May 29, 2023.

SUBCHAPTER A-3. PRACTICE BY CERTIFICATE HOLDERS

Sec. 1956.030. FIXED LOCATION. (a) A metal recycling entity shall at all times maintain a fixed location and use the fixed location to at least partly conduct an activity described by Section 1956.001(7).

(b) A metal recycling entity shall maintain a fixed location as required by Subsection (a) for each certificate of registration held by the metal recycling entity.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.06, eff. July 1, 2023.

Sec. 1956.031. NOTICE TO SELLERS. (a) A metal recycling entity shall at all times maintain in a prominent place in the entity's place of business, in open view to a seller of regulated material, a notice in two-inch lettering that:

(1) includes the following language:

"A PERSON ATTEMPTING TO SELL ANY REGULATED MATERIAL MUST PRESENT SUFFICIENT IDENTIFICATION AND WRITTEN PROOF OF OWNERSHIP REQUIRED BY STATE LAW."

"WARNING: STATE LAW PROVIDES A CRIMINAL PENALTY FOR A PERSON WHO INTENTIONALLY PROVIDES A FALSE DOCUMENT OF IDENTIFICATION OR OTHER FALSE INFORMATION TO A METAL RECYCLING ENTITY WHILE ATTEMPTING TO SELL ANY REGULATED MATERIAL."; and

(2) states the metal recycling entity's usual business hours.

(b) The notice required by this section may be contained on a sign that contains another notice if the metal recycling entity is required to display another notice under applicable law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.032. INFORMATION REGARDING SELLER. (a) Except as provided by Subsection (f), a person attempting to sell regulated material to a metal recycling entity shall:

(1) display to the metal recycling entity the person's personal identification document;

(2) provide to the metal recycling entity the make, model, color, and license plate number of the motor vehicle used to transport the regulated material and the name of the state issuing the license plate;

(3) either:

(A) present written documentation evidencing that the person is the legal owner or is lawfully entitled to sell the regulated material; or

(B) sign a written statement provided by the metal recycling entity that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale;

(4) if the regulated material includes condensing or evaporator coils for central heating or air conditioning units, display to the metal recycling entity:

(A) the person's air conditioning and refrigeration contractor license issued under Subchapter F or G, Chapter 1302;

(B) the person's air conditioning and refrigeration technician registration issued under Subchapter K, Chapter 1302;

(C) a receipt, bill of sale, or other documentation showing that the seller purchased the coils the seller is attempting to sell; or

(D) a receipt, bill of sale, or other documentation showing that the seller has purchased a replacement central heating or air conditioning unit; and

(5) if the regulated material includes insulated communications wire that has been burned wholly or partly to remove the insulation, display to the metal recycling entity documentation acceptable under the rules adopted under Subsection (h) that states that the material was salvaged from a fire.

(b) A person required by a municipality to prepare a signed statement consisting of the information required by Subsection (a)(3) may use the statement required by the municipality to comply with Subsection (a)(3).

(c) The metal recycling entity or the entity's agent shall visually verify the accuracy of the identification presented by the

seller at the time of the purchase of regulated material and make a copy of the identification to be maintained by the entity in the entity's records, except as otherwise provided by Subsection (f).

(d) The metal recycling entity or the entity's agent for recordkeeping purposes may photograph the seller's entire face, not including any hat, and obtain the name of the seller's employer.

(e) The metal recycling entity or the entity's agent for recordkeeping purposes may take a photograph of the motor vehicle of the seller in which the make, model, and license plate number of the motor vehicle are identifiable in lieu of the information required under Subsection (a)(3).

(f) The metal recycling entity is not required to make a copy of the identification as required under Subsection (c) or collect the information required under Subsection (a)(3) if:

(1) the seller signs the written statement as required under Subsection (a)(3);

(2) the seller has previously provided the information required under Subsection (a); and

(3) the previously provided information has not changed.

(g) Notwithstanding Section 1956.002, the metal recycling entity shall verify the registration of a person attempting to sell regulated material who represents that the person is a metal recycling entity as follows:

(1) by using the database described by Section 1956.016; or

(2) by obtaining from the person a copy of the person's certificate of registration issued under Section 1956.022 in addition to the information required under Subsection (a).

(h) The commission shall adopt rules establishing the type of documentation that a seller of insulated communications wire described by Subsection (a)(5) must provide to a metal recycling entity to establish that the wire was salvaged from a fire.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 8, eff. September 1, 2011.

Sec. 1956.0321. ADDITIONAL REQUIREMENTS REGARDING PURCHASE OF CATALYTIC CONVERTER. (a) In addition to the requirements of Section 1956.032, a person attempting to sell a catalytic converter to a metal recycling entity shall provide to the metal recycling entity:

(1) the year, make, model, and vehicle identification number for the vehicle from which the catalytic converter was removed; and

(2) a copy of the certificate of title or other documentation indicating that the person has an ownership interest in the vehicle described by Subdivision (1).

(b) A metal recycling entity may not purchase a catalytic converter from a seller who does not comply with the requirements of Subsection (a).

(c) A metal recycling entity may not purchase a catalytic converter unless the entity determines that the catalytic converter is consistent with the manufacturer's specifications for a catalytic converter from the vehicle for which the seller provided information under Subsection (a)(1).

(d) A metal recycling entity shall mark, in the manner prescribed by the commission by rule, each catalytic converter purchased by the entity with a unique number.

(e) A metal recycling entity shall keep an accurate electronic record or an accurate and legible written record of each purchase of a catalytic converter made in the course of the entity's business. The record must be in English and include:

(1) the information required by Section 1956.033;

(2) the vehicle information provided under Subsection (a)(1);

(3) a copy of the documentation described by Subsection (a)(2); and

(4) the unique number marked on the catalytic converter under Subsection (d).

Added by Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 2, eff. September 1, 2021.

Sec. 1956.033. RECORD OF PURCHASE. (a) Each metal recycling entity in this state shall keep an accurate electronic record or an accurate and legible written record of each purchase of regulated

material made in the course of the entity's business from an individual.

(b) The record must be in English and include:

(1) the place, date, and amount of the purchase;

(2) the name and address of the seller in possession of the regulated material purchased;

(3) the identifying number of the seller's personal identification document;

(4) a description made in accordance with the custom of the trade of the commodity type and quantity of regulated material purchased;

(5) the information required by Sections 1956.032(a)(2) and (3);

(6) as applicable:

(A) the identifying number of the seller's air conditioning and refrigeration contractor license displayed under Section 1956.032(a)(4)(A);

(B) a copy of the seller's air conditioning and refrigeration technician registration displayed under Section 1956.032(a)(4)(B);

(C) a copy of the documentation described by Section 1956.032(a)(4)(C); or

(D) a copy of the documentation described by Section 1956.032(a)(4)(D);

(7) if applicable, a copy of the documentation described by Section 1956.032(a)(5);

(8) a copy of the documentation described by Section 1956.032(g);

(9) a copy of the documentation described by Section 1956.0381(b); and

(10) if the regulated material purchased is a catalytic converter, a clear and legible thumbprint of the seller unless the seller presents to the metal recycling entity a valid cash transaction card issued under Section 1956.0382.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 4, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 3, eff. September 1, 2021.

Sec. 1956.0331. PHOTOGRAPH OR RECORDING REQUIREMENT FOR REGULATED METAL TRANSACTION. (a) In addition to the requirements of Sections 1956.032 and 1956.033, for each purchase by a metal recycling entity of an item of regulated metal, the entity shall obtain a digital photograph or video recording that accurately depicts the seller's entire face and each type of regulated metal purchased.

(b) A metal recycling entity shall preserve a photograph or recording required under Subsection (a) as follows:

(1) for a video recording, until the 91st day after the date of the transaction; and

(2) for a digital photograph, until the 181st day after the date of the transaction.

(c) The photograph or recording must be made available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 10, eff. September 1, 2011.

Sec. 1956.034. PRESERVATION OF RECORDS. A metal recycling entity shall preserve each record required by Sections 1956.032, 1956.0321, and 1956.033 until the second anniversary of the date the record was made. The records must be kept in an easily retrievable format and must be available for inspection as provided by Section 1956.035 not later than 72 hours after the time of purchase.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 11, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 4, eff. September 1, 2021.

Sec. 1956.035. INSPECTION OF RECORDS. (a) On request, a metal recycling entity shall permit a peace officer of this state, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to inspect, during the entity's usual business hours:

(1) a record required by Section 1956.0321 or 1956.033;

(2) a digital photograph or video recording required by Section 1956.0331;

(3) regulated material in the entity's possession; or

(4) an application for a cash transaction card submitted to the entity.

(b) The person seeking to inspect a record or material shall:

(1) inform the entity of the officer's status as a peace officer; or

(2) if the person is a representative of the department or a representative of a county, municipality, or other political subdivision, inform the entity of the person's status and display to the entity an identification document or other appropriate documentation establishing the person's status as a representative of the department or of the appropriate county, municipality, or political subdivision.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 12, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 5, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 5, eff. September 1, 2021.

Sec. 1956.036. FURNISHING OF REPORT TO DEPARTMENT. (a) Except as provided by Subsections (b) and (d), not later than the close of business on a metal recycling entity's second working day after the date of the purchase or other acquisition of material for which a

record is required under Section 1956.0321 or 1956.033, the entity shall send an electronic transaction report to the department via the department's Internet website. Except as provided by Subsection (d-1), the report must contain the information required to be recorded under Sections 1956.0321 and 1956.033.

(b) If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall:

(1) not later than the close of business on the entity's first working day after the purchase date, notify the department by telephone, by e-mail, or via the department's Internet website; and

(2) not later than the close of business on the entity's second working day after the purchase date, submit to the department electronically via the department's Internet website or file with the department a report containing the information required to be recorded under Section 1956.033.

(c) Subsection (b) does not apply to a purchase from:

(1) the manufacturer or fabricator of the material or pipe;

(2) a seller bearing a bill of sale for the material or pipe; or

(3) the owner of the material or pipe.

(d) A metal recycling entity may submit the transaction report required under Subsection (a) by facsimile if:

(1) the entity submits to the department annually:

(A) an application requesting an exception to the electronic reporting requirement; and

(B) an affidavit stating that the entity does not have an available and reliable means of submitting the transaction report electronically; and

(2) the department approves the entity's application under this subsection.

(d-1) A metal recycling entity is not required to include in a transaction report required by this section:

(1) the amount of the purchase; or

(2) a copy of the documentation described by Section 1956.0381(b).

(e) The department, after notice and an opportunity for a hearing, may prohibit a metal recycling entity from paying cash for a purchase of regulated material for a period determined by the

department if the department finds that the entity has failed to comply with this section.

(f) A metal recycling entity shall report to the department by telephone, by e-mail, or through the department's Internet website the entity's possession of an explosive device unknowingly purchased or otherwise obtained by the entity not later than the close of business on the entity's first working day after the date the possession of the device is discovered. A metal recycling entity may also report to an appropriate law enforcement authority or the nearest military installation the possession of an explosive device that the entity unknowingly purchased or otherwise obtained so that the explosive device may be removed from the entity or disposed of as soon as possible.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 191 (S.B. 208), Sec. 3, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 6, eff. September 1, 2021.

Sec. 1956.037. PLACEMENT OF ITEMS ON HOLD. (a) A metal recycling entity may not dispose of, process, sell, or remove from the premises an item of regulated metal unless:

(1) the entity acquired the item more than:

(A) eight days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a cemetery vase, receptacle, or memorial made from a regulated material other than aluminum material;

(B) five days, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is a catalytic converter; or

(C) 72 hours, excluding weekends and holidays, before the disposal, processing, sale, or removal, if the item is not an

item described by Paragraph (A) or (B); or

(2) the entity purchased the item from a manufacturing, industrial, commercial, retail, or other seller that sells regulated material in the ordinary course of its business.

(b) A peace officer who has reasonable suspicion to believe that an item of regulated material in the possession of a metal recycling entity is stolen may place the item on hold by issuing to the entity a written notice that:

(1) specifically identifies the item alleged to be stolen and subject to the hold; and

(2) informs the entity of the requirements of Subsection (c).

(c) On receiving the notice, the entity may not, except as provided by Subsection (e), process or remove from the entity's premises the identified item before the 60th day after the date the notice is issued unless the hold is released at an earlier time in writing by a peace officer of this state or a court order.

(d) After the holding period expires, the entity may dispose of the item unless disposition violates a court order.

(e) If a hold is placed on a purchase of regulated material, a metal recycling entity may not dispose of, process, sell, or remove from the premises any item from the purchased material unless the hold on the material is released.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 14, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 7, eff. September 1, 2021.

Sec. 1956.038. PROHIBITED ACTS. (a) A person may not, with the intent to deceive:

(1) display to a metal recycling entity a false or invalid personal identification document in connection with the person's attempted sale of regulated material;

(2) make a false, material statement or representation to a metal recycling entity in connection with:

(A) that person's execution of a written statement required by Section 1956.032(a)(3); or

(B) the entity's efforts to obtain the information required under Section 1956.033(b);

(3) display or provide to a metal recycling entity any information required under Section 1956.032 that the person knows is false or invalid; or

(4) display another individual's personal identification document in connection with the sale of regulated material.

(a-1) A metal recycling entity may only pay for a purchase of regulated material in the manner provided by Section 1956.0381.

(b) A metal recycling entity may not pay for a purchase of regulated material in cash if:

(1) the entity does not hold a certificate of registration under Subchapter A-2 and, if applicable, a license or permit required by a county, municipality, or other political subdivision as authorized under Section 1956.003(b); or

(2) the entity has been prohibited by the department from paying cash under Section 1956.036(e).

(c) Notwithstanding Section 1956.003(a) or any other law, a county, municipality, or other political subdivision may not adopt or enforce a rule, charter, or ordinance or issue an order or impose standards that limit the use of cash by a metal recycling entity in a manner more restrictive than that provided by Subsection (b).

(d) Subsection (c) does not apply to a rule, charter, ordinance, or order of a county, municipality, or other political subdivision in effect on January 1, 2011.

(e) The department or a county, municipality, or other political subdivision may bring an action in the county in which a metal recycling entity is located to enjoin the business operations of the owner or operator of the metal recycling entity for a period of not less than 30 days and not more than 90 days if the owner or operator has not submitted an application for a certificate of registration or the appropriate license or permit required by a county, municipality, or other political subdivision.

(f) An action under Subsection (e) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the owner or operator from maintaining or participating in the business of a metal recycling entity for a definite period of not less than 30 days and not more than 90 days,

as determined by the court; and

(2) order that the place of business of the owner or operator be closed for the same period.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 15, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 7, eff. September 1, 2015.

Sec. 1956.0381. PAYMENT BY METAL RECYCLING ENTITY. (a) A metal recycling entity may pay for a purchase of regulated material only by:

(1) cash if the seller has been issued a cash transaction card under Section 1956.0382, unless the metal recycling entity is prohibited from paying in cash under Section 1956.038(b);

(2) debit card if the seller has been issued a cash transaction card under Section 1956.0382;

(3) check;

(4) money order; or

(5) direct deposit by electronic funds transfer.

(b) A metal recycling entity shall include in the record of purchase required by Section 1956.033, as applicable, a copy of:

(1) the seller's cash transaction card or approved application for a cash transaction card if the entity paid for a purchase of regulated material by cash;

(2) the debit card receipt and the seller's cash transaction card or approved application for a cash transaction card if the entity paid for a purchase of regulated material by debit card; or

(3) the check if the entity paid for a purchase of regulated material by check.

Added by Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 8, eff. September 1, 2015.

Sec. 1956.0382. CASH TRANSACTION CARD. (a) A metal recycling

entity may pay a seller for a purchase of regulated material by cash or debit card only if, before the entity issues payment:

(1) the seller presents to the entity a valid cash transaction card issued by the entity or by another metal recycling entity located in this state; or

(2) the entity obtains a copy of the seller's cash transaction card from the records of the entity.

(b) An application for the issuance or renewal of a cash transaction card must include:

(1) the name, address, sex, and birth date of the applicant;

(2) the identification number from the applicant's personal identification document;

(3) a digital photograph that accurately depicts the applicant's entire face taken at the time the applicant completes the application;

(4) a clear and legible thumbprint of the applicant; and

(5) the signature of the applicant.

(c) On receipt of an application that contains the information required by Subsection (b), a metal recycling entity may approve the application and issue a cash transaction card to the applicant. The individual approving the application on behalf of the metal recycling entity must sign the application.

(d) A cash transaction card must include:

(1) the name and address of the seller;

(2) a digital photograph of the seller that accurately depicts the seller's entire face;

(3) an identifying number that is unique to the individual card; and

(4) the expiration date of the card, which may not be later than two years from the date the card was issued or renewed.

(e) A metal recycling entity must mail the issued cash transaction card to the address provided on the application for the card.

(f) A cash transaction card issued under this section is not transferable.

(g) A metal recycling entity shall preserve:

(1) each application for a cash transaction card the entity receives until the second anniversary of the date the application was received; and

(2) a copy of each cash transaction card the entity issues or renews until the second anniversary of the date the card was issued or renewed.

Added by Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 8, eff. September 1, 2015.

Sec. 1956.039. HOURS FOR PURCHASING MATERIAL. (a) Subject to Subsection (b), a county, municipality, or political subdivision may establish the hours during which a metal recycling entity may purchase regulated material.

(b) A metal recycling entity may not purchase from the general public regulated material:

(1) more than 15 consecutive hours in one day; or

(2) later than 9 p.m.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.

Sec. 1956.040. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates Section 1956.038. Except as otherwise provided by this subsection, an offense under this subsection is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subchapter, in which event the offense is a state jail felony. An offense under this subsection involving a catalytic converter is a state jail felony unless it is shown on trial of the offense that the person has previously been convicted of a violation of this subchapter involving a catalytic converter, in which event the offense is a felony of the third degree.

(a-1) A person commits an offense if the person knowingly violates Section 1956.021, 1956.023(d), 1956.036(a), or 1956.039.

(a-2) An offense under Subsection (a-1) is a Class A misdemeanor, except that any fine imposed may not exceed $10,000. If it is shown on trial of an offense under Subsection (a-1) that the person has previously been convicted of a violation of that subsection, the offense is a state jail felony.

(a-3) It is an affirmative defense to prosecution of a violation of Section 1956.021 or 1956.023(d) that the person made a

diligent effort to obtain or renew a certificate of registration at the time of the violation.

(a-4) A municipality or county may retain 10 percent of the money collected from a fine for a conviction of an offense under Subsection (a-1) as a service fee for that collection and the clerk of the court shall remit the remainder of the fine collected for conviction of an offense under Subsection (a-1) to the comptroller in the manner provided for the remission of fees to the comptroller under Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit proceeds received under this subsection to the credit of an account in the general revenue fund, and those proceeds may be appropriated only to the department and used to:

(1) finance the department's administration of Subchapters A, A-1, A-2, and A-3; and

(2) fund grants distributed under the prevention of scrap metal theft grant program established under Subchapter O, Chapter 411, Government Code.

(b) A person commits an offense if the person knowingly buys:

(1) stolen regulated material; or

(2) insulated communications wire that has been burned wholly or partly to remove the insulation, unless the wire is accompanied by documentation acceptable under the rules adopted under Section 1956.032(h) that states that the material was salvaged from a fire.

(b-1) Except as otherwise provided by Subsection (b-2), an offense under Subsection (b) is a Class A misdemeanor unless it is shown on trial of the offense that the person has previously been convicted under Subsection (b), in which event the offense is a state jail felony.

(b-2) An offense under Subsection (b)(1) in which the regulated material purchased was a catalytic converter is a state jail felony unless it is shown on trial of the offense that the person has previously been convicted of an offense under Subsection (b)(1) in which the regulated material purchased was a catalytic converter, in which event the offense is a felony of the third degree.

(c) A person commits an offense if the person knowingly sells stolen regulated material. An offense under this subsection is a state jail felony unless it is shown on trial of the offense that the person has previously been convicted under this subsection, in which event the offense is a third degree felony.

(c-1) A person commits an offense if the person knowingly sells an explosive device to a metal recycling entity.

(c-2) A metal recycling entity commits an offense if the entity knowingly buys an explosive device.

(c-3) Except as provided by Subsection (c-5), an offense under Subsection (c-1) or (c-2) is a Class A misdemeanor.

(c-4) A metal recycling entity commits an offense if the entity knowingly stores or allows to be stored on the entity's premises an explosive device. Except as provided by Subsection (c-5), an offense under this subsection is a Class A misdemeanor. For purposes of this subsection, a metal recycling entity is considered to store an explosive device on the entity's premises beginning not earlier than 72 hours after the time a person presents the explosive device to the entity for sale or an attempted sale and ending at the time the entity reports the presence of the explosive device on the entity's premises to the department. A metal recycling entity is not liable under this section for the time it takes for the department, a law enforcement agency, or a military installation to respond to the entity's report that the entity possesses an explosive device.

(c-5) An offense under Subsection (c-1), (c-2), or (c-4) is a felony of the second degree if it is shown at the trial of the offense that a person suffered death or serious bodily injury, as defined by Section 1.07, Penal Code, as a result of the detonation of an explosive device.

(d) On the conviction of a metal recycling entity for an offense punishable under Subsection (b), a court, in addition to imposing any other applicable penalty, may order that the entity cease doing business as a metal recycling entity for a period not to exceed:

(1) 30 days from the date of the order for each violation that forms the basis of the conviction for a first offense; and

(2) 180 days from the date of the order for each violation that forms the basis of the conviction if it is shown on trial of the offense that the person has previously been convicted under this section.

(d-1) On conviction of an offense under Subsection (c-1), (c-2), or (c-4), the court may order the defendant to make restitution to:

(1) the state or a political subdivision of the state for the costs incurred by the state or subdivision for responding to the

offense and any removal, cleaning, sanitizing, demolition, reconstruction, or other treatment required as a result of the offense; and

(2) the owner of any property damaged as a result of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 16, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(27), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 864 (H.B. 555), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 191 (S.B. 208), Sec. 4, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 8, eff. September 1, 2021.

Sec. 1956.041. ADMINISTRATIVE PENALTY. (a) The commission, after notice and an opportunity for a hearing, may impose an administrative penalty on a person who:

(1) violates this subchapter or Subchapter A-2 or a rule or order of the commission under this chapter; or

(2) engages in conduct that would constitute an offense under Section 1956.040(c-2) or (c-4).

(b) Except as provided by Subsection (b-1), the amount of the administrative penalty may not exceed $1,000. Each day a violation occurs or continues to occur is a separate violation for the purpose of imposing a penalty under this section. In determining the amount of the administrative penalty under this section, the commission shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;
(4) the amount necessary to deter a future violation;
(5) efforts to correct the violation; and
(6) any other matter that justice may require.

(b-1) The amount of an administrative penalty for engaging in conduct described by Subsection (a)(2) or for a violation of Section 1956.036(f) may not exceed $1,000 for each violation. The aggregate penalty under this subsection for multiple violations may not exceed $10,000.

(b-2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(2), eff. September 1, 2019.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(2), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(2), eff. September 1, 2019.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(2), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(2), eff. September 1, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 1065 (H.B. 2187), Sec. 8, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 191 (S.B. 208), Sec. 5, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.010(2), eff. September 1, 2019.

SUBCHAPTER B. SALE OF CRAFTED PRECIOUS METAL TO DEALERS

Sec. 1956.051. DEFINITIONS. In this subchapter:

(1) "Commission" means the Finance Commission of Texas.
(2) "Commissioner" means the consumer credit commissioner.
(3) "Crafted precious metal" means jewelry, silverware, an art object, or another object, made wholly or partly from precious metal and used primarily for personal, family, or household purchases. The term does not include:
(A) a coin;
(B) a bar;
(C) a commemorative medallion;

(D) an item selling at 105 percent or more of the scrap value of the item;

(E) an item made wholly or partly from precious metal and used for a dental, pharmaceutical, or medical application; or

(F) an item made wholly or partly from precious metal extracted, recovered, or salvaged from an industrial by-product or industrial waste product.

(4) "Dealer" means a person registered to engage in the business of purchasing and selling crafted precious metal, including purchases or sales made through the mail.

(5) "Department" means the Texas Department of Public Safety.

(5-a) "Jewelry store" means a retail establishment that derives 75 percent or more of its annual revenue from the sale to consumers of crafted precious metal or other items of personal adornment, including watches, bracelets, necklaces, brooches, rings, and earrings.

(6) "Precious metal" means gold, silver, platinum, palladium, iridium, rhodium, osmium, ruthenium, or an alloy of those metals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 1, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 604 (S.B. 1132), Sec. 1, eff. September 1, 2021.

Sec. 1956.0511. ADMINISTRATION BY COMMISSION. (a) Notwithstanding any other provision of this chapter, the commission shall administer and enforce this subchapter, unless the context clearly requires another state agency to perform a specific duty.

(b) To the extent of any conflict between this subchapter and other provisions of this chapter, this subchapter prevails.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 2, eff. September 1, 2011.

Sec. 1956.055. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED FROM

ANOTHER DEALER WHO PREVIOUSLY MADE REQUIRED REPORTS. This subchapter does not apply to crafted precious metal acquired in good faith in a transaction involving the stock-in-trade of another dealer who previously made the reports concerning that metal as required by this subchapter if:

(1) the selling dealer delivers to the acquiring dealer a written document stating that the reports have been made;

(2) the acquiring dealer submits a copy of the statement to the chief of police of the municipality or the sheriff of the county in which the selling dealer is located; and

(3) each dealer involved in the transaction retains a copy of the statement until the third anniversary of the date of the transaction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.056. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED IN DISSOLUTION OR LIQUIDATION SALE. This subchapter does not apply to crafted precious metal acquired in a nonjudicial sale, transfer, assignment, assignment for the benefit of creditors, or consignment of the assets or stock-in-trade, in bulk, or a substantial part of those assets, of an industrial or commercial enterprise, other than a dealer, for the voluntary dissolution or liquidation of the seller's business, or for disposing of an excessive quantity of personal property, or property that has been acquired in a nonjudicial sale or transfer from an owner other than a dealer, the seller's entire household of personal property, or a substantial part of that property, if the dealer:

(1) gives written notice to the chief of police of the municipality or the sheriff of the county in which the dealer's business is located that a reporting exemption is being claimed under this section;

(2) retains in the dealer's place of business, until the third anniversary of the date of the transaction, a copy of the bill of sale, receipt, inventory list, or other transfer document; and

(3) makes the record retained available for inspection by a peace officer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.057. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED IN JUDICIAL SALE. This subchapter does not apply to crafted precious metal acquired in a sale made:

(1) by any public officer in the officer's official capacity as a trustee in bankruptcy, executor, administrator, receiver, or public official acting under judicial process or authority; or

(2) on the execution of, or by virtue of, any process issued by a court.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.058. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED AS PAYMENT FOR OTHER CRAFTED PRECIOUS METAL BY PERSON IN BUSINESS OF SELLING TO CONSUMERS. This subchapter does not apply to crafted precious metal acquired in good faith as part or complete payment for other crafted precious metal by a person whose principal business is primarily that of selling directly to the consumer crafted precious metal that has not been subject to a prior sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.059. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED FROM OR REPORTED TO GOVERNMENTAL AGENCY. This subchapter does not apply to crafted precious metal:

(1) acquired as surplus property from the United States, a state, a subdivision of a state, or a municipal corporation; or

(2) reported by a dealer as an acquisition or a purchase, or reported as destroyed or otherwise disposed of, to:

(A) a state agency under another law of this state; or

(B) a municipal or county office or agency under another law of this state or a municipal ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.060. EXCEPTION: CRAFTED PRECIOUS METAL ACQUIRED BY PERSON LICENSED UNDER TEXAS PAWNSHOP ACT. This subchapter does not apply to crafted precious metal acquired by:

(1) a person licensed under Chapter 371, Finance Code; or

(2) an entity affiliated with a person licensed under Chapter 371, Finance Code, if the entity's recordkeeping practices satisfy the requirements of that chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 3, eff. September 1, 2011.

Sec. 1956.061. EFFECT ON OTHER LAWS AND ORDINANCES. This subchapter does not:

(1) excuse noncompliance with another state law or municipal ordinance covering the reporting, holding, or releasing of crafted precious metal;

(2) prohibit a municipality from enacting, amending, or enforcing an ordinance relating to a dealer; or

(3) supersede a municipal ordinance except to the extent the ordinance does not require reporting for transactions involving crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.0611. RULEMAKING. The commission may adopt rules necessary to implement and enforce this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.

Sec. 1956.0612. REGISTRATION AS DEALER. (a) A person may not engage in the business of purchasing and selling crafted precious metal unless the person is registered with the commissioner as a dealer under this section.

(b) To register as a dealer, a person must provide to the commissioner:

(1) a list of each location in this state at which the person will conduct business as a dealer; and

(2) a processing fee for each location included on the list

furnished under Subdivision (1).

(b-1) A registration issued under this section is valid for the period prescribed by commission rule adopted under Section 14.112, Finance Code.

(c) The commissioner shall prescribe the processing fee in an amount necessary to cover the costs of administering this subchapter.

(d) The commission by rule shall establish a deadline for the submission of the information and fee required by Subsection (b) for initial issuance and renewal of registrations under this section.

(d-1) After the applicable deadline for initial or renewal registrations, a dealer may amend the registration required under Subsection (a) to reflect any change in the information provided by the registration.

(e) The commissioner shall make available to the public a list of dealers registered under this section.

(f) The commissioner may prescribe the registration form.

(g) A reference to a registration in another subchapter of this chapter does not apply to a person to the extent the person is registered under this subchapter.

(h) The commissioner may refuse to renew the registration of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. January 1, 2012.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 92, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 604 (S.B. 1132), Sec. 2, eff. September 1, 2021.

Sec. 1956.0613. INVESTIGATION BY COMMISSIONER. The commissioner shall:

(1) monitor the operations of a dealer to ensure compliance with this subchapter; and

(2) receive and investigate complaints against a dealer or a person acting as a dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 604 (S.B. 1132), Sec. 3, eff. September 1, 2021.

Sec. 1956.06131. EXAMINATION BY COMMISSIONER. (a) At the times the commissioner considers necessary, the commissioner or the commissioner's representative may:

(1) examine each place of business of each dealer; and

(2) investigate the dealer's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this subchapter.

(b) A dealer shall:

(1) give the commissioner or the commissioner's representative free access to the dealer's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) The commissioner or the commissioner's representative shall examine under Subsection (a) at least 10 dealers each calendar year.

(d) This section does not apply with respect to a jewelry store.

Added by Acts 2021, 87th Leg., R.S., Ch. 604 (S.B. 1132), Sec. 4, eff. January 1, 2022.

Sec. 1956.0614. REVOCATION OF REGISTRATION. (a) The commissioner may revoke the registration of a dealer if the commissioner concludes that the dealer has violated this chapter or an order issued by the commissioner to enforce this chapter. The commissioner shall recite the basis of the decision in an order revoking the registration.

(b) If the commissioner proposes to revoke a registration, the dealer is entitled to a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing. The hearing is governed by Chapter 2001, Government Code.

(c) A dealer aggrieved by a ruling, order, or decision of the commissioner is entitled to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 93, eff. September 1, 2019.

Sec. 1956.0615. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty not to exceed $500 against a person for each knowing and wilful violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 4, eff. September 1, 2011.

Sec. 1956.0616. NOTICE OF ENFORCEMENT ORDER. (a) As soon as practicable after an enforcement order against a dealer for a violation of this subchapter becomes final, including an order assessing an administrative penalty or an order to pay restitution under Section 14.251(b)(3), Finance Code, the commissioner shall provide notice of the order to:

(1) the chief of police of the municipality in which the violation occurred; or

(2) the sheriff of the county in which the violation occurred, if the violation did not occur in a municipality.

(b) The notice must include:

(1) a copy of the enforcement order;

(2) the information on complaint procedures described by Section 14.062(b), Finance Code; and

(3) any other information the commissioner considers necessary or proper to the enforcement of this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 604 (S.B. 1132), Sec. 5, eff. September 1, 2021.

Sec. 1956.062. REPORT OF PURCHASE REQUIRED. (a) A dealer shall, as required by Section 1956.063, report all identifiable crafted precious metal that the dealer purchases, takes in trade, accepts for sale on consignment, or accepts for auction.

(b) Before crafted precious metal is offered for sale or exchange, a dealer must notify each person intending to sell or exchange the metal that, before the dealer may accept any of the person's property, the person must file with the dealer a list describing all of the person's crafted precious metal to be accepted by the dealer. The list must contain:

(1) the proposed seller's name and address;

(2) a complete and accurate description of the crafted precious metal; and

(3) the proposed seller's certification that the information is true and complete.

(c) The dealer shall record the proposed seller's driver's license number or department personal identification certificate number on physical presentation of the license or personal identification certificate by the seller. The record must accompany the list.

(d) The dealer shall:

(1) provide to a peace officer, on demand, the list required by Subsection (b); and

(2) mail or deliver a complete copy of the list to the chief of police or the sheriff as provided by Section 1956.063 not later than 48 hours after the list is filed with the dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.063. FORM OF REPORT; FILING. (a) A report required by this subchapter must comply with this section unless a similar report is required by another state law or a municipal ordinance, in which event the required report must comply with the applicable law or ordinance.

(b) If a transaction regulated by this subchapter occurs in a municipality that maintains a police department, the original and a copy of the report required by this subchapter shall be submitted to the municipality's chief of police. If the transaction does not occur in such a municipality, the original and a copy of the report

shall be submitted to the sheriff of the county in which the transaction occurs.

(c) For each transaction regulated by this subchapter, the dealer shall submit a report on a preprinted and prenumbered form prescribed by the commissioner or in the manner described by Subsection (c-1). The form must include the following:

(1) the date of the transaction;

(2) a description of the crafted precious metal purchased by the dealer;

(3) the name and physical address of the dealer; and

(4) the name, physical description, and physical address of the seller or transferor.

(c-1) A dealer may submit a list required by Section 1956.062(b) to satisfy the reporting requirement under this section if the list contains the information described by Subsection (c).

(d) The dealer shall retain a copy of the report until the third anniversary of the date the report is filed.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 5, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 767 (H.B. 1442), Sec. 94, eff. September 1, 2019.

Sec. 1956.064. REQUIRED RETENTION OF CRAFTED PRECIOUS METAL. (a) A dealer may not melt, deface, alter, or dispose of crafted precious metal that is the subject of a report required by this subchapter before the 11th day after the date the report is filed unless:

(1) the peace officer to whom the report is submitted, for good cause, authorizes disposition of the metal;

(2) the dealer obtains the name, address, and description of the buyer and retains a record of that information; or

(3) the dealer is a pawnbroker and the disposition is the redemption of pledged property by the pledgor.

(b) A peace officer who has reasonable suspicion to believe that an item of crafted precious metal in the possession of a dealer is stolen may place the item on hold for a period not to exceed 60

days by issuing to the dealer a written notice that:

(1) specifically identifies the item alleged to be stolen and subject to the hold; and

(2) informs the dealer of the requirements of Subsection (c).

(c) On receiving the notice, the dealer may not melt, deface, alter, or dispose of the identified crafted precious metal until the hold is released in writing by a peace officer of this state or a court order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 6, eff. September 1, 2011.

Sec. 1956.065. INSPECTION OF CRAFTED PRECIOUS METAL BY PEACE OFFICER. (a) A dealer shall make crafted precious metal purchased by the dealer available for inspection by a peace officer during regular business hours while in the dealer's possession.

(b) Information obtained under this section is confidential except for use in a criminal investigation or prosecution or a civil court proceeding.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.066. PURCHASE FROM MINOR. (a) A dealer may not purchase crafted precious metal from a person younger than 18 years of age unless the seller delivers to the dealer before the purchase a written statement from the seller's parent or legal guardian consenting to the transaction.

(b) The dealer shall retain the statement with the records required to be kept under this subchapter. The dealer may destroy the statement after the later of:

(1) the date the item is sold; or

(2) the first anniversary of the date the dealer purchased the item.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.067. PURCHASE AT TEMPORARY LOCATION OF DEALER. (a) A dealer who conducts business at a temporary location for a period of less than one year may not engage in the business of buying precious metal or used items made of precious metal unless, within a 12-month period at least 30 days before the date on which each purchase is made, the dealer has filed:

(1) a registration statement with the department;

(2) a copy of the registration statement and a copy of the dealer's certificate of registration issued under this subchapter with the local law enforcement agency of:

(A) the municipality in which the temporary location is located; or

(B) if the temporary location is not located in a municipality, the county in which the temporary location is located; and

(3) a copy of the dealer's certificate of registration issued under this subchapter with the county and, if applicable, the municipality in which the temporary location is located.

(b) The registration statement must contain:

(1) the name and address of the dealer;

(2) the location where business is to be conducted;

(3) if the dealer is an association, the name and address of each member of the association;

(4) if the dealer is a corporation, the name and address of each officer and director of the corporation; and

(5) other relevant information required by the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 7, eff. January 1, 2012.

Sec. 1956.068. PURCHASE OF MELTED ITEMS. A dealer, in the course of business, may not purchase from a person other than a manufacturer of or a regular dealer in crafted precious metal an object formed as the result of the melting of crafted precious metal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.069. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) fails to make or permit inspection of a report as required by Section 1956.062 or 1956.063;

(2) violates Section 1956.0612 or 1956.064;

(3) fails to obtain or retain a statement as required by Section 1956.066;

(4) fails to file a registration statement as required by Section 1956.067; or

(5) purchases an object in violation of Section 1956.068.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1298 (H.B. 2490), Sec. 8, eff. January 1, 2012.

SUBCHAPTER C. RESTRICTIONS ON SALE OF CERTAIN ITEMS TO METAL RECYCLING ENTITIES

Sec. 1956.101. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1316, Sec. 5, eff. September 1, 2007.

(2) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(3) "PCB-containing capacitor" means a capacitor that contains polychlorinated biphenyls and is regulated under the federal Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.).

(4) "Person" means an individual, corporation, partnership, sole proprietorship, or other business entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 5, eff. September 1, 2007.

Sec. 1956.102. EXCEPTION. This subchapter does not apply to a sale or transfer by or on behalf of a metal recycling entity.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1956.103. RESTRICTIONS ON TRANSFER OF CERTAIN PROPERTY. (a) A person may not sell or otherwise transfer to a metal recycling entity:

(1) a lead-acid battery, fuel tank, or PCB-containing capacitor that is included with another type of scrap, used, or obsolete metal without first obtaining from the metal recycling entity a written and signed acknowledgment that the scrap, used, or obsolete metal includes one or more lead-acid batteries, fuel tanks, or PCB-containing capacitors;

(2) any of the following items that contain or enclose a lead-acid battery, fuel tank, or PCB-containing capacitor or of which a lead-acid battery, fuel tank, or PCB-containing capacitor is a part:

(A) a motor vehicle;

(B) a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle;

(C) an appliance; or

(D) any other item of scrap, used, or obsolete metal;

(3) a motor vehicle or a motor vehicle that has been junked, flattened, dismantled, or changed so that it has lost its character as a motor vehicle if the motor vehicle includes, contains, or encloses a tire or scrap tire; or

(4) a metal alcoholic beverage keg, regardless of condition, unless the seller is the manufacturer of the keg, the brewer or distiller of the beverage that was contained in the keg, or an authorized representative of the manufacturer, brewer, or distiller.

(b) Subsection (a)(3) does not apply to the sale or other transfer of a motor vehicle or a junked, flattened, dismantled, or changed motor vehicle from another state.

(c) Subsection (a) does not apply to a fuel tank that has been completely drained and rendered unusable in accordance with Texas Commission on Environmental Quality rules regardless of whether the fuel tank is attached to a motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 47 (S.B. 1298), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 17, eff. September 1, 2011.

Sec. 1956.104. NOTICE OF RESTRICTIONS. A metal recycling entity shall post in a conspicuous location a notice that:

(1) is readily visible to a person selling material to the metal recycling entity;

(2) is at least 24 inches horizontally by 18 inches vertically; and

(3) contains the following language:

TEXAS LAW PROHIBITS:

1. THE SALE OF A WHOLE, FLATTENED, OR JUNKED MOTOR VEHICLE, AN APPLIANCE, OR ANY OTHER SCRAP METAL ITEM CONTAINING A LEAD-ACID BATTERY, FUEL TANK THAT HAS NOT BEEN COMPLETELY DRAINED AND RENDERED UNUSABLE, OR PCB-CONTAINING CAPACITOR; AND

2. THE SALE OF LEAD-ACID BATTERIES, FUEL TANKS THAT HAVE NOT BEEN COMPLETELY DRAINED AND RENDERED UNUSABLE, OR PCB-CONTAINING CAPACITORS INCLUDED WITH OTHER SCRAP METALS WITHOUT OUR PRIOR WRITTEN ACKNOWLEDGMENT.

VIOLATION OF THIS LAW IS A MISDEMEANOR.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 47 (S.B. 1298), Sec. 2, eff. September 1, 2005.

Sec. 1956.105. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not more than $1,000;

(2) confinement in the county jail for not more than 60 days; or

(3) both the fine and the confinement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

SUBCHAPTER C-1. CERTAIN TRANSACTIONS INVOLVING CATALYTIC CONVERTERS REMOVED FROM MOTOR VEHICLES

Sec. 1956.121. DEFINITION. In this subchapter, "motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

Sec. 1956.122. APPLICABILITY; EFFECT OF LAW. (a) Notwithstanding any other provision of this chapter, this subchapter applies to the purchase or acquisition, from a person described by Section 1956.002(1), of a catalytic converter removed from a motor vehicle.

(b) This subchapter does not affect any requirement under Subchapter A-3, including any requirement applicable to the purchase or acquisition of a catalytic converter removed from a motor vehicle from a person not described by Section 1956.002(1).

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

Sec. 1956.123. LIMITATION ON PURCHASING OR OTHERWISE ACQUIRING CATALYTIC CONVERTERS. A metal recycling entity may not purchase or otherwise acquire a catalytic converter that was removed from a motor vehicle from a person described by Section 1956.002(1), unless each of the following is satisfied:

(1) the person selling the catalytic converter to the metal recycling entity acquired it in the ordinary course of the person's business, including in the ordinary course of business of any of the following entities:

(A) an automotive wrecking and salvage yard as defined by Section 234.001, Local Government Code;

(B) a metal recycling entity registered under this chapter;

(C) a manufacturer, distributor, converter, or dealer licensed under Chapter 2301, including any department of a dealer or converter that repairs or services motor vehicles;

(D) a shop or garage that is engaged in the business of repairing motor vehicles;

(E) a used automotive parts recycler licensed under Chapter 2309;

(F) a motor vehicle demolisher as defined by Section 683.001, Transportation Code;

(G) a school or training program in which students are provided instruction on building, repairing, or restoring motor vehicles;

(H) a law enforcement agency;

(I) the National Insurance Crime Bureau;

(J) a business that is:

(i) located in and regulated by another state or a political subdivision of another state; and

(ii) engaged in an activity for which a business described by Paragraphs (A) through (I) is regulated by this state or a political subdivision of this state; or

(K) a business that is located in a jurisdiction outside the United States and operated in a business form recognized by the laws of that jurisdiction and that imports catalytic converters into the United States in accordance with the Harmonized Tariff Schedule of the United States published by the United States International Trade Commission; and

(2) any individual acting on behalf of the person described by Subdivision (1) has apparent authority to enter into the transaction and is acting in the scope of that authority.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

Sec. 1956.124. CERTAIN RECORDS REQUIRED WHEN PURCHASING OR OTHERWISE ACQUIRING CATALYTIC CONVERTER; OFFENSE. (a) A metal recycling entity shall maintain an accurate record of each transaction in which the entity purchases or otherwise acquires a catalytic converter that is removed from a motor vehicle from a person described by Section 1956.123.

(b) A record meets the requirements of Subsection (a) if it contains:

(1) a description made in accordance with the custom of the trade for the volume of catalytic converters purchased or otherwise acquired;

(2) the business name of the person from whom the catalytic converters were purchased or otherwise acquired; and

(3) the date of the transaction.

(c) A metal recycling entity shall preserve each record required by this section until the second anniversary of the date the record was made. The records must be maintained in an easily retrievable format and must be available for inspection as provided by Section 1956.125 not later than 72 hours after the time of purchase or acquisition.

(d) A record containing the information described by Subsection (b) that is maintained in accordance with other law or as a routine business practice satisfies the requirements of Subsection (a).

(e) A metal recycling entity commits an offense if the entity intentionally or knowingly fails to maintain a record as required by this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

Sec. 1956.125. INSPECTION OF RECORDS. On request, a metal recycling entity shall permit a peace officer, a representative of the department, or a representative of a county, municipality, or other political subdivision that issues a license or permit under Section 1956.003(b) to, during the entity's usual business hours:

(1) enter the premises of the entity; and

(2) inspect a record required to be maintained by Section 1956.124.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

Sec. 1956.126. EFFECT ON LOCAL LAW. (a) Notwithstanding Section 1956.003, a county, municipality, or political subdivision of this state may not:

(1) with respect to a catalytic converter removed from a motor vehicle, restrict the purchase, acquisition, sale, transfer, or possession of the catalytic converter by a person described by Section 1956.123; or

(2) alter or add to the recordkeeping requirements provided by Section 1956.124.

(b) Subsection (a) does not affect the authority of a county, municipality, or political subdivision of this state to:

(1) issue a license or permit as provided by Section 1956.003; or

(2) inspect a record as provided by Section 1956.125.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

Sec. 1956.127. DECLARATION UPDATE. If the business activity of a metal recycling entity substantially changes in the extent to which the entity engages in transactions involving catalytic converters removed from motor vehicles, the entity shall update the entity's declaration submitted under Section 1956.022.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

Sec. 1956.128. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty under Subchapter R, Chapter 411, Government Code, on a metal recycling entity that:

(1) violates Section 1956.123 due to the entity's failure to exercise due diligence in purchasing or acquiring a catalytic converter removed from a motor vehicle; or

(2) violates Section 1956.124.

(b) The amount of the administrative penalty may not exceed $10,000.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.07, eff. May 29, 2023.

SUBCHAPTER D. DISCIPLINARY PROCEDURES

Sec. 1956.151. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The commission shall deny an application for a certificate of registration, suspend or revoke a certificate of registration, or reprimand a person who is registered under this chapter if the

person:

(1) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) sells, barters, or offers to sell or barter a certificate of registration;

(3) violates a provision of this chapter or a rule adopted under this chapter; or

(4) violates Section 1956.021.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 18, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 595 (S.B. 616), Sec. 3.003, eff. September 1, 2019.

Sec. 1956.153. HEARING. (a) A person whose application for a certificate of registration is denied, whose certificate of registration is suspended or revoked, or who is reprimanded is entitled to a hearing before the department if the person submits to the department a written request for the hearing.

(b) A hearing is governed by department rules for a contested hearing and by Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

SUBCHAPTER E. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1956.201. ENFORCEMENT PROCEEDINGS; INJUNCTION. (a) The department, the attorney general, or the district, county, or city attorney for the county or municipality in which an alleged violation of this chapter occurs may, on receipt of a verified complaint, bring an appropriate administrative or judicial proceeding to enforce this chapter or a rule adopted under this chapter.

(b) The attorney general or an attorney representing the state may initiate an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

Sec. 1956.202. CIVIL PENALTY. (a) Except as provided by Subsection (d), a person who violates this chapter or a rule adopted under this chapter is liable to this state for a civil penalty of not more than $1,000 for each violation.

(b) The amount of the penalty shall be based on:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation; and

(4) any other matter that justice may require.

(c) The attorney general may sue to collect a civil penalty under this section. In the suit the attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

(d) A civil penalty may not be assessed under this section for conduct described by Section 1956.021, 1956.023(d), 1956.036(a), 1956.038, or 1956.039.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 19, eff. September 1, 2011.

Sec. 1956.203. CRIMINAL PENALTY FOR CERTAIN SOLICITATION. (a) A person commits an offense if the person solicits the purchase of regulated material at a location other than a business location at which the material is produced as a by-product in the ordinary course of that business.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1316 (S.B. 1154), Sec. 4, eff. September 1, 2007.

Sec. 1956.204. GENERAL CRIMINAL PENALTY. (a) A person commits

an offense if the person violates this chapter or a rule adopted under this chapter, including a rule, charter, or ordinance adopted, an order issued, or a standard imposed by a county, municipality, or political subdivision under Section 1956.003.

(b) An offense under this section is a Class C misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under another section in this chapter, the person may be prosecuted only under that other section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 864 (H.B. 555), Sec. 2, eff. September 1, 2013.

CHAPTER 1957. INDUSTRIAL HYGIENISTS

Sec. 1957.001. SHORT TITLE. This chapter may be cited as the Industrial Hygiene Title Recognition Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1957.002. INDUSTRIAL HYGIENE CERTIFICATION ORGANIZATION. (a) In this chapter, "industrial hygiene certification organization" means a nonprofit corporation established to improve the practice and educational standards of the profession of industrial hygiene by certifying individuals who meet its education, experience, and examination requirements.

(b) The organization must maintain criteria at least as stringent as those adopted by the American Board of Industrial Hygiene.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1957.003. CERTIFICATION REQUIRED. (a) A person may not use the title of or represent to the public that the person is a "certified industrial hygienist" or use the initials "CIH" unless the person is certified by the American Board of Industrial Hygiene as a certified industrial hygienist.

(b) A person may not use the title of or represent to the public that the person is an "industrial hygienist in training" or use the initials "IHIT" unless the person is certified by the

American Board of Industrial Hygiene as an industrial hygienist in training.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

Sec. 1957.004. CIVIL PENALTY. (a) A person who violates Section 1957.003 is subject to a civil penalty of not more than $1,000 for each violation.

(b) The attorney general may bring an action to recover the civil penalty.

(c) A penalty recovered under this section shall be deposited to the credit of the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 4, eff. June 1, 2003.

CHAPTER 1958. MOLD ASSESSORS AND REMEDIATORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1958.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Mold Assessment and Remediation Advisory Board.

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 282 (S.B. 1213), Sec. 1

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

Text of subdivision as added by Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.278

(1-a) "Department" means the Texas Department of Licensing and Regulation.

(2) "Executive director" means the executive director of the department.

(3) "License" means a license issued under this chapter.

(4) "Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(5) "Mold assessment" means:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or remediation protocol; or

(C) the collection or analysis of a mold sample.

(6) "Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at that location.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.292, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.278, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 282 (S.B. 1213), Sec. 1, eff. May 29, 2023.

Sec. 1958.002. SCOPE OF AUTHORITY. (a) This chapter applies only to the regulation of mold-related activities that affect indoor air quality, including a mold-related activity performed by a third party for compensation at a property owned or operated by a governmental entity.

(b) This chapter does not apply to:

(1) the following activities when not conducted for the purpose of mold assessment or mold remediation:

(A) routine cleaning;

(B) the diagnosis, repair, cleaning, or replacement of plumbing, heating, ventilation, air conditioning, electrical, or air duct systems or appliances;

(C) commercial or residential real estate inspections; and

(D) the incidental discovery or emergency containment of potential mold contamination during the conduct or performance of services listed in this subsection;

(2) the repair, replacement, or cleaning of construction materials during the building phase of the construction of a structure;

(3) the standard performance of custodial activities for, preventive maintenance of, and the routine assessment of property

owned or operated by a governmental entity; or

(4) a pest control inspection conducted by a person regulated under Chapter 1951.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER A-1. ADVISORY BOARD

Sec. 1958.031. ADVISORY BOARD MEMBERSHIP. (a) The Mold Assessment and Remediation Advisory Board consists of 11 members appointed by the presiding officer of the commission, with the approval of the commission, as follows:

(1) three members who are licensed and engage in mold assessment as consultants;

(2) three members who are licensed and engage in mold remediation as contractors;

(3) two members who are building contractors principally engaged in home construction and who are members of a statewide building trade association;

(4) one member who is a representative of the insurance industry;

(5) one member who is a representative of an accredited mold training provider; and

(6) one member who represents the public.

(b) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(c) Chapter 2110, Government Code, does not apply to the composition or duration of the advisory board or to the appointment of the advisory board's presiding officer.

Added by Acts 2023, 88th Leg., R.S., Ch. 282 (S.B. 1213), Sec. 2, eff. May 29, 2023.

Sec. 1958.032. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms, with the terms of three or four members expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the approval of the commission, shall appoint a replacement who meets the qualifications for the vacant

position to serve for the remainder of the term.

Added by Acts 2023, 88th Leg., R.S., Ch. 282 (S.B. 1213), Sec. 2, eff. May 29, 2023.

Sec. 1958.033. PRESIDING OFFICER. The presiding officer of the commission, with the approval of the commission, shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year.

Added by Acts 2023, 88th Leg., R.S., Ch. 282 (S.B. 1213), Sec. 2, eff. May 29, 2023.

Sec. 1958.034. DUTIES. The advisory board may advise the commission and department on:

(1) technical matters relevant to the administration of this chapter;

(2) standards or performance and work practices for mold assessment or remediation;

(3) qualifications for the issuance or renewal of a license, including any training or continuing education; and

(4) other issues affecting mold assessment and remediation.

Added by Acts 2023, 88th Leg., R.S., Ch. 282 (S.B. 1213), Sec. 2, eff. May 29, 2023.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 1958.051. GENERAL POWERS AND DUTIES. The executive director shall administer and enforce this chapter to protect the public from the adverse health effects of mold.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.279, eff. September 1, 2017.

Sec. 1958.052. PUBLIC EDUCATION PROGRAM. (a) The department

shall conduct a statewide education and outreach program regarding the importance of, and ways to improve, air quality in buildings, including the importance of, and the ways to recognize, prevent, control, and mitigate, mold occurrence and other indoor air quality factors that adversely affect human health.

(b) The program may include:

(1) the development and distribution of information to the public concerning indoor air quality and mold;

(2) educational programs;

(3) informational or educational exhibits; and

(4) any other methods of education or communication that the department considers appropriate.

(c) The department may contract with governmental entities or other persons to provide the program.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.0531. RULES. The commission shall adopt rules as necessary to administer this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 11.001, eff. September 1, 2017.

Sec. 1958.054. RULES REGARDING PERFORMANCE STANDARDS AND WORK PRACTICES. The commission by rule shall establish minimum performance standards and work practices for conducting a mold assessment or mold remediation in this state.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.294, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.280, eff. September 1, 2017.

Sec. 1958.056. INSPECTIONS. (a) The department shall conduct inspections as necessary to ensure compliance with this chapter.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560

), Sec. 1.25(26), eff. September 1, 2021.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.296, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.281, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(26), eff. September 1, 2021.

Sec. 1958.058. SAFETY STANDARDS. The commission by rule may develop and establish mold safety standards for license holders if appropriate scientific information exists regarding the effect of mold.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.297, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.282, eff. September 1, 2017.

Sec. 1958.059. CODE OF ETHICS. The commission by rule shall adopt a code of ethics for license holders that promotes the education of mold assessors and mold remediators concerning the ethical, legal, and business principles that should govern their conduct.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.298, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.283, eff. September 1, 2017.

SUBCHAPTER C. LICENSE AND REGISTRATION REQUIREMENTS

Sec. 1958.101. LICENSE REQUIRED; RULES. (a) A person may not

engage in:

(1) mold assessment unless the person holds a mold assessment license; or

(2) mold remediation unless the person holds a mold remediation license.

(b) The commission shall adopt rules regarding:

(1) the scope of mold-related work for which a license is required, including the supervision of employees or other persons by license holders; and

(2) renewal requirements for a license issued under this chapter.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.299, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.284, eff. September 1, 2017.

Sec. 1958.1011. TERM OF LICENSE. A license issued under this chapter is valid for two years.

Added by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.300, eff. April 2, 2015.

Sec. 1958.102. EXEMPTIONS. (a) An owner or tenant, or a managing agent or employee of an owner or tenant, is not required to be licensed under this chapter to perform mold assessment or mold remediation on property owned or leased by the owner or tenant. This exemption does not apply:

(1) if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public;

(2) if the mold remediation is performed in an area in which the mold contamination affects a total surface area of 25 contiguous square feet or more; or

(3) to a person who is exempt under Subsection (e).

(b) An employee of a license holder is not required to be licensed under this chapter to perform mold assessment or mold

remediation while supervised by the license holder, as provided by rules adopted under Section 1958.101.

(c) A person is not required to be licensed under this chapter to perform mold remediation in an area in which the mold contamination affects a total surface area for the project of less than 25 contiguous square feet.

(d) A person is not required to be licensed under this chapter to perform mold assessment or mold remediation in a one-family or two-family dwelling that the person constructed or improved if the person performs the mold assessment or mold remediation at the same time the person performs the construction or improvement or at the same time the person performs repair work on the construction or improvement. This exemption does not apply if the person engages in the business of performing mold assessment or mold remediation for the public.

(e) An owner, or a managing agent or employee of an owner, is not required to be licensed under this chapter to perform mold assessment or mold remediation on a residential property owned by that person with fewer than 10 dwelling units. This exemption does not apply if the managing agent or employee engages in the business of performing mold assessment or mold remediation for the public.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.103. REGISTRATION REQUIREMENTS FOR EMPLOYEES. The commission may adopt rules to require the registration of employees supervised by license holders.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.301, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.285, eff. September 1, 2017.

Sec. 1958.104. RULES REGARDING LICENSE APPLICATION. The commission shall adopt rules regarding a license application. The commission shall adopt rules that establish minimum requirements for a license, including:

(1) the type of license;
(2) the qualifications for the license, including any previous training required under Section 1958.106;
(3) renewal requirements for the license; and
(4) liability insurance requirements for the license.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.302, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.286, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.21, eff. September 1, 2021.

Sec. 1958.105. EXAMINATION. The department may require that an applicant for a license pass a competency examination to qualify for the license.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 642 (H.B. 2746), Sec. 1, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 11.002, eff. September 1, 2017.

Sec. 1958.106. TRAINING. (a) The commission shall adopt rules regarding training required under this chapter.
(b) The rules may include requirements regarding training providers, including rules establishing:
(1) accreditation by the department;
(2) curriculum requirements; and
(3) qualifications.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.303, eff. April 2, 2015.
Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.287, eff.

September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.22, eff. September 1, 2021.

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 1958.151. SCOPE OF WORK ANALYSIS. (a) A license holder who intends to perform mold assessment on a mold remediation project shall prepare a work analysis for the project. The license holder shall provide the analysis to the client before the mold remediation begins.

(b) The work analysis must specify:

(1) the rooms or areas where the work will be performed;

(2) the quantities of materials to be removed or cleaned at the project;

(3) the proposed methods for each type of remediation in each type of area in the project; and

(4) the proposed clearance criteria for each type of remediation in each type of area in the project.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.152. REMEDIATION WORK PLAN. (a) A license holder who intends to perform mold remediation shall prepare a work plan providing instructions for the remediation efforts to be performed for the mold remediation project. The license holder shall provide the work plan to the client before the mold remediation begins.

(b) The license holder shall maintain a copy of the work plan at the job site where the remediation is being performed.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.153. NOTICE OF PROJECT. (a) Except as provided by Subsection (b), not later than the fifth day before the date on which a license holder starts mold remediation at a property, the license holder shall notify the department in a manner prescribed by the department about the project.

(b) In an emergency, notice to the department under Subsection (a) must be made not later than the next business day after the

license holder identifies the emergency. For purposes of this subsection, an emergency exists if a delay in mold remediation services in response to a water damage occurrence would increase mold contamination.

(c) The commission shall adopt rules to implement this section, including rules describing the information that must be provided in the notice.

(d) The department shall develop a mechanism by which a license holder may notify the department of an emergency as required by Subsection (b).

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.305, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.288, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 11.003, eff. September 1, 2017.

Sec. 1958.154. CERTIFICATE OF MOLD REMEDIATION; DUTY OF PROPERTY OWNER. (a) Not later than the 10th day after the date on which a license holder completes mold remediation at a property, the license holder shall provide a certificate of mold remediation to the property owner. The certificate must include a statement by a mold assessment license holder that, based on visual, procedural, and analytical evaluation, the mold contamination identified for the project has been remediated as outlined in the mold management plan or remediation protocol. If the mold assessment license holder determines that the underlying cause of the mold has been remediated so that it is reasonably certain that the mold will not return from that remediated cause, the mold assessment license holder shall indicate on the certificate that the underlying cause of the mold has been remediated.

(b) If a property owner sells property, the property owner shall provide to the buyer a copy of each certificate issued for the property under this section during the five years preceding the date the property owner sells the property.

(c) The commission shall adopt rules to implement this section,

other than rules described by Subsection (d).

(d) The commissioner of insurance shall adopt rules describing the information that must be provided in the certificate of mold remediation. In adopting the rules, the commissioner shall design the certificate as necessary to comply with any requirements imposed under Subchapter G, Chapter 544, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 149 (H.B. 1328), Sec. 2, eff. May 24, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.153, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.306, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.289, eff. September 1, 2017.

Sec. 1958.155. CONFLICT OF INTEREST; DISCLOSURE REQUIRED. (a) A license holder may not perform both mold assessment and mold remediation on the same project.

(b) A person may not own an interest in both the entity that performs assessment services and an entity that performs remediation services on the same project.

(c) A license holder who is not an individual shall disclose to the department the name, address, and occupation of each person that has an ownership interest in the license holder. The license holder shall report any changes in ownership to the department. The commission shall adopt rules to implement this section, including rules regarding the form of the disclosure and the time required to make disclosures or to report a change in ownership.

(d) This section does not apply to a license holder employed by a school district working on a project for that school district.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 126 (H.B. 74), Sec. 1, eff. May 24, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 5.307, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 838 (S.B. 202), Sec. 1.290, eff. September 1, 2017.

Sec. 1958.156. RECORD REQUIREMENTS; DUTIES OF MOLD REMEDIATORS. (a) A mold remediator shall maintain a record regarding each mold remediation performed for at least three years after the date of completion of the mold remediation on a property.

(b) The mold remediator shall make the record available for inspection by the department or any law enforcement entity.

(c) The record must contain:

(1) photographs of the scene of the mold remediation taken before and after the remediation;

(2) the written contract between the mold remediator or any other party regarding the mold remediation;

(3) all invoices issued regarding the mold remediation; and

(4) any other material required by the department.

(d) Not later than the 10th day after the date of completion of a mold remediation, the mold remediator license holder shall provide the property owner with copies of all photographs required by this section.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 11.004, eff. September 1, 2017.

Sec. 1958.157. OFFICE LOCATION. A license holder shall maintain an office in this state.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.158. SERVICE OF PROCESS ON LICENSE HOLDER. The department may serve any notice that law requires the department to serve on a license holder by:

(1) personal service on the license holder;

(2) certified mail, return receipt requested, to the license holder at the last known address the license holder provided

to the department; or

(3) certified electronic mail to the license holder at the last known electronic mail address the license holder provided to the department.

Added by Acts 2017, 85th Leg., R.S., Ch. 1105 (H.B. 4007), Sec. 11.005, eff. September 1, 2017.

SUBCHAPTER G. OTHER PENALTIES; ENFORCEMENT PROVISIONS; EXEMPTIONS FROM CIVIL LIABILITY

Sec. 1958.303. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN PROPERTY OWNERS. A property owner is not liable for damages related to mold remediation on a property if:

(1) a certificate of mold remediation has been issued under this chapter for that property; and

(2) the damages accrued on or before the date of the issuance of the certificate.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

Sec. 1958.304. EXEMPTION FROM CIVIL LIABILITY FOR CERTAIN GOVERNMENTAL ENTITIES. A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if:

(1) a certificate of mold remediation has been issued under this chapter for the property;

(2) the property is owned or occupied by a governmental entity, including a school; and

(3) the decision was made by the owner, occupier, or any person authorized by the owner or occupier to make the decision.

Added by Acts 2003, 78th Leg., ch. 205, Sec. 1, eff. Sept. 1, 2003.

TITLE 13. SPORTS, AMUSEMENTS, AND ENTERTAINMENT

SUBTITLE A. GAMING

CHAPTER 2001. BINGO

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2001.001. SHORT TITLE. This chapter may be cited as the

Bingo Enabling Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.002. DEFINITIONS. In this chapter:

(1) "Authorized commercial lessor" means a person eligible for a commercial license to lease bingo premises under Subchapter D.

(2) "Authorized organization" means a person eligible for a license to conduct bingo.

(3) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(1), eff. October 1, 2009.

(4) "Bingo" or "game" means, except as provided by Section 2001.551, a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols conforming to randomly selected numbers or symbols.

(4-a) "Bingo chairperson" means an officer or member of the board of directors of a licensed authorized organization who is designated in writing by the organization as responsible for overseeing the organization's bingo activities and reporting to the membership relating to those activities.

(5) "Bingo equipment" means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

(i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) an electronic or mechanical cardminding device;

(iii) a pull-tab dispenser;

(iv) a bingo card;

(v) a bingo ball; and

(vi) any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

(i) a bingo game set commonly manufactured and sold as a child's game for a retail price of $20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or

(ii) a commonly available component part of bingo

equipment such as a light bulb or fuse.

(6) "Bingo occasion" means a single gathering or session at which a bingo game or a series of bingo games, including selling and redeeming pull-tab bingo tickets, are conducted on the day and at the times listed on the license issued to a licensed authorized organization.

(7) "Charitable purpose" means a purpose described by Section 2001.454.

(8) "Commission" means the Texas Lottery Commission.

(8-a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 993, Sec. 42(2), eff. September 1, 2013.

(9) "Distributor" means a person who obtains, by purchase or otherwise, bingo equipment or supplies for use in bingo in this state and sells or furnishes the items to another person for use, resale, display, or operation.

(10) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(1), eff. October 1, 2009.

(11) "Fraternal organization" means:

(A) a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter; or

(B) a nonprofit National Historical District Association representing the owners and lessees of a majority of the real property located in a National Historical District designated for not less than five years by the National Register of Historic Places, Heritage Conservation and Recreation Service of the United States Department of the Interior, if the association's net proceeds are used for restoration, construction, maintenance, and security in the district. The term "fraternal organization" does not include an organization whose members are predominantly veterans or dependents of veterans of the armed services of the United States.

(12) "Governing body" means the commissioners court with regard to a county or justice precinct or the city council or other chief legislative body with regard to a municipality.

(13) "Gross receipts" means the total amount received from the sale, rental, transfer, or use of bingo cards and entrance fees charged at premises at which bingo is conducted.

(14) "Licensed authorized organization" means an authorized organization that holds a license to conduct bingo.

(15) "Licensed commercial lessor" means a person licensed to lease premises and act as a commercial lessor.

(16) "Manufacturer" means:

(A) a person who assembles from raw materials or subparts a completed piece of bingo equipment or supplies for use in bingo games in this state; or

(B) a person who converts, modifies, adds to, or removes parts from any bingo equipment, item, or assembly to further its promotion or sale for or use in a bingo game in this state.

(17) "Municipal secretary" means the officer of a municipality performing the duties of municipal secretary.

(18) "Net proceeds" means:

(A) in relation to the gross receipts from one or more bingo occasions, the amount remaining after deducting the reasonable sums necessarily and actually expended for expenses under Section 2001.458 and the fee on prizes under Section 2001.502; and

(B) in relation to the gross rent or other consideration received by a licensed authorized organization for the use of its premises, fixtures, or equipment by another license holder, the amount remaining after deducting the reasonable sums necessarily and actually expended for any janitorial services and utility supplies directly attributable to the use of the premises, fixtures, or equipment.

(19) "Nonprofit organization" means an unincorporated association or a corporation that is incorporated or holds a certificate of authority under Chapter 22, Business Organizations Code. The organization:

(A) may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services; and

(B) must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.

(20) "Person" means an individual, partnership, corporation, or other group.

(21) "Political subdivision" means a county, justice precinct, or municipality.

(22) "Premises" means the area subject to the direct control of and actual use by a licensed authorized organization or group of licensed authorized organizations to conduct bingo. The term includes a location or place.

(23) "Primary business office" means the location at which all records relating to the primary purpose of a licensed authorized organization are maintained in the ordinary course of business.

(24) "Pull-tab bingo" means a form of bingo played using tickets with perforated break-open tabs, made of paper or paper products, the face of which is covered or otherwise hidden from view to conceal numbers, letters, or symbols, some of which have been designated in advance as prize winners. The term includes games commonly known as "instant bingo" and "break-open bingo."

(25) "Pull-tab dispenser" means an electronic or mechanical device that dispenses a pull-tab bingo ticket after a person inserts money into the device and includes a device commonly known as a "ticket dispenser."

(25-a) "Regular license" means a license to conduct bingo issued by the commission under Subchapter C that is not a temporary license.

(26) "Religious society" means a church, synagogue, or other organization organized primarily for religious purposes.

(27) "Veterans organization" means a nonprofit organization:

(A) whose members are veterans or dependents of veterans of the armed services of the United States; and

(B) that is chartered by the United States Congress and organized to advance the interests of veterans or active duty personnel of the armed forces of the United States and their dependents.

(28) "Volunteer fire department" means a fire-fighting organization that:

(A) operates fire-fighting equipment;

(B) is organized primarily to provide fire-fighting service;

(C) is actively providing fire-fighting service; and

(D) does not pay its members compensation other than nominal compensation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 1, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(1), eff. October 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1023 (H.B. 2728), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 42(2), eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 1, eff. September 1, 2023.

Sec. 2001.003. REGULATORY FUNDING FROM LICENSE FEES AND BINGO PRIZE FEES. It is the intent of the legislature that the funding necessary for the administration of this chapter by the commission be collected by the commission from commercial lessor, manufacturer, and distributor license fees and money paid to the commission by bingo players as bingo prize fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 1, eff. September 1, 2017.

SUBCHAPTER B. COMMISSION POWERS AND DUTIES

Sec. 2001.051. CONTROL AND SUPERVISION OF BINGO; BINGO DIVISION. (a) The commission shall administer this chapter.

(b) The commission has broad authority and shall exercise strict control and close supervision over all bingo conducted in this state so that bingo is fairly conducted and the proceeds derived from bingo are used for an authorized purpose.

(c) The commission shall execute its authority through a bingo division established by the commission to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.052. DIRECTOR OF BINGO OPERATIONS. (a) The commission shall employ a director of bingo operations.

(b) The director of bingo operations shall administer the bingo division under the direction of the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.053. OFFICERS AND INVESTIGATORS. The commission may employ officers or investigators the commission considers necessary to administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.054. RULEMAKING AUTHORITY. The commission may adopt rules to enforce and administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.0541. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. The commission shall adopt rules and guidelines as necessary to comply with Chapter 53 when using criminal history record information under this chapter to issue or renew a bingo license or to list or renew the listing of an individual in the registry of approved bingo workers.

Added by Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 18, eff. September 1, 2013.

Sec. 2001.055. REGULATION OF GAMES. The commission by rule may establish the number and type of bingo games that may be played during a bingo occasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.056. APPROVAL OF BINGO CARDS. (a) The commission by rule shall provide procedures for the approval of bingo cards.

(b) A license holder may not use or distribute a bingo card unless the card has been approved by the commission.

(c) The commission may set the price or adopt a schedule of prices for the sale or provision of bingo cards by a licensed authorized organization.

(d) A licensed authorized organization may not sell or provide a bingo card at a price other than a price authorized by the commission or a schedule adopted by the commission.

(e) The commission by rule may require a licensed authorized organization to notify the commission of the price for bingo cards the organization will use for one or more reporting periods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.057. BINGO ADVISORY COMMITTEE. (a) The commission may appoint a bingo advisory committee consisting of nine members. The commission shall appoint members representing a balance of interests including representatives of:

(1) the public;

(2) charities that operate bingo games; and

(3) commercial and charity lessors that participate in the bingo industry.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(2), eff. October 1, 2009.

(c) A committee member serves at the pleasure of the commission.

(d) A committee member is not entitled to receive compensation for serving as a member. A committee member is entitled to reimbursement for reasonable expenses incurred in performing duties as a member.

(e) The committee may:

(1) advise the commission on the needs and problems of the state's bingo industry;

(2) comment on rules involving bingo during their development and before final adoption unless an emergency requires immediate action by the commission;

(3) report annually to the commission on the committee's activities; and

(4) perform other duties as determined by the commission.

(f) The committee may meet quarterly or at the commission's request.

(g) The commission may adopt rules to govern the operations of the committee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(2), eff. October 1, 2009.

Sec. 2001.058. PUBLIC INFORMATION. (a) The commission shall provide to any person on request a printed copy of this chapter and the rules applicable to the enforcement of this chapter.

(b) The commission may charge a reasonable amount for a copy provided under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.059. ADVISORY OPINIONS. (a) An officer, bingo chairperson, or authorized representative of a license holder or an attorney, accountant, or bookkeeper employed or retained by a license holder may request from the commission an advisory opinion regarding compliance with this chapter and the rules of the commission.

(b) The commission shall respond to a request under Subsection (a) not later than the 60th day after the date a request is received, unless the commission determines that the request does not contain sufficient facts to provide an answer on which the requestor may rely. In that event, the commission shall request additional information from the requestor not later than the 10th day after the date the request is received. If the commission requests additional information, the commission shall respond to the request not later than the 60th day after the date additional information is received pursuant to the request for additional information.

(c) A person who requests an advisory opinion under Subsection (a) may act in reliance on the opinion in the conduct of any activity under any license issued under this chapter if the conduct is substantially consistent with the opinion and the facts stated in the request.

(d) An advisory opinion issued under this section is not a rule under Subchapter B, Chapter 2001, Government Code, and the rulemaking requirements of that subchapter do not apply to a request for an advisory opinion or any advisory opinion issued by the commission.

(e) Nothing in this section precludes the commission from requesting an attorney general opinion under Section 402.042, Government Code. In the event the commission requests an attorney general opinion on a matter that is the subject of an advisory opinion request under this section, the deadlines established under

Subsection (b) are tolled until 30 days following the issuance of the attorney general opinion.

(f) The commission may delegate all or part of the authority and procedures for issuing advisory opinions under this section to an employee of the commission.

(g) The commission may refuse to issue an advisory opinion under this section on a matter that the commission knows to be in active litigation.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 2, eff. October 1, 2009.

Sec. 2001.060. REPORTING. (a) On or before June 1 of each even-numbered year, the commission shall prepare and deliver to the governor, the lieutenant governor, the speaker of the house of representatives, and the chairs of the standing committees of the senate and house of representatives with primary jurisdiction over charitable bingo a report stating for each of the preceding two calendar years:

(1) the total amount of adjusted gross receipts reported by licensed authorized organizations from their bingo operations;

(2) the total amount of net proceeds reported by licensed authorized organizations from their bingo operations; and

(3) a comparison of the amounts reported under Subdivisions (1) and (2), including the percentage that the net proceeds represents of the adjusted gross receipts.

(b) For purposes of Subsection (a), "adjusted gross receipts" means the amount remaining after deducting prizes paid, excluding prize fees collected from bingo players.

(c) For purposes of Subsection (a), the commission shall determine the total amount of net proceeds in a manner that does not reduce gross receipts by the amount of rent paid for the rental of bingo premises by a licensed authorized organization to another licensed authorized organization if the other organization pays rent for the premises to a licensed commercial lessor.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 3, eff. October 1, 2009.

Sec. 2001.061. LICENSE RENEWAL PROCESS. The commission shall adopt rules governing each part of the license renewal process for all licenses issued under this chapter, from application submission to completion of the renewal process. The process must require a license holder renewing a license to submit to the commission the information required in the initial license application.

Added by Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 19, eff. September 1, 2013.

SUBCHAPTER C. LICENSE TO CONDUCT BINGO

Sec. 2001.101. AUTHORIZED ORGANIZATION. (a) The commission may license a person who is an authorized organization eligible for a license to conduct bingo if the person is:

(1) a religious society that has existed in this state for at least three years;

(2) a nonprofit organization:

(A) whose predominant activities are for the support of medical research or treatment programs; and

(B) that for at least three years:

(i) must have had a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; or

(ii) must have been affiliated with a state or national organization organized to perform the same purposes as the nonprofit organization;

(3) a fraternal organization;

(4) a veterans organization that has existed in this state for at least three years;

(5) a volunteer fire department that has existed in this state for at least three years; or

(6) a volunteer emergency medical services provider that has existed in this state for at least three years.

(b) A fraternal organization:

(1) must have been organized in this state for at least three years;

(2) must have had during the three-year period a bona fide

membership actively and continuously engaged as an organization in furthering its authorized purposes; and

(3) may not have authorized a person on behalf of its membership, governing body, or officers to support or oppose a particular candidate for public office by:

(A) making political speeches;

(B) passing out cards or other political literature;

(C) writing letters;

(D) signing or circulating petitions;

(E) making campaign contributions; or

(F) soliciting votes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 4, eff. October 1, 2009.

Sec. 2001.102. LICENSE APPLICATION. (a) An applicant for a license to conduct bingo must file with the commission an application on a form prescribed by the commission.

(b) The application must include:

(1) the name and address of the applicant;

(2) the names and addresses of the applicant's officers and directors;

(3) the address of the premises where and the time when the applicant intends to conduct bingo under the license sought;

(4) the name and address of the licensed commercial lessor of the premises, if the applicant intends to lease premises to conduct bingo from a person other than an authorized organization;

(5) a statement that the net proceeds of bingo will go to one or more of the authorized charitable purposes under this chapter;

(6) a designation of the applicant organization's bingo chairperson under whom bingo will be conducted accompanied by a statement signed by the chairperson stating that the chairperson will be responsible for the conduct of bingo under the terms of the license and this chapter;

(7) sufficient facts relating to the applicant's incorporation and organization to enable the commission to determine whether the applicant is an authorized organization;

(8) a copy of the applicant organization's most recently filed Internal Revenue Service Form 990, if applicable;

(9) a letter of good standing from the applicant organization's parent organization, if the organization receives an exemption from federal income taxes as a member of a group of organizations;

(10) copies of the applicant organization's organizing instruments, including any bylaws, constitution, charter, and articles of incorporation;

(11) verification of the applicant organization's good standing with the secretary of state if the organization is organized under the law of this state; and

(12) information necessary to conduct criminal background checks on the applicant organization's officers and directors.

(c) A copy of the Internal Revenue Service letter that approves an applicant's exemption from taxation under Section 501(c), Internal Revenue Code of 1986, is adequate evidence of the person's tax-exempt status. A letter of good standing from a parent organization that holds an exemption from taxation under Section 501(c), Internal Revenue Code of 1986, for both the parent organization and its affiliate is adequate evidence of the affiliate organization's tax-exempt status.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 5, eff. October 1, 2009.

Sec. 2001.103. TEMPORARY LICENSE. (a) An authorized organization may receive a temporary license to conduct bingo by filing with the commission an application, on a form prescribed by the commission.

(a-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(1), eff. January 1, 2020.

(b) A temporary license is valid for six hours during any one day.

(c) An authorized organization that does not hold a regular license to conduct bingo may receive not more than 12 temporary licenses in a calendar year.

(d) An organization operating under a temporary license is subject to:

(1) the fees authorized or imposed by this chapter; and

(2) the other provisions of this chapter to the extent they can be made applicable.

(e) Notwithstanding any other provision of this subchapter, the commission shall issue to an authorized organization that holds a regular license to conduct bingo 48 temporary licenses for each 12-month period that ends on an anniversary of the date the regular license was issued or renewed. Each unused temporary license issued to the license holder expires on the anniversary of the date the temporary license was issued.

(f) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 17(1), eff. September 1, 2023.

(g) Before using a temporary license issued under Subsection (e), the license holder shall notify the commission in the manner the commission prescribes of the specific date, time, and location of the bingo occasion for which the temporary license will be used. The commission shall provide to the license holder verification of the commission's receipt of the notification. The license holder shall maintain the verification in the records of the authorized organization.

(h) A verification under Subsection (g) may be delivered by facsimile, e-mail, or any other means reasonably contemplated to arrive before the time the temporary license will be used.

(i) The notice requirements of Sections 2001.305(b) and (c) do not apply to a temporary license issued to the holder of a regular license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 6, eff. October 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 101 (S.B. 549), Sec. 1, eff. January 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 749 (H.B. 882), Sec. 1, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(1), eff. January 1, 2020.

Acts 2023, 88th Leg., R.S., Ch. 479 (H.B. 639), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 17(1), eff. September 1, 2023.

Sec. 2001.105. LICENSE ISSUANCE OR RENEWAL. (a) The commission shall issue a temporary or regular license or renew a regular license to conduct bingo if the commission determines that:

(1) the member or members of the applicant designated in the application to conduct bingo are active members of the applicant;

(2) the bingo is to be conducted in accordance with this chapter;

(3) the proceeds of the bingo are to be disposed in accordance with this chapter;

(4) the applicant has made and can demonstrate significant progress toward the accomplishment of the purposes of the organization during the 24 months preceding the date of application for a license or regular license renewal;

(5) all persons who will conduct, promote, or administer the proposed bingo are active members of the applicant organization and all other persons who will assist in conducting, promoting, or administering the proposed bingo games are persons authorized to do so by Section 2001.411; and

(6) no person under whose name bingo will be conducted and no person working at the proposed bingo has been convicted of a gambling offense or criminal fraud.

(b) The commission may not issue a license to an authorized organization to conduct bingo if an officer or member of the board of directors of the organization has been convicted of criminal fraud or a gambling or gambling-related offense.

(c) A regular license to conduct bingo issued under this subchapter expires on the second anniversary of the date of issuance unless the commission revokes or suspends the license before that

date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 8, eff. October 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 21, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 3, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 3, eff. September 1, 2023.

Sec. 2001.106. FORM AND CONTENTS OF LICENSE. A license to conduct bingo must include:
(1) the name and address of the license holder;
(2) the name and address of the bingo chairperson of the license holder under whom the bingo will be conducted; and
(3) the address of the premises where and the time when bingo is to be conducted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 9, eff. October 1, 2009.

Sec. 2001.107. TRAINING PROGRAM. (a) Unless the organization is a member of a unit that designates a unit manager under Section 2001.437, the bingo chairperson for a licensed authorized organization shall complete the training required by commission rule. For a unit operating under Subchapter I-1, the unit manager shall complete the training if the unit designates a unit manager under Section 2001.437.
(b) A training program approved by the commission must include training related to:
(1) conducting bingo;
(2) administering and operating bingo; and
(3) promoting bingo.

(c) The commission by rule shall establish:

(1) the content of the training course;

(2) information concerning training to be reported to the commission; and

(3) other training program requirements that the commission determines to be necessary to promote the fair conduct of bingo and compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 10, eff. October 1, 2009.

Sec. 2001.108. LICENSE AMENDMENT FOR CHANGE OF BINGO PREMISES OR OCCASIONS. (a) A licensed authorized organization and the licensed commercial lessor at which the organization conducts or will conduct bingo may file a joint application with the commission to change the premises at which the organization may conduct bingo or the times of the organization's bingo occasions to allow the organization to conduct bingo at the same time and premises that another licensed authorized organization is licensed to conduct bingo if the other organization has ceased, or will cease, conducting bingo at that time and premises. The application must state whether the other organization has ceased or will cease conducting bingo at that time and premises because:

(1) the organization has abandoned or will abandon its licensed time or premises; or

(2) the organization's lease has been or will be terminated.

(b) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(1), the commission must act on the joint application filed under Subsection (a) not later than the 14th day after the date the application is filed with the commission.

(c) If the other organization ceased or will cease conducting bingo for the reason stated in Subsection (a)(2), the commission must act on the joint application filed under Subsection (a) not later than the 14th day after the date the application is filed with the commission or the date on which the termination takes effect,

whichever is later.

(d) If the commission fails to act within the time provided by Subsection (b) or (c), the licensed authorized organization may act as if the change in premises or bingo occasions has been approved by the commission and may conduct bingo at the new premises or during the new bingo occasion until the commission acts on the application.

(e) Notwithstanding Subsection (d), the commission may issue temporary licenses to one or more licensed authorized organizations that conduct bingo at the same location as an organization that has ceased or will cease to conduct bingo, which are in addition to the number of temporary licenses each organization is entitled to under another provision of this chapter. The commission is not required to act on a joint application under Subsection (a) within the time provided by this section if the number of additional temporary licenses is sufficient to allow the other organizations at the location to conduct bingo during the licensed times of the organization that has ceased or will cease to conduct bingo.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 6, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 11, eff. October 1, 2009.

SUBCHAPTER D. COMMERCIAL LESSOR LICENSE

Sec. 2001.151. LICENSE REQUIRED. A person who leases premises on which bingo is conducted directly to a licensed authorized organization must be a licensed commercial lessor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.152. ELIGIBILITY. (a) The commission may issue a commercial lessor license only to:

(1) a licensed authorized organization that owns or leases a premises where bingo is or will be conducted or an association of licensed authorized organizations that jointly own or lease premises where bingo is or will be conducted and that the organization or association leases or offers for lease to one or more other authorized organizations for the conduct of bingo;

(2) a person who leases premises to a single licensed

authorized organization that subleases or will sublease the premises to one or more other licensed authorized organizations for the conduct of bingo; or

(3) a person who leases premises for the total control and exclusive use of only one licensed authorized organization as that organization's primary business office.

(b) Notwithstanding Subsection (a), a person who was a licensed commercial lessor on June 10, 1989, whose license has been in effect continuously since that date, and who is otherwise eligible for the license may renew the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 7, eff. Sept. 1, 2003.

Sec. 2001.153. RESTRICTIONS ON SOURCE OF FUNDS. (a) The commission may not issue a commercial lessor license to a person unless the commission receives evidence the commission considers adequate that funds used by the person seeking the license to obtain the premises, provide the premises with furniture, fixtures, or equipment, renovate the premises, or provide utilities to the premises are:

(1) the person's own funds; or

(2) the funds of another person, including loan proceeds, that:

(A) were obtained in an arms-length transaction that was commercially reasonable under the circumstances; and

(B) were not obtained under an expectation or obligation that the person from whom the funds were obtained would directly participate in, or have a legal interest in, rents obtained under the license or revenues or profits from the conduct of bingo on the premises.

(b) Subsection (a) does not prohibit a group of licensed authorized organizations from combining the organizations' funds or combining or jointly obtaining funds described by Subsection (a)(2).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.154. INELIGIBLE PERSONS. (a) The commission may not issue a commercial lessor license to or renew a commercial lessor

license of:

(1) a person convicted of criminal fraud or a gambling or gambling-related offense;

(2) a public officer who receives any consideration, direct or indirect, as owner or lessor of premises offered for conducting bingo;

(3) a person who loans money to an authorized organization;

(4) a distributor or manufacturer;

(5) a person in which a person covered by Subdivision (1), (2), (3), or (4) or a person married or related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed;

(6) a foreign corporation or other foreign legal entity;

(7) an individual who is not a resident of this state;

(8) a corporation or other legal entity owned or controlled by:

(A) a foreign corporation; or

(B) an individual who is not a resident of this state; or

(9) a corporation or other legal entity:

(A) whose shares are publicly traded; or

(B) owned or controlled by a corporation whose shares are publicly traded.

(b) Subsection (a)(5) does not prevent an authorized organization or other person that is not organized for pecuniary profit and no part of the net earnings of which inure to the benefit of an individual, member, or shareholder from being licensed as a commercial lessor solely because a public officer or a person married or related in the first degree by consanguinity or affinity to a public officer is a member of, active in, or employed by the authorized organization or other person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 22, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 4, eff. September 1, 2017.

Sec. 2001.156. LICENSE APPLICATION. (a) An applicant for a commercial lessor license must file with the commission a written verified application on a form prescribed by the commission.

(b) The license application must include:

(1) the name and address of the applicant and each other person who has a financial interest in or who is in any capacity a real party in interest in the applicant's business as it pertains to this chapter;

(2) a designation and address of the premises intended to be covered by the license;

(3) the lawful capacity of the premises for public assembly purposes;

(4) a statement that a copy of the application has been sent to the appropriate governing body; and

(5) a statement that the applicant complies with the conditions for eligibility for the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.157. SUPPLEMENTAL INFORMATION. At any time the commission, the appropriate governing body, or the attorney general may make a written request of a commercial lessor to disclose:

(1) the cost of the premises and appraised value for property tax purposes or annual net lease rent, whichever is applicable;

(2) gross rentals received and itemized expenses for the preceding calendar or fiscal year, if any;

(3) gross rentals, if any, derived from bingo during the preceding calendar or fiscal year;

(4) the computation by which the proposed rental schedule was determined;

(5) the number of occasions on which the lessor anticipates receiving rent for bingo during the next year or shorter period if applicable and the proposed rent for each of those occasions;

(6) estimated gross rental income from all other sources during the next year; and

(7) estimated expenses itemized for the current year and

the amount of each item allocated to bingo rentals.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.158. LICENSE FEES. (a) The commission shall set the fees for a commercial lessor license in an amount reasonable to defray administrative costs but not less than the following:

(1) Class A (annual gross rentals from licensed organizations of not more than $12,000)-$100;

(2) Class B (annual gross rentals from licensed organizations of more than $12,000 but not more than $20,000)-$200;

(3) Class C (annual gross rentals from licensed organizations of more than $20,000 but not more than $30,000)-$300;

(4) Class D (annual gross rentals from licensed organizations of more than $30,000 but not more than $40,000)-$400;

(5) Class E (annual gross rentals from licensed organizations of more than $40,000 but not more than $50,000)-$600;

(6) Class F (annual gross rentals from licensed organizations of more than $50,000 but not more than $60,000)-$900;

(7) Class G (annual gross rentals from licensed organizations of more than $60,000 but not more than $70,000)-$1,200;

(8) Class H (annual gross rentals from licensed organizations of more than $70,000 but not more than $80,000)-$1,500;

(9) Class I (annual gross rentals from licensed organizations of more than $80,000 but not more than $90,000)-$2,000; and

(10) Class J (annual gross rentals from licensed organizations of more than $90,000)-$2,500.

(b) The commission by rule shall establish procedures for determining if the appropriate license fee was paid.

(c) The commission by rule shall provide for:

(1) the payment of any additional fee amount determined to be due not paid under Subsection (b); and

(2) credit to be given to the license holder for any excess fee amount determined under Subsection (b) to have been paid by the license holder.

(d) An applicant for a commercial lessor license shall pay the fees established under Subsection (a) annually. An applicant for a license or renewal of a license may obtain a license that is

effective for two years by paying an amount equal to two times the amount of the annual license fee.

(e) The commission shall refund the fee for an initial or renewal commercial lessor license if the applicant requests withdrawal of the application before the license is issued or if the commission denies the application, except the commission may retain an amount not to exceed the lesser of 50 percent of the license fee or $150 to defray any administrative cost incurred by the commission in processing the application. The commission shall issue the refund not later than the 30th day after the date the commission receives the withdrawal request or denies the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 8, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 12, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 23, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 101 (S.B. 549), Sec. 3, eff. January 1, 2018.

Sec. 2001.159. LICENSE ISSUANCE OR RENEWAL. (a) The commission shall issue or renew a commercial lessor license if the commission determines that:

(1) the applicant has paid the license fee as provided by Section 2001.158;

(2) the applicant qualifies to be licensed under this chapter;

(3) the rent to be charged is fair and reasonable;

(4) there is no diversion of the funds of the proposed lessee from the lawful purposes under this chapter;

(5) the person whose signature or name appears in the application is in all respects the real party in interest and is not an undisclosed agent or trustee for the real party in interest; and

(6) the applicant will lease the premises for the conduct of bingo in accordance with this chapter.

(b) The commission shall issue a commercial lessor license under this section for the period specified in the license

application or for a shorter period as the commission determines.

(c) Except as provided by Section 2001.158(d), the period may not exceed one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 9, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 13, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 14, eff. October 1, 2009.

Sec. 2001.160. TRANSFER OF LICENSE. (a) On approval by the commission, a licensed commercial lessor may transfer a commercial lessor license if the person to whom the license will be transferred otherwise meets the requirements of this subchapter.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(3), eff. October 1, 2009.

(d) Subject to Subsections (e) and (f), if an individual who holds a commercial lessor license dies or becomes incapacitated as determined by a court of this state, the individual's license is part of the individual's estate and is subject to the applicable laws governing the disposition and control of the person's property. The license is not considered to have been transferred, subject to compliance with Subsection (g). The individual's estate may take any action with respect to the individual's license that the individual could have taken while the individual was alive or had capacity.

(e) Unless the commission revokes or suspends the license under this chapter, or an injunction is issued under this section, a licensed authorized organization that conducts bingo lawfully at premises under a license to which Subsection (d) applies may continue conducting bingo at the premises after the death or incapacity of the commercial lessor license holder.

(f) On the showing by the commission of a cause that would be sufficient for the commission to revoke or suspend a license under this chapter or an applicable commission rule, a district court in the county for which a commercial lessor license was issued or the commission by order may temporarily or permanently enjoin the conduct of bingo at premises under a license to which Subsection (d) applies.

(g) The estate or guardian of an individual to whom Subsection (d) applies shall notify the commission not later than one year after the date the individual dies or is determined to be incapacitated by a court of this state. The estate or guardian and the heirs or other appropriate person shall promptly take all necessary steps to complete a transfer of the license to the heirs or other appropriate person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(3), eff. October 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1023 (H.B. 2728), Sec. 2, eff. September 1, 2011.

Sec. 2001.161. LICENSED AUTHORIZED ORGANIZATION AS COMMERCIAL LESSOR. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(4), eff. October 1, 2009.
(b) A licensed authorized organization may obtain only one commercial lessor license.
(c) The commission may issue a commercial lessor license to a licensed authorized organization only for the same premises where the organization is licensed to conduct bingo.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(4), eff. October 1, 2009.

SUBCHAPTER E. MANUFACTURER'S AND DISTRIBUTOR'S LICENSES

Sec. 2001.201. MANUFACTURER'S LICENSE REQUIRED. A manufacturer may not sell or supply to a person in this state or for use in this state bingo cards, boards, sheets, pads, or other supplies, or equipment designed to be used in playing bingo, or engage in any intrastate activity involving those items, unless the manufacturer holds a manufacturer's license under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.202. ELIGIBILITY FOR MANUFACTURER'S LICENSE. The following persons are not eligible for a manufacturer's license:

(1) a person convicted of criminal fraud or a gambling or gambling-related offense;

(2) a person who is or has been a professional gambler or gambling promoter;

(3) an elected or appointed public officer or a public employee;

(4) an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor;

(5) a person who conducts, promotes, or administers, or assists in conducting, promoting, or administering, bingo for which a license is required by this chapter;

(6) a distributor required to be licensed under this chapter;

(7) a person who has had a license to manufacture, distribute, or supply bingo equipment or supplies revoked within the preceding year by another state;

(8) an owner, officer, director, or shareholder of, or a person holding an equitable or credit interest in, another manufacturer or distributor licensed or required to be licensed under this chapter; or

(9) a person:

(A) in which a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) or in which a person married or related in the first degree by consanguinity or affinity to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed; or

(B) in whose application for a manufacturer's license a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) is required to be named.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 24, eff. September 1, 2013.

Sec. 2001.203. MANUFACTURER'S LICENSE APPLICATION. (a) An

applicant for a manufacturer's license must file with the commission an application on a form prescribed by the commission.

(b) The application must include:

(1) the name and address of the applicant and the name and address of each of its locations where bingo supplies or equipment are manufactured;

(2) a full description of each type of bingo supply or equipment that the applicant intends to manufacture or market in this state and the brand name, if any, under which each item will be sold;

(3) if the applicant:

(A) is not a corporation, the name and home address of each owner; or

(B) is a corporation, the name and home address of each officer and director and each person owning more than 10 percent of a class of stock in the corporation;

(4) if the applicant is a foreign corporation or other foreign legal entity, the name, business name and address, and address of its registered agent for service in this state;

(5) the name and address of each manufacturer, supplier, and distributor in which the applicant has a financial interest and the details of that financial interest, including any indebtedness between the applicant and the manufacturer, supplier, or distributor of $5,000 or more;

(6) information regarding whether the applicant or a person required to be named in the application has been convicted in this state or another state of criminal fraud or a gambling or gambling-related offense;

(7) information regarding whether the applicant or a person required to be named in the application is an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor or conducts, promotes, administers, or assists in conducting, promoting, or administering bingo for which a license is required by this chapter;

(8) information regarding whether the applicant or a person required to be named in the application is a public officer or public employee in this state;

(9) the name of each state in which the applicant is or has been licensed to manufacture, distribute, or supply bingo equipment or supplies, each license number, the period of time licensed under each license, and whether a license has been revoked, suspended,

withdrawn, canceled, or surrendered and, if so, the reasons for the action taken;

(10) information regarding whether the applicant or a person required to be named in the application is or has been a professional gambler or gambling promoter;

(11) the names and addresses of each manufacturer, supplier, or distributor of bingo equipment or supplies in which the applicant or a person required to be named in the application is an owner, officer, shareholder, director, agent, or employee; and

(12) any other information the commission requests.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 15, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 25, eff. September 1, 2013.

Sec. 2001.204. MANUFACTURER'S LICENSE BOND. (a) An applicant for a manufacturer's license must give the commission a cash bond or a bond in the amount of $10,000 issued by a surety company chartered or authorized to do business in this state.

(b) The bond must provide for forfeiture to the state on the manufacturer's failure to comply with this chapter or a commission rule or on suspension or revocation of the manufacturer's license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.205. MANUFACTURER'S LICENSE FEE. (a) The commission by rule shall set the annual manufacturer's license fee in an amount reasonable to defray administrative costs.

(b) In addition to the annual license fee, the commission may require an additional fee in an amount necessary to defray the cost of a background investigation, including the inspection of manufacturing plants and locations. The commission by rule may establish the conditions and procedure for payment of the additional fee.

(c) The commission shall refund the fee for an initial or renewal manufacturer's license if the applicant requests withdrawal

of the application before the license is issued or if the commission denies the application, except the commission may retain an amount not to exceed the lesser of 50 percent of the license fee or $150 to defray any administrative cost incurred by the commission in processing the application. The commission shall issue the refund not later than the 30th day after the date the commission receives the withdrawal request or denies the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 26, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 101 (S.B. 549), Sec. 4, eff. January 1, 2018.

Sec. 2001.206. DISTRIBUTOR'S LICENSE REQUIRED. A distributor may not sell, distribute, or supply bingo equipment or supplies for use in bingo in this state unless the distributor holds a distributor's license under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.207. ELIGIBILITY FOR DISTRIBUTOR'S LICENSE. The following persons are not eligible for a distributor's license:

(1) a person convicted of criminal fraud or a gambling or gambling-related offense;

(2) a person who is or has been a professional gambler or gambling promoter;

(3) an elected or appointed public officer or a public employee;

(4) an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor;

(5) a person who conducts, promotes, or administers, or assists in conducting, promoting, or administering bingo for which a license is required by this chapter;

(6) a manufacturer required to be licensed under this chapter;

(7) a person who has had a license to manufacture, distribute, or supply bingo equipment or supplies revoked within the

preceding year by another state;

(8) an owner, officer, director, or shareholder of, or a person having an equitable or credit interest in, another manufacturer or distributor licensed or required to be licensed under this chapter; or

(9) a person:

(A) in which a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) or in which a person married or related in the first degree by consanguinity or affinity, as determined under Subchapter B, Chapter 573, Government Code, to one of those persons has greater than a 10 percent proprietary, equitable, or credit interest or in which one of those persons is active or employed; or

(B) in whose application a person described by Subdivision (1), (2), (3), (4), (5), (6), (7), or (8) is required to be named.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 27, eff. September 1, 2013.

Sec. 2001.208. DISTRIBUTOR'S LICENSE APPLICATION. (a) An applicant for a distributor's license must file with the commission an executed verified application on a form prescribed by the commission.

(b) The application must include:

(1) the full name and address of the applicant;

(2) the name and address of each location operated by the distributor from which bingo supplies or equipment are distributed or at which bingo supplies or equipment are stored;

(3) if a noncorporate distributor, the name and home address of each owner;

(4) if a corporate distributor, the name and home address of each officer or director and of each person owning more than 10 percent of a class of stock in the corporation;

(5) if a foreign corporation or other foreign legal entity, the name, business name and address, and address of its registered agent for service in this state;

(6) a full description of the type of bingo supply or equipment that the applicant intends to store or distribute in this state and the name of the manufacturer of each item and the brand name, if any, under which the item will be sold or marketed;

(7) the name and address of a manufacturer, supplier, or distributor in which the applicant has a financial interest and the details of that financial interest, including an indebtedness between the applicant and the manufacturer, supplier, or distributor of $5,000 or more;

(8) information regarding whether the applicant or a person required to be named in the application has been convicted in this state or another state of criminal fraud or a gambling or gambling-related offense;

(9) information regarding whether the applicant or a person required to be named in the application is an owner, officer, director, shareholder, agent, or employee of a licensed commercial lessor or conducts, promotes, administers, or assists in conducting, promoting, or administering bingo for which a license is required under this chapter;

(10) information regarding whether the applicant or a person required to be named in the application is a public officer or public employee in this state;

(11) the name of each state in which the applicant is or has been licensed to manufacture, distribute, or supply bingo equipment or supplies, each license number, the period of time licensed under each license, and whether a license was revoked, suspended, withdrawn, canceled, or surrendered and, if so, the reasons for the action taken;

(12) information regarding whether the applicant or a person required to be named in the application is or has been a professional gambler or gambling promoter;

(13) the name and address of each manufacturer, supplier, or distributor of bingo equipment or supplies in which the applicant or a person required to be named in the application is an owner, officer, shareholder, director, agent, or employee; and

(14) any other information the commission requests.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 16, eff.

October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 28, eff. September 1, 2013.

Sec. 2001.209. DISTRIBUTOR'S LICENSE FEE. (a) The commission by rule shall set the annual distributor's license fee in an amount reasonable to defray administrative costs.

(b) In addition to the annual license fee, the commission may require an additional fee in an amount necessary to defray the cost of a background investigation of the applicant, including the inspection of storage, distribution, or operating locations. The commission by rule may establish the conditions and procedure for payment of the additional fee.

(c) The commission shall refund the fee for an initial or renewal distributor's license if the applicant requests withdrawal of the application before the license is issued or if the commission denies the application, except the commission may retain an amount not to exceed the lesser of 50 percent of the license fee or $150 to defray any administrative cost incurred by the commission in processing the application. The commission shall issue the refund not later than the 30th day after the date the commission receives the withdrawal request or denies the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 29, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 101 (S.B. 549), Sec. 5, eff. January 1, 2018.

Sec. 2001.210. GENERAL PROVISIONS. A license issued under this subchapter is subject to the restrictions under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.211. AMENDMENT OF APPLICATION. (a) An applicant for a manufacturer's or distributor's license shall, during pendency of the application, notify the commission immediately of any change

relating to a fact stated in the application.

(b) If a change occurs after issuance of a manufacturer's or distributor's license, the license holder shall report the change to the commission not later than the 14th day after the date of the change.

(c) Not later than the 14th day after the date of the change, a license holder shall notify the commission of a change in:

(1) the license holder's organization, structure, or mode of operation;

(2) the identity of persons named or required to be named in the application and the nature or extent of those persons' interest; or

(3) any other facts stated in the application.

(d) Failure to give a notice required under this section is cause for:

(1) denial, suspension, or revocation of a license; or

(2) imposition of an administrative penalty or other administrative action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 17, eff. October 1, 2009.

Sec. 2001.212. DENIAL OF LICENSE. The commission may deny an application for or renewal of a license for a cause that would permit or require the suspension or revocation of the license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.213. COMMISSION ACTION NOT REQUIRED. If, for reasons beyond the control of the commission, sufficient information is not available to allow the commission to determine the eligibility of an applicant for a manufacturer's or distributor's license issued under this chapter, the commission is not required to take action on the application until the applicant provides the required information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.214. LICENSE TERM. (a) Except as provided by Subsection (b), a manufacturer's or distributor's license is effective for one year unless revoked or suspended by the commission.

(b) A manufacturer or distributor may obtain a license that is effective for two years by paying an amount equal to two times the amount of the annual license fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 30, eff. September 1, 2013.

Sec. 2001.215. RECORDS AND REPORTS. The commission by rule may require a holder of a manufacturer's or distributor's license to keep records and file reports.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.216. EXAMINATION OF RECORDS. (a) The commission may examine the books and records of the holder of or an applicant for a manufacturer's or distributor's license.

(b) The commission may not disclose information obtained during the examination except as necessary to carry out this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.217. OFFENSE. A person who does not hold a manufacturer's or distributor's license commits an offense if the person sells or attempts to induce the sale of bingo equipment or supplies to a licensed authorized organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.218. PAYMENT DUE. (a) Each sale or lease of bingo supplies or equipment to a license holder under this chapter must be on terms of immediate payment or on terms requiring payment not later

than the 30th day after the date of actual delivery.

(b) If a payment is not made when due, the seller shall immediately notify the commission. The commission shall notify all manufacturers and distributors licensed in this state of the default.

(c) In the event of a default, a person may not sell or transfer bingo equipment or supplies to the purchaser in default on terms other than immediate payment on delivery until otherwise authorized by the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 11, eff. Sept. 1, 2003.

SUBCHAPTER G. GENERAL PROVISIONS RELATING TO COMMISSION LICENSES

Sec. 2001.301. LICENSE INVESTIGATION. Promptly after the filing of the application for a license under this chapter, the commission shall investigate the qualifications of each applicant and the merits of the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.302. PROVISION OF SUPPLEMENTAL INFORMATION. (a) In addition to any required application form, a license applicant or license holder shall submit any supplemental information requested by the commission.

(b) The commission may deny a license application or revoke a license based on a failure to submit requested supplemental information when required.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.3025. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION. The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency to assist in the investigation of:

(1) an applicant for or holder of a license issued under this chapter;

(2) a person required to be named in a license application; or

(3) an employee or other person who works or will work for a license holder and who is required by another provision of this chapter to undergo a criminal background check.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 18, eff. October 1, 2009.

Sec. 2001.304. TEMPORARY AUTHORIZATION. (a) The commission shall issue a temporary authorization for the activity requested if a license for the activity is not issued or denied before the 31st day after the earliest date on which each of the following has occurred:

(1) the filing of an application for the license;

(2) the payment of the proper license fee;

(3) the filing of a copy of a tax exemption statement issued by the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986, if required; and

(4) the completion of a criminal background investigation.

(b) A temporary authorization is effective for not more than 60 days, subject to automatic revocation, if a denial letter is issued.

(c) The commission may extend the effective period of the temporary authorization on written request filed before the end of the period.

(d) A temporary authorization may not be effective for more than one year from the date of its original issuance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.305. NOTICE TO LOCAL AUTHORITIES. (a) The commission may not issue a license to an applicant for an authorized organization license or a commercial lessor license until the applicant has sent a copy of the license application to the appropriate governing body.

(b) Except as provided by Section 2001.103(i), immediately after issuing a license, the commission shall send a copy of the license to the appropriate governing body. The governing body shall file the copy of the license in a central file containing licenses issued under this chapter.

(c) Except as provided by Section 2001.103(i), not later than the 10th day after the date a license is issued, the commission shall give written notice of the issuance of the license to:

(1) the police department of the municipality in which bingo will be conducted, if bingo is to be conducted in a municipality; or

(2) the sheriff of the county in which bingo will be conducted, if bingo is to be conducted outside a municipality.

(d) Bingo may not be played until notification has been given under Subsections (b) and (c).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 1, eff. January 1, 2020.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 4, eff. September 1, 2023.

Sec. 2001.306. AMENDMENT OF LICENSE. (a) A license issued under this chapter may be amended on application to the commission and on payment of a fee in the amount required by the commission if the subject matter of the proposed amendment could properly have been included in the original license.

(a-1) The commission by rule shall establish an amendment fee schedule. The amount of a fee charged by the commission may vary based on the complexity of the proposed license amendment.

(b) An amended license is effective only for the period remaining under the original license.

(c) The holder of a license to conduct bingo may not change the location at which it conducts bingo until it has:

(1) returned its original license if available, or certified that the license is not available; and

(2) received an amended license for the new location.

(d) The holder of a license to conduct bingo shall notify the commission before changing the time or date of a game. The license holder may provide notice to the commission regarding the change by use of telephone or facsimile.

(e) The commission by rule shall provide a method for a license holder to pay the amendment fee required by Subsection (a).

(f) The commission shall refund the fee for amending a license issued under this chapter if the applicant requests withdrawal of the amendment application before the amended license is issued or if the commission denies the amendment application, except the commission may retain an amount not to exceed 50 percent of the amendment fee to defray any administrative cost incurred by the commission in processing the amendment application. The commission shall issue the refund not later than the 30th day after the date the commission receives the withdrawal request or denies the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 19, eff. October 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 31, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 101 (S.B. 549), Sec. 6, eff. January 1, 2018.

Sec. 2001.307. MAXIMUM LICENSE TERM. Except as otherwise provided by this chapter, a license issued under this chapter may not be effective for more than one year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 12, eff. Sept. 1, 2003.

Sec. 2001.308. PAPERWORK REDUCTION. The commission may not require a person who has held a license under this chapter for five or more years to complete a license renewal application that is more than two pages long.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.309. SEPARATE LICENSE. Each location for conducting bingo must be separately licensed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.310. DISPLAY OF LICENSE. (a) A licensed authorized organization or licensed commercial lessor shall conspicuously display a license issued under this chapter and a license to lease premises for conducting bingo at the premises at which bingo is conducted at all times during the conduct of bingo.

(b) Each commercial lessor license shall contain a statement of the name and address of the license holder and the address of the premises.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.311. RIGHTS NOT VESTED. The issuance of a license or temporary authorization by the commission does not grant a vested right in the license, the temporary authorization, or the privileges conferred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.312. FAILURE TO FILE FEE REPORTS. A person is not eligible for a license or a license renewal unless all required reports and requested information have been filed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 4, eff. September 1, 2015.

Sec. 2001.313. REGISTRY OF APPROVED BINGO WORKERS. (a) To minimize duplicate criminal history background checks by the commission and the costs incurred by organizations and individuals, the commission shall maintain a registry of individuals on whom the commission has conducted a criminal history background check and who are approved to be involved in the conduct of bingo or to act as a bingo operator.

(b) An individual listed in the registry may be involved in the conduct of bingo or act as an operator at any location at which bingo is lawfully conducted.

(b-1) An individual's listing on the registry expires on the

third anniversary of the date the individual was initially included on the registry. The individual may renew the listing before the expiration date. If the individual fails to renew the listing, the commission shall remove the individual's name from the registry. An individual whose name is removed from the registry may reapply for listing on the registry.

(b-2) Repealed by Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 11, eff. September 1, 2017.

(b-3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(3), eff. January 1, 2020.

(c) The commission shall make the registry information available to the public by publishing it on the commission's website and by responding to telephone, e-mail, and facsimile requests. This subsection does not require the commission to disclose information that is confidential by law.

(d) An individual who is not listed on the registry established by this section may not act, and a licensed authorized organization may not allow the individual to act, as an operator, manager, cashier, usher, caller, bingo chairperson, bookkeeper, or salesperson for the licensed authorized organization.

(e) The commission may refuse to add an individual's name to, or remove an individual's name from, the registry established by this section if, after notice and, if requested by the individual, a hearing, the individual is finally determined to have:

(1) been convicted of an offense listed under Section 2001.105(b);

(2) converted bingo equipment in a premises to an improper use;

(3) converted funds that are in, or that should have been in, the bingo account of any licensed authorized organization;

(4) taken any action, individually or in concert with another person, that affects the integrity of any bingo game to which this chapter applies;

(5) acted as an operator, manager, cashier, usher, caller, bingo chairperson, bookkeeper, or salesperson for a licensed authorized organization without being listed on the registry established under this section;

(6) failed to provide a complete application; or

(7) participated in any violation of this chapter or rules adopted by the commission for the administration of this chapter.

(f) A licensed authorized organization shall report to the commission or its designee the discovery of any conduct on the part of an individual registered or required to be registered under this section where there is substantial basis for believing that the conduct would constitute grounds for removal of the individual's name from, or refusal to add the individual's name to, the registry established by this section. A statement made in good faith to the commission or to an adjudicative body in connection with any such report may not be the basis for an action for defamation of character.

(g) An individual who has been finally determined to have taken action prohibited by Subsection (e)(2), (3), (4), (5), (6), or (7) cannot be listed on the registry of approved bingo workers and cannot work as a bingo worker for one year from the date of such determination. Upon expiration of the one-year period, the individual is eligible for listing on the registry provided a licensee subject to this chapter makes application to list the individual. In such event, the commission shall take into consideration the facts and circumstances that occurred that led to the applicable action under Subsections (e)(2)-(7) in deciding whether to list the individual on the registry.

(h) A licensed authorized organization may employ an individual who is not on the registry established by this section as an operator, manager, cashier, usher, caller, or salesperson on a provisional basis if the individual is awaiting the results of a background check by the commission:

(1) for a period not to exceed 30 days if the individual is a resident of this state; or

(2) for a period to be established by commission rule if the individual is not a resident of this state.

(i) An individual who has been removed from the registry under Subsection (e) and has not subsequently been listed on the registry under Subsection (g) may not be employed under Subsection (h).

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 20, eff. October 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 32, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 101 (S.B. 549), Sec. 7, eff. January 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 11, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 2, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(3), eff. January 1, 2020.

Sec. 2001.314. IDENTIFICATION CARD FOR APPROVED BINGO WORKER. (a) The commission may require an individual listed in the registry maintained under Section 2001.313 to wear an identification card to identify the individual to license holders, bingo players, and commission staff while the individual is on duty during the conduct of bingo. The commission by rule shall prescribe the form and content of the card.

(b) The commission shall provide the identification card and shall provide a form to be completed by an individual that allows the individual to prepare the identification card. The commission may collect a reasonable charge to cover the cost of providing the card or form.

(c) An identification card required by the commission under this section to be worn by an individual while on duty during the conduct of bingo must be in substantial compliance with the form and content requirements prescribed by the commission under this section.

(d) The commission may not require any other individual licensed under this chapter, or an individual acting on the license holder's behalf, to wear an identification card, whether or not the individual is present or performing the individual's duties during the conduct of bingo.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 21, eff. October 1, 2009.

Sec. 2001.315. LATE LICENSE RENEWAL. (a) A person who fails to renew the person's license under this chapter before the date the

license expires may renew the license after the expiration date by:

(1) filing a license renewal application with the commission not later than the 14th day after the date the license expires, paying the applicable license fee, and paying a late license renewal fee equal to 10 percent of the license fee; or

(2) filing a license renewal application with the commission not later than the 60th day after the date the license expires, paying the applicable license fee, and paying a late license renewal fee equal to 10 percent of the license fee for each 14-day period occurring after the date the license expires and before the date the renewal application is filed with the commission.

(b) A person who files a renewal application with the commission under Subsection (a) may continue to perform the bingo activities authorized under the license as if the license has not expired until the license is renewed or renewal of the license is denied.

(c) To renew a license after the 60th day after the date the license expires, the person must file an application for an original license and cease all bingo activities for which the license is required as of the 61st day after the date the license expires until a new license is issued.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 22, eff. October 1, 2009.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 5, eff. September 1, 2023.

Sec. 2001.316. DELIVERY OF COMMISSION NOTICE. If notice under this chapter is required to be given to an authorized organization, the commission shall send the notice to the bingo chairperson of the authorized organization and to the appropriate commercial lessor, if applicable.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 22, eff. October 1, 2009.

SUBCHAPTER H. DENIAL, REVOCATION, AND SUSPENSION OF LICENSE

Sec. 2001.351. DENIAL OF LICENSE. The commission may deny an

application for a license or renewal of a license issued under this chapter for a cause that would permit or require the suspension or revocation of a license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.352. HEARING. (a) A person whose application for a license is denied by the commission may make a written request for a hearing. At the hearing the applicant is entitled to be heard on the qualifications of the applicant and the merits of the application.

(b) The burden of proof is on the applicant to establish by a preponderance of the evidence its eligibility for a license.

(c) A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e), Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 33, eff. September 1, 2013.

Sec. 2001.353. DISCIPLINE OF LICENSE AND REGISTRATION HOLDERS. (a) After a hearing, the commission may suspend, revoke, or refuse to renew a license or registration issued under this chapter for:

(1) failure to comply with this chapter or a commission rule; or

(2) a reason that would allow or require the commission to refuse to issue or renew a license or registration of the same class.

(b) The commission may place on probation a person whose license or registration is suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on the matters that are the basis of the probation;

(2) to limit the person's activities under the license or registration in the manner prescribed by the commission; or

(3) to take any other reasonable action prescribed by the commission to address the matters that are the basis of the probation.

(c) If the person fails to comply with the conditions of

probation, the commission may suspend or revoke the person's license or registration.

(d) The commission by rule shall:

(1) adopt written guidelines to ensure that probation is administered consistently; and

(2) develop a system to track compliance with probation requirements.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 34, eff. September 1, 2013.

Sec. 2001.354. FINAL HEARING. (a) The commission shall hold a final hearing on the suspension or revocation of a license, if requested by the license holder, not later than the 30th day after the date the commission receives written notice of the request.

(b) A final hearing on suspension or revocation is governed by the same rules as a hearing on any other suspension or revocation under this chapter.

(c) A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e), Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 35, eff. September 1, 2013.

Sec. 2001.355. TEMPORARY SUSPENSION. (a) The commission may temporarily suspend a license issued under this chapter for failure to comply with this chapter or a commission rule.

(b) Before temporarily suspending a license, the director of bingo operations must follow any prehearing rules adopted by the commission to determine if the license holder's continued operation may constitute:

(1) an immediate threat to the health, safety, morals, or welfare of the public; or

(2) a financial loss to this state, which includes a

license holder's failure to remit prize fee payments under Section 2001.502 to the commission as required by that section.

(c) Chapter 2001, Government Code, does not apply to the director of bingo operations or to the commission in the enforcement and administration of a temporary suspension under this section.

(d) The commission shall adopt rules to govern the temporary suspension of a license under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 36, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 5, eff. September 1, 2015.

Sec. 2001.356. NOTICE OF TEMPORARY SUSPENSION. (a) A proceeding to temporarily suspend a license issued under this chapter is initiated by the director of bingo operations by serving notice to the license holder informing the holder of:

(1) the alleged violations that constitute grounds for temporary suspension;

(2) the rules adopted by the commission regarding the prehearing temporary suspension process; and

(3) the license holder's right to a hearing before the commission.

(b) The notice must be:

(1) personally served on an officer, operator, or agent of the license holder; or

(2) sent by certified or registered mail, return receipt requested, to the license holder's mailing address as it appears on the commission's records.

(c) If a notice of temporary suspension is served on a license holder, the director of bingo operations shall simultaneously serve notice of a hearing, to be held not later than the 14th day after the date the notice is served, at which the license holder must show cause why the license should not be temporarily suspended on the 14th day after the date the notice is served. If the license holder does not show cause, the license is suspended.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 23, eff. October 1, 2009.

Sec. 2001.357. JUDICIAL REVIEW. (a) An applicant for or the holder of a license issued or to be issued under this chapter whose application has been denied, whose license has been revoked or suspended, or who is otherwise aggrieved by an action of the commission relating to licensing under this chapter may appeal the decision of the commission to a district court in Travis County not later than the 30th day after the date on which the commission's decision becomes final and appealable.

(b) Judicial review of a commission decision is under the substantial evidence rule as provided by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.358. SCHEDULE OF SANCTIONS. (a) The commission by rule shall adopt a schedule of sanctions that defines and summarizes violations of this chapter or commission rules adopted under this chapter to ensure that the sanctions imposed are appropriate to the violation.

(b) The schedule must:

(1) allow deviations from the schedule for mitigating circumstances clearly established by the commission;

(2) include a list of the most common violations and the sanctions assessed for those violations, including revocation, suspension, and denial of license or registration renewal; and

(3) establish the sanctions in accordance with the seriousness or frequency of each type of violation.

Added by Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 37, eff. September 1, 2013.

SUBCHAPTER I. OPERATION OF BINGO

Sec. 2001.401. RESTRICTIONS ON PREMISES PROVIDERS. A person may not, for direct or indirect consideration, lease or otherwise

make a premises available for conducting bingo unless the person is:

(1) a licensed commercial lessor; or

(2) a person who leases or otherwise makes available premises to an organization that:

(A) has been issued a temporary license; and

(B) does not hold a regular license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 6, eff. September 1, 2023.

Sec. 2001.402. SINGLE PREMISES. (a) Bingo may not be conducted at more than one premises on property owned or leased by a licensed authorized organization.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(6), eff. October 1, 2009.

(c) No more than seven licensed authorized organizations may conduct bingo at the same premises.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(6), eff. October 1, 2009.

Sec. 2001.403. COMMON ROOF OR FOUNDATION. (a) Except as provided by this section, no more than one bingo premises may exist under a common roof or over a common foundation.

(b) This section does not apply if more than one premises lawfully exists under a common roof or over a common foundation under a license application filed with the commission on or before May 23, 1997. The commission shall renew a license at the premises that is otherwise in compliance with this chapter.

(c) Subsection (b) does not apply if a premises under a common roof or over a common foundation ceases to lawfully exist.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.404. PRINCIPAL LOCATION. A licensed authorized organization may conduct bingo only in:

(1) the county where the organization has its primary business office or another county contiguous to that county; or

(2) if the organization does not have a business office, in the county of the principal residence of its chief executive officer, or a contiguous county of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 24, eff. October 1, 2009.

Sec. 2001.405. PROHIBITED RENTAL PAYMENTS. Bingo may not be conducted at a leased premises if rental under the lease is to be paid, in whole or part, on the basis of a percentage of the receipts or net proceeds derived from the operation of the game or by reference to the number of people attending a game.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.406. RENT FOR PREMISES. (a) The rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo may not exceed $600 for each bingo occasion conducted on the lessor's premises unless the organization subleases the premises to one or more other licensed authorized organizations to conduct bingo, in which event the rent charged by the licensed commercial lessor may not exceed $600 for each day.

(b) Rent for premises used for the conduct of bingo must be paid in a lump sum. Except as otherwise provided by this section, the lump sum must include all expenses authorized by Section 2001.458 that are paid by the licensed authorized organization to the lessor in connection with the use of the premises. A licensed authorized organization or unit may pay as a separate expense, based on the percentage of the total area of the lessor's facility that the organization or unit uses as the bingo premises for the conduct of bingo, the organization's or unit's pro rata share of:

(1) property taxes on the facility that are paid by the lessor, excluding any penalties and interest on the taxes;

(2) water, electric, and gas utility expenses for the facility that are paid by the lessor, excluding any late fees or other penalties; and

(3) property and casualty insurance premiums for the facility that are paid by the lessor, excluding any late fees or other penalties.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(7), eff. October 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 25, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(7), eff. October 1, 2009.

Sec. 2001.407. EQUIPMENT AND SUPPLY TRANSACTIONS. (a) A licensed manufacturer may furnish, by sale or otherwise, bingo equipment or supplies to a licensed distributor. A licensed manufacturer may not furnish, by sale or otherwise, bingo equipment or supplies to a person other than a licensed distributor.

(b) A licensed distributor may not furnish by sale, lease, or otherwise, bingo equipment or supplies to a person other than a licensed authorized organization, another licensed distributor, or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4). A sale of bingo equipment or supplies authorized by this section must be made on terms requiring immediate payment or payment not later than the 30th day after the date of actual delivery.

(c) A licensed distributor may not receive by purchase or otherwise bingo equipment or supplies from a person other than a licensed manufacturer or another licensed distributor.

(d) A licensed authorized organization may lease or purchase electronic or mechanical card-minding devices, pull-tab dispensers, bingo machines, consoles, blowers, and flash boards directly from a licensed distributor.

(e) Except for a purchase made by a licensed authorized organization under Subsection (f), a licensed authorized organization or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4) may not obtain by purchase or otherwise bingo equipment or

supplies from a person other than a licensed distributor.

(f) With the prior written consent of the commission, a licensed authorized organization may make an occasional sale of bingo cards or of a used bingo flash board or blower to another licensed authorized organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 26, eff. October 1, 2009.

Sec. 2001.408. OTHER METHODS FOR PLAYING BINGO. Subject to the commission's rules, bingo may be played using a pull-tab bingo ticket.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.409. CARD-MINDING DEVICES. (a) A person may not use a card-minding device:

(1) to generate or determine the random letters, numbers, or other symbols used in playing the bingo card played with the device's assistance;

(2) as a receptacle for the deposit of tokens or money in payment for playing the bingo card played with the device's assistance; or

(3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or a thing of value for the bingo card played with the device's assistance.

(b) Repealed by Acts 2003, 78th Leg., ch. 1114, Sec. 33, eff. Sept. 1, 2003.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 33, eff. Sept. 1, 2003.

Sec. 2001.410. PULL-TAB DISPENSER. (a) A person may not use a pull-tab dispenser:

(1) to generate or determine the random letters, numbers, or other symbols used in playing bingo;

(2) to affect the chances of winning at bingo; or

(3) as a dispenser for the payment of a bingo prize, including coins, paper currency, or a thing of value for the game played.

(b) The price of a pull-tab ticket sold by a pull-tab dispenser may not exceed $1.

(c) Not more than five pull-tab dispensers may be operated on one premises.

(d) A bingo game representation or combination of bingo games must be shown on a ticket dispensed from a pull-tab dispenser.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.411. PERSONS OPERATING OR CONDUCTING BINGO. (a) Except as provided by this section, a person other than a bona fide member of a licensed authorized organization may not conduct, promote, or administer, or assist in conducting, promoting, or administering, bingo.

(b) Only an active member of a licensed authorized organization may be an operator responsible for conducting, promoting, or administering bingo.

(c) A person may not assist in conducting, promoting, or administering bingo except a person who is:

(1) an active member of the licensed authorized organization;

(2) a member of an organization that is an auxiliary to the licensed authorized organization;

(3) a member of an organization of which the licensed authorized organization is an auxiliary;

(4) a member of an organization that is affiliated with the licensed authorized organization by being, with it, auxiliary to another organization; or

(5) a bookkeeper, an accountant, a cashier, an usher, or a caller.

(c-1) An organization may designate as members of the organization one or more individuals who elect to become members, including all of the organization's directors, and the designated members are bona fide members of the organization for purposes of this section and other law.

(d) The commission, without regard to a person's membership status in a licensed authorized organization, by rule may restrict involvement in the conduct, promotion, or administration of bingo by:

(1) a licensed commercial lessor;

(2) a person having an interest in or who is active in a licensed commercial lessor; or

(3) a person related in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person having an interest in or active in a licensed commercial lessor.

(e) The commission may not prohibit an operator responsible for conducting, promoting, or administering bingo from acting as a bingo caller for a licensed authorized organization during a bingo occasion. This subsection does not relieve the operator of the duty to be available to a commission employee or bingo player if required by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 14, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 27, eff. October 1, 2009.

Sec. 2001.4115. JOINT EMPLOYMENT OF BINGO EMPLOYEES. Two or more licensed authorized organizations conducting bingo at the same premises may jointly hire bingo employees. One organization may act as the employee's employer and the other organization may reimburse the employing organization for the other organization's share of the employee's compensation and other employment-related costs. A reimbursement under this section is an authorized expense and must be made from the bingo account of the reimbursing organization.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 15, eff. Sept. 1, 2003.

Sec. 2001.412. ADMISSION TO BINGO GAMES. A person may not be denied admission to a bingo game or the opportunity to participate in a game because of race, color, creed, religion, national origin, sex, or disability or because the person is not a member of the licensed authorized organization conducting the bingo game.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.413. PAYMENT REQUIRED. Except as provided by Section 2001.4155, a licensed authorized organization may not offer or provide to a person the opportunity to play bingo without payment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 16, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 7, eff. September 1, 2023.

Sec. 2001.414. BINGO RECORDS. (a) The commission by rule may provide for different recordkeeping procedures for licensed authorized organizations by class based on the amount of gross receipts of the organization.

(b) An organization conducting bingo must record on a cash register all transactions for which it receives bingo gross receipts in conformance with commission rules relating to transaction recording specifications.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.415. ADVERTISEMENTS. (a) A person other than a licensed authorized organization, licensed commercial lessor, or the commission may not advertise bingo.

(b) A licensed authorized organization, licensed commercial lessor, or the commission may include in an advertisement or promotion the amount of a prize or series of prizes offered at a bingo occasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 17, eff. Sept. 1, 2003.

Sec. 2001.4155. GIFT CERTIFICATES. (a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the

certificate to play a bingo game, including instant bingo.

(b) A licensed authorized organization that sells or redeems a gift certificate must keep adequate records relating to the gift certificate as provided by commission rule.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 18, eff. Sept. 1, 2003.

Sec. 2001.416. OTHER GAMES. (a) A game of chance other than bingo or a raffle conducted under Chapter 2002 may not be conducted or allowed during a bingo occasion.

(b) A person authorized to conduct a raffle under this section must be a member of a licensed authorized organization as provided by Section 2001.411.

(c) The commission shall adopt rules for the implementation of this section.

(d) This section does not prohibit the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.418. MINORS. (a) An individual younger than 18 years of age may not play bingo conducted under a license issued under this chapter unless the individual is accompanied by the individual's parent or guardian.

(b) A license holder may prohibit all individuals younger than 18 years of age or individuals of an age younger than 18 years of age as determined by the license holder from entering the licensed premises by posting a written notice to that effect at the premises.

(c) An individual younger than 18 years of age may not conduct or assist in the conduct of bingo under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.419. BINGO OCCASIONS. (a) A licensed authorized organization may not conduct more than three bingo occasions during a calendar week under a regular license.

(b) A bingo occasion may not exceed six hours.

(c) No more than two bingo occasions may be conducted at the same premises during one day except that a third bingo occasion may be conducted under a temporary license held by a licensed authorized organization at that premises.

(d) If more than one bingo occasion is conducted at the same premises on the same day:

(1) the bingo occasions must be announced separately;

(2) the licensed times may not overlap; and

(3) notwithstanding Subsection (e), bingo cards may be sold during a bingo occasion for play during a subsequent bingo occasion that is scheduled to begin at the same premises in not more than eight hours after the sale of cards for the subsequent occasion begins.

(e) Bingo cards, pull-tab bingo tickets, and the use of card-minding devices for a bingo occasion may be sold at the licensed premises at any time beginning one hour before the bingo occasion and ending at the conclusion of the bingo occasion.

(f) If pull-tab bingo tickets are sold by one licensed authorized organization that conducts consecutive bingo occasions during one day, the organization may account for and report all of the pull-tab bingo ticket sales for the occasions as sales for the final occasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 28, eff. October 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 749 (H.B. 882), Sec. 2, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 3, eff. January 1, 2020.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 8, eff. September 1, 2023.

Sec. 2001.420. PRIZES. (a) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 17(2), eff. September 1, 2023.

(b) A person may not offer or award on a single bingo occasion prizes with an aggregate value of more than $5,000 for all bingo games other than:

(1) pull-tab bingo; or

(2) bingo games that award individual prizes of $50 or less.

(c) A licensed authorized organization or other person may not award or offer to award a door prize with a value of more than $250.

(d) Notwithstanding any other law, a licensed authorized organization may offer and award as a bingo prize under this chapter a ticket for a charitable raffle conducted under Chapter 2002. The bingo prize amount is the cost to purchase the ticket to enter the charitable raffle for purposes of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 634 (H.B. 394), Sec. 1, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 245 (H.B. 874), Sec. 1, eff. May 29, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 9, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 17(2), eff. September 1, 2023.

SUBCHAPTER I-1. UNIT ACCOUNTING

Sec. 2001.431. DEFINITIONS. In this subchapter:

(1) "Unit" means two or more licensed authorized organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operations.

(2) "Unit accounting" means a method by which licensed authorized organizations that are members of a unit account for the sharing of revenues, authorized expenses, and inventory related to bingo operations.

(3) "Unit accounting agreement" means a written agreement by all the licensed authorized organizations that are members of a unit that contains, at a minimum:

(A) the taxpayer name and number of each licensed authorized organization that is a member of the unit;

(B) the method by which the net proceeds of the bingo operations of the unit will be apportioned among the members of the

unit;

(C) the name of the unit manager or designated agent of the unit; and

(D) the methods by which the unit may be dissolved and by which one or more members of the unit may withdraw from participation in the unit, including the distribution of funds, records, and inventory and the allocation of authorized expenses and liabilities on dissolution or withdrawal of one or more members of the unit.

(4) "Unit manager" means an individual who is responsible for the revenues, authorized expenses, and inventory of a unit.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.001, eff. September 1, 2017.

Sec. 2001.432. FORMING ACCOUNTING UNIT. (a) Two or more licensed authorized organizations may form and operate a unit as provided by this subchapter by:

(1) executing a unit accounting agreement; and

(2) stating in the unit accounting agreement whether the unit will use:

(A) a unit manager; or

(B) a designated agent.

(b) More than one unit may be formed at a single location. A licensed authorized organization may not be a member of more than one unit.

(c) This subchapter does not require a licensed authorized organization to join a unit. Except as provided by Subsection (d), whether to join or withdraw from a unit is at the discretion of each licensed authorized organization.

(d) The members of a unit may determine whether to allow another licensed authorized organization to join the unit. The terms of the withdrawal of a member from the unit are governed by the unit accounting agreement.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.433. APPLICABILITY OF CHAPTER. A licensed authorized organization that uses unit accounting is subject to the other provisions of this chapter to the extent the provisions are applicable and are not inconsistent with this subchapter.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.4335. EXEMPTION FROM FRANCHISE TAX. A unit formed under this subchapter is exempt from the tax imposed under Chapter 171, Tax Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 29, eff. October 1, 2009.

Sec. 2001.434. CONDUCT OF BINGO. (a) Each licensed authorized organization that is a member of a unit shall conduct its bingo games separately from the bingo games of the other members of the unit.

(b) A unit may purchase or lease bingo supplies and equipment in the same manner as a licensed authorized organization.

(c) A licensed distributor may sell or lease bingo supplies or equipment to a unit in the same manner as the distributor sells or leases bingo supplies and equipment to a licensed authorized organization.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.435. UNIT ACCOUNTING. (a) A unit:

(1) shall establish and maintain one checking account designated as the unit's bingo account;

(2) shall maintain one inventory of bingo supplies and equipment for use in the bingo operations of members of the unit; and

(3) may maintain an interest-bearing savings account designated as the unit's bingo savings account.

(b) Each member of a unit shall deposit into the unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes. The deposit shall be made not later than the third business day after the day of the bingo occasion on which the

receipts were obtained.

(c) All authorized expenses and distributions of the unit and its members shall be paid from the unit's bingo checking account.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 30, eff. October 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 10, eff. September 1, 2023.

Sec. 2001.436. DISBURSEMENT OF FUNDS BY DISSOLVED UNIT. (a) Sections 2001.457(a) and (b) apply to a unit formed under this subchapter. For purposes of this subchapter, the requirements of Sections 2001.457(a) and (b) that are applicable to a licensed authorized organization shall be applied to a unit.

(b) A unit that has dissolved for any reason and has unexpended bingo funds shall disburse those funds to the bingo account of each member of the unit before the end of the next calendar quarter after the calendar quarter in which the unit dissolves.

(c) For purposes of the application of Sections 2001.457(a) and (b) to a unit under this section:

(1) "Adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by a unit and prizes paid in the preceding quarter; and

(2) "Cost of goods purchased by a unit" means the cost of bingo paper and pull-tab bingo tickets purchased by the unit and payments to distributors for electronic cardminding devices.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

Sec. 2001.437. UNIT MANAGER. (a) If the unit accounting agreement of a unit states that a unit manager is responsible for compliance with commission rules and this chapter, the unit manager is responsible for:

(1) the filing of one quarterly report for the unit on a form prescribed by the commission; and

(2) the payment of fees and the maintenance of the bingo inventory and financial records of the unit.

(b) A unit with a unit manager shall notify the commission of the name of the unit manager and immediately notify the commission of any change of unit manager.

(c) A person designated as an agent under Section 2001.438(b) is not a unit manager on account of that designation for purposes of this section.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.004, eff. September 1, 2017.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.004, and Ch. 860 (H.B. 2578), Sec. 11, eff. September 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.004, eff. September 1, 2017.

(g) Repealed by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.004, eff. September 1, 2017.

(h) A unit manager must complete the training required by Section 2001.107.

(i) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(4), eff. January 1, 2020.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 38, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 101 (S.B. 549), Sec. 8, eff. January 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 11, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.002, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.003, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 12.004, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(4), eff. January 1, 2020.

Sec. 2001.438. AGREEMENT WITHOUT UNIT MANAGER. (a) This section applies to a unit if the unit accounting agreement for the unit:

(1) does not state that a unit manager will be responsible for compliance with the rules of the commission and this chapter; or

(2) states that the unit will use a designated agent.

(b) The unit shall designate with the commission an agent who will be responsible for providing the commission access to all inventory and financial records of the unit on request of the commission.

(c) The agent designated under Subsection (b) may not:

(1) hold or be listed on another license issued under this chapter, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations; or

(2) be an owner, officer, or director of a licensed commercial lessor, be employed by a licensed commercial lessor, or be related to a licensed commercial lessor within the second degree by consanguinity or affinity, unless the holder of the license is a licensed authorized organization or an association of licensed authorized organizations.

(d) The unit shall immediately notify the commission of any change in the agent designated under Subsection (b).

(e) The designated agent must complete the training required by Section 2001.107.

(f) Each licensed authorized organization that is a member of the unit shall be jointly and severally liable for:

(1) compliance with the requirements of this subchapter and the rules of the commission relating to the filing of required reports;

(2) the maintenance of bingo inventory and financial records; and

(3) except as provided by Subsection (f-1), the payment of any penalties imposed for a violation of this subchapter or commission rules related to the operations of the unit.

(f-1) If a unit demonstrates that a violation of this subchapter or commission rules is wholly attributable to a specific licensed authorized organization member or members of the unit:

(1) a penalty for the violation may not be imposed on a unit member to which the violation is not attributable; and

(2) the penalty imposed on a unit member to which the violation is attributable may not be in an amount greater than the amount initially assessed against each unit member.

(g) Each licensed authorized organization that is a member of the unit may be made a party to any administrative or judicial action relating to the enforcement of this subchapter or the rules of the commission pertaining to the operation of the unit.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 7, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 5, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 11, eff. September 1, 2023.

Sec. 2001.439. TRUST AGREEMENT. (a) Notwithstanding any other provision of this subchapter, a unit may be formed pursuant to a trust agreement between two or more licensed authorized organizations that conduct bingo at the same location. The agreement must:

(1) designate one of the organizations as the trustee;

(2) designate a person who will carry out the duties described by Section 2001.438(b);

(3) specify the method by which the unit will comply with the requirements of Section 2001.436(a); and

(4) state that the trustee is responsible for compliance with the rules of the commission and this chapter.

(b) The commission by rule may prohibit a person from serving as a unit manager or as a designated agent for a unit that does not use a unit manager if the person has failed to comply with the duties required of the person as a unit manager or designated agent.

(c) The commission may prohibit a person who serves as a designated agent that is listed on a license under this chapter, including having been approved by the commission to work in the bingo operations of a licensed authorized organization or as an operator, from holding or being listed on any license or from being approved to work in the bingo operations of any licensed authorized organization or to serve as an operator if the person has failed to comply with

the duties required of the person as a unit manager or designated agent.

Added by Acts 2003, 78th Leg., ch. 1114, Sec. 19, eff. Sept. 1, 2003.

SUBCHAPTER J. BINGO ACCOUNTS AND USE OF PROCEEDS

Sec. 2001.451. ORGANIZATION BINGO ACCOUNTS. (a) A licensed authorized organization shall establish and maintain one regular checking account designated as the organization's "bingo account." The organization may maintain a separate interest-bearing savings account designated as the "bingo savings account."

(b) Except as provided by Section 2001.502(a), a licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes. Except as provided by Subsection (b-1), a deposit must be made not later than the third business day after the day of the bingo occasion on which the receipts were obtained.

(b-1) A licensed authorized organization may deposit funds derived from the conduct of bingo that are paid through a debit card transaction in the bingo fund not later than 72 hours after the transaction.

(c) A licensed authorized organization may transfer money from its general fund or other account to the organization's bingo account or to the bingo account of a unit of which the organization is a member under Subchapter I-1, if applicable, if:

(1) the balance in the bingo account to which the funds are transferred is less than the maximum amount permitted by this section; and

(2) the organization notifies the commission of the transfer not later than the 14th day after the date of the transfer.

(d) Except as permitted by Subsection (c), a licensed authorized organization may not commingle gross receipts derived from the conduct of bingo with other funds of the organization.

(e) Except as permitted by Subsection (c) of this section and by Section 2001.453(2), a licensed authorized organization may not transfer gross receipts derived from the conduct of bingo to another account maintained by the organization.

(f) A licensed authorized organization shall maintain all of its savings and checking accounts in a financial institution in this

state.

(g) The bingo operations of a licensed authorized organization must result in net proceeds over each 24-month period that ends on the second anniversary of the date the license was issued.

(h) Except as provided by Subsection (j), a licensed authorized organization or a unit of licensed authorized organizations may retain operating capital in the organization's or unit's bingo account in an amount that:

(1) is equal to the organization's or unit's actual average bingo expenses per quarter based on the preceding license period, excluding prizes paid; and

(2) does not exceed a total of $50,000 for a single organization or $50,000 for each member of a unit unless:

(A) the commission by rule establishes a higher amount for all organizations or units or one or more classes of organizations or units; or

(B) the bingo operations director, on request, raises the operating capital limit for one organization or unit as necessary to facilitate the operation of the organization or unit.

(i) Prize fees are not included in the calculation of operating capital under Subsection (h) if the prize fees are:

(1) held in escrow for remittance to:

(A) the commission; or

(B) a county or municipality; or

(2) retained by a licensed authorized organization.

(j) The commission shall adopt rules allowing a licensed authorized organization to retain a maximum amount of operating capital in the bingo account in excess of the amount provided by Subsection (h) if the organization:

(1) has conducted bingo for less than one year;

(2) experiences circumstances beyond the control of the organization, including force majeure, that necessitate an increase in operating capital; or

(3) provides to the commission a credible business plan for the conduct of bingo or for the organization's existing or planned charitable purposes that an increase in operating capital will reasonably further.

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing

of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

(1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

(2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 20, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 31, eff. October 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 4, eff. January 1, 2020.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 12, eff. September 1, 2023.

Sec. 2001.452. BINGO ACCOUNT WITHDRAWALS. (a) Funds from the bingo account must be withdrawn by electronic funds transfer or by preprinted, consecutively numbered checks or withdrawal slips, signed by an authorized representative of the licensed authorized organization and made payable to a person. A check or withdrawal slip may not be made payable to "cash," "bearer," or a fictitious payee. The nature of the payment made must also be noted on the face of the check or withdrawal slip. The purpose, amount, and payee for each electronic funds transfer must be recorded in accordance with rules adopted by the commission.

(b) The checks for the bingo account must be imprinted with the words "Bingo Account" and must contain the organization's bingo license number on the face of each check.

(c) A licensed authorized organization shall account for all checks and withdrawal slips, including voided checks and withdrawal slips.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 32, eff.

October 1, 2009.

Sec. 2001.453. AUTHORIZED USES OF BINGO ACCOUNT. A licensed authorized organization may withdraw funds from its bingo account only for:

(1) the payment of necessary or reasonable bona fide expenses, including compensation of personnel, as permitted under Section 2001.458 incurred and paid in connection with the conduct of bingo; or

(2) the disbursement of net proceeds derived from the conduct of bingo as provided by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 33, eff. October 1, 2009.

Sec. 2001.454. USE OF NET PROCEEDS FOR CHARITABLE PURPOSES. (a) A licensed authorized organization shall devote to the charitable purposes of the organization its net proceeds of bingo and any rental of premises.

(b) Except as otherwise provided by law, the net proceeds derived from bingo and any rental of premises are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. If the organization is not required to obtain a federal tax exemption under 26 U.S.C. Section 501, the organization's net proceeds are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the purposes and objectives for which the organization qualifies as an authorized organization under Section 2001.002.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 21, eff. Sept. 1, 2003.

Sec. 2001.455. USE OF PROCEEDS BY RECIPIENT. A person given bingo proceeds for a charitable purpose may not use the donation:

(1) to pay for services rendered or materials purchased in connection with the conduct of bingo by the donor organization; or

(2) for a purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.456. USE OF PROCEEDS BY LICENSED AUTHORIZED ORGANIZATION. A licensed authorized organization may not use the net proceeds from bingo directly or indirectly to:

(1) support or oppose a candidate or slate of candidates for public office;

(2) support or oppose a measure submitted to a vote of the people; or

(3) influence or attempt to influence legislation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.457. REQUIRED DISBURSEMENTS TO CHARITY. (a) Before the end of each quarter, a licensed authorized organization shall disburse all of the organization's net proceeds from the preceding quarter, other than amounts retained under Section 2001.451, as provided by this subchapter.

(b) If a licensed authorized organization fails to meet the requirements of Subsection (a) for a quarter, the commission in applying appropriate sanctions shall consider whether, taking into account the amount required to be disbursed during that quarter and the three preceding quarters, the organization has disbursed a total amount sufficient to have met the disbursement requirement for that quarter and the three preceding quarters combined.

(c) A licensed authorized organization that has ceased to conduct bingo for any reason and that has unexpended bingo funds shall disburse those funds as provided by this subchapter before the end of the next calendar quarter after the calendar quarter in which the organization ceases to conduct bingo.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(9), eff. October 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 34, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(9), eff. October 1, 2009.

Sec. 2001.458. ITEMS OF EXPENSE. (a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

(1) advertising, including the cost of printing bingo gift certificates;

(2) security;

(3) repairs to premises and equipment;

(4) bingo supplies and equipment;

(5) prizes;

(6) stated rental or mortgage and insurance expenses;

(7) bookkeeping, legal, or accounting services related to bingo;

(8) bingo chairpersons, operators, managers, salespersons, callers, cashiers, ushers, janitorial services, and utility supplies and services;

(9) health insurance or health insurance benefits for bingo chairpersons, operators, managers, salespersons, callers, cashiers, and ushers, as provided by Subsection (b);

(10) attending a bingo seminar or convention required under Section 2001.107; and

(11) debit card transaction fees and electronic funds transfer fees.

(b) The value of health insurance or health insurance benefits provided by a licensed authorized organization to an employee may not exceed 50 percent of the total premium owed. If an employee is employed by more than one licensed authorized organization, the combined value of health insurance or health insurance benefits provided to the employee by the employing organizations may not exceed 50 percent of the total premium owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2003, 78th Leg., ch. 1114, Sec. 22, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 35, eff. October 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 916 (S.B. 1342), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 6, eff. September 1, 2017.

Sec. 2001.459. EXPENSES PAID FROM BINGO ACCOUNT. (a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:

(1) advertising, including the cost of printing bingo gift certificates;

(2) security during a bingo occasion;

(3) the purchase or repair of bingo supplies and equipment;

(4) prizes, other than authorized cash prizes;

(5) stated rental expenses;

(6) bookkeeping, legal, or accounting services;

(7) fees for callers, cashiers, and ushers; and

(8) janitorial services.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 17(3), eff. September 1, 2023.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 23, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 36, eff. October 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 7, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 17(3), eff. September 1, 2023.

SUBCHAPTER K. PRIZE FEES

Sec. 2001.502. PRIZE FEE. (a) A licensed authorized organization or unit as defined by Section 2001.431 shall:

(1) collect from a person who wins a cash bingo prize of

more than $5 a fee in the amount of five percent of the amount of the prize; and

(2) except as otherwise provided by this section, remit to the commission the amount of the fee collected under Subdivision (1).

(b) Notwithstanding Subsection (a)(2), each quarter, a licensed authorized organization or unit that collects a prize fee under Subsection (a) for a bingo game conducted in a county or municipality that was entitled to receive a portion of a bingo prize fee as of January 1, 2019, shall remit 50 percent of the amount collected as the prize fee to the commission and shall remit or deposit the remainder of the amount collected as the prize fee as follows:

(1) if the county in which the bingo game is conducted voted before November 1, 2019, to impose the prize fee and the location at which the bingo game is conducted:

(A) is not within the boundaries of a municipality, remit 50 percent of the amount collected as the prize fee to the county; or

(B) is within the boundaries of a municipality that:

(i) voted before November 1, 2019, to impose the prize fee, remit 50 percent of the amount collected as the prize fee in equal shares to the county and municipality; or

(ii) did not vote before November 1, 2019, to impose the prize fee, remit 25 percent of the amount collected as the prize fee to the county and deposit the remaining amount in the manner described by Subdivision (3);

(2) if the county in which the bingo game is conducted did not vote before November 1, 2019, to impose the prize fee and the location at which the bingo game is conducted is within the boundaries of a municipality that voted before November 1, 2019, to impose the prize fee:

(A) remit 25 percent of the amount collected as the prize fee to the municipality; and

(B) deposit the remaining amount in the manner described by Subdivision (3); and

(3) if neither the county or municipality in which the bingo game is conducted voted before November 1, 2019, to impose the prize fee, deposit the remainder of the amount collected as the prize fee in the general charitable fund of the organization or on a pro rata basis to the general funds of the organizations comprising the unit, as applicable, to be used for the charitable purposes of the

organization or organizations.

(c) The governing body of a county or municipality that voted to impose a prize fee under Subsection (b) may at any time vote to discontinue the imposition of the fee. If a county or municipality votes on or after November 1, 2019, to discontinue the fee, the fees to which the county or municipality, as applicable, was entitled before the vote shall be collected by the licensed authorized organization or unit as defined by Section 2001.431 and deposited as provided by Subsection (b)(3).

(d) A fee collected under Subsection (a) does not apply to:

(1) a merchandise prize awarded as a prize for winning a bingo game, including a bingo card, a pull-tab bingo ticket, a bingo dauber, or other bingo merchandise; or

(2) the use of a card-minding device awarded as a prize for winning a bingo game.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 37, eff. October 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 860 (H.B. 2578), Sec. 8, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 5, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 13, eff. September 1, 2023.

Sec. 2001.504. PAYMENT AND REPORTING OF FEE. (a) A fee on prizes authorized or imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission and county or municipality, as applicable, quarterly on or before the 25th day of the month succeeding each calendar quarter.

(b) The report of the fee on prizes must be filed under oath on forms prescribed by the commission.

(c) The commission shall adopt rules for the payment of the fee on prizes.

(d) A license holder required to file a report of the fee on prizes shall deliver the quarterly report with the net amount of the

fee due to the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 24, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 9, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 6, eff. January 1, 2020.

Sec. 2001.505. REPORT OF EXPENSES. (a) A licensed authorized organization conducting bingo shall submit quarterly to the commission a report under oath stating:

(1) the amount of the gross receipts derived from bingo;

(2) each item of expense incurred or paid;

(3) each item of expenditure made or to be made, the name and address of each person to whom each item has been paid or is to be paid, and a detailed description of the merchandise purchased or the services rendered;

(4) the net proceeds derived from bingo;

(5) the use to which the proceeds have been or are to be applied; and

(6) a list of prizes offered and given, with their respective values.

(b) A license holder shall maintain records to substantiate the contents of each report.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(10), eff. October 1, 2009.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 38, eff. October 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(10), eff. October 1, 2009.

Sec. 2001.506. RECORD OF PRIZE WINNER. The commission by rule may require a licensed authorized organization to maintain records relating to each person to whom a prize is awarded at a bingo

occasion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.507. COLLECTION AND DEPOSIT OF PRIZE FEE. (a) The commission shall deposit the revenue collected from the fee on prizes imposed by Section 2001.502 to the credit of the general revenue fund.

(a-1) The revenue collected by the commission from the fee on prizes imposed by Section 2001.502 is considered miscellaneous revenue for purposes of appropriations made to the commission under the General Appropriations Act for the administration of this chapter.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

(h) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

(i) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 7, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 8, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1051 (H.B. 914), Sec. 10(6), eff. January 1, 2020.

Sec. 2001.508. PENALTIES FOR FAILURE TO PAY OR REPORT. (a) If

a person fails to file a report of the fee on prizes as required by this chapter or fails to pay to the commission the fee on prizes imposed under this chapter when the report or payment is due, the person forfeits five percent of the amount due as a penalty, and after the first 30 days, the person forfeits an additional five percent.

(b) A delinquent payment of the fee on prizes accrues interest at the rate provided by Section 111.060, Tax Code, beginning on the 60th day after the due date.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 10, eff. September 1, 2015.

Sec. 2001.509. RECOMPUTATION OF PRIZE FEE. If the commission is not satisfied with a report of the fee on prizes or the amount of the fee on prizes required to be remitted under this chapter to the state by a person, the commission may compute and determine the amount required to be paid on the basis of:

(1) the facts contained in the report of the fee on prizes or report of receipts and expenses; or

(2) any information possessed by the commission or that may come into the possession of the commission, without regard to the period covered by the information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 11, eff. September 1, 2015.

Sec. 2001.510. DETERMINATION IF NO REPORT MADE. (a) If a license holder fails to make a required report of the fee on prizes, or if a person conducts bingo without a license, the commission shall make an estimate of the prizes awarded at a bingo occasion. The commission shall make the estimate for the period in respect to which the license holder or other person failed to make a report.

(b) The estimate shall be based on any information covering any period possessed by the commission or that may come into the

possession of the commission.

(c) On the basis of the commission's estimate, the commission shall compute and determine the amount of the fee on prizes required to be paid to the state and shall add to that amount a penalty of 10 percent of the amount.

(d) One or more determinations may be made under this section for one or more periods.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 12, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 13, eff. September 1, 2015.

Sec. 2001.511. JEOPARDY DETERMINATION. (a) If the commission believes that the collection of the fee on prizes, an amount of the fee on prizes required to be remitted to the state, or the amount of a determination will be jeopardized by delay, the commission shall make a determination of the fee on prizes or amount of the fee required to be collected, noting the finding of jeopardy on the determination. The determined amount is due and payable immediately.

(b) If a license holder against whom the determination is made does not pay the amount specified by a determination on or before the 20th day after the date of service of the determination on the license holder, the amount becomes final at the end of the 20th day unless the license holder files a petition for redetermination on or before the 20th day after service of notice of the determination.

(c) A delinquency penalty of 10 percent of the fee on prizes or amount of the fee on prizes and interest at the rate of 10 percent a year attaches to the amount of the fee on prizes or the amount of the fee on prizes required to be collected.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 14, eff. September 1, 2015.

Sec. 2001.512. APPLICATION OF TAX LAWS. (a) Subtitle B, Title

2, Tax Code, applies to the administration, collection, and enforcement of the fee on prizes imposed under Section 2001.502 except as modified by this chapter.

(b) In applying the provisions of Subtitle B, Title 2, Tax Code, to the fee on prizes imposed under Section 2001.502 only, the fee on prizes is treated as if it were a tax and the powers and duties assigned to the comptroller under that subtitle are assigned to the commission.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 15, eff. September 1, 2015.

Sec. 2001.513. DELINQUENCY: SEIZURE AND SALE. (a) At any time within three years after a person is delinquent in the payment of an amount of the fee on prizes due to the commission, the commission may collect the amount under this section.

(b) The commission shall seize real or personal property of the license holder not exempt from execution under the laws of this state and sell the property, or a sufficient part of the property, at public auction to pay the amount due and interest or penalties caused by the seizure and sale.

(c) The commission shall give the delinquent person written notice of the sale, including the time and place of the sale, at least 20 days before the date set for the sale. The commission shall mail the notice, postage prepaid, in an envelope addressed to the person at the person's last known address or place of business.

(d) The commission shall publish the notice for at least 10 days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, the commission shall post the notice in three public places in the county at least 20 days before the date set for the sale.

(e) The notice must contain:

(1) a description of the property to be sold;

(2) a statement of the amount due, including interest, penalties, and costs;

(3) the name of the delinquent person; and

(4) a statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(f) At the sale, the commission shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for personal property and a deed for real property sold. The bill of sale or deed vests the interest or title of the delinquent person for the amount in the purchaser. The unsold portion of property seized may be left at the place of sale at the risk of the delinquent person for the amount.

(g) Except as provided by Subsection (h), if the money received at the sale exceeds the total amounts, including interest, penalties, and costs due to the state, the commission shall return the excess money to the person liable for the amounts and shall obtain the person's receipt. If the receipt of the delinquent person for the amount is not available, the commission shall deposit the excess money with the comptroller, as trustee for the person, subject to the order of the person, or the person's heirs, successors, or assigns.

(h) If a person having an interest in or lien on the property files with the commission before the sale notice of the person's interest or lien, the commission shall withhold any excess money pending a court determination of the rights of the respective parties to the money.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 14, eff. September 1, 2023.

Sec. 2001.514. SECURITY. (a) To secure payment due to the commission of the fee on prizes imposed under this subchapter, each license holder shall furnish to the commission:

(1) a cash bond;

(2) a bond from a surety company chartered or authorized to do business in this state;

(3) certificates of deposit;

(4) certificates of savings;

(5) United States treasury bonds;

(6) subject to the approval of the commission, an assignment of negotiable stocks or bonds; or

(7) other security as the commission considers sufficient.

(b) The commission shall set the amount of the bond or other security, taking into consideration the amount of money that has or is expected to become due from the license holder. The amount required by the commission may not exceed three times the amount due according to the license holder's average quarterly reports.

(c) On a license holder's failure to pay the fee on prizes imposed under this subchapter, the commission may notify the license holder and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made when due, the commission may forfeit all or part of the bond or security.

(d) If the license holder ceases to conduct bingo and relinquishes the license holder's license, the commission shall authorize the release of all bonds and other security on a determination that no amounts of the fee on prizes remain due and payable under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 17, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 15, eff. September 1, 2023.

Sec. 2001.515. COMMISSION'S DUTIES. The commission shall perform all functions incident to the administration, collection, enforcement, and operation of the fee on prizes imposed under this subchapter for amounts due to the commission, including any necessary reconciliation of a prize fee held by the commission that is due to a county or municipality.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1255 (H.B. 1905), Sec. 18, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1132 (S.B. 643), Sec. 16, eff.

September 1, 2023.

SUBCHAPTER L. ENFORCEMENT

Sec. 2001.551. UNLAWFUL BINGO; OFFENSE. (a) In this section, "bingo" or "game" means a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random, whether or not a person who participates as a player furnishes something of value for the opportunity to participate.

(b) A person conducting, promoting, or administering bingo commits an offense if the person conducts, promotes, or administers bingo other than:

(1) under a license issued under this chapter;

(2) within the confines of a home for purposes of amusement or recreation when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate;

(B) participation in the game does not exceed 15 players; and

(C) the prizes awarded or to be awarded are nominal;

(3) on behalf of an organization of individuals 60 years of age or over, a senior citizens' association, a senior citizens' community center program operated or funded by a governmental entity, the patients in a hospital or nursing home, residents of a retirement home, or the patients in a Veteran's Administration medical center or a military hospital, solely for the purpose of amusement and recreation of its members, residents, or patients, when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate; and

(B) the prizes awarded or to be awarded are nominal; or

(4) on behalf of a business conducting the game for promotional or advertising purposes if:

(A) the game is conducted by or through a newspaper or a radio or television station;

(B) participation in the game is open to the general public and is not limited to customers of the business;

(C) playing materials are furnished without charge to a

person on request; and

(D) no player is required to furnish anything of value for the opportunity to participate.

(c) An offense under Subsection (b) is a felony of the third degree.

(d) This section applies to a political subdivision regardless of local option status.

(e) A game exempted under Subsection (b)(2), (3), or (4) is not required to be licensed under this chapter.

(f) A game exempted under Subsection (b)(4) is subject to the following restrictions:

(1) a person licensed or required to be licensed under this chapter or having an interest in a license under this chapter may not be involved, directly or indirectly, in bingo, except that a licensed manufacturer or licensed distributor may sell or otherwise furnish bingo equipment or supplies for use in a game;

(2) a person conducting bingo may purchase or otherwise obtain bingo equipment or supplies through a newspaper, a radio or television station, or an advertising agency and, unless otherwise authorized by the commission, only from a licensed manufacturer or licensed distributor;

(3) a licensed manufacturer or licensed distributor may sell or otherwise furnish bingo equipment or supplies for use in a game only to or through a newspaper or a radio or television station or through an advertising agency acting on behalf of a person authorized to conduct the game; and

(4) the commission by rule may require a person conducting or involved in conducting the game to:

(A) notify the commission of:

(i) the persons involved in conducting the game;

(ii) the manner in which the game is to be conducted; and

(iii) any other information required by the commission; and

(B) keep records of all transactions connected with the game available for commission inspection.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.552. FRAUDULENT AWARD OF PRIZES; OFFENSE. (a) A person commits an offense if the person knowingly participates in the award of a prize to a bingo player in a manner that disregards, to any extent, the random selection of numbers or symbols.

(b) An offense under this section is a felony of the third degree.

(c) It is a defense to prosecution under this section that no participant in the game furnished anything of value for the opportunity to participate in the game.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.553. UNLICENSED SALES; OFFENSE. (a) A person commits an offense if a person sells or attempts to induce the sale of bingo equipment, supplies, or automated bingo services to a licensed authorized organization and the person is not licensed to do so.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 636, Sec. 42(11), eff. October 1, 2009.

(c) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 42(11), eff. October 1, 2009.

Sec. 2001.554. OTHER OFFENSES; REVOCATION OF LICENSE. (a) A person commits an offense and the person's license is subject to revocation under this chapter if the person:

(1) makes a false statement or material omission in an application for a license under this chapter;

(2) fails to maintain records that fully and accurately record each transaction connected with the conducting of bingo, the leasing of premises to be used for bingo, or the manufacture, sale, or distribution of bingo supplies or equipment;

(3) falsifies or makes a false entry in a book or record if the entry relates to bingo, the disposition of bingo proceeds, the application of rent received by a licensed authorized organization, or the gross receipts from the manufacture, sale, or distribution of

bingo supplies or equipment;

(4) diverts or pays a portion of the net proceeds of bingo to a person except in furtherance of one or more of the lawful purposes provided by this chapter; or

(5) violates this chapter or a term of a license issued under this chapter.

(b) An offense under Subsection (a)(2), (3), or (5) is a Class C misdemeanor, unless it is shown on the trial of the offense that the person has been convicted previously under this section, in which event the offense is a Class B misdemeanor. An offense under Subsection (a)(1) or (4) is a Class A misdemeanor. This subsection does not apply to an offense committed under Section 2001.551(b) or Section 2001.552.

(c) A person whose license is revoked under this section may not apply for another license under this chapter before the first anniversary of the date of revocation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.555. EXEMPTION FROM PROSECUTION. (a) A person lawfully conducting or participating in bingo or permitting the conduct of bingo on premises owned or leased by the person under a license issued under this chapter is not subject to prosecution or conviction for a violation of a provision of the Penal Code or other law or ordinance to the extent that the person's action is specifically authorized by this chapter.

(b) The immunity granted under this section does not extend to a person:

(1) knowingly conducting or participating in bingo under a license obtained by a false pretense, false statement, or material omission made in an application for license or otherwise; or

(2) knowingly permitting the conduct of bingo on premises owned or leased by the person under a license known to the person to have been obtained by a false pretense or statement.

(c) A license holder under this chapter may possess paraphernalia or equipment that is required to conduct bingo.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.556. PRICE FIXING PROHIBITED. (a) A manufacturer, distributor, or supplier may not by express or implied agreement with another manufacturer or distributor fix the price at which bingo equipment or supplies used or intended to be used in connection with bingo conducted under this chapter may be sold.

(b) The price of bingo supplies and equipment in the competitive marketplace shall be established by the manufacturer, distributor, or supplier and may not be established in concert with another manufacturer, distributor, or supplier.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.557. INSPECTION OF PREMISES. (a) The commission, its officers or agents, or a state, municipal, or county peace officer may enter and inspect the contents of premises where:

(1) bingo is being conducted or intended to be conducted; or

(2) equipment used or intended for use in bingo is found.

(b) The commission by rule shall develop and implement policies and procedures to:

(1) prioritize the inspection of premises where bingo is being conducted or is intended to be conducted in accordance with the risk factors the commission considers important, including:

(A) the amount of money derived from the conduct of bingo at the premises;

(B) the compliance history of the premises; and

(C) the amount of time that has elapsed since the date of the immediately preceding commission inspection of the premises; and

(2) inspect premises where bingo is being conducted or is intended to be conducted in accordance with the priorities established under Subdivision (1).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 39, eff. September 1, 2013.

Sec. 2001.558. INJUNCTION; CIVIL PENALTY. (a) If the

commission, the appropriate governing body, or the attorney general has reason to believe that this chapter has been or is about to be violated, the commission, the governing body, or the attorney general may petition a court for injunctive relief to restrain the violation.

(b) Venue for an action seeking injunctive relief is in a district court in Travis County.

(c) If the court finds that this chapter has been violated or is about to be violated, the court shall issue a temporary restraining order and, after due notice and hearing, a temporary injunction, and after a final trial, a permanent injunction to restrain the violation.

(d) If the court finds that this chapter has been knowingly violated, the court shall order all proceeds from the illegal bingo to be forfeited to the appropriate governing body as a civil penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.559. REMEDIES NOT EXCLUSIVE. The commission may suspend or revoke a license under Section 2001.355, impose an administrative penalty under Subchapter M, or both, depending on the severity of the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.560. EXAMINATION OF RECORDS; DISCLOSURE OF INFORMATION. (a) The governing body of the appropriate political subdivision or the attorney general may:

(1) examine or cause to be examined the records of an authorized organization that is or has been licensed to conduct bingo, to the extent the organization's activities relate to bingo, including the maintenance, control, and disposition of net proceeds derived from bingo or from the use of its premises for bingo; and

(2) examine a manager, officer, director, agent, member, or employee of the organization under oath regarding:

(A) the conduct of bingo under a license;

(B) the use of premises; or

(C) the disposition of proceeds derived from bingo.

(b) The governing body of the appropriate political subdivision or the attorney general may:

(1) examine or cause to be examined the records of a licensed commercial lessor if the activities of the lessor may relate to leasing premises for bingo; and

(2) examine the lessor or a manager, officer, director, agent, or employee of the lessor under oath regarding the leasing.

(c) The commission or a person authorized in writing by the commission may examine the books, papers, records, equipment, and place of business of a license holder and may investigate the character of the license holder's business to verify the accuracy of a return, statement, or report made, or, if no return is made by the license holder, to ascertain and determine the amount required to be paid.

(c-1) The commission by rule shall develop a policy for auditing license holders. The bingo division shall use audit risk analysis procedures established by the commission to:

(1) annually identify which license holders are most at risk of violating this chapter or rules adopted under this chapter; and

(2) develop a plan for auditing the identified license holders that includes:

(A) a schedule for the audits of the identified license holders;

(B) procedures to annually update the plan based on successive risk analyses; and

(C) a completion date for each audit that is not later than the fifth anniversary of the date the license holder was identified as a candidate for audit.

(c-2) The bingo division shall provide to the commission a copy of the auditing plan developed under Subsection (c-1).

(d) The commission may set and charge to the license holder a fee in an amount reasonably necessary to recover the cost of an authorized investigation or audit authorized under this chapter.

(e) If the commission determines that a person is not complying with this chapter, the commission shall notify the attorney general and the governing body of the appropriate political subdivision.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 40, eff. September 1, 2013.

Sec. 2001.561. PENAL CODE APPLICATION. Section 47.08, Penal Code, applies to a prosecution for a violation of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER M. ADMINISTRATIVE PENALTY

Sec. 2001.601. IMPOSITION OF PENALTY. The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.602. AMOUNT OF PENALTY. (a) The amount of the administrative penalty may not exceed $1,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(b) In determining the amount of the penalty, the director shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 25, eff. Sept. 1, 2003.

Sec. 2001.603. NOTICE OF VIOLATION AND PENALTY. (a) If, after investigating a possible violation and the facts surrounding that possible violation, the director determines that a violation has occurred, the director may issue a violation report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty be imposed on the person alleged to have committed the violation, and recommending the amount

of the proposed penalty. The director shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set out in Section 2001.602(b).

(b) Not later than the 21st day after the date on which the report is issued, the director shall give written notice of the report to the person alleged to have committed the violation.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the administrative penalty recommended; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 26, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 39, eff. October 1, 2009.

Sec. 2001.604. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person may:

(1) accept the recommendation of the director, including the recommended administrative penalty; or

(2) make a written request for a hearing on the determination.

(b) If the person accepts the director's determination, the director by order shall approve the determination and impose the proposed penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 27, eff. Sept. 1, 2003.

Sec. 2001.605. HEARING. (a) If the person timely requests a hearing or does not respond to the notice in the time provided by Section 2001.604(a), the director shall set a hearing and give notice of the hearing to the person.

(b) The hearings examiner shall make findings of fact and

conclusions of law and promptly issue to the commission a proposal for decision as to the occurrence of the violation and the amount of the proposed penalty, if a penalty is warranted.

(c) A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e), Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 28, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 41, eff. September 1, 2013.

Sec. 2001.606. DECISION BY DIRECTOR. (a) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the director by order:

(1) may find that a violation has occurred and may impose an administrative penalty; or

(2) may find that a violation has not occurred.

(b) The director shall give notice of the order to the person. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty imposed;

(3) a statement of the right of the person to judicial review of the order; and

(4) other information required by law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 29, eff. Sept. 1, 2003.

Sec. 2001.607. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date on which the order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the finding that a violation occurred, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for

judicial review contesting the finding that a violation occurred, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the director by certified mail.

(c) On receipt of a copy of the affidavit as provided by Subsection (b)(2), the director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 30, eff. Sept. 1, 2003.

Sec. 2001.608. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1114, Sec. 31, eff. Sept. 1, 2003.

Sec. 2001.609. DETERMINATION BY COURT. (a) If the court

sustains the finding that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.610. REMITTANCE OF PENALTY AND INTEREST. (a) If, after judicial review, the administrative penalty is reduced or not upheld by the court, the court shall, after the judgment becomes final:

(1) order the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) if the person posted a supersedeas bond, order the release of the bond:

(A) if the penalty is not upheld; or

(B) after the person pays the reduced penalty, if the amount of the penalty is reduced.

(b) The interest paid under Subsection (a)(1) is accrued at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.611. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER N. ELECTIONS

Sec. 2001.651. ORDERING ELECTION. The governing body of a county, justice precinct, or municipality:

(1) shall order and hold an election under this chapter in the appropriate political subdivision if the governing body is presented with a petition for an election that meets the requirements

of this chapter; and

(2) may order and hold an election on its own motion.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.652. PETITION. (a) A petition for an election to legalize bingo under this chapter must have a statement substantially as follows preceding the space reserved for signatures on each page: "This petition is to require that an election be held in (name of political subdivision) to legalize bingo games authorized under the Bingo Enabling Act."

(b) A petition for an election to prohibit bingo under this chapter must have a statement substantially as follows preceding the space reserved for signatures on each page: "This petition is to require that an election be held in (name of political subdivision) to prohibit bingo games authorized under the Bingo Enabling Act."

(c) A petition is valid only if it is signed by a number of registered voters of the political subdivision equal to at least 10 percent of the number of votes received in the political subdivision by all candidates for governor in the most recent general election, or the amount specified in the document governing the administration of the political subdivision, whichever is less. If boundaries of the political subdivision do not coincide with boundaries of election precincts in effect for that general election, the officer verifying the petition may use a reasonable method to estimate the number of votes for governor received in that election in the political subdivision.

(d) A signer must enter beside the signer's signature the date of signing the petition. A signature may not be counted if the signer fails to enter the date or if the date of signing is earlier than the 90th day before the date the petition is submitted to the governing body.

(e) In addition to the signature and date of signing, the petition must include each signer's:

(1) current voter registration number;

(2) printed name; and

(3) residence address, including zip code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.653. VERIFICATION OF PETITION. (a) Not later than the fifth day after the date the governing body receives a petition for an election, the governing body shall submit the petition for verification to the county clerk if the petition is applicable to a county or justice precinct or to the municipal secretary if the petition is applicable to a municipality.

(b) The officer to whom the petition is submitted for verification shall determine whether the petition is signed by the required number of registered voters of the political subdivision in which the election is requested.

(c) Not later than the 30th day after the date the petition is submitted to the officer for verification, the officer shall certify in writing to the governing body whether the petition is valid or invalid. If the officer determines that the petition is invalid, the officer shall state all reasons for that determination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.654. DATE OF ELECTION. (a) If the officer responsible for certifying a petition determines that a petition is valid, the governing body shall:

(1) order that an election be held in the appropriate political subdivision on a date not later than the 60th day after the date of the officer's certification; and

(2) notify the commission by certified mail, return receipt requested, that an election has been ordered.

(b) If a uniform election day as provided by Section 41.001(a), Election Code, does not occur within the 60-day period, the governing body shall order the election to be held on the next uniform election date provided by that section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.655. BALLOT PROPOSITION. (a) In an election to legalize bingo under this chapter in a political subdivision, the ballot shall be prepared to provide for voting for or against the proposition: "Legalizing bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

(b) In an election to prohibit bingo under this chapter in a political subdivision, the ballot shall be prepared to provide for voting for or against the proposition: "Prohibiting bingo games for charitable purposes as authorized by the Bingo Enabling Act in (name of political subdivision)."

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.656. EFFECT OF ELECTION. (a) If a majority of the qualified voters voting on the question in a legalization election vote in favor of legalization, bingo is legalized throughout the political subdivision beginning on the 14th day after the date the result of the election is officially declared, except as otherwise provided as to a part of the political subdivision for which Section 2001.657 requires a contrary status.

(b) If a majority of the qualified voters voting on the question in a prohibitory election vote in favor of prohibition, bingo is prohibited throughout the political subdivision beginning on the 14th day after the date the result of the election is officially declared, except as otherwise provided as to a part of the political subdivision for which Section 2001.657 requires a contrary status.

(c) If a majority of the qualified voters voting on the question in a legalization election do not favor legalization, or if a majority of the qualified voters voting on the question in a prohibitory election do not favor prohibition, the election has no effect on the status under this chapter of the political subdivision in which the election is held.

(d) The governing body of a political subdivision in which a bingo election has been held shall not later than the 14th day after the date of the election give written notification to the commission of the results of the election. If as a result of the election bingo is legalized in the political subdivision, the governing body shall furnish the commission with a map prepared by the governing body indicating the boundaries of the political subdivision in which bingo may be conducted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 636 (H.B. 1474), Sec. 40, eff. October 1, 2009.

Sec. 2001.657. DETERMINATION OF LOCAL OPTION STATUS. (a) In determining whether bingo under this chapter is permitted in an area, the rules provided by this section apply.

(b) Bingo is permitted in an area only as the result of a successful election held under this chapter.

(c) To the extent that the results of local option elections held by different types of political subdivisions conflict with regard to the same territory, the relative dates of the elections are of no consequence and the following rules apply:

(1) the status of an area as determined by a municipal election prevails over a contrary status as determined by a justice precinct or county election; and

(2) the status of an area as determined by a justice precinct election prevails over the contrary status of the area as determined by a county election.

(d) If two or more local option elections held at the justice precinct level apply to the same territory, the most recent election prevails.

(e) If a municipality has established a status by a municipal election, territory annexed to the municipality after that status is established assumes the status under this chapter of the rest of the municipality. Territory detached from the municipality assumes the status the territory would have had if it had never been a part of the municipality. If the detached territory is added to another municipality that has established a status by a municipal election, the territory assumes the status of the municipality to which it is added.

(f) The addition of territory to or detachment of territory from a justice precinct does not affect the status under this chapter of the added or detached territory, except that in a county with a population of more than 3.3 million the added or detached territory assumes the status of the justice precinct of which it becomes a part. The abolition of a justice precinct does not affect the status under this chapter of the territory formerly within the justice precinct.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 115, eff. Sept. 1, 2001.

CHAPTER 2002. CHARITABLE RAFFLES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2002.001. SHORT TITLE. This chapter may be cited as the Charitable Raffle Enabling Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2002.002. DEFINITIONS. In this chapter:

(1) "Charitable purposes" means:

(A) benefitting needy or deserving persons in this state, indefinite in number, by:

(i) enhancing their opportunities for religious or educational advancement;

(ii) relieving them from disease, suffering, or distress;

(iii) contributing to their physical well-being;

(iv) assisting them in establishing themselves in life as worthy and useful citizens; or

(v) increasing their comprehension of and devotion to the principles on which this nation was founded and enhancing their loyalty to their government;

(B) initiating, performing, or fostering worthy public works in this state; or

(C) enabling or furthering the erection or maintenance of public structures in this state.

(1-a) "Money" means coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency.

(2) "Qualified organization" means a qualified religious society, qualified volunteer fire department, qualified volunteer emergency medical service, or qualified nonprofit organization.

(3) "Qualified religious society" means a church, synagogue, or other organization or association organized primarily for religious purposes that:

(A) has been in existence in this state for at least 10 years; and

(B) does not distribute any of its income to its

members, officers, or governing body, other than as reasonable compensation for services or for reimbursement of expenses.

(4) "Qualified volunteer emergency medical service" means an association that:

(A) is organized primarily to provide and actively provides emergency medical, rescue, or ambulance services;

(B) does not pay its members compensation other than nominal compensation; and

(C) does not distribute any of its income to its members, officers, or governing body other than for reimbursement of expenses.

(5) "Qualified volunteer fire department" means an association that:

(A) operates fire-fighting equipment;

(B) is organized primarily to provide and actively provides fire-fighting services;

(C) does not pay its members compensation other than nominal compensation; and

(D) does not distribute any of its income to its members, officers, or governing body, other than for reimbursement of expenses.

(6) "Raffle" means the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize.

(7) "Reverse raffle" means a raffle in which the last ticket or tickets drawn are considered the winning tickets.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 1, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1006 (H.B. 659), Sec. 1, eff. September 1, 2005.

Sec. 2002.003. QUALIFIED NONPROFIT ORGANIZATION. (a) An organization incorporated or holding a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is a qualified nonprofit organization

for the purposes of this chapter if the organization:

(1) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) has existed for the three preceding years;

(3) does not devote a substantial part of its activities to attempting to influence legislation and does not participate or intervene in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions;

(4) qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986; and

(5) does not have or recognize any local chapter, affiliate, unit, or subsidiary organization in this state.

(b) An organization that is formally recognized as and that operates as a local chapter, affiliate, unit, or subsidiary organization of a parent organization incorporated or holding a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is a qualified nonprofit organization if:

(1) neither the local organization nor the parent organization distributes any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) the local organization has existed for the three preceding years and during those years has been formally recognized as a local chapter, affiliate, unit, or subsidiary organization of the parent organization;

(3) neither the local organization nor the parent organization:

(A) devotes a substantial part of its activities to attempting to influence legislation; or

(B) participates or intervenes in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions; and

(4) either the local organization or the parent organization qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c),

Internal Revenue Code of 1986.

(b-1) An organization that is formally recognized as and that operates as a local chapter, affiliate, unit, or subordinate lodge of a grand lodge or other institution or order incorporated under Title 32, Revised Statutes, as authorized by Article 1399, Revised Statutes, is a qualified nonprofit organization if:

(1) neither the local organization nor the incorporated grand lodge or other institution or order distributes any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) the local organization has existed for the three preceding years and during those years:

(A) has had a governing body or officers elected by a vote of its members or by a vote of delegates elected by its members; or

(B) has been formally recognized as a local chapter, affiliate, unit, or subordinate lodge of the grand lodge or other institution or order;

(3) neither the local organization nor the incorporated grand lodge or other institution or order:

(A) devotes a substantial part of its activities to attempting to influence legislation; or

(B) participates or intervenes in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions; and

(4) either the local organization or the incorporated grand lodge or other institution or order qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986, or other applicable provision.

(c) An unincorporated organization, association, or society is a qualified nonprofit organization if it:

(1) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(2) for the three preceding years has been affiliated with a state or national organization organized to perform the same purposes as the unincorporated organization, association, or society;

(3) does not devote a substantial part of its activities to

attempting to influence legislation and does not participate or intervene in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions; and

(4) qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service under Section 501(c), Internal Revenue Code of 1986.

(d) An organization, association, or society is considered to devote a substantial part of its activities to attempting to influence legislation for purposes of this section if, in any 12-month period in the preceding three years, more than 10 percent of the organization's expenditures were made to influence legislation.

(e) A nonprofit wildlife conservation association and its local chapters, affiliates, wildlife cooperatives, or units are qualified nonprofit organizations under this chapter if the parent association meets the eligibility criteria under this section other than the requirement prescribed by Subsection (a)(3), (b)(3), (b-1)(3), or (c)(3), as applicable. An association or a local chapter, affiliate, wildlife cooperative, or unit that is eligible under this subsection may not use any proceeds from a raffle conducted under this chapter to attempt to influence legislation or participate or intervene in a political campaign on behalf of a candidate for public office in any manner, including by publishing or distributing a statement or making a campaign contribution. For purposes of this section, a nonprofit wildlife conservation association includes an association that supports wildlife, fish, or fowl.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 34 (S.B. 766), Sec. 1, eff. May 9, 2005.

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 2, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 936 (H.B. 3113), Sec. 1, eff. June 19, 2009.

Acts 2021, 87th Leg., R.S., Ch. 706 (H.B. 2757), Sec. 1, eff. June 15, 2021.

Sec. 2002.004. IMPUTED ACTIONS OF ORGANIZATION. For purposes

of this chapter, an organization performs an act if a member, officer, or agent of the organization performs the act with the consent or authorization of the organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2002.005. APPLICABILITY. This chapter does not apply to a savings promotion raffle authorized under Chapter 280, Finance Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 4, eff. November 7, 2017.

SUBCHAPTER B. OPERATION OF RAFFLE

Sec. 2002.051. RAFFLE AUTHORIZED. A qualified organization may conduct a raffle subject to the conditions imposed by this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2002.052. TIME AND FREQUENCY RESTRICTIONS. (a) In this section, "calendar year" means a period beginning January 1 and ending on the succeeding December 31.

(b) A raffle is not authorized by this chapter if the organization awards prizes in the raffle in a calendar year in which the organization has previously awarded prizes in four other raffles. For purposes of this subsection, a raffle conducted in a preceding calendar year for which a prize or prizes are awarded on a later date set in accordance with Subsection (e) that occurs in a subsequent calendar year is not included in the number of raffles for which prizes are awarded by the organization in that subsequent calendar year.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 706 (H.B. 2757), Sec. 4, eff. June 15, 2021.

(d) Before selling or offering to sell tickets for a raffle, a qualified organization shall set a date on which the organization will award the prize or prizes in a raffle. The organization must award the prize or prizes on that date unless the organization becomes unable to award the prize or prizes on that date.

(e) A qualified organization that is unable to award a prize or prizes on the date set under Subsection (d) may set another date not later than 30 days from the date originally set on which the organization will award the prize or prizes.

(f) If the prize or prizes are not awarded within the 30 days as required by Subsection (e), the organization must refund or offer to refund the amount paid by each person who purchased a ticket for the raffle.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 597, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 706 (H.B. 2757), Sec. 2, eff. June 15, 2021.

Acts 2021, 87th Leg., R.S., Ch. 706 (H.B. 2757), Sec. 4, eff. June 15, 2021.

Sec. 2002.053. USE OF RAFFLE PROCEEDS. All proceeds from the sale of tickets for a raffle must be spent for the charitable purposes of the qualified organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 3, eff. June 18, 2005.

Sec. 2002.054. RESTRICTIONS ON RAFFLE PROMOTION AND TICKET SALES. (a) The organization may not:

(1) directly or indirectly, by the use of paid advertising, promote a raffle through a medium of mass communication, including television, radio, or newspaper;

(2) promote or advertise a raffle statewide, other than on the organization's Internet website or through a publication or solicitation, including a newsletter, social media, or electronic mail, provided only to previously identified supporters of the organization; or

(3) sell or offer to sell tickets for a raffle statewide.

(b) Except as provided by this subsection, the organization may not compensate a person directly or indirectly for organizing or

conducting a raffle or for selling or offering to sell tickets to a raffle. A member of the organization who is employed by the organization may organize and conduct a raffle, but the member's work organizing or conducting a raffle may not be more than a de minimis portion of the member's employment with the organization.

(c) Except as provided by Section 2002.0541, the organization may not permit a person who is not authorized by the organization to sell or offer to sell raffle tickets.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 4, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1006 (H.B. 659), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 12.003, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 124 (H.B. 457), Sec. 1, eff. May 27, 2011.

Sec. 2002.0541. REVERSE RAFFLE. (a) A qualified organization may conduct a reverse raffle as provided by this section.

(b) Notwithstanding Section 2002.056(a), a refund of the purchase price of a ticket may be awarded as a raffle prize in a reverse raffle.

(c) Notwithstanding Section 2002.055(3), after the drawing of tickets in a reverse raffle has begun, the qualified organization conducting the raffle may auction off additional tickets to persons who are present at the drawing for a price other than the price printed on the ticket.

(d) After the drawing of tickets in a reverse raffle has begun, the qualified organization may permit a ticket holder present at the drawing to resell the ticket to another person present at the drawing for an amount greater than the original purchase price of the ticket. The sale must be made through a designated representative of the organization, and not less than 10 percent of the sale proceeds must be retained by the organization.

(e) Notwithstanding Section 2002.055(3), after the drawing of tickets in a reverse raffle has begun, the qualified organization may

permit the holder of a previously drawn ticket:

(1) to purchase additional chances for the ticket to be selected to win a prize; or

(2) to purchase additional tickets for the raffle.

(f) Only the portion of the proceeds from the resale of a ticket under Subsection (d) retained by the organization are subject to Section 2002.053. All proceeds from the sale of additional chances for a ticket under Subsection (e) are considered to be proceeds from the sale of the ticket for purposes of Section 2002.053.

Added by Acts 2005, 79th Leg., Ch. 1006 (H.B. 659), Sec. 3, eff. September 1, 2005.

Sec. 2002.055. TICKET DISCLOSURES. The following information must be printed on each raffle ticket sold or offered for sale:

(1) the name of the organization conducting the raffle;

(2) the address of the organization or of a named officer of the organization;

(3) the ticket price;

(4) a general description of each prize having a value of more than $10 to be awarded in the raffle; and

(5) the date on which the raffle prize or prizes will be awarded.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 597, Sec. 2, eff. Sept. 1, 2003.

Sec. 2002.056. RESTRICTIONS ON PRIZES. (a) A prize offered or awarded at a raffle may not be money.

(b) Except as provided by Subsections (b-1) and (c), the value of a prize offered or awarded at a raffle that is purchased by the organization or for which the organization provides any consideration may not exceed $75,000.

(b-1) The value of a residential dwelling offered or awarded as a prize at a raffle that is purchased by the organization or for which the organization provides any consideration may not exceed $750,000.

(c) A raffle prize may consist of one or more tickets in the

state lottery authorized by Chapter 466, Government Code, with a face value of $75,000 or less, without regard to whether a prize in the lottery game to which the ticket or tickets relate exceeds $75,000.

(d) A raffle is not authorized by this chapter unless the organization:

(1) has the prize to be offered in the raffle in its possession or ownership; or

(2) posts bond with the county clerk of the county in which the raffle is to be held for the full amount of the money value of the prize.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 929 (H.B. 541), Sec. 5, eff. June 18, 2005.

Acts 2021, 87th Leg., R.S., Ch. 706 (H.B. 2757), Sec. 3, eff. June 15, 2021.

Acts 2023, 88th Leg., R.S., Ch. 338 (S.B. 500), Sec. 1, eff. September 1, 2023.

Sec. 2002.057. TICKET SALE ON UNIVERSITY PROPERTY. An institution of higher education, as defined by Section 61.003, Education Code, shall allow a qualified organization that is a student organization recognized by the institution to sell raffle tickets at any facility of the institution, subject to reasonable restrictions on the time, place, and manner of the sale.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2002.058. INJUNCTIVE ACTION AGAINST UNAUTHORIZED RAFFLE. (a) A county attorney, district attorney, criminal district attorney, or the attorney general may bring an action in county or district court for a permanent or temporary injunction or a temporary restraining order prohibiting conduct involving a raffle or similar procedure that:

(1) violates or threatens to violate state law relating to gambling; and

(2) is not authorized by this chapter or other law.

(b) Venue for an action under this section is in the county in

which the conduct occurs or in which a defendant in the action resides.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2003. INSPECTION AND REGULATION OF GAMBLING VESSELS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2003.001. DEFINITION. In this chapter, "department" means the Department of Public Safety of the State of Texas.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2003.002. APPLICATION OF CHAPTER. This chapter applies only to a vessel on which activity described by Section 47.02(a), Penal Code, is regularly conducted, whether or not the activity occurs in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. STATE INSPECTION AND REGULATION

Sec. 2003.051. CRIMINAL HISTORY RECORD INFORMATION. (a) The department may request criminal history record information from the Federal Bureau of Investigation or any other law enforcement agency relating to a person who owns, has a financial interest in, operates, or is employed by a person who operates a vessel in this state, including the territorial waters of this state, whether or not the operation of the vessel is in violation of law.

(b) The department may maintain records of information obtained under Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2003.052. INSPECTION. The department may inspect a vessel located in this state, including the territorial waters of this state, to ensure that the vessel is operated in compliance with state or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. MUNICIPAL INSPECTION AND REGULATION

Sec. 2003.101. REGULATION. (a) A municipality, by ordinance, may impose regulations for the protection of the health and safety of the passengers or crew of a vessel that:

(1) regularly boards passengers in the municipality; or

(2) is regularly loaded, fueled, repaired, stored, or docked in the municipality.

(b) A municipal ordinance may not prohibit an activity relating to a vessel that is expressly permitted under Chapter 47, Penal Code, or other state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2003.102. INSPECTION. A municipality may inspect a vessel docked in the municipality to determine if the vessel is operated in compliance with Chapter 47, Penal Code, a municipal ordinance, or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2004. PROFESSIONAL SPORTS TEAM CHARITABLE FOUNDATION RAFFLES

Sec. 2004.001. SHORT TITLE. This chapter may be cited as the Professional Sports Team Charitable Foundation Raffle Enabling Act.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Sec. 2004.002. DEFINITIONS. In this chapter:

(1) "Charitable purposes" has the meaning assigned by Section 2002.002.

(1-a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 418 (H.B. 2168), Sec. 1, eff. June 8, 2021.

(2) "Professional sports team" means:

(A) a team organized in this state that is a member of

Major League Baseball, the National Basketball Association, the National Hockey League, the National Football League, Major League Soccer, the American Hockey League, the East Coast Hockey League, the American Association of Independent Professional Baseball, the Atlantic League of Professional Baseball, Minor League Baseball, the National Basketball Association Development League, the National Women's Soccer League, the Major Arena Soccer League, the United Soccer League, or the Women's National Basketball Association;

(B) a person hosting a motorsports racing team event sanctioned by the National Association for Stock Car Auto Racing (NASCAR), INDYCar, or another nationally recognized motorsports racing association at a venue in this state with a permanent seating capacity of not less than 75,000;

(C) an organization hosting a Professional Golf Association event; or

(D) an organization sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association.

(3) "Professional sports team charitable foundation" means an organization that:

(A) holds a certificate of formation under the Business Organizations Code or is otherwise incorporated under the laws of this state;

(B) is associated with a professional sports team; and

(C) is formed for charitable purposes.

(4) "Raffle" has the meaning assigned by Section 2002.002.

(5) "Rodeo event" means a rodeo conducted at a rodeo venue.

(6) "Rodeo venue" means a facility owned or operated by and operated as the home venue of an organization sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association at which rodeos are conducted by that organization.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 895 (H.B. 3125), Sec. 1, eff. December 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 418 (H.B. 2168), Sec. 1, eff. June 8, 2021.

Acts 2021, 87th Leg., R.S., Ch. 483 (H.B. 3012), Sec. 1, eff.

December 1, 2021.

Sec. 2004.003. QUALIFICATIONS TO CONDUCT RAFFLE. A professional sports team charitable foundation is qualified to conduct charitable raffles under this chapter if the foundation:

(1) is associated with a professional sports team with a home venue or rodeo venue located in this state;

(2) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(3) has existed for at least the three years preceding the conduct of a raffle under this chapter;

(4) does not devote a substantial part of its activities to attempting to influence legislation and does not participate or intervene in any political campaign on behalf of any candidate for public office in any manner, including by publishing or distributing statements or making campaign contributions;

(5) qualifies for and has obtained an exemption from federal income tax from the Internal Revenue Service as a charitable organization described in Section 501(c)(3), Internal Revenue Code of 1986; and

(6) does not have or recognize any local chapter, affiliate, unit, or subsidiary organization in this state.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 483 (H.B. 3012), Sec. 2, eff. December 1, 2021.

Sec. 2004.004. RAFFLE AUTHORIZED; TICKET SALES. (a) A professional sports team charitable foundation that meets the qualifications under Section 2004.003 may conduct a charitable raffle during each preseason, regular season, and postseason game hosted at the home venue or each rodeo event at the rodeo venue of the professional sports team associated with the foundation to provide revenue for the foundation's charitable purposes.

(a-1) Raffle tickets for a charitable raffle conducted under Subsection (a) may be sold:

(1) at the home venue or rodeo venue of the professional

sports team associated with the foundation conducting the raffle; or

(2) through digital interactive media, including an Internet website of or mobile application provided by the professional sports team associated with the foundation conducting the raffle.

(a-2) Raffle tickets for a charitable raffle conducted under Subsection (a) may be sold only during the period beginning when the venue opens to attendees of the game or rodeo venue opens to attendees of the rodeo event and ending when the draw to determine the prize winners for the raffle concludes.

(a-3) Raffle tickets sold under Subsection (a-1)(2) may only be sold to individuals who at the time of the sale are physically located inside the home venue or rodeo venue of the professional sports team associated with the foundation conducting the raffle.

(a-4) Subsection (a-1)(2) does not authorize the use of an Internet website or mobile application to provide a graphic or dynamic animation that corresponds to the outcome of a winning or losing raffle ticket.

(b) A professional sports team charitable foundation authorized to conduct a raffle under this section may award to a raffle winner selected by random draw a cash prize in an amount not to exceed 50 percent of the gross proceeds collected from the sale of raffle tickets.

(c) Only employees or volunteers of the professional sports team charitable foundation or the professional sports team associated with the foundation may sell raffle tickets for a charitable raffle conducted under this chapter.

(d) Only persons 18 years of age or older may purchase raffle tickets in a charitable raffle conducted under this chapter. A professional sports team charitable foundation that conducts a charitable raffle under Subsection (a) shall contract with a third-party vendor to ensure only persons 18 years of age or older purchase tickets for the raffle.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 483 (H.B. 3012), Sec. 3, eff. December 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 771 (H.B. 1759), Sec. 1, eff.

September 1, 2023.

Sec. 2004.005. TICKET DISCLOSURES. The following information must be printed on each raffle ticket sold or offered for sale under this chapter:

(1) the name of the raffle for which the ticket is offered for sale and the sales station at which the ticket was purchased;

(2) the date on which the random draw to determine the winner of the raffle will occur and the manner in which the winning ticket for the raffle will be announced;

(3) the procedure and location for claiming a prize;

(4) the time allowed for a prize winner to claim a prize; and

(5) the logo of the professional sports team charitable foundation, the logo of the professional sports team associated with the foundation, or both.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Sec. 2004.006. USE OF RAFFLE PROCEEDS. All proceeds from the sale of raffle tickets less the amounts deducted for reasonable operating expenses and cash prizes must be used for the charitable purposes of the professional sports team charitable foundation.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Sec. 2004.007. REASONABLE OPERATING EXPENSES. (a) For each raffle conducted under this chapter, a professional sports team charitable foundation may deduct not more than 10 percent of the gross proceeds collected from the sale of tickets for the raffle to pay the reasonable operating expenses of conducting the raffle.

(b) For purposes of this chapter, reasonable operating expenses include:

(1) promotion, advertisements, charitable foundation fund-raising events, equipment, and administrative expenses; and

(2) purchase, lease, or licensing fees for the equipment,

hardware, and software necessary to:

(A) sell raffle tickets to raffle participants;

(B) conduct random drawings to select prize winners; and

(C) continuously calculate the number of ticket sales, amount of money collected, amount of cash prize to be awarded, amount of money raised for charitable purposes, and amount of gross ticket sales that may be deducted for reasonable operating expenses.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Sec. 2004.008. COMMUNICATION OF WINNING NUMBER. The winning number of a charitable raffle conducted under this chapter may not be communicated to raffle participants by means of interactive and instantaneous technology.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Sec. 2004.009. CRIMINAL PENALTIES. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 418 (H.B. 2168), Sec. 1, eff. June 8, 2021.

(b) A person commits an offense if the person sells or offers to sell a raffle ticket for a charitable raffle conducted under this chapter to an individual that the person knows to be younger than 18 years of age.

(c) A person commits an offense if the person purchases a raffle ticket for a charitable raffle conducted under this chapter with the proceeds of a check issued as a payment under the financial assistance program administered under Chapter 31, Human Resources Code.

(d) A person commits an offense if the person misrepresents the person's age or displays fraudulent evidence that the person is 18 years of age or older in order to purchase a raffle ticket for a charitable raffle conducted under this chapter.

(e) An offense under this section is a Class C misdemeanor.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 895 (H.B. 3125), Sec. 2, eff. December 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 418 (H.B. 2168), Sec. 1, eff. June 8, 2021.

Sec. 2004.010. INJUNCTIVE ACTION AGAINST UNAUTHORIZED RAFFLE. (a) A county attorney, district attorney, criminal district attorney, or the attorney general may bring an action in county or district court for a permanent or temporary injunction or a temporary restraining order prohibiting conduct involving a raffle or similar procedure that:

(1) violates or threatens to violate state law relating to gambling; and

(2) is not authorized by this chapter, Chapter 2002, or other law.

(b) Venue for an action under this section is in the county in which the conduct occurs or in which a defendant in the action resides.

Added by Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 1, eff. January 1, 2016.

SUBTITLE A-1. TEXAS RACING ACT

CHAPTER 2021. GENERAL PROVISIONS

Sec. 2021.001. SHORT TITLE. This subtitle may be cited as the Texas Racing Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2021.002. PURPOSE. The purpose of this subtitle is to provide for the strict regulation of horse racing and greyhound racing and the control of pari-mutuel wagering in connection with that racing.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2021.003. GENERAL DEFINITIONS. In this subtitle:

(1) "Accredited Texas-bred horse" means a Texas-bred horse that meets the accreditation requirements of the state horse breed registry for that breed of horse.

(2) "Active license" means a racetrack license designated by the commission as active.

(3) "Appaloosa horse" means a horse that is registered by the Appaloosa Horse Club.

(4) "Applicant" means a person with a legal, equitable, or beneficial interest in a license application.

(5) "Arabian horse" means a horse that is registered by the Arabian Horse Association or by the Canadian Arabian Horse Registry.

(6) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents, except in a minus pool, in which the breakage must be in multiples of five cents.

(7) "Child" means an individual younger than 16 years of age.

(8) "Commission" means the Texas Racing Commission.

(9) "Concessionaire" means a person licensed by the commission to sell refreshments or souvenirs at a racetrack.

(10) "Contraband" means:

(A) an item the possession of which is unlawful under this subtitle, a commission rule, or other law;

(B) an item that might reasonably have the effect of unnaturally depressing, stimulating, or exciting an animal during a race in a manner contrary to this subtitle or a commission rule, including a prohibited device or prohibited substance; or

(C) a document, including a credential or forged ticket, possessed or used by an individual in violation of this subtitle or a commission rule.

(11) "Credential" means any document indicating authority or permission under this subtitle, including a license, certificate, and identification card.

(12) "Cross-species simulcast signal" means a simulcast signal of a horse race at a greyhound racetrack or a simulcast signal of a greyhound race at a horse racetrack.

(13) "Enclosure" means all areas of a racetrack

association's grounds, including the parking area, to which admission is ordinarily obtained only on payment of an admission fee or presentation of an official credential.

(14) "Executive director" means the executive director of the commission.

(15) "Greyhound" means a purebred greyhound dog registered by the National Greyhound Association.

(16) "Greyhound racing" means any race in which two or more greyhounds engage in a contest of speed or endurance or pursue a mechanical lure.

(17) "Greyhound racing day" means a day on which a racetrack association conducts greyhound racing. "One racing day" means a period beginning at noon and ending at 2 a.m. the next calendar day, other than a day on which a matinee performance is conducted.

(18) "Horse race meeting" means the conducting of horse races on a day or during a period of consecutive or nonconsecutive days.

(19) "Horse racing day" means the 24-hour period ending at 12 midnight.

(20) "Horsemen's organization" means an organization recognized by the commission that:

(A) represents horse owners and trainers in negotiating and contracting with racetrack associations on subjects relating to racing; and

(B) represents and advocates the interests of horse owners and trainers before administrative, legislative, and judicial forums.

(21) "Inactive license" means a racetrack license designated by the commission as inactive.

(22) "Judge" means a racing official with general authority and supervision over:

(A) the conduct of a greyhound race meeting; and

(B) all license holders at a racetrack during a greyhound race meeting.

(23) "Live pari-mutuel pool" means the total amount of money wagered by patrons on the result of a particular live race or combination of live races within the enclosure of the racetrack association where the race is being run.

(24) "Maiden" means a horse that has never won a race at a

race meeting authorized by the commission or by another racing jurisdiction.

(25) "Matinee performance" means any performance starting between 10 a.m. and 5 p.m. on a day other than Sunday.

(26) "Minor" means an individual younger than 21 years of age.

(27) "Multiple wagering" means wagering on two or more animals in one race or on one or more animals in more than one race. "Multiple two wagering" means wagering on two animals in one or more races. "Multiple three wagering" means wagering on three or more animals in one or more races.

(28) "National historic district" means a district included in or eligible for inclusion in the National Register of Historic Places under 54 U.S.C. Section 302101 et seq.

(29) "Nonprofit corporation" means a nonprofit corporation governed by Chapter 22, Business Organizations Code, that:

(A) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(B) has a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; and

(C) has obtained an exemption under Section 501 of the Internal Revenue Code of 1986.

(30) "Outstanding ticket" means a pari-mutuel ticket not presented for payment before the end of the horse racing day or greyhound racing day for which the ticket was purchased.

(31) "Paint horse" means a horse that is registered by the American Paint Horse Association.

(32) "Pari-mutuel pool" means the total amount of money wagered by patrons on the result of a particular race or combination of races, divided into separate mutuel pools for win, place, show, or combinations.

(33) "Pari-mutuel voucher" means a bearer instrument, issued by a pari-mutuel wagering machine, that represents money owned by a wagering patron and held by a racetrack association, including winnings from a pari-mutuel wager.

(34) "Pari-mutuel wagering" means the form of wagering on the outcome of horse racing or greyhound racing in which persons who wager purchase tickets of various denominations on an animal or animals and all wagers for each race are pooled and held by the

racetrack association for distribution of the total amount, less the deductions authorized by this subtitle, to holders of tickets on the winning animals.

(35) "Performance" means the consecutive running of a specified number of greyhound races as determined by the commission.

(36) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property.

(37) "Prohibited device" means:

(A) a spur or an electrical or other device prohibited by a commission rule regulating the unlawful influence of a race; or

(B) a device specifically designed, made, or adapted to influence or affect the outcome of a race in a manner contrary to this subtitle or a commission rule.

(38) "Prohibited substance" means a drug, chemical, or other substance that:

(A) in use or in intended use, is reasonably capable of influencing or affecting the outcome of a race in a manner contrary to this subtitle or a commission rule; and

(B) is prohibited by a commission rule regulating the unlawful influence of a race.

(39) "Quarter horse" means a horse that is registered by the American Quarter Horse Association.

(40) "Race" includes a live audio and visual signal of a race.

(41) "Racetrack" means a facility licensed under this subtitle for the conduct of pari-mutuel wagering on horse racing or greyhound racing.

(42) "Racetrack association" means a person licensed under this subtitle to conduct a horse race meeting or a greyhound race meeting with pari-mutuel wagering.

(43) "Receiving location" means a racetrack association in this state that has been allocated live and simulcast race dates or a facility not located in this state that is authorized to conduct wagering under the law of the jurisdiction in which it is located.

(44) "Regular wagering" means wagering on a single horse or greyhound in a single race. The term includes wagering on the win pool, the place pool, or the show pool.

(45) "Sending track" means any licensed track for horse or greyhound racing in this state or another state from which a race is transmitted.

(46) "Simulcast" means the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.

(47) "Simulcast pari-mutuel pool" means the total amount of money wagered by patrons at a racetrack in this state on the result of a particular simulcast race or combination of simulcast races.

(48) "State horse breed registry" means a designated association administering accredited Texas-bred horse requirements for a specific breed of horses.

(49) "Steward" means a racing official with general authority and supervision over:

(A) the conduct of a horse race meeting; and

(B) all license holders at a racetrack during a horse race meeting.

(50) "Texas-bred horse" means a horse qualified under commission rules that is:

(A) sired by a stallion standing in Texas at the time of conception and foaled by a mare in Texas;

(B) foaled by a mare bred outside Texas and brought into Texas to foal at any time in the mare's lifetime if the mare is bred back to a stallion standing in Texas; or

(C) a Thoroughbred or Arabian horse foaled in Texas by an accredited Texas-bred mare if the mare was bred outside Texas and returned to Texas on or before August 15 of the calendar year of conception.

(51) "Thoroughbred horse" means a horse that is registered by the Jockey Club.

(52) "Thoroughbred racing" means the form of horse racing in which Thoroughbred horses mounted by jockeys engage in a race.

(53) "Touting" means an offense described by Section 2033.013 or a similar offense under the laws of another state.

(54) "Trainer" means a person who is licensed by the commission to train horses or greyhounds.

(55) "Veterinarian" means a person licensed under Chapter 801.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2021.004. DEFINITIONS USED IN ADMINISTERING SUBTITLE. For the purpose of administering this subtitle:

(1) "Authorized agent" means a person appointed by an owner of a horse to represent the owner. The term is limited to a person who is appointed by a written instrument that the commission acknowledges and approves.

(2) "Clerk of scales" means a racetrack official who is responsible for weighing a jockey before and after a race.

(3) "Handicapper" means a person who predicts the winner of a horse race.

(4) "Horseshoe inspector" means a racetrack official who inspects the shoes of the horses entered in a race.

(5) "Jockey" or "apprentice jockey" means a professional rider licensed by the commission to ride in horse races.

(6) "Jockey room custodian" means a person who maintains the premises of a room in which jockeys prepare for a race.

(7) "Official starter" means a racetrack official who is in charge of the start of a race.

(8) "Paddock judge" means a racetrack official who supervises animals entered in a race while the animals are assembled before the beginning of a race in an enclosure on the grounds of a racetrack.

(9) "Patrol judge" means a racetrack official who is stationed at a set point along the racetrack to monitor the running of a race.

(10) "Quarter horse racing" means the form of horse racing in which quarter horses mounted by jockeys engage in a race.

(11) "Stable foreman" means the person in charge of the building in which horses are lodged and fed.

(12) "Timer" means a racetrack official who times the running of a race.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2021.005. PRECEDENCE OF SUIT UNDER TITLE. A court shall accelerate the disposition of an action brought under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2021.006. RELEASE OF CIVIL LIABILITY. A commission member, a commission employee, a steward or judge, a racetrack association, a horsemen's organization, or any other person regulated under this subtitle is not liable for a cause of action that arises out of that person's performance or exercise of discretion in the implementation or enforcement of this subtitle or a rule adopted under this subtitle if the person has acted in good faith.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2021.007. FEE OR PAYMENT IN LIEU OF OTHER STATE TAXES AND FEES. (a) A fee or payment collected by this state under this subtitle is in lieu of any other fee, payment, or tax imposed by this state.

(b) This section does not preclude the application of:

(1) the sales tax or an increase in the sales tax to the sale or purchase of a taxable item by a person licensed under this subtitle; or

(2) the franchise tax to a person licensed under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2021.008. SUNSET PROVISION. (a) The commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, and except as provided by Subsections (b) and (c), the commission is abolished and this subtitle expires September 1, 2029.

(a-1) As part of the review under Subsection (a), the Sunset Advisory Commission shall review:

(1) the impact on the commission of authorizing the executive director to apply for and receive grants to implement or enforce this subtitle;

(2) the effect of increasing the amount of unappropriated money remaining in the Texas Racing Commission fund at the close of

each state fiscal biennium that is transferred to the general revenue fund;

(3) the effect of complying with Chapter 53 in the administration of the commission's licensing program;

(4) the effect of requiring reimbursement of general revenue appropriated to the commission for the administration and enforcement of this subtitle that exceeds the cumulative amount deposited in the Texas Racing Commission fund; and

(5) the commission's authority to issue a temporary license to an applicant whose application appears to comply with the requirements of law.

(b) If, at the time the commission would be abolished under Subsection (a), a racetrack association has outstanding long-term liabilities:

(1) the racetrack association may continue to operate for a period not to exceed one year after those liabilities are satisfied; and

(2) the commission and this subtitle are continued in effect for the purpose of regulating that racetrack association under this subtitle.

(c) If the commission and this subtitle are continued in effect under Subsection (b), the commission is abolished and this subtitle expires on the first day of the state fiscal year following the state fiscal year in which the commission certifies to the secretary of state that no racetrack associations are operating under the terms of Subsection (b).

(d) A racetrack association that continues to operate under Subsection (b) may not incur any new liability without commission approval. At the beginning of that period, the commission shall:

(1) review the outstanding liabilities of the racetrack association; and

(2) set a specific date by which the racetrack association must retire its outstanding liabilities.

(e) Notwithstanding any contrary contract provision, a racetrack association may prepay any debt incurred by the racetrack association in conducting racing under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 596 (S.B. 619), Sec. 1.04, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 850 (S.B. 713), Sec. 3.04(a), eff. June 16, 2021.

Acts 2023, 88th Leg., R.S., Ch. 1120 (H.B. 1620), Sec. 5, eff. September 1, 2023.

Sec. 2021.009. PROHIBITED USE OF STATE APPROPRIATED FUNDS. This subtitle prohibits the use of state appropriated funds for capital improvements to racetracks or for interest payments on such facilities except for racetracks that were publicly owned on September 1, 1986.

Added by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 18.003(a), eff. September 1, 2019.

CHAPTER 2022. TEXAS RACING COMMISSION

SUBCHAPTER A. COMPOSITION AND OPERATION

Sec. 2022.001. COMMISSION MEMBERSHIP. (a) The commission consists of:

(1) seven members appointed by the governor with the advice and consent of the senate; and

(2) two ex officio members who have the right to vote.

(b) The ex officio members are:

(1) the chair of the Public Safety Commission, or a member of the Public Safety Commission designated by the chair; and

(2) the commissioner of agriculture or the commissioner's designee.

(c) Of the appointed commission members:

(1) five members must be representatives of the general public and have general knowledge of business or agribusiness;

(2) one additional member must have special knowledge or experience related to horse racing; and

(3) one additional member must have special knowledge or experience related to greyhound racing.

(d) At least one of the members appointed under Subsection (c)(1) may be a veterinarian. Holding a veterinarian's license satisfies the requirement that the person have general knowledge of

business or agribusiness.

(e) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) In making appointments to the commission, the governor shall attempt to reflect the minority groups found in the state's general populace.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 14.004, eff. September 1, 2021.

Sec. 2022.002. TERM OF OFFICE. (a) Appointed commission members hold office for staggered terms of six years with the terms of two or three members expiring February 1 of each odd-numbered year.

(b) An ex officio member holds office on the commission for the time the member holds the member's other office.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.003. FINANCIAL STATEMENT REQUIRED. (a) Each appointed commission member and the executive director is an "appointed officer of a major state agency" for purposes of Chapter 572, Government Code.

(b) An appointed commission member shall file a detailed financial statement with the secretary of state of the type required by the Texas Department of Banking in the application for a state bank charter. The financial statement is public information under Chapter 552, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.004. RESTRICTIONS ON COMMISSION APPOINTMENT,

MEMBERSHIP, AND EMPLOYMENT. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a commission member and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of horse or greyhound racing or breeding.

(c) A person may not be a commission member or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(d) An appointed member is not eligible to serve on the commission unless that member has been a resident of this state for at least 10 consecutive years immediately before appointment.

(e) A person is not eligible for appointment as a commission member if:

(1) the person or the person's spouse:

(A) is licensed by the commission, except as a commissioner;

(B) is employed by the commission or participates in the management of a business entity or other organization regulated by the commission or receiving funds from or through the commission;

(C) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from or through the commission; or

(D) uses or receives a substantial amount of tangible goods, services, or funds from or through the commission, other than

compensation or reimbursement authorized by law for commission membership, attendance, or expenses; or

(2) the person:

(A) owns any financial interest in a racetrack or its operation or is related within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code, to a person who owns any financial interest in a racetrack or its operation; or

(B) has been convicted of a felony or of any crime involving moral turpitude.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.005. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Sections 2022.001, 2022.004, and 2022.057;

(2) does not maintain during service on the commission the qualifications required by Sections 2022.001, 2022.004, and 2022.057;

(3) violates a prohibition established by Section 2022.004;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2022.006. MEMBER TRAINING. (a) To be eligible to take office as a commission member, a person appointed to the commission must complete at least one course of a training program that complies with this section.

(b) The training program must provide information to the person regarding:

(1) the enabling legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) commission rules, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code; and

(C) Chapter 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a commission member.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.007. MEMBER PER DIEM AND REIMBURSEMENT FOR EXPENSES. (a) An appointed commission member is entitled to:

(1) a per diem in an amount prescribed by legislative appropriation for each day spent in performing the duties of the office; and

(2) reimbursement for actual and necessary expenses

incurred in performing the duties of the office.

(b) Reimbursement for expenses under this section is subject to any applicable limitation in the General Appropriations Act.

(c) An ex officio commission member is entitled to reimbursement for expenses from the member's agency as provided by law for expenses incurred in the performance of the member's other official duties.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.008. PRESIDING OFFICER. The governor shall designate a public member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.009. COMMISSION MEETINGS; RECORD OF COMMISSION VOTES. (a) The commission shall hold at least six regular meetings each year on dates fixed by the commission.

(b) The commission shall adopt rules providing for the holding of special meetings.

(c) The commission shall keep at the commission's general office a public record of every vote.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.010. COMMISSION OFFICES. The commission shall maintain a general office of the commission in Austin and may also establish branch offices.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.011. MONEY PAID TO COMMISSION. All money paid to the commission under this subtitle is subject to Subchapter F, Chapter 404, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.012. LEGAL REPRESENTATION. The attorney general shall:

(1) designate at least one member of the attorney general's staff to counsel and advise the commission and to represent the commission in legal proceedings; and

(2) make available to the appropriate prosecuting attorneys any information obtained regarding violations of this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.013. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution shall conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2022.014. PUBLIC PARTICIPATION. (a) The commission by rule shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(b) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. COMMISSION STAFF

Sec. 2022.051. EXECUTIVE DIRECTOR; DUTIES. (a) The commission shall employ an executive director. The executive director serves at the pleasure of the commission on a full-time basis and may not hold other employment.

(b) The executive director shall:

(1) keep the records of the commission; and

(2) perform other duties required by the commission.

(c) The executive director or the executive director's designee shall provide to commission members and employees, as often as necessary, information regarding their qualification for office or employment under this subtitle and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.0515. GRANTS. The executive director may apply for and receive any grant applicable to the implementation or enforcement of this subtitle or a rule adopted under this subtitle.

Added by Acts 2023, 88th Leg., R.S., Ch. 1120 (H.B. 1620), Sec. 6, eff. September 1, 2023.

Sec. 2022.052. EMPLOYEES; RESTRICTIONS ON EMPLOYMENT. (a) The commission shall hire employees as necessary to administer this subtitle.

(b) The commission shall employ the executive director and other employees to reflect the diversity of the state's population with regard to race, color, disability, sex, religion, age, and national origin.

(c) The commission may not employ or continue to employ a person who:

(1) owns or controls a financial interest in a commission license holder;

(2) is employed by or serves as a paid consultant to a commission license holder, an official state breed registry, or a Texas trade association, as defined by Section 2022.004(a), in the field of horse or greyhound racing or breeding;

(3) owns or leases a race animal that participates in pari-mutuel racing in this state;

(4) accepts or is entitled to any part of the purse or Texas-bred incentive award to be paid on a horse or a greyhound in a race conducted in this state; or

(5) resides with or is related within the first degree by affinity or consanguinity to a person subject to a disqualification prescribed by this subsection.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.053. COMMISSION INVESTIGATORS. (a) The commission may commission as many investigators as the commission determines necessary to enforce this subtitle and commission rules.

(b) An investigator commissioned under this section shall take the constitutional oath of office and file it with the commission.

(c) An investigator commissioned under this section has the powers of a peace officer.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.054. CAREER LADDER; PERFORMANCE EVALUATIONS. (a)

The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program shall require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on documented employee performance. All merit pay for commission employees must be based on the system established under this subsection.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.055. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that comply with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission workforce that meets federal and state laws, rules, regulations, and instructions directly promulgated from those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the commission workforce of all persons for whom federal or state laws, rules, regulations, and instructions directly promulgated from those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(c) The policy statement must:

(1) cover an annual period and be updated annually;

(2) be reviewed by the Texas Workforce Commission for

compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.056. DIVISION OF RESPONSIBILITY. The commission by rule shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and the commission staff.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.057. BACKGROUND CHECKS AND QUALIFICATION CRITERIA. Each person appointed to or employed by the commission is subject to all background checks and qualification criteria required to hold a racetrack license or other license under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.058. PROHIBITION ON EMPLOYMENT OF FORMER COMMISSION MEMBERS OR EMPLOYEES BY RACETRACK ASSOCIATION; CRIMINAL PENALTY. (a) A racetrack association may not employ a person who has been a commission member, the executive director, or a commission employee in a position in the state employment classification plan of grade 12 or above, or a person related within the second degree by affinity or the third degree by consanguinity, as determined under Chapter 573, Government Code, to such a member or employee, during the one-year period immediately preceding the employment by the racetrack association.

(b) A person may not seek or accept employment with a racetrack association if the racetrack association would violate this section by employing the person.

(c) A racetrack association or person who violates this section commits an offense.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. RECORDS AND INFORMATION

Sec. 2022.101. PUBLIC INTEREST INFORMATION. (a) The commission shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission.

(b) The commission shall make the information described by Subsection (a) available to the public and appropriate state agencies.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.102. INFORMATION RELATING TO COMPLAINT PROCEDURES. (a) The commission by rule shall establish methods by which racetrack patrons are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide the notification:

(1) on every race performance program provided by each racetrack association; or

(2) on signs prominently displayed in the common public areas on the premises of each racetrack.

(b) The commission shall keep information about each complaint filed with the commission. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.

(c) The commission shall keep a file about each written complaint filed with the commission that the commission has authority

to resolve. The commission shall provide to the person filing the complaint and to the persons who are subjects of the complaint the commission's policies and procedures pertaining to complaint investigation and resolution.

(d) The commission, at least quarterly and until final disposition of a complaint, shall notify the person filing the complaint and the persons who are subjects of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.103. COMMISSION INVESTIGATIVE FILES CONFIDENTIAL. (a) The contents of the investigatory files of the commission are not public records and are confidential except:

(1) in a criminal proceeding;

(2) in a hearing conducted by the commission;

(3) on court order; or

(4) with the consent of the party being investigated.

(b) Except as otherwise provided by this subtitle, the files, records, information, compilations, documents, photographs, reports, summaries, and reviews of information and related matters that are collected, retained, or compiled by the Department of Public Safety in the discharge of the department's duties under this subtitle are confidential and are not subject to public disclosure, but are subject to discovery by a person who is the subject of the files, records, information, compilations, documents, photographs, reports, summaries, and reviews of information and related matters that are collected, retained, or compiled by the department in the discharge of the department's duties under this subtitle.

(c) An investigation report or other document submitted by the Department of Public Safety to the commission becomes part of the investigative files of the commission and is subject to discovery by a person who is the subject of the investigation report or other document submitted by the department to the commission that is part of the investigative files of the commission.

(d) Information that is in a form available to the public is not privileged or confidential under this section and is subject to

public disclosure.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.104. INTERAGENCY SHARING OF RECORDS. The commission may share with another regulatory agency of this state any investigatory file information that creates a reasonable suspicion of a person's violation of a law or rule under that agency's jurisdiction. The agency may use the information as if it was obtained through that agency's investigatory process.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.105. BOOKS AND RECORDS; INSPECTION. (a) The commission shall require racetrack associations, managers, totalisator license holders, and concessionaires to keep books and records and to submit financial statements to the commission.

(b) Except as provided by Section 2024.002(b), the commission shall adopt rules relating to the matters described by Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2022.106. PUBLIC INSPECTION OF RECORDS. (a) All commission records that are not made confidential by other law are open to inspection by the public during regular office hours.

(b) The commission shall maintain all applications for a license under this subtitle and make the applications available for public inspection during regular office hours.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2023. COMMISSION AND RACE MEETING OFFICIAL POWERS AND DUTIES

SUBCHAPTER A. REGULATION, SUPERVISION, AND LICENSING RELATING TO HORSE RACING AND GREYHOUND RACING

Sec. 2023.001. LICENSING, REGULATION, AND SUPERVISION OF HORSE RACING AND GREYHOUND RACING. (a) Notwithstanding any contrary provision in this subtitle, the commission may license and regulate all aspects of horse racing and greyhound racing in this state, regardless of whether that racing involves pari-mutuel wagering.

(b) The commission, in adopting rules and in the supervision and conduct of racing, shall consider the effect of a proposed commission action on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.002. REGULATION AND SUPERVISION OF WAGERING AT RACE MEETINGS. (a) The commission shall regulate and supervise each race meeting in this state that involves wagering on the result of horse racing or greyhound racing. Each person and thing relating to the operation of a race meeting is subject to regulation and supervision by the commission.

(b) The commission shall adopt rules, issue licenses, and take any other necessary action relating exclusively to horse racing or greyhound racing.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.003. OTHER LICENSING AND REGULATION: RULES AND FEES. (a) The commission may adopt rules for the licensing and regulation of races and workouts at tracks that do not offer pari-mutuel wagering and for workouts at training facilities to secure past performances and workouts to:

(1) protect the health, safety, and welfare of race animals and participants in racing;

(2) safeguard the interest of the general public; and

(3) promote the orderly conduct of racing in this state.

(b) The commission may charge an annual fee for licensing and regulating a track that does not offer pari-mutuel wagering or a

training facility in a reasonable amount that may not exceed the actual cost of enforcing rules adopted for the licensing and regulation of races and workouts at such a facility.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.004. COMMISSION RULES. (a) The commission shall adopt:

(1) rules for conducting horse racing or greyhound racing in this state that involves wagering; and

(2) rules for administering this subtitle in a manner consistent with this subtitle.

(b) The commission may establish separate sections to review or propose commission rules.

(c) The commission or a commission section shall hold a meeting on a proposed rule before the commission publishes the proposed rule in the Texas Register.

(d) The commission shall post at each racetrack notice of a meeting under Subsection (c) that includes an agenda of the meeting and a summary of the proposed rule.

(e) A copy of a proposed rule published in the Texas Register shall be posted concurrently at each racetrack.

(f) The commission or a commission section may appoint a committee of experts, members of the public, or other interested parties to advise the commission or section about a proposed commission rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.005. LIMITATION ON RULES RESTRICTING COMPETITIVE BIDDING OR ADVERTISING. The commission may not adopt rules restricting competitive bidding or advertising by a license holder except to prohibit false, misleading, or deceptive practices. Commission rules to prohibit false, misleading, or deceptive practices may not:

(1) restrict the use of any medium for advertising;

(2) restrict the use of a license holder's personal

appearance or voice in an advertisement;

(3) relate to the size or duration of an advertisement by the license holder; or

(4) restrict the license holder's advertisement under a trade name.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.006. CONSIDERATION OF PAST PERFORMANCE OF RACETRACK ASSOCIATION. In considering a pleading of a racetrack association, the commission shall take into account the operating experience of the racetrack association in this state, including:

(1) the financial condition of the racetrack;

(2) the regulatory compliance and conduct; and

(3) any other relevant matter concerning the operation of a racetrack.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.007. RIGHT OF ENTRY. A commission member, an authorized commission agent, a commissioned officer of the Department of Public Safety, or a peace officer of the local jurisdiction in which a racetrack association maintains a place of business may enter any part of a racetrack or any other place of business of a racetrack association at any time to enforce and administer this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.008. TESTIMONY AND SUBPOENA POWER. (a) For purposes of this section, "agent" means an appointed agent of the commission.

(b) A commission member or an agent, while involved in carrying out functions under this subtitle, may:

(1) take testimony;

(2) require by subpoena the attendance of a witness; and

(3) require the production of books, records, papers,

correspondence, and other documents that the commission considers advisable.

(c) A subpoena must be issued under the signature of the commission or an agent. A person designated by the commission must serve the subpoena.

(d) A commission member or an agent may administer an oath to a witness appearing before the commission or an agent.

(e) If a subpoena issued under this section is disobeyed, the commission or an agent may invoke the aid of a Travis County district court in requiring compliance with the subpoena. A Travis County district court may issue an order requiring the person to appear and testify and to produce books, records, papers, correspondence, and documents. Failure to obey the court order shall be punished by the court as contempt.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.009. JUDICIAL REVIEW OF COMMISSION ORDER. (a) Judicial review of a commission order is under the substantial evidence rule.

(b) Venue for judicial review of a commission order is in a district court in Travis County.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 2023.051. RECOGNITION OF ORGANIZATION. (a) The commission by rule shall adopt criteria to recognize an organization to represent members of a segment of the racing industry, including owners, breeders, trainers, kennel operators, or other persons involved in the racing industry, in any interaction between the members of the organization and a racetrack association or the commission.

(b) The commission may recognize an organization that meets the criteria adopted under Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2023.052. SECURITY FOR FEES AND CHARGES. The commission may require a racetrack association to post security in an amount and form determined by the commission to adequately ensure the payment of any fee or charge due to this state or the commission relating to pari-mutuel racing, including a charge for drug testing.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.053. TEXAS RACING COMMISSION FUND; ADDITIONAL APPROPRIATIONS. (a) The commission shall deposit the money it collects under this subtitle in the state treasury to the credit of a special fund to be known as the Texas Racing Commission fund.

(b) The Texas Racing Commission fund may be appropriated only for the administration and enforcement of this subtitle.

(c) Any unappropriated money exceeding $2 million that remains in the fund at the close of each state fiscal biennium shall be transferred to the general revenue fund and may be appropriated for any purpose.

(d) The legislature may appropriate money from the general revenue fund for the administration and enforcement of this subtitle.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 1120 (H.B. 1620), Sec. 9(1), eff. September 1, 2023.

(f) This section does not apply to money deposited into the Texas-bred incentive fund established under Section 2028.301.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1366 (H.B. 3366), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1120 (H.B. 1620), Sec. 7, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1120 (H.B. 1620), Sec. 9(1), eff. September 1, 2023.

Sec. 2023.054. COMMISSION STANDARDS ON GREYHOUND FARMS AND FACILITIES. The commission shall adopt standards relating to the operation of greyhound farms or other facilities where greyhounds are raised for pari-mutuel racing.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.055. REPORT OF VIOLATION. The commission's rules must allow anonymous reporting of a violation of this subtitle or of a commission rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.056. COOPERATION WITH LAW ENFORCEMENT. (a) The commission shall cooperate with a district attorney, a criminal district attorney, a county attorney, the Department of Public Safety, the attorney general, or a peace officer in enforcing this subtitle.

(b) The commission, under commission authority to obtain criminal history record information under Section 2023.057, shall maintain and exchange pertinent intelligence data with other states and agencies.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.057. ACCESS TO CRIMINAL HISTORY RECORDS. The commission may obtain criminal history record information that relates to each applicant for employment by the commission and to each applicant for a license issued by the commission and that is maintained by the Department of Public Safety or the Federal Bureau of Investigation Identification Division. The commission may refuse to recommend an applicant who fails to provide a complete set of fingerprints.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2023.058. COST OF CRIMINAL HISTORY RECORD CHECK. (a) The commission shall, in determining the amount of a license fee, set the fee in at least an amount necessary to cover the cost of conducting a criminal history record check on a license applicant.

(b) The commission shall reimburse the Department of Public Safety for the cost of conducting a criminal history record check under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.059. DISTANCE LEARNING. The commission may provide assistance to members of the racing industry who are attempting to develop or implement adult, youth, or continuing education programs that use distance learning.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.060. CERTIFIED DOCUMENTS. Instead of requiring an affidavit or other sworn statement in an application or other document that must be filed with the commission, the commission may require a certification of the document under penalty of perjury in the form prescribed by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.061. ANNUAL REPORT. (a) Not later than January 31 of each year, the commission shall file a report with the governor, lieutenant governor, and speaker of the house of representatives.

(b) The report must cover the operations of the commission and the condition of horse breeding and racing and greyhound breeding and racing during the previous year.

(c) The commission shall obtain from the Department of Public

Safety a comprehensive report of any organized crime activities in this state that the department may wish to report and information concerning illegal gambling that may be known to exist in this state. The commission shall include in the annual report the department's report and any recommendations the commission considers appropriate.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. EMPLOYMENT OF AND SUPERVISION BY RACE MEETING OFFICIALS

Sec. 2023.101. EMPLOYMENT OF STEWARDS AND JUDGES. (a) A horse race meeting must be supervised by three stewards, and a greyhound race meeting must be supervised by three judges.

(b) The commission shall employ each steward and judge for the supervision of a horse race or greyhound race meeting.

(c) The commission shall designate one steward or judge, as appropriate, as the presiding steward or judge for each race meeting.

(d) Following the completion of a race meeting, a racetrack association may submit to the commission for the commission's review written comments regarding the job performance of the stewards and judges. A racetrack association's comments submitted under this section are not binding, in any way, on the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.102. STEWARD AND JUDGE EXAMINATIONS. (a) The commission shall require each steward or judge to annually take and pass a written examination and a medical examination.

(b) The commission by rule shall prescribe the methods and procedures for taking the examinations and the standards for passing.

(c) Failure to pass an examination is a ground for refusal to issue an original or renewal license to a steward or judge or for suspension or revocation of the license.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.103. EMPLOYMENT OF STATE VETERINARIANS. For each race meeting, the commission shall employ at least one state veterinarian.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.104. RACE MEETING OFFICIAL COMPENSATION AND FEE. (a) The commission by rule may impose a fee on a racetrack association to offset the costs of compensating each steward, judge, and state veterinarian.

(b) The fee amount for compensating each steward, judge, and state veterinarian must be reasonable according to industry standards for the compensation of those officials at other racetracks and may not exceed the actual cost to the commission for compensating the officials.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.105. EMPLOYMENT OF OTHER RACETRACK OFFICIALS. The racetrack association shall appoint, with the commission's approval, all racetrack officials other than the officials listed in Section 2023.104. Compensation for officials not compensated by the commission is determined by the racetrack association.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.106. RACE MEETING OFFICIAL POWERS AND DUTIES; RULES. (a) A steward or judge may on any day exercise the supervisory authority granted the steward or judge under this subtitle or commission rule, including the performance of supervisory acts requiring the exercise of discretion.

(b) The commission shall adopt rules that specify the power and duties of each race meeting official, including the power of a steward or judge to impose penalties for unethical practices or violations of racing rules.

(c) A penalty imposed by a steward or judge may include a fine of not more than $25,000, a suspension not to exceed five years, or both a fine and suspension.

(d) Before imposing a penalty under this section, a steward or judge shall conduct a hearing that is consistent with constitutional due process. A hearing conducted by a steward or judge under this section is not subject to Chapter 2001, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.107. EXECUTIVE DIRECTOR REVIEW AND MODIFICATION OF PENALTY. (a) A decision of a steward or judge is subject to review by the executive director, who may modify the penalty.

(b) A penalty modified by the executive director under this section may include a fine of not more than $100,000, a suspension not to exceed five years, or both a fine and a suspension.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.108. FINAL DECISION; AVAILABILITY OF APPEAL. (a) A decision of a steward or judge that is not reviewed or modified by the executive director is a final decision.

(b) Any decision of a steward or judge may be appealed under Section 2023.109 regardless of whether the decision is modified by the executive director.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2023.109. APPEAL FROM DECISION OF RACE MEETING OFFICIAL; DECISIONS NOT APPEALABLE. (a) Except as provided by Subsection (b), a final decision of the stewards or judges may be appealed to the commission in the manner provided for a contested case under Chapter 2001, Government Code.

(b) A decision of the stewards or judges on a disqualification for a foul in a race or on a finding of fact regarding the running of

a race is final and may not be appealed.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2024. POWERS AND DUTIES OF COMPTROLLER

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 2024.001. COMPTROLLER RULES. The comptroller may adopt rules for the enforcement of the comptroller's powers and duties under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2024.002. INSPECTION OF BOOKS, RECORDS, AND FINANCIAL STATEMENTS. (a) The comptroller may inspect all books, records, and financial statements required by the commission under Section 2022.105.

(b) The comptroller by rule may specify the form and manner in which the books, records, and financial statements are to be kept and reports that relate to the state's share of a pari-mutuel pool are to be filed.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2024.003. RIGHT OF ENTRY. The comptroller and the agents authorized by the comptroller may enter at any time the office, racetrack, or other place of business of a racetrack association or totalisator license holder to:

(1) inspect books, records, or financial statements; or

(2) inspect and test the totalisator system to determine the accuracy of totalisator-generated reports and calculations relating to the state's share of a pari-mutuel pool.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. COLLECTION AND DEPOSIT OF STATE'S SHARE OF PARI-MUTUEL POOL

Sec. 2024.051. COLLECTION AND DEPOSIT OF STATE'S SHARE. (a) The comptroller by rule may prescribe procedures for the collection and deposit of the state's share of each pari-mutuel pool.

(b) A racetrack association shall deposit the state's share of each pari-mutuel pool at the time and in the manner prescribed by comptroller rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2024.052. SECURITY. (a) The comptroller by rule may require each racetrack association to post security in an amount estimated to be sufficient to cover the amount of state money that the racetrack association will collect and hold between bank deposits to ensure payment of the state's share of a pari-mutuel pool.

(b) The following are acceptable as security for purposes of this section:

(1) cash;

(2) a cashier's check;

(3) a surety bond;

(4) an irrevocable bank letter of credit;

(5) a United States Treasury bond that is readily convertible to cash; or

(6) an irrevocable assignment of a federally insured account in a bank, savings and loan institution, or credit union.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2024.053. CERTIFICATION OF NONCOMPLIANCE; ADMINISTRATIVE APPEAL. (a) The comptroller shall certify to the commission the fact that a racetrack association or totalisator company:

(1) does not comply with a rule adopted by the comptroller under this chapter;

(2) refuses to allow access to or inspection of any of the racetrack association's or totalisator company's required books, records, or financial statements;

(3) refuses to allow access to or inspection of the totalisator system; or

(4) becomes delinquent for:

(A) the state's share of a pari-mutuel pool; or

(B) any other tax collected by the comptroller.

(b) With regard to the state's share of a pari-mutuel pool and any penalty related to the state's share, the comptroller, acting independently of the commission, may take any collection or enforcement action authorized under the Tax Code against a delinquent taxpayer.

(c) An administrative appeal related to the state's share of a pari-mutuel pool or late reporting or deposit of the state's share is to the comptroller and then to the courts, as provided by Title 2, Tax Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2024.054. PENALTIES FOR LATE PAYMENT OR REPORT. (a) A racetrack association is liable for a penalty if the racetrack association does not pay the state's share of a pari-mutuel pool or file a report related to the payment of that share on or before the time the payment or report is due.

(b) The amount of the penalty under Subsection (a) is the greater of:

(1) five percent of the total amount due; or

(2) $1,000.

(c) An additional penalty in an amount equal to one percent of the unpaid amount of the state's share of the pari-mutuel pool shall be added for each business day that the required report or payment is late, up to a maximum penalty of 12 percent.

(d) A penalty under this section may be waived in a situation in which a penalty would be waived under Section 111.103, Tax Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2024.055. DEPOSIT OF STATE'S SHARE. (a) The comptroller shall deposit the state's share of each pari-mutuel pool from horse

racing and greyhound racing in the general revenue fund.

(b) This section does not apply to money deposited into the Texas-bred incentive fund established under Section 2028.301.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1366 (H.B. 3366), Sec. 2, eff. September 1, 2019.

SUBCHAPTER C. APPLICABILITY OF OTHER LAW

Sec. 2024.101. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS. (a) Unless inconsistent with this subtitle, Chapters 111 through 113, Tax Code, including provisions relating to the assessment of penalties and interest, apply to the collection of the state's share of a pari-mutuel pool under this subtitle.

(b) The state's share of a pari-mutuel pool under this subtitle is treated as if it were a tax for purposes of this section in applying the provisions of the Tax Code described by Subsection (a).

(c) The comptroller may use any procedure authorized under Title 2, Tax Code, for purposes of collecting the state's share of a pari-mutuel pool under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2025. LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2025.001. COMMISSION LICENSING DUTIES. (a) To preserve and protect the public health, welfare, and safety, the commission shall adopt rules relating to license applications and the financial responsibility, moral character, and ability of applicants.

(a-1) The commission shall comply with Chapter 53 in the administration of the commission's licensing program.

(b) The commission shall prescribe application forms for licenses issued under this subtitle and shall provide each occupational license holder with a credential.

(c) The commission shall annually prescribe reasonable license fees for each category of license issued under this subtitle.

(d) The commission by rule shall set fees in amounts reasonable and necessary to cover the commission's costs of regulating, overseeing, and licensing live and simulcast racing at racetracks.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 1120 (H.B. 1620), Sec. 8, eff. September 1, 2023.

Sec. 2025.002. LICENSE AS PRIVILEGE. The operation of a racetrack and the participation in racing are privileges, not rights, granted only by the commission by license and subject to reasonable and necessary conditions set by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.003. FINGERPRINTS REQUIRED. (a) An applicant for a license or license renewal under this subtitle must, except as otherwise provided by Section 2025.261, submit to the commission a complete set of fingerprints for:

(1) the applicant; or

(2) if the applicant is not an individual, each officer or director of, and each person who owns at least a five percent interest in, the applicant.

(b) The Department of Public Safety may request any person owning any interest in an applicant for a racetrack license to submit a complete set of fingerprints.

(c) A peace officer of any state, or any district office of the commission, shall take the fingerprints of an applicant for a license or license renewal on forms approved and furnished by the Department of Public Safety and immediately deliver the forms to the commission.

(d) If a complete set of fingerprints is required by the commission, the commission shall, not later than the 10th business day after the date the commission receives the fingerprints, forward the fingerprints to the Department of Public Safety or the Federal Bureau of Investigation. If the fingerprints are forwarded to the Department of Public Safety, the department shall:

(1) classify the fingerprints and check the fingerprints against the department's fingerprint files; and

(2) report to the commission the department's findings concerning the existence or lack of a criminal record of the applicant.

(e) The commission may not issue a racetrack license until the report under Subsection (d) is made to the commission. The commission may issue a temporary occupational license before the report is made to the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. RACETRACK LICENSE APPLICATION REQUIREMENTS

Sec. 2025.051. RACETRACK LICENSE REQUIRED; CRIMINAL PENALTY. A person may not conduct wagering on a horse or greyhound race meeting without first obtaining a racetrack license issued by the commission. A person who violates this section commits an offense.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.052. APPLICATION. (a) The commission shall require each applicant for an original racetrack license to submit an application, on a form prescribed by the commission, containing the following information:

(1) if the applicant is an individual:

(A) the individual's full name;

(B) the individual's date of birth;

(C) the individual's physical description;

(D) the individual's current address and telephone number; and

(E) a statement by the individual disclosing any arrest or conviction for a felony or for a misdemeanor, except a misdemeanor under Subtitle C, Title 7, Transportation Code, or a similar misdemeanor traffic offense;

(2) if the applicant is a corporation:

(A) the state of incorporation;

(B) the names and addresses of the corporation's agents

for service of process in this state;

(C) the name and address of each officer and director of the corporation;

(D) the name and address of each stockholder of the corporation;

(E) for each individual named under this subdivision, the information required by Subdivision (1); and

(F) identification of:

(i) any other beneficial owner of a share in the applicant that has absolute or contingent voting rights;

(ii) any other person who directly or indirectly exercises any participation in the applicant; and

(iii) any other ownership interest in the applicant that the applicant making its best effort is able to identify;

(3) if the applicant is an unincorporated business association:

(A) the name and address of each member of the association and, for each individual named under this subdivision, the information required by Subdivision (1); and

(B) identification of:

(i) any other person who exercises voting rights in the applicant or directly or indirectly exercises any participation in the applicant; and

(ii) any other ownership interest in the applicant that the applicant making its best effort is able to identify;

(4) the exact location at which a race meeting is to be conducted;

(5) if the racetrack is in existence, whether it is owned by the applicant and, if leased to the applicant:

(A) the name and address of the owner; and

(B) if the owner is a corporation or unincorporated business association, the name and address of each officer and director, any stockholder or member, and each agent for service of process in this state;

(6) if construction of the racetrack has not been initiated, whether it is to be owned by the applicant and, if it is to be leased to the applicant:

(A) the name and address of the prospective owner; and

(B) if the owner is a corporation or unincorporated business association, the information required by Subdivision (5)(B);

(7) identification of:

(A) any other beneficial owner of a share that has absolute or contingent voting rights in the owner or prospective owner of the racetrack;

(B) any other person that directly or indirectly exercises any participation in the owner or prospective owner; and

(C) all other ownership interest in the owner or prospective owner that the applicant making its best effort is able to identify;

(8) a detailed statement of the applicant's assets and liabilities;

(9) the type of racing to be conducted and the dates requested;

(10) proof of residency as required by Section 2025.201; and

(11) any other information required by the commission.

(b) An application must be sworn to:

(1) by the applicant; or

(2) if the applicant is a corporation or association, by its chief executive officer.

(c) If the applicant is a nonprofit corporation, only directors and officers of the corporation must disclose the information required under Subsection (a)(2).

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.053. APPLICATION FEE. (a) The commission shall require each applicant for an original racetrack license to pay the required application fee. The fee must accompany the application and be paid in the form of a cashier's check or certified check.

(b) The commission shall set application fees in amounts reasonable and necessary to cover the costs of administering this subtitle. The commission by rule shall establish a schedule of application fees for the various types and classifications of racetracks using minimum application fees. The minimum application fee:

(1) for a horse racetrack is:

(A) $15,000 for a class 1 racetrack;

(B) $7,500 for a class 2 racetrack;
(C) $2,500 for a class 3 racetrack; and
(D) $1,500 for a class 4 racetrack; and
(2) for a greyhound racetrack is $20,000.
(c) Notwithstanding this section, if a licensed racetrack petitions for a higher racetrack classification, the commission shall impose fees equal to the difference between the fees previously paid and the fees required for the higher classification.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.054. MANAGEMENT, CONCESSION, AND TOTALISATOR CONTRACTS. (a) The commission shall require each applicant for an original racetrack license to submit with the application for inspection and review by the commission a copy of each management, concession, and totalisator contract associated with the proposed license at the proposed location in which the applicant has an interest.
(b) An applicant or license holder shall advise the commission of any change in any management, concession, or totalisator contract.
(c) The criminal history record information, fingerprint, and other information required of a license applicant under Sections 2023.057, 2025.003, and 2025.052(a)(1)-(3) are required of proposed totalisator firms, concessionaires, and managers and management firms.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.055. CONFIDENTIALITY OF APPLICATION DOCUMENTS. Documents submitted to the commission under Sections 2025.051-2025.054 by an applicant are subject to discovery in a suit brought under this subtitle but are not public records and are not subject to Chapter 552, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.056. BACKGROUND CHECK. (a) The commission shall require a complete personal, financial, and business background check of the applicant or of any person who owns an interest in or exercises control over an applicant for a racetrack license, including the partners, stockholders, concessionaires, management personnel, management firms, and creditors.

(b) The commission shall refuse to issue or renew a license if, in the commission's sole discretion, the background checks reveal anything that may be detrimental to the public interest or the racing industry.

(c) The commission may not hold a hearing on the application, or any part of the application, of a racetrack license applicant before the 14th day after the date the completed background check of the applicant has been on file with the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.057. BOND. (a) The commission may, at any time, require a holder of or applicant for a racetrack license to post security in an amount reasonably necessary, as provided by commission rule, to adequately ensure the license holder's or applicant's compliance with substantive requirements of this subtitle and commission rules.

(b) The following are acceptable as security for purposes of this section:

(1) cash;

(2) a cashier's check;

(3) a surety bond;

(4) an irrevocable bank letter of credit;

(5) a United States Treasury bond that is readily convertible to cash; or

(6) an irrevocable assignment of a federally insured deposit in a bank, savings and loan institution, or credit union.

(c) The security described by Subsection (b) must be:

(1) conditioned on compliance with this subtitle and commission rules adopted under this subtitle; and

(2) returned after satisfying the conditions of the security.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.058. NOTIFICATION OF COMPLETED APPLICATION. When all requirements for the applicant's licensure described in this chapter have been satisfied, the commission shall notify the applicant that the application is complete.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. RACETRACK LICENSE ISSUANCE AND RENEWAL

Sec. 2025.101. LICENSE ELIGIBILITY REQUIREMENTS AND LIMITATIONS. (a) The burden of proof is on the applicant for an original racetrack license to show compliance with this subtitle and commission rules. An applicant who does not show the necessary compliance is not eligible for a license under this chapter.

(b) In considering an application for a horse racetrack license under this chapter, the commission shall give additional weight to evidence concerning an applicant who has experience operating a horse racetrack licensed under this subtitle.

(c) The commission may not issue a license to operate a class 1 or class 2 racetrack or a greyhound racetrack to a corporation unless:

(1) the corporation is incorporated under the laws of this state; and

(2) a majority of any of its corporate stock is owned at all times by individuals who meet the residency qualifications prescribed by Section 2025.201 for individual applicants.

(d) The majority ownership of a partnership, firm, or association applying for or holding a license must be held by citizens who meet the residency qualifications enumerated in Section 2025.201 for individual applicants. A corporation that holds a license to operate a racetrack under this subtitle and that violates this subsection is subject to forfeiture of its charter. The attorney general, on receipt of information relating to the violation, shall file suit in a district court of Travis County for cancellation of the charter and revocation of the license issued

under this subtitle.

(e) Subsections (c) and (d) and Section 2025.201(a)(12) do not apply to an applicant for or the holder of a racetrack license if the applicant, the license holder, or the license holder's parent company is a publicly traded company.

(f) The commission may condition the issuance of a license under this chapter on the observance of commission rules. The commission may amend the rules at any time and may condition the continued holding of the license on compliance with the rules as amended.

(g) A person may not own more than a five percent interest in more than three racetracks licensed under this subtitle.

(h) Notwithstanding any other law, a person who owns an interest in two or more racetracks licensed under this subtitle and who also owns an interest in a license issued under Subtitle B, Title 3, Alcoholic Beverage Code, may own an interest in the premises of another holder of a license or permit under Title 3, Alcoholic Beverage Code, if the premises of that other license or permit holder are part of the premises of a racetrack licensed under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.102. QUALIFICATIONS FOR ISSUANCE OF RACETRACK LICENSE. (a) The commission may issue a racetrack license to a qualified person if the commission:

(1) determines that the conduct of race meetings at the proposed racetrack and location:

(A) will be in the public interest;

(B) complies with all zoning laws; and

(C) complies with this subtitle and commission rules; and

(2) determines by clear and convincing evidence that the applicant will comply with all criminal laws of this state.

(b) In determining whether to grant or deny an application for any class of racetrack license, the commission may consider:

(1) the applicant's financial stability;

(2) the applicant's resources for supplementing the purses for races for various breeds;

(3) the location of the proposed racetrack;

(4) the effect of the proposed racetrack on traffic flow;

(5) facilities for patrons and occupational license holders;

(6) facilities for race animals;

(7) availability to the racetrack of support services and emergency services;

(8) the experience of the applicant's employees;

(9) the potential for conflict with other licensed race meetings;

(10) the anticipated effect of the race meeting on the horse or greyhound breeding industry in this state; and

(11) the anticipated effect of the race meeting on the state and local economy from tourism, increased employment, and other sources.

(c) The commission shall make a determination on a pending application not later than the 120th day after the date the commission provides the notice required under Section 2025.058.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.103. ISSUANCE OF TEMPORARY LICENSE. (a) After a racetrack association has been granted a license to operate a racetrack and before the completion of construction at the designated place for which the license was issued, the commission may, on application by the racetrack association, issue a temporary license that authorizes the racetrack association to conduct races at a location in the same county until the earlier of:

(1) the second anniversary of the date of issuance of the temporary license; or

(2) the completion of the permanent facility.

(b) An applicant for a temporary license must pay the application fees and post the bonds required of other license holders before the issuance of a temporary license.

(c) The commission may set conditions and standards for issuance of a temporary license and allocation of appropriate race days.

(d) The commission may not issue a new temporary license or an

extension of a temporary license to a person or to an individual belonging to a corporation or association that has been granted a temporary license after the temporary license has expired.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.104. DESIGNATION OF RACETRACK LICENSE AS ACTIVE OR INACTIVE. (a) The commission shall designate each racetrack license as an active license or an inactive license. The commission may change the designation of a racetrack license as appropriate.

(b) The commission shall designate a racetrack license as an active license if the license holder:

(1) holds live racing events at the racetrack; or

(2) makes good faith efforts to conduct live racing.

(c) The commission by rule shall provide guidance on actions that constitute, for purposes of this subtitle, good faith efforts to conduct live racing.

(d) Before the first anniversary of the date a new racetrack license is issued, the commission shall conduct an evaluation of the license to determine whether the license is an active or inactive license.

(e) An active license is effective until the license is designated as an inactive license or is surrendered, suspended, or revoked under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.105. RENEWAL OF INACTIVE RACETRACK LICENSE; FEES. (a) The commission by rule shall establish an annual renewal process for inactive licenses and may require the license holder to provide any information required for an original license application under this subtitle. An inactive license holder must complete the annual renewal process established under this section until the commission:

(1) designates the license as an active license; or

(2) refuses to renew the license.

(b) In determining whether to renew an inactive license, the commission shall consider:

(1) the inactive license holder's:

(A) financial stability;

(B) ability to conduct live racing;

(C) ability to construct and maintain a racetrack; and

(D) other good faith efforts to conduct live racing; and

(2) other necessary factors considered in the issuance of the original license.

(c) The commission may refuse to renew an inactive license if, after notice and a hearing, the commission determines that:

(1) renewal of the license is not in the best interests of the racing industry or the public; or

(2) the license holder has failed to make a good faith effort to conduct live racing.

(d) The commission shall consult with members of the racing industry and other key stakeholders in developing the license renewal process under this section.

(e) The commission shall set and collect renewal fees in amounts reasonable and necessary to cover the costs of administering and enforcing this section.

(f) The commission by rule shall establish criteria to make the determinations under Subsection (c).

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.106. COMMISSION REVIEW OF ACTIVE RACETRACK LICENSE; FEE. (a) The commission shall review the ownership and management of an active license issued under this chapter every five years beginning on the fifth anniversary of the date of issuance of the license.

(b) In performing the review, the commission may require the license holder to provide any information that would be required to be provided in connection with an original license application under this chapter.

(c) The commission shall charge fees for the review in amounts sufficient to implement this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.107. RACETRACK LICENSE NOT TRANSFERABLE; TEMPORARY LICENSE. (a) A racetrack license is not transferable.

(b) If the death of any person causes a violation of the licensing provisions of this subtitle, the commission may issue, in accordance with commission rules, a temporary license for a period not to exceed one year.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.108. RACETRACK LICENSE ANNUAL FEE. The commission may prescribe a reasonable annual fee to be paid by each racetrack license holder. The fee must be in an amount sufficient to provide that the total amount of fees imposed under this section, the license fees prescribed under Section 2025.001(c), and the renewal fees prescribed under Section 2025.105(e) are sufficient to cover the costs of administering and enforcing this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER D. GREYHOUND RACETRACK LICENSES

Sec. 2025.151. LIMITATION ON NUMBER OF GREYHOUND RACETRACK LICENSES. The commission may not issue licenses for more than three greyhound racetracks in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.152. LOCATION RESTRICTION FOR GREYHOUND RACETRACK. Each greyhound racetrack must be located in a county that:

(1) has a population of more than 190,000;

(2) borders the Gulf of Mexico; and

(3) includes all or part of an island that borders the Gulf of Mexico.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER E. DISCIPLINARY ACTION FOR RACETRACK LICENSE HOLDERS

Sec. 2025.201. GROUNDS FOR DENIAL, REVOCATION, OR SUSPENSION OF RACETRACK LICENSE. (a) The commission may refuse to issue a racetrack license or may revoke or suspend a license if, after notice and hearing, the commission finds that the applicant or license holder, as appropriate:

(1) has been convicted of a violation of this subtitle or a commission rule, or has aided, abetted, or conspired to commit a violation of this subtitle or a commission rule;

(2) has been convicted of a felony or a crime involving moral turpitude, including a conviction for which the punishment received was a suspended sentence, probation, or a nonadjudicated conviction, that is reasonably related to the person's present fitness to hold a license under this subtitle;

(3) has violated or has caused to be violated this subtitle or a commission rule in a manner that involves moral turpitude, as distinguished from a technical violation of this subtitle or a rule;

(4) is unqualified, by experience or otherwise, to perform the duties required of a license holder under this subtitle;

(5) failed to answer or falsely or incorrectly answered a question in an application;

(6) fails to disclose the true ownership or interest in a horse or greyhound as required by commission rules;

(7) is indebted to this state for any fee or for the payment of a penalty imposed by this subtitle or a commission rule;

(8) is not of good moral character or the person's reputation as a peaceable, law-abiding citizen in the community where the person resides is bad;

(9) is not at least the minimum age necessary to purchase alcoholic beverages in this state;

(10) is in the habit of using alcoholic beverages to an excess or uses a controlled substance as defined by Chapter 481, Health and Safety Code, or a dangerous drug as defined in Chapter 483, Health and Safety Code, or is mentally incapacitated;

(11) may be excluded from an enclosure under this subtitle;

(12) has not been a United States citizen residing in this

state for the 10 consecutive years preceding the filing of the application;

(13) has improperly used a credential, including a license certificate or identification card, issued under this subtitle;

(14) resides with a person whose license was revoked for cause during the 12 months preceding the date of the present application;

(15) has failed or refused to furnish a true copy of the application to the commission's district office in the district in which the premises for which the license is sought are located;

(16) is engaged or has engaged in activities or practices the commission determines are detrimental to the best interests of the public and the sport of horse racing or greyhound racing; or

(17) fails to fully disclose the true owners of all interests, beneficial or otherwise, in a proposed racetrack.

(b) Subsection (a) applies to a corporation, partnership, limited partnership, or any other organization or group whose application is composed of more than one person if a shareholder, partner, limited partner, director, or officer is disqualified under Subsection (a).

(c) The commission may refuse to issue a license or may suspend or revoke a license of a license holder under this subchapter who knowingly or intentionally allows access to an enclosure where horse races or greyhound races are conducted to a person:

(1) who has engaged in bookmaking, touting, or illegal wagering;

(2) whose income is from illegal activities or enterprises; or

(3) who has been convicted of a violation of this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.202. DISCIPLINARY ACTION; ADMINISTRATIVE PENALTY. (a) The commission by rule shall establish procedures for disciplinary action against a racetrack license holder.

(b) Notwithstanding the requirements of Section 2033.151, if, after notice and hearing as provided by Section 2033.152, the commission finds that a racetrack license holder or a person employed

by the racetrack has violated this subtitle or a commission rule, or if the commission finds during a review or renewal that the racetrack is ineligible for a license under this chapter, the commission may:

(1) revoke, suspend, or refuse to renew the racetrack license;

(2) impose an administrative penalty as provided under Section 2033.051; or

(3) take any other action as provided by commission rule.

(c) The commission may not revoke an active license unless the commission reasonably determines that other disciplinary actions are inadequate to remedy the violation.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.203. SUMMARY SUSPENSION. (a) The commission may summarily suspend a racetrack license if the commission determines that a racetrack at which races or pari-mutuel wagering are conducted under the license is being operated in a manner that constitutes an immediate threat to the health, safety, or welfare of the racing participants or the patrons.

(b) After issuing a summary suspension order, the executive director shall serve on the racetrack association an order:

(1) stating the specific charges; and

(2) requiring the license holder immediately to cease and desist from all conduct permitted by the license.

(c) The executive director shall serve the order by personal delivery or registered or certified mail, return receipt requested, to the license holder's last known address. The order must contain a notice that a request for hearing may be filed under this subchapter.

(d) A summary suspension order continues in effect unless the order is stayed by the executive director. The executive director may impose any condition before granting a stay of the order.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.204. SUMMARY SUSPENSION HEARING. (a) A racetrack association that is the subject of a summary suspension order may

request a hearing. The request must be filed with the executive director not later than the 10th day after the date the order was received or delivered. The request must:

(1) be in writing;

(2) be directed to the executive director; and

(3) state the grounds for the request to set aside or modify the order.

(b) Unless a license holder who is the subject of the order requests a hearing in writing before the 11th day after the date the order is received or delivered, the order is final and nonappealable as to that license holder.

(c) On receiving a request for a hearing, the executive director shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the executive director receives the request for a hearing unless the parties agree to a later hearing date.

(d) At the hearing, the commission has the burden of proof and must present evidence in support of the order. The license holder requesting the hearing may cross-examine witnesses and show cause why the order should not be affirmed.

(e) Section 2003.021(b), Government Code, does not apply to a hearing conducted under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.205. SUMMARY SUSPENSION FINAL ORDER. After the hearing on the suspension of a racetrack license, the executive director shall affirm, modify, or set aside, wholly or partly, the summary suspension order. An order affirming or modifying the summary suspension order is final for purposes of enforcement and appeal.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER F. OCCUPATIONAL LICENSES

Sec. 2025.251. OCCUPATIONAL LICENSE REQUIRED. (a) Except as provided by this section, a person, other than as a spectator or as a

person placing a wager, may not participate in pari-mutuel racing activities or wagering without first obtaining a license from the commission. A person may not engage in any occupation for which commission rules require a license under this subtitle without first obtaining a license from the commission.

(b) The commission shall determine the occupations that afford an opportunity to influence racing with pari-mutuel wagering, including individuals who:

(1) work in an occupation as an employee, contractor, or volunteer to afford the individual an opportunity to influence racing with pari-mutuel wagering; or

(2) will likely have significant access to the backside of a racetrack or to restricted areas of the frontside of a racetrack.

(c) Notwithstanding Subsection (b), the following individuals require a criminal history background check before an occupational license is issued: commissioners, regulatory employees and contractors hired by the commission, racetrack association employees, training facility employees, and employees of either a recognized horseman's organization or licensed racehorse owners.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 70, eff. June 13, 2023.

Sec. 2025.252. LICENSE CATEGORIES. The commission shall adopt categories of licenses for the various occupations licensed under this subchapter and shall specify by rule the qualifications and experience required for licensing in each category that requires specific qualifications or experience.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.253. EXAMINATION NOTIFICATION. (a) If an examination is required for the issuance of a license under this subchapter, the commission shall notify each examinee of the results of the examination not later than the 30th day after the date the

licensing examination is administered under this subtitle.

(b) If requested in writing by a person who fails a licensing examination administered under this subtitle, the commission shall furnish the person with an analysis of the person's performance on the examination.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.254. ISSUANCE OF LICENSE. The commission shall issue a license to a qualified person on application and payment of the license fee.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.255. ISSUANCE OF IDENTIFICATION CARD. The commission shall issue a license certificate under this subchapter in the form of an identification card with a photograph and other information as prescribed by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.256. LICENSE FEES. (a) The commission by rule shall adopt a fee schedule for licenses issued under this subchapter.

(b) The commission shall base the license fee amounts on the relative or comparative incomes or property interests of the various categories of license holders, with the lower income categories charged nearer the minimum fee and the higher income categories charged nearer the maximum fee.

(c) In setting the fee schedule under Subsection (a), the commission shall include the cost of criminal history record information obtained under Section 2023.058. The commission may determine the best method for recovering this cost and complying with this section, including collecting the costs over an extended period.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2025.257. TERM OF LICENSE; RENEWAL. (a) A license issued under this subchapter is valid for a period set by the commission not to exceed 36 months following the date of issuance. The license is renewable on the:

(1) completion of an application;

(2) receipt of satisfactory results of a criminal history record information check; and

(3) payment of the fee in accordance with commission rules.

(b) The commission by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees shall be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.258. CRIMINAL HISTORY RECORD INFORMATION. (a) The commission shall obtain criminal history record information on each applicant renewing an occupational license under this subchapter.

(b) The commission shall ensure that criminal history record information is obtained on each license holder at least once every 36 months.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.259. LICENSE VALID THROUGHOUT STATE. A license issued under this subchapter is valid, as determined by the commission, at all race meetings conducted in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.261. RECIPROCAL LICENSES; OUT-OF-STATE APPLICANTS. (a) The commission may waive any prerequisite to obtaining a license for an applicant, including any requirement to submit a set of fingerprints, after reviewing the applicant's credentials and determining that the applicant holds a license from another state that has license requirements substantially equivalent to the requirements of this state.

(b) The commission may waive any prerequisite to obtaining a license, including any requirement to submit a set of fingerprints, for an applicant who holds a license from another state with which this state has a reciprocity agreement. The commission may enter into agreements with other states to allow for licensing by reciprocity.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2025.262. GROUNDS FOR DENIAL, REVOCATION, AND SUSPENSION OF OCCUPATIONAL LICENSE. The commission may refuse to issue any original or renewal license under this subchapter or may revoke or suspend the license if, after notice and hearing, the commission finds that the applicant or license holder, as appropriate:

(1) has been convicted of a violation of this subtitle or a commission rule or has aided, abetted, or conspired to commit a violation of this subtitle or a commission rule;

(2) has been convicted of a felony or a crime involving moral turpitude that is reasonably related to the person's present fitness to hold a license under this subtitle;

(3) has violated or has caused to be violated this subtitle or a commission rule in a manner that involves moral turpitude, as distinguished from a technical violation of this subtitle or a rule;

(4) is unqualified, by experience or otherwise, to perform the duties required of a license holder under this subtitle;

(5) failed to answer or has falsely or incorrectly answered a question in an original or renewal application;

(6) fails to disclose the true ownership or interest in a horse or greyhound as required by commission rules;

(7) is indebted to this state for any fee or for the payment of a penalty imposed by this subtitle or a commission rule;

(8) is not of good moral character or the person's reputation as a peaceable, law-abiding citizen in the community where the person resides is bad;

(9) is in the habit of using alcoholic beverages to an excess or uses a controlled substance as defined in Chapter 481, Health and Safety Code, or a dangerous drug as defined in Chapter 483, Health and Safety Code, or is mentally incapacitated;

(10) may be excluded from an enclosure under this subtitle;

(11) has improperly used a temporary pass, license certificate, credential, or identification card issued under this subtitle;

(12) resides with a person whose license was revoked for cause during the 12 months preceding the date of the present application;

(13) has failed or refused to furnish a true copy of the application to the commission's district office in the district in which the premises for which the license is sought are located; or

(14) is engaged or has engaged in activities or practices that are detrimental to the best interests of the public and the sport of horse racing or greyhound racing.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2026. RACETRACK OPERATION AND PREMISES

SUBCHAPTER A. REGULATION OF RACETRACK

Sec. 2026.001. PLANNING, CONSTRUCTION, AND OPERATION RULES. To preserve and protect the public health, welfare, and safety, the commission shall adopt rules relating to all matters concerning the planning, construction, and operation of racetracks.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.002. PREVENTION OF SUBTERFUGE IN RACETRACK OWNERSHIP OR OPERATION. This subtitle shall be liberally construed to prevent subterfuge in the ownership and operation of a racetrack.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2026.003. FINANCIAL DISCLOSURE. (a) The commission by rule shall require that each racetrack association that holds a license for a class 1 racetrack, class 2 racetrack, or greyhound racetrack annually file with the commission a detailed financial statement that:

(1) contains the names and addresses of all stockholders, members, and owners of any interest in the racetrack;

(2) indicates compliance during the filing period with Section 2025.101; and

(3) includes any other information required by the commission.

(b) Each transaction that involves an acquisition or a transfer of a pecuniary interest in the racetrack association must receive prior approval from the commission. A transaction that changes the ownership of the racetrack association requires submission of updated information of the type required to be disclosed under Section 2025.052 and payment of a fee to recover the costs of the criminal background check.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.004. RACING LOCATION. (a) Except as provided by this section, Section 2026.005, or Section 2025.103, a racetrack association may not conduct horse racing or greyhound racing at any place other than the place designated in the license.

(b) If the racetrack or enclosure designated in the license becomes unsuitable for racing because of fire, flood, or other catastrophe, the affected racetrack association, with the prior approval of the commission, may conduct a race meeting or any remaining portion of a meeting temporarily at any other racetrack if the other racetrack license holder:

(1) is licensed by the commission to conduct the same type of racing as may be conducted by the affected racetrack association; and

(2) consents to the usage.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.005. CHANGE OF RACING LOCATION. On request of a racetrack association, the commission shall amend a racetrack license to change the location of the racetrack if the commission determines that:

(1) the conduct of race meetings at the proposed new location will be in the public interest;

(2) there was not a competing applicant for the original license; and

(3) the racetrack association's desire to change location is not the result of a subterfuge in the original licensing proceeding.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.006. LEASE OF RACETRACK PREMISES. (a) The commission by rule may authorize a racetrack association, as lessee, to contract for the lease of a racetrack and the surrounding structures.

(b) The commission may not approve a lease if:

(1) the lease appears to be a subterfuge to evade compliance with Section 2025.101 or 2025.201;

(2) the racetrack and surrounding structures do not conform to the rules adopted under this subtitle; or

(3) the lessee, prospective lessee, or lessor is disqualified from holding a racetrack license.

(c) Each lessor and lessee under this section must comply with the disclosure requirements of Section 2025.052(a)(1). The commission may not approve a lease if the lessor and lessee do not provide the required information.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.007. INAPPROPRIATE OR UNSAFE CONDITIONS; ENFORCEMENT;

RULES. (a) The executive director shall issue a notice of violation to a racetrack association on a determination that an inappropriate or unsafe condition exists at a racetrack.

(b) If the executive director determines that an inappropriate or unsafe condition exists at the racetrack, the executive director shall order the racetrack association to take action within a specified period to remedy the inappropriate or unsafe condition. In determining the period for compliance, the executive director shall consider:

(1) the nature and severity of the problem; and

(2) the threat to the health, safety, and welfare of race participants, patrons, and animals.

(c) The commission by rule shall require a report of any corrective action taken by a racetrack association in response to an order of the executive director under Subsection (b).

(d) If a racetrack association fails to take action as required under Subsection (b), the executive director shall initiate an enforcement action against the racetrack association. The executive director may rescind any live or simulcast race date of a racetrack association that does not take corrective action within the period set by the executive director.

(e) The commission shall adopt rules implementing this section, including rules:

(1) requiring the report and correction of:

(A) an inappropriate condition on the premises of a racetrack, including a failure to properly maintain the premises, that interferes with the administration of this subtitle; and

(B) a condition on the premises that makes the premises unsafe for a race participant, patron, or animal; and

(2) determining the methods and manner by which the executive director may determine and remedy inappropriate or unsafe conditions on the premises, including the methods and manner in which the executive director may conduct inspections of the premises and remedy emergency situations.

(f) The commission shall adopt rules relating to the commission's review of an action taken under this section by the executive director. A review procedure adopted under this subsection must be consistent with Chapter 2001, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2026.008. SUPERVISION OF CONSTRUCTION, RENOVATION, AND MAINTENANCE; ENFORCEMENT. (a) The commission shall adopt a method of supervising and approving the construction, renovation, or maintenance of any building or improvement on the premises of a racetrack.

(b) The commission shall adopt rules relating to:

(1) the approval of plans and specifications;

(2) the contents of plans and specifications;

(3) the maintenance of records to ensure compliance with approved plans and specifications;

(4) the content and filing of construction progress reports by the racetrack association to the commission;

(5) the inspection by the commission or others;

(6) the method for making a change or amendment to an approved plan or specification; and

(7) any other method of supervision or oversight necessary.

(c) If the commission has grounds to believe that a racetrack association has failed to comply with the requirements of this section, a representative of the racetrack association shall appear before the commission to consider the issue of compliance with rules adopted under this section.

(d) Before a building or improvement may be used by a racetrack association, the commission shall determine whether:

(1) the construction, renovation, or maintenance of the building or improvement was completed in accordance with the approved plans and specifications; and

(2) other commission requirements were met.

(e) If the commission determines that the racetrack association failed to comply with a requirement of this section or a rule adopted under this section, the commission shall initiate an enforcement action against the racetrack association. In addition to any other authorized enforcement action, the commission may rescind any live or simulcast race date of any racetrack association that has failed to comply with the requirements of this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.009. RACETRACK SECURITY. A horse racetrack association shall provide adequate security at the racetrack association's racetrack to ensure the safety of the spectators, employees, and animals.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.010. KENNELS. (a) Each greyhound racetrack association shall:

(1) contract for a maximum of 18 kennels; and

(2) provide free kennel rent and schooling.

(b) In contracting with kennel owners for a racetrack, a racetrack association shall ensure that at least 50 percent of the kennels with which the racetrack association contracts are wholly owned by residents of this state.

(c) For purposes of this section, "residents of this state" are individuals who have resided in Texas for the five-year period preceding the date the kennel contract is signed.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.011. AUTOMOBILE RACING FACILITY PROHIBITED NEAR RACETRACK IN CERTAIN COUNTIES. An automobile racing facility may not be located within 10,000 feet of a horse or greyhound racetrack that is located in a county with a population of 2.1 million or more.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 205, eff. September 1, 2023.

Sec. 2026.012. OTHER LAWFUL BUSINESSES AUTHORIZED. A racetrack association may conduct other lawful business on the racetrack

association's grounds.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.013. EMPLOYEE COMPLIANCE. (a) A racetrack is responsible for ensuring that the racetrack's employees comply with this subtitle and commission rules.

(b) The commission may impose disciplinary action against a racetrack for violations of this subtitle and commission rules by the racetrack's employees as provided by Section 2025.202.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. EXCLUSION OR EJECTION FROM RACETRACK

Sec. 2026.051. COMMISSION RULES REGARDING EXCLUSION OR EJECTION. The commission shall adopt rules providing for the exclusion or ejection from an enclosure where horse or greyhound races are conducted, or from specified portions of an enclosure, of a person:

(1) who has engaged in bookmaking, touting, or illegal wagering;

(2) whose income is from illegal activities or enterprises;

(3) who has been convicted of a violation of this subtitle;

(4) who has been convicted of theft;

(5) who has been convicted under the penal law of another jurisdiction for committing an act that would have constituted a violation of any rule described in this section;

(6) who has committed a corrupt or fraudulent act in connection with horse or greyhound racing or pari-mutuel wagering or who has committed any act tending or intended to corrupt horse or greyhound racing or pari-mutuel wagering;

(7) who is under suspension or has been excluded or ejected from a racetrack by the commission or a steward in this state or by a corresponding authority in another state because of corrupt or fraudulent practices or other acts detrimental to racing;

(8) who has submitted a forged pari-mutuel ticket or has altered or forged a pari-mutuel ticket for cashing or who has cashed

or caused to be cashed an altered, raised, or forged pari-mutuel ticket;

(9) who has been convicted of committing a lewd or lascivious act or other crime involving moral turpitude;

(10) who is guilty of boisterous or disorderly conduct while inside an enclosure;

(11) who is an agent or habitual associate of a person excludable under this section; or

(12) who has been convicted of a felony.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.052. EXCLUSION OR EJECTION FROM ENCLOSURE; HEARING; APPEAL. (a) A person who is excluded or ejected from an enclosure under a commission rule may apply to the commission for a hearing on the question of the applicability of the rule to that person.

(b) An application for a hearing under Subsection (a) constitutes a contested case under Chapter 2001, Government Code. If, after a hearing as provided under Subchapter C of that chapter, the commission determines that the exclusion or ejection was proper:

(1) the commission shall issue an order to that effect and enter the order in the commission's minutes; and

(2) the person shall continue to be excluded from each racetrack association's enclosure.

(c) A person excluded or ejected may appeal an adverse decision of the commission by filing a petition for judicial review in the manner provided by Subchapter G, Chapter 2001, Government Code. Venue for the review is in a district court in Travis County.

(d) The judgment of the court may be appealed as in other civil cases. The person appealing the commission's ruling under this subtitle shall continue to be excluded from all enclosures in this state during the pendency of the appeal.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.053. EXCLUSION OR EJECTION BY RACETRACK ASSOCIATION. This subtitle does not prohibit a racetrack association from

excluding or ejecting a person from the racetrack association's enclosure for any lawful reason.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.054. CRIMINAL TRESPASS AT ENCLOSURE. A person, for the purposes of Section 30.05, Penal Code, is presumed to have received notice that entry to an enclosure was forbidden if the person:

(1) was excluded or ejected from the enclosure under this subchapter;

(2) possessed, displayed, or used in the enclosure a credential that the person was not authorized to use; or

(3) entered the enclosure using a falsified credential.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. CLASSIFICATION OF HORSE RACETRACKS

Sec. 2026.101. CLASSIFICATION. A horse racetrack is classified as:

(1) a class 1 racetrack;

(2) a class 2 racetrack;

(3) a class 3 racetrack; or

(4) a class 4 racetrack.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.102. CLASS 1 RACETRACK. (a) A class 1 racetrack is a racetrack on which live racing is conducted for a number of days in a calendar year, as determined by the commission under Subchapter A, Chapter 2029.

(b) A class 1 racetrack may operate only in a county with a population of not less than 1.3 million, or in a county adjacent to such a county.

(c) Not more than three class 1 racetracks may be licensed and

operated in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.103. CLASS 2 RACETRACK. (a) A class 2 racetrack is a racetrack on which live racing is conducted for a number of days, as determined by the commission under Subchapter A, Chapter 2029.

(b) A class 2 racetrack is entitled to conduct 60 days of live racing in a calendar year. A racetrack association may request additional or fewer days of live racing. If, after receipt of a request from a racetrack association, the commission determines additional or fewer days to be economically feasible and in the best interest of this state and the racing industry, the commission shall grant the request.

(c) The commission may permit a racetrack association that holds a class 2 racetrack license and that is located in a national historic district to conduct horse races for more than 60 days in a calendar year.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.104. CLASS 3 RACETRACK. (a) A class 3 racetrack is a racetrack operated by a county or a nonprofit fair under Chapter 2032.

(b) A racetrack association that holds a class 3 racetrack license and that conducted horse races in 1986 may conduct live races for a number of days not to exceed 16 days in a calendar year on the dates selected by the racetrack association.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.105. CLASS 4 RACETRACK. (a) A class 4 racetrack is a racetrack operated by a county fair under Section 2032.002.

(b) A racetrack association that holds a class 4 racetrack license may conduct live races for a number of days not to exceed

five days in a calendar year on dates selected by the racetrack association and approved by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.106. WAIVER OR DEFERRAL OF CERTAIN STANDARDS FOR CLASS 4 RACETRACK. (a) In considering an application for a class 4 racetrack license, except as provided by Subsection (b), the commission may waive or defer compliance with the commission's standards regarding the physical facilities or operations of a horse racetrack.

(b) The commission may not waive or defer compliance with standards that relate to the testing of horses or license holders for the presence of a prohibited substance, including a prohibited drug or chemical.

(c) If the commission defers compliance, the commission shall, when granting the application, establish a schedule under which the license holder must comply with the standards.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.107. CALCULATION OF LIVE AND SIMULCAST RACE DATES. (a) For purposes of this subchapter, live race dates are counted separately from the dates on which the racetrack association presents simulcast races.

(b) The number of race dates allowed under this subchapter relates only to live race dates. A racetrack may present simulcast races on other dates as approved by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER D. CONCESSION, MANAGEMENT, OR TOTALISATOR CONTRACTS; SECURITY PLANS

Sec. 2026.151. COMMISSION APPROVAL REQUIRED. (a) All concession, management, and totalisator contracts submitted by an

applicant under Section 2025.054 must have the prior approval of the commission.

(b) The commission shall refuse to approve a concession or management contract if, in the sole discretion of the commission, the background checks conducted under Section 2025.056 reveal anything that might be detrimental to the public interest or the racing industry.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.152. COMMISSION REVIEW OF SECURITY PLANS AND CERTAIN CONTRACTS. (a) On receipt of a plan for the security of a racetrack, or a copy of a concession, management, or totalisator contract for review under Section 2026.151, the commission shall review the security plan or contract in an executive session. Documents submitted by an applicant to the commission under this section or Section 2025.052 or 2025.054 are subject to discovery in a suit brought under this subtitle but are not public records and are not subject to Chapter 552, Government Code.

(b) In reviewing and approving contracts under Subsection (a), the commission shall attempt to ensure the involvement of minority-owned businesses whenever possible.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2026.153. MANAGEMENT CONTRACT: REQUIREMENTS AND LIMITATIONS. (a) A person awarded a management contract to operate a racetrack must meet all of the requirements for a license under Sections 2025.101 and 2025.201.

(b) The commission may not approve a management contract to operate or manage a racetrack owned by a governmental entity unless the racetrack license holder is an owner of the entity that proposes to manage the racetrack.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2027. WAGERING

SUBCHAPTER A. PARI-MUTUEL WAGERING

Sec. 2027.001. PARI-MUTUEL WAGERING RULES. (a) The commission shall adopt rules to regulate wagering on horse races and greyhound races under the system known as pari-mutuel wagering.

(b) Rules adopted under this subtitle must include rules to:

(1) regulate wagering by a person licensed under this subtitle;

(2) prohibit wagering by a commission employee;

(3) prohibit a racetrack association from accepting a wager made by telephone; and

(4) prohibit a racetrack association from accepting a wager made on credit.

(c) Commission rules adopted under this subtitle must be written and updated to ensure maximum enforceability.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.002. WAGERING RESTRICTIONS. (a) Wagering may be conducted only by a racetrack association within the racetrack association's enclosure.

(b) A person may not accept, in person, by telephone, or over the Internet, a wager for a horse or greyhound race conducted inside or outside this state from a person in this state unless the wager is authorized under this subtitle.

(c) Only a person inside an enclosure where both live and simulcast race meetings are authorized may wager on the result of a live or simulcast race presented by a racetrack association in accordance with commission rules.

(d) Except as provided by Subsection (c), a person may not place, in person, by telephone, or over the Internet, a wager for a horse or greyhound race conducted inside or outside this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.003. WAGERING COMPUTATION EQUIPMENT. (a) Wagering authorized under this chapter may be calculated only by state-of-the-

art computational equipment approved by the commission.

(b) The commission may not require the use of a particular make of equipment.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.004. AUTOMATED TELLER MACHINES: RULES, LIMITATIONS, AND FEES. (a) The commission shall:

(1) adopt rules providing for the use of automated teller machines in an enclosure; and

(2) limit the use of automated teller machines by allowing a person access only to the person's checking account at a bank or other financial institution.

(b) A racetrack association that allows an automated teller machine in an enclosure as provided by Subsection (a) shall collect a fee of $1 for each transaction authorized under that subsection and forward the fee to the commission.

(c) The commission shall:

(1) adopt rules providing for collection, reporting, and auditing of the transaction fee authorized under Subsection (b); and

(2) deposit the fee collected under Subsection (b) to the credit of the general revenue fund.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.005. TICKET INFORMATION RULES. The commission by rule shall prescribe the information to be printed on each pari-mutuel ticket.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.006. CLAIM AFTER RACE MEETING. (a) A person who claims to be entitled to any part of a distribution from a pari-mutuel pool may, not later than the first anniversary of the day the ticket was purchased, file with the appropriate racetrack association

a claim for the money accompanied by a substantial portion of the pari-mutuel ticket sufficient to identify the racetrack association, race, horse or greyhound involved, amount wagered, and type of ticket.

(b) A person who claims to be entitled to money from a pari-mutuel voucher may before the first anniversary of the day the voucher was issued file with the appropriate racetrack association a claim for the money accompanied by a substantial portion of the pari-mutuel voucher sufficient to identify the racetrack association, serial number, date issued, and amount of the voucher.

(c) If the claimant satisfactorily establishes a right to distribution from a pari-mutuel pool, the racetrack association shall pay the amount due the claimant.

(d) If the racetrack association refuses to pay a claimant who has established satisfactorily a right to distribution from a pari-mutuel pool, the claimant may appeal to the commission under procedures prescribed by commission rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. SIMULCAST WAGERING

Sec. 2027.051. SIMULCAST WAGERING RULES. The commission shall adopt rules to license and regulate pari-mutuel wagering on:

(1) races conducted in this state and simulcast to in-state racetrack associations or out-of-state receiving locations; and

(2) races conducted out-of-state and simulcast to in-state racetrack associations.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.052. CONSTRUCTION OF LAWS RELATED TO SIMULCAST RACES. (a) This subtitle may not be construed to allow wagering in this state on simulcast races at any location other than a racetrack licensed under this subtitle that has been granted live race dates by the commission.

(b) This subtitle may not be construed to prohibit wagering on:

(1) a simulcast horse race at a greyhound racetrack in this

state; or

(2) a simulcast greyhound race at a horse racetrack in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.053. COMMISSION APPROVAL REQUIRED FOR PARI-MUTUEL POOL INCLUSION. (a) With commission approval:

(1) wagers accepted on a simulcast race by any out-of-state receiving location may be included in the pari-mutuel pool for the race at the sending in-state racetrack association; and

(2) wagers accepted by an in-state racetrack association on a race simulcast from out-of-state may be included in the pari-mutuel pools for the race at the out-of-state sending track.

(b) The commission may adopt rules necessary to facilitate the interstate commingling of pari-mutuel pools as provided by Subsection (a).

(c) The racetrack where the wager is made is responsible for reporting and remitting this state's share of the pari-mutuel pool.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.054. REQUIREMENTS AND LIMITATIONS ON SIMULCAST RACES. (a) A horse racetrack may not be required to accept a greyhound simulcast signal. A horse racetrack that offers wagering on interstate greyhound simulcast races must offer wagering on all Texas greyhound races made available for simulcast wagering.

(b) A greyhound racetrack may not be required to accept a horse simulcast signal. A greyhound racetrack that offers wagering on interstate horse simulcast races must offer wagering on all Texas horse races made available for simulcast wagering.

(c) The commission may not approve wagering on an interstate simulcast race unless the receiving location consents to wagering on interstate simulcast races at all other receiving locations in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2027.055. CONTRACT REQUIRED FOR SIMULCAST RACES. (a) Except as provided by this subchapter, a horse racetrack may offer wagering on interstate greyhound race simulcast signals only as provided by a contract with the nearest greyhound racetrack. If an agreement between the racetracks cannot be reached by October 1 of the year preceding the calendar year in which the simulcasting is to occur, the horse racetrack may purchase and offer wagering on greyhound race simulcast signals and shall pay to the nearest greyhound racetrack the amounts specified under Section 2028.202(c)(1).

(b) Except as provided by this subchapter, a greyhound racetrack may offer wagering on interstate horse race simulcast signals only as provided by a contract with the nearest Class 1 horse racetrack. If an agreement between the racetracks cannot be reached by October 1 of the year preceding the calendar year in which the simulcasting is to occur, the greyhound racetrack may purchase and offer wagering on interstate horse race simulcast signals and shall pay to the nearest Class 1 horse racetrack the amounts specified in Section 2028.202(b)(1).

(c) Wagering on a simulcast greyhound race at a horse racetrack that conducted its inaugural meet within 12 months of September 1, 1997, or at an operational horse racetrack within 60 miles of that racetrack may be conducted only in accordance with an agreement between the racetracks.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.056. SIMULCAST CONTRACT TERMS AND ARBITRATION. (a) Notwithstanding any other provisions of law, a greyhound racetrack association and the state greyhound breed registry shall by contract agree that each simulcast contract to which the greyhound racetrack association is a party, including a simulcast contract with a horse racetrack association or with another greyhound racetrack association, include terms that provide adequately for:

(1) the development of greyhound racing, breeding, and

purses; and

(2) any actual or potential loss of live racing handle based on the racetrack association's historical live racing schedule and handle in this state.

(b) If a greyhound racetrack association and the state greyhound breed registry fail to reach an agreement under Subsection (a), the racetrack association or the breed registry may submit the contract negotiations for binding arbitration under Chapter 171, Civil Practice and Remedies Code, and commission rules.

(c) The arbitration must be conducted by a board of three arbitrators as follows:

(1) one arbitrator appointed by the greyhound racetrack association;

(2) one arbitrator appointed by the state greyhound breed registry; and

(3) one arbitrator appointed by the arbitrators appointed under Subdivisions (1) and (2).

(d) A greyhound racetrack association and the state greyhound breed registry shall each pay its own arbitration expenses. The greyhound racetrack association and the state greyhound breed registry shall equally pay the arbitrator fees and costs.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. WAGERING PROHIBITIONS

Sec. 2027.101. RULES PROHIBITING WAGERING BY MINOR AND VIEWING BY UNACCOMPANIED CHILD. (a) The commission shall adopt rules to prohibit:

(1) wagering by a minor; and

(2) a child from entering the viewing section of a racetrack unless accompanied by the child's parent or guardian.

(b) The rules adopted under Subsection (a) may except any conduct described as an affirmative defense by Section 2033.017.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2027.102. UNLAWFUL WAGERING. (a) A person may not wager

on the result of a horse or greyhound race in this state except as authorized by this subtitle.

(b) A person other than a racetrack association may not accept from a Texas resident while the resident is in this state a wager on the result of a horse or greyhound race conducted inside or outside this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2028. PARI-MUTUEL POOLS, PURSES, AND FEES

SUBCHAPTER A. COMMISSION OVERSIGHT OF PARI-MUTUEL RACING FUNDS

Sec. 2028.001. ADOPTION OF REQUIREMENTS OR OTHER PERFORMANCE MEASURES. (a) For any organization that receives funds generated by live or simulcast pari-mutuel racing, the commission shall adopt reporting, monitoring, and auditing requirements or other appropriate performance measures for:

(1) any funds distributed to or used by the organization; and

(2) any function or service provided by the expenditure of the funds described by Subdivision (1).

(b) The commission shall adopt the requirements or performance measures after consultation with the affected organization. In adopting the rules, the commission shall consider the concerns of the affected organization.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.002. INDEPENDENT AUDIT REPORT; RECORDS REVIEW. (a) An organization that receives funds generated by live or simulcast pari-mutuel racing shall annually file with the commission a copy of an audit report prepared by an independent certified public accountant. The audit must include a verification of any performance report sent to or required by the commission.

(b) The commission may review any record or book of an organization that submits an independent audit to the commission as the commission determines necessary to confirm or further investigate the findings of an audit or report.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.003. SUSPENSION AND WITHHOLDING OF FUNDS. The commission by rule may suspend or withhold funds from an organization:

(1) that the commission determines has failed to comply with the requirements or performance measures adopted under Section 2028.001; or

(2) for which material questions on the use of funds by the organization are raised following an independent audit or other report to the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. GENERAL DEDUCTIONS FROM LIVE PARI-MUTUEL POOL

Sec. 2028.051. SET-ASIDE FROM LIVE PARI-MUTUEL POOL. A horse or greyhound racetrack association shall set aside for this state from each live pari-mutuel pool at the racetrack an amount equal to:

(1) one percent of each live pari-mutuel pool from the total amount of all of the racetrack association's live pari-mutuel pools in a calendar year in excess of $100 million but less than $200 million;

(2) two percent of each live pari-mutuel pool from the total amount of all of the racetrack association's live pari-mutuel pools in a calendar year in excess of $200 million but less than $300 million;

(3) three percent of each live pari-mutuel pool from the total amount of all of the racetrack association's live pari-mutuel pools in a calendar year in excess of $300 million but less than $400 million;

(4) four percent of each live pari-mutuel pool from the total amount of all of the racetrack association's live pari-mutuel pools in a calendar year in excess of $400 million but less than $500 million; and

(5) five percent of each live pari-mutuel pool from the total amount of all of the racetrack association's live pari-mutuel

pools in a calendar year in excess of $500 million.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. DISPOSITION OF HORSE PARI-MUTUEL POOLS AND OTHER AMOUNTS RELATED TO HORSE RACING

Sec. 2028.101. DEDUCTIONS FROM HORSE PARI-MUTUEL POOLS. (a) A horse racetrack association shall deduct an amount from each pari-mutuel pool to be distributed as provided by Sections 2028.102, 2028.103, and 2028.104.

(b) The total maximum deduction under Subsection (a) is:

(1) 18 percent from a regular wagering pool;

(2) 21 percent from a multiple two wagering pool; and

(3) 25 percent from a multiple three wagering pool.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.102. HORSE RACETRACK ASSOCIATION SET-ASIDES FOR PURSES; PURSE ACCOUNTS. (a) A horse racetrack association shall set aside for purses an amount not less than:

(1) for live pari-mutuel pools:

(A) seven percent of a live regular wagering pool or live multiple two wagering pool; and

(B) 8.5 percent of a live multiple three wagering pool; and

(2) for simulcast pari-mutuel pools from the takeout of the sending track:

(A) 38.8 percent of the regular wagering pool;

(B) 33.3 percent of the multiple two wagering pool; and

(C) 34 percent of the multiple three wagering pool.

(b) If the cost of the simulcast signal exceeds five percent of the simulcast handle, the receiving horse racetrack association shall split the cost of the signal in excess of five percent evenly with the horsemen's organization by allocating that cost against the purse money derived from that simulcast signal.

(c) The horse racetrack association shall:

(1) transfer the amount set aside for purses from any live

and simulcast pool; and

(2) deposit the amounts in purse accounts maintained by breed by the horsemen's organization in one or more federally insured depositories.

(d) Legal title to purse accounts is vested in the horsemen's organization. The horsemen's organization may contract with a horse racetrack association to manage and control the purse accounts and to make disbursements from the purse accounts:

(1) to an owner whose horse won a purse;

(2) to the horsemen's organization for the organization's expenses; or

(3) for other disbursements as provided by contract between the horsemen's organization and the horse racetrack association.

(e) A horse racetrack association may pay a portion of the revenue set aside under this section to an organization recognized under Section 2023.051, as provided by a contract approved by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.103. SET-ASIDE FOR TEXAS-BRED PROGRAM. (a) A horse racetrack association shall set aside for the Texas-bred program and pay to the commission an amount equal to one percent of a live multiple two wagering pool and a live multiple three wagering pool. From the set-aside amounts:

(1) two percent shall be set aside for purposes of Subchapter F, Chapter 88, Education Code; and

(2) the remaining amount shall be allocated as follows:

(A) 10 percent may be used by the appropriate state horse breed registry for administration; and

(B) the remainder shall be used for awards.

(a-1) The commission shall deposit money paid to the commission under Subsection (a) into the Texas-bred incentive fund established under Section 2028.301. The commission shall distribute the money collected under this section and deposited into the fund to the appropriate state horse breed registries for the Texas-bred program in accordance with rules adopted under Subsection (c).

(b) The amount set aside under Subsection (a) is in addition to

any money received from the breakage.

(c) The commission shall adopt rules relating to the deposit, accounting, auditing, and distribution of all amounts set aside for the Texas-bred program under this subchapter and for the use of those amounts by the state breed registries under that program.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1366 (H.B. 3366), Sec. 3, eff. September 1, 2019.

Sec. 2028.104. RACETRACK ASSOCIATION COMMISSION. After allocation of the amounts specified in Sections 2028.102 and 2028.103, the horse racetrack association shall retain as the racetrack association's commission the remainder of the amount deducted under Section 2028.101 from a regular wagering pool, a multiple two wagering pool, or a multiple three wagering pool.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.105. ALLOCATION OF BREAKAGE. (a) A horse racetrack association shall allocate two percent of the breakage from a pari-mutuel pool for purposes of Subchapter F, Chapter 88, Education Code. The remaining 98 percent of the breakage constitutes "total breakage" and must be allocated as provided by Subsections (b), (c), and (d).

(b) A horse racetrack association shall pay to the commission for use by the appropriate state horse breed registry, subject to commission rules, 10 percent of the total breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool. The appropriate state horse breed registries are as follows:

(1) the Texas Thoroughbred Breeders Association for Thoroughbred horses;

(2) the Texas Quarter Horse Association for quarter horses;

(3) the Texas Appaloosa Horse Club for Appaloosa horses;

(4) the Texas Arabian Breeders Association for Arabian horses; and

(5) the Texas Paint Horse Breeders Association for paint

horses.

(c) A horse racetrack association shall retain 10 percent of the total breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool to be used in stakes races restricted to accredited Texas-bred horses.

(d) The horse racetrack association shall pay to the commission for deposit into the Texas-bred incentive fund established under Section 2028.301 and distribution to the appropriate state horse breed registry the remaining 80 percent of the total breakage to be allocated as follows:

(1) 40 percent to the owners of the accredited Texas-bred horses that finish first, second, or third;

(2) 40 percent to the breeders of accredited Texas-bred horses that finish first, second, or third; and

(3) 20 percent to the owner of the stallion standing in this state at the time of conception whose Texas-bred get finish first, second, or third.

(d-1) The commission shall deposit the portions of total breakage paid to the commission under Subsections (b) and (d) into the Texas-bred incentive fund established under Section 2028.301. The commission shall distribute the money collected under this section and deposited into the fund to the appropriate state horse breed registries in accordance with this section and with rules adopted by the commission under Section 2028.103.

(e) If a share of the breakage cannot be distributed to the person entitled to the share, the appropriate state horse breed registry shall retain that share.

(f) For purposes of this section:

(1) "Breeder" means a person who, according to the rules of the appropriate state horse breed registry, is the breeder of the accredited Texas-bred horse.

(2) "Stallion owner" means a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1366 (H.B. 3366), Sec. 4, eff. September 1, 2019.

Sec. 2028.106. LIMITATION ON PURSE DEDUCTION. (a) In this section, "horse owner" means a person who is owner of record of an accredited Texas-bred horse at the time of a race.

(b) A horse racetrack association may not deduct or withhold any percentage of a purse from the account into which the purse paid to a horse owner is deposited for membership payments, dues, assessments, or any other payments to an organization except an organization chosen by the horse owner.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.107. LIMITATION ON INCENTIVES AWARDED TO CERTAIN HORSES. An accredited Texas-bred Thoroughbred or Arabian horse described by Section 2021.003(50)(C) is eligible for one-half of the incentives awarded under Sections 2028.103(a) and 2028.105(d)(2). The appropriate state horse breed registry shall retain the remaining portion for general distribution at the same meeting in accordance with Sections 2028.103(a) and 2028.105(d).

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER D. DISPOSITION OF GREYHOUND PARI-MUTUEL POOLS AND OTHER AMOUNTS RELATED TO GREYHOUND RACING

Sec. 2028.151. APPLICATION OF SUBCHAPTER. The deductions and allocations made under this subchapter apply to live pari-mutuel pools.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.152. DISTRIBUTION OF PARI-MUTUEL POOL. Each greyhound racetrack association shall distribute all money deposited in any pari-mutuel pool to the winning ticket holders who present tickets for payment not later than the 60th day after the closing day

of the greyhound race meeting at which the pool was formed less:

(1) an amount paid as a commission of 18 percent of the total deposits in pools resulting from regular win, place, and show wagering;

(2) an amount not to exceed 21 percent of the total deposits in pools resulting from multiple two wagering; and

(3) an amount not to exceed 25 percent of the total deposits in pools resulting from multiple three wagering.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.153. STATE FEE. On each racing day, a greyhound racetrack association shall pay to the comptroller the fee due this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.154. BREAKAGE. (a) A greyhound racetrack association shall pay 50 percent of the breakage to the appropriate state greyhound breed registry. Of that breakage percentage:

(1) 25 percent is to be used in stakes races; and

(2) 25 percent of that total breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool is to be paid to the commission for deposit into the Texas-bred incentive fund established under Section 2028.301. The commission shall distribute the money collected under this section and deposited into the fund to the state greyhound breed registry for use in accordance with this section and commission rules.

(b) The commission by rule shall require the state greyhound breed registry to award a grant, in an amount equal to two percent of the money paid under Subsection (a)(2), to a person for the rehabilitation of greyhounds or to locate homes for greyhounds.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1366 (H.B. 3366), Sec. 5, eff.

September 1, 2019.

Sec. 2028.155. ALLOCATION OF PURSE IN GREYHOUND RACES. (a) The purse in a greyhound race may not be less than 4.7 percent of the total deposited in each pari-mutuel pool.

(b) Of the portion of a purse allocated to a greyhound:

(1) 35 percent shall be paid directly to the greyhound owner; and

(2) the balance shall be paid to the greyhound's contract kennel as provided by commission rules.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER E. DISTRIBUTION OF SIMULCAST PARI-MUTUEL POOLS

Sec. 2028.201. RULES. The commission shall adopt rules relating to this subchapter and the oversight of the amounts allocated under Sections 2028.202(b) and (c).

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.202. REQUIRED DISTRIBUTIONS. (a) A racetrack association shall distribute from the total amount deducted as provided by Sections 2028.101 and 2028.152 from each simulcast pari-mutuel pool and each simulcast cross-species pari-mutuel pool the following shares:

(1) an amount equal to one percent of each simulcast pari-mutuel pool to the commission for the administration of this subtitle;

(2) an amount equal to 1.25 percent of each simulcast cross-species pari-mutuel pool to the commission for the administration of this subtitle;

(3) for a horse racetrack association, an amount equal to one percent of a multiple two wagering pool or multiple three wagering pool as the amount set aside for the Texas-bred program to be used as provided by Section 2028.103;

(4) for a greyhound racetrack association, an amount equal

to one percent of a multiple two wagering pool or a multiple three wagering pool as the amount set aside for the Texas-bred program for greyhound races, to be distributed and used in accordance with commission rules adopted to promote greyhound breeding in this state; and

(5) the remainder as the amount set aside for purses, expenses, the sending track, and the receiving location under a contract approved by the commission between the sending track and the receiving location.

(a-1) A racetrack association shall pay to the commission for deposit into the Texas-bred incentive fund established under Section 2028.301 the shares to be distributed under Subsections (a)(3) and (a)(4) for the Texas-bred program. The commission shall distribute the money collected under this section and deposited into the fund to the appropriate state breed registries for use under the Texas-bred program.

(b) From the total amount deducted under Subsection (a), a greyhound racetrack association that receives an interstate cross-species simulcast signal shall distribute the following amounts from each pari-mutuel pool wagered on the signal at the racetrack:

(1) a fee of 1.5 percent to be paid to the racetrack in this state sending the signal;

(2) a purse in the amount of 0.75 percent to be paid to the official state horse breed registry for Thoroughbred horses for use as purses at racetracks in this state;

(3) a purse in the amount of 0.75 percent to be paid to the official state horse breed registry for quarter horses for use as purses at racetracks in this state; and

(4) a purse of 4.5 percent to be escrowed with the commission in the manner provided by Section 2028.204.

(c) From the total amount deducted under Subsection (a), a horse racetrack association that receives an interstate cross-species simulcast signal shall distribute the following amounts from each pool wagered on the signal at the racetrack:

(1) a fee of 1.5 percent to be paid to the racetrack in this state sending the signal; and

(2) a purse in the amount of 5.5 percent to be paid to the official state greyhound breed registry for use at racetracks in this state.

(d) The official state greyhound breed registry may use not

more than 20 percent of the amount described by Subsection (c)(2) to administer that subsection.

(e) A racetrack association offering wagering on an intrastate cross-species simulcast signal shall send the purse amount specified under Subsection (b)(4) or (c)(2), as appropriate, to the racetrack conducting the live race that is being simulcast.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 49 (H.B. 1995), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1365 (H.B. 2463), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1366 (H.B. 3366), Sec. 6, eff. September 1, 2019.

Sec. 2028.203. REIMBURSEMENT FOR SIMULCAST SIGNAL COST. If a racetrack association purchases an interstate simulcast signal and the signal cost exceeds five percent of the pari-mutuel pool, the commission, from the escrowed account under Section 2028.202(b)(4), shall reimburse the racetrack association an amount equal to one-half of the signal cost that exceeds five percent of the pari-mutuel pool.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1365 (H.B. 2463), Sec. 2, eff. September 1, 2019.

Sec. 2028.204. ALLOCATION OF MONEY IN ESCROW ACCOUNTS. (a) A greyhound racetrack association shall deposit into an escrow account in the commission's registry the purse set aside under Section 2028.202(b)(4).

(b) Any horse racetrack association in this state may apply to the commission for receipt of money in the horse industry escrow account for use as purses. Any state horse breed registry listed in Section 2030.002(a) may apply for receipt of money in the account for any event that furthers the horse industry. The commission:

(1) shall determine the horse racetrack associations and state horse breed registries to be allocated money from the account and the percentages to be allocated, taking into consideration purse levels, racing opportunities, and the financial status of the requesting racetrack association or requesting breed registry; and

(2) may not annually allocate more than 70 percent of the amount deposited into the account to horse racetrack associations for use as purses.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1365 (H.B. 2463), Sec. 3, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 1365 (H.B. 2463), Sec. 4, eff. September 1, 2019.

Sec. 2028.2041. ALLOCATION OF CERTAIN FUNDS. (a) In each state fiscal biennium, the comptroller shall deposit the amounts allocated under Section 151.801(c-3), Tax Code, into the escrow account established under Section 2028.204(b), until the comptroller determines the amount deposited into the account in that fiscal biennium equals the greater of:

(1) the amount appropriated to the commission for the purposes of Section 2028.204 for that fiscal biennium; or

(2) $50 million.

(b) Once the comptroller determines the greater of the amount described by Subsection (a)(1) or (2) has been deposited during a state fiscal biennium into the escrow account established under Section 2028.204(b), for the remainder of that fiscal biennium the comptroller shall deposit the amounts allocated under Section 151.801(c-3), Tax Code, into the general revenue fund.

(c) The balance of the escrow account established under Section 2028.204(b) shall not exceed $50 million.

Added by Acts 2019, 86th Leg., R.S., Ch. 1365 (H.B. 2463), Sec. 5, eff. September 1, 2019.

Sec. 2028.205. ADDITIONAL ALLOCATIONS FOR CERTAIN RACETRACKS.

(a) In addition to money allocated under Section 2028.204, a horse racetrack association operating a racetrack that is located not more than 75 miles from a greyhound racetrack that offers wagering on a cross-species simulcast signal and that sends the cross-species simulcast signal to the greyhound racetrack may apply to the commission for an allocation of up to 20 percent of the money in the escrowed account that is attributable to the wagering on a cross-species simulcast signal at the greyhound racetrack.

(b) If the applying horse racetrack association can prove to the commission's satisfaction that the racetrack association's handle has decreased directly due to wagering on an interstate cross-species simulcast signal at a greyhound racetrack located not more than 75 miles from the applying racetrack association, the commission shall allocate amounts from the escrowed account as the commission considers appropriate to compensate the racetrack association for the decrease. The amounts allocated may not exceed 20 percent of the money in the escrowed account that is attributable to the wagering on the interstate cross-species simulcast signal at the greyhound racetrack.

(c) Money allocated by the commission under this section may be used by the racetrack association for any purpose.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1365 (H.B. 2463), Sec. 6, eff. September 1, 2019.

Sec. 2028.206. HOST FEE. A racetrack association conducting a live race that is being simulcast may charge the receiving racetrack a host fee in addition to the amounts described in this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER F. COUNTY AND MUNICIPAL FEES

Sec. 2028.251. ADMISSION FEES AUTHORIZED. (a) A commissioners court may collect a fee not to exceed 15 cents as an admission fee to a racetrack located in the county.

(b) If the racetrack is located in a municipality, the governing body of the municipality may collect a fee not to exceed 15 cents as an admission fee to the racetrack.

(c) If the racetrack is not located in a municipality, the commissioners court may collect an additional fee not to exceed 15 cents as an admission fee to a racetrack located in the county for allocation among the municipalities in the county.

(d) If the racetrack is not located in a municipality, the commissioners court on request of the governing bodies of a majority of the municipalities in the county shall collect the additional fee. Allocation of the fees must be based on the population of the municipalities in the county.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.252. ADDITIONAL FEES FOR CERTAIN COUNTIES. If the racetrack is a class 1 racetrack, the commissioners court of each county with a population of not less than 1.3 million adjacent to the county in which the racetrack is located may each collect fees equal to the fees authorized by Section 2028.251.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.253. PROCEDURES FOR FEE COLLECTION. (a) A commissioners court by order may establish procedures for the collection of the fees under Section 2028.251.

(b) The procedures may require a racetrack association to keep records and file the reports considered necessary by the commissioners court.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2028.254. OTHER FEES AND TAXES PROHIBITED. A county or municipality may not assess or collect any other license fee, privilege tax, excise tax, or racing fee on admissions to, or wagers

placed at, a racetrack.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER G. TEXAS-BRED INCENTIVE FUND

Sec. 2028.301. TEXAS-BRED INCENTIVE FUND. (a) The commission shall deposit money set aside for the Texas-bred program or set aside for use by state breed registries under this chapter into an escrow account in the state treasury in the registry of the commission to be known as the Texas-bred incentive fund.

(b) The commission shall distribute money from the Texas-bred incentive fund in accordance with this chapter and commission rules.

Added by Acts 2019, 86th Leg., R.S., Ch. 1366 (H.B. 3366), Sec. 7, eff. September 1, 2019.

CHAPTER 2029. ALLOCATION OF RACING DAYS

SUBCHAPTER A. HORSE RACING

Sec. 2029.001. ALLOCATION OF HORSE RACING DAYS; PROHIBITED RACING DAYS. (a) The commission shall allocate the live and simulcast horse racing days for the conduct of live and simulcast racing at each racetrack.

(b) In allocating race dates under this section, the commission shall consider live race dates separately from simulcast race dates.

(c) The commission may prohibit racing on Sunday unless the prohibition would conflict with another provision of this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2029.002. CHARITY DAYS. (a) The commission shall grant to each racetrack association additional horse racing days during a horse race meeting to be conducted as charity days. The commission shall grant to each class 1 racetrack and to each class 2 racetrack at least two and not more than five additional days.

(b) Each class 1 and class 2 racetrack shall conduct charity race days in accordance with this section.

(c) The commission shall ensure that races conducted by a racetrack association on a charity day are comparable in all respects, including the generation of revenue, to races conducted by that racetrack association on any other horse racing day.

(d) The commission shall adopt rules relating to the conduct of charity days.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2029.003. ACCESS TO RACES. (a) Each racetrack shall provide reasonable access to races for all breeds of horses as determined by the racetrack association through negotiations with the representative state horse breed registry with the final approval of the commission.

(b) In granting approval under Subsection (a), the commission shall consider:

(1) the availability of competitive horses;

(2) economic feasibility; and

(3) public interest.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. GREYHOUND RACING

Sec. 2029.051. NUMBER OF GREYHOUND RACING DAYS. A greyhound racetrack association is entitled to 300 evening performances and 150 matinee performances in a calendar year.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2029.052. CHARITY DAYS. (a) The commission shall grant not less than five additional greyhound racing days during a greyhound race meeting to be conducted as charity days.

(b) The commission shall ensure that races conducted by a racetrack association on a charity day are comparable in all respects, including the generation of revenue, to races conducted by

that racetrack association on any other greyhound racing day.

(c) The commission shall adopt rules relating to the conduct of charity days.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2029.053. SUBSTITUTE RACING DAYS OR ADDITIONAL RACES. If, for a reason beyond a greyhound racetrack association's control and not caused by the racetrack association's fault or neglect, it is impossible for the racetrack association to conduct a race on a day authorized by the commission, the commission in its discretion and at the request of the racetrack association, as a substitute for the race, may:

(1) specify another day for the racetrack association to conduct racing; or

(2) add additional races to already programmed events.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2030. TEXAS-BRED HORSES AND GREYHOUNDS

SUBCHAPTER A. TEXAS-BRED HORSES; BREED REGISTRIES; RACING

Sec. 2030.001. QUALIFICATIONS OF ACCREDITED TEXAS-BRED HORSES. (a) Subject to this subtitle or commission rule, a state horse breed registry shall adopt reasonable rules to establish the qualifications of accredited Texas-bred horses to promote, develop, and improve the breeding of horses in this state.

(b) Rules adopted under this section are subject to approval by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2030.002. STATE HORSE BREED REGISTRIES. (a) The officially designated state horse breed registries for accredited Texas-bred horses are:

(1) the Texas Thoroughbred Breeders Association for

Thoroughbred horses;

(2) the Texas Quarter Horse Association for quarter horses;

(3) the Texas Appaloosa Horse Club for Appaloosa horses;

(4) the Texas Arabian Breeders Association for Arabian horses; and

(5) the Texas Paint Horse Breeders Association for paint horses.

(b) The appropriate state horse breed registry shall act in an advisory capacity to each racetrack association and to the commission for the purpose of administering Sections 2030.003 and 2030.004.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2030.003. TEXAS-BRED RACES. (a) In this section, "Texas-bred race" means a race limited to accredited Texas-bred horses.

(b) A racetrack association shall provide for the running of Texas-bred races.

(c) Except as provided by Subsection (d), on each horse racing day, a racetrack association shall provide for the running of at least two Texas-bred races, including one race restricted to maidens.

(d) In accordance with commission rule, a racetrack association may defer the running of one or both of the races required by Subsection (c) for each horse racing day if the racetrack association provides that the total number of accredited Texas-bred races in a horse race meeting is equal to twice the total number of horse racing days in the horse race meeting.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2030.004. PURSE SUPPLEMENTS FOR TEXAS-BRED RACES. (a) In this section, "Texas-bred race" has the meaning assigned by Section 2030.003.

(b) To encourage horse breeding in this state, an accredited Texas-bred horse finishing first, second, or third in a race in this state, except a restricted stakes race, is entitled to receive a purse supplement.

(c) Funds for the purse supplements shall be derived from the

breakage as provided by Subchapters C and E, Chapter 2028.

(d) An accredited Texas-bred Thoroughbred horse that finishes first, second, or third in a race other than a Texas-bred race is entitled to receive an owner's bonus award as a purse supplement. Twenty-five percent of the Texas-bred program funds received under Subchapters C and E, Chapter 2028, excluding expenses for administration of the Texas-bred program, shall be allocated to fund the bonus awards.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2030.005. EQUITABLE NUMBER OF RACES FOR EACH BREED. (a) A racetrack association that conducts a horse race meeting for more than one breed of horse at one racetrack shall provide that the number of races run by each breed on each day is equitable as determined by the commission under Section 2029.003.

(b) The commission by rule or by order may allow an exception to Subsection (a) if an insufficient number of horses of a breed are available to provide sufficient competition.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2030.006. EQUITABLE STABLING. A racetrack association that conducts a horse race meeting for more than one breed of horse at one racetrack shall provide on-track stalls on an equitable basis as determined by the commission under Section 2029.003.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. TEXAS-BRED GREYHOUNDS

Sec. 2030.051. QUALIFICATIONS OF TEXAS-BRED GREYHOUNDS. (a) Subject to this subtitle or commission rule, the state greyhound breed registry shall adopt reasonable rules to establish the qualifications of accredited Texas-bred greyhounds to promote, develop, and improve the breeding of greyhounds in this state.

(b) Rules adopted under this section are subject to approval by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2030.052. STATE GREYHOUND BREED REGISTRY. The officially designated state greyhound breed registry for accredited Texas-bred greyhounds is the Texas Greyhound Association.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2030.053. BREAKAGE DISTRIBUTIONS DUE STATE GREYHOUND BREED REGISTRY. (a) The state greyhound breed registry shall adopt rules to provide for the use of breakage received by the registry under Section 2028.154(a).

(b) A racetrack association shall pay the appropriate state greyhound breed registry at least every 30 days the breakage due to the breed registry.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2031. TEXAS DERBIES

Sec. 2031.001. ESTABLISHMENT OF TEXAS DERBIES. (a) The commission shall establish as Texas Derbies the following annual stakes races:

(1) one race open to three-year-old Thoroughbreds;

(2) one race open only to three-year-old Texas-bred Thoroughbreds;

(3) one race open to three-year-old quarter horses; and

(4) one race open only to three-year-old Texas-bred quarter horses.

(b) Each Texas Derby must be held annually on a date and at the class 1 racetrack determined by the commission. The commission shall determine the location of each Texas Derby in consultation with:

(1) each class 1 racetrack;

(2) the official state horse breed registries; and

(3) the official horsemen's organization.

(c) The commission may sell the right to name a Texas Derby. The commission shall deposit the proceeds from the sale of the right to name a Texas Derby into the Texas Derby escrow purse fund established under Section 2031.004.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2031.002. RACE CONDITIONS, ENTRANCE QUALIFICATIONS, AND PREFERENCE SYSTEM. (a) For each Texas Derby, the race conditions, the entrance qualifications, and the preference system used to determine race finalists shall be developed by:

(1) the racetrack that is awarded the derby, for a race described by Section 2031.001(a)(1) or (3); or

(2) the respective official state horse breed registries and the official horsemen's organization, for a race described by Section 2031.001(a)(2) or (4).

(b) The race conditions, the entrance qualifications, and the preference system developed under Subsection (a) are subject to review and approval by the executive director.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2031.003. PRERACE EXAMINATION. (a) For each Texas Derby, the commission shall appoint a state veterinarian to conduct a prerace examination of each horse entered in the race to determine whether the horse:

(1) is healthy; and

(2) meets standards set by commission rule for racing.

(b) The examination may:

(1) be conducted at any time before the race; and

(2) include any procedure that the state veterinarian considers necessary to make the determination required by Subsection (a).

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2031.004. TEXAS DERBY ESCROW PURSE FUND. (a) The commission shall establish a Texas Derby escrow purse fund.

(b) Notwithstanding Section 2023.053 or 2024.055 or any other law, the commission by rule shall determine a portion of the fees, charges, and other revenue collected under this subtitle to be deposited to the credit of the Texas Derby escrow purse fund in the amount reasonably necessary to maintain competitive purses for each Texas Derby.

(c) The commission shall by rule establish a schedule of entrance fees for participants in each Texas Derby. A portion of each entrance fee, in the amount determined by the commission under Subsection (b), shall be deposited in the Texas Derby escrow purse fund.

(d) The commission by rule may assess under this subtitle additional charges and fees, including gate fees, to supplement the funds otherwise deposited in the Texas Derby escrow purse fund under this section.

(e) The commission may not:

(1) use funds from the accredited Texas-bred program under Subchapter A, Chapter 2030, or the escrowed purse account under Section 2028.204 to fund the Texas Derby escrow purse fund; or

(2) order a state horse breed registry to fund a purse for a Texas Derby, make contributions to the Texas Derby escrow purse fund, or pay the expenses of a Texas Derby race.

(f) State revenue may not be deposited to the credit of the Texas Derby escrow purse fund except as provided by this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2032. LIVESTOCK SHOWS, EXHIBITS, AND FAIRS

Sec. 2032.001. COUNTY LIVESTOCK SHOWS AND EXHIBITS; COUNTY RIGHTS. (a) Subject to the licensing requirements and other provisions of this subtitle, a county may conduct an annual race meeting, not to exceed 16 racing days, in connection with a livestock show or exhibit held under Chapter 319, Local Government Code.

(b) An agent qualified to hold a license under this subtitle and selected by the commissioners court under Section 319.004, Local Government Code, may conduct the race meeting.

(c) This subtitle does not prohibit a county from exercising any right otherwise granted to any person by this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2032.002. COUNTIES HOLDING CERTAIN RACETRACK LICENSES. (a) A county that holds a class 4 racetrack license may conduct an annual race meeting not to exceed five racing days in connection with a livestock show or exhibit held under Chapter 319, Local Government Code. A racing day of the annual race meeting must be conducted on a day when general fair activities are conducted.

(b) A county that holds a class 4 racetrack license may contract with an agent to conduct any portion of a race meeting. The agent must hold a license issued under this subtitle that is appropriate for the service the agent provides.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2032.003. PUBLIC FAIRS AND LIVESTOCK EXHIBITIONS. Subject to the licensing requirements and other provisions of this subtitle, a nonprofit corporation may conduct a race meeting, not to exceed 16 racing days, for the purpose of encouraging agriculture through the operation of public fairs and livestock exhibitions.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2033. CRIMINAL AND ADMINISTRATIVE PENALTIES; DISCIPLINARY POWERS

SUBCHAPTER A. CRIMINAL PENALTIES AND PROCEDURES

Sec. 2033.001. GENERAL CRIMINAL PENALTY. If a provision of this subtitle creates an offense without providing a specific penalty, a person who violates that provision commits a state jail

felony.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.002. UNLAWFUL RACING. A person commits an offense if:

(1) the person participates in, permits, or conducts a horse or greyhound race at a racetrack;

(2) the person wagers on the partial or final outcome of the horse or greyhound race or knows or reasonably should know that another person is betting on the partial or final outcome of the race; and

(3) the race is not part of a performance or race meeting conducted under this subtitle or commission rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.003. PARI-MUTUEL WAGERING WITHOUT LICENSE. (a) A person commits an offense if, without a license, the person in any capacity participates or is otherwise involved in horse racing or greyhound racing with pari-mutuel wagering.

(b) An offense under Subsection (a) is a Class A misdemeanor, unless the actor was required by this subtitle to obtain a racetrack license, in which event the offense is a state jail felony.

(c) It is an affirmative defense to prosecution under Subsection (a) that the actor was a spectator or a person placing a wager.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.004. RACING WITHOUT LICENSE. (a) A person commits an offense if the person:

(1) conducts a horse or greyhound race without a racetrack license; and

(2) knows or reasonably should know that another person is

betting on the final or partial outcome of the race.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.005. IMPERSONATING LICENSE HOLDER. (a) A person commits an offense if the person impersonates a license holder with the intent to induce another person to submit to the actor's purported authority as a license holder or to rely on the actor's actions as an alleged license holder.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.006. UNLAWFUL POSSESSION OR USE OF CREDENTIAL. (a) A person commits an offense if the person knowingly possesses or displays a credential or false credential that identifies the person as the holder of the credential and the person knows that:

(1) the credential is not issued to the person; or

(2) the person is not a license holder.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.007. FAILURE TO DISPLAY CREDENTIAL. (a) For purposes of this section, a request is lawful if it is made:

(1) at any time by:

(A) the commission;

(B) an authorized commission agent;

(C) the director or a commissioned officer of the Department of Public Safety;

(D) a peace officer; or

(E) a steward or judge; and

(2) at any restricted location that is at a racetrack and

is not a public place.

(b) A person commits an offense if, after a lawful request, the person knowingly fails or refuses to:

(1) display a credential to another person; or

(2) give the person's name, residence address, or date of birth to another person.

(c) Except as provided by Subsection (d), an offense under this section is a Class B misdemeanor.

(d) At the punishment stage of a trial for an offense under Subsection (b)(1), the defendant may raise an issue as to whether the defendant was a license holder at the time of the offense. If the defendant proves the issue, the offense is a Class C misdemeanor.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.008. RACES CONDUCTED ON CERTAIN INDIAN LANDS. (a) A person commits an offense if the person knowingly wagers on the result of a horse or greyhound race conducted in this state that:

(1) is held on an American Indian reservation or on American Indian trust land located in this state; and

(2) is not held under the supervision of the commission under rules adopted under this subtitle.

(b) An offense under this section is a felony of the third degree.

(c) It is an exception to the application of this section that the person is a member of a recognized Texas Indian tribe who lives on a reservation or on trust lands located in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.009. ILLEGAL ACCESS TO ENCLOSURE. (a) A person commits an offense if the person is a license holder and the person knowingly permits, facilitates, or allows access to an enclosure where races are conducted to another person who the person knows:

(1) has engaged in bookmaking, touting, or illegal wagering;

(2) derives income from illegal activities or enterprises;

(3) has been convicted of a violation of this subtitle; or

(4) is excluded by the commission from entering a racetrack.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.010. HINDERING ENTRY OR SEARCH. (a) A person commits an offense if the person with criminal negligence refuses, denies, or hinders entry to another person who is exercising or attempting to exercise a power of entry under this subtitle or a commission rule.

(b) A person commits an offense if the person with criminal negligence refuses, denies, hinders, interrupts, disrupts, impedes, or otherwise interferes with a search by a person who is exercising or attempting to exercise a power to search under this subtitle or a commission rule.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.011. FORGING PARI-MUTUEL TICKET. (a) In this section, "forge" has the meaning assigned by Section 32.21, Penal Code.

(b) A person commits an offense if the person knowingly forges a pari-mutuel ticket with the intent to defraud or harm another person.

(c) An offense under this section is a felony of the third degree.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.012. FALSE STATEMENTS. (a) In this section, "statement" means a representation of fact, including:

(1) a written or oral statement; or

(2) a sworn or unsworn statement.

(b) A person commits an offense if the person knowingly makes a material and false, incorrect, or deceptive statement to another person who is conducting an investigation or exercising discretion under this subtitle or a rule adopted under this subtitle.

(c) An offense under this section is a state jail felony unless the statement was material in a commission action relating to a racetrack license, in which event the offense is a felony of the third degree.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.013. TOUTING. (a) A person commits an offense if, with an intent to deceive and an intent to obtain a benefit, the person knowingly:

(1) makes a false statement about a horse or greyhound race to another person; or

(2) offers, agrees to convey, or conveys false information about a horse or greyhound race to another person.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a state jail felony if:

(1) the actor:

(A) is a license holder under this subtitle or a commission member or employee; and

(B) knowingly represents that a commission member or employee or a person licensed by the commission is the source of the false information; or

(2) the false statement or information was contained in racing selection information provided to the public.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.014. BRIBERY AND CORRUPT INFLUENCE. (a) A person commits an offense if, with the intent to influence or affect the outcome of a race in a manner contrary to this subtitle or a commission rule, the person offers, confers, or agrees to confer on

another person, or solicits, accepts, or agrees to accept from another person, any benefit as consideration for the actions of a person who receives the benefit relating to the conduct, decision, opinion, recommendation, vote, or exercise of discretion as a license holder or other person associated with or interested in any stable, kennel, horse, greyhound, or horse or greyhound race.

(b) An offense under this section is a state jail felony unless the recipient of the benefit is a steward, judge, or other racetrack official exercising authority over a horse or greyhound race that the person providing or offering the benefit intended to influence, in which event the offense is a felony of the third degree.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.015. POSSESSION OR USE OF PROHIBITED DEVICE OR SUBSTANCE. (a) A person commits an offense if the person possesses a prohibited device or prohibited substance at a racetrack, in an enclosure, or at a training facility.

(b) A person commits an offense if, with the intent to influence or affect a horse or greyhound race in a manner contrary to this subtitle or a commission rule, the person uses or offers to use:

(1) a prohibited device; or

(2) a prohibited substance.

(c) An offense under Subsection (a) is a Class A misdemeanor unless the actor possessed the prohibited device or prohibited substance with the intent to influence or affect the outcome of a horse or greyhound race in a manner contrary to this subtitle or a commission rule, in which event the offense is a state jail felony.

(d) An offense under Subsection (b) is a felony of the third degree.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.016. CRIMINAL CONFLICT OF INTEREST. A person who is a commission member commits an offense if the person:

(1) accepts, directly or indirectly, employment or remuneration from a racetrack, racetrack association, or other

license holder, including a racetrack, racetrack association, or license holder located or residing in another state;

(2) wagers or causes a wager to be placed on the outcome of a horse or greyhound race conducted in this state; or

(3) accepts or is entitled to any part of a purse to be paid to an animal in a race conducted in this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.017. OFFENSE INVOLVING MINOR. (a) A person commits an offense if the person with criminal negligence permits, facilitates, or allows:

(1) wagering by a minor at a racetrack; or

(2) entry by a child to the viewing section of a racetrack.

(b) A person commits an offense if the person is a minor and knowingly engages in wagering at a racetrack.

(c) An offense under Subsection (a) is a Class B misdemeanor.

(d) An offense under Subsection (b) is a Class C misdemeanor.

(e) It is an affirmative defense to prosecution of an offense under Subsection (a)(2) that a child was accompanied by and was in the physical presence of a parent, guardian, or spouse who was 21 years of age or older.

(f) It is an affirmative defense to prosecution of an offense under Subsection (a) that the minor falsely represented the minor's age by displaying to the person an apparently valid Texas driver's license or identification card issued by the Department of Public Safety that contains a physical description consistent with the minor's appearance.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.018. SEARCH AND SEIZURE. (a) A person consents to a search for a prohibited device, prohibited substance, or other contraband at a time and location described by Subsection (b) if the person:

(1) accepts a license or other credential issued under this subtitle; or

(2) enters a racetrack under the authority of a license or other credential alleged to have been issued under this subtitle.

(b) A search may be conducted by a commissioned officer of the Department of Public Safety or a peace officer, including a peace officer employed by the commission, at any time and at any location at a racetrack, except a location:

(1) excluded by commission rule from searches under this section; or

(2) provided by a racetrack association under commission rule for private storage of personal items belonging to a license holder entering a racetrack.

(c) A person conducting a search under Subsection (b) may seize a prohibited device, prohibited substance, or other contraband discovered during the search.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.019. PROSECUTION. A person subject to prosecution for an offense under this subtitle and another law may be prosecuted under either law.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.020. VENUE FOR PROSECUTION. Venue for the prosecution of an offense under this subtitle is in Travis County or in a county in which an element of the offense occurred.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.021. COMMISSION AUTHORITY. This subchapter does not restrict the commission's administrative authority to enforce this subtitle or commission rules to the fullest extent authorized by this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

SUBCHAPTER B. ADMINISTRATIVE PENALTY

Sec. 2033.051. IMPOSITION OF PENALTY. If the commission determines that a person regulated under this subtitle has violated this subtitle or a rule or order adopted under this subtitle in a manner that constitutes a ground for a disciplinary action under this subtitle, the commission may assess an administrative penalty against that person as provided by this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.052. AMOUNT OF PENALTY. (a) The commission may assess an administrative penalty under this subchapter in an amount not to exceed $10,000 for each violation.

(b) In determining the amount of the penalty, the commission shall consider the seriousness of the violation.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.053. PRELIMINARY REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If, after examination of a possible violation and the facts relating to that possible violation, the commission determines that a violation has occurred, the commission shall issue a preliminary report that states:

(1) the facts on which the conclusion is based;

(2) the fact that an administrative penalty is to be imposed; and

(3) the amount of the penalty to be assessed.

(b) Not later than the 10th day after the date on which the commission issues the preliminary report, the commission shall send a copy of the report to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2033.054. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date on which the commission sends the preliminary report under Section 2033.053, the person charged may:

(1) make a written request for a hearing; or

(2) remit the amount of the administrative penalty to the commission.

(b) Failure to request a hearing or to remit the amount of the administrative penalty in the period provided under this section results in a waiver of a right to a hearing under this subtitle.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.055. HEARING. (a) If the person charged requests a hearing, the hearing shall be conducted in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(b) If it is determined after the hearing that the person has committed the alleged violation, the commission shall:

(1) provide written notice to the person of the findings established by the hearing and the amount of the penalty; and

(2) enter an order requiring the person to pay the penalty.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.056. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date on which the notice required under Section 2033.055 is received, the person charged shall pay the administrative penalty in full or exercise the right to appeal either the amount of the penalty or the fact of the violation.

(b) If a person exercises a right of appeal either as to the amount of the penalty or the fact of the violation, the amount of the penalty is not required to be paid until the 30th day after the date on which all appeals have been exhausted and the commission's decision has been upheld.

(c) Except as otherwise provided by Section 2024.053(c), all administrative appeals are to the commission and then to the courts.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.057. COMPLAINTS. (a) A complaint alleging a violation of this subtitle may be instituted by the Department of Public Safety, the commission, or the attorney general.

(b) The complaint must be decided by the commission under the contested case provisions of Chapter 2001, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. CEASE AND DESIST ORDERS

Sec. 2033.101. CEASE AND DESIST ORDER. (a) The executive director may issue a cease and desist order if the executive director reasonably believes a racetrack association or other license holder is engaging or is likely to engage in conduct that violates this subtitle or a commission rule.

(b) On issuance of a cease and desist order, the executive director shall serve a proposed cease and desist order on the racetrack association or other license holder by personal delivery or registered or certified mail, return receipt requested, to the person's last known address.

(c) The proposed order must state the specific acts or practices alleged to violate this subtitle or a commission rule. The proposed order must state the effective date, which may not be earlier than the 21st day after the date the proposed order is mailed or delivered.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.102. HEARING CONCERNING PROPOSED CEASE AND DESIST ORDER; FINAL ORDER. (a) If the person against whom a proposed cease and desist order is directed requests, in writing, a hearing before

the effective date of the proposed order, the order is automatically stayed pending final adjudication of the order. Unless the person against whom the proposed order is directed requests, in writing, a hearing before the effective date of the proposed order, the order takes effect and is final and nonappealable as to that person.

(b) On receiving a request for a hearing, the executive director shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested.

(c) At a hearing, the commission has the burden of proof and must present evidence in support of the order. Each person against whom the order is directed may cross-examine and show cause why the order should not be issued.

(d) After the hearing, the commission shall issue or decline to issue a cease and desist order. The proposed order may be modified as necessary to conform to the findings at the hearing. An order issued under this section is final for purposes of enforcement and appeal and must require the person to immediately cease and desist from the conduct that violates this subtitle or a commission rule.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.103. PETITION FOR JUDICIAL REVIEW OF CEASE AND DESIST ORDER. (a) A person affected by a cease and desist order issued, affirmed, or modified after a hearing under Section 2033.102 may file a petition for judicial review in a district court of Travis County under Chapter 2001, Government Code.

(b) A petition for judicial review does not stay or vacate the cease and desist order unless the court, after hearing, specifically stays or vacates the order.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.104. EMERGENCY CEASE AND DESIST ORDER. (a) The executive director may issue an emergency cease and desist order if the executive director reasonably believes a racetrack association or other license holder is engaged in a continuing activity that

violates this subtitle or a commission rule in a manner that threatens immediate and irreparable public harm.

(b) After issuing an emergency cease and desist order, the executive director shall serve on the racetrack association or other license holder by personal delivery or registered or certified mail, return receipt requested, to the person's last known address, an order stating the specific charges and requiring the person immediately to cease and desist from the conduct that violates this subtitle or a commission rule. The order must contain a notice that a request for hearing may be filed under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.105. HEARING CONCERNING EMERGENCY CEASE AND DESIST ORDER; FINAL ORDER. (a) A racetrack association or other license holder that is the subject of an emergency cease and desist order may request a hearing. The request must:

(1) be filed with the executive director not later than the 10th day after the date the order was received or delivered;

(2) be in writing and directed to the executive director; and

(3) state the grounds for the request to set aside or modify the order.

(b) Unless a person who is the subject of the emergency order requests a hearing in writing before the 11th day after the date the order is received or delivered, the emergency order is final and nonappealable as to that person.

(c) On receiving a request for a hearing, the executive director shall serve notice of the time and place of the hearing by personal delivery or registered or certified mail, return receipt requested. The hearing must be held not later than the 10th day after the date the executive director receives the request for a hearing unless the parties agree to a later hearing date.

(d) At the hearing, the commission has the burden of proof and must present evidence in support of the order. The person requesting the hearing may cross-examine witnesses and show cause why the order should not be affirmed. Section 2003.021(b), Government Code, does not apply to hearings conducted under this section.

(e) An emergency cease and desist order continues in effect unless the order is stayed by the executive director. The executive director may impose any condition before granting a stay of the order.

(f) After the hearing, the executive director shall affirm, modify, or set aside, wholly or partly, the emergency cease and desist order. An order affirming or modifying the emergency cease and desist order is final for purposes of enforcement and appeal.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.106. VIOLATION OF FINAL CEASE AND DESIST ORDER. (a) If the executive director reasonably believes that a person has violated a final and enforceable cease and desist order, the executive director may:

(1) initiate administrative penalty proceedings under Subchapter B;

(2) refer the matter to the attorney general for enforcement by injunction and any other available remedy; or

(3) pursue any other action that the executive director considers appropriate, including suspension of the person's license.

(b) If the attorney general prevails in an action brought under Subsection (a)(2), the attorney general is entitled to recover reasonable attorney's fees.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER D. OTHER DISCIPLINARY POWERS

Sec. 2033.151. DISCIPLINARY ACTIONS. (a) The commission shall revoke, suspend, or refuse to renew a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this subtitle or a commission rule.

(b) If a license suspension is probated, the commission may require the license holder to report regularly to the commission on matters that are the basis of the probation.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01,

eff. April 1, 2019.

Sec. 2033.152. HEARING CONCERNING SUSPENSION, REVOCATION, OR REFUSAL TO RENEW LICENSE. (a) If the commission proposes to suspend, revoke, or refuse to renew a person's license, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Proceedings for a disciplinary action, other than those conducted by a steward or judge, are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the commission under Section 2001.004, Government Code, applicable to the proceedings for a disciplinary action, other than those conducted by a steward or judge, may not conflict with rules adopted by the State Office of Administrative Hearings.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.153. INJUNCTION. The commission may institute an action in its own name to enjoin the violation of this subtitle. An action for an injunction is in addition to any other action, proceeding, or remedy authorized by law.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2033.154. ENFORCEMENT REGARDING HORSEMEN'S ACCOUNT. (a) The commission by rule shall develop a system for monitoring the activities of managers and employees of a racetrack association relating to the horsemen's account. The monitoring system may include review of the financial operations of the racetrack association, including inspections of records at the racetrack association's offices, at any racetrack, or at any other place the racetrack association transacts business.

(b) The executive director may issue an order prohibiting the racetrack association from making any transfer from a bank account held by the racetrack association for the conduct of business under

this subtitle, pending commission review of the records of the account, if the executive director reasonably believes that the racetrack association has failed to maintain the proper amount of money in the horsemen's account. The executive director shall provide in the order a procedure for the racetrack association to pay certain expenses necessary for the operation of the racetrack, subject to the executive director's approval.

(c) An order issued under this section may be made valid for a period not to exceed 14 days.

(d) The executive director may issue an order requiring the appropriate transfers to or from the horsemen's account if, after reviewing the racetrack association's records of its bank accounts, the executive director determines there is an improper amount of money in the horsemen's account.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2034. UNLAWFUL INFLUENCE ON RACING

Sec. 2034.001. RULES RELATING TO UNLAWFUL INFLUENCES ON RACING AND REQUIRED TESTING. (a) The commission shall adopt rules prohibiting a person from unlawfully influencing or affecting the outcome of a race, including rules relating to the use of a prohibited device or prohibited substance at a racetrack or at a training facility.

(b) The commission shall require testing to determine whether a prohibited substance has been used.

(c) The commission's rules must require state-of-the-art testing methods. The testing may:

(1) be prerace or postrace as determined by the commission; and

(2) be by an invasive or noninvasive method.

(d) The commission shall adopt rules relating to the drug testing of license holders.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2034.002. MEDICATION AND DRUG TESTING PROCEDURES. (a)

Medication or drug testing performed on a race animal under this subtitle must be conducted by:

(1) the Texas A&M Veterinary Medical Diagnostic Laboratory; or

(2) a laboratory operated by or in conjunction with or by a private or public agency selected by the commission after consultation with the Texas A&M Veterinary Medical Diagnostic Laboratory.

(b) Medication or drug testing performed on a human under this subtitle must be conducted by a laboratory approved by the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2034.003. CHARGES FOR MEDICATION OR DRUG TESTING. (a) The commission by rule shall:

(1) prescribe procedures for approving and paying medical and drug testing laboratory charges under this section; and

(2) allocate responsibility for the costs of human drug testing of a license holder.

(b) The racetrack association that receives medication or drug testing services conducted under this subtitle shall pay the reasonable charges associated with those services.

(c) Charges for services performed under this section must be forwarded to the commission for approval of the reasonableness of the charges. Charges may include expenses incurred for travel, lodging, testing, and processing of test results.

(d) The commission shall determine whether the laboratory charges are reasonable in relation to industry standards by periodically surveying the drug testing charges of comparable laboratories in the United States.

(e) The racetrack association that receives the services is responsible for the cost of approved charges for animal drug testing services under this section. The commission shall forward a copy of the charges to the racetrack association for immediate payment.

(f) To pay the charges associated with the medication or drug testing, a racetrack association may use the money held by the racetrack association to pay outstanding tickets and pari-mutuel

vouchers. The racetrack association shall pay any additional amount needed for the charges.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2034.004. RESPONSIBILITY OF LICENSED TRAINER CONCERNING PROHIBITED SUBSTANCE. The licensed trainer of an animal is:

(1) considered by law to be the absolute ensurer that no prohibited substance has been administered to the animal; and

(2) responsible for ensuring that no prohibited substance is administered to the animal.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2034.005. PROHIBITED SUBSTANCE IN TEST SAMPLE OR SPECIMEN. (a) The commission may require urine samples to be frozen for a period necessary to allow any follow-up testing to detect and identify a prohibited substance. Any other specimen shall be maintained for testing purposes in a manner required by commission rule.

(b) If a test sample or specimen shows the presence of a prohibited substance, the entire sample, including any split portion remaining in the custody of the commission, shall be maintained until final disposition of the matter.

(c) A license holder whose animal test shows the presence of a prohibited substance is entitled to have a split portion of the test sample or specimen tested at a testing facility authorized to perform drug testing under this subtitle and selected by the license holder. The commission shall adopt rules relating to split testing procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2034.006. DISCIPLINARY ACTION FOR PROHIBITED DEVICE OR SUBSTANCE. (a) Following the discovery of a prohibited device or a

return of a test showing the presence of a prohibited substance, a steward or judge may summarily suspend a person who has used or administered the prohibited device or prohibited substance until a hearing before the stewards or judges. The steward or judge may also disqualify an animal as provided by a commission rule adopted under this chapter.

(b) Except as otherwise provided, a person may appeal a ruling of the stewards or judges to the commission. The commission may stay a suspension during the period the matter is before the commission.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2034.007. DISCIPLINARY ACTION FOR RULE VIOLATION OF PROHIBITED DEVICE OR SUBSTANCE. A person who violates a rule adopted under this chapter may:

(1) have any license issued to the person by the commission revoked or suspended; or

(2) be barred for life or any other period from applying for or receiving a license issued by the commission or entering any portion of a racetrack.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

CHAPTER 2035. LOCAL OPTION ELECTION TO LEGALIZE PARI-MUTUEL WAGERING

SUBCHAPTER A. LEGALIZATION ELECTION

Sec. 2035.001. VOTER APPROVAL OF RACETRACK REQUIRED. (a) The commission may not issue a racetrack license or accept a license application for a racetrack to be located in a county until the commissioners court has certified to the secretary of state that the qualified voters of the county have approved the legalization of pari-mutuel wagering on horse races or greyhound races in the county at an election held under this chapter.

(b) A racetrack may not be located within a home-rule municipality unless a majority of the votes cast in the municipality in the election held under this chapter that legalized pari-mutuel wagering on horse races in the county favored legalization.

(c) Subsection (b) does not apply to a racetrack that:

(1) was located outside the boundaries of the municipality when the racetrack was first licensed; and

(2) has continuously held a license since the issuance of the original license.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.002. INITIATION OF LEGALIZATION ELECTION. The commissioners court:

(1) may, on its own motion by a majority vote of its members, order an election to approve the legalization of pari-mutuel wagering on horse races or greyhound races; and

(2) shall order an election on presentation of a petition meeting the requirements of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.003. ELECTION TO APPROVE WAGERING ON SIMULCAST RACES. The commissioners court of a county in which a racetrack is conducting live racing may, on its own motion by a majority vote of its members, order an election to approve pari-mutuel wagering on simulcast horse races or greyhound races.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.004. APPLICATION FOR PETITION; ISSUANCE. If 10 or more registered voters of the county file a written application, the county clerk shall issue to the applicants a petition to be circulated among registered voters for their signatures.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.005. CONTENTS OF PETITION APPLICATION. To be valid,

the petition application must contain:

(1) a heading, as follows: "Application for a Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Horse Races" or "Application for a Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Greyhound Races," as appropriate;

(2) a statement of the issue to be voted on, as follows: "Legalizing pari-mutuel wagering on horse races in _____ County" or "Legalizing pari-mutuel wagering on greyhound races in _____ County," as appropriate;

(3) a statement immediately above the signatures of the applicants, as follows: "It is the hope, purpose, and intent of the applicants whose signatures appear below that pari-mutuel wagering on horse races be legalized in _____ County" or "It is the hope, purpose, and intent of the applicants whose signatures appear below that pari-mutuel wagering on greyhound races be legalized in _____ County," as appropriate; and

(4) the printed name, signature, residence address, and voter registration certificate number of each applicant.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.006. CONTENTS OF PETITION. To be valid, the petition must contain:

(1) a heading, as follows: "Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Horse Races" or "Petition for a Local Option Election to Approve the Legalization of Pari-mutuel Wagering on Greyhound Races," as appropriate;

(2) a statement of the issue to be voted on, in the same words used in the application;

(3) a statement immediately above the signatures of the petitioners, as follows: "It is the hope, purpose, and intent of the petitioners whose signatures appear below that pari-mutuel wagering on horse races be legalized in _____ County" or "It is the hope, purpose, and intent of the petitioners whose signatures appear below that pari-mutuel wagering on greyhound races be legalized in _____ County," as appropriate;

(4) lines and spaces for the names, signatures, addresses, and voter registration certificate numbers of the petitioners; and

(5) the date of issuance, the serial number, and the seal of the county clerk on each page.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.007. COPIES. The county clerk shall keep the application and a copy of the petition in the clerk's office files. The clerk shall issue to the applicants the number of copies requested by the applicants.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.008. REQUIREMENTS TO ORDER ELECTION. The commissioners court shall order an election if the petition:

(1) is filed with the county clerk not later than the 30th day after the date of the petition's issuance; and

(2) contains a number of signatures of registered county voters equal to at least five percent of the number of votes cast in the county for all candidates for governor in the most recent gubernatorial general election.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.009. VERIFICATION OF PETITION. (a) Except as otherwise provided by Section 277.003, Election Code, the county clerk shall, on request of any person, check each name on the petition to determine whether the signer is a registered county voter.

(b) The person requesting this verification by the county clerk shall pay the county clerk a sum equal to 20 cents per name before commencement of the verification.

(c) The county clerk may not count a signature if there is reason to believe that:

(1) the signature is not the actual signature of the purported signer;

(2) the voter registration certificate number is incorrect;

(3) the signature duplicates a name or handwriting used in any other signature on the petition;

(4) the residence address of the signer is incorrect; or

(5) the name of the voter is not signed exactly as the name appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.010. CERTIFICATION OF PETITION SIGNATURES. Not later than the 40th day after the date the petition is filed, excluding Saturdays, Sundays, and legal holidays, the county clerk shall certify to the commissioners court the number of registered voters signing the petition.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.011. RECORD IN MINUTES. The commissioners court shall record in the court's minutes:

(1) the date the petition is filed; and

(2) the date the petition is certified by the county clerk.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.012. ORDER FOR ELECTION; ELECTION DATE. (a) If the petition contains the required number of signatures and is in proper order, the commissioners court shall, at the court's next regular session after the certification by the county clerk, order an election to be held at the regular polling place in each county election precinct in the county on the next uniform election date authorized by Section 41.001, Election Code, that occurs at least 20 days after the date of the order.

(b) The commissioners court shall state in the order the issue to be voted on in the election.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.013. EVIDENCE OF VALIDITY. An order under Section 2035.012 is prima facie evidence of compliance with all provisions necessary to give the order validity.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.014. ELECTION PROCEDURES GOVERNED BY ELECTION CODE. An election under this chapter shall be held and the returns shall be prepared and canvassed in conformity with the Election Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.015. BALLOT PROPOSITION. The ballots for an election under this subchapter shall be printed to permit voting for or against the proposition: "Legalizing pari-mutuel wagering on horse races in _____ County," "Legalizing pari-mutuel wagering on greyhound races in _____ County," or "Authorizing pari-mutuel wagering on simulcast races in _____ County," as appropriate.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.016. CERTIFICATION OF ELECTION RESULTS. If a majority of the votes cast in the election favor the legalization of pari-mutuel wagering on horse races or greyhound races in the county, or the authorization of pari-mutuel wagering on simulcast races in the county, as appropriate, the commissioners court shall certify that fact to the secretary of state not later than the 10th day after the date of the canvass of the returns.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.017. FREQUENCY OF ELECTIONS. Another election may not be held in the county under this chapter before the fifth anniversary of the preceding election date.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER B. ELECTION CONTEST

Sec. 2035.051. INITIATION OF ELECTION CONTEST. Not later than the 30th day after the date the result of the election is declared, any qualified voter of the county may contest the election by filing a petition in the district court of the county.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.052. PARTIES. Any person who is licensed or who has submitted to the commission an application to be licensed in any capacity under this subtitle may become a named party to the contest proceedings by pleading to the petition on or before the time set for hearing and trial as provided by Section 2035.053(b) or after that time by intervention on leave of court.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.053. CONDUCT OF CONTEST SUIT. (a) The proceedings in the contest suit shall be conducted in the manner prescribed by Title 14, Election Code, for contesting an election held for a purpose other than the election of an officer.

(b) At or after the time for hearing and trial, the judge shall hear and determine all questions of law and fact in the proceedings and may enter orders for the proceedings that will enable the judge to:

(1) try and determine the questions; and

(2) render a final judgment with the least possible delay.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.054. BOND. (a) Before entry of a final judgment in the contest proceedings, any party may move that the court dismiss the contestant's action unless the contestant posts a bond with sufficient surety, approved by the court, payable to the movant for the payment of all damages and costs that may accrue as a result of the delay caused by the contestant's continued participation in the proceedings if the contestant fails to finally prevail and obtain substantially the judgment prayed for in the petition.

(b) If a motion is made under this section, the court shall issue an order directed to the contestant that:

(1) is served personally or by registered mail on all parties, or on their attorneys of record, together with a copy of the motion; and

(2) requires the contestant to:

(A) appear at the time and place, not sooner than five days and not later than 10 days after the receipt of the order and motion, as the court may direct; and

(B) show cause why the motion should not be granted.

(c) Motions involving more than one contestant may be heard together at the court's direction.

(d) Unless at the hearing on the motion the contestant establishes facts that in the court's judgment would entitle the contestant to a temporary injunction against issuance of the license based on the election in question, the court shall:

(1) grant the movant's motion; and

(2) in the court's order, subject to Subsection (e), set the bond to be posted by the contestant in an amount the court finds to be sufficient to cover all damages and costs that may accrue as described by Subsection (a).

(e) The maximum bond that the court may set is:

(1) $100,000 for an election contest for a racetrack to be located in a county that has a population of 1.3 million or more and in which a municipality with a population of more than one million is

primarily located; or

(2) $10,000 for an election contest for a racetrack to be located in any other county.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.055. APPEAL. (a) A party to the contest suit may appeal to the appropriate court of appeals an order or judgment entered by the trial court under Section 2035.053.

(b) An order or judgment from which an appeal is not taken is final. If a party does not file an appeal before the 31st day after the date the result of the election is declared, the election is presumed valid.

(c) An order or judgment of a court of appeals may be appealed to the supreme court.

(d) An appeal under this section has priority over any other matter, except habeas corpus. The appellate court shall render its final order or judgment with the least possible delay.

(e) The contestee or the county may not be required to give bond on appeal.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.056. CONTESTEE. The county attorney is the contestee of a suit brought under Section 2035.051. If there is not a county attorney of the county, the criminal district attorney or district attorney is the contestee.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.057. COSTS OF CONTEST. Costs of the election contest may not be adjudged against the contestee or county.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBCHAPTER C. RESCISSION ELECTION

Sec. 2035.101. INITIATION OF RESCISSION ELECTION. (a) The commissioners court of a county that has approved the legalization of racing with pari-mutuel wagering in that county may hold an election on the question of rescinding that approval.

(b) The commissioners court shall order the rescission election on the presentation of a petition requesting the election.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.102. EARLIEST DATE FOR HOLDING ELECTION. A rescission election may not be held before the second anniversary of the date of the election conducted under Section 2035.012 at which the legalization of pari-mutuel wagering was approved.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.103. PETITION REQUIREMENTS. A rescission election petition must meet the requirements imposed by this chapter for a petition to request a local option election on the question of the legalization of racing with pari-mutuel wagering.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.104. MANNER OF CONDUCTING ELECTION. An election under this subchapter to rescind legalization of racing shall be conducted in the manner provided for the original local option election under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.105. BALLOT PROPOSITION. The ballots for an election under this subchapter shall be printed to permit voting for or against the proposition: "Rescinding the legalization of pari-mutuel wagering on horse races in _____ County" or "Rescinding the legalization of pari-mutuel wagering on greyhound races in _____ County," as appropriate.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

Sec. 2035.106. EFFECT OF RESCISSION. (a) If the majority of the votes cast in an election under this subchapter favor the rescission, racing with pari-mutuel wagering may not be conducted in that county except as provided by Subsection (b).

(b) A racetrack association located in a county that elects to rescind the legalization of racing and that has outstanding long-term liabilities may continue to operate on a temporary basis as provided by Section 2021.008.

Added by Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 1.01, eff. April 1, 2019.

SUBTITLE B. SPORTS

CHAPTER 2051. ATHLETE AGENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2051.001. DEFINITIONS. In this chapter:

(1) "Agent contract" means a contract or an agreement under which an athlete authorizes an athlete agent to negotiate for employment on behalf of the athlete with a professional sports team.

(2) "Athlete" means an individual who:

(A) is eligible to participate in intercollegiate sports contests as a member of a sports team or as an individual competitor in a sport at an institution of higher education; or

(B) has participated as a member of an intercollegiate sports team or as an individual competitor in an intercollegiate sport at an institution of higher education and has never signed an employment contract with a professional sports team.

(3) "Athlete agent" means an individual who:

(A) for compensation, directly or indirectly recruits

or solicits an athlete to enter into an agent contract, a financial services contract, or a professional sports services contract with that individual or another person; or

(B) for a fee, procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.

(4) "Financial services contract" means a contract or an agreement under which an athlete authorizes the athlete agent to perform financial services for the athlete, including making and executing investment and other financial decisions for the athlete.

(5) "Institution of higher education" means an institution of higher education or a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is a member of a national association for the promotion and regulation of intercollegiate athletics.

(5-a) "National professional sports association" means an organization that licenses or certifies athlete agents to represent athletes in a particular professional sport. The term includes the National Football League Players Association, National Basketball Players Association, Major League Baseball Players Association, National Hockey League Players' Association, and United States Soccer Federation.

(6) "Schedule of fees" includes the fees and percentages charged by an athlete agent for professional services performed for an athlete.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 1, eff. September 1, 2011.

Sec. 2051.002. PARTICIPATION IN INTERCOLLEGIATE SPORTS CONTESTS. An athlete is not eligible to participate in intercollegiate sports contests if the athlete:

(1) declares that the athlete is eligible for recruitment by a professional sports team; or

(2) has concluded, in the athlete's final year of eligibility, the athlete's final intercollegiate sports contest, as determined by the governing body of the national association for the

promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 2, eff. Sept. 1, 2003.

Sec. 2051.003. EFFECT OF PERSONAL SERVICE CONTRACT. In this chapter, a personal service contract between an athlete and the owner or prospective owner of a professional sports team in which the athlete agrees to perform future athletic services constitutes employment with a professional sports team.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.004. ATHLETE AGENT CONTACT. (a) An athlete agent may contact an athlete only as provided by this chapter.

(b) Except as provided by Subsection (c), an athlete agent may contact a person who declares that the person is eligible for recruitment by a professional sports team.

(c) If a person eligible for recruitment by a professional sports team later becomes eligible to participate in intercollegiate sports, an athlete agent may contact the person only as provided by this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.005. CERTAIN PROFESSIONAL SERVICES EXEMPT. This chapter does not apply to a person who directly or indirectly recruits or solicits an athlete to enter into a contract with the person in which, for compensation, the person performs financial services for the athlete if:

(1) the person is licensed or registered by the state as:

(A) a dealer, agent, investment adviser, or investment adviser representative;

(B) a real estate broker or salesperson;

(C) an insurance agent; or

(D) another professional;

(2) the financial services performed by the person are of a

type that are customarily performed by a person licensed in that profession; and

(3) the person does not:

(A) recruit or solicit the athlete to enter into an agent contract or a professional services contract on behalf of the person, an affiliate, a related entity, or a third party; or

(B) procure, offer, promise, or attempt to obtain for the athlete employment with a professional sports team.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1091, Sec. 4.04, eff. Sept. 1, 2001.

Sec. 2051.006. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying this chapter, consideration must be given to the need to promote uniformity of the law among states that have enacted similar laws.

Added by Acts 2003, 78th Leg., ch. 821, Sec. 3, eff. Sept. 1, 2003.

SUBCHAPTER B. POWERS AND DUTIES OF SECRETARY OF STATE

Sec. 2051.051. ADMINISTRATION OF CHAPTER. (a) The secretary of state shall:

(1) actively enforce this chapter;

(2) set reasonable and necessary fees for the administration of this chapter; and

(3) conduct investigations necessary to ensure compliance with this chapter.

(b) The secretary may adopt rules necessary to administer this chapter.

(c) Fees shall be set in an amount to cover the costs of administering this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.052. PUBLICATION OF COMPLIANCE RESPONSIBILITIES. (a) The secretary of state shall publish on the secretary of state's Internet website information that prescribes the compliance responsibilities of an institution of higher education under this

chapter.

(b) The secretary shall notify the athletic director or other appropriate official of each institution of higher education of any change to the compliance responsibilities of the institution under this chapter.

(c) The secretary shall, as necessary, update the compliance responsibilities materials.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 2, eff. September 1, 2011.

SUBCHAPTER C. REGISTRATION

Sec. 2051.101. REGISTRATION REQUIRED. (a) Except as provided by Subsection (b), an individual may not act as an athlete agent in this state or represent that the individual is an athlete agent in this state unless the individual holds a certificate of registration under this chapter as:

(1) a professional athlete agent; or

(2) a limited athlete agent.

(a-1) An individual may not register as a professional athlete agent under this chapter unless the individual is certified as an agent by a national professional sports association.

(a-2) An individual who is not certified as an agent by a national professional sports association may register only as a limited athlete agent. A limited athlete agent may only represent an athlete in a sport that does not have a national professional sports association.

(b) Before the issuance of a certificate of registration under this chapter, an individual may act as an athlete agent in this state for all purposes except signing an agent contract, if:

(1) an athlete or a person acting on behalf of the athlete initiates communication with the individual; and

(2) within seven days after the date of the initial act as an athlete agent, the individual submits an application for registration under this chapter.

(c) An agent contract negotiated by an unregistered athlete agent is void.

(d) An agent contract with an athlete in a sport for which there is a national professional sports association is void if the contract is negotiated by an athlete agent holding a limited certificate of registration.

(e) A person who is not an individual may not register as an athlete agent in this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 4, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 3, eff. September 1, 2011.

Sec. 2051.102. APPLICATION REQUIREMENTS. (a) Except as provided by Subsection (e), an applicant for registration as an athlete agent must apply on a form prescribed by the secretary of state.

(b) An applicant must provide information required by the secretary of state, including:

(1) the applicant's:

(A) name;

(B) principal business address;

(C) business or occupation for the five years immediately preceding the date of application; and

(D) formal training, practical experience, and educational background relating to the applicant's professional activities as an athlete agent;

(2) the name, sport, and last known team for each person the applicant represented as an athlete agent during the five years immediately preceding the date of application;

(3) whether the applicant or a person described by Subdivision (5) has been subject to any of the following:

(A) a conviction of a crime that in this state is a Class A or Class B misdemeanor, a felony, or a crime of moral turpitude;

(B) an administrative or a judicial determination finding the applicant or other person made a false, misleading, deceptive, or fraudulent representation;

(C) a sanction or suspension related to occupational or

professional conduct;

(D) a denial of an application for a certificate of registration or license as an athlete agent; or

(E) a denial, revocation, or suspension of a certificate of registration or license as an athlete agent;

(4) whether the applicant or a person described by Subdivision (5) has engaged in conduct resulting in the imposition on an athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event;

(5) except as provided by Subsection (d), the name and address of each person, except a bona fide employee on salary, who is financially interested as a partner, associate, or profit sharer in the applicant's business; and

(6) the name and address of each national professional sports association that has certified the applicant as an agent.

(c) An application shall include the names and addresses of three professional references.

(d) If an applicant is a member of the State Bar of Texas, the application information required under Subsection (b)(5) must include the name and address of each person who is involved in the activities of the athlete agent. This subsection does not require an applicant to state the name and address of a member of a law firm or professional corporation who is not involved in the business of the athlete agent.

(e) An individual seeking certification as an athlete agent under this chapter who holds a certificate of registration or license as an athlete agent in another state may submit a copy of the previous application and certificate or license instead of submitting the application required by this section. The secretary of state shall accept the application and the certificate or license from the other state as an application for registration in this state if the application to the other state:

(1) was submitted to the other state not earlier than the 180th day before the date the application is submitted in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than the information required by this section; and

(3) was signed by the applicant under penalty of perjury.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 5, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 4, eff. September 1, 2011.

Sec. 2051.105. DENIAL OF APPLICATION. (a) The secretary of state shall deny an application for registration if the applicant has been convicted of:

(1) a felony; or

(2) a misdemeanor involving moral turpitude.

(b) The secretary of state may deny an application for registration if the secretary of state determines the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:

(1) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(2) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(3) engaged in conduct prohibited by Section 2051.351;

(4) had a registration or licensure as an athlete agent denied, suspended, or revoked;

(5) been denied renewal of registration or licensure as an athlete agent in any state;

(6) engaged in conduct that resulted in the imposition on an athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event; or

(7) engaged in conduct that adversely reflects on the applicant's credibility, honesty, or integrity.

(c) In making a determination under Subsection (b), the secretary of state shall consider:

(1) how recently the conduct occurred;

(2) the nature of the conduct and the context in which it occurred; and

(3) any other relevant conduct of the applicant.

(d) Judicial review of a denial of an application for

registration under Subsection (a) or (b) is by trial de novo and is subject to Section 2001.173, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 6, eff. Sept. 1, 2003.

Sec. 2051.106. TEMPORARY OR PROVISIONAL REGISTRATION. The secretary of state may issue a temporary or provisional certificate of registration that is valid for not more than 90 days to an applicant for registration or renewal of registration if the applicant's application has been made and the registration process has not been completed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.107. REGISTRATION DURATION; EXPIRATION. (a) Except as provided by Subsection (b), a certificate of registration issued under this chapter is valid for a period of not more than one year from the date of issuance.

(b) The secretary of state, by rule, may adopt a system under which certificates of registration expire on various dates during the year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.108. REGISTRATION RENEWAL. (a) Except as provided by Subsection (e), an applicant for renewal of registration must apply on a form prescribed by the secretary of state.

(b) A renewal application must include:

(1) the name, address, and telephone number of each athlete for whom the athlete agent is performing professional services for compensation on the date of the renewal application;

(2) the name, address, and telephone number of each athlete for whom the athlete agent has performed professional services for compensation during the three years immediately preceding the date of the renewal application but for whom the athlete agent is not performing professional services on the date of the renewal application;

(3) the name and address of each national professional sports association by which the athlete agent is currently certified; and

(4) any other information prescribed by the secretary of state.

(c) A renewal application under this section must be accompanied by an appropriate renewal fee.

(d) If a certificate of registration expires earlier than the anniversary of the date of issuance, the renewal fee that must accompany a renewal application under this section shall be prorated according to the number of months that the registration is valid.

(e) An individual who has submitted an application for renewal of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate of registration or license from the other state instead of submitting the application required by this section. The secretary of state shall accept the application for renewal from the other state as an application for renewal under this section if the application to the other state:

(1) was submitted to the other state not earlier than the 180th day before the date the renewal application is submitted in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than the information required by this section; and

(3) was signed by the applicant under penalty of perjury.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 5, eff. September 1, 2011.

Sec. 2051.109. CONTINUING NOTIFICATION REQUIREMENT. (a) A registered athlete agent shall notify the secretary of state in writing of the athlete agent's:

(1) conviction of a crime that in this state is an offense other than a Class C misdemeanor; or

(2) decertification as an agent by a national professional sports association that has become final by the conclusion of the

appeal process provided by the association.

(b) The athlete agent shall notify the secretary of state as required under this section not later than 30 days after the date of conviction or the date that the decertification becomes final.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 6, eff. September 1, 2011.

Sec. 2051.110. EFFECT OF DECERTIFICATION BY PROFESSIONAL ASSOCIATION. The secretary of state shall revoke the certificate of registration of an athlete agent decertified by a national professional sports association.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 6, eff. September 1, 2011.

SUBCHAPTER D. ATHLETE AGENT BOND

Sec. 2051.151. BOND DEPOSIT. (a) An athlete agent shall, before contacting an athlete or entering into an agent contract with an athlete in this state, deposit with the secretary of state a surety bond, in the amount of $50,000, payable to the state and conditioned on:

(1) the athlete agent complying with this chapter;

(2) the payment of any administrative penalty assessed under Subchapter J; and

(3) the payment of any damages awarded to an institution of higher education or an athlete as a result of the athlete agent offering or providing a thing of value to an athlete or a family member of the athlete.

(a-1) An athlete agent shall, before entering into a financial services contract with an athlete, deposit with the secretary of state a surety bond, in the amount of $100,000, payable to the state and conditioned on:

(1) the athlete agent complying with this chapter;

(2) the payment of money owed to an individual or group of individuals when the athlete agent or the athlete agent's representative or agent receives the money; and

(3) the payment of damages to an athlete caused by the intentional misrepresentation, fraud, deceit, or unlawful or

negligent act or omission of the athlete agent or of the athlete agent's representative or employee while acting within the scope of the financial services contract.

(b) An athlete agent shall maintain a bond deposited under Subsection (a) or (a-1) for not less than two years after the later of:

(1) the date that the athlete agent ceases to provide financial services to an athlete; or

(2) the date that the athlete agent's certificate of registration expires or is revoked.

(c) This section does not limit the amount of damages recoverable in a suit filed against an athlete agent to the amount of the bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 7, eff. September 1, 2011.

Sec. 2051.152. CANCELLATION OF BOND; SUSPENSION OF CERTIFICATE. (a) Not later than the 30th day after the date an athlete agent receives a notice of cancellation from the surety of a bond deposited under Section 2051.151, the athlete agent shall file a new bond with the secretary of state.

(b) The secretary shall suspend the certificate of registration of an athlete agent who fails to file a new bond as required by Subsection (a) until a new bond is filed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. FORM, CONTENT, AND FILING OF CERTAIN CONTRACTS

Sec. 2051.201. CONTRACT FORM. (a) A registered athlete agent must use a form approved by the secretary of state for any agent contract or financial services contract.

(b) The secretary of state shall by rule require that, to the extent practicable, the form for an agent contract or financial services contract conforms to the contract form approved by the national professional sports association for the sport in which the athlete will be represented.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 8, eff. September 1, 2011.

Sec. 2051.202. CONTRACT SIGNING. An athlete may sign an athlete agent contract at any time as permitted by the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.203. CONTRACT REQUIREMENTS RELATING TO FEES AND SERVICES. (a) An agent contract or a financial services contract must include:

(1) a schedule of fees, including:

(A) the amount and method of computing the consideration to be paid by the athlete for services to be provided by the athlete agent under the contract; and

(B) any other consideration the athlete agent received or will receive from any other source for entering into the contract or for providing the services;

(2) a description of the professional services that the athlete agent will perform for the athlete;

(3) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the athlete signed the agent contract;

(4) a description of any expenses of the athlete agent the athlete agrees to reimburse;

(5) the duration of the contract; and

(6) the date the contract was signed.

(b) A registered athlete agent may charge a fee only as provided by the schedule of fees in the contract.

(c) A change in the schedule of fees in a contract takes effect on the seventh day after the date on which the athlete agent files with the secretary of state a copy of the contract as required by Section 2051.205(b).

(d) The athlete agent shall give a signed copy of the contract to the athlete at the time the contract is signed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 8, eff. Sept. 1, 2003.

Sec. 2051.204. CONTRACT REQUIREMENTS RELATING TO NOTICE. (a) An agent contract or a financial services contract must include the following notice:

(1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY OF STATE OF THE STATE OF TEXAS. REGISTRATION WITH THE SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

NOTICE TO CLIENT

(2) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR IF IT CONTAINS BLANK SPACES.

(3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT. YOU MAY NOT WAIVE THE RIGHT TO CANCEL THIS CONTRACT. IF YOU CANCEL THIS CONTRACT WITHIN 16 DAYS, YOU ARE NOT REQUIRED TO PAY ANY CONSIDERATION UNDER THE CONTRACT OR RETURN ANY CONSIDERATION RECEIVED.

(4) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS AN ATHLETE IN YOUR SPORT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(5) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR.

(b) The notice required under Subsection (a) must be:

(1) printed in not less than 10-point typeface; and

(2) boldfaced, capitalized, underlined, or otherwise set apart from the surrounding provisions of the contract to make the notice conspicuous.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 9, eff. Sept. 1, 2003.

Sec. 2051.205. FILING REQUIREMENTS. (a) A registered athlete agent shall, not later than the 10th day after the date an athlete signs an agent contract or financial services contract, file a copy of the contract with:

(1) the secretary of state; and

(2) if the athlete is a student at an institution of higher education, the athletic director of the athlete's institution.

(b) If the schedule of fees in an agent or financial services contract is changed, the athlete agent shall file with the secretary a copy of the changed contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 9, eff. September 1, 2011.

Sec. 2051.206. MULTIYEAR CONTRACT FEE. (a) This section applies only to a multiyear professional sports services contract negotiated by a registered athlete agent.

(b) A registered athlete agent may not collect during a 12-month period a fee that exceeds the amount an athlete will receive during that same 12-month period under the professional sports services contract negotiated by the athlete agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. IMPLEMENTATION STANDARDS OF INSTITUTIONS OF HIGHER EDUCATION

Sec. 2051.251. ADOPTION OF IMPLEMENTATION STANDARDS. (a) An institution of higher education shall adopt standards relating to the implementation of this chapter, including specific guidelines governing the athlete agent interview program sponsored by the institution under Section 2051.301.

(b) Guidelines adopted under Subsection (a) relating to the athlete agent interview program must specify:

(1) the scheduling of interview periods;

(2) the duration of an interview period;

(3) the location on the institution's campus for conducting interviews; and

(4) any terms or conditions under which an athlete agent may contact an athlete during an interview period.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.252. APPROVAL AND FILING OF STANDARDS. (a) After adopting implementation standards under Section 2051.251, an institution of higher education shall:

(1) submit the standards to the institution's athletic council or other analogous body for approval; and

(2) file a copy of the approved standards with the secretary of state not later than the 30th day after the date the standards are approved under Subdivision (1).

(b) If an institution of higher education amends the implementation standards, the institution shall, not later than the 30th day after the date the amendment is effective, file a copy of the amended standards with the secretary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.253. DESIGNATION OF COMPLIANCE COORDINATOR. An institution of higher education shall:

(1) designate an individual to serve as a compliance coordinator for that institution; and

(2) report the name of the compliance coordinator to the secretary of state in a manner prescribed by the secretary.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.254. WRITTEN REQUEST FOR IMPLEMENTATION STANDARDS. On receipt of a written request from a registered athlete agent, the secretary of state or a compliance coordinator designated under Section 2051.253 shall provide a copy of the implementation standards adopted by an institution of higher education under Section 2051.251.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.255. NOTIFICATION OF AVAILABILITY OF IMPLEMENTATION STANDARDS. (a) The secretary of state shall notify each registered athlete agent in writing of the availability, on request, under Section 2051.254 of a copy of the implementation standards of each institution of higher education.

(b) Notice under Subsection (a) must include a statement that:

(1) the standards adopted by an institution of higher education specify the policies of that institution relating to the time, place, and duration of athlete agent interviews conducted on the institution's campus; and

(2) each institution of higher education has a designated compliance coordinator who the athlete agent may contact for additional information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.256. WRITTEN REQUEST FOR COMPLIANCE COORDINATORS. On receipt of a written request from a registered athlete agent, the secretary of state shall provide a copy of the names of the compliance coordinators designated under Section 2051.253.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER G. ATHLETE AGENT INTERVIEW PROGRAM

Sec. 2051.301. ATHLETE AGENT INTERVIEW PROGRAM. (a) Each institution of higher education shall sponsor an athlete agent interview program on the institution's campus.

(b) A registered athlete agent may interview an athlete during an interview program to discuss:

(1) financial services and advice offered by the athlete agent; and

(2) the athlete agent's representation of the athlete relating to marketing the athlete's athletic ability and reputation.

(c) The compliance coordinator or secretary of state shall, not later than the 30th day before the date on which an interview program sponsored under this section begins, notify each registered athlete agent in writing of the interview program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.302. COMPLIANCE COORDINATOR'S DUTIES. Each compliance coordinator designated under Section 2051.253 shall:

(1) establish the schedule for the athlete agent interview program sponsored under Section 2051.301 by the coordinator's institution of higher education;

(2) not later than the 30th day before the date on which the athlete agent interview program begins, notify each registered athlete agent, in writing, of the interview program, unless the secretary of state provides notification under Section 2051.301(c); and

(3) ensure that the coordinator's institution of higher education and the athletes attending the institution comply with this chapter and the rules adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.303. TIME AND DURATION OF INTERVIEW PROGRAM. An athlete agent interview program sponsored under this subchapter:

(1) may not continue for more than 30 consecutive business days as determined by the athlete's institution of higher education; and

(2) must be conducted during the off-season period before the completion of the athlete's final year of eligibility.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.304. COMPLIANCE WITH INTERVIEW GUIDELINES. An athlete agent shall strictly comply with the guidelines adopted under Section 2051.251 relating to the time, place, and duration of an athlete agent interview program.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. RESTRICTION OF AGENT'S PRACTICE

Sec. 2051.351. PROHIBITIONS. (a) An athlete agent may not:

(1) publish or cause to be published:

(A) false, fraudulent, or misleading information; or

(B) a false, fraudulent, or misleading:

(i) representation;

(ii) notice; or

(iii) advertisement;

(2) provide false information;

(3) make a false promise or representation relating to employment;

(4) divide fees with or receive compensation from:

(A) a person exempt from registration under this chapter under Section 2051.005;

(B) a professional sports league or franchise, including a representative or employee of the league or franchise; or

(C) an institution of higher education, including a representative or employee of the institution's athletics department;

(5) enter into a written or oral agreement with an employee of an institution of higher education in which the athlete agent offers a thing of value to the employee for the referral of clients by the employee;

(6) before an athlete completes the athlete's last intercollegiate sports contest, offer a thing of value to the athlete or an individual related to the athlete within the second degree by affinity or consanguinity to induce the athlete to enter into an agreement with the athlete agent in which the athlete agent will represent the athlete;

(7) before an athlete completes the athlete's last intercollegiate sports contest, furnish a thing of value to the athlete or an individual related to the athlete within the second degree by affinity or consanguinity;

(8) except as provided by this chapter, before an athlete completes the athlete's last intercollegiate sports contest:

(A) directly contact the athlete; or

(B) enter into an oral or written agreement with the athlete for the athlete agent to represent the athlete;

(9) furnish anything of value to any person other than the athlete or another registered athlete agent to induce an athlete to enter into an agreement with the athlete agent;

(10) initiate any contact with an athlete, except as authorized by this chapter;

(11) fail to retain or permit inspection of the records

required to be retained by Section 2051.352;

(12) predate or postdate an agent contract;

(13) fail to notify an athlete before the athlete signs an agent contract that the signing may make the athlete ineligible to participate in intercollegiate sports; or

(14) commit an act or cause a person to commit an act on the athlete agent's behalf that causes an athlete to violate a rule of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member.

(b) This section does not prohibit:

(1) an athlete agent from sending written materials to an athlete relating to the professional credentials or services of the athlete agent if the athlete agent simultaneously sends a copy of the materials to the athletic director of the athlete's institution of higher education or the athletic director's designee; or

(2) an athlete or an athlete's parent or legal guardian from contacting an athlete agent to schedule a meeting with the athlete agent to assess:

(A) the agent's professional proficiency in:

(i) representing the athlete; or

(ii) marketing the athlete's athletic ability or reputation; or

(B) the financial services offered by the athlete agent.

(c) If an athlete agent is contacted by an athlete or the athlete's parent or legal guardian to schedule a meeting to discuss the services offered by the athlete agent, the athlete agent shall, before meeting with the athlete or the athlete's parent or legal guardian, notify the athletic director of the athlete's institution of higher education or the athletic director's designee of the proposed meeting.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 10, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 10, eff. September 1, 2011.

Sec. 2051.352. RECORDKEEPING REQUIREMENT. (a) An athlete agent shall maintain a record of:

(1) each athlete represented by the athlete agent, including:

(A) the name and address of the athlete;

(B) fees paid by the athlete; and

(C) services performed by the athlete agent for the athlete;

(2) travel and entertainment expenses incurred by the athlete agent, including expenses for:

(A) food and beverages;

(B) hospitality rooms;

(C) sporting events;

(D) theater and music events; and

(E) transportation, lodging, and admission relating to entertainment;

(3) any agent contract entered into by the athlete agent; and

(4) any direct costs incurred by the athlete agent in recruiting or soliciting an athlete to enter into an agent contract.

(b) A record of travel and entertainment expenses maintained under Subsection (a)(2) must state:

(1) the nature of the expense;

(2) the amount of the expense;

(3) the purpose of the expense;

(4) the date and place of the expense; and

(5) the name of each person on whose behalf the expenditure was made.

(c) An athlete agent shall provide a copy of a record maintained under this section to the secretary of state on request.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 11, eff. Sept. 1, 2003.

Sec. 2051.353. DISCLOSURE REQUIREMENT. An athlete agent shall disclose the athlete agent's name and address in any advertising used by the athlete agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.354. AGENT LIABILITY FOR VIOLATION OF CHAPTER. A registered or unregistered athlete agent who violates this chapter may be subject to:

(1) an administrative penalty imposed under Subchapter J;

(2) forfeiture of the right to payment for a thing of value that the athlete agent gives to an athlete to induce the athlete to enter into a contract;

(3) a refund of consideration paid to the athlete agent; and

(4) payment of reasonable attorney's fees and court costs incurred by an athlete who files suit against an athlete agent for violation of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. INVESTIGATION OF AGENTS BY SECRETARY OF STATE

Sec. 2051.401. INVESTIGATIVE AUTHORITY: SUBPOENA AND SUMMONS. (a) The secretary of state may issue a subpoena or summons to compel:

(1) the attendance and testimony of a witness; or

(2) the production of:

(A) a book;

(B) an account;

(C) a record;

(D) a magnetic or electronic recording;

(E) a paper;

(F) a contract;

(G) correspondence; or

(H) any other record that the secretary determines is relevant or material to an investigation under this chapter.

(b) If the secretary issues a subpoena or summons under Subsection (a), the secretary, or an officer designated by the secretary, may:

(1) administer an oath;

(2) examine a witness; and

(3) receive evidence.

(c) Information and evidence obtained by the secretary under this section is:

(1) confidential and not open to public inspection, except

by a court order; and

(2) exempt from disclosure under Chapter 552, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.402. SERVICE OF PROCESS. (a) The secretary of state, the secretary's authorized agent, a sheriff, or a constable may serve a subpoena or summons issued by the secretary of state under Section 2051.401:

(1) on an individual by:

(A) delivering an executed copy of the subpoena or summons to the individual; or

(B) mailing an executed copy of the subpoena or summons by registered or certified mail, return receipt requested, to the individual's:

(i) place of residence; or

(ii) principal place of business; and

(2) on an entity by delivering or mailing a duly executed copy of the subpoena or summons to an individual for which service would be appropriate in a civil suit under state law.

(b) Proof of service of process under this section consists of:

(1) a verified return showing the manner of service; or

(2) if the service is made by registered or certified mail, return receipt requested, the return receipt.

(c) By acting as an athlete agent in this state, a nonresident appoints the secretary of state as the nonresident's agent for service of process in a civil action in this state related to an act by the person as an athlete agent.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 12, eff. Sept. 1, 2003.

Sec. 2051.403. ENFORCEMENT OF SUBPOENA AND SUMMONS. (a) The secretary of state shall refer a person who fails or refuses to comply with a subpoena or summons issued by the secretary under Section 2051.401 to the attorney general for enforcement.

(b) On receipt of a referral under Subsection (a), the attorney general may apply to a district court of Travis County for an order

requiring compliance.

(c) On receipt of an application for an order under Subsection (b), a district court:

(1) shall order compliance if the court determines that good cause exists for the issuance of the subpoena or summons; and

(2) may modify those requirements of the subpoena or summons that the court determines are unreasonable.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.404. INTERROGATORIES. (a) Except as provided by Subsection (b), the secretary of state may serve interrogatories on an athlete, compliance coordinator, or any person subject to this chapter, or an officer, director, partner, or associate of the person, if the interrogatories are reasonable and necessary to conduct an investigation under this chapter.

(b) The secretary may not serve interrogatories on an athlete who is not represented by an attorney.

(c) Interrogatories served under Subsection (a) must be answered:

(1) completely;

(2) in writing;

(3) under oath;

(4) not later than the 30th day after the date the interrogatories are mailed, or within a time period determined by the secretary; and

(5) by the individual to whom the interrogatories are directed or, if the interrogatories are directed to an entity, by an authorized representative of the entity.

(d) If the answers to interrogatories served under Subsection (a) disclose a violation of this chapter, the secretary shall take disciplinary action as provided by Section 2051.405.

(e) The interrogatories and answers to the interrogatories are:

(1) confidential and not open to public inspection, except by a court order; and

(2) exempt from disclosure under Chapter 552, Government Code.

(f) The secretary may disclose confidential information to a governmental authority or a quasi-governmental authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.405. DISCIPLINARY PROCEDURES; INJUNCTIONS. (a) If the secretary of state determines that a person has violated this chapter, the secretary shall:

(1) refer the violation to the attorney general for prosecution; and

(2) take appropriate disciplinary action, including:

(A) denying an application for registration; or

(B) suspending or revoking a certificate of registration.

(b) If the secretary determines that a person is violating or is threatening to violate this chapter, the secretary or the attorney general may file suit in district court in Travis County to enjoin the violation or threatened violation.

(c) Judicial review of a denial, suspension, revocation, or other disciplinary action taken under Subsection (a) is by trial de novo and is subject to Section 2001.173, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 2051.451. ADMINISTRATIVE PENALTY. (a) If the secretary of state determines that a person regulated under this chapter has violated this chapter or a rule adopted under this chapter in a manner that constitutes a ground for disciplinary action under Section 2051.405, the secretary may assess an administrative penalty against the person as provided by this subchapter.

(b) The secretary shall determine the amount of a penalty assessed under Subsection (a), except that the amount may not exceed:

(1) $50,000 for a violation of Section 2051.351(a)(7) or (14); or

(2) $25,000 for any other violation.

(c) In determining the amount of a penalty under Subsection (b), the secretary shall consider the seriousness of the violation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 11, eff.

September 1, 2011.

Sec. 2051.452. INVESTIGATION AND PRELIMINARY REPORT. (a) If, after examining a possible violation, including facts relating to the violation, the secretary of state determines that a person has committed a violation of this chapter, the secretary shall issue a preliminary report stating:

(1) the facts on which the determination is based; and

(2) that an administrative penalty will be imposed, including the amount of the penalty.

(b) The secretary shall, not later than the 10th day after the date a preliminary report is issued under Subsection (a), send to the person who is the subject of the report:

(1) a copy of the report; and

(2) notice that the person may request a hearing under Section 2051.453.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.453. PAYMENT OR REQUEST FOR HEARING. (a) A person who is the subject of a preliminary report issued under Section 2051.452 shall, not later than the 20th day after the date the report is sent:

(1) pay the administrative penalty to the secretary of state; or

(2) request in writing from the secretary a hearing relating to:

(A) the alleged violation; or

(B) the amount of the penalty.

(b) A person who fails to pay the penalty or request a hearing as required by Subsection (a) waives the right to request a hearing under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.454. HEARING. (a) If the secretary of state determines at a hearing conducted under Chapter 2001, Government Code, that a person has violated this chapter, the secretary shall:

(1) notify the person in writing of:

(A) the secretary's findings; and

(B) the amount of the administrative penalty; and

(2) enter an order requiring the person to pay the penalty.

(b) A person shall, not later than the 30th day after receiving notice under Subsection (a):

(1) pay the penalty to the secretary; or

(2) forward the penalty to the secretary for deposit in an escrow account and request judicial review of:

(A) the secretary's findings; or

(B) the amount of the penalty.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.455. JUDICIAL REVIEW. If judicial review requested under Section 2051.454 reveals that a person has not violated this chapter or that the administrative penalty assessed against a person should be reduced, the secretary of state shall, not later than the 30th day after the date the judicial determination becomes final, return the appropriate amount of the penalty to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.456. RECOVERY OF ADMINISTRATIVE PENALTY. On request by the secretary of state, the attorney general may file suit against a person to recover a penalty assessed under Section 2051.451.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2051.457. FAILURE TO PAY ADMINISTRATIVE PENALTY. (a) If an athlete agent fails to pay the administrative penalty and does not request a hearing as provided by Section 2051.453, the secretary of state may revoke the agent's certificate of registration, refuse to renew the agent's certificate of registration, or refuse to issue a certificate of registration to the agent.

(b) If, after a hearing, an athlete agent fails to pay the administrative penalty as required by Section 2051.454, the secretary of state may revoke the agent's certificate of registration, refuse

to renew the agent's certificate of registration, or refuse to issue a certificate of registration to the agent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 12, eff. September 1, 2011.

SUBCHAPTER K. CRIMINAL PENALTY

Sec. 2051.501. CRIMINAL OFFENSE. (a) An athlete agent commits an offense if the agent intentionally or knowingly violates this chapter or a rule under this chapter.

(b) Except as provided by Subsection (c), an offense under this section is a Class A misdemeanor.

(c) An offense under this section committed by an athlete agent who intentionally or knowingly violates Section 2051.351(a)(7) or (14) is a third degree felony.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 13, eff. September 1, 2011.

Sec. 2051.502. NOTICE OF CRIMINAL OFFENSE. The secretary of state shall send notice of an athlete agent's conviction of an offense under Section 2051.501 to each national professional sports association that has certified the agent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 14, eff. September 1, 2011.

SUBCHAPTER L. CIVIL LIABILITY

Sec. 2051.551. CIVIL SUIT. (a) An institution of higher education adversely affected by an athlete agent's violation of this chapter may file suit against the athlete agent for damages.

(a-1) An athlete adversely affected by an athlete agent's violation of Section 2051.351(a)(7) or (14) may file suit against the athlete agent for damages.

(b) A cause of action under Subsection (a) does not accrue until the educational institution discovers or by the exercise of

reasonable diligence would have discovered the violation by the athlete agent.

(c) Any liability of the athlete agent under this section is several and not joint.

(d) This chapter does not restrict the rights, remedies, or defense of any person under any other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 821, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 16, eff. September 1, 2011.

Sec. 2051.552. ADVERSELY AFFECTED. (a) An institution of higher education is adversely affected by an athlete agent's violation of this chapter if:

(1) the athlete agent's violation causes a national association for the promotion and regulation of intercollegiate athletics to disqualify or suspend the institution from participating in intercollegiate sports contests; and

(2) the disqualification or suspension of the institution causes the institution to:

(A) lose revenue from media coverage of sports contests;

(B) lose the right to grant athletic scholarships in the sport in which the institution is disqualified or suspended;

(C) lose the right to recruit athletes; or

(D) otherwise suffer an adverse financial impact.

(b) An athlete is adversely affected by an athlete agent's violation of Section 2051.351(a)(7) or (14) if:

(1) the athlete agent's violation causes a national association for the promotion and regulation of intercollegiate athletics to disqualify or suspend the athlete from participating in intercollegiate sports contests; and

(2) the disqualification or suspension of the athlete causes the athlete to suffer an adverse financial impact.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 17, eff.

September 1, 2011.

Sec. 2051.553. RECOVERY. A plaintiff that prevails in a civil suit filed under Section 2051.551 may recover:

(1) actual damages;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 741 (H.B. 1123), Sec. 18, eff. September 1, 2011.

CHAPTER 2052. COMBATIVE SPORTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2052.001. LEGISLATIVE DECLARATION. This chapter shall be liberally construed and applied to promote its underlying purposes.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.002. DEFINITIONS. In this chapter:

(1) "Amateur" means a person who has never received or competed for any purse or other thing of value, including reimbursement for expenses related to training or to participation in a combative sports event, that exceeded the maximum amount established by an amateur combative sports association.

(2) "Amateur combative sports association" means an organization that has nonprofit status under the laws of this state or under federal law and that produces, arranges, advertises, conducts, or stages combative sports events in which all the contestants are amateurs.

(3) "Boxing" means to compete with the fists.

(4) "Combative sports" means sports, including boxing, kickboxing, martial arts, and mixed martial arts, in which participants voluntarily engage in full contact to score points, to cause an opponent to submit, or to disable an opponent in a contest, match, or exhibition. The term does not include student training or

exhibitions of students' skills conducted by martial arts schools, or associations of schools, where the students' participation is for health and recreational purposes rather than competition and where the intent is to use only partial contact.

(5) "Commission" means the Texas Commission of Licensing and Regulation.

(6) "Contest" means a combative sports engagement in which the participants strive earnestly to win.

(7) "Department" means the Texas Department of Licensing and Regulation.

(8) "Elimination tournament" means a combative sports contest in which contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include an event described by Section 2052.110.

(9) "Executive director" means the executive director of the department or the executive director's designated representative.

(10) "Exhibition" means a combative sports skills demonstration.

(11) "Event" means a contest, match, or exhibition.

(11-a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 2.01(2), eff. September 1, 2021.

(12) "Judge" means a person who is responsible for scoring the performances of the participants in a match.

(13) "Kickboxing" means to compete by delivering blows with the fists, arms, feet, legs, or any combination thereof.

(14) "Martial arts" means any one of the individual disciplines described by rule adopted by the commission in which the contestants engage in unarmed combat using the applicable techniques to grapple with, kick, or strike an opponent to win a contest by causing an opponent to submit or by scoring points against or disabling an opponent.

(15) "Match" means any contest or exhibition.

(16) "Mixed martial arts" means unarmed combat involving the use of a combination of techniques from different disciplines of the martial arts including grappling, kicking, and striking and may include the use of full, unrestrained physical force.

(17) "Professional combative sports contestant" means a person who competes in a combative sports event in this state conducted for a purse or compensation.

(18) "Promoter" means any person who produces, arranges,

advertises, conducts, or stages a combative sports event.

(19) "Referee" means a person who:

(A) is present in the ring during a match; and

(B) exercises general supervision of the match.

(20) "Ringside physician" means an individual who has an unrestricted and unlimited license to practice medicine in this state and who, by agreement, is assigned as the physician for a combative sports event.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.001, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.501(b), eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 467 (H.B. 1293), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 41 (S.B. 618), Sec. 1, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 2.01(2), eff. September 1, 2021.

Sec. 2052.003. APPLICABILITY OF OTHER LAW. Section 51.401 does not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.002, eff. Jan. 1, 2004.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 2052.051. ADMINISTRATION OF CHAPTER. The department shall administer this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.052. RULES. (a) The commission shall adopt reasonable and necessary rules to administer this chapter.

(b) The commission may adopt rules:

(1) governing boxing, kickboxing, martial arts, or mixed

martial arts contests and exhibitions;

(2) establishing reasonable qualifications for an applicant seeking a license or registration from the department under this chapter;

(3) recognizing a sanction, medical suspension, or disqualification of a licensee or registrant by a combative sports authority in any state, provided that if licensure or registration is denied based on those actions, an applicant has an opportunity for a hearing as prescribed by rule;

(4) establishing selection criteria and procedures for the assignment of individuals who agree to act as ringside physicians and timekeepers for combative sports events;

(5) requiring a contestant to present with an application for licensure or license renewal documentation of recent blood test results that demonstrate whether the contestant is free from hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by commission rule and providing that a contestant's failure to provide the required blood test results disqualifies the contestant;

(6) providing that to participate in any event a contestant must be free of hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and any other communicable disease designated by rule;

(7) requiring that a contestant present with an application for licensure or license renewal documentation of the results of a physical examination, including an ophthalmologic examination, and providing for disqualification of a contestant who is determined by an examining physician to be unfit;

(8) establishing additional responsibilities for promoters; and

(9) governing regulated amateur events.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.004, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 2, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 41 (S.B. 618), Sec. 2, eff. September 1, 2013.

Sec. 2052.053. INVESTIGATIVE AUTHORITY. (a) The executive director shall investigate allegations of activity that may violate this chapter.

(b) The executive director may enter, at a reasonable time, a place of business or an establishment in which activity alleged to violate this chapter may occur. The executive director is not required to give advance notice before entering.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.064, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.503, eff. Sept. 1, 2003.

Sec. 2052.054. CONTINUING EDUCATION. (a) The commission may recognize, prepare, or administer continuing education programs for persons licensed under this chapter.

(b) Participation in a continuing education program under Subsection (a) is voluntary.

(c) Section 51.405 does not apply to this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.005, eff. Jan. 1, 2004.

Sec. 2052.055. COMBATIVE SPORTS ADVISORY BOARD. (a) The presiding officer of the commission, with the commission's approval, may appoint a combative sports advisory board to advise the department concerning issues relating to combative sports events and contestants.

(b) If the commission elects to appoint an advisory board, the commission by rule shall establish:

(1) the number of board members;

(2) qualifications for appointment to the board; and

(3) the purpose and duties of the board.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.006, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 3, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 580 (H.B. 3315), Sec. 1, eff.

September 1, 2015.

SUBCHAPTER C. LICENSING, REGISTRATION, AND PERMITS

Sec. 2052.101. PROMOTER LICENSE. A person may not act as a promoter unless the person holds the appropriate license issued under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 4, eff. September 1, 2005.

Sec. 2052.102. PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for a promoter's license under this chapter must apply on a form furnished by the executive director.

(b) An application must be accompanied by:

(1) a license fee in an amount set by the commission; and

(2) a surety bond:

(A) subject to approval by the executive director; and

(B) conditioned on the applicant's payment of the tax imposed under Section 2052.151.

(c) The executive director shall establish the amount of the surety bond required under Subsection (b). The bond amount may not be less than $300.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.065, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.505, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 5, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 6, eff. September 1, 2005.

Sec. 2052.107. OTHER COMBATIVE SPORTS LICENSES. Unless a person holds a license or registration issued under this chapter, the person may not act as a combative sports:

(1) professional contestant;

(2) manager of a professional contestant;
(3) referee; or
(4) judge.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.008, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 7, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 467 (H.B. 1293), Sec. 2, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 41 (S.B. 618), Sec. 3, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 2.05, eff. September 1, 2021.

Sec. 2052.108. APPLICATION REQUIREMENTS FOR OTHER LICENSES. (a) An application for a license under Section 2052.107 must be made on a form furnished by the executive director.

(b) An application must be accompanied by the required license fee.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.066, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.506, eff. Sept. 1, 2003.

Sec. 2052.109. SURETY BOND. (a) A surety bond required under this subchapter must:

(1) be issued by a company authorized to conduct business in this state;

(2) comply with the applicable requirements of the Insurance Code;

(3) be payable to the state for use by the state or a political subdivision that establishes that the boxing or wrestling promoter is liable to it for damages, penalties, taxes, or other expenses resulting from promotional activities conducted in this state; and

(4) be open to more than one claim, except that the claims may not exceed the face value of the bond.

(b) A person required to file a surety bond under this subchapter shall file a new bond annually.

(c) A company that issues a bond shall notify the department in writing of the cancellation of the bond not later than the 30th day before the date on which the bond is canceled.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.110. LICENSE AND BONDING EXCEPTIONS. If the contestants are amateurs, the licensing and bonding requirements of this chapter do not apply to:

(1) an event conducted by a college, school, or university that is part of the institution's athletic program in which only students of educational institutions participate;

(2) an event which is conducted by a troop, battery, company, or unit of the Texas National Guard or a law enforcement agency and in which only members of military or law enforcement organizations participate; or

(3) an event which is conducted by an organization of the Olympic Games, the Paralympic Games, or the Pan-American Games and in which participants train or compete for advancement to or within the games.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.009, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.507, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 8, eff. September 1, 2005.

Sec. 2052.111. DENIAL OF APPLICATION. The executive director may deny an application for a license or registration if:

(1) the applicant does not meet the qualifications for the license or registration; or

(2) after conducting an investigation and providing an opportunity for a hearing, the executive director determines that the applicant has violated this chapter or a rule adopted under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.067, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.507, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 9, eff. September 1, 2005.

Sec. 2052.113. LICENSE AND PERMIT REQUIRED FOR CLOSED CIRCUIT TELECAST. A person who exhibits in this state a simultaneous telecast of a live, spontaneous, or current combative sports event on a closed circuit telecast in which a fee is charged for admission to the telecast must:

(1) hold a promoter's license under this chapter; and

(2) obtain a permit for the closed circuit telecast.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 10, eff. September 1, 2005.

Sec. 2052.114. LICENSE, REGISTRATION, AND PERMIT TERM AND RENEWAL. (a) A license, registration, or permit issued under this chapter is valid for one year after the date of issuance.

(b) The holder of a license, registration, or permit may renew the license, registration, or permit by paying a renewal fee and complying with other renewal requirements prescribed by department rule before the expiration date. The department shall issue a renewal certificate to the holder at the time of renewal.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.010, eff. Jan. 1, 2004.

Sec. 2052.115. PROMOTER RESPONSIBILITIES. For each promoted event, a promoter shall:

(1) assure that all contestants scheduled to participate are licensed before the event;

(2) provide that an ambulance, serviced by at least two emergency medical technicians, is present on the premises where the

event is held;

(3) provide for a physical examination of each contestant that complies with rules adopted under this chapter; and

(4) comply with all commission rules.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.010, eff. Jan. 1, 2004.

Sec. 2052.116. AMATEUR COMBATIVE SPORTS ASSOCIATION REGISTRATION. A person may not act as an amateur combative sports association unless the person is registered under this chapter.

Added by Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 11, eff. September 1, 2005.

Sec. 2052.117. AMATEUR COMBATIVE SPORTS ASSOCIATION REGISTRATION REQUIREMENTS. (a) An applicant for registration as an amateur combative sports association must apply on a form acceptable to the executive director.

(b) An application must be accompanied by:

(1) a registration fee in the amount set by the commission;

(2) proof of compliance with requirements established by rule for:

(A) insurance; and

(B) surety bonds, if any;

(3) a copy of the rules of the association establishing standards of conduct for contestants and officials; and

(4) proof that the association is recognized or organized as a nonprofit organization under the laws of this state or has such status under federal law.

(c) Rules of the association must be approved by the department.

Added by Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 11, eff. September 1, 2005.

SUBCHAPTER D. GROSS RECEIPTS TAX

Sec. 2052.151. IMPOSITION AND RATE OF TAX. (a) A tax is

imposed on a person who:

(1) conducts a combative sports event in which a fee is charged for admission to the event; or

(2) exhibits in this state a simultaneous telecast of a live, spontaneous, or current combative sports event on a closed circuit telecast, in which a fee is charged for admission to the telecast.

(b) The tax is three percent of the gross receipts obtained from the sale of tickets to the event, plus three percent of gross receipts received from sales of broadcast rights or $30,000, whichever is less.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.011, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 12, eff. September 1, 2005.

Sec. 2052.152. TAX REPORT AND PAYMENT. (a) A person on whom a tax is imposed under Section 2052.151, not later than three business days after the end of the event or telecast for which the tax is due, shall submit to the department a verified report on a form acceptable to the department stating:

(1) the number of tickets sold to the event;

(2) the ticket prices charged;

(3) the gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses or charges; and

(4) the amount of gross receipts obtained from the event.

(b) The person shall attach to the report a cashier's check, check, or money order payable to this state in the amount of the tax imposed on the event covered by the report.

(c) The department may audit a report filed under Subsection (b).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.012, eff. Jan. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 13, eff. September

1, 2005.

Sec. 2052.153. CLOSED CIRCUIT TELECAST. A person exhibiting a simultaneous telecast of a live, spontaneous, or current combative sports event on a closed circuit telecast that occurs in Texas in which a fee is charged for admission to the exhibition:

(1) must:

(A) be a promoter; and

(B) obtain a permit for each telecast exhibited; and

(2) shall comply with the tax provisions of Sections 2052.151 and 2052.152.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 14, eff. September 1, 2005.

SUBCHAPTER F. OTHER COMBATIVE SPORT REGULATIONS

Sec. 2052.251. GLOVES. A combative sports event contestant shall wear gloves of the type and weight specified by commission rule, unless the commission by applicable rule requires or permits contestants to not wear gloves.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.015, eff. Jan. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 15, eff. September 1, 2005.

Sec. 2052.252. REGULATED AMATEUR EVENTS. (a) This section applies to an amateur combative sports event, other than an event described by Section 2052.110, in which a fee is charged for admission to the event.

(b) The amateur combative sports association sponsoring or producing the event shall register with the department not later than 30 days before the date the event begins.

(c) The event may take place only if the executive director approves the event not later than seven days before the date the

event begins.

(d) Each contestant in the event must have been a member of the amateur combative sports association for the 30-day period immediately preceding the date the event begins and must be a member on the date of the event.

(e) The amateur combative sports association shall determine the amateur standing of the event contestants and shall establish training programs consisting of at least 30 days of training for each contestant.

(f) The event is subject to the supervision of the executive director.

(g) Each contestant participating in the event must be examined by a licensed physician within a reasonable time before the event begins. A licensed physician must be present at ringside during the entire event.

(h) A professional combative sports contestant licensed under this chapter may not participate as a contestant in the event.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.016, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.510, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 16, eff. September 1, 2005.

Sec. 2052.253. KICKBOXING. A professional kickboxing event must be fought on the basis of the contestants' best efforts.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.254. ELIMINATION TOURNAMENTS. An elimination tournament may not be conducted in this state.

Added by Acts 2005, 79th Leg., Ch. 35 (S.B. 796), Sec. 17, eff. September 1, 2005.

SUBCHAPTER G. DISCIPLINARY PROCEDURES; PENALTIES

Sec. 2052.3015. PROMOTER PENALTY FOR LATE LICENSE. A promoter

who does not comply with Section 2052.115(1) in a timely manner is subject to a penalty under this chapter for each contestant who obtains a license less than 72 hours before an event in which the contestant is scheduled to participate.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 7.017, eff. Jan. 1, 2004.

Sec. 2052.302. WITHHOLDING OF PURSE AND FORFEITURE OF PURSE. (a) The executive director may order a promoter to withhold any purse or other funds payable to the holder of a license or registration under this chapter if it appears more likely than not that the holder has violated this chapter or a rule adopted under this chapter.

(b) The promoter shall surrender any purse or funds withheld as provided by Subsection (a) to the executive director on demand. Not later than the fifth working day after the event, the department shall notify in writing the promoter and any person from whom a sum was withheld of the date of a hearing to determine whether all or part of the purse or funds withheld should be forfeited to the state. The hearing must be scheduled for a date not later than the 10th day after the date of the notice. Not later than the 10th day after the date of the hearing, the executive director shall enter an order with findings of fact and conclusions of law determining whether all or part of the purse or funds should be forfeited. Any funds not forfeited shall be distributed to the persons entitled to the funds.

(c) Except as otherwise provided by this subchapter, a proceeding under this section shall be conducted in the manner provided by Chapter 2001, Government Code.

(d) A person aggrieved by an order entered under this section may appeal the order by filing a petition in a district court in Travis County in the manner provided by Chapter 2001, Government Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.018, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.511, eff. Sept. 1, 2003.

Sec. 2052.303. CIVIL PENALTY; INJUNCTION. (a) A court may

assess a civil penalty against a person who violates this chapter or a rule adopted under this chapter. The amount of the penalty may not exceed $1,000 for each violation.

(b) The attorney general or the department may file a civil suit to:

(1) assess and recover a civil penalty under Subsection (a); or

(2) enjoin a person who violates or threatens to violate this chapter or a rule adopted under this chapter from continuing the violation or threat.

(c) Venue for a suit filed under Subsection (b) is in a district court in Travis County.

(d) A civil penalty assessed under this section shall be paid to this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2052.304. PETITION FOR REVIEW. (a) A person may seek review of a decision or an order of the executive director or the commission under this chapter by filing a petition for review in a district court in Travis County.

(b) Chapter 2001, Government Code, governs any proceeding under this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 7.019, 7.020(5), eff. Jan. 1, 2004.

Sec. 2052.308. APPEAL. (a) The petitioner or executive director may appeal a final judgment of a court conducting a review under this subchapter in the same manner as a civil action.

(b) The executive director is not required to file an appeal bond.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.069, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.515, eff. Sept. 1, 2003.

SUBTITLE C. ARTS AND MUSIC
CHAPTER 2101. CONSIGNMENT OF ART WORKS

Sec. 2101.001. SHORT TITLE. This chapter may be cited as the Artists' Consignment Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2101.002. DEFINITIONS. In this chapter:

(1) "Art" means a commonly recognized art form, including a painting, sound recording of a musical performance, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, or quilt.

(2) "Art dealer" means a person in the business of selling works of art.

(3) "Artist" means the creator of a work of art or, if the creator is dead, the creator's estate.

(4) "Creditor" has the meaning assigned by Section 1.201, Business & Commerce Code.

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Recording distributor" means a person who acquires a sound recording and sells the sound recording to another person for use or resale.

(7) "Sound recording" means a tangible medium on which music or other sounds are recorded or otherwise stored, including a phonograph record, disc, tape, cassette, or other medium now existing or developed later on which music or other sounds are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original. The term does not include a medium on which the primary recorded information is information other than music or other sound, such as a motion picture or computer program, and that contains recorded sound as an integrated part of the primary recorded information.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 233 (S.B. 846), Sec. 1, eff. May 27, 2005.

Sec. 2101.003. CONSIGNED ART EXEMPT FROM CERTAIN LIENS OR CLAIMS. (a) Notwithstanding any provision of the Business & Commerce Code, a work of art delivered to an art dealer for exhibition or sale and the proceeds from the dealer's sale of the work of art are not subject to a claim, lien, or security interest of a creditor of the dealer.

(b) This section applies to the proceeds of a sale of a work of art regardless of whether the art dealer or another person purchased the work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2101.004. CONSIGNED SOUND RECORDINGS EXEMPT FROM CERTAIN LIENS OR CLAIMS. (a) Notwithstanding any provision of the Business & Commerce Code, a sound recording delivered by the artist who produced the music or other sound on the recording to a recording distributor for sale and the proceeds from the recording distributor's sale of the sound recording are not subject to a claim, lien, or security interest of a creditor of the recording distributor.

(b) Except as provided by Subsection (c), this section applies to the proceeds of a sale of a sound recording regardless of whether the recording distributor or another person purchased the recording.

(c) This section does not apply to the proceeds of a sale of a sound recording if the artist delivered the recording to the recording distributor pursuant to a sale for which the artist has been paid in full.

Added by Acts 2005, 79th Leg., Ch. 233 (S.B. 846), Sec. 2, eff. May 27, 2005.

CHAPTER 2102. COLLECTION OF ROYALTIES ON NONDRAMATIC MUSICAL WORKS

Sec. 2102.001. DEFINITIONS. In this chapter:

(1) "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized and enforceable under federal copyright laws (17 U.S.C. Section 101 et seq.).

(2) "Performing rights society" means an association or corporation that licenses the public performance of nondramatic musical works for copyright owners, including the American Society of

Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. (SESAC).

(3) "Proprietor" means the owner or operator of a retail establishment in this state where the public may assemble and where nondramatic musical works may be performed, broadcast, or otherwise transmitted, including a restaurant, inn, bar, tavern, or other similar place of business.

(4) "Royalty" means a fee payable to a performing rights society for public performance rights.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.002. APPLICATION OF CHAPTER. This chapter does not apply to:

(1) a contract:

(A) between a performing rights society and a broadcaster licensed by the Federal Communications Commission; or

(B) with a cable operator, programmer, or other transmission service;

(2) conduct engaged in for the enforcement of Section 641.054 and, to the extent applicable, Section 641.056, Business & Commerce Code; or

(3) the owner of a copyright of a motion picture or an audiovisual work.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.30, eff. April 1, 2009.

Sec. 2102.003. REQUIRED DISCLOSURES. A performing rights society may not contract or offer to contract for the payment of royalties by a proprietor unless, at the time of the offer or any subsequent time, but not later than 72 hours before the execution of the contract, the performing rights society provides the proprietor, in writing, the following:

(1) rates and terms of royalties to be collected under the contract;

(2) at the proprietor's request, the opportunity to review

the most current available list of the members or affiliates represented by the society;

(3) notice that the society will make available, on the proprietor's written request and at the proprietor's sole expense, the most current available list of the copyrighted musical works in the performing rights society's repertory; and

(4) notice that the society will identify the method for securing the list.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.004. REQUIRED CONTRACT TERMS. A contract between a performing rights society and a proprietor for the payment of royalties executed in this state must:

(1) be in writing;

(2) be signed by the parties; and

(3) include the following information:

(A) the proprietor's name and business address;

(B) the name and location of each place of business to which the contract applies;

(C) the name and address of the performing rights society;

(D) the duration of the contract; and

(E) the rates and terms of royalties to be collected under the contract, including any sliding scale or schedule for any increase or decrease of those rates for the duration of the contract.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.005. IMPROPER COLLECTIONS PRACTICES. A performing rights society or the society's agent or employee may not collect or attempt to collect from a proprietor licensed by that society a royalty payment except as provided by a contract executed under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2102.006. ENFORCEMENT. A person aggrieved by a violation

of this chapter may:

(1) bring an action to recover actual damages and reasonable attorney's fees; and

(2) seek an injunction or other remedy available at law or in equity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2103. LICENSING AND PERFORMING FEES FOR CERTAIN RECORDINGS

Sec. 2103.001. DEFINITION. In this chapter, "playing a recording" includes performing, broadcasting, or televising a recording.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.002. RELIANCE ON LABELING INFORMATION. A person playing a recording requiring the payment of a licensing or performing fee may rely on the information on the label of the recording for paying or accounting for the fees unless notice that complies with Section 2103.005 is given to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.003. ASSIGNMENT OF RIGHTS. An assignment or transfer of the rights to a licensing or performing fee for a recording is not binding on a person playing the recording unless a notice that complies with Section 2103.005 is given to the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.004. DISCHARGE OF OBLIGATION. A person's payment of a licensing or performing fee under the applicable agreement operates as a discharge of any other licensing or performing fee for the playing of a recording if the payment is made:

(1) in reliance on the label information on the recording; or

(2) under the terms of the last notice received that

complies with Section 2103.005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2103.005. NOTICE OF ASSIGNMENT OR TRANSFER. A notice of an assignment or transfer under this chapter must state, in writing:

(1) the identity of the recording to which the notice applies;

(2) the name and address of the assignee or transferee; and

(3) the effective date of the assignment or transfer.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2104. REGULATION OF OUTDOOR MUSIC FESTIVALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2104.001. DEFINITIONS. In this chapter:

(1) "Outdoor music festival" means any form of musical entertainment provided by live performances that occurs on two or more consecutive days or on any two days during a three-day period if:

(A) more than 5,000 persons attend any performance;

(B) any performer or audience member is not within a permanent structure; and

(C) the performance occurs outside the boundaries of a municipality.

(2) "Promoter" means a person who attempts to organize or promote an outdoor music festival, or to solicit funds for the organization or promotion of an outdoor music festival.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PROMOTER REGISTRATION

Sec. 2104.051. PROMOTER REGISTRATION. (a) A promoter shall register with the county clerk of the county in which the outdoor music festival is to be held.

(b) The registration must include:

(1) the name and address of:

(A) the promoter; and

(B) each of the promoter's associates or employees assisting in the promotion of the festival; and

(2) a statement indicating whether the promoter, or an associate or employee of the promoter, has been convicted of a crime involving the misappropriation of funds, theft, burglary, or robbery.

(c) The promoter must submit a $5 registration fee with the registration.

(d) The registration must be verified by the promoter and be based on the promoter's best information and belief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. OUTDOOR MUSIC FESTIVAL PERMIT

Sec. 2104.101. FESTIVAL PERMIT APPLICATION. (a) A promoter shall, before the 60th day before the date the promoter holds an outdoor music festival, file a permit application with the county clerk of the county in which the festival is to be held.

(b) The application must include:

(1) the name and address of:

(A) the promoter; and

(B) each of the promoter's associates or employees assisting in the promotion of the festival;

(2) a financial statement of the promoter and a statement specifying the sources and amounts of capital being supplied for the festival;

(3) a description of the festival location;

(4) the name and address of the owner of the festival location;

(5) a statement describing the terms and conditions of the agreement allowing the promoter to use the festival location;

(6) the dates and times of the festival;

(7) the maximum number of persons the promoter will allow to attend the festival;

(8) a statement describing the promoter's plan to control the number of persons attending the festival;

(9) a description of the agreement between the promoter and each performer who is scheduled to appear at the festival; and

(10) a complete statement describing the promoter's

festival preparations to comply with the minimum standards of sanitation and health prescribed by Chapter 341, Health and Safety Code.

(c) The promoter shall submit a $5 filing fee with the permit application.

(d) The permit application must be verified by the promoter and be based on the promoter's best information and belief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.102. HEALTH REPORT. (a) On the filing of a permit application under Section 2104.101, the county clerk shall forward a copy of the application to the county health officer.

(b) The county health officer shall make a written report to the commissioners court. A report made under this subsection must:

(1) state whether the county health officer believes that the preparations described in the application would, if carried out, be sufficient to:

(A) protect the community and the persons attending the outdoor music festival from health dangers; and

(B) avoid a violation of Chapter 341, Health and Safety Code; and

(2) be filed with the county clerk before the second day before the date of the hearing on the permit application.

(c) The county health officer shall be present at the hearing on the permit application and may be called to testify by a person having an interest in the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.103. HEARING. (a) The commissioners court shall set a date and time for a hearing on the permit application.

(b) The hearing must be held:

(1) after the 15th day after the date the permit application is filed; and

(2) before the 30th day before the date set for the first performance of the outdoor music festival.

(c) A promoter is entitled to at least 10 days notice before the hearing date.

(d) Any person may appear at the hearing and testify for or against the grant of the permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.104. DECISION ON PERMIT APPLICATION. The commissioners court shall grant a permit application filed under Section 2104.101 unless, by a majority vote, the court finds, from a preponderance of the evidence presented at the hearing, that:

(1) the permit application contains false or misleading information;

(2) required information is omitted from the application;

(3) the promoter does not have sufficient financial backing or stability to:

(A) carry out the preparations described in the application; or

(B) ensure the faithful performance of the promoter's agreements;

(4) the preparations described in the application are insufficient to:

(A) protect the community or the persons attending the outdoor music festival from health dangers; or

(B) avoid a violation of Chapter 341, Health and Safety Code;

(5) the times of the festival and the festival location create a substantial danger of congestion and disruption of other lawful activities in the immediate vicinity of the festival;

(6) the preparations described in the application are insufficient to limit the number of persons attending the festival to the maximum number stated in the application; or

(7) the promoter does not have adequate agreements with performers to ensure with reasonable certainty that persons advertised to perform at the festival will appear.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.105. EFFECT OF PERMIT. A permit issued under this chapter authorizes the promoter to hold an outdoor music festival at a specified location at specified times.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.106. PERMIT REVOCATION. (a) At any time before the fifth day before the date of the first performance of the outdoor music festival, the commissioners court may, after reasonable notice to the promoter and a hearing, revoke the permit on a finding, by a majority of the court, that:

(1) the preparations for the event will not be completed in time for the first performance; and

(2) the failure to carry out the preparations will result in a serious threat to the health of the community or persons attending the festival.

(b) A permit may not be revoked during the period beginning with the fifth day before the date of the first performance of the festival and ending with the final day of the festival.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2104.107. APPEAL. (a) A person affected by an action of the commissioners court in granting, denying, or revoking a permit issued under this chapter may appeal the action by filing a petition in a district court in the county in which the commissioners court presides.

(b) The district court shall review the action of the commissioners court under the substantial evidence rule.

(c) An appeal under this section does not suspend an action of the commissioners court unless the district court orders a suspension.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. PENALTIES

Sec. 2104.151. PROHIBITED ACTS; CRIMINAL OFFENSE. (a) A person may not act as a promoter of an outdoor music festival unless the person registers with the county clerk of the county in which the festival is to be held.

(b) A person may not direct, control, or participate in the direction or control of an outdoor music festival unless the festival

is authorized by a permit issued under this chapter.

(c) A person commits an offense if the person violates this section.

(d) An offense under this section is a misdemeanor punishable by:

(1) confinement in a county jail for a term not to exceed 30 days;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBTITLE D. OTHER AMUSEMENTS AND ENTERTAINMENT
CHAPTER 2151. REGULATION OF AMUSEMENT RIDES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2151.001. SHORT TITLE. This chapter may be cited as the Amusement Ride Safety Inspection and Insurance Act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2151.002. DEFINITIONS. In this chapter:

(1) "Amusement ride" means a mechanical device that carries passengers along, around, or over a fixed or restricted course or within a defined area for the purpose of giving the passengers amusement, pleasure, or excitement. The term does not include:

(A) a coin-operated ride that:

(i) is manually, mechanically, or electrically operated;

(ii) is customarily placed in a public location; and

(iii) does not normally require the supervision or services of an operator;

(B) nonmechanized playground equipment, including a swing, seesaw, stationary spring-mounted animal feature, rider-propelled merry-go-round, climber, playground slide, trampoline, and physical fitness device;

(C) a challenge course or any part of a challenge course that is excepted from this chapter under Section 2151.107; or

(D) a waterslide, even if operated by a mechanical

device, in which passengers are carried along a course that:

(i) is less than 200 feet in length;

(ii) is substantially constructed from vinyl or vinyl coated polyester; and

(iii) is not mechanically inflated using a continuous airflow device.

(2) "Class A amusement ride" means an amusement ride with a fixed location designed primarily for use by children younger than 13 years of age.

(3) "Class B amusement ride" means an amusement ride that is not a Class A amusement ride.

(4) "Commissioner" means the commissioner of insurance.

(5) "Department" means the Texas Department of Insurance.

(6) "Mobile amusement ride" means an amusement ride that is designed or adapted to be moved from one location to another and is not fixed at a single location.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.701(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 363 (S.B. 1282), Sec. 2, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 1107 (H.B. 1553), Sec. 1, eff. September 1, 2023.

SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

Sec. 2151.051. GENERAL POWERS AND DUTIES. The commissioner shall administer and enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.702(a), eff. Sept. 1, 2001.

Sec. 2151.052. FEES. (a) The commissioner shall establish reasonable and necessary fees, in an amount not to exceed $40 per year, for each amusement ride covered by this chapter.

(b) An amusement ride that consists of two or more self-propelled, four-wheeled vehicles designed to be operated

independently and to carry fewer than three persons, including go-carts, is a single amusement ride.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.702(b), eff. Sept. 1, 2001.

Sec. 2151.053. INFORMATION REQUEST. (a) The department may request information from a sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public concerning whether insurance required by this chapter is in effect on that amusement ride.

(b) The person shall respond to the information request not later than the 15th day after the date the request is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. OPERATION OF AMUSEMENT RIDES

Sec. 2151.101. REQUIREMENTS FOR OPERATION. (a) A person may not operate an amusement ride unless the person:

(1) has had the amusement ride inspected at least once a year by an insurer or a person with whom the insurer has contracted;

(2) obtains a written certificate from the insurer or person with whom the insurer has contracted stating that the amusement ride:

(A) has been inspected;

(B) meets the standards for insurance coverage; and

(C) is covered by the insurance required by Subdivision (3);

(3) except as provided by Sections 2151.1011 and 2151.1012, has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than:

(A) for Class A amusement rides:

(i) $100,000 bodily injury and $50,000 property

damage per occurrence with a $300,000 annual aggregate; or

(ii) a $150,000 per occurrence combined single limit with a $300,000 annual aggregate; and

(B) for Class B amusement rides:

(i) $1,000,000 bodily injury and $500,000 property damage per occurrence; or

(ii) $1,500,000 per occurrence combined single limit;

(4) files with the commissioner, as required by this chapter, the inspection certificate and the insurance policy or a photocopy of the certificate or policy authorized by the commissioner; and

(5) files with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the insurance policy required by this subsection.

(b) The inspection certificate and the insurance policy must be filed with the department before July 1 of each year, except that if an amusement ride is inspected more than once a year, the inspection certificate must be filed not later than the 15th day after the date of each inspection.

(c) A local government may satisfy the insurance requirement prescribed by Subsection (a) by obtaining liability coverage through an interlocal agreement.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(a), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.548, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 363 (S.B. 1282), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1146 (H.B. 2879), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 655 (H.B. 1070), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 580 (H.B. 3570), Sec. 1, eff. September 1, 2011.

Sec. 2151.1011. LIABILITY INSURANCE FOR CERTAIN AMUSEMENT RIDES. (a) This section only applies to a Class B amusement ride that:

(1) consists of a motorized vehicle that tows one or more separate passenger cars in a manner similar to a train, but without regard to whether the vehicle and cars operate on a fixed track or course;

(2) does not travel under its own power in excess of five miles per hour;

(3) has safety belts for all passengers;

(4) does not run on an elevated track;

(5) has passenger seating areas enclosed by guardrails or doors; and

(6) does not have passenger cars that rotate independently from the motorized vehicle.

(b) A person may not operate an amusement ride described by Subsection (a) unless the person has an insurance policy currently in effect written by an insurance company authorized to conduct business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than $1 million in aggregate for all liability claims occurring in a policy year.

(c) A local government may satisfy the insurance requirement prescribed by Subsection (b) by obtaining liability coverage through an interlocal agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 655 (H.B. 1070), Sec. 2, eff. June 15, 2007.

Sec. 2151.1012. LIABILITY INSURANCE FOR CERTAIN OTHER AMUSEMENT RIDES. (a) This section applies only to a Class B amusement ride that:

(1) is mechanically inflated using a continuous airflow device; and

(2) provides a surface for bouncing and jumping or creates an enclosed space for the purpose of amusement.

(b) A person may not operate an amusement ride described by

Subsection (a) unless the person has a combined single limit insurance policy currently in effect written by an insurance company authorized to conduct business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the owner or operator against liability arising out of the use of the amusement ride in an amount of not less than $1 million per occurrence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 580 (H.B. 3570), Sec. 2, eff. September 1, 2011.

Sec. 2151.102. INSPECTION REQUIREMENTS. (a) The inspection required by Section 2151.101(a) must test for stress-related and wear-related damage of the critical parts of a ride that the manufacturer of the amusement ride determines:

(1) are reasonably subject to failure as the result of stress and wear; and

(2) could cause injury to a member of the public as a result of a failure.

(b) If at any time the inspection reveals that an amusement ride does not meet the insurer's underwriting standards, the insurer shall notify the owner or operator.

(c) If repair or replacement of equipment is required, it is the responsibility of the owner or operator to make the repair or install the replacement equipment before the amusement ride is offered for public use.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(b), eff. Sept. 1, 2001.

Sec. 2151.1021. INSPECTION REQUIREMENTS FOR MOBILE AMUSEMENT RIDES. (a) The commissioner shall adopt rules requiring operators of mobile amusement rides to perform inspections of mobile amusement rides, including rules requiring daily inspections of safety restraints.

(b) Rules adopted under this section may apply to specific rides of specific manufacturers.

(c) The commissioner shall prescribe forms for inspections required under this section and shall require records of the inspections to be made available for inspection by any municipality, county, or state law enforcement officials at any location at which an amusement ride is operated.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.

Sec. 2151.1022. REQUIRED RECORDS OF GOVERNMENTAL ACTIONS. (a) A person who operates an amusement ride in this state shall maintain accurate records of any governmental action taken in any state relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride.

(b) The operator shall file with the commissioner quarterly a report, on a form designed by the commissioner, describing each governmental action taken in the quarter covered by the report for which the operator is required by Subsection (a) to maintain records. A report is not required in any quarter in which no reportable governmental action was taken in any state in which the person operated the amusement ride.

(c) A person who operates an amusement ride shall maintain for not less than two years at any location where the ride is operated, for inspection by a municipal, county, or state law enforcement official, a photocopy of any quarterly report required under this section or Section 2151.103 to be filed with the commissioner.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.

Sec. 2151.103. INJURY REPORTS. (a) In this section, "medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. The term does not include first-aid treatment, the onetime treatment and subsequent observation of minor scratches, cuts, burns, splinters, and other minor injuries that do not ordinarily require medical care, even if that treatment is provided by a physician or registered professional personnel.

(b) A person operating an amusement ride shall maintain accurate records of each injury caused by the ride that results in death or requires medical treatment.

(c) The operator shall file an injury report with the commissioner on a quarterly basis. The report shall be made on a form prescribed by the commissioner and shall include a description of each injury caused by a ride that results in death or requires medical treatment.

(d) If no reportable injuries occur in a quarter, the operator is not required to file an injury report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(d), eff. Sept. 1, 2001.

Sec. 2151.104. ACCESS TO RIDES. An owner or operator of an amusement ride may deny entry to the ride to any person if, in the owner's or operator's opinion, the entry may jeopardize the safety of the person or of other amusement ride patrons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2151.105. SIGNAGE REQUIREMENTS. (a) The commissioner shall adopt rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law.

(b) The rules must require the sign to be posted at the principal entrance to the site at which an amusement ride is located or at any location on that site at which tickets for an amusement ride are available.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.

Sec. 2151.106. MINIMUM STANDARDS. (a) An amusement ride covered by this chapter that is sold, maintained, or operated in this state must comply with standards established by the American Society

of Testing and Materials (ASTM) as of May 1, 1999. Those standards are minimum standards.

(b) To the extent that the standards of the American Society of Testing and Materials conflict with the requirements of this chapter, the more stringent requirement or standard applies.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.703(c), eff. Sept. 1, 2001.

Sec. 2151.107. EXCEPTION FOR CERTAIN CHALLENGE COURSES MEETING INSURANCE REQUIREMENT. (a) In this section, "challenge course" means a challenge, ropes, team building, or obstacle course, which may include logs, tires, platforms, beams, bridges, poles, ropes, ladders, nets, climbing walls, rock climbing walls, climbing towers, traverses, rock climbing devices, cables, swings, or zip lines, that is constructed and used for educational, team and confidence building, or physical fitness purposes.

(b) A challenge course or any part of a challenge course is not considered an amusement ride subject to regulation under this chapter if the person who operates the challenge course has a combined single limit or split limit insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981, Insurance Code, or has an independently procured policy subject to Chapter 101, Insurance Code, insuring the operator against liability for injury to persons arising out of the use of the challenge course in an amount of at least:

(1) for a challenge course with a fixed location:

(A) $100,000 bodily injury and $50,000 property damage per occurrence with a $300,000 annual aggregate; or

(B) a $150,000 per occurrence combined single limit with a $300,000 annual aggregate; and

(2) for a challenge course other than one with a fixed location:

(A) $1,000,000 bodily injury and $500,000 property damage per occurrence; or

(B) $1,500,000 per occurrence combined single limit.

Added by Acts 2005, 79th Leg., Ch. 598 (H.B. 1892), Sec. 1, eff. June 17, 2005.

Added by Acts 2005, 79th Leg., Ch. 1146 (H.B. 2879), Sec. 1, eff. September 1, 2005.

SUBCHAPTER D. ENFORCEMENT PROVISIONS

Sec. 2151.151. INJUNCTION. The district attorney of a county in which an amusement ride is operated or, on request of the commissioner of insurance, the attorney general or an agent of the attorney general, may seek an injunction against a person operating an amusement ride in violation of this chapter or in violation of a rule adopted by the commissioner under Section 2151.1021 or 2151.105.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.704(a), eff. Sept. 1, 2001.

Sec. 2151.152. OTHER ENFORCEMENT ACTIONS. (a) A municipal, county, or state law enforcement official may determine compliance with a provision of Subchapter C, other than Section 2151.104, in conjunction with the commissioner and may institute an action in a court of competent jurisdiction to enforce this chapter.

(b) A municipal, county, or state law enforcement official may enter and inspect without notice any amusement ride at any time to ensure public safety.

(c) The operator of an amusement ride shall immediately provide the inspection certificate and the insurance policy required by Section 2151.101 to a municipal, county, or state law enforcement official requesting the information. A photocopy of the inspection certificate or insurance policy may be provided instead of the certificate or policy.

(d) Performance or nonperformance by a municipal, county, or state law enforcement official of any action authorized by this chapter is a discretionary act.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.1525. PROHIBITION OF AMUSEMENT RIDE OPERATION. (a)

Except as provided by Subsection (e), a municipal, county, or state law enforcement official may immediately prohibit operation of an amusement ride if:

(1) the operator of the amusement ride is unable to provide the documents or a photocopy of the documents required by Section 2151.152(c);

(2) the law enforcement official reasonably believes the amusement ride is not in compliance with Section 2151.101; or

(3) the operation of the amusement ride, conduct of a person operating the amusement ride, conduct of a person assembling the amusement ride if it is a mobile amusement ride, or any other circumstance causes the law enforcement official to reasonably believe that the amusement ride is unsafe or the safety of a passenger on the amusement ride is threatened.

(b) If the operation of an amusement ride is prohibited under Subsection (a)(1) or (2), a person may not operate the amusement ride unless:

(1) the operator presents to the appropriate municipal, county, or state law enforcement official proof of compliance with Section 2151.101; or

(2) the commissioner or the commissioner's designee determines that on the date the amusement ride's operation was prohibited the operator had on file with the board the documents required by Section 2151.101 and issues a written statement permitting the amusement ride to resume operation.

(c) If on the date an amusement ride's operation is prohibited under Subsection (a)(3) the amusement ride is not in compliance with Section 2151.101, a person may not operate the amusement ride until after the person subsequently complies with Section 2151.101.

(d) If on the date an amusement ride's operation is prohibited under Subsection (a)(3) the amusement ride is in compliance with Section 2151.101, a person may not operate the amusement ride until:

(1) on-site corrections are made;

(2) an order from a district judge, county judge, judge of a county court at law, justice of the peace, or municipal judge permits the amusement ride to resume operation; or

(3) an insurance company insuring the amusement ride on the date the amusement ride's operation was prohibited:

(A) reinspects the amusement ride in the same manner required by Section 2151.101; and

(B) delivers to the commissioner or the commissioner's designee and the appropriate law enforcement official a reinspection certificate:

(i) stating that the required reinspection has occurred;

(ii) stating that the amusement ride meets coverage standards and is covered by insurance in compliance with Section 2151.101; and

(iii) explaining the necessary repairs, if any, that have been made to the amusement ride after its operation was prohibited.

(e) Subsection (a) does not apply to an amusement ride with a fixed location and operated at an amusement park that was attended by more than 200,000 customers in the year preceding the inspection under Section 2151.152(b).

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.1526. PROHIBITION OF MOBILE AMUSEMENT RIDE OPERATION. (a) Except as provided by Subsection (b) or (c), a mobile amusement ride on which a death occurs may not be operated.

(b) If a mobile amusement ride was in compliance with Section 2151.101 when its operation was initially prohibited under Subsection (a), a person may resume operating the mobile amusement ride only after an insurance company insuring the amusement ride on the date its operation was prohibited:

(1) reinspects the amusement ride in the same manner required under Section 2151.101; and

(2) delivers to the commissioner or the commissioner's designee a reinspection certificate:

(A) stating that the required reinspection has occurred;

(B) stating that the amusement ride meets coverage standards and is covered by insurance in compliance with Section 2151.101; and

(C) explaining the necessary repairs, if any, that have been made to the amusement ride after its operation was prohibited.

(c) If a mobile amusement ride was not in compliance with

Section 2151.101 when its operation was initially prohibited under Subsection (a), a person may resume operating the mobile amusement ride only after the person subsequently complies with Section 2151.101.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.1527. RELIEF FROM PROHIBITION ORDER. The owner or operator of the amusement ride may file suit for relief from a prohibition under Section 2151.1525 or 2151.1526 in a district court in the county in which the amusement ride was located when the prohibition against operation occurred.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.705(a), eff. Sept. 1, 2001.

Sec. 2151.153. CRIMINAL PENALTIES. (a) A person commits an offense if the person fails to comply with any requirement of:

(1) Section 2151.101, 2151.102, 2151.103, 2151.1525(b), (c), or (d), or 2151.1526(a); or

(2) a rule adopted by the commissioner under Section 2151.1021 or 2151.105.

(b) A person commits an offense if the person:

(1) is a sponsor, lessor, landowner, or other person responsible for an amusement ride being offered for use by the public; and

(2) does not provide the information required under Section 2151.053 or provides false information under Section 2151.053.

(c) An offense under this section is a Class B misdemeanor.

(d) Each day a violation of this chapter is committed constitutes a separate offense.

(e) The prosecuting attorney in a case in which a person is convicted of an offense under this section shall report the offense to the department not later than the 90th day after the date of the conviction.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.706(a), eff. Sept. 1,

2001.

CHAPTER 2153. COIN-OPERATED MACHINES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2153.001. PURPOSE. The purpose of this chapter is to provide comprehensive and uniform statewide regulation of music and skill or pleasure coin-operated machines.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.002. DEFINITIONS. In this chapter:

(1) "Coin-operated machine" means any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine.

(2) "Commissioner" means the Consumer Credit Commissioner.

(3) "Financial interest" includes a legal or equitable interest, including the ownership of shares or bonds of a corporation.

(4) "Music coin-operated machine" means any kind of coin-operated machine, including a phonograph, piano, or graphophone, that:

(A) dispenses music or is used to dispense music;

(B) is operated by inserting a coin, metal slug, token, or check; and

(C) is not an amusement machine designed exclusively for a child.

(5) "Operator" means a person who exhibits or displays, or permits to be exhibited or displayed, a coin-operated machine in this state in a place of business that is not owned by the person.

(6) "Owner" means a person who owns a coin-operated machine in this state.

(7) "Person" includes an individual, association, trustee, receiver, partnership, corporation, or organization or a manager, agent, servant, or employee of an individual, association, trustee, receiver, partnership, corporation, or organization.

(8) "Service coin-operated machine" means any kind of machine or device, including a pay toilet or telephone, that

dispenses only a service. The term does not include a machine or device that dispenses merchandise, music, skill, or pleasure.

(9) "Skill or pleasure coin-operated machine" means any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure or is operated for any purpose, other than for dispensing only merchandise, music, or service. The term:

(A) includes a marble machine, marble table machine, marble shooting machine, miniature racetrack machine, miniature football machine, miniature golf machine, miniature bowling machine, billiard or pool game, or machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and

(B) does not include an amusement machine designed exclusively for a child.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 79, eff. Sept. 1, 2001.

Sec. 2153.003. CONSTRUCTION OF CHAPTER CONSISTENT WITH OTHER LAW. This chapter does not authorize or permit the keeping, exhibition, operation, display, or maintenance of a machine, device, or table prohibited by the constitution of this state or the Penal Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.004. EXEMPT MACHINES. This chapter does not apply to:

(1) a stamp vending machine;

(2) a service coin-operated machine; or

(3) if subject to an occupation or gross receipts tax, a:

(A) gas meter;

(B) food vending machine;

(C) confection vending machine;

(D) beverage vending machine;

(E) merchandise vending machine; or

(F) cigarette vending machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.005. EXEMPT CORPORATIONS AND ASSOCIATIONS. (a) A corporation or association owning, leasing, or renting a music or skill or pleasure coin-operated machine is exempt from Subchapter D if:

(1) the corporation or association is organized and operated exclusively for religious, charitable, educational, or benevolent purposes;

(2) the corporation's or association's net earnings do not inure to the benefit of a private shareholder or individual; and

(3) the corporation or association owns, leases, or rents the coin-operated machine:

(A) for the corporation's or association's exclusive use; and

(B) to further a purpose of the corporation or association.

(b) A tax may not be assessed against a corporation or an association exempt under this section if assessment of the tax is prohibited by other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.006. PRIVATE OWNERSHIP EXEMPT. An individual who owns a music or skill or pleasure coin-operated machine for personal use and amusement in the individual's private residence is not required to obtain a license or pay a tax under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.007. EXEMPT COMMON CARRIERS. A person subject to regulation by the Railroad Commission of Texas is not required to obtain a license under this chapter if the person transports or stores in the course of the person's business a music or skill or pleasure coin-operated machine not owned by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.008. EXEMPT OWNERS OR EXHIBITORS. A person who owns or exhibits a coin-operated machine is exempt from the licensing and recordkeeping requirements of this chapter if the person:

(1) operates or exhibits the coin-operated machine only on premises occupied by the person and in connection with the person's business;

(2) does not own a coin-operated machine subject to the tax imposed under this chapter and located on the business premises of another person; and

(3) does not have a direct or indirect financial interest in the music or skill or pleasure coin-operated machine industry, except for ownership of the coin-operated machine operated or exhibited on premises occupied by the person.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. POWERS AND DUTIES OF COMPTROLLER

Sec. 2153.051. GENERAL DUTIES OF COMPTROLLER. (a) The comptroller shall administer this chapter.

(b) To administer this chapter, the comptroller may:

(1) issue a license or registration certificate;

(2) prescribe procedures for registering music and skill or pleasure coin-operated machines;

(3) prescribe methods for:

(A) securely attaching a tax permit to a coin-operated machine; and

(B) posting a license or registration certificate;

(4) prescribe the form and content of a:

(A) license application;

(B) registration certificate;

(C) tax permit;

(D) report specifying a coin-operated machine's location; and

(E) report of the consideration of each party to a contract relating to the placement of a coin-operated machine in an establishment owned by a person other than the license holder; and

(5) disclose confidential information to an appropriate official.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.052. RULEMAKING AUTHORITY. The comptroller may adopt rules necessary to administer this chapter, including rules:

(1) for enforcement of this chapter and collection of taxes and fees;

(2) providing due process to persons affected by this chapter; and

(3) governing procedure and evidence in the conduct of hearings under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.053. DISCIPLINARY AUTHORITY. (a) The comptroller may:

(1) conduct an investigation, hold a hearing, or take other necessary action to:

(A) ensure compliance with this chapter; or

(B) identify a violation of this chapter;

(2) conduct an investigation of a violation of this chapter, or a rule adopted under this chapter, committed by a person who owns, operates, exhibits, or displays a coin-operated machine in this state;

(3) deny an application for a license or registration certificate in accordance with Subchapter G; or

(4) impose sanctions, including suspending or revoking a person's license, registration certificate, or tax permit in accordance with Subchapter G.

(b) If the comptroller finds that a person has violated a penal provision of this chapter, the comptroller may file a complaint with the appropriate prosecuting attorney in the county in which the violation occurred.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.054. RECORDS OF COMPLAINTS. (a) The comptroller shall maintain an information file about each complaint filed with the comptroller.

(b) If a written complaint is filed with the comptroller, the

comptroller, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.055. PUBLIC INTEREST INFORMATION. (a) The comptroller shall prepare information of consumer interest describing the regulatory functions of the comptroller relating to coin-operated machines and the procedures by which complaints are filed with and resolved by the comptroller.

(b) The comptroller shall make the information available to the public and to appropriate state agencies.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.056. DELEGATION AUTHORIZED. The comptroller may delegate to an authorized representative any authority provided to the comptroller under this chapter, including the authority to:

(1) conduct an investigation; and

(2) hold a hearing.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.057. INTERAGENCY COOPERATION. (a) The comptroller shall use all agencies of the law available to the comptroller to enforce this chapter.

(b) A state agency shall:

(1) cooperate with the comptroller in connection with an investigation under this chapter; and

(2) provide the comptroller access to records and reports that are relevant to an investigation under this chapter and that are made confidential by other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.058. DEPOSIT OF REVENUE. Except as provided by Section 2153.257, the comptroller shall deposit one-fourth of the revenue received under this chapter in the foundation school fund and three-fourths of the revenue received under this chapter in the general revenue fund.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CONFIDENTIALITY OF CERTAIN INFORMATION

Sec. 2153.101. INFORMATION FROM LICENSE APPLICATION. (a) Except as provided by Subsection (b), information contained in a license application is confidential.

(b) After a license is issued under this chapter, the ownership statement contained in the license application is a public record.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.102. INFORMATION MADE AVAILABLE TO COMPTROLLER. Except for information specifically designated as a public record, information derived from a book, record, report, or application required to be made available under this chapter to the comptroller or the attorney general:

(1) is confidential; and

(2) may be used only to enforce this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. LICENSE OR REGISTRATION

Sec. 2153.151. LICENSE OR REGISTRATION REQUIRED. Except as otherwise provided by this chapter, a person may not engage in the business of manufacturing, owning, buying, selling, renting, leasing, trading, lending, furnishing to another, maintaining, transporting within this state, storing, or importing a music or skill or pleasure coin-operated machine unless the person holds a license or registration certificate issued under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.152. TYPES OF LICENSES. (a) A license applicant may apply for a general business license, an import license, or a repair license.

(b) A general business license holder may engage in the business of manufacturing, owning, buying, selling, renting, leasing, trading, maintaining, transporting or exhibiting in this state, or storing a music or skill or pleasure coin-operated machine.

(c) An import license holder may engage in the business of importing, transporting, owning, buying, repairing, selling, or delivering a music or skill or pleasure coin-operated machine for sale or delivery in this state.

(d) A repair license holder may engage in the business of maintaining, transporting, or storing a music or skill or pleasure coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.153. LICENSE APPLICATION REQUIREMENTS. (a) A license applicant must file with the comptroller a license application that:

(1) contains a complete statement about the ownership of the business that is the subject of the application, including:

(A) the nature of the business entity; and

(B) except as provided by Subsection (b), the name and residence address of each person who has a financial interest in the business, including the nature, type, and extent of the interest;

(2) designates:

(A) an individual, as described by Subsection (c), responsible for maintaining a record of and reporting to the comptroller information as required by Section 2153.202; and

(B) an office located in this state where the applicant proposes to maintain the records required by this chapter, a rule adopted under this chapter, or other law;

(3) is accompanied by:

(A) a written statement executed by the individual designated under Subdivision (2) that the individual accepts the responsibility described by that subdivision; and

(B) a cashier's check, money order, personal check, or other method of payment authorized by the comptroller, in an amount

equal to the annual license fee under Section 2153.154;

(4) includes any other relevant information required by the comptroller; and

(5) states that the information contained in the application is true and correct.

(b) A corporate applicant is not required to include in the ownership statement under Subsection (a)(1) the name and residence address of a shareholder who holds less than 10 percent of the shares in the applicant's corporation.

(c) The individual designated under Subsection (a)(2) must be:

(1) the owner of the business;

(2) a partner of the business;

(3) an officer of the business;

(4) a trustee of the business;

(5) a receiver of the business; or

(6) an officer or principal member of the business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 209, Sec. 12, eff. Oct. 1, 2003.

Sec. 2153.154. LICENSE FEE. (a) The annual fee for a general business license is:

(1) $200 for an applicant with not more than 50 coin-operated machines;

(2) $400 for an applicant with at least 51 but not more than 200 coin-operated machines; and

(3) $500 for an applicant with more than 200 coin-operated machines.

(b) The annual fee for an import license is $500.

(c) The annual fee for a repair license is $50.

(d) The comptroller may not refund any part of a license fee after a license is issued.

(e) The comptroller may refund a license fee if the comptroller does not issue a license. The comptroller may deduct $25 to cover administrative costs.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.155. TERMS OF LICENSE. A license issued under this

subchapter:

(1) is effective for only one business entity;

(2) does not vest any property or right in the license holder, except for the right to conduct the licensed business;

(3) may not be transferred or assigned; and

(4) is not subject to execution.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.156. REGISTRATION CERTIFICATE REQUIRED. (a) A person who is exempt under Section 2153.008 from the licensing and recordkeeping requirements of this chapter may not exhibit a coin-operated machine unless the machine is registered annually with the comptroller in accordance with this subchapter.

(b) A person required to register a machine under this section shall obtain a registration certificate each year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.157. REGISTRATION CERTIFICATE APPLICATION REQUIREMENTS. To obtain a registration certificate under this subchapter, a person must:

(1) file with the comptroller a registration application on a form prescribed by the comptroller; and

(2) pay a $150 registration fee to the comptroller for the business entity in which the owner exhibits the coin-operated machine that is the subject of the application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.158. CONTENTS OF REGISTRATION CERTIFICATE. A registration certificate must:

(1) state the name and address of the location of the coin-operated machine that is the subject of the certificate; and

(2) certify that a tax permit is attached to the machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.159. DISPLAY OF LICENSE OR CERTIFICATE. (a) A license holder shall prominently display the holder's license at the holder's place of business at all times.

(b) A registration certificate holder shall display a registration certificate at each location where the holder owns or exhibits a coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.160. RELOCATION OF MACHINE. A registration certificate holder shall notify the comptroller of a change in the location of a coin-operated machine registered under this subchapter by filing an amendment to the registration certificate with the comptroller not later than the 10th day after the date of the change.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.161. EXPIRATION OF LICENSE OR REGISTRATION. (a) A license issued under this chapter expires on the earlier of:

(1) December 31 of the year the license is issued; or

(2) the death or dissolution of the license holder.

(b) A registration certificate issued under this chapter expires on the first anniversary of the date of issuance.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.162. LICENSE AND REGISTRATION RENEWAL. (a) A license or registration certificate holder may renew an unexpired license or registration by paying to the comptroller, before the expiration date of the license or registration, the required annual license or registration fee. An application for renewal must be made to the comptroller before December 1. A renewal application filed on or after December 1 but before the license or registration expires must be accompanied by a late fee of $50.

(b) A license or registration certificate holder may renew an expired license or registration under this subsection. If the license or registration has been expired for not more than 90 days, the person may renew the license or registration by paying to the

comptroller a fee that is 1-1/2 times the amount of the annual license or registration fee. If the license or registration has been expired for more than 90 days but less than two years, the person may renew the license or registration by paying to the comptroller a fee that is two times the amount of the annual license or registration fee.

(c) A person whose license or registration has been expired for two years or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures for obtaining an original license or registration.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.163. EXTENSION OF CERTAIN LICENSES. (a) Except for good cause shown, the comptroller in writing shall permit a person who is the successor in interest to a business the license of which has expired to operate the business under the license as if the license has not expired if:

(1) the person requests an extension of the expired license;

(2) the license expired as a result of:

(A) the license holder's death or dissolution; or

(B) a condition involving receivership or bankruptcy; and

(3) the county judge in the county in which the business is located or a probate judge with jurisdiction over the matter certifies that the person is the successor to the licensed business.

(b) An extension of an expired license under this section:

(1) expires in the same manner a license expires; and

(2) is subject to suspension or cancellation in the same manner as any other license issued under this subchapter.

(c) A person whose extension of an expired license expires may not renew the license. The person may obtain a new license by complying with the requirements for obtaining an original license under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. PROVISIONS RELATING TO TRANSACTION OF BUSINESS

Sec. 2153.201. REQUIRED OWNER RECORDS. (a) An owner shall maintain a complete and itemized record of each coin-operated machine the owner purchases, receives, possesses, handles, exhibits, or displays in this state in accordance with accepted auditing and accounting practices.

(b) A record required under Subsection (a) must:

(1) be available at all times for inspection by the attorney general, the comptroller, or an authorized representative of the attorney general or comptroller as provided by Subsection (c);

(2) include information relating to:

(A) the kind of each machine;

(B) the date each machine is:

(i) acquired or received in this state; and

(ii) placed in operation;

(C) the location of each machine, including the:

(i) county;

(ii) municipality, if any; and

(iii) street or rural route number;

(D) the name and complete address of each operator of each machine;

(E) if the owner is an individual, the full name and address of the owner; and

(F) if the owner is not an individual, the name and address of each principal officer or member of the owner; and

(3) be maintained at a permanent address in this state designated on the application for a license under Section 2153.153.

(c) A record required under Subsection (a) must be available for inspection under Subsection (b) for at least four years and as required by Section 111.0041, Tax Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 4.01, eff. October 1, 2011.

Sec. 2153.202. REQUIRED LICENSE HOLDER RECORDS AND REPORTING. (a) A license holder shall maintain a record of and report to the comptroller information relating to each music or skill or pleasure

coin-operated machine owned, possessed, or controlled by the license holder, including:

(1) the make, type, and serial number of each machine;

(2) the date each machine is placed in operation;

(3) the dates of the first and most recent registration of each machine;

(4) the specific location of each machine; and

(5) any change in machine ownership.

(b) A license holder shall:

(1) report to the comptroller the information required under this section:

(A) at intervals specified by the comptroller; and

(B) at any other time requested by the comptroller; and

(2) immediately notify the comptroller in writing of a change in ownership of a licensed business.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.203. RECORD OF CREDIT TRANSACTION. (a) A license holder who extends or lends credit shall maintain in this state a record of the credit transaction in accordance with accepted accounting and auditing practices. The record must be sufficient to enable any competent person to determine if the license holder is in compliance with the requirements of this subchapter.

(b) The record must be preserved until the later of the fourth anniversary of the date the credit transaction occurred or the second anniversary of the date the final entry relating to the transaction is made.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.204. REQUIRED CONTRACT PROVISION. A written contract between an owner who holds a license issued under this chapter and an operator in this state must state the name, mailing address, and telephone number of the comptroller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.205. REIMBURSEMENT FOR TAXES AND FEES. (a) The first money earned from the exhibition of a coin-operated amusement machine may be paid to the owner to reimburse the owner for payment of:

(1) the tax imposed for that year by Section 2153.401; and

(2) a tax authorized by Section 2153.451 and imposed for that year by a county or municipality.

(b) A portion of the money earned each year from the exhibition of a coin-operated machine shall be paid to the owner in an amount necessary to reimburse the owner for the next year's payment of:

(1) the tax imposed by Section 2153.401; and

(2) any other tax or fee imposed on the exhibition of the machine.

(c) An owner may not:

(1) agree or contract, or offer to agree to contract, to waive the reimbursement provided by Subsection (b); or

(2) agree or contract with a bailee or lessee of a coin-operated machine to compensate the bailee or lessee in an amount that exceeds 50 percent of the gross receipts earned from the exhibition of the machine after the reimbursement provided by Subsection (b).

(d) The comptroller shall revoke the license of a license holder who violates this section.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. CREDIT TRANSACTIONS

Sec. 2153.252. AUTHORIZED CREDIT EXTENSIONS. A license holder may extend or lend credit to, or extend or lend credit on behalf of, a lessee or bailee of a music or skill or pleasure coin-operated machine only for a business or commercial purpose in accordance with this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.254. WRITTEN AGREEMENT REQUIRED. A license holder may extend or lend credit only if the credit transaction is evidenced by a written agreement that:

(1) is signed by the parties to the agreement; and

(2) specifies the:

(A) credit amount;
(B) consideration for the credit transaction; and
(C) terms governing repayment.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.255. CONSIDERATION. (a) In this section, "consideration" includes costs charged, contracted for, or received by a license holder or other person in connection with investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, or enforcing a credit transaction or forbearance of money, credit, goods, things in action, or other service rendered, including aggregate interest, fees, bonuses, commissions, brokerage, discounts, and expenses. The term does not include court costs or attorney's fees as determined by a court.

(b) The consideration for a credit transaction authorized under Section 2153.252 may not be less than one-half percent or exceed interest or its equivalent at the rate of one and one-half percent per month, as determined by the United States Rule.

(c) Except as provided by Subsection (d), if the consideration directly or indirectly charged or received by a license holder for a credit transaction authorized under Section 2153.252 exceeds the amount of consideration permitted by Subsection (b):

(1) the consideration paid, whether payment of principal or interest or its equivalent, shall be refunded to the person; and
(2) the unpaid balance of the consideration is void.

(d) Subsection (c) does not apply if consideration is charged or collected in excess of the amount permitted by Subsection (b) and:

(1) the overcharge or over-collection is the result of:
(A) an accident; and
(B) a bona fide error; and
(2) the error is corrected on the date of discovery.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.258. CRIMINAL OFFENSE; VIOLATION OF SUBCHAPTER. (a) A person commits an offense if the person violates this subchapter.

(b) Repealed by Acts 2005, 79th Leg., Ch. 1018, Sec. 7.05, eff. September 1, 2005.

(c) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 7.05, eff. September 1, 2005.

SUBCHAPTER G. LICENSE AND REGISTRATION DENIAL AND DISCIPLINARY PROCEEDINGS

Sec. 2153.301. DEFINITION. In this subchapter, "applicant," "license holder," or "registration certificate holder" includes:

(1) an individual;

(2) each partner of a partnership;

(3) each trustee of a trust;

(4) each receiver of a receivership;

(5) each officer, director, or member of an entity, including an association or corporation;

(6) each shareholder owning 25 percent or more of the shares of the corporation; and

(7) a business entity.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.302. MANDATORY DENIAL OF GENERAL BUSINESS LICENSE. The comptroller may not issue a general business license if the comptroller finds that the applicant has been:

(1) finally convicted of a felony during the five years preceding the date of application; or

(2) placed on community supervision or released on parole for a felony conviction during the two years preceding the date of application.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.303. MANDATORY DENIAL OF LICENSE FOR FAILURE TO COMPLY WITH CERTAIN PROVISIONS. The comptroller may not issue or renew a license if the applicant fails to:

(1) designate and maintain an office located in the state

as required by Section 2153.153; or

(2) allow the comptroller to inspect records that the applicant is required to maintain under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.304. MANDATORY DISCIPLINARY ACTION BASED ON NONPAYMENT. The comptroller may not issue or renew and shall revoke or suspend a license or registration certificate if the applicant or license or registration certificate holder fails to pay outstanding fees, costs, penalties, or taxes to the state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.305. DISCRETIONARY DISCIPLINARY ACTION. (a) The comptroller may refuse to issue or renew or may suspend or revoke a license or registration certificate if:

(1) the applicant or license or registration certificate holder violates this chapter or a rule adopted under this chapter;

(2) the applicant or license or registration certificate holder fails to answer a question or makes a false statement in, or in connection with, an application;

(3) the applicant or license or registration certificate holder extends or lends credit without notifying the commissioner of the person's intent to extend or lend credit as required by Section 2153.253;

(4) the applicant or license or registration certificate holder uses coercion to accomplish a purpose or engage in conduct regulated by the comptroller; or

(5) the applicant or license or registration certificate holder enters into a contract or agreement with the owner of the location of a coin-operated machine and the contract or agreement contains any kind of restriction relating to the location owner's right to purchase, agree to purchase, or use a product, commodity, or service that is not regulated under this chapter.

(b) The comptroller shall suspend or revoke a license or registration certificate if failure to suspend or revoke the license or registration would be contrary to the intent and purpose of this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.306. DETERMINATION HEARING. (a) An applicant for a license or registration certificate or a license or registration certificate holder is entitled to not less than 20 days' written notice and, if requested, a hearing in the following instances:

(1) after an application for an original or renewal license or registration certificate has been refused;

(2) before the comptroller may revoke a license or registration certificate; and

(3) before the comptroller may impose any other sanction under this chapter other than the sealing of a machine.

(b) Written notice required by Subsection (a) may:

(1) be personally served by the comptroller or the comptroller's authorized representative;

(2) be sent by United States certified mail addressed to the last known address of the applicant or license or registration certificate holder; or

(3) if, after due diligence, notice cannot be given as provided by Subdivision (1) or (2), be given by any reasonable method of notice prescribed by the comptroller calculated to inform a person of average intelligence and prudence in the conduct of the person's affairs, including publishing notice in a newspaper of general circulation in the area in which the applicant or license or registration holder conducts the person's business activities.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.307. JUDICIAL REVIEW. A person affected by a decision of the comptroller under this chapter may appeal the decision to a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER H. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 2153.351. CONSENT TO ENTRY. Acceptance of a license or registration certificate constitutes consent that the comptroller or a peace officer may freely enter the licensed business premises of

the license or registration certificate holder during normal business hours to ensure compliance with this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.352. SEALING OF MACHINES. (a) The comptroller or an authorized representative of the comptroller may seal a coin-operated machine in a manner that prevents the full operation of the machine if:

(1) the license or registration certificate of the person exhibiting or displaying the machine is suspended or revoked;

(2) the owner fails to pay a tax on the machine; or

(3) the machine is not registered with the comptroller under this chapter.

(b) The comptroller shall charge a $50 fee to release a coin-operated machine sealed under this section. The fee shall be paid to the comptroller.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.353. INJUNCTION. (a) The attorney general may commence an action, at the comptroller's request, against a person who does not hold a license or registration certificate to enjoin the person from engaging in the business of manufacturing, owning, selling, renting, leasing, trading, lending, furnishing to another, maintaining, transporting, storing, or importing a music or skill or pleasure coin-operated machine.

(b) Venue for a suit filed under Subsection (a) is in a district court in Travis County.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.354. CIVIL PENALTY. (a) The comptroller may assess a penalty of not less than $50 or more than $2,000 against:

(1) an owner who permits a coin-operated machine under the owner's control to be operated, exhibited, or displayed in this state without a tax permit as required by Section 2153.406; or

(2) a person who:

(A) exhibits or displays a coin-operated machine in this state without a tax permit as required by Section 2153.406;

(B) exhibits or displays a coin-operated machine that is not registered;

(C) does not maintain the records required under this chapter;

(D) refuses or fails to make records available for inspection on request by the comptroller or an authorized representative of the comptroller;

(E) uses an artful device or deceptive practice to conceal a violation of this chapter;

(F) misleads the comptroller or an authorized representative of the comptroller in connection with the enforcement of this chapter; or

(G) violates this chapter or a rule adopted under this chapter.

(b) The comptroller may assess a penalty under this section for each day a violation occurs.

(c) A penalty assessed under this section may be recovered by:

(1) the comptroller in the same manner as is provided by Subtitle B, Title 2, Tax Code, for the recovery of delinquent taxes; or

(2) the attorney general in a suit filed in Travis County.

(d) A penalty assessed under this section is in addition to any other remedy authorized under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.355. CRIMINAL OFFENSE; GENERAL VIOLATIONS. (a) A person commits an offense if the person:

(1) exhibits or displays a coin-operated machine in this state for which outstanding tax is due;

(2) falsifies, fails to maintain, or refuses or fails to make available to the comptroller or an authorized representative of the comptroller, on request, records of coin-operated machines that the person is required to maintain;

(3) uses an artful device or deceptive practice in this state to conceal a violation of this chapter;

(4) misleads the comptroller or an authorized

representative of the comptroller in connection with the enforcement of this chapter;

(5) breaks a seal attached by the comptroller or an authorized representative of the comptroller under Section 2153.352 without the comptroller's approval;

(6) exhibits or displays a coin-operated machine that has a broken seal without the comptroller's approval;

(7) removes a coin-operated machine from the location where the comptroller affixed a seal to the machine; or

(8) violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.356. CRIMINAL OFFENSE; OPERATING WITHOUT A LICENSE OR REGISTRATION CERTIFICATE. (a) A person commits an offense if the person knowingly violates Section 2153.151.

(b) An offense under this section is a Class A misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.357. CRIMINAL OFFENSE; OBTAINING A LICENSE BY FRAUD. (a) A person commits an offense if the person knowingly obtains or attempts to obtain a license by fraud, misrepresentation, or subterfuge.

(b) An offense under this section is a felony of the second degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.358. CRIMINAL OFFENSE; FAILURE TO REPORT OR PROVIDE INFORMATION. (a) A person commits an offense if the person intentionally:

(1) fails or refuses to report information to the comptroller as required by Section 2153.202; or

(2) withholds or conceals information required to be reported under Section 2153.202 from a person designated as

responsible for reporting to the comptroller the information required under that section.

(b) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.359. CRIMINAL OFFENSE; PROHIBITED TRANSACTIONS. (a) A person commits an offense if the person:

(1) personally or by an agent, contracts orally or in writing to convey by lease, sublease, or other form an interest in real property if:

(A) the person has a financial interest in a business required to be licensed under this chapter; and

(B) the contract contains a provision that limits the other party's right to obtain a music or skill or pleasure coin-operated machine from any source; or

(2) obtains or attempts to obtain a contract of lease or bailment of a music or skill or pleasure coin-operated machine by coercion, threats, or intimidation, or through the commission of, or threat to commit, an act prohibited by a state penal law or Title 4, Finance Code.

(b) An offense under this section is a felony of the third degree.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.360. CRIMINAL OFFENSE; REMOVAL OF TAX PERMIT. (a) A person may not remove or cause the removal of a tax permit from a music or skill or pleasure coin-operated machine.

(b) A person commits an offense if the person violates Subsection (a).

(c) An offense under this section is a Class B misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.361. CRIMINAL OFFENSE; SEALED MACHINES. (a) A person commits an offense if the person:

(1) breaks a seal attached in the name of a county or

municipality;

(2) exhibits or displays a coin-operated machine that has a broken seal; or

(3) removes from its location a coin-operated machine that has a broken seal.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.362. CRIMINAL OFFENSE; DISCLOSURE OF CONFIDENTIAL INFORMATION. (a) An employee of the comptroller or attorney general commits an offense if the employee discloses to an unauthorized person confidential information obtained under this chapter.

(b) An offense under this section is a Class C misdemeanor.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER I. STATE OCCUPATION TAX

Sec. 2153.401. IMPOSITION OF TAX. (a) An occupation tax is imposed on each coin-operated machine that an owner exhibits or displays, or permits to be exhibited or displayed in this state.

(b) The tax rate is $60 per year.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.402. EXEMPTION. The tax imposed under this subchapter does not apply to an owner of a coin-operated machine or a machine that is exempt from the tax under another provision of this chapter or if the owner:

(1) holds an import license; and

(2) possesses the coin-operated machine for resale only.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.403. PRORATED TAX. The tax on a coin-operated machine first exhibited or displayed in this state after March 31 is one-fourth of the tax imposed under Section 2153.401 for each quarter

or partial quarter of the calendar year remaining after the date the owner first exhibits or displays the coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.404. COLLECTION. (a) The comptroller shall collect the tax.

(b) In collecting the tax, the comptroller may:

(1) collect the tax on a quarterly basis;

(2) establish procedures for quarterly collection of the tax; and

(3) establish dates on which the tax payment is due.

(c) An owner required to pay a tax under this section shall pay the tax to the comptroller by cashier's check or money order.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.405. REFUND OR CREDIT PROHIBITED. The comptroller may not refund or assign credit for the tax imposed under this subchapter to an owner who ceases to exhibit or display a coin-operated machine before the end of the calendar year for which the tax is imposed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.406. TAX PERMIT. (a) The comptroller shall issue a tax permit to an owner who pays the tax.

(b) The comptroller may issue a duplicate tax permit to an owner if the owner's tax permit is lost, stolen, or destroyed. The fee for a duplicate permit is $5.

(c) Except as provided by Subsection (d), a tax permit shall be securely attached to the coin-operated machine for which the permit is issued in a manner that requires continued application of steam and water to remove the permit.

(d) A person may not attach a tax permit to a coin-operated machine that is exhibited or displayed if the machine is not registered with the comptroller under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.407. APPLICABILITY OF TAX CODE. Subtitle B, Title 2, Tax Code, applies to the administration, collection, and enforcement of taxes, penalties, and interest under this subchapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER J. COUNTY AND MUNICIPAL REGULATION

Sec. 2153.451. IMPOSITION OF OCCUPATION TAX AUTHORIZED. (a) A county or municipality may impose an occupation tax on a coin-operated machine in this state.

(b) The rate of the tax may not exceed one-fourth of the rate of the tax imposed under Section 2153.401.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.452. ZONING. (a) For purposes of zoning, a political subdivision of this state shall treat the exhibition of a music or skill or pleasure coin-operated machine in the same manner as the political subdivision treats the principal use of the property where the machine is exhibited.

(b) Subsection (a) does not prohibit a municipality from restricting the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2153.453. SEALING AUTHORIZED; RELEASE FEE. A county or municipality that imposes an occupation tax on a coin-operated machine may:

(1) seal a coin-operated machine if the tax imposed is not paid; and

(2) charge a fee of not more than $5 for the release of a sealed coin-operated machine.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2154. REGULATION OF FIREWORKS AND FIREWORKS DISPLAYS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2154.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of insurance of Texas.

(2) "Department" means the United States Department of Transportation.

(3) "Distributor" means a person who:

(A) imports fireworks into this state; or

(B) sells fireworks to:

(i) a jobber, retailer, or other distributor for resale; or

(ii) a holder of a single public display permit, a multiple public display permit, or another fireworks permit.

(4) "Fire prevention officer" means a chief of a fire department, a fire marshal, a county fire marshal, a sheriff, a constable, another local enforcement officer primarily responsible for fire prevention, or, if there is no local fire authority, the state fire marshal.

(5) "Fireworks" means a composition or device:

(A) designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and

(B) defined by 49 C.F.R. Section 173.56(j) (1996).

(6) "Fireworks 1.3G" means a large fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and

(B) classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).

(7) "Fireworks 1.4G" means a small fireworks device:

(A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;

(B) that complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996), or the most recently adopted version of that rule; and

(C) that is classified by the department in 49 C.F.R. Part 173 (1996).

(8) "Illegal fireworks" means a fireworks device manufactured, distributed, or sold in violation of this chapter.

(9) "Indoor or proximate display" means a pyrotechnic display involving the ignition of Fireworks 1.3G or Fireworks 1.4G for public amusement where an audience is closer to the pyrotechnic devices than permitted by NFPA 1123 Code of Fireworks Display. The term does not include the use of Fireworks 1.4G by a retail consumer for private or personal amusement.

(9-a) "Indoor retail fireworks site" means a retail fireworks site, other than a retail fireworks stand, that sells Fireworks 1.4G from a building or structure.

(10) "Insurance agent" means:

(A) a person, firm, or corporation licensed under Subchapter B, C, D, or E, Chapter 4051, or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; and

(C) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under Chapter 791, Government Code.

(11) "Jobber" means a person who purchases fireworks only for resale to retailers.

(12) "Manufacturer" means a person, firm, corporation, or association who makes fireworks.

(13) "Person" means an individual or entity, including an owner, manager, officer, employee, or occupant.

(14) "Public display" means the igniting of Fireworks 1.3G for public or private amusement.

(15) "Pyrotechnic operator" means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G or Fireworks 1.4G.

(16) "Pyrotechnic special effects operator" means an individual who, by experience, training, and examination, has demonstrated the necessary skill and ability for safely assembling, discharging, and supervising proximate displays of Fireworks 1.3G or Fireworks 1.4G.

(16-a) "Retail fireworks site" means a retail location for which a person has obtained a current retail fireworks permit under Section 2154.202 to sell fireworks.

(16-b) "Retail fireworks stand" means a structure that is a

retail fireworks site from which Fireworks 1.4G are sold over the counter to members of the general public who always remain outside of the structure.

(17) "Retailer" means a person who purchases fireworks for resale only to the general public.

(18) "Sale" means selling or offering for sale merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.

(19) "State fire marshal" means the chief law enforcement officer of the state charged with the responsibility of fire prevention.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.549, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.154, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 374 (H.B. 3907), Sec. 1, eff. June 1, 2017.

Sec. 2154.002. EXEMPTIONS. This chapter does not apply to:

(1) a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173 (1996);

(2) a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;

(3) a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;

(4) novelties or trick noisemakers;

(5) the sale, at wholesale, of any type of fireworks by a resident manufacturer, distributor, importer, or jobber if the fireworks are intended for shipment directly out of state under department regulations;

(6) the sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;

(7) the use of a fusee or a railway torpedo by a railroad;

(8) the sale of blank cartridges for:

(A) use in a radio, television, film, or theater production;

(B) a signal or ceremonial purpose in an athletic event; or

(C) an industrial purpose; or

(9) the use of a pyrotechnic device by a military organization.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.003. PERMISSIBLE FIREWORKS. (a) Except as provided by Subsection (b), Fireworks 1.4G are permissible fireworks.

(b) The following are not permissible fireworks:

(1) sky rockets or "bottle rockets" with:

(A) a total propellant charge of less than four grams;

(B) a casing size of less than five-eighths of an inch for the outside diameter and less than 3-1/2 inches in length; and

(C) an overall length, including stick, of less than 15 inches; and

(2) other fireworks determined not acceptable by the United States Consumer Product Safety Commission.

(c) The term "bottle rocket" may not be used in association with the advertisement or sale of fireworks.

(d) In addition to the items described by Subsection (b), pop rockets with a propellant casing length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches are not permissible fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 1, eff. January 2, 2008.

Sec. 2154.004. EFFECT OF CHAPTER ON LOCAL REGULATION. (a) A municipal or county ordinance, order, or rule in effect on January 2, 1986, is not invalidated by this chapter.

(b) This chapter does not limit or restrict the authority of a

county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. COMMISSIONER'S POWERS AND DUTIES

Sec. 2154.051. COMMISSIONER'S POWERS AND DUTIES. (a) The commissioner shall:

(1) determine reasonable criteria and qualifications for licenses and permits;

(2) set license and permit fees;

(3) determine the qualifications and examination requirements for pyrotechnics operators; and

(4) establish a procedure for reporting and processing complaints.

(b) The commissioner may, after notice and opportunity for hearing, increase or decrease the limits of insurance coverage.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.052. RULES. (a) The commissioner:

(1) shall administer this chapter through the state fire marshal; and

(2) may issue rules to administer this chapter.

(b) The commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating:

(1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state;

(2) the conduct of public fireworks displays; and

(3) the safe storage of Fireworks 1.3G and Fireworks 1.4G.

(c) The commissioner shall adopt rules for applications for licenses and permits.

(d) In adopting a rule, the commissioner may use standards recognized by federal law or regulation and standards published by a nationally recognized standards-making organization.

(e) A rule may not be adopted under this chapter that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.007, eff. September 1, 2011.

Sec. 2154.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commissioner may not adopt rules restricting advertising or competitive bidding by a license or permit holder under this chapter except to prohibit false, misleading, or deceptive practices.

(b) The commissioner may not include in the rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the holder's personal appearance or the use of a holder's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the holder; or

(4) restricts the holder's advertisement under a trade name.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.055. FIREWORKS SAFETY AND EDUCATION PROGRAM. (a) The commissioner shall establish a fireworks safety and education program.

(b) The program:

(1) shall provide information relating to the proper and safe use of fireworks and the dangers of the improper use of fireworks; and

(2) may include any method of communicating the need for safe use of fireworks and the dangers of improper use.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec. 2.008(16), eff. September 1, 2011.

(d) To fund the program, in addition to any other license or permit fees:

(1) the holder of a retail permit issued under Section 2154.202 shall pay, on issuance or renewal of the permit, a fee in the amount of $10; and

(2) the holder of a manufacturer's, distributor's, or jobber's license issued under Section 2154.151, 2154.152, or 2154.153 shall pay, on issuance or renewal of the license, a fee in the amount of $250.

(e) Money collected under Subsection (d) may be used only by the commissioner for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.708(a), eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. 1951), Sec. 2.008(16), eff. September 1, 2011.

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 2154.101. GENERAL REQUIREMENTS. (a) A person must obtain an appropriate license to:

(1) engage in the business of manufacturing, distributing, jobbing, or importing fireworks to be sold or used in this state; or

(2) supervise or conduct public fireworks displays.

(b) A person who is younger than 21 years of age may not be issued a pyrotechnic operator's license. The minimum age of a person issued another license under Subchapter D is 18 years of age.

(c) A person may not:

(1) transfer a license; or

(2) obtain or attempt to obtain a license by fraudulent representation.

(d) A person may not alter or deface a license. An altered or defaced license is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.102. WAIVER OF EXAMINATION REQUIREMENT. The commissioner may waive an examination requirement for an applicant with a valid license from another state if, in the commissioner's opinion, the license requirements of the other state are substantially equivalent to those of this state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.1025. STATE FIRE MARSHAL'S AUTHORITY REGARDING EXAMINATIONS; RULES. (a) The state fire marshal shall establish the scope and type of an examination required under this chapter.

(b) The state fire marshal may administer the examination or may enter into an agreement with a testing service.

(c) The state fire marshal shall adopt rules as necessary to implement examination requirements under this chapter.

Added by Acts 2003, 78th Leg., ch. 1014, Sec. 7, eff. June 20, 2003.

Sec. 2154.1026. USE OF TESTING SERVICE FOR EXAMINATION. (a) If a testing service is used, the state fire marshal may contract with the testing service regarding requirements for the examination required by this chapter, including examination development, scheduling, site arrangements, grading, reporting, analysis, or other administrative duties.

(b) The state fire marshal may require the testing service to:

(1) correspond directly with an applicant regarding the administration of the examination;

(2) collect a reasonable fee from an applicant for administering the examination; or

(3) administer the examination at a specific location or time.

Added by Acts 2003, 78th Leg., ch. 1014, Sec. 7, eff. June 20, 2003.

Sec. 2154.103. EXAMINATION RESULTS. (a) The state fire marshal shall notify each examinee of the results of the examination not later than the 30th day after the date an examination is administered.

(b) If the examination is conducted, graded, or reviewed by a testing service, the state fire marshal shall notify the examinee of the result of the examination not later than the 14th day after the date the state fire marshal receives the result from the testing service.

(c) If the notice of the examination result will be delayed for

longer than 90 days after the examination date, the state fire marshal shall notify the examinee of the reason for the delay before the 90th day.

(d) If requested in writing by a person who fails the licensing examination, the state fire marshal shall send the person an analysis of the person's performance on the examination.

(e) The state fire marshal may require a testing service to notify a person of the results of the person's examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1014, Sec. 8, eff. June 20, 2003.

Sec. 2154.104. DUPLICATE LICENSE; LICENSE CHANGES. A person must be charged a fee in an amount not to exceed $20 for a duplicate license issued by the commissioner and for any requested change to a license.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.105. LICENSE EXPIRATION DATE. (a) The commissioner by rule may provide for different expiration dates for the various types of licenses.

(b) If the expiration date of a license is less than one year from the date of its issuance or anniversary date, the license fee shall be prorated on the basis of the number of months during which the license is valid. The total annual fee is payable each time the license is renewed.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.106. LICENSE RENEWAL. (a) A license holder may renew an unexpired license by paying the required renewal fee to the state fire marshal any time before the license expires.

(b) Not later than the 30th day before the expiration date of a license, the state fire marshal shall send written notice of the impending license expiration to the license holder at the license holder's last known address.

(c) A person whose license has been expired for 90 days or less

may renew the license by paying to the state fire marshal the required annual fee and an additional amount equal to one-half of the original license fee.

(d) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the state fire marshal all unpaid annual fees and an additional amount equal to the original license fee.

(e) A person may not renew a license that has been expired for two years or more. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(f) This section does not prevent the state fire marshal from denying or refusing to renew a license for any reason provided by law or the rules of the commissioner.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER D. TYPES OF LICENSES

Sec. 2154.151. MANUFACTURER'S LICENSE. (a) A person manufacturing, storing, possessing, and selling fireworks constructed by that person must have a manufacturer's license.

(b) The commissioner shall set and collect an annual manufacturer's license fee in an amount not to exceed $1,000.

(c) A licensed manufacturer may sell:

(1) Fireworks 1.4G only to a licensed distributor or jobber; and

(2) Fireworks 1.3G only to a licensed distributor or pyrotechnic operator, or to a fireworks public display permit holder for use in public fireworks displays in this state.

(d) A licensed manufacturer may manufacture, store, possess, and sell an item other than a permissible firework if the item is only for sale and delivery to authorized persons in a state in which the item is permissible.

(e) A licensed manufacturer may be required to submit samples of all fireworks to the state fire marshal for approval.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.152. DISTRIBUTOR'S LICENSE. (a) A person must be a

licensed distributor if the person:

(1) imports into this state or stores, possesses, and sells Fireworks 1.3G to a licensed pyrotechnic operator or distributor or to a single public display or multiple public display permit holder; or

(2) imports or stores, possesses, and sells Fireworks 1.4G to a licensed jobber, retailer, or distributor in this state.

(b) The commissioner shall set and collect an annual distributor's license fee in an amount not to exceed $1,500.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 13.001, eff. September 1, 2017.

Sec. 2154.153. JOBBER'S LICENSE. (a) A person must be a licensed jobber if the person stores, possesses, and sells Fireworks 1.4G only to retailers in this state.

(b) The commissioner shall set and collect an annual jobber's license fee in an amount not to exceed $1,000.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.154. PYROTECHNIC OPERATOR'S LICENSE. (a) A person must be a licensed pyrotechnic operator if the person assembles, conducts, and supervises public fireworks displays using Fireworks 1.3G.

(b) The commissioner shall set and collect an annual pyrotechnic operator's license fee in an amount not to exceed $100.

(c) To qualify for a pyrotechnic operator's license, a person must take and pass an examination, if required, conducted by the commissioner through the state fire marshal's office.

(d) Unless the examination is administered by a testing service, a person shall be charged a nonrefundable initial examination fee in an amount not to exceed $50. Unless the reexamination is administered by a testing service, a person shall be charged a nonrefundable fee in an amount not to exceed $20 for each reexamination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1014, Sec. 9, eff. June 20, 2003.

Sec. 2154.155. PYROTECHNIC SPECIAL EFFECTS OPERATOR'S LICENSE. (a) A person must be a licensed pyrotechnic special effects operator if the person assembles, conducts, and supervises proximate displays using Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standard of the Use of Pyrotechnics Before a Proximate Audience.

(b) The commissioner shall set and collect an annual pyrotechnic special effects operator's license fee in an amount not to exceed $100.

(c) To qualify for a pyrotechnic special effects operator's license, a person must take and pass an examination, if required, conducted by the commissioner through the state fire marshal's office.

(d) Unless the examination is administered by a testing service, a person shall be charged a nonrefundable initial examination fee in an amount not to exceed $50. Unless the reexamination is administered by a testing service, a person shall be charged a nonrefundable fee in an amount not to exceed $20 for each reexamination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1014, Sec. 10, eff. June 20, 2003.

Sec. 2154.156. FLAME EFFECTS OPERATOR'S LICENSE. (a) A person must be a licensed flame effects operator if the person assembles, conducts, or supervises flame effects under Section 2154.253.

(b) The commissioner shall set and collect an annual flame effects operator's license fee in an amount not to exceed $100.

(c) To qualify for a flame effects operator's license, a person must take and pass an examination and comply with any other requirements set by the commissioner through the state fire marshal's office.

(d) A person shall be charged a nonrefundable initial examination fee in an amount not to exceed $30. A person shall be charged a nonrefundable fee in an amount not to exceed $20 for each reexamination.

Added by Acts 2003, 78th Leg., ch. 872, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER E. PERMIT REQUIREMENTS

Sec. 2154.201. GENERAL REQUIREMENTS. (a) A person who is younger than 21 years of age may not be issued a public fireworks display permit. A person who is younger than 18 years of age may not be issued another permit under this subchapter.

(b) A person may not:

(1) transfer a permit issued under this subchapter; or

(2) obtain or attempt to obtain a permit under this subchapter by fraudulent representation.

(c) A person may not alter or deface a permit. An altered or defaced permit is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.202. RETAIL FIREWORKS PERMIT. (a) A person selling fireworks directly to the public must annually obtain a nonrenewable retail fireworks permit for each retail location.

(b) The commissioner shall set and collect a retail fireworks permit fee in an amount not to exceed $20.

(c) The commissioner shall provide for the sale of a retail fireworks permit through an Internet website. A person may purchase a permit on the website. The Texas Department of Insurance shall post a link to the website on the department's Internet website.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 832 (H.B. 2259), Sec. 2, eff. September 1, 2023.

(e) A retail fireworks permit expires on January 31 each year and is not renewable.

(f) Repealed by Acts 2023, 88th Leg., R.S., Ch. 832 (H.B. 2259), Sec. 2, eff. September 1, 2023.

(g) Except as provided by Subsection (h), a retail fireworks permit holder may sell fireworks only to the public, and only during periods:

(1) beginning June 24 and ending at midnight on July 4;

(2) beginning December 20 and ending at midnight on January 1 of the following year; and

(3) beginning May 1 and ending at midnight on May 5 if the

fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border and that is in a county in which the commissioners court of the county has approved the sale of fireworks during the period.

(h) In addition to the periods during which the sale of fireworks is authorized under Subsection (g), the commissioners court of a county by order may allow a retail fireworks permit holder to sell fireworks in that county only to the public and only during one or more of the following periods:

(1) beginning February 25 and ending at midnight on March 2;

(2) beginning April 16 and ending at midnight on April 21;

(3) beginning the Wednesday before the last Monday in May and ending at midnight on the last Monday in May; and

(4) beginning five days before the first day of Diwali and ending at midnight on the last day of Diwali.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 3, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 710 (H.B. 1150), Sec. 1, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 475 (H.B. 608), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 832 (H.B. 2259), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 832 (H.B. 2259), Sec. 2, eff. September 1, 2023.

Sec. 2154.2025. INSPECTION OF RETAIL FIREWORKS SITES. (a) In this section:

(1) "Fire or life safety hazard" has the meaning assigned by Section 352.016, Local Government Code.

(2) "Local fire prevention officer" means:

(A) a county fire marshal; or

(B) a fire prevention officer of an emergency services district.

(b) A local fire prevention officer may inspect a retail

fireworks site for a fire or life safety hazard and assess and collect an inspection fee under Section 352.016, Local Government Code, or Section 775.040, Health and Safety Code, as applicable, for that inspection if:

(1) the local fire prevention officer is authorized to conduct the inspection under Chapter 352, Local Government Code, or Chapter 775, Health and Safety Code, as applicable; and

(2) the local fire prevention officer is:

(A) a county fire marshal of the county in which the site is located; or

(B) a fire prevention officer of an emergency services district in which the site is located provided:

(i) the county in which the site is located has not appointed a county fire marshal; or

(ii) the county fire marshal of the county in which the site is located requests the fire prevention officer to conduct the inspection.

(c) A local fire prevention officer who inspects a retail fireworks site for a fire or life safety hazard as authorized by Chapter 352, Local Government Code, or Chapter 775, Health and Safety Code, as applicable, may assess the inspection fee provided by Section 352.016, Local Government Code, or by Section 775.040, Health and Safety Code, as applicable, and collect payment of that fee from the person who obtained a retail fireworks permit under Section 2154.202 to sell fireworks at the site. The inspection fee may not exceed:

(1) $100, if the largest building at the site is less than 25,000 square feet, plus $25 for each additional building, other than the largest building, located at the site;

(2) $200, if the largest building at the site is 25,000 square feet or more, but less than 100,000 square feet, plus $25 for each additional building, other than the largest building, located at the site; and

(3) $300, if the largest building at the site is 100,000 square feet or more, plus $25 for each additional building, other than the largest building, located at the site.

(d) An inspection fee under Section 352.016, Local Government Code, or Section 775.040, Health and Safety Code, as applicable, may be assessed and collected for the inspection of a retail fireworks site for a fire or life safety hazard only:

(1) once in a calendar year for that site; and

(2) by a local fire prevention officer authorized under Subsection (b) to inspect the site for a fire or life safety hazard and to assess and collect an inspection fee.

(e) A local fire prevention officer who inspects a retail fireworks site for a fire or life safety hazard may determine whether the site complies with the requirements of Sections 2154.221 and 2154.222.

(f) Except as otherwise provided by Subsection (e), this section does not grant additional authority to a local fire prevention officer.

(g) This section does not limit the authority of a local fire prevention officer to conduct an inspection of a retail fireworks site for a fire or life safety hazard more than once in a calendar year provided that the site is assessed an inspection fee not more than once in that calendar year and the inspection complies with other requirements of this section.

(h) To the extent of any conflict between this section and Chapter 352, Local Government Code, or Chapter 775, Health and Safety Code, this section controls.

Added by Acts 2017, 85th Leg., R.S., Ch. 374 (H.B. 3907), Sec. 2, eff. June 1, 2017.

Sec. 2154.204. PUBLIC DISPLAY PERMIT. (a) The commissioner shall set and collect a permit fee in an amount not to exceed $50 for a Fireworks 1.3G single public display permit. The permit shall be obtained from the commissioner through the state fire marshal.

(b) A single public fireworks display permit is valid for only one public fireworks display to be held during the hours and on the date or alternate date, if provided, stated on the permit and is not renewable.

(c) A person conducting multiple fireworks displays at a single location may be issued a multiple public display permit. The commissioner shall set and collect an annual multiple public display permit fee in an amount not to exceed $400.

(d) The holder of a multiple public display permit is not required to obtain a single public display permit. A multiple public display permit is valid for one year from the date of issuance and is

not renewable.

(e) This chapter does not limit the authority of the state fire marshal to inspect the location of the display or to require appropriate fire protection measures.

(f) The commissioner shall adopt by reference the provisions of:

(1) NFPA 1123, Code for Fireworks Display, 1995 Edition, as rules governing public displays; and

(2) NFPA 1126, Standards for the Use of Pyrotechnics Before a Proximate Audience, 1996 Edition, as rules governing indoor displays.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.205. INSURANCE REQUIREMENT FOR PUBLIC DISPLAY PERMIT. (a) In addition to any other requirements, an applicant for a public display permit must submit to the state fire marshal evidence of a general liability insurance policy in an amount of not less than $500,000 unless the commissioner increases or decreases the amount under Section 2154.051. A multiple public display permit or single public display permit may not be issued without evidence of general liability insurance as required by this section.

(b) The policy shall be conditioned to pay the amount of money the insured becomes obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the insured's servant, officer, agent, or employee in the conduct of a public fireworks display.

(c) Evidence of the liability insurance policy required by this section must be in the form of a certificate of insurance issued by an insurer authorized to do business in this state and countersigned by an insurance agent licensed in this state.

(d) A certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

(e) An insurer may not cancel a certificate of insurance issued under this section unless the insurer gives the state fire marshal notice of intent to cancel as required by the commissioner.

(f) This section may be satisfied by a city, county, or other

political subdivision presenting proof of its participation in a self-insurance fund or other fund created under Chapter 791, Government Code, covering the liability requirements under this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.550, eff. Sept. 1, 2003.

Sec. 2154.206. INSPECTION OF PUBLIC FIREWORKS DISPLAY. (a) In this section, "appropriate fire prevention officer" means a person with fire prevention authority in a particular jurisdiction.

(b) A person planning to make a public fireworks display shall submit, under rules adopted by the commissioner, a written application to the state fire marshal for a permit.

(c) An appropriate fire prevention officer, as designated or approved by the state fire marshal, shall make a site investigation to determine whether a proposed fireworks display is of a nature or in a location that may be hazardous to property or dangerous to any person. The officer may, in the exercise of reasonable discretion, approve or disapprove the display site and may impose reasonable conditions on the display.

(d) After inspecting the proposed display site, the fire prevention officer shall notify the state fire marshal of the results of the inspection, and the state fire marshal shall determine if a permit is to be issued.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.207. INSURANCE REQUIREMENT. (a) In addition to any other requirements, an applicant for a permit under Section 2154.253 must submit to the authority having jurisdiction evidence of a general liability insurance policy in an amount of not less than $1 million unless the commissioner decreases the amount under Section 2154.051. The permit may not be issued without evidence of insurance as required by this section.

(b) The general liability insurance policy required by this section shall be conditioned to pay the amount of money the insured becomes obligated to pay as damages because of bodily injury and property damage caused by an occurrence involving the insured or the

insured's servant, officer, agent, or employee in the conduct of a display of pyrotechnics and flame effects.

(c) Evidence of the general liability insurance policy required by this section must be in the form of a certificate of insurance issued by an insurer authorized to do business in this state and countersigned by an insurance agent licensed in this state.

(d) A certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

(e) An insurer may not cancel a certificate of insurance issued under this section unless the insurer gives the authority having jurisdiction notice of intent to cancel.

(f) This section may be satisfied by a city, county, or other political subdivision presenting proof of its participation in a self-insurance fund or a fund created under Chapter 791, Government Code, covering the liability requirements under this chapter.

Added by Acts 2003, 78th Leg., ch. 872, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.155, eff. September 1, 2005.

SUBCHAPTER E-1. INDOOR RETAIL FIREWORKS SITES

Sec. 2154.221. FIREWORKS SALES BUILDING. The fireworks sales building of an indoor retail fireworks site must be a freestanding durable structure with only one story of the building accessible to the public. The fireworks sales building of an indoor retail fireworks site may not be:

(1) a tent, boat, or mobile vehicle; or

(2) part of a multiuse or multi-tenant building.

Added by Acts 2017, 85th Leg., R.S., Ch. 374 (H.B. 3907), Sec. 3, eff. June 1, 2017.

Sec. 2154.222. SALES DISPLAY AREA. The sales display area of an indoor retail fireworks site must be sufficiently designed to prevent customers from handling fireworks unless an attendant is directly assisting the customer.

Added by Acts 2017, 85th Leg., R.S., Ch. 374 (H.B. 3907), Sec. 3, eff. June 1, 2017.

Sec. 2154.223. OFFICE AREA EXEMPTION. The commissioner may exempt the office area used in the operation of an indoor retail fireworks site from commissioner rules prescribing distance requirements between fireworks storage and inhabited buildings if, after inspecting the office area at the request of the permit holder for the site, the state fire marshal confirms and reports to the commissioner that the office area is separated by a one-hour fire-rated wall from any fireworks sales or storage area.

Added by Acts 2017, 85th Leg., R.S., Ch. 374 (H.B. 3907), Sec. 3, eff. June 1, 2017.

SUBCHAPTER F. PROHIBITED ACTS

Sec. 2154.251. PROHIBITED USE OF FIREWORKS. (a) A person may not:

(1) explode or ignite fireworks within 600 feet of any church, a hospital other than a veterinary hospital, an asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization;

(2) sell at retail, explode, or ignite fireworks within 100 feet of a place where flammable liquids or flammable compressed gasses are stored and dispensed;

(3) explode or ignite fireworks within 100 feet of a place where fireworks are stored or sold;

(4) ignite or discharge fireworks in or from a motor vehicle;

(5) place ignited fireworks in, or throw ignited fireworks at, a motor vehicle;

(6) conduct a public fireworks display that includes Fireworks 1.3G unless the person is a licensed pyrotechnic operator;

(7) conduct a proximate display of fireworks that includes Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standards for the Use of Pyrotechnics Before a Proximate Audience unless the person is a licensed pyrotechnic special effects operator and has the

approval of the local fire prevention officer; or

(8) sell, store, manufacture, distribute, or display fireworks except as provided by this chapter or rules adopted by the commissioner under this chapter.

(b) A person may not manufacture, distribute, sell, or use fireworks in a public fireworks display without an appropriate license or permit. Fireworks manufactured, distributed, sold, or used without an appropriate license or permit are illegal fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 13.002, eff. September 1, 2017.

Sec. 2154.252. CERTAIN SALES OF FIREWORKS PROHIBITED. (a) Unless the fireworks conform to the standards of the United States Consumer Product Safety Commission and the department, a person in this state may not:

(1) sell the fireworks at retail;

(2) offer the fireworks for retail sale;

(3) possess the fireworks for retail sale in this state; or

(4) transport, use, or explode the fireworks in this state.

(b) A person may offer for sale to the general public Fireworks 1.4G only at authorized retail locations. All mail order sales of Fireworks 1.4G are prohibited.

(c) Fireworks may not be sold or offered for sale to children under 16 years of age or to an intoxicated or incompetent person. A person selling fireworks at retail shall make a reasonable effort to determine that potential purchasers of fireworks are of the minimum age required by this subsection.

(d) A licensed manufacturer, distributor, jobber, or importer may not sell fireworks to a person who does not hold a license or permit.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 4, eff. June 15, 2007.

Sec. 2154.253. USE OF FLAME EFFECTS OR PYROTECHNICS. (a) Definitions. In this section:

(1) "Authority having jurisdiction" means the fire marshal of a political subdivision. If the political subdivision has no fire marshal, the chief executive of the local fire protection district or emergency services district shall be the authority having jurisdiction. The state fire marshal or the state fire marshal's designee shall be the authority having jurisdiction if the political subdivision has no fire marshal, local fire protection district, or emergency services district.

(2) "Flame effects" means a stationary or hand-held device of solid, liquid, or gas, designed specifically to produce an open flame when ignited to display a thermal, physical, visual, or audible phenomenon as defined in NFPA Standard 160. Such devices include paraffin wax candles, LPG candles, torches, and LPG burners.

(3) "NFPA Standard 1126" means the edition of the National Fire Protection Association, Standard 1126, "Standard for the Use of Pyrotechnics before a Proximate Audience," as adopted and amended by the commissioner.

(4) "NFPA Standard 160" means the edition of the National Fire Protection Association, Standard 160, "Standard for Flame Effects Before an Audience," as adopted and amended by the commissioner.

(5) "Pyrotechnics" means an explosive composition or device designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation as defined by NFPA Standard 1126.

(b) The use of flame effects or pyrotechnics for entertainment, exhibition, demonstration, or simulation before an assembly of 50 people or more, except for public safety demonstrations, must comply with NFPA Standard 160 and NFPA Standard 1126 and the following standards and requirements:

(1) if flame effects or pyrotechnics are used inside a building, the building must contain a complete operational fire-sprinkler system or provide personnel to implement a standby fire watch acceptable to the authority having jurisdiction;

(2) before flame effects or pyrotechnics are used inside a building, an announcement to the assembly must be made giving verbal instruction regarding the location and use of available exits and information about the building fire protection and fire alarm

systems; a determination by the authority having jurisdiction that an exit door is locked or obstructed constitutes a violation of this section;

(3) the plan required by NFPA Standard 1126 or NFPA Standard 160 detailing the criteria for use and display of pyrotechnics and flame effects must be provided to the local authority having jurisdiction;

(4) at least one Texas pyrotechnic special effects operator's licensee must be present on-site at all times where pyrotechnics are used, discharged, or ignited;

(5) at least one Texas flame effects operator's licensee must be present on-site at all times where flame effects are used, discharged, or ignited;

(6) the on-site licensee shall be responsible for complying with this section;

(7) the licensee or the licensee's employer must obtain a permit from the local authority having jurisdiction before the use, discharge, or ignition of a flame effect or pyrotechnics; and

(8) the applicant for the permit must provide with the application the evidence of insurance required by Section 2154.207.

(c) The requirements provided by Subsection (b) do not apply to traditional, nontheatrical public displays such as:

(1) use of lighted candles in restaurants or during religious services;

(2) fireplaces in areas open to the public;

(3) restaurant cooking visible to the public;

(4) the outdoor use of consumer fireworks by the general public; or

(5) an outdoor public display permitted under Section 2154.204.

(d) The authority having jurisdiction may adopt regulations governing the issuance of permits for the use of flame effects or pyrotechnics and may charge a fee to recover its costs.

(e) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor. Each day a violation occurs or continues constitutes a separate offense. Venue under this section is in the county in which the offense is committed or in Travis County.

(f) A municipal or county ordinance, order, or rule in effect on September 1, 2003, is not invalidated by this chapter.

(g) This section does not limit or restrict the authority of a county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating flame effects or pyrotechnics.

Added by Acts 2003, 78th Leg., ch. 872, Sec. 1, eff. Sept. 1, 2003.

Sec. 2154.254. EMPLOYMENT OF MINORS. (a) Except as provided by Subsection (c), a person may not employ or allow a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks in the course of the person's business.

(b) Except as provided by Subsection (c), a person may not employ a person 16 years of age or older but younger than 18 years of age to sell fireworks at a retail sales location unless the person selling fireworks at that location is accompanied by another person who is at least 18 years of age.

(c) An owner of a retail sales location may employ a person who is otherwise prohibited from engaging in that activity by Subsection (a) or (b) to sell fireworks at the owner's retail sales location if the person employed is:

(1) a member of the owner's immediate family;

(2) 12 years of age or older; and

(3) accompanied by another person who is at least 18 years of age while the person is engaged in selling fireworks at that location.

Added by Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 5, eff. June 15, 2007.

SUBCHAPTER G. DISCIPLINARY ACTIONS; PENALTIES

Sec. 2154.301. DISCIPLINARY POWERS OF COMMISSIONER. (a) The commissioner may, through the state fire marshal, suspend, revoke, or refuse to issue or renew a license or permit if the commissioner finds that any provision of this chapter, or any rule adopted under this chapter, has been violated.

(b) A person who has a license or permit revoked may not reapply for the license or permit earlier than one year from the date of revocation. A person reapplying under this subsection must request a public hearing on the reissuance of the license or permit

and has the burden of proving that a license or permit should be granted.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.302. DISCIPLINARY HEARING. (a) If the state fire marshal proposes to suspend, revoke, or refuse to renew a person's license or permit, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the commissioner applicable to the disciplinary proceedings may not conflict with the rules adopted by the State Office of Administrative Hearings.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2154.303. PENALTIES. (a) A person commits an offense if the person violates Section 2154.101(b), (c)(2), or (d), 2154.151(e), or 2154.201(a), (b)(2), or (c) or Subchapter F.

(b) Except as provided by Subsection (c), an offense under this section is a Class B misdemeanor.

(c) A violation of Section 2154.251(a)(1), (2), (3), (4), (5), or (8) that results in property damage in an amount of less than $200 and does not result in bodily injury or death, or a violation of Section 2154.254(a) or (b), is a Class C misdemeanor.

(d) Each day a violation occurs or continues constitutes a separate offense.

(e) Venue under this section is in the county in which the offense is committed or in Travis County.

(f) If the commissioner determines that a violation of this chapter creates a threat to the public safety, the commissioner may bring suit in the district court of the county in which the person who committed the offense resides or has an office to enjoin the person from engaging in the prohibited activity. The commissioner is not required to give bond as a condition to the issuance of injunctive relief.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended

by Acts 2001, 77th Leg., ch. 1420, Sec. 14.709(a), eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1179 (H.B. 539), Sec. 6, eff. June 15, 2007.

Sec. 2154.304. SEIZURE OF ILLEGAL FIREWORKS. (a) The state fire marshal, a fire chief, a fire marshal, their deputies, or a peace officer may seize illegal fireworks. Fireworks seized in the enforcement of this chapter shall be kept in the custody of the seizing agent or the sheriff of the county in which the fireworks were seized.

(b) The owner of the seized fireworks may file an action contesting the seizure in a district court in the county in which the fireworks were seized.

(c) Not later than the 30th day after the hearing on the seizure, the court may authorize the return of part or all of the confiscated fireworks. The court shall order any fireworks not returned to be destroyed. If an action contesting the seizure is not filed by the 30th day after the seizure, the seizing agent or the sheriff shall destroy the fireworks.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2155. HOTELS AND BOARDINGHOUSES

SUBCHAPTER A. NOTIFICATION OF LODGING RATES

Sec. 2155.001. ROOM RATE INFORMATION. (a) A hotel owner or keeper shall post a card or sign in a conspicuous place in each hotel room stating:

(1) the daily room rate; and

(2) the date the card or sign was posted.

(b) An increase in the daily room rate is not effective until the 30th day after the date a card or sign with the increased rate is posted.

(c) The owner or keeper of a hotel having 20 or more rooms shall give a guest assigned a room a ticket showing the daily room rate being charged for the room. The room rate on the ticket must conform with the rate posted under Subsection (a).

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2155.002. CRIMINAL PENALTIES. (a) A hotel owner or keeper commits an offense if the person does not post a room rate as required by Section 2155.001(a).

(b) A hotel owner, keeper, or employee commits an offense if the person does not give a guest a ticket as required by Section 2155.001(c).

(c) A hotel owner, keeper, or employee commits an offense if the person knowingly charges a guest a room rate for a room that is more than the posted rate for that room. Each day an excessive rate is charged is a separate offense.

(d) An offense under Subsection (a) or (c) is a misdemeanor punishable by:

(1) a fine of not less than $25 or more than $100;

(2) confinement in jail for a term not to exceed 30 days; or

(3) both a fine and confinement.

(e) An offense under Subsection (b) is a misdemeanor punishable by a fine of not more than $100.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. LIABILITY FOR PERSONAL PROPERTY ON PREMISES

Sec. 2155.051. DEFINITION. In this subchapter, "hotel" means a business, including an inn or rooming house, that furnishes food, lodging, or both food and lodging to a person applying and paying for the service.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2155.052. LIABILITY FOR VALUABLES. (a) This section applies only to a hotel, apartment hotel, or boardinghouse keeper who:

(1) continuously maintains a metal safe or vault in the keeper's hotel, apartment hotel, or boardinghouse that is in good order and fit for the custody of money, jewelry, silver or gold articles, precious stones, personal ornaments, or documents; and

(2) keeps suitable locks or bolts on the guests' sleeping room doors and proper fastenings on the transom and window of guest rooms.

(b) A hotel, apartment hotel, or boardinghouse keeper is not liable for a loss or injury suffered by a guest from the loss of valuables in an amount of more than $50 if:

(1) the valuables could reasonably have been kept in the safe or vault of the hotel, apartment hotel, or boardinghouse;

(2) the loss or injury does not occur through the negligence or wrongdoing of the keeper or an employee of the hotel, apartment hotel, or boardinghouse; and

(3) a printed copy of this section is posted on the door of the guest's sleeping room.

(c) Subsection (b) does not apply if:

(1) the guest offered to deliver the valuables to the hotel, apartment hotel, or boardinghouse keeper for custody in the safe or vault; and

(2) the hotel, apartment hotel, boarding hotel, or boardinghouse keeper did not:

(A) deposit the valuables in the safe or vault; and

(B) issue a receipt for the valuables.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2155.053. GRATUITOUS BAILEE. (a) A hotel, apartment hotel, or boardinghouse keeper may hold a person's property, including baggage, at the keeper's option and at the property owner's risk if the property owner:

(1) forwards the property to the hotel, apartment hotel, or boardinghouse before becoming a guest;

(2) leaves the property in the hotel, apartment hotel, or boardinghouse lobby before checking the property or becoming a guest; or

(3) allows the property to remain in the hotel, apartment hotel, or boardinghouse after the innkeeper and guest relationship has ceased and without checking the property.

(b) If a person checks property at a hotel, apartment hotel, or boardinghouse and leaves the property at the hotel, apartment hotel, or boardinghouse free of charge for one week without being a guest,

the hotel, apartment hotel, or boardinghouse keeper may, absent a special agreement, continue to hold the property after the first week at the property owner's risk.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. FIREARMS POLICY

Sec. 2155.101. DEFINITION. In this subchapter, "hotel" means a hotel, motel, inn, or similar business entity that offers more than 10 rooms to the public for temporary lodging for a fee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 237 (H.B. 333), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 1008 (S.B. 20), Sec. 2, eff. September 1, 2021.

Sec. 2155.102. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a hotel that has a policy prohibiting or restricting the possession, storage, or transportation of firearms by hotel guests.

Added by Acts 2013, 83rd Leg., R.S., Ch. 237 (H.B. 333), Sec. 1, eff. September 1, 2013.

Sec. 2155.1025. FIREARMS POLICY. (a) Unless possession of a handgun or other firearm or ammunition on hotel property is prohibited by state or federal law, a hotel may not adopt a policy prohibiting a hotel guest from:

(1) carrying or storing a firearm or firearm ammunition in the guest's hotel room;

(2) carrying a firearm or firearm ammunition directly en route to or from the hotel or the guest's hotel room;

(3) carrying a firearm or firearm ammunition directly en route to or from the guest's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(4) carrying or storing a firearm or firearm ammunition in the guest's vehicle located on the hotel property, including a

vehicle in a parking area provided for hotel guests.

(b) A hotel may adopt a policy requiring a hotel guest carrying a firearm or firearm ammunition in a common area on the hotel property to:

(1) carry a handgun in a concealed manner; or

(2) carry a firearm or ammunition in a case or bag.

Added by Acts 2021, 87th Leg., R.S., Ch. 1008 (S.B. 20), Sec. 3, eff. September 1, 2021.

Sec. 2155.103. NOTICE REGARDING FIREARMS POLICY. (a) A hotel shall include on the hotel's Internet reservation website the hotel's policy regarding the possession, storage, and transportation of firearms.

(b) If a hotel provides a written confirmation or a written statement of terms and conditions to a consumer after accepting the consumer's hotel reservation by telephone, the hotel shall include information specifying how the consumer may review applicable guest policies. The guest policies must indicate the hotel's policy regarding the possession, storage, and transportation of firearms by guests.

(c) A hotel owner or keeper commits an offense if the person does not comply with this section. An offense under this subsection is a misdemeanor punishable by a fine of not more than $100.

Added by Acts 2013, 83rd Leg., R.S., Ch. 237 (H.B. 333), Sec. 1, eff. September 1, 2013.

CHAPTER 2156. THEATERS

Sec. 2156.001. DEFINITION. In this chapter, "theater" means a building constructed, equipped, and used for public performances or the production and exhibition of plays, dramas, or operas for which an admission fee is charged. The term includes an opera house or playhouse.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.002. OTHER REGULATION PERMITTED. A theater may be

regulated by ordinance or other law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.003. RIGHTS OF THEATER OWNERS. A theater owner or lessee may:

(1) assign seats to theater patrons; and

(2) refuse admission to objectionable persons.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.004. RECORDKEEPING; OFFENSE. (a) A person in charge of a theater, including a theater owner, lessee, or manager, shall:

(1) keep, in convenient form, a list of all bookings of shows for the theater and the specific dates of the bookings; and

(2) show the list, on request, to a person desiring in good faith to lease or rent the theater for a public performance or the production and exhibition of a play, drama, or opera.

(b) A person commits an offense if the person violates Subsection (a).

(c) An offense under Subsection (b) is a misdemeanor punishable by a fine of not more than $20 or less than $10.

(d) Each failure or refusal to comply with Subsection (a) is a separate offense.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.005. DISCRIMINATION AGAINST REPUTABLE PRODUCTIONS; OFFENSE. (a) A person who is in charge of and manages a theater, including a theater owner or lessee, or a representative of an owner or lessee, may not discriminate against reputable theaters, operas, shows, or other productions.

(b) A person who is in charge of and manages a theater, including a theater owner or lessee, or a representative of an owner or lessee, commits an offense if the person fails and refuses to rent or lease the theater for one or more performances of any reputable theater, opera, or show on terms that may not be considered

unreasonable, extortionate, or prohibitive to the agent, manager, proprietor, or representative of the theater, opera, or show.

(c) An offense under Subsection (b) is a misdemeanor and the person:

(1) shall be fined not more than $500 or less than $100; and

(2) may be committed to not more than 10 days in jail.

(d) Each violation of Subsection (b) is a separate offense.

(e) Fifty percent of a fine collected under Subsection (c) shall be paid to the complainant. The remainder of the fine shall be paid to the jury fund of the county where the suit was brought.

(f) It is a defense to prosecution under Subsection (b) that, at the time of the application to lease or rent the theater, the person in charge of the theater shows that:

(1) the theater had, in good faith, already been leased or rented; and

(2) other bookings had been made for the date or dates applied for in good faith and not with the intention of evading this chapter.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2156.006. FORFEITURE OF LEASE. A theater's lessee or a lessee's assigns forfeit the lease and any rights and privileges under the lease if the person:

(1) does not comply with the law governing theaters; or

(2) is convicted of an offense under Section 2156.005.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2157. REGULATION OF MOTION PICTURE THEATERS

Sec. 2157.001. INTERPRETATION OF CONTRACTS. An agreement relating to the distribution of a film shown in any theater in this state or the licensing of a motion picture or film shown in any theater in this state is to be construed under state law.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2157.002. VENUE FOR CERTAIN SUITS. (a) Venue of a suit arising out of an agreement described by Section 2157.001 is in the county in which:

(1) the film was licensed to be shown; or

(2) the principal office of the exhibitor under the agreement is located.

(b) A provision of the agreement attempting to establish venue in a place other than as provided by Subsection (a) is void.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 2157.003. REPORTS ON THEATER ATTENDANCE. (a) A private or confidential investigator employed to determine the attendance at or the number of paid admissions for a motion picture theater performance shall furnish to the owner or general manager of the theater:

(1) a report of the investigator's findings on the day after the date of the determination; and

(2) a written copy of the investigator's findings or report not later than the third day after the date of the determination.

(b) If an investigator does not comply with Subsection (a), evidence obtained by the investigator and the investigator's testimony is not admissible as evidence in any court or other proceeding.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 2158. SPECIAL EVENT PARKING CHARGE LIMITATION

Sec. 2158.001. DEFINITIONS. In this chapter:

(1) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(2) "Parking facility," "parking facility owner," and "vehicle" have the meanings assigned by Section 2308.002, Occupations Code.

(3) "Special event" includes a sporting event, convention, concert, exhibit, parade, or political rally.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec.

19.001(a), eff. September 1, 2015.

Sec. 2158.002. LIMITATION OF PARKING CHARGE IN CONNECTION WITH SPECIAL EVENT. (a) A parking facility owner may not charge for parking a vehicle in the parking facility in connection with a special event an amount that is more than two times the amount computed using the rate that is normally charged for parking a vehicle in the facility on that day of the week and at that time.

(b) This section does not apply to an institution of higher education or a private or independent institution of higher education.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.001(a), eff. September 1, 2015.

Sec. 2158.003. CRIMINAL OFFENSE. (a) A person commits an offense if the person violates Section 2158.002(a).

(b) An offense under this section is a Class C misdemeanor.

(c) It is a defense to prosecution under this section that the parking facility owner posted a conspicuous sign at least two feet wide and two feet high at the entrance to the parking facility stating:

(1) in print at least six inches in height, the rate that is normally charged for parking a vehicle in the facility; and

(2) in print at least six inches in height, the rate that is charged for parking a vehicle in the facility in connection with a special event.

Added by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 19.001(a), eff. September 1, 2015.

TITLE 14. REGULATION OF MOTOR VEHICLES AND TRANSPORTATION
SUBTITLE A. REGULATIONS RELATED TO MOTOR VEHICLES
CHAPTER 2301. SALE OR LEASE OF MOTOR VEHICLES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2301.001. CONSTRUCTION; PURPOSE. The distribution and sale of motor vehicles in this state vitally affects the general economy of the state and the public interest and welfare of its

citizens. This chapter shall be liberally construed to accomplish its purposes, including the exercise of the state's police power to ensure a sound system of distributing and selling motor vehicles through:

(1) licensing and regulating manufacturers, distributors, converters, and dealers of motor vehicles; and

(2) enforcing this chapter as to other persons to provide for compliance with manufacturer's warranties and to prevent fraud, unfair practices, discrimination, impositions, or other abuse of the people of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.002. DEFINITIONS. In this chapter:

(1) "Ambulance" means a vehicle that is used exclusively to transport or to provide emergency medical care to an injured or ill person and that includes:

(A) a driver's compartment;

(B) a compartment to accommodate an emergency medical care technician or paramedic and two injured or ill persons in a position that permits one of the injured or ill persons to be given intensive life-support during transit;

(C) equipment and supplies for emergency care of an injured or ill person at the location of the person or at the scene of an injury-producing incident as well as in transit;

(D) two-way radio communication capability; and

(E) equipment for light rescue or extrication procedures.

(1-a) "Ambulance manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as an ambulance.

(2) "Board" has the meaning assigned by Section 2301.005.

(3) "Broker" means a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale of a new motor vehicle, other than a person who is:

(A) a franchised dealer or a bona fide employee of a franchised dealer acting for the franchised dealer;

(B) a representative or a bona fide employee of a representative acting for the representative;

(C) a distributor or a bona fide employee of a distributor acting for the distributor; or

(D) the owner of the vehicle at any point in the transaction.

(4) "Chassis manufacturer" means a person who manufactures and produces the frame on which the body of a motor vehicle is mounted.

(5) "Conversion" means a motor vehicle, other than a motor home, ambulance, or fire-fighting vehicle, that:

(A) has been substantially modified by a person other than the manufacturer or distributor of the chassis of the motor vehicle; and

(B) has not been the subject of a retail sale.

(6) "Converter" means a person who before the retail sale of a motor vehicle:

(A) assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle other than a motor home, ambulance, or fire-fighting vehicle.

(7) "Dealer" means a person who holds a general distinguishing number issued by the board under Chapter 503, Transportation Code.

(8) "Dealership" means the physical premises and business facilities on which a franchised dealer operates the dealer's business, including the sale and repair of motor vehicles. The term includes premises or facilities at which a person engages only in the repair of a motor vehicle if the repair is performed under a franchise and a motor vehicle manufacturer's warranty.

(9) "Department" means the Texas Department of Motor Vehicles.

(10) "Director" means the director of the division.

(11) "Distributor" means a person, other than a manufacturer, who:

(A) distributes or sells new motor vehicles to a franchised dealer; or

(B) enters into franchise agreements with franchised dealers, on behalf of the manufacturer.

(12) "Division" means the department division that regulates the distribution and sale of motor vehicles.

(13) "Executive director" means the executive director of the department.

(14) "Fire-fighting vehicle" means a motor vehicle the only purposes of which are to transport firefighters to the scene of a fire and to provide equipment to fight the fire, and that is built on a truck chassis with a gross carrying capacity of at least 10,000 pounds, to which the following have been permanently affixed or mounted:

(A) a water tank with a combined capacity of at least 500 gallons; and

(B) a centrifugal water pump with a capacity of at least 750 gallons per minute at 150 pounds per square inch net pump pressure.

(14-a) "Fire-fighting vehicle manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as a fire-fighting vehicle.

(15) "Franchise" means one or more contracts between a franchised dealer as franchisee and a manufacturer or a distributor as franchisor, including a written communication from a franchisor to a franchisee in which a duty is imposed on the franchisee, under which:

(A) the franchisee is granted the right to sell and service new motor vehicles manufactured or distributed by the franchisor or only to service motor vehicles under the contract and a manufacturer's warranty;

(B) the franchisee is a component of the franchisor's distribution system as an independent business;

(C) the franchisee is substantially associated with the franchisor's trademark, tradename, and commercial symbol;

(D) the franchisee's business substantially relies on the franchisor for a continued supply of motor vehicles, parts, and accessories; or

(E) any right, duty, or obligation granted or imposed by this chapter is affected.

(16) "Franchised dealer" means a person who:

(A) holds a franchised motor vehicle dealer's license

issued by the board under this chapter and Chapter 503, Transportation Code; and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.

(17) "General distinguishing number" means a dealer license issued by the board under Chapter 503, Transportation Code.

(17-a) "Hearings examiner" means a person employed by the department to preside over hearings under this chapter.

(17-b) "Independent mobility motor vehicle dealer" means a nonfranchised dealer who:

(A) holds a general distinguishing number issued by the board under Chapter 503, Transportation Code;

(B) holds a converter's license issued under this chapter;

(C) is engaged in the business of buying, selling, or exchanging mobility motor vehicles and servicing or repairing the devices installed on mobility motor vehicles at an established and permanent place of business in this state; and

(D) is certified by the manufacturer of each mobility device that the dealer installs, if the manufacturer offers that certification.

(18) "License holder" means a person who holds a license or general distinguishing number issued by the board under this chapter or Chapter 503, Transportation Code.

(19) "Manufacturer" means a person who manufactures or assembles new motor vehicles.

(20) "Manufacturer's statement of origin" means a certificate on a form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

(20-a) "Mobility motor vehicle" means a motor vehicle that is designed and equipped to transport a person with a disability and that:

(A) has a chassis that contains:

(i) a permanently lowered floor or lowered frame; or

(ii) a permanently raised roof and raised door;

(B) contains at least one of the following:

(i) an electronic or mechanical wheelchair, scooter, or platform lift that enables a person to enter or exit the vehicle while occupying a wheelchair or scooter;

(ii) an electronic or mechanical wheelchair ramp; or

(iii) a system to secure a wheelchair or scooter to allow for a person to be safely transported while occupying the wheelchair or scooter; and

(C) is installed as an integral part or permanent attachment to the motor vehicle's chassis.

(21) "Motor home" means a motor vehicle that is designed to provide temporary living quarters and that:

(A) is built on a motor vehicle chassis as an integral part of or a permanent attachment to the chassis; and

(B) contains at least four of the following independent life support systems that are permanently installed and designed to be removed only for repair or replacement and that meet the standards of the American National Standards Institute, Standards for Recreational Vehicles:

(i) a cooking facility with an on-board fuel source;

(ii) a gas or electric refrigerator;

(iii) a toilet with exterior evacuation;

(iv) a heating or air conditioning system with an on-board power or fuel source separate from the vehicle engine;

(v) a potable water supply system that includes at least a sink, a faucet, and a water tank with an exterior service supply connection; or

(vi) a 110-125 volt electric power supply.

(22) "Motor home manufacturer" means a person other than the manufacturer of a motor vehicle chassis who, before the retail sale of the motor vehicle, performs modifications on the chassis that result in the finished product being classified as a motor home.

(23) "Motor vehicle" means:

(A) a fully self-propelled vehicle having two or more wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway;

(B) a fully self-propelled vehicle having two or more wheels that:

(i) has as its primary purpose the transport of a person or persons or property;

(ii) is not manufactured for use on public streets, roads, or highways; and

(iii) meets the requirements for a certificate of title;

(C) an engine, transmission, or rear axle, regardless of whether attached to a vehicle chassis, manufactured for installation in a vehicle that has:

(i) the transport of a person or persons, or property, on a public highway as its primary purpose; and

(ii) a gross vehicle weight rating of more than 16,000 pounds; or

(D) a towable recreational vehicle.

(23-a) "New mobility motor vehicle" means a mobility motor vehicle that has not been the subject of a retail sale, regardless of the mobility motor vehicle's mileage.

(24) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(25) "Nonfranchised dealer" means a person who holds an independent motor vehicle dealer's general distinguishing number, an independent mobility motor vehicle dealer's general distinguishing number, or a wholesale motor vehicle dealer's general distinguishing number issued by the board under Chapter 503, Transportation Code.

(26) "Party" means a person or agency named or admitted as a party and whose legal rights, duties, or privileges are to be determined by the board after an opportunity for adjudicative hearing.

(27) "Person" means a natural person, partnership, corporation, association, trust, estate, or any other legal entity.

(27-a) "Property use agreement" means a contract, other than a franchise, between a franchised dealer and a manufacturer, distributor, or representative that grants the manufacturer, distributor, or representative the right to regulate the franchised dealer's use of the dealership and other facilities covered by the franchise.

(28) "Relocate" means to transfer an existing dealership operation to facilities at a different location, including a transfer that results in a consolidation or dualing of an existing dealer's

operation.

(29) "Representative" means a person who:

(A) is or acts as an agent or employee for a manufacturer, distributor, or converter; and

(B) performs any duty in this state relating to promoting the distribution or sale of new motor vehicles or contacts dealers in this state on behalf of a manufacturer, distributor, or converter.

(30) "Retail sale" means any sale of a motor vehicle other than:

(A) a sale in which the purchaser acquires a vehicle for resale; or

(B) a sale of a vehicle that is operated in accordance with Section 503.061, Transportation Code.

(31) "Rule":

(A) means a statement by the board of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of the board;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of the board and not affecting the rights of a person not connected with the board.

(32) "Towable recreational vehicle" means a nonmotorized vehicle that:

(A) was originally designed and manufactured primarily to provide temporary human habitation in conjunction with recreational, camping, or seasonal use;

(B) meets the requirements to be issued a certificate of title and registration by the department as a travel trailer through a county tax assessor-collector;

(C) is permanently built on a single chassis;

(D) contains at least one life support system; and

(E) is designed to be towable by a motor vehicle.

(33) Repealed by Acts 2009, 81st Leg., R.S., Ch. 933, Sec. 2U.02, eff. September 1, 2009.

(34) "Vehicle lease" means a transfer of the right to

possess and use a motor vehicle for a term of more than 180 days in return for consideration.

(35) "Vehicle lease facilitator" means a person, other than a franchised dealer, a vehicle lessor, or a bona fide employee of a franchised dealer or vehicle lessor, who:

(A) holds the person out to any other person as a "motor vehicle leasing company" or "motor vehicle leasing agent," or uses a similar title, to solicit or procure another person to enter into an agreement to become the lessee of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator;

(B) otherwise solicits another person to enter into an agreement to become a lessee of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator; or

(C) is otherwise engaged in the business of securing lessees or prospective lessees of a motor vehicle that is not, and will not be, titled in the name of or registered to the facilitator.

(36) "Vehicle lessor" means a person who leases or offers to lease a motor vehicle to another person under a lease agreement.

(37) "Warranty work" means parts, labor, and any other expenses incurred by a franchised dealer in complying with the terms of a manufacturer's or distributor's warranty.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.601(a), 14A.602, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 7.01, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 710 (H.B. 2216), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 2U.01, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 2U.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.02, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 1, eff.

September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 1, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 8, eff. September 1, 2017.

Sec. 2301.003. EFFECT ON AGREEMENTS. (a) The terms and conditions of a franchise are subject to this chapter.

(b) An agreement to waive the terms of this chapter is void and unenforceable. A term or condition of a franchise inconsistent with this chapter is unenforceable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.004. CHAPTER EXCLUSIVE. Unless otherwise specifically provided by law not in conflict with this chapter, all aspects of the distribution and sale of motor vehicles are governed exclusively by this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.0045. NONAPPLICABILITY OF CHAPTER TO ASSEMBLED VEHICLES AND HOBBYIST. This chapter does not apply to an assembled vehicle or a hobbyist, as those terms are defined by Section 731.001, Transportation Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1079 (H.B. 1755), Sec. 1, eff. September 1, 2019.

Sec. 2301.005. TITLE CHANGES. (a) A reference in law, including a rule, to the Texas Motor Vehicle Commission or to the board means the board of the Texas Department of Motor Vehicles.

(b) A reference in law, including a rule, to the executive

director of the Texas Motor Vehicle Commission means the executive director of the Texas Department of Motor Vehicles.

(c) A reference in law, including a rule, to the Texas Motor Vehicle Commission Code means this chapter.

(d) A reference in law other than this chapter to a dealer licensed by the Texas Motor Vehicle Commission or a dealer licensed by the Motor Vehicle Board of the Texas Department of Transportation means a franchised dealer.

(e) A reference in this chapter to a rule or to a board rule means a rule adopted by the commission, except that all board rules that were in effect on June 1, 2005, remain in effect until amended or repealed by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 7.02, eff. June 14, 2005.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.03, eff. September 1, 2009.

Sec. 2301.006. BROKERS PROHIBITED. A person may not act as, offer to act as, or claim to be a broker.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.007. TOWING VEHICLE BY LICENSE HOLDER. Notwithstanding any other law, a person licensed under this chapter does not commit an offense by employing a person to tow a disabled vehicle to or from the premises for which the person is licensed regardless of whether the person employed to tow the vehicle:

(1) holds a certificate issued by a state agency authorizing the person to engage in the business of towing vehicles for hire; or

(2) commits an offense by towing the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER C. DIVISION PERSONNEL

Sec. 2301.103. PERSONNEL. A division employee is subject to dismissal if the employee has an interest in or is related within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, to a person who has an interest in a business that manufactures, distributes, converts, sells, or leases motor vehicles.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 7.04, eff. June 14, 2005.

Sec. 2301.104. HEARINGS EXAMINERS. (a) The department may employ a chief hearings examiner and one or more additional hearings examiners.
(b) A hearings examiner must be licensed to practice law in this state.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 2, eff. January 1, 2014.

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 2301.151. GENERAL JURISDICTION OF BOARD. (a) The board has the exclusive original jurisdiction to regulate those aspects of the distribution, sale, or lease of motor vehicles that are governed by this chapter, including the original jurisdiction to determine its own jurisdiction.
(b) The board may take any action that is specifically designated or implied under this chapter or that is necessary or convenient to the exercise of the power and jurisdiction granted under Subsection (a).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.605(a), eff. Sept. 1, 2003.

Sec. 2301.152. GENERAL DUTIES OF BOARD. (a) In accordance with this chapter, the board shall:

(1) administer this chapter;

(2) establish the qualifications of license holders;

(3) ensure that the distribution, sale, and lease of motor vehicles is conducted as required by this chapter and board rules;

(4) provide for compliance with warranties; and

(5) prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles.

(b) In addition to the duties delegated to the board under this chapter, the board shall enforce and administer Chapter 503, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.153. GENERAL POWERS OF BOARD. (a) Notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to perform a power or duty expressly granted under this chapter, including the power to:

(1) initiate and conduct proceedings, investigations, or hearings;

(2) administer oaths;

(3) receive evidence and pleadings;

(4) issue subpoenas to compel the attendance of any person;

(5) order the production of any tangible property, including papers, records, or other documents;

(6) make findings of fact on all factual issues arising out of a proceeding initiated under this chapter;

(7) specify and govern appearance, practice, and procedures before the board;

(8) adopt rules and issue conclusions of law and decisions, including declaratory decisions or orders;

(9) enter into contracts;

(10) execute instruments;

(11) retain counsel;

(12) use the services of the attorney general and institute and direct the conduct of legal proceedings in any forum;

(13) obtain other professional services as necessary and convenient;

(14) impose a sanction for contempt;

(15) assess and collect fees and costs, including attorney's fees;

(16) issue, suspend, or revoke licenses;

(17) prohibit and regulate acts and practices in connection with the distribution and sale of motor vehicles or warranty performance obligations;

(18) issue cease and desist orders in the nature of temporary or permanent injunctions;

(19) impose a civil penalty;

(20) enter an order requiring a person to:

(A) repurchase property under Section 2301.465 and pay costs and expenses of a party in connection with an order entered under that section;

(B) perform an act other than the payment of money; or

(C) refrain from performing an act; and

(21) enforce a board order.

(b) The board may inspect the books and records of a license holder in connection with the performance of its duties under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.606(a), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 2, eff. September 1, 2011.

Sec. 2301.154. DELEGATION OF POWERS. (a) The director may delegate any of the director's powers to one or more of the division's employees.

(b) The board by rule may delegate any power relating to a contested case hearing brought under this chapter or Chapter 503, Transportation Code, other than the power to issue a final order, to:

(1) one or more of the board's members;

(2) the executive director;

(3) the director; or

(4) one or more of the department's employees.

(c) The board by rule may delegate the authority to issue a final order in a contested case hearing brought under this chapter or

Chapter 503, Transportation Code, to:

(1) one or more of the board's members;

(2) the executive director; or

(3) the director of a division within the department designated by the board or the executive director to carry out the requirements of this chapter.

(d) The board by rule may delegate any power relating to a complaint investigation to any person employed by the department.

(e) An action taken by a person to whom a power or other authority is delegated under Subsection (b) or (c), including the issuance of an order, is considered an action of the board and may not be appealed to the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 7.05, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 7, eff. September 1, 2013.

Sec. 2301.155. RULES. The authority to adopt rules under this chapter is vested in the board. In accordance with this chapter and the rules, decisions, and orders of the board, the board shall adopt rules as necessary or convenient to administer this chapter and to govern practice and procedure before the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.156. DEPOSIT OF REVENUE. Notwithstanding any other law to the contrary, all money collected by the board under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Motor Vehicles fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1287 (H.B. 2202), Sec. 4, eff. September 1, 2013.

Sec. 2301.160. TOLLING OF TIME LIMIT DURING MEDIATION. A time limit relating to a board proceeding that is imposed by this chapter on the board or on a dealer is tolled during the pendency of mediation required by this chapter or by a franchise agreement.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.607(a), eff. Sept. 1, 2003.

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 2301.201. PUBLIC INTEREST INFORMATION. (a) The director or the director's designee shall prepare information describing the functions of the board and the procedures by which complaints or protests are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.202. COMPLAINTS; RECORDS. (a) The board shall provide to a person who files a complaint, and to each person that is the subject of the complaint, information about the board's policies and procedures relating to complaint investigation and resolution.

(b) The board shall keep an information file about each complaint filed with the board that the board has authority to resolve. The board shall keep the following information for each complaint filed by the board for the purpose of enforcing this chapter:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if the board does not take action on the complaint, an explanation of the reasons that action was not taken.

(c) If a written complaint is filed with the board that the board has authority to resolve, the board, at least quarterly and

until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an ongoing board investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.608(a), eff. Sept. 1, 2003.

Sec. 2301.203. COMPLAINT INVESTIGATION AND DISPOSITION. (a) If the board has reason to believe, through receipt of a complaint or otherwise, that a violation of this chapter or a rule, order, or decision of the board has occurred or is likely to occur, the board shall conduct an investigation unless it determines that the complaint is frivolous or for the purpose of harassment.

(b) If the investigation establishes that a violation of this chapter or a rule, order, or decision of the board has occurred or is likely to occur, the board shall initiate proceedings as it determines appropriate to enforce this chapter or its rules, orders, and decisions.

(c) The board may not file a complaint alleging a violation of this chapter or a board rule relating to advertising until the board has notified the license holder involved of the alleged violation and given the license holder an opportunity to cure the violation without further proceedings or liability.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.204. COMPLAINT CONCERNING VEHICLE DEFECT. (a) The owner of a motor vehicle or the owner's designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle.

(b) The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.

(c) The owner may also invoke the board's jurisdiction by sending a copy of the complaint to the board.

(d) A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the

dealer, manufacturer, converter, or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.205. NOTICE OF COMPLAINT PROCEDURE. (a) A franchised dealer shall provide notice of the complaint procedures provided by Section 2301.204 and Subchapter M to each person to whom the dealer sells a new motor vehicle.

(b) The board may require its approval of the contents of the notice required by Subsection (a) or may prescribe the contents of the notice.

(c) The failure to provide notice as required by this section is a violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 2301.251. LICENSE REQUIRED: GENERALLY. (a) Unless a person holds a license issued under this chapter authorizing the activity, the person may not:

(1) engage in business as, serve in the capacity of, or act as a dealer, manufacturer, distributor, converter, vehicle lessor, or vehicle lease facilitator in this state; or

(2) perform or offer to perform repair services on a motor vehicle under a franchise and a motor vehicle manufacturer's warranty, regardless of whether the person sells or offers to sell motor vehicles at the same location.

(b) A franchised dealer must have both a franchised motor vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, and a license issued under this chapter.

(c) A manufacturer or distributor that directly or indirectly reimburses another person to perform warranty repair services on a vehicle is engaged in business in this state regardless of whether the manufacturer sells or offers for sale new motor vehicles in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.01, eff.

September 1, 2019.

Sec. 2301.252. LICENSE REQUIRED: SALE OF NEW MOTOR VEHICLES. (a) A person may not engage in the business of buying, selling, or exchanging new motor vehicles unless the person:

(1) holds a franchised dealer's license issued under this chapter for the make of new motor vehicle being bought, sold, or exchanged; or

(2) is a bona fide employee of the holder of a franchised dealer's license.

(b) For purposes of this section:

(1) the make of a conversion is that of the chassis manufacturer;

(2) the make of a motor home is that of the motor home manufacturer;

(3) the make of an ambulance is that of the ambulance manufacturer; and

(4) the make of a fire-fighting vehicle is that of the fire-fighting vehicle manufacturer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.609(a), eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 4, eff. September 1, 2011.

Sec. 2301.253. LICENSE REQUIRED: VEHICLE LEASE FACILITATORS. Unless a person holds a vehicle lease facilitator license and complies with this chapter, the person may not:

(1) act in the capacity of or engage in the business of a vehicle lease facilitator;

(2) hold the person out to any other person as a "leasing company," "leasing agent," "lease facilitator," or similar title, directly or indirectly engaged in the business of a vehicle lease facilitator; or

(3) otherwise engage in the solicitation or procurement of a prospective lessee for a motor vehicle that is not titled in the

name of and registered to the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.254. LICENSE NOT REQUIRED FOR CERTAIN VEHICLE LESSORS OR VEHICLE LEASE FACILITATORS. (a) A person is not required to obtain a license to act as a vehicle lessor or a vehicle lease facilitator if the person is:

(1) a state or federally chartered financial institution or a regulated subsidiary of the financial institution; or

(2) a trust or other entity that owns an interest in a vehicle lease and the vehicle that is the subject of the lease, if the lease covering the vehicle is initiated, managed, serviced, and administered by a licensed vehicle lessor.

(b) A franchised dealer is not required to have a vehicle lessor or vehicle lease facilitator license to engage in any capacity in the business of leasing a motor vehicle that the dealer owns and is licensed under this chapter to sell.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.255. NONFRANCHISED DEALERS; GENERAL DISTINGUISHING NUMBER. (a) A nonfranchised dealer may not operate as a dealer unless the person holds a general distinguishing number. A nonfranchised dealer is not required to obtain an additional license under this chapter.

(b) For purposes of a nonfranchised dealer, a reference to a license in this chapter means a general distinguishing number.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.256. REVIEW OF NEW APPLICATIONS. A new application for a license under this chapter shall be reviewed and may be investigated to determine compliance with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.257. APPLICATION FOR DEALER'S LICENSE. (a) An application for a dealer's license must be on a form prescribed by the department. The application must include:

(1) the information required by Chapter 503, Transportation Code; and

(2) information the board determines by rule is necessary to determine the applicant's qualifications to adequately serve the public.

(b) If a material change occurs in the information included in an application for a dealer's license, the dealer shall notify the department of the change within a reasonable time. The department shall prescribe a form for the disclosure of the change.

(c) A franchised dealer must apply for a separate license under this section for each separate and distinct dealership showroom as determined by the department. Before changing a location, a dealer must obtain a new license for that location.

(d) The act of filing an application under this section or a form prescribed under this section does not establish the applicant as a franchised dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 8, eff. September 1, 2013.

Sec. 2301.2575. REQUEST FOR DEALER'S LICENSE APPLICATION CONFIDENTIAL. Notwithstanding any other law or rule, a request for an application for a dealer's license is confidential, is not an open record, and is not available for public inspection.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.610(a), eff. Sept. 1, 2003.

Sec. 2301.258. GENERAL REQUIREMENTS FOR APPLICATION FOR MANUFACTURER'S, DISTRIBUTOR'S, OR CONVERTER'S LICENSE. An application for a manufacturer's, distributor's, or converter's license must be on a form prescribed by the department. The application must include information the department determines necessary to fully determine the qualifications of an applicant, including financial resources, business integrity and experience, facilities and personnel for serving franchised dealers, and other information the department determines pertinent to safeguard the public interest and welfare.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 6, eff. September 1, 2011.
Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.02, eff. September 1, 2019.

Sec. 2301.259. APPLICATION FOR MANUFACTURER'S LICENSE. (a) An applicant for a manufacturer's license must provide a list of each distributor or representative acting for the applicant and each dealer franchised to sell the applicant's products in this state and their respective locations. An applicant for or holder of a manufacturer's license must inform the board of a change to the list not later than the 15th day after the date of the change. Information submitted under this subsection becomes a part of the application.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1135, Sec. 140(1), eff. September 1, 2013.

(c) An application for a manufacturer's license must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451-2301.476.

(d) An application for a manufacturer's license must specify:

(1) the preparation and delivery obligations of the manufacturer's franchised dealers before delivery of a new motor vehicle to a retail purchaser; and

(2) the schedule of compensation to be paid to a franchised dealer for the work and service performed under Subdivision (1).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.611(a), eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 140(1), eff. September 1, 2013.

Sec. 2301.260. APPLICATION FOR DISTRIBUTOR'S LICENSE. (a) An application for a distributor's license must disclose:

(1) the manufacturer for whom the distributor will act;

(2) whether the manufacturer is licensed in this state;

(3) the persons in this state who will be responsible for compliance with the warranty covering the motor vehicles to be sold;

(4) the terms of the contract under which the distributor will act for the manufacturer; and

(5) the franchised dealers with whom the distributor will do business.

(b) An applicant for a distributor's license that has a responsibility under a warranty agreement must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451-2301.476.

(c) An applicant for or holder of a distributor's license must inform the board of a change in the information provided under this section not later than the 15th day after the date of the change. Information submitted under this subsection becomes a part of the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 9, eff. September 1, 2013.

Sec. 2301.261. APPLICATION FOR VEHICLE LESSOR'S LICENSE. (a) An application for a vehicle lessor's license must:

(1) be on a form prescribed by the department;

(2) contain evidence of compliance with Chapter 503, Transportation Code, if applicable; and

(3) state other information required by the department.

(b) This chapter does not require a separate license for each

employee of a vehicle lessor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 7, eff. September 1, 2011.

Sec. 2301.262. APPLICATION FOR VEHICLE LEASE FACILITATOR LICENSE. (a) An application for a vehicle lease facilitator license must be on a form prescribed by the department and contain the information required by the department.

(b) This chapter does not require a separate license for each employee of a vehicle lease facilitator.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 8, eff. September 1, 2011.

Sec. 2301.263. LICENSE ISSUED SUBJECT TO NEW LAW AND RULES. A license issued under this chapter is subject to each provision of this chapter and board rule in effect on the date the license is issued and each provision of this chapter and board rule that takes effect during the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.264. LICENSE FEES. (a) The annual fees for a license issued under this chapter are:

(1) $900 for a manufacturer or distributor, plus $20 for each dealer franchised by the manufacturer or distributor;

(2) for a franchised dealer:

(A) $175, if the dealer sold fewer than 201 new motor vehicles during the preceding calendar year;

(B) $275, if the dealer sold more than 200 but fewer than 401 new motor vehicles during the preceding calendar year;

(C) $400, if the dealer sold more than 400 but fewer than 801 new motor vehicles during the preceding calendar year;

(D) $500, if the dealer sold more than 800 but fewer than 1,201 new motor vehicles during the preceding calendar year;

(E) $625, if the dealer sold more than 1,200 but fewer than 1,601 new motor vehicles during the preceding calendar year;

(F) $750, if the dealer sold more than 1,600 new motor vehicles during the preceding calendar year; and

(G) $100 for each location separate from the dealership at which the dealer does not offer motor vehicles for sale but performs warranty service work on vehicles the dealer is franchised and licensed to sell;

(3) $375 for a converter;

(4) for a vehicle lessor:

(A) $175, if the lessor leased 200 or fewer motor vehicles during the preceding calendar year;

(B) $275, if the lessor leased more than 200 but fewer than 401 motor vehicles during the preceding calendar year;

(C) $400, if the lessor leased more than 400 but fewer than 801 motor vehicles during the preceding calendar year;

(D) $500, if the lessor leased more than 800 but fewer than 1,201 motor vehicles during the preceding calendar year;

(E) $625, if the lessor leased more than 1,200 but fewer than 1,601 motor vehicles during the preceding calendar year; and

(F) $750, if the lessor leased more than 1,600 motor vehicles during the preceding calendar year; and

(5) $375 for a vehicle lease facilitator.

(b) A person who fails to apply for a license required under this chapter or fails to pay a fee within the required time must pay a penalty equal to 50 percent of the amount of the fee for each 30 days after the date the license is required or the fee is due.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.15, eff. September 1, 2019.

(d) The department may refund a fee collected under this chapter that is not due or that exceeds the amount due.

(e) The fee for an amendment to a license under this chapter is $25.

(f) The fee for a duplicate license under this chapter is $50.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.612(a), eff.

Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 2, eff. September 1, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 9, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 10, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.03, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.15, eff. September 1, 2019.

Sec. 2301.265. SERVICE OF PROCESS ON LICENSE HOLDER. Obtaining a license under this chapter constitutes doing business in this state. A license holder who fails to designate an agent for service of process is considered to have designated the secretary of state as the agent for receipt of service of process.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.266. DUPLICATE LICENSE. The board may:
(1) issue a duplicate license for any license the board issues;
(2) charge a fee for the issuance of a duplicate license; and
(3) adopt rules applicable to the issuance of a duplicate license.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.613(a), eff. Sept. 1, 2003.

SUBCHAPTER G. LICENSE EXPIRATION AND RENEWAL

Sec. 2301.301. LICENSE TERM AND RENEWAL. (a) Licenses issued under this chapter are valid for the period prescribed by the board.
(b) The department may issue a license for a term of less than the period prescribed under Subsection (a) to coordinate the expiration dates of licenses held by a person that is required to

obtain more than one license to perform activities under this chapter.

(c) The board by rule may implement a system under which licenses expire on various dates during the year. For a year in which a license expiration date is changed, the fee for the license shall be prorated so that the license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the entire license renewal fee is payable.

(d) A license renewal may be administratively granted unless a protest is made to the board.

(e) If the board prescribes the term of a license under this chapter for a period other than one year, the board shall prorate the applicable annual fee required under this chapter as necessary to reflect the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 10, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 11, eff. September 1, 2013.

Sec. 2301.302. NOTICE OF LICENSE EXPIRATION. The department shall notify each person licensed under this chapter of the date of license expiration and the amount of the fee required for license renewal. The notice shall be sent at least 30 days before the date of license expiration.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 11, eff. September 1, 2011.

Sec. 2301.303. RENEWAL OF DEALER'S LICENSE. A dealer shall

renew the dealer's license on an application prescribed by the department. The department shall include in the renewal application a request for disclosure of material changes described by Section 2301.257.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 732 (H.B. 2651), Sec. 5, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 12, eff. September 1, 2013.

Sec. 2301.304. PROCEDURE FOR RENEWAL OF CERTAIN LICENSES. The holder of a manufacturer's, distributor's, or converter's license may apply for a renewal of the license by complying with the application process specified by this chapter and board rule.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.04, eff. September 1, 2019.

SUBCHAPTER H. DEALERS

Sec. 2301.351. GENERAL PROHIBITION. A dealer may not:

(1) violate a board rule;

(2) aid or abet a person who violates this chapter, Chapter 503, Transportation Code, or a rule adopted under those chapters; or

(3) use false, deceptive, or misleading advertising relating to the sale or lease of motor vehicles.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 12, eff. September 1, 2011.

Sec. 2301.352. PROHIBITION: REQUIRING ADDITIONAL EQUIPMENT AFTER RETAIL SALE. A franchised dealer may not require as a condition of the sale and delivery of a new motor vehicle a retail

purchaser of the vehicle to purchase special features, equipment, parts, or accessories that the purchaser did not order or desire and that were not already installed on the vehicle at the time of sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.353. PROHIBITION: PERFORMANCE OF OBLIGATION UNDER AGREEMENT WITH MANUFACTURER. A franchised dealer may not fail to perform an obligation placed on:

(1) the selling dealer in connection with the preparation and delivery of a new motor vehicle for retail sale as provided in the manufacturer's preparation and delivery agreements that are applicable to the vehicle; or

(2) the dealer in connection with the manufacturer's warranty agreements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 13, eff. September 1, 2013.

Sec. 2301.354. USE OF SIGNS. (a) A franchised dealer may not operate without appropriate signs that:

(1) are readily and easily visible to the public; and

(2) identify the dealer's place of business and the products the dealer offers for sale.

(b) To the extent of a conflict between this section and another law, including an ordinance, this section prevails.

(c) If a dispute arises under this section:

(1) the board has exclusive jurisdiction to determine whether a sign complies with this section; and

(2) the board shall uphold an ordinance of a home-rule municipality and protect a franchised dealer from retribution by a manufacturer or distributor for complying with the ordinance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.355. USE OF MULTIPLE LOCATIONS. (a) A franchised

dealer may conduct business at more than one location, except that the dealer may establish and maintain a separate location for the display and sale of new motor vehicles only if expressly authorized by the dealer's franchise and license.

(b) A franchised dealer must hold a separate license for each separate and distinct dealership as required by Section 2301.257.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.356. NOTICE OF CERTAIN PROPOSED CHANGES. A licensed dealer shall promptly notify the board of any proposed change in its ownership, location, franchise, or any other matter the board by rule may require.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.357. PROHIBITED FEE. (a) A franchised dealer may not directly or indirectly pay a fee to a vehicle lessor or a vehicle lease facilitator.

(b) For purposes of Subsection (a), an adjustment in the purchase price paid for the lease or leased vehicle is not a fee. This subsection does not authorize a fee for referring leases or prospective lessees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.358. VEHICLE SHOW OR EXHIBITION. (a) A person who holds a license issued under this chapter may not participate in a new motor vehicle show or exhibition unless the person provides the department with written notice before the date the show or exhibition opens.

(b) A person who holds a license issued under this chapter may not sell or offer for sale a new motor vehicle at a show or exhibition, but dealership personnel may be present to aid in showing and exhibiting new motor vehicles.

(c) This section does not prohibit the sale of a towable recreational vehicle, motor home, ambulance, fire-fighting vehicle, or tow truck at a show or exhibition if:

(1) the department receives written notice of the show or exhibition before the date the show or exhibition opens; and

(2) the sale is not otherwise prohibited by law.

(d) A rule adopted by the board regulating the off-site display or sale of towable recreational vehicles must include a provision that authorizes the display and sale of towable recreational vehicles at a private event in a trade area that would not otherwise qualify for the private event under the application of general participation requirements for organized dealer shows and exhibitions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 85, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 13, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 14, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.05, eff. September 1, 2019.

Sec. 2301.359. TRANSFER OF OWNERSHIP BY DEALER. (a) A dealer must notify the manufacturer or distributor of a vehicle the dealer is franchised to sell of the dealer's decision to assign, sell, or otherwise transfer a franchise or a controlling interest in the dealership to another person. The notice is the application by the dealer for approval by the manufacturer or distributor of the transfer.

(b) Notice under Subsection (a) must:

(1) be in writing and include the prospective transferee's name, address, financial qualifications, and business experience; and

(2) be sent by certified mail, return receipt requested.

(c) The notice must be accompanied by:

(1) a copy of pertinent agreements regarding the proposed assignment, sale, or transfer;

(2) completed application forms and related information generally used by the manufacturer or distributor in reviewing prospective dealers, if the forms are on file with the board; and

(3) the prospective transferee's written agreement to

comply with the franchise to the extent that the franchise is not in conflict with this chapter.

(d) Not later than the 60th day after the date of receipt of a notice and application under this section, a manufacturer or distributor shall determine whether a dealer's prospective transferee is qualified and shall send a letter by certified mail, return receipt requested, informing the dealer of the approval or the unacceptability of the prospective transferee. If the prospective transferee is not acceptable, the manufacturer or distributor shall include a statement setting forth the material reasons for the rejection.

(e) A manufacturer or distributor may not unreasonably withhold approval of an application filed under Subsection (a).

(f) An application filed under this section is approved unless rejected by the manufacturer or distributor in the manner provided by this section.

(g) In determining whether to approve an application filed under Subsection (a), a manufacturer or distributor may consider:

(1) the prospective transferee's financial and operational performance as a franchised dealer, if the prospective transferee is or has been a franchised dealer;

(2) the prospective transferee's moral character; or

(3) the extent to which a prospective transferee satisfies any criteria developed by the manufacturer or distributor and made available to the prospective transferee, specifically to determine the business experience and financial qualifications of a prospective transferee.

(h) A manufacturer or distributor may consider the criteria developed under Subsection (g)(3) only if the criteria are in writing, are reasonable, and are uniformly applied in similar situations.

(i) It is unreasonable for a manufacturer or distributor to reject a prospective transferee who is of good moral character and who satisfies the criteria developed under Subsection (g)(3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 2, eff. September 1, 2011.

Sec. 2301.360. REVIEW BY BOARD FOLLOWING DENIAL OF TRANSFER. (a) A dealer whose application is rejected under Section 2301.359 may file a protest with the board. A protest filed under this section is a contested case.

(b) In a protest under this section, the board must determine whether the rejection was reasonable under the criteria described by Section 2301.359. The burden is on the manufacturer or distributor to prove that the prospective transferee is not qualified under the criteria. The board shall enter an order holding that the prospective transferee either is qualified or is not qualified.

(c) If the board's order is that the prospective transferee is qualified, the dealer's franchise is amended to reflect the change in franchisee, and the manufacturer or distributor shall accept the transfer for all purposes.

(d) If the board's order is that the prospective transferee is not qualified, the board may include in the order:

(1) specific reasons why the prospective transferee is not qualified; and

(2) specific conditions under which the prospective transferee would be qualified.

(e) If the board's order that a prospective transferee is not qualified includes specific conditions under which the prospective transferee would be qualified, the board may retain jurisdiction of the dispute for a time certain to allow the dealer and prospective transferee to meet the conditions.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 2, eff. September 1, 2009.

Sec. 2301.361. INDEPENDENT MOBILITY MOTOR VEHICLE DEALER. (a) Notwithstanding any other law or rule, an independent mobility motor vehicle dealer may:

(1) purchase or otherwise acquire a new motor vehicle with a lowered floor or frame or a raised roof and door to fit or equip the motor vehicle for retail sale as a mobility motor vehicle;

(2) display a new mobility motor vehicle to a person with a disability to fit or equip the vehicle as a mobility motor vehicle

for the person; and

(3) sell or arrange for the sale and delivery of a new mobility motor vehicle to a purchaser at the independent mobility motor vehicle dealer's place of business if the transaction occurs through or by a franchised dealer of the motor vehicle's chassis line make.

(b) An independent mobility motor vehicle dealer who purchased or acquired a new motor vehicle from a franchised dealer to equip the vehicle as a mobility motor vehicle may not advertise the vehicle for sale until the vehicle is fitted or equipped as a mobility motor vehicle.

(c) An independent mobility motor vehicle dealer may not sell or offer to sell a new motor vehicle other than a new mobility motor vehicle.

Added by Acts 2007, 80th Leg., R.S., Ch. 710 (H.B. 2216), Sec. 2, eff. June 15, 2007.

Sec. 2301.362. OFFSITE SALES. (a) Except as provided by Subsections (b) and (c) and Sections 2301.358(c) and (d), a dealer may only sell or offer to sell a motor vehicle from an established and permanent place of business:

(1) that is approved by the division; and

(2) for which a general distinguishing number has been issued.

(b) A dealer may sell or offer to sell a motor vehicle online through an advertisement on the Internet to a buyer who never personally appears at the dealer's established and permanent place of business.

(c) A dealer may sell, offer to sell, including by consignment, or exchange at a public auction an antique motor vehicle that is at least 25 years of age or a special interest vehicle that is at least 12 years of age or that has been the subject of a retail sale.

(d) For purposes of this section, "special interest vehicle" has the meaning assigned by Section 683.077, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1363 (H.B. 2559), Sec. 1, eff. June 15, 2007.
Renumbered from Occupations Code, Section 2301.361 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(74), eff. September 1,

2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 777 (H.B. 2481), Sec. 14, eff. September 1, 2015.

Sec. 2301.363. REQUIRED NOTICE. A dealer that sells or exchanges a motor home or a towable recreational vehicle subject to inspection under Chapter 548, Transportation Code, shall notify the buyer in writing at the time of the sale or exchange that the motor vehicle is subject to inspection requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 717 (H.B. 2918), Sec. 1, eff. September 1, 2009.

SUBCHAPTER I. WARRANTIES: REIMBURSEMENT OF DEALER

Sec. 2301.401. WARRANTY, PREPARATION, AND DELIVERY REQUIREMENTS. (a) On request, a manufacturer or distributor shall provide to the department a copy of the current requirements the manufacturer or distributor imposes on its dealers with respect to the dealer's:

(1) duties under the manufacturer's or distributor's warranty; and

(2) vehicle preparation and delivery obligations.

(b) Warranty or preparation and delivery requirements placed on a dealer by a manufacturer are not enforceable unless the requirements are reasonable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 14, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 15, eff. September 1, 2013.

Sec. 2301.402. RATE OF COMPENSATION. (a) A manufacturer or distributor shall fairly and adequately compensate its dealers for warranty work.

(b) A manufacturer or distributor may not pay or reimburse a

dealer an amount of money for warranty work that is less than the amount the dealer charges a retail customer for similar nonwarranty work.

(c) In computing the amount of money a dealer charges a retail customer under Subsection (b), the manufacturer or distributor shall use the greater of:

(1) the average labor rate charged during the preceding six months by the dealer on 100 sequential nonwarranty repair orders, exclusive of routine maintenance; or

(2) the average labor rate charged for 90 consecutive days during the preceding six months by the dealer for nonwarranty repairs, exclusive of routine maintenance.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.403. ADJUSTMENT OF WARRANTY LABOR RATE. (a) A dealer may request an adjustment in the dealer's warranty labor rate. The request must be sent to the manufacturer or distributor by certified mail, return receipt requested, and must state the requested rate and include information reasonably necessary to enable the manufacturer or distributor to adequately evaluate the request.

(b) Not later than the 60th day after the date of receipt of a request under this section, the manufacturer or distributor shall provide written notice to the requesting dealer of the approval or disapproval of the request. If the request is disapproved, the manufacturer or distributor shall state the reasons for the disapproval.

(c) A requesting dealer may file a protest with the board if the manufacturer or distributor:

(1) disapproves the request; or

(2) fails to respond within the time required by this section.

(d) After a protest is filed, the board may uphold the manufacturer's or distributor's decision only if the manufacturer or distributor proves by a preponderance of the evidence that the disapproval of the request or failure to respond was reasonable.

(e) If the board does not determine that the disapproval of the request or failure to respond was reasonable, the board shall order the requested rate into effect as of the 60th day after the receipt

of the request by the manufacturer or distributor.

(f) Except by agreement of the parties, a warranty labor rate established under this subchapter may not be adjusted more often than once a year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.404. TIME FOR PAYMENT. (a) A manufacturer or distributor shall pay a dealer's claim for reimbursement for warranty work or dealer preparation and delivery work not later than the 30th day after the date of approval of the claim.

(b) A claim that is not disapproved before the 31st day after the date of receipt is considered approved.

(c) If a claim is disapproved, the manufacturer or distributor shall provide the dealer written notice of the reasons for the disapproval.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.405. CHARGE BACK TO DEALER. (a) A manufacturer or distributor may not charge back to a dealer money paid by the manufacturer or distributor to satisfy a claim approved and paid under this subchapter unless the manufacturer or distributor shows that:

(1) the claim was false or fraudulent;

(2) repair work was not properly performed or was unnecessary to correct a defective condition; or

(3) the dealer who made the claim failed to substantiate the claim as provided by the manufacturer's or distributor's requirements that were enforceable under Section 2301.401 at the time the claim was filed.

(b) A manufacturer or distributor may not audit a claim filed under this subchapter after the first anniversary of the date the claim is submitted unless the manufacturer or distributor has reasonable grounds to suspect that the claim was fraudulent.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.406. PROHIBITED REQUIREMENTS FOR PAYMENT. A manufacturer or distributor may not require, as a prerequisite to the payment of a claim for reimbursement, that a dealer file a statement of actual time spent in performance of labor, unless actual time is the basis for reimbursement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER J. MANUFACTURERS, DISTRIBUTORS, AND REPRESENTATIVES

Sec. 2301.451. PROHIBITION: ITEMS NOT ORDERED. A manufacturer, distributor, or representative may not require or attempt to require a franchised dealer to order, accept delivery of, or pay anything of value, directly or indirectly, for a motor vehicle or an appliance, part, accessory, or any other commodity unless the dealer voluntarily ordered or contracted for the item.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.452. DELIVERY OF MOTOR VEHICLE OR PART. (a) A manufacturer, distributor, or representative shall deliver in a reasonable quantity and within a reasonable time to a franchised dealer who holds a franchise for a motor vehicle sold or distributed by the manufacturer, distributor, or representative any new motor vehicle or part or accessory for a new motor vehicle as covered by the franchise if the vehicle, part, or accessory is publicly advertised as being available for delivery or is actually being delivered.

(b) This section does not apply to a delivery prevented by:

(1) an act of God;

(2) a work stoppage or delay because of a strike or labor dispute;

(3) a freight embargo; or

(4) another cause beyond the control of the manufacturer, distributor, or representative.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.453. TERMINATION OR DISCONTINUANCE OF FRANCHISE. (a)

Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not terminate or discontinue a franchise with a franchised dealer or directly or indirectly force or attempt to force a franchised dealer to relocate or discontinue a line-make or parts or products related to that line-make unless the manufacturer, distributor, or representative provides notice of the termination or discontinuance as required by Subsection (c) and:

(1) the manufacturer, distributor, or representative receives the dealer's informed written consent;

(2) the appropriate time for the dealer to file a protest under Subsection (e) has expired; or

(3) the board makes a determination of good cause under Subsection (g).

(b) A termination or discontinuance to which this section applies includes a termination or discontinuance of a franchise that results from a change by a manufacturer, distributor, or representative of its:

(1) distributor;

(2) method of distribution of its products in this state; or

(3) business structure or ownership.

(c) Except as provided by Subsection (d), the manufacturer, distributor, or representative must provide written notice by registered or certified mail to the dealer and the board stating the specific grounds for the termination or discontinuance. The notice must:

(1) be received not later than the 60th day before the effective date of the termination or discontinuance; and

(2) contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS DEPARTMENT OF MOTOR VEHICLES IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED TERMINATION OR DISCONTINUANCE OF YOUR FRANCHISE UNDER THE TERMS OF CHAPTER 2301, OCCUPATIONS CODE, IF YOU OPPOSE THIS ACTION."

(d) Notice may be provided not later than the 15th day before the effective date of termination or discontinuance if a licensed dealer fails to conduct its customary sales and service operations during its customary business hours for seven consecutive business days. This subsection does not apply if the failure is caused by:

(1) an act of God;

(2) a work stoppage or delay because of a strike or labor dispute;

(3) an order of the board; or

(4) another cause beyond the control of the dealer.

(e) A franchised dealer may file a protest with the board of the termination or discontinuance not later than the latter of:

(1) the 60th day after the date of the receipt of the notice of termination or discontinuance; or

(2) the time specified in the notice.

(f) After a timely protest is filed under Subsection (e), the board shall notify the party seeking the termination or discontinuance that:

(1) a timely protest has been filed;

(2) a hearing is required under this chapter; and

(3) the party may not terminate or discontinue the franchise until the board issues its final order or decision.

(g) After a hearing, the board shall determine whether the party seeking the termination or discontinuance has established by a preponderance of the evidence that there is good cause for the proposed termination or discontinuance.

(h) If a franchise is terminated or discontinued, the manufacturer, distributor, or representative shall establish another franchise in the same line-make within a reasonable time unless it is shown to the board by a preponderance of the evidence that the community or trade area cannot reasonably support such a dealership. If this showing is made, a license may not be issued for a franchised dealer in the same area until a change in circumstances is established.

(i) A manufacturer that changes its distributor or the method of distribution of its products in this state in a manner that results in unlawful termination or discontinuance of a franchise without good cause may not directly or indirectly distribute its products in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.614, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 276 (H.B. 3514), Sec. 3, eff. September 1, 2021.

Sec. 2301.454. MODIFICATION OR REPLACEMENT OF FRANCHISE. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not modify or replace a franchise if the modification or replacement would adversely affect to a substantial degree the dealer's sales, investment, or obligations to provide service to the public, unless:

(1) the manufacturer, distributor, or representative provides written notice by registered or certified mail to each affected dealer and the department of the modification or replacement; and

(2) if a protest is filed under this section, the board approves the modification or replacement.

(b) The notice required by Subsection (a)(1) must:

(1) be given not later than the 60th day before the date of the modification or replacement; and

(2) contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS DEPARTMENT OF MOTOR VEHICLES IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED MODIFICATION OR REPLACEMENT OF YOUR FRANCHISE UNDER THE TERMS OF CHAPTER 2301, OCCUPATIONS CODE, IF YOU OPPOSE THIS ACTION."

(c) A franchised dealer may file a protest with the board of the modification or replacement not later than the latter of:

(1) the 60th day after the date of the receipt of the notice; or

(2) the time specified in the notice.

(d) After a protest is filed, the board shall determine whether the manufacturer, distributor, or representative has established by a preponderance of the evidence that there is good cause for the proposed modification or replacement. The prior franchise continues in effect until the board resolves the protest.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.615, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 15, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 276 (H.B. 3514), Sec. 4, eff. September 1, 2021.

Sec. 2301.455. DETERMINATION OF GOOD CAUSE FOR TERMINATION, DISCONTINUANCE, MODIFICATION, OR REPLACEMENT. (a) Notwithstanding the terms of any franchise, in determining whether good cause has been established under Section 2301.453 or 2301.454, the board shall consider all existing circumstances, including:

(1) the dealer's sales in relation to the sales in the market;

(2) the dealer's investment and obligations;

(3) injury or benefit to the public;

(4) the adequacy of the dealer's service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;

(5) whether warranties are being honored by the dealer;

(6) the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter; and

(7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power.

(b) The desire of a manufacturer, distributor, or representative for market penetration does not by itself constitute good cause.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.456. USE OF ADVERTISING. A manufacturer, distributor, or representative may not:

(1) use any false, deceptive, or misleading advertising; or

(2) notwithstanding the terms of any franchise, require that a franchised dealer join, contribute to, or affiliate with, directly or indirectly, any advertising association.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.457. PROHIBITION: CHANGE OF FRANCHISED DEALER'S CAPITAL STRUCTURE. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not prevent a franchised dealer who meets reasonable capital requirements from reasonably changing:

(1) the capital structure of the dealership; or

(2) the means by or through which the dealer finances the operation of the dealership.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.458. PROHIBITION: CHANGE IN DEALER OWNERSHIP. Notwithstanding the terms of any franchise, except as provided by Section 2301.359 or 2301.360, a manufacturer, distributor, or representative may not fail to give effect to or attempt to prevent the sale or transfer of:

(1) a dealer, dealership, or franchise;

(2) an interest in a dealer, dealership, or franchise; or

(3) the management of a dealer, dealership, or franchise.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.459. PROHIBITION: USE OF PROMISSORY NOTE, SECURITY AGREEMENT, OR INSURANCE POLICY. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require or attempt to require that a franchised dealer assign to or act as an agent for a manufacturer, distributor, or representative to secure:

(1) a promissory note or security agreement given in connection with the sale or purchase of a new motor vehicle; or

(2) an insurance policy on or having to do with the operation of a vehicle that is sold.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.460. WARRANTY, PREPARATION, OR DELIVERY AGREEMENT OBLIGATIONS. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not, after a

complaint and a hearing, fail or refuse to perform an obligation placed on the manufacturer in connection with the preparation, delivery, and warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and delivery agreements.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.616, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 16, eff. September 1, 2013.

Sec. 2301.461. LIABILITY OF FRANCHISED DEALER. (a) Notwithstanding the terms of any franchise or any other law, a franchised dealer's preparation, delivery, and warranty obligations are the dealer's sole responsibility for product liability as between the dealer and a manufacturer or distributor.

(b) Notwithstanding the terms of any franchise or any other law, a manufacturer or distributor shall reimburse the dealer for any loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action, except for a loss caused by the dealer's:

(1) failure to comply with an obligation described by Subsection (a);

(2) negligence or intentional misconduct; or

(3) modification of a product without the authorization of the manufacturer or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.617, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 17, eff. September 1, 2013.

Sec. 2301.462. SUCCESSION FOLLOWING DEATH OF FRANCHISED DEALER. (a) Notwithstanding the terms of any franchise, except as provided by Subsection (b), a manufacturer, distributor, or representative shall honor the succession to a dealership by a legal heir or devisee

under:

(1) the will of a franchised dealer; or

(2) the laws of descent and distribution of this state.

(b) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may refuse to honor a succession if, after notice and hearing, it is shown to the board that the result of the succession will be detrimental to the public interest and to the representation of the manufacturer or distributor.

(c) This section does not prevent a franchised dealer, during the dealer's lifetime, from designating any person as a successor dealer by a written instrument filed with the manufacturer or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.618, eff. Sept. 1, 2003.

Sec. 2301.463. PROHIBITION: PAYMENT OF REBATE BY FRANCHISED DEALER. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require a franchised dealer to directly or indirectly pay or assume any part of a refund, rebate, discount, or other financial adjustment made by the manufacturer, distributor, or representative to, or in favor of, a customer of the dealer, unless the dealer voluntarily agrees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.464. RELOCATION OF FRANCHISE. (a) Not later than the 60th day before the date a franchised dealer proposes to begin the relocation of a dealership, the dealer must provide written notice of the dealer's intent to relocate to the dealer's manufacturer, distributor, or representative. The notice must be sent by certified mail, return receipt requested. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not deny or withhold approval of a written application to relocate a franchise unless:

(1) the applicant receives written notice of the denial or withholding of approval not later than the 60th day after the date the application is received; and

(2) if the applicant files a protest with the board, the board makes a determination of reasonable grounds under this section.

(b) An application under Subsection (a) to relocate a franchise must contain information reasonably necessary to enable a manufacturer or distributor to adequately evaluate the application.

(c) If the applicant files a protest under Subsection (a)(2), the board shall hold a hearing. After the hearing, the board shall determine whether the manufacturer or distributor has established by a preponderance of the evidence that the grounds for the denial or withholding of approval of the relocation are reasonable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.619, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 3, eff. September 1, 2009.

Sec. 2301.465. PAYMENT TO FRANCHISED DEALER FOLLOWING TERMINATION OF FRANCHISE. (a) In this section:

(1) "Net cost" means the franchised dealer cost for a new, unsold, undamaged, and complete motor vehicle in a dealer's inventory:

(A) plus any charges by the manufacturer, distributor, or representative for distribution, delivery, and taxes; and

(B) less all allowances paid to the franchised dealer by the manufacturer, distributor, or representative.

(2) "Net discount value" is the net cost multiplied by the total mileage, exclusive of mileage placed on the motor vehicle before it was delivered to the dealer, divided by 100,000.

(b) Notwithstanding the terms of any franchise, after the termination of a franchise, a manufacturer, distributor, or representative shall pay to a franchised dealer or any lienholder, in accordance with the interest of each, the following amounts:

(1) the dealer cost of each new motor vehicle in the dealer's inventory with mileage of 5,000 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer, reduced by the net discount value of each vehicle, except that if a vehicle cannot be reduced by the net discount value, the manufacturer

or distributor shall pay the dealer the net cost of the vehicle;

(2) the dealer cost of each new, unused, undamaged, and unsold part or accessory that:

(A) is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except in the case of sheet metal, a comparable substitute for the original package may be used; and

(B) was purchased by the dealer either directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory;

(3) the fair market value of each undamaged sign owned by the dealer that bears a trademark or tradename used or claimed by the manufacturer, distributor, or representative and that was purchased from or at the request of the manufacturer, distributor, or representative;

(4) the fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that:

(A) were recommended in writing and designated as special tools and equipment;

(B) were purchased from or at the request of the manufacturer, distributor, or representative; and

(C) are in usable and good condition except for reasonable wear and tear;

(5) the cost of transporting, handling, packing, storing, and loading any property subject to repurchase under this section; and

(6) the depreciated value of computer software that was recommended and required in writing by the manufacturer, distributor, or representative.

(c) An amount described by Subsection (b) is due:

(1) for property described by Subsection (b)(1), not later than the 60th day after the date a franchise is terminated; and

(2) for all other property described by Subsection (b), not later than the 90th day after the date a franchise is terminated.

(d) As a condition of payment, a franchised dealer must comply with reasonable requirements provided by the franchise regarding the return of inventory.

(e) A manufacturer or distributor shall reimburse a franchised dealer for the dealer's cost for storing any property covered by this

section:

(1) beginning on the 91st day after the date the franchise is terminated; or

(2) before the date described by Subdivision (1) if the dealer notifies the manufacturer or distributor of the commencement of storage charges within that period.

(f) On receipt of notice under Subsection (e)(2), a manufacturer or distributor may immediately take possession of the property by repurchase under this section.

(g) A manufacturer, distributor, or representative who fails to pay an amount within the time required by this section or at the time the dealer and any lienholder proffer good title before the time required for payment, is liable to the dealer for:

(1) the dealer cost, fair market value, or current price of the inventory, whichever amount is highest;

(2) interest on the amount due computed at the rate applicable to a judgment of a court; and

(3) reasonable attorney's fees and costs.

(h) Notwithstanding any other law, this section does not require a manufacturer, distributor, or representative to repurchase a motor vehicle that:

(1) at the time of termination of the franchise had been in the dealer's inventory for at least 24 months after the date the dealer took delivery of the vehicle; or

(2) the dealer purchased not more than 30 days before the date of termination of the franchise solely in anticipation of the termination and, in the ordinary course of business, would not have purchased.

(i) For purposes of this section, a sale of the assets or stock of a dealership to a buyer who continues the operation of the dealership is not a termination of a franchise.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.620(a), (b), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 3, eff. September 1, 2011.

Sec. 2301.4651. ADDITIONAL PAYMENT TO FRANCHISED DEALER IN CERTAIN SITUATIONS. (a) This section applies to a manufacturer, distributor, or representative that terminates or discontinues a franchise by:

(1) discontinuing a line-make;

(2) ceasing to do business in this state; or

(3) changing the distributor or method of distribution of its products in this state.

(b) In addition to the duties placed on a manufacturer, distributor, or representative by Section 2301.465, a manufacturer, distributor, or representative to whom this section applies shall pay to the franchised dealer the following amounts as applicable:

(1) either:

(A) the dealer's construction costs for a new dealership completed in the two years preceding the date of the termination or discontinuance described by Subsection (a); or

(B) if the dealer does not have any costs described by Paragraph (A), the fair monthly rental value of the dealership payable in cash each month beginning on the first day of the first month following the date of the termination or discontinuance described by Subsection (a) and ending on the earlier of:

(i) the first anniversary of the termination or discontinuance date; or

(ii) the date on which the dealer no longer owns the dealership;

(2) the dealer's costs for upgrading or substantially altering a dealership if the upgrades or alterations were completed or added in the two years preceding the date of the termination or discontinuance described by Subsection (a); and

(3) an amount equal to the value of the goodwill associated with the franchise as it existed on the day before the earlier of:

(A) the date of the termination or discontinuance described by Subsection (a); or

(B) the date on which the manufacturer, distributor, or representative announced its intention to terminate or discontinue the franchise in a manner described by Subsection (a).

(c) A franchised dealer receiving money under Subsection (b)(1)(B) shall:

(1) make a reasonable effort to earn income from a dealership after a termination or discontinuance described by Subsection (a); and

(2) inform the manufacturer, distributor, or representative of the dealer's efforts under Subdivision (1) and of any income earned from the dealership.

(d) The amounts to be paid under Subsection (b)(1) or (2) to the dealer by a manufacturer, distributor, or representative shall be based on the percentage of the total square footage of the dealership attributable to sales, service, and parts suggested by a manufacturer or distributor and allocated to the franchise being terminated or discontinued at the time of the termination or discontinuance.

(e) A franchised dealer receiving money under Subsection (b)(1) or (2) shall mitigate damages by listing the dealership for lease or sublease with a real estate broker licensed under Chapter 1101 not later than the 30th day after the effective date of the termination or discontinuance described by Subsection (a) and shall reasonably cooperate with the broker in the performance of the broker's duties.

(f) A manufacturer, distributor, or representative may reduce the amount of a payment made to a franchised dealer under Subsection (b)(1)(B) by the amount of any income earned by the dealer from the dealership during the month preceding the payment.

(g) The manufacturer, distributor, or representative, as appropriate, shall pay any amount described by Subsection (b)(1)(A), (b)(2), or (b)(3) not later than the 90th day after the date of the termination or discontinuance described by Subsection (a).

(h) An amount payable under Subsection (b)(1)(A) or (b)(2) does not include any tax depreciation benefit received by the franchised dealer or any amount previously paid to the franchised dealer by the manufacturer, distributor, or representative to subsidize the costs incurred by the dealer in performing the activities described by Subsection (b)(1)(A) or (b)(2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 4, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 18, eff. September 1, 2013.

Sec. 2301.466. ARBITRATION. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not require a franchised dealer to submit to arbitration on any issue unless the dealer and the manufacturer, distributor, or representative and their respective counsel agree to the arbitration after a controversy arises.

(b) An arbitrator shall apply this chapter in resolving a controversy. Either party may appeal to the board a decision of an arbitrator on the ground that the arbitrator failed to apply this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.467. PROHIBITIONS: SALES STANDARDS, RELOCATIONS, FACILITY CHANGES, PURCHASE OF EQUIPMENT. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not:

(1) require adherence to unreasonable sales or service standards; or

(2) unreasonably require a franchised dealer to purchase special tools or equipment.

(b) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not unreasonably require a franchised dealer to relocate, or to replace or substantially change, alter, or remodel the dealer's facilities. Except as provided by Subsections (b-1) and (b-2), an act is reasonable if it is justifiable in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b-1) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to construct a new dealership or to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date the construction of the dealership at that location was completed if the construction was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer,

distributor, or representative.

(b-2) Except as necessary to comply with health or safety laws or to comply with technology requirements necessary to sell or service a line-make, it is unreasonable for a manufacturer, distributor, or representative to require a franchised dealer to substantially change, alter, or remodel an existing dealership before the 10th anniversary of the date that a prior change, alteration, or remodel of the dealership at that location was completed if the change, alteration, or remodel was in substantial compliance with standards or plans provided by a manufacturer, distributor, or representative or through a subsidiary or agent of the manufacturer, distributor, or representative.

(c) This section applies to the relationship between a manufacturer, distributor, or representative and:

(1) a current franchisee of the manufacturer, distributor, or representative;

(2) a successor of a current franchisee of the manufacturer, distributor, or representative; or

(3) a franchised dealer who is seeking to become a franchisee of the manufacturer, distributor, or representative.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 5, eff. September 1, 2011.

Sec. 2301.4671. FRANCHISE PROVISION ESTABLISHING RESTRICTION ON DEALER'S USE OF DEALERSHIP PROPERTY. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not:

(1) unreasonably limit or impair the ability of a franchised dealer to use the dealership property as the dealer considers appropriate;

(2) control the use of the dealership property after the franchise is terminated or discontinued; or

(3) at any time exercise exclusive control over the use of the dealership property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 6, eff. September 1, 2011.

Sec. 2301.468. INEQUITABLE TREATMENT OF DEALERS OR FRANCHISEES. Notwithstanding the terms of a franchise, a manufacturer, distributor, or representative may not treat franchised dealers of the same line-make differently as a result of the application of a formula or other computation or process intended to gauge the performance of a dealership or otherwise enforce standards or guidelines applicable to its franchised dealers in the sale of motor vehicles if, in the application of the standards or guidelines, the franchised dealers are treated unfairly or inequitably in the sale of a motor vehicle owned by the manufacturer or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 7, eff. September 1, 2011.

Sec. 2301.469. COSTS OF PRODUCT RECALL. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative shall compensate a franchised dealer for all costs incurred by the dealer as required by the manufacturer in complying with a product recall by the manufacturer or distributor, including any costs incurred by the dealer in notifying vehicle owners of the existence of the recall.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.470. PROHIBITION: CONDITIONS FOR FINANCING MOTOR VEHICLE. A manufacturer, distributor, or representative may not directly or indirectly, or through a subsidiary or agent, require as a condition for obtaining financing for a motor vehicle that:

(1) the purchaser of the vehicle purchase any product other than the motor vehicle from the manufacturer, the distributor, or an entity owned or controlled by the manufacturer or distributor; or

(2) an insurance policy or service contract bought by the purchaser be from a specific source.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.471. USE OF FINANCING SUBSIDIARY. (a) A manufacturer, distributor, or representative may not:

(1) compel a franchised dealer through a financing subsidiary of the manufacturer or distributor to agree to unreasonable operating requirements; or

(2) directly or indirectly terminate a franchise through the actions of a financing subsidiary of the manufacturer or distributor.

(b) This section does not limit the right of a financing entity to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.472. ADDITION OF LINE-MAKE. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not deny or withhold approval of a franchised dealer's application to add a line-make or parts or products related to that line-make unless:

(1) the manufacturer or distributor provides written notice of the denial or withholding of approval to the applicant not later than the 60th day after the date the application is received; and

(2) if the applicant files a protest under this section, the board upholds the denial or withholding of approval.

(b) After receiving notice under Subsection (a)(1), a dealer may file a protest with the board.

(c) If the dealer files a protest, the board may uphold the manufacturer's or distributor's decision to deny or withhold approval of the addition of the line-make only if the manufacturer or distributor establishes by a preponderance of the evidence that the denial or withholding of approval was reasonable.

(d) In determining whether a manufacturer or distributor has established that the denial or withholding of approval is reasonable, the board shall consider all existing circumstances, including:

(1) the dealer's sales in relation to the sales in the market;

(2) the dealer's investment and obligations;

(3) injury or benefit to the public;

(4) the adequacy of the dealer's sales and service facilities, equipment, parts, and personnel in relation to those of other dealers of new motor vehicles of the same line-make;

(5) whether warranties are being honored by the dealer agreement;

(6) the parties' compliance with the franchise, except to the extent that the franchise conflicts with this chapter;

(7) the enforceability of the franchise from a public policy standpoint, including issues of the reasonableness of the franchise's terms, oppression, adhesion, and the parties' relative bargaining power;

(8) whether the dealer complies with reasonable capitalization requirements or will be able to comply with reasonable capitalization requirements within a reasonable time;

(9) any harm to the manufacturer or distributor if the denial or withholding of approval is not upheld;

(10) any harm to the dealer if the denial or withholding of approval is upheld;

(11) the manufacturer's or distributor's investment and obligations; and

(12) whether the denial or withholding of approval is justified in light of current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 6, eff. September 1, 2009.

Sec. 2301.473. MODELS WITHIN LINE-MAKE. A manufacturer, distributor, or representative may not:

(1) fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make; or

(2) require as a prerequisite to receiving a model or series of vehicles that a franchised dealer:

(A) pay an extra fee;

(B) purchase unreasonable advertising displays or other materials; or

(C) remodel, renovate, or recondition the dealer's existing facilities.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.474. PAYMENT OF COSTS FOR ADMINISTRATIVE OR CIVIL PROCEEDING. (a) A manufacturer, distributor, or representative may not require a franchised dealer to compensate the manufacturer or distributor for any court costs, attorney's fees, or other expenses incurred in an administrative or civil proceeding arising under this chapter.

(b) This section does not prohibit a manufacturer and a franchised dealer from entering into an agreement to share costs in a proceeding in which the dealer and manufacturer have the same or similar interests.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.4749. MANUFACTURER OR DISTRIBUTOR INCENTIVE PROGRAMS: PAYMENT TO DEALER. (a) A manufacturer or distributor shall pay a dealer's claim filed under a manufacturer or distributor incentive program not later than the 30th day after the date the claim is approved.

(b) A claim is considered approved unless a manufacturer or distributor rejects the claim not later than the 31st day after the date of receipt of the claim by the manufacturer or distributor.

(c) The manufacturer or distributor shall provide the dealer with written notice of a rejection of a claim and the reasons for the rejection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 8, eff. September 1, 2011.

Sec. 2301.475. MANUFACTURER OR DISTRIBUTOR INCENTIVE PROGRAMS: AUDIT OR CHARGEBACK. (a) Except as provided by Subsection (b), after the first anniversary of the date a manufacturer or distributor

pays a claim under Section 2301.4749, the manufacturer or distributor may not:

(1) charge back to a dealer money paid by the manufacturer or distributor as a result of the incentive program;

(2) charge back to a dealer the cash value of a prize or other thing of value awarded to the dealer as a result of the incentive program; or

(3) audit the records of a dealer to determine compliance with the terms of the incentive program, unless the manufacturer or distributor has reasonable grounds to believe the dealer committed fraud with respect to the incentive program.

(b) A manufacturer or distributor may make charge-backs to a dealer if, after an audit, the manufacturer or distributor has reasonable grounds to conclude that the dealer committed fraud with respect to the incentive program.

(c) Money paid by a manufacturer or distributor under an incentive program may only be paid to a dealer, unless the dealer agrees to the payment of the money to another person, including an employee of the dealer, before the payment is made.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 9, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 10, eff. September 1, 2011.

Sec. 2301.476. MANUFACTURER OR DISTRIBUTOR OWNERSHIP, OPERATION, OR CONTROL OF DEALERSHIP. (a) In this section:

(1) "Manufacturer" includes:

(A) a representative; or

(B) a person who:

(i) is affiliated with a manufacturer or representative; or

(ii) directly or indirectly through an intermediary, is controlled by, or is under common control with, a manufacturer.

(2) "Type of motor vehicle" means the classification of a motor vehicle as one of the following:

(A) a passenger car or a truck, including a pickup truck, van, panel delivery truck, or a carryall truck, with a gross vehicle weight rating of 14,000 pounds or less that is used primarily to transport persons or property;

(B) a motorcycle or motor-driven cycle, which includes:

(i) an all-terrain vehicle, as defined by Section 551A.001, Transportation Code;

(ii) a recreational off-highway vehicle, as defined by Section 551A.001, Transportation Code;

(iii) an autocycle, as defined by Section 501.008, Transportation Code;

(iv) a moped, as defined by Section 541.201, Transportation Code; or

(v) a motorcycle, as defined by Section 541.201, Transportation Code;

(C) an engine, transmission, or rear axle, as described by Section 2301.002(23)(C);

(D) a medium-duty or heavy-duty truck with a gross vehicle weight rating of more than 14,000 pounds;

(E) a bus, as defined by Section 541.201, Transportation Code;

(F) a road tractor or truck tractor, as defined by Section 541.201, Transportation Code;

(G) a firefighting vehicle; or

(H) a recreational vehicle, which includes:

(i) a motor home;

(ii) a towable recreational vehicle;

(iii) a travel trailer, as defined by Section 501.002, Transportation Code; or

(iv) a house trailer, as defined by Section 501.002, Transportation Code.

(b) For purposes of Subsection (a)(1)(B)(ii), a person is controlled by a manufacturer if the manufacturer is directly or indirectly authorized, by law or by agreement of the parties, to direct or influence the person's management and policies.

(c) Except as provided by this section, a manufacturer or distributor may not directly or indirectly:

(1) own an interest in:

(A) a franchised dealer or dealership, as defined by Sections 2301.002(16) and (8), respectively, for the same type of motor vehicle that:

(i) the manufacturer manufactures or distributes; or

(ii) the distributor distributes; or

(B) a nonfranchised dealer or dealership;

(2) operate or control:

(A) a franchised dealer or dealership, as defined by Sections 2301.002(16) and (8), respectively, for the same type of motor vehicle that:

(i) the manufacturer manufactures or distributes; or

(ii) the distributor distributes; or

(B) a nonfranchised dealer or dealership; or

(3) act in the capacity of:

(A) a franchised dealer or dealership, as defined by Sections 2301.002(16) and (8), respectively, for the same type of motor vehicle that:

(i) the manufacturer manufactures or distributes; or

(ii) the distributor distributes; or

(B) a nonfranchised dealer.

(d) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

(1) the person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

(2) the dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions.

(e) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit imposed under Subsection (d) for a period not to exceed an additional 12 months. An application for an extension after the first extension is granted is subject to protest by a dealer of the same line-make whose dealership is located in the same county as, or within 15 miles of, the dealership owned or controlled by the manufacturer or distributor.

(f) For the purpose of determining compliance with Subsection (d)(2), the price of a dealership and the other terms and conditions of a contract for the sale of a dealership are reasonable if the purchaser is a franchised dealer who:

(1) has made a significant investment in the dealership, subject to loss;

(2) has an ownership interest in the dealership; and

(3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

(g) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has been historically underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

(1) has made a significant investment in the dealership, subject to loss;

(2) has an ownership interest in the dealership; and

(3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms.

(h) A person who on June 7, 1995, held both a motor home manufacturer's license and a motor home dealer's license issued under this chapter may:

(1) hold:

(A) a motor home manufacturer's license;

(B) a general distinguishing number issued under Chapter 503, Transportation Code; and

(C) not more than two franchised dealer's licenses; and

(2) operate as both a manufacturer and dealer of motor homes but of no other type of vehicle.

(h-1) A person who on January 18, 2002, held both a converter's license to convert buses with a gross vehicle weight rating of 40,000 pounds or more and a franchised dealer's license to sell buses issued under this chapter may:

(1) regain and hold both licenses; and

(2) operate as both a converter and franchised dealer of

bus conversions with a gross vehicle weight rating of 40,000 pounds or more but of no other type of vehicle.

(i) Notwithstanding the terms of this chapter, and subject to the limitations set forth in this subsection, a manufacturer or distributor may own an interest in an entity that holds a general distinguishing number if the entity:

(1) is primarily engaged in the business of renting to other persons passenger vehicles or commercial motor vehicles that the entity owns; and

(2) sells or offers for sale no vehicle other than a vehicle that the entity:

(A) owns and has taken from service in its rental fleet; or

(B) has taken in trade as part of a transaction involving the sale of a vehicle taken from service in its rental fleet.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 503, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.621(a), eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 105 (H.B. 733), Sec. 1, eff. September 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 5.01, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 16, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 512 (H.B. 833), Sec. 1, eff. June 16, 2015.

Acts 2019, 86th Leg., R.S., Ch. 440 (S.B. 1415), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 14.005, eff. September 1, 2021.

Sec. 2301.477. MANUFACTURER DOING BUSINESS IN THIS STATE. A manufacturer whose products are offered for sale in this state under a franchise entered into between its distributor or representative and a dealer is bound by the terms of the franchise and this chapter as if the manufacturer had executed the franchise.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.478. ACTION ON FRANCHISE. (a) Notwithstanding the terms of any franchise or any other law, an action or proceeding brought by a manufacturer, representative, converter, or distributor against a dealer must be brought in an appropriate forum in this state only, and the law of this state applies to the action or proceeding.

(b) Each party to a franchise owes to the other party a duty of good faith and fair dealing that is actionable in tort.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.479. ADVERSE ACTION IN CONNECTION WITH EXPORT OF VEHICLE. (a) Except as otherwise provided by this section, a manufacturer, distributor, or representative may not take an adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States.

(b) A franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is enforceable only if, at the time of the original sale or lease, the dealer knew or reasonably should have known that the vehicle would be exported to a location outside the United States.

(c) A franchised dealer is presumed to have no actual knowledge that a vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States:

(1) the vehicle is titled;

(2) the vehicle is registered; and

(3) applicable state and local taxes are paid for the vehicle.

(d) The presumption under Subsection (c) may be rebutted by direct, clear, and convincing evidence that the franchised dealer had actual knowledge or reasonably should have known at the time of the original sale or lease that the vehicle would be exported to a

location outside the United States.

(e) Except as otherwise permitted by this section, a franchise provision that allows a manufacturer, distributor, or representative to take adverse action against a franchised dealer because the franchised dealer sells or leases a vehicle that is later exported to a location outside the United States is void and unenforceable.

Added by Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 8, eff. September 1, 2009.

Sec. 2301.480. DISCLOSURE OF CERTAIN INFORMATION. A manufacturer, distributor, or representative may not require that a franchised dealer provide to the manufacturer, distributor, or representative information regarding a customer, except to the extent that a specific item of information is necessary:

(1) for the sale or delivery of a new motor vehicle to a customer;

(2) for reasonable marketing purposes;

(3) to validate a claim and make payment under an incentive program;

(4) to support a dealer's claim for reimbursement for repairs performed under a manufacturer's warranty; or

(5) to satisfy a product recall or safety obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 11, eff. September 1, 2011.

Sec. 2301.481. PROPERTY USE AGREEMENT. (a) A manufacturer, distributor, or representative may not require that a dealer enter into a property use agreement as a condition of the manufacturer, distributor, or representative:

(1) entering into a franchise;

(2) approving a franchised dealer's application to add a line-make;

(3) approving a franchised dealer's application to relocate a franchise; or

(4) approving a sale or transfer of a dealer, dealership, or franchise.

(b) The following provisions in a property use agreement are

void and unenforceable:

(1) a limitation on the franchised dealer's ability to add a line-make; or

(2) a provision that binds a franchised dealer's successor.

(c) A property use agreement expires on the earlier of:

(1) the date provided by the property use agreement; or

(2) the termination of the franchise between the parties to the property use agreement.

(d) This section applies to a subsidiary of, or a person controlled by, a manufacturer, distributor, or representative.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 11, eff. September 1, 2011.

Sec. 2301.482. CERTAIN PROPERTY USE AGREEMENTS. (a) Notwithstanding Section 2301.481(b)(1), and subject to this section, a dealer may enter into a property use agreement for cash consideration that grants the manufacturer or distributor the exclusive rights to direct the use of the dealership.

(b) In the event the dealer breaches the terms of the property use agreement described by Subsection (a) by altering the use of the property during the term of the agreement in violation of the agreement, the property use agreement is terminated and the dealer must reimburse the manufacturer or distributor in an amount determined by dividing the amount of the manufacturer's or distributor's cash consideration provided under Subsection (a) by the market value of the property identified in the original property use agreement at the time any necessary real estate has been purchased and any necessary construction has been completed, and multiplying the resulting quotient by the market value of the property at the time of the breach.

(c) For purposes of this section, the market value of property is to be determined by three appraisers chosen as follows:

(1) one selected by the affected manufacturer or distributor;

(2) one selected by the affected dealer; and

(3) one selected by mutual agreement of the manufacturer or distributor and the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 11, eff.

September 1, 2011.

Sec. 2301.483. SPECIFIC USE AGREEMENTS. (a) In this section:

(1) "Necessary real estate" means real estate that is necessary for the proper operation of a dealership in the dealership's location as determined by the manufacturer's, distributor's, or representative's facility requirements or to comply with any applicable law or zoning requirement.

(2) "Owner" means a manufacturer, distributor, or representative, including an entity owned or controlled by a manufacturer, distributor, or representative.

(3) "Specific use agreement" means a property use agreement that is executed in conjunction with a sale or as part of the terms of a lease by an owner of real property to a transferee for use by the transferee as a dealership under the terms of a franchise executed or to be executed between the owner and the transferee.

(4) "Transferee" means a person who is a purchaser or lessee of real property subject to a specific use agreement.

(b) To the extent of any conflict between this section and another section of this chapter regarding a specific use agreement, this section controls. Notwithstanding any other section of this chapter and except as provided by this section, a specific use agreement may include provisions that allow an owner to:

(1) limit the transferee's ability to add a line-make after the transferee has opened a franchised dealership on the property to which the specific use agreement applies;

(2) prohibit the sale or sublease of the dealership property by the transferee to a person for a purpose other than the operation of a dealership under a franchise with the owner of the property; or

(3) make the limitations described by Subdivisions (1) and (2) applicable to any successor or sublessee of the transferee.

(c) An owner may not coerce or attempt to coerce an existing franchised dealer of the owner to relocate an existing dealership of the same line-make to property that is subject to a specific use agreement. If it is proven in a civil suit that a person entered into a specific use agreement containing a provision described by Subsection (b) as a result of coercion, the specific use agreement is void.

(d) A specific use agreement executed in conjunction with the sale of real property may apply only to the necessary real estate.

(e) A specific use agreement executed in conjunction with the sale of real property to an existing franchised dealer for the purpose of relocating an existing dealership of the same line-make to property that is the subject of the specific use agreement or to a person for the purpose of establishing a new dealership expires on the earliest of:

(1) the date established by the specific use agreement;

(2) the termination or discontinuance of the franchise between the parties to the specific use agreement as a result of the owner:

(A) discontinuing all line-makes applicable to the necessary real estate that are under the control of a manufacturer or distributor holding property use rights for the necessary real estate under the specific use agreement;

(B) ceasing to do business in this state; or

(C) changing the distributor or method of distribution of the owner's products in this state;

(3) the 10th anniversary of the date the dealership opens for business; or

(4) any time after the expiration of nine years from the date the dealership opens for business if the transferee has performed all the transferee's financial duties as provided by the contract and title to the property has passed to the transferee.

(f) Unless a specific use agreement associated with the sale of property expressly provides otherwise, there is no penalty for the full performance by the transferee and transfer of title to the transferee prior to the time set forth by the contract's terms.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1338 (S.B. 854), Sec. 1, eff. June 14, 2013.

SUBCHAPTER K. MEDIATION BETWEEN DEALER AND MANUFACTURER OR DISTRIBUTOR

Sec. 2301.521. DEFINITION. In this subchapter, "mediation" means a nonbinding forum in which an impartial mediator facilitates communication between parties to promote reconciliation, settlement, or understanding between the parties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.522. MEDIATION APPLICABLE. (a) In an action brought against a manufacturer or distributor under Subchapter J by a franchised dealer whose franchise provides for arbitration in compliance with this chapter, the board shall order the parties to submit the dispute to mediation in the manner provided by this subchapter.

(b) Subsection (a) applies only if the dealer's franchise does not contain an arbitration provision in conflict with this chapter. In a dispute concerning whether Subsection (a) applies, the board shall enter an order either that the franchise contains a provision in conflict with this chapter or that it does not. If the board determines that the franchise does not contain an arbitration provision that conflicts with this chapter, the board shall order the parties to proceed to mediation as provided by this subchapter.

(c) An order issued under Subsection (b) is not appealable.

(d) This subchapter does not apply to an action brought by the board to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 12, eff. September 1, 2011.

Sec. 2301.523. MEDIATOR. (a) By agreement, the parties shall select and compensate a mediator who is qualified to serve under Section 154.052(a), Civil Practice and Remedies Code.

(b) Sections 154.053 and 154.055, Civil Practice and Remedies Code, apply to a mediator under this subchapter.

(c) A mediator may not impose the mediator's own judgment on the issues for that of the parties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.524. LOCATION AND SCHEDULE OF MEDIATION. (a) The parties by agreement shall select a venue and schedule for mediation under this subchapter. If the parties are unable to agree on a venue

and schedule, the mediator shall select a venue and schedule.

(b) Except by written agreement of all parties, mediation must be held in this state.

(c) Mediation must be completed not later than the 60th day after the date the board orders the parties to mediate. The deadline may be extended by the board at the request of all parties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.525. LAW APPLICABLE; CONFLICT OF LAWS. (a) Except as provided by Subsection (b) of this section, Section 154.073, Civil Practice and Remedies Code, applies to mediation under this subchapter.

(b) If Section 154.073, Civil Practice and Remedies Code, conflicts with another legal requirement for disclosure of communications or materials, the issue of confidentiality may be presented to the board to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the board or whether the communications or materials are subject to disclosure.

(c) This subchapter controls over any other law relating to or requiring mediation between or among license holders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.526. COSTS OF MEDIATION. (a) The board is not liable for the compensation paid or to be paid to a mediator employed under this subchapter.

(b) Without regard to the outcome of mediation or subsequent regulatory or judicial proceedings, costs incurred by a party in mediation required by this subchapter may not be imposed on the opposing party.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.527. JURISDICTION OF BOARD. The board retains jurisdiction of the subject matter of and parties to a dispute during mediation and may, on the motion of a party or on its own motion,

enter appropriate orders.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.528. EFFECT OF MEDIATION ON CHAPTER. (a) Except as provided by this subchapter, mediation under this subchapter does not affect a procedural right or duty conferred by this chapter or by board rule.

(b) Procedural time limits imposed by this chapter or under the authority of this chapter are tolled during mediation.

(c) Mediation does not affect any right of a person who is not a party to the mediation.

(d) The board shall stay proceedings involving the parties in mediation until the board receives the mediator's certification that mediation has concluded.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.529. OUTCOME OF MEDIATION. (a) If mediation resolves the dispute, the board shall enter an order incorporating the terms of the agreement reached in mediation.

(b) If mediation does not resolve the dispute, the board shall proceed to a contested case hearing or other appropriate exercise of its jurisdiction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER L. VEHICLE LESSORS AND VEHICLE LEASE FACILITATORS

Sec. 2301.551. ACCEPTANCE AND PAYMENT OF FEES BY VEHICLE LESSOR. (a) A vehicle lessor may not directly or indirectly accept a fee from a dealer. For purposes of this subsection, "fee" does not include an adjustment in the purchase price paid for the lease or leased vehicle. This subsection does not authorize a fee for referring vehicle leases or prospective lessees.

(b) A vehicle lessor may not pay a fee to any person in return for the solicitation, procurement, or production by the person of a prospective lessee of a motor vehicle unless the person:

(1) holds a vehicle lease facilitator license issued under

this chapter; and

(2) has an appointment from the lessor as provided by Section 2301.552.

(c) The fees prohibited by this section do not include money paid to:

(1) a franchised dealer as a part of the consideration for the sale or assignment of a lease or leased vehicle; or

(2) a franchised dealer who transfers title of the vehicle or assigns the lease contract to the lessor of the motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.552. APPOINTMENT OF VEHICLE LEASE FACILITATOR. (a) A vehicle lessor may appoint one or more vehicle lease facilitators licensed under this chapter to represent the lessor in obtaining prospective vehicle lessees.

(b) An appointment must:

(1) be in writing;

(2) disclose its terms; and

(3) comply with board rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.553. DISCLOSURE OF FEE REQUIRED. (a) In a vehicle lease solicited, procured, or produced by a vehicle lease facilitator, the vehicle lessor shall disclose to the lessee that a fee was paid or will be paid to the vehicle lease facilitator for the solicitation, procurement, or production of the lessee or the lease.

(b) The vehicle lessor shall include the disclosure in a prominent position either:

(1) on the face of the written memorandum of the vehicle lease; or

(2) on a separate instrument signed by the lessee at the same time as the signing of the vehicle lease.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.554. TERMS OF LEASE: FOREIGN COUNTRIES. (a) Except

as provided by Subsection (b) or by federal law, including a federal agency rule, a vehicle lessor may not, and the vehicle lease may not, prohibit the lessee from taking the vehicle that is the subject of the lease into a specific foreign country unless the lease prohibits the lessee from taking the vehicle into any foreign country.

(b) In the interests of justice and giving deference to standard national business practices, the board may adopt a rule by which a lease may prohibit the lessee from taking the vehicle into a specific foreign country regardless of whether the lease prohibits the lessee from taking the vehicle into another foreign country. In adopting a rule under this subsection the board shall give consideration to the proximity of international borders to prospective Texas lessees.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.555. LIMITATIONS ON VEHICLE LEASE FACILITATOR. (a) A vehicle lease facilitator may not:

(1) sell or offer to sell a new motor vehicle;

(2) accept a fee from a dealer;

(3) sign a motor vehicle manufacturer's statement of origin to a vehicle, accept an assignment of a manufacturer's statement of origin to a vehicle, or otherwise assume any element of title to a new motor vehicle;

(4) procure or solicit a prospective vehicle lessee for or on behalf of any person other than a vehicle lessor; or

(5) act in the capacity of or engage in the business of a vehicle lease facilitator without having an appointment from a vehicle lessor as provided by Section 2301.552.

(b) Except as provided by Subsection (a)(2), a vehicle lease facilitator may accept a fee for procuring a vehicle lessee or prospective vehicle lessee for or on behalf of a lessor.

(c) This section does not:

(1) limit the ability of a vehicle lease facilitator to accept an appointment from more than one vehicle lessor; or

(2) prohibit a vehicle lease facilitator from representing a vehicle lessor or lessee in acquiring a motor vehicle to lease the vehicle to another person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.5555. AUTHORITY TO SIGN VEHICLE LEASE AS LESSOR. Notwithstanding Section 2301.251, a licensed vehicle lease facilitator may sign a vehicle lease agreement as a vehicle lessor before the vehicle lease is assigned, transferred, or conveyed to an ultimate lessor.

Added by Acts 2017, 85th Leg., R.S., Ch. 183 (S.B. 1052), Sec. 9, eff. September 1, 2017.

Sec. 2301.556. USE OF CERTAIN TERMS. With respect to the regulation of motor vehicle distribution under this chapter, a person may not use the word "lease" or "leasing," or any variation of those words, in the person's name or in the name of an entity owned by the person unless the person is:

(1) licensed under this chapter as a vehicle lessor or vehicle lease facilitator; or

(2) exempt under Section 2301.254 from the requirement to obtain a license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER M. WARRANTIES: RIGHTS OF VEHICLE OWNERS

Sec. 2301.601. DEFINITIONS. In this subchapter:

(1) "Impairment of market value" means a substantial loss in market value caused by a defect specific to a motor vehicle.

(2) "Owner" means a person who is entitled to enforce a manufacturer's warranty with respect to a motor vehicle, and who:

(A) purchased the motor vehicle at retail from a license holder;

(B) is a lessor or lessee, other than a sublessee, who purchased or leased the vehicle from a license holder;

(C) is a resident of this state and has registered the vehicle in this state;

(D) purchased or leased the vehicle at retail and is an active duty member of the United States armed forces stationed in this state at the time a proceeding is commenced under this subchapter; or

(E) is:

(i) the transferee or assignee of a person described by Paragraphs (A)-(D);

(ii) a resident of this state; and

(iii) the person who registered the vehicle in this state.

(3) "Reasonable allowance for use" means the amount directly attributable to use of a motor vehicle when the vehicle is not out of service for repair.

(4) "Serious safety hazard" means a life-threatening malfunction or nonconformity that:

(A) substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes; or

(B) creates a substantial risk of fire or explosion.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 17, eff. September 1, 2011.

Sec. 2301.602. DUTY OF BOARD. (a) The board shall cause a manufacturer, converter, or distributor to perform an obligation imposed by this subchapter.

(b) The board shall adopt rules for the enforcement and implementation of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.603. CONFORMANCE WITH WARRANTY REQUIRED. (a) A manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty.

(b) Subsection (a) applies after the expiration date of a warranty if:

(1) during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor; or

(2) a rebuttable presumption relating to the vehicle is

created under Section 2301.605.

(c) This subchapter does not limit a remedy available to an owner under a new motor vehicle warranty that extends beyond the provisions of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.604. REPLACEMENT OF OR REFUND FOR VEHICLE. (a) A manufacturer, converter, or distributor that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

(1) replace the motor vehicle with a comparable motor vehicle; or

(2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner.

(b) A refund made for a vehicle for which there is a lienholder shall be made to the owner and lienholder in proportion to each person's interest in the vehicle.

(c) As necessary to promote the public interest, the board by rule:

(1) shall define the incidental costs that are eligible for reimbursement;

(2) shall specify other requirements necessary to determine an eligible cost; and

(3) may set a maximum amount that is eligible for reimbursement, either by type of eligible cost or by a total for all costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.605. REBUTTABLE PRESUMPTION--REASONABLE NUMBER OF ATTEMPTS. (a) A rebuttable presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to an

applicable express warranty is established if:

(1) the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of:

(A) the date the express warranty expires; or

(B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner;

(2) the same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of:

(A) the date the express warranty expires; or

(B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner; or

(3) a nonconformity still exists that substantially impairs the vehicle's use or market value, the vehicle is out of service for repair for a cumulative total of 30 or more days, and the attempts were made before the earlier of:

(A) the date the express warranty expires; or

(B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.

(b) A period or a number of days or miles described by Subsection (a) is extended for any period that repair services are not available to the owner because of:

(1) a war, invasion, or strike; or

(2) a fire, flood, or other natural disaster.

(c) The 30 days described by Subsection (a)(3) do not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 354 (H.B. 2070), Sec. 1, eff. September 1, 2017.

Sec. 2301.606. CONDUCT OF PROCEEDINGS. (a) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 140(1), eff. September 1, 2013, and Ch. 1379 (H.B. 1692), Sec. 12, eff. January 1, 2014.

(b) In a hearing under this subchapter, a manufacturer, converter, or distributor may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity:

(1) is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle; or

(2) does not substantially impair the use or market value of the motor vehicle.

(c) An order issued under this subchapter may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

(1) the owner, a person on behalf of the owner, or the department has provided written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and

(2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

(d) A proceeding under this subchapter must be commenced not later than six months after the earliest of:

(1) the expiration date of the express warranty term; or

(2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 140(1), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 3, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 12, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 354 (H.B. 2070), Sec. 2, eff. September 1, 2017.

Sec. 2301.607. EXHAUSTION OF ADMINISTRATIVE REMEDIES; RIGHT TO SUE. (a) A refund or replacement under this subchapter because a motor vehicle is alleged to not conform to an express warranty is not available to the owner of the vehicle unless the owner has exhausted the administrative remedies provided by this subchapter.

(b) A refund or replacement under this subchapter is not available to a party in an action against a seller under Chapter 2 or 17, Business & Commerce Code, but is available in an action against a manufacturer, converter, or distributor brought under Chapter 17, Business & Commerce Code, after the owner has exhausted the administrative remedies provided by this subchapter.

(c) If a final order is not issued before the 151st day after the date a complaint is filed under this subchapter, the department shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The department shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

(d) Notwithstanding a requirement of this section that administrative remedies be exhausted, a person who receives notice under Subsection (c) may file a civil action against any person named in the complaint.

(e) The failure to issue notice under Subsection (c) does not affect a person's right to bring an action under this chapter.

(f) This subchapter does not limit a right or remedy otherwise available to an owner under another law.

(g) A contractual provision that excludes or modifies a remedy provided by this subchapter is prohibited and is void as against public policy unless the exclusion or modification is made under a settlement agreement between the owner and the manufacturer, converter, or distributor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1403 (H.B. 3601), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 4, eff. January 1, 2014.

Acts 2017, 85th Leg., R.S., Ch. 354 (H.B. 2070), Sec. 3, eff. September 1, 2017.

Sec. 2301.608. ASSESSMENT OF COSTS FOR REPLACEMENT OR REFUND. (a) An order issued under this subchapter must name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically required by the order.

(b) If the final order requires a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the final order may require the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) In a case involving a leased vehicle, the final order may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 5, eff. January 1, 2014.

Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 354 (H.B. 2070), Sec. 4, eff. September 1, 2017.

Sec. 2301.609. JUDICIAL REVIEW. (a) A party to a proceeding under this subchapter that is affected by a final order related to the proceeding is entitled to judicial review of the order under the substantial evidence rule in a district court of Travis County.

(b) Judicial review is subject to Chapter 2001, Government Code, to the extent that chapter is not inconsistent with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 22, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 6, eff. January 1, 2014.

Sec. 2301.610. DISCLOSURE STATEMENT. (a) A manufacturer, distributor, or converter that has been ordered to repurchase or replace a vehicle shall, through its franchised dealer, issue a disclosure statement stating that the vehicle was repurchased or replaced by the manufacturer, distributor, or converter under this subchapter. The statement must accompany the vehicle through the first retail purchase following the issuance of the statement and must include the toll-free telephone number described by Subsection (d) that will enable the purchaser to obtain information about the condition or defect that was the basis of the order for repurchase or replacement.

(b) The manufacturer, distributor, or converter must restore the cause of the repurchase or replacement to factory specifications and issue a new 12-month, 12,000-mile warranty on the vehicle.

(c) The board shall adopt rules for the enforcement of this section.

(d) The department shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this subchapter. The department shall maintain an effective method of providing information to a person who makes a request.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 23, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 7, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 14.002, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 354 (H.B. 2070), Sec. 5, eff. September 1, 2017.

Sec. 2301.611. ANNUAL REPORT ON REPURCHASED OR REPLACED VEHICLES. (a) The department shall publish an annual report on the motor vehicles ordered repurchased or replaced under this subchapter.

(b) The report must list the number of vehicles by brand name and model and include a brief description of the conditions or defects that caused the repurchase or replacement.

(c) The department shall make the report available to the public and may charge a reasonable fee to cover the cost of the report.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 18, eff. September 1, 2011.

Sec. 2301.612. OPEN RECORDS EXCEPTION. Information filed with the department under this subchapter is not a public record and is not subject to disclosure under Chapter 552, Government Code, until the complaint is resolved by a final order of the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 276 (H.B. 3514), Sec. 5, eff. September 1, 2021.

Sec. 2301.613. NOTICE TO BUYER. (a) The department shall prepare, publish, and distribute information concerning an owner's rights under this subchapter. The retail seller of a new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually pay for repairs.

(b) The failure to provide notice as required by this section is a violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 19, eff. September 1, 2011.

SUBCHAPTER N. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE

Sec. 2301.651. DENIAL, REVOCATION, OR SUSPENSION GENERALLY. (a) The board may deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder:

(1) is unfit under standards described in this chapter or board rules;

(2) makes a material misrepresentation in any application or other information filed under this chapter or board rules;

(3) violates this chapter or a board rule or order;

(4) violates any law relating to the sale, distribution, financing, or insuring of motor vehicles;

(5) fails to maintain the qualifications for a license;

(6) wilfully defrauds a purchaser;

(7) fails to fulfill a written agreement with a retail purchaser of a motor vehicle; or

(8) violates the requirements of Section 503.0631, Transportation Code.

(b) The board may take action under Subsection (a) against an applicant or license holder for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder that would be cause for denying, revoking, or suspending a license under this chapter.

(c) The revocation of a license previously held under this chapter may be grounds for denying a subsequent application for a license.

(d) A license may not be denied, revoked, or suspended, and disciplinary action may not be taken under this subchapter, unless the respondent is given an opportunity for a hearing. The board may deny, revoke, or suspend a license or take disciplinary action by order only after the department grants the respondent an opportunity for a hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.622(a), 14A.623, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 8.10, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1336 (S.B. 1786), Sec. 10, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 24, eff. September 1, 2013.

Sec. 2301.652. DENIAL OF LICENSE APPLICATION: DEALERSHIP. (a) The board may deny an application for a license to establish a dealership if, following a protest, the applicant fails to establish good cause for establishing the dealership. In determining good cause, the board shall consider:

(1) whether the manufacturer or distributor of the same line-make of new motor vehicle is being adequately represented as to sales and service;

(2) whether the protesting franchised dealer representing the same line-make of new motor vehicle is in substantial compliance with the dealer's franchise, to the extent that the franchise is not in conflict with this chapter;

(3) the desirability of a competitive marketplace;

(4) any harm to the protesting franchised dealer;

(5) the public interest;

(6) any harm to the applicant; and

(7) current and reasonably foreseeable projections of economic conditions, financial expectations, and the market for new motor vehicles in the relevant market area.

(b) Except as provided by Subsection (c) and Sections 2301.6521 and 2301.6522, a person has standing under this section to protest an application to establish or relocate a dealership if the person filing the protest is a franchised dealer of the same line-make whose dealership is located:

(1) in the county in which the proposed dealership is to be located; or

(2) within a 15-mile radius of the proposed dealership.

(c) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation

site is not:

(1) more than two miles from the site where the dealership is currently located; or

(2) closer to the franchised dealer than the site from which the dealership is being relocated.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 684 (H.B. 2640), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 13, eff. September 1, 2011.

Sec. 2301.6521. RIGHT TO PROTEST: CERTAIN RELOCATIONS. (a) In this section, "affected county" means:

(1) a county with a population of 1.2 million or more; or

(2) a county with a population of 800,000 or more but less than 1.1 million that is adjacent to a county with a population of 1.2 million or more.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsection (d), a franchised dealer may protest an application to relocate a dealership from a location in an affected county to a location within the same affected county or an adjacent affected county only if the dealer is:

(1) a dealer of the same line-make as the relocating dealership and is in the affected county where the proposed dealership is being relocated and is nearest to the proposed relocation site, if no dealership of the same line-make as the relocating dealership is located within 15 miles of the proposed relocation site; or

(2) a dealer of the same line-make as the relocating dealership whose dealership location is within 15 miles of the proposed relocation site.

(c) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection (b)(1), each dealer may protest the relocation under Subsection (b)(1).

(d) A franchised dealer may not protest an application to relocate a dealership under this section if the proposed relocation

site is not:

(1) more than two miles from the site where the dealership is currently located; or

(2) closer to the franchised dealer than the site from which the dealership is being relocated.

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 14, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1338 (S.B. 854), Sec. 2, eff. June 14, 2013.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 206, eff. September 1, 2023.

Sec. 2301.6522. RIGHT TO PROTEST: ECONOMICALLY IMPAIRED DEALER. (a) In this section, "economically impaired dealer" means a franchised dealer whose profitability has been, or is reasonably expected to be, substantially reduced at the dealer's current location, with no reasonable expectation of substantial improvement at that location, due to:

(1) a natural disaster;

(2) the exercise of eminent domain authority with respect to the dealership; or

(3) the sale of all or part of the dealership to a governmental entity under threat of the exercise of eminent domain authority.

(b) Notwithstanding any other provision of this chapter and except as provided by Subsections (c) and (d), a dealer may not protest the relocation of an economically impaired dealer if:

(1) the relocation is reasonably expected to be completed before the first anniversary of the date of the event described by Subsection (a); and

(2) the proposed relocation site is two miles or less from the economically impaired dealer's current location.

(c) A dealer of the same line-make as an economically impaired dealer whose dealership is nearest to the proposed relocation site of the economically impaired dealer may protest the relocation if the proposed relocation site is more than two miles closer to the protesting dealer's dealership than the site of the economically

impaired dealer's current location.

(d) If more than one dealership location is an equal distance from the proposed relocation site and each dealer and dealership location satisfies the requirements of Subsection (c), each dealer may protest the relocation under Subsection (c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 14, eff. September 1, 2011.

Sec. 2301.653. REVOCATION OR SUSPENSION OF MANUFACTURER'S OR DISTRIBUTOR'S LICENSE. The revocation or suspension of a manufacturer's or distributor's license may be:

(1) limited to one or more municipalities or counties or any other defined area; or

(2) limited in a defined area only as to:

(A) certain aspects of the manufacturer's or distributor's business; or

(B) specified franchised dealers.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.654. PROBATION. If a suspension of a license is probated, the board may:

(1) require the license holder to report regularly to the board on matters that are the basis of the probation; or

(2) limit activities to those prescribed by the board.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER O. HEARINGS PROCEDURES

Sec. 2301.701. DEFINITION. In this subchapter, "contested case" has the meaning assigned by Section 2001.003, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.702. CONFLICT WITH OTHER LAW. To the extent of a conflict between this chapter and Chapter 2001, Government Code, this

chapter controls.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.7025. LIMITATIONS PERIOD FOR CERTAIN CAUSES OF ACTION BY LICENSE HOLDERS. (a) This section does not apply to:

(1) an action with respect to which this chapter or rules of the board establish specific procedural time limits; or

(2) an action brought under Section 2301.204.

(b) Except as provided by this section, a license holder may not file an action with the board after the fourth anniversary of the date the action accrues.

(c) The limitations period provided by Subsection (b) may be extended for not more than 180 days on a showing that the failure to commence an action in a timely manner was caused by reliance on a fraudulent statement or inducement made by a party to induce a party to refrain from bringing an action.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.624(a), eff. Sept. 1, 2003.

Sec. 2301.703. HEARING REQUIRED IN CONTESTED CASE. (a) A hearing arising under this chapter or a board rule adopted under this chapter must be conducted in accordance with this chapter, any order, decision, or rule of the board, and Chapter 2001, Government Code.

(b) A hearing may be informally disposed of in accordance with Chapter 2001, Government Code.

(c) The parties to a contested case under this chapter or Chapter 503, Transportation Code, other than a contested case in an action brought by the department to enforce this chapter or Chapter 503, Transportation Code, must participate in mediation as provided by board rule before the parties may have a hearing in the case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 25, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 8, eff. January 1, 2014.

Sec. 2301.704. HEARINGS EXAMINER; ADMINISTRATIVE LAW JUDGE. (a) Except as otherwise provided by this section, a hearing under this chapter must be held by an administrative law judge of the State Office of Administrative Hearings.

(a-1) A hearing under Section 2301.204 or Subchapter M must be held by a hearings examiner.

(b) An administrative law judge and a hearings examiner have all of the board's power and authority as provided by this chapter to conduct hearings, including the power to:

(1) hold a hearing;

(2) administer an oath;

(3) receive pleadings and evidence;

(4) issue a subpoena to compel the attendance of a witness;

(5) compel the production of papers and documents;

(6) issue an interlocutory order, including a cease and desist order in the nature of a temporary restraining order or a temporary injunction;

(7) make findings of fact and conclusions of law; and

(8) issue a proposal for decision and recommend a final order.

(c) In a contested case hearing under Section 2301.204 or Subchapter M, a hearings examiner shall issue a final order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1403 (H.B. 3601), Sec. 2, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 9, eff. January 1, 2014.

Sec. 2301.705. NOTICE OF CONTESTED CASE HEARING. (a) Notice of a contested case hearing involving a license holder must be given in accordance with this chapter and board rules.

(b) Notice must be given by certified mail, return receipt requested.

(c) Notice may be given to a person's officer, agent, employee, attorney, or other legal representative.

(d) Notice is considered to have been received by a person known to have legal rights, duties, or privileges that may be determined at the hearing if the notice is mailed to the last known address of the person not later than the 10th day before the date of the hearing.

(e) A person may waive notice of a hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.706. NOTICE OF RULEMAKING HEARING. Notice of a rulemaking hearing must be given in accordance with Chapter 2001, Government Code, and board rules before the 30th day preceding the date of the hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.707. CONTENTS OF HEARING NOTICE. Notice of a hearing shall describe in summary form the purpose of the hearing and the date, time, and place of the hearing.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.708. CONDUCT OF HEARING. (a) A hearing must be convened at the time and place stated in the notice.

(b) A hearing may be recessed until a time and place certain:

(1) by giving advance notice as required by Section 2001.057, Government Code; or

(2) without advance notice if the time and place is announced openly before the recess.

(c) Except as otherwise provided by this chapter, a person whose legal rights, duties, or privileges are to be determined at a hearing is entitled to:

(1) appear personally or by counsel;

(2) cross-examine adverse witnesses; and

(3) produce evidence and witnesses in the person's own behalf.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.709. REVIEW BY BOARD. (a) In reviewing a case under this subchapter, the board or a person delegated power from the board under Section 2301.154 may consider only materials that are submitted timely.

(b) The board or a person delegated power from the board under Section 2301.154 may hear such oral argument from any party as the board may allow.

(c) The board or a person delegated power from the board under Section 2301.154 shall take any further action conducive to the issuance of a final order and shall issue a written final decision or order. A majority vote of a quorum of the board is required to adopt a final decision or order of the board.

(d) The board shall adopt rules and policies that establish standards for reviewing a case under this subchapter. The rules and policies must:

(1) specify the role of division personnel in managing contested cases before the board or a person delegated power from the board under Section 2301.154, including advising on procedural matters;

(2) specify appropriate conduct and discussion by the board or a person delegated power from the board under Section 2301.154 regarding proposals for decision issued by administrative law judges;

(3) specify clear expectations limiting arguments and discussion under Subsection (b) to evidence in the record of the contested case hearing held by the administrative law judge;

(4) address ex parte communications; and

(5) distinguish between using industry expertise and representing or advocating for an industry when reviewing a case under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1403 (H.B. 3601), Sec. 3, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 26, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.06, eff. September 1, 2019.

Sec. 2301.710. DISMISSAL OF COMPLAINT. On the motion of any party, the board or other person delegated final order authority under Section 2301.154, without holding a contested case hearing, may issue a final order dismissing a complaint, protest, or response in accordance with the terms and procedures set forth in the Texas Rules of Civil Procedure.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 27, eff. September 1, 2013.

Sec. 2301.711. ORDERS AND DECISIONS. (a) Except as otherwise provided by this chapter, the board or a person delegated final order authority under Section 2301.154 shall issue final orders for the implementation and enforcement of this chapter and Chapter 503, Transportation Code.

(b) An order or decision under this chapter must:

(1) include a separate finding of fact with respect to each specific issue required by law to be considered in reaching a decision;

(2) set forth additional findings of fact and conclusions of law on which the order or decision is based;

(3) give the reasons for the particular actions taken; and

(4) be signed by the presiding officer or assistant presiding officer for the board, a person delegated final order authority under Section 2301.154, or a hearings examiner in a contested case hearing under Section 2301.204 or Subchapter M.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 20, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 28, eff. September 1, 2013.
Acts 2021, 87th Leg., R.S., Ch. 276 (H.B. 3514), Sec. 6, eff. September 1, 2021.

Sec. 2301.712. FILING FEE. (a) The filing fee for a contested case or a protest that involves a hearing is:

(1) $35 for a complaint filed under Subchapter M; and

(2) $200 for any other complaint or protest.

(b) If a person who brings a complaint under Subchapter M prevails in the case, the nonprevailing party in the case shall reimburse the amount of the filing fee for the case.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 29, eff. September 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 276 (H.B. 3514), Sec. 7, eff. September 1, 2021.

Sec. 2301.713. REHEARING. (a) Except as otherwise provided by this section, a party who seeks a rehearing of an order shall seek the rehearing in accordance with Chapter 2001, Government Code.

(b) The board by rule may establish procedures to allow a party to a contested case to file a motion for rehearing.

(c) A motion for rehearing in a contested case under Section 2301.204 or Subchapter M must be filed with the chief hearings examiner. The chief hearings examiner may designate a person to decide the motion.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 30, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1379 (H.B. 1692), Sec. 10, eff. January 1, 2014.

Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 354 (H.B. 2070), Sec. 6, eff. September 1, 2017.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 276 (H.B. 3514), Sec. 8, eff. September 1, 2021.

SUBCHAPTER P. JUDICIAL REVIEW

Sec. 2301.751. JUDICIAL REVIEW GENERALLY. (a) A party to a

proceeding affected by a final order, rule, or decision or other final action of the board with respect to a matter arising under this chapter or Chapter 503, Transportation Code, may seek judicial review of the action under the substantial evidence rule in:

(1) a district court in Travis County; or

(2) the court of appeals for the Fifteenth Court of Appeals District.

(b) Except as otherwise provided by this chapter, an appeal brought in a district court may be removed to the court of appeals by any party before trial in the district court on the filing of notice of removal with the district court.

(c) Judicial review by a court, to the extent not in conflict with this chapter, is in the manner provided by Chapter 2001, Government Code. Judicial review in the court of appeals:

(1) is initiated under Chapter 2001, Government Code, in the manner review is initiated for a proceeding in a district court; and

(2) is governed by the applicable rules of appellate procedure.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 31, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 459 (S.B. 1045), Sec. 1.12, eff. September 1, 2023.

Sec. 2301.752. TIME FOR FILING; CITATION. (a) A petition for judicial review under this chapter must be filed not later than the 30th day after the date on which the action, ruling, order, or decision becomes final and appealable.

(b) Citation for an appeal must be served on the executive director or the executive director's designee and each party of record in the matter. For an appeal initiated in the court of appeals, the court shall cause the citation to be issued.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 32, eff. September 1, 2013.

Sec. 2301.753. ADDITIONAL EVIDENCE. An appeal in which evidence outside the record of the board is to be taken under Chapter 2001, Government Code, or otherwise, shall be brought in a district court in Travis County or in the court of appeals. An appeal brought in the court of appeals is subject to remand to a district court in Travis County for proceedings under instructions from the court of appeals.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.754. DISMISSAL FOR FAILURE TO PROSECUTE. (a) A person filing an appeal under this subchapter shall pursue the appeal with reasonable diligence.

(b) If the person fails to prosecute the appeal within six months after the date the appeal is filed, the court shall presume that the appeal has been abandoned. On the motion of the attorney general or a party in the case, the court shall dismiss the appeal after notifying the person who filed the appeal, unless the person shows good cause for the delay.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.755. EFFECT OF APPEAL ON ORDER. An appeal under this subchapter does not affect the enforcement of a final board order unless:

(1) the enforcement of the order is enjoinable under Chapter 65, Civil Practice and Remedies Code, and under principles of primary jurisdiction; or

(2) the board, in the interest of justice, suspends the enforcement of the order pending final determination of the appeal.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2301.756. REVIEW OF INTERLOCUTORY ORDER. (a) A writ of error is allowed from the supreme court for an appeal of an interlocutory order described by Section 51.014(a)(3) or (6), Civil

Practice and Remedies Code, in a civil action involving a license holder.

(b) The supreme court shall give precedence to a writ of error under this section over other writs of error.

(c) The right to appeal by writ of error is without prejudice to the right of any party to seek relief by an application for leave to file a petition for writ of mandamus with respect to the order.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER Q. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 2301.801. CIVIL PENALTY. (a) If, after a proceeding under this chapter and board rules, the board determines that a person is violating or has violated this chapter, a rule adopted or order issued under this chapter, or Section 503.038(a), Transportation Code, the board may impose a civil penalty. The amount of the penalty may not exceed $10,000 for each violation. Each act of violation and each day a violation continues is a separate violation.

(b) In determining the amount of the penalty, the board shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

(2) the economic damage to the public caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(c) Notwithstanding any other law to the contrary, a civil penalty recovered under this chapter shall be deposited in the state treasury to the credit of the Texas Department of Motor Vehicles fund.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1287 (H.B. 2202), Sec. 5, eff. September 1, 2013.

Sec. 2301.802. CEASE AND DESIST ORDER. (a) If it appears to the board that a person is violating this chapter or a board rule or order, the board after notice may require the person engaged in the conduct to appear and show cause why a cease and desist order should not be issued prohibiting the conduct described in the notice.

(b) An interlocutory cease and desist order may be granted with or without bond or other undertaking if:

(1) the order is necessary to the performance of the duties delegated to the board by this chapter;

(2) the order is necessary or convenient to maintaining the status quo between two or more adverse parties before the board;

(3) a party before the board is entitled to relief demanded of the board and all or part of the relief requires the restraint of some act prejudicial to the party;

(4) a person is performing, about to perform, or procuring or allowing the performance of an act:

(A) relating to the subject of a contested case pending before the board, in violation of the rights of a party before the board; and

(B) that would tend to render the board's order in the case ineffectual; or

(5) substantial injury to the rights of a person subject to the board's jurisdiction is threatened regardless of any remedy available at law.

(c) A proceeding under this section is governed by:

(1) this chapter and the board's rules; and

(2) Chapter 2001, Government Code, relating to a contested case, to the extent that chapter is not in conflict with Subdivision (1).

(d) An interlocutory cease and desist order remains in effect until vacated or incorporated in a final order. An appeal of an interlocutory cease and desist order must be made to the board before seeking judicial review as provided by this chapter.

(e) A permanent cease and desist order may be issued regardless of the requirements of Subsection (b) but only under the procedures for a final order under this chapter. An appeal of a permanent cease and desist order is made in the same manner as an appeal of a final order under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 33, eff. September 1, 2013.

Sec. 2301.803. STATUTORY STAY. (a) On the initiation of a proceeding under this chapter or Chapter 503, Transportation Code, whether by complaint, protest, or otherwise, a person who receives notice from the board of a statutory stay imposed by this chapter may not allow or commit any act or omission that would:

(1) violate this chapter, Chapter 503, Transportation Code, any rule, order, or decision of the board, or an order or decision of a person delegated power from the board under Section 2301.154;

(2) affect a legal right, duty, or privilege of any party to a proceeding under this chapter or Chapter 503, Transportation Code; or

(3) tend to render ineffectual an order in a pending proceeding.

(b) A statutory stay imposed by this chapter remains in effect until vacated or until the proceeding is concluded by a final order or decision.

(c) A person affected by a statutory stay imposed by this chapter may request a hearing to modify, vacate, or clarify the extent and application of the statutory stay.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1290 (H.B. 2017), Sec. 21, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 34, eff. September 1, 2013.

Sec. 2301.804. SUIT FOR INJUNCTIVE RELIEF OR CIVIL PENALTY. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter, Chapter 503, Transportation Code, a board rule adopted under this chapter or Chapter 503, Transportation Code, or an order issued under this chapter or Chapter 503, Transportation Code, the board or the executive director, if authorized by the presiding officer of the board, may cause a suit to

be instituted in a court for:

(1) injunctive relief to restrain the person from committing the violation or threat of violation;

(2) imposition of a civil penalty; or

(3) both injunctive relief and a civil penalty.

(b) At the request of the board or the executive director, if authorized by the presiding officer of the board, the attorney general shall bring in the name of the state a suit for an injunction or a civil penalty as described by Subsection (a).

(c) In a suit for injunctive relief under this chapter, the court shall grant, without bond or other undertaking, any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 35, eff. September 1, 2013.

Sec. 2301.805. RELIEF UNDER OTHER LAW. (a) Notwithstanding any other law, including Subchapter E, Chapter 17, Business & Commerce Code, in addition to the other remedies provided by this subchapter, a person may institute an action under Subchapter E, Chapter 17, Business & Commerce Code, or any successor statute to that subchapter, and is entitled to any procedure or remedy under that subchapter, if the person:

(1) has sustained damages as a result of a violation of Sections 2301.351-2301.354 or Section 2301.357; or

(2) is a franchised dealer who has sustained damages as a result of a violation of:

(A) Subchapter J of this chapter; or

(B) Subchapter E, Chapter 17, Business & Commerce Code.

(b) In an action brought under this section, and in the interest of judicial economy and efficiency, a judgment entered in the action must give deference to the findings of fact and conclusions of law of the board contained in any final order that is the basis of the action.

(c) In an action brought against a license holder under this section, or for any other type of conduct for which an action may be

brought under Subchapter E, Chapter 17, Business & Commerce Code, the $1,000 limitation contained in Section 17.50(b)(1), Business & Commerce Code, as that provision existed on September 1, 1979, shall be adjusted to reflect a change in the consumer price index after that date. The limitation shall be increased or decreased, as applicable, by an amount equal to 1,000 multiplied by the percentage of increase or decrease in the consumer price index between September 1, 1979, and the time the damages are awarded by final judgment or settlement. In this subsection, "consumer price index" means the National Consumer Price Index For All Urban Consumers, or a substantially similar successor. A court may take judicial notice of that index.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 137 (S.B. 529), Sec. 15, eff. September 1, 2011.

Sec. 2301.806. BOARD EXEMPT FROM FILING FEE. Notwithstanding the other provisions of this chapter, the board is not required to pay a filing fee when filing a complaint or other enforcement action.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.625(a), eff. Sept. 1, 2003.

Sec. 2301.807. REFUND. If, after a proceeding under this chapter and board rules, the board determines that a person is violating or has violated this chapter or a rule adopted or order issued under this chapter, the board may order the person to pay a refund to the buyer or lessee of the motor vehicle that is the subject of the proceeding.

Added by Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.07, eff. September 1, 2019.

SUBCHAPTER R. REGULATION OF CERTAIN COMMERCIAL USES OF MOTOR VEHICLES

Sec. 2301.851. CERTAIN CHARGES INCLUDED IN CUSTOMER AGREEMENT.

(a) A person required to register under Section 152.065, Tax Code, may include in a customer agreement subject to Subsection (b) a separate charge for the proportionate amount of title fees, registration fees, and property taxes paid in the preceding calendar year on the person's vehicle fleet.

(b) A person who includes the charge must do so:

(1) on a nondiscriminatory basis; and

(2) in each agreement other than an agreement that is exempt from the tax imposed under Section 152.026, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.31, eff. April 1, 2009.

Sec. 2301.852. USE OR RETENTION OF SALVAGE MOTOR VEHICLE. (a) Notwithstanding Section 2301.002, in this section, "certificate of title," "motor vehicle," and "owner" have the meanings assigned by Section 501.002, Transportation Code.

(b) An owner required to register under Section 152.065, Tax Code, may not use or retain for use for a usual commercial purpose of the owner a motor vehicle that has been issued a certificate of title under Section 501.100, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.31, eff. April 1, 2009.

Sec. 2301.853. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.31, eff. April 1, 2009.

CHAPTER 2302. SALVAGE VEHICLE DEALERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2302.001. DEFINITIONS. In this chapter:

(1) "Casual sale," "damage," "insurance company," "major component part," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "out-of-state buyer,"

"salvage motor vehicle," "salvage vehicle title," "salvage vehicle dealer," and "used part" have the meanings assigned by Section 501.091, Transportation Code.

(2) "Board" means the board of the Texas Department of Motor Vehicles.

(3) "Department" means the Texas Department of Motor Vehicles.

(4) "Federal safety certificate" means the label or tag required under 49 U.S.C. Section 30115 that certifies that a motor vehicle or equipment complies with applicable federal motor vehicle safety standards.

(5) "Salvage pool operator" means a person who engages in the business of selling nonrepairable motor vehicles or salvage motor vehicles at auction, including wholesale auction, or otherwise.

(6) Repealed by Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.15, eff. September 1, 2019.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.03, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.04, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.01, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.15, eff. September 1, 2019.

Sec. 2302.0015. CONSENT TO ENTRY AND INSPECTION. (a) A person consents to an entry or inspection described by Subsection (b) by:

(1) accepting a license under this chapter; or

(2) engaging in a business or activity regulated under this chapter.

(b) For the purpose of enforcing or administering this chapter or Chapter 501 or 502, Transportation Code, a member of the board, an employee or agent of the board or department, a member of the Public Safety Commission, an officer of the Department of Public Safety, or

a peace officer may at a reasonable time:

(1) enter the premises of a business regulated under one of those chapters; and

(2) inspect or copy any document, record, vehicle, part, or other item regulated under one of those chapters.

(c) A person described by Subsection (a):

(1) may not refuse or interfere with an entry or inspection under this section; and

(2) shall cooperate fully with a person conducting an inspection under this section to assist in the recovery of stolen motor vehicles and parts and to prevent the sale or transfer of stolen motor vehicles and parts.

(d) An entry or inspection occurs at a reasonable time for purposes of Subsection (b) if the entry or inspection occurs:

(1) during normal business hours of the person or activity regulated under this chapter; or

(2) while an activity regulated under this chapter is occurring on the premises.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 17.04, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.05, eff. September 1, 2009.

Sec. 2302.005. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. This chapter:

(1) is in addition to any municipal ordinance relating to the regulation of a person who deals in nonrepairable or salvage motor vehicles or used parts; and

(2) does not prohibit the enforcement of a requirement of a municipal license or permit that is related to an activity regulated under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.

Sec. 2302.006. APPLICATION OF CHAPTER TO METAL RECYCLERS. (a)

Except as provided by Subsections (b) and (c), this chapter does not apply to a transaction in which a metal recycler is a party.

(b) This chapter applies to a transaction in which a motor vehicle:

(1) is sold, transferred, released, or delivered to a metal recycler for the purpose of reuse or resale as a motor vehicle; and

(2) is used for that purpose.

(c) Sections 2302.0015 and 2302.205 apply to a metal recycler.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.02, eff. September 1, 2009.

Sec. 2302.007. APPLICATION OF CHAPTER TO INSURANCE COMPANIES. This chapter does not apply to an insurance company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.

Sec. 2302.008. APPLICABILITY OF CHAPTER TO USED AUTOMOTIVE PARTS RECYCLERS. This chapter does not apply to a used automotive parts recycler licensed under Chapter 2309.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 3, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.03, eff. September 1, 2009.

Sec. 2302.009. APPLICABILITY OF CHAPTER TO CERTAIN GENERAL DISTINGUISHING NUMBER HOLDERS. This chapter applies to the holder of an independent motor vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, in the same manner as

this chapter applies to a salvage vehicle dealer if the holder of the general distinguishing number:

(1) acts as a salvage vehicle dealer or rebuilder; or

(2) stores or displays a motor vehicle as an agent or escrow agent of an insurance company.

Added by Acts 2019, 86th Leg., R.S., Ch. 279 (H.B. 1667), Sec. 1, eff. September 1, 2019.

Sec. 2302.010. REBUILDING OF ASSEMBLED VEHICLE PROHIBITED. A salvage vehicle dealer may not, as part of engaging in a business or activity regulated under this chapter, rebuild an assembled vehicle, as defined by Section 731.001, Transportation Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1079 (H.B. 1755), Sec. 2, eff. September 1, 2019.
Redesignated from Occupations Code, Section 2302.009 by Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 21.001(62), eff. September 1, 2021.

SUBCHAPTER B. BOARD POWERS AND DUTIES

Sec. 2302.051. RULES AND ENFORCEMENT POWERS. The board shall adopt rules as necessary to administer this chapter and may take other action as necessary to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.07, eff. September 1, 2009.

Sec. 2302.052. DUTY TO SET FEES. The board shall set application fees, license fees, renewal fees, and other fees as required to implement this chapter. The board shall set the fees in amounts reasonable and necessary to implement and enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.07, eff. September 1, 2009.

Sec. 2302.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The board may not adopt a rule under Section 2302.051 restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The board may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.07, eff. September 1, 2009.

SUBCHAPTER C. LICENSE REQUIREMENTS

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 279 (H.B. 1667), Sec. 2

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.08, see other Sec. 2302.101.

Sec. 2302.101. LICENSE OR DEALER'S GENERAL DISTINGUISHING NUMBER REQUIRED. Unless a person holds a salvage vehicle dealer license issued under this chapter or an independent motor vehicle dealer's general distinguishing number issued under Chapter 503, Transportation Code, the person may not:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 279 (H.B. 1667), Sec. 2, eff. September 1, 2019.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.08

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 279 (H.B. 1667), Sec. 2, see other Sec. 2302.101.

Sec. 2302.101. SALVAGE VEHICLE DEALER LICENSE. (a) Unless a person holds a salvage vehicle dealer license issued under this chapter, the person may not:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(b) A person who holds a salvage vehicle dealer license issued under this chapter may perform any of the activities of a salvage vehicle dealer, including:

(1) buying salvage motor vehicles and nonrepairable motor vehicles or selling salvage motor vehicles and nonrepairable motor vehicles that have been issued a salvage vehicle title or nonrepairable vehicle title, as appropriate;

(2) engaging in the business of selling nonrepairable motor vehicles or salvage motor vehicles at auction, including wholesale auction;

(3) offering or negotiating to sell or buy salvage motor vehicles or nonrepairable motor vehicles owned by a license holder and to be purchased or sold by another license holder;

(4) acting as the agent or representative of a license holder in performing an act described by Subdivision (3); and

(5) acquiring and repairing, rebuilding, or reconstructing for operation on a public highway more than five salvage motor vehicles in a calendar year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.05, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.08, eff. September 1, 2019.

Sec. 2302.103. APPLICATION FOR SALVAGE VEHICLE DEALER LICENSE. To apply for a salvage vehicle dealer license, a person must submit to the department an application on a form prescribed by the department and the application fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 4, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.04, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 36, eff. September 1, 2013.
Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.09, eff. September 1, 2019.

Sec. 2302.104. CONTENTS OF APPLICATION. (a) An application for a salvage vehicle dealer license must include:

(1) the name, business address, and business telephone number of the applicant;

(2) the name under which the applicant proposes to conduct business;

(3) the location, by number, street, and municipality, of each office at which the applicant proposes to conduct business;

(4) a statement indicating whether the applicant previously applied for a license under this chapter and, if so, a statement indicating the result of the previous application and indicating whether the applicant has ever been the holder of a license issued under this chapter that was revoked or suspended;

(5) a statement of the previous history, record, and associations of the applicant to the extent sufficient to establish,

to the satisfaction of the department, the business reputation and character of the applicant;

(6) the applicant's federal tax identification number, if any;

(7) the applicant's state sales tax number; and

(8) any other information required by rules adopted under this chapter.

(b) In addition to the information required by Subsection (a), the application of a corporation must include:

(1) the state of its incorporation;

(2) the name, address, date of birth, and social security number of each principal officer or director of the corporation;

(3) a statement of the previous history, record, and associations of each officer and each director to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant; and

(4) a statement showing whether an officer, director, or employee of the applicant has been refused a license as a salvage vehicle dealer or has been the holder of a license issued under this chapter that was revoked or suspended.

(c) In addition to the information required by Subsection (a), the application of a partnership must include:

(1) the name, address, date of birth, and social security number of each owner or partner;

(2) a statement of the previous history, record, and associations of each owner and each partner to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant; and

(3) a statement showing whether an owner, partner, or employee of the applicant has been refused a license as a salvage vehicle dealer or has been the holder of a license issued under this chapter that was revoked or suspended.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.105. DEPARTMENT INVESTIGATION. (a) The department may not issue a license under this chapter until the department completes an investigation of the applicant's qualifications.

(b) The department shall conduct the investigation not later

than the 15th day after the date the department receives the application. The department shall report to the applicant the results of the investigation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.106. LICENSE ISSUANCE. (a) The department shall issue a license to an applicant who meets the license qualifications adopted under this chapter and pays the required fees.

(b) A license may not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.108. DISCIPLINARY ACTION. (a) The department may deny, suspend, revoke, or reinstate a license issued under this chapter.

(b) The board by rule shall establish the grounds for denial, suspension, revocation, or reinstatement of a license issued under this chapter and the procedures for disciplinary action. A rule adopted under this subsection may not conflict with a rule adopted by the State Office of Administrative Hearings.

(c) A proceeding under this section is subject to Chapter 2001, Government Code.

(d) A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.08, eff. September 1, 2009.

SUBCHAPTER D. LICENSE EXPIRATION AND RENEWAL

Sec. 2302.151. LICENSE EXPIRATION. (a) A license issued under this chapter is valid for the period prescribed by the board.

(b) A person whose license has expired may not engage in the activities that require a license until the license has been renewed

under this subchapter.

(c) If the board prescribes the term of a license under this chapter for a period other than one year, the board shall prorate the applicable fee required under this chapter as necessary to reflect the term of the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.10, eff. September 1, 2019.

Sec. 2302.152. NOTICE OF EXPIRATION. Not later than the 31st day before the expiration date of a person's license, the department shall send written notice of the impending expiration to the person at the person's last known address according to department records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.153. PROCEDURES FOR RENEWAL. (a) A person who is otherwise eligible to renew a license issued under this chapter may renew an unexpired license by paying the required renewal fee to the department on or before the expiration date of the license.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or longer may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and has been doing business in the other state for the two years preceding the date of application may renew an expired license. The person must pay to the department a renewal fee that is equal to two times the normally required renewal fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER E. CONDUCTING BUSINESS

Sec. 2302.201. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE. (a) Except as provided by Section 501.0935, Transportation Code, a salvage vehicle dealer who acquires ownership of a salvage motor vehicle from an owner must receive from the owner a properly assigned title.

(b) The dealer shall comply with Subchapter E, Chapter 501, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1136 (H.B. 1422), Sec. 6, eff. September 1, 2011.

Sec. 2302.202. RECORDS OF PURCHASES. A salvage vehicle dealer shall maintain a record of each salvage motor vehicle purchased or sold by the dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 6, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.06, eff. September 1, 2009.

Sec. 2302.203. REGISTRATION OF NEW BUSINESS LOCATION. Before moving a place of business or opening an additional place of business, a salvage vehicle dealer must register the new location with the department.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.204. CASUAL SALES. This chapter does not apply to a person who purchases fewer than five nonrepairable motor vehicles or salvage motor vehicles from a salvage vehicle dealer, an insurance company or salvage pool operator in a casual sale at auction, except that:

(1) the board shall adopt rules as necessary to regulate casual sales by salvage vehicle dealers, insurance companies, or salvage pool operators and to enforce this section; and

(2) a salvage vehicle dealer, insurance company, or salvage pool operator who sells a motor vehicle in a casual sale shall comply with those rules and Subchapter E, Chapter 501, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3I.09, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1296 (H.B. 2357), Sec. 245, eff. January 1, 2012.

Sec. 2302.205. DUTY OF METAL RECYCLER. A metal recycler who purchases a motor vehicle shall submit a regular certificate of title or a nonrepairable or salvage vehicle title or comparable out-of-state ownership document to the department and comply with Subchapter E, Chapter 501, Transportation Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

SUBCHAPTER F. ADDITIONAL DUTIES OF SALVAGE VEHICLE DEALER IN CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS

Sec. 2302.251. DEFINITIONS. In this subchapter:

(1) "Component part" means a major component part as defined in Section 501.091, Transportation Code, or a minor component part.

(2) "Interior component part" means a seat or radio of a motor vehicle.

(3) "Minor component part" means an interior component part, a special accessory part, or a motor vehicle part that displays or should display one or more of the following:

(A) a federal safety certificate;

(B) a motor number;

(C) a serial number or a derivative; or

(D) a manufacturer's permanent vehicle identification number or a derivative.

(4) "Special accessory part" means a tire, wheel, tailgate, or removable glass top of a motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Sec. 2302.252. REMOVAL OF LICENSE PLATES; INVENTORY. (a) Immediately on receipt of a motor vehicle, a salvage vehicle dealer shall remove any unexpired license plates from the vehicle and place the license plates in a secure, locked place.

(b) A salvage vehicle dealer shall maintain on a form provided by the department an inventory of unexpired license plates removed under Subsection (a). The inventory must include:

(1) each license plate number;

(2) the make of the motor vehicle from which the license plate was removed;

(3) the motor number of that vehicle; and

(4) the vehicle identification number of that vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.254. RECORD OF PURCHASE; INVENTORY OF PARTS. (a) A salvage vehicle dealer shall keep an accurate and legible inventory of each used component part purchased by or delivered to the dealer. The inventory must contain a record of each part that includes:

(1) the date of purchase or delivery;

(2) the name, age, address, sex, and driver's license number of the seller and a legible photocopy of the seller's driver's license;

(3) the license plate number of the motor vehicle in which

the part was delivered;

(4) a complete description of the part, including the type of material and, if applicable, the make, model, color, and size of the part; and

(5) the vehicle identification number of the motor vehicle from which the part was removed.

(b) Instead of the information required by Subsection (a), a salvage vehicle dealer may record:

(1) the name of the person who sold the part or the motor vehicle from which the part was obtained; and

(2) the Texas certificate of inventory number or the federal taxpayer identification number of that person.

(c) The department shall prescribe the form of the record required under Subsection (a) and shall make the form available to salvage vehicle dealers.

(d) This section does not apply to:

(1) an interior component part or special accessory part that is from a motor vehicle more than 10 years of age; or

(2) a part delivered to a salvage vehicle dealer by a commercial freight line or commercial carrier.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.255. ASSIGNMENT OF INVENTORY NUMBER. (a) A salvage vehicle dealer shall:

(1) assign a unique inventory number to each transaction in which the dealer purchases or takes delivery of a component part;

(2) attach the unique inventory number to each component part the dealer obtains in the transaction; and

(3) retain each component part in its original condition on the business premises of the dealer for at least three calendar days, excluding Sundays, after the date the dealer obtains the part.

(b) An inventory number attached to a component part under Subsection (a) may not be removed while the part remains in the inventory of the salvage vehicle dealer.

(c) A salvage vehicle dealer shall record a component part on an affidavit bill of sale if:

(1) the component part does not have a vehicle identification number or the vehicle identification number has been

removed; or

(2) the vehicle identification number of the vehicle from which the component part was removed is not available.

(d) The department shall prescribe and make available the form for the affidavit bill of sale.

(e) This section does not apply to the purchase by a salvage vehicle dealer of a nonoperational engine, transmission, or rear axle assembly from another salvage vehicle dealer or an automotive-related business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.256. MAINTENANCE OF RECORDS. A salvage vehicle dealer shall keep a record required under this subchapter on a form prescribed by the department. The dealer shall maintain two copies of each record required under this subchapter until the first anniversary of the date the dealer sells or disposes of the item for which the record is maintained.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.257. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES. (a) On demand, a salvage vehicle dealer shall surrender to the department for cancellation a certificate of title or authority, sales receipt or transfer document, license plate, or inventory list that the dealer is required to possess or maintain.

(b) The department shall provide a signed receipt for a surrendered certificate of title or license plate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.258. INSPECTION OF RECORDS. (a) A peace officer at any reasonable time may inspect a record required to be maintained under this subchapter, including an inventory record and affidavit bill of sale.

(b) On demand of a peace officer, a salvage vehicle dealer shall give to the officer a copy of a record required to be maintained under this subchapter.

(c) A peace officer may inspect the inventory on the premises of a salvage vehicle dealer at any reasonable time in order to verify, check, or audit the records required to be maintained under this subchapter.

(d) A salvage vehicle dealer or an employee of the dealer shall allow and may not interfere with a peace officer's inspection of the dealer's inventory, premises, or required inventory records or affidavit bills of sale.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER G. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES

Sec. 2302.301. APPLICATION OF SUBCHAPTER. This subchapter applies only to a motor vehicle salvage yard located in a county with a population of 2.8 million or more.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2302.302. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) A salvage vehicle dealer may not operate heavy machinery in a motor vehicle salvage yard between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) This section does not apply to conduct necessary to a sale or purchase by the dealer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

SUBCHAPTER H. PENALTIES AND ENFORCEMENT

Sec. 2302.351. INJUNCTIONS. (a) The prosecutor in the county where a motor vehicle salvage yard is located or the city attorney in the municipality where the salvage yard is located may bring suit to enjoin for a period of less than one year a violation of this chapter.

(b) If a salvage vehicle dealer or an employee of the dealer acting in the course of employment is convicted of more than one offense under Section 2302.353(a), the district attorney for a county

in which the dealer's salvage business is located may bring an action in that county to enjoin the dealer's business operations for a period of at least one year.

(c) An action under Subsection (b) must be brought in the name of the state. If judgment is in favor of the state, the court shall:

(1) enjoin the dealer from maintaining or participating in the business of a salvage vehicle dealer for a definite period of at least one year or indefinitely, as determined by the court; and

(2) order that the dealer's place of business be closed for the same period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.11, eff. September 1, 2019.

Sec. 2302.353. OFFENSES. (a) A person commits an offense if the person knowingly violates:

(1) a provision of this chapter other than Subchapter G; or

(2) a rule adopted under a provision of this chapter other than Subchapter G.

(b) A person commits an offense if the person knowingly violates Subchapter G.

(c) An offense under Subsection (a) is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has been previously convicted of an offense under that subsection, in which event the offense is punishable as a state jail felony.

(d) An offense under Subsection (b) is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 17.07, eff. Sept. 1, 2003.

Sec. 2302.354. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty against a person licensed under this chapter who violates this chapter or a rule or order adopted under

this chapter.

(b) The penalty may not be less than $50 or more than $1,000, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice requires.

(c) The person may stay enforcement during the time the order is under judicial review if the person pays the penalty to the court clerk or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(d) A proceeding to impose an administrative penalty is subject to Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1296 (H.B. 2357), Sec. 246(a), eff. September 1, 2011.

Sec. 2302.355. CEASE AND DESIST ORDER. If it appears to the board that a person who is not licensed under this chapter is violating this chapter or a rule or order adopted under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

Added by Acts 2019, 86th Leg., R.S., Ch. 594 (S.B. 604), Sec. 2.12, eff. September 1, 2019.

CHAPTER 2303. VEHICLE STORAGE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2303.001. SHORT TITLE. This chapter may be cited as the

Vehicle Storage Facility Act.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.002. DEFINITIONS. In this chapter:

(1) "Abandoned nuisance vehicle" means a motor vehicle that is:

(A) at least 10 years old; and

(B) of a condition only to be demolished, wrecked, or dismantled.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Owner of a vehicle" means a person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder, holds an affidavit of repossession, and is entitled to repossess the vehicle.

(6) "Principal" means an individual who:

(A) personally or constructively holds, including as the beneficiary of a trust:

(i) at least 10 percent of a corporation's outstanding stock; or

(ii) more than $25,000 of the fair market value of a business entity;

(B) has the controlling interest in a business entity;

(C) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights are included, of more than 10 percent of the profits,

proceeds, or capital gains of a business entity;

(D) is a member of the board of directors or other governing body of a business entity; or

(E) serves as an elected officer of a business entity.

(7) "Vehicle" means:

(A) a motor vehicle for which the issuance of a certificate of title is required under Chapter 501, Transportation Code; or

(B) any other device designed to be self-propelled or transported on a public highway.

(8) "Vehicle storage facility" means a garage, parking lot, or other facility that is:

(A) owned by a person other than a governmental entity; and

(B) used to store or park at least 10 vehicles each year.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.626(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.01, eff. September 1, 2007.

Sec. 2303.003. EXEMPTIONS. (a) This chapter does not apply to a vehicle stored or parked at a vehicle storage facility with the consent of the owner of the vehicle.

(b) This chapter does not apply to a vehicle storage facility operated by a person licensed under Chapter 2301.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 2303.051. RULEMAKING: LICENSE REQUIREMENTS. The commission shall adopt rules that:

(1) establish the requirements for a person to be licensed to operate a vehicle storage facility to ensure that the facility maintains adequate standards for the care of stored vehicles;

(2) relate to the administrative sanctions that may be

imposed on a person licensed under this chapter;

(3) govern the administration of this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.02, eff. September 1, 2007.

Sec. 2303.052. ISSUANCE OF LICENSE; FEES. (a) The department may issue licenses to operate vehicle storage facilities.

(b) The department may impose and collect a fee for a license in an amount sufficient to cover the costs incurred by the department in administering this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.053. RULES REGARDING PAYMENT OF FEE. (a) The commission may adopt rules regarding the method of payment of a fee under this chapter.

(b) The rules may authorize the use of:

(1) electronic funds transfer; or

(2) a credit card issued by a financial institution chartered by:

(A) a state or the federal government; or

(B) a nationally recognized credit organization approved by the department.

(c) The rules may require the payment of a discount or a service charge for a credit card payment in addition to the fee.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person licensed under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) In its rules to prohibit a false, misleading, or deceptive practice, the commission may not include a rule that:

(1) restricts the person's use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the person's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.055. EXAMINATION OF CRIMINAL CONVICTION. The department may conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information permitted by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.

Sec. 2303.056. PERIODIC INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(27), eff. September 1, 2021.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 1, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(1), eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(27), eff. September 1, 2021.

Sec. 2303.057. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.

Sec. 2303.058. ADVISORY BOARD. The Towing and Storage Advisory Board under Chapter 2308 shall advise the commission in adopting vehicle storage rules under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.03, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 30, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 2, eff. June 15, 2017.
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.001, eff. June 15, 2017.

SUBCHAPTER C. LICENSE REQUIREMENTS, ISSUANCE, AND RENEWAL

Sec. 2303.101. FACILITY LICENSE REQUIRED. (a) A person may not operate a vehicle storage facility unless the person holds a license issued under this chapter.
(b) A license issued under this chapter:
(1) is valid only for the person who applied for the license; and
(2) applies only to a single vehicle storage facility named on the license.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.04, eff. September 1, 2007.

Sec. 2303.1015. EMPLOYEE LICENSE REQUIRED. (a) A person may not work at a vehicle storage facility unless the person holds:
(1) a license issued under this chapter;

(2) an incident management towing operator's license under Section 2308.153;

(3) a private property towing operator's license under Section 2308.154; or

(4) a consent towing operator's license under Section 2308.155.

(b) The commission shall adopt rules governing the application for and issuance of a license under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.05, eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 1057 (H.B. 2615), Sec. 1, eff. September 1, 2017.

Sec. 2303.102. LICENSE APPLICATION. (a) The commission by rule shall determine the types of information to be included in an application for a license under this chapter on a form prescribed by the executive director.

(b) The rules adopted under this section must require an application for a facility license to list:

(1) the name and address of each partner, if the applicant is a partnership; and

(2) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation.

(c) A corporation's application must be signed and sworn to by the president and secretary of the corporation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.06, eff. September 1, 2007.

Sec. 2303.103. ELIGIBILITY. The department shall approve an application submitted as provided by Section 2303.102 unless the department determines that:

(1) the applicant knowingly supplied false or incomplete information on the application;

(2) in the three years preceding the date of application,

the applicant, a partner, principal, or officer of the applicant, or the general manager of the applicant, was convicted of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding $500; or

(3) the vehicle storage facility for which the license is sought does not meet the standards for storage facilities established by commission rules.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.104. NOTICE OF DENIAL; OPPORTUNITY TO COMPLY. (a) If the department denies an application for a license under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision and that the applicant is entitled to a hearing before the department under Subchapter E.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter and commission rules not later than the 14th day after the date the applicant receives the notice, the department shall approve the application.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.105. TERM OF LICENSE; NOTICE OF EXPIRATION. (a) A license issued under this chapter is valid for the period set by the department.

(b) Not later than the 30th day before the expiration date of a person's license, the department shall send written notice of the impending license expiration to the person at the person's last known address according to the department's records.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.106. PROCEDURE FOR RENEWAL. (a) A person may apply

to the department to renew the person's license. The application for renewal must be:

(1) made on a form approved by the department;

(2) submitted to the department before the expiration date of the license; and

(3) accompanied by a nonrefundable fee.

(b) A person whose license expires and is not renewed under this section may apply for a new license under Section 2303.102.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER D. PRACTICE BY LICENSE HOLDER

Sec. 2303.151. NOTICE TO VEHICLE OWNER OR LIENHOLDER. (a) The operator of a vehicle storage facility who receives a vehicle that is registered in this state and that is towed to the facility for storage shall send a written notice to the registered owner and the primary lienholder of the vehicle not later than the fifth day after the date but not earlier than 24 hours after the date the operator receives the vehicle.

(b) Except as provided by Section 2303.152, the operator of a vehicle storage facility who receives a vehicle that is registered outside this state shall send a written notice to the registered owner and each recorded lienholder of the vehicle not later than the 14th day after the date but not earlier than 24 hours after the date the operator receives the vehicle.

(b-1) The operator of a vehicle storage facility shall send a written notice required under Subsection (b) to an address obtained, by mail or electronically, either:

(1) directly from the governmental entity responsible for maintaining the motor vehicle title and registration database for the state in which the vehicle is registered; or

(2) from a private entity authorized by that governmental entity to obtain title, registration, and lienholder information using a single vehicle identification number inquiry submitted through a secure access portal to the governmental entity's motor vehicle records.

(b-2) An address obtained electronically from a governmental entity under Subsection (b-1)(1) must be obtained through the governmental entity's secure access portal.

(c) It is a defense to an action initiated by the department for a violation of this section that the operator of the facility unsuccessfully attempted in writing or electronically to obtain information from the governmental entity with which the vehicle is registered.

(d) A notice under this section must:

(1) be correctly addressed;

(2) carry sufficient postage; and

(3) be sent by certified mail, return receipt requested or electronic certified mail.

(e) A notice under this section is considered to have been given on the date indicated on the postmark and to be timely filed if:

(1) the postmark indicates that the notice was mailed within the period described by Subsection (a) or (b), as applicable; or

(2) the notice was published as provided by Section 2303.152.

(f) If the operator of a vehicle storage facility sends a notice required under this section after the time prescribed by Subsection (a) or (b):

(1) the deadline for sending any subsequent notice is determined based on the date notice required by this section is actually sent;

(2) the operator may not begin to charge the daily storage fee authorized under Section 2303.155(b)(3) for the vehicle that is the subject of the notice until 24 hours after the operator sends the notice required under this section; and

(3) the ability of the operator to seek foreclosure of a lien for storage charges on the vehicle that is the subject of the notice is not affected.

(g) Notwithstanding any other law, a state agency or county office may not require proof of delivery of a notice sent under this section in order to issue a title for the vehicle that is the subject of the notice if proof is provided that the notice was mailed in accordance with this section.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1034, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.07, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 3, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1001 (H.B. 1247), Sec. 1, eff. June 15, 2017.

Sec. 2303.1511. VEHICLE STORAGE FACILITY'S DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) A vehicle storage facility accepting a vehicle that is towed under this chapter shall, within two hours after receiving the vehicle, report to the local law enforcement agency with jurisdiction over the area from which the vehicle was towed:

(1) a general description of the vehicle;

(2) the state and number of the vehicle's license plate, if any;

(3) the vehicle identification number of the vehicle, if it can be ascertained;

(4) the location from which the vehicle was towed; and

(5) the name and location of the vehicle storage facility where the vehicle is being stored.

(b) The report required by this section must be made by telephone or electronically or delivered personally or by facsimile.

(c) This section does not apply to a vehicle received as a result of an incident management tow requested by a law enforcement agency unless the law enforcement agency requests a report of incident management tows within the jurisdiction of the agency. In this subsection, "incident management tow" has the meaning assigned by Section 2308.002.

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 1, eff. September 1, 2011.

Sec. 2303.152. NOTICE BY PUBLICATION. (a) Notice to the

registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle is registered in another state;

(2) the operator of the storage facility submits to the governmental entity responsible for maintaining the motor vehicle title and registration database for the state in which the vehicle is registered a request for information relating to the identity of the registered owner and any lienholder of record that is either:

(A) written; or

(B) electronic, through the governmental entity's secure access portal;

(3) the identity of the registered owner cannot be determined;

(4) the registration does not contain an address for the registered owner; or

(5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(b) A written request under Subsection (a)(2)(A) must:

(1) be correctly addressed;

(2) carry sufficient postage; and

(3) be sent by certified mail, return receipt requested, or electronic certified mail.

(b-1) An electronic request under Subsection (a)(2)(B) must be submitted either:

(1) directly to the governmental entity through the governmental entity's secure access portal; or

(2) to a private entity authorized by the governmental entity to obtain title, registration, and lienholder information using a single vehicle identification number inquiry submitted through a secure access portal to the governmental entity's motor vehicle records.

(c) Notice by publication is not required if each notice sent as provided by Section 2303.151 is returned because:

(1) the notice was unclaimed or refused; or

(2) the person to whom the notice was sent moved without leaving a forwarding address.

(d) Only one notice is required to be published for an abandoned nuisance vehicle.

(e) Notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

(1) the vehicle does not display a license plate or a vehicle inspection certificate indicating the state of registration;

(2) the identity of the registered owner cannot reasonably be determined by the operator of the storage facility; or

(3) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 9, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1001 (H.B. 1247), Sec. 2, eff. June 15, 2017.

Sec. 2303.1521. CERTAIN VEHICLES WITH STATE OF REGISTRATION UNKNOWN. (a) An operator of a vehicle storage facility who receives a motor vehicle as defined by Section 501.002(17)(A), Transportation Code, and does not know the state in which the vehicle is registered may give notice by publication under Section 2303.152 only if the operator:

(1) obtains, using the motor vehicle's vehicle identification number, by mail or electronically, a report from the National Motor Vehicle Title Information System operated by the United States Department of Justice, or a successor system, showing the state in which the motor vehicle is titled; and

(2) either:

(A) is unable to determine from the report the governmental entity that is responsible for maintaining the registration information for the motor vehicle; or

(B) attempts to and is unable to obtain, from the governmental entity indicated in the report, the identity and address of any registered owner and any lienholder.

(b) An operator who attempts to obtain owner and lienholder

information under Subsection (a)(2) must attempt to obtain the information, by mail or electronically, either:

(1) directly from the governmental entity; or

(2) from a private entity authorized by the governmental entity to obtain title, registration, and lienholder information using a single vehicle identification number inquiry submitted through a secure access portal to the governmental entity's motor vehicle records.

(c) An address obtained electronically from a governmental entity under Subsection (b)(1) must be obtained through the governmental entity's secure access portal.

Added by Acts 2017, 85th Leg., R.S., Ch. 1001 (H.B. 1247), Sec. 3, eff. June 15, 2017.

Sec. 2303.153. CONTENTS OF NOTICE. (a) A notice by mail provided under Section 2303.151 must include:

(1) the date the vehicle was accepted for storage;

(2) the first day for which a storage fee is assessed;

(3) the daily storage rate;

(4) the type and amount of any other charge to be paid when the vehicle is claimed;

(5) the full name, street address, and telephone number of the vehicle storage facility;

(6) the hours during which the owner may claim the vehicle; and

(7) the facility license number preceded by "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No."

(b) A notice by publication provided under Section 2303.152 must include:

(1) the vehicle description;

(2) the total charges;

(3) the full name, street address, and telephone number of the facility; and

(4) the department registration number.

(c) Notice by publication is not required to include any information other than that listed in Subsection (b).

(d) Notice by publication may include a list of more than one

vehicle, watercraft, or outboard motor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(b), eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 764 (S.B. 1053), Sec. 1, eff. September 1, 2013.

Sec. 2303.154. SECOND NOTICE; CONSENT TO SALE. (a) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall consider the vehicle to be abandoned and, if required by the law enforcement agency with jurisdiction where the vehicle is located, report the abandonment to the law enforcement agency. If the law enforcement agency notifies the vehicle storage facility that the agency will send notices and dispose of the abandoned vehicle under Subchapter B, Chapter 683, Transportation Code, the vehicle storage facility shall pay the fee required under Section 683.031, Transportation Code.

(b) Notice under this section must include:

(1) the information listed in Section 2303.153(a);

(2) a statement of the right of the facility to dispose of the vehicle under Section 2303.157; and

(3) a statement that the failure of the owner or lienholder to claim the vehicle before the 30th day after the date the notice is provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(c) Notwithstanding Subsection (b), if publication is required for notice under this section, the notice must include:

(1) the information listed in Section 2303.153(b); and

(2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:

(A) a waiver of all right, title, and interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(d) Not earlier than the 15th day and before the 21st day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of a vehicle storage facility shall send a second notice to the registered owner and each recorded lienholder of the vehicle if the facility:

(1) was not required to make a report under Subsection (a); or

(2) has made a required report under Subsection (a) and the law enforcement agency:

(A) has notified the facility that the law enforcement agency will not take custody of the vehicle;

(B) has not taken custody of the vehicle; or

(C) has not responded to the report.

(e) If the operator of a vehicle storage facility sends a notice required under this section outside of the time described by Subsection (d):

(1) the deadline for sending any subsequent notice is determined based on the date notice under this section is actually sent;

(2) the operator may not charge the daily storage fee authorized under Section 2303.155(b)(3) for the vehicle that is the subject of the notice during the period beginning on the 21st day after the date that notice under Section 2303.151 is sent and ending 24 hours after notice under this section is sent; and

(3) the ability of the operator to seek foreclosure of a lien for storage charges on the vehicle that is the subject of the notice is not affected.

(f) Notwithstanding any other law, a state agency or county office may not require proof of delivery of a notice sent under this section in order to issue a title for the vehicle that is the subject of the notice if proof is provided that the notice was mailed in accordance with this section.

(g) A report sent under Subsection (a) may, at the discretion of the law enforcement agency, contain a list of more than one vehicle, watercraft, or outboard motor.

(h) A vehicle sold in compliance with this chapter shall be titled and registered without the imposition by a county office of additional requirements not otherwise permitted by law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(c), eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 10, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 2, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 4, eff. June 15, 2017.
Acts 2021, 87th Leg., R.S., Ch. 959 (S.B. 1817), Sec. 1, eff. September 1, 2021.

Sec. 2303.1545. DISPOSITION OF ABANDONED NUISANCE VEHICLE. (a) A vehicle storage facility that holds an abandoned nuisance vehicle is not required to send or publish a second notice and is entitled to dispose of the vehicle on the 30th day after the date the notice is mailed or published under Section 2303.151 or 2303.152.

(b) The facility may:

(1) notify the department that notices under Chapter 683, Transportation Code, have been provided and shall pay a fee of $10 to the department; or

(2) in the alternative, notify the appropriate law enforcement agency and pay a fee of $10 to that agency.

(c) A law enforcement agency described by Subsection (b)(2) may sign a document issued by the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(d), eff. Sept. 1, 2003.

Sec. 2303.155. CHARGES RELATED TO STORAGE. (a) For the purposes of this section, "governmental vehicle storage facility" means a garage, parking lot, or other facility that is:

(1) owned by a governmental entity; and

(2) used to store or park at least 10 vehicles each year.

(b) The operator of a vehicle storage facility or governmental vehicle storage facility may charge the owner of a vehicle stored or parked at the facility:

(1) a notification fee set in a reasonable amount for providing notice under this subchapter, including notice under Section 2303.154(c);

(2) an impoundment fee of $20, subject to Section 2303.1552, for any action that:

(A) is taken by or at the direction of the owner or operator of the facility; and

(B) is necessary to preserve, protect, or service a vehicle stored or parked at the facility;

(3) a daily storage fee, subject to Section 2303.1552, of:

(A) $20 for each day or part of a day the vehicle is stored at the facility if the vehicle is not longer than 25 feet; or

(B) $35 for each day or part of a day the vehicle is stored at the facility if the vehicle is longer than 25 feet; and

(4) any fee that is required to be submitted to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(c) A notification fee under Subsection (b) may not exceed $50, except that if notice by publication is required by this chapter and the cost of publication exceeds 50 percent of the notification fee, the vehicle storage facility may recover the additional amount of the cost of publication from the vehicle owner or agent.

(d) For purposes of imposing a daily storage fee, a day is considered to begin at midnight and to end at the next following midnight. A daily storage fee may be charged regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the facility for less than 12 hours.

(e) The operator of a vehicle storage facility or governmental vehicle storage facility may charge a daily storage fee under Subsection (b):

(1) for not more than five days before the date notice is mailed or published under this subchapter, if the vehicle is registered in this state;

(2) for not more than five days before the date the request for owner information is sent to the appropriate governmental entity as required by this subchapter, if the vehicle is registered in another state; and

(3) for each day the vehicle is in storage after the date the notice is mailed or published until the vehicle is removed and

all accrued charges are paid.

(f) The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee related to the storage of a vehicle other than a fee authorized by this section or a towing fee authorized by Chapter 2308.

(g) This section controls over any conflicting municipal ordinance or charter provision.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 1034, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.627(e), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 11, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.08, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 3.04, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 996 (H.B. 1140), Sec. 1, eff. June 14, 2019.

Sec. 2303.1551. REQUIRED POSTING. (a) All storage fees shall be posted at the licensed vehicle storage facility to which the motor vehicle has been delivered and shall be posted in view of the person who claims the vehicle.

(b) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign that complies with commission rules and states "Nonconsent tow fees schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fees schedule on request. The commission shall adopt rules for signs required under this subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 5, eff. June 15, 2017.

Sec. 2303.1552. BIENNIAL ADJUSTMENT OF CERTAIN FEES. (a) In this section, "consumer price index" means the Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor.

(b) Each odd-numbered year, the commission, not later than November 1:

(1) by rule may adjust the impoundment fee under Section 2303.155(b)(2) and the storage fees under Section 2303.155(b)(3) by an amount equal to the amount of the applicable fee in effect on December 31 of the preceding year multiplied by the percentage increase or decrease in the consumer price index during the preceding state fiscal biennium; and

(2) if the fees are adjusted under Subdivision (1), shall publish the adjusted fees on the department's Internet website.

(c) A fee adjusted under Subsection (b) is effective beginning the January 1 following the adoption of a rule under that subsection.

(d) If a fee is decreased under this section, the operator of a vehicle storage facility or governmental vehicle storage facility, as defined by Section 2303.155, shall begin charging the adjusted fee on the effective date of the decrease. If a fee is increased under this section, the operator may begin charging the adjusted fee at any time on or after the effective date of the increase.

Added by Acts 2019, 86th Leg., R.S., Ch. 996 (H.B. 1140), Sec. 2, eff. June 14, 2019.

Sec. 2303.156. PAYMENT BY LIENHOLDER OR INSURANCE COMPANY. (a) A lienholder who repossesses a vehicle delivered to a vehicle storage facility is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the lienholder repossessed the vehicle.

(b) An insurance company that pays a claim of total loss on a vehicle in a vehicle storage facility is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the insurance company

paid the claim.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.157. DISPOSAL OF CERTAIN ABANDONED VEHICLES. (a) The operator of a vehicle storage facility may dispose of a vehicle for which notice is given under Section 2303.154 if, before the 30th day after the date notice is mailed, the vehicle is not:

(1) claimed by a person entitled to claim the vehicle; or

(2) taken into custody by a law enforcement agency under Chapter 683, Transportation Code.

(b) An operator entitled to dispose of a vehicle under this section may sell the vehicle at a public sale without obtaining a release or discharge of any lien on the vehicle, regardless of whether notice was provided by mail or by publication under this chapter. The proceeds from the sale of the vehicle shall be applied to the charges incurred for the vehicle under Section 2303.155. The operator shall pay any excess proceeds to the person entitled to those proceeds.

(c) Notwithstanding Subsection (a), the operator of a vehicle storage facility may dispose of a vehicle for which notice was given under this subchapter as provided by this section if:

(1) the vehicle is an abandoned nuisance vehicle; and

(2) before the 30th day after the date the notice was sent, the facility submits an application to the department for disposal of the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.628(a), eff. Sept. 1, 2003.

Sec. 2303.158. ACCESS TO GLOVE COMPARTMENT, CONSOLE, OR OTHER INTERIOR STORAGE AREA TO ESTABLISH IDENTITY OR OWNERSHIP. The operator of a vehicle storage facility or a governmental vehicle storage facility must allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment,

console, or other interior storage area.

Added by Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 3, eff. September 1, 2005.

Sec. 2303.159. FORMS OF PAYMENT OF CHARGES. (a) The operator of a vehicle storage facility shall accept each of the following forms of payment for any charge associated with delivery or storage of a vehicle:

(1) cash;

(2) debit card; and

(3) credit card.

(a-1) The operator of a vehicle storage facility shall conspicuously post a sign that states: "This vehicle storage facility must accept payment by cash, credit card, and debit card for any fee or charge associated with delivery or storage of a vehicle." The operator of a vehicle storage facility may not refuse to release a vehicle based on the inability of the facility to accept payment by debit card or credit card of a fee or charge associated with delivery or storage of the vehicle unless the operator, through no fault of the operator, is unable to accept the debit card or credit card because of a power outage or a machine malfunction.

(b) In this section, "vehicle storage facility" includes a governmental vehicle storage facility as defined by Section 2303.155.

Added by Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 4, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 21, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 510 (H.B. 804), Sec. 1, eff. September 1, 2015.

Sec. 2303.160. RELEASE OF VEHICLES. (a) A vehicle storage facility may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address

contained in the title and registration records of the vehicle.

(b) A vehicle storage facility must accept evidence of financial responsibility, as required by Section 601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(c) Subsection (b) does not require a vehicle storage facility to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(1) pay the charges for services regulated under this chapter or Chapter 2308, including charges for an incident management tow, as defined by Section 2308.002; and

(2) present valid photo identification issued by this state, another state, a federal agency, or a foreign government.

Added by Acts 2007, 80th Leg., R.S., Ch. 271 (H.B. 90), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 3, eff. September 1, 2011.

Sec. 2303.161. DRUG TESTING OF EMPLOYEES. (a) A license holder shall establish a drug testing policy for employees of the vehicle storage facility operated by the license holder. A license holder that establishes a drug testing policy under this subsection may adopt the model drug testing policy adopted by the commission or may use another drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model drug testing policy for use by license holders. The model drug testing policy must be designed to ensure the safety of the public through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

(1) require at least one scheduled drug test each year for each employee of a vehicle storage facility who has direct contact with the public; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.09,

eff. September 1, 2007.
Renumbered from Occupations Code, Section 2303.160 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(75), eff. September 1, 2009.

SUBCHAPTER E. ACCEPTANCE AND DISPOSITION OF CERTAIN PROPERTY FROM SELF-SERVICE STORAGE FACILITY

Sec. 2303.201. DEFINITIONS. In this subchapter, "lessor" and "self-service storage facility" have the meanings assigned by Section 59.001, Property Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 4, eff. September 1, 2021.

Sec. 2303.202. APPLICABILITY. This subchapter applies only to property described by Section 59.051, Property Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 4, eff. September 1, 2021.

Sec. 2303.203. ACCEPTANCE OF PROPERTY. A vehicle storage facility shall accept property from a lessor who has transferred possession of the property from a self-service storage facility to the vehicle storage facility under Section 59.052, Property Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 4, eff. September 1, 2021.

Sec. 2303.204. DISPOSITION OF PROPERTY. A vehicle storage facility that accepts property under Section 2303.203 may dispose of the property in the manner provided by Subchapter D for a vehicle received by a facility as described by Section 2303.151.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 4, eff. September 1, 2021.

SUBCHAPTER G. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 2303.301. INJUNCTION; CIVIL PENALTY. (a) If a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the department or the attorney general at the request of the department may institute an action for:

(1) injunctive relief;

(2) a civil penalty not to exceed $1,000 for each violation; or

(3) both injunctive relief and the civil penalty.

(b) If the department or the attorney general prevails in an action under this section, the department or the attorney general is entitled to recover reasonable attorney's fees and court costs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.302. CRIMINAL PENALTIES. (a) A person commits an offense if the person:

(1) violates the licensing requirements of this chapter; or

(2) employs an individual who does not hold an appropriate license required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.10, eff. September 1, 2007.

Sec. 2303.303. AUTHORITY TO ARREST. A peace officer or license and weight inspector for the Department of Public Safety may make an arrest for a violation of a rule adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2303.304. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.11, eff. September 1, 2007.

Sec. 2303.305. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.11, eff. September 1, 2007.

CHAPTER 2304. NONMECHANICAL REPAIRS TO MOTOR VEHICLES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2304.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Natural Resource Conservation Commission.

(2) "Executive director" means the executive director of the Texas Natural Resource Conservation Commission.

(3) "Motor vehicle" means a vehicle with at least four wheels that is self-propelled and that can transport a person or property on a public street or highway. The term does not include a vehicle that is used exclusively on stationary tracks.

(4) "Repair facility" means a person that engages in the business of repairing or replacing the nonmechanical exterior or interior body parts of a damaged motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.002. APPLICATION OF CHAPTER. This chapter does not apply to a repair facility located in a county with a population of 50,000 or less.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER B. CERTIFICATE OF REGISTRATION

Sec. 2304.051. REGISTRATION REQUIRED. A repair facility shall register with the commission as provided by this chapter and the rules adopted by the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.052. APPLICATION. (a) The commission by rule shall:

(1) prescribe an application form for the issuance or renewal of a certificate of registration; and

(2) determine the information to be disclosed on the application.

(b) The application must include:

(1) the name, street address, and mailing address of each location at which the applicant operates a repair facility;

(2) the name and address of:

(A) each owner, partner, officer, or director of the applicant; and

(B) if the applicant is a corporation, each shareholder holding 10 percent or more of the outstanding shares;

(3) the identification number assigned by, or a statement of other evidence of compliance with any applicable requirements of:

(A) the United States Environmental Protection Agency;

(B) the United States Occupational Safety and Health Administration;

(C) the commission;

(D) the Texas Department of Health;

(E) the comptroller; and

(F) a municipality or county; and

(4) a statement of each conviction obtained against the applicant or a partner or officer of the applicant during the three years preceding the date of the application of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding $200.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.053. ISSUANCE AND RENEWAL OF CERTIFICATE. (a) An applicant for the issuance or renewal of a certificate of registration shall submit to the executive director a sworn application on the form prescribed by the commission accompanied by a $50 fee.

(b) On receipt of the application and required fee, the executive director shall issue a certificate of registration to the applicant.

(c) A certificate of registration expires on the first anniversary of the date of issuance and may be renewed annually in the manner prescribed by the commission. An application for renewal must be submitted to the executive director within 30 days before the expiration date of the certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.054. FORM OF CERTIFICATE; TRANSFERABILITY. A certificate of registration:

(1) must contain a unique number;

(2) applies only to the person whose name appears on the certificate or an employee of that person; and

(3) is not transferable.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.055. REPLACEMENT CERTIFICATE. (a) If a certificate of registration is lost or destroyed, the certificate holder may apply to the executive director for a replacement certificate of registration.

(b) The certificate holder must submit:

(1) an affidavit verifying that the certificate of registration was lost or destroyed; and

(2) a $25 replacement fee.

(c) The executive director shall issue a replacement certificate of registration on receipt of the affidavit and replacement fee.

(d) A replacement certificate of registration must be clearly identified as a replacement certificate on the certificate and in the records of the commission.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.056. VOLUNTARY SURRENDER OF CERTIFICATE. A certificate holder may terminate a certificate of registration at any time by voluntarily surrendering the certificate.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.057. CANCELLATION OF CERTIFICATE. (a) On the expiration, termination, or surrender of a certificate of registration, the certificate holder shall deliver the certificate to the executive director.

(b) The executive director shall:

(1) cancel the certificate; or

(2) endorse on the certificate the date of expiration, termination, or surrender.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.058. MAINTENANCE OF REGISTRATION INFORMATION. (a) The executive director shall maintain each application for a certificate of registration and a copy of each certificate of registration in a convenient form that is available to the public.

(b) The executive director shall annually publish a list of:

(1) the name and address of each person registered under this chapter; and

(2) the name of each person whose registration has been revoked, suspended, or surrendered during the period and the specific date of the suspension, revocation, or surrender.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDER

Sec. 2304.101. DISPLAY OF CERTIFICATE. A certificate holder shall publicly display the current certificate of registration at the certificate holder's place of business in a location readily visible to a customer paying for repairs.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.102. REGISTRATION NUMBER. A certificate holder shall include the certificate holder's registration number:

(1) on each repair estimate, repair order, or correspondence; and

(2) in each advertisement for motor vehicle repairs by the repair facility.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.103. FALSE STATEMENTS. A certificate holder may not make a false or fraudulent statement in connection with:

(1) a repair; or

(2) an attempt to collect compensation for a repair.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.104. RECORD OF VEHICLE REPAIRS. (a) A certificate holder shall maintain in a convenient place a record of each motor vehicle that enters the certificate holder's premises for a repair. Except as provided by Subsection (b), the certificate holder shall include in the record:

(1) a description of the vehicle;

(2) the vehicle identification number;

(3) the date the vehicle entered the certificate holder's premises;

(4) the odometer reading at the time the vehicle is received;

(5) the name and address of the person from whom the

vehicle is received; and

(6) a signed authorization for the work to be performed on the vehicle.

(b) If a motor vehicle is towed to the certificate holder's repair facility without the consent of the owner of the vehicle, the information in the record is the information provided by the law enforcement agency that initiated the towing process.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER D. ENFORCEMENT PROVISIONS

Sec. 2304.151. INSPECTION OF PREMISES AND RECORD. The executive director or an employee of the commission may, at any time, inspect:

(1) a record maintained under Section 2304.104; and

(2) the premises of a certificate holder's place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.152. ADMINISTRATIVE DISCIPLINARY ACTION AND PROCEDURES. (a) The commission shall adopt rules establishing:

(1) grounds for suspension, revocation, or reinstatement of a certificate of registration; and

(2) procedures for taking disciplinary action.

(b) The executive director may suspend or revoke a certificate of registration based on a ground established under this section.

(c) Procedures for the suspension or revocation of a certificate of registration are governed by Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.153. FAILURE TO REGISTER; CIVIL PENALTY. (a) A repair facility that fails to register under this chapter is liable to the state for a civil penalty of $250.

(b) The executive director shall waive the penalty if the repair facility applies for registration not later than the 10th day

after the date of notice of the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2304.154. VIOLATION OF CHAPTER; CIVIL PENALTY. Except as provided by Section 2304.153, a person that violates this chapter is liable to the state for a civil penalty in an amount not to exceed $100.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

CHAPTER 2305. RECORDS OF CERTAIN VEHICLE REPAIRS, SALES, AND PURCHASES

SUBCHAPTER A. RECORDS MAINTAINED BY CERTAIN ENTITIES

Sec. 2305.001. DEFINITIONS. In this subchapter:

(1) "Person" means an individual, corporation, or firm.

(2) "Repair" includes the rebuilding of a motor vehicle, the installation of a new or used part or accessory on a motor vehicle, and the performance of electrical work in connection with the repair of a motor vehicle. The term does not include a repair covered by Chapter 2304.

(3) "Used motor vehicle" includes a secondhand motor vehicle.

(4) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

(5) "Board" means the board of the Texas Department of Motor Vehicles.

(6) "Department" means the Texas Department of Motor Vehicles.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 37, eff. September 1, 2013.

Sec. 2305.002. APPLICATION OF SUBCHAPTER. This subchapter

applies to any person who:

(1) operates a shop or garage that is engaged in the business of repairing motor vehicles; or

(2) engages in the business of purchasing or selling used motor vehicles in this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 2, eff. September 1, 2005.

Sec. 2305.003. REGISTER OF REPAIRS. (a) A person subject to this subchapter shall maintain a register of each repair the person makes to a motor vehicle. The register must contain a substantially complete and accurate description of each motor vehicle that is repaired.

(b) This section does not apply to a repair having a value of $1 or less.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 3, eff. September 1, 2005.

Sec. 2305.004. REGISTER OF USED MOTOR VEHICLE SALES AND PURCHASES. (a) A person subject to this subchapter shall maintain a register of each sale or purchase the person makes of a used motor vehicle.

(b) If the person buys a used motor vehicle, the register must contain:

(1) the make and model, the number of cylinders, the motor number, the vehicle identification number, and the passenger capacity of the motor vehicle, if applicable;

(2) the name, date of birth, usual place of address, and official identification number of each person claiming to be the owner of the motor vehicle; and

(3) the state registration number of the motor vehicle, if applicable.

(c) If the person sells a used motor vehicle, in addition to

the requirements of Subsection (b), the register must contain the name and address of the purchaser of the motor vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 4, eff. September 1, 2005.

Sec. 2305.0041. LIMITATION ON BUYING AND SELLING CATALYTIC CONVERTERS. A person subject to this subchapter may not buy or sell a catalytic converter removed from a motor vehicle unless the catalytic converter was removed from the motor vehicle in connection with the person's repair of the vehicle.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.08, eff. May 29, 2023.

Sec. 2305.005. RECORD OF REPLACED CYLINDER BLOCK. The owner of the garage or repair shop that installs a replacement cylinder block and stamps the original engine number on the block as required by Section 2305.051 shall record in a substantially bound book:

(1) the name and address of the vehicle's owner; and

(2) the engine number and registration number of the vehicle.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2305.0051. REPAIR RECORDS RELATED TO CATALYTIC CONVERTERS. (a) The owner of a garage or repair shop that sells or transfers to any person, including a metal recycling entity registered under Chapter 1956, a catalytic converter that was removed in connection with a motor vehicle repair shall maintain a record of all repairs for the vehicle that includes:

(1) the name and address of the vehicle's owner;

(2) the vehicle identification number of the vehicle; and

(3) copies of all related invoices including, as applicable, a notation that a catalytic converter was removed from the vehicle.

(b) Notwithstanding Section 2305.006(a), a record required by this section shall be kept until at least the second anniversary of the date of the repair.

Added by Acts 2021, 87th Leg., R.S., Ch. 1040 (H.B. 4110), Sec. 9, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.09, eff. May 29, 2023.
Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.10, eff. May 29, 2023.

Sec. 2305.006. MAINTENANCE OF RECORDS. (a) All records required to be maintained under this subchapter shall be kept until at least the first anniversary of the date the record is made.

(b) The registers required by Sections 2305.003 and 2305.004 shall be maintained in a clear and intelligent manner in a well-bound book or an electronic recordkeeping system and kept in a secure place in the office or place of business where the work is performed or the business is conducted.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 5, eff. September 1, 2005.

Sec. 2305.007. ENTRY AND INSPECTION. (a) Except as provided by Subsection (b), for the purpose of enforcing or administering this chapter, Chapter 2302 of this code, or Chapter 501 or 502, Transportation Code, a member of the board, an employee of the department, a member of the Public Safety Commission, an officer of the Department of Public Safety, or another peace officer who is interested in tracing or locating a stolen motor vehicle may at a reasonable time:

(1) enter the premises of a business regulated under one of those chapters; and

(2) inspect or copy any document, record, vehicle, part, or other item regulated under one of those chapters.

(b) For the purposes of tracing or locating a stolen motor

vehicle on the premises of a person engaging in a business or activity regulated under this chapter who is also licensed under Chapter 348 or 353, Finance Code, only an officer of the Department of Public Safety may at a reasonable time:

(1) enter the premises of the person's business; and

(2) inspect or copy any document, record, vehicle, part, or other item regulated under:

(A) this chapter; or

(B) Chapter 348 or 353, Finance Code.

(c) A person engaging in a business or activity regulated under this chapter shall cooperate with a person conducting an inspection under this section to assist in the recovery of stolen motor vehicles and parts and to prevent the sale or transfer of stolen motor vehicles and parts.

(d) An entry or inspection occurs at a reasonable time for purposes of Subsection (a) or (b) if the entry or inspection occurs:

(1) during normal business hours of the person or activity regulated under a chapter listed in Subsection (a) or (b); or

(2) while an activity regulated under a chapter listed in Subsection (a) or (b) is occurring on the premises.

Added by Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 6, eff. September 1, 2005.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 117 (H.B. 2559), Sec. 21, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1135 (H.B. 2741), Sec. 38, eff. September 1, 2013.

SUBCHAPTER B. REQUIREMENT APPLICABLE TO OWNERS OF CERTAIN MOTOR VEHICLES

Sec. 2305.051. REPLACEMENT OF CYLINDER BLOCK. The owner of a motor vehicle registered under Chapter 502, Transportation Code, that has a damaged cylinder block replaced shall have the original engine number of the motor vehicle stamped with a steel die on the replacement cylinder block.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER C. ENFORCEMENT

Sec. 2305.101. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter.

(b) Except as provided by Subsection (c), an offense under this section is punishable by a fine of not less than $10 and not more than $100.

(c) An offense under this chapter that consists of the violation of Section 2305.0041, 2305.0051, or 2305.007 is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 761 (H.B. 3221), Sec. 7, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.11, eff. May 29, 2023.

SUBCHAPTER D. RECORDS OF CERTAIN SALES OR TRANSFERS OF CATALYTIC CONVERTERS REMOVED FROM MOTOR VEHICLES

Sec. 2305.151. DEFINITION. In this subchapter, "catalytic converter" has the meaning assigned by Section 1956.001.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.12, eff. May 29, 2023.

Sec. 2305.152. APPLICABILITY. This subchapter applies only to a person described by Section 1956.123(1)(A) through (G).

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.12, eff. May 29, 2023.

Sec. 2305.153. RECORD REQUIRED. (a) A person to whom this subchapter applies shall, for each transaction in which the person sells or transfers to another person a catalytic converter that is removed from a motor vehicle, maintain an accurate record of the transaction until the second anniversary of the date of the transaction.

(b) A record is sufficient to meet the requirements of Subsection (a) if it contains:

(1) a description made in accordance with the custom of the trade for the volume of catalytic converters sold or transferred;

(2) the name of the person to whom the catalytic converters were sold or transferred; and

(3) the date of the transaction.

(c) A record containing the information described by Subsection (b) that is maintained in accordance with other law or as a routine business practice satisfies the requirements of Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.12, eff. May 29, 2023.

Sec. 2305.154. OFFENSE: FAILURE TO MAINTAIN RECORD. (a) A person commits an offense if the person intentionally or knowingly fails to maintain a record as required by Section 2305.153.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under another provision of this chapter, the person may be prosecuted only under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.12, eff. May 29, 2023.

Sec. 2305.155. INSPECTION OF CERTAIN RECORDS. (a) In this section, "licensing authority" and "occupational license" have the meanings assigned by Section 58.001.

(b) If an occupational license is required for a person to engage in a business or occupation described by Section 1956.123(1)(A) through (G), the licensing authority that issues the occupational license may at a reasonable time:

(1) enter the premises at which the person engages in the regulated business or occupation; and

(2) inspect the records or information required to be maintained under Section 2305.153.

(c) Regardless of whether an occupational license is required, an officer of the Department of Public Safety or another peace officer may enter the premises of and inspect the records of a person

described by Section 1956.123(1)(A) through (G), as provided by Subsection (b).

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 3.12, eff. May 29, 2023.

CHAPTER 2307. INSURER INTERESTS IN REPAIR FACILITIES

Sec. 2307.001. DEFINITIONS. In this chapter:

(1) "Arm's length transaction" means the standard of conduct under which two parties having substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) "Claims center" means a location designated by an insurer where a claims adjuster, employee, or agent of the insurer performs an initial damage estimate on a vehicle under the terms of an insurance policy.

(3) "Favored facility agreement" means an agreement between an insurer and a repair facility under which the insurer agrees to recommend, directly or indirectly, to its policyholders or other beneficiaries under the insurer's policies, that the policyholder or other beneficiary obtain repairs at that repair facility or in any other way agrees to influence its policyholders or other beneficiaries under the insurer's policies to obtain repairs at that repair facility.

(4) "Insurer" means an insurer authorized by the Texas Department of Insurance to write motor vehicle insurance in this state, including a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange if that insurer owns an interest in a repair facility in this state. The term includes an entity that is an affiliate of an insurer as described by Section 823.003, Insurance Code.

(5) "Repair facility" has the meaning assigned by Section 2304.001.

(6) "Support services" means basic services, provided nonspecifically, that are provided internally and to each affiliate or subsidiary, by an insurer, its parent company, or a separate affiliate created to provide basic corporate support. The term does not include a service related to the operation of a repair facility if that service would have no value, or minimal value to any other

type of business.

(7) "Tied repair facility" means a repair facility in which an insurer owns an interest.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 206, Sec. 20.01, eff. Sept. 1, 2003.
Renumbered from Occupations Code, Section 2306.001 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.002. INSURER INTERESTS. (a) Except as provided by this section, an insurer may not own or acquire an interest in a repair facility.

(b) An insurer that owns an interest in a tied repair facility that was open for business, or on which construction had commenced, on April 15, 2003, may maintain that ownership interest and may operate that facility.

(c) An insurer may relocate a tied repair facility described by Subsection (b), but may not obtain an ownership interest in any additional facility not described by Subsection (b).

(d) Subsections (b) and (c) are applicable to an insurer only if the insurer and its tied repair facility are otherwise in compliance with this chapter.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003.
Renumbered from Occupations Code, Section 2306.002 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.003. FAVORED FACILITY AGREEMENT PRESUMED. An insurer is presumed to have a favored facility agreement with a repair facility in which it owns an interest.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003.
Renumbered from Occupations Code, Section 2306.003 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.004. CONTRACTUAL CONDITIONS. (a) An insurer that owns an interest in a repair facility may use only one favored

facility agreement.

(b) Except as otherwise provided by this subsection, the terms under which the insurer enters into a favored facility agreement must be identical for all repair facilities, including a tied repair facility. An insurer may vary the terms as necessary to implement technical differences required by geographical factors or other legitimate business factors.

(c) Except as provided by Subsection (d), an insurer may not cancel a favored facility agreement until the expiration of the 30th day after the date on which the insurer provides notice to the repair facility of the insurer's intent to cancel the agreement. The insurer shall include with the notice a statement explaining the reason for the cancellation of the agreement.

(d) An insurer may summarily cancel a favored facility agreement with a repair facility if the insurer, a policyholder of the insurer, or another beneficiary under the insurer's policy establishes reasonable grounds to believe that the repair facility is fraudulent in its dealings with the insurer or the policyholder or other beneficiaries under the insurer's policy.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.004 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.005. NOTICE. (a) An insurer that owns an interest in a repair facility shall post the following notice in each of its tied repair facilities:

"THIS REPAIR FACILITY IS OWNED IN WHOLE OR IN PART BY (NAME OF INSURER). YOU ARE HEREBY NOTIFIED THAT YOU ARE ENTITLED TO SEEK REPAIRS AT ANY REPAIR FACILITY OF YOUR CHOICE."

(b) The notice required by Subsection (a) must be posted prominently in a location in which it is likely to be seen and read by a customer of the repair facility.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.005 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.006. PROHIBITIONS. An insurer may not:

(1) condition the provision of a product, service, insurance policy renewal, pricing, or other benefit on the purchase of any good or service from its tied repair facilities;

(2) share information with its tied repair facilities that is not made available on identical terms and conditions to other repair facilities with which the insurer has entered into a favored facility agreement;

(3) engage in a joint marketing program with its tied repair facilities;

(4) provide its tied repair facilities a recommendation, referral, description, advantage, or access to its policyholders or other beneficiaries under its insurance policies that is not provided on identical terms to other repair facilities with which the insurer has entered into a favored facility agreement;

(5) provide a tied repair facility access to the insurer's products or services on terms and conditions different from those under which the insurer provides access to the same products or services to another repair facility with which the insurer has entered into a favored facility agreement;

(6) allow a tied repair facility to use the insurer's name, trademark, tradename, brand, or logo in a manner different than that allowed for any other favored facility;

(7) subsidize the business activities or operating expenses of a tied repair facility;

(8) directly or indirectly require a policyholder of the insurer or other beneficiary under the insurer's policy to obtain a damage estimate on a vehicle covered by the insurance policy at a tied repair facility;

(9) authorize or allow a person representing the insurer, whether an employee or an independent contractor, to recommend to a policyholder or other beneficiary under the insurance policy that the policyholder or other beneficiary obtain repairs at a tied repair facility, except to the same extent that the person recommends other repair facilities with whom the insurer has entered into a favored facility agreement;

(10) require a policyholder or beneficiary to use a claims center located on the premises of a tied repair facility;

(11) enter into a favored facility agreement exclusively with its tied repair facilities;

(12) retaliate or discriminate against a person who:

(A) files an action as provided by this chapter; or

(B) assists or participates in any manner in an investigation, judicial proceeding, or other action brought or maintained as provided by this chapter; or

(13) include earnings or losses of a tied repair facility in a rate filing made under Chapter 5, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.006 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.007. CONFLICT OF INTEREST PROHIBITED. Except as otherwise provided by this chapter, an agreement between an insurer and its tied repair facility must be negotiated and executed as an arm's length transaction.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.007 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.008. SUPPORT SERVICES. (a) Notwithstanding this chapter, and except as provided by Subsection (b), an insurer may provide support services to its tied repair facilities if those services:

(1) are priced at a level that is fair and reasonable to both the insurer and the tied repair facility; and

(2) do not directly or indirectly confer a competitive advantage to the tied repair facility.

(b) Notwithstanding Subsection (a), an agreement by an insurer to provide support services to its tied repair facility may not create the potential for confusion among the policyholders of the insurer, other beneficiaries of an insurance policy issued by the insurer, or other parties.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.008 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.009. ACTION TO COMPEL COMPLIANCE; DISCIPLINARY ACTION. (a) A person, including a repair facility, aggrieved by a violation of this chapter by an insurer may bring an action for injunctive or other appropriate relief to compel the insurer to comply with this chapter.

(b) In an action brought under this section, in addition to other appropriate relief, the court may impose a civil penalty as provided by this section.

(c) A civil penalty imposed under this section may not be less than $1,000 or more than $5,000 per violation. Each day during which a violation occurs is a separate violation.

(d) The amount of a civil penalty under this section is based on the seriousness of the violation, and must reflect the following factors:

(1) the nature, circumstances, extent, and gravity of the act or omission that constitutes the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the need to deter future violations by the person charged with a violation;

(5) efforts, if any, made to correct the violation; and

(6) any other factors the court considers appropriate to implement the remedial intent of this chapter.

(e) A civil penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(f) A plaintiff who prevails in an action under this section is entitled to recover reasonable attorney's fees and court costs.

(g) If a court finds that an action brought under this section was groundless, brought in bad faith, or brought for the purpose of harassment, the court may award reasonable attorney's fees to the prevailing defendant.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.009 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.010. ANTITRUST ENFORCEMENT. This chapter does not confer immunity from an antitrust law of this state or the United States. A sanction or penalty imposed in an action brought under

this chapter is in addition to other relief granted on the basis of the violation of an antitrust law of this state or the United States.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.010 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

Sec. 2307.011. EXCLUSIVITY. Unless otherwise specifically provided by this chapter, this chapter provides the exclusive authority and rules applicable to the regulation of the relations between an insurer and a tied repair facility.

Added by Acts 2003, 78th Leg., ch. 1045, Sec. 1, eff. Sept. 1, 2003. Renumbered from Occupations Code, Section 2306.011 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(76), eff. September 1, 2005.

CHAPTER 2308. VEHICLE TOWING AND BOOTING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE. This chapter may be cited as the Texas Towing and Booting Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 2, eff. September 1, 2009.

Sec. 2308.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Towing and Storage Advisory Board.

(1-a) "Boot" means a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.

(1-b) "Booting company" means a person that controls, installs, or directs the installation and removal of one or more boots.

(1-c) "Boot operator" means an individual who installs or

removes a boot on or from a vehicle.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Consent tow" means any tow of a motor vehicle in which the tow truck is summoned by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include an incident management tow or a private property tow.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Driver's license" has the meaning assigned by Section 521.001, Transportation Code.

(5-a) "Incident management tow" means any tow of a vehicle in which the tow truck is summoned to the scene of a traffic collision or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from a collision or incident scene.

(5-b) "Local authority" means a state or local governmental entity authorized to regulate traffic or parking and includes:

(A) an institution of higher education; and

(B) a political subdivision, including a county, municipality, special district, junior college district, housing authority, or other political subdivision of this state.

(6) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow, including:

(A) an incident management tow; and

(B) a private property tow.

(7) "Parking facility" means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

(A) a restricted space on a portion of an otherwise unrestricted parking facility; and

(B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

(i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and

(ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

(7-a) "Parking facility authorized agent" means an employee or agent of a parking facility owner with the authority to:

(A) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and

(B) accept service on behalf of the parking facility owner of a notice of hearing requested under this chapter.

(8) "Parking facility owner" means:

(A) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;

(B) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, over assigned or unassigned parking areas; or

(C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

Text of subdivision effective until January 1, 2025

(8-a) "Peace officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

Text of subdivision effective on January 1, 2025

(8-a) "Peace officer" means a person who is a peace officer under Article 2A.001, Code of Criminal Procedure.

(8-b) "Private property tow" means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

(9) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(2), and Ch. 967 (S.B. 2065), Sec. 14.012(a)(1), eff. June 15, 2017.

(10) "Public roadway" means a public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(11) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a

governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle;

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity;

(G) a truck-trailer combination that is owned or operated by a dealer licensed under Chapter 2301 and used to transport new vehicles during the normal course of a documented transaction in which the dealer is a party and ownership or the right of possession of the transported vehicle is conveyed or transferred; or

(H) a car hauler that is used solely to transport, other than in a consent or nonconsent tow, motor vehicles as cargo:

(i) in the course of:

(a) a prearranged shipping transaction; or

(b) a commercial transaction for transport of a damaged vehicle arranged or authorized by an insurance company and delivered to a salvage pool operator as defined by Section 2302.001; or

(ii) for use in mining, drilling, or construction operations.

(12) "Towing company" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(13) "Unauthorized vehicle" means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(14) "Vehicle" means a device in, on, or by which a person

or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(15) "Vehicle owner" means a person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(16) "Vehicle storage facility" means a vehicle storage facility, as defined by Section 2303.002, that is operated by a person who holds a license issued under Chapter 2303 to operate the facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 4, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 127 (S.B. 1820), Sec. 1, eff. May 23, 2015.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 6, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(2), eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.002, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.012(a)(1), eff. June 15, 2017.

Acts 2021, 87th Leg., R.S., Ch. 591 (S.B. 860), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 137, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.152, eff. January 1, 2025.

Sec. 2308.004. EXEMPTION. Sections 2308.151(b), 2308.2085, 2308.257, and 2308.258 do not apply to:

(1) a person who, while exercising a statutory or contractual lien right with regard to a vehicle:

(A) installs or removes a boot; or

(B) controls, installs, or directs the installation and removal of one or more boots; or

(2) a commercial office building owner or manager who installs or removes a boot in the building's parking facility.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 4, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 7, eff. September 1, 2018.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.003, eff. September 1, 2018.

SUBCHAPTER B. ADVISORY BOARD

Sec. 2308.051. TOWING, STORAGE, AND BOOTING ADVISORY BOARD. (a) The advisory board consists of the following members appointed by the presiding officer of the commission with the approval of the commission:

(1) one representative of a towing company operating in a county with a population of less than one million;

(2) one representative of a towing company operating in a county with a population of one million or more;

(3) one representative of a vehicle storage facility located in a county with a population of less than one million;

(4) one representative of a vehicle storage facility located in a county with a population of one million or more;

(5) one parking facility representative;

(6) one peace officer from a county with a population of less than one million;

(7) one peace officer from a county with a population of one million or more;

(8) one representative of a member insurer, as defined by Section 462.004, Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility.

(b) The advisory board must include representation for each classification of towing.

(c) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 457 (H.B. 2548), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 6, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 8, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.004, eff. June 15, 2017.

Sec. 2308.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of

the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.056. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.057. RULES. (a) The commission shall adopt rules for permitting tow trucks and licensing towing operators, towing companies, booting companies, and boot operators. The commission may adopt different rules applicable to each type of permit or license.

(a-1) The commission shall adopt rules for denial of

applications and permits if the applicant, a partner, principal, officer, or general manager of the applicant, or other license or permit holder has:

(1) a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds $500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;

(3) failed to submit a license or permit bond in an amount established by the commission;

(4) knowingly submitted false or incomplete information on the application; or

(5) filed an application to permit a tow truck previously permitted by a license or permit holder.

(b) The commission by rule shall adopt:

(1) standards of conduct for license and permit holders under this chapter; and

(2) requirements for a consent tow, private property tow, and incident management tow.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 5, eff. September 1, 2011.

Sec. 2308.0575. RULES ON FEES; CONTRACT FOR STUDY; CONFIDENTIAL INFORMATION. (a) To protect the public health and safety, the commission by rule shall establish:

(1) the fees that may be charged in connection with a private property tow;

(2) the maximum amount that may be charged for fees, other

than tow fees, that may be assessed by a towing company in connection with a private property tow; and

(3) a maximum amount that may be charged for the following private property tows:

(A) standard light-duty tows of motor vehicles with a gross weight rating of 10,000 pounds or less;

(B) medium-duty tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; and

(C) heavy-duty tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds.

(b) In adopting rules under Subsection (a), the commission shall contract for a study that:

(1) examines towing fee studies conducted by municipalities in this state; and

(2) analyzes the cost of towing services by company, the consumer price index, the geographic area, and individual cost components.

(c) The commission may structure the maximum amounts that may be charged for private property tows based on hourly or flat fees or by geographic location.

(d) The commission shall maintain the confidentiality of information contained in a study conducted under this section that is claimed to be confidential for competitive purposes and may not release information that identifies a person or company. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(e) To protect the confidentiality of the information, the commission shall aggregate the information to the maximum extent possible considering the purpose of the study.

(f) The department shall contract to conduct a study on private property towing fees under this section at least once every two years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 3, eff. September 1, 2010.

Sec. 2308.058. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover

the costs of administering this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.059. PERIODIC INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license or permit holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(3), eff. June 15, 2017.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(3), eff. June 15, 2017.

(d) In conducting an inspection under this section, the department may inspect a vehicle, a facility, business records, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 9, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(3), eff. June 15, 2017.

Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 4, eff. September 1, 2009.

Sec. 2308.061. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS

Sec. 2308.101. PERMIT REQUIRED. A tow truck may not be used for consent towing or nonconsent towing on a public roadway in this state unless an appropriate permit has been issued for the tow truck under this subchapter. Each tow truck requires a separate permit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.102. APPLICATION REQUIREMENTS. (a) An applicant for a permit under this subchapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) evidence of insurance or financial responsibility required under this subchapter;

(3) the required fees; and

(4) any other information required by the executive director.

(b) The department may conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information permitted by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING PERMIT. (a) An incident management towing permit is required for a

tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow authorized under Section 545.3051, Transportation Code.

(b) To be eligible for an incident management towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least $500,000 of liability insurance for the tow truck; and

(3) the applicant has at least $50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for private property towing and consent towing.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(4), and Ch. 967 (S.B. 2065), Sec. 14.012(a)(2), eff. June 15, 2017.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 20(a)(4), eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.012(a)(2), eff. June 15, 2017.

Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING PERMIT. (a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner under this chapter.

(b) To be eligible for a private property towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least $300,000 of liability insurance for the tow truck; and

(3) the applicant has at least $50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for consent towing but not for incident management towing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT. (a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner.

(b) To be eligible for a consent towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines; and

(2) the applicant has at least $300,000 of liability insurance for the tow truck.

(c) A tow truck permitted under this section may not be used for nonconsent towing, including incident management towing and private property towing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT. (a) The department shall issue a permit under this subchapter to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under this chapter.

(b) The department shall issue a certificate containing a single unique permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.107. PERMIT RENEWAL. (a) A permit issued under this chapter is valid for one year. The department may adopt a system under which permits expire at different times during the year.

(b) The department shall notify the permit holder at least 30 days before the date a permit expires. The notice must be in writing and sent to the permit holder's last known address according to the records of the department.

(c) A permit holder may renew a permit under this chapter by:

(1) paying a fee for each tow truck; and

(2) providing to the department evidence of continuing insurance or financial responsibility in an amount required by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.108. CAB CARDS. (a) The department shall issue a cab card for each tow truck issued a permit. The cab card must:

(1) show the permit number of the certificate issued under Section 2308.106(b);

(2) show the type of permit issued;

(3) show the vehicle unit number;

(4) show the vehicle identification number; and

(5) contain a statement that the vehicle has been issued a permit under this subchapter.

(b) The department shall issue a cab card when the department issues or renews a permit under this subchapter.

(c) A permit holder must keep the cab card in the cab of each permitted tow truck.

(d) The department may order a permit holder to surrender a cab card if the permit is suspended or revoked under this chapter.

(e) If the department determines that the cab card system described by Subsections (a) through (c) is not an efficient means of enforcing this subchapter, the executive director by rule may adopt an alternative method that is accessible by law enforcement personnel in the field and provides for the enforcement of the permit requirements of this subchapter.

(f) A cab card or a permit issued under the alternative method described in Subsection (e) must be valid for the same duration as a certificate issued under Section 2308.106.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.109. DISPLAY OF INFORMATION ON TOW TRUCK. (a) A permit holder shall display on each permitted tow truck:

(1) the permit holder's name;
(2) the permit holder's telephone number;
(3) the city and state where the permit holder is located; and
(4) the permit number for the tow truck.

(b) The information required to be displayed must be:
(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and
(2) permanently affixed in conspicuous places on both sides of the tow truck.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.110. FINANCIAL RESPONSIBILITY. (a) A permit holder shall maintain liability insurance for each tow truck according to the requirements under this subchapter.

(b) Unless state law permits a tow truck to be self-insured, any insurance required for a tow truck must be obtained from an insurer authorized to do business in this state.

(c) An applicant or permit holder must file with the department evidence of insurance as required by this subchapter.

(d) A permit holder shall keep evidence of insurance in a form approved by the department in the cab of each permitted tow truck.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2308.151. LICENSE OR LOCAL AUTHORIZATION REQUIRED. (a) Unless the person holds an appropriate license under this subchapter, a person may not:
(1) perform towing operations; or
(2) operate a towing company.

(b) Unless prohibited by a local authority under Section 2308.2085, a person may:
(1) perform booting operations; and
(2) operate a booting company.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 8, eff. September 1, 2009.
Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 10, eff. September 1, 2018.
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.005, eff. September 1, 2018.
Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 12.002, eff. September 1, 2019.

Sec. 2308.152. GENERAL LICENSE APPLICATION REQUIREMENTS. An applicant for a license under this subchapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) the required fees; and

(3) any other information required by commission rule.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.153. INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE. (a) An incident management towing operator's license is required to operate a tow truck permitted under Section 2308.103.

(b) An applicant for an incident management towing operator's license must:

(1) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

(c) A person holding a license described by this section may work at a vehicle storage facility regulated under Chapter 2303.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 5, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1057 (H.B. 2615), Sec. 2, eff. September 1, 2017.

Sec. 2308.154. PRIVATE PROPERTY TOWING OPERATOR'S LICENSE. (a) A private property towing operator's license is required to operate a tow truck permitted under Section 2308.104.

(b) An applicant for a private property towing operator's license must:

(1) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

(c) A person holding a license described by this section may work at a vehicle storage facility regulated under Chapter 2303.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 6, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1057 (H.B. 2615), Sec. 3, eff. September 1, 2017.

Sec. 2308.155. CONSENT TOWING OPERATOR'S LICENSE. (a) A consent towing operator's license is required to operate a tow truck permitted under Section 2308.105.

(b) An applicant for a consent towing operator's license must hold a valid driver's license issued by a state in the United States.

(c) A person holding a license described by this section may work at a vehicle storage facility regulated under Chapter 2303.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 7, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 1057 (H.B. 2615), Sec. 4, eff. September 1, 2017.

Sec. 2308.156. NONTRANSFERABILITY OF LICENSE. A license issued by the executive director is valid throughout this state and is not transferable.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.

Sec. 2308.157. REQUIREMENT FOR INITIAL RENEWAL OF INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE. To renew an incident management towing operator's license the first time, a license holder must complete a professional development course relating to incident management towing that is approved and administered by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 9, eff. September 1, 2009.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.23, eff. September 1, 2021.

Sec. 2308.158. ALCOHOL AND DRUG TESTING OF TOWING OPERATORS. (a) A towing company shall establish an alcohol and drug testing policy for towing operators. A towing company that establishes an alcohol and drug testing policy under this subsection may adopt the model alcohol and drug testing policy adopted by the commission or may use another alcohol and drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model alcohol and drug testing policy for use by a towing company. The model alcohol and drug testing policy must be designed to ensure the safety of the public through appropriate alcohol and drug testing and to protect the rights of employees. The model alcohol and drug testing policy must:

(1) require at least one scheduled drug test each year for each towing operator; and

(2) authorize random, unannounced alcohol and drug testing

for towing operators.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 10, eff. September 1, 2009.

Sec. 2308.159. LICENSE RENEWAL. (a) A license issued under this subchapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) A license holder may renew a license issued under this chapter by:

(1) submitting an application on a form prescribed by the executive director;

(2) submitting evidence demonstrating compliance with the requirements for the license type as required by this chapter or commission rule;

(3) paying a renewal fee; and

(4) completing any applicable continuing education requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 1.12, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 6, eff. September 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.24, eff. September 1, 2021.

SUBCHAPTER E. LOCAL REGULATION OF TOWING AND BOOTING

Sec. 2308.201. TOW TRUCK REGULATION BY POLITICAL SUBDIVISIONS. (a) A political subdivision of this state may regulate the operation of a tow truck to the extent allowed by federal law, except that a

political subdivision may not issue a more restrictive regulation for the use of lighting equipment on a tow truck than is imposed by Title 7, Transportation Code.

(b) A political subdivision may not require the registration of a tow truck that performs consent tows in the political subdivision unless the owner of the tow truck has a place of business in the territory of the political subdivision.

(c) A political subdivision may require the registration of a tow truck that performs a nonconsent tow in the political subdivision, regardless of whether the owner of the tow truck has a place of business in the territory of the political subdivision.

(d) A political subdivision may not require a person who holds a driver's license or commercial driver's license to obtain a license or permit for operating a tow truck unless the person performs nonconsent tows in the territory of the political subdivision. A fee charged for a license or permit may not exceed $15.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.150(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1303, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1034, Sec. 9, eff. Sept. 1, 2003. Renumbered from Transportation Code, Section 643.201 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Sec. 2308.202. REGULATION BY POLITICAL SUBDIVISIONS OF FEES FOR NONCONSENT TOWS. The governing body of a political subdivision may regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision if the private property tow fees:

(1) are authorized by commission rule; and

(2) do not exceed the maximum amount authorized by commission rule.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003. Renumbered from Transportation Code, Section 643.203 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 5, eff. September 1, 2010.

Sec. 2308.203. TOWING FEE STUDIES. (a) The governing body of a political subdivision that regulates nonconsent tow fees shall establish procedures by which a towing company may request that a towing fee study be performed.

(b) The governing body of the political subdivision shall establish or amend the allowable fees for nonconsent tows at amounts that represent the fair value of the services of a towing company and are reasonably related to any financial or accounting information provided to the governing body.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003. Renumbered from Transportation Code, Section 643.204 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.

Sec. 2308.205. TOWING OF VEHICLES TO LICENSED VEHICLE STORAGE FACILITIES OR OTHER LOCATIONS ON PARKING FACILITIES. (a) A towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility that is operated by a person who holds a license to operate the facility under Chapter 2303, unless:

(1) the towing company agrees to take the vehicle to a location designated by the vehicle's owner; or

(2) the vehicle is towed under:

(A) rules adopted under Subsection (a-1); or

(B) Section 2308.259(b).

(a-1) The commission shall adopt rules authorizing a towing company that makes a nonconsent tow from a parking facility to tow the vehicle to another location on the same parking facility under the direction of:

(1) the parking facility owner;

(2) a parking facility authorized agent; or

(3) a peace officer.

(b) A storage or notification fee imposed in connection with a motor vehicle towed to a vehicle storage facility is governed by Chapter 2303.

(c) Except as provided by this chapter, Article 18.23, Code of Criminal Procedure, or Chapter 2303, a fee may not be charged or

collected without the prior written consent of the vehicle owner or operator.

Added by Acts 2003, 78th Leg., ch. 1034, Sec. 10, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 5, eff. September 1, 2005.
Renumbered from Transportation Code, Section 643.206 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.01, eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 11, eff. June 15, 2017.
Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 12, eff. June 15, 2017.
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.006, eff. June 15, 2017.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 12.003, eff. September 1, 2019.

Sec. 2308.2065. FEES FOR NONCONSENT TOWS; REFUNDS. (a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than:

(1) the fee for a nonconsent tow established under Section 2308.0575; or

(2) a fee for a nonconsent tow authorized by a political subdivision.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established:

(1) under Section 2308.0575; or

(2) by a political subdivision.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the:

(1) amount charged to the owner or operator in excess of the amounts established by commission rule or by a political subdivision; or

(2) total amount of the charges for a service not listed in the amounts established by commission rule or by a political

subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 7, eff. September 1, 2011.

Sec. 2308.208. MUNICIPAL OR COUNTY ORDINANCE REGULATING UNAUTHORIZED VEHICLES AND TOWING OF MOTOR VEHICLES. The governing body of a municipality or the commissioners court of a county may adopt an ordinance that is identical to this chapter or that imposes additional requirements that exceed the minimum standards of this chapter but may not adopt an ordinance conflicting with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.101 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.02, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 8, eff. September 1, 2009.

Sec. 2308.2085. LOCAL AUTHORITY REGULATION OF BOOTING ACTIVITIES. (a) A local authority may regulate, in areas in which the entity regulates parking or traffic, booting activities, including:

(1) operation of booting companies and operators that operate on a parking facility;

(2) any permit and sign requirements in connection with the booting of a vehicle; and

(3) fees that may be charged in connection with the booting of a vehicle.

(b) Regulations adopted under this section must:

(1) incorporate the requirements of Sections 2308.257 and 2308.258;

(2) include procedures for vehicle owners and operators to file a complaint with the local authority regarding a booting company or operator; and

(3) provide for the imposition of a penalty on a booting company or operator for a violation of Section 2308.258.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 11, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 13, eff. June 15, 2017.
Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.007, eff. June 15, 2017.

Sec. 2308.209. TOW ROTATION LIST IN CERTAIN COUNTIES. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 27.002(37), eff. September 1, 2009.

(b) This section applies only to the unincorporated area of a county:

(1) with a population of 450,000 or more that is adjacent to a county with a population of 3.3 million or more;

(2) with a population of less than 9,000 that is located in a national forest; or

(3) adjacent to a county described by Subdivision (2) that has a population of less than 75,000.

(c) The sheriff's office may maintain a list of towing companies to perform nonconsent tows of motor vehicles initiated by a peace officer investigating a traffic collision or a traffic incident. The towing companies must operate in a county to which this section applies.

(d) A peace officer initiating a nonconsent tow of a motor vehicle involved in a traffic collision or traffic incident that the officer is investigating shall notify the sheriff's office that the tow is being initiated. The sheriff's office shall contact successive towing companies on the tow rotation list until a company agrees to carry out the tow.

(e) The sheriff's office may assess a towing company an administrative fee to be included on the tow rotation list in an amount not to exceed the amount necessary to implement this section.

(f) The commissioners court of a county in which a list is maintained under Subsection (c) shall adopt policies to implement this section in a manner that ensures:

(1) equal distribution of nonconsent tows among the towing companies that perform nonconsent tows in the county; and

(2) consumer protection, including fair pricing, for owners

or operators of motor vehicles towed by towing companies on the tow rotation list.

(g) The sheriff's office shall make a list maintained under this section available for public inspection.

(h) In a county in which a list is maintained under Subsection (c), a person commits an offense if:

(1) the person arrives at the scene of a traffic collision or traffic incident to perform a nonconsent tow of a motor vehicle without first being contacted by the sheriff's office;

(2) the person directly or indirectly solicits, on streets located in the county, towing services, including towing, removing, repairing, wrecking, storing, trading, selling, or purchasing related to a vehicle that has been damaged in a collision to the extent that it cannot be normally and safely driven; or

(3) the person enters the scene of a traffic collision, traffic incident, or other area under the control of a peace officer without the permission of the peace officer.

(i) An offense under Subsection (h) is a misdemeanor punishable by a fine of not less than $1 or more than $200.

Added by Acts 2007, 80th Leg., R.S., Ch. 162 (S.B. 500), Sec. 1, eff. September 1, 2007.
Transferred from Transportation Code, Section 643.209 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(109), eff. September 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.002(37), eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 108, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 102 (H.B. 2213), Sec. 1, eff. May 23, 2015.

Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 207, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 138, eff. September 1, 2023.

Sec. 2308.210. ROADWAY CLEARANCE PROGRAM IN CERTAIN COUNTIES; OFFENSE. (a) In this section, "freeway" has the meaning assigned by

Section 541.302, Transportation Code.

(b) The commissioners court of a county adjacent to a county with a population of more than 3.3 million by order may establish a program:

(1) for maintaining the safe movement of traffic on county freeways; and

(2) under which a peace officer designated by the sheriff's office or the commissioners court is authorized to direct, at the scene of an incident or remotely, a towing company, only for the purpose of the program, to:

(A) remove from a freeway, including the shoulder of a freeway, a vehicle that is impeding the safe movement of traffic; and

(B) relocate the vehicle to the closest safe location for the vehicle to be stored.

(c) An order under Subsection (b) must ensure the protection of the public and the safe and efficient operation of towing and storage services in the county.

(d) The commissioners court of a county operating a program under this section:

(1) may enter into an agreement with a federal agency, state agency, municipality, adjacent county, metropolitan rapid transit authority, or regional planning organization or any other governmental entity for the purpose of carrying out the program; and

(2) may apply for grants and other funding to carry out the program.

(e) A towing company or towing operator commits an offense if the company or operator violates a provision of an order establishing a program under this section relating to:

(1) the presence of a tow truck at the scene of an incident on a freeway or other area under the jurisdiction of the program; or

(2) the offering of towing or related services on a freeway or other area under the jurisdiction of the program.

(f) An offense under Subsection (e) is a misdemeanor punishable by a fine of not less than $1 or more than $200.

Added by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 14, eff. June 15, 2017.

SUBCHAPTER F. UNAUTHORIZED VEHICLES

Sec. 2308.251. PROHIBITION AGAINST UNATTENDED VEHICLES IN CERTAIN AREAS. (a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;

(2) prevents a vehicle from exiting a parking space in the facility;

(3) is in or obstructs a fire lane marked according to Subsection (c);

(4) does not display the special license plates issued under Section 504.201, Transportation Code, or the disabled parking placard issued under Chapter 681, Transportation Code, for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person; or

(5) is leaking a fluid that presents a hazard or threat to persons or property.

(b) Subsection (a) does not apply to an emergency vehicle that is owned by, or the operation of which is authorized by, a governmental entity.

(c) If a government regulation governing the marking of a fire lane applies to a parking facility, a fire lane in the facility must be marked as provided by the regulation. If a government regulation on the marking of a fire lane does not apply to the parking facility, all curbs of fire lanes must be painted red and be conspicuously and legibly marked with the warning "FIRE LANE--TOW AWAY ZONE" in white letters at least three inches tall, at intervals not exceeding 50 feet.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 20.003(j), eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.011 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 11, eff. September 1, 2009.

Sec. 2308.252. REMOVAL AND STORAGE OF UNAUTHORIZED VEHICLE. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if:

(1) signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours and remain installed at the time of towing;

(2) the owner or operator of the vehicle has received actual notice from the parking facility owner that the vehicle will be towed at the vehicle owner's or operator's expense if it is in or not removed from an unauthorized space;

(3) the parking facility owner gives notice to the owner or operator of the vehicle under Subsection (b); or

(4) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251 or 2308.253; or

(B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility.

(b) A parking facility owner is considered to have given notice under Subsection (a)(3) if:

(1) a conspicuous notice has been attached to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle stating:

(A) that the vehicle is in a parking space in which the vehicle is not authorized to be parked;

(B) a description of all other unauthorized areas in the parking facility;

(C) that the vehicle will be towed at the expense of the owner or operator of the vehicle if it remains in an unauthorized area of the parking facility; and

(D) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle; and

(2) a notice is mailed after the notice is attached to the vehicle as provided by Subdivision (1) to the owner of the vehicle by

certified mail, return receipt requested, to the last address shown for the owner according to the vehicle registration records of the Texas Department of Motor Vehicles, or if the vehicle is registered in another state, the appropriate agency of that state.

(c) The notice under Subsection (b)(2) must:

(1) state that the vehicle is in a space in which the vehicle is not authorized to park;

(2) describe all other unauthorized areas in the parking facility;

(3) contain a warning that the unauthorized vehicle will be towed at the expense of the owner or operator of the vehicle if it is not removed from the parking facility before the 15th day after the postmark date of the notice; and

(4) state a telephone number that is answered 24 hours a day to enable the owner or operator to locate the vehicle.

(d) The mailing of a notice under Subsection (b)(2) is not required if after the notice is attached under Subsection (b)(1) the owner or operator of the vehicle leaves the vehicle in another location where parking is unauthorized for the vehicle according to the notice.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 442, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 6, eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.012 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 9, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 764 (S.B. 1053), Sec. 2, eff. September 1, 2013.

Sec. 2308.253. UNATTENDED VEHICLES ON PARKING FACILITY OF APARTMENT COMPLEX; REMOVAL AND STORAGE OF VEHICLES. (a) This section applies only to a parking facility serving or adjacent to an apartment complex consisting of one or more residential apartment

units and any adjacent real property serving the apartment complex.

(b) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) obstructs a gate that is designed or intended for the use of pedestrians or vehicles;

(2) obstructs pedestrian or vehicular access to an area that is used for the placement of a garbage or refuse receptacle used in common by residents of the apartment complex;

(3) is in or obstructs a restricted parking area or parking space designated under Subchapter G, including a space designated for the use of employees or maintenance personnel of the parking facility or apartment complex;

(4) is in a tow away zone, other than a fire lane covered by Section 2308.251(c), that is brightly painted and is conspicuously and legibly marked with the warning "TOW AWAY ZONE" in contrasting letters at least three inches tall;

(5) is a semitrailer, trailer, or truck-tractor, as defined by Chapter 502, Transportation Code, unless the owner or operator of the vehicle is permitted under the terms of a rental or lease agreement with the apartment complex to leave the unattended vehicle on the parking facility; or

(6) is leaking a fluid that presents a hazard or threat to persons or property.

(c) A parking facility owner may not have an emergency vehicle described by Section 2308.251(b) towed from the parking facility.

(d) Except as provided by a contract described by Subsection (e), a parking facility owner may not have a vehicle towed from the parking facility merely because the vehicle does not display an unexpired license plate or registration insignia issued for the vehicle under Chapter 502, Transportation Code, or the vehicle registration law of another state or country.

(e) A contract provision providing for the towing from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia is valid only if the provision requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the parking facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. The notice must:

(1) state:

(A) that the vehicle does not display an unexpired

license plate or registration insignia;

(B) that the vehicle will be towed at the expense of the owner or operator of the vehicle if the vehicle does not display an unexpired license plate or registration insignia; and

(C) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle; and

(2) be:

(A) delivered in person to the owner or operator of the vehicle;

(B) sent by certified mail, return receipt requested, to that owner or operator; or

(C) attached:

(i) to the vehicle's front windshield;

(ii) to the vehicle's driver's side window; or

(iii) if the vehicle has no front windshield or driver's side window, to a conspicuous part of the vehicle.

(f) This section may not be construed:

(1) to authorize the owner or operator of a vehicle to leave an unattended vehicle on property that is not designed or intended for the parking of vehicles; or

(2) to limit or restrict the enforcement of Chapter 683, Transportation Code, the abandoned motor vehicle law.

(g) A provision of an apartment lease or rental agreement entered into or renewed on or after January 1, 2004, that is in conflict or inconsistent with this section is void and may not be enforced.

Added by Acts 2003, 78th Leg., ch. 442, Sec. 2, eff. Jan. 1, 2004. Renumbered from Transportation Code, Section 684.0125 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1291 (H.B. 2305), Sec. 9, eff. March 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 15, eff. June 15, 2017.

Sec. 2308.254. LIMITATION ON PARKING FACILITY OWNER'S AUTHORITY

TO REMOVE UNAUTHORIZED VEHICLE. A parking facility owner may not have an unauthorized vehicle removed from the facility except:

(1) as provided by this chapter or a municipal ordinance that complies with Section 2308.208; or

(2) under the direction of a peace officer or the owner or operator of the vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from Transportation Code, Section 684.013 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.

Sec. 2308.255. TOWING COMPANY'S AUTHORITY TO TOW AND STORE UNAUTHORIZED VEHICLE. (a) A towing company may, without the consent of an owner or operator of an unauthorized vehicle, tow the vehicle to and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

(1) the towing company has received written verification from the parking facility owner that:

(A) the signs required by Section 2308.252(a)(1) are posted; or

(B) the owner or operator received notice under Section 2308.252(a)(2) or the parking facility owner gave notice complying with Section 2308.252(a)(3); or

(2) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to tow and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251;

(B) in or obstructing a portion of a paved driveway; or

(C) on a public roadway used for entering or exiting the facility and the tow is approved by a peace officer.

(b) A towing company may not tow an unauthorized vehicle except under:

(1) this chapter;

(2) a municipal ordinance that complies with Section 2308.208; or

(3) the direction of:

(A) a peace officer; or

(B) the owner or operator of the vehicle.

(c) Only a towing company that is insured against liability for property damage incurred in towing a vehicle may tow and store an unauthorized vehicle under this section.

(d) A towing company may tow and store a vehicle under Subsection (a) only if the parking facility owner:

(1) requests that the towing company tow and store the specific vehicle; or

(2) has a standing written agreement with the towing company to enforce parking restrictions in the parking facility.

(e) When a tow truck is used for a nonconsent tow authorized by a peace officer under Section 545.3051, Transportation Code, the operator of the tow truck and the towing company are agents of the law enforcement agency and are subject to Section 545.3051(e), Transportation Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 7, eff. September 1, 2005.

Renumbered from Transportation Code, Section 684.014 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.03, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 10, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 9, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 16, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.008, eff. June 15, 2017.

Sec. 2308.2555. REMOVAL OF CERTAIN UNAUTHORIZED VEHICLES IN RURAL AREAS. (a) This section applies only to an abandoned vehicle that has damaged a fence on private property in a rural area.

(b) A law enforcement agency directing a towing company or tow operator to remove an abandoned vehicle that is located on private property shall provide the towing company or tow operator with the

name and telephone number of the property owner or the owner's agent if the owner or agent has provided the information to the law enforcement agency.

(c) A towing company or tow operator provided with information under Subsection (b) shall contact the property owner or the owner's agent before entering private property to tow a vehicle described by Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 757 (S.B. 702), Sec. 12, eff. September 1, 2009.
Redesignated from Occupations Code, Section 2308.257 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(49), eff. September 1, 2011.
Redesignated from Occupations Code, Section 2308.257 by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 10, eff. September 1, 2011.

Sec. 2308.2565. VEHICLE STORAGE FACILITY DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) Except for an incident management tow requested by a law enforcement agency, a vehicle storage facility accepting a vehicle that is towed under this chapter shall within two hours after receiving the vehicle report to the police department of the municipality from which the vehicle was towed or, if the vehicle was towed from a location that is not in a municipality with a police department, to the sheriff of the county from which the vehicle was towed:

(1) a general description of the vehicle;

(2) the state and number of the vehicle's license plate, if any;

(3) the vehicle identification number of the vehicle, if it can be ascertained;

(4) the location from which the vehicle was towed; and

(5) the name and location of the vehicle storage facility in which the vehicle is being stored.

(b) A law enforcement agency may request a vehicle storage facility to provide a report, in a manner prescribed by the law enforcement agency, of incident management tows within the jurisdiction of the agency. A vehicle storage facility must provide the report not later than 48 hours after the time the facility receives the request.

Added by Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 11, eff. September 1, 2011.

Sec. 2308.257. BOOTING OF UNAUTHORIZED VEHICLE. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause a boot to be installed on the vehicle in the parking facility if signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of the booting and for the preceding 24 hours and remain installed at the time of the booting.

(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

(1) that the vehicle has been booted and damage may occur if the vehicle is moved;

(2) the date and time the boot was installed;

(3) the name, address, and telephone number of the booting company;

(4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;

(5) the amount of the fee for removal of the boot and any associated parking fees;

(6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J; and

(7) in the manner prescribed by the local authority, notice of the procedure to file a complaint with the local authority for violation of this chapter by a boot operator.

(c) On removal of a boot, the boot operator shall provide a receipt to the vehicle owner or operator stating:

(1) the name of the person who removed the boot;

(2) the date and time the boot was removed;

(3) the name of the person to whom the vehicle was released;

(4) the amount of fees paid for removal of the boot and any associated parking fees; and

(5) the right of the vehicle owner or operator to a hearing under Subchapter J.

(d) The booting company shall maintain a copy of the receipt at

its place of business for a period of three years. A peace officer has the right, on request, to inspect and copy the records to determine compliance with the requirements of this section.

(e) A booting company shall accept payment by an electronic check, debit card, or credit card for any fee or charge associated with the removal of a boot. A booting company may not collect a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept.

Added by Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 12, eff. September 1, 2009.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 17, eff. June 15, 2017.

Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.009, eff. June 15, 2017.

Sec. 2308.258. BOOT REMOVAL. (a) A booting company responsible for the installation of a boot on a vehicle shall remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.

(b) A booting company shall waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

(c) A booting company responsible for the installation of more than one boot on a vehicle may not charge a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

Added by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 18, eff. June 15, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.010, eff. June 15, 2017.

Sec. 2308.259. TOWING COMPANY'S AUTHORITY TO TOW VEHICLE FROM UNIVERSITY PARKING FACILITY. (a) In this section:

(1) "Special event" means a university-sanctioned, on-campus activity, including parking lot maintenance.

(2) "University" means:

(A) a public senior college or university, as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education, as defined by Section 61.003, Education Code.

(b) Subject to Subsection (c), an individual designated by a university may, to facilitate a special event, request that a vehicle parked at a university parking facility be towed to another location on the university campus.

(c) A vehicle may not be towed under Subsection (b) unless signs complying with this section are installed on the parking facility for the 72 hours preceding towing enforcement for the special event and for 48 hours after the conclusion of the special event.

(d) Each sign required under Subsection (c) must:

(1) contain:

(A) a statement of:

(i) the nature of the special event; and

(ii) the dates and hours of towing enforcement; and

(B) the number, including the area code, of a telephone that is answered 24 hours a day to identify the location of a towed vehicle;

(2) face and be conspicuously visible to the driver of a vehicle that enters the facility;

(3) be located:

(A) on the right or left side of each driveway or curb-cut through which a vehicle can enter the facility, including an entry from an alley abutting the facility; or

(B) at intervals along the entrance so that no entrance is farther than 25 feet from a sign if:

(i) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and

(ii) the width of an entrance exceeds 35 feet;

(4) be made of weather-resistant material;

(5) be at least 18 inches wide and 24 inches tall;

(6) be mounted on a pole, post, wall, or free-standing board; and

(7) be installed so that the bottom edge of the sign is no lower than two feet and no higher than six feet above ground level.

(e) If a vehicle is towed under Subsection (b), personnel must be available to:

(1) release the vehicle within two hours after a request for release of the vehicle; and

(2) accept any payment required for the release of the vehicle.

(f) A university may not charge a fee for a tow under Subsection (b) that exceeds 75 percent of the private property tow fee established under Section 2308.0575.

(g) A vehicle towed under Subsection (b) that is not claimed by the vehicle owner or operator within 48 hours after the conclusion of the special event may only be towed:

(1) without further expense to the vehicle owner or operator; and

(2) to another location on the university campus.

(h) The university must notify the owner or operator of a vehicle towed under Subsection (b) of the right of the vehicle owner or operator to a hearing under Subchapter J.

Added by Acts 2017, 85th Leg., R.S., Ch. 919 (S.B. 1501), Sec. 18, eff. June 15, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 967 (S.B. 2065), Sec. 14.010, eff. June 15, 2017.

SUBCHAPTER G. SIGNS PROHIBITING UNAUTHORIZED VEHICLES AND DESIGNATING RESTRICTED AREAS

Sec. 2308.301. GENERAL REQUIREMENTS FOR SIGN PROHIBITING UNAUTHORIZED VEHICLES. (a) Except as provided by Subsection (a)(2)(B) and Section 2308.304 or 2308.305, an unauthorized vehicle may not be towed under Section 2308.252(a)(1) or booted under Section 2308.257 unless a sign prohibiting unauthorized vehicles on a parking facility is:

(1) facing and conspicuously visible to the driver of a vehicle that enters the facility;

(2) located:

(A) on the right or left side of each driveway or curb-cut through which a vehicle can enter the facility, including an

entry from an alley abutting the facility; or

(B) at intervals along the entrance so that no entrance is farther than 25 feet from a sign if:

(i) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and

(ii) the width of an entrance exceeds 35 feet;

(3) permanently mounted on a pole, post, permanent wall, or permanent barrier;

(4) installed on the parking facility; and

(5) installed so that the bottom edge of the sign is no lower than five feet and no higher than eight feet above ground level.

(b) Except as provided by Section 2308.305, an unauthorized vehicle may be towed under Section 2308.252(a)(1) or booted under Section 2308.257 only if each sign prohibiting unauthorized vehicles:

(1) is made of weather-resistant material;

(2) is at least 18 inches wide and 24 inches tall;

(3) contains the international symbol for towing vehicles;

(4) contains a statement describing who may park in the parking facility and prohibiting all others;

(5) bears the words, as applicable:

(A) "Unauthorized Vehicles Will Be Towed or Booted at Owner's or Operator's Expense";

(B) "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense"; or

(C) "Unauthorized Vehicles Will Be Booted at Owner's or Operator's Expense";

(6) contains a statement of the days and hours of towing and booting enforcement; and

(7) contains a number, including the area code, of a telephone that is answered 24 hours a day to enable an owner or operator of a vehicle to locate a towed vehicle or to arrange for removal of a boot from a vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.031 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 13, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 12, eff. September 1, 2011.

Sec. 2308.302. COLOR, LAYOUT, AND LETTERING HEIGHT REQUIREMENTS. (a) Except as provided by Section 2308.305, each sign required by this chapter must comply with the color, layout, and lettering height requirements of this section.

(b) A bright red international towing symbol, which is a solid silhouette of a tow truck towing a vehicle on a generally rectangular white background, at least four inches in height, must be on the uppermost portion of a sign or on a separate sign placed immediately above the sign.

(c) The portion of the sign immediately below the international towing symbol must:

(1) in lettering at least two inches in height, contain the words, as applicable:

(A) "Towing and Booting Enforced";

(B) "Towing Enforced"; or

(C) "Booting Enforced"; and

(2) consist of white letters on a bright red background.

(d) Except as provided by Subsection (e), the next lower portion of the sign must contain the remaining information required by Section 2308.301(b) displayed in bright red letters at least one inch in height on a white background.

(e) The bottommost portion of the sign must contain the telephone numbers required by Section 2308.301(b), in lettering at least one inch in height and may, if the facility owner chooses or if an applicable municipal ordinance requires, include the name and address of the storage facility to which an unauthorized vehicle will be removed. The lettering on this portion of the sign must consist of white letters on a bright red background.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.032 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 13, eff. September 1, 2011.

Sec. 2308.303. TELEPHONE NUMBER FOR LOCATING TOWED VEHICLE REQUIRED. If a parking facility owner posts a sign described by Sections 2308.301 and 2308.302, the owner of a vehicle that is towed from the facility under this chapter must be able to locate the vehicle by calling the telephone number on the sign.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from Transportation Code, Section 684.033 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Sec. 2308.304. DESIGNATION OF RESTRICTED PARKING SPACES ON OTHERWISE UNRESTRICTED PARKING FACILITY. A parking facility owner may designate one or more spaces as restricted parking spaces on a portion of an otherwise unrestricted parking facility. Instead of installing a sign at each entrance to the parking facility as provided by Section 2308.301(a)(2), an owner may place a sign that prohibits unauthorized vehicles from parking in designated spaces and that otherwise complies with Sections 2308.301 and 2308.302:

(1) at the right or left side of each entrance to a designated area or group of parking spaces located on the restricted portion of the parking facility; or

(2) at the end of a restricted parking space so that the sign, the top of which must not be higher than seven feet above the ground, is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from Transportation Code, Section 684.034 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

Sec. 2308.305. INDIVIDUAL PARKING RESTRICTIONS IN RESTRICTED

AREA. (a) A parking facility owner who complies with Sections 2308.301 and 2308.302 may impose further specific parking restrictions in an area to which the signs apply for individual spaces by installing or painting a weather-resistant sign or notice on a curb, pole, post, permanent wall, or permanent barrier so that the sign is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

(b) The top of the sign or notice may not be higher than seven feet above the ground.

(c) The sign or notice must include an indication that the space is reserved for a particular unit number, person, or type of person.

(d) The letters on the sign or notice must be at least two inches in height and must contrast to the color of the curb, wall, or barrier so they can be read during the day and at night. The letters are not required to be illuminated or made of reflective material.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from Transportation Code, Section 684.035 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.04, eff. September 1, 2007.

SUBCHAPTER H. REGULATION OF PARKING ON CERTAIN PUBLIC ROADWAY AREAS

Sec. 2308.351. REMOVAL OF UNAUTHORIZED VEHICLE FROM LEASED RIGHT-OF-WAY. Unless prohibited by the lease, a parking facility owner or towing company may remove an unauthorized vehicle parked in a leased area described by Section 2308.002(7)(B)(i) if the owner or towing company gives notice under Section 2308.252(a)(1), (2), or (3) and otherwise complies with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Renumbered from Transportation Code, Section 684.051 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.352. REMOVAL OF UNAUTHORIZED VEHICLE FROM AREA BETWEEN PARKING FACILITY AND PUBLIC ROADWAY. Unless prohibited by a municipal ordinance, a parking facility owner or towing company may remove an unauthorized vehicle any part of which is in an area

described by Section 2308.002(7)(B)(ii) if notice provided by Section 2308.252(a)(2) or (3) is given and the owner or towing company has otherwise complied with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.052 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Sec. 2308.353. REMOVAL UNDER GOVERNMENTAL ENTITY'S AUTHORITY OF UNAUTHORIZED VEHICLE PARKED IN RIGHT-OF-WAY. (a) A governmental entity that has jurisdiction over a public roadway and that has posted one or more signs in the right-of-way stating that parking is prohibited in the right-of-way may:

(1) remove or contract with a towing company to remove an unauthorized vehicle parked in the right-of-way of the public roadway; or

(2) grant written permission to an abutting parking facility owner to:

(A) post one or more "No parking in R.O.W." signs along a common property line of the facility and the roadway; and

(B) remove vehicles from the right-of-way of the public roadway under this chapter.

(b) A sign under Subsection (a)(2) must:

(1) state that a vehicle parked in the right-of-way may be towed at the expense of the owner or operator of the vehicle;

(2) be placed facing the public roadway:

(A) on the parking facility owner's property not more than two feet from the common boundary line; and

(B) at intervals so that no point in the boundary line is less than 25 feet from a sign posted under this subsection; and

(3) in all other respects comply with Subchapter G.

(c) After signs have been posted under Subsection (b), the parking facility owner or a towing company may remove an unauthorized vehicle from the right-of-way subject to the governmental entity's written permission given under Subsection (a)(2).

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.053 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff.

September 1, 2007.

Sec. 2308.354. AUTHORITY FOR REMOVAL OF VEHICLE FROM PUBLIC ROADWAY. (a) Under an ordinance of a municipality regulating the parking of vehicles in the municipality, to aid in the enforcement of the ordinance, an employee designated by the municipality may be authorized to:

(1) immobilize a vehicle parked in the municipality;

(2) remove an immobilized vehicle from a public roadway in the municipality; and

(3) request the removal and storage of a vehicle that is located in an area where on-street parking is regulated by the ordinance and that:

(A) is parked illegally; or

(B) is parked legally and:

(i) has been unattended for more than 48 hours; and

(ii) the employee has reasonable grounds to believe is abandoned.

(b) A parking facility owner or towing company may not remove a vehicle from a public roadway except under:

(1) this chapter or a municipal ordinance that complies with Section 2308.208; or

(2) the direction of a peace officer, a municipal employee under Subsection (a)(3), or the owner or operator of the vehicle.

(c) Subsection (a) does not apply to a vehicle owned by an electric, gas, water, or telecommunications utility while the vehicle is parked for the purpose of conducting work on a facility of the utility that is located below, above, or adjacent to the street.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 301, Sec. 1, eff. Sept. 1, 2001. Renumbered from Transportation Code, Section 684.054 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.05, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1298 (H.B. 2346), Sec. 1, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 231 (H.B. 914), Sec. 1, eff. September 1, 2021.

SUBCHAPTER I. REGULATION OF TOWING COMPANIES AND PARKING FACILITY OWNERS

Sec. 2308.401. PARKING FACILITY OWNER PROHIBITED FROM RECEIVING FINANCIAL GAIN FROM TOWING COMPANY OR BOOTING COMPANY. (a) A parking facility owner may not directly or indirectly accept anything of value from:

(1) a towing company in connection with the removal of a vehicle from a parking facility; or

(2) a booting company in connection with booting a vehicle in a parking facility.

(b) A parking facility owner may not have a direct or indirect monetary interest in:

(1) a towing company that for compensation removes unauthorized vehicles from a parking facility in which the parking facility owner has an interest; or

(2) a booting company that for compensation boots vehicles in a parking facility in which the parking facility owner has an interest.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.081 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 16, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 14, eff. September 1, 2011.

Sec. 2308.402. TOWING COMPANY AND BOOTING COMPANY PROHIBITED FROM FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER. (a) A towing company or booting company may not directly or indirectly give anything of value to a parking facility owner in connection with:

(1) the removal of a vehicle from a parking facility; or

(2) the booting of a vehicle in a parking facility.

(b) A towing company or booting company may not have a direct or indirect monetary interest in a parking facility:

(1) from which the towing company for compensation removes unauthorized vehicles; or

(2) in which the booting company for compensation installs boots on unauthorized vehicles.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.082 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 17, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 15, eff. September 1, 2011.

Sec. 2308.403. LIMITATION ON LIABILITY OF PARKING FACILITY OWNER FOR REMOVAL OR STORAGE OF UNAUTHORIZED VEHICLE. A parking facility owner who causes the removal of an unauthorized vehicle is not liable for damages arising from the removal or storage of the vehicle if the vehicle:

(1) was removed in compliance with this chapter; and

(2) is:

(A) removed by a towing company insured against liability for property damage incurred in towing a vehicle; and

(B) stored by a vehicle storage facility insured against liability for property damage incurred in storing a vehicle.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.083 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Sec. 2308.404. CIVIL LIABILITY OF TOWING COMPANY, BOOTING

COMPANY, OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER. (a) A towing company, booting company, or parking facility owner who violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for:

(1) damages arising from the removal, storage, or booting of the vehicle; and

(2) towing, storage, or booting fees assessed in connection with the vehicle's removal, storage, or booting.

(b) A vehicle's owner or operator is not required to prove negligence of a parking facility owner, towing company, or booting company to recover under Subsection (a).

(c) A towing company, booting company, or parking facility owner who intentionally, knowingly, or recklessly violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for $1,000 plus three times the amount of fees assessed in the vehicle's removal, towing, storage, or booting.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 353, Sec. 19(a)(3), eff. September 1, 2011.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.084 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 18, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 19, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 12, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 19(a)(3), eff. September 1, 2011.

Sec. 2308.405. CRIMINAL PENALTY. A person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than $500 or more than $1,500 unless it is shown on trial of the offense that the person knowingly or intentionally violated this chapter, in which event the offense is a Class B misdemeanor.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 1197 (H.B. 480), Sec. 8, eff. September 1, 2005.
Renumbered from Transportation Code, Section 684.085 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 13, eff. September 1, 2009.

Sec. 2308.406. VIOLATION OF CHAPTER; INJUNCTION. A violation of this chapter may be enjoined under Subchapter E, Chapter 17, Business & Commerce Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.086 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

Sec. 2308.407. MINOR SIGN OR LETTERING HEIGHT VARIATIONS. A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code, Section 684.087 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.06, eff. September 1, 2007.

SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED OR BOOTED VEHICLES

Sec. 2308.451. PAYMENT OF COST OF REMOVAL, STORAGE, AND BOOTING OF VEHICLE. (a) If in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person who requested the hearing shall pay the costs of the removal and storage.

(b) If in a hearing held under this chapter the court does not

find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the towing company, vehicle storage facility, or parking facility owner or law enforcement agency that authorized the removal shall:

(1) pay the costs of the removal and storage; or

(2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

(c) If in a hearing held under this chapter the court finds that a person authorized, with probable cause, the booting of a vehicle in a parking facility, the person who requested the hearing shall pay the costs of the booting.

(c-1) If, in a hearing held under this chapter, regardless of whether the court finds that there was probable cause for the removal and storage of a vehicle, the court finds that the towing charge collected exceeded fees regulated by a political subdivision or authorized by this chapter or Chapter 2303, the towing company shall reimburse the owner or operator of the vehicle an amount equal to the overcharge.

(d) If in a hearing held under this chapter the court does not find that a person authorized, with probable cause, the booting of a vehicle, the person that authorized the booting shall:

(1) pay the costs of the booting and any related parking fees; or

(2) reimburse the owner or operator for the cost of the booting and any related parking fees paid by the owner or operator.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997. Renumbered from Transportation Code, Section 685.002 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 21, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 22, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(50),

eff. September 1, 2011.

Sec. 2308.452. RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING. The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility or booted without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement or booting.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff.Sept. 1, 1997.
Renumbered from Transportation Code, Section 685.003 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 23, eff. September 1, 2009.

Sec. 2308.453. JURISDICTION. A hearing under this chapter shall be in any justice court in:
(1) the county from which the motor vehicle was towed; or
(2) for booted vehicles, the county in which the parking facility is located.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 669, Sec. 144, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 4, eff. September 1, 2005.
Renumbered from Transportation Code, Section 685.004 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 24, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 15, eff. September 1, 2009.
Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec.

18.006, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 238 (H.B. 338), Sec. 1, eff. June 14, 2013.

Sec. 2308.454. NOTICE TO VEHICLE OWNER OR OPERATOR. (a) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs of the vehicle's removal or storage, the towing company or vehicle storage facility that received the payment shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, shall include with that notice a notice of the person's rights under this chapter.

(c) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs for removal of a boot, the booting company shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(d) The booting operator that places a notice on a booted vehicle under Section 2308.257 shall include with that notice a notice of the person's rights under this chapter.

(e) If the towing company or vehicle storage facility that received the payment fails to furnish to the owner or operator of the vehicle the name, address, and telephone number of the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company or vehicle storage facility that received the payment is liable if the court, after a hearing, does not find probable cause for the removal and storage of the vehicle.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.841, eff. Sept. 1, 2003.
Renumbered from Transportation Code, Section 685.005 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 25, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 16, eff.

September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(51), eff. September 1, 2011.

Sec. 2308.455. CONTENTS OF NOTICE. The notice under Section 2308.454 must include:

(1) a statement of:

(A) the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove, or install a boot on, the vehicle;

(B) the information that a request for a hearing must contain;

(C) any filing fee for the hearing; and

(D) the person's right to request a hearing in any justice court in:

(i) the county from which the vehicle was towed; or

(ii) for booted vehicles, the county in which the parking facility is located;

(2) the name, address, and telephone number of the towing company that removed the vehicle or the booting company that booted the vehicle;

(3) the name, address, telephone number, and county of the vehicle storage facility in which the vehicle was placed;

(4) the name, street address including city, state, and zip code, and telephone number of the person, parking facility owner, or law enforcement agency that authorized the removal of the vehicle; and

(5) the name, address, and telephone number of each justice court in the county from which the vehicle was towed or, for booted vehicles, the county in which the parking facility is located, or the address of an Internet website maintained by the Office of Court Administration of the Texas Judicial System that contains the name, address, and telephone number of each justice court in that county.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 5, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.006 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 26, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 17, eff. September 1, 2009.
Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.007, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 238 (H.B. 338), Sec. 2, eff. June 14, 2013.

Sec. 2308.456. REQUEST FOR HEARING. (a) Except as provided by Subsections (c) and (c-1), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility or booted, excluding Saturdays, Sundays, and legal holidays.

(b) A request for a hearing must contain:

(1) the name, address, and telephone number of the owner or operator of the vehicle;

(2) the location from which the vehicle was removed or in which the vehicle was booted;

(3) the date when the vehicle was removed or booted;

(4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting;

(5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(6) the name, address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle;

(7) a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and

(8) if the vehicle was removed from or booted in a parking facility:

(A) one or more photographs that show the location and

text of any sign posted at the facility restricting parking of vehicles; or

(B) a statement that no sign restricting parking was posted at the parking facility.

(c) If notice was not given under Section 2308.454, the 14-day deadline for requesting a hearing under Subsection (a) does not apply, and the owner or operator of the vehicle may deliver a written request for a hearing at any time.

(c-1) The 14-day period for requesting a hearing under Subsection (a) does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete the material for the request for hearing required under Subsections (b)(2) through (6).

(d) A person who fails to deliver a request in accordance with Subsection (a) waives the right to a hearing.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code Sec. 685.005 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997.
Renumbered from Transportation Code, Section 685.007 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 27, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 18, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 18.008, eff. September 1, 2011.

Sec. 2308.458. HEARING. (a) A hearing under this chapter shall be held before the 21st calendar day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing for a towed vehicle, the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner

provided by Rule 21a, Texas Rules of Civil Procedure. The notice of the hearing to the towing company and the parking facility owner or law enforcement agency that authorized the removal of the vehicle must include a copy of the request for hearing. Notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located.

(b-1) At a hearing under this section:

(1) the burden of proof is on the person who requested the hearing; and

(2) hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

(b-2) The court shall notify the person who requested the hearing for a booted vehicle, the parking facility in which the vehicle was booted, and the booting company of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of hearing to the person that authorized the booting of the vehicle must include a copy of the request for hearing.

(c) The issues in a hearing regarding a towed vehicle under this chapter are:

(1) whether probable cause existed for the removal and placement of the vehicle;

(2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized by the political subdivision under Section 2308.201 or 2308.202;

(3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.203; or

(4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.0575.

(c-1) The issues in a hearing regarding a booted vehicle under this chapter are:

(1) whether probable cause existed for the booting of the vehicle; and

(2) whether a boot removal charge imposed or collected in connection with the removal of the boot from the vehicle was greater than the amount authorized by the political subdivision under Section

2308.2085.

(d) The court shall make written findings of fact and a conclusion of law.

(e) The court may award:

(1) court costs and attorney's fees to the prevailing party;

(2) the reasonable cost of photographs submitted under Section 2308.456(b)(8) to a vehicle owner or operator who is the prevailing party;

(3) an amount equal to the amount that the towing charge or booting removal charge and associated parking fees exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303; and

(4) reimbursement of fees paid for vehicle towing, storage, or removal of a boot.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.
Renumbered from Transportation Code Sec. 685.007 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.159(a), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1034, Sec. 17, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 7, eff. September 1, 2005.

Renumbered from Transportation Code, Section 685.009 and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 28, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 19, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 16, eff. September 1, 2011.

Sec. 2308.459. APPEAL. An appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.

Added by Acts 2005, 79th Leg., Ch. 737 (H.B. 2630), Sec. 8, eff.

September 1, 2005.
Renumbered from Transportation Code, Section 685.010 by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.07, eff. September 1, 2007.

Sec. 2308.460. ENFORCEMENT OF AWARD. (a) An award under this chapter may be enforced by any means available for the enforcement of a judgment for a debt.

(b) The department shall suspend a license holder's license on the license holder's failure to pay a final judgment awarded to an owner or operator of a vehicle before the 60th day after the date of the final judgment. The department must provide notice of the suspension to the license holder at least 30 days before the date the license is to be suspended.

(c) The owner or operator of the vehicle shall submit a certified copy of the final judgment to the department.

(d) On receipt of the certified copy of the unpaid final judgment, the department shall disqualify a person from renewing a license or permit or deny the person the opportunity of taking a licensing examination on the grounds that the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle.

(e) The department shall reinstate the license on submission of evidence satisfactory to the department of payment of the final judgment by the person, towing company, or vehicle storage facility.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.08, eff. September 1, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1310 (H.B. 2571), Sec. 20, eff. September 1, 2009.

SUBCHAPTER K. ENFORCEMENT

Sec. 2308.501. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.503. SANCTIONS. The department may impose sanctions as provided by Section 51.353.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.

Sec. 2308.504. CRIMINAL PENALTY; LICENSING. (a) A person commits an offense if the person:

(1) violates the permitting or licensing requirements of this chapter;

(2) performs towing without a license to perform towing in this state;

(3) employs an individual who does not hold the appropriate license required by this chapter; or

(4) falsifies a certification or training.

(b) An offense under this section is a Class C misdemeanor. An offense under this section is enforceable by law enforcement.

Added by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.09, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 17, eff. September 1, 2011.

Sec. 2308.505. CRIMINAL PENALTY; TOWING. (a) A person commits an offense if the person:

(1) violates an ordinance, resolution, order, rule, or regulation of a political subdivision adopted under Section 2308.201, 2308.202, or 2308.2085 for which the political subdivision does not prescribe the penalty;

(2) charges or collects a fee in a political subdivision that regulates the operation of tow trucks under Section 2308.201 or 2308.202 or booting under Section 2308.2085 that is not authorized or is greater than the authorized amount of the fee;

(3) charges or collects a fee greater than the amount authorized under Section 2308.204;

(4) charges or collects a fee in excess of the amount filed with the department under Section 2308.206;

(5) violates Section 2308.205; or

(6) violates a rule of the department applicable to a tow truck, towing company, or booting company.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $200 or more than $1,000 per violation. An offense under this section is enforceable by law enforcement.

Renumbered from Transportation Code, Section 643.253(d) and amended by Acts 2007, 80th Leg., R.S., Ch. 1046 (H.B. 2094), Sec. 2.10, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 845 (S.B. 2153), Sec. 29, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 353 (H.B. 3510), Sec. 18, eff. September 1, 2011.

CHAPTER 2309. USED AUTOMOTIVE PARTS RECYCLERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2309.001. SHORT TITLE. This chapter may be cited as the Texas Used Automotive Parts Recycling Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.002. DEFINITIONS. In this chapter:

(1) "Insurance company," "metal recycler," "motor vehicle," "nonrepairable motor vehicle," "nonrepairable vehicle title," "salvage motor vehicle," "salvage vehicle title," and "salvage vehicle dealer" have the meanings assigned by Section 501.091, Transportation Code.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Used automotive part" has the meaning assigned to "used part" by Section 501.091, Transportation Code.

(6) "Used automotive parts recycler" means a person licensed under this chapter to operate a used automotive parts recycling business.

(7) "Used automotive parts recycling" means the dismantling and reuse or resale of used automotive parts and the safe disposal of salvage motor vehicles or nonrepairable motor vehicles, including the resale of those vehicles.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.003. APPLICABILITY OF CHAPTER TO METAL RECYCLERS. (a) Except as provided by Subsection (b), this chapter does not apply to a transaction to which a metal recycler is a party.

(b) This chapter applies to a transaction in which a motor

vehicle:

(1) is sold, transferred, released, or delivered to a metal recycler as a source of used automotive parts; and

(2) is used as a source of used automotive parts.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.004. APPLICABILITY OF CHAPTER TO SALVAGE VEHICLE DEALERS. (a) Except as provided by Subsection (b), this chapter does not apply to a transaction in which a salvage vehicle dealer is a party.

(b) This chapter applies to a salvage vehicle dealer who deals in used automotive parts as more than an incidental part of the salvage vehicle dealer's primary business.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.005. APPLICABILITY OF CHAPTER TO INSURANCE COMPANIES. This chapter does not apply to an insurance company.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

SUBCHAPTER B. ADVISORY BOARD

Sec. 2309.051. USED AUTOMOTIVE PARTS RECYCLING ADVISORY BOARD. (a) The advisory board consists of five members representing the used automotive parts industry in this state appointed by the presiding officer of the commission with the approval of the commission.

(b) The advisory board shall include members who represent used

automotive parts businesses owned by domestic entities, as defined by Section 1.002, Business Organizations Code.

(c) The advisory board shall include one member who represents a used automotive parts business owned by a foreign entity, as defined by Section 1.002, Business Organizations Code.

(d) The advisory board may not include more than one member from any one used automotive parts business entity.

(e) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of one or two members expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.054. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including licensing standards.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.055. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION AND DEPARTMENT

Sec. 2309.101. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.102. RULES. (a) The commission shall adopt rules for licensing used automotive parts recyclers.

(b) The commission by rule shall adopt standards of conduct for

license holders under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 15.001, eff. September 1, 2019.

Sec. 2309.103. RULES REGARDING LICENSING AND STANDARDS OF CONDUCT. (a) The commission shall adopt rules for licensing applicants, including rules for denial of an application if the applicant, a partner, principal, officer, or general manager of the applicant, or another license or permit holder with a connection to the applicant, has:

(1) before the application date, been convicted of, pleaded guilty or nolo contendere to, or been placed on deferred adjudication for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding $500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties; or

(3) knowingly submitted false information on the application.

(b) The commission by rule shall adopt standards of conduct for license holders under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.104. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.105. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commission may not adopt a rule restricting advertising or competitive bidding by a person who holds a license issued under this chapter except to prohibit false, misleading, or deceptive practices by the person.

(b) The commission may not include in its rules to prohibit false, misleading, or deceptive practices a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement by the person; or

(4) restricts the use of a trade name in advertising by the person.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.106. PERIODIC INSPECTIONS. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(30), eff. September 1, 2021.

(b) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 15.004(1), eff. September 1, 2019.

(d) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 15.004(1), eff. September 1, 2019.

(e) In conducting an inspection under this section, the department may inspect a facility, a used automotive part, a business record, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 15.002, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 15.003, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1144 (H.B. 2847), Sec. 15.004(1), eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 663 (H.B. 1560), Sec. 1.25(30), eff. September 1, 2021.

Sec. 2309.107. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2309.151. USED AUTOMOTIVE PARTS RECYCLER LICENSE REQUIRED. (a) Unless the person holds a used automotive parts recycler license issued under this chapter, a person may not own or operate a used automotive parts recycling business or sell used automotive parts.

(b) A used automotive parts recycler license:

(1) is valid only with respect to the person who applied for the license; and

(2) authorizes the license holder to operate a used automotive parts recycling business only at the one facility listed

on the license.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.152. GENERAL LICENSE APPLICATION REQUIREMENTS. An applicant for a used automotive parts recycler license under this chapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) the required fees; and

(3) any other information required by commission rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.153. LICENSE REQUIREMENTS. An applicant for a used automotive parts recycler license under this chapter must provide in a manner prescribed by the executive director:

(1) a federal tax identification number;

(2) proof of general liability insurance in an amount not less than $250,000; and

(3) proof of a storm water permit if the applicant is required by the Texas Commission on Environmental Quality to obtain a permit.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.155. NONTRANSFERABILITY OF LICENSE. A license issued by the executive director is valid throughout this state and is not transferable.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.156. LICENSE RENEWAL. (a) A license issued under this chapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) The commission by rule shall adopt requirements to renew a license issued under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

SUBCHAPTER E. LOCAL REGULATION

Sec. 2309.201. APPLICABILITY OF CERTAIN MUNICIPAL ORDINANCES, LICENSES, AND PERMITS. (a) The requirements of this chapter apply in addition to the requirements of any applicable municipal ordinance relating to the regulation of a person who deals in used automotive parts.

(b) This chapter does not prohibit the enforcement of an applicable municipal license or permit requirement that is related to an activity regulated under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

SUBCHAPTER F. ENFORCEMENT

Sec. 2309.251. ADMINISTRATIVE PENALTY. (a) The commission may

impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a license under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.252. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.253. SANCTIONS. The department may impose sanctions as provided by Section 51.353.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

Sec. 2309.254. CRIMINAL PENALTY; LICENSING. (a) A person

commits an offense if the person:

(1) violates the licensing requirements of this chapter;

(2) deals in used parts without a license required by this chapter; or

(3) employs an individual who does not hold the appropriate license required by this chapter.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2010.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2010.

SUBCHAPTER G. CONDUCTING BUSINESS

Sec. 2309.301. DUTIES ON ACQUISITION OF SALVAGE MOTOR VEHICLE. (a) A used automotive parts recycler who acquires ownership of a salvage motor vehicle shall obtain a properly assigned title from the previous owner of the vehicle.

(b) A used automotive parts recycler who acquires ownership of a motor vehicle, nonrepairable motor vehicle, or salvage motor vehicle for the purpose of dismantling, scrapping, or destroying the motor vehicle, shall, before the 31st day after the date of acquiring the motor vehicle, submit to the Texas Department of Transportation a properly assigned manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document for the motor vehicle.

(c) After receiving the title or document, the Texas Department of Transportation shall issue the used automotive parts recycler a receipt for the manufacturer's certificate of origin, regular certificate of title, nonrepairable vehicle title, salvage vehicle title, other ownership document, or comparable out-of-state ownership document.

(d) The recycler shall comply with Subchapter E, Chapter 501, Transportation Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.302. RECORDS OF PURCHASES. A used automotive parts recycler shall maintain a record of or sales receipt for each motor vehicle, salvage motor vehicle, nonrepairable motor vehicle, and used automotive part purchased.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.303. REGISTRATION OF NEW BUSINESS LOCATION. Before moving a place of business, a used automotive parts recycler must notify the department of the new location. The used automotive parts recycler shall provide a storm water permit for the location if a permit is required by the Texas Commission on Environmental Quality.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

SUBCHAPTER H. ADDITIONAL DUTIES OF USED AUTOMOTIVE PARTS RECYCLER IN CONNECTION WITH MOTOR VEHICLE COMPONENT PARTS

Sec. 2309.351. DEFINITIONS. In this subchapter:

(1) "Component part" means a major component part as defined by Section 501.091, Transportation Code, or a minor component part.

(2) "Interior component part" means a motor vehicle's seat or radio.

(3) "Minor component part" means an interior component part, a special accessory part, or a motor vehicle part that displays or should display at least one of the following:

(A) a federal safety certificate;

(B) a motor number;

(C) a serial number or a derivative; or

(D) a manufacturer's permanent vehicle identification number or a derivative.

(4) "Special accessory part" means a motor vehicle's tire, wheel, tailgate, or removable glass top.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.352. REMOVAL OF LICENSE PLATES. Immediately on receipt of a motor vehicle, a used automotive parts recycler shall:

(1) remove any unexpired license plates from the vehicle; and

(2) place the license plates in a secure place until destroyed by the used automotive parts recycler.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.353. DISMANTLEMENT OR DISPOSITION OF MOTOR VEHICLE. A used automotive parts recycler may not dismantle or dispose of a motor vehicle unless the recycler first obtains:

(1) a certificate of authority to dispose of the vehicle, a sales receipt, or a transfer document for the vehicle issued under Chapter 683, Transportation Code; or

(2) a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.354. RECORD OF PURCHASE; INVENTORY OF PARTS. (a) A used automotive parts recycler shall keep an accurate and legible record of each used component part purchased by or delivered to the recycler. The record must include:

(1) the date of purchase or delivery;

(2) the driver's license number of the seller and a legible photocopy of the seller's driver's license; and

(3) a description of the part and, if applicable, the make and model of the part.

(b) As an alternative to the information required by Subsection (a), a used automotive parts recycler may record:

(1) the name of the person who sold the part or the motor vehicle from which the part was obtained; and

(2) the Texas certificate of inventory number or the federal taxpayer identification number of the person.

(c) The department shall prescribe the form of the record required by Subsection (a) and shall make the form available to used automotive parts recyclers.

(d) This section does not apply to:

(1) an interior component part or special accessory part from a motor vehicle more than 10 years old; or

(2) a part delivered to a used automotive parts recycler by a commercial freight line, commercial carrier, or licensed used automotive parts recycler.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.355. RETENTION OF COMPONENT PARTS. (a) A used automotive parts recycler shall retain each component part in its original condition on the business premises of the recycler for at least three calendar days, excluding Sundays, after the date the recycler obtains the part.

(b) This section does not apply to the purchase by a used automotive parts recycler of a nonoperational engine, transmission, or rear axle assembly from another used automotive parts recycler or an automotive-related business.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.356. MAINTENANCE OF RECORDS. A used automotive parts recycler shall maintain copies of each record required under this subchapter until the first anniversary of the purchase date of the item for which the record is maintained.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.357. SURRENDER OF CERTAIN DOCUMENTS OR LICENSE PLATES. (a) A used automotive parts recycler shall surrender to the Texas Department of Transportation for cancellation a certificate of title or authority, sales receipt, or transfer document, as required by the department.

(b) The Texas Department of Transportation shall provide a signed receipt for a surrendered certificate of title.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.358. INSPECTION OF RECORDS. (a) A peace officer at any reasonable time may inspect a record required to be maintained under this subchapter, including an inventory record.

(b) On demand by a peace officer, a used automotive parts recycler shall provide to the officer a copy of a record required to be maintained under this subchapter.

(c) A peace officer may inspect the inventory on the premises of a used automotive parts recycler at any reasonable time to verify, check, or audit the records required to be maintained under this subchapter.

(d) A used automotive parts recycler or an employee of the recycler shall allow and may not interfere with a peace officer's inspection of the recycler's inventory, premises, or required inventory records.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

SUBCHAPTER I. MOTOR VEHICLE SALVAGE YARDS IN CERTAIN COUNTIES

Sec. 2309.401. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a used automotive parts facility located in a county with a population of 2.8 million or more.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

Sec. 2309.402. LIMITS ON OPERATION OF HEAVY MACHINERY. (a) A used automotive parts recycler may not operate heavy machinery in a used automotive parts recycling facility between the hours of 7 p.m. of one day and 7 a.m. of the following day.

(b) This section does not apply to conduct necessary to a sale or purchase by the recycler.

Added by Acts 2009, 81st Leg., R.S., Ch. 783 (S.B. 1095), Sec. 7, eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 4.07, eff. September 1, 2009.

CHAPTER 2310. MOTOR FUEL METERING AND QUALITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2310.001. DEFINITIONS. (a) In this chapter:

(1) "Automotive fuel rating" has the meaning assigned by 15 U.S.C. Section 2821.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Dealer" means a person who is the operator of a retail motor fuel facility.

(4) "Department" means the Texas Department of Licensing and Regulation.

(4-a) "Distributor" means a person who makes retail or wholesale sales of motor fuel.

(5) "Executive director" means the executive director of the department.

(5-a) "Measuring device" means a mechanical or electronic device used to:

(A) dispense or deliver a motor fuel by volume, flow rate, or other measure; or

(B) compute the charge for a service related to motor fuel.

(6) "Motor fuel" has the meaning assigned by Section 162.001, Tax Code.

(7) "Motor fuel metering device" means a measuring device used for commercial motor fuel sales.

(8) "Operator" or "user" means a person in possession or control of a measuring device, including an owner, custodian, or seller.

(9) "Sell" includes barter or exchange.

(9-a) "Supplier" has the meaning assigned by Section 162.001, Tax Code.

(9-b) "Wholesaler" means a person who purchases tax-paid motor fuel for resale or distribution at wholesale.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 1, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 25(1), eff. September 1, 2023.

Sec. 2310.002. ENFORCEMENT OF CHAPTER. (a) Notwithstanding any other law, the department shall administer and enforce the provisions of this chapter and shall regulate all motor fuel metering devices sold or offered for sale in this state. The department may purchase apparatus as necessary for the administration of this chapter.

(b) To the extent this chapter conflicts with Chapter 13, Agriculture Code, with regard to motor fuel metering devices, this

chapter controls.

(c) The department may contract with one or more license holders under Subchapter D to perform the department's duties under this chapter related to motor fuel metering devices. A reference in this chapter to the commission or department in the context of a contracted service means the contractor.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 2, eff. September 1, 2023.

Sec. 2310.003. CIVIL PENALTY; INJUNCTION. (a) A person who violates Subchapter B or C or a rule adopted under Subchapter B or C is liable to the state for a civil penalty not to exceed $500 for each violation. Each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) On request of the executive director, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund. A civil penalty recovered in a suit first instituted by one or more local governments under this section shall be equally divided between this state and each local government that first instituted the suit, with 50 percent of the recovery deposited to the credit of the general revenue fund and the other 50 percent distributed equally to each local government.

(d) The executive director is entitled to appropriate injunctive relief to prevent or abate a violation of this chapter or a rule adopted under this chapter. On request of the executive director, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or is occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

(e) The department and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief and civil

penalties under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. The expenses recovered by the department may be appropriated only to the department for the administration and enforcement of this chapter. The expenses recovered by the attorney general may be appropriated only to the attorney general.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

SUBCHAPTER A-1. ADVISORY BOARD

Sec. 2310.031. DEFINITION. In this subchapter, "board" means the Motor Fuel Metering and Quality Advisory Board.

Added by Acts 2021, 87th Leg., R.S., Ch. 415 (S.B. 2062), Sec. 1, eff. June 7, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 3, eff. September 1, 2023.

Sec. 2310.032. BOARD MEMBERSHIP. (a) The board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission, as follows:

(1) four members who are dealers or representatives designated by the dealers, including:

(A) one dealer that has fewer than 501 motor fuel metering devices registered with the department;

(B) one dealer that has more than 1,000 but fewer than 5,000 motor fuel metering devices registered with the department;

(C) one dealer that has more than 5,000 motor fuel metering devices registered with the department; and

(D) one dealer without regard to the dealer's number of motor fuel metering devices registered with the department;

(2) two members who represent service companies, as defined by Section 2310.151;

(3) one member who represents a wholesaler or distributor;

(4) one member who represents a supplier; and

(5) one member of the public.

(b) The presiding officer of the commission, with the approval

of the commission, shall appoint two ex officio nonvoting members of the board. An ex officio member is not counted as a member for purposes of establishing a quorum. The ex officio members must include:

(1) one member who represents:

(A) a financial institution, as defined by Section 277.001, Finance Code; or

(B) a credit card issuer other than a financial institution; and

(2) one member who represents a law enforcement agency.

(c) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 2021, 87th Leg., R.S., Ch. 415 (S.B. 2062), Sec. 1, eff. June 7, 2021.

Sec. 2310.033. TERMS; VACANCY. (a) Members of the board serve staggered six-year terms, with the terms of three or four members expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement to fill the unexpired term.

Added by Acts 2021, 87th Leg., R.S., Ch. 415 (S.B. 2062), Sec. 1, eff. June 7, 2021.

Sec. 2310.034. PRESIDING OFFICER. The presiding officer of the commission, with the approval of the commission, shall appoint one of the board members to serve as presiding officer of the board for a term of one year.

Added by Acts 2021, 87th Leg., R.S., Ch. 415 (S.B. 2062), Sec. 1, eff. June 7, 2021.

Sec. 2310.035. DUTIES. The board may advise the commission and department on:

(1) the adoption of appropriate standards for the

installation, maintenance, calibration, alteration, operation, testing, or inspection, as applicable, of:

(A) motor fuel dispensing devices;

(B) motor fuel metering devices; and

(C) motor fuel;

(2) education and curricula for applicants for a license issued under this chapter and license holders;

(3) the content of examinations;

(4) proposed rules and standards on technical issues related to motor fuel metering and quality and payment card skimmers; and

(5) other issues affecting motor fuel metering and quality.

Added by Acts 2021, 87th Leg., R.S., Ch. 415 (S.B. 2062), Sec. 1, eff. June 7, 2021.

SUBCHAPTER B. STANDARD MEASURES FOR MOTOR FUEL

Sec. 2310.051. LEGAL STANDARDS. (a) The legal standard for the measure of a motor fuel in this state is the standard measure adopted and used by the government of the United States for that motor fuel. If the United States does not provide a standard measure for a motor fuel, the standard for the motor fuel is that established by this subchapter.

(b) The commission may adopt rules for the purpose of administering this subchapter and bringing about uniformity between the standards established under this subchapter and the standards established by federal law.

(c) Except as otherwise provided by an express contract, a contract for work or sales by measure of a motor fuel shall be construed in accordance with the standards of this subchapter.

(d) The standards of this subchapter shall be the guide for making any adjustment of measuring devices under the law of this state.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 5, eff. September 1, 2023.

Sec. 2310.052. STANDARD FOR LIQUID MOTOR FUEL. (a) This section does not apply to compressed natural gas or liquefied natural gas.

(b) The standard unit of measure of capacity for liquid motor fuels is the gallon.

(c) Except as provided by Subsections (d) and (e), all other measures of capacity for liquid motor fuels are derived from the gallon by continual division by two, making half gallons, quarts, pints, half pints, and gills.

(d) A mechanism or machine that is adapted to measure and deliver liquid motor fuels by volume and that indicates fractional parts of a gallon shall indicate the fractional parts either in terms of binary submultiple subdivisions or in terms of tenths of a gallon.

(e) For purposes of the retail sale of motor fuel only, the liquid gallon contains 231 cubic inches without adjustment based on the temperature of the liquid.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.053. EXEMPTION OF CERTAIN MOTOR FUEL METERING DEVICES. (a) The commission by rule may exempt a motor fuel metering device from a requirement established by this chapter if the commission determines that imposing or enforcing the requirement:

(1) is not cost-effective for the department;

(2) is not feasible with current resources or standards; or

(3) will not substantially benefit or protect consumers.

(b) A motor fuel metering device is exempt from the requirements of this chapter if the motor fuel metering device is not used to:

(1) calculate the amount of motor fuel sold in a commercial transaction; or

(2) compute the charge for service.

(c) Notwithstanding Section 2310.002, this chapter does not apply to a weighing or measuring device, as defined by Section 13.001, Agriculture Code, that measures liquefied petroleum gas.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 6, eff. September 1, 2023.

Sec. 2310.054. SALE OF MOTOR FUEL BY PROPER MEASURE. (a) Except as otherwise provided by this section, motor fuel shall be sold by liquid measure.

(b) Compressed natural gas and liquefied natural gas shall be sold by gallon equivalent.

(c) A person violates this chapter if the person sells motor fuel in a manner other than the manner required by this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 7, eff. September 1, 2023.

Sec. 2310.055. PRICE ADVERTISEMENT; MISREPRESENTATION OF PRICE OR QUANTITY. (a) If a price sign, card, tag, poster, or other advertisement displaying the price of motor fuel includes a whole number and a fraction, the figures in the fraction shall be of proportionate size and legibility to those of the whole number.

(b) A person violates this chapter if the person:

(1) misrepresents the price of motor fuel sold or offered or exposed for sale; or

(2) represents the price or the quantity of motor fuel sold or offered or exposed for sale in a manner intended or tending to mislead or deceive an actual or prospective customer.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.056. FALSE REPRESENTATION OF MOTOR FUEL QUANTITY. A person violates this chapter if the person or the person's representative or agent sells or offers or exposes for sale a quantity of motor fuel that is less than the quantity the person represents.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 8, eff. September 1, 2023.

Sec. 2310.057. USE OF INCORRECT MOTOR FUEL METERING DEVICE. (a) A person commits an offense if the person or the person's representative or agent knowingly uses an incorrect measuring device in:

(1) buying or selling motor fuel;

(2) computing a charge for services rendered based on measure; or

(3) determining the measure of motor fuel, if a charge is made for the determination.

(b) For the purpose of this section, a measuring device is incorrect if it:

(1) does not conform as closely as practicable to the official standards;

(2) is not accurate;

(3) is of a construction that is not reasonably permanent in adjustment or does not correctly repeat its indications;

(4) facilitates the perpetration of fraud; or

(5) does not conform to the specifications and tolerances under Section 2310.107.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 9, eff. September 1, 2023.

Sec. 2310.058. SALE OF MOTOR FUEL IN VIOLATION OF SUBCHAPTER. A person violates this chapter if the person or the person's representative or agent sells or keeps, offers, or exposes for sale motor fuel in violation of this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.059. TESTING BY DEPARTMENT. (a) The department shall from time to time measure an amount of motor fuel that is kept or offered for sale, sold, or in the process of delivery, to determine:

(1) if the motor fuel is of the amount or quantity represented; or

(2) if the motor fuel is being offered for sale or sold in accordance with law.

(b) If the department finds that any lot of motor fuel contains less of the motor fuel than the amount represented, the department may seize the motor fuel as evidence.

(c) A person commits an offense if the person or the person's employee or agent refuses to exhibit motor fuel being sold or offered for sale at a given quantity, or ordinarily sold in that manner, to the department for testing and proving as to quantity.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 10, eff. September 1, 2023.

Sec. 2310.060. STOP-SALE ORDER; APPEAL. (a) If the department has reason to believe that motor fuel is being sold or kept, offered, or exposed for sale in violation of this chapter, including a rule adopted under this chapter, or that motor fuel is being sold or offered for sale by or through the use of a motor fuel metering device that is in violation of this chapter, including a rule adopted under this chapter, the department may issue an order to stop the sale of the motor fuel to the dealer or operator of the retail motor fuel facility selling the motor fuel or offering the motor fuel for sale. The dealer or operator receiving the order may not sell the motor fuel or offer the motor fuel for sale until:

(1) the department finds that the motor fuel or motor fuel metering device is in compliance with this chapter; or

(2) the dealer or operator prevails in an appeal of the department's order under Subsection (b).

(a-1) In implementing this section, the department or an authorized representative of the department shall:

(1) follow the procedures adopted by the department for collecting, sampling, and handling motor fuel;

(2) obtain the approval of the executive director or the executive director's designee before taking any action under this section; and

(3) place a tag or other notice on each motor fuel dispensing device subject to an order issued by the department under this section.

(a-2) For purposes of this section, a person is an authorized representative of the department if the person:

(1) holds a license under Subchapter D; and

(2) is acting on behalf of the department under this section.

(b) A dealer or operator prohibited from selling motor fuel by an order of the department issued under this section is entitled to appeal the order to the State Office of Administrative Hearings.

(b-1) If a dealer or operator appeals an order issued by the department under this section, the executive director shall set the time and place for a hearing conducted by the State Office of Administrative Hearings to affirm, modify, or set aside the order not later than the 10th day after the date the department receives notice of the appeal. The order shall be affirmed to the extent that reasonable cause existed to issue the order. A proceeding under this subsection is a contested case under Chapter 2001, Government Code.

(b-2) The commission shall adopt rules necessary to implement this section.

(c) This section does not limit the right of the department to proceed as authorized by other sections of this code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 11, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 12, eff. September 1, 2023.

Sec. 2310.061. PENALTIES; DEFENSE. (a) An offense under Section 2310.057 or 2310.059 is a Class C misdemeanor.

(b) It is a defense to prosecution or to the imposition of a civil or administrative penalty for a violation of Section 2310.057 or 2310.059 that a discrepancy between the actual volume at the time of sale to a consumer or a discrepancy between the fill of a container and the capacity of the container is due to unavoidable leakage, shrinkage, evaporation, waste, or causes beyond the control of the seller acting in good faith.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 13, eff. September 1, 2023.

SUBCHAPTER C. INSPECTION AND REGISTRATION OF MOTOR FUEL METERING DEVICES

Sec. 2310.101. AUTHORITY TO INSPECT. (a) If the department has reason to believe that a motor fuel metering device is being used for a commercial transaction and the device is not registered with the department or is being used to facilitate the perpetration of fraud, the department may inspect the device and the records that relate to use of the device to determine whether the device is in compliance with this chapter.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 25(3), eff. September 1, 2023.

(c) Regardless of whether the department has received a report of a suspected skimmer under Section 607.053 or 607.054, Business & Commerce Code, the department may inspect each motor fuel metering device located at a dealer's retail outlet if the department has reason to believe that a skimmer is installed on or in a motor fuel unattended payment terminal or motor fuel metering device at the retail outlet. In this subsection, "motor fuel unattended payment terminal" and "skimmer" have the meanings assigned by Section 607.001, Business & Commerce Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 10, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 14, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 25(3), eff. September 1, 2023.

Sec. 2310.102. INSPECTION OF MOTOR FUEL METERING DEVICES. (a) Unless a motor fuel metering device is exempt from the application of this section by commission rule, a motor fuel metering device shall be inspected, tested, and calibrated for correctness by a license holder under Subchapter D of this chapter or Subchapter I, Chapter 13, Agriculture Code, at least once every two years if the device is:

(1) kept for sale, sold, or used by a proprietor, agent, lessee, or employee in proving the measure of motor fuel; or

(2) purchased, offered, or submitted by a proprietor, agent, lessee, or employee for sale, hire, or award.

(b) Inspection, testing, and calibration under this section must be performed by a license holder under Subchapter D of this chapter or Subchapter I, Chapter 13, Agriculture Code, under contract with the operator or user of the motor fuel metering device.

Added by Acts 2017, 85th Leg., R.S., Ch. 841 (H.B. 2174), Sec. 5, eff. September 1, 2017.
Transferred, redesignated and amended from Agriculture Code, Section 13.1015 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 2, eff. September 1, 2020.

Sec. 2310.103. REQUIRED REGISTRATION OF MOTOR FUEL METERING DEVICES. (a) Unless a motor fuel metering device is exempt from the application of this section by commission rule, a person who owns or operates a motor fuel metering device shall register the device with the department before using the device for a commercial transaction.

(b) An application for a device registration must:

(1) be submitted to the department on a form prescribed by the department;

(2) be accompanied by any other document or form required by the department;

(3) include any fees required under Section 2310.108; and

(4) include documentation of compliance with Section 2310.102.

(c) A registration under this section is valid for one or two years as established by commission rule. The registration must be renewed at or before the end of each registration period and the application for renewal must include documentation of compliance with Section 2310.102.

(d) If a person fails to register or renew a registration as required by this section, the department may not issue a certificate to operate the motor fuel metering device. The department shall issue the certificate when the operator submits to the department the items required by Subsection (b).

(e) The department may assess a late fee if the registration of one or more devices located on a premises is renewed after the end of the registration period because of a registration error, including one or more devices not properly registered, failure to register the correct type of device, or failure to timely register a previously registered device. The amount of the late fee may not exceed $50 per device, with a maximum penalty amount of $500 per year for the premises.

Added by Acts 2017, 85th Leg., R.S., Ch. 841 (H.B. 2174), Sec. 5, eff. September 1, 2017.
Transferred, redesignated and amended from Agriculture Code, Section 13.1016 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 2, eff. September 1, 2020.

Sec. 2310.104. COMPLAINTS REGARDING MOTOR FUEL METERING DEVICES. In accordance with Chapter 51, the executive director shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department shall provide to the person filing the complaint and to each person who is a subject of the complaint information about the department's policies and procedures relating to complaint investigation and resolution.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.105. REPAIR OR DESTRUCTION OF INCORRECT MOTOR FUEL METERING DEVICES. (a) If, in the judgment of the department, a motor fuel metering device found to be incorrect is not capable of being repaired, the department may condemn, seize, and destroy the device.

(b) If, in the judgment of the department, an incorrect motor fuel metering device is capable of being repaired, the department shall place on the device a tag or other mark with the words "Out of Order." The owner or user of the motor fuel metering device may not use it until it is reinspected and released for use by the department or inspected and released for use in any other manner authorized by commission rule.

(c) The owner, operator, or user of a motor fuel metering device may not destroy, replace, or otherwise dispose of a device declared to be incorrect or condemned under this section except as provided by commission rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.106. INSPECTION OF STANDARDS USED TO PERFORM DEVICE MAINTENANCE ACTIVITIES. (a) In this section, "state metrology laboratory" means the metrology laboratory maintained by the Department of Agriculture under Subchapter C, Chapter 13, Agriculture Code.

(b) The commission may adopt rules to regulate the frequency and place of inspection and correction of the standards for motor fuel used by an individual or business licensed by the department to perform device maintenance activities under Subchapter D.

(c) The department may inspect any standard for motor fuel used by an individual or business licensed by the department to perform device maintenance activities described by Subchapter D if the department has reason to believe a standard is no longer in compliance with this chapter.

(d) The department shall keep a record of the inspection and character of standards for motor fuel inspected under this section.

(e) Repealed by Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246

), Sec. 25(4), eff. September 1, 2023.

(f) The state metrology laboratory, or a metrology laboratory certified by the National Institute of Standards and Technology and approved by the department, shall inspect and correct the standards for motor fuel used by the department or an individual or business licensed by the department to perform device maintenance activities under Subchapter D.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 15, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 25(4), eff. September 1, 2023.

Sec. 2310.107. TOLERANCES. Specifications and tolerances for motor fuel metering devices shall be the same as those recommended by the National Institute of Standards and Technology.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.108. FEES. The commission by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.109. REFUSING TO ALLOW TEST OF MOTOR FUEL METERING DEVICE. (a) A person commits an offense if the person refuses to allow a motor fuel metering device under the person's control or in the person's possession to be inspected, tested, or examined by the department, and the inspection, test, or examination is required or authorized by this chapter.

(b) A person commits an offense if the person hinders or obstructs in any way the department, a department inspector, or other

department employee in the performance of official duties.

(c) A person commits an offense if the person removes or obliterates a tag or device placed or required by the department to be placed on a motor fuel metering device under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.110. SALE OR USE OF INCORRECT MOTOR FUEL METERING DEVICE. (a) The department may condemn and prohibit the sale or distribution of any incorrect motor fuel metering device that is sold, offered for sale, or about to be sold in this state.

(b) A person commits an offense if the person or the person's representative or agent knowingly:

(1) offers or exposes for sale, hire, or award or sells an incorrect motor fuel metering device;

(2) possesses an incorrect motor fuel metering device; or

(3) sells, offers for sale, uses, or possesses for the purpose of sale or use a device or instrument to be used to falsify or intended to falsify a measure for motor fuel.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 16, eff. September 1, 2023.

Sec. 2310.111. DISPOSING OF CONDEMNED MOTOR FUEL METERING DEVICE. A person commits an offense if the person or the person's representative or agent disposes of a motor fuel metering device condemned under Section 2310.105 or 2310.110 in a manner contrary to those sections.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.112. PENALTIES. An offense under Section 2310.109, 2310.110, or 2310.111 is a Class C misdemeanor.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

SUBCHAPTER D. LICENSING OF MOTOR FUEL METERING DEVICE SERVICE TECHNICIANS AND MOTOR FUEL METERING DEVICE SERVICE COMPANIES

Sec. 2310.151. DEFINITIONS. In this subchapter:

(1) "Device maintenance activities" means activities described by Section 2310.152.

(2) "License holder" means a person who holds a motor fuel metering device service company license or a motor fuel metering device service technician license.

(3) "Service company" means a person who holds a motor fuel metering device service company license issued by the department under this subchapter.

(4) "Service technician" means an individual who holds a motor fuel metering device service technician license issued by the department under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.152. DEVICE MAINTENANCE ACTIVITIES. A person performs device maintenance activities if the person or the person's employee:

(1) places a motor fuel metering device in service;

(2) installs, calibrates, inspects, tests, or repairs a motor fuel metering device; or

(3) removes an out-of-order tag, stop-sale order, security seal, lock, condemnation notice, or other form of use prohibition placed on a motor fuel metering device by the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.153. POWERS AND DUTIES OF DEPARTMENT. (a) To verify compliance with licensing requirements, trade practices, commission rules, and this chapter, the department may periodically or in response to a complaint or previous violation inspect an applicant's

or license holder's:

(1) facilities;

(2) inspecting and testing equipment and procedures;

(3) repair and calibration equipment, standards, and procedures;

(4) transportation equipment; and

(5) invoices, work orders, and other records related to device maintenance activities.

(b) The department may periodically or in response to a complaint or previous violation monitor and inspect or test motor fuel metering devices that have been inspected and tested by a license holder and any standards used by the license holder during an inspection or test.

(c) The commission by rule may adopt additional requirements for the issuance of a license and for the denial of an application for a license or renewal of a license. Rules adopted by the commission under this subsection must be designed to protect the public health, safety, and welfare and ensure the proper inspection, testing, and operation of motor fuel metering devices.

(d) The commission may adopt other rules necessary for the regulation of device maintenance activities, for the proper operation of motor fuel metering devices, and to protect the health, safety, and welfare of the public and license holders.

(e) The department may specify the date, time, and place for any inspection authorized by this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.154. EXEMPTIONS FROM LICENSE REQUIREMENTS. (a) A person is not required to hold a license issued under this subchapter if the person:

(1) is a department employee who is performing device maintenance activities in the scope of the person's duties for the department;

(2) is the owner or operator of a motor fuel metering device or an employee of the owner or operator of a motor fuel metering device and the person:

(A) completely removes the motor fuel metering device

from the location at which the device was installed, including a device subject to an out-of-order tag, stop-sale order, security seal, lock, condemnation notice, or other item placed on the device by the department to prohibit use of the device; and

(B) notifies the department of the motor fuel metering device's removal not later than the 10th day after the date the device was removed in the manner provided by commission rule; or

(3) performs device maintenance activities only on a motor fuel metering device that is:

(A) exempt from the inspection and registration requirements of Sections 2310.102 and 2310.103 under commission rules; and

(B) not required to be inspected by other commission rules.

(b) The department is not required to hold a license issued under this subchapter or Subchapter I, Chapter 13, Agriculture Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 17, eff. September 1, 2023.

Sec. 2310.155. SERVICE TECHNICIAN LICENSE REQUIRED. Unless exempt from the licensing requirement, an individual may not perform or offer to perform device maintenance activities unless the individual holds a service technician license issued by the department under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.156. SERVICE COMPANY LICENSE REQUIRED. (a) Unless exempt from the license requirement, a person may not employ or contract with an individual who performs or offers to perform device maintenance activities unless the person holds a service company license issued by the department under this subchapter.

(b) Unless exempt from the licensing requirement, an individual may not perform or offer to perform device maintenance activities as

a sole proprietor unless the individual holds a service technician license and a service company license issued by the department under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.157. APPLICATION FOR LICENSE. (a) An applicant for a license under this subchapter must submit to the department:

(1) an application form prescribed by the department;

(2) any other information required by the department; and

(3) a fee in an amount set by the department.

(b) The department shall conduct a criminal background check on each applicant who submits an application for a license under this subchapter and on any controlling person of the applicant. The department may, as permitted by law:

(1) examine any criminal conviction, guilty plea, or deferred adjudication of the applicant or controlling person; and

(2) obtain any criminal history or record of the applicant or controlling person.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.158. SERVICE TECHNICIAN LICENSE REQUIREMENTS. (a) The department shall issue a license to each qualified applicant who applies for a service technician license.

(b) The commission by rule may require an applicant for the issuance or renewal of a service technician license to:

(1) provide proof that the applicant has completed an academic, trade, or professional course of instruction approved by the department; and

(2) pass a written test, a practical skills test, or both.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.159. SERVICE COMPANY LICENSE REQUIREMENTS. (a) The

department shall issue a license to each qualified applicant who applies for a service company license.

(b) An applicant for the issuance or renewal of a license under this section must:

(1) submit to the department a certificate of insurance evidencing that the applicant has an insurance policy that meets the requirements of Section 2310.160 effective for the period for which the license is to be issued or renewed; and

(2) meet any other requirements provided by commission rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.160. INSURANCE POLICY REQUIRED FOR SERVICE COMPANY. A service company shall maintain a current effective liability insurance policy issued by an insurance company authorized to do business in this state or by a surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance in an amount set by commission rule and based on the type of licensed activities to be performed.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.161. TERM OF LICENSE. A license issued under this subchapter is valid for one or two years as established by commission rule.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.162. LICENSE RENEWAL. The commission by rule shall establish the requirements for renewing a license and issuing a renewal license under this chapter, including payment of applicable fees.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1,

eff. September 1, 2020.

Sec. 2310.163. PRACTICE BY LICENSE HOLDER. (a) A license holder shall perform device maintenance activities in compliance with commission rules.

(b) A license holder may use only equipment approved by the department, as provided by commission rules, when performing device maintenance activities.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.164. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 2310.155 or 2310.156 or causes another person to violate Section 2310.155 or 2310.156.

(b) An offense under Subsection (a) is a Class B misdemeanor, unless the person has been previously convicted of an offense under this section, in which case the offense is a Class A misdemeanor.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

SUBCHAPTER E. SALE, DELIVERY, AND QUALITY OF MOTOR FUEL

Sec. 2310.201. NOTICE OF SALE OF ALCOHOL AND FUEL MIXTURE. (a) A dealer may not sell or offer for sale motor fuel from a motor fuel pump supplied by a storage tank into which motor fuel, in a mixture in which at least one percent of the mixture measured by volume is ethanol or methanol, has been delivered within the 60-day period preceding the date of sale or offer of sale unless the dealer prominently displays on the pump from which the mixture is sold a sign that:

(1) is displayed on each side of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed;

(2) states "Contains Ethanol" or "Contains Methanol," as applicable;

(3) appears in contrasting colors with block letters at least one-half inch high and one-fourth inch wide; and

(4) is displayed in a clear, conspicuous, and prominent manner, visible to customers using either side of the pump.

(b) This section does not prohibit the posting of any other alcohol or additive information. Other alcohol or additive information and any relevant posting are subject to regulation by the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.2011. NOTICE OF MOTOR FUEL TAX RATES. (a) The department shall display on each motor fuel pump from which motor fuel is sold at retail a notice of the current rates of the federal and state motor fuel taxes. The notice must:

(1) display the current rate of each tax, in cents per gallon, for each type of motor fuel;

(2) be displayed on each face of the motor fuel pump on which the price of the motor fuel sold from the pump is displayed; and

(3) be displayed in a clear, conspicuous, and prominent manner.

(b) The department shall include the notice required under Subsection (a) with any other notice displayed or required by commission rule to be displayed.

Added by Acts 2015, 84th Leg., R.S., Ch. 1016 (H.B. 991), Sec. 1, eff. January 1, 2016.
Transferred, redesignated and amended from Agriculture Code, Section 17.0515 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.

Sec. 2310.2012. DOCUMENTATION OF MOTOR FUEL MIXTURE SALES. (a) Except as provided by Subsection (b), a distributor, supplier, or wholesaler of motor fuel may not deliver to an outlet in this state a motor fuel mixture that contains ethanol or methanol exceeding one percent by volume of the mixture unless, at the time of the delivery of the mixture, the person also delivers to the outlet receiving the delivery a manifest, bill of sale, bill of lading, or other document evidencing delivery of the mixture, that includes a statement

containing:

(1) the percentage of ethanol or methanol contained in the mixture; and

(2) the types and percentages of any associated cosolvents contained in the mixture.

(b) Subsection (a) does not apply to a delivery made into the fuel supply tanks of a motor vehicle.

(c) The commission by rule may prescribe the form of the statement required by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 2, eff. September 1, 2011.
Transferred, redesignated and amended from Agriculture Code, Section 17.052 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 18, eff. September 1, 2023.

Sec. 2310.2013. RECORD OF DELIVERY DOCUMENTS; INSPECTION AUTHORIZED. (a) Each dealer shall keep a copy of each document required to be delivered to the dealer by Section 2310.2012 until the fourth anniversary of the delivery date.

(b) Each distributor, supplier, and wholesaler of motor fuel shall keep a copy of each document required to be delivered to the dealer by Section 2310.2012 until the fourth anniversary of the delivery date.

(c) The department or an authorized representative of the department may inspect documents described by this section. On written notice issued by the department or an authorized representative of the department to any employee at a dealer's retail motor fuel facility or mailed to the principal place of business of a dealer, distributor, supplier, or wholesaler, the dealer, distributor, supplier, or wholesaler shall provide the department or authorized representative of the department with the documents described by this section within the period specified in the notice.

(c-1) For purposes of this section, a person is an authorized representative of the department if the person:

(1) holds a license issued under Subchapter D; and

(2) is conducting an inspection on behalf of the department under this section.

(d) The commission by rule may:

(1) require each dealer, distributor, supplier, and wholesaler to maintain and make available to the department:

(A) invoices, receipts, or other transmittal documents or records, including electronically stored information, showing or describing the purchase, sale, delivery, or distribution of motor fuel;

(B) invoices, receipts, work orders, reports, or other documents, including electronically stored information, showing or describing the installation, maintenance, or repair of:

(i) motor fuel dispensing devices; and

(ii) any equipment used in connection with motor fuel dispensing devices to record, display, or produce receipts or audit trails concerning the purchase, sale, delivery, or distribution of motor fuel; and

(C) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed by the dealer, distributor, supplier, or wholesaler; and

(2) prescribe:

(A) the manner of filing documents or records required to be kept under this section or by commission rule; and

(B) the time, place, and manner of inspection of the documents or records.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 3, eff. September 1, 2011.

Transferred, redesignated and amended from Agriculture Code, Section 17.053 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 19, eff. September 1, 2023.

Sec. 2310.2014. DOCUMENTS RELATING TO POSTING OR CERTIFICATION OF AUTOMOTIVE FUEL RATINGS. (a) Each dealer shall keep for at least one year a copy of:

(1) each delivery ticket or letter of certification on which the dealer based a posting of the automotive fuel rating of motor fuel contained in a motor fuel pump;

(2) each delivery ticket or letter of certification that is required to be delivered to the dealer under 16 C.F.R. Part 306; and

(3) records of any automotive fuel rating determination made by the dealer under 16 C.F.R. Part 306.

(b) Each distributor, supplier, or wholesaler shall keep for at least one year at the distributor's, supplier's, or wholesaler's principal place of business a copy of each delivery ticket or letter of certification required to be delivered by the distributor, supplier, or wholesaler to a dealer in this state under 16 C.F.R. Part 306.

(c) The department or an authorized representative of the department may inspect a document required to be kept under this section. On written notice issued by the department or an authorized representative of the department to any employee at a dealer's retail motor fuel facility or mailed to the dealer's principal place of business, the dealer shall provide the department or authorized representative of the department with the documents described by this section within the period specified in the notice.

(c-1) For purposes of this section, a person is an authorized representative of the department if the person:

(1) holds a license issued under Subchapter D; and

(2) is conducting an inspection on behalf of the department under this section.

(d) The commission by rule may:

(1) require each dealer to maintain and make available to the department:

(A) invoices, receipts, or other transmittal documents or records, including electronically stored information, showing or describing the purchase, sale, delivery, or distribution of motor fuel;

(B) invoices, receipts, work orders, reports, or other documents, including electronically stored information, showing or

describing the installation, maintenance, or repair of:

(i) motor fuel dispensing devices; and

(ii) any equipment used in connection with motor fuel dispensing devices to record, display, or produce receipts or audit trails concerning the purchase, sale, delivery, or distribution of motor fuel; and

(C) any record or other document related to the sampling and testing of motor fuel purchased, sold, delivered, or distributed by the dealer; and

(2) prescribe:

(A) the manner of filing documents or records required to be kept under this section or by commission rule; and

(B) the time, place, and manner of inspection of the documents or records.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 97 (S.B. 893), Sec. 4, eff. September 1, 2011.
Transferred, redesignated and amended from Agriculture Code, Section 17.054 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 20, eff. September 1, 2023.

Sec. 2310.2015. SALE OF MOTOR FUEL WITH INACCURATE AUTOMOTIVE FUEL RATING. (a) A dealer may not sell or offer for sale from a motor fuel pump motor fuel that has an automotive fuel rating lower than the rating for that motor fuel posted on the pump.

(b) A distributor, supplier, or wholesaler of motor fuel may not deliver or transfer to a dealer in this state motor fuel that has an automotive fuel rating lower than the certification of the rating the distributor, supplier, or wholesaler is required to make to the dealer under federal law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Transferred, redesignated and amended from Agriculture Code, Section

17.055 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 21, eff. September 1, 2023.

Sec. 2310.202. MINIMUM MOTOR FUEL QUALITY AND TESTING STANDARDS. (a) The commission by rule shall adopt minimum motor fuel quality and testing standards for motor fuel that is sold or offered for sale in this state. The standards must comply with the nationally recognized minimum standards established by:

(1) the American Society for Testing and Materials, for motor fuels other than motor fuels blended with ethanol; and

(2) the National Institute of Standards and Technology, for motor fuels blended with ethanol.

(b) The commission may adopt rules as necessary to bring about uniformity between the standards established under this subchapter and the nationally recognized standards described by Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.203. TESTING OF MOTOR FUEL QUALITY. (a) The department or an authorized representative of the department may collect samples and conduct testing at any location where motor fuel is kept, transferred, sold, or offered for sale to verify that the motor fuel complies with the minimum standards required by Section 2310.202.

(a-1) For purposes of this section, a person is an authorized representative of the department if the person:

(1) holds a license issued under Subchapter D; and

(2) is conducting testing on behalf of the department under this section.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 25(6), eff. September 1, 2023.

(c) On arriving at a facility to conduct testing under Subsection (a), the department or an authorized representative of the department shall notify an employee of the facility of the

department's or representative's presence and purpose.

(c-1) The commission shall adopt rules regulating the methods and procedures applicable to motor fuel testing under this section.

(d) A person commits an offense if the person refuses to allow the department or an authorized representative of the department to collect samples or conduct motor fuel testing under Subsection (a).

(e) An offense under Subsection (d) is a Class C misdemeanor.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 22, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 25(6), eff. September 1, 2023.

Sec. 2310.204. RULES; FEES. (a) The commission may adopt rules consistent with this subchapter for the regulation of the sale of motor fuels, including motor fuels that contain ethanol and methanol.

(b) The commission by rule may impose a fee for testing, inspection, or the performance of other services provided as determined necessary by the commission in the administration of this subchapter. A fee imposed under this subsection shall be collected from each dealer, distributor, and supplier, as defined by Section 162.001, Tax Code, on a periodic basis determined by the commission without regard to whether the motor fuel is subject to regulation under this subchapter.

(c) The commission by rule shall prescribe the form for reporting and remitting the fees imposed under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 25(7), eff. September 1, 2023.

Sec. 2310.205. CIVIL PENALTY. A person who sells or offers for sale motor fuel in violation of this subchapter or a rule adopted

under this subchapter is liable to this state for a civil penalty of not less than $200 and not more than $2,500.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.206. ADMINISTRATIVE PENALTY. The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, if the person sells or offers for sale motor fuel in violation of this subchapter or a rule adopted under this subchapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 1, eff. September 1, 2020.

Sec. 2310.207. CIVIL ACTION. (a) If a dealer or a distributor, supplier, or wholesaler of motor fuel violates Section 2310.201, 2310.2012, 2310.2013, 2310.2014, or 2310.2015, a person who purchased the motor fuel and sustained damages or who has a complaint about the product may bring an action against the dealer, distributor, supplier, or wholesaler.

(b) The action may be brought, without regard to the specific amount of damages, in the district court in any county in which:

(1) the dealer, distributor, supplier, or wholesaler transacts business; or

(2) the dealer resides.

(c) The court shall award to a motor fuel user who prevails in an action under this section:

(1) the amount of actual damages;

(2) equitable relief as determined by the court to be necessary to remedy the effects of the violation, including a declaratory judgment, permanent injunctive relief, and temporary injunctive relief; and

(3) court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(d) In addition to the remedies provided under Subsection (c), on finding that the defendant wilfully or knowingly violated Section 2310.201, 2310.2012, or 2310.2013, the trier of fact shall award not more than three times the amount of actual damages.

(e) A violation of Section 2310.201, 2310.2012, 2310.2013,

2310.2014, or 2310.2015 also constitutes a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(f) An action alleging a violation of Section 2310.201, 2310.2012, 2310.2013, 2310.2014, or 2310.2015 must be commenced and prosecuted not later than the second anniversary of the date on which the cause of action accrues.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Transferred, redesignated and amended from Agriculture Code, Section 17.152 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 23, eff. September 1, 2023.

Sec. 2310.208. CIVIL PENALTY. A dealer, distributor, supplier, or wholesaler who violates Section 2310.201, 2310.2012, 2310.2013, 2310.2014, or 2310.2015 is liable to this state for a civil penalty of not less than $200 and not more than $10,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Transferred, redesignated and amended from Agriculture Code, Section 17.153 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 337 (S.B. 246), Sec. 24, eff. September 1, 2023.

Sec. 2310.209. CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly violates Section 2310.201, 2310.2012, 2310.2013, 2310.2014, or 2310.2015 or a rule adopted by the commission to enforce or implement those sections.

(b) A person commits an offense if the person knowingly:

(1) refuses to permit an authorized person to test any motor fuel sold or held for sale in this state;

(2) refuses to permit inspection of any document required to be kept or delivered by this subchapter on request of a person

authorized to inspect the documents under Section 2310.2013 or 2310.2014; or

(3) mutilates, destroys, secretes, forges, or falsifies any document, record, report, or sign required to be delivered, kept, filed, or posted by this subchapter or any rule adopted by the commission to enforce this subchapter.

(c) An offense under Subsection (a) is a Class C misdemeanor.

(d) An offense under Subsection (b) is a Class B misdemeanor.

(e) The department or executive director may request the appropriate prosecuting attorney to prosecute a violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.06, eff. April 1, 2009.
Transferred, redesignated and amended from Agriculture Code, Section 17.154 by Acts 2019, 86th Leg., R.S., Ch. 1219 (S.B. 2119), Sec. 3, eff. September 1, 2020.

Chapter 2311, consisting of Secs. 2311.001, was added by Acts 2023, 88th Leg., R.S., Ch. 211 (S.B. 1732), Sec. 1.

For another Chapter 2311, consisting of Secs. 2311.0101 to 2311.0402, added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, see Sec. 2311.0101 et seq., post.

CHAPTER 2311. ELECTRIC VEHICLE CHARGING STATIONS

Sec. 2311.001. ELECTRIC VEHICLE CHARGING STATION STANDARDS. (a) This section applies only to an electric vehicle charging station that is:

(1) installed after December 1, 2024;

(2) made available to the public;

(3) not intended primarily for private use; and

(4) funded through public grants or state rebate programs.

(b) The Texas Department of Licensing and Regulation, in consultation with the Texas Department of Transportation, shall adopt standards for electric vehicle charging stations that require the charging stations to be equipped with a standard electric vehicle charging connector or plug type that is widely compatible with as many electric vehicles as practicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 211 (S.B. 1732), Sec. 1, eff.

May 24, 2023.

Chapter 2311, consisting of Secs. 2311.0101 to 2311.0402, was added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1.

For another Chapter 2311, consisting of Secs. 2311.001, added by Acts 2023, 88th Leg., R.S., Ch. 211 (S.B. 1732), Sec. 1, see Sec. 2311.001 et seq., post.

CHAPTER 2311. ELECTRIC VEHICLE SUPPLY EQUIPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2311.0101. DEFINITIONS. In this chapter:

(1) "Commercial transaction" means any sale or exchange for compensation of electrical energy through a digital network.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Digital network" means an online-enabled application, website, or system offered or used by an electric vehicle supply provider that allows a user to initiate a commercial transaction to dispense electrical energy from electric vehicle supply equipment to an electric vehicle.

(5) "Electric vehicle supply equipment" means a device or equipment used to dispense electrical energy to an electric vehicle.

(6) "Electric vehicle supply provider" means an owner or operator of electric vehicle supply equipment that is available and accessible to the public to provide electrical energy through a commercial transaction.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 2311.0201. RULES. The commission shall adopt rules as necessary to implement this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0202. FEES. The commission by rule shall set fees in amounts sufficient to cover the costs of administering this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0203. CONTRACT. The department may contract to perform the department's duties related to electric vehicle supply equipment, including inspections. A reference in this chapter to the commission or department in the context of a contracted service means the contractor.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0204. INSPECTION OF ELECTRIC VEHICLE SUPPLY EQUIPMENT. The department may periodically, or in response to a complaint, conduct an inspection of electric vehicle supply equipment in order to verify compliance with registration requirements and standards established in this chapter and commission rules, unless electric vehicle supply equipment is exempt from the application of this chapter by commission rule.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0205. COMPLAINTS REGARDING ELECTRIC VEHICLE SUPPLY EQUIPMENT. In accordance with Chapter 51, the executive director of the department shall establish methods by which consumers are notified of the name, Internet website address, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0206. EXEMPTIONS. (a) The commission by rule may

exempt electric vehicle supply equipment from a requirement established by this chapter if the commission determines that imposing or enforcing the requirement:

(1) is not cost-effective for the department;

(2) is not feasible with current resources or standards; or

(3) will not substantially benefit or protect consumers.

(b) Electric vehicle supply equipment is exempt from the requirements of this chapter if, in accordance with commission rule, the electric vehicle supply equipment is:

(1) installed in or adjacent to a private residence for noncommercial use;

(2) provided for the exclusive use of an individual, or a group of individuals, including employees, tenants, visitors, or residents of a multiunit housing or office development; or

(3) provided by a business for use at no charge.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0207. REGULATION OF LEGACY CHARGERS. The commission may adopt rules to regulate electric vehicle supply equipment in operation before January 1, 2024, that:

(1) has never had a metering system in place capable of measuring electricity transferred from the charging station to the vehicle; or

(2) is not capable of measuring the time elapsed while actively charging a vehicle and calculating a fee for the charging session.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

SUBCHAPTER C. OPERATION OF ELECTRIC VEHICLE SUPPLY EQUIPMENT

Sec. 2311.0301. DUTIES OF ELECTRIC VEHICLE SUPPLY PROVIDER. Unless electric vehicle supply equipment is exempt from the application of this chapter or has been removed from service, an electric vehicle supply provider shall:

(1) have electric vehicle supply equipment inspected as prescribed by commission rule; and

(2) maintain electric vehicle supply equipment in compliance with maintenance specifications, this chapter, and commission rule.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0302. REQUIRED REGISTRATION. (a) Unless electric vehicle supply equipment is exempt from the application of this chapter by commission rule, an electric vehicle supply provider shall register each charging unit of electric vehicle supply equipment operated by the provider with the department before the electric vehicle supply equipment is made available for use on a digital network for a commercial transaction.

(b) The department shall issue a registration to each applicant that meets the requirements of this chapter and submits an application that meets the requirements of this section. An application for electric vehicle supply equipment registration must:

(1) be submitted to the department in a manner prescribed by the department;

(2) be accompanied by any other document or form required by the department;

(3) include any fee required under Section 2311.0202; and

(4) include documentation of compliance with Section 2311.0303, as prescribed by commission rule.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0303. SPECIFICATIONS. (a) Specifications and tolerances for electric vehicle supply equipment shall be the same as those recommended by the National Institute of Standards and Technology.

(b) Electric vehicle supply equipment must be installed and operated in accordance with Chapter 1305.

(c) The commission may adopt rules as necessary to establish standards under this chapter.

(d) This subsection applies only to electric vehicle supply equipment installed after December 1, 2024, that is made available to

the public, is not intended primarily for private use, and is funded by a public grant or a rebate program. The commission, in consultation with the Texas Department of Transportation, shall adopt standards that require electric vehicle supply equipment to be equipped with a standard electric vehicle charging connector or plug type that is widely compatible with as many types of electric vehicles as practicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0304. FEES; DISCLOSURES. (a) An electric vehicle supply provider shall disclose on the display of the electric vehicle supply equipment or on the electric vehicle supply provider's digital network:

(1) the fee calculation method or methods; and

(2) applicable surcharges.

(b) Before the user begins charging, the electric vehicle supply provider shall disclose:

(1) the rate the user will be charged at the time of the transaction based on the available fee calculation method or methods; and

(2) a list of applicable surcharges.

(c) In accordance with commission rule, an electric vehicle supply provider shall show on the display of the provider's electric vehicle supply equipment or on the provider's digital network a notice to consumers that:

(1) states that the department regulates electric vehicle supply equipment; and

(2) provides information on filing a complaint with the department about electric vehicle supply equipment.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0305. RECEIPT. After a reasonable period following the completion of a commercial transaction for electric vehicle charging, on request of a user, the electric vehicle supply provider shall transmit a summary that includes:

(1) the date and time of the transaction;

(2) the physical location of the electric vehicle supply equipment;

(3) the duration of and kilowatt hours provided during the transaction; and

(4) an itemization of the total fees paid, including surcharges, if applicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

Sec. 2311.0306. REPAIR OF DAMAGED ELECTRIC VEHICLE SUPPLY EQUIPMENT. (a) An electric vehicle supply provider shall:

(1) remove from operation in a manner that prevents use and access by the public, in accordance with commission rules, electric vehicle supply equipment that poses a safety risk; and

(2) remove electric vehicle supply equipment that poses a safety risk from the electric vehicle supply provider's digital network listing of available charging units.

(b) If the department determines that electric vehicle supply equipment poses a safety risk, the department shall place a tag or other mark with the words "Out of Order" on the electric vehicle supply equipment.

(c) An electric vehicle supply provider may not return electric vehicle supply equipment to operation until the equipment has been repaired in accordance with manufacturer specifications and commission rule.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

SUBCHAPTER D. ENFORCEMENT

Sec. 2311.0401. DISCIPLINARY ACTION. A person is subject to the denial of an application, imposition of an administrative penalty under Subchapter F, Chapter 51, or disciplinary action under Section 51.353 if the person engages in a commercial transaction in violation of this chapter or a rule adopted under this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1,

eff. June 18, 2023.

Sec. 2311.0402. ADMINISTRATIVE PROCEDURES. A proceeding for the denial of a registration or a disciplinary action or an appeal from that proceeding is governed by Chapter 2001, Government Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 1153 (S.B. 1001), Sec. 1, eff. June 18, 2023.

CHAPTER 2312. FINANCIAL CRIMES INTELLIGENCE CENTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2312.001. DEFINITIONS. In this chapter:

(1) "Card fraud" means an act that constitutes the offense of fraudulent use or possession of a credit card or debit card under Section 32.315, Penal Code.

(2) "Center" means the financial crimes intelligence center established under this chapter.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Skimmer" means an electronic, mechanical, or other device that may be used to unlawfully intercept electronic communications or data to perpetrate card fraud.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

Sec. 2312.002. RULES. The commission shall adopt rules as necessary to implement this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

SUBCHAPTER B. PURPOSE AND ADMINISTRATION

Sec. 2312.051. FINANCIAL CRIMES INTELLIGENCE CENTER ESTABLISHED. The commission shall establish the center within the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

Sec. 2312.052. PURPOSES OF CENTER. The purposes of the center are to:

(1) serve as the state's primary entity for the planning, coordination, and integration of law enforcement agencies and other governmental agencies that respond to criminal activity related to card fraud, including through the use of skimmers; and

(2) maximize the ability of the department, law enforcement agencies, and other governmental agencies to detect, prevent, and respond to criminal activities related to card fraud.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

Sec. 2312.053. OPERATION AGREEMENTS AUTHORIZED; CHIEF INTELLIGENCE COORDINATOR. (a) The department:

(1) may enter into agreements with law enforcement agencies or other governmental agencies for the operation of the center; and

(2) shall enter into an agreement with a law enforcement agency or other governmental agency for the appointment of a chief intelligence coordinator to supervise and manage the operation of the center.

(b) The chief intelligence coordinator appointed under the agreement required by Subsection (a)(2) may be a licensed peace officer. The agreement must provide that the commission of a chief intelligence coordinator who is a licensed peace officer will be carried by the agency with which the department enters into the agreement under that subdivision.

(c) Information a law enforcement agency or other governmental agency collects and maintains under an agreement entered into with the department under this chapter is the intellectual property of the center. On termination of the agreement, the contracting agency shall transfer the information to the department in accordance with the terms of the agreement.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

Sec. 2312.054. POWERS AND DUTIES. (a) The center may collaborate with federal, state, and local governmental agencies to accomplish the purposes of the center.

(b) The center shall assist law enforcement agencies, other governmental agencies, financial institutions, credit card issuers, debit card issuers, payment card networks, institutions of higher education, and merchants in their efforts to develop and implement strategies to:

(1) detect skimmers;

(2) ensure an effective response if a skimmer is found; and

(3) prevent card fraud.

(c) The center may:

(1) serve as a centralized collection point for information related to card fraud;

(2) provide training and educational opportunities to law enforcement;

(3) provide outreach to the public; and

(4) release information to affected financial institutions, credit card issuers, debit card issuers, payment card networks, institutions of higher education, and merchants if the center does not consider the information to be sensitive to law enforcement.

(d) For purposes of Subsection (c)(4), information is considered sensitive to law enforcement if the information could cause harm to law enforcement activities or jeopardize an investigation or operation if disclosed.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.

Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

Sec. 2312.055. ANNUAL REPORT. (a) Not later than December 1 of each year, the chief intelligence coordinator shall file a report with the department.

(b) The report must include:

(1) a plan of operation for the center and an estimate of the amount of money necessary to implement that plan;

(2) an assessment of the current state of card fraud in this state, including:

(A) an identification of the geographic locations in this state that have the highest statistical probability for card fraud; and

(B) a summary of card fraud statistics for the year in which the report is filed;

(3) a detailed plan of operation for combatting card fraud;

(4) a communications plan for outreach to law enforcement agencies, financial institutions, credit card issuers, debit card issuers, payment card networks, merchants, and the public; and

(5) a list of expenditures made since the most recent report was filed with the department.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 2312.101. FUNDING. The department may solicit and accept gifts, grants, and other donations to fund, administer, and carry out the purposes of the center, except that the department may not solicit or accept a gift, grant, or other donation from a license holder as defined by Section 2310.151.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

Sec. 2312.102. AWARD OF GRANTS. (a) Subject to the availability of appropriated money, the department may award grants for the purposes of this chapter by entering into a contract with each grant recipient.

(b) A grant recipient may use grant money to:

(1) reduce card fraud by removing skimmers;

(2) purchase or upgrade fraud deterrence equipment, including unique locking systems, cameras, and lights;

(3) provide training opportunities regarding skimmers; and

(4) conduct public outreach regarding card fraud.

Added by Acts 2019, 86th Leg., R.S., Ch. 863 (H.B. 2945), Sec. 2, eff. September 1, 2019.
Transferred, redesignated and amended by Acts 2021, 87th Leg., R.S., Ch. 336 (H.B. 2106), Sec. 11, eff. September 1, 2021.

SUBTITLE B. REGULATIONS RELATED TO VESSELS
CHAPTER 2351. STEVEDORES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2351.001. DEFINITION. In this chapter, "contracting stevedore" means a person, firm or association of persons, or corporation that contracts with another person or corporation, including an agent, owner, master, manager, or captain of a vessel, to load or unload a vessel.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER B. BOND AND LICENSE REQUIREMENTS

Sec. 2351.051. BOND AND LICENSE REQUIRED. A contracting stevedore must execute a bond and obtain a license in each county in which the contracting stevedore engages in business as a contracting stevedore.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.052. BOND TERMS AND CONDITIONS. (a) A bond executed

under this subchapter must:

(1) be in the amount of $5,000;

(2) be conditioned that the contracting stevedore will:

(A) on Saturday of each week pay wages promptly according to the agreed wage scale to each laborer who engaged in loading and unloading a vessel; and

(B) perform each agreement the contracting stevedore enters into with a laborer with respect to the loading and unloading of a vessel; and

(3) be payable to the county judge of the county in which the contracting stevedore does business as trustee for any person who may be entitled to recover under the bond.

(b) The bond must be made with:

(1) a surety company authorized to do business in this state; or

(2) two or more good and sufficient sureties, each of whom is a resident of this state.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.053. APPROVAL AND RECORDING OF BOND. (a) The bond must be approved by the county clerk of the county in which the contracting stevedore engages in business.

(b) The county clerk shall file and record the bond.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.054. LICENSE APPLICATION AND ISSUANCE. (a) Before engaging in business as a contracting stevedore in any county, the contracting stevedore must file a written application for a license with the county clerk.

(b) The county clerk shall issue the license on:

(1) approval of the bond executed under this subchapter; and

(2) receipt of a $5 license fee.

(c) The county clerk shall deposit the license fee into the general fund of the county.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.055. ANNUAL RENEWAL. A contracting stevedore must execute a new bond and obtain a new license on each anniversary of the date the former license is issued.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER C. ENFORCEMENT PROVISIONS

Sec. 2351.101. CRIMINAL PENALTY. (a) A contracting stevedore commits an offense if the contracting stevedore engages in business as a contracting stevedore without first executing the bond and obtaining the license required by Section 2351.051.

(b) An offense under this section is punishable by a fine of not less than $100 or more than $500.

(c) Each day of violation is a separate offense.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2351.102. SUIT ON BOND. (a) A person to whom wages are not paid as required by Section 2351.052(a)(2) may bring suit and recover under the bond executed under Subchapter B.

(b) The bond may be sued on until:

(1) the full amount of the bond is exhausted; or

(2) suits sufficient to exhaust the bond are pending.

(c) If a bond is exhausted under this section, the contracting stevedore shall execute and file a new bond that meets the requirements of Subchapter B.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

CHAPTER 2352. BOAT MANUFACTURERS, DISTRIBUTORS, AND DEALERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2352.001. DEFINITIONS. In this chapter:

(1) "Agreement" means a written agreement between a manufacturer or distributor and a dealer for the purchase and sale of new boats or new boat motors.

(2) "Boat" means:

(A) a motorboat; or

(B) any other vessel that is more than 14 feet in length and is designed to be propelled by a sail.

(2-a) "Boat motor" means a mechanical form of propulsion for a vessel, including an inboard or outboard motor.

(3) "Dealer" means a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or boat motors during a calendar year.

(4) "Distributor" means a person who:

(A) offers for sale, sells, or distributes new boats or new boat motors to dealers; or

(B) controls a person described by Paragraph (A).

(5) "Manufacturer" means a person engaged in the business of manufacturing new and unused vessels or boat motors for the purpose of sale or trade.

(5-a) "Marketing standards" means mutually agreed standards in a manufacturer's marketing or promotional activities.

(6) "Motorboat" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(7) "New" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(8) "Outboard motor" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

(8-a) "Performance standards" means reasonable standards that are mutually developed and agreed to by a manufacturer and a dealer relating to:

(A) achievement of market share by a dealer for manufacturer products sold in a territory;

(B) achievement of a level of performance in a manufacturer's certified dealer program, if any; and

(C) participation in a plan that addresses improvement, if needed, in dealer performance.

(8-b) "Territory" means:

(A) for the sale of a manufacturer's boats, a defined geographical area within which a dealer is appointed by the manufacturer as the sole authorized dealer; or

(B) for the sale of all other manufacturer products, a market area within which a dealer is appointed by the manufacturer as an authorized dealer.

(9) "Vessel" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. DEALER AGREEMENTS

Sec. 2352.051. AGREEMENT REQUIRED. A manufacturer or distributor contracting with a dealer may not sell or offer for sale, and a dealer may not purchase or offer to purchase, a new boat or a new boat motor unless the manufacturer or distributor and the dealer enter into an agreement that complies with this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 2, eff. September 1, 2011.

Sec. 2352.052. TERMS OF AGREEMENT. (a) An agreement under this chapter must include:

(1) the dealer's territory and dealership locations;

(2) the length of the agreement, which must be not less than three years;

(3) performance standards or marketing standards, if any;

(4) working capital, inventory, facility, equipment, or tool standards, including mutually agreed minimum product stocking requirements, if any;

(5) provisions for termination or nonrenewal of the agreement and the designation of a successor dealer in the event of the dealer's death or disability;

(6) the obligations of the manufacturer, distributor, and dealer in the preparation and delivery of and warranty service on new boats and new boat motors;

(7) the obligations of the manufacturer, distributor, and dealer on termination of the agreement, including inventory of new boats and new boat motors, parts inventory, equipment, furnishings, special tools, and required signs;

(8) mutually agreed standards for maintenance of:

(A) a dedicated or self-funded line of credit, if any; and

(B) a trade-in line of credit or self-funded trade-in line of credit, if any; and

(9) dispute resolution procedures.

(b) At the end of the first year of an agreement, a dealer and manufacturer shall evaluate the dealer's progress in meeting the agreement's performance standards, marketing standards, and line of credit standards, to determine whether to enter into a new three-year agreement.

(c) If the dealer and manufacturer enter into a new agreement, the initial agreement is void. If the dealer and manufacturer do not enter into a new agreement, the dealer and manufacturer are bound by the terms and conditions of the initial agreement.

(d) Notwithstanding the terms of a dealer agreement, a dealer agreement and any transaction subject to this chapter must comply with the requirements of this chapter.

(e) Notwithstanding Subsection (a)(2), an initial agreement between a dealer and a manufacturer may have a term of less than three years. An extension or renewal of the initial agreement or a subsequent agreement under this chapter between the same dealer and manufacturer must be for a term of not less than three years.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 3, eff. September 1, 2011.

Sec. 2352.0521. PERFORMANCE STANDARDS. (a) A manufacturer shall make reasonable efforts to provide a dealer with information regarding the dealer's compliance with performance standards.

(b) Performance standards must be evaluated on an annual basis and, if a dealer and manufacturer agree, may be adjusted to promote the sale of the manufacturer's products.

(c) If revised performance standards are not agreeable, the initial performance standards remain in place until the expiration of the agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4,

eff. September 1, 2011.

Sec. 2352.0522. DEALER TERRITORY. (a) During the term of an agreement, a manufacturer may not appoint another authorized dealer for the sale of the manufacturer's boats in a dealer's territory.

(b) Except for purposes of advertising without an advertised price or with a manufacturer's suggested retail price, a dealer may not advertise or promote the sale of the manufacturer's boats outside the dealer's territory, including through the Internet.

(c) A dealer may not use a broker in another dealer's territory to sell a manufacturer's boat.

(d) This chapter does not prohibit a dealer from selling a boat to a customer residing outside of the dealer's territory who independently visits the dealership and seeks to purchase a boat from the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4, eff. September 1, 2011.

Sec. 2352.0523. DEFAULT. (a) A default under an agreement under this chapter by a manufacturer, distributor, or dealer is:

(1) a material failure to meet minimum product stocking requirements as specified by the agreement;

(2) a material failure to make timely payment of any material obligation as specified by the agreement;

(3) a material failure to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; or

(4) an act of material fraud relating to the performance of a right or obligation under the agreement.

(b) A default by a dealer under an agreement under this chapter is:

(1) a material failure to meet applicable performance standards as specified by the agreement for a defined one model year marketing cycle;

(2) a material failure to meet applicable marketing standards as specified by the agreement;

(3) a material failure to meet applicable standards for a

dedicated or self-funded line of credit or a trade-in or self-funded trade-in line of credit as specified by the agreement; or

(4) the marketing of the manufacturer's boats by the dealer outside of the dealer's territory in violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4, eff. September 1, 2011.

Sec. 2352.0524. CURE OF DEFAULT. (a) Except as provided by Section 2352.053(d)(3), (8), or (9), a manufacturer or distributor must give a dealer written notice of a default under Section 2352.0523 and allow the dealer to cure the default within a cure period as provided by Subsection (b).

(b) A dealer must cure a default not later than the:

(1) 30th day after the date of receipt of notice of a default under Section 2352.0523(a)(2) or (b)(4);

(2) 60th day after the date of receipt of notice of a default under Section 2352.0523(b)(2) or (3);

(3) 90th day after the date of receipt of notice of a default under Section 2352.0523(a)(1); or

(4) 180th day after the date of receipt of notice of a default under Section 2352.0523(b)(1).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 4, eff. September 1, 2011.

Sec. 2352.053. TERMINATION OR NONRENEWAL OF AGREEMENT; NOTICE. (a) Except as provided by Subsection (d), a manufacturer or distributor may not terminate an agreement unless the dealer defaults under Section 2352.0523 and:

(1) the manufacturer or distributor gives the dealer written notice of the default and possible termination in clear and concise terms;

(2) the notice states the default;

(3) the dealer has been given the applicable cure period to make a good faith effort to cure the default stated in the notice; and

(4) the dealer fails to cure the default.

(b) Good cause is not required for the nonrenewal of an

agreement.

(c) The fact that a dealer holds an agreement involving another line, make, or brand of new boat or new boat motor does not constitute a default or grounds for termination of an agreement.

(d) A manufacturer or distributor may terminate an agreement on written notice, without a cure period, if the dealer:

(1) financially defaults to the manufacturer, the distributor, or a financing source;

(2) becomes subject to an order for relief, as that term is used in Title 11, United States Code;

(3) engages in an act of material fraud relating to the performance of a right or obligation under the agreement;

(4) is a corporation that ceases to exist;

(5) becomes insolvent or takes or fails to take any action that constitutes an admission of inability to pay debts as the debts mature;

(6) makes a general assignment for the benefit of creditors to an agent authorized to liquidate any substantial amount of assets;

(7) applies to a court for the appointment of a receiver for any assets or properties;

(8) fails to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement; or

(9) receives three valid notices of a default under Section 2352.0523 for the same default, whether cured or not, within a 12-month period.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 5, eff. September 1, 2011.

SUBCHAPTER C. REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS

Sec. 2352.101. DELIVERY REQUIREMENTS. (a) A manufacturer or distributor who publicly advertises a new boat, new boat motor, or part as available for immediate delivery shall deliver the boat, boat motor, or part in reasonable quantities and within a reasonable time after receipt of an order from a dealer who has an agreement with the manufacturer or distributor applicable to the advertised boat, boat

motor, or part.

(b) Subsection (a) does not apply if circumstances beyond the control of the manufacturer or distributor prevent the delivery.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 6, eff. September 1, 2011.

Sec. 2352.102. SALE, TRANSFER, OR PASSAGE OF TITLE. A manufacturer or distributor may not unreasonably withhold approval of a sale, transfer, or passage of title of a dealer, agreement, management of the dealer, or designation of a successor dealer if:

(1) the dealer complies with any provisions in the agreement for the sale, transfer, or passage of title;

(2) the transferee meets the criteria:

(A) stated in the agreement; or

(B) generally applied by the manufacturer or distributor in similar situations; and

(3) the transferee agrees to be bound by the terms and conditions of the manufacturer's or distributor's standard agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.103. FINANCING. (a) A manufacturer or distributor may not require a dealer to finance through a particular financing source a new boat or new boat motor sold by the dealer.

(b) A manufacturer or distributor may not require a dealer to act as the manufacturer's or distributor's agent in securing:

(1) a promissory note and security agreement in connection with the sale or purchase of a new boat or new boat motor; or

(2) an insurance policy on the operation of a new boat or new boat motor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 7, eff. September 1, 2011.

Sec. 2352.104. SALE OF PARTS AND ACCESSORIES AND SERVICE AFTER TERMINATION OR NONRENEWAL OF AGREEMENT. (a) After a manufacturer or distributor terminates or does not renew an agreement, the former dealer may continue to purchase parts and accessories to service the products covered by the agreement until the first anniversary of the date of termination or nonrenewal. The manufacturer or distributor shall sell parts and accessories under this subsection at the same price offered to a current dealer.

(b) Until the first anniversary of the date of termination or nonrenewal of an agreement, a dealer shall continue to perform warranty work for the manufacturer's products, unless otherwise specified by the manufacturer in the termination notice.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 8, eff. September 1, 2011.

Sec. 2352.105. COMPENSATION FOR WARRANTY SERVICE. (a) A manufacturer or distributor shall fairly compensate a dealer for the work and services the dealer performs and for expenses the dealer incurs to comply with a manufacturer's or distributor's warranty.

(b) Except as provided by Subsection (c), a manufacturer or distributor may not pay a dealer a labor rate for warranty work that is less than the rate the dealer charges retail customers for nonwarranty work of the same kind by similar technicians.

(c) A manufacturer or distributor who has a warranty program that reimburses a dealer at 100 percent of the dealer's retail labor rate if the dealer complies with reasonable and objective criteria shall pay the dealer the labor rate provided by the terms of the program or a rate equal to 80 percent of the dealer's retail labor rate, whichever rate is higher.

(d) A manufacturer or distributor shall approve or disapprove a dealer's written claim for warranty work not later than the second business day after the date of receipt of the claim. If the claim is approved, the manufacturer or distributor shall pay the claim not later than the 30th day after the date of receipt of the dealer's written invoice or written proof of completion of the warranty work. If the claim is disapproved, the manufacturer or distributor shall

notify the dealer of the grounds for disapproval.

(e) A manufacturer or distributor may not audit a claim filed for warranty work after the first anniversary of the date the claim is submitted.

(f) A manufacturer must act as the single source of contact for the dealer for the manufacturer's component part product warranties, other than engine-related product warranties.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 9, eff. September 1, 2011.

Sec. 2352.1051. DELIVERY OF PARTS. On signing an agreement, a manufacturer shall provide the dealer with a written statement of the approximate amount of time the manufacturer takes to deliver a part to the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 10, eff. September 1, 2011.

Sec. 2352.106. REFUNDS, REBATES, AND DISCOUNTS. A dealer may not pay or assume a part of a refund, rebate, discount, or other financial adjustment made by the manufacturer or distributor to a customer or a dealer unless the dealer voluntarily agrees to make the payment or assumption.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.107. REPURCHASE BY MANUFACTURER OR DISTRIBUTOR. (a) A manufacturer or distributor who terminates an agreement shall repurchase on demand from the dealer any of the following items, purchased by the dealer from the manufacturer or distributor, that are free and clear of a lien or encumbrance:

(1) a new, unsold, and complete boat, with accessories and packaged trailers sold with the boat, and any boat motor that:

(A) is in the dealer's inventory; and

(B) was purchased during the two years preceding the

date of the termination; and

(2) any new, current, unsold, undamaged, and unused parts or accessories for boats or boat motors in the original resalable merchandising package.

(b) A demand for repurchase must be made in writing not later than the 90th day after the date the manufacturer or distributor terminates the agreement. The dealer must provide the manufacturer or distributor with a complete list of the items to be repurchased. The manufacturer or distributor shall complete the repurchase not later than the 30th day after the date the dealer demands the repurchase.

(c) The manufacturer or distributor shall:

(1) repurchase an item described by Subsection (a)(1) at the dealer's invoiced cost, less any allowance paid to the dealer;

(2) repurchase an item described by Subsection (a)(2) at the dealer's invoiced cost; and

(3) pay the cost incurred by the dealer to transport an item described by Subsection (a) to the manufacturer.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 11, eff. September 1, 2011.

SUBCHAPTER D. ENFORCEMENT PROVISIONS

Sec. 2352.201. CIVIL LIABILITY. A person who violates this chapter or an agreement regulated by this chapter is liable to an injured party for:

(1) the actual damages caused by the violation; and

(2) reasonable legal fees and court costs if litigation is commenced in connection with the violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.202. VENUE FOR DISPUTE. Venue for a dispute under an agreement is in the county of the dealer's principal place of business as stated in the agreement.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.203. ARBITRATION. A dealer may not be required to submit to arbitration on an issue between the dealer and the manufacturer or distributor at a location that is out of state or an unreasonable distance from the dealer's principal place of business.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2352.204. CIVIL PENALTY. (a) A manufacturer or distributor who violates this chapter is liable to this state for a civil penalty. The amount of the penalty may not exceed $500 for each violation.

(b) Each sale of a new boat or boat motor by a manufacturer or distributor in violation of Section 2352.051 is a separate violation.

(c) The attorney general may sue to collect a civil penalty under this section. The attorney general may recover, on behalf of the state, the reasonable expenses incurred in obtaining the penalty, including investigation and court costs, reasonable attorney's fees, witness fees, and other expenses.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1148 (H.B. 1960), Sec. 12, eff. September 1, 2011.

SUBTITLE C. REGULATION OF TRANSPORTATION SERVICES
CHAPTER 2401. TRANSPORTATION SERVICE PROVIDERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2401.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 17.006(1); Acts 2003, 78th Leg., ch. 1276, Sec. 14A.651.

(2) "Department" means the Department of Public Safety.

(2-a) "Executive director" means the executive director of the department.

(3) "Motor carrier" has the meaning assigned by 49 U.S. C. Section 13102.

(4) "Person" means an individual, corporation, partnership, or association.

(5) "Transportation service provider" or "freight forwarder" means a person, other than a motor carrier, who:

(A) represents to the public that the person provides transportation in this state only of property for compensation; and

(B) in the ordinary course of business:

(i) assembles and consolidates, or provides for assembling and consolidating, a shipment;

(ii) performs or provides for break-bulk and distribution operations of a shipment;

(iii) assumes responsibility for the land transportation of property at any place from origin to destination; and

(iv) uses a motor or rail carrier at any time during the transportation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.001, 17.006(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.651(a), (b), eff. Sept. 1, 2003.

Sec. 2401.002. APPLICATION OF CHAPTER. This chapter does not apply to a person who:

(1) acts as a customs broker as defined by 19 U.S.C. Section 1641;

(2) operates trucks and delivery vehicles in the wholesale distribution of alcoholic beverages under Chapter 19, 20, or 64, Alcoholic Beverage Code; or

(3) acts as an ocean freight forwarder as defined by 46 U.S.C. Section 1702.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. 1545), Sec. 395, eff. September 1, 2019.

SUBCHAPTER B. POWERS AND DUTIES

Sec. 2401.052. EXAMINATION OR AUDIT. (a) To administer this chapter, the department may:

(1) examine:

(A) a record maintained under Section 2401.152; or

(B) a record or object the department determines is

necessary to conduct a complete examination; or

(2) question under oath any person who is associated with the business of a transportation service provider.

(b) The department may periodically audit the business records of a transportation service provider.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.003, eff. Sept. 1, 2003.

SUBCHAPTER D. PRACTICE BY TRANSPORTATION SERVICE PROVIDER

Sec. 2401.152. RECORDS. (a) A transportation service provider shall maintain a record for each shipment of property the transportation service provider assumes responsibility for transporting. The record must include:

(1) the name of the shipper of the property;

(2) the type of property being transported;

(3) the destination of the property;

(4) the name of the person receiving the property; and

(5) the name of the person transporting the property.

(b) The transportation service provider shall keep a copy of the record until at least the fourth anniversary of the date the property is transported.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

SUBCHAPTER F. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

Sec. 2401.251. CIVIL PENALTY. A transportation service provider who knowingly violates this chapter is liable for a civil penalty of not less than $100 or more than $500 for each violation.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.
Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.004, eff. Sept. 1, 2003.

Sec. 2401.252. CRIMINAL PENALTY. (a) A transportation service provider commits an offense if the transportation service provider

knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003.

Sec. 2401.253. AUTHORITY TO INVESTIGATE AND FILE COMPLAINT. (a) The department may investigate a violation of this chapter.

(b) Any law enforcement agency may file a complaint with:

(1) the district attorney of Travis County; or

(2) the prosecuting attorney of the county in which a violation is alleged to have occurred.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 5, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 17.005, eff. Sept. 1, 2003.

CHAPTER 2402. TRANSPORTATION NETWORK COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2402.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Licensing and Regulation.

(2) "Digital network" means any online-enabled application, website, or system offered or used by a transportation network company that enables the prearrangement of rides between passengers and drivers.

(3) "Digitally prearranged ride" means a ride in a personal vehicle between points chosen by the passenger that is prearranged through a digital network.

(4) "Personal vehicle" means a vehicle that:

(A) is owned, leased, or otherwise authorized for use by a driver; and

(B) is not a taxicab, limousine, or other vehicle regulated by a municipality under Section 215.004, Local Government Code, or a joint airport board under Section 22.081, Transportation Code.

(5) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity that, for compensation, enables a passenger to prearrange with a driver, exclusively through the entity's digital network, a digitally

prearranged ride. The term does not include an entity that provides:

(A) street-hail taxicab services;

(B) limousine or other car services arranged by a method other than through a digital network;

(C) shared expense carpool or vanpool arrangements; or

(D) a type of ride service for which:

(i) the fee received by the driver does not exceed the driver's costs of providing the ride; or

(ii) the driver receives a fee that exceeds the driver's costs associated with providing the ride but makes not more than three round-trips per day between the driver's or passenger's place of employment and the driver's or passenger's home.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.002. NATURE OF TRANSPORTATION NETWORK COMPANIES, DRIVERS, AND VEHICLES. Transportation network companies and drivers logged in to the company's digital network are not common carriers, contract carriers, or motor carriers.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.003. CONTROLLING AUTHORITY. (a) Notwithstanding any other provision of law, and except as provided by Subsections (b) and (c), the regulation of transportation network companies, drivers logged in to a digital network, and vehicles used to provide digitally prearranged rides:

(1) is an exclusive power and function of this state; and

(2) may not be regulated by a municipality or other local entity, including by:

(A) imposing a tax;

(B) requiring an additional license or permit;

(C) setting rates;

(D) imposing operational or entry requirements; or

(E) imposing other requirements.

(b) An airport owner or operator may impose regulations, including a reasonable fee, on a transportation network company that

provides digitally prearranged rides to or from the airport.

(c) The governing body of a governmental entity with jurisdiction over a cruise ship terminal may impose regulations, including a reasonable fee, on a transportation network company that provides digitally prearranged rides to or from the terminal.

(d) Regulations under Subsections (b) and (c) may not:

(1) conflict with the requirements of this chapter; or

(2) include requirements for drivers in addition to those under Section 2402.107.

(e) This chapter does not affect the ability of a local authority, as defined by Section 541.002, Transportation Code, to:

(1) take an action described by Section 542.202, Transportation Code, or otherwise authorized by Subtitle C, Title 7, Transportation Code, that allows the local authority to adopt traffic rules in the jurisdiction of the authority if the rules are applied to transportation network company vehicles and drivers in the same manner as non-transportation network company vehicles and drivers; or

(2) enforce a provision of Subtitle C, Title 7, Transportation Code, or any other state law relating to the operation of traffic on public roads.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.004. PROVISIONS APPLICABLE TO DRIVERS LOGGED IN TO DIGITAL NETWORK. A provision of this chapter that applies to a driver logged in to a digital network applies while the driver is logged in to receive requests for digitally prearranged rides and while the driver is logged in and providing a digitally prearranged ride.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

SUBCHAPTER B. PERMIT REQUIRED

Sec. 2402.051. PERMIT REQUIRED. (a) A person may not operate a transportation network company in this state without obtaining and maintaining a permit issued under this chapter.

(b) The department shall issue a permit to each applicant that

meets the requirements of this chapter and pays the fee required by Section 2402.052.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.052. FEE. (a) A transportation network company shall annually pay to the department a fee to maintain a permit under this chapter in an amount determined by department rule to cover the costs of administering this chapter.

(b) The department may not impose a fee for:

(1) drivers authorized to use a transportation network company's digital network; or

(2) vehicles used to provide digitally prearranged rides.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

SUBCHAPTER C. OPERATION OF TRANSPORTATION NETWORK COMPANIES

Sec. 2402.101. INSURANCE REQUIRED. The requirements of Chapter 1954, Insurance Code, apply to transportation network companies and drivers logged in to a digital network.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.102. SHARED RIDES. A digitally prearranged ride may be wholly or partly shared by multiple passengers if the passengers consent to sharing the ride.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.103. FARES. A transportation network company that charges a fare for a digitally prearranged ride shall:

(1) disclose to passengers the fare calculation method on the digital network; and

(2) before the passenger enters the vehicle for the ride, provide through the digital network to the passenger requesting the ride:

(A) the applicable rates being charged; and

(B) the option to receive an estimated fare.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.104. DIGITAL NETWORK IDENTIFICATION OF DRIVERS AND VEHICLES TO PASSENGERS. A transportation network company shall, before a passenger enters a vehicle for a digitally prearranged ride, provide through the company's digital network to the passenger requesting the ride:

(1) the driver's first name and picture; and

(2) the make, model, and license plate number of the driver's vehicle.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.105. ELECTRONIC RECEIPT. Within a reasonable time following the completion of a digitally prearranged ride, the transportation network company whose digital network was used to prearrange the ride shall transmit, through electronic mail or text message, a receipt to the passenger who requested the ride that includes:

(1) the origin and destination of the ride;

(2) the total time and distance of the ride; and

(3) an itemization of the total fare paid, if any.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.106. INTOXICATING SUBSTANCE POLICY. (a) A transportation network company shall implement an intoxicating substance policy that prohibits a driver who is logged in to the company's digital network from any amount of intoxication.

(b) A transportation network company shall include on its Internet website:

(1) a notice concerning the company's intoxicating substance policy; and

(2) the means to make a complaint about a suspected violation of the policy.

(c) On receipt of a passenger complaint alleging a violation of the intoxicating substance policy, a transportation network company shall:

(1) conduct an investigation into the reported incident; and

(2) immediately suspend the driver's access to the company's digital network for the duration of the investigation.

(d) A transportation network company shall maintain records relevant to a complaint for a period of at least two years after the date the complaint is received.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.107. DRIVER REQUIREMENTS. (a) Before permitting an individual to log in as a driver on the company's digital network, a transportation network company must:

(1) confirm that the individual:

(A) is at least 18 years of age;

(B) maintains a valid driver's license issued by this state, another state, or the District of Columbia; and

(C) possesses proof of registration and automobile financial responsibility for each motor vehicle to be used to provide digitally prearranged rides;

(2) conduct, or cause to be conducted, a local, state, and national criminal background check for the individual that includes the use of:

(A) a commercial multistate and multijurisdiction criminal records locator or other similar commercial nationwide database; and

(B) the national sex offender public website maintained by the United States Department of Justice or a successor agency; and

(3) obtain and review the individual's driving record.

(b) A transportation network company may not permit an individual to log in as a driver on the company's digital network if the individual:

(1) has been convicted in the three-year period preceding the issue date of the driving record obtained under Subsection (a)(3) of:

(A) more than three offenses classified by the Department of Public Safety as moving violations; or

(B) one or more of the following offenses:

(i) fleeing or attempting to elude a police officer under Section 545.421, Transportation Code;

(ii) reckless driving under Section 545.401, Transportation Code;

(iii) driving without a valid driver's license under Section 521.025, Transportation Code; or

(iv) driving with an invalid driver's license under Section 521.457, Transportation Code;

(2) has been convicted in the preceding seven-year period of any of the following:

(A) driving while intoxicated under Section 49.04 or 49.045, Penal Code;

(B) use of a motor vehicle to commit a felony;

(C) a felony crime involving property damage;

(D) fraud;

(E) theft;

(F) an act of violence; or

(G) an act of terrorism; or

(3) is found to be registered in the national sex offender public website maintained by the United States Department of Justice or a successor agency.

(c) A transportation network company shall conduct or cause to be conducted an annual criminal background check described by Subsection (a)(2) for each driver authorized to access the company's digital network.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.1075. HUMAN TRAFFICKING AWARENESS AND PREVENTION

TRAINING MATERIALS REQUIRED. (a) A transportation network company shall annually provide to each driver who is authorized to log in to the company's digital network human trafficking awareness and prevention training materials. The training materials must:

(1) be provided in a digital video format or Internet-based video format;

(2) be not less than 15 minutes in duration;

(3) be approved by the attorney general;

(4) be provided in English and Spanish;

(5) be provided to a new driver before the driver is authorized to provide prearranged rides using the company's digital network; and

(6) include:

(A) an overview of human trafficking, including a description of:

(i) the experience of human trafficking victims;

(ii) how and why human trafficking takes place in the transportation industry; and

(iii) how human trafficking is defined under state and federal law;

(B) guidance on how to identify individuals who are most at risk for human trafficking;

(C) information on the difference between labor and sex trafficking as that relates to identification of human trafficking in the transportation industry;

(D) guidance on the role of a driver in reporting and responding to human trafficking; and

(E) the contact information of appropriate entities for reporting human trafficking, including:

(i) the National Human Trafficking Hotline toll-free telephone number and text line;

(ii) appropriate law enforcement agencies; and

(iii) a telephone number designated by the attorney general for reporting suspected human trafficking.

(b) A transportation network company shall maintain records necessary to establish that the company has provided the training materials required by this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 713 (H.B. 2313), Sec. 1, eff. September 1, 2023.

Sec. 2402.108. DIGITALLY PREARRANGED RIDES ONLY. A driver who is logged in to a digital network may not solicit or provide a ride for compensation unless the passenger has been matched to the driver through the digital network.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.109. PASSENGER ACTING IN UNLAWFUL, DISORDERLY, OR ENDANGERING MANNER. A driver who has accepted a digitally prearranged ride may refuse to transport a passenger acting in an unlawful, disorderly, or endangering manner.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.110. DISPLAY OF DIGITAL IDENTIFICATION. (a) In this section, "digital identification" means information stored on a digital network that may be accessed by a driver and that:

(1) serves as proof of the identity of the driver;

(2) serves as proof that the insurance coverage requirements of Chapter 1954, Insurance Code, are satisfied;

(3) displays a photo of the driver;

(4) displays an image of the driver's vehicle; and

(5) identifies the make, model, and license plate number of the vehicle used by the driver.

(b) On request of a law enforcement officer or a government official enforcing or administering this chapter, a driver providing a digitally prearranged ride shall:

(1) display the driver's digital identification; and

(2) display electronic proof that the ride was matched through the digital network.

(c) This section does not require a driver to relinquish possession of the electronic device containing the digital identification.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff.

May 29, 2017.

Sec. 2402.111. VEHICLE REQUIREMENTS. (a) A transportation network company shall, for each motor vehicle used by a driver to provide digitally prearranged rides through the company's digital network:

(1) require the vehicle to meet the requirements of Chapter 548, Transportation Code; and

(2) confirm that the vehicle has:

(A) four doors; and

(B) a maximum passenger capacity of not more than eight people, including the driver.

(b) A vehicle used to provide digitally prearranged rides may be owned, leased, or rented by, or otherwise made available to, the driver.

(c) Section 547.607, Transportation Code, does not apply to a personal vehicle used to provide digitally prearranged rides.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.112. NONDISCRIMINATION; ACCESSIBILITY. (a) A transportation network company shall adopt a policy that prohibits a driver logged in to the company's digital network from:

(1) discriminating on the basis of a passenger's or potential passenger's location or destination, race, color, national origin, religious belief or affiliation, sex, disability, or age; and

(2) refusing to provide service to a potential passenger with a service animal.

(b) For the purposes of Subsection (a), "sex" means the physical condition of being male or female.

(c) A transportation network company shall notify each person authorized to log in as a driver on the company's digital network of the nondiscrimination policy. A driver logged in to the company's digital network shall comply with the nondiscrimination policy.

(d) A transportation network company may not impose an additional charge for transportation of individuals with physical disabilities because of those disabilities.

(e) A transportation network company shall provide a passenger an opportunity to indicate whether the passenger requires a wheelchair-accessible vehicle. If a wheelchair-accessible vehicle cannot be provided, the company shall direct the requesting passenger to an alternate provider of wheelchair-accessible service, if available.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.113. ACCESSIBILITY PILOT PROGRAM. (a) Each transportation network company shall conduct, for a period of two years beginning not later than the 90th day after the date the company is issued a permit under Section 2402.051, an accessibility pilot program in one of the four largest markets in which the company operates in this state to:

(1) offer their services to disabled persons, including disabled persons using a fixed-frame wheelchair; and

(2) ensure that, if necessary, referrals to alternate providers of wheelchair-accessible service are made in a manner that does not unreasonably delay the provision of service.

(b) Not later than the 100th day after the date a transportation network company begins a pilot program under Subsection (a), the company shall submit to the department a report demonstrating the company's compliance with Subsection (a).

(c) A transportation network company shall provide a report on the findings of the company's pilot program to each legislative standing committee with primary jurisdiction over transportation not later than the 75th day after the date the program ends. At a minimum, the report must include information regarding:

(1) the number of vehicles equipped to accommodate a passenger with a fixed-frame wheelchair that were available through the company's digital network in the market in which the pilot program was conducted at the time the program ended;

(2) the average time elapsed between the time a fixed-frame wheelchair-bound passenger requested a ride and the time the ride began;

(3) the number of rides provided to fixed-frame wheelchair-bound passengers during the duration of the program; and

(4) the number of instances in which the company referred a fixed-frame wheelchair-bound passenger to another provider because the passenger could not be accommodated by the company.

(d) The department:

(1) shall:

(A) by rule establish requirements for a report under Subsection (b); and

(B) provide the transportation network company with notice of those requirements at the time the department issues the company's permit; and

(2) may revoke the company's permit for failure to timely submit a report required under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.114. DRIVERS AS INDEPENDENT CONTRACTORS. A driver who is authorized to log in to a transportation network company's digital network is considered an independent contractor for all purposes, and not an employee of the company in any manner, if:

(1) the company does not:

(A) prescribe the specific hours during which the driver is required to be logged in to the company's digital network;

(B) impose restrictions on the driver's ability to use other transportation network companies' digital networks;

(C) limit the territory within which the driver may provide digitally prearranged rides; or

(D) restrict the driver from engaging in another occupation or business; and

(2) the company and the driver agree in writing that the driver is an independent contractor.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.115. AGREEMENTS WITH LOCAL ENTITIES FOR LARGE EVENTS. Notwithstanding Section 2402.003, a municipality or other local entity may contract with a transportation network company operating in the municipality's or entity's jurisdiction for the coordination

of large events occurring in the municipality's or entity's jurisdiction. An agreement under this section:

(1) may not exclude a transportation network company holding a permit under this chapter from providing services at the event; and

(2) must have comparable terms for each company providing services at the event.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

SUBCHAPTER D. RECORDS AND OTHER INFORMATION

Sec. 2402.151. RETENTION AND SUBMISSION OF RECORDS. (a) A transportation network company shall maintain:

(1) records evidencing compliance with the requirements of this chapter for a period of two years;

(2) individual ride records for at least five years after the date the ride was provided; and

(3) driver records for at least five years after the date the driver ceases to be authorized to log in as a driver on the company's digital network.

(b) The department shall provide a means for information required to be submitted for the purposes of this chapter to be submitted electronically.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.152. COLLECTION, USE, OR DISCLOSURE OF RECORDS AND OTHER COMPANY INFORMATION. (a) Any records, data, or other information disclosed to a public entity in this state, including the department, by a transportation network company, including names, addresses, and any other personally identifiable information of drivers is not subject to disclosure under Chapter 552, Government Code.

(b) A public entity, including the department, may not disclose any records, data, or other information provided by a transportation network company under this chapter to a third party except in compliance with a court order or subpoena. If information provided

under this chapter is sought through a court order or subpoena, the public entity shall promptly notify the transportation network company to afford the company the opportunity to take actions to prevent disclosure.

(c) In collecting, using, or disclosing any records, data, or other information submitted by a transportation network company under this chapter, a public entity, including the department, shall:

(1) consider the potential risks to the privacy of the individuals whose information is being collected, used, or disclosed;

(2) ensure that the information to be collected, used, or disclosed is necessary, relevant, and appropriate to the proper administration of this chapter; and

(3) take all reasonable measures and make all reasonable efforts to protect, secure, and, where appropriate, encrypt or limit access to the information.

(d) A transportation network company required to submit, disclose, or otherwise provide personally identifiable information of drivers to a public entity of this state, including the department, is not liable in any civil or criminal action for any unauthorized disclosure, misuse, alteration, destruction, access or acquisition, or use of the information that occurs while the information is in the possession of any public entity of this state.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.153. DISCLOSURE OF PASSENGER INFORMATION. (a) A transportation network company may disclose a passenger's personal identifying information to a third party only if:

(1) the passenger consents;

(2) the disclosure is required by a legal obligation; or

(3) the disclosure is required to:

(A) protect or defend the terms of use of the transportation network company service; or

(B) investigate a violation of those terms.

(b) Notwithstanding Subsection (a), a transportation network company may share a passenger's name with a driver accessing the company's digital network to facilitate:

(1) identification of the passenger by the driver; or

(2) communication between the passenger and the driver.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

Sec. 2402.154. DATA SHARING WITH MUNICIPALITY. A municipality and a transportation network company may voluntarily enter into an agreement under which the company shares the company's data with the municipality.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

SUBCHAPTER E. ENFORCEMENT

Sec. 2402.201. PERMIT SUSPENSION OR REVOCATION. The department may suspend or revoke a permit issued to a transportation network company that violates a provision of this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 231 (H.B. 100), Sec. 1, eff. May 29, 2017.

TITLE 15. OCCUPATIONS RELATED TO EMPLOYMENT

CHAPTER 2501. PERSONNEL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2501.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who:

(A) engages the services of a personnel service to secure employment; or

(B) is placed with an employer by a personnel service.

(2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(3) "Counselor" means a person who:

(A) interviews and refers an applicant to a prospective employer; or

(B) solicits job orders from an employer.

(3-a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(4) "Employer" means a person who employs or seeks to

employ an employee.

(4-a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(5) "Fee" means anything of value, including valuable consideration or a service or the promise of valuable consideration or a service, directly or indirectly received by a personnel service as payment from a person seeking employment.

(6) "Job order" means a verbal or written notice of a job opening from an employer.

(7) "Owner" means a person who possesses a proprietary interest in a personnel service.

(8) "Person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

(9) "Personnel service" means a person who, regardless of whether for a fee, directly or indirectly offers or attempts to obtain permanent employment for an applicant or obtains or attempts to obtain a permanent employee for an employer. The term does not include a newspaper of general circulation or other publication that primarily communicates information, other than information relating to employment positions, and that does not claim to adapt the information provided to the needs or desires of an individual applicant. The term includes a person who offers the facilities of or advertises as:

(A) an executive search or consulting service;

(B) an out-placement service;

(C) an overseas placement service;

(D) a job listing service;

(E) a personnel consulting service; or

(F) a resume service that provides job market investigation, research, or evaluation.

(10) "Service file" means a job order, resume, application, workpaper, or other record containing information relating to:

(A) an applicant;

(B) an employer;

(C) an employment position; or

(D) the operation of a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 11.001, eff. Sept. 1,

2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. 1168), Sec. 2(1), eff. May 20, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. 3167), Sec. 2.02(1), eff. September 1, 2011.

Sec. 2501.002. EXCEPTION. This chapter does not apply to:
(1) a personnel service operated by the United States, this state, or a municipality of this state;
(2) a personnel service operated by a person who does not assess a fee if the personnel service is operated in conjunction with the person's own business exclusively to employ help for that business;
(3) a labor union; or
(4) a professional counselor licensed under Chapter 503.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

SUBCHAPTER C. PROHIBITED PRACTICES

Sec. 2501.101. PROHIBITED PRACTICES. (a) An owner, operator, counselor, agent, or employee of a personnel service may not:
(1) share or attempt to share a fee paid by a person seeking employment or an employer with an employer or an agent or employee of an employer or another person provided services by the personnel service;
(2) make or cause to be made a false promise, misrepresentation, or misleading statement or give or cause to be given misleading information to an applicant;
(3) refer an applicant to an employer unless the personnel service has a job order for the referral;
(4) advertise a position unless the personnel service has a job order verifiable by the employer;
(5) procure or attempt to procure the discharge of a person from the person's current employment;
(6) induce, solicit, or attempt to induce or solicit an employee to terminate current employment in order to obtain new employment if the current employment was obtained through that

personnel service or a personnel service that has a common ownership with that personnel service unless the employee initiates the new contact;

(7) deliver, disclose, distribute, or otherwise communicate to or receive from a person a service file or information contained in a service file, except as authorized by the personnel service that owns the file;

(8) advertise in any medium, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, or any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(9) refer an applicant to a place where the personnel service has knowledge of the existence of a strike or lockout unless the personnel service informs the applicant in writing of the strike or lockout before the referral is made; or

(10) refer an applicant to employment harmful to the applicant's health or morals if the personnel service has knowledge of the harmful condition.

(b) An employer or a person seeking employment may not:

(1) make a false statement or conceal any material fact to obtain an employee or employment by or through a personnel service; or

(2) share or attempt to share with a person subject to this chapter a fee paid or another payment made for the services of a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.102. IMPOSITION OF FEE PROHIBITED BEFORE EMPLOYMENT OFFER ACCEPTED. Notwithstanding any refund policy, an owner, operator, counselor, agent, or employee of a personnel service may not impose a fee on an applicant until the applicant accepts an offer of employment resulting from an employment referral made by the personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.103. CHARGING OF FEE IN EXCESS OF CERTAIN AMOUNT

PROHIBITED IF EMPLOYMENT TERMINATED. An owner, operator, counselor, agent, or employee of a personnel service may not charge an applicant a fee that exceeds 20 percent of the applicant's gross wages if:

(1) the employment accepted by the applicant as a result of a referral by the personnel service lasts less than 30 days; and

(2) the applicant terminates the employment for good cause.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

SUBCHAPTER E. CIVIL LIABILITY

Sec. 2501.201. LIABILITY FOR DAMAGES. (a) In this section, "knowingly" means actual awareness of the act or practice that is the alleged violation. Actual awareness may be inferred if any objective manifestation indicates that the person acted with actual awareness.

(b) A person who violates this chapter is liable to a person adversely affected by the violation for:

(1) actual damages; or

(2) if the person adversely affected establishes that the violation was committed knowingly, three times the amount of actual damages.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(2), eff. May 20, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. 1168), Sec. 2(2), eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. 3167), Sec. 2.02(2), eff. September 1, 2011.

Sec. 2501.202. INJUNCTION AND OTHER REMEDIES. A plaintiff in an action filed under Section 2501.201 may obtain:

(1) an order enjoining the defendant from violating this chapter;

(2) any order necessary to restore to the plaintiff any property acquired by the defendant in violation of this chapter; or

(3) other relief the court considers proper, including:

(A) the appointment of a receiver if the judgment against the defendant is not satisfied within three months after the

date of the final judgment; or

(B) an order enjoining the defendant from acting as a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. 1168), Sec. 1, eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. 3167), Sec. 2.01, eff. September 1, 2011.

Sec. 2501.203. AWARD OF ATTORNEY'S FEES. (a) A plaintiff who prevails in an action filed under Section 2501.201 is entitled to receive court costs and reasonable and necessary attorney's fees.

(b) On finding that an action filed under Section 2501.201 is groundless and was brought in bad faith or for the purpose of harassment, the court may award court costs and reasonable attorney's fees to the defendant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.204. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and any public or private right or remedy authorized by Subchapter E, Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

SUBCHAPTER F. PENALTIES

Sec. 2501.251. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.252. TRADE SECRET. A service file is a trade secret

for purposes of Section 31.05, Penal Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.254. EFFECT ON OTHER REMEDIES AND ENFORCEMENT POWERS. This chapter does not affect a public or private remedy or enforcement power available under other law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

PARKS AND WILDLIFE CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER A. PURPOSE AND POLICY

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 488, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent parks and wildlife law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 68, eff. Sept. 1, 1985.

SUBCHAPTER B. PROPERTY OF THE STATE

Sec. 1.011. PROPERTY OF THE STATE. (a) All wild animals, fur-bearing animals, wild birds, and wild fowl inside the borders of this state are the property of the people of this state.

(b) All fish and other aquatic animal life contained in the freshwater rivers, creeks, and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this state are the property of the people of this state.

(c) All the beds and bottoms and the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this state and of that part of the Gulf of Mexico within the jurisdiction of this state are the property of this state. The state may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters.

(d) The Parks and Wildlife Department shall regulate the taking and conservation of fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it by this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 1.012. PUBLIC FRESH WATER. Any public freshwater lake, river, creek, or bayou in this state contained in any survey of private land may not be sold but shall remain open to the public. The Parks and Wildlife Department is authorized to protect the fish in public waters under rules as it may prescribe.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 1, eff. Sept. 1, 1997.

Sec. 1.013. FENCES. This code does not prohibit or restrict the owner or occupant of land from constructing or maintaining a fence of any height on the land owned or occupied, and an owner or occupant who constructs such a fence is not liable for the restriction of the movement of wild animals by the fence. The existence of a fence does not affect the status of wild animals as property of the people of this state.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 123, eff. Sept. 1, 1997.

Sec. 1.014. USE OF CERTAIN WEAPONS IN OR ON BED OR BANK OF NAVIGABLE RIVER OR STREAM PROHIBITED. (a) In this section:

(1) "Archery equipment" means a longbow, recurved bow, compound bow, or crossbow.

(2) "Firearm" has the meaning assigned by Section 62.014.

(3) "Navigable river or stream" has the meaning assigned by Section 90.001.

(b) Except as provided by Subsection (c), a person may not discharge a firearm or shoot an arrow from any kind of bow if:

(1) the person is located in or on the bed or bank of a navigable river or stream at the time the firearm is discharged or the arrow is shot from the bow; or

(2) any portion of the ammunition discharged or arrow shot could physically contact the bed or bank of a navigable river or stream.

(c) This section does not apply to:

(1) an individual acting in the scope of the individual's duties as a peace officer or department employee;

(2) the discharge of a shotgun loaded with ammunition that releases only shot when discharged;

(3) an individual engaging in fishing using archery equipment, if the individual is in compliance with Subsection (e);

(4) the discharge of a firearm during the legal taking of an alligator; or

(5) the discharge of a firearm from the bank of a navigable river or stream to take a venomous snake or nonindigenous rodent by:

(A) an owner of the land adjacent to or through which the navigable river or stream runs; or

(B) an agent of an owner described by Paragraph (A).

(d) This section does not limit the ability of a license holder to carry a handgun under the authority of Subchapter H, Chapter 411, Government Code.

(e) An individual engaging in fishing using archery equipment may not possess while fishing:

(1) an arrow equipped with fletching of any kind;

(2) an unbarbed arrow; or

(3) a bow that is not equipped with a reel and line.

(f) A person who violates this section commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(g) If conduct that constitutes an offense under this section

also constitutes an offense under Title 7, the actor may be prosecuted under this section or the other law, but not both.

Added by Acts 2005, 79th Leg., Ch. 272 (H.B. 2027), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 583 (H.B. 3808), Sec. 1, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 39, eff. January 1, 2016.
Acts 2019, 86th Leg., R.S., Ch. 729 (H.B. 489), Sec. 1, eff. September 1, 2019.
Transferred, redesignated and amended from Parks and Wildlife Code, Section 284.001 by Acts 2023, 88th Leg., R.S., Ch. 1090 (S.B. 1236), Sec. 1, eff. September 1, 2023.

SUBCHAPTER C. DEFINITIONS

Sec. 1.101. DEFINITIONS. In this code:

(1) "Hunt" means capture, trap, take, or kill, or an attempt to capture, trap, take, or kill.

(2) "Catch" means take or kill and includes an attempt to take or kill.

(3) "Sell" means to transfer the ownership or the right of possession of an item to a person for consideration and includes a barter and an even exchange.

(4) "Wild," when used in reference to an animal, means a species, including each individual of a species, that normally lives in a state of nature and is not ordinarily domesticated. This definition does not include exotic livestock defined by Section 161.001(a)(4), Agriculture Code.

(5) "Take," except as otherwise provided by this code, means collect, hook, hunt, net, shoot, or snare, by any means or device, and includes an attempt to take or to pursue in order to take.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1981, 67th Leg., p. 378, ch. 153, Sec. 11, eff. Sept. 1, 1981; Acts 1991, 72nd Leg., ch. 424, Sec. 3, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 2, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 604, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 1, eff. June 18, 2005.

TITLE 2. PARKS AND WILDLIFE DEPARTMENT

CHAPTER 11. PARKS AND WILDLIFE DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this code:

(1) "Commission" means the Parks and Wildlife Commission.

(2) "Department" means the Parks and Wildlife Department.

(3) "Director" means the executive director of the Parks and Wildlife Department.

(4) "Presiding officer" means the presiding officer of the Parks and Wildlife Commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 47, eff. Sept. 1, 2001.

Sec. 11.002. POLICY IMPLEMENTATION. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the director and the department staff.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 1, eff. Sept. 1, 2001.

Sec. 11.003. APPLICABILITY OF CERTAIN STATE LAW REQUIREMENTS. A requirement under state law that a law enforcement agency adopt a policy that requires the collection and reporting of information relating to persons detained during traffic stops, that a peace officer report information relating to persons detained during traffic and pedestrian stops, or that a law enforcement agency compile, analyze, and report information relating to persons detained during traffic and pedestrian stops does not apply to the department or an employee of the department.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 2, eff. Sept. 1, 2001.

Sec. 11.004. RULES RELATING TO RESIDENCY FOR HUNTING AND OTHER PURPOSES. (a) The commission by rule may prescribe the proof required to demonstrate residency in this state for the purpose of obtaining a license or permit issued by the department.

Added by Acts 2005, 79th Leg., Ch. 961 (H.B. 1636), Sec. 1, eff. June 18, 2005.

Sec. 11.005. SOCIAL SECURITY NUMBERS OF CERTAIN MINORS. (a) The commission may not adopt rules that require a person 13 years of age or younger who applies for a license under Chapter 42, 46, or 50 to provide the applicant's social security number.

(b) The commission may adopt a rule requiring an applicant described by Subsection (a) or the applicant's parent or guardian to sign a statement that the applicant is not an obligor subject to a child support order.

Added by Acts 2015, 84th Leg., R.S., Ch. 153 (H.B. 821), Sec. 2, eff. September 1, 2015.

SUBCHAPTER B. ORGANIZATION OF DEPARTMENT

Sec. 11.011. PARKS AND WILDLIFE DEPARTMENT. The Parks and Wildlife Department is established as an agency of the state. It is under the policy direction of the Parks and Wildlife Commission.

Acts 1975, 64th Leg., p. 1405, ch. 541, Sec. 1, eff. Sept. 1, 1975.

Sec. 11.0111. SUNSET PROVISION. The Parks and Wildlife Department is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2035.

Added by Acts 1977, 65th Leg., p. 1846, ch. 735, Sec. 2.099a, eff. Aug. 29, 1977. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 479, Sec. 206,

eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 5.21(a), eff. Nov. 12, 1991; Acts 2001, 77th Leg., ch. 968, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 2.05, eff. June 15, 2007.
Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 1, eff. September 1, 2009.
Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 1, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 941 (S.B. 1659), Sec. 3.09, eff. June 18, 2023.

Sec. 11.012. COMMISSION. (a) The commission consists of nine members appointed by the governor with the advice and consent of two-thirds of the members of the senate present and voting.
(b) If the senate is not in session, the governor shall appoint the members and issue commissions to them as provided by law, and their appointment shall be submitted to the next session of the senate for its advice and consent in the manner that appointments to fill vacancies under the constitution are submitted to the senate.
(c) Commission members must be members of the general public and meet the qualifications provided by Section 11.0121.
(d) In making appointments under this section, the governor shall attempt to include persons with expertise in diverse fields, including fields such as historic preservation, conservation, and outdoor recreation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 3180, ch. 543, Sec. 1, eff. June 19, 1983; Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 3, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 968, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 2, eff. September 1, 2009.

Sec. 11.0121. QUALIFICATIONS. A person may not be a public member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of conservation, outdoor recreation, or commercial fishing, unless the license is a noncommercial hunting or fishing license or a license issued under Subchapter D, Chapter 43;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the department;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the department other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 4, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 5, eff. Sept. 1, 2001.

Sec. 11.0122. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the commission and may not be a department employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is a paid or compensated officer, employee, or paid consultant of a Texas trade association in the field of conservation, outdoor recreation, or commercial fishing; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of conservation, outdoor recreation, or commercial fishing.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 5, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 6, eff. Sept.

1, 2001.

Sec. 11.0123. LOBBYIST PROHIBITION. A person may not be a member of the commission or act as the general counsel to the commission or the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 6, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(23), eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 968, Sec. 7, eff. Sept. 1, 2001.

Sec. 11.0124. DISCRIMINATION IN APPOINTMENTS PROHIBITED. Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 7, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 8, eff. Sept. 1, 2001.

Sec. 11.0125. REMOVAL OF A COMMISSION MEMBER. (a) It is a ground for removal from the commission that:

(1) a public member does not have at the time of taking office the qualifications required by Section 11.0121;

(2) a public member does not maintain during service on the commission the qualifications required by Section 11.0121;

(3) a member is ineligible for membership under Section 11.012(c), 11.0122, or 11.0123;

(4) a member cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) a member is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the director has knowledge that a potential ground for removal exists, the director shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 8, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 9, eff. Sept. 1, 2001.

Sec. 11.0126. TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing department operations;

(2) the programs, functions, rules, and budget of the department;

(3) the scope of and limitations of the rulemaking authority of the commission;

(4) the results of the most recent formal audit of the department;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties; and

(6) any applicable ethics policies adopted by the department or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to

reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The director shall create a training manual that includes the information required by Subsection (b). The director shall distribute a copy of the training manual annually to each member of the commission. Each member of the commission shall sign and submit to the director a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 10, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 2, eff. September 1, 2021.

Sec. 11.013. TERMS. The members of the commission hold office for staggered terms of six years, with the terms of three members expiring every two years. Each member holds office until his successor is appointed and has qualified. The terms expire on January 31 of odd-numbered years.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1983, 68th Leg., p. 3180, ch. 543, Sec. 2, eff. June 19, 1983.

Sec. 11.014. PRESIDING OFFICER. (a) The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor.

(b) A vacancy in the office of presiding officer is filled in the same manner as the original designation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1983, 68th Leg., p. 3180, ch. 543, Sec. 3, eff. June 19, 1983; Acts 2001, 77th Leg., ch. 968, Sec. 12, eff. Sept. 1, 2001.

Sec. 11.015. MEETINGS, QUORUM. (a) The commission may meet as

often as is necessary but shall meet at least once during each quarter of the year. Five members constitute a quorum.

(b) The commission shall hold an annual public meeting to receive public comments concerning any issue relating to the commission's regulatory powers and duties.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 3180, ch. 543, Sec. 4, eff. June 19, 1983; Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 9, eff. Sept. 1, 1985.

Sec. 11.0151. PUBLIC HEARINGS. (a) In this section, "major decision" means a decision in which a vote is taken on:

(1) a rule;

(2) a proclamation;

(3) a contract;

(4) a budget;

(5) a grant;

(6) a development plan for a geographical area managed by the department;

(7) a memorandum of understanding with another governmental entity; or

(8) any other issue as determined by the commission.

(b) The commission shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

(c) The commission, or any committee of the commission with at least five commission members serving on the committee, shall provide an opportunity for public testimony in an open meeting before making a major decision.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 10, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 13, eff. Sept. 1, 2001.

Sec. 11.016. EXPENSES, PER DIEM. Members of the commission are entitled to reimbursement for their actual expenses incurred in attending meetings and to the per diem as provided in the general

appropriations act.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 11.0161. NOTIFICATION OF COMMISSION ACTIVITIES. (a) The commission shall prepare information of public interest describing the functions of the commission. The commission shall make the information available to the general public and appropriate state agencies.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 14, eff. September 1, 2021.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 14, eff. September 1, 2021.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 14, eff. September 1, 2021.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 14, eff. September 1, 2021.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 11, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 968, Sec. 14, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 3, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 14, eff. September 1, 2021.

Sec. 11.0162. ADVISORY COMMITTEES TO COMMISSION. (a) The presiding officer may appoint committees to advise the commission on issues under its jurisdiction.

(b) The presiding officer may adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section.

Added by Acts 1999, 76th Leg., ch. 925, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 968, Sec. 48, eff. Sept. 1, 2001.

Sec. 11.0163. USE OF TECHNOLOGY. The commission shall implement a policy requiring the department to use appropriate technological solutions to improve the department's ability to perform its functions. The policy must ensure that the public is able to interact with the department on the Internet.

Added by Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 4, eff. September 1, 2009.

Sec. 11.0164. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of department rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b) The department's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the department.

Added by Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 4, eff. September 1, 2009.

Sec. 11.0165. COMPLAINTS. (a) The department shall maintain a system to promptly and efficiently act on complaints filed with the

department. The department shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The department shall make information available describing its procedures for complaint investigation and resolution.

(c) The department shall periodically notify the complaint parties of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

Added by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 4, eff. September 1, 2021.

Sec. 11.017. EXECUTIVE DIRECTOR. The commission may appoint an executive director who is the chief executive officer of the department and performs its administrative duties. The director serves at the will of the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 11.0171. AUTHORITY TO CONTRACT. (a) Subject to Section 12.0251, for the purpose of carrying out the powers, duties, and responsibilities of the department, the executive director, or the executive director's designee, may negotiate, contract, or enter an agreement:

(1) with:

(A) the United States or any of its agencies;

(B) another state or a political subdivision of another state or of this state; or

(C) a nonprofit organization for research and field work; or

(2) for professional services relating to a project of the department, including project management, design, bid, and construction administration, consistent with Subchapter A, Chapter 2254, Government Code.

(b) The commission by rule shall adopt policies and procedures consistent with applicable state procurement practices for soliciting and awarding the contracts under this section.

(c) The executive director may negotiate with and award a

contract for goods or services to any qualified vendor if the executive director:

(1) solicits bids for the goods or services through a competitive process in compliance with all applicable laws, including Chapters 2155, 2254, and 2269, Government Code, that fails to result in competitive responsive bids;

(2) makes a written determination that resoliciting bids for the goods or services would:

(A) be unlikely to result in responsive bids;

(B) increase costs to the department; or

(C) delay the ability of the department to address a critical need; and

(3) determines that the vendor meets the requirements of the original solicitation.

(d) To the extent practicable, the executive director may combine the procurement of multiple goods or services into a single competitively bid contract to enhance the contract's attraction for potential vendors.

Added by Acts 1999, 76th Leg., ch. 618, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 296 (H.B. 2777), Sec. 1, eff. June 2, 2023.

Sec. 11.0172. LIMIT ON CONTRACTS FOR PUBLICATIONS. (a) In this section:

(1) "Publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(2) "Youth" means an individual younger than 17 years of age.

(b) The department may not contract with a person regarding a publication unless the contract provides the department the authority to:

(1) terminate the contract for a violation of a rule adopted under Subsection (c);

(2) retain final approval over the content of the publication, including advertising; and

(3) request and receive an appropriate number of copies of the publication that contain advertising that is appropriate for

viewing by youth.

(c) The commission shall adopt rules regarding the types of advertising that are appropriate for viewing by youth.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 15, eff. Sept. 1, 2001.

Sec. 11.0173. PROHIBITION ON TOBACCO ADVERTISING. (a) In this section, "publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(b) The department may not accept an advertisement that promotes the sale of tobacco in a publication sponsored or published by the department.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 15, eff. Sept. 1, 2001.

Sec. 11.0174. INTERNAL AFFAIRS OFFICE. (a) The executive director shall establish the office of internal affairs.

(b) The office of internal affairs has original departmental jurisdiction over all investigations of cases alleging criminal conduct:

(1) occurring on department property;

(2) engaged in by on-duty department employees; or

(3) engaged in by officers commissioned by the department performing off-duty work related to their official duties.

(c) The office of internal affairs shall oversee and review, but need not conduct, all investigations under this section.

(d) An investigation under this section may be initiated only by the executive director or the commission.

(e) The executive director shall appoint the head of the office of internal affairs. The head of the office of internal affairs serves until removed by the executive director.

(f) The head of the office of internal affairs shall:

(1) report directly to the executive director regarding performance of and activities related to investigations;

(2) report to the executive director for administrative purposes; and

(3) provide the executive director or commission with information regarding investigations as appropriate.

(g) The head of the office of internal affairs shall present at

each regularly scheduled commission meeting and at other appropriate times a summary of information relating to investigations conducted under this section that includes analysis of the number, type, and outcome of investigations, trends in the investigations, and any recommendations to avoid future complaints.

Added by Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 4, eff. September 1, 2009.

Sec. 11.018. EMPLOYEES. The director may appoint heads of divisions, law enforcement officers, park managers, and other employees authorized by appropriations and necessary for administering the duties and services of the department. These employees serve at the will of the director.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 122, ch. 29, Sec. 1, eff. April 19, 1983.

Sec. 11.0181. EMPLOYEES AS EDUCATORS AND OUTREACH PROPONENTS. (a) Employees of the department through education and outreach shall:

(1) expand the wise use and conservation of fish and wildlife resources; and

(2) increase the participation in outdoor recreation, including recreational activities in urban areas consistent with the mission and goals of the department.

(b) The department may use money from any of the department's special accounts to pay for education and outreach activities performed by department employees or to provide grants for education and outreach activities to be performed by other entities.

(c) The department shall manage the outreach and education activities performed under this section to ensure that the activities:

(1) are consistent with the department's mission and goals;

(2) do not duplicate other efforts by the department or other entities;

(3) provide a cost-effective method for reaching participants; and

(4) can be effectively measured.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 16, eff. Sept. 1, 2001.

Sec. 11.0182. EMPLOYEE FUND-RAISING. (a) This section applies only to the solicitation or receipt of a gift, including money, that has a value of $500 or more.

(b) The commission by rule shall adopt policies to govern fund-raising activities by department employees on behalf of the department. The rules must:

(1) designate the types of employees who may solicit donations;

(2) restrict where and how fund-raising may occur; and

(3) establish requirements for reports by employees to the director.

(c) The director shall approve and manage fund-raising activities by department employees on behalf of the department in accordance with commission rules.

(d) The state auditor may audit the fund-raising activities performed under this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the audit in the audit plan under Section 321.013(c), Government Code. If the state auditor performs an audit, the audit shall disclose who has engaged in fund-raising activities for the department and the value of gifts each person has received or solicited. The state auditor shall report the results of the audit to the presiding officer of each house of the legislature and of each committee having primary jurisdiction over the department. Each member of the legislature may access the report.

(e) Policies adopted by the commission under Subsection (b) are public information under Chapter 552, Government Code.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 17, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 74, eff. Sept. 1, 2003.

Sec. 11.0183. DONATION OF ACCRUED COMPENSATORY TIME OR ACCRUED

ANNUAL LEAVE FOR LEGISLATIVE PURPOSES. (a) The director shall allow a peace officer commissioned by the department to voluntarily transfer to a legislative leave pool up to eight hours of compensatory time or annual leave per year earned by the peace officer.

(b) The director or the director's designee shall administer the legislative leave pool.

(c) The commission shall adopt rules and prescribe procedures relating to the operation of the legislative leave pool.

(d) The director or the director's designee shall credit the legislative leave pool with the amount of time contributed by a peace officer commissioned by the department and deduct a corresponding amount of time from the peace officer's earned compensatory time or annual leave as if the peace officer had used the time for personal purposes.

(e) A peace officer commissioned by the department is entitled to use time contributed to the legislative leave pool if the peace officer uses the time for legislative leave on behalf of a law enforcement association:

(1) related to the peace officer's employment with the department;

(2) that has at least 150 active or retired members; and

(3) that is governed by a board of directors.

(f) The director or the director's designee shall transfer time from the pool to the peace officer and credit the time to the peace officer.

(g) A peace officer commissioned by the department may only withdraw time from the legislative leave pool in coordination with and with the consent of the president or designee of the law enforcement association described in Subsection (e). A peace officer may not draw more than 80 hours from the pool in a 160-hour work cycle and may not draw more than 480 hours from the pool in a fiscal year.

(h) A peace officer commissioned by the department shall use time from the legislative leave pool in accordance with rules adopted by the commission.

Added by Acts 2023, 88th Leg., R.S., Ch. 278 (S.B. 922), Sec. 1, eff. September 1, 2023.

Sec. 11.019. EMPLOYEES AS PEACE OFFICERS. (a) The director may commission as peace officers any of the employees provided for in the general appropriations act.

(b) Law enforcement officers commissioned by the director have the same powers, privileges, and immunities as peace officers coextensive with the boundaries of this state.

(c) Law enforcement officers commissioned by the director have the same authority as a sheriff to arrest, serve criminal or civil process, and require aid in serving criminal or civil process coextensive with the boundaries of this state.

(d) A law enforcement officer commissioned by the director may arrest without a warrant any person in this state found in the act of violating any law.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 122, ch. 29, Sec. 2, eff. April 19, 1983.

Sec. 11.0191. ENFORCEMENT OF CODE. Law enforcement officers commissioned by the director and any other peace officers have the authority to enforce all provisions of this code.

Added by Acts 1983, 68th Leg., p. 123, ch. 29, Sec. 3, eff. April 19, 1983.

Sec. 11.0192. PURCHASE OF BADGE BY RETIRING PEACE OFFICER OR SURVIVOR. (a) A peace officer commissioned by the director who is honorably retired from his commission by the department may purchase for an amount set by the department, not to exceed fair market value, one badge issued to the officer by the department. The purchase must be made before the second anniversary of the date of the officer's retirement.

(b) If a peace officer commissioned by the director dies while commissioned, whether or not the death occurred in the discharge of the officer's official duties as a peace officer, the following persons, in descending order of precedence, may purchase a badge issued to the officer under the same conditions imposed on a purchase by a retiring officer by Subsection (a) of this section:

(1) the surviving spouse of the officer;

(2) any children of the officer; or
(3) the parents of the officer.

Added by Acts 1987, 70th Leg., ch. 763, Sec. 1, eff. Aug. 31, 1987.

Sec. 11.0193. PURCHASE OF FIREARM FROM DEPARTMENT BY COMMISSIONED PEACE OFFICER. (a) An employee commissioned by the director as a peace officer may purchase for an amount set by the department, not to exceed fair market value, a firearm issued to the person by the department if:

(1) the firearm is not listed as a prohibited weapon under Section 46.05, Penal Code; and

(2) the firearm is retired by the department for replacement purposes.

(b) The commission may adopt rules for the sale of a retired firearm under this section to a peace officer commissioned by the director.

Added by Acts 2009, 81st Leg., R.S., Ch. 475 (S.B. 417), Sec. 1, eff. June 19, 2009.

Sec. 11.0195. USE OF FUNDS TO SUPPORT PEACE OFFICER TRAINING. The department, subject to director approval, may use appropriated funds to purchase food and beverages for training functions required of peace officers of the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1270 (H.B. 78), Sec. 4, eff. June 17, 2011.

Sec. 11.020. DEPUTY GAME WARDENS. (a) The director may commission deputy game wardens to serve at the will of the director. Provided, however, that no deputy game warden commissioned under this section may be commissioned for a period of longer than four years. At the expiration of each four-year commission the deputy game warden shall be eligible for recommission.

(b) The commission shall make regulations to govern the qualifications, conduct, and duties of commissioned deputy game wardens. The director shall implement an education course which

includes training in pertinent aspects of a game warden's duties. Completion of this course shall be a prerequisite to any person obtaining a commission as deputy game warden.

(c) A commissioned deputy game warden may enforce state laws relating to hunting and fishing and to the preservation and conservation of wildlife and marine animals. The department shall prescribe the geographical area in which a deputy game warden may operate, except that a deputy game warden may not operate on the coastal waters, bays, or estuaries of this state. At all times when any commissioned deputy game warden is on duty or is acting in an official capacity he shall carry official identification and shall wear an official badge which is clearly visible. A commissioned deputy game warden must present his official identification to any person he believes is violating this code before the deputy game warden makes an investigation or arrest. A commissioned deputy game warden shall purchase and wear at all times when on duty or acting in an official capacity a uniform prescribed by the department.

(d) A deputy game warden must file an oath and a bond in the amount of $2,000 payable to the department at the time he receives the commission.

(e) Commissioned deputy game wardens serve without compensation from the state, but the department may expend necessary funds to support and maintain this responsibility.

Added by Acts 1977, 65th Leg., p. 650, ch. 241, Sec. 1, eff. May 25, 1977.

Sec. 11.0201. SPECIAL GAME WARDENS. (a) The director may commission as a special game warden an honorably retired commissioned game warden of the department.

(b) An applicant for a special game warden commission must meet the minimum standards for licensing of a peace officer under the rules adopted by the Texas Commission on Law Enforcement.

(c) Except as provided by Subsection (d) of this section, a special game warden is subject to the orders of the director for special duty to the same extent as other law enforcement officers commissioned under this subchapter.

(d) A special game warden may enforce only:

(1) provisions of this code;

(2) regulations promulgated by the commission;

(3) provisions of the Penal Code; and

(4) other state laws intended to protect life or property, except a law that regulates the use of a motor vehicle on state highways.

(e) The department may assign a special game warden for duty in any area of the state, under the authority of the department's supervisory personnel in that area.

(f) The director has authority over the law enforcement activities of a special game warden regardless of whether the special game warden is on active or inactive status.

(g) The commission by rule shall establish standards governing the conduct and duties of special game wardens.

(h) Before the director may issue a special game warden commission, the applicant must file an oath and a bond in the amount of $2,500. The bond must be executed by a surety company authorized to do business in this state, must indemnify all persons against damages resulting from an unlawful act of the special game warden, and must be payable to the department at the time the applicant receives the commission.

(i) A special game warden commission expires on August 31 of the second calendar year following the year in which the commission is granted. At expiration of the commission, a special game warden is eligible for recommission. A special game warden serves at the will of the director.

(j) The commission by rule shall determine compensation for the services of a special game warden. Compensation for a special game warden may not exceed the actual value of the services rendered by the special game warden.

Added by Acts 1991, 72nd Leg., ch. 212, Sec. 1, eff. Sept. 1, 1991.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.59, eff. May 18, 2013.

Sec. 11.021. INFORMATION CONCERNING QUALIFICATIONS AND RESPONSIBILITIES. The director or the director's designee shall provide to commission members and department employees, as often as necessary, information regarding the requirements for office or

employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 12, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 18, eff. Sept. 1, 2001.

Sec. 11.022. EQUAL OPPORTUNITY EMPLOYMENT. (a) The director or the director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the department to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the department's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the state Commission on Human Rights for compliance with Subsection (b); and

(3) filed with the governor's office.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 13, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 19, eff. Sept. 1, 2001.

Sec. 11.023. CAREER LADDER PROGRAM. The director or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 14, eff. Sept. 1, 1985.

Sec. 11.024. PERFORMANCE EVALUATIONS. The director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this section.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 15, eff. Sept. 1, 1985.

Sec. 11.025. AUDIT. The financial transactions of the department are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 16, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 90, eff. Sept. 1, 1989.

Sec. 11.0255. EVALUATION OF CONSTRUCTION PROJECTS. (a) The department shall calculate the costs of each department construction project as the project is completed.

(b) In calculating the costs under Subsection (a), the department shall consider both direct and indirect costs of department employees who perform project tasks.

(c) On request, the comptroller shall provide technical assistance to the department.

(d) Using the costs calculated under this section for completed projects, the department shall evaluate the costs and benefits of contracting with private entities or individuals to manage proposed construction-related tasks or projects.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 20, eff. Sept. 1, 2001. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 24 (S.B. 706), Sec. 5, eff. September 1, 2017.

Sec. 11.026. GIFTS OF PROPERTY OR MONEY. (a) Except as provided by Subsection (b), the department may accept gifts of property or money in support of any department purpose authorized in this code.

(b) The department may not accept a gift or other donation from a person who holds a commercial license issued by the department. For the purposes of this section, a license issued under Subchapter D, Chapter 43, is not a commercial license.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 21, eff. Sept. 1, 2001.

Sec. 11.0261. PROHIBITION AGAINST ACCEPTANCE OF GIFTS, GRATUITIES, AND OTHER THINGS OF VALUE; EXCEPTION. (a) Except as provided by Subsection (b), a person who is a member of the commission or an employee of the department may not accept a gift, gratuity, or other thing of value, including travel, from a person who:

(1) is employed by or participates in the management of a business entity or other organization that receives funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization that receives funds from the department;

(3) is a person a significant portion of whose business consists of furnishing goods or services to an entity or organization described by Subdivision (1) or (2); or

(4) is an agent, representative, attorney, employee, officer, owner, director, or partner of an entity, organization, or person described by Subdivision (1), (2), or (3).

(b) A department employee may accept reimbursement for travel expenses from the official nonprofit partner designated by the commission under Section 11.205 if:

(1) the employee has sufficiently documented the expense; and

(2) the expense arose out of the performance of an activity related to an employee's official duties regarding the partner.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 4, eff. Sept. 1, 1997.

Amended by Acts 2001, 77th Leg., ch. 968, Sec. 22, eff. Sept. 1, 2001.

Sec. 11.0262. CERTAIN GRATUITIES AUTHORIZED. (a) An employee of the state parks division of the department may accept a gratuity if:

(1) the employee, as a primary job duty, serves food or beverages in a restaurant, cafeteria, or other food service establishment located within a state park and owned and operated by the department;

(2) the employee, as an auxiliary duty in performance of a regular duty renders a special customer service to an individual or group;

(3) the gratuity is offered by a customer:

(A) of the restaurant, cafeteria, food service establishment, or hospitality unit of the state parks division in appreciation of being served food or beverages by the employee; or

(B) of a hospitality unit of the state parks division, in appreciation of receiving some other customer service from the employee;

(4) the department has designated the employee as an employee authorized to accept a gratuity; and

(5) the employee reports the gratuity in accordance with commission rules.

(b) The commission may adopt rules necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 639 (H.B. 2685), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 15, eff. June 15, 2007.

Sec. 11.027. ESTABLISHMENT OF FEES; REVENUE. (a) In setting the amounts of the fees authorized by this code, the commission shall establish reasonable and necessary fees for the administration of department programs but may not maintain unnecessary fund balances.

(b) The commission by rule may establish and provide for the

collection of a fee to cover costs associated with the review of an application for a permit required by this code.

(c) The department may sell any item in the possession of the department in which the state has title, or acquire and resell items if a profit can be made, to provide funding for programs administered by the department.

(d) The commission may set and charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs involved in the use of the card. The department shall deposit the money in the state treasury.

(e) The commission by rule may establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 18, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 780, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 447, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 5, eff. Sept. 1, 1997.

Sec. 11.0271. PUBLIC HUNTING DRAWING; FEES. (a) The department may conduct public drawings to select applicants for public hunting privileges. The department may charge each person who participates in the drawing a nonrefundable participation fee in addition to any fee for issuing a hunting permit or license. The participation fee shall be set by the commission in an amount sufficient to pay the costs of operating the drawing.

(b) The commission may approve participation fees, not to exceed $25 per species for each participant on an application, in drawings for special hunting programs, packages, or events that exceed the costs of operating the drawing only if the fees charged are designated for use in the management and restoration efforts of the specific wildlife program implementing each special hunting program, package, or event.

Added by Acts 1993, 73rd Leg., ch. 635, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 78, eff. June 16, 1995.

Sec. 11.0272. PUBLIC FISHING AND SPECIAL EVENTS DRAWING; FEES. (a) The department may conduct public drawings to select applicants for public fishing or other special events privileges. The department may charge each person who participates in the drawing a nonrefundable participation fee in addition to any fee for issuing a permit or fishing license. The participation fee shall be set by the commission in an amount sufficient to pay the costs of operating the drawing.

(b) The commission may approve participation fees, not to exceed $25 per species or event for each participant on an application, in drawings for special fishing or other special programs, packages, or events the costs of which exceed the costs of operating the drawing only if the receipts from fees charged are designated for use in the management and restoration efforts of the specific fishery or resource program implementing each special fishing or other special program, package, or event.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 6, eff. Sept. 1, 1997.

Sec. 11.028. VOLUNTEER SERVICES. (a) The department may use the services of volunteers to help carry out the duties and responsibilities of the department, provided, however, that volunteers shall not be used to enforce provisions of this code or to carry out department duties and responsibilities on private property unless the landowner has consented to the activity.

(b) The department may accept funds raised by a volunteer or volunteer group to promote the work of the department and to help carry out its duties and responsibilities. The department may use the funds for the specific project or purpose for which the funds are intended.

(c) The director may waive park entrance fees and facility use fees for a volunteer to assist in the accomplishment of the volunteer's service to the department.

(d) The executive director may expend funds appropriated to the department from dedicated funding sources for:

(1) the establishment of an insurance program to protect volunteers in the performance of volunteer service;

(2) recognition of the services of a volunteer or volunteer groups.

(e) The commission shall authorize the administrator of a state park to provide passes to the state park to members of nonprofit youth groups who volunteer to help carry out the duties and responsibilities of the department at the park. For purposes of this subsection, "nonprofit youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, components relating to:

(A) character development;

(B) citizenship training;

(C) physical and mental fitness; and

(D) prevention of drug abuse;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent are younger than 22 years of age.

Added by Acts 1991, 72nd Leg., ch. 910, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1999, 76th Leg., ch. 257, Sec. 1, eff. May 28, 1999.

Sec. 11.0281. VOLUNTEER LIABILITY AND IMMUNITY. (a) In this section, "volunteer" means a person rendering services for or on behalf of the department without the expectation of receiving monetary compensation from the department other than reimbursement for expenses incurred by the person during the performance of the service. The term does not include:

(1) a person performing services as a result of a community service or community supervision sentence; or

(2) an inmate providing labor pursuant to Section 497.091, Government Code, or similar law.

(b) Except as provided by Subsection (c), a volunteer while acting within the course and scope of the volunteer's assignment for the department is immune from civil liability for any act or omission of the volunteer resulting from the operation or use of a motor-driven vehicle or motor-driven equipment owned or leased by the department.

(c) This section does not apply to an act or omission that is intentional, wilfully negligent, or done with conscious indifference

or reckless disregard for the safety of others.

(d) The department shall, from any funds appropriated to the department, compensate a claimant for property damage, personal injury, or death proximately caused by the wrongful act or omission or the negligence of a volunteer acting within the scope of the volunteer's assignment if:

(1) the property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment owned or leased by the department; and

(2) the volunteer would be personally liable to the claimant under the laws of this state in the absence of the immunity provided by this section.

(e) The amount of compensation paid under Subsection (d) may not exceed the maximum amount applicable to a state agency as specified by Section 101.023(a), Civil Practice and Remedies Code.

(f) A volunteer operating or using a motor-driven vehicle or motor-driven equipment owned or leased by the department who is acting within the course and scope of a volunteer assignment for the department is exempt from the requirements of Chapter 601, Transportation Code.

(g) Except as provided by Subsection (d), this section does not create any liability of or waive any immunity of the department, employees of the department, or volunteers for the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 184 (S.B. 381), Sec. 1, eff. September 1, 2015.

Sec. 11.0285. DONATED BUILDING PROJECTS. (a) The department may accept the donation of a turnkey building project on state land provided that the department:

(1) approves the plans and engineering in advance; and

(2) has supervision over the project.

(b) A project under this section is not subject to competitive bidding.

(c) The commission may adopt rules to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1193 (H.B. 3864), Sec. 1, eff. June 19, 2009.

Sec. 11.029. ADMINISTRATION OF OATHS. Employees of the department who are designated as provided by the commission may administer oaths in connection with the permitting, licensing, and other functions of the department.

Added by Acts 1991, 72nd Leg., ch. 192, Sec. 1, eff. Sept. 1, 1991. Renumbered from Sec. 11.028 by Acts 1991, 72nd Leg., 1st C.S., ch. 14, Sec. 8.01(20), eff. Nov. 12, 1991.

Sec. 11.030. DISCLOSURE OF PERSONAL CUSTOMER INFORMATION. (a) The name and address and a telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products, licenses, or services from the department may not be disclosed, sold, rented, or traded except as authorized under this section or Section 12.014, 12.103, or 12.0251.

(b) Chapter 552, Government Code, does not apply to customer information described by Subsection (a).

(c) The commission by rule shall adopt policies relating to:

(1) the release of the customer information; and

(2) the use of the customer information by the department.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 935 (S.B. 15), Sec. 15(1), eff. June 18, 2021.

(e) The commission or department may disclose customer information to a federal or state law enforcement agency if the agency provides a lawfully issued subpoena.

(e-1) The department may disclose statistical data and compilations of customer information described by Subsection (a) if the information does not reveal information identifying a specific department customer or a department customer's address, telephone number, social security number, or driver's license number.

(e-2) The department may disclose customer information described by Subsection (a) only:

(1) to another governmental body, including a law enforcement entity, as needed to carry out a governmental purpose;

(2) if the customer that is the subject of the information consents in writing to the specific disclosure; or

(3) if the information is:

(A) part of a record that is considered to be a public record under Section 31.039; or

(B) authorized to be disclosed under Section 31.0391.

(e-3) This section does not authorize the department to disclose information the department is prohibited from disclosing by other law.

(f) The department and its officers and employees are immune from civil liability for an unintentional violation of this section.

(g) In this section, a reference to the department includes a reference to an agent of the department.

Added by Acts 1995, 74th Leg., ch. 519, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 935 (S.B. 15), Sec. 2, eff. June 18, 2021.

Acts 2021, 87th Leg., R.S., Ch. 935 (S.B. 15), Sec. 15(1), eff. June 18, 2021.

Acts 2023, 88th Leg., R.S., Ch. 247 (S.B. 811), Sec. 2, eff. May 27, 2023.

SUBCHAPTER C. SPECIAL ACCOUNTS

Sec. 11.031. GAME, FISH, AND WATER SAFETY ACCOUNT. There is in the state treasury an account called the "game, fish, and water safety account."

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1979, 66th Leg., p. 546, ch. 260, art. 1, Sec. 1, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.

Sec. 11.032. GAME, FISH, AND WATER SAFETY ACCOUNT; SOURCES. (a) The game, fish, and water safety account is a separate account in the general revenue fund.

(b) The department shall deposit to the credit of the game, fish, and water safety account all revenue, less allowable costs, from the following sources:

(1) all types of fishing licenses and stamps and shrimping licenses;

(2) all types of hunting licenses and stamps;

(3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;

(4) sale of marl, sand, gravel, shell, and mudshell;

(5) oyster bed rentals and permits;

(6) federal funds received for fish and wildlife research, management, development and conservation, resource protection, and law enforcement, unless the funds are received for the specific purposes of Subchapter F, Chapter 77;

(7) sale of property, less advertising costs, purchased from this account or a special fund or account that is now part of this account;

(8) fines and penalties collected for violations of a law pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, shrimp, oysters, game birds and animals, fur-bearing animals, alligators, and any other wildlife resources of this state;

(9) sale of rough fish by the department;

(10) fees for importation permits;

(11) fees from supplying fish for or placing fish in water located on private property;

(12) sale of seized pelts;

(13) sale or lease of grazing rights to and the products from game preserves, sanctuaries, and management areas;

(14) contracts for the removal of fur-bearing animals and reptiles from wildlife management areas;

(15) vessel registration fees;

(16) vessel manufacturer or dealer licensing fees;

(17) fines or penalties imposed by a court for violation of water safety laws contained in Chapter 31 of this code;

(18) alligator hunter's or alligator buyer's licenses;

(19) sale of alligators or any part of an alligator by the department;

(20) fees and revenue collected under Section 11.027(b) or (c) of this code that are associated with the conservation of fish and wildlife;

(21) fees related to cultivated oyster mariculture;

(22) vessel and outboard motor titling fees;

(23) participation fees collected under Section 43.976;

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 235 (H.B. 2755), Sec. 1

(24) money received by the department from:

(A) boater education program courses and examinations

administered under Section 31.108; and

(B) boater education deferrals issued under the program established under Section 31.110(c); and

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 334 (H.B. 4018), Sec. 1

(24) money received by the department from carbon sequestration or similar ecosystem services projects described by Section 11.302(b)(1); and

(25) any other source provided by law.

(c) Not later than the 10th day of each month the department may transfer an amount not to exceed 15 percent of all amounts collected during the previous month from sources described by Subsection (b)(15), (16), or (22) to the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 546, ch. 260, art. 1, Sec. 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 439, ch. 184, Sec. 3, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 640, Sec. 2, eff. Jan. 1, 1986; Acts 1989, 71st Leg., ch. 637, Sec. 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 780, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 339, Sec. 2, eff. June 8, 1995; Acts 2003, 78th Leg., ch. 200, Sec. 7(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 667, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 237 (H.B. 448), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 426 (S.B. 733), Sec. 1, eff. June 4, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 15.001, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 235 (H.B. 2755), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 334 (H.B. 4018), Sec. 1, eff. September 1, 2023.

Sec. 11.033. USE OF GAME, FISH, AND WATER SAFETY ACCOUNT. (a) To the extent allowed by federal law, money in the game, fish, and water safety account may be used for the following purposes:

(1) enforcement of fish, shrimp, and oyster laws, game laws, and laws pertaining to sand, shell, and gravel;

(2) dissemination of information pertaining to marine life, wild animal life, wildlife values, and wildlife management;

(3) scientific investigation and survey of marine life for the better protection and conservation of marine life;

(4) establishment and maintenance of fish hatcheries, fish sanctuaries, tidal water fish passes, wildlife management areas, and public hunting grounds;

(5) propagation and distribution of marine life, game animals, and wild birds;

(6) protection of wild birds, fish, and game;

(7) purchase, repair, and operation of boats and dredges;

(8) research, management, and protection of the fish and wildlife resources of this state, including alligators and fur-bearing animals;

(9) salaries of employees and other expenses necessary to carry out the duties of the department under laws relating to fish, shrimp, oysters, game, water safety, and sand, shell, and gravel;

(10) expansion and development of additional opportunities of hunting and fishing in state-owned land and water;

(11) removing rough fish from public water;

(12) administration and enforcement of the water safety laws as set out in Chapter 31, including administration of the boater education program established under Section 31.108;

(13) purchasing all necessary forms and supplies, including reimbursement of the department for any material produced by its existing facilities or work performed by other divisions of the department;

(14) purchase, construction, and maintenance of boat ramps on or near public waters as provided in Chapter 31;

(15) resource protection activities;

(16) the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water; and

(17) any other use provided by law.

(b) The department may use money from license fees paid by hunters and fishermen only for those functions required to manage the

fish and wildlife resources of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 547, ch. 260, art. 1, Sec. 1, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 1157, ch. 261, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 19, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 968, Sec. 23, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 235 (H.B. 2755), Sec. 2, eff. September 1, 2023.

Sec. 11.034. GAME, FISH, AND WATER SAFETY ACCOUNT EXPENDITURES. All expenditures of the department from the game, fish, and water safety account must be approved by the director. The comptroller shall draw a warrant on the state treasury from the game, fish, and water safety account for the amount of the expenditure in favor of the person claiming the expenditure.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 546, ch. 260, art. 1, Sec. 1, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.

Sec. 11.035. STATE PARKS ACCOUNT. (a) The state parks account is a separate account in the general revenue fund.

(b) The department shall deposit to the credit of the state parks account all revenue, less allowable costs, received from the following sources:

(1) grants or operation of concessions in state parks or fishing piers;

(2) publications on state parks, state historic sites, or state scientific areas;

(3) fines or penalties received from violations of regulations governing parks issued pursuant to Subchapter B, Chapter 13;

(4) fees and revenue collected under Section 11.027(b) or (c) that are associated with state park lands;

(5) credits made to the department under Section 151.801, Tax Code, in an amount not to exceed the amount of the tax proceeds allocated by the legislature to the account under Section 151.801(c-1), Tax Code, to be used only for the purposes provided by that section;

(6) money received by the department from carbon sequestration or similar ecosystem services projects described by Section 11.302(b)(2); and

(7) any other source provided by law.

(c) The department may deposit to the credit of the state parks account all revenue, less allowable costs, from the following sources:

(1) private contributions, grants, and donations received for state parks-related purposes; and

(2) federal funds received for state parks-related purposes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1991, 72nd Leg., ch. 780, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 16, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 82 (S.B. 1366), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 503 (S.B. 26), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 334 (H.B. 4018), Sec. 2, eff. September 1, 2023.

Sec. 11.037. STATE LAND AND WATER CONSERVATION ACCOUNT. (a) The state land and water conservation account is a separate account in the general revenue fund.

(b) The department may deposit in the state land and water conservation account any revenue received from the federal government

or any other source for the purpose of administering programs authorized under Sections 13.301 through 13.311 of this code.

(c) The state land and water conservation account may be used for paying the cost of planning, acquisition, operation, and development of outdoor recreation and conservation resources of the state and the administrative expenses incident to the projects or programs authorized under Sections 13.301 through 13.311 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 6, eff. September 1, 2009.

Sec. 11.038. OPERATING ACCOUNT. (a) The parks and wildlife operating account is a separate account in the general revenue fund.

(b) The commission may transfer any funds appropriated to the department for personal services, travel, consumable supplies and materials, current operating expenses, and capital outlay, as these terms are used in the comptroller's object classification codes of the general appropriations act. All expenditures by the department from this account shall be made only for the purposes for which appropriations are made in the general appropriations act.

(c) The parks and wildlife operating account shall be used for the purposes specified by law and nothing may be done by any officer or employee of the department or commission to divert or jeopardize the account or any portion of the account, including any federal aid the department receives or administers.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.

Sec. 11.040. MISTAKEN DEPOSIT. (a) Any funds deposited in the state treasury by the department by mistake of fact or mistake of law shall be refunded by warrant issued against the fund and credited against the account in the state treasury into which the money was deposited. Refunds necessary to make the proper correction shall be appropriated by the general appropriations act.

(b) The comptroller may require written evidence from the director of the department to indicate the reason for the mistake of fact or law before issuing the refund warrant authorized in Subsection (a) of this section.

(c) This section does not apply to any funds that have been deposited under a written contract or to any funds on deposit as of June 8, 1971, which are the subject of litigation in any of the courts of this state or the United States.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.

Sec. 11.041. TRANSFER OF PROPERTY. (a) The commission may transfer tangible property, other than money or real estate held for limited purposes, from one division of the department to another division.

(b) If the property to be transferred was acquired with funds the use of which is limited by law or dedicated in any other manner, and the prospective use of the property is different from the use allowed by law, the department shall transfer from available funds to the fund or account from which the property was acquired the value of the property at the time of the transfer.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.

Sec. 11.042. FUNDS DEPOSITED IN TREASURY. All money paid to the department under this code or allocated to the department under Section 151.801, Tax Code, other than money received under Subchapter C, Chapter 12, or Chapter 21 of this code, shall be deposited in the State Treasury and may be used only for the administration of this code.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 20, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.

Sec. 11.043. TEXAS PARKS AND WILDLIFE CONSERVATION AND CAPITAL

ACCOUNT. (a) The Texas parks and wildlife conservation and capital account is a separate account in the general revenue fund.

(b) The account consists of:

(1) credits made to the department under Section 151.801, Tax Code, in an amount not to exceed the amount of the tax proceeds allocated by the legislature to the account under Section 151.801(c-1), Tax Code;

(2) proceeds of revenue bonds issued under Section 13.0045; and

(3) money from any other source authorized by law.

(c) Except as provided by Subsection (d), money in the account may be spent only for acquisition and development, maintenance, or operation of parks, fisheries, and wildlife projects that have been individually approved by the commission. Projects that directly provide hunting, fishing, or outdoor recreation opportunity to the public shall be given preference for funding under this section. Approved projects may include:

(1) acquiring land or facilities for use in any department program;

(2) developing and improving any land or facility owned or controlled by the department;

(3) servicing the debt on Texas park development bonds issued under Article III, Section 49-e, of the Texas Constitution or any other bonds issued for parks, fisheries, or wildlife projects;

(4) local park grants in Chapter 24 of this code;

(5) initiating or participating in partnerships to enhance conservation of historical, cultural, or natural resources;

(6) operational and maintenance costs in association with any parks, fisheries, wildlife projects, or department law enforcement efforts in support of this code; and

(7) meeting the requirements for providing matching money for any federal grants for parks, fisheries, or wildlife projects.

(d) The proceeds of bonds issued under Section 13.0045 and deposited to the account may be spent to finance parks and wildlife projects, including the repair, renovation, improvement, and equipping of parks and wildlife facilities. Money deposited to the credit of the account under Subsection (b)(1) may be used only for the purposes described by Section 151.801(c-1), Tax Code.

(e) The comptroller may invest money in the account.

Added by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 902, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 17.01, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1502, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 17, eff. June 15, 2007.

Acts 2015, 84th Leg., R.S., Ch. 82 (S.B. 1366), Sec. 2, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 503 (S.B. 26), Sec. 3, eff. September 1, 2021.

Sec. 11.044. DISPOSITION OF INTEREST ON INVESTMENTS. (a) Interest received from the investment of money in all accounts of the department in charge of the comptroller shall be allocated monthly to each account in an amount proportionate to the amount of money invested from the account.

(b) The comptroller may retain from the interest to be allocated monthly an amount equal to the necessary administrative costs of making the allocations.

Added by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 17.02, eff. Sept. 1, 1997.

Sec. 11.045. APPLICATION OF OTHER LAW. Section 403.095, Government Code, does not apply to revenues accruing to an account established under this chapter.

Added by Acts 1993, 73rd Leg., ch. 679, Sec. 1, eff. Sept. 1, 1993.

Sec. 11.046. OFF-HIGHWAY VEHICLE TRAIL AND RECREATIONAL AREA ACCOUNT. (a) The off-highway vehicle trail and recreational area account is a separate account in the general revenue fund.

(b) The department shall deposit to the credit of the off-highway vehicle trail and recreational area account all revenue, less allowable costs, from the following sources:

(1) decal fees collected under Chapter 29;

(2) fines assessed against persons operating off-highway vehicles in violation of Chapter 29 or any other law relating to the operation of off-highway vehicles;

(3) all funding outside the general revenue fund received by the department under Section 29.007; and

(4) all interest that accrues to the account.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 2, eff. September 1, 2005.

Sec. 11.047. USE OF OFF-HIGHWAY VEHICLE TRAIL AND RECREATIONAL AREA ACCOUNT. Money in the off-highway vehicle trail and recreational area account may be used only for expenditures necessary under Chapter 29 to:

(1) acquire, construct, develop, and maintain trails and other recreational areas for use by owners and riders of off-highway vehicles as defined by Section 29.001;

(2) provide access to those trails and recreational areas;

(3) make grants under Section 29.008; and

(4) enforce and administer the off-highway vehicle trail and recreational area program.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 2, eff. September 1, 2005.

SUBCHAPTER D. SPECIAL NONGAME AND ENDANGERED SPECIES CONSERVATION ACCOUNT

Sec. 11.051. DEFINITIONS. In this subchapter:

(1) "Nongame" means those species of vertebrate and invertebrate wildlife that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters.

(2) "Endangered species" means those species listed as provided by Section 68.002 of this code.

Added by Acts 1983, 68th Leg., p. 1751, ch. 340, Sec. 1, eff. June 16, 1983.

Sec. 11.052. SPECIAL NONGAME AND ENDANGERED SPECIES CONSERVATION ACCOUNT. The special nongame and endangered species conservation account is a separate account in the general revenue fund.

Added by Acts 1983, 68th Leg., p. 1751, ch. 340, Sec. 1, eff. June 16, 1983. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 3, eff. Sept. 1, 1993.

Sec. 11.053. SOURCES OF ACCOUNT. (a) The department shall deposit to the credit of the special nongame and endangered species conservation account all money received from:

(1) private contributions, grants, and donations made to the special nongame and endangered species conservation account;

(2) the net proceeds from the sale under this chapter of wildlife art prints, decals, and stamps;

(3) interest income from the investment of money collected under this section; and

(4) income from entrance fees, easements, mineral leases, grazing leases, and sale of products from lands purchased with funds from the special nongame and endangered species conservation account.

(b) The department may accept private contributions, grants, and donations made to the special nongame and endangered species conservation account.

Added by Acts 1983, 68th Leg., p. 1751, ch. 340, Sec. 1, eff. June 16, 1983. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 4, eff. Sept. 1, 1993.

Sec. 11.054. USES OF ACCOUNT. (a) Money in the special nongame and endangered species conservation account may be used for the following purposes:

(1) dissemination of information pertaining to nongame and endangered species conservation, management, and values;

(2) scientific investigation and survey of nongame and endangered species for better protection and conservation;

(3) propagation, distribution, protection, and restoration of nongame and endangered species;

(4) research and management of nongame and endangered

species;

(5) development of habitats for nongame and endangered species;

(6) acquisition of habitats for nongame and endangered species; and

(7) matching of funds available to the department under federal programs for projects and activities authorized under this section.

(b) Appropriations from the special nongame and endangered species conservation account are supplemental, and other accounts may be appropriated for the purposes for which the fund was established.

Added by Acts 1983, 68th Leg., p. 1751, ch. 340, Sec. 1, eff. June 16, 1983. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 5, eff. Sept. 1, 1993.

Sec. 11.055. WILDLIFE ART PRINTS, DECALS, AND STAMPS. (a) The commission may contract with and pay a person for designing and producing the wildlife art prints, decals, and stamps authorized by this subchapter.

(b) The commission may authorize an agent, including a nonprofit wildlife conservation organization, to sell the wildlife art prints, decals, and stamps, and shall provide for the widespread availability of those items to the public.

Added by Acts 1983, 68th Leg., p. 1751, ch. 340, Sec. 1, eff. June 16, 1983.

Sec. 11.056. COSTS OF WILDLIFE ART PRINTS, DECALS, AND STAMPS. (a) The price of a wildlife art decal or stamp sold under this subchapter is $5.00 or an amount set by the commission, whichever amount is more. The department may issue other editions of the stamp and decal at amounts set by the commission.

(b) The department shall establish the royalty and a reasonable price to be paid for a wildlife art print sold under this subchapter.

(c) Repealed by Acts 1995, 74th Leg., ch. 931, Sec. 80, eff. June 16, 1995.

Added by Acts 1983, 68th Leg., p. 1751, ch. 340, Sec. 1, eff. June

16, 1983. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 1, 80, eff. June 16, 1995.

SUBCHAPTER E. LIFETIME LICENSE ENDOWMENT ACCOUNT

Sec. 11.061. LIFETIME LICENSE ENDOWMENT ACCOUNT. The lifetime license endowment account is a separate account in the general revenue fund.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 21, eff. Sept. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 6, eff. Sept. 1, 1993.

Sec. 11.062. SOURCES OF ACCOUNT. (a) The department shall deposit to the credit of the lifetime license endowment account all money received from:

(1) lifetime hunting, fishing, or combination licenses;

(2) private contributions, grants, and donations made for purposes of this subchapter;

(3) interest income from the investment of money collected under this section; and

(4) any other source provided by law.

(b) The department may accept private contributions, grants, and donations made to the lifetime license endowment account.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 21, eff. Sept. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 6, eff. Sept. 1, 1993.

Sec. 11.063. USES OF ACCOUNT. To the extent allowed by federal law, money in the lifetime license endowment fund and interest earned on the lifetime license endowment account may be used only for the purpose of managing the fish and wildlife resources of this state, as follows:

(1) acquiring public hunting and fishing areas;

(2) developing, managing, and repairing public hunting and fishing areas; and

(3) making capital expenditures related to fisheries and wildlife resources, including:

(A) land acquisition;
(B) construction; and
(C) the purchase of:
(i) transportation items;
(ii) equipment; and
(iii) information technology resources.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 21, eff. Sept. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 6, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 708 (H.B. 3781), Sec. 1, eff. September 1, 2017.

Sec. 11.064. RESTRICTIONS. (a) No expenditure shall be made from the principal of the lifetime license endowment account if that expenditure would lower the unencumbered balance of the principal of the account below $20 million.

(b) The interest earnings on and principal in the lifetime license endowment account may not be used to pay salaries or employee benefits.

(c) The interest earnings on the lifetime license endowment account may be used for any purpose described by Section 11.063.

(d) The principal in the lifetime license endowment account may be used only for the purpose described by Section 11.063(3).

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 21, eff. Sept. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 6, eff. Sept. 1, 1993.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 708 (H.B. 3781), Sec. 2, eff. September 1, 2017.

Sec. 11.065. INVESTMENTS. The commission shall adopt rules for the investment of the lifetime license endowment account.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 21, eff. Sept. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 6, eff. Sept. 1, 1993.

SUBCHAPTER F. REGULATION OF MINERAL RECOVERY OPERATIONS ON DEPARTMENT LANDS

Sec. 11.071. REGULATION OF MINERAL RECOVERY OPERATIONS. The commission may regulate the use of department lands for oil, gas, and other mineral recovery and associated activities as the commission considers reasonable and necessary to protect the surface estate of department lands or to protect human health or property. Department lands include state parks, wildlife management areas, and natural areas.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 22, eff. Sept. 1, 1985.

Sec. 11.072. ENFORCEMENT. (a) If a person has violated, is violating, or is threatening to violate a regulation adopted under this subchapter, the director may have a civil suit brought in a district court for injunctive relief, for assessment and recovery of a civil penalty of not less than $100 for each act of violation, or for both injunctive relief and a civil penalty.

(b) A suit under this subchapter shall be brought in the name of the department through the attorney general.

(c) Reasonable attorney's fees shall also be recoverable, with reimbursement to the operating fund or account from which the expenditure occurred.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 22, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 7, eff. Sept. 1, 1993.

Sec. 11.073. DISPOSITION OF CIVIL PENALTIES. All civil penalties recovered in suits under this subchapter shall be paid to the appropriate fund or account of the department.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 22, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 8, eff. Sept. 1, 1993.

Sec. 11.074. EFFECT ON OTHER LAWS. This subchapter does not affect the regulatory authority of the Railroad Commission of Texas.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 22, eff. Sept. 1, 1985.

SUBCHAPTER G. AQUATIC VEGETATION MANAGEMENT

Sec. 11.081. DEFINITIONS. In this subchapter:

(1) "Governing entity" means the state agency or other political subdivision with jurisdiction over a public body of surface water.

(2) "Integrated pest management" means the coordinated use of pest and environmental information and pest control methods to prevent unacceptable levels of pest damage by the most economical means and in a manner that will cause the least possible hazard to persons, property, and the environment.

(3) "Local plan" means a local aquatic vegetation management plan authorized by Section 11.083.

(4) "Public body of surface water" means any body of surface water that is not used exclusively for an agricultural purpose. The term does not include impounded water on private property.

(5) "State plan" means the state aquatic vegetation management plan authorized by Section 11.082 and developed and implemented under this subchapter.

(6) "Water district" means a conservation and reclamation district or an authority created under authority of Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution, that has jurisdiction over a public body of surface water. The term does not include a navigation district or a port authority.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 1.

Sec. 11.082. STATE AQUATIC VEGETATION MANAGEMENT PLAN. (a) The department shall develop and by rule adopt a state aquatic vegetation management plan following the generally accepted principles of integrated pest management. The state plan shall apply throughout the state unless a governmental entity has adopted an approved local plan.

(b) The department shall develop the state plan in coordination with the Texas Natural Resource Conservation Commission, the Department of Agriculture, water districts and other political subdivisions of the state with jurisdiction over public bodies of surface water, and public drinking water providers.

(c) The state plan must:

(1) establish minimum standards for a governing entity that regulates a public body of surface water;

(2) require that any application of aquatic herbicide complies with label rates approved by the United States Environmental Protection Agency;

(3) ensure that any public drinking water provider that has an intake within two river miles of a site at which an application of aquatic herbicide is proposed to occur receives notice of the proposed application not later than the 14th day before the date the application is to occur;

(4) provide for the coordination, oversight, public notification, and enforcement of all aquatic herbicide use to protect state fish and wildlife resources and habitat and to prevent unreasonable risk from the use of any aquatic herbicide; and

(5) require that the written notice of a proposed application of herbicide include information demonstrating that the proposed application of herbicide under a plan will not result in exceeding:

(A) the maximum contaminant level of the herbicide in finished drinking water as set by the Texas Natural Resource Conservation Commission and the United States Environmental Protection Agency; or

(B) the maximum label rate, if the aquatic herbicide does not have a maximum contaminant level established by the Texas Natural Resource Conservation Commission and the United States Environmental Protection Agency.

(d) In administering the state plan, the department shall consult with, advise, provide resources to, and otherwise assist local governments regarding aquatic vegetation management and control. In this subsection, "local government" includes any political subdivision with jurisdiction over a public body of surface water.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 1. Amended by Acts

2001, 77th Leg., ch. 968, Sec. 24, eff. Sept. 1, 2001.

Sec. 11.083. LOCAL AQUATIC VEGETATION MANAGEMENT PLAN. (a) A governing entity may develop and adopt a local aquatic vegetation management plan. A local plan must be approved by the department, the Texas Natural Resource Conservation Commission, and the Department of Agriculture.

(b) A local plan may take into account the particular needs and uses of the public bodies of surface water to which it will apply, but the plan may not be approved unless the plan meets the minimum standards set by the state plan. The local plan may allow herbicide use if the person proposing to apply the herbicide notifies the governing entity not later than the 14th day before the proposed date of application.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 1, eff. Feb. 2, 2001.

Sec. 11.084. APPLICATION OF AQUATIC HERBICIDE IN PUBLIC BODY OF SURFACE WATER. (a) No person may apply aquatic herbicide in a public body of surface water unless the herbicide is applied in a manner consistent with the plan adopted by the governing entity.

(b) State money may not be used to pay for treatment of a public body of surface water with a chemical herbicide unless the application of the herbicide is performed by an applicator licensed for aquatic herbicide application by the Department of Agriculture.

(c) An individual who does not hold an applicator's license and who desires to apply an aquatic herbicide on a public body of surface water shall give written notice not later than the 14th day before the date the application of the aquatic herbicide is to occur to the governing entity with jurisdiction over the body of water on which the application of the herbicide is proposed. The governing entity shall respond to the individual's application not later than the day before the date the application of the aquatic herbicide is to occur. The individual may not apply the aquatic herbicide unless the governing entity finds that the application will be consistent with the state or local plan adopted by the entity.

(d) The state plan may provide for use of an aquatic herbicide consistent with the plan if:

(1) the individual who desires to apply the aquatic herbicide gives notice to the appropriate governing entity in the same manner as provided by Subsection (c) for an unlicensed applicator; and

(2) the governing entity does not disapprove the application.

(e) After receiving notice of a proposed application of aquatic herbicide, the governing entity shall:

(1) provide the individual proposing the application with a copy of the state or local plan, as appropriate;

(2) notify the individual in writing that it is a violation of state law to apply aquatic herbicides in that body of water in a manner inconsistent with the plan; and

(3) determine whether the proposed application is consistent with the plan.

(f) The governing entity shall:

(1) prohibit a proposed application of aquatic herbicide if the governing entity finds that the proposed application is inconsistent with the appropriate plan; or

(2) notify the individual proposing the application of the herbicide that the proposed application is not inconsistent with the appropriate plan if the governing entity finds that the proposed application is not inconsistent with the plan.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 1, eff. Feb. 2, 2001.

Sec. 11.085. LIABILITY. (a) The liability under other law of a governing entity that receives notice of a proposed application of aquatic herbicide is not affected by the requirements of this subchapter.

(b) Notice by a governing entity to an individual under Section 11.084(f)(2) does not constitute authorization by that entity for the application of the herbicide.

(c) This subchapter does not relieve an individual who applies aquatic herbicide to a public body of surface water of the obligation to comply with all applicable federal, state, or local laws, rules, ordinances, or orders relating to the application of the herbicide in the body of water.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 1, eff. Feb. 2, 2001.

Sec. 11.086. RECORDS. A governing entity shall maintain for not less than five years all records relating to notifications received under Section 11.084 and any other information relevant to a particular individual request for shoreline treatment.

Added by Acts 1999, 76th Leg., ch. 1461, Sec. 1, eff. Feb. 2, 2001.

SUBCHAPTER H. LAND AND WATER RESOURCES CONSERVATION PLAN

Sec. 11.101. DEFINITION. In this subchapter, "conservation" includes the conservation of historical, natural, recreational, and wildlife resources.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 25, eff. Sept. 1, 2001.

Sec. 11.102. PLAN APPROVAL; HEARING REQUIRED. (a) The department must obtain approval from the commission for each development plan required by statute for a geographical area managed by the department.

(b) The commission shall hold a hearing on approval of the plan.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 25, eff. Sept. 1, 2001.

Sec. 11.103. INVENTORY. (a) The department shall inventory all land and water associated with historical, natural, recreational, and wildlife resources in this state that are owned by:

(1) governmental entities; or

(2) nonprofit entities that offer access to the land or water to the public.

(b) The department shall use existing inventory information concerning the lands identified in Subsection (a)(1) whenever possible.

(c) The department shall create a permanent database of the resources inventoried under Subsection (a). At least once every 10 years, the department shall update the database as necessary to reflect changes in the resources.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 25, eff. Sept. 1, 2001.

Sec. 11.104. LAND AND WATER RESOURCES CONSERVATION AND RECREATION PLAN. (a) Using the inventory prepared under Section 11.103, the department shall:

(1) analyze the state's existing and future land and water conservation and recreation needs;

(2) identify threatened land and water resources in this state; and

(3) establish the relative importance for conservation purposes of particular resources listed in the inventory.

(b) The inclusion of a specific parcel of land in the inventory does not create any additional right of public access to that land.

(c) Based on the analysis made under Subsection (a), the department shall prepare a land and water resources conservation and recreation plan. The department shall revise the plan as necessary to reflect changes in the inventory developed under Section 11.103. The plan must include:

(1) criteria for determining how to meet the state's conservation and recreation needs; and

(2) measures of the effectiveness of the department in meeting the goals and objectives of the plan, including, where possible, quantifiable measures.

(d) The department shall modify any existing plans regarding parks and wildlife management areas to make the existing plans consistent with the land and water resources conservation and recreation plan developed under this section.

(e) The department shall base its decisions regarding the state's conservation needs on the criteria developed in the plan, including decisions relating to:

(1) the acquisition of new resources for the conservation and recreation purposes of the department;

(2) the divestiture of existing department-owned resources;

(3) department grants to local parks;

(4) department cooperation with private conservation organizations and landowners, including associations of landowners; and

(5) other major land conservation operations of the department.

(f) Every five years the department shall evaluate progress towards achieving the goals and objectives of the plan prepared under Subsection (c). The department's evaluation must:

(1) include the effectiveness measures under Subsection (c)(2); and

(2) identify:

(A) the goals and objectives met by the department; and

(B) reasons for any unmet goals or objectives.

(g) On completion of an evaluation under Subsection (f), the department shall develop and implement practices designed to improve progress towards meeting the goals and objectives of the plan.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 25, eff. Sept. 1, 2001.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 5, eff. September 1, 2021.

Sec. 11.105. COORDINATION OF CONSERVATION AND RECREATION OPERATIONS. The department shall:

(1) consider all resources listed in the inventory prepared under Section 11.103 in conjunction with each other;

(2) coordinate department activities related to those resources internally and with similar activities of other governmental or nonprofit entities; and

(3) set priorities for department activities related to those resources according to the most vital existing and future needs for conservation and recreation.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 25, eff. Sept. 1, 2001.

Sec. 11.106. EXEMPTIONS. Section 11.104 does not apply to:

(1) property that is part of a fund created or specifically authorized by the constitution of this state that is administered by or with the assistance of the School Land Board or the General Land Office; or

(2) land, water, or property owned by the permanent university fund or any other land, water, or property owned by, administered by, or held for the use and benefit of an institution of higher education, as that term is defined in Section 61.003,

Education Code.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 25, eff. Sept. 1, 2001.

SUBCHAPTER I. STATEWIDE COMMERCIAL PROJECTS

Sec. 11.151. DEFINITION. In this subchapter, "statewide commercial project" means a commercial venture undertaken by the department throughout the state, including promotions, sales, or other activities to raise money for the department. The term does not include a promotion or sale undertaken solely at one site.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 26, eff. Sept. 1, 2001.

Sec. 11.152. BUSINESS PLANS. Each business plan developed under this subchapter must include:

(1) a description of the product or service provided;

(2) an analysis of the information necessary for persons to make decisions on the project;

(3) an analysis of the personnel necessary to manage and implement the project;

(4) financial data, including both past performance and a budget and goals for future performance; and

(5) a list of the resources necessary for a successful project.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 26, eff. Sept. 1, 2001.

Sec. 11.153. DEPARTMENT PLAN: OPERATIONAL STRATEGIES. (a) The department shall develop an agency-wide business plan to guide its overall operational strategies for statewide commercial projects. The plan must:

(1) use the plans prepared under Section 11.154 for each project;

(2) evaluate the efficiency of existing projects;

(3) consider or propose changes to any project necessary to meet the department's overall goals;

(4) compare each project's services and products to similar services and products available from the private sector;

(5) seek to increase savings and improve customer service on each project;

(6) coordinate existing projects to avoid duplication and focus resources on the most efficient and effective projects; and

(7) assess the potential for contracting with a private entity or individual to perform department functions relating to specific projects.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 24 (S.B. 706), Sec. 7(7), eff. September 1, 2017.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 26, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 24 (S.B. 706), Sec. 7(7), eff. September 1, 2017.

Sec. 11.154. INDIVIDUAL PROJECT PLANS. (a) The department shall develop a business plan for each statewide commercial project. The plan must contain:

(1) an accurate accounting for all project costs, including personnel and overhead costs; and

(2) reasonable projections of project income.

(b) The director shall review the plan for each project at least annually to assess the overall performance and value of the project.

(c) The department may modify a plan as necessary to meet changing conditions.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 26, eff. Sept. 1, 2001.

Sec. 11.155. ADJUSTMENT OR TERMINATION OF PROJECT FOR FAILURE TO MEET FINANCIAL OBJECTIVES. (a) Except as provided by Subsection (b), the department shall adjust or terminate a statewide commercial project that fails to meet the financial objectives stated in the project's plan.

(b) This section does not apply if the department determines that the project possesses a positive public relations value or fulfills a useful educational purpose.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 26, eff. Sept. 1, 2001.

Sec. 11.156. CONTRACT WITH PRIVATE SECTOR. The department shall consider contracting out all or part of a statewide commercial project to a private entity or individual, including a nonprofit entity or individual.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 26, eff. Sept. 1, 2001.

SUBCHAPTER J. NONPROFIT PARTNERSHIPS

Sec. 11.201. DEFINITIONS. In this subchapter:

(1) "Nonprofit partner" means a nonpolitical legal entity that:

(A) is incorporated under the laws of this state;

(B) has been granted an exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended;

(C) works with the department to further department goals; and

(D) is selected as provided under Section 11.202.

(2) "Official nonprofit partner" means the nonprofit partner designated by the commission under Section 11.205.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 27, eff. Sept. 1, 2001.

Sec. 11.202. GENERAL DUTIES. (a) The department may select and cooperate with nonprofit partners to serve department goals.

(b) The department must obtain commission approval for each nonprofit partner selected under Subsection (a).

(c) The commission by rule shall establish best practices for nonprofit partners to comply with.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 27, eff. Sept. 1, 2001.

Sec. 11.203. ACCOUNTABILITY OF NONPROFIT PARTNERS; INVESTMENT RESTRICTIONS. (a) The commission by rule shall require a nonprofit partner to comply with specified state standards and safeguards for accounting for state assets held by the nonprofit partner.

(b) Chapter 2256, Government Code, applies to a nonprofit

partner to the extent that the partner controls state money.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 27, eff. Sept. 1, 2001.

Sec. 11.204. PLAN. The department shall provide to each nonprofit partner a copy of the plan developed under Section 11.104.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 27, eff. Sept. 1, 2001.

Sec. 11.205. OFFICIAL NONPROFIT PARTNER. (a) The commission shall designate a single nonprofit partner as the official nonprofit partner of the department, unless the commission determines in writing that no nonprofit partner is capable of effectively implementing the goals of this section.

(b) The official nonprofit partner must be dedicated to meeting department goals.

(c) The official nonprofit partner may accept gifts, grants, and donations to further department goals, including a gift, grant, or donation made in the name of the department.

(d) The official nonprofit partner may use state money to acquire property or engage in construction activities only if that acquisition or construction is consistent with the department's conservation and recreation priorities outlined in the plan developed under Section 11.104.

(e) The official nonprofit partner may organize and manage accounts for local nonprofit partners or other organizations to benefit a specific state park or other sites under the department's jurisdiction.

(f) The commission by rule shall establish:

(1) guidelines under which the official nonprofit partner may solicit and accept sponsorships from private entities; and

(2) best practices under which the partner may engage in activities under this section.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 27, eff. Sept. 1, 2001.

Sec. 11.206. AUDIT OF OFFICIAL NONPROFIT PARTNER. (a) The official nonprofit partner shall be audited annually by an

independent auditor. The partner shall file the audit with the commission.

(b) The official nonprofit partner's financial transactions involving and financial records relating to state money held by the nonprofit partner are subject to audit by the state auditor as provided in Section 321.013, Government Code.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 27, eff. Sept. 1, 2001.

Sec. 11.207. EXPENDITURES; LIMITS. (a) The department shall direct, by the terms of the contract or grant, how a nonprofit partner may spend any state money it receives.

(b) A state employee may not directly spend or obligate a nonprofit partner's money.

(c) A nonprofit partner may not spend state money to:

(1) lobby or otherwise attempt to influence a member of the legislature; or

(2) directly or indirectly attempt to influence legislation.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 27, eff. Sept. 1, 2001.

Sec. 11.208. PARTNERSHIP WITH NONPROFIT SERVING VETERANS. (a) In this section, "veteran" means a person who has served in the United States armed forces.

(b) The department may select and cooperate with one or more nonprofit partners that exclusively serve veterans to promote hunting and fishing by those veterans. A selection under this section must be approved by the commission.

(c) A veteran who is a resident of this state and who is served by a nonprofit selected under Subsection (b) may:

(1) hunt on one day without holding a hunting license required under Chapter 42 if accompanied by a representative of the nonprofit partner who holds the appropriate license; and

(2) fish on one day without holding a fishing license required under Chapter 46 if accompanied by a representative of the nonprofit partner who holds the appropriate license.

(d) The commission by rule shall establish:

(1) criteria under which the department may select a

nonprofit partner under this section; and

(2) guidelines under which a representative of or a veteran served by a nonprofit partner may engage in hunting or fishing activities under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 260 (H.B. 1728), Sec. 1, eff. September 1, 2021.

SUBCHAPTER J-1. FOR-PROFIT PARTNERSHIPS

Sec. 11.221. DEFINITIONS. In this subchapter:

(1) "Official corporate partner" means a for-profit entity that:

(A) is designated an official corporate partner by the department;

(B) works with the department to raise funds for state site operations and maintenance or other priority projects or programs; and

(C) is selected as provided under Section 11.222.

(2) "State site" means a state park, natural area, wildlife management area, fish hatchery, or historic site under the jurisdiction of the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 1, eff. May 28, 2011.

Sec. 11.222. SELECTION; CONTRACT. (a) Subject to commission approval, the department may select a for-profit entity as an official corporate partner.

(b) The department may contract with one or more official corporate partners to raise funds for state site operations and maintenance or other priority projects or programs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 1, eff. May 28, 2011.

Sec. 11.223. GIFTS AND GRANTS; FUND-RAISING. (a) To raise funds for state site operations and maintenance or other priority projects or programs, an official corporate partner may accept

contributions, gifts, grants, and promotional campaign proceeds on behalf of the department or provide contributions, gifts, grants, and promotional campaign proceeds to the department. The department shall ensure that an official corporate partner transfers the contributions, gifts, grants, and promotional campaign proceeds accepted on behalf of the department to the department as soon as possible.

(b) The department may contract with one or more official corporate partners to conduct joint promotional campaigns or other fund-raising efforts conducted by the department to raise funds for state site operations and maintenance or other priority projects or programs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 1, eff. May 28, 2011.

Sec. 11.224. USE OF FUNDS. Money received by the department under this subchapter, including money received under a contract or licensing or other agreement or as a gift or grant, may be used only for state site operations and maintenance or other priority projects or programs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 1, eff. May 28, 2011.

Sec. 11.225. RULES. The commission shall adopt rules to implement this subchapter, including rules that establish guidelines or best practices for official corporate partners.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 1, eff. May 28, 2011.

Sec. 11.226. OTHER DONATION AUTHORITY NOT LIMITED. This subchapter does not limit the department's authority to accept donations that are otherwise authorized.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 1, eff. May 28, 2011.

SUBCHAPTER K. MANAGEMENT AND EFFICIENCY REVIEWS

Sec. 11.251. MAINTENANCE EQUIPMENT REVIEW SYSTEM. (a) In this section:

(1) "Maintenance equipment" means personal property owned by the department that is used to administer, operate, preserve, repair, expand, or otherwise maintain real property, including improvements and fixtures, owned or operated by the department.

(2) "Outdated equipment" means equipment:

(A) that has a fair market value that is less than the annual cost of maintaining the equipment in working order;

(B) that is not operational and cannot reasonably be made operational; or

(C) that no longer serves a department purpose.

(b) The commission by rule shall establish an equipment review system through which the department annually determines whether any of the department's maintenance equipment has become outdated equipment since the last date the department conducted an equipment review under this section.

(c) The equipment review system established under Subsection (b) must require the department to sell any outdated equipment in the manner and at the time specified by the commission by rule.

(d) The department shall deposit proceeds from the sale of equipment under this section to the credit of the appropriate parks and wildlife account.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 18, eff. June 15, 2007.

Sec. 11.252. MAINTENANCE PROVIDER REVIEW SYSTEM. (a) In this section "maintenance" includes the administration, operation, preservation, repair, and expansion of personal property owned by the department and real property owned or operated by the department.

(b) The commission by rule shall establish a maintenance provider review system through which the department annually determines whether a maintenance task performed by the department could be performed by a third-party contractor in a manner that:

(1) is more cost-effective than the department's manner of

performing the maintenance task; and

(2) yields a result that is equal to or greater than the quality of the result produced by the department performing the task.

(c) The maintenance provider review system established under Subsection (b) must require the department to contract with a third party for the performance of any maintenance task performed by the department that could be performed by a third-party contractor in the manner that meets the criteria described by Subsection (b) after the department's cost of administering the contract is added to the cost of performance by the third party.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 18, eff. June 15, 2007.

Sec. 11.253. MANAGEMENT PLAN AND PRIORITIES LIST. Not later than January 15 of each odd-numbered year the department shall submit to the governor, the speaker of the house of representatives, the lieutenant governor, and the chair of each house and senate standing committee having jurisdiction over a matter regulated by the department under this code a management plan to address the department's maintenance responsibilities under this subchapter and a priorities list that includes the following information:

(1) a prioritized list of facilities operated by the department that are most in need of repair, renovation, expansion, or other maintenance;

(2) an itemized list explaining any additional funding requested by the department to accomplish a task described by Subdivision (1); and

(3) the results of the reviews conducted under Sections 11.251, 11.252, and 13.019(b).

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 18, eff. June 15, 2007.

SUBCHAPTER L. USE OF DEPARTMENT LAND

Sec. 11.301. EASEMENTS. (a) The commission may grant, lease, or renew permanent or temporary right-of-way easements on department land for:

(1) public highways, roads and streets, and ditches;

(2) electric lines and pipelines, including necessary wires, pipes, poles, and other equipment used to transmit, convey, or distribute water, electricity, gas, oil, or similar substances or commodities;

(3) electrical substations;

(4) equipment stations, vaults, cabinets, poles, power pedestals, and underground lines, circuits, and conduits, and other equipment used in the provision of communication services; or

(5) the provision of utilities for the operation of facilities of the department and roadways for access to facilities of the department.

(b) Except as provided by this subsection, the commission may not grant or lease an easement unless the commission receives the fair market value as consideration for the grant or lease. Consideration for an easement may include goods and services. The commission may grant without consideration a state highway easement to the Texas Department of Transportation, a roadway easement to a county for connecting roads between state highways, easements to utility providers for utilities to serve department facilities, and roadway easements to a city or county to provide roadways for department facilities.

(c) A grant or lease must contain a full reservation of minerals in and under the land. The commission may impose other fair and reasonable conditions, covenants, and provisions.

Added by Acts 2011, 82nd Leg., R.S., Ch. 502 (H.B. 1449), Sec. 3, eff. June 17, 2011.

Sec. 11.302. CARBON SEQUESTRATION AND SIMILAR ECOSYSTEM SERVICES PROJECTS. (a) Except as otherwise provided by this subsection, the department may enter into an agreement with a public or private entity for the purpose of developing a nature-based carbon sequestration or similar ecosystem services project on department land. This subsection does not authorize the department to enter into an agreement to develop a carbon dioxide injection well on department land.

(b) Money received by the department from a carbon sequestration or similar ecosystem services project under this section shall be deposited:

(1) to the credit of the game, fish, and water safety account, if the project is located on land primarily used for game or fish conservation, protection, or management; and

(2) to the credit of the state parks account, if the project is located on land primarily used for parks, recreation, or historic sites.

Added by Acts 2023, 88th Leg., R.S., Ch. 334 (H.B. 4018), Sec. 4, eff. September 1, 2023.

SUBCHAPTER M. PRESCRIBED BURNS

Sec. 11.351. DEFINITIONS. In this subchapter:

(1) "Landowner" includes any person who owns, has a property interest in, or leases a parcel of privately owned land or improvements on the land.

(2) "Utility infrastructure" means any facility owned by:

(A) an electric utility as "electric utility" is defined by Section 31.002, Utilities Code;

(B) a telecommunications utility as "telecommunications utility" is defined by Section 51.002, Utilities Code;

(C) a gas utility as "gas utility" is defined by Section 101.003 or 121.001, Utilities Code;

(D) an electric cooperative as "electric cooperative" is defined by Section 11.003, Utilities Code; or

(E) a municipally owned utility as "municipally owned utility" is defined by Section 11.003, Utilities Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.352. APPLICABILITY. This subchapter applies only to prescribed burns conducted by the department on state land managed by the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.353. GENERAL AND SPECIFIC PLAN REQUIREMENTS. (a) The

commission by rule shall adopt and shall require the department to implement a general plan for the use of beneficial prescribed burns in the management of department land. The general plan must include standards that meet or exceed the standards for a prescribed burn set out in Section 153.047, Natural Resources Code.

(b) The general plan must include variations as needed for different areas of the state.

(c) The general plan must be reviewed by the Prescribed Burning Board within the Department of Agriculture.

(d) The department may not conduct a prescribed burn under this subchapter before the general plan has been adopted by the commission.

(e) For a particular prescribed burn, a site-specific plan tailored to the designated area must be completed and approved by a person designated by the director to review prescribed burn plans. In addition to any site-specific information required under the general plan, a site-specific plan must include:

(1) the planned start and end dates of the prescribed burn;

(2) a map of the designated burn area, including the location of any utility infrastructure within the designated burn area;

(3) the names and contact numbers for:

(A) the prescribed burn manager;

(B) the nearest fire departments or emergency service providers; and

(C) all landowners whose property neighbors the designated burn area; and

(4) written documentation that applicable prescribed burn notification and approval requirements of the Texas Commission on Environmental Quality have been met.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.354. NOTICE REQUIREMENTS. (a) The department shall provide adequate advance notice of the department's intent to conduct a prescribed burn to each neighboring landowner and appropriate local officials in the vicinity of the designated burn area, including water utility officials with water facilities within two miles of the

prescribed burn.

(b) The landowner's notice must include:

(1) the planned start and end dates of the prescribed burn;

(2) any safety precautions the landowner should take to ensure the safety of the landowner's property before, during, and after the burn;

(3) a map of the prescribed burn area, including the location of any utility infrastructure within the designated burn area;

(4) the methods proposed for use in conducting the burn; and

(5) contact information for the prescribed burn manager and the department.

(c) The department shall publish advance notice of a planned prescribed burn in a newspaper of general circulation in the county or counties in which the burn will be conducted.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.355. INSURANCE. The department shall purchase liability insurance or establish a self-insurance fund as provided by Subchapter B, Chapter 2259, Government Code, for liability coverage for money damages in the amounts specified by Section 153.082, Natural Resources Code, to protect the department and the department's employees against claims under this subchapter resulting from:

(1) bodily injury or death resulting from a prescribed burn; or

(2) injury to or destruction of property resulting from a prescribed burn.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.356. LIABILITY. The department is liable for actual damages for:

(1) injury to or destruction of property, bodily injury, or death proximately caused by the wrongful act or omission or the

negligence of an employee acting within the scope of employment if:

(A) the injury to or destruction of property, bodily injury, or death arises from the escape of fire from a prescribed burn conducted by the department; and

(B) the employee would be personally liable to the claimant according to Texas law;

(2) injury to or destruction of property, bodily injury, or death so caused by the escape of fire from a prescribed burn conducted by the department if the department would, were it a private person, be liable to the claimant according to Texas law; and

(3) injury to or destruction of utility infrastructure caused by a prescribed burn.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.357. LIMITATION ON AMOUNT OF LIABILITY. Liability of the department under this subchapter is limited to money damages in an amount not to exceed the amount paid by the insurance provider described by Section 11.355 to the claimant.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.358. APPLICATION OF TORT CLAIMS ACT. (a) A claim asserted under this subchapter may not also be asserted against the department under Subchapter B, Chapter 101, Civil Practice and Remedies Code, or against a department employee.

(b) Subchapter D, Chapter 101, Civil Practice and Remedies Code, applies to a suit brought under this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

Sec. 11.359. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO SUE. (a) Sovereign immunity to suit is waived and abolished to the extent of liability created by this subchapter.

(b) A person having a claim under this subchapter may sue the

department for damages allowed by this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 345 (H.B. 801), Sec. 1, eff. June 9, 2015.

SUBCHAPTER N. INTELLECTUAL PROPERTY

Sec. 11.401. PROTECTION AND USE OF INTELLECTUAL PROPERTY. (a) The department may:

(1) apply for, register, secure, hold, and protect under the laws of the United States, any state, or any nation:

(A) a patent for an invention or discovery of, or improvement to, any process, machine, manufacture, or composition of matter;

(B) a copyright for an original work of authorship fixed in any tangible medium of expression now known or later developed that can be perceived, reproduced, or otherwise communicated;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan, or any combination of those items, that has been adopted and used by the department to identify goods or services and distinguish those goods or services from other goods or services; or

(D) other evidence of protection or exclusivity issued in or for intellectual property;

(2) enter into a contract with an individual or company for the sale, lease, marketing, or other distribution of intellectual property of the department;

(3) obtain under a contract entered into under Subdivision (2) a royalty, license right, or other appropriate means of securing appropriate compensation for the development or purchase of intellectual property of the department; and

(4) waive or reduce the amount of a fee, royalty, or other thing of monetary or nonmonetary value to be assessed by the department if the department determines that the waiver will:

(A) further the goals and missions of the department; and

(B) result in a net benefit to the state.

(b) Intellectual property for which the department has applied for or received a patent, copyright, trademark, or other evidence of

protection or exclusivity is excepted from required disclosure under Chapter 552, Government Code.

(c) Money paid to the department under this section shall be deposited to the credit of the game, fish, and water safety account or the state parks account, as appropriate.

(d) It is not a violation of Chapter 572, Government Code, or another law of this state for an employee of the department who conceives, creates, discovers, invents, or develops intellectual property to own or to be awarded any amount of equity interest or participation in the research, development, licensing, or exploitation of that intellectual property with the approval of the commission.

(e) The commission shall institute intellectual property policies for the department that establish minimum standards for:

(1) the public disclosure or availability of products, technology, and scientific information, including inventions, discoveries, trade secrets, and computer software;

(2) review by the department of products, technology, and scientific information, including consideration of ownership and appropriate legal protection;

(3) the licensing of products, technology, and scientific information;

(4) the identification of ownership and licensing responsibilities for each class of intellectual property; and

(5) royalty participation by inventors and the department.

Added by Acts 2015, 84th Leg., R.S., Ch. 1181 (S.B. 1132), Sec. 1, eff. June 19, 2015.
Redesignated from Parks and Wildlife Code, Section 11.351 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(34), eff. September 1, 2017.

CHAPTER 12. POWERS AND DUTIES CONCERNING WILDLIFE

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 12.001. GENERAL DUTIES. (a) The department shall administer the laws relating to game, fish, oysters, and marine life, as set out in this code.

(b) The department may:

(1) collect and enforce the payment of all taxes, licenses,

fines, and forfeitures due to the department;

(2) inspect all products required to be taxed by the laws relating to game, fish, oysters, and marine life and verify the weights and measures of the products;

(3) examine on request all streams, lakes, and ponds for the purpose of stocking with fish best suited to the locations;

(4) manage the propagation and distribution of fish in state fish hatcheries; and

(5) manage the propagation and distribution of birds and game in state reservations.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 12.0011. RESOURCE PROTECTION. (a) The department is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(b) The department's resource protection activities include:

(1) investigating fish kills and any type of pollution that may cause loss of fish or wildlife resources, taking necessary action to identify the cause and party responsible for the fish kill or pollution, estimating the monetary value of lost resources, and seeking restoration through presentation of evidence to the agency responsible for permitting or through suit in county or district court;

(2) providing recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects;

(3) providing information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources; and

(4) providing recommendations to the Texas Department of Water Resources on scheduling of in-stream flows and freshwater inflows to Texas estuaries for the management of fish and wildlife resources.

(b-1) Recommendations and information submitted by the department under Subsection (b) in response to a request for comments from the Texas Department of Transportation must be submitted not later than the 45th day after the date the department receives the request.

(c) An agency with statewide jurisdiction that receives a department recommendation or informational comment under Subsection (b) shall respond to the department in writing concerning the recommendation or comment. A response must include for each recommendation or comment provided by the department:

(1) a description of any modification made to the proposed project, fish and wildlife resource decision, or water flow schedule resulting from the recommendation or comment;

(2) any other disposition of the recommendation or comment; and

(3) as applicable, any reason the agency disagreed with or did not act on or incorporate the recommendation or comment.

(d) A response under Subsection (c):

(1) must be submitted to the department not later than the 90th day after the date the agency makes a decision or takes other action related to the recommendation or informational comment provided by the department; and

(2) is public information under Chapter 552, Government Code.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 23, eff. Sept. 1, 1985.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 7, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 943 (H.B. 630), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1060 (S.B. 548), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1345 (S.B. 1420), Sec. 1(a), eff. September 1, 2011.

Sec. 12.003. RECORDS. (a) The department shall keep a record containing the following information:

(1) the amount of all special taxes collected;

(2) a list of all licenses issued and the amount of license fees collected;

(3) a list of all certificates issued for location of private oyster beds, the date of the certificate and application,

when and how the applications were executed, and the manner in which the bottoms were examined and the amount of rent collected for the location;

(4) all stock fish furnished, to whom the fish were furnished, and the cost of the stock fish;

(5) all streams, lakes, or ponds stocked and the number and kinds of fish stocked in each; and

(6) all collections and disbursements of the department.

(b) The department shall keep an account with each person, firm, or corporation holding certificates for the location of private oyster beds, showing the amounts received as rents.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 12.004. LIST OF FEES AND FINES. (a) Repealed by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

(b) The department shall file at the end of each calendar month a written report with the comptroller showing fines, licenses, and other fees collected, their disposition, and any other necessary information.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

Sec. 12.005. FUNDS IN LIEU OF TAXES. (a) The department shall expend funds to counties and school districts for assessments in lieu of property taxes on wildlife management areas purchased from federal funds or grants authorized by the Pittman-Robertson Act or Dingell-Johnson Act.

(b) No general revenue funds may be expended in lieu of taxes for wildlife management areas; however, special funds may be expended for this purpose provided reimbursement or matching from the federal government is available at a federal ratio of two to one or better.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 12.006. PUBLICATIONS ON WILDLIFE VALUES AND MANAGEMENT. (a) The department may provide or sell information, including books, magazines, photographs, prints, and bulletins, to the public about wildlife values and management.

(b) The department may receive royalties on department-owned materials that are sold or supplied to others by the department for publication.

(c) The department may enter into contractual agreements for publication of information concerning wildlife values and management.

(d) Money received under this section shall be deposited in the State Treasury to the credit of the fund or account from which expenses for the publication were paid.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 24, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 9, eff. Sept. 1, 1993.

Sec. 12.007. VOLUNTARY CONTRIBUTION TO FUND FOR VETERANS' ASSISTANCE. (a) In this section, "veterans fund" means the fund for veterans' assistance established under Section 434.017, Government Code.

(b) When a person applies for a hunting or fishing license of any type, including a combination hunting and fishing license, under this code, the person may make a voluntary contribution of $1, $5, $10, or $20 to the veterans fund.

(c) The department shall:

(1) include space on the first page of each application for a hunting or fishing license that allows a person applying for the license to indicate that the person is voluntarily contributing $1, $5, $10, or $20 to the veterans fund; and

(2) provide an opportunity for the person to contribute $1, $5, $10, or $20 to the veterans fund during the application process for a hunting or fishing license on the department's Internet website.

(d) The department shall send any contribution made under this section to the comptroller for deposit in the state treasury to the credit of the fund for veterans' assistance not later than the 14th day of each month. Before sending the money to the veterans fund, the department may deduct money equal to the amount of reasonable

expenses for developing and administering this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 160 (H.B. 1584), Sec. 2, eff. September 1, 2015.

Sec. 12.0075. ORGAN DONOR REGISTRY INFORMATION. The department shall add on the department's Internet website a link to the Glenda Dawson Donate Life-Texas Registry operated under Chapter 692A, Health and Safety Code, for persons to access when applying on the department's Internet website for a hunting or fishing license, including a combination hunting and fishing license.

Added by Acts 2019, 86th Leg., R.S., Ch. 725 (H.B. 406), Sec. 1, eff. September 1, 2019.

Sec. 12.008. LEASING OF GRAZING OR FARMING RIGHTS: SALE OF PRODUCTS. (a) The department may lease grazing or farming rights on any land acquired by, and for the use of, the department as game preserves, game sanctuaries, and game management areas. The department may harvest and sell, or sell in place, any timber, hay, or other product grown on land of the department when the product is found to be in excess of wildlife management needs.

(b) The department may agree to accept consideration in lieu of money as part or full payment for a sale or lease under this section. The consideration in lieu of money must be materials, supplies, or services that are needed for wildlife management projects on any game management area administered by the department. The materials, supplies, or services accepted in lieu of money may be assigned a value no greater than that which the department would have been authorized to pay for them in a bona fide purchase.

(c) The comptroller shall execute any sale of products under this section under the general law governing the sale of state property; however, the department shall determine the quantity of products to be offered for sale and the consideration in lieu of money to be received under the sale. The department may lease grazing or farming rights under this section. In leasing the rights, the department must follow a competitive bidding procedure.

(d) All money derived from a sale or lease under this section shall be deposited in the state treasury to the credit of the game,

fish, and water safety account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 3, Sec. 1, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 2885, ch. 491, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 475, Sec. 1, 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 679, Sec. 10, eff. Sept. 1, 1993.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.106, eff. September 1, 2007.

Sec. 12.010. NUISANCE OR NOXIOUS AQUATIC VEGETATION PROGRAM. (a) The department may implement a program to control or eradicate nuisance aquatic vegetation, including hydrilla and giant sylvania, from public water in this state.

(b) To implement the program under this section, the department may use money from unclaimed refunds of the tax on fuel used in motorboats appropriated to the department under Section 162.502(c), Tax Code.

(c) The department may contract with a person not employed by the department or use the services of department personnel for the control or eradication of nuisance or noxious vegetation in the water of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 8, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19, eff. June 15, 2007.

Sec. 12.011. TEACHING EQUIPMENT. On request of a state-supported institution of higher education engaged in teaching and research related to marine science and oceanography, the department may transfer to the institution fish nets, seines, motors, boats, and other marine equipment confiscated under the authority of the game and fish laws to be used in the teaching and research programs of the institution.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 12.012. RECREATIONAL WATER SAFETY VIDEO. (a) The department shall produce a video suitable for use with high school students on recreational water safety. The video must include instruction on safe participation in recreational activities in, on, or around the lakes, rivers, and coastal waters of this state.

(b) The department shall notify the Texas Education Agency in writing when the recreational water safety video is available for the agency's use.

(c) The department may edit the content of the recreational water safety video to produce a boater education video that complies with federal standards for boating education courses published by the National Association of State Boating Law Administrators.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1275 (H.B. 673), Sec. 1, eff. June 17, 2011.

Sec. 12.013. POWER TO TAKE WILDLIFE; FISH. (a) An employee of the department acting within the scope of the employee's authority may possess, take, transport, release, and manage any of the wildlife and fish in this state for public safety, investigation, propagation, distribution, education, disease diagnosis or prevention, or scientific purposes.

(b) A person who is not an employee of the department who is participating under the supervision of a department employee in a program or event designated by the director as being conducted for research or species propagation and as exempt from the normally applicable size or bag limits may possess, take, transport, or release any fish in this state to accomplish the intent of the program or event.

(c) An employee of the department acting within the scope of the employee's authority may discharge a firearm to take wildlife on a public road or right-of-way if the wildlife is:

(1) mortally injured; or

(2) behaving in a manner consistent with the wildlife being diseased.

(d) Except as provided by Subsection (e), a person or agent of

the person may take wildlife on the person's property if the person:

(1) has written authorization from the department; and

(2) is participating under the supervision of a department employee in a program or event designated by the director as being conducted for the diagnosis, management, or prevention of a disease in wildlife.

(e) Subsection (d) does not apply to a person or agent who is a department employee.

(f) The commission may adopt rules to implement this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 9, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 2, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 20, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 188 (H.B. 3065), Sec. 1, eff. September 1, 2023.

Sec. 12.014. NOTICE OF WILDLIFE DISEASE OUTBREAK. (a) Notwithstanding any law restricting the disclosure of information by the department and subject to Subsection (b), if the department becomes aware of a wildlife disease outbreak on a property, the department shall provide notice of the location and nature of the outbreak to:

(1) each owner of adjacent property; and

(2) the Texas Animal Health Commission.

(b) Subsection (a) applies only to a disease that the Texas Animal Health Commission has designated as reportable.

Added by Acts 2023, 88th Leg., R.S., Ch. 247 (S.B. 811), Sec. 3, eff. May 27, 2023.

Sec. 12.015. REGULATION OF FISH, SHELLFISH, AND AQUATIC PLANTS. The department shall regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state.

Added by Acts 1975, 64th Leg., p. 1219, ch. 456, Sec. 17, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 637, Sec. 7, eff. Sept. 1, 1989.

Sec. 12.017. DAMAGING MARKERS. (a) No person may damage, deface, destroy, or remove, tie up a boat to, or in any way render inoperative or ineffective a marker, buoy, light or sound signal, radar reflector, or daymark or any part of these devices, including the attachment intended to hold the device in place.

(b) The fact that a device or part of a device specified in Subsection (a) of this section may have been established by the state in water adjacent to but outside the territorial water of the state is not a defense against a prosecution for damaging state property.

Added by Acts 1977, 65th Leg., p. 1126, ch. 421, Sec. 2, eff. Aug. 29, 1977. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 2, eff. Sept. 1, 1985.

Sec. 12.018. ACCEPTANCE AND DISPOSITION OF GIFTS. (a) The department may accept a gift or donation from any person for the purpose of funding any program or function of the department relating to wildlife conservation.

(b) A gift or donation other than money accepted under this section may be auctioned off or used as a prize in conjunction with a fund-raising program or event. All proceeds of the auction or fund-raising program or event shall be used by the department for the purposes described by this section.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 25, eff. Sept. 1, 1985.

Sec. 12.019. PENALTIES. (a) Except as provided by Subsection (b) of this section, a person who violates Section 12.015, 12.017, or 12.504 of this code or a regulation adopted under Section 12.015 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial of the defendant for a

violation of Section 12.017 of this code that he has been convicted within five years before the trial date of a violation of that section, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

(c) A person who violates Section 12.505 of this code commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 3, eff. Sept. 1, 1985.

Sec. 12.024. WATER PERMIT RESPONSIBILITIES. (a) The Texas Department of Water Resources shall furnish to the department a copy of all permit applications to store, take, or divert water.

(b) The department shall make recommendations to the Texas Department of Water Resources to protect fish and wildlife resources, including permit conditions, mitigation, and schedules of flow or releases.

(c) The department shall be, on its request, a full party in any hearing on an application for a permit to store, take, or divert water.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 29, eff. Sept. 1, 1985.

Sec. 12.025. TECHNICAL GUIDANCE TO LANDOWNERS. (a) The department may provide technical guidance to landowners who request information concerning fish, wildlife, nongame, and habitat management.

(b) In setting priorities for the provision of money to a landowner under this section, the department shall consider:

(1) the inventory developed under Section 11.103; and

(2) the priorities set under Section 11.105.

(c) The department shall support landowner education programs and cooperate with appropriate state agencies.

(d) The department shall provide notice of Section 12.0251 to a private landowner who requests technical assistance before entering the property to collect and record information about animal or plant life.

(e) The commission by rule shall adopt policies, including

written guidelines for a method for providing notice under Subsection (d) and for departmental entry onto privately owned land to collect information described by Section 12.0251(a). The policies and guidelines must identify the maximum information that the department may maintain under Section 12.0251.

(f) A review or update of a record or plan produced by the department under Section 12.0251 and maintained by the landowner or the landowner's agent may be requested by the landowner or the department.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 30, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 519, Sec. 2, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 968, Sec. 28, eff. Sept. 1, 2001.

Sec. 12.0251. DISCLOSURE OF INFORMATION COLLECTED DURING TECHNICAL GUIDANCE TO PRIVATE LANDOWNER. (a) Except as provided by this section, information is not subject to Chapter 552, Government Code, and may not be disclosed to any person, including a state or federal agency, if the information is collected by the department in response to a landowner request relating to the specific location, species identification, or quantity of any animal or plant life that is:

(1) protected by this code; and

(2) located on private land that:

(A) is subject to a wildlife management plan developed cooperatively with the department for private land; or

(B) is the subject of a recommendation report prepared by the department for the landowner.

(b) The commission or the department may disclose information described by this section only to:

(1) the landowner;

(2) another person if the landowner consents to full or specified partial disclosure of information and the consent is in writing and is attached to the plan or recommendation report; or

(3) the Texas Animal Health Commission as needed to carry out a governmental purpose.

(c) The department may release game census, harvest, habitat, or program information only if the information is summarized in a

manner that prevents the identification of an individual or specific parcel of land and the landowner.

(d) The department may prepare not more than one original record of the information collected by the department and incorporated into a wildlife management plan, and the record becomes the property of the landowner. The department may retain one copy of the record. The retained copy may not be disclosed except as provided by this section.

(e) Except as provided by this subsection, the department shall send a copy of the information retained by the department relating to a landowner's property to the landowner and destroy the department's record of the information if the protected information status assigned by this section is revoked. The department may retain a copy of the information if the landowner consents in writing.

(f) In this section, a reference to the department includes a reference to an agent of the department.

(g) This section does not apply to a parcel of land that is not privately owned.

Added by Acts 1995, 74th Leg., ch. 519, Sec. 3, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 968, Sec. 29, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 247 (S.B. 811), Sec. 4, eff. May 27, 2023.

Sec. 12.026. MULTIPLE USE OF LAND. A tract of land purchased primarily for a purpose authorized by this code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 31, eff. Sept. 1, 1985.

Sec. 12.027. ADOPTION OF EMERGENCY RULES. If the commission or the executive director finds that there is an immediate danger to a species authorized to be regulated by the department, or that strict compliance with existing department rules would in any way prevent, hinder, or delay necessary action in coping with a disaster declared

by the governor, the commission or the executive director may adopt emergency rules as provided by Chapter 2001, Government Code.

Added by Acts 1989, 71st Leg., ch. 924, Sec. 1, eff. Aug. 28, 1989.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 8, eff. September 1, 2009.

Sec. 12.028. POWERS AND DUTIES REGARDING TEXAS WATER TRUST. (a) In this section, "Texas Water Trust" means the trust established under Section 15.7031, Water Code.

(b) Consistent with Section 11.0235(b), Water Code, and the department's duties and responsibilities, the department shall encourage and facilitate the dedication of water rights in the Texas Water Trust through lease, donation, purchase, or other means of voluntary transfer for environmental needs, including for the purpose of maintaining or improving:

(1) instream flows;

(2) water quality;

(3) fish and wildlife habitat; and

(4) bay and estuary inflows.

(c) The department may manage rights in the Texas Water Trust in a manner that is consistent with:

(1) the manner in which a holder of the rights may manage the rights;

(2) the dedication of the rights, including the dedication's terms and conditions;

(3) Sections 11.0237, 11.027, and 11.122, Water Code; and

(4) maximizing environmental benefits.

(d) This section may not be construed to authorize the department to exercise any authority expressly granted to the Texas Water Development Board or the Texas Commission on Environmental Quality under Subchapter K, Chapter 15, Water Code.

Added by Acts 2021, 87th Leg., R.S., Ch. 689 (H.B. 2225), Sec. 1, eff. September 1, 2021.

SUBCHAPTER B. ENFORCEMENT POWERS

Sec. 12.101. DEFINITIONS. In this subchapter:

(1) "Aircraft" means a device, including an airplane, ultralight airplane, or helicopter, that can be used for flight in the air.

(2) "Contraband" means:

(A) an aircraft, vehicle, firearm, or other device used to commit a violation of Subchapter G, Chapter 43, of this code or a regulation of the commission adopted under that subchapter;

(B) a vessel that is not documented by the United States Coast Guard or registered as provided by Chapter 31 and that is used to commit an offense under Section 66.006 of this code;

(C) equipment, including a vessel, seized as provided by Section 66.2011 of this code; or

(D) any aircraft or vessel used to commit a second or subsequent offense under Section 61.022, 62.003, 62.004, or 62.005.

(3) "Vessel" means watercraft, including an attached motor, that can be used for transportation on water.

Added by Acts 1995, 74th Leg., ch. 966, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1999.

Sec. 12.102. INSPECTION OF WILDLIFE RESOURCES. (a) In this section:

(1) "Residence" means a person's principal or ordinary home or dwelling place.

(2) "Temporary residence" means a place where a person temporarily dwells or seeks shelter. The term does not include a hunting blind. The term does include a:

(A) hunting club or lodge;

(B) clubhouse;

(C) cabin;

(D) tent;

(E) manufactured home used as a hunting club or lodge; and

(F) hotel room, motel room, or room in a boardinghouse used during a hunting trip.

(3) "Wildlife resource" means any animal, bird, reptile, amphibian, fish, or form of aquatic life or any part of an animal,

bird, reptile, amphibian, fish, or form of aquatic life the hunting, catching, or possession of which is regulated by this code.

(b) Except as provided by Subsection (d), a game warden or other peace officer commissioned by the department who observes a person engaged in an activity regulated by this code or under the jurisdiction of the commission or reasonably believes that a person is or has been engaged in an activity regulated by this code or under the jurisdiction of the commission may inspect:

(1) any license, permit, tag, or other document issued by the department and required by this code of a person hunting or catching wildlife resources;

(2) any device that may be used to hunt or catch a wildlife resource;

(3) any wildlife resource in the person's possession; and

(4) the contents of any container or receptacle that is commonly used to store or conceal a wildlife resource.

(c) Except as provided by Subsection (d), a game warden or other peace officer commissioned by the department may inspect any wildlife resource that has been taken by a person and is in plain view of the game warden or other peace officer.

(d) Nothing in this section authorizes a game warden or other peace officer commissioned by the department to conduct a search otherwise authorized by this section:

(1) in a person's residence or temporary residence; or

(2) on a publicly maintained road or way that is:

(A) improved, designed, or ordinarily used for vehicular traffic;

(B) open to the public; and

(C) distinguishable from a shoulder, berm, or other area not intended for vehicular traffic.

Added by Acts 2003, 78th Leg., ch. 558, Sec. 1, eff. Sept. 1, 2003.

Sec. 12.1025. RISK-BASED INSPECTIONS OF NONRECREATIONAL AUTHORIZATION HOLDERS. (a) In this section, "nonrecreational authorization holder" means a holder of a license, permit, or other authorization required by this code or rules adopted under this code. The term does not include a holder of:

(1) a hunting license issued under Chapter 42;

(2) a hunting or fishing stamp issued under Chapter 43;

(3) a fishing license issued under Chapter 46; or

(4) a combination hunting and fishing license issued under Chapter 50.

(b) The commission by rule shall adopt a policy to guide the prioritization of inspections of nonrecreational authorization holders based on risk to the state's natural resources.

(c) The policy adopted under this section must require that the department:

(1) identify the nonrecreational authorization holders that require on-site inspections;

(2) develop an assessment tool for determining the appropriate frequency and intensity of department inspections of nonrecreational authorization holders, based on key risk factors and indications of increased or decreased risk, such as repeated or remedied violations and failed or passed inspections; and

(3) document all inspections of nonrecreational authorization holders and the results of those inspections and make the documentation available to all employees whose job descriptions include the regulation of nonrecreational authorization holders.

Added by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 6, eff. September 1, 2021.

Sec. 12.103. ENTERING LAND; USE OF INFORMATION OBTAINED BY ENTRY; CIVIL PENALTY. (a) To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray. No action may be sustained against an employee of the department to prevent his entering on land or water when acting in his official capacity as described by this subsection.

(b) Except as provided by Subsection (d) or (d-1), the department may use information collected by an employee of the department on privately owned land only for the purposes of scientific investigations and research described in Subsection (a) and only if authorized in writing by the landowner or the landowner's agent. Unless the department first obtains the written consent of the landowner or the landowner's agent, the department may not:

(1) use other incidental information obtained on the land that does not pertain directly to the investigation or research authorized under Subsection (a); or

(2) enter or permit the entry of any information that does not pertain directly to the investigation or research authorized under Subsection (a), into a database:

(A) maintained by the department and available to a person other than a department employee;

(B) maintained by a natural heritage program administered by the department; or

(C) established and maintained by any other person.

(c) Except as provided by Subsection (d) or (d-1), information collected under this section may only be reported or compiled in a manner that prevents the identification of an individual parcel or specific parcels of private property without the written consent of the landowner or the landowner's agent.

(d) The department may collect and enter data as necessary relating to the occurrence or harvest of natural resources in public land or water. The department may collect and report standardized annual wildlife survey information required by the Pitman-Robertson Wildlife Restoration Act (16 U.S.C. Section 669 et seq.).

(d-1) The department may disclose information collected under this section to the Texas Animal Health Commission as needed to carry out a governmental purpose.

(e) The department is liable to a private landowner for a civil penalty in the amount of $1,000 for a violation of this section involving information collected by an employee of the department on the landowner's property. A landowner may bring suit to collect the penalty in the county in which the land is located or the county in which the landowner resides.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 521, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 247 (S.B. 811), Sec. 5, eff. May 27, 2023.

Sec. 12.104. RIGHT TO SEARCH AND INSPECT. (a) A game warden or other peace officer commissioned by the department may search a

game bag, vehicle, vessel, or other receptacle if the game warden or peace officer has a reasonable, articulable suspicion that the game bag, vehicle, vessel, or receptacle contains a wildlife resource that has been unlawfully killed or taken.

(b) A game warden or other peace officer commissioned by the department may inspect a wildlife resource or a part or product of a wildlife resource that is discovered during a search under Subsection (a) of this section.

(c) In this section "wildlife resource" means an animal, bird, reptile, amphibian, fish, or other aquatic life the taking or possession of which is regulated in any manner by this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 261, Sec. 1, eff. Aug. 26, 1991.

Sec. 12.105. SUITS. (a) The department may file complaints in the name of the State of Texas to recover fines and penalties for violations of the laws relating to game, birds, and fish.

(b) The department may file a complaint and commence proceedings against an individual for violation of the laws relating to game, birds, and fish without the approval of the county attorney of the county in which the proceedings are brought. The department is not required to furnish security for costs for proceedings under this subsection.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 12.106. NOTICE TO APPEAR. (a) Any peace officer of this state or a political subdivision of this state or an authorized employee of the department who arrests a person for a violation of this code or a regulation of the commission adopted under this code may deliver to the alleged violator a written notice to appear before the justice court, county court, or another court having jurisdiction of the offense not later than 15 days after the date of the alleged violation.

(b) On signing the written notice to appear and thereby promising to appear as provided in the notice, the alleged violator shall be released.

(c) A person who fails to appear for a violation of this code

or a regulation of the commission adopted under this code within the time specified in the written notice commits an offense that is a Class C Parks and Wildlife Code misdemeanor, and a warrant for the arrest of the alleged violator may be issued.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 4, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 338, Sec. 1, eff. Sept. 1, 1993.

Sec. 12.107. REMISSION OF FINES. (a) A justice of the peace, clerk of any court, or any other officer of the state who receives a fine imposed by a court for a violation of this code or a regulation of the commission adopted under this code shall send the fine to the department within 10 days after the date of collection. A statement containing the docket number of the case, the name of the person fined, and the section of this code or the regulation violated must accompany the remission of the fine.

(b) The amount of the fine to be remitted to the department is 80 percent in county court or higher court cases and 85 percent in justice court cases.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 269, Sec. 4, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 338, Sec. 2, eff. Sept. 1, 1993.

Sec. 12.108. EXPENSES. In making an arrest, summoning a witness, and serving a process, the department is entitled to the same fee and mileage allowance as a sheriff. The fee is charged and collected in the same manner as sheriff's fees.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 12.109. CONFISCATION AND DISPOSITION OF AQUATIC PRODUCTS. (a) Except as provided by Subsection (c) or (f) of this section, when an enforcement officer of the department believes that a person has unlawful possession of any fish, oysters, shrimp, or other aquatic products as defined by Section 47.001(16) of this code, taken in violation of this code or a proclamation of the commission adopted

under this code, he shall seize the aquatic products and all aquatic products aboard any vessel involved, or in any device used to catch or store aquatic products, whether in storage or on deck, and whether alive or dead, frozen or fresh, whole or processed to any extent. The officer shall sell the aquatic products and dispose of the proceeds as provided in Subsection (b) of this section.

(b) The confiscated aquatic products shall be sold to the highest of three bidders. The proceeds of the sale shall be deposited in the state treasury to the credit of the appropriate suspense fund pending the outcome of the action taken against the person charged with illegal possession. The officer shall give to the person a receipt for all aquatic products seized upon the sale of the aquatic products. If bids cannot be obtained, the department, if practicable, shall donate the aquatic products to a charitable institution, hospital, or other person. To the extent practicable, Subtitle A, Title 6, Health and Safety Code, applies to an aquatic product sold under this subsection that is intended for sale and use as human food.

(c) If aquatic products are seized due only to a violation of a daily bag or possession limit, the officer shall allow the person in possession to retain a lawful quantity of the aquatic products, but only if the person gives written acknowledgement of retention of a lawful quantity to the officer on a form provided by the department. The officer shall sell the remainder of the aquatic products and dispose of the proceeds as provided by Subsection (b) of this section.

(d) If the person is found guilty, pleads guilty or nolo contendere, is placed on deferred adjudication, or fails to appear in accordance with a notice described by Section 12.106 or another law requiring that, as a condition of release, the defendant subsequently appear before a court to answer for the offense, all the proceeds shall be transferred to the credit of the game, fish, and water safety account. If the person is acquitted by the trial court, the charges against the person are dismissed, or the statute of limitations period for the prosecution of the offense has expired, the department shall pay the proceeds of the sale to the person from whom the aquatic products were seized.

(e) This section does not apply to fish, shrimp, or other aquatic products that are taken from an area declared by the Commissioner of Health to be a prohibited area.

(f) If an enforcement officer of the department determines that a person is in possession of oysters that were taken unlawfully, the officer may direct, if practical, that the oysters be returned to a public reef.

(g) The department and an enforcement officer of the department who acts under this section are not liable in any civil action for the seizure, sale, release, or donation of aquatic products or for the order to return oysters to a public reef.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1214, ch. 456, Sec. 13(k), eff. Sept. 1, 1975. Acts 1985, 69th Leg., ch. 433, Sec. 7, eff. June 11, 1985; Acts 1987, 70th Leg., ch. 611, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 338, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 679, Sec. 11, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 454, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 325 (H.B. 1818), Sec. 1, eff. September 1, 2013.

Sec. 12.110. DISPOSITION OF CONFISCATED GAME. (a) Except as provided by Subsection (d), the department shall donate, whenever donation is reasonably practicable, any wild game animal, bird, fowl, game fish, or exotic animal that is unlawfully killed, taken, shipped, held in storage, possessed, or offered for sale in a public eating place to a charitable institution, hospital, or person or persons.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 4.40(34), eff. January 1, 2020.

(c) The department and an enforcement officer of the department who acts under this section are not liable in any civil action for the seizure, sale, or donation of a game bird, other fowl, animal, game fish, or exotic animal.

(d) The department may sell confiscated live game described by Subsection (a) to the highest of three bidders. At the time of a sale under this subsection, the department shall provide the buyer a receipt for all game sold to the buyer. The department shall deposit the proceeds of the sale in the state treasury to the credit of the appropriate suspense fund pending the outcome of any action against

the person charged with an unlawful action described by Subsection (a). If the person is acquitted by the trial court, the charges against the person are dismissed, or the statute of limitations period for the prosecution of the offense has expired, the department shall pay the proceeds of the sale to the person from whom the game was seized.

(e) This section does not apply to the lawful possession or sale of an exotic animal.

(f) In this section, "exotic animal" has the meaning assigned by Section 62.015.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 33, ch. 16, Sec. 1, eff. March 16, 1977; Acts 1993, 73rd Leg., ch. 338, Sec. 4, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 3, eff. June 18, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 325 (H.B. 1818), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 4.37, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 4.40(34), eff. January 1, 2020.

Sec. 12.1101. SEIZURE AND DISPOSAL OF CERTAIN ANIMALS' PELTS AND CARCASSES. (a) A game warden or authorized employee of the department may seize a fur-bearing animal, pelt, or carcass taken or possessed in violation of a provision of this code or a lawful regulation of the commission.

(b) The department may sell a confiscated fur-bearing animal, pelt, or carcass to the highest of three bidders. At the time of a sale under this subsection, the department shall provide the buyer a receipt for all fur-bearing animals, pelts, or carcasses sold to the buyer. The department shall deposit the proceeds of the sale in the state treasury to the credit of the appropriate suspense fund pending the outcome of any action against the person charged with an unlawful action described by Subsection (a). If that person is found guilty, pleads guilty or nolo contendere, is placed on deferred adjudication, or fails to appear in accordance with a notice described by Section

12.106 or another law requiring that, as a condition of release, the defendant subsequently appear before a court to answer for the offense, the department shall transfer the proceeds of the sale to the credit of the game, fish, and water safety account. If the person is acquitted by the trial court, the charges against the person are dismissed, or the statute of limitations period for the prosecution of the offense has expired, the department shall pay the proceeds of the sale to the person from whom the items were seized.

(c) A game warden or authorized employee of the department acting under the authority of this section is immune from liability and from suit for the seizure of items under this section.

(d) To the extent practicable, Subtitle A, Title 6, Health and Safety Code, applies to an animal or animal part sold under this section that is intended for sale and use as human food.

Added by Acts 1977, 65th Leg., p. 82, ch. 39, Sec. 1, eff. March 30, 1977. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, Sec. 6, eff. Sept. 1, 1979.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 325 (H.B. 1818), Sec. 3, eff. September 1, 2013.

Sec. 12.1104. REMOVAL AND DISPOSAL OF ABANDONED FISHING DEVICE. (a) In this section, "abandoned fishing device" means an unattended fishing device located in the public water of this state that is placed in violation of a provision of this code or commission rule.

(b) An abandoned fishing device is litter for purposes of Section 365.011, Health and Safety Code, and is subject to immediate removal and disposal. Except as provided by Subsection (e), an abandoned fishing device must be disposed of in compliance with the Health and Safety Code.

(c) The commission may adopt rules to govern the removal and disposal of abandoned fishing devices as necessary to enhance:

(1) enforcement of this section;

(2) the cleanliness of the beds and bottoms of the public water of this state;

(3) boating safety; and

(4) the conservation and management of aquatic resources.

(d) A game warden or other peace officer is immune from

liability and from suit for the removal or disposal of an abandoned fishing device under this section.

(e) On request of an authorized representative of a unit of The University of Texas System, The Texas A&M University System, or the Texas State University System engaged in teaching and research related to marine science and oceanography, the department may transfer an abandoned fishing device removed under this section to the unit for use in the unit's teaching or research programs.

Added by Acts 2021, 87th Leg., R.S., Ch. 34 (S.B. 599), Sec. 1, eff. September 1, 2021.

Sec. 12.1105. SEIZURE AND DISPOSITION OF UNLAWFUL FISHING DEVICES. (a) When a game warden or other peace officer finds in or on the public water of the state a seine, net, trawl, trap, or other device that is in or on the water in violation of a provision of this code or in violation of a lawful regulation of the commission or is aboard a vessel in violation of a provision of this code or a lawful regulation of the commission, the warden or other peace officer shall seize without a warrant the seine, net, trawl, trap, or device.

(b) When an alleged violator is charged with an offense in connection with the unlawful use or possession of the seine, net, trawl, trap, or device seized by the warden or other peace officer, the warden or other peace officer shall hold the seine, net, trawl, trap, or device as evidence. Except as provided in Subsection (e) of this section, on a final conviction for the offense of the alleged violator, including a final judgment arising from a plea of nolo contendere, the warden or other peace officer shall destroy the seine, net, trawl, trap, or device. If the alleged violator is not guilty of the offense or if the charge is not prosecuted and dismissed, the seine, net, trawl, trap, or device shall be returned to the owner.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 34 (S.B. 599), Sec. 4, eff. September 1, 2021.

(d) A game warden or other peace officer who seizes items under this section is immune from liability and from suit for a seizure or destruction of a seine, net, trawl, trap, or other device as authorized by Subsection (b).

(e) The Parks and Wildlife Department, when requested by

authorized representatives of units of The University of Texas System, The Texas A&M University System, and the Texas State University System engaged in teaching and research related to marine science and oceanography, may transfer to such units of said universities and university systems nets, seines, and other marine equipment, which have been seized under this section, to be used in carrying out the teaching and research programs within said institutions.

Added by Acts 1977, 65th Leg., p. 381, ch. 190, Sec. 3, eff. May 20, 1977. Amended by Acts 1991, 72nd Leg., ch. 781, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 1061, Sec. 10, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 227, Sec. 7, eff. May 23, 1997; Acts 1999, 76th Leg., ch. 851, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 34 (S.B. 599), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 34 (S.B. 599), Sec. 4, eff. September 1, 2021.

Sec. 12.1106. SEIZURE AND DISPOSITION OF CONTRABAND; IMMUNITY. (a) A game warden or other peace officer who has probable cause to believe property is contraband may seize the property without a warrant.

(b) The warden or officer shall give notice of the seizure, including a description of the seized property and the location and date of seizure, to the county judge or a judge of a county court at law, justice court, or district court of the county where the seizure occurred:

(1) when a person pleads guilty or nolo contendere to, is convicted of, or is placed on deferred adjudication for:

(A) an offense under Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of this code; or

(B) a second or subsequent offense under Section 61.022, 62.003, 62.004, or 62.005 of this code; or

(2) if no person is arrested for an offense immediately after the warden or officer seizes the property.

(c) The court shall direct the sheriff or a constable to post a copy of the notice in the county courthouse for not less than 10

days. At the expiration of 10 days, the court shall hold a hearing to determine if the seized property is contraband.

(d) The court shall order the seized property:

(1) forfeited to the department if the court determines by a preponderance of the evidence that:

(A) the seized property is contraband and a person pleaded guilty or nolo contendere to, was convicted of, or was placed on deferred adjudication for:

(i) an offense under Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of this code; or

(ii) a second or subsequent offense under Section 61.022, 62.003, 62.004, or 62.005 of this code; or

(B) the seized property is contraband and no person was arrested for an offense immediately after the warden or officer seized the property; or

(2) released to the owner if:

(A) the person charged with an offense under Section 66.006, Section 66.2011, or Subchapter G, Chapter 43, of this code or a second or subsequent offense under Section 61.022, 62.003, 62.004, or 62.005 of this code is acquitted or the charge is dismissed; or

(B) the court determines that the seized property is not contraband.

(e) If the department receives a forfeiture order from a court as authorized by this section, the department may:

(1) use the seized property in its normal operations;

(2) sell or transfer the property; or

(3) destroy the property.

(f) A warden or officer who seizes property under this section is immune from liability and from suit for a seizure and disposition of property as authorized by this section.

(g) The commission may adopt rules to implement this section.

(h) The department shall deposit money received under this section in the state treasury to the credit of the game, fish, and water safety account.

Added by Acts 1991, 72nd Leg., ch. 808, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 12, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 966, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 851, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 959, Sec. 2, eff. Sept. 1, 1999.

Sec. 12.113. COASTAL SURVEY CHARTS ADMISSIBLE. In any prosecution under this code, United States Coastal Survey Charts are admissible.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 12.114. DRIVER'S LICENSE OR PERSONAL IDENTIFICATION CERTIFICATE REQUIRED. (a) A person who is 17 years of age or older and who has a license or permit issued under this code or who is engaging in an activity that requires a license or permit shall have a driver's license or personal identification certificate in the person's immediate possession.

(b) If the person is a resident as defined by Subdivision (1) of Section 42.001 of this code, "driver's license" and "personal identification certificate" have the meanings assigned by Chapter 521, Transportation Code.

(c) If the person is a nonresident as defined by Section 42.001, "driver's license" and "personal identification certificate" mean those documents that are similar to those defined in Subsection (b) and that are issued by the agency in the state or country of which the person is a resident that is authorized to issue driver's licenses or personal identification certificates.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 32, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.232, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 10, eff. Sept. 1, 1997.

Sec. 12.115. OFFENSE. (a) A person who is arrested for an alleged violation of this code or a proclamation or regulation adopted under this code commits an offense if the person:

(1) does not have in his immediate possession a driver's license or personal identification certificate required by Section 12.114 of this code; or

(2) fails or refuses to display the driver's license or personal identification certificate required by Section 12.114 of this code when requested to do so by any peace officer, game warden,

magistrate, or officer of a court of competent jurisdiction.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 32, eff. Sept. 1, 1985.

Sec. 12.116. JUSTICE COURT TO PROVIDE AFFIDAVITS CERTIFYING CERTAIN CONVICTIONS. (a) If a person is convicted in justice court for violating a provision of this code or a proclamation or regulation adopted under this code that provides enhanced penalties for subsequent convictions, the court on request shall submit to the department an affidavit certifying the conviction. The affidavit must include the driver's license number or personal identification certificate number obtained from the violator.

(b) The affidavit certifying the conviction, if admissible under the Texas Rules of Evidence, is available in subsequent prosecutions of that person for violations of the section, proclamation, or regulation under which the prior conviction was obtained.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 32, eff. Sept. 1, 1985.

Sec. 12.117. JUSTICE COURT TO PROVIDE AFFIDAVITS CERTIFYING CERTAIN CONVICTIONS AND OTHER INFORMATION. (a) If a person is convicted in a justice court for violating a provision of this code or a proclamation or regulation adopted under this code that provides enhanced penalties for subsequent convictions, the court on request shall submit to the department an affidavit certifying the conviction. Along with such affidavit the court shall also compile and send to the department the defendant's driver's license number and copies of any photograph, picture, description, or measurement of the defendant made by any law enforcement agency in connection with the offense.

(b) A certified copy of such affidavit and documents pursuant to Subsection (a) of this section is admissible as evidence in a criminal proceeding to prove that a particular person was convicted of the offense to which the documents pertain if the court finds that

15 days before trial, the party against whom the evidence is offered was provided a copy of the document offered as evidence.

Added by Acts 1985, 69th Leg., ch. 827, Sec. 10, eff. Aug. 26, 1985. Amended by Acts 1987, 70th Leg., ch. 218, Sec. 1, eff. Sept. 1, 1987. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 18.001, eff. September 1, 2009.

Sec. 12.119. VIOLATION OF COMMISSION RULE ON POSSESSION OF LICENSE; PENALTY. (a) A person commits an offense if the person violates a rule adopted by the commission relating to possessing a license or stamp otherwise required by this code for hunting wildlife resources or for catching aquatic life.

(b) An offense under this section is a Class C Parks and Wildlife misdemeanor.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 2, eff. June 16, 1995.

SUBCHAPTER C. OPERATION GAME THIEF

Sec. 12.201. CREATION OF FUND. The department may accept and deposit in a special fund outside the state treasury, called the operation game thief fund, donations from any person made for purposes of this subchapter. Funds deposited in the operation game thief fund may be used only for the maintenance of that fund, promotion of the operation game thief program through advertisement and marketing, the development, acquisition, and implementation of technological advancements to facilitate the apprehension and prosecution of persons who violate laws of this state intended to protect the state's natural or cultural resources or the public safety of persons using those natural or cultural resources, and payment of rewards and death benefits authorized by this subchapter. The Operation Game Thief Committee shall adopt rules for the implementation of the operation game thief program and maintenance of the operation game thief fund.

Added by Acts 1981, 67th Leg., p. 3316, ch. 868, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1987, 70th Leg., ch. 245, Sec. 1, eff. May 28, 1987; Acts 1995, 74th Leg., ch. 244, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 215 (H.B. 2032), Sec. 1, eff. September 1, 2005.

Sec. 12.202. OPERATION GAME THIEF COMMITTEE. (a) The director shall appoint an Operation Game Thief Committee composed of 11 members to administer the operation game thief fund and to make reward payments and death benefit payments from that fund. The director shall appoint persons who are not employees of the department and who have a demonstrated interest in game and fish conservation. The director may consider the recommendations or nominations of any club or association. The director shall designate one of the members as chairman of the committee. The director shall appoint a former committee member to serve as chairman emeritus. The chairman emeritus has the same rights and duties as any other committee member. The director or an employee designated by the director for that purpose shall serve as secretary to the committee. A member of the committee serves without compensation.

(b) Each member of the committee, including the chairman emeritus, serves a term of six years. The terms of approximately one-third of the members, including the chairman emeritus, expire on January 31 of each odd-numbered year. The director may reappoint members.

(c) The committee shall meet at least one time each calendar year at the department's office in Austin or at a location designated by the chairman of the committee. Four committee members must be present for approval of disbursement of rewards to eligible applicants and death benefit payments to eligible recipients. Except as provided by Subsection (d), if the vote for approval of disbursements of rewards or death benefits results in a tie vote, no action may be taken until the next meeting of the committee.

(d) Repealed by Acts 2003, 78th Leg., ch. 1170, Sec. 29.02.

Added by Acts 1981, 67th Leg., p. 3316, ch. 868, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 33, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 245, Sec. 2, eff. May 28, 1987; Acts 1991, 72nd Leg., ch. 431, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 631, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 244, Sec. 2, eff. Sept. 1, 1995; Acts 2003,

78th Leg., ch. 1170, Sec. 29.01, 29.02, eff. Sept. 1, 2003.

Sec. 12.203. REWARDS; CLAIMS. (a) A person may apply to the committee for a reward to be paid from the operation game thief fund if the person furnishes information leading to the arrest and conviction of a person for a violation of this code or any of the following laws or a regulation adopted under this code or any of the following laws:

(1) Subchapter B, Chapter 365, Health and Safety Code;

(2) Subchapter E, Chapter 191, Natural Resources Code;

(3) Chapter 28 or Section 30.05, 31.03, 31.11, 37.10, 49.06, 49.061, 49.07, or 49.08, Penal Code;

(4) Chapter 160, Tax Code; or

(5) Subchapter E, Chapter 7, or Subchapter D, Chapter 26, Water Code.

(b) The committee may consider claims made at any time before its meeting, but consideration is limited to claims that relate to final convictions.

(c) The committee shall prescribe and furnish the forms on which claims are to be made, including any documentation to be furnished to substantiate the claim.

(d) Repealed by Acts 2005, 79th Leg., Ch. 215, Sec. 3, eff. September 1, 2005.

Added by Acts 1981, 67th Leg., p. 3316, ch. 868, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1987, 70th Leg., ch. 245, Sec. 3, eff. May 28, 1987.

Amended by:

Acts 2005, 79th Leg., Ch. 215 (H.B. 2032), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 215 (H.B. 2032), Sec. 3, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 813 (H.B. 1163), Sec. 12, eff. September 1, 2023.

Sec. 12.204. REWARDS; PAYMENTS. No amount in excess of that on deposit in the operation game thief fund is payable as a reward under this section or as a death benefit payment under Section 12.206

of this code. No reward may be granted to a person, or an immediate family member of a person, who is a peace officer, deputy game warden, prosecutor, employee of the department, or member of the judiciary.

Added by Acts 1981, 67th Leg., p. 3316, ch. 868, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 123, ch. 29, Sec. 4, eff. April 19, 1983; Acts 1987, 70th Leg., ch. 245, Sec. 4, eff. May 28, 1987; Acts 1993, 73rd Leg., ch. 631, Sec. 2, eff. Sept. 1, 1993.

Sec. 12.205. POWERS OF THE DEPARTMENT. The department may:

(1) provide a toll-free telephone number for use of the public in reporting violations of the game and fish laws to an office of the department that has employees on duty 24 hours a day; and

(2) establish procedures for voluntary donations to the operation game thief fund to be collected and sent to the department.

Added by Acts 1981, 67th Leg., p. 3316, ch. 868, Sec. 1, eff. Aug. 31, 1981.

Sec. 12.206. PAYMENT OF DEATH BENEFITS. The committee may use the operation game thief fund to supplement any death benefits received by the families of peace officers employed by the department who are killed in the line of duty. The committee shall adopt guidelines for the payment of death benefits under this section.

Added by Acts 1993, 73rd Leg., ch. 631, Sec. 3, eff. Sept. 1, 1993.

SUBCHAPTER D. RECOVERY BY THE STATE FOR VALUE OF FISH, SHELLFISH, REPTILE, AMPHIBIAN, BIRD, OR ANIMAL

Sec. 12.301. LIABILITY FOR VALUE OF FISH, SHELLFISH, REPTILE, AMPHIBIAN, BIRD, OR ANIMAL. A person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of this code or a proclamation or regulation adopted under this code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 34, eff. Sept. 1, 1985.

Sec. 12.302. VALUE OF FISH, SHELLFISH, REPTILE, AMPHIBIAN, BIRD, OR ANIMAL. For purposes of this subchapter and for determining damages under Section 7.109, Water Code, the commission shall adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 34, eff. Sept. 1, 1985.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 19.001, eff. September 1, 2011.

Sec. 12.303. CIVIL SUIT FOR RECOVERY OF VALUE. (a) The attorney general or the county attorney of the county in which the violation occurred may bring a civil suit under this subchapter in the name of the state to recover the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.

(b) A suit under this section shall be brought in the county in which the violation occurred, except that the attorney general may bring suit in Travis County.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 34, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 73, Sec. 1, eff. Sept. 1, 1989.

Sec. 12.304. MORE THAN ONE DEFENDANT. If more than one defendant is named in a suit brought under this subchapter, each defendant against whom judgment is rendered is jointly and severally liable for the recovery provided by this subchapter.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 34, eff. Sept. 1, 1985.

Sec. 12.305. RECOVERY OF VALUE IN ADDITION TO FINE. The recovery amount provided by this subchapter is in addition to any fine, forfeiture, penalty, or costs imposed under another law.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 34, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 193, Sec. 1, eff. Sept. 1, 1987.

Sec. 12.306. BOTH CIVIL SUIT AND CRIMINAL PROSECUTION PERMISSIBLE. The pendency or determination of a suit brought under this subchapter or the pendency or determination of a criminal prosecution for the same killing, catching, taking, possession, or injury does not bar the other action.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 34, eff. Sept. 1, 1985.

Sec. 12.307. DISPOSITION OF RECOVERY. (a) Any damages for injury to fish, shellfish, reptiles, amphibians, birds, or animals recovered in a suit brought by the attorney general shall be deposited to the credit of the game, fish, and water safety account.

(b) Fifty percent of any damages for injury to fish, shellfish, reptiles, amphibians, birds, or animals recovered in a suit brought by a county attorney shall be deposited in the general fund of the county. The remainder shall be deposited to the credit of the game, fish, and water safety account.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 34, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 73, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 679, Sec. 13, eff. Sept. 1, 1993.

Sec. 12.308. CERTAIN COSTS RECOVERABLE. (a) The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees incurred by the department in a civil suit under this subchapter may be recovered in addition to damages for the value of any fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured.

(b) Any amounts recovered under this section shall be credited

to the same operating accounts from which the expenditures occurred.

Added by Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 4, eff. June 18, 2005.

SUBCHAPTER E. PUNISHMENTS

Sec. 12.401. APPLICATION. A person adjudged guilty of an offense under this code or a proclamation or regulation adopted under this code shall be punished in accordance with this subchapter and the Code of Criminal Procedure, 1965.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985.

Sec. 12.402. CIVIL PENALTY. This subchapter does not deprive a court of authority conferred by law to forfeit property, suspend or cancel a license or permit, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985.

Sec. 12.403. CLASSIFICATION OF OFFENSES. (a) Offenses are designated as Parks and Wildlife Code misdemeanors or Parks and Wildlife Code felonies.

(b) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

(1) Class A Parks and Wildlife Code misdemeanors;

(2) Class B Parks and Wildlife Code misdemeanors; and

(3) Class C Parks and Wildlife Code misdemeanors.

(c) Section 12.41, Penal Code, does not apply to classifications of offenses under this code.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985.

Sec. 12.404. CLASS A PARKS AND WILDLIFE CODE MISDEMEANOR. An

individual adjudged guilty of a Class A Parks and Wildlife Code misdemeanor shall be punished by:

(1) a fine of not less than $500 nor more than $4,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and imprisonment.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 11, eff. Sept. 1, 1997.

Sec. 12.405. CLASS B PARKS AND WILDLIFE CODE MISDEMEANOR. An individual adjudged guilty of a Class B Parks and Wildlife Code misdemeanor shall be punished by:

(1) a fine of not less than $200 nor more than $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and imprisonment.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 12, eff. Sept. 1, 1997.

Sec. 12.406. CLASS C PARKS AND WILDLIFE CODE MISDEMEANOR. An individual adjudged guilty of a Class C Parks and Wildlife Code misdemeanor shall be punished by a fine of not less than $25 nor more than $500.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 535, Sec. 1, eff. Sept. 1, 1987.

Sec. 12.4061. PARKS AND WILDLIFE CODE STATE JAIL FELONY. (a) An individual adjudged guilty of a Parks and Wildlife Code state jail felony shall be punished by confinement in a state jail for a term of not more than two years or less than 180 days.

(b) In addition to confinement, an individual adjudged guilty of a Parks and Wildlife Code state jail felony may be punished by a

fine of not less than $1,500 and not more than $10,000.

Added by Acts 1999, 76th Leg., ch. 959, Sec. 3, eff. Sept. 1, 1999.

Sec. 12.407. PARKS AND WILDLIFE CODE FELONY. (a) An individual adjudged guilty of a Parks and Wildlife Code felony shall be punished by confinement in the Texas Department of Criminal Justice for any term of not more than 10 years or less than two years.

(b) In addition to imprisonment, an individual adjudged guilty of a Parks and Wildlife Code felony may be punished by a fine of not less than $2,000 nor more than $10,000.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 13, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.143, eff. September 1, 2009.

Sec. 12.408. SUBSEQUENT CONVICTIONS. The use of a conviction for enhancement purposes does not preclude the subsequent use of a conviction for enhancement purposes.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985.

Sec. 12.409. SEPARATE OFFENSES. Each fish, bird, animal, reptile, amphibian, or egg or part of a fish, bird, animal, reptile, amphibian, or egg taken, possessed, killed, left to die, imported, exported, offered for sale, sold, purchased, attempted to be purchased, or retained in violation of any provision of this code or a proclamation or regulation adopted under this code constitutes a separate offense.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 5, eff. June 18, 2005.

Sec. 12.410. AUTHORIZED PUNISHMENTS FOR CORPORATIONS AND ASSOCIATIONS. (a) If a corporation or association is adjudged guilty of an offense under this code that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

(1) $20,000 if the offense is a Parks and Wildlife Code felony; or

(2) $10,000 if the offense is a Class A or Class B Parks and Wildlife Code misdemeanor.

(c) In lieu of the fines authorized by Subsections (a) and (b) of this section, if a court finds that the corporation or association gained money or property or caused personal injury, property damage, or other loss through the commission of a Parks and Wildlife Code felony or Class A or Class B Parks and Wildlife Code misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation to be lost, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 1, eff. Sept. 1, 1985.

Sec. 12.411. JURISDICTION OF JUSTICE COURT. In addition to the jurisdiction provided by the constitution and other law, a justice court has jurisdiction of Class C Parks and Wildlife Code

misdemeanors.

Added by Acts 1987, 70th Leg., ch. 535, Sec. 2, eff. Sept. 1, 1987.

SUBCHAPTER F. REVOCATION OR SUSPENSION OF LICENSES OR PERMITS

Sec. 12.501. REVOCATION OR SUSPENSION OF LICENSE OR PERMIT. (a) In this subchapter, "permittee" or "licensee" includes each member of a partnership or association, an agent acting on behalf of a partnership or association, each officer of a corporation, and the owner of a majority of a corporation's corporate stock.

(b) The director may suspend or revoke an original or renewal permit or license issued under this code if it is found, after notice and hearing, that:

(1) the permittee or licensee has been finally convicted of a violation of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;

(2) the permittee or licensee violated a provision of this code or proclamation or regulation adopted under this code relating to the permit or license to be suspended or revoked;

(3) the permittee or licensee made a false or misleading statement in connection with the permittee's or licensee's original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission or its officers or employees;

(4) the permittee or licensee is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a commission rule relating to a permit or license to be suspended or revoked; or

(5) the permittee or licensee is liable to the state under Section 12.301.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 36, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 454, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 1, eff. September 1, 2013.

Sec. 12.5015. AUTOMATIC REVOCATION OF HUNTING OR FISHING LICENSE OR PERMIT. (a) Except as provided by this section, any hunting or fishing license or permit issued by the department to a person is automatically revoked on final conviction of the person of an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, 62.011, 66.004(a), or 66.004(c) or a violation of a rule adopted under Section 62.0065.

(b) If the holder of a lifetime license is finally convicted of an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, 62.011(c), 66.004(a), or 66.004(c), or a violation of a rule adopted under Section 62.0065, the person's lifetime license is automatically suspended. The suspension is for a period set by the court of not less than one year or more than five years. If the court does not set a period, the suspension is for one year from the date the conviction becomes final.

(c) On conviction of a person for an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, 62.011(c), 66.004(a), or 66.004(c), or a violation of a rule adopted under Section 62.0065, the court shall set a period of not less than one year and not more than five years during which the department may not issue that person a license, tag, or stamp under Chapter 42, 46, or 50. If the court does not set a period, the department may not issue that person a license, tag, or stamp under Chapter 42, 46, or 50 before the first anniversary of the date the conviction becomes final.

(d) A person who has a license or permit revoked or suspended under this section shall surrender the revoked or suspended license or permit to the court. The court shall send the department the revoked or suspended license or permit and a copy of the judgment of conviction.

(e) For purposes of this section, "final conviction" includes a plea of guilty or nolo contendere to or the imposition of deferred adjudication for an offense.

Added by Acts 1997, 75th Leg., ch. 1090, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 959, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 989 (H.B. 1959), Sec. 5, eff. September 1, 2005.

Sec. 12.502. NOTICE; HEARING. The department must give the licensee or permittee an opportunity for a hearing concerning the suspension or revocation of the license or permit. Notice of the hearing must be given and the hearing held as provided by Sections 2001.052 and 2001.054, Government Code.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 36, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(70), eff. Sept. 1, 1995.

Sec. 12.503. NOTICE OF SUSPENSION OR REVOCATION. (a) After notice and hearing as provided by Section 12.502 of this code, the department shall notify the licensee or permittee of the suspension or revocation of the license or permit.

(b) The notice under this section must be given personally or by registered or certified mail.

(c) The suspension or revocation takes effect when the notice under this section is given or delivered.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 36, eff. Sept. 1, 1985.

Sec. 12.504. TIME OF SUSPENSION OR REVOCATION. (a) A license or permit may be suspended under this subchapter for a period set by the director. The period of suspension ends on the expiration of the time set by the director or the expiration of the license or permit, whichever occurs first.

(b) The holder of a license or permit that has been suspended may not apply for another license or permit of the same kind during the period of suspension.

(c) The holder of a license or permit that has been revoked may not apply for another license or permit of the same kind for one year from the date the revocation takes effect.

(d) A person who applies for a license or permit in violation of Subsection (b) or (c) of this section commits an offense.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 36, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 959, Sec. 5, eff. Sept. 1, 1999.

Sec. 12.505. VIOLATION OF SUSPENSION, REFUSAL, OR REVOCATION. A person who engages in an activity requiring a permit or license during the time for which such license or permit has been suspended, refused, or revoked commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 36, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 454, Sec. 5, eff. Sept. 1, 1999.

Sec. 12.506. APPEAL FROM SUSPENSION, REFUSAL, OR REVOCATION OF LICENSE OR PERMIT. (a) An appeal from an order of the department refusing to issue or transfer a license or permit or revoking or suspending a license or permit may be taken to a district court of Travis County.

(b) The appeal shall be under the substantial evidence rule and against the department alone as defendant.

(c) This section does not apply to the appeal of a decision by the department refusing to issue or renew a permit to which Subchapter G applies.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 36, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., ch. 454, Sec. 2, 3, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 2, eff. September 1, 2013.

Sec. 12.507. ALTERNATIVES TO SUSPENSION. (a) In lieu of suspending a license or permit under this subchapter, the department may give the licensee or permittee the opportunity to pay a civil penalty.

(b) The department shall determine the amount of the penalty and in doing so shall consider:

(1) the economic impact a suspension would have on the licensee or permittee engaging in a commercial activity under the

license or permit; or

(2) the amount reasonably necessary to deter further violations.

(c) The amount of the civil penalty may not be less than $150 for each day the license or permit was to have been suspended.

(d) If the licensee or permittee does not pay the penalty before the sixth day after the date on which the department notifies him of the amount, he loses the opportunity to pay it and the department may impose the suspension.

(e) Civil penalties received by the department under this section shall be deposited to the credit of the game, fish, and water safety account.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 36, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 14, eff. Sept. 1, 1993.

Sec. 12.508. REFUSAL OF LICENSE OR PERMIT. (a) In this section:

(1) "Notice" includes a certified letter sent from the department by the United States Postal Service to the applicant at the last address supplied to the department by the applicant or verbal notice to the applicant by a representative of the department.

(2) "Finally convicted" includes a final judgment of guilt, deferred adjudication, a plea of nolo contendere, or a plea of guilty.

(b) The department may refuse to issue or transfer an original or renewal license, permit, or tag if the applicant or transferee:

(1) has been finally convicted of a violation under this code or a rule adopted or a proclamation issued under this code;

(2) is liable to the state under Section 12.301; and

(3) has failed to fully pay the amount due under Section 12.301 after the department has issued notice of liability to the applicant or transferee.

(c) The contested case provisions of the Administrative Procedure Act (Sections 2001.051-2001.178, Government Code) do not apply to the refusal to issue, transfer, or renew a license, permit, or tag under this section.

(d) Expired.

Added by Acts 1999, 76th Leg., ch. 454, Sec. 4, eff. Sept. 1, 1999.

SUBCHAPTER G. REFUSAL TO ISSUE OR RENEW CERTAIN PERMITS RELATING TO THE CONTROL, BREEDING, OR MANAGEMENT OF DEER; APPEAL OF CERTAIN DECISIONS

Sec. 12.601. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to the following permits:

(1) a trap, transport, and transplant permit under Section 43.061 or 43.0611;

(2) a trap, transport, and process permit under Section 43.0612;

(3) a deer breeder's permit under Subchapter L, Chapter 43;

(4) a white-tailed deer management permit under Subchapter R, Chapter 43; and

(5) a mule deer management permit under Subchapter R-1, Chapter 43.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 3, eff. September 1, 2013.

Sec. 12.602. DEFINITIONS. In this subchapter:

(1) "Applicant" means a person who has applied for a new or renewal permit.

(2) "Final conviction" means a final judgment of guilt, the granting of deferred adjudication or pretrial diversion, or the entering of a plea of guilty or nolo contendere.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 3, eff. September 1, 2013.

Sec. 12.603. GENERAL CIRCUMSTANCES FOR REFUSAL TO ISSUE OR RENEW PERMIT. The department may refuse to issue or renew a permit if the applicant fails to submit in a timely manner the following:

(1) a completed application on a form supplied by the department and all application materials required by the department;

(2) the required permit fee;

(3) accurate reports as applicable; and

(4) any additional information that the department

determines is necessary to process the application.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 3, eff. September 1, 2013.

Sec. 12.604. CONSIDERATIONS FOR ISSUANCE OR RENEWAL OF PERMIT; APPLICANT WITH PRIOR PENALTIES OR CONVICTIONS. (a) This section applies only to a determination of whether to issue a permit to or renew a permit for an applicant who has a final conviction or has been assessed an administrative penalty for a violation of:

(1) Subchapter C, E, L, R, or R-1, Chapter 43;

(2) a provision of this code not described by Subdivision (1) that is punishable as a Class A or B Parks and Wildlife Code misdemeanor, a Parks and Wildlife Code state jail felony, or a Parks and Wildlife Code felony;

(3) Section 63.002; or

(4) the Lacey Act (16 U.S.C. Sections 3371-3378).

(b) In determining whether to issue a permit to or renew a permit for an applicant who has a final conviction or has been assessed an administrative penalty, the department shall consider:

(1) the number of final convictions or administrative penalties;

(2) the seriousness of the conduct on which the final conviction or administrative penalty is based;

(3) the existence, number, and seriousness of offenses or violations other than offenses or violations that resulted in a final conviction or administrative penalty described by Subsection (a);

(4) the length of time between the most recent final conviction or administrative penalty and the permit application;

(5) whether the final conviction, administrative penalty, or other offense or violation was the result of negligence or intentional conduct;

(6) whether the final conviction or administrative penalty resulted from conduct committed or omitted by the applicant, an agent of the applicant, or both;

(7) the accuracy of the permit history information provided by the applicant;

(8) for a renewal, whether the applicant agreed to any special provisions recommended by the department as conditions to the

expiring permit; and

(9) other mitigating factors.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 3, eff. September 1, 2013.

Sec. 12.605. PROCEDURE FOR REFUSAL TO ISSUE OR RENEW PERMIT. (a) Not later than the 10th day after the date a decision to refuse to issue or renew a permit has been made, the department shall provide to the applicant a written statement of the reasons for the decision.

(b) The commission by rule shall adopt procedures consistent with this subchapter for the department's review of a refusal to issue or renew a permit.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 3, eff. September 1, 2013.

Sec. 12.606. REVIEW OF REFUSAL TO ISSUE OR RENEW PERMIT. In conducting a review of a decision by the department to refuse to issue or renew a permit, the department shall consider:

(1) any applicable factors listed under Section 12.604;

(2) the applicant's efforts toward rehabilitation;

(3) whether there is a substantial likelihood that the applicant would repeat the conduct on which the refusal is based;

(4) whether the conduct on which the refusal is based involved a threat to public safety; and

(5) other mitigating factors.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 3, eff. September 1, 2013.

Sec. 12.607. APPEAL OF DEPARTMENT DECISION REFUSING TO ISSUE OR RENEW PERMIT. (a) Venue to appeal a decision of the department refusing to issue or renew a permit is a district court in Travis County.

(b) The appeal shall be by trial de novo.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 3, eff. September 1, 2013.

SUBCHAPTER H. LICENSE DEPUTIES

Sec. 12.701. ISSUANCE OF LICENSE, STAMP, PERMIT, OR TAG BY LICENSE DEPUTIES. The department may authorize the issuance of a license, stamp, permit, or tag by a license deputy.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 3, eff. June 16, 1995.

Sec. 12.702. LICENSE DEPUTIES; FEES. (a) An employee of the department, a county clerk, or another person designated or contracted with by the department to issue and collect money received for a license, stamp, permit, tag, or other similar item is a license deputy and may issue and collect money for a license, stamp, permit, tag, or other similar item issued under this code, including a special issue stamp or decal.

(b) The commission by rule may set collection and issuance fees for a license, stamp, tag, permit, or other similar item issued under any chapter of this code. The commission shall not set any collection or issuance fees for license deputies at amounts less than the amounts in effect on June 1, 1995. If a collection or issuance fee or other similar fee set by another section of this code conflicts with this section, the collection or issuance fee set under the authority of this section prevails.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 3, eff. June 16, 1995.

Sec. 12.703. POINT-OF-SALE SYSTEM. (a) The department may issue a license, stamp, tag, permit, or another similar item authorized by this code or federal law through the use of automated equipment and a point-of-sale system.

(b) The department may designate an entity to install the system for the issuance of licenses, stamps, permits, tags, or other similar items. A designated entity may collect revenue for the department from license deputies.

(c) The commission by rule may set the amount of compensation for a point-of-sale entity. The compensation may include an amount

to be retained by the entity from the fee collected for each item issued by the entity. The rules must specify standards for the licenses, including the legibility of the license.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 3, eff. June 16, 1995.
Amended by Acts 2001, 77th Leg., ch. 968, Sec. 30, eff. Sept. 1, 2001.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 570 (S.B. 1668), Sec. 1, eff. September 1, 2007.

Sec. 12.704. DUTIES OF LICENSE DEPUTIES. A license deputy shall:

(1) complete and keep for the use of the department a designated copy or other record of the sale of each license, stamp, permit, or tag issued;

(2) keep a record of each license, stamp, permit, or tag issued, showing:

(A) the identification of the purchaser;

(B) the serial number of the item sold;

(C) the date of issuance; and

(D) any other information required by the department; and

(3) perform any other function required by the license deputy's agreement with the department.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 3, eff. June 16, 1995.

Sec. 12.705. LICENSE, STAMP, PERMIT, AND TAG SALES REPORTS. (a) After the end of each calendar month or at any other time designated by the department, a license deputy shall send to the department a report on a form and in the manner prescribed by the department.

(b) A license deputy shall furnish any other information or material required by the license deputy's agreement with the department.

(c) The commission by rule may establish reasonable penalties for delinquent payments or reports from license deputies and may establish payment discounts for timely payments or reports from

license deputies.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 3, eff. June 16, 1995.

Sec. 12.706. UNISSUED ITEMS. A license deputy shall return to the department, at the department's request, unissued licenses, stamps, permits, tags, or any other materials or equipment furnished to the license deputy by the department.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 3, eff. June 16, 1995.

Sec. 12.707. ISSUANCE OR ACCEPTANCE OF LICENSE, STAMP, PERMIT, OR TAG. No person may issue or accept a license, stamp, permit, or tag required by this code except on a form provided by the department.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 3, eff. June 16, 1995.

Sec. 12.708. LIABILITY OF LICENSE DEPUTY FOR SALES. (a) This section applies to the sale of a license, stamp, permit, or tag generated by a license deputy or by an employee or agent of a license deputy.

(b) A license deputy holds in trust for the benefit of the state money that the license deputy receives from the sale of a license, stamp, permit, or tag, minus the amount of the authorized sales commission, until that money is transferred to the state treasury for credit to the appropriate department account. The license deputy is liable to the department for the full amount of money held in trust. If the license deputy is not an individual, each officer, director, or owner of the license deputy is personally liable to the department for the full amount of money held in trust.

Added by Acts 2005, 79th Leg., Ch. 822 (S.B. 804), Sec. 1, eff. June 17, 2005.

CHAPTER 13. POWERS AND DUTIES CONCERNING PARKS AND OTHER RECREATIONAL AREAS

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 13.001. CONTROL BY DEPARTMENT. (a) Except as otherwise provided by law, the following are under the department's control and custody:

(1) all recreational and natural areas designated as state parks; and

(2) all historical sites under the jurisdiction of the department.

(b) The commission shall establish a classification system for state parks and wildlife management areas that categorizes wildlife management areas, parks, or a portion of parks as wildlife management areas, recreational areas, natural areas, or historical sites. The commission may not classify a historical site as a historical park.

(c) The commission shall adopt rules governing the acquisition and development of recreational areas, natural areas, or historical sites.

(d) The commission shall establish as a priority the acquisition of land necessary for parks that are established by this code and that comply with the classification system and rules adopted by the commission as required by this section.

(e) The commission shall have the exclusive authority to determine sound biological management practices for all lands under its control.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 37, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 217, Sec. 1, eff. May 18, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 16, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 968, Sec. 31, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1245 (S.B. 1518), Sec. 8, eff. June 17, 2011.

Sec. 13.002. DEVELOPMENT AND ACQUISITION OF OUTDOOR AREAS. The department may:

(1) develop, operate, and maintain outdoor areas and facilities of the state; and

(2) acquire land, water, and interests in land and water for outdoor recreation areas and facilities.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 32, eff. Sept. 1, 2001.

Sec. 13.003. GIFTS AND IMPROVEMENTS OF PARK SITES. The department may receive gifts of state park sites and may improve and equip parks sites or contract for their improvement and equipment.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.004. FINANCING OF PARK PROGRAMS. (a) Except as provided by Section 13.0045, the operation, maintenance, and improvement of state parks shall be financed from the general revenue fund, the state parks account, other accounts that may be authorized by law, and donations, grants, and gifts received by the department for these purposes.

(b) No donation, grant, or gift accruing to the state or received by the department for the purpose of operating, maintaining, improving, or developing state parks may be used for any purpose other than the operation, maintenance, or developing of state parks.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 15, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 902, Sec. 2, eff. Sept. 1, 1997.

Sec. 13.0041. USE OF CERTAIN BOND REVENUE. The department shall, if practicable, apportion at least fifteen percent of any money received by the department from the proceeds of the sale of bonds issued under Section 50-f, Article III, Texas Constitution, to specific park maintenance or improvement projects for which matching private or local money for the specific state parks and wildlife projects has been made available to the department.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 33(a), eff. Nov. 6, 2001.

Sec. 13.0044. PREFERENCE FOR CERTAIN PARK PROGRAMS. In

selecting parks for capital improvements, the department may give a preference to programs in which the department matches locally raised money on a dollar-for-dollar basis.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 21, eff. June 15, 2007.

Sec. 13.0045. REVENUE BONDS FOR PARKS AND WILDLIFE FACILITIES. (a) The department, by resolution of the commission, may request the Texas Public Finance Authority to issue revenue bonds or other revenue obligations to finance the repair, renovation, improvement, and equipping of parks and wildlife facilities for an estimated project cost not to exceed $60 million.

(b) On receipt of the department's request, the authority shall promptly issue the bonds or other obligations under and in accordance with Chapter 1232, Government Code.

(c) The department shall deposit the proceeds of bonds issued under this section to the credit of the Texas parks and wildlife capital account and may use the proceeds only to finance the repair, renovation, improvement, and equipping of parks and wildlife facilities.

Added by Acts 1997, 75th Leg., ch. 902, Sec. 3, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.362, eff. Sept. 1, 2001.

Sec. 13.0046. COOPERATION WITH INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) The commission may enter into a joint agreement with the governing board of an institution of higher education to finance and build a conference center and other appropriate related facilities to be located in or near a state park.

(c) A facility built under this section must be operated cooperatively to provide benefits to the department and the institution of higher education in accomplishing the purposes of the department and the institution.

(d) The commission and an institution of higher education may use any funds, property, or other assets available to finance and

build a facility under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 824 (H.B. 3842), Sec. 1, eff. September 1, 2015.

Sec. 13.005. ACQUISITION OF HISTORICAL SITES. (a) The department may acquire by purchase, gift, or other manner historical sites:

(1) where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;

(3) embodying the distinguishing characteristics of an architectural type which is inherently valuable for study of a period, style, or method of construction;

(4) that contributes significantly to the understanding of aboriginal man in the nation or state; or

(5) that is of significant geologic interest relating to prehistoric animal or plant life.

(b) The department shall restore and maintain each historical site acquired under this section for the benefit of the general public. The department may enter into interagency contracts for this purpose.

(c) The department shall formulate plans for the preservation and development of historical sites. Before formulating a plan for a specific site, the department shall conduct an archeological survey of the site. In formulating plans, the department shall:

(1) consider the results from the archeological survey for the site if the plan is for a specific site;

(2) consider the resources necessary to manage a site; and

(3) meet with and consider comments made by the Texas Historical Commission.

(d) The department and the Texas Historical Commission shall form a joint panel to establish criteria for determining whether a site is of statewide significance under Subsection (a) and to promote the continuity of a historic sites program.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 38, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 968, Sec. 34, eff. Sept. 1, 2001.

Sec. 13.0051. COORDINATION WITH TEXAS HISTORICAL COMMISSION; REPORT ON PRESERVATION PLANS. The department shall meet regularly with the Texas Historical Commission regarding plans to preserve and develop historical sites in this state.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 36, eff. Sept. 1, 2001.

Sec. 13.0052. REPORTS. The department shall periodically prepare reports on plans to preserve and develop historical sites under the jurisdiction of the department in this state.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 36, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1245 (S.B. 1518), Sec. 9, eff. June 17, 2011.

Sec. 13.0053. REFERENCE TO HISTORICAL SITES. (a) In this section, "publication" includes the publication of a book, magazine, photograph, poster, or bulletin.

(b) The department may not refer to a historical site as a "historical park":

(1) in a department publication; or

(2) on a department marker or sign.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 36, eff. Sept. 1, 2001.

Sec. 13.006. LEASE OF LANDS. (a) The department may lease any land and improvements it holds to a city, county, special district, nonprofit organization, or political subdivision. The leased area may not be referred to as a state facility, and no state funds may be used to operate or maintain a property leased under this section.

(b) The conditions and duration of the lease agreement are determined by the agreement of the department and the lessee.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1999, 76th Leg., ch. 617, Sec. 1, eff. Sept. 1, 1999.

Sec. 13.0061. LEASE OF GRAZING RIGHTS ON PARK LANDS; SALE OF PRODUCTS. (a) The department may lease grazing rights on any state park or any area of a state park. The department may harvest and sell, or sell in place, any timber, hay, livestock, or other product grown on state park land the department finds to be in excess of natural resource management, educational, or interpretive objectives. Timber may be harvested only for forest pest management, salvage, or habitat restoration and under good forestry practices with the advice of the Texas Forest Service.

(b) The department may agree to accept materials, supplies, or services instead of money as part or full payment for a sale or lease under this section. The department may not assign to the materials, supplies, or services accepted as payment under this subsection a value that exceeds their actual market value.

(c) Except for consideration accepted under Subsection (b) of this section, all revenue derived from a lease or sale under this section shall be deposited in the state treasury to the credit of the state parks account.

Added by Acts 1981, 67th Leg., p. 2697, ch. 734, Sec. 1, eff. June 16, 1981. Amended by Acts 1993, 73rd Leg., ch. 447, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 679, Sec. 16, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 22, eff. June 15, 2007.

Sec. 13.007. INVESTIGATION EXPENSES. A locality may pay the expenses of a representative of the department for a trip to the locality to determine the suitability of a site for a state park. If the expenses of the representative are paid by the locality, state funds may not be used for the expenses of the trip.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.0075. ELIGIBILITY CRITERIA FOR INCLUSION OF REAL PROPERTY IN STATE PARKS SYSTEM. (a) The commission by rule shall adopt criteria for determining the eligibility of real property that is donated to the department for inclusion in the state parks system.

(b) The department may accept a donation of real property that satisfies the criteria adopted under Subsection (a).

(c) The department may renovate or restore donated real property, including improvements to the property, or construct new improvements on the donated real property as necessary and prudent.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 23, eff. June 15, 2007.

Sec. 13.008. SOLICITATION, RECEIPT, AND TRANSFER OF LAND. (a) The department may solicit and receive donations of land for public purposes and may refuse donations of land not acceptable for public purposes.

(b) If title to a site has vested in the department and if ownership of the site is no longer in the best interest of the department, the department may transfer the title:

(1) to another state department or institution requesting the site;

(2) to the donor of the land if the donor requests the return of the site;

(3) to the United States if it has undertaken the development of the site for public purposes;

(4) to the grantor if the deed to the department contains a reversion clause providing that title reverts to the grantor when the site is not used for the purposes for which it was acquired; or

(5) to any legally authorized entity if the property is to be used for public purposes.

(c) A two-thirds vote of the commission is necessary for action taken under this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1999, 76th Leg., ch. 617, Sec. 2, eff. Sept. 1, 1999.

Sec. 13.009. SALE OR EXCHANGE OF LAND. (a) The director with the approval of the commission may execute a deed exchanging real

property or an interest in real property either as all or partial consideration for other real property or interest in real property. The director with the approval of the commission may execute a deed selling real property or an interest in real property under the jurisdiction of the department if ownership of the real property is no longer in the best interest of the department.

(b) The department shall receive a good and marketable title to all land exchanged under this section.

(c) All land to be received in the exchange must be appraised and if the land to be received is of greater value, as determined by an independent and competent appraisal, than the state land exchanged, the department may use funds available for land acquisitions as a partial consideration for the exchange.

(d) The receipts from the sale of land under this section shall be used for improving or acquiring other real property dedicated to the same purpose for which the land sold was dedicated.

(e) Notwithstanding any other law or charter provision to the contrary, the department and a municipality may agree to exchange park properties under the control or management of the department or municipal government on the following conditions:

(1) the properties to be exchanged shall continue to be dedicated park properties and used for park purposes;

(2) no election is required by the municipality to authorize the exchange; and

(3) all of the provisions of Subsections (a) through (d) of this section are complied with by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 609, ch. 220, Sec. 1, eff. May 24, 1977; Acts 1979, 66th Leg., p. 550, ch. 260, art. 3, Sec. 2, eff. Sept. 1, 1979; Acts 1987, 70th Leg., ch. 1069, Sec. 1, eff. June 20, 1987; Acts 1991, 72nd Leg., ch. 246, Sec. 1, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 617, Sec. 3, eff. Sept. 1, 1999.

Sec. 13.010. HISTORIC SITES. The department and the Texas Historical Commission may cooperate to locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas as historic sites. Fitting markers may be erected; however, no expense may be incurred in the name of the state for this

project.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 2001, 77th Leg., ch. 968, Sec. 37, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1245 (S.B. 1518), Sec. 10, eff. June 17, 2011.

Sec. 13.011. NATURAL FEATURES. (a) The commission may locate and designate outstanding natural features and formations located in this state. It may erect or contract to have erected suitable markers or monuments to call the features and formations to the public's attention.

(b) The commission may accept title to a suitable site for a marker or monument from private individuals, associations, or corporations by gift. Sites may also be acquired by purchase with appropriated funds.

(c) The commission may adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites.

(d) All other agencies shall cooperate with the department to aid in the location of sites. The department may accept jurisdiction over suitable sites located on state land by an interagency transfer of jurisdiction.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.012. ROADSIDE PARKS. An area under the control of the department which is more suitable for use as a roadside park than any other type of park may be transferred to the Texas Department of Transportation for roadside park purposes if the land meets the specifications of the Texas Department of Transportation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(61), eff. Sept. 1, 1995.

Sec. 13.013. CONSTRUCTION OF ROADS BY TEXAS DEPARTMENT OF TRANSPORTATION. (a) The department may contract with the Texas Transportation Commission for the construction and paving of roads in and adjacent to state parks.

(b) Agreements under this section must be made in conformity with the Interagency Cooperation Act.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(62), eff. Sept. 1, 1995.

Sec. 13.014. ROADS AND TRAILS TO CERTAIN PARK SITES. (a) The department shall acquire, construct, and maintain roads and trails from public roads to park sites located on and accessible to the waters of Buchanan and Inks lakes in Burnet, Lampasas, Llano, San Saba, Travis, and Williamson counties. The park sites may be state parks or land owned by the Lower Colorado River Authority dedicated to public use for park purposes.

(b) The department may acquire the rights-of-way for the roads and trails by purchase or gift or by exercise of the power of eminent domain.

(c) The Texas Transportation Commission shall cooperate with the department, and the department shall cooperate and match funds with any state or federal governmental agency and shall sponsor any state or federal project.

(d) The department may make contracts to carry out the provisions of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(63), eff. Sept. 1, 1995.

Sec. 13.0145. SPEED LIMITS. (a) The department shall set and enforce speed limits on a road in a state park, wildlife management area, or other site under the control of the department as follows:

(1) 30 miles per hour on a park road or main drive;

(2) 20 miles per hour on a secondary road; or

(3) as posted by the department.

(b) The department shall:

(1) consult with the Texas Department of Transportation to determine if a speed limit under Subsection (a) is reasonable and safe based on an engineering and traffic control study; and

(2) amend the limit, if necessary.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 24, eff. June 15, 2007.

Sec. 13.015. PARK USER FEES; CONCESSIONS. (a) The department may charge and collect park user fees for park services. The user fees shall be set by the commission.

(a-1) The commission may waive the park entrance fee for a person who is at least 70 years of age, a student enrolled in the fifth grade, or a child who is 11 years of age. The commission may not waive the fee for use of a park facility, including a hook-up fee for electricity or water.

(a-2) The department may promote visits and enhance revenue at parks, including amounts necessary for salaries, advertising, consumable supplies and materials, promotional products, fees, and related expenses.

(b) The department may operate or grant contracts to operate concessions in state parks or on causeways, beach drives, or other improvements in connection with state park sites. The department may make regulations governing the granting or operating of concessions. The department may establish and operate staff concessions, including salaries, consumable supplies and materials, operating expenses, rental and other equipment, and other capital outlays.

(b-1) The department may purchase products, including food items, for resale or rental at a profit.

(b-2) The department shall operate any resale concession program using standard business practice models to generate revenue and provide quality customer service while adhering to conservation principles.

(b-3) The department may recruit and select private service providers to enter into leased concession contracts with the department to provide necessary and appropriate visitor services.

(c) The department shall deposit any revenue received from the contracts, user fees, or operations authorized by this section in the state treasury to the credit of the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 40, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 17, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 25, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1097 (H.B. 2065), Sec. 1, eff. June 14, 2019.

Sec. 13.0151. STATE PARK PASSES. (a) The department may contract with any entity the department considers appropriate to sell state park passes in any of the entity's retail locations.

(b) The commission may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 2, eff. May 28, 2011.

Sec. 13.0155. USE OF PARKS AND WILDLIFE DEPARTMENT BRAND. (a) The department may contract with any entity the department considers appropriate to use the Parks and Wildlife Department brand in exchange for licensing fees paid by the entity to the department.

(b) The department may use the licensing fees received under Subsection (a) for any use under this code.

(c) The commission may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 2, eff. May 28, 2011.

Sec. 13.016. INMATE LABOR. (a) The department may use the labor of an inmate confined in a state, county, or local correctional facility on or in connection with state parks, wildlife management areas, or other property under the control or jurisdiction of the department.

(b) Inmates working in connection with lands under the control or jurisdiction of the department remain under the control of the Texas Department of Criminal Justice or county or local correctional facility, as appropriate, and are considered as serving their terms in the Texas Department of Criminal Justice or other correctional

facility.

(c) The department may purchase equipment, meals, supplies, and materials for an inmate working at a department site as necessary to facilitate the use of the labor described by this section.

(d) The department may not use the labor of an inmate convicted of an offense listed in Article 62.001(5), Code of Criminal Procedure.

(e) The department may not use the labor of an inmate convicted of any violent offense.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 17, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 26, eff. June 15, 2007.

Sec. 13.017. PUBLICATIONS ON PARKS. (a) The department may provide or sell information, including books, magazines, photographs, prints, and bulletins, to the public on state parks.

(b) The department may enter into contractual agreements for publication of information concerning state parks.

(c) The department may receive royalties on department-owned materials that are sold or supplied to others by the department for publication.

(d) Money received under this section shall be deposited in the State Treasury to the credit of the account from which expenses for the publication were paid.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 41, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 18, eff. Sept. 1, 1993.

Sec. 13.018. STATE PARKLANDS PASSPORT. (a) The following people may apply to the department for a state parklands passport:

(1) a resident of this state who is 65 years old or over who has resided in the state for six consecutive months preceding the date of application for a parklands passport or any other individual in a category that the commission by rule designates as a resident of

this state who is 65 years old or over;

(2) an honorably discharged veteran of the United States armed services;

(3) a member of the United States armed services on active duty;

(4) a surviving spouse, parent, child, or sibling of a person who died while serving in the United States armed forces; and

(5) an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of the individual.

(b) The department shall issue a passport to each qualified applicant. The passport shall be issued on a form designed and provided by the department.

(c) The holder of a state parklands passport issued on or before August 31, 1995, a person whose birth date is before September 1, 1930, or a person described by Subsection (a)(2), (3), or (4) is entitled to enter any state park without payment of an entrance or admission fee. When a fee is charged by the department for entrance of a vehicle into a state park, the vehicle of the holder of a state parklands passport is exempt from the fee when the holder is present.

(d) The department may discount or waive a park entrance fee for a resident of this state issued an initial state parklands passport after August 31, 1995. When a fee is charged by the department for entrance of a vehicle into a state park, the vehicle of the holder of an initial state parklands passport may enter any state park on payment of a lower vehicle entrance fee. The department may waive vehicle entrance fees for any state park for the holder of an initial state parklands passport.

(e) A state parklands passport issued to a person described by Subsection (a)(3) is valid for one year from the date of issuance and may be renewed in the manner prescribed by commission rule.

(f) The commission by rule shall establish eligibility requirements and privileges available to the holder of a state parklands passport described by Subsection (a)(5).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 36, ch. 19, Sec. 1, eff. Aug. 29, 1977; Acts 1995, 74th Leg., ch. 629, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 387, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 227 (H.B. 1740), Sec. 1, eff. September 1, 2023.

Sec. 13.019. FACILITY RESERVATION SYSTEM AND FEE. (a) The department may permit the advance reservation of a facility, lodging, or campsite at a state park and require the payment of a fee by a person making the reservation.

(b) The department shall annually:

(1) evaluate whether the reservation system used by the department for the advance reservation of facilities, lodging, and campsites is as user-friendly as possible; and

(2) make modifications to the system as necessary to enhance the user-friendliness of the reservation system.

Added by Acts 1979, 66th Leg., p. 1065, ch. 495, Sec. 1, eff. June 7, 1979. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 18, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 27, eff. June 15, 2007.

Sec. 13.0191. FACILITY AND LODGING FEES. A fee charged by the department under this subchapter for the use of a facility or lodging at a state park may vary on a seasonal basis and may be set in an amount to recover the direct and indirect costs of providing the facility or lodging and provide a reasonable rate of return to the department. Items to be considered in setting a fee include the cost required to provide, maintain, and improve amenities available at the site and seasonal variables such as the cost of staffing to meet demand and costs of heating or air conditioning.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 28, eff. June 15, 2007.

Sec. 13.020. LOCAL PUBLIC HEARINGS ON PARK DEVELOPMENT PLANS. Before the commission approves a park master development plan, the department must hold a public hearing to receive comments on the plan in an area near the location of the new park site.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 42, eff. Sept. 1, 1985.

Sec. 13.022. EASEMENT THROUGH CADDO LAKE STATE PARK. The department shall grant an easement through Caddo Lake State Park to provide access to private real property located within the park.

Added by Acts 1985, 69th Leg., ch. 392, Sec. 1, eff. June 10, 1985. Renumbered from Sec. 13.020 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(34), eff. Sept. 1, 1987.

Sec. 13.023. LIFEGUARDS AND SIGNAGE IN CERTAIN AREAS. (a) The department shall:

(1) during reasonable daylight hours, as established and posted by the department, from Memorial Day to Labor Day, provide:

(A) occupied lifeguard towers or mobile lifeguard units on each side of each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within a state park; or

(B) a single occupied lifeguard tower or mobile lifeguard unit at each pier, jetty, or other structure that protrudes into the Gulf of Mexico that is located within a state park if the single tower provides an unobstructed view of both sides of each structure; and

(2) post within 100 yards of each side of each structure described by Subdivision (1) signs clearly describing the dangerous water conditions that may occur near the structure.

(b) The department may suspend or alter the duties imposed under Subsection (a) during dangerous weather conditions or emergency operations.

Added by Acts 2021, 87th Leg., R.S., Ch. 724 (H.B. 3807), Sec. 5, eff. September 1, 2021.

SUBCHAPTER B. REGULATIONS GOVERNING PARKS AND OTHER RECREATIONAL AREAS

Sec. 13.101. AUTHORIZATION. The commission may promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific areas, or

forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1206, ch. 456, Sec. 4(a), eff. Sept. 1, 1975.

Sec. 13.102. SCOPE OF REGULATIONS. The regulations may govern:

(1) the conservation, preservation, and use of state property whether natural features or constructed facilities;

(2) the abusive, disruptive, or destructive conduct of persons;

(3) the activities of park users including camping, swimming, boating, fishing, or other recreational activities;

(4) the possession of pets or animals;

(5) the regulation of traffic and parking; and

(6) conduct which endangers the health or safety of park users or their property.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2725, ch. 741, Sec. 3, eff. Jan. 1, 1982.

Sec. 13.103. ADVERTISING. The commission by rule shall prohibit inappropriate commercial advertising in state parks, natural areas, historic sites, or other sites under the jurisdiction of the department to preserve the integrity of the sites and to minimize distractions that may interfere with the enjoyment of the sites by visitors.

Added by Acts 2011, 82nd Leg., R.S., Ch. 152 (H.B. 1300), Sec. 3, eff. May 28, 2011.

Sec. 13.106. POSTING OF REGULATIONS. All specific or general regulations applying to a state park, historic site, scientific area, or fort must be posted in a conspicuous place at the park, site, or fort. A copy of the regulations shall be made available on request to persons using the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.108. REMOVAL FROM PARK. (a) Any person directly or indirectly responsible for disruptive, destructive, or violent conduct which endangers property or the health, safety, or lives of persons or animals may be removed from a park, historic site, scientific area, or fort for a period not to exceed 48 hours.

(b) Prior to removal under this section, the person must be given notice of the provisions of this section and an opportunity to correct the conduct justifying removal.

(c) A court of competent jurisdiction may enjoin a person from reentry to the park, scientific area, site, or fort, on cause shown, for any period set by the court.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.109. ENFORCEMENT OF REGULATIONS. Regulations adopted under this subchapter may be enforced by any peace officer, including those employees of the department commissioned as peace officers under Section 11.019 of this code. A notice to appear may be issued by a peace officer for violation of a regulation on a form prescribed by the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.110. EFFECT OF REGULATIONS. No regulation adopted under this subchapter may amend or repeal any penal law of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.112. PENALTY. A person who violates a regulation adopted under Subchapter B of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 6, eff. Sept. 1, 1985.

SUBCHAPTER C. REGULATIONS GOVERNING AREAS ADJACENT TO STATE PARKS

Sec. 13.201. AUTHORIZATION. The commission may make regulations prohibiting the use of firearms or certain types of firearms on state property adjacent to state parks and within 200 yards of the boundary of the state park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.202. APPLICATION LIMITED. The regulations of the commission under Section 13.201 of this code apply only to state parks located within one mile of coastal water of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.205. PENALTY. A person who violates a regulation made by the commission under Section 13.201 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 7, eff. Sept. 1, 1985.

SUBCHAPTER D. PARTICIPATION IN FEDERAL PROGRAMS

Sec. 13.301. PROGRAMS FOR THE DEVELOPMENT OF HISTORIC SITES AND STRUCTURES. (a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program involving the planning, acquisition, and development of historic sites and structures.

(b) The department may contract with the United States or its agencies to plan, acquire, and develop historic sites and structures in this state in conformity with any federal act concerning the development of historic sites and structures.

(c) The department shall keep financial and other records relating to programs under this section and shall furnish appropriate officials and agencies of the United States and of this state all reports and information reasonably necessary for the administration

of the programs.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.302. PROGRAMS FOR THE DEVELOPMENT OF OUTDOOR RECREATION RESOURCES. The department is the state agency to cooperate with the federal government in the administration of federal assistance programs for the planning, acquisition, operation, and development of the outdoor recreation resources of the state, including acquisition of land and water and interests in land and water. The department shall cooperate with the federal government in the administration of the provisions of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.303. COOPERATION WITH OTHER AGENCIES. (a) The department shall cooperate with departments of the federal government and other departments of state and local government, including as a part of the state plan, water districts, river authorities, and special districts in outdoor recreation. The department shall issue rules and regulations to cooperate in the enforcement and administration of federal acts and rules and regulations.

(b) The department shall implement programs and coordinate with departments and agencies of the federal government, including the United States Border Patrol and the Drug Enforcement Administration, and other departments of state and local government, if necessary, to minimize environmental damage to any land under the control and custody of the department along this state's border with Mexico.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1999, 76th Leg., ch. 588, Sec. 1, eff. Sept. 1, 1999.

Sec. 13.304. ADDITIONAL POWERS OF COUNTIES AND SPECIAL DISTRICTS. Counties, river authorities, water districts, and other political subdivisions organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, may:

(1) acquire land for public recreation;

(2) construct facilities for public use on land acquired for public recreation;

(3) provide for the operation, maintenance, and supervision of the public recreation areas;

(4) execute agreements with other local, state, or federal agencies for planning, construction, maintenance, and operation of public recreation facilities and necessary access roads; and

(5) maintain adequate sanitary standards on the land and water areas that are part of or adjacent to public recreation areas.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.305. CONDEMNATION PROCEEDINGS. (a) The department may institute condemnation proceedings according to the laws of this state to acquire land for programs developing outdoor recreation resources under Section 13.302 of this code.

(b) Costs incurred in the exercise of eminent domain under this section for the relocation, raising, lowering, rerouting, or change in grade, or alteration in the construction of any electric transmission, telegraph, or telephone line, railroad, conduit, pole, property, facility, or pipeline are the sole expense of the department.

(c) "Sole expense" means the actual cost of the lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.306. APPLICATION FOR PARTICIPATION IN FEDERAL PROGRAMS. (a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal outdoor recreation program.

(b) The department may contract with the United States or any appropriate federal agency to plan, acquire, and develop outdoor recreation resources of the state in conformity with the Land and Water Conservation Fund Act of 1965 or any other federal act to develop outdoor recreation resources of the state.

(c) The department shall keep financial and other records

relating to the programs under this section and shall furnish to appropriate officials and agencies of the United States and of this state reports and information reasonably necessary for the administration of the programs.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.307. COORDINATION OF ACTIVITIES. To obtain the benefits of outdoor recreation programs under this subchapter, the department shall coordinate its activities with and represent the interests of all agencies and political subdivisions of the state as a part of a state plan. The state plan shall include cities, counties, water districts, river authorities, and special districts in outdoor recreation having interests in the planning, development, acquisition, operation, and maintenance of outdoor recreation resources and facilities.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.308. AVAILABILITY OF STATE FUNDS. (a) The department may not make a commitment or an agreement to participate in an outdoor recreation program under this subchapter until sufficient funds are available to meet the state's share of the cost of the project.

(b) An outdoor recreation area or facility acquired or developed by the department under this subchapter shall be publicly maintained to the extent necessary to insure its proper operation and maintenance.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.309. AVAILABILITY OF LOCAL FUNDS. The department may agree with the United States or any appropriate agency to plan, acquire, operate, and develop projects involving participating federal aid funds on behalf of any political subdivision of this state if the political subdivision certifies to the department that:

(1) sufficient funds are available to meet its share, if any, of the cost of the project; and

(2) the acquired or developed areas will be operated and maintained at the expense of the subdivision for public outdoor recreation use.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.310. RECEIPT AND EXPENDITURE OF FUNDS. (a) The department may receive and spend federal money allocated to the state for any project established to develop outdoor recreation resources under this subchapter and for administrative and other expenses incident to the administration of these projects.

(b) The department may receive and expend funds from the state, a county, a city, or any other source for the development of outdoor recreation resources under this subchapter.

(c) The department shall deposit all funds received for the development of outdoor recreation resources in the state treasury to the credit of the state land and water conservation account, the Texas recreation and parks account, the large county and municipality recreation and parks account, or the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 19, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 9, eff. September 1, 2009.

Sec. 13.311. PROJECT PRIORITY. The department may make rules and regulations governing the priority of projects submitted under an outdoor recreation plan under this subchapter and within the limitations of the appropriations made for these purposes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.312. ADMINISTRATION EXPENSE. The department may employ necessary personnel, as determined by the director, and expend amounts necessary to administer efficiently the outdoor recreation programs under this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.313. FISH AND WILDLIFE RESTORATION PROJECTS. The department may conduct and establish cooperative fish and wildlife restoration projects under the provisions of Public Law No. 415, Acts of the 75th Congress, and Public Law No. 681, Acts of the 81st Congress, as amended.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 13.314. COMPLIANCE IN FISHERY MANAGEMENT. The department may cooperate and contract with the Gulf of Mexico Fishery Management Council or the National Marine Fisheries Service for conduct of such work as may be necessary in complying with requirements of the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.).

Added by Acts 1977, 65th Leg., p. 1280, ch. 501, Sec. 1, eff. June 15, 1977.

CHAPTER 14. POWERS AND DUTIES CONCERNING WETLANDS

SUBCHAPTER A. GENERAL POWERS AND DUTIES

Sec. 14.001. DEFINITIONS. In this chapter:

(1) "Department" means the Parks and Wildlife Department.

(2) "Land office" means the General Land Office.

(3) "Mitigation" means the sequential process of avoiding impacts to wetlands, minimizing impacts to wetlands, and providing compensation for losses to wetlands.

(4) "State-owned coastal wetlands" mean wetlands owned by state agencies underlying or adjacent to tidal waters.

Added by Acts 1991, 72nd Leg., ch. 265, Sec. 3, eff. June 5, 1991.

Sec. 14.002. STATE-OWNED WETLAND CONSERVATION PLAN. (a) The department and the land office, in conjunction, shall develop and adopt a State Wetlands Conservation Plan for state-owned coastal wetlands. The Texas Natural Resource Conservation Commission and

other state agencies and local governments shall assist in developing and implementing the plan. The department and the land office shall consult with federal agencies in developing and adopting the plan.

(b) The plan shall include:

(1) a definition of the term "wetlands" consistent to the greatest extent practicable with the definition under Subchapter J, Chapter 11, Water Code, and federal law;

(2) a policy framework for achieving a goal of no overall net loss of state-owned coastal wetlands, which framework shall include monitoring and enforcement of the no overall net loss policy;

(3) provisions for an inventory of state-owned coastal wetlands to determine gains and losses in areal extent, wetland types, wetland function, and the causes of wetlands alterations;

(4) provisions for an inventory of sites for compensatory mitigation, enhancement, restoration, and acquisition priorities;

(5) clarification and unification of wetland mitigation policies within the department, the land office, and the Texas Natural Resource Conservation Commission, and other state agencies and subdivisions;

(6) development of guidelines and regulations for mitigation done in advance for losses due to possible future development and for which credit may be received when such future development occurs;

(7) evaluation of requirements of freshwater inflow to estuaries that affect state-owned coastal wetlands;

(8) preparations for a long-range navigational dredging and disposal plan, in consultation with the Texas Department of Transportation, port authorities, and navigation districts, including the recommendations set out in the department's Texas Outdoor Recreation Plan;

(9) provisions for scientific studies examining the effects of boat traffic in sensitive coastal wetland areas and for education of the public with regard to the effects of boating in wetlands and proper nondamaging boating techniques;

(10) provisions to encourage the reduction of nonpoint source pollution of coastal wetlands, bays, and estuaries, in consultation with the Texas Natural Resource Conservation Commission, including the monitoring and adoption of nonpoint source pollution standards as they are developed by authorized state and federal agencies;

(11) development of a networking strategy to improve coordination among existing federal and state agencies with respect to coastal wetland permitting, review, and protection responsibilities, including the assessment of current state agency permitting and other processes concerning coastal wetlands;

(12) a public education program on wetlands with the responsibility for the production of such material to be jointly that of the land office and the department;

(13) participation in the establishment of a National Wetlands Information Center by the federal government;

(14) evaluation of the feasibility and effect of sediment bypassing from reservoirs to bays and estuaries;

(15) consideration of sea level rise as it relates to coastal wetlands;

(16) provisions consistent with the department's Texas Wetlands Plan;

(17) a plan to acquire coastal wetlands, following the guidelines provided for in Subchapter G, Chapter 33, Natural Resources Code; and

(18) any other matter affecting state-owned coastal wetlands.

(c) The department and the land office shall submit the plan to the Parks and Wildlife Commission and the School Land Board for review, comments, and approval.

(d) Following approval of the plan, the Parks and Wildlife Commission and the School Land Board shall adopt rules, policies, standards, and guidelines to implement the plan fully.

Added by Acts 1991, 72nd Leg., ch. 265, Sec. 3, eff. June 5, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.279, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(64), eff. Sept. 1, 1995.

Sec. 14.003. GIFTS AND GRANTS. The department and the land office may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out the powers and duties provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 265, Sec. 3, eff. June 5, 1991.

TITLE 3. PARKS
CHAPTER 21. TEXAS PARK DEVELOPMENT FUND
SUBCHAPTER A. TEXAS PARK DEVELOPMENT BONDS

Sec. 21.001. ISSUANCE OF PARK DEVELOPMENT BONDS. The department, by resolution of the commission, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed $75 million pursuant to the provisions of Article III, Section 49-e, of the Texas Constitution. All bonds provided for under this section shall be issued by the Texas Public Finance Authority, acting on behalf of the department. In connection with the issuance of such bonds, the Texas Public Finance Authority is subject to all rights, duties, and conditions set forth in this chapter with respect to the issuance of bonds by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 14.07, eff. Jan. 1, 1992.

Sec. 21.002. DESCRIPTION OF BONDS. The bonds are called State of Texas Park Development Bonds and shall be issued on a parity. The department may issue them in one or several installments and shall date the bonds of each issue.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.003. SALE PRICE. The department may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with the accrued interest from their date of issuance.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.004. INTEREST RATE. The department shall determine the rate of interest of an installment or series of bonds and shall determine whether interest is payable annually or semiannually.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.005. FORM, DENOMINATION, PLACE OF PAYMENT. The department shall determine:

(1) the form of the bonds, including the form of any interest coupons to be attached;

(2) the denominations of the bonds; and

(3) the places for payment of principal and interest.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.006. MATURITY. The bonds of each issue mature, serially or otherwise, not more than 40 years from their date.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.007. REDEMPTION BEFORE MATURITY. In the resolution providing for the issuance of bonds, the department may determine the price, terms, and conditions for redemption of bonds before maturity.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.008. REGISTERED AND BEARER BONDS. The resolution may provide for the registration of bonds as to ownership, successive conversion and reconversion from bearer to registered bonds, and successive conversion and reconversion from registered to bearer bonds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.009. NOTICE OF BOND SALE. (a) After determining to sell a series of bonds, the department shall publish notice of the sale at least one time not less than 10 days before the date of the sale. The notice shall be published in one or more recognized financial publications of general circulation published in the state and one or more recognized financial publications of general circulation published outside the state.

(b) The department may publish notice of the sale more than once and in more than one publication.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.010. COMPETITIVE BIDS. The bonds shall be sold only after competitive bidding to the highest and best bidder. The department may reject any or all bids.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.011. SECURITY FOR BIDS. The department shall require every bidder, except administrators of state funds, to include with their bid an exchange or cashier's check for an amount the department considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bid.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.012. APPROVAL OF BONDS; REGISTRATION. Before delivering bonds to the purchasers, the department shall submit the bonds and the records pertaining to them for approval by the attorney general. When approval is obtained, the bonds shall be registered in the office of the comptroller of public accounts.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.013. EXECUTION OF BONDS. (a) The bonds shall be executed on behalf of the department as general obligations of the state as provided in this section.

(b) The bonds shall be signed by the presiding officer and the director, and the seal of the department shall be impressed on them.

(c) The bonds shall be signed by the governor and attested by the secretary of state, and the state seal shall be impressed on them.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 49, eff. Sept. 1, 2001.

Sec. 21.014. FACSIMILE SIGNATURES AND SEALS. In the resolution authorizing the issuance of an installment or series of bonds, the commission may prescribe the extent to which facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the presiding officer and the director.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 50, eff. Sept. 1, 2001.

Sec. 21.015. SIGNATURE OF FORMER OFFICER. If an officer whose signature or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before the delivery of the bond, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.016. BONDS INCONTESTABLE, VALID, AND BINDING. (a) After approval by the attorney general, registration by the comptroller, and delivery to the purchaser, the bonds are incontestable and constitute general obligations of the state.

(b) After approval by the attorney general and registration by the comptroller, the bonds shall be held to be valid and binding obligations of the state in any action, suit, or other proceeding in which their validity is questioned.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.017. EVIDENCE OF VALIDITY. In an action to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general and a certificate of registration by the comptroller, or certified copies of these certificates, shall be received in evidence as proof of the validity of the bonds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.018. PAYMENT BY COMPTROLLER. The comptroller shall pay or cause to be paid the principal on bonds as they mature and the interest as it becomes payable.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 17.03, eff. Sept. 1, 1997.

Sec. 21.019. DUTIES ENFORCEABLE. The performance of the official duties of the comptroller may be enforced by mandamus or other appropriate proceeding.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 17.04, eff. Sept. 1, 1997.

Sec. 21.020. REFUNDING BONDS. The commission may provide by resolution for the issuance of refunding bonds. The department may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter, including interest accrued on outstanding bonds, or the department may exchange refunding bonds for outstanding bonds, including accrued interest. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the department with respect to refunding bonds are governed by the provisions of this chapter relating to the original bonds, to the extent they are applicable and by refunding statutes of general application not in conflict with the provisions of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.021. BONDS NEGOTIABLE INSTRUMENTS. The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.022. BONDS NOT TAXABLE. Bonds issued under this chapter, income from the bonds, and profit made on their sale are free from taxation within this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.023. AUTHORIZED INVESTMENTS. Bonds issued under this chapter are legal and authorized investments for:

(1) banks;

(2) savings banks;

(3) trust companies;

(4) building and loan and savings and loan associations;

(5) insurance companies;

(6) fiduciaries;

(7) trustees;

(8) guardians; and

(9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.024. SECURITY FOR DEPOSIT OF FUNDS. Bonds issued under this chapter, when accompanied by all appurtenant unmatured coupons, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or other political subdivision or agency of the state, at the par value of the bonds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.025. MUTILATED, LOST, OR DESTROYED BONDS. The department may provide for the replacement of a mutilated, lost, or destroyed bond.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER B. FUNDING PROVISIONS

Sec. 21.101. TEXAS PARK DEVELOPMENT FUND. (a) The Texas Park Development Fund, referred to as the "development fund," is created pursuant to the provisions of Article III, Section 49-e, of the Texas Constitution.

(b) Proceeds derived from the sale of Texas Park Development Bonds shall be deposited in the development fund.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.102. USE OF DEVELOPMENT FUND. The department may use the development fund only for:

(1) acquiring state park sites from the United States or any of its agencies, agencies of the state, or any other person;

(2) improving, developing, beautifying, and equipping acquired park sites; and

(3) paying expenses incurred in issuing bonds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.103. ACQUIRING PARK SITES. (a) Except as provided in Subsection (b) of this section, the department may acquire park sites, including property already devoted to public use, by purchase, condemnation, or other manner.

(b) Except as provided in Subchapter O of Chapter 22 of this code, no real property of the state or a political subdivision of the state may be acquired without its consent.

(c) The department shall exercise the power of eminent domain in the manner prescribed by general law, including the provisions of Section 13.305 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1809, ch. 736, Sec. 3, eff. Aug. 27, 1979.

Sec. 21.104. CONTRACTS AUTHORIZED. The department may contract

with any state or federal agency or with any other person to accomplish the functions prescribed by Sections 21.102(1) and (2).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 178 (H.B. 1422), Sec. 10, eff. September 1, 2019.

Sec. 21.105. INTEREST AND SINKING FUND. The Texas park development bonds interest and sinking fund, referred to as the "interest and sinking fund," is created to be used exclusively for:

(1) paying the principal of Texas Park Development Bonds as they mature;

(2) paying the interest on the bonds as it comes due; and

(3) paying exchange and collection charges in connection with the bonds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.106. CREDITS TO INTEREST AND SINKING FUND. (a) Accrued interest received in the sale of bonds, net income received from entrance or gate fees to state park sites, and income from investments of the development fund and the interest and sinking fund shall be credited to the interest and sinking fund. A portion of the net income from the sale of conservation permits authorized by Chapter 43 of the Parks and Wildlife Code may be credited to the interest and sinking fund.

(b) In the resolution authorizing a series of bonds, the commission may appropriate from the proceeds of the sale of bonds an amount which, together with accrued interest received, is sufficient to pay interest coupons coming due during the fiscal year in which the bonds are sold and to establish appropriate reserves.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1991, 72nd Leg., ch. 883, Sec. 2, eff. Sept. 1, 1991.

Sec. 21.1061. REPORT TO BOND REVIEW BOARD. The commission shall file with the Bond Review Board a report on the performance of

the interest and sinking fund and the development fund. The board shall review the reports filed by the commission under this section to assess the performance of the funds in repaying bonds issued under this chapter. The filing dates and the contents of the reports must comply with any rules adopted by the board.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 13.04, eff. Aug. 22, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.363, eff. Sept. 1, 2001.

Sec. 21.107. ADDITIONAL TRANSFERS. (a) If the amount credited to the sinking and interest fund at the end of the fiscal year is insufficient to pay the interest coming due and the principal maturing on bonds for the next fiscal year, the comptroller shall transfer from the first money coming into the treasury, not otherwise appropriated by the constitution, an amount stipulated in the certification of the director as is necessary to pay the interest and principal on the bonds.

(b) The director shall certify the amount required to be stipulated by Subsection (a) of this section as of August 15 of each fiscal year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 17.05, eff. Sept. 1, 1997.

Sec. 21.108. INTEREST AND SINKING FUND: FINAL TRANSFER. After all bonds have been paid, the balance of the interest and sinking fund shall be transferred to the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 20, eff. Sept. 1, 1993.

Sec. 21.109. TRANSFERS REQUIRED. The state comptroller shall make any transfer required by this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.110. INVESTMENT OF FUNDS. (a) The department may invest the development fund and, in making the investments, is governed by the provisions of Chapter 401, Acts of the 60th Legislature, Regular Session, 1967.

(b) The department may invest the interest and sinking fund only in direct obligations of the United States or in obligations the principal and interest of which are guaranteed by the United States.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 21.111. ENTRY FEES TO PARKS. (a) The department, wherever feasible may charge and collect an entrance fee to state park sites.

(b) Income derived from the fees required by this section, less expenses incurred in collecting the fees, shall be deposited in a special fund with the comptroller. The amounts deposited are net income.

(c) If any state park site includes a public beach on the seaward shore of the Gulf of Mexico, extending from the line of mean low tide to the line of vegetation, over which the public has acquired a right of use or easement to or over the area by prescription or dedication or has retained a right by virtue of continuous right in the public, no entrance or gate fee may be charged to persons desiring to enter or to leave the public beach area, so long as the persons do not enter any other portion of the park for which an entrance or gate fee is charged.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1211, ch. 456, Sec. 11, eff. Sept. 1, 1975; Acts 1991, 72nd Leg., ch. 883, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 17.06, eff. Sept. 1, 1997.

CHAPTER 21A. CENTENNIAL PARKS CONSERVATION FUND

Sec. 21A.001. DEFINITIONS. In this chapter:

(1) "Fund" means the centennial parks conservation fund established under Section 49-e-1, Article III, Texas Constitution.

(2) "Trust company" means the Texas Treasury Safekeeping Trust Company.

Added by Acts 2023, 88th Leg., R.S., Ch. 290 (S.B. 1648), Sec. 1, eff. January 1, 2024.

Sec. 21A.002. ADMINISTRATION AND MANAGEMENT OF FUND. (a) The centennial parks conservation fund is a trust fund held outside the treasury by the trust company and administered by the department for the purpose of the creation and improvement of state parks.

(b) The trust company shall hold and invest the fund, taking into account the purposes for which the money in the fund may be used. The overall objective for the investment of the fund is to maintain sufficient liquidity to meet the needs of the fund.

(c) The expenses of managing the fund and its assets shall be paid from the fund. Except as otherwise provided by this chapter and Section 49-e-1, Article III, Texas Constitution, money in the fund may not be used for any other purpose.

(d) In managing the assets of the fund, through procedures and subject to restrictions the trust company considers appropriate, the trust company may acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, liquidity requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the fund assets rather than a single investment. The fund may be invested with the state treasury pool and may be pooled with other state assets for purposes of investment.

(e) The department shall provide the trust company with a cash flow forecast at least annually, and more frequently as appropriate, to ensure the trust company is able to satisfy the objectives specified by Subsection (b).

Added by Acts 2023, 88th Leg., R.S., Ch. 290 (S.B. 1648), Sec. 1, eff. January 1, 2024.

Sec. 21A.003. REQUEST FOR DISTRIBUTION. The department may request from the trust company a distribution from the fund for the

purpose of acquiring real property in this state for the creation and improvement of publicly accessible state parks.

Added by Acts 2023, 88th Leg., R.S., Ch. 290 (S.B. 1648), Sec. 1, eff. January 1, 2024.

Sec. 21A.004. REQUIRED APPROVAL OF ACQUISITION. (a) The department must submit to the Legislative Budget Board a request for approval of a proposed acquisition of real property under this chapter before the property is acquired.

(b) A request to the Legislative Budget Board under this section shall be considered approved on the 30th day after the date the request is submitted unless the request is approved or disapproved before that date.

Added by Acts 2023, 88th Leg., R.S., Ch. 290 (S.B. 1648), Sec. 1, eff. January 1, 2024.

Sec. 21A.005. PROHIBITED EXPENDITURES. Money in the fund may not be used:

(1) to pay salaries, employee benefits, costs associated with employee benefits, or administration, operating, or program costs of the department; or

(2) for the maintenance or operation of state parks.

Added by Acts 2023, 88th Leg., R.S., Ch. 290 (S.B. 1648), Sec. 1, eff. January 1, 2024.

Sec. 21A.006. EXPENDITURES SUBJECT TO AUDIT. All expenditures by the department under this chapter are subject to audit by the state auditor.

Added by Acts 2023, 88th Leg., R.S., Ch. 290 (S.B. 1648), Sec. 1, eff. January 1, 2024.

Sec. 21A.007. STRATEGIC PLAN. The department shall include in each strategic plan submitted under Section 2056.002, Government

Code, a report on each acquisition funded using money in the fund during the two-year period preceding the date on which the department submits the plan.

Added by Acts 2023, 88th Leg., R.S., Ch. 290 (S.B. 1648), Sec. 1, eff. January 1, 2024.

CHAPTER 22. STATE PARKS

SUBCHAPTER C. PALO DURO CANYON STATE PARK

Sec. 22.021. JURISDICTION. (a) The Palo Duro Canyon State Park is under the jurisdiction of the department.

(b) The original boundaries of the park include the land located in Armstrong and Randall counties and described in the deed executed by Fred A. Emery and wife to Texas State Parks Board, July 28, 1933, and recorded in Volume 69, pages 347 through 350, of the deed records of Randall County.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.022. POWERS OF DEPARTMENT. (a) The department may:

(1) fix entrance fees for admission to the park;

(2) fix charges to be collected from patrons of the park;

(3) execute grazing leases covering all or part of the park land;

(4) grant concessions in the park;

(5) make improvements in the park; and

(6) execute any other contracts necessary to carry out the provisions of this subchapter.

(b) Improvements may include the construction of dams to impound water to form a lake or lakes for recreational and other conservation purposes within the park. Before constructing any dam or lake, the commission must obtain permits required by law from the Texas Water Rights Commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.023. DISPOSITION OF INCOME. The department shall use the income derived from leases, royalties, and operation of the park

necessary for maintaining, improving, and operating the park. The unexpended income at the end of the biennium shall be placed in the state treasury to the credit of the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 29, eff. June 15, 2007.

Sec. 22.024. ISSUANCE OF BONDS. The department may issue bonds necessary for the construction of improvements in the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.025. INTEREST ON BONDS. Interest on the bonds may not exceed six percent per year, computed with relation to the absolute maturity of the bonds in accordance with standard bond interest tables currently in use by insurance companies and investment houses, excluding from the computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.026. MATURITY OF BONDS. The bonds may mature, serially or otherwise, not more than 40 years from the date of their issuance.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.027. REDEMPTION BEFORE MATURITY. The department may fix the price, terms, and conditions for redemption of the bonds before maturity in the authorizing proceedings.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.028. SALE OF BONDS. The bonds may be sold, at public or private sale, at a price and under terms determined by the

department to be the most advantageous terms reasonably obtainable.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.029. PLEDGE OF INCOME. The department may irrevocably pledge the rents, revenues, and income from the improvements financed by the bonds and from any other revenue-producing facilities or properties of the park, including the fees collected for admission to the park, to the payment of the interest on and the principal of the bonds and may enter into agreements regarding the imposition of charges and the collection, pledge, and disposition of revenue.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.030. RIGHT TO ISSUE ADDITIONAL BONDS. In pledging the rents, revenues, and income, the department may expressly reserve the right to issue additional bonds on a parity with or subordinate to the bonds then being issued.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.031. ADDITIONAL SECURITY FOR BONDS. (a) If, after reasonable effort, the department is unable to sell the bonds, the bonds may be additionally secured by a deed of trust lien on the land and property comprising the park, or any part of it, after the department has obtained written approval of the governor.

(b) The governor may not give his approval under this section until he has obtained the advice and consent of the Legislative Budget Board.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.032. FORM OF BONDS. The department may prescribe the form, conditions, and details of the bonds in accordance with the provisions of this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.033. REFUNDING OF BONDS. (a) A bond issued by the department under a law of this state which is payable from any part of the revenues of a revenue-producing facility or property of Palo Duro Canyon State Park may be refunded or refinanced by the department under this subchapter.

(b) The provisions of this subchapter are applicable to a refunding bond.

(c) In the same authorizing proceedings, the department may refund or refinance any bond issued under this subchapter and combine all refunding bonds and any new bonds to be issued into one or more issues or series and may provide for the subsequent issuance of additional parity bonds under terms and conditions set out in the authorizing proceedings.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.034. EMPLOYMENT OF PERSONNEL. The department may employ engineers, attorneys, and fiscal agents or financial advisors necessary in the issuance or refunding of bonds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.035. APPROVAL BY ATTORNEY GENERAL. (a) The bonds and all records relating to their issuance must be submitted to the attorney general for examination prior to delivery.

(b) The attorney general shall approve the bonds if he finds that they have been issued in accordance with the constitution and this subchapter and that they will be binding special obligations of the department.

(c) Bonds approved by the attorney general must be registered by the comptroller of public accounts.

(d) After approval and registration, the bonds are incontestable.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.036. PAYMENT OF INTEREST AND EXPENSES. The department may set aside amounts from the proceeds of the sale of a bond issue for:

(1) the payment of interest anticipated to accrue during the construction period;

(2) a deposit into the reserve for the interest and sinking fund to the extent prescribed in the authorizing proceedings; and

(3) payment of attorney's fees, engineer's fees, and expenses of the issuance and sale of bonds, including the fees of fiscal agents or financial advisors.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.037. LEGAL INVESTMENTS. (a) Bonds issued under this subchapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(b) The bonds are eligible to secure the deposit of the public funds of the state, cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(c) The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.038. NEGOTIABLE INSTRUMENTS. Bonds issued under this subchapter are negotiable instruments under the laws of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.039. DEBT AGAINST THE STATE. Nothing in this subchapter creates a debt against the state or binds the state in any way except as to the mortgage of the land and property comprising the

Palo Duro Canyon State Park and as to the pledge of the rents, revenue, and income from the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER D. JIM HOGG MEMORIAL PARK

Sec. 22.051. JURISDICTION. (a) The Jim Hogg Memorial Park is under the jurisdiction of the department.

(b) The original boundaries of the park include approximately 180 acres, formerly a part of the General Joseph L. Hogg homestead in Cherokee County.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.052. HISTORICAL IMPROVEMENTS. To the extent possible, the department shall maintain a replica of the original Hogg home and the grounds adjacent to the residence.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.053. IMPROVEMENTS. The department may repair or construct facilities for recreational and park purposes at the park and may work in conjunction with other governmental agencies for this purpose.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.054. SALE AND USE OF TIMBER. (a) The department may use timber cut from the land in the park to repair or construct improvements.

(b) The department may sell timber from the land in the park to finance the construction or repair of improvements.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.055. SALE OF IRON ORE. (a) The department may sell iron ore in place located in the park. The department may grant all rights necessary for the development of the iron ore to the purchasers of the iron ore.

(b) The presiding officer, on behalf of the department, may execute and deliver the necessary instruments to convey the iron ore in place to the purchasers.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 51, eff. Sept. 1, 2001.

Sec. 22.056. COMPETITIVE BIDS. (a) Timber and iron ore may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service for the sale of timber and of the department for the sale of iron ore. The department must approve the contract for sale of timber.

(b) The Texas Forest Service shall keep on file the bids for timber sale. The bids are public records. Copies of the bids shall be given to the department.

(c) The department shall keep on file the bids for the sale of iron ore. The bids are public records.

(d) The Texas Forest Service may reject any or all bids for timber sale and readvertise for new bids. The department may reject any or all bids for iron ore sale and readvertise for new bids.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.057. ADVERTISING FOR BIDS. (a) The Texas Forest Service shall advertise for the sale of timber. The department shall advertise for the sale of iron ore.

(b) The sale must be advertised for two weeks in at least one weekly newspaper published and circulated in Cherokee County.

(c) The advertisement must contain the necessary information pertaining to the sale and the time and place for receiving bids.

(d) The first advertisement must be at least 10 days before the date of receiving bids.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.058. REGULATIONS. The department shall adopt regulations, forms, and contracts for the sale of iron ore and protection of the income produced from the sale.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.059. DISPOSITION OF FUNDS. Money received from the sale of timber or iron ore from the land in the park shall be placed in the state treasury to the credit of the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 43, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 21, eff. Sept. 1, 1993.

SUBCHAPTER E. HUNTSVILLE STATE PARK

Sec. 22.071. IMPROVEMENTS. (a) The department may construct and repair improvements to be used for recreational and park purposes in Huntsville State Park, including dams to impound water and form reservoirs or lakes.

(b) The department may cooperate with other governmental agencies in making the improvements.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.072. PERMIT FOR DAM. A dam may not be constructed until a permit has been obtained from the Texas Water Rights Commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.073. SALE AND USE OF TIMBER. (a) The department may use timber cut from land in the park to repair or construct improvements.

(b) The department may sell timber from land in the park to

finance the construction or repair of improvements and dams.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service.

(d) The amount of timber sold may not exceed $250,000.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.074. COMPETITIVE BIDS. (a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records. Copies of the bids shall be furnished to the department.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.075. ADVERTISING FOR BIDS. (a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Walker County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.076. DISPOSITION OF FUNDS. Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 44, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 22, eff. Sept. 1, 1993.

SUBCHAPTER F. GOLIAD STATE PARK

Sec. 22.081. JURISDICTION. Goliad State Park, including the General Ignacio Zaragoza Birthplace and the Mission of San Rosario, is under the jurisdiction of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.082. GENERAL IGNACIO ZARAGOZA BIRTHPLACE. (a) The department may care for and protect the birthplace of General Ignacio Zaragoza and shall designate the site as the General Ignacio Zaragoza Birthplace.

(b) The site originally accepted by the state includes approximately two acres, described as lots 4, 5, 6, 11, 12, 13, 14, 15, and 16 in Block X, La Bahia Townsite, in Goliad County.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.083. MISSION OF SAN ROSARIO. (a) The department shall care for the grounds of the Mission of San Rosario as a suitable and appropriate memorial and shall enclose the mission grounds with an appropriate and substantial park fence.

(b) The original boundaries of the mission consist of the surface title of 4.77 acres of land in the County of Goliad, Texas, said 4.77 acres of land, more or less, being the following described parcel of land:

BEGINNING at a concrete monument in the Southeast Right-of-Way line of State Highway No. 12, same being a R/W marker for said Highway, and being 50 ft. at right angles from the center line of said Highway, and marked Sta. 914/00;

THENCE South 39 deg. 36 min. West, with right-of-way fence, 295.9 ft. to a concrete monument for corner of this present survey;

THENCE South 56 deg. 02 min. East, at 148.0 ft. an iron pipe, at 350.0 ft. a concrete monument for corner of this present survey;

THENCE South 32 deg. 08 min. East, at 69.9 ft. an iron pipe, at 193.3 ft. a tack in cedar post at 241.4 ft. a concrete monument for corner of this present survey;

THENCE North 83 deg. 35 min. East, 193.4 ft. to a concrete monument for corner of this present survey;

THENCE North 17 deg. 46 min. East, at 109.7 ft. an iron pipe, at 227.3 ft. a concrete monument for corner of this present survey;

THENCE North 43 deg. 17 min. West, at 116.8 ft. an iron pipe, at 240.5 ft. a concrete monument for corner of this present survey;

THENCE North 57 deg. 21 min. West, at 193.3 ft. an iron pipe, at 356.3 ft. a concrete monument for corner of this present survey; same being a highway R/W marker for said Highway for extra width in R/W and also marked Sta. 914/00;

THENCE North 49 deg. 55 min. West, with Highway R/W line, 34.9 ft. to the place of beginning;

Containing Four and 77/100 (4.77) acres of land and all being out of Maria de Jesus de Leon Survey, Abstract 21, Goliad County, Texas.

Said 4.77 acres of land, more or less, being the land conveyed to the County of Goliad by William J. O'Connor on July 15, 1935, as shown by deed of such date duly recorded in Volume 77, Page 565, of the Deed Records of Goliad County, Texas, on July 17, 1935, and to which reference is here made for all pertinent purposes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.084. IMPROVEMENTS. The department may construct, maintain, and repair historical and recreational structures and facilities in the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.085. REVERSION OF TITLE; MINERAL RESERVATION. (a) If the state ceases to use the General Ignacio Zaragoza Birthplace or the Mission of San Rosario as park land, all right, title, and interest shall revert to Goliad County.

(b) All minerals under the land accepted as the Mission of San Rosario are excepted from any conveyance to the state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER G. MISSION SAN FRANCISCO DE LOS TEJAS STATE PARK

Sec. 22.091. FACILITIES; PARK SITE. (a) The department may construct and repair facilities for recreational and other appropriate purposes at Mission San Francisco de los Tejas State Park.

(b) The original boundaries of the park include portions of Hardy Ware Survey, Abstract 1240, situated on the N side of Highway No. 21, about 21 miles NE from the City of Crockett, and being the same tracts of land conveyed to the State of Texas for the use and benefit of the Agricultural and Mechanical College of Texas, more particularly described by the following deeds, to-wit:

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated October 16, 1939, recorded in Book 200, page 533, Deed Records of Houston County, Texas;

Deed from Southern Pine Lumber Company, dated September 20, 1935, recorded in Book 170, page 367, Deed Records of Houston County, Texas;

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated February 1, 1935, recorded in Book 166, page 141, Deed Records of Houston County, Texas;

Deed from C. H. Callaway, Trustee, dated January 3, 1935, recorded in Volume 164, page 543, Deed Records of Houston County, Texas.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.092. TIMBER SALE. (a) The department may sell timber from land in the park and may use timber of the park to repair or construct improvements in the park.

(b) Timber may be cut for salvage purposes only or under good forestry practices with the advice of the Texas Forest Service.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.093. COMPETITIVE BIDS. (a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas

Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.094. ADVERTISING FOR BIDS. (a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Houston County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.095. DISPOSITION OF FUNDS. Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 45, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 23, eff. Sept. 1, 1993.

SUBCHAPTER I. HUECO TANKS STATE PARK

Sec. 22.111. CONTROL. The department has control of Hueco Tanks State Park and shall improve, preserve, restore, and protect the land and property in the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.112. ACCEPTANCE OF GIFTS. The department may accept gifts for constructing, building, advertising, or creating the park,

including gifts for public exhibition that relate to the history of the park or the state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.113. TITLE TO PARK. The title of the land known as Hueco Tanks in El Paso County is in the name of the state and is subject to limitations, conditions, and exceptions made by the former owners and approved by the department or the department's predecessor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER J. STEPHEN F. AUSTIN STATE PARK

Sec. 22.121. JURISDICTION. Stephen F. Austin State Park is under the jurisdiction of the department. The department shall improve, preserve, and protect the land in the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER K. NIMITZ STATE PARK

Sec. 22.151. JURISDICTION. The Nimitz State Park, located near Fredericksburg in Gillespie County, is under the jurisdiction of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.152. POWERS OF DEPARTMENT. The department may:

(1) accept gifts for the construction, building, or advertising of the park;

(2) accept gifts for exhibition dealing with the history or life of Fleet Admiral Chester W. Nimitz;

(3) advertise the affairs of the park;

(4) make rules and regulations for administration of the park;

(5) hire personnel necessary to carry out its duties;

(6) grant concessions; and

(7) operate and maintain the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER L. EISENHOWER STATE PARK

Sec. 22.161. JURISDICTION. The Eisenhower State Park, located near Lake Texoma in Grayson County, is under the jurisdiction of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.162. POWERS OF DEPARTMENT. The department may:

(1) accept gifts for the construction, building, or advertising of the park;

(2) accept gifts for exhibition dealing with the history or life of Dwight D. Eisenhower;

(3) advertise the affairs of the park;

(4) make rules and regulations for administration of the park;

(5) hire personnel necessary to carry out its duties;

(6) grant concessions; and

(7) operate and maintain the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.163. DEFINITIONS. As used in this subchapter:

(1) "Impacted property" means that real property located in Grayson County adjacent to or near the western end of Eisenhower State Park that is described as:

(A) Lots 54-79 in "Elm Ridge Homesite Area" as described on a survey and plat of this area by B. & B. Engineering Co. in May, 1958, recorded in Plat Book 1, Page 73, Deed Records, Grayson County, Texas; and

(B) the East one-half and the West one-half of a 60.49 acre tract being part of the survey patented to Alan Carter, Abstract No. 231, dated June 22, 1851, and also being part of the J. A. Sadler 380 acre tract except the 316.05 acres thereof described in a deed to the United States of America, recorded in Volume 432, Page 389, Deed

Records, Grayson County, Texas.

(2) "Owner" means the owner or a lessee of impacted property.

(3) "Guest" means a business or personal guest or an employee of an owner of impacted property.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.164. RIGHT TO USE ROADS. (a) Owners, their family members, and their guests may use the roads of the park without charge for egress from or ingress to the impacted property when traveling between the impacted property and points east of the park.

(b) Owners, their family members, and their guests may use throughout the year whatever road is maintained by the department for travel by automobiles between the eastern and western points of the park and may enter the park at the points at which they were able to enter the park and its roads prior to November 1, 1968, or other reasonably located points the department may direct by regulation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.165. PERMITS. (a) The department may require owners, their family members, and their guests to obtain permits for entrance into and use of park roads under this subchapter.

(b) Permits shall be issued automatically on presentation of proper identification.

(c) Permits are valid for at least one year and shall be automatically renewed for owners and their family members.

(d) Permits for guests of owners shall be valid for the period of time requested by the owner.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER M. GOVERNOR JAMES STEPHEN HOGG MEMORIAL SHRINE

Sec. 22.171. GOVERNOR HOGG MEMORIAL. The Governor James Stephen Hogg Memorial Shrine, located near Quitman, Wood County, is established.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER N. ACQUISITION OF CERTAIN STATE PARKS

Sec. 22.181. SPANISH MISSIONS. (a) The department may acquire the following Spanish Mission sites, located in Milam County:

(1) Nuestra Senora de la Candelaria;

(2) San Francisco Xavier de los Dolores; and

(3) San Ildefonso.

(b) The department may acquire the sites with available or appropriated funds or may accept gifts for acquisition, construction, or restoration of the sites.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.183. HUBBARD LAKE. (a) The department may create, develop, operate, and maintain a state park on the land donated by the West Central Texas Municipal Water District located on Hubbard Lake in Stephens County.

(b) The department may accept additional gifts of any adjoining land or interest in land donated by the West Central Texas Water Municipal District to enlarge the park created by Subsection (a) of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 22.184. FISHING PIERS. (a) The department may repair and maintain the old causeway across Copano Bay on Highway 35 in Aransas County and the old causeway across Lavaca Bay on Highway 35 in Calhoun County as public fishing piers and recreation areas.

(b) The department and the Texas Department of Transportation may solicit and receive gifts of labor and materials for the construction and improvement of the fishing piers.

(c) The department may grant concessions to persons allowing the concessioners to charge for use of the piers and approaches.

(d) All revenue received under this section shall be deposited in the state treasury to the credit of the state parks account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 25, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(65), eff. Sept. 1, 1995.

SUBCHAPTER O. MATAGORDA ISLAND STATE PARK AND WILDLIFE MANAGEMENT AREA

Sec. 22.201. MATAGORDA ISLAND STATE PARK AND WILDLIFE MANAGEMENT AREA. (a) The Matagorda Island State Park and Wildlife Management Area is established under the jurisdiction of the department to be used for public recreational and wildlife conservation purposes as a state park and to be used as a wildlife management area.

(b) The Matagorda Island State Park and Wildlife Management Area consists of all land, including tideland, submerged land, and beaches, on Matagorda Island in Calhoun County belonging to the state on June 1, 1979, other than permanent school fund land, and any other land on Matagorda Island acquired after that date by the department for inclusion in the park and wildlife management area.

Added by Acts 1979, 66th Leg., p. 254, ch. 132, Sec. 1, eff. May 9, 1979. Amended by Acts 1983, 68th Leg., p. 121, ch. 28, Sec. 1, eff. April 19, 1983.

Sec. 22.202. DEDICATED LAND. All land within the Matagorda Island State Park and Wildlife Management Area on June 1, 1979, and all land included within the park and management area after that date are dedicated for park and wildlife management area purposes.

Added by Acts 1979, 66th Leg., p. 254, ch. 132, Sec. 1, eff. May 9, 1979.

SUBCHAPTER P. FRANKLIN MOUNTAINS STATE PARK

Sec. 22.221. PARK ESTABLISHED: JURISDICTION OF DEPARTMENT. The Franklin Mountains State Park is established under the jurisdiction of the department.

Added by Acts 1979, 66th Leg., p. 1804, ch. 736, Sec. 1, eff. Aug. 27, 1979. Redesignated from Sec. 22.201 by Acts 1981, 67th Leg., p.

3272, ch. 860, Sec. 1, eff. Aug. 31, 1981.

Sec. 22.222. DEPARTMENT TO ACQUIRE PARK LAND. (a) The department shall acquire by purchase, gift, lease, or condemnation all of the land described in Section 2 of the Act that added this subchapter to this code. The department may acquire the mineral interests in the land to be acquired.

(b) A lease executed under this section may only be from a public entity. A lease executed under this section from the state may not exceed 30 years and may be renewed on its expiration. A lease executed under this section from any other public entity is not limited to any term of years. For purposes of this subsection, "public entity" means an agency or instrumentality of federal, state, or local government, including the board of directors of a municipally owned utility system.

(c) The department shall acquire the land with money from the Texas Park Development Fund, or any fund or account created to finance the acquisition of state parks.

(d) The department may expend funds for the operation and maintenance of the Franklin Mountains State Park.

Added by Acts 1979, 66th Leg., p. 1804, ch. 736, Sec. 1, eff. Aug. 27, 1979. Redesignated from Sec. 22.202 and amended by Acts 1981, 67th Leg., p. 3272, ch. 860, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 74, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 304, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 383, Sec. 3, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 679, Sec. 26, eff. Sept. 1, 1993.

Sec. 22.223. CONDEMNATION. (a) If necessary for the acquisition of the Franklin Mountains State Park, the department shall institute condemnation proceedings according to the laws of this state against any person, including a governmental entity.

(b) Costs incurred in the exercise of eminent domain under this section for the relocation, raising, lowering, rerouting, or change in grade, or alteration in the construction of any electric transmission, telegraph, or telephone line, railroad, conduit, pole, property, facility, or pipeline are the sole expense of the

department.

(c) "Sole expense" means the actual cost of the lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

Added by Acts 1979, 66th Leg., p. 1804, ch. 736, Sec. 1, eff. Aug. 27, 1979. Redesignated from Sec. 22.203 by Acts 1981, 67th Leg., p. 3272, ch. 860, Sec. 1, eff. Aug. 31, 1981.

SUBCHAPTER S. TRINITY RIVER STATE PARK

Sec. 22.251. PARK ESTABLISHED: JURISDICTION OF DEPARTMENT. The Trinity River State Park is established under the jurisdiction of the department on property that may be acquired according to this Act.

Added by Acts 1983, 68th Leg., p. 5356, ch. 983, Sec. 3, eff. Aug. 29, 1983.

Sec. 22.252. DEPARTMENT TO ACQUIRE PARK LAND. (a) The department may acquire by purchase, gift, lease, or condemnation all of the land described in Section 4 of the Act that added this subchapter to this code. The department may acquire the mineral interests in that land.

(b) A lease executed under this section from the state may not exceed 30 years and may be renewed on its expiration. A lease executed under this section from any other public entity is not limited to any term of years. For purposes of this subsection, "public entity" means an agency or instrumentality of federal, state, or local government, including the board of directors of a municipally owned utility system.

(c) The department may acquire the land with money from the urban park fund.

(d) The department may expend funds for the operation and maintenance of the Trinity River State Park.

(e) The department will honor all existing easements on the property to be acquired under this Act, as well as all existing permits to pump water from the Trinity River and to discharge water into the Trinity River.

Added by Acts 1983, 68th Leg., p. 5356, ch. 983, Sec. 3, eff. Aug. 29, 1983. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 76, eff. Sept. 1, 1985.

Sec. 22.253. CONDEMNATION. (a) If necessary for the acquisition of the Trinity River State Park, the department may institute condemnation proceedings according to the laws of this state against any person, including a governmental entity.

(b) Costs incurred in the exercise of eminent domain under this section for the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any electric transmission, telegraph, or telephone line, railroad, conduit, pole, property, facility, or pipeline may be the sole expense of the department.

(c) "Sole expense" means the actual cost of the lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

Added by Acts 1983, 68th Leg., p. 5356, ch. 983, Sec. 3, eff. Aug. 29, 1983.

Sec. 22.254. POWERS OF CITY OF DALLAS. (a) Nothing in this Act shall preclude or prohibit the city of Dallas from initiating, developing, completing, extending, or maintaining any project, as described in Subsection (b) of this section, whether the project may be located within, partially within, or adjacent to the boundaries of Trinity River State Park.

(b) For purposes of this section, the city of Dallas by ordinance or resolution of the governing body may approve and authorize any or all of the following:

(1) the development of a lake to be located within the flood plain of the Trinity River within the city of Dallas;

(2) the extension of Trinity River flood controls which shall include but not be limited to the construction of drainage channels, swales, levees, and associated flood control appurtenances in the Trinity River flood plain which may be constructed and maintained within the boundaries of Trinity River State Park;

(3) the extension of Simpson Stuart Road at the point where it may cross the flood plain of the Trinity River; and

(4) the construction of swales in or adjacent to the natural channel of the Trinity River as necessary to provide offset capacity for full utilization of the McCommas Bluff Reclamation landfill.

(c) If the city of Dallas approves a project, as authorized by this section, the department shall grant the city of Dallas access to land within Trinity River State Park and whatever permissions are necessary in order to attain the purposes of the project.

(d) For purposes of this section, Chapter 276, Acts of the 61st Legislature, Regular Session, 1969 (Article 5421q, Vernon's Texas Civil Statutes), does not apply.

Added by Acts 1983, 68th Leg., p. 5356, ch. 983, Sec. 3, eff. Aug. 29, 1983.

SUBCHAPTER T. BATTLESHIP "TEXAS"

Sec. 22.261. JURISDICTION. The Battleship "Texas" is under the jurisdiction of the department. The department shall enter into a memorandum of understanding for a term of 99 years with an appropriate nonprofit foundation for the operation and maintenance of the Battleship "Texas."

Added by Acts 1983, 68th Leg., p. 2190, ch. 407, Sec. 1, eff. Sept. 1, 1983. Redesignated from Sec. 22.251 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(36), eff. Sept. 1, 1987.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 636 (S.B. 1511), Sec. 2, eff. June 10, 2019.

Sec. 22.262. PRESERVATION STANDARDS. The memorandum of understanding required by Section 22.261 must include provisions:

(1) governing the preservation, management, and operation of the Battleship "Texas" consistent with the Standards for Historic Vessel Preservation Projects with Guidelines for Applying the Standards published by the Secretary of the United States Department of the Interior as those standards existed on January 1, 2019;

(2) requiring the nonprofit foundation described by Section

22.261 to consult with the state historic preservation officer on matters related to the preservation or repair of the battleship; and

(3) regarding the protection of the public's interest in maintaining and preserving a priceless historical asset in a manner that ensures the public has access to the asset and an opportunity to provide comment regarding the preservation of the asset.

Added by Acts 2019, 86th Leg., R.S., Ch. 636 (S.B. 1511), Sec. 3, eff. June 10, 2019.

CHAPTER 23. NATIONAL PARKS, NATIONAL SEASHORES, AND OTHER FEDERAL LANDS

SUBCHAPTER A. BIG BEND NATIONAL PARK

Sec. 23.001. LIMITED JURISDICTION RETAINED. The state retains jurisdiction in the Big Bend National Park, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on the sales of products and commodities and on franchises and property.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.002. PARK RESIDENTS MAY VOTE. A person residing in Big Bend National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER B. PADRE ISLAND NATIONAL SEASHORE

Sec. 23.011. LIMITED JURISDICTION RETAINED. The state retains jurisdiction in the Padre Island National Seashore, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on the sales and use, or the gross receipts from the sales, of products and

commodities and on franchises, properties, and incomes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.012. SEASHORE RESIDENTS MAY VOTE. A person residing in the Padre Island National Seashore may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.013. REGULATIONS OF RAILROAD COMMISSION. (a) The Railroad Commission shall send by certified mail to the Secretary of Interior of the United States a copy of each proposed rule or regulation affecting mineral rights reserved in deeds conveying land in the Padre Island National Seashore to the United States.

(b) The Department of Interior has 30 days from the day a copy of a proposed rule or regulation is received to send to the Railroad Commission its objections or exceptions. An objection or exception must be sent by certified mail. Thereupon, a rule or regulation, with amendments, if any, promulgated by the Railroad Commission, takes effect.

(c) The development and recovery of minerals in the Padre Island National Seashore shall be carried out in a manner that does not unreasonably interfere with the use of the land for park purposes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.014. REVERSION TO STATE. (a) Any deed executed by the state to the United States for the creation of Padre Island National Seashore becomes null and void on the initiation by any elected or appointed agent, officer, or employee of the United States, or by any agency or department of the United States, of a suit at law or in equity in any federal court to enlarge or expand the title, right, or interest granted by the deed. When a deed becomes void under this subsection, the land immediately reverts to the state.

(b) Unless reversion is waived by the legislature during the

biennium following the happening of a condition of reversion, all state-owned land conveyed to the United States for the creation of the Padre Island National Seashore reverts to the state and to the fund or account to which it belonged before conveyance if:

(1) the United States fails to acquire two-thirds of all privately owned land in the area described by Section 1, Chapter 38, Acts of the 58th Legislature, 1963, within 10 years after the date that the state-owned land was acquired; or

(2) the United States fails to use as a national seashore the privately owned land it has acquired.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 27, eff. Sept. 1, 1993.

Sec. 23.015. CONSENT FOR ACQUISITION OF NAVIGATION DISTRICT LAND. The Willacy County Navigation District may consent to the acquisition of surface land for inclusion in Padre Island National Seashore. Interests in surface estates, spoil banks, easements, and rights-of-way controlled by the district in the Padre Island National Seashore shall be used for public purposes only.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.016. ROADS. The Secretary of Interior is requested to provide roads from the north boundary of Padre Island National Seashore and from the Port Mansfield cut to the access highways from the mainland.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER C. GUADALUPE MOUNTAINS NATIONAL PARK

Sec. 23.031. LIMITED JURISDICTION RETAINED. The state retains jurisdiction in the Guadalupe Mountains National Park, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on sales and

use, or the gross receipts from the sales, of products and commodities and on franchises, properties, and incomes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.032. PARK RESIDENTS MAY VOTE. A person residing in the Guadalupe Mountains National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.033. RECONVEYANCE OF TITLE. If any of the land described by the drawing entitled "Proposed Guadalupe Mountains National Park, Texas," numbered SA-GM-7100C, dated February, 1965, and on file in the offices of the National Park Service and the Secretary of State of Texas ceases to be used for the Guadalupe Mountains National Park, the state may require a reconveyance, without consideration, of the mineral rights conveyed for the creation of the park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 23.034. MINERAL RIGHTS IN PARK. (a) The state reserves a preferential right, without consideration to the United States, to lease all mineral rights and interests that were conveyed by the state for the establishment of the Guadalupe Mountains National Park if:

(1) Congress declares by an act that the national welfare or an emergency requires the development and production of minerals in the park; and

(2) Congress authorizes the Secretary of Interior of the U. S. to lease park land for drilling, mining, developing, or producing minerals.

(b) If oil, gas, or other minerals are discovered and produced in commercial quantities from land outside the park sufficient to cause drainage of minerals from in the park and the Secretary of Interior participates in a communitization agreement or takes other

action to protect the rights of the United States, the state retains its right to its proper share of the proceeds of the agreement or action. The state's proper share is not less than all bonuses, rentals, and royalties attributable to mineral rights conveyed to the United States for the establishment of Guadalupe Mountains National Park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER D. FEDERAL LANDS

Sec. 23.041. AGREEMENTS FOR WILDLIFE MANAGEMENT. The department may agree with the proper agency of the United States for the protection and management of wildlife resources and for restocking desirable species of wildlife on federal lands in the state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 20, eff. Sept. 1, 1997.

Sec. 23.042. WILDLIFE RESOURCES DEFINED. In this subchapter, "wildlife resources" means all wild birds, wild animals, and aquatic animal life.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 20, eff. Sept. 1, 1997.

Sec. 23.043. HUNTING AND FISHING REGULATIONS. The commission, under Chapter 61 or Subchapter E, Chapter 81, may provide for open seasons for hunting and fishing on federal lands for which the department has entered into a wildlife management agreement under this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 20, eff. Sept. 1, 1997.

Sec. 23.044. PENALTY. A person who violates any rule or regulation of the commission adopted under this subchapter or who hunts or fishes on federal lands included in a wildlife management agreement under this subchapter at any time other than the open season commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 8, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 20, eff. Sept. 1, 1997.

CHAPTER 24. STATE ASSISTANCE FOR LOCAL PARKS

SUBCHAPTER A. LOCAL PARKS FOR SMALLER COUNTIES AND MUNICIPALITIES AND OTHER POLITICAL SUBDIVISIONS

Sec. 24.001. DEFINITIONS. In this subchapter:

(1) "Political subdivision" means a county, municipality, special district, river authority, or other governmental entity created under the authority of the state or a county or municipality.

(2) "Urban area" means the area within a standard metropolitan statistical area (SMSA) in this state used in the last preceding federal census.

(3) "Park" includes land and water parks owned or operated by the state or a political subdivision.

(4) "Open space area" means a land or water area for human use and enjoyment that is relatively free of man-made structures.

(5) "Natural area" means a site having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife.

(6) "Parks, recreational, and open space area plan" means a comprehensive plan that includes information on and analyses of parks, recreational, and open space area objectives, needs, resources, environment, and uses, and that identifies the amounts, locations, characteristics, and potentialities of areas for adequate parks, recreational, and open space opportunities.

(7) "Federal rehabilitation and recovery grants" means matching grants made by the United States to or for political subdivisions for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor parks, recreational, or open

space areas and facilities, including improvements in park landscapes, buildings, and support facilities.

(8) "Account" means the Texas recreation and parks account.

(9) "Rural area" means any area not included in an urban area.

(10) "Cultural resource site or area" means a site or area determined by the commission to have valuable and vulnerable cultural or historical resources.

(11) "Nonprofit corporation" means a nonpolitical legal entity incorporated under the laws of this state that has been granted an exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended.

(12) "Underserved population" means any group of people that is:

(A) low income, inner city, or rural as determined by the last census;

(B) minority;

(C) youth, including youth at risk and youth with a physical, developmental, or intellectual disability or mental illness; or

(D) female.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 2024, ch. 367, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 679, Sec. 28, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 267, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 31, eff. June 15, 2007.

Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 7, eff. September 1, 2021.

Sec. 24.002. TEXAS RECREATION AND PARKS ACCOUNT. (a) The Texas recreation and parks account is a separate account in the general revenue fund. Except as provided by Subsection (b), money in the account may be used only for:

(1) grants under this subchapter to a county or municipality with a population of less than 500,000;

(2) grants under this subchapter to any other political subdivision that is not a county or municipality; or

(3) planning for, and acquisition, operation, and development of, outdoor recreation and conservation resources of this state and the administrative expenses incident to the projects or programs authorized under Subchapter D, Chapter 13.

(b) Money deposited to the credit of the account under Section 24.003(a)(1) may be used only for the purposes described by Section 151.801(c-1), Tax Code.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 29, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 32, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 10, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 503 (S.B. 26), Sec. 4, eff. September 1, 2021.

Sec. 24.003. ACCOUNT REVENUE SOURCE; REVENUE DEDICATION. (a) The department shall deposit to the credit of the Texas recreation and parks account:

(1) credits made to the department under Section 151.801, Tax Code, in an amount not to exceed the amount of the tax proceeds allocated by the legislature to the account under Section 151.801(c-1), Tax Code; and

(2) money from any other source authorized by law.

(b) The department may deposit to the credit of the Texas recreation and parks account:

(1) private contributions, grants, and donations received in connection with this subchapter or Subchapter D, Chapter 13; and

(2) federal funds received in connection with this subchapter or Subchapter D, Chapter 13.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 2024, ch. 367, Sec. 2, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 679, Sec. 30, eff. Sept. 1, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 33, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 10, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 82 (S.B. 1366), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 503 (S.B. 26), Sec. 5, eff. September 1, 2021.

Sec. 24.004. ASSISTANCE GRANTS. (a) The department may make grants of money from the account to a political subdivision for use by the political subdivision as all or part of the subdivision's required share of funds for eligibility for receiving a federal rehabilitation and recovery grant.

(b) In order to receive a grant under this section, the political subdivision seeking the federal grant shall apply to the department for the grant and present evidence that the political subdivision qualifies for the federal grant.

(c) A grant under this section is conditioned on the political subdivision qualifying for and receiving the federal grant.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 2025, ch. 367, Sec. 3, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 679, Sec. 31, eff. Sept. 1, 1993.

Sec. 24.005. DIRECT STATE MATCHING GRANTS. (a) The department shall make grants of money from the account to a political subdivision to provide one-half of the costs of the planning, acquisition, or development of a park, recreational area, or open space area to be owned and operated by the political subdivision.

(b) In establishing the program of grants under this section, the department shall adopt rules and regulations for grant assistance.

(c) Money granted to a political subdivision under this section may be used for the operation and maintenance of parks, recreational areas, cultural resource sites or areas, and open space areas only:

(1) if the park, site, or area is owned or operated and maintained by the department and is being transferred by the commission for public use to a political subdivision for operation and maintenance; and

(2) during the period the commission determines to be necessary to effect the official transfer of the park, site, or area.

(d) The department shall make grants of money from the account to a political subdivision or nonprofit corporation for recreation, conservation, or education programs for underserved populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by underserved populations.

(e) The department may provide from the account for direct administrative costs of the programs described by this subchapter.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 2025, ch. 367, Sec. 4, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 679, Sec. 32, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 267, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 34, eff. June 15, 2007.

Sec. 24.006. FUNDS FOR GRANTS TO LOCAL GOVERNMENTS. When state revenues to the Texas recreation and parks account exceed $14 million per year, an amount not less than 15 percent shall be made available for grants to local governments for up to 50 percent of the cost of acquisition or development of indoor public recreation facilities for indoor recreation programs, sports activities, nature programs, or exhibits.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 2025, ch. 367, Sec. 5, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 679, Sec. 33, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 267, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 10, eff. September 1, 2009.

Sec. 24.007. ACCOUNT USE TO BE CONSISTENT WITH PLANS. No grant may be made under Section 24.005 of this code nor may account money be used under Section 24.006 of this code unless:

(1) there is a present or future need for the acquisition and development of the property for which the grant is requested or the use is proposed; and

(2) a written statement is obtained from the regional planning commission having jurisdiction of the area in which the property is to be acquired and developed that the acquisition and development is consistent with local needs.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 34, eff. Sept. 1, 1993.

Sec. 24.008. ACQUISITION OF PROPERTY. (a) No property may be acquired with grant money made under this subchapter or by the department under this subchapter if the purchase price exceeds the fair market value of the property as determined by one independent appraiser.

(b) Repealed by Acts 1999, 76th Leg., ch. 267, Sec. 7, eff. Sept. 1, 1999.

(c) Property may be acquired with provision for a life tenancy if that provision facilitates the orderly and expedient acquisition of the property.

(d) Repealed by Acts 1999, 76th Leg., ch. 267, Sec. 7, eff. Sept. 1, 1999.

(e) If land or water designated for park, recreational, cultural resource, or open space use is included in the local and regional park, recreational, cultural resource, and open space plans for two or more jurisdictions, the two or more jurisdictions may cooperate under state law to secure assistance from the account to acquire or develop the property. In those cases, the department may modify the standards for individual applicants but must be assured that a cooperative management plan for the land or water can be developed and effectuated and that one of the jurisdictions possesses the necessary qualifications to perform contractual responsibilities

for purposes of the grant.

(f) All land or water purchased with assistance from the account shall be dedicated for park, recreational, cultural resource, indoor recreation center, and open space purposes in perpetuity and may not be used for any other purpose, except where the use is compatible with park, recreational, cultural resource, and open space objectives, and the use is approved in advance by the department.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 35, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 267, Sec. 4, 7, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 35, eff. June 15, 2007.

Sec. 24.009. PAYMENTS, RECORDS, AND ACCOUNTING. (a) On the approval of a grant under this subchapter and on the written request by the director, the comptroller of public accounts shall issue a warrant drawn against the Texas recreation and parks account and payable to the political subdivision or nonprofit corporation in the amount specified by the director.

(b) Each recipient of assistance under this subchapter shall keep records as required by the department, including records which fully disclose the amount and the disposition of the proceeds by the recipient, the total cost of the acquisition, a copy of the title and deed for the property acquired, the amount and nature of that portion of the cost of the acquisition supplied by other funds, and other records that facilitate effective audit. The director and the comptroller, or their authorized representatives, may examine any book, document, paper, and record of the recipient that are pertinent to assistance received under this subchapter.

(c) The recipient of funds under this subchapter shall, on each anniversary date of the grant for five years after the grant is made, furnish to the department a comprehensive report detailing the present and anticipated use of the property, any contiguous additions to the property, and any major changes in the character of the property, including the extent of park development which may have taken place.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 36, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 267, Sec. 5, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 36, eff. June 15, 2007.

Sec. 24.011. NONCOMPLIANCE WITH SUBCHAPTER. The attorney general shall file suit in a court of competent jurisdiction against a political subdivision or nonprofit corporation that fails to comply with the requirements of this subchapter to recover the full amount of the grant plus interest on that amount of five percent a year accruing from the time of noncompliance or for injunctive relief to require compliance with this subchapter. If the court finds that the political subdivision or nonprofit corporation has not complied with the requirements of this subchapter, it is not eligible for further participation in the program for three years following the finding for noncompliance.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1999, 76th Leg., ch. 267, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 37, eff. June 15, 2007.

Sec. 24.012. ACCOUNT NOT TO BE USED FOR PUBLICITY. No money credited to the account may be used for publicity or related purposes.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 38, eff. Sept. 1, 1993.

Sec. 24.013. AUTHORITY OF POLITICAL SUBDIVISIONS TO HAVE PARKS. This subchapter does not authorize a political subdivision to acquire, develop, maintain, or operate a park, recreational area,

open space area, or natural area.

Added by Acts 1979, 66th Leg., p. 1733, ch. 710, Sec. 1, eff. Sept. 1, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 38, eff. June 15, 2007.

SUBCHAPTER B. PARKS FOR LARGE COUNTIES AND MUNICIPALITIES

Sec. 24.051. DEFINITIONS. In this subchapter:

(1) "Account" means the large county and municipality recreation and parks account.

(2) "Cultural resource site or area" means a site or area determined by the commission to have valuable and vulnerable cultural or historical resources.

(3) "Federal rehabilitation and recovery grants" means matching grants made by the United States to or for political subdivisions for the purpose of rebuilding, remodeling, expanding, or developing existing outdoor or indoor parks, recreational, or open space areas and facilities, including improvements in park landscapes, buildings, and support facilities.

(4) "Large county or municipality" means a county or municipality with a population of 500,000 or more.

(5) "Natural area" means a site having valuable or vulnerable natural resources, ecological processes, or rare, threatened, or endangered species of vegetation or wildlife.

(6) "Nonprofit corporation" means a nonpolitical legal entity incorporated under the laws of this state that has been granted an exemption from federal income tax under Section 501(c), Internal Revenue Code of 1986, as amended.

(7) "Open space area" means a land or water area for human use and enjoyment that is relatively free of man-made structures.

(8) "Park" includes land and water parks owned or operated by the state or a political subdivision.

(9) "Parks, recreational, and open space area plan" means a comprehensive plan that includes information on and analyses of parks, recreational, and open space area objectives, needs, resources, environment, and uses, and that identifies the amounts, locations, characteristics, and potentialities of areas for adequate

parks, recreational, and open space opportunities.

(10) "Political subdivision" means a county, municipality, special district, river authority, or other governmental entity created under the authority of the state or a county or municipality.

(11) "Underserved population" means any group of people that is:

(A) low income or inner city, as determined by the last census;

(B) minority;

(C) youth, including youth at risk and youth with a physical, developmental, or intellectual disability or mental illness; or

(D) female.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 8, eff. September 1, 2021.

Sec. 24.052. LARGE COUNTY AND MUNICIPALITY RECREATION AND PARKS ACCOUNT. The large county and municipality recreation and parks account is a separate account in the general revenue fund. Money in the account may be used only as provided by this subchapter or Subchapter D, Chapter 13.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 10, eff. September 1, 2009.

Sec. 24.053. ACCOUNT REVENUE SOURCE; DEDICATION. (a) The department shall deposit to the credit of the large county and municipality recreation and parks account:

(1) credits made to the department under Section 151.801, Tax Code, in an amount not to exceed the amount of the tax proceeds allocated by the legislature to the account under Section 151.801(c-1), Tax Code, to be used only for the purposes provided by that

section; and

(2) money from any other source authorized by law.

(b) The department may deposit to the credit of the large county and municipality recreation and parks account:

(1) private contributions, grants, and donations received in connection with this subchapter or Subchapter D, Chapter 13; and

(2) federal funds received in connection with this subchapter or Subchapter D, Chapter 13.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 10, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 82 (S.B. 1366), Sec. 4, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 503 (S.B. 26), Sec. 6, eff. September 1, 2021.

Sec. 24.054. ASSISTANCE GRANTS. (a) The department may make grants of money from the account to a large county or municipality for use by the county or municipality as all or part of the county's or municipality's required share of funds for eligibility for receiving a federal rehabilitation and recovery grant.

(b) In order to receive a grant under this section, the county or municipality seeking the federal grant shall apply to the department for the grant and present evidence that the county or municipality qualifies for the federal grant.

(c) A grant under this section is conditioned on the county or municipality qualifying for and receiving the federal grant.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Sec. 24.055. DIRECT STATE MATCHING GRANTS. (a) The department shall make grants of money from the account to a large county or municipality to provide one-half of the costs of the planning, acquisition, or development of a park, recreational area, or open space area to be owned and operated by the county or municipality.

(b) In establishing the program of grants under this section, the department shall adopt rules and regulations for grant assistance.

(c) Money granted to a county or municipality under this section may be used for the operation and maintenance of parks, recreational areas, cultural resource sites or areas, and open space areas only:

(1) if the park, site, or area is owned or operated and maintained by the department and is being transferred by the commission for public use to the county or municipality for operation and maintenance; and

(2) during the period the commission determines to be necessary to effect the official transfer of the park, site, or area.

(d) The department shall make grants of money from the account to a large county or municipality or to a nonprofit corporation for use in a large county or municipality for recreation, conservation, or education programs for underserved populations to encourage and implement increased access to and use of parks, recreational areas, cultural resource sites or areas, and open space areas by underserved populations.

(e) The department may provide from the account for direct administrative costs of the programs described by this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Sec. 24.056. FUNDS FOR GRANTS TO LARGE COUNTIES AND MUNICIPALITIES. When state revenue to the large county and municipality recreation and parks account exceeds $14 million per year, an amount not less than 15 percent shall be made available for grants to large counties and municipalities for up to 50 percent of the cost of acquisition or development of indoor public recreation facilities for indoor recreation programs, sports activities, nature programs, or exhibits.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 10, eff. September 1, 2009.

Sec. 24.057. ACCOUNT USE TO BE CONSISTENT WITH PLANS. No grant may be made under Section 24.055 nor may account money be used under Section 24.056 unless:

(1) there is a present or future need for the acquisition and development of the property for which the grant is requested or the use is proposed; and

(2) a written statement is obtained from the regional planning commission having jurisdiction of the area in which the property is to be acquired and developed that the acquisition and development is consistent with local needs.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Sec. 24.058. ACQUISITION OF PROPERTY. (a) No property may be acquired with grant money made under this subchapter or by the department under this subchapter if the purchase price exceeds the fair market value of the property as determined by one independent appraiser.

(b) Property may be acquired with provision for a life tenancy if that provision facilitates the orderly and expedient acquisition of the property.

(c) If land or water designated for park, recreational, cultural resource, or open space use is included in the local and regional park, recreational, cultural resource, and open space plans for two or more large counties or municipalities, the two or more large counties or municipalities may cooperate under state law to secure assistance from the account to acquire or develop the property. In those cases, the department may modify the standards for individual applicants but must be assured that a cooperative management plan for the land or water can be developed and effectuated and that one of the counties or municipalities possesses the necessary qualifications to perform contractual responsibilities for purposes of the grant.

(d) All land or water purchased with assistance from the account shall be dedicated for park, recreational, cultural resource, indoor recreation center, and open space purposes in perpetuity and

may not be used for any other purpose, except where the use is compatible with park, recreational, cultural resource, and open space objectives, and the use is approved in advance by the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Sec. 24.059. PAYMENTS, RECORDS, AND ACCOUNTING. (a) On the approval of a grant under this subchapter and on the written request by the director, the comptroller shall issue a warrant drawn against the large county and municipality recreation and parks account and payable to the county, municipality, or nonprofit corporation in the amount specified by the director.

(b) Each recipient of assistance under this subchapter shall keep records as required by the department, including records that fully disclose the amount and the disposition of the proceeds by the recipient, the total cost of the acquisition, a copy of the title and deed for the property acquired, the amount and nature of that portion of the cost of the acquisition supplied by other funds, and other records that facilitate effective audit. The director and the comptroller, or their authorized representatives, may examine any book, document, paper, and record of the recipient that are pertinent to assistance received under this subchapter.

(c) The recipient of funds under this subchapter shall, on each anniversary date of the grant for five years after the grant is made, furnish to the department a comprehensive report detailing the present and anticipated use of the property, any contiguous additions to the property, and any major changes in the character of the property, including the extent of park development that may have taken place.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Sec. 24.060. NONCOMPLIANCE WITH SUBCHAPTER. The attorney general shall file suit in a court of competent jurisdiction against a county, municipality, or nonprofit corporation that fails to comply with the requirements of this subchapter to recover the full amount of the grant plus interest on that amount of five percent a year

accruing from the time of noncompliance or for injunctive relief to require compliance with this subchapter. If the court finds that the county, municipality, or nonprofit corporation has not complied with the requirements of this subchapter, it is not eligible for further participation in the program for three years following the finding for noncompliance.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Sec. 24.061. ACCOUNT NOT TO BE USED FOR PUBLICITY. No money credited to the account may be used for publicity or related purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

Sec. 24.062. AUTHORITY OF LARGE COUNTY OR MUNICIPALITY TO HAVE PARKS. This subchapter does not authorize a large county or municipality to acquire, develop, maintain, or operate a park, recreational area, open space area, or natural area.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 39, eff. June 15, 2007.

CHAPTER 25. WATER DISTRICT AND RIVER AUTHORITY PARKS

Sec. 25.001. STATE POLICY; LEGISLATIVE FINDINGS. (a) The policy of the legislature and the intent of this chapter are to encourage the conservation and development of water in the state and water-related land areas for public recreation.

(b) The legislature finds:

(1) that the use of water resources in the state for public recreation is a useful purpose;

(2) that the conservation and development of water resources for public recreation purposes are public rights and duties; and

(3) that the acquisition and improvement of land areas related to water resources for public recreation purposes are

essential to the maximum beneficial use of water resources for public recreation purposes.

Added by Acts 1983, 68th Leg., p. 1033, ch. 235, art. 6, Sec. 1(a), eff. Sept. 1, 1983.

Sec. 25.002. DEFINITION. In this chapter "district" means a district or authority created under Article XVI, Section 59, of the Constitution of Texas.

Added by Acts 1983, 68th Leg., p. 1033, ch. 235, art. 6, Sec. 1(a), eff. Sept. 1, 1983.

Sec. 25.003. GENERAL POWERS. (a) Each district shall:

(1) conserve and develop water resources in this state for public recreation purposes in compliance with the provisions of Title 2, Water Code; and

(2) acquire and improve for park purposes any lands adjacent to or in the vicinity of any public water or any other impounded water available to the public if the governing body of the district finds that the acquisition or improvement is necessary or desirable to enhance the beneficial use of such water for public recreation purposes.

(b) A finding under Subdivision (2) of Subsection (a) of this section is conclusive.

Added by Acts 1983, 68th Leg., p. 1033, ch. 235, art. 6, Sec. 1(a), eff. Sept. 1, 1983.

Sec. 25.004. RULES; FEES; ABANDONMENT OF PROJECTS. A district may:

(1) adopt and enforce reasonable rules relating to the use, operation, management, administration, and policing of its water-related park areas as it considers appropriate;

(2) fix, impose, and collect reasonable fees, tolls, rents, rates, and charges for entry to and use of water-related park areas and their facilities as necessary or desirable; and

(3) abandon the use of all or any part of any public

recreation project authorized by this chapter.

Added by Acts 1983, 68th Leg., p. 1033, ch. 235, art. 6, Sec. 1(a), eff. Sept. 1, 1983.

Sec. 25.005. LEASES, CONCESSIONS, FRANCHISES, AND AGREEMENTS. A district may make, grant, accept, and enter into leases, concessions, franchises, and rental, operating, and other agreements relating to the water-related park areas or their facilities that the governing body deems necessary or convenient to carry out any of the purposes and powers granted in this chapter on the terms and conditions and for the periods of time as may be prescribed. The lease, concession, franchise, or agreement may be entered into with any person.

Added by Acts 1983, 68th Leg., p. 1033, ch. 235, art. 6, Sec. 1(a), eff. Sept. 1, 1983.

Sec. 25.006. USE OF OTHER POWERS. (a) Except as provided by Subsection (b) of this section, to accomplish the purposes of this chapter, each district has the same powers, authority, rights, privileges, and modes of procedure as are provided by applicable law to accomplish any other corporate purpose.

(b) A district may exercise the powers granted by this chapter without regard to any provision, restriction, or limitation of any general or special law or specific act and may exercise the powers granted by this chapter as an alternative to the powers of all other laws relating to the same subject or combine those powers in whole or in part. This chapter does not authorize any fee or charge for boat inspection, fishing, or other activity on the water of the state or the exercise of the power of eminent domain.

Added by Acts 1983, 68th Leg., p. 1033, ch. 235, art. 6, Sec. 1(a), eff. Sept. 1, 1983.

CHAPTER 26. PROTECTION OF PUBLIC PARKS AND RECREATIONAL LANDS

Sec. 26.001. PROTECTED LAND; NOTICE OF TAKING. (a) A department, agency, political subdivision, county, or municipality of

this state may not approve any program or project that requires the use or taking of any public land designated and used prior to the arrangement of the program or project as a park, recreation area, scientific area, wildlife refuge, or historic site, unless the department, agency, political subdivision, county, or municipality, acting through its duly authorized governing body or officer, determines that:

(1) there is no feasible and prudent alternative to the use or taking of such land; and

(2) the program or project includes all reasonable planning to minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use or taking.

(b) A finding required by Subsection (a) of this section may be made only after notice and a hearing as required by this chapter.

(c) The governing body or officer shall consider clearly enunciated local preferences, and the provisions of this chapter do not constitute a mandatory prohibition against the use of the area if the findings are made that justify the approval of a program or project.

Added by Acts 1983, 68th Leg., p. 1035, ch. 235, art. 6, Sec. 2(a), eff. Sept. 1, 1983.

Sec. 26.002. NOTICE OF HEARING. (a) When any program or project requires notice and a public hearing before approval, the notice must be given in writing to the person, organization, department, or agency that has supervision of the land proposed to be used or taken.

(b) The notice must state clearly the proposed program or project and the date and place for the public hearing. The notice must be given at least 30 days before the date for the public hearing.

(c) Notice must also be given to the public by publishing a notice similar to that specified in this section once a week for three consecutive weeks. The last days of publication must not be less than one week or more than two weeks before the date of the hearing. The notice must be published in a newspaper of general circulation, which paper must be published at least six days a week

in the county where the land proposed to be used or taken is situated.

(d) If there is no newspaper that qualifies under Subsection (c) of this section, the notice must be published in a qualifying newspaper that is published in any county adjoining the county where the land is situated. If there is no qualifying newspaper published in any adjoining county, then the notice must be published in a qualifying newspaper published in the nearest county to the county where the land is situated. If there is no qualifying daily newspaper published therein, the notice must be published in any newspaper of general circulation published in the political subdivision affected. If no newspaper is published in the political subdivision, the notice must be published in a newspaper published in the political subdivision nearest the political subdivision affected.

Added by Acts 1983, 68th Leg., p. 1035, ch. 235, art. 6, Sec. 2(a), eff. Sept. 1, 1983.

Sec. 26.003. LIMITATIONS ON JUDICIAL REVIEW. A petition for the judicial review of the approval or disapproval of a program or project under this chapter must be filed within 30 days after the approval or disapproval is announced, or the review is barred.

Added by Acts 1983, 68th Leg., p. 1035, ch. 235, art. 6, Sec. 2(a), eff. Sept. 1, 1983.

Sec. 26.004. EXCLUDED LANDS. A department, agency, board, or political subdivision having control of the public land is not required to comply with this chapter if:

(1) the land is originally obtained and designated for another public use and is temporarily used as a park, recreation area, or wildlife refuge pending its use for the originally designated purpose;

(2) the program or project that requires the use or taking of the land being used temporarily as a park, recreation area, or wildlife refuge is the same program or project for which the land was originally obtained and designated; and

(3) the land has not been designated by the department, agency, political subdivision, county, or municipality for use as a

park, recreation area, or wildlife refuge before September 1, 1975.

Added by Acts 1983, 68th Leg., p. 1035, ch. 235, art. 6, Sec. 2(a), eff. Sept. 1, 1983.

CHAPTER 28. TEXAS TRAILS SYSTEM

Sec. 28.001. ESTABLISHMENT. The Texas Trails System is established under the administration of the department. The purposes of the system are to provide high-quality outdoor recreational, scenic, historic, and expedition trails and to promote the use and encourage the development of trails within the system.

Added by Acts 1983, 68th Leg., p. 5165, ch. 937, Sec. 1, eff. Aug. 29, 1983. Renumbered from Sec. 25.001 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(37), eff. Sept. 1, 1987.

Sec. 28.002. SYSTEM ADMINISTRATION. (a) The department may:

(1) develop a trails master plan for the orderly development of trails;

(2) designate qualifying trails within the state park system or on state lands as components of the trail system;

(3) enter into negotiations with federal, state, regional, local, and private agencies that administer trails to allow their trails to be included in the system;

(4) designate federal, state, regional, local, and private trails as components of the system after obtaining the consent of the owner or administering agency;

(5) remove trails from the system at the request of the owner or administering agency or to maintain the quality of the system;

(6) develop criteria and standards for trails in the system;

(7) classify trails in the system as recreational, scenic, historic, or expedition trails;

(8) provide a standardized terminology for trails within the system;

(9) provide a uniform marker for the trails within the system;

(10) provide technical assistance in planning or building

trails to potential trail administrators; and

(11) publish information about the system to ensure public knowledge of the existence of the system and to encourage its use.

(b) The commission may adopt rules or take any other action necessary to implement this chapter.

Added by Acts 1983, 68th Leg., p. 5165, ch. 937, Sec. 1, eff. Aug. 29, 1983. Renumbered from Sec. 25.002 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(37), eff. Sept. 1, 1987.

Sec. 28.004. CLASSIFICATION. (a) The department shall classify trails in the system according to the classifications established in this section. A trail may have more than one classification or may be composed of several trails with different classifications. A trail may not include the main travelway portions of highways, roads, or streets that are provided primarily for motor vehicle traffic or motor vehicle travel routes that exist or may be established on such travelways.

(b) A recreational trail is a trail that:

(1) is in or near an urban area; and

(2) is primarily used for recreational or health benefits.

(c) A scenic trail is a trail that:

(1) is in a rural or urban area;

(2) is in an area containing natural and scenic qualities of at least regional significance; and

(3) is primarily used for enjoyment of its scenic qualities and vistas, such as travel through or to a natural environment.

(d) A historic trail is a trail that:

(1) is in a rural or urban area;

(2) provides access to or between historic sites, structures, or monuments of regional or statewide significance; and

(3) is used primarily for its historic connotations, such as the significance of a historic structure or the presentation of a historic episode.

(e) An expedition trail is a trail that:

(1) is in a rural area;

(2) provides extended travel through scenic and natural areas of regional or statewide significance; and

(3) may require some travel preparation.

Added by Acts 1983, 68th Leg., p. 5165, ch. 937, Sec. 1, eff. Aug. 29, 1983. Renumbered from Sec. 25.004 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(37), eff. Sept. 1, 1987.

CHAPTER 29. OFF-HIGHWAY VEHICLE TRAIL AND RECREATIONAL AREA PROGRAM

Sec. 29.001. DEFINITION. In this chapter, "off-highway vehicle" means:

(1) an off-highway vehicle, as defined by Section 551A.001, Transportation Code;

(2) an off-highway motorcycle; or

(3) any other motorized vehicle used for off-highway recreation on:

(A) public land over which the department has authority or on land purchased or leased by the department; or

(B) land acquired or developed under a grant made under Section 29.008 or any other grant program operated or administered by the department.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1280 (H.B. 3849), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1136 (H.B. 2553), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 895 (H.B. 1044), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 7, eff. June 14, 2019.

Sec. 29.002. ESTABLISHMENT AND OPERATION. (a) The off-highway vehicle trail and recreational area program is established under the administration of the department. The purposes of the program are to:

(1) further the establishment of motor vehicle recreation sites under Section 90.009;

(2) establish and maintain a public system of trails and

other recreational areas for use by owners and riders of off-highway vehicles;

(3) improve existing trails and other recreational areas open to the public for use by owners and riders of off-highway vehicles; and

(4) foster the responsible use of off-highway vehicles.

(b) The department shall establish and maintain trails and recreational areas for use by owners and riders of off-highway vehicles:

(1) on public land over which the department has authority or on land purchased or leased by the department; or

(2) by making grants to federal agencies, political subdivisions of this state, and nonprofit organizations under Section 29.008.

(c) The department shall coordinate the implementation and operation of the program established under this chapter with the implementation and operation of the program established under Section 90.009.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.

Sec. 29.003. OFF-HIGHWAY VEHICLE DECAL REQUIRED; FEE. (a) Except as provided by Section 29.004, a person may not operate an off-highway vehicle on public land over which the department has authority, on land purchased or leased by the department, on other public land, or on land purchased or developed under a grant made under Section 29.008 or any other grant program operated or administered by the department on which off-highway vehicle recreation is legal without having obtained and properly mounted an off-highway vehicle decal.

(b) The fee for an off-highway vehicle decal is $8 or an amount set by the commission, whichever amount is more.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1280 (H.B. 3849), Sec. 3, eff. June 15, 2007.

Sec. 29.004. EXEMPTIONS. Section 29.003 does not apply to a person that is:

(1) acting on behalf of the United States, any state, or a political subdivision of the United States or any state;

(2) participating in a search and rescue operation under the authority or direction of a search and rescue or law enforcement agency; or

(3) exempt under a rule adopted by the commission.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.

Sec. 29.005. ISSUANCE, DISPLAY, AND EXPIRATION OF DECAL. (a) The department shall issue an off-highway vehicle decal on the payment of the fee under Section 29.003(b).

(b) The department shall prescribe the form and manner in which the decal must be issued to a person and displayed for use by the person.

(c) A decal issued under this section is valid only during the yearly period for which the decal is issued without regard to the date on which the decal is acquired. A yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1280 (H.B. 3849), Sec. 4, eff. June 15, 2007.

Sec. 29.006. DISPOSITION OF DECAL FEES. The department shall deposit all revenue, less allowable costs, collected under Section 29.005 to the credit of the off-highway vehicle trail and recreational area account under Section 11.046.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.

Sec. 29.007. OTHER REVENUE. The department shall seek and use funding from the federal government, including the Recreational Trails Program administered by the United States Department of Transportation, and other sources outside the general revenue fund to identify and facilitate the development of off-highway vehicle trails and recreational areas under this chapter.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.

Sec. 29.008. GRANTS. The department may make grants to federal agencies, political subdivisions of this state, and nonprofit organizations for the purpose of acquiring, developing, and maintaining public trails or recreational areas under this chapter.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.

Sec. 29.009. PENALTY. A person who violates Section 29.003 commits an offense that is a Class C Parks and Wildlife misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. January 1, 2006.

Sec. 29.010. RULES. The commission:

(1) shall adopt rules necessary to implement this chapter; and

(2) may adopt rules:

(A) exempting certain classes of persons from the requirements of Section 29.003; or

(B) concerning the department's use of funding from sources outside the general revenue fund under Section 29.007.

Added by Acts 2005, 79th Leg., Ch. 367 (S.B. 1311), Sec. 1, eff. September 1, 2005.

TITLE 4. WATER SAFETY

CHAPTER 31. WATER SAFETY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. TITLE. This chapter may be cited as the Water Safety Act.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.002. STATE POLICY. It is the duty of this state to promote recreational water safety for persons and property in and connected with the use of all recreational water facilities in the state, to promote safety in the operation and equipment of facilities, and to promote uniformity of laws relating to water safety.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.003. DEFINITIONS. In this chapter:

(1) "Boat" means a vessel not more than 65 feet in length, measured from the tip of the bow in a straight line to the stern.

(2) "Vessel" means any watercraft, other than a seaplane on water, used or capable of being used for transportation on water.

(3) "Motorboat" means any vessel propelled or designed to be propelled by machinery, whether or not the machinery is permanently or temporarily affixed or is the principal source of propulsion.

(4) "Owner" means the person who rightfully claims lawful possession of a vessel by virtue of the legal title or an equitable interest.

(5) "Water of this state" means any public water within the territorial limits of this state.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) "Dealer" means a person engaged in the business of buying, selling, selling on consignment, displaying for sale, or exchanging at least five vessels, motorboats, or outboard motors during a calendar year.

(8) "Vessel livery" means a business establishment engaged in renting or hiring out vessels for profit.

(9) Repealed by Acts 1997, 75th Leg., ch. 1363, Sec. 12,

eff. Sept. 1, 1997.

(10) "Reasonable time" means 15 days.

(11) "Manufacturer" means a person engaged in the business of manufacturing new and unused vessels and outboard motors for the purpose of sale or trade.

(12) "New" means every vessel or outboard motor after its manufacture and before its sale or other transfer to a person not a manufacturer or dealer.

(13) "Outboard motor" means any self-contained internal combustion propulsion system, excluding fuel supply, which is used to propel a vessel and which is detachable as a unit from the vessel.

(14) "Personal watercraft" means a type of motorboat that is specifically designed to be operated by a person or persons sitting, standing, or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel.

(15) "Authorized agent" means a dealer who is authorized by the department under Section 31.006 of this code to collect taxes and fees and issue certificates of number.

(16) "Distributor" means a person who offers for sale, sells, or processes for distribution new vessels or outboard motors to dealers in this state.

(17) "Coast Guard" means the United States Coast Guard.

(18) "Abandoned vessel or outboard motor" means a vessel or outboard motor that has remained on private property without the consent of the owner or person in charge of the property for more than seven consecutive days.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1252, ch. 484, Sec. 1(a), (b), eff. Sept. 1, 1977; Acts 1989, 71st Leg., ch. 571, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 718, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 450, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 739, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 26.01, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1363, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 200, Sec. 8(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 108 (S.B. 489), Sec. 1, eff. September

1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 720 (H.B. 787), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1127 (H.B. 308), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(36), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 286 (H.B. 1106), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1249 (H.B. 4032), Sec. 1, eff. September 1, 2019.

Sec. 31.004. APPLICATION OF CHAPTER. The provisions of this chapter apply to all public water of this state and to all vessels on public water. Privately owned water is not subject to the provisions of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1363, Sec. 2, eff. Sept. 1, 1997.

Sec. 31.005. CONTRACTS WITH FEDERAL GOVERNMENT. (a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program relating to water safety, including:

(1) the acquisition, maintenance, and operating costs of facilities;

(2) purchase of equipment and supplies;

(3) personnel salaries; and

(4) other federally approved reimbursable expenses, including personnel training costs, public boat safety and education costs, and general administrative and enforcement costs.

(b) The department may contract with the United States in order to comply with all necessary requirements for the receipt of funds made available under any federal legislation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.006. APPOINTMENT OF AUTHORIZED AGENT. (a) The department may authorize a dealer who holds a dealer's or manufacturer's number to act as the agent of the department under Subchapter B and under Chapter 160, Tax Code, for the issuance of certificates of number and the collection of fees and taxes for vessels and outboard motors sold by that dealer.

(b) An authorized agent must follow the rules of the commission and the rules of the comptroller.

(c) An authorized agent shall send the applications required by Sections 31.024 and 31.047 of this code, the fees required by Sections 31.026 and 31.048 of this code, and the tax paid under Chapter 160, Tax Code, to the department not later than 20 days after the date a certificate of number is issued and a fee or tax collected.

(d) An authorized agent shall execute a surety bond in an amount set by the department to insure against loss to the department of fees and taxes. The bond shall be in favor of the department.

(e) The department may cancel the authorization of an agent on 30 days' written notice of the agent's violation of this chapter, a department rule adopted under this chapter, Chapter 160, Tax Code, or a rule adopted by the comptroller under that chapter.

(f) The commission may adopt rules for the creation of a program for the continuing identification and classification of participants in the vessel and outboard motor industries doing business in this state. The commission may set fees to administer this subsection. The department shall use information from the program to appoint agents under this section or for any other purpose required by the commission's rules or this chapter.

Added by Acts 1993, 73rd Leg., ch. 718, Sec. 2, eff. Sept. 1, 1993.
Amended by Acts 2001, 77th Leg., ch. 968, Sec. 35, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1249 (H.B. 4032), Sec. 2, eff. September 1, 2019.

SUBCHAPTER B. IDENTIFICATION OF VESSELS; REQUIRED NUMBERING

Sec. 31.021. REQUIRED NUMBERING. (a) Each vessel on the water of this state shall be numbered in accordance with the provisions of

this chapter unless specifically exempted. The numbering system shall be in accord with the Federal Boating Act of 1958 and subsequent federal legislation.

(b) No person may operate or give permission for the operation of any vessel or may dock, moor, or store a vessel owned by the person on the water of this state unless:

(1) the vessel is numbered as required by this chapter;

(2) the certificate of number awarded to the vessel is in full force and effect; and

(3) the identifying number set forth in the certificate is properly displayed on the vessel as required by this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1363, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 200, Sec. 8(c), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1388 (H.B. 115), Sec. 1, eff. September 1, 2013.

Sec. 31.022. EXEMPTIONS FROM REQUIRED NUMBERING. (a) A vessel is not required to be numbered under the provisions of this chapter if it is:

(1) operated within this state for a period not exceeding 90 consecutive days and is covered by a number in full force and effect which has been awarded under federal law or a federally approved numbering system of another state;

(2) from a country other than the United States temporarily using the water of this state;

(3) owned by the United States, a state, or a subdivision of a state; or

(4) a ship's lifeboat.

(b) The department may exempt from numbering a class of vessels if it finds that the numbering of the vessels of that class will not materially aid in their identification. The department may also exempt a vessel if it finds that it belongs to a class of vessels that would be exempt from numbering under a numbering system of an

agency of the federal government if it were subject to federal law.

(c) All canoes, kayaks, punts, rowboats, rubber rafts, or other vessels under 14 feet in length when paddled, poled, oared, or windblown are exempt from the numbering provisions of this chapter.

(d) A vessel in use at a water ski tournament, competition, or exhibition sanctioned in writing by the governing board of the governmental entity that has jurisdiction over the body of water on which the tournament, competition, or exhibition occurs is exempt from the numbering provisions of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 543, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 450, Sec. 4, eff. Sept. 1, 1993.

Sec. 31.023. VESSELS NUMBERED UNDER FEDERAL OR OTHER STATE LAW. The owner of any vessel for which a current certificate of number has been awarded under any federal law or a federally approved numbering system of another state shall, if the vessel is operated on the water of this state in excess of 90 consecutive days, make application for a certificate of number in the manner prescribed in this chapter for residents of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 5, eff. Sept. 1, 1993.

Sec. 31.024. APPLICATION FOR NUMBER. (a) The owner of each vessel requiring numbering by this state shall file an application for a number with the department, an authorized agent, or a county tax assessor-collector.

(b) The application shall be signed by the owner of the vessel and shall be accompanied by the fee prescribed in Section 31.026 of this code. If the application is received by a county tax assessor-collector, the application and the portion of the fee not retained by the tax assessor-collector as a collection fee shall be sent to the department. If the application is received by an authorized agent, the application and the fee shall be sent to the department as required by Section 31.006 of this code.

(c) On receipt of the application in approved form, the department shall enter it on the records of its office and issue to

the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner.

(d) The application form, the form of the certificate of number, and the manner of renewal shall be prescribed by the department.

(e) The department, an authorized agent, or a county tax assessor-collector may not issue a certificate of number unless the tax due on the vessel under Chapter 160, Tax Code, is paid.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1352, ch. 607, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.04, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 450, Sec. 6, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 718, Sec. 3, eff. Sept. 1, 1993.

Sec. 31.025. RENEWAL OF CERTIFICATES OF NUMBER. (a) An application for the renewal of each certificate of number shall be prepared by the department and mailed to the owner of the vessel, or sent electronically to the owner if the owner has agreed to receive department communications electronically, during the period of the last 90 days before the expiration date of the certificate. The same number shall be issued on renewal.

(b) The completed application for renewal may be returned to the department, to any county tax assessor-collector, or if permitted by the department, to an agent of the department.

(c) A completed application not received during the 90-day period shall be treated in the same manner as an original application.

(d) The department, an authorized agent, or a county tax assessor-collector may not issue a renewal certificate of number unless the tax due on the vessel under Chapter 160, Tax Code, is paid.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1353, ch. 607, Sec. 2, eff. Aug. 27, 1979.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 396 (H.B. 1466), Sec. 1, eff. September 1, 2015.

Sec. 31.026. FEES. (a) Each application for an original or renewal certificate of number for a vessel shall be accompanied by a two-year fee determined by the following classification schedule or determined in the same classifications by the commission, whichever amount is more:

Class	Description of Vessel	Fee
Class A	less than 16 feet in length	$12
Class 1	16 feet or over and less than 26 feet in length	$18
Class 2	26 feet or over and less than 40 feet in length	$24
Class 3	40 feet or more in length	$30

(b) The fee for a vessel less than 16 feet in length owned by a vessel livery and used for rental purposes is $6 for each original and renewal application for a certificate of number or an amount set by the commission, whichever amount is more.

(c) Owners of newly purchased vessels or other vessels not previously operated in this state shall pay the full registration fee.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1326, ch. 277, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 7, eff. Sept. 1, 1993.

Sec. 31.028. CERTIFICATE OF NUMBER. The certificate of number shall be pocket-size. The certificate or a facsimile of it shall be carried on board the vessel at all times. It does not have to be on the person of the operator if prior to trial the operator can produce for examination a valid certificate of number.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.029. TERM OF CERTIFICATE OF NUMBER. Every certificate of number awarded pursuant to this chapter shall continue in full force and effect for a period of two years unless sooner terminated or discontinued in accordance with the provisions of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.030. DUPLICATE CERTIFICATES AND DECALS. (a) If a certificate of number becomes lost, mutilated, or illegible, the owner of the vessel for which the certificate was issued may obtain a duplicate on application to the department and the payment of a fee of $2 or an amount set by the commission, whichever amount is more.

(b) If a registration decal becomes lost, mutilated, or illegible, the owner of the vessel for which the decal was issued may obtain a replacement decal on application to the department and the payment of a fee of $2 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1275, ch. 497, Sec. 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 1327, ch. 277, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 2, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 7, eff. Sept. 1, 1993.

Sec. 31.031. NUMBERING PATTERN. (a) The numbering pattern used consists of the prefix "TX" followed by a combination of exactly four numerals and further followed by a suffix of two letters. The group of numerals appearing between the letters shall be separated from the letters by hyphens or equivalent spaces.

(b) All basic numbers of each series shall begin with 1000. TX-1000-AA through TX-9999-AA will be allotted to dealers and manufacturers. TX-1000-AB through TX-9999-ZZ will be allotted to all other vessel owners and livery operators.

(c) The letters "G", "I", "O", and "Q" shall be omitted from all letter sequences.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 8, eff. Sept. 1, 1993.

Sec. 31.032. NUMBERING LOCATION AND VISIBILITY; EXEMPTION; DECAL. (a) The owner of a vessel shall paint on or attach to each side of the forward half of the vessel the identification number and a registration decal in the manner prescribed by the department. The number shall read from left to right and shall be of block characters

of good proportion of not less than three inches in height. The numbers shall be of a color which will contrast with the hull material of the vessel and so maintained as to be clearly visible and legible.

(a-1) On a vessel configured so that a number on the hull or superstructure is not easily visible, the number must be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number is visible from each side of the vessel.

(b) The owner of a vessel required to be numbered under this subchapter and documented by the United States Coast Guard is not required to attach an identification number as required by Subsection (a).

(c) The commission shall adopt rules for the placement of the registration decal in an alternate location for antique boats. In this subsection, "antique boat" means a boat that:

(1) is used primarily for recreational purposes; and

(2) was manufactured 35 or more years before the date the registration decal is issued.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 9, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 200, Sec. 8(d), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 193 (H.B. 942), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1388 (H.B. 115), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1388 (H.B. 115), Sec. 3, eff. September 1, 2013.

Sec. 31.033. UNAUTHORIZED NUMBERS PROHIBITED. (a) No person may paint, attach, or otherwise display on the forward half of a vessel a number other than the number awarded to the vessel or granted reciprocity under this chapter.

(b) No person may deface or alter the certificate of number or the number assigned to and appearing on a vessel.

(c) No person may display on a vessel a registration decal that

is altered, fraudulent, or issued under a certificate of number assigned to another vessel.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 9, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 695 (H.B. 384), Sec. 1, eff. June 17, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1388 (H.B. 115), Sec. 4, eff. September 1, 2013.

Sec. 31.034. ISSUANCE OF NUMBERS BY DEPARTMENT OR AUTHORIZED AGENT. (a) The department may award a certificate of number.

(b) A certificate of number issued and delivered by an authorized agent in conformity with this chapter and the rules of the commission adopted under this chapter is valid as if awarded by the department directly.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.05, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 718, Sec. 4, eff. Sept. 1, 1993.

Sec. 31.0341. ISSUANCE OF NUMBERS: COUNTY TAX ASSESSOR-COLLECTOR. (a) Each county tax assessor-collector shall award certificates of number under this chapter in the manner prescribed by this chapter and the regulations of the department.

(b) The county tax assessor-collector is entitled to a fee of 10 percent of the amount of the fee for each certificate. The amount retained by the tax assessor-collector shall be deposited to the credit of the officers salary fund of the county to be used for the sole purpose of paying the salaries of persons issuing vessel certificates of number.

Added by Acts 1979, 66th Leg., p. 1353, ch. 607, Sec. 3, eff. Aug. 27, 1979. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 10, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 286 (H.B. 1106), Sec. 2, eff.

September 1, 2013.

Sec. 31.035. RULES AND REGULATIONS; COPIES. Copies of all rules and regulations formulated under this chapter shall be furnished without cost with each certificate of number issued.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.036. PROOF OF OWNERSHIP. (a) A certificate of title is required as proof of ownership of a vessel for which a certificate of number is sought.

(b) A certified statement of ownership is sufficient proof of ownership for a vessel of a type for which a certificate of title is not required.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(c), eff. Sept. 1, 1977; Acts 1993, 73rd Leg., ch. 450, Sec. 11, eff. Sept. 1, 1993.

Sec. 31.037. CHANGE IN OWNERSHIP INTEREST; NOTICE TO DEPARTMENT. (a) The recorded owner of a vessel numbered in this state shall notify the department not later than the 20th day after the date:

(1) of the transfer by sale, donation, gift, or other means of all or any part of the owner's interest in the vessel, other than the creation of a security interest in the vessel;

(2) of the destruction or disposal of the vessel; or

(3) of the permanent removal of the vessel from this state to another state or country.

(a-1) The notification under Subsection (a) must be on a form prescribed by the department that includes:

(1) the name and address of the new owner, as applicable; and

(2) the vessel's certificate of number.

(b) If the vessel is destroyed, disposed of, or permanently moved to another state or country, the department shall cancel the certificate of number and enter the cancellation in its records.

(c) The new owner of a vessel shall, not later than the 45th day after the date ownership was transferred, submit an application to the department with:

(1) evidence of ownership;

(2) the new owner's name and address;

(3) the number of the vessel; and

(4) a fee of $2 or an amount set by the commission, whichever amount is more.

(d) On receipt of the new owner's application and fee the department shall transfer the certificate of number issued for the vessel to the new owner. Unless the application is made and the fee is paid on time, the vessel is without a certificate of number, and it is unlawful for any person to operate the vessel until the certificate is issued.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1327, ch. 277, Sec. 3, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 3, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 11, eff. Sept. 1, 1993. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 396 (H.B. 1466), Sec. 2, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1249 (H.B. 4032), Sec. 3, eff. September 1, 2019.

Sec. 31.038. CHANGE OF ADDRESS; NOTICE TO DEPARTMENT. (a) The holder of a certificate of number shall notify the department within a reasonable time if his address no longer conforms to the address appearing on the certificate and shall inform the department of his new address.

(b) The department may provide in its regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of the outstanding certificate to show the new address of the holder. Changes of address shall be noted on the records of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.039. PUBLIC RECORDS; FEES. (a) Except as provided by Subsection (c), all ownership records of the department made or kept under this chapter are public records.

(b) The commission may by rule charge a fee for access to ownership records and other records made or kept under this chapter.

(c) An owner identifier as prescribed by 33 C.F.R. Section 174.17 is not a public record.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2003, 78th Leg., ch. 200, Sec. 8(e), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 5, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 286 (H.B. 1106), Sec. 3, eff. September 1, 2013.

Sec. 31.0391. RELEASE OF INFORMATION. (a) The department or a county may not release the name or address of a person recorded in the department vessel and outboard motor ownership records unless the department or county receives a written request that:

(1) contains the requestor's name and address; and

(2) states that the use of the information is for a lawful purpose.

Text of subsection effective until January 1, 2025

(b) This section does not apply to the release of information to:

(1) a peace officer as defined by Article 2.12, Code of Criminal Procedure, who is acting in an official capacity; or

(2) a state official or an official of a political subdivision of this state who requests the information for tax purposes.

Text of subsection effective on January 1, 2025

(b) This section does not apply to the release of information to:

(1) a peace officer as defined by Article 2A.001, Code of Criminal Procedure, who is acting in an official capacity; or

(2) a state official or an official of a political subdivision of this state who requests the information for tax purposes.

Added by Acts 1995, 74th Leg., ch. 845, Sec. 1, eff. Sept. 1, 1995.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.159, eff. January 1, 2025.

Sec. 31.040. VESSEL LIVERIES. (a) Before the vessel is rented or let for hire, the owner or operator of a vessel livery shall obtain a certificate of number for a vessel being used as a motorboat prior to being rented.

(b) The application for the certificate of number under Section 31.024 or for a certificate of title under Section 31.046 must state that the applicant is a vessel livery within the meaning of this chapter.

(c) The owner of a vessel livery shall keep a record of the name and address of the persons hiring any vessel operated as a motorboat, the vessel's certificate of number, the time and date of departure, and the expected time of return. The record shall be kept for six months.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 11, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 286 (H.B. 1106), Sec. 4, eff. September 1, 2013.

Sec. 31.041. DUTIES OF DEALERS, DISTRIBUTORS, AND MANUFACTURERS; LICENSE REQUIRED. (a) A person may not engage in business in this state as a dealer, distributor, or manufacturer unless the person holds a license issued under this section and enters into a license agreement with the department. A dealer must have a license for each place of business owned and operated by the person.

(b) The commission shall establish the form and manner for display of a license issued under this section.

(c) The department shall issue a dealer, distributor, or manufacturer number to each dealer, distributor, or manufacturer licensed under this section in the manner provided by Section

31.031(b).

(d) A dealer, distributor, or manufacturer of vessels in this state may use the dealer's, distributor's, or manufacturer's number for vessels the dealer, distributor, or manufacturer wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each vessel. The number shall be attached to any vessel that the dealer, distributor, or manufacturer sends temporarily on the water. For purposes of this subsection, "show, demonstrate, or test" does not include the use of a vessel for recreational purposes or for participation in a contest or event. The commission, however, may establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events. Any fees collected by the department under this subsection shall be deposited in the game, fish, and water safety account established under Section 11.032.

(e) The application for a license under this section must state that the applicant is a dealer, distributor, or manufacturer within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. An application submitted by a dealer must be accompanied by photographs of the business sufficient to show any sign the business is required to display and the extent of the space the business is required to maintain. The application must also be accompanied by a copy of the tax permit of the dealer, distributor, or manufacturer issued by the comptroller under Chapter 151, Tax Code, if the dealer, distributor, or manufacturer has a tax permit. The two-year fee for a dealer's, distributor's, or manufacturer's number is $500. A license may not be issued until the provisions of this section have been satisfied.

(f) A dealer, distributor, or manufacturer holding a dealer's, distributor's, or manufacturer's license may issue a reasonable temporary facsimile of the number issued under Subsection (c), which may be used by any authorized person. The form of the facsimile and the manner of display of the number shall be prescribed by the department.

(g) A dealer, distributor, or manufacturer holding a dealer's, distributor's, or manufacturer's license may transfer a certificate of number or a certificate of title to a vessel or outboard motor without securing a certificate of number or certificate of title in the dealer's, distributor's, or manufacturer's name if the vessel or

outboard motor is sold in the normal course of the dealer's, distributor's, or manufacturer's business.

(h) Not later than the 45th day after a dealer, distributor, or manufacturer holding a dealer's, distributor's, or manufacturer's license sells at the first or a subsequent sale a vessel or outboard motor, the dealer, distributor, or manufacturer shall apply, in the name of the purchaser of the vessel or outboard motor, for a certificate of number or a certificate of title for the vessel or outboard motor, as applicable, and file with the department each document necessary to transfer the certificate of number or certificate of title.

(i) A person purchasing a vessel may use the temporary facsimile number issued under Subsection (f) for a period not to exceed 45 days from the date the dealer, distributor, or manufacturer applies for a certificate of number or a certificate of title under Subsection (h). The person shall retain the facsimile number on the vessel for the period described by this subsection.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1328, ch. 277, Sec. 4, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 4, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 12, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 587, Sec. 36, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 13.01, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 200, Sec. 8(f), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 6, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 108 (S.B. 489), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 776 (H.B. 3764), Sec. 1, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1249 (H.B. 4032), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1249 (H.B. 4032), Sec. 5, eff. September 1, 2019.

Sec. 31.0411. TERM OF LICENSE; TRANSFER. (a) Except as provided by Subsection (b), a license issued under Section 31.041:

(1) is valid for two years from the date of issuance; and

(2) may not be transferred to another person.

(b) A license issued under Section 31.041 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs.

(c) A license issued under Section 31.041 may be transferred to a new address if:

(1) a business moves to another location; and

(2) a change of ownership has not occurred.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(g), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 7, eff. Sept. 1, 2003.

Sec. 31.0412. LICENSING RULES. The commission may adopt rules regarding licenses issued under Section 31.041, including rules:

(1) regarding license transfer procedures;

(2) prescribing application and license agreement forms;

(3) regarding application and renewal procedures;

(4) prescribing reporting and recordkeeping requirements for license holders;

(5) setting fees to be charged for:

(A) a transferred license; or

(B) a replacement license;

(6) prescribing license requirements; and

(7) establishing license revocation and suspension procedures.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(g), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 7, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 108 (S.B. 489), Sec. 3, eff. September 1, 2005.

Sec. 31.0413. EXEMPTION FROM DEALER LICENSING REQUIREMENTS. The dealer licensing provisions of this subchapter do not apply to the sale of a canoe, kayak, punt, rowboat, rubber raft, paddleboat, or other vessel that is less than 12 feet in length and has a horsepower rating of five horsepower or less or to the sale of an outboard motor with a manufacturer's rating of five horsepower or less.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(g), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 7, eff. Sept. 1, 2003.

Sec. 31.042. CANCELLATION OF CERTIFICATES OF NUMBER; GROUNDS. (a) A certificate of number may be cancelled and the identification number voided by the department even though the action occurs before the expiration date on the certificate and even though the certificate is not surrendered to the department.

(b) Causes for cancellation of certificates and voiding of numbers include:

(1) surrender of the certificate for cancellation;

(2) issuance of a new number for the same vessel;

(3) false or fraudulent certification in an application for number;

(4) failure to pay the prescribed fee; and

(5) dismantling, destruction, or other change in the form or character of the vessel or outboard motor so that it is no longer correctly described in the certificate or it no longer meets the definition of a vessel or outboard motor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(d), eff. Sept. 1, 1977; Acts 1993, 73rd Leg., ch. 450, Sec. 13, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 200, Sec. 8(h), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 8, eff. Sept. 1, 2003.

Sec. 31.043. MANUFACTURER'S IDENTIFICATION NUMBER. (a) All vessels manufactured in Texas for sale and all vessels sold, numbered, or titled in Texas shall carry a manufacturer's hull identification number clearly imprinted on the structure of the vessel or displayed on a plate permanently attached to the vessel. Except as required to comply with Section 31.024 or 31.047, this subsection does not apply to a vessel that is not required by the United States Coast Guard to have a hull identification number.

(b) The owner of a vessel that does not have a manufacturer's hull identification number may file an application for a hull identification number with the department on forms approved by it. The application must include a sworn statement describing the vessel,

proving legal ownership, and, if known, stating the reason for the lack of hull identification number. The application must be signed by the owner of the vessel and must be accompanied by a fee of $25 and a certificate from a game warden commissioned by the department stating that the vessel has been inspected by the officer and appears to be as applied for. On receipt of the application in approved form, the department shall enter the information on the records of its office and shall issue to the applicant a hull identification number.

(c) No person may intentionally or knowingly destroy, remove, alter, cover, or deface an outboard motor serial number, the manufacturer's hull identification number or plate bearing the hull identification number, or the hull identification number or serial number issued by the department. No person may possess a vessel with a hull identification number or an outboard motor with a serial number that has been altered, defaced, mutilated, or removed.

(c-1) No person may intentionally sell, offer to sell, or purchase a vessel with a hull identification number, or an outboard motor with a serial number, that has been altered, defaced, mutilated, or removed.

(d) A person who has a vessel with an altered, defaced, mutilated, or removed hull identification number or an outboard motor with an altered, defaced, mutilated, or removed serial number shall file a sworn statement with the department describing the vessel or outboard motor, proving legal ownership, and, if known, stating the reason for the destruction, removal, or defacement of the number. The statement must be accompanied by a fee of $25 and a certificate from a game warden commissioned by the department that the vessel or outboard motor has been inspected by the officer and appears to be as applied for. On receipt of the statement in approved form, the department shall enter the information on records of its office and shall issue to the applicant a hull identification number or outboard motor serial number.

(e) This section does not apply to vessels with a valid marine document issued by the United States Coast Guard's National Vessel Documentation Center or a federal agency that is a successor to the National Vessel Documentation Center.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1328, ch. 277, Sec. 5, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 5, eff. Sept.

1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 14, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1363, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1099, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 695 (H.B. 384), Sec. 2, eff. June 17, 2011.

Sec. 31.044. INSPECTIONS. (a) A dealer, distributor, or manufacturer may not refuse to allow the department or a peace officer to inspect a vessel, outboard motor, or records relating to the possession, origination, ownership, or transfer of a vessel or outboard motor at a dealership or distributor's or manufacturer's place of business during normal business hours.

(b) The commission by rule shall adopt a policy to guide the prioritization of inspections of license holders holding a license issued under Section 31.041 based on risk to water safety.

(c) The policy adopted under this section must require that the department:

(1) determine the conditions under which an on-site inspection of a license holder by the department is appropriate;

(2) develop an assessment tool for determining the appropriate frequency and intensity of department inspections of license holders, based on key risk factors and indications of increased or decreased risk, such as repeated or remedied violations and failed or passed inspections; and

(3) document all license holder inspections and the results of those inspections and make the documentation available to all employees whose job descriptions include the regulation of license holders.

(d) The policy adopted under this section may be combined with a policy adopted under Section 12.1025.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(i), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 9, eff. Sept. 1, 2003.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 9, eff. September 1, 2021.

SUBCHAPTER B-1. CERTIFICATES OF TITLE FOR VESSELS AND OUTBOARD MOTORS

Sec. 31.045. OWNERSHIP OF VESSELS AND OUTBOARD MOTORS; CERTIFICATES OF TITLE. (a) The ownership of a vessel or of an outboard motor is evidenced by a certificate of title issued by the department, unless the vessel or the outboard motor is new.

(b) The ownership of a new vessel or a new outboard motor is evidenced by a manufacturer's or an importer's certificate executed on a form prescribed by the department.

(c) Separate certificates are required for vessels and for outboard motors.

(d) The ownership of a vessel exempted from numbering under Section 31.022(c) of this code is not required to be evidenced by a certificate of title issued by the department.

(e) The recorded owner of a vessel or outboard motor shall notify the department not later than the 20th day after the date:

(1) of the transfer by sale, donation, gift, or other means of all or any part of the owner's interest in the vessel or outboard motor; or

(2) of the permanent removal of the vessel or outboard motor from this state to another state or country.

(f) Notification of a transfer of interest or move to another state or country under Subsection (e) must be on a form prescribed by the department that includes the name and address of the new owner and, as applicable:

(1) the vessel's certificate of number; and

(2) the serial number of the outboard motor.

(g) If a vessel or outboard motor for which the department has issued a certificate of title is destroyed or disposed of in a manner not described by Subsection (e), the recorded owner shall notify the department not later than the 20th day after the date of the destruction or disposal and shall surrender to the department the certificate of title.

(h) On receipt of notice under Subsection (e) or (g), the department shall cancel the title and enter the cancellation in the department's records.

(i) A recorded owner who fails to file notification in accordance with Section 31.037 or this section:

(1) is subject to the penalties under Section 31.127; and

(2) is subject to the removal costs under Section 40.108, Natural Resources Code, and penalties under Chapter 40, Natural

Resources Code, as the person considered responsible for an abandoned vessel or outboard motor.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 16, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 396 (H.B. 1466), Sec. 3, eff. September 1, 2015.

Sec. 31.046. APPLICATION FOR CERTIFICATE OF TITLE. (a) Except as provided in Subsections (b) and (c) of this section, the purchaser of a vessel or an outboard motor shall apply to the department or to a county tax assessor-collector for a certificate of title not later than the 45th day after the date of the sale of the vessel or outboard motor.

(b) A manufacturer or a dealer who sells a vessel or an outboard motor to a person other than a manufacturer or a dealer shall apply to the department or to a county tax assessor-collector for a certificate of title for the vessel or outboard motor in the name of the purchaser not later than the 45th day after the date of the sale.

(c) A dealer who acquires a vessel or an outboard motor, other than a new vessel or outboard motor, is not required to apply for a certificate of title in the name of the dealer, but on resale of the vessel or outboard motor shall apply for the subsequent purchaser under Subsection (b) of this section and shall submit to the department or to a county tax assessor-collector the endorsed certificate of title acquired by the dealer.

(d) The department or county tax assessor-collector may not issue a certificate of title unless the tax due on the vessel or outboard motor under Chapter 160, Tax Code, is paid.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1353, ch. 607, Sec. 4, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 7.06, eff. Oct. 1, 1991; Acts 1993, 73rd Leg., ch. 450, Sec. 16, eff. Sept. 1, 1993.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1249 (H.B. 4032), Sec. 6, eff.

September 1, 2019.

Sec. 31.0465. APPEAL REGARDING CERTIFICATE OF TITLE; BOND; RULES. (a) An applicant for a certificate of title under Section 31.046 may appeal the department's refusal to issue the title by filing a bond with the department as provided by this section.

(b) A bond filed under this section must be:

(1) in the form prescribed by the department;

(2) executed by the applicant;

(3) issued by a person authorized to act as a surety business in this state;

(4) in an amount equal to 1-1/2 times the value of the vessel or outboard motor as determined by the department; and

(5) conditioned to indemnify all prior owners and lienholders and all subsequent purchasers of the vessel or outboard motor or persons who acquire a security interest in the vessel or outboard motor, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, resulting from:

(A) the issuance of the certificate of title for the vessel or outboard motor; or

(B) a defect in or undisclosed security interest in the right, title, or interest of the applicant to or in the vessel or outboard motor.

(c) The department may issue the certificate of title to the person filing the bond if the applicant proves to the satisfaction of the department that:

(1) the vessel or outboard motor is not stolen; and

(2) issuance of a certificate of title would not defraud the owner or a lienholder of the vessel or outboard motor.

(d) A person described by Subsection (b)(5) has a right of action to recover on the bond for a breach of a condition of the bond described by Subsection (b)(5). The aggregate liability of the surety to all persons may not exceed the amount of the bond.

(e) A bond filed under this section expires on the third anniversary of the date the bond became effective. The department shall return an expired bond to the person who filed the bond unless the department has been notified of a pending action to recover on the bond.

(f) On return of a bond under Subsection (e), the department shall issue a certificate of title to the person to whom the bond is returned.

(g) In addition to the situation described by Subsection (c), the commission by rule may define acceptable situations in which certificates of title may be issued after the filing of a bond under this section.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 8(j), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 10, eff. Sept. 1, 2003.

Sec. 31.0466. TITLE FOR ABANDONED VESSEL; BOND. (a) A person may apply for a certificate of title for an abandoned vessel or outboard motor found on the person's property.

(b) The department may cancel the certificate for the abandoned vessel or outboard motor and issue a new certificate to the applicant if the applicant:

(1) executes and files a bond with the department:

(A) in the form prescribed by the department;

(B) issued by a person authorized to act as a surety business in this state;

(C) in an amount equal to 1-1/2 times the value of the abandoned vessel or outboard motor as determined by the department; and

(D) conditioned to indemnify all prior owners and lienholders and all subsequent purchasers of the abandoned vessel or outboard motor or persons who acquire a security interest in the vessel or outboard motor, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, resulting from:

(i) the issuance of the certificate of title for the abandoned vessel or outboard motor; or

(ii) a defect in or undisclosed security interest in the right, title, or interest of the applicant to or in the abandoned vessel or outboard motor;

(2) proves to the satisfaction of the department that:

(A) the abandoned vessel or outboard motor is not stolen;

(B) issuance of a certificate of title would not

defraud the owner or a lienholder of the abandoned vessel or outboard motor;

(C) at least 30 days before the applicant applied for the certificate, the applicant contacted the applicant's local law enforcement agency through certified mail to report that the vessel or outboard motor is abandoned; and

(D) the local law enforcement agency has not taken the abandoned vessel or outboard motor into custody or informed the applicant of the agency's intent to take the abandoned vessel or outboard motor into custody; and

(3) posts notice of the certificate of title application in the manner and for a period of time designated by rule by the department.

(c) A person described by Subsection (b)(1)(D) has a right of action to recover on the bond for a breach of a condition of the bond described by Subsection (b)(1)(D). The aggregate liability of the surety to all persons may not exceed the amount of the bond.

(d) A bond filed under this section expires on the third anniversary of the date the bond became effective. The department shall return an expired bond to the person who filed the bond unless the department has been notified of a pending action to recover on the bond.

(e) On return of a bond under Subsection (d), the department shall issue a certificate of title to the person to whom the bond is returned.

(f) If an abandoned vessel or outboard motor is not claimed before the department issues a certificate of title under this section, the owner or lienholder waives all rights and interests in the abandoned vessel or outboard motor and consents to the cancellation of the certificate for the abandoned vessel or outboard motor.

(g) The applicant for the certificate of title for the abandoned vessel or outboard motor takes title free and clear of all liens and claims of ownership.

(h) In addition to the situation described by Subsection (b)(2), the commission by rule may define acceptable situations in which certificates of title may be issued after the filing of a bond under this section.

(i) This section does not apply to a vessel or outboard motor that is subject to a contract or lien under Chapter 59 or 70,

Property Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 720 (H.B. 787), Sec. 2, eff. September 1, 2011.

Sec. 31.047. APPLICATION; FORM AND CONTENT; FEE. (a) A person may apply for a certificate of title on a form prescribed by the department.

(b) The form must contain:

(1) the owner's name, address, and owner identifier as prescribed by 33 C.F.R. Section 174.17;

(2) a description of the vessel or outboard motor, including, as appropriate, the manufacturer, make, model, year, length, construction material, manufacturer's or builder's number, hull identification number (HIN), motor number, outdrive number, primary operation purpose, vessel type, propulsion type, engine drive type, fuel, and horsepower;

(3) name and address of purchaser;

(4) date of purchase;

(5) name and address of any security interest owner;

(6) the appropriate affidavit as required by Section 160.042, Tax Code; and

(7) other information required by the department to show the ownership of the vessel or outboard motor, a security interest in the vessel or outboard motor, or a further description of items listed in the subdivision.

(c) The application must be accompanied by other evidence reasonably required by the department to establish that the applicant or other person is entitled to a certificate of title or a noted security interest. The evidence may include:

(1) a certificate of title issued by another state or jurisdiction;

(2) a manufacturer's or importer's certificate;

(3) a bill of sale, assignment, or contract;

(4) a promissory note;

(5) a security agreement;

(6) an invoice;

(7) a bill of lading;

(8) an affidavit;

(9) a probate or heirship proceeding or information;

(10) a judgment of a court of competent jurisdiction;

(11) evidence of an involuntary transfer as defined in Subdivision (5) of Subsection (a) of Section 31.053, as amended, which may be in affidavit form attaching copies of any pertinent underlying documents; or

(12) other documents.

(d) An application for a certificate of title must be accompanied by the fee required by Section 31.048 of this code.

(e) The department shall be authorized to issue certificates of title on an accelerated basis upon the payment of a fee in addition to the fees provided in Section 31.048 of this code as determined periodically by the department based on regulations the department shall establish.

(f) An application for a certificate of title on a homemade vessel, the origin of which is based on the affidavit of the person building the vessel, proof of materials incorporated into the vessel, and the like, must be accompanied by a certificate from a game warden commissioned by the department that the vessel has been inspected by such officer and appears to be as applied for. The applicant shall pay a fee of $25 to the department for this inspection.

(g) If administration of an estate is not required by law, an affidavit submitted under Subsection (c) must include:

(1) a showing that the administration is not required;

(2) identification of all heirs; and

(3) a statement by the heirs of the name in which to issue the certificate.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 4060, ch. 636, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 1013, Sec. 1, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 498, Sec. 1, eff. Sept. 1, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(22), eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 450, Sec. 17, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1099, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 529 (H.B. 943), Sec. 1, eff. June 17, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 286 (H.B. 1106), Sec. 5, eff.

September 1, 2013.

Sec. 31.048. FEE. (a) The fee for the issuance of a certificate of title or for the notation of a security interest, lien, or other encumbrance is $5 or an amount set by the commission, whichever amount is more, and is treated as fees collected under Section 31.026 of this code.

(b) If the fee is collected by a county tax assessor-collector, the tax assessor-collector shall retain 10 percent of the fee collected and send the remainder to the department. The amount retained by the tax assessor-collector shall be deposited to the credit of the officers salary fund of the county to be used for the sole purpose of paying the salaries of persons issuing vessel and outboard motor certificates of title.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1259, ch. 484, Sec. 9, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1353, ch. 607, Sec. 5, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1328, ch. 277, Sec. 6, eff. Sept. 1, 1983.; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 6, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 450, Sec. 18, eff. Sept. 1, 1993.

Sec. 31.049. FORM OF CERTIFICATE OF TITLE. (a) A certificate of title must be on a form prescribed by the department and must contain:

(1) the name and address of the owner of the vessel or outboard motor;

(2) the name of the owner of a security interest in the vessel or outboard motor; and

(3) a description of the vessel or outboard motor.

(b) If there is no lien on the vessel or outboard motor, the original certificate of title shall be delivered to the owner and a copy retained by the department.

(c) If there is a lien on the vessel or outboard motor, the original certificate of title shall be sent to the first lienholder and a copy shall be retained by the department.

(d) An original certificate of title bears an assigned title

number. A replacement certificate of title consists of a new, printed title that bears a new title number. The previous title number is void when the replacement certificate of title is issued.

(e) Title may be transferred by surrender of the original certificate of title properly endorsed to show the transfer, by evidence of an involuntary transfer as defined in Subdivision (5) of Subsection (a) of Section 31.053, or by following the provisions of Subsection (c) of Section 31.053 of this code.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 4061, ch. 636, Sec. 2, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 450, Sec. 19, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 200, Sec. 8(k), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 11, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 286 (H.B. 1106), Sec. 6, eff. September 1, 2013.

Sec. 31.050. FORM OF MANUFACTURER'S AND IMPORTER'S CERTIFICATE. (a) A manufacturer's certificate or an importer's certificate must include:

(1) a description of the vessel or outboard motor as required by Subdivision (2) of Subsection (b) of Section 31.047 of this code;

(2) the name and place of construction or other origin;

(3) the signature of the manufacturer or an equivalent of the signature of the manufacturer; and

(4) the endorsement of the original and each subsequent transferee, including the applicant for the original certificate of title.

(b) A lien, security interest, or other encumbrance may not be shown on a manufacturer's or importer's certificate.

(c) A security interest in a vessel or outboard motor held as inventory by a person who is in the business of selling or leasing goods of that kind may be perfected only by complying with Chapter 9, Business & Commerce Code.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 668, ch. 152,

Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 450, Sec. 20, eff. Sept. 1, 1993.

Sec. 31.051. REPLACEMENT CERTIFICATES. The department shall provide by regulation for the replacement of lost, mutilated, or stolen certificates.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977.

Sec. 31.052. SECURITY INTEREST LIENS. (a) Except as provided by this section and Section 31.050(c), and except for statutory liens, security interests in a vessel or outboard motor shall be noted on the certificate of title of the vessel or outboard motor to which the security interest applies. On recordation of a security interest on the certificate of title, the recorded security interest owner and assignees under Subsection (c) obtain priority over the rights of a lien creditor, as defined by Section 9.102, Business & Commerce Code, for so long as the security interest is recorded on the certificate of title.

(b) In case of any conflict between this code and Chapters 1 through 9 of the Business & Commerce Code, the provisions of the Business & Commerce Code control.

(c) A security interest owner may assign a security interest recorded under this chapter without making any filing or giving any notice under this chapter. The security interest assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the debtor, including lien creditors, as defined by Section 9.102, Business & Commerce Code.

(d) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the security interest assigned, as evidence of the assignment of the security interest recorded under this chapter, apply to the department or a county assessor-collector for the assignee to be named as security interest owner on the certificate of title and notify the debtor of the assignment. Failure to make application under this subsection or notify a debtor of an assignment does not create a cause of action against the

recorded security interest owner, the assignor, or the assignee or affect the continuation of the perfected status of the assigned security interest in favor of the assignee against transferees from and creditors of the debtor, including lien creditors, as defined by Section 9.102, Business & Commerce Code.

Added by Acts 1977, 65th Leg., p. 1255, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 669, ch. 152, Sec. 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 4062, ch. 636, Sec. 3, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 16, Sec. 15.01, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 450, Sec. 21, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 814 (S.B. 1592), Sec. 3, eff. June 19, 2009.

Sec. 31.053. TRANSFERS OF VESSELS AND OUTBOARD MOTORS. (a) No person may sell, assign, transfer, or otherwise dispose of an interest in a vessel or an outboard motor without:

(1) if the transferee is not a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the department a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;

(2) if the transferee is a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the transferee a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;

(3) if the vessel or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is a manufacturer or dealer, delivering to the department sufficient evidence of title or other information to permit the issuance of a certificate of title for the vessel or outboard motor in the name of the transferee;

(4) if the vessel or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is not a manufacturer or dealer, delivering to the transferee sufficient evidence of title or other information to permit the transferee to apply for and receive a certificate of title for the vessel or outboard motor in the name of the transferee; or

(5) delivering to the transferee a certificate of title for the vessel or outboard motor in the name of the transferor and properly endorsed to show the transfer or evidence of an involuntary transfer.

(b) For the purposes of Subsection (a)(5) of this section an involuntary transfer shall mean the transfer of ownership pursuant to a contractual or statutory lien which confers the power or right to the transfer. The evidence shall reflect the proper exercise of the right conferred pursuant to the lien.

(c) The transferor shall provide the documents or evidence required by Subsection (a) of this section to the department or the transferee, as appropriate, in sufficient time to allow the transferee to register and obtain a certificate of title for the vessel or outboard motor not later than the 45th day after the date of the sale.

(d) Notwithstanding the provisions of Subsection (a) of this section, a buyer of a new vessel or a new outboard motor in the ordinary course of business as provided in Section 9.320(a), Business & Commerce Code, takes the interest free of security interests as provided in that section. A buyer of a vessel or outboard motor that is not new shall be governed by Subsection (a) of this section.

(e) The transferee shall provide the department with sufficient evidence of ownership for transfer of a vessel or outboard motor if the transferee:

(1) failed to obtain the title from the transferor or the title was lost, stolen, or mutilated before the transfer was made; and

(2) has made reasonable efforts to contact the transferor to obtain the required documentation.

(f) A person who is not licensed as a dealer, distributor, or manufacturer under this chapter must obtain a certificate of number or certificate of title to a vessel or outboard motor in the person's name before transferring the certificate of number or certificate of title.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 4063, ch. 636, Sec. 4, eff. Aug. 29, 1983; Acts 1989, 71st Leg., ch. 283, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 450, Sec. 22, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 414, Sec. 2.33, eff. July

1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 8(l), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 12, eff. Sept. 1, 2003. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1249 (H.B. 4032), Sec. 7, eff. September 1, 2019.

Sec. 31.055. EXCEPTIONS. This subchapter does not apply to vessels with a valid marine document issued by the United States Coast Guard's National Vessel Documentation Center or a federal agency that is a successor to the National Vessel Documentation Center.

Added by Acts 1977, 65th Leg., p. 1253, ch. 484, Sec. 1(e), eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 450, Sec. 23, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1099, Sec. 3, eff. Sept. 1, 1999.

Sec. 31.056. FEE EXEMPTION FOR GOVERNMENT VESSELS AND OUTBOARD MOTORS. A fee imposed by this chapter does not apply to a vessel or outboard motor purchased by, owned by, or used exclusively in the service of this state, a political subdivision of this state, or the federal government.

Added by Acts 2007, 80th Leg., R.S., Ch. 410 (S.B. 969), Sec. 1, eff. June 15, 2007.

SUBCHAPTER C. REQUIRED EQUIPMENT

Sec. 31.061. UNIFORMITY OF EQUIPMENT REGULATIONS; STATE POLICY. It is the policy of the state that all equipment rules and regulations enacted under the authority granted in this chapter be uniform and consistent with the equipment provisions of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.062. OPERATION OF VESSELS WITHOUT REQUIRED EQUIPMENT PROHIBITED. No person may operate or give permission for the operation of a vessel that is not provided with the equipment

required by this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.063. CLASSES OF MOTORBOATS. Motorboats subject to the provisions of this chapter are divided into four classes according to length as follows:

Class A. Less than 16 feet in length.
Class 1. 16 feet or over and less than 26 feet in length.
Class 2. 26 feet or over and less than 40 feet in length.
Class 3. 40 feet in length or over.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.064. LIGHTS. A vessel or motorboat when not at dock must have and exhibit at least one bright light, lantern, or flashlight from sunset to sunrise in all weather. A vessel or motorboat when underway between sunset and sunrise in all weather must have and exhibit the lights prescribed by the commandant of the Coast Guard for boats of its class. No other lights that may be mistaken for those prescribed may be exhibited.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 422, Sec. 1, eff. Sept. 1, 1993.

Sec. 31.065. SOUND-PRODUCING DEVICES. A motorboat must have an efficient whistle or other sound-producing device if one is required by the commandant of the Coast Guard.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 422, Sec. 1, eff. Sept. 1, 1993.

Sec. 31.066. LIFE PRESERVING DEVICES. (a) A motorboat, including a motorboat carrying passengers for hire, must carry at least one wearable personal flotation device of the sort prescribed by the regulations of the commandant of the Coast Guard for each person on board, so placed as to be readily accessible.

(b) The operator of a motorboat less than 26 feet in length, while underway, shall require every passenger under 13 years of age to wear a wearable personal flotation device of the sort prescribed by the regulations of the commandant of the Coast Guard. A life belt or ring buoy does not satisfy this requirement.

(c) A person may not operate a recreational vessel 16 feet or more in length unless the vessel is equipped with:

(1) the number of wearable personal flotation devices required under Subsection (a); and

(2) additionally, at least one immediately accessible Type IV throwable flotation device of the sort prescribed by the regulations of the commandant of the Coast Guard.

(d) A person under 13 years of age on board a vessel described by Section 31.073(a) or (b) must wear a wearable personal flotation device of the sort prescribed by the commandant of the Coast Guard while the vessel is under way.

(e) An adult operator of a vessel described by Section 31.073 may not permit a person under 13 years of age to be on board the vessel while the vessel is under way if the person under 13 years of age is not wearing a wearable personal flotation device required by Subsection (d).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 543, Sec. 2, eff. June 14, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1127 (H.B. 308), Sec. 2, eff. June 17, 2011.

Sec. 31.067. FIRE EXTINGUISHERS. (a) A motorboat must have the number, size, and type of fire extinguishers prescribed by the commandant of the Coast Guard.

(b) The fire extinguishers must be capable of promptly and effectively extinguishing burning gasoline. They must be kept in condition for immediate and effective use at all times and must be placed so as to be readily accessible.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.068. FLAME ARRESTORS; BACKFIRE TRAPS. A motorboat

must have the carburetor or carburetors of every engine using gasoline as fuel, except outboard motors, equipped with an efficient flame arrestor, backfire trap, or other similar device prescribed by the regulations of the commandant of the Coast Guard.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.069. VENTILATORS. Each motorboat and vessel, except an open boat, using as fuel any liquid of a volatile nature must have the equipment prescribed by the commandant of the Coast Guard designed to ventilate properly and efficiently the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.070. EXHAUST WATER MANIFOLD; MUFFLER. A motorboat operating on the water of this state must have an exhaust water manifold or a factory-type muffler installed on the engine.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.071. REARVIEW MIRRORS. (a) A vessel used to tow a person or persons on water skis or an aquaplane or similar device on the water of this state must have a rearview mirror of a size no less than four inches from bottom to top and across from one side to the other. The mirror must be mounted firmly so as to give the boat operator a full and complete view beyond the rear of the boat at all times.

(b) Subsection (a) of this section does not apply to vessels used in water ski tournaments, competitions, or exhibitions, or to a vessel that, in addition to its operator, has on board a person 13 years of age or older observing the progress of the person being towed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 543, Sec. 3, eff. June 14, 1989.

Sec. 31.072. RACING BOATS; EQUIPMENT EXEMPTIONS. (a) A motorboat designed and intended solely for racing need not have a whistle or other sound-producing mechanical appliance or a bell as required by Section 31.065 of this code or a fire extinguisher as required by Section 31.067 of this code while competing in a race or while engaged in navigation that is incidental to tuning up for a race conducted in accordance with the provisions of this chapter.

(b) A racing craft engaged in a race sanctioned by the governing board of any public water of this state need not have an exhaust water manifold or factory-type muffler installed on the engine as required by Section 31.070 of this code if written permission is granted by the governing board of the water body.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.073. CANOES, PUNTS, ROWBOATS, SAILBOATS, RUBBER RAFTS, RACING SHELLS, ROWING SCULLS, KAYAKS, AND OTHER PADDLE CRAFT; EQUIPMENT EXEMPTIONS. (a) All canoes, kayaks, punts, rowboats, sailboats, rubber rafts, and other paddle craft when paddled, poled, oared, or windblown are exempt from all safety equipment requirements except each vessel must have the following:

(1) one Coast Guard approved wearable personal flotation device for each person aboard; and

(2) the lights prescribed by the commandant of the Coast Guard for vessels and required under Section 31.064.

(a-1) Notwithstanding Subsection (a), a vessel described by that subsection, except a canoe or kayak, that is 16 feet or more in length must be equipped with at least one Type IV personal flotation device of the sort prescribed by the regulations of the commandant of the Coast Guard.

(b) Racing shells, rowing sculls, and racing kayaks while participating in or practicing for an officially sanctioned race are exempt from all safety equipment requirements except the lights prescribed by the commandant of the Coast Guard for vessels and required under Section 31.064.

(c) In this section, "racing shell," "rowing scull," or "racing kayak" means a manually propelled boat:

(1) recognized by a national or international racing association for use in competitive racing;

(2) not designed or used to carry equipment serving any purpose other than competitive racing; and

(3) in which each occupant, except a coxswain, rows, sculls, or paddles.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1997, 75th Leg., ch. 236, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1127 (H.B. 308), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1127 (H.B. 308), Sec. 4, eff. June 17, 2011.

Sec. 31.074. VISUAL DISTRESS SIGNAL. (a) In this section:

(1) "Coastal waters" means the water that lies within nine nautical miles from the coastline of this state.

(2) "Uninspected passenger vessel" has the meaning assigned by 46 C.F.R. Section 24.10-1.

(3) "Visual distress signal" means a device that is approved and required by the commandant of the United States Coast Guard for the purpose of indicating a vessel in distress, including flares, smoke signals, and non-pyrotechnic signals.

(b) No person may operate on the coastal waters a vessel that is 16 feet or more in length, or any vessel operating as an uninspected passenger vessel, unless the vessel is equipped with readily accessible visual distress signals approved for day and night use in the number required by the commandant of the United States Coast Guard.

(c) Between sunset and sunrise, no person may operate on the coastal waters a vessel less than 16 feet in length unless the vessel is equipped with readily accessible visual distress signals approved for night use in the number required by the commandant of the United States Coast Guard.

(d) No person may operate a vessel on coastal waters unless each visual distress signal required under this section is in serviceable condition and the service life of the signal, if indicated by a date marked on the signal, has not expired.

Added by Acts 2013, 83rd Leg., R.S., Ch. 286 (H.B. 1106), Sec. 7, eff. September 1, 2013.

SUBCHAPTER D. BOATING REGULATIONS

Sec. 31.091. UNIFORMITY OF BOATING REGULATIONS. In the interest of uniformity, it is the policy of the State of Texas that the basic authority for the enactment of boating regulations is reserved to the state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.092. LOCAL REGULATIONS. (a) The governing body of an incorporated city or town, with respect to public water within its corporate limits and all lakes owned by it, may designate by ordinance certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(b) The commissioners court of a county, with respect to public water within the territorial limits of the county that is outside of the limits of an incorporated city or town or a political subdivision designated in Subsection (c) of this section and that are not lakes owned by an incorporated city or town, may enter an order on its books designating certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(c) The governing board of a political subdivision of the state created pursuant to Article XVI, Section 59, of the Texas Constitution, for the purpose of conserving and developing the public water of the state, with respect to public water impounded within lakes and reservoirs owned or operated by the political subdivision, may designate by resolution or other appropriate order certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(d) A copy of all rules and regulations adopted under this

section shall be summarily filed with the department.

(e) No city, town, village, special district, or other political subdivision of the state may impose or collect a fee for the registration or inspection of vessels to be used on public water against the owner or operator of a vessel used on public water. This section does not apply to Chapter 321, Tax Code, nor to any launch fees, docking fees, entry fees, or other recreational fees which may be imposed or collected by any political subdivision of the State of Texas for the use of the facilities afforded by any such district to the public.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1274, ch. 496, Sec. 1, eff. Aug. 29, 1977; Acts 1989, 71st Leg., ch. 2, Sec. 14.27(a)(5), eff. Aug. 28, 1989.

Sec. 31.093. RULES OF THE ROAD. The United States Coast Guard Inland Rules apply to all public water of this state to the extent they are applicable.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.094. RECKLESS OR NEGLIGENT OPERATION. No person may operate any motorboat or vessel or manipulate any water skis, aquaplane, or similar device in a wilfully or wantonly reckless or negligent manner that endangers the life, limb, or property of any person.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.095. EXCESSIVE SPEED. (a) No person may operate any boat at a rate of speed greater than is reasonable and prudent, having due regard for the conditions and hazards, actual and potential, then existing, including weather and density of traffic, or greater than will permit him, in the exercise of reasonable care, to bring the boat to a stop within the assured clear distance ahead.

(b) The commission may provide for the standardization of speed limits for moving vessels. No political subdivision or state agency

may impose a speed limit not in conformity with the commission's standards.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 313, Sec. 1, eff. Sept. 1, 1989.

Sec. 31.096. RECKLESS OPERATION AND EXCESSIVE SPEED. No person may operate a vessel or manipulate water skis, an aquaplane, or a similar device on the water of this state in wilful or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner that endangers, or is likely to endanger, a person or property.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 10, eff. Sept. 1, 1985.

Sec. 31.098. HAZARDOUS WAKE OR WASH. No person may operate a motorboat so as to create a hazardous wake or wash.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.099. PROHIBITION ON CIRCULAR COURSE AROUND INDIVIDUALS ENGAGED IN WATER ACTIVITIES. (a) No person may operate a motorboat in a circular course around:

(1) any other boat or personal watercraft any occupant of which is engaged in fishing, waterskiing, or a similar activity; or

(2) any person swimming.

(a-1) Subsection (a) does not apply to a person operating a motorboat in a circular course to retrieve a downed or fallen water-skier or other person engaged in a similar activity.

(b) No swimmer or diver may come within 200 yards of a sight-seeing or excursion boat except for maintenance purposes or unless within an enclosed area.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 236 (H.B. 596), Sec. 2, eff. June

17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 236 (H.B. 596), Sec. 3, eff. June 17, 2011.

Sec. 31.100. INTERFERENCE WITH MARKERS OR RAMPS. (a) No person may moor or attach a boat to a buoy, beacon, light marker, stake, flag, or other aid to safe operation placed upon the public water of this state by or under the authority of the United States or the State of Texas. No person may move, remove, displace, tamper with, damage, or destroy the markers or aids to safe operation.

(b) No person may moor or attach a vessel to a state-owned boat launching ramp except in connection with the launching or retrieving of a boat from the water.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.101. OBSTRUCTING PASSAGE. (a) No person may anchor a boat in the traveled portion of a river or channel so as to prevent, impede, or interfere with the safe passage of any other boat through the same area.

(b) No person may anchor a vessel near a state-owned boat ramp so as to prevent, impede, or interfere with the use of the boat ramp.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.102. OPERATING BOATS IN RESTRICTED AREAS. No person may operate a boat within a water area that has been clearly marked, by buoys or some other distinguishing device, as a bathing, fishing, swimming, or otherwise restricted area by the department or by a political subdivision of the state. This section does not apply to a patrol or rescue craft or in the case of an emergency.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.1021. OPERATING VESSELS IN SCUBA DIVING OR SNORKELING AREAS. (a) No person may operate a vessel within 50 feet of a buoy or of another vessel displaying a "diver down" flag that marks an

area in which a person is scuba diving or snorkeling.

(b) No person may operate a vessel at a speed greater than the minimum speed necessary to maintain steerageway and headway while the vessel is within 150 feet of a buoy or a vessel displaying a "diver down" flag that marks an area in which a person is scuba diving or snorkeling.

(c) To be entitled to the protections of this section, a scuba diver or snorkeler must prominently display a "diver down" flag from a buoy or vessel.

(d) This section does not apply:

(1) to a person who is operating a patrol or rescue craft; or

(2) in an emergency.

(e) Subsection (a) of this section does not apply:

(1) to a person who is already operating a vessel in an area when another person displays a "diver down" flag within 150 feet of that vessel;

(2) to a person who is operating a vessel in a waterway that is less than 300 feet wide; or

(3) to a person who has permission to enter the area from the person who placed the buoy or the person who is operating the vessel displaying the "diver down" flag.

(f) In this section, "'diver down' flag" means a square or rectangular red flag, at least 15 inches by 15 inches, that has a diagonal white stripe.

Added by Acts 1989, 71st Leg., ch. 1146, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 226, Sec. 1, eff. Sept. 1, 1991.

Sec. 31.103. WATER SKIS, AQUAPLANES, ETC.: TIME AND MANNER OF OPERATION. (a) No person may operate a vessel on any water of this state towing a person or persons on water skis, surfboards, or similar devices and no person while being towed may engage in water-skiing, surfboarding or similar activity at any time between the hours from one-half hour after sunset to one-half hour before sunrise. This subsection does not apply to motorboats or vessels used in water ski tournaments, competitions, or exhibitions or trials therefor if adequate lighting is provided.

(b) All motorboats having in tow or otherwise assisting in

towing a person on water skis, aquaplanes, or similar contrivances shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(c) A person being towed on water skis, aquaplanes, or similar devices by a vessel is considered an occupant of the vessel.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 421, Sec. 1, eff. Sept. 1, 1993.

Sec. 31.104. ACCIDENTS: DUTY OF OPERATORS. The operator of a vessel involved in a collision, accident, or casualty shall:

(1) render to other persons affected such assistance as may be practicable and necessary in order to save them from or minimize any danger insofar as he can do so without serious danger to his own vessel, crew, and passengers; and

(2) give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.105. INCIDENT REPORTS. (a) This section applies only to an incident that is a collision, accident, or other casualty that results in:

(1) the death of a person;

(2) injury to a person that requires medical treatment beyond the provision of first aid; or

(3) damage to property in excess of an amount set by the commission of not less than $2,000.

(b) Not later than the 30th day after the date of an incident to which this section applies, the operator of a vessel involved in the incident shall provide to a marine safety enforcement officer or game warden commissioned by the department a full description of the incident in accordance with regulations established by the department.

(c) A marine safety enforcement officer who in the regular course of duty investigates an incident to which this section applies shall electronically file a written report of the incident with the

department:

(1) in a form prescribed by the department; and

(2) not later than the 15th day after the date the officer initially became aware of the incident.

(d) On request made by an authorized official or agency of the United States, any information available to the department under Subsection (b) of this section shall be sent to the official or agency.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 835, ch. 311, Sec. 1, eff. May 30, 1977; Acts 1989, 71st Leg., ch. 543, Sec. 4, eff. June 14, 1989. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 474 (H.B. 555), Sec. 1, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 943 (S.B. 1670), Sec. 1, eff. September 1, 2023.

Sec. 31.1055. RELEASE OF INCIDENT REPORTS. (a) This section applies only to an incident report that is held by the department or another governmental entity.

(b) In this section:

(1) "Incident" means an incident described by Section 31.105(a).

(2) "Incident report" means a written report required under Section 31.105(c).

(c) Except as otherwise provided by this section, an incident report is confidential and for the use of:

(1) the department; and

(2) an authorized official or agency of the United States or a state or local governmental entity.

(d) On written request, the department or the governmental entity shall release an incident report to:

(1) an entity described by Subsection (c);

(2) the law enforcement agency that employs the marine safety enforcement officer who investigated the incident and filed the incident report with the department, including an agent of the law enforcement agency authorized by contract to obtain the information;

(3) the court in which a case involving a person involved in the incident is pending if the incident report is subpoenaed; or

(4) a person directly concerned in the incident or having an interest in the incident as:

(A) a person involved in the incident;

(B) the authorized representative of a person involved in the incident;

(C) a vessel operator involved in the incident;

(D) an employer, parent, or legal guardian of a vessel operator involved in the incident;

(E) the owner of a vessel or property damaged in the incident;

(F) a person who has established financial responsibility for a vessel involved in the incident, including a policyholder of a liability insurance policy covering the vessel;

(G) an insurance company that issued an insurance policy covering a vessel involved in the incident;

(H) an insurance company that issued a policy covering any person involved in the incident;

(I) a person under contract to provide claims or underwriting information to a person described by Paragraph (F), (G), or (H);

(J) a radio or television station that holds a license issued by the Federal Communications Commission;

(K) a newspaper that is:

(i) a free newspaper of general circulation or qualified under Section 2051.044, Government Code, to publish legal notices;

(ii) published at least once a week; and

(iii) available and of interest to the general public in connection with the dissemination of news; or

(L) a person who may sue because of death resulting from the incident.

(e) In addition to the information required to be released under Subsection (d), the department shall publish at least annually statistics derived from incident reports that relate to the number, cause, and location of the reported incidents.

(f) The department when releasing information under Subsection (d)(4)(J) or (K):

(1) may not release the personal identifying information,

as defined by Section 521.002(a), Business & Commerce Code, of an individual included in an incident report; and

(2) shall withhold or redact:

(A) the address, other than zip code, and telephone number of a person included in an incident report;

(B) the registration or hull identification number of a vessel included in an incident report;

(C) the badge number or identification number of the investigating officer;

(D) the date of death of a person who died as a result of the incident; and

(E) the location to which a person injured or killed in the incident was transported or the person that provided the transportation.

(g) The amount that may be charged for information provided under Subsection (d) shall be calculated in the manner specified by Chapter 552, Government Code, for public information provided by a governmental body under that chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 943 (S.B. 1670), Sec. 2, eff. September 1, 2023.

Sec. 31.106. PERSONAL WATERCRAFT. (a) No person shall operate a personal watercraft in the following manner or under the following circumstances:

(1) unless each person riding on or towed behind the vessel is wearing a U.S. Coast Guard approved Type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch, unless such lanyard is attached to the person, clothing, or personal flotation device of the operator as appropriate for the vessel involved;

(3) during the period between sunset and sunrise;

(4) within 50 feet of any other vessel, person, stationary platform or other object, or shore, except at headway speed;

(5) if the operator is under 13 years of age unless the operator is supervised by another person who:

(A) is at least 18 years of age;

(B) can lawfully operate the watercraft; and

(C) is on board the watercraft when under way;

(6) if the personal watercraft is a motorboat, within any area prohibited for operation of a motorboat by state law or local rule or regulation;

(7) while towing water skis, an aquaplane, a surfboard, a tube, or any other similar device, unless the towing vessel is designed to carry on board a minimum of two persons;

(8) by jumping the wake of another vessel recklessly or unnecessarily close to that vessel; or

(9) in a manner that requires the operator to swerve at the last possible moment to avoid collision.

(b) The provisions of this section do not apply to professional exhibitions or an officially sanctioned race, tournament, or exhibition.

(c) Subsection (a)(4) of this section does not prohibit the operation of personal watercraft on bodies of water less than 100 feet in width.

(d) An owner of a personal watercraft permitting a person under 18 years of age to operate the personal watercraft in a manner prohibited by this section may be notified of the violation.

(e) For the purposes of this section, a person is considered to be accompanying the operator of a personal watercraft if the person is on board the personal watercraft when underway.

Added by Acts 1989, 71st Leg., ch. 571, Sec. 2, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 739, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1363, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 269 (H.B. 1395), Sec. 1, eff. June 17, 2011.

Sec. 31.107. OPERATION OF MOTORBOAT. No person may operate a motorboat powered by a motor with a manufacturer's rating of more than 15 horsepower on the public waters of this state unless the person is at least 13 years of age or is supervised by another person who:

(1) is at least 18 years of age;

(2) can lawfully operate the motorboat; and

(3) is on board the motorboat when under way.

Added by Acts 1989, 71st Leg., ch. 1006, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 31.106 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(23), eff. Sept. 6, 1990. Amended by Acts 1997, 75th Leg., ch. 1363, Sec. 6, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 269 (H.B. 1395), Sec. 2, eff. June 17, 2011.

Sec. 31.1071. OPERATION OF MOTORBOAT WITH EMERGENCY ENGINE CUTOFF SWITCH. (a) In this section, "engine cutoff switch" means an emergency switch installed on a motorboat that:

(1) is designed to shut off the engine if:

(A) the motorboat operator using a lanyard attachment activates the switch by falling overboard or otherwise moving beyond the length of the lanyard; or

(B) the motorboat operator or a passenger using a wireless attachment activates the switch by falling overboard and submerging a man-overboard transmitter; and

(2) attaches:

(A) physically to the motorboat operator through the use of a lanyard worn by the operator; or

(B) wirelessly through the use of a water-activated man-overboard transmitter worn by the motorboat operator or any similarly equipped passenger on the motorboat.

(b) A motorboat operator may not operate a motorboat less than 26 feet in length and equipped by the manufacturer with an engine cutoff switch while the motorboat is under way and moving at greater than headway speed without first verifying that the switch is operational and fully functional and properly attaching the lanyard or wireless attachment, as appropriate for the specific motorboat, to the operator's body or to the clothing or personal flotation device being worn by the operator.

Added by Acts 2019, 86th Leg., R.S., Ch. 1030 (H.B. 337), Sec. 1, eff. September 1, 2019.

Sec. 31.108. BOATER EDUCATION PROGRAM. (a) The commission shall adopt rules to:

(1) administer a boater education program that is designed to educate persons about the safe operation of vessels;

(2) approve boater education courses that meet or exceed the minimum instruction requirement established by the National Association of State Boating Law Administrators on or after January 1, 2016, and adopted by commission rule;

(3) create an equivalency examination that may be taken, as the commission determines is consistent with promoting public safety in the operation of vessels, instead of the boater education course; and

(4) ensure that boater education courses and examinations are available in each county.

(a-1) A boater education course or equivalency examination under this section must include information on how to prevent the spread of exotic harmful or potentially harmful aquatic plants, fish, and shellfish, including department-approved methods for cleaning:

(1) a boat;

(2) a boat's motor;

(3) fishing and other equipment; and

(4) a boat trailer.

(b) The commission by rule may create exemptions from boater education requirements imposed by statute to the extent the exemptions are consistent with promoting public safety in the operation of vessels.

(c) The commission by rule shall create a standard form for a boater identification card to be issued to a person who successfully completes a boater education course or course equivalency examination.

(d) The department may appoint agents to:

(1) administer a boater education course or course equivalency examination; and

(2) issue boater identification cards under guidelines established by the commission.

(e) An officer or employee of the department shall collect a $5 examination or course fee and forward the fee and any examination documentation to the department not later than the 30th day after the date the examination or course is administered.

(f) An agent acting under authority of Subsection (d):

(1) shall collect a $10 examination or course fee and forward the fee and any examination documentation to the department

not later than the 30th day after the date the examination or course is administered; and

(2) may collect and keep a $3 service fee, or an amount set by the commission, whichever is greater.

(g) Money received by the department under Subsections (e) and (f)(1) shall be deposited in the state treasury to the credit of the game, fish, and water safety account established under Section 11.032 and may be used only for the administration of the boater education program established under this section.

Added by Acts 1997, 75th Leg., ch. 1363, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1254 (H.B. 3722), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 142 (H.B. 597), Sec. 1, eff. May 24, 2013.

Acts 2023, 88th Leg., R.S., Ch. 235 (H.B. 2755), Sec. 3, eff. September 1, 2023.

Sec. 31.109. BOATER EDUCATION COURSE REQUIRED FOR CERTAIN PERSONS. (a) This section applies only to a person who is:

(1) born on or after September 1, 1993; and

(2) operating on the public water of this state:

(A) a vessel powered by a motor with a manufacturer's rating of more than 15 horsepower; or

(B) a windblown vessel over 14 feet in length.

(b) A person subject to this section must have in the person's possession a photographic identification card and either:

(1) a boater identification card issued by the department; or

(2) proof of completion of the requirements to obtain a vessel operator's license issued by the United States Coast Guard.

(c) The department shall issue a boater identification card to a person who has successfully completed:

(1) a boater education course approved by the department; or

(2) a course equivalency examination approved by the department.

(d) A boater identification card issued to a person who has

successfully completed a boater education course or course equivalency examination does not expire.

(e) If, on or before the trial of a person charged with an offense for failing to possess a document required under Subsection (b), the person produces for the court or the prosecuting attorney a document required by Subsection (b) that was issued to the person and was valid at the time of the offense, the court shall dismiss the charge.

(f) A person charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess a document required under Subsection (b) may make to the court not later than the 10th day after the date of the alleged offense an oral or written motion requesting permission to take a boater education course approved by the department or a vessel operator's licensing course provided by the United States Coast Guard. The court shall defer the proceedings brought against a person who makes a motion described by this subsection and allow the person 90 days to present written evidence that the person has successfully completed the course approved by the department or provided by the United States Coast Guard. If the person successfully completes the course and the court accepts the presented evidence, the court shall dismiss the charge.

Added by Acts 1997, 75th Leg., ch. 1363, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 269 (H.B. 1395), Sec. 3, eff. June 17, 2011.

Sec. 31.110. EXEMPTION FROM BOATER EDUCATION COURSE REQUIREMENT; DEFERRAL PROGRAM. (a) A person is not required to comply with Section 31.109 if the person:

(1) holds a master's, mate's, or operator's license issued by the United States Coast Guard;

(2) is supervised by a person who is at least 18 years of age and who is otherwise exempt from the requirements of Section 31.109 or possesses a boater identification card as required by Section 31.109;

(3) is not a resident of this state and has proof that the person has successfully completed a boater education course or equivalency examination in another state that is approved by the

department;

(4) is exempt by rule of the commission as a customer of a business engaged in renting, showing, demonstrating, or testing boats; or

(5) is exempt by rule of the commission.

(b) For purposes of this section, to be considered to be supervising the operator of a watercraft, the person must be on board the watercraft when under way.

(c) The commission by rule shall establish a boater education deferral program. The deferral program must be available at no cost to boat dealers, manufacturers, and distributors.

(d) Money received by the department in connection with a boater education deferral program established by the commission under Subsection (c) shall be deposited in the state treasury to the credit of the game, fish, and water safety account established under Section 11.032 and may be used only for the administration of the boater education program established under Section 31.108.

Added by Acts 1997, 75th Leg., ch. 1363, Sec. 7, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 269 (H.B. 1395), Sec. 4, eff. June 17, 2011.

Acts 2023, 88th Leg., R.S., Ch. 235 (H.B. 2755), Sec. 4, eff. September 1, 2023.

Sec. 31.111. OPERATING VESSEL LIVERY. (a) A vessel livery must purchase liability insurance from an insurer licensed to do business in this state.

(b) Before releasing possession of a rented vessel, a vessel livery shall provide each operator of the rented vessel instruction relating to:

(1) the provisions of this chapter;

(2) operational characteristics of the rented vessel; and

(3) boating regulations that apply in the area of operation of the vessel.

(c) After providing the instruction required by Subsection (b) and before releasing possession of the rented vessel, the vessel livery shall require each operator to sign an acknowledgment form indicating that the operator has received the required instruction.

The vessel livery shall retain the form for at least six months.

Added by Acts 1997, 75th Leg., ch. 1363, Sec. 7, eff. Sept. 1, 1997.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 31.121. ENFORCEMENT OFFICERS. (a) In this section:

(1) "Game warden" means a person who is commissioned as a game warden by the commission.

(2) "State military forces" has the meaning assigned by Section 437.001, Government Code.

(a-1) All peace officers of this state and game wardens must be certified as marine safety enforcement officers by the department to enforce the provisions of this chapter by arresting and taking into custody any person who commits any act or offense prohibited by this chapter or who violates any provision of this chapter.

(a-2) Game wardens commissioned by the commission are the primary enforcement officers responsible for enforcing the provisions of this chapter related to water safety.

(b) The commission by rule shall establish standards for training and certifying marine safety enforcement officers under this section.

(c) The commission by rule may create exemptions for peace officers from marine safety enforcement officer training and certification requirements imposed by statute.

(d) The commission by rule shall establish and collect a fee to recover the administrative costs associated with the certification of marine safety enforcement officers. The commission shall require the applicant for certification or the applicant's employer to pay the fee required under this section.

(e) State military forces may assist game wardens in the search for and rescue of victims of water-oriented accidents.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1997, 75th Leg., ch. 1363, Sec. 8, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 788 (H.B. 2138), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 789 (H.B. 2141), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(37), eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.18, eff. September 1, 2013.

Sec. 31.1211. JURISDICTION OF MUNICIPAL PEACE OFFICERS. (a) Notwithstanding any other law limiting the enforcement jurisdiction of a peace officer, a peace officer of a municipality who is certified as a marine safety enforcement officer under Section 31.121 may enforce the provisions of this chapter within an area of a lake that is outside the enforcement jurisdiction of the peace officer if:

(1) any portion of the lake is contained in the corporate limits or extraterritorial jurisdiction of the municipality; and

(2) the municipality has entered into a memorandum of understanding with the governmental entity having enforcement jurisdiction in that area granting the peace officer enforcement jurisdiction in the area.

(b) The memorandum of understanding under Subsection (a)(2) must:

(1) designate the jurisdiction that has the authority to conduct any prosecution or ongoing investigation of a violation resulting from an enforcement action under this section; and

(2) be approved by the Parks and Wildlife Department.

Added by Acts 2007, 80th Leg., R.S., Ch. 975 (S.B. 410), Sec. 1, eff. June 15, 2007.

Sec. 31.122. WATER SAFETY VESSELS: LIGHTS. Only the department and police water safety vessels may use rotating or flashing blue beacon lights.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 543, Sec. 5, eff. June 14, 1989.

Sec. 31.123. REQUIRED RESPONSE TO POLICE WATER SAFETY VESSEL. The operator of a vessel underway, on sighting a rotating or flashing blue beacon light, shall reduce power immediately and bring the vessel to a no-wake speed and subsequent stop until the intention of

the water safety vessel is understood.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 543, Sec. 6, eff. June 14, 1989.

Sec. 31.124. INSPECTION OF VESSELS. (a) In order to enforce the provisions of this chapter, an enforcement officer may stop and board any vessel subject to this chapter and may inspect the boat to determine compliance with applicable provisions.

(b) An officer boarding a vessel shall first identify himself by presenting proper credentials.

(c) The operator of a vessel required by this chapter to hold a certificate of number aboard the vessel shall show the certificate to the officer on demand, and failure to do so constitutes a violation of this chapter.

(d) No person operating a boat on the water of this state may refuse to obey the directions of an enforcement officer when the officer is acting under the provisions of this chapter.

(e) The safety of the vessel shall always be the paramount consideration of an arresting officer.

(f) If an enforcement officer determines that a vessel and its associated equipment is being used in violation of this chapter or of any regulation or standard issued thereunder so as to create an especially hazardous condition, he may direct the operator to return to mooring, and the vessel may not be used until the condition creating the violation is corrected.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.125. VIOLATIONS; NOTICE TO APPEAR. (a) An enforcement officer who arrests a person for a violation of this chapter may deliver to the alleged violator a written notice to appear within 15 days after the date of the violation before the justice court having jurisdiction of the offense.

(b) The person arrested shall sign the notice to appear promising to make his appearance in accordance with the requirements set forth in the notice. After signing the notice the person may be released. Failure to appear before the court in the county having jurisdiction constitutes a violation of the chapter. A warrant for

the arrest of the person failing to appear may be issued.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 31.126. VENUE. (a) Venue for an alleged violation or offense under the provisions of this chapter is in the justice court, county court, or municipal court having jurisdiction where the violation or offense was committed.

(b) For an offense under the provisions of this chapter, there is a presumption that the offense was committed in the justice precinct and county where the dam containing the body of water is located.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 176 (H.B. 1222), Sec. 1, eff. May 25, 2013.

Sec. 31.127. PENALTIES AND FINES. (a) A person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a proclamation of the commission entered under this chapter or a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 31.043(c) or 31.096 commits an offense that is a Class B Parks and Wildlife Code misdemeanor. A person who violates Section 31.043(c-1) commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

(c) Except as provided by Subsection (f), a person who operates a vessel in violation of Section 31.021(b) or 31.095 commits an offense punishable by a fine of not less than $100 or more than $500.

(d) The operator of a vessel who is involved in a collision, accident, or other casualty that results in death or serious bodily injury to another person and fails to comply with Section 31.104 commits an offense that is a Parks and Wildlife Code felony.

(e) Except as provided by Subsection (d), the operator of a vessel who is involved in a collision, accident, or other casualty and fails to comply with Section 31.104 commits an offense that is a

Class A Parks and Wildlife Code misdemeanor.

(f) A court may dismiss a charge of operating a vessel with an expired certificate of number under Section 31.021 if:

(1) the defendant remedies the defect not later than the 10th working day after the date of the offense and pays a reimbursement fee not to exceed $10; and

(2) the certificate of number has not been expired for more than 60 days.

(g) A person who operates a motorboat in violation of Section 31.1071 commits an offense punishable by a fine of not more than $200.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 12, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 185, Sec. 2, eff. July 1, 1989; Acts 1997, 75th Leg., ch. 1363, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 200, Sec. 8(m), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1133, Sec. 13, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1027 (H.B. 1623), Sec. 12, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 695 (H.B. 384), Sec. 3, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1030 (H.B. 337), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.55, eff. January 1, 2020.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.56, eff. January 1, 2020.

Acts 2021, 87th Leg., R.S., Ch. 919 (S.B. 1923), Sec. 9, eff. September 1, 2021.

Sec. 31.128. DISPOSITION OF FINES. (a) A justice of the peace, or a clerk of any court, or any other officer of this state receiving any fine imposed by a court for a violation of this chapter shall send the fine to the department within 10 days after receipt and shall note the docket number of the case, the name of the person fined, and the section or article of the law under which the conviction was secured.

(b) In justice court cases filed as the result of an arrest by a game warden, the amount to be remitted to the game, fish, and water safety account shall be 85 percent of the fine. In county court cases filed as the result of an arrest by a game warden, the amount to be remitted to the game, fish, and water safety account shall be 80 percent of the fine. All costs of the court shall be retained by the court having jurisdiction of the offense and deposited as other fees in the proper county fund.

(c) In court cases filed as the result of an arrest by a marine safety enforcement officer other than a game warden, the amount to be remitted to the game, fish, and water safety account shall be 60 percent of the fine. All costs of the court shall be retained by the court having jurisdiction of the offense and deposited as other fees in the proper county fund.

(d) Not less than 50 percent of the amount remitted to the game, fish, and water safety account under Subsection (c) must be used for the administration and enforcement of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 39, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1363, Sec. 10, eff. Sept. 1, 1997.

Sec. 31.129. VIOLATION AND ENFORCEMENT OF SEWAGE DISPOSAL REGULATIONS. (a) A person who violates or fails to comply with a rule of the Texas Commission on Environmental Quality concerning the disposal of sewage from boats commits an offense that is a Class C Parks and Wildlife Code misdemeanor. A separate offense is committed each day a violation continues.

(b) The enforcement provisions of this subchapter apply to violations punishable by this section.

(c) A game warden or peace officer who is certified as a marine safety enforcement officer under Section 31.121 may enforce a rule of the Texas Commission on Environmental Quality concerning the disposal of sewage from boats.

(d) A marine safety enforcement officer who reasonably suspects that a boat is discharging sewage in an area where discharge is prohibited may, if the owner or operator is aboard, board the boat for the purpose of inspecting the marine sanitation device for proper operation and testing the sanitation and holding devices, including

placing a dye tablet in the holding tank.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 13, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 24, eff. Sept. 1, 1997.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 579 (S.B. 2445), Sec. 3, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 579 (S.B. 2445), Sec. 4, eff. September 1, 2009.

Sec. 31.130. BOATER EDUCATION COURSE PERMITTED IN LIEU OF FINE. (a) Except as provided by Section 31.131, this section applies to a person who violates for the first time a provision of this chapter relating to the operation of a vessel.

(b) A justice may defer imposition of a fine and place a defendant on probation for a period not to exceed 60 days if the defendant:

(1) pleads guilty or nolo contendere or is found guilty; and

(2) requests permission from the court to attend a boater education course.

(c) The justice shall require the defendant to successfully complete a boater education course approved by the department during the probation period.

(d) If the defendant presents satisfactory evidence that the defendant has successfully completed the boater education course, the justice shall waive imposition of a fine. If the defendant fails to successfully complete the boater education course, the justice shall impose a fine for the violation.

Added by Acts 1997, 75th Leg., ch. 1363, Sec. 11, eff. Sept. 1, 1997.

Sec. 31.131. BOATER EDUCATION COURSE REQUIRED FOR CERTAIN VIOLATIONS. (a) A justice shall require a person who is adjudged guilty of an offense resulting from the violation of a provision of Sections 31.094-31.103 or 31.106 to:

(1) pay any fine imposed for the violation; and

(2) successfully complete a boater education course approved by the department not later than the 90th day after the date the person is adjudged guilty.

(b) If the person fails to successfully complete the boater education course, the person commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1363, Sec. 11, eff. Sept. 1, 1997.

Sec. 31.132. REPORTING PROCEDURES FOR ENFORCEMENT OFFICERS. (a) Except as provided by Subsection (b), a marine safety enforcement officer shall provide to the department on a form prescribed by the department a report of any incident the officer investigates that involves a boating accident, water fatality, or person who allegedly operates a boat while intoxicated. The officer shall provide the report not later than the 15th day after the date the officer initially became aware of the incident.

(b) This section does not apply to an incident that is required to be reported under Section 31.105(c).

Added by Acts 1997, 75th Leg., ch. 1363, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 474 (H.B. 555), Sec. 2, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 943 (S.B. 1670), Sec. 3, eff. September 1, 2023.

SUBCHAPTER F. WATER FACILITIES

Sec. 31.141. BOAT RAMPS. (a) The department may construct and maintain boat ramps and access roads by the use of existing or additional services or facilities of the department.

(b) On the completion of the work, the department shall prepare and send vouchers to the comptroller of public accounts payable to the department or to any person, firm, or corporation for reimbursement for the work, and the comptroller shall issue warrants on the game, fish, and water safety account to reimburse the department or any person, firm, or corporation for the work performed.

(c) The department may remove sand, silt, and other materials

from state-owned submerged land and may contract for the removal of sand, silt, and other materials from state-owned submerged land to provide access to boat ramps.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1069, ch. 499, Sec. 1, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 679, Sec. 40, eff. Sept. 1, 1993.

Sec. 31.142. BUOYS AND MARKERS. The department may provide for a standardized buoy-marking program for the inland water of the state. The department may purchase and provide the controlling agency of the water bodies with buoys and markers.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 41, eff. Sept. 1, 1993.

SUBCHAPTER G. PARTY BOATS

Sec. 31.171. DEFINITIONS. In this subchapter:

(1) "Licensed party boat operator" means a person issued a license by the department under this subchapter.

(2) "Party boat" means a vessel:

(A) operated by the owner of the vessel or an employee of the owner; and

(B) rented or leased by the owner for a group recreational event for more than six passengers.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

Sec. 31.172. APPLICABILITY; EXCEPTION. (a) This subchapter applies only to a party boat that operates on the inland waters of this state.

(b) This subchapter does not apply to a boat that is less than 30 feet in length or to a sailboat.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a),

eff. June 15, 2007.

Sec. 31.173. PARTY BOAT OPERATOR AND STAFF. (a) Except as provided by Subsection (c), the party boat owner shall provide staff members, including a licensed party boat operator, who:

(1) operate and staff the party boat for the duration of a rental or lease for a group recreational event as follows:

(A) for a boat with not more than 25 passengers, one staff member who is an operator;

(B) for a boat with at least 26 but not more than 50 passengers, two staff members, including one operator; and

(C) for a boat with more than 50 passengers, three staff members, including one operator; and

(2) have each successfully completed a boater safety course approved under this chapter.

(b) At least one staff member on the boat must be certified to conduct cardiopulmonary resuscitation.

(c) This section does not apply to a party boat rented or leased for an overnight or longer period for which the owner, or the owner's staff, does not intend to remain in constant possession, command, and control of the party boat.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

Sec. 31.174. BOAT REQUIREMENTS. A party boat:

(1) may not carry more than the maximum number of passengers the boat may safely accommodate as determined by the department on inspection;

(2) must have a direct and reliable communication connection to the land-based office of the owner and law enforcement and emergency services by cellular telephone or very high frequency radio; and

(3) must pass an annual water safety inspection conducted by the department or a person under contract with the department.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

Sec. 31.175. PASSENGER SAFETY INFORMATION; INSURANCE. (a) The owner of a party boat shall provide each passenger with written and verbal safety information and require each passenger to sign a form acknowledging that the passenger reviewed and understands the information.

(b) The verbal and written safety information must disclose that no lifeguard is present on the party boat if there is not at least one staff member on the boat who is certified as a lifeguard by the American Red Cross, the American Lifeguard Association, or another comparable nationally recognized organization.

(c) The owner of a party boat must obtain at least a minimum amount of liability insurance from an insurer licensed to do business in this state. The commission shall set the amount.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

Sec. 31.176. PARTY BOAT OPERATOR LICENSE. (a) The commission by rule shall establish, as necessary to protect the public health and safety, the requirements and procedures for the issuance and renewal of a party boat operator license under this subchapter.

(b) Except as provided by Subsection (c), the rules for obtaining a license as a party boat operator must require at a minimum that the applicant:

(1) be at least 21 years of age;

(2) observe for at least four hours a licensed party boat operator operating a party boat on open water;

(3) operate for at least four hours a party boat on open water while being supervised and observed by a licensed party boat operator; and

(4) pass a written examination covering onboard safety procedures and the applicable provisions of this chapter.

(c) An applicant is not required to comply with Subsections (b)(2) and (3) if the applicant has:

(1) at least 25 hours of experience operating a party boat as shown by appropriate documentation; and

(2) no record of boating violations.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

Sec. 31.177. FEES. (a) The commission by rule shall establish and collect a reasonable fee for:

(1) the issuance of a party boat operator license under this subchapter; and

(2) the annual water safety inspection of a party boat required by this subchapter.

(b) A fee collected by the department under this subchapter and any interest that accrues on the fee shall be deposited to the credit of the game, fish, and water safety account established under Section 11.032.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

Sec. 31.178. DRUG AND ALCOHOL TESTING. If a party boat is involved in an accident causing serious personal injury or death, each staff member on board is subject to mandatory drug and alcohol testing.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

Sec. 31.179. ENFORCEMENT. (a) In addition to a game warden, any peace officer of a municipality or other political subdivision of this state who is certified as a marine safety enforcement officer under Section 31.121 may enforce this subchapter:

(1) in the area of a navigable body of water that is in the jurisdiction of the municipality or other political subdivision; or

(2) in any part of a lake that is partly or wholly inside the boundaries of:

(A) the municipality or its extraterritorial jurisdiction; or

(B) the political subdivision.

(b) A party boat is subject to enforcement inspections conducted under Section 31.124.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a),

eff. June 15, 2007.

Sec. 31.180. RULES. The commission shall adopt and enforce rules necessary to implement this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 19A(a), eff. June 15, 2007.

CHAPTER 32. FLOATING CABINS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. DEFINITIONS. In this chapter:

(1) "Coastal water" means those waters east and south of the coastal waters boundary established in 31 T.A.C. Section 65.3(10).

(2) "Floating cabin" means a structure securely moored in the coastal water of this state used for habitation or shelter and not routinely used for transportation. The term includes all mooring lines, anchors, anchor lines, spuds, and pilings and any other tethering devices. The term does not include a structure permitted by the General Land Office under Chapter 33, Natural Resources Code.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.002. APPLICABILITY TO COASTAL WATER. This chapter applies only to floating cabins moored in coastal water.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.003. APPLICABILITY OF OTHER LAW. Chapter 33, Natural Resources Code, does not apply to a floating cabin regulated under this chapter.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.004. EXEMPTION. Subchapter B does not apply to a floating cabin owned by a state agency.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.005. RULES. The commission may adopt rules to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.006. NONAPPLICABILITY OF CHAPTER 2001, GOVERNMENT CODE. The contested case provisions of the Administrative Procedure Act (Sections 2001.051-2001.178, Government Code) do not apply to this chapter.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

SUBCHAPTER B. PERMITS FOR FLOATING CABINS

Sec. 32.051. PERMIT REQUIRED. A person may not own, maintain, or use a floating cabin in the public coastal water of this state unless a permit has been issued under this chapter for the floating cabin.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.052. ELIGIBILITY FOR PERMIT. A person may apply for a floating cabin permit if:

(1) the person owns the floating cabin;

(2) the floating cabin floats at high tide; and

(3) the owner owned and moored the floating cabin before August 31, 2001.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.053. APPLICATION FOR PERMIT; REFUND. (a) An applicant must apply for a permit on a form prescribed by the department. The department shall issue a floating cabin permit to an applicant who:

(1) meets the eligibility requirements of Section 32.052;

(2) provides the name, mailing address, and telephone number of the applicant;

(3) describes the exact location of the floating cabin in terms of longitude, latitude, degrees, minutes, and seconds as determined by the global positioning system;

(4) describes the height, length, and width of the floating cabin;

(5) provides the department with a color photograph with a full view of the floating cabin;

(6) not later than August 31, 2001, pays a fee of $1,500 or a lesser amount set by the commission; and

(7) provides the department with any other information that the department reasonably requires.

(b) The applicant and each owner of the floating cabin must sign the application under penalty of perjury.

(c) The department shall remit all fees collected under this section to the comptroller for deposit to the credit of the floating cabins cleanup account in the general revenue fund. Money in the account may be used only for the cleanup of illegal or abandoned floating cabins and related debris in the coastal water.

(d) If the permit holder elects to retire the permit, the department shall refund the fee under this section on confirmation of proper removal of the floating cabin.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.054. TERM OF PERMIT. A floating cabin permit issued under this chapter has a term of one year.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.055. ORIGINAL PERMIT AND PERMIT RENEWAL FEE. (a) An original application for permit under Section 32.053 must be accompanied by a permit application fee of $300.

(b) To renew a floating cabin permit, a permit holder must apply in the manner prescribed by commission rule and pay a permit renewal fee of $300.

(c) The department may refuse to issue or transfer an original or renewal license, permit, or tag if the permittee has:

(1) been finally convicted of a violation of Section 32.154;

(2) failed to comply with a notice issued under Section 32.154; or

(3) failed to pay a civil penalty assessed under Section 32.154.

(d) The department shall remit all fees collected under this section to the comptroller for deposit to the credit of the game, fish, and water safety account in the general revenue fund.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.056. LOCATION OF PERMIT; INSPECTION ALLOWED. A permit holder shall keep a copy of the permit in the floating cabin and available for inspection by the department on request.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.057. TRANSFER OF PERMIT. (a) A permit holder may in writing transfer the permit to a new owner of the floating cabin.

(b) Not later than the 60th day after the date of transfer, the new permit holder shall provide to the department:

(1) the name, mailing address, and telephone number of the new permit holder;

(2) any other information the department reasonably requires; and

(3) a $300 transfer fee.

(c) In the event that the permit holder consists of more than one person, the withdrawal of persons from ownership shall not, on renewal, be considered a transfer to the remaining owner or owners for purpose of payment of the transfer fee.

(d) The new permit holder must sign the information provided to the department under Subsection (b) under penalty of perjury.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.058. PURCHASE PROGRAM; PERMIT EXPIRES. (a) The commission by rule may establish a program to purchase a floating

cabin for which a permit has been issued.

(b) On transfer of ownership under this section, the permit issued for the floating cabin expires.

(c) The owner of a floating cabin is not required to sell the cabin to the department under this section.

(d) The floating cabin purchase account is created as a separate account in the general revenue fund. The account consists of money deposited to the account under this section, including interest on that money. The department may accept grants and gifts of money or materials from private or public sources to be applied to the floating cabin purchase account. Money in the floating cabin purchase account may be used only for the purposes of this section. Section 403.095, Government Code, does not apply to the account.

(e) Money from the game, fish, and water safety account may not be used to purchase a floating cabin under this section.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

SUBCHAPTER C. REQUIREMENTS AND PROHIBITED CONDUCT

Sec. 32.101. IDENTIFICATION OF FLOATING CABIN. (a) A floating cabin must be marked and identified by numbers, reflective tape, paint, or other means as the commission may by rule require.

(b) From sunset to sunrise, a floating cabin shall exhibit at least one white light that is visible from a 360-degree angle.

(c) This section applies to each owner of a floating cabin.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.102. RELOCATION OF FLOATING CABIN. A permit holder may relocate the floating cabin, subject to department approval, and the commission shall by rule specify criteria for allowing relocation.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.103. REPLACEMENT OF FLOATING CABIN. The permit holder may replace the floating cabin if:

(1) the replacement cabin does not exceed the height, length, or width of the original cabin; and

(2) the department approves the replacement.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.104. INCREASE IN SIZE OF CABIN PROHIBITED. A person may not increase the height, length, or width of a floating cabin.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.105. SANITATION DEVICE. (a) A floating cabin shall be equipped with a portable marine sanitation device capable of holding and retaining human body waste.

(b) Each owner of a floating cabin is liable for a violation of this section.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.106. SEWAGE DISCHARGE PROHIBITED. A person may not discharge human body waste, treated or untreated, from a floating cabin into or adjacent to coastal water or state land.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.107. LOCATION OF FLOATING CABIN IN CERTAIN SITES PROHIBITED. (a) A floating cabin may not be located in a state park, state wildlife refuge, state wildlife sanctuary, or state coastal preserve.

(b) Each owner of a floating cabin is liable for a violation of this section.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.108. OTHER PROHIBITED CONDUCT. An owner of a floating cabin may not allow the cabin to:

(1) obstruct navigation;

(2) damage an oyster reef, serpulid reef, or seagrass bed;

or

(3) rest on a bottom or shoreline at high tide.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 32.151. DISCIPLINARY ACTION. The department may suspend or revoke a person's floating cabin permit or place the permit holder on probation for a violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.152. CIVIL ACTIONS ALLOWED; CIVIL PENALTY. (a) The department may bring an action for damages, injunctive relief, and any other appropriate civil relief for a violation of this chapter, except for Section 32.106.

(b) A court shall award the department attorney's fees if the department prevails in a suit filed under this section.

(c) Each owner of the floating cabin is jointly and severally liable for a violation under this section.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.153. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates:

(1) Section 32.051;

(2) Section 32.053(b);

(3) Section 32.056;

(4) Section 32.057(d);

(5) Section 32.101;

(6) Section 32.104;

(7) Section 32.105;

(8) Section 32.106;

(9) Section 32.107; or

(10) Section 32.108.

(b) Except as provided by Subsection (c), an offense under Subsection (a) is a Class C Parks and Wildlife Code misdemeanor.

(c) Except for a violation of Section 32.101(b), if it is shown

on the trial of an offense under this section that the defendant was previously convicted two or more times under this section, the offense is a Class B Parks and Wildlife Code misdemeanor, except that the offense is not punishable by confinement in jail.

(d) Each day of a violation under this section is a separate offense.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.154. REMOVAL OF FLOATING CABIN; CRIMINAL PENALTY; CIVIL PENALTY; HEARING. (a) If a person owns a floating cabin that does not meet the criteria for issuance of an original permit under this chapter or if an owner violates a provision of Section 32.104, 32.107, or 32.108, the department may by written notice require the removal of the floating cabin from the coastal water not later than the 90th day after the date of notice. The owner may, not later than 30 days after receipt of notice of removal, object to the revocation and show good cause why the permit should not be revoked. Good cause includes:

(1) force majeure, including a hurricane or tropical storm;

(2) circumstances resulting in a change of criteria for reasons not attributable to the actions of the owner; or

(3) any other reasons that the department adopts by rule.

(b) A person commits an offense if the person does not remove the floating cabin during the period provided by Subsection (a) or such extended period as may be prescribed by department rule. An offense under this subsection is a Class B Parks and Wildlife Code misdemeanor, except that the offense is not punishable by confinement in jail.

(c) The department may assess a civil penalty for a violation of Subsection (a) of not more than $1,000 for each day after the notice period that the owner fails to remove the floating cabin. Each owner is jointly and severally liable for the civil penalty and the reasonable costs of removal and cleanup of the floating cabin and related materials at that location.

(d) If a person does not remove the floating cabin during the period provided by Subsection (a), the department or a person or entity authorized by the department may remove and dispose of the floating cabin and any associated personal property in any manner

without further notice.

(e) Notice under this section is valid if:

(1) a person who owns a floating cabin has held a permit issued under this chapter and the notice is sent by certified letter from the department to the owner at the last address supplied to the department under this chapter; or

(2) as to a floating cabin that has not been identified and for which the owner has not been issued a permit, the notice is affixed to the floating cabin.

(f) The department is not liable to a person for the value of a floating cabin, or any personal property associated with the cabin, removed under this section.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

Sec. 32.155. VENUE. The department may file any suit under this chapter in Travis County or the county in which the floating cabin that is the subject of the suit is located.

Added by Acts 2001, 77th Leg., ch. 1273, Sec. 1, eff. June 15, 2001.

TITLE 5. WILDLIFE AND PLANT CONSERVATION
SUBTITLE A. HUNTING AND FISHING LICENSES
CHAPTER 41. RECIPROCAL HUNTING AND FISHING PRIVILEGES

Sec. 41.003. RECIPROCAL LICENSE AGREEMENTS: BORDER STATES. (a) The director shall negotiate for the commission with the proper representatives of each state having a common border with Texas to allow reciprocal fishing and migratory waterfowl hunting on rivers and lakes on the common boundary between Texas and the border state.

(b) An agreement must provide that a resident of the border state who has a sport fishing license or a hunting license issued by the border state may fish or hunt migratory waterfowl on rivers and lakes of the common border, and a Texas resident holding a Texas license is extended equal privileges. A person who holds a nonresident sport fishing license or a nonresident hunting license issued by this state or a border state may be extended the same privileges as those extended a resident license holder under this subsection.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 25, eff. Sept. 1, 1997.

Sec. 41.004. RECIPROCAL AGREEMENTS PROCLAIMED. An agreement under Section 41.003 is not effective until the commission by proclamation has approved it.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 26, eff. Sept. 1, 1997.

Sec. 41.005. TERMINATION OF RECIPROCAL LICENSE AGREEMENT. An agreement under Section 41.003 of this code may be terminated by the commission at any time after 90 days from the day notice of the termination is given to each border state that is a party to the agreement.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 41.006. REGULATIONS FOR RECIPROCAL LICENSE AGREEMENTS. (a) The commission may make regulations conforming to an agreement under Section 41.003 of this code for the conservation of fish and wildlife.

(b) A regulation may be adopted only at a meeting of the commission in Austin, and any interested person is entitled to be heard at the meeting.

(c) Regulations adopted by the commission or issued by the director, when authorized by the commission to issue regulations, take effect 20 days after their adoption or issuance or as otherwise specified in the regulations.

(d) After adoption of a regulation, a copy shall be numbered and filed in the office of the commission. Other copies shall be filed with the secretary of state, sent to the county clerk and county attorney in each county affected by the regulation, sent to the appropriate agency in the border state to which the agreement applies, and sent to each employee of the department who performs duties in a county affected by the regulation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 27, eff. Sept. 1, 1997.

Sec. 41.008. RECIPROCAL LICENSE AGREEMENTS: ANY OTHER STATE. The department may agree with any other state to license sport hunting and fishing by residents of the other state at the same fee as Texas residents are licensed if the other state licenses Texas residents at the same fee as residents of the other state are licensed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 42. GENERAL HUNTING LICENSE

Sec. 42.001. DEFINITIONS. In this chapter:

(1) "Resident" means:

(A) an individual who has resided continuously in this state for more than six months immediately before applying for a hunting license;

(B) a member of the United States armed forces on active duty;

(C) a dependent of a member of the United States armed forces on active duty;

(D) if approved by the director, a terminally ill individual who is participating in an event sponsored by a charitable nonprofit organization;

(E) a member of the Kickapoo Traditional Tribe of Texas who possesses documentation of membership sanctioned by the Bureau of Indian Affairs; or

(F) a member of any other category of individuals that the commission by regulation designates as residents.

(2) "Nonresident" means an individual who is not a resident.

(3) "Carcass" means the body of a dead deer or antelope, as listed in Section 63.001(a), that has not been processed more than by quartering.

(4) "Final destination," for a carcass or wild turkey or any part of a carcass or wild turkey, means:

(A) the permanent residence of the hunter;

(B) the permanent residence of any other person receiving the carcass or wild turkey or the part of a carcass or wild turkey; or

(C) a cold storage or processing facility.

(5) "Final processing," for a carcass or wild turkey, means the cleaning of the dead animal for cooking or storage purposes. For a carcass, the term also includes the processing of the animal more than by quartering.

(6) "Cold storage or processing facility" means a stationary facility designed and constructed to store or process game animals and game birds.

(7) "Wildlife resource document" means a document prescribed by the department, other than a tag or permit, that allows a person to give, leave, receive, or possess any species of legally taken game bird or game animal, or part of a legally taken game bird or game animal, if the game bird or game animal is otherwise required to have a tag or permit attached or is protected by a bag or possession limit.

(8) "Quartering" means the processing of an animal into not more than two hindquarters each having the leg bone (femur) attached down to the knee and two front shoulders each having the leg bones (scapula and humerus) attached down to the elbow. The term also includes removal of two back straps.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 612, ch. 223, Sec. 1, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 301, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 838, Sec. 1, eff. July 15, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 28, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 218 (S.B. 1122), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 317 (H.B. 1718), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 830 (H.B. 1891), Sec. 1, eff. June 15, 2017.

Sec. 42.002. RESIDENT LICENSE REQUIRED; EXEMPTIONS. (a)

Except as provided by Subsections (b), (c), and (d), no resident may hunt any bird or animal in this state without having acquired a hunting license.

(b) A resident possessing a valid resident trapper's license or fur-bearing animal propagation permit is not required to have a license issued under this section to take or possess the species covered by the license or permit.

(c) A resident landowner or any person, with the consent of the landowner, may take feral hogs on the resident landowner's land without having acquired a hunting license.

(d) A person who is a resident and who is a veteran of the United States armed forces is not required to have a license issued under this section if the person is acting under Section 11.208 and complying with rules adopted under that section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 7, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 4, eff. June 16, 1995; Acts 2003, 78th Leg., ch. 809, Sec. 1, 2, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 6, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 329 (S.B. 317), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 260 (H.B. 1728), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 260 (H.B. 1728), Sec. 3, eff. September 1, 2021.

Sec. 42.0021. LIFETIME RESIDENT HUNTING LICENSE. The department may issue to residents of this state a lifetime resident hunting license.

Added by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 8, eff. Sept. 1, 1986.

Sec. 42.005. NONRESIDENT LICENSE REQUIRED. (a) No nonresident in this state may hunt a mule deer, white-tailed deer, turkey, pronghorn antelope, or desert bighorn sheep in this state without

first having acquired a general nonresident hunting license.

(b) Except as provided by Subsection (f), no nonresident may hunt any bird or animal in this state without first having acquired a general nonresident hunting license, a nonresident special hunting license, or a nonresident five-day special hunting license.

(c) A nonresident possessing a valid nonresident trapper's license is not required to have a license issued under this section to take or possess the species governed by the license.

(d) No nonresident may hunt a turkey during the spring turkey hunting season without first having acquired a license as required by Subsection (b) of this section or a nonresident spring turkey hunting license.

(e) A nonresident may not acquire or possess during a license year:

(1) more than one nonresident spring turkey hunting license; or

(2) a general nonresident hunting license and a nonresident spring turkey hunting license.

(f) A nonresident landowner or any person, with the consent of the landowner, may take feral hogs on the nonresident landowner's land without having acquired a hunting license required by this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 317, ch. 150, Sec. 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 1859, ch. 439, Sec. 1, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 9, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 609, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 95, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 863, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 809, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 7, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 329 (S.B. 317), Sec. 2, eff. September 1, 2019.

Sec. 42.006. POSSESSION OF LICENSE; RULES. (a) The commission by rule may prescribe requirements relating to possessing a license

issued under this chapter.

(b) Rules adopted under Subsection (a) must allow for a person to present for the purpose of verification of possession a hunting license as an image displayed on a wireless communication device. The image displayed may be either an image of information from the Internet website of the department or a photograph of a hunting license.

(c) The display of an image that includes hunting license information on a wireless communication device under this section does not constitute effective consent for a law enforcement officer, or any other person, to access the contents of the wireless communication device except to view the hunting license information.

(d) The authorization of the use of a wireless communication device to display hunting license information under Subsection (b) does not prevent a court of competent jurisdiction from requiring a person to provide a paper copy of the person's hunting license in a hearing or trial or in connection with discovery proceedings.

(e) A telecommunications provider, as defined by Section 51.002, Utilities Code, may not be held liable to the holder of a hunting license for the failure of a wireless communication device to display hunting license information under Subsection (b).

Added by Acts 1995, 74th Leg., ch. 931, Sec. 5, eff. June 16, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 41 (H.B. 547), Sec. 1, eff. September 1, 2019.

Sec. 42.010. ISSUANCE AND FORM OF LICENSES AND TAGS. (a) The department shall prescribe the form of and issue the licenses and tags authorized by this chapter.

(b) The department may issue tags for animals or birds allowed by law to be killed during each year or season to holders of licenses authorizing the killing of animals or birds. The commission may establish fees for the tags.

(c) A person commits an offense if the person does not enter the required information on a license or tag before hunting or if the person possesses a tag without a name entered on the tag.

(d) No person may issue or receive a license or tag authorized by this chapter except on the form provided by the department.

(e) The commission by regulation shall determine the number of tags that may be issued to an individual for taking animals or birds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 612, ch. 223, Sec. 2, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 10, eff. Sept. 1, 1986; Acts 1991, 72nd Leg., ch. 911, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 931, Sec. 6, eff. June 16, 1995.

Sec. 42.0101. DIGITAL TAGS; RULES. (a) The commission by rule may develop and implement a program for the issuance of digital tags for animals, including birds, to holders of hunting licenses authorizing the taking of those animals.

(b) A program developed under this section may include:

(1) providing for the issuance of digital tags to the holder of a hunting license;

(2) allowing a person using a digital tag to create a digital record at the time of the taking of an animal that includes information required by the department;

(3) requiring a person using a digital tag to create the digital record described by Subdivision (2) as soon as possible after the taking of the animal; and

(4) requiring a person using a digital tag to retain in the person's possession documentation of the digital record described by Subdivision (2) at all times before the carcass is finally processed.

(c) Unless the context requires otherwise, a reference under this code to a tag includes a digital tag issued under a program developed under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 485 (H.B. 3081), Sec. 1, eff. June 14, 2021.

Sec. 42.011. VOLUNTARY CONTRIBUTION TO HELP FEED HUNGRY TEXANS. (a) When a person applies for a hunting license of any type under this chapter, the person may contribute $1 or more to a nonprofit organization, designated by the commission, whose purposes include the administration of a statewide program that provides hunters with a way to donate legally harvested deer to local food assistance providers. The program must include the recruitment of meat

processors who, for a nominal fee to cover processing costs, process and package the venison and contact the food assistance providers to pick up the venison.

(b) The department shall:

(1) include space on each application for a hunting license that allows a person applying for the license to indicate the amount that the person is voluntarily contributing to the nonprofit organization; and

(2) provide an opportunity for a person to contribute to the nonprofit organization during the application process for a hunting license on the department's Internet website.

(c) After deducting the department's administrative costs, the department shall hold in trust the remainder of the amount a person contributes under this section to the nonprofit organization. Not later than November 1 of each year, the department shall send the money held in trust to the nonprofit organization.

(d) Money received by the nonprofit organization under this section may be used only to administer, operate, support, and promote the program described by Subsection (a).

(e) The nonprofit organization shall submit an annual report to the legislature and the department that includes the total dollar amount of contributions received by the organization under this section.

(f) The commission may adopt rules to implement this section, including rules related to processes for the selection, inspection, and periodic review of the nonprofit organization.

Added by Acts 2015, 84th Leg., R.S., Ch. 1229 (S.B. 1978), Sec. 1, eff. June 19, 2015.

Sec. 42.012. RESIDENT LICENSE FEE. (a) The fee for a resident hunting license is $8 or an amount set by the commission, whichever amount is more.

(b) The commission may set a lower fee or waive the fee or license requirement for a resident who is under 17 years old, 65 years old or older, or participating in an event that is sponsored or co-sponsored by the department with the approval of the director. The commission shall waive the fee for a qualified veteran with a disability and for a resident on active duty as a member of the

United States military forces, the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard.

(c) "Qualified veteran with a disability" means a veteran with a service connected disability, as defined by the United States Department of Veterans Affairs, consisting of the loss of the use of a lower extremity or of a disability rating of 50 percent or more and who is receiving compensation from the United States for the disability.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1328, ch. 277, Sec. 7, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 12, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 838, Sec. 2, eff. July 15, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 7, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 840, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 145 (H.B. 1076), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 243 (H.B. 2130), Sec. 1, eff. May 25, 2007.

Acts 2015, 84th Leg., R.S., Ch. 279 (H.B. 721), Sec. 1, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 10, eff. September 1, 2021.

Sec. 42.0121. LIFETIME RESIDENT HUNTING LICENSE FEE. The fee for a lifetime resident hunting license is $300 or an amount set by the commission, whichever amount is more.

Added by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 13, eff. Sept. 1, 1986. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 8, eff. June 16, 1995.

Sec. 42.014. NONRESIDENT SPECIAL HUNTING LICENSE FEE. The fee for a nonresident special hunting license is $37.75 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 317, ch. 150, Sec. 2, eff. Aug.

29, 1977; Acts 1979, 66th Leg., p. 1397, ch. 623, Sec. 1, eff. Aug. 27, 1979; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 14, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 609, Sec. 2, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 931, Sec. 9, eff. June 16, 1995.

Sec. 42.0141. GENERAL NONRESIDENT HUNTING LICENSE FEE. The fee for a general nonresident hunting license is $100.75 or an amount set by the commission, whichever amount is more.

Added by Acts 1977, 65th Leg., p. 317, ch. 150, Sec. 3, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1397, ch. 623, Sec. 2, eff. Aug. 27, 1979; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 15, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 10, eff. June 16, 1995.

Sec. 42.0142. NONRESIDENT BANDED BIRD HUNTING LICENSE FOR HUNTING ON A PRIVATE BIRD HUNTING AREA. (a) In lieu of a general or nonresident special hunting license, a nonresident may acquire a banded bird hunting license from the department entitling the nonresident to take pen-reared, banded birds from a licensed private bird hunting area only.

(b) The fee for a nonresident banded bird hunting license is an amount set by the commission.

Added by Acts 1987, 70th Leg., ch. 609, Sec. 3, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 512, Sec. 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 838, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 11, eff. June 16, 1995.

Sec. 42.0143. NONRESIDENT FIVE-DAY SPECIAL HUNTING LICENSE. A nonresident five-day special hunting license is valid for five consecutive days. The fee for the license is set by the commission in an amount not to exceed 50 percent of the amount of the fee set for a nonresident special hunting license.

Added by Acts 1987, 70th Leg., ch. 609, Sec. 4, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 12, eff. June 16, 1995.

Sec. 42.0144. NONRESIDENT SPRING TURKEY HUNTING LICENSE FEE. The fee for a nonresident spring turkey hunting license is $75 or an amount set by the commission, whichever amount is more.

Added by Acts 1991, 72nd Leg., ch. 95, Sec. 2, eff. Sept. 1, 1991.

Sec. 42.017. DUPLICATE LICENSE AND TAGS. (a) If a person licensed to hunt under the provisions of this chapter loses the license or tags or if the license or tags are destroyed, the person may apply to the department for and receive a duplicate license or tags.

(b) The application for a duplicate license or tags is in the form of an affidavit and must contain a statement of fact concerning the loss or destruction of the license or tags and a statement of the number of birds or animals, if any, killed under the authority of the lost or destroyed license or tags. The commission by regulation may prescribe additional requirements for the issuance of a duplicate license or tag under this section.

(c) A duplicate license entitling the holder to hunt any bird or animal shall be clearly marked to indicate those birds or animals previously killed under the authority of the lost or destroyed license or tags and to prevent the killing of more birds or animals than allowed for the year.

(d) The fee for a duplicate license or tags is $5 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 612, ch. 223, Sec. 3, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 1329, ch. 277, Sec. 9, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 16, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 838, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 13, eff. June 16, 1995.

Sec. 42.0175. EXPIRATION DATE. (a) A license issued under this chapter, other than a lifetime resident hunting license or a nonresident five-day special hunting license is valid only during the yearly period for which the license is issued without regard to the

date on which a license is acquired. Each yearly period begins on September 1 or on another date set by the commission and extends through August 31 of the next year or another date set by the commission. A license issued under this chapter other than a nonresident five-day special hunting license that is issued before September 1 or another date set by the commission and does not expire until August 31 of the next year or another date set by the commission is valid from the date of issuance through August 31 of the following year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

(b) A license issued under Section 42.012(b) of this code to a person who is 16 years of age at the time the license is issued, but reaches the age of 17 during the term of the license, is valid for the entire term of the license.

Added by Acts 1977, 65th Leg., p. 1536, ch. 626, Sec. 2, eff. Aug. 29, 1977. Amended by Acts 1993, 73rd Leg., ch. 838, Sec. 5, eff. July 15, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 14, eff. June 16, 1995.

Sec. 42.0177. BIRD OR ANIMAL CARCASSES: COMMISSION RULES. The commission by rule may modify or eliminate the tagging, carcass, final destination, or final processing requirements or provisions of Section 42.001, 42.018, 42.0185, 42.019, or 42.020, or other similar requirements or provisions in this chapter.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 15, eff. June 16, 1995. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 199 (S.B. 720), Sec. 1, eff. September 1, 2017.

Sec. 42.018. TAG TO BE ATTACHED TO DEER. (a) Except as provided by Subsection (d) or commission rule, no person may possess the carcass of a deer before the carcass has been finally processed at a final destination unless there is attached to the carcass a properly executed deer tag from a hunting license provided by the

department and issued to the person who killed the deer.

(b) A tag is properly executed only when the month and the date of the kill are cut out and the tag is filled out to show the place the deer to which the tag is attached was killed and to show other information required on the tag by the commission.

(c) If the deer's head is severed from the carcass, the properly executed tag must remain with the carcass.

(d) A wildlife resource document completed by the person who killed the deer must accompany the head or other part of the deer not accompanied by a tag if at any time before the carcass is finally processed the head or other part of the deer no longer accompanies the carcass. If a portion of the carcass is divided among persons and separated and the person who killed the deer retains a portion of the carcass, that person shall retain the tag with the portion of the carcass retained by that person. A wildlife resource document shall be retained with the head of a deer that is not kept with the carcass until the head is delivered to the owner after taxidermy or, if not treated by a taxidermist, until delivered to a final destination.

(e) Final processing for a deer carcass may occur only at a final destination.

(f) This section does not prohibit a person before delivering a deer carcass to a final destination from removing and preparing a part of the deer if the removal and preparation occur immediately before the part is cooked or consumed.

(g) A landowner or the landowner's agent operating under a wildlife management plan approved by the department is, if authorized by the commission, exempt from the tag requirements of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 17, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 38, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 635, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 29, eff. Sept. 1, 1997.

Sec. 42.0185. TAG TO BE ATTACHED TO TURKEY. (a) Except as provided by commission rule, no person may possess a wild turkey at any time after the turkey is killed and before it has been finally processed at a final destination unless there is attached to the turkey a properly executed turkey tag from a hunting license provided

by the department and issued to the person who killed the turkey.

(b) A turkey tag is properly executed only when the month and the date of the kill are cut out and the tag is filled out to show the place the turkey to which the tag is attached was killed and to show other information required on the tag.

(c) A wildlife resource document completed by the person who killed the turkey must accompany a part of the turkey if at any time before the turkey reaches a final destination the part of the turkey no longer accompanies the tagged turkey and is possessed by the person who killed the turkey or is given to, left with, or possessed by another person, including a taxidermist.

(d) This section does not prohibit a person before delivering a wild turkey to a final destination from preparing part of the turkey immediately before cooking and consuming the part.

Added by Acts 1977, 65th Leg., p. 613, ch. 223, Sec. 4, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 38, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 30, eff. Sept. 1, 1997.

Sec. 42.019. POSSESSION OF CERTAIN PARTS OF ANTELOPE. (a) Except as provided by Subsection (c), no person may possess the carcass of an antelope before it has been finally processed at a final destination unless there is attached to the carcass an antelope permit provided by the department that is executed legibly, accurately, and completely by the person who killed the antelope.

(b) If the antelope's head is severed from the carcass, the properly executed permit must remain with the carcass.

(c) A wildlife resource document completed by the person who killed the antelope must accompany the head or other part of the antelope not accompanied by a permit if at any time before the carcass is finally processed the head or other part of the antelope no longer accompanies the carcass. If a portion of the carcass is divided among persons and separated and the person who killed the antelope retains a portion of the carcass, that person shall retain the permit with the portion of the carcass retained by that person. A wildlife resource document shall be retained with the head of an antelope that is not kept with the carcass until the head is delivered to the owner after taxidermy or, if not treated by a taxidermist, until delivered to a final destination.

(d) Final processing for an antelope carcass may occur only at a final destination.

(e) This section does not prohibit a person before delivering an antelope carcass to a final destination from removing and preparing a part of the antelope if the removal and preparation occur immediately before the part is cooked and consumed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 31, eff. Sept. 1, 1997.

Sec. 42.020. BIRD OR ANIMAL TAGS: PROHIBITED ACTS. (a) No person may purchase or use more bird or animal tags during a license year than the number and type authorized for the year by the commission, excluding duplicate licenses issued under Section 42.017 of this code.

(b) No person may:

(1) use the same bird or animal tag on more than one bird or animal;

(2) use a bird or animal tag issued in the name of another;

(3) use a tag on a bird or animal for which another tag is specifically required;

(4) kill a bird or animal required to be tagged and fail to immediately attach a properly executed tag to the carcass; or

(5) hunt a bird or animal that requires a tag without having in his immediate possession the tag required to be attached to the carcass of the bird or animal being hunted.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 613, ch. 223, Sec. 5, eff. Sept. 1, 1977; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 18, eff. Sept. 1, 1985.

Sec. 42.021. BAG LIMITS AND SEASON NOT AFFECTED. The provisions of this chapter do not authorize any person to exceed any bag limit or to hunt deer or turkey during a closed season, and the attachment of deer or turkey tags as provided by this chapter is not prima facie evidence that the deer or turkey was lawfully killed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 613, ch. 223, Sec. 6, eff. Sept. 1, 1977.

Sec. 42.0211. TAKING OF UNBANDED PEN-REARED PHEASANT OR QUAIL BY CERTAIN LANDOWNERS. (a) This section applies only to:

(1) noncommercial activity; and

(2) the taking of pheasant or quail on a property of at least five contiguous acres.

(b) Notwithstanding any other law requiring the banding of a bird, a person, or the person's guest when accompanied by the person, may take on the person's property unbanded pen-reared pheasant or quail.

(c) Nothing in this section:

(1) affects the requirement to acquire a license under Section 45.001 for the propagation of game birds; or

(2) authorizes a person to:

(A) exceed a bag limit for pheasant or quail; or

(B) take pheasant or quail during a closed season.

Added by Acts 2021, 87th Leg., R.S., Ch. 67 (H.B. 1699), Sec. 1, eff. May 19, 2021.

Sec. 42.022. ONE LICENSE FOR EACH YEAR. (a) No person may acquire or possess more than one hunting license during a license year. For purposes of this section, a violation does not occur unless a person acquires or possesses more than one license having the same expiration date.

(b) This section does not apply to the acquisition and possession of a duplicate hunting license acquired as provided in this chapter.

(c) This section does not apply to the acquisition and possession by a nonresident of more than one nonresident hunting license if the nonresident does not acquire or possess during a license year:

(1) more than one nonresident:

(A) general hunting license; or

(B) spring turkey hunting license; or

(2) both a nonresident general hunting license and a nonresident spring turkey hunting license.

(d) For purposes of this section, a license year begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 317, ch. 150, Sec. 4, eff. Aug. 29, 1977; Acts 1987, 70th Leg., ch. 609, Sec. 5, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 635, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 16, eff. June 16, 1995.

Sec. 42.023. HUNTING UNDER LICENSE OF ANOTHER. No person may hunt under a license issued to another or permit another to hunt under a license issued to him.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 42.024. EXHIBITING LICENSE. (a) No person required by the provisions of this chapter to have a hunting license may fail or refuse to show the license to an officer on demand.

(b) If on or before the trial of any person charged with a violation of this section, the person produces for the court or the prosecuting attorney the proper hunting license issued to the person and valid at the time of the offense, the court having jurisdiction of the suit shall dismiss the charge.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 810, ch. 368, Sec. 1, eff. Aug. 27, 1979.

Sec. 42.025. PENALTY. A person who violates any provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 15, eff. Sept. 1, 1985.

CHAPTER 43. SPECIAL LICENSES AND PERMITS
SUBCHAPTER C. PERMITS FOR SCIENTIFIC RESEARCH, ZOOLOGICAL COLLECTION, REHABILITATION, AND EDUCATIONAL DISPLAY

Sec. 43.021. PROTECTED WILDLIFE. In this subchapter, "protected wildlife" means all indigenous mammals, indigenous birds, indigenous reptiles, indigenous amphibians, indigenous fish, and other indigenous aquatic life the taking, collecting, holding, possession, propagation, release, display, or transport of which is governed by a provision of this code other than this subchapter or by a commission rule adopted under any provision of this code other than this subchapter and includes endangered species.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 927, Sec. 2, eff. Dec. 1, 1995.

Sec. 43.022. PERMIT REQUIREMENT. (a) No person may collect, hold, possess, display, transport, release, or propagate protected wildlife for the purposes of this subchapter without a permit issued under this subchapter.

(b) A permit under this subchapter is not required for an activity that may be lawfully conducted under the authority of another license or permit issued under this code or in accordance with another provision of this code.

(c) No other license is required for an activity conducted under the authority of a permit issued under this subchapter.

(d) A permit under this subchapter is not required to hold, transport, propagate, or display a marine mammal held under the authority of the federal Marine Mammal Protection Act (16 U.S.C. Section 1361 et seq.) unless the marine mammal is:

(1) a marine mammal for which the department has been delegated management authority under Section 1379 of the Marine Mammal Protection Act (16 U.S.C. Section 1379); or

(2) a marine mammal listed under the federal Endangered Species Act (16 U.S.C. Section 1531 et seq.).

(e) The department may issue a permit to a qualified person to collect, hold, possess, display, transport, release, or propagate protected wildlife for scientific research, educational display,

zoological collection, or rehabilitation. A permit may not be issued to propagate protected wildlife for rehabilitation or educational display.

(f) The commission shall adopt rules to govern the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

(g) The commission by rule may set fees for review of permit applications, inspections, transportation and boarding of seized animals, laboratory analysis, or other department actions necessary for implementation of this subchapter.

(h) The commission by rule may exempt certain categories of activities from the permitting and fee requirements of or established under this subchapter if those activities are determined to provide a public benefit and do not adversely affect a protected wildlife resource.

(i) A permit authorized by this subchapter may be issued by the director or the director's designee.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 927, Sec. 3, eff. Dec. 1, 1995.

Sec. 43.024. DISPOSITION OF PROTECTED WILDLIFE. (a) All protected wildlife collected and subsequently held under this subchapter or rules adopted under this subchapter remain the property of the state and shall be relinquished to the department or an agent of the department on demand or otherwise disposed of in a manner prescribed by the department.

(b) No permit may be issued for the taking or transportation of any endangered fish or wildlife the possession, taking, or transportation of which is prohibited by federal law.

(c) A permit issued for the taking of migratory birds is not valid unless the applicant has obtained a federal permit for the taking of migratory birds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 927, Sec. 4, eff. Dec. 1, 1995.

Sec. 43.028. CIVIL SUIT; INJUNCTIVE RELIEF; COSTS. (a) The department, on the approval of the director or commission, may authorize the filing and prosecution of a civil suit to enforce this subchapter or a rule adopted under this subchapter.

(b) On finding of a violation of this subchapter or a rule adopted under this subchapter, a court may assess a civil penalty in addition to providing injunctive relief. The penalty may not exceed $1,000 for each violation. Each day of violation is a separate offense. A civil suit filed under this subchapter is not a bar to any criminal or administrative action.

(c) On entry of a judgment in favor of the department, the court may award attorney's fees and court costs to the state.

Added by Acts 1995, 74th Leg., ch. 927, Sec. 5, eff. Dec. 1, 1995.

Sec. 43.030. PENALTY. A person who violates Section 43.022, a commission rule, or the conditions of a permit issued under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 18, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 927, Sec. 6, eff. Dec. 1, 1995.

SUBCHAPTER D. HUNTING LEASE LICENSES

Sec. 43.041. DEFINITIONS. In this subchapter:

(1) "Hunting cooperative" means a cooperative enterprise in which participating landowners pool their acreage and lease it for hunting purposes under the authority of a hunting lease license and in which the leasing profits are distributed to the landowners according to the landowners' participation.

(2) "Hunting lease" means the aggregate amount of land owned by one individual, partnership, firm, or corporation or the aggregate amount of land in a hunting cooperative in a county and leased for hunting purposes. If an individual, partnership, firm, or corporation owns a single tract of land, or if a hunting cooperative has land, located partially in one county and partially in another county, the individual, partnership, firm, or corporation or the hunting cooperative may not be required to have a separate hunting

lease license for that portion of the land located in the second county, unless the individual, partnership, firm, or corporation, or a landowner participating in the hunting cooperative, owns other land leased for hunting purposes in the second county. If an individual, partnership, firm, or corporation owns a single tract of land, or if a hunting cooperative has land, located partially in one county and partially in another county and the individual, partnership, firm, or corporation or the hunting cooperative is not required to have two licenses, the aggregate acreage of the tract shall be used for determining the amount of the license fee required by this subchapter.

(3) "Licensee" means:

(A) a person who owns the land, or manages a hunting cooperative that has land, on which a hunting lease is located; or

(B) an individual listed on the license application as the landowner's agent who holds a hunting lease license.

(4) "Guest" means a person, other than a licensee, who hunts or takes an animal or bird on a hunting lease.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, Sec. 3, eff. Sept. 1, 1975; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 19, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 512, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 856, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 15.02, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 805, Sec. 1, eff. Sept. 1, 1991.

Sec. 43.042. LICENSE REQUIRED. (a) The owner of a hunting lease or the landowner's agent may not receive as a guest for pay or other consideration another person engaged in hunting unless the owner or agent has acquired a hunting lease license from the department.

(b) The license shall be displayed on the hunting lease.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, Sec. 3, eff. Sept. 1, 1975; Acts 1989, 71st Leg., ch. 512, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.043. ISSUANCE OF LICENSE. The department may issue a

hunting lease license only in the name of the owner of a hunting lease or the name of the landowner's agent.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, Sec. 3, eff. Sept. 1, 1975; Acts 1989, 71st Leg., ch. 512, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.0431. APPLICATION FOR LICENSE. (a) The department may require an application for a license and may prescribe the form and content of the application.

(b) A written agreement containing the name, signature, address, and number of acres for each participating landowner included in a hunting cooperative must be attached to the application for a hunting lease license for a hunting lease that is a hunting cooperative.

Added by Acts 1989, 71st Leg., ch. 512, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 805, Sec. 2, eff. Sept. 1, 1991.

Sec. 43.0432. WILDLIFE MANAGEMENT ASSOCIATION AREA HUNTING LEASE LICENSES. (a) The owner of a tract of land included in a wildlife management association area under Section 81.301 of this code may apply for a wildlife management association area hunting lease license for that tract of land.

(b) A wildlife management association area hunting lease license applies only to the tract of land for which it is issued.

(c) Except as inconsistent with this section, this subchapter applies to a wildlife management association area hunting lease license in the same manner that it applies to a hunting lease license.

Added by Acts 1993, 73rd Leg., ch. 418, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 635, Sec. 4, eff. Sept. 1, 1993.

Sec. 43.044. LICENSE FEES. (a) The fees for hunting lease licenses, other than hunting leases that are hunting cooperatives, are determined by the following schedule or determined by the commission, whichever amount is more:

(1) $15 if the area of the hunting lease is less than 500 acres;

(2) $40 if the area of the hunting lease is 500 acres or more but less than 1,000 acres; and

(3) $60 if the area of the hunting lease is 1,000 acres or more.

(b) The fee for a license for a hunting lease that is a hunting cooperative is as follows:

(1) $60 + $5 per participating landowner if the area of the hunting lease is less than 10,000 acres;

(2) $120 + $5 per participating landowner if the area of the hunting lease is between 10,000 and 50,000 acres; and

(3) $240 + $5 per participating landowner if the area of the hunting lease is over 50,000 acres.

(c) The fee for a wildlife management association area hunting lease license is:

(1) $30 + $5 per participating landowner if the area of the wildlife management association is less than 10,000 acres;

(2) $60 + $5 per participating landowner if the area of the wildlife management association is between 10,000 and 50,000 acres; and

(3) $120 + $5 per participating landowner if the area of the wildlife management association is over 50,000 acres.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, Sec. 3, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 1329, ch. 277, Sec. 12, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 22, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 512, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 856, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 15.03, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 805, Sec. 3 eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 418, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 635, Sec. 5, eff. Sept. 1, 1993.

Sec. 43.045. DURATION OF LICENSE. A hunting lease license is valid for the period from September 1 or another date set by the commission through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a

license fee for a license issued during a transition period at an amount lower than prescribed in this subchapter and provide for a license term for a transition period that is shorter or longer than a year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, Sec. 3, eff. Sept. 1, 1975; Acts 1989, 71st Leg., ch. 512, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 931, Sec. 20, eff. June 16, 1995.

Sec. 43.055. PENALTY. A person who violates any provision of this subchapter or who fails to comply with any provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Sec. 43.057 and amended by Acts 1975, 64th Leg., p. 1204, ch. 456, Sec. 3, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 813, ch. 303, Sec. 2, eff. Aug. 29, 1977; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 21, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 512, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

Sec. 43.061. TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS; PERMIT REQUIRED. (a) No person may capture, transport, or transplant any game animal or game bird from the wild in this state unless that person has obtained a permit to trap, transport, and transplant from the department.

(b) The department may issue permits for trapping, transporting, and transplanting game animals or game birds from the wild to allow adjustments in game populations for better wildlife management. The permits may be issued only if recommended by separate wildlife stocking plans approved by the department for both the origin and the destination of the game animals or game birds.

(c) The state is not liable for and may not incur any expense for the trapping, transporting, and transplanting of game animals and game birds under a permit issued under this section.

(d) A person receiving a permit under this section commits an

offense if that person does not comply with the conditions listed on the permit, including conditions designed to minimize stress and maximize the humane treatment of trapped or transplanted animals and to minimize human health and safety risks.

(e) This section does not apply to any game animals or game birds that are possessed or propagated under a license or permit issued for that activity under another section of this code or to an activity conducted under a permit issued under Section 43.0611.

(f) The commission by rule may set fees for review of permit applications or other department actions necessary to implement this section. If the permit authorizes the applicant to trap, transport, and transplant squirrels that are causing damage to personal property, the applicant is exempt from the payment of the fee.

(g) The commission shall adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds under this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1995, 74th Leg., ch. 927, Sec. 8, eff. Dec. 1, 1995.

Sec. 43.0611. URBAN WHITE-TAILED DEER REMOVAL; PERMIT REQUIRED. (a) The department may issue to an individual an urban white-tailed deer removal permit for the trapping, transporting, and transplanting of white-tailed deer if the individual shows to the department's satisfaction that:

(1) there is an overpopulation of the deer in an area where deer hunting is inadequate, because of human health or safety concerns, for maintaining a balanced population of deer;

(2) the deer will be removed and transplanted to an area of adaptable natural habitat capable of sustaining the additional deer without exceeding the capacity of the habitat; and

(3) the deer will be subject to lawful hunting after the relocation.

(b) The state is not liable for and may not incur any expense for the trapping, transporting, and transplanting of white-tailed deer under a permit issued under this section.

(c) The commission by rule may set fees for review of permit applications or other department actions necessary to implement this

section. If the permit authorizes the applicant to remove white-tailed deer only from property owned by a political subdivision or institution of higher education of this state, the applicant is exempt from the payment of the fee.

(d) A person holding a permit issued under this section commits an offense if that person does not comply with conditions listed on the permit, including conditions designed to minimize stress and maximize the humane treatment of trapped or transplanted animals and that minimize human health and safety risks.

(e) The department may establish times when only department staff may trap, transport, or transplant deer under this section.

(f) Permits issued under this section do not entitle a person to take, trap, or possess white-tailed deer on any privately owned land without the landowner's written permission.

(g) The commission shall adopt rules for fees, applications, and activities, including limitations on the times of the activities, relating to permits for trapping, transporting, or transplanting white-tailed deer.

Added by Acts 1995, 74th Leg., ch. 927, Sec. 9, eff. Dec. 1, 1995.

Sec. 43.0612. TRAPPING AND TRANSPORTING SURPLUS WHITE-TAILED DEER; PERMIT REQUIRED. (a) In this section:

(1) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(2) "Qualified individual" means an individual who has a wildlife management plan approved by the department.

(b) The department may issue to a qualified individual, a political subdivision, or a property owners' association a permit authorizing the trapping and transporting of surplus white-tailed deer found on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located.

(c) Not later than the 30th day before the date of the first planned trapping and transporting of white-tailed deer, a qualified individual, a political subdivision, or a property owners' association shall file with the department an application showing that an overpopulation of white-tailed deer exists on the property

owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located. If the department issues a permit to a requesting qualified individual, political subdivision, or property owners' association, the permit shall contain specific instructions detailing the location to which the trapped white-tailed deer are to be transported or transplanted.

(d) After receipt of an application, the department may issue to the qualified individual, political subdivision, or property owners' association a permit specifying:

(1) the location to which trapped white-tailed deer must be transported; and

(2) the purpose for which the trapped deer are to be used.

(e) The department may deny a qualified individual, a political subdivision, or a property owners' association a permit if no suitable destination for the trapped white-tailed deer exists.

(f) A qualified individual, a political subdivision, or a property owners' association trapping and transporting white-tailed deer under this section must make reasonable efforts to ensure:

(1) safe and humane handling of trapped white-tailed deer; and

(2) minimization of human health and safety hazards in every phase of the trapping and transporting of white-tailed deer.

(g) A permit issued under this section may authorize a qualified individual, a political subdivision, or a property owners' association to trap and transport white-tailed deer only between October 1 of a year and March 31 of the following year, unless white-tailed deer found on the property owned by the qualified individual or within the boundaries of the political subdivision or the geographic area in which property subject to the property owners' association is located pose a threat to human health or safety, in which case the provision of Subsection (e) does not apply and a permit may authorize the qualified individual, political subdivision, or property owners' association to trap and transport white-tailed deer at any time of the year.

(h) A permit issued under this section does not entitle a person to take, trap, or possess white-tailed deer found on any privately owned land without the landowner's written permission, unless the permit holder is the landowner.

(i) The state is not liable for and may not incur any expense

for the trapping and transporting of white-tailed deer under a permit issued under this section.

(j) The department may not charge a fee for a white-tailed deer trapping and transporting permit issued under this section.

(k) The commission may adopt rules necessary for the implementation of this chapter, including rules which enhance the opportunity to relocate overpopulation of urban deer and relating to required notification, record-keeping, permit conditions, and the disposition of trapped white-tailed deer. The commission shall adopt rules for determining the circumstances under which a qualified individual, political subdivision, or property owners' association may obtain a permit issued under this section.

Added by Acts 2003, 78th Leg., ch. 1241, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1220 (S.B. 498), Sec. 1, eff. September 1, 2011.

Sec. 43.062. PENALTY. (a) Except as provided by Subsection (b), a person who violates any provision of this subchapter or the terms of a permit issued under this subchapter commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(b) A person commits an offense that is a Class C Parks and Wildlife Code misdemeanor if the person violates:

(1) a rule relating to a reporting requirement for a permit issued under this subchapter; or

(2) a term of a permit issued under this subchapter that relates to a reporting requirement.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 22, eff. Sept. 1, 1985.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 792 (S.B. 1432), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1025 (H.B. 2649), Sec. 1, eff. June 14, 2013.

SUBCHAPTER F. PRIVATE BIRD HUNTING AREAS

Sec. 43.071. DEFINITIONS. In this subchapter:

(1) "Private bird hunting area" means a tract of land on which the hunting or taking of pen-reared birds is authorized under this subchapter.

(2) "Licensee" means a person who holds a private bird hunting area license.

(3) "Guest" means a person other than a licensee who hunts or takes birds on a private bird hunting area.

(4) "Field trial" means the hunting of banded pen-reared birds in a formal trial of bird dogs that has been licensed or sanctioned by an organization or association of bird dog clubs, with or without the awarding of points.

(5) "Pen-reared birds" means bobwhite quail, pheasant, pigeons, partridge, and mallard ducks propagated or acquired under Chapter 45 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 22, Sec. 1, eff. Nov. 1, 1990. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 11, eff. September 1, 2009.

Sec. 43.072. APPLICATION FOR LICENSE. (a) Any person may apply to the department for a private bird hunting area license.

(b) The application for a private bird hunting area license must be on a form supplied by the department and must include:

(1) the name and address of the applicant;

(2) the total number of contiguous acres to be licensed;

(3) the name and general location of the property; and

(4) the species of pen-reared birds to be hunted.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1330, ch. 277, Sec. 13, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 23, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.0721. LICENSE REQUIRED. (a) No person may release banded pen-reared birds under this subchapter unless the person holds

a valid private bird hunting area license.

(b) The license must be displayed on the private bird hunting area.

(c) A person is not required to hold a hunting lease license issued under Subchapter D to hunt banded pen-reared birds released under the authority of this subchapter.

Added by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 171, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 32, eff. Sept. 1, 1997.

Sec. 43.0722. ISSUANCE OF LICENSE; FEE; VALIDITY. (a) The department may issue a license for a private bird hunting area under this subchapter.

(b) The license shall be issued in the name of a person.

(c) The fee for a private bird hunting area license is $60 or an amount set by the commission, whichever amount is more.

(d) The department may not issue more than one private bird hunting area license for a single tract of land.

(e) A private bird hunting area license is valid only for the tract of land for which it is issued.

(f) The private bird hunting area license is valid from September 1 or another date set by the commission through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this subchapter and provide for a license term for a transition period that is shorter or longer than a year.

Added by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 22, eff. June 16, 1995.

Sec. 43.073. AREA LIMITATIONS AND MARKINGS. (a) A private bird hunting area must consist of contiguous acreage owned by an individual, partnership, firm, or corporation.

(b) A private bird hunting area shall be distinguished from any other club, hunting lease, or other leased premises for hunting purposes by clearly marking its boundaries with wood, plastic, or

metal signs bearing the words, "Private Bird Hunting Area," and the identification number. The lettering and identification number on these signs must be in block letters and arabic numbers not less than three inches high, and must be in a color that contrasts with the background.

(c) Signs must be placed at each entrance to a private bird hunting area to identify clearly the boundaries of each licensed area.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 8, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 9, eff. June 18, 2005.

Sec. 43.074. TAKING OF PEN-REARED BIRDS AUTHORIZED. (a) A licensee or a guest may take banded pen-reared birds on a licensed private bird hunting area during the private bird hunting area season.

(b) The private bird hunting area season begins each September 1 and extends through the following August 31.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.075. GAME BIRDS IN CAPTIVITY; BANDING. (a) A licensee may hold pen-reared birds in captivity on the private bird hunting area only for release to provide hunting.

(b) All pen-reared birds released on a private bird hunting area shall be banded with a metal or plastic band before release.

(c) Each band must show the identification number of the licensee.

(d) The band must remain on each bird killed until the bird is taken to the permanent residence of the hunter, the permanent residence of another person receiving the bird, or a cold storage or processing facility unless the name and identification number of the licensee has been stamped or printed on the box, wrapping, or package

containing the carcass of a bird that has been processed and possessed, shipped, or transported without the band attached.

(e) This subchapter may not be construed to exempt the holder of a private bird hunting area license from the requirement of a commercial game bird breeder's license if the pen-reared birds are propagated on the licensed area.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1256, Sec. 33, eff. Sept. 1, 1997.

Sec. 43.076. LICENSE FORM. A private bird hunting area license must be on a form prescribed by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.0762. REGULATIONS. The commission may adopt regulations necessary to administer this subchapter, including any provision, limitation, or prohibition necessary to manage and protect game birds occurring naturally in the wild.

Added by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.0763. APPLICATION FOR FIELD TRIAL PERMIT. (a) Any person, including a licensee, may apply to the department for a field trial permit.

(b) The application must be on a form prescribed by the department and must contain the following information:

(1) name and address of the applicant;

(2) name, address, and identification number of the licensee for the private bird hunting area at which the field trial is to be held;

(3) the species of birds to be used in the field trial; and

(4) the name of the association or organization of bird dog clubs licensing or sanctioning the field trial.

(c) Repealed by Acts 1991, 72nd Leg., ch. 171, Sec. 2, eff.

Sept. 1, 1991.

Added by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.
Amended by Acts 1991, 72nd Leg., ch. 171, Sec. 2, eff. Sept. 1, 1991.

Sec. 43.0764. FIELD TRIAL PERMIT; FEE; VALIDITY. (a) No person, club, or organization may hold a field trial unless that person, club, or organization has in its immediate possession a valid field trial permit issued by the department.

(b) The fee for a field trial permit is $50 or an amount set by the commission, whichever amount is more.

(c) A field trial permit shall be issued in the name of an individual.

(d) A field trial permit is valid for a period of nine consecutive days.

(e) A field trial permit is not valid for a tract of land or premises that is not licensed as a private bird hunting area.

Added by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.077. PENALTY. A person who violates any provision of this subchapter or a regulation of the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 23, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.

Sec. 43.078. HUNTING LICENSE REQUIRED. (a) Except as provided by Subsection (b) of this section, this subchapter does not authorize any person to hunt pen-reared birds on a licensed private bird hunting area without having in the person's immediate possession a hunting license required by Chapter 42 of this code.

(b) A person registered to participate in a field trial held under a field trial permit issued by the department is exempt, for the field trial, from the hunting license requirements of Chapter 42 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 512, Sec. 2, eff. Sept. 1, 1989.

SUBCHAPTER G. PERMITS TO MANAGE WILDLIFE AND EXOTIC ANIMALS FROM AIRCRAFT

Sec. 43.101. APPLICABILITY OF SUBCHAPTER. This subchapter and a proclamation or regulation of the commission adopted under this subchapter apply to all counties of the state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1222, ch. 456, Sec. 23, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 568, ch. 202, Sec. 1, eff. May 20, 1977; Acts 1979, 66th Leg., p. 255, ch. 133, Sec. 1, eff. May 9, 1979; Acts 1979, 66th Leg., p. 784, ch. 346, Sec. 1, eff. June 6, 1979; Acts 1981, 67th Leg., p. 936, ch. 351, Sec. 1, eff. June 10, 1981; Acts 1983, 68th Leg., p. 4706, ch. 819, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 730, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.102. PERMIT AUTHORIZED. Under Public Law 92-159, Section (b)(1) (85 Stat. 480, 16 U.S.C. 742j-1), the department may issue permits for the management of wildlife and exotic animals by the use of aircraft in this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 2, eff. Sept. 1, 1995.

Sec. 43.103. DEFINITIONS. In this subchapter:

(1) "Aircraft" means a mechanical or other device used for flight in the air.

(2) "Depredating animals" means bobcats, feral hogs, red foxes, coyotes, and crossbreeds between coyotes and dogs but does not include birds or fowl.

(3) "Exotic animals" includes exotic livestock and exotic fowl as defined by Section 161.001(a), Agriculture Code, wild animals that are nonindigenous to Texas, aoudad sheep, and elk.

(4) "Harass" means to disturb, worry, molest, harry,

torment, rally, concentrate, drive, or herd.

(5) "Management by the use of aircraft" means counting, photographing, relocating, capturing, or hunting by the use of aircraft.

(6) "Wildlife" means any vertebrate species or their hybrids that normally live in a state of nature and are not ordinarily domesticated. This definition includes depredating animals.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 22, Sec. 2, eff. Nov. 1, 1990. Amended by Acts 1991, 72nd Leg., ch. 424, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 969, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 863, Sec. 2, eff. Sept. 1, 1997.

Sec. 43.104. GROUNDS TO ISSUE PERMIT. The department may issue a permit to any person if the department finds that management of wildlife or exotic animals by the use of aircraft is necessary to protect or to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops and will not have a deleterious effect on indigenous species.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 4, eff. Sept. 1, 1995.

Sec. 43.105. APPLICATION FOR PERMIT. (a) An applicant for a permit under this subchapter shall file with the application one or more affidavits, containing facts as well as opinion, as to why the permit should be issued for the management of wildlife or exotic animals by the use of aircraft.

(b) A permit holder under this subchapter must submit a landowner's authorization to manage wildlife or exotic animals to the department identifying the land to be managed and stating the kind and number of wildlife or exotic animals to be managed. The landowner's authorization may be submitted by a group of landowners or by an association on behalf of such landowners.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 5, eff. Sept. 1, 1995.

Sec. 43.106. FORM AND PERIOD OF VALIDITY OF PERMIT; RENEWAL. (a) The department shall prescribe the form and manner of issuance of, and periods of validity and renewal dates for, permits and landowner's authorizations authorized by this subchapter.

(b) A landowner agreement application to manage wildlife or exotic animals may be approved by the department for the time period required to complete the management activity but not for less than one year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 6, eff. Sept. 1, 1995.

Sec. 43.107. REPORTS REQUIRED. (a) The holder of a permit under this subchapter shall report to the department in the time and manner required by commission proclamation.

(b) An offense under this section may be prosecuted in the county in which the defendant resides or in the county where the offense took place.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 7, eff. Sept. 1, 1995.

Sec. 43.1075. USING HELICOPTERS TO TAKE CERTAIN ANIMALS. A qualified landowner or landowner's agent, as determined by commission rule, may contract to participate as a hunter or observer in using a helicopter to take depredating feral hogs or coyotes under the authority of a permit issued under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 481 (H.B. 716), Sec. 1, eff. September 1, 2011.

Sec. 43.1076. USING HOT AIR BALLOONS TO TAKE CERTAIN ANIMALS. A qualified landowner or landowner's agent, as determined by commission rule, may contract to participate as a hunter or observer in using a hot air balloon to take depredating feral hogs or coyotes under the authority of a permit issued under this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 706 (H.B. 3535), Sec. 1, eff. September 1, 2017.

Sec. 43.108. REPORTS BY DEPARTMENT. The department shall report annually to the Secretary of the Interior of the United States as required by federal law.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989.

Sec. 43.109. REGULATIONS. (a) The commission may make regulations governing management of wildlife or exotic animals by the use of aircraft under this subchapter.

(b) A proclamation or regulation of the commission adopted under this subchapter may:

(1) prescribe forms and procedures for permit applications;

(2) establish procedures for the management of wildlife or exotic animals by the use of aircraft;

(3) limit the time and the place for which a permit is valid;

(4) prohibit acts; and

(5) require, limit, or prohibit any activity as necessary to implement this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 8, eff. Sept. 1, 1995.

Sec. 43.1095. PROHIBITED ACTS. (a) For purposes of this subchapter, a person commits an offense if that person:

(1) hunts or kills, or attempts to hunt or kill, from an aircraft any animal or bird that is not specifically authorized by a

permit issued under this subchapter;

(2) uses an aircraft to manage wildlife or exotic animals without first obtaining and having in the person's immediate possession a permit and a landowner's authorization for the management of wildlife or exotic animals by the use of aircraft; or

(3) uses an aircraft to harass wildlife, exotic animals, or any other animal or bird.

(b) It is a defense to prosecution for harassment of wildlife or exotic animals under this section if the person is engaged in the activity of counting, photographing, relocating, capturing, or hunting wildlife or exotic animals under the authority of a permit under this subchapter.

(c) Nothing in this chapter authorizes a person to hunt any animal or bird from an aircraft for sport.

Added by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 969, Sec. 9, eff. Sept. 1, 1995.

Sec. 43.110. PERMIT FEE. The commission shall set a fee for a permit that authorizes the management of wildlife or exotic animals by the use of aircraft.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 10, eff. Sept. 1, 1995.

Sec. 43.111. PENALTY. (a) Except as otherwise provided by this section, a person who violates any provision of this subchapter or a proclamation or regulation adopted under this subchapter commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 43.107 commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant for a violation of this subchapter or a proclamation or regulation adopted under this subchapter that the defendant has been convicted of a Class A Parks and Wildlife Code misdemeanor violation of this subchapter within 10 years preceding the trial date, on conviction the defendant shall be punished for a Parks and Wildlife Code felony. This subsection does not apply if the previous conviction was for a

violation of Section 43.107.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 24, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 545, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 969, Sec. 11, eff. Sept. 1, 1995.

SUBCHAPTER H. PERMITS TO CONTROL WILDLIFE PROTECTED BY THIS CODE

Sec. 43.151. THREATS TO PUBLIC SAFETY OR DAMAGE BY WILDLIFE. A person who has evidence clearly showing that wildlife protected by this code is causing serious damage to commercial agricultural, horticultural, or aquicultural interests, or is a threat to public safety, and who desires to kill the protected wildlife shall give written notice of the facts to the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1987, 70th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 968, Sec. 38, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 1, eff. May 29, 2009.

Sec. 43.1515. RULES. The commission may adopt rules to implement this subchapter, including rules governing:

(1) reports that must be submitted to the department by a person who holds a permit issued by the department under this subchapter;

(2) the reinstatement of a canceled permit and a fee for the reinstatement;

(3) the possession of wildlife resources taken or held under this subchapter;

(4) the circumstances required to qualify for a permit; and

(5) the electronic issuance of permits.

Added by Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 2, eff. May 29, 2009.

Sec. 43.152. DEPARTMENT INSPECTION. (a) On receiving notice

from a person under Section 43.151, the department may inspect the property and determine if damage or a threat to public safety is occurring as alleged in the notice.

(b) If the notice received by the department under Section 43.151 alleges damage or a threat to public safety caused by mule deer, pronghorn antelope, or desert bighorn sheep, the department may not issue a permit under Section 43.154 unless the department inspects the property and determines whether serious damage or a threat to public safety is occurring.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1987, 70th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1987; Acts 2001, 77th Leg., ch. 968, Sec. 39, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 3, eff. May 29, 2009.

Sec. 43.153. APPLICATION FOR PERMIT. (a) A person who has evidence of damage by depredation or threat to public safety may file with the department an application for a permit to kill the protected wildlife.

(b) The application must be in writing, be sworn to by the applicant, and contain:

(1) a statement of facts relating to the damage or threat; and

(2) an agreement by the applicant to comply with the provisions of this subchapter and any rules adopted by the commission under this subchapter.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 251, Sec. 10, eff. May 29, 2009.

(d) The application must be accompanied by a permit application fee of $50 or an amount set by the commission, whichever amount is more. Proceeds from the fee shall be deposited in the special game, fish, and water safety account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1987, 70th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 4, eff. May 29, 2009.

Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 10, eff. May 29, 2009.

Sec. 43.154. PERMIT. (a) On receipt of an application, the department may issue a permit for the killing of wildlife without regard to the closed season, bag limit, or means and methods. As soon as practicable, but not later than the 10th business day after the date the department receives an application, the department shall approve or deny the application and, if the application is approved, issue the permit.

(a-1) The department may not issue a permit under this section for the killing of mule deer, pronghorn antelope, or desert bighorn sheep unless:

(1) the department has inspected the property and has verified that serious damage or a threat to public safety as described in the notice under Section 43.151 is occurring;

(2) the department has made recommendations to the applicant regarding ways to minimize the damage or threat; and

(3) the applicant has made a reasonable effort to comply with the recommendations made by the department under this section.

(b) The department shall deliver or mail the permit, if issued, to the person requesting the permit or to the regional or local office of the department for pickup by the person. The department may issue the permit electronically.

(c) A permit must specify:

(1) the period of time during which it is valid;

(2) the area in which it applies;

(3) the kind and number of wildlife authorized to be killed; and

(4) the persons permitted to kill the noxious wildlife.

(d) No state permit is required to authorize a person to kill migratory birds protected by the Federal Migratory Bird Treaty Act if the person has obtained a permit authorizing that activity from the United States Department of the Interior or the United States Department of Agriculture.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1987, 70th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1256, Sec. 34, eff. Sept. 1, 1997; Acts

2001, 77th Leg., ch. 968, Sec. 40, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 5, eff. May 29, 2009.

Sec. 43.155. DISPOSITION OF WILDLIFE. (a) The holder of a permit issued under this subchapter or a person designated by Section 43.154(c)(4) who kills wildlife under the authority of the permit shall dispose of the carcass by donating it to a charitable institution, a hospital, a needy person, or any other appropriate recipient.

(b) The permit holder or a person designated under Section 43.154(c)(4) may not keep or sell any part of the wildlife taken under this subchapter, including antlers.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1987, 70th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 6, eff. May 29, 2009.

Sec. 43.156. CANCELLATION OF PERMIT. The department may cancel a permit if:

(1) the permit does not accomplish its intended purposes;

(2) the permit holder fails to submit a required report to the department; or

(3) the permit holder intentionally made false claims on the application for the permit.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 48, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1987.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 7, eff. May 29, 2009.

Sec. 43.1565. REINSTATEMENT OF PERMIT. The department may reinstate a canceled permit if the permit holder submits an

application for reinstatement in the same manner as required by Section 43.153 for an original permit and pays a fee set by the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 8, eff. May 29, 2009.

Sec. 43.157. VIOLATIONS; PENALTY. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 251, Sec. 10, eff. May 29, 2009.

(b) No permittee may dispose of a wildlife carcass killed under the permit or allow the wildlife to be disposed of except as allowed under Section 43.155 of this code.

(c) No permittee may violate a term or condition of the permit.

(d) Except as provided by Subsection (e), a person who violates this section commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(e) A person who violates a reporting requirement adopted under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 25, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 610, Sec. 1, eff. Sept. 1, 1987. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 9, eff. May 29, 2009.

Acts 2009, 81st Leg., R.S., Ch. 251 (H.B. 1965), Sec. 10, eff. May 29, 2009.

Sec. 43.158. LANDOWNER PERMIT EXEMPTION. Nothing in this subchapter prevents a landowner or the landowner's agent or lessee from taking depredating feral hogs on the landowner's land without having acquired a permit under this subchapter.

Added by Acts 2003, 78th Leg., ch. 809, Sec. 4, eff. June 20, 2003.

SUBCHAPTER I. ARCHERY STAMPS

Sec. 43.201. ARCHERY STAMP REQUIRED. (a) Except as provided

by Subsection (c) or (d), no person may hunt deer, turkey, or javelina (collared peccary) during an open archery season provided by law or by the proclamations of the commission and during which season only crossbows, longbows, recurved bows, and compound bows may be used unless the person has acquired an archery hunting stamp issued to the person by the department. The commission by rule may prescribe requirements relating to possessing a stamp required by this subchapter. In a county that does not permit hunting with a firearm, a hunter may use a crossbow only if the hunter is a person with upper limb disabilities and has an archery hunting stamp.

(b) The stamp shall be issued in the form and manner prescribed by the department and, except as provided by Subsection (d), must be signed on its face by the person using the stamp for the stamp to be valid for hunting purposes.

(c) The commission by regulation may exempt a person from the stamp requirement of this section.

(d) The commission by rule may prescribe alternate requirements for identifying the purchaser of a stamp issued in an automated manner.

(e) A stamp issued under this subchapter is valid for hunting only during the yearly period for which the stamp is issued without regard to the date on which the stamp is acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a stamp fee for a stamp issued during a transition period at an amount lower than prescribed in this subchapter and provide for a stamp term for a transition period that is shorter or longer than a year.

Added by Acts 1975, 64th Leg., p. 1203, ch. 456, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 838, Sec. 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 24, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 35, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 99 (H.B. 968), Sec. 1, eff. September 1, 2009.

Sec. 43.202. FEE. The fee for an archery hunting stamp is $6 or an amount set by the commission, whichever amount is more. The

department may issue other editions of the stamp that are not valid for hunting at an amount set by the commission.

Acts 1975, 64th Leg., p. 1203, ch. 456, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1330, ch. 277, Sec. 14, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 24, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 25, eff. June 16, 1995.

Sec. 43.203. HUNTING LICENSE REQUIRED. The purchase or possession of an archery hunting stamp does not permit a person to hunt deer, turkey, or javelina without the license required by Chapter 42 or by any means or methods not allowed by law.

Acts 1975, 64th Leg., p. 1203, ch. 456, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 36, eff. Sept. 1, 1997.

Sec. 43.204. STAMP SALE RECEIPTS. The net revenue derived from the sale of archery hunting stamps shall be sent to the department.

Acts 1975, 64th Leg., p. 1203, ch. 456, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 548, ch. 260, art. 1, Sec. 4, eff. Sept. 1, 1979.

Sec. 43.205. PENALTY. (a) A person who violates Section 43.201 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person hunting a species covered by this chapter during an open archery season who fails or refuses on the demand of any game warden or other peace officer to exhibit an archery hunting stamp or proof that the person is eligible for any exemptions provided by Section 43.201(c) is presumed to be in violation of Section 43.201 of this code.

Acts 1975, 64th Leg., p. 1203, ch. 456, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 26, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 838, Sec. 10, eff. Sept. 1, 1993.

SUBCHAPTER L. DEER BREEDER'S PERMIT

Sec. 43.351. DEFINITIONS. In this subchapter:

(1) "Breeder deer" means a white-tailed deer or mule deer legally held under a permit authorized by this subchapter.

(2) "Deer breeder" means a person holding a valid deer breeder's permit.

(3) "Captivity" means the keeping of a breeder deer in an enclosure suitable for and capable of retaining the breeder deer it is designed to retain at all times under reasonable and ordinary circumstances and to prevent entry by another deer. The term includes the temporary keeping of a breeder deer in a vehicle or trailer.

(4) "Deer" means a white-tailed deer or mule deer.

(5) Repealed by Acts 2019, 86th Leg., R.S., Ch. 603 (S.B. 810), Sec. 2, eff. September 1, 2019.

(6) "Immediate locality" means land that is contiguous and that is owned by the same person. For purposes of this subdivision, land divided or separated only by a public road or a public waterway is contiguous.

(7) "Transfer" means any movement of breeder deer from a breeder facility, a nursing facility, or a deer management permit facility other than to an accredited veterinarian for medical purposes.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 603 (S.B. 810), Sec. 2, eff. September 1, 2019.

Sec. 43.352. PERMIT AUTHORIZED; DURATION OF PERMIT. (a) The department shall issue a permit to a qualified person to possess live breeder deer in captivity.

(b) At the option of the person applying for the issuance or renewal of a permit under this section, the department may issue a

permit that is valid for one year, three years, or five years.

(c) A three-year or five-year permit is available only to a person who:

(1) has held a deer breeder's permit for the three consecutive permit years immediately preceding the date of the application for a three-year or five-year permit;

(2) agrees to submit the annual reports required under this subchapter electronically; and

(3) meets any other criteria established by rule of the commission.

(d) The commission may adopt rules allowing the department to revoke a three-year or five-year permit before the date specified for expiration of the permit if the permit holder fails to submit the annual reports electronically as required.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 8, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 4, eff. September 1, 2013.

Sec. 43.353. PERMIT IS DEFENSE. In any prosecution for the unlawful possession or transportation of white-tailed deer or mule deer, the possession of a permit issued under this subchapter to the accused is a complete defense if the conduct was authorized under the terms of the permit.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 9, eff. Sept. 1, 1991.

Sec. 43.356. SERIAL NUMBER. The department shall issue a serial number to a permittee when the department issues the permittee a deer breeder's permit. The same serial number shall be assigned to the permittee if the department issues the permittee a subsequent deer breeder's permit.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1255, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 38, eff. Sept. 1, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.3561. IDENTIFICATION OF BREEDER DEER. (a) In this section:

(1) "Button back" means the portion of an identification tag used to secure the tag to the breeder deer.

(2) "Electronic identification device" means a button tag or implant that uses radio frequency identification technology.

(3) "Identification tag" means a tag attached to the ear of a breeder deer for the purposes of identification that meets the requirements of this section.

(4) "Unique identifier" means five alphanumeric characters assigned by the department to uniquely identify a breeder deer.

(b) Not later than March 31 of the year following the year in which a breeder deer is born, the breeder deer must be identified by:

(1) attaching an identification tag to the pinna of either ear of the breeder deer in a manner so that the face of the tag is clearly visible on the anterior side of the ear; and

(2) applying a single electronic identification device.

(c) Except for a replacement identification tag described by Subsection (h), an identification tag applied under Subsection (b):

(1) must:

(A) be commercially manufactured;

(B) bear on the face and button back the unique identifier for the breeder deer to which it is attached in text placed by the manufacturer with characters on the face not less than 5/16 inch wide and 1/2 inch tall and spaced not less than 1/16 inch apart;

(C) be securely affixed so as not to be dislodged or removed easily;

(D) be made of a material that is not likely to disintegrate or decompose; and

(E) have sufficient contrast between the color of the

text and the color of the tag to make the text characters clearly visible; and

(2) may bear additional information, provided that a dividing line placed by the manufacturer below the unique identifier separates the unique identifier from the additional information.

(d) The text of the unique identifier may be larger than the dimensions described by Subsection (c)(1)(B) but must maintain the same proportion of height and width.

(e) A breeder deer born before January 1, 2022, may be identified as described by Subsection (c) or (h). A breeder deer born on or after January 1, 2022, must be identified first as described by Subsection (c) before the breeder deer may be identified as described by Subsection (h).

(f) An electronic identification device applied under Subsection (b)(2) must be approved by the United States Department of Agriculture and have an associated 15-digit animal identification number that begins with 840. If the electronic identification device is a button tag, the button tag must be attached to the pinna of either ear of the breeder deer. If the electronic identification device is an implant, the implant may not be implanted in edible muscle. No person may remove an electronic identification device.

(g) The department shall create and maintain a database containing electronic identification device numbers entered by deer breeders. An electronic identification device applied under Subsection (b)(2) is valid for purposes of Subsection (b) only if the number associated with the device has been entered into the department database and corresponds with the unique identifier assigned to the breeder deer to or in which the device is attached or implanted. In making a determination to destroy a deer under Section 43.953, the department shall consider an electronic identification device that meets the requirements of this section as evidence of positive identification for a breeder deer that cannot be identified by either the identification tag or tattoo required by Subsection (b) or (j), provided that the deer breeder entered the electronic identification device number into the database before the identity of the breeder deer was in question as determined by the department.

(h) A deer breeder immediately shall replace an identification tag that has been dislodged, damaged, or removed by means other than human agency to the extent that the identification tag does not meet the requirements of Subsections (b) and (c) with another

identification tag that meets the requirements of Subsections (b) and (c), except that a deer breeder may create and attach a replacement identification tag. A replacement identification tag must:

(1) be clearly visible;

(2) have legible text written with a tag pen manufactured for use with the tag; and

(3) meet the requirements of Subsections (b)(1) and (c), except for the requirement that the text be placed on the tag by the manufacturer.

(i) A deer breeder is not required to remove the tag for any purpose but may remove the tag and replace the tag immediately to meet the requirements of this section.

(j) A person may not remove or knowingly permit the removal of a breeder deer held in a facility by a permittee under this subchapter unless the breeder deer has been identified by applying a tattoo to the inner portion of either ear of the deer that:

(1) is made with commercially available #300 or 5/16 inch tattoo letters and numbers;

(2) is legible, permanent, and green or black; and

(3) bears the same unique identifier printed on the identification tag attached to the deer under Subsection (c).

(k) A person may not knowingly accept or permit the acceptance of a breeder deer into a facility regulated under this subchapter unless the breeder deer has been identified as required by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. January 1, 2008.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 603 (S.B. 810), Sec. 1, eff. September 1, 2019.

Sec. 43.357. PERMIT PRIVILEGES; REGULATIONS. (a) The holder of a valid deer breeder's permit may:

(1) engage in the business of breeding breeder deer in the immediate locality for which the permit was issued; and

(2) sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation or sale.

(a-1) A deer breeder, a deer breeder's authorized agent, or an

assistant who is not a permittee under this subchapter but is acting under the direction of a deer breeder or a deer breeder's authorized agent may capture a breeder deer held in a permitted facility for:

(1) removal from an enclosure;

(2) veterinary treatment;

(3) tagging;

(4) euthanasia for the purpose of:

(A) humane dispatch of the breeder deer; or

(B) the conduct of a test for a reportable disease as required by law; or

(5) any other purpose required or allowed by law.

(b) The commission may make regulations governing:

(1) the possession of breeder deer held under the authority of this subchapter;

(2) the recapture of lawfully possessed breeder deer that have escaped from the facility of a deer breeder;

(3) permit applications and fees;

(4) reporting requirements;

(5) procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer;

(6) the endorsement of a deer breeder facility by a certified wildlife biologist;

(7) the number of breeder deer that a deer breeder may possess; and

(8) the dates for which a deer breeder permit is valid.

(c) A person who holds a permit under this subchapter or a person who receives a breeder deer under this subchapter is not required to have the release site inspected or approved before the release of a breeder deer from a breeding facility. This section does not preclude the department from making a habitat inspection but does direct the department to refrain from implementing habitat inspection rules or procedures that could unreasonably impede the broader deer breeding industry.

(d) Subsection (c) does not exempt a person from the requirements under the following permits issued by the department:

(1) managed land deer permit regulated under 31 T.A.C. Sections 65.26 and 65.34;

(2) deer management permit under Section 43.601;

(3) trap, transport, and transplant permit under Sections 43.061 and 43.0611;

(4) trap, transport, and process permit under Section 43.0612; and

(5) antlerless deer control permit regulated under 31 T.A.C. Sections 65.25 and 65.27.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 13, 14, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1255, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 39, eff. Sept. 1, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.358. INSPECTION. An authorized employee of the department may inspect at any time and without warrant:

(1) any pen, coop, or enclosure holding white-tailed deer or mule deer; or

(2) any records required to be maintained under Section 43.359(a).

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 15, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1255, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 40, eff. Sept. 1, 1997.

Sec. 43.359. RECORDS AND REPORTS. (a) A deer breeder shall maintain an accurate and legible record of all breeder deer acquired, purchased, propagated, sold, transferred, or disposed of and any other information required by the department that reasonably relates to the regulation of deer breeders.

(b) A deer breeder shall report the information maintained under Subsection (a) to the department as the commission by rule may require.

(c) On the request of a game warden acting within the scope of the game warden's authority, a deer breeder shall make any information required under this subchapter for the previous two reporting years available to:

(1) the game warden; or

(2) another authorized department employee.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 16, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1255, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 41, eff. Sept. 1, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.3591. GENETIC TESTING. (a) In this section:

(1) "DNA" means deoxyribonucleic acid.

(2) "Genetic test" means a laboratory analysis of a deer's genes, gene products, or chromosomes that:

(A) analyzes the deer's DNA, RNA, proteins, or chromosomes; and

(B) is performed to determine genetically the deer's ancestral lineage or descendants.

(3) "RNA" means ribonucleic acid.

(b) After an inspection, the department shall notify a deer breeder in writing when the department has reason to believe the deer breeder possesses deer that may pose a disease risk to other deer. The notice must include an explanation of the rationale used to establish the disease risk.

(c) If genetic testing is timely conducted, the department must postpone any actions that may be affected by the test results until the test results are available.

(d) The results of genetic testing may not be used as evidence to establish a defense against a fine imposed on a deer breeder found guilty of failure to keep records of all deer in a deer breeder facility as required by this subchapter.

(e) The commission shall adopt rules as needed to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 5, eff. September 1, 2013.

Sec. 43.360. ENCLOSURE SIZE. A single enclosure for breeder deer may not contain more than 100 acres.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept.

1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 17, eff. Sept. 1, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.361. RELEASE SITES. (a) A release site onto which breeder deer are liberated must be surrounded by a fence not less than seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances.

(b) The owner of a release site is responsible for ensuring that the fence surrounding the release site and infrastructure associated with the fence are in a condition to retain deer as provided by Subsection (a).

Added by Acts 2019, 86th Leg., R.S., Ch. 611 (S.B. 948), Sec. 1, eff. September 1, 2019.

Sec. 43.362. TRANSFER, PURCHASE, OR SALE OF LIVE BREEDER DEER. (a) Only breeder deer that are in a healthy condition may be sold, transferred, bartered, or exchanged, or offered for sale, transfer, barter, or exchange, by a deer breeder.

(b) Except as provided by Subchapter C or by a rule adopted by the commission under this subchapter, no person may purchase, obtain, sell, transfer, or accept in this state a live breeder deer unless the person obtains a transfer permit from the department.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 20, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1255, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 42, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.363. TRANSFER DURING OPEN SEASON. (a) During an open hunting season for deer or during the 10-day period immediately preceding an open hunting season, no person in this state may sell,

transfer, ship, or transport a breeder deer unless the person:

(1) has removed the antlers of the breeder deer between the G-3 tine, as defined by the Boone and Crockett Club, and the pedicel on each antler main beam; and

(2) has followed any procedure prescribed by rule of the commission for the lawful conduct of activities under this subchapter.

(b) Subsection (a) does not apply to a sale, transfer, shipment, or transport:

(1) to another deer breeder's facility; or

(2) to an enclosure authorized under a deer management permit.

(c) The commission shall adopt rules governing a transfer permit under this section.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 456, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 704, Sec. 21, 22, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1255, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 43, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.364. USE OF BREEDER DEER. Breeder deer may be purchased, sold, transferred, or received in this state only for the purposes of liberation or holding for propagation. All breeder deer and increase from breeder deer are under the full force of the laws of this state pertaining to deer, and those breeder deer may be held in captivity for propagation in this state only after a deer breeder's permit is issued by the department under this subchapter.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 23, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.365. PROHIBITED ACTS. (a) It is an offense if a deer breeder or another person:

(1) allows the hunting or killing of a breeder deer or any other deer held in captivity in a facility permitted under this subchapter, except as provided by this subchapter or a rule adopted by the commission under this subchapter; or

(2) knowingly sells, arranges the sale of, purchases, transfers, receives, or attempts to sell, arrange the sale of, purchase, transfer, or receive a live breeder deer in violation of this subchapter or a rule adopted by the commission under this subchapter.

(b) It is an offense if a deer breeder fails to furnish to a game warden commissioned by the department or other authorized department employee records for the previous two reporting years required to be maintained under Section 43.359(a).

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 24, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1255, Sec. 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 44, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.366. APPLICATION OF OTHER LAWS. (a) In order that native species may be preserved, breeder deer held under a deer breeder's permit are subject to all laws and regulations of this state pertaining to deer except as specifically provided in this subchapter.

(b) This subchapter may not be construed to restrict or prohibit the use of high fences.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 704, Sec. 25, eff. Sept. 1, 1991.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.367. PENALTY. (a) Except as provided by Subsection (b), a person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter or who fails to file a full and complete report as required by Section 43.359 commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 43.365(a)(1) commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 49, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 79 (H.B. 1308), Sec. 2, eff. September 1, 2007.

Sec. 43.369. DEER BREEDER DATABASE. (a) In this section, "database" means a deer breeder database used by the department.

(b) The department in conjunction with the Texas Animal Health Commission, not later than June 1, 2010, shall develop and maintain a process for a database to be shared by both agencies. The database must include the reporting data required to be provided by each deer breeder:

(1) to the department under this subchapter; and

(2) to the Texas Animal Health Commission.

(c) To the extent possible, the department and the Texas Animal Health Commission shall share the database to eliminate the need for a deer breeder to submit duplicate reports to the two agencies.

(d) The Parks and Wildlife Commission and the Texas Animal Health Commission, by rule, shall provide incentives to deer breeders whose cooperation results in reduced costs and increased efficiency by offering:

(1) reduced fees for the deer breeder permit; and

(2) a permit with an extended duration.

(e) The Parks and Wildlife Commission and the Texas Animal Health Commission may adopt rules to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 813 (S.B. 1586), Sec. 1, eff. June 19, 2009.

SUBCHAPTER M. SALTWATER SPORTFISHING STAMP

Sec. 43.401. DEFINITION. In this subchapter, "saltwater" has the meaning prescribed by Section 66.001 of this code.

Added by Acts 1985, 69th Leg., ch. 640, Sec. 1, eff. Jan. 1, 1986.

Sec. 43.402. SALTWATER SPORTFISHING STAMP REQUIRED. (a) Except as provided by Subsection (b) or (c) of this section, no person may engage in fishing in saltwater for sporting purposes in this state, or unload in this state fish or other aquatic life taken for sporting purposes from waters managed by the Gulf of Mexico Fishery Management Council established under the Fishery Conservation and Management Act of 1976 (16 U.S.C. Section 1801 et seq.), unless the person has acquired a saltwater sportfishing stamp endorsement issued to the person by the department. The commission by rule may prescribe requirements relating to possessing a stamp endorsement required by this subchapter.

(b) A person who is exempted from obtaining a fishing license under Chapter 46 is not required to obtain a saltwater sportfishing stamp endorsement.

(c) The commission by regulation may exempt a person from the stamp requirement of this section.

Added by Acts 1985, 69th Leg., ch. 640, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 838, Sec. 16, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 32, eff. June 16, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 40, eff. September 1, 2007.

Sec. 43.403. DESIGN AND ISSUANCE OF STAMP. (a) The department may issue a saltwater sportfishing stamp to any person on the payment to the department of $5 or an amount set by the commission, whichever amount is more. The department may issue other editions of the stamp that are not valid for fishing at an amount set by the commission. Except as provided by Subsection (d), the stamp must be signed on its face by the person using the stamp for the stamp to be valid for fishing purposes.

(b) The commission shall prescribe by regulation the form,

design, and manner of issuance of the saltwater sportfishing stamp. The department shall retain the reproduction rights to the design.

(c) The commission may contract with and pay a person for designing and producing the saltwater sportfishing stamp authorized by this subchapter.

(d) The commission by rule may prescribe alternate requirements for identifying the purchaser of a stamp issued in an automated manner.

Added by Acts 1985, 69th Leg., ch. 640, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1993, 73rd Leg., ch. 838, Sec. 17, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 33, eff. June 16, 1995.

Sec. 43.4035. EXPIRATION OF STAMP. (a) Except as provided by Subsection (b) or (c), a stamp issued under this subchapter is valid for fishing only during the yearly period for which the stamp is issued without regard to the date on which the stamp is acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a stamp fee for a stamp issued during a transition period at an amount lower than prescribed in this subchapter and provide for a stamp term for a transition period that is shorter or longer than a year.

(b) A saltwater sportfishing stamp issued before September 1 or another date set by the commission that does not expire until August 31 of the following year or another date set by the commission is valid from the date of issuance through August 31 of the following year or another date set by the commission.

(c) A saltwater sportfishing stamp issued in conjunction with a license issued under Section 46.005 or 46.0051 of this code expires at the same time the license expires or on the expiration date printed on the stamp, whichever is later.

Added by Acts 1993, 73rd Leg., ch. 838, Sec. 18, eff. July 15, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 34, eff. June 16, 1995.

Sec. 43.404. FISHING LICENSE REQUIRED. The acquisition of a

saltwater sportfishing stamp does not authorize a person to fish for sporting purposes in saltwater without having acquired a fishing license required by Chapter 46 of this code or authorize saltwater sportfishing at any time or by any means not otherwise authorized by this code.

Added by Acts 1985, 69th Leg., ch. 640, Sec. 1, eff. Jan. 1, 1986.

Sec. 43.405. COLLECTION FEES. (a) After deduction of the collection fee, the net receipts from stamp sales shall be sent to the department.

(b) The stamp sale net receipts shall be spent for coastal fisheries enforcement and management and are hereby appropriated for such purposes.

Added by Acts 1985, 69th Leg., ch. 640, Sec. 1, eff. Jan. 1, 1986.
Amended by Acts 1995, 74th Leg., ch. 931, Sec. 35, eff. June 16, 1995.

Sec. 43.406. REFUSAL TO SHOW STAMP. A person fishing in saltwater for sporting purposes who refuses on demand of any game warden or peace officer to show a saltwater sportfishing stamp is presumed to be in violation of Section 43.402.

Added by Acts 1985, 69th Leg., ch. 640, Sec. 1, eff. Jan. 1, 1986.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 1, eff. May 19, 2011.

Sec. 43.407. PENALTY. A person who violates Section 43.402 of this code is guilty of a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 640, Sec. 1, eff. Jan. 1, 1986.

SUBCHAPTER O. CONSERVATION PERMITS

Sec. 43.521. CONSERVATION PERMIT REQUIRED. (a) The department may require one person in each vehicle using land under the control

of the department that is open to the public to possess a conservation permit issued to the person by the department or its agent under this subchapter. For the purpose of this subchapter, a use of land includes any use for a consumptive or nonconsumptive purpose.

(b) The department may require each person to possess a conservation permit to participate in certain activities and to enter certain facilities designated as wildlife management areas, state natural areas or lands that have not been fully developed.

(c) A person is not required to possess a conservation permit for use of land under the department's control for hunting purposes if the person possesses a current Type II hunting permit issued by the department.

(d) A person is not required to possess a conservation permit at Washington-on-the-Brazos or San Jacinto State Parks or to attend musical or theatrical productions at Galveston Island or Palo Duro State Parks.

(e) A person is not required to possess a conservation permit to utilize a state park for day use.

Added by Acts 1991, 72nd Leg., ch. 883, Sec. 1, eff. Sept. 1, 1991.

Sec. 43.522. ISSUANCE AND EXPIRATION OF CONSERVATION PERMIT. (a) The department or its agent may issue a conservation permit to any person on the payment to the department or agent of a fee in an amount set by the commission.

(b) A conservation permit expires on the first anniversary of the date on which it is issued.

Added by Acts 1991, 72nd Leg., ch. 883, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 45, eff. Sept. 1, 1997.

Sec. 43.523. OTHER PERMITS REQUIRED. Possession of a conservation permit does not relieve the holder of the requirement for holding any other permit or paying any other fee or charge for the entrance to or use of land under the department's control that is authorized by law or rule of the commission, including Chapters 12, 21, and 81 of this code, however, the department may grant discounts

on charges for entrance and use of land to holders of conservation permits.

Added by Acts 1991, 72nd Leg., ch. 883, Sec. 1, eff. Sept. 1, 1991.

Sec. 43.524. DISPOSITION OF CONSERVATION PERMIT FEES. (a) After deducting any collection fee, an agent of the department shall send to the department the net receipts from the sale of conservation permits.

(b) The department may use the net receipts from the sale of conservation permits for the sole purpose of acquiring, leasing, or developing state lands, paying principal and interest on Texas Park Development Bonds, or operating land or facilities under the department's control.

Added by Acts 1991, 72nd Leg., ch. 883, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 40, eff. June 16, 1995.

Sec. 43.525. FAILURE OR REFUSAL TO SHOW CONSERVATION PERMIT; PENALTY. (a) Except as provided by Subsection (b), a person commits an offense if the person is using land under the department's control and fails or refuses to show a conservation permit issued to the person on the demand of a game warden, peace officer, or department employee.

(b) It is not an offense under Subsection (a) if a person who is using land under the department's control fails to show a conservation permit on the demand of a game warden, peace officer, or department employee, and that person:

(1) entered land under the department's control as an occupant of a privately owned, noncommercial vehicle in which at least one other occupant possesses and is able to show a conservation permit issued to that other occupant; or

(2) is a member of a group of individuals that the department has exempted from the requirement for a conservation permit.

(c) An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 883, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 2, eff. May 19, 2011.

SUBCHAPTER P. FISH STOCK PERMIT

Sec. 43.551. PERMIT FOR THE TAKING OF BROOD STOCK BY COMMERCIAL AQUACULTURE FACILITIES. The department may issue a permit to an operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, that authorizes the operator to take a specified quantity of fish brood stock from specified public water.

Added by Acts 1991, 72nd Leg., ch. 586, Sec. 2, eff. Sept. 1, 1991.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 42, eff. September 1, 2021.

Sec. 43.552. COMMISSION RULES. The commission by rule shall prescribe the requirements and conditions for issuance of a permit authorized by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 586, Sec. 2, eff. Sept. 1, 1991.

Sec. 43.553. QUANTITY THAT MAY BE TAKEN. (a) A permit under this subchapter may allow the operator of a commercial aquaculture facility to take a specified quantity of fish brood stock reasonably necessary for the operation of the aquaculture facility but limited to the extent necessary to protect the availability of fish in public water.

(b) The commission's rules must set guidelines regarding reasonable quantities of fish brood stock that may be taken under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 586, Sec. 2, eff. Sept. 1, 1991.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 43, eff. September 1, 2021.

Sec. 43.554. FEES. The commission shall charge the operator of a commercial aquaculture facility a fee equal to the value of the fish authorized to be taken under this subchapter.

Added by Acts 1991, 72nd Leg., ch. 586, Sec. 2, eff. Sept. 1, 1991.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 44, eff. September 1, 2021.

Sec. 43.555. PENALTIES. A person who violates this subchapter or a commission rule issued under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 46, eff. Sept. 1, 1997.

SUBCHAPTER R. WHITE-TAILED DEER MANAGEMENT PERMITS

Sec. 43.601. PERMIT FOR DEER MANAGEMENT. (a) The department may issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer (under reasonable and ordinary circumstances) and capable of preventing entry by a white-tailed deer.

(b) The deer managed under the permit remain the property of the people of the state, and the holder of the permit is considered to be managing the population on behalf of the state.

(c) If a special season with a special bag limit is established by the commission for holders of a deer management permit, the holder of the permit may not receive compensation for granting any other person permission to kill a wild deer during that special season on the acreage covered by the permit.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1997.

Sec. 43.602. MANAGEMENT PLAN. (a) The holder of a deer management permit must annually submit a deer management plan for approval or disapproval of the department. The management plan must provide for specific management practices to be applied to the deer population on the acreage, which may include, in addition to other

practices:

(1) the temporary detention within an enclosure on the acreage covered by the permit of wild white-tailed deer for the purpose of propagation with other wild deer, and the release of those deer on that acreage;

(2) the killing of wild deer in open seasons established by the commission in a number set in the management plan; or

(3) the killing of wild deer during a special season having a special bag limit established by the commission for this permit.

(b) A management plan approved by the department must be consistent with the regulatory responsibilities of the commission under Chapter 61.

(c) A management plan may not authorize the killing of wild deer within an enclosure designed for the temporary detention of wild deer under Subsection (a)(1).

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1997.

Sec. 43.603. CONDITIONS; DURATION; FEE. (a) A permit issued under this subchapter is subject to conditions established by the commission, including conditions governing:

(1) the number of deer that may be killed on the property by a single person;

(2) the number and type of deer that may be killed or taken under the permit; and

(3) the number, type, and length of time that deer may be temporarily detained in an enclosure.

(b) The permit is valid for a period prescribed by the department of not less than one year.

(c) The department shall set a fee for the issuance or renewal of a permit in an amount not to exceed $1,000.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1997.

Sec. 43.604. INSPECTION. An authorized employee of the department may inspect at any time without warrant the records required by Section 43.605 and the acreage for which the permit is

issued for the purpose of determining the permit holder's compliance with the management plan.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1997.

Sec. 43.605. RECORDS. The holder of a permit issued under this subchapter shall maintain, in a form prescribed by the department, an accurate record showing:

(1) the number of white-tailed deer taken during the general open seasons and during any special seasons;

(2) the number of white-tailed deer temporarily detained and released during the permit period; and

(3) any other information required by the department that reasonably relates to the activities covered by the permit.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1997.

Sec. 43.606. APPLICATION OF GENERAL LAWS. Except as expressly provided by this subchapter and the terms and conditions of the permit and management plan, the general laws and regulations of this state applicable to white-tailed deer apply to deer on the acreage covered by the permit. This subchapter does not restrict or prohibit the use of high fences on acreage not covered by a management plan.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1997.

Sec. 43.607. PENALTY. (a) A person commits an offense if the person:

(1) violates a provision of this subchapter or a regulation of the department adopted under this subchapter;

(2) violates a condition of permit imposed under Section 43.603(a);

(3) fails to maintain records required by Section 43.605; or

(4) kills or allows to be killed a deer temporarily

detained under Section 43.602(a)(1).

(b) An offense under Subsections (a)(1)-(3) is a Class C Parks and Wildlife Code misdemeanor.

(c) An offense under Subsection (a)(4) is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 47, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1265, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER R-1. MULE DEER MANAGEMENT PERMITS

Sec. 43.621. PERMIT FOR DEER MANAGEMENT. (a) The department may issue a permit for the management of the wild mule deer population.

(b) The deer managed under the permit remain the property of the people of the state, and the holder of the permit is considered to be managing the population on behalf of the state.

(c) If a special season with a special bag limit is established by the commission for holders of a deer management permit, the holder of the permit may receive compensation for granting a person permission to kill a wild deer during that special season on the acreage covered by the permit.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1214 (S.B. 460), Sec. 2, eff. June 17, 2011.

Sec. 43.622. MANAGEMENT PLAN. (a) The holder of a deer management permit must annually submit a deer management plan for approval or disapproval of the department. The management plan must provide for specific management practices to be applied to the deer population on the acreage, which may include, in addition to other practices:

(1) the detention, for a period not to exceed 16 months, within an enclosure on the acreage covered by the permit, of wild mule deer for the purpose of propagation with other wild deer or breeder deer, and the release of those deer on that acreage;

(2) the killing of wild deer in open seasons established by the commission in a number set in the management plan; or

(3) the killing of wild deer during a special season having a special bag limit established by the commission for this permit.

(b) A management plan approved by the department must be consistent with the regulatory responsibilities of the commission under Chapter 61.

(c) A management plan may not authorize the killing of wild deer within an enclosure designed for the temporary detention of wild deer under Subsection (a)(1).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1214 (S.B. 460), Sec. 2, eff. June 17, 2011.

Sec. 43.623. CONDITIONS; DURATION; FEE. (a) A permit issued under this subchapter is subject to conditions established by the commission, including conditions governing:

(1) the number of deer that may be killed on the property by a single person;

(2) the number and type of deer that may be killed or taken under the permit;

(3) the number and type of deer that may be temporarily detained in an enclosure; and

(4) the length of time that deer may be temporarily detained in an enclosure.

(b) The permit is valid for a period prescribed by the department of not less than one year.

(c) The department shall set a fee for the issuance or renewal of a permit in an amount not to exceed $1,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1214 (S.B. 460), Sec. 2, eff. June 17, 2011.

Sec. 43.624. INSPECTION. An authorized employee of the department may inspect at any time without warrant the records required by Section 43.625 and the acreage for which the permit is issued for the purpose of determining the permit holder's compliance with the management plan.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1214 (S.B. 460), Sec. 2, eff. June 17, 2011.

Sec. 43.625. RECORDS. The holder of a permit issued under this subchapter shall maintain, in a form prescribed by the department, an accurate record showing:

(1) the number of mule deer taken during the general open seasons and during any special seasons;

(2) the number of mule deer temporarily detained and released during the permit period; and

(3) any other information required by the department that reasonably relates to the activities covered by the permit.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1214 (S.B. 460), Sec. 2, eff. June 17, 2011.

Sec. 43.626. APPLICATION OF GENERAL LAWS. Except as expressly provided by this subchapter and the terms of the permit and management plan, the general laws and regulations of this state applicable to mule deer apply to deer on the acreage covered by the permit. This subchapter does not restrict or prohibit the use of high fences.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1214 (S.B. 460), Sec. 2, eff. June 17, 2011.

Sec. 43.627. PENALTY. (a) A person commits an offense if the person:

(1) violates this subchapter or a rule adopted under this subchapter;

(2) violates a condition of permit imposed under Section 43.623(a);

(3) fails to maintain records required by Section 43.625; or

(4) kills or allows to be killed a deer temporarily detained under Section 43.622(a)(1).

(b) An offense under Subsections (a)(1)-(3) is a Class C Parks and Wildlife Code misdemeanor.

(c) An offense under Subsection (a)(4) is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1214 (S.B. 460), Sec. 2,

eff. June 17, 2011.

SUBCHAPTER S. MIGRATORY AND UPLAND GAME BIRD STAMPS

Sec. 43.651. DEFINITIONS. In this subchapter:

(1) "Migratory game bird" means any bird listed in Section 64.021 and includes any other species of migratory bird that the commission by rule designates as a migratory game bird.

(2) "Upland game bird" means any bird listed in Section 64.001, other than a bird that is also listed in Section 64.021, and includes any other species of upland game bird that the commission by rule designates as an upland game bird.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.652. MIGRATORY OR UPLAND GAME BIRD STAMP REQUIRED. (a) Except as provided by Subsection (b), a person may not hunt a migratory or upland game bird in this state unless the person possesses the appropriate migratory or upland game bird stamp, as applicable, issued to the person by the department. The commission by rule may adopt requirements relating to possessing a stamp required by this subchapter.

(b) The commission by rule may exempt a person or class of persons from the stamp requirement of this section.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.653. HUNTING LICENSE REQUIRED. The possession of either a migratory or upland game bird stamp does not authorize a person to hunt a migratory or upland game bird:

(1) without possessing a hunting license as provided by Chapter 42; or

(2) at any time or by means not otherwise authorized by this code.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.654. DESIGN AND ISSUANCE OF STAMPS. (a) The department may issue a migratory or upland game bird stamp to any person on payment to the department of $7 per stamp.

(b) The commission may issue and sell a collector's edition of the migratory or upland game bird stamps that does not authorize hunting. The commission shall set the fee for a stamp issued under this subsection.

(c) The department may authorize the use of the image of a stamp issued under this subchapter for products offered to the public for sale and not for the purpose of authorizing hunting. The department shall receive a reasonable royalty payment for the sale of any stamp products sold under this subsection.

(d) The commission by rule shall prescribe the form, design, and manner of issuance of a stamp under this subchapter. The department retains all rights to the design.

(e) The commission may contract with and pay a person for designing, producing, and marketing a stamp.

(f) The commission by rule may prescribe alternate requirements for identifying the purchaser of a stamp issued in an automated manner.

(g) A stamp issued under this subchapter is valid for hunting only during the yearly period for which the stamp is issued, without regard to the date on which the stamp is acquired. Each yearly period begins on September 1 of the year in which the stamp is issued or another date set by the commission and extends through August 31 of the next year or another date set by the commission.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.655. DISPOSITION OF MIGRATORY GAME BIRD STAMP NET PROCEEDS. (a) The migratory game bird stamp net proceeds shall be deposited to the credit of the game, fish, and water safety account under Section 11.032 and may be used only for the purposes specified in Section 43.656.

(b) Net proceeds from the migratory game bird stamp consist of:

(1) proceeds from the issuance of migratory game bird

stamps;

(2) the amount allocated by the department from the net proceeds of a combination license if migratory game bird stamps are issued as part of a combination license under Chapter 50;

(3) proceeds from the sale of collector's editions of migratory game bird stamps, if issued under Section 43.654(b);

(4) payments, including royalty payments, received for the use of the migratory game bird stamp image authorized under Section 43.654(c); and

(5) interest and other earnings from the investment of remaining net proceeds under Subsection (c).

(c) The comptroller shall invest the remaining net proceeds, if any, in accordance with state law.

(d) Any net proceeds under this section not used in a fiscal year remain in the game, fish, and water safety account and are exempt from the application of Section 403.095, Government Code.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.656. USES OF NET PROCEEDS FROM MIGRATORY GAME BIRD STAMP. (a) Net proceeds from the migratory game bird stamp may be used only for:

(1) management of and research concerning migratory game birds;

(2) acquisition, lease, or development of migratory game bird habitats; and

(3) contracts, donations, and grants under Section 43.659.

(b) The department shall use the net proceeds from the migratory game bird stamp in a manner that addresses the needs of migratory birds in this state.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.657. DISPOSITION OF UPLAND GAME BIRD STAMP NET PROCEEDS. (a) The upland game bird stamp net proceeds shall be deposited to the credit of the game, fish, and water safety account under Section 11.032 and may be used only for the purposes specified

in Section 43.658.

(b) Net proceeds from the upland game bird stamp consist of:

(1) proceeds from the issuance of upland game bird stamps;

(2) the amount allocated by the department from the net proceeds of a combination license if upland game bird stamps are issued as part of a combination license under Chapter 50;

(3) proceeds from the sale of collector's editions of upland game bird stamps, if issued under Section 43.654(b);

(4) payments, including royalty payments, received for the use of the upland game bird stamp image authorized under Section 43.654(c); and

(5) interest and other earnings from the investment of remaining net proceeds under Subsection (c).

(c) The comptroller shall invest the remaining net proceeds, if any, in accordance with state law.

(d) Any net proceeds under this section not used in a fiscal year remain in the game, fish, and water safety account and are exempt from the application of Section 403.095, Government Code.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.658. USES OF NET PROCEEDS FROM UPLAND GAME BIRD STAMP. (a) Net proceeds from the upland game bird stamp may be used only for:

(1) management of and research concerning upland game birds;

(2) acquisition, lease, or development of upland game bird habitats; and

(3) contracts, donations, and grants under Section 43.659.

(b) The department shall use the net proceeds from the upland game bird stamp in a manner that addresses the needs of upland game birds in this state.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.659. CONTRACTS, DONATIONS, AND GRANTS. As allowed under state and federal law, the department may make money available

in advance or by reimbursement to appropriate state, regional, national, and international governmental and nonprofit organizations through contracts, donations, and grants. The money may be used to acquire, develop, and maintain migratory and upland game bird habitat areas in the United States, Canada, Mexico, or another country that provides migratory habitat for the Central Flyway.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.660. REFUSAL TO SHOW STAMP OR PROOF OF EXEMPTION ELIGIBILITY. A person hunting a migratory or upland game bird who refuses on demand of any game warden or other peace officer to show the applicable stamp, or proof that the person is exempt under Section 43.652(b), is presumed to be in violation of Section 43.652.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.661. RECIPROCAL AGREEMENTS RELATING TO MIGRATORY GAME BIRDS. As provided by Chapter 41, the department may negotiate a reciprocal agreement with a state that shares a common boundary with this state if the neighboring state has a similar migratory game bird stamp requirement and fee. The reciprocal agreement may permit a resident of the state with which the reciprocal agreement is made to hunt a migratory game bird in this state without a stamp issued under this subchapter if the person possesses a stamp issued by the other state.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

Sec. 43.665. PENALTY. A person who violates Section 43.652 commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 882 (S.B. 1192), Sec. 1, eff. June 17, 2005.

SUBCHAPTER U. FRESHWATER FISHING STAMP

Sec. 43.801. DEFINITION. In this subchapter, "fresh water" has the meaning provided by Section 66.001.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.

Sec. 43.802. FRESHWATER FISHING STAMP REQUIRED. (a) Except as provided by Subsection (b) or (c), no person may engage in fishing in fresh water for sporting purposes in this state unless the person has acquired a freshwater fishing stamp issued to the person by the department. The commission by rule may adopt requirements relating to possessing a freshwater fishing stamp required by this subchapter.

(b) A person who is exempted from obtaining a fishing license under Chapter 46 is not required to obtain a freshwater fishing stamp.

(c) The commission by rule may exempt a person from the freshwater fishing stamp requirement of this section.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.

Sec. 43.803. FISHING LICENSE REQUIRED. The acquisition of a freshwater fishing stamp does not authorize a person to fish in fresh water for sporting purposes without having acquired a fishing license as provided by Chapter 46. The acquisition of a freshwater fishing stamp does not authorize a person to fish at any time or by any means not otherwise authorized by this code.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.

Sec. 43.804. DESIGN AND ISSUANCE OF STAMPS. (a) The department may issue a freshwater fishing stamp to any person on the payment to the department of $5. Except as provided by Subsection (e), a stamp must be signed on its face by the person using it for

the stamp to be valid for fishing purposes.

(b) The department may issue a collectible freshwater fishing stamp to any person on the payment to the department of $5. A collectible freshwater fishing stamp does not authorize a person to fish and is not valid for fishing purposes.

(c) The commission by rule shall prescribe the form, design, and manner of issuance of the freshwater fishing stamp and the collectible freshwater fishing stamp. The department retains all reproduction rights to the design of the freshwater fishing stamp and the collectible freshwater fishing stamp.

(d) The commission may contract with and pay a person for designing and producing the freshwater fishing stamp or the collectible freshwater fishing stamp.

(e) The commission by rule may prescribe alternate requirements for identifying the purchaser of a freshwater fishing stamp issued in an automated manner.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.

Sec. 43.805. DISPOSITION OF STAMP FEES. (a) After deduction of any collection fee, the net receipts from freshwater fishing stamp and collectable freshwater fishing stamp sales shall be sent to the department.

(b) The net receipts from freshwater fishing stamp and collectable freshwater fishing stamp sales may be spent only for the:

(1) repair, maintenance, renovation, or construction of:

(A) freshwater fish hatcheries in this state; and

(B) facilities supporting the management of and research related to freshwater fisheries;

(2) purchase of game fish that are stocked into the public water of this state;

(3) restoration, enhancement, or management of freshwater fish habitats;

(4) development of shoreline-based projects allowing freshwater angler access; and

(5) administration and operation of freshwater fish hatcheries in an amount not to exceed 20 percent of the average annual net receipts in a state fiscal biennium.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 197 (S.B. 573), Sec. 2, eff. September 1, 2017.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 197 (S.B. 573), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 197 (S.B. 573), Sec. 2, eff. September 1, 2017.

Sec. 43.806. EXPIRATION OF STAMP. (a) Except as provided by Subsection (b) or (c), a freshwater fishing stamp is valid for fishing only during the yearly period for which the stamp is issued, without regard to the date on which the stamp is acquired. Each yearly period begins on September 1 of the year in which the stamp is issued or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a stamp fee for a stamp issued during a transition period at an amount lower than prescribed in this subchapter and provide for a stamp term for a transition period that is shorter or longer than one year.

(b) A freshwater fishing stamp issued before September 1 or another date set by the commission that does not expire until August 31 of the next year or another date set by the commission is valid from the date of issuance through August 31 of the next year or another date set by the commission.

(c) A freshwater fishing stamp issued in conjunction with a license issued under Section 46.005 or 46.0051 expires on the later of the license expiration date or the date printed on the stamp.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.

Sec. 43.807. REFUSAL TO SHOW STAMP. A person fishing in fresh water for sporting purposes who refuses on demand of any game warden or peace officer to show a freshwater fishing stamp or proof that the person is exempt under Section 43.802(b) or a rule adopted under that section is presumed to be in violation of Section 43.802.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 3, eff. May 19, 2011.

Sec. 43.808. PENALTY. A person who violates Section 43.802 is guilty of a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 2003, 78th Leg., ch. 200, Sec. 9(a), eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 623, Sec. 1, eff. Sept. 1, 2004.

SUBCHAPTER V. NONINDIGENOUS SNAKE PERMIT

Sec. 43.851. PERMIT. (a) The commission by rule shall establish permits that allow permit holders to possess or transport in this state a live nonindigenous snake, including a hybrid of any kind, that is:

(1) venomous; or

(2) a constrictor that is one of the following:

(A) African rock python, Python sebae;

(B) Asiatic rock python, Python molurus;

(C) Burmese python, Python bivittatus;

(D) green anaconda, Eunectes murinus;

(E) reticulated python, Python reticulatus; or

(F) southern African python, Python natalensis.

(b) The commission shall establish separate permits for recreational and commercial purposes.

(c) A permit under this subchapter is not required for:

(1) a state or county official performing an official duty;

(2) a licensed zoo that possesses or transports a snake for exhibition or scientific purposes;

(3) a research facility, including a university, licensed under the Animal Welfare Act (7 U.S.C. Section 2131 et seq.) that possesses or transports a snake for scientific purposes; or

(4) a person who assists a department employee in the handling or transport of a snake under this subchapter.

(d) Except as provided by Subsection (c), a person may not possess or transport in this state a snake described by Subsection

(a) without a permit issued by the department under this subchapter.

(e) A person convicted of a violation of this subchapter or a rule adopted under this subchapter may not obtain a permit before the fifth anniversary of the date of the conviction.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 41, eff. September 1, 2007.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 340 (H.B. 2326), Sec. 1, eff. September 1, 2021.

Sec. 43.852. INSPECTION OF PERMIT AND RECORDS. An authorized department employee may inspect at any time and without a warrant a permit or any records required by this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 41, eff. September 1, 2007.

Sec. 43.853. RELEASE FROM CAPTIVITY. A person may not intentionally, knowingly, recklessly, or with criminal negligence release or allow the release from captivity of a snake covered by this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 41, eff. September 1, 2007.

Sec. 43.854. SEIZURE OF CONTRABAND; FINANCIAL RESPONSIBILITY. (a) The department may arrange for the seizure and removal of a snake covered by this subchapter from a person who possesses the snake without the required permit. The person is responsible for any costs incurred by the department in the seizure, removal, and disposition of the snake.

(b) A department employee is not required to handle, remove, or dispose of the snake.

(c) The department may contract with a person who has knowledge of or expertise in the handling of a snake covered by this subchapter to assist the department in the handling, removal, and disposition of the snake.

(d) The department, including an enforcement officer of the department, who acts under this section is not liable in a civil action for the seizure, sale, donation, or other disposition of the snake.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 41, eff. September 1, 2007.

Sec. 43.855. RULES. The commission may adopt rules to implement this subchapter, including rules to govern:

(1) the possession or transport of a snake covered by this subchapter;

(2) permit application forms, fees, and procedures;

(3) the release of the snake;

(4) reports that the department may require a permit holder to submit to the department; and

(5) other matters the commission considers necessary.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 41, eff. September 1, 2007.

Sec. 43.856. OFFENSE. (a) Except as provided by Subsection (b) or (c), a person who violates this subchapter or a rule adopted under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 43.853 or a rule adopted to implement Section 43.853 commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant for a violation of this subchapter or a rule adopted under this subchapter that the defendant has engaged in a commercial activity without holding a required permit and the defendant has been previously convicted of a violation of this subchapter or a rule adopted under this subchapter, on conviction the defendant shall be punished for a Class B Parks and Wildlife Code misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 41, eff. April 1, 2008.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 340 (H.B. 2326), Sec. 2, eff. September 1, 2021.

SUBCHAPTER W. REPTILE AND AMPHIBIAN STAMP

Sec. 43.901. REPTILE AND AMPHIBIAN STAMP REQUIRED. (a) Except as provided by Section 43.905, a person may capture by nonlethal means an indigenous reptile or amphibian on the shoulder of a road, as defined by Section 541.302, Transportation Code, or the unpaved area of a public right-of-way only if the person possesses a reptile and amphibian stamp issued to the person by the department.

(b) The commission by rule shall prescribe the form, design, and manner of issuance of a stamp under this subchapter.

(c) The stamp is not valid unless the person to whom the stamp is issued has signed the stamp on its face.

(d) The commission by rule may prescribe alternate requirements for identifying the purchaser of a stamp issued in an automated manner.

(e) A stamp issued under this subchapter is valid only during the yearly period for which the stamp is issued without regard to the date on which the stamp is acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1351 (H.B. 1788), Sec. 1, eff. September 1, 2011.

Sec. 43.902. FEE. The fee for a reptile and amphibian stamp is $10. The department may issue other editions of the stamp that are not valid for capturing by nonlethal means a species covered by this subchapter for a fee set by the commission.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1351 (H.B. 1788), Sec. 1, eff. September 1, 2011.

Sec. 43.903. HUNTING LICENSE REQUIRED. The possession of a reptile and amphibian stamp does not authorize a person to capture by nonlethal means an indigenous reptile or amphibian:

(1) without possessing a hunting license required by

Section 42.002 or 42.005; or

(2) at a time or by means not otherwise authorized by this code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1351 (H.B. 1788), Sec. 1, eff. September 1, 2011.

Sec. 43.904. STAMP SALE RECEIPTS. The net revenue derived from the sale of reptile and amphibian stamps shall be credited to the game, fish, and water safety account.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1351 (H.B. 1788), Sec. 1, eff. September 1, 2011.

Sec. 43.905. EXEMPTIONS. A person is not required to have a hunting license or reptile and amphibian stamp to capture by nonlethal means and subsequently release in another location an indigenous reptile or amphibian if the person is:

(1) performing activities related to the operation and maintenance of pipelines and related facilities or to oil or gas exploration or production;

(2) an employee of the state, a utility, as defined by Section 203.091, Transportation Code, or a power generation company, as defined by Section 31.002, Utilities Code, and is acting in the course and scope of the person's employment with the state, the utility, or the power generation company; or

(3) performing activities related to surface coal mining and reclamation operations as defined by Section 134.004, Natural Resources Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1351 (H.B. 1788), Sec. 1, eff. September 1, 2011.

Sec. 43.906. PENALTY. (a) A person who violates Section 43.901 commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person, other than a person described by Section 43.905, in an area described by Section 43.901 who is engaged in capturing by

nonlethal means a species covered by this subchapter and fails or refuses on the demand of any game warden or other peace officer to show a reptile and amphibian stamp is presumed to be in violation of Section 43.901.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1351 (H.B. 1788), Sec. 1, eff. September 1, 2011.

SUBCHAPTER X. DEER DISPOSITION PROTOCOL

Sec. 43.951. APPLICABILITY. This subchapter applies only to the disposition of the following deer:

(1) deer held at a facility covered by a permit issued under Subchapter L;

(2) deer on acreage covered by a permit issued under Subchapter R; and

(3) deer on acreage covered by a permit issued under Subchapter R-1.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 6, eff. September 1, 2013.

Sec. 43.952. DEFINITIONS. In this subchapter:

(1) "Animal health commission" means the Texas Animal Health Commission.

(2) "Permit" means a permit issued under Subchapter L, R, or R-1.

(3) "Permit holder" means a person to whom a permit is issued under Subchapter L, R, or R-1.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 6, eff. September 1, 2013.

Sec. 43.953. DESTRUCTION OF DEER. (a) Before any deer may be destroyed under this subchapter:

(1) an agent of the animal health commission may conduct an epidemiological assessment:

(A) if the assessment can be conducted in a timely manner; and

(B) contingent on the availability of funding; and

(2) the department must consider the results of an assessment, if conducted, under Subdivision (1).

(b) To control or prevent the spread of disease, deer to which this subchapter applies may be destroyed only if the department determines that the deer pose a threat to the health of other deer or other species, including humans.

(c) The department shall carry out an order to destroy deer after notice has been provided to the permit holder under Section 43.954.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 6, eff. September 1, 2013.

Sec. 43.954. NOTICE OF DEER DESTRUCTION. (a) The department must provide written notice of an order to destroy deer to a permit holder before the department may destroy any of the deer covered by the permit holder's permit.

(b) A notice provided under this section must be sent by certified mail to the last known address of the permit holder and must contain:

(1) the date of destruction, which may not be sooner than the 10th day after the date of the notice;

(2) an explanation of any access restrictions imposed on the facility or acreage covered by the permit during the destruction of the deer; and

(3) an explanation of the reasons for the destruction, including the results of any epidemiological assessment conducted under Section 43.953(a) applicable to the deer that are the subject of the notice.

(c) The permit holder may waive the notice requirements of this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 6, eff. September 1, 2013.

Sec. 43.955. COST OF ASSESSMENT AND DESTRUCTION OF DEER. (a) The applicable permit holder shall pay all costs associated with:

(1) an epidemiological assessment conducted under this

subchapter to the animal health commission; and

(2) except as provided by Subsection (b), the destruction of deer under this subchapter to the department.

(b) Except as provided by Subsection (c), the department shall waive the costs associated with the destruction under this subchapter of breeder deer at a facility covered by a permit issued under Subchapter L where a breeder deer has tested positive for chronic wasting disease in a test performed by a testing laboratory accredited by the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

(c) The department may not waive costs under Subsection (b) if the department determines that the permit holder or an agent of the permit holder, in violation of this chapter or a regulation of the commission, caused:

(1) the introduction of chronic wasting disease into the facility; or

(2) a delay in the detection of chronic wasting disease at the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 99 (S.B. 820), Sec. 6, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 36 (S.B. 1372), Sec. 1, eff. May 15, 2023.

SUBCHAPTER Y. MANAGED LANDS DEER PROGRAM

Sec. 43.975. DEFINITION. In this subchapter, "program" means the Managed Lands Deer Program described by 31 T.A.C. Section 65.29, or a successor to that program.

Added by Acts 2019, 86th Leg., R.S., Ch. 426 (S.B. 733), Sec. 2, eff. June 4, 2019.

Sec. 43.976. PROGRAM PARTICIPATION FEE. (a) The commission by rule may impose a fee for participation in the program. Section 2001.0045, Government Code, does not apply to a rule adopted under this section.

(b) The commission shall remit a fee collected under Subsection (a) to the comptroller for deposit to the credit of the game, fish,

and water safety account.

Added by Acts 2019, 86th Leg., R.S., Ch. 426 (S.B. 733), Sec. 2, eff. June 4, 2019.

Sec. 43.977. RULES. The commission shall adopt rules required to implement the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 426 (S.B. 733), Sec. 2, eff. June 4, 2019.

CHAPTER 44. GAME BREEDER'S LICENSE

Sec. 44.001. DEFINITIONS. In this chapter:

(1) "Game breeder" means a person holding a valid game breeder's license.

(2) "Captivity" means the keeping of game animals in an enclosure suitable for and capable of retaining the animal it is designed to retain at all times under reasonable and ordinary circumstances and to prevent entry by another animal.

(3) "Game animal" means a pronghorn antelope, a collared peccary or javelina, or a red or gray squirrel.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 10, eff. June 18, 2005.

Sec. 44.002. LICENSE REQUIREMENT. No person may sell, place in captivity, or engage in the business of propagating any game animal of this state unless the person has obtained a license issued under this chapter from the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1975, 64th Leg., p. 1209, ch. 456, Sec. 9, eff. Sept. 1, 1975.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 11, eff. June 18, 2005.

Sec. 44.003. GAME BREEDER'S LICENSE. The department shall issue a game breeder's license on payment of a license fee of $10 or an amount set by the commission, whichever amount is more. The license is valid for a yearly period. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this section and provide for a license term for a transition period that is shorter or longer than a year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1209, ch. 456, Sec. 9, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 1331, ch. 277, Sec. 17, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 27, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 365, Sec. 1, eff. May 31, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 45, eff. June 16, 1995.

Sec. 44.004. REISSUANCE OF LICENSE. A game breeder's license may not be issued to a previous licensee unless the licensee has filed with the department a copy of the record required by Section 44.007 of this code with an affidavit made before an officer qualified to administer oaths that the copy is true and correct.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 44.005. SERIAL NUMBER. (a) The department shall issue a serial number to the applicant at the time of the first issuance of a game breeder's license to the applicant. The same serial number shall be assigned to the licensee whenever he holds a game breeder's license.

(b) The game breeder shall place a suitable permanent tag bearing the game breeder's serial number on the ear of each pronghorn antelope or collared peccary or javelina held in captivity by the game breeder.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 50, eff. Sept. 1, 1985.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 12, eff. June 18, 2005.

Sec. 44.006. LICENSE PRIVILEGES. The holder of a valid game breeder's license may:

(1) engage in the business of game breeding in the immediate locality for which the license was issued; or

(2) sell or hold in captivity for the purpose of propagation or sale a game animal.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1981, 67th Leg., p. 1860, ch. 439, Sec. 2, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 51, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 607, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 863, Sec. 3, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 13, eff. June 18, 2005.

Sec. 44.007. RECORDS. (a) Each game breeder shall keep a written record in a suitably bound book for the period from August 1 until the following July 31 or another yearly period established by the commission containing:

(1) the number and source of each kind of game animal on hand at the time the license is issued;

(2) the number, source, and date of receipt of each kind of game animal on hand at any time after the license is obtained;

(3) the number of each kind of game animal shipped or delivered, the date of shipment or delivery, and the name and address of persons to whom the shipment or delivery is made; and

(4) any other information determined by the commission to be necessary to enforce the provisions of this chapter.

(b) During August or another month set by the commission of each year, but before August 31 or another date established by the commission, a game breeder shall send to the department a report

showing the information required by this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 2, eff. May 31, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 46, eff. June 16, 1995.

Sec. 44.008. ENCLOSURE SIZE. A single enclosure for any game animal may not contain more than 320 acres.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 44.009. INSPECTION. An authorized employee of the department may inspect at any time and without warrant any pen, coop, or enclosure holding a game animal.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 44.010. SHIPMENT OF GAME ANIMALS. (a) A common carrier may not accept a live game animal unless the game animal is one listed in Section 44.006(2) of this code and the shipment is made by a game breeder.

(b) No person, except a game breeder or his authorized agent, may transport or ship a live game animal unless he obtains a permit for shipment or transportation from the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 44.011. PURCHASE AND SALE OF LIVE GAME ANIMALS. (a) Only game animals that are in a healthy condition may be sold, bartered, or exchanged, or offered for sale, barter, or exchange by a game breeder.

(b) No person may purchase or accept in this state a live game animal unless:

(1) the game animal bears a tag required by Section 44.005 of this code and is delivered or sold by a game breeder; or

(2) the game animal is delivered by a common carrier from outside this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 44.012. SALE DURING OPEN SEASON. A game animal held under the authority of a license issued under this subchapter may not be sold, traded, transferred, or shipped to any person in any county during an open season in the county of destination for taking the game animal or during a period of 10 days before the open season.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 52, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 48, eff. Sept. 1, 1997.

Sec. 44.0125. PROHIBITED ACTS. It is an offense if:

(1) a licensed game breeder takes, traps, or captures or attempts to take or capture game animals from the wild;

(2) a licensed game breeder allows the hunting or killing of a game animal held in captivity under the provisions of this chapter; or

(3) a person fails to furnish to a game warden commissioned by the department information as to the source from which game animals held in captivity were derived.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 53, eff. Sept. 1, 1985.

Sec. 44.013. USE OF PURCHASED GAME ANIMALS. (a) Except as provided in Subsection (b) of this section, game animals listed in Subdivision (2) of Section 44.006 of this code may be purchased or received in this state only for the purpose of liberation for stocking purposes or holding for propagation purposes. All game animals listed in Subdivision (2) of Section 44.006 of this code and increase from those game animals are under the full force of the laws of this state pertaining to wild game and the game animals may be held in captivity for propagation in this state only after a license is issued by the department under this chapter.

(b) Any game animal may be held, taken, or received for scientific and zoological purposes under a permit issued by the

department pursuant to Section 43.022 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 54, eff. Sept. 1, 1985.

Sec. 44.014. APPLICATION OF GENERAL LAWS. In order that native game species may be preserved, game animals held under a game breeder's license are subject to all laws and regulations of this state pertaining to wild game animals except as specifically provided in this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 44.015. RIGHT OF DEPARTMENT. The department or an authorized employee of the department may take, possess, hold, transport, or propagate any game animal of this state for public purposes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 44.016. PENALTIES. A person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 29, eff. Sept. 1, 1985.

CHAPTER 45. GAME BIRD BREEDER'S LICENSE

Sec. 45.0001. DEFINITIONS. In this chapter:

(1) "Game bird" has the meaning assigned by Section 64.001 and includes "migratory game birds."

(2) "Migratory game bird" has the meaning assigned by Section 64.021.

Added by Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 14, eff. June

18, 2005.

Sec. 45.001. LICENSE REQUIRED. No person may possess game birds in captivity for the purpose of propagation or sale or sell game bird eggs without first acquiring the proper license authorized to be issued under this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1208, ch. 456, Sec. 8(a), eff. Sept. 1, 1975; Acts 1997, 75th Leg., ch. 1256, Sec. 49, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 15, eff. June 18, 2005.

Sec. 45.002. FORM OF LICENSE; PERIOD OF VALIDITY. (a) The department shall issue the licenses authorized by this chapter on a form provided by the department and may designate agents for their issuance.

(b) Each license shall be numbered.

(c) A license is valid for a yearly period. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this section and provide for a license term for a transition period that is shorter or longer than a year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 3, eff. May 31, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 47, eff. June 16, 1995.

Sec. 45.003. TYPES OF LICENSES; FEES. (a) A class 1 commercial game bird breeder's license entitles the holder to possess in captivity more than 1,000 game birds. The fee for a class 1 license is $100 or an amount set by the commission, whichever amount is more.

(b) A class 2 commercial game bird breeder's license entitles

the holder to possess in captivity not more than 1,000 game birds during any calendar year. The fee for a class 2 license is $10 or an amount set by the commission, whichever amount is more.

(c) A class 1 or class 2 commercial game bird breeder's license is valid for selling game bird eggs in this state, regardless of the number of eggs sold.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1975, 64th Leg., p. 1208, ch. 456, Sec. 8(b), eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 1331, ch. 277, Sec. 18, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 28, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 50, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 16, eff. June 18, 2005.

Sec. 45.004. SIZE OF ENCLOSURES. (a) No holder of a license under this chapter may retain game birds, other than a migratory bird or waterfowl, in an enclosure larger than 40 acres.

(b) No holder of a license under this chapter may retain a migratory bird or waterfowl in an enclosure larger than 320 acres.

(c) "Captivity" means the keeping of game birds in an enclosure or pen.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 45.005. RECORDS OF LIVE BIRD AND EGG SALES. (a) No holder of a commercial game bird breeder's license may sell a live game bird or game bird egg without issuing a written document showing the name and serial number of the game bird breeder, the name and address of the purchaser, and the kind or species and number of game birds or game bird eggs sold. The document shall be delivered to the purchaser.

(b) The department shall issue to each holder of a commercial game bird breeder's license a serial number which shall remain the number of the person holding the license as long as he continues to hold a license.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1209, ch. 456, Sec. 8(c), eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2441, ch. 625, Sec. 1, eff. Sept. 1, 1981.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 17, eff. June 18, 2005.
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 18, eff. June 18, 2005.

Sec. 45.006. SALES OF GAME BIRD CARCASSES OR PARTS OF A GAME BIRD. (a) No person may sell, offer for sale, or purchase the carcass or any part of a dead pen-raised game bird unless:

(1) the carcass or part is clearly stamped and marked by the stamp authorized by Subsection (b); or

(2) the carcass or part is delivered to the purchaser and is accompanied by a document on which is printed or written the name, street address, and identification number, if applicable, of the game bird breeder.

(b) Each holder of a license required by this chapter who offers for sale the carcass of a pen-raised game bird may acquire a rubber stamp which, when used, shows the identification number of the holder of the license.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2441, ch. 625, Sec. 2, eff. Sept. 1, 1981; Acts 1997, 75th Leg., ch. 1256, Sec. 51, eff. Sept. 1, 1997.

Sec. 45.0061. SOURCE OF GAME BIRDS. A person who is not required to possess a commercial game bird breeder's license and who is in possession of a live game bird, game bird egg, or part of a dead game bird shall, on the request of a game warden commissioned by the department, furnish to the warden a receipt showing the name and street address of the person and the name and street address of the source from which any live game bird, game bird egg, or part of a dead game bird in the possession of the person was derived. The receipt must also show the date of sale and the kind or species and

number of live game birds, game bird eggs, or parts of dead game birds acquired. The failure or refusal to comply with this section is a violation of this chapter.

Added by Acts 1975, 64th Leg., p. 1209, ch. 456, Sec. 8(d), eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 52, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 19, eff. June 18, 2005.

Sec. 45.007. PROHIBITED ACTS. (a) No holder of a game bird breeder's license may sell a live game bird unless it is in a healthy condition.

(b) No person may purchase a live game bird or game bird egg except from a holder of a game bird breeder's license; however, this subsection does not prohibit the purchase of live game birds or game bird eggs from a lawful source outside the state.

(c) The carcass of a pen-raised game bird offered for sale must be killed other than by shooting.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 20, eff. June 18, 2005.

Sec. 45.008. RECORDS; REPORTS. (a) Each commercial game bird breeder shall maintain records showing the numbers of game birds and game bird eggs acquired, propagated, sold, and disposed of in any other manner. The records must be on forms provided by the department and must contain any other information required by the department.

(b) During August of each year or another month set by the commission, but before August 31 or another date established by the commission, a commercial game bird breeder shall send to the department a report showing the total number of game birds in the possession of the breeder during the reporting period and accounting for the acquisition and disposition of each game bird or game bird egg purchased or sold. The reporting period is from August 1 of the

preceding year through July 31 of the current year or another yearly period established by the commission.

(c) The failure to keep the records required by Subsection (a) of this section or to make the report as required by Subsection (b) of this section is a violation of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 4, eff. May 31, 1993;
Acts 1995, 74th Leg., ch. 931, Sec. 48, eff. June 16, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 21, eff. June 18, 2005.

Sec. 45.009. EXCEPTIONS. (a) A commercial game bird breeder may process game birds for personal consumption at any time.

(b) This chapter does not apply to a person holding a permit under Section 43.022.

(c) Any person owning or operating a business where food is sold for consumption, including a restaurant, hotel, boarding house, or club, may sell game birds obtained from a legal source for consumption on the premises of the business.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 53, eff. Sept. 1, 1997.

Sec. 45.010. INSPECTIONS. An authorized employee of the department may inspect the facilities and enclosures of a person licensed under this chapter at any time during normal business hours without a warrant.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 45.011. PERMITS REQUIRED BY THE UNITED STATES. This chapter does not authorize any act prohibited by federal law without a permit issued by the United States, nor does the possession of a permit issued by the United States authorize any act prohibited by this chapter unless expressly provided by federal law.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 45.012. PENALTY. A person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 30, eff. Sept. 1, 1985.

CHAPTER 46. FISHING LICENSES

SUBCHAPTER A. GENERAL FISHING LICENSE

Sec. 46.001. PROHIBITED ACTS. (a) No person may fish in the public water of this state, or unload in this state fish or other aquatic life taken for sporting purposes from waters managed by the Gulf of Mexico Fishery Management Council established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Section 1801 et seq.), unless the person has acquired a fishing license issued under this subchapter, except as provided by Sections 46.0012 and 46.002. The commission by rule may prescribe requirements relating to possessing a license required by this subchapter.

(b) A person in a vessel on tidal water may not possess fish taken for sporting purposes unless the person holds a fishing license issued under this subchapter, except as provided by Sections 46.0012 and 46.002. In this subsection, "tidal water" has the meaning assigned by Section 47.001.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 29, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 799, Sec. 1, eff. June 15, 1989; Acts 1995, 74th Leg., ch. 931, Sec. 49, eff. June 16, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 42, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 111 (H.B. 1322), Sec. 1, eff. May 21, 2011.

Sec. 46.0011. RESIDENT AND NONRESIDENT DEFINED. (1)

"Resident" means:

(A) an individual who has resided continuously in this state for more than six months immediately before applying for a fishing license required by this chapter;

(B) a member of the United States armed forces on active duty;

(C) a dependent of a member of the United States armed forces on active duty; or

(D) a member of any other category of individuals that the commission by regulation designates as residents.

(2) "Nonresident" means an individual who is not a resident.

Added by Acts 1977, 65th Leg., p. 1110, ch. 409, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1991, 72nd Leg., ch. 301, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 838, Sec. 21, eff. July 15, 1993.

Sec. 46.0012. FREE SPORTFISHING DAY. On the first Saturday in June of each year, a fishing license is not required of any person fishing for sporting purposes in public water. This section is limited to license requirements and does not affect other provisions of this code relating to the taking or possession of fish for sporting purposes.

Added by Acts 1989, 71st Leg., ch. 799, Sec. 2, eff. June 15, 1989.

Sec. 46.002. EXEMPTIONS. (a) A license issued under this chapter is not required of a person:

(1) who is a resident and whose birth date is before January 1, 1931;

(2) who is a nonresident, if the person's birth date is before September 1, 1930, and the person's state of residence grants a similar age exemption to Texas residents;

(3) with a mental illness or developmental or intellectual disability who is engaged in recreational fishing as part of medically approved therapy under the immediate supervision of personnel approved or employed by a hospital, residence, or school for persons with mental illnesses or developmental or intellectual

disabilities;

(4) with a mental illness or developmental or intellectual disability who is engaged in recreational fishing under the immediate supervision of a person who:

(A) holds a license issued under this chapter; and

(B) if not a member of the family of the person with a mental illness or developmental or intellectual disability, has the permission of the family head or legal guardian of the person with a mental illness or developmental or intellectual disability to take the person with a mental illness or developmental or intellectual disability fishing;

(5) who is participating in an event that is sponsored or co-sponsored by the department with the approval of the director; or

(6) who is a resident and who is a veteran of the United States armed forces, if the person is acting under Section 11.208 and complying with rules adopted under that section.

(b) The person with a mental illness or developmental or intellectual disability who is recreationally fishing under Subsection (a)(3) shall carry an authorization identifying the entity supplying the service. This authorization may be in the form of a tag that contains the name of the sponsoring entity.

(c) A person with a mental illness or developmental or intellectual disability who is engaged in recreational fishing under Subsection (a)(4) must carry a note from a doctor stating that the person has been diagnosed with a mental illness or developmental or intellectual disability.

Added by Acts 1987, 70th Leg., ch. 27, Sec. 1, eff. April 22, 1987. Amended by Acts 1989, 71st Leg., ch. 1153, Sec. 1, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 838, Sec. 22, eff. July 15, 1993; Acts 1995, 74th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1058, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1274 (H.B. 550), Sec. 1, eff. June 17, 2011.

Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 11, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 260 (H.B. 1728), Sec. 4, eff. September 1, 2021.

Sec. 46.004. LICENSE FEES. (a) The resident fishing license fee is $8 or an amount set by the commission, whichever amount is more.

(b) The commission may establish a lower fee or waive the fee or license requirement for:

(1) a resident who has a general commercial fisherman's license of this state;

(2) a resident who is blind as defined by Section 94.001, Human Resources Code;

(3) a resident or nonresident who is under 17 years old; or

(4) a resident or nonresident who is 65 years old or over.

(c) The commission shall waive the fee for a qualified veteran with a disability as defined by Section 42.012 and for a resident on active duty as a member of the United States military forces, the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard.

(d) The department may issue a lifetime resident fishing license to residents of this state. The fee for this license is $300 or an amount set by the commission, whichever amount is more.

(e) The nonresident fishing license fee is $15 or an amount set by the commission, whichever amount is more.

(f) The commission may establish collection and issuance fees for licenses and tags issued under this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1110, ch. 409, Sec. 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1475, ch. 599, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 1397, ch. 623, Sec. 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2607, ch. 695, Sec. 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1331, ch. 277, Sec. 19, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 30, eff. Sept. 1, 1986; Acts 1987, 70th Leg., ch. 27, Sec. 2, eff. April 22, 1987; Acts 1995, 74th Leg., ch. 629, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 931, Sec. 80, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 840, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 145 (H.B. 1076), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 243 (H.B. 2130), Sec. 2, eff. May

25, 2007.

Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 12, eff. September 1, 2021.

Sec. 46.0045. TAG FEES. The commission by rule may establish fees for initial and duplicate tags issued under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 457, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 50, eff. June 16, 1995.

Sec. 46.005. TEMPORARY SPORTFISHING LICENSES. (a) Any person who is a Texas resident or other person designated by the commission is entitled to receive from the department a license allowing fishing for sporting purposes in public water for a period of 14 consecutive days or other period set by the commission. The commission may authorize the issuance of more than one type of license under this subsection and may prescribe the categories of persons to whom the licenses may be issued.

(b) The fee for a temporary sportfishing license is an amount set by the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2607, ch. 695, Sec. 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1331, ch. 277, Sec. 20, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 31, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 51, eff. June 16, 1995.

Sec. 46.0051. TEMPORARY NONRESIDENT LICENSES. (a) A nonresident or other person designated by the commission is entitled to receive from the department a license allowing fishing for sporting purposes in public water for a period of five consecutive days or other period set by the commission. The commission may authorize the issuance of more than one type of license under this subsection and may prescribe the categories of persons to whom the licenses may be issued.

(b) The fee for a license is an amount set by the commission.

Added by Acts 1977, 65th Leg., p. 1110, ch. 409, Sec. 3, eff. Aug. 29, 1977. Amended by Acts 1979, 66th Leg., p. 1397, ch. 623, Sec. 4, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1331, ch. 277, Sec. 21, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 32, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 52, eff. June 16, 1995.

Sec. 46.006. DUPLICATE LICENSE OR TAG. (a) If a license issued under this subchapter is lost or destroyed, a license deputy may issue a duplicate license on application of the license holder and receipt of $5 or an amount set by the commission, whichever amount is more. If a tag issued under this subchapter is lost or destroyed, a license deputy may issue a duplicate tag on application of the tag holder and payment of a fee set by the commission under Section 46.0045 of this code.

(b) The application for a duplicate license or tag must be an affidavit containing:

(1) a statement of fact concerning the loss or destruction of the license or tag; and

(2) any other information which the commission by regulation may prescribe as necessary.

(c) Repealed by Acts 1995, 74th Leg., ch. 931, Sec. 80, eff. June 16, 1995.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1332, ch. 277, Sec. 22, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 33, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 838, Sec. 23, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 53, 80, eff. June 16, 1995.

Sec. 46.007. EXPIRATION OF LICENSES AND TAGS. (a) Except as provided by Subsections (b), (c), (d), (e), and (f) of this section, a license required or authorized by this subchapter is valid only during the yearly period for which it is issued without regard to the date on which the license is acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission.

The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this section and provide for a license term for a transition period that is shorter or longer than a year.

(b) A license issued under Section 46.005 or 46.0051 of this code is valid for the number of consecutive days authorized and does not necessarily expire on August 31 or another date set by the commission.

(c) A tag or duplicate tag required or authorized by this subchapter is valid for a period as established by the commission.

(d) A license issued under Section 46.004 of this code that is issued before September 1 or another date set by the commission and does not expire until August 31 of the following year or another date set by the commission is valid from the date of issuance through August 31 of the following year or another date set by the commission.

(e) A lifetime resident fishing license is valid for the lifetime of the license holder.

(f) A duplicate license is valid for the period of validity of the original license only.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1110, ch. 409, Sec. 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1536, ch. 626, Sec. 1, eff. Aug. 29, 1977; Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 838, Sec. 24, eff. July 15, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 54, eff. June 16, 1995.

Sec. 46.008. LICENSE INFORMATION. A license issued under this subchapter must contain information determined by the commission to be necessary.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1476, ch. 599, Sec. 2, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 473, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 838, Sec. 25, eff. Sept. 1, 1993.

Sec. 46.0085. FORM AND ISSUANCE OF LICENSES AND TAGS. (a) The

department shall issue and prescribe the form and manner of issuance of the licenses and tags authorized by this chapter. The commission by rule may prescribe identification and compliance requirements.

(b) A license and tag issued under this chapter is not valid until the person to whom it is issued completes all required information on the license and tag.

(c) The department may issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species or to other categories of persons.

(d) Rules adopted under Subsection (a) must allow for a person to present for the purpose of verification of possession a fishing license as an image displayed on a wireless communication device. The image displayed may be either an image of information from the Internet website of the department or a photograph of a fishing license.

(e) The display of an image that includes fishing license information on a wireless communication device under this section does not constitute effective consent for a law enforcement officer, or any other person, to access the contents of the wireless communication device except to view the fishing license information.

(f) The authorization of the use of a wireless communication device to display fishing license information under Subsection (d) does not prevent a court of competent jurisdiction from requiring a person to provide a paper copy of the person's fishing license in a hearing or trial or in connection with discovery proceedings.

(g) A telecommunications provider, as defined by Section 51.002, Utilities Code, may not be held liable to the holder of a fishing license for the failure of a wireless communication device to display fishing license information under Subsection (d).

Added by Acts 1991, 72nd Leg., ch. 473, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 55, eff. June 16, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 41 (H.B. 547), Sec. 2, eff. September 1, 2019.

Sec. 46.0086. FINFISH TAGS: PROHIBITED ACTS. (a) No person

may purchase or use more finfish tags during a license year than the number and type authorized for the year by the commission, excluding duplicate tags issued under Section 46.006 of this code.

(b) Except as provided by Subsection (c), no person may:

(1) use the same finfish tag on more than one finfish;

(2) use a finfish tag issued in the name of another;

(3) use a tag on a finfish for which another tag is specifically required; or

(4) take a finfish required to be tagged and fail to immediately attach a properly executed tag to the finfish in the manner prescribed by the commission.

(c) The commission by rule may modify or eliminate the requirements of this section.

Added by Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 56, eff. June 16, 1995.

Sec. 46.013. ISSUANCE OR ACCEPTANCE OF LICENSE. No person may issue or accept a license or tag required by this subchapter except on a form provided by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993.

Sec. 46.014. FISHING UNDER THE LICENSE OF ANOTHER. No person may fish under a license issued to another or allow another person to fish under a license issued to him.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993.

Sec. 46.015. PENALTY. (a) A person who violates a provision of this subchapter or, except as provided by Subsection (b) of this section, who fails or refuses to show an officer his license or tag on the request of the officer commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If on or before the trial of any person charged with the

failure or refusal to show an officer a license or tag issued under this subchapter, the person produces for the court or the prosecuting attorney the proper fishing license or tag issued to the person and valid at the time of the offense, the court having jurisdiction of the suit shall dismiss the charge.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 810, ch. 368, Sec. 1, eff. Aug. 27, 1979; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 31, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 457, Sec. 2, eff. Sept. 1, 1993.

SUBCHAPTER B. LAKE TEXOMA FISHING LICENSE

Sec. 46.101. LAKE TEXOMA. This subchapter applies only to Lake Texoma, which is the portion of this state inundated by the water impounded by a dam across the channel of the Red River, known as Denison Dam, and any other portion of that area of land acquired by the United States for the operation of the reservoir.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 46.102. FISHING LICENSE REQUIRED. Except as provided in this subchapter, no person may catch fish in Lake Texoma unless he has acquired a license issued under this subchapter. The commission by rule may prescribe requirements relating to possessing a license required by this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 57, eff. June 16, 1995.

Sec. 46.103. EXEMPTIONS. Residents of this state engaged in fishing within the territorial boundaries of this state are not required to obtain a license issued under this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 46.104. LICENSE: PERIOD OF VALIDITY AND FEE. (a) A Lake

Texoma fishing license is valid until December 31 following its date of issuance.

(b) The fee for the license is $5.75 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1400, ch. 623, Sec. 12, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1332, ch. 277, Sec. 23, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 34, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 58, eff. June 16, 1995.

Sec. 46.105. LAKE TEXOMA 10-DAY FISHING LICENSE. (a) A Lake Texoma 10-day fishing license is valid for 10 consecutive days including the date of issuance.

(b) The fee for the license is $1.25 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 35, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 59, eff. June 16, 1995.

Sec. 46.106. FORM OF LICENSE. Licenses issued under this subchapter shall be on the form prescribed by the department and must contain information necessary for enforcement of this subchapter as required by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 838, Sec. 26, eff. Sept. 1, 1993.

Sec. 46.108. DIVISION OF FEES. The department shall keep separate and strict account of the revenue received from licenses issued under this subchapter for annual division between this state and the State of Oklahoma. The division shall be on a basis of the proportionate area of Lake Texoma lying within the territorial jurisdiction of the respective states.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 46.109. PAYMENT BY COMPTROLLER. On February 1 of each year the comptroller shall pay to the state of Oklahoma 70 percent of the revenue collected from licenses issued under this subchapter during the previous calendar year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 46.110. PENALTY. A person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 32, eff. Sept. 1, 1985.

Sec. 46.111. EFFECTIVE DATE OF SUBCHAPTER. This subchapter does not become effective until:

(1) the State of Oklahoma makes provision for the sale of licenses in Oklahoma that are parallel to the licenses authorized by this subchapter;

(2) the State of Oklahoma provides for payment to this state of not less than 30 percent of all revenue collected by Oklahoma for the licenses; and

(3) the department is satisfied that this subchapter and the provisions of Oklahoma law are not in conflict and directs that this subchapter is effective.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 47. COMMERCIAL FISHING LICENSES

SUBCHAPTER A. LICENSES

Sec. 47.001. DEFINITIONS. In this chapter:

(1) "Commercial fisherman" means a person who for pay or for the purpose of sale, barter, or exchange or any other commercial purpose:

(A) catches aquatic products from the water of this state except finfish from the tidal waters of this state; or

(B) unloads in this state aquatic products that:

(i) were taken from water outside this state; and

(ii) have not been previously unloaded in another state or a foreign country.

(2) "Commercial finfish fisherman" means a person who catches finfish from the tidal waters of this state for pay or for the purpose of sale, barter, exchange, or any other commercial purpose. The term does not include a person who:

(A) holds an individual bait dealer's license issued under this chapter;

(B) is in a vessel licensed under this chapter as a menhaden boat and who takes menhaden; or

(C) takes minnows for bait only.

(3) "Wholesale fish dealer" means a person who operates a place of business for selling, offering for sale, canning, preserving, processing, or handling for shipments or sale aquatic products to retail fish dealers, hotels, restaurants, cafes, consumers, or other wholesale fish dealers. The term does not include the holder of a bait-shrimp dealer's license.

(4) "Retail fish dealer" means a person who operates a place of business for selling or offering for sale to a consumer aquatic products, other than aquatic products that are sold by restaurants for and ready for immediate consumption in individual portion servings and that are subject to the limited sales or use tax. For purposes of this subsection, "consumer" does not include a wholesale fish dealer or a hotel, restaurant, cafe, or other retail fish dealer.

(5) "Bait dealer" means a person who catches and sells minnows, fish, shrimp, or other aquatic products for bait or a place of business where minnows, fish, shrimp, or other aquatic products are sold, offered for sale, handled, or transported for sale for bait.

(6) "Fishing guide" means a person who, for compensation, accompanies, assists, or transports a person or persons engaged in fishing in the water of this state.

(7) "Tidal water" means all the salt water of this state, including that portion of the state's territorial water in the Gulf of Mexico within three marine leagues from shore.

(8) "Nontidal water" means all the water of this state excluding tidal water.

(9) "Place of business" means a permanent structure on land or a motor vehicle required to be registered under Section 502.040, Transportation Code, where aquatic products or orders for aquatic products are received or where aquatic products are sold or purchased but does not include a boat or any type of floating device, a public cold storage vault, the portion of a structure that is used as a residence, or a vehicle from which no orders are taken or no shipments or deliveries are made other than to the place of business of a licensee in this state.

(10) "Menhaden fish plant" means a fixed installation on land designed, equipped, and used to process fish and the by-products of fish by the application of pressure, heat, or chemicals or a combination of pressure, heat, and chemicals to raw fish to convert the raw fish into fish oil, fish solubles, fish scraps, or other products.

(11) "Red drum" means the species Sciaenops ocellata, commonly called "redfish."

(12) "Resident" means an individual who has resided continuously in this state for more than six months immediately before applying for a license required by this chapter from the department.

(13) "Nonresident" means an individual who is not a resident.

(14) "Finfish" means those living natural resources having either cartilaginous or bony skeletons (Chondrichthyes and Osteichthyes).

(15) "Permanent structure" means a building designed, planned, and constructed so as to remain at one location.

(16) "Aquatic product" means any live or dead, uncooked, fresh or frozen aquatic animal life.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 214, ch. 105, Sec. 2, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 720, ch. 270, Sec. 1, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, Sec. 1, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1398, ch. 623, Sec. 5, 6, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 924, ch. 339, Sec. 1, eff. June 10, 1981; Acts 1987, 70th Leg., ch. 29, Sec. 1, 2, eff.

April 22, 1987; Acts 1989, 71st Leg., ch. 255, Sec. 14, eff. July 31, 1989; Acts 1991, 72nd Leg., ch. 301, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 723, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 365, Sec. 5, 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 862, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.233, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 54, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 455, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 859, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 15.001, eff. September 1, 2013.

Sec. 47.002. GENERAL COMMERCIAL FISHERMAN'S LICENSE. (a) No person may engage in business as a commercial fisherman unless he has obtained a general commercial fisherman's license.

(b) The license fee for a general commercial fisherman's license is $15 or an amount set by the commission, whichever amount is more.

(c) The license fee for a nonresident general commercial fisherman's license is $100 or an amount set by the commission, whichever amount is more. A nonresident who is residing in a state that denies the privilege of commercial fishing in that state to a Texas resident because of residency status is not eligible for a nonresident general commercial fisherman's license.

(d) A person who is in a vessel licensed under this chapter as a menhaden boat and who takes menhaden is not required to obtain or possess a general commercial fisherman's license.

(e) A person who catches or assists in catching shrimp on a vessel licensed as a commercial shrimp boat under Chapter 77 is not required to obtain or possess a general commercial fisherman's license. The exemption provided by this section applies even though aquatic life other than shrimp are caught if that catching is incidental to lawful shrimping.

(f) A person who takes or assists in taking oysters on a vessel licensed as a commercial oyster boat under Chapter 76 is required to obtain or possess a general commercial fisherman's license. This subsection does not apply to the holder of a commercial oyster boat captain's license.

(g) A person who is licensed as a bait dealer under this chapter is not required to obtain or possess a general commercial fisherman's license if the person is catching bait only.

(h) A person who engages in or assists in commercial crab fishing under Subchapter B, Chapter 78, and who holds a license for that activity is not required to obtain or possess a general commercial fisherman's license or a commercial fishing boat license.

(i) A person who engages in commercial finfish fishing under Subchapter D and who holds a commercial finfish fisherman's license issued under Subchapter D in their immediate possession is not required to obtain or possess a general commercial fisherman's license.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1398, ch. 623, Sec. 7, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2542, ch. 676, art. 1, Sec. 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1332, ch. 277, Sec. 24, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 36, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 862, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 128, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 455, Sec. 2, eff. Sept. 1, 1999. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 604 (H.B. 3497), Sec. 1, eff. June 11, 2023.

Sec. 47.004. RESIDENT FISHING GUIDE LICENSE. (a) No resident may engage in business as a fishing guide unless the resident has obtained a resident fishing guide license.

(b) The commission may adopt rules governing the issuance and use of a resident fishing guide license, including rules creating separate resident fishing guide licenses for use in saltwater and freshwater.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1333, ch. 277, Sec. 26, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 38, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 365, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 56, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 859, Sec. 2, eff. Sept. 1, 2003.

Sec. 47.005. NONRESIDENT FISHING GUIDE LICENSE. (a) No nonresident may engage in business as a fishing guide unless the nonresident has obtained a nonresident fishing guide license.

(b) The commission may adopt rules governing the issuance and use of a nonresident fishing guide license, including rules creating separate nonresident fishing guide licenses for use in saltwater and freshwater.

Added by Acts 2003, 78th Leg., ch. 859, Sec. 3, eff. Sept. 1, 2003.

Sec. 47.006. LICENSE FEE. The license fee for resident, nonresident, freshwater, and saltwater guides is $75 or an amount for each guide type set separately by the commission, whichever amount is more.

Added by Acts 2003, 78th Leg., ch. 859, Sec. 4, eff. Sept. 1, 2003.

Sec. 47.007. COMMERCIAL FISHING BOAT LICENSE. (a) No person may use a vessel required to be numbered or registered under the laws of this state or the United States for the purpose of catching or assisting in catching aquatic products except shrimp, oysters, or menhaden, from the waters of this state, or have on board a vessel, or unload, or allow to be unloaded at a port or point in this state, edible aquatic products caught or taken from salt water outside the state without having been previously unloaded in some other state or foreign country, for pay or for the purpose of sale, barter, exchange, or any other commercial purpose unless the vessel is licensed as a commercial fishing boat and has a commercial fishing boat number affixed to it.

(b) Except as provided by Subsection (e) of this section, the fee for a commercial fishing boat license and number is $10.50 or an amount set by the commission, whichever amount is more.

(c) The commission shall provide by rule for the issuance and use of commercial fishing boat numbers. Each boat required to be licensed by this section shall have the number affixed to the bow of the boat or to such other location on the boat as will be readily accessible for unimpaired visual inspection of the number by a person on another boat. In such instances where the number will not properly affix to a wooden boat, the commission shall provide for an

alternate means of identification of such boat. Unless provided otherwise herein or by the rules of the commission, a license issued under this section is not valid unless the number is affixed to the boat as required by this section and the rules of the commission.

(d) An applicant for a commercial fishing boat license, which is not a renewal of the previous year's license, must submit to the department the vessel's United States Coast Guard Certificate of Documentation or Texas' or other state's Certificate of Number for a vessel or motorboat. The license issued by the department must contain:

(1) the name of the boat if the boat is registered with the United States Coast Guard; and

(2) the number appearing on the United States Coast Guard Certificate of Documentation or Texas' or other state's Certificate of Number.

(e) The fee for a commercial fishing boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $60 or an amount set by the commission, whichever amount is more.

(f) A person who engages in commercial finfish fishing under Subchapter D and who holds a commercial finfish fisherman's license issued under Subchapter D in their immediate possession is not required to obtain or possess a commercial fishing boat license.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 377, ch. 153, Sec. 10, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 1333, ch. 277, Sec. 27, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4055, ch. 634, Sec. 5, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 40, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 621, Sec. 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 255, Sec. 15, eff. July 31, 1989; Acts 1991, 72nd Leg., ch. 723, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 365, Sec. 8, 9, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 450, Sec. 24, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 60, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 455, Sec. 3, eff. Sept. 1, 1999.

Sec. 47.008. MENHADEN BOAT LICENSES.

(a) A boat may not be used for the purpose of catching, storing, and transporting menhaden in tidal water unless the owner of the boat has acquired:

(1) a Class A menhaden boat license; or

(2) a Class C menhaden boat license.

(a-1) The holder of a Class C menhaden boat license may not take or harvest from the public water of the state more than 300 pounds a day of menhaden or an amount set by the department.

(b) A boat may not be used for the purpose of assisting in catching menhaden in tidal water unless the owner of the boat has acquired a Class B menhaden boat license.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1111 (H.B. 2218), Sec. 3, eff. September 1, 2019.

(d) The commission shall set the license fee for each menhaden boat for each yearly period:

(1) in an amount not less than $2,000 for a Class A menhaden boat license;

(2) in an amount not to exceed $50 for a Class B menhaden boat license; and

(3) at $420 for a Class C menhaden boat license.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2542, ch. 676, art. 1, Sec. 3, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 41, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 365, Sec. 10, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 27, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1111 (H.B. 2218), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1111 (H.B. 2218), Sec. 3, eff. September 1, 2019.

Sec. 47.009. WHOLESALE FISH DEALER'S LICENSE. (a) Except as provided by Subsection (c) of this section, no person may engage in business as a wholesale fish dealer unless he has obtained a wholesale fish dealer's license.

(b) The license fee for a wholesale fish dealer's license is

$400 for each place of business or an amount set by the commission, whichever amount is more.

(c) An operator of a Texas commercial aquaculture facility as defined by Section 134.001, Agriculture Code, is not required to obtain or possess a wholesale fish dealer's license if the operator's business activities with regard to the sale of aquatic products involve aquatic products raised on the operator's commercial aquaculture facility only.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1334, ch. 277, Sec. 28, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 42, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 491, Sec. 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 57, eff. Sept. 1, 1997. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 45, eff. September 1, 2021.

Sec. 47.0091. PURCHASE OF AQUATIC PRODUCTS BY WHOLESALE FISH DEALERS. No wholesale fish dealer may purchase for resale or receive for sale, barter, exchange, or any other commercial purpose any aquatic product from any person or entity in this state unless the dealer purchases the product from the operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, or the holder of:

(1) a general commercial fisherman's license;
(2) a commercial oyster fisherman's license;
(3) a commercial oyster boat license;
(4) a wholesale fish dealer's license;
(5) a commercial shrimp boat license;
(6) a commercial oyster boat captain's license;
(7) a commercial shrimp boat captain's license;
(8) a commercial crab fisherman's license;
(9) a commercial finfish fisherman's license;
(10) a commercial gulf shrimp unloading license; or
(11) a cultivated oyster mariculture permit.

Added by Acts 1981, 67th Leg., p. 2384, ch. 595, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1985, 69th Leg., ch. 827, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 255, Sec. 16, eff. July 31,

1989; Acts 1991, 72nd Leg., ch. 586, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 723, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 365, Sec. 11, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 862, Sec. 3, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 455, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1151 (H.B. 1260), Sec. 1, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 3, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 46, eff. September 1, 2021.

Sec. 47.010. WHOLESALE TRUCK DEALER'S FISH LICENSE. (a) The license fee for a wholesale truck dealer's fish license is $250 for each truck or an amount set by the commission, whichever amount is more.

(b) A resident who operates a vehicle used to transport cultured species from a private facility, as those terms are defined by Section 134.001, Agriculture Code, and sells cultured species from the vehicle is not required to obtain a license for the vehicle under this section if the vehicle is used with regard to the sale or transportation of only aquatic products raised on a Texas commercial aquaculture facility belonging to the operator of the vehicle.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1334, ch. 277, Sec. 29, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 43, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 58, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 47, eff. September 1, 2021.

Sec. 47.011. RETAIL FISH DEALER'S LICENSE. (a) Except as provided by Subsection (c) of this section, no person may engage in business as a retail fish dealer unless he has obtained a retail fish dealer's license.

(b) The license fee for a retail fish dealer's license is $30 for each place of business or an amount set by the commission, whichever amount is more.

(c) An operator of a Texas commercial aquaculture facility as defined by Section 134.001, Agriculture Code, is not required to obtain or possess a retail fish dealer's license if the operator's business activities with regard to the sale of aquatic products involve aquatic products raised on the operator's commercial aquaculture facility only.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1334, ch. 277, Sec. 30, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 44, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 491, Sec. 7, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 586, Sec. 4, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 59, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 48, eff. September 1, 2021.

Sec. 47.0111. PURCHASE OF AQUATIC PRODUCTS BY RETAIL FISH DEALERS. No retail fish dealer may purchase for resale or receive for sale, barter, exchange, or any other commercial purposes any aquatic products from any person or entity in this state unless the dealer purchases the product from the operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, or the holder of:

(1) a wholesale fish dealer's license; or

(2) a general commercial fisherman's license, a commercial shrimp boat license, a commercial shrimp boat captain's license, a commercial gulf shrimp unloading license, a commercial crab fisherman's license, or a commercial finfish fisherman's license when the retail fish dealer has given written notification to the director or the director's designee of the dealer's intent to purchase aquatic products from the holder of a general commercial fisherman's license, a commercial shrimp boat license, a commercial shrimp boat captain's license, a commercial crab fisherman's license, or a commercial finfish fisherman's license.

Added by Acts 1981, 67th Leg., p. 2384, ch. 595, Sec. 1, eff. Aug.

31, 1981. Amended by Acts 1985, 69th Leg., ch. 827, Sec. 2, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 491, Sec. 8, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 586, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 723, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 365, Sec. 12, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 457, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 862, Sec. 4, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 455, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1151 (H.B. 1260), Sec. 2, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 49, eff. September 1, 2021.

Sec. 47.012. PURCHASE OF AQUATIC PRODUCTS BY RESTAURANT OWNER, OPERATOR, OR EMPLOYEE. No restaurant owner, operator, or employee may purchase for consumption by the restaurant's patrons on the restaurant's premises any aquatic product from any person or entity in this state unless the person purchases the aquatic product from the operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, or the holder of:

(1) a wholesale fish dealer's license;
(2) a general commercial fisherman's license;
(3) a commercial shrimp boat license;
(4) a commercial shrimp boat captain's license;
(5) a commercial crab fisherman's license;
(6) a commercial finfish fisherman's license; or
(7) a commercial gulf shrimp unloading license.

Added by Acts 1985, 69th Leg., ch. 827, Sec. 3, eff. Aug. 26, 1985. Amended by Acts 1991, 72nd Leg., ch. 491, Sec. 9, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 586, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 723, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 365, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 862, Sec. 5, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 455, Sec. 6, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1151 (H.B. 1260), Sec. 3, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 50, eff. September 1, 2021.

Sec. 47.0121. UNLAWFUL COMMERCIAL SALE OR PURCHASE OF AQUATIC PRODUCTS. (a) A person commits an offense if the person purchases for resale or receives for sale, barter, exchange, transport, or any other commercial purpose aquatic products that are taken, possessed, transported, or sold in violation of a federal or state law or regulation.

(b) It is an affirmative defense to prosecution under this section that the person:

(1) had no reason to believe at the time the offense was committed that the aquatic products purchased for resale or received for sale, barter, exchange, transport, or any other commercial purpose were taken, possessed, transported, or sold in violation of a federal or state law or regulation; and

(2) purchased or received the aquatic products described by Subdivision (1) from a seller who had a valid commercial license to sell aquatic products.

Added by Acts 2019, 86th Leg., R.S., Ch. 133 (H.B. 1828), Sec. 1, eff. September 1, 2019.

Sec. 47.013. RETAIL DEALER'S TRUCK LICENSE. (a) Except as provided by Subsection (c) of this section, a person may engage in the business of selling edible aquatic products from a motor vehicle to consumers only if he obtains a retail dealer's truck license.

(b) The license fee for a retail dealer's truck license is $50 for each truck or an amount set by the commission, whichever amount is more.

(c) A resident who operates a vehicle used to transport cultured species from a private facility, as those terms are defined by Section 134.001, Agriculture Code, and sells cultured species from the vehicle is not required to obtain a license for the vehicle under this section when the vehicle is used with regard to the sale or transportation of only aquatic products raised on a Texas commercial aquaculture facility belonging to the operator of the vehicle.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1983, 68th Leg., p. 1334, ch. 277, Sec. 31, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 45, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 491, Sec. 10, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 586, Sec. 5, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 60, eff. Sept. 1, 1997.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 51, eff. September 1, 2021.

Sec. 47.014. BAIT DEALER'S LICENSE. (a) No person may engage in business as a bait dealer unless the person has obtained the appropriate bait dealer's license.

(b) The license fee for a bait dealer's license is $20 for each place of business or an amount set by the commission, whichever amount is more.

(c) An operator of a Texas commercial aquaculture facility as defined by Section 134.001, Agriculture Code, is not required to obtain or possess a bait dealer's license if the operator's business activities with regard to the sale of aquatic products for bait involve only aquatic products raised on the operator's commercial aquaculture facility.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1977, 65th Leg., p. 214, ch. 105, Sec. 3, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 1335, ch. 277, Sec. 32, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 46, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 61, eff. Sept. 1, 1997.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 52, eff. September 1, 2021.

Sec. 47.016. MENHADEN FISH PLANT LICENSE. (a) No person may operate a menhaden fish plant unless he has obtained a menhaden fish plant license.

(b) Applications for a menhaden fish plant license must be submitted on forms prescribed by the department and accompanied by a filing fee. The filing fee is $100 or an amount set by the

commission, whichever amount is more. The filing fee shall be accompanied by a certified copy of an order of the commissioners court of the county in which the plant will be located containing:

(1) a description of the plant and its location; and

(2) approval of the court for the construction and operation of the plant.

(c) Decisions of the commissioners court in approving or disapproving the construction of a plant are final and may not be reviewed or appealed.

(d) A menhaden fish plant license shall be issued after a hearing and a finding by the department that the construction and operation of the plant is in the public interest. Regardless of the decision of the department, the filing fee is not refundable.

(e) Notice of the hearing must be given at least 20 days prior to the date set for the hearing to the county judge of the county in which the plant is to be constructed and to all known interested parties.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1335, ch. 277, Sec. 34, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 48, eff. Sept. 1, 1985.

Sec. 47.017. RENEWAL OF FISH PLANT LICENSE. The department shall renew a menhaden fish plant license on the application of the licensee and on the payment of a renewal fee of $50 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 49, eff. Sept. 1, 1985.

Sec. 47.018. INTERSTATE TRANSPORTATION. (a) No person may bring into this state and deliver aquatic products for commercial purposes unless the person has obtained a wholesale fish dealer's license, a retail fish dealer's license, or a bait dealer's license, as applicable, issued under this subchapter.

(b) Aquatic products lawfully taken from the waters of another state may be sold within this state by licensed dealers without

regard to size limitations imposed on such products taken within this state. A record of the source and disposition of such undersize or oversize products shall be maintained by the dealer for as long as the undersize or oversize products are retained and for at least 30 days thereafter.

(c) No person may transport aquatic products out of this state for commercial purposes unless the transporter first obtains a wholesale fish dealer's license or a retail fish dealer's license.

(d) A person who delivers aquatic products for a licensed wholesale fish dealer or retail fish dealer must possess a copy of the dealer's license while making deliveries.

(e) Repealed by Acts 1995, 74th Leg., ch. 862, Sec. 9, eff. Sept. 1, 1995.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1399, ch. 623, Sec. 10, eff. Aug. 27, 1979; Acts 1987, 70th Leg., ch. 621, Sec. 3, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 723, Sec. 6, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 862, Sec. 9, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 62, eff. Sept. 1, 1997.

Sec. 47.0181. AQUATIC PRODUCT TRANSPORTATION INVOICES. (a) No person, except a commercial fisherman licensed to take aquatic products from Texas waters transporting the fisherman's own catch within this state, may transport aquatic products for commercial purposes, regardless of origin or destination, without an invoice containing the following information correctly stated and legibly written:

(1) the invoice number;

(2) the date of shipment;

(3) the name and physical address of shipper;

(4) the name and physical address of receiver;

(5) the license number of shipper; and

(6) the quantity of aquatic products contained in the shipment; finfish by species and by number or weight, oysters by volume, and all other aquatic products by weight.

(b) Aquatic product transportation invoices must be prepared by the shipper and copies retained on file by both shipper and receiver for at least one year from the date of shipment. The shipper shall

sequentially number the invoices during each license period. No invoice number may be used twice during any one license period by an individual licensee.

Added by Acts 1991, 72nd Leg., ch. 723, Sec. 7, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 63, eff. Sept. 1, 1997.

Sec. 47.0182. AQUATIC PRODUCT SHIPPING REQUIREMENTS. (a) Each container of aquatic products shipped for commercial purposes must have a label attached to the outside listing the following information correctly stated and legibly written:

(1) the aquatic product transportation invoice number of the shipment of which the container is a part; and

(2) the kind and weight of aquatic product.

(b) No person may ship finfish in individual packages that contain more than one species of aquatic life.

(c) A person possessing a shipment of aquatic products in violation of Subsection (a) or (b) of this section commits an offense.

Added by Acts 1991, 72nd Leg., ch. 723, Sec. 7, eff. Sept. 1, 1991.

Sec. 47.0183. TRANSPORTATION OF AQUATIC PRODUCTS; DISPLAY OF DOCUMENTS. (a) A person transporting aquatic products for commercial purposes commits an offense if:

(1) the person does not possess the license or a copy of the license authorizing the commercial transportation;

(2) the person does not keep with the aquatic product any document, including a tag, invoice, or bill of lading, that is required by this code or a regulation of the commission for transporting aquatic products; or

(3) the person does not, on the request of a game warden, present to the game warden without delay a license, copy of a license, or document required by this code or a regulation of the commission for transporting aquatic products.

(b) A culpable mental state is not required to establish an offense under this section.

Added by Acts 1991, 72nd Leg., ch. 723, Sec. 7, eff. Sept. 1, 1991.

Sec. 47.019. EXCLUSIVE ECONOMIC ZONE. (a) Any vessel operating in the exclusive economic zone that lands fish, shrimp, crabs, or other aquatic organisms in this state is required to be licensed and registered as provided by Chapters 47 and 77 of this code.

(b) The commission may adopt regulations for vessels in the exclusive economic zone that land fish, shrimp, crabs, or other aquatic organisms in this state.

Added by Acts 1987, 70th Leg., ch. 217, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO COMMERCIAL FISHING LICENSES

Sec. 47.031. EXPIRATION OF LICENSES. (a) All licenses and permits issued under the authority of Chapter 47 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

(b) All licenses and permits issued under the authority of Chapter 47 may not be transferred to another person except that a license issued in the name of a business shall remain valid for the business location specified on the license or permit if a change of ownership and/or business name occurs. A license issued under the authority of Section 47.009, 47.011, 47.014, or 47.016 may be transferred to a new address if the business moves to another location. A license issued under the authority of Section 47.007, 47.010, or 47.013 may be transferred to another vehicle or vessel or to a new owner of the same vehicle or vessel. The commission, by regulation, may prescribe requirements necessary to clarify license and permit transfer procedures and may prescribe, by regulation,

forms to be used and fees to be charged for transfer of licenses and permits in this chapter and for duplicate license plates and duplicate or replacement licenses and permits.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 14, eff. May 31, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 61, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 64, eff. Sept. 1, 1997.

Sec. 47.032. REFUSAL OF LICENSE. No person owing the state any amount for a license or fee under a final judgment of a court may receive a license under this chapter until the indebtedness is satisfied by payment to the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 723, Sec. 8, eff. Sept. 1, 1991.

Sec. 47.033. DISPLAY OF LICENSE. All licenses, except a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, and menhaden fish plant license, must be publicly displayed at all times in the place of business of the licensee. Licenses required for vehicles transporting aquatic products for sale must be displayed in the vehicle.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 47.034. AQUATIC PRODUCT SIZE. (a) No person engaged in business as a commercial fisherman or wholesale or retail fish dealer may possess in his place of business or on a boat or vehicle for commercial purposes aquatic products of greater or lesser length than set out in the applicable proclamations of the commission adopted under Chapter 61 or 66 of this code unless otherwise provided by this code or Chapter 134 of the Agriculture Code.

(b) This section does not prohibit a wholesale or retail fish dealer from processing and selling lawful aquatic products by cutting, filleting, wrapping, freezing, or otherwise preparing the aquatic products for market.

(c) The taking of aquatic products of greater or lesser length

than set out in the applicable proclamations of the commission under Chapter 61 or 66 of this code on board a licensed commercial shrimp boat engaged in the taking of shrimp is not a violation of this section if the aquatic products of unlawful size are returned to the water from which they were taken in a manner to insure their best chance for survival.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1214, ch. 456, Sec. 13(l), eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 377, ch. 153, Sec. 7, eff. Sept. 1, 1981; Acts 1991, 72nd Leg., ch. 723, Sec. 9, eff. Sept. 1, 1991.

Sec. 47.035. PRIMA FACIE EVIDENCE. Proof of possession of any undersized or oversized fish in the place of business of any wholesale or retail fish dealer or on board any boat engaged in commercial fishing or in any commercial vehicle is prima facie evidence of possession for the purpose of sale.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 47.037. INSPECTION. (a) No person who possesses or handles aquatic products for commercial purposes may refuse to allow an authorized employee of the department to inspect the aquatic products at the dealer's or handler's place of business during normal business hours.

(b) No commercial fisherman may refuse to allow an authorized employee of the department to inspect aquatic products handled by or in the possession of the commercial fisherman while the commercial fisherman is pursuing his trade or at a reasonable hour.

(c) This section does not authorize the search of a residence without a search warrant.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1987, 70th Leg., ch. 29, Sec. 3, eff. April 22, 1987.

Sec. 47.038. SEINES OR NETS FOR MENHADEN. (a) Except as provided by Subsection (a-1), nets or purse seines used for catching

menhaden may not be:

(1) less than one and one-half inch stretched mesh, excluding the bag;

(2) used in any bay, river, pass, or tributary, nor within one mile of any barrier, jetty, island, or pass, nor within one-half mile offshore in the Gulf of Mexico; or

(3) used for the purpose of taking edible aquatic products for the purpose of barter, sale, or exchange.

(a-1) The holder of a Class C menhaden boat license issued under Section 47.008 may use a cast net, as defined by the commission, to catch menhaden in any coastal bay, river, or tributary landward from the shoreline of the state along the coast of the Gulf of Mexico.

(b) No person lawfully catching menhaden in the tidal water of this state may sell, barter, or exchange any edible aquatic products caught in a menhaden seine or net. Possession of edible aquatic fish in excess of five percent by volume of menhaden fish in possession is a prima facie violation of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1111 (H.B. 2218), Sec. 2, eff. September 1, 2019.

Sec. 47.039. SEASONS. (a) The commission may adopt rules setting open and closed seasons for the noncommercial taking of redfish and speckled sea trout.

(b) No person may catch and retain a redfish or speckled sea trout during a closed season set by the commission under Subsection (a) of this section.

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Added by Acts 1981, 67th Leg., p. 377, ch. 153, Sec. 8, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Sec. 47.040. REFUSAL TO SHOW LICENSE. A person who is engaging in any act for which a license or permit is required by this chapter

and who fails or refuses upon request to show the required license or permit to a game warden, other peace officer, or officer of the court commits an offense.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 33, eff. Sept. 1, 1985.

Sec. 47.041. COMMERCIAL LICENSE BUYBACK SUBACCOUNT. (a) The commercial license buyback subaccount is a subaccount in the game, fish, and water safety account. The subaccount consists of money deposited to the subaccount under this section.

(b) The department shall deposit to the credit of the commercial license buyback subaccount revenue from the following sources:

(1) revenue set aside under Section 47.081(d);

(2) revenue set aside under Section 78.111(d);

(3) a fee collected under Section 77.115;

(4) $25 of each wholesale fish dealer's license issued under Section 47.009;

(5) $25 of each wholesale truck dealer's fish license issued under Section 47.010;

(6) $6 of each retail fish dealer's license issued under Section 47.011;

(7) $11 of each retail dealer's truck license issued under Section 47.013;

(8) $25 of each commercial bay shrimp boat license issued under Section 77.031;

(9) $25 of each commercial bait-shrimp boat license issued under Section 77.033;

(10) $25 of each commercial gulf shrimp boat license issued under Section 77.035;

(11) $15 of each bait-shrimp dealer's license issued under Section 77.043; and

(12) revenue from any other source authorized by law.

(c) The department may accept grants and donations of money or materials from private or public sources to be applied to the commercial license buyback subaccount.

(d) Money in the commercial license buyback subaccount may be used only to buy back a commercial license from a willing license

holder.

(e) The commercial license buyback subaccount is not subject to Section 403.095, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 2, eff. September 1, 2017.

SUBCHAPTER C. PENALTIES, DISPLAY OF LICENSE, AND TRANSFER OF FUNDS

Sec. 47.051. PENALTY. Except as provided by Sections 47.052 and 47.053, a person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 33, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 827, Sec. 4, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 544, Sec. 1, eff. June 14, 1989.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 133 (H.B. 1828), Sec. 2, eff. September 1, 2019.

Sec. 47.052. PENALTY. (a) A person who fails to comply with or who violates a provision of Section 47.003(a) of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(b) The department may seize boats, nets, seines, trawls, or other tackle in the possession of a person violating the sections listed in Subsection (a) of this section and hold them until after the trial of the person.

(c) Violations of the above sections may also be enjoined by the attorney general by suit filed in a district court in Travis County.

(d) If it is shown at the trial of the defendant for a violation of Section 47.008, 47.016, or 47.038 of this code that he has been convicted within five years before the trial date of a violation of the section for which he is being prosecuted, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, Sec. 2,

eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1399, ch. 623, Sec. 11, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 970, ch. 229, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 34, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 827, Sec. 5, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 723, Sec. 10, eff. Sept. 1, 1991.

Sec. 47.053. PENALTY. (a) A person who violates or fails to comply with Section 47.0121 commits an offense that is:

(1) a Class B Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) $500 if the weight of the aquatic products totals 10 pounds or more but less than 50 pounds; or

(B) $1,000 if the weight of the aquatic products totals 50 pounds or more but less than 100 pounds;

(2) a Class A Parks and Wildlife Code misdemeanor punishable by a fine of at least:

(A) $1,500 if the weight of the aquatic products totals 100 pounds or more but less than 200 pounds; or

(B) $2,000 if the weight of the aquatic products totals 200 pounds or more but less than 300 pounds; or

(3) a Parks and Wildlife Code state jail felony for which, in addition to confinement, the person may be punished by a fine of at least:

(A) $3,000 if the weight of the aquatic products totals 300 pounds or more but less than 500 pounds; or

(B) $4,000 if the weight of the aquatic products totals 500 pounds or more.

(b) An offense under this section may be prosecuted in the county in which the aquatic products were unlawfully taken, possessed, transported, or sold or in any county through or into which the aquatic products were taken or transported.

(c) When aquatic products are obtained in violation of Section 47.0121 under one scheme or continuing course of conduct, whether from the same or several sources, the scheme or conduct may be considered as one offense and the weight of the aquatic products aggregated in determining the grade of the offense.

Added by Acts 2019, 86th Leg., R.S., Ch. 133 (H.B. 1828), Sec. 3, eff.

September 1, 2019.

Sec. 47.055. DISPOSITION OF FUNDS. Money received for licenses issued under this chapter or fines paid for violations of this chapter, less allowable deductions, shall be sent to the department by the 10th day of the month following receipt.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER D. FINFISH LICENSE MANAGEMENT

Sec. 47.071. FINFISH LICENSE MANAGEMENT PROGRAM. To promote efficiency and economic stability in the commercial finfish industry and to conserve economically important finfish resources, the department shall implement a finfish license management program in accordance with proclamations adopted by the commission under Chapter 61 and this subchapter.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.072. DEFINITION. In this subchapter, "license" means a commercial license issued in accordance with a proclamation under this subchapter that authorizes a person to engage in business as a commercial finfish fisherman.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.073. FINFISH LICENSE MANAGEMENT REVIEW BOARD. (a) The license holders under this subchapter shall elect a finfish license management review board of nine members.

(b) A majority of the members of the review board may not be residents of the same county.

(c) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the finfish licensing program, including hardship appeal cases concerning eligibility, license transfer, license renewal, license suspension, and license revocation.

(d) The executive director shall adopt procedures for the

operation of the review board and the election and terms of board members. The executive director shall solicit and consider recommendations regarding these procedures from persons who purchased commercial finfish fisherman's licenses after September 1, 1997, and through April 20, 1999.

(e) A member of the review board must:

(1) qualify to obtain a commercial finfish fisherman's license under this subchapter; or

(2) be a person who has knowledge of the commercial finfish industry.

(f) The review board is not subject to Chapter 2110, Government Code.

(g) A member of the review board serves without compensation or a per diem allowance.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.074. LICENSING. (a) No person may engage in business as a commercial finfish fisherman unless the person has obtained a commercial finfish fisherman's license.

(b) No person may engage in commercial finfish fishing unless:

(1) the person has in their immediate possession:

(A) a commercial finfish fisherman's license issued to the person; or

(B) a general commercial fisherman's license issued to the person, a commercial finfish fisherman's license issued to another person, and a copy of an affidavit that:

(i) authorizes the person to use commercial finfish fishing devices owned by the person to whom the commercial finfish fisherman's license was issued; and

(ii) contains the date, the original signature of the person to whom the commercial finfish fisherman's license was issued, and the commercial finfish fisherman's license number that matches the commercial finfish fisherman's license plate number on the boat, if the department requires a license plate; or

(2) the person has in their immediate possession a commercial finfish fisherman's license or a general commercial fisherman's license, and another person has in their immediate possession the documentation described by Subdivision (1).

(c) Beginning September 1, 2000, the department shall issue a commercial finfish fisherman's license only to a person who documents in a manner acceptable to the department that the person held a commercial finfish fisherman's license during the period after September 1, 1997, through April 20, 1999.

(d) A proclamation issued under this section shall establish a commercial finfish fisherman's license in accordance with the provisions of this subchapter.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.075. LICENSE FEE. The fee for a commercial finfish fisherman's license issued under this subchapter is $300 or an amount set by the commission, whichever amount is more. All fees generated by the issuance of a license under this subchapter are to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account subject to Section 47.081(d).

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.076. LICENSE RENEWAL. A person seeking to renew a license established by this subchapter must have held the license during the preceding license year.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.077. LIMIT ON NUMBER OF LICENSES HELD. (a) A person may not hold or directly or indirectly control more than three licenses issued under this subchapter.

(b) A license issued to a person other than an individual must designate an individual in whose name the license is issued.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.078. EXPIRATION OF LICENSE. A license required by this subchapter is valid only during the period for which it is issued without regard to the date on which the license is acquired. Each

period is one year beginning on September 1 or another date set by the commission.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.079. LICENSE TRANSFER. (a) The commission by rule may set a fee for the transfer of a license. The amount of the transfer fee may not exceed the amount of the license fee.

(b) The commission shall send all license transfer fees to the comptroller for deposit to the credit of the game, fish, and water safety account subject to Section 47.081(d).

(c) The commission by proclamation shall allow a license to be transferred at any time.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.080. LICENSE SUSPENSION AND REVOCATION. (a) The executive director, after notice to a license holder and the opportunity for a hearing, may suspend a commercial finfish fisherman's license if:

(1) the license holder or any other authorized operator of the licensed vessel is convicted of one or more flagrant offenses totaling three flagrant offenses involving the licensed vessel; or

(2) the license holder is convicted of theft of fishing gear or product associated with this subchapter.

(b) A suspension under this section may be for:

(1) six months, if:

(A) each of the three flagrant offenses occurred within a 24-consecutive-month period beginning not earlier than September 1, 2000; and

(B) the license holder has not previously had a license suspended under this section;

(2) 12 months, if each of the three flagrant offenses occurred within a 24-consecutive-month period and the license holder has previously had a license suspended under this section; or

(3) six months, if the license holder is convicted of theft of fishing gear or product associated with this subchapter.

(c) The executive director, after notice and the opportunity for a hearing, may permanently revoke a license issued under this

subchapter if:

(1) the license holder has previously had a license suspended twice under this section, and the license holder or any other authorized operator of the licensed vessel is convicted of three flagrant offenses involving the licensed vessel in a 24-consecutive-month period; or

(2) the license holder is convicted of theft of fishing gear or product associated with this subchapter, and the license holder has had a license suspended previously under this section.

(d) The same flagrant offense may not be counted for more than one suspension under this section.

(e) For purposes of this section, a flagrant offense includes:

(1) theft of trotlines or finfish, or any other fishing gear or product associated with this subchapter;

(2) exceeding daily bag and possession limits in violation of this code or of a proclamation of the commission issued under this code;

(3) exceeding trotline length limits by a length greater than 10 percent in violation of this code or of a proclamation of the commission issued under this code;

(4) selling crabs in violation of this code;

(5) exceeding the number of trotlines the holder of a commercial finfish fisherman's license may use in violation of this code or of a proclamation of the commission issued under this code; or

(6) taking, attempting to take, or possessing fish caught in public waters of this state by any device, means, or method other than as authorized under this code or by a proclamation of the commission issued under this code.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.081. LICENSE BUYBACK. (a) The department may implement a license buyback program for licenses issued under this subchapter as part of the finfish license management program established by this subchapter.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive

director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director must consult with the finfish license management review board concerning establishment of the criteria.

(c) The commission must retire each license purchased under the license buyback program until the commission finds that management of the finfish fishery allows reissue of those licenses through auction or lottery.

(d) The department shall set aside at least 20 percent of the fees from licenses issued and license transfers approved under this subchapter. That money shall be sent to the comptroller for deposit to the credit of the commercial license buyback subaccount in the game, fish, and water safety account.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(1), eff. September 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(1), eff. September 1, 2017.

(g) The commission shall consider the social and economic viability of the finfish industry and input from the finfish license management review board regarding the reissue of finfish licenses through auction or lottery.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(1), eff. September 1, 2017.

Sec. 47.082. LINE LIMITS. (a) Not later than September 1, 2000, the commission by proclamation issued under this code shall authorize the holder of a commercial finfish fisherman's license to use up to 20 trotlines not more than 600 feet long, or another number and length of line authorized by commission proclamation, to take or attempt to take finfish.

(b) No holder of a commercial finfish fisherman's license may possess on board more than the number of lines prescribed by this

code or by commission proclamation issued under this code.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.083. CRAB TRAPS. (a) Not later than September 1, 2000, the commission by proclamation issued under this code shall authorize the holder of a commercial finfish fisherman's license to use up to 20 crab traps, or a number of traps authorized by commission proclamation, for use in commercial fishing for bait purposes only.

(b) This section does not authorize the taking of any product for pay or for the purpose of sale, barter, or exchange.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.084. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

(c) The commission shall prescribe all gear marking requirements for trotlines and crab traps under this subchapter in accordance with Chapter 66.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.085. DISPOSITION OF FUNDS. Money received for a license issued under this subchapter and fines for violations of this subchapter shall be remitted to the department by the 10th day of the month following the date of collection.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

Sec. 47.086. PROCLAMATION; PROCEDURES. Subchapter D, Chapter 61, and Sections 61.054 and 61.055 apply to the adoption of proclamations under this subchapter.

Added by Acts 1999, 76th Leg., ch. 455, Sec. 7, eff. Sept. 1, 1999.

CHAPTER 49. FALCONRY PERMIT

Sec. 49.001. DEFINITIONS. In this chapter:

(1) "Resident" means an individual who has resided continuously in this state for more than six months immediately before applying for a falconry permit.

(2) "Nonresident" means an individual who is not a resident.

(3) "Falconry" means the practice of trapping, possessing, training, or flying a raptor for hunting purposes and includes the act of hunting by the use of a trained raptor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 301, Sec. 4, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 65, eff. Sept. 1, 1997.

Sec. 49.002. PROHIBITED ACTS. (a) Except as provided in Subsection (b), no person may take, capture, or possess, or attempt to take or capture, any native raptors unless the person has obtained a permit issued by the department.

(b) A nonresident may temporarily possess in this state or transport through this state any raptor if the person is authorized by state and federal permits to possess the raptor in the person's state of residence or has been issued a permit under Chapter 43.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 66, eff. Sept. 1, 1997.

Sec. 49.003. RECIPROCITY. A person in possession of a raptor under a license issued by another state who intends to establish residency in this state must apply to the department for a falconry permit not later than the 10th day after the date the person first moves a raptor into this state. A signed and notarized affidavit stating the person's intent to establish residency in this state must accompany the application.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 116, ch. 57, Sec. 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 1335, ch. 277, Sec. 36, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 51, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 67, eff. Sept. 1, 1997.

Sec. 49.010. HUNTING. (a) A resident possessing a falconry permit and a hunting license may hunt by means of falconry.

(b) A nonresident may hunt by means of falconry if the nonresident possesses on the nonresident's person:

(1) a federal falconry permit;

(2) a falconry permit issued in the person's state of residence; and

(3) a nonresident hunting license and any applicable stamps.

(c) A person may hunt a bird or animal by means of falconry only during an open season provided for that bird or animal.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 68, eff. Sept. 1, 1997.

Sec. 49.011. TRANSFER OR SALE OF RAPTORS. (a) Except as permitted in Subsections (b) and (c), no person may buy, sell, barter, or exchange, or offer to buy, sell, barter, or exchange, a raptor in this state.

(b) The holder of a falconer's permit may transfer a raptor to another holder of a falconer's permit or receive a raptor from another holder of a falconer's permit.

(c) A holder of a falconer's permit who qualifies as prescribed by commission rule may purchase raptors from any legal source and may sell captive-bred raptors to any person permitted to purchase captive-bred raptors.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, Sec. 8, eff. Sept. 1, 1977; Acts 1991, 72nd Leg., ch. 704, Sec. 27, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 69, eff. Sept. 1, 1997.

Sec. 49.012. PROPERTY OF STATE. All raptors captured, taken, or held in this state remain the property of the people of the state except as provided in this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 49.014. POWERS OF DEPARTMENT. The department may:

(1) prescribe rules for the taking, capture, possession, propagation, transportation, export, import, and sale of raptors, time and area from which raptors may be taken or captured, and species that may be taken or captured;

(2) provide standards for possessing and housing raptors held under a permit;

(3) prescribe annual reporting requirements and procedures;

(4) prescribe eligibility requirements and fees for and issue any falconry, raptor propagation, or nonresident trapping permit; and

(5) require and regulate the identification of raptors held by permit holders.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, Sec. 9, eff. Sept. 1, 1977; Acts 1997, 75th Leg., ch. 1256, Sec. 70, eff. Sept. 1, 1997.

Sec. 49.015. RARE OR ENDANGERED SPECIES. The department shall insure that the taking and possessing for falconry purposes of raptors classified as rare or endangered by this state, the regulations of the department, or the United States Bureau of Sports, Fisheries, and Wildlife are restricted to competent and experienced individuals and to numbers consistent with good management practices and the current population status of the individual species or subspecies involved.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 117, ch. 57, Sec. 10, eff. Sept. 1, 1977.

Sec. 49.017. PENALTIES. A person who violates a provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 37, eff. Sept. 1, 1985.

CHAPTER 50. COMBINATION HUNTING AND FISHING LICENSE

Sec. 50.001. COMBINATION LICENSES AUTHORIZED. (a) The department may issue to residents of this state a combination hunting and fishing license.

(b) The department may issue to a resident of this state a lifetime combination hunting and fishing license.

(c) The commission shall establish combination licenses or license packages for hunting, fishing, and other activities. The commission may set fees for those combination licenses or license packages. The fees set for combination licenses or license packages shall be less than the fees for the individual licenses, permits, or stamps that are combined in the combination licenses or license packages.

(d) Notwithstanding Sections 43.204, 43.405, and 43.805, the commission shall allocate net revenue to individual stamp funds from the sale of stamps that are included in a combination license package according to a methodology the commission establishes. The methodology must incorporate:

(1) the proportionate discounted price of each stamp;

(2) the estimated utilization of each stamp; or

(3) a combination of the methods described by Subdivisions (1) and (2).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 56, eff. Sept. 1, 1986; Acts 1995, 74th Leg., ch. 931, Sec. 62, eff. June 16, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 570 (S.B. 1668), Sec. 2, eff. September 1, 2007.

Sec. 50.0011. DEFINITION. In this chapter, "resident" means:

(1) an individual who has resided continuously in this state for more than six months immediately before applying for a license issued under this chapter;

(2) a member of the United States armed forces on active duty;

(3) a dependent of a member of the United States armed forces on active duty; or

(4) a member of any other category of individuals that the commission by regulation designates as residents.

Added by Acts 1991, 72nd Leg., ch. 301, Sec. 5, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 63, eff. June 16, 1995.

Sec. 50.002. LICENSE FEES. (a) The fee for the combination license is $12 or an amount set by the commission, whichever amount is more.

(b) The fee for the lifetime license is $500 or an amount set by the commission, whichever amount is more.

(c) Repealed by Acts 1995, 74th Leg., ch. 931, Sec. 80, eff. June 16, 1995.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1337, ch. 277, Sec. 41, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 57, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 931, Sec. 80, eff. June 16, 1995.

Sec. 50.0021. EXPIRATION OF LICENSES. (a) Except as provided by Subsections (b) and (c) of this section, a license required or authorized by this chapter is valid only during the yearly period for which the license is issued without regard to the date on which the license is acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that

is shorter or longer than a year.

(b) A license issued under the authority of this chapter that is issued before September 1 or another date set by the commission and does not expire until August 31 or another date set by the commission of the following year is valid from the date of issuance through August 31 of the following year or another date set by the commission.

(c) A lifetime resident combination hunting and fishing license is valid for the lifetime of the license holder.

Added by Acts 1993, 73rd Leg., ch. 838, Sec. 27, eff. July 15, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 64, eff. June 16, 1995.

Sec. 50.003. OTHER LICENSES NOT REQUIRED. A resident who has acquired a combination hunting and fishing license is not required to obtain the hunting license required by Chapter 42 of this code or the fishing license required by Chapter 46 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 50.004. FORM; DUPLICATE LICENSE. (a) The department shall issue and prescribe the form and manner of issuance of the license. The commission by rule may prescribe identification and compliance requirements.

(b) Duplicate licenses may be issued for the same fee and in the same manner as hunting licenses under Chapter 42 of this code.

(c) Rules adopted under Subsection (a) must allow for a person to present for the purpose of verification of possession a combination hunting and fishing license as an image displayed on a wireless communication device. The image displayed may be either an image of information from the Internet website of the department or a photograph of a combination hunting and fishing license.

(d) The display of an image that includes combination hunting and fishing license information on a wireless communication device under this section does not constitute effective consent for a law enforcement officer, or any other person, to access the contents of the wireless communication device except to view the combination hunting and fishing license information.

(e) The authorization of the use of a wireless communication device to display combination hunting and fishing license information under Subsection (c) does not prevent a court of competent jurisdiction from requiring a person to provide a paper copy of the person's combination hunting and fishing license in a hearing or trial or in connection with discovery proceedings.

(f) A telecommunications provider, as defined by Section 51.002, Utilities Code, may not be held liable to the holder of a combination hunting and fishing license for the failure of a wireless communication device to display combination hunting and fishing license information under Subsection (c).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1995, 74th Leg., ch. 931, Sec. 65, eff. June 16, 1995.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 41 (H.B. 547), Sec. 3, eff. September 1, 2019.

Sec. 50.005. HOLDER SHALL COMPLY WITH OTHER LAW. A holder of a combination hunting and fishing license shall comply with and is subject to the penalties in Chapters 42 and 46 of this code, unless those requirements or penalties conflict with this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBTITLE B. HUNTING AND FISHING
CHAPTER 61. UNIFORM WILDLIFE REGULATORY ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. TITLE. This chapter may be cited as the Wildlife Conservation Act of 1983.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1983, 68th Leg., p. 22, ch. 9, art. I, Sec. 1, eff. Aug. 29, 1983.

Sec. 61.002. PURPOSE. The purpose of this chapter is to provide a comprehensive method for the conservation of an ample

supply of wildlife resources on a statewide basis to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 22, ch. 44, art. I, Sec. 2, eff. Aug. 29, 1983.

Sec. 61.003. APPLICABILITY OF CHAPTER. This chapter applies to every county, place, and wildlife resource in the state, except as otherwise provided by this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 71, eff. Sept. 1, 1997.

Sec. 61.005. DEFINITIONS. In this chapter:

(1) "Wildlife resources" means all wild animals, wild birds, and aquatic animal life.

(2) "Depletion" means the reduction of a species below its immediate recuperative potential by any cause.

(3) "Waste" means the failure to provide for the regulated harvest of surplus wildlife resources when that harvest would allow, promote, or optimize a healthy and self-sustaining population of a species.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 439, ch. 184, Sec. 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2740, ch. 748, Sec. 2, eff. Sept. 1, 1981; Acts 1997, 75th Leg., ch. 1256, Sec. 72, eff. Sept. 1, 1997.

Sec. 61.006. CRAYFISH. Except for Section 61.022 and Chapter 68 of this code, this chapter does not apply to crayfish, other than in public water.

Added by Acts 1981, 67th Leg., p. 399, ch. 161, Sec. 3, eff. May 20, 1981.

SUBCHAPTER B. PROHIBITED ACTS

Sec. 61.021. TAKING WILDLIFE RESOURCES PROHIBITED. (a) Except as provided by Subsection (b) or permitted under a proclamation issued by the commission under this chapter, no person may hunt, catch, or possess a game bird or game animal, fish, marine animal, or other aquatic life at any time or in any place covered by this chapter.

(b) A documented member of the Kickapoo Traditional Tribe of Texas who holds a license under Section 42.002 may hunt antlerless white-tailed deer for religious ceremonial purposes on any day of the year between one-half hour before sunrise and one-half hour after sunset. A documented member of the Kickapoo Traditional Tribe of Texas hunting antlerless white-tailed deer under this subsection:

(1) shall comply with all other provisions of this code and proclamations adopted under this code;

(2) shall notify:

(A) a local game warden at least 24 hours before hunting antlerless white-tailed deer at a time of the year when a person who holds a license under Section 42.002 but who is not a documented member of the Kickapoo Traditional Tribe of Texas may not hunt antlerless white-tailed deer; and

(B) the department not later than September 1 of each year of the member's intent to hunt antlerless white-tailed deer for the following calendar year;

(3) may not hunt antlerless white-tailed deer outside an open hunting season in a chronic wasting disease containment or surveillance zone, as determined by the department; and

(4) may not receive a pecuniary gain from an action taken under this subsection.

(c) Subsection (b) applies only to hunting on land that is:

(1) owned or leased by the Kickapoo Traditional Tribe of Texas; and

(2) located in a county that:

(A) borders the United Mexican States and has a population of more than 50,000 but less than 70,000; or

(B) is adjacent to a county described by Paragraph (A)

and has a population of less than 8,000.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 506, ch. 213, Sec. 2, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2740, ch. 748, Sec. 3, eff. Sept. 1, 1981.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 830 (H.B. 1891), Sec. 2, eff. June 15, 2017.
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 208, eff. September 1, 2023.

Sec. 61.022. TAKING WILDLIFE RESOURCES WITHOUT CONSENT OF LANDOWNER PROHIBITED. (a) No person may hunt or catch by any means or method or possess a wildlife resource at any time and at any place covered by this chapter unless the owner of the land, submerged land, or water, or the owner's agent, consents.

(b) Except as provided by Subsection (c), a person who violates Subsection (a) the first time commits an offense that is a Class A Parks and Wildlife Code misdemeanor and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

(c) A person who violates Subsection (a) the first time by killing a desert bighorn sheep, pronghorn antelope, mule deer, or white-tailed deer commits an offense that is a Parks and Wildlife Code state jail felony and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

(d) A second violation of Subsection (a) shall be classified as one category higher than the first violation or a Parks and Wildlife Code felony, whichever is lesser, and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

(e) A third or subsequent violation of Subsection (a) shall be classified as a Parks and Wildlife Code felony and is punishable in addition by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 507, ch. 213, Sec. 2, eff. Aug.

31, 1981; Acts 1981, 67th Leg., p. 2740, ch. 748, Sec. 3, eff. Sept. 1, 1981; Acts 1997, 75th Leg., ch. 1090, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 73, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 959, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1002 (H.B. 506), Sec. 2, eff. September 1, 2005.

Sec. 61.0221. DISPOSITION OF SEIZED PROPERTY. (a) If a person is finally convicted of an offense under Section 61.022, the court entering judgment may order that a weapon or other personal property used in the commission of the offense be destroyed or forfeited to the department.

(b) If the department receives a forfeiture order from a court under this section, the department may:

(1) use the property in the department's normal operations;

(2) sell or transfer the property; or

(3) destroy the property.

(c) The department shall deposit money from the sale of forfeited property under this section in the game, fish, and water safety account.

(d) This section does not apply to a vehicle, aircraft, or vessel.

Added by Acts 2005, 79th Leg., Ch. 603 (H.B. 2037), Sec. 1, eff. September 1, 2005.

Sec. 61.023. APPLYING CONTRACEPTIVES TO WILDLIFE RESOURCES. No person may intentionally apply contraceptives to any vertebrate wildlife resource unless the person first obtains written authorization from the department.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 74, eff. Sept. 1, 1997.

SUBCHAPTER C. REGULATORY DUTIES

Sec. 61.051. DUTY TO INVESTIGATE AND STUDY CERTAIN WILDLIFE RESOURCES. (a) The department shall conduct scientific studies and investigations of all species of game animals, game birds, and

aquatic animal life to determine:

(1) supply;

(2) economic value;

(3) environments;

(4) breeding habits;

(5) sex ratios; and

(6) effects of any factors or conditions causing increases or decreases in supply.

(b) The studies and investigations may be made periodically or continuously.

(c) The commission shall make findings of fact based on the studies and investigations of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 75, eff. Sept. 1, 1997.

Sec. 61.052. GENERAL REGULATORY DUTY. (a) The commission shall regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by this chapter.

(b) The commission shall regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 507, ch. 213, Sec. 3, eff. Aug. 31, 1981; Acts 1997, 75th Leg., ch. 1256, Sec. 76, eff. Sept. 1, 1997.

Sec. 61.053. OPEN SEASONS. The commission shall provide open seasons for the hunting, taking, or possession of game animals, game birds, or aquatic animal life if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve game animals, game birds, or aquatic animal life.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1981, 67th Leg., p. 507, ch. 213, Sec. 3, eff. Aug. 31, 1981; Acts 1997, 75th Leg., ch. 1256, Sec. 77, eff. Sept. 1, 1997.

Sec. 61.054. PROCLAMATIONS OF THE COMMISSION. (a) Regulation of the hunting, taking, or possession of game animals, game birds, or aquatic animal life under this chapter shall be by proclamation of the commission.

(b) A proclamation of the commission authorizing the hunting, taking, or possession of game animals, game birds, or aquatic animal life must specify:

(1) the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed;

(2) the means or method that may be used to hunt, take, or possess the game animals, game birds, or aquatic animal life; and

(3) the region, county, area, body of water, or portion of a county where the game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 507, ch. 213, Sec. 3, eff. Aug. 31, 1981; Acts 1997, 75th Leg., ch. 1256, Sec. 78, eff. Sept. 1, 1997.

Sec. 61.055. AMENDMENTS AND REVOCATIONS. (a) If the commission finds that there is a danger of depletion or waste, it shall amend or revoke its proclamations to prevent the depletion or waste and to provide to the people the most equitable and reasonable privilege to hunt game animals or game birds or catch aquatic animal life.

(b) The commission may amend or revoke its proclamations at any time it finds the facts warrant a change.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 507, ch. 213, Sec. 3, eff. Aug. 31, 1981; Acts 1997, 75th Leg., ch. 1256, Sec. 79, eff. Sept. 1, 1997.

Sec. 61.056. PROCLAMATIONS CONCERNING CERTAIN DEER AND ANTELOPE. A proclamation of the commission authorizing the taking of antlerless deer or antelope in this state is not effective for a specific tract of land unless the landowner or the landowner's agent agrees in writing to the number of antlerless deer or antelope permits authorized for the property.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 1860, ch. 439, Sec. 3, eff. Aug. 31, 1981; Acts 1997, 75th Leg., ch. 863, Sec. 4, eff. Sept. 1, 1997.

Sec. 61.057. ANTLERLESS DEER AND ANTELOPE. (a) Except as provided by Section 61.021 and Subsection (c), no person may hunt an antlerless deer or antelope in this state without first having acquired an antlerless deer or antelope permit issued by the department on a form provided by the department.

(b) The permit may be distributed by the landowner or landowner's agent for land which is subject to an agreement under Section 61.056 of this code. A landowner or landowner's agent may distribute permits only for the land the person owns or the land for which the person is an agent.

(c) When conditions warrant, the commission may allow hunting of antlerless deer or antelope in this state without a permit. The proclamation allowing hunting without a permit must be specific as to the county or portion of a county to which it applies.

(d) No person may sell or trade a permit authorized by this section for anything of value.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 1860, ch. 439, Sec. 4, 5, eff. Aug. 31, 1981; Acts 1997, 75th Leg., ch. 863, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 830 (H.B. 1891), Sec. 3, eff. June 15, 2017.

Sec. 61.058. YOUTH HUNTING AND FISHING. (a) The commission may provide for special open seasons during which the taking and possession of game animals and game birds are restricted to persons

under 17 years old.

(b) The commission may provide for special means and methods for the taking and possession of aquatic animal life by persons under 17 years old.

(c) A special open season provided for by the commission under Subsection (a) may be combined with a special open season provided for by the commission under Section 61.059.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 80, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 180 (S.B. 675), Sec. 1, eff. May 30, 2021.

Sec. 61.059. HUNTING OF CERTAIN MIGRATORY GAME BIRDS BY VETERANS AND ACTIVE DUTY ARMED FORCES MEMBERS. (a) The commission may provide for special open seasons during which the taking and possession of ducks, geese, mergansers, coots, moorhens, and gallinules are restricted to veterans, as defined by 38 U.S.C. Section 101, and members of the armed forces of the United States on active duty, including members of the national guard and reserves on active duty other than for training.

(b) A special open season provided for by the commission under Subsection (a) may be combined with a special open season provided for by the commission under Section 61.058.

(c) The commission by rule may prescribe the proof of veteran or active duty status required of a person to participate in a special open season under this section.

(d) If the commission by rule requires that a person participating in a special open season under this section have in the person's immediate possession proof of the person's veteran or active duty status in accordance with commission rule, the rule must provide that it is a defense to prosecution under that rule that the person produces in court proof of the person's veteran or active duty status in accordance with commission rule.

Added by Acts 2021, 87th Leg., R.S., Ch. 180 (S.B. 675), Sec. 2, eff. May 30, 2021.

Sec. 61.060. DEFENSE TO PROSECUTION: HUMANE DISPATCH OF CERTAIN

GAME ANIMALS AND BIRDS. (a) In this section:

(1) "Dispatch" means to kill by any humane method.

(2) "Game animal" has the meaning assigned by Section 63.001.

(3) "Game bird" has the meaning assigned by Section 64.001.

(b) It is a defense to prosecution for a violation of this chapter or of a regulation adopted or proclamation issued under the authority of this chapter by the commission that the actor dispatched a game animal or game bird that:

(1) was mortally wounded, not through the actor's conduct; or

(2) behaved in a manner that:

(A) is inconsistent with the manner in which a game animal or game bird that is not diseased typically behaves; and

(B) leads a reasonable person to believe that the game animal or game bird poses a substantial risk of serious harm to itself, a person, or other wildlife.

(c) The commission may adopt rules, including rules concerning the disposition of a game animal or a game bird that has been dispatched under this section, to implement this section.

Added by Acts 2005, 79th Leg., Ch. 157 (H.B. 2555), Sec. 1, eff. May 24, 2005.

SUBCHAPTER D. ADMINISTRATIVE PROCEDURES

Sec. 61.101. LOCAL HEARING ON PROCLAMATION. (a) Before a proclamation of the commission may be adopted, the department shall hold public hearings in the county to be affected by the proclamation if the director or the director's designee receives a petition for a public hearing signed by not less than 25 persons who reside in the county.

(b) The hearing may be conducted by a member of the commission or by any designated employee of the department. This subsection does not require the presence of a member at any local hearing.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 58, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 81, eff. Sept. 1, 1997.

Sec. 61.102. NOTICE ON LOCAL HEARING. Notice of the hearing must be given in a newspaper published in the county in which the hearing is to be held at least 10 days before the date of the hearing. If no newspaper is published in the county in which the hearing is to be held, the notice must be given in a newspaper published in an adjoining county and having wide circulation in the county in which the hearing is to be held.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 59, eff. Sept. 1, 1985.

Sec. 61.103. ADOPTION OF PROCLAMATIONS. (a) A proclamation under this chapter must be adopted by a quorum of the commission at a meeting of the commission held in the commission's office in Austin.

(b) A proclamation may be adopted at any special or regular meeting of the commission, for which the date and time are designated by the commission.

(c) Any person interested in a proclamation is entitled to be heard at the meeting and may introduce evidence on the imminence of depletion or waste.

(d) For the purpose of adopting a proclamation under this chapter, a quorum of the commission is five members.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 60, eff. Sept. 1, 1985.

Sec. 61.104. EFFECTIVE DATE AND DURATION OF PROCLAMATIONS. (a) Except as provided in Subsection (b) of this section, a proclamation takes effect at the time determined by the commission. The time designated by the commission may not be earlier than 20 days after the day the proclamation is adopted by the commission.

(b) If the commission finds that there is an immediate danger of depletion in any area as to a species, the commission may declare a state of emergency, and a proclamation issued under the state of emergency takes effect on issuance.

(c) A proclamation of the commission continues in effect until it expires by its own terms or until it is amended or repealed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 2, Sec. 1, eff. Sept. 1, 1979.

Sec. 61.106. JUDICIAL REVIEW OF PROCLAMATION. (a) The venue for any suit challenging the validity of a proclamation of the commission under this chapter is in Travis County.

(b) The party complaining of a proclamation has the burden of proof to show invalidity.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER E. PROVISIONS AFFECTING LIMITED AREAS

Sec. 61.201. LIVINGSTON DAM FISHING PLATFORM. (a) No person may permanently anchor a barge, boat, or other fishing platform on the Trinity River downstream from the Livingston Dam within the area between the restricted area boundary that is 1,000 feet from the dam and a point 1,500 feet downstream from the dam. A barge, boat, or other fishing platform is considered permanently anchored if it is anchored in the described area:

(1) for more than 10 hours in a 24-hour period without moving 100 feet or more during that time; or

(2) for five or more consecutive days, whether or not it has been moved.

(b) No person may leave a barge, boat, or other fishing platform unattended for any period of time if the barge, boat, or platform is within the area described in Subsection (a) of this section.

(c) A barge, boat, or other fishing platform that is left unattended for any period of time within the area described in Subsection (a) of this section may be impounded and may be reclaimed only by payment of both the fine imposed under this chapter and the cost of impoundment.

(d) Property impounded under this section that has not been claimed within the time period specified in Section 683.002, Transportation Code, for disposition of an abandoned automobile is considered abandoned and may be disposed of in the same manner as an abandoned automobile in accordance with Chapter 683 of that code.

Text of subsection effective until January 1, 2025

(e) This section may be enforced by any peace officer listed in Article 2.12, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(e) This section may be enforced by any peace officer listed in Article 2A.001, Code of Criminal Procedure.

Added by Acts 1993, 73rd Leg., ch. 130, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.234, eff. Sept. 1, 1997.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.160, eff. January 1, 2025.

Sec. 61.204. BIGHORN SHEEP COOPERATIVE AGREEMENTS. The department may enter into cooperative agreements with landowners for the purpose of restoring, protecting, and managing bighorn sheep. A cooperative agreement may provide that any person holding a valid bighorn sheep hunting permit may hunt on land owned by the landowner and covered by the cooperative agreement.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 61, eff. Sept. 1, 1985.

Sec. 61.205. BIGHORN SHEEP HUNTING PERMITS. (a) No person may hunt a bighorn sheep without first having acquired a bighorn sheep hunting permit issued by the department on a form provided by the department. A holder of a bighorn sheep hunting permit may hunt only on those lands for which the permit is valid.

(b) The permit may be distributed by the department or by a party to a cooperative agreement with the department for the restoration, protection, and management of bighorn sheep. A party to a cooperative agreement may distribute permits only for land that he owns or is in charge of or that is designated in the cooperative agreement.

(c) Permits distributed by the department shall be distributed to parties to a cooperative agreement and other members of the public by means of a fair method, subject to the limitations of the maximum

number of permits to be issued.

(d) The department may authorize the sale, trade, auction, or donation of a bighorn sheep hunting permit if the proceeds of the sale, trade, auction, or donation are used to restore, protect, or manage bighorn sheep.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 61, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 82, eff. Sept. 1, 1997.

Sec. 61.206. BIGHORN SHEEP IDENTIFICATION. A person may not possess a mounted or unmounted head of a bighorn sheep taken in this state unless identification items and tags are attached as prescribed by the commission. The commission may establish fees for tags or other identification items issued under this section.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 61, eff. Sept. 1, 1985.

SUBCHAPTER F. PENALTIES

Sec. 61.901. PENALTIES. (a) Except as provided in this section, a person who violates any provision of this chapter or any proclamation or regulation of the commission issued under the authority of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates a proclamation of the commission relating to the daily catch, retention, and size limits for redfish or speckled sea trout taken for noncommercial purposes is guilty of an offense and is punishable for the first and subsequent offenses by the penalties prescribed by Sections 66.2011(d) and 66.218 of this code.

(c) Repealed by Acts 2005, 79th Leg., Ch. 992, Sec. 32(1), eff. June 18, 2005.

(d) If it is shown at the trial of the defendant for a violation of a proclamation of the commission that regulates the use and possession of nets, seines, trawls, traps, or other devices used for catching aquatic life, except shrimp, in the inside water of this state that he has been convicted within five years before the trial date of a violation of the proclamation for which he is being

prosecuted, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 381, ch. 190, Sec. 1, 2, eff. May 20, 1977; Acts 1981, 67th Leg., p. 507, ch. 213, Sec. 4, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2698, ch. 735, Sec. 1, eff. Aug. 31, 1981; Acts 1981, 67th Leg., p. 2740, ch. 748, Sec. 4, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 970, ch. 229, Sec. 3, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 39, eff. Sept. 1, 1985.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 32(1), eff. June 18, 2005.

CHAPTER 62. PROVISIONS GENERALLY APPLICABLE TO HUNTING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. DEFINITIONS. For the purpose of enforcement of the game laws of this state:

(1) "Closed season" means the period of time during which it is unlawful to hunt a game animal, wild fowl, or bird.

(2) "Open season" means the period of time during which it is lawful to hunt a specified animal, game animal, wild fowl, or bird.

(3) "Public road or right-of-way" means a public street, alley, road, right-of-way, or other public way, including a berm, ditch, or shoulder.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 43, eff. June 15, 2007.

Sec. 62.002. COMPUTER-ASSISTED REMOTE HUNTING. (a) In this section:

(1) "Computer-assisted remote hunting" means the use of a computer or any other device, equipment, or software, to remotely control the aiming and discharge of archery equipment, a crossbow, or a firearm to hunt an animal, including a bird.

(2) "Firearm" and "archery equipment" have the meanings assigned by Section 62.014.

(b) A person may not engage in computer-assisted remote hunting or provide or operate facilities for computer-assisted remote hunting if the animal being hunted is located in this state.

(c) For purposes of this section, facilities for computer-assisted remote hunting include real property and improvements on the property associated with hunting, including hunting blinds, offices, and rooms equipped to facilitate computer-assisted remote hunting.

(d) A person who violates this section commits an offense that is a Class B Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant that the defendant has been convicted one or more times before the trial date of a violation of this section, in which case the offense is a Class A Parks and Wildlife Code misdemeanor.

(e) It is an exception to the application of this section that a person provides only:

(1) general-purpose equipment, including a computer, camera, fencing, and building materials;

(2) general-purpose computer software including an operating system and communications programs; or

(3) general telecommunications hardware or networking services for computers, including adapters, modems, servers, routers, and other facilities associated with Internet access.

Added by Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 22, eff. June 18, 2005.

Sec. 62.003. HUNTING FROM VEHICLES. (a) Except as provided in Subsection (b), no person may hunt any wild bird or wild animal, other than an alligator, frog, or turtle, from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat, or from any other floating device.

(b) Animals and birds not classified as migratory may be hunted from a motor vehicle, powerboat, or sailboat, or from any other floating device within the boundaries of private property or upon private water by a person who is legally on the property or water for the purpose of hunting if no attempt is made to hunt any wild bird or wild animal on any part of the road system of this state.

(c), (d) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1981, 67th Leg., p. 2698, ch. 735, Sec. 3, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 23, eff. June 18, 2005.

Sec. 62.0031. HUNTING FROM PUBLIC ROAD OR RIGHT-OF-WAY PROHIBITED. (a) Except as provided by Subsections (b) and (c), a person may not hunt a wild animal or bird when the person is on a public road or right-of-way.

(b) This section does not apply to:

(1) the trapping of a raptor for educational or sporting purposes as provided by Chapter 49; or

(2) an employee of the department taking wildlife as provided by Section 12.013(c).

(c) A person may capture by nonlethal means reptiles and amphibians on the shoulder of a road, as defined by Section 541.302, Transportation Code, or the unpaved area of a public right-of-way if the person:

(1) possesses a reptile and amphibian stamp issued to the person by the department and does not use a trap; or

(2) is described by Section 43.905.

(d) A person must wear reflective clothing when engaging in the capture by nonlethal means of a reptile or amphibian under a stamp issued by the department. The clothing must have at least 144 square inches of reflective material on both the front and back of the clothing.

(e) A person may not use an artificial light from a motor vehicle in locating, capturing, or attempting to capture a reptile or amphibian under Subsection (c).

Added by Acts 2007, 80th Leg., R.S., Ch. 1159 (H.B. 12), Sec. 44, eff. June 15, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1351 (H.B. 1788), Sec. 2, eff.

September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 188 (H.B. 3065), Sec. 2, eff. September 1, 2023.

Sec. 62.004. HUNTING AT NIGHT. No person may hunt any wild bird, wild game bird, wild fowl, or wild game animal protected by this code at any season of the year between one-half hour after sunset and one-half hour before sunrise.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2699, ch. 735, Sec. 4, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 40, eff. Sept. 1, 1985.

Sec. 62.005. HUNTING WITH LIGHT. Except as provided by Section 62.0055 or 62.0056, no person may hunt a game animal or bird protected by this code with the aid of an artificial light that casts or reflects a beam of light onto or otherwise illuminates the game animal or bird, including the headlights of a motor vehicle.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 83, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 603 (H.B. 308), Sec. 1, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 111 (H.B. 1805), Sec. 1, eff. May 23, 2009.

Sec. 62.0055. HUNTING WITH LASER SIGHTING DEVICE BY LEGALLY BLIND HUNTER. (a) In this section, "legally blind" has the meaning assigned by Section 62.104, Government Code.

(b) A legally blind hunter may use a laser sighting device during regular hunting hours when assisted by a person who:

(1) is not legally blind;

(2) has a hunting license; and

(3) is at least 13 years of age.

(c) The legally blind hunter must carry proof of being legally blind.

(d) Section 62.014 applies to a hunter under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 603 (H.B. 308), Sec. 2, eff. June 15, 2007.

Sec. 62.0056. HUNTING WITH LASER SIGHTING DEVICE BY HUNTERS WITH CERTAIN DISABILITIES. (a) In this section, "person with a physical disability" means a person with a documented permanent physical disability that renders the person incapable of using a traditional firearm sighting device. A physician's or optometrist's statement certifying the extent of the disability is sufficient documentation.

(b) A hunter who is a person with a physical disability may use a laser sighting device during lawful hunting hours in open seasons when assisted by a person who:

(1) is not a person with a physical disability;

(2) has a hunting license; and

(3) is at least 13 years of age.

(c) The hunter who is a person with a physical disability must carry proof of the disability.

(d) Section 62.014 applies to a hunter under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 111 (H.B. 1805), Sec. 2, eff. May 23, 2009.

Sec. 62.006. HUNTING FOR HIRE. (a) No person may employ another person or be employed by another person for compensation or promise of compensation to hunt any bird, wild fowl, or game animal protected by this code.

(b) If a person testifies against another person who employed him in violation of this section, all prosecutions against him in the case in which he testifies shall be dismissed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 41, eff. Sept. 1, 1985.

Sec. 62.0061. HUNTING ON OR OVER CERTAIN SUBMERGED LAND. (a) Except as provided by Subsection (b), a person may not hunt or take any wild animal or wild bird when the person is on or over privately owned land that is:

(1) submerged under:

(A) public fresh water due to seasonal or occasional innundation; or

(B) public salt water and located above the mean high tide line of the Gulf of Mexico and its bays and estuaries; and

(2) conspicuously marked as privately owned by a sign or signs that are substantially similar to the following:

POSTED. PRIVATE PROPERTY. NO HUNTING.

(b) This section does not apply to:

(1) fishing or to fish and other aquatic life;

(2) a person who:

(A) owns the submerged land; or

(B) obtains the landowner's consent;

(3) land that is dedicated to the permanent school fund and that is located within:

(A) the tidewater limits of this state; or

(B) the gradient boundaries of a navigable river or stream in this state; or

(4) land that is:

(A) submerged by public water; and

(B) located below the mean high tide line of the Gulf of Mexico and its bays and estuaries.

(c) This section does not authorize a person to fish by any means or method or at any time or place that is otherwise prohibited by this code.

Added by Acts 2005, 79th Leg., Ch. 1002 (H.B. 506), Sec. 1, eff. September 1, 2005.
Renumbered from Parks and Wildlife Code, Section 62.002 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(60), eff. September 1, 2007.

Sec. 62.0065. HUNTING DEER WITH DOGS. (a) Except as provided by Subsection (d), a person may not recklessly use a dog to hunt or pursue a deer in this state.

(b) Subject to Subsection (a), the commission by rule may prescribe the type of firearm that may be possessed during an open deer season by a person who is in actual or constructive possession of a dog while in the field on another person's land or property in Angelina, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, or Walker County.

(c) It is not a defense to prosecution under Subsection (a) or to prosecution for violation of a rule adopted under Subsection (b) that the defendant was not the owner or in immediate possession of the dog or that the offense or violation was committed without the effective consent of the dog's owner.

(d) The commission by rule may authorize the use of dogs to trail wounded deer.

Added by Acts 2005, 79th Leg., Ch. 989 (H.B. 1959), Sec. 2, eff. September 1, 2005.

Sec. 62.007. STOPPING FOR SEARCH. (a) An authorized employee of the department may search the game bag, receptacle, automobile, or other vehicle if he has reason to believe that the bag, receptacle, automobile, or vehicle contains game unlawfully killed or taken.

(b) A person who refuses to allow a search or refuses to stop a vehicle when requested to do so by an authorized employee commits an offense.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 42, eff. Sept. 1, 1985.

Sec. 62.008. PRIMA FACIE EVIDENCE. Except as provided in Subchapter B of this chapter, possession of a wild game bird, wild game animal, or other species of protected wildlife, whether dead or alive, during a time when the hunting of the animal, bird, or species is prohibited is prima facie evidence of the guilt of the person in possession.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.009. PURCHASE FOR EVIDENCE. A person who, for the purpose of establishing testimony, purchases a game bird or animal whose sale is prohibited by this code, is immune from prosecution for the purchase. A conviction for the unlawful sale of game may be sustained on the uncorroborated testimony of the purchaser.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.010. EXCEEDING BAG LIMITS, HUNTING DURING CLOSED SEASON, ETC.; PENALTY. (a) No person may kill or take more than the daily, weekly, or seasonal bag limits for game birds or animals as set out in this code.

(b) No person may hunt any game bird or animal at any time of the year other than during the open season provided by this code.

(c) No person may kill, take, capture, wound, or shoot at any game bird or animal for which no open season is set out by this code.

(d) No person may possess an illegally killed game bird or animal.

(e) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Sec. 62.011. RETRIEVAL AND WASTE OF GAME. (a) Except as provided by Subsection (c), it is an offense if a person while hunting kills or wounds a game bird or game animal and intentionally or knowingly fails to make a reasonable effort to retrieve the animal or bird and include it in the person's daily or seasonal bag limit.

(b) Except as provided by Subsection (c), it is an offense if a person intentionally takes or possesses a game bird, game animal, or fish and intentionally, knowingly, recklessly, or with criminal negligence fails to keep the edible portions of the bird, animal, or fish in an edible condition.

(c) It is an offense if a person while hunting kills or wounds a desert bighorn sheep, pronghorn antelope, mule deer, or white-

tailed deer in violation of Section 61.022, 62.003, 62.0031, 62.004, or 62.005 and intentionally or knowingly fails to make a reasonable effort to retrieve the animal or intentionally, knowingly, recklessly, or with criminal negligence fails to keep the edible parts of the animal in an edible condition.

(d) In this section:

(1) "Edible condition" means fit for human consumption. The term does not include any portion of a game bird, game animal, or fish that is:

(A) bruised by bullet, shot, or arrow, or otherwise destroyed as a result of harvest;

(B) decayed or rotting; or

(C) obviously infected or diseased.

(2) "Edible parts" means the meaty portions of a carcass that are retained for consumption after quartering as defined in Section 42.001(8).

Acts 1975, 64th Leg., p. 1214, ch. 456, Sec. 15, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 1, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 959, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 138 (S.B. 1121), Sec. 1, eff. September 1, 2009.

Sec. 62.012. WRITTEN CONSENT TO HUNT OR TARGET SHOOT REQUIRED. (a) This section applies only to a county having a population of 3.3 million or more. This section does not apply to a person hunting or target shooting on a public or private shooting range.

(b) Except as provided by Subsection (d) of this section, no person possessing a firearm may hunt a wild animal or wild bird, or engage in target shooting on land owned by another unless the person has in his immediate possession the written consent of the owner of the land to hunt or engage in target shooting on the land.

(c) To be valid, the written consent required by Subsection (b) of this section must:

(1) contain the name of the person permitted to hunt or engage in target shooting on the land;

(2) identify the land on which hunting or target shooting is permitted;

(3) be signed by the owner of the land or by an agent, lessee, or legal representative of the owner; and

(4) show the address and phone number of the person signing the consent.

(d) The owner of the land on which hunting or target shooting occurs, the landowner's lessee, agent, or legal representative, and a person hunting or target shooting with the landowner or the landowner's lessee, agent, or legal representative are not required to have in their possession the written consent required by Subsection (b) of this section.

(e) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Added by Acts 1981, 67th Leg., p. 989, ch. 371, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4590, ch. 773, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 2001, 77th Leg., ch. 669, Sec. 116, eff. Sept. 1, 2001.

Sec. 62.0121. DISCHARGE OF FIREARM ACROSS PROPERTY LINE. (a) In this section, "firearm" has the meaning assigned by Section 62.014(a).

(b) A person commits an offense if:

(1) the person, while hunting or engaging in recreational shooting, knowingly discharges a firearm; and

(2) the projectile from the firearm travels across a property line.

(c) It is a defense to prosecution under this section that the person:

(1) owns the property on both sides of each property line crossed by the projectile; or

(2) has a written agreement with any person who owns property on either side of each property line crossed by the projectile that allows the person to discharge a firearm on, over, or across the property or property line.

(d) The written agreement required under Subsection (c)(2) must:

(1) contain the name of the person allowed to hunt or engage in recreational shooting in a manner described by Subsection (b);

(2) identify the property on either side of the property line crossed by the projectile; and

(3) be signed by any person who owns the property on either side of the line crossed by the projectile.

(e) An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

(f) If conduct constituting an offense under this section constitutes an offense under a section of the Penal Code, the person may be prosecuted under either section or both sections.

Added by Acts 2005, 79th Leg., Ch. 270 (H.B. 505), Sec. 1, eff. September 1, 2005.

Sec. 62.0125. HARASSMENT OF HUNTERS, TRAPPERS, AND FISHERMEN. (a) This section may be cited as the Sportsman's Rights Act.

(b) In this section:

(1) "Wildlife" means all species of wild mammals, birds, fish, reptiles, or amphibians.

(2) "Process of hunting or catching" means any act directed at the lawful hunting or catching of wildlife, including camping or other acts preparatory to hunting or catching of wildlife that occur on land or water on which the affected person has the right or privilege of hunting or catching that wildlife.

(c) No person may intentionally interfere with another person lawfully engaged in the process of hunting or catching wildlife.

(d) No person may intentionally harass, drive, or disturb any wildlife for the purpose of disrupting a person lawfully engaged in the process of hunting or catching wildlife.

(e) No person may enter or remain on public land or enter or remain on private land without the landowner's or his agent's consent if the person intends to disrupt another person lawfully engaged in the process of hunting or catching wildlife.

(f) This section does not apply to a peace officer of this state, a law enforcement officer of the United States, a member of the armed forces of the United States or of this state, or employees of the department or other state or federal agencies having statutory

responsibility to manage wildlife or land during the time that the officer, member, or employee is in the actual discharge of official duties.

(g) A person who violates this section commits an offense. An offense under this section is a Class B misdemeanor.

(h) It is an affirmative defense to prosecution that the defendant's conduct is protected by the right to freedom of speech under the constitution of this state or the United States.

Added by Acts 1985, 69th Leg., ch. 731, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1993, 73rd Leg., ch. 700, Sec. 1, eff. Sept. 11, 1993.

Sec. 62.013. PENALTIES. (a) Except as provided by Subsections (b) and (c) of this section, a person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 62.003, 62.004, 62.005, 62.0065, 62.011(c), or 350.001 or a rule adopted under Section 62.0065 commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of that section or rule, as appropriate, that the defendant has been convicted one or more times before the trial date of a violation of that section or rule, as appropriate, in which case the offense is a Parks and Wildlife Code state jail felony.

(c) In addition to the punishments provided in Subsections (a) and (b), a person who violates Section 62.003, 62.004, 62.005, 62.0065, 62.011(c), or 350.001 or a rule adopted under Section 62.0065 is punishable by the revocation or suspension under Section 12.5015 of hunting and fishing licenses and permits.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 43, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 738, Sec. 1, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 959, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 989 (H.B. 1959), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1156 (H.B. 3144), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 19.002, eff. September 1, 2011.

Sec. 62.014. HUNTER EDUCATION PROGRAM. (a) In this section:

(1) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use.

(2) "Archery equipment" means a long bow, recurved bow, or compound bow.

(b) The department may establish and administer a statewide hunter education program. The program must include but is not limited to instruction concerning:

(1) the safe handling and use of firearms, archery equipment, and crossbows;

(2) wildlife conservation and management;

(3) hunting laws and applicable rules and regulations; and

(4) hunting safety and ethics, including landowners' rights.

(c) The department shall issue a certificate to a person who has successfully completed a hunter education course. The department shall prescribe the form of the certificate.

(d) If funds are available for its implementation the commission may establish a mandatory hunter education program and may require a person to have successfully completed a training course before the person may hunt with firearms, archery equipment as defined in Subsection (a) of this section, or crossbows in Texas. If the certificate is so required, the person must possess the certificate or other evidence of completion of the program while hunting with firearms, archery equipment as defined in Subsection (a) of this section, or crossbows. The commission may provide that residents or nonresidents who have successfully completed the same or a comparable hunter education course and possess a certificate or other evidence of completion have satisfied the requirements imposed under this subsection. The commission may establish a minimum age for participation in the program. Those persons who cannot participate in the hunter education program because they do not meet the minimum age or other requirements established by the commission can only hunt with firearms, archery equipment as defined in

Subsection (a) of this section, or crossbows in Texas if they are accompanied by a person who is 17 years of age or older and licensed to hunt in Texas. Additionally, a person under 17 years of age hunting with a person licensed to hunt in Texas who is 17 years of age or older is not required to have certification under this Act.

The commission may implement the program by age group. Persons who are 17 years of age or older on September 1, 1988, or on the date on which a mandatory hunter education course is implemented, whichever is later, are exempt from the requirements imposed under this subsection.

The department is responsible for offering mandatory hunter education courses that are accessible to those persons required to take this course. To this end, the department shall provide hunter education opportunities in each county of the state when a substantial number of residents request a class or at least once a year.

(e) The commission may maximize the utilization of volunteer instructors to minimize the costs of the course and is authorized to charge a fee not to exceed $15 to defray administrative costs. Fees collected under this subsection, less any instructor expenses approved by the department, shall be deposited to the credit of the game, fish, and water safety account. The commission by rule may establish a procedure to allow a volunteer instructor to retain an amount from the fees collected by the instructor under this subsection to cover the instructor's actual and necessary out-of-pocket expenses.

(f) The department shall determine qualifications for instructors in the hunter education program and shall recruit, train, and certify instructors for the program.

(g) The department may cooperate with educational institutions, local governments, individuals, or organizations interested in hunter education in administering this section. The department may accept gifts, grants, and donations to be used in administering this section.

(h) The commission shall adopt rules to implement the hunter education program.

(i) The commission may establish an incentive program to encourage citizens to participate in the program as instructors.

(j) A person who violates any provision of this section or any proclamation or regulation of the commission issued under the

authority of this section commits an offense.

(k) If the commission requires a person to possess a certificate issued under this section and if the person is charged with a Class C Parks and Wildlife Code misdemeanor for failing to possess the required certificate, the person may present to the court not later than the 10th day after the date of the alleged offense an oral request or written motion to take a hunter safety training course.

(l) If a person requests a hunter safety training course as provided by Subsection (d) of this section, the court shall defer proceedings and allow the person 90 days to present written evidence that, after being charged with failure to possess the certificate, the person has successfully completed a hunter safety training course approved by the department. If a person successfully completes the course and the evidence presented is accepted by the court, the court shall dismiss the charge.

(m) It is a defense to prosecution under this section for failure to possess a certificate that the person charged produces in court a certificate issued to that person that was valid on the date of the alleged offense.

Text of subsection effective until January 1, 2025

(n) The following persons are exempt from any requirement to complete a hunter education course under this section:

(1) an honorably discharged veteran of the United States armed forces or a person who is on active duty as a member of the United States armed forces;

(2) a person who is on active duty or has previously served as a member of the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard; or

(3) a person who is serving or has previously served as a peace officer described by Subdivision (1), (2), (3), or (4), Article 2.12, Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(n) The following persons are exempt from any requirement to complete a hunter education course under this section:

(1) an honorably discharged veteran of the United States armed forces or a person who is on active duty as a member of the United States armed forces;

(2) a person who is on active duty or has previously served

as a member of the Texas Army National Guard, the Texas Air National Guard, or the Texas State Guard; or

(3) a person who is serving or has previously served as a peace officer described by Article 2A.001(1), (2), (3), or (4), Code of Criminal Procedure.

Added by Acts 1987, 70th Leg., ch. 276, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 43, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 732, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 84, 85, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 955 (H.B. 1080), Sec. 1, eff. June 17, 2011.

Acts 2017, 85th Leg., R.S., Ch. 460 (H.B. 2009), Sec. 1, eff. June 9, 2017.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.161, eff. January 1, 2025.

Sec. 62.015. HUNTING AND POSSESSION OF EXOTIC ANIMALS. (a) In this section, "exotic animal" means exotic livestock or exotic fowl as defined by Section 161.001(a), Agriculture Code, aoudad sheep, or elk.

(b) No person on a public road or on the right-of-way of a public road may hunt an exotic animal.

(c) No person may hunt on the land of another for an exotic animal without the express consent of the owner of the land to hunt for exotic animals.

(d) Except as provided in Subsections (e) and (f) of this section, no person may possess an exotic animal or the carcass of an exotic animal.

(e) Subsection (d) of this section does not apply to the owner or employee of the owner of the exotic animal, a person who holds a permit for the management of wildlife or exotic animals by the use of aircraft under Subchapter G, Chapter 43, of this code, a public health officer, a law enforcement officer, or a veterinarian.

(f) It is an affirmative defense to a prosecution under Subsection (d) of this section that the person possessed the exotic animal or the carcass of the exotic animal with the knowledge and consent of the owner.

(g) A person who violates this section commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 477, Sec. 1, eff. Aug. 26, 1985. Renumbered from Sec. 62.013 by Acts 1989, 71st Leg., ch. 2, Sec. 16.01(28), eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., ch. 424, Sec. 2, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 969, Sec. 12, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 863, Sec. 6, eff. Sept. 1, 1997.

Sec. 62.016. COMPETITIVE HUNTING DOG EVENTS. The department may permit a person to hold or participate in a competitive hunting dog field trial, in an area controlled by the department and designated by the commission as a public hunting area if:

(1) a participant in the event is prohibited from:

(A) using a firearm in the event; or

(B) taking the wildlife that is the object of the event; and

(2) the event does not deter other persons from hunting during a designated hunting season.

Added by Acts 1995, 74th Leg., ch. 372, Sec. 1, eff. Aug. 28, 1995.

Sec. 62.017. DISPOSITION OF SEIZED PROPERTY. (a) If a person is finally convicted of an offense under Section 61.022, 62.003, 62.004, 62.005, 62.0065, or 62.011(c), or violation of a rule adopted under Section 62.0065, the court entering judgment of conviction may order any weapon or other personal property used in the commission of the offense or violation destroyed or forfeited to the department.

(b) If the department receives a forfeiture order from a court as authorized by this section, the department may:

(1) use the property in its normal operation;

(2) sell or transfer the property; or

(3) destroy the property.

(c) This section does not apply to a vehicle, aircraft, vessel, or dog.

(d) If the disposition of property under this section is by sale of the property, the sale proceeds shall be deposited in the game, fish, and water safety account.

Added by Acts 1999, 76th Leg., ch. 851, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 959, Sec. 9, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 15.001, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 989 (H.B. 1959), Sec. 4, eff. September 1, 2005.

SUBCHAPTER B. SALE, TRANSPORTATION, AND STORAGE OF GAME

Sec. 62.021. SALE OR PURCHASE OF CERTAIN GAME. (a) Except as provided by Subsection (c), no person may sell, offer for sale, purchase, offer to purchase, or possess after purchase a wild bird, game bird, or game animal, dead or alive, or part of the bird or animal.

(b) This section applies only to a bird or animal protected by this code without regard to whether the bird or animal is taken or killed in this state.

(c) This section does not prohibit the sale of:

(1) a live game animal, a dead or live game bird, or the feathers of a game bird if the sale is conducted under authority of a license or permit issued under this code; or

(2) the following inedible parts:

(A) an inedible part, including the feathers, bones, or feet, of a game bird other than a migratory game bird that was lawfully taken or is lawfully possessed;

(B) the hair, hide, antlers, bones, horns, skull, hooves, or sinew, as applicable, of a deer, pronghorn antelope, desert bighorn sheep, collared peccary or javelina, red squirrel, or gray squirrel; or

(C) the feathers of a migratory game bird in accordance with federal law.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2699, ch. 735, Sec. 5, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 44, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 86, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 12, eff. September 1, 2009.

Sec. 62.023. SALE BY TAXIDERMIST. (a) If the owner of a lawfully taken game animal or game bird, including the head or hide of a lawfully taken game animal or game bird that has been mounted or tanned, has not claimed the mounted game animal, game bird, or head or the tanned hide within 90 days after notification by a taxidermist or tanner, the taxidermist or tanner may sell the mounted game animal, game bird other than a migratory game bird, or head or tanned hide for the amount due for labor performed.

(b) Repealed by Acts 2005, 79th Leg., Ch. 992, Sec. 32(2), eff. June 18, 2005.

(c) A taxidermist or tanner selling a mounted game animal, game bird, or head or tanned hide under this section shall maintain, until the second anniversary of the completion of the taxidermy or tanning, documentation of the identity of the person who left the game animal, game bird, head, or hide for taxidermy or tanning. Documentation under this section may include a hunting tag, wildlife resource document, or cold storage record.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 24, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 32(2), eff. June 18, 2005.

Sec. 62.024. IMPORTATION OF GAME. No person may bring into this state any bird or animal protected by this code during the closed season for that bird or animal except as provided by this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 45, eff. Sept. 1, 1985.

Sec. 62.025. IMPORTATION OF GAME. No person may bring into this state a bird or animal protected by this code for sale, barter, exchange, or shipment for sale during the open season for that bird

or animal except as provided in Section 62.026 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 46, eff. Sept. 1, 1985.

Sec. 62.026. IMPORTATION OF PROTECTED WILDLIFE FROM MEXICO. (a) It is lawful to ship or bring any wild game birds, wild game animals, or other protected species of wildlife from the Republic of Mexico into this state at any season if the person importing the wildlife has obtained:

(1) Repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, Sec. 1(1), eff. Sept. 1, 1979.

(2) a statement from the United States Customs Officer at the port of entry showing that the wildlife was brought from the Republic of Mexico.

(b) to (d) Repealed by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, Sec. 1(1), eff. Sept. 1, 1979.

(e) The department may prescribe reasonable rules and regulations for the importation of wild game birds, wild game animals, and other protected species of wildlife, and the number of each species that may be imported during a calendar week under this section.

(f) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 550, ch. 260, art. 5, Sec. 1(1), eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Sec. 62.0265. TRANSPORTATION OF WILD ANIMALS AND BIRDS. (a) A person may transport or ship to and from a taxidermist or tannery for mounting or preserving purposes or to his home, a specimen or part of a specimen of a wild bird or wild animal of this state, if the bird or animal was lawfully taken by the person, and if the specimen is not for sale.

(b) This section does not prohibit the transportation of a specimen and parts of a specimen as permitted under Sections 62.021

and 62.022 of this code.

Added by Acts 1977, 65th Leg., p. 610, ch. 221, Sec. 1, eff. May 24, 1977.

Sec. 62.029. RECORDS OF GAME IN COLD STORAGE OR PROCESSING FACILITY. (a) In this section:

(1) "Carcass" has the meaning assigned by Section 42.001.

(2) "Cold storage or processing facility" has the meaning assigned by Section 42.001.

(3) "Hunting lease" has the meaning assigned by Section 43.041.

(4) "Private cold storage or processing facility" means a cold storage or processing facility that is not available for use by the public.

(5) "Quartering" has the meaning assigned by Section 42.001.

(b) The owner, operator, or lessee of a cold storage or processing facility shall maintain a book containing a record of:

(1) the name, address, and hunting license number of each person who killed a game bird or game animal that is placed in the facility;

(2) the name and address of each person who places a game bird or game animal in the facility, if different from the person who killed the bird or animal;

(3) the number and kind of game birds or game animals placed in the facility; and

(4) the date on which each game bird or game animal is placed in the facility.

(c) The owner, operator, or lessee shall enter all information into the book as required by this section before placing in storage or processing any game animal or game bird.

(d) The cold storage or processing facility record book shall be kept at the facility and may be inspected by an authorized employee of the department during business hours or at any other reasonable time.

(e) Each cold storage or processing facility record book shall be kept at the facility until the first anniversary of the date of the last entry in the book.

(f) This section does not apply to a private, noncommercial, family-owned cold storage or processing facility unless the facility is located on a hunting lease and is made available to individuals other than the landowner, the landowner's nonpaying family members, or the landowner's nonpaying guests.

(g) This section does not require the entry or maintenance of a record for the carcass of a deer or antelope that is properly tagged and is placed in a private cold storage or processing facility.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 87, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 558, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 218 (S.B. 1122), Sec. 2, eff. September 1, 2009.

Sec. 62.030. POSSESSION OF GAME IN COLD STORAGE OR PROCESSING FACILITY. A person may place and maintain, or possess, in a cold storage or processing facility lawfully killed game birds and game animals not in excess of the number permitted to be possessed by law.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 88, eff. Sept. 1, 1997.

Sec. 62.031. INSPECTIONS OF FACILITIES. (a) Authorized employees of the department may enter and inspect a cold storage or processing facility or other place, including taxidermist shops and tanneries, where protected wildlife are stored.

(b) In this section "protected wildlife" means game animals, game birds, nongame animals, and nongame birds that are the subject of any protective law or regulation of this state or the United States.

(c) Inspections under this section may be made during normal business hours or at any other reasonable time.

Added by Acts 1977, 65th Leg., p. 611, ch. 221, Sec. 3, eff. May 24, 1977. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 89, eff. Sept.

1, 1997.

Sec. 62.032. PENALTIES. (a) Except as provided by Subsection (b) of this section, a person who violates a provision of this subchapter or a rule adopted under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial of the defendant for a violation of Section 62.021 of this code that he has been convicted within five years before the trial date of a violation of that section, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 48, eff. Sept. 1, 1985.

SUBCHAPTER D. HUNTING IN STATE PARKS

Sec. 62.061. PROHIBITED ACTS. Except as authorized by the commission under this subchapter, no person may hunt a wild animal, wild bird, or wild fowl in a state park, fort, or historic site under the jurisdiction of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.062. SEASON. (a) As sound biological management practices warrant and until August 31, 1995, the commission may prescribe an open season for hunting in state parks, forts, or sites where size, location, and other physical conditions permit hunting.

(b) After August 31, 1995, as sound biological practices warrant, and after it has established a classification system for parks in accordance with Section 13.001(b) of this code, the commission may prescribe an open season for recreational hunting in state parks, forts, or sites where size, location, physical conditions, safety, and other uses permit hunting.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 350, ch. 139, Sec. 2, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 77, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 217, Sec. 2, eff. May 18, 1993.

Sec. 62.063. REGULATORY AUTHORITY. The commission may prescribe the number, size, kind, and sex and the means and methods of taking any wildlife during an open season in a state park, fort, or historic site.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.0631. SEA RIM STATE PARK. (a) The commission may provide an open season for recreational hunting in Sea Rim State Park that is not inconsistent with sound biological management practices normally exercised to protect or utilize the wildlife resources occurring therein.

(b) The regulations of the commission under this section may not provide for a longer season, a greater seasonal or daily bag limit, or less restrictive means or methods of taking any wildlife resource than are provided in the regulations of the commission promulgated under the Wildlife Conservation Act of 1983 (Chapter 61 of this code), and Subchapter C, Chapter 64, of this code for the same year applicable to the remainder of Jefferson County.

(c) The limitations provided in Subsections (a) and (b) of Section 62.062 of this code do not apply to the regulations of the commission under this section.

Added by Acts 1981, 67th Leg., p. 350, ch. 139, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 33, ch. 9, art. II, Sec. 1, eff. Aug. 29, 1983.

Sec. 62.066. MANAGEMENT OF RESOURCES. The commission may direct the service or division of the department charged with the management of wildlife resources to manage the aquatic and wildlife resources found in state parks, forts, or historic sites.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.067. GENERAL HUNTING LICENSE. The provisions of this subchapter do not waive the requirement of a hunting license under

this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.068. ARREST. A peace officer, game warden, or commissioned state park employee may arrest without warrant a person found committing a violation of this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:
Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 25, eff. June 18, 2005.

Sec. 62.069. PENALTY. A person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 49, eff. Sept. 1, 1985.

SUBCHAPTER E. WEAPONS ON LOWER COLORADO RIVER AUTHORITY LAND

Sec. 62.081. WEAPONS PROHIBITED. Except as provided in Section 62.082 of this code, no person may hunt with, possess, or shoot a firearm, bow, crossbow, slingshot, or any other weapon on or across the land of the Lower Colorado River Authority.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.082. TARGET RANGES, MANAGED HUNTS, AND OTHER EXCEPTIONS; RULES. (a) The Board of Directors of the Lower Colorado River Authority may lease river authority land to be used on a nonprofit basis for a target rifle or archery range.

(b) A member of the boy scouts or the girl scouts or other nonprofit public service group or organization may possess and shoot a firearm, bow, and crossbow for target or instructional purposes under the supervision of a qualified instructor registered with and

approved by the Lower Colorado River Authority on ranges designated by the Lower Colorado River Authority.

(c) The Board of Directors of the Lower Colorado River Authority may authorize lawful hunting on Lower Colorado River Authority lands, consistent with sound biological management practices.

Text of subsection effective until January 1, 2025

(d) Section 62.081 does not apply to:

(1) an employee of the Lower Colorado River Authority;

(2) a person authorized to hunt under Subsection (c);

(3) a peace officer as defined by Article 2.12, Code of Criminal Procedure; or

(4) a person who:

(A) possesses a handgun and a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; or

(B) under circumstances in which the person would be justified in the use of deadly force under Chapter 9, Penal Code, shoots a handgun the person is licensed to carry under Subchapter H, Chapter 411, Government Code.

Text of subsection effective on January 1, 2025

(d) Section 62.081 does not apply to:

(1) an employee of the Lower Colorado River Authority;

(2) a person authorized to hunt under Subsection (c);

(3) a peace officer as defined by Article 2A.001, Code of Criminal Procedure; or

(4) a person who:

(A) possesses a handgun and a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; or

(B) under circumstances in which the person would be justified in the use of deadly force under Chapter 9, Penal Code, shoots a handgun the person is licensed to carry under Subchapter H, Chapter 411, Government Code.

(e) A state agency, including the department, the Department of Public Safety, and the Lower Colorado River Authority, may not adopt a rule that prohibits a person who possesses a license issued under Subchapter H, Chapter 411, Government Code, from entering or crossing the land of the Lower Colorado River Authority while:

(1) possessing a handgun; or

(2) under circumstances in which the person would be

justified in the use of deadly force under Chapter 9, Penal Code, shooting a handgun.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 90, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 375 (S.B. 535), Sec. 1, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 375 (S.B. 535), Sec. 2, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 1302 (H.B. 3142), Sec. 11, eff. June 14, 2013.
Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 38, eff. January 1, 2016.
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.162, eff. January 1, 2025.

Sec. 62.083. APPROVED INSTRUCTOR AND RANGE RECORDS. The Lower Colorado River Authority shall maintain in its Austin office a current listing of approved and registered instructors and a map indicating the location of the designated ranges. The records shall be made available on request to enforcement officers and county attorneys.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 62.084. PENALTY. A person who violates Section 62.081 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 50, eff. Sept. 1, 1985.

SUBCHAPTER F. UNLAWFUL CONTROLLED KILLING OF OR ATTEMPTING TO INJURE DANGEROUS WILD ANIMALS

Sec. 62.101. DEFINITIONS. In this subchapter:

(1) "Captivity" means the state of being held under control or kept caged or penned.

(2) "Dangerous wild animal" means a lion, tiger, leopard, cheetah, hyena, bear, elephant, wolf, or rhinoceros and includes any species, subspecies, or hybrid of any of those animals.

(3) "Hybrid" means an offspring of two animals of different breeds, species, or genera.

(4) "Lion" means African and Asiatic lion.

(5) "Sanctuary" means a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced dangerous wild animals are provided care for their lifetime or until released back to their natural habitat.

Added by Acts 1995, 74th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1995.

Sec. 62.102. CONTROLLED KILLING OF OR ATTEMPTING TO INJURE DANGEROUS WILD ANIMAL PROHIBITED. No person may:

(1) kill or attempt to injure a dangerous wild animal that is:

(A) in captivity in this state; or

(B) released from captivity in this state for the purpose of being killed; or

(2) conduct, promote, assist, or advertise an activity prohibited by Subdivision (1).

Added by Acts 1995, 74th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1995.

Sec. 62.103. UNLAWFUL CONTROLLED KILLING; CERTAIN COMMERCIAL ACTIVITY PROHIBITED. No person may:

(1) sell or offer for sale, or transport or consign for transportation in this state, including interstate commerce in this state, a dangerous wild animal that is to be used for controlled killing prohibited by Section 62.102(1); or

(2) sell or offer for sale a part of or a product made from a dangerous wild animal that is used in a controlled kill prohibited by Section 62.102(1).

Added by Acts 1995, 74th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1995.

Sec. 62.104. SEIZURE OF DANGEROUS WILD ANIMAL OR CARCASS, HIDE, PART OR PRODUCT. (a) A peace officer may seize a live dangerous wild animal or a carcass, hide, or part of or a product made from a dangerous wild animal if the officer has probable cause to believe that the live animal, carcass, hide, part, or product possessed by a person was killed, wounded, or injured in, or obtained as a result of, a controlled kill prohibited by Section 62.102(1).

(b) The commission shall adopt rules for the final disposition of a carcass, hide, part, product, or live animal seized under this section.

(c) The department, a game warden, or other department employee authorized to act under this section is immune from criminal or civil liability and from prosecution or civil suit for a seizure conducted under this section or rules adopted under this section.

Added by Acts 1995, 74th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1995.

Sec. 62.105. AUTHORITY OF LOCAL GOVERNMENT. This subchapter does not restrict the authority of a local government to regulate the possession of a dangerous wild animal if the regulation does not conflict with this subchapter.

Added by Acts 1995, 74th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1995.

Sec. 62.106. EXCEPTIONS. (a) This subchapter does not apply to a peace officer or other employee of a municipality, a county, or this state, or a person acting at the direction of such an officer or employee, who, while acting in an official capacity or at the direction of such an officer or employee acting in an official capacity, injures or kills a dangerous wild animal that the officer or employee reasonably believes to present, under the circumstances, the possibility of danger to the public. A person described by this subsection is immune from criminal or civil liability and from prosecution or civil suit for causing injury or death to the animal.

(b) This subchapter does not apply to a licensed veterinarian or an employee of a sanctuary exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501) or of a facility accredited by the Association of Zoos and Aquariums, who, while in the course of such employment, humanely

euthanizes a dangerous wild animal to eliminate the suffering of that animal due to illness or injury. A person described by this subsection is immune from criminal or civil liability and from prosecution or civil suit for causing injury or death to the animal.

Added by Acts 1995, 74th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1995.

Sec. 62.107. CRIMINAL PENALTY. A person who violates this subchapter commits an offense that is a Class A Parks and Wildlife Code misdemeanor, unless it is shown at the trial of the defendant for a violation of this subchapter that the defendant has been convicted one or more times before the trial date of a violation of this subchapter, in which case the offense is a Parks and Wildlife Code felony.

Added by Acts 1995, 74th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 63. GAME AND NONGAME ANIMALS

SUBCHAPTER A. GAME ANIMALS

Sec. 63.001. GAME ANIMALS. (a) The following animals are game animals: mule deer, white-tailed deer, pronghorn antelope, desert bighorn sheep, gray or cat squirrels, fox squirrels or red squirrels, and collared peccary or javelina.

(b) No species of any animal set out in Subsection (a) of this section or any other animal is a game animal if it is not indigenous to this state.

(c), (d) Repealed by Acts 1997, 75th Leg., ch. 863, Sec. 8, eff. Sept. 1, 1997.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 1860, ch. 439, Sec. 6, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 35, Sec. 1, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1256, Sec. 8, eff. Sept. 1, 1997.

Sec. 63.002. POSSESSION OF LIVE GAME ANIMALS. No person may possess a live game animal in this state for any purpose not authorized by this code.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 91, eff. Sept. 1, 1997.

SUBCHAPTER B. NONGAME ANIMALS

Sec. 63.101. PROTECTION OF BATS. (a) Except as provided by Subsections (b) and (c), no person may:

(1) hunt a bat; or

(2) sell, offer for sale, purchase, offer to purchase, or possess after purchase a bat or any part of a bat, dead or alive.

(b) A bat may be removed or hunted if the bat is inside or on a building occupied by people.

(c) This section does not apply to:

(1) an animal control officer, a peace officer, or a health official who captures a bat that the officer or official considers injured or diseased;

(2) a person who transports a bat for the purpose of laboratory testing if the bat has exposed or potentially exposed humans or domestic animals to rabies; or

(3) a person who is licensed to provide pest control services.

Added by Acts 2001, 77th Leg., ch. 363, Sec. 1, eff. Sept. 1, 2001.

Sec. 63.102. WOLVES. (a) No person may possess, transport, receive, or release a live wolf in this state.

(b) Subsection (a) does not apply to the transportation of a wolf by a state or county official while performing an official duty or to the possession or transportation of a wolf by the owner or agent of a licensed circus, zoo, or menagerie for exhibition or scientific purposes.

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Sec. 63.103. SALE OF CERTAIN LIVE ANIMALS. (a) No person may sell or possess for the purpose of sale in this state a living

armadillo.

(b) This section does not apply to:

(1) the sale of an animal by or to a zoo;

(2) the sale of an animal to an educational institution or a medical or research center for scientific purposes as authorized by a permit issued under Subchapter C, Chapter 43, of this code; or

(3) the sale to a commercial dealer who in turn resells for purposes authorized in Subdivisions (1) and (2) of this subsection.

(c) In this section, "zoo" means a publicly or privately owned establishment that has a permanent place of business open to the public and that displays 15 or more different species of wildlife.

(d) A peace officer who has probable cause to believe that an animal has been sold or held for sale in violation of Subsection (a) of this section may seize the animal and hold it for observation to determine if the animal has rabies or any other communicable disease harmful to man or other animals. If the animal is free from disease, the officer may release the animal or, if the animal is otherwise dangerous or harmful, may destroy it. If the animal is diseased, it shall be destroyed. An officer exercising the duties under this section is immune from liability.

(e) A person who violates Subsection (a) of this section, in addition to the penalties under Section 63.104 of this code, on conviction shall pay all costs and expenses incurred under Subsection (d) of this section.

Added by Acts 1979, 66th Leg., p. 386, ch. 177, Sec. 1, eff. Aug. 27, 1979. Amended by Acts 1981, 67th Leg., p. 2741, ch. 748, Sec. 5, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 51, eff. Sept. 1, 1985.

Sec. 63.104. PENALTIES. (a) A person who violates Section 63.102 of this code commits an offense that is a Parks and Wildlife Code felony.

(b) A person who violates Section 63.103 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) A person who violates Section 63.002 or 63.101 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 52, eff. Sept.

1, 1985. Amended by Acts 1999, 76th Leg., ch. 354, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 363, Sec. 2, eff. Sept. 1, 2001.

CHAPTER 64. BIRDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. GAME BIRDS. Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens, wild pheasants of all varieties, wild partridge, wild bobwhite quail, wild scaled quail, wild Mearn's quail, wild Gambel's quail, wild red-billed pigeons, wild band-tailed pigeons, wild mourning doves, wild white-winged doves, wild white-fronted doves, wild snipe of all varieties, wild shore birds of all varieties, chachalacas, wild plover of all varieties, and wild sandhill cranes are game birds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 202, ch. 95, Sec. 1, eff. April 30, 1981.

Sec. 64.002. PROTECTION OF NONGAME BIRDS. (a) Except as provided by this code, no person may:

(1) catch, kill, injure, pursue, or possess, dead or alive, or purchase, sell, expose for sale, transport, ship, or receive or deliver for transportation, a bird that is not a game bird;

(2) possess any part of the plumage, skin, or body of a bird that is not a game bird; or

(3) disturb or destroy the eggs, nest, or young of a bird that is not a game bird.

(b) European starlings, English sparrows, and feral rock doves (Columba livia) may be killed at any time in any manner and their nests or eggs may be destroyed, and such conduct does not constitute an offense under Chapter 42, Penal Code.

(c) A permit is not required to control yellow-headed, red-winged, rusty, or Brewer's blackbirds or all grackles, cowbirds, crows, or magpies when found committing or about to commit depredations on ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in numbers and in a

manner that constitutes a health hazard or other nuisance.

(d) Canaries, parrots, and other exotic nongame birds may be sold, purchased, and kept as domestic pets.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 202, ch. 95, Sec. 2, eff. April 30, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 610, Sec. 2, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1256, Sec. 92, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 13, eff. September 1, 2009.

Sec. 64.003. DESTROYING NESTS OR EGGS. No person may destroy or take the nest, eggs, or young of any wild game bird, wild bird, or wild fowl protected by this code except as provided in this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 53, eff. Sept. 1, 1985.

Sec. 64.004. TRAPPING GAME BIRDS. No person may set a trap, net, or other device for taking game birds or take or snare a game bird by a device without obtaining a permit from the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 54, eff. Sept. 1, 1985.

Sec. 64.005. PENALTY. A person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 55, eff. Sept. 1, 1985.

Sec. 64.006. RELEASE OF TURKEYS. (a) Except as provided by

this section, no turkeys may be propagated, purchased, sold, transported, or released for the purpose of establishing a free-ranging wild turkey population.

(b) The department may release turkeys in certain areas of the state for the purpose of maintaining a wild turkey population.

(c) The department may adopt regulations regulating the release of turkeys by persons other than department employees.

(d) This section does not apply to any turkeys maintained for agricultural purposes.

(e) The department may contract with private sector sources to release wild turkeys in certain areas of the state for the purpose of maintaining or expanding a wild turkey population.

Added by Acts 1987, 70th Leg., ch. 771, Sec. 1, eff. Aug. 31, 1987.

Sec. 64.007. POSSESSION OF LIVE GAME BIRDS. No person may possess a live game bird in this state except as authorized by this code.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 93, eff. Sept. 1, 1997.

SUBCHAPTER B. SEASONS AND LIMITS

Sec. 64.011. EAGLE. No person may hunt, trap, or kill a golden eagle or Mexican brown eagle without first having obtained a permit from the department as provided by Subchapter H, Chapter 43, of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1987, 70th Leg., ch. 631, Sec. 1, eff. June 19, 1987.

SUBCHAPTER C. MIGRATORY GAME BIRDS

Sec. 64.021. DEFINITIONS. In this subchapter:

(1) "Migratory game bird" means wild ducks of all species, wild geese and wild brant of all species, wild coot, wild rail, wild gallinules, wild plovers, Wilson's snipe or jack snipe, woodcock, mourning doves, white-winged doves, white-fronted doves, red-billed pigeons, band-tailed pigeons, shore birds of all varieties, and sandhill cranes.

(2) "Open season" means the period of time when it is lawful to take, kill, or pursue, or attempt to take or kill migratory game birds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 202, ch. 95, Sec. 3, eff. April 30, 1981.

Sec. 64.022. AUTHORITY OF COMMISSION. The commission shall provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds and may delegate that authority to the executive director.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 94, eff. Sept. 1, 1997.

Sec. 64.023. OPEN SEASON. An open season may be provided only for the length of time justified by the supply of the species of migratory game bird affected in this state or in the zone or section of this state where the open season applies.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 64.024. REGULATIONS. (a) The department shall conduct investigations prior to the issuance of regulations on an open season for a migratory game bird. The regulation may be issued if the supply of the migratory game bird is sufficient.

(b) The commission may adopt an emergency regulation governing the hunting or possession of migratory game birds if the commission finds that an emergency condition affecting the supply or condition of migratory game birds exists.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 62, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 95, eff. Sept. 1, 1997.

Sec. 64.025. SUIT. A party affected by and dissatisfied with a regulation issued under this subchapter may file suit against the department to test the validity of the regulation in a court of competent jurisdiction in Travis County.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 64.026. PROHIBITED ACTS. No person may hunt or possess a migratory game bird by any means or method except as provided by regulation issued under this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 56, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 96, eff. Sept. 1, 1997.

Sec. 64.027. PENALTY. A person who violates a provision of this subchapter or a regulation of the department adopted under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 57, eff. Sept. 1, 1985.

CHAPTER 65. ALLIGATORS

Sec. 65.001. DEFINITIONS. In this chapter:

(1) "Alligator" means a living or dead American alligator (Alligator mississippiensis).

(2) "Alligator hunter" means a person who takes an alligator, an alligator egg, or any part of an alligator.

(3) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner or as agent, bailee, or custodian for another.

(4) "Take" means the act of hooking, netting, snaring, trapping, pursuing, shooting, killing, capturing, or collecting by any means or device and includes the attempt to take by the use of any method.

(5) "Resident" means an individual who has resided

continuously in this state during the six months preceding the individual's application for any license or permit issued under this chapter.

(6) "Nonresident" means an individual who is not a resident.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1991, 72nd Leg., ch. 190, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 301, Sec. 6, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 97, eff. Sept. 1, 1997.

Sec. 65.002. APPLICATION. Except for regulation of those populations listed on the United States List of Endangered Wildlife (50 C.F.R. Part 17), special permits issued under Chapter 43 of this code, revocation or suspension of licenses or permits under Subchapter F, Chapter 12, of this code, or contracts for the removal of reptiles entered into under Section 81.404 of this code, this chapter governs the taking, possession, and sale of alligators to the exclusion of other regulatory and licensing laws.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1993, 73rd Leg., ch. 338, Sec. 5, eff. Sept. 1, 1993.

Sec. 65.003. REGULATIONS. (a) The commission may regulate by proclamation the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species.

(b) The regulations of the commission under this chapter may provide for:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator;

(4) limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator; and

(5) control of nuisance alligators.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 98, eff. Sept. 1, 1997.

Sec. 65.004. SCIENTIFIC STUDIES. The department shall conduct scientific studies and investigations of alligators as necessary to develop information on populations, distributions, habitat needs, limiting factors, and any other biological or ecological data or to determine appropriate management for public safety.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981.

Sec. 65.005. POSSESSION. No person may take, sell, purchase, or possess an alligator, an alligator egg, or any part of an alligator in this state except as permitted by the regulations of the commission.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 99, eff. Sept. 1, 1997.

Sec. 65.006. PERMIT REQUIRED. No person for any purpose may possess, purchase, or possess after purchase an alligator, an alligator hide, an alligator egg, or any part of an alligator taken in this state unless:

(1) the person has acquired and possesses a permit issued by the department for that purpose; or

(2) a regulation of the commission otherwise allows the possession or purchase without a permit.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1991, 72nd Leg., ch. 190, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1256, Sec. 100, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 26, eff. June 18, 2005.

Sec. 65.0071. EXPIRATION OF LICENSES. A license issued under this chapter is valid only during the yearly period for which the license is issued without regard to the date on which the license is acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

Added by Acts 1995, 74th Leg., ch. 931, Sec. 66, eff. June 16, 1995.

Sec. 65.008. PENALTIES. (a) A person commits an offense if the person violates this chapter or a regulation of the commission issued under this chapter.

(b) An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant that he has been once before convicted of a violation of this chapter, the offense is a Class B Parks and Wildlife Code misdemeanor.

(d) If it is shown at the trial of the defendant that he has been convicted of a violation of this chapter two or more previous times, the offense is a Class A Parks and Wildlife Code misdemeanor.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 58, eff. Sept. 1, 1985.

Sec. 65.009. SEIZURE AND DISPOSAL OF ALLIGATORS. (a) A game warden or any other peace officer may seize an alligator, alligator hide, alligator egg, or any part of an alligator if he has probable cause to believe it was taken, possessed, sold, or purchased in violation of this chapter or of a regulation of the commission. An alligator, alligator hide, alligator egg, or alligator part seized

under this section may be sold by the department to the highest of three bidders, and the proceeds of the sale shall be deposited in the appropriate department suspense fund.

(b) If a person from whom an item described by Subsection (a) was seized is found guilty, pleads guilty or nolo contendere, is placed on deferred adjudication, or fails to appear in accordance with a notice described by Section 12.106 or another law requiring that, as a condition of release, the defendant subsequently appear before a court to answer for the offense, the department shall transfer the proceeds of the sale from the suspense fund to the credit of the game, fish, and water safety account. If the person is acquitted by the trial court, the charges against the person are dismissed, or the statute of limitations period for the prosecution of the offense has expired, the department shall pay the proceeds of the sale to the person from whom the items were seized.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 325, Sec. 5, eff. September 1, 2013.

(d) A game warden or peace officer acting under the authority of this chapter or of a regulation of the commission is immune from liability and from suit for the seizure of alligators, alligator hides, alligator eggs, or any part of an alligator.

(e) To the extent practicable, Subtitle A, Title 6, Health and Safety Code, applies to an animal or animal part sold under this section that is intended for sale and use as human food.

Added by Acts 1981, 67th Leg., p. 437, ch. 184, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1993, 73rd Leg., ch. 338, Sec. 6, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 325 (H.B. 1818), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 325 (H.B. 1818), Sec. 5, eff. September 1, 2013.

CHAPTER 66. FISH AND AQUATIC PLANTS

SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER FISHING AND AQUATIC PLANTS

Sec. 66.001. DEFINITIONS. In this chapter:

(1) "Fresh water" means all lakes, lagoons, rivers, and

streams to their mouths, but does not include coastal or tidal water.

(2) "Prepared feed" means a pelleted ration, 20 percent or more of which consists of plant protein or grain by-products.

(3) "Salt water" means all coastal or tidal water.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 859, Sec. 1, eff. Sept. 1, 1995.

Sec. 66.002. CONSENT TO TAKE FISH FROM PRIVATE WATER. (a) No person may catch, take, or attempt to catch or take any aquatic animal life by any means or method from any privately owned waters without the consent of the landowner or the landowner's agent.

(b) In a prosecution under this section, the burden of proof to show consent is on the person charged.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 59, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 102, eff. Sept. 1, 1997.

Sec. 66.003. PLACING EXPLOSIVES OR HARMFUL SUBSTANCES IN WATER. (a) No person may place in the water of this state an explosive, poison, or other substance or thing deleterious to fish.

(b) Subsection (a) of this section does not apply to the use of explosives necessary for construction purposes when the use is authorized in writing by the department.

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 103, eff. Sept. 1, 1997.

Sec. 66.004. TAKING OF FISH BY ELECTRIC SHOCK PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (d) of this section, no person may catch fish by using an electricity-producing device designed to shock fish.

(b) No person may manufacture or sell an electricity-producing device designed to shock fish.

(c) Except as provided by Subsection (d) of this section, no person may possess an electricity-producing device commonly used to shock fish. The possession of an electricity-producing device commonly used to shock fish, in a boat or within one-half mile of any water of this state, is a violation of this section by the person in possession of the device.

(d) This section does not prohibit the use of an electricity-producing device of not more than three volts connected to a shrimp trawl used by an operator of a licensed commercial gulf shrimp boat in the outside water of this state at depths of more than seven fathoms. To qualify under this exemption, the commercial gulf shrimp boat and the trawl must be operating in compliance with the provisions of Chapter 77 of this code relating to the taking of shrimp.

(e) An electricity-producing device used or possessed in violation of this section is a nuisance, and an officer of the department who has probable cause to believe that a device is used or possessed in violation of this section may search a boat, vehicle, campsite, or person and seize the device and hold it as evidence for the trial of the person in possession of the device. If the person is found guilty of a violation of this section, the department shall be responsible for the destruction of the device unless it can be utilized by the department for research purposes, or upon request the device may be released to a state-supported college or university for use in marine or aquatic research. An officer of the department who seizes or destroys a device is immune from liability for any damages resulting from seizure or destruction, and the department is likewise immune from liability for any damages resulting from seizure, destruction, or disposition thereof.

(f) For purposes of this section, an "electricity-producing device" includes any device that produces or directs an electrical current and is used to shock, stun, disorient, or kill fish.

(g), (h) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1662, ch. 656, Sec. 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2542, ch. 676, art. 2, Sec. 1 to

4, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 738, Sec. 2, eff. Sept. 1, 1989.

Sec. 66.005. WILFUL DESTRUCTION OF BOAT, SEINE, OR NET. No person may wilfully, with the intent to injure the owner, take a boat, seine, net, or other device for fishing into prohibited water, or use a boat, seine, net, or other device for fishing to take fish unlawfully, so as to cause the destruction of the boat, seine, net, or device.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 60, eff. Sept. 1, 1985.

Sec. 66.006. POSSESSION OF ILLEGAL FISHING DEVICES. (a) No person may possess a device designed to catch fish or other aquatic wildlife in or on the public water of this state where the use of the device is not permitted by this code or by a proclamation of the commission under this code unless the device is on board a vessel that is in public coastal water and is:

(1) in port; or

(2) in a marked channel and the vessel is going directly to or from public water in this state where the use of the device is permitted.

(b) No person may possess or use for the purpose of catching finfish a seine, strike net, gill net, or trammel net in or on the public water of this state unless the seine, strike net, gill net, or trammel net is equipped with floats at intervals of six feet or less and of sufficient buoyancy to maintain the seine, strike net, gill net, or trammel net in an upright position in the water so that the floats are visible on the surface of the water thereby avoiding a hazard to motorboat traffic.

(c)(1) No person may possess a seine, strike net, gill net, or trammel net on or within 500 yards of any public coastal water of this state where the use of the seine or net for the catching of fish is not permitted by this code or by a proclamation of the commission under this code.

(2) It is a defense to prosecution under this subsection that the seine, strike net, gill net, or trammel net was possessed within 500 yards of a public coastal water of this state for a lawful fishing activity.

Added by Acts 1989, 71st Leg., ch. 27, Sec. 1, eff. Sept. 1, 1989.

Sec. 66.007. EXOTIC HARMFUL OR POTENTIALLY HARMFUL FISH AND SHELLFISH. (a) No person may import, possess, sell, or place into the public water of this state exotic harmful or potentially harmful fish or shellfish except as authorized by rule or permit issued by the department.

(b) The department shall publish a list of exotic fish and exotic shellfish for which a permit under Subsection (a) is required.

(c) The department shall make rules to carry out this section.

(c-1) The commission by rule shall waive the initial and renewal fees for an exotic species permit if the permit or permit renewal is requested by a public school to establish and maintain an educational program that will give students experience with a sustainable system of agriculture that mixes aquaculture and hydroponics. To qualify for the fee waiver, the school must submit an application to the department showing that the school's program meets the department's requirements, including requirements for supervision, handling of the exotic species, and control of wastes.

(d) An operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, may import, possess, or sell harmful or potentially harmful exotic fish species as provided by Section 134.020, Agriculture Code.

(e) In this section:

(1) "Exotic fish" means a nonindigenous fish that is not normally found in the public water of this state.

(2) "Exotic shellfish" means a nonindigenous shellfish that is not normally found in the public water of this state.

(3) "Public water" has the meaning assigned by Section 66.015.

(f) An operator of a commercial aquaculture facility as defined by Section 134.001, Agriculture Code, may not import, possess, propagate, or transport exotic shellfish unless the operator furnishes evidence required by the department showing that the

shellfish are free of disease.

(g) The commission may adopt rules to control a disease or agent of disease transmission that:

(1) may affect penaeid shrimp species; and

(2) has the potential to affect cultured species or other aquatic species.

(h) If one or more manifestations of disease is observed in any cultured marine penaeid shrimp species, the department shall immediately place the aquaculture facility under quarantine condition. The department shall determine, by rule, the meaning of "manifestation of disease" and "quarantine condition" under this section.

(i) The department may coordinate with the Texas Animal Health Commission regarding testing for diseases.

(j) Except as provided in Subsection (k), an operator of an aquaculture facility under quarantine condition may not discharge waste or another substance from the facility except with approval of the department and a wastewater discharge authorization from the Texas Commission on Environmental Quality.

(k) Even if under quarantine condition, an aquaculture facility shall discharge wastewater or another substance as necessary to comply with an emergency plan that has been submitted to and approved by the department and incorporated into a wastewater discharge authorization issued by the Texas Commission on Environmental Quality.

(l) On receiving notice from an owner of the observance of manifestations of disease, the department shall immediately:

(1) notify the Department of Agriculture, the Texas Commission on Environmental Quality, and the Texas Animal Health Commission; and

(2) advise the Department of Agriculture, the Texas Commission on Environmental Quality, and the Texas Animal Health Commission regarding the appropriate action to be taken.

(m) A water transfer described by this subsection is not a violation of this section. The department may not require a permit under this section for a water transfer described by this subsection. This subsection applies to a water transfer by a district or authority created under Section 59, Article XVI, Texas Constitution, that:

(1) is initially conveyed by a water intake structure that

is:

(A) shared by at least two districts or authorities; and

(B) located on a reservoir situated on the boundary of this state and another state;

(2) uses a closed conveyance system approved by the United States Army Corps of Engineers in accordance with an invasive species management plan approved by the United States Army Corps of Engineers; and

(3) contributes to a water supply that serves at least 1.5 million people, all of whom reside in an area that:

(A) borders another state;

(B) contains at least 10 contiguous counties;

(C) contains at least one county with a population of more than one million; and

(D) is adjacent to a county with a population of more than one million.

(n) A water transfer described by this subsection is not a violation of this section. The department may not require a permit under this section for a water transfer described by this subsection. This subsection applies to a water transfer that meets the following criteria:

(1) the transfer is through a water supply system, including a related water conveyance, storage, or distribution facility;

(2) the transfer is undertaken by a utility owned by a political subdivision, including a water district or municipality; and

(3) the transfer is described by one or more of the following:

(A) a transfer from a water body in which there is no known exotic harmful or potentially harmful fish or shellfish population;

(B) a transfer of water into a water body in which there is a known exotic harmful or potentially harmful fish or shellfish population;

(C) a transfer of water directly to a water treatment facility;

(D) a transfer of water that has been treated prior to the transfer into a water body; or

(E) a transfer of water from a reservoir or through a dam to address flood control or to meet water supply requirements or environmental flow purposes, provided that a person making a transfer of water described by this paragraph from a body of water in which there is a known exotic harmful or potentially harmful fish or shellfish population notifies the department annually in writing before the proposed transfer occurs.

(o) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 661, Sec. 8, eff. June 17, 2011.

(p) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 661, Sec. 8, eff. June 17, 2011.

(q) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 661, Sec. 8, eff. June 17, 2011.

(r) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 661, Sec. 8, eff. June 17, 2011.

(s) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 661, Sec. 8, eff. June 17, 2011.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 637, Sec. 8, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 586, Sec. 6, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1239, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 14, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 661 (S.B. 1480), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 661 (S.B. 1480), Sec. 4, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 661 (S.B. 1480), Sec. 8, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 163 (S.B. 1212), Sec. 1, eff. May 24, 2013.

Acts 2015, 84th Leg., R.S., Ch. 259 (S.B. 1204), Sec. 2, eff. May 29, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1048 (H.B. 1919), Sec. 1, eff. June 19, 2015.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 53, eff. September 1, 2021.

Sec. 66.0071. REMOVAL OF HARMFUL AQUATIC PLANTS. On leaving any public or private body of water in this state, a person shall immediately remove and lawfully dispose of any exotic aquatic plant on the list of prohibited plants adopted under Section 66.0072 that is clinging or attached to the person's:

(1) vessel or watercraft; or

(2) trailer, motor vehicle, or other mobile device used to transport or launch a vessel or watercraft.

Added by Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 27, eff. June 18, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 15, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 661 (S.B. 1480), Sec. 5, eff. June 17, 2011.

Sec. 66.0072. EXOTIC HARMFUL OR POTENTIALLY HARMFUL AQUATIC PLANTS. (a) In this section:

(1) "Exotic aquatic plant" means a nonindigenous aquatic plant that is not normally found in the public water of this state.

(2) "Public water" has the meaning assigned by Section 66.015.

(b) A person may not import, possess, sell, or place into the public water of this state an exotic harmful or potentially harmful aquatic plant except as authorized by commission rule or a permit issued by the department.

(c) The commission by rule shall adopt a list of exotic aquatic plants that may not be imported into or possessed in this state without a permit.

(d) The commission may enact an emergency rule as provided by Chapter 2001, Government Code, to add an exotic aquatic plant to the list of prohibited plants if the plant is determined to be harmful or potentially harmful.

(e) This section does not apply to any microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes. The department shall consult with the

Department of Agriculture as necessary to administer this section and may not adopt rules or permits for microalgae imported, possessed, used, or sold for biofuel, academic, or research and development purposes without written approval from the Department of Agriculture of the rules or permits.

(f) The commission shall adopt rules to implement this section.

(g) A water transfer described by this subsection is not a violation of this section. The department may not require a permit under this section for a water transfer described by this subsection. This subsection applies to a water transfer that meets the following criteria:

(1) the transfer is through a water supply system, including a related water conveyance, storage, or distribution facility;

(2) the transfer is undertaken by a utility owned by a political subdivision, including a water district or municipality; and

(3) the transfer is described by one or more of the following:

(A) a transfer from a water body in which there is no known exotic harmful or potentially harmful aquatic plant population;

(B) a transfer of water into a water body in which there is a known exotic harmful or potentially harmful aquatic plant population;

(C) a transfer of water directly to a water treatment facility;

(D) a transfer of water that has been treated prior to the transfer into a water body; or

(E) a transfer of water from a reservoir or through a dam to address flood control or to meet water supply requirements or environmental flow purposes, provided that a person making a transfer of water described by this paragraph from a body of water in which there is a known exotic harmful or potentially harmful aquatic plant population notifies the department annually in writing before the proposed transfer occurs.

Added by Acts 2011, 82nd Leg., R.S., Ch. 661 (S.B. 1480), Sec. 6, eff. June 17, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1048 (H.B. 1919), Sec. 2, eff.

June 19, 2015.

Sec. 66.0073. RULES REQUIRING WATER TO BE DRAINED. (a) In this section:

(1) "Public water" has the meaning assigned by Section 66.015.

(2) "Salt water" has the meaning assigned by Section 66.001.

(3) "Vessel" has the meaning assigned by Section 31.003.

(b) The commission may adopt rules requiring a person leaving or approaching public water to drain from a vessel or portable container on board the vessel any water that has been collected from or has come in contact with public water. This subsection does not apply to salt water.

(c) When promulgating rules described by Subsection (b), the commission shall consider the effects on boaters, anglers, and local interests while maintaining the ability to prevent the spread of harmful or potentially harmful exotic fish, shellfish, and aquatic plants.

(d) If the commission adopts rules described by Subsection (b), an authorized employee of the department may inspect a vessel leaving or approaching public water, including any portable containers on board the vessel, for the presence of water. This subsection does not apply to a vessel that is on public water.

Added by Acts 2013, 83rd Leg., R.S., Ch. 908 (H.B. 1241), Sec. 1, eff. June 14, 2013.

Sec. 66.008. FISHING FROM BRIDGE. (a) No person may fish from the deck or road surface of any bridge or causeway on a road maintained by the Texas Department of Transportation.

(b) No person may deposit or leave any dead fish, crab, or bait on the deck or road surface of any bridge or causeway on a road maintained by the Texas Department of Transportation.

(c) The Texas Department of Transportation shall post appropriate signs on all bridges and causeways affected by this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 165, Sec. 22(66), eff. Sept. 1, 1995.

Sec. 66.009. NAVIGATION DISTRICTS. (a) No person may use a seine or net of any type, trotline, or other mechanical or physical device, except hook and line, to catch fish in a channel, turning basin, or other water of a navigation district operating under Chapter 63, Water Code.

(b) The possession of a mechanical device referred to in Subsection (a) of this section within a navigation district operating under Chapter 63, Water Code, is prima facie evidence of a violation of Subsection (a) of this section.

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Sec. 66.0091. FISHING IN CERTAIN MAN-MADE WATERWAYS. (a) This section applies to a county in which at least 60 percent of the total area of the county is regularly covered by water and in which the majority of the total area of a wildlife refuge for species of wildlife on the federal endangered species list is located.

(b) No person may take or attempt to take fish of any variety by the use of nets, except hand-cast nets or minnow seines, from any canal or other artificial or man-made waterway within any platted subdivision platted under Chapter 231, Acts of the 40th Legislature, Regular Session, 1927 (Article 974a, Vernon's Texas Civil Statutes), if two or more residences abut onto the canal or waterway.

(c) No person may set any net in the mouth of a canal or waterway described in this section that interferes with or impedes the free movement of fish into or out of the canal or waterway.

Added by Acts 1987, 70th Leg., ch. 635, Sec. 1, eff. June 19, 1987.

Sec. 66.011. LEAVING FISH TO DIE. A person commits an offense

if the person leaves edible fish or bait fish taken from the public waters of this state to die without the intent to retain the fish for consumption or bait.

Added by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 2, eff. Sept. 1, 1985.

Sec. 66.012. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a rule adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 66.003, 66.004, 66.005, 66.006(c), 66.009, 66.015, 66.021, or 66.0091 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) An offense under Section 66.004, 66.006(c), or 66.015 is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section.

(d) An offense under Section 66.004 or 66.015 is a Parks and Wildlife Code felony if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section.

(e) An offense under Section 66.007, 66.0072, 66.020(f), or 66.020(g) or a proclamation adopted by the commission under those sections is a Class B Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted one time of a violation of the same section.

(f) An offense under Section 66.007, 66.0072, 66.020(f), or 66.020(g) or a proclamation adopted by the commission under those sections is a Class A Parks and Wildlife Code misdemeanor if it is shown at the trial of a person for the offense that the person has been previously convicted two or more times of a violation of the same section.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 61, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 635, Sec. 2, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 637, Sec. 9, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 738, Sec. 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 723, Sec. 11, eff. Sept. 1, 1991.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 661 (S.B. 1480), Sec. 7, eff. June 17, 2011.

Sec. 66.013. FEDERAL GRANTS. Federal grants for research and development of commercial fisheries may be used for individual fishery projects with the approval of the department.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 10, eff. Sept. 1, 1989.

Sec. 66.014. IDENTIFICATION OF VEHICLE TRANSPORTING AQUATIC PRODUCTS. (a) No person may transport any aquatic product for commercial purposes unless the person clearly identifies the motor vehicle, trailer, or semitrailer as a vehicle that carries aquatic products. The commission shall prescribe by proclamation the identification requirements for a motor vehicle, trailer, or semitrailer transporting aquatic products, and the commission may prescribe that the identification shall list the state of origin of the aquatic products. In this subsection, "motor vehicle," "trailer," and "semitrailer" have the meanings assigned by Section 541.201, Transportation Code.

(b) A person who violates this section commits an offense. An offense under this section is a Class C Parks and Wildlife Code misdemeanor.

(c) "Aquatic product" means any uncooked, fresh or frozen aquatic animal life.

Added by Acts 1985, 69th Leg., ch. 827, Sec. 6, eff. Aug. 26, 1985. Renumbered from Sec. 66.011 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(40), eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 723, Sec. 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 30.235, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 104, eff. Sept. 1, 1997.

Sec. 66.015. INTRODUCTION OF FISH, SHELLFISH, AND AQUATIC PLANTS. (a) In this section, "public water" means the bays, estuaries, and water of the Gulf of Mexico within the jurisdiction of the state, and the rivers, streams, creeks, bayous, reservoirs,

lakes, and portions of those waters where public access is available without discrimination.

(b) No person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department.

(c) The department shall establish rules and regulations governing the issuance of permits under this section.

(d) Subsection (b) of this section does not apply to native, nongame fish as defined by the commission, except in waters designated by the commission where threatened or endangered fish are present.

(e) A person violates this section if fish, shellfish, or aquatic plants the person possesses or has placed in nonpublic water escape into the public water of the state and the person does not hold a permit issued under this section.

(f) An employee of the department acting at the direction of the commission is exempt from this section.

Added by Acts 1989, 71st Leg., ch. 637, Sec. 11, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 105, eff. Sept. 1, 1997.

Sec. 66.016. COMMERCIAL FISHING REGULATIONS APPLICABLE IF COMMERCIAL PLATES ON BOARD. (a) A person on board a boat licensed or required to be licensed for a commercial fishing activity under Chapter 47, 76, 77, or 78, or any other chapter of this code may not catch and retain any fish species whose sale is prohibited when taken from Texas waters. While commercial fishing plates are on board, all commercial fishing regulations, size limits, bag limits, possession limits, and the prohibited possession of noncommercial fish species apply.

(b) Subsection (a) of this section does not apply to a person on board a boat licensed under Chapter 47, 76, 77, or 78 of this code if no commercial fishing plates are on board. While no commercial fishing plates are on board, all recreational fishing regulations, size limits, bag limits, and possession limits apply.

Added by Acts 1989, 71st Leg., ch. 73, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 455, Sec. 8, eff. Sept. 1, 1999.

Sec. 66.017. LICENSE, TAG, AND PERMIT EXPIRATIONS AND TRANSFERS. (a) All licenses, tags, and permits issued under the authority of Chapter 66 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

(b) All licenses, tags, and permits issued under the authority of Chapter 66 of this code may not be transferred to another person except that a license issued in the name of a business shall remain valid for the business location specified on the license or permit if a change of ownership and/or business name occurs. A license issued under the authority of Section 66.020(e) may be transferred to a new address if the business moves to another location. The commission, by regulation, may prescribe requirements necessary to clarify license and permit transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of licenses and permits in this chapter and for duplicate or replacement licenses, tags, and permits.

Added by Acts 1993, 73rd Leg., ch. 365, Sec. 15, eff. May 31, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 67, eff. June 16, 1995.

Sec. 66.018. CRAB TRAP TAGS. (a) The department may issue tags for crab traps placed in public water.

(b) The commission may make regulations for the safe use of crab traps and to carry out the provisions of this section.

(c) A crab trap tag issued under this section shall be attached to each crab trap placed in public water. The department may collect a maximum fee of $1.50 for each tag issued under this section; provided, however, that upon adoption of a crab management plan and the establishment of a crab advisory committee, the commission may determine the amount of the fee.

(d) No person may place a crab trap in public water unless a

crab trap tag is attached to the trap unless a proclamation under Subchapter B, Chapter 78, requires a license that does not require the use of crab trap tags.

(e) This section shall not apply to persons taking crabs from public water for personal use.

(f) If the commission adopts a license under Subchapter B, Chapter 78, the department may not collect a fee for any crab trap tag.

Added by Acts 1991, 72nd Leg., ch. 908, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 129, eff. Sept. 1, 1997.

Sec. 66.019. STATISTICAL REPORTS. (a) The department shall gather statistical information on the harvest of aquatic products of this state.

(b) The department shall prescribe the method or methods used to gather information and shall produce and distribute any applicable report forms.

(c) Unless otherwise required by the department, no dealer who purchases or receives aquatic products directly from any person other than a licensed dealer may fail to file the report with the department each month on or before the 10th day of the month following the month in which the reportable activity occurred. The report must be filed even if no reportable activity occurs in the month covered by the report. No dealer required to report may file an incorrect or false report. A culpable mental state is not required to establish an offense under this section.

(d) Unless otherwise required by the department, no dealer who purchases, receives, or handles aquatic products, other than oysters, from any person except another dealer may fail to:

(1) maintain cash sale tickets in the form required by this section as records of cash sale transactions; or

(2) make the cash sale tickets available for examination by authorized employees of the department for statistical purposes or as a part of an ongoing investigation of a criminal violation during reasonable business hours of the dealer.

(e) All cash sale tickets must be maintained at the place of business for at least one year from the date of the sale.

(f) A cash sale ticket must include:

(1) the name of the seller;

(2) the general commercial fisherman's license number and the commercial finfish fisherman's license number or the general commercial fisherman's license number and the commercial crab fisherman's license number, as applicable, if the holder of the general commercial fisherman's license is selling finfish or crabs;

(3) the general commercial fisherman's license number, the commercial crab fisherman's license number, the commercial finfish fisherman's license number, the commercial shrimp boat captain's license number, the commercial shrimp boat license number, or the commercial fishing boat license number of the seller or of the vessel used to take the aquatic product, as applicable;

(4) the number of pounds sold by species;

(5) the date of sale;

(6) the water body or bay system from which the aquatic products were taken; and

(7) price paid per pound per species.

(g) Any person who violates Subsection (c) or (d) of this section is guilty of a Class C misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 827, Sec. 9, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 625, Sec. 1, eff. Sept. 1, 1987. Redesignated from Sec. 66.209 and amended by Acts 1991, 72nd Leg., ch. 586, Sec. 7, eff. Sept. 1, 1991 and Acts 1991, 72nd Leg., ch. 723, Sec. 14, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 221, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 862, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 455, Sec. 9, eff. Sept. 1, 1999.

Sec. 66.020. SALE AND PURCHASE OF PROTECTED FISH. (a) It is unlawful for any person to buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, barter, or exchange bass of the genus Micropterus, blue marlin, crappie, flathead catfish, jewfish, longbill spearfish, muskellunge, northern pike, red drum, sailfish, sauger, snook, spotted sea trout, striped bass, tarpon, walleye, white bass, white

marlin, yellow bass, or hybrids of any of those fish.

(b) This section applies to the possession, transportation, sale, or purchase of any fish described by Subsection (a) without regard to where the fish was taken, caught, or raised, but does not apply to:

(1) the transportation or possession of fish taken, caught, or raised outside this state and transported by common carrier without being unloaded from outside this state to a point of delivery outside this state;

(2) fish raised by being continuously fed a prepared feed and sold by an operator of a Texas commercial aquaculture facility, as defined by Section 134.001, Agriculture Code;

(3) the sale of fish described by Subdivision (2) by:

(A) a licensed wholesale fish dealer;

(B) a licensed retail fish dealer; or

(C) a restaurant;

(4) bass of the genus Micropterus and crappie if the fish are:

(A) reared in private water; and

(B) sold by an operator of a Texas commercial aquaculture facility for the purpose of stocking:

(i) water of the state under a permit required under Section 66.015(b); or

(ii) private water with the documentation required under Section 134.018, Agriculture Code; or

(5) the lawful importation by the holder of a Texas finfish import license into this state from another state or foreign country or the exclusive economic zone of farm-raised red drum, bass of the genus Micropterus, crappie, flathead catfish, striped bass, white bass, or a hybrid of any of those fish that have been continuously fed a prepared feed as a primary food source or lawfully taken, caught, or raised blue marlin, jewfish, longbill spearfish, muskellunge, northern pike, sailfish, sauger, snook, spotted sea trout, tarpon, walleye, white marlin, yellow bass, or a hybrid of any of those fish, if the fish are tagged, invoiced, packaged, and labeled under regulations of the commission and if the license holder complies with any requirements the commission may establish by proclamation that the fish enter the stream of commerce for sale in this state in a condition allowing ready identification of the species, including a requirement that the fish come into the state

with the head and tail intact and tagged and a requirement that an invoice accompany all imported fish regulated by this section through each sales transaction, including transactions at the place of the final sale to the consumer.

(c) Notwithstanding Subsection (b)(5), the commission may allow subsequent sale of lawfully imported fish without the head and tail intact and without a tag if the fish are labeled in a manner prescribed by the commission and the tag when removed is destroyed. A tag, if required, must be of a type prescribed by the commission and shall be sold to an applicant at a cost as determined by the commission that is reasonable to defray the administrative costs incurred in connection with the tag requirement.

(d) It is unlawful for any person to receive directly from another state or foreign country, import, transport, or sell bass of the genus Micropterus, blue marlin, crappie, flathead catfish, jewfish, longbill spearfish, muskellunge, northern pike, red drum, sailfish, sauger, snook, spotted sea trout, striped bass, tarpon, walleye, white bass, white marlin, yellow bass, or a hybrid of any of those fish unless the person holds a Texas finfish import license issued by the department.

(e) The fee for a Texas finfish import license is $50 or an amount set by the commission, whichever amount is more.

(f) The commission by proclamation may require fish imported under this section to be tagged, packaged, and labeled and to be accompanied by an invoice. The department may provide a prenumbered invoice to a person importing any of the fish described by Subsection (a) of this section into this state from another state or foreign country and may charge a fee for the invoice in an amount determined by the commission that is reasonable to defray the administrative costs incurred under this subsection. The invoice shall be used to report shipments of any of the fish described by Subsection (a) of this section. A person who receives invoices under this subsection must account to the department for all invoices received as required by rules adopted by the commission. A person commits an offense if the person fails or refuses to account for an invoice as required by commission rules.

(g) It is unlawful for a person to sell or offer to sell any imported fish described by Subsection (a) of this section unless it is tagged, packaged, invoiced, and labeled for identification as provided by this section.

(h) A person may purchase at any season of the year fish described by Subsection (a) as provided by this section.

(i) A person possessing more than three times the possession limit, as provided by this code or by a proclamation of the commission under this code, of fish described by Subsection (a) of this section without lawful documentation commits an offense. An offense under this subsection is a Class A Parks and Wildlife Code misdemeanor.

(j) In this chapter the names of fishes are those prescribed by the American Fisheries Society in the most recent edition of "A List of Common and Scientific Names of Fishes of the United States and Canada."

Added by Acts 1991, 72nd Leg., ch. 723, Sec. 13, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 859, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1239, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 54, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 129 (H.B. 1333), Sec. 1, eff. September 1, 2023.

Sec. 66.021. PROTECTED FISH: DISPLAY OF DOCUMENTS. (a) A person commits an offense if the person possesses a fish described by Subsection 66.020(a) of this code under Subsection 66.020(b) of this code and:

(1) fails to keep with the fish a document or documents that verify the place of origin of the fish; or

(2) fails, on the request of a game warden, to present to the game warden without delay a document or documents that verify the place of origin of the fish.

(b) Documents that verify the place of origin of any fish described by Subsection 66.020(a) of this code include tags, labels, or invoices required by this code, a regulation of the commission, Chapter 134 of the Agriculture Code, or a regulation of the commissioner of agriculture.

(c) To commit an offense under Subsection (a) of this section, a person is not required to have a culpable mental state.

Added by Acts 1991, 72nd Leg., ch. 723, Sec. 13, eff. Sept. 1, 1991.

Sec. 66.022. PURCHASE FOR EVIDENCE. A person authorized by the department who, for the purpose of establishing testimony, purchases or sells any aquatic life the purchase or sale of which is prohibited or regulated by this code is immune from prosecution for the purchases or sales. A conviction for the unlawful purchase or sale of any aquatic animal may be sustained on the uncorroborated testimony of the person authorized by the department to purchase or sell aquatic life.

Added by Acts 1991, 72nd Leg., ch. 723, Sec. 13, eff. Sept. 1, 1991.

Sec. 66.023. FRAUD IN FISHING TOURNAMENTS. (a) In this section, "fishing tournament" means a contest in which a prize is to be awarded to one or more participants in the contest based on the weight, length, number, or type of fish caught by the participants or based on any other criteria applicable to the fish caught.

(b) A person commits an offense if, with intent to affect the outcome of a fishing tournament:

(1) the person provides, offers to provide, sells, or offers to sell a fish to a participant in the tournament for the purpose of representing that the fish was caught by the participant in the course of the tournament;

(2) the person, as a participant in the tournament, accepts or agrees to accept a fish from another person for the purpose of representing that the fish was caught by the participant in the course of the tournament;

(3) the person, as a participant in the tournament, represents that a fish was caught by the person in the course of the tournament when in fact the fish was not caught by that person or the fish was not caught in the course of that tournament;

(4) the person alters the length or weight of a fish for the purpose of representing that the fish as entered in the tournament was that length or weight when caught; or

(5) the person enters a fish in the tournament that was taken in violation of any provision of this code or a proclamation or regulation of the commission adopted under this code.

(c) A person commits an offense if the person sponsors or

conducts a fishing tournament and knows of the occurrence in the tournament of activity prohibited by Subsection (b) of this section and does not immediately notify a law enforcement officer commissioned by the director of its occurrence.

(d) An offense under this section is a Class A misdemeanor, except that if the offense occurred during a tournament in which any prize or combination of prizes to be awarded for any one category for which an award is given, whether the prize or prizes are to an individual or a team, is worth $10,000 or more in money or goods, the offense is a felony of the third degree.

Transferred, redesignated and amended from Parks and Wildlife Code, Section 66.119 by Acts 2011, 82nd Leg., R.S., Ch. 114 (H.B. 1806), Sec. 1, eff. May 21, 2011.

Sec. 66.024. SEAGRASS PLANTS. (a) In this section, "seagrass plant" means a flowering marine plant of the species:

(1) Cymodocea filiformis, known as manatee grass;

(2) Halodule beaudettei or Halodule wrightii, known as shoal grass;

(3) Halophila engelmannii, known as star grass or Engelmann's seagrass;

(4) Ruppia maritima, known as widgeon grass; or

(5) Thalassia testudinum, known as turtle grass.

(b) A person may not uproot or dig out any rooted seagrass plant from a bay bottom or other saltwater bottom area in the jurisdiction of this state by means of a propeller, except as that uprooting or digging out may be authorized by a commercial license or permit issued by the department.

(c) It is a defense to prosecution under this section that a person:

(1) anchors a vessel within an area containing seagrass plants and uproots a seagrass plant;

(2) uses an electric trolling motor within an area containing seagrass plants and uproots a seagrass plant; or

(3) operates a vessel in a manner consistent with the acceleration required to reach and stay on plane.

(d) A person who violates this section or a proclamation of the commission under this section commits an offense that is a Class C

Parks and Wildlife Code misdemeanor.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1071 (H.B. 3279), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. FRESH WATER FISHING

Sec. 66.102. PLACING PROHIBITED DEVICES IN PUBLIC WATER. A device designed to catch fish or other aquatic wildlife resources that is placed in the public fresh water of this state in violation of a law or commission proclamation is a nuisance, and a game warden or other peace officer shall confiscate and dispose of the device as provided by Section 12.1104 or 12.1105, as applicable. A game warden or other peace officer is immune from liability for the destruction of devices found in violation of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1983, 68th Leg., p. 23, ch. 9, art. I, Sec. 3, eff. Aug. 29, 1983.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 34 (S.B. 599), Sec. 3, eff. September 1, 2021.

Sec. 66.109. FISH LADDERS. (a) The department, by written order, may require the owner of a public or private dam or other obstruction on a regularly flowing public freshwater stream to construct or repair fishways or fish ladders sufficient to allow fish in all seasons to ascend or descend the dam or other obstruction for the purpose of depositing spawn.

(b) An owner who fails to construct or repair a fishway or fish ladder within 90 days after receiving the written order commits an offense. Each week of violation following the 90-day period constitutes a separate offense.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 62, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 106, eff. Sept. 1, 1997.

Sec. 66.110. SCREENS TO PROTECT FISH. (a) The department may direct a person or corporation taking fresh water of the state to cover the entrance of the intake canal, pipe, or other device used for taking water with a screen to protect fish.

(b) The department may regulate the manner of installation and the specifications of screens and other obstructions required under this section.

(c) No person may fail to comply with a direction of the department made in writing under Subsection (a) of this section.

(d) Each day's failure to comply with this section constitutes a separate offense.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 63, eff. Sept. 1, 1985.

Sec. 66.111. SALE AND PURCHASE OF CERTAIN FISH. (a) Except as provided by Subsection (b), no person may buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, or barter or exchange any fish taken from the public fresh water of this state.

(b) Subsection (a) does not apply to:

(1) nongame fish regulated under Chapter 67; or

(2) channel catfish of more than 14 inches in length or blue catfish of more than 14 inches in length taken from the public fresh water of Angelina, Bowie, Camp, Cass, Chambers, Franklin, Freestone, Gregg, Hardin, Harris, Harrison, Jasper, Jefferson, Lamar, Leon, Liberty, Madison, Marion, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Red River, Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler, Upshur, or Walker County, the public fresh water of the Neches or Trinity River in Houston County, the public fresh water of the Colorado River in Bastrop, Colorado, Fayette, Matagorda, or Wharton County, or the public fresh water of Falcon Lake in Starr or Zapata County.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 129 (H.B. 1333), Sec. 4, eff. September 1, 2023.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1204, ch. 456, Sec. 2, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 908, ch. 416, Sec. 1, eff. Aug.

27, 1979; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, art. 4, Sec. 3, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 827, Sec. 7, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 608, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 586, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 409, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 912, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 760 (H.B. 1181), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 848 (S.B. 703), Sec. 55, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 129 (H.B. 1333), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 129 (H.B. 1333), Sec. 4, eff. September 1, 2023.

Sec. 66.114. GAME AND NONGAME FISH DEFINED: COMMISSION PROCLAMATION. The commission by proclamation shall define game and nongame fish.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 4, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 409, Sec. 2, eff. Sept. 1, 1995.

Sec. 66.115. HANDFISHING. (a) In this section, "handfishing" means fishing for catfish by the use of hands only and without any other fishing device such as a gaff, pole hook, trap, or spear.

(b) A person holding the required fishing license and freshwater fishing stamp issued to the person by the department may engage in handfishing in the public fresh water of this state.

(c) The commission may adopt rules related to handfishing.

Added by Acts 2011, 82nd Leg., R.S., Ch. 309 (H.B. 2189), Sec. 1, eff. June 17, 2011.

Sec. 66.121. PENALTY. A person who violates Section 66.109, 66.110, 66.111, or 66.117(b) of this code or a regulation adopted under Section 66.115 of this code commits an offense that is a Class

C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 64, eff. Sept. 1, 1985. Renumbered from Sec. 66.119 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(41), eff. Sept. 1, 1987.

SUBCHAPTER C. SALTWATER FISHING

Sec. 66.2011. RED DRUM AND SPECKLED SEA TROUT: PENALTIES. In addition to the penalty provided in Section 66.218, a person who violates a proclamation issued under Chapter 61 shall have all equipment, other than vessels, in the person's possession used for the taking of red drum or speckled sea trout confiscated. A person who violates a proclamation issued under Chapter 61 three or more times within a five-year period shall have all equipment, including vessels, in the person's possession used for the taking of redfish or speckled sea trout confiscated.

Added by Acts 1977, 65th Leg., p. 722, ch. 270, Sec. 5, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 375, ch. 153, Sec. 2, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 33, ch. 9, art. II, Sec. 2, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 969, ch. 229, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4054, ch. 634, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 66, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 542, Sec. 1, eff. Aug. 31, 1987; Acts 1997, 75th Leg., ch. 1256, Sec. 107, eff. Sept. 1, 1997.

Sec. 66.2012. REGULATION OF COMMERCIAL USES OF REDFISH AND SPECKLED SEA TROUT. (a) The commission by proclamation may regulate the catching, possession, transportation, sale, and purchase for commercial purposes in this state of redfish and speckled sea trout. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining whether to permit or prohibit any commercial use of redfish and speckled sea trout under Subsection (a) of this section, the commission shall consider:

(1) the availability of redfish and speckled sea trout in the coastal water of this state;

(2) the availability of redfish and speckled sea trout from

sources other than the coastal water of this state;

(3) the economic interests of commercial and sports fishermen and related industries in this state;

(4) the research of the department made under Section 66.217 of this code;

(5) the protection of redfish and speckled sea trout habitat; and

(6) the degree of compliance with state law and previous regulations of the commission by fishermen and fish dealers in this state.

(c) A proclamation issued under Subsection (a) of this section may limit the number and size of redfish and speckled sea trout that may be caught, possessed, transported, sold, or purchased and may prescribe the times, places, conditions, and means and manner of catching redfish and speckled sea trout.

(d) A proclamation of the commission under this section prevails over any conflicting provision of Section 66.020 to the extent of the conflict and only during the period that the proclamation is in effect.

(e) This section does not apply to activities that are regulated under the exceptions provided by Subdivisions (1), (2), and (5) of Section 66.020(b) or under Subsections (f) and (g) of that section.

(f) A person who violates a proclamation issued under Subsection (a) is guilty of an offense and is punishable for the first and subsequent offenses by the penalties prescribed by Sections 66.2011 and 66.218.

Added by Acts 1981, 67th Leg., p. 378, ch. 153, Sec. 13, eff. Sept. 1, 1983. Amended by Acts 1983, 68th Leg., p. 970, ch. 229, Sec. 4, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 67, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 108, eff. Sept. 1, 1997.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 129 (H.B. 1333), Sec. 3, eff. September 1, 2023.

Sec. 66.204. VESSELS AND OBSTRUCTIONS IN FISH PASSES. (a) The commission by proclamation may regulate the placement of

obstructions, traps, and mooring in fish passes and the marking of restricted areas in any natural or artificial pass that is opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay.

(b) No person may operate, possess, or moor a vessel or other floating device, or may place any piling, wire, rope, cable, net, trap, or other obstruction, in a natural or artificial pass opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay within the distance inside the pass from the mouth of the pass where it empties into the Gulf of Mexico to a marker or sign erected by the department indicating the restricted area.

(c) This section does not restrict the power of the United States to regulate navigation.

(d) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 14, Sec. 1, eff. April 25, 1997.

Sec. 66.206. TROTLINE TAGS. (a) The department shall issue numbered tags for trotlines used in public salt water.

(b) The commission may make regulations for the safe use of trotlines and to carry out the provisions of this section.

(c) A trotline tag shall be attached to each 300 feet of trotline or fractional part of 300 feet. The department shall collect a fee of $2 for each tag issued or an amount set by the commission, whichever amount is more.

(d) No person may use a trotline in public salt water unless the trotline has attached to it the proper number of trotline tags.

(e) This section does not apply to a person fishing trotlines under a commercial finfish fisherman's license.

(f) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, Sec. 5(2), eff. May 20, 1977.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 382, ch. 190, Sec. 5(2), eff. May

20, 1977; Acts 1983, 68th Leg., p. 1337, ch. 277, Sec. 44, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 61, art. 3, Sec. 110, eff. Sept. 1, 1985; Acts 1999, 76th Leg., ch. 455, Sec. 10, eff. Sept. 1, 2000.

Sec. 66.208. COMMERCIAL JOINT FISHING VENTURES. (a) No person who is engaged in taking seafood in a commercial joint venture may sell or offer to sell the products of the joint venture except in the regular course of the joint venture with the express or implied consent of the co-venturer.

(b) No person who is employed to take seafood may sell or offer to sell the products taken in the course of his employment without the express or implied consent of his employer.

(c) No person may purchase seafood with the knowledge that it is sold in violation of Subsection (a) or (b) of this section.

(d) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Sec. 66.215. TAGS FOR NONCOMMERCIAL NETS AND SEINES. (a) Except as provided in Subsection (b) of this section, no person may place or use in the coastal water of this state a net or seine unless there is attached to the net or seine a tag that discloses the name and address of the owner of the net or seine.

(b) This section does not apply to a person who holds a commercial fishing license under Chapter 47 of this code or to a net or seine on which there is attached the license required by Section 47.015 of this code.

(c) Authorized employees of the department may seize a net or seine in coastal water in violation of this section and retain the net or seine as evidence. If the owner of the net or seine seized under this subsection is not identified before the expiration of 90 days after its seizure, the net or seine may be disposed of under Section 12.011 of this code or as provided by other law.

Added by Acts 1979, 66th Leg., p. 1166, ch. 565, Sec. 1, eff. July 1,

1980. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 72, eff. Sept. 1, 1985.

Sec. 66.216. POSSESSION OF HEADED OR TAILED FISH. (a) No person may possess a finfish of any species taken from coastal water, except broadbill swordfish, shark, or king mackerel, that has the head removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer.

(b) No person may possess a finfish of any species taken from coastal water, except broadbill swordfish or king mackerel, that has the tail removed unless the fish has been finally processed and delivered to the final destination or to a certified wholesale or retail dealer.

Added by Acts 1981, 67th Leg., p. 376, ch. 153, Sec. 6, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 73, eff. Sept. 1, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1254 (H.B. 1579), Sec. 1, eff. July 1, 2016.

Sec. 66.2161. SALE OR PURCHASE OF SHARK FINS OR SHARK FIN PRODUCTS; OFFENSE. (a) In this section:

(1) "Destroy" means, with respect to a shark fin, to denature the fin for the purpose of rendering the fin inedible.

(2) "Place of business" has the meaning assigned by Section 47.001.

(3) "Sale" includes barter and exchange.

(4) "Shark" means any species of the subclass Elasmobranchii.

(5) "Shark fin" means the fresh and uncooked, or cooked, frozen, dried, or otherwise processed, detached fin or tail of a shark.

(b) A person may process in a place of business or restaurant a shark carcass into steaks or fillets only if:

(1) the steaks and fillets do not contain any portion of a shark fin; and

(2) each of the shark's fins is destroyed and discarded in the manner prescribed by the department immediately on detaching the fins from the remainder of the carcass.

(c) A person commits an offense if the person:

(1) fails to immediately destroy and discard a shark fin as required by Subsection (b) or otherwise violates that subsection;

(2) buys or offers to buy, sells or offers to sell, possesses for the purpose of sale, transports or ships for the purpose of sale, or advertises for sale a shark fin regardless of where the shark was taken or caught; or

(3) violates a proclamation or rule adopted under this section.

(d) Except as provided by Subsection (e), an offense under this section is a Class B Parks and Wildlife Code misdemeanor.

(e) An offense under this section is a Class A Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section during the five-year period preceding the date of the trial of the current offense.

(f) Each shark fin a person purchases or possesses for the purpose of sale in violation of this section constitutes a separate offense.

(g) For purposes of Subsection (c)(2), proof that the person possessed a shark fin, other than a shark fin that has been destroyed, in a place of business or restaurant or on any commercial vessel on the waters of this state is prima facie evidence that the person possessed the shark fin for the purpose of sale.

(h) For purposes of Subsection (c)(2), proof that the person advertised for sale a shark fin, a product containing shark fin, or a product represented to be or to contain shark fin is prima facie evidence that the person offered a shark fin for sale.

(i) Notwithstanding Subsection (c)(2), the department may issue a permit for the possession, transport, sale, or purchase of shark fins for a bona fide scientific research purpose. Subsection (c)(2) does not apply to a person who possesses, transports, sells, or purchases a shark fin in accordance with a permit issued under this subsection.

(j) When a person is charged with an offense under this section, the warden or other peace officer shall seize and hold as evidence the shark fin, product containing shark fin, or product

represented to be or to contain shark fin. Notwithstanding Section 12.109, on a final court ruling, the department shall destroy the shark fin, product containing shark fin, or product represented to be or to contain shark fin.

(k) The commission may adopt rules as necessary to administer this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1254 (H.B. 1579), Sec. 2, eff. July 1, 2016.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 101 (S.B. 1839), Sec. 1, eff. September 1, 2023.

Sec. 66.217. FINFISH RESEARCH. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of finfish, including red drum and speckled sea trout;

(2) factors affecting the increase or decrease of finfish supply;

(3) the use of trawls, nets, and other devices for the taking of finfish;

(4) the effect on finfish of industrial and other types of water pollution in areas naturally frequented by finfish; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of finfish landed in this state.

(b) The department shall make findings based on the research required by Subsection (a) of this section.

(c) The findings shall be filed in the permanent records of the department.

Added by Acts 1981, 67th Leg., p. 378, ch. 153, Sec. 12, eff. Sept. 1, 1981. Amended by Acts 1995, 74th Leg., ch. 391, Sec. 1, eff. Aug. 28, 1995.

Sec. 66.218. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a proclamation adopted under this subchapter commits an offense that

is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial for a violation of Section 66.2011, 66.2012, 66.2014, or 66.208 of this code or a proclamation adopted under those sections that the defendant has been convicted within five years before the trial date of a violation of the section for which the defendant is being prosecuted, on conviction the defendant shall be punished for a Class B Parks and Wildlife Code misdemeanor.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 101 (S.B. 1839), Sec. 2, eff. September 1, 2023.

(d) Repealed by Acts 2023, 88th Leg., R.S., Ch. 101 (S.B. 1839), Sec. 2, eff. September 1, 2023.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 74, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 723, Sec. 15, eff. Sept. 1, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1254 (H.B. 1579), Sec. 3, eff. July 1, 2016.

Acts 2023, 88th Leg., R.S., Ch. 101 (S.B. 1839), Sec. 2, eff. September 1, 2023.

SUBCHAPTER D. TEXAS TERRITORIAL WATER

Sec. 66.301. DEFINITION. In this subchapter, "coastal water" means all of the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 66.303. PROHIBITED ACTS. No unlicensed alien vessel may take or attempt to take by any means or possess any natural resource of the coastal water of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 75, eff. Sept. 1, 1985.

Sec. 66.304. PORT AUTHORITIES AND NAVIGATION DISTRICTS. It is

the duty of the port authorities and navigation districts of this state to prevent the use of any port facility in a manner that they reasonably suspect may assist in the violation of this subchapter. They shall use all reasonable means, including the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types, other than warships of the United States, the presence of alien commercial fishing vessels within the coastal water of this state and shall promptly transmit the information to the department and to law enforcement agencies of this state as the situation may indicate. They shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 66.305. HARBOR PILOTS. All harbor pilots shall promptly transmit any knowledge coming to their attention regarding possible violations of this subchapter to the appropriate navigation district or port authority or the appropriate law enforcement officials.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 66.306. ENFORCEMENT. All law enforcement agencies of the state, including agents of the department, are empowered and directed to arrest the masters and crews of vessels that are reasonably believed to be in violation of this chapter and to seize and detain the vessels and their equipment and catch. The arresting officer shall take the offending crews or property before the court having jurisdiction of the offense. The agencies are directed to request assistance from the United States Coast Guard in the enforcement of this Act when the agencies are without means to effectuate arrest and restraint of vessels and their crews operating in violation or probable violation of this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 66.307. POLITICAL ASYLUM. No crew member or master seeking bona fide political asylum shall be fined or imprisoned under

this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 66.308. PENALTY. A captain, master, or owner of an unlicensed alien vessel or boat who violates Section 66.303 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 76, eff. Sept. 1, 1985.

CHAPTER 67. NONGAME SPECIES

Sec. 67.001. DEFINITION. In this chapter, "nongame" means those species of vertebrate and invertebrate wildlife indigenous to Texas that are not classified as game animals, game birds, game fish, fur-bearing animals, endangered species, alligators, marine penaeid shrimp, or oysters.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 63, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 863, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1256, Sec. 109, eff. Sept. 1, 1997.

Sec. 67.0011. EXEMPTION OF CRAYFISH. This chapter does not apply to crayfish, other than in public water.

Added by Acts 1981, 67th Leg., p. 399, ch. 161, Sec. 4, eff. May 20, 1981.

Sec. 67.002. MANAGEMENT OF NONGAME SPECIES. (a) The department shall develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

(b) In managing nongame species of fish and wildlife, the department may:

(1) disseminate information pertaining to nongame species

conservation, management, and values;

(2) conduct scientific investigation and survey of nongame species for better protection and conservation;

(3) propagate, distribute, protect, and restore nongame species;

(4) research and manage nongame species;

(5) develop habitats for nongame species; and

(6) acquire habitats for nongame species.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 64, eff. Sept. 1, 1985.

Sec. 67.003. CONTINUING SCIENTIFIC INVESTIGATIONS. The department shall conduct ongoing investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 67.004. ISSUANCE OF REGULATIONS. (a) The commission by regulation shall establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers necessary to manage the species.

(b) The regulations shall state the name of the species or subspecies, by common and scientific name, that the department determines to be in need of management under this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 110, eff. Sept. 1, 1997.

Sec. 67.0041. REGULATIONS AND PERMITS. (a) The department may issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that

species.

(b) The department may charge a fee for a permit issued under this section. The fee shall be set by the commission.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 65, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 111, eff. Sept. 1, 1997.

Sec. 67.005. PENALTY. (a) A person who violates a regulation of the commission issued under this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates a regulation of the commission issued under this chapter and who has been convicted on one previous occasion of a violation of a commission regulation under this chapter commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) A person who violates a regulation of the commission issued under this chapter and who has been convicted on two or more previous occasions of a violation of commission regulations under this chapter commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 77, eff. Sept. 1, 1985.

CHAPTER 68. ENDANGERED SPECIES

Sec. 68.001. DEFINITIONS. In this chapter:

(1) "Fish or wildlife" means any wild mammal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, or offspring, of any of these, dead or alive.

(2) "Management" means:

(A) the collection and application of biological information for the purpose of increasing the number of individuals within species or populations of fish or wildlife up to the optimum carrying capacity of their habitat and maintaining these numbers;

(B) the entire range of activities constituting a full scientific research program, including census studies, law enforcement, habitat acquisition and improvement, and education; and

(C) when and where appropriate, the protection of and regulation of the taking of fish and wildlife species and populations.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.002. ENDANGERED SPECIES. Species of fish or wildlife indigenous to Texas are endangered if listed on:

(1) the United States List of Endangered Native Fish and Wildlife; or

(2) the list of fish or wildlife threatened with statewide extinction as filed by the director of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 66, eff. Sept. 1, 1985.

Sec. 68.003. STATEWIDE EXTINCTION LIST. (a) The director shall file with the secretary of state a list of fish or wildlife threatened with statewide extinction.

(b) Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered due to:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) its overutilization for commercial or sporting purposes;

(3) disease or predation; or

(4) other natural or man-made factors.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.004. AMENDMENTS TO LIST BY DIRECTOR. (a) If the list of endangered native species issued by the United States is modified, the director shall file an order with the secretary of state accepting the modification. The order is effective immediately.

(b) The director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state.

The order is effective on filing.

(c) The director shall give notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.

(d) If a reclassification petition is filed during the 60-day notice period required by Subsection (c) of this section, the order may not be filed until the conclusion of the proceeding on reclassification.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 67, eff. Sept. 1, 1985.

Sec. 68.005. PETITION OF RECLASSIFICATION. (a) Three or more persons may petition the department to add or delete species of fish or wildlife from the statewide extinction list.

(b) The petition must present substantial evidence for the addition or deletion.

(c) If fewer than 50 people join in the petition, the department may refuse to review the classification list, but if 50 or more persons join in the petition, the department shall conduct a hearing to review the classification list. The hearing shall be open to the public, and notice of the hearing shall be given in at least three major newspapers of general circulation in the state at least one week before the date of the hearing.

(d) Based on the findings at the hearing, the department may file an order with the secretary of state altering the list of fish or wildlife threatened with statewide extinction. The order takes effect on filing.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.006. PERMIT FOR TAKING ENDANGERED SPECIES. The provisions of Subchapter C, Chapter 43, of this code are applicable to all fish or wildlife classified as endangered, and it is a violation of this chapter to possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport endangered fish or wildlife from their natural

habitat for propagation for commercial purposes without the permit required by Section 43.022 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1987, 70th Leg., ch. 607, Sec. 2, eff. Sept. 1, 1987.

Sec. 68.007. PROPAGATION PERMIT REQUIRED. No person may possess endangered fish or wildlife for the purpose of propagating them for sale unless he has first acquired a commercial propagation permit issued by the department under this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.008. ORIGINAL PROPAGATION PERMIT. (a) A person may apply for an original propagation permit by submitting an application containing information or statements as required by the department and by submitting an original propagation permit fee of $300 or an amount set by the commission, whichever amount is more.

(b) The department shall issue the permit if it determines that the applicant has complied with Subsection (a) of this section, that the initial breeding stock was acquired under a permit issued under Section 43.022 of this code or was otherwise legally acquired, and that the applicant has not violated the laws of the United States, this state, or another state with respect to the acquisition of breeding stock.

(c) An original propagation permit must contain a description of endangered fish and wildlife authorized to be possessed under the permit.

(d) An original propagation permit is valid for one year from the date of its issuance.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 62, eff. Sept. 1, 1985.

Sec. 68.009. RENEWAL PROPAGATION PERMIT. (a) A person holding an original propagation permit or a renewal propagation permit is entitled to receive from the department a renewal propagation permit

on application to the department and on the payment of a renewal propagation permit fee of $550 or an amount set by the commission, whichever amount is more, if the application and fee are received by the department during the period beginning 10 days before the expiration date of the outstanding permit and extending through the expiration date of the permit.

(b) A renewal propagation permit is valid for a period of three years beginning on the date of its issuance.

(c) The department may refuse to renew any permit if it determines that it would be in the best interest of the species of fish or wildlife described in the permit.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 63, eff. Sept. 1, 1985.

Sec. 68.010. REPORTS BY PERMITTEE. A person holding a commercial propagation permit shall send to the department annually:

(1) a written evaluation by a veterinarian licensed to practice in this state of the physical conditions of the propagation facilities and the conditions of the fish or wildlife held under the permit; and

(2) a written report on forms prepared by the department relating to propagation activities during the previous year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.011. REFUSAL OR CANCELLATION OF PERMIT. (a) If, on the basis of the reports required by Section 68.010 of this code or an investigation or inspection by an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and immediate protection is needed, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.012. APPEAL. (a) A person aggrieved by the action of the department in refusing to grant or renew a commercial propagation permit or in cancelling a permit may appeal within 20 days of the final action of the department to a district court of Travis County or the county of his residence.

(b) The appeal shall be by trial de novo as are appeals from the justice court to the county court.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.013. DISPOSITION OF FISH OR WILDLIFE. A person who ceases to hold a commercial propagation permit under this chapter shall dispose of endangered fish or wildlife held after the expiration or cancellation of the permit in the manner required by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.014. REGULATIONS. The department shall make regulations necessary to administer the provisions of this chapter and to attain its objectives, including regulations to govern:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying endangered fish and wildlife or goods made from endangered fish or wildlife which may be possessed, propagated, or sold under this chapter;

(4) publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products; and

(5) limitations on the capture, trapping, taking, or killing, or attempting to capture, trap, take, or kill, and the possession, transportation, exportation, sale, and offering for sale of endangered species.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 112, eff. Sept. 1, 1997.

Sec. 68.015. PROHIBITED ACTS. (a) No person may capture, trap, take, or kill, or attempt to capture, trap, take, or kill, endangered fish or wildlife.

(b) No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter.

(c) No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless:

(1) the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter; or

(2) the goods were made from fish or wildlife lawfully taken in another state and the person presents documented evidence to the department to substantiate that fact.

(d) No person may sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 3135, ch. 825, Sec. 1, eff. June 17, 1981; Acts 1987, 70th Leg., ch. 607, Sec. 3, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1256, Sec. 112, eff. Sept. 1, 1997.

Sec. 68.016. SOLD SPECIES TO BE TAGGED. No person may sell endangered fish or wildlife or goods made from endangered fish or wildlife unless the fish or wildlife or goods are tagged or labeled in a manner to indicate compliance with Section 68.015(a) and (b) of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.017. SEIZURE OF FISH OR WILDLIFE. (a) A peace officer who has arrested a person for a violation of this chapter may seize fish or wildlife or goods made from fish or wildlife taken, possessed, or made in violation of this chapter.

(b) Property taken under this section shall be delivered to the department for holding pending disposition of the court proceedings. If the court determines that the property was taken, possessed, or made in violation of the provisions of this chapter, the department may dispose of the property under its regulations. The costs of the department in holding seized fish or wildlife during the pendency of the proceedings may, in appropriate cases, be assessed against the defendant.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.018. DISPOSITION OF FUNDS; APPROPRIATIONS. All revenue received under this chapter shall be deposited in the state treasury to the credit of the special nongame and endangered species conservation account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 68, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 45, eff. Sept. 1, 1993.

Sec. 68.019. APPLICABILITY OF CHAPTER. All species and subspecies of wildlife classified as endangered are governed by this chapter to the exclusion of other regulatory and licensing laws.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 68.020. EXCEPTIONS. (a) This chapter does not apply to:

(1) coyotes (prairie wolves);
(2) cougars;
(3) bobcats;
(4) prairie dogs; or
(5) red foxes.

(b) This chapter does not apply to the possession of mounted or preserved endangered fish or wildlife acquired before August 31, 1973, by public or private nonprofit educational, zoological, or research institutions. The department may require an institution to furnish a list of mounted or preserved fish or wildlife possessed and proof of the time of acquisition.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1987, 70th Leg., ch. 607, Sec. 4, eff. Sept. 1, 1987.

Sec. 68.021. PENALTY. (a) A person who violates any provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates any provision of this chapter and who has been convicted on one previous occasion of a violation of this chapter commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) A person who violates any provision of this chapter and who has been convicted on two or more previous occasions of a violation of this chapter commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

(d) A violation of a regulation of the department issued under the authority of this chapter is a violation of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 78, eff. Sept. 1, 1985.

SUBTITLE C. FUR-BEARING ANIMALS

CHAPTER 71. LICENSES AND REGULATIONS

Sec. 71.001. DEFINITIONS. In this subtitle:

(1) "Fur-bearing animal" means wild beaver, otter, mink, ring-tailed cat, badger, skunk, raccoon, muskrat, opossum, fox, or nutria.

(2) "Trapper" means a person who takes a fur-bearing animal or the pelt of a fur-bearing animal.

(3) "Retail fur buyer" means a person who purchases a fur-bearing animal or the pelt of a fur-bearing animal of this state from trappers only.

(4) "Wholesale fur dealer" means a person who purchases for himself or for another person a fur-bearing animal or the pelt of a fur-bearing animal of this state from a trapper, a retail fur buyer, a fur-bearing animal propagator, or another wholesale fur dealer.

(5) "Resident" means an individual who has resided continuously in this state for more than six months immediately

before applying for a license issued under this chapter.

(6) "Nonresident" means an individual who is not a resident.

(7) "Sale" includes barter and other transfers of ownership for consideration.

(8) "Take" means the act of snaring, trapping, shooting, killing, or capturing by any means and includes an attempt to take.

(9) "Carcass" means the body of a dead fur-bearing animal, with or without the hide attached.

(10) "Depredation" means the loss of or damage to agricultural crops, livestock, poultry, wildlife, or personal property.

(11) "Pelt" means the untanned, green or dried hide or skin of a fur-bearing animal, whether or not the hide or skin is attached to the carcass.

(12) "Place of business" means a place where fur-bearing animals or their pelts are sold, received, transported, possessed, or purchased, and includes a vehicle used by a trapper, retail fur buyer, wholesale fur dealer, or fur-bearing animal propagator.

(13) "Fur-bearing animal propagator" means a person who takes or possesses a living fur-bearing animal and holds it for the purpose of propagation or sale.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 2047, ch. 801, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981; Acts 1983, 68th Leg., p. 2886, ch. 491, Sec. 3, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 301, Sec. 7, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 635, Sec. 6, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 28, eff. June 18, 2005.

Sec. 71.0011. APPLICATION. This chapter applies to fur-bearing animals in each county except those populations on the state's list of endangered fish and wildlife.

Added by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.002. PROCLAMATIONS. (a) The commission by proclamation may regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property.

(b) A proclamation of the commission under this chapter may also provide for:

(1) permit application forms, fees, procedures, and reports;

(2) hearing procedures;

(3) the periods of time when it is lawful to take, possess, sell, purchase, or transport fur-bearing animals, pelts, and carcasses;

(4) catch and possession limits for fur-bearing animals and pelts; and

(5) the means, methods, and manner that are, and places in which it is, lawful to take or possess fur-bearing animals, pelts, or carcasses.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.003. SCIENTIFIC STUDIES AND INVESTIGATIONS. The department shall conduct scientific studies and investigations of fur-bearing animals as necessary to develop information on populations, distribution, habitat needs, and limiting factors, to acquire any other biological or ecological data, and to determine appropriate management policies for public safety.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.004. PROHIBITED ACTS. (a) No person may take, sell, purchase, or possess a fur-bearing animal, pelt, or carcass in this state, except as provided by proclamation of the commission. This chapter does not prohibit a landowner or his agent from taking a fur-

bearing animal causing depredation on that person's land. No person may possess a fur-bearing animal taken for depredation purposes except as authorized by proclamation of the commission.

(b) Repealed by Acts 2005, 79th Leg., Ch. 992, Sec. 32(4), eff. June 18, 2005.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2005, 79th Leg., Ch. 992 (H.B. 2026), Sec. 32(4), eff. June 18, 2005.

Sec. 71.005. LICENSES REQUIRED. (a) Except as provided by this section and Section 71.004(a), no person may take a fur-bearing animal or a pelt in this state unless the person has acquired and possesses a trapper's license.

(b) Except as provided by commission regulation, no person may purchase, possess after purchase, or transport for commercial purposes a pelt or carcass taken in this state unless the person has acquired and possesses a retail fur buyer's or wholesale fur dealer's license.

(c) No person may capture or possess a live fur-bearing animal for any purpose, except as otherwise authorized by this code, unless he has acquired and possesses a fur-bearing animal propagation license.

(d) A person who possesses a hunting license may take and possess a fur-bearing animal if:

(1) neither the fur-bearing animal nor any part of that animal is taken for the purpose of sale, barter, or exchange; and

(2) the number of fur-bearing animals taken does not exceed the daily bag limit or possession limit set by commission regulation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 635, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 113, eff. Sept. 1, 1997.

Sec. 71.006. PURCHASES BY RETAIL FUR BUYER. No retail fur

buyer may purchase in this state a pelt or carcass except from a licensed trapper.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.007. PURCHASES BY WHOLESALE FUR DEALER. No wholesale fur dealer may purchase in this state a pelt or carcass except from a licensed trapper, a licensed retail fur buyer, a fur-bearing animal propagator, or another licensed wholesale fur dealer.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.008. ISSUANCE OF LICENSES. The licenses authorized by this chapter shall be of a form prescribed and issued by the department, or an authorized agent of the department, to applicants on the payment of the license fees.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.009. LICENSE FEES. The fee for a license authorized by this chapter is in the following amount or an amount set by the commission, whichever amount is more:

(1) $10.75 for a resident trapper's license;

(2) $200.75 for a nonresident trapper's license;

(3) $50.75 for a resident retail fur buyer's license;

(4) $200.75 for a nonresident retail fur buyer's license;

(5) $100.75 for a resident wholesale fur dealer's license;

(6) $400.75 for a nonresident wholesale fur dealer's license; and

(7) $50.75 for a fur-bearing animal propagation permit.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 64, eff. Sept. 1, 1985.

Sec. 71.010. LICENSE PERIOD. The license period for licenses issued under this chapter is September 1 or another date set by the commission through August 31 of the next year or another date set by the commission, and a license is current and valid only for the license period for which it is issued. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981; Acts 1995, 74th Leg., ch. 931, Sec. 68, eff. June 16, 1995.

Sec. 71.011. POSSESSION AND DISPLAY OF LICENSES. (a) A trapper shall carry the trapper's license on his person while taking or possessing a fur-bearing animal, pelt, or carcass.

(b) A wholesale fur dealer, a retail fur buyer, or a fur-bearing animal propagator shall display the required license at his place of business or while conducting business at a place other than his place of business.

(c) The failure to display a valid license on request by the department or an authorized agent of the department while taking, possessing, selling, offering for sale, or buying a fur-bearing animal, pelt, or carcass is a violation of this chapter. If on or before the trial of a person charged with a violation of this section, the person produces for the court or the prosecuting attorney the proper license that was issued to the person and valid at the time of the offense, the court shall dismiss that charge.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.012. INSPECTIONS. The place of business of any fur-bearing animal propagator, wholesale fur dealer, or retail fur buyer and any vehicle being used by a fur-bearing animal propagator, wholesale fur dealer, or retail fur buyer for the collection or transportation of fur-bearing animals, carcasses, or pelts are subject to inspection without a warrant by a game warden or any other peace officer at any time.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.014. REPORTS. The holder of a wholesale fur dealer's, retail fur buyer's, or fur-bearing animal propagation license shall submit reports to the department as required by proclamation of the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981.

Sec. 71.015. PENALTIES. (a) Except as provided in another subsection of this section, a person who violates any provision of this chapter or proclamation under this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial of the defendant that he has been convicted once within the preceding 36 months of a violation of this chapter or a proclamation under this chapter, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant that he has been convicted two or more times within the preceding 60 months of a violation of this chapter or a proclamation under this chapter, on conviction he shall be punished for a Class A Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2737, ch. 748, Sec. 1, eff. Sept. 1, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 79, eff. Sept. 1, 1985.

SUBTITLE D. CRUSTACEANS AND MOLLUSKS

CHAPTER 75. CULTIVATED OYSTER MARICULTURE

Sec. 75.0101. DEFINITIONS. In this chapter:

(1) "Broodstock oyster" means an oyster collected for the purpose of growing cultivated oysters.

(2) "Cultivated oyster" means an oyster grown at any point in the life cycle of the oyster in or on an artificial structure suspended in the water or resting on the bottom.

(3) "Cultivated oyster mariculture" means the process of growing cultivated oysters.

(4) "Natural oyster bed" has the meaning assigned by Section 76.001.

(5) "Oyster" means the Eastern oyster and the subspecies of the Eastern oyster.

Added by Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 4, eff. September 1, 2019.

Sec. 75.0102. APPLICABILITY; CONFLICT OF LAWS. (a) A structure used to grow oysters that is part of a cultivated oyster mariculture operation is not a natural oyster bed or a private oyster bed and is not subject to location requirements under Subchapter A, Chapter 76.

(b) The licensing and permitting requirements of Subchapters B, C, and F, Chapter 76, do not apply to activity carried out under a cultivated oyster mariculture permit issued under this chapter.

(c) A regulation adopted under Section 76.301 does not apply to an activity carried out under a cultivated oyster mariculture permit issued under this chapter.

(d) A rule or proclamation issued under this section prevails to the extent of conflict over a rule or proclamation issued under:

(1) Chapter 61; or

(2) Chapter 76.

(e) Section 2001.0045, Government Code, does not apply to rules adopted under this chapter.

Added by Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 4, eff. September 1, 2019.

Sec. 75.0103. CULTIVATED OYSTER MARICULTURE PROGRAM. (a) The commission shall adopt rules to establish a program governing cultivated oyster mariculture.

(b) Rules adopted under the program may establish requirements for:

(1) the location and size of a cultivated oyster mariculture operation;

(2) the taking, possession, transport, movement, and sale of cultivated oysters;

(3) the taking, possession, transport, and movement of broodstock oysters;

(4) marking structures for the cultivation of oysters in a cultivated oyster mariculture operation;

(5) fees and conditions for use of public resources, including broodstock oysters and public water; and

(6) any other matter necessary to implement and administer this chapter.

(c) The department shall coordinate with the Department of Agriculture, the Department of State Health Services, the General Land Office, and the Texas Commission on Environmental Quality in the adoption of rules under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 4, eff. September 1, 2019.

Sec. 75.0104. CULTIVATED OYSTER MARICULTURE PERMIT REQUIRED. (a) No person may engage in cultivated oyster mariculture without first having acquired a cultivated oyster mariculture permit.

(b) The commission shall adopt rules to implement this section. Rules adopted under this section may establish requirements for:

(1) permit applications and application fees;

(2) criteria for the approval, transfer, revocation, and suspension of permits; and

(3) procedures for hearings related to a permit.

Added by Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 4, eff. September 1, 2019.

Sec. 75.0105. DEPOSIT AND USE OF FEES; CULTIVATED OYSTER MARICULTURE CLEANUP SUBACCOUNT. (a) Except as provided by Subsection (c), fees collected under this chapter shall be deposited to the credit of the game, fish, and water safety account.

(b) The cultivated oyster mariculture cleanup subaccount is a subaccount in the game, fish, and water safety account. The subaccount consists of money deposited to the subaccount under this section.

(c) The department shall set aside 20 percent of the fees collected under this chapter. That money shall be deposited to the credit of the cultivated oyster mariculture cleanup subaccount in the game, fish, and water safety account and may be used only for the cleanup of illegal or abandoned cultivated oyster mariculture equipment and related debris in public water.

Added by Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 4, eff. September 1, 2019.

Sec. 75.0106. PROHIBITED ACTIONS. (a) No person may sell or barter, or offer to sell or barter, a cultivated oyster, except as authorized by this chapter.

(b) No person may place a cultivated oyster in a natural oyster bed or private oyster bed.

(c) In this subsection, "coastal public land" has the meaning assigned by Section 33.004, Natural Resources Code. Regardless of whether a person holds a permit under this chapter, no person may place a structure related to cultivated oyster mariculture on coastal public land unless the person first obtains a lease or easement under Chapter 33 or 51, Natural Resources Code.

Added by Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 4, eff. September 1, 2019.

Sec. 75.0107. PENALTIES. (a) For purposes of this section, "final conviction" includes a plea of guilty or nolo contendere to or the imposition of deferred adjudication or deferred disposition for an offense.

(b) A person who violates Section 75.0104(a) or 75.0106 or a rule adopted under this chapter commits an offense that is a Class B

Parks and Wildlife Code misdemeanor.

(c) If conduct constituting an offense under this section also constitutes an offense under Section 33.112, Natural Resources Code, the actor may be prosecuted under this section, Section 33.112, Natural Resources Code, or both.

Added by Acts 2019, 86th Leg., R.S., Ch. 174 (H.B. 1300), Sec. 4, eff. September 1, 2019.

Sec. 75.0108. COMMERCIAL OYSTER MARICULTURE ADVISORY BOARD. (a) In this section, "advisory board" means the commercial oyster mariculture advisory board established under this section.

(b) The commercial oyster mariculture advisory board is established within the department to advise all state agencies with regulatory authority over the commercial oyster mariculture industry.

(c) The advisory board consists of seven members appointed by the governor as follows:

(1) four members must:

(A) represent the commercial oyster mariculture industry, seafood industry, or related industries; and

(B) have a documented interest in the promotion of entrepreneurship, free enterprise, and the increased use, consumption, marketing, and sale of native oysters in this state; and

(2) three members must:

(A) represent the scientific and conservation community in this state; and

(B) have a documented interest in the sustainability of the natural coastal environment of this state.

(d) At least one advisory board member must be a member of the department's oyster advisory workgroup.

(e) Advisory board members serve staggered five-year terms, with the terms of one or two members expiring February 1 of each year.

(f) If a vacancy occurs on the advisory board, the governor shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(g) The governor shall designate an advisory board member described by Subsection (c)(1) to serve as the advisory board's presiding officer for a one-year term. The presiding officer may vote

on any matter before the advisory board.

(h) Advisory board members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties authorized by the office of the governor.

(i) The advisory board shall make recommendations to the governor and all relevant agencies concerning the commercial oyster mariculture industry, including recommendations regarding:

(1) the promotion of the use, consumption, marketing, and sale of maricultured oysters;

(2) the promotion of sustainable commercial oyster mariculture; and

(3) commercial oyster mariculture permits and regulations.

(j) In performing the advisory board's duties under this section, the advisory board may consult with:

(1) industry and academic resources; and

(2) agencies of this state and the United States, including the:

(A) department;

(B) General Land Office;

(C) Department of State Health Services, including the seafood and aquatic life unit;

(D) National Marine Fisheries Service;

(E) United States Army Corps of Engineers; and

(F) United States Coast Guard.

(k) Chapter 2110, Government Code, does not apply to the advisory board.

Added by Acts 2023, 88th Leg., R.S., Ch. 230 (H.B. 1809), Sec. 1, eff. May 27, 2023.

CHAPTER 76. OYSTERS

SUBCHAPTER A. PUBLIC AND PRIVATE OYSTER BEDS

Sec. 76.001. DEFINITIONS. In this chapter:

(1) "Barrel of oysters" means three boxes of oysters in the shell or two gallons of shucked oysters without shells. The dimensions of a box are 10 inches by 20 inches by 13-1/2 inches. In filling a box for measurement, the oysters may not be piled more than 2-1/2 inches above the height of the box at the center.

(2) "Natural oyster bed" means an area with a substrate that is predominantly composed of oyster shell or live oysters.

(3) "Open season" means a period during which it is lawful to take oysters.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. 2379), Sec. 1, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 250 (S.B. 1032), Sec. 1, eff. September 1, 2023.

Sec. 76.002. DESIGNATION OF PUBLIC AND PRIVATE BEDS. (a) All natural oyster beds are public.

(b) All oyster beds not designated as private are public.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.003. BEDS SUBJECT TO LOCATION. (a) Except as provided by Subsection (b) and Section 76.004, an oyster bed or reef, other than a natural oyster bed, is subject to location by the department.

(b) The department may subject a natural oyster bed to location if the department determines that the bed is degraded. In determining whether a natural oyster bed is degraded, the department may consider:

(1) the relative abundance of oysters in the area;

(2) the availability of natural cultch material in the area;

(3) sediment overburden in the area;

(4) the amount of time that the area has been exhausted, if the area is exhausted; and

(5) any other criteria the department considers indicative of a degraded oyster bed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 250 (S.B. 1032), Sec. 2, eff. September 1, 2023.

Sec. 76.004. RIPARIAN RIGHTS. (a) The lawful occupant of a grant of land in this state has the exclusive right to use any creek, bayou, lake, or cove included within the metes and bounds of the original grant for the planting or sowing of oysters.

(b) If the creek, bayou, lake, or cove is not included in the original grant, a riparian owner has an exclusive right in the creek, bayou, lake, or cove for the planting and sowing of oysters to the middle of the creek, bayou, lake, or cove or to 100 yards from the shore, whichever distance is shorter.

(c) The right of a riparian owner of land along any bay shore in this state to plant oysters extends 100 yards into the bay from the high-water mark or from where the land survey ceases. The right to a natural oyster bed under this subsection is not exclusive.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.005. AFFIDAVIT OF RIPARIAN RIGHTS. (a) The department may require the owner of riparian rights described in Section 76.004 of this code when offering oysters for sale to make an affidavit stating that the oysters were produced on his property.

(b) The failure of an owner of riparian rights described in Section 76.004(a) to have an affidavit when required by the department or to show it to a game warden on request or to the person to whom the oysters are offered for sale when required by the department is prima facie evidence that the oysters were produced from public beds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 4, eff. May 19, 2011.

Sec. 76.006. APPLICATION FOR LOCATION; FEE. (a) Any citizen of the United States or any domestic corporation may file a written application with the department for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state.

(b) The application must describe the location desired.

(c) The application must be accompanied by a fee of $20 or an

amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 65, eff. Sept. 1, 1985.

Sec. 76.007. MAXIMUM ACREAGE UNDER LOCATION. (a) The department may not issue a certificate of location for a location that includes more than 100 acres of land covered by water.

(b) A person may not own, lease, or control more than 300 acres of land covered by water under certificates of location. A person who does not own, lease, or control more than 300 acres of land may act as an agent for persons who, in the aggregate, own, lease, or control more than 300 acres of land.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 41, eff. Sept. 1, 2001.

Sec. 76.008. LEASE OR CONTROL BY FOREIGN CORPORATION PROHIBITED. No corporation other than those incorporated under the laws of this state may lease or control land under a certificate of location.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.009. EXAMINATION AND SURVEY OF LOCATION. (a) On receipt of an application for a location, the department shall examine the proposed location as soon as practicable by any efficient means.

(b) If the location is subject to certification, the department shall have the location surveyed by a competent surveyor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.012. LOCATOR'S CERTIFICATE. (a) The department shall issue to each locator a certificate signed and sealed by the

director.

(b) The certificate must contain:

(1) the date of the application;

(2) the date of the survey; and

(3) a description of the location by metes and bounds with reference to points of the compass and natural objects by which the location may be found and verified.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.015. RIGHTS OF LOCATOR. (a) The holder of a certificate of location as provided for in Section 76.012 of this code is protected in his possession of the location against trespass in the same manner as are freeholders.

(b) This section applies only as long as the stakes or pipes and buoys required by this chapter are maintained in their correct positions and the locator complies with the law and the regulations governing the fish and oyster industries.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.017. LOCATION RENTAL FEES. (a) The holder of a certificate of location shall pay to the department $6 per acre of location per year to rent the location under the certificate. In lieu of that payment, the commission may set the required payment under this section in a greater amount.

(b) Rental fees are due annually by March 1.

(c) The holder of a certificate shall pay the department a late penalty fee equal to 10 percent of the amount due for any rental, transfer, sale, or renewal fee that is not paid when due.

(d) The failure to pay any rental, transfer, sale, renewal, or late penalty fee within 90 days of the due date terminates the lease.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 908, ch. 416, Sec. 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1338, ch. 277, Sec. 46, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 66, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 448, Sec. 1, eff. Jan. 1, 1990; Acts 2001, 77th Leg., ch. 968, Sec. 42, eff. Sept. 1, 2001.

Sec. 76.018. LOCATION RENTAL TERM; RENEWAL; AUCTION. (a) The term of a rental lease for a location under this subchapter is 15 years.

(b) The commission shall determine renewal procedures to follow at the end of each lease term. The procedures must include:

(1) a determination that the lease renewal will be based on considerations specified in the oyster management plan;

(2) payment of a $200 fee due on renewal of the lease;

(3) a condition that the current leaseholder has the right to renew if the lease is renewed under this chapter; and

(4) any other conditions for the lease renewal that do not conflict with this chapter.

(c) The commission shall determine auction procedures for the issuance of a lease that is not renewed by the previous leaseholder under Subsection (b).

Added by Acts 2001, 77th Leg., ch. 968, Sec. 43, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 250 (S.B. 1032), Sec. 3, eff. September 1, 2023.

Sec. 76.019. PROCEDURES FOR SALE OR TRANSFER OF LOCATION RENTAL. The commission shall determine procedures for reissuance of a lease when the lease is sold or otherwise transferred. The procedures must include:

(1) payment of a $200 fee due on the sale or transfer of the lease unless the lease is inherited; and

(2) a provision that the sale or transfer does not change the lease term.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 43, eff. Sept. 1, 2001.

Sec. 76.020. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM. (a) The commission by proclamation may establish and conduct a program to require the recovery of oyster shell or other suitable cultch material from, and replacement of oyster shell in, the coastal waters of the state to maintain or enhance public oyster reefs.

(b) The department may accept grants and donations of money or materials from private or public sources to be applied to the oyster shell recovery and replacement program.

Added by Acts 1991, 72nd Leg., ch. 644, Sec. 1, eff. Aug. 26, 1991.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1331 (S.B. 932), Sec. 1, eff. September 1, 2011.

Sec. 76.0205. SUSTAINABILITY OF OYSTER INDUSTRY. (a) In order to enhance the viability of commercial oyster fishing and ensure the sustainability of the oyster industry to accommodate the highest number of commercial oyster fishing boats, a person who purchases oysters under Section 47.0091 and holds a shellfish certificate, as defined by Section 436.002, Health and Safety Code, must:

(1) distribute, in an area designated by the department, oyster shells or other cultch material approved by the department in an amount equal to not less than 30 percent of the total volume of oysters purchased by the person in the previous license year; or

(2) pay a fee to the department in an amount calculated under Subsection (c).

(b) The distribution of oyster shells or other cultch material must be directly supervised by an agent or employee of the department.

(c) The department shall calculate the current market cost of the acquisition and deposition of cultch material on a per cubic yard basis. The fee charged under Subsection (a)(2) is the market cost established under this subsection multiplied by 30 percent of the total volume of oysters purchased by the person in the previous license year. The fee charged under this section shall be deposited to the credit of the oyster shell recovery and replacement program account.

(d) A person who possesses oysters that do not meet the requirements of Section 76.112:

(1) shall replace the oysters in the beds from which they were taken as directed by an authorized employee of the department; and

(2) is subject to any penalty and must perform any remedy authorized by law.

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 1, eff. September 1, 2017.

Sec. 76.021. OYSTER SHELL RECOVERY AND REPLACEMENT PROGRAM ACCOUNT; FEE. (a) The oyster shell recovery and replacement program account is a separate account in the game, fish, and water safety account. The account consists of money deposited to the account under this section. The account is exempt from the application of Section 403.095, Government Code.

(b) The department shall collect a fee of 20 cents or an amount set by the commission, whichever is greater, from a licensed commercial oyster fisherman for each box of oysters harvested by the fisherman from the water of this state.

(c) The commission by rule shall adopt policies and procedures for the issuance of oyster shell recovery tags or other means to collect the fee imposed by this section. A tag required by this section must:

(1) be affixed to the outside of each box of oysters at the time of harvest, in the location of harvest;

(2) contain information required by the Department of State Health Services under the National Shellfish Sanitation Program; and

(3) remain affixed during transportation of the oysters to a dealer.

(d) The department shall deposit to the credit of the oyster shell recovery and replacement program account all revenue, less allowable costs, from the fees collected under Subsection (b).

(e) Money in the oyster shell recovery and replacement program account may be appropriated only for the recovery and enhancement of public oyster reefs under Section 76.020.

(f) The department shall consult with members of the oyster industry regarding the management of oyster beds in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1331 (S.B. 932), Sec. 2, eff. September 1, 2011.

Sec. 76.022. CERTIFICATES OF LOCATION FOR RESTORATION PURPOSES. (a) The commission by rule shall establish a program to issue certificates of location for the restoration of natural oyster beds.

(b) Sections 76.006, 76.007, 76.017, 76.018, and 76.019 do not apply to a program established under this section.

(c) Rules adopted under this section may establish:

(1) fees, application approval requirements, lease terms, and renewal procedures for leases under this section;

(2) the total area in each bay system for which leases may be issued under this section;

(3) siting and marking requirements for leases under this section; and

(4) any other requirement necessary to administer this section.

(d) In adopting rules under this section, the department shall coordinate with:

(1) the Department of State Health Services; and

(2) the General Land Office.

Added by Acts 2023, 88th Leg., R.S., Ch. 250 (S.B. 1032), Sec. 4, eff. September 1, 2023.

SUBCHAPTER B. OYSTER PERMITS

Sec. 76.031. APPLICATION FOR PERMIT. (a) A person desiring to plant oysters on his own location or to take oysters from oyster reefs and public water shall apply to the department for an oyster permit.

(b) Only those persons who are citizens of Texas or corporations composed of American citizens and chartered by this state to engage in the culture of oysters or to transact business in the purchase and sale of fish and oysters may apply for a permit.

(c) The application must:

(1) state the purpose for taking oysters; and

(2) give the quantity of oysters to be taken from designated areas.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.032. DISCRETION TO ISSUE PERMIT. The department may issue or refuse to issue a permit to any applicant.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.033. CONDITIONS OF PERMIT. (a) The department shall require the permittee to take only the oysters authorized in the permit from beds or reefs designated in the permit.

(b) The department shall:

(1) mark off the exact area of beds or reefs from which oysters may be taken;

(2) designate the bottoms on which oysters may be deposited if they are taken to be prepared for market;

(3) require the permittee to cull the oysters on the grounds where they are to be located; and

(4) specify what implements may be used in taking oysters.

(c) The department may make other conditions or regulations to protect and conserve oysters on public reefs and beds.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.035. OYSTERS PROPERTY OF PERMITTEE. All oysters taken or deposited in public water by the holder of an oyster permit under the terms of a permit are the personal property of the permit holder.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.036. MARKING BEDS. (a) The holder of a permit shall clearly and distinctly mark by buoys or other permanent markers easily visible above the surface of the water the boundaries of the areas designated in the permit from which he may take or in which he may deposit oysters.

(b) No person may be prosecuted for taking oysters from the bed of a permittee unless the boundaries are established and maintained as provided in this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 2001, 77th Leg., ch. 968, Sec. 44, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 384 (S.B. 620), Sec. 1, eff. June 15, 2007.

Sec. 76.037. THEFT OF OYSTERS FROM PRIVATE BED. No person may fraudulently take oysters placed on private beds without the consent of the owner of the private bed or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who lawfully deposited them.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 80, eff. Sept. 1, 1985.

Sec. 76.038. INTERFERENCE WITH BUOYS OR MARKERS. (a) No person may deface, injure, destroy, or remove a buoy, marker, or fence used to designate or enclose a private oyster bed or location where oysters have been deposited for preparation for market without the consent of the owner of the bed or location.

(b) No person may deface, injure, destroy, or remove a buoy, marker, or sign of the department used for designating water closed for the taking of fish or oysters without the consent of the department.

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 110, eff. Sept. 1, 1985.

Sec. 76.039. PROHIBITED SALES. (a) No person gathering oysters for planting or for depositing for market preparation on locations or on private oyster beds may sell, market, or dispose of the oysters gathered, at the time they are gathered, for any other purpose than planting or preparing for market.

(b) This section does not affect the right of a person to sell or assign an oyster location or private bed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 81, eff. Sept. 1, 1985.

Sec. 76.040. PENALTIES. (a) Except as otherwise provided by this section, a person who violates a provision of this subchapter or a regulation adopted by the commission under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 76.037 or Section 76.038 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant that he has been convicted once within five years before the trial date of a violation of Section 76.037 or 76.038 of this code, he is guilty of a Class A Parks and Wildlife Code misdemeanor.

(d) If it is shown at the trial of the defendant that he has been convicted two or more times within five years before the trial date of a violation of Section 76.037 or 76.038 of this code, he is guilty of a Parks and Wildlife Code felony.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 82, eff. Sept. 1, 1985.

SUBCHAPTER C. OYSTER LICENSES

Sec. 76.101. OYSTER LICENSES REQUIRED. (a) No person may take or attempt to take oysters from the public water of this state for noncommercial use by the use of a dredge or tongs without first having acquired a sport oyster boat license from the department.

(b) No person may take or attempt to take oysters from the public water of this state, without the use of a boat, for pay or for the purpose of sale, barter, or exchange or any other commercial purpose without first having acquired from the department a commercial oyster fisherman's license.

(c) No person may take or attempt to take oysters from the public water of this state by the use of a dredge, tongs, or other mechanical means, or by the use of a boat or other vessel for pay, or for the purpose of sale, barter, or exchange or any other commercial purpose without first having acquired from the department a commercial oyster boat license.

(d) Each member of the crew of a licensed commercial oyster boat is required to have a general commercial fisherman's license to

take oysters while they are on a licensed boat that is being used to take oysters. This subsection does not apply to the holder of a commercial oyster boat captain's license.

(e) The captain and each crew member of a licensed commercial oyster boat, each person on a licensed sport oyster boat, and each person oystering under a commercial oyster fisherman's license must possess and produce on request to any enforcement officer proof of the person's identity.

(f) The captain of a commercial oyster boat must hold a valid commercial oyster boat captain's license to operate a commercial oyster boat while taking or attempting to take oysters from the public water of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1989, 71st Leg., ch. 255, Sec. 2, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 16, eff. Sept. 1, 1993.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 604 (H.B. 3497), Sec. 2, eff. June 11, 2023.

Sec. 76.102. LICENSE APPLICATION. (a) An applicant for an oyster boat license, which is not a renewal of the previous year's license, issued under this subchapter must submit to the department the boat's United States Coast Guard certificate of documentation or Texas' or other state's certificate of number for a vessel or motorboat.

(b) The license issued by the department must contain:

(1) the name of the boat if the boat is registered with the United States Coast Guard; and

(2) the number appearing on the United States Coast Guard certificate of documentation or Texas' or other state's certificate of number.

Added by Acts 1989, 71st Leg., ch. 255, Sec. 3, eff. July 31, 1989.
Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 17, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 450, Sec. 26, eff. Sept. 1, 1993.

Sec. 76.103. TYPES OF LICENSES; PERIOD OF VALIDITY. A commercial oyster boat license, commercial oyster boat captain's license, sport oyster boat license, or commercial oyster fisherman's license expires on August 31 of the yearly period for which it is issued or another date set by the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 548, ch. 229, Sec. 1, eff. Aug. 31, 1981; Acts 1989, 71st Leg., ch. 255, Sec. 4, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 69, eff. June 16, 1995.

Sec. 76.1031. LICENSE EXPIRATIONS AND TRANSFERS. (a) All licenses issued under the authority of Chapter 76 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

(b) All licenses issued under the authority of this chapter may not be transferred to another person or vessel except as provided by this subsection. A license issued under the authority of Section 76.101(c) may be transferred to another vessel or to a new owner of the same vessel. The commission, by regulation, may prescribe requirements necessary to clarify license transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of licenses in this chapter and for duplicate license plates or duplicate or replacement licenses.

Added by Acts 1993, 73rd Leg., ch. 365, Sec. 19, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 70, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 114, eff. Sept. 1, 1997.

Sec. 76.104. LICENSE FEES. (a) Except as provided by Subsection (e) of this section, the fee for a commercial oyster boat

license is $350 or an amount set by the commission, whichever amount is more.

(b) Except as provided by Subsection (f) of this section, the fee for a sport oyster boat license is $10 or an amount set by the commission, whichever amount is more.

(c) Except as provided by Subsection (g) of this section, the fee for a commercial oyster fisherman's license is $100 or an amount set by the commission, whichever amount is more. The definition for "resident" for this subsection is the same as the resident definition in Section 47.001 of this code.

(d) Except as provided by Subsection (h) of this section, the fee for a commercial oyster boat captain's license is $25 or an amount set by the commission, whichever amount is more. The definition for "resident" for this subsection is the same as the resident definition in Section 47.001 of this code.

(e) The fee for a commercial oyster boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $1,400 or an amount set by the commission, whichever amount is more.

(f) The fee for a sport oyster boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $40 or an amount set by the commission, whichever amount is more.

(g) The fee for a nonresident commercial oyster fisherman's license is $250 or an amount set by the commission, whichever amount is more. The definition for "nonresident" for this subsection is the same as the nonresident definition in Section 47.001 of this code.

(h) The fee for a nonresident commercial oyster boat captain's license is $100 or an amount set by the commission, whichever amount is more. The definition for "nonresident" for this subsection is the same as the nonresident definition in Section 47.001 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1338, ch. 277, Sec. 47, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 67, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 621, Sec. 4, eff. Sept. 1,

1987; Acts 1989, 71st Leg., ch. 255, Sec. 5, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 20, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 71, eff. June 16, 1995.

Sec. 76.1041. LICENSE DISPLAY AND DESIGN. (a) A commercial oyster boat license issued under this subchapter must be prominently displayed on the bow, outside the wheelhouse, or at another point outside the boat designated by the department, and on each side of the boat, evidencing payment of the license.

(b) A commercial oyster boat license issued under this subchapter must be a metal or plastic sign or emblem of sufficient size to allow enforcement of this chapter and have a different color or design for each license period.

Added by Acts 1989, 71st Leg., ch. 255, Sec. 6, eff. July 31, 1989. Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 21, eff. Sept. 1, 1993.

Sec. 76.107. SALE OF SPORT OYSTERS PROHIBITED. No person may sell oysters taken under the authority of a sport oyster boat license.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 255, Sec. 8, eff. July 31, 1989; Acts 1993, 73rd Leg., ch. 365, Sec. 23, eff. Sept. 1, 1993.

Sec. 76.109. NIGHT DREDGING PROHIBITED. During the open season, no person may take oysters from public water during the period between sunset and sunrise.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.112. OYSTER SIZE LIMITS. (a) Repealed by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

(b) A cargo of undersized oysters shall be determined by taking at random five percent of the total cargo of oysters as a sample, of which not more than five percent may measure less than three inches

along an imaginary straight line through the long axis of the shell.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

Sec. 76.114. EXCEPTION TO SIZE AND RETENTION LIMITS. (a) The commission by permit may allow the use of one or more dredges of any size and cargoes in excess of 50 barrels in transplanting to or harvesting from private leases.

(b) The commission by permit may allow the taking and retention of cargoes having oysters between three-fourths inch and three inches in a greater percentage than five percent.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 76.115. CLOSING AREAS. (a) The commission may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked.

(b) The commission may open closed areas when appropriate.

(c) Before closing any area, the commission shall publish notice in a daily newspaper of general circulation in the area to be closed. The notice shall be published at least three days before the effective date of the closing.

(d) Areas closed under this section must reopen by the beginning of the next public oyster season unless sound biological data indicates that the need for closure still exists.

(e) The commission by rule may establish procedures and criteria for closing areas under Subsection (a).

(f) The commission may delegate to the executive director the duties and responsibilities under this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, Sec. 18, eff. Sept. 1, 1975.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1331 (S.B. 932), Sec. 3, eff. September 1, 2011.

Sec. 76.116. OYSTERS FROM RESTRICTED AREAS. (a) There is no open season for taking oysters from areas closed by the Department of State Health Services.

(b) The department may authorize by permit the transplanting of oysters from restricted areas or other areas designated by the department to private oyster leases.

(c) A person removing oysters from a restricted area or other area designated by the department without a permit shall replace the oysters in the beds from which they were taken as directed by authorized employees of the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 255, Sec. 10, eff. July 31, 1989; Acts 1997, 75th Leg., ch. 1256, Sec. 115, eff. Sept. 1, 1997. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. 2379), Sec. 2, eff. September 1, 2009.

Sec. 76.117. OBEDIENCE TO ORDERS. No person may fail or refuse to obey a lawful order of a commissioned game warden of the department issued under the authority of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 5, eff. May 19, 2011.

Sec. 76.118. PENALTIES. (a) Except as provided in Subsections (b), (c), (e-2), and (e-3), a person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 76.101, 76.107, or 76.109 or a regulation of the commission issued under one of those sections commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(c) A person who violates Sections 76.109 and either Section

76.115 or 76.116 in the same criminal episode commits an offense that is a Class A Parks and Wildlife Code misdemeanor.

(d) Each day of a continuing violation constitutes a separate offense.

(e) If it is shown at the trial of a defendant for a violation of Section 76.101, 76.107, or 76.109 that the defendant has been convicted once within five years before the trial date of a violation of Section 76.101, 76.107, or 76.109, the defendant is guilty of a Class A Parks and Wildlife Code misdemeanor.

(e-1) If it is shown at the trial of a defendant for a violation of Section 76.116 that the defendant has been convicted once within five years before the trial date of a violation of Section 76.116, the defendant is guilty of a Parks and Wildlife Code state jail felony.

(e-2) An offense related to oyster size or the harvest of oysters from a closed area is a Class B Parks and Wildlife Code misdemeanor if it is shown on the trial of the offense that the defendant has previously been convicted at least twice for a violation of a provision or regulation relating to oyster size or the harvest of oysters from a closed area.

(e-3) An offense during the commission of which the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell or an offense related to the harvest of oysters from a closed area is a Class B Parks and Wildlife Code misdemeanor, if it is shown on the trial of the offense that the defendant has previously been convicted one time for a violation of a provision or regulation relating to:

(1) oyster size and the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell; or

(2) the harvest of oysters from a closed area.

(e-4) The punishment for an offense otherwise punishable under Subsection (a) is a Class A Parks and Wildlife Code misdemeanor, with an attendant license suspension under Section 76.1181, if it is shown on the trial of the offense that:

(1) the defendant is the captain of a commercial oyster boat or a member of the crew of a commercial oyster boat;

(2) the provision or regulation violated relates to:

(A) oyster size and the defendant was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell; or

(B) the harvest of oysters from a closed area; and

(3) the defendant has previously been convicted at least two times for a violation of a provision or regulation relating to:

(A) oyster size and the defendant during both offenses was in possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell; or

(B) the harvest of oysters from a closed area.

(e-5) It is a defense to prosecution under Subsection (a) for a violation of a statute or regulation adopted relating to oyster size that the defendant is a person who purchased oysters from the captain or a member of the crew of a commercial oyster boat and the purchaser was in possession of a cargo of oysters in which less than 30 percent of the oysters were less than three inches in length along an imaginary straight line through the long axis of the shell.

(f) If it is shown at the trial of a defendant for a violation of Section 76.101, 76.107, 76.109, or 76.116 of this code that the defendant has been convicted two or more times within five years before the trial date of a violation of Section 76.101, 76.107, 76.109, or 76.116 of this code, the defendant is guilty of a Parks and Wildlife Code felony.

(g) If it is shown on the trial of a defendant for a violation of Section 76.109 and either Section 76.115 or 76.116 occurring in the same criminal episode that the defendant has been convicted once before within five years before the trial date of a violation of Section 76.109 and either Section 76.115 or 76.116 occurring in the same criminal episode, the defendant is guilty of a Parks and Wildlife Code felony.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 83, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 255, Sec. 11, eff. July 31, 1989. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. 2379), Sec. 3, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 3, eff.

September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 313 (H.B. 2321), Sec. 1, eff. September 1, 2019.

Sec. 76.1181. SUSPENSION OF LICENSE. (a) For purposes of this section, "final conviction" includes a plea of guilty or nolo contendere to or the imposition of deferred adjudication for an offense.

(b) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the commercial oyster boat license of the boat used in the commission of the violation is suspended for 30 days.

(c) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the commercial oyster boat captain's license of the captain of the boat used in the commission of the violation is suspended for 30 days. During the period of suspension, the holder of the suspended license may not purchase a general commercial fisherman's license or a commercial oyster fisherman's license.

(d) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the general commercial fisherman's license of a member of the crew of a boat on which the violation was committed is suspended for 30 days. During the suspension period, the holder of the suspended license may not purchase a commercial oyster boat captain's license or a commercial oyster fisherman's license.

(d-1) On final conviction for an offense punishable under Section 76.118(e-3) or (e-4), the commercial oyster fisherman's license of the person who takes or attempts to take oysters without the use of a boat is suspended for 30 days.

(e) On final conviction for the third offense within five years of the commission of an offense punishable under Section 76.118, for a violation of a provision or regulation relating to oyster size in which the conviction was for possession of a cargo of oysters in which 30 percent or more of the oysters measured less than three inches in length along an imaginary straight line through the long axis of the shell, any license issued by the department to a person that purchases oysters is suspended for 30 days. During the suspension period, the holder of the suspended license may not purchase a license issued by the department allowing the taking or purchase of oysters.

(f) A suspension period described by this section must be

served during the public oyster season in which the violation occurred, unless less than 30 days remain in the public oyster season, in which case the suspension must be served at the beginning of the next public oyster season.

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 4, eff. September 1, 2017.

Sec. 76.119. RESPONSIBILITY FOR VIOLATION. (a) If a vessel licensed as a commercial oyster boat is involved in a violation of this chapter, the captain of the vessel licensed as a commercial oyster boat is primarily responsible for the violation. A member of the crew of a vessel licensed as a commercial oyster boat is not guilty of a violation unless the member of the crew committed the violation against the captain's orders, except for a violation of Section 76.109, 76.112, or 76.116, in which case each person on the vessel is responsible for the violation.

(b) The owner of a vessel licensed as a commercial oyster boat involved in a violation of this chapter is not guilty of the violation unless the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation.

(c) The captain of a vessel licensed as a commercial oyster boat shall identify the name of the captain, the vessel, and each member of the crew to each purchaser of oysters.

(d) A person who purchases oysters under Section 47.0091, who holds a shellfish certificate as defined by Section 436.002, Health and Safety Code, and who purchases oysters from a captain of a vessel licensed as a commercial oyster boat, the holder of a commercial oyster boat license, or a member of the crew of a commercial oyster boat in violation of Section 76.109 or 76.112 or this section may not possess the oysters and is subject to any penalty prescribed by law.

Added by Acts 1989, 71st Leg., ch. 255, Sec. 12, eff. July 31, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 241 (S.B. 2379), Sec. 4, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 5, eff. September 1, 2017.

SUBCHAPTER E. OYSTER REGULATIONS

Sec. 76.301. REGULATION OF TAKING, POSSESSION, PURCHASE, AND SALE OF OYSTERS. (a) The commission by proclamation may regulate the taking, possession, purchase, and sale of oysters. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining the need for a proclamation under Subsection (a) of this section, the commission shall consider:

(1) measures to prevent the depletion of oyster beds while achieving, on a continuing basis, the optimum yield for the oystering industry;

(2) measures based on the best scientific information available;

(3) measures to manage oysters;

(4) measures, where practicable, that will promote efficiency in utilizing oyster resources, except that economic allocation may not be the sole purpose of the measures;

(5) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(6) measures which will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of oysters that may be taken, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of taking oysters.

(d) A proclamation of the commission under this section prevails over:

(1) any conflicting provision of Subchapter A, B, or C of this chapter to the extent of the conflict; and

(2) a proclamation of the commission issued under the Wildlife Conservation Act of 1983 (Chapter 61 of this code).

(e) A proclamation of the commission under this section does not prevail over any order, rule, or regulation adopted by the Commissioner of Health under Subchapter D of this chapter.

(f) A person who violates a proclamation issued under this subchapter commits an offense that is a Parks and Wildlife Code Class C misdemeanor.

(g) The commission shall make no proclamation under this chapter until it has approved and adopted an oyster management plan and economic impact analysis prepared by the department as provided in Section 76.302 of this code and unless such proclamation is shown

to be consistent with the approved oyster management plan.

(h) A proclamation of the commission under this section applies to any person who:

(1) purchases oysters from the captain of a commercial oyster boat, the holder of a commercial oyster boat license, or a member of the crew of a commercial oyster boat;

(2) purchases oysters under Section 47.0091; and

(3) holds a shellfish certificate, as defined by Section 436.002, Health and Safety Code.

Added by Acts 1985, 69th Leg., ch. 633, Sec. 1, eff. June 14, 1985.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 6, eff. September 1, 2017.

Sec. 76.302. RESEARCH PROGRAM. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and reproductive characteristics of the various economically important species of oysters;

(2) factors affecting the increase or decrease in oyster stocks in both an annual and long-term cycle;

(3) the use and effectiveness of dredges and other devices for the taking of oysters;

(4) industrial and other pollution of the water naturally frequented by oysters;

(5) statistical information gathered by the department on the marketing, harvesting, processing, and taking of oysters;

(6) environmental parameters in areas in which oysters may be found that may serve as limiting factors of oyster population abundance;

(7) other factors that, based on the best scientific information available, may affect the health and well-being of the economically important oyster resources; and

(8) alternative management measures for oysters that may be considered for implementation in the management regime.

(b) The research may be conducted by the department or an agency designated by the department.

Added by Acts 1985, 69th Leg., ch. 633, Sec. 1, eff. June 14, 1985.

Sec. 76.303. SALE OF RAW OYSTERS FOR CONSUMPTION WITHIN THIS STATE. Any federal regulations that prohibit the interstate transport and sale of oysters that have not been postharvest treated do not apply to oysters harvested from waters of this state and sold and consumed in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 381 (S.B. 387), Sec. 1, eff. June 17, 2011.

Sec. 76.304. VESSEL MONITORING SYSTEM. (a) The commission by proclamation may establish a vessel monitoring system for commercial oyster boats.

(b) Before the commission issues a proclamation under Subsection (a), the department shall consult with commercial oyster boat license holders concerning establishment of a vessel monitoring system.

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 7, eff. September 1, 2017.

SUBCHAPTER F. OYSTER LICENSE MORATORIUM

Sec. 76.401. OYSTER LICENSE MORATORIUM PROGRAM. The department shall implement an oyster license moratorium program to promote efficiency and economic stability in the oyster industry.

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

Sec. 76.402. ISSUANCE AND RENEWAL OF COMMERCIAL OYSTER BOAT LICENSES. (a) After August 31, 2005, the department may not issue or renew a commercial oyster boat license unless the person seeking to obtain or renew the license documents to the satisfaction of the department that the vessel for which the license is sought:

(1) is owned by the person;

(2) was licensed as a commercial oyster boat on the day the renewal was sought or at the end of the licensing period immediately

preceding the period for which the license is sought; and

(3) is intended to be licensed and used as a commercial oyster boat.

(b) An applicant for a new or renewed commercial oyster boat license for a vessel must submit to the department with the license application:

(1) the United States Coast Guard certificate of documentation for the vessel, if the vessel is required by United States Coast Guard rules to be documented; and

(2) the certificate of number for the vessel as required by Chapter 31.

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

Sec. 76.403. OYSTER LICENSE MORATORIUM REVIEW BOARD. (a) The holders of commercial oyster boat licenses shall elect an oyster license moratorium review board of seven members.

(b) A member of the review board must be a holder of a commercial oyster boat license.

(c) The seven members of the review board must be selected to reflect the following geographical distribution according to the county of residence specified on the member's commercial oyster boat license:

(1) one member representing Orange, Jefferson, Chambers, and Harris Counties;

(2) two members representing Galveston County;

(3) one member representing Brazoria and Matagorda Counties;

(4) two members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio Counties; and

(5) one member representing Kleberg, Cameron, and Willacy Counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the oyster license moratorium program, including hardship and appeal cases concerning eligibility.

(e) The director shall adopt procedures for the election and operation of the review board. The director shall solicit and

consider recommendations from the commercial oyster boat license holders regarding the procedures and the continued need for the board.

(f) The review board is not subject to Chapter 2110, Government Code.

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

Sec. 76.404. PROGRAM ADMINISTRATION; RULES. (a) The director shall establish administrative procedures to carry out the requirements of this subchapter.

(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 104 (S.B. 272), Sec. 1, eff. May 20, 2005.

Sec. 76.405. LICENSE BUYBACK PROGRAM. (a) The department shall implement a license buyback program for licenses issued under this subchapter as part of the oyster license moratorium program established by this subchapter.

(b) The commission by rule shall establish criteria, using reasonable classifications, for the department's use in selecting licenses to be purchased. The department or executive director shall consult with the oyster license moratorium review board concerning establishment of the criteria.

(c) The department shall retire each license purchased under the license buyback program until the commission finds that management of the oyster fishery allows reissue of those licenses through auction or lottery.

(d) The department shall set aside an amount determined by commission rule that is at least 20 percent of the fees from licenses issued under this subchapter to be used only for the purpose of buying back commercial oyster boat licenses from willing license holders. That money shall be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.

(e) The department may solicit and accept grants and donations of money or materials from private or public sources for the purpose

of buying back licenses issued under this subchapter from willing license holders.

(f) Money to be used for the purpose of buying back licenses issued under this subchapter is not subject to Section 403.095, Government Code.

(g) The commission shall consider the social and economic viability of the oyster industry and input from the oyster license moratorium review board regarding the reissue of commercial oyster boat licenses through auction or lottery.

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 8, eff. June 1, 2018.

Sec. 76.406. PREVAILING AUTHORITY. A proclamation of the commission under this subchapter prevails over any conflicting provision of this chapter to the extent of the conflict.

Added by Acts 2017, 85th Leg., R.S., Ch. 687 (H.B. 51), Sec. 8, eff. June 1, 2018.

CHAPTER 77. SHRIMP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 77.001. DEFINITIONS. In this chapter:

(1) "Coastal water" means all the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of the state.

(2) "Inside water" means all bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which saltwater shrimp are found or into which saltwater shrimp migrate.

(3) "Outside water" means the salt water of the state contiguous to and seaward from the shoreline of the state along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; and that portion of the Gulf of Mexico extending from the shoreline seaward and within the jurisdiction of

the state.

(4) "Major bays" means the deeper, major bay areas of the inside water, including Sabine Lake north of Cameron Causeway, Trinity Bay, Galveston Bay, East Galveston Bay, West Galveston Bay, Matagorda Bay (including East Matagorda Bay), Tres Palacios Bay south of a line from Grassy Point to the mouth of Pilkerton Bayou, Espiritu Santo Bay, Lavaca Bay seaward of State Highway 35, San Antonio Bay seaward of a line from McDowell Point to Grassy Point to Marker 32 on the Victoria Barge Canal, Ayres Bay, Carlos Bay, Aransas Bay, Mesquite Bay, and Corpus Christi Bay, all exclusive of tributary bays, bayous, and inlets, lakes, and rivers.

(5) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as agent, bailee, or custodian of another.

(6) "Commercial gulf shrimp boat" means any boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the outside water of the state for pay or for the purpose of sale, barter, or exchange, or from salt water outside the state for pay or for the purpose of sale, barter, or exchange, and that unloads at a port or other point in the state without having been previously unloaded in another state or foreign country.

(7) "Commercial bay shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water of this state for pay or for the purpose of sale, barter, or exchange.

(8) "Commercial bait shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp for use as bait and other edible aquatic products from the inside water of the state for pay or for the purpose of sale, barter, or exchange.

(9) Repealed by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

(10) "Bait-shrimp dealer" means a person who operates an established place of business in a coastal county of the state for compensation or profit for the purpose of handling shrimp caught for

use as bait from the inside water of this state, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(11) "Individual bait-shrimp trawl" means a trawl, net, or rig used for the purpose of catching shrimp for one's own personal use.

(12) "Second offense" and "third and subsequent offenses" mean offenses for which convictions have been obtained within three years prior to the date of the offense charged.

(13) "Contiguous zone," means that area of the Gulf of Mexico lying adjacent to and offshore of the jurisdiction of the State of Texas and in which shrimp of the genus Penaeus are found.

(14) "Bait bays" includes major bays, Copano Bay east of a line running from Rattlesnake Point to the northeastern boundary of the Bayside township, Nueces Bay from the bridge at State Highway 181 west to the second overhead power line dissecting the bay, Upper Laguna Madre, Baffin Bay, Alazan Bay, Carlos Bay, Baroom Bay, Lower Laguna Madre, and the Gulf Intracoastal Waterway exclusive of all tributaries.

(15) "Nursery areas" includes tributary bays, bayous, inlets, lakes, and rivers, which are proven to serve as significant growth and development environments for postlarval and juvenile shrimp not including the outside waters, major bays, or bait bays as defined in this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, Sec. 20(a), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1297, ch. 600, Sec. 1, 2, eff. Aug. 27, 1979; Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

Sec. 77.002. LICENSE FEES. (a) License fees provided in this chapter are a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state.

(b) The shrimp marketing account is an account in the general revenue fund to be used by the Department of Agriculture solely for the purpose of the Texas shrimp marketing assistance program established under Subchapter B, Chapter 47, Agriculture Code. The

account consists of funds deposited to the account under this section. The account is exempt from the application of Section 11.032 of this code and Section 403.095, Government Code.

(c) Except as provided by Sections 47.021 and 77.049, in addition to fee increases the department is authorized to make under this code, the department shall increase by 10 percent the fee, as of September 1, 2003, for the following licenses and shall deposit the amount of the increase to the credit of the shrimp marketing account:

(1) a wholesale fish dealer's license issued under Section 47.009;

(2) a wholesale truck dealer's fish license issued under Section 47.010;

(3) a retail fish dealer's license issued under Section 47.011;

(4) a retail dealer's truck license issued under Section 47.013;

(5) a commercial bay shrimp boat license issued under Section 77.031; and

(6) a commercial gulf shrimp boat license issued under Section 77.035.

(d) Money in the shrimp marketing account may be used only for implementing, maintaining, and conducting, including hiring program staff employees for, the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47, Agriculture Code. The Department of Agriculture may allocate not more than $100,000 per fiscal year of the money in the account to cover administrative and personnel costs of the Department of Agriculture associated with the program.

(e) The department shall deposit at the end of each quarter to the credit of the shrimp marketing account, fees received under Subsection (c) for use by the Department of Agriculture to conduct and operate the Texas shrimp marketing assistance program created under Subchapter B, Chapter 47, Agriculture Code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 2003, 78th Leg., ch. 265, Sec. 8, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 677, Sec. 6, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1052 (H.B. 4593), Sec. 7, eff. September 1, 2009.

Sec. 77.003. DISPOSITION OF FUNDS. Money received for licenses issued under this chapter or fines for violations of this chapter shall be remitted to the department by the 10th day of the month following the date of collection.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 77.004. RESEARCH PROGRAM. (a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and reproductive characteristics of the various economically important species of shrimp;

(2) factors affecting the increase or decrease in shrimp stocks in both an annual and long-term cycle;

(3) the use and effectiveness of trawls, nets, and other devices for the taking of shrimp;

(4) industrial and other pollution of the water naturally frequented by shrimp;

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of shrimp landed at points in the state;

(6) environmental parameters in the bay and estuary areas that may serve as limiting factors of shrimp population abundance;

(7) other factors that, based on the best scientific information available, may affect the health and well-being of the economically important shrimp resources; and

(8) alternative management measures for shrimp that may be considered for implementation in the management regime.

(b) The research may be conducted by the department or an agency designated by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 633, Sec. 2, eff. June 14, 1985.

Sec. 77.005. STUDY AND REPORT ON SHRIMP INDUSTRY AND RESOURCES. (a) Using the shrimp management plan required by Section 77.007 and the research conducted under Section 77.004, the department shall

comprehensively study shrimp resources, including the shrimp population, and the shrimp industry. The study shall analyze:

(1) the status of the shrimp population in coastal water, including the size and projected growth of shrimping beds;

(2) the economic health of the shrimp industry;

(3) the status of conservation measures, including department regulations and license buybacks; and

(4) the status of marine resources and habitats affected by shrimping.

(b) In conducting the study, the department shall solicit and consider input from:

(1) the public;

(2) the shrimp industry;

(3) other businesses affected by the shrimp industry;

(4) any other persons interested in marine resources; and

(5) the comptroller regarding economic data.

(c) The department shall report on the status of the study to:

(1) the commission;

(2) the presiding officer of each house of the legislature; and

(3) the committees of each house of the legislature that have primary oversight jurisdiction over the department.

(d) The department may repeat the study and report as necessary to adequately regulate the shrimp industry and to preserve shrimp resources.

(e) The commission shall base policies and rules relating to shrimping on the results of the most recent study completed under this section.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 45, eff. Sept. 1, 2001.

Sec. 77.007. REGULATION OF CATCHING, POSSESSION, PURCHASE, AND SALE OF SHRIMP. (a) The commission by proclamation may regulate the catching, possession, purchase, and sale of shrimp. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining the need for a proclamation under Subsection (a) of this section, the commission shall consider:

(1) measures to prevent overfishing while achieving, on a

continuing basis, the optimum yield for the fishery;

(2) measures based on the best scientific information available;

(3) measures to manage shrimp throughout their range;

(4) measures, where practicable, that will promote efficiency in utilizing shrimp resources, except that economic allocation may not be the sole purpose of the measures;

(5) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(6) measures which will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of shrimp that may be caught, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of catching shrimp. However, measures dealing with sale and purchase may only be implemented at first sale or exchange transaction.

(d) A proclamation of the commission under this section prevails over:

(1) any conflicting provision of this chapter to the extent of the conflict; and

(2) a proclamation of the commission issued under the Wildlife Conservation Act of 1983 (Chapter 61 of this code).

(e) A person who violates a proclamation issued under Subsection (a) of this section commits an offense. An offense under this section is punishable as provided by Subsection (a) of Section 77.020 of this code.

(f) The commission shall make no proclamation under this chapter until it has approved and adopted a shrimp management plan and economic impact analysis prepared by the department as provided in Section 77.004 and unless such proclamation is shown to be consistent with the shrimp management plan.

Added by Acts 1985, 69th Leg., ch. 633, Sec. 3, eff. June 14, 1985.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO SHRIMPING

Sec. 77.011. LICENSE REQUIREMENT. No person may operate in the coastal water without obtaining the appropriate license, if required, as prescribed in this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 77.014. METHOD OF TAKING COUNT. (a) An authorized employee of the department shall take the count of shrimp in the presence of the person possessing the shrimp.

(b) The employee shall select a minimum of three representative samples for each 1,000 pounds or fraction of 1,000 pounds of headless or heads-on shrimp being sampled.

(c) Each sample must weigh five pounds after draining at least three minutes.

(d) The count per pound for the sample is determined by dividing the number of specimens in the sample by five.

(e) The average count per pound for the entire quantity being sampled is determined by totalling the count per pound for each sample and dividing that total by the number of samples.

(f) The average count per pound as determined under this section is prima facie evidence of the average count per pound of the shrimp in the entire cargo or quantity of shrimp sampled.

(g) Headless and heads-on shrimp shall be sampled, weighed, and counted separately.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 77.015. GRADATION AND PROCESSING. Shrimp found to be of legal size under this chapter may subsequently be graded for size for packaging, processing, or sale.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 77.0191. RETENTION OF REDFISH, SPECKLED SEA TROUT, AND LIGHTNING WHELKS. (a) No person who is using a trawl for the purpose of taking shrimp may retain a redfish, speckled sea trout, or lightning whelk, also known as Busycon perversum pulleyi, caught in the trawl.

(b) No person may retain a redfish, speckled sea trout, or lightning whelk if the person is on board a boat licensed under this chapter and if there is a shrimp trawl on board the boat.

Added by Acts 1983, 68th Leg., p. 3818, ch. 592, Sec. 1, eff. Aug.

29, 1983. Amended by Acts 1999, 76th Leg., ch. 524, Sec. 1, eff. Sept. 1, 1999.

Sec. 77.020. PENALTY. (a) A person who violates a provision of this chapter except Section 77.024 or 77.061(a)(1) or who violates a regulation adopted under this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial of the defendant that the person has been convicted once within five years before the trial date of a violation of a provision of this chapter except Section 77.024 or 77.061(a)(1), or of a regulation adopted under this chapter, the person is guilty of a Class B Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant that the person has been convicted two or more times within five years before the trial date of a violation of a provision of this chapter except Section 77.024 or 77.061(a)(1), or of a regulation adopted under this chapter, the person is guilty of a Class A Parks and Wildlife Code misdemeanor.

(d) Section 12.109 and Subchapter D, Chapter 12, do not apply to a violation of a rule adopted under this chapter related to the display of a commercial shrimp boat license or a commercial shrimp boat's documentation or registration number if another violation of this chapter or a rule adopted under this chapter does not exist at the time of the violation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1465, ch. 641, Sec. 1, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 2166, ch. 506, Sec. 2, eff. June 12, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 85, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1256, Sec. 116, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1180, Sec. 1, eff. Sept. 1, 2001.

Sec. 77.021. SEPARATE OFFENSE. Each day on which a violation occurs constitutes a separate offense.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 77.022. RESPONSIBILITY FOR VIOLATION. (a) When a vessel is involved in a violation of this chapter, the captain of the vessel shall be considered primarily responsible for the violation. A member of the crew of a vessel shall not be guilty of a violation unless it also be charged that the member of the crew acted in violation of the orders of the captain of the vessel.

(b) The owner of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is charged and proved that the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, Sec. 13(i), eff. Sept. 1, 1975.

Sec. 77.024. OPERATION WITHOUT LICENSE. No person whose license has been forfeited may do business without a new license or possess another license for the period of forfeiture.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 86, eff. Sept. 1, 1985.

Sec. 77.025. PERIOD OF LIMITATION. Except as provided in Article 12.05, Code of Criminal Procedure, 1965, as amended, an indictment or information for a violation of this chapter may be presented within one year after the date of the commission of the offense and not afterward.

Added by Acts 1975, 64th Leg., p. 1213, ch. 456, Sec. 13(j), eff. Sept. 1, 1975.

SUBCHAPTER C. SHRIMP LICENSES

Sec. 77.031. COMMERCIAL BAY SHRIMP BOAT LICENSE. (a) No person may operate a commercial bay shrimp boat for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water unless the owner has obtained a commercial bay shrimp boat license.

(b) The fee for a commercial bay shrimp boat license is $170 or an amount set by the commission, whichever amount is more. The executive director may set a fee lower than $170 for licenses issued from December 16, 1993, through August 31, 1994, and which expire on August 31, 1994.

(c) An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant intends to derive the major portion of his livelihood from the commercial fishery and that he will maintain adequate facilities to conduct the business.

(d) The fee for a commercial bay shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $500 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, Sec. 13(g), eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 2012, ch. 789, Sec. 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 1338, ch. 277, Sec. 48, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 68, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 633, Sec. 4, eff. June 14, 1985; Acts 1987, 70th Leg., ch. 621, Sec. 6, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 365, Sec. 25, eff. Dec. 16, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 72, eff. June 16, 1995.

Sec. 77.033. COMMERCIAL BAIT-SHRIMP BOAT LICENSE. (a) No person may operate a commercial bait-shrimp boat for the purpose of catching or assisting in catching shrimp for use as bait only and other edible aquatic products from the inside water unless the owner of the boat has obtained a commercial bait-shrimp boat license.

(b) The fee for a commercial bait-shrimp boat license is $170 or an amount set by the commission, whichever amount is more.

(c) The fee for a commercial bait-shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $500 or an amount set by

the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1338, ch. 277, Sec. 49, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 69, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 633, Sec. 5, eff. June 14, 1985; Acts 1987, 70th Leg., ch. 621, Sec. 7, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 365, Sec. 26, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 73, eff. June 16, 1995.

Sec. 77.034. COMMERCIAL GULF SHRIMP UNLOADING LICENSE. (a) Except as provided by Subsection (b), no person may unload or allow to be unloaded at a port or point in this state shrimp or other aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the person has obtained:

(1) a commercial gulf shrimp unloading license; and

(2) a federal commercial vessel permit for gulf shrimp from the National Oceanic and Atmospheric Administration.

(b) A person holding a valid resident or nonresident commercial gulf shrimp boat license is exempt from the requirement to hold a commercial gulf shrimp unloading license.

(c) A vessel operating under a commercial gulf shrimp unloading license must make a nonstop progression through outside waters to a place of unloading. The commission shall adopt rules for the requirements of trawl gear storage for a vessel who holds a commercial gulf shrimp unloading license while that vessel is making a nonstop progression through outside waters to a place of unloading.

(d) The fee for a commercial gulf shrimp unloading license is $1485, or an amount set by the commission, whichever amount is more. Revenue from the fee shall be deposited to the credit of the game, fish, and water safety account established under Section 11.032.

Added by Acts 2017, 85th Leg., R.S., Ch. 1151 (H.B. 1260), Sec. 4, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1173 (H.B. 3317), Sec. 17(a), eff. June 14, 2019.

Sec. 77.035. COMMERCIAL GULF SHRIMP BOAT LICENSE. (a) Except as permitted under Section 77.034, no person may operate a commercial gulf shrimp boat for catching or assisting in catching shrimp and other edible aquatic products from the outside water, or have on board a boat, or unload, or allow to be unloaded at a port or point in this state, shrimp and other edible aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the owner of the boat has obtained a commercial gulf shrimp boat license.

(b) The fee for a commercial gulf shrimp boat license is $250 or an amount set by the commission, whichever amount is more.

(c) The fee for a commercial gulf shrimp boat license for a boat that is not numbered under Chapter 31 of this code or does not have a certificate of documentation issued by the United States Coast Guard that lists an address in Texas for the boat owner or other criteria established by the commission is $1,000 or an amount set by the commission, whichever amount is more.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1213, ch. 456, Sec. 13(h), eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 1338, ch. 277, Sec. 50, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 70, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 633, Sec. 6, eff. June 14, 1985; Acts 1987, 70th Leg., ch. 621, Sec. 8, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 365, Sec. 27, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 74, eff. June 16, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1151 (H.B. 1260), Sec. 5, eff. September 1, 2017.

Sec. 77.0351. COMMERCIAL SHRIMP BOAT CAPTAIN'S LICENSE. (a) No captain of a licensed commercial shrimp boat may operate a licensed commercial shrimp boat while catching or attempting to catch shrimp from the public water of this state or unloading or attempting to unload in this state shrimp and other aquatic products taken from saltwater outside this state for pay or for purposes of sale, unless the person holds a commercial shrimp boat captain's license issued by the department.

(b) Except as provided by Subsection (c), the fee for a resident commercial shrimp boat captain's license shall be no less than $25 and no more than $50.

(c) The fee for a nonresident commercial shrimp boat captain's license is $100 or an amount set by the commission, whichever amount is more.

(d) In this section, "resident" and "nonresident" have the meanings assigned by Section 47.001.

(e) Subchapter D, Chapter 12, does not apply to a violation of this section if another violation of this chapter or a rule adopted under this chapter does not exist at the time of the violation.

Added by Acts 1995, 74th Leg., ch. 862, Sec. 7, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1180, Sec. 2, eff. Sept. 1, 2001.

Sec. 77.0352. SALE OF CATCH. (a) The holder of a commercial shrimp boat license or commercial gulf shrimp unloading license may sell only the catch of shrimp from the vessel to which the commercial shrimp boat license or commercial gulf shrimp unloading license applies.

(b) The holder of a commercial shrimp boat license or commercial gulf shrimp unloading license may sell aquatic products other than shrimp if those aquatic products:

(1) were taken incidental to lawful shrimping on the vessel to which the commercial shrimp boat license or commercial gulf shrimp unloading license applies; and

(2) comply with all applicable provisions of this code or commission regulations.

(c) The holder of a commercial shrimp boat captain's license may sell only:

(1) the catch of shrimp from the vessel being operated by that license holder; and

(2) aquatic products other than shrimp if those aquatic products:

(A) were taken incidental to lawful shrimping; and

(B) comply with all applicable provisions of this code or commission regulations.

(d) Subsection (c) does not authorize the sale of shrimp or

other aquatic products without the consent of the owner of the vessel used to make the catch.

(e) No person, including a crew member of a licensed commercial shrimp boat, may sell the catch of shrimp or other aquatic products taken incidental to the legal shrimping operation, except as provided by this section.

Added by Acts 1995, 74th Leg., ch. 862, Sec. 7, eff. Sept. 1, 1995.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1151 (H.B. 1260), Sec. 6, eff. September 1, 2017.

Sec. 77.036. OFFICIAL REGISTRATION. (a) An applicant for a commercial shrimp boat license, which is not a renewal of the previous year's license, issued under this subchapter must submit to the department the boat's United States Coast Guard certificate of documentation or the Texas certificate of number for a vessel or other state's certificate of number for a motorboat.

(b) The certificate of license issued by the department for a commercial shrimp boat must contain the name of the boat if the boat is registered with the United States Coast Guard and the number appearing on the United States Coast Guard certificate of documentation or the Texas or other state's certificate of number.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1987, 70th Leg., ch. 621, Sec. 9, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 365, Sec. 28, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 450, Sec. 25, eff. Sept. 1, 1993.

Sec. 77.0361. LICENSE EXPIRATIONS AND TRANSFERS. (a) All licenses issued under the authority of Chapter 77 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a

year.

(b) All licenses issued under the authority of this chapter may not be transferred to another person or vessel except as provided by Subsection (c) or by Section 77.113. A license issued under the authority of Section 77.043 in the name of a business remains valid for the business location specified on the license if a change of ownership or business name occurs. A license issued under the authority of Section 77.035 may be transferred to another vessel or to the new owner of the same vessel.

(c) The commission, by regulation, may prescribe requirements necessary for license transfers and may prescribe, by regulation, forms to be used and fees to be charged for transfers of licenses in this chapter, for duplicate license plates, or for duplicate or replacement licenses.

Added by Acts 1993, 73rd Leg., ch. 365, Sec. 29, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 339, Sec. 3, eff. June 8, 1995; Acts 1995, 74th Leg., ch. 931, Sec. 75, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 117, eff. Sept. 1, 1997.

Sec. 77.037. TRANSFER OF LICENSE. A commercial gulf shrimp boat license issued under this subchapter may be transferred on the application of the licensee from a boat that has been destroyed or lost to a boat acquired by the licensee as a replacement. The commission, by regulation, may prescribe requirements necessary to clarify license transfer procedures and may prescribe, by regulation, forms to be used and fees to be charged for transfer of licenses authorized by this subsection.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 365, Sec. 30, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 118, eff. Sept. 1, 1997.

Sec. 77.039. LICENSE DESIGN. (a) A commercial shrimp boat license or commercial gulf shrimp unloading license issued under this subchapter must be a sign or emblem at least 32 square inches in size and be constructed of a durable material.

(b) The character and design of each class of commercial shrimp boat license issued under this subchapter must be distinguishable.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2005, 79th Leg., Ch. 107 (S.B. 454), Sec. 1, eff. May 20, 2005.

Acts 2017, 85th Leg., R.S., Ch. 1151 (H.B. 1260), Sec. 7, eff. September 1, 2017.

Sec. 77.040. OTHER LICENSES REQUIRED. (a) A person holding a commercial shrimp boat license under this subchapter is not required to obtain a commercial fishing boat license under Section 47.007 of this code.

(b) The captain of a commercial shrimp boat who holds a commercial shrimp boat captain's license and each paid member of the crew of a boat having a commercial shrimp boat license issued under this subchapter are not required to have a general commercial fisherman's license issued under Section 47.002 of this code, a commercial finfish fisherman's license issued under Section 47.003 of this code, or a bait dealer's license issued under Section 47.014 of this code to catch and unload aquatic products lawfully taken incidental to lawful shrimping.

(c) The captain and each crew member of a licensed commercial shrimp boat must possess and produce on request to any enforcement officer proof of the person's identity.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 550, ch. 260, art. 4, Sec. 4, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1399, ch. 623, Sec. 9, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 365, Sec. 31, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 862, Sec. 8, eff. Sept. 1, 1995.

Sec. 77.043. BAIT-SHRIMP DEALER LICENSE. (a) No person may engage in business as a bait-shrimp dealer unless he has obtained a bait-shrimp dealer's license from the department for each bait stand or place of business he maintains.

(b) The fee for a bait-shrimp dealer's license is $60 or an amount set by the commission, whichever amount is more.

(c) A bait-shrimp dealer's license expires August 31 following

the date of issuance.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1339, ch. 277, Sec. 52, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 72, eff. Sept. 1, 1985.

Sec. 77.044. ISSUANCE OF BAIT-SHRIMP DEALER'S LICENSE. (a) The department shall issue a bait-shrimp dealer's license only after it has determined that the applicant for the license is a bona fide bait-shrimp dealer.

(b) A bait-shrimp dealer's license may not be held by a person who also holds a wholesale fish dealer's license.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1997, 75th Leg., ch. 1256, Sec. 119, eff. Sept. 1, 1997.

Sec. 77.045. RIGHTS AND DUTIES OF BAIT-SHRIMP DEALER. (a) The holder of a bait-shrimp dealer's license may sell, purchase, and handle shrimp, minnows, fish, and other forms of aquatic life for sale or resale for fish bait purposes in the coastal counties of this state.

(b) The holder of a bait-shrimp dealer's license is not required to obtain a bait dealer's license issued under Section 47.014 of this code unless he engages in the business in a county other than a coastal county.

(c) Repealed by Acts 1981, 67th Leg., p. 2693, ch. 730, Sec. 2, eff. Aug. 31, 1981.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1981, 67th Leg., p. 2692, ch. 730, Sec. 2, eff. Aug. 31, 1981.

Sec. 77.046. EXEMPTIONS FROM BAIT-SHRIMP DEALER'S LICENSE. A bait-shrimp dealer's license is not required for:

(1) grocery stores in coastal counties which do not unload or purchase shrimp directly from commercial bait-shrimp boats;

(2) bait dealers in coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes, but these dealers must have a bait-dealer's license issued under Section 47.014 of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 77.048. INDIVIDUAL BAIT-SHRIMP TRAWL LICENSE. (a) No person may possess or have on board a boat in coastal water an individual bait-shrimp trawl unless the owner of the trawl has obtained an individual bait-shrimp trawl license from the department.

(b) The fee for the individual bait-shrimp trawl license is $15 or an amount set by the commission, whichever amount is more.

(c) The individual bait-shrimp trawl license expires on August 31 following the date of issuance.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 1339, ch. 277, Sec. 53, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 73, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 633, Sec. 7, eff. June 14, 1985.

SUBCHAPTER D. SHRIMPING IN OUTSIDE WATER

Sec. 77.061. GENERAL CLOSED SEASON. (a) Except as specifically provided in this subchapter, no person may catch shrimp in outside water:

(1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or

(2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

(b) Notwithstanding the provisions of Subchapter E, Chapter 12, of this code, a person who violates Subdivision (1) of Subsection (a) of this section or Section 77.024 of this code commits an offense and on conviction is punishable by a fine of not less than $2,500 nor more than $5,000, by confinement in the county jail for not less than six months nor more than one year, or by both.

(c) Except as provided in this section, the presence of a shrimp trawl (excluding doors) not stored within the confines of the hull of a vessel in outside water during the closed period provided by Subdivision (1) of Subsection (a) of this section is prima facie evidence of a violation of this section.

(d) Subsection (c) of this section does not apply to a licensed commercial gulf shrimp boat within one-fourth mile of jetties when the vessel is in direct transit to open water to catch white shrimp as provided in Section 77.065, Parks and Wildlife Code, as amended.

(e) A commercial shrimp boat operating in the outside water during the closed season as provided by Subdivision (1) of Subsection (a) of this section shall display its documentation number issued by the United States Coast Guard for documented vessels or a registration number issued by a state on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. This number shall be permanently attached or painted on the vessel in block Arabic numerals in contrasting color to the background and at least 18 inches in height on vessels over 65 feet in length or at least 10 inches in height for all other vessels.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, Sec. 20(b), eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2165, ch. 506, Sec. 1, eff. June 12, 1981; Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 87, eff. Sept. 1, 1985.

Sec. 77.062. CHANGE IN GENERAL CLOSED SEASON. Based on sound biological data, the commission may change the opening and closing dates of the June 1 to July 15 closed season to provide for an earlier, later, or longer season not to exceed 60 days. The commission may change the closing date with 72 hours public notice and may reopen the season with 24 hours notice. The commission may delegate to the director the duties and responsibilities of opening and closing the shrimping season under this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1975, 64th Leg., p. 1220, ch. 456, Sec. 20(b), eff. Sept. 1, 1975.

Sec. 77.063. GENERAL LIMITATION ON NETS. (a) Repealed by Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

(b) When restrictions are imposed on either or both the size and number of main trawls, no person may use a try net in outside water exceeding 21 feet in width as measured along an uninterrupted corkline from leading tip of door to leading tip of door and having doors or boards that exceed 450 square inches each or a beam trawl exceeding 10 feet in width as measured along the beam of a beam trawl in its fully extended position.

(c) This section does not apply to the taking of sea bobs.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1092, ch. 511, Sec. 1, eff. June 11, 1979; Acts 1997, 75th Leg., ch. 1256, Sec. 130, eff. Sept. 1, 1997.

Sec. 77.071. REGULATIONS IN CONTIGUOUS ZONE. (a) Repealed by Acts 1987, 70th Leg., ch. 217, Sec. 2, eff. Sept. 1, 1987.

(b) The department may negotiate reciprocal agreements with another state with respect to the application of one state's shrimping regulations in its contiguous zone to citizens of the other state.

Added by Acts 1975, 64th Leg., p. 1221, ch. 456, Sec. 20(f), eff. Sept. 1, 1975. Amended by Acts 1987, 70th Leg., ch. 217, Sec. 2, eff. Sept. 1, 1987.

Sec. 77.072. SHRIMP SIZE EXCEPTION. Minimum size restrictions as provided in Chapter 77, Parks and Wildlife Code, as amended, do not apply to shrimp taken from outside waters when:

(1) the Gulf of Mexico Fishery Management Council's Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico is in effect; and

(2) such plan as described in Subsection (a) of this section restricts the taking of shrimp in the Fishery Conservation Zone contiguous to the outside waters of Texas, to conform with the Texas closed Gulf season as defined in Sections 77.061(1) and 77.062 of this code.

Added by Acts 1981, 67th Leg., p. 452, ch. 187, Sec. 1, eff. May 25, 1981.

SUBCHAPTER F. BAY SHRIMP LICENSE MANAGEMENT

Sec. 77.111. SHRIMP LICENSE MANAGEMENT PROGRAM. For the purposes of promoting efficiency and economic stability in the shrimping industry and of conserving economically important shrimp resources, the department shall implement a shrimp license management program in accordance with the shrimp management plan adopted by the commission under Section 77.007 and as prescribed by this subchapter.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.112. ISSUANCE AND RENEWAL OF COMMERCIAL BAY AND BAIT SHRIMP BOAT LICENSES. (a) After August 31, 1995, the department may not issue a new commercial bay or bait shrimp boat license unless the person seeking to obtain the license documents to the satisfaction of the department that the vessel for which the license is sought:

(1) is owned by the person;

(2) was under construction and at least 50 percent completed on April 1, 1995; and

(3) is intended to be licensed and used as a commercial bay or bait shrimp boat.

(b) For the license year ending August 31, 1996, the department may renew a commercial bay or bait shrimp boat license only if the person seeking renewal of the license:

(1) owns the commercial bay or bait shrimp boat for which the license renewal is sought; and

(2) held the license to be renewed on April 1, 1995, or, after that date, obtained the license to be renewed by a transfer authorized by Section 77.113.

(c) After August 31, 1996, the commission may renew a commercial bay or bait shrimp boat license only if the person seeking to renew the license:

(1) owns the commercial bay or bait shrimp boat for which the license renewal is sought; and

(2) held the license to be renewed during the preceding license year.

(d) An applicant for a new or renewed commercial bay or bait shrimp boat license for a vessel that is required by United States Coast Guard rules to be documented by the United States Coast Guard must submit to the department with the license application the United States Coast Guard certificate of documentation for the vessel.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.113. LICENSE TRANSFER. (a) Except as provided by this section, a commercial bay or bait shrimp boat license may not be transferred from one person to another before September 1, 1999.

(b) A commercial bay or bait shrimp boat license may be transferred at any time, by sale or otherwise:

(1) between holders of a commercial bay or bait shrimp boat license;

(2) between a holder of a commercial bay or bait shrimp boat license and a historical shrimp boat captain as defined by the shrimp license management review board and approved by the executive director; or

(3) to an heir or devisee of the deceased holder of the commercial bay or bait shrimp boat license, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.114. LIMIT ON NUMBER OF LICENSES HELD; DESIGNATED LICENSE HOLDER. (a) Except as provided by Subsection (b), no person may hold or directly or indirectly control more than four commercial bay and four commercial bait shrimp boat licenses.

(b) A person who qualifies to renew a license under Section 77.112 on September 1, 1995, may hold each license renewed and after that date may retain and renew the licenses until the licenses are transferred, not renewed, or revoked. A person may not hold or renew more than four commercial bay and four commercial bait shrimp boat licenses under this subsection after August 31, 2002.

(c) A commercial bay or bait shrimp boat license must be issued to an individual. A person other than an individual who wishes to retain or seeks to renew a license of either type must designate an

individual to whom the license will be issued.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.115. TRANSFER FEE. The commission may set a fee for the transfer of a commercial bay or bait shrimp boat license. The amount of the transfer fee may not exceed the amount of the license fee for the license being transferred.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.116. LENGTH AND ENGINE LIMITS; VESSEL UPGRADE. (a) Except as provided by Subsection (d), a vessel licensed as a commercial bay or bait shrimp boat may not:

(1) have an engine that is rated by the manufacturer of the engine at more than 400 horsepower; or

(2) exceed 60 feet in length.

(b) A vessel licensed as a commercial bay or bait shrimp boat may not be lengthened or have the engine horsepower increased more than once after September 1, 1995.

(c) A vessel may not be lengthened by more than 15 percent of the vessel's length.

(d) The license for a vessel that on September 1, 1995, is licensed as a commercial bay or bait shrimp boat and exceeds the length or horsepower limit set by Subsection (a) may be renewed, but the vessel may not be lengthened or have the horsepower of the vessel increased. If the vessel is replaced, the replacement vessel must meet the engine and length requirements described in Subsection (a).

(e) For purposes of this section, vessel length shall be determined according to United States Coast Guard specifications in effect on September 1, 1995.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.117. LICENSE SUSPENSION AND REVOCATION. (a) The executive director, after notice and the opportunity for a hearing, may suspend a commercial bay or bait shrimp boat license if the license holder or any other operator of the licensed vessel is

convicted of one or more flagrant offenses totalling three flagrant offenses for the licensed vessel. The suspension may be for:

(1) six months, if:

(A) the date of each offense is within a 24-consecutive-month period beginning not earlier than September 1, 1995; and

(B) the license holder has not previously had a commercial bay or bait shrimp boat license suspended under this section; or

(2) 12 months, if the date of each offense is within a 24-consecutive-month period and the license holder has previously had a commercial bay or bait shrimp boat license suspended under this section.

(b) Except as provided by Subsection (c), a license suspension under this section does not affect the license holder's eligibility to renew the license after the suspension expires.

(c) The executive director, after notice and the opportunity for a hearing, may permanently revoke a commercial bay or bait shrimp boat license if:

(1) the license holder has previously had a commercial bay or bait shrimp boat license suspended twice under this section;

(2) the license holder or any other operator of the licensed vessel is convicted of one or more flagrant offenses totalling three flagrant offenses for the licensed vessel; and

(3) the date of each offense is in a 24-consecutive-month period beginning not earlier than the date of the most recent previous suspension under this section.

(d) For purposes of this section, a flagrant offense includes:

(1) trawling in a nursery area in violation of this code or of a proclamation of the commission issued under this code;

(2) shrimping longer than 30 minutes before or 30 minutes after legal shrimping hours prescribed by this code or by a proclamation of the commission issued under this code;

(3) exceeding possession limits, in violation of this code or of a proclamation of the commission issued under this code, by 100 or more pounds;

(4) exceeding legal net size, in violation of this code or of a proclamation of the commission issued under this code, by five feet or more; or

(5) falsifying information required by this subchapter or a

commission rule adopted under this subchapter for the issuance of a commercial bay or bait shrimp boat license.

(e) The same flagrant offense may not be counted for more than one suspension under this section.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.118. SHRIMP LICENSE MANAGEMENT REVIEW BOARD. (a) The holders of commercial bay and bait shrimp boat licenses shall elect a shrimp license management review board of nine members.

(b) A member of the review board must be a holder of a commercial bay or bait shrimp boat license.

(c) The nine members of the review board must be selected to reflect the following geographical distribution according to the county of residence specified on the member's commercial bay or bait shrimp boat license:

(1) one member representing Orange, Jefferson, Chambers, and Harris counties;

(2) two members representing Galveston County;

(3) two members representing Brazoria and Matagorda counties;

(4) three members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio counties; and

(5) one member representing Kleberg, Cameron, and Willacy counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the shrimp license management program, including hardship and appeal cases concerning eligibility, license transfer, license renewal, license suspension, license revocation, and vessel length and engine changes.

(e) The executive director shall adopt procedures for the election and operation of the review board. The executive director shall solicit and consider recommendations from the commercial bay and bait shrimp boat license holders regarding the procedures.

(f) The review board is not subject to Article 6252-33, Revised Statutes.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.119. LICENSE BUYBACK PROGRAM. (a) The department shall implement a license buyback program as part of the shrimp license management program established by this subchapter.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director shall consult with the shrimp license management review board concerning establishment of the criteria.

(c) The commission shall retire each license purchased under the license buyback program until the commission finds that management of the shrimp fishery allows reissue of those licenses through auction or lottery.

(d) A person whose license is selected by the department to be purchased under the license buyback program shall be required to execute a contract that includes the following terms:

"Section 40.251, Natural Resources Code, provides that any person who intentionally leaves, abandons, or maintains any vessel in a wrecked, derelict, or substantially dismantled condition in violation of Section 40.108, Natural Resources Code, shall be guilty of a Class A misdemeanor. Further, a person who leaves, abandons, or maintains a derelict vessel in violation of Section 40.108, Natural Resources Code, shall be subject to a civil penalty of not less than $100 or more than $10,000 per violation for each day of violation, not to exceed a maximum of $125,000 pursuant to Section 40.251(f), Natural Resources Code. I agree not to abandon or dispose of any vessel in violation of state law. I further acknowledge that money paid to me under the license buyback program may be forfeited to the coastal protection fund established by Section 40.151, Natural Resources Code, if the commissioner of the General Land Office finds that the vessel to which the license applied was abandoned in violation of Section 40.108, Natural Resources Code."

(e) The commissioner of the General Land Office may order the forfeiture of any money paid to a person under the license buyback

program if the commissioner finds that the vessel to which the license applied was abandoned by the person in violation of Section 40.108, Natural Resources Code. Any money forfeited under this section shall be deposited to the credit of the coastal protection fund established by Section 40.151, Natural Resources Code.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 6, eff. September 1, 2005.

Sec. 77.121. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.
(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.122. REPORT TO LEGISLATURE. Not later than January 1, 1999, the department shall report to the governor and each member of the legislature an overview of the administration and status of the shrimp license management program, including the biological, sociological, and economic effects of the program.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

Sec. 77.123. PREVAILING AUTHORITY. A proclamation of the commission under this subchapter prevails over any conflicting provision of this chapter to the extent of the conflict.

Added by Acts 1995, 74th Leg., ch. 339, Sec. 1, eff. June 8, 1995.

SUBCHAPTER G. GULF SHRIMP LICENSE MORATORIUM

Sec. 77.151. GULF SHRIMP LICENSE MORATORIUM PROGRAM. The department shall implement a gulf shrimp license moratorium program to promote efficiency and economic stability in the gulf shrimping

industry.

Added by Acts 2005, 79th Leg., Ch. 107 (S.B. 454), Sec. 3, eff. May 20, 2005.

Sec. 77.152. ISSUANCE AND RENEWAL OF COMMERCIAL GULF SHRIMP BOAT LICENSES. (a) After August 31, 2005, the department may not issue or renew a commercial gulf shrimp boat license unless the person seeking to obtain or renew the license documents to the satisfaction of the department that the vessel for which the license is sought:

(1) is owned by the person;

(2) was licensed as a gulf shrimp boat on the day the renewal was sought or at the end of the licensing period immediately preceding the period for which the license is sought; and

(3) is intended to be licensed and used as a commercial gulf shrimp boat.

(b) An applicant for a new or renewed commercial gulf shrimp boat license for a vessel must submit to the department with the license application:

(1) the United States Coast Guard certificate of documentation for the vessel, if the vessel is required by United States Coast Guard rules to be documented; and

(2) the certificate of number for the vessel as required by Chapter 31.

Added by Acts 2005, 79th Leg., Ch. 107 (S.B. 454), Sec. 3, eff. May 20, 2005.

Sec. 77.153. GULF SHRIMP LICENSE MORATORIUM REVIEW BOARD. (a) The holders of commercial gulf shrimp boat licenses shall elect a gulf shrimp license moratorium review board of nine members.

(b) A member of the review board must be a holder of a commercial gulf shrimp boat license.

(c) The nine members of the review board must be selected to reflect the following geographical distribution according to the county of residence specified on the member's commercial gulf shrimp boat license:

(1) two members representing Orange, Jefferson, Chambers,

and Harris Counties;

(2) one member representing Galveston County;

(3) two members representing Brazoria and Matagorda Counties;

(4) two members representing Calhoun, Aransas, Nueces, San Patricio, and Refugio Counties; and

(5) two members representing Kleberg, Cameron, and Willacy Counties.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the gulf shrimp license moratorium program, including hardship and appeal cases concerning eligibility.

(e) The executive director shall adopt procedures for the election and operation of the review board. The executive director shall solicit and consider recommendations from the commercial gulf shrimp boat license holders regarding the procedures and the continued need for the board.

(f) The review board is not subject to Chapter 2110, Government Code.

Added by Acts 2005, 79th Leg., Ch. 107 (S.B. 454), Sec. 3, eff. May 20, 2005.

Sec. 77.154. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 107 (S.B. 454), Sec. 3, eff. May 20, 2005.

CHAPTER 78. MUSSELS, CLAMS, AND CRABS

SUBCHAPTER A. MUSSELS AND CLAMS

Sec. 78.001. DEFINITIONS. In this chapter:

(1) "Commercial purposes" includes sale, barter, or exchange, or any other commercial use.

(2) "Mussels and clams" includes all freshwater and marine bivalve mollusks except species covered under other chapters of this

code.

(3) "Nonresident" has the meaning assigned under Section 47.001 of this code.

(4) "Soft tissue" means mussel and clam body parts, exclusive of the shell, and pearls.

(5) "Resident" has the meaning assigned under Section 47.001 of this code.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.002. LICENSE REQUIRED; FEES. (a) No person may take any mussels, clams, or their shells from the public water of the state for commercial purposes without a resident or nonresident commercial mussel and clam fisherman's license.

(b) The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. All licenses issued under the authority of Chapter 78 of this code are valid only during the yearly period for which they are issued without regard to the date on which the licenses are acquired. Each yearly period begins on September 1 or another date set by the commission and extends through August 31 of the next year or another date set by the commission. The commission by rule may set the amount of a license fee for a license issued during a transition period at an amount lower than prescribed in this chapter and provide for a license term for a transition period that is shorter or longer than a year.

(c) The license fee for a resident commercial mussel and clam fisherman's license is $30 or an amount set by the commission, whichever amount is more.

(d) The license fee for a nonresident commercial mussel and clam fisherman's license is $800 or an amount set by the commission, whichever amount is more.

(e) The department may grant permission to use a dredge in a designated area for an additional fee of $30 or an amount set by the commission, whichever amount is more.

(f) Repealed by Acts 1995, 74th Leg., ch. 931, Sec. 80, eff. June 16, 1995.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Renumbered from Sec. 71.001 and 71.002 and amended by Acts 1993, 73rd

Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 931, Sec. 76, 80, eff. June 16, 1995.

Sec. 78.003. SHELL BUYER LICENSE. (a) No person may purchase for commercial use mussel or clam shells that have been taken from the public water of the state without a resident or nonresident shell buyer's license, except as allowed under Section 78.005 of this code.

(b) The license form shall be prescribed by the department.

(c) The license fee for a resident shell buyer's license is $100 or an amount set by the commission, whichever amount is more.

(d) The license fee for a nonresident shell buyer's license is $1,500 or an amount set by the commission, whichever amount is more.

(e) The holder of a shell buyer's license shall file with the department a report of activities performed under the license in a form and manner specified by the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 931, Sec. 77, eff. June 16, 1995.

Sec. 78.004. EXPORT FEE. The commission may charge a fee of three cents a pound or an amount set by the commission, whichever amount is more, for mussels or clams or mussel or clam shells that are harvested from the public water of the state for export. Funds collected from shell export fees may be used only for research and mitigation and management activities associated with mussels and clams.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.005. EXEMPTION FOR PERSONAL USE AND CONSUMPTION. A person who possesses a valid fishing license or who is a resident and is exempt from licensing requirements under Section 46.002 of this code may take or harvest from the public water of the state, for personal use and consumption only, not more than 25 pounds a day of whole mussels and clams, including shell and soft tissue, or 12 pounds a day of mussel and clam shells.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.006. REGULATION OF TAKING, POSSESSION, PURCHASE, AND SALE OF MUSSELS AND CLAMS. (a) The commission by proclamation may regulate the taking, possession, purchase, and sale of mussels and clams. A proclamation issued under this section must contain findings by the commission that support the need for the proclamation.

(b) In determining the need for a proclamation under Subsection (a) of this section, the commission shall consider:

(1) measures to prevent the depletion of mussels and clams;

(2) measures based on the best scientific information available;

(3) measures to manage mussels and clams;

(4) measures, where practicable, that will minimize cost and avoid unnecessary duplication in their administration; and

(5) measures that will enhance enforcement.

(c) A proclamation issued under Subsection (a) of this section may limit the quantity and size of mussels and clams that may be taken, possessed, sold, or purchased and may prescribe the times, places, conditions, and means and manner of taking mussels and clams.

(d) A proclamation of the commission under this section prevails over a proclamation of the commission issued under Chapter 61 of this code.

(e) A proclamation of the commission under this section does not prevail over:

(1) an order, rule, or regulation adopted by the commissioner of health; or

(2) a proclamation of the commission issued under Chapter 66 of this code.

Added by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

Sec. 78.007. UNLAWFUL ACTS. A person who violates the provisions of this chapter commits a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 88, eff. Sept.

1, 1985. Renumbered from Sec. 78.004 and amended by Acts 1993, 73rd Leg., ch. 741, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. CRAB LICENSE MANAGEMENT

Sec. 78.101. CRAB LICENSE MANAGEMENT PROGRAM. To promote efficiency and economic stability in the crabbing industry and to conserve economically important crab resources, the department shall implement a crab license management program in accordance with proclamations adopted by the commission under Chapter 61 and this subchapter.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.102. DEFINITIONS. In this subchapter:

(1) "Crab" means all species in the families Portunidae and Xanthidae.

(2) "Commercial crab fishing" means pursuing, taking, attempting to take, or landing crabs in this state for pay or for the purpose of sale, barter, or exchange.

(3) "License" means a commercial license issued in accordance with a proclamation under this subchapter that authorizes commercial crab fishing or the operation of a commercial crab boat.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.103. CRAB LICENSE MANAGEMENT REVIEW BOARD. (a) The license holders under this chapter shall elect a crab license management review board with an odd number of members greater than four and fewer than 12.

(b) A member of the review board must be a license holder under this subchapter or a wholesale fish dealer as defined by Section 47.001 with knowledge of the commercial crab fishing industry.

(c) A majority of the members of the review board may not be residents of the same county.

(d) The review board shall advise the commission and department and make recommendations concerning the administrative aspects of the

crab licensing program, including the definition of flagrant offenses, and hardship appeal cases concerning eligibility, license transfer, license renewal, license suspension, and license revocation.

(e) The executive director shall adopt procedures for determining the size and operations of the review board and the election and terms of board members. The executive director shall solicit and consider recommendations regarding these procedures from persons who purchased crab trap tags after September 1, 1995, and before August 31, 1996, or from holders of licenses issued under this subchapter.

(f) The review board is not subject to Article 6252-33, Revised Statutes.

(g) A member of the review board serves without compensation or a per diem allowance.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.104. LICENSING. (a) If the commission adopts one or more licenses to be issued under this subchapter, a person may not engage in commercial crab fishing without a license adopted by the commission. If the commission adopts a commercial crab boat license to be issued under this subchapter, a person may not operate a boat for the purpose of commercial crab fishing without having a boat license as prescribed by the commission.

(b) A proclamation under this section requiring a license must contain findings by the commission that support the need for the proclamation. In determining the need for a license requirement, the commission shall consider:

(1) measures to prevent waste or depletion of crabs while achieving, on a continuing basis, the optimum yield for the fishery;

(2) the best scientific information available;

(3) the effect a licensing program would have on the management of crabs throughout the jurisdictional range;

(4) the need to promote, where practicable, efficiency in using crabs; and

(5) the need to enhance enforcement.

(c) A proclamation issued under this section may:

(1) establish a license that is issued to a person, to a person and limited to a vessel, or to a person according to the equipment used in commercial crab fishing, including issuing tags for crab traps placed in public waters under Section 66.018;

(2) establish eligibility requirements for a license, including the use of historical participation in the industry or participation in the industry after August 31, 1995, and before November 14, 1996;

(3) establish requirements for license transfer;

(4) prohibit license transfer during certain time periods; and

(5) establish a lottery or an auction for issuing licenses.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.105. LICENSE FEE. The fee for a license is $500, or an amount set by the commission, whichever amount is more. All fees generated by the issuance of a license under this subchapter are to be sent to the comptroller for deposit to the credit of the game, fish, and water safety account.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.106. LICENSE RENEWAL. A person seeking to renew a license established by this subchapter must have held the license during the preceding license year.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.107. LIMIT ON NUMBER OF LICENSES HELD. (a) A person may not hold or directly or indirectly control more than three licenses issued under this subchapter other than an equipment license.

(b) A license issued to a person other than an individual must designate an individual in whose name the license will be issued.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.108. EXPIRATION OF LICENSE. A license required by this subchapter is valid only during the period for which it is issued without regard to the date on which the license is acquired. Each period is one year beginning on September 1 or another date set by the commission.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.109. LICENSE TRANSFER. (a) The commission by rule may set a fee for the transfer of a license. The amount of the fee may not exceed the amount of the license fee.

(b) The commission shall send all license transfer fees to the comptroller for deposit to the credit of the game, fish, and water safety account.

(c) The commission by proclamation shall allow a license to be transferred beginning not later than September 1, 2001. The commission shall annually review the decision regarding license transfer.

(d) Notwithstanding Subsection (c), a license may be transferred at any time to an heir or devisee of a deceased license holder, but only if the heir or devisee is a person who in the absence of a will would be entitled to all or a portion of the deceased's property.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.110. LICENSE SUSPENSION AND REVOCATION. (a) The executive director, after notice to a license holder and the opportunity for a hearing, may suspend or revoke a license if the license holder or any other operator of a licensed vessel is shown to have been convicted of one or more flagrant offenses defined by a proclamation of the commission during a period described by the proclamation of the commission.

(b) A license suspension does not affect the license holder's eligibility to renew the license after the suspension expires.

(c) The same flagrant offense may not be counted for more than one suspension under this section.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.111. LICENSE BUYBACK. (a) The department may implement a license buyback program as part of the crab license management program established by this subchapter.

(b) The commission by rule may establish criteria, using reasonable classifications, by which the department selects licenses to be purchased. The commission may delegate to the executive director, for purposes of this section only, the authority to develop the criteria through rulemaking procedures, but the commission by order must finally adopt the rules establishing the criteria. The commission or executive director must consult with the crab license management review board concerning establishment of the criteria.

(c) The commission must retire each license purchased under the license buyback program until the commission finds that management of the crab fishery allows reissue of those licenses through auction or lottery.

(d) The department shall set aside at least 20 percent of the fee from commercial crab licenses and transfer fees. That money shall be sent to the comptroller for deposit to the credit of the commercial license buyback subaccount in the game, fish, and water safety account.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(3), eff. September 1, 2017.

(f) Repealed by Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(3), eff. September 1, 2017.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1034 (H.B. 1724), Sec. 5(3), eff. September 1, 2017.

Sec. 78.112. PROGRAM ADMINISTRATION; RULES. (a) The executive director shall establish administrative procedures to carry out the requirements of this subchapter.

(b) The commission shall adopt any rules necessary for the administration of the program established under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.113. DISPOSITION OF FUNDS. Money received for a license issued under this subchapter or fines for violations of this subchapter shall be remitted to the department by the 10th day of the month following the date of collection.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.114. PROCLAMATION; PROCEDURES. Subchapter D, Chapter 61, and Sections 61.054 and 61.055 apply to the adoption of proclamations under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1256, Sec. 127, eff. Sept. 1, 1997.

Sec. 78.115. CRAB TRAPS; REMOVAL OF ABANDONED TRAPS. (a) In this section, "abandoned crab trap" means a crab trap located in the public water of this state that is designated as abandoned by the commission beginning on the first day of a closed season established by the commission under this section.

(b) The commission may establish a closed season for the use of crab traps in the public water of this state. The commission by rule shall designate the closed season as not less than 10 days or more than 30 days between January 31 and April 1 in years designated by the commission.

(c) The commission shall adopt rules to govern the removal and disposal of abandoned crab traps as necessary to enhance:

(1) enforcement of this chapter;

(2) the cleanliness of the beds and bottoms of the public water of this state;

(3) boating safety; and

(4) the conservation and management of crab resources.

(d) Abandoned crab traps are litter for purposes of Section 365.011, Health and Safety Code, and are subject to immediate removal and disposal. An abandoned crab trap must be disposed of in compliance with the Health and Safety Code. Section 12.1105 does not apply to the removal and disposal of an abandoned crab trap under this section.

(e) A proclamation made by the commission under this section prevails over a conflicting commission proclamation made under Chapter 47, 61, or 66.

Added by Acts 2001, 77th Leg., ch. 278, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 858, Sec. 1, eff. June 20, 2003.

CHAPTER 79. EXTENDED FISHERY JURISDICTION

Sec. 79.001. COMPLIANCE. The department is authorized to cooperate with the Gulf of Mexico Fishery Management Council established pursuant to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.), in developing state management programs which are consistent with plans proposed by the council and approved by the secretary of commerce.

Added by Acts 1977, 65th Leg., p. 1280, ch. 501, Sec. 2, eff. June 15, 1977.

Sec. 79.002. AUTHORITY. The department may follow procedures outlined in Section 12.027, Chapter 61, or Chapter 77 of this code in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.). The commission may delegate to the director the duties, responsibilities, and authority provided by this chapter for taking immediate action as necessary to modify state coastal fisheries regulations in order to provide for consistency with federal regulations in the exclusive economic zone.

Added by Acts 1977, 65th Leg., p. 1280, ch. 501, Sec. 2, eff. June 15, 1977. Amended by Acts 1995, 74th Leg., ch. 859, Sec. 3, eff. Sept. 1, 1995.

Sec. 79.003. SUSPENSION OF OTHER LAWS. Irrespective of exclusions or limited application of the Wildlife Conservation Act of 1983 (Chapter 61 of this code) or any chapter in Title 7 of this code the commission shall exercise the authority set out in Section 79.002 of this code and conflicting provisions limiting the area, species to which applicable, or special seasons, are hereby suspended when the proclamation of the commission becomes effective, but only for the period specified in such proclamation.

Added by Acts 1977, 65th Leg., p. 1280, ch. 501, Sec. 2, eff. June 15, 1977. Amended by Acts 1983, 68th Leg., p. 34, ch. 9, art. II, Sec. 3, eff. Aug. 29, 1983.

SUBTITLE E. WILDLIFE MANAGEMENT AREAS, SANCTUARIES, AND PRESERVES

CHAPTER 81. MANAGEMENT AREAS AND PRESERVES: GENERAL AUTHORITY

SUBCHAPTER A. ACTS PROHIBITED IN WILDLIFE PROTECTION AREAS

Sec. 81.001. TAKING OF WILDLIFE FROM HATCHERIES AND RESERVATIONS PROHIBITED. No person may take, injure, or kill any fish kept by the state in its hatcheries, or any bird or animal kept by the state on its reservation grounds or elsewhere for propagation or exhibition purposes.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 90, eff. Sept. 1, 1985.

Sec. 81.003. TRESPASS ON STATE HATCHERIES AND RESERVATIONS. No person may enter without the permission of the department on the grounds of a state fish hatchery or on grounds set apart by the state for the propagation and keeping of birds and animals.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 91, eff. Sept. 1, 1985.

Sec. 81.004. FISHING IN SANCTUARY. No person may fish or attempt to take fish from a fish sanctuary designated under Subchapter C of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 92, eff. Sept. 1, 1985.

Sec. 81.006. TAKING OR POSSESSING SPECIES FROM WILDLIFE MANAGEMENT AREAS. No person may take or attempt to take or possess any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Subchapter E of this chapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 93, eff. Sept. 1, 1985.

Sec. 81.007. PENALTY. A person who violates a provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 94, eff. Sept. 1, 1985.

SUBCHAPTER B. FISH HATCHERIES

Sec. 81.101. SALTWATER AREAS. The commission may construct and maintain saltwater hatcheries and propagation farms for fish, oysters, and game on islands owned by the state in coastal water. Funds available to the department for the enforcement of game, fish, and oyster laws may be used for costs and expenses authorized under this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.102. FRESHWATER AREAS. The department may purchase land for the construction, maintenance, enlargement, and operation of freshwater fish hatcheries, and for the construction and maintenance of passes leading from one body of tidewater to another. On approval of the title by the attorney general, purchases may be made from funds appropriated to the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.103. PROPERTY ACQUISITION; MANNER AND MEANS. The department may enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of erecting, constructing, enlarging, and maintaining fish hatcheries, buildings, equipment, roads, and passageways to the hatcheries. The department may also enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of constructing, enlarging, and maintaining passes or channels from one body of tidewater to another body of tidewater in the state. The manner and method of condemnation, assessment, and payment of damages is the same as is provided for railroads.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.104. CONDEMNATION SUITS. Condemnation suits under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department and shall be held in Travis County. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the comptroller against any fund or account in state treasury that is limited in use for fish or wildlife purposes and that is appropriated to the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 48, eff. Sept. 1, 1993.

SUBCHAPTER C. FISH SANCTUARIES

Sec. 81.206. PROCLAMATION. (a) Sanctuaries shall be set aside and designated by proclamation of the commission signed by the presiding officer.

(b) The proclamation must contain:

(1) the area to be included in the sanctuary;

(2) the reason for creation of the sanctuary;

(3) the date on which the proclamation takes effect;

(4) the duration of the proclamation; and

(5) a statement that the sanctuary is set aside and designated under the authority of this subchapter, the citation of which must be included.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2001, 77th Leg., ch. 968, Sec. 52, eff. Sept. 1, 2001.

Sec. 81.207. NOTICE. The department shall give notice of the creation of a sanctuary by each of the following methods:

(1) by posting copies of the proclamation on the courthouse door of each county in which the sanctuary is located;

(2) by publishing a brief summary of the proclamation in a newspaper in the county in which the sanctuary is located, or in a newspaper of an adjoining county if the county where the sanctuary is located has no newspaper, once each week for five consecutive weeks; and

(3) by posting at least six signs bearing the conspicuous inscription "State Fish Sanctuary--No Fishing" around the boundary of the sanctuary.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.208. EFFECTIVE DATE OF PROCLAMATION. The proclamation takes effect on the day of the last publication of the notice required by Section 81.207(2) of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.209. EXCLUDED COUNTIES. This subchapter does not apply to Wichita, Clay, Baylor, and Wilbarger counties.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

SUBCHAPTER D. WILDLIFE MANAGEMENT ASSOCIATION AREAS

Sec. 81.301. WILDLIFE MANAGEMENT ASSOCIATION AREAS. (a) The department may designate two or more contiguous or proximate tracts of land as a wildlife management association area if:

(1) each owner of the land applies for the designation;

(2) the land is inhabited by wildlife;

(3) the department determines that observing wildlife and collecting information on the wildlife will serve the purpose of wildlife management in the state; and

(4) the landowners agree to provide the department with information regarding the wildlife under Section 81.302 of this code.

(b) The department shall prescribe the form and content of an application under this section.

Added by Acts 1993, 73rd Leg., ch. 418, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 635, Sec. 8, eff. Sept. 1, 1993.

Sec. 81.302. WILDLIFE MANAGEMENT PLAN; COLLECTION OF INFORMATION. (a) Before the department may approve an application for designation of a wildlife management association area under this subchapter, the applicants must prepare a wildlife management plan according to department guidelines for wildlife management plans.

(b) The department's guidelines shall require the collection of information on the wildlife that is in a wildlife management association area.

(c) Activities prescribed in the wildlife management plan must be conducted annually to maintain the designation of a wildlife management association.

Added by Acts 1993, 73rd Leg., ch. 418, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 635, Sec. 8, eff. Sept. 1, 1993.

Sec. 81.303. RULES. The commission may adopt rules necessary

to implement this subchapter.

Added by Acts 1993, 73rd Leg., ch. 418, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 635, Sec. 8, eff. Sept. 1, 1993.

SUBCHAPTER E. WILDLIFE MANAGEMENT AREAS AND PUBLIC HUNTING LANDS

Sec. 81.401. ACQUISITION AND MANAGEMENT OF AREAS. (a) The department may acquire by donation, purchase, lease, or otherwise, and develop, maintain, and operate, wildlife management areas and public hunting lands.

(b) The department may manage, along sound biological lines, wildlife and fish found on any land the department has or may acquire as a wildlife management area.

(c) The department may use money from the game, fish, and water safety account to accomplish the purposes of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 69, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 571 (S.B. 1669), Sec. 1, eff. September 1, 2007.

Sec. 81.4011. DEFINITION. In this subchapter, "public hunting land" means land:

(1) owned, leased, or managed by the department, including a wildlife management area; and

(2) designated by the director as public hunting land.

Added by Acts 2007, 80th Leg., R.S., Ch. 571 (S.B. 1669), Sec. 2, eff. September 1, 2007.

Sec. 81.4012. APPLICABILITY TO STATE PARK LAND. This subchapter applies to a state park only:

(1) on public hunting land in the park; and

(2) on specific dates designated by the department for public hunting activities.

Added by Acts 2007, 80th Leg., R.S., Ch. 571 (S.B. 1669), Sec. 2, eff. September 1, 2007.

Sec. 81.402. REGULATION OF HUNTING AND FISHING. (a) The executive director may prohibit hunting and fishing in wildlife management areas or public hunting lands to protect any species of wildlife or fish.

(b) During an open season in wildlife management areas or public hunting lands, the executive director may prescribe the number, kind, sex, and size of game or fish that may be taken.

(c) The executive director may prescribe the means, methods, and conditions for the taking of game or fish during an open season in wildlife management areas or public hunting lands.

(d) As sound biological management permits, the commission may prescribe an open season for hunting after it has established a classification system for such areas in accordance with Section 13.001(b).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 217, Sec. 3, eff. May 18, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 121, eff. Sept. 1, 1997.

Sec. 81.403. PERMITS; FEES. (a) The department may issue a permit authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or a wildlife management area. The commission by rule shall prescribe the conditions for the issuance and use of a permit under this section.

(a-1) Except as provided by this section, permits for hunting of wildlife or for any other use in wildlife management areas or public hunting lands shall be issued by the department to applicants by means of a fair method of distribution subject to limitations on the maximum number of permits to be issued.

(b) The department may implement a system of issuing special permits that gives preference to those applicants who have applied previously but were not selected to receive a permit.

(c) The department shall charge a permit fee in the amount set by the commission by rule. Revenue from permit fees for access to

state parks must be deposited to the credit of the state parks account. Revenue from other permit fees under this section must be deposited to the game, fish, and water safety account.

(d) This subchapter does not exempt any person from compliance with hunting license laws.

(e) The department may authorize and accept multiple applications for special hunting permits, programs, packages, or events.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1983, 68th Leg., p. 2886, ch. 491, Sec. 2, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 70, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 217, Sec. 4, eff. May 18, 1993; Acts 1997, 75th Leg., ch. 1256, Sec. 122, eff. Sept. 1, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 571 (S.B. 1669), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 571 (S.B. 1669), Sec. 4, eff. September 1, 2007.

Sec. 81.404. CONTRACTS FOR REMOVAL OF FUR-BEARING ANIMALS AND REPTILES. (a) The department may contract for the removal of fur-bearing animals and reptiles in wildlife management areas under the control of the department. The removal of fur-bearing animals and reptiles shall be according to sound biological management practices.

(b) Contracts for the removal of fur-bearing animals and reptiles shall be entered into under the direction of the comptroller in the manner provided by general law for the sale of state property, except that the department shall determine the means, methods, and quantities of fur-bearing animals and reptiles to be taken, and the department may accept or reject any bid received by the comptroller.

(c) Fur-bearing animals may be removed only during the open season provided by proclamation of the commission under Chapter 71 of this code. Reptiles may be removed at any time unless there is a proclamation relating to a specific species of reptiles in effect under Chapter 65 or Chapter 67 of this code, in which case that species of reptiles may be removed only during the open season provided for in the proclamation.

(d) Repealed by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1,

Sec. 6, eff. Sept. 1, 1979.

Acts 1975, 64th Leg., p. 1207, ch. 456, Sec. 5, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 549, ch. 260, art. 1, Sec. 6, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 1158, ch. 261, Sec. 2, eff. Aug. 29, 1983.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.107, eff. September 1, 2007.

Sec. 81.405. REGULATION OF RECREATIONAL ACTIVITIES. The commission may adopt rules governing recreational activities in wildlife management areas.

Added by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 71, eff. Sept. 1, 1985.

SUBCHAPTER F. SCIENTIFIC AREAS

Sec. 81.501. CREATION OF SCIENTIFIC AREAS. The department may promote and establish a state system of scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.502. POWERS AND DUTIES. To the extent necessary to carry out the purposes of this subchapter, the department may:

(1) determine the acceptance or rejection of state scientific areas proposed for incorporation into a state system of scientific areas;

(2) make and publish all rules and regulations necessary for the management and protection of scientific areas;

(3) cooperate and contract with any agencies, organizations, or individuals for the purposes of this subchapter;

(4) accept gifts, grants, devises, and bequests of money, securities, or property to be used in accordance with the tenor of such gift, grant, devise, or bequest;

(5) formulate policies for the selection, acquisition,

management, and protection of state scientific areas;

(6) negotiate for and approve the dedication of state scientific areas as part of the system;

(7) advocate research, investigations, interpretive programs, and publication and dissemination of information pertaining to state scientific areas and related areas of scientific value;

(8) acquire interests in real property by purchase; and

(9) hold and manage lands within the system.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.503. LAND OF PUBLIC ENTITIES. All public entities and their agencies are authorized and urged to acquire, administer, and dedicate land as state scientific areas within the system under the policies of the commission authorized by this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.504. EFFECT ON EXISTING AREAS. Inclusion of a state or local park, preserve, wildlife refuge, or other area within the system established under this subchapter does not cancel, supersede, or interfere with any other law or provision of an instrument relating to the use, management, or development of the area for other purposes except that any agency administering an area within the system is responsible for preserving the natural character of the area under the policies of the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.505. PROTECTED STATUS. Neither the designation of an area as a scientific area within the state system nor an intrusion, easement, or taking allowed by the commission under this subchapter voids or replaces a protected status under the law which the area would have if it were not included within the system.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 81.506. FUNDS TO BE SPECIFICALLY APPROPRIATED. The commission may not use any funds for the acquisition of scientific areas other than those specifically appropriated for use under this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 82. STATUTORY SANCTUARIES AND PRESERVES

SUBCHAPTER B. CONNIE HAGAR WILDLIFE SANCTUARY--ROCKPORT

Sec. 82.101. CREATION AND BOUNDARIES. The Connie Hagar Wildlife Sanctuary--Rockport in Aransas County is described as follows:

Being all of the water area of Aransas Bay and Little Bay between the shoreline of Live Oak Peninsula and a line described as follows:

BEGINNING at the point where the city limits of the City of Rockport intersects the shoreline of the Aransas Bay;

THENCE, one mile due east to a point in Aransas Bay;

THENCE, in a northeasterly direction approximately 1-3/8 miles to a point which is 1/2 mile due east of Nine Mile Point;

THENCE, in a north by northwesterly direction approximately 2 miles to a point which is 1/2 mile due east of the channel entrance to the Fulton Harbor;

THENCE, due west to the shoreline of Live Oak Peninsula.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.102. BOUNDARY MARKERS. The department shall place suitable markers defining the boundaries of the wildlife sanctuary.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.103. UNLAWFUL ACT. No person may hunt any bird or animal within the wildlife sanctuary.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.104. PENALTIES. A person who violates any provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 96, eff. Sept. 1, 1985.

SUBCHAPTER C. SIERRA DIABLO WILDLIFE MANAGEMENT AREA, CULBERSON AND HUDSPETH COUNTIES

Sec. 82.201. CREATION. The department may set aside a fenced game management area in Culberson and Hudspeth counties for the protection and perpetuation of Texas Bighorn Mountain Sheep (Ovis canadensis texiana).

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 72, eff. Sept. 1, 1985.

Sec. 82.202. ACCEPTANCE OF GIFTS. The department may accept gifts of land in Culberson and Hudspeth counties or money to be deposited in the game, fish, and water safety account. The gifts shall be used for the Texas Bighorn Sheep management unit.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 72, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 49, eff. Sept. 1, 1993.

Sec. 82.203. LAND PURCHASE; SCHOOL LANDS. The department may purchase the surface rights in not more than eight sections of public school lands located in Culberson and Hudspeth counties in the following blocks: Blocks 65 and 66, T. & P. Ry. Co. land; Blocks 42-1/2, 43, 54-1/2, Public School Lands. The minerals on the land purchased shall be reserved to the school fund and managed by the school land board. The price to be paid for the land shall not exceed $1 per acre and shall be paid for by the department out of the game, fish, and water safety account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 72, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 50, eff. Sept. 1, 1993.

Sec. 82.204. OTHER LAND; TITLE APPROVAL. The department may purchase other land in Culberson and Hudspeth counties as necessary for the operation of the game management unit. The department may pay for the land out of the game, fish, and water safety account on approval of the title by the attorney general.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 72, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 51, eff. Sept. 1, 1993.

Sec. 82.205. LAND PURCHASE; PRIVATE. The department may enter on, condemn, and appropriate not more than 12 sections of land belonging to any person or corporation in Culberson and Hudspeth counties for the purpose stated in this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 72, eff. Sept. 1, 1985.

Sec. 82.206. CONDEMNATION. The method of condemnation, assessment, and payment of damages is the same as is provided by law for railroads. Condemnation suits brought under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn on the game, fish, and water safety account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 72, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 52, eff. Sept. 1, 1993.

Sec. 82.207. EXPENDITURES. All expenditures provided under this subchapter shall be made from the game, fish, and water safety account .

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 1, Sec. 72, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 53, eff. Sept. 1, 1993.

SUBCHAPTER D. WILDLIFE SANCTUARY: GALVESTON COUNTY

Sec. 82.301. CREATION. The group of small islands located in Galveston Bay near Smith's Point and known as Vingt et Un Islands are a state wildlife sanctuary.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.302. UNLAWFUL ACTS. No person may hunt or in any way molest any of the birds on any of the islands or within 50 yards of the islands, nor may any person enter on the islands for any purpose without first obtaining permission from the department.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.303. PENALTIES. A person violating any provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 97, eff. Sept. 1, 1985.

SUBCHAPTER E. GAME AND FISH RESERVE: MARION AND HARRISON COUNTIES

Sec. 82.401. LAND SET ASIDE. All of the public land and school land situated in, under, and adjacent to the bed of Caddo Lake in the counties of Marion and Harrison are withdrawn from sale and preserved for public use as a state game and fish reserve.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.402. CREATION. The department may establish one or more game sanctuaries in the water of Caddo Lake for the protection of wild ducks, geese, and all other migratory birds. The sanctuaries shall protect the birds from being pursued, hunted, taken, or disturbed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.403. BOUNDARY MARKERS. The department shall designate and define the boundaries of the sanctuaries by placing markers or signs around the boundaries of each sanctuary with the words "Game Preserve" on each marker or sign. The markers or signs shall be placed not more than 500 yards apart.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.404. AMOUNT OF AREA SET ASIDE. The sanctuaries shall not include more than 20 percent of the area of the lake.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.405. PUBLIC HUNTING AND FISHING. The public may hunt and fish on all of the water of the lake except that water set aside for sanctuaries.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.406. INVESTIGATION OF FEASIBILITY OF TIMBER LAND PURCHASE. The department, in conjunction with the director of the Texas Forest Service, shall investigate the feasibility and desirability of acquiring title to a block of timbered land adjacent to the lake comprising from 5,000 to 10,000 acres, to be placed under the joint control of the director of the Texas Forest Service and the department, with the view of ultimately preserving a belt of native forest for the future and also for the propagation of game.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 488, Sec. 4, eff. Sept. 1, 1985.

Sec. 82.407. MINERAL RIGHTS. The mineral rights under the land reserved for the sanctuaries are withdrawn from sale and the rights may not be offered for sale until the legislature directs the rights to be sold.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.408. UNLAWFUL ACTS. (a) No person may hunt any kind of game on the sanctuaries established under this subchapter.

(b) No person may hunt any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

(c) No person may pursue or frighten or attempt to pursue or frighten any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.409. PENALTY. A person who violates any provision of this subchapter commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 98, eff. Sept. 1, 1985.

SUBCHAPTER F. INGLESIDE COVE WILDLIFE SANCTUARY: SAN PATRICIO AND NUECES COUNTIES

Sec. 82.501. CREATION. The Ingleside Cove Wildlife Sanctuary is composed of an area in San Patricio and Nueces counties described as follows:

BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel (N 27 50.791, W 97 13.577);

THENCE, in a northwesterly direction along the shoreline to the channel marker at the location commonly known as Donnel Point (N

27 51.593, W 97 14.505);

THENCE, due northwest crossing the Reynolds Channel to the east side of a spoil bank (N 27 51.668, W 97 14.715);

THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southernmost point (N 27 50.328, W 97 14.302), continuing southeast crossing Ingleside Cut to the north shore of Ingleside Point (N 27 50.231, W 97 14.197);

THENCE, in an easterly and southeasterly direction along the east shoreline following the Reynolds Channel through Ingleside Point to the southernmost portion of this cut (N 27 49.782, W 97 13.782);

THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southernmost portion of Ingleside Cove (N 27 49.834, W 97 13.641);

THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 631 (S.B. 810), Sec. 1, eff. June 17, 2011.

Sec. 82.502. MARKING BOUNDARIES. The department shall place suitable markers defining the boundary of the wildlife sanctuary as described in this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.503. UNLAWFUL ACTS. (a) No person may hunt any bird within the sanctuary.

(b) No person may fish by any means other than rod and reel within the sanctuary.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.504. PENALTIES. A person who violates any provision of this subchapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 99, eff. Sept. 1, 1985.

SUBCHAPTER G. FISH HATCHERIES: SMITH COUNTY

Sec. 82.601. CREATION. The department may construct, enlarge, and maintain fish hatcheries in Smith County.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.602. PROPERTY ACQUISITION. The department may enter on, condemn, and appropriate land, water rights, easements, rights-of-way, and property of any person or corporation in Smith County for the purposes designated in this subchapter.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.603. CONDEMNATION; MANNER AND MEANS. The method of condemnation, assessment, and payment of damages is the same as is provided for railroads. Condemnation suits brought under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn by the comptroller against any account in the state treasury appropriated to the department for the use of constructing and maintaining fish hatcheries.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 54, eff. Sept. 1, 1993.

SUBCHAPTER H. ISLAND CHANNEL

Sec. 82.651. ISLAND CHANNEL. (a) The department may construct and maintain a channel through Padre Island, Mustang Island, and St.

Jo Island, or any of them.

(b) The department may contract for the construction of a channel under this section on approval by the commission and approval from the federal government of an application for authority to construct channels.

(c) The cost of the construction and maintenance of a channel constructed under this section may be paid from the game, fish, and water safety account only.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 55, eff. Sept. 1, 1993.

SUBCHAPTER I. LAKE CORPUS CHRISTI GAME SANCTUARY

Sec. 82.701. GAME SANCTUARY. All the water of Lake Corpus Christi in San Patricio and Live Oak counties is a game sanctuary.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.702. PROHIBITED ACTS. (a) Except as provided in Subsection (b) of this section, no person may enter on the portion of Lake Corpus Christi that is a game sanctuary with a gun or rifle, and no person may attempt to shoot a bird or animal in the portion of Lake Corpus Christi that is a game sanctuary.

(b) A person may hunt ducks and geese during the open seasons for ducks and geese with a shotgun in the portion of Lake Corpus Christi in San Patricio County. This exception does not apply to hunting within one mile of the boy scout camp, the girl scout camp, or Lake Corpus Christi Park.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.703. MARKERS. The Parks and Wildlife Department shall erect appropriate markers at intervals adequately spaced to warn hunters of the one-mile limit around the boy scout camp, the girl scout camp, and Lake Corpus Christi Park in San Patricio County.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 82.704. PENALTY. A person who violates Section 82.702 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 100, eff. Sept. 1, 1985.

SUBCHAPTER J. LASALLE COUNTY RIVERS SANCTUARY

Sec. 82.711. CREATION. All of the land area and public water in state-owned riverbeds in LaSalle County, including the Nueces and Frio rivers, is a game sanctuary.

Added by Acts 1977, 65th Leg., p. 2072, ch. 823, Sec. 1, eff. Aug. 29, 1977.

Sec. 82.712. PROHIBITED ACTS. (a) Except as permitted under Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.711 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on said rivers.

Added by Acts 1977, 65th Leg., p. 2072, ch. 823, Sec. 1, eff. Aug. 29, 1977.

Sec. 82.713. PENALTY. A person who violates Section 82.712 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1977, 65th Leg., p. 2072, ch. 823, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 101, eff. Sept. 1, 1985.

SUBCHAPTER K. MCMULLEN COUNTY RIVERS SANCTUARY

Sec. 82.721. CREATION. All of the land area and public water in state-owned riverbeds in McMullen County, including the Nueces and Frio rivers, is a game sanctuary.

Added by Acts 1977, 65th Leg., p. 2072, ch. 823, Sec. 2, eff. Aug. 29, 1977.

Sec. 82.722. PROHIBITED ACTS. (a) Except as permitted under Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.721 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on said rivers.

Added by Acts 1977, 65th Leg., p. 2072, ch. 823, Sec. 2, eff. Aug. 29, 1977.

Sec. 82.723. PENALTY. A person who violates Section 82.722 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1977, 65th Leg., p. 2072, ch. 823, Sec. 2, eff. Aug. 29, 1977. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 102, eff. Sept. 1, 1985.

SUBCHAPTER L. BEE COUNTY RIVERS SANCTUARY

Sec. 82.731. CREATION. All of the land area and water in the Aransas and Poesta rivers in Bee County, to the extent same are owned by the state, are declared to be a game sanctuary.

Added by Acts 1981, 67th Leg., p. 2080, ch. 471, Sec. 1, eff. Aug. 31, 1981.

Sec. 82.732. PROHIBITED ACTS. (a) Except as permitted by Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.731 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on the listed rivers.

Added by Acts 1981, 67th Leg., p. 2080, ch. 471, Sec. 1, eff. Aug. 31, 1981.

Sec. 82.733. PENALTY. A person who violates Section 82.732 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1981, 67th Leg., p. 2080, ch. 471, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 103, eff. Sept. 1, 1985.

SUBCHAPTER O. LIVE OAK COUNTY RIVERS SANCTUARY

Sec. 82.761. CREATION. All of the land area and public water in the state-owned beds of the Nueces, Frio, and Atascosa rivers in Live Oak County is a game sanctuary.

Added by Acts 1979, 66th Leg., p. 2083, ch. 814, Sec. 1, eff. Aug.

27, 1979.

Sec. 82.762. PROHIBITED ACTS. (a) Except as permitted by Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.761 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on the listed rivers.

Added by Acts 1979, 66th Leg., p. 2083, ch. 814, Sec. 1, eff. Aug. 27, 1979.

Sec. 82.763. PENALTY. A person who violates Section 82.762 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1979, 66th Leg., p. 2083, ch. 814, Sec. 1, eff. Aug. 27, 1979. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 104, eff. Sept. 1, 1985.

CHAPTER 83. FEDERAL-STATE AGREEMENTS

SUBCHAPTER A. FEDERAL-STATE AGREEMENTS

Sec. 83.001. FISH RESTORATION PROJECTS. The department shall conduct and establish cooperative fish restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects" (Public Law No. 681, 81st Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of the interior.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 83.002. COMMERCIAL FISHERIES RESEARCH. (a) The department shall conduct research in and develop commercial fisheries under an Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (Title 16, Sections 779-779f, U.S.C.A.). The department shall comply with the act and the rules and regulations promulgated under the act by the secretary of the interior.

(b) Funds received from the federal government and appropriated by the state for research and development of commercial fisheries shall be deposited in the state treasury to the credit of the game, fish, and water safety account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 56, eff. Sept. 1, 1993.

Sec. 83.003. WILDLIFE-RESTORATION PROJECTS. The department shall establish and conduct cooperative wildlife-restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes" (Public Law No. 415, 75th Congress). The department shall comply with the act and rules and regulations promulgated under the act by the United States secretary of the interior.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 2003, 78th Leg., ch. 536, Sec. 1, eff. June 20, 2003.

Sec. 83.004. MIGRATORY GAME BIRD RESERVATIONS. (a) The United States of America may acquire by purchase, gift, devise, or lease areas of land or water in this state necessary for the establishment of migratory bird reservations under an Act of Congress entitled "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas,

their maintenance and improvement and for other purposes."

(b) The state retains jurisdiction and authority over the areas which are not incompatible with the administration, maintenance, protection, and control of the areas by the United States under the act.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 83.005. CONSERVATION AGREEMENTS FOR PROTECTION OF SPECIES. (a) Any conservation agreement between a political subdivision of the state and the United States Department of the Interior must be developed in consultation with the Parks and Wildlife Department.

(b) In this section, "conservation agreement" includes an agreement between the state or a political subdivision of the state and the United States Department of the Interior under the federal act that does not relate to a federal permit as defined by Section 83.011.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 2, eff. Sept. 1, 1999.

SUBCHAPTER B. HABITAT PROTECTION BY POLITICAL SUBDIVISIONS

Sec. 83.011. DEFINITIONS. In this chapter:

(1) "Biological advisory team" means three or more professional biologists retained to provide biological guidance to plan participants.

(2) "Endangered species" means a species listed by the United States Department of the Interior as endangered or threatened under the federal act.

(3) "Federal act" means the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.), as amended.

(4) "Federal permit" means a permit issued under Section 7 or 10(a) of the federal act.

(5) "Governmental entity" means a political subdivision of the state, including:

(A) a municipality; and

(B) a county.

(6) "Habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit:

(A) that does not require the regulation of non-habitat preserve land; and

(B) for which the land to be used as habitat preserves, at the time of application for the federal permit:

(i) is owned by a plan participant; or

(ii) is subject to a contract agreed to by each owner of land in the habitat preserve or proposed habitat preserve providing that all or part of the owner's land be used or managed as a habitat preserve.

(7) "Habitat preserve" means land set aside or managed for the protection of endangered species under a federal permit.

(8) "Harm" means significant habitat modification or degradation that, by significantly impairing essential behavioral patterns, including breeding, feeding, sheltering, or migrating, is the proximate cause of:

(A) the death of a member of an endangered species; or

(B) the physical injury of a member of an endangered species.

(9) "Land development standards" means rules or ordinances regulating the development of land, including impervious cover limitations, building setbacks, zoning, floor-to-area ratios, building coverage, water quality controls and regulations, landscaping, building height, development setbacks, compatibility standards, traffic analyses, driveway cuts, impact fees, and transfer of development rights. The term does not include fire or building codes or restrictions on the withdrawal of groundwater.

(10) "Mitigation fee" means a charge or in-kind contribution that is based on the amount of harm and is paid or provided to a plan participant in exchange for mitigation credit to be used to comply with the federal act.

(11) "Plan participant" means a governmental entity that develops, attempts to develop, adopts, approves, or participates in a regional habitat conservation plan or habitat conservation plan.

(12) "Regional habitat conservation plan" means a plan or program to protect endangered species by habitat preserves or other protection strategies developed in order to obtain a federal permit that requires the acquisition or regulation of land or interests in land not owned by a plan participant at the time of application for a federal permit.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.012. PURPOSE. The purpose of this subchapter is to:

(1) establish the requirements for and authority of a governmental entity to regulate wildlife through the development, financing, and implementation of a regional habitat conservation plan or a habitat conservation plan;

(2) encourage governmental entities to use the authority under this subchapter to develop and implement habitat conservation plans instead of regional habitat conservation plans;

(3) coordinate, to the greatest extent practicable, habitat preserves with lands set aside or to be set aside under local, state, or federal laws or regulations;

(4) prohibit plan participants from devaluing land containing endangered species or endangered species habitat through plan participant actions; and

(5) require plan participants of existing regional habitat conservation plans to comply with the requirements of this subchapter so that existing regional habitat conservation plans become habitat conservation plans as quickly as possible.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.013. AUTHORITY OF DEPARTMENT OR POLITICAL SUBDIVISION. (a) The department or a political subdivision may participate in the study and preparation for and creation of a habitat conservation plan.

(b) Subject to this subchapter, the department or a political subdivision may participate in the study and preparation for and creation of a regional habitat conservation plan.

(c) Subject to this subchapter, a political subdivision, including a municipality acting within its corporate limits or its extraterritorial jurisdiction, in order to facilitate the creation of a habitat preserve and the setting aside of land to protect a species protected under a conservation agreement, may:

(1) purchase land, easements, or leases; and

(2) enter into an agreement with a landowner to establish alternative land development standards for a tract of land.

(d) A plan participant may accept a federal permit in conjunction with a regional habitat conservation plan only if the qualified voters of a plan participant have authorized the issuance of bonds or other debt financing in an amount equal to the estimated cost of acquiring all land for habitat preserves within the time required by this subchapter or the plan participant has demonstrated that adequate sources of funding exist to acquire all land for habitat preserves within the time required by this subchapter.

(e) A governmental entity may not implement a regional habitat conservation plan or apply for a federal permit in conjunction with a regional habitat conservation plan if:

(1) the federal act is repealed; or

(2) the endangered species that are subject to conservation and protection under the federal permit cease to be listed as endangered or threatened by the United States Department of the Interior.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 388 (S.B. 1455), Sec. 1, eff. June 17, 2005.

Sec. 83.014. LIMITATION OF POWERS. (a) A governmental entity may not impose a regulation, rule, or ordinance related to endangered species unless the regulation, rule, or ordinance is necessary to implement a habitat conservation plan or regional habitat conservation plan for which the governmental entity was issued a federal permit. This subsection does not limit the authority of a governmental entity to adopt a rule, regulation, or ordinance restricting the withdrawal of groundwater.

(b) A governmental entity may not discriminate against a permit application, permit approval, or the provision of utility service for land that:

(1) is or has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or habitat conservation plan;

(2) is designated as critical habitat under the federal act; or

(3) has endangered species or endangered species habitat.

(c) A governmental entity may not deny or limit available water or wastewater service to land in the service area of the governmental entity that has been designated as habitat preserve or potential habitat preserve in a regional habitat conservation plan or in a habitat conservation plan. For purposes of this subsection, a governmental entity may not remove land from its water or wastewater utility service areas after the date established under Section 83.018(b).

(d) A governmental entity may not, as a condition for the issuance of a permit, approval, or service, require a person to:

(1) pay a mitigation fee to a plan participant;

(2) set aside, lease, or convey land as habitat preserve; or

(3) pay a mitigation fee for land set aside or restricted from development under local, state, or federal law or regulation.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.015. BIOLOGICAL REVIEW; CRITERIA. (a) Except as provided by Subsection (f), a regional habitat conservation plan, including any mitigation fee, shall be based on the amount of harm to each endangered species to be protected under the regional habitat conservation plan.

(b) Except as provided by Subsection (f), the size of proposed habitat preserves shall be based solely on the amount of harm to the endangered species to be protected in the regional habitat conservation plan.

(c) The plan participants, together with the commission and the landowner members of the citizens advisory committee, shall appoint a biological advisory team. At least one member shall be appointed by the commission and one member by the landowner members of the citizens advisory committee. The member appointed by the commission serves as presiding officer of the team. The team shall assist in:

(1) the calculation of harm to the endangered species; and

(2) the sizing and configuring of the habitat preserves.

(d) Meetings of the biological advisory team are subject to the open meetings law, Chapter 551, Government Code, and all work product of the biological advisory team is subject to the open records law, Chapter 552, Government Code.

(e) For purposes of this section, "recovery criteria" means the criteria developed under a recovery plan in accordance with the federal act.

(f) After notice and hearing by the plan participants, the following may be based partly on any recovery criteria applicable to each endangered species to be protected under the plan:

(1) a regional habitat conservation plan, including any mitigation fee; or

(2) the size of proposed habitat preserves.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 388 (S.B. 1455), Sec. 2, eff. June 17, 2005.

Sec. 83.016. CITIZENS ADVISORY COMMITTEE. (a) The plan participants shall appoint a citizens advisory committee to assist in preparing the regional habitat conservation plan and the application for a federal permit.

(b) At least four members or 33 percent of the citizens advisory committee, whichever is greater in number, must own undeveloped land or land in agricultural use in the regional habitat conservation plan area. A landowner member may not be an employee or elected official of a plan participant or any other local, state, or federal governmental entity.

(c) Not later than the 90th day after the initial identification of the proposed preserve system for the regional habitat conservation plan, the plan participants shall appoint one additional landowner, who owns land within the proposed habitat preserve system, to the citizens advisory committee. The additional landowner member must comply with Subsection (b).

(d) The commission shall appoint one representative to the citizens advisory committee. The commission's representative is a voting member of the committee.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.017. DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN. (a) Meetings of the citizens advisory committee and meetings of the

plan participants regarding planning, development, and implementation of the regional habitat conservation plan are subject to the open meetings law, Chapter 551, Government Code.

(b) All data, reports, and other information regarding the regional habitat conservation plan, including field notes, lab notes, and any other information relied on by the biological advisory team, are subject to the open records law, Chapter 552, Government Code.

(c) Not later than the 60th day after the plan participants' initial identification of the proposed habitat preserve system for the federal permit, the plan participants shall notify in writing each owner of land identified by the plan participants as habitat preserve or potential habitat preserve. The plan participants shall use the county tax rolls to identify the owners of land identified as habitat preserve or potential habitat preserve. The written notice must include at least the following information:

(1) the tax identification and parcel numbers;

(2) the owner's name and address;

(3) an explanation of the designation or possible designation of the tract as habitat preserve or potential habitat preserve under the regional habitat conservation plan;

(4) identification of the citizens advisory committee members, including telephone numbers, addresses, and the group that each committee member represents;

(5) identification of employees or agents of plan participants who can provide information about the regional habitat conservation plan;

(6) the date of the next citizens advisory committee meeting or plan participant meeting regarding the regional habitat conservation plan; and

(7) a description of the status of the regional habitat conservation plan.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 388 (S.B. 1455), Sec. 3, eff. June 17, 2005.

Sec. 83.018. PRESERVE ACQUISITION. (a) The designation of a tract of land as habitat preserve or potential habitat preserve or

the presence of endangered species or endangered species habitat may not be considered in determining the fair market value of the property for acquisition as a habitat preserve.

(b) A change to plan participant rules and regulations, including land development standards, that occurs after the earliest date that the biological advisory team, citizens advisory committee, or plan participant initially identifies a tract of land as habitat preserve or potential habitat preserve may not be considered in determining the fair market value of the land for acquisition as a habitat preserve.

(c) Except as provided by Subsection (d), the plan participants shall make offers based on fair market value to the landowners for the acquisition of fee simple or other interest in land designated in the regional habitat conservation plan as proposed habitat preserve not later than four years after the issuance of the federal permit or six years after the initial application for the federal permit, whichever is later. Except as provided by Subsection (e), acquisition of all habitat preserves designated as proposed habitat preserves in the regional habitat conservation plan must be completed not later than the sixth anniversary of the date on which the federal permit was issued. A plan participant subject to this subsection who does not meet an applicable deadline shall file an application to amend the federal permit to remove the nonacquired habitat preserve land from the regional habitat conservation plan as a habitat preserve not later than the 60th day after the expiration of the applicable deadline.

(d) If plan participants have not designated a landowner's land as proposed habitat preserve in a regional habitat conservation plan before the date on which the federal permit is issued but designate the land as proposed habitat preserve in a regional habitat conservation plan on or after that date, plan participants shall make an offer to the landowner based on fair market value for the acquisition of fee simple or other interest in the land not later than the fourth anniversary of the date on which the land is identified or designated as proposed habitat preserve.

(e) Plan participants must complete acquisition of land subject to Subsection (d) as habitat preserves not later than the fifth anniversary of the date on which the plan participants identified or designated the land as proposed habitat preserves.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 388 (S.B. 1455), Sec. 4, eff. June 17, 2005.

Sec. 83.019. NOTICE AND HEARING REQUIREMENTS. (a) A plan participant must comply with the notice and hearing requirements of this section before adopting any regional habitat conservation plan, plan amendment, ordinance, budget, fee schedule, rule, regulation, or order to implement this subchapter.

(b) The plan participant, individually or through interlocal contract, shall publish a notice, including a brief description of the proposed action and the time and place of a public hearing on the proposed action, not later than the 30th day before the public hearing in the newspaper of largest general circulation in the county in which the plan participant proposing the action is located.

(c) A public hearing on the proposed action shall be held at the time and place specified in the notice.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.

Sec. 83.020. GRIEVANCE WITH DEVELOPMENT OF REGIONAL HABITAT CONSERVATION PLAN. (a) An individual appointed to a citizens advisory committee under Section 83.016(b) may file a grievance with the commission regarding the development of a regional habitat conservation plan under this subchapter if the individual believes that the plan is being developed in violation of this subchapter. The individual filing the grievance must have been a member of the citizens advisory committee for the plan named in the grievance.

(b) A grievance must be filed under this section not later than the 60th day after the date the plan is approved by the plan participants. The grievance must cite each provision of this subchapter alleged to have been violated during the development of the plan and must describe each act alleged to have violated this subchapter.

(c) The commission shall review a grievance filed under this section to determine whether the plan is being developed in compliance with this subchapter. If after reviewing the grievance

the commission finds that the grievance has no merit, the commission may dismiss the grievance. If the commission finds that the grievance does have merit, the commission must hold a public hearing in accordance with Chapter 551, Government Code. The commission shall take testimony from each plan participant and from the individual filing the grievance. On conclusion of testimony, the commission shall vote on whether to approve or dismiss the grievance or to schedule a public hearing not later than the 30th day after the conclusion of the initial public hearing and to vote after the conclusion of that hearing whether to approve or dismiss the grievance.

(d) If the commission approves the grievance, the commission shall instruct the plan participant or participants to amend the plan so that it will comply with this subchapter.

(e) Repealed by Acts 2005, 79th Leg., Ch. 388, Sec. 6, eff. June 17, 2005.

(f) If an individual files a grievance under this section, that individual may not file a subsequent grievance.

Added by Acts 1999, 76th Leg., ch. 1268, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 388 (S.B. 1455), Sec. 5, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 388 (S.B. 1455), Sec. 6, eff. June 17, 2005.

CHAPTER 84. TEXAS FARM AND RANCH LANDS CONSERVATION PROGRAM

Sec. 84.001. PURPOSE. The purpose of the program established under this chapter is to enable and facilitate the purchase and donation of agricultural conservation easements.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.002. DEFINITIONS. In this chapter:

(1) "Agricultural conservation easement" means a conservation easement in qualified land that is designed to accomplish one or more of the following additional purposes:

(A) conserving water quality or quantity;

(B) conserving native wildlife species through protection of their habitat;

(C) conserving rare or sensitive plant species; or

(D) conserving large tracts of qualified open-space land that are threatened with fragmentation or development.

(2) "Conservation easement" has the meaning assigned by Section 183.001, Natural Resources Code.

(3) "Council" means the Texas Farm and Ranch Lands Conservation Council established under Section 84.011.

(4) "Fund" means the Texas farm and ranch lands conservation fund established under Section 84.008.

(5) "Holder" has the meaning assigned by Section 183.001, Natural Resources Code.

(6) "Program" means the Texas farm and ranch lands conservation program established under this chapter.

(7) "Purchase of agricultural conservation easement" means the purchase from a willing seller of an agricultural conservation easement.

(8) "Qualified easement holder" means a holder that is:

(A) a state agency, a county, or a municipality; or

(B) an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code and that is organized for the purpose of preserving agriculture, open space, or natural resources.

(9) "Qualified land" means qualified open-space land, as that term is defined by Section 23.51, Tax Code.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.003. PROGRAM. The Texas farm and ranch lands conservation program is established as a program of the department for the purpose of administering the assistance to be provided by the fund for the purchase of agricultural conservation easements.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401

(H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.004. TERMS OF AGRICULTURAL CONSERVATION EASEMENT. (a) An agricultural conservation easement under this chapter must be perpetual or for a term of 30 years.

(b) The owner of qualified land and a potential purchaser of an agricultural conservation easement should consider and negotiate easement terms, including the following considerations:

(1) whether the landowner will receive a lump sum or annual payments;

(2) whether the term of the easement shall be perpetual or for a term of 30 years;

(3) whether a term easement is renewable;

(4) whether the landowner retains limited development rights; and

(5) the purchase price of the easement.

(c) An agricultural conservation easement may not be assigned to or enforced by a third party without the express written consent of the landowner.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.005. TERMINATION OF EASEMENT. (a) Any time after an agricultural conservation easement is acquired with a grant awarded under this chapter, the landowner may request that the council terminate the easement as provided by Subsection (b) on the ground that the landowner is unable to meet the conservation goals as described by Section 84.002(1). The termination request must contain a verifiable statement of impossibility.

(b) On receipt of the request for termination, the council shall notify the qualified easement holder and conduct an inquiry. Not later than the 180th day after the date the council receives the request, the council shall notify the parties of the decision to grant or deny the request for termination. Either party may appeal the decision in district court not later than the 45th day after the date of the notification.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.006. REPURCHASE BY LANDOWNER. (a) In this section:

(1) "Agricultural value" means the price as of the appraisal date a buyer willing, but not obligated, to buy would pay for a farm or ranch unit with land comparable in quality and composition to the subject property, but located in the nearest location where profitable farming or ranching is feasible.

(2) "Fair market value" means the price as of the appraisal date that a buyer willing, but not obligated, to buy would pay for the land at its best and most beneficial use under any obtainable development zoning category.

(b) If a request for termination of an agricultural conservation easement is granted under Section 84.005, the director shall order an appraisal of the fair market value and the agricultural value of the property subject to the easement. The landowner shall bear the cost of the appraisal.

(c) Not later than the 180th day after the date of the appraisal under Subsection (b), the landowner must pay to the qualified easement holder an amount equal to the difference between the fair market value and the agricultural value. The qualified easement holder shall pay to the fund any amounts received under this subsection, not to exceed the amount paid by the fund for purchase of the easement.

(d) Not later than the 30th day after the date of payment by the landowner under Subsection (c), the qualified easement holder shall terminate the easement.

(e) If the request for termination is denied or if the landowner fails to make the payment required by Subsection (c) in the time required by that subsection, the landowner may not submit another request for termination of the easement before the fifth anniversary of the date of the last request.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.007. PROTECTED LAND; NOTICE OF TAKING. (a) A department or agency of this state, a county, a municipality, another political subdivision, or a public utility may not approve any program or project that requires the use or taking through eminent domain of private land encumbered by an agricultural conservation easement purchased under this chapter unless the governmental entity or public utility acting through its governing body or officers determines that:

(1) there is no feasible and prudent alternative to the use or taking of the land; and

(2) the program or project includes all reasonable planning to minimize harm to the land resulting from the use or taking.

(b) A determination required by Subsection (a) may be made only at a properly noticed public hearing.

(c) The governing body or officers of the governmental entity or public utility may consider clearly enunciated local preferences, and the provisions of this chapter do not constitute a mandatory prohibition against the use of the area if the determinations required by Subsection (a) are made.

(d) If, after making the determination required by Subsection (a), a department or agency of this state, a county, a municipality, another political subdivision, or a public utility acquires by eminent domain a fee simple interest in land encumbered by an agricultural conservation easement purchased under this chapter:

(1) the easement on the condemned property terminates; and

(2) the entity exercising the power of eminent domain shall:

(A) pay for an appraisal of the fair market value, as that term is defined by Section 84.006, of the property subject to condemnation;

(B) pay to the qualified easement holder an amount equal to the amount paid by the holder for the portion of the easement affecting the property to be condemned;

(C) pay to the landowner an amount equal to the fair market value of the condemned property less the amount paid to the qualified easement holder under Paragraph (B); and

(D) pay to the landowner and the qualified easement holder any additional damages to their interests in the remaining property, as determined by the special commissioners under Section 21.042, Property Code.

(e) If, after making the determination required by Subsection (a), a department or agency of this state, a county, a municipality, another political subdivision, or a public utility acquires by eminent domain an interest other than a fee simple interest in land encumbered by an agricultural conservation easement purchased under this chapter:

(1) the entity exercising the power of eminent domain shall pay for an appraisal of the fair market value, as that term is defined by Section 84.006, of the property subject to condemnation; and

(2) the special commissioners shall consider the fair market value as the value of the property for purposes of assessing damages under Section 21.042, Property Code.

(f) The qualified easement holder shall pay to the fund any amounts received under Subsections (d) and (e), not to exceed the amount paid by the fund for the purchase of the easement.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.008. TEXAS FARM AND RANCH LANDS CONSERVATION FUND. (a) The Texas farm and ranch lands conservation fund is an account in the general revenue fund that may be appropriated only to the department to be used as provided by Subsection (b). The fund may not be used for grants to purchase or acquire any right or interest in property by eminent domain. The fund consists of:

(1) money appropriated by the legislature to the fund;

(2) public or private grants, gifts, donations, or contributions;

(3) funds from any other source, including proceeds from the sale of bonds, state or federal mitigation funds, or funds from any local, state, or federal program;

(4) proceeds of the sale of real property not required for the management of real property under Section 31.065(d), Natural Resources Code; and

(5) proceeds of the sale of real property under Section 31.066(d), Natural Resources Code.

(b) The fund may be used only:

(1) to award grants to qualified easement holders for the purchase of agricultural conservation easements;

(2) to pay transaction costs related to the purchase of agricultural conservation easements, which may include reimbursement of appraisal costs; and

(3) to pay associated administrative costs of the department, not to exceed five percent of the money in the fund.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.009. ADMINISTRATION OF FUND. (a) The council may:

(1) adopt rules necessary to perform program duties under this chapter;

(2) request, accept, and use gifts, loans, donations, aid, appropriations, guaranties, subsidies, grants, or contributions of any item of value for the furtherance of any purposes of this chapter;

(3) establish, charge, and collect fees, charges, and penalties in connection with the programs, services, and activities provided for by this chapter;

(4) make, enter into, and enforce contracts and agreements, and take other actions as may accomplish any of the purposes of this chapter;

(5) seek ways to coordinate and leverage public and private sources of funding;

(6) adopt best practices and enforcement standards for the evaluation of easements purchased through grants from the fund;

(7) establish a protocol for the purchase of agricultural conservation easements and for the distribution of funds to approved applicants;

(8) administer grants awarded to successful applicants;

(9) ensure that agricultural conservation easements purchased under this chapter are not inconsistent with the preservation of open space and the conservation of wildlife habitat or water; and

(10) approve the termination of easements and take any other action necessary to further the goals of the program.

(b) To receive a grant from the fund under this chapter, an applicant who is qualified to be an easement holder under this chapter must submit an application to the council. The application must:

(1) set out the parties' clear conservation goals consistent with the program;

(2) include a site-specific estimate-of-value appraisal by a licensed appraiser qualified to determine the market value of the easement; and

(3) include a memorandum of understanding signed by the landowner and the applicant indicating intent to sell an agricultural conservation easement and containing the terms of the contract for the sale of the easement.

(c) For the purposes of determining the amount of a grant under this chapter, the value of an agricultural conservation easement shall be determined by a site-specific estimate-of-value appraisal performed by a licensed, qualified appraiser.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.010. CRITERIA FOR AWARDING GRANTS. The council shall:

(1) give priority to applications that protect agricultural lands that are susceptible to development, including subdivision and fragmentation; and

(2) adopt a scoring process to be used in evaluating applications that considers the following:

(A) maintenance of landscape and watershed integrity to conserve water and natural resources;

(B) protection of habitats for native plant and animal species, including habitats for endangered, threatened, rare, or sensitive species;

(C) potential for leveraging state money allocated to the program with additional public or private money;

(D) proximity of the subject property to other protected lands;

(E) the term of the proposed easement, whether perpetual or for a term of 30 years; and

(F) a resource management plan agreed to by both parties and approved by the council.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.011. TEXAS FARM AND RANCH LANDS CONSERVATION COUNCIL. (a) The Texas Farm and Ranch Lands Conservation Council is established to advise and assist the director with administration of the program and to select applicants to receive grants under this chapter using the criteria adopted by the council under Section 84.010. The council consists of 12 members as follows:

(1) six members appointed by the governor as follows:

(A) two members who each operate a family farm or ranch in this state;

(B) one member who is the designated representative of an agricultural banking or lending organization and who has significant experience lending for farms and ranches or lands encumbered by conservation easements;

(C) two members who are the designated representatives of a statewide agricultural organization in existence in this state for not less than 10 years; and

(D) one member who is a designated representative of a statewide nonprofit organization that represents land trusts operating in this state; and

(2) six ex officio members as follows:

(A) the executive director of the State Soil and Water Conservation Board;

(B) the commissioner of agriculture or the commissioner's designee;

(C) the chair of the Texas Water Development Board, or the chair's designee;

(D) the state conservationist of the Natural Resources Conservation Service of the United States Department of Agriculture or a designee of that person, who serves as a nonvoting member;

(E) the presiding officer of the commission or the presiding officer's designee, who must be a member of the commission; and

(F) the executive director of the Texas A&M Institute of Renewable Natural Resources.

(b) Appointed members of the council serve staggered terms of six years, with two of the members' terms expiring February 1 of each odd-numbered year.

(c) Appointments to and removal from the council shall be made by the governor without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(d) The presiding officer of the commission or the presiding officer's designee shall serve as the presiding officer of the council. The presiding officer of the commission may appoint, at that person's discretion, the executive director of the department or another member of the commission to serve as the presiding officer of the council. The presiding officer of the council shall designate from among the members of the council an assistant presiding officer of the council to serve in that capacity at the will of the presiding officer of the council. The council may choose from its appointed members other officers as the council considers necessary.

(e) A member of the council is not entitled to compensation for service on the council but is entitled to reimbursement of the necessary and reasonable travel expenses incurred by the member while conducting the business of the council, as provided for state employees by the General Appropriations Act.

(f) The council shall meet not less than once each year.

(g) A person may not be appointed as a council member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving money under the program;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving money under the program; or

(3) uses or receives a substantial amount of tangible goods, services, or money under the program other than reimbursement authorized by law for travel expenses as described by Subsection (e).

(h) In this subsection, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common

interest. A person may not be an appointed member of the council if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association for an occupation or profession with an interest in land conservation that is related to the occupation or profession; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association for an occupation or profession with an interest in land conservation that is related to that occupation or profession.

(i) A person may not be an appointed member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of an occupation or profession with an interest in land conservation that is related to that occupation or profession.

(j) It is a ground for removal from the council if a member:

(1) is ineligible for membership under this section;

(2) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(3) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the council.

(k) The validity of an action of the council is not affected by the fact that it is taken when a ground for removal of a participating council member exists.

(l) If the presiding officer of the council has knowledge that a potential ground for removal exists, the presiding officer of the council shall notify the director and the governor that a potential ground for removal exists.

(m) The presiding officer of the council or that person's designee, with the assistance of staff of the department, shall provide to members of the council information regarding a member's responsibilities under applicable laws relating to standards of conduct for state officers.

(n) A person who is appointed to and qualifies for office as a member of the council may not vote, deliberate, or be counted as a member in attendance at a meeting of the council until the person completes a training program that complies with this section. The training program must provide the person with information regarding:

(1) the legislation that created the council;
(2) the program to be administered under this chapter;
(3) the role and functions of the council;
(4) the rules of the council, with an emphasis on the rules that relate to disciplinary and investigatory authority;
(5) the current budget for the council;
(6) the results of the most recent formal audit of the council;
(7) the requirements of:
(A) the open meetings law, Chapter 551, Government Code;
(B) the public information law, Chapter 552, Government Code;
(C) the administrative procedure law, Chapter 2001, Government Code; and
(D) other laws relating to public officials, including conflict-of-interest laws; and
(8) any applicable policies adopted by the council or the Texas Ethics Commission.

(o) A person appointed to the council is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the training program occurs before or after the person qualifies for office.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.012. EFFECT ON TAX APPRAISAL. An agricultural conservation easement under this chapter does not affect the eligibility of the property subject to the easement for appraisal for ad valorem tax purposes under Subchapter D, Chapter 23, Tax Code.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

Sec. 84.013. REPORT TO TEXAS DEPARTMENT OF TRANSPORTATION. Not

later than the 10th day after the date of a closing of a purchase of an easement under this chapter, the department shall provide the Texas Department of Transportation a legal description of the property subject to the easement and shall include with the description the date the closing occurred.

Transferred, redesignated and amended from Natural Resources Code, Subchapter B, Chapter 183 by Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 1, eff. June 10, 2015.

SUBTITLE F. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

CHAPTER 86. MARL, SAND, GRAVEL, SHELL, AND MUDSHELL

Sec. 86.001. MANAGEMENT AND PROTECTION. The commission shall manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state, and on islands within those limits, and within the freshwater areas of the state not embraced by a survey of private land, and on islands within those areas.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 86.002. PERMIT REQUIRED; PENALTY. (a) No person may disturb or take marl, sand, gravel, shell, or mudshell under the management and protection of the commission or operate in or disturb any oyster bed or fishing water for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority without first having acquired from the commission a permit authorizing the activity.

(b) Each day's operation in violation of this section constitutes a separate offense.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 105, eff. Sept. 1, 1985.

Sec. 86.003. APPLICATION FOR PERMIT. (a) A person desiring a permit may apply to the commission.

(b) The application must be in writing and must describe the

area in which authorization to operate is sought.

(c) The commission shall prescribe a single application form for an individual or general permit. The form must require individual and general permit applicants to provide the same information, including information regarding:

(1) the publication of notice in:

(A) the daily or weekly newspaper with the greatest circulation in the county or counties affected by the issuance of the permit for three consecutive days, if daily; and

(B) one newspaper published for the community closest to the proposed area of disturbance, if any;

(2) proof that notice was sent by certified mail to alongshore property owners of property one river mile above and below the proposed area of disturbance described in the permit;

(3) a sedimentation impact assessment approved by the department; and

(4) any amendments to the permit, if the application is for the renewal of a permit.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. 2805), Sec. 1, eff. September 1, 2019.

Sec. 86.004. GRANTING OF PERMIT. The commission may grant a permit to an applicant who has complied with all requirements of the commission if the commission finds that the disturbing, taking, and carrying away of marl, sand, gravel, shell, or mudshell will not:

(1) damage or injuriously affect any island, reef, bar, channel, river, creek, or bayou used for navigation, or any oysters, oyster beds, fish, or wildlife in or near the water used in the operation;

(2) change or injuriously affect any current that would affect navigation;

(3) significantly and injuriously change the hydrology of the river;

(4) significantly increase downstream nonpoint source pollution; and

(5) significantly accelerate erosion upstream or downstream

from the place where the taking occurs.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1995, 74th Leg., ch. 923, Sec. 1, eff. Sept. 1, 1995.

Sec. 86.005. ECONOMIC CONSIDERATIONS. In determining whether or not a permit should be granted, the commission shall consider the injurious effect on oysters, oyster beds, and fish in or near the water used in the operation as well as the needs of industry for marl, sand, gravel, shell, and mudshell and its relative value to the state for commercial use.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 86.006. PERMIT. (a) The permit shall identify the person authorized to disturb, take, or carry away marl, sand, gravel, shell, or mudshell and shall describe the nature of the material that may be disturbed, taken, or carried away.

(b) The permit shall describe the area where the operation may occur and shall state the purpose of the operation.

(c) The permit may contain other terms and conditions.

(d) A general permit issued under this chapter has a maximum term length of one year.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. 2805), Sec. 2, eff. September 1, 2019.

Sec. 86.007. PERMIT BY RULE. (a) The commission by rule may establish conditions under which specified activities are authorized without the requirement of individual permits under this chapter. An activity conducted in accordance with those conditions is considered to be under a permit.

(b) Rules adopted under this section shall require a person proposing to rely on the authorization provided for by this section to notify the department and, as appropriate, to report to the department during and after the activity. The rules may provide for

a waiver of the requirement for advance notification in an emergency. The commission may require a nonrefundable processing fee to be submitted with the notification.

(c) The department, under rules adopted under this section, may require an individual permit for any proposed activity.

(d) In addition to the requirements under Subchapter B, Chapter 2001, Government Code, the rules shall require public notification of the proposed activity to provide the public with an opportunity to comment on the appropriateness of requiring an individual permit.

(e) The rules must establish best management practices that must be followed to minimize potential adverse effects on resources under the commission's jurisdiction.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 923, Sec. 2, eff. Sept. 1, 1995.

Sec. 86.008. DENIAL OF PERMIT. If the commission refuses to grant a permit to an applicant, it shall make a full written finding of facts explaining the reason for the refusal.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 86.009. TERMINATION AND REVOCATION. The failure or refusal by the holder of a permit to comply with any term or condition of the permit operates as an immediate termination and revocation of all rights conferred or claimed under the permit.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 86.010. REMOVAL AND REPLANTING OF OYSTERS AND OYSTER BEDS. (a) The commission may remove oysters and oyster beds and replant them in other natural or artificial reefs if the commission finds that the removal and replanting will benefit the growth and propagation or the betterment of oysters and oyster beds or fishing conditions.

(b) The removal and replanting of oysters and oyster beds shall be at the expense of the person holding a permit or of an applicant for a permit and not the state.

(c) Before authorizing the removal and replanting of oysters or oyster beds the commission shall give notice to interested parties and hold a hearing on the subject.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 86.0105. REMOVAL REPORT. A person holding a permit issued under this chapter shall deliver to the department a report stating how much marl, sand, gravel, shell, or mudshell was removed during the term of the permit. The commission shall adopt rules regarding the delivery and format of the report.

Added by Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. 2805), Sec. 3, eff. September 1, 2019.

Sec. 86.011. DELEGATION OF AUTHORITY. (a) The commission may delegate to the director authority to grant uncontested permits under this section if:

(1) the application meets all statutory and administrative criteria;

(2) no new issues affecting commission policy are presented;

(3) no objection is raised by department staff; and

(4) no timely written requests for hearing are filed or all requests for hearing have been withdrawn.

(b) On request by the applicant or a concerned person with a justiciable interest, the commission shall review an application.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1995, 74th Leg., ch. 923, Sec. 3, eff. Sept. 1, 1995.

Sec. 86.012. SALES OF MATERIALS. (a) The commission, with the approval of the governor, may sell marl, sand, gravel, shell, and mudshell for not less than four cents a ton.

(b) The commission may require other terms and conditions for the sale of marl, sand, gravel, shell, and mudshell.

(c) Payment for sales shall be made to the commission.

(d) Marl, sand, gravel, shell, and mudshell may be removed

without payment to the commission if removed from land or flats patented to a navigation district by the state for any use on the land or flats or on any adjoining land or flats for any purpose for which the land or flats may be used under the authority of the patent to the district, or if removed to provide access to a boat ramp under Section 31.141(c) of this code.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1979, 66th Leg., p. 1069, ch. 499, Sec. 2, eff. Aug. 27, 1979.

Sec. 86.013. USE ON ROADS. (a) A county, subdivision of a county, city, or town that has a permit to take marl, sand, gravel, shell, or mudshell is not required to purchase marl, sand, gravel, shell, or mudshell taken and used for roads and streets.

(b) A county, subdivision of a county, city, or town that purchases marl, sand, gravel, shell, or mudshell for use on roads and streets from a holder of a permit who has purchased the material from the commission may receive a refund of the amount paid by the permit holder by submitting a sworn itemized account of an official of the county, subdivision of the county, city, or town. All refunds under this subsection must be approved by the commission and be paid by the comptroller by warrant.

(c) The Texas Transportation Commission may receive a refund of the amount paid to the commission for the purchase of marl, sand, gravel, shell, or mudshell used by the transportation commission on public roads.

(d) The commission may make regulations for the payment of refunds under this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(67), eff. Sept. 1, 1995.

Sec. 86.014. USE FOR SEAWALLS, ETC. (a) The commission shall grant to any county, city, or town that is authorized under Subchapter A, Chapter 571, Local Government Code, to build and maintain seawalls a permit for the taking of marl, sand, gravel, shell, or mudshell to be used for the building, extending,

protecting, maintaining, or improving any seawall, breakwater, levee, dike, floodway, or drainway.

(b) Permits under this section shall be issued under regulations established by the commission.

(c) A county, city, or town taking marl, sand, gravel, shell, or mudshell under this section is not required to purchase the marl, sand, gravel, shell, or mudshell.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.364, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.77(21), eff. April 1, 2009.

Sec. 86.015. SAND FROM CORPUS CHRISTI AND NUECES BAYS. Sand and other deposits having no commercial value may be taken from Corpus Christi and Nueces bays for filling and raising the grade of the salt flats in the northern part of the city of Corpus Christi and the lowlands lying north of the north boundary line of the city of Corpus Christi, in Nueces County, and south of the south boundary line of the city of Portland, in San Patricio County, without making payments for it to the commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 86.0151. USE TO OPEN BROWN CEDAR CUT. (a) A nonprofit corporation, fund, or foundation exempted from federal income taxes under Section 503(c)(3), Internal Revenue Code of 1954, as amended (26 U.S.C. Sec. 503(c)(3)), may take sand, gravel, marl, shell, and mudshell from Brown Cedar Cut in Matagorda County for the sole purpose of opening and reopening that passage between the Gulf of Mexico and East Matagorda Bay.

(b) The fee required by Section 86.012 of this code does not apply to sand, gravel, marl, shell, or mudshell taken under Subsection (a) of this section, and that sand, gravel, marl, shell, and mudshell may be deposited on private land.

Added by Acts 1979, 66th Leg., p. 911, ch. 419, Sec. 1, eff. Aug. 27,

1979.

Sec. 86.0152. USE TO OPEN CEDAR BAYOU. (a) A nonprofit corporation, fund, or foundation exempted from federal income taxes under Section 501(c)(3), Internal Revenue Code of 1954, as amended (26 U.S.C. Sec. 501(c)(3)), or a political subdivision of the state may take sand, gravel, marl, shell, and mudshell from Cedar Bayou in Aransas County for the sole purpose of opening and reopening that passage between the Gulf of Mexico and Mesquite Bay.

(b) The fee required by Section 86.012 of this code does not apply to sand, gravel, marl, shell, or mudshell taken under Subsection (a) of this section, and that sand, gravel, marl, shell, and mudshell may be deposited on private land.

Added by Acts 1985, 69th Leg., ch. 771, Sec. 1, eff. June 14, 1985.

Sec. 86.016. DEPOSIT OF FUNDS. The proceeds from the sale of marl, sand, gravel, shell, and mudshell shall be deposited in the special game, fish, and water safety account.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 57, eff. Sept. 1, 1993.

Sec. 86.017. USE OF FUNDS. (a) Except as provided by Subsection (b), funds collected by the commission from the sale of marl, sand, gravel, shell, and mudshell may be used for:

(1) the enforcement of the provisions of this chapter;

(2) the payment of refunds;

(3) the construction and maintenance of fish hatcheries; and

(4) the enhancement, preservation, and restoration of fish habitats in rivers and streams.

(b) No less than three-fourths of the proceeds from the sale of marl, sand, gravel, shell, and mudshell, after the payment of refunds, shall be used for:

(1) the construction and maintenance of fish hatcheries; and

(2) the enhancement, preservation, and restoration of fish habitats in rivers and streams.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1286 (H.B. 1824), Sec. 1, eff. September 1, 2019.

Sec. 86.018. TAKING FROM CERTAIN AREAS PROHIBITED. No person may take marl, sand, gravel, shell, or other material from any place between a seawall and the water's edge, from a beach or shoreline within 300 feet of the mean low tide, or within one-half mile of the end of any seawall, for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 106, eff. Sept. 1, 1985.

Sec. 86.019. OIL AND GAS LESSEES. This chapter does not require the holder of an oil and gas lease executed by the state to obtain a permit from the commission to exercise any right granted under the lease or other laws of this state.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 86.0191. EXEMPTION. (a) The commission shall, by rule, exempt entities from the requirements of this chapter regarding permits and fees required for disturbing or taking marl, sand, gravel, shell, and mudshell for noncommercial purposes when such disturbances or takings occur for maintenance projects or construction of new utility lines carried out by public utilities.
(b) Public utilities shall make every reasonable effort to use best management practices established by the commission.

Added by Acts 1995, 74th Leg., ch. 61, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 596, Sec. 1, eff. Sept. 1, 1999.

Sec. 86.0192. EXEMPTION FOR CERTAIN POLITICAL SUBDIVISIONS. (a) This section applies only to the following political subdivisions:

(1) San Jacinto River Authority; and

(2) Harris County Flood Control District.

(b) A political subdivision may take sand, gravel, marl, shell, and mudshell from the San Jacinto River and its tributaries to restore, maintain, or expand the capacity of the river and its tributaries to convey storm flows.

(c) A political subdivision acting under this section is not required to:

(1) obtain a permit or pay a fee to take sand, gravel, marl, shell, or mudshell under Subsection (b); or

(2) purchase sand, gravel, marl, shell, or mudshell taken under Subsection (b).

(d) A political subdivision acting under this section may deposit sand, gravel, marl, shell, or mudshell taken under Subsection (b) on private land.

Added by Acts 2019, 86th Leg., R.S., Ch. 1286 (H.B. 1824), Sec. 2, eff. September 1, 2019.

Sec. 86.020. RULES. The commission may adopt rules to govern:

(1) consideration of applications;

(2) setting and collection of application fees;

(3) assessment of transcript costs in contested cases;

(4) permit conditions;

(5) issuance of permits by rule;

(6) pricing of and terms for payment for substrate materials;

(7) assignability of permits;

(8) payment of refunds;

(9) permit renewal; and

(10) any other matter necessary for the administration of this chapter.

Added by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 107, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., ch. 923, Sec. 4, eff.

Sept. 1, 1995.

Sec. 86.021. EXEMPTIONS. (a) The commission by rule shall exempt the projects listed in Subsection (b) from any permit requirement or payment to the department for materials removed if the commission finds that the state will not be deprived of significant revenue and there will be no significant adverse effects on navigation, the coastal sediment budget, riverine hydrology, erosion, or fish and wildlife resources or their habitat.

(b) Projects that may be exempted under Subsection (a) include:

(1) projects resulting in insignificant takings or disturbances of marl, sand, gravel, shell, or mudshell;

(2) projects to restore or maintain the storage capacity of existing public water supplies;

(3) maintenance projects carried out by public utilities for noncommercial purposes; and

(4) public road projects contracted by the Texas Department of Transportation.

(b-1) In this subsection, "unconsolidated sedimentary material" means loose gravel, sand, or other sedimentary material that has been transported by the flow of the watercourse. The term does not include solid bedrock or earthen banks. A project results in an insignificant taking or disturbance of marl, sand, gravel, shell, or mudshell for purposes of Subsection (b)(1) if:

(1) the project is noncommercial;

(2) the project takes or disturbs less than 125 cubic yards of dry unconsolidated sedimentary material within a 12-month period;

(3) the project occurs within an on-channel impoundment created by a dam originally constructed on or before December 31, 1955, and the dam crest has not been increased in height by more than six inches since initial construction; and

(4) the taking or disturbance of unconsolidated sedimentary material does not occur outside of the impoundment in areas above dam crest elevation.

(c) The commission may require the performance of scientific studies as needed to determine the cumulative effect of permitted operations in a watershed on natural resources using the criteria described by Section 86.004 and may provide for permit holders to participate in the performance of those studies. The commission may

reimburse a participating permit holder for costs incurred by the permit holder in performing the study in an amount equal to not more than one-fourth of all royalty fees paid by the permit holder to the commission. Total reimbursements to all participating permit holders may not exceed one-half the total cost of the study.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 486 (H.B. 2805), Sec. 4, eff. September 1, 2019.

Sec. 86.0215. INSPECTIONS. (a) In this section, "permit holder" means a person holding a permit under Section 86.006.

(b) The commission by rule shall adopt a policy to guide the prioritization of inspections of permit holders based on risk to the state's natural resources.

(c) The policy adopted under this section must require that the department:

(1) determine the conditions under which an on-site inspection of a permit holder by the department is appropriate;

(2) develop an assessment tool for determining the appropriate frequency and intensity of department inspections of permit holders, based on key risk factors and indications of increased or decreased risk, such as repeated or remedied violations and failed or passed inspections; and

(3) document all inspections of permit holders and the results of those inspections and make the documentation available to all employees whose job descriptions include the regulation of permit holders.

(d) The policy adopted under this section may be combined with a policy adopted under Section 12.1025.

Added by Acts 2021, 87th Leg., R.S., Ch. 182 (S.B. 700), Sec. 13, eff. September 1, 2021.

Sec. 86.022. PENALTY. (a) A person who violates Section 86.002 commits an offense that is a Class B Parks and Wildlife Code misdemeanor.

(b) A person who violates Section 86.018 commits an offense

that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 794 (H.B. 2038), Sec. 1, eff. June 10, 2019.

Sec. 86.023. LIABILITY FOR VALUE OF MATERIAL TAKEN. A person who takes marl, sand, gravel, shell, or mudshell under the jurisdiction of the commission in violation of this chapter or a rule adopted under this chapter is liable to the state for the value of:

(1) the material taken; and

(2) any other natural resource under the department's jurisdiction that is damaged or diminished in value.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

Sec. 86.024. CIVIL PENALTY. A person who violates this chapter or a rule, permit, or order of the department issued or adopted under this chapter is subject to a civil penalty of not less than $100 or more than $10,000 for each act of violation and for each day of violation, to be recovered as provided in this chapter.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

Sec. 86.025. ENFORCEMENT. (a) If a person has violated, is violating, or is threatening to violate this chapter or a rule, permit, or order of the department issued, adopted, or entered into under this chapter, the director may bring suit to restrain the person from continuing the violation or threat of violation, to recover the civil penalty under Section 86.024, to recover the value of material taken in violation of this chapter, or for any appropriate combination of these remedies.

(b) On application for injunctive relief and a finding that a person is violating or threatening to violate a provision of this chapter or a rule, permit, or order of the department under this chapter, a court shall grant the injunctive relief the facts may warrant, without requirement for bond.

(c) At the request of the director, the attorney general or the county attorney of the county in which the violation or threat of violation occurred shall bring suit for injunctive relief, to recover a civil penalty, to recover the value of material taken in violation of this chapter, or for any appropriate combination of these remedies. Amounts recovered under this section shall be credited to the game, fish, and water safety fund. The actual cost of investigation, reasonable attorney's fees, and reasonable expert witness fees also may be recovered, and those recovered amounts shall be credited to the same operating funds from which expenditures occurred.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

Sec. 86.026. MORE THAN ONE DEFENDANT. If more than one defendant is named in an action under this chapter, each defendant against whom judgment is rendered is jointly and severally liable for recovery provided by this chapter.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

Sec. 86.027. CIVIL SUIT AND CRIMINAL PROSECUTION PERMISSIBLE. The pendency or determination of a civil action brought under this chapter or a criminal prosecution for the same violation does not bar the other action.

Added by Acts 1995, 74th Leg., ch. 923, Sec. 5, eff. Sept. 1, 1995.

SUBTITLE G. PLANTS

CHAPTER 88. ENDANGERED PLANTS

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Endangered plant" means a species of plant life that is in danger of extinction throughout all or a significant portion of its range.

(2) "Threatened plant" means a species of plant life that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(3) "Protected plant" means a species of plant life that

the director determines is of historical or cultural value to the state or the area in which it is found.

(4) "Native plant" means any tree, shrub, herb, grass, forb, legume, fern, fern ally, or wildflower that is indigenous to the state and that is growing on public or private land.

(5) "Public land" means land that is owned by the state or a local governmental entity.

(6) "Take" means to collect, pick, cut, dig up, or remove.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.002. ENDANGERED, THREATENED, OR PROTECTED NATIVE PLANTS. Species of native plants are endangered, threatened, or protected if listed as such on:

(1) the United States List of Endangered Plant Species as in effect on the effective date of this Act (50 C.F.R. Part 17); or

(2) the list of endangered, threatened, or protected native plants as filed by the director of the department.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.003. STATEWIDE LIST. The director shall file with the secretary of state a list of endangered, threatened, or protected native plants.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.004. AMENDMENT TO LIST. (a) If the list of endangered or threatened plants issued by the United States is modified, the director shall file an order with the secretary of state accepting the modification unless the director finds that the plant does not occur in this state. The order is effective immediately.

(b) The director may amend the list of endangered, threatened, or protected native plants by filing a modification order with the secretary of state. The order is effective on filing.

(c) The director shall give public notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.

(d) The director shall hold a public hearing at least 30 days before the modification order authorized by Subsection (b) of this section is filed.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.005. PERMIT. The department shall issue a permit to a qualified person to take endangered, threatened, or protected plants or parts thereof from public land for the purpose of propagation, education, or scientific studies.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.006. REGULATIONS. The department shall adopt regulations to administer the provisions of this chapter, including regulations to provide for:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying endangered, threatened, or protected plants; and

(4) publication and distribution of lists of endangered, threatened, or protected plants.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.007. ACTIVITIES BY THE DEPARTMENT. (a) The department may conduct biological research and field investigations to help determine the classification of native plants.

(b) The department may collect and disseminate information about the conservation of native plants and their habitats.

(c) The department may take an endangered, threatened, or

protected plant from public land without a permit for the purpose of conservation, education, or scientific studies.

(d) The department shall distribute pictures and other information concerning endangered, threatened, or protected plants to law enforcement agencies and the public as the department determines necessary for educational purposes.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 426, Sec. 1, eff. Sept. 1, 1985.

Sec. 88.008. PROHIBITED ACTS. (a) Except as otherwise provided by this chapter, no person may take for commercial sale, possess for commercial sale, or sell all or part of an endangered, threatened, or protected plant from public land.

(b) No contract or common carrier may transport or receive for shipment all or part of an endangered, threatened, or protected native plant taken from public land.

(c) No person may take for commercial sale, possess for commercial sale, transport for commercial sale, or sell all or part of an endangered, threatened, or protected plant from private land unless the person possesses a permit issued under Section 88.0081 of this code and each plant is tagged as provided by Section 88.0081 of this code.

(d) No person may hire or pay another person to take for commercial sale, possess for commercial sale, transport for commercial sale, or sell all or part of an endangered, threatened, or protected plant from private land unless both persons possess a permit issued under Section 88.0081 of this code.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 426, Sec. 2, eff. Sept. 1, 1985.

Sec. 88.0081. PERMIT FOR TAKING PLANTS FROM PRIVATE LAND. (a) A person who takes, possesses, or transports for commercial sale or sells an endangered, threatened, or protected plant from private land, or who hires or pays another to perform those activities, shall possess a permit issued by the department. The permit must specify

the land from which the taking is permissible, have attached a copy of the landowner's consent, and contain any other information required by the department.

(b) A person applying for a permit under this section must submit to the department:

(1) a copy of the written consent of the landowner from whose land the plant will be taken; and

(2) a permit fee set by the commission in an amount reasonable to defray administrative costs.

(c) In addition to the permit required by this section, a person taking endangered, threatened, or protected plants from private land shall attach to each plant at the time of taking a tag issued to the person by the department. The fee for each tag is $1.

(d) No person may remove the tag from the plant until the plant has been transplanted into its ultimate site for landscaping or beautification purposes. Only the ultimate owner or a department employee may remove the tag.

(e) The commission shall adopt rules specifying the form and information required for permits and tags issued under this section.

(f) The department shall waive the tagging fee if it determines the plants were planted and cultivated for the express purpose of being harvested for commercial purposes.

Added by Acts 1985, 69th Leg., ch. 426, Sec. 3, eff. Sept. 1, 1985.

Sec. 88.009. EXCEPTIONS. (a) This chapter does not apply to the taking, possession, or sale of endangered, threatened, or protected plants if the taking, possession, or sale is incidental to:

(1) the possession or sale of the real property on which the plant is growing;

(2) the possession or acquisition of easements or leases on which the plant is growing; or

(3) the harvest or sale of an agricultural crop if the endangered, threatened, or protected plant grows among that crop.

(b) This chapter does not apply to the possession, transportation, or sale of an endangered, threatened, or protected plant if:

(1) the plant originates in another state; and

(2) the person possessing, transporting, or selling the

plant complies with the terms of any required federal permit or with the terms of a state permit required by the laws of the originating state.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.010. INSPECTIONS. A person authorized to enforce this chapter may detain for inspection and inspect a vehicle, package, crate, or other container if the person has probable cause to believe it contains a plant in violation of this chapter.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

Sec. 88.011. PENALTIES. (a) Except as otherwise provided by this section, a person who violates any provision of this chapter commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

(b) If it is shown at the trial of the defendant that he has been convicted within the preceding 36 months of a violation of this chapter, on conviction he shall be punished for a Class B Parks and Wildlife Code misdemeanor.

(c) If it is shown at the trial of the defendant that he has been convicted two or more times within the preceding 60 months of a violation of this chapter, on conviction he shall be punished for a Class A Parks and Wildlife Code misdemeanor.

(d) A person who hires or pays another person to take, possess, or transport for commercial sale or sell an endangered, threatened, or protected plant in violation of Subsection (d) of Section 88.008 of this code commits an offense. An offense under this section is a Class B Parks and Wildlife Code misdemeanor.

(e) Each endangered, threatened, or protected plant taken, possessed, transported, or sold in violation of this chapter constitutes a separate offense.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 3, Sec. 108, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 426, Sec. 4, eff.

Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 16, Sec. 15.04, eff. Aug. 26, 1991.

Sec. 88.012. INJUNCTION AGAINST GOVERNMENTAL VIOLATOR. A state or local governmental agency that violates or threatens to violate a provision of this chapter is subject to a civil suit for injunctive relief. The suit shall be brought in the name of the State of Texas.

Added by Acts 1981, 67th Leg., p. 2461, ch. 637, Sec. 1, eff. Sept. 1, 1981.

SUBTITLE H. ARTIFICIAL REEFS
CHAPTER 89. ARTIFICIAL REEFS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. DEFINITIONS. In this chapter:

(1) "Artificial reef" means a structure or system of structures constructed, placed, or permitted in water covered under this chapter for the purpose of enhancing fishery resources and commercial and recreational fishing opportunities.

(2) "National Fishing Enhancement Act" means Title II of Public Law No. 98-623, enacting 16 U.S.C. Section 1220d and 33 U.S.C. Sections 2101 through 2106 and amending 16 U.S.C. Sections 1220 through 1220c.

(3) "Reef materials" includes only materials allowed under the national artificial reef plan adopted under the National Fishing Enhancement Act for construction of artificial reefs.

(4) "Water covered under this chapter" means the navigable water of Texas and water of the federal fisheries conservation zone adjacent to Texas water.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.

Sec. 89.002. GENERAL DUTIES. (a) The department shall promote, develop, maintain, monitor, and enhance the artificial reef potential in water covered under this chapter.

(b) In carrying out the duties under Subsection (a) of this section, the department shall:

(1) plan and review permit applications for artificial

reefs;

(2) coordinate with relevant state and federal agencies;

(3) hold public hearings on proposed artificial reefs;

(4) oversee maintenance and placement requirements of artificial reefs; and

(5) develop rules and guidelines, in conjunction with the advisory committee, in the collection of fees, grants, and donations to the artificial reef account.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 58, eff. Sept. 1, 1993.

Sec. 89.0025. RULES. The commission may adopt rules and guidelines as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 190 (H.B. 883), Sec. 1, eff. May 27, 2005.

Sec. 89.003. DEPARTMENT AUTHORIZED TO SERVE AS PERMITTEE. (a) The department may apply for a federal permit and serve as permittee for an artificial reef located in water covered under this chapter if the establishment of the reef complies with this chapter and the National Fishing Enhancement Act.

(b) In applying for a permit under this section, the department shall:

(1) consult with and consider the views of appropriate federal and state agencies, local governments, and other interested persons;

(2) ensure that the provisions in the permit for siting, constructing, monitoring, maintaining, and managing an artificial reef are consistent with the criteria and standards established under this chapter and the National Fishing Enhancement Act;

(3) ensure that title to an artificial reef component or construction material is unambiguous; and

(4) consider the national artificial reef plan adopted under the National Fishing Enhancement Act and notify the Secretary of the United States Department of Commerce of any need to deviate from that plan.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.

Sec. 89.004. PERSON OTHER THAN DEPARTMENT AS PERMITTEE. The department shall review and comment on an application for an artificial reef permit by a person other than the department to ensure that the conditions of the permit are consistent with the state artificial reef plan and the National Fishing Enhancement Act.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.

Text of section as added by Acts 2001, 77th Leg., ch. 968, Sec. 46

Sec. 89.005. USE OF BRIDGES, TUNNELS, AND CAUSEWAYS.

(a) The department, in cooperation with the Texas Department of Transportation and local governments, may use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(b) The department may receive from the Texas Department of Transportation the transfer of obsolete bridges, tunnels, and causeways to create artificial reefs.

(c) The department may provide assistance, including money, to a local government to fulfill the purposes of this section.

(d) Any money appropriated to the department for the artificial reef program under this chapter may be used for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 968, Sec. 46, eff. Sept. 1, 2001.

Text of section as added by Acts 2001, 77th Leg., ch. 1137, Sec. 1

Sec. 89.005. USE OF BRIDGES, TUNNELS, AND CAUSEWAYS.

(a) The Texas Department of Transportation shall coordinate with the department and local governments to use obsolete bridges, tunnels, and causeways to create artificial reefs under this chapter.

(b) The Texas Department of Transportation may transfer obsolete bridges, tunnels, and causeways to the department to create artificial reefs.

(c) The department may provide assistance, including money, to

a local government to fulfill the purposes of this section.

(d) Any money appropriated to the department for the artificial reef program under this chapter may be used for the purposes of this section.

Added by Acts 2001, 77th Leg., ch. 1137, Sec. 1, eff. June 15, 2001.

Sec. 89.006. REEF CONSTRUCTION BY OTHERS. The department may authorize a person to place a donation of reef materials in a permitted zone in accordance with this chapter and commission rules and guidelines.

Added by Acts 2005, 79th Leg., Ch. 190 (H.B. 883), Sec. 1, eff. May 27, 2005.

SUBCHAPTER B. STATE ARTIFICIAL REEF PLAN

Sec. 89.021. STATE ARTIFICIAL REEF PLAN. (a) The department shall develop a state artificial reef plan that meets the purpose of this chapter and is consistent with the standards under Section 89.023 of this code.

(b) The department shall administer and enforce the plan in accordance with this chapter and the National Fishing Enhancement Act.

(c) The department shall develop any additional technical information needed to carry out the plan.

(d) Repealed by Acts 1999, 76th Leg., ch. 925, Sec. 2(5), eff. Sept. 1, 1999.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 925, Sec. 2, eff. Sept. 1, 1999.

Sec. 89.022. REQUIRED PROVISIONS. The state artificial reef plan must include:

(1) operational guidelines for the plan, including specific participant roles, and projected funding requirements for the plan;

(2) geographic, hydrographic, geological, biological, ecological, social, economic, and other criteria for permitting and siting artificial reefs;

(3) design, materials, and other criteria for establishing, constructing, and maintaining artificial reefs;

(4) mechanisms and methodologies for monitoring artificial reefs in compliance with the requirements of permits issued under the National Fishing Enhancement Act;

(5) mechanisms and methodologies for managing the use of artificial reefs;

(6) a map that depicts priority areas for artificial reef development consistent with this chapter and the National Fishing Enhancement Act; and

(7) provisions for managing the artificial reef account in a manner that will assure successful implementation of the plan.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 59, eff. Sept. 1, 1993.

Sec. 89.023. STANDARDS. An artificial reef located in water covered under this chapter must be sited, constructed, maintained, monitored, and managed in a manner that:

(1) enhances and conserves fishery resources to the maximum extent practicable;

(2) facilitates access and use by Texas recreational and commercial fishermen;

(3) minimizes conflicts among competing uses of water and water resources;

(4) minimizes environmental risks and risks to personal and public health and property;

(5) is consistent with generally accepted principles of international law and national fishing law and does not create any unreasonable obstruction to navigation;

(6) uses the best scientific information available; and

(7) conforms to the state artificial reef plan.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.

Sec. 89.024. COMPLETION DATE. The department must complete the state artificial reef plan on or before September 1, 1990.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.

Sec. 89.025. REEFS CONSISTENT WITH PLAN. (a) All artificial reefs developed in state water must be consistent with the state artificial reef plan.

(b) Comments and recommendations by a state agency regarding artificial reefs in federal water must be consistent with the state artificial reef plan.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.

SUBCHAPTER C. ARTIFICIAL REEF ACCOUNT

Sec. 89.041. ARTIFICIAL REEF ACCOUNT. (a) The artificial reef account is a separate account in the general revenue fund.

(b) The account is composed of all funds received under Section 89.043 of this code, including interest and earnings.

(c) Except as provided by Section 89.042(b), general revenue funds may not be expended in the development or implementation of this plan.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 60, eff. Sept. 1, 1993.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1097 (H.B. 2065), Sec. 2, eff. June 14, 2019.

Sec. 89.042. DEDICATION; APPROPRIATIONS. (a) The funds received under Section 89.043 of this code are dedicated to the department for the purpose of carrying out this chapter, including siting, designing, constructing, monitoring, and otherwise managing an artificial reef or artificial reef system.

(b) The legislature may appropriate money from the general revenue fund to the department for:

(1) salaries of department employees implementing this chapter; and

(2) costs associated with those employees, including the cost of employee benefits.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 60, eff. Sept. 1, 1993.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 1097 (H.B. 2065), Sec. 3, eff. June 14, 2019.

Sec. 89.043. GRANTS, DONATIONS, AND OTHER ASSISTANCE. The department may accept grants, donations of money or materials, and other forms of assistance from private and public sources.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 60, eff. Sept. 1, 1993.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 89.061. LIABILITY. (a) The state, an agency of the state, or an insurer of the state or agency of the state is not liable for damages caused by an activity required under the terms and conditions of a permit for an artificial reef.

(b) A person who has transferred title of artificial reef construction materials to the state is not liable for damages arising from the use of the materials in an artificial reef if the materials meet applicable requirements of the National Fishing Enhancement Act and applicable regulations of the United States Department of the Interior.

Added by Acts 1989, 71st Leg., ch. 47, Sec. 1, eff. May 1, 1989.

SUBTITLE I. PROTECTED FRESHWATER AREAS

CHAPTER 90. ACCESS TO PROTECTED FRESHWATER AREAS

Sec. 90.001. DEFINITIONS. In this chapter:

(1) "Emergency" means a condition or circumstance in which a person reasonably believes that an individual has sustained serious bodily injury or is in imminent danger of serious bodily injury or that property has sustained significant damage or destruction or is in imminent danger of significant damage or destruction.

(2) "Motor vehicle" means any wheeled or tracked vehicle,

machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport a person or thing.

(3) "Navigable river or stream" means a river or stream that retains an average width of 30 or more feet from the mouth or confluence up.

(4) "Protected freshwater area" means that portion of the bed, bottom, or bank of any navigable river or stream that lies at or below the gradient boundary of the river or stream. The term does not include that portion of a bed, bottom, or bank that lies below tidewater limits.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.002. OPERATION OF MOTOR VEHICLE IN PROTECTED FRESHWATER AREA PROHIBITED. Except as provided by Section 90.003 or 90.004, a person may not operate a motor vehicle in or on a protected freshwater area on or after January 1, 2004.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.003. EXEMPTIONS. (a) Section 90.002 does not apply to:

(1) a state, county, or municipal road right-of-way;

(2) a private road crossing established on or before December 31, 2003; or

(3) operation of a motor vehicle by:

(A) a federal, state, or local government employee if operation of a motor vehicle is necessary for conducting official business;

(B) a person if operation of a motor vehicle is necessary for reasonable purposes related to usual and customary agricultural activities;

(C) a person if operation of a motor vehicle is necessary to and is authorized by a mineral lease;

(D) a person if operation of a motor vehicle is necessary to and authorized by a crossing easement granted by the General Land Office under the Natural Resources Code;

(E) a person if operation of a motor vehicle is necessary to an activity authorized by Chapter 86;

(F) a person in response to an emergency;

(G) a person if operation of a motor vehicle is necessary for the lawful construction, operation, or maintenance of equipment, facilities, or structures used for:

(i) the production, transportation, transmission, or distribution of electric power;

(ii) the provision of telecommunications services or other services delivered through a cable system;

(iii) the transportation of aggregates, oil, natural gas, coal, or any product of oil, natural gas, or coal;

(iv) the production, treatment, or transportation of water or wastewater; or

(v) dredge material disposal placement;

(H) an owner of the uplands adjacent to a protected freshwater area, the owner's agent, lessee, sublessee, or the lessee or sublessee's agent, representative, licensee, invitee, or guest for reasonable purposes related to usual and customary operation of:

(i) a camp regulated under Chapter 141, Health and Safety Code; or

(ii) a retreat facility owned and operated by a nonprofit corporation chartered under the laws of this state before January 1, 1970; or

(I) an owner of the adjacent uplands on both sides of a protected freshwater area and the owner's agents, employees, representatives, and lessees only for the purpose of accessing the owner's property on the opposite side of the protected freshwater area when no reasonable alternate access is available.

(b) This chapter does not apply to any river with headwaters in a state other than Texas and a mouth or confluence in a state other than Texas.

(c) A person exempt under this section who operates a motor vehicle in or on a protected freshwater area shall do so in a manner that avoids, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area. A person exempt under this section who is crossing a protected freshwater area shall cross by the most direct feasible route.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.0035. OPERATION OF AIRCRAFT IN OR ON PROTECTED FRESHWATER AREA. (a) In this section, "aircraft" means a device that can be used for flight in the air, including an airplane, ultralight airplane, or helicopter.

(b) Notwithstanding any other provision of this chapter, a person may operate an aircraft in or on a protected freshwater area.

(c) A person who operates an aircraft in or on a protected freshwater area shall do so in a manner that avoids, to the extent reasonably possible, harming or disturbing vegetation, wildlife, or wildlife habitat within the protected freshwater area.

Added by Acts 2021, 87th Leg., R.S., Ch. 287 (H.B. 4436), Sec. 1, eff. June 4, 2021.

Sec. 90.004. LOCAL RIVER ACCESS PLAN. (a) A county, municipality, or river authority may adopt a written local plan to provide access to a protected freshwater area located within the county's geographical boundaries or the river authority's or municipality's jurisdiction.

(b) A local plan adopted under Subsection (a) may:

(1) notwithstanding Section 90.002, allow limited motor vehicle use in a protected freshwater area;

(2) provide for the county, municipality, or river authority to collect a fee from a person accessing a protected freshwater area, the amount of which may not exceed the estimated cost that the county, municipality, or river authority incurs by allowing the limited use of motorized vehicles in protected freshwater areas within its jurisdiction; or

(3) establish other measures consistent with the policy and purposes of this chapter.

(c) Before a local plan adopted under Subsection (a) may take effect, a county, municipality, or river authority must file the plan with the department. A local plan does not take effect until the plan is approved in writing by the department.

(d) The department may approve, disapprove, or modify a local plan filed under Subsection (c). In determining whether to approve, disapprove, or modify a local plan, the department shall consider whether the plan:

(1) protects fish, wildlife, water quality, and other

natural resources;

(2) protects public safety;

(3) provides for adequate enforcement;

(4) coordinates with adjacent and overlapping jurisdictions;

(5) provides for and publicizes adequate public access to a protected freshwater area;

(6) provides for adequate public services relating to access to a protected freshwater area; and

(7) protects private property rights.

(e) The department by rule may adopt additional criteria or procedures to govern approval of local plans. Lack of rules adopted under this section alone is not a sufficient basis for rejecting a local plan.

(f) The department may conduct periodic reviews of a local plan filed under Subsection (c) to monitor the effectiveness of the plan.

(g) A person who has reason to believe that a local plan filed under Subsection (c) does not comply with this section may file a petition for revocation of the plan with the department.

(h) The department shall revoke approval of a local plan if the department finds, as a result of a periodic review conducted under Subsection (f) or a petition for revocation filed under Subsection (g), that the plan as implemented fails to meet any of the criteria for approval established by Subsection (d).

(i) The department may adopt rules necessary to implement this section and Section 90.002, including rules relating to locations from which a person may launch or retrieve a vessel by trailer from the banks of a protected freshwater area. For purposes of this subsection, "vessel" has the meaning assigned by Section 12.101.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.005. ASSISTANCE FROM DEPARTMENT. (a) The department shall assist a requesting county, municipality, or river authority in developing a local plan.

(b) A county, municipality, or river authority implementing a local plan shall remit to the department 20 percent of the county's, municipality's, or river authority's gross receipts from fees charged under Section 90.004(b)(2) to offset the department's administrative

costs associated with implementing this chapter.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.006. STUDIES. The department may conduct studies necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.007. LANDOWNER RIGHTS. (a) A prescriptive easement over private property cannot be created by recreational use of a protected freshwater area, including by portage over or around barriers, scouting of obstructions, or crossing of private property to or from a protected freshwater area.

(b) Nothing in this section shall limit the right of a person to navigate in, on, or around a protected freshwater area.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.008. PUBLIC ACCESS. (a) Except as otherwise allowed by law, a person may not restrict, obstruct, interfere with, or limit public recreational use of a protected freshwater area.

(b) This section does not allow the public to use private property to gain access to a protected freshwater area without permission of the landowner.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.0085. CAMPING AND BUILDING FIRES PROHIBITED IN CERTAIN AREAS. (a) This section applies to a section of the Blanco River that is not located in a county adjacent to a county with a municipality with a population greater than 1.5 million.

(b) Notwithstanding Section 90.008(a), a person may not camp or build a fire in a dry riverbed.

Added by Acts 2015, 84th Leg., R.S., Ch. 664 (H.B. 3618), Sec. 1, eff. September 1, 2015.

Sec. 90.009. MOTOR VEHICLE RECREATION SITES. (a) The department shall establish a program to identify and to facilitate the development of motor vehicle recreation sites that are not located in or on a protected freshwater area. The department shall seek the cooperation of political subdivisions, landowners, nonprofit groups, and other interested persons in identifying and facilitating the development of motor vehicle recreation sites under this subsection.

(b) The department shall seek and use funding from the federal government and other sources outside the general revenue fund to identify and facilitate the development of motor vehicle recreation sites under Subsection (a).

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.010. ENFORCEMENT. All peace officers of this state shall enforce the provisions of this chapter.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.

Sec. 90.011. PENALTY. (a) A person commits an offense if the person violates Section 90.002, 90.008, or 90.0085.

(b) Except as provided by Subsection (c), an offense under Subsection (a) is a Class C misdemeanor.

(c) If it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under Section 90.002 or 90.008, on conviction the defendant shall be punished for a Class B misdemeanor.

(d) Each violation under this section is a separate offense.

(e) Notwithstanding Section 12.403 of this code, Subchapter B, Chapter 12, Penal Code, applies to punishments under this section.

Added by Acts 2003, 78th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 664 (H.B. 3618), Sec. 2, eff. September 1, 2015.

TITLE 6. COMPACTS

CHAPTER 91. GULF STATES COMPACT

Sec. 91.001. MEMBERS OF COMMISSION. The three members of the Gulf States Marine Fisheries Commission from the state authorized under Article III of the Gulf States Marine Fisheries Compact are:

(1) the executive director of the department;

(2) a legislator appointed jointly by the lieutenant governor and speaker of the house of representatives; and

(3) a citizen with a knowledge of the marine fisheries problems appointed by the governor with the advice and consent of the senate.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 91.002. TERMS OF COMMISSION MEMBERS. (a) The executive director of the department shall serve on the Gulf States Marine Fisheries Commission in an ex-officio capacity, and his term expires when he ceases to hold the office of executive director of the department. His successor as a member of the Gulf States Marine Fisheries Commission is his successor as executive director of the department.

(b) The legislator appointed as a member of the Gulf States Marine Fisheries Commission shall serve in an ex-officio capacity, and his term expires at the time he ceases to hold his legislative office. His successor as a member of the Gulf States Marine Fisheries Commission shall be appointed as provided by Section 91.001(2) of this code.

(c) The citizen appointed as a member of the Gulf States Marine Fisheries Commission shall serve a term of three years or until his successor has been appointed and has qualified. A vacancy in this position shall be filled for the unexpired term by appointment by the governor with the advice and consent of the senate.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 91.003. DELEGATE OF COMMISSIONER. The executive director of the department as ex-officio member of the Gulf States Marine Fisheries Commission may delegate to an authorized employee of the department the power to be present and participate, including the

right to vote for the executive director, at any meeting, hearing, or proceeding of the Gulf States Marine Fisheries Commission.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 91.004. POWERS AND DUTIES. All the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact are granted to the Gulf States Marine Fisheries Commission and members of the commission. These powers are in aid of and supplemental to but not a limitation on the powers vested in the Gulf States Marine Fisheries Commission by other laws of this state or by the terms of the compact.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 91.005. COOPERATION OF STATE AGENCIES. (a) All officers of the state shall do all things falling within their respective jurisdictions necessary or incidental to the carrying out of the compact.

(b) All officers, bureaus, departments, and persons in state government shall furnish the Gulf States Marine Fisheries Commission information and data requested by the commission and aid the commission by loan of personnel or other means lying within their legal rights.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 91.006. REPORTS. The Gulf States Marine Fisheries Commission shall keep accurate accounts of receipts and disbursements and shall submit on or before February 10 of each year a report to the governor and legislature of the state containing:

(1) a detailed description of the transactions conducted by the commission during the preceding calendar year;

(2) recommendations for any legislative action considered advisable or necessary to carry out the intent and purposes of the compact.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 91.007. AUDITOR. The accounts and books of the Gulf States Marine Fisheries Commission, including receipts, disbursements, and other items relating to its financial standing are subject to audit by the state auditor in accordance with Chapter 321, Government Code. The auditor shall report the results of the examination to the governor of each state that is a party to the compact.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 91, eff. Sept. 1, 1989.

Sec. 91.008. TEXT OF COMPACT. The Gulf States Marine Fisheries Compact reads as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the Gulf Coast States have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent, pursuant to Article I, Section 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned States and which are frequented by anadromous fish or marine species, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States

Marine Fisheries Commission. One shall be the head of the administrative agency of such State charged with the conservation of the fishery resources to which this compact pertains; or, if there be more than one officer or agency, the official of that State named by the Governor thereof. The second shall be a member of the Legislature of such State designated by such Legislature, or in the absence of such designation, such legislator shall be designated by the Governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such State, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the Governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their respective jurisdictions to promote the preservation of these fisheries and their protection against over-fishing, waste, depletion or any abuse whatsoever, and to assure a continuing yield from the fishery resources of the aforementioned States. To that end the commission shall draft and recommend to the Governors and Legislatures of the various signatory States, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the Governor of each compacting State its recommendations relating to enactments to be presented to the Legislature of that State in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the States party hereto with regard to problems connected with the fisheries, and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the States party hereto the stocking of the waters of such States with fish and fish eggs or joint stocking by some or all of the States party hereto, and when two or more States shall jointly stock waters

the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint, and at its pleasure remove or discharge, such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place; but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting States. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting States which have an interest in such species. The commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission, cooperating with the research agencies in each State for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each State as the commissioners deem advisable may be established by the commissioners from each State for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any State, other than those named specifically in Article II of this compact, shall become a party hereto for the purpose of conserving its anadromous fish or marine species in accordance with the provisions of Article II, the participation of such State in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers

of the proprietary interest of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State, imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two or more States party hereto may further amend this compact by acts of their respective Legislatures, subject to approval of Congress as provided in Article I, Section X, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such States as shall so compact, and at their joint expense. The representatives of such States shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted, but the creation of such section shall not be deemed to deprive the States so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other Articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any State party hereto, shall be brought to the attention of the Governor thereof.

ARTICLE XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the States party hereto. Such initial appropriation as set forth below shall be made available yearly until modified as hereinafter provided:

Florida	$3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	$13,000.00

The proration and total cost per annum of Thirteen Thousand ($13,000.00) Dollars, above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission and approved by the Legislatures of the respective States. Each State party hereto agrees to provide in the manner most acceptable to it, the travel costs and necessary expenses of its

commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting State until renounced by Act of the Legislature of such State, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the Legislature. Notice of such renunciation shall be given the other States party hereto by the Secretary of State of compacting State so renouncing upon passage of the Act.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 91.009. NOTICE OF MEETINGS. For informational purposes, the department shall file with the secretary of state notice of compact meetings for publication in the Texas Register.

Added by Acts 1985, 69th Leg., ch. 612, Sec. 2, eff. Sept. 1, 1985.

CHAPTER 92. INTERSTATE WILDLIFE VIOLATOR COMPACT

Sec. 92.001. MEMBERSHIP IN INTERSTATE WILDLIFE VIOLATOR COMPACT. (a) On behalf of this state, the commission may enter into the Interstate Wildlife Violator Compact.

(b) If necessary to protect the interests of this state, the commission may withdraw from the Interstate Wildlife Violator Compact in accordance with the terms of the compact.

(c) The commission may take all actions necessary to implement this chapter, including the adoption of rules and the delegation of authority to the director.

Added by Acts 2009, 81st Leg., R.S., Ch. 952 (H.B. 3391), Sec. 16, eff. September 1, 2009.

TITLE 7. LOCAL AND SPECIAL LAWS

CHAPTER 114. BELL COUNTY

SUBCHAPTER B. STILLHOUSE HOLLOW RESERVOIR

Sec. 114.011. HUNTING PROHIBITED. (a) Except as provided by

Subsection (b) of this section, no person on the water of Stillhouse Hollow Reservoir in Bell County or on land that is owned by the federal government and that is adjacent to Stillhouse Hollow Reservoir may hunt any wild bird or animal.

(b) A person may hunt birds on the water of Stillhouse Hollow Reservoir in Bell County or on land that is owned by the federal government and that is adjacent to Stillhouse Hollow Reservoir during the open season only if:

(1) the person is at least 600 feet from the nearest private property line when the person shoots the gun; and

(2) the person uses a shotgun.

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Added by Acts 1981, 67th Leg., p. 2102, ch. 486, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 130. CALLAHAN COUNTY

SUBCHAPTER B. LAKE BAIRD

Sec. 130.013. DISCHARGE OF FIREARM. (a) Except as provided in this section, no person may shoot, fire, or discharge any pistol or rifle in, on, along, or across Lake Baird in Callahan County.

(b) This section does not apply to peace officers or other representatives of the department in the conduct of their official duties.

(c) This section does not apply to a person hunting with a shotgun during an open season in Callahan County.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 131. CAMERON COUNTY

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

Sec. 131.011. AUDUBON SOCIETY LAND. (a) This section applies to Green Island and the group of three islands in Big Bay and the flats, reefs, and shallow water near those islands in Cameron County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee

of the National Association of Audubon Societies or an officer of this state or the United States may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. . Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 134. CASS COUNTY

SUBCHAPTER E. LAKE TEXARKANA

Sec. 134.041. DISCHARGE OF FIREARM. (a) Except as provided in this section, no person may shoot a pistol or rifle in, on, along, or across Lake Texarkana.

(b) Subsection (a) of this section does not apply to peace officers, game wardens, or representatives of the department in the lawful discharge of their duties.

(c) Subsection (a) of this section does not apply to a person hunting with a shotgun during an open season or when it is lawful to hunt in or on Lake Texarkana.

(d) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 136. CHAMBERS COUNTY

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

Sec. 136.012. SHOOTING IN CERTAIN PLACES. (a) No person may shoot a pistol or rifle in, on, along, or across the water of the Trinity River, Wallisville Reservoir, and Lake Anahuac in Chambers County.

(b) No person may shoot a pistol, crossbow, bow and arrow, shotgun, or rifle in, on, along, or across the water of Oyster Bayou in Chambers County from State Highway 65 south to the mouth of Oyster Bayou in East Bay.

(c) The water described in Subsections (a) and (b) of this section are part of the public fresh water of this state suited and adapted to the preservation, protection, and propagation of game and fish, and this section is to aid in the preservation, protection, and propagation of game and fish.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 136.013. ENFORCEMENT; PENALTIES. (a) Section 136.012 of this code does not apply to a person hunting migratory waterfowl with a shotgun during a prescribed open season in and on the Trinity River and the Wallisville Reservoir.

(b) Sections 136.011 and 136.012 of this code do not apply to peace officers, or representatives of the department in the lawful discharge of their duties.

(c) It is the duty of the department to enforce the provisions of this subchapter, and enforcement officers may arrest without a warrant a person violating a provision in his presence.

(d) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 143. COLLIN COUNTY
SUBCHAPTER C. LAKE LAVON

Sec. 143.023. DISCHARGE OF FIREARM. (a) Except as provided in Subsections (b) and (c) of this section, no person may shoot, fire, or discharge any firearm in, on, along, or across Lake Lavon in Collin County.

(b) This section does not apply to peace officers, game wardens, or other representatives of the department in the lawful discharge of their duties.

(c) This section does not apply to a person hunting with a shotgun during an open season or when it is lawful to hunt in or on Lake Lavon.

(d) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 202. HARRISON COUNTY
SUBCHAPTER D. CADDO LAKE

Sec. 202.031. FIRING WEAPONS. (a) No person may shoot a pistol or rifle in, on, along, or across Caddo Lake in Harrison County.

(b) This section does not apply to peace officers, game wardens, or representatives of the Parks and Wildlife Commission in the discharge of their official duties, nor does it prevent a person from hunting with a shotgun during an open season or when it is lawful to hunt in or upon Caddo Lake in Harrison County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $10 nor more than $200.

(d) Venue for prosecutions for violations of this section is in Harrison or Marion counties. Prosecutions may be brought and maintained in either county without regard to the county where the offense was committed.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 6, eff. May

19, 2011.

CHAPTER 216. HUNT COUNTY
SUBCHAPTER C. SABINE RIVER

Sec. 216.021. SABINE RIVER: NAVIGABILITY. (a) That part of the Sabine River located between its source and its juncture with the east boundary line of Hunt County is not a navigable stream for the purpose of hunting and fishing rights on and along the stream. This section does not divest the state of whatever title it may have to the bed or water of the stream.

(b) Article 5302, Revised Civil Statutes of Texas, 1925, does not apply to that portion of the Sabine River described in Subsection (a) of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 223. JEFFERSON COUNTY
SUBCHAPTER C. REGULATION OF LAKE SABINE BY CITY OF PORT ARTHUR

Sec. 223.021. RECREATIONAL USE OF LAKE SABINE. The governing body of the city of Port Arthur, with respect to the waters of Lake Sabine within the corporate limits of the city, may designate or otherwise regulate by ordinance certain areas of the lake as bathing, fishing, swimming, recreational, or other restricted areas and may adopt rules relating to that regulation.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 23, eff. Sept. 1, 1987.

Sec. 223.023. REGULATION OF BOAT SPEEDS. Notwithstanding any other state law or rule, the governing body of the city of Port Arthur may by ordinance regulate the speed of boats on Lake Sabine within the corporate limits of the city.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 23, eff. Sept. 1, 1987.

CHAPTER 237. KLEBERG COUNTY
SUBCHAPTER C. BIRDS

Sec. 237.022. AUDUBON SOCIETY LAND. (a) This section applies

to North Bird Island and South Bird Island and the flats, reefs, and shallow water near those islands in Kleberg County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States, may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 246. LIBERTY COUNTY

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

Sec. 246.012. DISCHARGE OF FIREARMS. (a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, and across the water of the Trinity River or Wallisville Reservoir in Liberty County.

(b) This section does not apply to peace officers or representatives of the department in the lawful discharge of their duties or to a person hunting migratory waterfowl during an open

season in and on the Trinity River and Wallisville Reservoir.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 258. MARION COUNTY

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

Sec. 258.011. SHOOTING PISTOLS ON CADDO LAKE. (a) No person may shoot a pistol in, on, along, or across Caddo Lake in Marion County.

(b) This section does not apply to peace officers or employees of the department engaged in official duties, nor does this section prohibit hunting with a shotgun during an open season.

(c) Peace officers and authorized employees of the department may inspect boats and other watercraft for violations of this section without a warrant.

(d) A prosecution for a violation of this section may be maintained in Marion or Harrison County without regard to where the offense occurred.

(e) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 272. MORRIS COUNTY

SUBCHAPTER F. LAKE TEXARKANA AND DAINGERFIELD LAKE

Sec. 272.051. DISCHARGE OF FIREARMS. (a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, or across Daingerfield Lake or Lake Texarkana in Morris County.

(b) This section does not apply to peace officers, game wardens, or agents of the department in the lawful exercise of their duty or to persons hunting with a shotgun during an open season in or on Daingerfield Lake or Lake Texarkana.

(c) Repealed by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Amended by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 16, eff. Sept. 1, 1985.

CHAPTER 281. ORANGE COUNTY

SUBCHAPTER C. SHRIMP

Sec. 281.022. SHRIMP REGULATIONS. (a) The commission may regulate the taking of shrimp from the coastal water of Orange County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Orange County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

(1) the size of shrimp that may be taken;

(2) open and closed shrimp seasons;

(3) the means of taking shrimp;

(4) the size and type of boats and equipment that may be used for taking shrimp;

(5) the length and mesh size of net and trawls and their spreading devices; and

(6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Orange County.

(c) The commission by regulation adopted in accordance with this section may provide for the licensing of all persons taking, selling, or handling shrimp in Orange County and may license boats and equipment used for the taking, selling, or handling of shrimp in Orange County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Orange County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained, and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the method of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission

adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 283. PANOLA COUNTY
SUBCHAPTER C. MURVAUL LAKE

Sec. 283.021. CAMPING. No person may camp on the shores of Murvaul Lake in Panola County on land owned by the Panola County Fresh Water Supply District Number 1 except at places designated as campsites by the Board of Supervisors of the Panola County Fresh Water Supply District Number 1.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

Sec. 283.022. FIREARMS. (a) Except as provided by Subsection (b) of this section, no person may possess for shooting a rifle or pistol of any kind on or over the water of Murvaul Lake in Panola County.

(b) This section does not apply to a peace officer or game warden of this state or to a regular employee of the Panola County Fresh Water Supply District Number 1.

(c) Possession of a rifle or pistol of any kind within 500 feet from the water of Murvaul Lake is prima facie evidence of a violation of this section.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 78 (H.B. 1346), Sec. 7, eff. May 19, 2011.

Sec. 283.023. CERTAIN WATER SPORTS ON LAKE MURVAUL. No person may swim, bathe, wade, or water ski in or on Lake Murvaul except within areas designated by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 as areas for swimming, bathing, wading, or water skiing.

Acts 1975, 64th Leg., p. 1405, ch. 545, Sec. 1, eff. Sept. 1, 1975.

CHAPTER 287. POTTER COUNTY

Sec. 287.001. DISCHARGE OF FIREARM PROHIBITED. (a) In this section, "firearm" has the meaning assigned by Section 62.014.

(b) This section applies only to the segment of the Canadian River extending from the intersection of United States Highways 287 and 87 and the Canadian River to:

(1) a point 1.2 miles west of the intersection, marked by a structure serving as a railroad trestle; and

(2) a point 1.5 miles east of the intersection, where the Canadian River enters the Lake Meredith National Recreational Area.

(c) Except as provided by Subsection (d), a person may not discharge a firearm or shoot an arrow from any kind of bow if the person is located in or on the bed or bank of the portion of the Canadian River to which this chapter applies at the time the firearm is discharged or the arrow is shot from the bow.

(d) This section does not apply to:

(1) an individual acting in the scope of the individual's duties as a peace officer or department employee; or

(2) the discharge of a shotgun loaded with ammunition that releases only shot when discharged.

(e) This section does not limit the ability of a license holder to carry a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 266 (H.B. 1771), Sec. 1, eff. September 1, 2017.

CHAPTER 351. STARR AND ZAPATA COUNTIES

SUBCHAPTER A. FALCON LAKE

Sec. 351.001. COMMERCIAL CATFISH FISHING. (a) Notwithstanding any other law and except as provided by Subsection (b), a person may engage in commercial catfish fishing in the portion of Falcon Lake in this state that borders Starr and Zapata Counties if the person:

(1) holds the required commercial fishing license issued by the department; and

(2) engages in the commercial fishing on a vessel licensed

as a commercial fishing boat by the department.

(b) The department may regulate the amount of catfish taken from the portion of Falcon Lake described by Subsection (a) if the department determines that regulation is necessary to protect the catfish population in Falcon Lake from depletion or waste.

(c) The commission may adopt rules related to commercial catfish fishing in Falcon Lake.

Added by Acts 2019, 86th Leg., R.S., Ch. 760 (H.B. 1181), Sec. 2, eff. September 1, 2019.

CHAPTER 355. PENALTIES FOR VIOLATIONS OF TITLE 7, PARKS AND WILDLIFE CODE

Sec. 355.001. OFFENSES THAT ARE CLASS C PARKS AND WILDLIFE CODE MISDEMEANORS. Except as provided by Section 355.002 or 355.003 of this code, a person who violates a provision of Title 7 of this code commits an offense that is a Class C Parks and Wildlife Code misdemeanor.

Added by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 15, eff. Sept. 1, 1985.

Sec. 355.002. OFFENSES THAT ARE CLASS B PARKS AND WILDLIFE CODE MISDEMEANORS. A person who violates any of the following provisions of Title 7 of this code commits an offense that is a Class B Parks and Wildlife Code misdemeanor:

Section 131.011; 143.023; 229.021; 237.022; 334.041; or 350.021.

Added by Acts 1985, 69th Leg., ch. 267, art. 4, Sec. 15, eff. Sept. 1, 1985.

PENAL CODE
TITLE 1. INTRODUCTORY PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. SHORT TITLE. This code shall be known and may be cited as the Penal Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 1.02. OBJECTIVES OF CODE. The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

(1) to insure the public safety through:

(A) the deterrent influence of the penalties hereinafter provided;

(B) the rehabilitation of those convicted of violations of this code; and

(C) such punishment as may be necessary to prevent likely recurrence of criminal behavior;

(2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;

(3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;

(4) to safeguard conduct that is without guilt from condemnation as criminal;

(5) to guide and limit the exercise of official discretion in law enforcement to prevent arbitrary or oppressive treatment of persons suspected, accused, or convicted of offenses; and

(6) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

Sec. 1.03. EFFECT OF CODE. (a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

(b) The provisions of Titles 1, 2, and 3 apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code.

(c) This code does not bar, suspend, or otherwise affect a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this code defines as an offense, and the civil injury is not merged in the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 1.04. TERRITORIAL JURISDICTION. (a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

(1) either the conduct or a result that is an element of the offense occurs inside this state;

(2) the conduct outside this state constitutes an attempt to commit an offense inside this state;

(3) the conduct outside this state constitutes a conspiracy to commit an offense inside this state, and an act in furtherance of the conspiracy occurs inside this state; or

(4) the conduct inside this state constitutes an attempt, solicitation, or conspiracy to commit, or establishes criminal responsibility for the commission of, an offense in another jurisdiction that is also an offense under the laws of this state.

(b) If the offense is criminal homicide, a "result" is either the physical impact causing death or the death itself. If the body of a criminal homicide victim is found in this state, it is presumed

that the death occurred in this state. If death alone is the basis for jurisdiction, it is a defense to the exercise of jurisdiction by this state that the conduct that constitutes the offense is not made criminal in the jurisdiction where the conduct occurred.

(c) An offense based on an omission to perform a duty imposed on an actor by a statute of this state is committed inside this state regardless of the location of the actor at the time of the offense.

(d) This state includes the land and water and the air space above the land and water over which this state has power to define offenses.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 1.05. CONSTRUCTION OF CODE. (a) The rule that a penal statute is to be strictly construed does not apply to this code. The provisions of this code shall be construed according to the fair import of their terms, to promote justice and effect the objectives of the code.

(b) Unless a different construction is required by the context, Sections 311.011, 311.012, 311.014, 311.015, and 311.021 through 311.032 of Chapter 311, Government Code (Code Construction Act), apply to the construction of this code.

(c) In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next-larger unit of this code in which the reference appears.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 69, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 1.07. DEFINITIONS. (a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "suspect" is used in this code, it means "actor."

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(5) "Another" means a person other than the actor.

(6) "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(7) "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(8) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(8-a) "Civil commitment facility" means a facility owned, leased, or operated by the state, or by a vendor under contract with the state, that houses only persons who have been civilly committed as sexually violent predators under Chapter 841, Health and Safety Code.

(9) "Coercion" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(10) "Conduct" means an act or omission and its accompanying mental state.

(11) "Consent" means assent in fact, whether express or apparent.

(12) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(13) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

(14) "Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

(15) "Criminal negligence" is defined in Section 6.03 (Culpable Mental States).

(16) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.

(17) "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(18) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

(19) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(20) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

(21) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

(22) "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(23) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(24) "Government" means:

(A) the state;

(B) a county, municipality, or political subdivision of the state; or

(C) any branch or agency of the state, a county, municipality, or political subdivision.

(25) "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(26) "Individual" means a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.

(27) Repealed by Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.144, eff. September 1, 2009.

(28) "Intentional" is defined in Section 6.03 (Culpable Mental States).

(29) "Knowing" is defined in Section 6.03 (Culpable Mental States).

(30) "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(30-a) "Mass shooting" means a person's discharge of a firearm to cause serious bodily injury or death, or to attempt to cause serious bodily injury or death, to four or more persons:

(A) during the same criminal transaction; or

(B) during different criminal transactions but pursuant to the same scheme or course of conduct.

(31) "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(32) "Oath" includes affirmation.

(33) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(34) "Omission" means failure to act.

(35) "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or

(B) is a holder in due course of a negotiable instrument.

Text of subdivision effective until January 1, 2025

(36) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

Text of subdivision effective on January 1, 2025

(36) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2A.001, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

(37) "Penal institution" means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(38) "Person" means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.

(39) "Possession" means actual care, custody, control, or management.

(40) "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(41) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following,

even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(42) "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(43) "Reckless" is defined in Section 6.03 (Culpable Mental States).

(44) "Rule" includes regulation.

(45) "Secure correctional facility" means:

(A) a municipal or county jail; or

(B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.

(46) "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(46-a) "Sight order" means a written or electronic instruction to pay money that is authorized by the person giving the instruction and that is payable on demand or at a definite time by the person being instructed to pay. The term includes a check, an electronic debit, or an automatic bank draft.

Text of subdivision effective until January 1, 2025

(46-b) "Federal special investigator" means a person described by Article 2.122, Code of Criminal Procedure.

Text of subdivision effective on January 1, 2025

(46-b) "Federal special investigator" means a person described by Article 2A.002, Code of Criminal Procedure.

(47) "Swear" includes affirm.

(48) "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

(49) "Death" includes, for an individual who is an unborn child, the failure to be born alive.

(b) The definition of a term in this code applies to each grammatical variation of the term.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1975, 64th Leg., p. 912, ch. 342, Sec. 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2123, ch. 848, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1113, ch. 530, Sec. 1, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 1520, ch. 655, Sec. 1, eff. Sept. 1, 1979; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(43), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 997, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 543, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 822, Sec. 2.01, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.144, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 421 (H.B. 2031), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 26, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 467 (H.B. 165), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.153, eff. January 1, 2025.

Sec. 1.08. PREEMPTION. No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty. This section shall apply only as long as the law governing the conduct proscribed by this code is legally enforceable.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 1.09. CONCURRENT JURISDICTION UNDER THIS CODE TO PROSECUTE OFFENSES THAT INVOLVE STATE PROPERTY. With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute under this code any offense an element of which occurs on state property or any offense that involves the use, unlawful appropriation, or misapplication of state property, including state funds.

Added by Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 1, eff. June 15, 2007.

Sec. 1.10. ENFORCEMENT OF CERTAIN FEDERAL LAWS REGULATING FIREARMS, FIREARM ACCESSORIES, AND FIREARM AMMUNITION. (a) In this section:

(1) "Ammunition" has the meaning assigned by Section 229.001, Local Government Code.

(2) "Firearm" has the meaning assigned by Section 46.01.

(3) "Firearm accessory" means an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of the firearm. The term includes a detachable firearm magazine.

(4) "State funds" means money appropriated by the legislature or money under the control or direction of a state agency.

(b) Notwithstanding any other law, an agency of this state, a political subdivision of this state, or a law enforcement officer or other person employed by an agency of this state or a political subdivision of this state may not contract with or in any other manner provide assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation that:

(1) imposes a prohibition, restriction, or other regulation that does not exist under the laws of this state; and

(2) relates to:

(A) a registry requirement for a firearm, a firearm accessory, or ammunition;

(B) a requirement that an owner of a firearm, a firearm accessory, or ammunition possess a license as a condition of owning, possessing, or carrying the firearm, firearm accessory, or ammunition;

(C) a requirement that a background check be conducted for the private sale or transfer of a firearm, a firearm accessory, or ammunition;

(D) a program for confiscating a firearm, a firearm accessory, or ammunition from a person who is not otherwise prohibited by the laws of this state from possessing the firearm, firearm accessory, or ammunition; or

(E) a program that requires an owner of a firearm, a firearm accessory, or ammunition to sell the firearm, firearm accessory, or ammunition.

(c) Subsection (b) does not apply to a contract or agreement to provide assistance in the enforcement of a federal statute, order, rule, or regulation in effect on January 19, 2021.

(d) A political subdivision of this state may not receive state funds if the political subdivision enters into a contract or adopts a rule, order, ordinance, or policy under which the political subdivision requires or assists with the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or, by consistent actions, requires or assists with the enforcement of any federal statute, order, rule, or regulation described by Subsection (b). State funds for the political subdivision shall be denied for the fiscal year following the year in which a final judicial determination in an action brought under this section is made that the political subdivision has required or assisted with the enforcement of any federal statute, order, rule, or regulation described by Subsection (b).

(e) Any individual residing in the jurisdiction of a political subdivision of this state may file a complaint with the attorney general if the individual offers evidence to support an allegation that the political subdivision has entered into a contract or adopted a rule, order, ordinance, or policy under which the political subdivision requires or assists with the enforcement of any federal statute, order, rule, or regulation described by Subsection (b) or

evidence to support an allegation that the political subdivision, by consistent actions, requires or assists with the enforcement of any federal statute, order, rule, or regulation described by Subsection (b). The individual must include with the complaint the evidence the individual has that supports the complaint.

(f) If the attorney general determines that a complaint filed under Subsection (e) against a political subdivision of this state is valid, the attorney general may file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the political subdivision is located to compel the political subdivision to comply with Subsection (b). The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(g) An appeal of a suit brought under Subsection (f) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure. The appellate court shall render its final order or judgment with the least possible delay.

(h) The attorney general shall defend any agency of this state in a suit brought against the agency by the federal government for an action or omission consistent with the requirements of this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 819 (H.B. 2622), Sec. 2, eff. September 1, 2021.

CHAPTER 2. BURDEN OF PROOF

Sec. 2.01. PROOF BEYOND A REASONABLE DOUBT. All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 2.02. EXCEPTION. (a) An exception to an offense in this code is so labeled by the phrase: "It is an exception to the application of . . . ."

(b) The prosecuting attorney must negate the existence of an exception in the accusation charging commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception.

(c) This section does not affect exceptions applicable to offenses enacted prior to the effective date of this code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 2.03. DEFENSE. (a) A defense to prosecution for an offense in this code is so labeled by the phrase: "It is a defense to prosecution . . . ."

(b) The prosecuting attorney is not required to negate the existence of a defense in the accusation charging commission of the offense.

(c) The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

(e) A ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 2.04. AFFIRMATIVE DEFENSE. (a) An affirmative defense in this code is so labeled by the phrase: "It is an affirmative defense to prosecution . . . ."

(b) The prosecuting attorney is not required to negate the existence of an affirmative defense in the accusation charging commission of the offense.

(c) The issue of the existence of an affirmative defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of an affirmative defense is submitted to the jury, the court shall charge that the defendant must prove the affirmative defense by a preponderance of evidence.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 2.05. PRESUMPTION. (a) Except as provided by Subsection (b), when this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

(b) When this code or another penal law establishes a presumption in favor of the defendant with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed

fact must be submitted to the jury unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption, that:

(A) the presumption applies unless the state proves beyond a reasonable doubt that the facts giving rise to the presumption do not exist;

(B) if the state fails to prove beyond a reasonable doubt that the facts giving rise to the presumption do not exist, the jury must find that the presumed fact exists;

(C) even though the jury may find that the presumed fact does not exist, the state must prove beyond a reasonable doubt each of the elements of the offense charged; and

(D) if the jury has a reasonable doubt as to whether the presumed fact exists, the presumption applies and the jury must consider the presumed fact to exist.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1975, 64th Leg., p. 912, ch. 342, Sec. 2, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2005, 79th Leg., Ch. 288 (H.B. 823), Sec. 2, eff. September 1, 2005.

CHAPTER 3. MULTIPLE PROSECUTIONS

Sec. 3.01. DEFINITION. In this chapter, "criminal episode" means the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances:

(1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or

(2) the offenses are the repeated commission of the same or similar offenses.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1987, 70th Leg., ch. 387, Sec. 1, eff. Sept. 1, 1987;

Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 3.02. CONSOLIDATION AND JOINDER OF PROSECUTIONS. (a) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode.

(b) When a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, the state shall file written notice of the action not less than 30 days prior to the trial.

(c) If a judgment of guilt is reversed, set aside, or vacated, and a new trial ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecuting official at the time the first prosecution commenced.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE. (a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which the accused has been found guilty shall be pronounced. Except as otherwise provided by this section, the sentences shall run concurrently.

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

(1) an offense:

(A) under Section 49.07 or 49.08, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with

violations of the same section more than once or is charged with violations of both sections;

(2) an offense:

(A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;

(3) an offense:

(A) under Section 21.15 or 43.26, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of both sections; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

(4) an offense for which the judgment in the case contains an affirmative finding under Article 42.0197, Code of Criminal Procedure;

(5) an offense:

(A) under Section 20A.02, 20A.03, or 43.05, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section;

(6) an offense:

(A) under Section 22.04(a)(1) or (2) or Section 22.04(a-1)(1) or (2) that is punishable as a felony of the first

degree, regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

(B) for which a plea agreement was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A) and punishable as described by that paragraph, regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of more than one section; or

(7) any combination of offenses listed in Subdivisions (1)-(6).

(b-1) Subsection (b)(4) does not apply to a defendant whose case was transferred to the court under Section 54.02, Family Code.

(c) If in a single criminal action the accused is found guilty of more than one offense under Section 22.02 that arises out of the same criminal episode, the sentences run consecutively if each sentence is for a conviction of an assault punishable as a felony of the first degree under Section 22.02(b)(4).

(d)(1) This subsection applies only to a single criminal action in which the accused is found guilty of:

(A) an offense under Section 20.05(a)(2) or an offense under Section 20.06 involving conduct constituting an offense under Section 20.05(a)(2); and

(B) an offense punishable under Section 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or 38.04(b-1) that arises out of the same criminal episode as the offense described by Paragraph (A).

(2) The sentence for an offense described by Subdivision (1)(A) may run consecutively with each sentence for an offense described by Subdivision (1)(B).

(3) If the accused is found guilty of more than one offense described by Subdivision (1)(A), the sentences for those offenses must run concurrently with each other.

(e) Except as otherwise provided by this subsection, if in a single criminal action the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run consecutively if each sentence is for a conviction of an offense for which a plea agreement was reached in a case in which the accused was charged with an offense described by Subsection (d)(1)(A) and an offense described by Subsection (d)(1)(B). If the accused is found

guilty of more than one offense described by Subsection (d)(1)(A), the sentences for those offenses must run concurrently with each other.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 596, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 667, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 527 (H.B. 904), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.47, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1291 (S.B. 6), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 21, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 228 (H.B. 220), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 1.01, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 249 (H.B. 1403), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 467 (H.B. 165), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 1, eff. February 6, 2024.

Sec. 3.04. SEVERANCE. (a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02, the defendant shall have a right to a severance of the offenses.

(b) In the event of severance under this section, the provisions of Section 3.03 do not apply, and the court in its discretion may order the sentences to run either concurrently or consecutively.

(c) The right to severance under this section does not apply to a prosecution for offenses described by Section 3.03(b) or (c) unless

the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which event the judge may order the offenses to be tried separately or may order other relief as justice requires.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 667, Sec. 3, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 527 (H.B. 904), Sec. 2, eff. September 1, 2005.

Acts 2023, 88th Leg., R.S., Ch. 467 (H.B. 165), Sec. 3, eff. September 1, 2023.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Sec. 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION. (a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

(b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.

(c) A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 3, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 3, Sec. 1, eff. Feb. 25, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 6.02. REQUIREMENT OF CULPABILITY. (a) Except as provided in Subsection (b), a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless

required unless the definition plainly dispenses with any mental element.

(c) If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b), intent, knowledge, or recklessness suffices to establish criminal responsibility.

(d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

(1) intentional;

(2) knowing;

(3) reckless;

(4) criminal negligence.

(e) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

(f) An offense defined by municipal ordinance or by order of a county commissioners court may not dispense with the requirement of a culpable mental state if the offense is punishable by a fine exceeding the amount authorized by Section 12.23.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2005, 79th Leg., Ch. 1219 (H.B. 970), Sec. 1, eff. September 1, 2005.

Sec. 6.03. DEFINITIONS OF CULPABLE MENTAL STATES. (a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and

unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 6.04. CAUSATION: CONDUCT AND RESULTS. (a) A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

(b) A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

(1) a different offense was committed; or

(2) a different person or property was injured, harmed, or otherwise affected.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER A. COMPLICITY

Sec. 7.01. PARTIES TO OFFENSES. (a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally

responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER. (a) A person is criminally responsible for an offense committed by the conduct of another if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy. In this subsection, "conspiracy" means an agreement between two or more persons to commit a felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 735 (H.B. 2961), Sec. 1, eff. September 1, 2023.

Sec. 7.03. DEFENSES EXCLUDED. In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

(1) that the actor belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity; or

(2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER B. CORPORATIONS, ASSOCIATIONS, LIMITED LIABILITY COMPANIES, AND OTHER BUSINESS ENTITIES

Sec. 7.21. DEFINITIONS. In this subchapter:

(1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation, an association, a limited liability company, or another business entity.

(1-a) "Business entity" means an entity or organization governed by the Business Organizations Code, other than a corporation, association, or limited liability company.

(2) "High managerial agent" means:

(A) a partner in a partnership;

(B) an officer of a corporation, an association, a limited liability company, or another business entity;

(C) an agent of a corporation, an association, a limited liability company, or another business entity who has duties of such responsibility that the agent's conduct reasonably may be assumed to represent the policy of the corporation, association, limited liability company, or other business entity.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 2, eff. September 1, 2019.

Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. (a) If conduct constituting an offense is performed by an agent acting in behalf of a corporation, an association, a limited liability company, or another business entity and within the scope of the agent's office or employment, the corporation, association, limited liability company, or other business entity is criminally responsible for an offense defined:

(1) in this code where corporations, associations, limited liability companies, and other business entities are made subject thereto;

(2) by law other than this code in which a legislative purpose to impose criminal responsibility on corporations, associations, limited liability companies, and other business entities plainly appears; or

(3) by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations, associations, limited liability companies, or other business entities plainly appears.

(b) A corporation, an association, a limited liability company, or another business entity is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing body acting in behalf of the corporation, association, limited liability company, or other business entity; or

(2) a high managerial agent acting in behalf of the corporation, association, limited liability company, or other business entity and within the scope of the agent's office or employment.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 4, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:
Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 2, eff. September 1, 2019.

Sec. 7.23. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF OF CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. (a) An individual is criminally responsible for conduct that the individual performs in the name of or in behalf of a corporation, an association, a limited liability company, or another business entity to the same extent as if the conduct were performed in the individual's own name or behalf.

(b) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation, an association, a limited liability company, or another business entity is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on the agent.

(c) If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation, an association, a limited liability company, or another business entity, the individual is subject to the sentence authorized by law for an individual convicted of the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 2, eff. September 1, 2019.

Sec. 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION, ASSOCIATION, LIMITED LIABILITY COMPANY, OR OTHER BUSINESS ENTITY. It is an affirmative defense to prosecution of a corporation, an association, a limited liability company, or another business entity under Section 7.22(a)(1) or (a)(2) that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 5, eff. Sept.

1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 2, eff. September 1, 2019.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Sec. 8.01. INSANITY. (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.

(b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1983, 68th Leg., p. 2640, ch. 454, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 8.02. MISTAKE OF FACT. (a) It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

(b) Although an actor's mistake of fact may constitute a defense to the offense charged, he may nevertheless be convicted of any lesser included offense of which he would be guilty if the fact were as he believed.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 8.03. MISTAKE OF LAW. (a) It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.

(b) It is an affirmative defense to prosecution that the actor reasonably believed the conduct charged did not constitute a crime

and that he acted in reasonable reliance upon:

(1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

(c) Although an actor's mistake of law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the law were as he believed.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 8.04. INTOXICATION. (a) Voluntary intoxication does not constitute a defense to the commission of crime.

(b) Evidence of temporary insanity caused by intoxication may be introduced by the actor in mitigation of the penalty attached to the offense for which he is being tried.

(c) When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was caused by intoxication, the court shall charge the jury in accordance with the provisions of this section.

(d) For purposes of this section "intoxication" means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 8.05. DURESS. (a) It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

(b) In a prosecution for an offense that does not constitute a felony, it is an affirmative defense to prosecution that the actor

engaged in the proscribed conduct because he was compelled to do so by force or threat of force.

(c) Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

(d) The defense provided by this section is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

(e) It is no defense that a person acted at the command or persuasion of his spouse, unless he acted under compulsion that would establish a defense under this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 8.06. ENTRAPMENT. (a) It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(b) In this section "law enforcement agent" includes personnel of the state and local law enforcement agencies as well as of the United States and any person acting in accordance with instructions from such agents.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY. (a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter

729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only;

(5) a violation of a penal ordinance of a political subdivision;

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or

(7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

(b) Unless the juvenile court waives jurisdiction under Section 54.02, Family Code, and certifies the individual for criminal prosecution or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except an offense described by Subsections (a)(1)-(5).

(c) No person may, in any case, be punished by death for an offense committed while the person was younger than 18 years.

(d) Notwithstanding Subsection (a), a person may not be prosecuted for or convicted of an offense described by Subsection (a)(4) or (5) that the person committed when younger than 10 years of age.

(e) A person who is at least 10 years of age but younger than 15 years of age is presumed incapable of committing an offense described by Subsection (a)(4) or (5). This presumption may be refuted if the prosecution proves to the court by a preponderance of the evidence that the actor had sufficient capacity to understand that the conduct engaged in was wrong at the time the conduct was engaged in. The prosecution is not required to prove that the actor at the time of engaging in the conduct knew that the act was a criminal offense or knew the legal consequences of the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, Sec. 24, eff. Sept. 1, 1975; Acts 1987, 70th Leg., ch. 1040, Sec. 26, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1245, Sec. 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 169, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 77, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 165, Sec. 30.236, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 822, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1086, Sec. 42, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1297, Sec. 68, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 283, Sec. 52, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 949 (H.B. 1575), Sec. 45, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 311 (H.B. 558), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 17, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 425 (H.B. 1819), Sec. 7, eff. September 1, 2023.

Sec. 8.08. CHILD WITH MENTAL ILLNESS, DISABILITY, OR LACK OF CAPACITY. (a) On motion by the state, the defendant, or a person standing in parental relation to the defendant, or on the court's own motion, a court with jurisdiction of an offense described by Section 8.07(a)(4) or (5) shall determine whether probable cause exists to believe that a child, including a child with a mental illness or developmental disability:

(1) lacks the capacity to understand the proceedings in criminal court or to assist in the child's own defense and is unfit to proceed; or

(2) lacks substantial capacity either to appreciate the wrongfulness of the child's own conduct or to conform the child's conduct to the requirement of the law.

(b) If the court determines that probable cause exists for a finding under Subsection (a), after providing notice to the state, the court may dismiss the complaint.

(c) A dismissal of a complaint under Subsection (b) may be appealed as provided by Article 44.01, Code of Criminal Procedure.

Text of subsection effective until January 1, 2025

(d) In this section, "child" has the meaning assigned by Article 45.058(h), Code of Criminal Procedure.

Text of subsection effective on January 1, 2025

(d) In this section, "child" has the meaning assigned by Article 45A.453(a), Code of Criminal Procedure.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 18, eff. September 1, 2013.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.154, eff. January 1, 2025.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9.01. DEFINITIONS. In this chapter:

(1) "Custody" has the meaning assigned by Section 38.01.

(2) "Escape" has the meaning assigned by Section 38.01.

(3) "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

(4) "Habitation" has the meaning assigned by Section 30.01.

(5) "Vehicle" has the meaning assigned by Section 30.01.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 293, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1 (S.B. 378), Sec. 1, eff. September 1, 2007.

Sec. 9.02. JUSTIFICATION AS A DEFENSE. It is a defense to prosecution that the conduct in question is justified under this chapter.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.03. CONFINEMENT AS JUSTIFIABLE FORCE. Confinement is justified when force is justified by this chapter if the actor takes reasonable measures to terminate the confinement as soon as he knows he safely can unless the person confined has been arrested for an offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.04. THREATS AS JUSTIFIABLE FORCE. The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.05. RECKLESS INJURY OF INNOCENT THIRD PERSON. Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.06. CIVIL REMEDIES UNAFFECTED. The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER B. JUSTIFICATION GENERALLY

Sec. 9.21. PUBLIC DUTY. (a) Except as qualified by Subsections (b) and (c), conduct is justified if the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C), to protect property (Subchapter D), for law enforcement (Subchapter E), or by virtue of a special relationship (Subchapter F).

(c) The use of deadly force is not justified under this section unless the actor reasonably believes the deadly force is specifically required by statute or unless it occurs in the lawful conduct of war. If deadly force is so justified, there is no duty to retreat before using it.

(d) The justification afforded by this section is available if the actor reasonably believes:

(1) the court or governmental tribunal has jurisdiction or the process is lawful, even though the court or governmental tribunal lacks jurisdiction or the process is unlawful; or

(2) his conduct is required or authorized to assist a public servant in the performance of his official duty, even though the servant exceeds his lawful authority.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.22. NECESSITY. Conduct is justified if:

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER C. PROTECTION OF PERSONS

Sec. 9.31. SELF-DEFENSE. (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace

officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:

(A) carrying a weapon in violation of Section 46.02; or

(B) possessing or transporting a weapon in violation of Section 46.05.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34.

(e) A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.

(f) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 190, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1 (S.B. 378), Sec. 2, eff. September 1, 2007.

Sec. 9.32. DEADLY FORCE IN DEFENSE OF PERSON. (a) A person is justified in using deadly force against another:

(1) if the actor would be justified in using force against the other under Section 9.31; and

(2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:

(A) to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in

criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.

(d) For purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5316, ch. 977, Sec. 5, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 235, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1 (S.B. 378), Sec. 3, eff. September 1, 2007.

Sec. 9.33. DEFENSE OF THIRD PERSON. A person is justified in using force or deadly force against another to protect a third person if:

(1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.34. PROTECTION OF LIFE OR HEALTH. (a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

(b) A person is justified in using both force and deadly force against another when and to the degree he reasonably believes the force or deadly force is immediately necessary to preserve the

other's life in an emergency.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.35. CERTAIN MEDICAL TREATMENT PROVIDED TO PREGNANT WOMAN. A physician or health care provider is justified in exercising reasonable medical judgment in providing medical treatment to a pregnant woman as described by Section 74.552, Civil Practice and Remedies Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 913 (H.B. 3058), Sec. 3, eff. September 1, 2023.

SUBCHAPTER D. PROTECTION OF PROPERTY

Sec. 9.41. PROTECTION OF ONE'S OWN PROPERTY. (a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b) A person unlawfully dispossessed of land or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2) the other accomplished the dispossession by using force, threat, or fraud against the actor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.42. DEADLY FORCE TO PROTECT PROPERTY. A person is

justified in using deadly force against another to protect land or tangible, movable property:

(1) if he would be justified in using force against the other under Section 9.41; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and

(3) he reasonably believes that:

(A) the land or property cannot be protected or recovered by any other means; or

(B) the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.43. PROTECTION OF THIRD PERSON'S PROPERTY. A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 in using force or deadly force to protect his own land or property and:

(1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or

(2) the actor reasonably believes that:

(A) the third person has requested his protection of the land or property;

(B) he has a legal duty to protect the third person's land or property; or

(C) the third person whose land or property he uses force or deadly force to protect is the actor's spouse, parent, or

child, resides with the actor, or is under the actor's care.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.44. USE OF DEVICE TO PROTECT PROPERTY. The justification afforded by Sections 9.41 and 9.43 applies to the use of a device to protect land or tangible, movable property if:

(1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 6, eff. Sept. 1, 1975. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER E. LAW ENFORCEMENT

Sec. 9.51. ARREST AND SEARCH. (a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately

necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) and:

(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d).

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.52. PREVENTION OF ESCAPE FROM CUSTODY. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a correctional facility or a peace officer is justified in using any force, including deadly force, that he reasonably believes to be immediately necessary to prevent the escape of a person from the correctional facility.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.53. MAINTAINING SECURITY IN CORRECTIONAL FACILITY. An officer or employee of a correctional facility is justified in using force against a person in custody when and to the degree the officer or employee reasonably believes the force is necessary to maintain the security of the correctional facility, the safety or security of other persons in custody or employed by the correctional facility, or his own safety or security.

Added by Acts 1987, 70th Leg., ch. 512, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Text of section effective until January 1, 2025

Sec. 9.54. LIMITATION ON USE OF FORCE BY DRONE. (a) In this section:

(1) "Autonomous drone" means a drone that operates autonomously through computer software or other programming.

(2) "Drone" and "law enforcement agency" have the meanings assigned by Article 2.33, Code of Criminal Procedure.

(b) Notwithstanding any other law, the use of force, including deadly force, involving a drone is justified under this subchapter

only if:

(1) at the time the use of force occurred, the actor was employed by a law enforcement agency;

(2) the use of force:

(A) would have been justified under another provision of this subchapter; and

(B) did not involve the use of deadly force by means of an autonomous drone; and

(3) before the use of force occurred, the law enforcement agency employing the actor adopted and submitted to the Texas Commission on Law Enforcement a policy on the agency's use of force by means of a drone, as required by Article 2.33, Code of Criminal Procedure, and the use of force conformed to the requirements of that policy.

Added by Acts 2021, 87th Leg., R.S., Ch. 1011 (H.B. 1758), Sec. 2, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.155, eff. January 1, 2025.

Text of section effective on January 1, 2025

Sec. 9.54. LIMITATION ON USE OF FORCE BY DRONE. (a) In this section:

(1) "Autonomous drone" means a drone that operates autonomously through computer software or other programming.

(2) "Drone" and "law enforcement agency" have the meanings assigned by Article 2B.0253, Code of Criminal Procedure.

(b) Notwithstanding any other law, the use of force, including deadly force, involving a drone is justified under this subchapter only if:

(1) at the time the use of force occurred, the actor was employed by a law enforcement agency;

(2) the use of force:

(A) would have been justified under another provision of this subchapter; and

(B) did not involve the use of deadly force by means of an autonomous drone; and

(3) before the use of force occurred, the law enforcement

agency employing the actor adopted and submitted to the Texas Commission on Law Enforcement a policy on the agency's use of force by means of a drone, as required by Article 2B.0253, Code of Criminal Procedure, and the use of force conformed to the requirements of that policy.

Added by Acts 2021, 87th Leg., R.S., Ch. 1011 (H.B. 1758), Sec. 2, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.155, eff. January 1, 2025.

SUBCHAPTER F. SPECIAL RELATIONSHIPS

Sec. 9.61. PARENT-CHILD. (a) The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or stepparent or is acting in loco parentis to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "in loco parentis" includes grandparent and guardian, any person acting by, through, or under the direction of a court with jurisdiction over the child, and anyone who has express or implied consent of the parent or parents.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 9.62. EDUCATOR-STUDENT. The use of force, but not deadly force, against a person is justified:

(1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and

(2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

Sec. 9.63. GUARDIAN-INCOMPETENT. The use of force, but not deadly force, against a mental incompetent is justified:

(1) if the actor is the incompetent's guardian or someone similarly responsible for the general care and supervision of the incompetent; and

(2) when and to the degree the actor reasonably believes the force is necessary:

(A) to safeguard and promote the incompetent's welfare; or

(B) if the incompetent is in an institution for his care and custody, to maintain discipline in the institution.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

TITLE 3. PUNISHMENTS
CHAPTER 12. PUNISHMENTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.01. PUNISHMENT IN ACCORDANCE WITH CODE. (a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure.

(b) Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter.

(c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.02. CLASSIFICATION OF OFFENSES. Offenses are

designated as felonies or misdemeanors.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.03. CLASSIFICATION OF MISDEMEANORS. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

(1) Class A misdemeanors;

(2) Class B misdemeanors;

(3) Class C misdemeanors.

(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Felonies are classified according to the relative seriousness of the offense into five categories:

(1) capital felonies;

(2) felonies of the first degree;

(3) felonies of the second degree;

(4) felonies of the third degree; and

(5) state jail felonies.

(b) An offense designated a felony in this code without specification as to category is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1125, ch. 426, art. 2, Sec. 3, eff. Jan. 1, 1974; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

Sec. 12.21. CLASS A MISDEMEANOR. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(1) a fine not to exceed $4,000;

(2) confinement in jail for a term not to exceed one year; or

(3) both such fine and confinement.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.22. CLASS B MISDEMEANOR. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

(1) a fine not to exceed $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and confinement.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.23. CLASS C MISDEMEANOR. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed $500.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for:

(1) life, if the individual committed the offense when younger than 18 years of age; or

(2) life without parole, if the individual committed the offense when 18 years of age or older.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment without parole or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that:

(1) a sentence of life imprisonment is mandatory on conviction of the capital felony, if the individual committed the offense when younger than 18 years of age; or

(2) a sentence of life imprisonment without parole is mandatory on conviction of the capital felony, if the individual committed the offense when 18 years of age or older.

Added by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 652, Sec. 12, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 838, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 787 (S.B. 60), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.145, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 765 (S.B. 839), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., 2nd C.S., Ch. 2, Sec. 1, eff. July 22, 2013.

Sec. 12.32. FIRST DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed $10,000.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 12.31 by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1058, ch. 488, Sec. 1, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.146, eff. September 1, 2009.

Sec. 12.33. SECOND DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed $10,000.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 12.32 by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.147, eff. September 1, 2009.

Sec. 12.34. THIRD DEGREE FELONY PUNISHMENT. (a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed $10,000.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 12.33 by Acts 1973, 63rd Leg., p. 1124, ch. 426, art. 2, Sec. 2, eff. Jan. 1,1974. Amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.01, eff. Sept. 1, 1989; Acts 1990, 71st Leg., 6th C.S., ch. 25, Sec. 7, eff. June 18, 1990; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.148, eff. September 1, 2009.

Sec. 12.35. STATE JAIL FELONY PUNISHMENT. (a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days.

(b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed $10,000.

(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:

(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) under Section 21.02 or listed in Article 42A.054(a), Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.48, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.81, eff. January 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 17.001, eff. September 1, 2023.

SUBCHAPTER D. EXCEPTIONAL SENTENCES

Sec. 12.41. CLASSIFICATION OF OFFENSES OUTSIDE THIS CODE. For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

(1) "felony of the third degree" if imprisonment in the Texas Department of Criminal Justice or another penitentiary is affixed to the offense as a possible punishment;

(2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;

(3) "Class C misdemeanor" if the offense is punishable by fine only.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.149, eff. September 1, 2009.

Sec. 12.42. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS ON TRIAL FOR FIRST, SECOND, OR THIRD DEGREE FELONY. (a) Except as provided by Subsection (c)(2), if it is shown on the trial of a felony of the third degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.

(b) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony of the second degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the first degree.

(c)(1) If it is shown on the trial of a felony of the first degree that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 15 years. In

addition to imprisonment, an individual may be punished by a fine not to exceed $10,000.

(2) Notwithstanding Subdivision (1), a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life if:

(A) the defendant is convicted of an offense:

(i) under Section 20A.02(a)(7) or (8), 21.11(a)(1), 22.021, or 22.011, Penal Code;

(ii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(iii) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (i) or (ii) or a felony under Section 21.11, Penal Code; and

(B) the defendant has been previously convicted of an offense:

(i) under Section 43.25 or 43.26, Penal Code, or an offense under Section 43.23, Penal Code, punishable under Subsection (h) of that section;

(ii) under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code;

(iii) under Section 20.04(a)(4), Penal Code, if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(iv) under Section 30.02, Penal Code, punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (ii) or (iii); or

(v) under the laws of another state containing elements that are substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

(3) Notwithstanding Subdivision (1) or (2), a defendant shall be punished for a capital felony if it is shown on the trial of an offense under Section 22.021 otherwise punishable under Subsection (f) of that section that the defendant has previously been finally convicted of:

(A) an offense under Section 22.021 that was committed against a victim described by Section 22.021(f)(1) or was committed against a victim described by Section 22.021(f)(2) and in a manner

described by Section 22.021(a)(2)(A); or

(B) an offense that was committed under the laws of another state that:

(i) contains elements that are substantially similar to the elements of an offense under Section 22.021; and

(ii) was committed against a victim described by Section 22.021(f)(1) or was committed against a victim described by Section 22.021(f)(2) and in a manner substantially similar to a manner described by Section 22.021(a)(2)(A).

(4) Notwithstanding Subdivision (1) or (2), and except as provided by Subdivision (3) for the trial of an offense under Section 22.021 as described by that subdivision, a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if it is shown on the trial of an offense under Section 20A.03 or of a sexually violent offense, committed by the defendant on or after the defendant's 18th birthday, that the defendant has previously been finally convicted of:

(A) an offense under Section 20A.03 or of a sexually violent offense; or

(B) an offense that was committed under the laws of another state and that contains elements that are substantially similar to the elements of an offense under Section 20A.03 or of a sexually violent offense.

(5) A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under Subdivision (2).

(d) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction for a state jail felony punishable under Section 12.35(a) may not be used for enhancement purposes under this subsection.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 834, Sec. 6, eff. September 1, 2011.

(f) For the purposes of Subsections (a), (b), and (c)(1), an

adjudication by a juvenile court under Section 54.03, Family Code, that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas Juvenile Justice Department under Section 54.04(d)(2), (d)(3), or (m), Family Code, or Section 54.05(f), Family Code, or to a post-adjudication secure correctional facility under Section 54.04011, Family Code, is a final felony conviction.

(g) For the purposes of Subsection (c)(2):

(1) a defendant has been previously convicted of an offense listed under Subsection (c)(2)(B) if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (c)(2)(B) is a conviction of an offense listed under Subsection (c)(2)(B).

(h) In this section, "sexually violent offense" means an offense:

(1) described by Article 62.001(6), Code of Criminal Procedure; and

(2) for which an affirmative finding has been entered under Article 42.015(b) or 42A.105(a), Code of Criminal Procedure, for an offense other than an offense under Section 21.02 or 22.021.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 1750, ch. 339, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 582, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 250, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 262, Sec. 78, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 318, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 665, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 667, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.01, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 283, Sec. 53, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1005, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 340 (S.B. 75), Sec. 4, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.15, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.150, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.02, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1119 (H.B. 3), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1119 (H.B. 3), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 16.003, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 663 (H.B. 1302), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 663 (H.B. 1302), Sec. 8, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 663 (H.B. 1302), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1323 (S.B. 511), Sec. 11, eff. December 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.82, eff. January 1, 2017.

Sec. 12.425. PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS ON TRIAL FOR STATE JAIL FELONY. (a) If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two state jail felonies punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the third degree.

(b) If it is shown on the trial of a state jail felony punishable under Section 12.35(a) that the defendant has previously been finally convicted of two felonies other than a state jail felony punishable under Section 12.35(a), and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished for a felony of the second degree.

(c) If it is shown on the trial of a state jail felony for which punishment may be enhanced under Section 12.35(c) that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under Section 12.35(a), on conviction the defendant shall be punished for a felony of the second degree.

Added by Acts 2011, 82nd Leg., R.S., Ch. 834 (H.B. 3384), Sec. 5, eff. September 1, 2011.

Sec. 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS. (a) If it is shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by:

(1) a fine not to exceed $4,000;

(2) confinement in jail for any term of not more than one year or less than 90 days; or

(3) both such fine and confinement.

(b) If it is shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B

misdemeanor or any degree of felony, on conviction he shall be punished by:

(1) a fine not to exceed $2,000;

(2) confinement in jail for any term of not more than 180 days or less than 30 days; or

(3) both such fine and confinement.

(c) If it is shown on the trial of an offense punishable as a Class C misdemeanor under Section 42.01 or 49.02 that the defendant has been before convicted under either of those sections three times or three times for any combination of those offenses and each prior offense was committed in the 24 months preceding the date of commission of the instant offense, the defendant shall be punished by:

(1) a fine not to exceed $2,000;

(2) confinement in jail for a term not to exceed 180 days; or

(3) both such fine and confinement.

(d) If the punishment scheme for an offense contains a specific enhancement provision increasing punishment for a defendant who has previously been convicted of the offense, the specific enhancement provision controls over this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 564, Sec. 1, eff. Sept. 1, 1999.

Sec. 12.44. REDUCTION OF STATE JAIL FELONY PUNISHMENT TO MISDEMEANOR PUNISHMENT. (a) A court may punish a defendant who is convicted of a state jail felony by imposing the confinement permissible as punishment for a Class A misdemeanor if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such punishment would best serve the ends of justice.

(b) At the request of the prosecuting attorney, the court may authorize the prosecuting attorney to prosecute a state jail felony as a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.02, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 3, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 1276 (H.B. 2296), Sec. 1, eff. September 1, 2005.

Sec. 12.45. ADMISSION OF UNADJUDICATED OFFENSE. (a) A person may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty.

(b) Before a court may take into account an admitted offense over which exclusive venue lies in another county or district, the court must obtain permission from the prosecuting attorney with jurisdiction over the offense.

(c) If a court lawfully takes into account an admitted offense, prosecution is barred for that offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1983, 68th Leg., p. 4131, ch. 649, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.46. USE OF PRIOR CONVICTIONS. The use of a conviction for enhancement purposes shall not preclude the subsequent use of such conviction for enhancement purposes.

Added by Acts 1979, 66th Leg., p. 1027, ch. 459, Sec. 1, eff. June 7, 1979. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 12.47. PENALTY IF OFFENSE COMMITTED BECAUSE OF BIAS OR PREJUDICE. (a) If an affirmative finding under Article 42.014, Code of Criminal Procedure, is made in the trial of an offense other than a first degree felony or a Class A misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next

highest category of offense. If the offense is a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days. This section does not apply to the trial of an offense of injury to a disabled individual under Section 22.04, if the affirmative finding in the case under Article 42.014, Code of Criminal Procedure, shows that the defendant intentionally selected the victim because the victim was disabled.

(b) The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense committed because of bias or prejudice. The attorney general shall designate one individual in the division of the attorney general's office that assists in the prosecution of criminal cases to coordinate responses to requests made under this subsection.

Added by Acts 1993, 73rd Leg., ch. 987, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 751, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 85, Sec. 1.01, eff. Sept. 1, 2001.

Sec. 12.48. CERTAIN OFFENSES RESULTING IN LOSS TO NURSING AND CONVALESCENT HOMES. If it is shown on the trial of an offense under Chapter 31 or 32 that, as a result of a loss incurred because of the conduct charged, a trustee was appointed and emergency assistance funds, other than funds used to pay the expenses of the trustee, were used for a nursing or convalescent home under Subchapter D, Chapter 242, Health and Safety Code, the punishment for the offense is increased to the punishment prescribed for the next higher category of offense except that a felony of the first degree is punished as a felony of the first degree.

Added by Acts 1999, 76th Leg., ch. 439, Sec. 4, eff. Sept. 1, 1999.

Sec. 12.49. PENALTY IF CONTROLLED SUBSTANCE USED TO COMMIT OFFENSE. If the court makes an affirmative finding under Article 42.012, Code of Criminal Procedure, in the punishment phase of the trial of an offense under Chapter 29, Chapter 31, or Title 5, other than a first degree felony or a Class A misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next highest category of offense. If the offense is a Class A

misdemeanor, the minimum term of confinement for the offense is increased to 180 days.

Added by Acts 1999, 76th Leg., ch. 417, Sec. 2(a), eff. Sept. 1, 1999. Renumbered from Penal Code Sec. 12.48 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(93), 21.002(15), eff. Sept. 1, 2001.

Sec. 12.50. PENALTY IF OFFENSE COMMITTED IN DISASTER AREA OR EVACUATED AREA. (a) Subject to Subsections (c) and (d), the punishment for an offense described by Subsection (b) is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that the offense was committed in an area that was, at the time of the offense:

(1) subject to a declaration of a state of disaster made by:

(A) the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.);

(B) the governor under Section 418.014, Government Code; or

(C) the presiding officer of the governing body of a political subdivision under Section 418.108, Government Code; or

(2) subject to an emergency evacuation order.

(b) The increase in punishment authorized by this section applies only to an offense under:

(1) Section 20.05;

(2) Section 20.06;

(3) Section 20.07;

(4) Section 22.01;

(5) Section 28.02;

(6) Section 29.02;

(7) Section 30.02;

(8) Section 30.03;

(9) Section 30.04;

(10) Section 30.05; and

(11) Section 31.03.

(c) If an offense listed under Subsection (b) is punishable as a Class A misdemeanor, the minimum term of confinement for the

offense is increased to 180 days. Except as provided by Subsection (d), if an offense listed under Subsection (b) is punishable as a felony of the first degree, the punishment for that offense may not be increased under this section.

(d) Except as otherwise provided by this subsection, the minimum term of imprisonment for an offense listed under Subsection (b)(1), (2), or (3) for which punishment is increased under this section is 10 years. If an offense listed under Subsection (b)(1) or (2) is punishable as a felony of the first degree, the minimum term of imprisonment is increased to 15 years unless another provision of law applicable to the offense provides for a minimum term of imprisonment of 15 years or more.

(e) For purposes of this section, "emergency evacuation order" means an official statement issued by the governing body of this state or a political subdivision of this state to recommend or require the evacuation of all or part of the population of an area stricken or threatened with a disaster.

Added by Acts 2009, 81st Leg., R.S., Ch. 731 (S.B. 359), Sec. 1, eff. September 1, 2009.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 418 (S.B. 201), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 418 (S.B. 201), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1058 (H.B. 1028), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1058 (H.B. 1028), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 16.001, eff. September 1, 2021.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 2, eff. February 6, 2024.

Sec. 12.501. PENALTY FOR CERTAIN OFFENSES COMMITTED IN RETALIATION FOR OR ON ACCOUNT OF PERSON'S SERVICE OR STATUS AS PUBLIC SERVANT. (a) In this section, "public servant" has the meaning assigned by Section 36.06.

(b) Subject to Subsection (d), the punishment for an offense

described by Subsection (c) is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that:

(1) the offense:

(A) was committed against a person the actor knows is a public servant or a member of a public servant's family or household; or

(B) involves property that the actor knows belongs to, is under the control of, or is lawfully possessed by a public servant; and

(2) the offense was committed in retaliation for or on account of the service or status of the person as a public servant.

(c) The increase in punishment authorized by this section applies only to:

(1) an offense under Section 21.16, 21.18, 21.19, 22.011, 28.02, 28.03, 30.05, 33.02, 42.07, or 42.072; or

(2) an offense under Section 32.51, other than an offense punishable under Subsection (c-1) of that section.

(d) If an offense described by Subsection (c) is punishable as a Class A misdemeanor, the minimum term of confinement for the offense is increased to 180 days. If an offense described by Subsection (c) is punishable as a felony of the first degree, the punishment for that offense may not be increased under this section.

(e) For purposes of this section, "member of a public servant's family" means a person related to the public servant within the second degree of consanguinity.

Added by Acts 2021, 87th Leg., R.S., Ch. 791 (H.B. 624), Sec. 1, eff. September 1, 2021.

Sec. 12.502. PENALTY IF OFFENSE COMMITTED ON PREMISES OF POSTSECONDARY EDUCATIONAL INSTITUTION. (a) In this section:

(1) "Postsecondary educational institution" means:

(A) an institution of higher education or a private or independent institution of higher education as defined by Section 61.003, Education Code; or

(B) a career school or college as defined by Section 132.001, Education Code.

(2) "Premises" means real property and all buildings and

appurtenances pertaining to the real property.

(b) Except as provided by Subsection (c), if it is shown on the trial of an offense under Section 21.07, 21.08, 21.15, or 21.17 that the offense was committed in a location that was on the premises of a postsecondary educational institution, the category of punishment for the offense is increased to a higher category of offense as follows:

(1) a Class C misdemeanor is increased to a Class B misdemeanor;

(2) a Class B misdemeanor is increased to a Class A misdemeanor;

(3) a Class A misdemeanor is increased to a state jail felony; and

(4) a state jail felony is increased to a felony of the third degree.

(c) For an offense otherwise punishable under Subsection (b), if it is shown on the trial of the offense that the person has been previously convicted twice of an offense under Section 21.07, 21.08, 21.15, or 21.17 for which the punishment was increased under Subsection (b), the category of punishment for the offense is increased to a higher category of offense as follows:

(1) a Class C misdemeanor is increased to a Class A misdemeanor;

(2) a Class B misdemeanor is increased to a state jail felony;

(3) a Class A misdemeanor is increased to a felony of the third degree; and

(4) a state jail felony is increased to a felony of the second degree.

(d) If the punishment scheme for an offense under Section 21.07, 21.08, 21.15, or 21.17 contains a specific enhancement provision increasing punishment to a higher minimum term of punishment than the minimum term required by the applicable higher category of offense prescribed by Subsection (b) or (c), the specific enhancement provision controls over this section.

(e) A previous conviction may be used for purposes of enhancement under this section or under another provision of Subchapter D, Chapter 12, but not under both this section and the other provision.

Added by Acts 2023, 88th Leg., R.S., Ch. 451 (H.B. 3553), Sec. 1, eff.

September 1, 2023.

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

Sec. 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATIONS, ASSOCIATIONS, LIMITED LIABILITY COMPANIES, AND OTHER BUSINESS ENTITIES. (a) If a corporation, an association, a limited liability company, or another business entity is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation, association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation, an association, a limited liability company, or another business entity is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation, association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed:

(1) $20,000 if the offense is a felony of any category;

(2) $10,000 if the offense is a Class A or Class B misdemeanor;

(3) $2,000 if the offense is a Class C misdemeanor; or

(4) $50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

(c) In lieu of the fines authorized by Subsections (a), (b)(1), (b)(2), and (b)(4), if a court finds that the corporation, association, limited liability company, or other business entity gained money or property or caused personal injury or death, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation, association, limited liability company, or other business entity to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation, association, limited liability company, or business entity to be lost or damaged, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation, an association, a limited liability company, or another business entity that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction

to any person the court deems appropriate.

(e) On conviction of a corporation, an association, a limited liability company, or another business entity, the court shall notify the attorney general of that fact.

(f) In this section, "business entity" has the meaning assigned by Section 7.21.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 1917, ch. 768, Sec. 1, eff. June 16, 1977; Acts 1987, 70th Leg., ch. 1085, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 3, eff. September 1, 2019.

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

Sec. 15.01. CRIMINAL ATTEMPT. (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a state jail felony, the offense is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 478, ch. 203, Sec. 4, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 15.02. CRIMINAL CONSPIRACY. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense;

and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

(1) one or more of the coconspirators is not criminally responsible for the object offense;

(2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony, the offense is a Class A misdemeanor. This subsection does not apply to an offense under Section 76.02.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 935 (S.B. 1518), Sec. 4, eff. September 1, 2023.

Sec. 15.03. CRIMINAL SOLICITATION. (a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless

the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the person solicited is not criminally responsible for the felony solicited;

(2) the person solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the felony solicited is legally incapable of committing the offense in an individual capacity; or

(4) the felony solicited was actually committed.

(d) An offense under this section is:

(1) a felony of the first degree if the offense solicited is a capital offense; or

(2) a felony of the second degree if the offense solicited is a felony of the first degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 462, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 15.031. CRIMINAL SOLICITATION OF A MINOR. (a) A person commits an offense if, with intent that an offense listed by Article 42A.054(a), Code of Criminal Procedure, be committed, the person requests, commands, or attempts to induce a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense listed by Article 42A.054(a) or make the minor a party to the commission of an offense listed by Article 42A.054(a).

(b) A person commits an offense if, with intent that an offense under Section 20A.02(a)(7) or (8), 21.02, 21.11, 22.011, 22.021, 43.02, 43.021, 43.05(a)(2), or 43.25 be committed, the person by any means requests, commands, or attempts to induce a minor or another whom the person believes to be a minor to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would constitute an offense under one of

those sections or would make the minor or other believed by the person to be a minor a party to the commission of an offense under one of those sections.

(c) A person may not be convicted under this section on the uncorroborated testimony of the minor allegedly solicited unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the minor act on the solicitation.

(d) It is no defense to prosecution under this section that:

(1) the minor solicited is not criminally responsible for the offense solicited;

(2) the minor solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the offense solicited is legally incapable of committing the offense in an individual capacity; or

(4) the offense solicited was actually committed.

(e) An offense under this section is one category lower than the solicited offense, except that an offense under this section is the same category as the solicited offense if it is shown on the trial of the offense that the actor:

(1) was at the time of the offense 17 years of age or older and a member of a criminal street gang, as defined by Section 71.01; and

(2) committed the offense with the intent to:

(A) further the criminal activities of the criminal street gang; or

(B) avoid detection as a member of a criminal street gang.

(f) In this section, "minor" means an individual younger than 17 years of age.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 79, eff. Jan. 1, 1996.
Amended by Acts 1999, 76th Leg., ch. 1415, Sec. 22(a), eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.49, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.03, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.83, eff. January 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 51, eff. September 1, 2021.

Sec. 15.032. CHILD GROOMING. (a) A person commits an offense if, with the intent that an offense under Chapter 43 or an offense involving sexual activity, the occurrence of which would subject the actor to criminal liability under Chapter 20A, 21, or 22, be committed, the person knowingly persuades, induces, entices, or coerces, or attempts to persuade, induce, entice, or coerce, a child younger than 18 years of age to engage in specific conduct that, under the circumstances surrounding the actor's conduct as the actor believes them to be, would:

(1) constitute an offense under Chapter 43 or an offense involving sexual activity the occurrence of which would subject the actor to criminal liability under Chapter 20A, 21, or 22; or

(2) make the child a party to the commission of an offense described by Subdivision (1).

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under:

(1) Chapter 20A, if the offense involved conduct described by Section 20A.02(a)(7) or (8);

(2) Section 21.02;

(3) Section 21.11;

(4) Section 22.011, if the victim of the offense was a child under 18 years of age; or

(5) Section 22.021, if the victim of the offense was a child under 18 years of age.

(c) It is an affirmative defense to prosecution under this section that the actor is under the age of 18 and:

(1) the actor engaged in conduct described by Subsection (a) with respect to another child under the age of 18:

(A) who is not more than three years older or younger

than the actor and with whom the actor had a dating relationship at the time of the offense; or

(B) who was the spouse of the actor at the time of the offense; and

(2) the conduct occurred only between the actor and the other child described by Subdivision (1).

(d) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section but not both sections.

Added by Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 6.01, eff. September 1, 2023.

Sec. 15.04. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 15.01 that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor avoided commission of the offense attempted by abandoning his criminal conduct or, if abandonment was insufficient to avoid commission of the offense, by taking further affirmative action that prevented the commission.

(b) It is an affirmative defense to prosecution under Section 15.02 or 15.03 that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor countermanded his solicitation or withdrew from the conspiracy before commission of the object offense and took further affirmative action that prevented the commission of the object offense.

(c) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(d) Evidence that the defendant renounced his criminal objective by abandoning his criminal conduct, countermanding his solicitation, or withdrawing from the conspiracy before the criminal offense was committed and made substantial effort to prevent the

commission of the object offense shall be admissible as mitigation at the hearing on punishment if he has been found guilty of criminal attempt, criminal solicitation, or criminal conspiracy; and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided for the offense committed.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 15.05. NO OFFENSE. Attempt or conspiracy to commit, or solicitation of, a preparatory offense defined in this chapter is not an offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

CHAPTER 16. CRIMINAL INSTRUMENTS, INTERCEPTION OF WIRE OR ORAL COMMUNICATION, AND INSTALLATION OF TRACKING DEVICE

Sec. 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT OR MECHANICAL SECURITY DEVICE. (a) A person commits an offense if:

(1) the person possesses a criminal instrument or mechanical security device with the intent to use the instrument or device in the commission of an offense; or

(2) with knowledge of its character and with the intent to use a criminal instrument or mechanical security device or aid or permit another to use the instrument or device in the commission of an offense, the person manufactures, adapts, sells, installs, or sets up the instrument or device.

(b) For the purpose of this section:

(1) "Criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specially designed, made, or adapted for use in the commission of an offense.

(2) "Mechanical security device" means a device designed or manufactured for use by a locksmith to perform services for a customer who seeks entry to a structure, motor vehicle, or other

property.

(c) An offense under Subsection (a)(1) is one category lower than the offense intended. An offense under Subsection (a)(2) is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1975, 64th Leg., p. 913, ch. 342, Sec. 7, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 814 (H.B. 2577), Sec. 1, eff. September 1, 2011.

Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. (a) In this section:

(1) "Communication common carrier," "computer trespasser," "contents," "covert entry," "electronic communication," "intercept," "interception device," "investigative or law enforcement officer," "oral communication," "protected computer," and "wire communication" have the meanings assigned by Article 18A.001, Code of Criminal Procedure.

(2) "Immediate life-threatening situation" and "member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" have the meanings assigned by Article 18A.201, Code of Criminal Procedure.

(3) "Readily accessible to the general public" means, with respect to a radio communication, a communication that is not:

(A) scrambled or encrypted;

(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;

(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication;

(E) transmitted on frequencies allocated under Part 25, Subpart D, E, or F of Part 74, or Part 94 of the rules of the Federal Communications Commission, unless, in the case of a communication

transmitted on a frequency allocated under Part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio; or

(F) an electronic communication.

(b) A person commits an offense if the person:

(1) intentionally intercepts, endeavors to intercept, or procures another person to intercept or endeavor to intercept a wire, oral, or electronic communication;

(2) intentionally discloses or endeavors to disclose to another person the contents of a wire, oral, or electronic communication if the person knows or has reason to know the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(3) intentionally uses or endeavors to use the contents of a wire, oral, or electronic communication if the person knows or is reckless about whether the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire, oral, or electronic communications without court order or authorization; or

(5) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any interception device to intercept any oral communication when the device:

(A) is affixed to, or otherwise transmits a signal through a wire, cable, or other connection used in wire communications; or

(B) transmits communications by radio or interferes with the transmission of communications by radio.

(c) It is an affirmative defense to prosecution under Subsection (b) that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire or electronic communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than

mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this section to intercept a wire, oral, or electronic communication;

(3) a person acting under color of law intercepts:

(A) a wire, oral, or electronic communication, if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception;

(B) a wire, oral, or electronic communication, if the person is acting under the authority of Chapter 18A, Code of Criminal Procedure; or

(C) a wire or electronic communication made by a computer trespasser and transmitted to, through, or from a protected computer, if:

(i) the interception did not acquire a communication other than one transmitted to or from the computer trespasser;

(ii) the owner of the protected computer consented to the interception of the computer trespasser's communications on the protected computer; and

(iii) the actor was lawfully engaged in an ongoing criminal investigation and the actor had reasonable suspicion to believe that the contents of the computer trespasser's communications likely to be obtained would be material to the investigation;

(4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if:

(A) the person is a party to the communication; or

(B) one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act;

(5) a person acting under color of law intercepts a wire, oral, or electronic communication if:

(A) oral or written consent for the interception is given by a magistrate before the interception;

(B) an immediate life-threatening situation exists;

(C) the person is a member of a law enforcement unit specially trained to:

(i) respond to and deal with life-threatening

situations; or

(ii) install interception devices; and

(D) the interception ceases immediately on termination of the life-threatening situation;

(6) an officer, employee, or agent of the Federal Communications Commission intercepts a communication transmitted by radio or discloses or uses an intercepted communication in the normal course of employment and in the discharge of the monitoring responsibilities exercised by the Federal Communications Commission in the enforcement of Chapter 5, Title 47, United States Code;

(7) a person intercepts or obtains access to an electronic communication that was made through an electronic communication system that is configured to permit the communication to be readily accessible to the general public;

(8) a person intercepts radio communication, other than a cordless telephone communication that is transmitted between a cordless telephone handset and a base unit, that is transmitted:

(A) by a station for the use of the general public;

(B) to ships, aircraft, vehicles, or persons in distress;

(C) by a governmental, law enforcement, civil defense, private land mobile, or public safety communications system that is readily accessible to the general public, unless the radio communication is transmitted by a law enforcement representative to or from a mobile data terminal;

(D) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(E) by a marine or aeronautical communications system;

(9) a person intercepts a wire or electronic communication the transmission of which causes harmful interference to a lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference;

(10) a user of the same frequency intercepts a radio communication made through a system that uses frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted; or

(11) a provider of an electronic communications service records the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another

provider furnishing service towards the completion of the communication, or a user of that service from fraudulent, unlawful, or abusive use of the service.

(d) A person commits an offense if the person:

(1) intentionally manufactures, assembles, possesses, or sells an interception device knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications and that the device or a component of the device has been or will be used for an unlawful purpose; or

(2) places in a newspaper, magazine, handbill, or other publication an advertisement of an interception device:

(A) knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications;

(B) promoting the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications; or

(C) knowing or having reason to know that the advertisement will promote the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications.

(e) It is an affirmative defense to prosecution under Subsection (d) that the manufacture, assembly, possession, or sale of an interception device that is designed primarily for the purpose of nonconsensual interception of wire, electronic, or oral communication is by:

(1) a communication common carrier or a provider of wire or electronic communications service or an officer, agent, or employee of or a person under contract with a communication common carrier or service provider acting in the normal course of the provider's or carrier's business;

(2) an officer, agent, or employee of a person under contract with, bidding on contracts with, or doing business with the United States or this state acting in the normal course of the activities of the United States or this state;

(3) a member of the Department of Public Safety who is specifically trained to install wire, oral, or electronic communications intercept equipment; or

(4) a member of a local law enforcement agency that has an

established unit specifically designated to respond to and deal with life-threatening situations.

(e-1) It is a defense to prosecution under Subsection (d)(1) that the interception device is possessed by a person authorized to possess the device under Section 500.008, Government Code, or Section 242.103, Human Resources Code.

(f) An offense under this section is a felony of the second degree, unless the offense is committed under Subsection (d) or (g), in which event the offense is a state jail felony.

(g) A person commits an offense if, knowing that a government attorney or an investigative or law enforcement officer has been authorized or has applied for authorization to intercept wire, electronic, or oral communications, the person obstructs, impedes, prevents, gives notice to another of, or attempts to give notice to another of the interception.

(h) Repealed by Acts 2005, 79th Leg., Ch. 889, Sec. 1, eff. June 17, 2005.

Added by Acts 1981, 67th Leg., p. 738, ch. 275, Sec. 2, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4878, ch. 864, Sec. 1 to 3, eff. June 19, 1983; Acts 1989, 71st Leg., ch. 1166, Sec. 16, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 790, Sec. 16, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1051, Sec. 9, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1270, Sec. 11, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 678, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 889 (S.B. 1551), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1169 (H.B. 3228), Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 85 (S.B. 653), Sec. 3.023, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 2.01, eff. January 1, 2019.

Sec. 16.03. UNLAWFUL USE OF PEN REGISTER OR TRAP AND TRACE DEVICE. (a) A person commits an offense if the person knowingly installs or uses a pen register or trap and trace device to record or

decode electronic or other impulses for the purpose of identifying telephone numbers dialed or otherwise transmitted on a telephone line.

(b) In this section:

(1) "Authorized peace officer," "pen register," and "trap and trace device" have the meanings assigned by Article 18B.001, Code of Criminal Procedure.

(2) "Communication common carrier" has the meaning assigned by Article 18A.001, Code of Criminal Procedure.

(c) It is an affirmative defense to prosecution under Subsection (a) that the actor is:

(1) an officer, employee, or agent of a communication common carrier and the actor installs or uses a device or equipment to record a number dialed from or to a telephone instrument in the normal course of business of the carrier for purposes of:

(A) protecting property or services provided by the carrier; or

(B) assisting another who the actor reasonably believes to be a peace officer authorized to install or use a pen register or trap and trace device under Chapter 18B, Code of Criminal Procedure;

(2) an officer, employee, or agent of a lawful enterprise and the actor installs or uses a device or equipment while engaged in an activity that:

(A) is a necessary incident to the rendition of service or to the protection of property of or services provided by the enterprise; and

(B) is not made for the purpose of gathering information for a law enforcement agency or private investigative agency, other than information related to the theft of communication or information services provided by the enterprise; or

(3) a person authorized to install or use a pen register or trap and trace device under Chapter 18B, Code of Criminal Procedure.

(d) An offense under this section is a state jail felony.

Added by Acts 1985, 69th Leg., ch. 587, Sec. 6, eff. Aug. 26, 1985.
Amended by Acts 1989, 71st Leg., ch. 958, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1051, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 2.02, eff.

January 1, 2019.

Sec. 16.04. UNLAWFUL ACCESS TO STORED COMMUNICATIONS. (a) In this section:

(1) "Electronic communication," "user," and "wire communication" have the meanings assigned by Article 18A.001, Code of Criminal Procedure.

(2) "Electronic storage" has the meaning assigned by Article 18B.001, Code of Criminal Procedure.

(b) A person commits an offense if the person obtains, alters, or prevents authorized access to a wire or electronic communication while the communication is in electronic storage by:

(1) intentionally obtaining access without authorization to a facility through which a wire or electronic communications service is provided; or

(2) intentionally exceeding an authorization for access to a facility through which a wire or electronic communications service is provided.

(c) Except as provided by Subsection (d), an offense under Subsection (b) is a Class A misdemeanor.

(d) If committed to obtain a benefit or to harm another, an offense is a state jail felony.

(e) It is an affirmative defense to prosecution under Subsection (b) that the conduct was authorized by:

(1) the provider of the wire or electronic communications service;

(2) the user of the wire or electronic communications service;

(3) the addressee or intended recipient of the wire or electronic communication; or

(4) Chapter 18B, Code of Criminal Procedure.

Added by Acts 1989, 71st Leg., ch. 958, Sec. 3, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1051, Sec. 11, eff. Sept. 1, 1997. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 2.03, eff. January 1, 2019.

Sec. 16.05. ILLEGAL DIVULGENCE OF PUBLIC COMMUNICATIONS. (a) In this section, "electronic communications service" has the meaning assigned by Article 18A.001, Code of Criminal Procedure.

(b) A person who provides electronic communications service to the public commits an offense if the person knowingly divulges the contents of a communication to another who is not the intended recipient of the communication.

(c) It is an affirmative defense to prosecution under Subsection (b) that the actor divulged the contents of the communication:

(1) as authorized by federal or state law;

(2) to a person employed, authorized, or whose facilities are used to forward the communication to the communication's destination; or

(3) to a law enforcement agency if the contents reasonably appear to pertain to the commission of a crime.

(d) Except as provided by Subsection (e), an offense under Subsection (b) that involves a scrambled or encrypted radio communication is a state jail felony.

(e) If committed for a tortious or illegal purpose or to gain a benefit, an offense under Subsection (b) that involves a radio communication that is not scrambled or encrypted:

(1) is a Class A misdemeanor if the communication is not a public land mobile radio service communication or a paging service communication; or

(2) is a Class C misdemeanor if the communication is a public land mobile radio service communication or a paging service communication.

(f) Repealed by Acts 1997, 75th Leg., ch. 1051, Sec. 13, eff. Sept. 1, 1997.

Added by Acts 1989, 71st Leg., ch. 1166, Sec. 17, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 16.04 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(24), eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1051, Sec. 12, 13, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 2.04, eff. January 1, 2019.

Sec. 16.06. UNLAWFUL INSTALLATION OF TRACKING DEVICE. (a) In this section:

(1) "Electronic or mechanical tracking device" means a device capable of emitting an electronic frequency or other signal that may be used by a person to identify, monitor, or record the location of another person or object.

(2) "Motor vehicle" has the meaning assigned by Section 501.002, Transportation Code.

(b) A person commits an offense if the person knowingly installs an electronic or mechanical tracking device on a motor vehicle owned or leased by another person.

(c) An offense under this section is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section that the person:

(1) obtained the effective consent of the owner or lessee of the motor vehicle before the electronic or mechanical tracking device was installed;

(2) assisted another whom the person reasonably believed to be a peace officer authorized to install the device in the course of a criminal investigation or pursuant to an order of a court to gather information for a law enforcement agency; or

(3) was a private investigator licensed under Chapter 1702, Occupations Code, who installed the device:

(A) with written consent:

(i) to install the device given by the owner or lessee of the motor vehicle; and

(ii) to enter private residential property, if that entry was necessary to install the device, given by the owner or lessee of the property; or

(B) pursuant to an order of or other authorization from a court to gather information.

(e) This section does not apply to a peace officer who installed the device in the course of a criminal investigation or pursuant to an order of a court to gather information for a law enforcement agency.

Added by Acts 1999, 76th Leg., ch. 728, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.828, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1122 (H.B. 1659), Sec. 1, eff. September 1, 2009.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL HOMICIDE

Sec. 19.01. TYPES OF CRIMINAL HOMICIDE. (a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

(b) Criminal homicide is murder, capital murder, manslaughter, or criminally negligent homicide.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 19.02. MURDER. (a) In this section:

(1) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(2) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(b) A person commits an offense if the person:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual;

(3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, the person commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual; or

(4) knowingly manufactures or delivers a controlled substance included in Penalty Group 1-B under Section 481.1022,

Health and Safety Code, in violation of Section 481.1123, Health and Safety Code, and an individual dies as a result of injecting, ingesting, inhaling, or introducing into the individual's body any amount of the controlled substance manufactured or delivered by the actor, regardless of whether the controlled substance was used by itself or with another substance, including a drug, adulterant, or dilutant.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

(e) It is a defense to prosecution under Subsection (b)(4) that the actor's conduct in manufacturing or delivering the controlled substance was authorized under Chapter 481, Health and Safety Code, or other state or federal law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 20, eff. September 1, 2023.

Sec. 19.03. CAPITAL MURDER. (a) A person commits an offense if the person commits murder as defined under Section 19.02(b)(1) and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation, or terroristic threat under Section 22.07(a)(1), (3), (4), (5), or (6);

(3) the person commits the murder for remuneration or the

promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;

(7) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct;

(8) the person murders an individual under 10 years of age;

(9) the person murders an individual 10 years of age or older but younger than 15 years of age; or

(10) the person murders another person in retaliation for or on account of the service or status of the other person as a judge or justice of the supreme court, the court of criminal appeals, a court of appeals, a district court, a criminal district court, a constitutional county court, a statutory county court, a justice court, or a municipal court.

(b) An offense under this section is a capital felony.

(c) If the jury or, when authorized by law, the judge does not find beyond a reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense.

(d) For purposes of Subsection (a)(1), the actor is presumed to have known the person murdered was a peace officer or fireman if the person was wearing a distinctive uniform or badge indicating the person's employment as a peace officer or fireman.

Added by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5317, ch. 977, Sec. 6, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 44, Sec. 1, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 652, Sec. 13, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 715, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 887, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 388, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 428 (S.B. 1791), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1209 (S.B. 377), Sec. 1, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1214 (S.B. 719), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 1057 (S.B. 386), Sec. 2, eff. September 1, 2023.

Sec. 19.04. MANSLAUGHTER. (a) A person commits an offense if he recklessly causes the death of an individual.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that the defendant committed an offense under Section 28.09 and that conduct caused the death of an individual.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 19.04 by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 307, Sec. 1, eff. Sept. 1, 1987. Renumbered from Penal Code Sec. 19.05 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1146 (S.B. 947), Sec. 1, eff. September 1, 2023.

Sec. 19.05. CRIMINALLY NEGLIGENT HOMICIDE. (a) A person commits an offense if he causes the death of an individual by

criminal negligence.

(b) An offense under this section is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 19.06 by Acts 1973, 63rd Leg., p. 1123, ch. 426, art. 2, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 19.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 19.06. APPLICABILITY TO CERTAIN CONDUCT. This chapter does not apply to the death of an unborn child if the conduct charged is:

(1) conduct committed by the mother of the unborn child;

(2) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent, if the death of the unborn child was the intended result of the procedure;

(3) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or

(4) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.02, eff. Sept. 1, 2003.

CHAPTER 20. KIDNAPPING, UNLAWFUL RESTRAINT, AND SMUGGLING OF PERSONS

Sec. 20.01. DEFINITIONS. In this chapter:

(1) "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with the person's liberty, by moving the person from one place to another or by confining the person. Restraint is "without consent" if it is accomplished by:

(A) force, intimidation, or deception; or

(B) any means, including acquiescence of the victim, if:

(i) the victim is a child who is less than 14 years

of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement; or

(ii) the victim is a child who is 14 years of age or older and younger than 17 years of age, the victim is taken outside of the state and outside a 120-mile radius from the victim's residence, and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by:

(A) secreting or holding him in a place where he is not likely to be found; or

(B) using or threatening to use deadly force.

(3) "Relative" means a parent or stepparent, ancestor, sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

(4) "Person" means an individual or a corporation, association, limited liability company, or other entity or organization governed by the Business Organizations Code.

(5) Notwithstanding Section 1.07, "individual" means a human being who has been born and is alive.

(6) "Agricultural land" has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.

(7) "Firearm" has the meaning assigned by Section 46.01.

(8) "Special investigator" includes an agent of the United States Department of Homeland Security.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 790, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 822, Sec. 2.03, eff. Sept. 1, 2003.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 4, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 572 (S.B. 576), Sec. 1, eff. September 1, 2021.

Sec. 20.02. UNLAWFUL RESTRAINT. (a) A person commits an offense if he intentionally or knowingly restrains another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the person restrained was a child younger than 14 years of age;

(2) the actor was a relative of the child; and

(3) the actor's sole intent was to assume lawful control of the child.

(c) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the person restrained was a child younger than 17 years of age;

(2) a felony of the third degree if:

(A) the actor recklessly exposes the victim to a substantial risk of serious bodily injury;

(B) the actor restrains an individual the actor knows is a public servant while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or

(C) the actor, while in custody or committed to a civil commitment facility, restrains any other person; or

(3) notwithstanding Subdivision (2)(B), a felony of the second degree if the actor restrains an individual the actor knows is a peace officer or judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

(d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.

(e) It is an affirmative defense to prosecution under this section that:

(1) the person restrained was a child who is 14 years of age or older and younger than 17 years of age;

(2) the actor does not restrain the child by force, intimidation, or deception; and

(3) the actor is not more than three years older than the child.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 707, Sec. 1(b), 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 790, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 524, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 440 (H.B. 2908), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 1, eff. September 1, 2023.

Sec. 20.03. KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the abduction was not coupled with intent to use or to threaten to use deadly force;

(2) the actor was a relative of the person abducted; and

(3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 20.04. AGGRAVATED KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

(1) hold him for ransom or reward;

(2) use him as a shield or hostage;

(3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;

(4) inflict bodily injury on him or violate or abuse him sexually;

(5) terrorize him or a third person; or

(6) interfere with the performance of any governmental or political function.

(b) A person commits an offense if the person intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he voluntarily released the victim in a safe place. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 4, eff. Sept. 1, 1995.

Sec. 20.05. SMUGGLING OF PERSONS. (a) A person commits an offense if the person knowingly:

(1) uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport an individual with the intent to:

(A) conceal the individual from a peace officer or special investigator; or

(B) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor;

(2) encourages or induces a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection; or

(3) assists, guides, or directs two or more individuals to enter or remain on agricultural land without the effective consent of the owner.

(b) Subject to Subsections (b-1) and (b-2), an offense under this section is a felony of the third degree with a term of imprisonment of 10 years, except that the offense is:

(1) a felony of the second degree with a minimum term of imprisonment of 10 years if:

(A) the actor commits the offense in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death;

(B) the smuggled individual is a child younger than 18

years of age at the time of the offense;

(C) the offense was committed with the intent to obtain a pecuniary benefit;

(D) during the commission of the offense the actor, another party to the offense, or an individual assisted, guided, or directed by the actor knowingly possessed a firearm; or

(E) the actor commits the offense under Subsection (a)(1)(B); or

(2) a felony of the first degree with a minimum term of imprisonment of 10 years if:

(A) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(B) the smuggled individual suffered serious bodily injury or death.

(b-1) If at the punishment stage of the trial or at the time of entering a plea agreement for an offense under this section punishable as a felony of the third degree, the attorney representing the state in the prosecution of the offense certifies to the court in writing that the actor has provided significant cooperation to the state or law enforcement, and describes the manner of cooperation, the minimum term of imprisonment is five years. The certification is confidential and shall be sealed by the court, except that the certification may be accessed by the office of the attorney representing the state, the attorney representing the defendant, and the court. For purposes of this subsection, "significant cooperation" includes:

(1) testifying in a trial on behalf of the state against other parties to the offense;

(2) providing relevant information regarding the case and other parties to the offense;

(3) providing information that furthers the investigation of the charged offense and any other parties involved; or

(4) providing information that aids law enforcement.

(b-2) At the punishment stage of a trial of an offense under this section, other than an offense punishable under Subsection (b)(1)(A), (C), (D), or (E) or (b)(2), the actor may raise the issue as to whether the actor is related to the smuggled individual in the

third degree of consanguinity or, at the time of the offense, in the third degree of affinity. If the actor proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the third degree with a minimum term of imprisonment of five years.

(c) It is an affirmative defense to prosecution of an offense under this section, other than an offense punishable under Subsection (b)(1)(A) or (b)(2), that the actor is related to the smuggled individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

(d) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

Added by Acts 1999, 76th Leg., ch. 1014, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 223 (H.B. 260), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 333 (H.B. 11), Sec. 14, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 572 (S.B. 576), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 3, eff. February 6, 2024.

Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) A person commits an offense if, during a period that is 10 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20.05.

(b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20.05 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 10 or more days in duration, engaged two or more times in conduct that constitutes an offense under Section 20.05.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20.05, a defendant may not be convicted of the offense under Section 20.05 in

the same criminal action as the offense under Subsection (a), unless the offense under Section 20.05:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20.05 is alleged to have been committed against the same victim.

(e) Except as provided by Subsections (f) and (g), an offense under this section is a felony of the second degree with a minimum term of imprisonment of 10 years.

(f) An offense under this section is a felony of the first degree with a minimum term of imprisonment of 10 years if:

(1) the conduct constituting an offense under Section 20.05 is conducted in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death; or

(2) the smuggled individual is a child younger than 18 years of age at the time of the offense.

(g) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years, if:

(1) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(2) the smuggled individual suffered serious bodily injury or death.

Added by Acts 2015, 84th Leg., R.S., Ch. 333 (H.B. 11), Sec. 15, eff. September 1, 2015.

Amended by:

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 4, eff. February 6, 2024.

Sec. 20.07. OPERATION OF STASH HOUSE. (a) A person commits an offense if the person knowingly:

(1) uses or permits another to use any real estate, building, room, tent, vehicle, boat, or other property owned by the person or under the person's control to commit an offense or to facilitate the commission of an offense under Section 20.05, 20.06, 20A.02, 20A.03, 43.04, or 43.05; or

(2) rents or leases any property to another, intending that the property be used as described by Subdivision (1).

(b) An offense under this section is a felony of the third degree with a minimum term of imprisonment of five years, except that the offense is a felony of the second degree with a minimum term of imprisonment of five years if:

(1) the offense is committed under Subsection (a)(1) and the property that is the subject of the offense is used to commit or facilitate the commission of an offense under Section 20.06, 20A.03, or 43.05; or

(2) it is shown on the trial of the offense that as a direct result of the commission of the offense:

(A) an individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(B) an individual suffered serious bodily injury or death.

(c) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2019, 86th Leg., R.S., Ch. 412 (H.B. 2613), Sec. 1, eff. September 1, 2019.
Amended by:
Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 5, eff. February 6, 2024.

CHAPTER 20A. TRAFFICKING OF PERSONS

Sec. 20A.01. DEFINITIONS. In this chapter:

(1) "Child" means a person younger than 18 years of age.

(1-a) "Coercion" as defined by Section 1.07 includes:

(A) destroying, concealing, confiscating, or

withholding from a trafficked person, or threatening to destroy, conceal, confiscate, or withhold from a trafficked person, the person's actual or purported:

(i) government records; or

(ii) identifying information or documents;

(B) causing a trafficked person, without the person's consent, to become intoxicated, as defined by Section 49.01, to a degree that impairs the person's ability to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services; or

(C) withholding alcohol or a controlled substance to a degree that impairs the ability of a trafficked person with a chemical dependency, as defined by Section 462.001, Health and Safety Code, to appraise the nature of or resist engaging in any conduct, including performing or providing labor or services.

(1-b) "Disabled individual" has the meaning assigned by Section 22.021(b).

(2) "Forced labor or services" means labor or services, other than labor or services that constitute sexual conduct, that are performed or provided by another person and obtained through an actor's use of force, fraud, or coercion.

(2-a) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2-b) "School" means a public or private primary or secondary school.

(3) "Sexual conduct" has the meaning assigned by Section 43.25.

(4) "Traffic" means to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.

Added by Acts 2003, 78th Leg., ch. 641, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 16.01, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 849 (H.B. 1121), Sec. 4, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 1.01, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 21, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 905 (H.B. 3521), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1049 (S.B. 1831), Sec. 5, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 2.01, eff. September 1, 2023.

Sec. 20A.02. TRAFFICKING OF PERSONS. (a) A person commits an offense if the person knowingly:

(1) traffics another person with the intent that the trafficked person engage in forced labor or services;

(2) receives a benefit from participating in a venture that involves an activity described by Subdivision (1), including by receiving labor or services the person knows are forced labor or services;

(3) traffics another person and, through force, fraud, or coercion, causes the trafficked person to engage in conduct prohibited by:

(A) Section 43.02 (Prostitution);

(B) Section 43.03 (Promotion of Prostitution);

(B-1) Section 43.031 (Online Promotion of Prostitution);

(C) Section 43.04 (Aggravated Promotion of Prostitution);

(C-1) Section 43.041 (Aggravated Online Promotion of Prostitution); or

(D) Section 43.05 (Compelling Prostitution);

(4) receives a benefit from participating in a venture that involves an activity described by Subdivision (3) or engages in sexual conduct with a person trafficked in the manner described in Subdivision (3);

(5) traffics a child or disabled individual with the intent that the trafficked child or disabled individual engage in forced labor or services;

(6) receives a benefit from participating in a venture that involves an activity described by Subdivision (5), including by receiving labor or services the person knows are forced labor or services;

(7) traffics a child or disabled individual and by any

means causes the trafficked child or disabled individual to engage in, or become the victim of, conduct prohibited by:

(A) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);

(B) Section 21.11 (Indecency with a Child);

(C) Section 22.011 (Sexual Assault);

(D) Section 22.021 (Aggravated Sexual Assault);

(E) Section 43.02 (Prostitution);

(E-1) Section 43.021 (Solicitation of Prostitution);

(F) Section 43.03 (Promotion of Prostitution);

(F-1) Section 43.031 (Online Promotion of Prostitution);

(G) Section 43.04 (Aggravated Promotion of Prostitution);

(G-1) Section 43.041 (Aggravated Online Promotion of Prostitution);

(H) Section 43.05 (Compelling Prostitution);

(I) Section 43.25 (Sexual Performance by a Child);

(J) Section 43.251 (Employment Harmful to Children); or

(K) Section 43.26 (Possession or Promotion of Child Pornography); or

(8) receives a benefit from participating in a venture that involves an activity described by Subdivision (7) or engages in sexual conduct with a child or disabled individual trafficked in the manner described in Subdivision (7).

(a-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 62(5) and Ch. 905 (H.B. 3521), Sec. 2, eff. September 1, 2021.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 2.02

(b) Except as otherwise provided by this subsection and Subsection (b-1), an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child or whether the actor knows the victim is disabled at the time of the offense;

(2) the commission of the offense results in serious bodily injury to or the death of the person who is trafficked;

(3) the commission of the offense results in the death of an unborn child of the person who is trafficked; or

(4) the actor:

(A) used or exhibited a deadly weapon during the commission of the offense;

(B) intentionally, knowingly, or recklessly impeded the normal breathing or circulation of the blood of the trafficked person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth; or

(C) recruited, enticed, or obtained the trafficked person from a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, the homeless, or persons subjected to human trafficking, domestic violence, or sexual assault.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 452 (H.B. 3554), Sec. 1

(b) Except as otherwise provided by this subsection and Subsection (b-1), an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

(1) the applicable conduct constitutes an offense under Subsection (a)(5), (6), (7), or (8), regardless of whether the actor knows the age of the child at the time of the offense;

(2) the commission of the offense results in the death of the person who is trafficked; or

(3) the commission of the offense results in the death of an unborn child of the person who is trafficked.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 451 (H.B. 3553), Sec. 2

(b-1) An offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(1) on the premises of or within 1,000 feet of the premises of:

(A) a school; or

(B) an institution of higher education or private or independent institution of higher education, as defined by Section

61.003, Education Code; or

(2) on premises or within 1,000 feet of premises where:

(A) an official school function was taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League was taking place.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 452 (H.B. 3554), Sec. 1

(b-1) An offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for a term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(1) on the premises of or within 1,000 feet of the premises of:

(A) a school;

(B) a juvenile detention facility;

(C) a post-adjudication secure correctional facility;

(D) a shelter or facility operating as a residential treatment center that serves runaway youth, foster children, people who are homeless, or persons subjected to human trafficking, domestic violence, or sexual assault;

(E) a community center offering youth services and programs; or

(F) a child-care facility, as defined by Section 42.002, Human Resources Code; or

(2) on premises or within 1,000 feet of premises where:

(A) an official school function was taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League was taking place.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) If the victim of an offense under Subsection (a)(7)(A) is the same victim as a victim of an offense under Section 21.02, a defendant may not be convicted of the offense under Section 21.02 in the same criminal action as the offense under Subsection (a)(7)(A) unless the offense under Section 21.02:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a)(7)(A) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a)(7)(A).

Added by Acts 2003, 78th Leg., ch. 641, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 16.02, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 849 (H.B. 1121), Sec. 5, eff. June 15, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 7, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 1.02, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 480 (H.B. 2529), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 30, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 15, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 1, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 273 (S.B. 1802), Sec. 2, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 3.11, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.26, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 22, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 62(5), eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 905 (H.B. 3521), Sec. 2, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 1049 (S.B. 1831), Sec. 6, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 2.02, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 451 (H.B. 3553), Sec. 2, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 452 (H.B. 3554), Sec. 1, eff.

September 1, 2023.

Sec. 20A.03. CONTINUOUS TRAFFICKING OF PERSONS. (a) A person commits an offense if, during a period that is 30 or more days in duration, the person engages two or more times in conduct that constitutes an offense under Section 20A.02 against one or more victims.

(b) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific conduct engaged in by the defendant constituted an offense under Section 20A.02 or on which exact date the defendant engaged in that conduct. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, engaged in conduct that constituted an offense under Section 20A.02.

(c) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20A.02, a defendant may not be convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20A.02:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20A.02 is alleged to have been committed against the same victim.

(e) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

Added by Acts 2011, 82nd Leg., R.S., Ch. 122 (H.B. 3000), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 332 (H.B. 10), Sec. 12, eff. September 1, 2015.

Sec. 20A.04. ACCOMPLICE WITNESS; TESTIMONY AND IMMUNITY. (a) A party to an offense under this chapter may be required to provide evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which the party is required to provide evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury. For purposes of this subsection, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) A conviction under this chapter may be had on the uncorroborated testimony of a party to the offense.

Added by Acts 2015, 84th Leg., R.S., Ch. 332 (H.B. 10), Sec. 13, eff. September 1, 2015.

CHAPTER 21. SEXUAL OFFENSES

Sec. 21.01. DEFINITIONS. In this chapter:

(1) "Deviate sexual intercourse" means:

(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(B) the penetration of the genitals or the anus of another person with an object.

(2) "Sexual contact" means, except as provided by Section 21.11 or 21.12, any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(4) "Spouse" means a person to whom a person is legally married under Subtitle A, Title 1, Family Code, or a comparable law of another jurisdiction.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 373, ch. 168, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 203, ch. 96, Sec. 3, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 739, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.124, eff. September 1, 2005.

Acts 2021, 87th Leg., R.S., Ch. 631 (H.B. 246), Sec. 1, eff. September 1, 2021.

Sec. 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Disabled individual" has the meaning assigned by Section 22.021(b).

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is:

(A) a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense; or

(B) a disabled individual.

(c) For purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws:

(1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;

(2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4);

(6) sexual performance by a child under Section 43.25;

(7) trafficking of persons under Section 20A.02(a)(3), (4),

(7), or (8); and

(8) compelling prostitution under Section 43.05.

(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

(e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).

(f) A defendant may not be charged with more than one count under Subsection (b) if all of the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.

(g) With respect to a prosecution under this section involving only one or more victims described by Subsection (b)(2)(A), it is an affirmative defense to prosecution under this section that the actor:

(1) was not more than five years older than:

(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or

(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;

(2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and

(3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).

(h) An offense under this section is a felony of the first

degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

Added by Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.17, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.04, eff. September 1, 2011.
Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 31, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 2, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 1.01, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 1.02, eff. September 1, 2021.

Section 21.06 was declared unconstitutional by Lawrence v. Texas, 123 S.Ct. 2472.

Sec. 21.06. HOMOSEXUAL CONDUCT. (a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

(b) An offense under this section is a Class C misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 21.07. PUBLIC LEWDNESS. (a) A person commits an offense if the person knowingly engages in any of the following acts in a public place or, if not in a public place, the person is reckless about whether another is present who will be offended or alarmed by the person's:

(1) act of sexual intercourse;
(2) act of deviate sexual intercourse; or
(3) act of sexual contact.

(b) An offense under this section is a Class A misdemeanor,

except that the offense is a felony of the third degree if the actor is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 1, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 2, eff. September 1, 2023.

Sec. 21.08. INDECENT EXPOSURE. (a) A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 3

(b) An offense under this section is a Class B misdemeanor, except that the offense is a felony of the third degree if the actor is civilly committed as a sexually violent predator under Chapter 841, Health and Safety Code.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 822 (H.B. 1730), Sec. 1

(b) An offense under this section is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if it is shown on the trial of the offense that the defendant has been previously convicted one time of an offense under this section; and

(2) a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1983, 68th Leg., p. 509, ch. 924, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 822 (H.B. 1730), Sec. 1, eff. September 1, 2023.

Sec. 21.09. BESTIALITY. (a) A person commits an offense if the person knowingly:

(1) engages in an act involving contact between:

(A) the person's mouth, anus, or genitals and the anus or genitals of an animal; or

(B) the person's anus or genitals and the mouth of the animal;

(2) fondles or touches the anus or genitals of an animal in a manner that is not a generally accepted and otherwise lawful animal husbandry or veterinary practice, including touching through clothing;

(3) causes an animal to contact the seminal fluid of the person;

(4) inserts any part of a person's body or any object into the anus or genitals of an animal in a manner that is not a generally accepted and otherwise lawful animal husbandry or veterinary practice;

(5) possesses, sells, transfers, purchases, or otherwise obtains an animal with the intent that the animal be used for conduct described by Subdivision (1), (2), (3), or (4);

(6) organizes, promotes, conducts, or participates as an observer of conduct described by Subdivision (1), (2), (3), or (4);

(7) causes a person to engage or aids a person in engaging in conduct described by Subdivision (1), (2), (3), or (4);

(8) permits conduct described by Subdivision (1), (2), (3), or (4) to occur on any premises under the person's control;

(9) engages in conduct described by Subdivision (1), (2), (3), or (4) in the presence of a child younger than 18 years of age; or

(10) advertises, offers, or accepts the offer of an animal with the intent that the animal be used in this state for conduct described by Subdivision (1), (2), (3), or (4).

(b) An offense under this section is a state jail felony,

unless the offense is committed under Subsection (a)(9) or results in serious bodily injury or death of the animal, in which event the offense is a felony of the second degree.

(c) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful animal husbandry or veterinary practice.

Added by Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 2, eff. September 1, 2017.

Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex and regardless of whether the person knows the age of the child at the time of the offense, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the child at the time of the offense.

(c) In this section, "sexual contact" means the following acts,

if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1981, 67th Leg., p. 472, ch. 202, Sec. 3, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 1028, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 1415, Sec. 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 739, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 1, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 32, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 3, eff. September 1, 2017.

Sec. 21.12. IMPROPER RELATIONSHIP BETWEEN EDUCATOR AND STUDENT. (a) An employee of a public or private primary or secondary school commits an offense if the employee:

(1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works;

(2) holds a position described by Section 21.003(a) or (b), Education Code, regardless of whether the employee holds the appropriate certificate, permit, license, or credential for the position, and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:

(A) enrolled in a public or private primary or secondary school, other than a school described by Subdivision (1);

or

(B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if students enrolled in a public or private primary or secondary school are the primary participants in the activity; or

(3) engages in conduct described by Section 33.021, with a person described by Subdivision (1), or a person the employee knows is a person described by Subdivision (2)(A) or (B), regardless of the age of that person.

(b) An offense under this section is a felony of the second degree.

(b-1) It is an affirmative defense to prosecution under this section that:

(1) the actor was the spouse of the enrolled person at the time of the offense; or

(2) the actor was not more than three years older than the enrolled person and, at the time of the offense, the actor and the enrolled person were in a relationship that began before the actor's employment at a public or private primary or secondary school.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

(d) The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.

(d-1) Except as otherwise provided by this subsection, a public or private primary or secondary school, or a person or entity that operates a public or private primary or secondary school, may not release externally to the general public the name of an employee of the school who is accused of committing an offense under this section until the employee is indicted for the offense. The school, or the person or entity that operates the school, may release the name of the accused employee regardless of whether the employee has been indicted for the offense as necessary for the school to:

(1) report the accusation:

(A) to the Texas Education Agency, another state agency, or local law enforcement or as otherwise required by law; or

(B) to the school's members or community in accordance with the school's policies or procedures or with the religious law observed by the school; or

(2) conduct an investigation of the accusation.

(e) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by an employee of a public or private primary or secondary school of the anus, breast, or any part of the genitals of:

(A) an enrolled person described by Subsection (a)(1) or (a)(2)(A); or

(B) a student participant described by Subsection (a)(2)(B); or

(2) any touching of any part of the body of the enrolled person or student participant with the anus, breast, or any part of the genitals of the employee.

Added by Acts 2003, 78th Leg., ch. 224, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 610 (H.B. 401), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 772 (H.B. 3659), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 761 (H.B. 1610), Sec. 3, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 178 (S.B. 7), Sec. 1, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 631 (H.B. 246), Sec. 2, eff. September 1, 2021.

Sec. 21.15. INVASIVE VISUAL RECORDING. (a) In this section:

(1) "Female breast" means any portion of the female breast below the top of the areola.

(2) "Intimate area" means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person.

(3) "Changing room" means a room or portioned area provided

for or primarily used for the changing of clothing and includes dressing rooms, locker rooms, and swimwear changing areas.

(4) "Promote" has the meaning assigned by Section 43.21.

(b) A person commits an offense if, without the other person's consent and with intent to invade the privacy of the other person, the person:

(1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of an intimate area of another person if the other person has a reasonable expectation that the intimate area is not subject to public view;

(2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another in a bathroom or changing room; or

(3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2).

(c) An offense under this section is a state jail felony.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

(e) For purposes of Subsection (b)(2), a sign or signs posted indicating that the person is being photographed or that a visual image of the person is being recorded, broadcast, or transmitted is not sufficient to establish the person's consent under that subdivision.

Added by Acts 2001, 77th Leg., ch. 458, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 500, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 306 (H.B. 1804), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 955 (S.B. 1317), Sec. 1, eff. June 18, 2015.

Acts 2015, 84th Leg., R.S., Ch. 955 (S.B. 1317), Sec. 2, eff. June 18, 2015.

Sec. 21.16. UNLAWFUL DISCLOSURE OR PROMOTION OF INTIMATE VISUAL MATERIAL. (a) In this section:

(1) "Intimate parts" means the naked genitals, pubic area, anus, buttocks, or female nipple of a person.

(2) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(3) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse.

(4) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

(5) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(b) A person commits an offense if:

(1) without the effective consent of the depicted person and with the intent to harm that person, the person discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;

(2) at the time of the disclosure, the person knows or has reason to believe that the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;

(3) the disclosure of the visual material causes harm to the depicted person; and

(4) the disclosure of the visual material reveals the identity of the depicted person in any manner, including through:

(A) any accompanying or subsequent information or material related to the visual material; or

(B) information or material provided by a third party in response to the disclosure of the visual material.

(c) A person commits an offense if the person intentionally threatens to disclose, without the consent of the depicted person,

visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct and the actor makes the threat to obtain a benefit:

(1) in return for not making the disclosure; or

(2) in connection with the threatened disclosure.

(d) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by Subsection (b) on an Internet website or other forum for publication that is owned or operated by the person.

(e) It is not a defense to prosecution under this section that the depicted person:

(1) created or consented to the creation of the visual material; or

(2) voluntarily transmitted the visual material to the actor.

(f) It is an affirmative defense to prosecution under Subsection (b) or (d) that:

(1) the disclosure or promotion is made in the course of:

(A) lawful and common practices of law enforcement or medical treatment;

(B) reporting unlawful activity; or

(C) a legal proceeding, if the disclosure or promotion is permitted or required by law;

(2) the disclosure or promotion consists of visual material depicting in a public or commercial setting only a person's voluntary exposure of:

(A) the person's intimate parts; or

(B) the person engaging in sexual conduct; or

(3) the actor is an interactive computer service, as defined by 47 U.S.C. Section 230, and the disclosure or promotion consists of visual material provided by another person.

(g) An offense under this section is a state jail felony.

(h) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2015, 84th Leg., R.S., Ch. 852 (S.B. 1135), Sec. 3, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 16(b), eff.

September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1354 (H.B. 98), Sec. 2, eff. September 1, 2019.

Sec. 21.165. UNLAWFUL PRODUCTION OR DISTRIBUTION OF CERTAIN SEXUALLY EXPLICIT VIDEOS. (a) In this section:

(1) "Deep fake video" means a video, created with the intent to deceive, that appears to depict a real person performing an action that did not occur in reality.

(2) "Intimate parts" and "sexual conduct" have the meanings assigned by Section 21.16.

(b) A person commits an offense if, without the effective consent of the person appearing to be depicted, the person knowingly produces or distributes by electronic means a deep fake video that appears to depict the person with the person's intimate parts exposed or engaged in sexual conduct.

(c) An offense under this section is a Class A misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section or the other law.

Added by Acts 2023, 88th Leg., R.S., Ch. 355 (S.B. 1361), Sec. 1, eff. September 1, 2023.

Sec. 21.17. VOYEURISM. (a) A person commits an offense if the person, with the intent to arouse or gratify the sexual desire of the actor, observes, including remotely through the use of electronic means, another person without the other person's consent while the other person is in a dwelling or structure in which the other person has a reasonable expectation of privacy.

(b) Except as provided by Subsection (c) or (d), an offense under this section is a Class C misdemeanor.

(c) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of an offense under this section.

(d) An offense under this section is a state jail felony if the victim was a child younger than 14 years of age at the time of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2015, 84th Leg., R.S., Ch. 676 (H.B. 207), Sec. 1, eff. September 1, 2015.
Redesignated from Penal Code, Section 21.16 by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 24.001(35), eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 326 (H.B. 2306), Sec. 1, eff. September 1, 2023.

Sec. 21.18. SEXUAL COERCION. (a) In this section:

(1) "Intimate visual material" means the visual material described by Section 21.16(b)(1) or (c).

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(b) A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit an offense under Chapter 43 or Section 20A.02(a)(3), (4), (7), or (8), 21.02, 21.08, 21.11, 21.12, 21.15, 21.16, 21.17, 22.011, or 22.021 to obtain, in return for not committing the threatened offense or in connection with the threatened offense, any of the following benefits:

(1) intimate visual material;

(2) an act involving sexual conduct causing arousal or gratification; or

(3) a monetary benefit or other benefit of value.

(c) A person commits an offense if the person intentionally threatens, including by coercion or extortion, to commit an offense under Chapter 19 or 20 or Section 20A.02(a)(1), (2), (5), or (6) to obtain, in return for not committing the threatened offense or in connection with the threatened offense, either of the following benefits:

(1) intimate visual material; or

(2) an act involving sexual conduct causing arousal or gratification.

(d) This section applies to a threat regardless of how that threat is communicated, including a threat transmitted through e-mail

or an Internet website, social media account, or chat room and a threat made by other electronic or technological means.

(e) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted of an offense under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 16(c), eff. September 1, 2017.
Added by Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 4(b), eff. September 1, 2017.

Sec. 21.19. UNLAWFUL ELECTRONIC TRANSMISSION OF SEXUALLY EXPLICIT VISUAL MATERIAL. (a) In this section, "intimate parts," "sexual conduct," and "visual material" have the meanings assigned by Section 21.16.

(b) A person commits an offense if the person knowingly transmits by electronic means visual material that:

(1) depicts:

(A) any person engaging in sexual conduct or with the person's intimate parts exposed; or

(B) covered genitals of a male person that are in a discernibly turgid state; and

(2) is not sent at the request of or with the express consent of the recipient.

(c) An offense under this section is a Class C misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2019, 86th Leg., R.S., Ch. 848 (H.B. 2789), Sec. 1, eff. September 1, 2019.

CHAPTER 22. ASSAULTIVE OFFENSES

Sec. 22.01. ASSAULT. (a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;

(2) intentionally or knowingly threatens another with

imminent bodily injury, including the person's spouse; or

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against:

(1) a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(2) a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted of an offense that was committed:

(i) against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(ii) under:

(a) this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11;

(b) Section 25.07, if the applicable violation was based on the commission of family violence as described by Subsection (a)(1) of that section; or

(c) Section 25.072, if any of the applicable violations were based on the commission of family violence as described by Section 25.07(a)(1); or

(B) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth;

(3) a person who contracts with government to perform a service in a facility described by Section 1.07(a)(14), Penal Code, or Section 51.02(13) or (14), Family Code, or an employee of that person:

(A) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by government to provide

the service; or

(B) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract;

(4) a person the actor knows is a security officer while the officer is performing a duty as a security officer;

(5) a person the actor knows is emergency services personnel while the person is providing emergency services;

(6) a person the actor knows is a process server while the person is performing a duty as a process server;

(7) a pregnant individual to force the individual to have an abortion;

(8) a person the actor knows is pregnant at the time of the offense; or

(9) a person the actor knows is hospital personnel while the person is located on hospital property, including all land and buildings owned or leased by the hospital.

(b-1) Notwithstanding Subsections (b) and (c), an offense under Subsection (a) is a felony of the third degree if the offense is committed:

(1) by an actor who is committed to a civil commitment facility; and

(2) against:

(A) a person the actor knows is an officer or employee of the Texas Civil Commitment Office:

(i) while the officer or employee is lawfully discharging an official duty; or

(ii) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee; or

(B) a person the actor knows is contracting with the state to perform a service in a civil commitment facility or an employee of that person:

(i) while the person or employee is engaged in performing a service within the scope of the contract; or

(ii) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract.

(b-2) Notwithstanding Subsection (b)(1), an offense under Subsection (a)(1) is a felony of the second degree if the offense is committed against a person the actor knows is a peace officer or

judge while the officer or judge is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

(b-3) Notwithstanding Subsection (b)(2), an offense under Subsection (a)(1) is a felony of the second degree if:

(1) the offense is committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code;

(2) it is shown on the trial of the offense that the defendant has been previously convicted of an offense that was committed:

(A) against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; and

(B) under:

(i) this chapter, Chapter 19, or Section 20.03, 20.04, 21.11, or 25.11;

(ii) Section 25.07, if the applicable violation was based on the commission of family violence as described by Subsection (a)(1) of that section; or

(iii) Section 25.072, if any of the applicable violations were based on the commission of family violence as described by Section 25.07(a)(1); and

(3) the offense is committed by intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth.

(b-4) Notwithstanding Subsection (b), an offense under Subsection (a)(1) is a felony of the third degree if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

(c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the offense is committed under Subsection (a)(3) against an elderly individual or disabled individual, as those terms are defined by Section 22.04;

(2) a Class B misdemeanor if the offense is committed by a person who is not a sports participant against a person the actor knows is a sports participant either:

(A) while the participant is performing duties or

responsibilities in the participant's capacity as a sports participant; or

(B) in retaliation for or on account of the participant's performance of a duty or responsibility within the participant's capacity as a sports participant; or

(3) a Class A misdemeanor if the offense is committed against a pregnant individual to force the individual to have an abortion.

(d) For purposes of Subsection (b), the actor is presumed to have known the person assaulted was a public servant, a security officer, or emergency services personnel if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer or emergency services personnel.

(e) In this section:

(1) "Emergency services personnel" includes firefighters, emergency medical services personnel as defined by Section 773.003, Health and Safety Code, emergency room personnel, and other individuals who, in the course and scope of employment or as a volunteer, provide services for the benefit of the general public during emergency situations.

(1-a) "Hospital personnel" includes nurses, physicians, physician assistants, maintenance or janitorial staff, receptionists, and other individuals who are employed by or work in a facility that is licensed as a general hospital or special hospital, as those terms are defined by Section 241.003, Health and Safety Code, including a hospital maintained or operated by the state.

(2) "Process server" has the meaning assigned by Section 156.001, Government Code.

(3) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

(4) "Sports participant" means a person who participates in any official capacity with respect to an interscholastic, intercollegiate, or other organized amateur or professional athletic competition and includes an athlete, referee, umpire, linesman, coach, instructor, administrator, or staff member.

(f) For the purposes of Subsections (b)(2)(A) and (b-3)(2):

(1) a defendant has been previously convicted of an offense

listed in those subsections committed against a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed in those subsections is a conviction of the offense listed.

(g) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, Sec. 12, 13, eff. July 22, 1977; Acts 1979, 66th Leg., p. 260, ch. 135, Sec. 1, 2, eff. Aug. 27, 1979; Acts 1979, 66th Leg., p. 367, ch. 164, Sec. 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 5311, ch. 977, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 2.08, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 739, Sec. 1 to 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(23) to (26), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 334, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 366, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 27.01, eff. Sept. 1, 1997; Acts 1995, 74th Leg., ch. 318, Sec. 5, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 659, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 27.01, 31.01(68), eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1158, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 294, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1019, Sec. 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1028, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 16.002, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 1, eff. September

1, 2005.

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 6, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 623 (H.B. 495), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 623 (H.B. 495), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 427 (H.B. 2066), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 665 (H.B. 2240), Sec. 2, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 875 (H.B. 705), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 27, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 440 (H.B. 2908), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 858 (H.B. 2552), Sec. 18, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(39), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.002(14), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 751 (H.B. 902), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 461 (H.B. 1306), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 461 (H.B. 1306), Sec. 2, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 199 (S.B. 840), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 199 (S.B. 840), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 694 (H.B. 1589), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 6, eff.

February 6, 2024.

Sec. 22.011. SEXUAL ASSAULT. (a) A person commits an offense if:

(1) the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) regardless of whether the person knows the age of the child at the time of the offense, the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or

defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser;

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code;

(12) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor;

(13) the actor is a coach or tutor who causes the other person to submit or participate by using the actor's power or influence to exploit the other person's dependency on the actor; or

(14) the actor is a caregiver hired to assist the other person with activities of daily life and causes the other person to submit or participate by exploiting the other person's dependency on the actor.

(c) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Spouse" means a person who is legally married to

another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or

(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(6) "Assisted reproduction" and "donor" have the meanings assigned by Section 160.102, Family Code.

(7) "Human reproductive material" means:

(A) a human spermatozoon or ovum; or

(B) a human organism at any stage of development from fertilized ovum to embryo.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not

include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense; or

(2) that:

(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) the victim:

(i) was a child of 14 years of age or older; and

(ii) was not:

(a) a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01; or

(b) a person with whom the actor was prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is:

(1) a felony of the first degree if the victim was:

(A) a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01; or

(B) a person with whom the actor was prohibited from engaging in sexual intercourse or deviate sexual intercourse under Section 25.02; or

(2) a state jail felony if the offense is committed under Subsection (a)(1) and the actor has not received express consent as described by Subsection (b)(12).

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, Sec. 3, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 557, Sec. 1, eff.

Sept. 1, 1985; Acts 1987, 70th Leg., ch. 1029, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 662, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 273, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1031, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1286, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1102, Sec. 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1415, Sec. 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.829, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 155, Sec. 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 528, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 553, Sec. 2.017, eff. Feb. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.02, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 4, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 33, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 6, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 436 (S.B. 1259), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 436 (S.B. 1259), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 738 (H.B. 667), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 873 (S.B. 1164), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 16.002, eff. September 1, 2021.

Sec. 22.012. INDECENT ASSAULT. (a) A person commits an offense if, without the other person's consent and with the intent to arouse or gratify the sexual desire of any person, the person:

(1) touches the anus, breast, or any part of the genitals

of another person;

(2) touches another person with the anus, breast, or any part of the genitals of any person;

(3) exposes or attempts to expose another person's genitals, pubic area, anus, buttocks, or female areola; or

(4) causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of any person.

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if it is shown on the trial of the offense that:

(A) the defendant has been previously convicted of an offense under this section, other than an offense punishable under Paragraph (B); or

(B) the defendant is a health care services provider or a mental health services provider and the act is:

(i) committed during the course of providing a treatment or service to the victim; and

(ii) beyond the scope of generally accepted practices for the treatment or service; or

(2) a felony of the third degree if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section that is punishable under Subdivision (1)(B).

(c) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

(d) In this section, "health care services provider" and "mental health services provider" have the meanings assigned by Section 22.011.

Added by Acts 2019, 86th Leg., R.S., Ch. 955 (S.B. 194), Sec. 1, eff. September 1, 2019.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 659 (H.B. 55), Sec. 1, eff. September 1, 2023.

Sec. 22.02. AGGRAVATED ASSAULT. (a) A person commits an offense if the person commits assault as defined in Sec. 22.01 and

the person:

(1) causes serious bodily injury to another, including the person's spouse; or

(2) uses or exhibits a deadly weapon during the commission of the assault.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

(1) the actor uses a deadly weapon during the commission of the assault and causes:

(A) serious bodily injury to a person whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005, Family Code; or

(B) a traumatic brain or spine injury to another that results in a persistent vegetative state or irreversible paralysis;

(2) regardless of whether the offense is committed under Subsection (a)(1) or (a)(2), the offense is committed:

(A) by a public servant acting under color of the servant's office or employment;

(B) against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant;

(C) in retaliation against or on account of the service of another as a witness, prospective witness, informant, or person who has reported the occurrence of a crime;

(D) against a person the actor knows is a process server while the person is performing a duty as a process server; or

(E) against a person the actor knows is a security officer while the officer is performing a duty as a security officer;

(3) the actor is in a motor vehicle, as defined by Section 501.002, Transportation Code, and:

(A) knowingly discharges a firearm at or in the direction of a habitation, building, or vehicle;

(B) is reckless as to whether the habitation, building, or vehicle is occupied; and

(C) in discharging the firearm, causes serious bodily injury to any person; or

(4) the actor commits the assault as part of a mass shooting.

(c) The actor is presumed to have known the person assaulted

was a public servant or a security officer if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant or status as a security officer.

(d) In this section:

(1) "Process server" has the meaning assigned by Section 156.001, Government Code.

(2) "Security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 367, ch. 164, Sec. 2, eff. Sept. 1, 1979; Acts 1979, 66th Leg., p. 1521, ch. 655, Sec. 2, eff. Sept. 1, 1979; Acts 1983, 68th Leg., p. 349, ch. 79, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5311, ch. 977, Sec. 2, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 223, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 18, Sec. 3, eff. April 14, 1987; Acts 1987, 70th Leg., ch. 1101, Sec. 12, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 939, Sec. 1 to 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 334, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 903, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1019, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 788 (S.B. 91), Sec. 3, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 594 (H.B. 176), Sec. 2, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 461 (H.B. 1306), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 300 (H.B. 28), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 467 (H.B. 165), Sec. 4, eff. September 1, 2023.

Sec. 22.021. AGGRAVATED SEXUAL ASSAULT. (a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) regardless of whether the person knows the age of the child at the time of the offense, intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim

and occurring during the course of the same criminal episode; or

(vi) with the intent of facilitating the commission of the offense, administers or provides to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act;

(B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense; or

(C) the victim is an elderly individual or a disabled individual.

(b) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Elderly individual" has the meaning assigned by Section 22.04(c).

(3) "Disabled individual" means a person older than 13 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

(e) An offense under this section is a felony of the first degree.

(f) The minimum term of imprisonment for an offense under this section is increased to 25 years if:

(1) the victim of the offense is younger than six years of age at the time the offense is committed; or

(2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, Sec. 3, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 573, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 16, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1286, Sec. 2, eff. Sept. 1, 1997; Acts

1999, 76th Leg., ch. 417, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 459, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 528, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 896, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.18, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 6.05, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 784 (H.B. 2589), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 34, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 7, eff. September 1, 2017.

Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or disabled individual:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(a-1) A person commits an offense if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, boarding home facility, intermediate care facility for persons with an intellectual or developmental disability, or other institutional care facility and the person intentionally, knowingly, recklessly, or with criminal negligence by omission causes to a child, elderly individual, or disabled individual who is a resident of that group home or facility:

(1) serious bodily injury;

(2) serious mental deficiency, impairment, or injury; or

(3) bodily injury.

(b) An omission that causes a condition described by Subsection (a)(1), (2), or (3) or (a-1)(1), (2), or (3) is conduct constituting an offense under this section if:

(1) the actor has a legal or statutory duty to act; or

(2) the actor has assumed care, custody, or control of a child, elderly individual, or disabled individual.

(c) In this section:

(1) "Child" means a person 14 years of age or younger.

(2) "Elderly individual" means a person 65 years of age or older.

(3) "Disabled individual" means a person:

(A) with one or more of the following:

(i) autism spectrum disorder, as defined by Section 1355.001, Insurance Code;

(ii) developmental disability, as defined by Section 112.042, Human Resources Code;

(iii) intellectual disability, as defined by Section 591.003, Health and Safety Code;

(iv) severe emotional disturbance, as defined by Section 261.001, Family Code;

(v) traumatic brain injury, as defined by Section 92.001, Health and Safety Code; or

(vi) mental illness, as defined by Section 571.003, Health and Safety Code; or

(B) who otherwise by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.

(4) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 620, Sec. 11, eff. September 1, 2011.

(d) For purposes of an omission that causes a condition described by Subsection (a)(1), (2), or (3), the actor has assumed care, custody, or control if the actor has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that the actor has accepted responsibility for protection, food, shelter, or medical care for a child, elderly individual, or disabled individual. For purposes of an omission that causes a condition described by Subsection (a-1)(1), (2), or (3), the actor acting during the actor's capacity as owner, operator, or employee of a group home or facility described by Subsection (a-1) is considered to have accepted responsibility for protection, food, shelter, or medical care for the child, elderly individual, or disabled individual who is a resident of the group home or facility.

(e) An offense under Subsection (a)(1) or (2) or (a-1)(1) or

(2) is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly, the offense is a felony of the second degree.

(f) An offense under Subsection (a)(3) or (a-1)(3) is a felony of the third degree when the conduct is committed intentionally or knowingly, except that an offense under Subsection (a)(3) is a felony of the second degree when the conduct is committed intentionally or knowingly and the victim is a disabled individual residing in a center, as defined by Section 555.001, Health and Safety Code, or in a facility licensed under Chapter 252, Health and Safety Code, and the actor is an employee of the center or facility whose employment involved providing direct care for the victim. When the conduct is engaged in recklessly, the offense is a state jail felony.

(g) An offense under Subsection (a) is a state jail felony when the person acts with criminal negligence. An offense under Subsection (a-1) is a state jail felony when the person, with criminal negligence and by omission, causes a condition described by Subsection (a-1)(1), (2), or (3).

(h) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) that before the offense the actor:

(1) notified in person the child, elderly individual, or disabled individual that the actor would no longer provide the applicable care described by Subsection (d), and notified in writing the parents or a person, other than the actor, acting in loco parentis to the child, elderly individual, or disabled individual that the actor would no longer provide the applicable care described by Subsection (d); or

(2) notified in writing the Department of Family and Protective Services that the actor would no longer provide the applicable care described by Subsection (d).

(j) Written notification under Subsection (i)(2) or (i)(3) is not effective unless it contains the name and address of the actor,

the name and address of the child, elderly individual, or disabled individual, the type of care provided by the actor, and the date the care was discontinued.

(k) It is a defense to prosecution under this section that the act or omission consisted of:

(1) reasonable medical care occurring under the direction of or by a licensed physician; or

(2) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(l) It is an affirmative defense to prosecution under this section:

(1) that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy;

(2) for a person charged with an act of omission causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.004, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect; or

(3) that:

(A) the actor was not more than three years older than the victim at the time of the offense; and

(B) the victim was a nondisabled or disabled child at the time of the offense.

(m) It is an affirmative defense to prosecution under Subsections (a)(1), (2), and (3) for injury to a disabled individual

that the person did not know and could not reasonably have known that the individual was a disabled individual, as defined by Subsection (c), at the time of the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1977, 65th Leg., p. 2067, ch. 819, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 365, ch. 162, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 472, ch. 202, Sec. 4, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2397, ch. 604, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 357, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 497, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.139, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(b), eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 1.125(a), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 949 (H.B. 1575), Sec. 46, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 38, eff. June 11, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 719 (H.B. 1286), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 719 (H.B. 1286), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 361 (H.B. 3019), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 361 (H.B. 3019), Sec. 2, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 187 (S.B. 1354), Sec. 1, eff. September 1, 2021.

Sec. 22.041. ABANDONING OR ENDANGERING A CHILD, ELDERLY INDIVIDUAL, OR DISABLED INDIVIDUAL. (a) In this section:

(1) "Abandon" means to leave in any place without providing

reasonable and necessary care a child, elderly individual, or disabled individual under circumstances under which no reasonable, similarly situated person would leave a child or individual of that age and ability.

(2) "Child," "elderly individual," and "disabled individual" have the meanings assigned by Section 22.04.

(b) A person commits an offense if the person, having custody, care, or control of a child, elderly individual, or disabled individual, intentionally abandons the child or individual in any place under circumstances that expose the child or individual to an unreasonable risk of harm.

(c) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child, elderly individual, or disabled individual in imminent danger of death, bodily injury, or physical or mental impairment.

(c-1) For purposes of Subsection (c), it is presumed that a person engaged in conduct that places a child, elderly individual, or disabled individual in imminent danger of death, bodily injury, or physical or mental impairment if:

(1) the person manufactured, possessed, or in any way introduced into the body of any person the controlled substance methamphetamine in the presence of the child, elderly individual, or disabled individual;

(2) the person's conduct related to the proximity or accessibility of the controlled substance methamphetamine to the child, elderly individual, or disabled individual and an analysis of a specimen of the child's or individual's blood, urine, or other bodily substance indicates the presence of methamphetamine in the body of the child or individual; or

(3) the person injected, ingested, inhaled, or otherwise introduced a controlled substance listed in Penalty Group 1, Section 481.102, Health and Safety Code, or Penalty Group 1-B, Section 481.1022, Health and Safety Code, into the human body when the person was not in lawful possession of the substance as defined by Section 481.002(24) of that code.

(d) Except as provided by Subsection (e), an offense under Subsection (b) is:

(1) a state jail felony if the actor abandoned the child, elderly individual, or disabled individual with intent to return for

the child or individual; or

(2) a felony of the third degree if the actor abandoned the child, elderly individual, or disabled individual without intent to return for the child or individual.

(e) An offense under Subsection (b) is a felony of the second degree if the actor abandons the child, elderly individual, or disabled individual under circumstances that a reasonable person would believe would place the child or individual in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) is a state jail felony.

(g) It is a defense to prosecution under Subsection (c) that the act or omission enables the child, elderly individual, or disabled individual to practice for or participate in an organized athletic event and that appropriate safety equipment and procedures are employed in the event.

(h) It is an exception to the application of this section for abandoning or endangering a child that the actor voluntarily delivered the child to a designated emergency infant care provider under Section 262.302, Family Code.

Added by Acts 1985, 69th Leg., ch. 791, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 904, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 687, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1087, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 809, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 282 (H.B. 164), Sec. 10, eff. August 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 840 (H.B. 946), Sec. 2, eff. September 1, 2007.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 19, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 830 (H.B. 2187), Sec. 1, eff. September 1, 2023.

Sec. 22.05. DEADLY CONDUCT. (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) A person commits an offense if he knowingly discharges a firearm at or in the direction of:

(1) one or more individuals; or

(2) a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.

(c) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

(d) For purposes of this section, "building," "habitation," and "vehicle" have the meanings assigned those terms by Section 30.01.

(e) An offense under Subsection (a) is a Class A misdemeanor. An offense under Subsection (b) is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 22.06. CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT. (a) The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (Deadly Conduct) if:

(1) the conduct did not threaten or inflict serious bodily injury; or

(2) the victim knew the conduct was a risk of:

(A) his occupation;

(B) recognized medical treatment; or

(C) a scientific experiment conducted by recognized methods.

(b) The defense to prosecution provided by Subsection (a) is not available to a defendant who commits an offense described by Subsection (a) as a condition of the defendant's or the victim's initiation or continued membership in a criminal street gang, as defined by Section 71.01.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 273 (H.B. 184), Sec. 1, eff.

September 1, 2007.

Sec. 22.07. TERRORISTIC THREAT. (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

(1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;

(2) place any person in fear of imminent serious bodily injury;

(3) prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place;

(4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;

(5) place the public or a substantial group of the public in fear of serious bodily injury; or

(6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.

(b) An offense under Subsection (a)(1) is a Class B misdemeanor.

(c) An offense under Subsection (a)(2) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the offense:

(1) is committed against a member of the person's family or household or otherwise constitutes family violence; or

(2) is committed against a public servant.

(c-1) Notwithstanding Subsection (c)(2), an offense under Subsection (a)(2) is a state jail felony if the offense is committed against a person the actor knows is a peace officer or judge.

(d) An offense under Subsection (a)(3) is a Class A misdemeanor, unless the actor causes pecuniary loss of $1,500 or more to the owner of the building, room, place, or conveyance, in which event the offense is a state jail felony.

(e) An offense under Subsection (a)(4), (a)(5), or (a)(6) is a felony of the third degree.

(f) In this section:

(1) "Family" has the meaning assigned by Section 71.003, Family Code.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Household" has the meaning assigned by Section 71.005, Family Code.

(g) For purposes of Subsection (d), the amount of pecuniary loss is the amount of economic loss suffered by the owner of the building, room, place, or conveyance as a result of the prevention or interruption of the occupation or use of the building, room, place, or conveyance.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, Sec. 2, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 139, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 388, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 446, Sec. 1, eff. Sept. 1, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 16.003, eff. September 1, 2005.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 440 (H.B. 2908), Sec. 4, eff. September 1, 2017.

Sec. 22.08. AIDING SUICIDE. (a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, in which event the offense is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 22.09. TAMPERING WITH CONSUMER PRODUCT. (a) In this section:

(1) "Consumer Product" means any product offered for sale to or for consumption by the public and includes "food" and "drugs" as those terms are defined in Section 431.002, Health and Safety Code.

(2) "Tamper" means to alter or add a foreign substance to a consumer product to make it probable that the consumer product will cause serious bodily injury.

(b) A person commits an offense if he knowingly or intentionally tampers with a consumer product knowing that the consumer product will be offered for sale to the public or as a gift to another.

(c) A person commits an offense if he knowingly or intentionally threatens to tamper with a consumer product with the intent to cause fear, to affect the sale of the consumer product, or to cause bodily injury to any person.

(d) An offense under Subsection (b) is a felony of the second degree unless a person suffers serious bodily injury, in which event it is a felony of the first degree. An offense under Subsection (c) is a felony of the third degree.

Added by Acts 1983, 68th Leg., p. 2812, ch. 481, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1989, 71st Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(32), eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 22.10. LEAVING A CHILD IN A VEHICLE. (a) A person commits an offense if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:

(1) younger than seven years of age; and

(2) not attended by an individual in the vehicle who is 14 years of age or older.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 24, Sec. 1, eff. Oct. 2, 1984. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 22.11. HARASSMENT BY PERSONS IN CERTAIN FACILITIES; HARASSMENT OF PUBLIC SERVANT. (a) A person commits an offense if, with the intent to assault, harass, or alarm, the person:

(1) while imprisoned or confined in a correctional or detention facility, causes another person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal;

(2) while committed to a civil commitment facility, causes:

(A) an officer or employee of the Texas Civil Commitment Office to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal:

(i) while the officer or employee is lawfully discharging an official duty at a civil commitment facility; or

(ii) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee; or

(B) a person who contracts with the state to perform a service in the facility or an employee of that person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal:

(i) while the person or employee is engaged in performing a service within the scope of the contract, if the actor knows the person or employee is authorized by the state to provide the service; or

(ii) in retaliation for or on account of the person's or employee's performance of a service within the scope of the contract; or

(3) causes another person the actor knows to be a public servant to contact the blood, seminal fluid, vaginal fluid, saliva, urine, or feces of the actor, any other person, or an animal while the public servant is lawfully discharging an official duty or in retaliation or on account of an exercise of the public servant's official power or performance of an official duty.

(b) An offense under this section is a felony of the third degree.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section.

(d) In this section, "correctional or detention facility" means:

(1) a secure correctional facility; or

(2) a "secure correctional facility" or a "secure detention facility" as defined by Section 51.02, Family Code, operated by or under contract with a juvenile board or the Texas Juvenile Justice Department or any other facility operated by or under contract with that department.

(e) For purposes of Subsection (a)(3), the actor is presumed to have known the person was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

Added by Acts 1999, 76th Leg., ch. 335, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 878, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 543 (H.B. 1095), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 142, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 28, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 29, eff. September 1, 2017.

Sec. 22.12. APPLICABILITY TO CERTAIN CONDUCT. This chapter does not apply to conduct charged as having been committed against an individual who is an unborn child if the conduct is:

(1) committed by the mother of the unborn child;

(2) a lawful medical procedure performed by a physician or other health care provider with the requisite consent;

(3) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or

(4) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.04, eff. Sept. 1, 2003.

TITLE 6. OFFENSES AGAINST THE FAMILY
CHAPTER 25. OFFENSES AGAINST THE FAMILY

Sec. 25.01. BIGAMY. (a) An individual commits an offense if:

(1) he is legally married and he:

(A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage; or

(B) lives with a person other than his spouse in this state under the appearance of being married; or

(2) he knows that a married person other than his spouse is married and he:

(A) purports to marry or does marry that person in this state, or any other state or foreign country, under circumstances that would, but for the person's prior marriage, constitute a marriage; or

(B) lives with that person in this state under the appearance of being married.

(b) For purposes of this section, "under the appearance of being married" means holding out that the parties are married with cohabitation and an intent to be married by either party.

(c) It is a defense to prosecution under Subsection (a)(1) that the actor reasonably believed at the time of the commission of the offense that the actor and the person whom the actor married or purported to marry or with whom the actor lived under the appearance of being married were legally eligible to be married because the actor's prior marriage was void or had been dissolved by death, divorce, or annulment. For purposes of this subsection, an actor's belief is reasonable if the belief is substantiated by a certified copy of a death certificate or other signed document issued by a court.

(d) For the purposes of this section, the lawful wife or husband of the actor may testify both for or against the actor concerning proof of the original marriage.

(e) An offense under this section is a felony of the third degree, except that if at the time of the commission of the offense, the person whom the actor marries or purports to marry or with whom the actor lives under the appearance of being married is:

(1) 17 years of age, the offense is a felony of the second degree; or

(2) 16 years of age or younger, the offense is a felony of the first degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.03, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 222 (H.B. 253), Sec. 4, eff. September 1, 2011.

Sec. 25.02. PROHIBITED SEXUAL CONDUCT. (a) A person commits an offense if the person engages in sexual intercourse or deviate sexual intercourse with another person the actor knows to be, without regard to legitimacy:

(1) the actor's ancestor or descendant by blood or adoption;

(2) the actor's current or former stepchild or stepparent;

(3) the actor's parent's brother or sister of the whole or half blood;

(4) the actor's brother or sister of the whole or half blood or by adoption;

(5) the children of the actor's brother or sister of the whole or half blood or by adoption; or

(6) the son or daughter of the actor's aunt or uncle of the whole or half blood or by adoption.

(b) For purposes of this section:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.

(2) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(c) An offense under this section is a felony of the third degree, unless the offense is committed under Subsection (a)(1), in which event the offense is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 4.04, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 673 (H.B. 2385), Sec. 1, eff. September 1, 2009.

Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY. (a) A person commits an offense if the person takes or retains a child younger than 18 years of age:

(1) when the person knows that the person's taking or retention violates the express terms of a judgment or order, including a temporary order, of a court disposing of the child's custody;

(2) when the person has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child; or

(3) outside of the United States with the intent to deprive a person entitled to possession of or access to the child of that possession or access and without the permission of that person.

(b) A noncustodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, the noncustodial parent knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.

(c) It is a defense to prosecution under Subsection (a)(2) that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.

(c-1) It is an affirmative defense to prosecution under Subsection (a)(3) that:

(1) the taking or retention of the child was pursuant to a valid order providing for possession of or access to the child; or

(2) notwithstanding any violation of a valid order providing for possession of or access to the child, the actor's retention of the child was due only to circumstances beyond the actor's control and the actor promptly provided notice or made reasonable attempts to provide notice of those circumstances to the other person entitled to possession of or access to the child.

(c-2) Subsection (a)(3) does not apply if, at the time of the offense, the person taking or retaining the child:

(1) was entitled to possession of or access to the child; and

(2) was fleeing the commission or attempted commission of family violence, as defined by Section 71.004, Family Code, against the child or the person.

(d) An offense under this section is a state jail felony.

(e) If conduct that constitutes an offense under Subsection (a)(3) also constitutes an offense under Section 20.03, the actor may be prosecuted only under Section 20.03.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1979, 66th Leg., p. 1111, ch. 527, Sec. 1, eff. Aug. 27, 1979; Acts 1987, 70th Leg., ch. 444, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 830, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 332, Sec. 1, eff. May 24, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 272 (H.B. 95), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 840 (H.B. 3439), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1100 (S.B. 1551), Sec. 3, eff. September 1, 2011.

Acts 2023, 88th Leg., R.S., Ch. 520 (H.B. 3025), Sec. 3, eff. September 1, 2023.

Sec. 25.031. AGREEMENT TO ABDUCT FROM CUSTODY. (a) A person commits an offense if the person agrees, for remuneration or the promise of remuneration, to abduct a child younger than 18 years of age by force, threat of force, misrepresentation, stealth, or unlawful entry, knowing that the child is under the care and control

of a person having custody or physical possession of the child under a court order, including a temporary order, or under the care and control of another person who is exercising care and control with the consent of a person having custody or physical possession under a court order, including a temporary order.

(b) An offense under this section is a state jail felony.

Added by Acts 1987, 70th Leg., ch. 444, Sec. 3, eff. Sept. 1, 1987.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 272 (H.B. 95), Sec. 2, eff. September 1, 2007.

Sec. 25.04. ENTICING A CHILD. (a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the offense that the actor intended to commit a felony against the child, in which event an offense under this section is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 685, Sec. 7, eff. Sept. 1, 1999.

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if the individual intentionally or knowingly fails to provide support for the individual's child younger than 18 years of age, or for the individual's child who is the subject of a court order requiring the individual to support the child.

(b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

(c) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense.

(d) It is an affirmative defense to prosecution under this section that the actor could not provide support for the actor's child.

(e) The pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code.

(f) An offense under this section is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 73, Sec. 13, eff. Nov. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 375, Sec. 1, eff. May 25, 2001.

Sec. 25.06. HARBORING RUNAWAY CHILD. (a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and

(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor.

(e) On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon

receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center.

Added by Acts 1979, 66th Leg., p. 1155, ch. 558, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4750, ch. 831, Sec. 1, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 561, Sec. 40, eff. Aug. 26, 1991. Renumbered from Sec. 25.07 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Sec. 25.07. VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN A FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE. (a) A person commits an offense if, in violation of a condition of bond set in a family violence, sexual assault or abuse, indecent assault, stalking, or trafficking case and related to the safety of a victim or the safety of the community, an order issued under Subchapter A, Chapter 7B, Code of Criminal Procedure, an order issued under Article 17.292, Code of Criminal Procedure, an order issued under Section 6.504, Family Code, Chapter 83, Family Code, if the temporary ex parte order has been served on the person, Chapter 85, Family Code, or Subchapter F, Chapter 261, Family Code, or an order issued by another jurisdiction as provided by Chapter 88, Family Code, the person knowingly or intentionally:

(1) commits family violence or an act in furtherance of an offense under Section 20A.02, 22.011, 22.012, 22.021, or 42.072;

(2) communicates:

(A) directly with a protected individual or a member of the family or household in a threatening or harassing manner;

(B) a threat through any person to a protected individual or a member of the family or household; or

(C) in any manner with the protected individual or a member of the family or household except through the person's attorney or a person appointed by the court, if the violation is of an order described by this subsection and the order prohibits any communication with a protected individual or a member of the family or household;

(3) goes to or near any of the following places as specifically described in the order or condition of bond:

(A) the residence or place of employment or business of a protected individual or a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the order or condition of bond normally resides or attends;

(4) possesses a firearm;

(5) harms, threatens, or interferes with the care, custody, or control of a pet, companion animal, or assistance animal that is possessed by a person protected by the order or condition of bond;

(6) removes, attempts to remove, or otherwise tampers with the normal functioning of a global positioning monitoring system; or

(7) tracks or monitors personal property or a motor vehicle in the possession of a protected individual or of a member of the family or household of a protected individual, without the individual's effective consent, including by:

(A) using a tracking application on a personal electronic device in the possession of the protected individual or the family or household member or using a tracking device; or

(B) physically following the protected individual or family or household member or causing another to physically follow the individual or member.

(a-1) For purposes of Subsection (a)(5), possession of a pet, companion animal, or assistance animal by a person means:

(1) actual care, custody, control, or management of a pet, companion animal, or assistance animal by the person; or

(2) constructive possession of a pet, companion animal, or assistance animal owned by the person or for which the person has been the primary caregiver.

(b) For the purposes of this section:

(1) "Family violence," " family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(2) "Firearm" has the meaning assigned by Chapter 46.

(2-a) "Global positioning monitoring system" has the meaning assigned by Article 17.49, Code of Criminal Procedure.

(3) "Assistance animal" has the meaning assigned by Section 121.002, Human Resources Code.

(4) "Sexual abuse" means any act as described by Section

21.02 or 21.11.

(5) "Sexual assault" means any act as described by Section 22.011 or 22.021.

(6) "Stalking" means any conduct that constitutes an offense under Section 42.072.

(7) "Trafficking" means any conduct that constitutes an offense under Section 20A.02.

(8) "Indecent assault" means any conduct that constitutes an offense under Section 22.012.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) Reconciliatory actions or agreements made by persons affected by an order do not affect the validity of the order or the duty of a peace officer to enforce this section.

(e) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(f) It is not a defense to prosecution under this section that certain information has been excluded, as provided by Section 85.007, Family Code, or Article 17.292, Code of Criminal Procedure, from an order to which this section applies.

(g) An offense under this section is a Class A misdemeanor, except the offense is:

(1) subject to Subdivision (2), a state jail felony if it is shown at the trial of the offense that the defendant violated an order issued under Subchapter A, Chapter 7B, Code of Criminal Procedure, following the defendant's conviction of or placement on deferred adjudication community supervision for an offense, if the order was issued with respect to a victim of that offense; or

(2) a felony of the third degree if it is shown on the trial of the offense that the defendant:

(A) has previously been convicted two or more times of an offense under this section or two or more times of an offense under Section 25.072, or has previously been convicted of an offense under this section and an offense under Section 25.072; or

(B) has violated the order or condition of bond by committing an assault or the offense of stalking.

(h) For purposes of Subsection (g), a conviction under the laws

of another state for an offense containing elements that are substantially similar to the elements of an offense under this section or Section 25.072 is considered to be a conviction under this section or Section 25.072, as applicable.

Added by Acts 1983, 68th Leg., p. 4049, ch. 631, Sec. 3, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 583, Sec. 3, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 170, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 677, Sec. 8, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 614, Sec. 23 to 26, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 739, Sec. 4 to 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 366, Sec. 2, eff. Sept. 1, 1991. Renumbered from Sec. 25.08 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 658, Sec. 2, 3, eff. June 14, 1995; Acts 1995, 74th Leg., ch. 660, Sec. 1, 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1024, Sec. 23, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1, Sec. 2, eff. Jan. 28, 1997; Acts 1997, 75th Leg., ch. 1193, Sec. 21, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(c), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 23, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 134, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 66 (S.B. 584), Sec. 2, eff. May 11, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1113 (H.B. 3692), Sec. 1, eff. January 1, 2008.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.001, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 136 (S.B. 279), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. 743), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 543 (S.B. 555), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 760 (S.B. 893), Sec. 5, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 760 (S.B. 893), Sec. 6, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1086 (H.B. 2645), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1086 (H.B. 2645), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1133 (S.B. 147), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1133 (S.B. 147), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 317 (H.B. 7), Sec. 69, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.58, eff. January 1, 2021.

Acts 2019, 86th Leg., R.S., Ch. 955 (S.B. 194), Sec. 11(b), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 955 (S.B. 194), Sec. 11(c), eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 955 (S.B. 194), Sec. 13, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1066 (H.B. 1343), Sec. 4, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 787 (H.B. 39), Sec. 11, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 839 (H.B. 2715), Sec. 6, eff. September 1, 2023.

Sec. 25.071. VIOLATION OF PROTECTIVE ORDER PREVENTING OFFENSE CAUSED BY BIAS OR PREJUDICE. (a) A person commits an offense if, in violation of an order issued under Subchapter C, Chapter 7B, Code of Criminal Procedure, the person knowingly or intentionally:

(1) commits an offense under Title 5 or Section 28.02, 28.03, or 28.08 and commits the offense because of bias or prejudice as described by Article 42.014, Code of Criminal Procedure;

(2) communicates:

(A) directly with a protected individual in a threatening or harassing manner;

(B) a threat through any person to a protected individual; or

(C) in any manner with the protected individual, if the order prohibits any communication with a protected individual; or

(3) goes to or near the residence or place of employment or business of a protected individual.

(b) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(c) A peace officer investigating conduct that may constitute an offense under this section for a violation of an order may not arrest a person protected by that order for a violation of that order.

(d) An offense under this section is a Class A misdemeanor unless it is shown on the trial of the offense that the defendant has previously been convicted under this section two or more times or has violated the protective order by committing an assault, in which event the offense is a third degree felony.

Added by Acts 2001, 77th Leg., ch. 85, Sec. 3.02, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.59, eff. January 1, 2021.

Sec. 25.072. REPEATED VIOLATION OF CERTAIN COURT ORDERS OR CONDITIONS OF BOND IN FAMILY VIOLENCE, CHILD ABUSE OR NEGLECT, SEXUAL ASSAULT OR ABUSE, INDECENT ASSAULT, STALKING, OR TRAFFICKING CASE.

(a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 25.07.

(b) If the jury is the trier of fact, members of the jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 25.07.

(c) A defendant may not be convicted in the same criminal action of another offense an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged

to have been engaged in is alleged to have been committed in violation of a single court order or single setting of bond.

(e) An offense under this section is a felony of the third degree.

Added by Acts 2013, 83rd Leg., R.S., Ch. 96 (S.B. 743), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 955 (S.B. 194), Sec. 11(d), eff. September 1, 2019.

Sec. 25.08. SALE OR PURCHASE OF CHILD. (a) A person commits an offense if he:

(1) possesses a child younger than 18 years of age or has the custody, conservatorship, or guardianship of a child younger than 18 years of age, whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption; or

(2) offers to give, agrees to give, or gives a thing of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

(b) It is an exception to the application of this section that the thing of value is:

(1) a fee or reimbursement paid to a child-placing agency as authorized by law;

(2) a fee paid to an attorney, social worker, mental health professional, or physician for services rendered in the usual course of legal or medical practice or in providing adoption counseling;

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child; or

(4) a necessary pregnancy-related expense paid by a child-placing agency for the benefit of the child's parent during the pregnancy or after the birth of the child as permitted by the minimum standards for child-placing agencies and Department of Protective and Regulatory Services rules.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under

Section 20A.02, 43.021, 43.05, or 43.25.

Added by Acts 1977, 65th Leg., p. 81, ch. 38, Sec. 1, eff. March 30, 1977. Amended by Acts 1981, 67th Leg., p. 2211, ch. 514, Sec. 1, eff. Sept. 1, 1981. Renumbered from Sec. 25.06 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(44). Renumbered from Sec. 25.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 2001, 77th Leg., ch. 134, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1005, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. 2014), Sec. 4.01, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 52, eff. September 1, 2021.

Sec. 25.081. UNREGULATED CUSTODY TRANSFER OF ADOPTED CHILD. (a) In this section:

(1) "Adopted child" means a person younger than 18 years of age who was legally adopted through a governmental entity or through private means, including a person who is in foster care or from a foreign country at the time of the adoption.

(2) "Unregulated custody transfer" means the transfer of the permanent physical custody of an adopted child by the parent, managing conservator, or guardian of the child without receiving approval of the transfer by a court as required by Section 162.026, Family Code.

(b) Except as otherwise provided by this section, a person commits an offense if the person knowingly:

(1) conducts an unregulated custody transfer of an adopted child; or

(2) facilitates or participates in the unregulated custody transfer of an adopted child, including by transferring, recruiting, harboring, transporting, providing, soliciting, or obtaining an adopted child for that purpose.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 20A.02, 43.021, 43.05, 43.25, 43.251, or 43.26.

(d) This section does not apply to:

(1) the placement of an adopted child with a licensed child-placing agency, the Department of Family and Protective Services, or an adult relative, stepparent, or other adult with a significant and long-standing relationship to the child;

(2) the placement of an adopted child by a licensed child-placing agency or the Department of Family and Protective Services;

(3) the temporary placement of an adopted child by the child's parent, managing conservator, or guardian for a designated short-term period with a specified intent and period for return of the child due to temporary circumstances, including:

(A) a vacation;

(B) a school-sponsored function or activity; or

(C) the incarceration, military service, medical treatment, or incapacity of the parent, managing conservator, or guardian;

(4) the placement of an adopted child in another state in accordance with the requirements of Subchapter B, Chapter 162, Family Code; or

(5) the voluntary delivery of an adopted child under Subchapter D, Chapter 262, Family Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 985 (H.B. 834), Sec. 3, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 53, eff. September 1, 2021.

Sec. 25.09. ADVERTISING FOR PLACEMENT OF CHILD. (a) A person commits an offense if the person advertises in the public media that the person will place, provide, or obtain a child for adoption or any other form of permanent physical custody of the child.

(b) This section does not apply to a licensed child-placing agency that is identified in the advertisement as a licensed child-placing agency.

(c) An offense under this section is a Class A misdemeanor unless the person has been convicted previously under this section, in which event the offense is a felony of the third degree.

(d) In this section:

(1) "Child" has the meaning assigned by Section 101.003,

Family Code.

(2) "Public media" has the meaning assigned by Section 38.01. The term also includes communications through the use of the Internet or another public computer network.

Added by Acts 1997, 75th Leg., ch. 561, Sec. 31, eff. Sept. 1, 1997.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 985 (H.B. 834), Sec. 4, eff. September 1, 2017.

Sec. 25.10. INTERFERENCE WITH RIGHTS OF GUARDIAN OF THE PERSON. (a) In this section:

(1) "Possessory right" means the right of a guardian of the person to have physical possession of a ward and to establish the ward's legal domicile, as provided by Section 1151.051(c)(1), Estates Code.

(2) "Ward" has the meaning assigned by Chapter 1002, Estates Code.

(b) A person commits an offense if the person takes, retains, or conceals a ward when the person knows that the person's taking, retention, or concealment interferes with a possessory right with respect to the ward.

(c) An offense under this section is a state jail felony.

(d) This section does not apply to a governmental entity where the taking, retention, or concealment of the ward was authorized by Subtitle E, Title 5, Family Code, or Chapter 48, Human Resources Code.

Added by Acts 2003, 78th Leg., ch. 549, Sec. 32, eff. Sept. 1, 2003.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.056, eff. September 1, 2017.

Sec. 25.11. CONTINUOUS VIOLENCE AGAINST THE FAMILY. (a) A person commits an offense if, during a period that is 12 months or less in duration, the person two or more times engages in conduct that constitutes an offense under Section 22.01(a)(1) against another person or persons whose relationship to or association with the defendant is described by Section 71.0021(b), 71.003, or 71.005,

Family Code.

(b) If the jury is the trier of fact, members of the jury are not required to agree unanimously on the specific conduct in which the defendant engaged that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a), the exact date when that conduct occurred, or the county in which each instance of the conduct occurred. The jury must agree unanimously that the defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that constituted an offense under Section 22.01(a)(1) against the person or persons described by Subsection (a).

(c) A defendant may not be convicted in the same criminal action of another offense the victim of which is an alleged victim of the offense under Subsection (a) and an element of which is any conduct that is alleged as an element of the offense under Subsection (a) unless the other offense:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(d) A defendant may not be charged with more than one count under Subsection (a) if all of the specific conduct that is alleged to have been engaged in is alleged to have been committed against a single victim or members of the same household, as defined by Section 71.005, Family Code.

(e) An offense under this section is a felony of the third degree.

Added by Acts 2009, 81st Leg., R.S., Ch. 665 (H.B. 2240), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1360 (H.B. 1661), Sec. 3, eff. September 1, 2019.

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 28.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

(B) tangible or intangible personal property, including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.

(5) "Open-space land" means real property that is undeveloped for the purpose of human habitation.

(6) "Controlled burning" means the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, Sec. 1, eff. Sept. 1, 1979; Acts 1989, 71st Leg., ch. 31, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.02. ARSON. (a) A person commits an offense if the person starts a fire, regardless of whether the fire continues after ignition, or causes an explosion with intent to destroy or damage:

(1) any vegetation, fence, or structure on open-space land; or

(2) any building, habitation, or vehicle:

(A) knowing that it is within the limits of an incorporated city or town;

(B) knowing that it is insured against damage or

destruction;

(C) knowing that it is subject to a mortgage or other security interest;

(D) knowing that it is located on property belonging to another;

(E) knowing that it has located within it property belonging to another; or

(F) when the person is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(a-1) A person commits an offense if the person recklessly starts a fire or causes an explosion while manufacturing or attempting to manufacture a controlled substance and the fire or explosion damages any building, habitation, or vehicle.

(a-2) A person commits an offense if the person intentionally starts a fire or causes an explosion and in so doing:

(1) recklessly damages or destroys a building belonging to another; or

(2) recklessly causes another person to suffer bodily injury or death.

(b) It is an exception to the application of Subsection (a)(1) that the fire or explosion was a part of the controlled burning of open-space land.

(c) It is a defense to prosecution under Subsection (a)(2)(A) that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(d) An offense under Subsection (a) is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that:

(1) bodily injury or death was suffered by any person by reason of the commission of the offense; or

(2) the property intended to be damaged or destroyed by the actor was a habitation or a place of assembly or worship.

(e) An offense under Subsection (a-1) is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that bodily injury or death was suffered by any person by reason of the commission of the offense.

(f) An offense under Subsection (a-2) is a state jail felony.

(g) If conduct that constitutes an offense under Subsection (a-1) or that constitutes an offense under Subsection (a-2) also constitutes an offense under another subsection of this section or another section of this code, the actor may be prosecuted under Subsection (a-1) or Subsection (a-2), under the other subsection of this section, or under the other section of this code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1979, 66th Leg., p. 1216, ch. 588, Sec. 2, eff. Sept. 1, 1979; Acts 1981, 67th Leg., p. 1837, ch. 425, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 31, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1006, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 976, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 960 (H.B. 1634), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1168 (H.B. 3224), Sec. 1, eff. September 1, 2009.

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

(1) he intentionally or knowingly damages or destroys the tangible property of the owner;

(2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or

(3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsections (f) and (h), an offense under this section is:

(1) a Class C misdemeanor if:

(A) the amount of pecuniary loss is less than $100; or

(B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;

(2) a Class B misdemeanor if the amount of pecuniary loss is $100 or more but less than $750;

(3) a Class A misdemeanor if:

(A) the amount of pecuniary loss is $750 or more but less than $2,500; or

(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary loss;

(4) a state jail felony if the amount of pecuniary loss is:

(A) $2,500 or more but less than $30,000;

(B) less than $2,500, if the property damaged or destroyed is a habitation and if the damage or destruction is caused by a firearm or explosive weapon;

(C) less than $2,500, if the property was a fence used for the production or containment of:

(i) cattle, bison, horses, sheep, swine, goats, exotic livestock, or exotic poultry; or

(ii) game animals as that term is defined by Section 63.001, Parks and Wildlife Code;

(D) less than $30,000 and the actor:

(i) causes wholly or partly impairment or interruption of property used for flood control purposes or a dam or of public communications, public transportation, public gas supply, or other public service; or

(ii) causes to be diverted wholly, partly, or in any manner, including installation or removal of any device for any such purpose, any public communications or public gas supply; or

(E) less than $30,000, if the property is a motor vehicle that is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter from the motor vehicle;

(5) a felony of the third degree if:

(A) the amount of the pecuniary loss is $30,000 or more but less than $150,000;

(B) the actor, by discharging a firearm or other weapon or by any other means, causes the death of one or more head of cattle or bison or one or more horses;

(C) the actor causes wholly or partly impairment or interruption of access to an automated teller machine, regardless of the amount of the pecuniary loss; or

(D) the amount of pecuniary loss is less than $150,000

and the actor:

(i) causes wholly or partly impairment or interruption of property used for public power supply; or

(ii) causes to be diverted wholly, partly, or in any manner, including installation or removal of any device for any such purpose, any public power supply;

(6) a felony of the second degree if the amount of pecuniary loss is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the amount of pecuniary loss is $300,000 or more.

(c) For the purposes of this section, it shall be presumed that a person who is receiving the economic benefit of public communications, public water, gas, or power supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device; or

(3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.

(d) The terms "public communication, public transportation, public gas or power supply, or other public service" and "public water supply" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Natural Resource Conservation Commission or any such services enfranchised by the State of Texas or any political subdivision thereof.

(e) When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.

(f) An offense under this section is a state jail felony if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is

$750 or more but less than $30,000.

(g) In this section:

(1) "Explosive weapon" means any explosive or incendiary device that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes:

(A) an explosive or incendiary bomb, grenade, rocket, and mine;

(B) a device designed, made, or adapted for delivering or shooting an explosive weapon; and

(C) a device designed, made, or adapted to start a fire in a time-delayed manner.

(2) "Firearm" has the meaning assigned by Section 46.01.

(3) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(4) "Aluminum wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent aluminum, including any tubing or conduit attached to the wire or cable.

(5) "Bronze wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent bronze, including any tubing or conduit attached to the wire or cable.

(6) "Copper wiring" means insulated or noninsulated wire or cable that consists of at least 50 percent copper, including any tubing or conduit attached to the wire or cable.

(7) "Transportation communications equipment" means:

(A) an official traffic-control device, railroad sign or signal, or traffic-control signal, as those terms are defined by Section 541.304, Transportation Code; or

(B) a sign, signal, or device erected by a railroad, public body, or public officer to direct the movement of a railroad train, as defined by Section 541.202, Transportation Code.

(8) "Transportation communications device" means any item attached to transportation communications equipment, including aluminum wiring, bronze wiring, and copper wiring.

(9) "Automated teller machine" has the meaning assigned by Section 31.03.

(h) An offense under this section is a state jail felony if the amount of the pecuniary loss to real property or to tangible personal property is $750 or more but less than $30,000 and the damage or

destruction is inflicted on a public or private elementary school, secondary school, or institution of higher education.

(i) Notwithstanding Subsection (b), an offense under this section is a felony of the first degree if the property is livestock and the damage is caused by introducing bovine spongiform encephalopathy, commonly known as mad cow disease, or a disease listed in rules adopted by the Texas Animal Health Commission under Section 161.041(a), Agriculture Code. In this subsection, "livestock" has the meaning assigned by Section 161.001, Agriculture Code.

(j) Notwithstanding Subsection (b), an offense under this section is a felony of the third degree if:

(1) the tangible property damaged, destroyed, or tampered with is transportation communications equipment or a transportation communications device; and

(2) the amount of the pecuniary loss to the tangible property is less than $150,000.

(k) Subsection (a)(1) or (2) does not apply if the tangible personal property of the owner was a head of cattle or bison killed, or a horse killed, in the course of the actor's:

(1) actual discharge of official duties as a member of the United States armed forces or the state military forces as defined by Section 437.001, Government Code; or

(2) regular agricultural labor duties and practices.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 66, ch. 29, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 2917, ch. 497, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 352, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 559, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 1253, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., 1st C.S., ch. 42, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 11.280, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1083, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 747, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 976, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1280, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 690 (H.B. 1767), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 690 (H.B. 1767), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 638 (H.B. 1614), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 5, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 136 (H.B. 1257), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 500 (H.B. 2817), Sec. 2, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 369 (S.B. 516), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 369 (S.B. 516), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 849 (S.B. 705), Sec. 36, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.01, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 823 (H.B. 1833), Sec. 1, eff. September 1, 2023.

Sec. 28.04. RECKLESS DAMAGE OR DESTRUCTION. (a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 28.05. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property damaged or destroyed if another person also has an interest that the actor is not entitled to infringe.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

Sec. 28.06. AMOUNT OF PECUNIARY LOSS. (a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c), the amount of loss is deemed to be greater than $750 but less than $2,500.

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

(1) the amount of pecuniary loss if the property is destroyed; or

(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1983, 68th Leg., p. 2918, ch. 497, Sec. 2, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 6, eff.

September 1, 2015.

Sec. 28.07. INTERFERENCE WITH RAILROAD PROPERTY. (a) In this section:

(1) "Railroad property" means:

(A) a train, locomotive, railroad car, caboose, work equipment, rolling stock, safety device, switch, or connection that is owned, leased, operated, or possessed by a railroad; or

(B) a railroad track, rail, bridge, trestle, or right-of-way owned or used by a railroad.

(2) "Tamper" means to move, alter, or interfere with railroad property.

(b) A person commits an offense if the person:

(1) throws an object or discharges a firearm or weapon at a train or rail-mounted work equipment; or

(2) without the effective consent of the owner:

(A) enters or remains on railroad property, knowing that it is railroad property;

(B) tampers with railroad property;

(C) places an obstruction on a railroad track or right-of-way; or

(D) causes in any manner the derailment of a train, railroad car, or other railroad property that moves on tracks.

(c) An offense under Subsection (b)(1) is a Class B misdemeanor unless the person causes bodily injury to another, in which event the offense is a felony of the third degree.

(d) An offense under Subsection (b)(2)(A) is a Class C misdemeanor.

(e) An offense under Subsection (b)(2)(B), (b)(2)(C), or (b)(2)(D) is a Class C misdemeanor unless the person causes pecuniary loss of $100 or more, in which event the offense is:

(1) a Class B misdemeanor if the amount of pecuniary loss is $100 or more but less than $750;

(2) a Class A misdemeanor if the amount of pecuniary loss is $750 or more but less than $2,500;

(3) a state jail felony if the amount of pecuniary loss is $2,500 or more but less than $30,000;

(4) a felony of the third degree if the amount of the pecuniary loss is $30,000 or more but less than $150,000;

(5) a felony of the second degree if the amount of pecuniary loss is $150,000 or more but less than $300,000; or

(6) a felony of the first degree if the amount of the pecuniary loss is $300,000 or more.

(f) The conduct described in Subsection (b)(2)(A) is not an offense under this section if it is undertaken by an employee of the railroad or by a representative of a labor organization which represents or is seeking to represent the employees of the railroad as long as the employee or representative has a right to engage in such conduct under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

Added by Acts 1989, 71st Leg., ch. 908, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 7, eff. September 1, 2015.

Sec. 28.08. GRAFFITI. (a) A person commits an offense if, without the effective consent of the owner, the person intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner with:

(1) paint;

(2) an indelible marker; or

(3) an etching or engraving device.

(b) Except as provided by Subsection (d), an offense under this section is:

(1) a Class C misdemeanor if the amount of pecuniary loss is less than $100;

(2) a Class B misdemeanor if the amount of pecuniary loss is $100 or more but less than $750;

(3) a Class A misdemeanor if the amount of pecuniary loss is $750 or more but less than $2,500;

(4) a state jail felony if the amount of pecuniary loss is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the amount of pecuniary loss is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the amount of

pecuniary loss is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the amount of pecuniary loss is $300,000 or more.

(c) When more than one item of tangible property, belonging to one or more owners, is marked in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the marking of the property may be aggregated in determining the grade of the offense.

(d) An offense under this section is a state jail felony if:

(1) the marking is made on a school, an institution of higher education, a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs; and

(2) the amount of the pecuniary loss to real property or to tangible personal property is $750 or more but less than $30,000.

(e) In this section:

(1) "Aerosol paint" means an aerosolized paint product.

(2) "Etching or engraving device" means a device that makes a delineation or impression on tangible property, regardless of the manufacturer's intended use for that device.

(3) "Indelible marker" means a device that makes a mark with a paint or ink product that is specifically formulated to be more difficult to erase, wash out, or remove than ordinary paint or ink products.

(4) "Institution of higher education" has the meaning assigned by Section 481.134, Health and Safety Code.

(5) "School" means a private or public elementary or secondary school.

Added by Acts 1997, 75th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 166, Sec. 1, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 695, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 16.001, eff. Sept. 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 639 (H.B. 1633), Sec. 4, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 8, eff. September 1, 2015.

Sec. 28.09. DAMAGING CRITICAL INFRASTRUCTURE FACILITY. (a) In this section:

(1) "Critical infrastructure facility" means an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility.

(2) "Cyber attack" means an attempt to damage, disrupt, or gain unauthorized access to a computer, computer network, or computer system.

(3) "Drone" has the meaning assigned by Article 2.33, Code of Criminal Procedure, as added by Chapter 1011 (H.B. 1758), Acts of the 87th Legislature, Regular Session, 2021.

(4) "Explosive weapon" has the meaning assigned by Section 28.03.

(5) "Extended power outage" means a power outage:

(A) lasting for two hours or more; or

(B) affecting 1,000 or more meters used to measure electric energy consumption by retail customers.

(6) "Firearm" has the meaning assigned by Section 46.01.

(b) A person commits an offense if, without the effective consent of the owner or operator of a critical infrastructure facility, the person:

(1) intentionally or knowingly damages, destroys, vandalizes, or impairs the function of any critical infrastructure facility; and

(2) as a result of the conduct described by Subdivision (1), causes an extended power outage.

(c) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if:

(1) the amount of pecuniary damage to the critical infrastructure facility is $100,000 or more; or

(2) the actor uses a firearm, drone, cyber attack, or explosive weapon in the commission of the offense.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2023, 88th Leg., R.S., Ch. 1146 (S.B. 947), Sec. 2, eff. September 1, 2023.

Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR STATE JAIL FELONIES. The punishment for an offense under this chapter that is punishable as a misdemeanor or a state jail felony is increased to the punishment for a felony of the third degree if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

Added by Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 7, eff. February 6, 2024.

CHAPTER 29. ROBBERY

Sec. 29.01. DEFINITIONS. In this chapter:

(1) "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.

(2) "Property" means:

(A) tangible or intangible personal property including anything severed from land; or

(B) a document, including money, that represents or embodies anything of value.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 29.02. ROBBERY. (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 29.03. AGGRAVATED ROBBERY. (a) A person commits an offense if he commits robbery as defined in Section 29.02, and he:

(1) causes serious bodily injury to another;

(2) uses or exhibits a deadly weapon; or

(3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:

(A) 65 years of age or older; or

(B) a disabled person.

(b) An offense under this section is a felony of the first degree.

(c) In this section, "disabled person" means an individual with a mental, physical, or developmental disability who is substantially unable to protect himself from harm.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 357, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Sec. 30.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as "habitation."

(4) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(5) "Wholesale distributor of prescription drugs" means a wholesale distributor, as defined by Section 431.401, Health and Safety Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 338 (H.B. 1178), Sec. 1, eff. September 1, 2017.

Sec. 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, the person:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or

(2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) Except as provided in Subsection (c-1), (c-2), or (d), an offense under this section is a:

(1) state jail felony if committed in a building other than a habitation; or

(2) felony of the second degree if committed in a habitation.

(c-1) An offense under this section is a felony of the third degree if:

(1) the premises are a commercial building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, nursing facility, or warehouse; and

(2) the person entered or remained concealed in that building with intent to commit a theft of a controlled substance.

(c-2) An offense under this section is a felony of the third degree if:

(1) the premises are a building other than a habitation; and

(2) it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

(d) An offense under this section is a felony of the first degree if:

(1) the premises are a habitation; and

(2) any party to the offense entered the habitation with intent to commit a felony other than felony theft or committed or attempted to commit a felony other than felony theft.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 8, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 727, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 338 (H.B. 1178), Sec. 2, eff. September 1, 2017.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 8, eff. February 6, 2024.

Sec. 30.03. BURGLARY OF COIN-OPERATED OR COIN COLLECTION MACHINES. (a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine, coin collection machine, or other coin-operated or coin collection receptacle, contrivance, apparatus, or equipment used for the purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every kind of entry except one made with the effective consent of the owner.

(c) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1987, 70th Leg., ch. 62, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 30.04. BURGLARY OF VEHICLES. (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) For purposes of this section, a container or trailer carried on a rail car is a part of the rail car.

(d) An offense under this section is a Class A misdemeanor, except that:

(1) the offense is a Class A misdemeanor with a minimum term of confinement of six months if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section;

(2) the offense is a state jail felony if:

(A) it is shown on the trial of the offense that the defendant has been previously convicted two or more times of an offense under this section; or

(B) the vehicle or part of the vehicle broken into or entered is a rail car; and

(3) the offense is a felony of the third degree if:

(A) the vehicle broken into or entered is owned or operated by a wholesale distributor of prescription drugs and the actor breaks into or enters that vehicle with the intent to commit theft of a controlled substance; or

(B) it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

(d-1) For the purposes of Subsection (d), a defendant has been previously convicted under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

(e) It is a defense to prosecution under this section that the actor entered a rail car or any part of a rail car and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 916, Sec. 1, eff. Sept. 1, 1999. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 308 (H.B. 1887), Sec. 1, eff.

September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 338 (H.B. 1178), Sec. 3, eff. September 1, 2017.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 9, eff. February 6, 2024.

Sec. 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, a general residential operation operating as a residential treatment center, or an aircraft or other vehicle, without effective consent and the person:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(b) For purposes of this section:

(1) "Entry" means the intrusion of the entire body.

(2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;

(D) the placement of identifying purple paint marks on trees or posts on the property, provided that the marks are:

(i) vertical lines of not less than eight inches in length and not less than one inch in width;

(ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and

(iii) placed at locations that are readily visible to any person approaching the property and no more than:

(a) 100 feet apart on forest land; or

(b) 1,000 feet apart on land other than forest land; or

(E) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.

(3) "Shelter center" has the meaning assigned by Section 51.002, Human Resources Code.

(4) "Forest land" means land on which the trees are potentially valuable for timber products.

(5) "Agricultural land" has the meaning assigned by Section 75.001, Civil Practice and Remedies Code.

(6) "Superfund site" means a facility that:

(A) is on the National Priorities List established under Section 105 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9605); or

(B) is listed on the state registry established under Section 361.181, Health and Safety Code.

(7) "Critical infrastructure facility" means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders:

(A) a chemical manufacturing facility;

(B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas transmission compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas; or

(J) a transmission facility used by a federally licensed radio or television station.

(8) "Protected freshwater area" has the meaning assigned by Section 90.001, Parks and Wildlife Code.

(9) "Recognized state" means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:

(A) has firearm proficiency requirements for peace officers; and

(B) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

(10) "Recreational vehicle park" has the meaning assigned by Section 13.087, Water Code.

(11) "Residential land" means real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.

(12) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(13) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(c) A person may provide notice that firearms are prohibited on the property by posting a sign at each entrance to the property that:

(1) includes language that is identical to or substantially similar to the following: "Pursuant to Section 30.05, Penal Code (criminal trespass), a person may not enter this property with a firearm";

(2) includes the language described by Subdivision (1) in both English and Spanish;

(3) appears in contrasting colors with block letters at least one inch in height; and

(4) is displayed in a conspicuous manner clearly visible to the public.

(d) Subject to Subsection (d-3), an offense under this section is:

(1) a Class B misdemeanor, except as provided by Subdivisions (2), (3), and (4);

(2) a Class C misdemeanor, except as provided by Subdivisions (3) and (4), if the offense is committed:

(A) on agricultural land and within 100 feet of the boundary of the land; or

(B) on residential land and within 100 feet of a protected freshwater area;

(3) a Class A misdemeanor, except as provided by Subdivision (4), if:

(A) the offense is committed:

(i) in a habitation or a shelter center;

(ii) on a Superfund site; or

(iii) on or in a critical infrastructure facility;

(B) the offense is committed on or in property of an

institution of higher education and it is shown on the trial of the offense that the person has previously been convicted of:

(i) an offense under this section relating to entering or remaining on or in property of an institution of higher education; or

(ii) an offense under Section 51.204(b)(1), Education Code, relating to trespassing on the grounds of an institution of higher education;

(C) the person carries a deadly weapon during the commission of the offense; or

(D) the offense is committed on the property of or within a general residential operation operating as a residential treatment center; and

(4) a felony of the third degree if it is shown on the trial of the offense that the defendant committed the offense in the course of committing an offense under Section 20.05(a)(2).

(d-1) For the purposes of Subsection (d)(3)(B), a person has previously been convicted of an offense described by that paragraph if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication community supervision, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from deferred adjudication community supervision.

(d-2) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(B), the defendant may raise the issue as to whether, at the time of the instant offense or the previous offense, the defendant was engaging in speech or expressive conduct protected by the First Amendment to the United States Constitution or Section 8, Article I, Texas Constitution. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(B) does not apply.

(d-3) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed $200 if the person enters the property, land, or building with a firearm or other weapon and the sole basis on which entry on the property or land or in the building was forbidden is that entry with a firearm or other weapon was forbidden, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property,

land, or building with the firearm or other weapon, the actor:

(1) personally received from the owner of the property or another person with apparent authority to act for the owner notice that entry with a firearm or other weapon was forbidden, as given through:

(A) notice under Subsection (b)(2)(A), including oral or written communication; or

(B) if the actor is unable to reasonably understand the notice described by Paragraph (A), other personal notice that is reasonable under the circumstances; and

(2) subsequently failed to depart.

(e) It is a defense to prosecution under this section that the actor at the time of the offense was:

(1) a firefighter or emergency medical services personnel, as defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;

(2) a person who was:

(A) an employee or agent of:

(i) an electric utility, as defined by Section 31.002, Utilities Code;

(ii) a telecommunications provider, as defined by Section 51.002, Utilities Code;

(iii) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code;

(iv) a gas utility, as defined by Section 101.003, Utilities Code, which for the purposes of this subsection includes a municipally owned utility as defined by that section;

(v) a gas utility, as defined by Section 121.001, Utilities Code;

(vi) a pipeline used for the transportation or sale of oil, gas, or related products; or

(vii) an electric cooperative or municipally owned utility, as defined by Section 11.003, Utilities Code; and

(B) performing a duty within the scope of that employment or agency; or

(3) a person who was:

(A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and

(B) performing a duty within the scope of that

employment or agency.

(f) It is a defense to prosecution under this section that:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun was forbidden; and

(2) the person was carrying:

(A) a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; and

(B) a handgun:

(i) in a concealed manner; or

(ii) in a holster.

(f-1) It is a defense to prosecution under this section that:

(1) the basis on which entry on the property was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B);

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the condominium apartment or unit owner's apartment or unit;

(B) carries a firearm or firearm ammunition directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for residents or guests of the condominium property; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-2) It is a defense to prosecution under this section that:

(1) the basis on which entry on a leased premises governed by Chapter 92, Property Code, was forbidden is that entry with a

firearm or firearm ammunition was forbidden;

(2) the actor is a tenant of the leased premises or the tenant's guest;

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the tenant's rental unit;

(B) carries a firearm or firearm ammunition directly en route to or from the tenant's rental unit;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-3) It is a defense to prosecution under this section that:

(1) the basis on which entry on a leased premises governed by Chapter 94, Property Code, was forbidden is that entry with a firearm or firearm ammunition was forbidden;

(2) the actor is a tenant of a manufactured home lot or the tenant's guest;

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the tenant's manufactured home;

(B) carries a firearm or firearm ammunition directly en route to or from the tenant's manufactured home;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; and

(4) the actor is not otherwise prohibited by law from possessing a firearm or firearm ammunition.

(f-4) It is a defense to prosecution under this section that:

(1) the conduct occurred on hotel property, and the basis on which entry on that property was forbidden is that entry with a

firearm or firearm ammunition was forbidden;

(2) the actor is a guest of a hotel, as defined by Section 2155.101, Occupations Code; and

(3) the actor:

(A) carries or stores a firearm or firearm ammunition in the actor's hotel room;

(B) carries a firearm or firearm ammunition directly en route to or from the hotel or the actor's hotel room;

(C) carries a firearm or firearm ammunition directly en route to or from the actor's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(D) carries or stores a firearm or firearm ammunition in the actor's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests.

(g) It is a defense to prosecution under this section that the actor entered a railroad switching yard or any part of a railroad switching yard and was at that time an employee or a representative of employees exercising a right under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

(h) At the punishment stage of a trial in which the attorney representing the state seeks the increase in punishment provided by Subsection (d)(3)(A)(iii), the defendant may raise the issue as to whether the defendant entered or remained on or in a critical infrastructure facility as part of a peaceful or lawful assembly, including an attempt to exercise rights guaranteed by state or federal labor laws. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the increase in punishment provided by Subsection (d)(3)(A)(iii) does not apply.

Text of subsection effective until January 1, 2025

(i) This section does not apply if:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun or other weapon was forbidden; and

(2) the actor at the time of the offense was a peace officer, including a commissioned peace officer of a recognized state, or a special investigator under Article 2.122, Code of Criminal Procedure, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon.

Text of subsection effective on January 1, 2025

(i) This section does not apply if:

(1) the basis on which entry on the property or land or in the building was forbidden is that entry with a handgun or other weapon was forbidden; and

(2) the actor at the time of the offense was a peace officer, including a commissioned peace officer of a recognized state, or a special investigator under Article 2A.002, Code of Criminal Procedure, regardless of whether the peace officer or special investigator was engaged in the actual discharge of an official duty while carrying the weapon.

(j) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1138, Sec. 4, eff. September 1, 2009.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, Sec. 3, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2385, ch. 596, Sec. 1, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 139, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 308, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 24, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1229, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 161, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 169, Sec. 1, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 765, Sec. 1, 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 16.002, 21.001(94), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1078, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1178, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14B.001, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1093 (H.B. 2110), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 20, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1337 (S.B. 9), Sec. 21, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(61), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.002(13), eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1138 (H.B. 2609), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 20.001, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 564 (S.B. 701), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 613 (S.B. 1268), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1302 (H.B. 3142), Sec. 12, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 40, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 602 (S.B. 1649), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 602 (S.B. 1649), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 39 (H.B. 302), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 481 (H.B. 2112), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 518 (S.B. 550), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 23, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 24, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 25, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 17, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1008 (S.B. 20), Sec. 4, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.156, eff. January 1, 2025.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 10, eff. February 6, 2024.

Sec. 30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN. (a) A license holder commits an offense if the license holder:

(1) carries a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder with a concealed handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section 30.05(b).

(2) "License holder" has the meaning assigned by Section 46.03.

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed $200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03.

(e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

(e-4) It is a defense to prosecution under this section that the license holder is a guest of a hotel, as defined by Section 2155.101, Occupations Code, and the license holder:

(1) carries or stores a handgun in the license holder's hotel room;

(2) carries a handgun directly en route to or from the hotel or the license holder's hotel room;

(3) carries a handgun directly en route to or from the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(4) carries or stores a handgun in the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests.

(f) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

(f-1) It is a defense to prosecution under this section that the license holder is a first responder, as defined by Section 46.01, who:

(1) holds an unexpired certificate of completion under Section 411.1883, Government Code, at the time of engaging in the applicable conduct;

(2) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and

(3) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

(g) It is a defense to prosecution under this section that the license holder was personally given notice by oral communication described by Subsection (b) and promptly departed from the property.

Added by Acts 1997, 75th Leg., ch. 1261, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 9.24, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1178, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 41, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 42, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 43, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 8, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 39 (H.B. 302), Sec. 2, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 250 (H.B. 121), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 18, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 19, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1008 (S.B. 20), Sec. 5, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 5, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(18), eff. September 1, 2023.

Sec. 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN. (a) A license holder commits an offense if the license holder:

(1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section 30.05(b).

(2) "License holder" has the meaning assigned by Section 46.03.

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed $200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03.

(e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by

Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's

vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

(e-4) It is a defense to prosecution under this section that the license holder is a guest of a hotel, as defined by Section 2155.101, Occupations Code, and the license holder:

(1) carries or stores a handgun in the license holder's hotel room;

(2) carries a handgun directly en route to or from the hotel or the license holder's hotel room;

(3) carries a handgun directly en route to or from the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(4) carries or stores a handgun in the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests.

(f) It is not a defense to prosecution under this section that the handgun was carried in a holster.

(g) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

(g-1) It is a defense to prosecution under this section that the license holder is a first responder, as defined by Section 46.01, who:

(1) holds an unexpired certificate of completion under Section 411.1883, Government Code, at the time of engaging in the applicable conduct;

(2) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and

(3) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

(h) It is a defense to prosecution under this section that the license holder was personally given notice by oral communication described by Subsection (b) and promptly departed from the property.

Added by Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 44, eff. January 1, 2016.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 9, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 39 (H.B. 302), Sec. 3, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 250 (H.B. 121), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 481 (H.B. 2112), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 518 (S.B. 550), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 20, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 21, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1008 (S.B. 20), Sec. 6, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 6, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(19), eff. September 1, 2023.

CHAPTER 31. THEFT

Sec. 31.01. DEFINITIONS. In this chapter:

(1) "Deception" means:

(A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true;

(B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

(C) preventing another from acquiring information likely to affect his judgment in the transaction;

(D) selling or otherwise transferring or encumbering property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid, or is or is not a matter of official record; or

(E) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure

to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

(2) "Deprive" means:

(A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner;

(B) to restore property only upon payment of reward or other compensation; or

(C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

(3) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions;

(D) given solely to detect the commission of an offense; or

(E) given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

(4) "Appropriate" means:

(A) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

(5) "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(6) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, or

transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(7) "Steal" means to acquire property or service by theft.

(8) "Certificate of title" has the meaning assigned by Section 501.002, Transportation Code.

(9) "Used or secondhand motor vehicle" means a used motor vehicle, as that term is defined by Section 501.002, Transportation Code.

(10) "Elderly individual" has the meaning assigned by Section 22.04(c).

(11) "Retail merchandise" means one or more items of tangible personal property displayed, held, stored, or offered for sale in a retail establishment.

(12) "Retail theft detector" means an electrical, mechanical, electronic, or magnetic device used to prevent or detect shoplifting and includes any article or component part essential to the proper operation of the device.

(13) "Shielding or deactivation instrument" means any item or tool designed, made, or adapted for the purpose of preventing the detection of stolen merchandise by a retail theft detector. The term includes a metal-lined or foil-lined shopping bag and any item used to remove a security tag affixed to retail merchandise.

(14) "Fire exit alarm" has the meaning assigned by Section 793.001, Health and Safety Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1975, 64th Leg., p. 914, ch. 342, Sec. 9, eff. Sept. 1, 1975; Acts 1985, 69th Leg., ch. 901, Sec. 2, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 30.237, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 432, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. 2482), Sec. 1, eff. September 1, 2011.

Sec. 31.02. CONSOLIDATION OF THEFT OFFENSES. Theft as defined

in Section 31.03 constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 31.03. THEFT. (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent;

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or

(3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

(c) For purposes of Subsection (b):

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, the transaction for which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice;

(3) an actor engaged in the business of buying and selling used or secondhand personal property, or lending money on the security of personal property deposited with the actor, is presumed to know upon receipt by the actor of stolen property (other than a motor vehicle subject to Chapter 501, Transportation Code) that the property has been previously stolen from another if the actor pays for or loans against the property $25 or more (or consideration of

equivalent value) and the actor knowingly or recklessly:

(A) fails to record the name, address, and physical description or identification number of the seller or pledgor;

(B) fails to record a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; or

(C) fails to obtain a signed warranty from the seller or pledgor that the seller or pledgor has the right to possess the property. It is the express intent of this provision that the presumption arises unless the actor complies with each of the numbered requirements;

(4) for the purposes of Subdivision (3)(A), "identification number" means driver's license number, military identification number, identification certificate, or other official number capable of identifying an individual;

(5) stolen property does not lose its character as stolen when recovered by any law enforcement agency;

(6) an actor engaged in the business of obtaining abandoned or wrecked motor vehicles or parts of an abandoned or wrecked motor vehicle for resale, disposal, scrap, repair, rebuilding, demolition, or other form of salvage is presumed to know on receipt by the actor of stolen property that the property has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to maintain an accurate and legible inventory of each motor vehicle component part purchased by or delivered to the actor, including the date of purchase or delivery, the name, age, address, sex, and driver's license number of the seller or person making the delivery, the license plate number of the motor vehicle in which the part was delivered, a complete description of the part, and the vehicle identification number of the motor vehicle from which the part was removed, or in lieu of maintaining an inventory, fails to record the name and certificate of inventory number of the person who dismantled the motor vehicle from which the part was obtained;

(B) fails on receipt of a motor vehicle to obtain a certificate of authority, sales receipt, or transfer document as required by Chapter 683, Transportation Code, or a certificate of title showing that the motor vehicle is not subject to a lien or that all recorded liens on the motor vehicle have been released; or

(C) fails on receipt of a motor vehicle to immediately remove an unexpired license plate from the motor vehicle, to keep the

plate in a secure and locked place, or to maintain an inventory, on forms provided by the Texas Department of Motor Vehicles, of license plates kept under this paragraph, including for each plate or set of plates the license plate number and the make, motor number, and vehicle identification number of the motor vehicle from which the plate was removed;

(7) an actor who purchases or receives a used or secondhand motor vehicle is presumed to know on receipt by the actor of the motor vehicle that the motor vehicle has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to report to the Texas Department of Motor Vehicles the failure of the person who sold or delivered the motor vehicle to the actor to deliver to the actor a properly executed certificate of title to the motor vehicle at the time the motor vehicle was delivered; or

(B) fails to file with the county tax assessor-collector of the county in which the actor received the motor vehicle, not later than the 20th day after the date the actor received the motor vehicle, the registration license receipt and certificate of title or evidence of title delivered to the actor in accordance with Subchapter D, Chapter 520, Transportation Code, at the time the motor vehicle was delivered;

(8) an actor who purchases or receives from any source other than a licensed retailer or distributor of pesticides a restricted-use pesticide or a state-limited-use pesticide or a compound, mixture, or preparation containing a restricted-use or state-limited-use pesticide is presumed to know on receipt by the actor of the pesticide or compound, mixture, or preparation that the pesticide or compound, mixture, or preparation has been previously stolen from another if the actor:

(A) fails to record the name, address, and physical description of the seller or pledgor;

(B) fails to record a complete description of the amount and type of pesticide or compound, mixture, or preparation purchased or received; and

(C) fails to obtain a signed warranty from the seller or pledgor that the seller or pledgor has the right to possess the property;

(9) an actor who is subject to Section 409, Packers and Stockyards Act (7 U.S.C. Section 228b), that obtains livestock from a

commission merchant by representing that the actor will make prompt payment is presumed to have induced the commission merchant's consent by deception if the actor fails to make full payment in accordance with Section 409, Packers and Stockyards Act (7 U.S.C. Section 228b); and

(10) an actor in possession of property consisting of one or more catalytic converters that have been removed from a motor vehicle is presumed to have unlawfully appropriated the property unless the actor:

(A) is the owner, as defined by Section 601.002, Transportation Code, of each vehicle from which the catalytic converters were removed; or

(B) possesses the catalytic converters in the ordinary course of the actor's business, including in the ordinary course of business of an entity described by Section 1956.123(1), Occupations Code.

(d) It is not a defense to prosecution under this section that:

(1) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of an undercover operative or peace officer;

(2) the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to engage in conduct constituting the offense; or

(3) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense, but would not encourage a person not predisposed to commit the offense to actually commit the offense.

(e) Except as provided by Subsections (f) and (f-1), an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than $100;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is $100 or more but less than $750;

(B) the value of the property stolen is less than $100 and the defendant has previously been convicted of any grade of theft; or

(C) the property stolen is a driver's license, commercial driver's license, or personal identification certificate

issued by this state or another state;

(3) a Class A misdemeanor if the value of the property stolen is $750 or more but less than $2,500;

(4) a state jail felony if:

(A) the value of the property stolen is $2,500 or more but less than $30,000, or the property is less than 10 head of sheep, swine, or goats or any part thereof under the value of $30,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave, including property that is a military grave marker;

(C) the property stolen is a firearm;

(D) the value of the property stolen is less than $2,500 and the defendant has been previously convicted two or more times of any grade of theft;

(E) the property stolen is an official ballot or official carrier envelope for an election;

(F) the value of the property stolen is less than $20,000 and the property stolen is:

(i) aluminum;

(ii) bronze;

(iii) copper; or

(iv) brass; or

(G) the cost of replacing the property stolen is less than $30,000 and the property stolen is a catalytic converter;

(5) a felony of the third degree if the value of the property stolen is $30,000 or more but less than $150,000, or the property is:

(A) cattle, horses, or exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, stolen during a single transaction and having an aggregate value of less than $150,000;

(B) 10 or more head of sheep, swine, or goats stolen during a single transaction and having an aggregate value of less than $150,000; or

(C) a controlled substance, having a value of less than $150,000, if stolen from:

(i) a commercial building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, nursing facility, or warehouse; or

(ii) a vehicle owned or operated by a wholesale

distributor of prescription drugs;

(6) a felony of the second degree if:

(A) the value of the property stolen is $150,000 or more but less than $300,000; or

(B) the value of the property stolen is less than $300,000 and the property stolen is an automated teller machine or the contents or components of an automated teller machine; or

(7) a felony of the first degree if the value of the property stolen is $300,000 or more.

(f) An offense described for purposes of punishment by Subsections (e)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor was a public servant at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant;

(2) the actor was in a contractual relationship with government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of the contractual relationship;

(3) the owner of the property appropriated was at the time of the offense:

(A) an elderly individual; or

(B) a nonprofit organization;

(4) the actor was a Medicare provider in a contractual relationship with the federal government at the time of the offense and the property appropriated came into the actor's custody, possession, or control by virtue of the contractual relationship; or

(5) during the commission of the offense, the actor intentionally, knowingly, or recklessly:

(A) caused a fire exit alarm to sound or otherwise become activated;

(B) deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or

(C) used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

(f-1) An offense described for purposes of punishment by Subsections (e)(4)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the property stolen is a catalytic converter; and

(2) the actor possessed a firearm during the commission of the offense.

(g) For the purposes of Subsection (a), a person is the owner of exotic livestock or exotic fowl as defined by Section 142.001, Agriculture Code, only if the person qualifies to claim the animal under Section 142.0021, Agriculture Code, if the animal is an estray.

(h) In this section:

(1) "Restricted-use pesticide" means a pesticide classified as a restricted-use pesticide by the administrator of the Environmental Protection Agency under 7 U.S.C. Section 136a, as that law existed on January 1, 1995, and containing an active ingredient listed in the federal regulations adopted under that law (40 C.F.R. Section 152.175) and in effect on that date.

(2) "State-limited-use pesticide" means a pesticide classified as a state-limited-use pesticide by the Department of Agriculture under Section 76.003, Agriculture Code, as that section existed on January 1, 1995, and containing an active ingredient listed in the rules adopted under that section (4 TAC Section 7.24) as that section existed on that date.

(3) "Nonprofit organization" means an organization that is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being described as an exempt organization by Section 501(c)(3) of that code.

(4) "Automated teller machine" means an unstaffed electronic information processing device that, at the request of a user, performs a financial transaction through the direct transmission of electronic impulses to a financial institution or through the recording of electronic impulses or other indicia of a transaction for delayed transmission to a financial institution. The term includes an automated banking machine.

(5) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.

(6) "Wholesale distributor of prescription drugs" means a wholesale distributor, as defined by Section 431.401, Health and Safety Code.

(7) "Catalytic converter" means a catalytic converter and any material removed from the catalytic converter.

(8) "Firearm" has the meaning assigned by Section 46.01.

(i) For purposes of Subsection (c)(9), "livestock" and "commission merchant" have the meanings assigned by Section 147.001,

Agriculture Code.

(j) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 914, ch. 342, Sec. 10, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 937, ch. 349, Sec. 1, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 849, ch. 298, Sec. 1, eff. Sept. 1, 1981; Acts 1981, 67th Leg., p. 2065, ch. 455, Sec. 1, eff. June 11, 1981; Acts 1983, 68th Leg., p. 2918, ch. 497, Sec. 3, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 3244, ch. 558, Sec. 11, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4523, ch. 741, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 599, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 901, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(45), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 245, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 724, Sec. 2, 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(80), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 565, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 203, Sec. 4, 5, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 9, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 734, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 843, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.238, 31.01(69), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1153, Sec. 7.01, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1276, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.136, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 13, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 393, Sec. 20, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 304 (H.B. 1766), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 70 (H.B. 1282), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 105 (H.B. 1466), Sec. 1, eff. May 23, 2009.

Acts 2009, 81st Leg., R.S., Ch. 139 (S.B. 1163), Sec. 1, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 295 (H.B. 348), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 903 (H.B. 671), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 903 (H.B. 671), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3J.01, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 120 (S.B. 887), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 120 (S.B. 887), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. 2482), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1234 (S.B. 694), Sec. 21, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 10, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 338 (H.B. 1178), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 338 (H.B. 1178), Sec. 5, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.02, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.03, eff. May 29, 2023.

Sec. 31.04. THEFT OF SERVICE. (a) A person commits theft of service if, with intent to avoid payment for service that the actor knows is provided only for compensation:

(1) the actor intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which the actor is not entitled, the actor intentionally or knowingly diverts the other's services to the actor's own benefit or to the benefit of another not entitled to the services;

(3) having control of personal property under a written rental agreement, the actor holds the property beyond the expiration

of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals; or

(4) the actor intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.

(b) For purposes of this section, intent to avoid payment is presumed if any of the following occurs:

(1) the actor absconded without paying for the service or expressly refused to pay for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, campgrounds, recreational vehicle parks, restaurants, and comparable establishments;

(2) the actor failed to make payment under a service agreement within 10 days after receiving notice demanding payment;

(3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment;

(4) the actor failed to return the property held under a rental agreement:

(A) within five days after receiving notice demanding return, if the property is valued at less than $2,500;

(B) within three days after receiving notice demanding return, if the property is valued at $2,500 or more but less than $10,000; or

(C) within two days after receiving notice demanding return, if the property is valued at $10,000 or more; or

(5) the actor:

(A) failed to return the property held under an agreement described by Subsections (d-2)(1)-(3) within five business days after receiving notice demanding return; and

(B) has made fewer than three complete payments under the agreement.

(c) For purposes of Subsections (a)(4), (b)(2), (b)(4), and (b)(5), notice must be:

(1) in writing;

(2) sent by:

(A) registered or certified mail with return receipt

requested; or

(B) commercial delivery service; and

(3) sent to the actor using the actor's mailing address shown on:

(A) the rental agreement or service agreement;

(B) records of the person whose service was secured; or

(C) if the actor secured performance of service by issuing or passing a check or similar sight order for the payment of money, using the actor's address shown on:

(i) the check or order; or

(ii) the records of the bank or other drawee on which the check or order is drawn.

(d) Except as otherwise provided by this subsection, if written notice is given in accordance with Subsection (c), it is presumed that the notice was received not later than two days after the notice was sent. For purposes of Subsections (b)(4)(A) and (B) and (b)(5), if written notice is given in accordance with Subsection (c), it is presumed that the notice was received not later than five days after the notice was sent.

(d-1) For purposes of Subsection (a)(2), the diversion of services to the benefit of a person who is not entitled to those services includes the disposition of personal property by an actor having control of the property under an agreement described by Subsections (d-2)(1)-(3), if the actor disposes of the property in violation of the terms of the agreement and to the benefit of any person who is not entitled to the property.

(d-2) For purposes of Subsection (a)(3), the term "written rental agreement" does not include an agreement that:

(1) permits an individual to use personal property for personal, family, or household purposes for an initial rental period;

(2) is automatically renewable with each payment after the initial rental period; and

(3) permits the individual to become the owner of the property.

(d-3) For purposes of Subsection (a)(4):

(1) if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period;

(2) the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service;

and

(3) the term "service" does not include leasing personal property under an agreement described by Subsections (d-2)(1)-(3).

(d-4) A presumption established under Subsection (b) involving a defendant's failure to return property held under an agreement described by Subsections (d-2)(1)-(3) may be refuted if the defendant shows that the defendant:

(1) intended to return the property; and

(2) was unable to return the property.

(d-5) For purposes of Subsection (b)(5), "business day" means a day other than Sunday or a state or federal holiday.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than $100;

(2) a Class B misdemeanor if the value of the service stolen is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the service stolen is $750 or more but less than $2,500;

(4) a state jail felony if the value of the service stolen is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the service stolen is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the service stolen is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the value of the service stolen is $300,000 or more.

(f) Notwithstanding any other provision of this code, any police or other report of stolen vehicles by a political subdivision of this state shall include on the report any rental vehicles whose renters have been shown to such reporting agency to be in violation of Subsection (b)(2) and shall indicate that the renting agency has complied with the notice requirements demanding return as provided in this section.

(g) It is a defense to prosecution under this section that:

(1) the defendant secured the performance of the service by giving a post-dated check or similar sight order to the person performing the service; and

(2) the person performing the service or any other person presented the check or sight order for payment before the date on the check or sight order.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 1138, ch. 429, Sec. 1, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 2920, ch. 497, Sec. 4, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 565, Sec. 15, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 479, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 843, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1245, Sec. 1, 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 419, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 141 (S.B. 1024), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 11, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1124 (H.B. 2524), Sec. 1, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 517 (H.B. 2897), Sec. 1, eff. September 1, 2023.

Sec. 31.05. THEFT OF TRADE SECRETS. (a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

(1) steals a trade secret;

(2) makes a copy of an article representing a trade secret;

or

(3) communicates or transmits a trade secret.

(c) An offense under this section is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 31.06. PRESUMPTION FOR THEFT BY CHECK OR SIMILAR SIGHT ORDER. (a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, it is prima facie evidence of the issuer's intent to deprive the owner of property under Section 31.03 (Theft) including a drawee or third-party holder in due course who negotiated the check or order or to avoid payment for service under Section 31.04 (Theft of Service) (except in the case of a postdated check or order) if:

(1) the issuer had no account with the bank or other drawee at the time the issuer issued the check or sight order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(b) For purposes of Subsection (a)(2) or (f)(3), notice may be actual notice or notice in writing that:

(1) is sent by:

(A) first class mail, evidenced by an affidavit of service; or

(B) registered or certified mail with return receipt requested;

(2) is addressed to the issuer at the issuer's address shown on:

(A) the check or order;

(B) the records of the bank or other drawee; or

(C) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

(c) If written notice is given in accordance with Subsection (b), it is presumed that the notice was received no later than five days after it was sent.

(d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.

(e) Partial restitution does not preclude the presumption of the requisite intent under this section.

(f) If the actor obtained property by issuing or passing a check or similar sight order for the payment of money, the actor's intent to deprive the owner of the property under Section 31.03 (Theft) is presumed, except in the case of a postdated check or order, if:

(1) the actor ordered the bank or other drawee to stop payment on the check or order;

(2) the bank or drawee refused payment to the holder on presentation of the check or order within 30 days after issue;

(3) the owner gave the actor notice of the refusal of payment and made a demand to the actor for payment or return of the property; and

(4) the actor failed to:

(A) pay the holder within 10 days after receiving the demand for payment; or

(B) return the property to the owner within 10 days after receiving the demand for return of the property.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1991, 72nd Leg., ch. 543, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 753, Sec. 1, eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 976 (S.B. 548), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 1, eff.

September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 2, eff. September 1, 2013.

Sec. 31.07. UNAUTHORIZED USE OF A VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

(b) An offense under this section is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 31.08. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c), value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b), the property or service is deemed to have a value of $750 or more but less than $2,500.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) to determine

value for purposes of this chapter.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1983, 68th Leg., p. 2920, ch. 497, Sec. 5, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 12, eff. September 1, 2015.

Sec. 31.09. AGGREGATION OF AMOUNTS INVOLVED IN THEFT. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 31.10. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 31.11. TAMPERING WITH IDENTIFICATION NUMBERS. (a) A person commits an offense if the person:

(1) knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on tangible personal property; or

(2) possesses, sells, or offers for sale tangible personal property and:

(A) the actor knows that the serial number or other permanent identification marking has been removed, altered, or

obliterated; or

(B) a reasonable person in the position of the actor would have known that the serial number or other permanent identification marking has been removed, altered, or obliterated.

(b) It is an affirmative defense to prosecution under this section that the person was:

(1) the owner or acting with the effective consent of the owner of the property involved;

(2) a peace officer acting in the actual discharge of official duties; or

(3) acting with respect to a number assigned to a vehicle by the Texas Department of Transportation or the Texas Department of Motor Vehicles, as applicable, and the person was:

(A) in the actual discharge of official duties as an employee or agent of the department; or

(B) in full compliance with the rules of the department as an applicant for an assigned number approved by the department.

(c) Property involved in a violation of this section may be treated as stolen for purposes of custody and disposition of the property.

(d) An offense under this section is a Class A misdemeanor.

(e) In this section, "vehicle" has the meaning given by Section 541.201, Transportation Code.

Added by Acts 1979, 66th Leg., p. 417, ch. 191, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 4525, ch. 741, Sec. 2, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 113, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 30.239, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3J.02, eff. September 1, 2009.

Sec. 31.12. THEFT OF OR TAMPERING WITH MULTICHANNEL VIDEO OR INFORMATION SERVICES. (a) A person commits an offense if, without the authorization of the multichannel video or information services provider, the person intentionally or knowingly:

(1) makes or maintains a connection, whether physically,

electrically, electronically, or inductively, to:

(A) a cable, wire, or other component of or media attached to a multichannel video or information services system; or

(B) a television set, videotape recorder, or other receiver attached to a multichannel video or information system;

(2) attaches, causes to be attached, or maintains the attachment of a device to:

(A) a cable, wire, or other component of or media attached to a multichannel video or information services system; or

(B) a television set, videotape recorder, or other receiver attached to a multichannel video or information services system;

(3) tampers with, modifies, or maintains a modification to a device installed by a multichannel video or information services provider; or

(4) tampers with, modifies, or maintains a modification to an access device or uses that access device or any unauthorized access device to obtain services from a multichannel video or information services provider.

(b) In this section:

(1) "Access device," "connection," and "device" mean an access device, connection, or device wholly or partly designed to make intelligible an encrypted, encoded, scrambled, or other nonstandard signal carried by a multichannel video or information services provider.

(2) "Encrypted, encoded, scrambled, or other nonstandard signal" means any type of signal or transmission not intended to produce an intelligible program or service without the use of a device, signal, or information provided by a multichannel video or information services provider.

(3) "Multichannel video or information services provider" means a licensed cable television system, video dialtone system, multichannel multipoint distribution services system, direct broadcast satellite system, or other system providing video or information services that are distributed by cable, wire, radio frequency, or other media.

(c) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.

(d) An offense under this section is a Class C misdemeanor

unless it is shown on the trial of the offense that the actor:

(1) has been previously convicted one time of an offense under this section, in which event the offense is a Class B misdemeanor, or convicted two or more times of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) committed the offense for remuneration, in which event the offense is a Class A misdemeanor, unless it is also shown on the trial of the offense that the actor has been previously convicted two or more times of an offense under this section, in which event the offense is a Class A misdemeanor with a minimum fine of $2,000 and a minimum term of confinement of 180 days.

(e) For the purposes of this section, each connection, attachment, modification, or act of tampering is a separate offense.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 10, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 858, Sec. 1, eff. Sept. 1, 1999.

Sec. 31.13. MANUFACTURE, DISTRIBUTION, OR ADVERTISEMENT OF MULTICHANNEL VIDEO OR INFORMATION SERVICES DEVICE. (a) A person commits an offense if the person for remuneration intentionally or knowingly manufactures, assembles, modifies, imports into the state, exports out of the state, distributes, advertises, or offers for sale, with an intent to aid in the commission of an offense under Section 31.12, a device, a kit or part for a device, or a plan for a system of components wholly or partly designed to make intelligible an encrypted, encoded, scrambled, or other nonstandard signal carried or caused by a multichannel video or information services provider.

(b) In this section, "device," "encrypted, encoded, scrambled, or other nonstandard signal," and "multichannel video or information services provider" have the meanings assigned by Section 31.12.

(c) This section does not prohibit the manufacture, distribution, advertisement, offer for sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.

(d) An offense under this section is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 10, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 858, Sec. 2, eff. Sept. 1, 1999.

Sec. 31.14. SALE OR LEASE OF MULTICHANNEL VIDEO OR INFORMATION SERVICES DEVICE. (a) A person commits an offense if the person intentionally or knowingly sells or leases, with an intent to aid in the commission of an offense under Section 31.12, a device, a kit or part for a device, or a plan for a system of components wholly or partly designed to make intelligible an encrypted, encoded, scrambled, or other nonstandard signal carried or caused by a multichannel video or information services provider.

(b) In this section, "device," "encrypted, encoded, scrambled, or other nonstandard signal," and "multichannel video or information services provider" have the meanings assigned by Section 31.12.

(c) This section does not prohibit the sale or lease of satellite receiving antennas that are otherwise permitted by state or federal law without providing notice to the comptroller.

(d) An offense under this section is a Class A misdemeanor.

Added by Acts 1999, 76th Leg., ch. 858, Sec. 3, eff. Sept. 1, 1999.

Sec. 31.15. POSSESSION, MANUFACTURE, OR DISTRIBUTION OF CERTAIN INSTRUMENTS USED TO COMMIT RETAIL THEFT. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 323, Sec. 4, eff. September 1, 2011.

(b) A person commits an offense if, with the intent to use the instrument to commit theft, the person:

(1) possesses a shielding or deactivation instrument; or

(2) knowingly manufactures, sells, offers for sale, or otherwise distributes a shielding or deactivation instrument.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 109, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. 2482), Sec. 4, eff. September 1, 2011.

Sec. 31.16. ORGANIZED RETAIL THEFT. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 323, Sec. 4, eff. September 1, 2011.

(b) A person commits an offense if the person intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barters, sells, or disposes of:

(1) stolen retail merchandise; or

(2) merchandise explicitly represented to the person as being stolen retail merchandise.

(c) An offense under this section is:

(1) a Class C misdemeanor if the total value of the merchandise involved in the activity is less than $100;

(2) a Class B misdemeanor if the total value of the merchandise involved in the activity is $100 or more but less than $750;

(3) a Class A misdemeanor if the total value of the merchandise involved in the activity is $750 or more but less than $2,500;

(4) a state jail felony if the total value of the merchandise involved in the activity is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the total value of the merchandise involved in the activity is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the total value of the merchandise involved in the activity is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the total value of the merchandise involved in the activity is $300,000 or more.

(d) An offense described for purposes of punishment by Subsections (c)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the person organized, supervised, financed, or managed one or more other persons engaged in an activity described by Subsection (b); or

(2) during the commission of the offense, a person engaged in an activity described by Subsection (b) intentionally, knowingly, or recklessly:

(A) caused a fire exit alarm to sound or otherwise become activated;

(B) deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or

(C) used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 323, Sec. 4,

eff. September 1, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 1274 (H.B. 3584), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. 2482), Sec. 3, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 323 (H.B. 2482), Sec. 4, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 13, eff. September 1, 2015.

Sec. 31.17. UNAUTHORIZED ACQUISITION OR TRANSFER OF CERTAIN FINANCIAL INFORMATION. (a) In this section:

(1) "Check" has the meaning assigned by Section 3.104, Business & Commerce Code.

(2) "Credit card" and "debit card" have the meanings assigned by Section 32.31.

(3) "Financial sight order or payment card information" means financial information that is:

(A) contained on either side of a check or similar sight order, check card, debit card, or credit card; or

(B) encoded on the magnetic strip or stripe of a check card, debit card, or credit card.

(b) A person commits an offense if the person, knowing that the person is not entitled to obtain or possess that financial information:

(1) obtains the financial sight order or payment card information of another by use of an electronic, photographic, visual imaging, recording, or other device capable of accessing, reading, recording, capturing, copying, imaging, scanning, reproducing, or storing in any manner the financial sight order or payment card information; or

(2) transfers to a third party information obtained as described by Subdivision (1).

(c) An offense under Subsection (b)(1) is a Class B misdemeanor. An offense under Subsection (b)(2) is a Class A misdemeanor.

(d) If conduct that constitutes an offense under this section

also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 260 (H.B. 1215), Sec. 1, eff. September 1, 2011.

Sec. 31.18. CARGO THEFT. (a) In this section:

(1) "Cargo" means goods, as defined by Section 7.102, Business & Commerce Code, that constitute, wholly or partly, a commercial shipment of freight moving in commerce. A shipment is considered to be moving in commerce if the shipment is located at any point between the point of origin and the final point of destination regardless of any temporary stop that is made for the purpose of transshipment or otherwise.

(2) "Vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(b) A person commits an offense if the person:

(1) knowingly or intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barters, sells, abandons, or disposes of:

(A) stolen cargo; or

(B) cargo explicitly represented to the person as being stolen cargo; or

(2) is employed as a driver lawfully contracted to transport a specific cargo by vehicle from a known point of origin to a known point of destination and, with the intent to conduct, promote, or facilitate an activity described by Subdivision (1), knowingly or intentionally:

(A) fails to deliver the entire cargo to the known point of destination as contracted; or

(B) causes the seal to be broken on the vehicle or on an intermodal container containing any part of the cargo.

(c) An offense under this section is:

(1) a state jail felony if the total value of the cargo involved in the activity is $1,500 or more but less than $10,000;

(2) a felony of the third degree if the total value of the cargo involved in the activity is $10,000 or more but less than $100,000;

(3) a felony of the second degree if the total value of the

cargo involved in the activity is $100,000 or more but less than $200,000; or

(4) a felony of the first degree if the total value of the cargo involved in the activity is $200,000 or more.

(d) For purposes of Subsection (c), the total value of the cargo involved in the activity includes the value of any vehicle stolen or damaged in the course of the same criminal episode as the conduct that is the subject of the prosecution.

(e) An offense described for purposes of punishment by Subsections (c)(1)-(3) is increased to the next higher category of offense if it is shown on the trial of the offense that the person organized, supervised, financed, or managed one or more other persons engaged in an activity described by Subsection (b).

(f) It is not a defense to prosecution under this section that:

(1) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of:

(A) an undercover operative or peace officer; or

(B) a bait vehicle;

(2) the actor was provided by a law enforcement agency with a facility in which to commit the offense or with an opportunity to engage in conduct constituting the offense; or

(3) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense but would not encourage a person not predisposed to commit the offense to actually commit the offense.

Added by Acts 2015, 84th Leg., R.S., Ch. 1219 (S.B. 1828), Sec. 3, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 15.001, eff. September 1, 2017.

Sec. 31.19. THEFT OF PETROLEUM PRODUCT. (a) In this section, "petroleum product" means crude oil, natural gas, or condensate.

(b) A person commits an offense if the person unlawfully appropriates a petroleum product with intent to deprive the owner of the petroleum product by:

(1) possessing, removing, delivering, receiving, purchasing, selling, moving, concealing, or transporting the petroleum product; or

(2) making or causing a connection to be made with, or drilling or tapping or causing a hole to be drilled or tapped in, a pipe, pipeline, or tank used to store or transport a petroleum product.

(c) Appropriation of a petroleum product is unlawful if it is without the owner's effective consent.

(d) An offense under this section is:

(1) a state jail felony if the total value of the petroleum product appropriated is less than $10,000;

(2) a felony of the third degree if the total value of the petroleum product appropriated is $10,000 or more but less than $100,000;

(3) a felony of the second degree if the total value of the petroleum product appropriated is $100,000 or more but less than $300,000; or

(4) a felony of the first degree if the total value of the petroleum product appropriated is $300,000 or more.

Added by Acts 2017, 85th Leg., R.S., Ch. 46 (S.B. 1871), Sec. 1, eff. September 1, 2017.

Sec. 31.20. MAIL THEFT. (a) In this section:

(1) "Disabled individual" and "elderly individual" have the meanings assigned by Section 22.04.

(2) "Identifying information" has the meaning assigned by Section 32.51.

(3) "Mail" means a letter, postal card, package, bag, or other sealed article that:

(A) is delivered by a common carrier or delivery service and not yet received by the addressee; or

(B) has been left to be collected for delivery by a common carrier or delivery service.

(b) A person commits an offense if the person intentionally appropriates mail from another person's mailbox or premises without the effective consent of the addressee and with the intent to deprive that addressee of the mail.

(c) Except as provided by Subsections (d) and (e), an offense under this section is:

(1) a Class A misdemeanor if the mail is appropriated from fewer than 10 addressees;

(2) a state jail felony if the mail is appropriated from at least 10 but fewer than 30 addressees; or

(3) a felony of the third degree if the mail is appropriated from 30 or more addressees.

(d) If it is shown on the trial of an offense under this section that the appropriated mail contained an item of identifying information and the actor committed the offense with the intent to facilitate an offense under Section 32.51, an offense under this section is:

(1) a state jail felony if the mail is appropriated from fewer than 10 addressees;

(2) a felony of the third degree if the mail is appropriated from at least 10 but fewer than 20 addressees;

(3) a felony of the second degree if the mail is appropriated from at least 20 but fewer than 50 addressees; or

(4) a felony of the first degree if the mail is appropriated from 50 or more addressees.

(e) An offense described for purposes of punishment by Subsection (d)(1), (2), or (3) is increased to the next higher category of offense if it is shown on the trial of the offense that at the time of the offense the actor knew or had reason to believe that an addressee from whom the actor appropriated mail was a disabled individual or an elderly individual.

(f) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2019, 86th Leg., R.S., Ch. 706 (H.B. 37), Sec. 1, eff. September 1, 2019.

Sec. 31.21. UNAUTHORIZED POSSESSION OF CATALYTIC CONVERTER. (a) A person commits an offense if the person:

(1) intentionally or knowingly possesses a catalytic converter that has been removed from a motor vehicle; and

(2) is not a person who is authorized under Subsection (b)

to possess the catalytic converter.

(b) A person is presumed to be authorized to possess a catalytic converter that has been removed from a motor vehicle if the person:

(1) is the owner, as defined by Section 601.002, Transportation Code, of the vehicle from which the catalytic converter was removed; or

(2) possesses the catalytic converter in the ordinary course of the person's business, including in the ordinary course of business of an entity described by Section 1956.123(1), Occupations Code.

(c) The presumption established under Subsection (b) does not apply to a person described by Subsection (b)(2) who knows that the catalytic converter was unlawfully removed from a motor vehicle or otherwise unlawfully obtained.

(d) Except as provided by Subsection (e), an offense under this section is a state jail felony.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the person:

(1) has been previously convicted of an offense under this section;

(2) in connection with the offense, engaged in conduct constituting conspiracy under Section 15.02 to commit an offense under Section 28.03 or 31.03 with respect to a catalytic converter; or

(3) possessed a firearm during the commission of the offense.

(f) If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.04, eff. May 29, 2023.

CHAPTER 32. FRAUD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. In this chapter:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association,

savings and loan association, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

(2) "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(3) "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, and transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(4) "Steal" means to acquire property or service by theft.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.02. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c), value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably

ascertained by the criteria set forth in Subsections (a) and (b), the property or service is deemed to have a value of $750 or more but less than $2,500.

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) to determine value for purposes of this chapter.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 14, eff. September 1, 2015.

Sec. 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

SUBCHAPTER B. FORGERY

Sec. 32.21. FORGERY. (a) For purposes of this section:

(1) "Forge" means:

(A) to alter, make, complete, execute, or authenticate any writing so that it purports:

(i) to be the act of another who did not authorize that act;

(ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or

(iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass,

publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A); or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B).

(2) "Writing" includes:

(A) printing or any other method of recording information;

(B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and

(C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided by Subsections (d), (e), and (e-1), an offense under this section is a Class A misdemeanor.

(d) Subject to Subsection (e-1), an offense under this section is a state jail felony if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check, authorization to debit an account at a financial institution, or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) Subject to Subsection (e-1), an offense under this section is a felony of the third degree if the writing is or purports to be:

(1) part of an issue of money, securities, postage or revenue stamps;

(2) a government record listed in Section 37.01(2)(C); or

(3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

(e-1) If it is shown on the trial of an offense under this section that the actor engaged in the conduct to obtain or attempt to obtain a property or service, an offense under this section is:

(1) a Class C misdemeanor if the value of the property or service is less than $100;

(2) a Class B misdemeanor if the value of the property or service is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the property or service is $750 or more but less than $2,500;

(4) a state jail felony if the value of the property or service is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the property or service is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the property or service is $150,000 or more but less than $300,000; and

(7) a felony of the first degree if the value of the property or service is $300,000 or more.

(e-2) Notwithstanding any other provision of this section, an offense under this section, other than an offense described for purposes of punishment by Subsection (e-1)(7), is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

(f) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more writings of the same type and if each writing is a government record listed in Section 37.01(2)(C).

(f-1) For purposes of Subsection (e-1), it is presumed that a person in possession of money that is forged within the meaning of Subsection (a)(1)(A) intended to obtain a property or service of a value equal to the total purported value of the forged money.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 113, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 1, eff. May 21, 1997; Acts 2003, 78th Leg., ch. 1104, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 670 (H.B. 2328), Sec. 1, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 977 (H.B. 351), Sec. 25, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 132 (H.B. 1910), Sec. 1, eff. September 1, 2023.

Sec. 32.22. CRIMINAL SIMULATION. (a) A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

(3) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(b) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.23. TRADEMARK COUNTERFEITING. (a) In this section:

(1) "Counterfeit mark" means a mark that is identical to or substantially indistinguishable from a protected mark the use or production of which is not authorized by the owner of the protected mark.

(2) "Identification mark" means a data plate, serial number, or part identification number.

(3) "Protected mark" means a trademark or service mark or an identification mark that is:

(A) registered with the secretary of state;

(B) registered on the principal register of the United States Patent and Trademark Office;

(C) registered under the laws of another state; or

(D) protected by Section 16.105, Business & Commerce Code, or by 36 U.S.C. Section 371 et seq.

(4) "Retail value" means the actor's regular selling price for a counterfeit mark or an item or service that bears or is identified by a counterfeit mark, except that if an item bearing a counterfeit mark is a component of a finished product, the retail value means the actor's regular selling price of the finished product on or in which the component is used, distributed, or sold.

(5) "Service mark" has the meaning assigned by Section 16.001, Business & Commerce Code.

(6) "Trademark" has the meaning assigned by Section 16.001,

Business & Commerce Code.

(b) A person commits an offense if the person intentionally manufactures, displays, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute a counterfeit mark or an item or service that:

(1) bears or is identified by a counterfeit mark; or

(2) the person knows or should have known bears or is identified by a counterfeit mark.

(c) A state or federal certificate of registration of intellectual property is prima facie evidence of the facts stated in the certificate.

(d) For the purposes of Subsection (e), when items or services are the subject of counterfeiting in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the retail value of the items or services aggregated in determining the grade of offense.

(e) An offense under this section is a:

(1) Class C misdemeanor if the retail value of the item or service is less than $100;

(2) Class B misdemeanor if the retail value of the item or service is $100 or more but less than $750;

(3) Class A misdemeanor if the retail value of the item or service is $750 or more but less than $2,500;

(4) state jail felony if the retail value of the item or service is $2,500 or more but less than $30,000;

(5) felony of the third degree if the retail value of the item or service is $30,000 or more but less than $150,000;

(6) felony of the second degree if the retail value of the item or service is $150,000 or more but less than $300,000; or

(7) felony of the first degree if the retail value of the item or service is $300,000 or more.

Added by Acts 1997, 75th Leg., ch. 1161, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 2, eff. September 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 15, eff. September 1, 2015.

Sec. 32.24. STEALING OR RECEIVING STOLEN CHECK OR SIMILAR SIGHT ORDER. (a) A person commits an offense if the person steals an unsigned check or similar sight order or, with knowledge that an unsigned check or similar sight order has been stolen, receives the check or sight order with intent to use it, to sell it, or to transfer it to a person other than the person from whom the check or sight order was stolen.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1999, 76th Leg., ch. 1413, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. CREDIT

Sec. 32.31. CREDIT CARD OR DEBIT CARD ABUSE. (a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card or debit card to whom or for whose benefit the card is issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. The term includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(3) "Expired credit card" means a credit card bearing an expiration date after that date has passed.

(4) "Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal or obtain property or services by debit to an account at a financial institution. The term includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.

(5) "Expired debit card" means a debit card bearing as its expiration date a date that has passed.

(6) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated by a customer, by which a customer may communicate to a financial institution a request to withdraw a benefit for himself or for another directly from the customer's account or from the customer's account under a line of

credit previously authorized by the institution for the customer.

(7) "Customer convenience terminal" means an unmanned teller machine the use of which does not involve personnel of a financial institution.

(b) A person commits an offense if:

(1) with intent to obtain a benefit fraudulently, he presents or uses a credit card or debit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

(2) with intent to obtain a benefit, he uses a fictitious credit card or debit card or the pretended number or description of a fictitious card;

(3) he receives a benefit that he knows has been obtained in violation of this section;

(4) he steals a credit card or debit card or, with knowledge that it has been stolen, receives a credit card or debit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;

(5) he buys a credit card or debit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card or debit card;

(7) he uses or induces the cardholder to use the cardholder's credit card or debit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) not being the cardholder, and without the effective consent of the cardholder, he possesses a credit card or debit card with intent to use it;

(9) he possesses two or more incomplete credit cards or debit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a card is incomplete if part of the matter that an issuer requires to appear on the card before it can be used, other than the signature of the cardholder, has not yet been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or

services on presentation of a credit card or debit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card or debit card obtained or retained in violation of this section or a credit card or debit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card or debit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card or debit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

(d) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1104, Sec. 2, 3, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1054 (H.B. 1323), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 670 (H.B. 2328), Sec. 2, eff. September 1, 2009.

Sec. 32.315. FRAUDULENT USE OR POSSESSION OF CREDIT CARD OR DEBIT CARD INFORMATION. (a) In this section:

(1) "Counterfeit credit card or debit card" means a:

(A) credit card or debit card that:

(i) purports on its face to have been issued by an issuer that did not issue the card;

(ii) has been altered to contain a digital imprint other than that which was placed on the card by the issuer;

(iii) contains a digital imprint with account information or account holder information differing from that which is printed or embossed on the card; or

(iv) has been altered to change the account information or account holder information on the face of the card from that which was printed or embossed on the card by the issuer; or

(B) card, other than one issued as a credit card or debit card, that has been altered to contain the digital imprint of a credit card or debit card.

(2) "Credit card" and "debit card" have the meanings assigned by Section 32.31.

(3) "Digital imprint" means the digital data placed on a credit card or debit card or on a counterfeit credit card or debit card.

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses:

(1) a counterfeit credit card or debit card;

(2) the number and expiration date of a credit card or debit card without the consent of the account holder; or

(3) the data stored on the digital imprint of a credit card or debit card without the consent of the account holder.

(c) If an actor possessed five or more of an item described by Subsection (b)(2) or (3), a rebuttable presumption exists that the actor possessed each item without the consent of the account holder.

(d) The presumption established under Subsection (c) does not apply to a business or other commercial entity or a government agency that is engaged in a business activity or governmental function that does not violate a penal law of this state.

(e) An offense under this section is:

(1) a state jail felony if the number of items obtained, possessed, transferred, or used is less than five;

(2) a felony of the third degree if the number of items obtained, possessed, transferred, or used is five or more but less than 10;

(3) a felony of the second degree if the number of items obtained, possessed, transferred, or used is 10 or more but less than

50; or

(4) a felony of the first degree if the number of items obtained, possessed, transferred, or used is 50 or more.

(f) If a court orders a defendant convicted of an offense under this section to make restitution to a victim of the offense, the court may order the defendant to reimburse the victim for lost income or other expenses, other than attorney's fees, incurred as a result of the offense.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2019, 86th Leg., R.S., Ch. 832 (H.B. 2625), Sec. 1, eff. September 1, 2019.

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT OR IN THE PROVISION OF CERTAIN SERVICES. (a) For purposes of this section, "credit" includes:

(1) a loan of money;

(2) furnishing property or service on credit;

(3) extending the due date of an obligation;

(4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;

(5) a line or letter of credit;

(6) a credit card, as defined in Section 32.31 (Credit Card or Debit Card Abuse); and

(7) a mortgage loan.

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit, including a mortgage loan.

(b-1) A person commits an offense if the person intentionally or knowingly makes a materially false or misleading written statement in providing an appraisal of real property for compensation.

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the property or the amount of credit is less than $100;

(2) a Class B misdemeanor if the value of the property or the amount of credit is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the property or

the amount of credit is $750 or more but less than $2,500;

(4) a state jail felony if the value of the property or the amount of credit is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the property or the amount of credit is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the property or the amount of credit is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the value of the property or the amount of credit is $300,000 or more.

(d) The following agencies shall assist a prosecuting attorney of the United States or of a county or judicial district of this state, a county or state law enforcement agency of this state, or a federal law enforcement agency in the investigation of an offense under this section involving a mortgage loan:

(1) the office of the attorney general;

(2) the Department of Public Safety;

(3) the Texas Department of Insurance;

(4) the Office of Consumer Credit Commissioner;

(5) the Texas Department of Banking;

(6) the credit union department;

(7) the Department of Savings and Mortgage Lending;

(8) the Texas Real Estate Commission;

(9) the Texas Appraiser Licensing and Certification Board; and

(10) the Texas Department of Housing and Community Affairs.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves a mortgage loan.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.50, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1245, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 285 (H.B. 716), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 709 (H.B. 2840), Sec. 4, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 709 (H.B. 2840), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 16, eff. September 1, 2015.

Sec. 32.33. HINDERING SECURED CREDITORS. (a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

(1) to pay the part then due; and

(2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) An offense under Subsection (b) is a:

(1) Class C misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is less than $100;

(2) Class B misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is $100 or more but less than $750;

(3) Class A misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is $750 or more but less than $2,500;

(4) state jail felony if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is $2,500 or more but less than $30,000;

(5) felony of the third degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is $30,000 or more but less than $150,000;

(6) felony of the second degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is $150,000 or more but less than $300,000; or

(7) felony of the first degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is $300,000 or more.

(e) A person who is a debtor under a security agreement, and who does not have a right to sell or dispose of the secured property or is required to account to the secured party for the proceeds of a permitted sale or disposition, commits an offense if the person sells or otherwise disposes of the secured property, or does not account to the secured party for the proceeds of a sale or other disposition as required, with intent to appropriate (as defined in Chapter 31) the proceeds or value of the secured property. A person is presumed to have intended to appropriate proceeds if the person does not deliver the proceeds to the secured party or account to the secured party for the proceeds before the 11th day after the day that the secured party makes a lawful demand for the proceeds or account. An offense under this subsection is:

(1) a Class C misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of less than $100;

(2) a Class B misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of $100 or more but less than $750;

(3) a Class A misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of $750 or more but less than $2,500;

(4) a state jail felony if the proceeds obtained from the sale or other disposition are money or goods having a value of $2,500 or more but less than $30,000;

(5) a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of $30,000 or more but less than $150,000;

(6) a felony of the second degree if the proceeds obtained from the sale or other disposition are money or goods having a value

of $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the proceeds obtained from the sale or other disposition are money or goods having a value of $300,000 or more.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1979, 66th Leg., p. 501, ch. 232, Sec. 1, eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch. 914, Sec. 5, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 17, eff. September 1, 2015.

Sec. 32.34. FRAUDULENT TRANSFER OF A MOTOR VEHICLE. (a) In this section:

(1) "Lease" means the grant of use and possession of a motor vehicle for consideration, whether or not the grant includes an option to buy the vehicle.

(2) "Motor vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.

(3) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(4) "Third party" means a person other than the actor or the owner of the vehicle.

(5) "Transfer" means to transfer possession, whether or not another right is also transferred, by means of a sale, lease, sublease, lease assignment, or other property transfer.

(b) A person commits an offense if the person acquires, accepts possession of, or exercises control over the motor vehicle of another under a written or oral agreement to arrange for the transfer of the vehicle to a third party and:

(1) knowing the vehicle is subject to a security interest, lease, or lien, the person transfers the vehicle to a third party without first obtaining written authorization from the vehicle's secured creditor, lessor, or lienholder;

(2) intending to defraud or harm the vehicle's owner, the person transfers the vehicle to a third party;

(3) intending to defraud or harm the vehicle's owner, the person disposes of the vehicle in a manner other than by transfer to a third party; or

(4) the person does not disclose the location of the vehicle on the request of the vehicle's owner, secured creditor, lessor, or lienholder.

(c) For the purposes of Subsection (b)(2), the actor is presumed to have intended to defraud or harm the motor vehicle's owner if the actor does not take reasonable steps to determine whether or not the third party is financially able to pay for the vehicle.

(d) It is a defense to prosecution under Subsection (b)(1) that the entire indebtedness secured by or owed under the security interest, lease, or lien is paid or satisfied in full not later than the 30th day after the date that the transfer was made.

(e) It is not a defense to prosecution under Subsection (b)(1) that the motor vehicle's owner has violated a contract creating a security interest, lease, or lien in the motor vehicle.

(f) An offense under Subsection (b)(1), (b)(2), or (b)(3) is:

(1) a state jail felony if the value of the motor vehicle is less than $30,000;

(2) a felony of the third degree if the value of the motor vehicle is $30,000 or more but less than $150,000;

(3) a felony of the second degree if the value of the motor vehicle is $150,000 or more but less than $300,000; or

(4) a felony of the first degree if the value of the motor vehicle is $300,000 or more.

(g) An offense under Subsection (b)(4) is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., ch. 954, Sec. 1, eff. Sept. 1, 1989. Renumbered from Penal Code, Sec. 32.36 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 18, eff. September 1, 2015.

Sec. 32.35. CREDIT CARD TRANSACTION RECORD LAUNDERING. (a) In this section:

(1) "Agent" means a person authorized to act on behalf of another and includes an employee.

(2) "Authorized vendor" means a person authorized by a creditor to furnish property, service, or anything else of value upon presentation of a credit card by a cardholder.

(3) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued, and includes the named person's agents.

(4) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. It includes the number or description on the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(5) "Creditor" means a person licensed under Chapter 342, Finance Code, a bank, savings and loan association, credit union, or other regulated financial institution that lends money or otherwise extends credit to a cardholder through a credit card and that authorizes other persons to honor the credit card.

(b) A person commits an offense if the person is an authorized vendor who, with intent to defraud the creditor or cardholder, presents to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(c) A person commits an offense if, without the creditor's authorization, the person employs, solicits, or otherwise causes an authorized vendor or the vendor's agent to present to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(d) It is presumed that a person is not the agent of an authorized vendor if a fee is paid or offered to be paid by the person to the authorized vendor in connection with the vendor's presentment to a creditor of a credit card transaction record.

(e) An offense under this section is a:

(1) Class C misdemeanor if the amount of the record of a sale is less than $100;

(2) Class B misdemeanor if the amount of the record of a sale is $100 or more but less than $750;

(3) Class A misdemeanor if the amount of the record of a sale is $750 or more but less than $2,500;

(4) state jail felony if the amount of the record of a sale is $2,500 or more but less than $30,000;

(5) felony of the third degree if the amount of the record of a sale is $30,000 or more but less than $150,000;

(6) felony of the second degree if the amount of the record of a sale is $150,000 or more but less than $300,000; or

(7) felony of the first degree if the amount of the record of a sale is $300,000 or more.

Added by Acts 1991, 72nd Leg., ch. 792, Sec. 1, eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 32.37 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 38, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.83, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 19, eff. September 1, 2015.

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Sec. 32.41. ISSUANCE OF BAD CHECK OR SIMILAR SIGHT ORDER. (a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) may be actual notice or notice in writing that:

(1) is sent by:

(A) first class mail, evidenced by an affidavit of service; or

(B) registered or certified mail with return receipt requested;

(2) is addressed to the issuer at the issuer's address shown on:

(A) the check or order;

(B) the records of the bank or other drawee; or

(C) the records of the person to whom the check or order has been issued or passed; and

(3) contains the following statement:

"This is a demand for payment in full for a check or order not paid because of a lack of funds or insufficient funds. If you fail to make payment in full within 10 days after the date of receipt of this notice, the failure to pay creates a presumption for committing an offense, and this matter may be referred for criminal prosecution."

(d) If notice is given in accordance with Subsection (c), it is presumed that the notice was received no later than five days after it was sent.

(e) A person charged with an offense under this section may make restitution for the bad checks or sight orders. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may be, with the approval of the court in which the offense is filed:

(1) made through the court; or

(2) collected by a law enforcement agency if a peace officer of that agency executes a warrant against the person charged with the offense.

(f) Except as otherwise provided by this subsection, an offense under this section is a Class C misdemeanor. If the check or similar sight order that was issued or passed was for a child support payment the obligation for which is established under a court order, the offense is a Class B misdemeanor.

(g) An offense under this section is not a lesser included offense of an offense under Section 31.03 or 31.04.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 5050, ch. 911, Sec. 1, eff. Aug.

29, 1983; Acts 1987, 70th Leg., ch. 687, Sec. 2, eff. June 18, 1987; Acts 1989, 71st Leg., ch. 1038, Sec. 1, eff. June 16, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 753, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 702, Sec. 14, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 976 (S.B. 548), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1393 (H.B. 485), Sec. 1, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 4, eff. September 1, 2013.

Sec. 32.42. DECEPTIVE BUSINESS PRACTICES. (a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Commodity" means any tangible or intangible personal property.

(4) "Contest" includes sweepstake, puzzle, and game of chance.

(5) "Deceptive sales contest" means a sales contest:

(A) that misrepresents the participant's chance of winning a prize;

(B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game piece, entry blank, or other paraphernalia required for participation in the contest (if the contest is not conducted by or through a retail outlet):

(i) the geographical area or number of outlets in which the contest is to be conducted;

(ii) an accurate description of each type of prize;

(iii) the minimum number and minimum amount of cash

prizes; and

(iv) the minimum number of each other type of prize; or

(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

(6) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of a property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand;

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another;

(8) advertising property or service with intent:

(A) not to sell it as advertised, or

(B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;

(9) representing the price of property or service falsely or in a way tending to mislead;

(10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;

(11) conducting a deceptive sales contest; or

(12) making a materially false or misleading statement:

(A) in an advertisement for the purchase or sale of property or service; or

(B) otherwise in connection with the purchase or sale of property or service.

(c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) is:

(1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or

(2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.

(d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 1350, ch. 508, Sec. 1, 2, eff. Sept. 1, 1975; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.43. COMMERCIAL BRIBERY. (a) For purposes of this section:

(1) "Beneficiary" means a person for whom a fiduciary is acting.

(2) "Fiduciary" means:

(A) an agent or employee;

(B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;

(C) a lawyer, physician, accountant, appraiser, or other professional advisor; or

(D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.

(b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.

(c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b).

(d) An offense under this section is a state jail felony.

(e) In lieu of a fine that is authorized by Subsection (d), and in addition to the imprisonment that is authorized by that subsection, if the court finds that an individual who is a fiduciary gained a benefit through the commission of an offense under Subsection (b), the court may sentence the individual to pay a fine in an amount fixed by the court, not to exceed double the value of the benefit gained. This subsection does not affect the application of Section 12.51(c) to an offense under this section committed by a corporation, an association, a limited liability company, or another business entity, as defined by Section 7.21.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1983, 68th Leg., p. 1942, ch. 357, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 112 (S.B. 1258), Sec. 5, eff. September 1, 2019.

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST. (a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

(1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:

(A) a participant in the contest to induce him not to use his best efforts; or

(B) an official or other person associated with the contest; or

(2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a).

(c) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 32.441. ILLEGAL RECRUITMENT OF AN ATHLETE. (a) A person commits an offense if, without the consent of the governing body or a designee of the governing body of an institution of higher education, the person intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another on an agreement or understanding that the benefit will influence the conduct of the person in enrolling in the institution and participating in intercollegiate athletics.

(b) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (a).

(c) It is an exception to prosecution under this section that the person offering, conferring, or agreeing to confer a benefit and the person soliciting, accepting, or agreeing to accept a benefit are related within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

(d) It is an exception to prosecution under Subsection (a) that, not later than the 60th day after the date the person accepted or agreed to accept a benefit, the person contacted a law enforcement agency and furnished testimony or evidence about the offense.

(e) An offense under this section is a:

(1) Class C misdemeanor if the value of the benefit is less than $100;

(2) Class B misdemeanor if the value of the benefit is $100 or more but less than $750;

(3) Class A misdemeanor if the value of the benefit is $750 or more but less than $2,500;

(4) state jail felony if the value of the benefit is $2,500 or more but less than $30,000;

(5) felony of the third degree if the value of the benefit is $30,000 or more but less than $150,000;

(6) felony of the second degree if the value of the benefit is $150,000 or more but less than $300,000; or

(7) felony of the first degree if the value of the benefit is $300,000 or more.

Added by Acts 1989, 71st Leg., ch. 125, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 41, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 20, eff. September 1, 2015.

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. (a) For purposes of this section:

(1) "Fiduciary" includes:

(A) a trustee, guardian, administrator, executor, conservator, and receiver;

(B) an attorney in fact or agent appointed under a durable power of attorney as provided by Subtitle P, Title 2, Estates Code;

(C) any other person acting in a fiduciary capacity, but not a commercial bailee unless the commercial bailee is a party in a motor fuel sales agreement with a distributor or supplier, as those terms are defined by Section 162.001, Tax Code; and

(D) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

(A) an agreement under which the fiduciary holds the property; or

(B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk

of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

(1) a Class C misdemeanor if the value of the property misapplied is less than $100;

(2) a Class B misdemeanor if the value of the property misapplied is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the property misapplied is $750 or more but less than $2,500;

(4) a state jail felony if the value of the property misapplied is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the property misapplied is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the property misapplied is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the value of the property misapplied is $300,000 or more.

(d) An offense described for purposes of punishment by Subsections (c)(1)-(6) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1991, 72nd Leg., ch. 565, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1036, Sec. 14, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1047, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.137, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 14, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(77), eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 5, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 21, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.057, eff. September 1, 2017.

Sec. 32.46. FRAUDULENT SECURING OF DOCUMENT EXECUTION. (a) A person commits an offense if the person, with the intent to defraud or harm any person:

(1) causes another person, without that person's effective consent, to sign or execute any document affecting property or service or the pecuniary interest of any person; or

(2) causes a public servant, without the public servant's effective consent, to file or record any purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court that is not expressly created or established under the constitution or the laws of this state or of the United States;

(B) a purported judicial entity that is not expressly created or established under the constitution or laws of this state or of the United States; or

(C) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A) or (B).

(b) An offense under Subsection (a)(1) is a:

(1) Class C misdemeanor if the value of the property, service, or pecuniary interest is less than $100;

(2) Class B misdemeanor if the value of the property, service, or pecuniary interest is $100 or more but less than $750;

(3) Class A misdemeanor if the value of the property, service, or pecuniary interest is $750 or more but less than $2,500;

(4) state jail felony if the value of the property, service, or pecuniary interest is $2,500 or more but less than $30,000;

(5) felony of the third degree if the value of the property, service, or pecuniary interest is $30,000 or more but less than $150,000;

(6) felony of the second degree if the value of the property, service, or pecuniary interest is $150,000 or more but less than $300,000; or

(7) felony of the first degree if the value of the property, service, or pecuniary interest is $300,000 or more.

(c) An offense under Subsection (a)(2) is a state jail felony.

(c-1) An offense described for purposes of punishment by Subsections (b)(1)-(6) and (c) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04 or involves the state Medicaid program.

(d) In this section:

(1) "Deception" has the meaning assigned by Section 31.01.

(2) "Document" includes electronically stored data or other information that is retrievable in a readable, perceivable form.

(3) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; or

(C) given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 2, eff. May 21, 1997; Acts 2003, 78th Leg., ch. 198, Sec. 2.138, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 15, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 432, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. 1694), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 22, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 837 (S.B. 109), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 837 (S.B. 109), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 837 (S.B. 109), Sec. 3, eff. September 1, 2021.

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING. (a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) universal product codes, labels, price tags, or markings on goods.

(c) Except as provided by Subsection (d), an offense under this section is a Class A misdemeanor, provided that:

(1) the writing is not attached to tangible property to indicate the price for the sale of that property; and

(2) the actor did not engage in the conduct described by Subsection (a) with respect to that writing for the purpose of obtaining the property for a lesser price indicated by a separate writing.

(d) An offense under this section is a state jail felony if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

(e) If at the time of the offense the writing was attached to tangible property to indicate the price for the sale of that property

and the actor engaged in the conduct described by Subsection (a) with respect to that writing for the purpose of obtaining the property for a lesser price indicated by a separate writing, an offense under this section is:

(1) a Class C misdemeanor if the difference between the impaired writing and the lesser price indicated by the other writing is less than $100;

(2) a Class B misdemeanor if the difference between the impaired writing and the lesser price indicated by the other writing is $100 or more but less than $750;

(3) a Class A misdemeanor if the difference between the impaired writing and the lesser price indicated by the other writing is $750 or more but less than $2,500;

(4) a state jail felony if the difference between the impaired writing and the lesser price indicated by the other writing is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the difference between the impaired writing and the lesser price indicated by the other writing is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the difference between the impaired writing and the lesser price indicated by the other writing is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the difference between the impaired writing and the lesser price indicated by the other writing is $300,000 or more.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 21, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2019, 86th Leg., R.S., Ch. 215 (H.B. 427), Sec. 1, eff. September 1, 2019.

Sec. 32.48. SIMULATING LEGAL PROCESS. (a) A person commits an offense if the person recklessly causes to be delivered to another any document that simulates a summons, complaint, judgment, or other court process with the intent to:

(1) induce payment of a claim from another person; or

(2) cause another to:

(A) submit to the putative authority of the document; or

(B) take any action or refrain from taking any action in response to the document, in compliance with the document, or on the basis of the document.

(b) Proof that the document was mailed to any person with the intent that it be forwarded to the intended recipient is a sufficient showing that the document was delivered.

(c) It is not a defense to prosecution under this section that the simulating document:

(1) states that it is not legal process; or

(2) purports to have been issued or authorized by a person or entity who did not have lawful authority to issue or authorize the document.

(d) If it is shown on the trial of an offense under this section that the simulating document was filed with, presented to, or delivered to a clerk of a court or an employee of a clerk of a court created or established under the constitution or laws of this state, there is a rebuttable presumption that the document was delivered with the intent described by Subsection (a).

(e) Except as provided by Subsection (f), an offense under this section is a Class A misdemeanor.

(f) If it is shown on the trial of an offense under this section that the defendant has previously been convicted of a violation of this section, the offense is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 3, eff. May 21, 1997.

Sec. 32.49. REFUSAL TO EXECUTE RELEASE OF FRAUDULENT LIEN OR CLAIM. (a) A person commits an offense if, with intent to defraud or harm another, the person:

(1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent, as described by Section 51.901(c), Government Code; and

(2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested, to the person's last known address, or by telephonic document transfer to the recipient's current

telecopier number, requesting the execution of a release of the fraudulent lien or claim, refuses to execute the release on the request of:

(A) the obligor or debtor; or

(B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.

(b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 4, eff. May 21, 1997.

Sec. 32.50. DECEPTIVE PREPARATION AND MARKETING OF ACADEMIC PRODUCT. (a) For purposes of this section:

(1) "Academic product" means a term paper, thesis, dissertation, essay, report, recording, work of art, or other written, recorded, pictorial, or artistic product or material submitted or intended to be submitted by a person to satisfy an academic requirement of the person.

(2) "Academic requirement" means a requirement or prerequisite to receive course credit or to complete a course of study or degree, diploma, or certificate program at an institution of higher education.

(3) "Institution of higher education" means an institution of higher education or private or independent institution of higher education as those terms are defined by Section 61.003, Education Code, or a private postsecondary educational institution as that term is defined by Section 61.302, Education Code.

(b) A person commits an offense if, with intent to make a profit, the person prepares, sells, offers or advertises for sale, or delivers to another person an academic product when the person knows, or should reasonably have known, that a person intends to submit or use the academic product to satisfy an academic requirement of a person other than the person who prepared the product.

(c) A person commits an offense if, with intent to induce another person to enter into an agreement or obligation to obtain or have prepared an academic product, the person knowingly makes or

disseminates a written or oral statement that the person will prepare or cause to be prepared an academic product to be sold for use in satisfying an academic requirement of a person other than the person who prepared the product.

(d) It is a defense to prosecution under this section that the actor's conduct consisted solely of action taken as an employee of an institution of higher education in providing instruction, counseling, or tutoring in research or writing to students of the institution.

(e) It is a defense to prosecution under this section that the actor's conduct consisted solely of offering or providing tutorial or editing assistance to another person in connection with the other person's preparation of an academic product to satisfy the other person's academic requirement, and the actor does not offer or provide substantial preparation, writing, or research in the production of the academic product.

(f) It is a defense to prosecution under this section that the actor's conduct consisted solely of typing, transcribing, or reproducing a manuscript for a fee, or of offering to do so.

(g) An offense under this section is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 730, Sec. 1, eff. Sept. 1, 1997. Renumbered from Penal Code Sec. 32.49 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(87), (88), eff. Sept. 1, 1999.

Sec. 32.51. FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION. (a) In this section:

(1) "Identifying information" means information that alone or in conjunction with other information identifies a person, including a person's:

(A) name and date of birth;

(B) unique biometric data, including the person's fingerprint, voice print, or retina or iris image;

(C) unique electronic identification number, address, routing code, or financial institution account number;

(D) telecommunication identifying information or access device; and

(E) social security number or other government-issued identification number.

(2) "Telecommunication access device" means a card, plate,

code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another telecommunication access device may be used to:

(A) obtain money, goods, services, or other thing of value; or

(B) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) A person commits an offense if the person, with the intent to harm or defraud another, obtains, possesses, transfers, or uses an item of:

(1) identifying information of another person without the other person's consent or effective consent;

(2) information concerning a deceased natural person, including a stillborn infant or fetus, that would be identifying information of that person were that person alive, if the item of information is obtained, possessed, transferred, or used without legal authorization; or

(3) identifying information of a child younger than 18 years of age.

(b-1) For the purposes of Subsection (b), the actor is presumed to have the intent to harm or defraud another if the actor possesses:

(1) the identifying information of three or more other persons;

(2) information described by Subsection (b)(2) concerning three or more deceased persons; or

(3) information described by Subdivision (1) or (2) concerning three or more persons or deceased persons.

(b-2) The presumption established under Subsection (b-1) does not apply to a business or other commercial entity or a government agency that is engaged in a business activity or governmental function that does not violate a penal law of this state.

(c) An offense under this section is:

(1) a state jail felony if the number of items obtained, possessed, transferred, or used is less than five;

(2) a felony of the third degree if the number of items obtained, possessed, transferred, or used is five or more but less than 10;

(3) a felony of the second degree if the number of items

obtained, possessed, transferred, or used is 10 or more but less than 50; or

(4) a felony of the first degree if the number of items obtained, possessed, transferred, or used is 50 or more.

(c-1) An offense described for purposes of punishment by Subsections (c)(1)-(3) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the offense was committed against an elderly individual as defined by Section 22.04; or

(2) the actor fraudulently used identifying information with the intent to facilitate an offense under Article 62.102, Code of Criminal Procedure.

(d) If a court orders a defendant convicted of an offense under this section to make restitution to the victim of the offense, the court may order the defendant to reimburse the victim for lost income or other expenses, other than attorney's fees, incurred as a result of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 1999, 76th Leg., ch. 1159, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1104, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 631 (H.B. 649), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1163 (H.B. 126), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1173 (H.B. 460), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1173 (H.B. 460), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.002, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 670 (H.B. 2328), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 276 (H.B. 1529), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 362 (H.B. 2637), Sec. 2, eff.

September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 319 (H.B. 2697), Sec. 2, eff. September 1, 2019.

Sec. 32.52. FRAUDULENT, SUBSTANDARD, OR FICTITIOUS DEGREE. (a) In this section, "fraudulent or substandard degree" has the meaning assigned by Section 61.302, Education Code.

(b) A person commits an offense if the person:

(1) uses or claims to hold a postsecondary degree that the person knows:

(A) is a fraudulent or substandard degree;

(B) is fictitious or has otherwise not been granted to the person; or

(C) has been revoked; and

(2) uses or claims to hold that degree:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain employment;

(ii) obtain a license or certificate to practice a trade, profession, or occupation;

(iii) obtain a promotion, a compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) obtain admission to an educational program in this state; or

(v) gain a position in government with authority over another person, regardless of whether the actor receives compensation for the position.

(c) An offense under this section is a Class B misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2005, 79th Leg., Ch. 1039 (H.B. 1173), Sec. 8, eff. September 1, 2005.

Sec. 32.53. EXPLOITATION OF CHILD, ELDERLY INDIVIDUAL, OR

DISABLED INDIVIDUAL. (a) In this section:

(1) "Child," "elderly individual," and "disabled individual" have the meanings assigned by Section 22.04.

(2) "Exploitation" means the illegal or improper use of a child, elderly individual, or disabled individual or of the resources of a child, elderly individual, or disabled individual for monetary or personal benefit, profit, or gain.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly causes the exploitation of a child, elderly individual, or disabled individual.

(c) An offense under this section is a felony of the third degree.

(d) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(e) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the Medicaid program.

Added by Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 7, eff. September 1, 2011.

Sec. 32.54. FRAUDULENT OR FICTITIOUS MILITARY RECORD. (a) In this section:

(1) "Military record" means an enlistment record, occupation specialty, medal, award, decoration, or certification obtained by a person through the person's service in the armed forces of the United States or the state military forces.

(2) "State military forces" has the meaning assigned by Section 437.001, Government Code.

(b) A person commits an offense if the person:

(1) uses or claims to hold a military record that the person knows:

(A) is fraudulent;

(B) is fictitious or has otherwise not been granted or assigned to the person; or

(C) has been revoked; and

(2) uses or claims to hold that military record:

(A) in a written or oral advertisement or other promotion of a business; or

(B) with the intent to:

(i) obtain priority in receiving services or resources under Subchapter G, Chapter 302, Labor Code;

(ii) qualify for a military employment preference under Chapter 657, Government Code;

(iii) obtain a license or certificate to practice a trade, profession, or occupation;

(iv) obtain a promotion, compensation, or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(v) obtain a benefit, service, or donation from another person;

(vi) obtain admission to an educational program in this state; or

(vii) gain a position in state government with authority over another person, regardless of whether the actor receives compensation for the position.

(c) An offense under this section is a Class B misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 386 (S.B. 431), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.19, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 6 (S.B. 835), Sec. 1, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1100 (S.B. 1376), Sec. 10, eff. September 1, 2023.

Sec. 32.55. FINANCIAL ABUSE OF ELDERLY INDIVIDUAL. (a) In this section:

(1) "Elderly individual" has the meaning assigned by Section 22.04.

(2) "Financial abuse" means the wrongful taking, appropriation, obtaining, retention, or use of, or assisting in the wrongful taking, appropriation, obtaining, retention, or use of, money or other property of another person by any means, including by exerting undue influence. The term includes financial exploitation.

(3) "Financial exploitation" means the wrongful taking, appropriation, obtaining, retention, or use of money or other property of another person by a person who has a relationship of confidence or trust with the other person. Financial exploitation may involve coercion, manipulation, threats, intimidation, misrepresentation, or the exerting of undue influence. The term includes:

(A) the breach of a fiduciary relationship, including the misuse of a durable power of attorney or the abuse of guardianship powers, that results in the unauthorized appropriation, sale, or transfer of another person's property;

(B) the unauthorized taking of personal assets;

(C) the misappropriation, misuse, or unauthorized transfer of another person's money from a personal or a joint account; and

(D) the knowing or intentional failure to effectively use another person's income and assets for the necessities required for the person's support and maintenance.

(b) For purposes of Subsection (a)(3), a person has a relationship of confidence or trust with another person if the person:

(1) is a parent, spouse, adult child, or other relative by blood or marriage of the other person;

(2) is a joint tenant or tenant in common with the other person;

(3) has a legal or fiduciary relationship with the other person;

(4) is a financial planner or investment professional who provides services to the other person; or

(5) is a paid or unpaid caregiver of the other person.

(c) A person commits an offense if the person knowingly engages

in the financial abuse of an elderly individual.

(d) An offense under this section is:

(1) a Class B misdemeanor if the value of the property taken, appropriated, obtained, retained, or used is less than $100;

(2) a Class A misdemeanor if the value of the property taken, appropriated, obtained, retained, or used is $100 or more but less than $750;

(3) a state jail felony if the value of the property taken, appropriated, obtained, retained, or used is $750 or more but less than $2,500;

(4) a felony of the third degree if the value of the property taken, appropriated, obtained, retained, or used is $2,500 or more but less than $30,000;

(5) a felony of the second degree if the value of the property taken, appropriated, obtained, retained, or used is $30,000 or more but less than $150,000; and

(6) a felony of the first degree if the value of the property taken, appropriated, obtained, retained, or used is $150,000 or more.

(e) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either section or both sections.

(f) There is a rebuttable presumption that any transfer, appropriation, or use of an elderly individual's money or other property by a person described by Subsection (b)(5) is wrongful for purposes of Subsection (a)(2) or (3) if it is shown on the trial of the offense that the actor knew or should have known that, at the time of the offense, the elderly individual had been diagnosed with dementia, Alzheimer's disease, or a related disorder.

Added by Acts 2021, 87th Leg., R.S., Ch. 456 (H.B. 1156), Sec. 1, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1076 (S.B. 576), Sec. 3, eff. September 1, 2023.

CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. DEFINITIONS. In this chapter:

(1) "Access" means to approach, instruct, communicate with,

store data in, retrieve or intercept data from, alter data or computer software in, or otherwise make use of any resource of a computer, computer network, computer program, or computer system.

(2) "Aggregate amount" means the amount of:

(A) any direct or indirect loss incurred by a victim, including the value of money, property, or service stolen, appropriated, or rendered unrecoverable by the offense; or

(B) any expenditure required by the victim to:

(i) determine whether data or a computer, computer network, computer program, or computer system was altered, acquired, appropriated, damaged, deleted, or disrupted by the offense; or

(ii) attempt to restore, recover, or replace any data altered, acquired, appropriated, damaged, deleted, or disrupted.

(3) "Communication common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

(4) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(5) "Computer network" means the interconnection of two or more computers or computer systems by satellite, microwave, line, or other communication medium with the capability to transmit information among the computers.

(6) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.

(7) "Computer services" means the product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer time, data processing, and storage functions.

(8) "Computer system" means any combination of a computer or computer network with the documentation, computer software, or physical facilities supporting the computer or computer network.

(9) "Computer software" means a set of computer programs,

procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

(10) "Computer virus" means an unwanted computer program or other set of instructions inserted into a computer's memory, operating system, or program that is specifically constructed with the ability to replicate itself or to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files.

(10-a) "Critical infrastructure facility" means:

(A) a chemical manufacturing facility;

(B) a refinery;

(C) an electrical power generating facility, substation, switching station, electrical control center, or electrical transmission or distribution facility;

(D) a water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(E) a natural gas transmission compressor station;

(F) a liquid natural gas terminal or storage facility;

(G) a telecommunications central switching office;

(H) a port, railroad switching yard, trucking terminal, or other freight transportation facility;

(I) a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas;

(J) a transmission facility used by a federally licensed radio or television station; or

(K) a cable television or video service provider headend.

(11) "Data" means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer printouts, magnetic storage media, laser storage media, and punchcards, or may be stored internally in the memory of the computer.

(11-a) "Decryption," "decrypt," or "decrypted" means the decoding of encrypted communications or information, whether by use of a decryption key, by breaking an encryption formula or algorithm, or by the interference with a person's use of an encryption service in a manner that causes information or communications to be stored or

transmitted without encryption.

(12) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception, as defined by Section 31.01, or induced by coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions;

(D) given solely to detect the commission of an offense; or

(E) used for a purpose other than that for which the consent was given.

(13) "Electric utility" has the meaning assigned by Section 31.002, Utilities Code.

(13-a) "Encrypted private information" means encrypted data, documents, wire or electronic communications, or other information stored on a computer or computer system, whether in the possession of the owner or a provider of an electronic communications service or a remote computing service, and which has not been accessible to the public.

(13-b) "Encryption," "encrypt," or "encrypted" means the encoding of data, documents, wire or electronic communications, or other information, using mathematical formulas or algorithms in order to preserve the confidentiality, integrity, or authenticity of, and prevent unauthorized access to, such information.

(13-c) "Encryption service" means a computing service, a computer device, computer software, or technology with encryption capabilities, and includes any subsequent version of or update to an encryption service.

(14) "Harm" includes partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a computer virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor's conduct.

(14-a) "Identifying information" has the meaning assigned by Section 32.51.

(15) "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor;

(B) has the right to restrict access to the property; or

(C) is the licensee of data or computer software.

(15-a) "Privileged information" means:

(A) protected health information, as that term is defined by Section 182.002, Health and Safety Code;

(B) information that is subject to the attorney-client privilege; or

(C) information that is subject to accountant-client confidentiality under Section 901.457, Occupations Code, or other law, if the information is on a computer, computer network, or computer system owned by a person possessing a license issued under Subchapter H, Chapter 901, Occupations Code.

(16) "Property" means:

(A) tangible or intangible personal property including a computer, computer system, computer network, computer software, or data; or

(B) the use of a computer, computer system, computer network, computer software, or data.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 306, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 306, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 18.44, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1044 (H.B. 3396), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 684 (H.B. 9), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.17, eff. January 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 447 (H.B. 2217), Sec. 16, eff. June 9, 2023.

Sec. 33.02. BREACH OF COMPUTER SECURITY. (a) A person commits

an offense if the person knowingly accesses a computer, computer network, or computer system without the effective consent of the owner.

(b) An offense under Subsection (a) is a Class B misdemeanor, except that the offense is a state jail felony if:

(1) the defendant has been previously convicted two or more times of an offense under this chapter; or

(2) the computer, computer network, or computer system is owned by the government or a critical infrastructure facility.

(b-1) A person commits an offense if, with the intent to defraud or harm another or alter, damage, or delete property, the person knowingly accesses:

(1) a computer, computer network, or computer system without the effective consent of the owner; or

(2) a computer, computer network, or computer system:

(A) that is owned by:

(i) the government; or

(ii) a business or other commercial entity engaged in a business activity;

(B) in violation of:

(i) a clear and conspicuous prohibition by the owner of the computer, computer network, or computer system; or

(ii) a contractual agreement to which the person has expressly agreed; and

(C) with the intent to obtain or use a file, data, or proprietary information stored in the computer, network, or system to defraud or harm another or alter, damage, or delete property.

(b-2) An offense under Subsection (b-1) is:

(1) a Class C misdemeanor if the aggregate amount involved is less than $100;

(2) a Class B misdemeanor if the aggregate amount involved is $100 or more but less than $750;

(3) a Class A misdemeanor if the aggregate amount involved is $750 or more but less than $2,500;

(4) a state jail felony if the aggregate amount involved is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the aggregate amount involved is $30,000 or more but less than $150,000;

(6) a felony of the second degree if:

(A) the aggregate amount involved is $150,000 or more

but less than $300,000;

(B) the aggregate amount involved is any amount less than $300,000 and the computer, computer network, or computer system is owned by the government or a critical infrastructure facility; or

(C) the actor obtains the identifying information of another by accessing only one computer, computer network, or computer system; or

(7) a felony of the first degree if:

(A) the aggregate amount involved is $300,000 or more; or

(B) the actor obtains the identifying information of another by accessing more than one computer, computer network, or computer system.

(c) When benefits are obtained, a victim is defrauded or harmed, or property is altered, damaged, or deleted in violation of this section, whether or not in a single incident, the conduct may be considered as one offense and the value of the benefits obtained and of the losses incurred because of the fraud, harm, or alteration, damage, or deletion of property may be aggregated in determining the grade of the offense.

(d) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

(e) It is a defense to prosecution under this section that the person acted with the intent to facilitate a lawful seizure or search of, or lawful access to, a computer, computer network, or computer system for a legitimate law enforcement purpose.

(f) It is a defense to prosecution under Subsection (b-1)(2) that the actor's conduct consisted solely of action taken pursuant to a contract that was entered into with the owner of the computer, computer network, or computer system for the purpose of assessing the security of the computer, network, or system or providing other security-related services.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 306, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 306, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1411, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1044 (H.B. 3396), Sec. 2, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 154 (H.B. 896), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 23, eff. September 1, 2015.

Sec. 33.021. ONLINE SOLICITATION OF A MINOR. (a) In this section:

(1) "Minor" means:

(A) an individual who is younger than 17 years of age; or

(B) an individual whom the actor believes to be younger than 17 years of age.

(2) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(3) "Sexually explicit" means any communication, language, or material, including a photographic or video image, that relates to or describes sexual conduct, as defined by Section 43.25.

(b) A person who is 17 years of age or older commits an offense if, with the intent to commit an offense listed in Article 62.001(5)(A), (B), or (K), Code of Criminal Procedure, the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, intentionally:

(1) communicates in a sexually explicit manner with a minor; or

(2) distributes sexually explicit material to a minor.

(c) A person commits an offense if the person, over the Internet, by electronic mail or text message or other electronic message service or system, or through a commercial online service, knowingly solicits a minor to meet another person, including the actor, with the intent that the minor will engage in sexual contact, sexual intercourse, or deviate sexual intercourse with the actor or another person.

(d) It is not a defense to prosecution under Subsection (c) that the meeting did not occur.

(e) It is a defense to prosecution under this section that at the time conduct described by Subsection (c) was committed:

(1) the actor was married to the minor; or

(2) the actor was not more than three years older than the minor and the minor consented to the conduct.

(f) An offense under Subsection (b) is a felony of the third degree, except that the offense is a felony of the second degree if the minor is younger than 14 years of age or is an individual whom the actor believes to be younger than 14 years of age at the time of the commission of the offense. An offense under Subsection (c) is a felony of the second degree.

(f-1) The punishment for an offense under this section is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor committed the offense during regular public or private primary or secondary school hours; and

(2) the actor knew or reasonably should have known that the minor was enrolled in a public or private primary or secondary school at the time of the offense.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2005, 79th Leg., Ch. 1273 (H.B. 2228), Sec. 1, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 610 (H.B. 401), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1291 (S.B. 6), Sec. 7, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 61 (S.B. 344), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 61 (S.B. 344), Sec. 2, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 59, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1049 (S.B. 1831), Sec. 7, eff. September 1, 2021.

Sec. 33.022. ELECTRONIC ACCESS INTERFERENCE. (a) A person, other than a network provider or online service provider acting for a

legitimate business purpose, commits an offense if the person intentionally interrupts or suspends access to a computer system or computer network without the effective consent of the owner.

(b) An offense under this section is a third degree felony.

(c) It is a defense to prosecution under this section that the person acted with the intent to facilitate a lawful seizure or search of, or lawful access to, a computer, computer network, or computer system for a legitimate law enforcement purpose.

Added by Acts 2017, 85th Leg., R.S., Ch. 684 (H.B. 9), Sec. 3, eff. September 1, 2017.

Sec. 33.023. ELECTRONIC DATA TAMPERING. (a) In this section, "ransomware" means a computer contaminant or lock that restricts access by an unauthorized person to a computer, computer system, or computer network or any data in a computer, computer system, or computer network under circumstances in which a person demands money, property, or a service to remove the computer contaminant or lock, restore access to the computer, computer system, computer network, or data, or otherwise remediate the impact of the computer contaminant or lock.

(b) A person commits an offense if the person intentionally alters data as it transmits between two computers in a computer network or computer system through deception and without a legitimate business purpose.

(c) A person commits an offense if the person intentionally introduces ransomware onto a computer, computer network, or computer system through deception and without a legitimate business purpose.

(d) Subject to Subsections (d-1) and (d-2), an offense under this section is a Class C misdemeanor.

(d-1) Subject to Subsection (d-2), if it is shown on the trial of the offense that the defendant acted with the intent to defraud or harm another, an offense under this section is:

(1) a Class C misdemeanor if the aggregate amount involved is less than $100 or cannot be determined;

(2) a Class B misdemeanor if the aggregate amount involved is $100 or more but less than $750;

(3) a Class A misdemeanor if the aggregate amount involved is $750 or more but less than $2,500;

(4) a state jail felony if the aggregate amount involved is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the aggregate amount involved is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the aggregate amount involved is $150,000 or more but less than $300,000; and

(7) a felony of the first degree if the aggregate amount involved is $300,000 or more.

(d-2) If it is shown on the trial of the offense that the defendant knowingly restricted a victim's access to privileged information, an offense under this section is:

(1) a state jail felony if the value of the aggregate amount involved is less than $2,500;

(2) a felony of the third degree if:

(A) the value of the aggregate amount involved is $2,500 or more but less than $30,000; or

(B) a client or patient of a victim suffered harm attributable to the offense;

(3) a felony of the second degree if:

(A) the value of the aggregate amount involved is $30,000 or more but less than $150,000; or

(B) a client or patient of a victim suffered bodily injury attributable to the offense; and

(4) a felony of the first degree if:

(A) the value of the aggregate amount involved is $150,000 or more; or

(B) a client or patient of a victim suffered serious bodily injury or death attributable to the offense.

(e) When benefits are obtained, a victim is defrauded or harmed, or property is altered, appropriated, damaged, or deleted in violation of this section, whether or not in a single incident, the conduct may be considered as one offense and the value of the benefits obtained and of the losses incurred because of the fraud, harm, or alteration, appropriation, damage, or deletion of property may be aggregated in determining the grade of the offense.

(f) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

(g) Software is not ransomware for the purposes of this section if the software restricts access to data because:

(1) authentication is required to upgrade or access purchased content; or

(2) access to subscription content has been blocked for nonpayment.

Added by Acts 2017, 85th Leg., R.S., Ch. 684 (H.B. 9), Sec. 3, eff. September 1, 2017.

Sec. 33.024. UNLAWFUL DECRYPTION. (a) A person commits an offense if the person intentionally decrypts encrypted private information through deception and without a legitimate business purpose.

(b) Subject to Subsections (b-1) and (b-2), an offense under this section is a Class C misdemeanor.

(b-1) Subject to Subsection (b-2), if it is shown on the trial of the offense that the defendant acted with the intent to defraud or harm another, an offense under this section is:

(1) a Class C misdemeanor if the value of the aggregate amount involved is less than $100 or cannot be determined;

(2) a Class B misdemeanor if the value of the aggregate amount involved is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the aggregate amount involved is $750 or more but less than $2,500;

(4) a state jail felony if the value of the aggregate amount involved is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the aggregate amount involved is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the aggregate amount involved is $150,000 or more but less than $300,000; and

(7) a felony of the first degree if the value of the aggregate amount involved is $300,000 or more.

(b-2) If it is shown on the trial of the offense that the defendant knowingly decrypted privileged information, an offense under this section is:

(1) a state jail felony if the value of the aggregate amount involved is less than $2,500;

(2) a felony of the third degree if:

(A) the value of the aggregate amount involved is

$2,500 or more but less than $30,000; or

(B) a client or patient of a victim suffered harm attributable to the offense;

(3) a felony of the second degree if:

(A) the value of the aggregate amount involved is $30,000 or more but less than $150,000; or

(B) a client or patient of a victim suffered bodily injury attributable to the offense; and

(4) a felony of the first degree if:

(A) the value of the aggregate amount involved is $150,000 or more; or

(B) a client or patient of a victim suffered serious bodily injury or death attributable to the offense.

(c) It is a defense to prosecution under this section that the actor's conduct was pursuant to an agreement entered into with the owner for the purpose of:

(1) assessing or maintaining the security of the information or of a computer, computer network, or computer system; or

(2) providing other services related to security.

(d) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 684 (H.B. 9), Sec. 3, eff. September 1, 2017.

For text of section as amended by Acts 2017, 85th Leg., R.S., Ch. 684 (H.B. 9), Sec. 4, see other Sec. 33.03.

Sec. 33.03. DEFENSES. It is an affirmative defense to prosecution under Section 33.02 or 33.022 that the actor was an officer, employee, or agent of a communication common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communication common carrier or electric utility.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985.

Renumbered from Penal Code Sec. 33.04 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 684 (H.B. 9), Sec. 4, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.18, eff. January 1, 2019.

Sec. 33.04. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer.

Added by Acts 1985, 69th Leg., ch. 600, Sec. 1, eff. Sept. 1, 1985.
Renumbered from Penal Code Sec. 33.05 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 33.05. TAMPERING WITH DIRECT RECORDING ELECTRONIC VOTING MACHINE. (a) In this section:

(1) "Direct recording electronic voting machine" has the meaning assigned by Section 121.003, Election Code.

(2) "Measure" has the meaning assigned by Section 1.005, Election Code.

(b) A person commits an offense if the person knowingly accesses a computer, computer network, computer program, computer software, or computer system that is a part of a voting system that uses direct recording electronic voting machines and by means of that access:

(1) prevents a person from lawfully casting a vote;

(2) changes a lawfully cast vote;

(3) prevents a lawfully cast vote from being counted; or

(4) causes a vote that was not lawfully cast to be counted.

(c) An offense under this section does not require that the votes as affected by the person's actions described by Subsection (b) actually be the votes used in the official determination of the outcome of the election.

(d) An offense under this section is a felony of the first

degree.

(e) Notwithstanding Section 15.01(d), an offense under Section 15.01(a) is a felony of the third degree if the offense the actor intends to commit is an offense under this section.

(f) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to investigate or prosecute an offense under this section.

Added by Acts 2005, 79th Leg., Ch. 470 (H.B. 56), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 503 (S.B. 927), Sec. 1, eff. September 1, 2009.

Sec. 33.07. ONLINE IMPERSONATION. (a) A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud, intimidate, or threaten any person, uses the name or persona of another person to:

(1) create a web page on a commercial social networking site or other Internet website; or

(2) post or send one or more messages on or through a commercial social networking site or other Internet website, other than on or through an electronic mail program or message board program.

(b) A person commits an offense if the person sends an electronic mail, instant message, text message, or similar communication that references a name, domain address, phone number, or other item of identifying information belonging to any person:

(1) without obtaining the other person's consent;

(2) with the intent to cause a recipient of the communication to reasonably believe that the other person authorized or transmitted the communication; and

(3) with the intent to harm or defraud any person.

(c) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor commits the offense with the intent to solicit a response by emergency personnel.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(e) It is a defense to prosecution under this section that the actor is any of the following entities or that the actor's conduct consisted solely of action taken as an employee of any of the following entities:

(1) a commercial social networking site;

(2) an Internet service provider;

(3) an interactive computer service, as defined by 47 U.S.C. Section 230;

(4) a telecommunications provider, as defined by Section 51.002, Utilities Code; or

(5) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code.

(f) In this section:

(1) "Commercial social networking site" means any business, organization, or other similar entity operating a website that permits persons to become registered users for the purpose of establishing personal relationships with other users through direct or real-time communication with other users or the creation of web pages or profiles available to the public or to other users. The term does not include an electronic mail program or a message board program.

(2) "Identifying information" has the meaning assigned by Section 32.51.

Added by Acts 2009, 81st Leg., R.S., Ch. 911 (H.B. 2003), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 282 (H.B. 1666), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 282 (H.B. 1666), Sec. 2, eff. September 1, 2011.

CHAPTER 33A. TELECOMMUNICATIONS CRIMES

Sec. 33A.01. DEFINITIONS. In this chapter:

(1) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, not

issued to a legitimate telecommunications access device subscriber account, or otherwise unlawful or invalid.

(2) "Counterfeit telecommunications device" means a telecommunications device that has been altered or programmed alone or with another telecommunications device to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider and includes a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.

(3) "Deliver" means to actually or constructively sell, give, loan, or otherwise transfer a telecommunications device, or a counterfeit telecommunications device or any telecommunications plans, instructions, or materials, to another person.

(4) "Publish" means to communicate information or make information available to another person orally, in writing, or by means of telecommunications and includes communicating information on a computer bulletin board or similar system.

(5) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence over a communications system by any method, including an electronic, magnetic, optical, digital, or analog method.

(6) "Telecommunications access device" means an instrument, device, card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

(7) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications and includes a computer, computer chip or circuit, telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables use of a modem.

(8) "Telecommunications service" means the provision, facilitation, or generation of telecommunications through the use of

a telecommunications device or telecommunications access device over a telecommunications system.

(9) "Value of the telecommunications service obtained or attempted to be obtained" includes the value of:

(A) a lawful charge for telecommunications service avoided or attempted to be avoided;

(B) money, property, or telecommunications service lost, stolen, or rendered unrecoverable by an offense; and

(C) an expenditure incurred by a victim to verify that a telecommunications device or telecommunications access device or telecommunications service was not altered, acquired, damaged, or disrupted as a result of an offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.02. UNAUTHORIZED USE OF TELECOMMUNICATIONS SERVICE. (a) A person commits an offense if the person is an officer, shareholder, partner, employee, agent, or independent contractor of a telecommunications service provider and the person knowingly and without authority uses or diverts telecommunications service for the person's own benefit or to the benefit of another.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service used or diverted is less than $500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service used or diverted is $500 or more but less than $1,500; or

(B) the value of the telecommunications service used or diverted is less than $500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:

(A) the value of the telecommunications service used or diverted is $1,500 or more but less than $20,000; or

(B) the value of the telecommunications service used or diverted is less than $1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service used or diverted is $20,000 or more but less than $100,000;

(5) a felony of the second degree if the value of the telecommunications service used or diverted is $100,000 or more but less than $200,000; or

(6) a felony of the first degree if the value of the telecommunications service used or diverted is $200,000 or more.

(c) When telecommunications service is used or diverted in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service used or diverted may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.03. MANUFACTURE, POSSESSION, OR DELIVERY OF UNLAWFUL TELECOMMUNICATIONS DEVICE. (a) A person commits an offense if the person manufactures, possesses, delivers, offers to deliver, or advertises:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to:

(A) commit an offense under Section 33A.04; or

(B) conceal the existence or place of origin or destination of a telecommunications service.

(b) A person commits an offense if the person delivers, offers to deliver, or advertises plans, instructions, or materials for manufacture of:

(1) a counterfeit telecommunications device; or

(2) a telecommunications device that is intended to be used to commit an offense under Subsection (a).

(c) An offense under this section is a felony of the third degree.

(d) It is a defense to prosecution under this section that the person was an officer, agent, or employee of a telecommunications service provider who engaged in the conduct for the purpose of gathering information for a law enforcement investigation related to an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.04. THEFT OF TELECOMMUNICATIONS SERVICE. (a) A person commits an offense if the person knowingly obtains or attempts to obtain telecommunications service to avoid or cause another person to avoid a lawful charge for that service by using:

(1) a telecommunications access device without the authority or consent of the subscriber or lawful holder of the device or pursuant to an agreement for an exchange of value with the subscriber or lawful holder of the device to allow another person to use the device;

(2) a counterfeit telecommunications access device;

(3) a telecommunications device or counterfeit telecommunications device; or

(4) a fraudulent or deceptive scheme, pretense, method, or conspiracy, or other device or means, including a false, altered, or stolen identification.

(b) An offense under this section is:

(1) a Class B misdemeanor if the value of the telecommunications service obtained or attempted to be obtained is less than $500;

(2) a Class A misdemeanor if:

(A) the value of the telecommunications service obtained or attempted to be obtained is $500 or more but less than $1,500; or

(B) the value of the telecommunications service obtained or attempted to be obtained is less than $500 and the defendant has been previously convicted of an offense under this chapter;

(3) a state jail felony if:

(A) the value of the telecommunications service obtained or attempted to be obtained is $1,500 or more but less than $20,000; or

(B) the value of the telecommunications service obtained or attempted to be obtained is less than $1,500 and the defendant has been previously convicted two or more times of an offense under this chapter;

(4) a felony of the third degree if the value of the telecommunications service obtained or attempted to be obtained is $20,000 or more but less than $100,000;

(5) a felony of the second degree if the value of the telecommunications service obtained or attempted to be obtained is

$100,000 or more but less than $200,000; or

(6) a felony of the first degree if the value of the telecommunications service obtained or attempted to be obtained is $200,000 or more.

(c) When telecommunications service is obtained or attempted to be obtained in violation of this section pursuant to one scheme or continuing course of conduct, whether or not in a single incident, the conduct may be considered as one offense and the values of the service obtained or attempted to be obtained may be aggregated in determining the grade of the offense.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.05. PUBLICATION OF TELECOMMUNICATIONS ACCESS DEVICE. (a) A person commits an offense if the person with criminal negligence publishes a telecommunications access device or counterfeit telecommunications access device that is designed to be used to commit an offense under Section 33A.04.

(b) Except as otherwise provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under this section is a felony of the third degree if the person has been previously convicted of an offense under this chapter.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

Sec. 33A.051. FALSE CALLER IDENTIFICATION INFORMATION DISPLAY. (a) A person commits an offense if the person, with the intent to defraud or cause harm, makes a call or engages in any other conduct using any type of technology that results in the display on another person's telecommunications device of data that misrepresents the actor's identity or telephone number.

(b) An offense under this section is a Class A misdemeanor.

(c) Notwithstanding any other provision of this chapter, a conviction for an offense under this section may not be used for enhancement purposes under any other section of this chapter.

(d) It is a defense to prosecution that the actor:

(1) blocked caller identification information;

(2) was a peace officer or federal law enforcement officer lawfully discharging an official duty;

(3) was an officer, agent, or employee of a federal intelligence or security agency lawfully discharging an official duty;

(4) was an officer, agent, or employee of a telecommunications service provider who was:

(A) acting in the provider's capacity as an intermediary for the transmission of telephone service, a Voice over Internet Protocol transmission, or another type of telecommunications transmission between the caller and the recipient;

(B) providing or configuring a service or service feature as requested by a customer;

(C) acting in a manner that is authorized or required by other law; or

(D) engaging in other conduct that is a necessary incident to the provision of service; or

(5) was a private investigator licensed under Chapter 1702, Occupations Code, lawfully conducting an investigation.

(e) For the purposes of this section, "telecommunications service provider" means a:

(1) telecommunications provider, as defined by Section 51.002, Utilities Code; or

(2) provider of telecommunications service, advanced communications services, or information service, as those terms are defined by 47 U.S.C. Section 153.

Added by Acts 2019, 86th Leg., R.S., Ch. 1355 (H.B. 101), Sec. 1, eff. September 1, 2019.

Sec. 33A.06. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of telecommunications equipment, services, or devices.

Added by Acts 1997, 75th Leg., ch. 306, Sec. 3, eff. Sept. 1, 1997.

CHAPTER 34. MONEY LAUNDERING

Sec. 34.01. DEFINITIONS. In this chapter:

(1) "Criminal activity" means any offense, including any

preparatory offense, that is:

(A) classified as a felony under the laws of this state or the United States; or

(B) punishable by confinement for more than one year under the laws of another state.

(2) "Funds" includes:

(A) coin or paper money of the United States or any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issue;

(B) United States silver certificates, United States Treasury notes, and Federal Reserve System notes;

(C) an official foreign bank note that is customarily used and accepted as a medium of exchange in a foreign country and a foreign bank draft; and

(D) currency or its equivalent, including an electronic fund, a personal check, a bank check, a traveler's check, a money order, a bearer negotiable instrument, a bearer investment security, a bearer security, a certificate of stock in a form that allows title to pass on delivery, a stored value card as defined by Section 604.001, Business & Commerce Code, or a digital currency.

(3) "Financial institution" has the meaning assigned by Section 32.01.

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, realized through, or used in the commission of:

(A) an act; or

(B) conduct that constitutes an offense under Section 151.7032, Tax Code.

Added by Acts 1993, 73rd Leg., ch. 761, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 7, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 928 (H.B. 1523), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1357 (S.B. 1451), Sec. 5, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 957 (S.B. 207), Sec. 1, eff. September 1, 2019.

Sec. 34.02. MONEY LAUNDERING. (a) A person commits an offense if the person knowingly:

(1) acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity;

(2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity;

(3) invests, expends, or receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; or

(4) finances or invests or intends to finance or invest funds that the person believes are intended to further the commission of criminal activity.

(a-1) Knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish a culpable mental state under this section.

(b) For purposes of this section, a person is presumed to believe that funds are the proceeds of or are intended to further the commission of criminal activity if a peace officer or a person acting at the direction of a peace officer represents to the person that the funds are proceeds of or are intended to further the commission of criminal activity, as applicable, regardless of whether the peace officer or person acting at the peace officer's direction discloses the person's status as a peace officer or that the person is acting at the direction of a peace officer.

(c) It is a defense to prosecution under this section that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose pursuant to the laws of this state or the United States.

(d) It is a defense to prosecution under this section that the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution and by Article 1, Section 10, of the Texas Constitution or that the funds were received as bona fide legal fees by a licensed attorney and at the time of their receipt, the attorney

did not have actual knowledge that the funds were derived from criminal activity.

(e) An offense under this section is:

(1) a state jail felony if the value of the funds is $2,500 or more but less than $30,000;

(2) a felony of the third degree if the value of the funds is $30,000 or more but less than $150,000;

(3) a felony of the second degree if the value of the funds is $150,000 or more but less than $300,000; or

(4) a felony of the first degree if the value of the funds is $300,000 or more.

(f) For purposes of this section, if proceeds of criminal activity are related to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the value of the proceeds aggregated in determining the classification of the offense.

(g) For purposes of this section, funds on deposit at a branch of a financial institution are considered the property of that branch and any other branch of the financial institution.

(h) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 1993, 73rd Leg., ch. 761, Sec. 2, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 24, eff. September 1, 2015.

Sec. 34.021. PROTECTION FROM CIVIL LIABILITY. Notwithstanding Section 1.03(c), a financial institution or an agent of the financial institution acting in a manner described by Section 34.02(c) is not liable for civil damages to a person who:

(1) claims an ownership interest in funds involved in an offense under Section 34.02; or

(2) conducts with the financial institution or an insurer, as defined by Article 1.02, Insurance Code, a transaction concerning funds involved in an offense under Section 34.02.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 3, eff. September 1, 2005.

Sec. 34.03. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist in the prosecution of an offense under this chapter.

Added by Acts 1993, 73rd Leg., ch. 761, Sec. 2, eff. Sept. 1, 1993.

CHAPTER 35. INSURANCE FRAUD

Sec. 35.01. DEFINITIONS. In this chapter:

(1) "Insurance policy" means a written instrument in which is provided the terms of any certificate of insurance, binder of coverage, contract of insurance, benefit plan, nonprofit hospital service plan, motor club service plan, surety bond, cash bond, or any other alternative to insurance authorized by Chapter 601, Transportation Code. The term includes any instrument authorized to be regulated by the Texas Department of Insurance.

(2) "Insurer" has the meaning assigned by Article 1.02, Insurance Code.

(3) "Statement" means an oral or written communication or a record or documented representation of fact made to an insurer. The term includes computer-generated information.

(4) "Value of the claim" means the total dollar amount of a claim for payment under an insurance policy or, as applicable, the value of the claim determined under Section 35.025.

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.830, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.541, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Sec. 35.015. MATERIALITY. A statement is material for the purposes of this chapter, regardless of the admissibility of the statement at trial, if the statement could have affected:

(1) the eligibility for coverage or amount of the payment on a claim for payment under an insurance policy; or

(2) the decision of an insurer whether to issue an insurance policy.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Sec. 35.02. INSURANCE FRAUD. (a) A person commits an offense if, with intent to defraud or deceive an insurer, the person, in support of a claim for payment under an insurance policy:

(1) prepares or causes to be prepared a statement that:

(A) the person knows contains false or misleading material information; and

(B) is presented to an insurer; or

(2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

(a-1) A person commits an offense if the person, with intent to defraud or deceive an insurer and in support of an application for an insurance policy:

(1) prepares or causes to be prepared a statement that:

(A) the person knows contains false or misleading material information; and

(B) is presented to an insurer; or

(2) presents or causes to be presented to an insurer a statement that the person knows contains false or misleading material information.

(b) A person commits an offense if, with intent to defraud or deceive an insurer, the person solicits, offers, pays, or receives a benefit in connection with the furnishing of goods or services for which a claim for payment is submitted under an insurance policy.

(c) An offense under Subsection (a) or (b) is:

(1) a Class C misdemeanor if the value of the claim is less than $100;

(2) a Class B misdemeanor if the value of the claim is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the claim is $750 or more but less than $2,500;

(4) a state jail felony if the value of the claim is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the claim is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the claim is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if:

(A) the value of the claim is $300,000 or more; or

(B) an act committed in connection with the commission of the offense places a person at risk of death or serious bodily injury.

(d) An offense under Subsection (a-1) is a state jail felony.

(e) The court shall order a defendant convicted of an offense under this section to pay restitution, including court costs and attorney's fees, to an affected insurer.

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

(g) For purposes of this section, if the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

(h) If it is shown on the trial of an offense under this section that the actor submitted a bill for goods or services in support of a claim for payment under an insurance policy to the insurer issuing the policy, a rebuttable presumption exists that the actor caused the claim for payment to be prepared or presented.

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 2003, 78th Leg., ch. 605, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 25, eff. September 1, 2015.

Sec. 35.025. VALUE OF CLAIM. (a) Except as provided by

Subsection (b) and subject to Subsection (c), for the purposes of Section 35.02(c), if the value of a claim is not readily ascertainable, the value of the claim is:

(1) the fair market value, at the time and place of the offense, of the goods or services that are the subject of the claim; or

(2) the cost of replacing the goods or services that are the subject of the claim within a reasonable time after the claim.

(b) If goods or services that are the subject of a claim cannot be reasonably ascertained under Subsection (a), the goods or services are considered to have a value of $750 or more but less than $2,500.

(c) If the actor proves by a preponderance of the evidence that a portion of the claim for payment under an insurance policy resulted from a valid loss, injury, expense, or service covered by the policy, the value of the claim is equal to the difference between the total claim amount and the amount of the valid portion of the claim.

Added by Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 4, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 26, eff. September 1, 2015.

Sec. 35.03. AGGREGATION AND MULTIPLE OFFENSES. (a) When separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the claims aggregated in determining the classification of the offense. If claims are aggregated under this subsection, Subsection (b) shall not apply.

(b) When three or more separate claims in violation of this chapter are communicated to an insurer or group of insurers pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the classification of the offense shall be one category higher than the most serious single offense proven from the separate claims, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree. This subsection shall not be applied if claims are aggregated under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.

Sec. 35.04. JURISDICTION OF ATTORNEY GENERAL. (a) The attorney general may offer to an attorney representing the state in the prosecution of an offense under Section 35.02 the investigative, technical, and litigation assistance of the attorney general's office.

(b) The attorney general may prosecute or assist in the prosecution of an offense under Section 35.02 on the request of the attorney representing the state described by Subsection (a).

Added by Acts 1995, 74th Leg., ch. 621, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 35A. HEALTH CARE FRAUD

Sec. 35A.01. DEFINITIONS. In this chapter:

(1) "Claim" means a written or electronically submitted request or demand that:

(A) is submitted by a provider or the provider's agent and identifies a service or product provided or purported to have been provided to a health care recipient as reimbursable under a health care program, without regard to whether the money that is requested or demanded is paid; or

(B) states the income earned or expense incurred by a provider in providing a service or product and is used to determine a rate of payment under a health care program.

(2) "Fiscal agent" means:

(A) a person who, through a contractual relationship with a state agency or the federal government, receives, processes, and pays a claim under a health care program; or

(B) the designated agent of a person described by Paragraph (A).

(3) "Health care practitioner" means a dentist, podiatrist, psychologist, physical therapist, chiropractor, registered nurse, or other provider licensed to provide health care services in this state.

(4) "Health care program" means a program funded by this state, the federal government, or both and designed to provide health care services to health care recipients, including a program that is

administered in whole or in part through a managed care delivery model.

(5) "Health care recipient" means an individual to whom a service or product is provided or purported to have been provided and with respect to whom a person claims or receives a payment for that service or product from a health care program or fiscal agent, without regard to whether the individual was eligible for benefits under the health care program.

(6) "Managed care organization" means a person who is authorized or otherwise permitted by law to arrange for or provide a managed care plan.

(7) "Physician" means a physician licensed to practice medicine in this state.

(8) "Provider" means a person who participates in or has applied to participate in a health care program as a supplier of a service or product and includes:

(A) a management company that manages, operates, or controls another provider;

(B) a person, including a medical vendor, who provides a service or product to another provider or the other provider's agent;

(C) an employee of the person who participates in or has applied to participate in the program;

(D) a managed care organization; and

(E) a manufacturer or distributor of a product for which a health care program provides reimbursement.

(9) "Service" includes care or treatment of a health care recipient.

(10) "High managerial agent" means a director, officer, or employee who is authorized to act on behalf of a provider and has duties of such responsibility that the conduct of the director, officer, or employee reasonably may be assumed to represent the policy or intent of the provider.

Added by Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 16, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 8, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 381 (H.B. 2894), Sec. 6, eff.

September 1, 2019.

Sec. 35A.02. HEALTH CARE FRAUD. (a) A person commits an offense if the person:

(1) knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized;

(2) knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized;

(3) knowingly applies for and receives a benefit or payment on behalf of another person under a health care program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;

(4) knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:

(A) the conditions or operation of a facility in order that the facility may qualify for certification or recertification under a health care program; or

(B) information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to a health care program;

(5) except as authorized under a health care program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the health care program, a gift, money, donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under a health care program;

(6) knowingly presents or causes to be presented a claim for payment under a health care program for a product provided or a service rendered by a person who:

(A) is not licensed to provide the product or render the service, if a license is required; or

(B) is not licensed in the manner claimed;

(7) knowingly makes or causes to be made a claim under a health care program for:

(A) a service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;

(B) a service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or

(C) a product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;

(8) makes a claim under a health care program and knowingly fails to indicate the type of license and the identification number of the licensed health care practitioner who actually provided the service;

(9) knowingly enters into an agreement, combination, or conspiracy to defraud the state or federal government by obtaining or aiding another person in obtaining an unauthorized payment or benefit from a health care program or fiscal agent;

(10) is a managed care organization that contracts with the Health and Human Services Commission, another state agency, or the federal government to provide or arrange to provide health care benefits or services to individuals eligible under a health care program and knowingly:

(A) fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;

(B) fails to provide or falsifies information required to be provided by law, rule, or contractual provision; or

(C) engages in a fraudulent activity in connection with the enrollment of an individual eligible under a health care program in the organization's managed care plan or in connection with marketing the organization's services to an individual eligible under a health care program;

(11) knowingly obstructs an investigation by the attorney general of an alleged unlawful act under this section or under Section 32.039, 32.0391, or 36.002, Human Resources Code; or

(12) knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state or the federal government under a health care program.

(b) An offense under this section is:

(1) a Class C misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under a health care program, directly or indirectly, as a result of the conduct is less than $100;

(2) a Class B misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under a health care program, directly or indirectly, as a result of the conduct is $100 or more but less than $750;

(3) a Class A misdemeanor if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under a health care program, directly or indirectly, as a result of the conduct is $750 or more but less than $2,500;

(4) a state jail felony if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under a health care program, directly or indirectly, as a result of the conduct is $2,500 or more but less than $30,000;

(B) the offense is committed under Subsection (a)(11); or

(C) it is shown on the trial of the offense that the amount of the payment or value of the benefit described by this subsection cannot be reasonably ascertained;

(5) a felony of the third degree if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under a health care program, directly or indirectly, as a result of the conduct is $30,000 or more but less than $150,000; or

(B) it is shown on the trial of the offense that the defendant submitted more than 25 but fewer than 50 fraudulent claims under a health care program and the submission of each claim constitutes conduct prohibited by Subsection (a);

(6) a felony of the second degree if:

(A) the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under a health care program, directly or indirectly, as a result of the conduct is $150,000 or more but less than $300,000; or

(B) it is shown on the trial of the offense that the defendant submitted 50 or more fraudulent claims under a health care program and the submission of each claim constitutes conduct

prohibited by Subsection (a); or

(7) a felony of the first degree if the amount of any payment or the value of any monetary or in-kind benefit provided or claim for payment made under a health care program, directly or indirectly, as a result of the conduct is $300,000 or more.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code or another provision of law, the actor may be prosecuted under either this section or the other section or provision or both this section and the other section or provision.

(d) When multiple payments or monetary or in-kind benefits are provided under one or more health care programs as a result of one scheme or continuing course of conduct, the conduct may be considered as one offense and the amounts of the payments or monetary or in-kind benefits aggregated in determining the grade of the offense.

(e) The punishment prescribed for an offense under this section, other than the punishment prescribed by Subsection (b)(7), is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor was a high managerial agent at the time of the offense.

(f) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves a health care program.

Added by Acts 2005, 79th Leg., Ch. 806 (S.B. 563), Sec. 16, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 127 (S.B. 1694), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 398 (S.B. 544), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 27, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 381 (H.B. 2894), Sec. 6, eff. September 1, 2019.

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION
CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(2) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(3) "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

(4) "Vote" means to cast a ballot in an election regulated by law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3237, ch. 558, Sec. 1, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 67, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 304, Sec. 4.01, eff. Jan. 1, 1992; Acts 1991, 72nd Leg., ch. 565, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 36.02. BRIBERY. (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the

benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.

(e) An offense under this section is a felony of the second degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3237, ch. 558, Sec. 2, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 304, Sec. 4.02, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER. (a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 67, Sec. 1, 3, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 36.04. IMPROPER INFLUENCE. (a) A person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 36.05. TAMPERING WITH WITNESS. (a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding, or he coerces a witness or a prospective witness in an official proceeding:

(1) to testify falsely;

(2) to withhold any testimony, information, document, or

thing;

(3) to elude legal process summoning him to testify or supply evidence;

(4) to absent himself from an official proceeding to which he has been legally summoned; or

(5) to abstain from, discontinue, or delay the prosecution of another.

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a).

(c) It is a defense to prosecution under Subsection (a)(5) that the benefit received was:

(1) reasonable restitution for damages suffered by the complaining witness as a result of the offense; and

(2) a result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.

(d) An offense under this section is a felony of the third degree, except that if the official proceeding is part of the prosecution of a criminal case, an offense under this section is the same category of offense as the most serious offense charged in that criminal case.

(e) Notwithstanding Subsection (d), if the most serious offense charged is a capital felony, an offense under this section is a felony of the first degree.

(e-1) Notwithstanding Subsection (d), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family Code, an offense under this section is the greater of:

(1) a felony of the third degree; or

(2) the most serious offense charged in the criminal case.

(e-2) Notwithstanding Subsections (d) and (e-1), if the underlying official proceeding involves family violence, as defined by Section 71.004, Family Code, and it is shown at the trial of the offense that the defendant has previously been convicted of an offense involving family violence under the laws of this state or another state, an offense under this section is the greater of:

(1) a felony of the second degree; or

(2) the most serious offense charged in the criminal case.

(e-3) For purposes of Subsection (a), a person is considered to

coerce a witness or prospective witness if the person commits an act of family violence as defined by Section 71.004, Family Code, that is perpetrated, in part, with the intent to cause the witness's or prospective witness's unavailability or failure to comply and the offense is punishable under Subsection (e-1) or (e-2), as applicable.

(f) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 721, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 770 (H.B. 1856), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 165 (S.B. 1360), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 165 (S.B. 1360), Sec. 2, eff. September 1, 2013.

Sec. 36.06. OBSTRUCTION OR RETALIATION. (a) A person commits an offense if the person intentionally or knowingly harms or threatens to harm another by an unlawful act:

(1) in retaliation for or on account of the service or status of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime; or

(2) to prevent or delay the service of another as a:

(A) public servant, witness, prospective witness, or informant; or

(B) person who has reported or who the actor knows intends to report the occurrence of a crime.

(a-1) A person commits an offense if the person posts on a publicly accessible website the residence address or telephone number of an individual the actor knows is a public servant or a member of a public servant's family or household with the intent to cause harm or a threat of harm to the individual or a member of the individual's

family or household in retaliation for or on account of the service or status of the individual as a public servant.

(b) In this section:

(1) "Honorably retired peace officer" means a peace officer who:

(A) did not retire in lieu of any disciplinary action;

(B) was eligible to retire from a law enforcement agency or was ineligible to retire only as a result of an injury received in the course of the officer's employment with the agency; and

(C) is entitled to receive a pension or annuity for service as a law enforcement officer or is not entitled to receive a pension or annuity only because the law enforcement agency that employed the officer does not offer a pension or annuity to its employees.

(2) "Informant" means a person who has communicated information to the government in connection with any governmental function.

(3) "Public servant" has the meaning assigned by Section 1.07, except that the term also includes an honorably retired peace officer.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if:

(1) the victim of the offense was harmed or threatened because of the victim's service or status as a juror; or

(2) the actor's conduct is described by Subsection (a-1) and results in the bodily injury of a public servant or a member of a public servant's family or household.

(d) For purposes of Subsection (a-1), it is prima facie evidence of the intent to cause harm or a threat of harm to an individual the person knows is a public servant or a member of a public servant's family or household if the actor:

(1) receives a written demand from the individual to not disclose the address or telephone number for reasons of safety; and

(2) either:

(A) fails to remove the address or telephone number from the publicly accessible website within a period of 48 hours after receiving the demand; or

(B) reposts the address or telephone number on the same or a different publicly accessible website, or makes the information

publicly available through another medium, within a period of four years after receiving the demand, regardless of whether the individual is no longer a public servant.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3238, ch. 558, Sec. 4, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 557, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 239, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 835, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 246, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 848 (S.B. 923), Sec. 2, eff. September 1, 2015.

Sec. 36.07. ACCEPTANCE OF HONORARIUM. (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1991, 72nd Leg., ch. 304, Sec. 4.03, eff. Jan. 1, 1992. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 56 (S.B. 1269), Sec. 1, eff. September 1, 2011.

Sec. 36.08. GIFT TO PUBLIC SERVANT BY PERSON SUBJECT TO HIS

JURISDICTION. (a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is

interested in any matter before the public servant. The exception provided by Sec. 36.10(b) does not apply to a benefit under this subsection.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3238, ch. 558, Sec. 5, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 304, Sec. 4.04, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 36.09. OFFERING GIFT TO PUBLIC SERVANT. (a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 36.10. NON-APPLICABLE. (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title

15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of $50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code;

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) an item with a value of less than $50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity;

(8) transportation, lodging, and meals described by Section 36.07(b); or

(9) complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered:

(A) to a public servant who is a first responder; and

(B) through a program or clinic that is:

(i) operated by a local bar association or the State Bar of Texas; and

(ii) approved by the head of the agency employing the public servant, if the public servant is employed by an agency.

(b) Section 36.08 (Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

(d) Section 36.08 (Gift to Public Servant) does not apply to a gratuity accepted and reported in accordance with Section 11.0262,

Parks and Wildlife Code. Section 36.09 (Offering Gift to Public Servant) does not apply to a gratuity that is offered in accordance with Section 11.0262, Parks and Wildlife Code.

(e) In this section, "first responder" means:

(1) a peace officer whose duties include responding rapidly to an emergency;

(2) fire protection personnel, as that term is defined by Section 419.021, Government Code;

(3) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office;

(4) an ambulance driver; or

(5) an individual certified as emergency medical services personnel by the Department of State Health Services.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2707, ch. 738, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3240, ch. 558, Sec. 6, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 472, Sec. 60, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, Sec. 4.05, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(38), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 639 (H.B. 2685), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 56 (S.B. 1269), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1149 (S.B. 148), Sec. 1, eff. September 1, 2013.

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.01. DEFINITIONS. In this chapter:

(1) "Court record" means a decree, judgment, order, subpoena, warrant, minutes, or other document issued by a court of:

(A) this state;

(B) another state;

(C) the United States;

(D) a foreign country recognized by an act of congress or a treaty or other international convention to which the United States is a party;

(E) an Indian tribe recognized by the United States; or

(F) any other jurisdiction, territory, or protectorate entitled to full faith and credit in this state under the United States Constitution.

(2) "Governmental record" means:

(A) anything belonging to, received by, or kept by government for information, including a court record;

(B) anything required by law to be kept by others for information of government;

(C) a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, by the United States, or by a foreign government engaged in a reciprocal treaty or memorandum of understanding with the United States;

(D) a standard proof of motor vehicle liability insurance form described by Section 601.081, Transportation Code, a certificate of an insurance company described by Section 601.083 of that code, a document purporting to be such a form or certificate that is not issued by an insurer authorized to write motor vehicle liability insurance in this state, an electronic submission in a form described by Section 502.046(i), Transportation Code, or an evidence of financial responsibility described by Section 601.053 of that code;

(E) an official ballot or other election record;

(F) the written documentation a mobile food unit is required to obtain under Section 437.0074, Health and Safety Code; or

(G) a temporary tag issued under Chapter 502 or 503, Transportation Code.

(3) "Statement" means any representation of fact.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 113, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 5, eff. May 21, 1997; Acts 1997, 75th Leg., ch. 823, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 659, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 393, Sec.

21, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1276 (H.B. 3672), Sec. 2, eff. September 1, 2007.
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 16.004, eff. September 1, 2013.
Acts 2023, 88th Leg., R.S., Ch. 125 (H.B. 914), Sec. 2, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 623 (H.B. 4337), Sec. 1, eff. September 1, 2023.

Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:
(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or
(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.
(b) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 37.03. AGGRAVATED PERJURY. (a) A person commits an offense if he commits perjury as defined in Section 37.02, and the false statement:
(1) is made during or in connection with an official proceeding; and
(2) is material.
(b) An offense under this section is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 37.04. MATERIALITY. (a) A statement is material,

regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under Section 37.03 (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

(c) Whether a statement is material in a given factual situation is a question of law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 37.05. RETRACTION. It is a defense to prosecution under Section 37.03 (Aggravated Perjury) that the actor retracted his false statement:

(1) before completion of the testimony at the official proceeding; and

(2) before it became manifest that the falsity of the statement would be exposed.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 37.06. INCONSISTENT STATEMENTS. An information or indictment for perjury under Section 37.02 or aggravated perjury under Section 37.03 that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 37.07. IRREGULARITIES NO DEFENSE. (a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated

Perjury) that the oath was administered or taken in an irregular manner, or that there was some irregularity in the appointment or qualification of the person who administered the oath.

(b) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) that a document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he signed the document, and the document contains the signed jurat of a public servant authorized to administer oaths.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, LAW ENFORCEMENT EMPLOYEE, CORRECTIONS OFFICER, OR JAILER. (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to:

(1) a peace officer or federal special investigator conducting the investigation;

(2) any employee of a law enforcement agency that is authorized by the agency to conduct the investigation and that the actor knows is conducting the investigation; or

(3) a corrections officer or jailer.

(b) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

(c) An offense under this section is a Class B misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 925, Sec. 1, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 3, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 513 (S.B. 405), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 513 (S.B. 405), Sec. 2, eff. September 1, 2019.

Sec. 37.081. FALSE REPORT REGARDING MISSING CHILD OR MISSING PERSON. (a) A person commits an offense if, with intent to deceive, the person knowingly:

(1) files a false report of a missing child or missing person with a law enforcement officer or agency; or

(2) makes a false statement to a law enforcement officer or other employee of a law enforcement agency relating to a missing child or missing person.

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 1999, 76th Leg., ch. 200, Sec. 3, eff. Sept. 1, 1999.

Sec. 37.082. MISREPRESENTING CHILD AS FAMILY MEMBER AT PORT OF ENTRY. (a) In this section:

(1) "Child" means a person younger than 18 years of age.

(2) "Family member" means a person who is related to another person by consanguinity or affinity.

(3) "Port of entry" means a place designated by executive order of the president of the United States, by order of the United States secretary of the treasury, or by act of the United States Congress at which a customs officer is authorized to enforce customs laws.

(b) A person commits an offense if the person, with intent to commit an offense under Section 20A.02, knowingly misrepresents a child as a family member of the person to a peace officer or federal special investigator at a port of entry.

(c) An offense under this section is a Class B misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2019, 86th Leg., R.S., Ch. 1277 (H.B. 888), Sec. 1, eff. September 1, 2019.

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability

as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under Subsection (a) or Subsection (d)(1) is a felony of the third degree, unless the thing altered, destroyed, or concealed is a human corpse, in which case the offense is a felony of the second degree. An offense under Subsection (d)(2) is a Class A misdemeanor.

(c-1) It is a defense to prosecution under Subsection (a) or (d)(1) that the record, document, or thing was visual material prohibited under Section 43.261 that was destroyed as described by Subsection (f)(3) of that section.

(d) A person commits an offense if the person:

(1) knowing that an offense has been committed, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense; or

(2) observes a human corpse under circumstances in which a reasonable person would believe that an offense had been committed, knows or reasonably should know that a law enforcement agency is not aware of the existence of or location of the corpse, and fails to report the existence of and location of the corpse to a law enforcement agency.

(e) In this section, "human corpse" has the meaning assigned by Section 42.08.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1991, 72nd Leg., ch. 565, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 1284, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 287 (H.B. 872), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 1, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 16.004, eff. September 1, 2021.

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. (a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record;

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully;

(5) makes, presents, or uses a governmental record with knowledge of its falsity; or

(6) possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) that the governmental record is destroyed pursuant to legal authorization or transferred under Section 441.204, Government Code. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c)(1) Except as provided by Subdivisions (2), (3), (4), (5), and (6), and by Subsection (d), an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a state jail felony.

(2) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was:

(A) a public school record, report, or assessment instrument required under Chapter 39, Education Code, data reported for a school district or open-enrollment charter school to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Sections 48.008 and 48.009, Education

Code, under a law or rule requiring that reporting, or a license, certificate, permit, seal, title, letter of patent, or similar document issued by government, by another state, or by the United States, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree;

(B) a written report of a medical, chemical, toxicological, ballistic, or other expert examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action;

(C) a written report of the certification, inspection, or maintenance record of an instrument, apparatus, implement, machine, or other similar device used in the course of an examination or test performed on physical evidence for the purpose of determining the connection or relevance of the evidence to a criminal action; or

(D) a search warrant issued by a magistrate.

(3) An offense under this section is a Class C misdemeanor if it is shown on the trial of the offense that the governmental record is a governmental record that is required for enrollment of a student in a school district and was used by the actor to establish the residency of the student.

(4) An offense under this section is a Class B misdemeanor if it is shown on the trial of the offense that the governmental record is a written appraisal filed with an appraisal review board under Section 41.43(a-1), Tax Code, that was performed by a person who had a contingency interest in the outcome of the appraisal review board hearing.

(5) An offense under this section is a Class B misdemeanor if the governmental record is an application for a place on the ballot under Section 141.031, Election Code, and the actor knowingly provides false information under Subsection (a)(4)(G) of that section.

(6) An offense under this section is a Class A misdemeanor if the governmental record is a temporary tag issued under Chapter 502 or 503, Transportation Code.

(d) An offense under this section, if it is shown on the trial of the offense that the governmental record is described by Section 37.01(2)(D), is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a)(2) or Subsection (a)(5) and the defendant is convicted of presenting or using the record;

(2) a felony of the third degree if the offense is committed under:

(A) Subsection (a)(1), (3), (4), or (6); or

(B) Subsection (a)(2) or (5) and the defendant is convicted of making the record; and

(3) a felony of the second degree, notwithstanding Subdivisions (1) and (2), if the actor's intent in committing the offense was to defraud or harm another.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) that the possession occurred in the actual discharge of official duties as a public servant.

(f) It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

(h) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.13, the actor may be prosecuted under any of those sections.

(i) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section that involves the state Medicaid program.

(j) It is not a defense to prosecution under Subsection (a)(2) that the record, document, or thing made, presented, or used displays or contains the statement "NOT A GOVERNMENT DOCUMENT" or another substantially similar statement intended to alert a person to the falsity of the record, document, or thing, unless the record, document, or thing displays the statement diagonally printed clearly and indelibly on both the front and back of the record, document, or thing in solid red capital letters at least one-fourth inch in height.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 66, eff. Sept. 1,

1989; Acts 1991, 72nd Leg., ch. 113, Sec. 4, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 565, Sec. 5, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 6, eff. May 21, 1997; Acts 1997, 75th Leg., ch. 823, Sec. 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 659, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 718, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 771, Sec. 3, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.139, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 257, Sec. 16, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1364 (H.B. 126), Sec. 1, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1085 (H.B. 3024), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 73 (H.B. 1813), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 31, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 510 (S.B. 124), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 690 (H.B. 644), Sec. 3, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.087, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 1006 (H.B. 4555), Sec. 3, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 125 (H.B. 914), Sec. 3, eff. September 1, 2023.

Sec. 37.101. FRAUDULENT FILING OF FINANCING STATEMENT. (a) A person commits an offense if the person knowingly presents for filing or causes to be presented for filing a financing statement that the person knows:

(1) is forged;

(2) contains a material false statement; or

(3) is groundless.

(b) An offense under Subsection (a)(1) is a felony of the third degree, unless it is shown on the trial of the offense that the person had previously been convicted under this section on two or

more occasions, in which event the offense is a felony of the second degree. An offense under Subsection (a)(2) or (a)(3) is a Class A misdemeanor, unless the person commits the offense with the intent to defraud or harm another, in which event the offense is a state jail felony.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 10, eff. May 21, 1997.

Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if the person:

(1) impersonates a public servant with intent to induce another to submit to the person's pretended official authority or to rely on the person's pretended official acts; or

(2) knowingly purports to exercise, without legal authority, any function of a public servant or of a public office, including that of a judge and court.

(b) An offense under this section is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 189, Sec. 7, eff. May 21, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 243 (S.B. 1820), Sec. 1, eff. September 1, 2019.

Sec. 37.12. FALSE IDENTIFICATION AS PEACE OFFICER; MISREPRESENTATION OF PROPERTY. (a) A person commits an offense if:

(1) the person makes, provides to another person, or possesses a card, document, badge, insignia, shoulder emblem, or other item, including a vehicle, bearing an insignia of a law enforcement agency that identifies a person as a peace officer or a reserve law enforcement officer; and

(2) the person who makes, provides, or possesses the item bearing the insignia knows that the person so identified by the item is not commissioned as a peace officer or reserve law enforcement officer as indicated on the item.

(b) It is a defense to prosecution under this section that:

(1) the card, document, badge, insignia, shoulder emblem,

or other item bearing an insignia of a law enforcement agency clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of a junior posse; or

(2) the person identified as a peace officer or reserve law enforcement officer by the item bearing the insignia was commissioned in that capacity when the item was made.

(b-1) It is an exception to the application of this section that the item was used or intended for use exclusively for decorative purposes or in an artistic or dramatic presentation.

(c) In this section, "reserve law enforcement officer" has the same meaning as is given that term in Section 1701.001, Occupations Code.

(c-1) For purposes of this section, an item bearing an insignia of a law enforcement agency includes an item that contains the word "police," "sheriff," "constable," or "trooper."

(d) A person commits an offense if the person intentionally or knowingly misrepresents an object, including a vehicle, as property belonging to a law enforcement agency. For purposes of this subsection, intentionally or knowingly misrepresenting an object as property belonging to a law enforcement agency includes intentionally or knowingly displaying an item bearing an insignia of a law enforcement agency in a manner that would lead a reasonable person to interpret the item as property belonging to a law enforcement agency.

(e) An offense under this section is a Class B misdemeanor.

Added by Acts 1983, 68th Leg., p. 5672, ch. 1075, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 514, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1420, Sec. 14.831, eff. Sept. 1, 2001.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 982 (H.B. 683), Sec. 3, eff. September 1, 2017.

Sec. 37.13. RECORD OF A FRAUDULENT COURT. (a) A person commits an offense if the person makes, presents, or uses any document or other record with:

(1) knowledge that the document or other record is not a record of a court created under or established by the constitution or

laws of this state or of the United States; and

(2) the intent that the document or other record be given the same legal effect as a record of a court created under or established by the constitution or laws of this state or of the United States.

(b) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section on two or more occasions.

(c) If conduct that constitutes an offense under this section also constitutes an offense under Section 32.48 or 37.10, the actor may be prosecuted under any of those sections.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 8, eff. May 21, 1997.

Sec. 37.14. FALSE STATEMENT REGARDING CHILD CUSTODY DETERMINATION MADE IN FOREIGN COUNTRY. (a) For purposes of this section, "child custody determination" has the meaning assigned by Section 152.102, Family Code.

(b) A person commits an offense if the person knowingly makes or causes to be made a false statement relating to a child custody determination made in a foreign country during a hearing held under Chapter 152 or Subchapter I, Chapter 153, Family Code.

(c) An offense under this section is a felony of the third degree.

Added by Acts 2011, 82nd Leg., R.S., Ch. 92 (S.B. 1490), Sec. 3, eff. September 1, 2011.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court of this state or another state of the United States; or

(B) under restraint by an agent or employee of a facility that is operated by or under contract with the United States and that confines persons arrested for, charged with, or convicted of criminal offenses.

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period or leave that is part of an intermittent sentence, but does not include a violation of conditions of community supervision or parole other than conditions that impose a period of confinement in a secure correctional facility.

(3) "Economic benefit" means anything reasonably regarded as an economic gain or advantage, including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.

(4) "Finance" means to provide funds or capital or to furnish with necessary funds.

(5) "Fugitive from justice" means a person for whom a valid arrest warrant has been issued.

(6) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(7) "Invest funds" means to commit money to earn a financial return.

(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code.

(9) "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(10) "Public media" means a telephone directory or legal directory, newspaper or other periodical, billboard or other sign, radio or television broadcast, recorded message the public may access by dialing a telephone number, or a written communication not

prohibited by Section 38.12(d).

(11) "Solicit employment" means to communicate in person or by telephone with a prospective client or a member of the prospective client's family concerning professional employment within the scope of a professional's license, registration, or certification arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing problem of the prospective client within the scope of the professional's license, registration, or certification, for the purpose of providing professional services to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include a communication initiated by a family member of the person receiving a communication, a communication by a professional who has a prior or existing professional-client relationship with the person receiving the communication, or communication by an attorney for a qualified nonprofit organization with the organization's members for the purpose of educating the organization's members to understand the law, to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. The term does not include an advertisement by a professional through public media.

(12) "Professional" means an attorney, chiropractor, physician, surgeon, private investigator, or any other person licensed, certified, or registered by a state agency that regulates a health care profession.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 866, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(14), eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 561, Sec. 42, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 723, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 321, Sec. 1.103, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 293, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 750, Sec. 1, eff. Sept. 1, 1997.

Sec. 38.02. FAILURE TO IDENTIFY. (a) A person commits an offense if he intentionally refuses to give his name, residence

address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he intentionally gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

(1) lawfully arrested the person;

(2) lawfully detained the person; or

(3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(b-1) A person commits an offense if the person:

(1) is an operator of a motor vehicle, as defined by Section 32.34, who is lawfully detained by a peace officer for an alleged violation of a law;

(2) fails to provide or display the person's driver's license on the officer's request for the license; and

(3) intentionally refuses to give the person's name, driver's license number, residence address, or date of birth to the peace officer on the officer's request for that information.

(b-2) For purposes of Subsection (b-1)(3), giving a peace officer a residence address that is different from the address associated with the person's driver's license does not constitute a refusal to give the person's residence address in violation of that provision if the address given to the officer is the person's actual residence address.

(c) Except as provided by Subsections (d) and (d-1), an offense under this section is:

(1) a Class C misdemeanor if the offense is committed under Subsection (a) or (b-1); or

(2) a Class B misdemeanor if the offense is committed under Subsection (b).

(d) If it is shown on the trial of an offense under this section that the defendant was a fugitive from justice at the time of the offense, the offense is:

(1) a Class B misdemeanor if the offense is committed under Subsection (a); or

(2) a Class A misdemeanor if the offense is committed under Subsection (b).

(d-1) An offense under Subsection (b-1) is a Class B misdemeanor if it is shown on the trial of the offense that the actor gave a false or fictitious name to the peace officer during the

commission of the offense.

(e) If conduct that constitutes an offense under this section also constitutes an offense under Section 106.07, Alcoholic Beverage Code, the actor may be prosecuted only under Section 106.07.

(f) Subject to Subsection (e), if conduct that constitutes an offense under Subsection (b-1) also constitutes an offense under any other law, the actor may be prosecuted under that subsection, the other law, or both.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1987, 70th Leg., ch. 869, Sec. 1, eff. Sept. 1, 1987.
Acts 1991, 72nd Leg., ch. 821, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1009, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1164 (S.B. 1551), Sec. 1, eff. September 1, 2023.

Sec. 38.03. RESISTING ARREST, SEARCH, OR TRANSPORTATION. (a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor or another by using force against the peace officer or another.

(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

(c) Except as provided in Subsection (d), an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the arrest or search.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Acts 1991, 72nd Leg., ch. 277, Sec. 1, 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.04. EVADING ARREST OR DETENTION. (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer or federal special investigator attempting lawfully to

arrest or detain him.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 4, and Ch. 391, Sec. 1

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if:

(A) the actor has been previously convicted under this section; or

(B) the actor uses a vehicle or watercraft while the actor is in flight and the actor has not been previously convicted under this section;

(2) a felony of the third degree if:

(A) the actor uses a vehicle or watercraft while the actor is in flight and the actor has been previously convicted under this section; or

(B) another suffers serious bodily injury as a direct result of an attempt by the officer or investigator from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(3) a felony of the second degree if another suffers death as a direct result of an attempt by the officer or investigator from whom the actor is fleeing to apprehend the actor while the actor is in flight.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 920 (S.B. 1416), Sec. 3

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the actor has been previously convicted under this section;

(2) a felony of the third degree if:

(A) the actor uses a vehicle while the actor is in flight;

(B) another suffers serious bodily injury as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(C) the actor uses a tire deflation device against the officer while the actor is in flight; or

(3) a felony of the second degree if:

(A) another suffers death as a direct result of an

attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight; or

(B) another suffers serious bodily injury as a direct result of the actor's use of a tire deflation device while the actor is in flight.

(b-1) Notwithstanding Subsection (b), an offense under this section is a felony of the third degree if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

(c) In this section:

(1) "Vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(2) "Tire deflation device" has the meaning assigned by Section 46.01.

(3) "Watercraft" has the meaning assigned by Section 49.01.

(d) A person who is subject to prosecution under both this section and another law may be prosecuted under either or both this section and the other law.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 504, Sec. 1, eff. Sept. 1, 1987. Acts 1989, 71st Leg., ch. 126, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 708, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.240, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1334, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1480, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1400 (H.B. 221), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 391 (S.B. 496), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 920 (S.B. 1416), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(38), eff. September 1, 2013.

Acts 2023, 88th Leg., 3rd C.S., Ch. 1 (S.B. 4), Sec. 11, eff. February 6, 2024.

Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION. (a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense or, with intent to hinder the arrest, detention, adjudication, or disposition of a child for engaging in delinquent conduct that violates a penal law of the state, or with intent to hinder the arrest of another under the authority of a warrant or capias, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) that the warning was given in connection with an effort to bring another into compliance with the law.

(c) Except as provided by Subsection (d), an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the person who is harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony, including an offense under Section 62.102, Code of Criminal Procedure, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony, including an offense under Section 62.102, Code of Criminal Procedure, and the person charged under this section knew that the person they harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony, or is in custody or detention for, is alleged in a petition to have engaged in, or has been adjudicated as having engaged in delinquent conduct that violates a penal law of the grade of felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1991, 72nd Leg., ch. 748, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 11, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 607 (H.B. 2104), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.19, eff. September 1, 2007.

Sec. 38.06. ESCAPE. (a) A person commits an offense if the person escapes from custody when the person is:

(1) under arrest for, lawfully detained for, charged with, or convicted of an offense;

(2) in custody pursuant to a lawful order of a court;

(3) detained in a secure detention facility, as that term is defined by Section 51.02, Family Code; or

(4) in the custody of a juvenile probation officer for violating an order imposed by the juvenile court under Section 52.01, Family Code.

(b) Except as provided in Subsections (c), (d), and (e), an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony;

(2) is confined or lawfully detained in a secure correctional facility or law enforcement facility; or

(3) is committed to or lawfully detained in a secure correctional facility, as defined by Section 51.02, Family Code, other than a halfway house, operated by or under contract with the Texas Juvenile Justice Department.

(d) An offense under this section is a felony of the second degree if the actor to effect his escape causes bodily injury.

(e) An offense under this section is a felony of the first degree if to effect his escape the actor:

(1) causes serious bodily injury; or

(2) uses or threatens to use a deadly weapon.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1985, 69th Leg., ch. 328, Sec. 1, eff. Sept. 1, 1985. Renumbered from Penal Code Sec. 38.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 526, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 38, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1330 (S.B. 844), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 143, eff. September 1, 2015.

Sec. 38.07. PERMITTING OR FACILITATING ESCAPE. (a) An official or employee of a correctional facility commits an offense if he knowingly permits or facilitates the escape of a person in custody.

(b) A person commits an offense if he knowingly causes or facilitates the escape of one who is in custody pursuant to:

(1) an allegation or adjudication of delinquency; or

(2) involuntary commitment for mental illness under Subtitle C, Title 7, Health and Safety Code, or for chemical dependency under Chapter 462, Health and Safety Code.

(c) Except as provided in Subsections (d) and (e), an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the person in custody:

(1) was under arrest for, charged with, or convicted of a felony; or

(2) was confined in a correctional facility other than a secure correctional facility after conviction of a felony.

(e) An offense under this section is a felony of the second degree if:

(1) the actor or the person in custody used or threatened to use a deadly weapon to effect the escape; or

(2) the person in custody was confined in a secure correctional facility after conviction of a felony.

(f) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 38.08 and amended by Acts 1993, 73rd

Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 39, eff. September 1, 2007.

Sec. 38.08. EFFECT OF UNLAWFUL CUSTODY. It is no defense to prosecution under Section 38.06 or 38.07 that the custody was unlawful.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Renumbered from Penal Code Sec. 38.09 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.09. IMPLEMENTS FOR ESCAPE. (a) A person commits an offense if, with intent to facilitate escape, he introduces into a correctional facility, or provides a person in custody or an inmate with, a deadly weapon or anything that may be useful for escape.

(b) An offense under this section is a felony of the third degree unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the second degree.

(c) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Renumbered from Penal Code Sec. 38.10 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 40, eff. September 1, 2007.

Sec. 38.10. BAIL JUMPING AND FAILURE TO APPEAR. (a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) It is a defense to prosecution under this section that the

appearance was incident to community supervision, parole, or an intermittent sentence.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

(d) Except as provided in Subsections (e) and (f), an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

(f) An offense under this section is a felony of the third degree if the offense for which the actor's appearance was required is classified as a felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 38.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.11. PROHIBITED SUBSTANCES AND ITEMS IN CORRECTIONAL OR CIVIL COMMITMENT FACILITY. (a) A person commits an offense if the person provides, or possesses with the intent to provide:

(1) an alcoholic beverage, controlled substance, or dangerous drug to a person in the custody of a correctional facility or residing in a civil commitment facility, except on the prescription of a practitioner;

(2) a deadly weapon to a person in the custody of a correctional facility or residing in a civil commitment facility;

(3) a cellular telephone or other wireless communications device or a component of one of those devices to a person in the custody of a correctional facility;

(4) money to a person confined in a correctional facility; or

(5) a cigarette or tobacco product to a person confined in a correctional facility, except that if the facility is a local jail regulated by the Commission on Jail Standards, the person commits an offense only if providing the cigarette or tobacco product violates a rule or regulation adopted by the sheriff or jail administrator that:

(A) prohibits the possession of a cigarette or tobacco product by a person confined in the jail; or

(B) places restrictions on:

(i) the possession of a cigarette or tobacco product by a person confined in the jail; or

(ii) the manner in which a cigarette or tobacco product may be provided to a person confined in the jail.

(b) A person commits an offense if the person takes an alcoholic beverage, controlled substance, or dangerous drug into a correctional facility or civil commitment facility.

(c) A person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by a correctional facility or civil commitment facility.

(d) A person commits an offense if the person:

(1) possesses an alcoholic beverage, controlled substance, or dangerous drug while in a correctional facility or civil commitment facility or on property owned, used, or controlled by a correctional facility or civil commitment facility; or

(2) possesses a deadly weapon while in a correctional facility or civil commitment facility.

(e) It is an affirmative defense to prosecution under Subsection (b), (c), or (d)(1) that the person possessed the alcoholic beverage, controlled substance, or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the beverage, substance, or drug to a warehouse, pharmacy, or practitioner on property owned, used, or controlled by the correctional facility or civil commitment facility. It is an affirmative defense to prosecution under Subsection (d)(2) that the person possessing the deadly weapon is a peace officer or is an officer or employee of the correctional facility or civil commitment facility who is authorized to possess the deadly weapon while on duty or traveling to or from the person's place of assignment.

(f) In this section:

(1) "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.

(2) "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.

(3) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(4) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(5) "Component" means any item necessary for the current,

ongoing, or future operation of a cellular telephone or other wireless communications device, including a subscriber identity module card or functionally equivalent portable memory chip, a battery or battery charger, and any number of minutes that have been purchased or for which a contract has been entered into and during which a cellular telephone or other wireless communications device is capable of transmitting or receiving communications.

(6) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14)(A), (B), or (C); or

(B) a secure correctional facility or secure detention facility, as defined by Section 51.02, Family Code.

(g) An offense under this section is a felony of the third degree.

(h) Notwithstanding Section 15.01(d), if a person commits the offense of criminal attempt to commit an offense under Subsection (a), (b), or (c), the offense committed under Section 15.01 is a felony of the third degree.

(i) It is an affirmative defense to prosecution under Subsection (b) that the actor:

(1) is a duly authorized member of the clergy with rights and privileges granted by an ordaining authority that includes administration of a religious ritual or ceremony requiring the presence or consumption of an alcoholic beverage; and

(2) takes four ounces or less of an alcoholic beverage into a correctional facility and personally consumes all of the alcoholic beverage or departs from the facility with any portion of the beverage not consumed.

(j) A person commits an offense if the person, while confined in a correctional facility, possesses a cellular telephone or other wireless communications device or a component of one of those devices.

(j-1) A person commits an offense if the person, while residing in a civil commitment facility, possesses a cellular telephone or other wireless communications device or a component of one of those devices unless the device or component is authorized by the Texas Civil Commitment Office.

(k) A person commits an offense if, with the intent to provide to or make a cellular telephone or other wireless communications device or a component of one of those devices available for use by a

person in the custody of a correctional facility or residing in a civil commitment facility, the person:

(1) acquires a cellular telephone or other wireless communications device or a component of one of those devices to be delivered to the person in custody or residing in the facility;

(2) provides a cellular telephone or other wireless communications device or a component of one of those devices to another person for delivery to the person in custody or residing in the facility; or

(3) makes a payment to a communication common carrier, as defined by Article 18A.001, Code of Criminal Procedure, or to any communication service that provides to its users the ability to send or receive wire or electronic communications.

Added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 5.01, eff. Oct. 1, 1991. Renumbered from Penal Code Sec. 38.112 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 362, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 649, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 470, Sec. 1 to 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 499 (H.B. 549), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 949 (H.B. 1575), Sec. 48, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1092 (H.B. 2077), Sec. 1, eff. September 1, 2005.

Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 1169 (H.B. 3228), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 30, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 31, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 3.19, eff. January 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 5, eff. September 1, 2023.

Sec. 38.111. IMPROPER CONTACT WITH VICTIM. (a) A person commits an offense if the person, while confined in a correctional facility after being charged with or convicted of an offense listed in Article 62.001(5), Code of Criminal Procedure, contacts by letter, telephone, or any other means, either directly or through a third party, a victim of the offense or a member of the victim's family, if the director of the correctional facility has not, before the person makes contact with the victim:

(1) received written and dated consent to the contact from:

(A) the victim, if the victim was 17 years of age or older at the time of the commission of the offense for which the person is confined; or

(B) if the victim was younger than 17 years of age at the time of the commission of the offense for which the person is confined:

(i) a parent of the victim;

(ii) a legal guardian of the victim;

(iii) the victim, if the victim is 17 years of age or older at the time of giving the consent; or

(iv) a member of the victim's family who is 17 years of age or older; and

(2) provided the person with a copy of the consent.

(b) The person confined in a correctional facility may not give the written consent required under Subsection (a)(2)(A).

(c) It is an affirmative defense to prosecution under this section that the contact was:

(1) indirect contact made through an attorney representing the person in custody; and

(2) solely for the purpose of representing the person in a criminal proceeding.

(d) An offense under this section is a Class A misdemeanor unless the actor is confined in a correctional facility after being convicted of a felony described by Subsection (a), in which event the offense is a felony of the third degree.

(e) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Added by Acts 2001, 77th Leg., ch. 1337, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1008 (H.B. 867), Sec. 2.11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 41, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1066 (H.B. 1343), Sec. 5, eff. September 1, 2019.

Sec. 38.112. TAMPERING WITH ELECTRONIC MONITORING DEVICE. (a) A person who is required to submit to electronic monitoring of the person's location as part of an electronic monitoring program under Article 42.035, Code of Criminal Procedure, or as a condition of community supervision, parole, mandatory supervision, or release on bail commits an offense if the person knowingly removes or disables, or causes or conspires or cooperates with another person to remove or disable, a tracking device that the person is required to wear to enable the electronic monitoring of the person's location.

(b) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if the person is in the super-intensive supervision program described by Section 508.317(d), Government Code.

(c) This section does not apply to the removal or disabling of a tracking device by a health care provider, as defined by Section 161.201, Health and Safety Code, due to medical necessity.

Added by Acts 2023, 88th Leg., R.S., Ch. 33 (S.B. 1004), Sec. 1, eff. September 1, 2023.

Sec. 38.113. UNAUTHORIZED ABSENCE FROM COMMUNITY CORRECTIONS FACILITY, COUNTY CORRECTIONAL CENTER, OR ASSIGNMENT SITE. (a) A person commits an offense if the person:

(1) is sentenced to or is required as a condition of community supervision or correctional programming to submit to a period of detention or treatment in a community corrections facility or county correctional center;

(2) fails to report to or leaves the facility, the center, or a community service assignment site as directed by the court, community supervision and corrections department supervising the

person, or director of the facility or center in which the person is detained or treated, as appropriate; and

(3) in failing to report or leaving acts without the approval of the court, the community supervision and corrections department supervising the person, or the director of the facility or center in which the person is detained or treated.

(b) An offense under this section is a state jail felony.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 318, Sec. 12, eff. Sept. 1, 1995.

Sec. 38.114. CONTRABAND IN CORRECTIONAL FACILITY. (a) A person commits an offense if the person:

(1) provides contraband to an inmate of a correctional facility;

(2) otherwise introduces contraband into a correctional facility; or

(3) possesses contraband while confined in a correctional facility.

(b) In this section, "contraband":

(1) means:

(A) any item not provided by or authorized by the operator of the correctional facility; or

(B) any item provided by or authorized by the operator of the correctional facility that has been altered to accommodate a use other than the originally intended use; and

(2) does not include any item specifically prohibited under Section 38.11.

(c) An offense under this section is a Class C misdemeanor, unless the offense is committed by an employee or a volunteer of the correctional facility, in which event the offense is a Class B misdemeanor.

(d) In this section, "correctional facility" means:

(1) any place described by Section 1.07(a)(14); or

(2) a "secure correctional facility" or "secure detention facility" as those terms are defined by Section 51.02, Family Code.

Added by Acts 2005, 79th Leg., Ch. 499 (H.B. 549), Sec. 2, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 42, eff. September 1, 2007.

Sec. 38.115. OPERATION OF UNMANNED AIRCRAFT OVER CORRECTIONAL FACILITY OR DETENTION FACILITY. (a) In this section:

(1) "Contraband" means any item not provided by or authorized by the operator of a correctional facility or detention facility.

(2) "Correctional facility" means:

(A) a confinement facility operated by or under contract with any division of the Texas Department of Criminal Justice;

(B) a municipal or county jail;

(C) a confinement facility operated by or under contract with the Federal Bureau of Prisons; or

(D) a secure correctional facility or secure detention facility, as defined by Section 51.02, Family Code.

(3) "Detention facility" means a facility operated by or under contract with United States Immigration and Customs Enforcement for the purpose of detaining aliens and placing them in removal proceedings.

(b) A person commits an offense if the person intentionally or knowingly:

(1) operates an unmanned aircraft over a correctional facility or detention facility and the unmanned aircraft is not higher than 400 feet above ground level;

(2) allows an unmanned aircraft to make contact with a correctional facility or detention facility, including any person or object on the premises of or within the facility; or

(3) allows an unmanned aircraft to come within a distance of a correctional facility or detention facility that is close enough to interfere with the operations of or cause a disturbance to the facility.

(c) This section does not apply to conduct described by Subsection (b) that is committed by:

(1) the federal government, this state, or a governmental entity;

(2) a person under contract with or otherwise acting under

the direction or on behalf of the federal government, this state, or a governmental entity;

(3) a person who has the prior written consent of the owner or operator of the correctional facility or detention facility;

(4) a law enforcement agency; or

(5) a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency.

(d) An offense under this section is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted under this section; or

(2) a state jail felony if, during the commission of the offense, the actor used the unmanned aircraft to:

(A) provide contraband to a person in the custody of the correctional facility or detention facility; or

(B) otherwise introduce contraband into the correctional facility or detention facility.

Added by Acts 2023, 88th Leg., R.S., Ch. 591 (H.B. 3075), Sec. 1, eff. September 1, 2023.

Sec. 38.12. BARRATRY AND SOLICITATION OF PROFESSIONAL EMPLOYMENT. (a) A person commits an offense if, with intent to obtain an economic benefit the person:

(1) knowingly institutes a suit or claim that the person has not been authorized to pursue;

(2) solicits employment, either in person or by telephone, for himself or for another;

(3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain employment as a professional from the prospective client;

(4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;

(5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or

(6) accepts or agrees to accept money or anything of value to solicit employment.

(b) A person commits an offense if the person:

(1) knowingly finances the commission of an offense under Subsection (a);

(2) invests funds the person knows or believes are intended to further the commission of an offense under Subsection (a); or

(3) is a professional who knowingly accepts employment within the scope of the person's license, registration, or certification that results from the solicitation of employment in violation of Subsection (a).

(c) It is an exception to prosecution under Subsection (a) or (b) that the person's conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.

(d) A person commits an offense if the person:

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state; and

(2) with the intent to obtain professional employment for the person or for another, provides or knowingly permits to be provided to an individual who has not sought the person's employment, legal representation, advice, or care a written communication or a solicitation, including a solicitation in person or by telephone, that:

(A) concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication or solicitation is provided or a relative of that person and that was provided before the 31st day after the date on which the accident or disaster occurred;

(B) concerns a specific matter and relates to legal representation and the person knows or reasonably should know that the person to whom the communication or solicitation is directed is represented by a lawyer in the matter;

(C) concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication or solicitation is provided is a defendant or a relative of that person, unless the lawsuit in which the person is named as a defendant has been on file for more than 31 days before the date on which the communication or solicitation was provided;

(D) is provided or permitted to be provided by a person who knows or reasonably should know that the injured person or relative of the injured person has indicated a desire not to be

contacted by or receive communications or solicitations concerning employment;

(E) involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; or

(F) contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(e) For purposes of Subsection (d)(2)(D), a desire not to be contacted is presumed if an accident report reflects that such an indication has been made by an injured person or that person's relative.

(f) An offense under Subsection (a) or (b) is a felony of the third degree.

(g) Except as provided by Subsection (h), an offense under Subsection (d) is a Class A misdemeanor.

(h) An offense under Subsection (d) is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (d).

(i) Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules and the Texas Rules of Disciplinary Procedure.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1989, 71st Leg., ch. 866, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 723, Sec. 2, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 750, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1252 (H.B. 148), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 315 (H.B. 1711), Sec. 3, eff. September 1, 2013.

Sec. 38.122. FALSELY HOLDING ONESELF OUT AS A LAWYER. (a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where

licensed.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Added by Acts 1993, 73rd Leg., ch. 723, Sec. 5, eff. Sept. 1, 1993.

Sec. 38.123. UNAUTHORIZED PRACTICE OF LAW. (a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person:

(1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

(2) advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;

(3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;

(4) enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person's cause of action; or

(5) enters into any contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.

(b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.

(d) An offense under Subsection (a) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a) of

this section.

Added by Acts 1993, 73rd Leg., ch. 723, Sec. 5, eff. Sept. 1, 1993.

Sec. 38.13. HINDERING PROCEEDINGS BY DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1973, 63rd Leg., p. 833, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 38.14. TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE OFFICER, FEDERAL SPECIAL INVESTIGATOR, EMPLOYEE OR OFFICIAL OF CORRECTIONAL FACILITY, PAROLE OFFICER, COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT OFFICER, OR COMMISSIONED SECURITY OFFICER. (a) In this section:

(1) "Firearm" has the meanings assigned by Section 46.01.

(2) "Stun gun" means a device designed to propel darts or other projectiles attached to wires that, on contact, will deliver an electrical pulse capable of incapacitating a person.

(3) "Commissioned security officer" has the meaning assigned by Section 1702.002(5), Occupations Code.

(b) A person commits an offense if the person intentionally or knowingly and with force takes or attempts to take from a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer the officer's, investigator's, employee's, or official's firearm, nightstick, stun gun, or personal protection chemical dispensing device.

(c) The actor is presumed to have known that the peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer was a peace

officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer if:

(1) the officer, investigator, employee, or official was wearing a distinctive uniform or badge indicating his employment; or

(2) the officer, investigator, employee, or official identified himself as a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer.

(d) It is a defense to prosecution under this section that the defendant took or attempted to take the weapon from a peace officer, federal special investigator, employee or official of a correctional facility, parole officer, community supervision and corrections department officer, or commissioned security officer who was using force against the defendant or another in excess of the amount of force permitted by law.

(e) An offense under this section is:

(1) a felony of the third degree, if the defendant took a weapon described by Subsection (b) from an officer, investigator, employee, or official described by that subsection; and

(2) a state jail felony, if the defendant attempted to take a weapon described by Subsection (b) from an officer, investigator, employee, or official described by that subsection.

Added by Acts 1989, 71st Leg., ch. 986, Sec. 1, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 38.16 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(25), eff. Sept. 6, 1990. Renumbered from Penal Code Sec. 38.17 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 714, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 322, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1201 (H.B. 582), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 394 (H.B. 1721), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 942 (H.B. 3147), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 942 (H.B. 3147), Sec. 2, eff.

September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 942 (H.B. 3147), Sec. 3, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 839 (H.B. 3423), Sec. 6, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 647 (S.B. 1754), Sec. 1, eff. September 1, 2019.

Sec. 38.15. INTERFERENCE WITH PUBLIC DUTIES. (a) A person commits an offense if the person with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:

(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;

(2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty;

(3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;

(4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes;

(5) the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency;

(6) an officer with responsibility for animal control in a county or municipality, while the officer is performing a duty or exercising authority imposed or granted under Chapter 821 or 822, Health and Safety Code; or

(7) a person who:

(A) has responsibility for assessing, enacting, or enforcing public health, environmental, radiation, or safety measures for the state or a county or municipality;

(B) is investigating a particular site as part of the person's responsibilities under Paragraph (A);

(C) is acting in accordance with policies and procedures related to the safety and security of the site described

by Paragraph (B); and

(D) is performing a duty or exercising authority imposed or granted under the Agriculture Code, Health and Safety Code, Occupations Code, or Water Code.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) that the conduct engaged in by the defendant was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing Subtitle C, Title 7, Transportation Code.

(d) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(d-1) Except as provided by Subsection (d-2), in a prosecution for an offense under Subsection (a)(1), there is a rebuttable presumption that the actor interferes with a peace officer if it is shown on the trial of the offense that the actor intentionally disseminated the home address, home telephone number, emergency contact information, or social security number of the officer or a family member of the officer or any other information that is specifically described by Section 552.117(a), Government Code.

(d-2) The presumption in Subsection (d-1) does not apply to information disseminated by:

(1) a radio or television station that holds a license issued by the Federal Communications Commission; or

(2) a newspaper that is:

(A) a free newspaper of general circulation or qualified to publish legal notices;

(B) published at least once a week; and

(C) available and of interest to the general public.

(e) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

Added by Acts 1989, 71st Leg., ch. 1162, Sec. 1, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 38.16 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(26), eff. Sept. 6, 1990. Renumbered from Penal Code Sec. 38.18 and amended by Acts 1993, 73rd Leg., ch. 900, Sec.

1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.241, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 1212 (H.B. 825), Sec. 1, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1251 (H.B. 2703), Sec. 1, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 519 (H.B. 1061), Sec. 1, eff. September 1, 2015.

Sec. 38.151. INTERFERENCE WITH POLICE SERVICE ANIMALS. (a) In this section:

(1) "Area of control" includes a vehicle, trailer, kennel, pen, or yard.

(2) "Handler or rider" means a peace officer, corrections officer, or jailer who is specially trained to use a police service animal for law enforcement, corrections, prison or jail security, or investigative purposes.

(3) "Police service animal" means a dog, horse, or other domesticated animal that is specially trained for use by a handler or rider.

(b) A person commits an offense if the person recklessly:

(1) taunts, torments, or strikes a police service animal;

(2) throws an object or substance at a police service animal;

(3) interferes with or obstructs a police service animal or interferes with or obstructs the handler or rider of a police service animal in a manner that:

(A) inhibits or restricts the handler's or rider's control of the animal; or

(B) deprives the handler or rider of control of the animal;

(4) releases a police service animal from its area of control;

(5) enters the area of control of a police service animal without the effective consent of the handler or rider, including placing food or any other object or substance into that area;

(6) injures or kills a police service animal; or

(7) engages in conduct likely to injure or kill a police

service animal, including administering or setting a poison, trap, or any other object or substance.

(c) An offense under this section is:

(1) a Class C misdemeanor if the person commits an offense under Subsection (b)(1);

(2) a Class B misdemeanor if the person commits an offense under Subsection (b)(2);

(3) a Class A misdemeanor if the person commits an offense under Subsection (b)(3), (4), or (5);

(4) except as provided by Subdivision (5), a state jail felony if the person commits an offense under Subsection (b)(6) or (7) by injuring a police service animal or by engaging in conduct likely to injure the animal; or

(5) a felony of the second degree if the person commits an offense under Subsection (b)(6) or (7) by:

(A) killing a police service animal or engaging in conduct likely to kill the animal;

(B) injuring a police service animal in a manner that materially and permanently affects the ability of the animal to perform as a police service animal; or

(C) engaging in conduct likely to injure a police service animal in a manner that would materially and permanently affect the ability of the animal to perform as a police service animal.

Added by Acts 2001, 77th Leg., ch. 979, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1331 (S.B. 1562), Sec. 5, eff. September 1, 2007.

Sec. 38.152. INTERFERENCE WITH RADIO FREQUENCY LICENSED TO GOVERNMENT ENTITY. (a) A person commits an offense if, without the effective consent of the law enforcement agency, fire department, or emergency medical services provider, the person intentionally interrupts, disrupts, impedes, jams, or otherwise interferes with a radio frequency that is licensed by the Federal Communications Commission to a government entity and is used by the law enforcement agency, fire department, or emergency medical services provider.

(b) An offense under this section is a Class A misdemeanor,

except that the offense is a state jail felony if the actor committed the offense with the intent to:

(1) facilitate the commission of another offense; or

(2) interfere with the ability of a law enforcement agency, a fire department, or an emergency medical services provider to respond to an emergency.

(c) In this section:

(1) "Emergency" has the meaning assigned by Section 38.15.

(2) "Emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code.

(3) "Law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

(d) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

Added by Acts 2009, 81st Leg., R.S., Ch. 1222 (S.B. 1273), Sec. 1, eff. September 1, 2009.

Sec. 38.16. PREVENTING EXECUTION OF CIVIL PROCESS. (a) A person commits an offense if he intentionally or knowingly by words or physical action prevents the execution of any process in a civil cause.

(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.

(c) An offense under this section is a Class C misdemeanor.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 13, eff. Sept. 1, 1995.

Sec. 38.17. FAILURE TO STOP OR REPORT AGGRAVATED SEXUAL ASSAULT OF CHILD. (a) A person, other than a person who has a relationship with a child described by Section 22.04(b), commits an offense if:

(1) the actor observes the commission or attempted commission of an offense prohibited by Section 21.02 or 22.021(a)(2)(B) under circumstances in which a reasonable person would believe that an offense of a sexual or assaultive nature was being committed or was about to be committed against the child;

(2) the actor fails to assist the child or immediately report the commission of the offense to a peace officer or law

enforcement agency; and

(3) the actor could assist the child or immediately report the commission of the offense without placing the actor in danger of suffering serious bodily injury or death.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1999, 76th Leg., ch. 1344, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 3.50, eff. September 1, 2007.

Sec. 38.171. FAILURE TO REPORT FELONY. (a) A person commits an offense if the person:

(1) observes the commission of a felony under circumstances in which a reasonable person would believe that an offense had been committed in which serious bodily injury or death may have resulted; and

(2) fails to immediately report the commission of the offense to a peace officer or law enforcement agency under circumstances in which:

(A) a reasonable person would believe that the commission of the offense had not been reported; and

(B) the person could immediately report the commission of the offense without placing himself or herself in danger of suffering serious bodily injury or death.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 2003, 78th Leg., ch. 1009, Sec. 2, eff. Sept. 1, 2003.

Sec. 38.172. FAILURE TO REPORT ASSAULT, NEGLECT, OR OMISSION OF CARE IN CERTAIN GROUP HOMES. (a) In this section, "group home" means an establishment that:

(1) provides, in one or more buildings, lodging to three or more residents who are unrelated by blood or marriage to the owner of the establishment; and

(2) provides those residents with community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication but does not provide personal care services as defined

by Section 247.002, Health and Safety Code.

(b) A person commits an offense if the person:

(1) has actual knowledge that a resident of a group home has suffered bodily injury due to assault, neglect, or an omission in care; and

(2) fails to report that fact to law enforcement or the Department of Family and Protective Services.

(c) It is an exception to the application of this section that:

(1) the actor is a person who holds a license issued under Chapter 142, 242, 246, 247, or 252, Health and Safety Code, or who is exempt from licensing under Section 142.003(a)(19), 242.003(3), or 247.004(4), Health and Safety Code; or

(2) the injury occurs in:

(A) an establishment or facility exempt from licensing under Section 142.003(a)(19), 242.003(3), or 247.004(4), Health and Safety Code;

(B) a hotel as defined by Section 156.001, Tax Code;

(C) a retirement community;

(D) a monastery or convent;

(E) a child-care facility as defined by Section 42.002, Human Resources Code;

(F) a family violence shelter center as defined by Section 51.002, Human Resources Code; or

(G) a sorority or fraternity house or other dormitory associated with an institution of higher education.

(d) An offense under this section is a Class A misdemeanor.

(e) If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2023, 88th Leg., R.S., Ch. 1046 (S.B. 189), Sec. 3, eff. September 1, 2023.

Sec. 38.18. USE OF COLLISION REPORT INFORMATION AND OTHER INFORMATION FOR PECUNIARY GAIN. (a) This section applies to:

(1) information described by Section 550.065(a), Transportation Code;

(2) information reported under Chapter 772, Health and Safety Code, other than information that is confidential under that

chapter; and

(3) information contained in a dispatch log, a towing record, or a record of a 9-1-1 service provider, other than information that is confidential under Chapter 772, Health and Safety Code.

(b) A person commits an offense if:

(1) the person obtains information described by Subsection (a) from the Department of Public Safety of the State of Texas or other governmental entity; and

(2) the information is subsequently used for the direct solicitation of business or employment for pecuniary gain by:

(A) the person;

(B) an agent or employee of the person; or

(C) the person on whose behalf the information was requested.

(c) A person who employs or engages another to obtain information described by Subsection (a) from the Department of Public Safety or other governmental entity commits an offense if the person subsequently uses the information for direct solicitation of business or employment for pecuniary gain.

(d) An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1032, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 139, eff. September 1, 2023.

Sec. 38.19. FAILURE TO PROVIDE NOTICE AND REPORT OF DEATH OF RESIDENT OF INSTITUTION. (a) A superintendent or general manager of an institution commits an offense if, as required by Article 49.24 or 49.25, Code of Criminal Procedure, the person fails to:

(1) provide notice of the death of an individual under the care, custody, or control of or residing in the institution;

(2) submit a report on the death of the individual; or

(3) include in the report material facts known or discovered by the person at the time the report was filed.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 894, Sec. 4, eff. Sept. 1, 2003.

CHAPTER 39. ABUSE OF OFFICE

Sec. 39.01. DEFINITIONS. In this chapter:

(1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly:

(A) imposes a duty on the public servant; or

(B) governs the conduct of the public servant.

(2) "Misuse" means to deal with property contrary to:

(A) an agreement under which the public servant holds the property;

(B) a contract of employment or oath of office of a public servant;

(C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

(D) a limited purpose for which the property is delivered or received.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 39.015. CONCURRENT JURISDICTION TO PROSECUTE OFFENSES UNDER THIS CHAPTER. With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 2, eff. June 15, 2007.

Sec. 39.02. ABUSE OF OFFICIAL CAPACITY. (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

(1) violates a law relating to the public servant's office or employment; or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) is:

(1) a Class C misdemeanor if the value of the use of the thing misused is less than $100;

(2) a Class B misdemeanor if the value of the use of the thing misused is $100 or more but less than $750;

(3) a Class A misdemeanor if the value of the use of the thing misused is $750 or more but less than $2,500;

(4) a state jail felony if the value of the use of the thing misused is $2,500 or more but less than $30,000;

(5) a felony of the third degree if the value of the use of the thing misused is $30,000 or more but less than $150,000;

(6) a felony of the second degree if the value of the use of the thing misused is $150,000 or more but less than $300,000; or

(7) a felony of the first degree if the value of the use of the thing misused is $300,000 or more.

(d) A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.

(e) If separate transactions that violate Subsection (a)(2) are conducted pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense and the value of the use of the things misused in the transactions may be aggregated in determining the classification of the offense.

(f) The value of the use of a thing of value misused under Subsection (a)(2) may not exceed:

(1) the fair market value of the thing at the time of the offense; or

(2) if the fair market value of the thing cannot be ascertained, the cost of replacing the thing within a reasonable time after the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3241, ch. 558, Sec. 7, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 39.01 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 82 (S.B. 828), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1251 (H.B. 1396), Sec. 28, eff. September 1, 2015.

Sec. 39.03. OFFICIAL OPPRESSION. (a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Sections 48.008 and 48.009, Education Code, under a law requiring that reporting.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 1217, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(34), eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 39.02 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 510 (S.B. 124), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.088, eff.

September 1, 2019.

Sec. 39.04. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY; IMPROPER SEXUAL ACTIVITY WITH PERSON IN CUSTODY OR UNDER SUPERVISION. (a) An official of a correctional facility or juvenile facility, an employee of a correctional facility or juvenile facility, a person other than an employee who works for compensation at a correctional facility or juvenile facility, a volunteer at a correctional facility or juvenile facility, or a peace officer commits an offense if the person intentionally:

(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance.

Text of subsection as amended by Acts 2021, 87th Leg., R.S., Ch. 895 (H.B. 3157), Sec. 1

(b) An offense under Subsection (a)(1) is a felony of the third degree. An offense under Subsection (a)(2) is a felony of the second degree, except that an offense under Subsection (a)(2) is a felony of the first degree if the offense is committed against:

(1) an individual in the custody of the Texas Juvenile Justice Department or placed in a juvenile facility; or

(2) a juvenile offender detained in or committed to a correctional facility.

Text of subsection as amended by Acts 2021, 87th Leg., R.S., Ch. 939 (S.B. 312), Sec. 1

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a felony of the second degree.

(c) This section shall not preclude prosecution for any other offense set out in this code.

(d) The Attorney General of Texas shall have concurrent jurisdiction with law enforcement agencies to investigate violations

of this statute involving serious bodily injury or death.

(e) In this section:

Text of subdivision as amended by Acts 2015, 84th Leg., R.S., Ch. 216 (H.B. 511), Sec. 1

(1) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14);

(B) any place or facility designated for the detention of a person suspected of violating a provision of the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.); or

(C) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.

Text of subdivision as amended by Acts 2015, 84th Leg., R.S., Ch. 1136 (S.B. 183), Sec. 2

(1) "Correctional facility" means any place described by Section 1.07(a)(14).

(2) "Custody" means the detention, arrest, or confinement of an adult offender, the detention of a juvenile offender, or the commitment of a juvenile offender to a correctional facility or juvenile facility.

(2-a) "Juvenile facility" means:

(A) a facility operated by the Texas Juvenile Justice Department or a private vendor under a contract with the Texas Juvenile Justice Department; or

(B) a facility for the detention or placement of juveniles under juvenile court jurisdiction and that is operated wholly or partly by a juvenile board or another governmental unit or by a private vendor under a contract with the juvenile board or governmental unit.

(3) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(4) "Sexual conduct" and "performance" have the meanings assigned by Section 43.25.

(5) "Sexual performance" means any performance or part thereof that includes sexual conduct by an individual.

(f) An employee of the Texas Department of Criminal Justice, the Texas Juvenile Justice Department, a juvenile facility, a local juvenile probation department, or a community supervision and corrections department established under Chapter 76, Government Code, a person other than an employee who works for compensation at a

juvenile facility or local juvenile probation department, or a volunteer at a juvenile facility or local juvenile probation department commits an offense if the actor engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who the actor knows is under the supervision of the Texas Department of Criminal Justice, Texas Juvenile Justice Department, probation department, or community supervision and corrections department but not in the custody of the Texas Department of Criminal Justice, Texas Juvenile Justice Department, probation department, or community supervision and corrections department.

(g) An offense under Subsection (f) is a state jail felony.

(h) It is an affirmative defense to prosecution under Subsection (f) that the actor was the spouse of the individual at the time of the offense.

Added by Acts 1979, 66th Leg., p. 1383, ch. 618, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1983, 68th Leg., p. 3242, ch. 558, Sec. 8, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 18, Sec. 5, eff. April 15, 1987. Renumbered from Penal Code Sec. 39.021 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1406, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 158, Sec. 1 to 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1070, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1297, Sec. 69, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 62, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 263 (S.B. 103), Sec. 63, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 378 (S.B. 563), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 908 (H.B. 2884), Sec. 43, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.003, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 260 (H.B. 549), Sec. 5, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 216 (H.B. 511), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 144, eff.

September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 145, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1136 (S.B. 183), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1136 (S.B. 183), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 540 (S.B. 343), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 540 (S.B. 343), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 540 (S.B. 343), Sec. 3, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 895 (H.B. 3157), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 939 (S.B. 312), Sec. 1, eff. September 1, 2021.

Sec. 39.041. IMPROPER SEXUAL ACTIVITY WITH COMMITTED PERSON. (a) In this section, "deviate sexual intercourse," "sexual contact," and "sexual intercourse" have the meanings assigned by Section 21.01.

(b) An officer or employee of the Texas Civil Commitment Office, a person who contracts with this state to perform a service in a civil commitment facility or an employee of that person, or a volunteer at a civil commitment facility commits an offense if the person intentionally engages in deviate sexual intercourse, sexual contact, or sexual intercourse with a person committed to a civil commitment facility.

(c) An offense under this section is a felony of the third degree.

(d) It is an affirmative defense to prosecution under this section that, at the time of the offense, the actor was the spouse of the person committed to the civil commitment facility.

(e) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. 1179), Sec. 6, eff. September 1, 2023.

Sec. 39.05. FAILURE TO REPORT DEATH OF PRISONER. (a) A person commits an offense if the person is required to conduct an investigation and file a report by Article 49.18, Code of Criminal Procedure, and the person fails to investigate the death, fails to file the report as required, or fails to include in a filed report facts known or discovered in the investigation.

(b) A person commits an offense if the person is required by Section 501.055, Government Code, to:

(1) give notice of the death of an inmate and the person fails to give the notice; or

(2) conduct an investigation and file a report and the person:

(A) fails to conduct the investigation or file the report; or

(B) fails to include in the report facts known to the person or discovered by the person in the investigation.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 1983, 68th Leg., p. 2510, ch. 441, Sec. 2, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 39.022 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.104, eff. Sept. 1, 1995.

Sec. 39.06. MISUSE OF OFFICIAL INFORMATION. (a) A public servant commits an offense if, in reliance on information to which the public servant has access by virtue of the person's office or employment and that has not been made public, the person:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;

(2) speculates or aids another to speculate on the basis of the information; or

(3) as a public servant, including as a school administrator, coerces another into suppressing or failing to report that information to a law enforcement agency.

(b) A public servant commits an offense if with intent to obtain a benefit or with intent to harm or defraud another, he

discloses or uses information for a nongovernmental purpose that:

(1) he has access to by means of his office or employment; and

(2) has not been made public.

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he solicits or receives from a public servant information that:

(1) the public servant has access to by means of his office or employment; and

(2) has not been made public.

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 552, Government Code.

(e) Except as provided by Subsection (f), an offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 3243, ch. 558, Sec. 9, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 30, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 43, Sec. 3, eff. Oct. 20, 1987; Acts 1989, 71st Leg., ch. 927, Sec. 1, eff. Aug. 28, 1989. Renumbered from Penal Code Sec. 39.03 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 14.52, eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1043 (H.B. 1783), Sec. 5, eff. September 1, 2015.

Sec. 39.07. FAILURE TO COMPLY WITH IMMIGRATION DETAINER REQUEST. (a) A person who is a sheriff, chief of police, or constable or a person who otherwise has primary authority for administering a jail commits an offense if the person:

(1) has custody of a person subject to an immigration detainer request issued by United States Immigration and Customs Enforcement; and

(2) knowingly fails to comply with the detainer request.

(b) An offense under this section is a Class A misdemeanor.

(c) It is an exception to the application of this section that the person who was subject to an immigration detainer request described by Subsection (a)(1) had provided proof that the person is a citizen of the United States or that the person has lawful immigration status in the United States, such as a Texas driver's license or similar government-issued identification.

Added by Acts 2017, 85th Leg., R.S., Ch. 4 (S.B. 4), Sec. 5.02, eff. September 1, 2017.

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) discharges a firearm in a public place other than a public road or a sport shooting range, as defined by Section 250.001, Local Government Code;

(8) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(9) discharges a firearm on or across a public road;

(10) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or

alarmed by his act; or

(11) for a lewd or unlawful purpose:

(A) enters on the property of another and looks into a dwelling on the property through any window or other opening in the dwelling;

(B) while on the premises of a hotel or comparable establishment, looks into a guest room not the person's own through a window or other opening in the room; or

(C) while on the premises of a public place, looks into an area such as a restroom or shower stall or changing or dressing room that is designed to provide privacy to a person using the area.

(a-1) For purposes of Subsection (a), the term "public place" includes a public school campus or the school grounds on which a public school is located.

(b) It is a defense to prosecution under Subsection (a)(4) that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section:

(1) an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence; and

(2) a noise is presumed to be unreasonable if the noise exceeds a decibel level of 85 after the person making the noise receives notice from a magistrate or peace officer that the noise is a public nuisance.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(7) or (a)(8), in which event it is a Class B misdemeanor.

(e) It is a defense to prosecution for an offense under Subsection (a)(7) or (9) that the person who discharged the firearm had a reasonable fear of bodily injury to the person or to another by a dangerous wild animal as defined by Section 822.101, Health and Safety Code.

(e-1) Subsection (a)(9) does not apply to a person who, at the time the person engaged in conduct prohibited under that subdivision, was an employee of the Parks and Wildlife Department acting within the scope of the employee's authority under Section 12.013(c), Parks and Wildlife Code.

(f) Subsections (a)(1), (2), (3), (5), and (6) do not apply to a person who, at the time the person engaged in conduct prohibited

under the applicable subdivision, was a student younger than 12 years of age, and the prohibited conduct occurred at a public school campus during regular school hours.

(g) Noise arising from space flight activities, as defined by Section 100A.001, Civil Practice and Remedies Code, if lawfully conducted, does not constitute "unreasonable noise" for purposes of this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 181, ch. 89, Sec. 1, 2, eff. Aug. 29, 1977; Acts 1983, 68th Leg., p. 4641, ch. 800, Sec. 1, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 145, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 14, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 54, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 389, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 691 (H.B. 359), Sec. 6, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 953 (H.B. 1791), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1407 (S.B. 393), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1409 (S.B. 1114), Sec. 9, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 188 (H.B. 3065), Sec. 3, eff. September 1, 2023.

Sec. 42.02. RIOT. (a) For the purpose of this section, "riot" means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;

(2) substantially obstructs law enforcement or other governmental functions or services; or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in

a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a), the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

(e) Except as provided in Subsection (f), an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

(1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY. (a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subdivision (1); or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) Except as otherwise provided by Subsections (c-1), (d), and (e), an offense under this section is a Class B misdemeanor.

(c-1) An offense under this section is a state jail felony if, in committing the offense, the actor knowingly:

(1) prevents the passage of an authorized emergency vehicle, as defined by Section 541.201, Transportation Code, that is operating the vehicle's emergency audible or visual signals required by Section 546.003, Transportation Code; or

(2) obstructs access to a hospital licensed under Chapter 241, Health and Safety Code, or other health care facility that provides emergency medical care, as defined by Section 773.003, Health and Safety Code.

(d) Subject to Subsection (e), an offense under this section is a Class A misdemeanor if it is shown on the trial of the offense that, at the time of the offense, the person was operating a motor vehicle while engaging in a reckless driving exhibition.

(e) An offense under this section is a state jail felony if it is shown on the trial of the offense that, at the time of the offense, the person was operating a motor vehicle while engaging in a reckless driving exhibition, and:

(1) the person has previously been convicted of an offense punishable under Subsection (d);

(2) at the time of the offense, the person was operating a motor vehicle while intoxicated, as defined by Section 49.01; or

(3) a person suffered bodily injury as a result of the offense.

(f) For purposes of this section, "reckless driving exhibition" means an operator of a motor vehicle, on a highway or street and in the presence of two or more persons assembled for the purpose of spectating the conduct, intentionally:

(1) breaking the traction of the vehicle's rear tires;

(2) spinning the vehicle's rear tires continuously by pressing the accelerator and increasing the engine speed; and

(3) steering the vehicle in a manner designed to rotate the vehicle.

(g) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law, but not both.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 197 (H.B. 9), Sec. 2, eff. September 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 949 (S.B. 1495), Sec. 1, eff. September 1, 2021.
Acts 2023, 88th Leg., R.S., Ch. 369 (H.B. 1442), Sec. 2, eff. September 1, 2023.
Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 17.002, eff. September 1, 2023.

Sec. 42.04. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION. (a) If conduct that would otherwise violate Section 42.01(a)(5) (Unreasonable Noise), 42.03 (Obstructing Passageway), or 42.055 (Funeral Service Disruptions) consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(c) It is a defense to prosecution under Section 42.01(a)(5), 42.03, or 42.055:

(1) that in circumstances in which this section requires an order no order was given;

(2) that an order, if given, was manifestly unreasonable in scope; or

(3) that an order, if given, was promptly obeyed.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2006, 79th Leg., 3rd C.S., Ch. 2 (H.B. 97), Sec. 2, eff. May 19, 2006.

Sec. 42.05. DISRUPTING MEETING OR PROCESSION. (a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 42.055. FUNERAL SERVICE DISRUPTIONS. (a) In this section:

(1) "Facility" means a building at which any portion of a funeral service takes place, including a funeral parlor, mortuary, private home, or established place of worship.

(2) "Funeral service" means a ceremony, procession, or memorial service, including a wake or viewing, held in connection with the burial or cremation of the dead.

(3) "Picketing" means:

(A) standing, sitting, or repeated walking, riding, driving, or other similar action by a person displaying or carrying a banner, placard, or sign;

(B) engaging in loud singing, chanting, whistling, or yelling, with or without noise amplification through a device such as a bullhorn or microphone; or

(C) blocking access to a facility or cemetery being used for a funeral service.

(b) A person commits an offense if, during the period beginning three hours before the service begins and ending three hours after the service is completed, the person engages in picketing within 1,000 feet of a facility or cemetery being used for a funeral

service.

(c) An offense under this section is a Class B misdemeanor.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 2 (H.B. 97), Sec. 1, eff. May 19, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 256 (H.B. 1093), Sec. 1, eff. June 4, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 716 (H.B. 718), Sec. 1, eff. September 1, 2011.

Sec. 42.06. FALSE ALARM OR REPORT. (a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

(1) cause action by an official or volunteer agency organized to deal with emergencies;

(2) place a person in fear of imminent serious bodily injury; or

(3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving a public or private institution of higher education or involving a public primary or secondary school, public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a state jail felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1979, 66th Leg., p. 1114, ch. 530, Sec. 4, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 910 (H.B. 1284), Sec. 2, eff. June 14, 2013.

Sec. 42.0601. FALSE REPORT TO INDUCE EMERGENCY RESPONSE. (a)

A person commits an offense if:

(1) the person makes a report of a criminal offense or an emergency or causes a report of a criminal offense or an emergency to be made to a peace officer, law enforcement agency, 9-1-1 service as defined by Section 771.001, Health and Safety Code, official or volunteer agency organized to deal with emergencies, or any other governmental employee or contractor who is authorized to receive reports of a criminal offense or emergency;

(2) the person knows that the report is false;

(3) the report causes an emergency response from a law enforcement agency or other emergency responder; and

(4) in making the report or causing the report to be made, the person is reckless with regard to whether the emergency response by a law enforcement agency or other emergency responder may directly result in bodily injury to another person.

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if it is shown on the trial of the offense that the defendant has previously been convicted two or more times of an offense under this section; or

(2) a felony of the third degree if:

(A) the false report was of a criminal offense to which a law enforcement agency or other emergency responder responded; and

(B) a person suffered serious bodily injury or death as a direct result of lawful conduct arising out of that response.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

(d) This section may not be construed in any manner to conflict with 47 U.S.C. Section 230 or 42 U.S.C. Section 1983.

Added by Acts 2021, 87th Leg., R.S., Ch. 945 (S.B. 1056), Sec. 1, eff. September 1, 2021.

Sec. 42.061. SILENT OR ABUSIVE CALLS TO 9-1-1 SERVICE. (a) In this section "9-1-1 service" and "public safety answering point" or "PSAP" have the meanings assigned by Section 771.001, Health and Safety Code.

(b) A person commits an offense if the person makes a call to a

9-1-1 service, or requests 9-1-1 service using an electronic communications device, when there is not an emergency and knowingly or intentionally:

(1) remains silent; or

(2) makes abusive or harassing statements to a PSAP employee.

(c) A person commits an offense if the person knowingly permits an electronic communications device, including a telephone, under the person's control to be used by another person in a manner described in Subsection (b).

(d) An offense under this section is a Class B misdemeanor.

Added by Acts 1989, 71st Leg., ch. 582, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(2), eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 6, eff. September 1, 2013.

Sec. 42.062. INTERFERENCE WITH EMERGENCY REQUEST FOR ASSISTANCE. (a) An individual commits an offense if the individual knowingly prevents or interferes with another individual's ability to place an emergency call or to request assistance, including a request for assistance using an electronic communications device, in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(b) An individual commits an offense if the individual recklessly renders unusable an electronic communications device, including a telephone, that would otherwise be used by another individual to place an emergency call or to request assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.

(c) An offense under this section is a Class A misdemeanor, except that the offense is a state jail felony if the actor has previously been convicted under this section.

(d) In this section, "emergency" means a condition or circumstance in which any individual is or is reasonably believed by

the individual making a call or requesting assistance to be in fear of imminent assault or in which property is or is reasonably believed by the individual making the call or requesting assistance to be in imminent danger of damage or destruction.

Added by Acts 2001, 77th Leg., ch. 690, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 460, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1164, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 331 (H.B. 1972), Sec. 8, eff. September 1, 2013.

Sec. 42.07. HARASSMENT. (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, the person:

(1) initiates communication and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;

(2) threatens, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of the person's family or household, or the person's property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under the person's control to be used by another to commit an offense under this section;

(7) sends repeated electronic communications in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass,

or offend another;

(8) publishes on an Internet website, including a social media platform, repeated electronic communications in a manner reasonably likely to cause emotional distress, abuse, or torment to another person, unless the communications are made in connection with a matter of public concern; or

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 839 (H.B. 2715), Sec. 7

(9) tracks or monitors the personal property or motor vehicle of another person, without the other person's effective consent, including by:

(A) using a tracking application on the person's personal electronic device or using a tracking device; or

(B) physically following the other person or causing any person to physically follow the other person

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 1118 (H.B. 1427), Sec. 1

(9) makes obscene, intimidating, or threatening telephone calls or other electronic communications from a temporary or disposable telephone number provided by an Internet application or other technological means.

(b) In this section:

(1) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term includes:

(A) a communication initiated through the use of electronic mail, instant message, network call, a cellular or other type of telephone, a computer, a camera, text message, a social media platform or application, an Internet website, any other Internet-based communication tool, or facsimile machine; and

(B) a communication made to a pager.

(2) "Family" and "household" have the meaning assigned by Chapter 71, Family Code.

(3) "Obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function.

(c) An offense under this section is a Class B misdemeanor,

except that the offense is a Class A misdemeanor if:

(1) the actor has previously been convicted under this section; or

(2) the offense was committed under Subsection (a)(7) or (8) and:

(A) the offense was committed against a child under 18 years of age with the intent that the child:

(i) commit suicide; or

(ii) engage in conduct causing serious bodily injury to the child; or

(B) the actor has previously violated a temporary restraining order or injunction issued under Chapter 129A, Civil Practice and Remedies Code.

(d) In this section, "matter of public concern" has the meaning assigned by Section 27.001, Civil Practice and Remedies Code.

(e) For purposes of Subsection (a)(9), it is presumed that a person did not give effective consent to the actor's conduct if:

(1) an application for a protective or restraining order against or with respect to the actor has been filed by or on behalf of the person under Subchapter A, Chapter 7B, Code of Criminal Procedure, Article 17.292, Code of Criminal Procedure, Section 6.504, Family Code, or Subtitle B, Title 4, Family Code, or an order has been issued against or with respect to the actor under one of those provisions; or

(2) the person is married to the actor and a petition for dissolution of marriage has been filed, or the person was previously married to the actor and the marriage has been dissolved.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2204, ch. 411, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 10, Sec. 1, eff. March 19, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 657, Sec. 1, eff. June 14, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(d), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1222, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1278 (H.B. 1606), Sec. 1, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 522 (S.B. 179), Sec. 13, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 522 (S.B. 179), Sec. 14, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 178 (S.B. 530), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 839 (H.B. 2715), Sec. 7, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1118 (H.B. 1427), Sec. 1, eff. September 1, 2023.

Sec. 42.072. STALKING. (a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed at a specific other person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening:

(A) bodily injury or death for the other person; or

(B) that an offense will be committed against:

(i) a member of the other person's family or household;

(ii) an individual with whom the other person has a dating relationship; or

(iii) the other person's property;

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship:

(A) to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship, or the other person's property; or

(B) to feel harassed, terrified, intimidated, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

(3) would cause a reasonable person under circumstances similar to the circumstances of the other person to:

(A) fear bodily injury or death for the person;

(B) fear that an offense will be committed against a member of the person's family or household or an individual with whom the person has a dating relationship;

(C) fear that an offense will be committed against the person's property; or

(D) feel harassed, terrified, intimidated, annoyed, alarmed, abused, tormented, embarrassed, or offended.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:

(1) the laws of another state;

(2) the laws of a federally recognized Indian tribe;

(3) the laws of a territory of the United States; or

(4) federal law.

(c) For purposes of this section, a trier of fact may find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.

(d) In this section:

(1) "Dating relationship," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(2) "Property" includes a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 1, Sec. 1, eff. Jan. 28, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 15.02(e), eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1222, Sec. 2, eff. Sept. 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 591 (S.B. 82), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1278 (H.B. 1606), Sec. 2, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 947 (S.B. 1717), Sec. 2, eff. September 1, 2023.

Sec. 42.074. UNLAWFUL DISCLOSURE OF RESIDENCE ADDRESS OR TELEPHONE NUMBER. (a) A person commits an offense if the person

posts on a publicly accessible website the residence address or telephone number of an individual with the intent to cause harm or a threat of harm to the individual or a member of the individual's family or household.

(b) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the offense results in the bodily injury of:

(1) the individual whose residence address or telephone number was posted on a publicly accessible website; or

(2) a member of the individual's family or household.

(c) This section does not apply to a public servant who posted information described by Subsection (a) to a publicly accessible website in the performance of the public servant's duties as required by or in accordance with state or federal law.

(d) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.06(a-1), the actor may be prosecuted under either section but not both.

Added by Acts 2023, 88th Leg., R.S., Ch. 805 (H.B. 611), Sec. 1, eff. September 1, 2023.

Sec. 42.075. DISCLOSURE OF CONFIDENTIAL INFORMATION REGARDING FAMILY VIOLENCE OR VICTIMS OF TRAFFICKING SHELTER CENTER. (a) In this section, "family violence shelter center" and "victims of trafficking shelter center" have the meanings assigned by Section 552.138, Government Code.

(b) A person commits an offense if the person, with the intent to threaten the safety of any inhabitant of a family violence shelter center or victims of trafficking shelter center, discloses or publicizes the location or physical layout of the center.

(c) An offense under this section is a Class A misdemeanor.

(d) If conduct constituting an offense under this section also constitutes an offense under Section 552.352, Government Code, the actor may be prosecuted under either section.

Added by Acts 2019, 86th Leg., R.S., Ch. 1152 (H.B. 3091), Sec. 2, eff. September 1, 2019.

Sec. 42.08. ABUSE OF CORPSE. (a) A person commits an offense

if the person, without legal authority, knowingly:

(1) disinters, disturbs, damages, dissects, in whole or in part, carries away, or treats in an offensive manner a human corpse;

(2) conceals a human corpse knowing it to be illegally disinterred;

(3) sells or buys a human corpse or in any way traffics in a human corpse;

(4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state; or

(5) vandalizes, damages, or treats in an offensive manner the space in which a human corpse has been interred or otherwise permanently laid to rest.

(b) An offense under this section is a state jail felony, except that an offense under Subsection (a)(5) is a Class A misdemeanor.

(c) In this section, "human corpse" includes:

(1) any portion of a human corpse;

(2) the cremated remains of a human corpse; or

(3) any portion of the cremated remains of a human corpse.

(d) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.

(e) It is a defense to prosecution under this section that the actor:

(1) as a member or agent of a cemetery organization, removed or damaged anything that had been placed in or on any portion of the organization's cemetery in violation of the rules of the organization; or

(2) removed anything:

(A) placed in the cemetery in violation of the rules of the cemetery organization; or

(B) placed in the cemetery by or with the cemetery organization's consent but that, in the organization's judgment, had become wrecked, unsightly, or dilapidated.

(f) In this section, "cemetery" and "cemetery organization" have the meanings assigned by Section 711.001, Health and Safety Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 42.10 by Acts 1993, 73rd Leg., ch.

900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2005, 79th Leg., Ch. 1025 (H.B. 1012), Sec. 1, eff. June 18, 2005.
Acts 2017, 85th Leg., R.S., Ch. 299 (S.B. 524), Sec. 1, eff. September 1, 2017.

Sec. 42.09. CRUELTY TO LIVESTOCK ANIMALS. (a) A person commits an offense if the person intentionally or knowingly:

(1) tortures a livestock animal;

(2) fails unreasonably to provide necessary food, water, or care for a livestock animal in the person's custody;

(3) abandons unreasonably a livestock animal in the person's custody;

(4) transports or confines a livestock animal in a cruel and unusual manner;

(5) administers poison to a livestock animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;

(6) causes one livestock animal to fight with another livestock animal or with an animal as defined by Section 42.092;

(7) uses a live livestock animal as a lure in dog race training or in dog coursing on a racetrack;

(8) trips a horse; or

(9) seriously overworks a livestock animal.

(b) In this section:

(1) "Abandon" includes abandoning a livestock animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(3) "Custody" includes responsibility for the health, safety, and welfare of a livestock animal subject to the person's care and control, regardless of ownership of the livestock animal.

(4) "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

(5) "Livestock animal" means:

(A) cattle, sheep, swine, goats, ratites, or poultry commonly raised for human consumption;

(B) a horse, pony, mule, donkey, or hinny;

(C) native or nonnative hoofstock raised under agriculture practices; or

(D) native or nonnative fowl commonly raised under agricultural practices.

(6) "Necessary food, water, or care" includes food, water, or care provided to the extent required to maintain the livestock animal in a state of good health.

(7) "Torture" includes any act that causes unjustifiable pain or suffering.

(8) "Trip" means to use an object to cause a horse to fall or lose its balance.

(c) An offense under Subsection (a)(2), (3), (4), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092. An offense under Subsection (a)(1), (5), (6), (7), or (8) is a state jail felony, except that the offense is a felony of the third degree if the person has previously been convicted two times under this section, two times under Section 42.092, or one time under this section and one time under Section 42.092.

(d) It is a defense to prosecution under Subsection (a)(8) that the actor tripped the horse for the purpose of identifying the ownership of the horse or giving veterinary care to the horse.

(e) It is a defense to prosecution for an offense under this section that the actor was engaged in bona fide experimentation for scientific research.

(f) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture practice involving livestock animals.

(g) This section does not create a civil cause of action for

damages or enforcement of this section.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 917, ch. 342, Sec. 12, eff. Sept. 1, 1975; Acts 1985, 69th Leg., ch. 549, Sec. 1, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 78, Sec. 1, eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 42.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 318, Sec. 15, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1283, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 54, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 450, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1275, Sec. 2(116), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 1, eff. September 1, 2007.

Sec. 42.091. ATTACK ON ASSISTANCE ANIMAL. (a) A person commits an offense if the person intentionally, knowingly, or recklessly attacks, injures, or kills an assistance animal.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly incites or permits an animal owned by or otherwise in the custody of the actor to attack, injure, or kill an assistance animal and, as a result of the person's conduct, the assistance animal is attacked, injured, or killed.

(c) An offense under this section is a:

(1) Class A misdemeanor if the actor or an animal owned by or otherwise in the custody of the actor attacks an assistance animal;

(2) state jail felony if the actor or an animal owned by or otherwise in the custody of the actor injures an assistance animal; or

(3) felony of the third degree if the actor or an animal owned by or otherwise in the custody of the actor kills an assistance animal.

(d) A court shall order a defendant convicted of an offense under Subsection (a) to make restitution to the owner of the assistance animal for:

(1) related veterinary or medical bills;

(2) the cost of:

(A) replacing the assistance animal; or

(B) retraining an injured assistance animal by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities as reputable and competent to provide special equipment for or special training to an animal to help a person with a disability; and

(3) any other expense reasonably incurred as a result of the offense.

(e) In this section:

(1) "Assistance animal" has the meaning assigned by Section 121.002, Human Resources Code.

(2) "Custody" has the meaning assigned by Section 42.09.

Added by Acts 2003, 78th Leg., ch. 710, Sec. 2, eff. Sept. 1, 2003.

Sec. 42.092. CRUELTY TO NONLIVESTOCK ANIMALS. (a) In this section:

(1) "Abandon" includes abandoning an animal in the person's custody without making reasonable arrangements for assumption of custody by another person.

(2) "Animal" means a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal.

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

(4) "Custody" includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal.

(5) "Depredation" has the meaning assigned by Section 71.001, Parks and Wildlife Code.

(6) "Livestock animal" has the meaning assigned by Section 42.09.

(7) "Necessary food, water, care, or shelter" includes food, water, care, or shelter provided to the extent required to maintain the animal in a state of good health.

(8) "Torture" includes any act that causes unjustifiable pain or suffering.

(9) "Trap-Neuter-Return Program" means a nonlethal population control practice in which an animal is:

(A) trapped;

(B) evaluated by a veterinarian;

(C) if unvaccinated, vaccinated by a veterinarian;

(D) if unsterilized, sterilized by a veterinarian;

(E) marked by a veterinarian, whether by notching or tipping one ear or otherwise; and

(F) returned to the trap location.

(10) "Veterinarian" shall have the same meaning as set forth in Section 801.002, Occupations Code.

(b) A person commits an offense if the person intentionally, knowingly, or recklessly:

(1) tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal;

(2) without the owner's effective consent, kills, administers poison to, or causes serious bodily injury to an animal;

(3) fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody;

(4) abandons unreasonably an animal in the person's custody;

(5) transports or confines an animal in a cruel manner;

(6) without the owner's effective consent, causes bodily injury to an animal;

(7) causes one animal to fight with another animal, if either animal is not a dog;

(8) uses a live animal as a lure in dog race training or in dog coursing on a racetrack; or

(9) seriously overworks an animal.

(c) An offense under Subsection (b)(3), (4), (5), (6), or (9) is a Class A misdemeanor, except that the offense is a state jail felony if the person has previously been convicted two times under this section, two times under Section 42.09, or one time under this section and one time under Section 42.09.

(c-1) An offense under Subsection (b)(1) or (2) is a felony of the third degree, except that the offense is a felony of the second degree if the person has previously been convicted under Subsection (b)(1), (2), (7), or (8) or under Section 42.09.

(c-2) An offense under Subsection (b)(7) or (8) is a state jail felony, except that the offense is a felony of the third degree if

the person has previously been convicted under this section or under Section 42.09.

(d) It is a defense to prosecution under this section that:

(1) the actor had a reasonable fear of bodily injury to the actor or to another person by a dangerous wild animal as defined by Section 822.101, Health and Safety Code; or

(2) the actor was engaged in bona fide experimentation for scientific research.

(e) It is a defense to prosecution under Subsection (b)(2) or (6) that:

(1) the animal was discovered on the person's property in the act of or after injuring or killing the person's livestock animals or damaging the person's crops and that the person killed or injured the animal at the time of this discovery; or

(2) the person killed or injured the animal within the scope of the person's employment as a public servant or in furtherance of activities or operations associated with electricity transmission or distribution, electricity generation or operations associated with the generation of electricity, or natural gas delivery.

(e-1) It is a defense to prosecution under Subsection (b)(4) that the actor released or returned a stray or feral animal which is not a wild living creature pursuant to a Trap-Neuter-Return Program.

(e-2) It is a defense to prosecution under Subsection (b)(4) that the actor released or returned a previously trapped wild living creature in accordance with Texas wildlife laws and regulations.

(f) It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise lawful:

(1) form of conduct occurring solely for the purpose of or in support of:

(A) fishing, hunting, or trapping; or

(B) wildlife management, wildlife or depredation control, or shooting preserve practices as regulated by state and federal law; or

(2) animal husbandry or agriculture practice involving livestock animals.

(g) This section does not create a civil cause of action for damages or enforcement of the section.

Added by Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 2, eff. September 1, 2007.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 576 (S.B. 762), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 739 (S.B. 1232), Sec. 3, eff. September 1, 2017.
Acts 2023, 88th Leg., R.S., Ch. 537 (H.B. 3660), Sec. 1, eff. June 10, 2023.
Acts 2023, 88th Leg., R.S., Ch. 537 (H.B. 3660), Sec. 2, eff. June 10, 2023.

Sec. 42.10. DOG FIGHTING. (a) A person commits an offense if the person intentionally or knowingly:

(1) causes a dog to fight with another dog;

(2) participates in the earnings of or operates a facility used for dog fighting;

(3) uses or permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;

(4) owns or possesses dog-fighting equipment with the intent that the equipment be used to train a dog for dog fighting or in furtherance of dog fighting;

(5) owns or trains a dog with the intent that the dog be used in an exhibition of dog fighting; or

(6) attends as a spectator an exhibition of dog fighting.

(b) In this section:

(1) "Dog fighting" means any situation in which one dog attacks or fights with another dog.

(2) "Dog-fighting equipment" has the meaning assigned by Article 18.18(g), Code of Criminal Procedure.

(c) A conviction under Subsection (a)(2) or (3) may be had upon the uncorroborated testimony of a party to the offense.

(d) It is a defense to prosecution under Subsection (a)(1) that the actor caused a dog to fight with another dog to protect livestock, other property, or a person from the other dog, and for no other purpose.

(e) An offense under Subsection (a)(4), (5), or (6) is a Class A misdemeanor. An offense under Subsection (a)(1), (2), or (3) is a state jail felony.

Added by Acts 1983, 68th Leg., p. 1610, ch. 305, Sec. 1, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 42.111 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 644 (H.B. 916), Sec. 1, eff. September 1, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1357 (S.B. 554), Sec. 1, eff. September 1, 2009.

Sec. 42.105. COCKFIGHTING. (a) In this section:
(1) "Bridle" means a leather device designed to fit over the head and beak of a cock to prevent the cock from injuring another cock.
(2) "Cock" means the male of any type of domestic fowl.
(3) "Cockfighting" means any situation in which one cock attacks or fights with another cock.
(4) "Gaff" means an artificial steel spur designed to attach to the leg of a cock to replace or supplement the cock's natural spur.
(5) "Slasher" means a steel weapon resembling a curved knife blade designed to attach to the foot of a cock.
(b) A person commits an offense if the person knowingly:
(1) causes a cock to fight with another cock;
(2) participates in the earnings of a cockfight;
(3) uses or permits another to use any real estate, building, room, tent, arena, or other property for cockfighting;
(4) owns or trains a cock with the intent that the cock be used in an exhibition of cockfighting;
(5) manufactures, buys, sells, barters, exchanges, possesses, advertises, or otherwise offers a gaff, slasher, or other sharp implement designed for attachment to a cock with the intent that the implement be used in cockfighting; or
(6) attends as a spectator an exhibition of cockfighting.
(c) It is an affirmative defense to prosecution under this section that the actor's conduct:
(1) occurred solely for the purpose of or in support of breeding cocks for poultry shows in which a cock is judged by the cock's physical appearance; or
(2) was incidental to collecting bridles, gaffs, or

slashers.

(d) An affirmative defense to prosecution is not available under Subsection (c) if evidence shows that the actor is also engaging in use of the cocks for cockfighting.

(e) It is a defense to prosecution for an offense under this section that:

(1) the actor was engaged in bona fide experimentation for scientific research; or

(2) the conduct engaged in by the actor is a generally accepted and otherwise lawful animal husbandry or agriculture practice involving livestock animals.

(f) It is an exception to the application of Subsection (b)(6) that the actor is 15 years of age or younger at the time of the offense.

(g) An offense under Subsection (b)(1) or (2) is a state jail felony. An offense under Subsection (b)(3), (4), or (5) is a Class A misdemeanor. An offense under Subsection (b)(6) is a Class C misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 952 (H.B. 1043), Sec. 1, eff. September 1, 2011.

Sec. 42.107. POSSESSION OF ANIMAL BY PERSON CONVICTED OF ANIMAL CRUELTY. (a) A person commits an offense if the person:

(1) possesses or exercises control over an animal; and

(2) within the five-year period preceding the date of the instant offense, has been previously convicted of an offense under:

(A) Section 42.091, 42.092, or 42.10; or

(B) federal law or a penal law of another state containing elements that are substantially similar to the elements of an offense described by Paragraph (A).

(b) An offense under this section is a Class C misdemeanor, except that the offense is a Class B misdemeanor if the defendant has been previously convicted of an offense under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 173 (H.B. 598), Sec. 1, eff. September 1, 2023.

Sec. 42.11. DESTRUCTION OF FLAG. (a) A person commits an offense if the person intentionally or knowingly damages, defaces, mutilates, or burns the flag of the United States or the State of Texas.

(b) In this section, "flag" means an emblem, banner, or other standard or a copy of an emblem, standard, or banner that is an official or commonly recognized depiction of the flag of the United States or of this state and is capable of being flown from a staff of any character or size. The term does not include a representation of a flag on a written or printed document, a periodical, stationery, a painting or photograph, or an article of clothing or jewelry.

(c) It is an exception to the application of this section that the act that would otherwise constitute an offense is done in conformity with statutes of the United States or of this state relating to the proper disposal of damaged flags.

(d) An offense under this section is a Class A misdemeanor.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 27, Sec. 1, eff. Sept. 1, 1989. Renumbered from Penal Code Sec. 42.14 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 42.12. DISCHARGE OF FIREARM IN CERTAIN MUNICIPALITIES. (a) A person commits an offense if the person recklessly discharges a firearm inside the corporate limits of a municipality having a population of 100,000 or more.

(b) An offense under this section is a Class A misdemeanor.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the person may be prosecuted under either section.

(d) Subsection (a) does not affect the authority of a municipality to enact an ordinance which prohibits the discharge of a firearm.

Added by Acts 1995, 74th Leg., ch. 663, Sec. 1, eff. Sept. 1, 1995.

Sec. 42.13. USE OF LASER POINTERS. (a) A person commits an offense if the person knowingly directs a light from a laser pointer at a uniformed safety officer, including a peace officer, security guard, firefighter, emergency medical service worker, or other

uniformed municipal, state, or federal officer.

(b) In this section, "laser pointer" means a device that emits a visible light amplified by the stimulated emission of radiation.

(c) An offense under this section is a Class C misdemeanor, except that the offense is:

(1) a felony of the third degree if the conduct causes bodily injury to the officer; or

(2) a felony of the first degree if the conduct causes serious bodily injury to the officer.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law, but not both.

Added by Acts 2003, 78th Leg., ch. 467, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 200 (H.B. 2366), Sec. 1, eff. September 1, 2021.

Sec. 42.14. ILLUMINATION OF AIRCRAFT BY INTENSE LIGHT. (a) A person commits an offense if:

(1) the person intentionally directs a light from a laser pointer or other light source at an aircraft; and

(2) the light has an intensity sufficient to impair the operator's ability to control the aircraft.

(b) It is an affirmative defense to prosecution under this section that the actor was using the light to send an emergency distress signal.

(c) An offense under this section is a Class C misdemeanor unless the intensity of the light impairs the operator's ability to control the aircraft, in which event the offense is a Class A misdemeanor.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

(e) In this section, "laser pointer" has the meaning assigned by Section 42.13.

Added by Acts 2007, 80th Leg., R.S., Ch. 680 (H.B. 1586), Sec. 1, eff. September 1, 2007.

Sec. 42.15. OPERATION OF UNMANNED AIRCRAFT OVER AIRPORT OR MILITARY INSTALLATION. (a) In this section:

(1) "Airport" has the meaning assigned by Section 22.001, Transportation Code.

(2) "Military installation" means any military installation owned or operated by or for the federal government, this state, or another governmental entity.

(b) A person commits an offense if the person intentionally or knowingly:

(1) operates an unmanned aircraft over an airport or military installation;

(2) allows an unmanned aircraft to make contact with an airport or military installation, including any person or object on the premises of or within the airport or military installation; or

(3) operates an unmanned aircraft in a manner that interferes with the operations of or causes a disturbance to an airport or military installation.

(c) It is a defense to prosecution under this section that the conduct described by Subsection (b) was engaged in by:

(1) the federal government, this state, or a governmental entity;

(2) a person under contract with or otherwise acting under the direction or on behalf of the federal government, this state, or a governmental entity;

(3) a law enforcement agency;

(4) a person under contract with or otherwise acting under the direction or on behalf of a law enforcement agency;

(5) an owner or operator of the airport or military installation;

(6) a person under contract with or otherwise acting under the direction or on behalf of an owner or operator of the airport or military installation;

(7) a person who has the prior written or electronic authorization of:

(A) the owner or operator of the airport or military installation; or

(B) the Federal Aviation Administration; or

(8) the owner or occupant of the property on which the airport or military installation is located or a person who has the prior written consent of the owner or occupant of that property.

(d) An offense under this section is a Class B misdemeanor, except that the offense is a Class A misdemeanor if the actor has previously been convicted under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1096 (S.B. 1308), Sec. 1, eff. September 1, 2023.

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER A. PROSTITUTION

Sec. 43.01. DEFINITIONS. In this subchapter:

(1) "Access software provider" means a provider of software, including client or server software, or enabling tools that perform one or more of the following functions:

(A) filter, screen, allow, or disallow content;

(B) select, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(1-a) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(1-b) "Fee" means the payment or offer of payment in the form of money, goods, services, or other benefit.

(1-c) "Information content provider" means any person or entity that is wholly or partly responsible for the creation or development of information provided through the Internet or any other interactive computer service.

(1-d) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access to a computer server by multiple users, including a service or system that provides access to the Internet or a system operated or service offered by a library or educational institution.

(1-e) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(1-f) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2) "Prostitution" means the offense defined in Section 43.02.

(2-a) "School" means a public or private primary or

secondary school.

(3) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(4) "Sexual conduct" includes deviate sexual intercourse, sexual contact, and sexual intercourse.

(5) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(6) "Solicitation of prostitution" means the offense defined in Section 43.021.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1979, 66th Leg., p. 373, ch. 168, Sec. 2, eff. Aug. 27, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 35, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 3.01, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 54, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 60, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1049 (S.B. 1831), Sec. 8, eff. September 1, 2021.

Sec. 43.02. PROSTITUTION. (a) A person commits an offense if the person knowingly offers or agrees to receive a fee from another to engage in sexual conduct.

(b-1) Repealed by Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 44(2), eff. September 1, 2017.

(c) An offense under Subsection (a) is a Class B misdemeanor, except that the offense is:

(1) a Class A misdemeanor if the actor has previously been convicted one or two times of an offense under Subsection (a); or

(2) a state jail felony if the actor has previously been convicted three or more times of an offense under Subsection (a).

(d) It is a defense to prosecution for an offense under

Subsection (a) that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02 or 43.05.

(e) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D, Chapter 12. For purposes of enhancement of penalties under this section or Subchapter D, Chapter 12, a defendant is previously convicted of an offense under this section if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1977, 65th Leg., p. 757, ch. 286, Sec. 1, eff. May 27, 1977; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 987, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. 2014), Sec. 4.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 15, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 332 (H.B. 10), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1273 (S.B. 825), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 36, eff. September 1, 2017.

Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 37, eff. September 1, 2017.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 44(2), eff. September 1, 2017.

Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 8, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 2.05, eff.

September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 29, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 61, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1049 (S.B. 1831), Sec. 9, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 2.04, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 17.003, eff. September 1, 2023.

Sec. 43.021. SOLICITATION OF PROSTITUTION. (a) A person commits an offense if the person knowingly offers or agrees to pay a fee to another person for the purpose of engaging in sexual conduct with that person or another.

(b) An offense under Subsection (a) is a state jail felony, except that the offense is:

(1) a felony of the third degree if the actor has previously been convicted of an offense under Subsection (a) or under Section 43.02(b), as that law existed before September 1, 2021; or

(2) a felony of the second degree if the person to whom the actor offers or agrees to pay the fee for the purpose of engaging in sexual conduct is:

(A) younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense;

(B) represented to the actor as being younger than 18 years of age; or

(C) believed by the actor to be younger than 18 years of age.

(b-1) The punishment prescribed for an offense under Subsection (a) is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the actor committed the offense in a location that was:

(1) on the premises of or within 1,000 feet of the premises of a school; or

(2) on premises or within 1,000 feet of premises where:

(A) an official school function was taking place; or

(B) an event sponsored or sanctioned by the University

Interscholastic League was taking place.

(c) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and that subchapter. For purposes of enhancement of penalties under this section or Subchapter D, Chapter 12, a defendant is considered to have been previously convicted of an offense under this section or under Section 43.02(b), as that law existed before September 1, 2021, if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision.

Added by Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 28, eff. September 1, 2021.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 29, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 30, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 2.03, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 2.04, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 17.003, eff. September 1, 2023.

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

(b) An offense under this section is a felony of the third degree, except that the offense is:

(1) a felony of the second degree if the actor has been

previously convicted of an offense under this section; or

(2) a felony of the first degree if the actor engages in conduct described by Subsection (a)(1) or (2) involving a person younger than 18 years of age, regardless of whether the actor knows the age of the person at the time of the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1977, 65th Leg., p. 758, ch. 287, Sec. 1, eff. May 27, 1977; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 16, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 38, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 9, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 273 (S.B. 1802), Sec. 3, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 461 (S.B. 1653), Sec. 1, eff. September 1, 2023.

Sec. 43.031. ONLINE PROMOTION OF PROSTITUTION. (a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of another person or facilitate another person to engage in prostitution or solicitation of prostitution.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor:

(1) has been previously convicted of an offense under this section or Section 43.041; or

(2) engages in conduct described by Subsection (a) involving a person younger than 18 years of age engaging in prostitution, regardless of whether the actor knows the age of the person at the time of the offense.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 3.02, eff. September 1, 2019.

Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 55, eff. September 1, 2021.

Sec. 43.04. AGGRAVATED PROMOTION OF PROSTITUTION. (a) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the first degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 17, eff. September 1, 2013.
Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 39, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 10, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 273 (S.B. 1802), Sec. 4, eff. September 1, 2019.

Sec. 43.041. AGGRAVATED ONLINE PROMOTION OF PROSTITUTION. (a) A person commits an offense if the person owns, manages, or operates an interactive computer service or information content provider, or operates as an information content provider, with the intent to promote the prostitution of five or more persons or facilitate five or more persons to engage in prostitution or solicitation of prostitution.

(b) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the actor:

(1) has been previously convicted of an offense under this section; or

(2) engages in conduct described by Subsection (a) involving two or more persons younger than 18 years of age engaging

in prostitution, regardless of whether the actor knows the age of the persons at the time of the offense.

Added by Acts 2019, 86th Leg., R.S., Ch. 413 (S.B. 20), Sec. 3.02, eff. September 1, 2019.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 56, eff. September 1, 2021.

Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if the person knowingly:

(1) causes another by force, threat, coercion, or fraud to commit prostitution;

(2) causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense; or

(3) causes by any means a disabled individual, as defined by Section 22.021(b), to commit prostitution, regardless of whether the actor knows the individual is disabled at the time of the offense.

(b) An offense under this section is a felony of the first degree.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) For purposes of this section, "coercion" as defined by Section 1.07 includes:

(1) destroying, concealing, confiscating, or withholding from a person, or threatening to destroy, conceal, confiscate, or withhold from a person, the person's actual or purported:

(A) government records; or

(B) identifying information or documents;

(2) causing a person, without the person's consent, to become intoxicated, as defined by Section 49.01, to a degree that impairs the person's ability to appraise the nature of the person's conduct that constitutes prostitution or to resist engaging in that conduct; or

(3) withholding alcohol or a controlled substance to a degree that impairs the ability of a person with a chemical

dependency, as defined by Section 462.001, Health and Safety Code, to appraise the nature of the person's conduct that constitutes prostitution or to resist engaging in that conduct.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1002 (H.B. 4009), Sec. 9, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1 (S.B. 24), Sec. 1.03, eff. September 1, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1273 (S.B. 825), Sec. 2, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 40, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 11, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 273 (S.B. 1802), Sec. 5, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 2.05, eff. September 1, 2023.

Sec. 43.06. ACCOMPLICE WITNESS; TESTIMONY AND IMMUNITY. (a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.

SUBCHAPTER B. OBSCENITY

Sec. 43.21. DEFINITIONS. (a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the

stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 372, ch. 163, Sec. 1, eff. Sept. 1, 1975; Acts 1979, 66th Leg., p. 1974, ch. 778, Sec. 1, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 43.22. OBSCENE DISPLAY OR DISTRIBUTION. (a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 43.23. OBSCENITY. (a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) Except as provided by Subsection (h), an offense under Subsection (a) is a state jail felony.

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) Except as provided by Subsection (h), an offense under

Subsection (c) is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) It is an affirmative defense to prosecution under this section that the person who possesses or promotes material or a device proscribed by this section does so for a bona fide medical, psychiatric, judicial, legislative, or law enforcement purpose.

(h) The punishment for an offense under Subsection (a) or (c) is increased to the punishment for a felony of the second degree if it is shown on the trial of the offense that obscene material that is the subject of the offense visually depicts activities described by Section 43.21(a)(1)(B) engaged in by:

(1) a child younger than 18 years of age at the time the image of the child was made;

(2) an image that to a reasonable person would be virtually indistinguishable from the image of a child younger than 18 years of age; or

(3) an image created, adapted, or modified to be the image of an identifiable child.

(i) In this section, "identifiable child" means a person, recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature:

(1) who was younger than 18 years of age at the time the visual depiction was created, adapted, or modified; or

(2) whose image as a person younger than 18 years of age was used in creating, adapting, or modifying the visual depiction.

(j) An attorney representing the state who seeks an increase in punishment under Subsection (h)(3) is not required to prove the actual identity of an identifiable child.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1979, 66th Leg., p. 1975, ch. 778, Sec. 2, eff. Sept. 1, 1979; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1005, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 19, eff. September 1, 2013.

Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR. (a) For purposes of this section:

(1) "Minor" means an individual younger than 18 years.

(2) "Harmful material" means material whose dominant theme taken as a whole:

(A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;

(B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and

(C) is utterly without redeeming social value for minors.

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2).

(c) It is an affirmative defense to prosecution under this section that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification.

(c-1) It is a defense to prosecution under this section that the actor was the spouse of the minor at the time of the offense.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) in which event it is a felony of the third degree.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 497 (H.B. 1344), Sec. 1, eff. September 1, 2011.

Sec. 43.25. SEXUAL PERFORMANCE BY A CHILD. (a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.

(2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.

(4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.

(5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

(7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned by Section 43.01.

(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.

(c) An offense under Subsection (b) is a felony of the second degree, except that the offense is a felony of the first degree if

the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 years of age.

(e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

(f) It is an affirmative defense to a prosecution under this section that:

(1) the defendant was the spouse of the child at the time of the offense;

(2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

(3) the defendant is not more than two years older than the child.

(g) When it becomes necessary for the purposes of this section or Section 43.26 to determine whether a child who participated in sexual conduct was younger than 18 years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by the rules of evidence at common law.

(h) Conduct under this section constitutes an offense regardless of whether the actor knows the age of the victim at the time of the offense.

Added by Acts 1977, 65th Leg., p. 1035, ch. 381, Sec. 1, eff. June

10, 1977. Amended by Acts 1979, 66th Leg., p. 1976, ch. 779, Sec. 1, eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch. 530, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 1415, Sec. 22(b), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1005, Sec. 4, 5 eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 593 (H.B. 8), Sec. 1.20, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 41, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 12, eff. September 1, 2017.

Sec. 43.251. EMPLOYMENT HARMFUL TO CHILDREN. (a) In this section:

(1) "Child" means a person younger than 21 years of age.

(2) "Massage" has the meaning assigned to the term "massage therapy" by Section 455.001, Occupations Code.

(3) "Massage establishment" has the meaning assigned by Section 455.001, Occupations Code.

(4) "Nude" means a child who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the child is female, or any portion of the genitals or buttocks.

(5) "Sexually oriented commercial activity" means a massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise the primary business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.

(6) "Topless" means a female child clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of her breasts below the top of the areola.

(b) A person commits an offense if the person employs, authorizes, or induces a child to work:

(1) in a sexually oriented commercial activity; or

(2) in any place of business permitting, requesting, or requiring a child to work nude or topless.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 42

(c) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the child is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the child at the time of the offense.

Text of subsection as amended by Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 13

(c) An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed, regardless of whether the actor knows the age of the victim at the time of the offense.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 42

(d) Conduct under this section constitutes an offense regardless of whether the actor knows the age of the child at the time of the offense.

Text of subsection as added by Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 13

(d) Conduct under this section constitutes an offense regardless of whether the actor knows the age of the victim at the time of the offense.

Added by Acts 1987, 70th Leg., ch. 783, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2001, 77th Leg., ch. 1420, Sec. 14.832, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 515 (H.B. 2014), Sec. 4.03, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 938 (H.B. 290), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 18, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 685 (H.B. 29), Sec. 42, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1038 (H.B. 1808), Sec. 13, eff.

September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 79 (S.B. 315), Sec. 8, eff. May 24, 2021.

Acts 2021, 87th Leg., R.S., Ch. 942 (S.B. 766), Sec. 8, eff. September 1, 2021.

Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY. (a) A person commits an offense if:

(1) the person knowingly or intentionally possesses, or knowingly or intentionally accesses with intent to view, visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct, including a child who engages in sexual conduct as a victim of an offense under Section 20A.02(a)(5), (6), (7), or (8); and

(2) the person knows that the material depicts the child as described by Subdivision (1).

(b) In this section:

(1) "Promote" has the meaning assigned by Section 43.25.

(2) "Sexual conduct" has the meaning assigned by Section 43.25.

(3) "Visual material" means:

(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(c) The affirmative defenses provided by Sections 43.25(f)(2) and (3) also apply to a prosecution under this section.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 6.02

(d) An offense under Subsection (a) is a felony of the third degree, except that the offense is:

(1) a felony of the second degree if:

(A) it is shown on the trial of the offense that the person has been previously convicted one time of an offense under that subsection; or

(B) the person possesses visual material that contains

10 or more visual depictions of a child as described by Subsection (a)(1) but fewer than 50 such depictions; and

(2) a felony of the first degree if:

(A) it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under that subsection; or

(B) the person possesses visual material that contains:

(i) 50 or more visual depictions of a child as described by Subsection (a)(1); or

(ii) a videotape or film that visually depicts conduct constituting an offense under Section 22.011(a)(2).

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 1041 (S.B. 129), Sec. 2

(d) An offense under Subsection (a) is:

(1) a felony of the third degree if the person possesses visual material that contains fewer than 100 visual depictions of a child as described by Subsection (a)(1);

(2) a felony of the second degree if the person possesses visual material that contains 100 or more visual depictions of a child as described by Subsection (a)(1) but fewer than 500 such depictions;

(3) a felony of the first degree if the person possesses visual material that contains 500 or more visual depictions of a child as described by Subsection (a)(1); or

(4) a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years if it is shown on the trial of the offense that, at the time of the offense, the person was:

(A) an employee at a child-care facility or a residential child-care facility, as those terms are defined by Section 42.002, Human Resources Code;

(B) an employee at a residential treatment facility established under Section 221.056, Human Resources Code;

(C) an employee at a shelter or facility that serves youth and that receives state funds; or

(D) receiving state funds for the care of a child depicted by the visual material.

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 93

(S.B. 1527), Sec. 6.02

(d-1) If it is shown on the trial of an offense under Subsection (a) that the person engaged in conduct that constituted an offense under Subsection (e) during the same criminal episode:

(1) an offense described for purposes of punishment by Subsection (d)(1) is a felony of the first degree; or

(2) the minimum term of confinement for an offense described for purposes of punishment by Subsection (d)(2) is increased to 15 years.

Text of subsection as added by Acts 2023, 88th Leg., R.S., Ch. 1041 (S.B. 129), Sec. 2

(d-1) If it is shown on the trial of an offense under Subsection (a) that the visual material depicted a child younger than 10 years of age at the time the image of the child was made or that the defendant has been previously convicted of an offense under that subsection:

(1) an offense described for purposes of punishment by Subsection (d)(1) or (2) is increased to the next higher category of offense; or

(2) the minimum term of confinement for an offense described for purposes of punishment by Subsection (d)(3) is increased to 15 years.

(d-2) The enhancement provided by Subsection (d-1) is unavailable if the person is also prosecuted under Subsection (e) for conduct occurring during the same criminal episode.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and

(2) the person knows that the material depicts the child as described by Subsection (a)(1).

(f) Repealed by Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 6.03, eff. September 1, 2023.

(g) An offense under Subsection (e) is a felony of the second degree, except that the offense is a felony of the first degree if it is shown on the trial of the offense that the person has been previously convicted of an offense under that subsection.

(h) It is a defense to prosecution under Subsection (a) or (e) that the actor is a law enforcement officer or a school administrator who:

(1) possessed or accessed the visual material in good faith solely as a result of an allegation of a violation of Section 43.261;

(2) allowed other law enforcement or school administrative personnel to possess or access the material only as appropriate based on the allegation described by Subdivision (1); and

(3) took reasonable steps to destroy the material within an appropriate period following the allegation described by Subdivision (1).

(i) For purposes of conduct prohibited under this section, visual material to which that conduct applies includes a depiction of a child:

(1) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(2) whose image as a child younger than 18 years of age was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence application or other computer software.

Added by Acts 1985, 69th Leg., ch. 530, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 361, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 968, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.51, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 933, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1415, Sec. 22(c), eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 20, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 933 (H.B. 2291), Sec. 2, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 6.02, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 93 (S.B. 1527), Sec. 6.03, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 730 (H.B. 2700), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1041 (S.B. 129), Sec. 2, eff. September 1, 2023.

Sec. 43.261. ELECTRONIC TRANSMISSION OF CERTAIN VISUAL MATERIAL DEPICTING MINOR. (a) In this section:

(1) "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.

(2) "Minor" means a person younger than 18 years of age.

(3) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.

(4) "Promote" has the meaning assigned by Section 43.25.

(5) "Sexual conduct" has the meaning assigned by Section 43.25.

(6) "Visual material" has the meaning assigned by Section 43.26.

(b) A person who is a minor commits an offense if the person intentionally or knowingly:

(1) by electronic means promotes to another minor visual material depicting a minor, including the actor, engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material; or

(2) possesses in an electronic format visual material depicting another minor engaging in sexual conduct, if the actor produced the visual material or knows that another minor produced the visual material.

(b-1) For purposes of conduct prohibited under Subsection (b), visual material to which that conduct applies includes a depiction of a minor:

(1) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(2) whose image as a minor was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence application or other computer software.

(c) An offense under Subsection (b)(1) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of

the offense that the actor:

(A) promoted the visual material with intent to harass, annoy, alarm, abuse, torment, embarrass, or offend another; or

(B) except as provided by Subdivision (2)(A), has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been:

(A) convicted one or more times of an offense punishable under Subdivision (1)(A); or

(B) convicted two or more times of any offense under this section.

(d) An offense under Subsection (b)(2) is a Class C misdemeanor, except that the offense is:

(1) a Class B misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted one time of any offense under this section; or

(2) a Class A misdemeanor if it is shown on the trial of the offense that the actor has previously been convicted two or more times of any offense under this section.

(e) It is an affirmative defense to prosecution under this section that the visual material:

(1) depicted only the actor or another minor:

(A) who is not more than two years older or younger than the actor and with whom the actor had a dating relationship at the time of the offense; or

(B) who was the spouse of the actor at the time of the offense; and

(2) was promoted or received only to or from the actor and the other minor.

(f) It is a defense to prosecution under Subsection (b)(2) that the actor:

(1) did not produce or solicit the visual material;

(2) possessed the visual material only after receiving the material from another minor; and

(3) destroyed the visual material within a reasonable amount of time after receiving the material from another minor.

(g) If conduct that constitutes an offense under this section also constitutes an offense under another law, the defendant may be prosecuted under this section, the other law, or both.

(h) Notwithstanding Section 51.13, Family Code, a finding that a person has engaged in conduct in violation of this section is considered a conviction for the purposes of Subsections (c) and (d).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1322 (S.B. 407), Sec. 3, eff. September 1, 2011.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 730 (H.B. 2700), Sec. 2, eff. September 1, 2023.

Sec. 43.262. POSSESSION OR PROMOTION OF LEWD VISUAL MATERIAL DEPICTING CHILD. (a) In this section:

(1) "Promote" and "sexual conduct" have the meanings assigned by Section 43.25.

(2) "Visual material" has the meaning assigned by Section 43.26.

(b) A person commits an offense if the person knowingly possesses, accesses with intent to view, or promotes visual material that:

(1) depicts the lewd exhibition of the genitals or pubic area of an unclothed, partially clothed, or clothed child who is younger than 18 years of age at the time the visual material was created;

(2) appeals to the prurient interest in sex; and

(3) has no serious literary, artistic, political, or scientific value.

(b-1) For purposes of conduct prohibited under Subsection (b), visual material to which that conduct applies includes a depiction of a child:

(1) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(2) whose image as a child younger than 18 years of age was used in creating, adapting, or modifying the visual material, including computer-generated visual material that was created, adapted, or modified using an artificial intelligence application or other computer software.

(c) An offense under this section is a state jail felony, except that the offense is:

(1) a felony of the third degree if it is shown on the trial of the offense that the person has been previously convicted one time of an offense under this section or Section 43.26; and

(2) a felony of the second degree if it is shown on the trial of the offense that the person has been previously convicted two or more times of an offense under this section or Section 43.26.

(d) It is not a defense to prosecution under this section that the depicted child consented to the creation of the visual material.

Added by Acts 2017, 85th Leg., R.S., Ch. 350 (H.B. 1810), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 730 (H.B. 2700), Sec. 3, eff. September 1, 2023.

Sec. 43.27. DUTY TO REPORT. (a) For purposes of this section, " visual material" has the meaning assigned by Section 43.26.

(b) A business that develops or processes visual material and determines that the material may be evidence of a criminal offense under this subchapter shall report the existence of the visual material to a local law enforcement agency.

Added by Acts 2003, 78th Leg., ch. 1005, Sec. 6, eff. Sept. 1, 2003.

Sec. 43.28. CERTAIN SEXUALLY ORIENTED PERFORMANCES PROHIBITED. (a) In this section:

(1) "Sexual conduct" means:

(A) the exhibition or representation, actual or simulated, of sexual acts, including vaginal sex, anal sex, and masturbation;

(B) the exhibition or representation, actual or simulated, of male or female genitals in a lewd state, including a state of sexual stimulation or arousal;

(C) the exhibition of a device designed and marketed as useful primarily for the sexual stimulation of male or female genitals;

(D) actual contact or simulated contact occurring between one person and the buttocks, breast, or any part of the genitals of another person; or

(E) the exhibition of sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics.

(2) "Sexually oriented performance" means a visual performance that:

(A) features:

(i) a performer who is nude, as defined by Section 102.051, Business & Commerce Code; or

(ii) any other performer who engages in sexual conduct; and

(B) appeals to the prurient interest in sex.

(b) A person commits an offense if, regardless of whether compensation for the performance is expected or received, the person engages in a sexually oriented performance:

(1) on public property at a time, in a place, and in a manner that could reasonably be expected to be viewed by a child; or

(2) in the presence of an individual younger than 18 years of age.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 931 (S.B. 12), Sec. 3, eff. September 1, 2023.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

Sec. 46.01. DEFINITIONS. In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

(A) blackjack;

(B) nightstick;

(C) mace;

(D) tomahawk.

(2) "Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and

includes a device designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is:

(A) an antique or curio firearm manufactured before 1899; or

(B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.

(4) Repealed by Acts 2021, 87th Leg., R.S., Ch. 642 (H.B. 957), Sec. 3, eff. September 1, 2021.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

(6) "Location-restricted knife" means a knife with a blade over five and one-half inches.

(7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) Repealed by Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 4, eff. September 1, 2019.

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) Repealed by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 15.002, eff. September 1, 2017.

(12) "Armor-piercing ammunition" means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers.

(13) "Hoax bomb" means a device that:

(A) reasonably appears to be an explosive or incendiary device; or

(B) by its design causes alarm or reaction of any type

by an official of a public safety agency or a volunteer agency organized to deal with emergencies.

(14) "Chemical dispensing device" means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.

(15) "Racetrack" has the meaning assigned that term by Section 2021.003(41), Occupations Code.

(16) "Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

(17) "Tire deflation device" means a device, including a caltrop or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle's tires. The term does not include a traffic control device that:

(A) is designed to puncture one or more of a vehicle's tires when driven over in a specific direction; and

(B) has a clearly visible sign posted in close proximity to the traffic control device that prohibits entry or warns motor vehicle operators of the traffic control device.

(18) "Volunteer emergency services personnel" includes a volunteer firefighter, an emergency medical services volunteer as defined by Section 773.003, Health and Safety Code, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations. The term does not include a peace officer or reserve law enforcement officer, as those terms are defined by Section 1701.001, Occupations Code, who is performing law enforcement duties.

(19) "Improvised explosive device" means a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. The term does not include:

(A) unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval; or

(B) an exploding target that is used for firearms practice, sold in kit form, and contains the components of a binary

explosive.

(20) "First responder" means a public safety employee whose duties include responding rapidly to an emergency. The term includes fire protection personnel as defined by Section 419.021, Government Code, and emergency medical services personnel as defined by Section 773.003, Health and Safety Code. The term does not include:

(A) volunteer emergency services personnel;

(B) an emergency medical services volunteer, as defined by Section 773.003, Health and Safety Code; or

(C) a peace officer or reserve law enforcement officer, as those terms are defined by Section 1701.001, Occupations Code, who is performing law enforcement duties.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 917, ch. 342, Sec. 13, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4830, ch. 852, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(46), eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 749, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 229, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 12A.001, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1199 (H.B. 4456), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 920 (S.B. 1416), Sec. 1, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 15.002, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 814 (H.B. 913), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.07, eff. April 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 1049 (H.B. 1935), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 10, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 4, eff.

September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(40), eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 642 (H.B. 957), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 7, eff. September 1, 2021.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun;

(2) at the time of the offense:

(A) is younger than 21 years of age; or

(B) has been convicted of an offense under Section 22.01(a)(1), 22.05, 22.07, or 42.01(a)(7) or (8) committed in the five-year period preceding the date the instant offense was committed; and

(3) is not:

(A) on the person's own premises or premises under the person's control; or

(B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control.

(a-1) A person commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft that is owned by the person or under the person's control at any time in which:

(1) the handgun is in plain view, unless the person is 21 years of age or older or is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code, and the handgun is carried in a holster; or

(2) the person is:

(A) engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic or boating; or

(B) prohibited by law from possessing a firearm.

(a-2) For purposes of this section, "premises" includes real property and a recreational vehicle that is being used as living

quarters, regardless of whether that use is temporary or permanent. In this subsection, "recreational vehicle" means a motor vehicle primarily designed as temporary living quarters or a vehicle that contains temporary living quarters and is designed to be towed by a motor vehicle. The term includes a travel trailer, camping trailer, truck camper, motor home, and horse trailer with living quarters.

(a-3) For purposes of this section, "watercraft" means any boat, motorboat, vessel, or personal watercraft, other than a seaplane on water, used or capable of being used for transportation on water.

(a-4) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a location-restricted knife;

(2) is younger than 18 years of age at the time of the offense; and

(3) is not:

(A) on the person's own premises or premises under the person's control;

(B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control; or

(C) under the direct supervision of a parent or legal guardian of the person.

(a-5) A person commits an offense if the person carries a handgun and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was carried in a holster.

(a-6) A person commits an offense if the person:

(1) carries a handgun while the person is intoxicated; and

(2) is not:

(A) on the person's own property or property under the person's control or on private property with the consent of the owner of the property; or

(B) inside of or directly en route to a motor vehicle or watercraft:

(i) that is owned by the person or under the person's control; or

(ii) with the consent of the owner or operator of the vehicle or watercraft.

(a-7) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly carries on or about his or her person a handgun;

(2) is not:

(A) on the person's own premises or premises under the person's control; or

(B) inside of or directly en route to a motor vehicle or watercraft that is owned by the person or under the person's control; and

(3) at the time of the offense, was prohibited from possessing a firearm under Section 46.04(a), (b), or (c).

(a-8) If conduct constituting an offense under Subsection (a-7) constitutes an offense under another provision of law, the actor may be prosecuted under Subsection (a-7) or under both provisions.

(b) Except as provided by Subsection (d) or (e), an offense under this section is a Class A misdemeanor.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(8), eff. September 1, 2021.

(d) An offense under Subsection (a-4) is a Class C misdemeanor.

(e) An offense under Subsection (a-7) is:

(1) a felony of the second degree with a minimum term of imprisonment of five years, if the actor was prohibited from possessing a firearm under Section 46.04(a); or

(2) a felony of the third degree, if the actor was prohibited from possessing a firearm under Section 46.04(b) or (c).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 109, ch. 49, Sec. 1, eff. April 15, 1975; Acts 1975, 64th Leg., p. 918, ch. 342, Sec. 14, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1330, ch. 494, Sec. 2, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1879, ch. 746, Sec. 26, eff. Aug. 29, 1977; Acts 1981, 67th Leg., p. 2273, ch. 552, Sec. 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 5113, ch. 931, Sec. 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 262, Sec. 21, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 873, Sec. 25, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 168, Sec. 1, eff. Sept. 1, 1991. Redesignated from Penal Code Sec. 46.02, 46.03 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 229, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 16, eff. Sept. 1, 1995; Acts 1995,

74th Leg., ch. 754, Sec. 15, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 790, Sec. 16, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 998, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 10.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1221, Sec. 1, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 24, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. 1815), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 679 (H.B. 25), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 45, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 1049 (H.B. 1935), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 481 (H.B. 2112), Sec. 3, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 518 (S.B. 550), Sec. 4, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 22, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(8), eff. September 1, 2021.

Sec. 46.03. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the premises of a school or postsecondary educational institution, on any grounds or building owned by and under the control of a school or postsecondary educational institution and on which an activity sponsored by the school or institution is being conducted, or in a passenger transportation vehicle of a school or postsecondary educational institution, whether the school or postsecondary educational institution is public or private, unless:

(A) pursuant to written regulations or written

authorization of the school or institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of a postsecondary educational institution, on any grounds or building owned by and under the control of the institution and on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport;

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited;

(7) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(8) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a) is used in the event;

(9) on the premises of a correctional facility;

(10) on the premises of a civil commitment facility;

(11) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing facility

licensed under Chapter 242, Health and Safety Code, unless the person has written authorization of the hospital or nursing facility administration, as appropriate;

(12) on the premises of a mental hospital, as defined by Section 571.003, Health and Safety Code, unless the person has written authorization of the mental hospital administration;

(13) in an amusement park; or

(14) in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551, Government Code, and if the entity provided notice as required by that chapter.

(a-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(9), eff. September 1, 2021.

(a-2) Notwithstanding Section 46.02(a-5), a license holder commits an offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally or knowingly displays the handgun in plain view of another person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education.

(a-3) Notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder carries a handgun on the campus of a private or independent institution of higher education in this state that has established rules, regulations, or other provisions prohibiting license holders from carrying handguns pursuant to Section 411.2031(e), Government Code, or on the grounds or building on which an activity sponsored by such an institution is being conducted, or in a passenger transportation vehicle of such an institution, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06.

(a-4) Notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the

campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

(b) It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a firearm while in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) In this section:

(1) "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(2) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(3) "License holder" means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(3-a) "Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education.

(4) "Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(4-a) "School" means an accredited primary or secondary school.

(5) "Secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law, or an aircraft parking area that is used by common carriers in air transportation but not by general aviation and to which access is controlled under federal law. The term does not include a baggage claim area, a motor vehicle parking

area used by passengers, employees, or persons awaiting an arrival, or an area used by the public to pick up or drop off passengers or employees.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a member of the armed forces or national guard;

(2) a guard employed by a penal institution; or

(3) a security officer commissioned by the Texas Private Security Board if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view; or

(4) a security officer who holds a personal protection authorization under Chapter 1702, Occupations Code, provided that the officer is either:

(A) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's firearm in plain view; or

(B) not wearing the uniform of a security officer and carrying the officer's firearm in a concealed manner.

(e) It is a defense to prosecution under Subsection (a)(5) that the actor:

(1) checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area; or

(2) was authorized by a federal agency or the airport operator to possess a firearm in a secured area.

(e-1) It is a defense to prosecution under Subsection (a)(5) that the actor:

(1) possessed, at the screening checkpoint for the secured area, a handgun that the actor was licensed to carry under Subchapter H, Chapter 411, Government Code; and

(2) exited the screening checkpoint for the secured area immediately upon completion of the required screening processes and notification that the actor possessed the handgun.

(e-2) A peace officer investigating conduct that may constitute an offense under Subsection (a)(5) and that consists only of an actor's possession of a handgun that the actor is licensed to carry under Subchapter H, Chapter 411, Government Code, may not arrest the

actor for the offense unless:

(1) the officer advises the actor of the defense available under Subsection (e-1) and gives the actor an opportunity to exit the screening checkpoint for the secured area; and

(2) the actor does not immediately exit the checkpoint upon completion of the required screening processes.

(f) Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(g) Except as provided by Subsections (g-1) and (g-2), an offense under this section is a felony of the third degree.

(g-1) If the weapon that is the subject of the offense is a location-restricted knife, an offense under this section is a Class C misdemeanor, except that the offense is a felony of the third degree if the offense is committed under Subsection (a)(1).

(g-2) An offense committed under Subsection (a)(8), (a)(10), (a)(11), (a)(13), (a-2), (a-3), or (a-4) is a Class A misdemeanor.

(h) It is a defense to prosecution under Subsection (a)(4) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies, if:

(1) the actor is wearing a distinctive uniform; and

(2) the firearm or club is in plain view.

(i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:

(1) while in a vehicle being driven on a public road; or

(2) at the actor's residence or place of employment.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1983, 68th Leg., p. 2962, ch. 508, Sec. 1, eff. Aug. 29, 1983; Acts 1989, 71st Leg., ch. 749, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 203, Sec. 2.79; Acts 1991, 72nd Leg., ch. 386, Sec. 71, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 433, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 554, Sec. 50, eff. Sept. 1, 1991. Renumbered from Penal Code Sec. 46.04 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 229, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 260, Sec. 42, eff. May 30, 1995;

Acts 1995, 74th Leg., ch. 318, Sec. 17, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 790, Sec. 17, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 10.03, 31.01(70), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1043, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1221, Sec. 2, 3, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1060, Sec. 1, 2 eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1178, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.21, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 46, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 438 (S.B. 11), Sec. 3, eff. August 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 1001 (H.B. 554), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 15.003, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1049 (H.B. 1935), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1049 (H.B. 1935), Sec. 6, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 325 (H.B. 1920), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 325 (H.B. 1920), Sec. 2, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 23, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(9), eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 182 (H.B. 1760), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 182 (H.B. 1760), Sec. 2, eff. September 1, 2023.

Without reference to the amendment of this section, this section was repealed by Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(10), eff. September 1, 2021.

Sec. 46.035. UNLAWFUL CARRYING OF HANDGUN BY LICENSE HOLDER. (a) A license holder commits an offense if the license holder carries a handgun on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally displays the handgun in plain view of another person in a public place. It is an exception to the application of this subsection that the handgun was partially or wholly visible but was:

(1) carried in a holster by the license holder; or

(2) in a holster, and the handgun and the license holder were in a motor vehicle.

Added by Acts 1995, 74th Leg., ch. 229, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 10.04, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 26, 27, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.833, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 976 (H.B. 1813), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1214 (H.B. 1889), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1222 (H.B. 2300), Sec. 5, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 687 (H.B. 2664), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 72 (S.B. 299), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 47, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 48, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 438 (S.B. 11), Sec. 4, eff. August 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 438 (S.B. 11), Sec. 5, eff. August 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 593 (S.B. 273), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 34 (S.B. 1576), Sec. 32, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 15.004,

eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 15.005, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 11, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 12, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 520 (S.B. 535), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 520 (S.B. 535), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 481 (H.B. 2112), Sec. 4, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 518 (S.B. 550), Sec. 1, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(10), eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1027 (H.B. 1407), Sec. 1, eff. September 1, 2021.

Repealed by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 17.004, eff. September 1, 2023.

Sec. 46.04. UNLAWFUL POSSESSION OF FIREARM. (a) A person who has been convicted of a felony commits an offense if he possesses a firearm:

(1) after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or

(2) after the period described by Subdivision (1), at any location other than the premises at which the person lives.

(a-1) A person who is a member of a criminal street gang, as defined by Section 71.01, commits an offense if the person intentionally, knowingly, or recklessly carries on or about his or her person a handgun in a motor vehicle or watercraft.

(b) A person who has been convicted of an offense under Section 22.01, punishable as a Class A misdemeanor and involving a member of the person's family or household, commits an offense if the person

possesses a firearm before the fifth anniversary of the later of:

(1) the date of the person's release from confinement following conviction of the misdemeanor; or

(2) the date of the person's release from community supervision following conviction of the misdemeanor.

(c) A person, other than a peace officer, as defined by Section 1.07, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision, who is subject to an order issued under Section 6.504 or Chapter 85, Family Code, under Article 17.292 or Subchapter A, Chapter 7B, Code of Criminal Procedure, or by another jurisdiction as provided by Chapter 88, Family Code, commits an offense if the person possesses a firearm after receiving notice of the order and before expiration of the order.

(d) In this section, "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code.

(e) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (a-1), (b), or (c) is a Class A misdemeanor.

(f) For the purposes of this section, an offense under the laws of this state, another state, or the United States is, except as provided by Subsection (g), a felony if, at the time it is committed, the offense:

(1) is designated by a law of this state as a felony;

(2) contains all the elements of an offense designated by a law of this state as a felony; or

(3) is punishable by confinement for one year or more in a penitentiary.

(g) An offense is not considered a felony for purposes of Subsection (f) if, at the time the person possesses a firearm, the offense:

(1) is not designated by a law of this state as a felony; and

(2) does not contain all the elements of any offense designated by a law of this state as a felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 46.05 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 2001, 77th Leg., ch. 23, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg.,

ch. 836, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 11.24, eff. September 1, 2009.
Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.60, eff. January 1, 2021.
Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 24, eff. September 1, 2021.

Sec. 46.041. UNLAWFUL POSSESSION OF METAL OR BODY ARMOR BY FELON. (a) In this section, "metal or body armor" means any body covering manifestly designed, made, or adapted for the purpose of protecting a person against gunfire.
(b) A person who has been convicted of a felony commits an offense if after the conviction the person possesses metal or body armor.
(c) An offense under this section is a felony of the third degree.

Added by Acts 2001, 77th Leg., ch. 452, Sec. 1, eff. Sept. 1, 2001.

Sec. 46.05. PROHIBITED WEAPONS. (a) A person commits an offense if the person intentionally or knowingly possesses, manufactures, transports, repairs, or sells:
(1) any of the following items, unless the item is registered in the National Firearms Registration and Transfer Record maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives or otherwise not subject to that registration requirement or unless the item is classified as a curio or relic by the United States Department of Justice:
(A) an explosive weapon;
(B) a machine gun; or
(C) a short-barrel firearm;
(2) armor-piercing ammunition;
(3) a chemical dispensing device;
(4) a zip gun;
(5) a tire deflation device; or
(6) an improvised explosive device.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a correctional facility.

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 69 , Sec. 2, eff. September 1, 2015.

(d) It is an affirmative defense to prosecution under this section that the actor's conduct:

(1) was incidental to dealing with a short-barrel firearm or tire deflation device solely as an antique or curio;

(2) was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b); or

(3) was incidental to dealing with a tire deflation device solely for the purpose of making the device available to an organization, agency, or institution listed in Subsection (b).

(e) Except as otherwise provided by this subsection, an offense under this section is a felony of the third degree. An offense under Subsection (a)(5) is a state jail felony.

(f) It is a defense to prosecution under this section for the possession of a chemical dispensing device that the actor is a security officer and has received training on the use of the chemical dispensing device by a training program that is:

(1) provided by the Texas Commission on Law Enforcement; or

(2) approved for the purposes described by this subsection by the Texas Private Security Board of the Department of Public Safety.

(g) In Subsection (f), "security officer" means a commissioned security officer as defined by Section 1702.002, Occupations Code, or a noncommissioned security officer registered under Section 1702.221, Occupations Code.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 918, ch. 342, Sec. 15, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 2650, ch. 457, Sec. 2, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 4831, ch. 852, Sec. 2, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(47), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 229, Sec. 2, eff. Sept. 1, 1991; Renumbered from Penal Code Sec. 46.06 and amended by Acts 1993, 73rd

Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 2003, 78th Leg., ch. 1071, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1035 (H.B. 1132), Sec. 2.01, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 1278 (H.B. 2303), Sec. 7, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 920 (S.B. 1416), Sec. 2, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.60, eff. May 18, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 960 (H.B. 1862), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 69 (S.B. 473), Sec. 1, eff. September 1, 2015.
Acts 2015, 84th Leg., R.S., Ch. 69 (S.B. 473), Sec. 2, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 155 (H.B. 1819), Sec. 1, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 814 (H.B. 913), Sec. 2, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 2, eff. September 1, 2019.
Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 13.001, eff. September 1, 2019.
Acts 2021, 87th Leg., R.S., Ch. 642 (H.B. 957), Sec. 2, eff. September 1, 2021.

Sec. 46.06. UNLAWFUL TRANSFER OF CERTAIN WEAPONS. (a) A person commits an offense if the person:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years of age any firearm, club, or location-restricted knife;

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated;

(4) knowingly sells a firearm or ammunition for a firearm

to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony;

(5) sells, rents, leases, loans, or gives a handgun to any person knowing that an active protective order is directed to the person to whom the handgun is to be delivered;

(6) knowingly purchases, rents, leases, or receives as a loan or gift from another a handgun while an active protective order is directed to the actor; or

(7) while prohibited from possessing a firearm under state or federal law, knowingly makes a material false statement on a form that is:

(A) required by state or federal law for the purchase, sale, or other transfer of a firearm; and

(B) submitted to a firearms dealer licensed under 18 U.S.C. Section 923.

(b) In this section:

(1) "Intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(2) "Active protective order" means a protective order issued under Title 4, Family Code, that is in effect. The term does not include a temporary protective order issued before the court holds a hearing on the matter.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor, except that:

(1) an offense under Subsection (a)(2) is a state jail felony if the weapon that is the subject of the offense is a handgun; and

(2) an offense under Subsection (a)(7) is a state jail

felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1985, 69th Leg., ch. 686, Sec. 1, eff. Sept. 1, 1985. Renumbered from Penal Code Sec. 46.07 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 324, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1193, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1304, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 15.02(f), eff. Sept. 1, 1999.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1049 (H.B. 1935), Sec. 7, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 173 (S.B. 162), Sec. 1, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 17.005, eff. September 1, 2023.

Sec. 46.07. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in another state. This authorization is enacted in conformance with 18 U.S.C. Section 922(b)(3)(A).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 46.08 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 280 (S.B. 1188), Sec. 1, eff. May 30, 2009.

Sec. 46.08. HOAX BOMBS. (a) A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb with intent to use the hoax bomb to:

(1) make another believe that the hoax bomb is an explosive or incendiary device; or

(2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1983, 68th Leg., p. 4831, ch. 852, Sec. 3, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 46.09 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.09. COMPONENTS OF EXPLOSIVES. (a) A person commits an offense if the person knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal endeavor.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1983, 68th Leg., p. 4832, ch. 852, Sec. 4, eff. Sept. 1, 1983. Renumbered from Penal Code Sec. 46.10 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.10. DEADLY WEAPON IN PENAL INSTITUTION. (a) A person commits an offense if, while confined in a penal institution, he intentionally, knowingly, or recklessly:

(1) carries on or about his person a deadly weapon; or

(2) possesses or conceals a deadly weapon in the penal institution.

(b) It is an affirmative defense to prosecution under this section that at the time of the offense the actor was engaged in conduct authorized by an employee of the penal institution.

(c) A person who is subject to prosecution under both this section and another section under this chapter may be prosecuted under either section.

(d) An offense under this section is a felony of the third degree.

Added by Acts 1985, 69th Leg., ch. 46, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 714, Sec. 1, eff. Sept. 1, 1987. Renumbered from Penal Code Sec. 46.11 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 46.11. PENALTY IF OFFENSE COMMITTED WITHIN WEAPON-FREE

SCHOOL ZONE. (a) Except as provided by Subsection (b), the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense in a place that the actor knew was:

(1) within 300 feet of the premises of a school; or

(2) on premises where:

(A) an official school function is taking place; or

(B) an event sponsored or sanctioned by the University Interscholastic League is taking place.

(b) This section does not apply to an offense under Section 46.03(a)(1).

(c) In this section:

(1) "Premises" has the meaning assigned by Section 481.134, Health and Safety Code.

(2) "School" means a private or public elementary or secondary school.

Added by Acts 1995, 74th Leg., ch. 320, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 1063, Sec. 10, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 20.002, eff. September 1, 2011.

Sec. 46.12. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution of an offense for which punishment is increased under Section 46.11, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of weapon-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.11; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 1995, 74th Leg., ch. 320, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 16.004, eff. September 1, 2005.

Sec. 46.13. MAKING A FIREARM ACCESSIBLE TO A CHILD. (a) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Readily dischargeable firearm" means a firearm that is loaded with ammunition, whether or not a round is in the chamber.

(3) "Secure" means to take steps that a reasonable person would take to prevent the access to a readily dischargeable firearm by a child, including but not limited to placing a firearm in a locked container or temporarily rendering the firearm inoperable by a trigger lock or other means.

(b) A person commits an offense if a child gains access to a readily dischargeable firearm and the person with criminal negligence:

(1) failed to secure the firearm; or

(2) left the firearm in a place to which the person knew or should have known the child would gain access.

(c) It is an affirmative defense to prosecution under this section that the child's access to the firearm:

(1) was supervised by a person older than 18 years of age and was for hunting, sporting, or other lawful purposes;

(2) consisted of lawful defense by the child of people or property;

(3) was gained by entering property in violation of this

code; or

(4) occurred during a time when the actor was engaged in an agricultural enterprise.

(d) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(e) An offense under this section is a Class A misdemeanor if the child discharges the firearm and causes death or serious bodily injury to himself or another person.

(f) A peace officer or other person may not arrest the actor before the seventh day after the date on which the offense is committed if:

(1) the actor is a member of the family, as defined by Section 71.003, Family Code, of the child who discharged the firearm; and

(2) the child in discharging the firearm caused the death of or serious injury to the child.

(g) A dealer of firearms shall post in a conspicuous position on the premises where the dealer conducts business a sign that contains the following warning in block letters not less than one inch in height:

"IT IS UNLAWFUL TO STORE, TRANSPORT, OR ABANDON AN UNSECURED FIREARM IN A PLACE WHERE CHILDREN ARE LIKELY TO BE AND CAN OBTAIN ACCESS TO THE FIREARM."

Added by Acts 1995, 74th Leg., ch. 83, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 15.02(g), eff. Sept. 1, 1999.

Sec. 46.14. FIREARM SMUGGLING. (a) A person commits an offense if the person knowingly engages in the business of transporting or transferring a firearm that the person knows was acquired in violation of the laws of any state or of the United States. For purposes of this subsection, a person is considered to engage in the business of transporting or transferring a firearm if the person engages in that conduct:

(1) on more than one occasion; or

(2) for profit or any other form of remuneration.

(b) An offense under this section is a felony of the third degree, unless it is shown on the trial of the offense that the

offense was committed with respect to three or more firearms in a single criminal episode, in which event the offense is a felony of the second degree.

(c) This section does not apply to a peace officer who is engaged in the actual discharge of an official duty.

(d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2009, 81st Leg., R.S., Ch. 153 (S.B. 2225), Sec. 1, eff. September 1, 2009.

Sec. 46.15. NONAPPLICABILITY.

Text of subsection effective until January 1, 2025

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active or retired judicial officer as defined by

Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or other qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C, who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is an honorably retired peace officer or other qualified retired law enforcement officer;

(6) the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer;

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code;

(10) a person who is volunteer emergency services personnel if the person is:

(A) carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code; and

(B) engaged in providing emergency services; or

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 501 (H.B. 2291), Sec. 1

(11) a person who:

(A) retired after serving as a judge or justice described by Section 411.201(a)(1), Government Code; and

(B) is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 1077 (S.B. 599), Sec. 4

(11) a district or county clerk who is carrying a handgun

the clerk is licensed to carry under Subchapter H, Chapter 411, Government Code.

Text of subsection effective on January 1, 2025

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2A.002, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active or retired judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or other qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C, who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is an honorably retired peace officer or other qualified retired law enforcement officer;

(6) the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under

Subchapter H, Chapter 411, Government Code;

(7) an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer;

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code;

(10) a person who is volunteer emergency services personnel if the person is:

(A) carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code; and

(B) engaged in providing emergency services; or

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 501 (H.B. 2291), Sec. 1

(11) a person who:

(A) retired after serving as a judge or justice described by Section 411.201(a)(1), Government Code; and

(B) is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 1077 (S.B. 599), Sec. 4

(11) a district or county clerk who is carrying a handgun the clerk is licensed to carry under Subchapter H, Chapter 411, Government Code.

(b) Sections 46.02, 46.03(a)(14), and 46.04(a-1) do not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 437.001, Government Code, or as a guard employed by a penal institution;

(2) is traveling;

(3) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, motor vehicle, or watercraft, if the weapon is a type

commonly used in the activity;

(4) holds a security officer commission issued by the Texas Private Security Board, if the person is engaged in the performance of the person's duties as an officer commissioned under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment and is wearing the officer's uniform and carrying the officer's weapon in plain view;

(5) acts as a personal protection officer and carries the person's security officer commission and personal protection officer authorization, if the person:

(A) is engaged in the performance of the person's duties as a personal protection officer under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment; and

(B) is either:

(i) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's weapon in plain view; or

(ii) not wearing the uniform of a security officer and carrying the officer's weapon in a concealed manner;

(6) is carrying:

(A) a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; and

(B) a handgun:

(i) in a concealed manner; or

(ii) in a holster;

(7) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises; or

(8) is a student in a law enforcement class engaging in an activity required as part of the class, if the weapon is a type commonly used in the activity and the person is:

(A) on the immediate premises where the activity is conducted; or

(B) en route between those premises and the person's residence and is carrying the weapon unloaded.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 4, eff. September 1, 2019.

(d) The provisions of Section 46.02 prohibiting the carrying of

a firearm do not apply to a public security officer employed by the adjutant general under Section 437.053, Government Code, in performance of official duties or while traveling to or from a place of duty.

(e) Section 46.02(a-4) does not apply to an individual carrying a location-restricted knife used in a historical demonstration or in a ceremony in which the knife is significant to the performance of the ceremony.

(f) Section 46.03(a)(6) does not apply to a person who possesses a firearm or club while in the actual discharge of official duties as:

(1) a member of the armed forces or state military forces, as defined by Section 437.001, Government Code; or

(2) an employee of a penal institution.

(g) The provisions of Section 46.03 prohibiting the possession or carrying of a club do not apply to an animal control officer who holds a certificate issued under Section 829.006, Health and Safety Code, and who possesses or carries an instrument used specifically for deterring the bite of an animal while the officer is in the performance of official duties under the Health and Safety Code or is traveling to or from a place of duty.

(h) The provisions of Section 46.03 prohibiting the possession or carrying of a club do not apply to a code enforcement officer who:

(1) holds a certificate of registration issued under Chapter 1952, Occupations Code; and

(2) possesses or carries an instrument used specifically for deterring an animal bite while the officer is:

(A) performing official duties; or

(B) traveling to or from a place of duty.

(i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(2), eff. September 1, 2007.

(j) The provisions of Sections 46.02 and 46.03(a)(7), (a-2), (a-3), and (a-4) do not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of the Texas Alcoholic Beverage Commission.

(k) Section 46.02 does not apply to a person who carries a handgun if:

(1) the person carries the handgun while:

(A) evacuating from an area following the declaration of a state of disaster under Section 418.014, Government Code, or a

local state of disaster under Section 418.108, Government Code, with respect to that area; or

(B) reentering that area following the person's evacuation;

(2) not more than 168 hours have elapsed since the state of disaster or local state of disaster was declared, or more than 168 hours have elapsed since the time the declaration was made and the governor has extended the period during which a person may carry a handgun under this subsection; and

(3) the person is not prohibited by state or federal law from possessing a firearm.

(l) Sections 46.02 and 46.03(a)(1), (a)(2), (a)(3), and (a)(4) do not apply to a person who carries a handgun if:

(1) the person carries the handgun on the premises, as defined by the statute providing the applicable offense, of a location operating as an emergency shelter during a state of disaster declared under Section 418.014, Government Code, or a local state of disaster declared under Section 418.108, Government Code;

(2) the owner, controller, or operator of the premises or a person acting with the apparent authority of the owner, controller, or operator, authorized the carrying of the handgun;

(3) the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises that govern the carrying of a handgun on the premises; and

(4) the person is not prohibited by state or federal law from possessing a firearm.

(m) It is a defense to prosecution under Section 46.03 that the actor:

(1) carries a handgun on a premises or other property on which the carrying of a weapon is prohibited under that section;

(2) personally received from the owner of the property, or from another person with apparent authority to act for the owner, notice that carrying a firearm or other weapon on the premises or other property, as applicable, was prohibited; and

(3) promptly departed from the premises or other property.

(n) The defense provided by Subsection (m) does not apply if:

(1) a sign described by Subsection (o) was posted prominently at each entrance to the premises or other property, as applicable; or

(2) at the time of the offense, the actor knew that

carrying a firearm or other weapon on the premises or other property was prohibited.

(o) A person may provide notice that firearms and other weapons are prohibited under Section 46.03 on the premises or other property, as applicable, by posting a sign at each entrance to the premises or other property that:

(1) includes language that is identical to or substantially similar to the following: "Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property";

(2) includes the language described by Subdivision (1) in both English and Spanish;

(3) appears in contrasting colors with block letters at least one inch in height; and

(4) is displayed in a conspicuous manner clearly visible to the public.

(p) Sections 46.03(a)(7), (11), and (13) do not apply if the actor:

(1) carries a handgun on the premises or other property, as applicable;

(2) holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(3) was not given effective notice under Section 30.06 or 30.07 of this code or Section 411.204, Government Code, as applicable.

(q) Section 46.03(a)(8) does not apply if the actor:

(1) carries a handgun on a premises where a collegiate sporting event is taking place;

(2) holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(3) was not given effective notice under Section 30.06 or 30.07 of this code, as applicable.

(r) Sections 46.02 and 46.03 do not apply to a first responder who:

(1) was carrying a handgun in a concealed manner or in a shoulder or belt holster;

(2) holds an unexpired certificate of completion under Section 411.1883, Government Code, at the time of engaging in the applicable conduct;

(3) was engaged in the actual discharge of the first

responder's duties while carrying the handgun; and

(4) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 18, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1221, Sec. 4, eff. June 20, 1997; Acts 1997, 75th Leg., ch. 1261, Sec. 28, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 9.25, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1445, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1060, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 325, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 421, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 795, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 288 (H.B. 823), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(78), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 976 (H.B. 1813), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1093 (H.B. 2110), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1093 (H.B. 2110), Sec. 4, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179 (S.B. 578), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1179 (S.B. 578), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 647 (H.B. 964), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. 1815), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. 1815), Sec. 3(1), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 693 (H.B. 1815), Sec. 3(2), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(62), eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1048 (H.B. 2101), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1214 (H.B. 1889), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1222 (H.B. 2300), Sec. 6, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 19.004, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 299 (H.B. 405), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 794 (S.B. 1237), Sec. 4, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 4B.22, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 679 (H.B. 25), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 13.02, eff. September 28, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1080 (H.B. 3370), Sec. 4, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1302 (H.B. 3142), Sec. 13, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 49, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 1049 (H.B. 1935), Sec. 8, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1143 (H.B. 435), Sec. 13, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 4, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1126 (H.B. 2584), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1234 (H.B. 1552), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1281 (H.B. 1177), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 481 (H.B. 2112), Sec. 5, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 518 (S.B. 550), Sec. 5, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 25, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 16.005, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 1026 (H.B. 1069), Sec. 8, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 501 (H.B. 2291), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.157, eff. January 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(34), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.002(20), eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 1077 (S.B. 599), Sec. 4, eff. September 1, 2023.

CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. In this chapter:

(1) "Bet" means an agreement to win or lose something of value solely or partially by chance. A bet does not include:

(A) contracts of indemnity or guaranty, or life, health, property, or accident insurance;

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest; or

(C) an offer of merchandise, with a value not greater than $25, made by the proprietor of a bona fide carnival contest conducted at a carnival sponsored by a nonprofit religious, fraternal, school, law enforcement, youth, agricultural, or civic group, including any nonprofit agricultural or civic group incorporated by the state before 1955, if the person to receive the merchandise from the proprietor is the person who performs the carnival contest.

(2) "Bookmaking" means:

(A) to receive and record or to forward more than five

bets or offers to bet in a period of 24 hours;

(B) to receive and record or to forward bets or offers to bet totaling more than $1,000 in a period of 24 hours; or

(C) a scheme by three or more persons to receive, record, or forward a bet or an offer to bet.

(3) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, bookmaking, or the conducting of a lottery or the playing of gambling devices.

(4) "Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or $5, whichever is less.

(5) "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror rings, electronic sensors, shaved cards, marked cards, and any other equipment altered or designed to enhance the actor's chances of winning.

(6) "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking,

wagering pools, lotteries, numbers, policy, or similar games.

(7) "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(8) "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

(9) "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 313, Sec. 1, 2, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 396, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 774, Sec. 1, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 19, eff. Sept. 1, 1995.

Sec. 47.02. GAMBLING. (a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

(1) was permitted under Chapter 2001, Occupations Code;

(2) was permitted under Chapter 2002, Occupations Code;

(3) was permitted under Chapter 2004, Occupations Code;

(4) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Chapter 466, Government Code);

(5) was permitted under Subtitle A-1, Title 13, Occupations Code (Texas Racing Act); or

(6) consisted entirely of participation in a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

(d) An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under this section that a person played for something of value other than money using an electronic, electromechanical, or mechanical contrivance excluded from the definition of "gambling device" under Section 47.01(4)(B).

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., 1st C.S., p. 101, ch. 11, Sec. 43, eff. Nov. 10, 1981; Acts 1989, 71st Leg., ch. 957, Sec. 2, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 3; Acts 1993, 73rd Leg., ch. 107, Sec. 4.04, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 774, Sec. 2, eff. Aug. 30, 1993. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 14.53, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 20, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 931, Sec. 79, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 1256, Sec. 124, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.834, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 2, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.08, eff. April 1, 2019.

Sec. 47.03. GAMBLING PROMOTION. (a) A person commits an offense if he intentionally or knowingly does any of the following acts:

(1) operates or participates in the earnings of a gambling place;

(2) engages in bookmaking;

(3) for gain, becomes a custodian of anything of value bet or offered to be bet;

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1987, 70th Leg., ch. 313, Sec. 3, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.04. KEEPING A GAMBLING PLACE. (a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

(1) the gambling occurred in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 667, ch. 251, Sec. 1, eff. Aug. 29, 1977. Acts 1989, 71st Leg., ch. 1030, Sec. 1, eff. Sept. 1, 1989. Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. (a) A person commits an offense if, with the intent to further gambling, he

knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) It is an exception to the application of Subsection (a) that the information communicated is intended for use in placing a lawful wager under Chapter 2027, Occupations Code, and is not communicated in violation of Section 2033.013, Occupations Code.

(c) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.09, eff. April 1, 2019.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE, EQUIPMENT, OR PARAPHERNALIA. (a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

(c) A person commits an offense if, with the intent to further gambling, the person knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

(d) It is a defense to prosecution under Subsections (a) and (c) that:

(1) the device, equipment, or paraphernalia is used for or is intended for use in gambling that is to occur entirely in a private place;

(2) a person involved in the gambling does not receive any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the chance

of winning is the same for all participants.

(e) An offense under this section is a Class A misdemeanor.

(f) It is a defense to prosecution under Subsection (a) or (c) that the person owned, manufactured, transferred, or possessed the gambling device, equipment, or paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the device, equipment, or paraphernalia was legal.

(g) A district or county attorney is not required to have a search warrant or subpoena to inspect a gambling device or gambling equipment or paraphernalia on an ocean-going vessel that enters the territorial waters of this state to call at a port in this state.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1977, 65th Leg., p. 668, ch. 251, Sec. 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1865, ch. 741, Sec. 1, eff. Aug. 29, 1977; Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(48), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 458, Sec. 1, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 1030, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 44, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 315, Sec. 1, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 4; Acts 1993, 73rd Leg., ch. 107, Sec. 4.05, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 284, Sec. 30, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.07. EVIDENCE. In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 47.08 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.08. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 47.09 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.09. OTHER DEFENSES. (a) It is a defense to prosecution under this chapter that the conduct:

(1) was authorized under:

(A) Chapter 2001, Occupations Code;

(B) Chapter 2002, Occupations Code;

(C) Chapter 2004, Occupations Code;

(D) Subtitle A-1, Title 13, Occupations Code (Texas Racing Act); or

(E) Chapter 280, Finance Code;

(2) consisted entirely of participation in the state lottery authorized by Chapter 466, Government Code; or

(3) was a necessary incident to the operation of the state lottery and was directly or indirectly authorized by:

(A) Chapter 466, Government Code;

(B) the lottery division of the Texas Lottery Commission;

(C) the Texas Lottery Commission; or

(D) the director of the lottery division of the Texas Lottery Commission.

(b) It is an affirmative defense to prosecution under Sections 47.04, 47.06(a), and 47.06(c) that the gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device, equipment, or paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) at all times while the vessel is in the territorial waters of this state all devices, equipment, or paraphernalia are disabled, electronically or by another method, from a remote and secured area of the vessel in a manner that allows only the master or crew of the vessel to remove any disabling device;

(3) at all times while the vessel is in the territorial waters of this state any disabling device is not removed except for the purposes of inspecting or repairing the device, equipment, or paraphernalia; and

(4) the device, equipment, or paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.54, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 111, Sec. 1, eff. May 16, 1997; Acts 1997, 75th Leg., ch. 1035, Sec. 55, eff. June 19, 1997; Acts 1999, 76th Leg., ch. 844, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.835, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 47 (H.B. 975), Sec. 3, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 963 (S.B. 1969), Sec. 2.10, eff. April 1, 2019.

Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 5, eff. November 7, 2017.

Sec. 47.10. AMERICAN DOCUMENTATION OF VESSEL REQUIRED. If 18 U.S.C. Section 1082 is repealed, the affirmative defenses provided by Section 47.09(b) apply only if the vessel is documented under the laws of the United States.

Added by Acts 1989, 71st Leg., ch. 1030, Sec. 4, eff. Sept. 1, 1989.

Renumbered from Penal Code Sec. 47.12 by Acts 1990, 71st Leg., 6th C.S., ch. 12, Sec. 2(27), eff. Sept. 6, 1990. Renumbered from Penal Code Sec. 47.13 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 47.11. DEPOSITS IN CERTAIN ACCOUNTS NOT CONSIDERATION. For purposes of this chapter, opening or making a deposit in a savings account or other savings program subject to a savings promotion raffle under Chapter 280, Finance Code, does not constitute consideration.

Added by Acts 2017, 85th Leg., R.S., Ch. 978 (H.B. 471), Sec. 6, eff. November 7, 2017.

CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

Sec. 48.01. SMOKING TOBACCO. (a) In this section, "e-cigarette" has the meaning assigned by Section 161.081, Health and Safety Code.

(a-1) A person commits an offense if the person is in possession of a burning tobacco product, smokes tobacco, or operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, intrastate bus, plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance or public place and that an offense is punishable by a fine not to exceed $500.

(c) All conveyances and public places set out in Subsection (a-1) shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a-1) if the person is in possession of the burning tobacco product, smokes tobacco, or operates the e-cigarette exclusively within an area designated for smoking tobacco or operating an e-cigarette or as a

participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco or operating an e-cigarette on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

Added by Acts 1975, 64th Leg., p. 744, ch. 290, Sec. 1, eff. Sept. 1, 1975. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1997, 75th Leg., ch. 165, Sec. 30.242, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 39, eff. October 1, 2015.

Sec. 48.015. PROHIBITIONS RELATING TO CERTAIN CIGARETTES. (a) A person may not acquire, hold, own, possess, or transport for sale or distribution in this state or import or cause to be imported into this state for sale or distribution in this state:

(1) cigarettes that do not comply with all applicable requirements imposed by or under federal law and implementing regulations; or

(2) cigarettes to which stamps may not be affixed under Section 154.0415, Tax Code, other than cigarettes lawfully imported or brought into the state for personal use and cigarettes lawfully sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with 19 U.S.C. Section 1555(b), as amended.

(b) A person who commits an act prohibited by Subsection (a), knowing or having reason to know that the person is doing so, is guilty of a Class A misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1104, Sec. 6, eff. Sept. 1, 2001.

Sec. 48.02. PROHIBITION OF THE PURCHASE AND SALE OF HUMAN ORGANS. (a) In this section, "human organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, or any other human

organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents. The term does not include human fetal tissue as defined by Section 48.03.

(b) A person commits an offense if he or she knowingly or intentionally offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human organ for valuable consideration.

(c) It is an exception to the application of this section that the valuable consideration is: (1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services; (2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the organ; or (3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(d) A violation of this section is a Class A misdemeanor.

Added by Acts 1985, 69th Leg., ch. 40, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 16, eff. September 1, 2017.

Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL TISSUE. (a) In this section, "human fetal tissue" has the meaning assigned by Section 173.001, Health and Safety Code.

(b) A person commits an offense if the person knowingly offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human fetal tissue for economic benefit.

(c) An offense under this section is a state jail felony.

(d) It is a defense to prosecution under this section that the actor:

(1) is an employee of or under contract with an accredited public or private institution of higher education; and

(2) acquires, receives, or transfers human fetal tissue solely for the purpose of fulfilling a donation authorized by Section 173.005, Health and Safety Code.

(e) This section does not apply to:

(1) human fetal tissue acquired, received, or transferred solely for diagnostic or pathological testing;

(2) human fetal tissue acquired, received, or transferred solely for the purposes of a criminal investigation;

(3) human fetal tissue acquired, received, or transferred solely for the purpose of disposing of the tissue in accordance with state law or rules applicable to the disposition of human fetal tissue remains;

(4) human fetal tissue or human tissue acquired during pregnancy or at delivery of a child, provided the tissue is acquired by an accredited public or private institution of higher education for use in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research; or

(5) cell lines derived from human fetal tissue or human tissue existing on September 1, 2017, that are used by an accredited public or private institution of higher education in research approved by an institutional review board or another appropriate board, committee, or body charged with oversight applicable to the research.

(f) With the consent of the appropriate local county or district attorney, the attorney general has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 441 (S.B. 8), Sec. 17, eff. September 1, 2017.

Sec. 48.04. PROHIBITION ON PURCHASE AND SALE OF ADULT STEM CELLS FOR CERTAIN INVESTIGATIONAL TREATMENTS. (a) In this section:

(1) "Adult stem cell" means an undifferentiated cell that is:

(A) found in differentiated tissue; and

(B) able to renew itself and differentiate to yield all or nearly all of the specialized cell types of the tissue from which the cell originated.

(2) "Investigational stem cell treatment" means an adult stem cell treatment that:

(A) is under investigation in a clinical trial and being administered to human participants in that trial; and

(B) has not yet been approved for general use by the United States Food and Drug Administration.

(b) A person commits an offense if the person knowingly offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any adult stem cells for valuable consideration for use in an investigational stem cell treatment.

(c) It is an exception to the application of this section that the valuable consideration is:

(1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services;

(2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the investigational stem cell treatment; or

(3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of adult stem cells in connection with the donation of the adult stem cells.

(d) It is an exception to the application of this section that the actor engaged in conduct authorized under Chapter 162, Health and Safety Code.

(e) A violation of this section is a Class A misdemeanor.

Added by Acts 2017, 85th Leg., R.S., Ch. 697 (H.B. 810), Sec. 4, eff. September 1, 2017.
Redesignated from Penal Code, Section 48.03 by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 21.001(41), eff. September 1, 2019.

Sec. 48.05. PROHIBITED CAMPING. (a) In this section:

(1) "Camp" means to reside temporarily in a place, with shelter.

(2) "Shelter" includes a tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of temporary, semipermanent, or permanent shelter, other than clothing or any handheld device, designed to protect a person from weather conditions that threaten personal health and safety.

(b) A person commits an offense if the person intentionally or knowingly camps in a public place without the effective consent of

the officer or agency having the legal duty or authority to manage the public place.

(c) The actor's intent or knowledge may be established through evidence of activities associated with sustaining a living accommodation that are conducted in a public place, including:

(1) cooking;

(2) making a fire;

(3) storing personal belongings for an extended period;

(4) digging; or

(5) sleeping.

(d) Consent given by an officer or agency of a political subdivision is not effective for purposes of Subsection (b), unless given to authorize the person to camp for:

(1) recreational purposes;

(2) purposes of sheltering homeless individuals, if the property on which the camping occurs is subject to a plan approved under Subchapter PP, Chapter 2306, Government Code, and the camping occurs in a manner that complies with the plan;

(3) purposes permitted by a beach access plan that has been approved under Section 61.015, Natural Resources Code, and the camping occurs in a manner that complies with the plan; or

(4) purposes related to providing emergency shelter during a disaster declared under Section 418.014, Government Code, or a local disaster declared under Section 418.108 of that code.

(e) An offense under this section is a Class C misdemeanor.

(f) This section does not preempt an ordinance, order, rule, or other regulation adopted by a state agency or political subdivision relating to prohibiting camping in a public place or affect the authority of a state agency or political subdivision to adopt or enforce an ordinance, order, rule, or other regulation relating to prohibiting camping in a public place if the ordinance, order, rule, or other regulation:

(1) is compatible with and equal to or more stringent than the offense prescribed by this section; or

(2) relates to an issue not specifically addressed by this section.

(g) Except as provided by Subsection (h), before or at the time a peace officer issues a citation to a person for an offense under this section, the peace officer must make a reasonable effort to:

(1) advise the person of an alternative place at which the

person may lawfully camp; and

(2) contact, if reasonable and appropriate, an appropriate official of the political subdivision in which the public place is located, or an appropriate nonprofit organization operating within that political subdivision, and request the official or organization to provide the person with:

(A) information regarding the prevention of human trafficking; or

(B) any other services that would reduce the likelihood of the person suspected of committing the offense continuing to camp in the public place.

(h) Subsection (g) does not apply if the peace officer determines there is an imminent threat to the health or safety of any person to the extent that compliance with that subsection is impracticable.

(i) If the person is arrested or detained solely for an offense under this section, a peace officer enforcing this section shall ensure that all of the person's personal property not designated as contraband under other law is preserved by:

(1) permitting the person to remove all the property from the public place at the time of the person's departure; or

(2) taking custody of the property and allowing the person to retrieve the property after the person is released from custody.

(j) A fee may not be charged for the storage or release of property under Subsection (i)(2).

Added by Acts 2021, 87th Leg., R.S., Ch. 677 (H.B. 1925), Sec. 1, eff. September 1, 2021.

CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES

Sec. 49.01. DEFINITIONS. In this chapter:

(1) "Alcohol concentration" means the number of grams of alcohol per:

(A) 210 liters of breath;

(B) 100 milliliters of blood; or

(C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled

substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.08 or more.

(3) "Motor vehicle" has the meaning assigned by Section 32.34(a).

(4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

(5) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

(6) "Mobile amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 234, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1364, Sec. 8, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1420, Sec. 14.707, eff. Sept. 1, 2001.

Sec. 49.02. PUBLIC INTOXICATION. (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(a-1) For the purposes of this section, a premises licensed or permitted under the Alcoholic Beverage Code is a public place.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.

(d) An offense under this section is not a lesser included offense under Section 49.04.

(e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1997, 75th Leg., ch. 1013, Sec. 12, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 68 (S.B. 904), Sec. 25, eff. September 1, 2007.

Sec. 49.031. POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. (a) In this section:

(1) "Open container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed.

(2) "Passenger area of a motor vehicle" means the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:

(A) a glove compartment or similar storage container that is locked;

(B) the trunk of a vehicle; or

(C) the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.

(3) "Public highway" means the entire width between and immediately adjacent to the boundary lines of any public road, street, highway, interstate, or other publicly maintained way if any part is open for public use for the purpose of motor vehicle travel. The term includes the right-of-way of a public highway.

(b) A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession by a person of one or more open containers in a single criminal episode is a single offense.

(c) It is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger in:

(1) the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxicab, or limousine; or

(2) the living quarters of a motorized house coach or motorized house trailer, including a self-contained camper, a motor home, or a recreational vehicle.

(d) An offense under this section is a Class C misdemeanor.

(e) A peace officer charging a person with an offense under

this section, instead of taking the person before a magistrate, shall issue to the person a written citation and notice to appear that contains the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. If the person makes a written promise to appear before the magistrate by signing in duplicate the citation and notice to appear issued by the officer, the officer shall release the person.

Added by Acts 2001, 77th Leg., ch. 969, Sec. 2, eff. Sept. 1, 2001.

Sec. 49.04. DRIVING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.

(b) Except as provided by Subsections (c) and (d) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

(d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.55, eff. Sept. 1, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 960 (H.B. 1199), Sec. 2, eff. September 1, 2011.

Sec. 49.045. DRIVING WHILE INTOXICATED WITH CHILD PASSENGER. (a) A person commits an offense if:

(1) the person is intoxicated while operating a motor vehicle in a public place; and

(2) the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.

(b) An offense under this section is a state jail felony.

Added by Acts 2003, 78th Leg., ch. 787, Sec. 1, eff. Sept. 1, 2003.

Sec. 49.05. FLYING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating an aircraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 49.06. BOATING WHILE INTOXICATED. (a) A person commits an offense if the person is intoxicated while operating a watercraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 49.061. BOATING WHILE INTOXICATED WITH CHILD PASSENGER. (a) A person commits an offense if:

(1) the person is intoxicated while operating a watercraft; and

(2) the watercraft being operated by the person is occupied by a passenger who is younger than 15 years of age.

(b) An offense under this section is a state jail felony.

Added by Acts 2023, 88th Leg., R.S., Ch. 813 (H.B. 1163), Sec. 1, eff. September 1, 2023.

Sec. 49.065. ASSEMBLING OR OPERATING AN AMUSEMENT RIDE WHILE INTOXICATED. (a) A person commits an offense if the person is

intoxicated while operating an amusement ride or while assembling a mobile amusement ride.

(b) Except as provided by Subsection (c) and Section 49.09, an offense under this section is a Class B misdemeanor with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the amusement ride or assembling the mobile amusement ride had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor with a minimum term of confinement of six days.

Added by Acts 1999, 76th Leg., ch. 1364, Sec. 9, eff. Jan. 1, 2000.

Sec. 49.07. INTOXICATION ASSAULT. (a) A person commits an offense if the person, by accident or mistake:

(1) while operating an aircraft, watercraft, or amusement ride while intoxicated, or while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another; or

(2) as a result of assembling a mobile amusement ride while intoxicated causes serious bodily injury to another.

(b) In this section, "serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) Except as provided by Section 49.09, an offense under this section is a felony of the third degree.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 10, eff. Jan. 1, 2000.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. 1212), Sec. 2, eff. September 1, 2007.

Sec. 49.08. INTOXICATION MANSLAUGHTER. (a) A person commits an offense if the person:

(1) operates a motor vehicle in a public place, operates an

aircraft, a watercraft, or an amusement ride, or assembles a mobile amusement ride; and

(2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

(b) Except as provided by Section 49.09, an offense under this section is a felony of the second degree.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 11, eff. Jan. 1, 2000.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. 1212), Sec. 3, eff. September 1, 2007.

Sec. 49.09. ENHANCED OFFENSES AND PENALTIES. (a) Except as provided by Subsection (b), an offense under Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has previously been convicted one time of an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated.

(b) An offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted:

(1) one time of an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or

(2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.

(b-1) An offense under Section 49.07 is:

(1) a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to a firefighter or emergency medical services personnel while in the

actual discharge of an official duty; or

(2) a felony of the first degree if it is shown on the trial of the offense that the person caused serious bodily injury to a peace officer or judge while the officer or judge was in the actual discharge of an official duty.

(b-2) An offense under Section 49.08 is a felony of the first degree if it is shown on the trial of the offense that the person caused the death of a person described by Subsection (b-1).

(b-3) For the purposes of Subsection (b-1):

(1) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.

(2) "Firefighter" means:

(A) an individual employed by this state or by a political or legal subdivision of this state who is subject to certification by the Texas Commission on Fire Protection; or

(B) a member of an organized volunteer fire-fighting unit that:

(i) renders fire-fighting services without remuneration; and

(ii) conducts a minimum of two drills each month, each at least two hours long.

(b-4) An offense under Section 49.07 is a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state.

(c) For the purposes of this section:

(1) "Offense relating to the operating of a motor vehicle while intoxicated" means:

(A) an offense under Section 49.04 or 49.045;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a motor vehicle;

(C) an offense under Article 6701l-1, Revised Statutes, as that law existed before September 1, 1994;

(D) an offense under Article 6701l-2, Revised Statutes, as that law existed before January 1, 1984;

(E) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a motor vehicle; or

(F) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was an aircraft;

(C) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was an aircraft; or

(E) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06 or 49.061;

(B) an offense under Section 49.07 or 49.08, if the vehicle operated was a watercraft;

(C) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994;

(D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a watercraft; or

(E) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(4) "Offense of operating or assembling an amusement ride while intoxicated" means:

(A) an offense under Section 49.065;

(B) an offense under Section 49.07 or 49.08, if the offense involved the operation or assembly of an amusement ride; or

(C) an offense under the law of another state that prohibits the operation of an amusement ride while intoxicated or the assembly of a mobile amusement ride while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) Repealed by Acts 2005, 79th Leg., Ch. 996, Sec. 3, eff. September 1, 2005.

(f) Repealed by Acts 2005, 79th Leg., Ch. 996, Sec. 3, eff. September 1, 2005.

(g) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D. For purposes of this section, a person is considered to have been convicted of an offense under Section 49.04 or 49.06 if the person was placed on deferred adjudication community supervision for the offense under Article 42A.102, Code of Criminal Procedure.

(h) This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. The court shall require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Subchapter I, Chapter 42A, Code of Criminal Procedure, this subsection controls.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.56, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 318, Sec. 21, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1364, Sec. 12, 13, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 648, Sec. 1, 2, eff, Sept. 1, 2001; Acts 2001, 77th Leg., ch. 969, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 787, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(117), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 996 (H.B. 51), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 996 (H.B. 51), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 662 (H.B. 1212), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 960 (H.B. 1199), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.84, eff. January 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1067 (H.B. 2246), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 23.010, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 440 (H.B. 2908), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1298 (H.B. 3582), Sec. 7, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 813 (H.B. 1163), Sec. 2, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 813 (H.B. 1163), Sec. 3, eff. September 1, 2023.

Sec. 49.10. NO DEFENSE. In a prosecution under Section 49.031, 49.04, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.

Added by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1,

1994. Amended by Acts 1999, 76th Leg., ch. 1364, Sec. 14, eff. Jan. 1, 2000; Acts 2003, 78th Leg., ch. 787, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 813 (H.B. 1163), Sec. 4, eff. September 1, 2023.

Sec. 49.11. PROOF OF MENTAL STATE UNNECESSARY. (a) Notwithstanding Section 6.02(b), proof of a culpable mental state is not required for conviction of an offense under this chapter.

(b) Subsection (a) does not apply to an offense under Section 49.031.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 22, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 969, Sec. 4, eff. Sept. 1, 2001.

Sec. 49.12. APPLICABILITY TO CERTAIN CONDUCT. Sections 49.07 and 49.08 do not apply to injury to or the death of an unborn child if the conduct charged is conduct committed by the mother of the unborn child.

Added by Acts 2003, 78th Leg., ch. 822, Sec. 2.05, eff. Sept. 1, 2003.

CHAPTER 50. FIREWORKS

Sec. 50.01. DEFINITIONS. In this chapter:

(1) "Consumer firework" and "fireworks" have the meanings assigned by 49 C.F.R. Section 173.59.

Text of subdivision effective until January 1, 2025

(2) "Law enforcement officer" means a person who is a peace officer under Article 2.12, Code of Criminal Procedure, or a person who is a federal law enforcement officer, as defined by 5 U.S.C. Section 8331(20).

Text of subdivision effective on January 1, 2025

(2) "Law enforcement officer" means a person who is a peace officer under Article 2A.001, Code of Criminal Procedure, or a person who is a federal law enforcement officer, as defined by 5 U.S.C. Section 8331(20).

Added by Acts 2021, 87th Leg., R.S., Ch. 200 (H.B. 2366), Sec. 2, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.158, eff. January 1, 2025.

Sec. 50.02. UNLAWFUL USE OF FIREWORKS. (a) A person commits an offense if the person explodes or ignites fireworks with the intent to:

(1) interfere with the lawful performance of an official duty by a law enforcement officer; or

(2) flee from a person the actor knows is a law enforcement officer attempting to lawfully arrest or detain the actor.

(b) Except as provided by Subsections (c) and (d), an offense under this section is a state jail felony.

(c) An offense under this section that involves any firework that is not a consumer firework is a second degree felony.

(d) Notwithstanding Subsection (c), an offense under this section is a felony of the first degree if the offense causes serious bodily injury to a person the actor knows is a law enforcement officer while the law enforcement officer is lawfully discharging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a law enforcement officer.

(e) If conduct constituting an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2021, 87th Leg., R.S., Ch. 200 (H.B. 2366), Sec. 2, eff. September 1, 2021.

CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

Sec. 51.01. DEFINITIONS. In this chapter:

(1) "Alien" has the meaning assigned by 8 U.S.C. Section 1101, as that provision existed on January 1, 2023.

(2) "Port of entry" means a port of entry in the United States as designated by 19 C.F.R. Part 101.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff.

March 5, 2024.

Sec. 51.02. ILLEGAL ENTRY FROM FOREIGN NATION. (a) A person who is an alien commits an offense if the person enters or attempts to enter this state directly from a foreign nation at any location other than a lawful port of entry.

(b) An offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section.

(c) It is an affirmative defense to prosecution under this section that:

(1) the federal government has granted the defendant:

(A) lawful presence in the United States; or

(B) asylum under 8 U.S.C. Section 1158;

(2) the defendant's conduct does not constitute a violation of 8 U.S.C. Section 1325(a); or

(3) the defendant was approved for benefits under the federal Deferred Action for Childhood Arrivals program between June 15, 2012, and July 16, 2021.

(d) The following federal programs do not provide an affirmative defense for purposes of Subsection (c)(1):

(1) the Deferred Action for Parents of Americans and Lawful Permanent Residents program; and

(2) any program not enacted by the United States Congress that is a successor to or materially similar to the program described by Subsection (c)(3) or Subdivision (1).

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff. March 5, 2024.

Sec. 51.03. ILLEGAL REENTRY BY CERTAIN ALIENS. (a) A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state after the person:

(1) has been denied admission to or excluded, deported, or removed from the United States; or

(2) has departed from the United States while an order of exclusion, deportation, or removal is outstanding.

(b) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a felony of the third degree if:

(A) the defendant's removal was subsequent to a conviction for commission of two or more misdemeanors involving drugs, crimes against a person, or both;

(B) the defendant was excluded pursuant to 8 U.S.C. Section 1225(c) because the defendant was excludable under 8 U.S.C. Section 1182(a)(3)(B);

(C) the defendant was removed pursuant to the provisions of 8 U.S.C. Chapter 12, Subchapter V; or

(D) the defendant was removed pursuant to 8 U.S.C. Section 1231(a)(4)(B); or

(2) a felony of the second degree if the defendant was removed subsequent to a conviction for the commission of a felony.

(c) For purposes of this section, "removal" includes an order issued under Article 5B.002, Code of Criminal Procedure, or any other agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff. March 5, 2024.

Sec. 51.04. REFUSAL TO COMPLY WITH ORDER TO RETURN TO FOREIGN NATION. (a) A person who is an alien commits an offense if:

(1) the person has been charged with or convicted of an offense under this chapter;

(2) a magistrate or judge, as applicable, has issued an order under Article 5B.002, Code of Criminal Procedure, for the person to return to the foreign nation from which the person entered or attempted to enter; and

(3) the person refuses to comply with the order.

(b) An offense under this section is a felony of the second degree.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff. March 5, 2024.

TITLE 11. ORGANIZED CRIME

CHAPTER 71. ORGANIZED CRIME

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02.

(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.

(e) "Foreign terrorist organization" means three or more persons operating as an organization at least partially outside the United States who engage in criminal activity and threaten the security of this state or its residents, including but not limited to a drug cartel.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1989, 71st Leg., ch. 782, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 555, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 23, eff. Sept. 1, 1995.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 462 (S.B. 1900), Sec. 18, eff. September 1, 2023.

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Chs. 269 (S.B. 224), 369 (H.B. 1442), 885 (H.B. 4635), and 910 (H.B. 6)

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or disabled individual, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 5

(5-b) any unlawful possession with intent to deliver a controlled substance or dangerous drug;

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 21

(5-b) unlawful possession with intent to deliver a controlled substance listed in Penalty Group 1-B under Section 481.1022, Health and Safety Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05 or 20.06;

(18) any offense under Section 16.02;

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 369 (H.B. 1442), Sec. 3

(19) any offense punishable under Section 42.03(d) or (e);

Text of subdivision as amended by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.05

(19) an offense under Section 28.03 that is punishable under Subsection (b)(4)(E) of that section;

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.05

(20) an offense under Section 31.21 that is punishable under Subsection (d) of that section; or

Text of subdivision as amended by Acts 2023, 88th Leg., R.S., Ch. 369 (H.B. 1442), Sec. 3

(20) any offense classified as a felony under the Tax Code; or

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 369 (H.B. 1442), Sec. 3

(21) any offense under Section 545.420, Transportation Code

Text of subdivision as amended by Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.05

(21) any offense classified as a felony under the Tax Code.

Text of subsection as amended by Acts 2023, 88th Leg., R.S., Ch. 462

(S.B. 1900), Sec. 19

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang or foreign terrorist organization, the person commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or disabled individual, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug:

(A) through forgery, fraud, misrepresentation, or deception; or

(B) with the intent to deliver the controlled substance or dangerous drug;

(5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;

(8) any felony offense under Chapter 32;

(9) any offense under Chapter 36;

(10) any offense under Chapter 34, 35, or 35A;

(11) any offense under Section 37.11(a);

(12) any offense under Chapter 20A;

(13) any offense under Section 37.10;

(14) any offense under Section 38.06, 38.07, 38.09, or 38.11;

(15) any offense under Section 42.10;

(16) any offense under Section 46.06(a)(1) or 46.14;

(17) any offense under Section 20.05, 20.06, or 20.07;

(18) any offense under Section 16.02;

(19) any offense classified as a felony under the Tax Code.

(b) Except as provided in Subsections (c), (d), and (e), an offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a state jail felony, except that the offense is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for:

(1) life without parole, if the most serious offense is an aggravated sexual assault and if at the time of that offense the defendant is 18 years of age or older and:

(A) the victim of the offense is younger than six years of age;

(B) the victim of the offense is younger than 14 years of age and the actor commits the offense in a manner described by Section 22.021(a)(2)(A); or

(C) the victim of the offense is younger than 17 years of age and suffered serious bodily injury as a result of the offense;

(2) life or for any term of not more than 99 years or less than 30 years if the most serious offense is an offense under Section 20.06 that is punishable under Subsection (g) of that section; or

(3) life or for any term of not more than 99 years or less than 15 years if the most serious offense is an offense punishable as a felony of the first degree, other than an offense described by Subdivision (1) or (2).

(c) Notwithstanding Section 15.02(d), a conspiracy to commit an offense under this section is punishable in the same manner as an offense under this section.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether in voluntary and complete renunciation of the offense he withdrew from the combination before commission of an offense listed in Subsection (a) and made substantial effort to prevent the commission of the offense. If the defendant proves the

issue in the affirmative by a preponderance of the evidence the offense is the same category of offense as the most serious offense listed in Subsection (a) that is committed.

(e) An offense that is punishable as a second degree felony or as any lower category of offense under Subsection (b) is one additional category higher than the category listed under Subsection (b) if the person used or exhibited a deadly weapon during the commission of one or more of the offenses listed under Subsection (a) and if an offense is punishable as a Class A misdemeanor under Subsection (b), the offense is a state jail felony.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2373, ch. 587, Sec. 1 to 3, eff. Sept. 1, 1981; Acts 1989, 71st Leg., ch. 782, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 555, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 761, Sec. 3, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, Sec. 24, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 189, Sec. 9, eff. May 21, 1997; Acts 1999, 76th Leg., ch. 685, Sec. 8, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 641, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1162 (H.B. 3376), Sec. 5, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1163 (H.B. 126), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 153 (S.B. 2225), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1357 (S.B. 554), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 68 (S.B. 934), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 20.003, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 223 (H.B. 260), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 620 (S.B. 688), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 4, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 16.005, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1252 (H.B. 8), Sec. 21, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1325 (S.B. 549), Sec. 4(b), eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 333 (H.B. 11), Sec. 16, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 253 (H.B. 869), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.27, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 269 (S.B. 224), Sec. 2.05, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 369 (H.B. 1442), Sec. 3, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 462 (S.B. 1900), Sec. 19, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 5, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 910 (H.B. 6), Sec. 21, eff. September 1, 2023.

Sec. 71.021. VIOLATION OF COURT ORDER ENJOINING ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if the person knowingly violates a temporary or permanent order issued under Section 125.065(a) or (b), Civil Practice and Remedies Code.

(b) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1995, 74th Leg., ch. 584, Sec. 1, eff. Sept. 1, 1995.

Sec. 71.022. COERCING, INDUCING, OR SOLICITING MEMBERSHIP IN A CRIMINAL STREET GANG OR FOREIGN TERRORIST ORGANIZATION. (a) A person commits an offense if the person knowingly causes, enables, encourages, recruits, or solicits another person to become a member of a criminal street gang or foreign terrorist organization which, as a condition of initiation, admission, membership, or continued membership, requires the commission of any conduct which constitutes an offense punishable as a Class A misdemeanor or a felony.

(a-1) A person commits an offense if, with intent to coerce, induce, or solicit a child to actively participate in the activities of a criminal street gang or foreign terrorist organization, the person:

(1) threatens the child or a member of the child's family with imminent bodily injury; or

(2) causes bodily injury to the child or a member of the child's family.

(b) Except as provided by Subsection (c), an offense under this section is a felony of the third degree.

(c) A second or subsequent offense under this section is a felony of the second degree.

(d) In this section:

(1) "Child" means an individual younger than 17 years of age.

(2) "Family" has the meaning assigned by Section 71.003, Family Code.

Added by Acts 1999, 76th Leg., ch. 1555, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 435 (H.B. 2187), Sec. 2, eff. September 1, 2009.

Acts 2023, 88th Leg., R.S., Ch. 462 (S.B. 1900), Sec. 20, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 462 (S.B. 1900), Sec. 21, eff. September 1, 2023.

Sec. 71.023. DIRECTING ACTIVITIES OF CRIMINAL STREET GANGS OR FOREIGN TERRORIST ORGANIZATIONS. (a) A person commits an offense if the person, as part of the identifiable leadership of a criminal street gang or foreign terrorist organization, knowingly finances,

directs, or supervises the commission of, or a conspiracy to commit, one or more of the following offenses by members of a criminal street gang or foreign terrorist organization:

(1) a felony offense that is listed in Article 42A.054(a), Code of Criminal Procedure;

(2) a felony offense for which it is shown that a deadly weapon, as defined by Section 1.07, was used or exhibited during the commission of the offense or during immediate flight from the commission of the offense; or

(3) an offense that is punishable under Section 481.112(e) or (f), 481.1121(b)(4), 481.1123(d), (e), or (f), 481.115(f), or 481.120(b)(6), Health and Safety Code.

(b) An offense under this section is a felony of the first degree punishable by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 3, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1325 (S.B. 549), Sec. 5, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 770 (H.B. 2299), Sec. 2.85, eff. January 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 20, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 462 (S.B. 1900), Sec. 22, eff. September 1, 2023.

Sec. 71.028. GANG-FREE ZONES. (a) In this section:

(1) "General residential operation" has the meaning assigned by Section 42.002, Human Resources Code.

(2) "Institution of higher education," "playground," "premises," "school," "video arcade facility," and "youth center" have the meanings assigned by Section 481.134, Health and Safety Code.

(3) "Shopping mall" means an enclosed public walkway or hall area that connects retail, service, or professional establishments.

(b) This section applies to an offense listed in Section 71.02(a)(1), (4), or (7), other than burglary, theft, burglary of a motor vehicle, or unauthorized use of a motor vehicle.

(c) Except as provided by Subsection (d), the punishment prescribed for an offense described by Subsection (b) is increased to the punishment prescribed for the next highest category of offense if the actor is 17 years of age or older and it is shown beyond a reasonable doubt on the trial of the offense that the actor committed the offense at a location that was:

(1) in, on, or within 1,000 feet of any:

(A) real property that is owned, rented, or leased by a school or school board;

(B) premises owned, rented, or leased by an institution of higher education;

(C) premises of a public or private youth center;

(D) playground; or

(E) general residential operation operating as a residential treatment center;

(2) in, on, or within 300 feet of any:

(A) shopping mall;

(B) movie theater;

(C) premises of a public swimming pool; or

(D) premises of a video arcade facility; or

(3) on a school bus.

(d) The punishment for an offense described by Subsection (b) may not be increased under this section if the offense is punishable under Section 71.02 as a felony of the first degree.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 26, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 807 (H.B. 1540), Sec. 27, eff. September 1, 2021.

Sec. 71.029. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution of an offense for which punishment is increased under Section 71.028, a map produced or reproduced by a municipal or county

engineer for the purpose of showing the location and boundaries of gang-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those zones if the governing body of the municipality or county adopts a resolution or ordinance approving the map as an official finding and record of the location or boundaries of those zones.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the zone is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 71.028; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Evidence.

Added by Acts 2009, 81st Leg., R.S., Ch. 1130 (H.B. 2086), Sec. 3, eff. September 1, 2009.

Sec. 71.03. DEFENSES EXCLUDED. It is no defense to prosecution under Section 71.02 that:

(1) one or more members of the combination are not criminally responsible for the object offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02; or

(4) once the initial combination of three or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10,

1977. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 71.04. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 71.05. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 71.02 that under circumstances manifesting a voluntary and complete renunciation of the actor's criminal objective, the actor withdrew from the combination before commission of an offense listed in Section 71.02(a) and took further affirmative action that prevented the commission of the offense.

(b) For the purposes of this section and Subsection (d) of Section 71.02, renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Section 71.02(a) and made substantial effort to prevent the commission of an offense listed in Section 71.02(a) shall be admissible as mitigation at the hearing on punishment if the actor has been found guilty under Section 71.02, and in the event of a finding of renunciation under this subsection,

the punishment shall be one grade lower than that provided under Section 71.02.

Added by Acts 1977, 65th Leg., p. 922, ch. 346, Sec. 1, eff. June 10, 1977. Amended by Acts 1981, 67th Leg., p. 2374, ch. 587, Sec. 4, 5, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 761, Sec. 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 5, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 1200 (S.B. 158), Sec. 6, eff. September 1, 2011.

CHAPTER 72. RACKETEERING AND UNLAWFUL DEBT COLLECTION

Sec. 72.01. DEFINITIONS. In this chapter:

(1) "Enterprise" has the meaning assigned by Section 140B.001, Civil Practice and Remedies Code.

(2) "Money" means funds as defined by Section 34.01.

(3) "Pattern of racketeering" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, the last of which occurred not later than the fifth anniversary of the date of a previous incident of racketeering conduct.

(4) "Pecuniary value" means:

(A) anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; or

(B) any other property or service that has a value in excess of $100.

(5) "Racketeering" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(A) a felony offense under The Securities Act (Title 12, Government Code);

(B) an offense under Section 20.03 (kidnapping);

(C) an offense under Section 20.04 (aggravated

kidnapping);

(D) an offense under Section 20.07 (operation of stash house);

(E) a felony offense under Chapter 37 (perjury and other falsification);

(F) a felony offense under Section 38.03 (resisting arrest, search, or transportation);

(G) a felony offense under Section 38.05 (hindering apprehension or prosecution);

(H) a felony offense under Chapter 43 (public indecency); or

(I) an offense under Section 71.02 (engaging in organized criminal activity).

(6) "Real property" has the meaning assigned by Section 140B.001, Civil Practice and Remedies Code.

(7) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is wholly or partly legally unenforceable in this state because the debt was incurred or contracted:

(A) in violation of:

(i) the Texas Racing Act (Subtitle A-1, Title 13, Occupations Code, and Article 179e, Revised Civil Statutes);

(ii) Subtitle A, Title 4, Finance Code, or Section 11, Article XVI, Texas Constitution, relating to interest and usury, if the usurious rate is at least twice the enforceable rate; or

(iii) Chapter 47, relating to gambling; or

(B) in gambling activity in violation of federal law or in the business of lending money at a rate usurious under state law if the usurious rate is at least twice the enforceable rate.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 6, eff. September 1, 2023.

Sec. 72.02. USE OF PROCEEDS DERIVED FROM RACKETEERING OR UNLAWFUL DEBT COLLECTION. (a) A person commits an offense if the person intentionally uses or invests, whether directly or indirectly, any part of any proceeds knowingly derived, directly or indirectly, from a pattern of racketeering or through the collection of an unlawful debt, or the proceeds derived from the investment or use of

those proceeds, in acquiring title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.

(b) An offense under this section is a felony of the second degree.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 6, eff. September 1, 2023.

Sec. 72.03. ACQUISITION OF INTEREST IN PROPERTY OR CONTROL OF ENTERPRISE THROUGH RACKETEERING OR UNLAWFUL DEBT COLLECTION. (a) A person commits an offense if the person, knowingly through a pattern of racketeering or through the collection of an unlawful debt, acquires or maintains, directly or indirectly, any interest in or control of any enterprise or real property.

(b) An offense under this section is a felony of the second degree.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 6, eff. September 1, 2023.

Sec. 72.04. PARTICIPATION IN ENTERPRISE THROUGH RACKETEERING OR UNLAWFUL DEBT COLLECTION. (a) A person commits an offense if the person is employed by or associated with an enterprise and knowingly conducts or participates, directly or indirectly, in that enterprise through a pattern of racketeering or the collection of an unlawful debt.

(b) An offense under this section is a felony of the second degree.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section, the other law, or both.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 6, eff. September 1, 2023.

Sec. 72.05. ALTERNATIVE FINE. Notwithstanding any other law, a court, after a hearing, may impose a fine, instead of an otherwise applicable fine, on a person convicted of an offense under Section 72.02, 72.03, or 72.04, through which the person derived pecuniary value or by which the person caused personal injury, property damage, or other loss, that does not exceed:

(1) the greater of:

(A) three times the gross value gained as a result of the offense; or

(B) three times the gross loss caused as a result of the offense; and

(2) the amount of the court costs and the reasonably incurred costs of investigation and prosecution.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 6, eff. September 1, 2023.

TITLE 12. TERRORISM

CHAPTER 76. TERRORISTIC OFFENSES

Sec. 76.01. DEFINITIONS. In this chapter:

(1) "Material support or resources" means:

(A) currency or other financial securities;

(B) financial services;

(C) instruments of value;

(D) lodging;

(E) training;

(F) safehouses;

(G) false documentation or identification;

(H) communications equipment;

(I) computer equipment;

(J) software;

(K) facilities;

(L) a deadly weapon;

(M) lethal substances;

(N) an explosive weapon or components of an explosive

weapon, a chemical dispensing device, or a hoax bomb, as those terms are defined by Section 46.01;

(O) personnel;

(P) transportation; and

(Q) other tangible assets, other than medical care provided by a licensed health care provider or religious materials.

(2) "Training" means teaching or demonstrating directly to another person, either in person or through a writing or by use of a computer or computer network, the use, application, or making of:

(A) a weapon prohibited by Section 46.05;

(B) a deadly weapon;

(C) a component of an explosive weapon, as defined by Section 46.01; or

(D) an incendiary device capable of causing injury or death to persons.

Added by Acts 2023, 88th Leg., R.S., Ch. 935 (S.B. 1518), Sec. 5, eff. September 1, 2023.

Sec. 76.02. TERRORISM. (a) A person commits an offense if the person:

(1) commits or conspires to commit an offense under:

(A) Chapter 19;

(B) Section 20.02;

(C) Section 20.03;

(D) Section 20A.02;

(E) Section 22.02;

(F) Section 22.021;

(G) Section 22.05, if punishable as a felony;

(H) Section 22.07, if punishable as a felony;

(I) Section 22.09;

(J) Section 28.02;

(K) Section 28.07, if punishable as a felony;

(L) Section 29.03;

(M) Section 38.152, if punishable as a felony; or

(N) Section 46.08; and

(2) commits or conspires to commit that offense with the intent to:

(A) intimidate or coerce the public or a substantial

group of the public; or

(B) influence, by intimidation or coercion, the policy, conduct, or activities of this state, a political subdivision of this state, or the United States.

(b) An offense under this section is one category higher than the most serious offense listed in Subsection (a) that was committed or conspired to be committed, except that:

(1) if the most serious offense is a Class A misdemeanor, the offense under this section is a Class A misdemeanor with a minimum term of confinement of 180 days; and

(2) if the most serious offense is a felony of the first degree, the offense under this section is a felony of the first degree with a minimum term of confinement of 15 years.

Added by Acts 2023, 88th Leg., R.S., Ch. 935 (S.B. 1518), Sec. 5, eff. September 1, 2023.

Sec. 76.03. AIDING IN COMMISSION OF TERRORISM. (a) A person commits an offense if the person intentionally raises, solicits, collects, or provides material support or resources with intent or knowledge that the material support or resources will be used, wholly or partly, to solicit, direct, supervise, plan, prepare, promote, carry out, assist, or aid in committing an offense under Section 76.02.

(b) An offense under this section is of the same degree as the offense under Section 76.02 that the person aided.

Added by Acts 2023, 88th Leg., R.S., Ch. 935 (S.B. 1518), Sec. 5, eff. September 1, 2023.

Sec. 76.04. HINDERING PROSECUTION OF TERRORISM. (a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense under Section 76.02 or 76.03, the person:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape;

(3) warns the other of impending discovery or apprehension; or

(4) tampers with any physical evidence that might aid in the discovery or apprehension of the other.

(b) An offense under this section is of the same degree as the offense under Section 76.02 or 76.03 for which the person committed the act described by Subsection (a).

Added by Acts 2023, 88th Leg., R.S., Ch. 935 (S.B. 1518), Sec. 5, eff. September 1, 2023.

Sec. 76.05. ASSISTANCE BY ATTORNEY GENERAL. (a) The attorney general, if requested to do so by the attorney representing the state, may assist the attorney representing the state in the investigation or prosecution of an offense under this chapter.

(b) The attorney general shall designate one individual in the division of the attorney general's office that assists in the prosecution of criminal cases to coordinate responses to requests to assist in prosecution made under this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 935 (S.B. 1518), Sec. 5, eff. September 1, 2023.

PROPERTY CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1983, 68th Leg., p. 3478, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Acts 1983, 68th Leg., p. 3478, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 70, eff. Sept. 1, 1985.

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without

further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

Acts 1983, 68th Leg., p. 3479, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 1.004. PREEMPTION. (a) Unless expressly authorized by another statute, a municipality or county may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this code. An ordinance, order, or rule that violates this section is void, unenforceable, and inconsistent with this code.

(b) For purposes of Subsection (a), a field occupied by a provision of this code includes an ordinance, order, or rule regulating evictions or otherwise prohibiting, restricting, or delaying delivery of a notice to vacate or filing a suit to recover possession of the premises under Chapter 24.

Added by Acts 2023, 88th Leg., R.S., Ch. 899 (H.B. 2127), Sec. 15, eff. September 1, 2023.

CHAPTER 2. NATURE OF PROPERTY

Sec. 2.001. MANUFACTURED HOUSING. (a) Except as provided by Subsection (b), a manufactured home is personal property.

(b) A manufactured home is real property if:

(1) the statement of ownership and location for the home issued under Section 1201.207, Occupations Code, reflects that the owner has elected to treat the home as real property; and

(2) a certified copy of the statement of ownership and location has been filed in the real property records in the county in which the home is located.

(c) In this section, "consumer," "document of title," "first retail sale," "manufactured home," and "mobile home" have the meanings assigned by Chapter 1201, Occupations Code.

(d) to (h) Repealed by Acts 2003, 78th Leg., ch. 338, Sec. 52(2).

(i) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 978, Sec. 15, eff. Sept. 1, 1995.

Amended by Acts 2001, 77th Leg., ch. 899, Sec. 5, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1055, Sec. 5, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 338, Sec. 41 to 43, 52(2), eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.802, eff. Sept. 1, 2003.

Sec. 2.002. DRY FIRE HYDRANTS: AGREEMENT IS PERSONAL. (a) An agreement between an owner, lessee, or occupant of real property and a fire-fighting agency relating to the connection of a dry fire hydrant to a source of water on the property or the installation of a dry fire hydrant on the property may not bind a subsequent owner, lessee, or occupant of the real property.

(b) In this section:

(1) "Dry fire hydrant" means a fire hydrant that is connected to a stock tank, pond, or other similar source of water from which water is pumped in case of fire.

(2) "Fire-fighting agency" means any entity that provides fire-fighting services, including:

(A) a volunteer fire department; and

(B) a political subdivision of this state authorized to provide fire-fighting services.

Added by Acts 1997, 75th Leg., ch. 437, Sec. 2, eff. Sept. 1, 1997.

TITLE 2. CONVEYANCES
CHAPTER 5. CONVEYANCES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 5.001. FEE SIMPLE. (a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary.

(b) This section applies only to a conveyance occurring on or after February 5, 1840.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.002. FAILING AS A CONVEYANCE. An instrument intended as a conveyance of real property or an interest in real property that,

because of this chapter, fails as a conveyance in whole or in part is enforceable to the extent permitted by law as a contract to convey the property or interest.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.003. PARTIAL CONVEYANCE. (a) An alienation of real property that purports to transfer a greater right or estate in the property than the person making the alienation may lawfully transfer alienates only the right or estate that the person may convey.

(b) Neither the alienation by deed or will of an estate on which a remainder depends nor the union of the estate with an inheritance by purchase or descent affects the remainder.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.004. CONVEYANCE BY AUTHORIZED OFFICER. (a) A conveyance of real property by an officer legally authorized to sell the property under a judgment of a court within the state passes absolute title to the property to the purchaser.

(b) This section does not affect the rights of a person who is not or who does not claim under a party to the conveyance or judgment.

Acts 1983, 68th Leg., p. 3480, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.005. ALIENS. An alien has the same real and personal property rights as a United States citizen.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.006. ATTORNEY'S FEES IN BREACH OF RESTRICTIVE COVENANT ACTION. (a) In an action based on breach of a restrictive covenant pertaining to real property, the court shall allow to a prevailing party who asserted the action reasonable attorney's fees in addition to the party's costs and claim.

(b) To determine reasonable attorney's fees, the court shall

consider:

(1) the time and labor required;

(2) the novelty and difficulty of the questions;

(3) the expertise, reputation, and ability of the attorney; and

(4) any other factor.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.007. VENDOR AND PURCHASER RISK ACT. (a) Any contract made in this state for the purchase and sale of real property shall be interpreted as including an agreement that the parties have the rights and duties prescribed by this section, unless the contract expressly provides otherwise.

(b) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part of the property is destroyed without fault of the purchaser or is taken by eminent domain, the vendor may not enforce the contract, and the purchaser is entitled to recover any portion of the contract price paid.

(c) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part of the property is destroyed without fault of the vendor or is taken by eminent domain, the purchaser is not relieved from the duty to pay the contract price, nor is the purchaser entitled to recover any portion of the price already paid.

(d) This section shall be interpreted and construed to accomplish its general purpose to make uniform the law of those states that enact the Uniform Vendor and Purchaser Risk Act.

(e) This section may be cited as the Uniform Vendor and Purchaser Risk Act.

Added by Acts 1989, 71st Leg., ch. 1002, Sec. 1, eff. Sept. 1, 1989.

Sec. 5.008. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) A seller of residential real property comprising not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice as prescribed by this section or a written notice substantially similar to the notice prescribed by this

section which contains, at a minimum, all of the items in the notice prescribed by this section.

(b) The notice must be executed and must, at a minimum, read substantially similar to the following:

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT _____

(Street Address and City)

THIS NOTICE IS A DISCLOSURE OF SELLER'S KNOWLEDGE OF THE CONDITION OF THE PROPERTY AS OF THE DATE SIGNED BY SELLER AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PURCHASER MAY WISH TO OBTAIN. IT IS NOT A WARRANTY OF ANY KIND BY SELLER OR SELLER'S AGENTS.

Seller __ is __ is not occupying the Property.

If unoccupied, how long since Seller has occupied the Property?

_____

1. The Property has the items checked below:

Write Yes (Y), No (N), or Unknown (U).

__ Range	__ Oven	__ Microwave
__ Dishwasher	__ Trash Compactor	__ Disposal
__ Washer/Dryer Hookups	__ Window Screens	__ Rain Gutters
__ Security System	__ Fire Detection Equipment	__ Intercom System
	__ Smoke Detector	
	__ Smoke Detector - Hearing Impaired	
	__ Carbon Monoxide Alarm	
	__ Emergency Escape Ladder(s)	
__ TV Antenna	__ Cable TV Wiring	__ Satellite Dish
__ Ceiling Fan(s)	__ Attic Fan(s)	__ Exhaust

__ Central A/C	__ Central Heating	__ Wall/Window Air Conditioning Fan(s)
__ Plumbing System	__ Septic System	__ Public Sewer System
__ Patio/Decking	__ Outdoor Grill	__ Fences
__ Pool	__ Sauna	__ Spa
		__ Hot Tub
__ Pool Equipment	__ Pool Heater	__ Automatic Lawn Sprinkler System
__ Fireplace(s) & Chimney (Woodburning)		__ Fireplace(s) & Chimney (Mock)
__ Natural Gas Lines		__ Gas Fixtures
__ Liquid Propane Gas:	__ LP Community (Captive)	__ LP on Property
__ Fuel Gas Piping:	__ Black Iron Pipe	__ Corrugated Stainless Steel Tubing
	__ Copper	
Garage: __ Attached	__ Not Attached	__ Carport
Garage Door Opener(s):	__ Electronic	__ Control(s)
Water Heater:	__ Gas	__ Electric
Water Supply: __ City	__ Well __ MUD	__ Co-op

Roof Type: _____ Age: _____(approx)

Are you (Seller) aware of any of the above items that are not in working condition, that have known defects, or that are in need of repair? __ Yes __ No __ Unknown.

If yes, then describe. (Attach additional sheets if necessary):

_____

_____

2. Does the property have working smoke detectors installed in accordance with the smoke detector requirements of Chapter 766, Health and Safety Code?* __ Yes __ No __ Unknown.
If the answer to the question above is no or unknown, explain. (Attach additional sheets if necessary):

*Chapter 766 of the Health and Safety Code requires one-family or two-family dwellings to have working smoke detectors installed in accordance with the requirements of the building code in effect in the area in which the dwelling is located, including performance, location, and power source requirements. If you do not know the building code requirements in effect in your area, you may check unknown above or contact your local building official for more information. A buyer may require a seller to install smoke detectors for the hearing impaired if: (1) the buyer or a member of the buyer's family who will reside in the dwelling is hearing impaired; (2) the buyer gives the seller written evidence of the hearing impairment from a licensed physician; and (3) within 10 days after the effective date, the buyer makes a written request for the seller to install smoke detectors for the hearing impaired and specifies the locations for installation. The parties may agree who will bear the cost of installing the smoke detectors and which brand of smoke detectors to install.

3. Are you (Seller) aware of any known defects/malfunctions in any of the following?
Write Yes (Y) if you are aware, write No (N) if you are not aware.

__ Interior Walls	__ Ceilings	__ Floors
__ Exterior Walls	__ Doors	__ Windows
__ Roof	__ Foundation/ Slab(s)	__ Basement
__ Walls/Fences	__ Driveways	__ Sidewalks
__ Plumbing/Sewers/ Septics	__ Electrical Systems	__ Lighting Fixtures

__ Other Structural Components (Describe):_____
_____
_____

If the answer to any of the above is yes, explain. (Attach

additional sheets if necessary):_____
_____
_____

4. Are you (Seller) aware of any of the following conditions? Write Yes (Y) if you are aware, write No (N) if you are not aware.

__ Active Termites (includes wood-destroying insects)
__ Termite or Wood Rot Damage Needing Repair
__ Previous Termite Damage
__ Previous Termite Treatment
__ Improper Drainage
__ Water Damage Not Due to a Flood Event
__ Landfill, Settling, Soil Movement, Fault Lines
__ Single Blockable Main Drain in Pool/Hot Tub/Spa*

__ Previous Structural or Roof Repair
__ Hazardous or Toxic Waste
__ Asbestos Components
__ Urea formaldehyde Insulation
__ Radon Gas
__ Lead Based Paint
__ Aluminum Wiring
__ Previous Fires
__ Unplatted Easements
__ Subsurface Structure or Pits
__ Previous Use of Premises for Manufacture of Methamphetamine

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary):_____
_____
_____

*A single blockable main drain may cause a suction entrapment hazard for an individual.

5. Are you (Seller) aware of any item, equipment, or system in or on the property that is in need of repair? __ Yes (if you are aware) __ No (if you are not aware). If yes, explain (attach additional sheets as necessary). _____

6. Are you (Seller) aware of any of the following conditions?* Write Yes (Y) if you are aware, write No (N) if you are not aware.

__ Present flood insurance coverage

__ Previous flooding due to a failure or breach of a reservoir or a controlled or emergency release of water from a reservoir

__ Previous water penetration into a structure on the property due to a natural flood event

Write Yes (Y) if you are aware and check wholly or partly as applicable, write No (N) if you are not aware.

__ Located ( ) wholly ( ) partly in a 100-year floodplain (Special Flood Hazard Area-Zone A, V, A99, AE, AO, AH, VE, or AR)

__ Located ( ) wholly ( ) partly in a 500-year floodplain (Moderate Flood Hazard Area-Zone X (shaded))

__ Located ( ) wholly ( ) partly in a floodway

__ Located ( ) wholly ( ) partly in a flood pool

__ Located ( ) wholly ( ) partly in a reservoir

If the answer to any of the above is yes, explain (attach additional sheets as necessary):

* For purposes of this notice:

"100-year floodplain" means any area of land that:

(A) is identified on the flood insurance rate map as a special flood hazard area, which is designated as Zone A, V, A99, AE, AO, AH, VE, or AR on the map;

(B) has a one percent annual chance of flooding, which is considered to be a high risk of flooding; and

(C) may include a regulatory floodway, flood pool, or reservoir.

"500-year floodplain" means any area of land that:

(A) is identified on the flood insurance rate map as a moderate flood hazard area, which is designated on the map as Zone X (shaded); and

(B) has a two-tenths of one percent annual chance of flooding, which is considered to be a moderate risk of flooding.

"Flood pool" means the area adjacent to a reservoir that lies above the normal maximum operating level of the reservoir and that is

subject to controlled inundation under the management of the United States Army Corps of Engineers.

"Flood insurance rate map" means the most recent flood hazard map published by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.).

"Floodway" means an area that is identified on the flood insurance rate map as a regulatory floodway, which includes the channel of a river or other watercourse and the adjacent land areas that must be reserved for the discharge of a base flood, also referred to as a 100-year flood, without cumulatively increasing the water surface elevation more than a designated height.

"Reservoir" means a water impoundment project operated by the United States Army Corps of Engineers that is intended to retain water or delay the runoff of water in a designated surface area of land.

7. Have you (Seller) ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program (NFIP)?* __ Yes __ No. If yes, explain (attach additional sheets as necessary):

*Homes in high risk flood zones with mortgages from federally regulated or insured lenders are required to have flood insurance. Even when not required, the Federal Emergency Management Agency (FEMA) encourages homeowners in high risk, moderate risk, and low risk flood zones to purchase flood insurance that covers the structure(s) and the personal property within the structure(s).

8. Have you (Seller) ever received assistance from FEMA or the U.S. Small Business Administration (SBA) for flood damage to the property? __ Yes __ No. If yes, explain (attach additional sheets as necessary):

9. Are you (Seller) aware of any of the following?
Write Yes (Y) if you are aware, write No (N) if you are not aware.

__ Room additions, structural modifications, or other alterations or repairs made without necessary permits or not in compliance with building codes in effect at that time.

__ Homeowners' Association or maintenance fees or assessments.

__ Any "common area" (facilities such as pools, tennis courts, walkways, or other areas) co-owned in undivided interest with others.

__ Any notices of violations of deed restrictions or governmental ordinances affecting the condition or use of the Property.

__ Any lawsuits directly or indirectly affecting the Property.

__ Any condition on the Property which materially affects the physical health or safety of an individual.

__ Any rainwater harvesting system located on the property that is larger than 500 gallons and that uses a public water supply as an auxiliary water source.

__ Any portion of the property that is located in a groundwater conservation district or a subsidence district.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary): _____

_____

_____

10. If the property is located in a coastal area that is seaward of the Gulf Intracoastal Waterway or within 1,000 feet of the mean high tide bordering the Gulf of Mexico, the property may be subject to the Open Beaches Act or the Dune Protection Act (Chapter 61 or 63, Natural Resources Code, respectively) and a beachfront construction certificate or dune protection permit may be required for repairs or improvements. Contact the local government with ordinance authority over construction adjacent to public beaches for more information.

11. This property may be located near a military installation and may be affected by high noise or air installation compatible use zones or other operations. Information relating to high noise and compatible use zones is available in the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study prepared for a military installation and may be accessed on the Internet website of the military installation and of the county and any municipality in which the military installation is located.

_____ _____

Date Signature of Seller

The undersigned purchaser hereby acknowledges receipt of the foregoing notice.

_____ _____

Date Signature of Purchaser

(c) A seller or seller's agent shall have no duty to make a disclosure or release information related to whether a death by natural causes, suicide, or accident unrelated to the condition of the property occurred on the property or whether a previous occupant had, may have had, has, or may have AIDS, HIV related illnesses, or HIV infection.

(d) The notice shall be completed to the best of seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required by the notice is unknown to the seller, the seller shall indicate that fact on the notice, and by that act is in compliance with this section.

(e) This section does not apply to a transfer:

(1) pursuant to a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest, or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust or a sale pursuant to a court ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(9) to or from any governmental entity;

(10) of a new residence of not more than one dwelling unit which has not previously been occupied for residential purposes; or

(11) of real property where the value of any dwelling does not exceed five percent of the value of the property.

(f) The notice shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is

entered without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within seven days after receiving the notice.

(g) In this section:

(1) "Blockable main drain" means a main drain of any size and shape that a human body can sufficiently block to create a suction entrapment hazard.

(2) "Main drain" means a submerged suction outlet typically located at the bottom of a swimming pool or spa to conduct water to a recirculating pump.

Added by Acts 1993, 73rd Leg., ch. 356, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 17.001, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 448 (H.B. 271), Sec. 1, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1051 (H.B. 2118), Sec. 11, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 22, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.001, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1178 (H.B. 3502), Sec. 1, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 578 (H.B. 3389), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 621 (S.B. 710), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1311 (H.B. 3391), Sec. 5, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 695 (H.B. 2781), Sec. 6, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 524 (H.B. 1221), Sec. 1, eff. January 1, 2016.

Acts 2017, 85th Leg., R.S., Ch. 35 (H.B. 890), Sec. 2, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1307 (H.B. 3815), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1337 (S.B. 339), Sec. 1, eff.

September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 390 (H.B. 697), Sec. 1, eff. September 1, 2023.

Sec. 5.009. DUTIES OF LIFE TENANT. (a) Subject to Subsection (b), if the life tenant of a legal life estate is given the power to sell and reinvest any life tenancy property, the life tenant is subject, with respect to the sale and investment of the property, to all of the fiduciary duties of a trustee imposed by the Texas Trust Code (Subtitle B, Title 9, Property Code) or the common law of this state.

(b) A life tenant may retain, as life tenancy property, any real property originally conveyed to the life tenant without being subject to the fiduciary duties of a trustee; however, the life tenant is subject to the common law duties of a life tenant.

Acts 1993, 73rd Leg., ch. 846, Sec. 34, eff. Sept. 1, 1993. Renumbered from Property Code Sec. 5.008 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(42), eff. Sept. 1, 1995.

Sec. 5.010. NOTICE OF ADDITIONAL TAX LIABILITY. (a) A person who is the owner of an interest in vacant land and who contracts for the transfer of that interest shall include in the contract the following bold-faced notice:

NOTICE REGARDING POSSIBLE LIABILITY FOR ADDITIONAL TAXES

If for the current ad valorem tax year the taxable value of the land that is the subject of this contract is determined by a special appraisal method that allows for appraisal of the land at less than its market value, the person to whom the land is transferred may not be allowed to qualify the land for that special appraisal in a subsequent tax year and the land may then be appraised at its full market value. In addition, the transfer of the land or a subsequent change in the use of the land may result in the imposition of an additional tax plus interest as a penalty for the transfer or the change in the use of the land. The taxable value of the land and the applicable method of appraisal for the current tax year is public information and may be obtained from the tax appraisal district established for the county in which the land is located.

(b) This section does not apply to a contract for a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) of only a mineral interest, leasehold interest, or security interest; or

(7) to or from a governmental entity.

(c) The notice described by Subsection (a) is not required to be included in a contract for transfer of an interest in land if every transferee under the contract is:

(1) a person who is a co-owner with an owner described by Subsection (a) of an undivided interest in the land; or

(2) a spouse or a person in the lineal line of consanguinity of an owner described by Subsection (a).

(d) The notice described by Subsection (a) is not required to be given if in a separate paragraph of the contract the contract expressly provides for the payment of any additional ad valorem taxes and interest that become due as a penalty because of:

(1) the transfer of the land; or

(2) a subsequent change in the use of the land.

(e) If the owner fails to include in the contract the notice described by Subsection (a), the person to whom the land is transferred is entitled to recover from that owner an amount equal to the amount of any additional taxes and interest that the person is required to pay as a penalty because of:

(1) the transfer of the land; or

(2) a subsequent change in the use of the land that occurs before the fifth anniversary of the date of the transfer.

Added by Acts 1997, 75th Leg., ch. 174, Sec. 1, eff. Jan. 1, 1998.

Sec. 5.011. SELLER'S DISCLOSURE REGARDING POTENTIAL ANNEXATION. (a) A person who sells an interest in real property in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE REGARDING POSSIBLE ANNEXATION

If the property that is the subject of this contract is located outside the limits of a municipality, the property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the property for further information.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of real property that is located wholly within a

municipality's corporate boundaries.

(d) If the notice is delivered as provided by this section, the seller has no duty to provide additional information regarding the possible annexation of the property by a municipality.

(e) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

(1) seven days after the date the purchaser receives the notice; or

(2) the date the transfer occurs.

Added by Acts 1999, 76th Leg., ch. 529, Sec. 1, eff. Jan. 1, 2000.

Sec. 5.012. NOTICE OF OBLIGATIONS RELATED TO MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION. (a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION CONCERNING THE PROPERTY AT (street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all dedicatory instruments governing the establishment, maintenance, or operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk.

You are obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of your property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains

information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

Date: _____ _____

Signature of Purchaser

(a-1) The second paragraph of the notice prescribed by Subsection (a) must be in bold print and underlined.

(b) The seller shall deliver the notice to the purchaser before the date the executory contract binds the purchaser to purchase the property. The notice may be given separately, as part of the contract during negotiations, or as part of any other notice the seller delivers to the purchaser. If the notice is included as part of the executory contract or another notice, the title of the notice prescribed by this section, the references to the street address and date in the notice, and the purchaser's signature on the notice may be omitted.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity;

(9) of only a mineral interest, leasehold interest, or security interest; or

(10) of a real property interest in a condominium.

(d) If an executory contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason within the earlier of:

(1) seven days after the date the purchaser receives the notice; or

(2) the date the transfer occurs as provided by the executory contract.

(e) The purchaser's right to terminate the executory contract under Subsection (d) is the purchaser's exclusive remedy for the seller's failure to provide the notice required by this section.

(f) On the purchaser's request for a resale certificate from the property owners' association or the association's agent, the association or its agent shall promptly deliver a copy of the most recent resale certificate issued for the property under Chapter 207 so long as the resale certificate was prepared not earlier than the 60th day before the date the resale certificate is delivered to the purchaser and reflects any special assessments approved before and due after the resale certificate is delivered. If a resale certificate that meets the requirements of this subsection has not been issued for the property, the seller shall request the association or its agent to issue a resale certificate under Chapter 207, and the association or its agent shall promptly prepare and deliver a copy of the resale certificate to the purchaser.

(g) The purchaser shall pay the fee to the property owners' association or its agent for issuing the resale certificate unless otherwise agreed by the purchaser and seller of the property. The property owners' association may require payment before beginning the process of providing a resale certificate requested under Chapter 207 but may not process a payment for a resale certificate until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

Added by Acts 1999, 76th Leg., ch. 1420, Sec. 1, eff. Jan. 1, 2000.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1142 (H.B. 1821), Sec. 1, eff. January 1, 2012.

Sec. 5.013. SELLER'S DISCLOSURE OF LOCATION OF CONDITIONS UNDER

SURFACE OF UNIMPROVED REAL PROPERTY. (a) A seller of unimproved real property to be used for residential purposes shall provide to the purchaser of the property a written notice disclosing the location of a transportation pipeline, including a pipeline for the transportation of natural gas, natural gas liquids, synthetic gas, liquefied petroleum gas, petroleum or a petroleum product, or a hazardous substance.

(b) The notice must state the information to the best of the seller's belief and knowledge as of the date the notice is completed and signed by the seller. If the information required to be disclosed is not known to the seller, the seller shall indicate that fact in the notice.

(c) The notice must be delivered by the seller on or before the effective date of an executory contract binding the purchaser to purchase the property. If a contract is entered without the seller providing the notice as required by this section, the purchaser may terminate the contract for any reason not later than the seventh day after the effective date of the contract.

(d) This section applies to any seller of unimproved real property, including a seller who is the developer of the property and who sells the property to others for resale.

(e) In this section, "hazardous substance" and "hazardous waste" have the meanings assigned by Section 361.003, Health and Safety Code.

(f) A seller is not required to give the notice if:

(1) the seller is obligated under an earnest money contract to furnish a title insurance commitment to the buyer prior to closing; and

(2) the buyer is entitled to terminate the contract if the buyer's objections to title as permitted by the contract are not cured by the seller prior to closing.

Added by Acts 1997, 75th Leg., ch. 1239, Sec. 1, eff. Sept. 1, 1997. Renumbered from Property Code Sec. 5.010 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(95), eff. Sept. 1, 2001.

Sec. 5.014. NOTICE OF OBLIGATIONS RELATED TO PUBLIC IMPROVEMENT DISTRICT. (a) A person who proposes to sell or otherwise convey real property that is located in a public improvement district

established under Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, shall first give to the purchaser of the property the written notice prescribed by Subsection (a-1) or (a-2), as applicable.

(a-1) Except for the notice prescribed by Subsection (a-2), the notice required by Subsection (a) shall be executed by the seller and must, except as provided by Subsection (b), read as follows:

NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO (insert name of municipality or county levying assessment), TEXAS CONCERNING THE FOLLOWING PROPERTY (insert property address)

As the purchaser of the real property described above, you are obligated to pay assessments to (insert name of municipality or county, as applicable), Texas, for the costs of a portion of a public improvement or services project (the "Authorized Improvements") undertaken for the benefit of the property within (insert name of public improvement district) (the "District") created under (insert Subchapter A, Chapter 372, Local Government Code, or Chapter 382, Local Government Code, as applicable).

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED IMPROVEMENTS, WHICH MAY BE PAID IN FULL AT ANY TIME. IF THE ASSESSMENT IS NOT PAID IN FULL, IT WILL BE DUE AND PAYABLE IN ANNUAL INSTALLMENTS THAT WILL VARY FROM YEAR TO YEAR DEPENDING ON THE AMOUNT OF INTEREST PAID, COLLECTION COSTS, ADMINISTRATIVE COSTS, AND DELINQUENCY COSTS.

The exact amount of the assessment may be obtained from (insert name of municipality or county, as applicable). The exact amount of each annual installment will be approved each year by (insert name of city council or county commissioners court, as applicable) in the annual service plan update for the district. More information about the assessments, including the amounts and due dates, may be obtained from (insert name of municipality or county, as applicable).

Your failure to pay any assessment or any annual installment may result in penalties and interest being added to what you owe or in a lien on and the foreclosure of your property.

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

Date: _____ _____

Signature of Purchaser

(a-2) For a district described by Section 372.0035, Local Government Code, the notice required by Subsection (a) shall be executed by the seller and must, except as provided by Subsection (b), read as follows:

NOTICE OF OBLIGATION TO PAY IMPROVEMENT DISTRICT ASSESSMENT TO
(insert name of municipality levying assessment), TEXAS
CONCERNING THE FOLLOWING HOTEL PROPERTY
(insert property address)

As the purchaser of the real property described above, you are obligated to pay assessments to (insert name of municipality), Texas, for the costs of a portion of a public improvement or services project (the "Authorized Services") undertaken for the benefit of the property within (insert name of public improvement district) (the "District") created under Subchapter A, Chapter 372, Local Government Code.

AN ASSESSMENT HAS BEEN LEVIED AGAINST YOUR PROPERTY FOR THE AUTHORIZED SERVICES, WHICH MUST BE PAID IN FULL WITH EVERY PAYMENT BY THE HOTEL OF LOCAL HOTEL OCCUPANCY TAX REMITTANCES TO THE MUNICIPALITY. YOUR FAILURE TO PAY THE ASSESSMENT MAY RESULT IN PENALTIES AND INTEREST BEING ADDED TO WHAT YOU OWE, AND MAY INCLUDE THE PURSUIT OF ANY OTHER REMEDY THAT IS AUTHORIZED UNDER SECTION 372.0035(d), LOCAL GOVERNMENT CODE.

Information about the calculation of the assessment may be obtained from (insert name of the municipality). The exact assessment rate will be approved each year by (insert name of city council) in the annual service plan update for the district. More information about the assessments, including the assessment rate and due dates, may be obtained from (insert name of municipality).

The undersigned purchaser acknowledges receipt of this notice before the effective date of a binding contract for the purchase of the real property at the address described above.

Date: _____ _____

Signature of Purchaser

(b) The seller or the municipality or county that created the public improvement district may provide additional information regarding the district in the notice prescribed by Subsection (a-1) or (a-2), including whether an assessment has been levied, the amount of the assessment, and the payment schedule for assessments.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the land at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the land by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to another co-owner of an undivided interest in the real property;

(7) to a spouse or a person in the lineal line of consanguinity of the seller;

(8) to or from a governmental entity; or

(9) of only a mineral interest, leasehold interest, or security interest.

(d) For the purposes of this section, a contract for the purchase and sale of real property having a performance period of less than six months is considered a sale requiring notice.

Added by Acts 2005, 79th Leg., Ch. 1085 (H.B. 1919), Sec. 1, eff. January 1, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.002, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 3, eff. September 1, 2021.

Sec. 5.0141. NOTICE REQUIRED BEFORE CONTRACT EXECUTION. (a) The notice required by Section 5.014 shall be given to the prospective purchaser before the execution of a binding contract of purchase and sale, either separately or as an addendum or paragraph of a purchase contract.

(b) In the event a contract of purchase and sale is entered into without the seller providing the notice, the purchaser is entitled to terminate the contract.

(c) If, however, the seller furnishes the notice at or before closing the purchase and sale contract and the purchaser elects to

close even though the notice was not timely furnished before execution of the contract, it shall be conclusively presumed that the purchaser has waived all rights to terminate the contract under Subsection (b) or recover damages or other remedies or rights under Section 5.0145.

(d) Notwithstanding any provision of this section, Section 5.014, 5.0142, 5.0143, 5.0144, or 5.0145, all sellers, title companies, real estate brokers, and examining attorneys, and any agent, representative, or person acting on their behalf, are not liable for damages under Section 5.0145, or for any other damages to any person, for:

(1) failing to provide the notice to a purchaser before execution of a binding contract of purchase and sale or at or before the closing of the purchase and sale contract when the municipality or county has not filed the service plan as required by Section 372.013, Local Government Code; or

(2) unintentionally providing a notice that is not the correct notice under the circumstances before execution of a binding contract of purchase and sale, or at or before the closing of the purchase and sale contract.

Added by Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 4, eff. September 1, 2021.

Sec. 5.0142. PURCHASER SIGNATURE REQUIRED. The purchaser shall sign the notice required by Section 5.014 or the purchase contract including the notice to evidence the receipt of notice.

Added by Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 4, eff. September 1, 2021.

Sec. 5.0143. RECORDING OF NOTICE AT CLOSING. At the closing of purchase and sale, a separate copy of the notice required by Section 5.014 with current information shall be executed by the seller and purchaser, acknowledged, and recorded in the deed records of the county in which the property is located.

Added by Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 4, eff. September 1, 2021.

Sec. 5.0144. RELIANCE ON FILED SERVICE PLAN. (a) For the purposes of the notice required by Section 5.014, all sellers, title companies, real estate brokers, and examining attorneys, and any agent, representative, or person acting on their behalf, are entitled to rely on the accuracy of the service plan as last filed by each municipality or county under Section 372.013, Local Government Code, in completing the notice form to be executed by the seller and purchaser at the closing of purchase and sale.

(b) Any information taken from the service plan as last filed by the municipality or county and the information contained in or shown on the notice form contained in the service plan under Section 372.013, Local Government Code, not including information provided as to the assessments or annual installment amounts as authorized by Section 5.014(b), shall be, for purposes of the notice required by Section 5.014, conclusively presumed as a matter of law to be correct.

(c) All subsequent sellers, purchasers, title insurance companies, real estate brokers, examining attorneys, and lienholders are entitled to rely on the service plan filed by the municipality or county, including the notice form contained in the service plan, under Section 372.013, Local Government Code.

(d) If the notice required by Section 5.014 is given at closing as provided by Section 5.0141(c), a purchaser, or the purchaser's heirs, successors, or assigns, are not entitled to maintain an action for damages against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on their behalf, because the seller:

(1) used the notice form included in the service plan filed by the municipality or county under Section 372.013, Local Government Code; or

(2) relied on the filed legal description of the public improvement district in determining whether the property is located in the district.

(e) No action may be maintained against any title company for failure to disclose the inclusion of the property in a public improvement district when the municipality or county has not filed the service plan under Section 372.013, Local Government Code, with the clerk of each county in which the district is located.

(f) All sellers, title insurance companies, examining attorneys, vendors of property and tax information, real estate brokers, and lienholders, and any agent, representative, or person acting on their behalf, are entitled to rely on the accuracy of:

(1) the service plan last filed by the municipality or county or the information in the notice form filed by the district under Section 372.013, Local Government Code; or

(2) for the purposes of the notice required by Section 5.014, the information in the service plan filed by the municipality or county in effect as of January 1 of each year for the period January 1 through December 31 of such calendar year.

Added by Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 4, eff. September 1, 2021.

Sec. 5.0145. SUITS FOR DAMAGES. (a) If any sale or conveyance of real property within a public improvement district is not made in compliance with Section 5.014, 5.0141, 5.0142, or 5.0143, the purchaser may institute a suit for damages under the provisions of Subsection (b) or (e).

(b) A purchaser of real property whose sale or conveyance is subject to the notice requirement under Section 5.014, if the sale or conveyance of the property is not made in compliance with that section or Section 5.0141, 5.0142, or 5.0143, may institute a suit for damages in the amount of all costs relative to the purchase of the property at the time of purchase, plus interest and reasonable attorney's fees.

(c) The suit for damages under Subsection (b) may be instituted jointly or severally against the person, firm, corporation, partnership, organization, business trust, estate, trust, association, or other legal entity that sold or conveyed the property to the purchaser.

(d) Following the recovery of damages under Subsection (b), the amount of the damages shall first be paid to satisfy all unpaid obligations on each outstanding lien on the property and the remainder of the damage amount shall be paid to the purchaser. On payment of all damages respectively to the lienholders and purchaser, the purchaser shall reconvey the property to the seller.

(e) A purchaser of real property whose sale or conveyance is

subject to the notice requirement under Section 5.014, if the sale or conveyance of the property is not made in compliance with that section or Section 5.0141, 5.0142, or 5.0143, may institute a suit for damages in an amount not to exceed $5,000, plus reasonable attorney's fees.

(f) A purchaser is not entitled to recover damages under both Subsections (b) and (e), and entry of a final decision awarding damages to the purchaser under either Subsection (b) or (e) shall preclude the purchaser from recovering damages under the other subsection.

(g) The relief provided under Subsections (b) and (e) shall be the exclusive remedies for a purchaser aggrieved by the seller's failure to comply with the provisions of Section 5.014, 5.0141, 5.0142, or 5.0143.

(h) An action for damages does not apply to, affect, alter, or impair the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(i) A suit for damages under this section must be brought not later than the earlier of:

(1) the 90th day after the date the purchaser receives the first public improvement district annual assessment installment or tax notice; or

(2) the fourth anniversary of the date the property is sold or conveyed to the purchaser.

(j) Notwithstanding a provision of this section, a purchaser may not recover damages under this section if the purchaser:

(1) purchases an equity in real property and in conjunction with the purchase assumes any liens, whether purchase money or otherwise; and

(2) does not require proof of title by abstract, title policy, or any other proof of title.

(k) A purchaser who purchases real property in a public improvement district and who then sells or conveys the property shall on closing of the subsequent sale or conveyance be conclusively considered to have waived any prior right to damages under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 253 (H.B. 1543), Sec. 4, eff. September 1, 2021.

Sec. 5.015. PROHIBITED FEES. A person who has a right of first refusal in real property that is a condominium subject to Chapter 81 or Chapter 82 may not charge a fee for declining to exercise that right, such as a fee for providing written evidence of the declination.

Added by Acts 2005, 79th Leg., Ch. 825 (S.B. 810), Sec. 14, eff. September 1, 2005.
Renumbered from Property Code, Section 5.014 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(63), eff. September 1, 2007.

Sec. 5.016. CONVEYANCE OF RESIDENTIAL PROPERTY ENCUMBERED BY LIEN. (a) A person may not convey an interest in or enter into a contract to convey an interest in residential real property that will be encumbered by a recorded lien at the time the interest is conveyed unless, on or before the seventh day before the earlier of the effective date of the conveyance or the execution of an executory contract binding the purchaser to purchase the property, an option contract, or other contract, the person provides the purchaser and each lienholder a separate written disclosure statement in at least 12-point type that:

(1) identifies the property and includes the name, address, and phone number of each lienholder;

(2) states the amount of the debt that is secured by each lien;

(3) specifies the terms of any contract or law under which the debt that is secured by the lien was incurred, including, as applicable:

(A) the rate of interest;

(B) the periodic installments required to be paid; and

(C) the account number;

(4) indicates whether the lienholder has consented to the transfer of the property to the purchaser;

(5) specifies the details of any insurance policy relating to the property, including:

(A) the name of the insurer and insured;

(B) the amount for which the property is insured; and

(C) the property that is insured;

(6) states the amount of any property taxes that are due on

the property; and

(7) includes a statement at the top of the disclosure in a form substantially similar to the following:

WARNING: ONE OR MORE RECORDED LIENS HAVE BEEN FILED THAT MAKE A CLAIM AGAINST THIS PROPERTY AS LISTED BELOW. IF A LIEN IS NOT RELEASED AND THE PROPERTY IS CONVEYED WITHOUT THE CONSENT OF THE LIENHOLDER, IT IS POSSIBLE THE LIENHOLDER COULD DEMAND FULL PAYMENT OF THE OUTSTANDING BALANCE OF THE LIEN IMMEDIATELY. YOU MAY WISH TO CONTACT EACH LIENHOLDER FOR FURTHER INFORMATION AND DISCUSS THIS MATTER WITH AN ATTORNEY.

(b) A violation of this section does not invalidate a conveyance. Except as provided by Subsections (c) and (d), if a contract is entered into without the seller providing the notice required by this section, the purchaser may terminate the contract for any reason on or before the seventh day after the date the purchaser receives the notice in addition to other remedies provided by this section or other law.

(c) This section does not apply to a transfer:

(1) under a court order or foreclosure sale;

(2) by a trustee in bankruptcy;

(3) to a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(4) by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted under a power of sale under a deed of trust or a sale under a court-ordered foreclosure or has acquired the real property by a deed in lieu of foreclosure;

(5) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;

(6) from one co-owner to one or more other co-owners;

(7) to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(8) between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to one of those decrees;

(9) to or from a governmental entity;

(10) where the purchaser obtains a title insurance policy insuring the transfer of title to the real property; or

(11) to a person who has purchased, conveyed, or entered

into contracts to purchase or convey an interest in real property four or more times in the preceding 12 months.

(d) A violation of this section is not actionable if the person required to give notice reasonably believes and takes any necessary action to ensure that each lien for which notice was not provided will be released on or before the 30th day after the date on which title to the property is transferred.

Added by Acts 2007, 80th Leg., R.S., Ch. 1056 (H.B. 2207), Sec. 1, eff. January 1, 2008.

Sec. 5.019. NOTICE OF WATER LEVEL FLUCTUATIONS. (a) This section applies only to the sale of residential or commercial real property adjoining an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level.

(b) A seller of real property shall give to the purchaser of the property a written notice in substantially the following form:

NOTICE OF WATER LEVEL FLUCTUATIONS

The water level of the impoundment of water adjoining the property at _____ (street address and city) or described as _____ (legal description) fluctuates for various reasons, including as a result of:

(1) an entity lawfully exercising its right to use the water stored in the impoundment; or

(2) drought or flood conditions.

(c) The notice described by Subsection (b) shall be delivered by the seller to the purchaser on or before the effective date of an executory contract binding the purchaser to purchase the property.

(d) If a contract is entered into without the seller providing the notice within the period required by Subsection (c), the purchaser may terminate the contract for any reason within seven days after the date the purchaser receives:

(1) the notice described by Subsection (b) from the seller; or

(2) information described by the notice under Subsection (b) from any other person.

(e) After the date of the conveyance, the purchaser may bring

an action for misrepresentation against the seller if the seller:

(1) failed to provide the notice before the date of the conveyance; and

(2) had actual knowledge that the water level described by Subsection (b) fluctuates for various reasons, including the reasons stated in Subsection (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 926 (H.B. 1665), Sec. 1, eff. September 1, 2015.

Sec. 5.020. EASEMENTS RESTRICTING POSSESSION OF FIREARMS OR ALCOHOLIC BEVERAGES PROHIBITED. (a) In this section:

(1) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(2) "Firearm" has the meaning assigned by Section 46.01, Penal Code. The term includes any firearm parts, firearm accessories, and firearm ammunition.

(b) This section does not apply to a right-of-way easement for a pipeline, electric transmission line, or other utility.

(c) An instrument granting an access easement may not restrict or prohibit an easement holder or an easement holder's guest from possessing, carrying, or transporting a firearm or an alcoholic beverage over the servient estate while using the easement for the easement's purpose.

(d) The owner of a servient estate may not enforce a restrictive covenant in an instrument granting an access easement over the servient estate that restricts or prohibits the easement holder or the easement holder's guest from possessing, carrying, or transporting a firearm or an alcoholic beverage over the servient estate while using the easement for the easement's purpose.

Added by Acts 2021, 87th Leg., R.S., Ch. 907 (H.B. 4346), Sec. 1, eff. September 1, 2021.

Sec. 5.0205. EQUITABLE INTEREST DISCLOSURE. Before entering into a contract to sell an option or assign an interest in a contract to purchase real property, a person must disclose in writing to:

(1) any potential buyer that the person is selling only an option or assigning an interest in a contract and that the person

does not have legal title to the real property; and

(2) the owner of the real property that the person intends to sell an option or assign an interest in a contract.

Added by Acts 2017, 85th Leg., R.S., Ch. 974 (S.B. 2212), Sec. 4, eff. September 1, 2017.
Transferred, redesignated and amended from Property Code, Section 5.086 by Acts 2023, 88th Leg., R.S., Ch. 94 (S.B. 1577), Sec. 27, eff. January 1, 2024.

SUBCHAPTER B. FORM AND CONSTRUCTION OF INSTRUMENTS

Sec. 5.021. INSTRUMENT OF CONVEYANCE. A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.022. FORM. (a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:
"The State of Texas,
"County of _____.

"Know all men by these presents, That I, _____, of the _____ (give name of city, town, or county), in the state aforesaid, for and in consideration of _____ dollars, to me in hand paid by _____, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said _____, of the _____ (give name of city, town, or county), in the state of _____, all that certain _____ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _____, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said _____, his heirs, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any

part thereof.

"Witness my hand, this _____ day of _____, A.D. 19___.

"Signed and delivered in the presence of _____"

(b) A covenant of warranty is not required in a conveyance.

(c) The parties to a conveyance may insert any clause or use any form not in contravention of law.

Acts 1983, 68th Leg., p. 3481, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.023. IMPLIED COVENANTS. (a) Unless the conveyance expressly provides otherwise, the use of "grant" or "convey" in a conveyance of an estate of inheritance or fee simple implies only that the grantor and the grantor's heirs covenant to the grantee and the grantee's heirs or assigns:

(1) that prior to the execution of the conveyance the grantor has not conveyed the estate or any interest in the estate to a person other than the grantee; and

(2) that at the time of the execution of the conveyance the estate is free from encumbrances.

(b) An implied covenant under this section may be the basis for a lawsuit as if it had been expressed in the conveyance.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.024. ENCUMBRANCES. "Encumbrance" includes a tax, an assessment, and a lien on real property.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.025. WOOD SHINGLE ROOF. To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void.

Acts 1983, 68th Leg., p. 3482, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.026. DISCRIMINATORY PROVISIONS. (a) If a restriction

that affects real property, or a provision in a deed that conveys real property or an interest in real property, whether express or incorporated by reference, prohibits the use by or the sale, lease, or transfer to a person because of race, color, religion, or national origin, the provision or restriction is void.

(b) A court shall dismiss a suit or part of a suit to enforce a provision that is void under this section.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.0261. REMOVAL OF DISCRIMINATORY PROVISION FROM RECORDED CONVEYANCE INSTRUMENT. (a) In this section, "discriminatory provision" means a restriction or provision that is void under Section 5.026(a).

(b) A person who owns real property or an interest in real property the chain of title for which includes a recorded conveyance instrument containing a discriminatory provision, or another person with the permission of the owner, may request the removal of the discriminatory provision from the instrument by completing and filing, with the clerk of a district court in the county in whose real property records the instrument is recorded or of another court having jurisdiction over real property matters in the county, a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: Conveyance Instrument with Discriminatory Provision

In the _____ Judicial District

In and For _____ County, Texas

Motion for Judicial Review of Conveyance Instrument Alleged to Contain a Discriminatory Provision as Defined by Section 5.0261(a), Texas Property Code

Now Comes (name) and files this motion requesting a judicial determination of the status of a conveyance instrument that contains a discriminatory provision as defined by Section 5.0261(a), Texas Property Code, filed in the office of the Clerk of (county name) County, Texas, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person who owns the real property or the interest in real property described in the conveyance instrument or has been given permission by that person to file this motion.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed and recorded the conveyance instrument attached hereto and containing (number) pages. The instrument is recorded at _____ in the real property records of _____ County. The conveyance instrument contains a discriminatory provision as defined by Section 5.0261(a), Texas Property Code.

III.

Movant alleges that the conveyance instrument attached hereto contains a discriminatory provision as defined by Section 5.0261(a), Texas Property Code, and that the discriminatory provision should be removed.

IV.

Movant attests that assertions herein are true and correct.

V.

PRAYER

Movant requests the court to review the attached conveyance instrument and enter an order removing the discriminatory provision as defined by Section 5.0261(a), Texas Property Code, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(c) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct."

Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

_____

(d) A motion under this section may be ruled on by a court having jurisdiction over real property matters in the county where the subject conveyance instrument was filed. The court's finding may be made solely on a review of the conveyance instrument attached to the motion and without hearing any testimonial evidence. The court's review may be made ex parte without delay or notice of any kind. If the court does not rule on the motion on or before the 15th day after the date the motion is filed, the motion is deemed granted. An appellate court shall expedite review of a court's finding under this section.

(e) A court clerk may not collect a filing fee for filing a motion under this section.

(f) After reviewing the conveyance instrument attached to a motion filed under this section, the court shall enter an appropriate finding of fact and conclusion of law.

(g) The court's finding of fact and conclusion of law must be:

(1) transferred by the court clerk to the county clerk for recording and indexing not later than the 10th day after the date the finding of fact and conclusion of law is entered by the court or deemed granted under Subsection (d); and

(2) filed and indexed by the county clerk in the same class of records in which the subject conveyance instrument is filed.

(h) The county clerk may not collect a fee for filing a court's finding of fact and conclusion of law under this section.

(i) A suggested form of order appropriate to comply with Subsection (f) is as follows:

MISC. DOCKET NO. _____

In Re: Conveyance Instrument with Discriminatory Provision	In the _____ Judicial District In and For _____ County, Texas

Judicial Finding of Fact and Conclusion of Law Regarding Conveyance Instrument Alleged to Contain a Discriminatory Provision as Defined by Section 5.0261(a), Texas Property Code

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the conveyance instrument attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the conveyance instrument under the authority vested in the court under Section 5.0261, Texas Property Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The conveyance instrument recorded at _____ in the real property records of _____ County CONTAINS a discriminatory provision as defined by Section 5.0261(a), Texas Property Code. The discriminatory provision as defined by Section 5.0261(a), Texas Property Code, is void and removed from the conveyance instrument identified herein.

_____ The conveyance instrument recorded at _____ in the real property records of _____ County and attached to the motion herein DOES NOT CONTAIN a discriminatory provision as defined by Section 5.0261(a), Texas Property Code.

This court expressly limits its finding of fact and conclusion of law to the review of a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records in which the subject conveyance instrument is filed, and the court directs the county clerk to index it using the same names used to index the subject conveyance instrument.

SIGNED ON THIS THE _____ DAY OF _____.

_____

JUDGE

_____ (Court)

_____ COUNTY, TEXAS

Added by Acts 2021, 87th Leg., R.S., Ch. 532 (S.B. 30), Sec. 2, eff.

September 1, 2021.

Sec. 5.027. CORRECTION INSTRUMENTS: GENERALLY. (a) A correction instrument that complies with Section 5.028 or 5.029 may correct an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property, including an ambiguity or error that relates to the description of or extent of the interest conveyed.

(b) A correction instrument may not correct an ambiguity or error in a recorded original instrument of conveyance to transfer real property or an interest in real property not originally conveyed in the instrument of conveyance for purposes of a sale of real property under a power of sale under Chapter 51 unless the conveyance otherwise complies with all requirements of Chapter 51.

(c) A correction instrument is subject to Section 13.001.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.

Sec. 5.028. CORRECTION INSTRUMENTS: NONMATERIAL CORRECTIONS. (a) A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may prepare or execute a correction instrument to make a nonmaterial change that results from a clerical error, including:

(1) a correction of an inaccurate or incorrect element in a legal description, such as a distance, angle, direction, bearing or chord, a reference to a plat or other plat information, a lot or block number, a unit, building designation, or section number, an appurtenant easement, a township name or number, a municipality, county, or state name, a range number or meridian, a certified survey map number, or a subdivision or condominium name; or

(2) an addition, correction, or clarification of:

(A) a party's name, including the spelling of a name, a first or middle name or initial, a suffix, an alternate name by which a party is known, the identity of the trustee of a trust named as party, or a description of an entity as a corporation, company, or other type of organization;

(B) a party's marital status;

(C) the date on which the conveyance was executed;

(D) the recording data for an instrument referenced in the correction instrument; or

(E) a fact relating to the acknowledgment or authentication.

(a-1) A person who has personal knowledge of facts relevant to the correction of a recorded original instrument of conveyance may prepare or execute a correction instrument to make a nonmaterial change that results from an inadvertent error, including the addition, correction, or clarification of:

(1) a legal description prepared in connection with the preparation of the original instrument but inadvertently omitted from the original instrument; or

(2) an omitted call in a metes and bounds legal description in the original instrument that completes the description of the property.

(b) A person who executes a correction instrument under this section may execute a correction instrument that provides an acknowledgment or authentication that is required and was not included in the recorded original instrument of conveyance.

(c) A person who executes a correction instrument under this section shall disclose in the instrument the basis for the person's personal knowledge of the facts relevant to the correction of the recorded original instrument of conveyance.

(d) A person who executes a correction instrument under this section shall:

(1) record the instrument and evidence of notice as provided by Subdivision (2), if applicable, in each county in which the original instrument of conveyance being corrected is recorded; and

(2) if the correction instrument is not signed by each party to the recorded original instrument, send a copy of the correction instrument and notice by first class mail, e-mail, or other reasonable means to each party to the original instrument of conveyance and, if applicable, a party's heirs, successors, or assigns.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 158 (S.B. 887), Sec. 1, eff. September 1, 2013.

Acts 2023, 88th Leg., R.S., Ch. 345 (S.B. 801), Sec. 2, eff. September 1, 2023.

Sec. 5.029. CORRECTION INSTRUMENTS: MATERIAL CORRECTIONS. (a) In addition to nonmaterial corrections, including the corrections described by Section 5.028, the parties to the original transaction or the parties' heirs, successors, or assigns, as applicable may execute a correction instrument to make a material correction to the recorded original instrument of conveyance, including a correction to:

(1) add:

(A) a buyer's disclaimer of an interest in the real property that is the subject of the original instrument of conveyance;

(B) a mortgagee's consent or subordination to a recorded document executed by the mortgagee or an heir, successor, or assign of the mortgagee; or

(C) land to a conveyance that correctly conveys other land;

(2) remove land from a conveyance that correctly conveys other land; or

(3) accurately identify a lot or unit number or letter of property owned by the grantor that was inaccurately identified as another lot or unit number or letter of property owned by the grantor in the recorded original instrument of conveyance.

(b) A correction instrument under this section must be:

(1) executed by each party to the recorded original instrument of conveyance the correction instrument is executed to correct or, if applicable, a party's heirs, successors, or assigns; and

(2) recorded in each county in which the original instrument of conveyance that is being corrected is recorded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.

Sec. 5.030. CORRECTION INSTRUMENT: EFFECT. (a) A correction instrument that complies with Section 5.028 or 5.029 is:

(1) effective as of the effective date of the recorded original instrument of conveyance;

(2) prima facie evidence of the facts stated in the correction instrument;

(3) presumed to be true;

(4) subject to rebuttal; and

(5) notice to a subsequent buyer of the facts stated in the correction instrument.

(b) A correction instrument replaces and is a substitute for the original instrument. Except as provided by Subsection (c), a bona fide purchaser of property that is subject to a correction instrument may rely on the instrument against any person making an adverse or inconsistent claim.

(c) A correction instrument is subject to the property interest of a creditor or a subsequent purchaser for valuable consideration without notice acquired on or after the date the original instrument was acknowledged, sworn to, or proved and filed for record as required by law and before the correction instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 158 (S.B. 887), Sec. 2, eff. September 1, 2013.

Sec. 5.031. CORRECTION INSTRUMENTS RECORDED BEFORE SEPTEMBER 1, 2011. A correction instrument recorded before September 1, 2011, that substantially complies with Section 5.028 or 5.029 and that purports to correct a recorded original instrument of conveyance is effective to the same extent as provided by Section 5.030 unless a court of competent jurisdiction renders a final judgment determining that the correction instrument does not substantially comply with Section 5.028 or 5.029.

Added by Acts 2011, 82nd Leg., R.S., Ch. 194 (S.B. 1496), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. FUTURE ESTATES

Sec. 5.041. FUTURE ESTATES. A person may make an inter vivos conveyance of an estate of freehold or inheritance that commences in the future, in the same manner as by a will.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 5.042. ABOLITION OF COMMON-LAW RULES. (a) The common-law rules known as the rule in Shelley's case, the rule forbidding a remainder to the grantor's heirs, the doctrine of worthier title, and the doctrine or rule prohibiting an existing lien upon part of a homestead from extending to another part of the homestead not charged with the debts secured by the existing lien upon part of the homestead do not apply in this state.

(b) A deed, will, or other conveyance of property in this state that limits an interest in the property to a particular person or to a class such as the heirs, heirs of the body, issue, or next of kin of the conveyor or of a person to whom a particular interest in the same property is limited is effective according to the intent of the conveyor.

(c) Status as an heir or next of kin of a conveyor or the failure of a conveyor to describe a person in a conveyance other than as a member of a class does not affect a person's right to take or share in an interest as a conveyee.

(d) Subject to the intention of a conveyor, which controls unless limited by law, the membership of a class described in this section and the participation of a member in a property interest conveyed to the class are determined under this state's laws of descent and distribution.

(e) This section does not apply to a conveyance taking effect before January 1, 1964.

Acts 1983, 68th Leg., p. 3483, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1999, 76th Leg., ch. 1510, Sec. 5, eff. Sept. 1, 1999.

Sec. 5.043. REFORMATION OF INTERESTS VIOLATING RULE AGAINST

PERPETUITIES. (a) Within the limits of the rule against perpetuities, a court shall reform or construe an interest in real or personal property that violates the rule to effect the ascertainable general intent of the creator of the interest. A court shall liberally construe and apply this provision to validate an interest to the fullest extent consistent with the creator's intent.

(b) The court may reform or construe an interest under Subsection (a) of this section according to the doctrine of cy pres by giving effect to the general intent and specific directives of the creator within the limits of the rule against perpetuities.

(c) If an instrument that violates the rule against perpetuities may be reformed or construed under this section, a court shall enforce the provisions of the instrument that do not violate the rule and shall reform or construe under this section a provision that violates or might violate the rule.

(d) This section applies to legal and equitable interests, including noncharitable gifts and trusts, conveyed by an inter vivos instrument or a will that takes effect on or after September 1, 1969, and this section applies to an appointment made on or after that date regardless of when the power was created.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 16, eff. Sept. 1, 1991.

SUBCHAPTER D. EXECUTORY CONTRACT FOR CONVEYANCE

Sec. 5.061. DEFINITION. In this subchapter, "default" means the failure to:

(1) make a timely payment; or

(2) comply with a term of an executory contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.065 and amended by Act 2001, 77th Leg., ch. 693, Sec. 1, Sept. 1, 2001.

Sec. 5.062. APPLICABILITY. (a) This subchapter applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence or as the residence of a person related to the purchaser within the second

degree by consanguinity or affinity, as determined under Chapter 573, Government Code. For purposes of this subchapter, and only for the purposes of this subchapter:

(1) a lot measuring one acre or less is presumed to be residential property; and

(2) an option to purchase real property that includes or is combined or executed concurrently with a residential lease agreement, together with the lease, is considered an executory contract for conveyance of real property.

(b) This subchapter does not apply to the following transactions under an executory contract:

(1) the sale of state land; or

(2) a sale of land by:

(A) the Veterans' Land Board;

(B) this state or a political subdivision of this state; or

(C) an instrumentality, public corporation, or other entity created to act on behalf of this state or a political subdivision of this state, including an entity created under Chapter 303, 392, or 394, Local Government Code.

(c) This subchapter does not apply to an executory contract that provides for the delivery of a deed from the seller to the purchaser within 180 days of the date of the final execution of the executory contract.

(d) Section 5.066 and Sections 5.068-5.080 do not apply to a transaction involving an executory contract for conveyance if the purchaser of the property:

(1) is related to the seller of the property within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; and

(2) has waived the applicability of those sections in a written agreement.

(e) Sections 5.066, 5.067, 5.071, 5.075, 5.079, 5.081, and 5.082 do not apply to an executory contract described by Subsection (a)(2).

(f) Notwithstanding any other provision of this subchapter, only the following sections apply to an executory contract described by Subsection (a)(2) if the term of the contract is three years or less and the purchaser and seller, or the purchaser's or seller's assignee, agent, or affiliate, have not been parties to an executory

contract to purchase the property covered by the executory contract for longer than three years:

(1) Sections 5.063-5.065;

(2) Section 5.073, except for Section 5.073(a)(2); and

(3) Sections 5.083 and 5.085.

(g) Except as provided by Subsection (b), if Subsection (f) conflicts with another provision of this subchapter, Subsection (f) prevails.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.091 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 1, eff. September 1, 2015.

Sec. 5.0621. CONSTRUCTION WITH OTHER LAW. (a) Except as provided by Subsection (b), the provisions of this subchapter and Chapter 92 apply to the portion of an executory contract described by Section 5.062(a)(2) that is a residential lease agreement.

(b) After a tenant exercises an option to purchase leased property under a residential lease described by Subsection (a), Chapter 92 no longer applies to the lease.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 3, eff. September 1, 2005.

Sec. 5.0622. ADDITIONAL APPLICABILITY: CERTAIN COUNTIES. (a) This section applies only to a county with a population of less than 100,000 that is located in a metropolitan statistical area as defined by the federal Office of Management and Budget:

(1) with a population of more than 1.5 million; and

(2) adjacent to a different metropolitan statistical area as defined by the federal Office of Management and Budget with a population of more than 2.5 million.

(b) The commissioners court of a county may adopt an order requiring an executory contract for the conveyance of land used or to

be used as a residence located in the county to be subject to this subchapter. The order must specify a method for determining whether the land is used or to be used as a residence.

(c) The order may not include an executory contract for the conveyance of land:

(1) described by Section 5.062(b), (c), or (d); or

(2) that is to be used primarily for agricultural use, as defined by Section 1-d, Article VIII, Texas Constitution, or for farm, ranch, wildlife management, or timber production use within the meaning of Section 1-d-1, Article VIII, Texas Constitution, and for which no part of the land is to be used as a residence.

(d) If a tract described by Subsection (c)(2) ceases to be used primarily for agricultural use or for farm, ranch, wildlife management, or timber production use, or any part of the land is used as a residence, the executory contract for the conveyance of the land may be included in an order authorized by this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 911 (H.B. 4374), Sec. 1, eff. September 1, 2021.
Amended by:
Acts 2023, 88th Leg., R.S., Ch. 644 (H.B. 4559), Sec. 209, eff. September 1, 2023.

Sec. 5.063. NOTICE. (a) Notice under Section 5.064 must be in writing and must be delivered by registered or certified mail, return receipt requested. The notice must be conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters, and must include on a separate page the statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) THE SELLER HAS THE RIGHT TO TAKE POSSESSION OF YOUR PROPERTY.

(b) The notice must also:

(1) identify and explain the remedy the seller intends to enforce;

(2) if the purchaser has failed to make a timely payment, specify:

(A) the delinquent amount, itemized into principal and interest;

(B) any additional charges claimed, such as late charges or attorney's fees; and

(C) the period to which the delinquency and additional charges relate; and

(3) if the purchaser has failed to comply with a term of the contract, identify the term violated and the action required to cure the violation.

(c) Notice by mail is given when it is mailed to the purchaser's residence or place of business. The affidavit of a person knowledgeable of the facts to the effect that notice was given is prima facie evidence of notice in an action involving a subsequent bona fide purchaser for value if the purchaser is not in possession of the real property and if the stated time to avoid the forfeiture has expired. A bona fide subsequent purchaser for value who relies upon the affidavit under this subsection shall take title free and clear of the contract.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 444, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.062 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.064. SELLER'S REMEDIES ON DEFAULT. A seller may enforce the remedy of rescission or of forfeiture and acceleration against a purchaser in default under an executory contract for conveyance of real property only if:

(1) the seller notifies the purchaser of:

(A) the seller's intent to enforce a remedy under this section; and

(B) the purchaser's right to cure the default within the 30-day period described by Section 5.065;

(2) the purchaser fails to cure the default within the 30-day period described by Section 5.065;

(3) Section 5.066 does not apply; and

(4) the contract has not been recorded in the county in which the property is located.

Acts 1983, 68th Leg., p. 3484, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995.

Renumbered from Property Code Sec. 5.061 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 2, eff. September 1, 2015.

Sec. 5.065. RIGHT TO CURE DEFAULT. Notwithstanding an agreement to the contrary, a purchaser in default under an executory contract for the conveyance of real property may avoid the enforcement of a remedy described by Section 5.064 by complying with the terms of the contract on or before the 30th day after the date notice is given under that section.

Acts 1983, 68th Leg., p. 3485, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.063 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 959, Sec. 2, eff. Sept. 1, 2003.

Sec. 5.066. EQUITY PROTECTION; SALE OF PROPERTY. (a) If a purchaser defaults after the purchaser has paid 40 percent or more of the amount due or the equivalent of 48 monthly payments under the executory contract or, regardless of the amount the purchaser has paid, the executory contract has been recorded, the seller is granted the power to sell, through a trustee designated by the seller, the purchaser's interest in the property as provided by this section. The seller may not enforce the remedy of rescission or of forfeiture and acceleration after the contract has been recorded.

(b) The seller shall notify a purchaser of a default under the contract and allow the purchaser at least 60 days after the date notice is given to cure the default. The notice must be provided as prescribed by Section 5.063 except that the notice must substitute the following statement:

NOTICE

YOU ARE NOT COMPLYING WITH THE TERMS OF THE CONTRACT TO BUY YOUR PROPERTY. UNLESS YOU TAKE THE ACTION SPECIFIED IN THIS NOTICE BY (date) A TRUSTEE DESIGNATED BY THE SELLER HAS THE RIGHT TO SELL YOUR

PROPERTY AT A PUBLIC AUCTION.

(c) The trustee or a substitute trustee designated by the seller must post, file, and serve a notice of sale and the county clerk shall record and maintain the notice of sale as prescribed by Section 51.002. A notice of sale is not valid unless it is given after the period to cure has expired.

(d) The trustee or a substitute trustee designated by the seller must conduct the sale as prescribed by Section 51.002. The seller must:

(1) convey to a purchaser at a sale conducted under this section fee simple title to the real property; and

(2) warrant that the property is free from any encumbrance.

(e) The remaining balance of the amount due under the executory contract is the debt for purposes of a sale under this section. If the proceeds of the sale exceed the debt amount, the seller shall disburse the excess funds to the purchaser under the executory contract. If the proceeds of the sale are insufficient to extinguish the debt amount, the seller's right to recover the resulting deficiency is subject to Sections 51.003, 51.004, and 51.005 unless a provision of the executory contract releases the purchaser under the contract from liability.

(f) The affidavit of a person knowledgeable of the facts that states that the notice was given and the sale was conducted as provided by this section is prima facie evidence of those facts. A purchaser for value who relies on an affidavit under this subsection acquires title to the property free and clear of the executory contract.

(g) If a purchaser defaults before the purchaser has paid 40 percent of the amount due or the equivalent of 48 monthly payments under the executory contract, the seller may enforce the remedy of rescission or of forfeiture and acceleration of the indebtedness if the seller complies with the notice requirements of Sections 5.063 and 5.064.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.101 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 3, eff. September 1, 2015.

Sec. 5.067. PLACEMENT OF LIEN FOR UTILITY SERVICE. Notwithstanding any terms of a contract to the contrary, the placement of a lien for the reasonable value of improvements to residential real estate for purposes of providing utility service to the property shall not constitute a default under the terms of an executory contract for the purchase of the real property.

Added by Acts 1991, 72nd Leg., ch. 743, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.064 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.068. FOREIGN LANGUAGE REQUIREMENT. If the negotiations that precede the execution of an executory contract are conducted primarily in a language other than English, the seller shall provide a copy in that language of all written documents relating to the transaction, including the contract, disclosure notices, annual accounting statements, and a notice of default required by this subchapter.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.093 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.069. SELLER'S DISCLOSURE OF PROPERTY CONDITION. (a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a survey, which was completed within the past year, or plat of a current survey of the real property;

(2) a legible copy of any document that describes an encumbrance or other claim, including a restrictive covenant or easement, that affects title to the real property; and

(3) a written notice, which must be attached to the contract, informing the purchaser of the condition of the property that must, at a minimum, be executed by the seller and purchaser and read substantially similar to the following:

WARNING

IF ANY OF THE ITEMS BELOW HAVE NOT BEEN CHECKED, YOU MAY NOT BE ABLE TO LIVE ON THE PROPERTY.

SELLER'S DISCLOSURE NOTICE

CONCERNING THE PROPERTY AT (street address or legal description and city)

THIS DOCUMENT STATES CERTAIN APPLICABLE FACTS ABOUT THE PROPERTY YOU ARE CONSIDERING PURCHASING.

CHECK ALL THE ITEMS THAT ARE APPLICABLE OR TRUE:

_____ The property is in a recorded subdivision.

_____ The property has water service that provides potable water.

_____ The property has sewer service.

_____ The property has been approved by the appropriate municipal, county, or state agency for installation of a septic system.

_____ The property has electric service.

_____ The property is not in a floodplain.

_____ The roads to the boundaries of the property are paved and maintained by:

_____ the seller;

_____ the owner of the property on which the road exists;

_____ the municipality;

_____ the county; or

_____ the state.

_____ No individual or entity other than the seller:

(1) owns the property;

(2) has a claim of ownership to the property; or

(3) has an interest in the property.

_____ No individual or entity has a lien filed against the property.

_____ There are no restrictive covenants, easements, or other title exceptions or encumbrances that prohibit construction of a house on the property.

NOTICE: SELLER ADVISES PURCHASER TO:

(1) OBTAIN A TITLE ABSTRACT OR TITLE COMMITMENT COVERING THE PROPERTY AND HAVE THE ABSTRACT OR COMMITMENT REVIEWED BY AN ATTORNEY BEFORE SIGNING A CONTRACT OF THIS TYPE; AND

(2) PURCHASE AN OWNER'S POLICY OF TITLE INSURANCE COVERING THE PROPERTY.

_____ _____

(Date) (Signature of Seller)

_____ _____

(Date) (Signature of Purchaser)

(b) If the property is not located in a recorded subdivision, the seller shall provide the purchaser with a separate disclosure form stating that utilities may not be available to the property until the subdivision is recorded as required by law.

(c) If the seller advertises property for sale under an executory contract, the advertisement must disclose information regarding the availability of water, sewer, and electric service.

(d) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(e) Subsection (d) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.094 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.070. SELLER'S DISCLOSURE OF TAX PAYMENTS AND INSURANCE COVERAGE. (a) Before an executory contract is signed by the purchaser, the seller shall provide the purchaser with:

(1) a tax certificate from the collector for each taxing unit that collects taxes due on the property as provided by Section 31.08, Tax Code; and

(2) a legible copy of any insurance policy, binder, or other evidence relating to the property that indicates:

(A) the name of the insurer and the insured;

(B) a description of the property insured; and

(C) the amount for which the property is insured.

(b) The seller's failure to provide information required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(c) Subsection (b) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(d) If the executory contract is recorded, the seller is not required to continue insuring the property.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 4, eff. September 1, 2015.

Sec. 5.071. SELLER'S DISCLOSURE OF FINANCING TERMS. Before an executory contract is signed by the purchaser, the seller shall provide to the purchaser a written statement that specifies:

(1) the purchase price of the property;

(2) the interest rate charged under the contract;

(3) the dollar amount, or an estimate of the dollar amount if the interest rate is variable, of the interest charged for the term of the contract;

(4) the total amount of principal and interest to be paid under the contract;

(5) the late charge, if any, that may be assessed under the contract; and

(6) the fact that the seller may not charge a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995.

Renumbered from Property Code Sec. 5.095 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.072. ORAL AGREEMENTS PROHIBITED. (a) An executory contract is not enforceable unless the contract is in writing and signed by the party to be bound or by that party's authorized representative.

(b) The rights and obligations of the parties to a contract are determined solely from the written contract, and any prior oral agreements between the parties are superseded by and merged into the contract.

(c) An executory contract may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the contract.

(d) The seller shall include in a separate document or in a provision of the contract a statement printed in 14-point boldfaced type or 14-point uppercase typewritten letters that reads substantially similar to the following:

THIS EXECUTORY CONTRACT REPRESENTS THE FINAL AGREEMENT BETWEEN THE SELLER AND PURCHASER AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

_____ _____

(Date) (Signature of Seller)

_____ _____

(Date) (Signature of Purchaser)

(e) The seller's failure to provide the notice required by this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) entitles the purchaser to cancel and rescind the executory contract and receive a full refund of all payments made to the seller.

(f) Subsection (e) does not limit the purchaser's remedy against the seller for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter

17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.073. CONTRACT TERMS, CERTAIN WAIVERS PROHIBITED. (a) A seller may not include as a term of the executory contract a provision that:

(1) imposes an additional late-payment fee that exceeds the lesser of:

(A) eight percent of the monthly payment under the contract; or

(B) the actual administrative cost of processing the late payment;

(2) prohibits the purchaser from pledging the purchaser's interest in the property as security to obtain a loan to place improvements, including utility improvements or fire protection improvements, on the property;

(3) imposes a prepayment penalty or any similar fee if the purchaser elects to pay the entire amount due under the contract before the scheduled payment date under the contract;

(4) forfeits an option fee or other option payment paid under the contract for a late payment; or

(5) increases the purchase price, imposes a fee or charge of any type, or otherwise penalizes a purchaser leasing property with an option to buy the property for requesting repairs or exercising any other right under Chapter 92.

(b) A provision of the executory contract that purports to waive a right or exempt a party from a liability or duty under this subchapter is void.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.096 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 4, eff. September 1, 2005.

Sec. 5.074. PURCHASER'S RIGHT TO CANCEL CONTRACT WITHOUT CAUSE. (a) In addition to other rights or remedies provided by law, the

purchaser may cancel and rescind an executory contract for any reason by sending by telegram or certified or registered mail, return receipt requested, or by delivering in person a signed, written notice of cancellation to the seller not later than the 14th day after the date of the contract.

(b) If the purchaser cancels the contract as provided by Subsection (a), the seller shall, not later than the 10th day after the date the seller receives the purchaser's notice of cancellation:

(1) return to the purchaser the executed contract and any property exchanged or payments made by the purchaser under the contract; and

(2) cancel any security interest arising out of the contract.

(c) The seller shall include in immediate proximity to the space reserved in the executory contract for the purchaser's signature a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

YOU, THE PURCHASER, MAY CANCEL THIS CONTRACT AT ANY TIME DURING THE NEXT TWO WEEKS. THE DEADLINE FOR CANCELING THE CONTRACT IS (date). THE ATTACHED NOTICE OF CANCELLATION EXPLAINS THIS RIGHT.

(d) The seller shall provide a notice of cancellation form to the purchaser at the time the purchaser signs the executory contract that is printed in 14-point boldface type or 14-point uppercase typewritten letters and that reads substantially similar to the following:

(date of contract)

NOTICE OF CANCELLATION

YOU MAY CANCEL THE EXECUTORY CONTRACT FOR ANY REASON WITHOUT ANY PENALTY OR OBLIGATION BY (date).

(1) YOU MUST SEND BY TELEGRAM OR CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR DELIVER IN PERSON A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (Name of Seller) AT (Seller's Address) BY (date).

(2) THE SELLER SHALL, NOT LATER THAN THE 10TH DAY AFTER THE DATE THE SELLER RECEIVES YOUR CANCELLATION NOTICE:

(A) RETURN THE EXECUTED CONTRACT AND ANY PROPERTY EXCHANGED OR PAYMENTS MADE BY YOU UNDER THE CONTRACT; AND

(B) CANCEL ANY SECURITY INTEREST ARISING OUT OF THE

CONTRACT.
I ACKNOWLEDGE RECEIPT OF THIS NOTICE OF CANCELLATION FORM.

_____ _____
(Date) (Purchaser's Signature)
I HEREBY CANCEL THIS CONTRACT.

_____ _____
(Date) (Purchaser's Signature)

(e) The seller may not request the purchaser to sign a waiver of receipt of the notice of cancellation form required by this section.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.097 by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.075. PURCHASER'S RIGHT TO PLEDGE INTEREST IN PROPERTY ON CONTRACTS ENTERED INTO BEFORE SEPTEMBER 1, 2001. (a) On an executory contract entered into before September 1, 2001 , a purchaser may pledge the interest in the property, which accrues pursuant to Section 5.066, only to obtain a loan for improving the safety of the property or any improvements on the property.

(b) Loans that improve the safety of the property and improvements on the property include loans for:

(1) improving or connecting a residence to water service;

(2) improving or connecting a residence to a wastewater system;

(3) building or improving a septic system;

(4) structural improvements in the residence; and

(5) improved fire protection.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.098 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.076. RECORDING REQUIREMENTS. (a) Except as provided by Subsection (b), the seller shall record the executory contract, including the attached disclosure statement required by Section 5.069, as prescribed by Title 3 on or before the 30th day after the date the contract is executed.

(b) Section 12.002(c) does not apply to an executory contract filed for record under this section.

(c) If the executory contract is terminated for any reason, the seller shall record the instrument that terminates the contract.

(d) The county clerk shall collect the filing fee prescribed by Section 118.011, Local Government Code.

(e) A seller who violates this section is liable to the purchaser in the same manner and for the same amount as a seller who violates Section 5.079 is liable to a purchaser, except the damages may not exceed $500 for each calendar year of noncompliance. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.099 and amended Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 5, eff. September 1, 2015.

Sec. 5.077. ANNUAL ACCOUNTING STATEMENT. (a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. If the seller mails the statement to the purchaser, the statement must be postmarked not later than January 31.

(b) The statement must include the following information:

(1) the amount paid under the contract;

(2) the remaining amount owed under the contract;

(3) the number of payments remaining under the contract;

(4) the amounts paid to taxing authorities on the purchaser's behalf if collected by the seller;

(5) the amounts paid to insure the property on the purchaser's behalf if collected by the seller;

(6) if the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property; and

(7) if the seller has changed insurance coverage, a legible copy of the current policy, binder, or other evidence that satisfies the requirements of Section 5.070(a)(2).

(c) A seller who conducts less than two transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of $100 for each annual statement the seller fails to provide to the purchaser within the time required by Subsection (a); and

(2) reasonable attorney's fees.

(d) A seller who conducts two or more transactions in a 12-month period under this section who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of $250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement, but not to exceed the fair market value of the property; and

(2) reasonable attorney's fees.

(e) The requirements of this section continue to apply after a purchaser obtains title to the property by conversion or any other process.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.100 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 6, eff. September 1, 2015.

Sec. 5.078. DISPOSITION OF INSURANCE PROCEEDS. (a) The named insured under an insurance policy, binder, or other coverage relating to property subject to an executory contract for the conveyance of real property shall inform the insurer, not later than the 10th day after the date the coverage is obtained or the contract executed, whichever is later, of:

(1) the executory contract for conveyance and the term of the contract; and

(2) the name and address of the other party to the contract.

(b) An insurer who disburses proceeds under an insurance

policy, binder, or other coverage relating to property that has been damaged shall issue the proceeds jointly to the purchaser and the seller designated in the contract.

(c) If proceeds under an insurance policy, binder, or other coverage are disbursed, the purchaser and seller shall ensure that the proceeds are used to repair, remedy, or improve the condition on the property.

(d) The failure of a seller or purchaser to comply with Subsection (c) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

(e) Subsection (d) does not limit either party's remedy for other false, misleading, or deceptive acts or practices actionable in a suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.079. TITLE TRANSFER. (a) A recorded executory contract shall be the same as a deed with a vendor's lien. The vendor's lien is for the amount of the unpaid contract price, less any lawful deductions, and may be enforced by foreclosure sale under Section 5.066 or by judicial foreclosure. A general warranty is implied unless otherwise limited by the recorded executory contract. If an executory contract has not been recorded or converted under Section 5.081, the seller shall transfer recorded, legal title of the property covered by the executory contract to the purchaser not later than the 30th day after the date the seller receives the purchaser's final payment due under the contract.

(b) A seller who violates Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of:

(A) $250 a day for each day the seller fails to transfer the title to the purchaser during the period that begins the 31st day and ends the 90th day after the date the seller receives the purchaser's final payment due under the contract; and

(B) $500 a day for each day the seller fails to transfer title to the purchaser after the 90th day after the date the

seller receives the purchaser's final payment due under the contract; and

(2) reasonable attorney's fees.

(c) If a person to whom a seller's property interest passes by will or intestate succession is required to obtain a court order to clarify the person's status as an heir or to clarify the status of the seller or the property before the person may convey good and indefeasible title to the property, the court in which the action is pending may waive payment of the liquidated damages and attorney's fees under Subsection (b) if the court finds that the person is pursuing the action to establish good and indefeasible title with reasonable diligence.

(d) In this section, "seller" includes a successor, assignee, personal representative, executor, or administrator of the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.102 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 7, eff. September 1, 2015.

Sec. 5.080. LIABILITY FOR DISCLOSURES. For purposes of this subchapter, a disclosure required by this subchapter that is made by a seller's agent is a disclosure made by the seller.

Added by Acts 1995, 74th Leg., ch. 994, Sec. 3, eff. Sept. 1, 1995. Renumbered from Property Code Sec. 5.103 and amended by Acts 2001, 77th Leg., ch. 693, Sec. 1, eff. Sept. 1, 2001.

Sec. 5.081. RIGHT TO CONVERT CONTRACT. (a) A purchaser, at any time and without paying penalties or charges of any kind, is entitled to convert the purchaser's interest in property under an executory contract into recorded, legal title in accordance with this section, regardless of whether the seller has recorded the executory contract.

(b) If the purchaser tenders to the seller an amount of money equal to the balance of the total amount owed by the purchaser to the seller under the executory contract, the seller shall transfer to the

purchaser recorded, legal title of the property covered by the contract.

(c) Subject to Subsection (d), if the purchaser delivers to the seller of property covered by an executory contract a promissory note that is equal in amount to the balance of the total amount owed by the purchaser to the seller under the contract and that contains the same interest rate, due dates, and late fees as the contract:

(1) the seller shall execute a deed containing any warranties required by the contract and conveying to the purchaser recorded, legal title of the property; and

(2) the purchaser shall simultaneously execute a deed of trust that:

(A) contains the same terms as the contract regarding the purchaser's and seller's duties concerning the property;

(B) secures the purchaser's payment and performance under the promissory note and deed of trust; and

(C) conveys the property to the trustee, in trust, and confers on the trustee the power to sell the property if the purchaser defaults on the promissory note or the terms of the deed of trust.

(d) On or before the 10th day after the date the seller receives a promissory note under Subsection (c) that substantially complies with that subsection, the seller shall:

(1) deliver to the purchaser a written explanation that legally justifies why the seller refuses to convert the purchaser's interest into recorded, legal title under Subsection (c); or

(2) communicate with the purchaser to schedule a mutually agreeable day and time to execute the deed and deed of trust under Subsection (c).

(e) A seller who violates this section is liable to the purchaser in the same manner and amount as a seller who violates Section 5.079 is liable to a purchaser. This subsection does not limit or affect any other rights or remedies a purchaser has under other law.

(f) On the last date that all of the conveyances described by Subsections (b) and (c) are executed, the executory contract:

(1) is considered completed; and

(2) has no further effect.

(g) The appropriate use of forms published by the Texas Real Estate Commission for transactions described by this section

constitutes compliance with this section.

(h) This section may not be construed to limit the purchaser's interest in the property established by other law, if any, or any other rights of the purchaser under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 996 (H.B. 311), Sec. 8, eff. September 1, 2015.

Sec. 5.082. REQUEST FOR BALANCE AND TRUSTEE. (a) A purchaser under an executory contract, on written request, is entitled to receive the following information from the seller:

(1) as of the date of the request or another date specified by the purchaser, the amount owed by the purchaser under the contract; and

(2) if applicable, the name and address of the seller's desired trustee for a deed of trust to be executed under Section 5.081.

(b) On or before the 10th day after the date the seller receives from the purchaser a written request for information described by Subsection (a), the seller shall provide to the purchaser a written statement of the requested information.

(c) If the seller does not timely respond to a request made under this section, the purchaser may:

(1) determine or pay the amount owed under the contract, including determining the amount necessary for a promissory note under Section 5.081; and

(2) if applicable, select a trustee for a deed of trust under Section 5.081.

(d) For purposes of Subsection (c)(2), a purchaser must select a trustee that lives or has a place of business in the same county where the property covered by the executory contract is located.

(e) Not later than the 20th day after the date a seller receives notice of an amount determined by a purchaser under Subsection (c)(1), the seller may contest that amount by sending a written objection to the purchaser. An objection under this subsection must:

(1) be sent to the purchaser by regular and certified mail;

(2) include the amount the seller claims is the amount owed under the contract; and

(3) be based on written records kept by the seller or the seller's agent that were maintained and regularly updated for the entire term of the executory contract.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.

Sec. 5.083. RIGHT TO CANCEL CONTRACT FOR IMPROPER PLATTING. (a) Except as provided by Subsection (c), in addition to other rights or remedies provided by law, the purchaser may cancel and rescind an executory contract at any time if the purchaser learns that the seller has not properly subdivided or platted the property that is covered by the contract in accordance with state and local law. A purchaser canceling and rescinding a contract under this subsection must:

(1) deliver a signed, written notice of the cancellation and rescission to the seller in person; or

(2) send a signed, written notice of the cancellation and rescission to the seller by telegram or certified or registered mail, return receipt requested.

(b) If the purchaser cancels the contract as provided under Subsection (a), the seller, not later than the 10th day after the date the seller receives the notice of cancellation and rescission, shall:

(1) deliver in person or send by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice that the seller intends to subdivide or plat the property properly; or

(2) return to the purchaser all payments of any kind made to the seller under the contract and reimburse the purchaser for:

(A) any payments the purchaser made to a taxing authority for the property; and

(B) the value of any improvements made to the property by the purchaser.

(c) A purchaser may not exercise the purchaser's right to cancel and rescind an executory contract under this section if, on or

before the 90th day after the date the purchaser receives the seller's notice under Subsection (b)(1), the seller:

(1) properly subdivides or plats the property; and

(2) delivers in person or sends by telegram or certified or registered mail, return receipt requested, to the purchaser a signed, written notice evidencing that the property has been subdivided or platted in accordance with state and local law.

(d) The seller may not terminate the purchaser's possession of the property covered by the contract being canceled and rescinded before the seller pays the purchaser any money to which the purchaser is entitled under Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.

Sec. 5.084. RIGHT TO DEDUCT. If a seller is liable to a purchaser under this subchapter, the purchaser, without taking judicial action, may deduct the amount owed to the purchaser by the seller from any amounts owed to the seller by the purchaser under the terms of an executory contract.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.

Sec. 5.085. FEE SIMPLE TITLE REQUIRED; MAINTENANCE OF FEE SIMPLE TITLE. (a) A potential seller may not execute an executory contract with a potential purchaser if the seller does not own the property in fee simple free from any liens or other encumbrances.

(b) Except as provided by this subsection, a seller, or the seller's heirs or assigns, must maintain fee simple title free from any liens or other encumbrances to property covered by an executory contract for the entire duration of the contract. This subsection does not apply to a lien or encumbrance placed on the property that is:

(1) placed on the property because of the conduct of the purchaser;

(2) agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility or fire protection improvements; or

(3) placed on the property by the seller prior to the execution of the contract in exchange for a loan used only to purchase the property if:

(A) the seller, not later than the third day before the date the contract is executed, notifies the purchaser in a separate written disclosure:

(i) of the name, address, and phone number of the lienholder or, if applicable, servicer of the loan;

(ii) of the loan number and outstanding balance of the loan;

(iii) of the monthly payments due on the loan and the due date of those payments; and

(iv) in 14-point type that, if the seller fails to make timely payments to the lienholder, the lienholder may attempt to collect the debt by foreclosing on the lien and selling the property at a foreclosure sale;

(B) the lien:

(i) is attached only to the property sold to the purchaser under the contract; and

(ii) secures indebtedness that, at no time, is or will be greater in amount than the amount of the total outstanding balance owed by the purchaser under the executory contract;

(C) the lienholder:

(i) does not prohibit the property from being encumbered by an executory contract; and

(ii) consents to verify the status of the loan on request of the purchaser and to accept payments directly from the purchaser if the seller defaults on the loan; and

(D) the following covenants are placed in the executory contract:

(i) a covenant that obligates the seller to make timely payments on the loan and to give monthly statements to the purchaser reflecting the amount paid to the lienholder, the date the lienholder receives the payment, and the information described by Paragraph (A);

(ii) a covenant that obligates the seller, not later than the third day the seller receives or has actual knowledge of a document or an event described by this subparagraph, to notify the purchaser in writing in 14-point type that the seller has been sent a notice of default, notice of acceleration, or notice of

foreclosure or has been sued in connection with a lien on the property and to attach a copy of all related documents received to the written notice; and

(iii) a covenant that warrants that if the seller does not make timely payments on the loan or any other indebtedness secured by the property, the purchaser may, without notice, cure any deficiency with a lienholder directly and deduct from the total outstanding balance owed by the purchaser under the executory contract, without the necessity of judicial action, 150 percent of any amount paid to the lienholder.

(c) A violation of this section:

(1) is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) in addition to other rights or remedies provided by law, entitles the purchaser to cancel and rescind the executory contract and receive from the seller:

(A) the return of all payments of any kind made to the seller under the contract; and

(B) reimbursement for:

(i) any payments the purchaser made to a taxing authority for the property; and

(ii) the value of any improvements made to the property by the purchaser.

(d) A seller is not liable under this section if:

(1) a lien is placed on the property by a person other than the seller; and

(2) not later than the 30th day after the date the seller receives notice of the lien, the seller takes all steps necessary to remove the lien and has the lien removed from the property.

Added by Acts 2005, 79th Leg., Ch. 978 (H.B. 1823), Sec. 6, eff. September 1, 2005.

Sec. 5.087. ADDITIONAL PROVISIONS: CERTAIN COUNTIES. (a) This section applies only to a county adopting an order under Section 5.0622.

(b) The commissioners court may not modify the provisions of

this subchapter except the commissioners court may provide in the order that an executory contract to which the order applies may not be used to purchase land for residential purposes unless the conversion authorized by Section 5.081 is required to occur not later than three years after the date the executory contract is entered into.

Added by Acts 2021, 87th Leg., R.S., Ch. 911 (H.B. 4374), Sec. 2, eff. September 1, 2021.

SUBCHAPTER F. REQUIREMENTS FOR CONVEYANCES OF MINERAL OR ROYALTY INTERESTS

Sec. 5.151. DISCLOSURE IN OFFER TO PURCHASE MINERAL INTEREST. (a) A person who mails to the owner of a mineral or royalty interest an offer to purchase only the mineral or royalty interest, it being understood that for the purpose of this section the taking of an oil, gas, or mineral lease shall not be deemed a purchase of a mineral or royalty interest, and encloses an instrument of conveyance of only the mineral or royalty interest and a draft or other instrument, as defined in Section 3.104, Business & Commerce Code, providing for payment for that interest shall include in the offer a conspicuous statement printed in a type style that is approximately the same size as 14-point type style or larger and is in substantially the following form:

BY EXECUTING AND DELIVERING THIS INSTRUMENT YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTEREST IN (DESCRIPTION OF PROPERTY BEING CONVEYED).

(b) A person who conveys a mineral or royalty interest as provided by Subsection (a) may bring suit against the purchaser of the interest if:

(1) the purchaser did not give the notice required by Subsection (a); and

(2) the person has given 30 days' written notice to the purchaser that a suit will be filed unless the matter is otherwise resolved.

(c) A plaintiff who prevails in a suit under Subsection (b) may recover from the initial purchaser of the mineral or royalty interest the greater of:

(1) $100; or

(2) an amount up to the difference between the amount paid by the purchaser for the mineral or royalty interest and the fair market value of the mineral or royalty interest at the time of the sale.

(d) The prevailing party in a suit under Subsection (b) may recover:

(1) court costs; and

(2) reasonable attorney's fees.

(e) A person must bring a suit under Subsection (b) not later than the second anniversary of the date the person executed the conveyance.

(f) The remedy provided under this section shall be in addition to any other remedies existing under law, excluding rescission or other remedies that would make the conveyance of the mineral or royalty interest void or of no force and effect.

Added by Acts 1999, 76th Leg., ch. 1200, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.152. CERTAIN PURCHASES OF MINERAL OR ROYALTY INTERESTS VOID. (a) This section applies only to the conveyance of a mineral or royalty interest by an instrument that:

(1) is presented to the owner of the interest by the person acquiring the interest;

(2) is titled an oil and gas lease or an oil and gas royalty lease or has other words in the caption or other prominently displayed label that indicate that the transaction is a lease of a mineral or royalty interest; and

(3) has the effect of conveying, permanently or for a term, all or a portion of the owner's:

(A) mineral interest in lands covered by an existing oil, gas, or mineral lease; or

(B) royalty interest in production from an existing oil, gas, or mineral lease.

(b) This section does not apply to a conveyance of a mineral or royalty interest by an instrument that:

(1) is an oil, gas, or mineral lease;

(2) conveys a mineral or royalty interest for a term; and

(3) provides that the interest conveyed vests in possession after the expiration or termination of all or a portion of the

interest conveyed by an existing oil, gas, or mineral lease in effect at the time of the execution of the instrument, commonly referred to as a top lease.

(c) A conveyance instrument described by Subsection (a) must include:

(1) a conspicuous statement printed at the top of the first page of the instrument below the caption, if any, in an approximate type size of at least 14 points and in substantially the following form:

THIS IS NOT AN OIL AND GAS LEASE. YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTERESTS IN (DESCRIPTION OF PROPERTY BEING CONVEYED).

; and

(2) a conspicuous statement printed at the top of each subsequent page of the instrument and immediately above the signature of the person conveying the interest in an approximate type size of at least 14 points and in substantially the following form:

THIS IS NOT AN OIL AND GAS LEASE. YOU ARE SELLING ALL OR A PORTION OF YOUR MINERAL OR ROYALTY INTERESTS.

(d) If the conveyance instrument does not include the statements required by Subsection (c), the conveyance is void.

(e) A person who has conveyed a royalty or mineral interest in a conveyance that is void under this section may bring suit against the purchaser of the interest to remove the conveyance as a cloud on title and may recover from the purchaser:

(1) all royalties and bonuses paid to the purchaser and any successor or assign of the purchaser;

(2) court costs; and

(3) reasonable attorney's fees.

(f) The remedies under this section are in addition to any other rights or remedies a person may have at law or pursuant to contract.

Added by Acts 2019, 86th Leg., R.S., Ch. 914 (H.B. 3838), Sec. 1, eff. September 1, 2019.

SUBCHAPTER G. CERTAIN PRIVATE TRANSFER FEES PROHIBITED; PRESERVATION OF PRIVATE REAL PROPERTY RIGHTS

Sec. 5.201. DEFINITIONS. In this subchapter:

(1) "Encumbered property" means all property, including the property of a subsequent purchaser, subject to the same private transfer fee obligation.

(2) "Lender" means a lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, and governmental agency, that customarily provides financing or an affiliate of a lending institution.

(3) "Payee" means a person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation and who may or may not have a pecuniary interest in the obligation.

(4) "Private transfer fee" means an amount of money, regardless of the method of determining the amount, that is payable on the transfer of an interest in real property or payable for a right to make or accept a transfer.

(5) "Private transfer fee obligation" means an obligation to pay a private transfer fee created under:

(A) a declaration or other covenant recorded in the real property records in the county in which the property subject to the private transfer fee obligation is located;

(B) a contractual agreement or promise; or

(C) an unrecorded contractual agreement or promise.

(6) "Subsequent owner" means a person who acquires real property by transfer from a person other than the person who is the seller of the property on the date the private transfer fee obligation is created.

(7) "Subsequent purchaser" means a person who purchases real property from a person other than the person who is the seller on the date the private transfer fee obligation is created. The term includes a lender who provides a mortgage loan to a subsequent purchaser to purchase the property.

(8) "Transfer" means the sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.202. CERTAIN PRIVATE TRANSFER FEE OBLIGATIONS VOID. (a) Except as provided by this subchapter, a private transfer fee obligation created on or after the effective date of this subchapter is not binding or enforceable against a subsequent owner or subsequent purchaser of an interest in real property and is void.

(b) For purposes of this subchapter, the following payments are not considered private transfer fee obligations:

(1) consideration paid by a purchaser to a seller for an interest in real property transferred, including, as applicable, a mineral interest transferred, including additional consideration paid to a seller for the property's appreciation, development, or sale after the interest in the property has been transferred to the purchaser, if the additional consideration is paid only once and that payment does not bind successors in interest to the property to any private transfer fee obligation;

(2) a commission paid to a licensed real estate broker under a written agreement between a seller or purchaser and the broker, including an additional commission for the property's appreciation, development, or sale after the interest in property is transferred to the purchaser;

(3) interest, a fee, a charge, or another type of payment to a lender under a loan secured by a mortgage on the property, including:

(A) a fee payable for the lender's consent to an assumption of the loan or transfer of the property subject to the mortgage;

(B) a fee or charge payable for an estoppel letter or certificate;

(C) a shared appreciation interest or profit participation; or

(D) other consideration payable in connection with the loan;

(4) rent, reimbursement, a fee, a charge, or another type of payment to a lessor under a lease, including a fee for consent to an assignment, sublease, encumbrance, or transfer of a lease;

(5) consideration paid to the holder of an option to purchase an interest in property, or to the holder of a right of first refusal or first offer to purchase an interest in property, for waiving, releasing, or not exercising the option or right when the property is transferred to another person;

(6) a fee payable to or imposed by a governmental entity in connection with recording the transfer of the property;

(7) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment under a declaration or other covenant or under law, including a fee or charge payable for a change of ownership entered in the records of an association to which this subdivision applies or an estoppel letter or resale certificate issued under Section 207.003 by an association to which this subdivision applies or the person identified under Section 209.004(a)(6), provided that no portion of the fee or charge is required to be passed through to a third party designated or identifiable in the declaration or other covenant or law or in a document referenced in the declaration or other covenant or law, unless paid to:

(A) an association as defined by Section 82.003 or 221.002 or the person or entity managing the association as provided by Section 82.116(a)(5) or 221.032(b)(11), as applicable;

(B) a property owners' association as defined by Section 202.001 or 209.002 or the person or entity described by Section 209.004(a)(6); or

(C) a property owners' association as defined by Section 202.001 that does not require an owner of property governed by the association to be a member of the association or the person or entity described by Section 209.004(a)(6);

(8) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment for the transfer of a club membership related to the property;

(9) dues, a fee, a charge, an assessment, a fine, a contribution, or another type of payment paid to an organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, only if the organization uses the payments to directly benefit the encumbered property by:

(A) supporting or maintaining only the encumbered property;

(B) constructing or repairing improvements only to the encumbered property; or

(C) providing activities or infrastructure to support quality of life, including cultural, educational, charitable, recreational, environmental, and conservation activities and infrastructure, that directly benefit the encumbered property; or

(10) a fee payable to or imposed by the Veterans' Land Board for consent to an assumption or transfer of a contract of sale and purchase.

(c) The benefit described by Subsection (b)(9)(C) may collaterally benefit:

(1) a community composed of:

(A) property that is adjacent to the encumbered property; or

(B) property a boundary of which is not more than 1,000 yards from a boundary of the encumbered property; or

(2) with respect to a payment to a school for educational activities, property not described by Subdivision (1) if the encumbered property is located within:

(A) the school's assigned attendance zone; and

(B) a county with a population of more than 650,000 that is adjacent to two counties, each of which has a population of more than 1.8 million.

(d) Notwithstanding Subsection (c), an organization may provide a direct benefit under Subsection (b)(9) if:

(1) the organization provides to the general public activities or infrastructure described by Subsection (b)(9)(C);

(2) the provision of activities or infrastructure substantially benefits the encumbered property; and

(3) the governing body of the organization:

(A) is controlled by owners of the encumbered property; and

(B) approves payments for activities or infrastructure at least annually.

(e) An organization may provide activities and infrastructure described by Subsection (b)(9)(C) to another organization exempt from federal taxation under Section 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986, at no charge for de minimis usage without violating the requirements of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 812 (H.B. 755), Sec. 1, eff. September 1, 2017.

Sec. 5.203. NOTICE REQUIREMENTS FOR CONTINUATION OF EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) A person who receives a private transfer fee under a private transfer fee obligation created before the effective date of this subchapter must, on or before January 31, 2012, file for record a "Notice of Private Transfer Fee Obligation" as provided by this section in the real property records of each county in which the property is located.

(b) Multiple payees of a single private transfer fee under a private transfer fee obligation must designate one payee as the payee of record for the fee.

(c) A notice under Subsection (a) must:

(1) be printed in at least 14-point boldface type;

(2) state the amount of the private transfer fee and the method of determination, if applicable;

(3) state the date or any circumstance under which the private transfer fee obligation expires, if any;

(4) state the purpose for which the money from the private transfer fee obligation will be used;

(5) notwithstanding Subsection (b), state the name of each payee and each payee's contact information;

(6) state the name and address of the payee of record to whom the payment of the fee must be sent;

(7) include the acknowledged signature of each payee or authorized representative of each payee; and

(8) state the legal description of the property subject to the private transfer fee obligation.

(d) A person required to file a notice under this section shall:

(1) refile the notice described by this section not earlier than the 30th day before the third anniversary of the original filing date described by Subsection (a) and within a similar 30-day period every third year thereafter; and

(2) amend the notice to reflect any change in the name or address of any payee included in the notice not later than the 30th day after the date the change occurs.

(e) A person who amends a notice under Subsection (d)(2) must include:

(1) the recording information of the original notice filed as required by this section; and

(2) the legal description of the property subject to the

private transfer fee obligation.

(f) If a person required to file a notice under this section fails to comply with this section:

(1) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser;

(2) the property is not subject to further obligation under the private transfer fee obligation; and

(3) the private transfer fee obligation is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.204. ADDITIONAL COMPLIANCE REQUIREMENT: TIMELY ACCEPTANCE OF FEES PAID UNDER EXISTING PRIVATE TRANSFER FEE OBLIGATIONS. (a) The payee of record on the date a private transfer fee is paid under a private transfer fee obligation subject to Section 5.203 must accept the payment on or before the 30th day after the date the payment is tendered to the payee.

(b) If the payee of record fails to comply with Subsection (a):

(1) the payment must be returned to the remitter;

(2) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser; and

(3) the property is not subject to further obligation under the private transfer fee obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.205. DISCLOSURE OF EXISTING TRANSFER FEE OBLIGATION REQUIRED IN CONTRACT FOR SALE. A seller of real property that may be subject to a private transfer fee obligation shall provide written notice to a potential purchaser stating that the obligation may be governed by this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.206. WAIVER VOID. A provision that purports to waive a purchaser's rights under this subchapter is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

Sec. 5.207. INJUNCTIVE OR DECLARATORY RELIEF; PROVIDING PENALTIES. (a) The attorney general may institute an action for injunctive or declaratory relief to restrain a violation of this subchapter.

(b) In addition to instituting an action for injunctive or declaratory relief under Subsection (a), the attorney general may institute an action for civil penalties against a payee for a violation of this chapter. Except as provided by Subsection (c), a civil penalty assessed under this section may not exceed an amount equal to two times the amount of the private transfer fee charged or collected by the payee in violation of this subchapter.

(c) If the court in which an action under Subsection (b) is pending finds that a payee violated this subchapter with a frequency that constitutes a pattern or practice, the court may assess a civil penalty not to exceed $250,000.

(d) The comptroller shall deposit to the credit of the general revenue fund all money collected under this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 211 (H.B. 8), Sec. 1, eff. June 17, 2011.

TITLE 3. PUBLIC RECORDS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RECORDS

Sec. 11.001. PLACE OF RECORDING. (a) To be effectively recorded, an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located. However, if such an instrument grants a security interest by a utility as defined in Section 261.001, Business & Commerce Code, the instrument may be recorded as required by Sections 261.004 and 261.006 of that code, and if such instrument is so recorded, the lien and the secured interest created by such instrument shall be deemed perfected for all purposes.

(b) If an instrument has been recorded in a proper county, the

subsequent creation of a new county containing property conveyed or encumbered by the instrument does not affect the recording's validity or effect as notice. The county court of the new county shall at its own expense:

(1) obtain a certified transcript of the record of all instruments conveying or encumbering property in the new county;

(2) deposit the transcript for public inspection in the recorder's office of the new county; and

(3) make an index of the transcript.

Acts 1983, 68th Leg., p. 3486, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 999, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.32, eff. April 1, 2009.

Sec. 11.002. ENGLISH LANGUAGE. (a) An instrument relating to real or personal property may not be recorded unless it is in English or complies with this section.

(b) An authenticated instrument not in English that was executed before August 22, 1897, may be recorded and operate as constructive notice from the date of filing if:

(1) a correct English translation is recorded with the original instrument; and

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths.

(c) An instrument acknowledged outside the United States or its territories in accordance with Section 121.001(c)(3), Civil Practice and Remedies Code, that contains a certificate, stamp, or seal of a notary public or other official before whom the acknowledgment was taken or an apostille relating to the acknowledgment, any portion of which is not in English, may be recorded and operate as constructive notice from the date of filing if:

(1) a correct English translation of any non-English portion of the certificate, stamp, seal, or apostille is recorded with the original instrument;

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths; and

(3) any apostille relating to the acknowledgment complies

with the Hague Convention dated October 5, 1961, titled Convention Abolishing the Requirement of Legalisation for Foreign Public Documents.

Acts 1983, 68th Leg., p. 3486, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1987, 70th Leg., ch. 891, Sec. 2, eff. Sept. 1, 1987.

Sec. 11.003. GRANTEE'S ADDRESS. (a) An instrument executed after December 31, 1981, conveying an interest in real property may not be recorded unless:

(1) a mailing address of each grantee appears in the instrument or in a separate writing signed by the grantor or grantee and attached to the instrument; or

(2) a penalty filing fee equal to the greater of $25 or twice the statutory recording fee for the instrument is paid.

(b) The validity of a conveyance as between the parties is not affected by a failure to include an address of each grantee in the instrument or an attached writing.

(c) Payment of a filing fee and acceptance of the instrument by the county clerk for recording creates a conclusive presumption that the requirements of this section have been met.

Acts 1983, 68th Leg., p. 3487, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 11.004. DUTY OF RECORDER. (a) A county clerk shall:

(1) correctly record, as required by law, within a reasonable time after delivery, any instrument authorized or required to be recorded in that clerk's office that is proved, acknowledged, or sworn to according to law;

(2) give a receipt, as required by law, for an instrument delivered for recording;

(3) record instruments relating to the same property in the order the instruments are filed; and

(4) provide and keep in the clerk's office the indexes required by law.

(b) A county clerk who violates a provision of this section and the sureties on the clerk's bond are liable for damages and, on motion in district court and after three days' notice to the clerk, for a civil penalty of not more than $500, half of which is payable

to the county and half to the person who files the motion.

Acts 1983, 68th Leg., p. 3487, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 162, Sec. 1, eff. Sept. 1, 1989.

Sec. 11.0041. REVIEW OF CERTAIN INSTRUMENTS IN CERTAIN COUNTIES. (a) This section applies only to the county clerk of a county:

(1) that:

(A) is located on the international border; and

(B) has a population of less than 15,000;

(2) in which a colonia self-help center established under Section 2306.582, Government Code, is located; or

(3) that is served by a colonia self-help center described by Subdivision (2) in another county.

(b) Before accepting an instrument conveying real property for filing, the county clerk may send the instrument to the county attorney for review under this section. Not later than five business days after the date the county attorney receives an instrument under this subsection, the county attorney shall:

(1) review the instrument to determine whether the platting requirements prescribed by Sections 232.023, 232.025, and 232.031, Local Government Code, have been satisfied; and

(2) return the instrument to the county clerk with a statement of the county attorney's determination under Subdivision (1).

(c) Notwithstanding Section 11.004(a), the county clerk shall immediately notify the party that presented the instrument for recording that:

(1) the clerk is referring the instrument to the county attorney for review;

(2) the instrument will not be immediately recorded; and

(3) the clerk is not required to file an instrument the county attorney determines the clerk is not required to file.

Added by Acts 2009, 81st Leg., R.S., Ch. 1176 (H.B. 3479), Sec. 1, eff. September 1, 2009.

Sec. 11.005. JUDGMENT PROVING AN INSTRUMENT OR CORRECTING A

CERTIFICATE. (a) A person interested under an instrument that may be proved for record may bring an action in district court for a judgment proving the instrument.

(b) A person interested under a defectively certified instrument for which acknowledgement or proof of execution has been properly made may bring an action in district court for a judgment correcting the certificate.

(c) If a certified copy of a judgment in a suit under this section that shows proof of an instrument is attached to the instrument, the instrument may be recorded with the same effect as if it were acknowledged.

Acts 1983, 68th Leg., p. 3488, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 11.006. INSTRUMENT AFFECTING TITLE TO LAND IN ARCHER COUNTY. An instrument that in any manner affects title to land in Archer County, Texas, but was recorded in Jack County on or after August 10, 1866, but no later than August 10, 1870, and was made under the hand and seal of the county clerk of Shackelford County, is admissible in evidence in any suit in which secondary evidence is admissible.

Acts 1983, 68th Leg., p. 3488, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 11.007. EFFECT OF CITATION TO REAL PROPERTY RECORDS. A reference in an instrument to the volume and page number, film code number, or county clerk file number of the "real property records" (or other words of similar import) for a particular county is equivalent to a reference to the deed records, deed of trust records, or other specific records, for the purpose of providing effective notice to all persons of the existence of the referenced instrument.

Added by Acts 1989, 71st Leg., ch. 161, Sec. 1, eff. May 25, 1989.
Amended by Acts 1991, 72nd Leg., ch. 205, Sec. 1, eff. Aug. 26, 1991.

Sec. 11.008. PERSONAL INFORMATION IN REAL PROPERTY RECORDS. (a) In this section, "instrument" means a deed, deed of trust, or any other record recorded by a county clerk related to real property,

including a mineral lease, a mechanic's lien, and the release of a mechanic's lien.

(b) An instrument submitted for recording is not required to contain an individual's social security number, and the social security number of an individual is not obtained or maintained by the clerk under this section. The preparer of a document may not include an individual's social security number in a document that is presented for recording in the office of the county clerk.

(c) Notwithstanding Section 191.007(c), Local Government Code, an instrument transferring an interest in real property to or from an individual must include a notice that appears on the top of the first page of the instrument in 12-point boldfaced type or 12-point uppercase letters and reads substantially as follows:

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

(d) The validity of an instrument as between the parties to the instrument and the notice provided by the instrument are not affected by a party's failure to include the notice required under Subsection (c).

(e) The county clerk may not under any circumstance reject an instrument presented for recording solely because the instrument fails to comply with this section. Other than the duty to redact an individual's social security number as required by Section 552.147, Government Code, the county clerk has no duty to ensure that an instrument presented for recording does not contain an individual's social security number.

(f) The county clerk shall post a notice in the county clerk's office stating that instruments recorded in the real property or official public records or the equivalent of the real property or official public records of the county:

(1) are not required to contain a social security number or driver's license number; and

(2) are public records available for review by the public.

(g) All instruments described by this section are subject to inspection by the public. The county clerk is not criminally or civilly liable for disclosing an instrument or information in an instrument in compliance with the public information law (Chapter

552, Government Code) or another law.

(h) Unless this section is cited in a law enacted after September 1, 2003, this section is the exclusive law governing the confidentiality of personal information contained in the real property or official public records or the equivalent of the real property or official public records of a county.

(i) To the extent that federal law conflicts with this section, an instrument must contain the information required by and must be filed in a manner that complies with federal law.

(j) On receipt of a written request from a federal judge, including a federal bankruptcy judge, a marshal of the United States Marshals Service, a United States attorney, a state judge as defined by Section 572.002, Government Code, or a family member as defined by Section 31.006, Finance Code, of a federal judge, marshal, attorney, or state judge, the county clerk shall omit or redact from an instrument described by this section that is available in an online database made public by the county clerk, or by a provider with which the county commissioners court contracts to provide the online database, social security number, driver's license number, and residence address of the federal judge, marshal, attorney, state judge, or family member of the federal judge, marshal, attorney, or state judge.

Added by Acts 2003, 78th Leg., ch. 715, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 960, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 45 (S.B. 461), Sec. 1, eff. May 13, 2005.

Acts 2007, 80th Leg., R.S., Ch. 3 (H.B. 2061), Sec. 2, eff. March 28, 2007.

Acts 2017, 85th Leg., R.S., Ch. 190 (S.B. 42), Sec. 25, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 415 (S.B. 73), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 518 (S.B. 489), Sec. 5, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 383 (S.B. 1134), Sec. 13, eff. September 1, 2021.

CHAPTER 12. RECORDING OF INSTRUMENTS

Sec. 12.001. INSTRUMENTS CONCERNING PROPERTY. (a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.

(b) An instrument conveying real property may not be recorded unless it is signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgements or oaths, as applicable.

(c) This section does not require the acknowledgement or swearing or prohibit the recording of a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

(d) The failure of a notary public to attach an official seal to an acknowledgment, a jurat, or other proof taken outside this state but inside the United States or its territories renders the acknowledgment, jurat, or other proof invalid only if the jurisdiction in which the acknowledgment, jurat, or other proof is taken requires the notary public to attach the seal.

Acts 1983, 68th Leg., p. 3489, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 162, Sec. 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 603, Sec. 2, eff. June 14, 1995.

Sec. 12.0011. INSTRUMENTS CONCERNING PROPERTY: ORIGINAL SIGNATURE REQUIRED FOR CERTAIN INSTRUMENTS. (a) For the purposes of this section, "paper document" means a document received by a county clerk in a form that is not electronic.

(b) A paper document concerning real or personal property may not be recorded or serve as notice of the paper document unless:

(1) the paper document contains an original signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law;

(2) the paper document is attached as an exhibit to a paper affidavit or other document that has an original signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law; or

(3) the paper document is a tangible copy of an electronic

record that has been declared to be a true and correct copy of the electronic record as provided by Section 12.0013 by a notary public or other officer who may take an acknowledgment or proof of a written instrument under Section 121.001, Civil Practice and Remedies Code.

(c) An original signature may not be required for an electronic instrument or other document that complies with the requirements of Chapter 15 of this code, Chapter 195, Local Government Code, Chapter 322, Business & Commerce Code, or other applicable law.

(d) This section does not apply to a child support lien notice or release of child support lien issued by the Title IV-D agency under Chapter 157, Family Code. For purposes of this subsection, "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

(e) This section does not apply to a notice of sale under Section 51.065, Natural Resources Code, or a land award under Section 51.066, Natural Resources Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 213 (H.B. 732), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 20.003, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 33, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 4, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 678 (S.B. 2128), Sec. 2, eff. September 1, 2019.

Acts 2023, 88th Leg., R.S., Ch. 152 (S.B. 870), Sec. 23, eff. September 1, 2023.

Sec. 12.0012. INSTRUMENTS CONCERNING REAL PROPERTY SUBJECT TO A FORECLOSURE SALE. (a) Notwithstanding Section 12.0011(b), the following documents received by the county clerk in the manner provided by Subsection (b) shall be recorded by the clerk and serve as notice of the matter document:

(1) an instrument appointing or authorizing a trustee or substitute trustee to exercise the power of sale in a security instrument;

(2) a notice of sale pursuant to which the sale under a power of sale occurred;

(3) a notice of default on which the sale evidenced by a deed conveying title from a trustee or substitute trustee to a purchaser occurred;

(4) documentation from the United States Department of Defense indicating that a debtor was not on active duty military service on the date of a foreclosure sale;

(5) a statement of facts regarding a foreclosure sale prepared by an attorney representing the trustee, substitute trustee, or mortgage servicer; or

(6) proof of service of the mailing of any notice related to a foreclosure sale.

(b) A document described by Subsection (a) shall be accepted for recording pursuant to Subsection (a) if it is attached as an exhibit to:

(1) a deed that conveys title from a trustee or substitute trustee to a purchaser at a foreclosure sale and that meets the requirements for recording under Section 12.0011(b); or

(2) an affidavit of a trustee or substitute trustee that meets the requirements for recording under Section 12.0011(b) and relates to a foreclosure sale.

(c) This section does not prevent the recording of documents in any other manner allowed by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 653 (H.B. 2063), Sec. 1, eff. September 1, 2015.

Sec. 12.0013. RECORDATION OF PAPER OR TANGIBLE COPY OF ELECTRONIC RECORD. (a) In this section:

(1) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(2) "Electronic," "electronic record," and "electronic signature" have the meanings assigned by Section 322.002, Business & Commerce Code.

(b) A county clerk shall record a paper or tangible copy of an electronic record that is otherwise eligible under state law to be recorded in the real property records if the paper or tangible copy

of the electronic record:

(1) contains an image of an electronic signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law; and

(2) has been declared by a notary public or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, to be a true and correct copy of the electronic record as provided by Subsection (d).

(c) A document that is a paper or tangible copy of an electronic record and is printed and declared to be a true and correct copy as provided by Subsection (d) satisfies any requirement of law that, as a condition for recording, the document:

(1) be an original or be in writing;

(2) be signed or contain an original signature, if the document contains an image of an electronic signature of the person required to sign the document; and

(3) be notarized, acknowledged, verified, witnessed, made under oath, sworn to with a jurat, or proved according to law, if the document contains an image of an electronic signature of the person authorized to perform that act and all other information required to be included.

(d) A notary public or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, may declare that a paper or tangible copy of an electronic record is a true and correct copy of an electronic record by:

(1) executing and attaching an official seal to a tangible paper declaration under penalty of perjury; and

(2) affixing or attaching the declaration to the printed paper or tangible copy of an electronic record.

(e) The form of declaration required under Subsection (d) must be substantially as follows:

DECLARATION OF AUTHENTICITY

State of _____

County of _____

The attached document, _____(insert title), dated _____ and containing __ pages, is a true and correct copy of an electronic record printed by me or under my supervision. At the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature or

other information in the electronic record after the electronic record's creation or execution. This declaration is made under penalty of perjury.
Signed this ____ day of _____, ____.
_____(signature of notary public or other officer)
(seal of office)
_____(printed name of notary public or other officer)
My commission expires: _____

Added by Acts 2019, 86th Leg., R.S., Ch. 678 (S.B. 2128), Sec. 3, eff. September 1, 2019.

Sec. 12.002. SUBDIVISION PLAT; PENALTY. (a) The county clerk or a deputy of the clerk with whom a plat or replat of a subdivision of real property is filed for recording shall determine whether the plat or replat is required by law to be approved by a county or municipal authority or both. The clerk or deputy may not record a plat or replat unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or 232.023, Local Government Code, if applicable. If a plat or replat does not indicate whether land covered by the plat or replat is in the extraterritorial jurisdiction of the municipality, the county clerk may require the person filing the plat or replat for recording to file with the clerk an affidavit stating that information.

(b) A person may not file for record or have recorded in the county clerk's office a plat or replat of a subdivision of real property unless it is approved as provided by law by the appropriate authority and unless the plat or replat has attached to it the documents required by Section 212.0105 or 232.023, Local Government Code, if applicable.

(c) Except as provided by Subsection (d), a person who subdivides real property may not use the subdivision's description in a deed of conveyance, a contract for a deed, or a contract of sale or other executory contract to convey that is delivered to a purchaser unless the plat or replat of the subdivision is approved and is filed for record with the county clerk of the county in which the property is located and unless the plat or replat has attached to it the documents required by Subsection (e) or by Section 212.0105 or

232.023, Local Government Code, if applicable.

(d) Except in the case of a subdivision located in a county to which Subchapter B, Chapter 232, Local Government Code, applies, Subsection (c) does not apply to using a subdivision's description in a contract to convey real property before the plat or replat of the subdivision is approved and is filed for record with the county clerk if:

(1) the conveyance is expressly contingent on approval and recording of the final plat; and

(2) the purchaser is not given use or occupancy of the real property conveyed before the recording of the final plat.

(e) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a subdivision of real property unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if:

(1) more than one person acquired the real property from a decedent under a will or by inheritance and those persons owning an undivided interest in the property obtained approval to subdivide the property to provide each person with a divided interest and a separate title to the property; or

(2) a taxing unit acquired the real property for public use through eminent domain proceedings or voluntary sale.

(f) A person commits an offense if the person violates Subsection (b), (c), or (e). An offense under this subsection is a

misdemeanor punishable by a fine of not less than $10 or more than $1,000, by confinement in the county jail for a term not to exceed 90 days, or by both the fine and confinement. Each violation constitutes a separate offense and also constitutes prima facie evidence of an attempt to defraud.

(g) This section does not apply to a partition by a court.

Acts 1983, 68th Leg., p. 3489, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 149, Sec. 22, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 624, Sec. 3.09, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 570, Sec. 1, eff. June 15, 1991; Acts 1997, 75th Leg., ch. 583, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 404, Sec. 27, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 812, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1382, Sec. 8, eff. June 19, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1126 (H.B. 2491), Sec. 26, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1154 (H.B. 3101), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 289 (H.B. 989), Sec. 1, eff. September 1, 2007.

Sec. 12.003. INSTRUMENT IN GENERAL LAND OFFICE OR ARCHIVES. (a) If written evidence of title to land has been filed according to law in the General Land Office or is in the public archives, a copy of the written evidence may be recorded if:

(1) the original was properly executed under the law in effect at the time of execution; and

(2) the copy is certified by the officer having custody of the original and attested with the seal of the General Land Office.

(b) A court may not admit a title to land that was filed in the General Land Office as evidence of superior title against a location or survey of the same land that was made under a valid land warrant or certificate prior to the filing of the title in the General Land Office unless prior to the location or survey:

(1) the older title had been recorded with the county clerk of the county in which the land is located; or

(2) the person who had the location or survey made had

actual notice of the older title.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.004. FOREIGN DEED. If written evidence of title to land has been filed outside the county in which the land is located or outside the state, a copy of the written evidence may be recorded in the county in which the land is located if:

(1) the original was properly executed and recorded under the law governing the recording; and

(2) the copy is certified by the officer having legal custody of the original.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.005. PARTITION. (a) A court order partitioning or allowing recovery of title to land must be recorded with the county clerk of the county in which the land is located in order to be admitted as evidence to support a right claimed under the order.

(b) A record of an order is sufficient under this section if it consists of a brief statement by the clerk of the court that made the order, signed and sealed by the clerk, that includes:

(1) the identity of the case in which the partition or judgment was made;

(2) the date of the case;

(3) the names of the parties to the case;

(4) a description of the land involved that is located in the county of the recording; and

(5) the name of the party to whom the land is decreed.

Acts 1983, 68th Leg., p. 3490, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.006. GRANT FROM GOVERNMENT. A grant from this state or the United States that is executed and authenticated under the law in effect at the time the grant is made may be recorded without further acknowledgement or proof.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.007. LIS PENDENS. (a) After the plaintiff's statement in an eminent domain proceeding is filed or during the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.

(b) The party filing a lis pendens or the party's agent or attorney shall sign the lis pendens, which must state:

(1) the style and number, if any, of the proceeding;

(2) the court in which the proceeding is pending;

(3) the names of the parties;

(4) the kind of proceeding; and

(5) a description of the property affected.

(c) The county clerk shall record the notice in a lis pendens record. The clerk shall index the record in a direct and reverse index under the name of each party to the proceeding.

(d) Not later than the third day after the date a person files a notice for record under this section, the person must serve a copy of the notice on each party to the action who has an interest in the real property affected by the notice.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 297 (H.B. 396), Sec. 1, eff. September 1, 2009.

Sec. 12.0071. MOTION TO EXPUNGE LIS PENDENS. (a) A party to an action in connection with which a notice of lis pendens has been filed may:

(1) apply to the court to expunge the notice; and

(2) file evidence, including declarations, with the motion to expunge the notice.

(b) The court may:

(1) permit evidence on the motion to be received in the form of oral testimony; and

(2) make any orders the court considers just to provide for discovery by a party affected by the motion.

(c) The court shall order the notice of lis pendens expunged if the court determines that:

(1) the pleading on which the notice is based does not contain a real property claim;

(2) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or

(3) the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under Section 12.007(d).

(d) Notice of a motion to expunge under Subsection (a) must be served on each affected party on or before the 20th day before the date of the hearing on the motion.

(e) The court shall rule on the motion for expunction based on the affidavits and counteraffidavits on file and on any other proof the court allows.

(f) After a certified copy of an order expunging a notice of lis pendens has been recorded:

(1) the notice of lis pendens and any information derived or that could be derived from the notice:

(A) does not:

(i) constitute constructive or actual notice of any matter contained in the notice or of any matter relating to the action in connection with which the notice was filed;

(ii) create any duty of inquiry in a person with respect to the property described in the notice; or

(iii) affect the validity of a conveyance to a purchaser for value or of a mortgage to a lender for value; and

(B) is not enforceable against a purchaser or lender described by Paragraph (A)(iii), regardless of whether the purchaser or lender knew of the lis pendens action; and

(2) an interest in the real property may be transferred or encumbered free of all matters asserted or disclosed in the notice and all claims or other matters asserted or disclosed in the action in connection with which the notice was filed.

(g) The court in its discretion may require that the party prevailing in the expunction hearing submit an undertaking to the court in an amount determined by the court.

Added by Acts 2009, 81st Leg., R.S., Ch. 297 (H.B. 396), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 47 (S.B. 1955), Sec. 1, eff. September 1, 2017.

Sec. 12.008. CANCELLATION OF LIS PENDENS. (a) On the motion of a party or other person interested in the result of or in property affected by a proceeding in which a lis pendens has been recorded and after notice to each affected party, the court hearing the action may cancel the lis pendens at any time during the proceeding, whether in term time or vacation, if the court determines that the party seeking affirmative relief can be adequately protected by the deposit of money into court or by the giving of an undertaking.

(b) If the cancellation of a lis pendens is conditioned on the payment of money, the court may order the cancellation when the party seeking the cancellation pays into the court an amount equal to the total of:

(1) the judgment sought;

(2) the interest the court considers likely to accrue during the proceeding; and

(3) costs.

(c) If the cancellation of a lis pendens is conditioned on the giving of an undertaking, the court may order the cancellation when the party seeking the cancellation gives a guarantee of payment of a judgment, plus interest and costs, in favor of the party who recorded the lis pendens. The guarantee must equal twice the amount of the judgment sought and have two sufficient sureties approved by the court. Not less than two days before the day the guarantee is submitted to the court for approval, the party seeking the cancellation shall serve the attorney for the party who recorded the lis pendens a copy of the guarantee and notice of its submission to the court.

Acts 1983, 68th Leg., p. 3491, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.009. MORTGAGE OR DEED OF TRUST MASTER FORM. (a) A master form of a mortgage or deed of trust may be recorded in any

county without acknowledgement or proof. The master form must contain on its face the designation: "Master form recorded by (name of person causing the recording)."

(b) The county clerk shall index a master form under the name of the person causing the recording and indicate in the index and records that the document is a master mortgage.

(c) The parties to an instrument may incorporate by reference a provision of a recorded master form with the same effect as if the provision were set out in full in the instrument. The reference must state:

(1) that the master form is recorded in the county in which the instrument is offered for record;

(2) the numbers of the book or volume and first page of the records in which the master form is recorded; and

(3) a definite identification of each provision being incorporated.

(d) If a mortgage or deed of trust incorporates by reference a provision of a master form, the mortgagee shall give the mortgagor a copy of the master form at the time the instrument is executed. A statement in the mortgage or deed of trust or in a separate instrument signed by the mortgagor that the mortgagor received a copy of the master form is conclusive evidence of its receipt. On written request the mortgagee shall give a copy of the master form without charge to the mortgagor, the mortgagor's successors in interest, or the mortgagor's or a successor's agent.

(e) The provisions of the Uniform Commercial Code prevail over this section.

Acts 1983, 68th Leg., p. 3492, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.011. CERTIFICATE OF REDEMPTION. An instrument issued by the United States that redeems or evidences redemption of real property from a judicial sale or from a nonjudicial sale under foreclosure of a lien, mortgage, or deed of trust may be recorded in records of conveyances in each county in which the property is located if the instrument has been issued according to the laws of the United States.

Acts 1983, 68th Leg., p. 3493, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.012. ATTACHMENT. (a) If an officer files a writ of attachment on real property with a county clerk, the clerk shall record the name of each plaintiff and defendant in attachment, the amount of the debt, and the officer's return in full.

(b) A county clerk who receives a certified copy of an order quashing or vacating a writ of attachment shall record the order and the name of each plaintiff and defendant.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.013. JUDGMENT. A judgment of a court may be recorded if:

(1) the judgment is of a court:

(A) expressly created or established under the constitution or laws of this state or of the United States;

(B) that is a court of a foreign country and that is recognized by an Act of congress or a treaty or other international convention to which the United States is a party; or

(C) of any other jurisdiction, territory, or protectorate entitled to full faith and credit in this state under the Constitution of the United States; and

(2) the judgment is attested under the signature and seal of the clerk of the court that rendered the judgment.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1997, 75th Leg., ch. 189, Sec. 15, eff. May 21, 1997;
Acts 2001, 77th Leg., ch. 668, Sec. 1, eff. Sept. 1, 2001.

Sec. 12.014. TRANSFER OF JUDGMENT OR CAUSE OF ACTION. (a) A judgment or part of a judgment of a court of record or an interest in a cause of action on which suit has been filed may be sold, regardless of whether the judgment or cause of action is assignable in law or equity, if the transfer is in writing.

(b) A transfer under this section may be filed with the papers of the suit if the transfer is acknowledged or sworn to in the form and manner required by law for acknowledgement or swearing of deeds.

(c) If a transfer of a judgment is filed, the clerk shall record the transfer appropriately. If a transfer of a cause of action in which a judgment has not been rendered is filed, the clerk

shall note and briefly state the substance of the transfer on the court docket at the place where the suit is entered.

(d) A transfer filed under this section is notice to and is binding on a person subsequently dealing with the judgment or cause of action.

Acts 1983, 68th Leg., p. 3494, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 162, Sec. 3, eff. Sept. 1, 1989.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 628 (H.B. 587), Sec. 4, eff. September 1, 2007.

Sec. 12.015. JUDGMENT IN JUSTICE COURT. (a) On the application of a party interested in land that has been sold under an execution issued by a justice court, the justice of the peace having custody of the execution and the judgment under which it was issued shall make a certified transcript of the judgment, the execution, and the levy and return of the executing officer.

(b) A certified transcript under this section may be recorded in the same manner as a deed.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.016. POWER OF ATTORNEY. A power of attorney may be recorded.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 12.017. TITLE INSURANCE COMPANY AFFIDAVIT AS RELEASE OF LIEN; CIVIL PENALTY. (a) In this section:

(1) "Mortgage" means a deed of trust or other contract lien on an interest in real property.

(2) "Mortgagee" means:

(A) the grantee of a mortgage;

(B) if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record; or

(C) if a mortgage is serviced by a mortgage servicer, the mortgage servicer.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by a mortgagee to send payments for the loan secured by a mortgage. A person transmitting a payoff statement is considered the mortgage servicer for the mortgage described in the payoff statement.

(4) "Mortgagor" means the grantor of a mortgage.

(5) "Payoff statement" means a statement of the amount of:

(A) the unpaid balance of a loan secured by a mortgage, including principal, interest, and other charges properly assessed under the loan documentation of the mortgage; and

(B) interest on a per diem basis for the unpaid balance.

(6) "Title insurance company" means a corporation or other business entity authorized to engage in the business of insuring titles to interests in real property in this state.

(7) "Authorized title insurance agent," with respect to an Affidavit as Release of Lien under this section, means a person licensed as a title insurance agent under Chapter 2651, Insurance Code, and authorized in writing by a title insurance company by instrument recorded in the real property records in the county in which the property to which the affidavit relates is located to execute one or more Affidavits as Release of Lien in compliance with this section, subject to any terms, limitations, and conditions that are set forth in the instrument executed by the title insurance company.

(b) This section applies only to a mortgage on:

(1) property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime; or

(2) property other than property described by Subdivision (1), if the original face amount of the indebtedness secured by the mortgage on the property is less than $1.5 million.

(c) An authorized officer of a title insurance company or an authorized title insurance agent may, on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the mortgage, execute an affidavit that complies with the requirements of this section and record the affidavit in the real property records of each county in which the mortgage was recorded.

(d) An affidavit executed under Subsection (c) must be in substantially the following form:

AFFIDAVIT AS RELEASE OF LIEN

Before me, the undersigned authority, on this day personally appeared (insert name of affiant) ("Affiant") who, being first duly sworn, upon his/her oath states:

1. My name is (insert name of Affiant), and I am an authorized officer of (insert name of title insurance company or authorized title insurance agent) ("Title Company").

2. This affidavit is made on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the following mortgage:
(describe mortgage, the name of the mortgagor, and the property described in the mortgage)

3. (Insert name of Mortgagee) ("Mortgagee") provided a payoff statement with respect to the loan secured by the mortgage.

4. Affiant has ascertained that Title Company delivered to Mortgagee payment of the loan secured by the mortgage in the amount and time and to the location required by the payoff statement.

5. The mortgage relates to:

(A) property consisting exclusively of a one-to-four-family residence, which may include a residential unit in a condominium regime; or

(B) property, other than property described by Paragraph (A) above, for which the original face amount of the indebtedness secured by the mortgage on the property is less than $1.5 million.

6. Pursuant to Section 12.017, Texas Property Code, this affidavit constitutes a full and final release of the mortgage from the property.

Signed this___ day of _____, ____.
_____ (signature of affiant)
State of _____
County of _____
Sworn to and subscribed to before me on _____ (date) by _____ (insert name of affiant).
_____ (signature of notarial officer)
(Seal, if any, of notary) _____
_____ (printed name)
My commission expires:
_____

(e) An affidavit filed under Subsection (c) or (f) must include the names of the mortgagor and the mortgagee, the date of the

mortgage, and the volume and page or clerk's file number of the real property records where the mortgage is recorded, together with similar information for a recorded assignment of the mortgage.

(f) On or after the date of the payment to which the affidavit relates, the title insurance company or authorized title insurance agent must notify the mortgagee at the location to which the payment is sent that the title insurance company or authorized title insurance agent may file for record at any time the affidavit as a release of lien. If notice required by this section is not provided to the mortgagee, the title insurance company or authorized title insurance agent may not file for record the affidavit as a release of lien. The mortgagee may file a separate affidavit describing the mortgage and property and controverting the affidavit by the title insurance company or authorized title insurance agent as a release of lien on or before the 45th day after the date the mortgagee receives the notice if the mortgagee mails a copy of the mortgagee's affidavit to the title insurance company or authorized title insurance agent within that 45-day period.

(g) An affidavit under Subsection (c) operates as a release of the mortgage described in the affidavit if the affidavit, as provided by this section:

(1) is executed;

(2) is recorded; and

(3) is not controverted by a separate affidavit by the mortgagee in accordance with the requirements of Subsection (f).

(h) The county clerk shall index an affidavit filed under this section in the names of the original mortgagee and the last assignee of the mortgage appearing of record as the grantors and in the name of the mortgagor as grantee.

(i) A person who knowingly causes an affidavit with false information to be executed and recorded under this section is liable for the penalties for filing a false affidavit, including the penalties for commission of offenses under Section 37.02 of the Penal Code. The attorney general may sue to collect the penalty. A person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages. If the attorney general or an injured party bringing suit substantially prevails in an action under this subsection, the court may award reasonable attorney's fees and court costs to the prevailing party.

(j) A title insurance company or authorized title insurance agent that, at any time after payment of the mortgage, files for record an affidavit executed under Subsection (c) may use any recording fee collected for the recording of a release of the mortgage for the purpose of filing the affidavit.

(k) This section does not affect any agreement or obligation of a mortgagee to execute and deliver a release of mortgage.

Added by Acts 1993, 73rd Leg., ch. 1003, Sec. 1, eff. Aug. 30, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 997 (H.B. 3945), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 997 (H.B. 3945), Sec. 2, eff. September 1, 2009.

Sec. 12.018. TRANSFER BY RECEIVER OR CONSERVATOR OF FAILED DEPOSITORY INSTITUTION. If a bank, savings and loan association, savings bank, or other depository institution is placed in receivership or conservatorship by a state or federal agency, instrumentality, or institution, including the Banking Department of Texas, Department of Savings and Mortgage Lending of Texas, Office of the Comptroller of the Currency, Resolution Trust Corporation, Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or their successors, a person at any time may record an affidavit or memorandum of a sale, transfer, purchase, or acquisition agreement between the receiver or conservator of the failed depository institution and another depository institution. If the sale, transfer, purchase, or acquisition agreement transfers or sells an interest in land or in a mortgage or other lien vested according to the real property records in the failed depository institution, a recorded affidavit or memorandum under this section is constructive notice of the transfer or sale. The failure of the affidavit or memorandum to be executed by the record owner or of the affidavit, memorandum, or agreement to contain language of conveyance does not create a defect in title to the land or the lien.

Added by Acts 1993, 73rd Leg., ch. 1004, Sec. 1, eff. Aug. 30, 1993.
Renumbered from Property Code Sec. 12.017 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(43), eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.064, eff. September 1, 2007.

Sec. 12.019. AFFIDAVIT OF AUTHORITY TO TRANSFER. (a) In this section:

(1) "Domestic entity," "foreign entity," "jurisdiction of formation," and "nonprofit entity" have the meanings assigned by Section 1.002, Business Organizations Code.

(2) "Transfer" means a transaction to sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property.

(b) This section does not apply to:

(1) a domestic nonprofit entity or a foreign entity that is:

(A) exempt from federal taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code; or

(B) described by Section 170(c)(1) or (2), Internal Revenue Code of 1986; or

(2) a transaction involving the transfer of an estate or interest in real property in an amount that exceeds $1 million.

(c) A domestic entity or foreign entity may execute and record an affidavit identifying one or more individuals with authority to transfer on behalf of the entity an estate or interest in real property in the name of the entity if the entity is:

(1) a limited liability company, a limited partnership, or a professional entity as defined by Section 301.003, Business Organizations Code; and

(2) active or in good standing under the laws of the entity's jurisdiction of formation.

(d) An estate or interest in real property in the name of a domestic entity or foreign entity may be transferred on behalf of the entity by one or more individuals identified as authorized to do so in an affidavit described by Subsection (c).

(e) Subject to Subsection (f), an affidavit described by

Subsection (c) must:

(1) be executed under penalty of perjury by an individual who swears that the individual:

(A) is at least 18 years of age;

(B) is authorized to execute and deliver the affidavit on behalf of the entity;

(C) is fully competent to execute the affidavit; and

(D) understands that:

(i) third parties will rely on the truthfulness of the statements made in the affidavit; and

(ii) the affidavit is made under penalty of perjury; and

(2) state:

(A) the name of the domestic entity or foreign entity that holds title to the real property and that the entity is active or in good standing under the laws of the entity's jurisdiction of formation;

(B) the address, including street address, of the domestic entity's or foreign entity's principal place of business in this state or, if the entity does not have a principal place of business in this state, the address of the entity's principal place of business in the state or country that is the entity's jurisdiction of formation;

(C) the legal description of the real property an estate or interest in which is to be transferred and specify the nature of the transfer authorized; and

(D) the name and title of one or more individuals authorized to transfer on the entity's behalf an estate or interest in the real property described in the affidavit.

(f) An individual is authorized to execute an affidavit described by Subsection (c) on behalf of a domestic entity that files a franchise tax public information report under Section 171.203, Tax Code, if, on the date the affidavit is executed, the individual:

(1) in the case of a limited liability company, is a manager or member of the limited liability company;

(2) in the case of a limited partnership, is a general partner of the limited partnership; or

(3) in the case of a professional entity, is a director or officer of the applicable professional entity.

(g) Except as provided by Subsection (h), the individual

executing an affidavit described by Subsection (c) may not be the individual identified in the affidavit as authorized to transfer an estate or interest in the real property described in the affidavit.

(h) The individual executing the affidavit described by Subsection (c) may be the individual identified in the affidavit as authorized to transfer an estate or interest in the real property described in the affidavit if:

(1) the entity is a limited liability company and the affidavit includes a representation by the affiant that the affiant is the sole member and manager of the limited liability company;

(2) the entity is a limited partnership and the affidavit includes a representation by the affiant that the affiant is the sole general partner of the limited partnership;

(3) the entity is a professional entity and the affidavit includes a representation by the affiant that the affiant is the sole director and officer of the applicable professional entity; or

(4) the most recent franchise tax public information report of the entity under Section 171.203, Tax Code, available on the date the affidavit is executed identifies only the affiant and no other person as an officer, director, member, manager, or general partner of the entity.

(i) The affidavit must be recorded with the county clerk in the county in which the real property is located. The county clerk may collect a fee for recording an affidavit under this section in the amount authorized for recording a transfer of real property.

(j) A person who in good faith acts in reliance on an affidavit that complies with this section and that contains transfer authority that has not been terminated under Subsection (n) or has not expired under Subsection (o) is not liable to any person for that act and may assume without inquiry the existence of the facts contained in the affidavit if the person does not have actual knowledge that any material representations contained in the affidavit are incorrect.

(k) A person who in good faith enters into a transaction involving the transfer of an estate or interest in real property described in an affidavit that is described by Subsection (c) and who relies on the affidavit, without actual knowledge that any material representations contained in the affidavit are incorrect, may enforce the transaction against the entity and the real property described in the affidavit as if the representations contained in the affidavit are correct if:

(1) the affidavit complies with this section; and

(2) the transfer authority specified in the affidavit has not been terminated under Subsection (n) or has not expired under Subsection (o).

(l) With respect to an affidavit described by Subsection (c), this section does not limit the rights of an owner of an interest in the entity against the affiant, the entity, or any individual identified in the affidavit with authority to transfer on behalf of the entity an estate or interest in real property in the name of the entity.

(m) Nothing in this section:

(1) requires an individual to rely on an affidavit described by Subsection (c);

(2) requires an entity to deliver an affidavit that complies with this section in order for a transfer of an estate or interest in real property on behalf of the entity to take effect;

(3) prohibits an entity from authorizing an individual to transfer an estate or interest in real property on behalf of the entity by a means other than an affidavit described by Subsection (c); or

(4) shall be construed to validate a transfer of an estate or interest in real property that is void by other law.

(n) An entity that executes and records an affidavit described by Subsection (c) may terminate the transfer authority specified in the affidavit at any time by recording a written termination of the authority specified in the affidavit with the county clerk in the county in which the real property is located. The written termination must be in the form of an affidavit that:

(1) satisfies the requirements of Subsection (e) other than Subsection (e)(2)(D);

(2) provides the recording information for the affidavit that specifies the transfer authority being terminated; and

(3) states that the authority to transfer an estate or interest in real property as contained in the previously recorded affidavit is terminated.

(o) The transfer authority contained in an affidavit that complies with this section and that has not been terminated as provided by Subsection (n) expires on the first anniversary of the date on which the affidavit was recorded under Subsection (i).

(p) The transfer authority or the termination of the transfer

authority specified in an affidavit that is recorded under Subsection (i) or (n) is effective on the date the county clerk indexes the affidavit.

Added by Acts 2019, 86th Leg., R.S., Ch. 1081 (H.B. 1833), Sec. 1, eff. September 1, 2019.

CHAPTER 13. EFFECTS OF RECORDING

Sec. 13.001. VALIDITY OF UNRECORDED INSTRUMENT. (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

(b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

(c) This section does not apply to a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 162, Sec. 4, eff. Sept. 1, 1989.

Sec. 13.002. EFFECT OF RECORDED INSTRUMENT. An instrument that is properly recorded in the proper county is:

(1) notice to all persons of the existence of the instrument; and

(2) subject to inspection by the public.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 715, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 960, Sec. 2, eff. Sept. 1, 2003.

Sec. 13.003. INSTRUMENTS PREVIOUSLY RECORDED IN OTHER COUNTIES. The original or a certified copy of a conveyance, covenant, agreement, deed of trust, or mortgage, relating to land, that has

been recorded in a county of this state other than the county where the land to which the instrument relates is located, is valid as to a creditor or a subsequent purchaser who has paid a valuable consideration and who does not have notice of the instrument only after it is recorded in the county in which the land is located. Recording a previously recorded instrument in the proper county does not validate an invalid instrument.

Acts 1983, 68th Leg., p. 3496, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 13.004. EFFECT OF RECORDING LIS PENDENS. (a) A recorded lis pendens is notice to the world of its contents. The notice is effective from the time it is filed for record and indexed as provided by Section 12.007(c), regardless of whether service has been made on the parties to the proceeding.

(b) A transfer or encumbrance of real property involved in a proceeding by a party to the proceeding to a third party who has paid a valuable consideration and who does not have actual or constructive notice of the proceeding is effective, even though the judgment is against the party transferring or encumbering the property, unless a notice of the pendency of the proceeding has been recorded and indexed under that party's name as provided by Section 12.007(c) in each county in which the property is located.

Acts 1983, 68th Leg., p. 3496, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 437 (S.B. 1187), Sec. 1, eff. September 1, 2011.

Sec. 13.005. EFFECT OF RECORDING JUDGMENT OF JUSTICE COURT. A certified transcript of a justice court judgment recorded under Section 12.015 of this code has the same effect as a recorded deed. A court shall admit as evidence the transcript or a copy of the transcript, if the copy is certified with the signature and seal of the clerk of the county in which the transcript is recorded, in the same manner and with the same effect as the original judgment and execution.

Acts 1983, 68th Leg., p. 3496, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 13.006. EFFECT OF RECORDING QUITCLAIM DEED. After the fourth anniversary of the date a quitclaim deed for real property is recorded in the deed records of the county in which the real property is located, the quitclaim deed:

(1) does not affect the question of the good faith of a subsequent purchaser or creditor; and

(2) is not notice to a subsequent purchaser or creditor of any unrecorded conveyance of, transfer of, or encumbrance on the real property.

Added by Acts 2021, 87th Leg., R.S., Ch. 94 (S.B. 885), Sec. 2, eff. September 1, 2021.

CHAPTER 14. UNIFORM FEDERAL LIEN REGISTRATION ACT

Sec. 14.001. SCOPE. This chapter applies only to federal tax liens and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.002. PLACE OF FILING. (a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the county clerk in the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

(1) if the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) in all other cases, in the office of the county clerk in the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.003. EXECUTION OF NOTICES AND CERTIFICATES. Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.004. DUTIES OF FILING OFFICER. (a) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in Subsection (b) is presented to a filing officer who is:

(1) the secretary of state, he shall cause the notice to be marked, held or placed on microtext, and indexed in accordance with the provisions of Section 9.519, Business & Commerce Code, as if the notice were a financing statement within the meaning of that code; or

(2) any other officer described in Section 14.002, he shall endorse thereon his identification and the date and time of receipt and forthwith file it alphabetically in the real property records and if requested by the party submitting the document, in the personal property files or enter it in an alphabetical index for real or personal property, as appropriate, showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing he shall:

(1) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination

statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of federal lien referred to in Subsection (a) or any of the certificates or notices referred to in Subsection (b) is presented for filing to any other filing officer specified in Section 14.002, he shall permanently attach the refiled notice or the certificate to the original notice of lien unless the document is on microtext and therefore not in the files of the filing officer and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(d) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file, on a date and time specified by the filing office, but not a date earlier than three business days before the date the filing office receives the request, any notice of lien or certificate or notice affecting any lien filed under this chapter or filed under the Uniform Federal Tax Lien Registration Act (Subchapter C, Chapter 113, Tax Code) on or after January 1, 1972, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The amount of the fee for a certificate is the same as the amount of the fee provided by Section 9.525(d), Business & Commerce Code. Upon request, the filing officer shall furnish a copy of any notice of federal lien. The fee for a copy furnished under this section is in the amount provided by Section 405.031, Government Code.

(e) Section 9.523, Business & Commerce Code, applies to a federal lien filed under this chapter.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.34, eff. July 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 10, eff. September 1, 2009.

Sec. 14.005. FEE. The fee for filing and indexing each notice of lien or certificate or notice affecting the lien is $10. The filing of the same notice of lien or certificate or notice affecting a lien in both real property records and personal property files is two filings.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.006. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

Sec. 14.007. SHORT TITLE. This chapter may be cited as the Uniform Federal Lien Registration Act.

Added by Acts 1989, 71st Leg., ch. 945, Sec. 1, eff. Sept. 1, 1989.

CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Sec. 15.001. SHORT TITLE. This chapter may be cited as the Uniform Real Property Electronic Recording Act.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.002. DEFINITIONS. In this chapter:

(1) "Document" means information that is:

(A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) eligible to be recorded in the real property records maintained by a county clerk.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by a county clerk in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Paper document" means a document that is received by a county clerk in a form that is not electronic.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS. (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document that complies with the requirements of this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff.

September 1, 2005.

Sec. 15.005. RECORDING OF DOCUMENTS. (a) A county clerk who implements any of the functions described by this section shall act in compliance with rules adopted by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, and standards established by the Texas State Library and Archives Commission under Section 15.006.

(b) A county clerk may:

(1) receive, index, store, archive, and transmit electronic documents;

(2) provide for access to, and for search and retrieval of, documents and information by electronic means;

(3) convert paper documents accepted for recording into electronic form;

(4) convert into electronic form information recorded before the county clerk began to record electronic documents;

(5) accept electronically any fee or tax that the county clerk is authorized to collect; and

(6) agree with other officials of a state, a political subdivision of a state, or the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(c) A county clerk who accepts electronic documents for recording shall:

(1) continue to accept paper documents; and

(2) place entries for paper documents and electronic documents in the same index.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.006. UNIFORM STANDARDS. (a) The Texas State Library and Archives Commission by rule shall adopt standards to implement this chapter.

(b) To keep the standards and practices of county clerks in this state in harmony with the standards and practices of recording

offices in other jurisdictions that enact a law that is substantially similar to this chapter and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact a law that is substantially similar to this chapter, the Texas State Library and Archives Commission, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards shall consider:

(1) standards and practices of other jurisdictions;

(2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;

(3) the views of interested persons and governmental officials and entities; and

(4) the needs of counties of varying size, population, and resources.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Except as otherwise provided by this chapter, Chapter 195, Local Government Code, and the rules adopted by the Texas State Library and Archives Commission under that chapter apply to electronic documents filed in accordance with this chapter.

Added by Acts 2005, 79th Leg., Ch. 699 (S.B. 335), Sec. 1, eff. September 1, 2005.

TITLE 4. ACTIONS AND REMEDIES
CHAPTER 21. EMINENT DOMAIN
SUBCHAPTER A. JURISDICTION

Sec. 21.001. CONCURRENT JURISDICTION. District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A county court has no jurisdiction in eminent domain cases.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.002. TRANSFER OF CASES. If an eminent domain case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, the judge shall transfer the case to a district court.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.003. DISTRICT COURT AUTHORITY. A district court may determine all issues, including the authority to condemn property and the assessment of damages, in any suit:

(1) in which this state, a political subdivision of this state, a person, an association of persons, or a corporation is a party; and

(2) that involves a claim for property or for damages to property occupied by the party under the party's eminent domain authority or for an injunction to prevent the party from entering or using the property under the party's eminent domain authority.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. PROCEDURE

Sec. 21.0101. EFFECT OF CHAPTER ON SURVEY ACCESS RIGHTS. Nothing in this chapter prevents an entity from seeking survey access rights as provided by law.

Added by Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 5, eff.

January 1, 2022.

Sec. 21.011. STANDARD PROCEDURE. Exercise of the eminent domain authority in all cases is governed by Sections 21.012 through 21.016 of this code.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) An entity with eminent domain authority that wants to acquire real property for a public use shall, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all appraisal reports produced or acquired by the entity relating specifically to the owner's property and prepared in the 10 years preceding the date of the offer.

(a-1) An entity seeking to acquire real property through the use of eminent domain shall, not later than the third business day before the date of a special commissioner's hearing, disclose to the property owner any and all current and existing appraisal reports produced or acquired by the entity relating specifically to the owner's property and used in determining the entity's opinion of value, if an appraisal report is to be used at the hearing.

(b) A property owner shall disclose to the entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Such disclosure shall take place not later than the earlier of:

(1) the 10th day after the date of receipt of an appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the hearing.

(c) An entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain may not include a confidentiality provision in an offer or agreement to acquire the property. The entity shall inform the owner of the

property that the owner has the right to:

(1) discuss any offer or agreement regarding the entity's acquisition of the property with others; or

(2) keep the offer or agreement confidential, unless the offer or agreement is subject to Chapter 552, Government Code.

(d) A subsequent bona fide purchaser for value from the acquiring entity may conclusively presume that the requirement of this section has been met. This section does not apply to acquisitions of real property for which an entity does not have eminent domain authority.

Added by Acts 1995, 74th Leg., ch. 566, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 7, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 54 (S.B. 721), Sec. 1, eff. September 1, 2021.

Sec. 21.0112. PROVISION OF LANDOWNER'S BILL OF RIGHTS STATEMENT REQUIRED. (a) Not later than the seventh day before the date a governmental or private entity with eminent domain authority makes a final offer to a property owner to acquire real property, the entity must send by first-class mail or otherwise provide a landowner's bill of rights statement provided by Section 402.031, Government Code, to the last known address of the person in whose name the property is listed on the most recent tax roll of any appropriate taxing unit authorized by law to levy property taxes against the property. In addition to the other requirements of this subsection, an entity with eminent domain authority shall provide a copy of the landowner's bill of rights statement to a landowner before or at the same time as the entity first represents in any manner to the landowner that the entity possesses eminent domain authority.

(b) The statement must be:

(1) printed in an easily readable font and type size; and

(2) if the entity is a governmental entity, made available on the Internet website of the entity if technologically feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 1201 (H.B. 1495), Sec. 3, eff. February 1, 2008.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1145 (H.B. 2685), Sec. 1, eff. January 15, 2010.

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the property owner voluntarily.

(b) An entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner that includes:

(A) a copy of the landowner's bill of rights statement prescribed by Section 402.031, Government Code, including the addendum prescribed by Section 402.031(c-1), Government Code, if applicable;

(B) a statement, in bold print and a larger font than the other portions of the offer, indicating whether the compensation being offered includes:

(i) damages to the remainder, if any, of the property owner's remaining property; or

(ii) an appraisal of the property, including damages to the remainder, if any, prepared by a certified appraiser certified to practice as a certified general appraiser under Chapter 1103, Occupations Code;

(C) an instrument of conveyance, provided that if the entity is a private entity as defined by Section 21.0114(a), the instrument must comply with Section 21.0114, as applicable, unless:

(i) the entity has previously provided an instrument complying with Section 21.0114;

(ii) the property owner desires to use an instrument different than one complying with Section 21.0114 and consents in writing to use a different instrument; or

(iii) the property owner provided the entity with the instrument prior to the issuance of the initial offer; and

(D) the name and telephone number of a representative of the entity who is:

(i) an employee of the entity;

(ii) an employee of an affiliate providing services on behalf of the entity;

(iii) a legal representative of the entity; or

(iv) if the entity does not have employees, an individual designated to represent the day-to-day operations of the entity;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112; and

(7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

Added by Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 8, eff. September 1, 2011.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 6, eff. January 1, 2022.

Sec. 21.0114. REQUIRED TERMS FOR INSTRUMENTS OF CONVEYANCE OF CERTAIN EASEMENTS. (a) In this section, "private entity":

(1) means:

(A) a for-profit entity, as defined by Section 1.002, Business Organizations Code, however organized, including an affiliate or subsidiary, authorized to exercise the power of eminent domain to acquire private property for public use; or

(B) a corporation organized under Chapter 67, Water

Code, that has a for-profit entity, however organized, as the sole or majority member; and

(2) does not include an entity governed by the Natural Gas Act (15 U.S.C. Section 717 et seq.), unless the entity seeks to acquire property under this chapter.

(b) This section:

(1) applies only to a deed, agreement, or other instrument of conveyance for a pipeline right-of-way easement or an electric transmission line right-of-way easement that is included with an offer made under this chapter to acquire a property interest for a public use; and

(2) does not apply in relation to:

(A) a pipeline or appurtenance that is:

(i) downstream of the point where natural gas is measured and custody is transferred from a transmission pipeline to a gas local distribution company for distribution to end-use customers; or

(ii) at a location where a gas utility taps a transmission pipeline to a city gate, provided that the pipeline does not exceed 100 feet; or

(B) an electric power line that operates below 60 kilovolts.

(c) Except as provided by Subsections (d), (e), and (f), a deed, agreement, or other instrument of conveyance provided to a property owner by a private entity with eminent domain authority to acquire the property interest to be conveyed must address the following general terms, as applicable:

(1) if the instrument conveys a pipeline right-of-way easement or an easement related to pipeline appurtenances:

(A) the maximum number of pipelines that may be installed under the instrument for a pipeline right-of-way;

(B) a description of the types of pipeline appurtenances that are authorized to be installed under the instrument for pipeline-related appurtenances, such as pipes, valves, compressors, pumps, meters, pigging stations, dehydration facilities, electric facilities, communication facilities, and any other appurtenances that may be necessary or desirable in connection with a pipeline;

(C) the maximum diameter, excluding any protective coating or wrapping, of each pipeline to be initially installed under

the instrument for a pipeline right-of-way;

(D) the type or category of substances permitted to be transported through each pipeline to be installed under the instrument;

(E) a general description of any aboveground equipment or facility the private entity intends to install, maintain, or operate under the instrument for a pipeline easement on the surface of the easement;

(F) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(G) the maximum width of the easement under the instrument;

(H) the minimum depth at which each pipeline to be installed under the instrument for a pipeline right-of-way will initially be installed;

(I) a provision identifying whether the private entity intends to double-ditch areas of the pipeline easement that are not installed by boring or horizontal directional drilling;

(J) a provision requiring the private entity to provide written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property if and when the private entity assigns the interest under the instrument to another entity, provided that the provision does not require notice by the private entity for assignment to an affiliate or to a successor through merger, consolidation, or other sale or transfer of all or substantially all of its assets and businesses;

(K) a provision describing whether the easement rights are exclusive or nonexclusive;

(L) a provision limiting the private entity's right to grant to a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument and of pipeline appurtenances to be installed under the instrument;

(M) a provision regarding the property owner's right to recover actual monetary damages arising from the construction and

installation of each pipeline to be installed under the instrument, or a statement that the consideration for the instrument includes any monetary damages arising from the construction and installation of each pipeline to be installed under the instrument;

(N) a provision regarding the property owner's right after initial construction and installation of each pipeline to be installed under the instrument to actual monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument, or a statement that consideration for the instrument includes any monetary damages arising from the repair, maintenance, inspection, replacement, operation, or removal of each pipeline to be installed under the instrument;

(O) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration paid for the instrument;

(P) a provision:

(i) regarding the private entity's obligation to restore the pipeline easement area and the property owner's remaining property, if any, used by the private entity to as near to original condition as is reasonably practicable and to maintain the easement in a manner consistent with the purposes for which the easement will be used by the private entity under the instrument; or

(ii) providing for the private entity to reimburse the property owner for actual monetary damages incurred by the property owner that arise from damage to the pipeline easement area or the property owner's remaining property, if any, to the extent caused by the private entity and not restored or paid for as part of the consideration for the instrument; and

(Q) a provision describing the private entity's rights of ingress, egress, entry, and access on, to, over, and across the property owner's property under the instrument;

(2) if the instrument conveys an electric transmission line right-of-way easement:

(A) a general description of the uses of the surface of the property to be encumbered by the easement the entity intends to acquire;

(B) a description or illustration of the location of the easement, including a metes and bounds or centerline description, plat, or aerial or other map-based depiction of the location of the easement on the property;

(C) the maximum width of the easement under the instrument;

(D) the manner in which the entity will access the easement under the instrument;

(E) a provision limiting the private entity's right to grant to a third party access to the easement area for a purpose that is not related to the construction, safety, repair, maintenance, inspection, replacement, operation, or removal of the electric and appurtenant facilities installed under the instrument;

(F) a provision regarding the property owner's right to recover actual monetary damages arising from the construction, operation, repair, maintenance, inspection, replacement, and future removal of lines and support facilities after initial construction in the easement, if any, or a statement that the initial consideration for the easement instrument includes such damages;

(G) a provision:

(i) regarding the removal, cutting, use, repair, and replacement of gates and fences that cross the easement or that will be used by the private entity under the instrument; or

(ii) providing for the payment for any damage caused by the private entity to gates and fences described by Subparagraph (i), if any, to the extent that the gates or fences are not restored or paid for as part of the consideration for the instrument;

(H) a provision regarding the private entity's obligation to restore the easement area and the property owner's remaining property to the easement area's and the remaining property's original contours and grades, to the extent reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired, and:

(i) a provision regarding the entity's obligation to restore the easement area and the property owner's remaining property following any future damages directly attributed to the use

of the easement by the private entity, to the extent reasonably practicable, unless the safety or operational needs of the private entity and the electric facilities would be impaired; or

(ii) a provision that the consideration for the easement instrument includes damages as described by Subparagraph (i) to the easement area and the property owner's remaining property;

(I) a provision describing whether the easement rights are exclusive, nonexclusive, or otherwise limited under the terms of the instrument; and

(J) a prohibition against the assignment of the entity's interest in the property to an assignee that will not operate as a utility subject to the jurisdiction of the Public Utility Commission of Texas or the Federal Energy Regulatory Commission without written notice to the property owner at the last known address of the person in whose name the property is listed on the most recent tax roll of any taxing unit authorized to levy property taxes against the property;

(3) a prohibition against any use by the private entity of the property rights being conveyed by the instrument, other than a use stated in the instrument, without the express written consent of the property owner; and

(4) a provision that the terms of the instrument will bind the successors and assigns of the property owner and private entity.

(d) A private entity shall notify the property owner that the property owner may negotiate for the following general terms to be included in a deed, agreement, or other instrument of conveyance described by Subsection (c):

(1) a provision regarding the property owner's right to negotiate to recover damages, or a statement that the consideration for the instrument includes damages, for:

(A) damage to certain vegetation; and

(B) the income loss from disruption of existing agricultural production or existing leases based on verifiable loss or lease payments; and

(2) a provision:

(A) requiring the private entity to maintain at all times while the private entity uses the easement, including during construction and operations on the easement, commercial liability insurance or self-insurance:

(i) issued by an insurer authorized to issue

liability insurance in this state, if maintaining commercial liability insurance; and

(ii) insuring the property owner against liability for personal injuries and property damage sustained by any person to the extent caused by the negligence of the private entity or the private entity's agents or contractors and to the extent allowed by law; or

(B) if the private entity is subject to the electric transmission cost-of-service rate jurisdiction of the Public Utility Commission of Texas or has a net worth of at least $25 million, requiring the private entity to maintain self-insurance or commercial liability insurance at levels approved by the Public Utility Commission of Texas in the entity's most recent transmission cost-of-service base rate proceeding.

(e) A private entity or the property owner may, after the entity provides an instrument in compliance with Section 21.0113(b)(1)(C):

(1) negotiate for and agree to terms and conditions not required by Subsection (c), including terms and conditions that differ from or are not included in a subsequent condemnation petition; and

(2) negotiate for and agree to a deed, agreement, or other instrument of conveyance that does not include or includes terms that differ from the terms required by Subsection (c).

(f) Except as provided by this subsection, this section does not prohibit a private entity or the property owner from negotiating for or agreeing to amend, alter, or omit the terms required by Subsection (c) at any time after the private entity first provides a deed, agreement, or other instrument containing the required general terms to the property owner, whether before or at the same time that the entity makes an initial offer to the property owner. A private entity that changes the terms required by Subsection (c) must provide a copy of the amended deed, agreement, or other instrument of conveyance to the property owner not later than the seventh day before the date the private entity files a condemnation petition relating to the property unless the parties agree in writing to waive the notice.

(g) A private entity that changes or amends a deed, agreement, or other instrument has satisfied the requirements of Section 21.0113 if the requirements were previously satisfied as part of the initial

offer made in accordance with Section 21.0113(b)(1)(C).

Added by Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 7, eff. January 1, 2022.

Sec. 21.012. CONDEMNATION PETITION. (a) If an entity with eminent domain authority wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the entity may begin a condemnation proceeding by filing a petition in the proper court.

(b) The petition must:

(1) describe the property to be condemned;

(2) state with specificity the public use for which the entity intends to acquire the property;

(3) state the name of the owner of the property if the owner is known;

(4) state that the entity and the property owner are unable to agree on the damages;

(5) if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112; and

(6) state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113.

(c) An entity that files a petition under this section must concurrently provide a copy of the petition to the property owner by certified mail, return receipt requested, and first class mail. If the entity has received written notice that the property owner is represented by counsel, the entity must also concurrently provide a copy of the petition to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

Acts 1983, 68th Leg., p. 3498, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1201 (H.B. 1495), Sec. 4, eff. February 1, 2008.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 9, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 8, eff. January 1, 2022.

Sec. 21.0121. CONDEMNATION TO ACQUIRE WATER RIGHTS. (a) In addition to the contents prescribed by Section 21.012(b), a condemnation petition filed by a political subdivision of this state for the purpose of acquiring rights to groundwater or surface water must state that the facts to be proven are that the political subdivision has:

(1) prepared a drought contingency plan;

(2) developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable in the political subdivision's jurisdiction;

(3) made a bona fide good faith effort to obtain practicable alternative water supplies to the water rights the political subdivision proposes to condemn;

(4) made a bona fide good faith effort to acquire the rights to the water the political subdivision proposes to condemn by voluntary purchase or lease; and

(5) made a showing that the political subdivision needs the water rights to provide for the domestic needs of the political subdivision within the next 10-year period.

(b) A court shall deny the right to condemn unless the political subdivision proves to the court that the political subdivision has met the requirements of Subsection (a).

Added by Acts 2003, 78th Leg., ch. 1032, Sec. 1, eff. Sept. 1, 2003.

Sec. 21.013. VENUE; FEES AND PROCESSING FOR SUIT FILED IN DISTRICT COURT. (a) The venue of a condemnation proceeding is the county in which the owner of the property being condemned resides if the owner resides in a county in which part of the property is located. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located.

(b) Except where otherwise provided by law, a party initiating a condemnation proceeding in a county in which there is one or more county courts at law with jurisdiction shall file the petition with any clerk authorized to handle such filings for that court or courts.

(c) A party initiating a condemnation proceeding in a county in

which there is not a county court at law must file the condemnation petition with the district clerk. The filing fee shall be due at the time of filing.

(d) District and county clerks shall assign an equal number of eminent domain cases in rotation to each court with jurisdiction that the clerk serves.

Acts 1983, 68th Leg., p. 3499, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1993, 73rd Leg., ch. 760, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 756, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 4.09, eff. January 1, 2022.

Sec. 21.014. SPECIAL COMMISSIONERS. (a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall, not later than the 30th calendar day after the petition is filed, appoint three disinterested real property owners who reside in the county as special commissioners to assess the damages of the owner of the property being condemned and appoint two disinterested real property owners who reside in the county as alternate special commissioners. The judge appointing the special commissioners shall give preference to persons agreed on by the parties, if any, before the court appoints the special commissioners. The judge shall provide the names and contact information of the special commissioners and alternate special commissioners to the parties. Each party shall have until the later of 10 calendar days after the date of the order appointing the special commissioners or 20 days after the date the petition was filed to strike one of the three special commissioners. Any strike of a special commissioner must be filed electronically with electronic service provided concurrently to any represented party and first class mail service provided concurrently to any other party. If a person fails to serve as a special commissioner or is struck by a party to the suit in accordance with this subsection, an alternate special commissioner shall serve as a replacement for the special commissioner based on the order that the alternate special commissioners are listed in the initial order of appointment. If a party exercises a strike, the other party may, by the later of the

third day after the date of filing of the initial strike or the date of the initial strike deadline, strike a special commissioner from the resulting panel, provided the other party has not earlier exercised a strike.

(b) The special commissioners shall swear to assess damages fairly, impartially, and according to the law.

(c) Special commissioners may compel the attendance of witnesses and the production of testimony, administer oaths, and punish for contempt in the same manner as a county judge.

(d) Each party in an eminent domain proceeding is entitled to a copy of the court's order appointing special commissioners under Subsection (a). The court must promptly provide the signed order to the party initiating the condemnation proceeding and that party must provide a copy of the signed order to the property owner and each other party by certified mail, return receipt requested. If the entity has received written notice that the property owner is represented by counsel, the party initiating the condemnation proceeding must concurrently provide a copy of the signed order to the property owner's attorney by first class mail, commercial delivery service, fax, or e-mail.

Acts 1983, 68th Leg., p. 3499, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 10, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 826 (H.B. 2730), Sec. 9, eff. January 1, 2022.

Sec. 21.015. HEARING. (a) The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time but may not schedule a hearing to assess damages before the 20th day after the date the special commissioners were appointed. The special commissioners shall schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

(b) After notice of the hearing has been served, the special commissioners shall hear the parties at the scheduled time and place or at any other time or place to which they may adjourn the hearing.

Acts 1983, 68th Leg., p. 3500, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 11, eff. September 1, 2011.

Sec. 21.016. NOTICE. (a) Each party in an eminent domain proceeding is entitled to written notice issued by the special commissioners informing the party of the time and place of the hearing.

(b) Notice of the hearing must be served on a party not later than the 20th day before the day set for the hearing. A person competent to testify may serve the notice.

(c) A person who serves a notice shall return the original notice to the special commissioners on or before the day set for hearing. The person shall write a return of service on the notice that states how and when it was served.

(d) Notice may be served:

(1) by delivering a copy of the notice to the party or to the party's agent or attorney;

(2) if the property being condemned belongs to a deceased's estate or to a minor or other legally disabled person and the person or estate has a legal representative, by delivering a copy of the notice to the legal representative; or

(3) if the property being condemned belongs to a nonresident of this state and there has been no personal service on the owner, if the identity or the residence of the property owner is unknown, or if the property owner avoids service of notice by hiding, by publication in the same manner as service of citation by publication in other civil cases in the district courts or county courts at law.

Acts 1983, 68th Leg., p. 3500, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 12, eff. September 1, 2011.

Sec. 21.017. ALTERNATIVE PLEADINGS. (a) This state, a political subdivision of this state, a person, an association of

persons, or a corporation that is a party to a suit covered by Section 21.003 of this code by petition, cross-bill, or plea of intervention may assert a claim to the property or, alternatively, seek to condemn the property.

(b) A plea under this section is not an admission of an adverse party's title to the property in controversy.

Acts 1983, 68th Leg., p. 3501, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.018. APPEAL FROM COMMISSIONERS' FINDINGS. (a) A party to a condemnation proceeding may object to the findings of the special commissioners by filing a written statement of the objections and their grounds with the court that has jurisdiction of the proceeding. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court.

(b) If a party files an objection to the findings of the special commissioners, the court shall cite the adverse party and try the case in the same manner as other civil causes.

Acts 1983, 68th Leg., p. 3501 ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.019. DISMISSAL OF CONDEMNATION PROCEEDINGS. (a) A party that files a condemnation petition may move to dismiss the proceedings, and the court shall conduct a hearing on the motion. However, after the special commissioners have made an award, in an effort to obtain a lower award a condemnor may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner.

(b) A court that hears and grants a motion to dismiss a condemnation proceeding made by a condemnor under Subsection (a) shall make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing.

(c) A court that hears and grants a motion to dismiss a condemnation proceeding made by a property owner seeking a judicial denial of the right to condemn or that otherwise renders a judgment

denying the right to condemn may make an allowance to the property owner for reasonable and necessary fees for attorneys, appraisers, and photographers and for the other expenses incurred by the property owner to the date of the hearing or judgment.

Acts 1983, 68th Leg., p. 3501, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 483, Sec. 1, eff. Aug. 31, 1987.

Sec. 21.0195. DISMISSAL OF CERTAIN CONDEMNATION PROCEEDINGS; TEXAS DEPARTMENT OF TRANSPORTATION. (a) This section applies only to the dismissal of a condemnation proceeding that involves the Texas Department of Transportation.

(b) The department may move to dismiss a proceeding it files, and the court shall conduct a hearing on the motion. The court may grant the motion only if the court determines that the property owner's interest will not be materially affected by the dismissal. The department may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner solely to obtain a lower condemnation award.

(c) If a court dismisses a condemnation proceeding on the motion of the department or as a result of the failure of the department to bring the proceeding properly, the court shall make an allowance to the property owner for the value of the department's use of the property while in possession of the property, any damage that the condemnation has caused to the property owner, and any expenses the property owner has incurred in connection with the condemnation, including reasonable and necessary fees for attorneys.

Added by Acts 1997, 75th Leg., ch. 1171, Sec. 1.46(a), eff. Sept. 1, 1997.

Sec. 21.020. REINSTATEMENT OF CONDEMNATION PROCEEDINGS. If a condemnor moves to dismiss a condemnation proceeding and subsequently files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were

allowed the property owner prior to the dismissal of the first proceeding.

Acts 1983, 68th Leg., p. 3502, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.021. POSSESSION PENDING LITIGATION. (a) After the special commissioners have made an award in a condemnation proceeding, except as provided by Subsection (c) of this section, the condemnor may take possession of the condemned property pending the results of further litigation if the condemnor:

(1) pays to the property owner the amount of damages and costs awarded by the special commissioners or deposits that amount of money with the court subject to the order of the property owner;

(2) deposits with the court either the amount of money awarded by the special commissioners as damages or a surety bond in the same amount issued by a surety company qualified to do business in this state, conditioned to secure the payment of an award of damages by the court in excess of the award of the special commissioners; and

(3) executes a bond that has two or more good and solvent sureties approved by the judge of the court in which the proceeding is pending and conditioned to secure the payment of additional costs that may be awarded to the property owner by the trial court or on appeal.

(b) A court shall hold money or a bond deposited under Subdivision (1) or (2) of Subsection (a) to secure the payment of the damages that have been or that may be awarded against the condemnor.

(c) This state, a county, or a municipal corporation or an irrigation, water improvement, or water power control district created under legal authority is not required to deposit a bond or the amount equal to the award of damages under Subdivisions (2) and (3) of Subsection (a).

(d) If a condemnor deposits money with a court under Subdivision (2) of Subsection (a), the condemnor may instruct the court to deposit or invest the money in any account with or certificate or security issued by a state or national bank in this state. The court shall pay the interest that accrues from the deposit or investment to the condemnor.

Acts 1983, 68th Leg., p. 3502, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(b), eff. Oct. 2, 1984.

Sec. 21.0211. PAYMENT OF AD VALOREM TAXES. (a) A court may not authorize withdrawal of any money deposited under Section 21.021 unless the petitioner for the money files with the court:

(1) a tax certificate issued under Section 31.08, Tax Code, by the tax collector for each taxing unit that imposes ad valorem taxes on the condemned property showing that there are no delinquent taxes, penalties, interest, or costs owing on the condemned property or on any larger tract of which the condemned property forms a part; and

(2) in the case of a whole taking that occurs after the date the ad valorem tax bill for taxes imposed by a taxing unit on the property is sent, a tax receipt issued under Section 31.075, Tax Code, by the tax collector of the taxing unit that imposes ad valorem taxes showing that the taxes on the condemned property for the current tax year, prorated under Section 26.11, Tax Code, have been paid.

(b) For purposes of Subsection (a)(2), a "case of a whole taking" means a case in which the location, size, and boundaries of the property assessed for ad valorem taxes are identical to that of the condemned property.

Added by Acts 2005, 79th Leg., Ch. 1126 (H.B. 2491), Sec. 27, eff. September 1, 2005.

Sec. 21.022. AUTHORITY OF COURTS. Laws that formerly governed the performance of functions by county clerks and judges in eminent domain proceedings are applicable to the clerks and judges of district courts and county courts at law.

Acts 1983, 68th Leg., p. 3503, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION. An entity with eminent domain authority shall disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that:

(1) the owner or the owner's heirs, successors, or assigns may be entitled to:

(A) repurchase the property under Subchapter E; or

(B) request from the entity certain information relating to the use of the property and any actual progress made toward that use; and

(2) the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 13, eff. September 1, 2011.

Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES. (a) Notwithstanding any other law, an entity that is not subject to Chapter 552, Government Code, and is authorized by law to acquire private property through the use of eminent domain is required to produce information as provided by this section if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) An entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. A request under this section must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) The entity shall respond to a request in accordance with the Texas Rules of Civil Procedure as if the request was made in a matter pending before a state district court.

(d) Exceptions to disclosure provided by this chapter and the Texas Rules of Civil Procedure apply to the disclosure of information under this section.

(e) Jurisdiction to enforce the provisions of this section resides in:

(1) the court in which the condemnation was initiated; or

(2) if the condemnation proceeding has not been initiated:

(A) a court that would have jurisdiction over a proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(f) If the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section, the court may award the requestor's reasonable attorney's fees incurred to compel the production of the information.

Added by Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 14, eff. September 1, 2011.

SUBCHAPTER C. DAMAGES AND COSTS

Sec. 21.041. EVIDENCE. As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on:

(1) the value of the property being condemned;

(2) the injury to the property owner;

(3) the benefit to the property owner's remaining property; and

(4) the use of the property for the purpose of the condemnation.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.042. ASSESSMENT OF DAMAGES. (a) The special commissioners shall assess damages in a condemnation proceeding according to the evidence presented at the hearing.

(b) If an entire tract or parcel of real property is condemned, the damage to the property owner is the local market value of the property at the time of the special commissioners' hearing.

(c) If a portion of a tract or parcel of real property is condemned, the special commissioners shall determine the damage to the property owner after estimating the extent of the injury and benefit to the property owner, including the effect of the condemnation on the value of the property owner's remaining property.

(d) In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of traffic. In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway.

(e) If a portion of a tract or parcel of real property is condemned for the use, construction, operation, or maintenance of the state highway system or of a county toll project described by Chapter 284, Transportation Code, that is eligible for designation as part of the state highway system, or for the use, construction, development, operation, or maintenance of an improvement or project by a metropolitan rapid transit authority created before January 1, 1980, with a principal municipality having a population of less than 1.9 million and established under Chapter 451, Transportation Code, the special commissioners shall determine the damage to the property owner regardless of whether the property owner makes a claim for damages to the remaining property. In awarding compensation or assessing the damages, the special commissioners shall consider any special and direct benefits that arise from the highway improvement or the transit authority improvement or project that are peculiar to the property owner and that relate to the property owner's ownership, use, or enjoyment of the particular parcel of remaining real property.

(f) In awarding compensation or assessing damages for a condemnation by an institution of higher education, as defined by Section 61.003, Education Code, the special commissioners may not include in the compensation or damages any amount that compensates for, or is based on the present value of, an exemption from ad valorem taxation applicable to the property before its condemnation.

(g) Notwithstanding Subsection (d), if a portion of a tract or parcel of real property that, for the then current tax year was appraised for ad valorem tax purposes under a law enacted under Section 1-d or 1-d-1, Article VIII, Texas Constitution, and is

outside the municipal limits or the extraterritorial jurisdiction of a municipality with a population of 5,000 or more is condemned for state highway purposes, the special commissioners shall consider the loss of reasonable access to or from the remaining property in determining the damage to the property owner.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 29, Sec. 1, eff. Oct. 2, 1984; Acts 1989, 71st Leg., ch. 734, Sec. 5, eff. June 15, 1989; Acts 1997, 75th Leg., ch. 165, Sec. 30.244, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 669, Sec. 117, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1266, Sec. 1.15, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 2.94, eff. June 14, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 15, eff. September 1, 2011.

Sec. 21.0421. ASSESSMENT OF DAMAGES: GROUNDWATER RIGHTS. (a) In a condemnation proceeding initiated by a political subdivision under this chapter, the special commissioners or court shall admit evidence relating to the market value of groundwater rights as property apart from the land in addition to the local market value of the real property if:

(1) the political subdivision proposes to condemn the fee title of real property; and

(2) the special commissioners or court finds, based on evidence submitted at the hearing, that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose.

(b) The evidence submitted under Subsection (a) on the market value of the groundwater rights as property apart from the land shall be based on generally accepted appraisal methods and techniques, including the methods of appraisal under Subchapter A, Chapter 23, Tax Code.

(c) If the special commissioners or court finds that the real property may be used by the political subdivision to develop or use the rights to groundwater for a public purpose, the special commissioners or court may assess damages to the property owner based

on:

(1) the local market value of the real property, excluding the value of the groundwater in place, at the time of the hearing; and

(2) the market value of the groundwater rights as property apart from the land at the time of the hearing.

(d) In assessing damages based on the market value of groundwater rights under Subsection (c)(2), the special commissioners or court shall consider:

(1) the amount of groundwater the political subdivision can reasonably be expected to produce from the property on an annual basis;

(2) the number of years the political subdivision can reasonably be expected to produce groundwater from the property;

(3) the quality of the groundwater;

(4) the location of the real property in relation to the political subdivision for conveyance purposes;

(5) any potential environmental impact of producing groundwater from the real property;

(6) whether or not the real property is located within the boundaries of a political subdivision that can regulate the production of groundwater from the real property;

(7) the cost of alternative water supplies to the political subdivision; and

(8) any other reasonable factor that affects the market value of a groundwater right.

(e) This section does not:

(1) authorize groundwater rights appraised separately from the real property under this section to be appraised separately from real property for property tax appraisal purposes; or

(2) subject real property condemned for the purpose described by Subsection (a) to an additional tax as provided by Section 23.46 or 23.55, Tax Code.

Added by Acts 2003, 78th Leg., ch. 1032, Sec. 2, eff. Sept. 1, 2003.

Sec. 21.043. DISPLACEMENT FROM DWELLING OR PLACE OF BUSINESS. (a) A property owner who is permanently physically displaced from the property owner's dwelling or place of business and who is not

entitled to reimbursement for moving expenses under another law may recover, in addition to the property owner's other damages, the reasonable expenses of moving the property owner's personal property from the dwelling or place of business.

(b) A recovery under this section may not exceed the market value of the property being moved. The maximum distance of movement to be considered is 50 miles.

Acts 1983, 68th Leg., p. 3504, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.044. DAMAGES FROM TEMPORARY POSSESSION. (a) If a court finally determines that a condemnor who has taken possession of property pending litigation did not have the right to condemn the property, the court may award to the property owner the damages that resulted from the temporary possession.

(b) The court may order the payment of damages awarded under this section from the award or other money deposited with the court. However, if the award paid to or appropriated by the property owner exceeds the court's final determination of the value of the property, the court shall order the property owner to return the excess to the condemnor.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.045. TITLE ACQUIRED. Except where otherwise expressly provided by law, the interest acquired by a condemnor under this chapter does not include the fee simple title to real property, either public or private. An interest acquired by a condemnor is not lost by the forfeiture or expiration of the condemnor's charter and is subject to an extension of the charter or the grant of a new charter without a new condemnation.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.046. RELOCATION ASSISTANCE PROGRAM. (a) A department, agency, instrumentality, or political subdivision of this state shall provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit

organization that is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

(b) This state or a political subdivision of this state shall, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

(c) A department, agency, instrumentality, or political subdivision of this state that initiates a program under Subsection (b) shall adopt rules relating to the administration of the program.

(d) Neither this state nor a political subdivision of this state may authorize expenditures under Subsection (b) that exceed payments authorized under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. 4601, et seq.

(e) If a person moves or discontinues the person's business, moves personal property, or moves from the person's dwelling as a direct result of code enforcement, rehabilitation, or a demolition program, the person is considered to be displaced because of the acquisition of real property.

Acts 1983, 68th Leg., p. 3505, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 16, eff. September 1, 2011.

Sec. 21.047. ASSESSMENT OF COSTS AND FEES. (a) Special commissioners may adjudge the costs of an eminent domain proceeding against any party. If the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, the condemnor shall pay all costs. If the commissioners' award or the court's determination of the damages is less than or equal to the amount the condemnor offered before proceedings began, the property owner shall pay the costs.

(b) A condemnor shall pay the initial cost of serving a property owner with notice of a condemnation proceeding. If the property owner is ordered to pay the costs of the proceeding, the condemnor may recover the expense of notice from the property owner as part of the costs.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(i), eff. January 1, 2022.

(d) If a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113, the court shall abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay:

(1) all costs as provided by Subsection (a); and

(2) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the violation.

Acts 1983, 68th Leg., p. 3506, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 17, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 18, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 472 (S.B. 41), Sec. 5.01(i), eff. January 1, 2022.

Sec. 21.048. STATEMENT OF DAMAGES AND COSTS. After the special commissioners in an eminent domain proceeding have assessed the damages, they shall:

(1) make a written statement of their decision stating the damages, date it, sign it, and file it and all other papers connected with the proceeding with the court on the day the decision is made or on the next working day after the day the decision is made; and

(2) make and sign a written statement of the accrued costs of the proceeding, naming the party against whom the costs are adjudged, and file the statement with the court.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(c), eff. Oct. 2, 1984.

Sec. 21.049. NOTICE OF DECISION OF SPECIAL COMMISSIONERS. The judge of a court hearing a proceeding under this chapter shall inform the clerk of the court as to a decision by the special commissioners on the day the decision is filed or on the next working day after the day the decision is filed. Not later than the next working day after the day the decision is filed, the clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding, or to their attorneys of record, at their addresses of record.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 1(d), eff. Oct. 2, 1984.

SUBCHAPTER D. JUDGMENT

Sec. 21.061. JUDGMENT ON COMMISSIONERS' FINDINGS. If no party in a condemnation proceeding files timely objections to the findings of the special commissioners, the judge of the court that has jurisdiction of the proceeding shall adopt the commissioners' findings as the judgment of the court, record the judgment in the minutes of the court, and issue the process necessary to enforce the judgment.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.062. WRIT OF POSSESSION. If a condemnor in a condemnation proceeding has taken possession of property pending litigation and the court finally decides that the condemnor does not have the right to condemn the property, the court shall order the condemnor to surrender possession of the property and issue a writ of possession to the property owner.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.063. APPEAL. (a) The appeal of a judgment in a condemnation proceeding is as in other civil cases.

(b) A court hearing an appeal from the decision of a trial

court in a condemnation proceeding may not suspend the judgment of the trial court pending the appeal.

Acts 1983, 68th Leg., p. 3507, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.064. INJUNCTIVE RELIEF. (a) A court hearing a suit covered by Section 21.003 of this code may grant injunctive relief under the rules of equity.

(b) Instead of granting an injunction under this section, a court may require a condemnor to provide security adequate to compensate the property owner for damages that might result from the condemnation.

Acts 1983, 68th Leg., p. 3508, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 21.065. VESTED INTEREST. A judgment of a court under this chapter vests a right granted to a condemnor.

Acts 1983, 68th Leg., p. 3508, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING ENTITY

Sec. 21.101. RIGHT OF REPURCHASE. (a) A person from whom a real property interest is acquired by an entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property as provided by this subchapter if:

(1) the public use for which the property was acquired through eminent domain is canceled before the property is used for that public use;

(2) no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date; or

(3) the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) In this section, "actual progress" means the completion of three or more of the following actions:

(1) the performance of a significant amount of labor to

develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(2) the provision of a significant amount of materials to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(3) the hiring of or contracting with and the performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan, plat, or easement that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;

(4) application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired; or

(5) application for a state or federal permit or certificate to develop the property or other property acquired for the same public use project for which the property owner's property was acquired.

(b-1) Notwithstanding Subsection (b), a navigation district or port authority, or a water district implementing a project included in the state water plan adopted by the Texas Water Development Board, may establish actual progress for purposes of this section by:

(1) the completion of one action described by Subsection (b); and

(2) the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one action described by Subsection (b) before the 10th anniversary of the date of acquisition of the property.

(c) A district court may determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 86 (S.B. 726), Sec. 1, eff. September 1, 2021.

Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED. Not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section 21.101, the entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing:

(1) an identification, which is not required to be a legal description, of the property that was acquired;

(2) an identification of the public use for which the property had been acquired and a statement that:

(A) the public use was canceled before the property was used for the public use;

(B) no actual progress was made toward the public use; or

(C) the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition; and

(3) a description of the person's right under this subchapter to repurchase the property.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED PROPERTY. (a) On or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, a property owner or the owner's heirs, successors, or assigns may request that the condemning entity make a determination and provide a statement and other relevant information regarding:

(1) whether the public use for which the property was acquired was canceled before the property was used for the public use;

(2) whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that date, including an itemized description of the progress made, if applicable; and

(3) whether the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) A request under this section must contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Not later than the 90th day following the date of receipt of the request for information, the entity shall send a written response by certified mail, return receipt requested, to the requestor.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.1022. LIMITATIONS PERIOD FOR REPURCHASE RIGHT. Notwithstanding Section 21.103, the right to repurchase provided by this subchapter is extinguished on the first anniversary of the expiration of the period for an entity to provide notice under Section 21.102 if the entity:

(1) is required to provide notice under Section 21.102;

(2) makes a good faith effort to locate and provide notice to each person entitled to notice before the expiration of the deadline for providing notice under that section; and

(3) does not receive a response to any notice provided under that section in the period for response prescribed by Section 21.103.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than the 180th day after the date of the postmark on a notice sent under Section 21.102 or a response to a request made under Section 21.1021 that indicates that the property owner, or the owner's heirs, successors, or assigns, is entitled to repurchase the property interest in accordance with Section 21.101, the property owner or the owner's heirs, successors, or assigns must notify the entity of the

person's intent to repurchase the property interest under this subchapter.

(b) As soon as practicable after receipt of a notice of intent to repurchase under Subsection (a), the entity shall offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain. The person's right to repurchase the property expires on the 90th day after the date on which the entity makes the offer.

Added by Acts 2003, 78th Leg., ch. 1307, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 81 (S.B. 18), Sec. 19, eff. September 1, 2011.

CHAPTER 22. TRESPASS TO TRY TITLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 22.001. TRESPASS TO TRY TITLE. (a) A trespass to try title action is the method of determining title to lands, tenements, or other real property.

(b) The action of ejectment is not available in this state.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.002. TITLE SUFFICIENT TO MAINTAIN ACTION. A headright certificate, land scrip, bounty warrant, or other evidence of legal right to located and surveyed land is sufficient title to maintain a trespass to try title action.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.003. FINAL JUDGMENT CONCLUSIVE. A final judgment that establishes title or right to possession in an action to recover real property is conclusive against the party from whom the property is recovered and against a person claiming the property through that party by a title that arises after the action is initiated.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.004. EFFECT OF FORMER LAW. This chapter does not affect rights that existed before the introduction of the common law in this state. Those rights are defined by the principles of the law in effect at the time the rights accrued.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. JUDGMENT AND DAMAGES

Sec. 22.021. CLAIM FOR IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property, but who has possessed the property in good faith and made permanent and valuable improvements to it, is either:

(1) entitled to recover the amount by which the estimated value of the defendant's improvements exceeds the estimated value of the defendant's use and occupation of and waste or other injury to the property; or

(2) liable for the amount by which the value of the use and occupation of and waste and other injury to the property exceeds the value of the improvements and for costs.

(b) In estimating values of improvements or of use and occupation:

(1) improvements are valued at the time of trial, but only to the extent that the improvements increased the value of the property; and

(2) use and occupation is valued for the time before the date the action was filed that the defendant was in possession of the property, but excluding the value resulting from the improvements made by the defendant or those under whom the defendant claims.

(c) The defendant who makes a claim for improvements must plead:

(1) that the defendant and those under whom the defendant claims have had good faith adverse possession of the property in controversy for at least one year before the date the action began;

(2) that they or the defendant made permanent and valuable improvements to the property while in possession;

(3) the grounds for the claim;

(4) the identity of the improvements; and

(5) the value of each improvement.

(d) The defendant is not liable for damages under this section for injuries or for the value of the use and occupation more than two years before the date the action was filed, and the defendant is not liable for damages or for the value of the use and occupation in excess of the value of the improvements.

Acts 1983, 68th Leg., p. 3509, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.022. WRIT OF POSSESSION. If in a trespass to try title action the plaintiff obtains a judgment for the contested property, but the defendant obtains a judgment for the value of the defendant's improvements in excess of the defendant's liability for use, occupation, and damages, the court may not issue a writ of possession until the first anniversary of the judgment unless the plaintiff pays to the clerk of the court for the benefit of the defendant the amount of the judgment in favor of the defendant plus interest.

Acts 1983, 68th Leg., p. 3510, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.023. FAILURE TO PAY. (a) If after a trespass to try title action a plaintiff does not pay a judgment awarded to a defendant, plus accrued interest, before the first anniversary of the judgment and if the defendant, before the sixth month after the first anniversary of the judgment, pays the value of the property, less the value of the defendant's improvements, to the clerk of the court for the benefit of the plaintiff, the plaintiff may not obtain a writ of possession or maintain any proceeding against the defendant or the defendant's heirs or assigns for the property awarded to the plaintiff in the trespass to try title action.

(b) If an eligible defendant does not exercise the option under this section, a plaintiff may apply for a writ of possession as in other cases.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.024. PAYMENTS INTO COURT. If a party in a trespass to try title action makes a payment to the clerk of a court under this

subchapter, the clerk shall enter a dated memorandum of the payment on the page of the record on which the judgment was entered. The clerk shall pay the money on demand to the person entitled to the payment, who shall indicate receipt of the payment by dating and signing the record on the same page on which the judgment was entered.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. REMOVAL OF IMPROVEMENTS

Sec. 22.041. PLEA FOR REMOVAL OF IMPROVEMENTS. (a) A defendant in a trespass to try title action who is not the rightful owner of the property in controversy may remove improvements made to the property if:

(1) the defendant, and those under whom the defendant claims, possessed the property, and made permanent and valuable improvements to it, without intent to defraud; and

(2) the improvements can be removed without substantial and permanent damage to the property.

(b) The pleadings of a defendant who seeks to remove improvements must contain:

(1) a statement that the defendant, and those under whom the defendant claims, adversely possessed the property, and made permanent and valuable improvements to it, without intent to defraud;

(2) a statement identifying the improvements; and

(3) an offer to provide a surety bond in an amount and conditioned as required by this section.

(c) Before removing the improvements, the defendant must post a surety bond in an amount determined by the court, conditioned on the removal of the improvements in a manner that substantially restores the property to the condition it was in before the improvements were made.

Acts 1983, 68th Leg., p. 3511, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.042. REFEREE. A court that authorizes a defendant in a trespass to try title action to remove improvements shall appoint a referee to supervise the removal. The court may require the referee to make reports to the court concerning the removal.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.043. RETAINED JURISDICTION. A court that authorizes a defendant in a trespass to try title action to remove improvements retains jurisdiction of the action until the court makes a final disposition of the case and a final determination of the rights, duties, and liabilities of the parties and sureties.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.044. CONDITION FOR REMOVAL. Before a court in a trespass to try title action authorizes a defendant to remove improvements, the court may require the defendant to satisfy a money judgment in favor of the plaintiff that arises out of a claim of the plaintiff in the action.

Acts 1983, 68th Leg., p. 3512, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 22.045. CUMULATIVE REMEDIES. The remedy of removing improvements may be pleaded as an alternative to all other remedies at law or in equity.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 23. PARTITION

Sec. 23.001. PARTITION. A joint owner or claimant of real property or an interest in real property or a joint owner of personal property may compel a partition of the interest or the property among the joint owners or claimants under this chapter and the Texas Rules of Civil Procedure.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.002. VENUE AND JURISDICTION. (a) A joint owner or a claimant of real property or an interest in real property may bring an action to partition the property or interest in a district court

of a county in which any part of the property is located.

(b) A joint owner of personal property must bring an action to partition the property in a court that has jurisdiction over the value of the property.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.003. EFFECT ON FUTURE INTERESTS. A partition of real property involving an owner of a life estate or an estate for years and other owners of equal or greater estate does not prejudice the rights of an owner of a reversion or remainder interest.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.004. EFFECT OF PARTITION. (a) A person allotted a share of or an interest in real property in a partition action holds the property or interest in severalty under the conditions and covenants that applied to the property prior to the partition.

(b) A court decree confirming a report of commissioners in partition of real property gives a recipient of an interest in the property a title equivalent to a conveyance of the interest by a warranty deed from the other parties in the action.

(c) Except as provided by this chapter, a partition of real property does not affect a right in the property.

Acts 1983, 68th Leg., p. 3513, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 23.005. FEES. The judge of a court that hears an action to partition real property shall examine the report of the commissioners appointed to partition the property and shall determine from the report and from evidence submitted by the parties the complexity and difficulty of making the partition. The court shall then award the commissioners, and any surveyor appointed by the court or retained by the commissioners, a reasonable fee for the services rendered. The fees awarded shall be taxed and collected as costs of court in the same manner as the other costs in the action.

Acts 1983, 68th Leg., p. 3514, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1991, 72nd Leg., ch. 443, Sec. 1, eff. Sept. 1, 1991.

Sec. 23.006. ACCESS EASEMENT FOR PARTITIONED PROPERTY. (a) Unless waived by the parties in an action to partition property under this chapter, the commissioners appointed to partition property shall grant a nonexclusive access easement on a tract of partitioned property for the purpose of providing reasonable ingress to and egress from an adjoining partitioned tract that does not have a means of access through a public road or an existing easement appurtenant to the tract. The order granting the access easement shall contain a legal description of the easement.

(b) Unless waived by the parties in writing in a private partition agreement, the property owner of a partitioned tract that has a means of access through a public road or an existing easement appurtenant to the tract shall grant in the private partition agreement a nonexclusive access easement on the owner's partitioned tract for the purpose of providing reasonable ingress to and egress from an adjoining partitioned tract that does not have a means of access through a public road or an existing easement appurtenant to the tract.

(c) The access easement may not be a width greater than a width prescribed by a municipality or county for a right-of-way on a street or road. The access easement route must be the shortest route to the adjoining tract that:

(1) causes the least amount of damage to the tract subject to the easement; and

(2) is located the greatest reasonable distance from the primary residence and related improvements located on the tract subject to the easement.

(d) The adjoining tract owner who is granted an access easement under this section shall maintain the easement and keep the easement open for public use.

Added by Acts 2001, 77th Leg., ch. 647, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 23A. UNIFORM PARTITION OF HEIRS' PROPERTY ACT

Sec. 23A.001. SHORT TITLE. This chapter may be cited as the Uniform Partition of Heirs' Property Act.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.002. DEFINITIONS. In this chapter:

(1) "Ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual.

(2) "Collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant.

(3) "Descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual.

(4) "Determination of value" means a court order determining the fair market value of heirs' property under Section 23A.006 or 23A.010 or adopting the valuation of the property agreed to by all cotenants.

(5) "Heirs' property" means real property held in tenancy in common that satisfies all of the following requirements as of the filing of a partition action:

(A) there is no agreement in a record binding all the cotenants that governs the partition of the property;

(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(C) any of the following applies:

(i) 20 percent or more of the interests are held by cotenants who are relatives;

(ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(iii) 20 percent or more of the cotenants are relatives.

(6) "Partition by sale" means a court-ordered sale of the entire heirs' property, whether by open-market sale, sealed bids, or auction conducted under Section 23A.010.

(7) "Partition in kind" means the division of heirs' property into physically distinct and separately titled parcels.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium

and is retrievable in perceivable form.

(9) "Relative" means an ascendant, descendant, or collateral or an individual otherwise related to another individual by blood, marriage, adoption, or law of this state other than this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.003. APPLICABILITY; RELATION TO OTHER LAW. (a) In an action to partition real property under Chapter 23, the court shall determine whether the property is heirs' property. If the court determines that the property is heirs' property, the property must be partitioned under this chapter unless all of the cotenants otherwise agree in a record.

(b) This chapter supplements Chapter 23 and the Texas Rules of Civil Procedure governing partition of real property. If an action is governed by this chapter, this chapter supersedes provisions of Chapter 23 and the Texas Rules of Civil Procedure governing partition of real property that are inconsistent with this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.004. SERVICE; NOTICE BY POSTING. (a) This chapter does not limit or affect the method by which service of a petition in a partition action may be made.

(b) If the plaintiff in a partition action seeks citation by publication and the court determines that the property may be heirs' property, the plaintiff, not later than the 10th day after the date the determination is made, shall post, and maintain while the action is pending, a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff.

September 1, 2017.

Sec. 23A.005. COMMISSIONERS. If the court appoints commissioners under Rule 761, Texas Rules of Civil Procedure, each commissioner, in addition to the requirements and disqualifications applicable to commissioners under that rule, must be impartial and may not be a party to or a participant in the action.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.006. DETERMINATION OF VALUE. (a) Except as provided by Subsection (b) or (c), if the court determines that the property that is the subject of a partition action is heirs' property, the court shall determine the fair market value of the property by ordering an appraisal under Subsection (d).

(b) If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

(c) If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

(d) If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

(e) If an appraisal is conducted under Subsection (d), not later than the 10th day after the date the appraisal is filed, the court shall send notice to each party with a known address, stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than the 30th day after the date notice is sent, stating the grounds for the objection.

(f) If an appraisal is filed with the court under Subsection

(d), the court shall conduct a hearing to determine the fair market value of the property not earlier than the 30th day after the date a copy of the notice of the appraisal is sent to each party under Subsection (e), whether or not an objection to the appraisal is filed under Subsection (e)(3). In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

(g) After a hearing under Subsection (f), but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.007. COTENANT BUYOUT. (a) If any cotenant requested partition by sale, after the determination of value under Section 23A.006, the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale.

(b) Not later than the 45th day after the date notice is sent under Subsection (a), any cotenant except a cotenant that requested partition by sale may give notice to the court that the cotenant elects to buy all the interests of the cotenants that requested partition by sale.

(c) The purchase price for each of the interests of a cotenant that requested partition by sale is the value of the entire parcel determined under Section 23A.006 multiplied by the cotenant's fractional ownership of the entire parcel.

(d) After the period provided by Subsection (b) expires:

(1) if only one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall notify all the parties of that fact;

(2) if more than one cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:

(A) allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total

existing fractional ownership of all cotenants electing to buy; and

(B) send notice to all the parties of that fact and of the price to be paid by each electing cotenant; or

(3) if no cotenant elects to buy all the interests of the cotenants that requested partition by sale, the court shall:

(A) send notice to all the parties of that fact; and

(B) resolve the partition action under Section 23A.008(a) or (b).

(e) If the court sends notice to the parties under Subsection (d)(1) or (2), the court shall set a date, not earlier than the 60th day after the date notice was sent, by which an electing cotenant must pay the cotenant's apportioned price into the court. After that date:

(1) if all electing cotenants timely pay their apportioned price into court, the court shall:

(A) issue an order reallocating all the interests of the cotenants; and

(B) disburse the amounts held by the court to the persons entitled to them;

(2) if no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Section 23A.008(a) or (b) as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) if one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

(f) Not later than the 20th day after the date the court gives notice under Subsection (e)(3), any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After that period expires:

(1) if only one cotenant pays the entire price for the remaining interest, the court shall:

(A) issue an order reallocating the remaining interest to that cotenant;

(B) promptly issue an order reallocating the interests of all of the cotenants; and

(C) disburse the amounts held by the court to the persons entitled to the amounts;

(2) if no cotenant pays the entire price for the remaining

interest, the court shall resolve the partition action under Section 23A.008(a) or (b) as if the interests of the cotenants that requested partition by sale were not purchased; or

(3) if more than one cotenant pays the entire price for the remaining interest, the court shall:

(A) reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest;

(B) promptly issue an order reallocating all of the cotenants' interests;

(C) disburse the amounts held by the court to the persons entitled to the amounts; and

(D) promptly refund any excess payment held by the court.

(g) Not later than the 45th day after the date the court sends notice to the parties under Subsection (a), any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

(h) If the court receives a timely request under Subsection (g), the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under Subsections (a) through (f) have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 23A.006.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.008. PARTITION ALTERNATIVES. (a) If all the

interests of all cotenants that requested partition by sale are not purchased by other cotenants under Section 23A.007, or if after conclusion of the buyout under Section 23A.007 a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the court, after consideration of the factors listed in Section 23A.009, finds that partition in kind will result in substantial prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have the requesting parties' individual interests aggregated.

(b) If the court does not order partition in kind under Subsection (a), the court shall order partition by sale under Section 23A.010 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(c) If the court orders partition in kind under Subsection (a), the court may require that one or more cotenants pay one or more other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

(d) If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable, or the subject of a default judgment, if those cotenants' interests were not bought out under Section 23A.007, a part of the property representing the combined interests of those cotenants as determined by the court, and that part of the property shall remain undivided.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.009. CONSIDERATIONS FOR PARTITION IN KIND. (a) In determining under Section 23A.008(a) whether partition in kind would result in substantial prejudice to the cotenants as a group, the court shall consider the following:

(1) whether the heirs' property practicably can be divided among the cotenants;

(2) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value

of the property if the property were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) the degree to which the cotenants have contributed the cotenants' pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and

(7) any other relevant factor.

(b) The court may not consider any one factor under Subsection (a) to be dispositive without weighing the totality of all relevant factors and circumstances.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.010. OPEN-MARKET SALE, SEALED BIDS, OR AUCTION. (a) If the court orders a sale of heirs' property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or at an auction would be more economically advantageous and in the best interest of the cotenants as a group.

(b) If the court orders an open-market sale and the parties, not later than the 10th day after the date the order is entered, agree on a real estate broker to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no

lower than the determination of value and on the terms and conditions established by the court.

(c) If the broker appointed under Subsection (b) obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) the broker shall comply with the reporting requirements of Section 23A.011; and

(2) the sale may be completed in accordance with state law other than this chapter.

(d) If the broker appointed under Subsection (b) does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

(1) approve the highest outstanding offer, if any;

(2) redetermine the value of the property and order that the property continue to be offered for an additional time; or

(3) order that the property be sold by sealed bids or at an auction.

(e) If the court orders a sale by sealed bids or at an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted in the manner provided by law for a sale made under execution.

(f) If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.011. REPORT OF OPEN-MARKET SALE. (a) Unless required to do so earlier by other law governing the partition of real property, a broker appointed under Section 23A.010(b) to offer heirs' property for open-market sale shall file a report with the court not later than the seventh day after the date an offer is received to purchase the property for at least the value determined under Section 23A.006 or 23A.010.

(b) The report required by Subsection (a) must contain the following information:

(1) a description of the property to be sold to each buyer;

(2) the name of each buyer;

(3) the proposed purchase price;

(4) the terms and conditions of the proposed sale, including the terms of any owner financing;

(5) the amounts to be paid to lienholders;

(6) a statement of contractual or other arrangements or conditions of the broker's commission; and

(7) other material facts relevant to the sale.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law based on the uniform act on which this chapter is based.

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

Sec. 23A.013. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

Added by Acts 2017, 85th Leg., R.S., Ch. 297 (S.B. 499), Sec. 1, eff. September 1, 2017.

CHAPTER 24. FORCIBLE ENTRY AND DETAINER

Sec. 24.001. FORCIBLE ENTRY AND DETAINER. (a) A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.

(b) For the purposes of this chapter, a forcible entry is:

(1) an entry without the consent of the person in actual

possession of the property;

(2) an entry without the consent of a tenant at will or by sufferance; or

(3) an entry without the consent of a person who acquired possession by forcible entry.

Acts 1983, 68th Leg., p. 3514, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 688, Sec. 1, eff. Sept. 1, 1989.

Sec. 24.002. FORCIBLE DETAINER. (a) A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person:

(1) is a tenant or a subtenant wilfully and without force holding over after the termination of the tenant's right of possession;

(2) is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease; or

(3) is a tenant of a person who acquired possession by forcible entry.

(b) The demand for possession must be made in writing by a person entitled to possession of the property and must comply with the requirements for notice to vacate under Section 24.005.

Acts 1983, 68th Leg., p. 3514, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 200, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 688, Sec. 2, eff. Sept. 1, 1989.

Sec. 24.003. SUBSTITUTION OF PARTIES. If a tenancy for a term expires while the tenant's suit for forcible entry is pending, the landlord may prosecute the suit in the tenant's name for the landlord's benefit and at the landlord's expense. It is immaterial whether the tenant received possession from the landlord or became a tenant after obtaining possession of the property.

Acts 1983, 68th Leg., p. 3515, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985.

Sec. 24.004. JURISDICTION; DISMISSAL. (a) Except as provided by Subsection (b), a justice court in the precinct in which the real property is located has jurisdiction in eviction suits. Eviction suits include forcible entry and detainer and forcible detainer suits. A justice court has jurisdiction to issue a writ of possession under Sections 24.0054(a), (a-2), and (a-3).

(b) A justice court does not have jurisdiction in a forcible entry and detainer or forcible detainer suit and shall dismiss the suit if the defendant files a sworn statement alleging the suit is based on a deed executed in violation of Chapter 21A, Business & Commerce Code.

Acts 1983, 68th Leg., p. 3515, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1205, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 958 (H.B. 1111), Sec. 1, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1242 (S.B. 1320), Sec. 3, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(28), eff. September 1, 2013.

Sec. 24.005. NOTICE TO VACATE PRIOR TO FILING EVICTION SUIT. (a) If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days' written notice to vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. A landlord who files a forcible detainer suit on grounds that the tenant is holding over beyond the end of the rental term or renewal period must also comply with the tenancy termination requirements of Section 91.001.

(b) If the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement. If a building is purchased at a tax

foreclosure sale or a trustee's foreclosure sale under a lien superior to the tenant's lease and the tenant timely pays rent and is not otherwise in default under the tenant's lease after foreclosure, the purchaser must give a residential tenant of the building at least 30 days' written notice to vacate if the purchaser chooses not to continue the lease. The tenant is considered to timely pay the rent under this subsection if, during the month of the foreclosure sale, the tenant pays the rent for that month to the landlord before receiving any notice that a foreclosure sale is scheduled during the month or pays the rent for that month to the foreclosing lienholder or the purchaser at foreclosure not later than the fifth day after the date of receipt of a written notice of the name and address of the purchaser that requests payment. Before a foreclosure sale, a foreclosing lienholder may give written notice to a tenant stating that a foreclosure notice has been given to the landlord or owner of the property and specifying the date of the foreclosure.

(c) If the occupant is a tenant of a person who acquired possession by forcible entry, the landlord must give the person at least three days' written notice to vacate before the landlord files a forcible detainer suit.

(d) In all situations in which the entry by the occupant was a forcible entry under Section 24.001, the person entitled to possession must give the occupant oral or written notice to vacate before the landlord files a forcible entry and detainer suit. The notice to vacate under this subsection may be to vacate immediately or by a specified deadline.

(e) If the lease or applicable law requires the landlord to give a tenant an opportunity to respond to a notice of proposed eviction, a notice to vacate may not be given until the period provided for the tenant to respond to the eviction notice has expired.

(f) Except as provided by Subsection (f-1), the notice to vacate shall be given in person or by mail at the premises in question. Notice in person may be by personal delivery to the tenant or any person residing at the premises who is 16 years of age or older or personal delivery to the premises and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question.

(f-1) As an alternative to the procedures of Subsection (f), a

landlord may deliver the notice to vacate by securely affixing to the outside of the main entry door a sealed envelope that contains the notice and on which is written the tenant's name, address, and in all capital letters, the words "IMPORTANT DOCUMENT" or substantially similar language and, not later than 5 p.m. of the same day, depositing in the mail in the same county in which the premises in question is located a copy of the notice to the tenant if:

(1) the premises has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to affix the notice to vacate to the inside of the main entry door; or

(2) the landlord reasonably believes that harm to any person would result from personal delivery to the tenant or a person residing at the premises or from personal delivery to the premises by affixing the notice to the inside of the main entry door.

(f-2) Notice to vacate under Subsection (f-1) is considered delivered on the date the envelope is affixed to the outside of the door and is deposited in the mail, regardless of the date the notice is received.

(g) The notice period is calculated from the day on which the notice is delivered.

(h) A notice to vacate shall be considered a demand for possession for purposes of Subsection (b) of Section 24.002.

(i) If before the notice to vacate is given as required by this section the landlord has given a written notice or reminder to the tenant that rent is due and unpaid, the landlord may include in the notice to vacate required by this section a demand that the tenant pay the delinquent rent or vacate the premises by the date and time stated in the notice.

Acts 1983, 68th Leg., p. 3515, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 688, Sec. 3, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 1, eff. January 1, 2016.

Sec. 24.0051. PROCEDURES APPLICABLE IN SUIT TO EVICT AND

RECOVER UNPAID RENT. (a) In a suit filed in justice court in which the landlord files a sworn statement seeking judgment against a tenant for possession of the premises and unpaid rent, personal service on the tenant or service on the tenant under Rule 742a, Texas Rules of Civil Procedure, is procedurally sufficient to support a default judgment for possession of the premises and unpaid rent.

(b) A landlord may recover unpaid rent under this section regardless of whether the tenant vacated the premises after the date the landlord filed the sworn statement and before the date the court renders judgment.

(c) In a suit to recover possession of the premises, whether or not unpaid rent is claimed, the citation required by Rule 739, Texas Rules of Civil Procedure, must include the following notice to the defendant:

FAILURE TO APPEAR FOR TRIAL MAY RESULT IN A DEFAULT JUDGMENT BEING ENTERED AGAINST YOU.

(d) In a suit described by Subsection (c), the citation required by Rule 739, Texas Rules of Civil Procedure, must include the following notice to the defendant on the first page of the citation in English and Spanish and in conspicuous bold print:

SUIT TO EVICT

THIS SUIT TO EVICT INVOLVES IMMEDIATE DEADLINES. A TENANT WHO IS SERVING ON ACTIVE MILITARY DUTY MAY HAVE SPECIAL RIGHTS OR RELIEF RELATED TO THIS SUIT UNDER FEDERAL LAW, INCLUDING THE SERVICEMEMBERS CIVIL RELIEF ACT (50 U.S.C. APP. SECTION 501 ET SEQ.), OR STATE LAW, INCLUDING SECTION 92.017, TEXAS PROPERTY CODE. CALL THE STATE BAR OF TEXAS TOLL-FREE AT 1-877-9TEXBAR IF YOU NEED HELP LOCATING AN ATTORNEY. IF YOU CANNOT AFFORD TO HIRE AN ATTORNEY, YOU MAY BE ELIGIBLE FOR FREE OR LOW-COST LEGAL ASSISTANCE.

Added by Acts 1999, 76th Leg., ch. 1464, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 712 (S.B. 439), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 812 (S.B. 1483), Sec. 1, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 252 (H.B. 1127), Sec. 1, eff. January 1, 2012.

Sec. 24.00511. APPEAL BOND FOR CERTAIN EVICTION SUITS. (a) In a residential eviction suit for nonpayment of rent, the justice court shall state in the court's judgment the amount of the appeal bond, taking into consideration the money required to be paid into the court registry under Section 24.0053.

(b) In addition to meeting all other requirements of law, the bond must require the surety to provide the surety's contact information, including an address, phone number, and e-mail address, if any. If any of the contact information changes, the surety shall inform the court of the surety's new contact information.

Added by Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 1, eff. January 1, 2016.

Sec. 24.00512. CONTEST OF CERTAIN APPEAL BONDS. (a) This section does not apply to an appeal bond issued by a corporate surety authorized by the Texas Department of Insurance to engage in business in this state.

(b) If a party appeals the judgment of a justice court in a residential eviction suit for nonpayment of rent by filing an appeal bond, the opposing party may contest the bond amount, form of the bond, or financial ability of a surety to pay the bond by filing a written notice with the justice court contesting the appeal bond on or before the fifth day after the date the appeal bond is filed and serving a copy on the other party. After the notice is filed, the justice court shall notify the other party and the surety of the contest.

(c) Not later than the fifth day after the date the contest is filed, the justice court shall hold a hearing to hear evidence to determine whether to approve or disapprove the amount or form of the bond or the surety.

(d) If a party contests the amount or form of the bond, the contesting party has the burden to prove, by a preponderance of the evidence, that the amount or form of the bond, as applicable, is insufficient. If a party contests the financial ability of a surety to pay the bond, the party filing the bond must prove, by a preponderance of the evidence, that the surety has sufficient nonexempt assets to pay the appeal bond. If the justice court determines that the amount or form of the bond is insufficient or the

surety does not have sufficient nonexempt assets to pay the appeal bond, the justice court must disapprove the bond. If the surety fails to appear at the contest hearing, the failure to appear is prima facie evidence that the bond should be disapproved.

(e) Not later than the fifth day after the date the justice court disapproves an appeal bond, the party appealing may make a cash deposit, file a sworn statement of inability to pay with the justice court, or appeal the decision disapproving the appeal bond to the county court. If the party appealing fails to make a cash deposit, file a sworn statement of inability to pay, or appeal the decision disapproving the appeal bond, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee.

(f) If an appeal is filed, the justice court shall transmit to the county court the contest to the appeal bond and all relevant documents. The county court shall docket the appeal, schedule a hearing to be held not later than the fifth day after the date the appeal is docketed, notify the parties and the surety of the hearing time and date, and hear the contest de novo. The failure of the county court to hold a timely hearing is not grounds for approval or denial of the appeal. A writ of possession may not be issued before the county court issues a final decision on the appeal bond.

(g) After the contest is heard by the county court, the county clerk shall transmit the transcript and records of the case to the justice court. If the county court disapproves the appeal bond, the party may, not later than the fifth day after the date the court disapproves the appeal bond, perfect the appeal of the judgment on the eviction suit by making a cash deposit in the justice court in an amount determined by the county court or by filing a sworn statement of inability to pay with the justice court pursuant to the Texas Rules of Civil Procedure. If the tenant is the appealing party and a cash deposit in the required amount is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final and a writ of possession and other processes to enforce the judgment must be issued on the payment of the required fee. If the landlord is the appealing party and a cash deposit is not timely made or a sworn statement of inability to pay is not timely filed, the judgment of the justice court becomes final. If the appeal bond is approved by the county court, the court shall transmit the transcript and other records of the case to the justice

court, and the justice court shall proceed as if the appeal bond was originally approved.

Added by Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 1, eff. January 1, 2016.

Sec. 24.0052. TENANT APPEAL ON PAUPER'S AFFIDAVIT. (a) If a tenant in a residential eviction suit is unable to pay the costs of appeal or file an appeal bond as required by the Texas Rules of Civil Procedure, the tenant may appeal the judgment of the justice court by filing with the justice court, not later than the fifth day after the date the judgment is signed, a pauper's affidavit sworn before the clerk of the justice court or a notary public that states that the tenant is unable to pay the costs of appeal or file an appeal bond. The affidavit must contain the following information:

(1) the tenant's identity;

(2) the nature and amount of the tenant's employment income;

(3) the income of the tenant's spouse, if applicable and available to the tenant;

(4) the nature and amount of any governmental entitlement income of the tenant;

(5) all other income of the tenant;

(6) the amount of available cash and funds available in savings or checking accounts of the tenant;

(7) real and personal property owned by the tenant, other than household furnishings, clothes, tools of a trade, or personal effects;

(8) the tenant's debts and monthly expenses; and

(9) the number and age of the tenant's dependents and where those dependents reside.

(b) The justice court shall make available an affidavit form that a person may use to comply with the requirements of Subsection (a).

(c) The justice court shall promptly notify the landlord if a pauper's affidavit is filed by the tenant.

(d) A landlord may contest a pauper's affidavit on or before the fifth day after the date the affidavit is filed. If the landlord contests the affidavit, the justice court shall notify the parties

and hold a hearing to determine whether the tenant is unable to pay the costs of appeal or file an appeal bond. The hearing shall be held not later than the fifth day after the date the landlord notifies the court clerk of the landlord's contest. At the hearing, the tenant has the burden to prove by competent evidence, including documents or credible testimony of the tenant or others, that the tenant is unable to pay the costs of appeal or file an appeal bond.

(e) If the justice court approves the pauper's affidavit of a tenant, the tenant is not required to pay the county court filing fee or file an additional affidavit in the county court under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1185 (H.B. 62), Sec. 1, eff. September 1, 2005.

Sec. 24.00521. CONTEST OF CERTAIN APPEAL BONDS IN COUNTY COURT. A contest under Section 24.00512 does not preclude a party from contesting the appeal bond in the county court after the county court has jurisdiction over the eviction suit. After the county court has jurisdiction over the eviction suit, the county court may modify the amount or form of the bond and determine the sufficiency of the surety.

Added by Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 2, eff. January 1, 2016.

Sec. 24.0053. PAYMENT OF RENT DURING APPEAL OF EVICTION. (a) If the justice court enters judgment for the landlord in a residential eviction case based on nonpayment of rent, the court shall determine the amount of rent to be paid each rental pay period during the pendency of any appeal and shall note that amount in the judgment. If a portion of the rent is payable by a government agency, the court shall determine and note in the judgment the portion of the rent to be paid by the government agency and the portion to be paid by the tenant. The court's determination shall be in accordance with the terms of the rental agreement and applicable laws and regulations. This subsection does not require or prohibit payment of rent into the court registry or directly to the landlord during the pendency of an appeal of an eviction case based on grounds

other than nonpayment of rent.

(a-1) In an eviction suit for nonpayment of rent, if a tenant files a pauper's affidavit in the period prescribed by Section 24.0052 or an appeal bond pursuant to the Texas Rules of Civil Procedure, the justice court shall provide to the tenant a written notice at the time the pauper's affidavit or appeal bond is filed that contains the following information in bold or conspicuous type:

(1) the amount of the initial deposit of rent stated in the judgment that the tenant must pay into the justice court registry;

(2) whether the initial deposit must be paid in cash, cashier's check, or money order, and to whom the cashier's check or money order, if applicable, must be made payable;

(3) the calendar date by which the initial deposit must be paid into the justice court registry;

(4) for a court that closes before 5 p.m. on the date specified by Subdivision (3), the time the court closes; and

(5) a statement that failure to pay the required amount into the justice court registry by the date prescribed by Subdivision (3) may result in the court issuing a writ of possession without a hearing.

(a-2) The date by which an initial deposit must be paid into the justice court registry under Subsection (a-1)(3) must be within five days of the date the tenant files the pauper's affidavit as required by the Texas Rules of Civil Procedure.

(a-3) If a tenant files an appeal bond to appeal an eviction for nonpayment of rent, the tenant must, not later than the fifth day after the date the tenant filed the appeal bond, pay into the justice court registry the amount of rent to be paid in one rental pay period as determined by the court under Subsection (a). If the tenant fails to timely pay that amount into the justice court registry and the transcript has not yet been transmitted to the county court, the plaintiff may request a writ of possession. On request and payment of the applicable fee, the justice court shall issue the writ of possession immediately and without a hearing. Regardless of whether a writ of possession is issued, the justice court shall transmit the transcript and appeal documents to the county court for trial de novo on issues relating to possession, rent, or attorney's fees.

(a-4) On sworn motion and hearing, the plaintiff in the eviction suit may withdraw money deposited in the court registry before the final determination in the case, dismissal of the appeal,

or order of the court after final hearing. The county court shall give precedence to a hearing or motion under this subsection.

(b) If an eviction case is based on nonpayment of rent and the tenant appeals by filing a pauper's affidavit, the tenant shall pay the rent, as it becomes due, into the justice court or the county court registry, as applicable, during the pendency of the appeal, in accordance with the Texas Rules of Civil Procedure and Subsection (a). If a government agency is responsible for all or a portion of the rent under an agreement with the landlord, the tenant shall pay only that portion of the rent determined by the justice court under Subsection (a) to be paid by the tenant during appeal, subject to either party's right to contest that determination under Subsection (c).

(c) If an eviction case is based on nonpayment of rent and the tenant's rent during the rental agreement term has been paid wholly or partly by a government agency, either party may contest the portion of the rent that the justice court determines must be paid into the county court registry by the tenant under this section. The contest must be filed on or before the fifth day after the date the justice signs the judgment. If a contest is filed, not later than the fifth day after the date the contest is filed the justice court shall notify the parties and hold a hearing to determine the amount owed by the tenant in accordance with the terms of the rental agreement and applicable laws and regulations. After hearing the evidence, the justice court shall determine the portion of the rent that must be paid by the tenant under this section.

(d) If the tenant objects to the justice court's ruling under Subsection (c) on the portion of the rent to be paid by the tenant during appeal, the tenant shall be required to pay only the portion claimed by the tenant to be owed by the tenant until the issue is tried de novo along with the case on the merits in county court. During the pendency of the appeal, either party may file a motion with the county court to reconsider the amount of the rent that must be paid by the tenant into the registry of the court.

(e) If either party files a contest under Subsection (c) and the tenant files a pauper's affidavit that is contested by the landlord under Section 24.0052(d), the justice court shall hold the hearing on both contests at the same time.

Added by Acts 2005, 79th Leg., Ch. 1185 (H.B. 62), Sec. 1, eff.

September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 958 (H.B. 1111), Sec. 2, eff. January 1, 2012.
Acts 2015, 84th Leg., R.S., Ch. 1027 (H.B. 1334), Sec. 3, eff. January 1, 2016.

Sec. 24.0054. TENANT'S FAILURE TO PAY RENT DURING APPEAL. (a) During an appeal of an eviction case for nonpayment of rent, the justice court on request shall immediately issue a writ of possession, without hearing, if:

(1) a tenant fails to pay the initial rent deposit into the justice court registry within five days of the date the tenant filed a pauper's affidavit as required by Rule 749b(1), Texas Rules of Civil Procedure, and Section 24.0053;

(2) the justice court has provided the written notice required by Section 24.0053(a-1); and

(3) the justice court has not yet forwarded the transcript and original papers to the county court as provided by Subsection (a-2).

(a-1) The sheriff or constable shall execute a writ of possession under Subsection (a) in accordance with Sections 24.0061(d) through (h). The landlord shall bear the costs of issuing and executing the writ of possession.

(a-2) The justice court shall forward the transcript and original papers in an appeal of an eviction case to the county court but may not forward the transcript and original papers before the sixth day after the date the tenant files a pauper's affidavit, except that, if the court confirms that the tenant has timely paid the initial deposit of rent into the justice court registry in accordance with Section 24.0053, the court may forward the transcript and original papers immediately. If the tenant has not timely paid the initial deposit into the justice court registry, the justice court on request shall issue a writ of possession notwithstanding the fact that the tenant has perfected an appeal by filing a pauper's affidavit that has been approved by the court. The justice court shall forward the transcript and original papers in the case to the county court for trial de novo, notwithstanding the fact that a writ of possession under this section has already been issued.

(a-3) Notwithstanding Subsections (a) and (a-2), the justice court may not issue a writ of possession if the tenant has timely deposited the tenant's portion of the rent claimed by the tenant under Section 24.0053(d).

(a-4) During an appeal of an eviction case for nonpayment of rent, if a tenant fails to pay rent into the justice court or county court registry as the rent becomes due under the rental agreement in accordance with the Texas Rules of Civil Procedure and Section 24.0053, the landlord may file with the county court a sworn motion that the tenant failed to pay rent as required. The landlord shall notify the tenant of the motion and the hearing date.

(b) If the county court finds that the tenant has not complied with the payment requirements of the Texas Rules of Civil Procedure and Section 24.0053, the county court shall immediately issue a writ of possession unless on or before the day of the hearing the tenant pays into the court registry:

(1) all rent not paid in accordance with the Texas Rules of Civil Procedure and Section 24.0053; and

(2) the landlord's reasonable attorney's fees, if any, in filing the motion.

(c) If the court finds that a tenant has failed to timely pay the rent into the court registry on more than one occasion:

(1) the tenant is not entitled to stay the issuance of the writ by paying the rent and the landlord's reasonable attorney's fees, if any; and

(2) the county court shall immediately issue a writ of possession.

(d) A writ of possession issued under Subsection (c) may not be executed before the sixth day after the date the writ is issued.

(e) In a motion or hearing under Subsection (a-4), or in a motion to dismiss an appeal of an eviction case in county court, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys.

(f) During the appeal of an eviction case, if a government agency is responsible for payment of a portion of the rent and does not pay that portion to the landlord or into the justice court or county court registry, the landlord may file a motion with the county court requesting that the tenant be required to pay into the county court registry, as a condition of remaining in possession, the full amount of each rental period's rent, as it becomes due under the

rental agreement. After notice and hearing, the court shall grant the motion if the landlord proves by credible evidence that:

(1) a portion of the rent is owed by a government agency;

(2) the portion of the rent owed by the government agency is unpaid;

(3) the landlord did not cause wholly or partly the agency to cease making the payments;

(4) the landlord did not cause wholly or partly the agency to pay the wrong amount; and

(5) the landlord is not able to take reasonable action that will cause the agency to resume making the payments of its portion of the total rent due under the rental agreement.

Added by Acts 2005, 79th Leg., Ch. 1185 (H.B. 62), Sec. 1, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 958 (H.B. 1111), Sec. 3, eff. January 1, 2012.

Sec. 24.006. ATTORNEY'S FEES AND COSTS OF SUIT. (a) Except as provided by Subsection (b), to be eligible to recover attorney's fees in an eviction suit, a landlord must give a tenant who is unlawfully retaining possession of the landlord's premises a written demand to vacate the premises. The demand must state that if the tenant does not vacate the premises before the 11th day after the date of receipt of the notice and if the landlord files suit, the landlord may recover attorney's fees. The demand must be sent by registered mail or by certified mail, return receipt requested, at least 10 days before the date the suit is filed.

(b) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord to recover attorney's fees, a prevailing landlord is entitled to recover reasonable attorney's fees from the tenant.

(c) If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord. A prevailing tenant is not required to give notice in order to recover attorney's fees under this subsection.

(d) The prevailing party is entitled to recover all costs of court.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 688, Sec. 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 3, eff. Sept. 1, 1997.

Sec. 24.0061. WRIT OF POSSESSION. (a) A landlord who prevails in an eviction suit is entitled to a judgment for possession of the premises and a writ of possession. In this chapter, "premises" means the unit that is occupied or rented and any outside area or facility that the tenant is entitled to use under a written lease or oral rental agreement, or that is held out for the use of tenants generally.

(b) A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.

(c) The court shall notify a tenant in writing of a default judgment for possession by sending a copy of the judgment to the premises by first class mail not later than 48 hours after the entry of the judgment.

(d) The writ of possession shall order the officer executing the writ to:

(1) post a written warning of at least 8-1/2 by 11 inches on the exterior of the front door of the rental unit notifying the tenant that the writ has been issued and that the writ will be executed on or after a specific date and time stated in the warning not sooner than 24 hours after the warning is posted; and

(2) when the writ is executed:

(A) deliver possession of the premises to the landlord;

(B) instruct the tenant and all persons claiming under the tenant to leave the premises immediately, and, if the persons fail to comply, physically remove them;

(C) instruct the tenant to remove or to allow the landlord, the landlord's representatives, or other persons acting under the officer's supervision to remove all personal property from

the rental unit other than personal property claimed to be owned by the landlord; and

(D) place, or have an authorized person place, the removed personal property outside the rental unit at a nearby location, but not blocking a public sidewalk, passageway, or street and not while it is raining, sleeting, or snowing, except as provided by Subsection (d-1).

(d-1) A municipality may provide, without charge to the landlord or to the owner of personal property removed from a rental unit under Subsection (d), a portable, closed container into which the removed personal property shall be placed by the officer executing the writ or by the authorized person. The municipality may remove the container from the location near the rental unit and dispose of the contents by any lawful means if the owner of the removed personal property does not recover the property from the container within a reasonable time after the time the property is placed in the container.

(e) The writ of possession shall authorize the officer, at the officer's discretion, to engage the services of a bonded or insured warehouseman to remove and store, subject to applicable law, part or all of the property at no cost to the landlord or the officer executing the writ.

(f) The officer may not require the landlord to store the property.

(g) The writ of possession shall contain notice to the officer that under Section 7.003, Civil Practice and Remedies Code, the officer is not liable for damages resulting from the execution of the writ if the officer executes the writ in good faith and with reasonable diligence.

(h) A sheriff or constable may use reasonable force in executing a writ under this section.

(i) A landlord is not liable for damages to the tenant resulting from the execution of a writ of possession by an officer under this section.

Added by Acts 1985, 69th Leg., ch. 319, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 314, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 745, Sec. 6, eff. June 20, 1987; Acts 1987, 70th Leg., ch. 1089, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 2, Sec. 13.01, eff. Aug. 28, 1989; Acts 1989, 71st

Leg., ch. 688, Sec. 5, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 355 (H.B. 1853), Sec. 1, eff. September 1, 2015.
Acts 2021, 87th Leg., R.S., Ch. 641 (H.B. 900), Sec. 1, eff. September 1, 2021.

Sec. 24.0062. WAREHOUSEMAN'S LIEN. (a) If personal property is removed from a tenant's premises as the result of an action brought under this chapter and stored in a bonded or insured public warehouse, the warehouseman has a lien on the property to the extent of any reasonable storage and moving charges incurred by the warehouseman. The lien does not attach to any property until the property has been stored by the warehouseman.

(b) If property is to be removed and stored in a public warehouse under a writ of possession, the officer executing the writ shall, at the time of execution, deliver in person to the tenant, or by first class mail to the tenant's last known address not later than 72 hours after execution of the writ if the tenant is not present, a written notice stating the complete address and telephone number of the location at which the property may be redeemed and stating that:

(1) the tenant's property is to be removed and stored by a public warehouseman under Section 24.0062 of the Property Code;

(2) the tenant may redeem any of the property, without payment of moving or storage charges, on demand during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises;

(3) within 30 days from the date of storage, the tenant may redeem any of the property described by Section 24.0062(e), Property Code, on demand by the tenant and on payment of the moving and storage charges reasonably attributable to the items being redeemed;

(4) after the 30-day period and before sale, the tenant may redeem the property on demand by the tenant and on payment of all moving and storage charges; and

(5) subject to the previously stated conditions, the warehouseman has a lien on the property to secure payment of moving and storage charges and may sell all the property to satisfy reasonable moving and storage charges after 30 days, subject to the

requirements of Section 24.0062(j) of the Property Code.

(c) The statement required by Subsection (b)(2) must be underlined or in boldfaced print.

(d) On demand by the tenant during the time the warehouseman is removing the property from the tenant's premises and before the warehouseman permanently leaves the tenant's premises, the warehouseman shall return to the tenant all property requested by the tenant, without charge.

(e) On demand by the tenant within 30 days after the date the property is stored by the warehouseman and on payment by the tenant of the moving and storage charges reasonably attributable to the items being redeemed, the warehouseman shall return to the tenant at the warehouse the following property:

(1) wearing apparel;

(2) tools, apparatus, and books of a trade or profession;

(3) school books;

(4) a family library;

(5) family portraits and pictures;

(6) one couch, two living room chairs, and a dining table and chairs;

(7) beds and bedding;

(8) kitchen furniture and utensils;

(9) food and foodstuffs;

(10) medicine and medical supplies;

(11) one automobile and one truck;

(12) agricultural implements;

(13) children's toys not commonly used by adults;

(14) goods that the warehouseman or the warehouseman's agent knows are owned by a person other than the tenant or an occupant of the residence;

(15) goods that the warehouseman or the warehouseman's agent knows are subject to a recorded chattel mortgage or financing agreement; and

(16) cash.

(f) During the first 30 days after the date of storage, the warehouseman may not require payment of removal or storage charges for other items as a condition for redeeming the items described by Subsection (e).

(g) On demand by the tenant to the warehouseman after the 30-day period and before sale and on payment by the tenant of all unpaid

moving and storage charges on all the property, the warehouseman shall return all the previously unredeemed property to the tenant at the warehouse.

(h) A warehouseman may not recover any moving or storage charges if the court determines under Subsection (i) that the warehouseman's moving or storage charges are not reasonable.

(i) Before the sale of the property by the warehouseman, the tenant may file suit in the justice court in which the eviction judgment was rendered, or in another court of competent jurisdiction in the county in which the rental premises are located, to recover the property described by Subsection (e) on the ground that the landlord failed to return the property after timely demand and payment by the tenant, as provided by this section. Before sale, the tenant may also file suit to recover all property moved or stored by the warehouseman on the ground that the amount of the warehouseman's moving or storage charges is not reasonable. All proceedings under this subsection have precedence over other matters on the court's docket. The justice court that issued the writ of possession has jurisdiction under this section regardless of the amount in controversy.

(j) Any sale of property that is subject to a lien under this section shall be conducted in accordance with Section 7.210 and Subchapters D and F, Chapter 9, Business & Commerce Code.

(k) In a proceeding under this section, the prevailing party is entitled to recover actual damages, reasonable attorney's fees, court costs, and, if appropriate, any property withheld in violation of this section or the value of that property if it has been sold.

Added by Acts 1985, 69th Leg., ch. 747, Sec. 1, eff. Sept. 1, 1985. Renumbered from Sec. 24.009 and amended by Acts 1987, 70th Leg., ch. 314, Sec. 2, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 745, Sec. 7, eff. June 20, 1987; Acts 1993, 73rd Leg., ch. 48, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 414, Sec. 2.35, eff. July 1, 2001.

Sec. 24.007. APPEAL. A final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only. A judgment of a county court may not under any circumstances

be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal, taking into consideration the value of rents likely to accrue during appeal, damages which may occur as a result of the stay during appeal, and other damages or amounts as the court may deem appropriate.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1205, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 2.02(a), eff. January 1, 2012.

Acts 2015, 84th Leg., R.S., Ch. 1113 (H.B. 3364), Sec. 1, eff. January 1, 2016.

Sec. 24.008. EFFECT ON OTHER ACTIONS. An eviction suit does not bar a suit for trespass, damages, waste, rent, or mesne profits.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1205, Sec. 6, eff. Sept. 1, 1997.

Sec. 24.011. NONLAWYER REPRESENTATION. (a) In eviction suits in justice court for nonpayment of rent or holding over beyond a rental term, the parties may represent themselves or be represented by their authorized agents, who need not be attorneys. In any eviction suit in justice court, an authorized agent requesting or obtaining a default judgment need not be an attorney.

(b) In an appeal of an eviction suit for nonpayment of rent in a county or district court, an owner of a multifamily residential property may be represented by the owner's authorized agent, who need not be an attorney, or, if the owner is a corporation or other entity, by an employee, owner, officer, or partner of the entity, who need not be an attorney.

Added by Acts 1985, 69th Leg., ch. 891, Sec. 1, eff. Aug. 26, 1985.

Renumbered from Sec. 24.009 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(49), eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1205, Sec. 7, eff. Sept. 1, 1997.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 904 (H.B. 3879), Sec. 1, eff. September 1, 2017.

CHAPTER 24A. ACCESS TO RESIDENCE OR FORMER RESIDENCE TO RETRIEVE PERSONAL PROPERTY

Sec. 24A.001. DEFINITIONS. In this chapter:

(1) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(2) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(3) "Peace officer" means a person listed under Article 2.12(1) or (2), Code of Criminal Procedure.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 588 (S.B. 920), Sec. 1, eff. September 1, 2017.

Sec. 24A.002. WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL; PEACE OFFICER TO ACCOMPANY. (a) If a person is unable to enter the person's residence or former residence to retrieve personal property belonging to the person or the person's dependent because the current occupant is denying the person entry, the person may apply for a writ authorizing the person to enter the residence accompanied by a peace officer to retrieve specific items of personal property.

(a-1) A person applying for a writ under this section must apply:

(1) if the person and the current occupant are parties to a pending suit under Title 1, Family Code, to the court in which the suit is pending;

(2) if the person's right to possession of the items described in the application is subject to a decree of divorce or annulment to which the person and the current occupant are parties,

to the court having jurisdiction of the divorce or annulment action; or

(3) if Subdivision (1) or (2) does not apply, to a justice court.

(b) An application under Subsection (a) must:

(1) certify that the applicant is unable to enter the residence because the current occupant of the residence:

(A) has denied the applicant access to the residence; or

(B) poses a clear and present danger of family violence to the applicant or the applicant's dependent;

(2) certify that, to the best of the applicant's knowledge, the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) certify whether, to the best of the applicant's knowledge:

(A) the applicant and the current occupant are parties to a pending suit under Title 1, Family Code; or

(B) the applicant's right to possession of the items described in the application is subject to a decree of divorce or annulment to which the applicant and the current occupant are parties;

(4) allege that the applicant or the applicant's dependent requires personal items located in the residence that are only of the following types:

(A) medical records;

(B) medicine and medical supplies;

(C) clothing;

(D) child-care items;

(E) legal or financial documents;

(F) checks or bank or credit cards in the name of the applicant;

(G) employment records;

(H) personal identification documents;

(I) copies of electronic records containing legal or

financial documents;

(J) assistance animals or service animals, as defined by Section 121.002, Human Resources Code, used by the applicant or the applicant's dependent;

(K) wireless communication devices, as defined by Section 545.425(a), Transportation Code, of the applicant or the applicant's dependent; or

(L) tools, equipment, books, and apparatus used by the applicant in the applicant's trade or profession;

(5) describe with specificity the items that the applicant intends to retrieve;

(6) allege that the applicant or the applicant's dependent will suffer personal harm if the items listed in the application are not retrieved promptly; and

(7) include a lease or other documentary evidence that shows the applicant is currently or was formerly authorized to occupy the residence.

(c) Before the court may issue a writ under this section, the applicant must execute a bond that:

(1) has two or more good and sufficient non-corporate sureties or one corporate surety authorized to issue bonds in this state;

(2) is payable to the occupant of the residence;

(3) is in an amount required by the court; and

(4) is conditioned on the applicant paying all damages and costs adjudged against the applicant for wrongful property retrieval.

(d) The applicant shall deliver the bond to the court issuing the writ for the court's approval. The bond shall be filed with the court.

(e) On sufficient evidence of urgency and potential harm to the health and safety of any person and after sufficient notice to the current occupant and an opportunity to be heard, the court may grant the application under this section and issue a writ authorizing the applicant to enter the residence accompanied by a peace officer and retrieve the property listed in the application if the court finds that:

(1) the applicant is unable to enter the residence because the current occupant of the residence has denied the applicant access to the residence to retrieve the applicant's personal property or the personal property of the applicant's dependent;

(2) the applicant is not:

(A) the subject of an active protective order under Title 4, Family Code, a magistrate's order for emergency protection under Article 17.292, Code of Criminal Procedure, or another court order prohibiting entry to the residence; or

(B) otherwise prohibited by law from entering the residence;

(3) there is a risk of personal harm to the applicant or the applicant's dependent if the items listed in the application are not retrieved promptly;

(4) the applicant is currently or was formerly authorized to occupy the residence according to a lease or other documentary evidence; and

(5) the current occupant received notice of the application and was provided an opportunity to appear before the court to contest the application.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 588 (S.B. 920), Sec. 1, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 451 (H.B. 1012), Sec. 1, eff. September 1, 2021.

Sec. 24A.0021. TEMPORARY EX PARTE WRIT AUTHORIZING ENTRY AND PROPERTY RETRIEVAL. (a) A court may issue a writ under Section 24A.002 without providing notice and hearing under Section 24A.002(e)(5) if the court finds at a hearing on the application that:

(1) the conditions of Sections 24A.002(e)(1)-(4) are established;

(2) the current occupant poses a clear and present danger of family violence to the applicant or the applicant's dependent; and

(3) the personal harm to be suffered by the applicant or the applicant's dependent will be immediate and irreparable if the application is not granted.

(b) A court issuing a writ under this section may waive the bond requirements under Sections 24A.002(c) and (d).

(c) The court may recess a hearing under Subsection (a) to notify the current occupant by telephone that the current occupant may attend the hearing or bring to the court the personal property listed in the application. The court shall reconvene the hearing before 5 p.m. that day regardless of whether the current occupant attends the hearing or brings the personal property to the court.

(d) A temporary ex parte writ issued under Subsection (a) must state the period, not to exceed five days, during which the writ is valid.

Added by Acts 2017, 85th Leg., R.S., Ch. 588 (S.B. 920), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 451 (H.B. 1012), Sec. 2, eff. September 1, 2021.

Sec. 24A.003. AUTHORIZED ENTRY PROCEDURES; DUTIES OF PEACE OFFICER. (a) If the court grants an application under Section 24A.002 or Section 24A.0021, a peace officer shall accompany and assist the applicant in making the authorized entry and retrieving the items of personal property listed in the application.

(b) If the current occupant of the residence is present at the time of the entry, the peace officer shall provide the occupant with a copy of the writ authorizing the entry and property retrieval.

(c) Before removing the property listed in the application from the residence, the applicant must submit all property retrieved to the peace officer assisting the applicant under this section to be inventoried. The peace officer shall create an inventory listing the items taken from the residence, provide a copy of the inventory to the applicant, provide a copy of the inventory to the current occupant or, if the current occupant is not present, leave the copy in a conspicuous place in the residence, and return the property to be removed from the residence to the applicant. The officer shall file the original inventory with the court that issued the writ authorizing the entry and property retrieval.

(d) A peace officer may use reasonable force in providing assistance under this section.

(e) A peace officer who provides assistance under this section in good faith and with reasonable diligence is not:

(1) civilly liable for an act or omission of the officer that arises in connection with providing the assistance; or

(2) civilly or criminally liable for the wrongful appropriation of any personal property by the person the officer is assisting.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 588 (S.B. 920), Sec. 2, eff. September 1, 2017.
Acts 2021, 87th Leg., R.S., Ch. 451 (H.B. 1012), Sec. 3, eff. September 1, 2021.

Sec. 24A.004. IMMUNITY FROM LIABILITY. A landlord or a landlord's agent who permits or facilitates entry into a residence in accordance with a writ issued under this chapter is not civilly or criminally liable for an act or omission that arises in connection with permitting or facilitating the entry.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 588 (S.B. 920), Sec. 3, eff. September 1, 2017.

Sec. 24A.005. OFFENSE. (a) A person commits an offense if the person interferes with a person or peace officer entering a residence and retrieving personal property under the authority of a writ issued under Section 24A.002 or 24A.0021.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under this section that the actor did not receive a copy of the writ or other notice that the entry or property retrieval was authorized.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 588 (S.B. 920), Sec. 4, eff.

September 1, 2017.

Sec. 24A.006. HEARING; REVIEW. (a) The occupant of a residence that is the subject of a writ issued under Section 24A.002 or 24A.0021, not later than the 10th day after the date of the authorized entry, may file a complaint in the court that issued the writ alleging that the applicant has appropriated property belonging to the occupant or the occupant's dependent.

(b) The court shall promptly hold a hearing on a complaint submitted under this section and rule on the disposition of the disputed property.

(c) This section does not limit the occupant's remedies under any other law for recovery of the property of the occupant or the occupant's dependent.

Added by Acts 2015, 84th Leg., R.S., Ch. 1076 (H.B. 2486), Sec. 1, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 588 (S.B. 920), Sec. 5, eff. September 1, 2017.

CHAPTER 25. TRIAL OF RIGHT OF PROPERTY

Sec. 25.001. JURISDICTION. A trial of the right of property is an action that applies only to personal property. A trial of the right of property must be tried in a court with jurisdiction of the amount in controversy.

Acts 1983, 68th Leg., p. 3516, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 25.002. DAMAGES. If a claimant in a trial of the right of property does not establish a right to the property, the court shall adjudge damages against the obligors in the claimant's bond equal to 10 percent of the lesser of:

(1) the property's value; or

(2) the amount claimed under the writ levied against the property.

Acts 1983, 68th Leg., p. 3517, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 26. USE OF A DECEASED INDIVIDUAL'S NAME, VOICE, SIGNATURE, PHOTOGRAPH, OR LIKENESS

Sec. 26.001. DEFINITIONS. In this chapter:

(1) "Photograph" means a photograph or photographic reproduction, still or moving, videotape, or live television transmission of an individual in a manner that allows a person viewing the photograph with the naked eye to reasonably determine the identity of the individual.

(2) "Property right" means the property right created by this chapter.

(3) "Name" means the actual or assumed name used by an individual which, when used in conjunction with other information, is intended to identify a particular person.

(4) "Media enterprise" means a newspaper, magazine, radio station or network, television station or network, or cable television system.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.002. PROPERTY RIGHT ESTABLISHED. An individual has a property right in the use of the individual's name, voice, signature, photograph, or likeness after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.003. APPLICABILITY. This chapter applies to an individual:

(1) alive on or after September 1, 1987, or who died before September 1, 1987, but on or after January 1, 1937; and

(2) whose name, voice, signature, photograph, or likeness has commercial value at the time of his or her death or comes to have commercial value after that time.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.004. TRANSFERABILITY. (a) The property right is

freely transferable, in whole or in part, by contract or by means of trust or testamentary documents.

(b) The property right may be transferred before or after the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.005. OWNERSHIP AFTER DEATH OF INDIVIDUAL. (a) If the ownership of the property right of an individual has not been transferred at or before the death of the individual, the property right vests as follows:

(1) if there is a surviving spouse but there are no surviving children or grandchildren, the entire interest vests in the surviving spouse;

(2) if there is a surviving spouse and surviving children or grandchildren, one-half the interest vests in the surviving spouse and one-half the interest vests in the surviving children or grandchildren;

(3) if there is no surviving spouse, the entire interest vests in the surviving children of the deceased individual and the surviving children of any deceased children of the deceased individual; or

(4) if there is no surviving spouse, children, or grandchildren, the entire interest vests in the surviving parents of the deceased individual.

(b) The interests of the deceased individual's children and grandchildren are divided among them and exercisable on a per stirpes basis in the manner provided by Section 201.101, Estates Code, according to the number of the deceased individual's children represented. If there is more than one child of a deceased child of the deceased individual, the share of a child of a deceased child may only be exercised by a majority of the children of the deceased child.

(c) If the property right is split among more than one person, those persons who own more than a one-half interest in the aggregate may exercise the right on behalf of all persons who own the right.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.058,

eff. September 1, 2017.

Sec. 26.006. REGISTRATION OF CLAIM. (a) A person who claims to own a property right may register that claim with the secretary of state.

(b) The secretary of state shall provide a form for registration of a claim under this section. The form must be verified and must include:

(1) the name and date of death of the deceased individual;

(2) the name and address of the claimant;

(3) a statement of the basis of the claim; and

(4) a statement of the right claimed.

(c) The secretary of state may microfilm or reproduce by another technique a document filed under this section and destroy the original document.

(d) A document or a reproduction of a document filed under this section is admissible in evidence.

(e) The secretary of state may destroy all documents filed under this section after the 50th anniversary of the date of death of the individual whose property right they concern.

(f) The fee for filing a claim is $25.

(g) A document filed under this section is a public record.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.007. EFFECT OF REGISTRATION. (a) Registration of a claim is prima facie evidence of a valid claim to a property right.

(b) A registered claim is superior to a conflicting, unregistered claim unless a court invalidates the registered claim.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.008. EXERCISE OF OWNERSHIP FOR FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL. (a) Except as provided by Subsection (b), for the first year following the death of the individual a property right may be exercised, if authorized by law or an appointing court, by the following persons who may be appointed by a court for the benefit of the estate of the deceased individual:

(1) an independent executor;
(2) an executor;
(3) an independent administrator;
(4) a temporary or permanent administrator; or
(5) a temporary or permanent guardian.

(b) For the first year following the death of the individual, an owner of a property right may exercise that right only if the owner registers a valid claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.009. EXERCISE OF OWNERSHIP AFTER FIRST YEAR FOLLOWING DEATH OF INDIVIDUAL. After the first year following the death of the individual, an owner of a property right may exercise that right whether or not the owner has registered a claim as provided by Section 26.006.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.010. TERMINATION. A property right expires on the first anniversary of the date of death of the individual if:

(1) the individual has not transferred the right; and
(2) a surviving person under Section 26.005 does not exist.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.011. UNAUTHORIZED USES. Except as provided by Section 26.012, a person may not use, without the written consent of a person who may exercise the property right, a deceased individual's name, voice, signature, photograph, or likeness in any manner, including:

(1) in connection with products, merchandise, or goods; or
(2) for the purpose of advertising, selling, or soliciting the purchase of products, merchandise, goods, or services.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.012. PERMITTED USES. (a) A person may use a deceased

individual's name, voice, signature, photograph, or likeness in:

(1) a play, book, film, radio program, or television program;

(2) a magazine or newspaper article;

(3) material that is primarily of political or newsworthy value;

(4) single and original works of fine art; or

(5) an advertisement or commercial announcement concerning a use under this subsection.

(b) A media enterprise may use a deceased individual's name, voice, signature, photograph, or likeness in connection with the coverage of news, public affairs, a sporting event, or a political campaign without consent. Any use other than the above by a media enterprise of a deceased individual's name, voice, signature, photograph, or likeness shall require consent if the material constituting the use is integrally and directly connected with commercial sponsorship or paid advertising. No consent shall be required for the use of the deceased individual's name, voice, signature, photograph, or likeness by a media enterprise if the broadcast or article is not commercially sponsored or does not contain paid advertising.

(c) A person who is an owner or employee of a media enterprise, including a newspaper, magazine, radio station or network, television station or network, cable television system, billboard, or transit ad, that is used for advertising a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this section is not liable for damages as provided by this section unless the person:

(1) knew that the use was not authorized by this section; or

(2) used the deceased individual's name, voice, signature, photograph, or likeness in a manner primarily intended to advertise or promote the media enterprise itself.

(d) A person may use a deceased individual's name, voice, signature, photograph, or likeness in any manner after the 50th anniversary of the date of the individual's death.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.013. LIABILITY FOR UNAUTHORIZED USE. (a) A person who uses a deceased individual's name, voice, signature, photograph, or likeness in a manner not authorized by this chapter is liable to the person who owns the property right for:

(1) the amount of any damages sustained, as a result of the unauthorized use, by the person who owns the property right or $2,500, whichever is greater;

(2) the amount of any profits from the unauthorized use that are attributable to that use;

(3) the amount of any exemplary damages that may be awarded; and

(4) reasonable attorney's fees and expenses and court costs incurred in recovering the damages and profits established by this section.

(b) The amount of profits under Subsection (a)(2) may be established by a showing of the gross revenue attributable to the unauthorized use minus any expenses that the person who committed the unauthorized use may prove.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.014. OTHER RIGHTS NOT AFFECTED. This chapter does not affect a right an individual may have in the use of the individual's name, voice, signature, photograph, or likeness before the death of the individual.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

Sec. 26.015. DEFENSES TO LIABILITY. A person shall not be liable for damages under this chapter if he has acted in reliance on the results of a probate proceeding governing the estate of the deceased personality in question.

Added by Acts 1987, 70th Leg., ch. 152, Sec. 1, eff. Sept. 1, 1987.

CHAPTER 27. RESIDENTIAL CONSTRUCTION LIABILITY

Sec. 27.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an

arbitration.

(2) "Appurtenance" means any garage, outbuilding, retaining wall, or other structure or recreational facility that is constructed by a contractor in connection with the construction or alteration of a residence, regardless of whether it is attached to or a part of the dwelling unit.

(3) "Construction defect" means a deficiency in the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor.

(4) "Contractor":

(A) means:

(i) a builder contracting with an owner for the construction or repair of a new residence, for the repair or alteration of or an addition to an existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence;

(ii) any person contracting for the sale or construction of a new residence constructed by or on behalf of that person; or

(iii) a person contracting with an owner or the developer of a condominium or other housing project for the construction or sale of one or more new residences, for an alteration of or an addition to an existing residence, for repair of a new or existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence; and

(B) includes:

(i) an owner, officer, director, shareholder, partner, or employee of the contractor; and

(ii) a risk retention group registered under Chapter 2201, Insurance Code, that insures all or any part of a contractor's liability for the cost to repair a residential construction defect.

(5) "Economic damages" means compensatory damages for pecuniary loss proximately caused by a construction defect. The term does not include exemplary damages or damages for bodily or personal injury, physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and

society.

(6) "Residence" means the real property and improvements for a detached one-family or two-family dwelling, a townhouse not more than three stories above grade plane in height with a separate means of egress, an accessory structure not more than three stories above grade plane in height, or a duplex, triplex, or quadruplex or a unit and the common elements in a multiunit residential structure in which the individual units are sold to the owners under a condominium or cooperative system.

(7) "Structural failure" means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

(8) "Developer of a condominium" means a declarant, as defined by Section 82.003, of a condominium consisting of one or more residences.

(9) "Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on not less than two sides.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 1, 2 eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 189, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.01, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 750 (H.B. 3147), Sec. 1, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 1, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 13(2), eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 1, eff. September 1, 2023.

Sec. 27.002. APPLICATION OF CHAPTER. (a) This chapter applies to:

(1) any action to recover damages or other relief arising from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and

(2) any subsequent purchaser of a residence who files a claim against a contractor.

(b) To the extent of conflict between this chapter and any other law, including the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) or a common law cause of action, this chapter prevails.

(c) In this section:

(1) "Goods" does not include a residence.

(2) "Personal injury" does not include mental anguish.

(d) This chapter does not apply to an action to recover damages that arise from:

(1) a violation of Section 27.01, Business & Commerce Code;

(2) a contractor's wrongful abandonment of an improvement project before completion; or

(3) a violation of Chapter 162.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 3, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 189, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.02, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 2, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 2, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 2, eff. September 1, 2023.

Sec. 27.003. LIABILITY. (a) In an action subject to this chapter arising from a construction defect:

(1) a contractor is liable only to the extent a defective condition proximately causes:

(A) actual physical damage to the residence;

(B) an actual failure or lack of capability of a building component to perform its intended function or purpose; or

(C) a verifiable danger to the safety of the occupants of the residence;

(2) a contractor is not liable for damages caused by:

(A) negligence of a person other than the contractor or

an agent, employee, or subcontractor of the contractor;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) mitigate the damages;

(ii) maintain the residence; or

(iii) timely notify a contractor of a construction defect;

(C) normal wear, tear, or deterioration;

(D) normal cracking or shrinkage cracking due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false, modified, or inaccurate and the contractor did not know and could not reasonably have known of the falsity, modification, or inaccuracy of the information; and

(3) if an assignee of the claimant or a person subrogated to the rights of a claimant fails to provide the contractor with the written notice and opportunity to inspect and offer to repair required by Section 27.004 before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant or a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor.

(b) Except as provided by this chapter, this chapter does not limit or bar any other defense or defensive matter or other defensive cause of action applicable to an action to recover damages or other relief arising from a construction defect.

(c) To maintain a claim of breach of a warranty of habitability, a claimant must establish that a construction defect:

(1) was latent at the time the residence was completed or title was conveyed to the original purchaser; and

(2) has rendered the residence unsuitable for its intended use as a home.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 4, eff. Aug. 30, 1993;

Acts 1999, 76th Leg., ch. 189, Sec. 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.03, eff. Sept. 1, 2003.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 3, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 3, eff. September 1, 2023.

Sec. 27.0031. FRIVOLOUS SUIT; HARASSMENT. A party who files a suit under this chapter that is groundless and brought in bad faith or for purposes of harassment is liable to the defendant for reasonable and necessary attorney's fees and court costs.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 4, eff. Sept. 1, 1999.

Sec. 27.004. NOTICE AND OFFER OF SETTLEMENT. (a) Before the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. The claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including any expert reports, photographs, and video or audio recordings, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. To the extent requested, the contractor shall be given the opportunity to conduct up to three inspections during the 35-day period after the date the contractor receives the notice and during any extension of that inspection period provided by law or as otherwise agreed to by the parties. The contractor may take reasonable steps to document the defect.

(b) Not later than the 60th day after the date the contractor receives the notice under this section, the contractor may make a written offer of settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or to the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made and the time for completion of the repairs if more than 60 days. The repairs shall be made not later than the 60th day after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. If a contractor makes a written offer of settlement that the claimant considers to be unreasonable:

(1) on or before the 25th day after the date the claimant receives the offer, the claimant shall advise the contractor in writing and in reasonable detail of the reasons why the claimant considers the offer unreasonable; and

(2) not later than the 10th day after the date the contractor receives notice under Subdivision (1), the contractor may make a supplemental written offer of settlement to the claimant by sending the offer to the claimant or the claimant's attorney.

(c) If the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of initiating an action at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, the notice is not required. However, the action or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint. The inspection provided for by Subsection (a) may be made not later than the 75th day after the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made not later than the 60th day after the date of service. If, while an action subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action shall be abated

to allow compliance with Subsections (a) and (b).

(d) The court or arbitration tribunal shall abate an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement because the claimant failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a) or failed to follow the procedures specified by Subsection (b). An action is automatically abated without the order of the court or tribunal beginning on the 11th day after the date a motion to abate is filed if the motion:

(1) is verified and alleges that the person against whom the action is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending was not given a reasonable opportunity to inspect the property as required by Subsection (a), or the claimant failed to follow the procedures specified by Subsection (b); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to abate is filed.

(e) If a claimant rejects a reasonable offer made under Subsection (b) or does not permit the contractor or independent contractor a reasonable opportunity to inspect or repair the defect pursuant to an accepted offer of settlement, the claimant:

(1) may not recover an amount in excess of:

(A) the fair market value of the contractor's last offer of settlement under Subsection (b); or

(B) the amount of a reasonable monetary settlement or purchase offer made under Subsection (n); and

(2) may recover only the amount of reasonable and necessary costs and attorney's fees as prescribed by Rule 1.04, Texas Disciplinary Rules of Professional Conduct, incurred before the offer was rejected or considered rejected.

(f) If a contractor fails to make a reasonable offer under Subsection (b), the limitations on damages provided for in Subsection (e) shall not apply.

(g) Except as provided by Subsection (e), in an action subject to this chapter the claimant may recover only the following economic damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any

construction defect;

(2) the reasonable and necessary cost for the replacement or repair of any damaged goods in the residence;

(3) reasonable and necessary engineering and consulting fees;

(4) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(5) the reduction in current market value, if any, after the construction defect is repaired if the construction defect is a structural failure;

(6) reasonable and necessary attorney's fees; and

(7) reasonable and necessary arbitration filing fees and the claimant's share of arbitrator compensation.

(g-1) The court or arbitration tribunal may order that an offer made by the contractor after the time prescribed is considered timely for purposes of Subsection (b) or (c), as applicable, if the contractor is prejudiced in the contractor's opportunity to inspect as provided for by Subsection (a) or (c) or make an offer provided for by Subsection (b) or (c):

(1) because the claimant:

(A) failed to provide the contractor evidence available and in the claimant's possession, custody, or control at the time of the original notice depicting the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including reports, photographs, videos, or any other evidence; or

(B) amended a claim to add a new alleged defect; or

(2) due to events beyond the contractor's control.

(h) A homeowner and a contractor may agree in writing to extend any time period described in this chapter.

(i) An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(j) An affidavit certifying rejection of a settlement offer under this section may be filed with the court or arbitration tribunal. The trier of fact shall determine the reasonableness of a final offer of settlement made under this section.

(k) A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(l) Repealed by Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768

), Sec. 13(3), eff. May 29, 2023, and Ch. 441 (H.B. 2022), Sec. 8(1), eff. September 1, 2023.

(m) Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(n) This section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

(o) A notice and response letter prescribed by this chapter must be sent by certified mail, return receipt requested, to the last known address of the recipient. If previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter shall be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure.

(p) If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

(q) If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 797, Sec. 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 414, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 189, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 458, Sec. 2.04, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 3, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 4, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 13(3), eff.

May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 4, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 8(1), eff. September 1, 2023.

Sec. 27.0041. MEDIATION. (a) If a claimant files suit seeking from a contractor damages arising from a construction defect in an amount greater than $7,500, the claimant or contractor may file a motion to compel mediation of the dispute. The motion must be filed not later than the 90th day after the date the suit is filed.

(b) Not later than the 30th day after the date a motion is filed under Subsection (a), the court shall order the parties to mediate the dispute. If the parties cannot agree on the appointment of a mediator, the court shall appoint the mediator.

(c) The court shall order the parties to begin mediation of the dispute not later than the 30th day after the date the court enters its order under Subsection (b) unless the parties agree otherwise or the court determines additional time is required. If the court determines that additional time is required, the court may order the parties to begin mediation of the dispute not later than the 60th day after the date the court enters its order under Subsection (b).

(d) Unless each party who has appeared in a suit filed under this chapter agrees otherwise, each party shall participate in the mediation and contribute equally to the cost of the mediation.

(e) Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to a mediation under this section to the extent those laws do not conflict with this section.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 6, eff. Sept. 1, 1999.

Sec. 27.0042. CONDITIONAL SALE TO BUILDER. (a) A written agreement between a contractor and a homeowner may provide that, if the reasonable cost of repairs necessary to repair a construction defect that is the responsibility of the contractor exceeds an agreed percentage of the current fair market value of the residence, as determined without reference to the construction defects, then, in an

action subject to this chapter, the contractor may elect as an alternative to the damages specified in Section 27.004(g) that the contractor who sold the residence to the homeowner purchase it.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 8(2), eff. September 1, 2023.

(c) If a contractor elects to purchase the residence under Subsection (a):

(1) the contractor shall pay the original purchase price of the residence and closing costs incurred by the homeowner and the cost of transferring title to the contractor under the election;

(2) the homeowner may recover:

(A) reasonable and necessary attorney's and expert fees as identified in Section 27.004(g);

(B) reimbursement for permanent improvements the owner made to the residence after the date the owner purchased the residence from the builder; and

(C) reasonable costs to move from the residence; and

(3) conditioned on the payment of the purchase price, the homeowner shall tender a special warranty deed to the contractor, free of all liens and claims to liens as of the date the title is transferred to the contractor, and without damage caused by the homeowner.

(d) An offer to purchase a claimant's home that complies with this section is considered reasonable absent clear and convincing evidence to the contrary.

Added by Acts 2003, 78th Leg., ch. 458, Sec. 2.05, eff. Sept. 1, 2003.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 5, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 5, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 8(2), eff. September 1, 2023.

Sec. 27.005. LIMITATIONS ON EFFECT OF CHAPTER. This chapter does not create a cause of action or derivative liability or extend a limitations period.

Added by Acts 1989, 71st Leg., ch. 1072, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1999, 76th Leg., ch. 189, Sec. 7, eff. Sept. 1, 1999.

Sec. 27.006. CAUSATION. In an action to recover damages resulting from a construction defect, the claimant must prove that:

(1) the construction defect existed at the time of completion of the construction, alteration, or repair; and

(2) the damages were proximately caused by the construction defect.

Added by Acts 1993, 73rd Leg., ch. 797, Sec. 6, eff. Aug. 30, 1993.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 6, eff. September 1, 2023.

Sec. 27.007. DISCLOSURE STATEMENT REQUIRED. (a) A written contract subject to this chapter, other than a contract between a developer of a condominium and a contractor for the construction or repair of a residence or appurtenance to a residence in a condominium, must contain in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code."

(b) If a contract does not contain the notice required by this section, the claimant may recover from the contractor a civil penalty of $500 in addition to any other remedy provided by this chapter.

(c) Repealed by Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 13(4), eff. May 29, 2023, and Ch. 441 (H.B. 2022), Sec. 8(3), eff. September 1, 2023.

Added by Acts 1999, 76th Leg., ch. 189, Sec. 8, eff. Sept. 1, 2000.
Amended by Acts 2003, 78th Leg., ch. 458, Sec. 2.06, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 750 (H.B. 3147), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 4, eff. September 1, 2007.
Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 13(4), eff. May 29, 2023.
Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 8(3), eff. September 1, 2023.

Sec. 27.008. EFFECT OF ARBITRATION ON LIMITATIONS PERIOD. The submission of an action subject to this chapter to arbitration has the same effect on the running of a limitations period as a filing in a court in this state.

Added by Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 7, eff. September 1, 2023.

Sec. 27.009. NO WAIVER. An attempted waiver of the provisions of this chapter in a contract subject to this chapter is void.

Added by Acts 2023, 88th Leg., R.S., Ch. 441 (H.B. 2022), Sec. 7, eff. September 1, 2023.

CHAPTER 28. PROMPT PAYMENT TO CONTRACTORS AND SUBCONTRACTORS

Sec. 28.001. DEFINITIONS. In this chapter:

(1) "Contractor" means a person who contracts with an owner to improve real property or perform construction services for an owner.

(2) "Improve" means to:

(A) build, construct, effect, erect, alter, repair, or

demolish any improvement on, connected with, or beneath the surface of real property;

(B) excavate, clear, grade, fill, or landscape real property;

(C) construct a driveway or roadway;

(D) furnish any material, including trees or shrubbery, for the purpose of taking any action described by Paragraphs (A)-(C) of this subdivision; or

(E) perform any labor on or in connection with an improvement.

(3) "Improvement" includes all or any part of:

(A) a building, structure, erection, alteration, demolition, or excavation on, connected with, or beneath the surface of real property; and

(B) the act of clearing, grading, filling, or landscaping real property, including constructing a driveway or roadway or furnishing trees or shrubbery.

(4) "Owner" means a person or entity, other than a governmental entity, with an interest in real property that is improved, for whom an improvement is made, and who ordered the improvement to be made.

(5) "Real property" includes lands, leaseholds, tenements, hereditaments, and improvements placed on the real property.

(6) "Subcontractor" means a person who contracts to furnish labor or material to, or has performed labor or supplied materials for, a contractor or another subcontractor in connection with a contract to improve real property.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.002. PROMPT PAY REQUIRED. (a) If an owner or a person authorized to act on behalf of the owner receives a written payment request from a contractor for an amount that is allowed to the contractor under the contract for properly performed work or suitably stored or specially fabricated materials, the owner shall pay the amount to the contractor, less any amount withheld as authorized by statute, not later than the 35th day after the date the owner receives the request.

(b) A contractor who receives a payment under Subsection (a) or

otherwise from an owner in connection with a contract to improve real property shall pay each of its subcontractors the portion of the owner's payment, including interest, if any, that is attributable to work properly performed or materials suitably stored or specially fabricated as provided under the contract by that subcontractor, to the extent of that subcontractor's interest in the owner's payment. The payment required by this subsection must be made not later than the seventh day after the date the contractor receives the owner's payment.

(c) A subcontractor who receives a payment under Subsection (b) or otherwise from a contractor in connection with a contract to improve real property shall pay each of its subcontractors the portion of the payment, including interest, if any, that is attributable to work properly performed or materials suitably stored or specially fabricated as provided under the contract by that subcontractor, to the extent of that subcontractor's interest in the payment. The payment required by this subsection must be made not later than the seventh day after the date the subcontractor receives the contractor's payment.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 805, Sec. 1, eff. Sept. 1, 1999.

Sec. 28.003. EXCEPTION FOR GOOD FAITH DISPUTE; WITHHOLDING. (a) If a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract for construction of or improvements to a detached single-family residence, duplex, triplex, or quadruplex, the owner, contractor, or subcontractor that is disputing its obligation to pay or the amount of payment may withhold from the payment owed not more than 110 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due. A good faith dispute includes a dispute regarding whether the work was performed in a proper manner.

(b) If a good faith dispute exists concerning the amount owed for a payment requested or required by this chapter under a contract for construction of or improvements to real property, excluding a detached single-family residence, duplex, triplex, or quadruplex, the owner, contractor, or subcontractor that is disputing its obligation

to pay or the amount of payment may withhold from the payment owed not more than 100 percent of the difference between the amount the obligee claims is due and the amount the obligor claims is due. A good faith dispute includes a dispute regarding whether the work was performed in a proper manner.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 805, Sec. 2, eff. Sept. 1, 1999.

Sec. 28.004. INTEREST ON OVERDUE PAYMENT. (a) An unpaid amount required under this chapter begins to accrue interest on the day after the date on which the payment becomes due.

(b) An unpaid amount bears interest at the rate of 1-1/2 percent each month.

(c) Interest on an unpaid amount stops accruing under this section on the earlier of:

(1) the date of delivery;

(2) the date of mailing, if payment is mailed and delivery occurs within three days; or

(3) the date a judgment is entered in an action brought under this chapter.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.005. ACTION TO ENFORCE PAYMENT. (a) A person may bring an action to enforce the person's rights under this chapter.

(b) In an action brought under this chapter, the court may award costs and reasonable attorney's fees as the court determines equitable and just.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.006. NO WAIVER. (a) Except as provided by Subsection (b), an attempted waiver of a provision of this chapter is void.

(b) A written contract between an owner and a contractor for improvements to or construction of a single-family residence may provide that the payment required under Section 28.002(a) be made not later than a date that occurs before the 61st day after the date the

owner receives the payment request. Notwithstanding Section 28.004(b), an unpaid amount under contract subject to this subsection that allows payment later than the date otherwise required under Section 28.002(a) bears interest at the rate of 1-1/2 percent each month.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.007. LEGAL CONSTRUCTION. (a) This chapter may not be interpreted to void a contractor's or subcontractor's entitlement to payment for properly performed work or suitably stored materials.

(b) Nothing in this statute shall be interpreted to change the rights and obligations set forth in Chapter 53, Property Code.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.

Sec. 28.008. EXCEPTION FOR FAILURE OF LENDER TO DISBURSE FUNDS. The date of payment required of the owner pursuant to Section 28.002(a) shall change from the 35th day after the date the owner receives the payment request to the fifth day after the date the owner receives loan proceeds, in the event that:

(1) the owner has obtained a loan intended to pay for all or part of a contract to improve real property;

(2) the owner has timely and properly requested disbursement of proceeds from that loan; and

(3) the lender is legally obligated to disburse such proceeds to the owner, but has failed to do so within 35 days after the date the owner received the contractor's payment request.

Added by Acts 1993, 73rd Leg., ch. 479, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 805, Sec. 3, eff. Sept. 1, 1999.

Sec. 28.009. RIGHT TO SUSPEND WORK. (a) If an owner fails to pay the contractor the undisputed amount within the time limits provided by this chapter, the contractor or any subcontractor may suspend contractually required performance the 10th day after the date the contractor or subcontractor gives the owner and the owner's lender written notice:

(1) informing the owner and lender that payment has not been received; and

(2) stating the intent of the contractor or subcontractor to suspend performance for nonpayment.

(b) For purposes of Subsection (a), the contractor or subcontractor must give the owner's lender the written notice only if:

(1) the owner has obtained a loan intended to pay for all or part of the construction project;

(2) the lender has remitted funds, including acquisition funds, for construction purposes;

(3) the loan obtained:

(A) is evidenced by a promissory note secured by a deed of trust recorded in the real property records of the county in which the real property that is the subject of the contract is located; and

(B) is not only for the acquisition of personal property or secured only by a security instrument;

(4) the owner or lender, at the lender's option:

(A) securely posts not later than the 10th day after the date construction commences a sign on the project site in a prominent place accessible to each contractor, subcontractor, and supplier that states the lender's name, address, and the person to whom any notice should be sent; and

(B) maintains the sign during the pendency of the construction project;

(5) not later than the 10th day after the date construction commences, the owner or lender, at the lender's option, provides a written copy of the notice prescribed by Subdivision (4) to the contractor and any subcontractor or supplier identified by the contractor by depositing the notice properly addressed in the United States mail, first class, postage paid; and

(6) not later than the 10th day after the date a subcontractor or supplier performs labor or furnishes materials or equipment for the construction project, the owner, contractor, or subcontractor provides a written copy of the notice prescribed by Subdivision (4) to the subcontractor or supplier.

(c) A contractor or subcontractor who suspends performance as provided by this section is not:

(1) required to supply further labor, services, or

materials until the person is paid the amount provided by this chapter, plus costs for demobilization and remobilization; or

(2) responsible for damages resulting from suspending work if the contractor or subcontractor has not been notified in writing before suspending performance that payment has been made or that a good faith dispute for payment exists.

(d) A notification that a good faith dispute for payment exists provided under Subsection (c) must include a list of specific reasons for nonpayment. If a reason specified includes labor, services, or materials provided by a subcontractor that are not provided in compliance with the contract, the subcontractor is entitled to a reasonable opportunity to:

(1) cure the listed items; or

(2) offer a reasonable amount to compensate for listed items that cannot be promptly cured.

(e) This section does not apply to:

(1) a contract for the construction of or improvements to a detached single-family residence, duplex, triplex, or quadruplex; or

(2) a contract to improve real property for a governmental entity.

(f) The rights and remedies provided by this section are in addition to rights and remedies provided by this chapter or other law.

Added by Acts 1999, 76th Leg., ch. 805, Sec. 4, eff. Sept. 1, 1999.

Sec. 28.0091. UNSIGNED CHANGE ORDER. (a) A contractor or subcontractor may elect not to proceed with additional work directed by an owner if:

(1) the contractor or subcontractor has not received a written, fully executed change order for the owner-directed additional work; and

(2) the aggregate actual or anticipated value of the additional work plus any previous owner-directed additional work for which the contractor or subcontractor has not received a written, fully executed change order exceeds 10 percent of the contractor's or subcontractor's original contract amount.

(b) A contractor or subcontractor who elects not to proceed with additional work as provided by this section is not responsible

for damages associated with the election not to proceed.

Added by Acts 2023, 88th Leg., R.S., Ch. 533 (H.B. 3485), Sec. 2, eff. September 1, 2023.

Sec. 28.010. EXEMPTION FOR MINERAL DEVELOPMENT AND OILFIELD SERVICES. (a) This chapter does not apply to any agreement:

(1) to explore, produce, or develop oil, natural gas, natural gas liquids, synthetic gas, sulphur, ore, or other mineral substances, including any lease or royalty agreement, joint interest agreement, production or production-related agreement, operating agreement, farmout agreement, area of mutual interest agreement, or other related agreement;

(2) for any well or mine services; or

(3) to purchase, sell, gather, store, or transport oil, natural gas, natural gas liquids, synthetic gas, or other hydrocarbon substances by pipeline or by a fixed, associated facility.

(b) In this section:

(1) "Agreement" includes a written or oral agreement or understanding:

(A) to provide work or services, including any construction, operating, repair, or maintenance services; or

(B) to perform a part of the services covered by Paragraph (A) or an act collateral to those services, including furnishing or renting equipment, incidental transportation, or other goods and services furnished in connection with those services.

(2) "Well or mine services" includes:

(A) drilling, deepening, reworking, repairing, improving, testing, treating, perforating, acidizing, logging, conditioning, purchasing, gathering, storing, or transporting oil or natural gas, brine water, fresh water, produced water, condensate, petroleum products, or other liquid commodities, or otherwise rendering services in connection with a well drilled to produce or dispose of oil, gas, or other minerals or water; and

(B) designing, excavating, constructing, improving, or otherwise rendering services in connection with an oil, gas, or other mineral production platform or facility, mine shaft, drift, or other structure intended directly for use in exploring for or producing a mineral.

Added by Acts 1999, 76th Leg., ch. 805, Sec. 4, eff. Sept. 1, 1999.

CHAPTER 29. FORCED SALE OF OWNER'S INTEREST IN CERTAIN REAL PROPERTY AS REIMBURSEMENT FOR PROPERTY TAXES PAID BY CO-OWNER ON OWNER'S BEHALF

Sec. 29.001. APPLICATION OF CHAPTER. This chapter applies only to real property that is not exempt from forced sale under the constitution or laws of this state and is:

(1) received by a person as a result of the death of another person:

(A) by inheritance;

(B) under a will;

(C) by a joint tenancy with a right of survivorship; or

(D) by any other survivorship agreement in which the interest of the decedent passes to a surviving beneficiary other than an agreement between spouses for community property with a right of survivorship; or

(2) owned in part by a nonprofit organization that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt organization under Section 501(c)(3), Internal Revenue Code of 1986, and its subsequent amendments, that:

(A) has been incorporated in this state for at least one year;

(B) has a corporate purpose to develop affordable housing that is stated in the articles of incorporation or charter;

(C) has at least one-fourth of its board of directors residing in the county in which the property is located; and

(D) engages primarily in the building, repair, rental, or sale of housing for low-income individuals or families.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 891, Sec. 1, eff. Sept. 1, 2001.

Sec. 29.002. PETITION FOR FORCED SALE. (a) A person, including a nonprofit organization, that owns an undivided interest in real property to which this chapter applies may file in the

district court in a county in which the property is located a petition for a court order to require another owner of an undivided interest in that property to sell the other owner's interest in the property to the person if:

(1) the person has paid the other owner's share of ad valorem taxes imposed on the property for any three years in a five-year period or, in the case of a nonprofit organization, has paid the other owner's share of ad valorem taxes imposed on the property for any two years in a three-year period; and

(2) the other owner has not reimbursed the person for more than half of the total amount paid by the person for the taxes on the owner's behalf.

(b) The petition must contain:

(1) a description of the property;

(2) the name of each known owner of the property;

(3) the interest held by each known owner of the property;

(4) the total amount paid by the petitioner for the defendant's share of ad valorem taxes imposed on the property; and

(5) if applicable, the amount paid by the defendant to the petitioner to reimburse the petitioner for paying the defendant's share of ad valorem taxes imposed on the property.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 891, Sec. 1, eff. Sept. 1, 2001.

Sec. 29.003. HEARING ON PETITION FOR FORCED SALE. At a hearing on a petition filed under Section 29.002, the petitioner must prove by clear and convincing evidence that:

(1) the petitioner has paid the defendant's share of ad valorem taxes imposed on the property that is the subject of the petition for any three years in a five-year period or, in the case of a nonprofit organization, the petitioner has paid the defendant's share of ad valorem taxes imposed on the property that is the subject of the petition for any two years in a three-year period;

(2) before the date on which the petition was filed the petitioner made a demand that the defendant reimburse the petitioner for the amount of the defendant's share of ad valorem taxes imposed on the property paid by the petitioner; and

(3) the defendant has not reimbursed the petitioner more

than half of the amount of money the petitioner paid on the defendant's behalf for the defendant's share of ad valorem taxes imposed on the property.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995.
Amended by Acts 2001, 77th Leg., ch. 891, Sec. 1, eff. Sept. 1, 2001.

Sec. 29.0035. DEMAND TO UNKNOWN DEFENDANT. If the address or identity of the defendant is unknown, the demand of the petitioner for reimbursement from the defendant required by Section 29.003(2) may be met by publication in a newspaper in the county in which the property is located once each week for four consecutive weeks, with the final publication occurring not later than the 30th day before the date on which the petition is filed. The publication must contain the demand for reimbursement and:

(1) a general description of the property involved;

(2) the legal description of the property according to the survey of the property, including the number of the lot and block or any other plat description that may be of record if the property is located in a municipality;

(3) the county in which the property is located;

(4) the interest of the defendant; and

(5) the name and address of the petitioner.

Added by Acts 2001, 77th Leg., ch. 891, Sec. 2, eff. Sept. 1, 2001.

Sec. 29.004. COURT-ORDERED SALE. On completion of the hearing on a petition filed under Section 29.002, if the court is satisfied that the petitioner has made the requisite proof under Section 29.003, the court shall enter an order that divests the defendant's interest in the real property that is the subject of the petition and that orders the petitioner to pay to the defendant an amount computed by subtracting the outstanding amount of money the defendant owes to the petitioner for payment of the defendant's share of ad valorem taxes imposed on the property from the fair market value of the defendant's interest in the property as determined by an independent appraiser appointed by the court. The court's order may also direct the defendant to execute and deliver to the petitioner a deed that conveys to the petitioner the defendant's interest in the property.

Added by Acts 1995, 74th Leg., ch. 981, Sec. 1, eff. Aug. 28, 1995.

CHAPTER 30. WRIT OF ASSISTANCE FOR REPOSSESSION OF AIRCRAFT

Sec. 30.01. DEFINITIONS. In this chapter:

(1) "Aircraft" means a self-propelled motor vehicle that can be used to transport a person by flight in the air.

(2) "Repossession" means the recovery of an aircraft that has been sold under a security agreement containing a repossession clause authorizing the lender to recover the aircraft if the borrower defaults under the agreement.

(3) "Repossession agent" means an individual who is authorized to engage in a repossession for a lender.

Added by Acts 2015, 84th Leg., R.S., Ch. 1125 (H.B. 3901), Sec. 1, eff. September 1, 2015.

Sec. 30.02. WRIT OF ASSISTANCE FOR REPOSSESSION OF AIRCRAFT. (a) A writ of assistance for the repossession of an aircraft authorizes a peace officer to assist and protect a repossession agent in gaining possession of the aircraft while the agent:

(1) secures the aircraft on site; or

(2) prepares the aircraft, which may include a mechanical inspection, for removal from the site by flight or otherwise to another location.

(b) A writ of assistance for the repossession of an aircraft is valid for 30 days.

(c) A justice court may grant unlimited extensions of a writ of assistance issued under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1125 (H.B. 3901), Sec. 1, eff. September 1, 2015.

Sec. 30.03. PETITION FOR WRIT OF ASSISTANCE. (a) A repossession agent may file a petition in a justice court for a writ of assistance for the repossession of an aircraft.

(b) The repossession agent is entitled to the writ if the repossession agent establishes that:

(1) the aircraft is subject to the proposed repossession;

and

(2) the repossession agent is authorized to engage in the repossession.

(c) The petition for the writ must include a copy of:

(1) the security agreement relating to the aircraft;

(2) the notice of default under the security agreement sent by the lender to the borrower;

(3) the instrument in which a power of attorney for the repossession is granted to the repossession agent by the lender; and

(4) the results of a title search of the Federal Aviation Administration's records for the aircraft.

Added by Acts 2015, 84th Leg., R.S., Ch. 1125 (H.B. 3901), Sec. 1, eff. September 1, 2015.

CHAPTER 31. BAD FAITH WASHOUT OF OVERRIDING ROYALTY INTEREST IN OIL AND GAS LEASE

Sec. 31.001. DEFINITIONS. In this chapter:

(1) "Bad faith" means the conscious taking of action for the purpose of washing out all or part of an overriding royalty interest.

(2) "Washout" means the elimination or reduction of an overriding royalty interest in an oil and gas lease by the forfeiture or surrender of the oil and gas lease by a lessee or the lessee's successors or assigns and the subsequent reacquisition of a lease, or all or part of the mineral estate associated with the lease, by the lessee or the lessee's successors, assigns, contractors, or subsidiaries on all or part of the same land, free of the overriding royalty interest.

Added by Acts 2023, 88th Leg., R.S., Ch. 7 (H.B. 450), Sec. 1, eff. September 1, 2023.

Sec. 31.002. CAUSE OF ACTION FOR BAD FAITH WASHOUT. A person may bring a cause of action for a bad faith washout of the person's overriding royalty interest in an oil and gas lease. The person is entitled to a remedy under this chapter if the person proves by a preponderance of the evidence that:

(1) the person owned or had a legal right to the overriding

royalty interest;

(2) the defendant had control over the oil and gas lease burdened by the overriding royalty interest;

(3) the defendant caused a washout of the person's overriding royalty interest; and

(4) the defendant acted in bad faith by knowingly or intentionally causing the washout.

Added by Acts 2023, 88th Leg., R.S., Ch. 7 (H.B. 450), Sec. 1, eff. September 1, 2023.

Sec. 31.003. VENUE. An owner of an overriding royalty interest in an oil and gas lease may bring an action under this chapter in a district court of a county in which any part of the property subject to the oil and gas lease is located.

Added by Acts 2023, 88th Leg., R.S., Ch. 7 (H.B. 450), Sec. 1, eff. September 1, 2023.

Sec. 31.004. REMEDIES; COSTS AND FEES. (a) An owner of an overriding royalty interest who prevails in an action under this chapter may recover:

(1) actual damages;

(2) enforcement of a constructive trust on the oil and gas lease or mineral estate acquired to accomplish the washout of the overriding royalty interest; and

(3) court costs and attorney's fees.

(b) The remedies provided by this chapter are cumulative of other remedies provided by common law or statute.

Added by Acts 2023, 88th Leg., R.S., Ch. 7 (H.B. 450), Sec. 1, eff. September 1, 2023.

Sec. 31.005. LIMITATION ON FILING ACTION. A person must bring an action under this chapter not later than the second anniversary of the date the person obtained actual knowledge that the washout occurred.

Added by Acts 2023, 88th Leg., R.S., Ch. 7 (H.B. 450), Sec. 1, eff. September 1, 2023.

TITLE 5. EXEMPT PROPERTY AND LIENS
SUBTITLE A. PROPERTY EXEMPT FROM CREDITORS' CLAIMS
CHAPTER 41. INTERESTS IN LAND
SUBCHAPTER A. EXEMPTIONS IN LAND DEFINED

Sec. 41.001. INTERESTS IN LAND EXEMPT FROM SEIZURE. (a) A homestead and one or more lots used for a place of burial of the dead are exempt from seizure for the claims of creditors except for encumbrances properly fixed on homestead property.

(b) Encumbrances may be properly fixed on homestead property for:

(1) purchase money;

(2) taxes on the property;

(3) work and material used in constructing improvements on the property if contracted for in writing as provided by Sections 53.254(a), (b), and (c);

(4) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(5) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(6) an extension of credit that meets the requirements of Section 50(a)(6), Article XVI, Texas Constitution; or

(7) a reverse mortgage that meets the requirements of Sections 50(k)-(p), Article XVI, Texas Constitution.

(c) The homestead claimant's proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1993, 73rd Leg., ch. 48, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 121, Sec. 1.01, eff. May 17, 1995; Acts 1995, 74th Leg., ch. 121, Sec. 2.01; Acts 1997, 75th Leg., ch. 526, Sec. 1,

eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 516, Sec. 1, eff. Sept. 1, 2001.

Sec. 41.002. DEFINITION OF HOMESTEAD. (a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.

(b) If used for the purposes of a rural home, the homestead shall consist of:

(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or

(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

(c) A homestead is considered to be urban if, at the time the designation is made, the property is:

(1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and

(2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

(A) electric;

(B) natural gas;

(C) sewer;

(D) storm sewer; and

(E) water.

(d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1989, 71st Leg., ch. 391, Sec. 2, eff. Aug. 28, 1989; Acts 1999, 76th Leg., ch. 1510, Sec. 1, eff. Jan. 1, 2000; Acts 1999, 76th Leg., ch. 1510, Sec. 2, eff. Sept. 1, 1999.

Sec. 41.0021. HOMESTEAD IN QUALIFYING TRUST. (a) In this section, "qualifying trust" means an express trust:

(1) in which the instrument or court order creating the express trust, an instrument transferring property to the trust, or any other agreement that is binding on the trustee provides that a settlor or beneficiary of the trust has the right to:

(A) revoke the trust without the consent of another person other than a spouse who is also a settlor of the trust;

(B) exercise an inter vivos general power of appointment over the property that qualifies for the homestead exemption, either alone or when aggregated with property subject to an inter vivos general power of appointment held by a spouse who is also a settlor of the trust; or

(C) use and occupy the residential property as the settlor's or beneficiary's principal residence at no cost, or rent free and without charge, except for taxes and other costs and expenses specified in the instrument or court order:

(i) for the life of the settlor or beneficiary;

(ii) for the shorter of the life of the settlor or beneficiary or a term of years specified in the instrument or court order; or

(iii) until the date the trust is revoked or terminated by an instrument or court order that describes the property with sufficient certainty to identify the property and that is recorded in the real property records of the county in which the property is located; and

(2) the trustee of which acquires the property in an instrument of title or under a court order that:

(A) describes the property with sufficient certainty to identify the property and the interest acquired; and

(B) is recorded in the real property records of the county in which the property is located.

(b) Property that a settlor or beneficiary occupies and uses in a manner described by this subchapter and in which the settlor or beneficiary owns a beneficial interest through a qualifying trust is considered the homestead of the settlor or beneficiary under Section 50, Article XVI, Texas Constitution, and Section 41.001.

(c) A married person who transfers property to the trustee of a qualifying trust must comply with the requirements relating to the joinder of the person's spouse as provided by Chapter 5, Family Code.

(d) A trustee may sell, convey, or encumber property transferred as described by Subsection (c) without the joinder of

either spouse unless expressly prohibited by the instrument or court order creating the trust.

(e) This section does not affect the rights of a surviving spouse or surviving children under Section 52, Article XVI, Texas Constitution, or Chapter 353, Estates Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 984 (H.B. 3767), Sec. 1, eff. September 1, 2009.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 12, eff. September 1, 2019.
Acts 2023, 88th Leg., R.S., Ch. 446 (H.B. 2196), Sec. 1, eff. June 9, 2023.

Sec. 41.0022. CERTAIN CONVEYANCES NOT SHAM OR PRETENDED SALES. (a) In this section:

(1) "Entity" means a domestic or foreign:

(A) corporation, professional corporation, or professional association;

(B) limited liability company or professional limited liability company; or

(C) limited partnership.

(2) "Parcel" means one or more parcels.

(b) The conveyance of a parcel not meeting the definition of an urban homestead under Section 41.002(a) or (c) by an individual to an entity in which the individual or individual's spouse has a direct or indirect ownership interest is not a sham or pretended sale, including a pretended sale under Section 50(c), Article XVI, Texas Constitution, if:

(1) the deed conveying the parcel is recorded at least 30 days before the entity grants a mortgage, trust deed, or other lien on the parcel;

(2) the individual does not reside on the parcel at the time of the conveyance;

(3) the parcel is not contiguous to the parcel on which the individual resides;

(4) the deed conveying the parcel does not contain a condition of defeasance; and

(5) the individual recorded contemporaneously with the deed

an affidavit substantially in the form prescribed by Subsection (d).

(c) An individual executing a deed under Subsection (b) is estopped from claiming that:

(1) the conveyance is a sham or pretended sale, including a pretended sale under Section 50(c), Article XVI, Texas Constitution; or

(2) the individual had not abandoned homestead rights, if any, in the parcel by executing the deed.

(d) At the time of recording a deed under Subsection (b), an individual grantor of the deed shall record an affidavit containing the following:

(1) a title caption stating "Affidavit Regarding Conveyance To An Entity";

(2) the date of the affidavit;

(3) a description of the deed containing:

(A) the title of the deed;

(B) the date of the deed;

(C) the name and address of the individual grantor; and

(D) the name and address of the entity grantee;

(4) a description of the parcel being conveyed to the entity;

(5) a description of the parcel upon which the individual currently resides;

(6) a statement that the parcel being conveyed is not contiguous to the parcel upon which the individual currently resides;

(7) a statement that the parcel upon which the individual currently resides is not:

(A) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; or

(B) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

(i) electric;

(ii) natural gas;

(iii) sewer;

(iv) storm sewer; or

(v) water;

(8) a statement that:

(A) the individual is unmarried; or

(B) the individual is married, and including the name

of the individual's spouse;

(9) a statement that the individual or individual's spouse owns a direct or indirect interest in the entity;

(10) a statement that the individual has executed the deed conveying the parcel to the entity;

(11) a statement that the individual intends to vest title in the entity;

(12) a statement that there are no written or oral agreements regarding a defeasance of the parcel upon the passage of time or occurrence or non-occurrence of any event;

(13) a statement that the individual acknowledges that the individual will be estopped from claiming the conveyance to the entity is a sham or pretended sale, including a pretended sale under Section 50(c), Article XVI, Texas Constitution;

(14) a statement that the individual acknowledges that the individual will be estopped from claiming the individual had not abandoned homestead rights, if any, in the parcel by executing the deed;

(15) a statement that the individual understands that if the parcel is valued for ad valorem tax purposes as qualified open-space land, the entity must reapply in its own name by the applicable filing deadline; and

(16) a statement that the individual has had an opportunity:

(A) to review the affidavit prior to the affidavit's execution; and

(B) to consult with an attorney before the affidavit's execution, whether or not the opportunity to consult with an attorney was exercised.

(e) If the individual conveying a parcel under Subsection (b) is married, the individual's spouse must join in the execution of:

(1) the deed; and

(2) the affidavit described by Subsection (d).

(f) The entity or a lender for value may conclusively rely on an affidavit described by Subsection (d).

(g) Notwithstanding any other provision of this section, a transaction that does not meet the requirements of this section is not invalid if the homestead has been abandoned or disclaimed as provided by other provisions of law.

Added by Acts 2023, 88th Leg., R.S., Ch. 384 (H.B. 207), Sec. 1, eff. September 1, 2023.

Sec. 41.003. TEMPORARY RENTING OF A HOMESTEAD. Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 41.004. ABANDONMENT OF A HOMESTEAD. If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant's spouse.

Added by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 41.005. VOLUNTARY DESIGNATION OF HOMESTEAD. (a) If a rural homestead of a family is part of one or more parcels containing a total of more than 200 acres, the head of the family and, if married, that person's spouse may voluntarily designate not more than 200 acres of the property as the homestead. If a rural homestead of a single adult person, not otherwise entitled to a homestead, is part of one or more parcels containing a total of more than 100 acres, the person may voluntarily designate not more than 100 acres of the property as the homestead.

(b) If an urban homestead of a family, or an urban homestead of a single adult person not otherwise entitled to a homestead, is part of one or more contiguous lots containing a total of more than 10 acres, the head of the family and, if married, that person's spouse or the single adult person, as applicable, may voluntarily designate not more than 10 acres of the property as the homestead.

(c) Except as provided by Subsection (e) or Subchapter B, to designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

(1) a description sufficient to identify the property designated;

(2) a statement by the person or persons who executed the instrument that the property is designated as the homestead of the person's family or as the homestead of a single adult person not otherwise entitled to a homestead;

(3) the name of the current record title holder of the property; and

(4) for a rural homestead, the number of acres designated and, if there is more than one survey, the number of acres in each.

(d) A person or persons, as applicable, may change the boundaries of a homestead designated under Subsection (c) by executing and recording an instrument in the manner required for a voluntary designation under that subsection. A change under this subsection does not impair rights acquired by a party before the change.

(e) Except as otherwise provided by this subsection, property on which a person receives an exemption from taxation under Section 11.43, Tax Code, is considered to have been designated as the person's homestead for purposes of this subchapter if the property is listed as the person's residence homestead on the most recent appraisal roll for the appraisal district established for the county in which the property is located. If a person designates property as a homestead under Subsection (c) or Subchapter B and a different property is considered to have been designated as the person's homestead under this subsection, the designation under Subsection (c) or Subchapter B, as applicable, prevails for purposes of this chapter.

(f) If a person or persons, as applicable, have not made a voluntary designation of a homestead under this section as of the time a writ of execution is issued against the person, any designation of the person's or persons' homestead must be made in accordance with Subchapter B.

(g) An instrument that made a voluntary designation of a homestead in accordance with prior law and that is on file with the county clerk on September 1, 1987, is considered a voluntary designation of a homestead under this section.

Added by Acts 1987, 70th Leg., ch. 727, Sec. 1, eff. Aug. 31, 1987.
Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 3, eff. Sept. 1, 1993;

Acts 1993, 73rd Leg., ch. 297, Sec. 1, eff. Aug. 1, 1993; Acts 1997, 75th Leg., ch. 846, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1510, Sec. 3, eff. Jan. 1, 2000.

Sec. 41.0051. DISCLAIMER AND DISCLOSURE REQUIRED. (a) A person may not deliver a written advertisement offering, for a fee, to designate property as a homestead as provided by Section 41.005 unless there is a disclaimer on the advertisement that is conspicuous and printed in 14-point boldface type or 14-point uppercase typewritten letters that makes the following statement or a substantially similar statement:

THIS DOCUMENT IS AN ADVERTISEMENT OF SERVICES. IT IS NOT AN OFFICIAL DOCUMENT OF THE STATE OF TEXAS.

(b) A person who solicits solely by mail or by telephone a homeowner to pay a fee for the service of applying for a property tax refund from a tax appraisal district or other governmental body on behalf of the homeowner shall, before accepting money from the homeowner or signing a contract with the homeowner for the person's services, disclose to the homeowner the name of the tax appraisal district or other governmental body that owes the homeowner a refund.

(c) A person's failure to provide a disclaimer on an advertisement as required by Subsection (a) or to provide the disclosure required by Subsection (b) is considered a false, misleading, or deceptive act or practice for purposes of Section 17.46(a), Business & Commerce Code, and is subject to action by the consumer protection division of the attorney general's office as provided by Section 17.46(a), Business & Commerce Code.

Added by Acts 2001, 77th Leg., ch. 341, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1191, Sec. 1, 2, eff. Sept. 1, 2003.

Sec. 41.006. CERTAIN SALES OF HOMESTEAD. (a) Except as provided by Subsection (c), any sale or purported sale in whole or in part of a homestead at a fixed purchase price that is less than the appraised fair market value of the property at the time of the sale or purported sale, and in connection with which the buyer of the property executes a lease of the property to the seller at lease

payments that exceed the fair rental value of the property, is considered to be a loan with all payments made from the seller to the buyer in excess of the sales price considered to be interest subject to Title 4, Finance Code.

(b) The taking of any deed in connection with a transaction described by this section is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and the deed is void and no lien attaches to the homestead property as a result of the purported sale.

(c) This section does not apply to the sale of a family homestead to a parent, stepparent, grandparent, child, stepchild, brother, half brother, sister, half sister, or grandchild of an adult member of the family.

Added by Acts 1987, 70th Leg., ch. 1130, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.84, eff. Sept. 1, 1999.

Sec. 41.007. HOME IMPROVEMENT CONTRACT. (a) A contract for improvements to an existing residence described by Section 41.001(b)(3) must contain:

(1) the contractor's certificate of registration number from the Texas Residential Construction Commission if the contractor is required to register as a builder with the commission;

(2) the address and telephone number at which the owner may file a complaint with the Texas Residential Construction Commission about the conduct of the contractor if the contractor is required to register as a builder with the commission; and

(3) the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a

public or private suit brought under the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

(c) A provision of a contract for improvements to an existing residence described by Section 41.001(b)(3) that requires the parties to submit a dispute arising under the contract to binding arbitration must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(d) A provision described by Subsection (c) is not enforceable against the owner unless the requirements of Subsection (c) are met.

Added by Acts 1987, 70th Leg., ch. 116, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 41.005 by Acts 1989, 71st Leg., ch. 2, Sec. 16.01(30), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 4, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 843 (H.B. 1038), Sec. 5, eff. September 1, 2007.

Sec. 41.008. CONFLICT WITH FEDERAL LAW. To the extent of any conflict between this subchapter and any federal law that imposes an upper limit on the amount, including the monetary amount or acreage amount, of homestead property a person may exempt from seizure, this subchapter prevails to the extent allowed under federal law.

Added by Acts 1999, 76th Leg., ch. 1510, Sec. 4.

SUBCHAPTER B. DESIGNATION OF A HOMESTEAD IN AID OF ENFORCEMENT OF A JUDGMENT DEBT

Sec. 41.021. NOTICE TO DESIGNATE. If an execution is issued against a holder of an interest in land of which a homestead may be a part and the judgment debtor has not made a voluntary designation of a homestead under Section 41.005, the judgment creditor may give the judgment debtor notice to designate the homestead as defined in Section 41.002. The notice shall state that if the judgment debtor fails to designate the homestead within the time allowed by Section 41.022, the court will appoint a commissioner to make the designation at the expense of the judgment debtor.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 2, eff. Aug. 31, 1987.

Sec. 41.022. DESIGNATION BY HOMESTEAD CLAIMANT. At any time before 10 a.m. on the Monday next after the expiration of 20 days after the date of service of the notice to designate, the judgment debtor may designate the homestead as defined in Section 41.002 by filing a written designation, signed by the judgment debtor, with the justice or clerk of the court from which the writ of execution was issued, together with a plat of the area designated.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985.

Sec. 41.023. DESIGNATION BY COMMISSIONER. (a) If a judgment debtor who has not made a voluntary designation of a homestead under Section 41.005 does not designate a homestead as provided in Section 41.022, on motion of the judgment creditor, filed within 90 days after the issuance of the writ of execution, the court from which the writ of execution issued shall appoint a commissioner to designate the judgment debtor's homestead. The court may appoint a surveyor and others as may be necessary to assist the commissioner. The commissioner shall file his designation of the judgment debtor's homestead in a written report, together with a plat of the area designated, with the justice or clerk of the court not more than 60 days after the order of appointment is signed or within such time as the court may allow.

(b) Within 10 days after the commissioner's report is filed, the judgment debtor or the judgment creditor may request a hearing on the issue of whether the report should be confirmed, rejected, or modified as may be deemed appropriate in the particular circumstances of the case. The commissioner's report may be contradicted by evidence from either party, when exceptions to it or any item thereof have been filed before the hearing, but not otherwise. After the hearing, or if there is no hearing requested, the court shall designate the homestead as deemed appropriate and order sale of the excess.

(c) The commissioner, a surveyor, and others appointed to assist the commissioner are entitled to such fees and expenses as are

deemed reasonable by the court. The court shall tax these fees and expenses against the judgment debtor as part of the costs of execution.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 3, eff. Aug. 31, 1987.

Sec. 41.024. SALE OF EXCESS. An officer holding an execution sale of property of a judgment debtor whose homestead has been designated under this chapter may sell the excess of the judgment debtor's interest in land not included in the homestead.

Amended by Acts 1985, 69th Leg., ch. 840, Sec. 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, Sec. 4, eff. Aug. 31, 1987.

CHAPTER 42. PERSONAL PROPERTY

Sec. 42.001. PERSONAL PROPERTY EXEMPTION. (a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:

(1) the property is provided for a family and has an aggregate fair market value of not more than $100,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than $50,000, exclusive of the amount of any liens, security interests, or other charges encumbering the property.

(b) The following personal property is exempt from seizure and is not included in the aggregate limitations prescribed by Subsection (a):

(1) current wages for personal services, except for the enforcement of court-ordered child support payments;

(2) professionally prescribed health aids of a debtor or a dependent of a debtor;

(3) alimony, support, or separate maintenance received or to be received by the debtor for the support of the debtor or a dependent of the debtor; and

(4) a religious bible or other book containing sacred writings of a religion that is seized by a creditor other than a

lessor of real property who is exercising the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for or abandons the real property.

(c) Except as provided by Subsection (b)(4), this section does not prevent seizure by a secured creditor with a contractual landlord's lien or other security in the property to be seized.

(d) Unpaid commissions for personal services not to exceed 25 percent of the aggregate limitations prescribed by Subsection (a) are exempt from seizure and are included in the aggregate.

(e) A religious bible or other book described by Subsection (b)(4) that is seized by a lessor of real property in the exercise of the lessor's contractual or statutory right to seize personal property after a tenant breaches a lease agreement for the real property or abandons the real property may not be included in the aggregate limitations prescribed by Subsection (a).

Acts 1983, 68th Leg., p. 3522, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991;
Acts 1997, 75th Leg., ch. 1046, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 444 (H.B. 167), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 793 (H.B. 2706), Sec. 1, eff. September 1, 2015.

Sec. 42.002. PERSONAL PROPERTY. (a) The following personal property is exempt under Section 42.001(a):

(1) home furnishings, including family heirlooms;

(2) provisions for consumption;

(3) farming or ranching vehicles and implements;

(4) tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession;

(5) wearing apparel;

(6) jewelry not to exceed 25 percent of the aggregate limitations prescribed by Section 42.001(a);

(7) two firearms;

(8) athletic and sporting equipment, including bicycles;

(9) a two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a

driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the nonlicensed person;

(10) the following animals and forage on hand for their consumption:

(A) two horses, mules, or donkeys and a saddle, blanket, and bridle for each;

(B) 12 head of cattle;

(C) 60 head of other types of livestock; and

(D) 120 fowl; and

(11) household pets.

(b) Personal property, unless precluded from being encumbered by other law, may be encumbered by a security interest under Subchapter B, Chapter 9, Business & Commerce Code, or Subchapter F, Chapter 501, Transportation Code, or by a lien fixed by other law, and the security interest or lien may not be avoided on the ground that the property is exempt under this chapter.

Acts 1983, 68th Leg., p. 3522, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991; Acts 1993, 73rd Leg., ch. 216, Sec. 1, eff. May, 17, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 30.245, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.36, eff. July 1, 2001; Acts 1999, 76th Leg., ch. 846, Sec. 1, eff. Aug. 30, 1999.

Sec. 42.0021. ADDITIONAL EXEMPTION FOR CERTAIN SAVINGS PLANS. (a) In this section, "qualified savings plan" means any stock bonus, pension, annuity, deferred compensation, profit-sharing, health, education, or similar plan or account, to the extent the plan or account is exempt from federal income tax or to the extent federal income tax on a person's interest in the plan or account is deferred until actual payment of benefits to the person. A plan or account that is subject to federal income tax is considered to be exempt from federal income tax for purposes of this section if the plan or account is subject to the tax solely under Sections 511 through 514, Internal Revenue Code of 1986. The term includes:

(1) a retirement plan sponsored by a private employer, government, or church;

(2) a retirement plan for self-employed individuals;

(3) a simplified employee pension plan;

(4) an individual retirement account or annuity, including an inherited individual retirement account or annuity;

(5) a Roth IRA, including an inherited Roth IRA;

(6) a health savings account;

(7) a Coverdell education savings account;

(8) a plan or account established under Subchapter F, Chapter 54, Education Code, including a prepaid tuition contract;

(9) a plan or account established under Subchapter G, Chapter 54, Education Code, including a savings trust account;

(10) a qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986;

(11) a qualified ABLE program of any state that meets the requirements of Section 529A, Internal Revenue Code of 1986; and

(12) an annuity or similar contract purchased with assets distributed from a plan or account described by this subsection.

(b) In addition to the exemption prescribed by Section 42.001 and except as provided by this section, a person's interest in and right to receive payments from a qualified savings plan, whether vested or not, is exempt from attachment, execution, and seizure for the satisfaction of debts.

(c) An interest or right in a qualified savings plan that was acquired by reason of the death of another person, whether as an owner, participant, beneficiary, survivor, coannuitant, heir, or legatee, is exempt to the same extent that the interest or right of the decedent was exempt on the date of the decedent's death.

(d) Contributions to a qualified savings plan that are excess contributions under Section 4973, Internal Revenue Code of 1986, and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law.

(e) Amounts distributed from a qualified savings plan are exempt from attachment, execution, and seizure for a creditor's claim for 60 days after the date of distribution. If the amounts qualify as a rollover contribution under the Internal Revenue Code of 1986, whether taxable or nontaxable, the amounts will continue to be exempt thereafter under this section.

(f) A person's interest in a retirement plan that is solely an unfunded, unsecured promise by an employer to pay deferred compensation is not exempt under this section unless otherwise exempt by law.

(g) A person is not prohibited by this section from granting a valid and enforceable security interest in the person's interest in or right to receive payments from a qualified savings plan to the extent permitted by, and in accordance with, the Internal Revenue Code of 1986 and the terms of the qualified savings plan to secure a loan to the person from the qualified savings plan. The person's interest in or right to receive payments from the plan is subject to attachment, execution, and seizure for the satisfaction of the security interest or lien granted by the person to secure the loan.

(h) If any provision of this section is held invalid or preempted by federal law, in whole or in part or in certain circumstances, the remaining provisions of this section remain in effect, to the maximum extent permitted by law.

(i) A reference in this section to the Internal Revenue Code of 1986 or a specific provision of the Internal Revenue Code of 1986 includes a subsequent amendment of that code or of the substance of that provision.

Added by Acts 1987, 70th Leg., ch. 376, Sec. 1, eff. Sept. 1, 1987.
Amended by Acts 1989, 71st Leg., ch. 1122, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 963, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 106, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 130 (H.B. 330), Sec. 2, eff. May 24, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 933 (S.B. 1810), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 91 (S.B. 649), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 320 (H.B. 2779), Sec. 1, eff. September 1, 2019.

Sec. 42.003. DESIGNATION OF EXEMPT PROPERTY. (a) If the number or amount of a type of personal property owned by a debtor exceeds the exemption allowed by Section 42.002 and the debtor can be found in the county where the property is located, the officer making a levy on the property shall ask the debtor to designate the personal property to be levied on. If the debtor cannot be found in the county or the debtor fails to make a designation within a reasonable

time after the officer's request, the officer shall make the designation.

(b) If the aggregate value of a debtor's personal property exceeds the amount exempt from seizure under Section 42.001(a), the debtor may designate the portion of the property to be levied on. If, after a court's request, the debtor fails to make a designation within a reasonable time or if for any reason a creditor contests that the property is exempt, the court shall make the designation.

Acts 1983, 68th Leg., p. 3524, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991.

Sec. 42.004. TRANSFER OF NONEXEMPT PROPERTY. (a) If a person uses the property not exempt under this chapter to acquire, obtain an interest in, make improvement to, or pay an indebtedness on personal property which would be exempt under this chapter with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

(b) A creditor may not assert a claim under this section more than two years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.

(c) It is a defense to a claim under this section that the transfer was made in the ordinary course of business by the person making the transfer.

Acts 1983, 68th Leg., p. 3524, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1991, 72nd Leg., ch. 175, Sec. 1, eff. May 24, 1991.

Sec. 42.005. CHILD SUPPORT LIENS. (a) Except as provided by Subsection (b), Sections 42.001, 42.002, and 42.0021 do not apply to a child support lien established under Subchapter G, Chapter 157, Family Code.

(b) The exemption from attachment, execution, and seizure for the satisfaction of debts provided under Section 42.0021 for a plan or account described by Section 42.0021(a)(8), (9), or (10) applies to a child support lien established under Subchapter G, Chapter 157, Family Code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 4.07, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.56, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 320 (H.B. 2779), Sec. 2, eff. September 1, 2019.

CHAPTER 43. EXEMPT PUBLIC PROPERTY

Sec. 43.001. EXEMPT PUBLIC LIBRARY. A public library is exempt from attachment, execution, and forced sale.

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 43.002. EXEMPT PROPERTY. The real property of the state, including the real property held in the name of state agencies and funds, and the real property of a political subdivision of the state are exempt from attachment, execution, and forced sale. A judgment lien or abstract of judgment may not be filed or perfected against the state, a unit of state government, or a political subdivision of the state on property owned by the state, a unit of state government, or a political subdivision of the state; any such judgment lien or abstract of judgment is void and unenforceable.

Added by Acts 1997, 75th Leg., ch. 159, Sec. 1, eff. May 20, 1997.

CHAPTER 44. TAXATION OF RETIREMENT BENEFITS BY ANOTHER STATE

Sec. 44.001. DEFINITION. In this chapter, "pension or other retirement plan" includes:

(1) an annuity, pension, or profit-sharing or stock bonus or similar plan established to provide retirement benefits for an officer or employee of a public or private employer or for a self-employed individual;

(2) an annuity, pension, or military retirement pay plan or other retirement plan administered by the United States; and

(3) an individual retirement account.

Added by Acts 1993, 73rd Leg., ch. 95, Sec. 1, eff. May 7, 1993.

Sec. 44.002. PROPERTY EXEMPT. All property in this state is exempt from attachment, execution, and seizure for the satisfaction of a judgment or claim in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan.

Added by Acts 1993, 73rd Leg., ch. 95, Sec. 1, eff. May 7, 1993.

Sec. 44.003. LIEN NOT CREATED. A claim or judgment in favor of another state or political subdivision of another state for failure to pay that state's or that political subdivision's income tax on benefits received from a pension or other retirement plan may not be a lien on any property in this state owned by a resident of this state.

Added by Acts 1993, 73rd Leg., ch. 95, Sec. 1, eff. May 7, 1993.

SUBTITLE B. LIENS

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS

Sec. 51.0001. DEFINITIONS. In this chapter:

(1) "Book entry system" means a national book entry system for registering a beneficial interest in a security instrument that acts as a nominee for the grantee, beneficiary, owner, or holder of the security instrument and its successors and assigns.

(2) "Debtor's last known address" means:

(A) for a debt secured by the debtor's residence, the debtor's residence address unless the debtor provided the mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002; or

(B) for a debt other than a debt described by Paragraph (A), the debtor's last known address as shown by the records of the

mortgage servicer of the security instrument unless the debtor provided the current mortgage servicer a written change of address before the date the mortgage servicer mailed a notice required by Section 51.002.

(3) "Mortgage servicer" means the last person to whom a mortgagor has been instructed by the current mortgagee to send payments for the debt secured by a security instrument. A mortgagee may be the mortgage servicer.

(4) "Mortgagee" means:

(A) the grantee, beneficiary, owner, or holder of a security instrument;

(B) a book entry system; or

(C) if the security interest has been assigned of record, the last person to whom the security interest has been assigned of record.

(5) "Mortgagor" means the grantor of a security instrument.

(6) "Security instrument" means a deed of trust, mortgage, or other contract lien on an interest in real property.

(7) "Substitute trustee" means a person appointed by the current mortgagee or mortgage servicer under the terms of the security instrument to exercise the power of sale.

(8) "Trustee" means a person or persons authorized to exercise the power of sale under the terms of a security instrument in accordance with Section 51.0074.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 1, eff. June 15, 2007.

Sec. 51.001. EFFECT ON OTHER LIENS. Except as provided by Chapter 59, this subtitle does not affect:

(1) the right to create a lien by special contract or agreement; or

(2) a lien that is not treated in this subtitle, including a lien arising under common law, in equity, or under another statute of this state.

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 51.0011. DEFAULT ARISING FROM DELINQUENT AD VALOREM TAXES: INSTALLMENT AGREEMENTS. (a) Notwithstanding any agreement to the contrary, a debtor is not in default under a deed of trust or other contract lien on real property used as the debtor's residence for the delinquent payment of ad valorem taxes if:

(1) the debtor gave notice to the mortgage servicer of the intent to enter into an installment agreement with the taxing unit under Section 33.02, Tax Code, for the payment of the taxes at least 10 days before the date the debtor entered into the agreement; and

(2) the property is protected from seizure and sale and a suit may not be filed to collect a delinquent tax on the property as provided by Section 33.02(d), Tax Code.

(b) A mortgage servicer who receives a notice described by Subsection (a)(1) may pay the taxes subject to the installment agreement at any time.

(c) A mortgage servicer who receives a notice described by Subsection (a)(1) and gives the debtor notice that the mortgage servicer intends to accelerate the note securing the deed of trust or other contract lien as a result of the delinquency of the taxes that are subject to the installment agreement must rescind the notice if the debtor enters into the agreement not later than the 30th day after the date the debtor delivers the notice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 935 (H.B. 1597), Sec. 4, eff. September 1, 2013.

Sec. 51.002. SALE OF REAL PROPERTY UNDER CONTRACT LIEN. (a) Except as provided by Subsection (a-1), a sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month. Except as provided by Subsection (h), the sale must take place at the county courthouse in the county in which the land is located, or if the property is located in more than one county, the sale may be made at the courthouse in any county in which the property is located. The commissioners court shall designate the area at the courthouse where the sales are to take place and shall record the designation in the real property records of the county. The sale must occur in the designated area. If no area is designated by the commissioners court, the notice of sale must

designate the area where the sale covered by that notice is to take place, and the sale must occur in that area.

(a-1) If the first Tuesday of a month occurs on January 1 or July 4, a public sale under Subsection (a) must be held between 10 a.m. and 4 p.m. on the first Wednesday of the month.

(b) Except as provided by Subsection (b-1), notice of the sale, which must include a statement of the earliest time at which the sale will begin, must be given at least 21 days before the date of the sale by:

(1) posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold;

(2) filing in the office of the county clerk of each county in which the property is located a copy of the notice posted under Subdivision (1); and

(3) serving written notice of the sale by certified mail on each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt.

(b-1) If the courthouse or county clerk's office is closed because of inclement weather, natural disaster, or other act of God, a notice required to be posted at the courthouse under Subsection (b)(1) or filed with the county clerk under Subsection (b)(2) may be posted or filed, as appropriate, up to 48 hours after the courthouse or county clerk's office reopens for business, as applicable.

(c) The sale must begin at the time stated in the notice of sale or not later than three hours after that time.

(d) Notwithstanding any agreement to the contrary, the mortgage servicer of the debt shall serve a debtor in default under a deed of trust or other contract lien on real property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 20 days to cure the default before notice of sale can be given under Subsection (b). The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 20-day notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the 20-day notice period.

(e) Service of a notice under this section by certified mail is

complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(f) Each county clerk shall keep all notices filed under Subdivision (2) of Subsection (b) in a convenient file that is available to the public for examination during normal business hours. The clerk may dispose of the notices after the date of sale specified in the notice has passed. The clerk shall receive a fee of $2 for each notice filed.

(f-1) A county shall prominently post a notice of sale filed with the county clerk under Subsection (b)(2) on the county's Internet website on a page where the county posts other auction information and that is publicly available for viewing without charge or registration. Along with each notice of sale posted under this subsection, the county must post the date, time, and location of the sale on the same website page on which the notice is posted.

(g) The entire calendar day on which the notice of sale is given, regardless of the time of day at which the notice is given, is included in computing the 21-day notice period required by Subsection (b), and the entire calendar day of the foreclosure sale is excluded.

(h) For the purposes of Subsection (a), the commissioners court of a county may designate an area other than an area at the county courthouse where public sales of real property under this section will take place that is in a public place within a reasonable proximity of the county courthouse as determined by the commissioners court and in a location as accessible to the public as the courthouse door. The commissioners court shall record that designation in the real property records of the county. A designation by a commissioners court under this section is not a ground for challenging or invalidating any sale. A sale must be held at an area designated under this subsection if the sale is held on or after the 90th day after the date the designation is recorded. The posting of the notice required by Subsection (b)(1) of a sale designated under this subsection to take place at an area other than an area of the courthouse remains at the courthouse door of the appropriate county.

(i) Notice served on a debtor under this section must state the name and address of the sender of the notice and contain, in addition to any other statements required under this section, a statement that

is conspicuous, printed in boldface or underlined type, and substantially similar to the following: "Assert and protect your rights as a member of the armed forces of the United States. If you are or your spouse is serving on active military duty, including active military duty as a member of the Texas National Guard or the National Guard of another state or as a member of a reserve component of the armed forces of the United States, please send written notice of the active duty military service to the sender of this notice immediately."

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 3(b), eff. Oct. 2, 1984; Acts 1987, 70th Leg., ch. 540, Sec. 1, eff. Jan. 1, 1988; Acts 1993, 73rd Leg., ch. 48, Sec. 5, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 554, Sec. 2, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 533 (H.B. 961), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 555 (H.B. 1235), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 252 (H.B. 1127), Sec. 2, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 592 (S.B. 101), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 52 (H.B. 584), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 17.001, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 642 (H.B. 699), Sec. 2, eff. October 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 133 (H.B. 1128), Sec. 3, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 268 (S.B. 62), Sec. 1, eff. September 1, 2023.

Sec. 51.0021. NOTICE OF CHANGE OF ADDRESS REQUIRED. A debtor shall inform the mortgage servicer of the debt in a reasonable manner

of any change of address of the debtor for purposes of providing notice to the debtor under Section 51.002.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Sec. 51.0025. ADMINISTRATION OF FORECLOSURE BY MORTGAGE SERVICER. A mortgage servicer may administer the foreclosure of property under Section 51.002 on behalf of a mortgagee if:

(1) the mortgage servicer and the mortgagee have entered into an agreement granting the current mortgage servicer authority to service the mortgage; and

(2) the notices required under Section 51.002(b) disclose that the mortgage servicer is representing the mortgagee under a servicing agreement with the mortgagee and the name of the mortgagee and:

(A) the address of the mortgagee; or

(B) the address of the mortgage servicer, if there is an agreement granting a mortgage servicer the authority to service the mortgage.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 555 (H.B. 1235), Sec. 2, eff. September 1, 2005.

Sec. 51.003. DEFICIENCY JUDGMENT. (a) If the price at which real property is sold at a foreclosure sale under Section 51.002 is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency, any action brought to recover the deficiency must be brought within two years of the foreclosure sale and is governed by this section.

(b) Any person against whom such a recovery is sought by motion may request that the court in which the action is pending determine the fair market value of the real property as of the date of the foreclosure sale. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include, but is not limited to, the following: (1) expert opinion testimony; (2) comparable sales; (3) anticipated marketing time and holding costs;

(4) cost of sale; and (5) the necessity and amount of any discount to be applied to the future sales price or the cashflow generated by the property to arrive at a current fair market value.

(c) If the court determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons against whom recovery of the deficiency is sought are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no party requests the determination of fair market value or if such a request is made and no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower prior to the lender bringing an action at law for any deficiency owed by the borrower. Notwithstanding the foregoing, the credit required by this subsection shall not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 12, Sec. 1, eff. April 1, 1991.

Sec. 51.004. JUDICIAL FORECLOSURE--DEFICIENCY. (a) This section applies if:

(1) real property subject to a deed of trust or other contract lien is sold at a foreclosure sale under a court judgment foreclosing the lien and ordering the sale; and

(2) the price at which the real property is sold is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency.

(b) Any person obligated on the indebtedness, including a guarantor, may bring an action in the district court in the county in which the real property is located for a determination of the fair market value of the real property as of the date of the foreclosure sale. The suit must be brought not later than the 90th day after the date of the foreclosure sale unless the suit is brought by a

guarantor who did not receive actual notice of the sale before the date of sale, in which case the suit must be brought by the guarantor not later than the 90th day after the date the guarantor received actual notice of the sale. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include:

(1) expert opinion testimony;

(2) comparable sales;

(3) anticipated marketing time and holding costs;

(4) cost of sale; and

(5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the foreclosure sale.

(c) If the finder of fact determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons obligated on the indebtedness, including guarantors, are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower before the lender brings an action at law for any deficiency owed by the borrower. However, the credit required by this subsection does not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 361, Sec. 1, eff. June 5, 1991.

Sec. 51.005. JUDICIAL OR NONJUDICIAL FORECLOSURE AFTER JUDGMENT AGAINST GUARANTOR--DEFICIENCY. (a) This section applies if:

(1) the holder of a debt obtains a court judgment against a guarantor of the debt;

(2) real property subject to a deed of trust or other contract lien securing the guaranteed debt is sold at a foreclosure sale under Section 51.002 or under a court judgment foreclosing the lien and ordering the sale;

(3) the price at which the real property is sold is less than the unpaid balance of the indebtedness secured by the real property, resulting in a deficiency; and

(4) a motion or suit to determine the fair market value of the real property as of the date of the foreclosure sale has not been filed under Section 51.003 or 51.004.

(b) The guarantor may bring an action in the district court in the county in which the real property is located for a determination of the fair market value of the real property as of the date of the foreclosure sale. The suit must be brought not later than the 90th day after the date of the foreclosure sale or the date the guarantor receives actual notice of the foreclosure sale, whichever is later. The fair market value shall be determined by the finder of fact after the introduction by the parties of competent evidence of the value. Competent evidence of value may include:

(1) expert opinion testimony;

(2) comparable sales;

(3) anticipated marketing time and holding costs;

(4) cost of sale; and

(5) the necessity and amount of any discount to be applied to the future sales price or the cash flow generated by the property to arrive at a fair market value as of the date of the foreclosure sale.

(c) If the finder of fact determines that the fair market value is greater than the sale price of the real property at the foreclosure sale, the persons obligated on the indebtedness, including guarantors, are entitled to an offset against the deficiency in the amount by which the fair market value, less the amount of any claim, indebtedness, or obligation of any kind that is secured by a lien or encumbrance on the real property that was not extinguished by the foreclosure, exceeds the sale price. If no competent evidence of fair market value is introduced, the sale price at the foreclosure sale shall be used to compute the deficiency.

(d) Any money received by a lender from a private mortgage guaranty insurer shall be credited to the account of the borrower before the lender brings an action at law for any deficiency owed by

the borrower. However, the credit required by this subsection does not apply to the exercise by a private mortgage guaranty insurer of its subrogation rights against a borrower or other person liable for any deficiency.

Added by Acts 1991, 72nd Leg., ch. 361, Sec. 1, eff. June 5, 1991.

Sec. 51.006. DEED-OF-TRUST FORECLOSURE AFTER DEED IN LIEU OF FORECLOSURE. (a) This section applies to a holder of a debt under a deed of trust who accepts from the debtor a deed conveying real property subject to the deed of trust in satisfaction of the debt.

(b) The holder of a debt may void a deed conveying real property in satisfaction of the debt before the fourth anniversary of the date the deed is executed and foreclosed under the original deed of trust if:

(1) the debtor fails to disclose to the holder of the debt a lien or other encumbrance on the property before executing the deed conveying the property to the holder of the debt in satisfaction of the debt; and

(2) the holder of the debt has no personal knowledge of the undisclosed lien or encumbrance on the property.

(c) A third party may conclusively rely upon the affidavit of the holder of a debt stating that the holder has voided the deed as provided in this section.

(d) If the holder elects to void a deed in lieu of foreclosure as provided in this section, the priority of its deed of trust shall not be affected or impaired by the execution of the deed in lieu of foreclosure.

(e) If a holder accepts a deed in lieu of foreclosure, the holder may foreclose its deed of trust as provided in said deed of trust without electing to void the deed. The priority of such deed of trust shall not be affected or impaired by the deed in lieu of foreclosure.

Added by Acts 1995, 74th Leg., ch. 1020, Sec. 1, eff. Aug. 28, 1995.

Sec. 51.007. TRUSTEE UNDER DEED OF TRUST, CONTRACT LIEN OR SECURITY INSTRUMENT. (a) The trustee named in a suit or proceeding may plead in the answer that the trustee is not a necessary party by

a verified denial stating the basis for the trustee's reasonable belief that the trustee was named as a party solely in the capacity as a trustee under a deed of trust, contract lien, or security instrument.

(b) Within 30 days after the filing of the trustee's verified denial, a verified response is due from all parties to the suit or proceeding setting forth all matters, whether in law or fact, that rebut the trustee's verified denial.

(c) If a party has no objection or fails to file a timely verified response to the trustee's verified denial, the trustee shall be dismissed from the suit or proceeding without prejudice.

(d) If a respondent files a timely verified response to the trustee's verified denial, the matter shall be set for hearing. The court shall dismiss the trustee from the suit or proceeding without prejudice if the court determines that the trustee is not a necessary party.

(e) A dismissal of the trustee pursuant to Subsections (c) and (d) shall not prejudice a party's right to seek injunctive relief to prevent the trustee from proceeding with a foreclosure sale.

(f) A trustee shall not be liable for any good faith error resulting from reliance on any information in law or fact provided by the mortgagor or mortgagee or their respective attorney, agent, or representative or other third party.

Added by Acts 1999, 76th Leg., ch. 1304, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.0074. DUTIES OF TRUSTEE. (a) One or more persons may be authorized to exercise the power of sale under a security instrument.

(b) A trustee may not be:

(1) assigned a duty under a security instrument other than to exercise the power of sale in accordance with the terms of the security instrument; or

(2) held to the obligations of a fiduciary of the mortgagor or mortgagee.

Added by Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 3, eff. June 15, 2007.

Sec. 51.0075. AUTHORITY OF TRUSTEE OR SUBSTITUTE TRUSTEE. (a) A trustee or substitute trustee may set reasonable conditions for conducting the public sale if the conditions are announced before bidding is opened for the first sale of the day held by the trustee or substitute trustee.

(b) A trustee or substitute trustee is not a debt collector.

(c) Notwithstanding any agreement to the contrary, a mortgagee may appoint or may authorize a mortgage servicer to appoint a substitute trustee or substitute trustees to succeed to all title, powers, and duties of the original trustee. A mortgagee or mortgage servicer may make an appointment or authorization under this subsection by power of attorney, corporate resolution, or other written instrument.

(d) A mortgage servicer may authorize an attorney to appoint a substitute trustee or substitute trustees on behalf of a mortgagee under Subsection (c).

(e) The name and a street address for a trustee or substitute trustees shall be disclosed on the notice required by Section 51.002(b).

(f) The purchase price in a sale held by a trustee or substitute trustee under this section is due and payable without delay on acceptance of the bid or within such reasonable time as may be agreed upon by the purchaser and the trustee or substitute trustee if the purchaser makes such request for additional time to deliver the purchase price. The trustee or substitute trustee shall disburse the proceeds of the sale as provided by law.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 1231 (H.B. 1234), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 903 (H.B. 2738), Sec. 4, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 323 (H.B. 655), Sec. 1, eff. September 1, 2009.

Sec. 51.0076. EFFECTIVE DATE OF APPOINTMENT. The appointment or authorization of a trustee or substitute trustee made in a notice of sale is effective as of the date of the notice if the notice:

(1) complies with Sections 51.002 and 51.0075(e);

(2) is signed by an attorney or agent of the mortgagee or mortgage servicer; and

(3) contains a statement in all capital letters, boldface type, to read as follows:

THIS INSTRUMENT APPOINTS THE SUBSTITUTE TRUSTEE(S) IDENTIFIED TO SELL THE PROPERTY DESCRIBED IN THE SECURITY INSTRUMENT IDENTIFIED IN THIS NOTICE OF SALE THE PERSON SIGNING THIS NOTICE IS THE ATTORNEY OR AUTHORIZED AGENT OF THE MORTGAGEE OR MORTGAGE SERVICER.

Added by Acts 2015, 84th Leg., R.S., Ch. 653 (H.B. 2063), Sec. 2, eff. September 1, 2015.

Sec. 51.008. CERTAIN LIENS ON REAL PROPERTY. (a) A lien on real property created under this code or another law of this state in favor of a governmental entity must be recorded as provided by Chapters 11 and 12 in the real property records of the county in which the property or a portion of the property is located unless:

(1) the lien is imposed as a result of failure to pay:

(A) ad valorem taxes; or

(B) a penalty or interest owed in connection with those taxes; or

(2) the law establishing the lien expressly states that recording the lien is not required.

(b) Any notice of the lien required by law must contain a legal description of the property.

(c) This section does not apply to:

(1) a lien created under Section 89.083, Natural Resources Code;

(2) a state tax lien under Chapter 113, Tax Code; or

(3) a lien established under Chapter 61 or 213, Labor Code.

Added by Acts 2001, 77th Leg., ch. 827, Sec. 1, eff. Sept. 1, 2001.

Sec. 51.009. FORECLOSED PROPERTY SOLD "AS IS". A purchaser at a sale of real property under Section 51.002:

(1) acquires the foreclosed property "as is" without any expressed or implied warranties, except as to warranties of title,

and at the purchaser's own risk; and

(2) is not a consumer.

Added by Acts 2003, 78th Leg., ch. 554, Sec. 1, eff. Jan. 1, 2004.

Sec. 51.015. SALE OF CERTAIN PROPERTY OWNED BY MEMBER OF THE MILITARY. (a) In this section:

(1) "Active duty military service" means:

(A) service as a member of the armed forces of the United States; and

(B) with respect to a member of the Texas National Guard or the National Guard of another state or a member of a reserve component of the armed forces of the United States, active duty under an order of the president of the United States.

(1-a) "Assessment" and "assessments" have the meanings assigned by Sections 82.113(a) and 209.002, as applicable.

(2) "Dwelling" means a residential structure or manufactured home that contains one to four family housing units.

(3) "Military servicemember" means:

(A) a member of the armed forces of the United States;

(B) a member of the Texas National Guard or the National Guard of another state serving on active duty under an order of the president of the United States; or

(C) a member of a reserve component of the armed forces of the United States who is on active duty under an order of the president of the United States.

(4) "Person" has the meaning assigned by Section 311.005, Government Code.

(b) This section applies only to an obligation:

(1) that is secured by a mortgage, deed of trust, or other contract lien, including a lien securing payment of an assessment or assessments, as applicable, on real property or personal property that is a dwelling owned by a military servicemember;

(2) that originates before the date on which the servicemember's active duty military service commences; and

(3) for which the servicemember is still obligated.

(c) In an action filed during a military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes to foreclose a lien or

otherwise enforce an obligation described by Subsection (b), the court may after a hearing and on the court's own motion, and shall on the application by a servicemember whose ability to comply with the obligations of the contract secured by the lien is materially affected by the servicemember's military service:

(1) stay the proceedings for a period of time as justice and equity require; or

(2) adjust the obligations of the contract secured by the lien to preserve the interests of all parties.

(d) A sale, foreclosure, or seizure of property under a mortgage, deed of trust, or other contract lien described by Subsection (b) may not be conducted during the military servicemember's period of active duty military service or during the nine months after the date on which that service period concludes unless the sale, foreclosure, or seizure is conducted under:

(1) a court order issued before the sale, foreclosure, or seizure; or

(2) an agreement that complies with Subsection (e).

(e) A military servicemember may waive the servicemember's rights under this section only as provided by this subsection. The waiver must be:

(1) in writing in at least 12-point type;

(2) executed as an instrument separate from the obligation to which the waiver applies; and

(3) made under a written agreement:

(A) executed during or after the servicemember's period of active duty military service; and

(B) specifying the legal instrument to which the waiver applies and, if the servicemember is not a party to the instrument, the servicemember concerned.

(f) A person commits an offense if the person knowingly makes or causes to be made a sale, foreclosure, or seizure of property that is prohibited by Subsection (d). An offense under this subsection is a Class A misdemeanor.

(g) On application to a court, a dependent of a military servicemember is entitled to the protections of this section if the dependent's ability to comply with an obligation that is secured by a mortgage, deed of trust, or other contract lien on real property or personal property that is a dwelling is materially affected by the servicemember's military service.

(h) A court that issues a stay or takes any other action under this section regarding the enforcement of an obligation that is subject to this section may grant a similar stay or take similar action with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation.

(i) If a judgment or decree is vacated or set aside wholly or partly under this section, the court may also set aside or vacate, as applicable, the judgment or decree with respect to a surety, guarantor, endorser, accommodation maker, comaker, or other person who is or may be primarily or secondarily subject to the obligation that is subject to the judgment or decree.

(j) This section does not prevent a waiver in writing by a surety, guarantor, endorser, accommodation maker, comaker, or other person, whether primarily or secondarily liable on an obligation, of the protections provided under Subsections (h) and (i). A waiver described by this subsection is effective only if it is executed as an instrument separate from the obligation with respect to which it applies. If a waiver under this subsection is executed by an individual who after the execution of the waiver enters active duty military service, or by a dependent of an individual who after the execution of the waiver enters active duty military service, the waiver is not valid after the beginning of the period of the active duty military service unless the waiver was executed by the individual or dependent during the applicable period described by 50 U.S.C. App. Section 516, as that section existed on January 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 992 (H.B. 3857), Sec. 1, eff. June 19, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 592 (S.B. 101), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 592 (S.B. 101), Sec. 3, eff. September 1, 2011.

Sec. 51.016. RESCISSION OF NONJUDICIAL FORECLOSURE SALES. (a) This section applies only to a nonjudicial foreclosure sale of residential real property conducted under Section 51.002. In this subsection, "residential real property" means:

(1) a single family home, duplex, triplex, or quadraplex; or

(2) a unit in a multiunit residential structure in which title to an individual unit is transferred to the owner of the unit under a condominium or cooperative system.

(b) Not later than the 15th calendar day after the date of a foreclosure sale, a mortgagee, trustee, or substitute trustee may rescind the sale under this section if:

(1) the statutory requirements for the sale were not satisfied;

(2) the default leading to the sale was cured before the sale;

(3) a receivership or dependent probate administration involving the property was pending at the time of sale;

(4) a condition specified in the conditions of sale prescribed by the trustee or substitute trustee before the sale and made available in writing to prospective bidders at the sale was not met;

(5) the mortgagee or mortgage servicer and the debtor agreed before the sale to cancel the sale based on an enforceable written agreement by the debtor to cure the default; or

(6) at the time of the sale, a court-ordered or automatic stay of the sale imposed in a bankruptcy case filed by a person with an interest in the property was in effect.

(c) On or before the 15th calendar day after the date of the sale, the party rescinding the sale shall:

(1) serve a written notice of rescission that describes the reason for the rescission and includes recording information for any affected trustee's or substitute trustee's deed that was recorded on:

(A) the purchaser, if the mortgagee is not the purchaser; and

(B) each debtor who, according to the records of the mortgage servicer of the debt, is obligated to pay the debt; and

(2) file each notice for recording in the real property records of the county in which all or a part of the property is located.

(d) A notice required by Subsection (c) must be served by certified mail. Service of the notice is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the purchaser or debtor, as applicable, at the purchaser's or

debtor's last known address, as applicable. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(e) Not later than the fifth calendar day after the date a foreclosure sale is rescinded under this section, the mortgagee shall return to the purchaser by certified mail, electronic or wire transfer, or courier service with delivery tracking the amount of the bid paid by the purchaser for the property at the sale. The debtor shall return to the trustee the amount of any excess proceeds received by the debtor from the sale. The return of the bid amount is considered made on the date:

(1) the bid amount is deposited postage prepaid in the United States mail or with the courier service addressed to the purchaser at the purchaser's last known address; or

(2) the electronic or wire transfer is ordered.

(f) The rescinding mortgagee, trustee, or substitute trustee shall cause to be filed for recording in the real property records of the county where the notice required under Subsection (c) was recorded an affidavit stating the date the bid amount was returned together with the certified mail, electronic or wire transfer, or courier service delivery tracking information.

(g) An affidavit executed and filed in accordance with Subsection (f) is prima facie evidence of the return of the bid amount and of the authority of the maker of the affidavit. A bona fide purchaser, lender, or other person acquiring an interest in the property or an insurer of title is entitled to rely conclusively on the record of the filed affidavit and notice, and any subsequent purchaser in good faith and for value is entitled to bona fide purchaser protection.

(h) The rescission of a foreclosure sale under this section restores the mortgagee and the debtor to their respective title, rights, and obligations under any instrument relating to the foreclosed property that existed immediately prior to the sale.

(i) A rescission of a foreclosure sale under this section is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless notice of the rescission has been acknowledged, sworn to, or proved and filed for recording as required by law. A rescission of a foreclosure sale under this section evidenced by an unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who

does not pay a valuable consideration or who has notice of the instrument.

(j) No action challenging the effectiveness of a rescission under this section may be commenced unless the action is filed on or before the 30th calendar day after the date the notices of rescission required by Subsection (c) are filed for recording. A lis pendens notice based on the rescission not recorded within that period has no effect. This subsection does not affect the limitations period for an action claiming damages resulting from the rescission.

(k) If the foreclosure sale is rescinded under this section for a reason listed in Subsection (b), other than a stay described by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser, plus interest on that amount at the rate of 10 percent per year. Notwithstanding any other law, the court may not order specific performance of the sale as a remedy for the purchaser. Interest awarded under this subsection ceases to accrue on the fourth day after the date the mortgagee deposits the amount of the damages awarded in the United States mail or with a courier for delivery to the purchaser.

(l) If a foreclosure sale is rescinded under this section for a reason provided by Subsection (b)(6), the court in a civil action filed by the purchaser challenging the effectiveness of the rescission or claiming damages resulting from the rescission may only award as damages to the purchaser the amount of the bid paid for the property by the purchaser at the sale that has not been refunded to the purchaser.

(m) Nothing in this section prohibits the rescission of a sale by agreement of the affected parties on other terms or a suit to rescind a sale not rescinded under this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 551 (H.B. 2066), Sec. 1, eff. September 1, 2015.

CHAPTER 52. JUDGMENT LIEN
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. ESTABLISHMENT OF LIEN. Except as provided by Section 52.0011 or 52.0012, a first or subsequent abstract of judgment, when it is recorded and indexed in accordance with this chapter, if the judgment is not then dormant, constitutes a lien on and attaches to any real property of the defendant, other than real property exempt from seizure or forced sale under Chapter 41, the Texas Constitution, or any other law, that is located in the county in which the abstract is recorded and indexed, including real property acquired after such recording and indexing.

Acts 1983, 68th Leg., p. 3526, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1178, Sec. 2, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 6, eff. Sept. 1, 1993. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 374 (S.B. 512), Sec. 1, eff. September 1, 2007.

Sec. 52.0011. ESTABLISHMENT OF LIEN PENDING APPEAL OF JUDGMENT. (a) A first or subsequent abstract of a judgment rendered by a court against a defendant, when it is recorded and indexed under this chapter, does not constitute a lien on the real property of the defendant if:

(1) the defendant has posted security as provided by law or is excused by law from posting security; and

(2) the court finds that the creation of the lien would not substantially increase the degree to which a judgment creditor's recovery under the judgment would be secured when balanced against the costs to the defendant after the exhaustion of all appellate remedies. A certified copy of the finding of the court must be recorded in the real property records in each county in which the abstract of judgment or a certified copy of the judgment is filed in the abstract of judgment records.

(b) The court may withdraw its finding under Subsection (a)(2) at any time the court determines, from evidence presented to it, that the finding should be withdrawn. The lien exists on withdrawal of the finding and on the filing of a certified copy of the withdrawal of the finding of the court in the real property records in each county in which the abstract of judgment or a certified copy of the judgment is filed in the abstract of judgment records.

Added by Acts 1989, 71st Leg., ch. 1178, Sec. 3, eff. Sept. 1, 1989.

Sec. 52.0012. RELEASE OF RECORD OF LIEN ON HOMESTEAD PROPERTY. (a) In this section:

(1) "Homestead" has the meaning assigned by Section 41.002.

(2) "Judgment debtor" and "judgment creditor" have the meanings assigned by Section 31.008(h), Civil Practice and Remedies Code.

(b) A judgment debtor may file in the real property records of the county in which the judgment debtor's homestead is located:

(1) an affidavit that substantially complies with Subsection (f); and

(2) a certificate of mailing that substantially complies with Subsection (g).

(b-1) A judgment debtor who files an affidavit under Subsection (b) shall send a letter notifying the judgment creditor of the filing of the affidavit and a copy of the filed affidavit by registered or certified mail, return receipt requested, to:

(1) the judgment creditor's last known address;

(2) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(3) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

(4) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

(c) Subject to Subsection (d) and except as provided by Subsection (e), an affidavit filed under Subsection (b) serves as a release of record of a judgment lien established under this chapter.

(d) If a judgment debtor has filed a certificate of mailing under Subsection (b) and a contradicting affidavit is not filed under Subsection (e), a bona fide purchaser or a mortgagee for value or a successor or assign of a bona fide purchaser or mortgagee for value may rely conclusively on an affidavit filed under Subsection (b) for the 90-day period that begins on the 31st day after the date the certificate of mailing was filed.

(e) An affidavit filed under Subsection (b) does not serve as release of record of a judgment lien established under this chapter with respect to a purchaser or mortgagee of real property that acquires the purchaser's or mortgagee's interest from the judgment debtor if, not later than the 30th day after the date a certificate of mailing was filed under Subsection (b), the judgment creditor files a contradicting affidavit in the real property records of the county in which the real property is located asserting that:

(1) the affidavit or certificate of mailing filed by the judgment debtor under Subsection (b) is untrue; or

(2) another reason exists as to why the judgment lien attaches to the judgment debtor's property.

(f) An affidavit filed under Subsection (b) must be in substantially the following form:

HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

Before me, the undersigned authority, on this day personally appeared _____ ("Affiant(s)") (insert name of one or more affiants) who, being first duly sworn, upon oath states:

(1) My/our name is/are _____ (insert name of Affiant(s)). I/we own the following described land ("Land"):

(describe the property claimed as homestead)

(2) This affidavit is made for the purpose of effecting a release of that judgment lien recorded in _____ (refer to recording information of judgment lien) ("Judgment Lien") as to the Land.

(3) The Land includes as its purpose use for a home for Affiant(s) and is the homestead of Affiant(s), as homestead is defined in Section 41.002, Property Code. The Land does not exceed:

(A) 10 acres of land, if used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business; or

(B) 200 acres for a family or 100 acres for a single, adult person not otherwise entitled to a homestead, if used for the purposes of a rural home.

(4) This affidavit serves as a release of the Judgment Lien as to the Land in accordance with Section 52.0012, Property Code.

Signed on this _____ day of _____, _____.

_____

_____

(Signature of Affiant(s))
State of _____
County of _____
SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20___.
My commission expires:
_____

_____
Notary Public, State of Texas
Notary's printed name:
_____

(g) A certificate of mailing filed under Subsection (b) must be in substantially the following form:

CERTIFICATE OF MAILING OF HOMESTEAD AFFIDAVIT AS RELEASE OF JUDGMENT LIEN

Before me, the undersigned authority, on this day personally appeared _____ ("Affiant(s)") (insert name(s) of Affiant(s)) who, being first duly sworn, upon oath state(s):

(1) My name is/Our names are _____ (insert name(s) of Affiant(s)).

(2) On the ____ day of _____, 20__, Affiant(s) caused a Homestead Affidavit as Release of Judgment Lien to be recorded in _____ (refer to affidavit recording information) ("Affidavit").

(3) On the ____ day of _____, 20__, Affiant(s) sent a letter and a copy of the Affidavit, notifying the judgment creditor of the Affiant's homestead claim and the filing of the Affidavit, by registered or certified mail, return receipt requested, to:

(A) the judgment creditor's last known address;

(B) the address appearing in the judgment creditor's pleadings in the action in which the judgment was rendered or another court record, if that address is different from the judgment creditor's last known address;

(C) the address of the judgment creditor's last known attorney as shown in those pleadings or another court record; and

(D) the address of the judgment creditor's last known attorney as shown in the records of the State Bar of Texas, if that address is different from the address of the attorney as shown in those pleadings or another court record.

(4) Attached to this certificate are:

(A) a true and correct copy of the letter described by

Subdivision (3) of this certificate; and

(B) proof of mailing of the letter described by Subdivision (3) of this certificate.

Signed on the _____ day of _____, 20 _____.

_____

_____

(Signature of Affiant(s))

State of _____

County of _____

SWORN TO AND SUBSCRIBED before me on the _____ day of _____, 20___.

My commission expires:

_____

_____

Notary Public, State of Texas

Notary's printed name:

_____

Added by Acts 2007, 80th Leg., R.S., Ch. 374 (S.B. 512), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 893 (H.B. 3115), Sec. 1, eff. September 1, 2021.

Sec. 52.002. ISSUANCE OF ABSTRACT. (a) On application of a person in whose favor a judgment is rendered or on application of that person's agent, attorney, or assignee, the judge or justice of the peace who rendered the judgment or the clerk of the court in which the judgment is rendered shall prepare, certify, and deliver to the applicant an abstract of the judgment. The applicant for the abstract must pay the fee authorized by law for providing the abstract.

(b) The attorney of a person in whose favor a judgment is rendered in a small claims court or a justice court or a person in whose favor a judgment is rendered in a court other than a small claims court or a justice court or that person's agent, attorney, or assignee may prepare the abstract of judgment. An abstract of judgment prepared under this subsection must be verified by the person preparing the abstract.

Acts 1983, 68th Leg., p. 3527, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 663, Sec. 2, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 176, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 668, Sec. 2, eff. Sept. 1, 2001.

Sec. 52.003. CONTENTS OF ABSTRACT. (a) An abstract of a judgment must show:

(1) the names of the plaintiff and defendant;

(2) the birthdate of the defendant, if available to the clerk or justice;

(3) the last three numbers of the driver's license of the defendant, if available;

(4) the last three numbers of the social security number of the defendant, if available;

(5) the number of the suit in which the judgment was rendered;

(6) the defendant's address, or if the address is not shown in the suit, the nature of citation and the date and place of service of citation;

(7) the date on which the judgment was rendered;

(8) the amount for which the judgment was rendered and the balance due;

(9) the amount of the balance due, if any, for child support arrearage; and

(10) the rate of interest specified in the judgment.

(b) An abstract of a judgment may show a mailing address for each plaintiff or judgment creditor.

Acts 1983, 68th Leg., p. 3527, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 15, Sec. 4.08, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 134, Sec. 2, eff. May 12, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 143 (S.B. 699), Sec. 2, eff. September 1, 2007.

Sec. 52.004. RECORDING AND INDEXING OF ABSTRACT. (a) The county clerk shall immediately record in the county real property

records each properly authenticated abstract of judgment that is presented for recording. The clerk shall note in the records the date and hour an abstract of judgment is received.

(b) At the same time an abstract is recorded, the county clerk shall enter the abstract on the alphabetical index to the real property records, showing:

(1) the name of each plaintiff in the judgment;

(2) the name of each defendant in the judgment; and

(3) the volume and page or instrument number in the records in which the abstract is recorded.

Acts 1983, 68th Leg., p. 3527, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2001, 77th Leg., ch. 668, Sec. 2, eff. Sept. 1, 2001.

Sec. 52.0041. ADDRESS REQUIREMENT FOR RECORDING ABSTRACT. (a) A judgment abstracted after September 1, 1993, may not be recorded unless:

(1) a mailing address for each plaintiff or judgment creditor appears on the abstract of judgment; or

(2) a penalty filing fee equal to the greater of $25 or twice the statutory recording fee for the abstract is paid.

(b) The validity of an abstracted judgment as between the parties is not affected by a failure to include an address for each plaintiff or judgment creditor in the abstracted judgment.

(c) Payment of a filing fee and acceptance of the abstract of judgment by a county clerk for recording creates a conclusive presumption that the requirements of this section have been met.

Added by Acts 1993, 73rd Leg., ch. 134, Sec. 1, eff. May 12, 1993.

Sec. 52.005. SATISFACTION OF JUDGMENT. Satisfaction of a judgment in whole or in part may be shown by recordation of:

(1) a return on an execution issued on the judgment, or a copy of the return, certified by the officer making the return and showing:

(A) the names of the parties to the judgment;

(B) the number and style of the suit;

(C) the court in which the judgment was rendered;

(D) the date and amount of the judgment; and

(E) the dates of issuance and return of the execution; or

(2) a receipt, acknowledgement, or release that is signed by the party entitled to receive payment of the judgment or by that person's agent or attorney of record and that is acknowledged or proven for record in the manner required for deeds.

Acts 1983, 68th Leg., p. 3528, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2001, 77th Leg., ch. 668, Sec. 2, eff. Sept. 1, 2001.

Sec. 52.006. DURATION OF LIEN. (a) Except as provided by Subsection (b), a judgment lien continues for 10 years following the date of recording and indexing the abstract, except that if the judgment becomes dormant during that period the lien ceases to exist.

(b) Notwithstanding Section 34.001, Civil Practice and Remedies Code, a judgment in favor of the state or a state agency, as that term is defined by Section 403.055, Government Code, does not become dormant. A properly filed abstract of the judgment continues to constitute a lien under Section 52.001 until the earlier of the 20th anniversary of the date the abstract is recorded and indexed or the date the judgment is satisfied or the lien is released. The judgment lien may be renewed for one additional 20-year period by filing, before the expiration of the initial 20-year period, a renewed abstract of judgment in the same manner as the original abstract of judgment is filed. The renewed judgment lien relates back to the date the original abstract of judgment was filed.

Acts 1983, 68th Leg., p. 3528, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 11 (S.B. 300), Sec. 1, eff. April 23, 2007.

Sec. 52.007. FEDERAL COURT JUDGMENT. An abstract of a judgment rendered in this state by a federal court may be recorded and indexed under this chapter on the certificate of the clerk of the court.

Acts 1983, 68th Leg., p. 3528, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. CANCELLATION OF JUDGMENTS AND JUDGMENT LIENS AGAINST BANKRUPTS--ABSTRACT RECORDED BEFORE SEPTEMBER 1, 1993

Sec. 52.021. DISCHARGE AND CANCELLATION. (a) In accordance with this subchapter, a judgment and judgment lien may be discharged and canceled if the person against whom the judgment was rendered is discharged from his debts under federal bankruptcy law.

(b) This subchapter applies to judgments against persons whose debts are discharged in bankruptcy and for which the abstracts of judgment are recorded before September 1, 1993, as provided by Subchapter A, regardless of the fact that the discharge in bankruptcy occurred before this law took effect.

Acts 1983, 68th Leg., p. 3529, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1993, 73rd Leg., ch. 313, Sec. 2, eff. Sept. 1, 1993.

Sec. 52.022. APPLICATION FOR COURT ORDER. (a) The person who has been discharged from his debts, that person's receiver or trustee, or any other interested person may apply, on proof of the discharge, to the court in which the judgment was rendered for an order discharging and canceling the judgment and judgment lien.

(b) A person may not apply for the order before a year has elapsed since the bankruptcy discharge.

Acts 1983, 68th Leg., p. 3529, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 52.023. NOTICE OF APPLICATION. (a) Notice of the application for the order and copies of the papers on which application is made must be served on the judgment creditor or his attorney of record in the action in which the judgment was rendered.

(b) If the residence or place of business of the judgment creditor or his attorney is known, notice must be served in the manner prescribed for service of notice in an action.

(c) As an alternative to service under Subsection (b), the court may order that notice of the application be published in a newspaper designated in the order once a week for not more than three consecutive weeks if the applicant proves by affidavit that:

(1) the address of neither the judgment creditor nor his attorney is known and the address of neither can be ascertained by due diligence; or

(2) the judgment creditor is not a resident of this state and his attorney is dead, removed from the state, or unknown.

Acts 1983, 68th Leg., p. 3529, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 52.024. COURT ORDER. (a) The court shall conduct a hearing on the application and shall enter an order of discharge and cancellation of the judgment and any abstracts of the judgment if the debtor or bankrupt has been discharged in bankruptcy from the payment of the obligation or debt represented by the judgment.

(b) In each county in which the court's order is recorded in the judgment lien records, the order constitutes a release, discharge, and cancellation of the judgment and of any unsatisfied judgment lien represented by an abstract that is of record in the county on the date of the order or is recorded in the county on or after the date of the order.

Acts 1983, 68th Leg., p. 3530, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 52.025. EFFECT ON LIEN OF DISCHARGE OF DEBT IN BANKRUPTCY. (a) A judgment lien is not affected by the order of discharge and cancellation and may be enforced, if the lien is against real property owned by the bankrupt or debtor before the debtor was adjudged bankrupt or a petition for debtor relief was filed under federal bankruptcy law, and:

(1) the debt or obligation evidenced by the judgment is not discharged in bankruptcy; or

(2) the property is nonexempt and is abandoned during the course of the proceeding.

(b) Except as provided by Subsection (a), the judgment is of no force or validity and may not be a lien on real property acquired by the bankrupt or debtor after the discharge in bankruptcy.

Acts 1983, 68th Leg., p. 3530, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. CANCELLATION OF JUDGMENTS AND JUDGMENT LIENS AGAINST DEBTORS--ABSTRACT RECORDED ON OR AFTER SEPTEMBER 1, 1993

Sec. 52.041. APPLICATION OF SUBCHAPTER. This subchapter

applies to a judgment and judgment lien for which an abstract of judgment or judgment lien is recorded on or after September 1, 1993.

Added by Acts 1993, 73rd Leg., ch. 313, Sec. 3, eff. Sept. 1, 1993.

Sec. 52.042. DISCHARGE AND CANCELLATION. (a) A judgment is discharged and any abstract of judgment or judgment lien is canceled and released without further action in any court and may not be enforced if:

(1) the lien is against real property owned by the debtor before a petition for debtor relief was filed under federal bankruptcy law; and

(2) the debt or obligation evidenced by the judgment is discharged in the bankruptcy.

(b) A judgment evidencing a debt or obligation discharged in bankruptcy does not have force or validity and may not be a lien on real property acquired by the debtor after the petition for debtor relief was filed.

Added by Acts 1993, 73rd Leg., ch. 313, Sec. 3, eff. Sept. 1, 1993.

Sec. 52.043. EXCEPTIONS TO DISCHARGE AND CANCELLATION. A judgment lien is not affected by this subchapter and may be enforced if the lien is against real property owned by the debtor before a petition for debtor relief was filed under federal bankruptcy law and:

(1) the debt or obligation evidenced by the judgment is not discharged in bankruptcy; or

(2) the property is not exempted in the bankruptcy and is abandoned during the bankruptcy.

Added by Acts 1993, 73rd Leg., ch. 313, Sec. 3, eff. Sept. 1, 1993.

CHAPTER 53. MECHANIC'S, CONTRACTOR'S, OR MATERIALMAN'S LIEN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Contract price" means the cost to the owner for any part of construction or repair performed under an original contract.

(2) "Improvement" includes:

(A) a house, building, structure, parking structure, physical appurtenance, pool, utility, railroad, well, storage facility, abutting sidewalks and streets, utilities in or on those sidewalks and streets, land reclaimed from overflow, and other fixtures or modifications to real property;

(B) clearing, grubbing, draining, or fencing of land;

(C) machinery or apparatuses used for raising water or for supplying or storing water for stock, domestic use, or irrigation;

(D) work described by Section 53.021(4); and

(E) a design, drawing, plan, plat, survey, or specification provided by a licensed architect, engineer, or surveyor.

(3) "Labor" means:

(A) labor used in the direct performance of the work; or

(B) a professional service used in the direct preparation for the work of a design, drawing, plan, plat, survey, or specification.

(4) "Material" means all or part of:

(A) the material, machinery, fixtures, or tools:

(i) incorporated into the work;

(ii) used in the direct performance of the work;

(iii) specially fabricated for an improvement; or

(iv) ordered and delivered for incorporation or use;

(B) rent at a reasonable rate and actual running repairs at a reasonable cost for construction equipment used or reasonably required and delivered for use in the direct performance of the work at the site of the construction or repair; or

(C) power, water, fuel, and lubricants consumed or ordered and delivered for consumption in the direct performance of the work.

(5) "Mechanic's lien" means the lien provided by this chapter.

(6) "Original contract" means an agreement to which an owner is a party either directly or by implication of law.

(7) "Original contractor" means a person contracting with an owner either directly or through the owner's agent.

(7-a) "Purported original contractor" means an original contractor who can effectively control the owner or is effectively controlled by the owner through common ownership of voting stock or ownership interests, interlocking directorships, common management, or otherwise, or who was engaged by the owner for the construction or repair of improvements without a good faith intention of the parties that the purported original contractor was to perform under the contract. For purposes of this subdivision, the term "owner" does not include a person who has or claims a security interest only.

(8) "Residence" means the real property and improvements for a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit structure used for residential purposes in which title to the individual units is transferred to the owners under a condominium or cooperative system that is:

(A) owned by one or more adult persons; and

(B) used or intended to be used as a dwelling by one of the owners.

(9) "Residential construction contract" means a contract between an owner and a contractor in which the contractor agrees to construct or repair the owner's residence, including improvements appurtenant to the residence.

(10) "Residential construction project" means a project for the construction or repair of a new or existing residence, including improvements appurtenant to the residence, as provided by a residential construction contract.

(11) "Retainage" means an amount representing part of a contract payment that is not required to be paid to the claimant within the month following the month in which labor is performed, material is furnished, or specially fabricated material is delivered.

(12) "Specially fabricated material" means material fabricated for use as a component of the construction or repair so as to be reasonably unsuitable for use elsewhere.

(13) "Subcontractor" means a person who labors or has furnished labor or materials to fulfill an obligation to an original contractor or to a subcontractor of any tier to perform all or part of the work required by an original contract.

(14) "Work" means any part of construction or repair of an improvement performed under an original contract.

(15) "Completion" of an original contract means the actual completion of the work, including any extras or change orders

reasonably required or contemplated under the original contract, other than warranty work or replacement or repair of the work performed under the contract.

Acts 1983, 68th Leg., p. 3533, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1997, 75th Leg., ch. 526, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 2, eff. January 1, 2022.

Sec. 53.002. MORE THAN ONE ORIGINAL CONTRACTOR. On any work there may be more than one original contractor for purposes of this chapter.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.003. NOTICES. (a) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(1), eff. January 1, 2022.

(b) Except as provided by Subsection (c) or (d), any notice or other written communication required by this chapter must be delivered:

(1) in person to the party entitled to the notice or to that party's agent;

(2) by certified mail; or

(3) by any other form of traceable, private delivery or mailing service that can confirm proof of receipt.

(c) If notice is sent by certified mail, deposit or mailing of the notice in the United States mail in the form required constitutes compliance with the notice requirement. This subsection does not apply if the law requires receipt of the notice by the person to whom it is directed.

(d) If a written notice is received by the person entitled to receive it, the method by which the notice was delivered is immaterial.

(e) In computing the period of days in which to provide a notice or to take any action required under this chapter, if the last day of the period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday,

or legal holiday.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1997, 75th Leg., ch. 526, Sec. 3, eff. Sept. 1, 1997.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 3, eff. January 1, 2022.
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(1), eff. January 1, 2022.

SUBCHAPTER B. PERSONS ENTITLED TO LIEN; SUBJECT PROPERTY

Sec. 53.021. PERSONS ENTITLED TO LIEN. A person has a lien if the person, under a contract with the owner or the owner's agent, trustee, receiver, contractor, or subcontractor:

(1) labors or furnishes labor or materials for construction or repair of an improvement;

(2) specially fabricates material, even if the material is not delivered;

(3) is a licensed architect, engineer, or surveyor providing services to prepare a design, drawing, plan, plat, survey, or specification;

(4) provides labor, plant material, or other supplies for the installation of landscaping for an improvement, including the construction of a retention pond, retaining wall, berm, irrigation system, fountain, or other similar installation; or

(5) performs labor as part of, or furnishes labor or materials for, the demolition of an improvement on real property.

Acts 1983, 68th Leg., p. 3535, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 395, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 1138, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 16.01, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 851, Sec. 1, 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 896, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 410, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 1, eff. January 1, 2012.
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 4, eff. January 1, 2022.

Sec. 53.022. PROPERTY TO WHICH LIEN EXTENDS. (a) The lien extends to the improvements and to each lot of land necessarily connected.

(b) The lien does not extend to abutting sidewalks, streets, and utilities that are public property.

(c) A lien against land in a city, town, or village extends to each lot on which the improvement is situated or on which the labor was performed.

(d) A lien against land not in a city, town, or village extends to not more than 50 acres on which the improvement is situated or on which the labor was performed.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 5, eff. January 1, 2022.

Sec. 53.023. PAYMENT SECURED BY LIEN. The lien secures payment for:

(1) the labor done or material furnished for the construction, repair, design, survey, or demolition; or

(2) the specially fabricated material, even if the material has not been delivered or incorporated into the construction or repair, less its fair salvage value.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1995, 74th Leg., ch. 851, Sec. 2, eff. Sept. 1, 1995.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 6, eff. January 1, 2022.

Sec. 53.024. LIMITATION ON SUBCONTRACTOR'S LIEN. The amount of a lien claimed by a subcontractor may not exceed:

(1) an amount equal to the proportion of the total subcontract price that the sum of the labor performed, materials furnished, materials specially fabricated, reasonable overhead costs incurred, and proportionate profit margin bears to the total

subcontract price; minus

(2) the sum of previous payments received by the claimant on the subcontract.

Acts 1983, 68th Leg., p. 3536, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.025. LIMITATION ON ORDINARY RETAINAGE LIEN. A lien for retainage is valid only for the amount specified to be retained in the contract, including any amendments to the contract, between the claimant and the original contractor or between the claimant and a subcontractor.

Acts 1983, 68th Leg., p. 3537, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 2, eff. Sept. 1, 1989.

Sec. 53.026. SHAM CONTRACT. (a) A person who labors or furnishes labor or materials under a direct contractual relationship with a purported original contractor is considered to be an original contractor for purposes of perfecting a mechanic's lien.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(2), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3537, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 3, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 4, eff. Sept. 1, 1997. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 7, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(2), eff. January 1, 2022.

SUBCHAPTER C. PROCEDURE FOR PERFECTING LIEN

Sec. 53.051. NECESSARY PROCEDURES. To perfect the lien, a person must comply with this subchapter.

Acts 1983, 68th Leg., p. 3538, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.052. FILING OF AFFIDAVIT. (a) An original contractor claiming the lien must file an affidavit with the county clerk:

(1) for projects other than residential construction projects, not later than the 15th day of the fourth month after the month in which the original contractor's work was completed, terminated, or abandoned; or

(2) for residential construction projects, not later than the 15th day of the third month after the month in which the original contractor's work was completed, terminated, or abandoned.

(b) Except as provided by Subsection (c) or (d), a claimant other than an original contractor claiming the lien must file an affidavit with the county clerk not later than the 15th day of the fourth month after the later of:

(1) the month the claimant last provided labor or materials; or

(2) the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered.

(c) A claimant other than an original contractor claiming a lien arising from a residential construction project must file an affidavit with the county clerk not later than the 15th day of the third month after the later of:

(1) the month the claimant last provided labor or materials; or

(2) the month the claimant would normally have been required to deliver the last of specially fabricated materials that have not been actually delivered.

(d) A claimant other than an original contractor claiming a lien for retainage must file an affidavit with the county clerk not later than the 15th day of the third month after the month in which the original contract under which the claimant performed was completed, terminated, or abandoned.

(e) An affidavit under this chapter must be filed in the county where the improvements are located. The county clerk shall record the affidavit in records kept for that purpose and shall index and cross-index the affidavit in the names of the claimant, the original contractor, and the owner. Failure of the county clerk to properly record or index a filed affidavit does not invalidate the lien.

Acts 1983, 68th Leg., p. 3538, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 8, eff. January 1, 2022.

Sec. 53.054. CONTENTS OF AFFIDAVIT. (a) The affidavit must be signed by the person claiming the lien or by another person on the claimant's behalf and must contain substantially:

(1) a sworn statement of the amount of the claim;

(2) the name and last known address of the owner or reputed owner;

(3) a general statement of the kind of work done and materials furnished by the claimant and, for a claimant other than an original contractor, a statement of each month in which the work was done and materials furnished for which payment is requested;

(4) the name and last known address of the person by whom the claimant was employed or to whom the claimant furnished the materials or labor;

(5) the name and last known address of the original contractor;

(6) a description, legally sufficient for identification, of the property sought to be charged with the lien;

(7) the claimant's name, mailing address, and, if different, physical address; and

(8) for a claimant other than an original contractor, a statement identifying the date each notice of the claim was sent to the owner and the method by which the notice was sent.

(b) The claimant may attach to the affidavit a copy of any applicable written agreement or contract and a copy of each notice sent to the owner.

(c) The affidavit is not required to set forth individual items of work done or material furnished or specially fabricated. The affidavit may use any abbreviations or symbols customary in the trade.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 6, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 6, eff. Sept. 1, 1997.

Sec. 53.055. NOTICE OF FILED AFFIDAVIT. (a) A person who files an affidavit must send a copy of the affidavit to the owner or reputed owner at the owner's last known business or residence address not later than the fifth day after the date the affidavit is filed with the county clerk.

(b) If the person is not an original contractor, the person must also send a copy of the affidavit to the original contractor at the original contractor's last known business or residence address within the same period.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 7, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 7, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 526, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 9, eff. January 1, 2022.

Sec. 53.056. DERIVATIVE CLAIMANT: NOTICE TO OWNER AND ORIGINAL CONTRACTOR. (a) Except as provided by Section 53.057, a claimant other than an original contractor must give the notice prescribed by Subsections (a-1) and (a-2) for the lien to be valid.

(a-1) For all unpaid labor or materials provided, the claimant must send a notice of claim for unpaid labor or materials to the owner or reputed owner and the original contractor. The notice must be sent:

(1) for projects other than residential construction projects, not later than the 15th day of the third month after the month during which:

(A) the labor or materials were provided; or

(B) the undelivered specially fabricated materials would normally have been delivered; or

(2) for residential construction projects, not later than the 15th day of the second month after the month during which:

(A) the labor or materials were provided; or

(B) the undelivered specially fabricated materials

would normally have been delivered.

(a-2) The notice must be in substantially the following form:

"NOTICE OF CLAIM FOR UNPAID LABOR OR MATERIALS

"WARNING: This notice is provided to preserve lien rights. "Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.

"Date:_____

"Project description and/or address: _____

"Claimant's name: _____

"Type of labor or materials provided: _____

"Original contractor's name: _____

"Party with whom claimant contracted if different from original contractor: _____

"Claim amount: _____

"_____ (Claimant's contact person)

"_____ (Claimant's address)"

(a-3) The notice may include an invoice or billing statement.

(a-4) A claimant may give to the original contractor a written notice of an unpaid labor or materials invoice that is past due. A notice under this subsection is not required for a lien to be valid.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

(f) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3540, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 8, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 8, eff. Sept. 1, 1997. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 10, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 11, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(4), eff. January 1, 2022.

Sec. 53.057. DERIVATIVE CLAIMANT: NOTICE OF CLAIM FOR UNPAID RETAINAGE. (a) To the extent that a claim for unpaid retainage is not included wholly or partly in a notice provided under Section 53.056, a claimant other than an original contractor whose contract provides for retainage must give notice under this section for a lien for unpaid retainage to be valid.

(a-1) The claimant must send the notice of claim for unpaid retainage to the owner or reputed owner and the original contractor not later than the earlier of:

(1) the 30th day after the date the claimant's contract is completed, terminated, or abandoned; or

(2) the 30th day after the date the original contract is terminated or abandoned.

(a-2) The notice must be in substantially the following form:

"NOTICE OF CLAIM FOR UNPAID RETAINAGE

"WARNING: This notice is provided to preserve lien rights. "Owner's property may be subject to a lien if sufficient funds are not withheld from future payments to the original contractor to cover this debt.

"Date:_____

"Project description and/or address: _____

"Claimant's name: _____

"Type of labor or materials provided: _____

"Original contractor's name: _____

"Party with whom claimant contracted if different from original contractor: _____

"Total retainage unpaid: _____

"_____ (Claimant's contact person)

"_____ (Claimant's address)"

(a-3) The notice may include an invoice or billing statement.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(b-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(c) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(e) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

(f) A claimant has a lien on, and the owner is personally liable to the claimant for, the reserved funds under Subchapter E if the claimant:

(1) gives notice in accordance with this section and:

(A) complies with Subchapter E; or

(B) files an affidavit claiming a lien not later than the date required for filing an affidavit under the applicable provision of Section 53.052; and

(2) gives the notice of the filed affidavit as required by Section 53.055.

(g) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3541, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 9, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 9, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 2, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 12, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 13, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(5), eff. January 1, 2022.

SUBCHAPTER D. FUNDS WITHHELD BY OWNER FOLLOWING NOTICE

Sec. 53.081. AUTHORITY TO WITHHOLD FUNDS FOR BENEFIT OF CLAIMANTS. (a) If an owner receives notice under Section 53.056 or 53.057, the owner may withhold from payments to the original contractor an amount necessary to pay the claim for which he receives notice. The withholding may be in addition to any reserved funds.

(b) If notice is sent under Section 53.056, the owner may withhold the funds immediately on receipt of the notice.

(c) If notice is sent under Section 53.057, the owner may withhold funds immediately on receipt of a copy of the claimant's affidavit prepared in accordance with Sections 53.052 through 53.055.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(7), eff. January 1, 2022.

Acts 1983, 68th Leg., p. 3543, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 12, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 11, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 14, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(7), eff. January 1, 2022.

Sec. 53.082. TIME FOR WHICH FUNDS ARE WITHHELD. Unless the claim is otherwise settled, discharged, indemnified against under Subchapter H or I, or determined to be invalid by a final judgment of a court, the owner shall retain the funds withheld until:

(1) the time for filing the affidavit of mechanic's lien has passed; or

(2) if a lien affidavit has been filed, the lien claim has been satisfied or released.

Acts 1983, 68th Leg., p. 3544, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 13, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 15, eff. January 1, 2022.

Sec. 53.084. OWNER'S LIABILITY. (a) Except for the amount the owner fails to reserve under Subchapter E, the owner is not liable for any amount paid to the original contractor before the owner is authorized to withhold funds under this subchapter.

(b) If the owner has received a notice required by Section 53.056 or 53.057, if the lien has been secured, and if the claim has been reduced to final judgment, the owner is liable and the owner's property is subject to a claim for any money paid to the original

contractor after the owner was authorized to withhold funds under this subchapter. The owner is liable for that amount in addition to any amount for which the owner is liable under Subchapter E.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1997, 75th Leg., ch. 526, Sec. 12, eff. Sept. 1, 1997.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 16, eff. January 1, 2022.

Sec. 53.085. AFFIDAVIT REQUIRED. (a) Any person who furnishes labor or materials for the construction of improvements on real property shall, if requested and as a condition of payment for such labor or materials, provide to the requesting party, or the party's agent, an affidavit stating that the person has paid each of the person's subcontractors, laborers, or materialmen in full for all labor and materials provided to the person for the construction. In the event, however, that the person has not paid each of the person's subcontractors, laborers, or materialmen in full, the person shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each subcontractor, laborer, or materialman to whom the payment is owed.

(b) The seller of any real property shall, upon request by the purchaser or the purchaser's agent prior to closing of the purchase of the real property, provide to the purchaser or the purchaser's agent, a written affidavit stating that the seller has paid each of the seller's contractors, laborers, or materialmen in full for all labor and materials provided to the seller through the date specified in the affidavit for any construction of improvements on the real property and that the seller is not indebted to any person, firm, or corporation by reason of any such construction through the date specified in the affidavit. In the event that the seller has not paid each of the seller's contractors, laborers, or materialmen in full for labor and material provided through the date specified in the affidavit, the seller shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each contractor, laborer, or materialman to whom the payment is owed.

(c) The affidavit may include:

(1) a waiver or release of lien rights or payment bond claims by the affiant that is conditioned on the receipt of actual payment or collection of funds when payment is made by check or draft, as provided by Subchapter L;

(2) a warranty or representation that certain bills or classes of bills will be paid by the affiant from funds paid in reliance on the affidavit; and

(3) an indemnification by the affiant for any loss or expense resulting from false or incorrect information in the affidavit.

(d) A person, including a seller, commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed $4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense.

(e) A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or incorrect information in the affidavit.

Added by Acts 1987, 70th Leg., ch. 578, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 14, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 13, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 2, eff. January 1, 2012.

SUBCHAPTER E. FUNDS RESERVED FOR BENEFIT OF LIEN CLAIMANTS

Sec. 53.101. FUNDS REQUIRED TO BE RESERVED. (a) During the progress of work under an original contract for which a mechanic's lien may be claimed and for 30 days after the work under the contract is completed, the owner shall reserve:

(1) 10 percent of the contract price of the work to the owner; or

(2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the

reasonable value of the completed work.

(b) In this section, "owner" includes the owner's agent, trustee, or receiver.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 15, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.102. PAYMENT SECURED BY RESERVED FUNDS. The reserved funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, material and labor, or specially fabricated material for any contractor, subcontractor, agent, or receiver in the performance of the work.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.103. LIEN ON RESERVED FUNDS. A claimant has a lien on the reserved funds if the claimant:

(1) sends the notices required by this chapter in the time and manner required; and

(2) except as allowed by Section 53.057(f), files an affidavit claiming a lien not later than the 30th day after the earliest of the date:

(A) the work is completed;

(B) the original contract is terminated; or

(C) the original contractor abandons performance under the original contract.

Acts 1983, 68th Leg., p. 3545, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2005, 79th Leg., Ch. 1003 (H.B. 629), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 3, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.104. PREFERENCES. (a) Individual artisans and mechanics are entitled to a preference to the reserved funds and shall share proportionately to the extent of their claims for wages and fringe benefits earned.

(b) After payment of artisans and mechanics who are entitled to a preference under Subsection (a), other participating claimants share proportionately in the balance of the reserved funds.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 16, eff. Sept. 1, 1989.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.105. OWNER'S LIABILITY FOR FAILURE TO RESERVE FUNDS. (a) If the owner fails or refuses to comply with this subchapter, the claimants complying with Subchapter C or this subchapter have a lien, at least to the extent of the amount that should have been reserved from the original contract under which they are claiming, against the improvements and all of its properties and against the lot or lots of land necessarily connected.

(b) The claimants share the lien proportionately in accordance with the preference provided by Section 53.104.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 13.02, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1138, Sec. 17, eff. Sept. 1, 1989.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 4, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 18, eff. January 1, 2022.

Sec. 53.106. AFFIDAVIT OF COMPLETION. (a) An owner may file with the county clerk of the county in which the property is located an affidavit of completion. The affidavit must contain:

(1) the name and address of the owner;

(2) the name and address of the original contractor;

(3) a description, legally sufficient for identification, of the real property on which the improvements are located;

(4) a description of the improvements furnished under the original contract;

(5) a statement that the improvements under the original contract have been completed and the date of completion; and

(6) a conspicuous statement that a claimant may not have a lien on retained funds unless the claimant files an affidavit claiming a lien in the time and manner required by this chapter.

(b) A copy of the affidavit must be sent to the original contractor and to each claimant who sends a notice to the owner under Section 53.056 or 53.057 not later than the third day after the date the affidavit is filed or the 10th day after the date the owner receives the notice of lien liability, whichever is later.

(c) A copy of the affidavit must also be sent to each person who furnishes labor or materials for the property and who furnishes the owner with a written request for the copy. The owner must furnish the copy to the person not later than the date the affidavit is filed or the 10th day after the date the request is received, whichever is later.

(d) An affidavit filed under this section is prima facie evidence of the date the work under the original contract is completed for purposes of this chapter. If the affidavit is filed after the 10th day after the date of completion, the date of completion for purposes of this subchapter is the date the affidavit is filed. This subsection does not apply to a person to whom the affidavit was not sent as required by this section.

(e) Repealed by Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 18, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 12, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 5, eff.

September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 19, eff. January 1, 2022.

Sec. 53.107. NOTICE RELATING TO TERMINATION OF WORK OR ABANDONMENT OF PERFORMANCE BY ORIGINAL CONTRACTOR OR OWNER. (a) Not later than the 10th day after the date an original contract is terminated or the original contractor abandons performance under the original contract, the owner shall give notice to each subcontractor who, before the date of termination or abandonment, has:

(1) given notice to the owner as provided by Section 53.056 or 53.057; or

(2) sent to the owner a written request for notice of termination or abandonment.

(b) The notice must contain:

(1) the name and address of the owner;

(2) the name and address of the original contractor;

(3) a description, legally sufficient for identification, of the real property on which the improvements are located;

(4) a general description of the improvements agreed to be furnished under the original contract;

(5) a statement that the original contract has been terminated or that performance under the contract has been abandoned;

(6) the date of the termination or abandonment; and

(7) a conspicuous statement that a claimant may not have a lien on the retained funds unless the claimant files an affidavit claiming a lien in the time and manner required by this chapter.

(c) A notice sent in compliance with this section on or before the 10th day after the date of termination or abandonment is prima facie evidence of the date the original contract was terminated or work was abandoned for purposes of this subchapter.

(d) If an owner is required to send a notice to a subcontractor under this section and fails to send the notice, the subcontractor is not required to comply with Section 53.057 to claim retainage and may claim a lien by filing a lien affidavit as prescribed by Section 53.052.

(e) This section does not apply to a residential construction project.

Added by Acts 2005, 79th Leg., Ch. 1003 (H.B. 629), Sec. 2, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 6, eff. September 1, 2011.
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 20, eff. January 1, 2022.

SUBCHAPTER F. PRIORITIES AND PREFERENCES

Sec. 53.121. PREFERENCE OVER OTHER CREDITORS. All subcontractors, laborers, and materialmen who have a mechanic's lien have preference over other creditors of the original contractor.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.122. EQUALITY OF MECHANIC'S LIENS. (a) Except as provided by Subchapter E and Section 53.124(e), perfected mechanic's liens are on equal footing without reference to the date of filing the affidavit claiming the lien.

(b) If the proceeds of a foreclosure sale of property are insufficient to discharge all mechanic's liens against the property, the proceeds shall be paid pro rata on the perfected mechanic's liens on which suit is brought.

(c) This chapter does not affect the contract between the owner and the original contractor as to the amount, manner, or time of payment of the contract price.

Acts 1983, 68th Leg., p. 3546, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1995, 74th Leg., ch. 851, Sec. 4, eff. Sept. 1, 1995.

Sec. 53.123. PRIORITY OF MECHANIC'S LIEN OVER OTHER LIENS. (a) Except as provided by this section, a mechanic's lien attaches to the house, building, improvements, or railroad property in preference to any prior lien, encumbrance, or mortgage on the land on which it is located, and the person enforcing the lien may have the house, building, improvement, or any piece of the railroad property sold separately.

(b) The mechanic's lien does not affect any lien, encumbrance,

or mortgage on the land or improvement at the time of the inception of the mechanic's lien, and the holder of the lien, encumbrance, or mortgage need not be made a party to a suit to foreclose the mechanic's lien.

Acts 1983, 68th Leg., p. 3547, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.124. INCEPTION OF MECHANIC'S LIEN. (a) Except as provided by Subsection (e), for purposes of Section 53.123, the time of inception of a mechanic's lien is the commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located and on which the materials are to be used.

(b) The construction or materials under Subsection (a) must be visible from inspection of the land on which the improvements are being made.

(c) An owner and original contractor may jointly file an affidavit of commencement with the county clerk of the county in which the land is located not later than the 30th day after the date of actual commencement of construction of the improvements or delivery of materials to the land. The affidavit must contain:

(1) the name and address of the owner;

(2) the name and address of each original contractor, known at the time to the owner, that is furnishing labor, service, or materials for the construction of the improvements;

(3) a description, legally sufficient for identification, of the property being improved;

(4) the date the work actually commenced; and

(5) a general description of the improvement.

(d) An affidavit filed in compliance with this section is prima facie evidence of the date of the commencement of the improvement described in the affidavit. The time of inception of a mechanic's lien arising from work described in an affidavit of commencement is the date of commencement of the work stated in the affidavit.

(e) The time of inception of a lien that is created under Section 53.021(c), (d), or (e) is the date of recording of an affidavit of lien under Section 53.052. The priority of a lien claimed by a person entitled to a lien under Section 53.021(c), (d), or (e) with respect to other mechanic's liens is determined by the

date of recording. A lien created under Section 53.021(c), (d), or (e) is not valid or enforceable against a grantee or purchaser who acquires an interest in the real property before the time of inception of the lien.

Acts 1983, 68th Leg., p. 3547, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 19, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 851, Sec. 5, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 896, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 410, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER G. RELEASE AND FORECLOSURE; ACTION ON CLAIM

Sec. 53.151. ENFORCEMENT OF REMEDIES AGAINST MONEY DUE ORIGINAL CONTRACTOR OR SUBCONTRACTOR. (a) A creditor of an original contractor may not collect, enforce a security interest against, garnish, or levy execution on the money due the original contractor or the contractor's surety from the owner, and a creditor of a subcontractor may not collect, enforce a security interest against, garnish, or levy execution on the money due the subcontractor, to the prejudice of the subcontractors, mechanics, laborers, materialmen, or their sureties.

(b) A surety issuing a payment bond or performance bond in connection with the improvements has a priority claim over other creditors of its principal to contract funds to the extent of any loss it suffers or incurs. That priority does not excuse the surety from paying any obligations that it may have under its payment bonds.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 20, eff. Sept. 1, 1989.

Sec. 53.152. RELEASE OF CLAIM OR LIEN. (a) When a debt for labor or materials is satisfied or paid by collected funds, the person who furnished the labor or materials shall, not later than the 10th day after the date of receipt of a written request, furnish to the requesting person a release of the indebtedness and any lien claimed, to the extent of the indebtedness paid. An owner, the original contractor, or any person making the payment may request the release.

(b) A release of lien must be in a form that would permit it to be filed of record.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 21, eff. Sept. 1, 1989.

Sec. 53.153. DEFENSE OF ACTIONS. (a) If an affidavit claiming a mechanic's lien is filed by a person other than the original contractor, the original contractor shall defend at his own expense a suit brought on the claim.

(b) If the suit results in judgment on the lien against the owner or the owner's property, the owner is entitled to deduct the amount of the judgment and costs from any amount due the original contractor. If the owner has settled with the original contractor in full, the owner is entitled to recover from the original contractor any amount paid for which the original contractor was originally liable.

Acts 1983, 68th Leg., p. 3548, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.154. FORECLOSURE. A mechanic's lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.155. TRANSFER OF PROPERTY SOLD. If the improvement is sold separately from the land, the officer making the sale shall provide the purchaser a reasonable time after the date of purchase within which to remove and take possession of the purchased improvement.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 21, eff. January 1, 2022.

Sec. 53.156. COSTS AND ATTORNEY'S FEES. In any proceeding to foreclose a lien or to enforce a claim against a bond issued under Subchapter H, I, or J or in any proceeding to declare that any lien or claim is invalid or unenforceable in whole or in part, the court shall award costs and reasonable attorney's fees as are equitable and just. With respect to a lien or claim arising out of a residential construction contract, the court is not required to order the property owner to pay costs and attorney's fees under this section.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 4(a), eff. Oct. 2, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 22, eff. Sept. 1, 1989.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 51 (S.B. 539), Sec. 1, eff. September 1, 2011.

Sec. 53.157. DISCHARGE OF LIEN. An affidavit claiming a mechanic's lien filed under Section 53.052 may be discharged of record by:

(1) recording a lien release signed by the claimant under Section 53.152;

(2) failing to institute suit to foreclose the lien in the county in which the improvement is located within the period prescribed by Section 53.158, 53.175, or 53.208;

(3) recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction providing for the discharge;

(4) filing the bond and notice in compliance with Subchapter H;

(5) filing the bond in compliance with Subchapter I; or

(6) recording a certified copy of the order removing the lien under Section 53.160, provided that no bond or deposit as described by Section 53.161 was filed by the claimant within 30 days after the date the order was entered.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 15, eff. Sept. 1, 1997.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 22, eff.

January 1, 2022.

Sec. 53.158. PERIOD FOR BRINGING SUIT TO FORECLOSE LIEN. (a) Except as provided by Subsection (a-2), suit must be brought to foreclose the lien not later than the first anniversary of the last day a claimant may file the lien affidavit under Section 53.052.

(a-1) Notwithstanding Section 16.069, Civil Practice and Remedies Code, or any other law, if suit is pursued solely to discharge a lien because limitations have expired on bringing a lien foreclosure suit, the lien claimant's rights to pursue a suit to foreclose a lien are not revived.

(a-2) The limitations period established under Subsection (a) may be extended to not later than the second anniversary of the date the claimant filed the lien affidavit under Section 53.052 if, before the expiration of the limitations period established under Subsection (a), the claimant enters into a written agreement with the then-current record owner of the property to extend the limitations period. The agreement must be recorded with the clerk of the same county where the lien was recorded and is considered to be notice of the extension to any subsequent purchaser.

(b) Repealed by Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(9), eff. January 1, 2022.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 889, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 23, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 36(9), eff. January 1, 2022.

Sec. 53.159. OBLIGATION TO FURNISH INFORMATION. (a) An owner, on written request, shall furnish the following information within a reasonable time, but not later than the 10th day after the date the request is received, to any person furnishing labor or materials for the project:

(1) a description of the real property being improved

legally sufficient to identify it;

(2) whether there is a surety bond and if so, the name and last known address of the surety and a copy of the bond;

(3) whether there are any prior recorded liens or security interests on the real property being improved and if so, the name and address of the person having the lien or security interest; and

(4) the date on which the original contract for the project was executed.

(b) An original contractor, on written request by a person who furnished work under the original contract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of the person to whom the original contractor furnished labor or materials for the construction project;

(2) whether the original contractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond; and

(3) the date on which the original contract for the project was executed.

(c) A subcontractor, on written request by an owner of the property being improved, the original contractor, a surety on a bond covering the original contract, or any person furnishing work under the subcontract, shall furnish to the person the following information within a reasonable time, but not later than the 10th day after the date the request is received:

(1) the name and last known address of each person from whom the subcontractor purchased labor or materials for the construction project, other than those materials that were furnished to the project from the subcontractor's inventory;

(2) the name and last known address of each person to whom the subcontractor furnished labor or materials for the construction project; and

(3) whether the subcontractor has furnished or has been furnished a payment bond for any of the work on the construction project and if so, the name and last known address of the surety and a copy of the bond.

(d) Not later than the 30th day after the date a written request is received from the owner, the contractor under whom a claim

of lien or under whom a bond is made, or a surety on a bond on which a claim is made, a claimant for a lien or under a bond shall furnish to the requesting person a copy of any applicable written agreement, purchase order, or contract and any billing, statement, or payment request of the claimant reflecting the amount claimed and the work performed by the claimant for which the claim is made. If requested, the claimant shall provide the estimated amount due for each calendar month in which the claimant has performed labor or furnished materials.

(e) If a person from whom information is requested does not have a direct contractual relationship on the project with the person requesting the information, the person from whom information is requested, other than a claimant requested to furnish information under Subsection (d), may require payment of the actual costs, not to exceed $25, in furnishing the requested information.

(f) A person, other than a claimant requested to furnish information under Subsection (d), who fails to furnish information as required by this section is liable to the requesting person for that person's reasonable and necessary costs incurred in procuring the requested information.

Added by Acts 1989, 71st Leg., ch. 1138, Sec. 23, eff. Sept. 1, 1989.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 7, eff. September 1, 2011.

Sec. 53.160. SUMMARY MOTION TO REMOVE INVALID OR UNENFORCEABLE LIEN. (a) In a suit brought to foreclose a lien or to declare a claim or lien invalid or unenforceable, a party objecting to the validity or enforceability of the claim or lien may file a motion to remove the claim or lien. The motion must be verified and state the legal and factual basis for objecting to the validity or enforceability of the claim or lien. The motion may be accompanied by supporting affidavits.

(b) The grounds for objecting to the validity or enforceability of the claim or lien for purposes of the motion are limited to the following:

(1) notice of claim was not timely furnished to the owner or original contractor as required by Section 53.056 or 53.057;

(2) an affidavit claiming a lien failed to comply with Section 53.054 or was not filed as required by Section 53.052;

(3) notice of the filed affidavit was not furnished to the owner or original contractor as required by Section 53.055;

(4) the deadlines for perfecting a lien claim for retainage under this chapter have expired and the owner complied with the requirements of Section 53.101 and paid the retainage and all other funds owed to the original contractor before:

(A) the claimant perfected the lien claim; and

(B) the owner received a notice of the claim as required by this chapter;

(5) all funds subject to the notice of a claim to the owner and a notice regarding the retainage have been deposited in the registry of the court and the owner has no additional liability to the claimant;

(6) when the lien affidavit was filed on homestead property:

(A) no contract was executed or filed as required by Section 53.254;

(B) the affidavit claiming a lien failed to contain the notice as required by Section 53.254; or

(C) the notice of the claim failed to include the statement required by Section 53.254; and

(7) the claimant executed a valid and enforceable waiver or release of the claim or lien claimed in the affidavit.

(c) The claimant is not required to file a response. The claimant and any other party that has appeared in the proceeding must be notified by at least 30 days before the date of the hearing on the motion. A motion may not be heard before the 30th day after the date the claimant answers or appears in the proceeding. The claimant must be allowed expedited discovery regarding information relevant to the issues listed under Subsection (b).

(d) At the hearing on the motion, the burden is on:

(1) the claimant to prove that the notice of claim and affidavit of lien were furnished to the owner and original contractor as required by this chapter; and

(2) the movant to establish that the lien should be removed for any other ground authorized by this section.

(e) The court shall promptly determine a motion to remove a claim or lien under this section. If the court determines that the

movant is not entitled to remove the lien, the court shall enter an order denying the motion. If the court determines that the movant is entitled to remove the lien, the court shall enter an order removing the lien claimed in the lien affidavit. A party to the proceeding may not file an interlocutory appeal from the court's order.

(f) Any admissible evidence offered at the hearing may be admitted in the trial of the case. The court's order under Subsection (e) is not admissible as evidence in determining the validity and enforceability of the claim or lien.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 499 (H.B. 1390), Sec. 8, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 24, eff. January 1, 2022.

Sec. 53.161. BOND REQUIREMENTS AFTER ORDER TO REMOVE. (a) In the order removing a lien, the court shall set the amount of security that the claimant may provide in order to stay the removal of the claim or lien. The sum must be an amount that the court determines is a reasonable estimate of the costs and attorney's fees the movant is likely to incur in the proceeding to determine the validity or enforceability of the lien. The sum may not exceed the amount of the lien claim.

(b) The court shall stay the order removing the lien if the claimant files a bond or a deposit in lieu of a bond in the amount set in the order with the clerk of the court not later than the 30th day after the date the order is entered by the court unless, for good cause, the court orders a later date for filing the bond or the deposit in lieu of a bond. If the court fails to set the amount of the security required, the amount required is the amount of the lien claim.

(c) The bond must be:

(1) executed by a corporate surety authorized to do business in this state and licensed by this state to execute bonds as surety; and

(2) conditioned on the claimant's payment of any final judgment rendered against the claimant in the proceeding for

attorney's fees and costs to the movant under Section 53.156.

(d) In lieu of filing a bond, the claimant may deposit in the amount set by the court for the surety bond:

(1) cash;

(2) a negotiable obligation of the federal government or a federal agency; or

(3) a negotiable obligation of a financial institution chartered by the federal or state government that is insured by the federal government or a federal agency.

(e) A deposit made under Subsection (d) must be conditioned in the same manner as a surety bond. Any interest accrued on the deposit amount is a part of the deposit.

(f) If the claimant fails to file the bond or the deposit in lieu of the bond in compliance with this section, the owner may file:

(1) a certified copy of the order; and

(2) a certificate from the clerk of the court stating that:

(A) no bond or deposit in lieu of the bond was filed within 30 days after the date the order was entered by the court; and

(B) no order staying the order to remove the lien was entered by the court.

(g) The claim or lien is removed and extinguished as to a creditor or subsequent purchaser for valuable consideration who obtains an interest in the property after the certified copy of the order and certificate of the clerk of the court are filed with the county clerk. The removal of the lien does not constitute a release of the liability of the owner, if any, to the claimant.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

Sec. 53.162. REVIVAL OF REMOVED LIEN. (a) If an order removing the lien is not stayed as provided by Section 53.161 and the claimant later obtains a final judgment in the suit establishing the validity and ordering the foreclosure of the lien, the claimant may file a certified copy of the final judgment with the county clerk.

(b) The filed judgment revives the lien, and the claimant may foreclose the lien.

(c) A lien revived under this section is void as to a creditor or subsequent purchaser for valuable consideration who obtained an

interest in the property:

(1) after the order removing the lien and the certificate from the clerk of the court was filed with the county clerk; and

(2) before the final judgment reviving the lien was filed with the county clerk.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 17, eff. Sept. 1, 1997.

SUBCHAPTER H. BOND TO INDEMNIFY AGAINST LIEN

Sec. 53.171. BOND. (a) If a lien, other than a lien granted by the owner in a written contract, is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may file a bond to indemnify against the lien.

(b) The bond shall be filed with the county clerk of the county in which the property subject to the lien is located.

(c) A mechanic's lien claim against an owner's property is discharged after:

(1) a bond that complies with Section 53.172 is filed;

(2) the notice of the bond is issued as provided by Section 53.173; and

(3) the bond and notice are recorded as provided by Section 53.174.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 24, 39(1), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 18, eff. Sept. 1, 1997.

Sec. 53.172. BOND REQUIREMENTS. The bond must:

(1) describe the property on which the liens are claimed;

(2) refer to each lien claimed in a manner sufficient to identify it;

(3) be in an amount that is double the amount of the liens referred to in the bond unless the total amount claimed in the liens exceeds $40,000, in which case the bond must be in an amount that is the greater of 1-1/2 times the amount of the liens or the sum of $40,000 and the amount of the liens;

(4) be payable to the parties claiming the liens;

(5) be executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety authorized and admitted to do business under the law in this state and licensed by this state to execute the bond as surety, subject to Subchapter A, Chapter 3503, Insurance Code; and

(6) be conditioned substantially that the principal and sureties will pay to the named obligees or to their assignees the amount that the named obligees would have been entitled to recover if their claims had been proved to be valid and enforceable liens on the property.

Acts 1983, 68th Leg., p. 3549, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 25, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1132, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 6, eff. May 29, 2023.

Sec. 53.173. NOTICE OF BOND. (a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

(b) A copy of the bond must be attached to the notice.

(c) The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail addressed to the claimant at the address stated in the lien affidavit for the obligee.

(d) If the claimant's lien affidavit does not state the claimant's address, the notice is not required to be mailed to the claimant.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 26, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 19, eff. Sept. 1, 1997. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 25, eff. January 1, 2022.

Sec. 53.174. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

(b) In acquiring an interest in or insuring title to real

property, a purchaser, insurer of title, or lender may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 27, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 20, eff. Sept. 1, 1997.

Sec. 53.175. ACTION ON BOND. (a) A party making or holding a lien claim may not sue on the bond later than one year after the date on which the notice is served or after the date on which the underlying lien claim becomes unenforceable under Section 53.158.

(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any court of jurisdiction in the county in which the real property is located.

Acts 1983, 68th Leg., p. 3550, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 28, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 526, Sec. 21, eff. Sept. 1, 1997.

SUBCHAPTER I. BOND TO PAY LIENS OR CLAIMS

Sec. 53.201. BOND. (a) An original contractor who has a written contract with the owner may furnish at any time a bond for the benefit of claimants.

(b) If a valid bond is filed, a claimant may not file suit against the owner or the owner's property and the owner is relieved of obligations under Subchapter D or E.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 526, Sec. 22, eff. Sept. 1, 1997.

Sec. 53.202. BOND REQUIREMENTS. The bond must:

(1) be in a penal sum at least equal to the total of the original contract amount;

(2) be in favor of the owner;

(3) have the written approval of the owner endorsed on it;

(4) be executed by:

(A) the original contractor as principal; and

(B) a corporate surety authorized and admitted to do business in this state and licensed by this state to execute bonds as surety, subject to Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code);

(5) be conditioned on prompt payment for all labor, subcontracts, materials, specially fabricated materials, and normal and usual extras not exceeding 15 percent of the contract price; and

(6) clearly and prominently display on the bond or on an attachment to the bond:

(A) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or

(B) the toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 29, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1132, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 380, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.158, eff. September 1, 2005.

Sec. 53.203. RECORDING OF BOND AND CONTRACT. (a) The bond and the contract between the original contractor and the owner shall be filed with the county clerk of the county in which is located all or part of the owner's property on which the construction or repair is being performed or is to be performed. A memorandum of the contract or a copy of the contract may be substituted for the original.

(b) The plans, specifications, and general conditions of the contract are not required to be filed.

(c) The county clerk shall record the bond and place the contract on file in the clerk's office and shall index and cross-index both in the names of the original contractor and the owner in records kept for that purpose.

(d) On request and payment of a reasonable fee, the county clerk shall furnish a copy of the bond and contract to any person.

(e) In any court of this state or in the United States, a copy of the bond and contract certified by the county clerk constitutes prima facie evidence of the contents, execution, delivery, and filing of the originals.

Acts 1983, 68th Leg., p. 3551, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 683, Sec. 1, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 1138, Sec. 30, eff. Sept. 1, 1989.

Sec. 53.204. RELIANCE ON RECORD. A purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title is entitled to rely on the record of the bond and contract as constituting payment of all claims and liens for labor, subcontracts, materials, or specially fabricated materials incurred by the original contractor as if the purchaser, lender, or other person acquiring an interest in the owner's property or an insurer of title were the owner who approved, accepted, and endorsed the bond and as if each person furnishing labor or materials for the work performed under the original contract, other than the original contractor, had filed a complete release and relinquishment of lien of record.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 31, eff. Sept. 1, 1989.

Sec. 53.205. ENFORCEABLE CLAIMS. (a) The bond protects all persons with a claim that is:

(1) perfected in the manner prescribed for fixing a lien under Subchapter C; or

(2) perfected in the manner prescribed by Section 53.206.

(b) A claim or the rights to a claim under the bond may be assigned.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1999, 76th Leg., ch. 889, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 26, eff. January 1, 2022.

Sec. 53.206. PERFECTION OF CLAIM. (a) Except as provided by Subsection (b), to perfect a claim against a bond in a manner other than that prescribed by Subchapter C for fixing a lien, a person must give notice under Sections 53.056 and 53.057, as applicable, to the original contractor and surety on the bond.

(b) To perfect a claim for retainage under this section, a claimant is not required to give notice to the surety under Section 53.057 if the claimant has a direct contractual relationship with the original contractor.

(c) A claimant that provides the notices described by this section is not required to file an affidavit claiming a mechanic's lien to perfect a claim under the bond.

(d) A person satisfies the requirements of this section relating to providing notice to the surety if the person mails the notice by certified mail to the surety:

(1) at the address stated on the bond or on an attachment to the bond;

(2) at the address on file with the Texas Department of Insurance; or

(3) at any other address allowed by law.

Acts 1983, 68th Leg., p. 3552, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 32, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 889, Sec. 6, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 380, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 27, eff. January 1, 2022.

Sec. 53.207. OWNER'S NOTICE OF CLAIM TO SURETY. (a) If the owner receives any of the notices or a lien is fixed under this chapter, the owner shall mail to the surety on the bond a copy of all

notices received.

(b) Failure of the owner to send copies of notices to the surety does not relieve the surety of any liability under the bond if the claimant has complied with the requirements of this subchapter, nor does that failure impose any liability on the owner.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1999, 76th Leg., ch. 889, Sec. 7, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 28, eff. January 1, 2022.

Sec. 53.208. ACTION ON BOND. (a) A claimant may sue the principal and surety on the bond either jointly or severally, if the claim remains unpaid for 60 days after the claimant perfects the claim.

(b) The claimant may sue for the amount of the claim and court costs.

(c) The suit must be brought in the county in which the property being improved is located.

(d) If the bond is recorded at the time the lien is filed, the claimant must sue on the bond within one year following perfection of his claim. If the bond is not recorded at the time the lien is filed, the claimant must sue on the bond within two years following perfection of his claim.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 33, eff. Sept. 1, 1989.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 29, eff. January 1, 2022.

Sec. 53.210. CLAIMS IN EXCESS OF BOND AMOUNT. If valid claims against the bond exceed the penal sum of the bond, each claimant is entitled to a pro rata share of the penal sum.

Acts 1983, 68th Leg., p. 3553, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.211. ATTEMPTED COMPLIANCE. (a) A bond shall be construed to comply with this subchapter, and the rights and remedies on the bond are enforceable in the same manner as on other bonds under this subchapter, if the bond:

(1) is furnished and filed in attempted compliance with this subchapter; or

(2) evidences by its terms intent to comply with this subchapter.

(b) Any provision in any payment bond furnished or filed in attempted compliance with this subchapter that expands or restricts the rights or liabilities provided under this chapter shall be disregarded and the provisions of this subchapter shall be read into that bond.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 34, eff. Sept. 1, 1989.

SUBCHAPTER J. LIEN ON MONEY DUE PUBLIC WORKS CONTRACTOR

Sec. 53.231. LIEN. (a) A person who furnishes material or labor to a contractor under a prime contract with a governmental entity other than a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code, that does not exceed $25,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

(b) A person who furnishes material or labor to a contractor under a prime contract with a municipality or a joint board created under Subchapter D, Chapter 22, Transportation Code, that does not exceed $50,000 and that is for public improvements in this state and who gives notice required by this subchapter has a lien on the money, bonds, or warrants due the contractor for the improvements.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1304 (H.B. 2515), Sec. 2, eff. September 1, 2009.

Sec. 53.232. TO WHOM NOTICE GIVEN; MANNER. The lien claimant

must send written notice of his claim by certified mail to:

(1) the officials of the state, county, town, or municipality whose duty it is to pay the contractor; and

(2) the contractor at the contractor's last known business or residence address.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 30, eff. January 1, 2022.

Sec. 53.233. CONTENTS OF NOTICE. (a) Whether based on written or oral agreement, the notice must contain:

(1) the amount claimed;

(2) the name of the party to whom the materials were delivered or for whom the labor was performed;

(3) the dates and place of delivery or performance;

(4) a description reasonably sufficient to identify the materials delivered or labor performed and the amount due;

(5) a description reasonably sufficient to identify the project for which the material was delivered or the labor performed; and

(6) the claimant's business address.

(b) The notice must be accompanied by a statement under oath that the amount claimed is just and correct and that all payments, lawful offsets, and credits known to the affiant have been allowed.

Acts 1983, 68th Leg., p. 3554, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 35, eff. Sept. 1, 1989.

Sec. 53.234. TIME FOR NOTICE. The lien claimant must give notice not later than the 15th day of the second month following the month in which the labor was performed or the material furnished.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 36, eff. Sept. 1, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1304 (H.B. 2515), Sec. 3, eff. September 1, 2009.

Sec. 53.235. OFFICIAL TO RETAIN FUNDS. A public official who receives the notice may not pay all of the money, bonds, or warrants due the contractor, but shall retain enough to pay the claim for which notice is given.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.236. BOND FOR RELEASE OF LIEN. (a) If a claim is filed attempting to fix a lien under this subchapter, the contractor against whom the claim is made may file a bond with the officials of the state, county, town, or municipality whose duty it is to pay the money, bonds, or warrants to the contractor.

(b) If the bond is approved by the proper official, its filing releases and discharges all liens fixed or attempted to be fixed by the filing of a claim, and the appropriate officials shall pay the money, bonds, or warrants to the contractor or the contractor's assignee.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 53.237. BOND REQUIREMENTS. The bond must be:

(1) in an amount double the amount of the claims filed;

(2) payable to the claimants;

(3) executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety authorized, admitted to do business, and licensed by the law of this state to execute the bond as surety; and

(4) conditioned that:

(A) the principal and surety will pay to the obligees named or to their assignees the amount of the claims or the portions of the claims proved to be liens under this subchapter; and

(B) the principal and surety will pay all court costs adjudged against the principal in actions brought by a claimant on the bond.

Acts 1983, 68th Leg., p. 3555, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 1138, Sec. 37, eff. Sept. 1, 1989.

Sec. 53.238. NOTICE OF BOND. The official with whom the bond is filed shall send an exact copy of the bond by certified mail, return receipt requested, to all claimants.

Acts 1983, 68th Leg., p. 3556, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 31, eff. January 1, 2022.

Sec. 53.239. ACTION ON BOND. (a) A claimant must sue on the bond within six months after the bond is filed.

(b) The bond is not exhausted by one action on it. Each obligee or his assignee may maintain a separate suit on the bond in any court of jurisdiction.

Acts 1983, 68th Leg., p. 3556, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER K. RESIDENTIAL CONSTRUCTION PROJECTS

Sec. 53.251. PROCEDURES FOR RESIDENTIAL CONSTRUCTION PROJECTS. (a) This subchapter applies only to residential construction projects.

(b) A person must comply with this subchapter in addition to the other applicable provisions of this chapter to perfect a lien that arises from a claim resulting from a residential construction project.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.254. CONTRACTUAL REQUIREMENTS FOR LIEN ON HOMESTEAD. (a) To fix a lien on a homestead, the person who is to furnish material or perform labor and the owner must execute a written contract setting forth the terms of the agreement.

(b) The contract must be executed before the material is

furnished or the labor is performed.

(c) If the owner is married, the contract must be signed by both spouses.

(d) If the contract is made by an original contractor, the contract inures to the benefit of all persons who labor or furnish material for the original contractor.

(e) The contract must be filed with the county clerk of the county in which the homestead is located. The county clerk shall record the contract in records kept for that purpose.

(f) An affidavit for lien filed under this subchapter that relates to a homestead must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldface or the computer equivalent, at the top of the page:

"NOTICE: THIS IS NOT A LIEN. THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN."

(g) For the lien on a homestead to be valid, the notice required to be given to the owner under Subchapter C must include or have attached the following statement:

"If a subcontractor or supplier who furnishes materials or performs labor for construction of improvements on your property is not paid, your property may be subject to a lien for the unpaid amount if:

(1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or

(2) during construction and for 30 days after completion of your contractor's work, you fail to reserve 10 percent of the contract price or 10 percent of the value of the work performed by your contractor.

"If you have complied with the law regarding the reservation of 10 percent of the contract price or value of work and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent reservation, you are not liable to a subcontractor or supplier for any amount paid to your contractor before you received written notice of the claim."

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 32, eff. January 1, 2022.

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 33, eff. January 1, 2022.

Sec. 53.255. DISCLOSURE STATEMENT REQUIRED FOR RESIDENTIAL CONSTRUCTION CONTRACT. (a) Before a residential construction contract is executed by the owner, the original contractor shall deliver to the owner a disclosure statement described by this section.

(b) The disclosure statement must read substantially similar to the following:

"KNOW YOUR RIGHTS AND RESPONSIBILITIES UNDER THE LAW. You are about to enter into a transaction to build a new home or remodel existing residential property. Texas law requires your contractor to provide you with this brief overview of some of your rights, responsibilities, and risks in this transaction.

"CONVEYANCE TO CONTRACTOR NOT REQUIRED. Your contractor may not require you to convey your real property to your contractor as a condition to the agreement for the construction of improvements on your property.

"KNOW YOUR CONTRACTOR. Before you enter into your agreement for the construction of improvements to your real property, make sure that you have investigated your contractor. Obtain and verify references from other people who have used the contractor for the type and size of construction project on your property.

"GET IT IN WRITING. Make sure that you have a written agreement with your contractor that includes: (1) a description of the work the contractor is to perform; (2) the required or estimated time for completion of the work; (3) the cost of the work or how the cost will be determined; and (4) the procedure and method of payment, including provisions for statutory reservation of funds and conditions for final payment. If your contractor made a promise, warranty, or representation to you concerning the work the contractor is to perform, make sure that promise, warranty, or representation is specified in the written agreement. An oral promise that is not included in the written agreement may not be enforceable under Texas

law.

"READ BEFORE YOU SIGN. Do not sign any document before you have read and understood it. NEVER SIGN A DOCUMENT THAT INCLUDES AN UNTRUE STATEMENT. Take your time in reviewing documents. If you borrow money from a lender to pay for the improvements, you are entitled to have the loan closing documents furnished to you for review at least one business day before the closing. Do not waive this requirement unless a bona fide emergency or another good cause exists, and make sure you understand the documents before you sign them. If you fail to comply with the terms of the documents, you could lose your property. You are entitled to have your own attorney review any documents. If you have any question about the meaning of a document, consult an attorney.

"GET A LIST OF SUBCONTRACTORS AND SUPPLIERS. Before construction commences, your contractor is required to provide you with a list of the subcontractors and suppliers the contractor intends to use on your project. Your contractor is required to supply updated information on any subcontractors and suppliers added after the list is provided. Your contractor is not required to supply this information if you sign a written waiver of your rights to receive this information.

"MONITOR THE WORK. Lenders and governmental authorities may inspect the work in progress from time to time for their own purposes. These inspections are not intended as quality control inspections. Quality control is a matter for you and your contractor. To ensure that your home is being constructed in accordance with your wishes and specifications, you should inspect the work yourself or have your own independent inspector review the work in progress.

"MONITOR PAYMENTS. If you use a lender, your lender is required to provide you with a periodic statement showing the money disbursed by the lender from the proceeds of your loan. Each time your contractor requests payment from you or your lender for work performed, your contractor is also required to furnish you with a disbursement statement that lists the name and address of each subcontractor or supplier that the contractor intends to pay from the requested funds. Review these statements and make sure that the money is being properly disbursed.

"CLAIMS BY SUBCONTRACTORS AND SUPPLIERS. Under Texas law, if a subcontractor or supplier who furnishes labor or materials for the

construction of improvements on your property is not paid, you may become liable and your property may be subject to a lien for the unpaid amount, even if you have not contracted directly with the subcontractor or supplier. To avoid liability, you should take the following actions:

(1) If you receive a written notice from a subcontractor or supplier, you should withhold payment from your contractor for the amount of the claim stated in the notice until the dispute between your contractor and the subcontractor or supplier is resolved. If your lender is disbursing money directly to your contractor, you should immediately provide a copy of the notice to your lender and instruct the lender to withhold payment in the amount of the claim stated in the notice. If you continue to pay the contractor after receiving the written notice without withholding the amount of the claim, you may be liable and your property may be subject to a lien for the amount you failed to withhold.

(2) During construction and for 30 days after final completion, termination, or abandonment of the contract by the contractor, you should reserve or cause your lender to reserve 10 percent of the amount of payments made for the work performed by your contractor. If you choose not to reserve the 10 percent for at least 30 days after final completion, termination, or abandonment of the contract by the contractor and if a valid claim is timely made by a claimant and your contractor fails to pay the claim, you may be personally liable and your property may be subject to a lien up to the amount that you failed to reserve.

"If a claim is not paid within a certain time period, the claimant is required to file a mechanic's lien affidavit in the real property records in the county where the property is located. A mechanic's lien affidavit is not a lien on your property, but the filing of the affidavit could result in a court imposing a lien on your property if the claimant is successful in litigation to enforce the lien claim.

"SOME CLAIMS MAY NOT BE VALID. When you receive a written notice of a claim or when a mechanic's lien affidavit is filed on your property, you should know your legal rights and responsibilities regarding the claim. Not all claims are valid. A notice of a claim by a subcontractor or supplier is required to be sent, and the mechanic's lien affidavit is required to be filed, within strict time periods. The notice and the affidavit must contain certain

information. All claimants may not fully comply with the legal requirements to collect on a claim. If you have paid the contractor in full before receiving a notice of a claim and have withheld the 10 percent of the contract price or value of work, you may not be liable for that claim. Accordingly, you should consult your attorney when you receive a written notice of a claim to determine the true extent of your liability or potential liability for that claim.

"OBTAIN A LIEN RELEASE AND A BILLS-PAID AFFIDAVIT. When you receive a notice of claim, do not release withheld funds without obtaining a signed and notarized release of lien and claim from the claimant. You can also reduce the risk of having a claim filed by a subcontractor or supplier by requiring as a condition of each payment made by you or your lender that your contractor furnish you with an affidavit stating that all bills have been paid. Under Texas law, on final completion of the work and before final payment, the contractor is required to furnish you with an affidavit stating that all bills have been paid. If the contractor discloses any unpaid bill in the affidavit, you should withhold payment in the amount of the unpaid bill until you receive a waiver of lien or release from that subcontractor or supplier.

"OBTAIN TITLE INSURANCE PROTECTION. You may be able to obtain a title insurance policy to insure that the title to your property and the existing improvements on your property are free from liens claimed by subcontractors and suppliers. If your policy is issued before the improvements are completed and covers the value of the improvements to be completed, you should obtain, on the completion of the improvements and as a condition of your final payment, a 'completion of improvements' policy endorsement. This endorsement will protect your property from liens claimed by subcontractors and suppliers that may arise from the date the original title policy is issued to the date of the endorsement."

(c) The failure of a contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 889, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 34, eff. January 1, 2022.

Sec. 53.256. LIST OF SUBCONTRACTORS AND SUPPLIERS. (a) Except as provided by Subsection (d), for the construction of improvements under a residential construction contract, the original contractor shall:

(1) furnish to the owner before the commencement of construction a written list that identifies by name, address, and telephone number each subcontractor and supplier the contractor intends to use in the work to be performed; and

(2) provide the owner with an updated list of subcontractors and suppliers not later than the 15th day after the date a subcontractor or supplier is added or deleted.

(b) The list must contain the following notice conspicuously printed, stamped, or typed in a size equal to at least 10-point boldface or the computer equivalent:

"NOTICE: THIS LIST OF SUBCONTRACTORS AND SUPPLIERS MAY NOT BE A FINAL LISTING. UNLESS YOU SIGN A WAIVER OF YOUR RIGHT TO RECEIVE UPDATED INFORMATION, THE CONTRACTOR IS REQUIRED BY LAW TO SUPPLY UPDATED INFORMATION, AS THE INFORMATION BECOMES AVAILABLE, FOR EACH SUBCONTRACTOR OR SUPPLIER USED IN THE WORK PERFORMED ON YOUR RESIDENCE."

(c) The failure of a contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

(d) An owner may waive the right to receive the list of subcontractors and suppliers or any updated information required by this section only as provided by this subsection. The waiver must be in writing and may be included in the residential construction contract. If the waiver is not included as a provision of the residential construction contract, the separate waiver statement must be signed by the owner. The waiver must be conspicuously printed in at least 10-point bold-faced type and read substantially similar to the following:

"WAIVER OF THE LIST OF SUBCONTRACTORS AND SUPPLIERS. AN OWNER IS NOT REQUIRED TO WAIVE THE RIGHT GRANTED BY SECTION 53.256, PROPERTY CODE, TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND SUPPLIERS.

"BY SIGNING THIS DOCUMENT, I AGREE TO WAIVE MY RIGHT TO RECEIVE FROM THE CONTRACTOR AN ORIGINAL OR UPDATED LIST OF SUBCONTRACTORS AND

SUPPLIERS.

"I UNDERSTAND AND ACKNOWLEDGE THAT, AFTER SIGNING THIS DOCUMENT, THIS WAIVER MAY NOT BE CANCELED AT A LATER DATE.

"I HAVE VOLUNTARILY CONSENTED TO THIS WAIVER."

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 889, Sec. 9, eff. Sept. 1, 1999.

Sec. 53.257. PROVISIONS RELATED TO CLOSING OF LOAN FOR CONSTRUCTION OF IMPROVEMENTS. (a) If the owner is obtaining third-party financing for the construction of improvements under a residential construction contract, the lender shall deliver to the owner all documentation relating to the closing of the loan not later than one business day before the date of the closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing.

(b) The lender shall provide to the owner the disclosure statement described by Section 53.255(b). The disclosure statement must be provided to the owner before the date of closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the disclosure statement at the closing. The lender shall retain a signed and dated copy of the disclosure statement with the closing documents.

(c) The failure of a lender to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.258. DISBURSEMENTS OF FUNDS. (a) At the time the original contractor requests payment from the owner or the owner's lender for the construction of improvements under a residential construction contract, the original contractor shall provide to the owner a disbursement statement. The statement may include any information agreed to by the owner and the original contractor and must include at least the name and address of each person who

subcontracted directly with the original contractor and who the original contractor intends to pay from the requested funds. The original contractor shall provide the disbursement statement:

(1) in the manner agreed to in writing by the owner and original contractor; or

(2) if no agreement exists, by depositing the statement in the United States mail, first class, postage paid, and properly addressed to the owner or by hand delivering the statement to the owner before the original contractor receives the requested funds.

(b) If the owner finances the construction of improvements through a third party that advances loan proceeds directly to the original contractor, the lender shall:

(1) obtain from the original contractor the signed disbursement statement required by Subsection (a) that covers the funds for which the original contractor is requesting payment; and

(2) provide to the owner a statement of funds disbursed by the lender since the last statement was provided to the owner.

(c) The lender shall provide to the owner the lender's disbursement statement and the disbursement statement the lender obtained from the contractor before the lender disburses the funds to the original contractor. The disbursement statements may be provided in any manner agreed to by the lender and the owner.

(d) The lender is not responsible for the accuracy of the information contained in the disbursement statement obtained from the original contractor.

(e) The failure of a lender or an original contractor to comply with this section does not invalidate a lien under this chapter, a contract lien, or a deed of trust.

(f) A person commits an offense if the person intentionally, knowingly, or recklessly provides false or misleading information in a disbursement statement required under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed $4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 889, Sec. 10, eff. Sept. 1, 1999.

Sec. 53.259. FINAL BILLS-PAID AFFIDAVIT REQUIRED. (a) As a condition of final payment under a residential construction contract, the original contractor shall, at the time the final payment is tendered, execute and deliver to the owner, or the owner's agent, an affidavit stating that the original contractor has paid each person in full for all labor and materials used in the construction of improvements on the real property. If the original contractor has not paid each person in full, the original contractor shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.

(b) The seller of any real property on which a structure of not more than four units is constructed and that is intended as the principal place of residence for the purchaser shall, at the closing of the purchase of the real property, execute and deliver to the purchaser, or the purchaser's agent, an affidavit stating that the seller has paid each person in full for all labor and materials used in the construction of improvements on the real property and that the seller is not indebted to any person by reason of any construction. In the event that the seller has not paid each person in full, the seller shall state in the affidavit the amount owed and the name and, if known, the address and telephone number of each person to whom a payment is owed.

(c) A person commits an offense if the person intentionally, knowingly, or recklessly makes a false or misleading statement in an affidavit under this section. An offense under this section is a misdemeanor. A person adjudged guilty of an offense under this section shall be punished by a fine not to exceed $4,000 or confinement in jail for a term not to exceed one year or both a fine and confinement. A person may not receive community supervision for the offense.

(d) A person signing an affidavit under this section is personally liable for any loss or damage resulting from any false or incorrect information in the affidavit.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.

Sec. 53.260. CONVEYANCE TO CONTRACTOR NOT REQUIRED. An

original contractor may not require an owner of real property to convey the real property to the original contractor or an entity controlled by the original contractor as a condition to the performance of the residential construction contract for improvements to the real property.

Added by Acts 1997, 75th Leg., ch. 526, Sec. 23, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 889, Sec. 11, eff. Sept. 1, 1999.

SUBCHAPTER L. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM

Sec. 53.281. WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) Any waiver and release of a lien or payment bond claim under this chapter is unenforceable unless a waiver and release is executed and delivered in accordance with this subchapter.

(b) A waiver and release is effective to release the owner, the owner's property, the contractor, and the surety on a payment bond from claims and liens only if:

(1) the waiver and release substantially complies with one of the forms prescribed by Section 53.284;

(2) the waiver and release is signed by the claimant or the claimant's authorized agent; and

(3) in the case of a conditional release, evidence of payment to the claimant exists.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.
Amended by:
Acts 2021, 87th Leg., R.S., Ch. 690 (H.B. 2237), Sec. 35, eff. January 1, 2022.

Sec. 53.282. CONDITIONS FOR WAIVER, RELEASE, OR IMPAIRMENT OF LIEN OR PAYMENT BOND CLAIM. (a) A statement purporting to waive, release, or otherwise adversely affect a lien or payment bond claim is not enforceable and does not create an estoppel or impairment of a lien or payment bond claim unless:

(1) the statement is in writing and substantially complies with a form prescribed by Section 53.284;

(2) the claimant has actually received payment in good and

sufficient funds in full for the lien or payment bond claim; or

(3) the statement is:

(A) in a written original contract or subcontract for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex; and

(B) made before labor or materials are provided under the original contract or subcontract.

(b) The filing of a lien rendered unenforceable by a lien waiver under Subsection (a)(3) does not violate Section 12.002, Civil Practice and Remedies Code, unless:

(1) an owner or original contractor sends a written explanation of the basis for nonpayment, evidence of the contractual waiver of lien rights, and a notice of request for release of the lien to the claimant at the claimant's address stated in the lien affidavit; and

(2) the lien claimant does not release the filed lien affidavit on or before the 14th day after the date the owner or the original contractor sends the items required by Subdivision (1).

(c) Subsection (a)(3) does not apply to a person who supplies only material, and not labor, for the construction, remodel, or repair of a single-family house, townhouse, or duplex or for land development related to a single-family house, townhouse, or duplex.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.283. UNCONDITIONAL WAIVER AND RELEASE: PAYMENT REQUIRED. A person may not require a claimant or potential claimant to execute an unconditional waiver and release for a progress payment or final payment amount unless the claimant or potential claimant received payment in that amount in good and sufficient funds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) A waiver and release given by a claimant or potential claimant is unenforceable unless it substantially complies

with the applicable form described by Subsections (b)-(e).

(b) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress payment and is not paid in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of $_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

"The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

(c) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a progress payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the progress payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

"Project _____

"Job No. _____

"The signer of this document has been paid and has received a progress payment in the sum of $_____ for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

"This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

"The signer warrants that the signer has already paid or will

use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

(d) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a final payment and is not paid in good and sufficient funds in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____

"Job No. _____

"On receipt by the signer of this document of a check from _____ (maker of check) in the sum of $_____ payable to _____ (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description).

"This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted).

"Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided

for or to the above referenced project up to the date of this waiver and release.

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

(e) If a claimant or potential claimant is required to execute an unconditional waiver and release to prove the receipt of good and sufficient funds for a final payment and the claimant or potential claimant asserts in the waiver and release that the claimant or potential claimant has been paid the final payment, the waiver and release must:

(1) contain a notice at the top of the document, printed in bold type at least as large as the largest type used in the document, but not smaller than 10-point type, that reads:

"NOTICE:

"This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form."; and

(2) below the notice, read:

"UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

"Project _____

"Job No. _____

"The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ (person with whom signer contracted) on the property of _____ (owner) located at _____ (location) to the following extent: _____ (job description). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

"The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided

for or to the above referenced project up to the date of this waiver and release.

"Date _____

"_____ (Company name)

"By _____ (Signature)

"_____ (Title)"

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.286. PUBLIC POLICY. Notwithstanding any other law and except as provided by Section 53.282, any contract, agreement, or understanding purporting to waive the right to file or enforce any lien or claim created under this chapter is void as against public policy.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

Sec. 53.287. CERTAIN AGREEMENTS EXEMPT. This subchapter does not apply to a written agreement to subordinate, release, waive, or satisfy all or part of a lien or bond claim in:

(1) an accord and satisfaction of an identified dispute;

(2) an agreement concerning an action pending in any court or arbitration proceeding; or

(3) an agreement that is executed after an affidavit claiming the lien has been filed or the bond claim has been made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 271 (H.B. 1456), Sec. 3, eff. January 1, 2012.

CHAPTER 54. LANDLORD'S LIENS

SUBCHAPTER A. AGRICULTURAL LANDLORD'S LIEN

Sec. 54.001. LIEN. A person who leases land or tenements at will or for a term of years has a preference lien for rent that becomes due and for the money and the value of property that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises and to gather, store, and prepare the

crop for marketing.

Acts 1983, 68th Leg., p. 3557, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.002. PROPERTY TO WHICH LIEN ATTACHES. (a) Except as provided by Subsections (b) and (c), the lien attaches to:

(1) the property on the leased premises that the landlord furnishes or causes to be furnished to the tenant to grow a crop on the leased premises; and

(2) the crop grown on the leased premises in the year that the rent accrues or the property is furnished.

(b) If the landlord provides everything except labor, the lien attaches only to the crop grown in the year that the property is furnished.

(c) The lien does not attach to the goods of a merchant, trader, or mechanic if the tenant sells and delivers the goods in good faith in the regular course of business.

(d) A law exempting property from forced sale does not apply to a lien under this subchapter on agricultural products, animals, or tools.

Acts 1983, 68th Leg., p. 3557, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.003. EXCEPTIONS. The lien does not arise if:

(1) a tenant provides everything necessary to cultivate the leased premises and the landlord charges rent of more than one-third of the value of the grain and one-fourth of the value of the cotton grown on the premises; or

(2) a landlord provides everything except the labor and directly or indirectly charges rent of more than one-half of the value of the grain and cotton grown on the premises.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.004. DURATION OF LIEN. The lien exists while the property to which it is attached remains on the leased premises and until one month after the day that the property is removed from the premises. If agricultural products to which the lien is attached are

placed in a public or bonded warehouse regulated by state law before the 31st day after the day that they are removed from the leased premises, the lien exists while they remain in the warehouse.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.005. REMOVAL OF PROPERTY. (a) If an advance or rent is unpaid, a tenant may not without the landlord's consent remove or permit the removal of agricultural products or other property to which the lien is attached from the leased premises.

(b) If agricultural products subject to the lien are removed with the landlord's consent from the leased premises for preparation for market, the lien continues to exist as if the products had not been removed.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.006. DISTRESS WARRANT. (a) The person to whom rent or an advance is payable under the lease or the person's agent, attorney, assign, or other legal representative may apply to an appropriate justice of the peace for a distress warrant if the tenant:

(1) owes any rent or an advance;

(2) is about to abandon the premises; or

(3) is about to remove the tenant's property from the premises.

(b) The application for a warrant must be filed with a justice of the peace:

(1) in the precinct in which the leasehold is located or in which the property subject to the landlord's lien is located; or

(2) who has jurisdiction of the cause of action.

Acts 1983, 68th Leg., p. 3558, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 9, eff. Sept. 1, 1993.

Sec. 54.007. JUDGMENT ON REPLEVIN BOND. If a final judgment is rendered against a defendant who has replevied property seized under a distress warrant, the sureties on the defendant's replevy bond are

also liable under the judgment, according to the terms of the bond.

Acts 1983, 68th Leg., p. 3559, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. BUILDING LANDLORD'S LIEN

Sec. 54.021. LIEN. A person who leases or rents all or part of a building for nonresidential use has a preference lien on the property of the tenant or subtenant in the building for rent that is due and for rent that is to become due during the current 12-month period succeeding the date of the beginning of the rental agreement or an anniversary of that date.

Acts 1983, 68th Leg., p. 3559, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 200, Sec. 2, eff. Aug. 26, 1985.

Sec. 54.022. COMMERCIAL BUILDING. (a) The lien is unenforceable for rent on a commercial building that is more than six months past due unless the landlord files a lien statement with the county clerk of the county in which the building is located.

(b) The lien statement must be verified by the landlord or the landlord's agent or attorney and must contain:

(1) an account, itemized by month, of the rent for which the lien is claimed;

(2) the name and address of the tenant or subtenant, if any;

(3) a description of the leased premises; and

(4) the beginning and termination dates of the lease.

(c) Each county clerk shall index alphabetically and record the rental lien statements filed in the clerk's office.

Acts 1983, 68th Leg., p. 3559, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.023. EXEMPTIONS. This subchapter does not affect a statute exempting property from forced sale.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.024. DURATION OF LIEN. The lien exists while the tenant occupies the building and until one month after the day that the tenant abandons the building.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.025. DISTRESS WARRANT. The person to whom rent is payable under a building lease or the person's agent, attorney, assign, or other legal representative may apply to the justice of the peace in the precinct in which the building is located for a distress warrant if the tenant:

(1) owes rent;

(2) is about to abandon the building; or

(3) is about to remove the tenant's property from the building.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 10, eff. Sept. 1, 1993.

SUBCHAPTER C. RESIDENTIAL LANDLORD'S LIEN

Sec. 54.041. LIEN. A landlord of a single or multifamily residence has a lien for unpaid rent that is due. The lien attaches to nonexempt property that is in the residence or that the tenant has stored in a storage room.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.042. EXEMPTIONS. A lien under this subchapter does not attach to:

(1) wearing apparel;

(2) tools, apparatus, and books of a trade or profession;

(3) schoolbooks;

(4) a family library;

(5) family portraits and pictures;

(6) one couch, two living room chairs, and a dining table and chairs;

(7) beds and bedding;

(8) kitchen furniture and utensils;

(9) food and foodstuffs;

(10) medicine and medical supplies;

(11) one automobile and one truck;

(12) agricultural implements;

(13) children's toys not commonly used by adults;

(14) goods that the landlord or the landlord's agent knows are owned by a person other than the tenant or an occupant of the residence; and

(15) goods that the landlord or the landlord's agent knows are subject to a recorded chattel mortgage or financing agreement.

Acts 1983, 68th Leg., p. 3560, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.043. ENFORCEABILITY OF CONTRACTUAL PROVISIONS. (a) A contractual landlord's lien is not enforceable unless it is underlined or printed in conspicuous bold print in the lease agreement.

(b) A provision of a lease that purports to waive or diminish a right, liability, or exemption of this subchapter is void to the extent limited by this subchapter.

Acts 1983, 68th Leg., p. 3561, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 54.044. SEIZURE OF PROPERTY. (a) The landlord or the landlord's agent may not seize exempt property and may seize nonexempt property only if it is authorized by a written lease and can be accomplished without a breach of the peace.

(b) Immediately after seizing property under Subsection (a) of this section, the landlord or the landlord's agent shall leave written notice of entry and an itemized list of the items removed. The notice and list shall be left in a conspicuous place within the dwelling. The notice must state the amount of delinquent rent and the name, address, and telephone number of the person the tenant may contact regarding the amount owed. The notice must also state that the property will be promptly returned on full payment of the delinquent rent.

(c) Unless authorized in a written lease, the landlord is not entitled to collect a charge for packing, removing, or storing

property seized under this section.

(d) If the tenant has abandoned the premises, the landlord or the landlord's agent may remove its contents.

Acts 1983, 68th Leg., p. 3561, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.045. SALE OF PROPERTY. (a) Property seized under Section 54.044 may not be sold or otherwise disposed of unless the sale or disposition is authorized in a written lease.

(b) Before selling seized property, the landlord or the landlord's agent must give notice to the tenant not later than the 30th day before the date of the sale. The notice must be sent to the tenant by both first class mail and certified mail, return receipt requested, at the tenant's last known address. The notice must contain:

(1) the date, time, and place of the sale;

(2) an itemized account of the amount owed by the tenant to the landlord; and

(3) the name, address, and telephone number of the person the tenant may contact regarding the sale, the amount owed, and the right of the tenant to redeem the property under Subsection (e) of this section.

(c) A sale under this section is subject to a recorded chattel mortgage or financing statement. The property shall be sold to the highest cash bidder. Proceeds from the sale shall be applied first to delinquent rents and, if authorized by the written lease, reasonable packing, moving, storage, and sale costs.

(d) Any sale proceeds remaining after payment of the amounts authorized in Subsection (c) of this section shall be mailed to the tenant at the tenant's last known address not later than the 30th day after the date of the sale. The landlord shall provide the tenant with an accounting of all proceeds of the sale not later than the 30th day after the date on which the tenant makes a written request for the accounting.

(e) The tenant may redeem the property at any time before the property is sold by paying to the landlord or the landlord's agent all delinquent rents and, if authorized in the written lease, all reasonable packing, moving, storage, and sale costs.

Added by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.046. VIOLATION BY LANDLORD. If a landlord or the landlord's agent wilfully violates this subchapter, the tenant is entitled to:

(1) actual damages, return of any property seized that has not been sold, return of the proceeds of any sale of seized property, and the sum of one month's rent and $1,000, less any amount for which the tenant is liable; and

(2) reasonable attorney's fees.

Acts 1983, 68th Leg., p. 356, ch. 5761, Sec. 1, eff. Jan. 1, 1984.
Renumbered and amended by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 2, eff. January 1, 2016.

Sec. 54.047. OTHER RIGHTS NOT AFFECTED. This subchapter does not affect or diminish any other rights or obligations arising under common law or any statute.

Added by Acts 1985, 69th Leg., ch. 305, Sec. 1, eff. Aug. 26, 1985.

Sec. 54.048. TENANT MAY REPLEVY. At any time before judgment in a suit for unpaid rent, the tenant may replevy any of the property that has been seized, if the property has not been claimed or sold, by posting a bond in an amount approved by the court, payable to the landlord, and conditioned that if the landlord prevails in the suit, the amount of the judgment rendered and any costs assessed against the tenant shall be first satisfied, to the extent possible, out of the bond.

Added by Acts 1987, 70th Leg., ch. 266, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 54.901. DISPOSAL OF CERTAIN MOTOR VEHICLES SUBJECT TO

LIEN. (a) Notwithstanding any other law, a person authorized to dispose of property for which a lien under this chapter is attached may dispose of the property in accordance with Subchapter D, Chapter 683, Transportation Code, if:

(1) the property is a motor vehicle; and

(2) the person determines that:

(A) the vehicle's only residual value is as a source of parts or scrap metal; or

(B) it is not economical to dispose of the vehicle at a public sale.

(b) If a person disposes of the property under Subsection (a), the person shall apply the fair market value of the motor vehicle to the charges due to the person.

Added by Acts 2017, 85th Leg., R.S., Ch. 1061 (H.B. 3131), Sec. 3, eff. September 1, 2017.

CHAPTER 55. HOSPITAL AND EMERGENCY MEDICAL SERVICES LIENS

Sec. 55.001. DEFINITIONS. In this chapter:

(1) "Emergency medical services" has the meaning assigned by Section 773.003, Health and Safety Code.

(2) "Emergency medical services provider" has the meaning assigned by Section 773.003, Health and Safety Code.

(3) "Hospital" means a person or institution maintaining a facility that provides hospital services in this state.

(4) "Person" does not include a county, common, or independent school district.

Acts 1983, 68th Leg., p. 3562, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.0015. ADMISSION TO HOSPITAL. For purposes of this chapter, an injured individual is considered admitted to a hospital if the individual is allowed access to any department of the hospital for the provision of any treatment, care, or service to the individual.

Added by Acts 2019, 86th Leg., R.S., Ch. 862 (H.B. 2929), Sec. 1, eff. June 10, 2019.

Sec. 55.002. LIEN. (a) A hospital has a lien on a cause of action or claim of an individual who receives hospital services for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must be admitted to a hospital not later than 72 hours after the accident.

(b) The lien extends to both the admitting hospital and a hospital to which the individual is transferred for treatment of the same injury.

(c) An emergency medical services provider has a lien on a cause of action or claim of an individual who receives emergency medical services in a county with a population of 800,000 or less for injuries caused by an accident that is attributed to the negligence of another person. For the lien to attach, the individual must receive the emergency medical services not later than 72 hours after the accident.

Acts 1983, 68th Leg., p. 3562, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 576 (H.B. 3337), Sec. 1, eff. September 1, 2011.

Sec. 55.003. PROPERTY TO WHICH LIEN ATTACHES. (a) A lien under this chapter attaches to:

(1) a cause of action for damages arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services;

(2) a judgment of a court in this state or the decision of a public agency in a proceeding brought by the injured individual or by another person entitled to bring the suit in case of the death of the individual to recover damages arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services; and

(3) the proceeds of a settlement of a cause of action or a claim by the injured individual or another person entitled to make the claim, arising from an injury for which the injured individual is admitted to the hospital or receives emergency medical services.

(b) The lien does not attach to:

(1) a claim under the workers' compensation law of this state, the Federal Employees Liability Act, or the Federal Longshore and Harbor Workers' Compensation Act; or

(2) the proceeds of an insurance policy in favor of the injured individual or the injured individual's beneficiary or legal representative, except public liability insurance carried by the insured that protects the insured against loss caused by an accident or collision.

(c) A hospital lien described by Section 55.002(a) does not attach to a claim against the owner or operator of a railroad company that maintains or whose employees maintain a hospital in which the injured individual is receiving hospital services.

Acts 1983, 68th Leg., p. 3562, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.004. AMOUNT OF LIEN. (a) In this section, "emergency hospital care" means health care services provided in a hospital to evaluate, stabilize, and treat a serious medical problem of recent onset or severity, including severe pain that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the condition, illness, or injury is of such a nature that failure to obtain immediate medical care would in all reasonable probability:

(1) seriously jeopardize the patient's health;

(2) seriously impair one or more bodily functions;

(3) seriously harm an organ or other part of the body;

(4) cause serious disfigurement; or

(5) in the case of a pregnant woman, seriously jeopardize the health of the fetus.

(b) A hospital lien described by Section 55.002(a) is for the lesser of:

(1) the amount of the hospital's charges for services provided to the injured individual during the first 100 days of the injured individual's hospitalization;

(2) 50 percent of all amounts recovered by the injured individual through a cause of action, judgment, or settlement described by Section 55.003(a); or

(3) if the trier of fact specifies the amount awarded for hospital charges for services provided to the injured individual, the amount awarded by the trier of fact for the services provided to the injured individual by the hospital less the pro rata share of reasonable attorney's fees and expenses the injured individual incurred in pursuing the claim.

(c) A hospital lien described by Section 55.002(a) may also include the amount of a physician's reasonable and necessary charges for emergency hospital care services provided to the injured individual during the first seven days of the injured individual's hospitalization. At the request of the physician, the hospital may act on the physician's behalf in securing and discharging the lien.

(d) A hospital lien described by Section 55.002(a) does not cover:

(1) charges for other services that exceed a reasonable and regular rate for the services;

(2) charges by the physician related to any services provided under Subsection (c) for which the physician has accepted insurance benefits or payment under a private medical indemnity plan or program, regardless of whether the benefits or payment equals the full amount of the physician's charges for those services;

(3) charges by the physician for services provided under Subsection (c) if the injured individual has coverage under a private medical indemnity plan or program from which the physician is entitled to recover payment for the physician's services under an assignment of benefits or similar rights;

(4) charges by the physician related to any services provided under Subsection (c) if the physician is a member of the legislature; or

(5) charges for which recovery is barred under Section 146.003, Civil Practice and Remedies Code.

(e) A hospital lien described by Section 55.002(a) is not affected by a hospital's use of a method of classifying patients according to their ability to pay that is solely intended to obtain a lien for services provided to an indigent injured individual.

(f) An emergency medical services lien described by Section 55.002(c) is for the amount charged by the emergency medical services provider, not to exceed $1,000, for emergency medical services provided to the injured individual during the 72 hours following the accident that caused the individual's injuries.

(g) An emergency medical services lien described by Section 55.002(c) does not cover:

(1) charges for services that exceed a reasonable and regular rate for the services;

(2) charges by the emergency medical services provider related to any services for which the emergency medical services provider has accepted insurance benefits or payment under a private medical indemnity plan or program, regardless of whether the benefits or payments equal the full amount of the charges for those services; or

(3) charges by the emergency medical services provider for services provided if the injured individual has coverage under a private medical indemnity plan or program from which the provider is entitled to recover payment for the provider's services under an assignment of benefits or similar right.

(h) If the physician is employed in that capacity by an institution of higher education, as defined by Section 61.003, Education Code, and the lien does not include the amount of the physician's reasonable and necessary charges described by Subsection (c), the physician has a lien on the cause of action in the same manner as a hospital under this chapter. The lien is subject to provisions of this chapter applicable to a hospital lien, and the physician or the physician's employing institution may secure and enforce the lien in the manner provided by this chapter.

Acts 1983, 68th Leg., p. 3563, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2001, 77th Leg., ch. 930, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1266, Sec. 1.16, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(79), eff. September 1, 2005.

Acts 2019, 86th Leg., R.S., Ch. 862 (H.B. 2929), Sec. 2, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 812 (H.B. 2064), Sec. 1, eff. June 16, 2021.

Sec. 55.005. SECURING LIEN. (a) To secure the lien, a hospital or emergency medical services provider must:

(1) provide notice to the injured individual in accordance with Subsection (d); and

(2) file written notice of the lien with the county clerk of the county in which the services were provided before money is paid to an entitled person because of the injury.

(b) The notice must contain:

(1) the injured individual's name and address;

(2) the date of the accident;

(3) the name and location of the hospital or emergency medical services provider claiming the lien; and

(4) the name of the person alleged to be liable for damages arising from the injury, if known.

(c) The county clerk shall record the name of the injured individual, the date of the accident, and the name and address of the hospital or emergency medical services provider and shall index the record in the name of the injured individual.

(d) Except as provided by Subsection (e), not later than the fifth business day after the date a hospital or emergency medical services provider receives notice from the county clerk that a notice of lien filed under Subsection (a)(2) has been recorded in the county records, the hospital or emergency medical services provider must send a written notice to the injured individual or the injured individual's legal representative, by regular mail, to the individual's last known address, informing the individual that:

(1) the lien will attach to any cause of action or claim the individual may have against another person for the individual's injuries; and

(2) the lien does not attach to real property owned by the individual.

(e) An emergency medical services provider is not required to provide notice by mail if the emergency medical services provider provides the notice required by Subsection (d) to the injured individual or the injured individual's representative at the time emergency medical services are provided and if:

(1) the required notice is included on the emergency medical services authorization form in a paper or electronic version in a separate paragraph that is bolded and in at least 14-point type; and

(2) except as provided by Subsection (f), the notice is signed by the injured individual or the injured individual's

representative.

(f) For the purposes of Subsection (e), if consent for emergency care of an individual is not required under Section 773.008, Health and Safety Code, notice provided on an emergency medical services authorization form to the injured individual is not required to be signed.

(g) The failure of an individual to receive a notice mailed in accordance with Subsection (d) does not affect the validity of a lien under this chapter.

Acts 1983, 68th Leg., p. 3563, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1995, 74th Leg., ch. 1031, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 169 (S.B. 328), Sec. 1, eff. September 1, 2011.

Sec. 55.006. DISCHARGE OF LIEN. (a) To discharge a lien under this chapter, the authorities of the hospital or emergency medical services provider claiming the lien or the person in charge of the finances of the hospital or emergency medical services provider must execute and file with the county clerk of the county in which the lien notice was filed a certificate stating that the debt covered by the lien has been paid or released and authorizing the clerk to discharge the lien.

(b) The county clerk shall record a memorandum of the certificate and the date it was filed.

(c) The filing of the certificate and recording of the memorandum discharge the lien.

Acts 1983, 68th Leg., p. 3564, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.007. VALIDITY OF RELEASE. (a) A release of a cause of action or judgment to which a lien under this chapter may attach is not valid unless:

(1) the charges of the hospital or emergency medical services provider claiming the lien were paid in full before the execution and delivery of the release;

(2) the charges of the hospital or emergency medical services provider claiming the lien were paid before the execution and delivery of the release to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release; or

(3) the hospital or emergency medical services provider claiming the lien is a party to the release.

(b) A judgment to which a lien under this chapter has attached remains in effect until the charges of the hospital or emergency medical services provider claiming the lien are paid in full or to the extent set out in the judgment.

Acts 1983, 68th Leg., p. 3564, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

Sec. 55.008. RECORDS. (a) On request by an attorney for a party by, for, or against whom a claim is asserted for damages arising from an injury, a hospital or emergency medical services provider shall as promptly as possible make available for the attorney's examination its records concerning the services provided to the injured individual.

(b) The hospital or emergency medical services provider may issue reasonable rules for granting access to its records under this section, but it may not deny access because a record is incomplete.

(c) The records are admissible, subject to applicable rules of evidence, in a civil suit arising from the injury.

Acts 1983, 68th Leg., p. 3564, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 337, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 56. LIENS AGAINST MINERAL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 56.001. DEFINITIONS. In this chapter:

(1) "Mineral activities" means digging, drilling, torpedoing, operating, completing, maintaining, or repairing an oil, gas, or water well, an oil or gas pipeline, or a mine or quarry.

(2) "Mineral contractor" means a person who performs labor or furnishes or hauls material, machinery, or supplies used in mineral activities under an express or implied contract with a

mineral property owner or with a trustee, agent, or receiver of a mineral property owner.

(3) "Mineral property owner" means an owner of land, an oil, gas, or other mineral leasehold, an oil or gas pipeline, or an oil or gas pipeline right-of-way.

(4) "Mineral subcontractor" means a person who:

(A) furnishes or hauls material, machinery, or supplies used in mineral activities under contract with a mineral contractor or with a subcontractor;

(B) performs labor used in mineral activities under contract with a mineral contractor; or

(C) performs labor used in mineral activities as an artisan or day laborer employed by a subcontractor.

Acts 1983, 68th Leg., p. 3565, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.002. LIEN. A mineral contractor or subcontractor has a lien to secure payment for labor or services related to the mineral activities.

Acts 1983, 68th Leg., p. 3566, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.003. PROPERTY SUBJECT TO LIEN. (a) The following property is subject to the lien:

(1) the material, machinery, and supplies furnished or hauled by the lien claimant;

(2) the land, leasehold, oil or gas well, water well, oil or gas pipeline and its right-of-way, and lease for oil and gas purposes for which the labor was performed or material, machinery, or supplies were furnished or hauled, and the buildings and appurtenances on this property;

(3) other material, machinery, and supplies used for mineral activities and owned by the owner of the property listed in Subdivision (2); and

(4) other wells and pipelines used in operations related to oil, gas, and minerals and located on property listed in Subdivision (2).

(b) A lien created by performing labor or furnishing or hauling material, machinery, or supplies for a leaseholder does not attach to

the fee title to the property.

Acts 1983, 68th Leg., p. 3566, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.004. PRIORITY. (a) The lien does not affect an encumbrance that attached to land or a leasehold before the lien's inception.

(b) The lien on material, machinery, supplies, or a specific improvement takes priority over an earlier encumbrance on the land or leasehold on which the material, machinery, supplies, or improvement is placed or located.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.005. ACCRUAL OF INDEBTEDNESS. (a) The indebtedness for labor performed by the day or week accrues at the end of each week during which the labor is performed.

(b) The indebtedness for material or services accrues on the date the material or services were last furnished. All material or services that a person furnishes for the same land, leasehold interest, oil or gas pipeline, or oil or gas pipeline right-of-way are considered to be furnished under a single contract unless more than six months elapse between the dates the material or services are furnished.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.006. LIABILITY OF OWNER. An owner of land or a leasehold may not be subjected to liability under this chapter greater than the amount agreed to be paid in the contract for furnishing material or performing labor.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. SECURING LIEN

Sec. 56.021. SECURING LIEN. (a) Not later than six months after the day the indebtedness accrues, a person claiming the lien

must file an affidavit with the county clerk of the county in which the property is located.

(b) Not later than the 10th day before the day the affidavit is filed, a mineral subcontractor claiming the lien must serve on the property owner written notice that the lien is claimed.

Acts 1983, 68th Leg., p. 3567, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.022. CONTENTS OF AFFIDAVIT. (a) A lien claimant's affidavit must include:

(1) the name of the mineral property owner involved, if known;

(2) the name and mailing address of the claimant;

(3) the dates of performance or furnishing;

(4) a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved; and

(5) an itemized list of amounts claimed.

(b) A mineral subcontractor's affidavit must in addition include:

(1) the name of the person for whom labor was performed or material was furnished or hauled; and

(2) a statement that the subcontractor timely served written notice that the lien is claimed on the property owner or the owner's agent, representative, or receiver.

Acts 1983, 68th Leg., p. 3568, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.023. CONTENTS OF MINERAL SUBCONTRACTOR'S NOTICE. A mineral subcontractor's notice to the property owner must include the amount of the lien, the name of the person indebted to the subcontractor, and a description of the land, leasehold interest, pipeline, or pipeline right-of-way involved.

Acts 1983, 68th Leg., p. 3568, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.024. FILING IN NEW COUNTY. (a) Not later than the 90th day after the day that property to which the lien has attached is removed from a county in which the lien affidavit covering the

property has been filed, the lienholder may file with the clerk of the county to which the property has been moved an itemized inventory of the property showing the unpaid amount due.

(b) The lien attaches to all property subject to the lien located in a county in which an inventory is filed under this section.

(c) An inventory filed under this section is notice of the lien's existence.

Acts 1983, 68th Leg., p. 3568, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. ENFORCEMENT

Sec. 56.041. ENFORCEMENT. (a) A claimant must enforce the lien within the same time and in the same manner as a mechanic's, contractor's, or materialman's lien under Chapter 53.

(b) A holder of a prior encumbrance on land or a leasehold is not a necessary party to a suit to foreclose the lien.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.042. SALE OR REMOVAL OF PROPERTY. (a) A mineral property owner, contractor, subcontractor, or purchaser or an agent, trustee, or receiver of one of those persons may not sell property to which the lien has attached or remove it from the land on which it was to be used, unless the lienholder consents in writing.

(b) On a violation of this section, a lienholder is entitled to possession of the property regardless of where it is found, and the lienholder may have the property sold to satisfy the debt on which the lien is based regardless of whether the debt is due.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.043. RETENTION OF PAYMENT. A property owner who is served with a mineral subcontractor's notice may withhold payment to the contractor in the amount claimed until the debt on which the lien is based is settled or determined to be not owed. The owner is not liable to the subcontractor for more than the amount that the owner owes the original contractor when the notice is received.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.044. FORFEITURE OF LEASEHOLD. Forfeiture of a leasehold does not impair a lien on material, machinery, supplies, or an improvement located on the leasehold if:

(1) the lien attached to the property before the leasehold was forfeited;

(2) the property is not permanently attached to the land; and

(3) the lienholder pays the owner of the land the damages caused to the land by removal of the property.

Acts 1983, 68th Leg., p. 3569, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 56.045. EQUITABLE OR CONTINGENT INTEREST. Failure of an equitable interest to become legal title or nonfulfillment of a condition subsequent on which a legal interest is contingent does not impair a lien on material, machinery, supplies, or an improvement located on the land covered by the equitable interest if the lien attached to the material, machinery, supplies, or improvement before the failure.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 57. RAILROAD LABORER'S LIEN

Sec. 57.001. RAILROAD LABORER'S LIEN. A mechanic, laborer, or other person who works or uses tools or a team in the construction, operation, or repair of a railroad or railroad equipment has a lien on the railroad and equipment for the amount owed for the labor or the use of the tools or team.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.002. PRIORITY. A lien under this chapter takes priority over all other liens on the same property.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.003. DURATION OF LIEN. A lien under this chapter ceases to exist 12 months after the day that it is created, unless the lien claimant has sued to foreclose the lien.

Acts 1983, 68th Leg., p. 3570, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.004. ENFORCEMENT. A court in a suit to foreclose the lien shall render judgment for the amount due and order to be sold as much of the railroad right-of-way and equipment as is necessary to satisfy the judgment only if:

(1) the work was performed at the instance of the railroad company or the company's agent, contractor, or subcontractor; and

(2) the amount claimed is due.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.005. VENUE. A suit to foreclose a lien under this chapter may be brought in a county in which:

(1) the work was performed or any part of the cause of action accrued; or

(2) the principal office of the railroad company is located.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 57.006. PARTIES. Holders of other liens on the same property are not necessary parties to a suit to foreclose a lien under this chapter but may intervene in the suit.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 58. FARM, FACTORY, AND STORE WORKER'S LIENS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) "Employer" means a person with whom a worker contracts, directly or through an agent, receiver, or trustee of the person, for

the performance of labor or a service by the worker. The contract may be oral or in writing.

(2) "Worker" means a clerk, accountant, bookkeeper, waiter, waitress, cook, maid, porter, servant, employee, artisan, craftsman, factory operator, mill operator, mechanic, quarry worker, common laborer, or farmhand.

Acts 1983, 68th Leg., p. 3571, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.002. LIEN. (a) A worker has a lien as provided by this chapter if, under the contract with the employer, the worker:

(1) labors or performs a service in an office, store, hotel, rooming house or boardinghouse, restaurant, shop, factory, mine, quarry, or mill or on a farm; or

(2) performs a service:

(A) in cutting, preparing, hauling, or transporting logs or timber to a place of disposition;

(B) on a means of transportation of logs or timber; or

(C) in constructing or maintaining a tram or railroad constructed or used for transporting logs or timber to their owner or a point of disposition.

(b) The amount of the lien is the amount owed under the contract.

Acts 1983, 68th Leg., p. 3572, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.003. PROPERTY SUBJECT TO LIEN. Each thing of value owned by or in the possession or control of the employer or the employer's agent, receiver, or trustee is subject to the lien if:

(1) created in whole or part by the lien claimant's work;

(2) used by or useful to the lien claimant in the performance of the work; or

(3) necessarily connected with the performance of the work.

Acts 1983, 68th Leg., p. 3572, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.004. SECURING LIEN. (a) Not later than the 30th day after the day that the indebtedness accrues, a worker who has not

received payment for work performed and who wishes to claim the lien must:

(1) serve a copy of an account of the services, stating the amount due, on the employer or the employer's agent, receiver, or trustee; and

(2) file a copy of the account with the county clerk of the county in which the services were performed.

(b) The party making an account must execute an affidavit verifying the contents of the account.

(c) Substantial compliance with this section secures the lien.

Acts 1983, 68th Leg., p. 3572, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.005. PRIORITY. (a) A lien under this chapter is a first lien, except that a farmhand's lien is subordinate to a landlord's lien provided by law.

(b) Liens under this chapter take priority in the order that the accounts are filed with the county clerk.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.006. DURATION OF LIEN. The lien ceases to exist six months after the day that it is secured unless the lien claimant has sued to foreclose the lien.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.007. PURCHASE OF PROPERTY TO WHICH LIEN HAS ATTACHED. (a) A person who purchases from its owner property to which the lien has attached and who has no actual or constructive notice of the lien takes the property free from the lien.

(b) An account filed with the county clerk under this chapter or a suit to foreclose a lien is constructive notice of the lien's existence.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.008. ASSIGNMENT OF LIEN. The lien may be assigned. An assignee receives the rights and privileges held by the assignor under the lien.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 58.009. PAYMENT OF WAGES. For purposes of this chapter, wages are due weekly for work performed by the day or week and monthly for work performed by the month, and an employer shall pay wages in United States legal tender.

Acts 1983, 68th Leg., p. 3573, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 59. SELF-SERVICE STORAGE FACILITY LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 59.001. DEFINITIONS. In this chapter:

(1) "Lessor" means an owner, lessor, sublessor, or managing agent of a self-service storage facility.

(1-a) "Military service" means:

(A) military service as defined by Section 101, Servicemembers Civil Relief Act (50 U.S.C. App. Section 511); and

(B) active duty service for a period of more than 30 consecutive days as a member of the Texas State Guard or Texas National Guard under the call of the governor.

(2) "Rental agreement" means a written or oral agreement that establishes or modifies the terms of use of a self-service storage facility.

(3) "Self-service storage facility" means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant.

(4) "Tenant" means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility.

(4-a) "Vehicle storage facility" has the meaning assigned by Section 2303.002, Occupations Code.

(5) "Verified mail" means any method of mailing that provides evidence of mailing.

Acts 1983, 68th Leg., p. 3574, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 1, eff. January 1, 2012.
Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 1, eff. September 1, 2021.

Sec. 59.002. APPLICABILITY. This chapter applies to a self-service storage facility rental agreement that is entered into, extended, or renewed after September 1, 1981.

Acts 1983, 68th Leg., p. 3574, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.003. APPLICABILITY OF OTHER STATUTES. (a) The following provisions do not apply to a self-service storage facility:
(1) Subchapter B, Chapter 54;
(2) Chapter 70; and
(3) Chapter 181, Health and Safety Code.
(b) Unless a lessor issues a warehouse receipt, bill of lading, or other document of title relating to property stored at the facility, the following statutes do not apply to a self-service storage facility:
(1) Chapter 7, Business & Commerce Code, as amended; and
(2) Chapter 14, Agriculture Code.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 2001, 77th Leg., ch. 1124, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 2, eff. January 1, 2012.

Sec. 59.004. VARIATION BY AGREEMENT AND WAIVER. Except as expressly provided by this chapter, a lessor or tenant may not vary the provisions of this chapter by agreement or waive rights conferred by this chapter.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.005. DAMAGES FOR VIOLATION. A person injured by a violation of this chapter may sue for damages under the Deceptive Trade Practices--Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.006. ATTACHMENT AND PRIORITY OF LIEN. A lien under this chapter attaches on the date the tenant places the property at the self-service storage facility. The lien takes priority over all other liens on the same property.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.007. PURCHASE OF PROPERTY. A good faith purchaser of property sold to satisfy a lien under this chapter takes the property free of a claim by a person against whom the lien was valid, regardless of whether the lessor has complied with this chapter.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.008. REDEMPTION. A tenant may redeem property seized under a judicial order or a contractual landlord's lien prior to its sale or other disposition by paying the lessor the amount of the lien and the lessor's reasonable expenses incurred under this chapter.

Acts 1983, 68th Leg., p. 3575, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.009. RESIDENTIAL USE. A tenant may not use or allow the use of a self-service storage facility as a residence.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 59.010. RIGHTS OF CERTAIN MILITARY MEMBERS. (a) In this section, "servicemember" has the meaning assigned by Section 101, Servicemembers Civil Relief Act (50 U.S.C. App. Section 511).

(b) A member of the Texas State Guard or Texas National Guard who is in military service is entitled to the same protections and rights relating to the enforcement of storage liens under the Servicemembers Civil Relief Act (50 U.S.C. App. Section 501 et seq.) to which a servicemember is entitled.

Added by Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 3, eff. January 1, 2012.

SUBCHAPTER B. LIEN

Sec. 59.021. LIEN; PROPERTY ATTACHED. A lessor has a lien on all property in a self-service storage facility for the payment of charges that are due and unpaid by the tenant.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 117, Sec. 12(a), eff. Sept. 1, 1985.

SUBCHAPTER C. ENFORCEMENT OF LIEN

Sec. 59.041. ENFORCEMENT OF LIEN. (a) Except as provided by Subsection (b) of this section, a lessor may enforce a lien under this chapter only under a judgment by a court of competent jurisdiction that forecloses the lien and orders the sale of the property to which it is attached.

(b) A lessor may enforce a lien under this chapter by seizing and selling the property to which the lien is attached if:

(1) the seizure and sale are made under the terms of a contractual landlord's lien as underlined or printed in conspicuous bold print in a written rental agreement between the lessor and tenant; and

(2) the seizure and sale are made in accordance with this chapter.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 117, Sec. 12(c), eff. Sept. 1, 1985.

Sec. 59.042. PROCEDURE FOR SEIZURE AND SALE. (a) A lessor who

wishes to enforce a contractual landlord's lien by seizing and selling or otherwise disposing of the property to which it is attached must deliver written notice of the claim to the tenant.

(b) If the tenant fails to satisfy the claim on or before the 14th day after the date the notice is delivered, the lessor must publish or post notices advertising the sale as provided by this subchapter.

(c) If notice is by publication, the lessor may not sell the property until the 15th day after the date the notice is first published. If notice is by posting, the lessor may sell the property after the 10th day after the date the notices are posted.

Acts 1983, 68th Leg., p. 3576, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 5, eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 117, Sec. 12(d), eff. Sept. 1, 1985.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 4, eff. January 1, 2012.

Sec. 59.043. CONTENTS AND DELIVERY OF NOTICE OF CLAIM; INFORMATION REGARDING TENANT'S MILITARY SERVICE. (a) The lessor's notice to the tenant of the claim must contain:

(1) an itemized account of the claim;

(2) the name, address, and telephone number of the lessor or the lessor's agent;

(3) a statement that the contents of the self-service storage facility have been seized under the contractual landlord's lien;

(4) a statement that if the tenant fails to satisfy the claim on or before the 14th day after the date the notice is delivered, the property may be, as applicable:

(A) sold at public auction under this subchapter; or

(B) towed to a vehicle storage facility and disposed of by the vehicle storage facility under Subchapter D, Chapter 2303, Occupations Code; and

(5) a statement underlined or printed in conspicuous bold print requesting a tenant who is in military service to notify the lessor of the status of the tenant's current military service

immediately.

(b) A lessor may require written proof of a tenant's military service in the form of documentation from the United States Department of Defense or other documentation reasonably acceptable to the lessor.

(c) Subject to Subsection (d), the lessor must deliver the notice in person or by e-mail or verified mail to the tenant's last known e-mail or postal address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. Notice by verified mail is considered delivered when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier. Notice by e-mail is considered delivered when sent to the last known e-mail address of the tenant.

(d) The notice may not be sent by e-mail unless a written rental agreement between the lessor and the tenant contains language underlined or in conspicuous bold print that notice may be given by e-mail if the tenant elects to provide an e-mail address.

Acts 1983, 68th Leg., p. 3577, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 5, eff. January 1, 2012.

Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 2, eff. September 1, 2021.

Sec. 59.044. NOTICE OF SALE. (a) The notice advertising the sale must contain:

(1) a general description of the property;

(2) a statement that the property is being sold to satisfy a landlord's lien;

(3) the tenant's name;

(4) the address of the self-service storage facility; and

(5) the time, place, and terms of the sale.

(a-1) For the purposes of Subsection (a)(5), the place of a sale is:

(1) the physical address of the location of the sale if the sale is conducted at the self-service storage facility or a reasonably near public place; or

(2) the address of the Internet website if the sale is conducted through an Internet website.

(b) The lessor must publish the notice once in each of two consecutive weeks in a newspaper of general circulation in the county in which the self-service storage facility is located. If there is not a newspaper of general circulation in the county, the lessor may instead post a copy of the notice at the self-service storage facility and at least five other conspicuous locations near the facility.

Acts 1983, 68th Leg., p. 3577, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 203 (S.B. 952), Sec. 1, eff. September 1, 2017.

Sec. 59.0445. NOTICE TO OWNER AND LIENHOLDERS. (a) This section applies to the enforcement of a lien under this chapter on:

(1) a motor vehicle subject to Chapter 501, Transportation Code;

(2) a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B, Chapter 31, Parks and Wildlife Code; or

(3) a motor vehicle, motorboat, vessel, or outboard motor registered or titled outside this state.

(b) In addition to the notices required by Sections 59.042 and 59.044, not later than the 30th day after the date the lessor takes possession of the motor vehicle, motorboat, vessel, or outboard motor to enforce a lien under this chapter, the lessor shall give written notice of sale to the last known owner and each holder of a lien recorded on the registration or certificate of title of the motor vehicle, motorboat, vessel, or outboard motor or, if the registration or title is outside this state, the owner and each lienholder of record in the location in which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled.

(c) Except as provided by Subsection (d), the notice required by this section must be sent by verified mail. Notice by verified mail is considered mailed when the notice, properly addressed with postage prepaid, is deposited with the United States Postal Service or a common carrier. The notice must include:

(1) the amount of the charges secured by the lien;

(2) a request for payment; and

(3) a statement that if the charges are not paid in full before the 31st day after the date the notice is mailed or published, as applicable, the property may be sold at public auction.

(d) The notice required by this section may be given by publishing the notice once in a print or electronic version of a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the lessor submits a written request by verified mail to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled requesting information relating to the identity of the last known owner of record and any lienholder of record;

(2) the lessor:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled that the entity is unwilling or unable to provide information on the last known owner of record or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered or titled on or before the 21st day after the date the lessor submits the request;

(3) the identity of the last known owner of record cannot be determined;

(4) the registration or title does not contain an address for the last known owner of record; and

(5) the lessor cannot determine the identities and addresses of the lienholders of record.

(e) The lessor is not required to publish notice under Subsection (d) if a correctly addressed notice is sent with sufficient postage in accordance with Subsections (b) and (c) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address or the forwarding order has expired.

(f) After notice is given under this section to the owner of or the holder of a lien on the motor vehicle, motorboat, vessel, or outboard motor, the owner or lienholder may take possession of the motor vehicle, motorboat, vessel, or outboard motor by paying all

charges due to the lessor before the 31st day after the date the notice is mailed or published as provided by this section.

(g) If the charges are not paid before the 31st day after the date the notice is mailed or published, as applicable, the lessor may:

(1) sell the motor vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges; or

(2) if the property that is the subject of the notice is a motor vehicle, dispose of the motor vehicle in accordance with Subchapter D, Chapter 683, Transportation Code, if the lessor determines that:

(A) the vehicle's only residual value is as a source of parts or scrap metal; or

(B) it is not economical to dispose of the vehicle at a public sale.

(g-1) If the lessor disposes of the property under Subsection (g)(2), the lessor shall apply the fair market value of the motor vehicle to the charges due to the lessor.

(h) A person commits an offense if the person knowingly provides false or misleading information in a notice required by this section. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 6, eff. January 1, 2012.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1061 (H.B. 3131), Sec. 4, eff. September 1, 2017.

Sec. 59.045. CONDUCT OF SALE. (a) A sale under this subchapter must be a public sale:

(1) conducted at the self-service storage facility or a reasonably near public place; or

(2) conducted through an Internet website accessible to the public.

(b) The lessor must conduct the sale according to the terms specified in the notice advertising the sale and sell the property to the highest bidder.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 203 (S.B. 952), Sec. 2, eff. September 1, 2017.

Sec. 59.046. EXCESS PROCEEDS OF SALE. If the proceeds of a sale under this subchapter are greater than the amount of the lien and the reasonable expenses of the sale, the lessor shall deliver written notice of the excess to the tenant's last known address as stated in the rental agreement or in a written notice from the tenant to the lessor furnished after the execution of the rental agreement. The lessor shall retain the excess and deliver it to the tenant if the tenant requests it before two years after the date of the sale. If the tenant does not request the excess before two years after the date of the sale, the lessor owns the excess.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER D. TOWING OF CERTAIN PROPERTY TO VEHICLE STORAGE FACILITY

Sec. 59.051. APPLICABILITY. This subchapter applies only to property that is:

(1) a motor vehicle, trailer, or semitrailer for which a title or registration is required under Chapter 501 or 502, Transportation Code;

(2) a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B, Chapter 31, Parks and Wildlife Code; or

(3) a motor vehicle, trailer, semitrailer, motorboat, vessel, or outboard motor registered or titled outside this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 3, eff. September 1, 2021.

Sec. 59.052. TRANSFER OF CERTAIN PROPERTY TO VEHICLE STORAGE FACILITY. Notwithstanding Subchapter C, a lessor who takes possession of property to which this subchapter applies to enforce a lien under this chapter may transfer possession of the property and have the property towed to a vehicle storage facility for disposition by the vehicle storage facility under Subchapter D, Chapter 2303, Occupations Code, if:

(1) the transfer of possession and towing is authorized under a written rental agreement between the lessor and tenant;

(2) the lessor gives written notice of the lessor's claim to the tenant as required under Section 59.042(a) in the manner prescribed by Section 59.043;

(3) the tenant fails to satisfy the claim on or before the 14th day after the date the notice required under Section 59.042(a) is delivered in the manner prescribed by Section 59.043; and

(4) the vehicle storage facility agrees in writing to accept possession of the property.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 3, eff. September 1, 2021.

Sec. 59.053. LIEN EXTINGUISHED. A lessor's lien on property towed to a vehicle storage facility under Section 59.052 is extinguished when the property is towed from the self-service storage facility.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 3, eff. September 1, 2021.

Sec. 59.054. OTHER RIGHTS AND REMEDIES NOT AFFECTED. Except as provided by Section 59.053, this subchapter does not affect any right or remedy of the lessor at law or in equity.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 3, eff. September 1, 2021.

Sec. 59.055. LESSOR'S LIABILITY FOR PROPERTY. A lessor is not liable to a tenant for any damage to property that the lessor has towed under Section 59.052 that occurs during the tow or after the property is towed from the self-service storage facility.

Added by Acts 2021, 87th Leg., R.S., Ch. 99 (S.B. 1181), Sec. 3, eff. September 1, 2021.

CHAPTER 60. NEWSPAPER EMPLOYEE'S LIEN

Sec. 60.001. LIEN. A worker in the editorial, reportorial, advertising, or business department of a newspaper, periodical, or other publication who labors or performs a service for the publication under a written or an oral contract with any person has a first lien under this chapter for the amount due under the contract.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 60.002. PROPERTY SUBJECT TO LIEN. The lien attaches to all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, or other things of value that are created wholly or partly by the labor of the workers or that are necessarily connected with the performance of their labor or service and that are owned by or in possession of the person with whom the workers contracted.

Acts 1983, 68th Leg., p. 3578, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 61. MOTOR VEHICLE MORTGAGEE'S LIEN

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Motor vehicle" means any motor-driven or propelled vehicle required to be registered or licensed under the laws of this state.

(2) "Mortgagee" means a secured party, as defined by Section 9.102, Business & Commerce Code, holding a lien on a motor vehicle that has been perfected pursuant to Subchapter F, Chapter 501, Transportation Code.

(3) "Mortgagor" means a debtor, as defined by Section 9.102, Business & Commerce Code, giving a lien or agreeing that a lien may be retained on a motor vehicle.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.246, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.37, eff. July 1, 2001.

Sec. 61.002. LIEN. A mortgagee has a lien on a cause of action or other claim of a mortgagor in connection with an accident that

involves a motor vehicle on which the mortgagee has perfected a lien and that is attributable to the negligence of another person.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.003. PROPERTY TO WHICH LIEN ATTACHES. The lien attaches to:

(1) a cause of action for damages arising from property damage to a motor vehicle on which the mortgagee has perfected a lien caused by an accident that is attributable to the negligence of another person;

(2) a judgment of a court in favor of a mortgagor arising from property damage to a motor vehicle on which the mortgagee has perfected a lien caused by an accident that is attributable to the negligence of another person;

(3) the proceeds of a settlement of a cause of action or a claim by the mortgagor for property damage to a motor vehicle on which the mortgagee has perfected a lien caused by an accident that is attributable to the negligence of another person; and

(4) the proceeds of a property damage liability insurance policy carried by another person that protects the other person against property damage loss caused by accident or collision.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.004. AMOUNT OF LIEN. The amount of the lien is the lesser of:

(1) the fair market value of the motor vehicle before the accident;

(2) the reasonable cost of repair to the motor vehicle; or

(3) the balance owed to the mortgagee by the mortgagor.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 11, eff. Sept. 1, 1993.

Sec. 61.005. DISCHARGE OF LIEN. If the property to which a lien created under this chapter attaches is paid jointly to the mortgagee and the mortgagor, the lien is discharged.

Added by Acts 1989, 71st Leg., ch. 171, Sec. 1, eff. Sept. 1, 1989.

Sec. 61.006. ATTORNEY'S FEES. The prevailing party in an action to enforce this chapter is entitled to recover reasonable attorney's fees.

Added by Acts 2023, 88th Leg., R.S., Ch. 548 (H.B. 4142), Sec. 1, eff. September 1, 2023.

CHAPTER 62. BROKER'S AND APPRAISER'S LIEN ON COMMERCIAL REAL ESTATE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE. This chapter may be cited as the Broker's and Appraiser's Lien on Commercial Real Estate Act.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.002. APPLICABILITY. (a) This chapter applies only to real estate that is commercial real estate on the date the notice of lien is filed under this chapter.

(b) This chapter does not apply to:

(1) a transaction involving a claim for a commission of $2,500 or less in the aggregate; or

(2) a transaction for the sale of commercial real estate involving a claim for a commission of $5,000 or less in the aggregate if the commercial real estate:

(A) is the principal place of business of the record title owner;

(B) is occupied by more than one and fewer than five tenants; and

(C) is improved with 7,500 square feet or less of total gross building area.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.003. DEFINITIONS. In this chapter:

(1) "Broker" means a person who:

(A) is licensed as a broker under Chapter 1101,

Occupations Code, and is not acting as a residential rental locator as defined by Section 1101.002, Occupations Code; or

(B) is licensed or certified as a real estate appraiser under Chapter 1103, Occupations Code.

(2) "Commercial real estate" means all real estate except:

(A) real estate improved with one to four residential units;

(B) a single-family residential unit, including a condominium, townhouse, or home in a subdivision, if the unit is sold, leased, or otherwise conveyed on a unit-by-unit basis and regardless of whether the unit is part of a larger building or located on real estate containing more than four residential units;

(C) real estate that is or includes on the real estate a person's homestead;

(D) real estate that is not improved with a structure and is:

(i) zoned for single-family residential use; or

(ii) restricted for single-family use under restrictive covenants that will remain in effect for at least the next two years; or

(E) real estate that:

(i) is primarily used for farming and ranching purposes;

(ii) will continue to be used primarily for farming and ranching purposes; and

(iii) is located more than three miles from the corporate boundaries of any municipality.

(3) "Commission" includes a fee or other valuable consideration.

(4) "Commission agreement" means a written instrument that:

(A) entitles a broker to a commission;

(B) is signed by the person obligated to pay the commission or that person's authorized agent;

(C) references the commission amount or describes the formula used to determine the commission amount; and

(D) contains a description legally sufficient for identification of the real estate interest that is the subject of the agreement if the person obligated to pay the commission is a seller or lessor.

(5) "Deferred commission" means a commission that is earned

and is not yet payable.

(6) "Real estate" has the meaning assigned by Section 1101.002, Occupations Code.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.803, eff. Sept. 1, 2003.

Sec. 62.004. PAYABLE COMMISSION AND EARNED COMMISSION. (a) A commission is payable at the time provided in the commission agreement. If payment of the commission is conditioned on the occurrence of an event and that event does not occur, the person obligated to pay the commission is not required to pay the commission.

(b) Except as provided by Subsection (c), a commission is earned on the earlier of the date that:

(1) an event occurs that, under the commission agreement, defines when the commission is earned; or

(2) the person obligated to pay the commission enters into a purchase contract or a lease during the period prescribed by the commission agreement for all or part of the commercial real estate if the purchase contract or lease is contemplated by the commission agreement and if the parties to the purchase contract or lease are contemplated by the commission agreement.

(c) If a broker has earned a commission under a commission agreement relating to a lease transaction and the commission agreement provides that the broker may receive an additional commission when the lease is modified to expand the lease space or renewed, the additional commission is earned when:

(1) the broker performs all the additional services relating to the lease modification or renewal expressly prescribed by the commission agreement; or

(2) the broker first earned a commission under the commission agreement if the commission agreement does not expressly require the broker to perform additional services relating to a lease modification or renewal.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.005. BROKER'S ADDRESS FOR RECEIPT OF NOTICE. A seller, lessor, buyer, or tenant shall send any notice required to be sent to the broker under this chapter to the broker:

(1) at the broker's address as reflected in the records of the Texas Real Estate Commission; and

(2) at the broker's last address that the broker furnished the seller, lessor, buyer, or tenant by certified mail, return receipt requested, if the broker's license is expired.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER B. BROKER'S LIEN

Sec. 62.021. PERSON ENTITLED TO LIEN. (a) A broker has a lien on a seller's or lessor's commercial real estate interest in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the seller or lessor of the commercial real estate interest or the seller's or lessor's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(b) A broker has a lien on the commercial real estate interest purchased by a prospective buyer in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the prospective buyer of the commercial real estate interest or the prospective buyer's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(c) A broker has a lien on the leasehold interest in the commercial real estate that a prospective tenant leases in the amount specified by the commission agreement if:

(1) the broker has earned a commission under a commission agreement signed by the prospective tenant of the commercial real estate interest or the prospective tenant's authorized agent; and

(2) a notice of lien is recorded and indexed as provided by Section 62.024.

(d) A lien described by this section is available only to the broker named in the commission agreement. The lien is not available to an employee or independent contractor of the broker.

(e) The broker's right to claim a lien based on the commission agreement must be disclosed in the commission agreement.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.022. WAIVER, RELEASE, OR DISCHARGE OF LIEN; ASSUMPTION OF COMMISSION OBLIGATION. (a) Except as provided by Subsection (b), the waiver of a broker's right to a lien under this chapter, or a release given for the purpose of releasing the broker's lien before the commission is satisfied or forgiven, is void.

(b) A broker's entitlement to a lien on the interest of an owner or tenant in commercial real estate shall be automatically waived if:

(1) the commission is earned and payable for services provided relating to a lease transaction; and

(2) the commission agreement is included as a provision of the lease agreement.

(c) A lien under this chapter is discharged by:

(1) a court order discharging the lien;

(2) paying the commission to the broker named in the commission agreement; or

(3) establishing an escrow account described by Subchapter F.

(d) A person who assumes an owner's or tenant's commercial real estate interest is bound by a commission agreement included in a lease agreement unless an escrow account is established under Subchapter F or a bond is provided under Subchapter G.

(e) This section does not affect the rights of a mortgagee who forecloses on commercial real estate and does not assume the lease on which a commission agreement is based.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.023. AFFIDAVIT IDENTIFYING BROKER. If requested by the buyer, the buyer's authorized agent, or the escrow agent for the commercial real estate transaction, the seller of commercial real estate and the broker representing the seller shall provide to the requesting party before the closing of the transaction a written affidavit identifying each broker with whom the affiant knows or

believes the seller or the seller's authorized agent has signed a commission agreement under which a commission is claimed or earned and has not been paid.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.024. FILING OF NOTICE OF LIEN. (a) A broker claiming a lien under this chapter may not file a notice of lien unless the commission on which the lien is based is earned.

(b) A broker claiming a lien under this chapter must file a notice of lien as provided by Subchapter C with the county clerk of the county in which the commercial real estate is located.

(c) The county clerk shall record the notice of lien in records kept for that purpose and shall index and cross-index the notice of lien in the names of the broker, each person obligated to pay the commission under the commission agreement, and each person who owns an interest in the commercial real estate if the broker claims a lien on that interest.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.025. CONTENTS OF NOTICE OF LIEN. The notice of lien must be signed by the broker or by a person authorized to sign on behalf of the broker and must contain the following:

(1) a sworn statement of the nature and amount of the claim, including:

(A) the commission amount or the formula used to determine the commission;

(B) the type of commission at issue, including a deferred commission; and

(C) the month and year in which the commission was earned;

(2) the name of the broker and the real estate license number of the broker;

(3) the name as reflected in the broker's records of any person who the broker believes is obligated to pay the commission under the commission agreement;

(4) the name as reflected in the broker's records of any person the broker believes to be an owner of the commercial real

estate interest on which the lien is claimed;

(5) a description legally sufficient for identification of the commercial real estate interest sought to be charged with the lien;

(6) the name of any cooperating broker or principal in the transaction with whom the broker intends to share the commission and the dollar or percentage amount to be shared; and

(7) a copy of the commission agreement on which the lien is based.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.026. NOTICE OF FILING. (a) In this section, "business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(b) Not later than one business day after the date the broker files a notice of lien, the broker shall mail a copy of the notice of lien by certified mail, return receipt requested, or registered mail to:

(1) the owner of record of the commercial real estate interest on which the lien is claimed or the owner's authorized agent; and

(2) the prospective buyer or tenant and any escrow agent named in a contract for the sale or lease of the commercial real estate interest on which the lien is claimed if:

(A) a binding written contract for the sale or lease of the commercial real estate interest is in effect between the owner and the prospective buyer or tenant in a transaction that is the basis for the commission; and

(B) the binding written contract was executed by the owner and the prospective buyer or tenant before the date the notice of lien is filed.

(c) Service of the notice under Subsection (b) is complete when the notice is deposited in the United States mail, postage prepaid, and addressed to the persons entitled to receive the notice under this section.

(d) If the broker has actual knowledge of the identity of the escrow agent named in the contract for the sale or lease of the commercial real estate interest on which the broker claims a lien or

of the escrow agent otherwise closing the sale or lease of the commercial real estate interest, the broker, before the first business day before the date that the sale or lease is closed on commercial real estate for which a notice of lien is filed, shall deliver a file-stamped copy or transmit a facsimile of a file-stamped copy of the notice of lien to each escrow agent at the office in which the closing of the sale or lease will occur for use during the closing of the sale or lease. The broker shall deliver the copy or transmit the facsimile directly to the individual escrow agent responsible for closing the sale or lease if the broker knows that person's name.

(e) If the escrow agent receives the notice of lien, the escrow agent and other parties to the sale or lease may not close the transaction unless the lien is released, the prospective buyer or tenant purchases or leases the property subject to the lien, the funds are held in escrow as provided by Subchapter F, or a bond is filed as provided by Subchapter G.

(f) If the broker fails to comply with this section, the notice of lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.027. INCEPTION OF BROKER'S LIEN. (a) A broker's lien attaches to the commercial real estate interest owned by the person obligated to pay the commission on the date the notice of lien is recorded as provided by this chapter. The lien does not relate back to the date of the commission agreement.

(b) A notice of lien for amounts earned by the broker under an installment contract or under a commission agreement for a deferred commission is enforceable only to the extent that the installment or commission has become payable.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.028. PRIORITY. (a) A recorded lien, mortgage, or other encumbrance on commercial real estate, including a recorded lien securing revolving credit and future advances for a loan, recorded before the date a broker's lien is recorded has priority over the broker's lien.

(b) A broker's lien on the commercial real estate interest of a person obligated to pay a commission is not valid or enforceable against a grantee, buyer, lessee, or transferee of the interest of the person obligated to pay the commission if the deed, lease, or instrument transferring the interest is recorded before the notice of the broker's lien is recorded.

(c) A purchase-money mortgage lien executed by the buyer of the commercial real estate interest has priority over a broker's lien claimed for the commission owed by the buyer against the commercial real estate interest purchased by the buyer.

(d) A mechanic's lien that is recorded after a broker's lien and that relates back to a date before the date the broker's lien is recorded has priority over the broker's lien.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.029. SUBORDINATION. (a) If the person obligated to pay the commission sells that person's commercial real estate interest, the broker's lien is subordinate to a recorded purchase-money first lien authorized by the buyer if the buyer:

(1) executes and files with the county clerk of the county in which the broker's lien is filed a memorandum that evidences the buyer's acknowledgment of the existence of the broker's lien; and

(2) sends the broker, by certified mail, return receipt requested, or registered mail, a copy of the recorded memorandum required by this subsection.

(b) If the person obligated to pay the commission refinances a recorded first lien secured by that person's commercial real estate interest, the broker's lien is subordinate to the recorded refinanced first lien, regardless of the amount of the first lien after refinancing, if the person obligated to pay the commission:

(1) executes and files with the county clerk of the county in which the broker's lien is filed a memorandum that evidences the person's acknowledgment of the existence of the broker's lien; and

(2) sends the broker, by certified mail, return receipt requested, or registered mail, a copy of the recorded memorandum required by this subsection.

(c) If the person obligated to pay the commission obtains an extension of credit secured by that person's commercial real estate

interest, the broker's lien is subordinate to the lien securing the extension of credit if, according to the loan documents, the extension of credit is made only for the purpose of:

(1) repairing or renovating the commercial real estate; or

(2) completing construction or providing additional improvements on the commercial real estate.

(d) If the person obligated to pay the commission furnishes a subordination agreement as provided by this section to be executed by the broker, the broker must:

(1) execute and acknowledge the subordination agreement before a notary public; and

(2) return the subordination agreement to the person not later than the seventh day after the date the broker receives the subordination agreement and other documents the broker reasonably requests in order to determine that the subordination agreement complies with this section.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.030. MIXED-USE REAL ESTATE. If real estate is zoned or restricted for more than one use, the broker's lien attaches only to the portions of the real estate that constitute commercial real estate.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.031. CHANGE IN USE OF REAL ESTATE. (a) Except as provided by Subsection (b), any change in the use of the real estate does not affect a broker's lien if the notice of the lien was filed when the real estate was commercial real estate.

(b) The broker's lien is extinguished if:

(1) not later than the 360th day after the date on which the broker's commission is payable, the commercial real estate interest on which a broker claims a lien is zoned for single-family use or restricted for single-family use under recorded restrictive covenants; and

(2) the zoning ordinances or restrictive covenants for single-family use are in effect until at least the second anniversary of the date the commission is payable.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER C. TIME FOR FILING NOTICE OF LIEN

Sec. 62.041. TIME TO FILE. (a) If a broker has earned a commission under a commission agreement signed by a seller or the seller's authorized agent, a broker must record a notice of lien:

(1) after the commission is earned; and

(2) before the conveyance of the commercial real estate interest on which the broker is claiming a lien.

(b) If a broker has earned a commission under a commission agreement signed by a prospective buyer or a prospective buyer's authorized agent, the broker must record a notice of lien:

(1) after the buyer acquires legal title to the commercial real estate interest on which the broker is claiming a lien; and

(2) before the buyer conveys the buyer's commercial real estate interest on which the broker is claiming a lien.

(c) If the lien is based on a lease transaction, the broker must record a notice of lien after the commission is earned and before the earlier of:

(1) the 91st day after the date the event for which the commission becomes payable occurs; or

(2) the date the person obligated to pay the commission records a subsequent conveyance of that person's commercial real estate interest after executing the lease agreement relating to the lease transaction for which the lien is claimed.

(d) If a notice of lien is not filed within the time required by this section, the lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER D. ENFORCEMENT OF LIEN

Sec. 62.061. SUIT TO FORECLOSE LIEN. (a) A broker may not bring a suit to foreclose a lien under this chapter unless the commission is earned and payable. A broker may bring a suit to foreclose a lien in any district court for the county in which the commercial real estate is located by filing a sworn complaint stating that the notice of lien has been recorded.

(b) A complaint in a suit filed under this section must

contain:

(1) a brief description of the commission agreement that is the basis for the lien, including:

(A) a description of the disclosure of the broker's right to the lien contained in the commission agreement;

(B) the date on which the commission agreement was executed;

(C) the event for which a commission is considered to be earned; and

(D) the event for which a commission is considered to be payable;

(2) a description of the services performed by the broker;

(3) the amount of the payable commission that is unpaid;

(4) a description of the commercial real estate to which the lien attaches; and

(5) other facts necessary for a full understanding of the rights of the parties.

(c) The broker must include as a defendant in a suit brought under this subchapter each person the broker believes to have an interest in the commercial real estate that is subordinate to or encumbered by the broker's lien.

(d) If the broker and a person against whom the broker claims a commission use alternative dispute resolution procedures to resolve a dispute concerning entitlement to the broker's commission, the broker's lien remains valid, and any suit to foreclose the lien is stayed until the alternative dispute resolution process is completed.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.062. STATUTE OF LIMITATIONS. (a) Except as provided by this section, a broker claiming a lien under this chapter must bring a suit to foreclose the lien on or before the second anniversary of the date the notice of lien is recorded.

(b) A broker claiming a lien to collect a deferred commission must bring a suit to foreclose the lien on or before the earlier of:

(1) the second anniversary of the date on which the commission is payable; or

(2) the 10th anniversary of the date the lien is recorded or the 10th anniversary of the date the broker records a subsequent

notice of the lien as a renewal of the broker's right to the lien, whichever date is later.

(c) A renewal of a notice of lien must state that it is a renewal of the broker's lien and must be recorded after the ninth anniversary after the date the original notice of lien or last renewal notice is recorded and on or before the 10th anniversary of the date the original notice of lien or last renewal notice is recorded.

(d) A broker claiming a lien for a commission that is payable must bring a suit to foreclose the lien not later than the 30th day after the date the broker receives a written demand to bring a suit to foreclose the lien from the owner of the commercial real estate interest on which the lien is claimed.

(e) If a suit to foreclose the lien is not brought within the period prescribed by this section, the lien is void.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.063. ASSESSMENT OF COSTS, FEES, AND INTEREST. The prevailing party in a suit brought under this subchapter is entitled to court costs, reasonable attorney's fees, and prejudgment interest from the date the commission becomes payable or the date the damage accrues.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER E. RELEASE OF LIEN

Sec. 62.081. RELEASE OF LIEN. (a) Not later than the fifth day after the date a broker receives a written request from the owner of a commercial real estate interest on which a lien is claimed, the broker shall furnish to the owner a release of indebtedness and any lien claimed if:

(1) the debt that is the basis for the lien is satisfied; or

(2) the lien is discharged under Section 62.022, rendered void under Section 62.026 or 62.062, or extinguished under Section 62.031.

(b) When a condition occurs that would preclude the broker from receiving a commission under the terms of the commission agreement

that is the basis for the lien, the broker shall, not later than the 10th day after the date the broker receives a written request from the owner of the commercial real estate interest on which the lien is claimed, furnish to the owner a release of indebtedness and any lien claimed.

(c) Not later than the 10th day after the date a broker receives a written request for the release of the broker's lien from the escrow agent responsible for closing the purchase and sale of a commercial real estate interest on which the lien is claimed, the broker shall furnish to the escrow agent a release of indebtedness and any lien claimed if:

(1) the commercial real estate interest to which the lien attaches is subject to a contract for purchase and sale;

(2) the release of indebtedness and any lien claimed is conditioned on the closing of the transaction; and

(3) the broker would otherwise be obligated to release the indebtedness and any lien claimed under Subsection (a) or (b) on the closing of the transaction.

(d) A release of lien must be in a form that permits the instrument to be filed of record.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER F. ESCROW OF DISPUTED AMOUNTS

Sec. 62.101. ESCROW ACCOUNT. If a claim for a lien under a recorded notice of lien is not paid or assumed at the closing of a sale, lease, or mortgage of the commercial real estate interest subject to the lien and would prevent the closing of the transaction or conveyance or if a claim for a lien under a recorded notice of lien does not survive the closing, any person named in the notice of lien as obligated to pay the commission shall, on the date of the closing:

(1) establish an escrow account from any net proceeds of the transaction or conveyance in an amount equal to the amount sufficient to satisfy the lien plus 15 percent of that amount; or

(2) file a bond to indemnify against the lien as provided by Subchapter G.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.102. NAMED ESCROW AGENT. If an escrow agent is named in the contract on which the transaction or conveyance is based, the escrow account shall be established with the named escrow agent.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.103. COSTS OF INTERPLEADER. Related costs for any interpleader action may be deducted from the escrow account by the person maintaining the escrow account.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.104. REFUSAL TO ESTABLISH ESCROW ACCOUNT OR BOND. (a) A party may not refuse to close a transaction because of the requirement to establish an escrow account or bond as provided by Section 62.101 if:

(1) the broker provides a copy of the notice of lien that complies with Sections 62.025 and 62.026;

(2) sufficient proceeds will result from the proposed transaction for the payment of the commission and costs of the interpleader; and

(3) the broker executes and delivers a full release of the broker's lien in a recordable form.

(b) A prospective buyer of a commercial real estate interest may not refuse to close the purchase solely because a broker's lien is filed after the date a title commitment or abstract of title relating to the interest is issued if an escrow account is established as provided by this subchapter or a bond is filed as provided by Subchapter G.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.105. TERM OF ESCROW ACCOUNT. The amount held in escrow shall be held in escrow until:

(1) the rights of the parties claiming the amount in escrow are determined by a written agreement of the parties, a court order, or an alternative dispute resolution process agreed to by the parties;

(2) the broker's lien is no longer enforceable; or

(3) the funds are interpled into a district court for the county in which the commercial real estate is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.106. EXTINGUISHMENT OF LIEN UPON ESCROW. When the escrow account is established under this subchapter, the broker's lien against the commercial real estate is extinguished and becomes a lien on the proceeds in the escrow account.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER G. BOND TO INDEMNIFY AGAINST LIEN

Sec. 62.121. BOND. (a) If a lien is fixed or is attempted to be fixed by a recorded instrument under this chapter, any person may file a bond to indemnify against the lien.

(b) The bond shall be filed with the county clerk of the county in which the commercial real estate subject to the lien is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.122. BOND REQUIREMENTS. The bond must:

(1) describe the commercial real estate on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount that is double the amount of the lien referred to in the bond as of the date of execution of the bond by the surety, unless the total amount claimed in the lien exceeds $40,000, in which case the bond must be in an amount that is 1-1/2 times the amount of the lien;

(4) be payable to the party claiming the lien;

(5) be executed by:

(A) the party filing the bond as principal; and

(B) a corporate surety licensed by this state to execute the bond as surety;

(6) be conditioned substantially that the principal and

sureties will pay the named obligees or their assignees the amount that the named obligees would have been entitled to recover if their claim had been proved to be valid and enforceable liens on the commercial real estate; and

(7) identify the last known mailing address of the person claiming the lien.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.123. NOTICE OF BOND. (a) After the bond is filed, the county clerk shall issue notice of the bond to all named obligees.

(b) A copy of the bond must be attached to the notice.

(c) The notice must be served on each obligee by mailing a copy of the notice and the bond to the obligee by certified mail, return receipt requested, addressed to the claimant at the address stated in the bond for the obligee.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.124. RECORDING OF BOND AND NOTICE. (a) The county clerk shall record the bond, the notice, and a certificate of mailing in the real property records.

(b) In acquiring an interest in or insuring title to the commercial real estate, a buyer, insurer of title, or lender may rely on and is absolutely protected by the record of the bond and the notice to the same extent as if the lien claimant had filed a release of lien in the real property records.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

Sec. 62.125. ACTION ON BOND. (a) A party making or holding a lien claim may not sue on the bond later than the last date on which a person may bring a suit to foreclose the lien under Section 62.062.

(b) The bond is not exhausted by one action against it. Each named obligee or assignee of an obligee may maintain a separate suit on the bond in any district court for the county in which the commercial real estate is located.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

SUBCHAPTER H. REMEDIES

Sec. 62.141. OWNER'S OR TENANT'S REMEDIES. (a) An owner or tenant may file suit against a broker under this chapter.

(b) In an action filed under this section, the court shall discharge a broker's lien if the broker:

(1) failed to mail a copy of the notice of lien within the period prescribed by Section 62.026;

(2) failed to execute, acknowledge, and return a subordination agreement within the period prescribed by Section 62.029(d);

(3) failed to record the notice of lien within the period prescribed by Section 62.041; or

(4) failed to release a lien within the period prescribed by Section 62.081.

(c) A broker is liable to an owner or tenant for damages as provided by Subsection (d) if:

(1) the broker recorded a lien on the commercial real estate interest of the owner or tenant;

(2) the broker failed to:

(A) execute, acknowledge, and return a subordination agreement within the period prescribed by Section 62.029(d); or

(B) release a lien within the period prescribed by Section 62.081;

(3) the owner, tenant, or escrow agent mailed to the broker by certified mail, return receipt requested, a copy of this section and a notice requesting the broker to execute, acknowledge, and return the subordination agreement or release the lien not later than the 10th day after the date the broker receives the notice; and

(4) the broker failed to comply with the owner's, tenant's, or escrow agent's written notice within the prescribed period.

(d) If the court finds that a broker is liable to an owner or tenant under Subsection (c), the court may award the owner or tenant:

(1) actual damages, including attorney's fees and court costs, incurred by the owner or tenant that are proximately caused by the broker's failure to execute, acknowledge, and return the subordination agreement or release the lien; and

(2) a civil penalty in an amount not to exceed three times

the amount of the claimed commission if the court finds that the broker acted with gross negligence or acted in bad faith in violation of Chapter 1101, Occupations Code.

(e) This section does not prevent:

(1) a person from filing a complaint with the Texas Real Estate Commission against a broker who fails to comply with this chapter; or

(2) the Texas Real Estate Commission at any time from investigating or initiating a disciplinary proceeding against a broker who fails to comply with this chapter.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.804, eff. Sept. 1, 2003.

Sec. 62.142. BROKER'S REMEDIES. (a) A broker may file suit against an owner or tenant to enforce a commission agreement.

(b) If the court finds that the broker waived the right to file a lien under Section 62.022 and that the owner or tenant violated the commission agreement, the court may award to the broker:

(1) actual damages, including attorney's fees and court costs, that are proximately caused by the owner's or tenant's failure to comply with the commission agreement; and

(2) a civil penalty in an amount not to exceed three times the amount of the claimed commission if the court finds that the owner or tenant acted with gross negligence or in bad faith.

Added by Acts 1999, 76th Leg., ch. 1571, Sec. 1, eff. Aug. 30, 1999.

CHAPTER 63. MANUFACTURED HOME LIEN

Sec. 63.001. MANUFACTURED HOMES. In this chapter, "manufactured home" has the meaning assigned by Chapter 1201, Occupations Code.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.001 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(96), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.805, eff. Sept. 1, 2003.

Sec. 63.002. APPLICABILITY. This chapter applies only to a lien on a manufactured home if the loan or credit advance documents state or indicate that the lien:

(1) is or is in the nature of a vendor's lien;

(2) is or is in the nature of a purchase money lien; or

(3) is or is in the nature of a retail installment lien.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.002 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(96), eff. Sept. 1, 2001.

Sec. 63.003. CONVERSION OF LIEN FROM PERSONAL PROPERTY LIEN TO REAL PROPERTY LIEN. When the manufactured home converts to real property as provided by Section 2.001(b), the lien on the property:

(1) is converted to a purchase money lien on real property by operation of law; and

(2) exists independently of any existing lien on the real property to which the home is permanently attached.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.003 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(96), eff. Sept. 1, 2001.

Sec. 63.004. REFINANCING OF LIEN. (a) A person who provides funds to refinance a lien secured by a manufactured home is subrogated to the lien position of the previous lienholder.

(b) If the holder of a lien secured by a manufactured home transfers loan or credit advance documents to a lender refinancing the lien, that lender and a title insurance company, title insurance agent or direct operation, or attorney to whom the loan or credit advance documents are delivered holds the loan or credit advance documents in trust for that lienholder. In this subsection, "direct operation" has the meaning assigned by Section 2501.003, Insurance Code.

(c) A lien that is converted to a purchase money lien on real property under Section 63.003, or a lien for the debt for new improvements thereon under Section 63.005, may be refinanced with another lien on the real property to which the manufactured home is permanently attached as provided by Section 2.001.

Added by Acts 1999, 76th Leg., ch. 742, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 62.004 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(96) and Sec. 21.002(16), eff. Sept. 1, 2001. Amended by Acts 2001, 77th Leg., ch. 1055, Sec. 6, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 1275, Sec. 3(38), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.159, eff. September 1, 2005.

Sec. 63.005. CONVERSION OF LIEN FROM A PERSONAL PROPERTY LIEN TO A REAL PROPERTY LIEN FOR THE DEBT FOR THE NEW IMPROVEMENTS THEREON. (a) A manufactured home becomes a new improvement to the homestead of a family or of a single adult person upon the filing of the appropriate statement of ownership as provided in Chapter 1201, Occupations Code. As such, if the debt for the manufactured home was contracted for in writing, that debt is considered to be for work and materials used in constructing new improvements thereon and thus constitutes a valid lien on the homestead when the appropriate statement of ownership is filed in the Official Public Records of Real Property in the county in which the land is located.

(b) When the manufactured home converts to real property as provided by Section 2.001 of this code, the lien on the property exists independently of any existing lien on the real property to which the home is permanently attached.

Added by Acts 2001, 77th Leg., ch. 1055, Sec. 7, eff. Jan. 1, 2002. Renumbered from Property Code Sec. 62.005 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(118), eff. Sept. 1, 2003. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.806, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 408 (H.B. 2019), Sec. 78, eff. September 1, 2017.

CHAPTER 64. ASSIGNMENT OF RENTS TO LIENHOLDER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. DEFINITIONS. In this chapter:

(1) "Assignee" means a person entitled to enforce a security instrument.

(2) "Assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property from which the rents arise. The term does not include a contract for a charge authorized by Section 306.101, Finance Code, or a true sale of rents.

(3) "Assignor" means a person who makes a security instrument that creates an assignment of rents arising from real property or that person's successor in interest with respect to the real property.

(4) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(5) "Day" means a calendar day.

(6) "Deposit account" means a demand, time, savings, passbook, escrow, or similar account maintained with a bank, savings bank, savings and loan association, credit union, trust company, or other person.

(7) "Document" means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(8) "Proceeds" means personal property that is received, collected, or distributed on account of an obligation to pay rents.

(9) "Rents" means consideration payable for the right to possess or occupy, or for possessing or occupying, real property, consideration payable to an assignor under a policy of rental interruption insurance covering real property, claims arising out of a default in the payment of consideration payable for the right to possess or occupy real property, consideration payable to terminate an agreement to possess or occupy real property, consideration payable to an assignor for payment or reimbursement of expenses incurred in owning, operating, and maintaining, or constructing or installing improvements on, real property, or any other consideration payable under an agreement relating to the real property that constitutes rents under a law of this state other than this chapter. The term does not include consideration payable under an oil and gas lease, mineral lease, or other conveyance of a mineral estate.

(10) "Secured obligation" means an obligation secured by an assignment of rents.

(11) "Security instrument" means:

(A) a security instrument, as that term is defined by Section 51.0001; or

(B) an agreement containing an assignment of rents.

(12) "Security interest" means an interest in property that arises by agreement and secures an obligation.

(13) "Sign" includes to sign by an electronic signature, as defined by Section 15.002.

(14) "Tenant" means a person who has an obligation to pay for the right to possess or occupy, or for possessing or occupying, real property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 1, eff. June 14, 2013.

Sec. 64.002. MANNER OF GIVING NOTICE. (a) A person may give notice under this chapter:

(1) by transmitting the notice in the manner described by Section 51.002(e);

(2) by depositing the notice with the United States Postal Service or a commercially reasonable delivery service, properly addressed to the intended recipient's address in accordance with this section, with first class postage or other cost of delivery paid; or

(3) by transmitting the notice to the intended recipient by any means agreed to by the intended recipient.

(b) The following rules determine the address for notices under Subsection (a):

(1) the address for notices to an assignee is the address of the assignee agreed in the security instrument or other document between the parties as the address for notices to the assignee, unless a more recent address for notices has been given by the assignee to the person giving the notice in accordance with Subsection (a) or as agreed in a security instrument or other document signed by the assignee;

(2) the address for notices to an assignor is the address of the assignor agreed in the security instrument or other document between the parties as the address for notices to the assignor or as provided in Section 51.002, unless a more recent address for notices has been given by the assignor to the person giving the notice in

accordance with Subsection (a) or as agreed in a security instrument or other document signed by the assignor; and

(3) for notices to a tenant:

(A) if there is an address for notices to the tenant in a signed document between the tenant and the person giving the notice, the person giving the notice shall use that address unless a more recent address for notices has been given by the tenant in accordance with that document;

(B) if an address for notices described by Paragraph (A) does not exist, but the tenant's agreement with the assignor has an address for notices to the tenant and the person giving the notice has received a copy of that document or has actual knowledge of the address for notices specified in that document, the person giving the notice shall use that address; or

(C) if an address for notices described by Paragraphs (A) and (B) does not exist, the person giving the notice shall use the tenant's address at the real property covered by the security instrument.

(c) Notice given in accordance with this chapter is deemed received on the earliest of:

(1) the date the notice is received by the person to whom the notice is given;

(2) the fifth day after the date the notice is given in accordance with Subsection (a)(2); or

(3) the date on which notice is deemed received in accordance with an agreement made by the person to whom the notice is given.

(d) A notice under this chapter must be a document.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 2, eff. June 14, 2013.

SUBCHAPTER B. ASSIGNMENT OF RENTS

Sec. 64.051. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS; ASSIGNMENT OF RENTS CREATES SECURITY INTEREST. (a) An enforceable security instrument creates an assignment of rents arising from real

property described in that security instrument, unless the security instrument provides otherwise or the security instrument is governed by Section 50(a)(6), (7), or (8), Article XVI, Texas Constitution.

(b) An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the security instrument creating the assignment, regardless of whether the security instrument is in the form of an absolute assignment, an absolute assignment conditioned on default or other event, an assignment as additional security, or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property from which the rents arise.

(c) An assignment of rents does not reduce the secured obligation except to the extent the assignee collects rents and applies, or is obligated to apply, the collected rents to payment of the secured obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 3, eff. June 14, 2013.

Sec. 64.052. RECORDATION AND PERFECTION OF SECURITY INTEREST IN RENTS; PRIORITY OF INTERESTS IN RENTS. (a) A security instrument creating an assignment of rents may be recorded in the county in which any part of the real property is located in accordance with this code.

(b) On recordation of a security instrument creating an assignment of rents, the security interest in the rents is perfected. This subsection prevails over a conflicting provision in the security instrument creating the assignment of rents or a law of this state other than this chapter that prohibits or defers enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property, or the appointment of a receiver.

(c) Except as provided by Subsection (d), a perfected security interest in rents has priority over the rights of a person who, after

the security interest is perfected, acquires:

(1) a lien on or other security interest in the rents or the real property from which the rents arise; or

(2) an interest in the rents or the real property from which the rents arise.

(d) An assignee with a perfected security interest in rents has the same priority over the rights of a person described by Subsection (c) with respect to future advances as the assignee has with respect to the assignee's security interest in the real property from which the rents arise.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 4, eff. June 14, 2013.

Sec. 64.053. ENFORCEMENT OF SECURITY INTEREST IN RENTS GENERALLY. (a) An assignee may enforce an assignment of rents using one or more of the methods provided by Section 64.054 or 64.055 or any other method sufficient to enforce an assignment of rents under a law of this state other than this chapter.

(b) On and after the date on which an assignee begins to enforce an assignment of rents, the assignee is entitled to collect all rents that:

(1) have accrued but remain unpaid on that date; and

(2) accrue on or after that date.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 5, eff. June 14, 2013.

Sec. 64.054. ENFORCEMENT BY NOTICE TO ASSIGNOR. (a) After default, or as otherwise agreed by the assignor, the assignee may give the assignor a notice demanding that the assignor pay the assignee the proceeds of any rents that the assignee is entitled to collect under Section 64.053.

(b) For the purposes of Section 64.053, the assignee begins enforcement under this section on the date on which the assignee gives notice to the assignor in accordance with Section 64.002.

(c) An assignee may not enforce an assignment of rents under this section if, on the date the security instrument was signed and the date of prospective enforcement, the real property constitutes the assignor's homestead on which is located a one-family to four-family dwelling.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 6, eff. June 14, 2013.

Sec. 64.055. ENFORCEMENT BY NOTICE TO TENANT. (a) After default, or as otherwise agreed by the assignor, the assignee may give to a tenant of real property that is subject to an assignment of rents a notice demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notice to the assignor in accordance with Section 64.002. The notice must substantially comply with the form prescribed by Section 64.056 and be signed by the assignee or the assignee's authorized agent or representative.

(b) For the purposes of Section 64.053(b), the assignee begins enforcement under this section on the date on which the tenant receives a notice complying with Subsection (a).

(c) Subject to Subsection (d) and any other claim or defense that a tenant has under a law of this state other than this chapter, after a tenant receives a notice under Subsection (a):

(1) the tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notice under this section from another assignee of rents given by that assignee in accordance with this section and the other assignee has not canceled that notice;

(2) except as otherwise agreed in a document signed by the tenant, the tenant is not obligated to pay to an assignee rent that was prepaid to the assignor before the tenant received the notice under Subsection (a);

(3) unless the tenant occupies the premises as the tenant's primary residence, the tenant is not discharged from the obligation to pay rents to the assignee if the tenant pays rents to the assignor;

(4) the tenant's payment to the assignee of rents then due satisfies the tenant's obligation under the tenant's agreement with the assignor to the extent of the payment made; and

(5) the tenant's obligation to pay rents to the assignee continues until the earliest date on which the tenant receives:

(A) a court order directing the tenant to pay the rents in a different manner;

(B) a signed notice that a perfected security instrument that has priority over the assignee's security interest has been foreclosed; or

(C) a signed document from the assignee canceling the assignee's notice.

(d) Except as otherwise agreed in a document signed by the tenant, a tenant who has received a notice under Subsection (a) is not in default for nonpayment of rents that accrue during the 30 days after the date the tenant receives the notice until the earlier of:

(1) the 10th day after the date the next regularly scheduled rental payment would be due; or

(2) the 30th day after the date the tenant receives the notice.

(e) On receiving a notice from another assignee who has priority under Section 64.052(c) that the assignee with priority has conducted a foreclosure sale of the real property from which the rents arise or is enforcing the interest in rents of the assignee with priority by notice to the tenant, an assignee that has given a notice to a tenant under Subsection (a) shall immediately give another notice to the tenant canceling the earlier notice.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 7, eff. June 14, 2013.

Sec. 64.056. FORM OF NOTICE TO TENANT. The following form of

notice, when properly completed, satisfies the requirements of Section 64.055(a):

NOTICE TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant: [Name of tenant]

Property Occupied by Tenant (the "Premises"): [Address]

Landlord: [Name of landlord]

Assignee: [Name of assignee]

Address of Assignee and Telephone Number of Contact Person: [Address of assignee] [Telephone number of person to contact]

1. Assignee is entitled to collect rents on the Premises under [Name of Document] (the "Assignment of Rents") dated [Date of Assignment of Rents], and recorded at [Recording Data] of [Name of County] County, Texas. You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address of the Assignee.

2. A default exists under the Assignment of Rents or related documents between the Landlord and the Assignee. The Assignee is entitled to collect rents from the Premises.

3. This notice affects your rights and obligations under the agreement under which you occupy the Premises (your "Lease Agreement"). Unless you have otherwise agreed in a document signed by you, if your next scheduled rental payment is due within 30 days after you receive this notice, you will not be in default under your Lease Agreement for nonpayment of that rental payment until the 10th day after the due date of that payment or the 30th day following the date you receive this notice, whichever occurs first.

4. You may consult a lawyer at your expense concerning your rights and obligations under your Lease Agreement and the effect of this notice.

5. You must pay to the Assignee at the Address of the Assignee all rents under your Lease Agreement that are due and payable on the date you receive this notice and all rents accruing under your Lease Agreement after you receive this notice.

6. If you pay rents to the Assignee after receiving this notice, the payment will satisfy your rental obligation to the extent of that payment.

7. If you pay any rents to the Landlord after receiving this notice, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord unless you

occupy the Premises as your primary residence.

8. If you have previously received a notice from another person who also holds an assignment of the rents due under your Lease Agreement, you should continue paying your rents to the person that sent that notice until that person cancels that notice. Once that notice is canceled, you must begin paying rents to the Assignee in accordance with this notice.

Name of assignee: _____

By: [Officer/authorized agent of assignee]

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.057. EFFECT OF ENFORCEMENT. The enforcement of an assignment of rents by a method provided by Section 64.054 or 64.055, the application of proceeds by the assignee under Section 64.059 after enforcement, the payment of expenses under Section 64.058, or an action under Section 64.060 does not:

(1) make the assignee a mortgagee in possession of the real property from which the rents arise;

(2) make the assignee an agent of the assignor;

(3) constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) make the secured obligation unenforceable;

(5) limit any right available to the assignee with respect to the secured obligation; or

(6) bar a deficiency judgment under any law of this state governing or relating to deficiency judgments following the enforcement of any encumbrance, lien, or security interest.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.058. APPLICATION OF PROCEEDS GENERALLY. Unless otherwise agreed, an assignee who collects rents under this chapter or collects on a judgment in an action under Section 64.060 shall apply the sums collected in the following order to:

(1) reimbursement of the assignee's expenses of enforcing the assignee's assignment of rents, including, to the extent provided

for by agreement by the assignor and not prohibited by a law of this state other than this chapter, reasonable attorney's fees and costs incurred by the assignee;

(2) reimbursement of any expenses incurred by the assignee to protect or maintain the real property that is subject to the assignment of rents;

(3) payment of the secured obligation;

(4) payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignee receives a signed notice from the holder of the interest or lien demanding payment of the proceeds; and

(5) payment of any excess proceeds to the assignor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 8, eff. June 14, 2013.

Sec. 64.059. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY; CLAIMS AND DEFENSES OF TENANT. (a) Unless otherwise agreed by the assignee, an assignee that collects rents following enforcement under Section 64.054 or 64.055 is not obligated to apply the collected rents to the payment of expenses of protecting or maintaining the real property subject to an assignment of rents.

(b) Unless otherwise agreed by a tenant, the right of the assignee to collect rents from the tenant is subject to the terms of any agreement between the assignor and tenant or any claim or defense of the tenant arising from the assignor's nonperformance of that agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 9, eff. June 14, 2013.

Sec. 64.060. TURNOVER OF RENTS; LIABILITY OF ASSIGNOR. (a) If an assignor collects rents that the assignee is entitled to collect

under this chapter, the assignor shall turn over the proceeds to the assignee not later than the 30th day after the date the assignor receives notice from the assignee under Section 64.054 or within such other period agreed by the assignor and assignee in a security instrument or other document, less any amount representing payment of expenses agreed in that security instrument or other document.

(b) In addition to any other remedy available to the assignee under a law of this state other than this chapter, if an assignor does not turn over proceeds to the assignee as required by Subsection (a), the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over under Subsection (a); and

(2) reasonable attorney's fees and costs incurred by the assignee to the extent provided for by an agreement between the assignor and assignee and not prohibited by a law of this state other than this chapter.

(c) The assignee may maintain an action under Subsection (b) with or without taking action to foreclose any security interest that the assignee has in the real property.

(d) Unless otherwise agreed, if an assignee who has a security interest in rents that is subordinate to the security interest of another assignee under Section 64.052 enforces the subordinate assignee's interest under Section 64.054 or 64.055 before the assignee with priority enforces the interests in rents of the assignee with priority, the subordinate assignee is not obligated to turn over any proceeds that the subordinate assignee collects before the subordinate assignee receives a signed notice from the assignee with priority informing the subordinate assignee that the assignee with priority is enforcing the interest in rents of the assignee with priority. The subordinate assignee shall turn over to the assignee with priority any proceeds that the subordinate assignee collects after the subordinate assignee receives the notice from the assignee with priority that the assignee with priority is enforcing the interest in rents of the assignee with priority not later than the 30th day after the date the subordinate assignee receives the notice or as otherwise agreed between the assignee with priority and the subordinate assignee. Any proceeds subsequently collected by the subordinate assignee shall be turned over to the assignee with priority not later than the 10th day after the date the proceeds are collected or as otherwise agreed between the assignee with priority

and the subordinate assignee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 453 (S.B. 848), Sec. 10, eff. June 14, 2013.

Sec. 64.061. ATTACHMENT, PERFECTION, AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS. (a) An assignee's security interest in rents attaches to identifiable proceeds.

(b) If an assignee's security interest in rents is perfected, the assignee's security interest in identifiable cash proceeds is perfected.

(c) Except as provided by Subsection (b), the provisions of Chapter 9, Business & Commerce Code, or the comparable Uniform Commercial Code provisions of another applicable jurisdiction, determine:

(1) whether an assignee's security interest in proceeds is perfected;

(2) the effect of perfection or nonperfection;

(3) the priority of an interest in proceeds; and

(4) the law governing perfection, the effect of perfection or nonperfection, and the priority of an interest in proceeds.

(d) For purposes of this chapter, cash proceeds are identifiable if they are maintained in a segregated deposit account or, if commingled with other funds, to the extent they can be identified by a method of tracing, including application of equitable principles, that is permitted under a law of this state other than this chapter with respect to commingled funds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff. June 17, 2011.

Sec. 64.062. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not preclude subordination by agreement by a person entitled to priority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 2, eff.

June 17, 2011.

CHAPTER 65. AUTHORITY OF CO-OWNER TO ENCUMBER RESIDENTIAL PROPERTY

Sec. 65.001. APPLICATION OF CHAPTER. This chapter applies only to residential property:

(1) that has residential improvements primarily designed for not more than four families;

(2) that is not more than 10 acres of land;

(3) that is owned by more than one person; and

(4) for which at least one co-owner has received a residence homestead exemption under Section 11.13, Tax Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.

Sec. 65.0011. APPLICATION TO INSTITUTIONS OF HIGHER EDUCATION. This chapter does not apply to residential property for which an institution of higher education is a co-owner.

Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1366 (S.B. 1604), Sec. 2, eff. June 14, 2013.

Sec. 65.002. CONDITIONS FOR AUTHORITY TO ACT AS AGENT FOR CO-OWNER. A co-owner of residential property may act in the name of and on behalf of another co-owner, whether known or unknown, as the co-owner's statutory agent and attorney-in-fact for the purposes described by Section 65.004 if:

(1) the co-owner has occupied the property for more than five years;

(2) the co-owner has a residence homestead exemption for the property under Section 11.13, Tax Code;

(3) for the five years preceding the date the documents required by Section 65.003 are filed, the occupying co-owner has paid all assessed ad valorem taxes without delinquency and without

contribution from the other co-owner; and

(4) the occupying co-owner files the documents required by Section 65.003.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.
Redesignated and amended from Property Code, Section 64.002 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(29), eff. September 1, 2013.

Sec. 65.003. REQUIRED DOCUMENTATION. The occupying co-owner may establish the authority to act as an agent and attorney-in-fact for another co-owner by filing in the office of the county clerk of the county in which the real property is located:

(1) an affidavit of the occupying co-owner affirming the facts described by Sections 65.002(1)-(3);

(2) the affidavits of two additional affiants personally familiar with the co-owner's occupancy of the real property corroborating the occupancy during the preceding five years; and

(3) a certificate of the tax assessor-collector for the county in which the real property is located affirming that the co-owner has paid all taxes assessed against the real property for the preceding five years without delinquency.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.
Redesignated and amended from Property Code, Section 64.003 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(30), eff. September 1, 2013.

Sec. 65.004. SCOPE OF AUTHORITY. (a) The authority of the occupying co-owner to act as an agent and attorney-in-fact is limited to the authority to enter into a contract giving rise to a mechanic's and materialman's lien and to execute a deed of trust for the purpose of preserving or improving the residential property. The occupying

co-owner is the sole obligor of the debt incurred under the contract and secured by the deed of trust.

(b) A lien that arises under a contract entered into by an occupying co-owner under this section is not subject to repudiation or disaffirmance by another co-owner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 918 (S.B. 1368), Sec. 1, eff. June 17, 2011.
Redesignated from Property Code, Chapter 64 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(39), eff. September 1, 2013.

CHAPTER 66. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE

Sec. 66.001. SALE OF PROPERTY SUBJECT TO OIL OR GAS LEASE. (a) In this section:

(1) "Mortgagee," "mortgagor," and "security instrument" have the meanings assigned by Section 51.0001.

(2) "Oil or gas lease" means an instrument conveying a fee simple determinable interest in a mineral estate covering oil, gas, or other hydrocarbons or a recorded memorandum of such an instrument.

(3) "Real property" means an estate covering the mineral interest in hydrocarbons or the mineral interest in hydrocarbons together with the surface overlying such mineral interest. The term does not include a surface interest or other interest that excludes a mineral interest in hydrocarbons.

(b) Notwithstanding any other law, an oil or gas lease covering real property subject to a security instrument that has been foreclosed remains in effect after the foreclosure sale if the oil or gas lease has not terminated or expired on its own terms and was executed and recorded in the real property records of the county before the foreclosure sale. An interest of the mortgagor or the mortgagor's assigns in the oil or gas lease, including a right to receive royalties or other payments that become due and payable after the date of the foreclosure, passes to the purchaser of the foreclosed property to the extent that the security instrument under which the real property was foreclosed had priority over the interest in the oil or gas lease of the mortgagor or the mortgagor's assigns.

(c) Notwithstanding Subsection (b), if real property that includes the mineral interest in hydrocarbons together with the surface overlying such mineral interest is subject to both an oil or

gas lease and a security instrument and the security interest is foreclosed, the foreclosure sale terminates and extinguishes any right granted under the oil or gas lease for the lessee to use the surface of the real property to the extent that the security instrument under which the real property was foreclosed had priority over the rights of the lessee under the oil or gas lease.

(d) An agreement, including a subordination agreement, between a lessee of an oil or gas lease and a mortgagee of real property or the lessee of an oil or gas lease and the purchaser of foreclosed real property controls over any conflicting provision of this section. An agreement between a mortgagor and mortgagee may not modify the application of this section unless the affected lessee agrees to the modification.

(e) This section does not apply to a security instrument that does not attach to a mineral interest in hydrocarbons in the mortgaged real property.

Added by Acts 2015, 84th Leg., R.S., Ch. 461 (H.B. 2207), Sec. 1, eff. January 1, 2016.

CHAPTER 67. OIL AND GAS LIENS

Sec. 67.001. DEFINITIONS. In this chapter:

(1) "Affiliate" means any person who:

(A) is controlled, directly or indirectly, by a first purchaser; or

(B) controls, directly or indirectly, a first purchaser.

(2) "Agreement to sell" means an enforceable agreement by an interest owner, directly or through a representative, to sell oil or gas on or after severance to a first purchaser. The term includes an agreement that is express or implied, whether oral or written.

(3) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership, by contract, or otherwise.

(4) "First purchaser" means the first person that purchases oil or gas from an interest owner, under an agreement to sell.

(5) "Gas" means natural gas, casinghead gas, and all constituent parts of natural gas and casinghead gas before and after

processing but before a first purchaser transfers title, possession, or control of the gas to a purchaser.

(6) "Interest owner" means a person, including a transferee interest owner, owning an interest of any kind in oil and gas rights before acquisition by a first purchaser.

(7) "Oil" means oil, condensate, and all constituent parts of the oil, before or after processing but before a first purchaser transfers title, possession, or control of the oil to a purchaser.

(8) "Oil and gas lien" means the lien described by Section 67.002.

(9) "Oil and gas rights" means any legal or equitable right, title, or interest in or to oil or gas from land in this state. The term includes:

(A) oil or gas in place before severance;

(B) oil or gas production, or the right to receive a portion of the proceeds, on severance;

(C) any interest or estate in, by, through, or under an oil and gas lease;

(D) a right acquired under a pooling order relating to:

(i) ownership of oil or gas;

(ii) the right to proceeds; or

(iii) the right to enter into an agreement to sell;

(E) a right to receive consideration under an agreement to sell oil or gas; and

(F) a mortgage lien or security interest in oil and gas rights.

(10) "Operator" means a person engaged in the severance of oil or gas for that person only, for other persons only, or for that person and others.

(11) "Permitted lien" means a perfected and enforceable lien created by statute or rule of a governmental agency for storage or transportation charges, including terminal charges, tariffs, demurrage, insurance, labor, or other charges, owed by a first purchaser in relation to oil or gas originally purchased under an agreement to sell. The term does not include a lien that is:

(A) in favor of an affiliate of a first purchaser unless the lien is authorized by the statute or rule creating the lien; or

(B) for charges incurred after the 90th day after the date the first purchaser delivers the oil or gas for storage or

transportation.

(12) "Pooling order" means an order issued by the Railroad Commission of Texas that requires the owners of the right to drill for oil or gas in a drilling and spacing unit to pool the owner's interests for the development of the drilling and spacing unit.

(13) "Proceeds" means, when paid or to be paid in consideration of, or as a consequence of, the sale of oil or gas under an agreement to sell:

(A) oil or gas on or after severance;

(B) inventory of raw, refined, or manufactured oil or gas after severance;

(C) rights to or products of any of the oil or gas described by Paragraph (A) or inventory described by Paragraph (B);

(D) cash proceeds;

(E) accounts;

(F) chattel paper;

(G) instruments;

(H) documents; or

(I) payment intangibles with respect to any of the preceding.

(14) "Purchaser" means a person who:

(A) is not an affiliate of a first purchaser; and

(B) takes, receives, or purchases oil or gas from a first purchaser.

(15) "Representative" means a person who is authorized, expressly or by implication, including an operator or an authorized broker, to:

(A) sell oil or gas on behalf of, or for the benefit of, an interest owner under an agreement to sell; or

(B) receive on behalf of an interest owner the consideration under an agreement to sell.

(16) "Sales price" means the proceeds a first purchaser agrees to pay an interest owner or representative under an agreement to sell.

(17) "Security interest" means a security interest governed by Chapter 9, Business & Commerce Code.

(18) "Severance" means the point in time oil or gas is possessed at the mouth of the wellbore of an oil and gas well.

(19) "Transferee interest owner" means a person that acquires oil and gas rights from a transferor interest owner.

(20) "Transferor interest owner" means an interest owner that transfers or conveys oil and gas rights, wholly or partly.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.002. OIL AND GAS LIEN. (a) To secure the obligations of a first purchaser to pay the sales price, each interest owner has an oil and gas lien to the extent of the interest owner's interest in oil and gas rights. The oil and gas lien exists as part of and incident to the ownership of oil and gas rights.

(b) An oil and gas lien:

(1) exists in and attaches to all oil and gas before severance;

(2) continues uninterrupted and without lapse in all oil and gas on and after severance; and

(3) continues uninterrupted and without lapse in and to all proceeds from the sale of the oil or gas.

(c) Except as provided by Subsection (d), an oil and gas lien exists until the interest owner or representative first entitled to receive the sales price has received the sales price for the oil or gas production, but the lien does not continue to attach to the production after the production is sold by the first purchaser, unless the first subsequent purchaser:

(1) is an affiliate of the first purchaser; or

(2) has actual knowledge, not constructive notice or inquiry notice, that the first purchaser has not paid the interest owner or representative first entitled to receive the sales price.

(d) As between an interest owner and a representative of an interest owner or any person claiming adversely to the interest owner or representative, the interest owner's oil and gas lien continues uninterrupted and without lapse in proceeds in the possession or control of a representative until the interest owner on whose behalf the representative acts receives the proceeds in full.

(e) Except as provided by Subsection (f), a first purchaser takes free of an oil and gas lien if the first purchaser:

(1) in good faith, paid the sales price for the oil or gas to an interest owner or representative otherwise apparently entitled to receive the sales price; and

(2) is without actual knowledge that the interest owner or representative is not entitled to receive the sales price paid.

(f) Notwithstanding Subsection (e), the oil and gas lien continues uninterrupted in the proceeds paid to or otherwise due the interest owner or representative.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.003. TRANSFER OF OIL AND GAS RIGHTS. (a) The validity of an oil and gas lien is not dependent on possession of the oil or gas by an interest owner or representative. An oil and gas lien is not void or expired because of a change or transfer of the actual or constructive possession of or title to the oil or gas from the interest owner or representative to a first purchaser or other purchaser.

(b) On the conveyance or transfer of any oil and gas rights by a transferor interest owner, the oil and gas lien vested in the transferor interest owner immediately before the conveyance or transfer remains with the transferor interest owner to the extent of any oil and gas rights retained by the transferor interest owner.

(c) On the conveyance or transfer of any oil and gas rights by a transferor interest owner, the oil and gas lien vested in the transferor interest owner immediately before the conveyance or transfer is transferred to and attaches automatically to the oil and gas rights acquired by the transferee interest owner uninterrupted and without lapse and as part of and incident to the oil and gas rights that are conveyed or transferred.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.004. AUTOMATIC PERFECTION OF LIEN. An oil and gas lien of an interest owner is perfected automatically without the need to file a financing statement or any other type of documentation.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.005. COMMINGLING. (a) If oil or gas in which there exists more than one oil and gas lien is commingled with other oil or gas in a manner that the identity of the specific oil or gas is lost, the oil and gas lien:

(1) continues without interruption into and attaches to any resulting commingled product; and

(2) is perfected automatically on the date of the oil and gas lien's original perfection but only for the volume of the commingled product that is equal to the volume of product to which the oil and gas lien originally attached.

(b) If commingling described by Subsection (a) occurs, the oil and gas lien in the commingled product has priority over any security interest or other lien that is not an oil and gas lien or permitted lien, regardless of whether the security interest or other lien has been properly perfected.

(c) If more than one oil and gas lien attaches to the commingled product, the oil and gas liens rank equally in the proportion that the respective sales prices secured by each oil and gas lien bears as a percentage of the total of the sales prices secured by all oil and gas liens applicable to the production at the time the production was commingled.

(d) This section is intended to recognize the continuation of oil and gas lien rights of an interest owner in the commingled product stream only as to a volume of oil or gas proportionate to the volume of oil or gas that originated from the interest owner, with that volume of the commingled product being considered to have maintained a distinct identity as being available for sale or transportation under the specific contractual arrangements applicable to the production at the time the oil or gas entered the commingled product stream.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.006. RIGHTS OF PURCHASERS. (a) Except as provided by Subsection (b), a purchaser takes free of any oil and gas lien otherwise applicable to the oil or gas purchased if the purchaser:

(1) is a buyer in the ordinary course of the first purchaser's business under Chapter 9, Business & Commerce Code; or

(2) has paid all of the consideration due to the first purchaser, including by exchange of oil or gas, net-out, or set-off, under all applicable enforceable contracts in existence at the time of the payment.

(b) The oil and gas lien continues uninterrupted in the proceeds paid to or otherwise due the first purchaser.

(c) Except as provided by this section, an oil and gas lien has priority over the rights of any purchaser.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.007. PRIORITY IN RELATION TO OTHER LIENS OR SECURITY INTERESTS. Except for a permitted lien, an oil and gas lien takes priority over any other lien, whether arising by contract, law, equity, or otherwise, or any security interest.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.008. TITLE NOT AFFECTED. This chapter does not affect:

(1) when legal title to oil and gas may pass by agreement or operation of law subject to an oil and gas lien;

(2) the right of a first purchaser to take or receive oil and gas under the terms of a division order, provided that the division order does not modify, waive, or abrogate in any respect the rights of an interest owner under this chapter; or

(3) subject to Section 67.009, the right of a first purchaser to take or receive oil and gas under an agreement to sell.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.009. WAIVER. (a) Except as provided by Subsection (b), an interest owner may not be required, as a condition or term of an agreement to sell or otherwise, to:

(1) waive or release any oil and gas lien or a right under this chapter, other than on payment in full of the sales price; or

(2) agree to a provision that would apply the law of another state to a right granted under this chapter.

(b) An interest owner, or representative acting on behalf of an interest owner, may waive or release any oil and gas lien or any rights under this chapter or agree to apply the law of another state to the interest owner's oil and gas rights granted under this chapter, if the first purchaser:

(1) posts a letter of credit in a form and amount satisfactory to the interest owner; or

(2) agrees to prepay or escrow the sales price under an agreement to sell with the interest owner and performs all of the first purchaser's obligations under the agreement.

(c) Unless waived or released under Subsection (b), a condition or term described by Subsection (a) is void.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.010. LIMITATION ON FILING ACTION TO ENFORCE LIEN. (a) Except as provided by Subsection (b), an action to enforce the interest owner's oil and gas lien must be brought not later than the first anniversary of the last day of the month after the date proceeds from the sale of oil or gas subject to the lien are required by law or contract to be paid to the interest owner, but only as to the oil or gas sold during that month.

(b) The commencement of a proceeding by or against any person claiming an interest in any property subject to the oil and gas lien seeking to adjudicate the person as bankrupt or insolvent, or seeking relief of the person's debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for the person or for any substantial part of the person's property shall toll the one-year period prescribed by Subsection (a) in which to bring an action to enforce the oil and gas lien for an additional period of 90 days after the earlier of the date:

(1) the proceeding is dismissed or otherwise finally concluded; or

(2) final relief is obtained from the appropriate tribunal

authorizing the commencement of the action to enforce the oil and gas lien.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.011. VENUE; JURISDICTION. (a) An action to enforce the interest owner's oil and gas lien may be brought in a district court or other court of competent jurisdiction in the county in which:

(1) the oil and gas well from which the oil or gas is produced is located;

(2) the unpaid for oil or gas is located; or

(3) the proceeds for the oil or gas are located.

(b) An interest owner may join multiple proceedings to enforce oil and gas liens involving more than one oil and gas well in one county in the same action.

(c) In cases involving oil or gas from the same oil and gas well or wells:

(1) any persons claiming oil and gas liens in the oil or gas may join in the same action; or

(2) a district court may consolidate separate actions related to the oil or gas.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.012. PAYMENT DISPUTES. In the case of a payment dispute between an operator and another interest owner, a good-faith tender of money in satisfaction of a debt or security interest by one person operates as a tender of the money to both if tender is made:

(1) to the person who the operator and other interest owner jointly directed the first purchaser in writing to pay;

(2) to a person who otherwise shows the person is entitled to the money; or

(3) to a court of competent jurisdiction in the event of litigation or bankruptcy.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.013. COSTS; ATTORNEY'S FEES. The prevailing party in an action brought under this chapter is entitled to court costs and reasonable attorney's fees.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.014. CERTAIN RIGHTS OF OPERATOR NOT IMPAIRED. This chapter does not impair an operator's right to be paid, set-off, or withhold funds from another interest owner as security for or in satisfaction of a debt or security interest.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.015. INTEREST OWNER RIGHTS CUMULATIVE. The provisions of this chapter and the rights granted under this chapter are intended to be cumulative with all other rights an interest owner may otherwise have at law or in equity, including the right of any interest owner to maintain a personal action to recover the debt against any person liable for payment of the sales price of the oil or gas.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.016. LIBERAL CONSTRUCTION OF INTEREST OWNER RIGHTS. The rights of the interest owner shall be liberally construed to give the interest owner the most comprehensive protection to secure the receipt by the interest owner of the sales price.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

Sec. 67.017. CONFLICT OF LAWS. To the extent of a conflict

between the provisions of this chapter and other law, this chapter prevails.

Added by Acts 2021, 87th Leg., R.S., Ch. 284 (H.B. 3794), Sec. 4, eff. September 1, 2021.

CHAPTER 68. RICO LIENS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001. DEFINITIONS. In this chapter:

(1) "Beneficial interest," "investigative agency," "local prosecutor," and "real property" have the meanings assigned by Section 140B.001, Civil Practice and Remedies Code.

(2) "RICO lien notice" means a lien notice filed under Section 68.051 or 68.052.

(3) "Trustee":

(A) means:

(i) a person acting as trustee under a trust established under the Texas Trust Code (Subtitle B, Title 9, Property Code) in which the trustee holds legal or record title to real property;

(ii) a person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) a successor trustee to a person described by Subparagraph (i) or (ii); and

(B) does not include a person appointed or acting as a personal representative as defined by Section 22.031, Estates Code, or appointed or acting as a trustee of a testamentary trust or as a trustee of an indenture of trust under which any bonds have been or are to be issued.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

SUBCHAPTER B. RICO LIEN NOTICE

Sec. 68.051. GENERAL RICO LIEN NOTICE. (a) On the institution by an investigative agency of a civil action brought under Chapter 140B, Civil Practice and Remedies Code, the investigative agency, then or at any time during the pendency of the action, may file a RICO lien notice in the official records of any one or more counties.

The attorney general must receive the consent of the applicable local prosecutor before filing a RICO lien.

(b) A filing fee or other charge may not be required as a condition for filing the RICO lien notice, and the clerk of the district court, on the presentation of a RICO lien notice, shall immediately record it in the official records.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.052. ATTORNEY GENERAL OR LOCAL PROSECUTOR RICO LIEN NOTICE. (a) In addition to the authority to file a RICO lien notice under Section 68.051, the attorney general or a local prosecutor may apply ex parte to a district court and, on petition supported by sworn affidavit, obtain an order authorizing the filing of a RICO lien notice against real property on a showing of probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code.

(b) If the RICO lien notice authorization is granted, the attorney general or local prosecutor shall, after filing the notice, immediately provide notice to the owner of the property by:

(1) serving the notice in the manner provided by law for the service of process;

(2) mailing the notice, postage prepaid, by certified mail to the owner at the owner's last known address and obtaining evidence of the delivery; or

(3) if service by a method described by Subdivision (1) or (2) cannot be accomplished, posting the notice on the premises.

(c) The owner of the property may move the court to discharge the lien, and that motion shall be set for hearing at the earliest possible time.

(d) The court shall discharge the lien if the court finds that:

(1) there is no probable cause to believe that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code; or

(2) the owner of the property neither knew nor reasonably

should have known that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code.

(e) Testimony presented by the property owner at the hearing:

(1) is not admissible against the property owner in any criminal proceeding except in a criminal prosecution for perjury or false statement; and

(2) does not constitute a waiver of the property owner's constitutional right against self-incrimination.

(f) Except as provided by Subsection (g), a RICO lien notice secured under this section is valid for a period of 90 days from the date the court granted authorization and may be extended for an additional 90 days by the court for good cause shown.

(g) If a civil action is instituted under Chapter 140B, Civil Practice and Remedies Code, and a RICO lien notice is filed under this subchapter, the term of the lien notice is governed by this subchapter.

(h) The filing of a RICO lien notice, regardless of whether subsequently discharged or otherwise lifted, constitutes notice to the owner and knowledge by the owner that the property was used in the course of, intended for use in the course of, derived from, or realized through conduct constituting an offense under Section 72.02, 72.03, or 72.04, Penal Code, such that lack of such notice and knowledge is not a defense in any subsequent civil action under Chapter 140B, Civil Practice and Remedies Code, or a subsequent criminal proceeding under Chapter 72, Penal Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.053. FORMAT OF NOTICE. (a) A RICO lien notice must be signed by the attorney general or the attorney general's designee or by a local prosecutor or the local prosecutor's designee.

(b) A RICO lien notice must be in the form prescribed by the attorney general and must include:

(1) the name of the person against whom a civil action has been brought under Chapter 140B, Civil Practice and Remedies Code, and at the discretion of the investigative agency may also include

any other aliases, names, or fictitious names under which the person may be known and any corporation, partnership, or other entity that is either controlled or entirely owned by the person;

(2) if known to the investigative agency, the current residence and business addresses of the person named in the notice and of the other names included in the notice;

(3) a reference to an applicable civil action, stating:

(A) that an action under Chapter 140B, Civil Practice and Remedies Code, has been brought against the person named in the notice;

(B) the name of each county in which the action has been brought; and

(C) if known to the investigative agency at the time of filing the notice, the cause number of the action;

(4) a statement that the notice is being filed under this chapter; and

(5) the name and address of the investigative agency filing the notice and the name of the individual signing the notice.

(c) A RICO lien notice must apply only to one person and, to the extent applicable, any other aliases, names, or fictitious names of that person, including the names of corporations, partnerships, or other entities, to the extent permitted by Subsection (b)(1). A separate notice must be filed for each person against whom the investigative agency desires to file a RICO lien notice under this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.054. SERVICE OF NOTICE. (a) An investigative agency shall, as soon as practicable after the filing of each RICO lien notice, provide to the person named in the notice:

(1) a copy of the recorded notice; or

(2) a copy of the notice that states each county in which the notice has been recorded.

(b) The failure of the investigative agency to provide a copy of a RICO lien notice under this section does not invalidate or otherwise affect the notice.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff.

September 1, 2023.

Sec. 68.055. CREATION AND PRIORITY OF RICO LIEN. (a) Filing a RICO lien notice creates, from the time of its filing, a lien in favor of the state on the following property of the person named in the notice and against any other names set forth in the notice:

(1) any real property situated in the county where the notice is filed then or thereafter owned by the person or under any of the names; and

(2) any beneficial interest situated in the county where the notice is filed then or thereafter owned by the person or under any of the names.

(b) The lien shall commence and attach as of the time of filing of a RICO lien notice and shall continue thereafter until expiration, termination, or release of the notice under this subchapter. The lien created in favor of the state is superior to the interest of any other person in the real property or beneficial interest if the interest is acquired subsequent to the filing of the notice.

(c) For purposes of this section, a beneficial interest is considered to be located where real property owned by the trustee is located.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.056. LIS PENDENS; INTERESTS OF PERSONS ACQUIRING INTEREST IN PROPERTY. (a) In conjunction with a civil action brought under Chapter 140B, Civil Practice and Remedies Code, an investigative agency may file without prior court order in any county a notice of lis pendens under Section 12.007. In such case, a person acquiring an interest in the subject real property or beneficial interest, if the real property or beneficial interest is acquired subsequent to the filing of the notice of lis pendens, shall take the interest subject to the civil action and any subsequent judgment of forfeiture.

(b) In conjunction with a civil action brought under Chapter 140B, Civil Practice and Remedies Code, if a RICO lien notice has been filed, an investigative agency may name as a defendant, in

addition to the person named in the notice, any person acquiring an interest in the real property or beneficial interest subsequent to the filing of the notice. If a judgment of forfeiture is entered in the action in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.057. DUTIES OF TRUSTEE; CRIMINAL OFFENSE. (a) A trustee who acquires actual knowledge that a RICO lien notice or a civil action brought under Chapter 140B, Civil Practice and Remedies Code, or criminal proceeding brought under Chapter 72, Penal Code, has been filed against a person for whom the trustee holds legal or record title to real property shall immediately furnish to the appropriate investigative agency:

(1) the name and address of the person, as known to the trustee;

(2) the name and address, as known to the trustee, of each other person for whose benefit the trustee holds title to the real property; and

(3) if requested by the investigative agency, a copy of the trust agreement or other instrument under which the trustee holds legal or record title to the real property.

(b) A trustee who violates this section commits an offense. An offense under this subsection is a Class B misdemeanor.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.058. LIABILITY OF TRUSTEE FOR CONVEYANCE OF TITLE. (a) A trustee who conveys title to real property for which, at the time of the conveyance, a RICO lien notice naming a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust has been filed in the county where the real property is situated is liable to the state for the greatest of:

(1) the amount of proceeds received directly by the person named in the notice as a result of the conveyance;

(2) the amount of proceeds received by the trustee as a result of the conveyance and distributed to the person named in the notice; or

(3) the fair market value of the interest of the person named in the notice in the real property conveyed.

(b) Notwithstanding Subsection (a)(3), if a trustee conveys the real property and holds the proceeds that would otherwise be paid or distributed to the beneficiary or at the direction of the beneficiary or the beneficiary's designee, the trustee's liability does not exceed the amount of the proceeds held for so long as the proceeds are held by the trustee.

(c) An investigative agency may bring a civil action in any district court against a trustee to recover from the trustee the amount described by Subsection (a) and is entitled to recover investigative costs and attorney's fees incurred by the investigative agency.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.059. EFFECT ON TRUST OF RICO LIEN NOTICE. (a) The filing of a RICO lien notice does not constitute a lien on the record title to real property as owned by a trustee except to the extent that the trustee is named in the notice.

(b) The filing of a RICO lien notice does not affect the use to which real property or a beneficial interest owned by the person named in the notice may be put or the right of the person to receive any avails, rents, or other proceeds resulting from the use and ownership, but not the sale, of the property until a judgment of forfeiture is entered.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.060. TRUST EXCEPTIONS. (a) This chapter does not apply to a conveyance by a trustee under a court order, unless that court order is entered in an action between the trustee and the beneficiary.

(b) Unless the trustee has actual knowledge that a person

owning a beneficial interest in the trust is named in a RICO lien notice or is otherwise a defendant in a civil action brought under Chapter 140B, Civil Practice and Remedies Code, this subchapter does not apply to a conveyance by the trustee:

(1) required under the terms of the trust agreement that is a matter of public record before the filing of the lien notice; or

(2) to all of the persons who own beneficial interests in the trust.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.061. RIGHTS OF INNOCENT PERSONS. All forfeitures or dispositions under this chapter must be made with due provision for the rights of innocent persons.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.062. EXPIRATION, RENEWAL, AND RELEASE OF RICO LIEN NOTICE. (a) Unless renewed by the investigative agency, a RICO lien notice expires on the sixth anniversary of the date it was filed. If the investigative agency renews the notice, the notice expires on the sixth anniversary of the date it was renewed. The investigative agency may renew the notice only once.

(b) The investigative agency filing a RICO lien notice may wholly or partly release the notice or may release any specific real property or beneficial interest from the notice on the investigative agency's own terms. A release of the notice may be filed in the official records of any county. A charge or fee may not be imposed for the filing of the release.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.063. EFFECT OF CRIMINAL CASE ON RICO LIEN NOTICE. If a civil action has not been brought by an investigative agency seeking a forfeiture of any property owned by the person named in the RICO

lien notice, the acquittal in a criminal proceeding brought under Chapter 72, Penal Code, of the person named in the notice or the dismissal of the criminal proceeding terminates the notice and, in such case, the filing of the notice is void. If the criminal proceeding has been dismissed or the person named in the notice has been acquitted in the criminal proceeding, the notice continues for the duration of a civil action brought under Chapter 140B, Civil Practice and Remedies Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

Sec. 68.064. TERMINATION OR RELEASE OF RICO LIEN NOTICE BY COURT. (a) If a civil action brought under Chapter 140B, Civil Practice and Remedies Code, is not pending against a person named in a RICO lien notice, the person may bring an action in the county where the notice has been filed against the investigative agency that filed the notice seeking a release or extinguishment of the notice.

(b) In an action brought under this section, the court shall, on the motion of the person named in the RICO lien notice, immediately enter an order setting a date for hearing that is not earlier than the fifth day and not later than the 10th day after the date the action is filed, and the order and a copy of the complaint shall be served on the investigative agency not later than the third day after the date the action is filed.

(c) At the hearing set under Subsection (b), the court shall take evidence on the issue of whether any real property or beneficial interest owned by the person named in the RICO lien notice is covered by the notice or is otherwise subject to forfeiture under Chapter 140B, Civil Practice and Remedies Code.

(d) If, at the hearing under Subsection (b), the person named in the RICO lien notice shows by a preponderance of the evidence that the notice is not applicable to the person or that any real property or beneficial interest owned by the person is not subject to forfeiture under Chapter 140B, Civil Practice and Remedies Code, the court shall enter a judgment terminating the notice or releasing the real property or beneficial interest from the notice.

(e) A court shall immediately enter its order releasing from a RICO lien notice any specific real property or beneficial interest if

a sale of that real property or beneficial interest is pending and the filing of the notice prevents the sale of the property or interest. Proceeds resulting from the sale of that real property or beneficial interest shall be deposited into the registry of the court, subject to the further order of the court.

(f) At the hearing under Subsection (b), the court may release any real property or beneficial interest from the RICO lien notice, on the posting by the person named in the notice of security that is equal to the value of the real property or beneficial interest owned by the person.

(g) If a civil action brought under Chapter 140B, Civil Practice and Remedies Code, is pending against a person named in a RICO lien notice, the court on motion by the person may grant the relief described by this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 885 (H.B. 4635), Sec. 7, eff. September 1, 2023.

CHAPTER 70. MISCELLANEOUS LIENS

SUBCHAPTER A. POSSESSORY LIENS

Sec. 70.001. WORKER'S LIEN. (a) A worker in this state who by labor repairs an article, including a vehicle, motorboat, vessel, or outboard motor, may retain possession of the article until:

(1) the amount due under the contract for the repairs is paid; or

(2) if no amount is specified by contract, the reasonable and usual compensation is paid.

(b) If a worker relinquishes possession of a motor vehicle, motorboat, vessel, or outboard motor in return for a check, money order, or a credit card transaction on which payment is stopped, has been dishonored because of insufficient funds, no funds or because the drawer or maker of the order or the credit card holder has no account or the account upon which it was drawn or the credit card account has been closed, the lien provided by this section continues to exist and the worker is entitled to possession of the vehicle, motorboat, vessel, or outboard motor until the amount due is paid, unless the vehicle, motorboat, vessel, or outboard motor is possessed by a person who became a bona fide purchaser of the vehicle after a stop payment order was made. A person entitled to possession of

property under this subsection is entitled to take possession thereof in accordance with the provisions of Section 9.609, Business & Commerce Code.

(b-1) Except as provided by Subsection (b), a lien provided by this section on a motor vehicle, motorboat, vessel, or outboard motor is released when a worker:

(1) receives good and sufficient payment of the amounts due under Subsection (a) and, if applicable, Subsection (d); or

(2) relinquishes possession of the motor vehicle, motorboat, vessel, or outboard motor.

(b-2) A worker's right to possession under this section may not be assigned to a third party in return for payment of any amount due under Subsection (a) or (d).

(c) A worker may take possession of an article under Subsection (b) only if the person obligated under the repair contract has signed a notice stating that the article may be subject to repossession under this section. A notice under this subsection must be:

(1) separate from the written repair contract; or

(2) printed on the written repair contract, credit agreement, or other document in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous with a separate signature line.

(d) A worker who takes possession of an article under Subsection (b) may require a person obligated under the repair contract to pay the costs of repossession as a condition of reclaiming the article only to the extent of the reasonable fair market value of the services required to take possession of the article. For the purpose of this subsection, charges represent the fair market value of the services required to take possession of an article if the charges represent the actual cost incurred by the worker in taking possession of the article.

(e) A worker may not transfer to a third party, and a person who performs repossession services may not accept, a check, money order, or credit card transaction that is received as payment for repair of an article and that is returned to the worker because of insufficient funds or no funds, because the drawer or maker of the check or money order or the credit card holder has no account, or because the account on which the check or money order is drawn or the credit card account has been closed.

(f) A person commits an offense if the person transfers or

accepts a check, money order, or credit card transaction in violation of Subsection (e). An offense under this subsection is a Class B misdemeanor.

(g) A motor vehicle that is repossessed under this section shall be promptly delivered to the location where the repair was performed or a vehicle storage facility licensed under Chapter 2303, Occupations Code. The motor vehicle must remain at the repair location or a licensed vehicle storage facility at all times until the motor vehicle is lawfully returned to the motor vehicle's owner or a lienholder or is disposed of as provided by this subchapter.

Acts 1983, 68th Leg., p. 3579, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(b), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 275, Sec. 1, eff. June 5, 1985; Acts 1993, 73rd Leg., ch. 754, Sec. 1, 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 375, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 414, Sec. 2.38, eff. July 1, 2001; Acts 1999, 76th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.807, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1058 (H.B. 2076), Sec. 1, eff. June 19, 2015.

Sec. 70.002. LIENS ON GARMENTS. A person with whom a garment is left for repair, alteration, dyeing, cleaning, laundering, or pressing may retain possession of the garment until:

(1) the amount due the person under the contract for the work is paid; or

(2) if no amount is specified by contract, the reasonable and usual compensation is paid.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.003. STABLE KEEPER'S, GARAGEMAN'S, PASTURER'S, AND COTTON GINNER'S LIEN'S. (a) A stable keeper with whom an animal is left for care has a lien on the animal for the amount of the charges for the care.

(b) An owner or lessee of a pasture with whom an animal is left for grazing has a lien on the animal for the amount of charges for

the grazing.

(c) A garageman with whom a motor vehicle, motorboat, vessel, or outboard motor is left for care has a lien on the motor vehicle, motorboat, vessel, or outboard motor for the amount of the charges for the care, including reasonable charges for towing the motor vehicle, motorboat, vessel, or outboard motor to the garageman's place of business and excluding charges for repairs.

(d)(1) A cotton ginner to whom a cotton crop has been delivered for processing or who, under an agreement, is to be paid for harvesting a cotton crop has a lien on the cotton processed or harvested for the amount of the charges for the processing or harvesting. The lienholder is entitled to retain possession of the cotton until the amount of the charge due under an agreement is paid or, if an amount is not specified by agreement, the reasonable and usual compensation is paid. If the cotton owner's address is known and the amount of the charge is not paid before the 31st day after the date the cotton ginner's work is completed or the date payment is due under a written agreement, whichever is later, the lienholder shall request the owner to pay the unpaid charge due and shall notify the owner and any other person having a lien on the cotton which is properly recorded under applicable law with the secretary of state of the fact that unless payment is made not later than the 15th day after the date the notice is received, the lienholder is entitled to sell the cotton under any procedure authorized by Section 9.610, Business & Commerce Code. If the cotton owner's address is not known and the amount of the charge is not paid before the 61st day after the date the cotton ginner's work is completed or the date payment is due under a written agreement, whichever is later, the lienholder is entitled to sell the cotton without notice at a commercially reasonable sale. The proceeds of a sale under this subsection shall be applied first to charges due under this subsection, and any remainder shall be paid in appropriate proportion to:

(A) any other person having a lien on the cotton which is properly recorded under applicable law with the secretary of state; and

(B) the cotton owner.

(2) Nothing in this subsection shall be construed to place an affirmative burden on the cotton ginner to perform any lien searches except as may be appropriate to provide notices required by this section.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 629, Sec. 1, eff. June 14, 1989; Acts 1997, 75th Leg., ch. 462, Sec. 1, 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.39, eff. July 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 80 (S.B. 543), Sec. 1, eff. September 1, 2009.

Sec. 70.004. POSSESSION OF MOTOR VEHICLE, MOTORBOAT, VESSEL, OR OUTBOARD MOTOR. (a) A holder of a lien under Section 70.003 on a motor vehicle, motorboat, vessel, or outboard motor who obtains possession of the motor vehicle, motorboat, vessel, or outboard motor under a state law or city ordinance shall give notice for a motor vehicle, motorboat, vessel, or outboard motor registered in this state to the last known registered owner and each lienholder of record not later than the fifth day after the day possession is obtained. If the motor vehicle, motorboat, vessel, or outboard motor is registered outside this state, the notice shall be given to the last known registered owner and each lienholder of record not later than the 14th day after the day possession is obtained.

(b) Except as provided by Subsection (c), the notice must be sent by certified mail with return receipt requested and must contain:

(1) a request to remove the motor vehicle, motorboat, vessel, or outboard motor;

(2) a request for payment;

(3) the location of the motor vehicle, motorboat, vessel, or outboard motor; and

(4) the amount of accrued charges.

(c) The notice may be given by publishing the notice once in a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the motor vehicle, motorboat, vessel, or outboard motor is registered in another state;

(2) the holder of the lien submits a written request by certified mail, return receipt requested, to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered requesting information relating to the identity of the last known registered owner and any lienholder of record;

(3) the holder of the lien:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered that the entity is unwilling or unable to provide information on the last known registered owner or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered on or before the 21st day after the date the holder of the lien submits a request under Subdivision (2);

(4) the identity of the last known registered owner cannot be determined;

(5) the registration does not contain an address for the last known registered owner; and

(6) the holder of the lien cannot determine the identities and addresses of the lienholders of record.

(d) The holder of the lien is not required to publish notice under Subsection (c) if a correctly addressed notice is sent with sufficient postage under Subsection (b) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address.

(e) A person is entitled to fees for towing, impoundment, preservation, and notification and to reasonable storage fees for up to five days before the day that the notice is mailed or published, as applicable. After the day that the notice is mailed or published, the person is entitled to reasonable storage, impoundment, and preservation fees until the motor vehicle, motorboat, vessel, or outboard motor is removed and accrued charges are paid.

(f) A person charging fees under Subsection (e) commits an offense if the person charges a storage fee for a period of time not authorized by that subsection. An offense under this subsection is punishable by a fine of not less than $200 nor more than $1,000.

Acts 1983, 68th Leg., p. 3580, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(c), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 308, Sec. 1, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 629, Sec. 2, eff. June 14, 1989; Acts 1999, 76th Leg., ch. 70, Sec. 2, eff. Sept. 1, 1999.

Sec. 70.005. SALE OF PROPERTY. (a) Except as provided by Subsection (c), a person holding a lien under this subchapter on property other than a motor vehicle subject to Chapter 501, Transportation Code, or cotton under Section 70.003(d), who retains possession of the property for 60 days after the day that the charges accrue shall request the owner to pay the unpaid charges due if the owner's residence is in this state and known. If the charges are not paid before the 11th day after the day of the request, the lienholder may, after 20 days' notice, sell the property at a public sale, or if the lien is on a garment, at a public or private sale.

(b) Except as provided by Subsection (c), if the residence of the owner of property subject to sale under this section is not in this state or not known, the lienholder may sell the property without notice at a public sale after the 60th day after the day that the unpaid charges accrued.

(c) A person holding a lien under Section 70.003(a) on an animal fed in confinement for slaughter may enforce that lien in any manner authorized by Sections 9.610-9.619, Business & Commerce Code.

(d) The lienholder shall apply the proceeds of a sale under this section to the charges. If the lien is on a garment, the lienholder shall apply the proceeds to the charges and the reasonable costs of holding the sale. The lienholder shall pay excess proceeds to the person entitled to them.

Acts 1983, 68th Leg., p. 3581, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.247, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 249, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 462, Sec. 3, 4, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 414, Sec. 2.40, eff. July 1, 2001.

Sec. 70.006. SALE OR DISPOSAL OF MOTOR VEHICLE, MOTORBOAT, VESSEL, OR OUTBOARD MOTOR. (a) A holder of a lien under this subchapter on a motor vehicle subject to Chapter 501, Transportation Code, or on a motorboat, vessel, or outboard motor for which a certificate of title is required under Subchapter B, Chapter 31, Parks and Wildlife Code, as amended, who retains possession of the motor vehicle, motorboat, vessel, or outboard motor shall give written notice to the owner and each holder of a lien recorded on the certificate of title. Subject to Subsection (a-1), a holder of a

possessory lien on a motor vehicle under Section 70.001, other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, shall file a copy of the notice and all information required by this section with the county tax assessor-collector's office in the county in which the repairs were made with an administrative fee of $25 payable to the county tax assessor-collector. If the motor vehicle, motorboat, vessel, or outboard motor is registered outside this state, the holder of a lien under this subchapter who retains possession during that period shall give notice to the last known registered owner and each lienholder of record.

(a-1) A copy of the notice and information required to be filed with the county tax assessor-collector's office under Subsection (a) must be filed:

(1) for a motor vehicle that has a gross vehicle weight rating of less than 16,000 pounds, not later than the 30th day after the date on which the charges accrue; and

(2) for a motor vehicle that has a gross vehicle weight rating equal to or greater than 16,000 pounds, not later than the later of the 30th day after the date on which the charges accrue or the 30th day before the date of a proposed sale or disposition of the motor vehicle under Subsection (f) or (f-1).

(b) Except as provided by Subsection (c), the notice must be sent by certified mail with return receipt requested and must include the amount of the charges and a request for payment.

(b-1) A holder of a possessory lien on a motor vehicle under Section 70.001, other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, who is required to give notice to a lienholder of record under this section must include in the notice:

(1) the physical address of the real property at which the repairs to the motor vehicle were made;

(2) the legal name of the person that holds the possessory lien for which the notice is required;

(3) the taxpayer identification number or employer identification number, as applicable, of the person that holds the possessory lien for which the notice is required;

(4) a signed copy of the work order authorizing the repairs on the motor vehicle; and

(5) if applicable, the proposed date of the sale or

disposition of the motor vehicle under Subsection (f) or (f-1).

(b-2) If the holder of a possessory lien required to give notice in accordance with Subsection (b-1) does not comply with that subsection, a lien recorded on the certificate of title of the motor vehicle is superior to the possessory lienholder's lien.

(b-3) A person commits an offense if the person knowingly provides false or misleading information in a notice required by this section. An offense under this subsection is a Class B misdemeanor.

(c) The notice may be given by publishing the notice once in a newspaper of general circulation in the county in which the motor vehicle, motorboat, vessel, or outboard motor is stored if:

(1) the holder of the lien submits a written request by certified mail, return receipt requested, to the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered requesting information relating to the identity of the last known registered owner and any lienholder of record;

(2) the holder of the lien:

(A) is advised in writing by the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered that the entity is unwilling or unable to provide information on the last known registered owner or any lienholder of record; or

(B) does not receive a response from the governmental entity with which the motor vehicle, motorboat, vessel, or outboard motor is registered on or before the 21st day after the date the holder of the lien submits a request under Subdivision (1);

(3) the identity of the last known registered owner cannot be determined;

(4) the registration does not contain an address for the last known registered owner; and

(5) the holder of the lien cannot determine the identities and addresses of the lienholders of record.

(d) The holder of the lien is not required to publish notice under Subsection (c) if a correctly addressed notice is sent with sufficient postage under Subsection (b) and is returned as unclaimed or refused or with a notation that the addressee is unknown or has moved without leaving a forwarding address.

(e) After notice is given under this section to the owner of or the holder of a lien on the motor vehicle, motorboat, vessel, or outboard motor, the owner or holder of the lien may obtain possession

of the motor vehicle, motorboat, vessel, or outboard motor by paying all charges due to the holder of a lien under this subchapter before the 31st day after the date a copy of the notice is filed with the county tax assessor-collector's office.

(f) If the charges are not paid before the 31st day after the date that a copy of the notice required by Subsection (a) is filed with the county tax assessor-collector's office, the lienholder may sell the motor vehicle, motorboat, vessel, or outboard motor at a public sale and apply the proceeds to the charges. The lienholder shall pay excess proceeds to the person entitled to them. The public sale may not take place before the 31st day after the date a copy of the notice is filed with the county tax assessor-collector's office.

(f-1) If the charges are not paid before the 31st day after the date that a copy of the notice required by Subsection (a) is filed with the county tax assessor-collector's office and the property that is the subject of the notice is a motor vehicle, the lienholder may, in lieu of selling the vehicle under Subsection (f), dispose of the vehicle in accordance with Subchapter D, Chapter 683, Transportation Code, if the lienholder determines that:

(1) the vehicle's only residual value is as a source of parts or scrap metal; or

(2) it is not economical to dispose of the vehicle at a public sale.

(f-2) If the lienholder disposes of the property under Subsection (f-1), the lienholder shall apply the fair market value of the motor vehicle to the charges due to the lienholder.

(g) After providing notice in accordance with this section, a holder of a possessory lien on a motor vehicle under Section 70.001, other than a person licensed as a franchised dealer under Chapter 2301, Occupations Code, shall, on request, allow an owner and each lienholder of record to inspect or arrange an inspection of the motor vehicle by a qualified professional to verify that the repairs were made. The inspection must be completed before the date of the public sale authorized by Subsection (f).

(h) Not later than the 15th business day after the date the county tax assessor-collector receives notice under this section, the county tax assessor-collector shall provide a copy of the notice that indicates the date the notice was filed with the county tax assessor-collector to the owner of the motor vehicle and each holder of a lien recorded on the certificate of title of the motor vehicle. Except as

provided by this subsection, the county tax assessor-collector shall provide the notice required by this section in the same manner as a holder of a lien is required to provide a notice under this section, except that the county tax assessor-collector is not required to use certified mail. Notice under this section is required regardless of the date on which the charges on which the possessory lien is based accrued.

Acts 1983, 68th Leg., p. 3581, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(d), eff. Oct. 2, 1984; Acts 1997, 75th Leg., ch. 165, Sec. 30.248, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 70, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 80 (S.B. 543), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 405 (S.B. 690), Sec. 7, eff. January 1, 2012.

Acts 2011, 82nd Leg., R.S., Ch. 1204 (S.B. 266), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1058 (H.B. 2076), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 1061 (H.B. 3131), Sec. 5, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 1061 (H.B. 3131), Sec. 6, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 709 (H.B. 2879), Sec. 1, eff. September 1, 2021.

Sec. 70.007. UNCLAIMED EXCESS. (a) If a person entitled to excess proceeds under this subchapter is not known or has moved from this state or the county in which the lien accrued, the person holding the excess shall pay it to the county treasurer of the county in which the lien accrued. The treasurer shall issue the person a receipt for the payment.

(b) If the person entitled to the excess does not claim it before two years after the day it is paid to the treasurer, the excess becomes a part of the county's general fund.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.008. ATTORNEY'S FEES. The court in a suit concerning possession of a motor vehicle, motorboat, vessel, or outboard motor and a debt due on it may award reasonable attorney's fees to the prevailing party.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 6(e), eff. Oct. 2, 1984.

Sec. 70.009. PLASTIC FABRICATOR LIENS. (a) A plastic fabricator has a lien on any die, mold, form, or pattern in his possession that belongs to a customer for the amount due from the customer for plastic fabrication work performed with the die, mold, form, or pattern. The plastic fabricator may retain possession of the die, mold, form, or pattern until the amount due is paid.

(b) In this section:

(1) "Customer" means a person who contracts with or causes a plastic fabricator to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product or products.

(2) "Plastic fabricator" means a person, including a tool or die maker, who manufactures or causes to be manufactured, or who assembles or improves, a die, form, mold, or pattern for a customer, or who uses or contracts to use a die, mold, form, or pattern to manufacture, assemble, or otherwise make a plastic product or products for a customer.

Added by Acts 1985, 69th Leg., ch. 357, Sec. 1, eff. Sept. 1, 1985.

Sec. 70.010. LIENS FOR VETERINARY CARE CHARGES FOR LARGE ANIMALS. (a) In this section, "large animal" means exotic livestock or a cow, horse, mule, ass, sheep, goat, llama, alpaca, farm elk, or hog. The term does not include a common household pet such as a cat or dog.

(b) A veterinarian licensed under Chapter 801, Occupations Code, has a lien on a large animal and the proceeds from the disposition of the large animal to secure the cost of veterinary care the veterinarian provided to the large animal.

(c) A lien under this section:

(1) attaches on the 20th day after the date the veterinarian first provides care to the large animal;

(2) attaches regardless of whether the veterinarian retains possession of the large animal;

(3) takes priority over all other liens on the large animal for the period during which the veterinarian retains possession of the large animal, regardless of whether the lien under this section was created or perfected after the date on which another lien was created or perfected, if the veterinarian retains possession; and

(4) has the priority with respect to other liens as provided by Subchapter C, Chapter 9, Business & Commerce Code, if the veterinarian does not retain possession.

(d) The veterinarian may retain possession of a large animal under this section and enforce a lien under this section as provided by Section 70.005(c).

(e) A veterinarian who does not retain possession of a large animal under this section may enforce a lien under this section in the same manner as a statutory residential landlord's lien.

Added by Acts 2009, 81st Leg., R.S., Ch. 1387 (S.B. 1806), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. LIENS ON VESSELS

Sec. 70.101. GENERAL LIEN ON VESSELS. A person who furnishes supplies or materials or who performs repairs or labor for or on account of a domestic vessel that is owned in whole or part in this state has a lien for the person's charges.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.102. LIEN OF NAVIGATION DISTRICT OR PORT. (a) A navigation district or port within the territorial limits of this state that furnishes supplies or materials, performs repairs or labor, or provides a facility or service for which charges are specified in its official published port tariff for or on account of a domestic vessel that is owned in whole or part in this state has a maritime lien for the amount of its charges.

(b) A lien under this section may be enforced in rem. A plaintiff in an action to enforce the lien need not allege or prove

that credit was given to the vessel.

Acts 1983, 68th Leg., p. 3582, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.103. PROPERTY SUBJECT TO LIEN. A lien under this subchapter attaches to the vessel and its tackle, apparel, furniture, and freight money.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.104. PERSONS WHO MAY BIND VESSEL. (a) The following persons are presumed to be authorized by the owner of a vessel to incur charges that give rise to a lien under this subchapter:

(1) the managing owner;

(2) the ship's husband;

(3) the master;

(4) the local agent; and

(5) a person entrusted with management of the vessel at the port of supply.

(b) A person tortiously or unlawfully in possession or charge of a vessel may not bind the vessel.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. STOCK BREEDER'S LIEN

Sec. 70.201. STOCK BREEDER'S LIEN. An owner or keeper of a stallion, jack, bull, or boar confined to be bred for profit has a preference lien on the offspring of the animal for the amount of the charges for the breeding services, unless the owner or keeper misrepresents the animal by false pedigree.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 70.202. ENFORCEMENT OF LIEN. The lien may be enforced in the same manner as a statutory landlord's lien. The lien remains in force for 10 months from the day that the offspring is born, but the lien may not be enforced until five months after the date of birth of

the offspring.

Acts 1983, 68th Leg., p. 3583, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER D. AIRCRAFT REPAIR AND MAINTENANCE LIEN

Sec. 70.301. LIEN. (a) A person who stores, fuels, repairs, or performs maintenance work on an aircraft has a lien on the aircraft for:

(1) the amount due under a contract for the storage, fuel, repairs, or maintenance work; or

(2) if no amount is specified by contract, the reasonable and usual compensation for the storage, fuel, repairs, or maintenance work.

(b) This subchapter applies to a contract for storage only if it is:

(1) written; or

(2) oral and provides for a storage period of at least 30 days.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.302. POSSESSION. (a) A holder of a lien under this subchapter may retain possession of the aircraft subject to the lien until the amount due is paid.

(b) Except as provided by Subsection (c), if the holder of a lien under this subchapter relinquishes possession of the aircraft before the amount due is paid, the person may retake possession of the aircraft as provided by Section 9.609, Business & Commerce Code.

(c) The holder of a lien under this subchapter may not retake possession of the aircraft from a bona fide purchaser for value who purchases the aircraft without knowledge of the lien before the date the lien is recorded under Section 70.303.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.41, eff. July 1, 2001.

Sec. 70.303. RECORDING OF LIEN: AIRCRAFT REGISTERED IN UNITED STATES. A holder of a lien under this subchapter may record the lien on the aircraft by filing with the Federal Aviation Administration Aircraft Registry not later than the 180th day after the date of the completion of the contractual storage period or the performance of the last repair or maintenance a verified document in the form and manner required by applicable federal laws and regulations that states:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, fuel, repairs, or maintenance;

(3) a complete description of the aircraft; and

(4) the name and address of the owner of the aircraft and the number assigned the aircraft by the Federal Aviation Administration, if known.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 1, eff. June 17, 2005.

Sec. 70.3031. RECORDING OF LIEN: AIRCRAFT NOT REGISTERED IN UNITED STATES. (a) A holder of a lien under this subchapter on an aircraft that is registered in a nation other than the United States or that is not registered in any national jurisdiction may record the lien on the aircraft by filing with the secretary of state not later than the 180th day after the date of the completion of the contractual storage period or the performance of the last repair, fueling, or maintenance an affidavit that states:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, repairs, fuel, or maintenance;

(3) a complete description of the aircraft; and

(4) the name and last known address of the owner of the aircraft and the number assigned the aircraft by the applicable

jurisdiction, if known.

(b) An inaccurate address stated under Subsection (a)(4) does not invalidate the affidavit.

(c) The secretary of state shall maintain a record of information filed with the secretary of state under this section and index the records in the name of the owner of the aircraft.

(d) The fee for filing information with the secretary of state under this section is:

(1) $15 if the information is communicated in writing and consists of one or two pages;

(2) $30 if the information is communicated in writing and consists of more than two pages; and

(3) $5 if the information is communicated by another medium authorized by the secretary of state by rule.

Added by Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 2, eff. June 17, 2005.

Sec. 70.304. NOTICE TO OWNER AND LIENHOLDERS. (a) Not later than the 60th day after the date of the completion of the contractual storage period or the performance of the last fueling, repair, or maintenance, a holder of a lien under this subchapter who retains possession of the aircraft shall notify the owner shown on the certificate of registration and each holder of a lien on the aircraft as shown by the records maintained for that purpose by the Federal Aviation Administration Aircraft Registry or the secretary of state. The notice must state:

(1) the name, address, and telephone number of the holder of the lien under this subchapter;

(2) the amount due for storage, fuel, repairs, or maintenance;

(3) a complete description of the aircraft; and

(4) the legal right of the holder of the lien under this subchapter to sell the aircraft at public auction and apply the proceeds to the amount due.

(b) The notice must be delivered by certified or registered mail, return receipt requested.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 538, Sec. 1, eff. June 15, 1991;

Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 3, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 3, eff. June 17, 2005.

Sec. 70.305. SALE OF AIRCRAFT. If the holder of a lien under this subchapter provides the notice required by Section 70.304 and the amount due remains unpaid after the 90th day after the date of the completion of the contractual storage period or the performance of the last fueling, repair, or maintenance, the holder of the lien may sell the aircraft at a public sale and apply the proceeds to the amount due. The lienholder shall pay any excess proceeds to the person entitled to them.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1995, 74th Leg., ch. 946, Sec. 1, eff. Aug. 28, 1995; Acts 2001, 77th Leg., ch. 1171, Sec. 4, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 4, eff. June 17, 2005.

Sec. 70.306. ATTORNEY'S FEES. The court in a suit brought under this subchapter may award reasonable attorney's fees to the prevailing party.

Added by Acts 1989, 71st Leg., ch. 250, Sec. 1, eff. Sept. 1, 1989.

Sec. 70.307. CRIMINAL OFFENSE: IMPROPERLY OBTAINING POSSESSION OF AIRCRAFT SUBJECT TO LIEN. (a) A person commits an offense if the person, through surreptitious removal or by trick, fraud, or device perpetrated on the holder of the lien, obtains possession of all or part of an aircraft that is subject to a lien under this subchapter.
(b) An offense under this section is a Class B misdemeanor.
(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law.

Added by Acts 2005, 79th Leg., Ch. 677 (S.B. 149), Sec. 5, eff. June 17, 2005.

SUBCHAPTER E. AGRICULTURAL LIENS

Sec. 70.401. DEFINITIONS. In this subchapter:

(1) "Agricultural crop" means a plant product that is grown, produced, or harvested as a result of an agricultural producer's farm operation.

(2) "Agricultural producer" means a person who is engaged in the business of growing, producing, or harvesting an agricultural crop.

(3) "Buyer in ordinary course of business" has the meaning assigned by Section 1.201, Business & Commerce Code.

(4) "Company-owned crop" means an agricultural crop:

(A) that is in the possession of a warehouse or contract purchaser located in this state and for which the agricultural producer has received full payment;

(B) that is not an open storage crop; or

(C) for which the warehouse or the contract purchaser tenders payment and the agricultural producer, without coercion, defers payment.

(5) "Contract purchaser" means a person who has agreed under a contract to purchase an agricultural crop or otherwise pay the agricultural producer for growing, producing, or harvesting the agricultural crop. The term includes a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.).

(6) "Open storage crop" means an agricultural crop that:

(A) an agricultural producer delivers or transfers to:

(i) a warehouse for storage; or

(ii) a contract purchaser located in this state;

(B) is not covered by a warehouse receipt; and

(C) is not owned by the lessee, owner, or operator of the warehouse in which the crop is stored or the contract purchaser to which the crop is delivered or transferred.

(7) "Secured lender" means a person that:

(A) has loaned money to a warehouse or a contract purchaser; and

(B) holds a perfected secured lien against a company-owned crop.

(8) "Warehouse" means a facility that stores or handles any agricultural crop after the crop is harvested, including a facility operated by a person who, as to the transaction in question, is licensed and bonded under Chapter 14, Agriculture Code, or the United States Warehouse Act (7 U.S.C. Section 241 et seq.). The term includes a person engaged in the business of operating a warehouse.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 1, eff. September 1, 2017.

Sec. 70.402. LIEN CREATED. (a) An agricultural producer who, under a contract with a contract purchaser, is to receive consideration for selling an agricultural crop grown, produced, or harvested by the producer has a lien against that crop for the amount owed under the contract, or for the market value of the crop on the date of transfer or delivery if there is no agreement concerning the amount owed under the contract.

(b) An agricultural producer who delivers or transfers an agricultural crop grown, produced, or harvested by the producer to a warehouse has a lien against that agricultural crop for the market value of the agricultural crop:

(1) on the date of delivery or transfer; or

(2) if there is to be a series of deliveries to the warehouse, on the date of the first delivery of the agricultural crop to the warehouse.

(c) A lien created under this subchapter is on every agricultural crop, either in raw or processed form, that has been transferred or delivered by the agricultural producer and is in the possession of the warehouse or the contract purchaser, and if the warehouse or the contract purchaser sells all or part of the crop, on the proceeds of the sale. If an open storage crop is commingled with a company-owned crop by a warehouse or a contract purchaser after the crop has been transferred or delivered, a lien created under this

subchapter applies only to that portion of the agricultural crop in the possession of the warehouse or the contract purchaser in an amount that is equal to the amount of the crop transferred or delivered by the agricultural producer.

(d) For purposes of this subchapter, an agricultural crop or processed form of an agricultural crop deposited by a contract purchaser with a warehouse, whether or not a warehouse receipt is given as security, is considered to be in the possession of the contract purchaser and subject to the lien created by this subchapter.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 2, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 2, eff. September 1, 2017.

Sec. 70.403. WHEN LIEN ATTACHES. A lien created under this subchapter attaches on the date on which physical possession of the agricultural crop is delivered or transferred by the agricultural producer to the warehouse or to the contract purchaser or the purchaser's agent, or if there is to be a series of deliveries, on the date of the first delivery of the agricultural crop.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 3, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 3, eff. September 1, 2017.

Sec. 70.404. APPLICABILITY OF OTHER LAW; EFFECT ON OTHER LAW. (a) Except as provided by Section 70.4045 of this code, Chapter 9, Business & Commerce Code, including applicable filing and perfection requirements, applies to a lien created under this subchapter.

(b) Except as provided by Subsection (c), to the extent of a conflict, this subchapter controls over any other law.

(c) This subchapter does not abridge the protections afforded

by any applicable law, including:

(1) Chapter 14, Agriculture Code;

(2) Chapter 7, Business & Commerce Code;

(3) the United States Warehouse Act (7 U.S.C. Section 241 et seq.); or

(4) common law, including the law of bailment.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 4, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 4, eff. September 1, 2017.

Sec. 70.4045. PERFECTION AND PRIORITY OF AGRICULTURAL LIEN ON CROPS. (a) Notwithstanding Chapter 9, Business & Commerce Code, a lien created under this subchapter is perfected at the time the lien attaches under Section 70.403 and continues to be perfected if a financing statement covering the agricultural crop is filed on or before the 90th day after the date:

(1) the physical possession of the crop is delivered or transferred by the agricultural producer to the warehouse or the contract purchaser or the purchaser's agent, if there is only one delivery; or

(2) of the last delivery of the crop to the warehouse or the contract purchaser or the purchaser's agent, if there is a series of deliveries.

(b) If a financing statement covering the agricultural crop is not filed within the time prescribed by Subsection (a)(1) or (2), as applicable, the lien is considered unperfected.

(c) Notwithstanding Chapter 9, Business & Commerce Code, and except as provided by Subsection (d), a lien created and perfected under this subchapter has priority over a conflicting security interest in or lien on the agricultural crop or the proceeds from the sale of the crop created by the warehouse or the contract purchaser in favor of a third party, regardless of the date the security interest or lien created by the warehouse or the contract purchaser attached. This subsection does not affect:

(1) the validity or priority of a security interest or

lien:

(A) created and perfected to secure a loan directly to the agricultural producer; or

(B) created and perfected under Chapter 9, Business & Commerce Code, to secure a loan to a warehouse or a contract purchaser on a company-owned crop in favor of a secured lender;

(2) the validity or priority of a cotton ginner's lien created under Section 70.003(d); or

(3) the rights of a holder of a negotiable warehouse receipt.

(d) Subsection (c) does not apply to a contract purchaser who purchases an agricultural crop from an agricultural producer under a marketing contract created under:

(1) Section 52.016, Agriculture Code; or

(2) regulations adopted by the United States Department of Agriculture under Title 7 of the United States Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 628 (S.B. 1339), Sec. 5, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 5, eff. September 1, 2017.

Sec. 70.405. DURATION OF LIEN. A lien created under this subchapter expires on the first anniversary of the date of attachment.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.406. EFFECT OF LIEN; RECOVERY. (a) A buyer in ordinary course of business of an agricultural crop, including a person who buys any portion of an agricultural crop from a warehouse or a contract purchaser, whether or not the agricultural crop has been commingled, takes the agricultural crop free of a lien created under this subchapter, and the lien created by this subchapter does not pass to any subsequent claimant of the agricultural crop.

(b) An unequal pro rata recovery between agricultural producers is not prohibited under this subchapter if the inequality results from a lien on accounts receivable.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 6, eff. September 1, 2017.

Sec. 70.407. DISCHARGE OF LIEN. (a) A lien created under this subchapter is discharged when:

(1) the lienholder receives full payment for the agricultural crop; or

(2) payment is tendered by the warehouse or the contract purchaser, as applicable, and the lienholder, without coercion, defers payment.

(b) If payment for the agricultural crop is received in the form of a negotiable instrument, full payment is received when the negotiable instrument clears all financial institutions.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 7, eff. September 1, 2017.

Sec. 70.408. JOINDER OF ACTIONS. Persons claiming a lien against the same agricultural crop under this subchapter may join in the same action, and if separate actions are commenced, the court may consolidate them.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.409. RECOVERY OF COSTS. An agricultural producer who prevails in an action brought to enforce a lien created under this subchapter is entitled to recover:

(1) reasonable and necessary attorney's fees and court costs; and

(2) interest on funds subject to the lien at the judgment interest rate as provided by Chapter 304, Finance Code.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.

Sec. 70.410. WAIVER OF CERTAIN RIGHTS PROHIBITED. An agricultural producer's agreement with a warehouse or a contract purchaser to waive the producer's right to seek a remedy provided by this subchapter is void.

Added by Acts 2001, 77th Leg., ch. 732, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 887 (H.B. 3063), Sec. 8, eff. September 1, 2017.

SUBCHAPTER F. LIEN RELATED TO DAMAGED FENCE

Sec. 70.501. LANDOWNER'S LIEN. A person who owns real property in this state that is enclosed by a fence or other structure obviously designed to exclude intruders or to contain livestock or other animals may obtain from a court in this state a judgment entitling the person to a lien against the motor vehicle of a person who damages the landowner's fence with the motor vehicle if the person who damages the landowner's fence:

(1) owns the motor vehicle; or

(2) has the consent of the owner of the motor vehicle to drive the vehicle at the time the person damages the landowner's fence.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.502. AMOUNT OF LIEN. The amount of a landowner's lien under this subchapter is equal to the lesser of:

(1) the fair market value of the motor vehicle on the date the landowner's fence is damaged; or

(2) the actual cost incurred by the landowner to:

(A) repair the fence;

(B) recapture any livestock or other animals that escaped as a direct result of the damage to the fence; and

(C) have the vehicle towed from the property and stored.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.503. PROPERTY TO WHICH LIEN ATTACHES. A landowner's lien under this chapter attaches only to a motor vehicle that causes damage to a fence as described by Section 70.501.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.504. PERFECTING LIEN. A landowner may perfect a lien under this subchapter in the manner provided by Subchapter F, Chapter 501, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.505. EXPIRATION AND DISCHARGE OF LIEN. A lien under this subchapter does not expire and is discharged only when the landowner receives payment of the lien.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

Sec. 70.506. REMOVAL OF VEHICLE FROM LANDOWNER'S PROPERTY. A landowner whose fence is damaged by a motor vehicle that is then abandoned on the owner's property, or the landowner's agent, may:

(1) select a towing service to remove the vehicle from the landowner's property; and

(2) designate the time at which the towing service may enter the property to remove the vehicle.

Added by Acts 2007, 80th Leg., R.S., Ch. 330 (H.B. 2931), Sec. 1, eff. September 1, 2007.

TITLE 6. UNCLAIMED PROPERTY
CHAPTER 71. ESCHEAT OF PROPERTY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. ESCHEAT. (a) If an individual dies intestate and without heirs, the real and personal property of that individual is subject to escheat.

(b) "Escheat" means the vesting of title to property in the state in an escheat proceeding under Subchapter B.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 230, Sec. 2, eff. Sept. 1, 1985.

Sec. 71.002. PRESUMPTION OF DEATH. An individual is presumed dead for the purpose of determining if the individual's real or personal property is subject to escheat if the individual:

(1) is absent from the individual's place of residence for seven years or longer; and

(2) is not known to exist.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 230, Sec. 3, eff. Sept. 1, 1985.

Sec. 71.003. PRESUMPTION OF INTESTACY. An individual is presumed to have died intestate if, on or before the seventh anniversary of the date of the individual's death, the individual's will has not been recorded or probated in the county where the individual's property is located.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.004. PRESUMPTION OF DEATH WITHOUT HEIRS. An individual is presumed to have died leaving no heirs if for the seven-year period preceding the court's determination:

(1) a lawful claim to the individual's property has not been asserted; and

(2) a lawful act of ownership of the individual's property has not been exercised.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.005. ACT OF OWNERSHIP. For the purposes of this chapter, an individual exercises a lawful act of ownership in property by, personally or through an agent, paying taxes to this state on the property.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.006. REVIEW OF PROBATE DECREE. (a) If the state claims that an estate that has been administered in probate court in this state is subject to escheat, the state may have the judgment of the probate court reviewed by filing a petition in district court alleging that the administration of the estate was obtained by fraud or mistake of fact.

(b) The case shall be tried in accordance with the law for the revision and correction of a decree of the probate court.

Acts 1983, 68th Leg., p. 3585, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.007. IDENTIFICATION OF REAL PROPERTY SUBJECT TO ESCHEAT. The tax assessor-collector of each county shall:

(1) take all steps necessary to identify real property that may be subject to escheat; and

(2) notify the commissioner of the General Land Office and the attorney general so that they may take appropriate action.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(d), eff. Sept. 1, 2003.

SUBCHAPTER B. ESCHEAT PROCEEDINGS

Sec. 71.101. PETITION FOR ESCHEAT. (a) If any person, including the attorney general, the comptroller, or a district attorney, criminal district attorney, county attorney, county clerk, district clerk, or attorney ad litem is informed or has reason to believe that real or personal property is subject to escheat under this chapter, the person may file a sworn petition requesting the escheat of the property and requesting a writ of possession for the property.

(b) The petition must contain:

(1) a description of the property;

(2) the name of the deceased owner of the property;

(3) the name of the tenants or persons claiming the estate, if known; and

(4) the facts supporting the escheat of the estate.

(c) If the petition is filed by a person other than the attorney general, the person shall send to the attorney general written notice of the filing and a copy of the petition to permit the attorney general to elect to participate on behalf of the state.

(d) An action brought under this section is governed by the procedure relating to class actions provided by the Texas Rules of Civil Procedure.

(e) A petition filed under this section is not subject to an objection relating to misjoinder of parties or causes of action.

Acts 1983, 68th Leg., p. 3586, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 4, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.01, eff. Sept. 1, 1997.

Sec. 71.102. CITATION. (a) If a petition is filed under this subchapter, the district clerk shall issue citation as in other civil suits to:

(1) each defendant alleged by the petition to possess or claim the property that is the subject of the petition;

(2) any person required by this chapter to be cited; and

(3) persons interested in the estate, including lienholders of record.

(b) The citation required by Subdivision (3) of Subsection (a) must be published as required for other civil suits and must:

(1) briefly state the contents of the petition; and

(2) request all persons interested in the estate to appear and answer at the next term of the court.

Acts 1983, 68th Leg., p. 3587, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 21, eff. Aug. 26, 1985.

Sec. 71.103. PARTY TO PROCEEDING. (a) A person who exercises a lawful act of ownership in property that is the subject of an escheat proceeding must be made a party to the proceeding by:

(1) personal service of citation if the person is a resident of this state and the person's address can be obtained by reasonable diligence; or

(2) service of citation on a person's agent if the person is a nonresident or a resident who cannot be found and the agent can be found by the use of reasonable diligence.

(b) For the purposes of this section, reasonable diligence includes an inquiry and investigation of the records of the office of the tax assessor-collector of the county in which the property sought to be escheated is located.

(c) The comptroller is an indispensable party to any judicial or administrative proceeding concerning the disposition and handling of property that is the subject of an escheat proceeding and must be made a party to the proceeding by personal service of citation.

Acts 1983, 68th Leg., p. 3587, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.02, eff. Sept. 1, 1997.

Sec. 71.104. APPEARANCE OF CLAIMANTS. Any person, whether named in the escheat petition or not, who claims an interest in property that is the subject of an escheat proceeding may appear, enter a pleading, and oppose the facts stated in the petition.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.105. TRIAL. (a) If a person appears and denies the state's right to the property or opposes a material fact of the petition, the court shall try the issue as any other issue of fact.

(b) The court may order a survey as in other cases in which the title or the boundary of the land is in question.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.106. DEFAULT JUDGMENT. If citation is issued in accordance with Section 71.102 and no person answers within the period provided by the Texas Rules of Civil Procedure, the court shall render a default judgment in favor of the state.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.107. JUDGMENT FOR STATE. (a) If the court renders a judgment for the state finding that an intestate died without heirs, the property escheats to the state and title to the property is considered to pass to the state on the date of death of the owner as established by the escheat proceeding. The court may award court costs to the state.

(b) If the judgment involves real property, the state may sell the property under the general laws governing the sale of Permanent School Fund lands, and, after the second anniversary of the date of the final judgment, the court shall issue a writ of possession for the property.

(c) If the judgment involves personal property, the court shall issue a writ of possession that contains an adequate description of the property as in other cases for recovery of personal property.

(d) When the record of an escheat proceeding reflects that a lienholder or his predecessor received actual or constructive notice of the escheat proceeding, the entry of the judgment in the escheat proceeding will either satisfy or extinguish any lien which the lienholder or his predecessor claimed or could have claimed on the escheated property at the escheat proceeding.

(e) The sheriff, constable, court clerk, or other officer appointed by the judge in an escheat proceeding shall execute a writ of possession by filing the writ with the deed or map records of the county when the escheated property relates to realty and by serving the writ on any holder, tenant, or occupant of any escheated property. Additionally, the person who executes a writ of possession shall either:

(1) post the writ for at least three consecutive weeks on the door or posting board of the county courthouse in the county where the proceeding was conducted or in the county where the property is located; or

(2) in the case of real property, post the writ for at

least two consecutive weeks at a reasonably conspicuous place on the realty; or

(3) publicize the writ in any other fashion ordered by the court.

(f) After validly executing a writ of possession, the sheriff, constable, court clerk, or other appointed officer shall note the method of the execution of the writ on the writ return and shall return the writ to the clerk to be filed in the court records of the escheat proceeding.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 5, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 923, Sec. 22, eff. Aug. 26, 1985.

Sec. 71.108. COSTS PAID BY STATE. If the property does not escheat, the state shall pay court costs. The clerk of the court shall certify the amount of the costs, and when the certificate is filed in the office of the comptroller of public accounts, the comptroller shall issue a warrant for the amount of the costs.

Acts 1983, 68th Leg., p. 3588, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.109. APPEAL; WRIT OF ERROR. A party who appeared at an escheat proceeding may appeal the judgment rendered or may file an application for a writ of error on the judgment. The attorney general or the other person acting on behalf of the state in the escheat proceeding may make an appeal or file the writ.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER C. DISPOSITION OF ESCHEATED PROPERTY

Sec. 71.201. SEIZURE AND SALE OF PERSONAL PROPERTY. (a) If personal property escheated to the state, the court shall issue to the sheriff a writ that commands the sheriff to seize the escheated property.

(b) The sheriff shall:

(1) dispose of the personal property at public auction in accordance with the law regarding the sale of personal property under

execution; and

(2) deposit into the State Treasury the proceeds of the sale, less court costs.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.202. DISPOSITION OF REAL PROPERTY. (a) Real property that escheats to the state under this title before January 1, 1985, becomes a part of the permanent school fund. Real property that escheats to the state on or after January 1, 1985, is held in trust by the Commissioner of the General Land Office for the use and benefit of the foundation school fund. The revenue from all leases, sales, and use of land held for the foundation school fund shall be deposited to the credit of the foundation school fund.

(b) Before the 91st day after the day on which a judgment that provides for the recovery of real property is rendered, the clerk of the district court rendering the judgment shall send to the Commissioner of the General Land Office:

(1) a certified copy of the judgment; and

(2) notice of any appeal of that judgment.

(c) The commissioner shall list real property as escheated foundation school fund land or permanent school land as appropriate when the commissioner receives:

(1) a certified copy of a judgment under which the property escheats to the state and from which appeal is not taken; or

(2) a certified copy of notice of the affirmance on appeal of a judgment under which the property escheats to the state.

Acts 1983, 68th Leg., p. 3589, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 28, art. II, part B, Sec. 13, eff. Sept. 1, 1984.

Sec. 71.203. ACCOUNT OF ESCHEATED PROPERTY. The comptroller shall keep an account of the money paid to and real property vested in this state under this chapter.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER D. RECOVERY OF ESCHEATED PROPERTY

Sec. 71.301. SUIT FOR ESCHEATED PERSONAL PROPERTY. (a) If personal property of a deceased owner escheats to the state under this chapter and is delivered to the state, a person who claims the property as an heir, devisee, or legatee of the deceased may file suit against the state in a district court of Travis County, Texas. The suit must be filed on or before the fourth anniversary of the date of the final judgment of the escheat proceeding.

(b) The petition must state the nature of the claim and request that the money be paid to the claimant.

(c) A copy of the petition shall be served on the comptroller, who shall represent the interests of the state. As the comptroller elects and with the approval of the attorney general, the attorney general, the county attorney or criminal district attorney for the county, or the district attorney for the district shall represent the comptroller.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 3, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.03, eff. Sept. 1, 1997.

Sec. 71.302. RECOVERY OF PERSONAL PROPERTY. (a) If in a suit filed under Section 71.301 the court finds that a claimant is entitled to recover personal property, the court shall order the comptroller to issue a warrant for payment of the claim without interest or costs.

(b) A copy of the order under seal of the court is sufficient voucher for issuing the warrant.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 71.303. SUIT FOR ESCHEATED REAL PROPERTY. (a) If real property escheats to the state under this chapter, a person who was not personally served with citation in the escheat proceedings may file suit in the district court of Travis County for all or a part of the property. The suit must be filed not later than the second anniversary of the date of the final judgment in the escheat proceedings.

(b) A copy of the petition must be served on the attorney general, who shall represent the interests of the state.

(c) To the extent the claimant is adjudged to be the owner of all or a part of the property, the state is divested of the property.

Acts 1983, 68th Leg., p. 3590, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 4, eff. Sept. 1, 1991.

Sec. 71.304. STATE AS PARTY IN SUIT FOR ASSETS. (a) A suit brought for the collection of personal property delivered to the comptroller under this chapter must be brought in the name of this state.

(b) A suit brought for the possession of real property held in trust by the Commissioner of the General Land Office under this chapter must be brought in the name of this state.

Acts 1983, 68th Leg., p. 3591, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 4, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 7, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.04, eff. Sept. 1, 1997.

CHAPTER 72. ABANDONMENT OF PERSONAL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 72.001. APPLICATION OF CHAPTER. (a) Tangible or intangible personal property is subject to this chapter if it is covered by Section 72.101 and:

(1) the last known address of the apparent owner, as shown on the records of the holder, is in this state;

(2) the records of the holder do not disclose the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this state;

(3) the records of the holder do not disclose the last known address of the apparent owner, and it is established that:

(A) the last known address of the person entitled to the property is in this state; or

(B) the holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last

known address of the apparent owner or other person entitled to the property;

(4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide by law for the escheat or custodial taking of the property or is in a state in which the state's escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) the transaction out of which the property arose occurred in this state and:

(A) the last known address of the apparent owner or other person entitled to the property is:

(i) unknown; or

(ii) in a state that does not provide by law for the escheat or custodial taking of the property or in a state in which the state's escheat or unclaimed property law is not applicable to the property; and

(B) the holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or a state in which the state's escheat or unclaimed property law is not applicable to the property.

(a-1) Tangible or intangible personal property is not subject to this chapter if it is a worthless or non-freely transferable security.

(b) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

(c) This chapter applies to property held by life insurance companies with the exception of unclaimed proceeds to which Chapter 1109, Insurance Code, applies and that are held by those companies that are subject to Chapter 1109, Insurance Code.

(d) A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.

(e) In this chapter, a holder is a person, wherever organized or domiciled, who is:

(1) in possession of property that belongs to another;

(2) a trustee; or

(3) indebted to another on an obligation.

(f) In this chapter, a corporation shall be deemed to be a domiciliary of the state of its incorporation.

Acts 1983, 68th Leg., p. 3592, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 230, Sec. 7, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 426, Sec. 2, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 5, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1419, Sec. 30, eff. June 1, 2003.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 3, eff. May 18, 2021.

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Sec. 72.101. PERSONAL PROPERTY PRESUMED ABANDONED. (a) Except as provided by this section and Sections 72.1015, 72.1016, 72.1017, 72.102, and 72.104, personal property is presumed abandoned if, for longer than three years:

(1) the location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

(b)(1) The three-year period leading to a presumption of abandonment of stock or another intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, commences on the first date that either a sum payable as a result of the ownership interest is unclaimed by the owner or a communication to the owner is returned undelivered by the United States Postal Service.

(2) The running of the three-year period of abandonment ceases immediately on the exercise of an act of ownership interest or sum payable or a communication with the association as evidenced by a memorandum or other record on file with the association or its agents.

(3) At the time an ownership is presumed abandoned under this section, any sum then held for interest or owing to the owner as a result of the interest and not previously presumed abandoned is presumed abandoned.

(4) Any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the ownership interest is subject to the presumption of abandonment as provided by this section.

(c) Property distributable in the course of a demutualization or related reorganization of an insurance company is presumed abandoned on the first anniversary of the date the property becomes distributable if, at the time of the first distribution, the last known address of the owner according to the records of the holder of the property is known to be incorrect or the distribution or statements related to the distribution are returned by the post office as undeliverable and the owner has not:

(1) communicated in writing with the holder of the property or the holder's agent regarding the interest; or

(2) otherwise communicated with the holder regarding the interest as evidenced by a memorandum or other record on file with the holder or its agents.

(d) Property distributable in the course of a demutualization or related reorganization of an insurance company that is not subject to Subsection (c) is presumed abandoned as otherwise provided by this section.

(e) This section does not apply to money collected as child support that:

(1) is being held for disbursement by the state disbursement unit under Chapter 234, Family Code, or a local registry, as defined by Section 101.018, Family Code, pending identification and location of the person to whom the money is owed; or

(2) has been disbursed by the state disbursement unit under Chapter 234, Family Code, by electronic funds transfer into a child support debit card account established for an individual under Section 234.010, Family Code, but not activated by the individual.

Acts 1983, 68th Leg., p. 3593, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 9, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 426, Sec. 3, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.01, eff. Sept. 1, 1993; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.01, 3.01, eff. Jan. 11, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 551 (S.B. 1777), Sec. 2, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 34, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 606 (S.B. 569), Sec. 1, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 1, eff. June 10, 2019.

Sec. 72.1015. UNCLAIMED WAGES. (a) In this section, "wages" has the meaning assigned by Section 61.001, Labor Code.

(b) An amount of unclaimed wages is presumed abandoned if, for longer than one year:

(1) the existence and location of the person to whom the wages are owed is unknown to the holder of the wages; and

(2) according to the knowledge and records of the holder of the wages, a claim to the wages has not been asserted or an act of ownership of the wages has not been exercised.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.02, eff. Jan. 11, 2004.

Sec. 72.1016. STORED VALUE CARD. (a) This section applies to a stored value card, as defined by Section 604.001, Business & Commerce Code, other than a card:

(1) to which Chapter 604, Business & Commerce Code, does not apply by operation of Sections 604.002(1)(A) and (C) and 604.002(2)-(5) of that code; or

(2) that is linked to and draws its value solely from a deposit account subject to Chapter 73.

(b) If the existence and location of the owner of a stored value card is unknown to the holder of the property, the stored value card is presumed abandoned to the extent of its unredeemed and

uncharged value on the earlier of:

(1) the card's expiration date;

(2) the third anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card; or

(3) the first anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card, if the card's value represents wages, as defined by Section 61.001, Labor Code.

(c) If the person who sells or issues a stored value card in this state does not obtain the name and address of the apparent owner of the card and maintain a record of the owner's name and address and the identification number of the card, the address of the apparent owner is considered to be the Austin, Texas, address of the comptroller.

(d) A person may charge a fee against a stored value card as provided by Chapter 604, Business & Commerce Code. A fee may not be charged against a stored value card after the card is presumed abandoned under this section.

(e) The comptroller shall transfer five percent of the money collected from cards presumed to be abandoned for use as grants under Subchapter M, Chapter 56, Education Code.

(f) This section does not create a cause of action against a person who issues or sells a stored value card.

Added by Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 3, eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.33, eff. April 1, 2009.

Sec. 72.1017. UTILITY DEPOSITS. (a) In this section:

(1) "Utility" has the meaning assigned by Section 183.001, Utilities Code.

(2) "Utility deposit" is a refundable money deposit a utility requires a user of the utility service to pay as a condition of initiating the service.

(b) Notwithstanding Section 73.102, a utility deposit is presumed abandoned on the latest of:

(1) the first anniversary of the date a refund check for the utility deposit was payable to the owner of the deposit;

(2) the first anniversary of the date the utility last received documented communication from the owner of the utility deposit; or

(3) the first anniversary of the date the utility issued a refund check for the deposit payable to the owner of the deposit if, according to the knowledge and records of the utility or payor of the check, during that period, a claim to the check has not been asserted or an act of ownership by the payee has not been exercised.

(c) A utility deposit is not presumed abandoned for two years from the time the depositor provides documentation to the utility of being called to active military service in any branch of the United States armed forces during any part of the period described by Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 5.01, eff. September 28, 2011.

Sec. 72.102. TRAVELER'S CHECK AND MONEY ORDER. (a) A traveler's check or money order is not presumed to be abandoned under this chapter unless:

(1) the records of the issuer of the check or money order indicate that it was purchased in this state;

(2) the issuer's principal place of business is in this state and the issuer's records do not indicate the state in which the check or money order was purchased; or

(3) the issuer's principal place of business is in this state, the issuer's records indicate that the check or money order was purchased in another state, and the laws of that state do not provide for the escheat or custodial taking of the check or money order.

(b) A traveler's check to which Subsection (a) applies is presumed to be abandoned on the latest of:

(1) the 15th anniversary of the date on which the check was issued;

(2) the 15th anniversary of the date on which the issuer of the check last received from the owner of the check communication concerning the check; or

(3) the 15th anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the check.

(c) A money order to which Subsection (a) applies is presumed to be abandoned on the latest of:

(1) the third anniversary of the date on which the money order was issued;

(2) the third anniversary of the date on which the issuer of the money order last received from the owner of the money order communication concerning the money order; or

(3) the third anniversary of the date of the last writing, on file with the issuer, that indicates the owner's interest in the money order.

Acts 1983, 68th Leg., p. 3593, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 230, Sec. 10, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1037, Sec. 8, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 179, Sec. 1, eff. June 1, 2004.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 3, eff. September 1, 2011.

Sec. 72.1021. SHARES OF MUTUAL FUND; DESIGNATION OF REPRESENTATIVE FOR NOTICE. (a) The owner of shares of a mutual fund may designate the name and a mailing or e-mail address of a representative of the owner only for the purpose of receiving the notice required by Section 74.1011. The owner is not required to designate a representative under this subsection.

(a-1) A holder of shares of a mutual fund shall notify the owner of the shares when the owner makes the initial purchase of shares in the fund that the owner may designate a representative under Subsection (a).

(b) The comptroller shall prescribe a form that a holder of shares of a mutual fund may make available to an owner of the shares to designate a representative for notice under this section.

(c) A representative for notice designated under this section

does not have any rights to the mutual fund shares and may not access the shares.

(d) The running of the three-year period of abandonment under Section 72.101 ceases immediately if a representative designated under this section communicates to the holder that the representative knows:

(1) the owner's location; and

(2) that the owner exists and has not abandoned the shares of the mutual fund.

Added by Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 1, eff. September 1, 2017.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 170 (H.B. 2964), Sec. 1, eff. September 1, 2017.

Sec. 72.103. PRESERVATION OF PROPERTY. Notwithstanding any other provision of this title except a provision of this section or Section 72.1016 relating to a money order or a stored value card, a holder of abandoned property shall preserve the property and may not at any time, by any procedure, including a deduction for service, maintenance, or other charge, transfer or convert to the profits or assets of the holder or otherwise reduce the value of the property. For purposes of this section, value is determined as of the date of the last transaction or contact concerning the property, except that in the case of a money order, value is determined as of the date the property is presumed abandoned under Section 72.102(c). If a holder imposes service, maintenance, or other charges on a money order prior to the time of presumed abandonment, such charges may not exceed the amount of $1 per month for each month the money order remains uncashed prior to the month in which the money order is presumed abandoned.

Acts 1983, 68th Leg., p. 3594, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 230, Sec. 11, eff. Sept. 1, 1985; Acts 1997, 75th Leg., ch. 1037, Sec. 9, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 179, Sec. 2, eff. June 1, 2002.
Amended by:
Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 4, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 4, eff. September 1, 2011.

Sec. 72.104. TANGIBLE PERSONAL PROPERTY HELD BY COUNTY. Tangible personal property that is found on county land or in a county park, facility, or right-of-way is presumed abandoned if, for longer than 120 days:

(1) the personal property is held by the county;

(2) the existence and location of the owner of the personal property is unknown to the county; and

(3) according to the knowledge and records of the county, a claim to the personal property has not been asserted or an act of ownership of the personal property has not been exercised.

Added by Acts 2015, 84th Leg., R.S., Ch. 606 (S.B. 569), Sec. 2, eff. September 1, 2015.

CHAPTER 73. PROPERTY HELD BY FINANCIAL INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 73.001. DEFINITIONS AND APPLICATION OF CHAPTER. (a) In this chapter:

(1) "Account" means funds deposited with a depository in an interest-bearing account, a checking or savings account, or a child support debit card account established under Section 234.010, Family Code, or funds received by a depository in exchange for the purchase of a stored value card.

(2) "Depositor" means a person who has an ownership interest in an account.

(3) "Owner" means a person who has an ownership interest in a safe deposit box.

(4) "Holder" means a depository.

(5) "Check" includes a draft, cashier's check, certified check, registered check, or similar instrument.

(b) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

(c) Any property, other than an account, check, or safe deposit box, held by a depository is subject to the abandonment provisions of Chapter 72.

(d) A holder of accounts, checks, or safe deposit boxes presumed abandoned under this chapter is subject to the procedures of Chapter 74.

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 13, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 7, 8, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 11, 12, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 81 (S.B. 446), Sec. 5, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 551 (S.B. 1777), Sec. 3, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 767 (S.B. 865), Sec. 35, eff. June 19, 2009.

Sec. 73.002. DEPOSITORY. For the purposes of this chapter, a depository is a bank, savings and loan association, credit union, or other banking organization that:

(1) receives and holds a deposit of money or the equivalent of money in banking practice or other personal property in this state; or

(2) receives and holds such a deposit or other personal property in another state for a person whose last known residence is in this state.

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 13, eff. Sept. 1, 1997.

Sec. 73.003. PRESERVATION OF INACTIVE ACCOUNT OR SAFE DEPOSIT BOX. (a) A depository shall preserve an account that is inactive and the contents of a safe deposit box that is inactive. The depository may not, at any time, by any procedure, including the imposition of a service charge, transfer or convert to the profits or assets of the depository or otherwise reduce the value of the account or the contents of such a box. For purposes of this subsection, value is determined as of the date the account or safe deposit box becomes inactive.

(b) An account is inactive if for more than one year there has not been a debit or credit to the account because of an act by the depositor or an agent of the depositor, other than the depository, and the depositor has not communicated with the depository. A safe deposit box is inactive if the rental on the box is delinquent.

(c) This section does not affect the provisions of Subchapter B, Chapter 59, Finance Code.

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 8(b), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 230, Sec. 14, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 9, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.02, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 11, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1037, Sec. 13, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.85, eff. Sept. 1, 1999.

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Sec. 73.101. INACTIVE ACCOUNT OR SAFE DEPOSIT BOX PRESUMED ABANDONED. (a) An account or safe deposit box is presumed abandoned if:

(1) except as provided by Subsection (c), the account or safe deposit box has been inactive for at least five years as determined under Subsection (b);

(2) the location of the depositor of the account or owner of the safe deposit box is unknown to the depository; and

(3) the amount of the account or the contents of the box have not been delivered to the comptroller in accordance with Chapter 74.

(b) For purposes of Subsection (a)(1):

(1) an account becomes inactive beginning on the date of the depositor's last transaction or correspondence concerning the account; and

(2) a safe deposit box becomes inactive beginning on the date a rental was due but not paid.

(c) If the account is a checking or savings account or is a matured certificate of deposit, the account is presumed abandoned if the account has been inactive for at least three years as determined under Subsection (b)(1).

Acts 1983, 68th Leg., p. 3607, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 8(d), eff. Oct. 2, 1984; Acts 1985, 69th Leg., ch. 230, Sec. 16, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 153, Sec. 11, 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.05, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 5, eff. September 1, 2011.

Sec. 73.102. CHECKS. A check is presumed to be abandoned on the latest of:

(1) the third anniversary of the date the check was payable;

(2) the third anniversary of the date the issuer or payor of the check last received documented communication from the payee of the check; or

(3) the third anniversary of the date the check was issued if, according to the knowledge and records of the issuer or payor of the check, during that period, a claim to the check has not been asserted or an act of ownership by the payee has not been exercised.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 15, eff. Sept. 1, 1997.

Sec. 73.103. DESIGNATION OF REPRESENTATIVE FOR NOTICE. (a) The depositor of an account or the owner of the contents of a safe deposit box may designate the name and a mailing or e-mail address of a representative of the depositor or the owner only for the purpose of receiving the notice required by Section 74.1011. The depositor or owner is not required to designate a representative under this subsection.

(b) The comptroller shall prescribe a form that a holder of an account or the contents of a safe deposit box may make available to a depositor of the account or owner of the contents of the box to designate a representative for notice under this section.

(c) A representative for notice designated under this section does not have any rights to the account or safe deposit box and may not access the account or box.

(d) The running of a period of abandonment under Section 73.101 ceases immediately if a representative designated under this section communicates to the holder that the representative knows:

(1) the depositor's or owner's location; and

(2) that the depositor or owner exists and has not abandoned the account or the contents of a safe deposit box.

Added by Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 2, eff. September 1, 2017.

CHAPTER 74. REPORT, DELIVERY, AND CLAIMS PROCESS

SUBCHAPTER A. APPLICABILITY

Sec. 74.001. APPLICABILITY. (a) Except as provided by this section, this chapter applies to:

(1) property that is presumed abandoned under Chapter 72, Chapter 73, or Chapter 75;

(2) property that is presumed abandoned under Chapter 154, Finance Code;

(3) unclaimed proceeds under Chapter 1109, Insurance Code; or

(4) any other law requiring a person to report and deliver property to the comptroller under this chapter.

(b) This chapter does not apply to a holder of property subject to Chapter 76.

(c) This chapter does not apply to small credit balances held by an institution of higher education in an unclaimed money fund under Section 51.011, Education Code.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 13, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 16, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 465, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.03, eff. Jan. 11, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 1.07, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 2, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 4, eff. May 18, 2021.

SUBCHAPTER B. PROPERTY REPORT

Sec. 74.101. PROPERTY REPORT. (a) Each holder who on March 1 holds property to which this chapter applies shall file a report of that property on or before the following July 1. The comptroller may require the report to be in a particular format, including a format that can be read by a computer.

(b) Repealed by Acts 1999, 76th Leg., ch. 1208, Sec. 5, eff. Sept. 1, 1999.

(c) The property report must include, if known by the holder:

(1) the name, social security number, driver's license or state identification number, e-mail address, and last known address of:

(A) each person who, from the records of the holder of the property, appears to be the owner of the property; or

(B) any person who is entitled to the property;

(2) the name and last known mailing or e-mail address of any person designated as a representative for notice under Section 72.1021 or 73.103;

(3) a description of the property, the identification number, if any, and, if appropriate, a balance of each account, except as provided by Subsection (d);

(4) the date that the property became payable, demandable, or returnable;

(5) the date of the last transaction with the owner concerning the property; and

(6) other information that the comptroller by rule requires to be disclosed as necessary for the administration of this chapter.

(d) Amounts due that individually are less than $25 may be reported in the aggregate without furnishing any of the information required by Subsection (c).

(e) A holder of mineral proceeds under Chapter 75 that is regulated by the Railroad Commission of Texas under Chapter 91, Natural Resources Code, shall include in the property report for the proceeds, in addition to the information listed in Subsection (c), the following information with respect to each well the production from which resulted in the proceeds:

(1) the lease, property, or well name;

(2) any lease, property, or well identification number used

to identify the lease, property, or well; and

(3) the county in which the lease, property, or well is located.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 4, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 14, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 1, Sec. 2, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 17, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.06, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 62, Sec. 7.86, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 465, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.04, eff. Jan. 11, 2004.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 6, eff. January 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 118 (S.B. 1021), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 1, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 3, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 5, eff. May 18, 2021.

Sec. 74.1011. NOTICE BY PROPERTY HOLDER REQUIRED. (a) Except as provided by Subsection (b), a holder who on March 1 holds property to which this chapter applies that is valued at more than $250 shall, not later than the 60th day before the date the property is delivered to the comptroller, provide to the owner by mail to the last known address of the owner or by e-mail written notice stating that:

(1) the holder is holding the property; and

(2) the holder may be required to deliver the property to the comptroller on or before July 1 if the property is not claimed.

(b) The notice required under Subsection (a) does not apply to

a holder who:

(1) has already provided such notice to the owner of the property or a person entitled to the property under existing federal law, rules, and regulations or state law within the time specified under Subsection (a); or

(2) does not have a record of a physical or e-mail address for the property owner or any other person entitled to the property.

(b-1) If an owner has designated a representative for notice under Section 72.1021 or 73.103, the holder shall mail or e-mail the written notice required under Subsection (a) to the representative in addition to providing written notice to the owner.

(c) A holder that provides notice under this section may charge the cost of the postage as a service charge against the property.

Added by Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 7, eff. January 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 4, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 6, eff. May 18, 2021.

Sec. 74.102. SIGNED STATEMENT. (a) The person preparing a property report shall provide with each copy of the report a statement signed by:

(1) the individual holding the reported property;

(2) a partner, if the holder is a partnership;

(3) an officer, if the holder is an unincorporated association or a private corporation; or

(4) the chief fiscal officer, if the holder is a public corporation.

(b) The statement must include the following sentence:

"This report contains a full and complete list of all property held by the undersigned that, from the knowledge and records of the undersigned, is abandoned under the laws of the State of Texas."

(c) The comptroller may adopt rules or policies relating to the signature requirement, as the comptroller determines appropriate, to

maximize the use of future developments in electronic filing technology.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 18, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 1, eff. Sept. 1, 1999.

Sec. 74.103. RETENTION OF RECORDS. (a) A holder required to file a property report under Section 74.101 shall keep a record of:

(1) the name, the social security number, if known, and the last known address of each person who, from the records of the holder of the property, appears to be the owner of the property;

(2) the name and last known mailing or e-mail address of any representative for notice designated under Section 72.1021 or 73.103;

(3) a brief description of the property, including the identification number, if any; and

(4) the balance of each account, if appropriate.

(b) Without regard to whether the property is reported in the aggregate, the record must be kept for 10 years from the later of:

(1) the date on which the property is reportable; or

(2) the date the report is filed.

(c) The comptroller may by rule provide for a shorter period for keeping a record required by this section.

(d) The comptroller may determine the liability of a holder required to file a property report under Section 74.101 using the best information available to the comptroller if the records of the holder are unavailable or incomplete for any portion of the required retention period.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 19, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.07, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 84, eff. Sept. 1, 2003. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 925 (H.B. 1454), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 3, eff. June 10, 2019.

Sec. 74.104. CONFIDENTIALITY OF PROPERTY REPORT; EXCEPTIONS. (a) Except as provided by Subsection (c) and Section 74.201, 74.203, or 74.307, a property report filed with the comptroller under Section 74.101 is confidential until the second anniversary of the date the report is filed.

(b) The social security number of an owner that is provided to the comptroller is confidential.

(c) The information reported under Section 74.101(e) is confidential and not subject to disclosure under Chapter 552, Government Code.

(d) Notwithstanding Subsection (c), the comptroller may release the information about a well reported under Section 74.101(e) to a claimant of mineral proceeds from the well if the claim is approved by the comptroller under Section 74.501.

(e) Notwithstanding Subsection (c), the information compiled under Section 74.307(a)(2) is subject to disclosure under Chapter 552, Government Code.

Added by Acts 1991, 72nd Leg., ch. 153, Sec. 15, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 20, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.08, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 2, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 3, eff. January 1, 2016.

Sec. 74.105. COMBINED REPORTING. (a) In this section:

(1) "Affiliated group" means a group of one or more entities in which a controlling interest is owned by a common owner, either corporate or noncorporate, or by one or more of the member entities.

(2) "Controlling interest" means:

(A) for a corporation, more than 50 percent, owned directly or indirectly, of the total voting power of all classes of stock of the corporation;

(B) for a partnership, more than 50 percent, owned directly or indirectly, of the capital or profits in the partnership;

(C) for a limited liability company, more than 50 percent, owned directly or indirectly, of the total membership interest of the limited liability company; and

(D) for an association, trust, or other entity, more than 50 percent, owned directly or indirectly, of the beneficial interest in the association, trust, or other entity.

(b) If a holder that is required to file a property report under this chapter is a member of an affiliated group, the holder shall file one report for the affiliated group.

Added by Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 4, eff. June 10, 2019.

Sec. 74.106. CONTINUING REPORTING REQUIREMENT. (a) A person who is required to file a property report under Section 74.101 in any year shall file a property report in each successive year.

(b) If a person required to file a property report under this section is not holding any property that is reportable under this chapter, the person shall certify that fact.

Added by Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 4, eff. June 10, 2019.

SUBCHAPTER C. NOTICE BY COMPTROLLER

Sec. 74.201. REQUIRED NOTICE. (a) Except as provided by Section 74.202, the comptroller may use one or more methods as necessary to provide the most efficient and effective notice to each reported owner in the calendar year immediately following the year in which the report required by Section 74.101 is filed. The notice must be provided:

(1) in the county of the property owner's last known address; or

(2) in the county in which the holder has its principal place of business or its registered office for service in this state, if the property owner's last address is unknown.

(b) The notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) the name and city of last known address of the reported owner;

(2) a statement that, by inquiry, any person possessing a legal or beneficial interest in the reported property may obtain information concerning the amount and description of the property; and

(3) a statement that the person may present proof of the claim and establish the person's right to receive the property.

(c) Deleted by Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997.

(d) The comptroller may offer for sale space for suitable advertisements in a notice published under this section.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 153, Sec. 16, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.03, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.09, eff. Sept. 1, 1997.

Sec. 74.202. NOTICE FOR ITEM WITH VALUE OF LESS THAN $100. In the notice required by Section 74.201, the comptroller is not required to publish information regarding an item having a value that is less than $100 unless the comptroller determines that publication of that information is in the public interest.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 571, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.10, eff. Sept. 1, 1997.

Sec. 74.203. AUTHORIZED NOTICE. (a) During the calendar year immediately following the year in which the report required by Section 74.101 is filed, notice may be mailed to each person who has been reported with a Texas address and appears to be entitled to the reported property.

(b) The notice under Subsection (a) must conform to the requirements for notice under Section 74.201(b).

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 17, eff. Sept. 1,

1991; Acts 1997, 75th Leg., ch. 1037, Sec. 21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.11, eff. Sept. 1, 1997.

Sec. 74.205. CHARGE FOR NOTICE. The comptroller may charge the following against the property delivered under this chapter:

(1) expenses incurred for the publication of notice required by Section 74.201; and

(2) the amount paid in postage for the notice to the owner required by Section 74.203.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.12, eff. Sept. 1, 1997.

Sec. 74.206. ADVERTISING AND PROMOTION. The comptroller may advertise or otherwise promote the unclaimed property program in any available media to further the purposes of this title and to provide effective and efficient notice to reported owners.

Added by Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 5, eff. June 10, 2019.

SUBCHAPTER D. DELIVERY

Sec. 74.301. DELIVERY OF PROPERTY TO COMPTROLLER. (a) Except as provided by Subsection (c), each holder who on March 1 holds property to which this chapter applies shall deliver the property to the comptroller on or before the following July 1 accompanied by the report required to be filed under Section 74.101.

(b) If the property subject to delivery under Subsection (a) is stock or some other intangible ownership interest in a business association for which there is no evidence of ownership, the holder shall issue a duplicate certificate or other evidence of ownership to the comptroller at the time delivery is required under this section.

(c) If the property subject to delivery under Subsection (a) is the contents of a safe deposit box, the comptroller may instruct a holder to deliver the property on a specified date before July 1 of the following year.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 19, 30(2), eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 22, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.13, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 465, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 2.05, eff. Jan. 11, 2004. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 8, eff. January 1, 2013.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 7, eff. May 18, 2021.

Sec. 74.3011. DELIVERY OF MONEY TO RURAL SCHOLARSHIP FUND. (a) Notwithstanding and in addition to any other provision of this chapter or other law, a local telephone exchange company may deliver reported money to a scholarship fund for rural students instead of delivering the money to the comptroller as prescribed by Section 74.301.

(b) A local telephone exchange company may deliver the money under this section only to a scholarship fund established by one or more local telephone exchange companies in this state to enable needy students from rural areas to attend college, technical school, or another postsecondary educational institution.

(c) A local telephone exchange company shall file with the comptroller a verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered to a scholarship fund under this section must be filed with the local telephone exchange company that delivered the money. The local telephone exchange company shall forward the claim to the administrator of the scholarship fund to which the money was delivered. The scholarship fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the scholarship fund is located in accordance with Section 74.506.

(e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship fund; and
(3) filing of a claim.

(f) In this section, "local telephone exchange company" means a telecommunications utility certificated to provide local exchange service within the state and that is a telephone cooperative or has fewer than 50,000 access lines in service in this state.

(g) During a state fiscal year, the total amount of money that may be transferred by all local telephone exchange companies under this section may not exceed $800,000. The comptroller shall keep a record of the total amount of money transferred annually. When the total amount of money transferred during a state fiscal year equals the amount allowed by this subsection, the comptroller shall notify each local telephone exchange company that the company may not transfer any additional money to the company's scholarship fund during the remainder of that state fiscal year.

Added by Acts 1995, 74th Leg., ch. 231, Sec. 50(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 23, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.14, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 163 (S.B. 947), Sec. 1, eff. September 1, 2007.

Sec. 74.3012. DELIVERY OF MONEY TO URBAN SCHOLARSHIP FUND. (a) Notwithstanding and in addition to any other provision of this chapter or other law, a local exchange company may deliver reported money to a scholarship fund for urban students instead of delivering the money to the comptroller as prescribed by Section 74.301.

(b) A local exchange company may deliver the money under this section only to a scholarship fund established by one or more local exchange companies in this state to enable needy students from urban areas to attend college, technical school, or another postsecondary educational institution.

(c) A local exchange company shall file with the comptroller a verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered to a scholarship fund under this section must be filed with the local exchange company that

delivered the money. The local exchange company shall forward the claim to the administrator of the scholarship fund to which the money was delivered. The scholarship fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the scholarship fund is located in accordance with Section 74.506.

(e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship fund; and

(3) filing of a claim.

(f) In this section, "local exchange company" means a telecommunications utility certificated to provide local exchange telephone service within the state and that has 50,000 or more access lines in service in this state and is not a telephone cooperative.

(g) During each state fiscal year, the total amount of money that may be transferred by all local exchange companies under this section may not exceed the total amount of money transferred to rural scholarship funds under Section 74.3011 during the previous state fiscal year. The comptroller shall keep a record of the total amount of money transferred annually. If the total amount of money transferred during a state fiscal year equals the amount allowed by this subsection, the comptroller shall notify each local exchange company that the company may not transfer any additional money to the company's scholarship fund during the remainder of that state fiscal year.

Added by Acts 1995, 74th Leg., ch. 231, Sec. 51(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 24, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.15, eff. Sept. 1, 1997.

Sec. 74.3013. DELIVERY OF MONEY FOR RURAL SCHOLARSHIP, ECONOMIC DEVELOPMENT, AND ENERGY EFFICIENCY ASSISTANCE. (a) Notwithstanding and in addition to any other provision of this chapter or other law, a nonprofit cooperative corporation may deliver reported money to a scholarship fund for rural students, to stimulate rural economic development, or to provide energy efficiency assistance to members of

electric cooperatives, instead of delivering the money to the comptroller as prescribed in Section 74.301.

(b) A nonprofit cooperative corporation may deliver the money under this section only:

(1) to a scholarship fund established by one or more nonprofit cooperative corporations in this state to enable students from rural areas to attend college, technical school, or other postsecondary educational institution;

(2) to an economic development fund for the stimulation and improvement of business and commercial activity for economic development in rural communities; and

(3) to an energy efficiency assistance fund to assist members of an electric cooperative in reducing their energy consumption and electricity bills.

(c) A nonprofit cooperative corporation shall file with the comptroller a verification of money delivered under this section that complies with Section 74.302.

(d) A claim for money delivered under this section must be filed with the nonprofit cooperative corporation that delivered the money. A nonprofit cooperative corporation shall forward the claim to the administrator of the fund to which the money was delivered. The fund shall pay the claim if the fund determines in good faith that the claim is valid. A person aggrieved by a claim decision may file a suit against the fund in a district court in the county in which the administrator of the fund is located in accordance with Section 74.506.

(e) The comptroller shall prescribe forms and procedures governing this section, including forms and procedures relating to:

(1) notice of presumed abandoned property;

(2) delivery of reported money to a scholarship, economic development fund, or energy efficiency assistance fund;

(3) filing of a claim; and

(4) procedures to allow equitable opportunity for participation by each nonprofit cooperative corporation in the state.

(f) During a state fiscal year the total amount of money that may be transferred by all nonprofit cooperative corporations under this section may not exceed 50 percent of the total money reported for that year by those nonprofit cooperative corporations. The comptroller shall adopt procedures to record the total amount of money transferred annually.

(g) Nonprofit cooperative corporations may combine funds from other sources with any funds delivered under this section. In addition, such cooperatives may engage in other business and commercial activities, in their own behalf or through such subsidiaries and affiliates as deemed necessary, in order to provide and promote educational opportunities and to stimulate rural economic development.

(h) In this section, a nonprofit cooperative corporation means a cooperative corporation organized under Chapters 51 and 52, Agriculture Code, the Texas Nonprofit Corporation Law, as described by Section 1.008(d), Business Organizations Code, the Texas Cooperative Association Law, as described by Section 1.008(i), Business Organizations Code, and Chapter 161, Utilities Code.

Added by Acts 1997, 75th Leg., ch. 904, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.45, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 14, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 15, eff. September 1, 2007.

Acts 2023, 88th Leg., R.S., Ch. 291 (S.B. 1768), Sec. 7, eff. May 29, 2023.

Acts 2023, 88th Leg., R.S., Ch. 621 (H.B. 4246), Sec. 1, eff. September 1, 2023.

Sec. 74.302. STATEMENT OF DELIVERED PROPERTY. (a) Property delivered under Section 74.301 must be accompanied by a statement that:

(1) the property delivered is a complete and correct remittance of all accounts subject to this chapter in the holder's possession;

(2) the existence and location of the listed owners are unknown to the holder; and

(3) the listed owners have not asserted a claim or exercised an act of ownership with respect to the owner's reported property.

(b) The statement required by Subsection (a) shall be signed

by:

(1) the individual holding the reported property;

(2) a partner, if the holder is a partnership;

(3) an officer, if the holder is an unincorporated association or a private corporation; or

(4) the chief fiscal officer, if the holder is a public corporation.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 20, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1208, Sec. 3, eff. Sept. 1, 1999.

Sec. 74.304. RESPONSIBILITY AFTER DELIVERY. (a) If reported property is delivered to the comptroller, the state shall assume custody of the property and responsibility for its safekeeping.

(b) A holder who delivers property to the comptroller in good faith is relieved of all liability to the extent of the value of the property delivered for any claim then existing, that may arise after delivery to the comptroller, or that may be made with respect to the property.

(c) If the holder delivers property to the comptroller in good faith and, after delivery, a person claims the property from the holder or another state claims the property under its laws relating to escheat or unclaimed property, the attorney general shall, on written notice of the claim, defend the holder against the claim, and the holder shall be indemnified from the unclaimed money received under this chapter or any other statute requiring delivery of unclaimed property to the comptroller against any liability on the claim.

(d) The comptroller is not, in the absence of negligence or mishandling of the property, liable to the person who claims the property for damages incurred while the property or the proceeds from the sale of the property are in the comptroller's possession. But in any event the liability of the state is limited to the extent of the property delivered under this chapter and remaining in the possession of the comptroller at the time a suit is filed.

(e) For the purposes of this section, payment or delivery is made in good faith if:

(1) payment or delivery was made in a reasonable attempt to

comply with this chapter;

(2) the holder delivering the property was not a fiduciary then in breach of trust with respect to the property and had a reasonable basis for believing based on the facts then known to the holder that the property was abandoned or inactive for purposes of this chapter; and

(3) there is no showing that the records under which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(f) On delivery of a duplicate certificate or other evidence of ownership to the comptroller under Subsection (b) of Section 74.301, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate are relieved of all liability of every kind in accordance with this section to any person, including any person acquiring the original certificate or the duplicate of the certificate issued to the comptroller, for any losses or damages resulting to any person by the issuance and delivery to the comptroller of the duplicate certificate.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.16, eff. Sept. 1, 1997.

Sec. 74.306. UNCLAIMED PROPERTY HELD BY FEDERAL GOVERNMENT. (a) If the federal government enacts a law that provides for the discovery of unclaimed property held by the federal government and that provides or makes that information available to the states, the comptroller may pay to the federal government from the unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller the proportional share of the necessary cost of examining records.

(b) If the federal government delivers unclaimed property to the comptroller, this state shall hold the federal government harmless from claims made by owners of the property after the delivery.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1,

1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.18, eff. Sept. 1, 1997.

Sec. 74.3061. ESCHEAT OF FUNDS IN THE POSSESSION OF THE UNITED STATES. (a) In the event any money is due to a resident of this state in the nature of a refund, rebate, or other overpayment of taxes or fees to the United States with respect to which the resident is likely to have his rights to secure such refund or rebate barred by a statute of limitations, or if for any reason at least three years has elapsed after the date on which the resident could have filed a timely claim for said refund or rebate, the comptroller is appointed agent of such resident to apply for said refund or rebate and is authorized to do any act which a natural person could do to recover said money. When the comptroller files an application or initiates any other proceeding to secure said refund or rebate, the comptroller is coupled with an interest in the money sought and money recovered. All property within this provision, including all principal and interest accruing thereon, is declared to have escheated and to have become the property of the state.

(b) The funds escheated by the state pursuant to this provision shall be given notice as provided by Section 74.201. Title to any such property shall be transferred by the state to any persons who in accordance with Subchapter F can show that the property belonged to them immediately prior to the escheat or that they were heirs to those funds immediately prior to the escheat.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997.

Sec. 74.307. LIST OF OWNERS; OTHER PUBLIC INFORMATION. (a) The comptroller shall compile and revise each year:

(1) except as to amounts reported in the aggregate, an alphabetical list of the names and last known addresses of the owners listed in the reports and the amount credited to each account; and

(2) an alphabetical list by county of:

(A) the number of reports filed under Section 74.101 for mineral proceeds attributable to all wells located in each respective county; and

(B) the aggregate amount of mineral proceeds reported

under Section 74.101 attributable to all wells, if any, located in each respective county.

(b) The comptroller shall make the lists available for public inspection during all reasonable business hours.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.
Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.19, eff. Sept. 1, 1997.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 480 (S.B. 1589), Sec. 4, eff. January 1, 2016.

Sec. 74.308. PERIOD OF LIMITATION NOT A BAR. The expiration, on or after September 1, 1987, of any period specified by contract, statute, or court order, during which an action or proceeding may be initiated or enforced to obtain payment of a claim for money or recovery of property, does not prevent the money or property from being presumed abandoned property and does not affect any duty to file a report required by this chapter or to pay or deliver abandoned property to the comptroller.

Added by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987.
Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 25, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.20, eff. Sept. 1, 1997.

Sec. 74.309. PRIVATE ESCHEAT AGREEMENTS PROHIBITED. An individual, corporation, business association, or other organization may not act through amendment of articles of incorporation, amendment of bylaws, private agreement, or any other means to take or divert funds or personal property into income, divide funds or personal property among locatable patrons or stockholders, or divert funds or personal property by any other method for the purpose of circumventing the unclaimed property process.

Added by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987.

SUBCHAPTER E. DISPOSITION OF DELIVERED PROPERTY

Sec. 74.401. SALE OF PROPERTY. (a) Except as provided by Section 74.404, the comptroller may sell at public sale any personal property, other than money and marketable securities, delivered to the comptroller in accordance with Section 74.301. The comptroller may conduct the sale at the location and in the manner that the comptroller determines affords the most favorable market for the particular property.

(b) The comptroller shall sell the property to the highest bidder. If the comptroller determines that the highest bid is insufficient, the comptroller may decline that bid and offer the property for public or private sale.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 13, eff. June 10, 2019.

(d) If after investigation the comptroller determines that property delivered under this chapter is not marketable or has insubstantial commercial value, the comptroller may destroy or otherwise dispose of the property at any time.

(e) A person may not maintain any action or proceeding against the state, an officer of the state, or the holder of property because of an action taken by the comptroller under this section.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.04, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 26, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.21, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 800, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 6, eff. June 10, 2019.

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 13, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 8, eff. May 18, 2021.

Sec. 74.402. NOTICE OF SALE. Before the 21st day preceding the day on which a public sale is held under Section 74.401, the comptroller shall publish notice of the sale in a newspaper of general circulation in Travis County or in the county where the sale

is to be held. If the public sale is to be held on the Internet or by an online auction, the comptroller may post the notice on the comptroller's own website before the seventh day preceding the date on which the sale or auction is held.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.05, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 26, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1263, Sec. 80, eff. Sept. 1, 2001.

Sec. 74.403. PURCHASER'S TITLE. (a) At a sale, public or private, of property that is held under this subchapter, the purchaser receives title to the purchased property free from all claims of the prior owner and prior holder of the property and all persons claiming through or under the owner or holder.

(b) The comptroller shall execute all documents necessary to complete the transfer of title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 27, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.23, eff. Sept. 1, 1997.

Sec. 74.404. SALE OF MILITARY AWARDS AND DECORATIONS PROHIBITED. (a) In this section, "military award or decoration" means a military decoration for an act of valor, heroism, or exceptional service, a good conduct medal, a service medal, a service ribbon, or a badge, tab, certificate, or letter awarded in connection with military service.

(b) A military award or decoration delivered to the comptroller under this chapter:

(1) may not be sold under Section 74.401 or destroyed; and

(2) shall be delivered by the comptroller to the Texas military forces.

(c) The Texas military forces shall conduct a reasonable search of public records to locate the person to whom the military award or decoration was awarded. If the department cannot locate the person, the department shall attempt to locate the person's next of kin. If

the department locates the person or the person's next of kin, the department shall deliver the award or decoration to the person or the person's next of kin, as applicable.

(d) If the Texas military forces cannot locate the person to whom a military award or decoration was awarded or the person's next of kin, the award or decoration shall be held in trust for the comptroller at:

(1) a museum established by the department; or

(2) if no museum exists, any other public facility designated by the department.

(e) Except as provided by this subsection, a military award or decoration held in trust by a museum or facility designated under Subsection (d) shall be used in a display or exhibit that honors persons who have served the state or nation in military service. If the museum or facility cannot practically incorporate the award or decoration into an established display or exhibit of the museum or facility, the award or decoration shall be kept in a secure storage area or loaned to another museum for use in a display or exhibit that honors persons who have served the state or nation in military service.

(f) This section does not affect a person's right to claim a military award or decoration under Subchapter F.

Added by Acts 2001, 77th Leg., ch. 800, Sec. 2, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.14, eff. September 1, 2013.

Sec. 74.405. DISPOSITION OF SECURITIES. (a) The comptroller may sell or otherwise liquidate a security delivered to the comptroller under this chapter.

(b) The comptroller may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale. The comptroller may sell a security not listed on an established exchange by any commercially reasonable method.

Added by Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 9, eff. May 18, 2021.

SUBCHAPTER F. CLAIM FOR DELIVERED PROPERTY

Sec. 74.501. CLAIM FILED WITH COMPTROLLER. (a) The comptroller shall review the validity of each claim filed under this section.

(b) If the comptroller determines that a claim is valid, the comptroller or the comptroller's authorized agent shall approve the claim. If the claim is for money and has been approved under this section, the comptroller shall pay the claim. If a claim is for personal property other than money and has been approved under this section, the comptroller shall deliver the property to the claimant unless the comptroller has sold the property. If the property has been sold under Section 74.401, the comptroller shall pay to the claimant the proceeds from the sale.

(c) All claims to which this subchapter applies must:

(1) identify the specific property in the possession of the comptroller that is being claimed;

(2) include all necessary documentation the comptroller may require; and

(3) except as provided by Section 74.503, be filed in accordance with procedures, contain the information, and be on forms prescribed by the comptroller.

(d) On receipt of a claim form and all necessary documentation the comptroller may require, or as may be appropriate under the circumstances, the comptroller may approve the claim of:

(1) the reported owner of the property;

(2) if the reported owner died testate:

(A) the appropriate legal beneficiaries of the owner as provided by the last will and testament of the owner that has been accepted into probate or filed as a muniment of title;

(B) the executor of the owner's last will and testament who holds current letters testamentary; or

(C) the appropriate legal beneficiaries of the owner as provided by a valid last will and testament of the owner that has not been accepted into probate or filed as a muniment of title, if:

(i) the amount of the property being claimed is less than $10,000; and

(ii) the beneficiaries named in the will are the same persons who would inherit the property if the owner had died intestate;

(3) if the reported owner died intestate:

(A) the legal heirs of the owner as provided by Sections 201.001, 201.002, and 201.003, Estates Code;

(B) the court-appointed independent administrator of the owner's estate, if the administrator was appointed before the fourth anniversary of the date of the death of the owner; or

(C) the court-appointed dependent administrator of the owner's estate;

(4) the legal heirs of the reported owner as established by a determination of heirship order signed by a judge of the county probate court or by a county judge;

(5) if the reported owner is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;

(6) if the reported owner is a corporation:

(A) the president or chair of the board of directors of the corporation, on behalf of the corporation; or

(B) any person who has legal authority to act on behalf of the corporation;

(7) if the reported owner is a corporation that has been dissolved or liquidated:

(A) the sole surviving shareholder of the corporation, if there is only one surviving shareholder;

(B) the surviving shareholders of the corporation in proportion to their ownership of the corporation, if there is more than one surviving shareholder;

(C) the corporation's bankruptcy trustee, bankruptcy estate representative, or other person authorized pursuant to Title 11, United States Code, or an order of a bankruptcy court to act on behalf of or for the benefit of the corporation's bankruptcy estate, or any assignee of any such person; or

(D) the court-ordered receiver for the corporation; or

(8) any other person that is entitled to receive the unclaimed property under other law or comptroller policy.

(e) Except as provided by Subsection (d)(7), (f), or (g) or Section 551.051, Estates Code, the comptroller may not pay to the following persons a claim to which this section applies:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the reported owner or of the owner's heirs;

(2) a person holding a power of attorney from the reported owner or the owner's heirs; or

(3) a person attempting to make a claim on behalf of a corporation that was previously forfeited, dissolved, or terminated, if the comptroller finds that:

(A) the corporation was revived for the purpose of making a claim under this section; and

(B) the person submitting the claim was not an authorized representative of the corporation at the time of the corporation's forfeiture, dissolution, or termination.

(f) Notwithstanding Subsection (e), the comptroller may approve the claim of:

(1) the attorney general or other Title IV-D agency, as defined by Section 101.033, Family Code, for child support arrearages owed by the reported owner of the property that are reflected in a child support lien notice that complies with Section 157.313, Family Code; or

(2) a person holding a durable power of attorney of a person who is medically incapacitated.

(g) The comptroller may approve a claim for unclaimed property that complies with Section 493.035, Government Code.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 28, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.24, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 85, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 165 (H.B. 81), Sec. 1, eff. May 27, 2005.

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.059, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 267 (S.B. 1420), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 7, eff. June 10, 2019.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 10, eff. May 18, 2021.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 11, eff. May 18, 2021.

Acts 2021, 87th Leg., R.S., Ch. 915 (H.B. 3607), Sec. 17.001, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 368 (H.B. 1221), Sec. 3, eff.

September 1, 2023.

Sec. 74.502. CLAIM FILED WITH HOLDER. (a) If a claim is filed with a holder under this section and the holder determines in good faith that the claim is valid, the holder may pay the amount of the claim.

(b) The comptroller shall reimburse the holder for a valid claim paid under this section.

(c) The request from a holder for reimbursement must be filed in accordance with procedures and on forms prescribed by the comptroller.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 851, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 28, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.25, eff. Sept. 1, 1997.

Sec. 74.503. WAIVER OF CLAIM REQUIREMENT. The comptroller may waive the requirement of filing a claim and pay or deliver property directly to a person who does not file a claim if:

(1) the person receiving the property is the reported owner of the property;

(2) the comptroller reasonably believes the person is entitled to receive the property or payment; and

(3) the property has a value of less than $5,000.

Added by Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 12, eff. May 18, 2021.

Sec. 74.504. HEARING. (a) The comptroller may hold a hearing and receive evidence concerning a claim filed under this subchapter.

(b) If the comptroller considers that a hearing is necessary to determine the validity of a claim, the comptroller shall sign the statement of the findings and the decision on the claim. The statement shall report the substance of the evidence heard and the reasons for the decision. The statement is a public record.

(c) If the comptroller determines that a claim is valid, the comptroller shall approve and sign the claim.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.07, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 851, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 29, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.27, eff. Sept. 1, 1997.

Sec. 74.506. APPEAL. (a) A person who has filed a claim that complies with Section 74.501(c) may appeal the decision of the comptroller on the claim before the 61st day after the day on which it was rendered.

(b) If a claim that complies with Section 74.501(c) has not been decided before the 91st day after the day on which it was filed, the claimant may file an appeal if, after the claimant provides notice by certified mail to the comptroller of the intent to file an appeal, the comptroller does not reach a decision on the claim on or before the 60th day after the date the notice is delivered to the comptroller. An appeal under this section must be made within one year of the date the claim was filed.

(c) An appeal under this section must be made by filing suit against the state in a district court in Travis County, Texas. The state's immunity from suit without consent is abolished with respect to suits brought under this section.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 30, eff. Sept. 1, 1997.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 13, eff. May 18, 2021.

Sec. 74.507. ASSISTANCE OF CLAIMANT; FEE FOR RECOVERY. (a) A person who informs a potential claimant that the claimant may be entitled to claim property that is reportable to the comptroller under this chapter, that has been reported to the comptroller, or that is in the possession of the comptroller may not contract for or receive from the claimant for services an amount that exceeds 10

percent of the value of the property recovered, plus reasonable attorney's fees necessary to pursue the claim. If the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

(b) The person who informs a potential claimant and by contract or other written agreement is to receive a percentage of the value of the property may not file or receive a form to claim on behalf of a claimant.

(c) An agreement to assist a claimant in the recovery of property that is reportable to the comptroller, that has been reported to the comptroller, or that is in the possession of the comptroller under this chapter is enforceable only if the agreement:

(1) clearly states the nature of the property and the services to be provided;

(2) is signed by or on behalf of the claimant; and

(3) states the amount or value of the property reasonably expected to be recovered, computed before and after a fee or other compensation has been deducted.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 36, Sec. 3.09, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 31, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.29, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1208, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 14, eff. May 18, 2021.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 15, eff. May 18, 2021.

Sec. 74.508. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY; PROCEDURE. (a) At any time after property has been paid or delivered to the comptroller under this chapter, another state may recover the property if:

(1) the property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed

abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder are in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(3) the records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(4) the property was subjected to custody by this state under Subdivision (6) of Subsection (a) of Section 72.001 and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(5) the property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under Subdivision (4) and the instrument was purchased in the other state and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the comptroller, who shall decide the claim within 90 days after it is presented. The comptroller shall allow the claim if he determines that the other state is entitled to the abandoned property under Subsection (a).

Added by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 31, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.30, eff. Sept. 1, 1997.

Sec. 74.509. HANDLING FEE FOR PROCESSING UNCLAIMED PROPERTY. A

handling fee may be deducted from the amount of the claim payment if the payment is at least $100.

Added by Acts 1993, 73rd Leg., ch. 36, Sec. 3.10, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 31, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.31, eff. Sept. 1, 1997.

SUBCHAPTER G. UNCLAIMED MONEY

Sec. 74.601. UNCLAIMED MONEY. (a) The comptroller shall maintain a record that documents unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller.

(b) The comptroller shall deposit to the credit of the general revenue fund:

(1) all funds, including marketable securities, delivered to the comptroller under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller;

(2) all proceeds from the sale of any property, including marketable securities, under this chapter;

(3) all funds that have escheated to the state under Chapter 71, except that funds relating to escheated real property shall be deposited according to Section 71.202; and

(4) any income derived from investments of the unclaimed money.

(c) The comptroller shall keep a separate record and accounting for delivered unclaimed property, other than money, before its sale.

(d) Except as provided by Subsection (e), the comptroller shall from time to time invest the amount of unclaimed money in investments approved by law for the investment of state funds.

(e) The comptroller may use the proceeds from the sale of securities delivered under this chapter to buy, exchange, invest, or reinvest in marketable securities. When making or selling the investments, the comptroller shall exercise the judgment and care of a prudent person.

(f) The comptroller shall keep a separate record and accounting for securities delivered, sold, purchased, or exchanged and the proceeds and earnings from the securities.

(g) If an owner does not assert a claim for unclaimed money and

the owner is reported to be the state or a state agency, the comptroller may deposit the unclaimed money to the credit of the general revenue fund. The comptroller may establish procedures and adopt rules as necessary to implement this subsection.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.
Amended by Acts 1993, 73rd Leg., ch. 36, Sec. 3.11, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.32, eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 9, eff. September 1, 2011.

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 16, eff. May 18, 2021.

Sec. 74.602. USE OF MONEY. Except as provided by Section 381.004, Local Government Code, and Section 74.604 the comptroller shall use the unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller to pay the claims of persons or states establishing ownership of property in the possession of the comptroller under this chapter or under any other unclaimed property or escheat statute.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.
Amended by Acts 1991, 72nd Leg. ch. 304, Sec. 1.40, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 27, Sec. 3, eff. April 13, 1993; Acts 1993, 73rd Leg., ch. 36, Sec. 3.13, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 506, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1037, Sec. 32, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.33, eff. Sept. 1, 1997.
Amended by:

Acts 2023, 88th Leg., R.S., Ch. 1134 (S.B. 658), Sec. 1, eff. September 1, 2023.

Sec. 74.603. AUDIT; APPROPRIATION. The unclaimed money received under this chapter or any other statute requiring the delivery of unclaimed property to the comptroller is subject to audit

by the State Auditor and to appropriation by the legislature for enforcing and administering this title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 32, eff. Sept. 1, 1997.

Sec. 74.604. DISPOSITION OF MONEY DELIVERED TO COMPTROLLER FROM CERTAIN ATTORNEY ACCOUNTS. (a) In this section, "IOLTA account" means an account established as required by the Interest on Lawyers' Trust Accounts Program administered by the Texas Access to Justice Foundation under supreme court rule.

(b) Except as provided by Subsection (c), this section applies to money delivered to the comptroller under Section 74.301 as:

(1) unclaimed or unidentified money in a client trust account established by an attorney or law firm; or

(2) money in an abandoned IOLTA account.

(c) This section does not apply to money paid or delivered to a reported owner by the comptroller under Section 74.503.

(d) Notwithstanding any other law, the comptroller shall deposit money to which this section applies to the credit of the basic civil legal services account of the judicial fund. Except as provided by Subsection (e), money deposited to the credit of the basic civil legal services account under this section may be appropriated only to the supreme court for use in programs approved by the supreme court that provide basic civil legal services to indigent persons.

(e) If the comptroller pays a claim for money deposited to the credit of the basic civil legal services account under Subsection (d), the supreme court shall reimburse the comptroller from the account for the amount of the claim. The supreme court may use money deposited under Subsection (d) to reimburse the comptroller.

(f) The comptroller and the supreme court may adopt rules necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 1134 (S.B. 658), Sec. 2, eff. September 1, 2023.

SUBCHAPTER H. ENFORCEMENT

Sec. 74.701. RULES. The comptroller may adopt rules necessary to carry out this title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1037, Sec. 33, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.34, eff. Sept. 1, 1997.

Sec. 74.702. EXAMINATION OF RECORDS. (a) For purposes of the application and enforcement of this title, the comptroller, the attorney general, or an authorized agent of either, may at any reasonable time and place, examine the books and records of any person to determine whether the person has complied with this title.

(b) The comptroller, the attorney general, or an agent of either may not make public any information obtained by an examination made under this section and may not disclose that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party or pursuant to an agreement with another state allowing joint audits or the exchange of information obtained under this section.

(c) Subsection (a) applies to any books, records, papers, information, or other objects determined by the comptroller or attorney general to be necessary to conduct a complete examination under this title.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 153, Sec. 21, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 36, Sec. 3.12, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1037, Sec. 33, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.35, eff. Sept. 1, 1997.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 8, eff. June 10, 2019.

Sec. 74.7021. LIMITATION PERIOD FOR EXAMINATION. (a) The comptroller or attorney general may not begin an examination relating to the reporting, payment, or delivery of property under this chapter after the seventh anniversary of the date a person filed a property report under this title.

(b) The limitation provided by this section does not apply if:

(1) the person has filed a false or fraudulent property report with the intent to avoid delivery of property as required by this title;

(2) a property report for a period has not been filed; or

(3) a court grants a petition to compel the person to submit to an examination under this chapter, deliver property, or file a property report.

(c) For purposes of Subsection (b)(1), a person is presumed to have acted with intent to avoid delivery of property as required by this title if, after correction of a report, the amount of property to be delivered under this title exceeds the amount initially reported by at least 25 percent.

Added by Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 9, eff. June 10, 2019.

Sec. 74.703. ADDITIONAL PERSONNEL. (a) The comptroller and the attorney general may employ, in the office of either official, additional personnel necessary to enforce this title.

(b) The salary rate of additional personnel may not exceed the rate paid to other state employees for similar services.

(c) The salaries of additional personnel shall be paid in accordance with Section 74.602.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th leg., ch. 1037, Sec. 34, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.36, eff. Sept. 1, 1997.

Sec. 74.704. ASSISTANCE IN ENFORCEMENT. (a) If the comptroller requests, the attorney general shall assist the comptroller in enforcing this title.

(b) If the comptroller or the attorney general requests, the state auditor, banking commissioner, securities commissioner, commissioner of insurance, savings and mortgage lending commissioner, Credit Union Commission, Department of Public Safety of the State of Texas, or Texas Workforce Commission, a district or county attorney, or any other state agency or political subdivision of this state

shall assist the comptroller or attorney general in enforcing this title.

(c) Notwithstanding any other law, a state agency or political subdivision may not impose a charge for providing a copy of public information requested by the comptroller under this section.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1997, 75th leg., ch. 1037, Sec. 35, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.37, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.065, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 10, eff. June 10, 2019.

Sec. 74.705. INTEREST. A holder who fails to pay or deliver property within the time prescribed by this chapter shall pay to the comptroller interest, at an annual rate of 10 percent, on the property from the date the property should have been paid or delivered until the date the property is actually paid or delivered.

(b) to (e) Deleted by Acts 1997, 75th Leg., ch. 1037, Sec. 33, eff. Sept. 1, 1997.

(f) A person is exempt from payment of interest under Subsection (a) if the person's action or omission is in connection with the person's official duties as an officer or employee of a political subdivision of this state.

(g) In this section, "person" does not include a local governmental entity or an officer or employee of a local governmental entity who is performing the officer's or employee's official duties for the local governmental entity.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 426, Sec. 5, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 483, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 888, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1037, Sec. 35, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 16.38, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.01(90), eff. Sept. 1, 1999.

Sec. 74.706. PENALTY. (a) A penalty equal to five percent of the value of the property due shall be imposed on a holder who fails to pay or deliver property within the time prescribed by this chapter. If a holder fails to pay or deliver property before the 31st day after the date the property is due, an additional penalty equal to five percent of the value of the property due shall be imposed.

(b) For purposes of Subsection (a), "holder" does not include a local governmental entity or an officer or employee of a local governmental entity who is performing the officer's or employee's official duties for the local governmental entity.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 748, Sec. 1, eff. Sept. 1, 1999.

Sec. 74.707. WAIVER OR ABATEMENT OF PENALTY OR INTEREST. (a) The comptroller may waive penalty or interest, in whole or in part, imposed on delinquent property if the comptroller determines that the holder has made a good faith effort to comply with Chapters 72-75, or for other good cause.

(b) The comptroller may provide for periods during which a holder of delinquent property may report and remit the unclaimed property without paying a penalty or interest.

(c) The comptroller may waive penalty and interest imposed on delinquent property if the holder delivering the property was required to deliver the property on or before November 1, 1997.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 137, Sec. 1, eff. May 16, 2001.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 52 (H.B. 1514), Sec. 17, eff. May 18, 2021.

Sec. 74.708. PROPERTY HELD IN TRUST. A holder who on March 1 holds property presumed abandoned under Chapters 72-75 holds the property in trust for the benefit of the state on behalf of the missing owner and is liable to the state for the full value of the property, plus any accrued interest and penalty. A holder is not required by this section to segregate or establish trust accounts for

the property provided the property is timely delivered to the comptroller in accordance with Section 74.301.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 685 (H.B. 257), Sec. 10, eff. January 1, 2013.

Sec. 74.709. SUIT TO COMPEL DELIVERY OF PROPERTY AND CIVIL PENALTIES. (a) On request of the comptroller, the attorney general shall bring an action in district court, in the name of the state, to compel a person to:

(1) permit examination of records in accordance with this chapter;

(2) deliver property; or

(3) file a property report.

(b) Venue for a suit brought under this section is in Travis County.

(c) The fact that a suit seeks enforcement of this section from more than one holder is not grounds for an objection concerning misjoinder of parties or causes of action.

(d) When introduced into evidence, the verified property report, unless rebutted, is sufficient evidence that the property is abandoned and subject to delivery under this chapter and for entry of a judgment transferring custody of the property to the comptroller.

(e) The attorney general, on behalf of the comptroller, may recover reasonable attorney's fees from the holder in addition to recovery of any unclaimed property accrued or a penalty or interest due.

(f) In addition to a penalty or interest assessed on delinquent property, a holder who fails to pay or deliver property or who fails to file a property report within the time prescribed by this chapter is subject to a civil penalty not to exceed $100 for each day of violation.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 11, eff. June 10, 2019.

Sec. 74.710. CRIMINAL OFFENSE. (a) A holder commits an offense if the holder wilfully violates this chapter, including:

(1) failing to file a report in accordance with this chapter;

(2) failing to pay or deliver property in accordance with this chapter; or

(3) refusing to permit examination of records in accordance with this chapter.

(b) An offense under this section is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 36, eff. Sept. 1, 1997.

Sec. 74.711. AUTHORITY TO TAKE TESTIMONY AND ISSUE ADMINISTRATIVE SUBPOENAS. (a) To enforce this title, the comptroller may:

(1) take testimony;

(2) administer oaths; and

(3) issue subpoenas to compel any person to:

(A) appear and give testimony under oath at a time and place reasonable under the circumstances; or

(B) produce relevant books, records, documents, or other data, in whatever form, for audit, inspection, and copying.

(b) The comptroller may delegate the authority granted under this section to take testimony, administer oaths, and issue subpoenas to an attorney employed by the comptroller.

(c) A person authorized to serve process under the Texas Rules of Civil Procedure may serve a subpoena issued under this section. The person shall serve the subpoena in accordance with the Texas Rules of Civil Procedure.

Added by Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 12, eff. June 10, 2019.

Sec. 74.712. ENFORCEMENT OF SUBPOENAS. (a) If the person to whom a subpoena is directed under Section 74.711 fails to comply with the subpoena, or fails to file a motion to quash or otherwise demand a pre-compliance review of the subpoena, within the return date specified in the subpoena, the attorney general shall, on the request of the comptroller, bring suit to enforce the subpoena. The suit may

be brought in a district court of Travis County.

(b) A court that determines that the subpoena was issued in good faith shall order compliance with the subpoena. The court may apply penalties for civil and criminal contempt otherwise available at law if a person refuses to comply with the court's order.

Added by Acts 2019, 86th Leg., R.S., Ch. 897 (H.B. 3598), Sec. 12, eff. June 10, 2019.

CHAPTER 75. TEXAS MINERALS

SUBCHAPTER A. APPLICABILITY

Sec. 75.001. DEFINITIONS; APPLICATION OF CHAPTER. (a) In this chapter:

(1) "Mineral" means oil, gas, uranium, sulphur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral in this state, regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal, or other substance is found.

(2) "Mineral proceeds" includes:

(A) all obligations to pay resulting from the production and sale of minerals, including net revenue interests, royalties, overriding royalties, production payments, and joint operating agreements; and

(B) all obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.

(3) "Holder" means a person, wherever organized or domiciled, who is:

(A) in possession of property that belongs to another;

(B) a trustee; or

(C) indebted to another on an obligation.

(b) This chapter applies to mineral proceeds and the owner's underlying right to receive those mineral proceeds if:

(1) the owner's underlying right to receive mineral proceeds is related to land located in this state;

(2) the mineral proceeds result from the production of minerals located in this state; or

(3) the mineral proceeds are an obligation for the acquisition or retention of a mineral lease to produce minerals

located in this state.

(c) A holder of property presumed abandoned under this chapter is subject to the procedures of Chapter 74.

(d) This chapter supplements other chapters in this title, and each chapter shall be followed to the extent applicable.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 426, Sec. 6, eff. Sept. 1, 1987.

Sec. 75.002. TRANSFER AND PURCHASE OF MINERAL INTEREST ON MINERAL PROCEEDS. A person purchasing mineral proceeds of an owner whose name has been reported or is reportable to the comptroller shall provide documentation required by the comptroller to substantiate that the transfer is executed by the reported owner or the reported owner's legal agent.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 37, eff. Sept. 1, 1997.

SUBCHAPTER B. PRESUMPTION OF ABANDONMENT

Sec. 75.101. PRESUMPTION OF ABANDONMENT. (a) All mineral proceeds that are held or owing by the holder and that have remained unclaimed by the owner for longer than three years after they became payable or distributable and the owner's underlying right to receive those mineral proceeds are presumed abandoned.

(b) At the time any owner's underlying right to receive mineral proceeds is presumed abandoned under this section, any mineral proceeds then held for or owing to the owner as a result of the underlying right and any mineral proceeds accruing after that time as a result of the underlying right and not previously presumed abandoned are presumed abandoned.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 426, Sec. 7, eff. Sept. 1, 1987.

Sec. 75.102. PRESERVATION OF PROPERTY. A holder of abandoned property shall preserve that property and may not by any procedure, including a deduction for service, maintenance, or other charge, transfer, convert, or reduce the property to the profits or assets of

the holder.

Added by Acts 1985, 69th Leg., ch. 230, Sec. 17, eff. Sept. 1, 1985.

CHAPTER 76. REPORT, DELIVERY, AND CLAIMS PROCESS FOR CERTAIN PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 76.001. APPLICABILITY. (a) This chapter applies only to the holder of property if:

(1) the holder is a:

(A) school district;

(B) municipality;

(C) county; or

(D) junior college that has, in the manner described by Subsection (b), opted to handle property described by Subdivision (2) in accordance with this chapter; and

(2) the property is:

(A) presumed abandoned under Chapter 72 or 75; and

(B) valued at $100 or less.

(b) This chapter applies to a junior college only if the governing board of the junior college takes formal action to opt to handle property described by Subsection (a)(2) in accordance with this chapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 1015, Sec. 1, eff. Sept. 1, 2000.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 478 (H.B. 650), Sec. 1, eff. June 17, 2011.

Sec. 76.002. OFFICERS AND REPRESENTATIVES. In this chapter:

(1) a reference to the treasurer of a holder includes a person performing the duties of the treasurer of a holder in a school district, municipality, or county in which the office of treasurer does not exist;

(2) a reference to the chief fiscal officer of a holder includes a person performing the duties of the chief fiscal officer of a holder in a school district, municipality, or county in which the office of chief fiscal officer does not exist; and

(3) a reference to the attorney for a holder includes an attorney designated by the governing body of the holder to represent the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1015, Sec. 2, eff. Sept. 1, 2000.

SUBCHAPTER B. PROPERTY REPORT

Sec. 76.101. PROPERTY REPORT. (a) Each holder who on June 30 holds property subject to this chapter shall file a report of that property on or before the following November 1. Each report shall be filed with the treasurer of the holder as provided by this section and on forms prescribed by the treasurer of the holder.

(b) A holder required by Subsection (a) to file a report shall file a report each successive year regardless of whether the holder has any reportable property on June 30 of the year in which the report is filed.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.102. VERIFICATION. (a) The person preparing a property report shall place at the end of each copy of the report a verification made under oath and executed by the chief fiscal officer of the holder, as designated by the holder.

(b) The verification must include the following sentence: "This report contains a full and complete list of all property held by the undersigned that, from the knowledge and records of the undersigned, is abandoned under the laws of the State of Texas."

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.103. RETENTION OF RECORDS. (a) The holder required to file a property report shall keep a record of:

(1) the name and last known address of each person who, from the records of the holder, appears to be the owner of the property;

(2) a brief description of the property, including the

identification number of the account, if any; and

(3) the balance of each account, if appropriate.

(b) The record must be kept until the 10th anniversary of the date on which the property is reportable.

(c) The treasurer of the holder may provide for a shorter period for keeping a record required by this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.104. CONFIDENTIALITY OF PROPERTY REPORT. (a) Except as provided by this chapter, a property report filed with the treasurer of the holder is confidential until the second anniversary of the date the report is filed.

(b) Notwithstanding other law, the social security number of an owner that is reported to the treasurer of the holder is confidential.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER C. NOTICE

Sec. 76.201. PUBLISHED NOTICE. (a) Except as provided by Subsections (b) and (e), the treasurer of a holder shall publish a notice in a newspaper in the calendar year immediately following the year in which the property report is filed. The newspaper must be a newspaper of general circulation in the jurisdiction of the holder.

(b) The treasurer of the holder may use a method of publishing notice that is different from that prescribed by Subsection (a) if the treasurer determines that the different method would be as likely as the prescribed method to give actual notice to the person required to be named in the notice.

(c) The published notice must state that the reported property is presumed abandoned and subject to this chapter and must contain:

(1) a statement that, by addressing an inquiry to the treasurer of the holder, any person possessing a legal or beneficial interest in the reported property may obtain information concerning the amount of the property; and

(2) a statement that the owner may present proof of the claim to the treasurer of the holder and establish the owner's right to receive the property.

(d) The treasurer of a holder may offer for sale space for suitable advertisements in a notice published under this section. Proceeds from the sale of the advertising space shall be used to defray the cost of publishing the notices, with the remaining amount, if any, to be deposited to the credit of the unclaimed money fund.

(e) In the notice required by this section, the treasurer of the holder may publish other information regarding property if the treasurer determines that publication of that information is in the public interest.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.202. NOTICE TO OWNER. (a) During the calendar year immediately following the year in which the property report is filed, the treasurer of the holder may mail a notice to each person who has an address in this state and appears to be entitled to the reported property.

(b) The notice must contain:

(1) a statement that property is being held by the treasurer of the holder to which the addressee appears to be entitled; and

(2) a statement that the owner may present proof of the claim to the treasurer of the holder and establish the owner's right to receive the property.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.203. NOTICE THAT ACCOUNTS ARE SUBJECT TO THIS CHAPTER. Publication of notice in accordance with Section 76.201 is notice to the owner by the holder that the reported property is subject to this chapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.204. CHARGE FOR NOTICE. The treasurer of the holder may charge the following against the property delivered under this chapter:

(1) expenses incurred for the publication of notice

required by Section 76.201; and

(2) the amount paid in postage for the notice to the owner required by Section 76.202.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER D. DELIVERY

Sec. 76.301. DELIVERY OF PROPERTY TO TREASURER. (a) Each holder who on June 30 holds property that is subject to this chapter shall deliver the property to the treasurer of the holder on or before the following November 1 accompanied by the property report.

(b) If the property subject to delivery under Subsection (a) is stock or some other intangible ownership interest in a business association for which there is no evidence of ownership, the holder shall issue a duplicate certificate or other evidence of ownership to the treasurer of the holder at the time delivery is required under this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.302. VERIFICATION OF DELIVERED PROPERTY. (a) Property delivered under Section 76.301 must be accompanied by a verification under oath that:

(1) the property delivered is a complete and correct remittance of all accounts subject to this chapter in the holder's possession;

(2) the existence and location of the listed owners are unknown to the holder; and

(3) the listed owners have not asserted a claim or exercised an act of ownership with respect to the owner's reported property.

(b) The verification required by Subsection (a) shall be signed by the chief fiscal officer of the holder, as designated by the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.303. LIST OF OWNERS. (a) The treasurer of the holder

shall compile and revise each year an alphabetical list of names and last known addresses of the owners listed in the reports and the amount credited to each account.

(b) The treasurer of the holder shall make the list available for public inspection during all reasonable business hours.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.304. PERIOD OF LIMITATION NOT A BAR. The expiration of any period specified by statute or court order, during which an action or proceeding may be initiated or entered to obtain payment of a claim for money, does not prevent the money from being presumed abandoned property and does not affect any duty to file a report required by this chapter or to deliver abandoned property to the treasurer of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER E. DISPOSITION OF DELIVERED PROPERTY

Sec. 76.401. SALE OF PROPERTY. (a) Except as provided by Subsection (c), the treasurer of the holder shall sell at public sale all personal property, other than money and marketable securities, delivered to the treasurer of the holder in accordance with Section 76.301. The treasurer of the holder shall conduct the sale in the holder's jurisdiction.

(b) The treasurer of the holder shall sell the property to the highest bidder. If the treasurer of the holder determines that the highest bid is insufficient, the treasurer of the holder may decline that bid and offer the property for public or private sale.

(c) The treasurer of the holder is not required to offer property for sale if the property belongs to a person with an address outside this state or the treasurer of the holder determines that the probable cost of the sale of the property exceeds its value.

(d) If after investigation the treasurer of the holder determines that property delivered has insubstantial commercial value, the treasurer of the holder may destroy or otherwise dispose of the property at any time.

(e) A person may not maintain any action or proceeding against the state, an officer of the state, or the holder of property because

of an action taken by the treasurer of the holder under this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.402. NOTICE OF SALE. Before the 21st day before the day on which a public sale is held under Section 76.401, the treasurer of the holder shall publish notice of the sale in a newspaper of general circulation in the county where the sale is to be held.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.403. PURCHASER'S TITLE. (a) At a sale, public or private, of property that is held under this subchapter, the purchaser receives title to the purchased property free from all claims of the prior owner and prior holder of the property and all persons claiming through or under the owner or holder.

(b) The treasurer of the holder shall execute all documents necessary to complete the transfer of title.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER F. CLAIM FOR DELIVERED PROPERTY

Sec. 76.501. FILING OF CLAIM. (a) A claim for property delivered to the treasurer of the holder under this chapter must be filed with the treasurer of the holder.

(b) All claims to which this section applies must be filed in accordance with procedures and on forms prescribed by the treasurer of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.502. CONSIDERATION OF CLAIM. The treasurer of the holder shall consider the validity of each claim filed under this subchapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.503. HEARING. (a) The treasurer of the holder may hold a hearing and receive evidence concerning a claim filed under this subchapter.

(b) If the treasurer of the holder considers that a hearing is necessary to determine the validity of a claim, the treasurer of the holder shall sign the statement of the findings and the decision on the claim. The statement shall report the substance of the evidence heard and the reasons for the decision. The statement is a public record.

(c) If the treasurer of the holder determines that a claim is valid, the treasurer of the holder shall approve and sign the claim.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.504. PAYMENT OF CLAIM. (a) If a claim has been approved under this subchapter, the treasurer of the holder shall pay the claim.

(b) If a claim is for personal property other than money and has been approved under this subchapter, the treasurer of the holder promptly shall deliver the property to the claimant unless the treasurer of the holder has sold the property. If the property has been sold under Section 76.401, the treasurer of the holder shall pay to the claimant the proceeds from the sale.

(c) Costs of publication and postage shall be deducted from the amounts paid under this section, but deductions for any costs of administration or service charges may not be made.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.505. APPEAL. (a) A person aggrieved by the decision on a claim filed under this subchapter may appeal the decision before the 61st day after the date the decision was rendered.

(b) If a claim has not been decided before the 91st day after the date the claim was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the date of filing.

(c) An appeal under this section must be made by filing suit against the holder in a district court in the county in which the

claimed property is located. The holder's immunity from suit without consent is waived with respect to a suit under this section.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.506. FEE FOR RECOVERY. A person who informs a potential claimant that the claimant may be entitled to claim property that is reportable to the treasurer of the holder under this chapter, that has been reported to the treasurer of the holder, or that is in the possession of the treasurer of the holder may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered. If the property involved is mineral proceeds, the amount for services may not include a portion of the underlying minerals or any production payment, overriding royalty, or similar payment.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.507. CLAIM OF ANOTHER STATE TO RECOVER PROPERTY; PROCEDURE. (a) At any time after property has been paid or delivered to the treasurer of the holder under this chapter, another state may recover the property if:

(1) the property was subjected to custody by the holder because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(2) the last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state; or

(3) the records of the holder were erroneous in that the records did not accurately reflect the actual owner of the property

and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state.

(b) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the treasurer of the holder, who shall decide the claim within 90 days after the date it is presented. The treasurer of the holder shall allow the claim if the treasurer of the holder determines that the other state is entitled to the abandoned property under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER G. UNCLAIMED MONEY FUND

Sec. 76.601. FUND. (a) The treasurer of the holder shall maintain a fund known as the unclaimed money fund.

(b) The treasurer of the holder shall deposit to the credit of the fund:

(1) all funds, including marketable securities, delivered to the treasurer of the holder under this chapter or any other statute requiring the delivery of unclaimed property to the treasurer of the holder;

(2) all proceeds from the sale of any property, including marketable securities, under this chapter; and

(3) any income derived from investments of the fund.

(c) The treasurer of the holder shall keep a separate record and accounting for delivered unclaimed property, other than money, before its sale.

(d) The treasurer of the holder shall from time to time invest the amount in the unclaimed money fund in investments approved by law for the investment of funds by the holder.

(e) The treasurer of the holder may from time to time sell securities in the fund, including stocks, bonds, and mutual funds, and use the proceeds to buy, exchange, invest, or reinvest in marketable securities. When making the investments, the treasurer of the holder shall exercise the judgment and care of a prudent person.

(f) The treasurer of the holder shall keep a separate record and accounting for securities delivered, sold, purchased, or exchanged and the proceeds and earnings from the securities.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.602. USE OF FUND. (a) The treasurer of the holder shall use the unclaimed money fund to pay the claims of persons establishing ownership of property in the possession of the treasurer of the holder under this chapter or under any other unclaimed property or escheat statute.

(b) Each fiscal year after deducting funds sufficient to pay anticipated expenses and claims of the unclaimed money fund, the treasurer of the holder shall transfer the remainder to the general fund of the holder.

(c) The treasurer of the holder and the attorney for the holder may use the unclaimed money fund generally for the enforcement and administration of this chapter, including the expenses of forms, notices, examinations, travel, court costs, supplies, equipment, and employment of necessary personnel and other necessary expenses.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.603. AUDIT; BUDGET. The unclaimed money fund is subject to:

(1) audit by the auditor of the holder or an independent auditor if the holder does not have an auditor; and

(2) budgetary procedures adopted by the governing body of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

SUBCHAPTER H. ENFORCEMENT

Sec. 76.701. RULES. The treasurer of the holder may adopt rules necessary to carry out this chapter.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.702. EXAMINATION OF RECORDS. (a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the treasurer of the holder, at any reasonable time,

may examine the books and records of the holder.

(b) The treasurer of the holder, attorney for the holder, or an agent of either person may not make public any information obtained by an examination made under this section and may not disclose that information except:

(1) in the course of a judicial proceeding authorized by this chapter in which the holder is a party; or

(2) under an agreement with another state allowing joint audits or the exchange of information obtained under this section.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.703. ADDITIONAL PERSONNEL. (a) The treasurer of the holder and the attorney for the holder may employ, in the office of either person, additional personnel necessary to enforce this chapter.

(b) The salary rate of additional personnel may not exceed the rate paid to other employees of the holder for similar services.

(c) The salaries of additional personnel shall be paid in accordance with Section 76.602.

(d) The provisions of this section are subject to the budgetary procedures adopted by the governing body of the holder.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

Sec. 76.704. OFFENSE. (a) A person commits an offense if the person:

(1) wilfully fails to file a report required by this chapter;

(2) refuses to permit examination of records in accordance with this chapter;

(3) makes a deduction from or a service charge against a dormant account or dormant deposit of funds; or

(4) violates any other provision of this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not less than $500 or more than $1,000;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

(c) In addition to a criminal penalty, a person who commits an offense under Subsection (a) is subject to a civil penalty not to exceed $100 for each day of the violation. The attorney for the holder shall collect the civil penalty by bringing suit in a district court of the county in which the holder is located.

Added by Acts 1997, 75th Leg., ch. 1037, Sec. 38, eff. Sept. 1, 1997.

CHAPTER 77. REPORT, DELIVERY, AND CLAIMS PROCESS FOR UNCLAIMED RESTITUTION PAYMENTS

SUBCHAPTER A. APPLICABILITY

Sec. 77.001. APPLICABILITY. This chapter applies to unclaimed restitution payments that are presumed abandoned under Section 76.013 or 508.322, Government Code.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

SUBCHAPTER B. PROPERTY REPORT

Sec. 77.051. PROPERTY REPORT. (a) Notwithstanding the confidentiality provisions of Subchapters C, D, E, and F, Chapter 58, Code of Criminal Procedure, each holder who on March 1 holds an unclaimed restitution payment that is presumed abandoned under Section 76.013 or 508.322, Government Code, shall file a property report with the comptroller on or before the following July 1. The comptroller may prescribe the form to be used for the report required by this section and may require the report to be filed electronically.

(b) The property report must include, if known by the holder:

(1) the name, social security number, driver's license or state identification number, e-mail address, and last known address of the victim who, from the records of the holder, is entitled to the unclaimed restitution payment;

(2) the cause number of the case in which a judge ordered a defendant to pay restitution to the victim, the amount of restitution ordered, and the balance owed to the victim;

(3) the date of the last transaction with the victim concerning the restitution payments; and

(4) other information that the comptroller requires to be

disclosed as necessary for the administration of this chapter.

(c) A holder who is required by Subsection (a) to file a report in any year shall file a report each successive year thereafter. If a person required to file a report under this subsection is not holding any restitution payments that are presumed abandoned under Section 76.013 or 508.322, Government Code, the person shall certify that the person is not holding any restitution payments that are presumed abandoned under those sections.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.61, eff. January 1, 2021.

Sec. 77.052. NOTICE BY HOLDER REQUIRED. A holder who on March 1 holds an unclaimed restitution payment that is presumed abandoned under Section 76.013 or 508.322, Government Code, shall, on or before the following May 1, mail to the last known address of the victim entitled to the unclaimed restitution payment written notice stating that:

(1) the holder is holding the restitution payment to which the victim is entitled; and

(2) the holder may be required to deliver the restitution payment to the comptroller on or before July 1 if the victim does not claim the restitution payment.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.053. SIGNED STATEMENT. (a) The person preparing a property report required by this chapter shall provide with each copy of the report a statement signed by the holder's chief fiscal officer, as designated by the holder. The signature required by this section may be in an electronic or other form prescribed by the comptroller and shall have the same effect as an original signature.

(b) The statement must include the following sentence:

"This report contains a full and complete list of all restitution payments held by the undersigned that, from the knowledge

and records of the undersigned, are abandoned under the laws of the State of Texas."

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.054. CONFIDENTIALITY OF PROPERTY REPORT. (a) The property report filed with the comptroller under Section 77.051 is confidential and is not subject to disclosure under Chapter 552, Government Code.

(b) The social security number, driver's license or state identification number, and address of a victim are confidential and are not subject to disclosure under Chapter 552, Government Code. For the purposes of this subsection, the victim's address includes information that identifies a victim's place of residence or post office box but does not include the city or county in which the victim resides.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.055. EXCEPTION TO LIABILITY. (a) It is an exception to the application of Section 552.352, Government Code, that the comptroller or an officer or employee of the comptroller's office published or disclosed information in reliance on the report filed with the comptroller under Section 77.051.

(b) The comptroller or an officer or employee of the comptroller's office is immune from any civil liability for publishing or disclosing confidential information under this section if the comptroller, officer, or employee published or disclosed the information in reliance on the report filed with the comptroller under Section 77.051.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

SUBCHAPTER C. NOTICE BY COMPTROLLER

Sec. 77.101. NOTICE. The comptroller may use one or more

methods as necessary to provide the most efficient and effective notice to victims that the comptroller is holding unclaimed restitution payments that are subject to this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.102. PUBLICATION. Notwithstanding Section 77.054, the comptroller may publish on the Internet information regarding unclaimed restitution payments received by the comptroller, except that the comptroller may not publish information that identifies a person as a victim or information that identifies a victim's address. For the purposes of this subsection, the victim's address includes information that identifies a victim's place of residence or post office box but does not include the city or county in which the victim resides.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

SUBCHAPTER D. DELIVERY

Sec. 77.151. DELIVERY OF PROPERTY TO COMPTROLLER. Each holder who on March 1 holds an unclaimed restitution payment that is presumed abandoned under Section 76.013 or 508.322, Government Code, shall deliver the property to the comptroller on or before the following July 1 accompanied by the report required to be filed under Section 77.051.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.152. RESPONSIBILITY AFTER DELIVERY. (a) If an unclaimed restitution payment that is presumed abandoned under Section 76.013 or 508.322, Government Code, is reported and delivered to the comptroller, the state shall assume custody of the payment and responsibility for its safekeeping.

(b) A holder who delivers an unclaimed restitution payment to the comptroller in compliance with this chapter is relieved of all

liability to the extent of the value of the payment delivered for any claim then existing, that may arise after delivery to the comptroller, or that may be made with respect to the payment.

(c) If the holder delivers an unclaimed restitution payment to the comptroller in good faith and, after delivery, a person claims the property from the holder, the attorney general shall, on written notice of the claim, defend the holder against the claim, and the holder shall be indemnified against any liability on the claim.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

SUBCHAPTER E. CLAIM FOR DELIVERED PROPERTY

Sec. 77.201. CLAIM FILED WITH COMPTROLLER. (a) The comptroller shall review the validity of each claim for an unclaimed restitution payment filed under this section.

(b) If the comptroller determines a claim for an unclaimed restitution payment is valid, the comptroller shall approve the claim. If a claim is approved under this section, the comptroller shall pay the claim.

(c) All claims to which this section applies must be filed in accordance with the procedures, contain the information, and be on forms prescribed by the comptroller.

(d) On receipt of a claim form and all necessary documentation as may be appropriate under the circumstances, the comptroller may approve the claim of:

(1) the victim;

(2) if the victim died testate:

(A) the appropriate legal beneficiaries of the victim as provided by the last will and testament of the victim that has been accepted into probate or filed as a muniment of title; or

(B) the executor of the victim's last will and testament who holds current letters testamentary;

(3) if the victim died intestate or is deceased and presumed intestate:

(A) the legal heirs of the victim as provided by Chapter 201, Estates Code; or

(B) the court-appointed administrator of the victim's estate, on behalf of the legal heirs of the victim;

(4) the legal heirs of the victim as established by an affidavit of heirship order signed by a judge of the county probate court or by a county judge;

(5) if the victim is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;

(6) if the victim is a trust:

(A) the trustee, on behalf of the trust; or

(B) the beneficiaries of the trust, if the trust is dissolved;

(7) if the victim is a corporation:

(A) the president or chair of the board of directors of the corporation, on behalf of the corporation;

(B) any person who has been delegated legal authority to act on behalf of the corporation by the president or board of directors of the corporation; or

(C) a receiver appointed for the corporation;

(8) if the victim is a corporation that has been dissolved, liquidated, or otherwise terminated:

(A) the surviving shareholders of the corporation in proportion to their ownership of the corporation at the time of dissolution, liquidation, or termination;

(B) the corporation's bankruptcy trustee; or

(C) a receiver appointed for the corporation;

(9) if the victim is a state agency, the comptroller; or

(10) any other person that is entitled to receive the unclaimed restitution payment under other law or comptroller policy.

(e) Except as provided by Subsections (f) and (g), the comptroller may not approve the claim of or pay a claim to the following persons:

(1) a creditor, a judgment creditor, a lienholder, or an assignee of the victim or of any other person entitled to receive an unclaimed restitution payment under this section;

(2) a receiver, if the receiver is appointed at the request of a person the comptroller may not pay under Subdivision (1);

(3) a person attempting to make a claim on behalf of a trust or corporation that has previously been dissolved or terminated, if it appears the trust or corporation was revived for the purpose of making a claim under this section and the person submitting the claim was not an authorized representative of the

corporation or trust at the time of the dissolution or termination; or

(4) a person holding a power of attorney, if the person holding a power of attorney is a person the comptroller may not pay under this subsection.

(f) The comptroller may approve a claim for child support arrearages owed by the victim and reflected in a child support lien notice that complies with Section 157.313, Family Code. A claim under this subsection may be submitted by the lienholder.

(g) The comptroller may approve a claim for debts owed by the victim to the state or any state agency. A claim under this subsection may be submitted by the attorney general or the comptroller on behalf of the state or state agency.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.202. CLAIMS NOT ASSIGNABLE. Notwithstanding Section 9.406(f), Business & Commerce Code, an interest in a claim under this chapter may not be assigned.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.203. CLAIM FILED WITH HOLDER. (a) If a claim for an unclaimed restitution payment is filed with a holder under this section and the holder determines in good faith that the claim is valid, the holder may pay the amount of the claim.

(b) The comptroller may reimburse the holder for a valid claim paid under this section.

(c) The request from a holder for reimbursement must be filed in accordance with procedures and on forms prescribed by the comptroller and may not exceed the amount previously reported and delivered by the holder to the comptroller.

(d) The comptroller may not reimburse a holder for a claim paid to a person the comptroller is not permitted to pay under Section 77.201(e).

(e) The liability of the comptroller to reimburse a holder under this section is limited to the extent of the property delivered

under this chapter and remaining in the possession of the comptroller at the time a holder requests reimbursement.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.204. APPEAL. (a) A person aggrieved by the decision of a claim filed under this chapter may appeal the decision before the 61st day after the day on which it was rendered.

(b) If a claim has not been decided before the 91st day after the day on which it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the day of filing.

(c) An appeal under this section must be made by filing suit against the state in a district court in Travis County.

(d) A court shall try an action filed under this section de novo and shall apply the rules of practice of the court.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.205. LIMITATION OF LIABILITY. The liability of the state is limited to the extent of the property delivered under this chapter and remaining in the possession of the comptroller at the time a suit is filed.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.206. FEE FOR RECOVERY. (a) A person who informs a potential claimant that the claimant may be entitled to claim property under this chapter may not contract for or receive from the claimant for services an amount that exceeds 10 percent of the value of the property recovered.

(b) A person who receives a fee for recovery from a claimant that exceeds 10 percent of the value of the property recovered is liable to the claimant for the amount of the fee plus attorney's fees and expenses.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

SUBCHAPTER F. UNCLAIMED PAYMENTS

Sec. 77.251. UNCLAIMED RESTITUTION PAYMENTS. (a) The comptroller shall maintain a record that documents unclaimed restitution payments received under this chapter.

(b) The comptroller shall deposit all unclaimed restitution payments to the credit of the compensation to victims of crime auxiliary fund in the state treasury.

(c) Income or interest derived from unclaimed restitution payments deposited in the fund shall remain in the compensation to victims of crime auxiliary fund.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.252. USE OF MONEY. (a) Except as provided by Subsection (b) and Chapter 56B, Code of Criminal Procedure, money in the compensation to victims of crime auxiliary fund may only be used to pay claims as provided by this chapter and is not available for any other purpose. Section 403.095, Government Code, does not apply to the fund.

(b) The legislature may appropriate money in the compensation to victims of crime auxiliary fund to cover costs incurred by the comptroller in administering this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.62, eff. January 1, 2021.

Sec. 77.253. EXCESS CLAIMS. The comptroller may pay a claim under this chapter that is more than the money available in the compensation to victims of crime auxiliary fund using funds appropriated by the legislature for paying claims under this title.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

SUBCHAPTER G. ENFORCEMENT

Sec. 77.301. RULES. The comptroller may adopt rules necessary to carry out this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.302. EXAMINATION OF RECORDS. (a) To enforce this chapter and to determine whether reports have been made as required by this chapter, the comptroller, the attorney general, or an authorized agent of either, may, at any reasonable time and place, examine the books and records of any holder.

(b) The comptroller, the attorney general, or an agent of either may not make public any information obtained by an examination made under this section and may not disclose that information except in the course of a judicial proceeding, authorized by this chapter, in which the state is a party or under an agreement with another state allowing joint audits or the exchange of information obtained under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.303. AUTHORITY TO TAKE TESTIMONY AND ISSUE ADMINISTRATIVE SUBPOENAS. (a) In addition to the authority to examine granted by Section 77.302, to enforce this chapter and to determine whether reports have been made as required by this chapter, the comptroller, or the comptroller's designee, may take testimony, administer oaths, and issue subpoenas to compel any person, at a time and place reasonable under the circumstances, to appear and give testimony, and to produce relevant books, records, documents, or other data, in whatever form, for audit, inspection, and copying.

(b) A person authorized to serve process under the Texas Rules of Civil Procedure may serve a subpoena issued under Subsection (a). The person shall serve the subpoena in accordance with the Texas

Rules of Civil Procedure.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.304. ENFORCEMENT OF SUBPOENAS. (a) If the person to whom a subpoena is directed under Section 77.303 fails to comply with the subpoena, or fails to file a motion to quash or otherwise demand a pre-compliance review of the subpoena, within the return date specified in the subpoena, the attorney general shall, on the request of the comptroller, bring suit to enforce the subpoena. The suit may be brought in a state district court where service may be obtained on the person refusing to testify or produce records.

(b) A court that determines that the subpoena was issued in good faith shall order compliance with the subpoena. The court may apply penalties for civil and criminal contempt otherwise available at law where a person refuses to comply with the court's order.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.305. VENUE FOR PRE-COMPLIANCE REVIEW. A person receiving a subpoena under this chapter may, before the return date specified in the subpoena, petition a district court in Travis County for an order to modify or quash the subpoena.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.306. ASSISTANCE IN ENFORCEMENT. If the comptroller or attorney general requests, any state agency, county clerk, district clerk, county attorney, or district attorney shall assist the comptroller or attorney general in enforcing this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.307. PENALTY. A penalty equal to five percent of the value of the unclaimed restitution payment due shall be imposed on a holder who fails to pay or deliver the payment within the time prescribed by this chapter. If a holder fails to pay or deliver an unclaimed restitution payment before the 121st day after the date the payment is due, an additional penalty equal to five percent of the value of the payment due shall be imposed.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

Sec. 77.308. WAIVER OR ABATEMENT OF PENALTY. The comptroller may waive any penalty or interest imposed under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 351 (H.B. 1866), Sec. 4, eff. September 1, 2017.

TITLE 6A. PROPERTY LOANED TO MUSEUMS

CHAPTER 80. OWNERSHIP, CONSERVATION, AND DISPOSITION OF PROPERTY LOANED TO MUSEUM

Sec. 80.001. PURPOSES. The purposes of this chapter are to establish the ownership of loaned cultural property that has been abandoned by the lender, to establish uniform procedures for the termination of loans of property to museums, to allow museums to conserve loaned property under certain conditions, and to limit actions to recover loaned property.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.002. DEFINITIONS. In this chapter:

(1) "Museum" means an institution located in this state and operated by a nonprofit corporation or public agency, primarily educational, scientific, or aesthetic in purpose, that owns, borrows, or cares for and studies, archives, or exhibits property.

(2) "Lender" means a person whose name appears on the records of a museum as the person entitled to property held or owed by the museum.

(3) "Loan," "loaned," and "on loan" include all deposits of

property with a museum that are not accompanied by a transfer of title to the property.

(4) "Property" or "cultural property" means all tangible objects, animate and inanimate, under a museum's care that have intrinsic, scientific, historic, artistic, or cultural value.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.003. NOTICE TO LENDER. (a) If a museum is required to give a lender notice under this chapter, the museum is considered to have given the lender notice if the museum mails the notice to the lender at the lender's address and proof of receipt is received by the museum within 30 days after the date the notice is mailed.

(b) If the museum does not have an address for the lender or if proof of receipt is not received by the museum, the notice is considered to be given if the museum publishes notice at least once a week for two consecutive weeks in a newspaper of general circulation in both the county in which the museum is located and the county of the lender's address, if known.

(c) In addition to any other information prescribed by this chapter, notices given under this chapter must contain, if known, the lender's name, the lender's address, the date of the loan, and the name, address, and telephone number of the appropriate office or official to be contacted at the museum for information regarding the loan.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.004. ABANDONED PROPERTY; NOTICE; TITLE TO PROPERTY. (a) Unless there is a written unexpired loan agreement to the contrary, any property on loan to a museum for 15 years or more and to which no person has made claim according to the records of the museum is considered abandoned and, notwithstanding Chapter 72, becomes the property of the museum if the museum has given the lender notice in accordance with Section 80.003.

(b) If no valid claim has been made to the property within 65 days after the date of the last notice given under Section 80.003, title to the property vests in the museum free from all claims of the owner and all persons claiming through or under the owner.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.005. INTENT TO TERMINATE LOAN; FORM; TRANSFORMATION OF SPECIFIED TERM TO INDEFINITE TERM. (a) A museum may give the lender notice of the museum's intent to terminate a loan that was made for an indefinite term or for a term in excess of seven years. A notice of intent to terminate a loan given under this section must comply with Section 80.003 and must include a statement containing substantially the following information:

The records of (name of museum) indicate that you have property on loan to it. The museum wishes to terminate the loan. You must contact the museum, establish your ownership of the property, and make arrangements to collect the property. If you fail to do so within 65 days after the date of this notice, you will be deemed to have donated the property to the museum. See Chapter 80, Property Code.

(b) If, within 65 days after the date of the notice given under Subsection (a), the lender fails to contact the museum, establish ownership of the property, and make arrangements to collect the property, the property is considered to be donated to the museum.

(c) For the purposes of this chapter, a loan for a specified term becomes a loan for an indefinite term if the property remains in the custody of the museum when the specified term expires.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.006. CONSERVATION OR DISPOSAL OF LOANED PROPERTY; CONDITIONS; LIEN; LIABILITY OF MUSEUM. (a) Unless there is a written loan agreement to the contrary, a museum may apply conservation measures to or dispose of property on loan to the museum without a lender's permission if immediate action is required to protect the property on loan or to protect other property in the custody of the museum, or the property on loan has become a hazard to the health and safety of the public or of the museum's staff, and:

(1) the museum cannot reach the lender at the lender's last address of record so that the museum and the lender can promptly agree on a solution; or

(2) the lender will not agree to the protective measures

the museum recommends, yet is unwilling or unable to terminate the loan and retrieve the property.

(b) If a museum applies conservation measures to or disposes of property under Subsection (a), the museum:

(1) has a lien on the property and on the proceeds from any disposition of the property for the costs incurred by the museum; and

(2) is not liable for injury to or loss of the property if the museum:

(A) had a reasonable belief at the time the action was taken that the action was necessary to protect the property on loan or other property in the custody of the museum, or that the property on loan constituted a hazard to the health and safety of the public or the museum's staff; and

(B) exercised reasonable care in the choice and application of the conservation measures.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.007. ACTION TO RECOVER PROPERTY; LIMITATIONS. (a) The two-year limitation on actions to recover personal property prescribed by Section 16.003, Civil Practice and Remedies Code, runs from the date the museum gives the lender notice of its intent to terminate the loan under Section 80.005.

(b) No action may be brought against a museum to recover property on loan to a museum for 15 years or more and to which no person has made claim if the museum has complied with Section 80.004.

(c) A lender is considered to have donated loaned property to a museum if the lender fails to file an action to recover the property on loan to the museum within the period specified by Subsection (a).

(d) A person who purchases property from a museum acquires valid title to the property if the museum represents that it has acquired title to the property under Subsection (b) or (c).

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

Sec. 80.008. NOTICE OF PROVISIONS OF CHAPTER; LENDER'S NOTICES. (a) If, after August 31, 1987, a museum accepts a loan of property for an indefinite term or for a term in excess of seven

years, the museum shall inform the lender in writing at the time of the loan of the provisions of this chapter.

(b) The lender of property to a museum shall notify the museum promptly in writing of any changes of address or change in ownership of the property.

Added by Acts 1987, 70th Leg., ch. 1076, Sec. 1, eff. Sept. 1, 1987.

TITLE 7. CONDOMINIUMS

CHAPTER 81. CONDOMINIUMS CREATED BEFORE ADOPTION OF UNIFORM CONDOMINIUM ACT

SUBCHAPTER A. PROVISIONS GENERALLY APPLICABLE TO CONDOMINIUMS

Sec. 81.001. SHORT TITLE. This chapter may be cited as the Condominium Act.

Acts 1983, 68th Leg., p. 3616, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.0011. APPLICABILITY. (a) This chapter applies only to a condominium regime created before January 1, 1994. A condominium regime created on or after January 1, 1994, is governed by Chapter 82.

(b) A condominium regime created before January 1, 1994, to which this chapter applies is also governed by Chapter 82 as provided by Section 82.002.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 3, eff. Jan. 1, 1994.

Sec. 81.002. DEFINITIONS. In this chapter:

(1) "Apartment" means an enclosed space, regardless of whether it is designed for residential or other use, that consists of one or more rooms in a building and that has a direct exit to a thoroughfare or to a common space that leads to a thoroughfare.

(2) "Building" includes each principal structure on or to be erected on real property dedicated in a declaration to a condominium regime.

(3) "Condominium" means a form of real property ownership that combines separate ownership of individual apartments or units with common ownership of other elements.

(4) "Council of owners" means all the apartment owners in a condominium project.

(5) "Declaration" means the instrument that establishes property under a condominium regime.

(6) "General common elements" means the property that is part of a condominium regime other than property that is part of or belongs to an apartment in the regime, including:

(A) land on which the building is erected;

(B) foundations, bearing walls and columns, roofs, halls, lobbies, stairways, and entrance, exit, and communication ways;

(C) basements, flat roofs, yards, and gardens, except as otherwise provided;

(D) premises for the lodging of janitors or persons in charge of the building, except as otherwise provided;

(E) compartments or installation of central services such as power, light, gas, water, refrigeration, central heat and air, reservoirs, water tanks and pumps, and swimming pools; and

(F) elevators and elevator shafts, garbage incinerators, and all other devices and installations generally existing for common use.

(7) "Limited common elements" means a portion of the common elements allocated by unanimous agreement of a council of owners for the use of one or more but less than all of the apartments, such as special corridors, stairways and elevators, sanitary services common to the apartments of a particular floor, and similar areas or facilities.

(8) "Master deed" means a deed that establishes property under a condominium regime.

(9) "Master lease" means a lease that establishes property under a condominium regime.

(10) "Project" means a plan to offer for sale or to sell real property consisting of four or more apartments, rooms, office spaces, or other units in an existing or proposed building as a condominium.

(11) "Property" means real property, whether leased or owned, the improvements on the property, and the incorporeal rights that are appurtenant to the property.

Acts 1983, 68th Leg., p. 3616, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.003. APPLICABILITY OF LOCAL ORDINANCES AND REGULATIONS. (a) A planning or zoning commission of a county or municipality may adopt regulations governing condominium regimes that supplement this chapter.

(b) A local zoning ordinance must be construed to treat similar structures, lots, or parcels in a similar manner regardless of whether the property is a condominium or is leased.

Acts 1983, 68th Leg., p. 3617, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 81.101. CREATION OF CONDOMINIUM. An owner or developer of an existing or a planned building establishes a condominium regime by recording a master deed, master lease, or declaration under Section 81.102.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.102. CONTENTS OF DECLARATION, MASTER DEED, OR MASTER LEASE. (a) A declaration, master deed, or master lease for a condominium must contain:

(1) the legal description of the real property dedicated to the condominium regime, depicted by a plat of the property that locates and identifies by letter each existing or proposed building;

(2) a general description of each apartment, including the square footage, location, number, and other information necessary for identification of the apartment, depicted by a plat of the floor of the building in which the apartment is located that identifies the building by letter and the floor and the apartment by number;

(3) a general description of each area not already described that is subject to individual ownership and exclusive control, such as a garage or carport, depicted by a plat that shows the area and appropriately identifies it by letter or number;

(4) a description of the general common elements that are not described under Subdivision 1;

(5) a description of the limited common elements;

(6) each apartment's fractional or percentage interest in

the entire condominium regime;

(7) a provision that the declaration may only be amended at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium; and

(8) a provision that an amendment of the declaration may not alter or destroy a unit or a limited common element without the consent of the owners affected and the owners' first lien mortgagees.

(b) A declaration, master deed, or master lease for a condominium may contain any covenants or other matters the declarant considers appropriate.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(b), eff. Oct. 2, 1984.

Sec. 81.103. PUBLIC RECORDS. (a) Each county clerk shall maintain suitable records called "Condominium Records" in which the clerk shall record master deeds, master leases, and declarations for condominiums.

(b) A county clerk shall record plats and other instruments in a declaration without prior approval from any other authority.

(c) A document required or authorized by this chapter to be recorded must be recorded according to law in the real property records of the county in which the property to which the document relates is located.

Acts 1983, 68th Leg., p. 3618, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.104. APARTMENT OWNERSHIP. (a) An owner of an apartment in a condominium regime owns it exclusively, and the owner may possess, convey, or encumber the apartment, or subject it to judicial acts, independently of the other apartments in the condominium regime.

(b) An individual title or interest in an apartment in a condominium regime is recordable.

(c) The entire interest in the condominium regime shall be divided among the apartments.

(d) A person may own an apartment in a condominium regime

jointly or in common with others.

(e) A condominium association may not alter or destroy an apartment or a limited common element without the consent of all owners affected and the first lien mortgagees of all affected owners.

Acts 1983, 68th Leg., p. 3619, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(c), eff. Oct. 2, 1984.

Sec. 81.105. APARTMENT BOUNDARIES. (a) The boundaries of an apartment in a condominium regime are the interior surfaces of the apartment's perimeter walls, floors, and ceilings, and the exterior surfaces of the apartment's balconies and terraces.

(b) Except for common elements, the portions of a building on the boundaries of an apartment in a condominium regime and the airspace within those boundaries are part of the apartment.

(c) In interpreting a legal instrument relating to an apartment or to an apartment that has been reconstructed substantially according to the original plans of the apartment, the physical boundaries of the apartment are conclusively presumed to be the proper boundaries of the apartment regardless of settling, rising, or lateral movement of the building containing the apartment and regardless of variances between boundaries shown on the plat of the building and the actual boundaries of the building.

Acts 1983, 68th Leg., p. 3619, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.106. APARTMENT DEEDS. A deed to an apartment in a condominium regime must:

(1) include by reference the plats in the declaration;

(2) state the encumbrances against the apartment;

(3) describe the apartment according to the plat; and

(4) state the apartment's fractional or percentage interest in the condominium regime.

Acts 1983, 68th Leg., p. 3620, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.107. INTERESTS IN COMMON ELEMENTS. An owner of an

apartment in a condominium regime shares ownership of the regime's common elements with the other apartment owners. An apartment owner may use the common elements according to their intended purposes, as expressed in the plat, declaration, or bylaws of the condominium regime, without interfering with the rights of the other apartment owners.

Acts 1983, 68th Leg., p. 3620, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.108. PARTITION OF COMMON ELEMENTS. (a) The ownership of the general and the limited common elements of a condominium regime may not be judicially partitioned or divided while they are suitable for a condominium regime.

(b) A person may not initiate an action for partition of the limited or general common elements of a condominium regime unless the mortgages on the property are paid or the consent of the mortgagees is obtained.

(c) An agreement contrary to this section is void.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.109. CONVEYANCE OF COMMON ELEMENTS. An apartment in a condominium regime and the undivided interest of an apartment owner in the common elements of the regime that are attributable to the apartment may not be conveyed separately. If a conveyance of an apartment does not refer to the common elements, the undivided interest of the apartment owner in the general and the limited common elements of the regime attributable to the apartment is conveyed with the apartment.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.110. TERMINATION OF CONDOMINIUM REGIME. (a) By unanimous agreement, or if the declaration provides for termination by agreement of the owners, by agreement of the holders of at least 67 percent or a stated percentage in the declaration, whichever is greater, of the ownership interests in the condominium, the owners of a building in a condominium regime may terminate the regime and

request the county clerk of the county in which the regime is located to merge the records of the estates that comprise the condominium regime, if any creditors in whose behalf encumbrances against the building are recorded agree to accept the undivided portions of the property owned by the debtors as security, provided no amendment may be made to a declaration to reduce the vote required for termination of the condominium regime.

(b) If a condominium regime is terminated, each apartment owner owns an undivided interest in the common property that corresponds to the undivided interest previously owned by the apartment owner in the common elements.

(c) Property that has been removed from a condominium regime may be dedicated to another condominium regime at any time.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 157, Sec. 1, eff. May 25, 1989.

Sec. 81.111. AMENDMENT OF CONDOMINIUM DECLARATION. After a condominium declaration is recorded with a county clerk, the declaration may not be amended except at a meeting of the apartment owners at which the amendment is approved by the holders of at least 67 percent of the ownership interests in the condominium.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 9(d), eff. Oct. 2, 1984.

Sec. 81.112. RESTRICTION RELATING TO CLUB MEMBERSHIP. (a) A provision of a declaration, master deed, master lease, or other recorded contract that requires owners of apartments in a condominium regime to maintain a membership in a specified private club is not valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date at a meeting of the apartment owners at which the renewal is approved by the holders of at least 67 percent of the ownership interests in the condominium and the text of the renewed provision is recorded in the real property records of each county in which the condominium is located.

(b) A provision described by this section may not be enacted or renewed as a bylaw by a council of owners.

Added by Acts 2003, 78th Leg., ch. 1101, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 81.201. AUTHORITY OF COUNCIL OF OWNERS. (a) The council of owners of a condominium regime may adopt and amend bylaws.

(b) A council of owners of a condominium regime may institute litigation on behalf of two or more apartment owners concerning a matter related to the common elements of two or more apartments. The council of owners may delegate its authority under this subsection by designating in the bylaws a person who may exercise the authority. This subsection does not limit the right of an apartment owner to bring an action in the apartment owner's own behalf.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.202. BYLAWS. The bylaws of a condominium regime govern the administration of the buildings that comprise the regime.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.203. VOTING MAJORITY. For the purposes of this chapter, the apartment owners who own at least 51 percent of the interests in a condominium regime, as determined under the declaration, are a majority of the apartment owners.

Acts 1983, 68th Leg., p. 3621, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.204. MAINTENANCE OF CONDOMINIUM. (a) An apartment owner in a condominium regime is responsible for the apartment owner's pro rata share of:

(1) the expenses to administer the condominium regime and to maintain and repair the general common elements;

(2) in proper cases, the expenses to administer the limited common elements of the buildings in the condominium regime; and

(3) other expenses approved by the council of owners.

(b) An apartment owner in a condominium regime is not exempted from the obligation under this section to contribute toward the

expenses of the condominium regime by waiving the use of the common elements or abandoning the apartment.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.205. INSURANCE. (a) By resolution of a majority of the council of owners or in the manner provided or required by the declaration or bylaws, the council of owners may acquire the insurance it deems appropriate for the protection of the buildings and the apartment owners.

(b) Insurance may be written in the name of the council of owners, or in the name of a person designated in the declaration or bylaws, as trustee for the apartment owners and their mortgagees. Each apartment owner and mortgagee of an apartment owner is a beneficiary of the policy, whether named as a beneficiary or not, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

(c) The acquisition of insurance by the council of owners does not prejudice the right of an apartment owner in a condominium regime to obtain insurance for the apartment owner's own benefit.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.206. DISPOSITION OF INSURANCE PROCEEDS. (a) Except as provided by Subsection (b), if a building in a condominium regime is damaged by a casualty against which it is insured, the proceeds of the insurance policy shall be used to reconstruct the building. The council of owners or the bylaws of the condominium regime govern the conduct of the reconstruction.

(b) If more than two-thirds of a building in a condominium regime requires reconstruction because of a casualty against which it is insured, the council of owners may elect not to reconstruct the building. Unless the council of owners unanimously agrees otherwise, the insurance proceeds shall be paid to the individual apartment owners or their mortgagees, as their interest may appear, in proportion to the interest of an apartment owner in the condominium regime as established by the declaration.

Acts 1983, 68th Leg., p. 3622, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.207. INSUFFICIENT INSURANCE. (a) If under Section 81.206 a damaged building in a condominium regime must be reconstructed but insurance proceeds are insufficient to pay for the cost of reconstruction, the apartment owners directly affected by the damage shall pay the difference between the cost of reconstruction and the insurance proceeds, unless the bylaws provide otherwise. Each affected apartment owner shall contribute an amount for reconstruction that is proportionate to the interest of the apartment owner in the condominium regime.

(b) If one or more but less than a majority of the affected apartment owners refuse to make a payment required under this section, after a resolution by the majority of the affected apartment owners stating the circumstances of the case and the cost of the work, the majority may repair the damage at the expense of all apartment owners benefited by the reconstruction.

(c) By a unanimous resolution subsequent to the date of a casualty, the apartment owners in a condominium regime who are concerned with the application of this section may elect to modify its effects.

Acts 1983, 68th Leg., p. 3623, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.208. ASSESSMENTS DUE ON CONVEYANCE. If an apartment owner conveys the apartment and assessments against the apartment are unpaid, the apartment owner shall pay the past due assessments out of the sale price of the apartment, or the purchaser shall pay the assessments, in preference to any other charges against the property except:

(1) assessments, liens, and charges in favor of this state or a political subdivision of this state for taxes on the apartment that are due and unpaid; or

(2) an obligation due under a validly recorded mortgage.

Acts 1983, 68th Leg., p. 3623, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.209. CONDOMINIUM RECORDS. (a) The administrator or board of administration of a condominium regime or a person appointed

by the bylaws of the regime shall keep a detailed written account of the receipts and expenditures related to the building and its administration that specifies the expenses incurred by the regime.

(b) The accounts and supporting vouchers of a condominium regime shall be made available to the apartment owners for examination on working days at convenient, established, and publicly announced hours.

(c) The books and records of a condominium regime must comply with good accounting procedures and must be audited at least once each year by an auditor who is not associated with the condominium regime.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 81.210. LOANS AS ELIGIBLE INVESTMENTS. (a) If a fiduciary or a bank, savings and loan association, trust company, life insurance company, or other lending institution is authorized to make real estate loans, a loan on an apartment in a condominium regime and the undivided interest in the common elements of the regime that is appurtenant to the apartment is an eligible investment for the fiduciary or lending institution.

(b) A lender may not consider the existence of a prior lien for taxes, assessments, or other similar charges that are not delinquent in determining whether a mortgage or deed of trust is a first lien on the security for a loan under this section.

(c) For the purposes of this section, an apartment in a condominium regime and the undivided interest in the common elements appurtenant to the apartment are a single unit independent of the other units in the regime.

(d) This section does not affect any otherwise applicable provision of law that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984.

CHAPTER 82. UNIFORM CONDOMINIUM ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Uniform Condominium Act.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.002. APPLICABILITY. (a) This chapter applies to all commercial, industrial, residential, and other types of condominiums in this state for which the declaration is recorded on or after January 1, 1994. A condominium for which the declaration was recorded before January 1, 1994, may be governed exclusively under this chapter if either:

(1) the owners of units vote to amend the declaration, in accordance with the amendment process authorized by the declaration, to have this chapter apply and that amendment is filed for record in the condominium records in each county in which the condominium is located; or

(2) a declaration or amendment of declaration was recorded before January 1, 1994, and the declaration or amendment states that this chapter will apply in its entirety on January 1, 1994.

(b) An amendment to a declaration under Subsection (a)(1) that implements a vote of the unit owners to be governed by this chapter may not affect the rights of a declarant or impose duties on a declarant that are greater than or in addition to the declarant's duties immediately before the date of the vote or amendment.

(c) This section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005, 82.006, 82.007, 82.053, 82.054, 82.102(a)(1)-(7), (a)(12)-(21), (f), and (g), 82.108, 82.111, 82.113, 82.114, 82.116, 82.118, 82.157, and 82.161. The definitions prescribed by Section 82.003 apply to a condominium in this state for which the declaration was recorded before January 1, 1994, to the extent the definitions do not conflict with the declaration. The sections listed in this subsection apply only with respect to events and circumstances occurring on or after January 1, 1994, and do not invalidate existing provisions of the declaration, bylaws, or plats or plans of a condominium for which the declaration was recorded before January 1, 1994.

(c-1) Section 82.121 applies to a condominium for which the declaration was recorded before January 1, 1994.

(d) Chapter 81 does not apply to a condominium for which the declaration was recorded on or after January 1, 1994, and does not invalidate any amendment to the declaration, bylaws, or plats and

plans of any condominium for which the declaration was recorded before January 1, 1994, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by Chapter 81. If the amendment grants to a person a right, power, or privilege permitted by this chapter, all correlative obligations, liabilities, and restrictions prescribed by this chapter also apply to that person.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by Acts 1997, 75th Leg., ch. 956, Sec. 1, eff. Jan. 1, 1998.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 39 (H.B. 302), Sec. 4, eff. September 1, 2019.

Sec. 82.003. DEFINITIONS. (a) In this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person is a general partner, officer, director, or employer of the declarant; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing more than 20 percent of the voting interests in the declarant; determines in any manner the election of a majority of the directors of the declarant; or has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant is a general partner, officer, director, or employer of the person; directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than 20 percent of the voting interests in the person; determines in any manner the election of a majority of the directors of the person; or has contributed more than 20 percent of the capital of the person.

(2) "Allocated interests" means the undivided interest in

the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Association" means the unit owners' association organized under Section 82.101.

(4) "Board" means the board of directors or the body, regardless of name, designated to act on behalf of the association.

(5) "Common elements" means all portions of a condominium other than the units and includes both general and limited common elements.

(6) "Common expense liability" means the liability for common expenses allocated to each unit.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Condominium" means a form of real property with portions of the real property designated for separate ownership or occupancy, and the remainder of the real property designated for common ownership or occupancy solely by the owners of those portions. Real property is a condominium only if one or more of the common elements are directly owned in undivided interests by the unit owners. Real property is not a condominium if all of the common elements are owned by a legal entity separate from the unit owners, such as a corporation, even if the separate legal entity is owned by the unit owners.

(9) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(10) "Declarant" means a person, or group of persons acting in concert, who:

(A) as part of a common promotional plan, offers to dispose of the person's interest in a unit not previously disposed of; or

(B) reserves or succeeds to any special declarant right.

(11) "Declaration" means an instrument, however denominated, that creates a condominium, and any amendment to that instrument.

(11-a) "Dedicatory instrument" means each document governing the establishment, maintenance, or operation of a

condominium regime. The term includes a declaration or similar instrument subjecting real property to:

(A) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a unit owners' association;

(B) properly adopted rules and regulations of the unit owners' association; or

(C) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

(12) "Development rights" means a right or combination of rights reserved by a declarant in the declaration to:

(A) add real property to a condominium;

(B) create units, common elements, or limited common elements within a condominium;

(C) subdivide units or convert units into common elements; or

(D) withdraw real property from a condominium.

(13) "Disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit but does not include the transfer or release of a security interest.

(14) "General common elements" means common elements that are not limited common elements.

(15) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(16) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

(17) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 82.052 for the exclusive use of one or more but less than all of the units.

(18) "Plan" means a dimensional drawing that is recordable in the real property records or the condominium plat records and that horizontally and vertically identifies or describes units and common elements that are contained in buildings.

(19) "Plat" means a survey recordable in the real property records or the condominium plat records and containing the information required by Section 82.059. As used in this chapter, "plat" does not have the same meaning as "plat" in Chapter 212 or

232, Local Government Code, or other statutes dealing with municipal or county regulation of property development.

(20) "Purchaser" means a person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit other than a leasehold interest or as security for an obligation.

(21) "Residential purposes" means recreational or dwelling purposes, or both.

(22) "Special declarant rights" means rights reserved for the benefit of a declarant to:

(A) complete improvements indicated on plats and plans filed with the declaration;

(B) exercise any development right;

(C) make the condominium part of a larger condominium or a planned community;

(D) maintain sales, management, and leasing offices, signs advertising the condominium, and models;

(E) use easements through the common elements for the purpose of making improvements within the condominium or within real property that may be added to the condominium; or

(F) appoint or remove any officer or board member of the association during any period of declarant control.

(23) "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described by the declaration.

(24) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

(b) Unless otherwise provided by the declaration or bylaws, a term defined by Subsection (a) has the same meaning if used in a declaration or bylaws.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 2, eff. September 1, 2013.

Sec. 82.004. VARIATION BY AGREEMENT. Except as expressly provided by this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A person may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.005. SEPARATE TITLES AND TAXATION. (a) If there is a unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(b) If there is a unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against common elements for which a declarant has not reserved development rights. Any portion of the common elements for which a declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(c) If there is no unit owner other than a declarant, the real property constituting the condominium may be taxed and assessed in any manner provided by law.

(d) The laws relating to homestead exemptions from property taxes apply to condominium units, which are entitled to homestead exemptions in those cases in which the owner of a single family dwelling would qualify.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.006. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES. A zoning, subdivision, building code, or other real property use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement on a condominium that it would not impose on a physically identical development under a different form of ownership. Otherwise, this chapter does not invalidate or modify any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.007. CONDEMNATION. (a) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the condemnation award must compensate the unit owner for the unit and its common element interest, whether or not any common element interest is acquired. On acquisition, unless the decree provides otherwise, the condemned unit's entire allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. A remnant of a unit remaining after part of a unit is taken under this subsection is a common element.

(b) Except as provided by Subsection (a), if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its common element interest. On acquisition, the condemned unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified by the declaration, and the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by condemnation, the award must be paid to the association, as trustee for the unit owners, and to persons holding liens on the condemned property, as their interests may appear. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) The court decree shall be recorded in each county in which

any portion of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.008. VENUE. Venue for an action to enforce a right or obligation arising under the declaration, bylaws, or rules of the association is in each county in which any part of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

SUBCHAPTER B. CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

Sec. 82.051. CREATION OF CONDOMINIUM. (a) A condominium may be created under this chapter only by recording a declaration executed in the same manner as a deed by all persons who have an interest in the real property that will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. The declaration shall be recorded in each county in which any portion of the condominium is located.

(b) A declarant may not convey an interest in a unit until each holder of a mortgage on the unit immediately before conveyance has executed a consent to declaration, and the consent has been recorded, or is recorded concurrently with the conveyance, as part of the declaration or an amendment to the declaration.

(c) If a recorded declaration is not properly executed, that defect may be cured by a subsequent execution conforming to Subsection (a). After an execution defect is cured by authority of this subsection, the declaration is retroactively effective on the date it was first recorded.

(d) A county clerk shall, without prior approval from any other authority, record declarations and amendments to declarations in the real property records and record condominium plats or plans in the real property records or in books maintained for that purpose. If a county clerk maintains a book for the condominium plat records, the book shall be the same size and type as the book for recording subdivision plats.

(e) This chapter does not affect or diminish the rights of municipalities and counties to approve plats of subdivisions and

enforce building codes as may be authorized or required by law.

(f) A person may not file for record or have recorded in the county clerk's office a plat, replat, or amended plat or replat of a condominium unless the plat, replat, or amended plat or replat has attached to it an original tax certificate from each taxing unit with jurisdiction of the real property indicating that no delinquent ad valorem taxes are owed on the real property. If the plat, replat, or amended plat or replat is filed after September 1 of a year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for each taxing unit with jurisdiction of the property indicating that the taxes imposed by the taxing unit for the current year have been paid or, if the taxes for the current year have not been calculated, a statement from the collector for the taxing unit indicating that the taxes to be imposed by that taxing unit for the current year have not been calculated. If the tax certificate for a taxing unit does not cover the preceding year, the plat, replat, or amended plat or replat must also have attached to it a tax receipt issued by the collector for the taxing unit indicating that the taxes imposed by the taxing unit for the preceding year have been paid. This subsection does not apply if a taxing unit acquired the condominium for public use through eminent domain proceedings or voluntary sale.

(g) This chapter does not permit development of a subdivision golf course, as defined by Section 212.0155(b), Local Government Code, without a plat if the plat is otherwise required by applicable law. A municipality may require as a condition to the development of a previously platted or unplatted subdivision golf course that the subdivision golf course be platted or replatted.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 289 (H.B. 989), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1092 (H.B. 3232), Sec. 2, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(77), eff. September 1, 2009.

Sec. 82.052. UNIT BOUNDARIES. Except as otherwise provided by

the declaration or plat:

(1) if walls, floors, or ceilings are designated as boundaries of a unit, then all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting part of the finished surfaces are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements;

(2) if any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture is partially within and partially outside the designated boundaries of a unit, then the portion serving only that unit is a limited common element allocated solely to that unit, and the portion serving more than one unit or the common elements is a part of the general common elements;

(3) subject to Subdivision (2), the spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit; and

(4) shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.053. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS. (a) The provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, or rules of the association.

(c) If there is a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(d) Title to a unit and common elements is not made unmarketable or otherwise affected by a provision of unrecorded bylaws or by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.054. DESCRIPTION OF UNITS. A description of a unit is a sufficient legal description of the unit and all rights, obligations, and interests appurtenant to the unit that were created by the declaration or bylaws if the description contains:

(1) the name of the condominium;

(2) the recording data for the declaration, including any amendments, plats, and plans;

(3) the county in which the condominium is located; and

(4) the identifying number of the unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.055. CONTENTS OF DECLARATION FOR ALL CONDOMINIUMS. The declaration for a condominium must contain:

(1) the name of the condominium, which must include the word "condominium" or be followed by the words "a condominium" or a phrase that includes the word "condominium," and the name of the association;

(2) the name of each county in which any part of the condominium is located;

(3) a legally sufficient description of the real property included in the condominium;

(4) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(5) a statement of the maximum number of units that the declarant reserves the right to create;

(6) a description of the limited common elements other than those listed in Sections 82.052(2) and (4);

(7) a description of any real property, except real property subject to development rights, that may be allocated subsequently as limited common elements, together with a statement that the property may be so allocated;

(8) an allocation to each unit of its allocated interests;

(9) any restrictions on use, occupancy, or alienation of the units;

(10) a description of and the recording data for recorded easements and licenses appurtenant to or included in the condominium

or to which any portion of the condominium is or may become subject by reservation in the declaration;

(11) the method of amending the declaration;

(12) a plat or plan or the recording data of a plat or plan that has been recorded in the real property or condominium plat records;

(13) a statement of the association's obligation under Section 82.111(i) to rebuild or repair any part of the condominium after a casualty or any other disposition of the proceeds of a casualty insurance policy;

(14) a description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real property to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(15) if any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect, together with:

(A) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and

(B) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(16) all matters required by this chapter to be stated in the declaration; and

(17) any other matters the declarant considers appropriate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.056. LEASEHOLD CONDOMINIUMS. (a) Any lease the expiration or termination of which may terminate the condominium or reduce its size must be recorded. The lessor shall sign the declaration, and the declaration must state:

(1) the recording data for the lease;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real property

subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner in which the unit owners may exercise that right, or a statement that the unit owners do not have that right;

(5) any right of the unit owners to remove improvements within a reasonable time after the expiration or termination of the lease, or a statement that the unit owners do not have that right; and

(6) any right of the unit owners to renew the lease and the conditions of renewal, or a statement that the unit owners do not have that right.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of the unit owner's share of the rent and otherwise complies with all covenants that, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of a unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated as though those units had been taken by condemnation unless otherwise provided by the declaration. Reallocation shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.057. ALLOCATION OF COMMON ELEMENT INTERESTS, VOTES, AND COMMON EXPENSE LIABILITIES. (a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. These allocations may not discriminate in favor of units owned by a declarant.

(b) If units may be added to or withdrawn from the condominium, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(c) The declaration may provide:

(1) that different allocations of votes must be made to the units on particular matters specified in the declaration; and

(2) for class voting on specified issues affecting the class if necessary to protect valid interests of the class.

(d) A declarant may not use cumulative or class voting to evade any limitation imposed on declarants by this chapter. Units may not constitute a class because the units are owned by a declarant.

(e) Except for minor variations due to rounding, the sums of the undivided interests in the common elements and of the common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or 100 percent if stated as percentages. If a discrepancy exists between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) The common elements are not subject to partition. Any purported conveyance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements without the unit to which that interest is allocated is void.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.058. LIMITED COMMON ELEMENTS. (a) The limited common elements and the provisions of the declaration relating to the right to use the limited common elements may not be altered without the consent of each affected unit owner and the owner's first lien mortgagee.

(b) Except as otherwise provided by the declaration, a limited common element may be reallocated by an amendment to the declaration, executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall deliver it to the association, which shall record it at the expense of the reallocating unit owners.

(c) A common element not previously allocated as a limited common element may not be allocated except pursuant to the

declaration made in accordance with Section 82.055(7). The allocation shall be made by amendment to the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.059. PLATS AND PLANS. (a) Plats and plans are a part of the declaration and may be recorded as a part of the declaration or separately. Each plat or plan must be legible and contain a certification that the plat or plan contains all information required by this section.

(b) Each plat must show:

(1) the name and a survey or general schematic map of the entire condominium;

(2) the location and dimensions of all real property not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real property;

(3) a legally sufficient description of any real property subject to development rights, labeled to identify the rights applicable to each parcel;

(4) the extent of any encroachments by or on any portion of the condominium;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the condominium, and the location of any underground utility line that is actually known by the declarant at the time of filing the declaration to have been constructed outside a recorded easement;

(6) the location and dimensions of any vertical unit boundaries not shown or projected on recorded plans and the unit's identifying number;

(7) the location of horizontal unit boundaries, if any, with reference to established data, unless described in the declaration or shown or projected on recorded plans, and the unit's identifying number;

(8) a legally sufficient description of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(9) the distance between noncontiguous parcels of real property constituting the condominium;

(10) the location and dimensions of limited common elements, other than those described by Sections 82.052(2) and (4);

(11) in the case of real property not subject to development rights, all other matters required by law on land surveys; and

(12) the distance and bearings locating each building from all other buildings and from at least one boundary line of the real property constituting the condominium.

(c) A plat may also show the intended location and dimensions of a contemplated improvement to be constructed anywhere within the condominium, which must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(d) To the extent not shown on the plats, plans must show:

(1) the location and dimensions of the vertical boundaries of each unit, and the unit's identifying number;

(2) the horizontal unit boundaries, if any, with reference to established data, unless described in the declaration, and the unit's identifying number; and

(3) any units, appropriately identified, in which the declarant has reserved the right to create additional units or common elements.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans. Interior walls and partitions within a unit need not be included in the plats or plans.

(f) On exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of this section or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of this section.

(g) An independent licensed surveyor or engineer shall certify at least one plat, whether contained in one or more pages, showing all perimeter land boundaries of the condominium, except for additional real property, and showing the locations on the ground of all buildings labeled "MUST BE BUILT" in relation to land boundaries. Certification of any other plat or plan required by this chapter shall be made by an independent licensed architect, surveyor, or engineer.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 826 (H.B. 2569), Sec. 1, eff. September 1, 2019.

Sec. 82.060. EXERCISE OF DEVELOPMENT RIGHT. (a) To exercise a development right, the declarant must prepare, execute, and record an amendment to the declaration and record new plats and plans for that real property. The declarant is the unit owner of any units created. The amendment to the declaration must assign an identifying number to each new unit created and, except for subdivision or conversion of units described by Subsection (b), reallocate the allocated interest among all units. The amendment must describe any limited common elements created, designating the unit to which each is allocated.

(b) Development rights may be reserved within any real property added to the condominium if the amendment adding the real property includes the information required by Section 82.055 or 82.056, as appropriate, and the plats and plans include the information required by Section 82.059(b). This provision does not extend the time limit on the exercise of development rights imposed by the declaration. Real property to be added is not part of a condominium or subject to a declaration until the declaration is amended to make the additional real property part of the condominium.

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the other units as if the unit had been taken by condemnation; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides that all or a portion of the real property is subject to the development right of withdrawal:

(1) if all the real property is subject to withdrawal, and the declaration does not describe separate portions of real property

subject to that right, none of the real property may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.061. ALTERATIONS OF UNITS. (a) Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) may make improvements or alterations to the owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) may not change the appearance of the common elements or the exterior appearance of a unit or any other portion of the condominium without prior written permission of the association; and

(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, with the prior written approval of the association, may remove, alter, and create apertures in an intervening partition, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium.

(b) Removal of partitions or creation of apertures under Subsection (a)(3) is not an alteration of boundaries.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.062. RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS. Subject to the declaration, the boundaries between adjoining units may be relocated by an amendment to the declaration on written application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board determines not later than the 30th day after the date the application is received that the reallocation is unreasonable, the association shall prepare an amendment that identifies the units involved, states the

reallocation, is executed by the applying unit owners, and contains words of conveyance between them. At the expense of the applying unit owners, the association shall prepare and record the amendment and plats or plans necessary to show the altered boundaries between adjoining units, and the units' dimensions and identifying numbers.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.063. SUBDIVISION OF UNITS. (a) If the declaration expressly permits, a unit may be subdivided into two or more units. Subject to the declaration, on written application of a unit owner to subdivide a unit and after payment by the unit owner of the cost of preparing and recording amendments and plats, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing the unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.064. EASEMENT FOR ENCROACHMENTS. To the extent that a unit or common element encroaches on another unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of the owner's wilful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.065. USE FOR SALES PURPOSES. The declaration may permit a declarant to maintain sales, leasing, or management offices and models in units or on common elements in the condominium if the declaration specifies the rights of a declarant with regard to the number, size, location, and relocation of the offices and models. If the declaration fails to expressly permit an office or model, a

declarant may maintain no more than one unit as a model and no more than one unit as an office for sales, leasing, and management purposes at any one time. A sales, leasing, or management office or model not designated as a unit by the declaration is a common element and is subject to the exclusive use of a declarant until the declarant ceases to be a unit owner or until the declarant no longer uses the office or model for such purposes, whichever occurs earlier. A declarant may modify the exterior of a sales, leasing, or management office to conform to the aesthetic exterior plan of the condominium. A declarant who ceases to be a unit owner ceases to have any rights with regard to an office or model unless it is removed within a reasonable time from the condominium in accordance with a right to remove reserved in the declaration. Subject to limitations in the declaration, a declarant may maintain signs on the common elements that advertise the condominium for sale or lease. This section is subject to local ordinances and other state law.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.066. EASEMENT RIGHTS. Subject to the declaration, a declarant has an easement through the common elements as may be reasonably necessary for discharging the declarant's obligations or exercising special declarant rights whether arising under this chapter or reserved by the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.067. AMENDMENT OF DECLARATION. (a) Except as provided by Subsection (b), a declaration, including the plats and plans, may be amended only by vote or agreement of unit owners to which at least 67 percent of the votes in the association are allocated, or any larger majority the declaration specifies. A declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use. An amendment to a declaration may be adopted:

(1) by written ballot that states the exact wording or substance of the amendment and that specifies the date by which a ballot must be received to be counted;

(2) at a meeting of the members of the association after written notice of the meeting has been delivered to an owner of each

unit stating that a purpose of the meeting is to consider an amendment to the declaration; or

(3) by any method permitted by the declaration.

(b) The amendment procedures of this section do not apply to amendments that may be executed by:

(1) a declarant under Section 82.051(c), 82.059(f), or 82.060 or Subsection (f);

(2) the association under Section 82.007, 82.056(d), 82.058(c), 82.062, or 82.063 or Subsection (f); or

(3) certain unit owners under Section 82.058(b), 82.062, 82.063(b), or 82.068(b).

(c) An action to challenge the validity of an amendment adopted by the association under this section must be brought before the first anniversary of the date the amendment is recorded.

(d) To be effective, an amendment to the declaration must be recorded in each county in which any portion of the condominium is located.

(e) Except as permitted or required by this chapter, an amendment may not create or increase special declarant rights, increase the number of units, change the boundaries of a unit, alter or destroy a unit or limited common element, change a unit's allocated interest, or change the use restrictions on a unit unless the amendment is approved by 100 percent of the votes in the association. Except as agreed to by the declarant, an amendment may not increase or otherwise modify the obligations imposed by a declaration on a declarant, or reduce or otherwise modify the rights granted by a declaration to a declarant, including special declarant rights.

(f) If permitted by the declaration, the board or the declarant, if the declarant owns a unit that has never been occupied, may without a vote of the unit owners or approval of the association amend the declaration in any manner necessary to meet the requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration.

(g) Amendments to the declaration required by this chapter to be recorded by the association must be prepared, executed, recorded, and certified by an officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(h) An association may amend the declaration to authorize the board:

(1) to bring an action to evict a tenant of a unit owner for the tenant's violation of the declaration, bylaws, or rules of the association;

(2) to bring an action to evict a tenant of a unit owner who fails to pay the association for the cost of repairs to common elements damaged substantially by the owner's tenant; or

(3) to collect rents from a tenant of a unit owner who is at least 60 days' delinquent in the payment of any amount due to the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.0675. RESTRICTION RELATING TO CLUB MEMBERSHIP. (a) A provision of a declaration or recorded contract that requires owners of units in a condominium to maintain a membership in a specified private club is not valid after the 10th anniversary of the date the provision is recorded or renewed unless renewed after the ninth anniversary of that date in the manner provided by the declaration or recorded contract for amending the declaration or recorded contract and the text of the renewed provision is filed in the real property records of each county in which the condominium is located.

(b) A provision described by this section may not be enacted or renewed as a bylaw by the unit owners' association.

Added by Acts 2003, 78th Leg., ch. 1101, Sec. 2, eff. Sept. 1, 2003.

Sec. 82.068. TERMINATION OF CONDOMINIUM. (a) Unless the declaration provides otherwise and except for a taking of all the units by condemnation, a condominium may be terminated only by the agreement of 100 percent of the votes in the association and each holder of a deed of trust or vendor's lien on a unit. The declaration may not allow a termination by less than 80 percent of the votes in the association if any unit is restricted exclusively to residential uses.

(b) An agreement of unit owners to terminate a condominium must be evidenced by the execution or ratification of a termination agreement by the requisite number of unit owners. If, pursuant to a

termination agreement, the real property constituting the condominium is to be sold following termination, the termination agreement must set forth the terms of the sale. To be effective, a termination agreement and all ratifications of the agreement must be recorded in each county in which a portion of the condominium is located.

(c) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until it is approved under Subsections (a) and (b). If the real property constituting the condominium is to be sold following termination, on termination title to that real property vests in the association as trustee for the holders of all interests in the units, and the association has all powers necessary and appropriate to effect the sale, including the power to convey the interests of nonconsenting owners. Until the sale has been concluded and the proceeds distributed, the association shall continue to exist and retains the powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided by Subsection (f). Unless the termination agreement specifies differently, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit. During that period of occupancy a unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(d) If the real property constituting the condominium is not to be sold following termination, on termination title to the real property vests in the unit owners as tenants in common in proportion to their respective interests, and liens on the units shift accordingly. While the tenancy in common exists, a unit owner and the owner's successors in interest have an exclusive right to occupy the portion of the real property that formerly constituted the owner's unit.

(e) Following termination of the condominium, and after payment of or provision for the claims of the association's creditors, the assets of the association shall be distributed to unit owners in proportion to their respective interests. The proceeds of sale described by Subsection (c) and held by the association as trustee

are not assets of the association.

(f) The interest of a unit owner referred to in Subsections (c), (d), and (e) is, except as provided by Subsection (g), the fair market value of the owner's unit, limited common elements, and common element interest immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved by unit owners of units to which 25 percent of the votes in the association are allocated not later than the 30th day after the date of distribution. The proportion of a unit owner's interest to that of all unit owners is determined by dividing the fair market value of the unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(g) If a unit or a limited common element is destroyed to the extent that an appraisal of the fair market value before the destruction cannot be made, the interest of a unit owner is the owner's common element interest immediately before the termination.

(h) Foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium does not withdraw that portion from the condominium, unless the portion is withdrawable real property or unless the mortgage being foreclosed was recorded before the date the declaration was recorded and the mortgagee did not consent in writing to the declaration.

(i) By agreement of the same percentage of unit owners that is required to terminate the condominium, the unit owners may rescind a termination agreement and reinstate the declaration in effect immediately before the election to terminate. To be effective, the rescission agreement must be in writing, executed by the unit owners who desire to rescind, and recorded in each county in which any portion of the condominium is located.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.069. RIGHTS OF SECURED LENDERS. The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units

approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but a requirement for approval may not operate to:

(1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board; or

(2) prevent the association or the board from:

(A) commencing, intervening in, or settling any litigation or proceeding; or

(B) receiving and distributing insurance proceeds under Section 82.111.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.070. MEETING AT WHICH AMENDMENTS MAY BE ADOPTED. (a) An association or a board may not meet to adopt an amendment or other change to the declaration, articles of incorporation, bylaws, or rules of the association unless the association or board has given to each unit owner a document showing the specific amendment or other change that would be made to the declaration, articles of incorporation, bylaws, or rules.

(b) The information described by Subsection (a) must be given to each unit owner after the 20th day but before the 10th day preceding the date of the meeting. The information is considered to have been given to a unit owner on the date the information is personally delivered to the unit owner, as shown by a receipt signed by the unit owner, or on the date shown by the postmark on the information after it is deposited in the United States mail with a proper address and postage paid.

Added by Acts 1997, 75th Leg., ch. 956, Sec. 2, eff. Jan. 1, 1998.

SUBCHAPTER C. CONDOMINIUM MANAGEMENT

Sec. 82.101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION. A unit owners' association must be organized as a profit or nonprofit corporation. The declarant may not convey a unit until the secretary of state has issued a certificate of incorporation under Article 3.03, Texas Business Corporation Act, or Article 3.03, Texas Non-Profit Corporation Act (Article 1396-3.03, Vernon's Texas Civil

Statutes). The membership of the association at all times consists exclusively of all the unit owners or, following termination of the condominium, all former unit owners entitled to distribution of proceeds, or the owners' heirs, successors, or assigns.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.102. POWERS OF UNIT OWNERS' ASSOCIATION. (a) Unless otherwise provided by the declaration, the association, acting through its board, may:

(1) adopt and amend bylaws;

(2) adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;

(5) make contracts and incur liabilities relating to the operation of the condominium;

(6) regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium;

(7) adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units;

(8) cause additional improvements to be made as a part of the common elements;

(9) acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except common elements of the condominium;

(10) grant easements, leases, licenses, and concessions through or over the common elements;

(11) impose and receive payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to unit owners;

(12) impose interest and late charges for late payments of

assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d), reasonable fines for violations of the declaration, bylaws, and rules of the association;

(13) adopt and amend rules regulating the collection of delinquent assessments and the application of payments;

(14) adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility;

(15) impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments;

(16) enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the common elements, another unit, or the occupants;

(17) suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments;

(18) purchase insurance and fidelity bonds it considers appropriate or necessary;

(19) exercise any other powers conferred by the declaration or bylaws;

(20) exercise any other powers that may be exercised in this state by a corporation of the same type as the association; and

(21) exercise any other powers necessary and proper for the government and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

(c) To be enforceable, a bylaw or rule of the association must not be arbitrary or capricious.

(d) Before an association may charge the unit owner for property damage for which the unit owner is liable or levy a fine for violation of the declaration, bylaws, or rules, the association shall give to the unit owner a written notice that:

(1) describes the violation or property damage and states the amount of the proposed fine or damage charge;

(2) states that not later than the 30th day after the date

of the notice, the unit owner may request a hearing before the board to contest the fine or damage charge; and

(3) allows the unit owner a reasonable time, by a specified date, to cure the violation and avoid the fine unless the unit owner was given notice and a reasonable opportunity to cure a similar violation within the preceding 12 months.

(e) The association may give a copy of the notice required by Subsection (d) to an occupant of the unit. The association must give notice of a levied fine or damage charge to the unit owner not later than the 30th day after the date of levy.

(f) Except as provided by Subsection (g), the association by resolution of the board of directors may:

(1) borrow money; and

(2) assign as collateral for the loan authorized by the resolution:

(A) the association's right to future income, including the right to receive assessments; and

(B) the association's lien rights.

(g) If a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, the loan or assignment must be approved as provided by the dedicatory instrument. The board may determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. If a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67 percent of all voting interests.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 3, eff. September 1, 2013.

Sec. 82.103. BOARD MEMBERS AND OFFICERS. (a) Except as provided by the declaration, bylaws, or this chapter, the board shall act in all instances on behalf of the association if in the good-faith judgment of the board the action is reasonable. Each officer or member of the board is liable as a fiduciary of the unit owners

for the officer's or member's acts or omissions. All acts of the association must be by and through the board unless otherwise provided by the declaration or bylaws or by law.

(b) The board may not act on behalf of the association to amend the declaration except as permitted by this chapter, to terminate the condominium, to elect members of the board, or to determine the qualifications, powers and duties, or terms of office of board members. The board may fill a vacancy in its membership for the unexpired portion of a term.

(c) Subject to Subsection (d), the declaration may provide for a period of declarant control of the association during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board. Regardless of the period provided by the declaration, a period of declarant control terminates not later than the 120th day after conveyance of 75 percent of the units that may be created to unit owners other than a declarant. Transfer of special declarant rights does not terminate the period of declarant control. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board before termination of the period, but in that event the declarant may require, for the duration of the period that the declarant would otherwise control, that specified actions of the association or board be approved by the declarant before they become effective.

(d) Not later than the 120th day after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than one-third of the members of the board must be elected by unit owners other than the declarant.

(e) Not later than the termination of a period of declarant control, the unit owners shall elect a board of at least three members who need not be unit owners. The board shall elect the officers before the 31st day after the date declarant control terminates. The persons elected shall take office on election.

(f) An officer or director of the association is not liable to the association or any unit owner for monetary damages for an act or omission occurring in the person's capacity as an officer or director unless:

(1) the officer or director breached a fiduciary duty to the association or a unit owner;

(2) the officer or director received an improper benefit;

or

(3) the act or omission was in bad faith, involved intentional misconduct, or was one for which liability is expressly provided by statute.

(g) Subsection (f) does not diminish a limitation of liability provided an officer or director of the association by the declaration, bylaws, articles of incorporation of the association, or other laws.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.104. TRANSFER OF SPECIAL DECLARANT RIGHTS. (a) Special declarant rights created or reserved under this chapter may not be transferred except by an instrument evidencing the transfer recorded in each county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.

(b) On transfer of any special declarant right, a transferor is not relieved of an obligation or liability arising before the transfer. A transferor is not liable for an act or omission or a breach of an obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided by a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings, of a unit owned by a declarant or of real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold may request to succeed to all special declarant rights or only to rights reserved by the declaration to maintain models, offices, and signs. The judgment or instrument conveying title may provide for transfer of only the special declarant rights requested.

(d) On foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under Bankruptcy Code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(1) the declarant ceases to have any special declarant

rights; and

(2) the period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) a successor to a special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(2) a successor to a special declarant right, other than a successor described by Subdivision (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(3) a successor to only a right reserved by the declaration to maintain models, offices, and signs, who is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a condominium information statement and any liability arising as a result; and

(4) a successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under Subsection (c) may declare the person's intention in a recorded instrument to hold those rights solely for transfer to another person; thereafter, until all special declarant rights are transferred to a person acquiring title to any unit owned by the successor, or until an instrument permitting exercise of all those rights is recorded, the successor may not exercise any of those rights other than any right held by the successor's transferor to control the board as provided by Section 82.103(c) for the duration of the period of declarant control, and an attempt to exercise those rights is void; so long as a successor declarant may not exercise special declarant rights under this subdivision, the successor is not subject to any liability or obligation as a declarant other than liability for acts and omissions under Section 82.103(a).

(f) This section does not subject a successor to a special

declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.105. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT. An association in a residential or recreational condominium may terminate, without penalty, contracts or leases between the association and a declarant or an affiliate of a declarant if:

(1) the contract is entered into by the association while controlled by the declarant;

(2) the association terminates the contract or lease before the first anniversary of the date a board elected by the unit owners takes office; and

(3) the association gives at least 90 days' notice of its intent to terminate the contract or lease to the other party.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.106. BYLAWS. (a) The administration and operation of the condominium are governed by the bylaws, which must provide for:

(1) the number of members on the board and the titles of the officers of the association;

(2) election by the board of a president, treasurer, secretary, and any other officers the bylaws specify;

(3) the qualifications, powers and duties, terms of office, and the manner of electing and removing a board member or officer and filling vacancies;

(4) the powers, if any, that the board or an officer may delegate to other persons or to a managing agent;

(5) the designation of officers who are authorized to prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) the method of amending the bylaws; and

(7) the manner of notice of meetings of the association.

(b) Subject to the declaration, the bylaws may provide for other matters the association considers desirable, necessary, or appropriate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.107. UPKEEP OF CONDOMINIUM. (a) Except as provided by the declaration or Subsections (b) and (c), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair of the damage.

(b) Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of any utility installation or equipment serving only the owner's unit, without regard to whether the installation or equipment is located wholly or partially outside the designated boundaries of the unit. For purposes of this subsection, utility installations and equipment include electricity, water, sewage, gas, water heaters, heating and air conditioning equipment, and television antennas.

(c) Except as provided by the declaration, each unit owner is responsible for the cost of maintenance, repair, and replacement of windows and doors serving only the owner's unit.

(d) Unless otherwise provided by the declaration, the association may enter a unit, after giving notice to the owner and occupant of the unit, to:

(1) prevent or terminate waste of water purchased by the association as a common expense; or

(2) perform maintenance and repairs of the condominium that, if not performed, may result in increased damage by water to components of the condominium that the association maintains.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.108. MEETINGS. (a) Meetings of the association must be held at least once each year. Unless the declaration provides otherwise, special meetings of the association may be called by the

president, a majority of the board, or unit owners having at least 20 percent of the votes in the association.

(b) Meetings of the association and board must be open to unit owners, subject to the right of the board to adjourn a meeting of the board and reconvene in closed executive session to consider actions involving personnel, pending litigation, contract negotiations, enforcement actions, matters involving the invasion of privacy of individual unit owners, or matters that are to remain confidential by request of the affected parties and agreement of the board. The general nature of any business to be considered in executive session must first be announced at the open meeting.

(c) Unless the declaration, bylaws, or articles of incorporation of the association provide otherwise:

(1) a meeting of the board may be held by any method of communication, including electronic and telephonic, if:

(A) notice of the meeting has been given in accordance with Subsection (e);

(B) each director may hear and be heard by every other director; and

(C) the meeting does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(2) the board may act by unanimous written consent of all the directors, without a meeting, if:

(A) the board action does not involve voting on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular association member before the member has an opportunity to attend a board meeting to present the member's position, including any defense, on the issue; and

(B) a record of the board action is filed with the minutes of board meetings.

(d) Notice of a meeting of the association must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each unit owner in the same manner in which notice is given to members of a nonprofit corporation under Section A, Article 2.11, Texas Non-Profit Corporation Act (Article 1396-2.11,

Vernon's Texas Civil Statutes).

(e) Notice of a meeting of the board must be given as provided by the bylaws, or, if the bylaws do not provide for notice, notice must be given to each board member in the same manner in which notice is given to members of the board of a nonprofit corporation under Section B, Article 2.19, Texas Non-Profit Corporation Act (Article 1396-2.19, Vernon's Texas Civil Statutes).

(f) An association, on the written request of a unit owner, shall inform the unit owner of the time and place of the next regular or special meeting of the board. If the association representative to whom the request is made does not know the time and place of the meeting, the association promptly shall obtain the information and disclose it to the unit owner or inform the unit owner where the information may be obtained.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by Acts 1997, 75th Leg., ch. 956, Sec. 3, eff. Jan. 1, 1998.

Sec. 82.109. QUORUMS. (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if persons entitled to cast at least 20 percent of the votes that may be cast for election of the board are present in person or by proxy at the beginning of the meeting. The bylaws may not reduce the standard for a quorum to less than 10 percent.

(b) Unless the bylaws specify a larger percentage, a quorum is present throughout a meeting of the board if persons entitled to cast at least 50 percent of the votes on the board are present at the beginning of the meeting.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.110. VOTING AND PROXIES. (a) If only one of the multiple owners of a unit is present at a meeting of the association, that person may cast the vote or votes allocated to that unit. If more than one of the multiple owners is present, the vote or votes allocated to that unit may be cast only in accordance with the owners' unanimous agreement unless the declaration provides otherwise. Multiple owners are in unanimous agreement if one of the multiple owners casts the votes allocated to a unit and none of the

other owners makes prompt protest to the person presiding over the meeting.

(b) Votes allocated to a unit may be cast under a written proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a proxy duly executed by the unit owner. A unit owner may not revoke a proxy given under this section except by giving actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or if it purports to be revocable without notice. A proxy terminates one year after its date unless it specifies a shorter or longer time.

(c) Cumulative voting is not allowed.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.111. INSURANCE. (a) Beginning not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) property insurance on the insurable common elements insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage, in a total amount of at least 80 percent of the replacement cost or actual cash value of the insured property as of the effective date and at each renewal date of the policy; and

(2) commercial general liability insurance, including medical payments insurance, in an amount determined by the board but not less than any amount specified by the declaration covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(b) If a building contains units having horizontal boundaries described in the declaration, the insurance maintained under Subsection (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described by Subsections (a) and (b) is not reasonably available, the association shall cause notice of that fact to be delivered or mailed to all unit owners and lienholders.

The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance the board considers appropriate to protect the condominium, the association, or the unit owners. Insurance policies maintained under Subsection (a) may provide for commercially reasonable deductibles as the board determines appropriate or necessary. This section does not affect the right of a holder of a mortgage on a unit to require a unit owner to acquire insurance in addition to that provided by the association.

(d) Insurance policies carried under Subsection (a) must provide that:

(1) each unit owner is an insured person under the policy with respect to liability arising out of the person's ownership of an undivided interest in the common elements or membership in the association;

(2) the insurer waives its right to subrogation under the policy against a unit owner;

(3) no action or omission of a unit owner, unless within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy provides primary insurance.

(e) A claim for any loss covered by the policy under Subsection (a)(1) must be submitted by and adjusted with the association. The insurance proceeds for that loss shall be payable to an insurance trustee designated by the association for that purpose, if the designation of an insurance trustee is considered by the board to be necessary or desirable, or otherwise to the association, and not to any unit owner or lienholder.

(f) The insurance trustee or the association shall hold insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to Subsection (i), the proceeds paid under a policy must be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is

terminated.

(g) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(h) The insurer issuing the policy may not cancel or refuse to renew it less than 30 days after written notice of the proposed cancellation or nonrenewal has been mailed to the association.

(i) Except as provided by this section, any portion of the condominium for which insurance is required that is damaged or destroyed shall be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners vote to not rebuild. Each owner of a unit may vote, regardless of whether the owner's unit or limited common element has been damaged or destroyed. A vote may be cast electronically or by written ballot if a meeting is not held for that purpose or in person or by proxy at a meeting called for that purpose. A vote to not rebuild does not increase an insurer's liability to loss payment obligation under a policy, and the vote does not cause a presumption of total loss. Except as provided by this section, the cost of repair or replacement in excess of the insurance proceeds is a common expense, and the board may levy an assessment to pay the expenses in accordance with each owner's common expense liability. If the entire condominium is not repaired or replaced, any insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration. If the unit owners vote to not rebuild any unit, that unit's allocated interests shall be automatically reallocated on the vote as if the unit had been condemned, and the association shall prepare, execute, and record an amendment to the declaration reflecting the reallocation. Section 82.068 governs the distribution of insurance proceeds if the condominium is terminated.

(j) If the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, the party who would be responsible for the repair in the absence of insurance shall pay the cost for the repair of the unit or common element.

(k) If the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. If the dedicatory instruments are silent, the board of directors of the association by resolution shall determine the payment of those costs, or if the board does not approve a resolution, the costs are a common expense. A resolution under this subsection is considered a dedicatory instrument and must be recorded in each location in which the declaration is recorded.

(l) If damage to a unit or the common elements is due wholly or partly to an act or omission of any unit owner or a guest or invitee of the unit owner, the association may assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owner's unit.

(m) The provisions of this section may be varied or waived if all the units in a condominium are restricted to nonresidential use.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 4, eff. September 1, 2013.

Sec. 82.112. ASSESSMENTS FOR COMMON EXPENSES. (a) Until an association makes a common expense assessment, a declarant shall pay all the expenses of the condominium as the expenses accrue. After an initial assessment by an association, assessments must be made at least annually and must be based on a budget adopted at least annually by the association. The association's reserves and the unit owners' working capital contributions may not be used to pay operational expenses until the declarant control terminates.

(b) From the date of the initial assessment until declarant control terminates, or three years from a declarant's first

conveyance of a unit, whichever is earlier, the declarant shall periodically pay to the association:

(1) an amount equal to all operational expenses of the association, less the operational expense portion of the assessments paid by unit owners other than declarant; or

(2) the common expense liability allocated to each unit owned by the declarant.

(c) Common expenses shall be assessed against all units conveyed, rented, or used as models or offices by the declarant and against all units owned by a declarant after termination of a declarant's control or three years from a declarant's first conveyance of a unit, whichever is earlier, in accordance with the common expense liability allocated to each unit. A past due assessment or installment of an assessment may bear interest at a lawful rate established by the association.

(d) Except as provided by the declaration and Section 82.107, a common expense for the maintenance, repair, or replacement of a limited common element shall be assessed against all the units as if it were for a general common element.

(e) If common expense liabilities are reallocated, common expense assessments and an assessment installment not yet due shall be recomputed in accordance with the reallocated common expense liabilities.

(f) A declaration may allow the accumulation of reserve funds for an unspecified period to provide for any anticipated expense of the condominium.

(g) This section does not prevent a declarant from collecting from a purchaser at closing the prorated amount of any expenses, such as insurance or taxes, that the declarant has prepaid to the association or directly to others on behalf of the unit that is being purchased.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.113. ASSOCIATION'S LIEN FOR ASSESSMENTS. (a) An assessment levied by the association against a unit or unit owner is a personal obligation of the unit owner and is secured by a continuing lien on the unit and on rents and insurance proceeds received by the unit owner and relating to the owner's unit. In this

section, "assessments" means regular and special assessments, dues, fees, charges, interest, late fees, fines, collection costs, attorney's fees, and any other amount due to the association by the unit owner or levied against the unit by the association, all of which are enforceable as assessments under this section unless the declaration provides otherwise.

(b) The association's lien for assessments has priority over any other lien except:

(1) a lien for real property taxes and other governmental assessments or charges against the unit unless otherwise provided by Section 32.05, Tax Code;

(2) a lien or encumbrance recorded before the declaration is recorded;

(3) a first vendor's lien or first deed of trust lien recorded before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules; and

(4) unless the declaration provides otherwise, a lien for construction of improvements to the unit or an assignment of the right to insurance proceeds on the unit if the lien or assignment is recorded or duly perfected before the date on which the assessment sought to be enforced becomes delinquent under the declaration, bylaws, or rules.

(c) The association's lien for assessments is created by recordation of the declaration, which constitutes record notice and perfection of the lien. Unless the declaration provides otherwise, no other recordation of a lien or notice of lien is required.

(d) By acquiring a unit, a unit owner grants to the association a power of sale in connection with the association's lien. By written resolution, a board may appoint, from time to time, an officer, agent, trustee, or attorney of the association to exercise the power of sale on behalf of the association. Except as provided by the declaration, an association shall exercise its power of sale pursuant to Section 51.002.

(e) The association has the right to foreclose its lien judicially or by nonjudicial foreclosure pursuant to the power of sale created by this chapter or the declaration, except that the association may not foreclose a lien for assessments consisting solely of fines. Costs of foreclosure may be added to the amount owed by the unit owner to the association. A unit owner may not

petition a court to set aside a sale solely because the purchase price at the foreclosure sale was insufficient to fully satisfy the owner's debt.

(f) The association may bid for and purchase the unit at foreclosure sale as a common expense. The association may own, lease, encumber, exchange, sell, or convey a unit.

(g) The owner of a unit purchased at a foreclosure sale of the association's lien for assessments may redeem the unit not later than the 90th day after the date of the foreclosure sale. If the association is the purchaser, the owner must pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. If a party other than the association is the purchaser, the redeeming owner must pay to the purchaser of the unit at the foreclosure sale an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance and leasing. The redeeming owner must also pay to the association all assessments that are due as of the date of the redemption and reasonable attorney's fees and costs incurred by the association in foreclosing the lien. On redemption, the purchaser of the unit at the foreclosure sale shall execute a deed with no warranty to the redeeming unit owner. The exercise of the right of redemption is not effective against a subsequent purchaser or lender for value without notice of the redemption after the redemption period expires unless the redeeming unit owner records the deed from the purchaser of the unit at the foreclosure sale or an affidavit stating that the owner has exercised the right of redemption. A unit that has been redeemed remains subject to all liens and encumbrances on the unit before foreclosure. All rents and other income collected from the unit by the purchaser of the unit at the foreclosure sale from the date of foreclosure sale to the date of redemption belong to the purchaser of

the unit at the foreclosure sale, but the rents and income shall be credited against the redemption amount. The purchaser of a unit at a sale foreclosing an association's assessment lien may not transfer ownership of the unit during the redemption period to a person other than a redeeming owner.

(h) If a unit owner defaults in the owner's monetary obligations to the association, the association may notify other lien holders of the default and the association's intent to foreclose its lien. The association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a unit who has given the association a written request for notification of the unit owner's monetary default or the association's intent to foreclose its lien.

(i) This section does not prohibit the association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

(j) At any time before a nonjudicial foreclosure sale, a unit owner may avoid foreclosure by paying all amounts due the association.

(k) If, on January 1, 1994, a unit is the homestead of the unit owner and is subject to a declaration that does not contain a valid assessment lien against the unit, the lien provided by this section does not attach against the unit until the unit ceases to be the homestead of the person owning it on January 1, 1994.

(l) Foreclosure of a tax lien attaching against a unit under Chapter 32, Tax Code, does not discharge the association's lien for assessments under this section or under a declaration for amounts becoming due to the association after the date of foreclosure of the tax lien.

(m) If a unit owner is delinquent in payment of assessments to an association, at the request of the association a holder of a recorded lien against the unit may provide the association with information about the unit owner's debt secured by the holder's lien against the unit and other relevant information. At the request of a lien holder, the association may furnish the lien holder with information about the condominium and the unit owner's obligations to the association.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 5, eff.

September 1, 2013.

Sec. 82.114. ASSOCIATION RECORDS. (a) The association shall keep:

(1) detailed financial records that comply with generally accepted accounting principles and that are sufficiently detailed to enable the association to prepare a resale certificate under Section 82.157;

(2) the plans and specifications used to construct the condominium except for buildings originally constructed before January 1, 1994;

(3) the condominium information statement prepared under Section 82.152 and any amendments;

(4) the name and mailing address of each unit owner;

(5) voting records, proxies, and correspondence relating to amendments to the declaration; and

(6) minutes of meetings of the association and board.

(b) All financial and other records of the association shall be reasonably available at its registered office or its principal office in this state for examination and production in accordance with Section 82.1141.

(c) The association shall, as a common expense, annually obtain an independent audit of the records. Copies of the audit must be made available to the unit owners. An audit required by this subsection shall be performed by a certified public accountant if required by the bylaws or a vote of the board of directors or a majority vote of the members of the association voting at a meeting of the association.

(d) A declarant shall furnish copies to the association of the information required by Subsection (a) on the date the first unit is sold.

(e) Not later than the 30th day after the date of acquiring an interest in a unit, the unit owner shall provide the association with:

(1) the unit owner's mailing address, telephone number, and driver's license number, if any;

(2) the name and address of the holder of any lien against the unit, and any loan number;

(3) the name and telephone number of any person occupying

the unit other than the unit owner; and

(4) the name, address, and telephone number of any person managing the unit as agent of the unit owner.

(f) A unit owner shall notify the association not later than the 30th day after the date the owner has notice of a change in any information required by Subsection (e), and shall provide the information on request by the association from time to time.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2021, 87th Leg., R.S., Ch. 555 (S.B. 318), Sec. 1, eff. September 1, 2021.

Sec. 82.1141. ACCESS TO ASSOCIATION RECORDS. (a) This section applies to all associations governed by this chapter and controls over other law not specifically applicable to an association.

(b) Notwithstanding a provision in a dedicatory instrument, an association shall make the books and records of the association, including financial records, open to and reasonably available for examination by a unit owner, or a person designated in a writing signed by the unit owner as the unit owner's agent, attorney, or certified public accountant, in accordance with this section. A unit owner is entitled to obtain from the association copies of information contained in the books and records.

(c) Except as provided by this subsection, an attorney's files and records relating to the association, excluding invoices requested by a unit owner for attorney's fees and other costs relating only to a matter for which the association seeks reimbursement of fees and costs from the unit owner, are not records of the association and are not subject to inspection by the unit owner or production in a legal proceeding. If a document in an attorney's files and records relating to the association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the association has not maintained a separate copy of the document. This subsection does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication.

(d) A unit owner or the unit owner's authorized representative

described by Subsection (b) must submit a written request for access or information under Subsection (b) by certified mail, with sufficient detail describing the association's books and records requested, to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 82.116. The request must contain an election either to inspect the books and records before obtaining copies or to have the association forward copies of the requested books and records and:

(1) if an inspection is requested, the association, on or before the 10th business day after the date the association receives the request, shall send written notice of dates during normal business hours that the unit owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the association; or

(2) if copies of identified books and records are requested, the association shall, to the extent those books and records are in the possession, custody, or control of the association, produce the requested books and records for the requesting party on or before the 10th business day after the date the association receives the request, except as otherwise provided by this section.

(e) If the association is unable to produce the books or records requested under Subsection (d) on or before the 10th business day after the date the association receives the request, the association must provide to the requestor written notice that:

(1) informs the requestor that the association is unable to produce the information on or before the 10th business day after the date the association received the request; and

(2) states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the 15th business day after the date notice under this subsection is given.

(f) If an inspection is requested or required, the inspection shall take place at a mutually agreed on time during normal business hours, and the requesting party shall identify the books and records for the association to copy and forward to the requesting party.

(g) An association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the association.

(h) An association board must adopt a records production and copying policy that prescribes the costs the association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor, and overhead but may not exceed costs that would be applicable for an item under 1 T.A.C. Section 70.3 for an item produced by the association and may not exceed actual costs for an item produced by a third party. The policy required by this subsection must be recorded as a dedicatory instrument in accordance with Section 202.006. An association may not charge a unit owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. A unit owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this subsection. The association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the association shall submit a final invoice to the unit owner on or before the 30th business day after the date the information is delivered. If the final invoice includes additional amounts due from the unit owner, the additional amounts, if not reimbursed to the association before the 30th business day after the date the invoice is sent to the unit owner, may be added to the unit owner's account as an assessment. If the estimated costs exceeded the final invoice amount, the unit owner is entitled to a refund, and the refund shall be issued to the unit owner not later than the 30th business day after the date the invoice is sent to the unit owner.

(i) An association must estimate costs under this section using amounts prescribed by the policy adopted under Subsection (h).

(j) Except as provided by Subsection (k) and to the extent the information is provided in the meeting minutes, the association is not required to release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual unit owner of an association, a unit owner's personal financial information, including records of payment or nonpayment of amounts due the association, a unit owner's contact information, a unit owner's address, or information related to an employee of the

association, including personnel files. Information may be released in an aggregate or summary manner that would not identify an individual unit owner.

(k) The books and records described by Subsection (j) shall be released or made available for inspection if:

(1) the express written approval of the unit owner whose records are the subject of the request for inspection is provided to the association; or

(2) a court orders the release of the books and records or orders that the books and records be made available for inspection.

(l) In addition to retaining records as necessary for compliance with Section 82.114, an association composed of eight or more units shall adopt and comply with a document retention policy that includes, at a minimum, the following requirements:

(1) certificates of formation, bylaws, dedicatory instruments, and all amendments to the certificates of formation, bylaws, and dedicatory instruments shall be retained permanently;

(2) financial books and records shall be retained for seven years;

(3) account records of current unit owners shall be retained for five years;

(4) contracts with a term of one year or more shall be retained for four years after the expiration of the contract term;

(5) minutes of meetings of the unit owners and the board shall be retained for seven years; and

(6) tax returns and audit records shall be retained for seven years.

(m) A member of an association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the condominium is located requesting relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

(1) a judgment ordering the association to release or allow access to the books or records; or

(2) a judgment against the association for court costs and attorney's fees incurred in connection with seeking a remedy under this section.

(n) If the association prevails in an action under Subsection (m), the association is entitled to a judgment for court costs and attorney's fees incurred by the association in connection with the action.

(o) On or before the 10th business day before the date a person brings an action against an association under this section, the person must send written notice to the association of the person's intent to bring the action. The notice must:

(1) be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the mailing address of the association or authorized representative as reflected on the most current management certificate filed under Section 82.116; and

(2) describe with sufficient detail the books and records being requested.

(p) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

Added by Acts 2021, 87th Leg., R.S., Ch. 555 (S.B. 318), Sec. 2, eff. September 1, 2021.

Sec. 82.115. ASSOCIATION AS TRUSTEE. A third person dealing with an association in the association's capacity as a trustee may assume without inquiry the existence of trust powers and their proper exercise by the association. A third person who lacks actual knowledge that an association is exceeding or improperly exercising its powers is fully protected in dealing with the association as if the association possessed and properly exercised the powers it purports to exercise. A third person is not bound to ensure the proper application of trust assets paid or delivered to an association in its capacity as trustee.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.116. MANAGEMENT CERTIFICATE. (a) An association shall record in each county in which any portion of the condominium is located a certificate, signed and acknowledged by an officer of the association, stating:

(1) the name of the condominium;

(2) the name of the association;

(3) the location of the condominium;

(4) the recording data for the declaration;

(5) the mailing address of the association, or the name and mailing address of the person or entity managing the association; and

(6) other information the association considers appropriate.

(a-1) The county clerk of each county in which a management certificate is filed as required by this section shall record the management certificate in the real property records of the county and index the document as a "Condominium Association Management Certificate."

(b) The association shall record a management certificate not later than the 30th day after the date the association has notice of a change in any information in a recorded certificate required by Subdivisions (a)(1)-(5).

(c) The association and its officers, directors, employees, and agents are not subject to liability to any person for delay or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 678 (H.B. 2075), Sec. 6, eff. September 1, 2013.

Sec. 82.117. OBLIGATIONS OF UNIT OWNERS. Without limiting the obligations of the unit owners and except as provided by the declaration, bylaws, rules of the association, or this chapter, the unit owner:

(1) shall pay assessments, interest, and other charges properly levied by the association against the owner or the owner's unit, and shall pay regular periodic assessments without demand by the association;

(2) shall comply with the declaration, bylaws, and rules of the association, including any amendments;

(3) shall pay for damage to the condominium caused by the negligence or wilful misconduct of the owner, an occupant of the

owner's unit, or the owner or occupant's family, guests, employees, contractors, agents, or invitees; and

(4) is liable to the association for violations of the declaration, bylaws, or rules of the association, including any amendments, by the owner, an occupant of the owner's unit, or the owner or occupant's family, guests, employees, agents, or invitees, and for costs incurred by the association to obtain compliance, including attorney's fees whether or not suit is filed.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.118. SERVICE OF PROCESS ON UNIT OWNERS IN CERTAIN MUNICIPALITIES; CHANGE OF ADDRESS REQUIRED. (a) A unit owner of a condominium located wholly or partly in a municipality with a population of more than 1.9 million may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure.

(b) Notwithstanding Subsection (a), a unit owner may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.

(c) Not later than the 90th day after the date a unit owner changes the unit owner's mailing address, the owner must provide written notice of the owner's new address to the appraisal district in which the condominium is located.

Added by Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 693 (H.B. 364), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 693 (H.B. 364), Sec. 3, eff. September 1, 2011.

Sec. 82.119. PROCEDURES FOR FILING SUIT OR INITIATING ARBITRATION PROCEEDINGS FOR DEFECT OR DESIGN CLAIMS FOR CERTAIN ASSOCIATIONS. (a) This section does not apply to an association with less than eight units.

(b) In addition to any preconditions to filing suit or initiating an arbitration proceeding included in the declaration, an association, before filing suit or initiating an arbitration proceeding to resolve a claim pertaining to the construction or design of a unit or the common elements, must:

(1) obtain an inspection and a written independent third-party report from a licensed professional engineer that:

(A) identifies the specific units or common elements subject to the claim;

(B) describes the present physical condition of the units or common elements subject to the claim; and

(C) describes any modifications, maintenance, or repairs to the units or common elements performed by the unit owners or the association; and

(2) obtain approval from unit owners holding more than 50 percent of the total votes allocated under the declaration, voting in person or by proxy as provided by Section 82.110, at a regular, annual, or special meeting called in accordance with the declaration or bylaws, as applicable.

(c) The association must provide written notice of the inspection to be conducted by the engineer to each party subject to a claim not later than the 10th day before the date the inspection occurs. The notice must:

(1) identify the party engaged to prepare the report required by Subsection (b)(1);

(2) identify the specific units or common elements to be inspected; and

(3) include the date and time the inspection will occur.

(d) Each party subject to a claim may attend the inspection conducted by the engineer, either personally or through an agent.

(e) Before providing the notice of the meeting under Subsection (f), an association must:

(1) on completion of the independent third-party report, provide the report to each unit owner and each party subject to a

claim; and

(2) allow each party subject to a claim at least 90 days after the date of completion of the report to inspect and correct any condition identified in the report.

(f) Not later than the 30th day before the date the meeting described by Subsection (b)(2) is held, the association must provide each unit owner with written notice of the date, time, and location of the meeting. The notice must also include:

(1) a description of the nature of the claim, the relief sought, the anticipated duration of prosecuting the claim, and the likelihood of success;

(2) a copy of the report required by Subsection (b)(1);

(3) a copy of the contract or proposed contract between the association and the attorney selected by the board to assert or provide assistance with the claim;

(4) a description of the attorney's fees, consultant fees, expert witness fees, and court costs, whether incurred by the association directly or for which the association may be liable as a result of prosecuting the claim;

(5) a summary of the steps previously taken by the association to resolve the claim;

(6) a statement that initiating a lawsuit or arbitration proceeding to resolve a claim may affect the market value, marketability, or refinancing of a unit while the claim is prosecuted; and

(7) a description of the manner in which the association proposes to fund the cost of prosecuting the claim.

(g) The notice required by Subsection (f) must be prepared and signed by a person who is not:

(1) the attorney who represents or will represent the association in the claim;

(2) a member of the law firm of the attorney who represents or will represent the association in the claim; or

(3) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the association in the claim.

(h) The period of limitations for filing a suit or initiating an arbitration proceeding for a claim described by Subsection (b) is tolled until the first anniversary of the date the procedures are initiated by the association under that subsection if the procedures

are initiated during the final year of the applicable period of limitation.

Added by Acts 2015, 84th Leg., R.S., Ch. 730 (H.B. 1455), Sec. 1, eff. September 1, 2015.

Sec. 82.120. BINDING ARBITRATION FOR CERTAIN CLAIMS. (a) A declaration may provide that a claim pertaining to the construction or design of a unit or the common elements must be resolved by binding arbitration and may provide for a process by which the claim is resolved.

(b) An amendment to the declaration that modifies or removes the arbitration requirement or the process associated with resolution of a claim may not apply retroactively to a claim regarding the construction or design of units or common elements based on an alleged act or omission that occurred before the date of the amendment.

Added by Acts 2015, 84th Leg., R.S., Ch. 730 (H.B. 1455), Sec. 1, eff. September 1, 2015.

Sec. 82.121. POSSESSION OF FIREARM OR FIREARM AMMUNITION ON CONDOMINIUM PROPERTY. (a) Unless possession of a firearm or firearm ammunition on condominium property is prohibited by state or federal law, a condominium unit owner, or a tenant or guest of a condominium unit owner, or a guest of a tenant of a condominium unit owner may not be prohibited from lawfully possessing, carrying, transporting, or storing a firearm, any part of a firearm, or firearm ammunition:

(1) in the condominium unit owner's unit;

(2) in a vehicle located in a parking area provided for the residents or guests of the condominium property; or

(3) in other common element locations as necessary to:

(A) enter or exit the condominium property;

(B) enter or exit the condominium unit owner's unit; or

(C) enter or exit a vehicle on the condominium property or located in a parking area provided for residents or guests of the condominium property.

(b) This section applies notwithstanding any provision of a dedicatory instrument to the contrary and regardless of the date of

the provision's adoption.

Added by Acts 2019, 86th Leg., R.S., Ch. 39 (H.B. 302), Sec. 5, eff. September 1, 2019.

SUBCHAPTER D. PROTECTION OF PURCHASERS

Sec. 82.151. APPLICABILITY. (a) This subchapter applies to each unit subject to this chapter, except as provided by Subsection (b) or as modified or waived by the agreement of a purchaser of a unit in a condominium in which all units are restricted to nonresidential use.

(b) A condominium information statement or resale certificate need not be prepared or delivered in the case of:

(1) a gratuitous disposition of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure; or

(5) a disposition that may be canceled at any time, for any reason, and without penalty.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.152. LIABILITY FOR CONDOMINIUM INFORMATION STATEMENT. (a) Except as provided by Subsection (b), a declarant shall prepare a condominium information statement before offering to the public any interest in a unit.

(b) A declarant may transfer responsibility for preparation of all or a part of the condominium information statement to a successor declarant or to a person in the business of selling real property who intends to offer units in the condominium for the person's own account. On such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to prepare a condominium information statement.

(c) A declarant or other person in the business of selling real property who offers a unit for the person's own account to a purchaser shall provide a purchaser of a unit with a copy of the condominium information statement, as amended, before conveyance of the unit or the date of a contract of sale, whichever is earlier.

(d) The person preparing all or part of the condominium information statement is liable for any false or misleading statement or for any omission of material fact in the portion of the condominium information statement that the person prepared. If a declarant did not prepare any part of a condominium information statement that the declarant delivers, the declarant is not liable for any false or misleading statement or any omission of material fact unless the declarant actually knew or should have known of the statement or omission.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.153. CONDOMINIUM INFORMATION STATEMENTS IN GENERAL. (a) A condominium information statement must contain or accurately disclose:

(1) the name and principal address of the declarant and of the condominium;

(2) a general description of the condominium that includes the types of units and the maximum number of units;

(3) the minimum and maximum number of additional units, if any, that may be included in the condominium;

(4) a brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(5) copies of the declaration, articles of incorporation of the association, the bylaws, any rules of the association, and amendments to any of them, and copies of leases and contracts, other than loan documents, that are required by the declarant to be signed by purchasers at closing;

(6) a projected or pro forma budget for the association that complies with Subsection (b) for the first fiscal year of the association following the date of the first conveyance to a purchaser, identification of the person who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors;

(7) a general description of each lien, lease, or encumbrance on or affecting the title to the condominium after conveyance by the declarant;

(8) a copy of each written warranty provided by the

declarant;

(9) a description of any unsatisfied judgments against the association and any pending suits to which the association is a party or which are material to the land title and construction of the condominium of which a declarant has actual knowledge;

(10) a general description of the insurance coverage provided for the benefit of unit owners;

(11) current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium; and

(12) for a condominium located wholly or partly in a municipality with a population of more than 1.9 million a statement that a unit owner:

(A) as an alternative to personal service, may be served with process by the municipality or the municipality's agent for a judicial or administrative proceeding initiated by the municipality and directly related to the unit owner's property interest in the condominium by serving the unit owner at the unit owner's last known address, according to the records of the appraisal district in which the condominium is located, by any means permitted by Rule 21a, Texas Rules of Civil Procedure;

(B) shall notify the appraisal district in writing of a change in the unit owner's mailing address not later than the 90th day after the date the unit owner changes the address; and

(C) may not offer proof in the judicial or administrative proceeding, or in a subsequent related proceeding, that otherwise proper service by mail of the notice was not received not later than three days after the date the notice was deposited in a post office or official depository under the care and custody of the United States Postal Service.

(b) A budget under Subsection (a)(6) must be prepared in accordance with generally accepted accounting principles and a consideration of the physical condition of the condominium and be based on assumptions that, to the best of the declarant's knowledge and belief, are reasonable. The budget must include:

(1) a statement of the amount included, or a statement that no amount is included, in the budget as a reserve; and

(2) the projected monthly common expense assessment for each type of unit.

(c) A declarant shall promptly amend the condominium

information statement to reflect a material and substantial change in its contents. If the change may adversely affect a prospective purchaser who has received a condominium information statement, the declarant shall furnish a copy of the amendment to the prospective purchaser before closing.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1323 (H.B. 3128), Sec. 3, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 693 (H.B. 364), Sec. 4, eff. September 1, 2011.

Sec. 82.154. CONDOMINIUMS WITH CONVERSION BUILDINGS. If a building contains units that may be occupied for residential use, the condominium information statement of a condominium containing any conversion building must additionally contain:

(1) a dated statement by the declarant, based on a report by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) a dated statement by the declarant of the expected useful life of each item reported in Subdivision (1) or a statement that no representations are made in that regard; and

(3) a list of violations of building code or other governmental regulations of which the declarant has received notice and that have not been cured, together with the estimated cost of curing those violations.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.155. CONDOMINIUM SECURITIES. A declarant satisfies all requirements relating to preparation of a condominium information statement if an interest in the condominium is currently registered with the Securities and Exchange Commission of the United States and if the declarant delivers to the purchaser a copy of the public offering statement filed with the commission.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.156. PURCHASER'S RIGHT TO CANCEL. (a) If a purchaser of a unit from a unit owner other than a declarant has not received from the seller the declaration, bylaws, and association rules required by Section 82.157 before the purchaser executes a contract of sale or if the contract does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of those documents and recommending that the purchaser read those documents before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives those documents. If a purchaser has not received a resale certificate before executing a contract of sale, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the resale certificate or executes a waiver under Section 82.157, whichever occurs first.

(b) If a purchaser from a declarant has not received the condominium information statement before the purchaser executes a contract of sale or if a contract does not contain an underlined or bold-print provision acknowledging the purchaser's receipt of the condominium information statement and recommending that the purchaser read the condominium information statement before executing the contract, the purchaser may cancel the contract before the sixth day after the date the purchaser receives the condominium information statement.

(c) If a purchaser elects to cancel a contract under Subsection (a) or (b), the cancellation must be by hand-delivering written notice of cancellation to the declarant or selling unit owner or by mailing notice of cancellation by certified United States mail, return receipt requested, to the offeror or the offeror's agent for service of process within the five-day cancellation period. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded.

(d) A selling unit owner may not require a purchaser to close until the purchaser is given the declaration, bylaws, and any association rules. A declarant may not require a purchaser to close until a condominium information statement has been furnished to the purchaser.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.157. RESALE OF UNIT. (a) Except as provided by Subsection (c), if a unit owner other than a declarant intends to sell a unit, before executing a contract or conveying the unit, the unit owner must furnish to the purchaser a current copy of the declaration, bylaws, any association rules, and a resale certificate that must have been prepared not earlier than three months before the date it is delivered to the purchaser. The resale certificate must be issued by the association and must contain the current operating budget of the association and statements of:

(1) any right of first refusal or other restraint contained in the declaration that restricts the right to transfer a unit;

(2) the amount of the periodic common expense assessment and the unpaid common expenses or special assessments currently due and payable from the selling unit owner;

(3) other unpaid fees or amounts payable to the association by the selling unit owner;

(4) capital expenditures, if any, approved by the association for the next 12 months;

(5) the amount of reserves, if any, for capital expenditures and of portions of those reserves designated by the association for a specified project;

(6) any unsatisfied judgments against the association;

(7) the nature of any pending suits against the association;

(8) insurance coverage provided for the benefit of unit owners;

(9) whether the board has knowledge that any alterations or improvements to the unit or to the limited common elements assigned to that unit violate the declaration, bylaws, or association rules;

(10) whether the board has received notice from a governmental authority concerning violations of health or building codes with respect to the unit, the limited common elements assigned to that unit, or any other portion of the condominium;

(11) the remaining term of any leasehold estate that affects the condominium and the provisions governing an extension or renewal of the lease;

(12) the name, mailing address, and telephone number of the association's managing agent, if any;

(13) the association's current operating budget and balance sheet; and

(14) all fees payable to the association or an agent of the association that are associated with the transfer of ownership, including a description of each fee, to whom the fee is paid, and the amount of the fee.

(b) Not later than the 10th day after the date of receiving a written request by a unit owner, an association shall furnish to the selling unit owner or the owner's agent a resale certificate signed and dated by an officer or authorized agent of the association containing the information required by Subsection (a). A selling unit owner or the owner's agent is not liable to the purchaser for erroneous information provided by the association in the certificate. If an association does not furnish a resale certificate or any information required in the certificate within the 10-day period, the unit owner may provide the purchaser with a sworn affidavit signed by the unit owner in lieu of the certificate. An affidavit must state that the unit owner requested information from the association concerning its financial condition, as required by this section, and that the association did not timely provide a resale certificate or the information required in the certificate. If a unit owner has furnished an affidavit to a purchaser, the unit owner and the purchaser may agree in writing to waive the requirement to furnish a resale certificate. The association is not liable to a selling unit owner for delay or failure to furnish a resale certificate, and an officer or agent of the association is not liable for a delay or failure to furnish a certificate unless the officer or agent wilfully refuses to furnish the certificate or is grossly negligent in not furnishing the resale certificate. Failure to provide a resale certificate does not void a deed to a purchaser.

(c) If a properly executed resale certificate incorrectly states the total of delinquent sums owed by the selling unit owner to the association, the purchaser is not liable for payment of additional delinquencies that are unpaid on the date the certificate is prepared and that exceed the total sum stated in the certificate. A unit owner or the owner's agent is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner.

(d) A resale certificate does not affect:

(1) an association's right to recover debts or claims that

arise or become due after the date the certificate is prepared; or

(2) an association's lien on a unit securing payment of future assessments.

(e) A purchaser, lender, or title insurer who relies on a resale certificate is not liable for any debt or claim that is not disclosed in the certificate. An association may not deny the validity of any statement in the certificate.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1183 (S.B. 1168), Sec. 1, eff. September 1, 2015.

Sec. 82.158. ESCROW OF DEPOSITS. A deposit made in connection with the purchase or reservation of a unit from a declarant shall be placed in escrow and held in this state in an account designated for that purpose by a real estate broker, an attorney, a title insurance company licensed in this state, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until delivered to the declarant at closing, delivered to the declarant because of the purchaser's default under a contract to purchase the unit, or refunded to the purchaser. Escrow deposits may be placed in interest-bearing accounts, and the interest is payable as may be agreed in writing between the declarant and the purchaser.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.159. RELEASE OF LIENS. Before conveying real property to an association, a declarant shall have that real property released from all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of the owners' units, and all other liens on that real property unless the condominium information statement describes certain real property that may be conveyed subject to liens in specified amounts.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.160. CONVERSION BUILDINGS. (a) A declarant of a condominium containing a conversion building shall give each residential tenant or subtenant in possession of a portion of a conversion building notice of the conversion at least 60 days before the date the declarant will require the tenant or subtenant in possession to vacate. The notice must state generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by certified United States mail, return receipt requested, to the tenant or subtenant at the address of the unit or any other mailing address provided by the tenant or subtenant. The declarant may not require a tenant or subtenant to vacate on less than 60 days' notice, except for nonpayment of rent, waste, or conduct that violates the rental agreement or is illegal, and the terms of a tenancy may not be altered during that period. Failure of a declarant to give notice as required by this section is a defense to an action for possession.

(b) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with Section 24.005, the notice also constitutes legal notice to vacate on that date for purposes of Section 24.005. A declarant may not terminate a lease in violation of its terms.

(c) Unless expressly authorized by a rental agreement, a declarant may not make substantial alterations to the interior of a leased premises for purposes of a condominium conversion.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.161. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION AND ATTORNEY'S FEES. (a) If a declarant or any other person subject to this chapter violates this chapter, the declaration, or the bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief.

(b) The prevailing party in an action to enforce the declaration, bylaws, or rules is entitled to reasonable attorney's fees and costs of litigation from the nonprevailing party.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.162. LABELING OF PROMOTIONAL MATERIAL. If any

improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan or is to be located within a portion of a condominium with respect to which the declarant has reserved a development right, no promotional material that describes or depicts the improvement may be displayed or delivered to prospective purchasers unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.163. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE. The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans. The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created under this chapter.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

Sec. 82.164. LOANS AS ELIGIBLE INVESTMENTS. (a) A loan on a condominium unit and the undivided interest in the common elements is an eligible investment for a bank, savings and loan association, trust company, life insurance company, or other lending institution that is authorized to make real property loans, and for an administrator, guardian, executor, trustee, individual, partnership, corporation, or other fiduciary that is authorized to make real property loans. In determining eligibility, the existence of a prior lien for taxes, assessments, or other similar charges not yet delinquent may not be considered in determining whether a mortgage or deed of trust on the security is a first lien. This section does not change any provision of law that would otherwise be applicable that limits mortgage investments based on a special fraction or percentage of the value of the mortgaged property.

(b) An association's lien for assessments does not make a condominium unit ineligible for loans for which the unit would otherwise qualify.

Added by Acts 1993, 73rd Leg., ch. 244, Sec. 1, eff. Jan. 1, 1994.

TITLE 8. LANDLORD AND TENANT

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE TO LANDLORDS AND TENANTS

Sec. 91.001. NOTICE FOR TERMINATING CERTAIN TENANCIES. (a) A monthly tenancy or a tenancy from month to month may be terminated by the tenant or the landlord giving notice of termination to the other.

(b) If a notice of termination is given under Subsection (a) and if the rent-paying period is at least one month, the tenancy terminates on whichever of the following days is the later:

(1) the day given in the notice for termination; or

(2) one month after the day on which the notice is given.

(c) If a notice of termination is given under Subsection (a) and if the rent-paying period is less than a month, the tenancy terminates on whichever of the following days is the later:

(1) the day given in the notice for termination; or

(2) the day following the expiration of the period beginning on the day on which notice is given and extending for a number of days equal to the number of days in the rent-paying period.

(d) If a tenancy terminates on a day that does not correspond to the beginning or end of a rent-paying period, the tenant is liable for rent only up to the date of termination.

(e) Subsections (a), (b), (c), and (d) do not apply if:

(1) a landlord and a tenant have agreed in an instrument signed by both parties on a different period of notice to terminate the tenancy or that no notice is required; or

(2) there is a breach of contract recognized by law.

Acts 1983, 68th Leg., p. 3625, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 200, Sec. 3, eff. Aug. 26, 1985.

Sec. 91.003. TERMINATION OF LEASE BECAUSE OF PUBLIC INDECENCY CONVICTION. (a) A landlord may terminate a lease executed or renewed after June 15, 1981, if:

(1) the tenant or occupant of the leasehold uses the property for an activity for which the tenant or occupant or for which an agent or employee of the tenant or occupant is convicted under Chapter 43, Penal Code, as amended; and

(2) the convicted person has exhausted or abandoned all

avenues of direct appeal from the conviction.

(b) The fee owner or an intermediate lessor terminates the lease by giving written notice of termination to the tenant or occupant within six months after the right to terminate arises under this section. The right to possess the property reverts to the landlord on the 10th day after the date the notice is given.

(c) This section applies regardless of a term of the lease to the contrary.

Acts 1983, 68th Leg., p. 3627, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 91.004. LANDLORD'S BREACH OF LEASE; LIEN. (a) If the landlord of a tenant who is not in default under a lease fails to comply in any respect with the lease agreement, the landlord is liable to the tenant for damages resulting from the failure.

(b) To secure payment of the damages, the tenant has a lien on the landlord's nonexempt property in the tenant's possession and on the rent due to the landlord under the lease.

Acts 1983, 68th Leg., p. 3627, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 91.005. SUBLETTING PROHIBITED. During the term of a lease, the tenant may not rent the leasehold to any other person without the prior consent of the landlord.

Acts 1983, 68th Leg., p. 3627, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 91.006. LANDLORD'S DUTY TO MITIGATE DAMAGES. (a) A landlord has a duty to mitigate damages if a tenant abandons the leased premises in violation of the lease.

(b) A provision of a lease that purports to waive a right or to exempt a landlord from a liability or duty under this section is void.

Added by Acts 1997, 75th Leg., ch. 1205, Sec. 8, eff. Sept. 1, 1997.

CHAPTER 92. RESIDENTIAL TENANCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS. Except as otherwise provided by this chapter, in this chapter:

(1) "Dwelling" means one or more rooms rented for use as a permanent residence under a single lease to one or more tenants.

(2) "Landlord" means the owner, lessor, or sublessor of a dwelling, but does not include a manager or agent of the landlord unless the manager or agent purports to be the owner, lessor, or sublessor in an oral or written lease.

(3) "Lease" means any written or oral agreement between a landlord and tenant that establishes or modifies the terms, conditions, rules, or other provisions regarding the use and occupancy of a dwelling.

(4) "Normal wear and tear" means deterioration that results from the intended use of a dwelling, including, for the purposes of Subchapters B and D, breakage or malfunction due to age or deteriorated condition, but the term does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, equipment, or chattels by the tenant, by a member of the tenant's household, or by a guest or invitee of the tenant.

(5) "Premises" means a tenant's rental unit, any area or facility the lease authorizes the tenant to use, and the appurtenances, grounds, and facilities held out for the use of tenants generally.

(6) "Tenant" means a person who is authorized by a lease to occupy a dwelling to the exclusion of others and, for the purposes of Subchapters D, E, and F, who is obligated under the lease to pay rent.

Acts 1983, 68th Leg., p. 3630, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 12, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 357, Sec. 1, eff. Sept. 1, 1993.

Sec. 92.002. APPLICATION. This chapter applies only to the relationship between landlords and tenants of residential rental property.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.003. LANDLORD'S AGENT FOR SERVICE OF PROCESS. (a) In a lawsuit by a tenant under either a written or oral lease for a dwelling or in a suit to enforce a legal obligation of the owner as landlord of the dwelling, the owner's agent for service of process is determined according to this section.

(b) If written notice of the name and business street address of the company that manages the dwelling has been given to the tenant, the management company is the owner's sole agent for service of process.

(c) If Subsection (b) does not apply, the owner's management company, on-premise manager, or rent collector serving the dwelling is the owner's authorized agent for service of process unless the owner's name and business street address have been furnished in writing to the tenant.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.004. HARASSMENT. A party who files or prosecutes a suit under Subchapter B, D, E, or F in bad faith or for purposes of harassment is liable to the defendant for one month's rent plus $100 and for attorney's fees.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.005. ATTORNEY'S FEES. (a) A party who prevails in a suit brought under this subchapter or Subchapter B, E, or F may recover the party's costs of court and reasonable attorney's fees in relation to work reasonably expended.

(b) This section does not authorize a recovery of attorney's fees in an action brought under Subchapter E or F for damages that relate to or arise from property damage, personal injury, or a criminal act.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 2, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1439, Sec. 2, eff. Sept. 1, 1999.

Sec. 92.006. WAIVER OR EXPANSION OF DUTIES AND REMEDIES. (a)

A landlord's duty or a tenant's remedy concerning security deposits, security devices, the landlord's disclosure of ownership and management, or utility cutoffs, as provided by Subchapter C, D, E, or G, respectively, may not be waived. A landlord's duty to install a smoke alarm under Subchapter F may not be waived, nor may a tenant waive a remedy for the landlord's noninstallation or waive the tenant's limited right of installation and removal. The landlord's duty of inspection and repair of smoke alarms under Subchapter F may be waived only by written agreement.

(b) A landlord's duties and the tenant's remedies concerning security devices, the landlord's disclosure of ownership and management, or smoke alarms, as provided by Subchapter D, E, or F, respectively, may be enlarged only by specific written agreement.

(c) A landlord's duties and the tenant's remedies under Subchapter B, which covers conditions materially affecting the physical health or safety of the ordinary tenant, may not be waived except as provided in Subsections (d), (e), and (f) of this section.

(d) A landlord and a tenant may agree for the tenant to repair or remedy, at the landlord's expense, any condition covered by Subchapter B.

(e) A landlord and a tenant may agree for the tenant to repair or remedy, at the tenant's expense, any condition covered by Subchapter B if all of the following conditions are met:

(1) at the beginning of the lease term the landlord owns only one rental dwelling;

(2) at the beginning of the lease term the dwelling is free from any condition which would materially affect the physical health or safety of an ordinary tenant;

(3) at the beginning of the lease term the landlord has no reason to believe that any condition described in Subdivision (2) of this subsection is likely to occur or recur during the tenant's lease term or during a renewal or extension; and

(4)(A) the lease is in writing;

(B) the agreement for repairs by the tenant is either underlined or printed in boldface in the lease or in a separate written addendum;

(C) the agreement is specific and clear; and

(D) the agreement is made knowingly, voluntarily, and for consideration.

(f) A landlord and tenant may agree that, except for those

conditions caused by the negligence of the landlord, the tenant has the duty to pay for repair of the following conditions that may occur during the lease term or a renewal or extension:

(1) damage from wastewater stoppages caused by foreign or improper objects in lines that exclusively serve the tenant's dwelling;

(2) damage to doors, windows, or screens; and

(3) damage from windows or doors left open.

This subsection shall not affect the landlord's duty under Subchapter B to repair or remedy, at the landlord's expense, wastewater stoppages or backups caused by deterioration, breakage, roots, ground conditions, faulty construction, or malfunctioning equipment. A landlord and tenant may agree to the provisions of this subsection only if the agreement meets the requirements of Subdivision (4) of Subsection (e) of this section.

(g) A tenant's right to vacate a dwelling and avoid liability under Section 92.016 or 92.017 may not be waived by a tenant or a landlord, except as provided by those sections.

(h) A tenant's right to a jury trial in an action brought under this chapter may not be waived in a lease or other written agreement.

Acts 1983, 68th Leg., p. 3631, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 1, eff. Aug. 28, 1989. Amended by:

Acts 2005, 79th Leg., Ch. 348 (S.B. 1186), Sec. 2, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 257 (H.B. 1168), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 3, eff. January 1, 2016.

Sec. 92.007. VENUE. Venue for an action under this chapter is governed by Section 15.0115, Civil Practice and Remedies Code.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 332, Sec. 1, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 650, Sec. 2, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 138, Sec. 9, eff. Aug. 28, 1995.

Sec. 92.008. INTERRUPTION OF UTILITIES. (a) A landlord or a landlord's agent may not interrupt or cause the interruption of utility service paid for directly to the utility company by a tenant unless the interruption results from bona fide repairs, construction, or an emergency.

(b) Except as provided by this section, a landlord may not interrupt or cause the interruption of water, wastewater, gas, or electric service furnished to a tenant by the landlord as an incident of the tenancy or by other agreement unless the interruption results from bona fide repairs, construction, or an emergency.

(c) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1112, Sec. 3, eff. January 1, 2010.

(d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1112, Sec. 3, eff. January 1, 2010.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1112, Sec. 3, eff. January 1, 2010.

(f) If a landlord or a landlord's agent violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease; and

(2) in addition to other remedies available under law, recover from the landlord an amount equal to the sum of the tenant's actual damages, one month's rent plus $1,000, reasonable attorney's fees, and court costs, less any delinquent rents or other sums for which the tenant is liable to the landlord.

(g) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

(h) Subject to Subsections (i), (j), (k), (m), and (o), a landlord who submeters electricity or allocates or prorates nonsubmetered master metered electricity may interrupt or cause the interruption of electric service for nonpayment by the tenant of an electric bill issued to the tenant if:

(1) the landlord's right to interrupt electric service is provided by a written lease entered into by the tenant;

(2) the tenant's electric bill is not paid on or before the 12th day after the date the electric bill is issued;

(3) advance written notice of the proposed interruption is delivered to the tenant by mail or hand delivery separately from any other written content that:

(A) prominently displays the words "electricity

termination notice" or similar language underlined or in bold;

(B) includes:

(i) the date on which the electric service will be interrupted;

(ii) a location where the tenant may go during the landlord's normal business hours to make arrangements to pay the bill to avoid interruption of electric service;

(iii) the amount that must be paid to avoid interruption of electric service;

(iv) a statement providing that when the tenant makes a payment to avoid interruption of electric service, the landlord may not apply that payment to rent or other amounts owed under the lease;

(v) a statement providing that the landlord may not evict a tenant for failure to pay an electric bill when the landlord has interrupted the tenant's electric service unless the tenant fails to pay for the electric service after the electric service has been interrupted for at least two days, not including weekends or state or federal holidays; and

(vi) a description of the tenant's rights under Subsection (j) to avoid interruption of electric service if the interruption will cause a person residing in the tenant's dwelling to become seriously ill or more seriously ill; and

(C) is delivered not earlier than the first day after the bill is past due or later than the fifth day before the interruption date stated in the notice; and

(4) the landlord, at the same time the service is interrupted, hand delivers or places on the tenant's front door a written notice that:

(A) prominently displays the words "electricity termination notice" or similar language underlined or in bold; and

(B) includes:

(i) the date the electric service has been interrupted;

(ii) a location where the tenant may go during the landlord's normal business hours to make arrangements to pay the bill to reestablish interrupted electric service;

(iii) the amount that must be paid to reestablish electric service;

(iv) a statement providing that when the tenant

makes a payment to reestablish electric service, a landlord may not apply that payment to rent or other amounts owed under the lease;

(v) a statement providing that the landlord may not evict a tenant for failure to pay an electric bill when the landlord has interrupted the tenant's electric service unless the tenant fails to pay for the electric service after the electric service has been interrupted for at least two days, not including weekends or state or federal holidays; and

(vi) a description of the tenant's rights under Subsection (j) to avoid interruption of electric service if the interruption will cause a person residing in the tenant's dwelling to become seriously ill or more seriously ill.

(i) Unless a dangerous condition exists or the tenant requests disconnection, a landlord may not interrupt or cause the interruption of electric service under Subsection (h) on a day:

(1) on which the landlord or a representative of the landlord is not available to collect electric bill payments and reestablish electric service;

(2) that immediately precedes a day described by Subdivision (1); or

(3) on which:

(A) the previous day's highest temperature did not exceed 32 degrees Fahrenheit and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports; or

(B) the National Weather Service issues a heat advisory for a county in which the premises is located or has issued such an advisory on one of the two preceding days.

(j) A landlord may not interrupt or cause the interruption of electric service under Subsection (h) of a tenant who, before the interruption date specified in the notice required by Subsection (h)(3), has:

(1) established that the interruption will cause a person residing in the tenant's dwelling to become seriously ill or more seriously ill by having a physician, nurse, nurse practitioner, or other similar licensed health care practitioner attending to the person who is or may become ill provide a written statement to the landlord or a representative of the landlord stating that the person will become seriously ill or more seriously ill if the electric service is interrupted; and

(2) entered into a deferred payment plan that complies with Subsection (l).

(k) If a tenant has established, in accordance with Subsection (j), the circumstances necessary to avoid electric service interruption under that subsection, the landlord may not interrupt or cause the interruption of the tenant's electric service under Subsection (h) before:

(1) the 63rd day after the date those circumstances are established; or

(2) an earlier date agreed to by the landlord and the tenant.

(l) A deferred payment plan for the purposes of this section must be in writing. The deferred payment plan must allow the tenant to pay the outstanding electric bill in installments that extend beyond the due date of the next electric bill and must provide that the delinquent amount may be paid in equal installments over a period equal to at least three electric service billing cycles.

(m) A landlord may not interrupt or cause the interruption of electric service under Subsection (h) to a tenant who receives energy assistance for a billing period during which the landlord receives a pledge, letter of intent, purchase order, or other notification that the energy assistance provider is forwarding sufficient payment to continue the electric service.

(n) If a delinquent electric bill is paid, or a deferred payment plan is entered into, during normal business hours, the landlord shall reconnect the tenant's electric service within two hours of payment or entry into the deferred payment plan.

(o) A landlord may not interrupt or cause the interruption of electric service under Subsection (h) for any of the following reasons:

(1) a delinquency in payment for electric service furnished to a previous tenant;

(2) failure to pay non-electric bills, rent, or other fees;

(3) failure to pay electric bills that are six or more months delinquent; or

(4) failure to pay an electric bill disputed by the tenant, unless the landlord has conducted an investigation as required by the particular case and reported the results in writing to the tenant.

(p) A landlord who provides notice in accordance with Subsection (h) may not apply a payment made by a tenant to avoid

interruption of electric service or reestablish electric service to rent or any other amounts owed under the lease.

(q) The landlord may not evict a tenant for failure to pay an electric bill when the landlord has interrupted the tenant's electric service under Subsection (h) unless the tenant fails to pay for the electric service after the electric service has been interrupted for at least two days, not including weekends or state or federal holidays.

(r) Subject to this subsection, a reconnection fee may be applied if electric service to the tenant is disconnected for nonpayment of bills under Subsection (h). The reconnection fee must be computed based on the average cost to the landlord for the expenses associated with the reconnection, but may not exceed $10. A reconnection fee may not be applied unless agreed to by the tenant in a written lease that states the exact dollar amount of the reconnection fee. A fee may not be applied to a deferred payment plan entered into under this section.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 4, eff. Aug. 26, 1985. Renumbered from Sec. 91.002 by Acts 1987, 70th Leg., ch. 683, Sec. 2, eff. Aug. 31, 1987. Amended as Sec. 91.002 by Acts 1987, 70th Leg., ch. 826, Sec. 1, eff. Aug. 31, 1987. Renumbered from Sec. 91.002 and amended by Acts 1989, 71st Leg., ch. 689, Sec. 1, 3, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 869, Sec. 1, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 952, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1112 (H.B. 882), Sec. 1, eff. January 1, 2010.

Acts 2009, 81st Leg., R.S., Ch. 1112 (H.B. 882), Sec. 3, eff. January 1, 2010.

Acts 2013, 83rd Leg., R.S., Ch. 899 (H.B. 1086), Sec. 1, eff. September 1, 2013.

Sec. 92.0081. REMOVAL OF PROPERTY AND EXCLUSION OF RESIDENTIAL TENANT. (a) A landlord may not remove a door, window, or attic hatchway cover or a lock, latch, hinge, hinge pin, doorknob, or other mechanism connected to a door, window, or attic hatchway cover from premises leased to a tenant or remove furniture, fixtures, or

appliances furnished by the landlord from premises leased to a tenant unless the landlord removes the item for a bona fide repair or replacement. If a landlord removes any of the items listed in this subsection for a bona fide repair or replacement, the repair or replacement must be promptly performed.

(b) A landlord may not intentionally prevent a tenant from entering the leased premises except by judicial process unless the exclusion results from:

(1) bona fide repairs, construction, or an emergency;

(2) removing the contents of premises abandoned by a tenant; or

(3) changing the door locks on the door to the tenant's individual unit of a tenant who is delinquent in paying at least part of the rent.

(c) If a landlord or a landlord's agent changes the door lock of a tenant who is delinquent in paying rent, the landlord or the landlord's agent must place a written notice on the tenant's front door stating:

(1) an on-site location where the tenant may go 24 hours a day to obtain the new key or a telephone number that is answered 24 hours a day that the tenant may call to have a key delivered within two hours after calling the number;

(2) the fact that the landlord must provide the new key to the tenant at any hour, regardless of whether or not the tenant pays any of the delinquent rent; and

(3) the amount of rent and other charges for which the tenant is delinquent.

(d) A landlord may not intentionally prevent a tenant from entering the leased premises under Subsection (b)(3) unless:

(1) the landlord's right to change the locks because of a tenant's failure to timely pay rent is placed in the lease;

(2) the tenant is delinquent in paying all or part of the rent; and

(3) the landlord has locally mailed not later than the fifth calendar day before the date on which the door locks are changed or hand-delivered to the tenant or posted on the inside of the main entry door of the tenant's dwelling not later than the third calendar day before the date on which the door locks are changed a written notice stating:

(A) the earliest date that the landlord proposes to

change the door locks;

(B) the amount of rent the tenant must pay to prevent changing of the door locks;

(C) the name and street address of the individual to whom, or the location of the on-site management office at which, the delinquent rent may be discussed or paid during the landlord's normal business hours; and

(D) in underlined or bold print, the tenant's right to receive a key to the new lock at any hour, regardless of whether the tenant pays the delinquent rent.

(e) A landlord may not change the locks on the door of a tenant's dwelling under Subsection (b)(3) on a day, or on a day immediately before a day, on which the landlord or other designated individual is not available, or on which any on-site management office is not open, for the tenant to tender the delinquent rent.

(e-1) A landlord who changes the locks or otherwise prevents a tenant from entering the tenant's individual rental unit may not change the locks or otherwise prevent a tenant from entering a common area of residential rental property.

(f) A landlord who intentionally prevents a tenant from entering the tenant's dwelling under Subsection (b)(3) must provide the tenant with a key to the changed lock on the dwelling without regard to whether the tenant pays the delinquent rent.

(g) If a landlord arrives at the dwelling in a timely manner in response to a tenant's telephone call to the number contained in the notice as described by Subsection (c)(1) and the tenant is not present to receive the key to the changed lock, the landlord shall leave a notice on the front door of the dwelling stating the time the landlord arrived with the key and the street address to which the tenant may go to obtain the key during the landlord's normal office hours.

(h) If a landlord violates this section, the tenant may:

(1) either recover possession of the premises or terminate the lease; and

(2) recover from the landlord a civil penalty of one month's rent plus $1,000, actual damages, court costs, and reasonable attorney's fees in an action to recover property damages, actual expenses, or civil penalties, less any delinquent rent or other sums for which the tenant is liable to the landlord.

(i) If a landlord violates Subsection (f), the tenant may

recover, in addition to the remedies provided by Subsection (h), an additional civil penalty of one month's rent.

(j) A provision of a lease that purports to waive a right or to exempt a party from a liability or duty under this section is void.

(k) A landlord may not change the locks on the door of a tenant's dwelling under Subsection (b)(3):

(1) when the tenant or any other legal occupant is in the dwelling; or

(2) more than once during a rental payment period.

(l) This section does not affect the ability of a landlord to pursue other available remedies, including the remedies provided by Chapter 24.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 200, Sec. 4, eff. Aug. 26, 1985. Renumbered from Sec. 91.002 by Acts 1987, 70th Leg., ch. 683, Sec. 2, eff. Aug. 31, 1987. Amended as Sec. 91.002 by Acts 1987, 70th Leg., ch. 826, Sec. 1, eff. Aug. 31, 1987. Renumbered from Sec. 91.002 and amended by Acts 1989, 71st Leg., ch. 689, Sec. 1, 3, eff. Sept. 1, 1989. Redesignated from Property Code Sec. 92.008(b) to (f) and amended by Acts 1995, 74th Leg., ch. 869, Sec. 1, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 952, Sec. 1, Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 1, eff. January 1, 2008.

Sec. 92.009. RESIDENTIAL TENANT'S RIGHT OF REENTRY AFTER UNLAWFUL LOCKOUT. (a) If a landlord has locked a tenant out of leased premises in violation of Section 92.0081, the tenant may recover possession of the premises as provided by this section.

(b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint for reentry, specifying the facts of the alleged unlawful lockout by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful lockout.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful lockout has likely occurred, the justice may issue, ex parte, a writ of reentry that entitles the tenant to immediate and temporary possession of the premises, pending

a final hearing on the tenant's sworn complaint for reentry.

(d) The writ of reentry must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer action. A sheriff or constable may use reasonable force in executing a writ of reentry under this section.

(e) The landlord is entitled to a hearing on the tenant's sworn complaint for reentry. The writ of reentry must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) If the landlord fails to request a hearing on the tenant's sworn complaint for reentry before the eighth day after the date of service of the writ of reentry on the landlord under Subsection (d), a judgment for court costs may be rendered against the landlord.

(g) A party may appeal from the court's judgment at the hearing on the sworn complaint for reentry in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) If a writ of possession is issued, it supersedes a writ of reentry.

(i) If the landlord or the person on whom a writ of reentry is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served, under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the reentry action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why he should not be adjudged in contempt of court. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may commit the person to jail without bail until the person purges himself of the contempt in a manner and form as the justice may direct. If the person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

(j) This section does not affect a tenant's right to pursue a separate cause of action under Section 92.0081.

(k) If a tenant in bad faith files a sworn complaint for reentry resulting in a writ of reentry being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or $500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

(l) The fee for filing a sworn complaint for reentry is the same as that for filing a civil action in justice court. The fee for service of a writ of reentry is the same as that for service of a writ of possession. The fee for service of a show cause order is the same as that for service of a civil citation. The justice may defer payment of the tenant's filing fees and service costs for the sworn complaint for reentry and writ of reentry. Court costs may be waived only if the tenant executes a pauper's affidavit.

(m) This section does not affect the rights of a landlord or tenant in a forcible detainer or forcible entry and detainer action.

Added by Acts 1989, 71st Leg., ch. 687, Sec. 1, eff. Sept. 1, 1989.
Amended by Acts 1997, 75th Leg., ch. 1205, Sec. 9, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 21.001, eff. September 1, 2011.

Sec. 92.0091. RESIDENTIAL TENANT'S RIGHT OF RESTORATION AFTER UNLAWFUL UTILITY DISCONNECTION. (a) If a landlord has interrupted utility service in violation of Section 92.008, the tenant may obtain relief as provided by this section.

(b) The tenant must file with the justice court in the precinct in which the rental premises are located a sworn complaint specifying the facts of the alleged unlawful utility disconnection by the landlord or the landlord's agent. The tenant must also state orally under oath to the justice the facts of the alleged unlawful utility disconnection.

(c) If the tenant has complied with Subsection (b) and if the justice reasonably believes an unlawful utility disconnection has

likely occurred, the justice may issue, ex parte, a writ of restoration of utility service that entitles the tenant to immediate and temporary restoration of the disconnected utility service, pending a final hearing on the tenant's sworn complaint.

(d) The writ of restoration of utility service must be served on either the landlord or the landlord's management company, on-premises manager, or rent collector in the same manner as a writ of possession in a forcible detainer suit.

(e) The landlord is entitled to a hearing on the tenant's sworn complaint for restoration of utility service. The writ of restoration of utility service must notify the landlord of the right to a hearing. The hearing shall be held not earlier than the first day and not later than the seventh day after the date the landlord requests a hearing.

(f) If the landlord fails to request a hearing on the tenant's sworn complaint for restoration of utility service before the eighth day after the date of service of the writ of restoration of utility service on the landlord under Subsection (d), a judgment for court costs may be rendered against the landlord.

(g) A party may appeal from the court's judgment at the hearing on the sworn complaint for restoration of utility service in the same manner as a party may appeal a judgment in a forcible detainer suit.

(h) If a writ of possession is issued, it supersedes a writ of restoration of utility service.

(i) If the landlord or the person on whom a writ of restoration of utility service is served fails to immediately comply with the writ or later disobeys the writ, the failure is grounds for contempt of court against the landlord or the person on whom the writ was served under Section 21.002, Government Code. If the writ is disobeyed, the tenant or the tenant's attorney may file in the court in which the action is pending an affidavit stating the name of the person who has disobeyed the writ and describing the acts or omissions constituting the disobedience. On receipt of an affidavit, the justice shall issue a show cause order, directing the person to appear on a designated date and show cause why the person should not be adjudged in contempt of court. If the justice finds, after considering the evidence at the hearing, that the person has directly or indirectly disobeyed the writ, the justice may commit the person to jail without bail until the person purges the contempt action or omission in a manner and form as the justice may direct. If the

person disobeyed the writ before receiving the show cause order but has complied with the writ after receiving the order, the justice may find the person in contempt and assess punishment under Section 21.002(c), Government Code.

(j) If a tenant in bad faith files a sworn complaint for restoration of utility service resulting in a writ being served on the landlord or landlord's agent, the landlord may in a separate cause of action recover from the tenant an amount equal to actual damages, one month's rent or $500, whichever is greater, reasonable attorney's fees, and costs of court, less any sums for which the landlord is liable to the tenant.

(k) The fee for filing a sworn complaint for restoration of utility service is the same as that for filing a civil action in justice court. The fee for service of a writ of restoration of utility service is the same as that for service of a writ of possession. The fee for service of a show cause order is the same as that for service of a civil citation. The justice may defer payment of the tenant's filing fees and service costs for the sworn complaint for restoration of utility service and writ of restoration of utility service. Court costs may be waived only if the tenant executes a pauper's affidavit.

Added by Acts 2009, 81st Leg., R.S., Ch. 1112 (H.B. 882), Sec. 2, eff. January 1, 2010.

Sec. 92.010. OCCUPANCY LIMITS. (a) Except as provided by Subsection (b), the maximum number of adults that a landlord may allow to occupy a dwelling is three times the number of bedrooms in the dwelling.

(b) A landlord may allow an occupancy rate of more than three adult tenants per bedroom:

(1) to the extent that the landlord is required by a state or federal fair housing law to allow a higher occupancy rate; or

(2) if an adult whose occupancy causes a violation of Subsection (a) is seeking temporary sanctuary from family violence, as defined by Section 71.004, Family Code, for a period that does not exceed one month.

(c) An individual who owns or leases a dwelling within 3,000 feet of a dwelling as to which a landlord has violated this section,

or a governmental entity or civic association acting on behalf of the individual, may file suit against a landlord to enjoin the violation. A party who prevails in a suit under this subsection may recover court costs and reasonable attorney's fees from the other party. In addition to court costs and reasonable attorney's fees, a plaintiff who prevails under this subsection may recover from the landlord $500 for each violation of this section.

(d) In this section:

(1) "Adult" means an individual 18 years of age or older.

(2) "Bedroom" means an area of a dwelling intended as sleeping quarters. The term does not include a kitchen, dining room, bathroom, living room, utility room, or closet or storage area of a dwelling.

Added by Acts 1993, 73rd Leg., ch. 937, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 7.002(o), eff. Sept. 1, 2003.

Sec. 92.011. CASH RENTAL PAYMENTS. (a) A landlord shall accept a tenant's timely cash rental payment unless a written lease between the landlord and tenant requires the tenant to make rental payments by check, money order, or other traceable or negotiable instrument.

(b) A landlord who receives a cash rental payment shall:

(1) provide the tenant with a written receipt; and

(2) enter the payment date and amount in a record book maintained by the landlord.

(c) A tenant or a governmental entity or civic association acting on the tenant's behalf may file suit against a landlord to enjoin a violation of this section. A party who prevails in a suit brought under this subsection may recover court costs and reasonable attorney's fees from the other party. In addition to court costs and reasonable attorney's fees, a tenant who prevails under this subsection may recover from the landlord the greater of one month's rent or $500 for each violation of this section.

Added by Acts 1993, 73rd Leg., ch. 938, Sec. 1, eff. Sept. 1, 1993. Renumbered from Property Code Sec. 92.010 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(44), eff. Sept. 1, 1995.

Sec. 92.012. NOTICE TO TENANT AT PRIMARY RESIDENCE. (a) If, at the time of signing a lease or lease renewal, a tenant gives written notice to the tenant's landlord that the tenant does not occupy the leased premises as a primary residence and requests in writing that the landlord send notices to the tenant at the tenant's primary residence and provides to the landlord the address of the tenant's primary residence, the landlord shall mail to the tenant's primary residence:

(1) all notices of lease violations;

(2) all notices of lease termination;

(3) all notices of rental increases at the end of the lease term; and

(4) all notices to vacate.

(b) The tenant shall notify the landlord in writing of any change in the tenant's primary residence address. Oral notices of change are insufficient.

(c) A notice to a tenant's primary residence under Subsection (a) may be sent by regular United States mail and shall be considered as having been given on the date of postmark of the notice.

(d) If there is more than one tenant on a lease, the landlord is not required under this section to send notices to the primary residence of more than one tenant.

(e) This section does not apply if notice is actually hand delivered to and received by a person occupying the leased premises.

Added by Acts 1997, 75th Leg., ch. 1205, Sec. 10, eff. Sept. 1, 1997.

Sec. 92.013. NOTICE OF RULE OR POLICY CHANGE AFFECTING TENANT'S PERSONAL PROPERTY. (a) A landlord shall give prior written notice to a tenant regarding a landlord rule or policy change that is not included in the lease agreement and that will affect any personal property owned by the tenant that is located outside the tenant's dwelling. A landlord shall provide to the tenant in a multiunit complex, as that term is defined by Section 92.151, a copy of any applicable vehicle towing or parking rules or policies of the landlord and any changes to those rules or policies as provided by Section 92.0131.

(b) The notice must be given in person or by mail to the affected tenant. Notice in person may be by personal delivery to the

tenant or any person residing at the tenant's dwelling who is 16 years of age or older or by personal delivery to the tenant's dwelling and affixing the notice to the inside of the main entry door. Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested. If the dwelling has no mailbox and has a keyless bolting device, alarm system, or dangerous animal that prevents the landlord from entering the premises to leave the notice on the inside of the main entry door, the landlord may securely affix the notice on the outside of the main entry door.

(c) A landlord who fails to give notice as required by this section is liable to the tenant for any expense incurred by the tenant as a result of the landlord's failure to give the notice.

Added by Acts 1999, 76th Leg., ch. 942, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 1060 (H.B. 1399), Sec. 1, eff. January 1, 2006.

Sec. 92.0131. NOTICE REGARDING VEHICLE TOWING OR PARKING RULES OR POLICIES. (a) This section applies only to a tenant in a multiunit complex, as that term is defined by Section 92.151.

(b) If at the time a lease agreement is executed a landlord has vehicle towing or parking rules or policies that apply to the tenant, the landlord shall provide to the tenant a copy of the rules or policies before the lease agreement is executed. The copy of the rules or policies must be:

(1) signed by the tenant;

(2) included in a lease agreement signed by the tenant; or

(3) included in an attachment to the lease agreement that is signed by the tenant, but only if the attachment is expressly referred to in the lease agreement.

(c) If the rules or policies are contained in the lease agreement or an attachment to the lease agreement, the title to the paragraph containing the rules or policies must read "Parking" or "Parking Rules" and be capitalized, underlined, or printed in bold print.

(c-1) As a precondition for allowing a tenant to park in a specific parking space or a common parking area that the landlord has made available for tenant use, the landlord may require a tenant to

provide only the make, model, color, year, license number, and state of registration of the vehicle to be parked.

(c-2) Notwithstanding Subsection (c-1), a municipal housing authority located in a municipality that has a population of more than 500,000 and is not more than 50 miles from an international border, or a public facility corporation, affiliate, or subsidiary of the authority, may require that vehicles parked in a community of the authority, corporation, affiliate, or subsidiary be registered with the housing authority.

(d) If a landlord changes the vehicle towing or parking rules or policies during the term of the lease agreement, the landlord shall provide written notice of the change to the tenant before the tenant is required to comply with the rule or policy change. The landlord has the burden of proving that the tenant received a copy of the rule or policy change. The landlord may satisfy that burden of proof by providing evidence that the landlord:

(1) delivered the notice by certified mail, return receipt requested, addressed to the tenant at the tenant's dwelling; or

(2) made a notation in the landlord's files of the time, place, and method of providing the notice and the name of the person who delivered the notice by:

(A) hand delivery to the tenant or any occupant of the tenant's dwelling over the age of 16 years at the tenant's dwelling;

(B) facsimile to a facsimile number the tenant provided to the landlord for the purpose of receiving notices; or

(C) taping the notice to the inside of the main entry door of the tenant's dwelling.

(e) If a rule or policy change is made during the term of the lease agreement, the change:

(1) must:

(A) apply to all of the landlord's tenants in the same multiunit complex and be based on necessity, safety or security of tenants, reasonable requirements for construction on the premises, or respect for other tenants' parking rights; or

(B) be adopted based on the tenant's written consent; and

(2) may not be effective before the 14th day after the date notice of the change is delivered to the tenant, unless the change is the result of a construction or utility emergency.

(f) A landlord who violates Subsection (b), (c), (d), or (e) is

liable for a civil penalty in the amount of $100 plus any towing or storage costs that the tenant incurs as a result of the towing of the tenant's vehicle. The nonprevailing party in a suit under this section is liable to the prevailing party for reasonable attorney's fees and court costs.

(g) A landlord is liable for any damage to a tenant's vehicle resulting from the negligence of a towing service that contracts with the landlord or the landlord's agent to remove vehicles that are parked in violation of the landlord's rules and policies if the towing company that caused the damage does not carry insurance that covers the damage.

Added by Acts 2005, 79th Leg., Ch. 1060 (H.B. 1399), Sec. 2, eff. January 1, 2006.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 2, eff. January 1, 2008.
Acts 2011, 82nd Leg., R.S., Ch. 969 (H.B. 1371), Sec. 1, eff. September 1, 2011.

Sec. 92.0132. TERM OF PARKING PERMIT. A landlord who issues a parking permit to a tenant:

(1) must issue the permit for a term that is coterminous with the tenant's lease term; and

(2) may not terminate or suspend the permit until the date the tenant's right of possession ends.

Added by Acts 2019, 86th Leg., R.S., Ch. 409 (H.B. 1002), Sec. 1, eff. January 1, 2020.

Sec. 92.0135. NOTICE FOR DWELLING LOCATED IN FLOODPLAIN. (a) In this section:

(1) "100-year floodplain" means any area of land designated as a flood hazard area with a one percent or greater chance of flooding each year by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.).

(2) "Flooding" means a general or temporary condition of partial or complete inundation of a dwelling caused by:

(A) the overflow of inland or tidal waters;

(B) the unusual and rapid accumulation of runoff or surface waters from any established water source such as a river, stream, or drainage ditch; or

(C) excessive rainfall.

(b) A landlord shall provide to a tenant a written notice substantially equivalent to the following:

"(Landlord) ( ) is or ( ) is not aware that the dwelling you are renting is located in a 100-year floodplain. If neither box is checked, you should assume the dwelling is in a 100-year floodplain. Even if the dwelling is not in a 100-year floodplain, the dwelling may still be susceptible to flooding. The Federal Emergency Management Agency (FEMA) maintains a flood map on its Internet website that is searchable by address, at no cost, to determine if a dwelling is located in a flood hazard area. Most tenant insurance policies do not cover damages or loss incurred in a flood. You should seek insurance coverage that would cover losses caused by a flood."

(c) Notwithstanding Subsection (b), a landlord is not required to disclose on the notice that the landlord is aware that a dwelling is located in a 100-year floodplain if the elevation of the dwelling is raised above the 100-year floodplain flood levels in accordance with federal regulations.

(d) If a landlord knows that flooding has damaged any portion of a dwelling at least once during the five-year period immediately preceding the effective date of the lease, the landlord shall provide a written notice to a tenant that is substantially equivalent to the following:

"(Landlord) ( ) is or ( ) is not aware that the dwelling you are renting has flooded at least once within the last five years."

(e) The notices required by Subsections (b) and (d) must be included in a separate written document given to the tenant at or before execution of the lease.

(f) If a landlord violates this section and a tenant suffers a substantial loss or damage to the tenant's personal property as a result of flooding, the tenant may terminate the lease by giving a written notice of termination to the landlord not later than the 30th day after the date the loss or damage occurred. For purposes of this subsection, a tenant suffers a substantial loss or damage to personal property if the total cost of repairs to or replacement of the

personal property is 50 percent or more of the personal property's market value on the date the flooding occurred. Termination of a lease under this subsection is effective when the tenant surrenders possession of the dwelling.

(g) Not later than the 30th day after the effective date of the termination of a lease under Subsection (f), the landlord shall refund to the tenant all rent or other amounts paid in advance under the lease for any period after the effective date of the termination of the lease.

(h) This section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the date the lease was terminated by the tenant under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 921 (H.B. 531), Sec. 1, eff. January 1, 2022.

Sec. 92.014. PERSONAL PROPERTY AND SECURITY DEPOSIT OF DECEASED TENANT. (a) Upon written request of a landlord, the landlord's tenant shall:

(1) provide the landlord with the name, address, and telephone number of a person to contact in the event of the tenant's death; and

(2) sign a statement authorizing the landlord in the event of the tenant's death to:

(A) grant to the person designated under Subdivision (1) access to the premises at a reasonable time and in the presence of the landlord or the landlord's agent;

(B) allow the person designated under Subdivision (1) to remove any of the tenant's property found at the leased premises; and

(C) refund the tenant's security deposit, less lawful deductions, to the person designated under Subdivision (1).

(b) A tenant may, without request from the landlord, provide the landlord with the information in Subsection (a).

(c) Except as provided in Subsection (d), in the event of the death of a tenant who is the sole occupant of a rental dwelling:

(1) the landlord may remove and store all property found in the tenant's leased premises;

(2) the landlord shall turn over possession of the property

to the person who was designated by the tenant under Subsection (a) or (b) or to any other person lawfully entitled to the property if the request is made prior to the property being discarded under Subdivision (5);

(3) the landlord shall refund the tenant's security deposit, less lawful deductions, including the cost of removing and storing the property, to the person designated under Subsection (a) or (b) or to any other person lawfully entitled to the refund;

(4) the landlord may require any person who removes the property from the tenant's leased premises to sign an inventory of the property being removed; and

(5) the landlord may discard the property removed by the landlord from the tenant's leased premises if:

(A) the landlord has mailed a written request by certified mail, return receipt requested, to the person designated under Subsection (a) or (b), requesting that the property be removed;

(B) the person failed to remove the property by the 30th day after the postmark date of the notice; and

(C) the landlord, prior to the date of discarding the property, has not been contacted by anyone claiming the property.

(d) In a written lease or other agreement, a landlord and a tenant may agree to a procedure different than the procedure in this section for removing, storing, or disposing of property in the leased premises of a deceased tenant.

(e) If a tenant, after being furnished with a copy of this subchapter, knowingly violates Subsection (a), the landlord shall have no responsibility after the tenant's death for removal, storage, disappearance, damage, or disposition of property in the tenant's leased premises.

(f) If a landlord, after being furnished with a copy of this subchapter, knowingly violates Subsection (c), the landlord shall be liable to the estate of the deceased tenant for actual damages.

Added by Acts 1999, 76th Leg., ch. 1439, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 92.013 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(97), eff. Sept. 1, 2001.

Sec. 92.015. TENANT'S RIGHT TO SUMMON POLICE OR EMERGENCY ASSISTANCE. (a) A landlord may not:

(1) prohibit or limit a residential tenant's right to summon police or other emergency assistance based on the tenant's reasonable belief that an individual is in need of intervention or emergency assistance; or

(2) impose monetary or other penalties on a tenant who summons police or emergency assistance if the assistance was requested or dispatched based on the tenant's reasonable belief that an individual was in need of intervention or emergency assistance.

(b) A provision in a lease is void if the provision purports to:

(1) waive a tenant's right to summon police or other emergency assistance based on the tenant's reasonable belief that an individual is in need of intervention or emergency assistance; or

(2) exempt any party from a liability or a duty under this section.

(c) In addition to other remedies provided by law, if a landlord violates this section, a tenant is entitled to recover from or against the landlord:

(1) a civil penalty in an amount equal to one month's rent;

(2) actual damages suffered by the tenant as a result of the landlord's violation of this section;

(3) court costs;

(4) injunctive relief; and

(5) reasonable attorney's fees incurred by the tenant in seeking enforcement of this section.

(d) For purposes of this section, if a tenant's rent is subsidized in whole or in part by a governmental entity, "one month's rent" means one month's fair market rent.

(e) Repealed by Acts 2017, 85th Leg., R.S., Ch. 337 (H.B. 1099), Sec. 2, eff. September 1, 2017.

Added by Acts 2003, 78th Leg., ch. 794, Sec. 1, eff. June 20, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 337 (H.B. 1099), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 337 (H.B. 1099), Sec. 2, eff. September 1, 2017.

Sec. 92.016. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING

FAMILY VIOLENCE. (a) For purposes of this section:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Occupant" means a person who has the landlord's consent to occupy a dwelling but has no obligation to pay the rent for the dwelling.

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if the tenant complies with Subsection (c).

(b-1) A tenant may obtain relief under Subsection (b) if the tenant provides the landlord or the landlord's agent:

(1) a copy of one or more of the following orders protecting the tenant or an occupant from family violence:

(A) a temporary injunction issued under Subchapter F, Chapter 6, Family Code;

(B) a temporary ex parte order issued under Chapter 83, Family Code;

(C) a protective order issued under Chapter 85, Family Code; or

(D) an order of emergency protection under Article 17.292, Code of Criminal Procedure; or

(2) a copy of documentation of the family violence against the tenant or an occupant from:

(A) a licensed health care services provider who examined the victim;

(B) a licensed mental health services provider who examined or evaluated the victim; or

(C) an advocate as defined by Section 93.001, Family Code, who assisted the victim.

(c) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) a judge signs an order described by Subsection (b-1)(1) if the tenant obtained such an order;

(2) the tenant provides a copy of the relevant documentation described by Subsection (b-1)(1) or (2), as applicable, to the landlord;

(3) the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

(4) the 30th day after the date the tenant provided notice under Subdivision (3) expires; and

(5) the tenant vacates the dwelling.

(c-1) If the family violence is committed by a cotenant or occupant of the dwelling, a tenant may exercise the right to terminate the lease under the procedures provided by Subsection (b-1)(1)(A), (C), or (D) or (b-1)(2) and Subsection (c), except that the tenant is not required to provide the notice described by Subsection (c)(3).

(d) Except as provided by Subsection (f), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(e) A landlord who violates this section is liable to the tenant for actual damages, a civil penalty equal in amount to the amount of one month's rent plus $500, and attorney's fees.

(f) A tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."

(g) A tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this section may not be waived by a tenant.

Added by Acts 2005, 79th Leg., Ch. 348 (S.B. 1186), Sec. 1, eff. January 1, 2006.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 18 (S.B. 83), Sec. 1, eff. January 1, 2010.

Acts 2019, 86th Leg., R.S., Ch. 15 (S.B. 234), Sec. 1, eff. September 1, 2019.

Sec. 92.0161. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN SEX OFFENSES OR STALKING. (a) In this section, "occupant" has the meaning assigned by Section 92.016.

(b) A tenant may terminate the tenant's rights and obligations under a lease and may vacate the dwelling and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term after the tenant complies with Subsection (c) or (c-1).

(c) If the tenant is a victim or a parent or guardian of a victim of sexual assault under Section 22.011, Penal Code, aggravated sexual assault under Section 22.021, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual performance by a child under Section 43.25, Penal Code, continuous sexual abuse of young child or disabled individual under Section 21.02, Penal Code, or an attempt to commit any of the foregoing offenses under Section 15.01, Penal Code, that takes place during the preceding six-month period on the premises or at any dwelling on the premises, the tenant shall provide to the landlord or the landlord's agent a copy of:

(1) documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed health care services provider who examined the victim;

(2) documentation of the assault or abuse, or attempted assault or abuse, of the victim from a licensed mental health services provider who examined or evaluated the victim;

(3) documentation of the assault or abuse, or attempted assault or abuse, of the victim from an individual authorized under Chapter 420, Government Code, who provided services to the victim; or

(4) documentation of a protective order issued under Subchapter A, Chapter 7B, Code of Criminal Procedure, except for a temporary ex parte order.

(c-1) If the tenant is a victim or a parent or guardian of a victim of stalking under Section 42.072, Penal Code, that takes place during the preceding six-month period on the premises or at any dwelling on the premises, the tenant shall provide to the landlord or the landlord's agent a copy of:

(1) documentation of a protective order issued under Subchapter A or B, Chapter 7B, Code of Criminal Procedure, except for a temporary ex parte order; or

(2) documentation of the stalking from a provider of services described by Subsection (c)(1), (2), or (3) and:

(A) a law enforcement incident report or, if a law enforcement incident report is unavailable, another record maintained in the ordinary course of business by a law enforcement agency; and

(B) if the report or record described by Paragraph (A) identifies the victim by means of a pseudonym, as defined by Article 58.001, Code of Criminal Procedure, a copy of a pseudonym form completed and returned under Article 58.152(a) of that code.

(d) A tenant may exercise the rights to terminate the lease under Subsection (b), vacate the dwelling before the end of the lease term, and avoid liability beginning on the date after all of the following events have occurred:

(1) the tenant provides a copy of the relevant documentation described by Subsection (c) or (c-1) to the landlord;

(2) the tenant provides written notice of termination of the lease to the landlord on or before the 30th day before the date the lease terminates;

(3) the 30th day after the date the tenant provided notice under Subdivision (2) expires; and

(4) the tenant vacates the dwelling.

(e) Except as provided by Subsection (g), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(f) A landlord who violates this section is liable to the tenant for actual damages, a civil penalty equal to the amount of one month's rent plus $500, and attorney's fees.

(g) A tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving certain sexual offenses or stalking."

(h) A tenant may not waive a tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this chapter.

(i) For purposes of Subsections (c) and (c-1), a tenant who is a parent or guardian of a victim described by those subsections must reside with the victim to exercise the rights established by this

section.

(j) A person who receives information under Subsection (c), (c-1), or (d) may not disclose the information to any other person except for a legitimate or customary business purpose or as otherwise required by law.

Added by Acts 2009, 81st Leg., R.S., Ch. 18 (S.B. 83), Sec. 2, eff. January 1, 2010.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 593 (S.B. 946), Sec. 1, eff. January 1, 2014.

Acts 2013, 83rd Leg., R.S., Ch. 593 (S.B. 946), Sec. 2, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 394 (H.B. 1293), Sec. 2, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 469 (H.B. 4173), Sec. 2.63, eff. January 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 221 (H.B. 375), Sec. 2.28, eff. September 1, 2021.

Sec. 92.0162. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING TENANT'S DEATH. (a) A representative of the estate of a tenant who dies before the expiration of the tenant's lease and was, at the time of the tenant's death, the sole occupant of a rental dwelling may terminate the tenant's rights and obligations under the lease and may vacate the leased premises and avoid liability for future rent and any other sums due under the lease for terminating the lease and vacating the leased premises before the end of the lease term if:

(1) the representative provides to the landlord or the landlord's agent written notice of the termination of the lease under this section;

(2) the deceased tenant's property is removed from the leased premises in accordance with Section 92.014(c) or (d); and

(3) the representative signs an inventory of the removed property, if required by the landlord or the landlord's agent.

(b) Termination of a lease under this section is effective on the later of:

(1) the 30th day after the date on which the notice under Subsection (a) was provided; or

(2) the date on which all of the conditions in Subsection (a) have been met.

(c) After receipt of the notice provided under Subsection (a), the landlord shall provide a copy of the written lease agreement to the person who provided the notice on written request of that person.

(d) This section does not affect the obligations or liability of the tenant or the tenant's estate under the lease before the lease is terminated under this section, including the liability of the tenant or the tenant's estate for:

(1) delinquent, unpaid rent; and

(2) damages to the leased premises not caused by normal wear and tear.

(e) A landlord or landlord's agent who lawfully permits a person described by Subsection (a) to enter or facilitates the person's entry into the leased premises under this section is not liable for an act or omission that arises in connection with permitting or facilitating the entry.

Added by Acts 2019, 86th Leg., R.S., Ch. 1349 (H.B. 69), Sec. 1, eff. January 1, 2020.

Sec. 92.017. RIGHT TO VACATE AND AVOID LIABILITY FOLLOWING CERTAIN DECISIONS RELATED TO MILITARY SERVICE. (a) For purposes of this section, "dependent," "military service," and "servicemember" have the meanings assigned by 50 App. U.S.C. Section 511.

(b) A tenant who is a servicemember or a dependent of a servicemember may vacate the dwelling leased by the tenant and avoid liability for future rent and all other sums due under the lease for terminating the lease and vacating the dwelling before the end of the lease term if:

(1) the lease was executed by or on behalf of a person who, after executing the lease or during the term of the lease, enters military service; or

(2) a servicemember, while in military service, executes the lease and after executing the lease receives military orders:

(A) for a permanent change of station; or

(B) to deploy with a military unit for a period of 90 days or more.

(c) A tenant who terminates a lease under Subsection (b) shall

deliver to the landlord or landlord's agent:

(1) a written notice of termination of the lease; and

(2) a copy of an appropriate government document providing evidence of the tenant's entrance into military service if Subsection (b)(1) applies or a copy of the servicemember's military orders if Subsection (b)(2) applies.

(d) Termination of a lease under this section is effective:

(1) in the case of a lease that provides for monthly payment of rent, on the 30th day after the first date on which the next rental payment is due after the date on which the notice under Subsection (c)(1) is delivered; or

(2) in the case of a lease other than a lease described by Subdivision (1), on the last day of the month following the month in which the notice under Subsection (c)(1) is delivered.

(e) A landlord, not later than the 30th day after the effective date of the termination of a lease under this section, shall refund to the residential tenant terminating the lease under Subsection (b) all rent or other amounts paid in advance under the lease for any period after the effective date of the termination of the lease.

(f) Except as provided by Subsection (g), this section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the lease was terminated by the tenant under this section.

(g) A tenant who terminates a lease under Subsection (b) is released from all liability for any delinquent, unpaid rent owed to the landlord by the tenant on the effective date of the lease termination if the lease does not contain language substantially equivalent to the following:

"Tenants may have special statutory rights to terminate the lease early in certain situations involving family violence or a military deployment or transfer."

(h) A landlord who violates this section is liable to the tenant for actual damages, a civil penalty in an amount equal to the amount of one month's rent plus $500, and attorney's fees.

(i) Except as provided by Subsection (j), a tenant's right to terminate a lease before the end of the lease term, vacate the dwelling, and avoid liability under this section may not be waived by a tenant.

(j) A tenant and a landlord may agree that the tenant waives a tenant's rights under this section if the tenant or any dependent

living with the tenant moves into base housing or other housing within 30 miles of the dwelling. A waiver under this section must be signed and in writing in a document separate from the lease and must comply with federal law. A waiver under this section does not apply if:

(1) the tenant or the tenant's dependent moves into housing owned or occupied by family or relatives of the tenant or the tenant's dependent; or

(2) the tenant and the tenant's dependent move, wholly or partly, because of a significant financial loss of income caused by the tenant's military service.

(k) For purposes of Subsection (j), "significant financial loss of income" means a reduction of 10 percent or more of the tenant's household income caused by the tenant's military service. A landlord is entitled to verify the significant financial loss of income in order to determine whether a tenant is entitled to terminate a lease if the tenant has signed a waiver under this section and moves within 30 miles of the dwelling into housing that is not owned or occupied by family or relatives of the tenant or the tenant's dependent. For purposes of this subsection, a pay stub or other statement of earnings issued by the tenant's employer is sufficient verification.

Added by Acts 2005, 79th Leg., Ch. 348 (S.B. 1186), Sec. 1, eff. June 17, 2005, except Subsec. (g) eff. January 1, 2006.

Sec. 92.018. LIABILITY OF TENANT FOR GOVERNMENTAL FINES. (a) In this section, "governmental entity" means the state, an agency of the state, or a political subdivision of the state.

(b) A landlord or a landlord's manager or agent may not charge or seek reimbursement from the landlord's tenant for the amount of a fine imposed on the landlord by a governmental entity unless the tenant or another occupant of the tenant's dwelling actually caused the damage or other condition on which the fine is based.

Added by Acts 2005, 79th Leg., Ch. 1344 (S.B. 399), Sec. 1, eff. June 18, 2005.
Renumbered from Property Code, Section 92.016 by Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 17.001(64), eff. September 1, 2007.

Sec. 92.019. LATE PAYMENT OF RENT; FEES. (a) A landlord may not collect from a tenant a late fee for failing to pay any portion of the tenant's rent unless:

(1) notice of the fee is included in a written lease;

(2) the fee is reasonable; and

(3) any portion of the tenant's rent has remained unpaid two full days after the date the rent was originally due.

(a-1) For purposes of this section, a late fee is considered reasonable if:

(1) the late fee is not more than:

(A) 12 percent of the amount of rent for the rental period under the lease for a dwelling located in a structure that contains not more than four dwelling units; or

(B) 10 percent of the amount of rent for the rental period under the lease for a dwelling located in a structure that contains more than four dwelling units; or

(2) the late fee is more than the applicable amount under Subdivision (1), but not more than uncertain damages to the landlord related to the late payment of rent, including direct or indirect expenses, direct or indirect costs, or overhead associated with the collection of late payment.

(b) A late fee under this section may include an initial fee and a daily fee for each day any portion of the tenant's rent continues to remain unpaid, and the combined fees are considered a single late fee for purposes of this section.

(c) A landlord who violates this section is liable to the tenant for an amount equal to the sum of $100, three times the amount of the late fee collected in violation of this section, and the tenant's reasonable attorney's fees.

(d) A provision of a lease that purports to waive a right or exempt a party from a liability or duty under this section is void.

(e) This section relates only to a fee, charge, or other sum of money required to be paid under the lease if rent is not paid as provided by Subsection (a)(3), and does not affect the landlord's right to terminate the lease or take other action permitted by the lease or other law. Payment of the fee, charge, or other sum of money by a tenant does not waive the right or remedies provided by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 3, eff.

January 1, 2008.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1268 (H.B. 1109), Sec. 1, eff. June 19, 2009.
Acts 2019, 86th Leg., R.S., Ch. 629 (S.B. 1414), Sec. 1, eff. September 1, 2019.

Sec. 92.0191. STATEMENT OF LATE FEES. A tenant may request that the landlord provide to the tenant a written statement of whether the tenant owes a late fee to the landlord and, if so, the amount of the late fee. On request of the tenant, the landlord shall provide the statement to the tenant by any established means regularly used for written communication between the landlord and the tenant. A landlord's failure to respond does not affect the tenant's liability for any late fee owed to the landlord.

Added by Acts 2019, 86th Leg., R.S., Ch. 629 (S.B. 1414), Sec. 2, eff. September 1, 2019.

Sec. 92.020. EMERGENCY PHONE NUMBER. (a) A landlord that has an on-site management or superintendent's office for a residential rental property must provide to a tenant a telephone number that will be answered 24 hours a day for the purpose of reporting emergencies related to a condition of the leased premises that materially affects the physical health or safety of an ordinary tenant.

(b) The landlord must post the phone number required by Subsection (a) prominently outside the management or superintendent's office.

(c) This section does not apply to or affect a local ordinance governing a landlord's obligation to provide a 24-hour emergency contact number to a tenant that is adopted before January 1, 2008, if the ordinance conforms with or is amended to conform with this section.

(d) A landlord to whom Subsection (a) does not apply must provide to a tenant a telephone number for the purpose of reporting emergencies described by that subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 4, eff. January 1, 2008.

Sec. 92.021. LIABILITY OF CERTAIN GUARANTORS UNDER LEASE. (a) A person other than a tenant who guarantees a lease is liable only for the original lease term except that a person may specify that the person agrees to guarantee a renewal of the lease as provided by Subsection (b).

(b) A person may specify in writing in an original lease that the person will guarantee a renewal of the lease only if the original lease states:

(1) the last date, as specified by the guarantor, on which the renewal of the lease will renew the obligation of the guarantor;

(2) that the guarantor is liable under a renewal of the lease that occurs on or before that date; and

(3) that the guarantor is liable under a renewal of the lease only if the renewal:

(A) involves the same parties as the original lease; and

(B) does not increase the guarantor's potential financial obligation for rent that existed under the original lease.

(c) Subsection (b) does not prohibit a guarantor from voluntarily entering into an agreement at the time of the renewal of a lease, in a separate written document, to guarantee an increased amount of rent.

(d) This section does not release a guarantor from the obligations of the guarantor under the terms of the original lease or a valid renewal for costs and damages owed to the lessor that arise after the date specified by the guarantor in the original lease in accordance with Subsection (b), if the costs or damages relate to actions of the tenant before that date or arise as a result of the tenant refusing to vacate the leased premises.

Added by Acts 2009, 81st Leg., R.S., Ch. 601 (H.B. 534), Sec. 1, eff. January 1, 2010.

Sec. 92.023. TENANT'S REMEDIES REGARDING REVOCATION OF CERTIFICATE OF OCCUPANCY. If a municipality or a county revokes a certificate of occupancy for a leased premises because of the landlord's failure to maintain the premises, the landlord is liable

to a tenant who is not in default under the lease for:

(1) the full amount of the tenant's security deposit;

(2) the pro rata portion of any rental payment the tenant has paid in advance;

(3) the tenant's actual damages, including any moving costs, utility connection fees, storage fees, and lost wages; and

(4) court costs and attorney's fees arising from any related cause of action by the tenant against the landlord.

Added by Acts 2011, 82nd Leg., R.S., Ch. 512 (H.B. 1862), Sec. 1, eff. September 1, 2011.

Sec. 92.024. LANDLORD'S DUTY TO PROVIDE COPY OF LEASE. (a) Not later than the third business day after the date the lease is signed by each party to the lease, a landlord shall provide at least one complete copy of the lease to at least one tenant who is a party to the lease.

(b) If more than one tenant is a party to the lease, not later than the third business day after the date a landlord receives a written request for a copy of a lease from a tenant who has not received a copy of the lease under Subsection (a), the landlord shall provide one complete copy of the lease to the requesting tenant.

(c) A landlord's failure to provide a complete copy of the lease as described by Subsection (a) or (b) does not invalidate the lease or, subject to Subsection (d), prevent the landlord from prosecuting or defending a legal action or proceeding to enforce the lease.

(d) A landlord may not continue to prosecute and a court shall abate an action to enforce the lease, other than an action for nonpayment of rent, only until the landlord provides to a tenant a complete copy of the lease if the tenant submits to the court evidence in a plea in abatement or otherwise that the landlord failed to comply with Subsection (a) or (b).

(e) A landlord may comply with this section by providing to a tenant a complete copy of the lease:

(1) in a paper format;

(2) in an electronic format if requested by the tenant; or

(3) by e-mail if the parties have communicated by e-mail regarding the lease.

Added by Acts 2013, 83rd Leg., R.S., Ch. 588 (S.B. 630), Sec. 1, eff. January 1, 2014.

Sec. 92.025. LIABILITY FOR LEASING TO PERSON WITH CRIMINAL RECORD. (a) A cause of action does not accrue against a landlord or a landlord's manager or agent solely for leasing a dwelling to a tenant convicted of, or arrested or placed on deferred adjudication for, an offense.

(b) This section does not preclude a cause of action for negligence in leasing of a dwelling by a landlord or a landlord's manager or agent to a tenant, if:

(1) the tenant:

(A) was convicted of an offense listed in Article 42A.054, Code of Criminal Procedure; or

(B) has a reportable conviction or adjudication, as defined by Article 62.001, Code of Criminal Procedure; and

(2) the person against whom the action is filed knew or should have known of the conviction or adjudication.

(c) This section does not create a cause of action or expand an existing cause of action.

Added by Acts 2015, 84th Leg., R.S., Ch. 651 (H.B. 1510), Sec. 1, eff. January 1, 2016.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 23.011, eff. September 1, 2017.

Sec. 92.026. POSSESSION OF FIREARMS OR FIREARM AMMUNITION ON LEASED PREMISES. Unless possession of a firearm or firearm ammunition on a landlord's property is prohibited by state or federal law, a landlord may not prohibit a tenant or a tenant's guest from lawfully possessing, carrying, transporting, or storing a firearm, any part of a firearm, or firearm ammunition:

(1) in the tenant's rental unit;

(2) in a vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(3) in other locations controlled by the landlord as necessary to:

(A) enter or exit the tenant's rental unit;

(B) enter or exit the leased premises; or

(C) enter or exit a vehicle on the leased premises or located in a parking area provided by the landlord for tenants or guests.

Added by Acts 2019, 86th Leg., R.S., Ch. 39 (H.B. 302), Sec. 6, eff. September 1, 2019.

SUBCHAPTER B. REPAIR OR CLOSING OF LEASEHOLD

Sec. 92.051. APPLICATION. This subchapter applies to a lease executed, entered into, renewed, or extended on or after September 1, 1979.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.052. LANDLORD'S DUTY TO REPAIR OR REMEDY. (a) A landlord shall make a diligent effort to repair or remedy a condition if:

(1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid;

(2) the tenant is not delinquent in the payment of rent at the time notice is given; and

(3) the condition:

(A) materially affects the physical health or safety of an ordinary tenant; or

(B) arises from the landlord's failure to provide and maintain in good operating condition a device to supply hot water of a minimum temperature of 120 degrees Fahrenheit.

(b) Unless the condition was caused by normal wear and tear, the landlord does not have a duty during the lease term or a renewal or extension to repair or remedy a condition caused by:

(1) the tenant;

(2) a lawful occupant in the tenant's dwelling;

(3) a member of the tenant's family; or

(4) a guest or invitee of the tenant.

(c) This subchapter does not require the landlord:

(1) to furnish utilities from a utility company if as a practical matter the utility lines of the company are not reasonably

available; or

(2) to furnish security guards.

(d) The tenant's notice under Subsection (a) must be in writing only if the tenant's lease is in writing and requires written notice.

Acts 1983, 68th Leg., p. 3632, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 650, Sec. 3, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 48, Sec. 14, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 600 (H.B. 177), Sec. 1, eff. September 1, 2007.

Sec. 92.053. BURDEN OF PROOF. (a) Except as provided by this section, the tenant has the burden of proof in a judicial action to enforce a right resulting from the landlord's failure to repair or remedy a condition under Section 92.052.

(b) If the landlord does not provide a written explanation for delay in performing a duty to repair or remedy on or before the fifth day after receiving from the tenant a written demand for an explanation, the landlord has the burden of proving that he made a diligent effort to repair and that a reasonable time for repair did not elapse.

Acts 1983, 68th Leg., p. 3633, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.054. CASUALTY LOSS. (a) If a condition results from an insured casualty loss, such as fire, smoke, hail, explosion, or a similar cause, the period for repair does not begin until the landlord receives the insurance proceeds.

(b) If after a casualty loss the rental premises are as a practical matter totally unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, either the landlord or the tenant may terminate the lease by giving written notice to the other any time before repairs are completed. If the lease is terminated, the tenant is entitled only to a pro rata refund of rent from the date the tenant moves out and to a refund of any security deposit otherwise required by law.

(c) If after a casualty loss the rental premises are partially

unusable for residential purposes and if the casualty loss is not caused by the negligence or fault of the tenant, a member of the tenant's family, or a guest or invitee of the tenant, the tenant is entitled to reduction in the rent in an amount proportionate to the extent the premises are unusable because of the casualty, but only on judgment of a county or district court. A landlord and tenant may agree otherwise in a written lease.

Acts 1983, 68th Leg., p. 3633, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1993, 73rd Leg., ch. 48, Sec. 15, eff. Sept. 1, 1993.

Sec. 92.055. CLOSING THE RENTAL PREMISES. (a) A landlord may close a rental unit at any time by giving written notice by certified mail, return receipt requested, to the tenant and to the local health officer and local building inspector, if any, stating that:

(1) the landlord is terminating the tenancy as soon as legally possible; and

(2) after the tenant moves out the landlord will either immediately demolish the rental unit or no longer use the unit for residential purposes.

(b) After a tenant receives the notice and moves out:

(1) the local health officer or building inspector may not allow occupancy of or utility service by separate meter to the rental unit until the officer certifies that he knows of no condition that materially affects the physical health or safety of an ordinary tenant; and

(2) the landlord may not allow reoccupancy or reconnection of utilities by separate meter within six months after the date the tenant moves out.

(c) If the landlord gives the tenant the notice closing the rental unit:

(1) before the tenant gives a repair notice to the landlord, the remedies of this subchapter do not apply;

(2) after the tenant gives a repair notice to the landlord but before the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under Subsection (d) of this section and Subdivisions (3), (4), and (5) of Subsection (a) of Section 92.0563; or

(3) after the tenant gives a repair notice to the landlord

and after the landlord has had a reasonable time to make repairs, the tenant is entitled only to the remedies under Subsection (d) of this section and Subdivisions (3), (4), and (5) of Subsection (a) of Section 92.0563.

(d) If the landlord closes the rental unit after the tenant gives the landlord a notice to repair and the tenant moves out on or before the end of the rental term, the landlord must pay the tenant's actual and reasonable moving expenses, refund a pro rata portion of the tenant's rent from the date the tenant moves out, and, if otherwise required by law, return the tenant's security deposit.

(e) A landlord who violates Subsection (b) or (d) is liable to the tenant for an amount equal to the total of one month's rent plus $100 and attorney's fees.

(f) The closing of a rental unit does not prohibit the occupancy of other apartments, nor does this subchapter prohibit occupancy of or utility service by master or individual meter to other rental units in an apartment complex that have not been closed under this section. If another provision of this subchapter conflicts with this section, this section controls.

Acts 1983, 68th Leg., p. 3634, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 650, Sec. 4, eff. Aug. 28, 1989.

Sec. 92.056. LANDLORD LIABILITY AND TENANT REMEDIES; NOTICE AND TIME FOR REPAIR. (a) A landlord's liability under this section is subject to Section 92.052(b) regarding conditions that are caused by a tenant and Section 92.054 regarding conditions that are insured casualties.

(b) A landlord is liable to a tenant as provided by this subchapter if:

(1) the tenant has given the landlord notice to repair or remedy a condition by giving that notice to the person to whom or to the place where the tenant's rent is normally paid;

(2) the condition materially affects the physical health or safety of an ordinary tenant;

(3) the tenant has given the landlord a subsequent written notice to repair or remedy the condition after a reasonable time to repair or remedy the condition following the notice given under Subdivision (1) or the tenant has given the notice under Subdivision

(1) by sending that notice by certified mail, return receipt requested, by registered mail, or by another form of mail that allows tracking of delivery from the United States Postal Service or a private delivery service;

(4) the landlord has had a reasonable time to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's subsequent notice under Subdivision (3);

(5) the landlord has not made a diligent effort to repair or remedy the condition after the landlord received the tenant's notice under Subdivision (1) and, if applicable, the tenant's notice under Subdivision (3); and

(6) the tenant was not delinquent in the payment of rent at the time any notice required by this subsection was given.

(c) For purposes of Subsection (b)(4) or (5), a landlord is considered to have received the tenant's notice when the landlord or the landlord's agent or employee has actually received the notice or when the United States Postal Service has attempted to deliver the notice to the landlord.

(d) For purposes of Subsection (b)(3) or (4), in determining whether a period of time is a reasonable time to repair or remedy a condition, there is a rebuttable presumption that seven days is a reasonable time. To rebut that presumption, the date on which the landlord received the tenant's notice, the severity and nature of the condition, and the reasonable availability of materials and labor and of utilities from a utility company must be considered.

(e) Except as provided in Subsection (f), a tenant to whom a landlord is liable under Subsection (b) of this section may:

(1) terminate the lease;

(2) have the condition repaired or remedied according to Section 92.0561;

(3) deduct from the tenant's rent, without necessity of judicial action, the cost of the repair or remedy according to Section 92.0561; and

(4) obtain judicial remedies according to Section 92.0563.

(f) A tenant who elects to terminate the lease under Subsection (e) is:

(1) entitled to a pro rata refund of rent from the date of termination or the date the tenant moves out, whichever is later;

(2) entitled to deduct the tenant's security deposit from

the tenant's rent without necessity of lawsuit or obtain a refund of the tenant's security deposit according to law; and

(3) not entitled to the other repair and deduct remedies under Section 92.0561 or the judicial remedies under Subdivisions (1) and (2) of Subsection (a) of Section 92.0563.

(g) A lease must contain language in underlined or bold print that informs the tenant of the remedies available under this section and Section 92.0561.

Acts 1983, 68th Leg., p. 3635, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1989, 71st Leg., ch. 650, Sec. 5, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1205, Sec. 11, eff. Jan. 1, 1998.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 917 (H.B. 3101), Sec. 5, eff. January 1, 2008.

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 4, eff. January 1, 2016.

Sec. 92.0561. TENANT'S REPAIR AND DEDUCT REMEDIES. (a) If the landlord is liable to the tenant under Section 92.056(b), the tenant may have the condition repaired or remedied and may deduct the cost from a subsequent rent payment as provided in this section.

(b) The tenant's deduction for the cost of the repair or remedy may not exceed the amount of one month's rent under the lease or $500, whichever is greater. However, if the tenant's rent is subsidized in whole or in part by a governmental agency, the deduction limitation of one month's rent shall mean the fair market rent for the dwelling and not the rent that the tenant pays. The fair market rent shall be determined by the governmental agency subsidizing the rent, or in the absence of such a determination, it shall be a reasonable amount of rent under the circumstances.

(c) Repairs and deductions under this section may be made as often as necessary so long as the total repairs and deductions in any one month do not exceed one month's rent or $500, whichever is greater.

(d) Repairs under this section may be made only if all of the following requirements are met:

(1) The landlord has a duty to repair or remedy the condition under Section 92.052, and the duty has not been waived in a

written lease by the tenant under Subsection (e) or (f) of Section 92.006.

(2) The tenant has given notice to the landlord as required by Section 92.056(b)(1), and, if required, a subsequent notice under Section 92.056(b)(3), and at least one of those notices states that the tenant intends to repair or remedy the condition. The notice shall also contain a reasonable description of the intended repair or remedy.

(3) Any one of the following events has occurred:

(A) The landlord has failed to remedy the backup or overflow of raw sewage inside the tenant's dwelling or the flooding from broken pipes or natural drainage inside the dwelling.

(B) The landlord has expressly or impliedly agreed in the lease to furnish potable water to the tenant's dwelling and the water service to the dwelling has totally ceased.

(C) The landlord has expressly or impliedly agreed in the lease to furnish heating or cooling equipment; the equipment is producing inadequate heat or cooled air; and the landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the lack of heat or cooling materially affects the health or safety of an ordinary tenant.

(D) The landlord has been notified in writing by the appropriate local housing, building, or health official or other official having jurisdiction that the condition materially affects the health or safety of an ordinary tenant.

(e) If the requirements of Subsection (d) of this section are met, a tenant may:

(1) have the condition repaired or remedied immediately following the tenant's notice of intent to repair if the condition involves sewage or flooding as referred to in Paragraph (A) of Subdivision (3) of Subsection (d) of this section;

(2) have the condition repaired or remedied if the condition involves a cessation of potable water as referred to in Paragraph (A) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair or remedy the condition within three days following the tenant's delivery of notice of intent to repair;

(3) have the condition repaired or remedied if the condition involves inadequate heat or cooled air as referred to in

Paragraph (C) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair the condition within three days after delivery of the tenant's notice of intent to repair; or

(4) have the condition repaired or remedied if the condition is not covered by Paragraph (A), (B), or (C) of Subdivision (3) of Subsection (d) of this section and involves a condition affecting the physical health or safety of the ordinary tenant as referred to in Paragraph (D) of Subdivision (3) of Subsection (d) of this section and if the landlord has failed to repair or remedy the condition within seven days after delivery of the tenant's notice of intent to repair.

(f) Repairs made pursuant to the tenant's notice must be made by a company, contractor, or repairman listed in the yellow or business pages of the telephone directory or in the classified advertising section of a newspaper of the local city, county, or adjacent county at the time of the tenant's notice of intent to repair. Unless the landlord and tenant agree otherwise under Subsection (g) of this section, repairs may not be made by the tenant, the tenant's immediate family, the tenant's employer or employees, or a company in which the tenant has an ownership interest. Repairs may not be made to the foundation or load-bearing structural elements of the building if it contains two or more dwelling units.

(g) A landlord and a tenant may mutually agree for the tenant to repair or remedy, at the landlord's expense, any condition of the dwelling regardless of whether it materially affects the health or safety of an ordinary tenant. However, the landlord's duty to repair or remedy conditions covered by this subchapter may not be waived except as provided by Subsection (e) or (f) of Section 92.006.

(h) Repairs made pursuant to the tenant's notice must be made in compliance with applicable building codes, including a building permit when required.

(i) The tenant shall not have authority to contract for labor or materials in excess of what the tenant may deduct under this section. The landlord is not liable to repairmen, contractors, or material suppliers who furnish labor or materials to repair or remedy the condition. A repairman or supplier shall not have a lien for materials or services arising out of repairs contracted for by the tenant under this section.

(j) When deducting the cost of repairs from the rent payment,

the tenant shall furnish the landlord, along with payment of the balance of the rent, a copy of the repair bill and the receipt for its payment. A repair bill and receipt may be the same document.

(k) If the landlord repairs or remedies the condition or delivers an affidavit for delay under Section 92.0562 to the tenant after the tenant has contacted a repairman but before the repairman commences work, the landlord shall be liable for the cost incurred by the tenant for the repairman's trip charge, and the tenant may deduct the charge from the tenant's rent as if it were a repair cost.

Added by Acts 1989, 71st Leg., ch. 650, Sec. 6, eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1205, Sec. 12, eff. Jan. 1, 1998.

Sec. 92.0562. LANDLORD AFFIDAVIT FOR DELAY. (a) The tenant must delay contracting for repairs under Section 92.0561 if, before the tenant contracts for the repairs, the landlord delivers to the tenant an affidavit, signed and sworn to under oath by the landlord or his authorized agent and complying with this section.

(b) The affidavit must summarize the reasons for the delay and the diligent efforts made by the landlord up to the date of the affidavit to get the repairs done. The affidavit must state facts showing that the landlord has made and is making diligent efforts to repair the condition, and it must contain dates, names, addresses, and telephone numbers of contractors, suppliers, and repairmen contacted by the owner.

(c) Affidavits under this section may delay repair by the tenant for:

(1) 15 days if the landlord's failure to repair is caused by a delay in obtaining necessary parts for which the landlord is not at fault; or

(2) 30 days if the landlord's failure to repair is caused by a general shortage of labor or materials for repair following a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm.

(d) Affidavits for delay based on grounds other than those listed in Subsection (c) of this section are unlawful, and if used, they are of no effect. The landlord may file subsequent affidavits, provided that the total delay of the repair or remedy extends no

longer than six months from the date the landlord delivers the first affidavit to the tenant.

(e) The affidavit must be delivered to the tenant by any of the following methods:

(1) personal delivery to the tenant;

(2) certified mail, return receipt requested, to the tenant; or

(3) leaving the notice inside the dwelling in a conspicuous place if notice in that manner is authorized in a written lease.

(f) Affidavits for delay by a landlord under this section must be submitted in good faith. Following delivery of the affidavit, the landlord must continue diligent efforts to repair or remedy the condition. There shall be a rebuttable presumption that the landlord acted in good faith and with continued diligence for the first affidavit for delay the landlord delivers to the tenant. The landlord shall have the burden of pleading and proving good faith and continued diligence for subsequent affidavits for delay. A landlord who violates this section shall be liable to the tenant for all judicial remedies under Section 92.0563 except that the civil penalty under Subdivision (3) of Subsection (a) of Section 92.0563 shall be one month's rent plus $1,000.

(g) If the landlord is liable to the tenant under Section 92.056 and if a new landlord, in good faith and without knowledge of the tenant's notice of intent to repair, has acquired title to the tenant's dwelling by foreclosure, deed in lieu of foreclosure, or general warranty deed in a bona fide purchase, then the following shall apply:

(1) The tenant's right to terminate the lease under this subchapter shall not be affected, and the tenant shall have no duty to give additional notice to the new landlord.

(2) The tenant's right to repair and deduct for conditions involving sewage backup or overflow, flooding inside the dwelling, or a cutoff of potable water under Subsection (e) of Section 92.0561 shall not be affected, and the tenant shall have no duty to give additional notice to the new landlord.

(3) For conditions other than those specified in Subdivision (2) of this subsection, if the new landlord acquires title as described in this subsection and has notified the tenant of the name and address of the new landlord or the new landlord's authorized agent and if the tenant has not already contracted for the

repair or remedy at the time the tenant is so notified, the tenant must deliver to the new landlord a written notice of intent to repair or remedy the condition, and the new landlord shall have a reasonable time to complete the repair before the tenant may repair or remedy the condition. No further notice from the tenant is necessary in order for the tenant to repair or remedy the condition after a reasonable time has elapsed.

(4) The tenant's judicial remedies under Section 92.0563 shall be limited to recovery against the landlord to whom the tenant gave the required notices until the tenant has given the new landlord the notices required by this section and otherwise complied with Section 92.056 as to the new landlord.

(5) If the new landlord violates this subsection, the new landlord is liable to the tenant for a civil penalty of one month's rent plus $2,000, actual damages, and attorney's fees.

(6) No provision of this section shall affect any right of a foreclosing superior lienholder to terminate, according to law, any interest in the premises held by the holders of subordinate liens, encumbrances, leases, or other interests and shall not affect any right of the tenant to terminate the lease according to law.

Added by Acts 1989, 71st Leg., ch. 650, Sec. 7, eff. Aug. 28, 1989.

Sec. 92.0563. TENANT'S JUDICIAL REMEDIES. (a) A tenant's judicial remedies under Section 92.056 shall include:

(1) an order directing the landlord to take reasonable action to repair or remedy the condition;

(2) an order reducing the tenant's rent, from the date of the first repair notice, in proportion to the reduced rental value resulting from the condition until the condition is repaired or remedied;

(3) a judgment against the landlord for a civil penalty of one month's rent plus $500;

(4) a judgment against the landlord for the amount of the tenant's actual damages; and

(5) court costs and attorney's fees, excluding any attorney's fees for a cause of action for damages relating to a personal injury.

(b) A landlord who knowingly violates Section 92.006 by

contracting orally or in writing with a tenant to waive the landlord's duty to repair under this subchapter shall be liable to the tenant for actual damages, a civil penalty of one month's rent plus $2,000, and reasonable attorney's fees. For purposes of this subsection, there shall be a rebuttable presumption that the landlord acted without knowledge of the violation. The tenant shall have the burden of pleading and proving a knowing violation. If the lease is in writing and is not in violation of Section 92.006, the tenant's proof of a knowing violation must be clear and convincing. A mutual agreement for tenant repair under Subsection (g) of Section 92.0561 is not a violation of Section 92.006.

(c) The justice, county, and district courts have concurrent jurisdiction in an action under Subsection (a).

(d) If a suit is filed in a justice court requesting relief under Subsection (a), the justice court shall conduct a hearing on the request not earlier than the sixth day after the date of service of citation and not later than the 10th day after that date.

(e) A justice court may not award a judgment under this section, including an order of repair, that exceeds $20,000, excluding interest and costs of court.

(f) An appeal of a judgment of a justice court under this section takes precedence in county court and may be held at any time after the eighth day after the date the transcript is filed in the county court. An owner of real property who files a notice of appeal of a judgment of a justice court to the county court perfects the owner's appeal and stays the effect of the judgment without the necessity of posting an appeal bond.

Added by Acts 1989, 71st Leg., ch. 650, Sec. 8, eff. Aug. 28, 1989.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 225 (S.B. 1448), Sec. 1, eff. January 1, 2010.

Acts 2023, 88th Leg., R.S., Ch. 89 (S.B. 1259), Sec. 1, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 861 (H.B. 3474), Sec. 3.003(a), eff. September 1, 2023.

Sec. 92.058. LANDLORD REMEDY FOR TENANT VIOLATION. (a) If the tenant withholds rents, causes repairs to be performed, or makes rent

deductions for repairs in violation of this subchapter, the landlord may recover actual damages from the tenant. If, after a landlord has notified a tenant in writing of (1) the illegality of the tenant's rent withholding or the tenant's proposed repair and (2) the penalties of this subchapter, the tenant withholds rent, causes repairs to be performed, or makes rent deductions for repairs in bad faith violation of this subchapter, the landlord may recover from the tenant a civil penalty of one month's rent plus $500.

(b) Notice under this section must be in writing and may be given in person, by mail, or by delivery to the premises.

(c) The landlord has the burden of pleading and proving, by clear and convincing evidence, that the landlord gave the tenant the required notice of the illegality and the penalties and that the tenant's violation was done in bad faith. In any litigation under this subsection, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

Acts 1983, 68th Leg., p. 3638, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 650, Sec. 10, eff. Aug. 28, 1989.

Sec. 92.060. AGENTS FOR DELIVERY OF NOTICE. A managing agent, leasing agent, or resident manager is the agent of the landlord for purposes of notice and other communications required or permitted by this subchapter.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.061. EFFECT ON OTHER RIGHTS. The duties of a landlord and the remedies of a tenant under this subchapter are in lieu of existing common law and other statutory law warranties and duties of landlords for maintenance, repair, security, habitability, and nonretaliation, and remedies of tenants for a violation of those warranties and duties. Otherwise, this subchapter does not affect any other right of a landlord or tenant under contract, statutory law, or common law that is consistent with the purposes of this subchapter or any right a landlord or tenant may have to bring an action for personal injury or property damage under the law of this state. This subchapter does not impose obligations on a landlord or

tenant other than those expressly stated in this subchapter.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1985, 69th Leg., ch. 200, Sec. 5, eff. Aug. 26, 1985.

Sec. 92.062. LEASE TERM AFTER NATURAL DISASTER. If a rental premises is, as a practical matter, totally unusable for residential purposes as a result of a natural disaster such as a hurricane, tornado, flood, extended freeze, or widespread windstorm, a landlord that allows a tenant to move to another rental unit owned by the landlord may not require the tenant to execute a lease for a term longer than the term remaining on the tenant's lease on the date the premises was rendered unusable as a result of the natural disaster.

Added by Acts 2013, 83rd Leg., R.S., Ch. 475 (S.B. 1120), Sec. 1, eff. January 1, 2014.

SUBCHAPTER C. SECURITY DEPOSITS

Sec. 92.101. APPLICATION. This subchapter applies to all residential leases.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1995, 74th Leg., ch. 744, Sec. 1, eff. Jan. 1, 1996.

Sec. 92.102. SECURITY DEPOSIT. A security deposit is any advance of money, other than a rental application deposit or an advance payment of rent, that is intended primarily to secure performance under a lease of a dwelling that has been entered into by a landlord and a tenant.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1995, 74th Leg., ch. 744, Sec. 2, eff. Jan. 1, 1996.

Sec. 92.103. OBLIGATION TO REFUND. (a) Except as provided by Section 92.107, the landlord shall refund a security deposit to the tenant on or before the 30th day after the date the tenant surrenders the premises.

(b) A requirement that a tenant give advance notice of surrender as a condition for refunding the security deposit is effective only if the requirement is underlined or is printed in conspicuous bold print in the lease.

(c) The tenant's claim to the security deposit takes priority over the claim of any creditor of the landlord, including a trustee in bankruptcy.

Acts 1983, 68th Leg., p. 3639, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1995, 74th Leg., ch. 744, Sec. 3, eff. Jan. 1, 1996.

Sec. 92.1031. CONDITIONS FOR RETENTION OF SECURITY DEPOSIT OR RENT PREPAYMENT. (a) Except as provided in Subsection (b), a landlord who receives a security deposit or rent prepayment for a dwelling from a tenant who fails to occupy the dwelling according to a lease between the landlord and the tenant may not retain the security deposit or rent prepayment if:

(1) the tenant secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the dwelling on or before the commencement date of the lease; or

(2) the landlord secures a replacement tenant satisfactory to the landlord and the replacement tenant occupies the dwelling on or before the commencement date of the lease.

(b) If the landlord secures the replacement tenant, the landlord may retain and deduct from the security deposit or rent prepayment either:

(1) a sum agreed to in the lease as a lease cancellation fee; or

(2) actual expenses incurred by the landlord in securing the replacement, including a reasonable amount for the time of the landlord in securing the replacement tenant.

Added by Acts 1995, 74th Leg., ch. 869, Sec. 13, eff. Jan. 1, 1996.

Sec. 92.104. RETENTION OF SECURITY DEPOSIT; ACCOUNTING. (a) Before returning a security deposit, the landlord may deduct from the deposit damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease.

(b) The landlord may not retain any portion of a security

deposit to cover normal wear and tear.

(c) If the landlord retains all or part of a security deposit under this section, the landlord shall give to the tenant the balance of the security deposit, if any, together with a written description and itemized list of all deductions. The landlord is not required to give the tenant a description and itemized list of deductions if:

(1) the tenant owes rent when he surrenders possession of the premises; and

(2) there is no controversy concerning the amount of rent owed.

Acts 1983, 68th Leg., p. 3640, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.1041. PRESUMPTION OF REFUND OR ACCOUNTING. A landlord is presumed to have refunded a security deposit or made an accounting of security deposit deductions if, on or before the date required under this subchapter, the refund or accounting is placed in the United States mail and postmarked on or before the required date.

Added by Acts 1995, 74th Leg., ch. 744, Sec. 4, eff. Jan. 1, 1996.

Sec. 92.105. CESSATION OF OWNER'S INTEREST. (a) If the owner's interest in the premises is terminated by sale, assignment, death, appointment of a receiver, bankruptcy, or otherwise, the new owner is liable for the return of security deposits according to this subchapter from the date title to the premises is acquired.

(b) The new owner shall deliver to the tenant a signed statement acknowledging that the new owner has acquired the property and is responsible for the tenant's security deposit and specifying the exact dollar amount of the deposit.

(b-1) The person who no longer owns an interest in the rental premises is liable for a security deposit received while the person was the owner until the new owner has received the deposit or has assumed the liability for the deposit, unless otherwise specified by the parties in a written contract.

(c) Subsection (a) does not apply to a real estate mortgage lienholder who acquires title by foreclosure.

Acts 1983, 68th Leg., p. 3640, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1985, 69th Leg., ch. 305, Sec. 2, eff. Aug. 26, 1985.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 5, eff. January 1, 2016.

Sec. 92.106. RECORDS. The landlord shall keep accurate records of all security deposits.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.107. TENANT'S FORWARDING ADDRESS. (a) The landlord is not obligated to return a tenant's security deposit or give the tenant a written description of damages and charges until the tenant gives the landlord a written statement of the tenant's forwarding address for the purpose of refunding the security deposit.

(b) The tenant does not forfeit the right to a refund of the security deposit or the right to receive a description of damages and charges merely for failing to give a forwarding address to the landlord.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.108. LIABILITY FOR WITHHOLDING LAST MONTH'S RENT. (a) The tenant may not withhold payment of any portion of the last month's rent on grounds that the security deposit is security for unpaid rent.

(b) A tenant who violates this section is presumed to have acted in bad faith. A tenant who in bad faith violates this section is liable to the landlord for an amount equal to three times the rent wrongfully withheld and the landlord's reasonable attorney's fees in a suit to recover the rent.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.109. LIABILITY OF LANDLORD. (a) A landlord who in bad faith retains a security deposit in violation of this subchapter is liable for an amount equal to the sum of $100, three times the

portion of the deposit wrongfully withheld, and the tenant's reasonable attorney's fees in a suit to recover the deposit.

(b) A landlord who in bad faith does not provide a written description and itemized list of damages and charges in violation of this subchapter:

(1) forfeits the right to withhold any portion of the security deposit or to bring suit against the tenant for damages to the premises; and

(2) is liable for the tenant's reasonable attorney's fees in a suit to recover the deposit.

(c) In an action brought by a tenant under this subchapter, the landlord has the burden of proving that the retention of any portion of the security deposit was reasonable.

(d) A landlord who fails either to return a security deposit or to provide a written description and itemization of deductions on or before the 30th day after the date the tenant surrenders possession is presumed to have acted in bad faith.

Acts 1983, 68th Leg., p. 3641, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 92.110. LEASE WITHOUT SECURITY DEPOSIT; REQUIRED NOTICE. (a) If a security deposit was not required by a residential lease and the tenant is liable for damages and charges on surrender of the premises, the landlord shall notify the tenant in writing of the landlord's claim for damages and charges on or before the date the landlord reports the claim to a consumer reporting agency or third-party debt collector.

(b) A landlord is not required to provide the notice under Subsection (a) if the tenant has not given the landlord the tenant's forwarding address as provided by Section 92.107.

(c) If a landlord does not provide the tenant the notice as required by this section, the landlord forfeits the right to collect damages and charges from the tenant. Forfeiture of the right to collect damages and charges from the tenant is the exclusive remedy for the failure to provide the proper notice to the tenant.

Added by Acts 2015, 84th Leg., R.S., Ch. 1198 (S.B. 1367), Sec. 6, eff. January 1, 2016.

Sec. 92.111. FEE IN LIEU OF SECURITY DEPOSIT. (a) If a security deposit is required by a residential lease, the landlord may choose to offer the tenant an option to pay a fee in lieu of a security deposit. If a landlord offers a tenant the option of paying a fee in lieu of a security deposit, the landlord:

(1) shall offer the tenant the option to instead pay a security deposit; and

(2) may not use a prospective tenant's choice to pay a fee in lieu of a security deposit or a security deposit as a criterion in the determination of whether to approve an application for occupancy.

(b) At the time a landlord offers to a tenant the option of paying a fee in lieu of a security deposit, the landlord shall notify the tenant in writing:

(1) that the tenant has the option to instead pay a security deposit;

(2) that the tenant has the option to terminate the agreement to pay the fee in lieu of a security deposit at any time and stop paying the fee, and instead, to pay a security deposit in the amount that is otherwise offered to new tenants for substantially similar housing on the date the tenant chooses to pay the security deposit; and

(3) of the charges for each option described by Subdivision (1) or (2).

(c) If the tenant decides to pay a fee in lieu of a security deposit, an agreement to collect the fee must be in writing and signed by:

(1) the landlord or the landlord's legal representative; and

(2) the tenant.

(d) A fee in lieu of a security deposit must be:

(1) a recurring fee of equivalent amount; and

(2) payable at the time each rent payment is due during the lease.

(e) A fee collected under this section may be used to purchase insurance coverage for damages and charges for which the tenant is legally liable under the lease or as a result of breaching the lease. A landlord may not charge the tenant a fee that is more than the reasonable cost of obtaining and administering the insurance purchased under this subsection.

(f) If the tenant decides to pay a fee in lieu of a security

deposit and the landlord purchases insurance coverage as described by Subsection (e), an agreement required under Subsection (c) must clearly specify the following terms:

(1) the fee is being paid only to secure occupancy without a requirement of paying a security deposit;

(2) the fee, unless otherwise specified, is not refundable;

(3) payment of the fee, unless otherwise specified, does not eliminate, release, or otherwise limit the requirements of the lease, including that the tenant must pay for:

(A) rent as the rent becomes due; and

(B) damages for which the tenant is legally liable under the lease, other than normal wear and tear; and

(4) the fee, unless otherwise specified, is not paying for insurance that covers the tenant or otherwise changes the tenant's obligation to pay rent and damages beyond normal wear and tear.

(g) Except as provided by Subsection (h), a fee collected under this section is a security deposit for purposes of this chapter.

(h) A fee collected under this section is not a security deposit for purposes of this chapter if:

(1) an agreement was signed under Subsection (c); and

(2) the fee is used to purchase insurance coverage for damages and unpaid rent for which the tenant is legally liable under the lease or as a result of breaching the lease.

(i) A landlord may not charge a tenant for normal wear and tear of a dwelling.

(j) A landlord may not submit a claim for damages or unpaid rent to an insurer for insurance described by Subsection (e) unless the landlord notifies the tenant of the damages or unpaid rent indebtedness not later than the 30th day after the date the tenant surrendered possession of the dwelling. The notice must include a written description and itemized list of all damages, if any, and of unpaid rent, if any, including the dates the rent payments were due.

(k) If the tenant challenges the claim for damages or unpaid rent and that challenge results in a determination by the landlord or by a court that the notice of indebtedness is incorrect, the indebtedness is void and the landlord may not file an insurance claim for insurance purchased under Subsection (e) in the amount of the voided indebtedness. If the landlord has already submitted to the insurer a claim for the voided indebtedness, the claim must be withdrawn. If the insurance company has already paid the landlord

for the invalidated claim, the landlord shall return the payment.

(l) If an insurer compensates a landlord for a tenant's damages or unpaid rent under a valid claim:

(1) the landlord may not seek or collect reimbursement from the tenant of the amounts that the insurer paid to the landlord;

(2) the insurer that has paid a landlord after receipt of a claim filed by a landlord, if allowed by a subrogation clause in the insurance described by Subsection (e) and before the first anniversary of the termination of the tenant's occupancy, may seek reimbursement from the tenant of only the amounts paid to the landlord; and

(3) the tenant is entitled to any defenses to payment against the insurer as against the landlord.

(m) If an insurer seeks reimbursement under Subsection (l)(2), the insurer must include in the reimbursement demand:

(1) evidence of damages or unpaid rent that the landlord submitted to the insurer;

(2) evidence of damage repair costs that the landlord submitted to the insurer; and

(3) a copy of the settled claim that documents payments made by the insurer to the landlord.

Added by Acts 2021, 87th Leg., R.S., Ch. 189 (S.B. 1783), Sec. 1, eff. September 1, 2021.

SUBCHAPTER D. SECURITY DEVICES

Sec. 92.151. DEFINITIONS. In this subchapter:

(1) "Doorknob lock" means a lock in a doorknob, with the lock operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(2) "Door viewer" means a permanently installed device in an exterior door that allows a person inside the dwelling to view a person outside the door. The device must be:

(A) a clear glass pane or one-way mirror; or

(B) a peephole having a barrel with a one-way lens of glass or other substance providing an angle view of not less than 160 degrees.

(3) "Exterior door" means a door providing access from a dwelling interior to the exterior. The term includes a door between

a living area and a garage but does not include a sliding glass door or a screen door.

(4) "French doors" means a set of two exterior doors in which each door is hinged and abuts the other door when closed. The term includes double-hinged patio doors.

(5) "Keyed dead bolt" means:

(A) a door lock not in the doorknob that:

(i) locks with a bolt into the doorjamb; and

(ii) is operated from the exterior by a key, card, or combination and from the interior by a knob or lever without a key, card, or combination; or

(B) a doorknob lock that contains a bolt with at least a one-inch throw.

(6) "Keyless bolting device" means a door lock not in the doorknob that locks:

(A) with a bolt into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

(B) by a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint that protrudes from the doorjamb and that is affixed to the doorjamb frame by means of three case-hardened screws at least three inches in length. One-half of the central plate must overlap the interior surface of the door and the other half of the central plate must overlap the doorjamb when the plate is placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door.

The term "keyless bolting device" does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded nightlatch, foot bolt, or other lock or latch; or

(C) by a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three inches in length and must be screwed into the door frame stud or wall stud on each side of the door. The bar or

tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the door frame stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

(7) "Landlord" means a dwelling owner, lessor, sublessor, management company, or managing agent, including an on-site manager.

(8) "Multiunit complex" means two or more dwellings in one or more buildings that are:

(A) under common ownership;

(B) managed by the same owner, agent, or management company; and

(C) located on the same lot or tract or adjacent lots or tracts of land.

(9) "Possession of a dwelling" means occupancy by a tenant under a lease, including occupancy until the time the tenant moves out or a writ of possession is issued by a court. The term does not include occupancy before the initial occupancy date authorized under a lease.

(10) "Rekey" means to change or alter a security device that is operated by a key, card, or combination so that a different key, card, or combination is necessary to operate the security device.

(11) "Security device" means a doorknob lock, door viewer, keyed dead bolt, keyless bolting device, sliding door handle latch, sliding door pin lock, sliding door security bar, or window latch in a dwelling.

(12) "Sliding door handle latch" means a latch or lock:

(A) located near the handle on a sliding glass door;

(B) operated with or without a key; and

(C) designed to prevent the door from being opened.

(13) "Sliding door pin lock" means a lock on a sliding glass door that consists of a pin or nail inserted from the interior side of the door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(14) "Sliding door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the door from being opened.

(15) "Tenant turnover date" means the date a tenant moves

into a dwelling under a lease after all previous occupants have moved out. The term does not include dates of entry or occupation not authorized by the landlord.

(16) "Window latch" means a device on a window that prevents the window from being opened and that is operated without a key and only from the interior.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 16, Sec. 1, eff. Sept. 1, 1999.

Sec. 92.152. APPLICATION OF SUBCHAPTER. (a) This subchapter does not apply to:

(1) a room in a hotel, motel, or inn or to similar transient housing;

(2) residential housing owned or operated by a public or private college or university accredited by a recognized accrediting agency as defined under Section 61.003, Education Code;

(3) residential housing operated by preparatory schools accredited by the Texas Education Agency, a regional accrediting agency, or any accrediting agency recognized by the commissioner of education; or

(4) a temporary residential tenancy created by a contract for sale in which the buyer occupies the property before closing or the seller occupies the property after closing for a specific term not to exceed 90 days.

(b) Except as provided by Subsection (a), a dwelling to which this subchapter applies includes:

(1) a room in a dormitory or rooming house;

(2) a mobile home;

(3) a single family house, duplex, or triplex; and

(4) a living unit in an apartment, condominium, cooperative, or townhome project.

Amended by Acts 1993, 73rd Leg., ch. 357, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 126, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 869, Sec. 2, eff. Jan. 1, 1996.

Sec. 92.153. SECURITY DEVICES REQUIRED WITHOUT NECESSITY OF TENANT REQUEST. (a) Except as provided by Subsections (b), (e),